

AL-MUHALLA

كِتَابُ الْأَقْضِيَةِ

The Book of Judicial Rulings

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[كِتَابُ الْأَقْضِيَةِ] [مَسْأَلَةٌ لَا يَحِلُّ الْحُكْمُ إِلَّا بِمَا أَنْزَلَ اللَّهُ تَعَالَى]

١٧٧٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْحُكْمُ إِلَّا بِمَا أَنْزَلَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ الْحَقُّ وَكُلُّ مَا عَدَا ذَلِكَ فَهُوَ جَوْرٌ وَظُلْمٌ لَا يَحِلُّ الْحُكْمُ بِهِ وَيُفْسَخُ أَبَدًا إذَا حَكَمَ بِهِ حَاكِمٌ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

وَقَالَ تَعَالَى: {وَآمَنُوا بِمَا نُزِّلَ عَلَى مُحَمَّدٍ وَهُوَ الْحَقُّ مِنْ رَبِّهِمْ} [محمد: ٢]

وَقَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

وَقَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤]

وَقَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

وَالظُّلْمُ لَا يَحِلُّ إقْرَارُهُ، وَالْخَطَأُ لَا يَجُوزُ إمْضَاؤُهُ.

[مَسْأَلَة مَا يَجِب فِيمَنْ يلي الْقَضَاء]

١٧٧٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يَلِيَ الْقَضَاءَ وَالْحُكْمَ فِي شَيْءٍ مِنْ أُمُورِ الْمُسْلِمِينَ وَأَهْلِ الذِّمَّةِ: إلَّا مُسْلِمٌ، بَالِـغٌ، عَاقِلٌ، عَالِمٌ بِأَحْكَامِ الْقُرْآنِ، وَالسُّنَّةِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَاسِخِ كُلِّ ذَلِكَ، وَمَنْسُوخِهِ، وَمَا كَانَ مِنْ النُّصُوصِ مَخْصُوصًا بِنَصٍّ آخَرَ صَحِيحٍ؛ لِأَنَّ الْحُكْمَ لَا يَجُوزُ إلَّا بِمَا ذَكَرْنَا لِمَا ذَكَرْنَا قَبْلُ.

L28887–28888 **[The Book of Judicial Rulings] [A Legal Inquiry: It is not permissible to pass judgment except by that which Allah, the Most High, has revealed.]**

L28889 Issue 1778: It is impermissible to judge except by what Allah the Exalted has revealed through the tongue of His Messenger—peace and blessings be upon him—for that is the truth. Whatever differs from that is injustice and oppression; it is unlawful to judge by it, and any judgment issued by a judge according to it is perpetually annulled.

L28890 The proof of that is the saying of Allah, the Exalted: "And to judge between them by what Allah has revealed" [Surah Al-Mā'idah 5:49].[1]

L28891 And He, the Exalted, said: "And they believe in what has been revealed to Muhammad, which is the truth from their Lord" [47:2].[2]

L28892 And He, the Exalted, said: "So that you may clarify to the people what was sent down to them." [16:44][3]

L28893 And He, the Exalted, said: "Nor does he speak from desire. It is nothing but a revelation revealed." [An-Najm: 3–4][4]

L28894 And He, the Exalted, said: "Whoever transgresses the limits ordained by Allah has certainly wronged himself." [Surah at-Talaq 65:1].[5]

L28895 It is unlawful to affirm injustice and impermissible to proceed with error.

L28896 **The Issue of the Duties Required for One Who Assumes Judicial Authority.**

L28897 Issue 1779 - It is impermissible for anyone to assume judicial authority or pass rulings in matters concerning Muslims or dhimmis except a Muslim who is adult, sane, knowledgeable in the rulings of the Quran and the

[1] **Qur'an references (L28890):** Qur'an 5:49 (Al-Ma'idah).
[2] **Qur'an references (L28891):** Qur'an 47:2 (Muhammad).
[3] **Qur'an references (L28892):** Qur'an 16:44 (An-Nahl).
[4] **Qur'an references (L28893):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[5] **Qur'an references (L28894):** Qur'an 65:1 (At-Talaq).

established Sunnah of the Messenger of Allah—peace and blessings be upon him—including what abrogates those rulings, what is abrogated of them, and what is specified by another authentic scriptural text. This restriction exists because judgment is only permitted through what we have described, for the reasons we previously mentioned.

فَإِذَا لَمْ يَكُنْ عَالِمًا بِمَا لَا يَجُوزُ الْحُكْمُ إِلَّا بِهِ لَمْ يَحِلَّ لَهُ أَنْ يَحْكُمَ بِجَهْلِهِ بِالْحُكْمِ وَلَا يَحِلُّ لَهُ إِذَا كَانَ جَاهِلًا بِمَا ذَكَرْنَا أَنْ يُشَاوِرَ مَنْ يَرَى أَنَّ عِنْدَهُ عِلْمًا ثُمَّ يَحْكُمَ بِقَوْلِهِ، لِأَنَّهُ لَا يَدْرِي أَفْتَاهُ بِحَقٍّ أَمْ بِبَاطِلٍ.

L28898–28899 If he is not knowledgeable about that without which judgment is not permissible, it is unlawful for him to pass judgment due to his ignorance of the ruling. Nor is it lawful for him—if ignorant of what we have mentioned—to consult someone he believes has knowledge and then judge based on his opinion, for he does not know whether the advisor issued him a fatwa rooted in truth or falsehood.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ} [الإسراء: ٣٦] فَمَنْ أَخَذَ بِمَا لَا يَعْلَمُ فَقَدْ قَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَعَصَى اللَّهَ عَزَّ وَجَلَّ.

L28900 Allah the Exalted has said: *"And do not follow that of which you have no knowledge"* [Al-Isrāʾ 17:36]. Thus, whoever acts upon what he does not know has followed what he has no knowledge of, thereby disobeying Allah, the Almighty, the Majestic.[6]

وَلَيْسَ هَذَا بِمَنْزِلَةِ الْجَاهِلِ مِنْ الْعَامَّةِ تَنْزِلُ بِهِ النَّازِلَةُ فَيَسْأَلُ مَنْ يُوصَفُ لَهُ بِعِلْمِ الْقُرْآنِ وَالسُّنَّةِ، وَيَأْخُذُ بِقَوْلِهِ بَعْدَ أَنْ يُخْبِرَهُ أَنَّهُ حُكْمُ اللَّهِ تَعَالَى أَوْ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ أَنَّ الْعَامِّيَّ مُكَلَّفٌ فِي تِلْكَ النَّازِلَةِ عَمَلًا مَا قَدْ افْتَرَضَهُ اللَّهُ عَلَيْهِ، وَلَمْ يُفْسَحْ لَهُ فِي إهْمَالِهِ فَعَلَيْهِ فِي ذَلِكَ أَنْ يَبْلُغَ فِي ذَلِكَ حَيْثُ بَلَغَ وُسْعُهُ مِنْ الْعِلْمِ مَا لَمْ يَلْزَمْهُ.

L28901–28902 This is not akin to the situation of an ignorant commoner upon whom a calamity befalls, so he asks someone who describes to him with knowledge of the Quran and Sunnah, then follows his statement after being informed that it is the ruling of Allah the Exalted or the command of the Messenger of Allah (peace be upon him), or that the commoner is obligated in that calamity to perform an act that Allah has enjoined upon him, with no allowance for neglecting it. Thus, he must extend his efforts in that matter as far as his capacity within the scope of his knowledge permits, provided it does not become obligatory upon him.

قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L28903 Allah, the Exalted, said: "He does not burden any soul beyond its capacity" [Al-Baqarah: 286].[7]

وَأَمَّا الْحَاكِمُ فَبِضِدِّ هَذَا، لِأَنَّهُ غَيْرُ مُكَلَّفٍ مَا لَا يَدْرِي مِنْ الْحُكْمِ بَيْنَ غَيْرِهِ مِنْ النَّاسِ، بَلْ هُوَ مُحَرَّمٌ عَلَيْهِ ذَلِكَ، وَإِنَّمَا كَلَّفَهُ اللَّهُ تَعَالَى سِوَاهُ مِنْ أَهْلِ الْعِلْمِ.

L28904 As for the judge, the opposite applies, for he is not obligated to rule on matters he does not know concerning disputes between others among the people. Rather, this is forbidden to him. Allah the Exalted has obligated him, just as He has obligated others among the people of knowledge.

[6] **Qur'an references (L28900):** Qur'an 17:36 (Al-Isra).
[7] **Qur'an references (L28903):** Qur'an 2:286 (Al-Baqarah).

Issue concerning that which necessitates a ruling by it.

1780 - Issue: It is not permissible to judge by analogy, nor by personal opinion, nor by juristic preference, nor by the opinion of anyone below the Messenger of Allah (peace be upon him) unless it conforms to the Quran or an authentic Sunnah; for all of that constitutes judgment based on preponderant assumption.

Allah, the Exalted, has said: "Indeed, conjecture does not avail anything from the truth" [Jonah (Yunus) 10:36].[8]

And He, the Most High, said: "They follow nothing but conjecture and what their souls desire, and indeed there has come to them from their Lord the guidance." [An-Najm: 23].[9]

The Messenger of Allah - peace and blessings be upon him - said: "Beware of suspicion, for suspicion is the most false of speech."

If it is said: "Then, in your acceptance of solitary reports, you are adhering to conjecture."

We said: By no means! Rather, it is for the certain truth. The Most High said: "Indeed, We Ourselves have sent down the Reminder, and We are assuredly its guardians." [Al-Hijr: 9][10]

And He, the Exalted, said: "He does not speak from [his own] inclination" [An-Najm: 3], "It is not except a revelation revealed" [An-Najm: 4].[11]

If it is said: "You rule by clear evidence and oath, and your judgment is in fact based on conjecture."

We said: Certainly not! Rather, with certainty that Allah, the Exalted, has

[8] **Qur'an references (L28907):** Qur'an 10:36 (Yunus).
[9] **Qur'an references (L28908):** Qur'an 53:23 (An-Najm).
[10] **Qur'an references (L28911):** Qur'an 15:9 (Al-Hijr).
[11] **Qur'an references (L28913):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

[مَسْأَلَة فِيمَا يَجِب الْحُكْم بِهِ]

١٧٨٠ - مَسْأَلَة: وَلَا يَحِلُّ الْحُكْمُ بِقِيَاسٍ، وَلَا بِالرَّأْيِ وَلَا بِالِاسْتِحْسَانِ وَلَا بِقَوْلِ أَحَدٍ مِمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دُونَ أَنْ يُوَافِقَ قُرْآنًا أَوْ سُنَّةً صَحِيحَةً، لِأَنَّ كُلَّ ذَلِكَ حُكْمٌ بِغَالِبِ الظَّنِّ.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] .

وَقَالَ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَمَا تَهْوَى الأَنْفُسُ وَلَقَدْ جَاءَهُمْ مِنْ رَبِّهِمُ الْهُدَى} [النجم: ٢٣] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

فَإِنْ قِيلَ: فَإِنَّكُمْ فِي أَخْذِكُمْ بِخَبَرِ الْوَاحِدِ مُتَّبِعُونَ لِلظَّنِّ.

قُلْنَا: كَلَّا، بَلْ لِلْحَقِّ الْمُتَيَقَّنِ، قَالَ تَعَالَى: {إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ} [الحجر: ٩] .

وَقَالَ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

فَإِنْ قِيلَ: فَإِنَّكُمْ فِي الْحُكْمِ بِالْبَيِّنَةِ وَالْيَمِينِ حَاكِمُونَ بِالظَّنِّ.

قُلْنَا: كَلَّا، بَلْ بِيَقِينٍ أَنَّ اللَّهَ تَعَالَى أَمَرَنَا بِذَلِكَ نَصًّا وَمَا عَلَيْنَا مِنْ مَغِيبِ الْأَمْرِ شَيْءٌ إِذْ لَمْ نُكَلَّفْهُ.

explicitly commanded us thus, and we bear no responsibility for the unseen dimensions of the matter, since we were not tasked with it.

وَأَيْضًا - فَإِنَّهُ لَا يَخْلُو مَا أَوْجَبَهُ الْقِيَاسُ، أَوْ مَا قِيلَ بِرَأْيٍ أَوْ اسْتِحْسَانٍ أَوْ تَقْلِيدِ قَائِلٍ مِنْ أَحَدِ، أَوْجُهٍ ثَلَاثَةٍ لَا رَابِعَ لَهَا ضَرُورَةً -: إمَّا أَنْ يَكُونَ ذَلِكَ مُوَافِقًا لِقُرْآنٍ أَوْ لِسُنَّةٍ صَحِيحَةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا إنَّمَا يُحْكَمُ فِيهِ بِالْقُرْآنِ أَوْ بِالسُّنَّةِ، وَلَا مَعْنَى لِطَلَبِ قِيَاسٍ، أَوْ رَأْيٍ، أَوْ قَوْلِ قَائِلٍ مُوَافِقٍ لِذَلِكَ، وَمَنْ لَمْ يَحْكُمْ بِالْقُرْآنِ، أَوْ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا حَتَّى يُوَافِقَ ذَلِكَ قِيَاسٌ، أَوْ رَأْيٌ، أَوْ قَوْلُ قَائِلٍ فَقَدْ انْسَلَخَ عَنْ الْإِيمَانِ.

L28916 Moreover, any ruling necessitated by analogical reasoning, or what is posited by personal opinion, juristic preference, or blind adherence to a scholar's view, must by necessity align with one of three aspects—no fourth exists. Either it conforms to the Qur'an or to an authentic Sunnah of the Messenger of Allah (peace be upon him). In such a case, judgment is based solely on the Qur'an or the Sunnah, and there is no justification for seeking analogical reasoning, personal opinion, or a scholar's statement that aligns with them. Whoever does not judge by the Qur'an or the ruling of the Messenger of Allah (peace be upon him) except when it coincides with analogical reasoning, personal opinion, or a scholar's statement has indeed been cast off from faith.

قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا} [النساء: ٦٥] وَهَذَا الَّذِي لَمْ يَحْكُمْ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا شَجَرَ عِنْدَهُ فِيمَا بَيْنَ النَّاسِ إلَّا حَتَّى وَافَقَهُ قِيَاسٌ أَوْ رَأْيٌ، أَوْ قَوْلُ قَائِلٍ فَلَمْ يُحَكِّمْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا سَلَّمَ لَهُ تَسْلِيمًا، بَلْ وَجَدَ فِي نَفْسِهِ حَرَجًا مِمَّا قَضَى بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَوَرَبِّنَا مَا آمَنَ.

L28917 Allah the Almighty said: "But no, by your Lord, they will not truly believe until they make you judge in matters disputed among them, then find no inner resistance to your verdict in their hearts, and submit with full submission." [An-Nisa: 65] Whoever refrained from applying the judgment of Allah's Messenger—peace and blessings be upon him—in disputes presented to him among the people unless it conformed to analogy, opinion, or another's statement—such a person neither implemented the Prophet's judgment—peace and blessings be upon him—nor submitted to him with full submission. Rather, he harbored resentment in his soul against what the Prophet—peace and blessings be upon him—decreed. By our Lord, such a one is no true believer![12]

وَأَمَّا أَنْ يَكُونَ مُخَالِفًا لِلْقُرْآنِ أَوْ لِسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا الضَّلَالُ الْمُتَيَقَّنُ، وَخِلَافُ دِينِ الْإِسْلَامِ، وَلَا نَحْتَاجُ أَنْ نُطَوِّلَ فِي هَذَا مَعَ مُسْلِمٍ.

L28918 Or if it contradicts the Quran or the Sunnah of the Messenger of Allah—may Allah send blessings and peace upon him—then this is definite misguidance—contrary to the religion of Islam—and we need not elaborate on this with a Muslim.

قَالَ تَعَالَى: {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩]

L28919 He, the Exalted, said: "These are Allah's limits, so do not transgress them." [Al-Baqarah: 229][13]

[12] **Qur'an references (L28917):** Qur'an 4:65 (An-Nisa).
[13] **Qur'an references (L28919):** Qur'an 2:229 (Al-Baqarah).

L28920 And the Most High said: *"Whoever disobeys Allah and His Messenger and transgresses His limits, He will cast him into a Fire, wherein he will abide eternally"* [An-Nisāʾ 4:14].[14]

وَقَالَ تَعَالَى: {وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا} [النساء: ١٤] .

L28921 If there is nothing in the Qur'an and Sunnah that is textually concordant with it nor contradictory to it, then such an opinion cannot originate from a scholar, and there is no way for it to exist.

وَإِمَّا أَنْ لَا يُوجَدَ فِي الْقُرْآنِ وَالسُّنَّةِ مَا يُوَافِقُهُ نَصًّا وَلَا مَا يُخَالِفُهُ، فَهَذَا مَعْدُومٌ مِنْ الْعَالِمِ وَلَا سَبِيلَ إلَى وُجُودِهِ.

L28922 He, the Exalted, said: {This day I have perfected for you your religion} [Al-Ma'idah: 3].[15]

قَالَ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] .

L28923 And He, the Exalted, said: "We have neglected nothing in the Book." [Al-An'am 6:38][16]

وَقَالَ تَعَالَى: {مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ} [الأنعام: ٣٨] .

L28924–28926 The Messenger of Allah—peace and blessings of Allah be upon him—said: "Do not ask me about what I have left unregulated for you, for those before you were destroyed only due to their excessive..." "Their matters and disagreements concerning their prophets. So when I command you to do something, do as much of it as you can, and when I forbid you from something, leave it."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَعُونِي مَا تَرَكْتُكُمْ فَإِنَّمَا هَلَكَ مَنْ كَانَ قَبْلَكُمْ بِكَثْرَةِ مَسَائِلِهِمْ وَاخْتِلَافِهِمْ عَلَى أَنْبِيَائِهِمْ فَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاتْرُكُوهُ» .

L28927 It is necessarily established that no ruling ever deviates from being either: what Allah the Exalted commands through His Messenger—peace and blessings be upon him—thereby making it obligatory to the extent of our capability in it; or what Allah the Exalted prohibits through His Messenger—peace and blessings be upon him—thereby making it forbidden; or what entails neither command nor prohibition, rendering its performance or omission permissible. It is invalid that a newly arising matter in religion should occur—even if it were to occur (though Allah the Almighty has refused for it to exist)—without having a ruling in the Quran and Sunnah. For then whoever seeks to prescribe a ruling as part of the religion for such a matter would be condemned by Allah the Exalted, as stated in His words: "They

فَصَحَّ ضَرُورَةً أَنَّهُ لَا يَخْرُجُ حُكْمٌ أَبَدًا عَنْ أَنْ يَأْمُرَ بِهِ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَيَكُونُ فَرْضًا مَا اسْتَطَعْنَا مِنْهُ أَوْ يَنْهَى عَنْهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَيَكُونُ حَرَامًا، أَوْ لَا يَكُونُ فِيهِ أَمْرٌ وَلَا نَهْيٌ فَهُوَ مُبَاحٌ فِعْلُهُ وَتَرْكُهُ، وَبَطَلَ أَنْ تَنْزِلَ نَازِلَةٌ فِي الدِّينِ لَا حُكْمَ لَهَا فِي الْقُرْآنِ وَالسُّنَّةِ - وَلَوْ وُجِدَتْ - وَقَدْ أَبَى اللَّهُ عَزَّ وَجَلَّ أَنْ تُوجَدَ -: لَكَانَ مَنْ أَرَادَ أَنْ يُشَرِّعَ فِيهَا حُكْمًا دَاخِلًا فِي الدِّينِ ذَمَّ اللَّهُ تَعَالَى إذْ قَوْله تَعَالَى: {شَرَعُوا لَهُمْ مِنَ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ} [الشورى: ٢١] .

[14] **Qur'an references (L28920):** Qur'an 4:14 (An-Nisa).
[15] **Qur'an references (L28922):** Qur'an 5:3 (Al-Ma'idah).
[16] **Qur'an references (L28923):** Qur'an 6:38 (Al-An'am).

have prescribed for them laws of religion which Allah has not sanctioned" (42:21).[17]

L28928 If they say: "We judge therein by a ruling from the Quran and Sunnah that resembles it?" We say: "Where has Allah, the Exalted, commanded you to do this?" This constitutes legislating in religion that which Allah has not permitted.

L28929 If they say: "Allah the Exalted said: 'Take lesson, O people of insight' [59:2]," we reply: Yes, "take lesson" means "marvel." Allah the Exalted said: "There is indeed a lesson for you in livestock - We give you drink from what lies within their bellies, between waste and blood" [16:66]. Yet no one has ever understood "take lesson" to mean judging something by the ruling of its equivalent (qiyās). This distorts the words from their proper contexts, falsely attributing to Allah the Exalted what is baseless and what He did not say.[18]

L28930 If they say: "Allah, the Most High, has said: 'And consult them in the matter'" (Quran 3:159).[19]

L28931 We said: Yes, in matters where acting or abstaining is permissible, but not in legislating within the religion in that which Allah the Exalted has not permitted, nor in abandoning an obligation Allah the Exalted has ordained, nor in permitting what Allah the Exalted has prohibited, nor in forbidding what Allah the Exalted has made lawful, nor in mandating what Allah the Exalted has not obligated.

L28932 And Allah, the Most High, has said: "And know that the Messenger of Allah is among you. If he were to obey you in many affairs, you would surely have suffered" [Al-Hujurat: 7].[20]

L28933 Thus, it is established that adopting their opinions is not permissible in matters of religion except in cases where the Messenger of Allah—may Al-

فَإِنْ قَالُوا: نَحْكُمُ فِيهَا بِحُكْمٍ مَا يُشْبِهُهَا مِنْ الْقُرْآنِ وَالسُّنَّةِ؟ قُلْنَا: وَأَيْنَ أَمَرَكُمْ اللَّهُ تَعَالَى بِهَذَا؟ وَهَذَا هُوَ الشَّرْعُ فِي الدِّينِ بِمَا لَمْ يَأْذَنْ بِهِ اللَّهُ.

فَإِنْ قَالُوا: قَالَ اللَّهُ تَعَالَى: {فَاعْتَبِرُوا يَا أُولِي الأَبْصَارِ} [الحشر: ٢] ؟ قُلْنَا: نَعَمْ، اعْتَبِرُوا مَعْنَاهُ اعْجَبُوا قَالَ اللَّهُ تَعَالَى: {وَإِنَّ لَكُمْ فِي الأَنْعَامِ لَعِبْرَةً نُسْقِيكُمْ مِمَّا فِي بُطُونِهِ مِنْ بَيْنِ فَرْثٍ وَدَمٍ} [النحل: ٦٦] ، وَمَا فَهِمَ أَحَدٌ قَطُّ مِنْ " {فَاعْتَبِرُوا} [الحشر: ٢] أَحْكُمُوا لِلشَّيْءِ بِحُكْمِ نَظِيرِهِ، وَهَذَا هُوَ تَحْرِيفُ لِلْكَلِمِ عَنْ مَوَاضِعِهِ، وَالْقَوْلُ عَلَى اللَّهِ تَعَالَى بِالْبَاطِلِ وَبِمَا لَمْ يَقُلْهُ.

فَإِنْ قَالُوا: قَدْ قَالَ اللَّهُ تَعَالَى: {وَشَاوِرْهُمْ فِي الأَمْرِ} [آل عمران: ١٥٩] .

قُلْنَا: نَعَمْ، فِيمَا أُبِيحَ لَهُ فِعْلُهُ وَتَرْكُهُ، لَا فِي شَرْعِ الدِّينِ بِمَا لَمْ يَأْذَنْ فِيهِ اللَّهُ تَعَالَى، وَلَا فِي إِسْقَاطِ فَرْضٍ فَرَضَهُ اللَّهُ تَعَالَى، وَلَا فِي إِبَاحَةِ مَا حَرَّمَهُ اللَّهُ تَعَالَى، وَلَا فِي تَحْرِيمِ مَا أَحَلَّهُ اللَّهُ تَعَالَى، وَلَا فِي إِيجَابِ مَا لَمْ يُوجِبْهُ اللَّهُ تَعَالَى.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَاعْلَمُوا أَنَّ فِيكُمْ رَسُولَ اللَّهِ لَوْ يُطِيعُكُمْ فِي كَثِيرٍ مِنَ الأَمْرِ لَعَنِتُّمْ} [الحجرات: ٧] .

فَصَحَّ أَنَّ الْأَخْذَ بِرَأْيِهِمْ لَا يَجُوزُ فِي الدِّينِ إِلَّا حَيْثُ صَحَّحَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَطْ، وَمَا كَانَ هَكَذَا فَإِنَّمَا صَحَّ طَاعَةً لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[17] **Qur'an references (L28927):** Qur'an 42:21 (Ash-Shuraa).
[18] **Qur'an references (L28929):** Qur'an 59:2 (Al-Hashr); Qur'an 16:66 (An-Nahl).
[19] **Qur'an references (L28930):** Qur'an 3:159 (Ali 'Imran).
[20] **Qur'an references (L28932):** Qur'an 49:7 (Al-Hujurat).

lah bless him and grant him peace—has specifically validated them. When such validation exists, it is considered valid solely as an act of obedience to the Messenger of Allah—may Allah bless him and grant him peace—not as adherence to the one who proposed it. Moreover, every verse or Sunnah they cite which states that Allah the Exalted has decreed such-and-such in a particular matter due to such-and-such reasons and considerations, or as He decreed in such a matter.

- لَا اتِّبَاعًا لِمَنْ أَشَارَ بِهِ - ثُمَّ كُلُّ مَا أَتَوْا بِهِ مِنْ آيَةٍ أَوْ سُنَّةٍ فِيهَا: أَنَّ اللَّهَ تَعَالَى حَكَمَ فِي أَمْرِ كَذَا بِكَذَا مِنْ أَجْلِ كَذَا وَكَذَا، أَوْ كَمَا حَكَمَ فِي أَمْرِ كَذَا.

L28934–28935 We said: It is truth as it is.

قُلْنَا: هُوَ حَقٌّ كَمَا هُوَ.

L28936 Whenever you seek to legislate by analogizing something to another ruling without a textual basis, it is sheer invalidity and impermissible. No one may prohibit what Allah, the Exalted, has not prohibited solely because He prohibited other matters, nor may they obligate what Allah, the Almighty and Majestic, has not obligated solely because He obligated other matters—all of this transgresses the boundaries set by Allah, the Almighty and Majestic, and constitutes legislating in religion what Allah, the Exalted, has not authorized.

وَكُلَّمَا أَرَدْتُمْ أَنْ تُشَرِّعُوا أَنْتُمْ فِيهِ تَشْبِيهًا لَهُ بِحُكْمٍ آخَرَ دُونَ نَصٍّ فَهُوَ بَاطِلٌ بَحْتٌ لَا يَحِلُّ، فَلَيْسَ لِأَحَدٍ أَنْ يُحَرِّمَ مَا لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى مِنْ أَجْلِ أَنَّ اللَّهَ تَعَالَى حَرَّمَ أَشْيَاءَ أُخَرَ، وَلَا أَنْ يُوجِبَ مَا لَمْ يُوجِبْهُ اللَّهُ عَزَّ وَجَلَّ مِنْ أَجْلِ أَنَّ اللَّهَ عَزَّ وَجَلَّ أَوْجَبَ أَشْيَاءَ أُخَرَ -: فَهَذَا كُلُّهُ تَعَدٍّ لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ، وَشَرْعٌ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L28937 “Then if they claim consensus regarding the permissibility of that...”

فَإِنْ ادَّعَوْا فِي جَوَازِ ذَلِكَ إِجْمَاعًا.

L28938 We said: This is a lie and slander. Rather, the consensus has been confirmed regarding the invalidity of all that, for the entire nation is in consensus upon affirming the truth of Allah’s statement, the Exalted: “This day I have perfected for you your religion” (Al-Mā’idah 3).[21]

قُلْنَا: هَذَا الْكَذِبُ وَالْبَهْتُ، بَلْ الْإِجْمَاعُ قَدْ صَحَّ عَلَى بُطْلَانِ كُلِّ ذَلِكَ، لِأَنَّ الْأُمَّةَ كُلَّهَا مُجْمِعَةٌ عَلَى تَصْدِيقِ قَوْلِ اللَّهِ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] .

L28939 And to confirm the truthfulness of Allah’s statement, the Exalted: “Obey Allah and obey the Messenger and those entrusted with authority among you. If you dispute over any matter, refer it to Allah and the Messenger - if you truly believe in Allah and the Last Day” [An-Nisa: 59].[22]

وَعَلَى تَصْدِيقِ قَوْلِ اللَّهِ تَعَالَى: {أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] .

L28940 In this lies the invalidity of ruling by anything other than the Quran and the Sunnah.

وَفِي هَذَا بُطْلَانُ الْحُكْمِ بِمَا عَدَا الْقُرْآنِ وَالسُّنَّةَ.

L28941 Then those who broke [the covenant] and erred while intending good have

ثُمَّ نَقَضَ مَنْ نَقَضَ فَأَخْطَأَ قَاصِدًا إِلَى الْخَيْرِ، وَلَا سَبِيلَ لَهُمْ أَلْبَتَّةَ إِلَى وُجُودِ حُكْمٍ طُولَ مُدَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقِيَاسٍ أَصْلًا، وَلَا بِرَأْيٍ أَلْبَتَّةَ، وَكُلُّ

[21] **Qur’an references (L28938):** Qur’an 5:3 (Al-Ma’idah).
[22] **Qur’an references (L28939):** Qur’an 4:59 (An-Nisa).

absolutely no means to establish any ruling during the lifetime of Allah's Messenger - peace and blessings be upon him - through analogy as a valid source, nor through independent reasoning whatsoever. Every religious legislation that emerged after him - upon him be peace - which he did not rule by is undoubtedly invalid and has no place in the religion at all. Allah the Exalted said: "This day I have perfected for you your religion" [Al-Mā'idah 5:3]. What has been perfected cannot accept any addition whatsoever, nor is there any valid evidence that the Companions - may Allah be pleased with them - ever commanded the use of legal analogy in religion through authentic means.[23]

L28942 Moreover, those who claim consensus regarding a matter not confirmed to have been known and affirmed by every Muslim are lying against the entire Ummah. Allah the Exalted has explicitly stated that a group of jinn believed and heard the Quran from the Messenger of Allah—peace and blessings be upon him—thus becoming noble and virtuous believers. How then can this claimant wrongfully assert their consensus? The statements of the Companions—may Allah be pleased with them—cannot be confined except in matters where there is no doubt that every Muslim has indeed known it.

L28943–28945 Indeed, Ahmad ibn Hanbal—may Allah be pleased with him—said: "Whoever claims consensus has lied. What informs him? Perhaps people have differed on that." This was narrated to us concerning that by Humaam ibn Ahmad and Yahya ibn Abd al-Rahman ibn Mas'ud. Humaam said: 'Abbas ibn Asbagh narrated to us,' and Yahya said: 'Ahmad ibn Sa'id ibn Hazm narrated to us.' Then their chains converged – both Ahmad and Abbas said: 'Muhammad ibn Abd al-Malik ibn Ayman narrated to us, and Abdullah ibn Ahmad ibn Hanbal narrated to us, who said: "My father [Ahmad ibn Hanbal] stated" – and he [Ahmad ibn Hanbal] related the hadith.'

L28946 **The legal issue of a judge passing judgment while angry.**

L28947 Issue 1781: A judge should not pass judgment while angry, due to what has

شَرْعٍ حَدَثَ بَعْدَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَحْكُمْ هُوَ بِهِ، فَهُوَ بَاطِلٌ بِيَقِينٍ، وَلَيْسَ مِنْ الدِّينِ أَلْبَتَّةَ، قَالَ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] وَمَا كَمُلَ فَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُزَادَ فِيهِ شَيْءٌ أَصْلًا، وَلَا سَبِيلَ أَلْبَتَّةَ إلَى أَنْ يُوجَدَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - الْأَمْرُ بِالْقِيَاسِ فِي الدِّينِ مِنْ طَرِيقٍ صَحِيحَةٍ أَبَدًا.

وَأَيْضًا - فَمُدَّعِي الْإِجْمَاعِ عَلَى مَا لَا يَتَيَقَّنُ أَنَّ كُلَّ مُسْلِمٍ فَقَدْ عَرَفَهُ وَقَالَ بِهِ: كَاذِبٌ عَلَى الْأُمَّةِ كُلِّهَا، وَقَدْ نَصَّ اللَّهُ تَعَالَى عَلَى أَنَّ نَفَرًا مِنْ الْجِنِّ آمَنُوا، وَسَمِعُوا الْقُرْآنَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُمْ صَحَابَةٌ وَفُضَلَاءُ، فَمَنْ لِهَذَا الْمُدَّعِي بِالْبَاطِلِ بِإِجْمَاعِ أُولَئِكَ، فَكَيْفَ وَإِحْصَاءُ أَقْوَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا تُحْصَرُ إلَّا حَيْثُ لَا يُشَكُّ فِي أَنَّ كُلَّ مُسْلِمٍ فَقَدْ عَرَفَهُ.

وَقَدْ قَالَ أَحْمَدُ بْنُ حَنْبَلٍ - رَضِيَ اللَّهُ عَنْهُ -: مَنْ ادَّعَى الْإِجْمَاعَ فَقَدْ كَذَبَ، وَمَا يُدْرِيهِ لَعَلَّ النَّاسَ اخْتَلَفُوا فِي ذَلِكَ -: حَدَّثَنَا بِذَلِكَ: حُمَامُ بْنُ أَحْمَدَ، وَيَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ، قَالَ حُمَامٌ: نا عَبَّاسُ بْنُ أَصْبَغَ، وَقَالَ يَحْيَى: نا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ، ثُمَّ اتَّفَقَ أَحْمَدُ، وَعَبَّاسٌ، قَالَا: نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: قَالَ أَبِي فَذَكَرَهُ

[مَسْأَلَة قَضَاء الْقَاضِي وَهُوَ غضبان]

[23] **Qur'an references (L28941):** Qur'an 5:3 (Al-Ma'idah).

been narrated to us through the chain of Ahmad ibn Shu‘ayb—narrated to us by ‘Ali ibn Hajar—narrated to us by Hushaym—from ‘Abd al-Malik ibn ‘Umayr—from ‘Abd al-Rahman ibn Abi Bakrah—from his father, who said: The Prophet—peace and blessings of Allah be upon him and his family—said: “A judge should not pass judgment between two parties while he is angry.”

The Issue of Agency at the Time of a Ruling

1782 - Issue: Agency is permissible before the judge only for producing evidence, asserting a right, pursuing its claim, and demanding the oath - because all these fall under the agent’s authority as a substitute for the principal’s authority.

Indeed, the Messenger of Allah—peace and blessings be upon him and his family—sent Ali to Yemen to collect the right of the near relatives from a fifth of the khums. And the Almighty said: “Be upholders of justice” [An-Nisa: 135]. Among upholding justice is seeking the right of every rightful claimant.[24]

A Jurisprudential Inquiry into Agency in the Context of Affirmation and Repudiation

1783 - Issue: It is not permissible to appoint an agent for the purpose of confession or denial under any circumstance. Neither the denial by one person on behalf of another nor the confession by one person against another is accepted. Evidence must be presented before the judge pertaining to the confessor’s own admission or denial.

The proof of this is the statement of Allah, the Exalted: {No soul earns except against itself, and no bearer of burdens will bear the burden of another} [Al-An’ām 6:164].[25]

١٧٨١ - مَسْأَلَةٌ: وَلَا يَقْضِي الْقَاضِي وَهُوَ غَضْبَانُ، لِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَلِيُّ بْنُ حَجَرٍ أَنَا هُشَيْمٌ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ عَنْ أَبِيهِ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا يَقْضِي الْقَاضِي بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانُ» .

[مَسْأَلَة الْوَكَالَة عِنْد الْحُكْم]

١٧٨٢ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَكَالَةُ عِنْدَ الْحَاكِمِ إلَّا عَلَى جَلْبِ الْبَيِّنَةِ، وَعَلَى طَلَبِ الْحَقِّ، وَعَلَى تَقَاضِيهِ، وَعَلَى تَقَاضِي الْيَمِينِ -: لِأَنَّ كُلَّ هَذَا بِيَدِ الْوَكِيلِ مَقَامُ يَدِ الْمُوَكِّلِ.

وَقَدْ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلِيًّا إلَى الْيَمَنِ لِقَبْضِ حَقِّ ذَوِي الْقُرْبَى مِنْ خُمْسِ الْخُمْسِ» ، وَقَالَ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] وَمِنْ الْقِيَامِ بِالْقِسْطِ طَلَبُ حَقِّ كُلِّ ذِي حَقٍّ.

[مَسْأَلَة التَّوْكِيلُ عَلَى الْإِقْرَارِ وَالْإِنْكَارِ]

١٧٨٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ التَّوْكِيلُ عَلَى الْإِقْرَارِ وَالْإِنْكَارِ أَصْلًا، وَلَا يُقْبَلُ إنْكَارُ أَحَدٍ عَنْ أَحَدٍ، وَلَا إقْرَارُ أَحَدٍ عَلَى أَحَدٍ، وَلَا بُدَّ مِنْ قِيَامِ الْبَيِّنَةِ عِنْدَ الْحَاكِمِ عَلَى إقْرَارِ الْمُقِرِّ نَفْسِهِ أَوْ إنْكَارِهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

[24] **Qur’an references (L28950):** Qur’an 4:135 (An-Nisa).
[25] **Qur’an references (L28953):** Qur’an 6:164 (Al-An’am).

L28954–28956 The consensus of the people of Islam is soundly established that none may be deemed credible against another except within the ruling of testimony alone. Then those who breached it enforced the agent's admission against his principal and held him accountable in matters of bloodshed, wealth, and chastity. This is a matter known with certainty to have never occurred, nor been permitted, nor recognized during the era of the Messenger of Allah. May Allah bless him, his family, and grant him peace - nor during the era of any of the Companions - may Allah be pleased with them - and it was not so, for it would indeed constitute a true contradiction of the consensus of the Muslims, a contradiction of the Quran, and a falsehood that is impermissible - and success is granted by Allah, the Most High.

وَقَدْ صَحَّ إجْمَاعُ أَهْلِ الْإِسْلَامِ عَلَى أَنْ لَا يُصَدَّقَ أَحَدٌ عَلَى غَيْرِهِ إلَّا عَلَى حُكْمِ الشَّهَادَةِ فَقَطْ، ثُمَّ نَقَضَ مَنْ نَقَضَ فَأَنْفَذَ إقْرَارَ الْوَكِيلِ عَلَى مُوَكِّلِهِ وَأَخَذَهُ بِهِ فِي الدَّمِ، وَالْمَالِ، وَالْفَرْجِ، وَهَذَا أَمْرٌ يُوقَنُ أَنَّهُ لَمْ يَكُنْ قَطُّ، وَلَا جَازَ وَلَا عُرِفَ فِي عَصْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا فِي عَصْرِ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمَا كَانَ هَكَذَا فَهُوَ حَقًّا خِلَافُ إجْمَاعِ الْمُسْلِمِينَ، وَخِلَافُ الْقُرْآنِ، وَالْبَاطِلُ الَّذِي لَا يَجُوزُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of the judicial ruling upon the absent individual.

[مَسْأَلَةُ الْقَضَاءُ عَلَى الْغَائِبِ]

L28957

L28958 Ruling 1784: Judgment is passed against an absent party just as it is passed against a present party.

١٧٨٤ - مَسْأَلَةٌ: وَيُقْضَى عَلَى الْغَائِبِ كَمَا يُقْضَى عَلَى الْحَاضِرِ.

L28959 This is the opinion of Al-Shafi'i, Abu Sulayman, and their respective companions.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L28960 Ibn Shubruma said: Judgment is not rendered against an absent person.

وَقَالَ ابْنُ شُبْرُمَةَ: لَا يُقْضَى عَلَى غَائِبٍ.

L28961 Abu Hanifa and his companions ruled: No judgment may be issued against an absentee except in certain circumstances.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يُقْضَى عَلَى غَائِبٍ إلَّا فِي بَعْضِ الْمَوَاضِعِ

L28962 Malik said: Judgment may be passed against an absent person in all matters except those involving lands and residential properties, unless he has been absent for a prolonged period. Ibn al-Qasim said: Such as the distance between Egypt and al-Andalus.

وَقَالَ مَالِكٌ: يُقْضَى عَلَى الْغَائِبِ فِي كُلِّ شَيْءٍ إلَّا فِي الْأَرْضِينَ، وَالدُّورِ، إلَّا أَنْ يَكُونَ غَائِبًا غَيْبَةً طَوِيلَةً - قَالَ ابْنُ الْقَاسِمِ: كَمَا بَيْنَ مِصْرَ وَالْأَنْدَلُسِ

L28963 Abū Muḥammad said: As for Mālik's statement, it is manifestly erroneous in two aspects—the first being his differentiation between immovable property and other types without evidence. For Allāh the Exalted has not imposed restrictions on anyone regarding another's immovable property except as He imposed regarding non-immovable property, with no distinction. Rather, immovable property is more justifiable in sound legal reasoning to adjudicate rulings upon in absentia, since it cannot be relocated, concealed, or lost.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ الْخَطَأِ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا - تَفْرِيقُهُ بَيْنَ الْعَقَارِ وَغَيْرِهِ وَهُوَ قَوْلٌ بِلَا بُرْهَانٍ، وَمَا حَرَّمَ اللَّهُ تَعَالَى عَلَى أَحَدٍ مِنْ النَّاسِ مِنْ عَقَارِ غَيْرِهِ إلَّا كَالَّذِي حَرَّمَهُ مِنْ غَيْرِ الْعَقَارِ وَلَا فَرْقَ، بَلْ الْعَقَارُ كَانَ أَوْلَى فِي الرَّأْيِ أَنْ يُحْكَمَ

فِيهِ عَلَى الْغَائِبِ، لِأَنَّهُ لَا يُنْقَلُ وَلَا يُغَابُ عَلَيْهِ، وَلَا يَفُوتُ، بَلْ يُسْتَدْرَكُ الْخَطَأُ فِيهِ فِي كُلِّ وَقْتٍ، وَلَيْسَ كَذَلِكَ سَائِرُ الْأَمْوَالِ.

Indeed, any error regarding it can be rectified at any time—unlike all other forms of property.

وَالْوَجْهُ الثَّانِي - تَفْرِيقُهُ بَيْنَ الْغَائِبِ غَيْبَةً طَوِيلَةً وَغَيْبَةً غَيْرَ طَوِيلَةٍ، فَهَذَا قَوْلٌ بِلَا بُرْهَانٍ، وَتَفْرِيقٌ فَاسِدٌ، وَلَيْسَ فِي الْعَالَمِ غَيْبَةٌ إِلَّا وَهِيَ طَوِيلَةٌ بِالْإِضَافَةِ إِلَى مَا هُوَ أَقْصَرُ مِنْهَا فِي الزَّمَانِ، وَالْمَكَانِ، وَهِيَ أَيْضًا قَصِيرَةٌ بِالْإِضَافَةِ إِلَى مَا هُوَ أَطْوَلُ مِنْهَا فِي الْمَكَانِ وَالزَّمَانِ، فَمَنْ غَابَ عَامَيْنِ إِلَى الْعِرَاقِ فَقَدْ غَابَ غَيْبَةً طَوِيلَةً بِالْإِضَافَةِ إِلَى مَنْ غَابَ نِصْفَ عَامٍ إِلَى مِصْرَ، وَقَدْ غَابَ غَيْبَةً قَصِيرَةً بِالْإِضَافَةِ إِلَى مَنْ غَابَ عَشَرَةَ أَعْوَامٍ إِلَى الْهِنْدِ، وَهَكَذَا فِي كُلِّ زَمَانٍ وَكُلِّ مَكَانٍ.

L28964 The second aspect is his differentiation between a prolonged absence and a non-prolonged absence. This is an assertion without proof and an invalid distinction, for there is no absence in existence except that it is prolonged relative to what is shorter than it in time and place, while also being brief relative to what is longer than it in place and time. One who is absent for two years to Iraq has had a prolonged absence compared to one absent half a year to Egypt, and indeed has had a brief absence compared to one absent ten years to India. And so it is with every time and every place.

ثُمَّ تَحْدِيدُ ابْنِ الْقَاسِمِ خَطَأٌ ثَالِثٌ: وَهَذَا قَوْلٌ مَا نَعْلَمُهُ لِأَحَدٍ مِنْ خَلْقِ اللَّهِ عَزَّ وَجَلَّ قَبْلَ مَالِكٍ - فَسَقَطَ هَذَا الْقَوْلُ.

L28965 Then Ibn al-Qāsim's determination constitutes a third error: this is a statement we do not know to have been attributed to any of Allah's creation—the Almighty and Majestic—before Mālik. Thus, this opinion is invalidated.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ - فَفَاسِدٌ أَيْضًا، لِأَنَّ كُلَّ مَنْ لَمْ يَحْضُرْ مَجْلِسَ الْحَاكِمِ فَهُوَ غَائِبٌ عَنْهُ - وَلَوْ أَنَّهُ فِي رَحْبَةِ بَابِ دَارِ الْحَاكِمِ - فَعَلَى هَذَا لَا يُحْكَمُ عَلَى أَحَدٍ أَبَدًا - وَهُوَ فَاسِدٌ كَمَا تَرَى.

L28966 As for the statement of Abū Ḥanīfa and his followers, it is likewise defective because anyone not present at the judge's session is considered legally absent—even if he were in the open space at the entrance to the judge's residence. By this logic, no judgment could ever be issued against anyone—which is clearly defective, as you can see.

فَإِنْ قَالُوا: يَبْعَثُ فِيهِ؟ قُلْنَا: وَابْعَثُوا أَيْضًا فِي كُلِّ غَائِبٍ وَلَا فَرْقَ.

L28967–28968 If they say, "Does He resurrect [something] within it?" We say, "Then resurrect [yourselves] in every matter of the unseen as well—there is no difference!"

فَإِنْ قَالُوا: قَدْ يَكُونُ بِحَيْثُ تَتَعَذَّرُ الْبَعْثَةُ فِيهِ.

L28969 If they say: It may be such that the sending therein becomes difficult.

قُلْنَا: وَقَدْ يَكُونُ إِلَى جَانِبِ حَائِطِ الْحَاكِمِ، وَتَتَعَذَّرُ الْبَعْثَةُ فِيهِ أَيْضًا لِتَعَذُّرِهِ أَوْ لِبَعْضِ الْوُجُوهِ، ثُمَّ قَدْ فَحُشَ تَنَاقُضُهُمْ هَاهُنَا، فَقَالُوا: مَنْ غَابَ بِحَيْثُ لَا يُعْرَفُ، فَإِنَّهُ يُنْفِقُ مِنْ مَالِهِ عَلَى زَوْجَتِهِ وَأَصَاغِرِ وَلَدِهِ، وَعَلَى أَكَابِرِ وَلَدِهِ - إِنْ كَانُوا زَمْنَى - وَعَلَى بَنَاتِهِ الْأَبْكَارِ

L28970 We said: It may be adjacent to the judge's wall, and dispatching someone to it becomes impossible either due to its impracticality or for certain reasons. Moreover, their contradiction here has become egregious, for they stated: If someone is absent in an unknown location, his wealth must be spent on his wife, his minor children, his adult children—if they are chronically ill—

his unmarried daughters even if they are of age and not chronically ill, and his poor, chronically ill parents. This expenditure is to be taken from his food, oil, clothing equivalent in kind to what those we mentioned wear, his dirhams (silver coins) and dinars (gold coins). Under no circumstances may real estate, merchandise, or animals be sold for this purpose. This applies equally whether the mentioned food, oil, cash, and clothing are held as a deposit with someone who acknowledges them or not, or are located in the absent person's residence.

- وَإِنْ كُنَّ بَالِغَاتٍ غَيْرَ زَمِنَاتٍ - وَعَلَى أَبَوَيْهِ - الْفَقِيرَيْنِ الزَّمِنَيْنِ - مِنْ طَعَامِهِ وَزَيْتِهِ وَثِيَابِهِ الَّذِي تَشَاكَلَ لِبَاسُ مَنْ ذَكَرْنَا، وَمِنْ دَرَاهِمِهِ وَدَنَانِيرِهِ، وَلَا يُبَاعُ فِي ذَلِكَ أَلْبَتَّةَ عَقَارٌ، وَلَا عُرُوضٌ، وَلَا حَيَوَانٌ، وَسَوَاءٌ كَانَ مَا ذَكَرْنَا مِنْ الطَّعَامِ وَالزَّيْتِ وَالنَّاضِّ وَالثِّيَابِ - وَدِيعَةً عِنْدَ مُقِرٍّ أَوْ غَيْرِ مُقِرٍّ، أَوْ فِي مَنْزِلِ الْغَائِبِ -.

L28971 This statement gathers significant aspects of absurdity, being a ruling against an absent party and a judgment is made to falsely differentiate between properties, leading them into confusions here of utter corruption. They decreed against the apostate who reaches enemy territory that he is dead—while he lives—and apportioned what belongs to God among his heirs. This is a false ruling against an absent party.

وَهَذَا كَلَامٌ جَمَعَ مِنْ السُّخْفِ وُجُوهًا عَظِيمَةً، وَهُوَ حُكْمٌ عَلَى الْغَائِبِ، وَتُحْكَمُ بِالْفَرْقِ بَيْنَ الْأَمْوَالِ بِالْبَاطِلِ، إلَى تَخَالِيطَ لَهُمْ هَاهُنَا فِي غَايَةِ الْفَسَادِ، وَقَضَوْا عَلَى الْمُرْتَدِّ إذَا لَحِقَ بِأَرْضِ الْحَرْبِ بِأَنَّهُ مَيِّتٌ - وَهُوَ حَيٌّ - وَقَسَمُوا مَا لِلَّهِ عَلَى وَرَثَتِهِ - وَهَذَا قَضَاءٌ بِالْبَاطِلِ عَلَى غَائِبٍ.

L28972 There is no distinction between the right of those we mentioned regarding maintenance, the right of creditors in debts, and the right of the wrongfully dispossessed in what was seized from them, nor between legal distinctions unknown to any of God's creation before them. Abu Muhammad said: They disguised this matter with deceptive arguments—which stand against them, not in their favor—we shall mention these, God willing, and demonstrate through God's enabling will and power, the Exalted, that they constitute evidence against them.

وَلَا فَرْقَ بَيْنَ حَقِّ مَنْ ذَكَرْنَا فِي النَّفَقَةِ وَبَيْنَ حَقِّ الْغُرَمَاءِ فِي الدُّيُونِ، وَحَقِّ الْمَغْصُوبِينَ فِيمَا غُصِبَ مِنْهُمْ، وَتَقَاسِيمُ لَا تُعْرَفُ عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُمْ. قَالَ أَبُو مُحَمَّد: وَمَوَّهُوا فِي ذَلِكَ بِأَشْيَاءَ - وَهِيَ عَلَيْهِمْ لَا لَهُمْ - نَذْكُرُهَا إنْ شَاءَ اللَّهُ تَعَالَى وَنُبَيِّنُ أَنَّهَا عَلَيْهِمْ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

L28973–28975 As for those who held that judgment should not be passed against an absent party, like Ibn Shubruma, Sufyān, and their adherents, they argued by citing what was narrated to us through Shurayk's chain from Simāk ibn Ḥarb, from Ḥanash ibn al-Muʿtamir, from ʿAlī ibn Abī Ṭālib, who said: "Allah's Messenger—may Allah's blessings and peace be upon him and his family—sent me to Yemen as a judge. I said: 'O Messenger of Allah, you dispatch me while I am young in age and have no knowledge of judgment.' He replied: 'Allah the Almighty will guide your heart and steady your tongue. When two litigants sit before you, do not pass judgment until you have heard the second party as you heard the first, for this is more likely to clarify the

وَأَمَّا مَنْ أَجْمَلَ أَنْ لَا يُقْضَى عَلَى غَائِبٍ كَابْنِ شُبْرُمَةَ، وَسُفْيَانَ وَمَنْ وَافَقَهُ، فَإِنَّهُمْ احْتَجُّوا: بِمَا رُوِّينَا مِنْ طَرِيقِ شَرِيكٍ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ حَنَشِ بْنِ الْمُعْتَمِرِ عَنْ «عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَى الْيَمَنِ قَاضِيًا، فَقُلْتُ: يَا رَسُولَ اللَّهِ تُرْسِلُنِي وَأَنَا حَدِيثُ السِّنِّ لَا عِلْمَ لِي بِالْقَضَاءِ، فَقَالَ: إنَّ اللَّهَ عَزَّ وَجَلَّ سَيَهْدِي قَلْبَكَ وَيُثَبِّتُ لِسَانَكَ، فَإِذَا جَلَسَ بَيْنَ يَدَيْكَ الْخَصْمَانِ فَلَا تَقْضِيَنَّ حَتَّى تَسْمَعَ مِنْ الْآخَرِ كَمَا سَمِعْتَ مِنْ الْأَوَّلِ، فَإِنَّهُ أَحْرَى أَنْ يَتَبَيَّنَ لَكَ الْقَضَاءُ»

judgment for you.'" He added: "I remained a judge thereafter and never doubted any judgment again." We have also narrated through Ibn ʿUyayna's chain from Simāk ibn Ḥarb, from Ḥanash ibn al-Muʿtamir, from ʿAlī ibn Abī Ṭālib. The Prophet (peace be upon him and his family) said to him: "When two disputants sit before you, do not judge in favor of the first until you hear the argument of the other." Muḥammad ibn al-Ḥasan al-Rāzī narrated to us: ʿAbd al-Raḥmān ibn ʿUmar ibn al-Naḥḥās narrated to us; Ibn al-Aʿrābī narrated to us; Sahl ibn Aḥmad ibn ʿUthmān al-Wāsiṭī narrated to us; al-Qāsim ibn ʿĪsā ibn Ibrāhīm al-Ṭāʾī narrated to us; al-Muʾammal ibn Ismāʿīl narrated from Sufyān al-Thawrī, from ʿAlī ibn al-Aqmar, from Juḥayfah, from ʿAlī, that the Prophet (peace be upon him and his family) said to him in a narration: "When two disputants sit before you, do not judge in favor of the first until you hear from the other, for that is more likely to make the judgment clear to you."

L28976 Abū Muḥammad said: Thus in my book from al-Rāzī from "Juḥayfata," and the correct form is Juḥayfatu.

L28977 They mentioned from those other than the Messenger of Allah (peace and blessings be upon him and his family) what we have narrated through the chain of al-Kashwārī from al-Ḥuḍāfī: from ʿAbd al-Malik al-Dhimmārī, from Muḥammad al-Ghifārī, from Ibn Abī Dhiʾb al-Juhanī, from ʿAmr ibn ʿUthmān ibn ʿAffān, who said: A man whose eye had been gouged out came to ʿUmar ibn al-Khaṭṭāb. ʿUmar commanded him, "Bring your opponent!" The man replied, "O Commander of the Faithful, is this all the anger you possess?" ʿUmar retorted, "Perhaps you have gouged out both of your opponent's eyes together." When his opponent arrived—both eyes gouged out—ʿUmar declared, "When you hear the argument of the other party, the ruling becomes clear."

L28978 They said: It is not known that any of the Companions opposed Umar's position in that matter.

L28979 Narrated through ʿAbd al-Razzāq, via al-Ḥudhāfī, via Muḥammad ibn Muslim al-Ṭāʾifī, via ʿAmr ibn Dīnār, who said: ʿUmar ibn ʿAbd al-ʿAzīz said:

، قَالَ: فَمَا زِلْت قَاضِيًا وَمَا شَكَكْت فِي قَضَاءٍ بَعْدُ. وَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ عُيَيْنَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ حَنَشِ بْنِ الْمُعْتَمِرِ عَنْ «عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ: إذَا قَعَدَ الْخَصْمَانِ فَلَا تَقْضِ لِلْأَوَّلِ حَتَّى تَسْمَعَ حُجَّةَ الْآخَرِ» . وَنَا مُحَمَّدُ بْنُ الْحَسَنِ الرَّازِيُّ نا عَبْدُ الرَّحْمَنِ بْنُ عُمَرَ بْنِ النَّحَّاسُ نا ابْنُ الْأَعْرَابِيِّ نا سَهْلُ بْنُ أَحْمَدَ بْنِ عُثْمَانَ الْوَاسِطِيُّ نا الْقَاسِمُ بْنُ عِيسَى بْنُ إبْرَاهِيمَ الطَّائِيُّ نا الْمُؤَمَّلُ بْنُ إسْمَاعِيلَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَلِيِّ بْنِ الْأَقْمَرِ عَنْ جُحَيْفَةَ عَنْ عَلِيٍّ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ فِي حَدِيثٍ «فَإِذَا جَلَسَ بَيْنَ يَدَيْكَ الْخَصْمَانِ فَلَا تَقْضِ لِلْأَوَّلِ حَتَّى تَسْمَعَ مِنْ الْآخَرِ، فَإِنَّهُ أَحْرَى أَنْ يَتَّبِيَّنَ لَكَ الْقَضَاءُ» .

قَالَ أَبُو مُحَمَّدٍ: هَكَذَا فِي كِتَابِي عَنْ الرَّازِيِّ عَنْ " جُحَيْفَةَ " وَالصَّوَابُ جُحَيْفَةُ.

وَذَكَرُوا عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ الْكَشْوَرِيِّ عَنْ الْحُذَافِيِّ نا عَبْدُ الْمَلِكِ الذِّمَارِيُّ نا مُحَمَّدٌ الْغِفَارِيُّ حَدَّثَنِي ابْنُ أَبِي ذِئْبٍ الْجُهَنِيُّ عَنْ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ قَالَ: أَتَى عُمَرَ بْنَ الْخَطَّابِ رَجُلٌ قَدْ فُقِئَتْ عَيْنُهُ فَقَالَ لَهُ عُمَرُ: تُحْضِرُ خَصْمَك فَقَالَ لَهُ: يَا أَمِيرَ الْمُؤْمِنِينَ أَمَا بِك مِنْ الْغَضَبِ إلَّا مَا أَرَى فَقَالَ لَهُ عُمَرُ: فَلَعَلَّك قَدْ فَقَأْت عَيْنَيْ خَصْمِك مَعًا، فَحَضَرَ خَصْمُهُ قَدْ فُقِئَتْ عَيْنَاهُ مَعًا، فَقَالَ عُمَرُ: إذَا سَمِعْت حُجَّةَ الْآخَرِ بَانَ الْقَضَاءُ -.

قَالُوا: وَلَا يُعْلَمُ لِعُمَرَ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ.

Luqmān said, “If a man comes to you with his eyes fallen into his hands [i.e., in distress], do not rule in his favor until his adversary arrives.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحُذَافِيِّ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ الطَّائِفِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ وَقَالَ قَالَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ، قَالَ لُقْمَانُ: إذَا جَاءَك الرَّجُلُ وَقَدْ سَقَطَتْ عَيْنَاهُ فِي يَدِهِ فَلَا تَقْضِ لَهُ حَتَّى يَأْتِيَ خَصْمُهُ.

L28980 And via the chain of Mujālid from Al-Shaʿbī from Shuraih: No judgment may be issued against an absent person.

وَمِنْ طَرِيقِ مُجَالِدٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ: لَا يُقْضَى عَلَى غَائِبٍ.

L28981 From the narration of Abu ’Ubayd, from ’Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from al-Ja’d ibn Dhakwan: A man asked Shurayh about a matter, and he replied, “I do not incite the present against the absent.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْجَعْدِ بْنِ ذَكْوَانَ: أَنَّ رَجُلًا سَأَلَ شُرَيْحًا عَنْ شَيْءٍ؟ فَقَالَ: لَا أُغْرِي حَاضِرًا بِغَائِبٍ.

L28982 Abū Muḥammad said: We know nothing for them besides this, and none of it provides valid proof for them in any matter. As for the report from the Messenger of Allah—peace and blessings of Allah be upon him and his family—it is rejected, for Sharīk is a *mudallis*, Simāk ibn Ḥarb accepts *talqīn*, and Ḥanash ibn al-Muʿtamir is rejected and discarded.

قَالَ أَبُو مُحَمَّدٍ: لَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، أَمَّا الْخَبَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَسَاقِطٌ، لِأَنَّ شَرِيكًا مُدَلِّسٌ، وَسِمَاكَ بْنَ حَرْبٍ يَقْبَلُ التَّلْقِينَ، وَحَنَشُ بْنُ الْمُعْتَمِرِ سَاقِطٌ مُطَّرَحٌ.

L28983–28984 As for the other chain of transmission, Al-Qāsim ibn ʿĪsā ibn Ibrāhīm al-Ṭā’ī is majhūl (a narrator of unknown status), and it is not known who he is.

وَأَمَّا الطَّرِيقُ الْأُخْرَى، فَالْقَاسِمُ بْنُ عِيسَى بْنِ إبْرَاهِيمَ الطَّائِيُّ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ.

L28985 Then, the most astonishing thing is that we have been narrated through the chain of al-Bazzar—narrated by Abu Kamil, narrated by Abu ‘Awanah—from Simak ibn Harb—from Hanash ibn al-Muʿtamir, who said: ‘Ali ibn Abi Talib arrived in Yemen, where a dispute was brought to him regarding a collapsed structure that fell into a well. People gathered around it, then a man fell in and clung to another, who clung to a third, and the third clung to a fourth—causing all to fall. Their blood monies were sought from the first man. He ruled that two blood monies and a sixth of a blood money be imposed upon the people present at the well: the first man received a quarter of a blood money because three died above him; the second received a third of a blood money because two died above him; the third received half a blood money because one died above him; and the fourth received a full blood money. When Allah’s Messenger—peace and blessings be upon him and his family—was informed of ‘Ali’s ruling, he said: “It is as he has judged among you.”

ثُمَّ أَعْجَبُ شَيْءٍ: أَنَّنَا رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نا أَبُو كَامِلٍ نا أَبُو عَوَانَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ حَنَشِ بْنِ الْمُعْتَمِرِ، قَالَ: إنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَدِمَ الْيَمَنَ فَاخْتُصِمَ إلَيْهِ فِي أَسَدٍ سَقَطَ فِي بِئْرٍ فَاجْتَمَعَ النَّاسُ إلَيْهَا، فَسَقَطَ فِيهَا رَجُلٌ فَتَعَلَّقَ بِآخَرَ، وَتَعَلَّقَ الْآخَرُ بِثَالِثٍ وَتَعَلَّقَ الثَّالِثُ بِرَابِعٍ فَسَقَطُوا كُلُّهُمْ، فَطُلِبَتْ دِيَاتُهُمْ مِنْ الْأَوَّلِ، فَقَضَى فِي ذَلِكَ بِدِيَتَيْنِ وَسُدُسٍ عَلَى مَنْ حَضَرَ الْبِئْرَ مِنْ النَّاسِ: فَلِلْأَوَّلِ رُبْعُ دِيَةٍ، لِأَنَّهُ هَلَكَ فَوْقَهُ ثَلَاثَةٌ، وَلِلثَّانِي ثُلُثُ دِيَةٍ، لِأَنَّهُ هَلَكَ فَوْقَهُ اثْنَانِ، وَلِلثَّالِثِ نِصْفُ دِيَةٍ لِأَنَّهُ هَلَكَ فَوْقَهُ وَاحِدٌ، وَلِلرَّابِعِ دِيَةٌ - فَأُخْبِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَضَاءِ عَلِيٍّ «فَقَالَ: هُوَ مَا قَضَى بَيْنَكُمْ»

L28986 They contradict this and do not adhere to it. At times, the narration of Simak ibn Harb from Hanash is considered a proof when they believe their obfuscation through it is permissible, and at other times, it is not considered a proof when they cannot obfuscate with it. I do not know which religion can endure such practices.

- وَهُمْ يُخَالِفُونَ هَذَا وَلَا يَقُولُونَ بِهِ، فَمَرَّةً تَكُونُ رِوَايَةُ سِمَاكِ بْنِ حَرْبٍ عَنْ حَنَشٍ حُجَّةً إِذَا ظَنُّوا أَنَّ تَمْوِيهَهُمْ بِهَا يَجُوزُ لَهُمْ، وَمَرَّةً لَا تَكُونُ حُجَّةً إِذَا لَمْ يُمْكِنْهُمْ أَنْ يُمَوِّهُوا بِهَا - وَمَا أَدْرِي أَيَّ دِينٍ يَبْقَى مَعَ هَذَا.

L28987 Moreover, if the narrations we presented were sound, they would have no basis for their claim in any respect, because these narrations do not state that a judgment should not be rendered against an absent person. Rather, they state that a judgment should not be rendered against a present person based on his opponent's claim without hearing his argument—and this is a point on which we agree with them.

ثُمَّ لَوْ صَحَّتْ الْأَخْبَارُ الَّتِي قَدَّمْنَا لَمَا كَانَ لَهُمْ بِهَا مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهَا: أَنْ لَا يُقْضَى عَلَى غَائِبٍ، بَلْ فِيهَا: أَنْ لَا يُقْضَى عَلَى حَاضِرٍ بِدَعْوَى خَصْمِهِ دُونَ سَمَاعِ حُجَّتِهِ - وَهَذَا شَيْءٌ لَا نُخَالِفُهُمْ فِيهِ.

L28988 It is not permissible to pass judgment against a present person or an absent one based on the claim of his opponent, but rather only through the just evidence that Allah, the Exalted, has commanded. Thus, the enormity of their concealment through falsehood has become manifest.

وَلَا يَجُوزُ أَنْ يُقْضَى عَلَى حَاضِرٍ وَلَا غَائِبٍ بِقَوْلِ خَصْمِهِ، وَلَكِنْ بِالَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ الْبَيِّنَةِ الْعَادِلَةِ فَقَطْ، فَظَهَرَ عَظِيمُ تَمْوِيهِهِمْ بِالْبَاطِلِ -

L28989 And we seek refuge in Allah from abandonment.

وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L28990 And among the absurdities is that they contradicted these traditions they used to obscure [the truth] in another context: their ruling holding an absent person liable based on his agent's admission. This has no basis in any of the transmitted reports whatsoever.

وَمِنْ الْعَجَائِبِ: أَنَّهُمْ قَدْ خَالَفُوا هَذِهِ الْآثَارَ الَّتِي مَوَّهُوا بِهَا فِي مَكَان آخَرَ، وَهُوَ أَنَّهُمْ قَضَوْا عَلَى الْغَائِبِ بِإِقْرَارِ وَكِيلِهِ عَلَيْهِ - وَلَيْسَ هَذَا فِي شَيْءٍ مِنْ الْأَخْبَارِ أَصْلًا.

L28991 As for their specious citation of ʿUmar, this attribution is likewise invalid, for its chain passes through Muḥammad al-Ghifārī from Ibn Abī Dhi'b al-Juhanī - and the identities of these two are unknown among Allah's creation—the Exalted—then through ʿAmr ibn ʿUthmān ibn ʿAffān from ʿUmar, though ʿAmr was not born until the night of ʿUmar's death.

وَأَمَّا تَمْوِيهُهُمْ بِعُمَرَ فَإِنَّهُ لَا يَصِحُّ عَنْهُ أَيْضًا، لِأَنَّهُ مِنْ طَرِيقِ مُحَمَّدٍ الْغِفَارِيِّ عَنْ ابْنِ أَبِي ذِئْبٍ الْجُهَنِيُّ - وَلَا يُدْرَى مَنْ هُمَا فِي خَلْقِ اللَّهِ تَعَالَى - ثُمَّ عَنْ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ عَنْ عُمَرَ - وَلَمْ يُولَدْ عَمْرٌو إلَّا لَيْلَةَ مَوْتِ عُمَرَ.

L28992 Moreover, how many rulings of ʿUmar and ʿAlī have been opposed where opposing them is impermissible?

وَأَيْضًا - فَكَمْ قَضِيَّةٍ لِعُمَرَ، وَعَلِيٍّ، قَدْ خَالَفُوهَا حَيْثُ لَا يَجُوزُ خِلَافُهَا.

L28993 Moreover, even if it were authentically reported from ʿUmar, it merely states that no judgment should be rendered against an absent person based on the claim of his litigant - and this is a right we do not deny.

وَأَيْضًا - فَلَوْ صَحَّ عَنْ عُمَرَ فَلَيْسَ فِيهِ إلَّا أَنْ لَا يُقْضَى عَلَى غَائِبٍ بِدَعْوَى خَصْمِهِ - وَهَذَا حَقٌّ لَا نُنْكِرُهُ.

وَأَيْضًا - فَإِنَّ الصَّحِيحَ عَنْ عُمَرَ، وَعُثْمَانَ: الْقَضَاءُ عَلَى الْغَائِبِ إذَا صَحَّ الْحَقُّ قَبْلَهُ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُ ذَلِكَ.

L28994–28995 Moreover, the sound position transmitted from ʻUmar and ʻUthman is that a judgment may be passed against an absent party if the right has been established prior to the judgment, and no valid contrary opinion to this is reported from any of the Companions.

وَأَمَّا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَإِنَّمَا ذَكَرَ عَنْ لُقْمَانَ كَلَامًا، وَأَيْنَ لُقْمَانُ مِنْ أَيَّامِ عُمَرَ.

L28996 As for what is reported from Umar ibn Abd al-Azīz, he merely mentioned words from Luqmān—and how distant is Luqmān's time from the era of Umar?

ثُمَّ لَيْسَ فِيهِ إلَّا أَنْ يُقْضَى عَلَى غَائِبٍ بِدَعْوَى خَصْمِهِ فَقَطْ - وَهَكَذَا نَقُولُ.

L28997 Furthermore, the ruling entails nothing except issuing a verdict against an absent defendant based solely on the plaintiff's claim—and this is our position.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهِمَا قَضَاءَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَغَيْرِهِ.

L28998 There are many cases in which they opposed the rulings of ʻUmar ibn ʻAbd al-ʻAzīz in these two matters and others.

وَأَمَّا شُرَيْحٌ - فَإِنَّهُ لَا يَصِحُّ عَنْهُ؛ لِأَنَّهُ عَنْ مُجَالِدٍ، وَمُجَالِدٌ ضَعِيفٌ

L28999 As for Shuraih, no authentic narration is reported from him because it is from Mujalid, and Mujalid is a weak transmitter.

L29000 The other approach is that it entails not merely coaching an adversary—for if this were valid, no authoritative proof would exist in anyone besides the Messenger of Allah (peace and blessings be upon him and his family). Thus, nothing remains for them to rely upon, and their argument collapses because it is entirely devoid of demonstrative proof.

L29001 We found Allah, the Exalted, saying: "Be steadfast upholders of justice, witnesses for Allah" [An-Nisa: 135]. Thus, the Exalted did not distinguish between the present and the absent.[1]

L29002 And He, the Exalted, said: "And establish testimony for Allah" [At-Talaq: 2]. Thus, the Exalted did not specify a present [witness] from an absent one.[2]

L29003 Thus, the obligation of the ruling is valid for the absent person, just as it is for the one present.

L29004 We know of no greater misguidance than the act of a judge before whom credible witnesses testify that a certain absent person intentionally or accidentally killed Zayd, or that he forcibly seized this free woman or asserted ownership over her, or that he divorced his wife three times, or that he seized this female slave from this person, or wrongfully appropriated a mosque or cemetery—yet he disregards all of this, allowing the free woman, the sanctity of inviolability, and illicit wealth to remain in his possession. Truly, this is clear misguidance, certain oppression, entrenched transgression, and collaboration in sin and aggression.

L29005 It has been authentically reported that the Messenger of Allah—peace and blessings of Allah be upon him and his family—ruled against absent parties, just as he ruled against the Urayniyyun who killed the shepherds, burned their eyes, and fled. He pursued them with a tracker while they were absent until they were apprehended, and he exacted qisas (retribution) from them. He also ruled against the people of Khaybar while they were absent—that the Harithiyyun, the guardians of Abdullah ibn Sahl (may Allah be pleased with him), must present definitive evidence (bayyinah), or fifty of them must

وَالطَّرِيقُ الْأُخْرَى: إنَّمَا فِيهَا أَنَّهُ لَا يُلَقَّنُ خَصْمًا فَقَطْ - وَلَوْ صَحَّ لَمَا كَانَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حُجَّةٌ، فَلَمْ يَبْقَ لَهُمْ شَيْءٌ يَتَعَلَّقُونَ بِهِ - فَسَقَطَ قَوْلُهُمْ لِتَعَرِّيهِ مِنْ الْبُرْهَانِ.

وَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] فَلَمْ يَخُصَّ تَعَالَى حَاضِرًا مِنْ غَائِبٍ.

وَقَالَ تَعَالَى: {وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ} [الطلاق: ٢] فَلَمْ يَخُصَّ تَعَالَى حَاضِرًا مِنْ غَائِبٍ.

فَصَحَّ وُجُوبُ الْحُكْمِ عَلَى الْغَائِبِ كَمَا هُوَ عَلَى الْحَاضِرِ.

وَمَا نَدْرِي فِي الضَّلَالِ أَعْظَمَ مِنْ فِعْلِ حَاكِمٍ شَهِدَ عِنْدَهُ الْعُدُولُ بِأَنَّ فُلَانًا الْغَائِبَ قَتَلَ زَيْدًا عَمْدًا أَوْ خَطَأً، أَوْ أَنَّهُ غَصَبَ هَذِهِ الْحُرَّةَ أَوْ تَمَلَّكَهَا، أَوْ أَنَّهُ طَلَّقَ امْرَأَتَهُ ثَلَاثًا، أَوْ أَنَّهُ غَصَبَ هَذِهِ الْأَمَةَ مِنْ هَذَا، أَوْ تَمَلَّكَ مَسْجِدًا أَوْ مَقْبَرَةً، فَلَا يَلْتَفِتُ إلَى كُلِّ ذَلِكَ وَتَبْقَى فِي مِلْكِهِ الْحُرَّةُ وَالْفَرْجُ الْحَرَامُ، وَالْمَالُ الْحَرَامُ، أَلَا إنَّ هَذَا هُوَ الضَّلَالُ الْمُبِينُ، وَالْجَوْرُ الْمُتَيَقَّنُ، وَالْفِسْقُ الْمَتِينُ، وَالتَّعَاوُنُ عَلَى الْإِثْمِ وَالْعُدْوَانِ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْحُكْمُ عَلَى الْغَائِبِ كَمَا حَكَمَ عَلَى الْعُرَنِيِّينَ الَّذِينَ قَتَلُوا الرِّعَاءَ وَسَمَلُوا أَعْيُنَهُمْ وَفَرُّوا، فَأَتْبَعَهُمْ بِقَائِفٍ - وَهُمْ غُيَّبٌ - حَتَّى أُدْرِكُوا وَاقْتَصَّ مِنْهُمْ. وَعَلَى أَهْلِ خَيْبَرَ - وَهُمْ غُيَّبٌ - بِأَنْ يُقِيمَ الْحَارِثِيُّونَ أَوْلِيَاءُ عَبْدِ اللَّهِ بْنِ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - الْبَيِّنَةَ أَوْ يَحْلِفُ خَمْسُونَ مِنْهُمْ عَلَى قَاتِلِهِ مِنْ أَهْلِ خَيْبَرَ وَيُسَلَّمُ إلَيْهِمْ أَوْ يُؤَدُّوا دِيَتَهُ، أَوْ يَحْلِفُ خَمْسُونَ مِنْ يَهُودَ أَنَّهُمْ مَا قَتَلُوهُ وَيَبْرَءُونَ.

[1] **Qur'an references (L29001):** Qur'an 4:135 (An-Nisa).
[2] **Qur'an references (L29002):** Qur'an 65:2 (At-Talaq).

swear concerning his killer from the people of Khaybar so the killer would be surrendered to them, or they would pay his diyah (blood money). Alternatively, fifty from the Jews of Khaybar could swear they did not kill him and thereby be absolved.

وَالْخَبَرُ الْمَشْهُورُ الَّذِي رُوِّيناهُ مِنْ طُرُقٍ، مِنْهَا: عَنْ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا أَبُو مُعَاوِيَةَ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «جَاءَتْ هِنْدُ بِنْتُ عُتْبَةَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ زَوْجِي أَبَا سُفْيَانَ رَجُلٌ مِسِّيكٌ شَحِيحٌ، لَا يُعْطِينِي مَا يَكْفِينِي وَبَنِي، أَفَآخُذُ مِنْ مَالِهِ وَهُوَ لَا يَعْلَمُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: خُذِي مَا يَكْفِيكِ وَبَنِيكِ بِالْمَعْرُوفِ» .

L29006–29007 The well-known report we have narrated through various chains, among them: From Ahmad ibn Shu'ayb: I am Ishaq ibn Ibrahim—that is, Ibn Rahawayh—from Abu Mu'awiyah, who narrated to us: Hisham ibn Urwah narrated to us from his father, from Aisha, the Mother of the Believers, who said: "Hind bint Utbah came to the Messenger of Allah—peace and blessings of Allah be upon him and his family—and said: 'My husband Abu Sufyan is a stingy and miserly man. He does not give me enough to sustain myself and my children. May I take from his wealth without his knowledge?' The Messenger of Allah—peace and blessings of Allah be upon him and his family—replied: 'Take what suffices you and your children in a reasonable manner.'"

وَهَذَا حُكْمٌ عَلَى الْغَائِبِ.

L29008 This is a ruling upon the absent person.

فَإِنْ قَالُوا: إِنَّمَا حَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى أَبِي سُفْيَانَ لِعِلْمِهِ بِصِحَّةِ مَا ذَكَرَتْ لَهُ هِنْدُ.

L29009 If they say: He (prayers and peace be upon him) ruled against Abū Sufyān only because he knew the validity of what Hind had conveyed to him.

قُلْنَا: إِنَّ هَذَا لَعَجَبٌ عَهِدْنَا بِكُمْ تَجْعَلُونَ الْبَيِّنَةَ أَقْوَى مِنْ عِلْمِ الْحَاكِمِ فِي مَوَاضِعَ، مِنْهَا: مَا عِلْمَ قَبْلَ أَنْ يَلِيَ الْحُكْمَ، وَمِنْهَا: الْحُدُودُ فِي الزِّنَى، وَالْقَطْعُ، وَالْخَمْرُ، فَإِنَّكُمْ تَرَوْنَ أَنْ يُحْكَمَ فِي كُلِّ ذَلِكَ بِالْبَيِّنَةِ، وَلَا تُجِيزُونَ أَنْ يَحْكُمَ فِي ذَلِكَ بِعِلْمِهِ، وَإِنْ عَلِمَهُ بَعْدَ وِلَايَتِهِ الْقَضَاءَ، فَمَرَّةً يَكُونُ الْحُكْمُ بِالْعِلْمِ عِنْدَكُمْ أَقْوَى مِنَ الْبَيِّنَةِ، وَمَرَّةً تَكُونُ الْبَيِّنَةُ أَقْوَى مِنَ الْعِلْمِ فَكَمْ هَذَا الْخَبْطِ فِي ظُلُمَاتِ الْجَهْلِ، وَالتَّحَكُّمِ فِي الدِّينِ بِالْبَاطِلِ.

L29010 We said: This is truly astonishing! We have observed your practice of prioritizing conclusive evidence over a judge's personal knowledge in certain matters—such as cases known prior to his judicial appointment, the *ḥadd* penalties for adultery, theft amputation, and wine consumption. You maintain that rulings in all such matters must be based on evidence, rejecting judgment through his knowledge—even if acquired after assuming judicial authority. At times, you consider personal knowledge more authoritative than evidence; at others, evidence superior to knowledge. What confusion is this in the depths of ignorance, this imposition of falsehood upon religion through arbitrary judgment!

L29011 Every matter requiring a judge to rule based on his personal knowledge also obligates him to rule based on clear evidence, and every matter requiring him to rule based on clear evidence likewise obligates him to rule based

on his personal knowledge, due to the statement of Allah, the Exalted: “Be upholders of justice” [An-Nisa’ 135].[3]

وَكُلُّ مَا لَزِمَ الْحَاكِمَ أَنْ يَحْكُمَ فِيهِ بِعِلْمِهِ فَلَازِمٌ لَهُ أَنْ يَحْكُمَ فِيهِ بِالْبَيِّنَةِ، وَكُلُّ مَا لَزِمَهُ أَنْ يَحْكُمَ فِيهِ بِالْبَيِّنَةِ لَزِمَهُ أَنْ يَحْكُمَ فِيهِ بِعِلْمِهِ، لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] .

L29012–29014 As for the Companions - may Allah be pleased with them - we have been narrated through the chain of Ḥammād ibn Salamah, from ʿAṭāʾ ibn al-Sāʾib, from Abū Zurʿah ibn ʿAmr ibn Jarīr ibn ʿAbdullāh al-Bajalī: A man accompanied Abū Mūsā al-Ashʿarī, possessing a powerful voice that caused significant harm to the enemy. When they acquired spoils, Abū Mūsā granted him a portion of his share, but he refused to accept anything but the entirety. Abū Mūsā then lashed him twenty times and shaved his head. The man gathered his hair, journeyed to ʿUmar, and entered his presence. Jarīr ibn ʿAbdullāh said: “I was seated nearest to ʿUmar in the assembly.” The man brought out his hair and struck ʿUmar’s chest with it, exclaiming: “By Allah, were it not for—” ʿUmar demanded: “Were it not for what? By Allah, he speaks truth! Were it not for the Fire?” The man replied: “I used my powerful voice to inflict harm upon the enemy,” then recounted his story to ʿUmar. Thereupon, ʿUmar wrote to... Abu Musa said: “So-and-so came to me—inform me of such-and-such. If you did this to him, I have resolved against you: If you did it to him publicly, I will surely make you face him publicly until he exacts retaliation from you. And if you did it to him privately, I will surely make you face him privately until he exacts retaliation from you.” The people said: “Pardon him.” He replied: “No, by Allah! I will not spare him for anyone’s sake.” When Abu Musa positioned himself to enact retaliation, he raised his head to the sky and said: “O Allah, I have forgiven him.”

وَأَمَّا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي زُرْعَةَ بْنِ عَمْرِو بْنِ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ: أَنَّ رَجُلًا كَانَ مَعَ أَبِي مُوسَى الْأَشْعَرِيِّ وَكَانَ ذَا صَوْتٍ وَنِكَايَةٍ فِي الْعَدُوِّ فَغَنِمُوا فَأَعْطَاهُ أَبُو مُوسَى الْأَشْعَرِيُّ بَعْضَ سَهْمِهِ فَأَبَى أَنْ يَأْخُذَ إِلَّا جَمِيعًا، فَضَرَبَهُ عِشْرِينَ سَوْطًا وَحَلَقَ رَأْسَهُ، فَجَمَعَ شَعْرَهُ وَرَحَلَ إِلَى عُمَرَ فَدَخَلَ عَلَيْهِ، قَالَ جَرِيرُ بْنُ عَبْدِ اللَّهِ: وَأَنَا أَقْرَبُ النَّاسِ مَجْلِسًا مِنْ عُمَرَ، فَأَخْرَجَ شَعْرَهُ فَضَرَبَ بِهِ صَدْرَ عُمَرَ، وَقَالَ: أَمَا وَاَللَّهِ لَوْلَا فَقَالَ عُمَرُ: لَوْلَا مَاذَا؟ صَدَقَ وَاَللَّهِ لَوْلَا النَّارُ؟ فَقَالَ: كُنْت ذَا صَوْتٍ وَنِكَايَةٍ فِي الْعَدُوِّ، ثُمَّ قَصَّ قِصَّتَهُ عَلَى عُمَرَ. فَكَتَبَ عُمَرُ إِلَى أَبِي مُوسَى: إِنَّ فُلَانًا قَدِمَ عَلَيَّ فَأَخْبَرَنِي بِكَذَا وَكَذَا، فَإِنْ كُنْت فَعَلْت ذَلِكَ بِهِ فَعَزَمْت عَلَيْك إِنْ كُنْت فَعَلْت بِهِ ذَلِكَ فِي مَلَأٍ مِنْ النَّاسِ، فَعَزَمْت عَلَيْك لَمَا جَلَسْت لَهُ فِي مَلَأٍ مِنْ النَّاسِ حَتَّى يَقْتَصَّ مِنْك، وَإِنْ كُنْت فَعَلْت بِهِ ذَلِكَ فِي خَلَاءٍ لَمَا جَلَسْت لَهُ فِي خَلَاءٍ حَتَّى يَقْتَصَّ مِنْك فَقَالَ لَهُ النَّاسُ: اُعْفُ عَنْهُ فَقَالَ: لَا وَاَللَّهِ لَا أَدَعُهُ لِأَحَدٍ، فَلَمَّا قَعَدَ أَبُو مُوسَى لِلْقِصَاصِ رَفَعَ رَأْسَهُ إِلَى السَّمَاءِ وَقَالَ: اللَّهُمَّ قَدْ عَفَوْت عَنْهُ.

L29015 Yunus ibn Abdullah narrated to us: Ahmad ibn Abdullah ibn Abd al-Rahim narrated to us: Ahmad ibn Khalid narrated to us: Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bashshar narrated to us: Yahya Sa’id al-Qattan narrated to us: Yahya ibn Sa’id al-Taymi narrated to us: Abaya ibn Rifa’a ibn Rafi’ ibn Khadij said: Umar ibn al-Khattab was in-

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى سَعِيدٌ الْقَطَّانُ نا يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ نا عَبَايَةُ بْنُ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ قَالَ: بَلَغَ عُمَرَ بْنَ الْخَطَّابِ أَنَّ سَعْدَ بْنَ

[3] **Qur’an references (L29011):** Qur’an 4:135 (An-Nisa).

formed that Sa'd ibn Abi Waqqas had installed a door and said, "The noise has been blocked." Umar sent someone to him and had it burned. He dispatched Muhammad ibn Maslamah al-Ansari, who took Sa'd by the hand, brought him out, seated him, and said: "Sit here to attend to the people." Sa'd apologized to Umar and swore he had not made that statement.

أَبِي وَقَّاصٍ اتَّخَذَ بَابًا وَقَالَ: انْقَطَعَ الصَّوْتُ فَأَرْسَلَ إِلَيْهِ عُمَرُ فَحَرَقَهُ، وَأَرْسَلَ مُحَمَّدَ بْنَ مَسْلَمَةَ الْأَنْصَارِيَّ وَأَخَذَ بِيَدِ سَعْدٍ وَأَخْرَجَهُ وَأَجْلَسَهُ وَقَالَ: هُنَا اجْلِسْ لِلنَّاسِ، فَاعْتَذَرَ إِلَيْهِ سَعْدٌ وَحَلَفَ أَنَّهُ مَا تَكَلَّمَ بِذَلِكَ.

L29016 Muhammad ibn Saʿīd ibn Nabāt narrated to us: Ahmad ibn ʿAwn Allah narrated to us: Qasim ibn Asbagh narrated to us: Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bashshar narrated to us: Muhammad ibn Jaʿfar narrated to us: Shuʿbah narrated from Abu Husayn, who said: I heard al-Shaʿbi say: Umar wrote to Abu Musa: "It has reached me that some people in your region are making the calls of the pre-Islamic era: 'O clan of Dabba!' When this letter of mine reaches you, discipline them with punishment involving their wealth and bodies until they disperse, for they have not understood."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ أَبِي حُصَيْنٍ قَالَ: سَمِعْتُ الشَّعْبِيَّ قَالَ: كَتَبَ عُمَرُ إِلَى أَبِي مُوسَى: أَنَّهُ بَلَغَنِي أَنَّ نَاسًا مِنْ قِبَلِكَ دَعَوْا بِدَعْوَى الْجَاهِلِيَّةِ: يَا آلَ ضَبَّةَ، فَإِذَا أَتَاكَ كِتَابِي هَذَا فَأَنْهِكْهُمْ عُقُوبَةً فِي أَمْوَالِهِمْ وَأَجْسَامِهِمْ حَتَّى يُفَرِّقُوا، إِذْ لَمْ يَفْقَهُوا.

L29017 From the chain of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Sa'id ibn al-Musayyab, who said: Umar ibn al-Khattab and Uthman ibn Affan decreed regarding the missing person that his wife must observe a waiting period of four years, four months, and ten days, after which she may marry.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ، وَعُثْمَانُ بْنُ عَفَّانَ فِي الْمَفْقُودِ: أَنَّ امْرَأَتَهُ تَتَرَبَّصُ أَرْبَعَ سِنِينَ وَأَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ تَتَزَوَّجُ -.

L29018 And all of this constitutes a judicial ruling upon the absentee.

وَهَذَا كُلُّهُ قَضَاءٌ عَلَى الْغَائِبِ.

L29019 If one were to pursue such matters regarding the Companions after what is established concerning the Prophet—may Allah bless him and his family and grant him peace—it would be exceedingly abundant. What we have cited from 'Umar and 'Uthmān is authentic, and no contradiction to it from any of the Companions is ever valid—and with Allah, the Exalted, lies all success.

وَلَوْ تَتَبَّعَ ذَلِكَ لِلصَّحَابَةِ بَعْدَمَا يُوجَدُ مِنْ ذَلِكَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَكَثُرَ جِدًّا - وَالَّذِي أَوْرَدْنَا عَنْ عُمَرَ، وَعُثْمَانَ صَحِيحٌ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ خِلَافُهُ أَبَدًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L29020 **A ruling was issued against someone based on testimony from just witnesses, imposing a monetary penalty or other sanction. Subsequently, the defendant themselves presented testimony from just witnesses.**

[مَسْأَلَة قُضِيَ عَلَيْهِ بِبَيِّنَةِ عَدْلٍ بِغَرَامَةٍ أَوْ غَيْرِهَا ثُمَّ أَتَى هُوَ بِبَيِّنَةِ عَدْلٍ]

L29021–29023 1785 – Issue: If someone is adjudged liable, based on the testimony of

upright witnesses, to pay a fine or other obligation, and he himself then produces upright witnesses proving that he had already discharged that due or was absolved of it, what he paid as a fine must be reimbursed to him, and the judgment must be rescinded. The first judgment is from him because it is a right that became evident—a fact not within the knowledge of the evidence initially presented—and success is from Allah, the Exalted.

١٧٨٥ - مَسْأَلَةٌ: وَكُلُّ مَنْ قُضِيَ عَلَيْهِ بِبَيِّنَةِ عَدْلٍ بِغَرَامَةٍ أَوْ غَيْرِهَا، ثُمَّ أَتَى هُوَ بِبَيِّنَةِ عَدْلٍ: أَنَّهُ كَانَ قَدْ أَدَّى ذَلِكَ الْحَقَّ أَوْ بَرِئَ مِنْ ذَلِكَ الْحَقِّ: رُدَّ عَلَيْهِ مَا كَانَ غَرِمَ، وَفُسِخَ عَنْهُ الْقَضَاءُ الْأَوَّلُ؛ لِأَنَّهُ حَقٌّ ظَهَرَ لَمْ يَكُنْ فِي عِلْمِ الْبَيِّنَةِ الَّتِي شَهِدَتْ أَوَّلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة ادَّعَى عَلَى أَحَدٍ وَأَنْكَرَ الْمُدَّعَى عَلَيْهِ فَكُلِّفَ الْمُدَّعِي الْبَيِّنَةَ]

L29024 **Issue: If someone makes a claim against another and the defendant denies it, the claimant is required to present evidence.**

١٧٨٦ - مَسْأَلَةٌ: وَكُلُّ مَنْ ادَّعَى عَلَى أَحَدٍ وَأَنْكَرَ الْمُدَّعَى عَلَيْهِ فَكُلِّفَ الْمُدَّعِي الْبَيِّنَةَ فَقَالَ: لِي بَيِّنَةٌ غَائِبَةٌ، أَوْ قَالَ: لَا أَعْرِفُ لِنَفْسِي بَيِّنَةً، أَوْ قَالَ: لَا بَيِّنَةَ لِي قِيلَ لَهُ: إِنْ شِئْتَ فَدَعْ تَحْلِيفَهُ حَتَّى تُحْضِرَ بَيِّنَتَك أَوْ لَعَلَّك تَجِدُ بَيِّنَةً، وَإِنْ شِئْت حَلَّفْته وَقَدْ سَقَطَ حُكْمُ بَيِّنَتِك الْغَائِبَةِ جُمْلَةً، فَلَا يُقْضَى لَك بِهَا أَبَدًا، وَسَقَطَ حُكْمُ بَيِّنَةٍ تَأْتِي بِهَا بَعْدَ هَذَا عَلَيْهِ، لَيْسَ لَك إلَّا هَذَا فَقَطْ، فَأَيُّ الْأَمْرَيْنِ اخْتَارَ قُضِيَ لَهُ بِهِ - وَلَمْ يُلْتَفَتْ لَهُ إلَى بَيِّنَةٍ فِي تِلْكَ الدَّعْوَى بَعْدَهَا، إلَّا أَنْ يَكُونَ تَوَاتُرٌ يُوجِبُ صِحَّةَ الْعِلْمِ وَيَقِينَهُ: أَنَّهُ حَلَفَ كَاذِبًا فَيُقْضَى عَلَيْهِ بِالْحَقِّ أَوْ يُقِرُّ بَعْدَ أَنْ حَلَفَ فَيَلْزَمُهُ مَا أَقَرَّ بِهِ.

L29025 1786 - Issue: When someone makes a claim against another and the defendant denied it, the claimant was required to present evidence. If the claimant states, “I have evidence that is unavailable,” or says, “I know of no evidence for myself,” or declares, “I have no evidence,” he is told: “If you wish, forgo his swearing until you present your evidence or perhaps find evidence. If you wish, have him swear the oath, but the legal effect of your unavailable evidence is entirely nullified, and you will never be granted a ruling based on it. Moreover, the legal effect of any evidence you bring afterward is nullified. You have no choice but these two options alone.” Whichever choice he selects, the ruling is issued accordingly. No consideration is given to any evidence presented in that claim afterward unless there is tawātur (recurrent, certainty-inducing reports) establishing definitive knowledge and certainty that he swore falsely, in which case judgment is passed against him in accordance with the truth, or unless he confesses after swearing the oath, thereby binding him to his admission.

L29026 People have differed concerning this matter. It has been narrated to us via the chain of transmission from Waki‘, who narrated to us from Sufyān al-Thawrī, from Hishām ibn Ḥassān, from Ibn Sīrīn, who said: Shurayḥ would require a man to swear an oath despite the presence of his evidence, and he would accept evidence even after administering the oath. He would state: “Credible testimony is more rightful than a perjurious oath.”

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ هِشَامِ بْنِ حَسَّانٍ عَنْ ابْنِ سِيرِينَ قَالَ: كَانَ شُرَيْحٌ يَسْتَحْلِفُ الرَّجُلَ مَعَ بَيِّنَتِهِ وَيَقْبَلُ الْبَيِّنَةَ بَعْدَ الْيَمِينِ، وَيَقُولُ الْبَيِّنَةُ الْعَادِلَةُ أَحَقُّ مِنْ الْيَمِينِ الْفَاجِرَةِ.

L29027 And concerning the ruling on the swearer when the claimant furnishes

evidence subsequent to the defendant's oath, Sufyān al-Thawrī and al-Layth ibn Saʿd hold this view; this is also the position of Abū Ḥanīfa, al-Shāfiʿī, Aḥmad, and Isḥāq.

وَبِالْحُكْمِ عَلَى الْحَالِفِ إذَا أَقَامَ الطَّالِبُ بَيِّنَةً بَعْدَ يَمِينِ الْمَطْلُوبِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَاللَّيْثُ بْنُ سَعْدٍ. وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَإِسْحَاقُ.

L29028 Mālik said: If the plaintiff knows he has evidence but chooses to make the defendant swear an oath, the legal validity of his evidence is nullified, and no ruling shall be issued for him based on it if he presents it thereafter. However, if he is unaware he possesses evidence, opts for the defendant's oath, and the defendant swears, then later discovers evidence, a judgment shall be rendered in his favor on the basis of it.

وَقَالَ مَالِكٌ: إنْ عَرَفَ الطَّالِبُ أَنَّ لَهُ بَيِّنَةً فَاخْتَارَ تَحْلِيفَ الْمَطْلُوبِ فَقَدْ سَقَطَ حُكْمُ بَيِّنَتِهِ وَلَا يُقْضَى بِهَا لَهُ إنْ جَاءَ بِهَا بَعْدَ ذَلِكَ، وَأَمَّا إنْ لَمْ يَعْرِفْ أَنَّ لَهُ بَيِّنَةً فَاخْتَارَ تَحْلِيفَ الْمَطْلُوبِ فَحَلَّفَ، ثُمَّ وَجَدَ بَيِّنَةً، فَإِنَّهُ يُقْضَى لَهُ بِهَا.

L29029 It has been reported from him that he said: If the claimant says, "I have distant evidence, but administer the oath to him now for my case. Then if my evidence materializes, I will present it."

وَقَدْ رُوِيَ عَنْهُ أَنَّهُ قَالَ: إنْ قَالَ الطَّالِبُ: إنَّ لَهُ بَيِّنَةً بَعِيدَةً وَلَكِنْ أَحْلِفْهُ لِي الْآنَ، ثُمَّ إنْ حَضَرَتْ بَيِّنَتِي أَتَيْت بِهَا.

L29030 His request is accepted in that regard, and the defendant swears to him. Judgment is then rendered in his favor based on his proof when he presents it.

فَإِنَّهُ يُجَابُ إلَى ذَلِكَ وَيَحْلِفُ لَهُ الْمَطْلُوبُ، ثُمَّ يُقْضَى لَهُ بِبَيِّنَتِهِ إذَا أَحْضَرَهَا -.

L29031 And something akin to this has been narrated from Shuraih.

وَقَدْ رُوِيَ نَحْوُ هَذَا عَنْ شُرَيْحٍ.

L29032 Ibn Abī Laylā said our opinion, as did Abū ʿUbayd, Abū Sulaymān, and all our companions.

وَقَالَ بِقَوْلِنَا ابْنُ أَبِي لَيْلَى، وَأَبُو عُبَيْدٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L29033–29035 Abu Muhammad said: Abu Hanifah, Malik, al-Shafi'i, and Ahmad have no basis in Shuraih, because they... They opposed him for requiring the presenter of evidence to take an oath despite his evidence, and it is baseless to deem Shurayh's opinion authoritative in one case yet non-authoritative in another.

قَالَ أَبُو مُحَمَّد: لَا مُتَعَلَّقَ لِأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ بِشُرَيْحٍ؛ لِأَنَّهُمْ قَدْ خَالَفُوهُ فِي تَحْلِيفِهِ مُقِيمَ الْبَيِّنَةِ مَعَ بَيِّنَتِهِ، وَمِنْ الْبَاطِلِ أَنْ يَكُونَ قَوْلُ شُرَيْحٍ حُجَّةً فِي مَوْضِعٍ وَغَيْرَ حُجَّةٍ فِي آخَرَ.

L29036 As for Mālik's position—we do not know anyone before him who stated it concerning the distinction between a claimant's knowledge of possessing clear evidence and their ignorance of such evidence—this is an opinion not supported by the Quran, nor the Sunnah, nor the statement of any predecessor, nor analogical reasoning.

وَأَمَّا قَوْلُ مَالِكٍ - فَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ فِي التَّفْرِيقِ بَيْنَ عِلْمِ الطَّالِبِ بِأَنَّ لَهُ بَيِّنَةً وَبَيْنَ جَهْلِهِ بِذَلِكَ - وَهُوَ قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ مُتَقَدِّمٍ، وَلَا قِيَاسٌ.

L29037 If they say: If he knows he has evidence, then is made to swear an oath, he has indeed invalidated his evidence.

فَإِنْ قَالُوا: إذَا عَلِمَ أَنَّ لَهُ بَيِّنَةً ثُمَّ أَحْلَفَهُ فَقَدْ أَسْقَطَ بَيِّنَتَهُ.

So we said, “He did not do, nor did he inform that he annulled it.”

فَقُلْنَا: مَا فَعَلَ وَلَا أَخْبَرَ أَنَّهُ أَسْقَطَهَا.

Similarly, if he is unaware that he possesses evidence and he makes his opponent swear an oath, he has thereby forfeited his evidence as well, and there is no distinction.

وَكَذَلِكَ أَيْضًا إِذَا لَمْ يَعْلَمْ بِأَنَّ لَهُ بَيِّنَةً فَأَحْلَفَ خَصْمَهُ فَقَدْ أَسْقَطَ بَيِّنَتَهُ أَيْضًا وَلَا فَرْقَ.

As for the positions of Abu Hanifa, Al-Shafi’i, Malik, and Ahmad regarding their judgment through testimonial evidence after the oath of the denier, their statement that “the just testimonial evidence is superior to the false oath” would be valid if we were certain that the evidence is just before Allah the Almighty and that the oath-taker’s vow is undeniably false. However, when we lack certainty about the testimonial evidence being truthful or the oath being false, the testimony does not take precedence over the oath, for truth may exist in either and falsehood may exist in either - unless supported by a Quranic text or Prophetic tradition commanding us to implement testimonial evidence. If the denier swears an oath and no such textual evidence exists at all, this opinion is definitively invalidated. Rather, we have found textual evidence aligning with our view. All praise is due to Allah, Lord of the worlds.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَمَالِكٍ، وَأَحْمَدَ، فِي قَضَائِهِمْ بِالْبَيِّنَةِ بَعْدَ يَمِينِ الْمُنْكِرِ، فَإِنَّ قَوْلَهُمْ: الْبَيِّنَةُ الْعَادِلَةُ خَيْرٌ مِنَ الْيَمِينِ الْفَاجِرَةِ، فَقَوْلٌ صَحِيحٌ لَوْ أَيْقَنَّا أَنَّ الْبَيِّنَةَ عَادِلَةٌ عِنْدَ اللَّهِ عَزَّ وَجَلَّ، وَأَنَّ يَمِينَ الْحَالِفِ فَاجِرَةٌ بِلَا شَكٍّ، وَأَمَّا إِذَا لَمْ يُوقِنْ أَنَّ الْبَيِّنَةَ صَادِقَةٌ، وَلَا أَنَّ الْيَمِينَ فَاجِرَةٌ، فَلَيْسَتْ الشَّهَادَةُ أَوْلَى مِنَ الْيَمِينِ، إِذْ الصِّدْقُ فِي كِلَيْهِمَا مُمْكِنٌ وَالْكَذِبُ فِي كِلَيْهِمَا مُمْكِنٌ، إِلَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ تَأْمُرُنَا بِإِنْفَاذِ الْبَيِّنَةِ، وَإِنْ حَلَفَ الْمُنْكِرُ وَلَا يُوجَدُ فِي ذَلِكَ نَصٌّ أَصْلًا - فَسَقَطَ هَذَا الْقَوْلُ بِيَقِينٍ، بَلْ وَجَدْنَا النَّصَّ بِمِثْلِ قَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

As Muslim ibn al-Hajjaj narrated to us through his chain: Zuhayr ibn Harb and Ishaq ibn Ibrahim—the latter being Ibn Rahwayh—both narrated to us from Abu al-Walid al-Tayalisi, who narrated to us from Abu Awanah, from Abdul Malik ibn Umayr, from Alqamah ibn Wail ibn Hujr, who said: “I was in the presence of the Messenger of Allah—may the peace and blessings of Allah be upon him—when two men came disputing over a piece of land.” He mentioned that the Messenger of Allah—may the peace and blessings of Allah be upon him—said to the claimant: “Your evidence?” The man replied: “I have no evidence.” He said: “His oath.” The man said: “Then he would take it (meaning what is mine).” The Messenger of Allah—may the peace and blessings of Allah be upon him—responded: “This is all you are entitled to.”

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا زُهَيْرُ بْنُ حَرْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - جَمِيعًا عَنْ أَبِي الْوَلِيدِ الطَّيَالِسِيِّ نا أَبُو عَوَانَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ «عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ قَالَ كُنْتُ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَتَاهُ رَجُلَانِ يَخْتَصِمَانِ فِي أَرْضٍ فَذَكَرَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِلطَّالِبِ: بَيِّنَتُكَ؟ قَالَ: لَيْسَ لِي بَيِّنَةٌ، قَالَ: يَمِينُهُ قَالَ: إِذَا يَذْهَبُ بِهَا - يَعْنِي بِمَا لِي قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَيْسَ لَكَ إِلَّا ذَلِكَ»

As for the positions of Abu Hanifa, Al-Shafi’i, Malik, and Ahmad regarding their judgment through testimonial evidence after the oath of the denier, their statement that “the just testimonial evidence is superior to the false oath” would be valid if we were certain that the evidence is just before Allah the Almighty and that the oath-taker’s vow is undeniably false. However, when we lack certainty about the testimonial evidence being truthful or the oath being false, the testimony does not take precedence over the oath, for truth may exist in either and falsehood may exist in either - unless supported by a Quranic text or Prophetic tradition commanding us to implement testimonial evidence. If the denier swears an oath and no such textual evidence exists at all, this opinion is definitively invalidated. Rather, we have found textual evidence aligning with our view. All praise is due to Allah, Lord of the worlds.

“He – peace and blessings be upon him – ruled that the claimant is entitled to nothing beyond his evidence or the defendant’s oath. Thus, it is conclusively established that only one of the two options is valid, not both, and it is invalid with certainty for both to hold legal weight.”

“ فَنَصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى أَنَّهُ لَيْسَ لِلطَّالِبِ إِلَّا بَيِّنَتُهُ أَوْ يَمِينُ الْمَطْلُوبِ - فَصَحَّ يَقِينًا: أَنَّهُ لَيْسَ إِلَّا أَحَدُهُمَا لَا كِلَاهُمَا وَبَطَلَ أَنْ يَكُونَ لَهُ كِلَا الْأَمْرَيْنِ بِيَقِينٍ

فَإِنْ قِيلَ: فَإِنَّكُمْ تَحْكُمُونَ لِلطَّالِبِ بَعْدَ يَمِينِ الْمَطْلُوبِ بِالتَّوَاتُرِ، وَبِعِلْمِ الْحَاكِمِ وَبِإِقْرَارِهِ.

قُلْنَا: نَعَمْ، وَكُلُّ هَذَا لَيْسَ بِبَيِّنَةٍ، لَكِنَّهُ بِيَقِينِ الْحَقِّ، وَيَقِينُ الْحَقِّ فُرِضَ إنْفَاذُهُ، وَلَيْسَتْ شَهَادَةُ الْعُدُولِ كَذَلِكَ، بَلْ يُمْكِنُ أَنْ يَكُونُوا كَاذِبِينَ، أَوْ مُغَفَّلِينَ، وَلَوْلَا النَّصُّ بِقَبُولِهِمْ وَبِالْيَمِينِ مَا حَكَمْنَا بِشَيْءٍ مِنْ ذَلِكَ بِخِلَافِ يَقِينِ الْعِلْمِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L29043 If it is said: "You indeed rule in favor of the claimant after the defendant's oath, based on tawātur (mass-transmitted evidence), the judge's personal knowledge, or the defendant's admission."

L29044 We said: Yes, and all of this does not constitute conclusive proof, but it rests on the certainty of divine truth, and the enforcement of the certainty of divine truth is mandated. The testimony of upright witnesses is not equivalent to this; rather, they may be lying or deceived. Had it not been for the scriptural injunction regarding their acceptance and the oath, we would not have ruled on any of that contrary to certainty of knowledge—and success is from Allah, the Exalted.

[مَسْأَلَة لَمْ يَكُنْ لِلطَّالِبِ بَيِّنَةٌ وَأَبَى الْمَطْلُوبُ مِنْ الْيَمِينِ]

A case in which the claimant possessed no evidence and the defendant refused to take the oath.

مَسْأَلَةٌ: فَإِنْ لَمْ يَكُنْ لِلطَّالِبِ بَيِّنَةٌ وَأَبَى الْمَطْلُوبُ مِنْ الْيَمِينِ: أُجْبِرَ عَلَيْهَا - أَحَبَّ أَمْ كَرِهَ - بِالْأَدَبِ، وَلَا يُقْضَى عَلَيْهِ بِنُكُولِهِ فِي شَيْءٍ مِنْ الْأَشْيَاءِ أَصْلًا، وَلَا تُرَدُّ الْيَمِينُ عَلَى الطَّالِبِ أَلْبَتَّةَ.

L29047 Issue: If the plaintiff lacks evidence and the defendant refuses to swear the oath, he is compelled to take it - whether willing or unwilling - through disciplinary means. No judgment is passed against him for his refusal to swear the oath in any matter whatsoever, nor is the oath returned to the plaintiff under absolutely no circumstances.

وَلَا تُرَدُّ يَمِينٌ أَصْلًا، إلَّا فِي ثَلَاثَةِ مَوَاضِعَ فَقَطْ -: وَهِيَ الْقَسَامَةُ: فِيمَنْ وُجِدَ مَقْتُولًا، فَإِنَّهُ إنْ لَمْ تَكُنْ لِأَوْلِيَائِهِ بَيِّنَةٌ حَلَفَ خَمْسُونَ مِنْهُمْ، وَاسْتَحَقُّوا الْقِصَاصَ أَوْ الدِّيَةَ، فَإِنْ أَبَوْا حَلَفَ خَمْسُونَ مِنْ الْمُدَّعَى عَلَيْهِمْ وَبَرِئُوا، فَإِنْ نَكَلُوا أُجْبِرُوا عَلَى الْيَمِينِ أَبَدًا - وَهَذَا مَكَانٌ يَحْلِفُ فِيهِ الطَّالِبُونَ، فَإِنْ نَكَلُوا رُدَّ عَلَى الْمَطْلُوبِينَ.

L29048 An oath is not rejected in principle, except in three cases only: Qasamah—in the case of a person found murdered. If the heirs of the deceased lack clear evidence, fifty of them must swear, thereby becoming entitled to retribution or blood money. If they refuse, fifty of the defendants must swear and are thereby absolved. If they refuse to swear, they are compelled to take the oath without exception—and this is a case where the claimants swear; if they refuse, the oath is transferred to the defendants.

وَالْمَوْضِعُ الثَّانِي: الْوَصِيَّةُ فِي السَّفَرِ، لَا يَشْهَدُ عَلَيْهَا إلَّا كُفَّارٌ، وَأَنَّ الشَّاهِدَيْنِ الْكَافِرَيْنِ يَحْلِفَانِ مَعَ شَهَادَتِهَا، فَإِنْ نَكَلَا لَمْ يُقْضَ بِشَهَادَتِهَا، فَإِنْ قَامَتْ بَعْدَ ذَلِكَ بَيِّنَةٌ مِنْ الْمُسْلِمِ حَلَفَ اثْنَانِ مِنْهُمْ مَعَ شَهَادَتِهِمَا، وَحُكِمَ بِهَا، وَفُسِخَ مَا شَهِدَ بِهِ الْأَوَّلَانِ، فَإِنْ

L29049 The second scenario involves a will made during travel, witnessed only by non-Muslims. The two non-Muslim witnesses must swear an oath alongside their testimony regarding the will. If they refuse, their testimony is not accepted. If evidence is later presented by a Muslim, two Muslims must swear an oath alongside their testimony, after which a ruling is issued accordingly, nullifying the ruling based on the initial two witnesses' testimony. If they refuse, their testimony is invalidated, and the original ruling remains as pre-

viously adjudicated. This is a situation where the witnesses swear the oath—not the claimant or the defendant.

L29050 The third situation: If someone has a single upright male witness or two upright female witnesses supporting his claim, he swears an oath, and the judgment is rendered in his favor. If he refuses to swear, the defendant swears an oath and is absolved. If the defendant refuses, he is indefinitely compelled to swear. This is a case where the claimant swears; if he refuses, the defendant counters him and is absolved.

L29051 In all that we have mentioned, there is a difference of opinion. A group stated: If the defendant refuses to take the oath, judgment is rendered against him based on the plaintiff's claim without requiring the defendant to swear.

L29052 Others said: A judgment is not passed against the defendant unless he swears to the validity of his claim, at which point judgment is rendered in his favor. Thus, the proponents hold that judgment is passed against the defendant for his refusal, without requiring the oath to be re-administered.

L29053 As narrated through the chain of Abu Ubaydah - Yazid (Ibn Harun) - Yahya ibn Sa'id al-Ansari - Salim ibn Abdullah ibn Umar ibn al-Khattab: That his father Abdullah sold his slave for eight hundred dirhams without warranty. The buyer then brought a lawsuit against Ibn Umar concerning the slave before Uthman. Uthman said to Ibn Umar: "Swear by Allah that you sold him and there was no ailment in him you were aware of." When Ibn Umar refused to take the oath, Uthman returned the slave to the buyer.

L29054–29056 And from the chain of Ibn Abi Shaybah: Hafs ibn Ghiyath narrated to us from Ibn Jurayj from Ibn Abi Mulaykah from... It is reported from Ibn Abbas that he instructed Ibn Abi Mulaykah to administer an oath to a woman, but she refused to swear, so he compelled her to do so. A similar report was narrated from Abu Musa al-Ash'ari.

L29057 From the narration of Ibn Abi Shaybah from Sharīk from Mughīrah from al-Ḥārith, who said: A man retracted from taking the oath before Shurayḥ,

نَكَلَا بَطَلَتْ شَهَادَتُهَا، وَبَقِيَ الْحُكْمُ الْأَوَّلُ كَمَا حُكِمَ بِهِ - فَهَذَا مَكَانٌ يَحْلِفُ فِيهِ الشُّهُودُ لَا الطَّالِبُ وَلَا الْمَطْلُوبُ.

وَالْمَوْضِعُ الثَّالِثُ: مَنْ قَامَ لَهُ بِدَعْوَاهُ شَاهِدٌ وَاحِدٌ عَدْلٌ، أَوْ امْرَأَتَانِ عَدْلَتَانِ، فَيَحْلِفُ وَيُقْضَى لَهُ، فَإِنْ نَكَلَ حَلَفَ الْمُدَّعَى عَلَيْهِ وَبَرِئَ، فَإِنْ نَكَلَ أُجْبِرَ عَلَى الْيَمِينِ أَبَدًا، فَهَذَا مَكَانٌ يَحْلِفُ فِيهِ الطَّالِبُ فَإِنْ نَكَلَ رَدَّ عَلَيْهِ الْمَطْلُوبُ.

وَفِي كُلِّ مَا ذَكَرْنَا اخْتِلَافٌ -: فَقَالَتْ طَائِفَةٌ: إِنْ نَكَلَ الْمُدَّعَى عَلَيْهِ عَنْ الْيَمِينِ قُضِيَ عَلَيْهِ بِدَعْوَى الطَّالِبِ دُونَ أَنْ يَحْلِفَ.

وَقَالَ آخَرُونَ: لَا يُقْضَى عَلَيْهِ إلَّا حَتَّى يَحْلِفَ عَلَى صِحَّةِ دَعْوَاهُ، فَيُقْضَى لَهُ حِينَئِذٍ، فَالْقَائِلُونَ يُقْضَى عَلَى الْمَطْلُوبِ بِنُكُولِهِ دُونَ أَنْ تُرَدَّ الْيَمِينُ -.

فَكَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدَةَ نا يَزِيدُ - هُوَ ابْنُ هَارُونَ - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ أَنَّ أَبَاهُ عَبْدَ اللَّهِ بَاعَ عَبْدًا لَهُ بِثَمَانِمِائَةِ دِرْهَمٍ بِالْبَرَاءَةِ، ثُمَّ إنَّ صَاحِبَ الْعَبْدِ خَاصَمَ فِيهِ ابْنَ عُمَرَ إلَى عُثْمَانَ فَقَالَ عُثْمَانُ لِابْنِ عُمَرَ: احْلِفْ بِاَللَّهِ لَقَدْ بِعْته وَمَا بِهِ مِنْ دَاءٍ عَلِمْته فَأَبَى ابْنُ عُمَرَ مِنْ أَنْ يَحْلِفَ، فَرَدَّ عَلَيْهِ عُثْمَانُ الْعَبْدَ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ أَمَرَ ابْنَ أَبِي مُلَيْكَةَ أَنْ يَسْتَحْلِفَ امْرَأَةً فَأَبَتْ أَنْ تَحْلِفَ، فَأَلْزَمَهَا ذَلِكَ وَرُوِيَ نَحْوُ ذَلِكَ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ.

so he ruled against him. The man said: “Shall I swear?” Shurayḥ responded: “My judgment has already been concluded.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ شَرِيكٍ عَنْ مُغِيرَةَ عَنْ الْحَارِثِ، قَالَ: نَكَلَ رَجُلٌ عِنْدَ شُرَيْحٍ عَنْ الْيَمِينِ، فَقَضَى عَلَيْهِ فَقَالَ: أَنَا أَحْلِفُ؟ فَقَالَ شُرَيْحٌ: قَدْ مَضَى قَضَائِي.

L29058 Aḥmad ibn Ḥanbal and Isḥāq adopt this view, with the latter in one of his two opinions.

وَبِهَذَا يَأْخُذُ أَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ فِي أَحَدِ قَوْلَيْهِ.

L29059 Abu Hanifah said: In all matters involving property, sexual integrity, and retaliation for injuries short of homicide, judgment is rendered against one who refuses to swear the oath. Save for retaliation pertaining to life (homicide) - no judgment is rendered therein due to the respondent’s refusal to swear, nor is the oath returned to the plaintiff. Rather, the respondent is imprisoned until he either swears or confesses.

وَقَالَ أَبُو حَنِيفَةَ: يُقْضَى عَلَى النَّاكِلِ عَنْ الْيَمِينِ فِي كُلِّ شَيْءٍ مِنْ الْأَمْوَالِ وَالْفُرُوجِ، وَالْقِصَاصِ فِيمَا دُونَ النَّفْسِ، حَاشَا الْقِصَاصَ فِي النَّفْسِ فَلَا يُقْضَى فِيهِ بِنُكُولِ الْمَطْلُوبِ، وَلَا تُرَدُّ الْيَمِينُ عَلَى الطَّالِبِ، لَكِنْ يُسْجَنُ الْمَطْلُوبُ حَتَّى يَحْلِفَ أَوْ يُقِرَّ.

L29060 Zufar said: The ruling applies to refusal to take the oath in all matters, and to qisas (retaliation) in cases involving life and lesser injuries - which represents the opinion of Abū Yūsuf and Muḥammad in one of their two juristic opinions.

وَقَالَ زُفَرُ: أَقْضِي فِي النُّكُولِ فِي كُلِّ شَيْءٍ، وَفِي الْقِصَاصِ فِي النَّفْسِ وَمَا دُونَ النَّفْسِ - وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدٍ فِي أَحَدِ قَوْلَيْهِمَا.

L29061 They also said on another occasion: A ruling is issued based on refusal [to swear an oath] in all matters except retaliation (qisas) for murder or lesser injuries. For indeed, compensatory damages (arsh) and blood money (diyya) become obligatory through refusal in all such cases, and retaliation is not imposed due to it.

وَقَالَا مَرَّةً أُخْرَى: يُقْضَى بِالنُّكُولِ فِي كُلِّ شَيْءٍ حَاشَ الْقِصَاصَ فِي النَّفْسِ وَفِيمَا دُونَهَا، فَإِنَّهُ يَلْزَمُ الْأَرْشُ وَالدِّيَةُ بِالنُّكُولِ فِي كُلِّ ذَلِكَ وَلَا يُقَصُّ مِنْهُ.

L29062 They all said: If someone claims another stole from him property warranting the cutting punishment without presenting proof, the accused must swear an oath and is acquitted. If he refuses to swear, he becomes liable for the property’s value but is not subjected to the cutting punishment.

وَقَالُوا كُلُّهُمْ: مَنْ ادَّعَى عَلَى آخَرَ أَنَّهُ سَرَقَ مِنْهُ مَا فِيهِ الْقَطْعُ وَلَا بَيِّنَةَ لَهُ: حَلَفَ الْمَطْلُوبُ وَبَرِئَ، فَإِنْ نَكَلَ غَرِمَ الْمَالَ وَلَا قَطْعَ عَلَيْهِ.

L29063 They all said: No judgment is to be passed against him for refusal until he is called to the oath three times.

وَقَالُوا كُلُّهُمْ: لَا يُقْضَى عَلَيْهِ بِالنُّكُولِ حَتَّى يَدْعُوَهُ إلَى الْيَمِينِ ثَلَاثَ مَرَّاتٍ.

L29064 If he refuses and persists, judgment is passed against him.

فَإِنْ أَبَى وَتَمَادَى قُضِيَ عَلَيْهِ.

L29065 Al-Hasan ibn Ḥayy said: If a slain person is found in the district of a people, and his next of kin accuse them of killing him without evidence, fifty of them

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: إنْ وُجِدَ قَتِيلٌ فِي مَحَلَّةِ قَوْمٍ فَادَّعَى أَوْلِيَاؤُهُ عَلَيْهِمْ قَتْلَهُ وَلَا بَيِّنَةَ لَهُمْ: حَلَفَ خَمْسُونَ مِنْهُمْ بِاَللَّهِ مَا قَتَلْنَاهُ، ثُمَّ يَغْرَمُونَ الدِّيَةَ، فَإِنْ نَكَلُوا قُتِلُوا قِصَاصًا.

must swear by Allah that they did not kill him, and they must pay the diyah. If they refuse to swear, they are to be killed in qiṣāṣ.

L29066 Mālik said: Whoever claims a financial right against a denying party and produces one witness is to swear along with his witness. If he refuses, the defendant is told: "Swear, and you shall be absolved."

وَقَالَ مَالِكٌ: مَنْ ادَّعَى حَقًّا مِنْ مَالٍ عَلَى مُنْكِرٍ وَأَقَامَ شَاهِدًا وَاحِدًا حَلَفَ مَعَ شَاهِدِهِ، فَإِنْ أَبَى قِيلَ لِلْمَطْلُوبِ احْلِفْ فَتَبْرَأُ.

L29067 If he refuses to take the oath, judgment is passed against him based on the testimony of the claimant's witness. He said: Whoever declares, "I accuse so-and-so of taking my property," must specify its amount—though I do not verify that.

فَإِنْ نَكَلَ قُضِيَ عَلَيْهِ بِمَا شَهِدَ بِهِ شَاهِدُ طَالِبِهِ عَلَيْهِ. قَالَ: وَمَنْ قَالَ: أَنَا أَتَّهِمُ فُلَانًا بِأَنَّهُ أَخَذَ لِي مَالًا ذَكَرَ عَدَدَهُ - وَلَا أُحَقِّقُ ذَلِكَ.

L29068 The defendant is told: "Swear an oath and absolve yourself." If he refuses, judgment is passed against him based on what the claimant has stated, without requiring a rebuttal oath.

قِيلَ لِلْمَطْلُوبِ: احْلِفْ وَتَبْرَأُ، فَإِنْ نَكَلَ قُضِيَ عَلَيْهِ بِمَا ذَكَرَهُ الْمُتَّهَمُ دُونَ رَدِّ يَمِينٍ.

L29069–29070 He said: If someone dies leaving minor heirs, and their guardian produces a single upright witness testifying to a debt owed to their estate by another person, the defendant is told: "Swear an oath until the minors come of age, at which point they will swear alongside their witness, and the ruling will be made in their favor." If he swears, the case is postponed until they reach adulthood, swear, and the ruling is granted. If he refuses, he must pay what the witness testified.

قَالَ: مَنْ مَاتَ وَتَرَكَ وَرَثَتَهُ صِغَارًا فَأَقَامَ وَصِيُّهُمْ شَاهِدًا وَاحِدًا عَدْلًا بِدَيْنٍ لِمَوْرُوثِهِمْ عَلَى إِنْسَانٍ: قِيلَ لِلْمُدَّعَى عَلَيْهِ: احْلِفْ حَتَّى تَبْلُغَ الصِّغَارُ فَيَحْلِفُوا مَعَ شَاهِدِهِمْ، وَيُقْضَى لَهُمْ، فَإِنْ حَلَفَ تُرِكَ حَتَّى يَبْلُغُوا وَيَحْلِفُوا وَيُقْضَى لَهُمْ، وَإِنْ نَكَلَ غَرِمَ مَا شَهِدَ بِهِ الشَّاهِدُ.

L29071 He said regarding a man whose wife claims he divorced her, or whose female slave or male slave claims he emancipated her or him, and a single just witness testifies to that against him: He is told, "Swear that you have neither divorced nor emancipated, and clear yourself."

وَقَالَ فِيمَنْ ادَّعَتْ عَلَيْهِ امْرَأَتُهُ طَلَاقًا، أَوْ ادَّعَتْ عَلَيْهِ أَمَتُهُ أَوْ عَبْدُهُ عَتَاقًا، وَقَامَ عَلَيْهِ بِذَلِكَ، شَاهِدٌ وَاحِدٌ عَدْلٌ: إِنَّهُ يُقَالُ لَهُ: احْلِفْ مَا طَلَّقْتَ، وَلَا أَعْتَقْتَ وَتَبَرَّأُ.

L29072 If he refuses, it is ruled against him to effect divorce and manumission.

فَإِنْ نَكَلَ قُضِيَ عَلَيْهِ بِالطَّلَاقِ وَالْعِتْقِ.

L29073 He said in another instance, "He is to be imprisoned until his matter becomes prolonged," setting that duration at one year, then he divorces. On one occasion, he stated, "He is to be imprisoned perpetually until he swears."

وَقَالَ مَرَّةً أُخْرَى يُسْجَنُ حَتَّى يَطُولَ أَمْرُهُ، وَحَدَّ ذَلِكَ بِسَنَةٍ، ثُمَّ يُطَلِّقُ - وَمَرَّةً قَالَ: يُسْجَنُ أَبَدًا حَتَّى يَحْلِفَ.

L29074 Abu Muhammad said: As for Mālik's opinion, its erroneous nature is evident because it is self-contradictory: at times he rules based on refusal (nukūl) as cited, while in other claims he does not rule based on it. These are distinc-

tions that, to our knowledge, no Muslim before him ever made, nor does he possess any evidence for his distinctions—neither from the Qur'an, nor the Sunnah, nor an infirm narration, nor the statement of any predecessors, nor analogy. Rather, all of that invalidates his distinctions. Thus, this opinion is invalid with certainty.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ الْخَطَأِ، لِأَنَّهُ مُتَنَاقِضٌ: مَرَّةً يَقْضِي بِالنُّكُولِ كَمَا أَوْرَدْنَا، وَفِي سَائِرِ الدَّعَاوَى لَا يَقْضِي بِهِ، وَهَذِهِ فُرُوقٌ مَا نَعْلَمُ أَحَدًا مِنْ الْمُسْلِمِينَ فَرَّقَ بِهَا قَبْلَهُ وَلَا دَلِيلَ لَهُ عَلَى تَفْرِيقِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ سَبَقَهُ إلَى ذَلِكَ، وَلَا قِيَاسٍ، بَلْ كُلُّ ذَلِكَ مُبْطِلٌ لِفُرُوقِهِ - فَسَقَطَ هَذِهِ الْقَوْلُ بِيَقِينٍ.

L29075 As for the statements of Abū Ḥanīfa, Abū Yūsuf, and Muḥammad ibn al-Ḥasan, they are manifestly contradictory. We know of no one who preceded them in making those corrupt distinctions, nor in reiterating his call to swear an oath three times. This has not been validated by the Qur'an, the Sunnah, not even a flawed narration, the opinion of any predecessor, or analogy. Rather, all such sources contradict their distinctions.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ: فَظَاهِرُ التَّنَاقُضِ أَيْضًا، وَمَا نَعْلَمُ أَحَدًا سَبَقَهُمْ إلَى تِلْكَ الْفُرُوقِ الْفَاسِدَةِ، وَلَا إلَى تَرْدِيدِ دُعَائِهِ إلَى الْيَمِينِ ثَلَاثَ مَرَّاتٍ، وَلَا صَحَّحَ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ أَحَدٍ قَبْلَهُمْ، وَلَا قِيَاسٌ، بَلْ كُلُّ ذَلِكَ مُخَالِفٌ لِفُرُوقِهِمْ.

L29076–29078 The ruling based on refusal to take the oath must necessarily be either a valid and obligatory ruling or an invalid one. If it is invalid, then issuing an invalid ruling is impermissible. If it is valid, then ruling by it in all circumstances becomes obligatory—as stated by Zufar, Al-Hasan ibn Hayy, and by Abu Yusuf and Muhammad in one of their two opinions—since neither the Qur'an has been revealed nor the Sunnah established to differentiate between any aspect of this matter. Thus, this opinion is entirely invalidated as well. Allah has never deemed precaution for protecting blood more imperative than precaution for safeguarding chastity, wealth, or bodies. Rather, the prohibition of all these is equal in their inviolability. The Messenger of Allah—peace and blessings be upon him—said: "Verily, your blood, your wealth, your honor, and your bodies are sacred to you." "Just as the sanctity of this day of yours, in this month of yours, in this land of yours - Take heed! Have I not conveyed? O Allah, bear witness."

وَلَا يَخْلُو الْحُكْمُ بِالنُّكُولِ مِنْ أَنْ يَكُونَ حَقًّا وَاجِبًا أَوْ بَاطِلًا، فَإِنْ كَانَ بَاطِلًا فَالْحُكْمُ بِالْبَاطِلِ لَا يَحِلُّ، وَإِنْ كَانَ حَقًّا فَالْحُكْمُ بِهِ فِي كُلِّ مَكَانٍ وَاجِبٌ -: كَمَا قَالَ زُفَرُ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو يُوسُفَ، وَمُحَمَّدٌ - فِي أَحَدِ قَوْلَيْهِمَا - إذْ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ - فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا جُمْلَةً، وَمَا جَعَلَ اللَّهُ قَطُّ الِاحْتِيَاطَ لِلدَّمِ بِأَوْلَى مِنْ الِاحْتِيَاطِ لِلْفُرُوجِ، وَالْمَالِ، وَالْبَشَرَةِ، بَلْ الْحَرَامُ مِنْ كُلِّ ذَلِكَ سَوَاءٌ فِي أَنَّهُ حَرَامٌ. قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ كَحُرْمَةِ يَوْمِكُمْ هَذَا فِي شَهْرِكُمْ هَذَا فِي بَلَدِكُمْ هَذَا أَلَا هَلْ بَلَّغْتُ؟ اللَّهُمَّ اشْهَدْ» .

L29079 Rather, we have found that bloodshed is permitted with two witnesses, and the penalty of one hundred lashes for adultery or fifty is not permitted except

with four upright witnesses. Thus, it is confirmed that submission is solely to the textual rulings.

بَلْ قَدْ وَجَدْنَا الدَّمَ يُبَاحُ بِشَاهِدَيْنِ، وَجَلْدِ مِائَةٍ فِي الزِّنَى أَوْ خَمْسِينَ لَا يُبَاحُ إلَّا بِأَرْبَعَةِ عُدُولٍ - فَصَحَّ أَنَّهُ التَّسْلِيمُ لِلنُّصُوصِ فَقَطْ.

L29080 The only remaining opinion regarding the ruling on refusal to take oaths is that of Zufar, which was agreed upon by his two companions Abu Yusuf and Muhammad ibn al-Hasan. We found in the evidence of those who adopted this view that he cited the verse of liʿān, stating: There is no disagreement that if the husband refuses the oaths or she refuses, then a ruling obligating the aforementioned refuser takes effect due to this refusal—either imprisonment or ḥadd punishment. Thus, this constitutes a ruling based on refusal.

وَلَمْ يَبْقَ فِي الْحُكْمِ بِالنُّكُولِ إلَّا قَوْلُ زُفَرَ الَّذِي وَافَقَهُ عَلَيْهِ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ صَاحِبَاهُ، فَوَجَدْنَا مِنْ حُجَّةِ مَنْ ذَهَبَ إلَيْهِ: أَنَّهُ ذَكَرَ آيَةَ اللِّعَانِ وَقَالَ: إنَّهُ لَا خِلَافَ فِي أَنَّ الزَّوْجَ إنْ نَكَلَ عَنْ الْأَيْمَانِ، أَوْ نَكَلَتْ هِيَ، فَإِنَّ عَلَى النَّاكِلِ حُكْمًا مَا يَلْزَمُهُ بِنُكُولِ النَّاكِلِ الْمَذْكُورِ إمَّا السِّجْنُ وَإِمَّا الْحَدُّ - فَهَذَا قَضَاءٌ بِالنُّكُولِ.

L29081 So we said: They have no proof in this, for two reasons:

فَقُلْنَا: لَا حُجَّةَ لَهُمْ فِي هَذَا، لِوَجْهَيْنِ -:

L29082 One of the two scenarios is that the husband is a slanderer, and the text stipulates the removal of the hadd punishment for slander from him by his four oaths, with the fifth oath cursing him. Compliance with this ruling is therefore obligatory. If he does not swear, the hadd punishment remains incumbent upon him as per the text. As for the woman, God Almighty has mandated punishment upon her unless she swears. If she swears, the punishment is averted from her by her four oaths, and she incurs God's wrath in the fifth oath as per the text. If she refuses to swear, the punishment becomes obligatory upon her. This ruling differs from all other legal cases, without disagreement between us and you.

أَحَدُهُمَا - أَنَّ الزَّوْجَ قَاذِفٌ، فَجَاءَ النَّصُّ بِإِزَالَةِ حَدِّ الْقَذْفِ عَنْهُ بِأَيْمَانِهِ الْأَرْبَعِ وَلَعَنَتْهُ الْخَامِسَةُ فَلَزِمَتْ الطَّاعَةُ لِذَلِكَ، فَإِنْ لَمْ يَحْلِفْ فَالْحَدُّ بَاقٍ عَلَيْهِ بِالنَّصِّ - وَأَمَّا الْمَرْأَةُ فَقَدْ أَوْجَبَ اللَّهُ تَعَالَى عَلَيْهَا الْعَذَابَ، إلَّا أَنْ تَحْلِفَ، فَإِنْ حَلَفَتْ دُرِئَ عَنْهَا الْعَذَابُ بِأَيْمَانِهَا الْأَرْبَعِ، وَغَضِبَ اللَّهُ عَلَيْهَا فِي الْخَامِسَةِ بِالنَّصِّ، وَإِنْ نَكَلَتْ فَالْعَذَابُ عَلَيْهَا وَاجِبٌ، وَلَيْسَ كَذَلِكَ سَائِرُ الدَّعَاوَى، بِلَا خِلَافٍ مِنَّا وَمِنْكُمْ.

L29083 The second point is that what you have derived from this verse is merely that a ruling becomes incumbent upon it due to refusal—which, according to you, is imprisonment. We assert that the refusal of one who declines to swear an oath in every instance where it is obligatory upon him also necessitates a ruling upon him—namely, the disciplinary action that the Messenger of Allah (peace be upon him) commanded for anyone who commits a reprehensible act that we are able to rectify by force. By refusing to fulfill what Allah the Exalted has obligated upon him, he has indeed committed a reprehensible act, making it obligatory to rectify the act by force. Thus, their misleading use of the verse in an inappropriate context is invalidated.

وَالْوَجْهُ الثَّانِي - أَنَّهُ إنَّمَا حَصَلَ لَكُمْ مِنْ هَذِهِ الْآيَةِ أَنَّ حُكْمًا مَا يَلْزَمُهَا بِالنُّكُولِ، وَهُوَ عِنْدَكُمْ السِّجْنُ، وَنَحْنُ نَقُولُ: إنَّ نُكُولَ النَّاكِلِ عَنْ الْيَمِينِ فِي كُلِّ مَوْضِعٍ وَجَبَتْ عَلَيْهِ يُوجِبُ أَيْضًا عَلَيْهِ حُكْمًا مَا وَهُوَ الْأَدَبُ الَّذِي أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى كُلِّ مَنْ أَتَى مُنْكَرًا قَدَرْنَا عَلَى تَغْيِيرِهِ بِالْيَدِ - وَهُوَ بِامْتِنَاعِهِ مِمَّا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْهِ قَدْ أَتَى مُنْكَرًا فَوَجَبَ تَغْيِيرُهُ بِالْيَدِ فَبَطَلَ تَمْوِيهُهُمْ بِالْآيَةِ فِي غَيْرِ مَوْضِعِهَا.

L29084 He also said: The community unanimously agrees that the defendant's oath-refusal necessitates a ruling imposing a right upon the claimant. Then they differed: one group held it to be returning the oath, another group maintained it requires imprisonment and discipline, while a third group affirmed enforcing the judgment against the oath-refuser. Thus returning the oath becomes invalidated, and the claimant derives no benefit from imprisoning or disciplining the oath-refusing defendant. Therefore, nothing remains except obligating the defendant to the judgment by virtue of his refusal.

وَقَالَ أَيْضًا: إِنَّ الْأُمَّةَ مُجْمِعَةٌ عَلَى أَنَّ لِنُكُولِ الْمُدَّعَى عَلَيْهِ حُكْمًا مُوجِبًا لِلْمُدَّعِي حَقًّا، ثُمَّ اخْتَلَفُوا، فَقَالَتْ طَائِفَةٌ: هُوَ رَدُّ الْيَمِينِ، وَقَالَتْ طَائِفَةٌ: هُوَ السِّجْنُ وَالْأَدَبُ، وَقَالَتْ طَائِفَةٌ: هُوَ إِنْفَاذُ الْحُكْمِ عَلَى النَّاكِلِ، فَبَطَلَ رَدُّ الْيَمِينِ، وَلَا فَائِدَةَ لِلْمُدَّعِي فِي سِجْنِ الْمَطْلُوبِ النَّاكِلِ وَتَأْدِيبِهِ، فَلَمْ يَبْقَ إِلَّا إِلْزَامُ الْمُدَّعَى عَلَيْهِ الْحُكْمَ بِنُكُولِهِ.

L29085–29087 So we said: This statement is utterly corrupt, for you have added to it what does not belong to it. No one has a right against another except only that which Allah the Exalted has obligated in the Quran or through the tongue of His Messenger—peace be upon him. Nor does a claimant hold any right against the defendant. In the apparent case and ruling, except for the monetary penalty if one admits liability, or if it is established against them through evidence, by the judge's certainty, or the oath required solely upon denial. If they neither admit liability, nor is evidence established against them, nor does the judge ascertain the claimant's truthfulness, the penalty is waived. Only the oath ordained by Allah the Exalted remains, which constitutes the respondent's obligated right. It is therefore imperative to enforce this oath exclusively, not any other obligation not legally required of them—whether the claimant benefits from it or not—for considering the claimant's interest amounts to a false claim, unlike upholding the respondent's rightful interest.

فَقُلْنَا: هَذَا الْقَوْلُ فِي غَايَةِ الْفَسَادِ، إِذْ زِدْتُمْ فِيهِ مَا لَيْسَ مِنْهُ، وَلَا حَقَّ لِأَحَدٍ عِنْدَ أَحَدٍ إِلَّا أَنْ يُوجِبَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ أَوْ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَلَا حَقَّ لِلْمُدَّعِي عَلَى الْمُدَّعَى عَلَيْهِ فِي ظَاهِرِ الْأَمْرِ، وَالْحُكْمِ، إِلَّا الْغَرَامَةُ إِنْ أَقَرَّ أَوْ ثَبَتَ عَلَيْهِ بِبَيِّنَةٍ، أَوْ بِيَقِينِ الْحَاكِمِ، أَوْ الْيَمِينُ إِنْ أَنْكَرَ فَقَطْ، فَلَمَّا لَمْ يُقِرَّ، وَلَا قَامَتْ عَلَيْهِ بَيِّنَةٌ، وَلَا تَيَقَّنَ الْحَاكِمُ صِدْقَ الْمُدَّعِي: سَقَطَتْ الْغَرَامَةُ، وَلَمْ يَبْقَ عَلَيْهِ إِلَّا الْيَمِينُ الَّتِي أَوْجَبَ اللَّهُ تَعَالَى، فَهُوَ حَقُّهُ قِبَلَ الْمَطْلُوبِ، فَوَجَبَ أَخْذُهُ بِهِ وَلَا بُدَّ، لَا بِمَا سِوَاهُ مِمَّا لَمْ يَجِبْ عَلَيْهِ - سَوَاءٌ كَانَ لِلطَّالِبِ فِي ذَلِكَ فَائِدَةٌ أَوْ لَمْ يَكُنْ - لِأَنَّ مُرَاعَاةَ فَائِدَتِهِ دَعْوَى كَاذِبَةٌ دُونَ مُرَاعَاةِ فَائِدَةِ الْمَطْلُوبِ.

L29088 He said: The termination of litigation is a right for the claimant against the defendant. If the defendant takes the oath, the litigation is terminated. When he refuses to swear, the termination becomes obligatory upon him. Since litigation cannot be terminated through his imprisonment or corporal punishment, no option remains except to terminate it by ruling in accordance with the claimant's claim. His imprisonment constitutes a restriction on his capacity to manage affairs, which is impermissible. Thus the litigation is halted, leaving no alternative except to issue judgment based on his refusal to swear.

وَقَالَ: إِنَّ قَطْعَ الْخُصُومَةِ حَقٌّ لِلْمُدَّعِي عَلَى الْمُدَّعَى عَلَيْهِ فَلَوْ حَلَفَ الْمُدَّعَى عَلَيْهِ لَانْقَطَعَتْ الْخُصُومَةُ، فَإِذْ نَكَلَ فَقَدْ لَزِمَهُ قَطْعُ الْخُصُومَةِ، وَهِيَ لَا تَنْقَطِعُ بِسَجْنِهِ وَلَا بِأَدَبِهِ، فَلَمْ يَبْقَ إِلَّا قَطْعُهَا بِالْقَضَاءِ عَلَيْهِ بِمَا يَدَّعِيهِ الطَّالِبُ، وَكَانَ فِي سَجْنِهِ قَطْعٌ لَهُ عَنْ التَّصَرُّفِ، وَذَلِكَ لَا يَجُوزُ، فَتَقِفُ الْخُصُومَةُ، فَلَمْ يَبْقَ إِلَّا الْحُكْمُ بِالنُّكُولِ.

L29089 So we said: All of this is invalid and contradicts your claim—: As for the contradiction in your claim—that were one to swear an oath, the legal con-

tention would cease—you instead assert it does not cease by that act; rather, whenever the claimant produces evidence, the legal contention resumes. The remainder of your statement is invalid.

فَقُلْنَا: هَذَا كُلُّهُ بَاطِلٌ وَخِلَافُ قَوْلِكُمْ -: أَمَّا خِلَافُ قَوْلِكُمْ: لَوْ حَلَفَ لَانْقَطَعَتْ الْخُصُومَةُ، فَأَنْتُمْ تَقُولُونَ: إنَّهَا لَا تَنْقَطِعُ بِذَلِكَ، بَلْ مَتَى أَقَامَ الطَّالِبُ الْبَيِّنَةَ عَادَتْ الْخُصُومَةُ - وَسَائِرُ قَوْلِكُمْ بَاطِلٌ.

L29090 There is no basis at all for terminating a dispute except through one of two means—there being no third for them—: either by admission, provided the claimant is truthful.

وَمَا عَلَيْهِ قَطْعُ الْخُصُومَةِ أَصْلًا إلَّا بِأَحَدِ وَجْهَيْنِ، لَا ثَالِثَ لَهُمَا -: إمَّا بِالْإِقْرَارِ، إنْ كَانَ الْمُدَّعِي صَادِقًا.

L29091 Alternatively, by oath—if the claimant is lying—while it is incumbent upon the judge to terminate the dispute through a ruling mandated by the evidence, or by the defendant's oath only if no evidence exists against him. One of these two matters is necessarily required.

وَإِمَّا بِالْيَمِينِ، إنْ كَانَ الْمُدَّعِي كَاذِبًا، وَعَلَى الْحَاكِمِ قَطْعُ الْخُصُومَةِ بِالْقَضَاءِ بِمَا تُوجِبُهُ الْبَيِّنَةُ، أَوْ بِيَمِينِ الْمَطْلُوبِ إنْ لَمْ تَكُنْ عَلَيْهِ بَيِّنَةٌ فَقَطْ - وَلَا بُدَّ مِنْ أَحَدِ الْأَمْرَيْنِ.

L29092 Or, if it is a fine - one not mandated by the Qur'an or the Sunnah - then it is definitively invalid.

وَإِمَّا غَرَامَةً - بِأَنْ لَا يُوجِبَهَا قُرْآنٌ وَلَا سُنَّةٌ، فَهِيَ بَاطِلٌ بِيَقِينٍ.

L29093 Then the height of irony is that after ruling against him for refusal to take the oath, you imprison him until he complies; you have reverted to the imprisonment you had denounced.

ثُمَّ الْعَجَبُ كُلُّهُ: أَنَّكُمْ بَعْدَ قَضَائِكُمْ عَلَيْهِ بِالنُّكُولِ تَسْجُنُونَهُ حَتَّى يُؤَدِّيَ، قَدْ عُدْتُمْ إلَى السِّجْنِ الَّذِي أَنْكَرْتُمْ.

L29094 And this is impurity and absurdity—let that suffice!

وَهَذَا تَلَوُّثٌ وَسَخَافَةٌ نَاهِيكَ بِهَا.

L29095 He said: It is a statement narrated from Uthman, Ibn Umar, Ibn Abbas, and Abu Musa. No one besides the Messenger of Allah (peace and blessings of Allah be upon him) holds authoritative proof.

وَقَالَ: هُوَ قَوْلٌ رُوِيَ عَنْ عُثْمَانَ، وَابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَأَبِي مُوسَى، فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29096 How then can this be, when contrary to this have been reported from ʿUmar, ʿAlī, al-Miqdād ibn al-Aswad, Ubayy ibn Kaʿb, and Zayd ibn Thābit—may Allah be pleased with them—what makes the opinion of some of them more deserving than that of others?

فَكَيْفَ وَقَدْ رُوِيَ خِلَافُ هَذَا عَنْ عُمَرَ، وَعَلِيٍّ، وَالْمِقْدَادِ بْنِ الْأَسْوَدِ، وَأُبَيِّ بْنِ كَعْبٍ، وَزَيْدِ بْنِ ثَابِتٍ - رَضِيَ اللَّهُ عَنْهُمْ - فَمَا الَّذِي جَعَلَ قَوْلَ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ مِنْهُمْ.

L29097–29098 How then, when they themselves opposed Uthman on this very issue—for he did not permit sale with absolution from liability except in the case of a defect unknown to the seller, and this contradicts your position?

فَكَيْفَ وَقَدْ خَالَفُوا عُثْمَانَ فِي هَذِهِ الْقَضِيَّةِ نَفْسِهَا، لِأَنَّهُ لَمْ يُجِزْ الْبَيْعَ بِالْبَرَاءَةِ إِلَّا فِي عَيْبٍ لَمْ يَعْلَمْهُ الْبَائِعُ - وَهَذَا خِلَافُ قَوْلِكُمْ.

L29099 It is perplexing that some of ʿUthmān's rulings are deemed authoritative evidence while others are not. This is despite the fact that Mālik ibn Anas narrated this report from Yaḥyā ibn Saʿīd al-Anṣārī, from Sālim ʿAbdullāh, who said in it, from his father: "He refused to take the oath and reclaimed the slave." This indicates that he chose to reclaim the slave, so ʿUthmān restored the slave to him with the owner's consent.

وَمِنْ الْعَجَبِ أَنْ يَكُونَ حُكْمُ عُثْمَانَ بَعْضُهُ حُجَّةٌ وَبَعْضُهُ لَيْسَ بِحُجَّةٍ، هَذَا عَلَى أَنَّ مَالِكَ بْنَ أَنَسٍ رَوَى هَذَا الْخَبَرَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَالِمٍ عَبْدِ اللَّهِ فَقَالَ فِيهِ، عَنْ أَبِيهِ: فَأَبَى أَنْ يَحْلِفَ وَارْتَجَعَ الْعَبْدَ فَدَلَّ هَذَا عَلَى أَنَّهُ اخْتَارَ أَنْ يَرْتَجِعَ الْعَبْدَ، فَرَدَّهُ إلَيْهِ عُثْمَانُ بِرِضَاهُ -.

L29100 Thus, this invalidates the validity of the judicial ruling based on refusal (nukūl) as narrated from ʿUthmān.

فَبَطَلَ بِهَذَا أَنْ يَصِحَّ عَنْ عُثْمَانَ الْقَضَاءُ بِالنُّكُولِ.

L29101 As for the narration from Abū Mūsā, I drop it because its provenance cannot be known or ascertained.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي مُوسَى فَأَسْقَطُ مِنْ أَنْ يُعْرَفَ أَوْ يُدْرَى مَخْرَجُهَا.

L29102 As for Ibn Umar, that report does not indicate that he deemed rulings based on abstention from oath-taking permissible. Rather, the report only states that it was Uthman's ruling, and you dissent from Uthman in that very ruling.

وَأَمَّا ابْنُ عُمَرَ فَلَيْسَ فِي ذَلِكَ الْخَبَرِ: أَنَّهُ رَأَى الْحُكْمَ بِالنُّكُولِ جَائِزًا، وَإِنَّمَا فِيهِ: أَنَّهُ حُكْمُ عُثْمَانُ، وَأَنْتُمْ مُخَالِفُونَ لِعُثْمَانَ فِي ذَلِكَ الْحُكْمِ بِعَيْنِهِ.

L29103 As for the narration from Ibn Abbas, you have no basis to connect it to your position, for it does not state that Ibn Abbas imposed financial liability due to refusal. Rather, it mentions that Ibn Abbas ordered the defendant to be adjured by oath, but she refused, so he compelled her to that [oath]—and this points to the oath, since the report makes absolutely no mention of financial liability whatsoever. Thus, Ibn Abbas's statement aligns with our position, not to yours.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَلَا مُتَعَلَّقَ لَكُمْ بِهَا، لِأَنَّهُ لَيْسَ فِيهَا: أَنَّ ابْنَ عَبَّاسٍ أَلْزَمَ الْغَرَامَةَ بِالنُّكُولِ، إنَّمَا فِيهِ: أَنَّ ابْنَ عَبَّاسٍ أَمَرَ أَنْ يَسْتَحْلِفَ الْمُدَّعَى عَلَيْهَا فَأَبَتْ، فَأَلْزَمَهَا ذَلِكَ - وَهَذِهِ إشَارَةٌ إلَى الْيَمِينِ، إذْ لَيْسَ لِلْغَرَامَةِ فِي الْخَبَرِ ذِكْرٌ أَصْلًا، فَقَوْلُ ابْنِ عَبَّاسٍ مُوَافِقٌ لِقَوْلِنَا، لَا لِقَوْلِكُمْ.

L29104 If it is said: Indeed, Abū Nuʿaym narrated this report from Ismāʿīl ibn ʿAbd al-Malik al-Asadī, from Ibn Abī Mulaykah, wherein he stated: "If he does not swear, then hold her liable."

فَإِنْ قِيلَ: فَإِنَّ أَبَا نُعَيْمٍ رَوَى عَنْ إسْمَاعِيلَ بْنِ عَبْدِ الْمَلِكِ الْأَسَدِيِّ عَنْ ابْنِ أَبِي مُلَيْكَةَ هَذَا الْخَبَرَ، فَذَكَرَ فِيهِ: فَإِنْ لَمْ يَحْلِفْ فَضَمِّنْهَا.

L29105 It was said to him: Isma'il ibn 'Abd al-Malik al-Asadi is unknown—no one knows who he is—and Isma'il ibn 'Abd al-Rahman al-Asadi is rejected and disregarded.

قِيلَ لَهُ: إسْمَاعِيلُ بْنُ عَبْدِ الْمَلِكِ الْأَسَدِيُّ مَجْهُولٌ - لَا يَدْرِي أَحَدٌ مَنْ هُوَ - وَإِسْمَاعِيلُ بْنُ عَبْدِ الرَّحْمَنِ الْأَسَدِيُّ - مَتْرُوكٌ مُطَرَّحٌ.

فَبَطَلَ أَنْ يَصِحَّ فِي هَذَا شَيْءٌ عَنْ الصَّحَابَةِ أَصْلًا.

فَبَطَلَ الْقَوْلُ بِأَنْ يُقْضَى بِالْغَرَامَةِ عَلَى النَّاكِلِ لِتَعَرِّيهِ مِنْ الْأَدِلَّةِ -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ قَالَ بِرَدِّ الْيَمِينِ عَلَى الطَّالِبِ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَفَّانَ بْنِ مُسْلِمٍ عَنْ مَسْلَمَةَ بْنِ عَلْقَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: اسْتَسْلَفَ الْمِقْدَادُ بْنُ الْأَسْوَدِ مِنْ عُثْمَانَ بْنِ عَفَّانَ سَبْعَةَ آلَافِ دِرْهَمٍ فَلَمَّا قَضَاهُ أَتَاهُ بِأَرْبَعَةِ آلَافٍ، فَقَالَ عُثْمَانُ: إنَّهَا سَبْعَةُ آلَافٍ فَقَالَ الْمِقْدَادُ: مَا كَانَتْ إلَّا أَرْبَعَةَ آلَافٍ، فَارْتَفَعَا إلَى عُمَرَ، فَقَالَ الْمِقْدَادُ: يَا أَمِيرَ الْمُؤْمِنِينَ لِيَحْلِفْ أَنَّهَا كَمَا يَقُولُ، وَيَأْخُذْهَا فَقَالَ لَهُ عُمَرُ: أَنْصَفَكَ، احْلِفْ أَنَّهَا كَمَا تَقُولُ وَخُذْهَا.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ أَنَا إسْمَاعِيلُ بْنُ إسْحَاقَ أَنَا إسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ نا حُسَيْنُ بْنُ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ بْنِ أَبِي ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْيَمِينُ مَعَ الشَّاهِدِ، فَإِنْ لَمْ تَكُنْ بَيِّنَةٌ فَالْيَمِينُ عَلَى الْمُدَّعَى عَلَيْهِ، إذَا كَانَ قَدْ خَالَطَهُ، فَإِنْ نَكَلَ حَلَفَ الْمُدَّعِي.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ أَنَّهُ كَانَ إذَا قَضَى بِالْيَمِينِ فَرَدَّهَا عَلَى الطَّالِبِ فَلَمْ يَحْلِفْ لَمْ يُعْطِهِ شَيْئًا، وَلَمْ يَسْتَحْلِفْ الْآخَرَ.

L29106 Thus, it is fundamentally invalid for anything to be authentically attributed to the Companions regarding this matter.

L29107 Thus, the opinion that a fine be imposed on the reneger is invalidated because it is devoid of evidence.

L29108 And success is from Allah, the Exalted.

L29109–29111 As for those who hold the opinion of reverting the oath to the claimant, it is as narrated through the chain of Abū Ubayd from Affān ibn Muslim from Maslamah ibn ʿAlqamah from Dāwūd ibn Abī Hind from al-Shaʿbī, who said: Al-Miqdād ibn al-Aswad took a loan of seven thousand dirhams from Uthmān ibn Affān. When he repaid him, he brought four thousand. Uthmān said, "It was seven thousand." Al-Miqdād responded, "It was no more than four thousand." They then referred the matter to Umar. Al-Miqdād said, "O Commander of the Faithful, let him swear that it is as he claims and take her." Umar replied to him, "He has done you justice. Swear that it is as you claim and take possession of her."

L29112 And from the chain of Muḥammad ibn al-Jahm: I am Ismāʿīl ibn Isḥāq, I am Ismāʿīl ibn Abī Uways, who reported to us from Ḥusayn ibn ʿAbd Allāh ibn Ḍumayrah ibn Abī Ḍumayrah, from his father, from his grandfather (Ḍumayrah ibn Abī Ḍumayrah), from ʿAlī ibn Abī Ṭālib, who said: "The oath is taken alongside the witness. If there is no clear evidence, the oath falls upon the defendant if he was involved in it. If he refuses to swear, the claimant must take the oath."

L29113 Through the chain of Abu 'Ubayd: Yazid ibn Harun narrated to us from Hisham ibn Hassan from Muhammad ibn Sirin from Shurayh that when he ruled by directing the oath to the plaintiff and they refused to swear, he would neither grant their claim nor administer the oath to the opposing party.

L29114 Through the chain of Abi 'Ubayd: 'Abd ibn al-Awwam narrated to us from Ash'ath, from al-Hakam ibn 'Utaybah, from 'Awn ibn 'Abdillah ibn 'Utbah that his father, when he judged by requiring an oath, then referred the oath back to the claimant, then if the claimant refused to swear, he would not

grant him anything. He said: “I do not give you what you do not swear upon.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ بْنُ الْعَوَّامِ عَنْ أَشْعَثَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَوْنِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ أَبَاهُ كَانَ إذَا قَضَى بِالْيَمِينِ فَرَدَّهَا عَلَى الْمُدَّعِي فَأَبَى أَنْ يَحْلِفَ لَمْ يَجْعَلْ لَهُ شَيْئًا، وَقَالَ: لَا أُعْطِيك مَا لَا تَحْلِفُ عَلَيْهِ.

L29115 And through the chain of Ibn Abi Shaybah from Jarīr from al-Mughīrah: al-Shaʿbī would not issue a judgment for the claimant if the defendant refused to take the required oath except until the claimant swore an oath.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ جَرِيرٍ عَنْ الْمُغِيرَةِ: أَنَّ الشَّعْبِيَّ لَمْ يَقْضِ لِلطَّالِبِ إنْ نَكَلَ الْمَطْلُوبُ إلَّا حَتَّى يَحْلِفَ الطَّالِبُ.

L29116 Through the transmission of Saʿīd ibn Manṣūr: Hushaym narrated to us from al-Shaybānī - who is Abū Isḥāq - from al-Shaʿbī, who said: Shurayḥ would return the oath to the claimant if the defendant requested that, and al-Shaʿbī held this opinion.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - عَنْ الشَّعْبِيِّ قَالَ: كَانَ شُرَيْحٌ يَرُدُّ الْيَمِينَ عَلَى الْمُدَّعِي إذَا طَلَبَ ذَلِكَ الْمُدَّعَى عَلَيْهِ - وَكَانَ الشَّعْبِيُّ يَرَى ذَلِكَ.

L29117 Hushaym reported to us from Ubaydah, from Ibrāhīm al-Nakhaʿī, that he did not invalidate the oath. This was also narrated from Ibn Sīrīn, as well as the two al-ʿAnbarī judges: Sawwār ibn ʿAbd Allāh and ʿUbaydullāh ibn al-Ḥasan. This ruling is the view of Abū ʿUbayd and one of the two views of Isḥāq.

وَقَالَ هُشَيْمٌ نا عُبَيْدَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ لَا يَرُدُّ الْيَمِينَ وَرُوِيَ هَذَا أَيْضًا عَنْ ابْنِ سِيرِينَ، وَسَوَّارِ بْنِ عَبْدِ اللَّهِ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْعَنْبَرِيِّينَ الْقَاضِيَيْنِ - هُوَ قَوْلُ أَبِي عُبَيْدٍ - وَأَحَدُ قَوْلَيْ إِسْحَاقَ.

L29118 Two opinions have been reported from Ibn Abī Laylā: one is the unconditional return of the oath as a whole without restriction.

وَرُوِيَ عَنْ ابْنِ أَبِي لَيْلَى قَوْلَانِ -: أَحَدُهُمَا: رَدُّ الْيَمِينِ جُمْلَةً عَلَى الْإِطْلَاقِ.

L29119 Secondly, if he is accused, the oath is returned to him, but if he is not accused, it is not returned. The apparent meaning of the scholar’s statement indicates that the defendant remains perpetually bound by the oath, as no ruling of refusal [to swear] has ever been reported from him.

وَالثَّانِي: أَنَّهُ إنْ كَانَ مُتَّهَمًا رُدَّ عَلَيْهِ الْيَمِينُ، وَإِنْ كَانَ غَيْرَ مُتَّهَمٍ لَمْ يُرَدَّ عَلَيْهِ - وَالظَّاهِرُ مِنْ قَوْلِهِ أَنْ يَلْزَمَ الْمَطْلُوبَ الْيَمِينُ أَبَدًا، لِأَنَّهُ لَمْ يُرْوَ عَنْهُ قَطُّ الْحُكْمُ بِالنُّكُولِ.

L29120–29121 Mālik said: The oath must be retaken in financial matters, but he did not uphold its retaking in marriage, divorce, or manumission.

وَقَالَ مَالِكٌ: تُرَدُّ الْيَمِينُ فِي الْأَمْوَالِ - وَلَا يَرَى رَدَّهَا فِي النِّكَاحِ، وَلَا فِي الطَّلَاقِ، وَلَا فِي الْعِتْقِ.

L29122 Al-Shāfiʿī, Abū Thawr, and all their companions held that the oath is administered in all matters—including retaliation for homicide or lesser harms, marriage, divorce, and manumission. If a wife claims against her husband

وَقَالَ الشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَسَائِرُ أَصْحَابِهِ: تُرَدُّ الْيَمِينُ فِي كُلِّ شَيْءٍ، وَفِي الْقِصَاصِ فِي النَّفْسِ فَمَا دُونَهَا، وَفِي النِّكَاحِ، وَالطَّلَاقِ، وَالْعَتَاقِ - فَمَنْ ادَّعَتْ عَلَيْهِ امْرَأَتُهُ الطَّلَاقَ،

that he divorced her, or his male or female slave claims he performed manumission, or if a husband claims the existence of a marriage with his wife or she asserts it against him—with neither witnesses nor clear evidence—the oath becomes binding upon him to swear that he did not divorce or manumit. He must also swear that he did not contract marriage with her, or she must swear likewise. Whichever party refuses must have the claimant swear, thereby validating the manumission, marriage, and divorce. The same applies to retaliation.

وَعَبْدُهُ أَوْ أَمَتُهُ الْعَتَاقَ - وَمَنْ ادَّعَى عَلَى امْرَأَتِهِ النِّكَاحَ أَوْ ادَّعَتْهُ عَلَيْهِ وَلَا شَاهِدَ لَهُمَا وَلَا بَيِّنَةَ: لَزِمَتْهُ الْيَمِينُ: أَنَّهُ مَا طَلَّقَ، وَلَا أَعْتَقَ، وَلَزِمَتْهُ الْيَمِينُ: أَنَّهُ مَا أَنْكَحَهَا، أَوْ لَزِمَتْهَا الْيَمِينُ كَذَلِكَ، فَأَيُّهُمَا نَكَلَ حَلَفَ الْمُدَّعِي - وَصَحَّ الْعِتْقُ، وَالنِّكَاحُ، وَالطَّلَاقُ، وَكَذَلِكَ فِي الْقِصَاصِ.

L29123 Abu Muhammad said: As for Malik's statement—it is clearly erroneous due to its contradiction. If the refutation of the oath is valid in one circumstance, then it must be valid in every circumstance where the oath is required from the denier. If it is invalid in one situation, it must be invalid in all situations, unless evidence from the Quran or Sunnah establishes its obligation in specific cases, thereby implementing it. There is absolutely no basis in the Quran or Sunnah for this whatsoever. Thus, Malik's opinion is nullified, as it lacks support from the Quran, the Sunnah, any weak narration, the view of a companion [of the Prophet] before him, or analogical reasoning.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ - فَظَاهِرُ الْخَطَأِ لِتَنَاقُضِهِ، وَلَئِنْ كَانَ رَدُّ الْيَمِينِ حَقًّا فِي مَوْضِعٍ، فَإِنَّهُ لَحَقٌّ فِي كُلِّ مَوْضِعٍ يَجِبُ فِيهِ الْيَمِينُ عَلَى الْمُنْكِرِ، وَلَئِنْ كَانَ بَاطِلًا فِي مَكَانٍ، فَإِنَّهُ لَبَاطِلٌ فِي كُلِّ مَكَانٍ، إلَّا أَنْ يَأْتِيَ بِإِيجَابِهِ فِي مَكَانٍ دُونَ مَكَانٍ: قُرْآنٌ أَوْ سُنَّةٌ، فَيَنْفُذُ ذَلِكَ، وَلَا سَبِيلَ إلَى وُجُودِ قُرْآنٍ وَلَا سُنَّةٍ بِذَلِكَ أَصْلًا - فَبَطَلَ قَوْلُ مَالِكٍ، إذْ لَا يُعَضِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ قَبْلَهُ وَلَا قِيَاسٌ.

L29124 If he says: Only what has been reported from the Companions concerning wealth is considered.

فَإِنْ قَالَ: إنَّمَا رُوِيَ عَنْ الصَّحَابَةِ فِي الْأَمْوَالِ.

L29125 We said: This is invalid because it was narrated from ʿAlī in general terms, and from ʿUmar and Al-Miqdād concerning dirhams in debts. How then do you justify applying analogy to this for all other forms of wealth, all claims pertaining to usurpations, and other than that, while you do not analogize it to every claim? Thus, the corruption of this opinion has become evident.

قُلْنَا: بَاطِلٌ؛ لِأَنَّهُ رُوِيَ عَنْ عَلِيٍّ جُمْلَةً، وَرُوِيَ عَنْ عُمَرَ، وَالْمِقْدَادِ فِي الدَّرَاهِمِ فِي الدَّيْنِ، فَمِنْ أَيْنَ لَكُمْ أَنْ تَقِيسُوا عَلَى ذَلِكَ سَائِرَ الْأَمْوَالِ، وَسَائِرَ الدَّعَاوَى مِنْ الْغُصُوبِ، وَغَيْرَ ذَلِكَ، وَلَمْ تَقِيسُوا عَلَيْهِ كُلَّ دَعْوَى، فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ -.

L29126 And with Allah, the Most High, is success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29127 As for the statement of Ibn Abī Laylā regarding returning the oath to the accused, it is invalid because it constitutes a division not established by the Qur'ān or the Sunnah. Allāh the Exalted has not ordained judgment through evidence or oath upon the disbeliever, the liar against Allāh the Exalted and His Messenger—peace and blessings be upon him—including the Jews, Chris-

وَأَمَّا قَوْلُ ابْنِ أَبِي لَيْلَى فِي رَدِّهِ الْيَمِينَ عَلَى الْمُتَّهَمِ، فَبَاطِلٌ؛ لِأَنَّهُ تَقْسِيمٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَمَا جَعَلَ اللَّهُ تَعَالَى فِي الْحُكْمِ بِالْبَيِّنَةِ أَوْ الْيَمِينِ عَلَى الْكَافِرِ، وَالْكَاذِبِ عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ الْيَهُودِ، وَالنَّصَارَى، وَالْمَجُوسِ،

tians, Magians, and those notorious for lying and transgression, except what He has ordained concerning Abū Bakr al-Ṣiddīq, ʿUmar, ʿUthmān, ʿAlī, the Mothers of the Believers, Abū Dharr al-Ghifārī, Khuzaymah ibn Thābit, and all the Muhājirūn and Anṣār about whom Allāh the Exalted said: *{It is they who are the truthful}* [al-Ḥujurāt: 15]. This nullifies every opinion, analogy, and precautionary measure in religion not supported by textual evidence—if only they were just to themselves.[4]

وَعَلَى الْمَشْهُورِينَ بِالْكَذِبِ، وَالْفِسْقِ، إِلَّا الَّذِي جَعَلَ مِنْ ذَلِكَ عَلَى أَبِي بَكْرٍ الصِّدِّيقِ وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَأُمَّهَاتِ الْمُؤْمِنِينَ، وَأَبِي ذَرٍّ الْغِفَارِيِّ، وَخُزَيْمَةَ بْنِ ثَابِتٍ وَسَائِرِ الْمُهَاجِرِينَ، وَالْأَنْصَارِ الَّذِينَ قَالَ اللَّهُ تَعَالَى فِيهِمْ: {أُولَئِكَ هُمُ الصَّادِقُونَ} [الحجرات: ١٥] وَفِي هَذَا إِبْطَالُ كُلِّ رَأْيٍ، وَكُلِّ قِيَاسٍ، وَكُلِّ احْتِيَاطٍ فِي الدِّينِ، مِمَّا لَمْ يَأْتِ بِهِ نَصٌّ لَوْ أَنْصَفُوا مِنْ أَنْفُسِهِمْ.

L29128–29129 As for the statement of Al-Shafi'i—they cited the verse of bequest during travel as evidence from the words of Allah the Exalted: *"Detain them both after the prayer, then if you doubt, they shall swear by Allah: 'We will not exchange this oath for any price, even if the beneficiary were a relative, nor will we conceal Allah's testimony—for then we would certainly be among the sinners.'"* [Al-Ma'idah: 106] *"But if it is proven that they have incurred sin, two others from those against whom the first two [witnesses] have a rightful claim shall replace them. They shall swear: 'Our testimony has greater right than their testimony, and we have not transgressed—for then we would certainly be among the wrongdoers.'"* [Al-Ma'idah: 107] *"That is more likely to ensure they present testimony truthfully, or they will fear that their oaths might be rejected after their oaths. Be mindful of Allah and obey."* [Al-Ma'idah: 108][5]

وَأَمَّا قَوْلُ الشَّافِعِيِّ - فَإِنَّهُمُ احْتَجُّوا بِآيَةِ الْوَصِيَّةِ فِي السَّفَرِ مِنْ قَوْلِ اللَّهِ تَعَالَى: {تَحْبِسُونَهُمَا مِنْ بَعْدِ الصَّلاةِ فَيُقْسِمَانِ بِاللَّهِ إِنِ ارْتَبْتُمْ لا نَشْتَرِي بِهِ ثَمَنًا وَلَوْ كَانَ ذَا قُرْبَى وَلا نَكْتُمُ شَهَادَةَ اللَّهِ إِنَّا إِذًا لَمِنَ الآثِمِينَ} [المائدة: ١٠٦] {فَإِنْ عُثِرَ عَلَى أَنَّهُمَا اسْتَحَقَّا إِثْمًا فَآخَرَانِ يَقُومَانِ مَقَامَهُمَا مِنَ الَّذِينَ اسْتَحَقَّ عَلَيْهِمُ الأَوْلَيَانِ فَيُقْسِمَانِ بِاللَّهِ لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا وَمَا اعْتَدَيْنَا إِنَّا إِذًا لَمِنَ الظَّالِمِينَ} [المائدة: ١٠٧] {ذَلِكَ أَدْنَى أَنْ يَأْتُوا بِالشَّهَادَةِ عَلَى وَجْهِهَا أَوْ يَخَافُوا أَنْ تُرَدَّ أَيْمَانٌ بَعْدَ أَيْمَانِهِمْ وَاتَّقُوا اللَّهَ وَاسْمَعُوا} [المائدة: ١٠٨].

L29130 They mentioned the report of Qasamah when the Messenger of Allah—peace and blessings be upon him—said to Banu Harithah regarding their claim concerning the blood of Abdullah ibn Sahl against the Jews of Khaybar: "Let fifty of you swear an oath against a man among them, and he shall be surrendered in full." They said: "How can we swear to a matter we did not witness?" He said: "Then the Jews shall absolve you through the oaths of fifty of them."

وَذَكَرُوا خَبَرَ الْقَسَامَةِ إِذْ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِبَنِي حَارِثَةَ فِي دَعْوَاهُمْ دَمَ عَبْدِ اللَّهِ بْنِ سَهْلٍ عَلَى يَهُودِ خَيْبَرَ يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ، قَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَحْلِفُ؟ قَالَ: فَتُبْرِئُكُمْ يَهُودُ بِأَيْمَانِ خَمْسِينَ مِنْهُمْ».

L29131 They mentioned the obligation of the oath upon the respondent, and that the Messenger of Allah—peace and blessings be upon him—ruled by oath

وَذَكَرُوا وُجُوبَ الْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالْيَمِينِ مَعَ الشَّاهِدِ فَرَدَّ الْيَمِينَ عَلَى الطَّالِبِ مِنْ أَجْلِ شَاهِدِهِ، فَكَانَ الشَّاهِدُ سَبَبًا

[4] **Qur'an references (L29127):** Qur'an 49:15 (Al-Hujurat); Qur'an 59:8 (Al-Hashr).

alongside a witness, thereby returning the oath to the claimant due to his witness. Thus, the witness became the cause for returning the oath. Consequently, it became obligatory that the respondent's refusal to take the oath must likewise serve as a cause for returning the oath. He did not rule in favor of the claimant based on a single witness until the claimant combined it with his own oath, thereby serving as a second witness. Similarly, it was impermissible to rule in his favor based on the refusal until he supplemented it with his oath. Thus, the respondent's refusal stands in the place of a witness, and the claimant's oath stands in the place of another witness.

لِرَدِّ الْيَمِينِ، فَوَجَبَ أَنْ يَكُونَ النُّكُولُ مِنْ الْمَطْلُوبِ أَيْضًا سَبَبًا لِرَدِّ الْيَمِينِ وَلَمْ يَقْضِ لَهُ بِشَهَادَةِ وَاحِدٍ حَتَّى يَضُمَّ إلَيْهِ يَمِينَهُ، فَيَقُومُ مَقَامَ شَاهِدٍ آخَرَ، كَذَلِكَ لَمْ يَجُزْ أَنْ يُقْضَى لَهُ بِالنُّكُولِ حَتَّى يَضُمَّ إلَى ذَلِكَ يَمِينَهُ فَيَكُونَ نُكُولُ الْمَطْلُوبِ مَقَامَ شَاهِدٍ، وَيَمِينُ الطَّالِبِ مَقَامَ شَاهِدٍ آخَرَ.

L29132 Abū Muḥammad said: As for the verse of bequest during travel, it constitutes a proof against them, not for them. Indeed, their reliance on it is an eternal disgrace upon them for three sufficient reasons: First, they do not act upon it regarding the matter it was revealed for—how then do they deem it lawful to cite a verse they contradict? Second, the verse contains no mention—neither by explicit text nor by implication—of administering an oath to the defendant or returning the oath to the plaintiff. It only addresses the swearing of witnesses initially, then the swearing of a witness and two witnesses, contrary to the initial testimony. How could they so easily invalidate the explicit text of the verse and derive from it a ruling for which there is neither evidence nor explicit text?

قَالَ أَبُو مُحَمَّد: أَمَّا آيَةُ الْوَصِيَّةِ فِي السَّفَرِ فَحُجَّةٌ عَلَيْهِمْ لَا لَهُمْ، وَإِنَّ احْتِجَاجَهُمْ بِهَا لَفَضِيحَةُ الدَّهْرِ عَلَيْهِمْ لِوُجُوهٍ ثَلَاثَةٍ كَافِيَةٍ -: أَحَدُهَا - أَنَّهُمْ لَا يَأْخُذُونَ بِهَا فِيمَا جَاءَتْ فِيهِ، فَكَيْفَ يَسْتَحِلُّونَ الِاحْتِجَاجَ بِآيَةٍ هُمْ مُخَالِفُونَ لَهَا؟ وَالثَّانِي - أَنَّهُ لَيْسَ فِيهَا مِنْ تَحْلِيفِ الْمُدَّعَى عَلَيْهِ، وَلَا رَدِّ الْيَمِينِ عَلَى الْمُدَّعِي كَلِمَةٌ، لَا بِنَصٍّ وَلَا بِدَلِيلٍ، إنَّمَا فِيهَا تَحْلِيفُ الشُّهُودِ أَوَّلًا، وَتَحْلِيفُ الشَّاهِدِ وَالشَّاهِدَيْنِ، بِخِلَافِ شَهَادَةِ الْأَوَّلِ، فَكَيْفَ سَهُلَ عَلَيْهِمْ إبْطَالُ نَصِّ الْآيَةِ، وَأَنْ يَحْكُمُوا مِنْهَا بِمَا لَيْسَ فِيهَا عَلَيْهِ، لَا دَلِيلٌ وَلَا نَصٌّ.

L29133 This is indeed most certainly a calamity.

إنَّ هَذِهِ لَمُصِيبَةٌ.

L29134 If someone who advocates requiring the one in whose favor testimony is given to swear an oath alongside their evidence were to cite this verse as proof, their argument would resemble the ambiguity found in reports transmitted from Shuraīḥ, al-Awzāʿī, and others. It has been reported that Muḥammad ibn Bashīr, the judge in Cordoba, once required witnesses to swear when validating their credibility: "By Allah, what they have testified to is truly the truth."

وَلَوْ احْتَجَّ بِهَذِهِ الْآيَةِ مَنْ يَرَى تَحْلِيفَ الْمَشْهُودِ لَهُ مَعَ بَيِّنَتِهِ لَكَانَ أَشْبَهَ فِي التَّمْوِيهِ عَلَى مَا رُوِيَ عَنْ شُرَيْحٍ، وَالْأَوْزَاعِيِّ، وَغَيْرِهِمَا - وَقَدْ رُوِيَ عَنْ مُحَمَّدِ بْنِ بَشِيرٍ الْقَاضِي بِقُرْطُبَةَ أَنَّهُ أَحْلَفَ شُهُودًا فِي تَزْكِيَتِهِ: بِاَللَّهِ إنَّ مَا شَهِدُوا بِهِ لَحَقٌّ.

L29135–29136 It is narrated from Ibn Waḍḍāḥ that he said: "I hold that due to the corruption of the people, the judge should administer an oath to the witnesses."

وَرُوِيَ عَنْ ابْنِ وَضَّاحٍ أَنَّهُ قَالَ: أَرَى لِفَسَادِ النَّاسِ أَنْ يُحَلِّفَ الْحَاكِمُ الشُّهُودَ، ذَكَرَ ذَلِكَ خَالِدُ بْنُ سَعْدٍ فِي كِتَابِهِ فِي " أَخْبَارِ فُقَهَاءِ قُرْطُبَةَ " فَلَوْ احْتَجَّ أَهْلُ هَذَا الْمَذْهَبِ بِهَذِهِ

[5] **Qur'an references (L29129):** Qur'an 5:106 (Al-Ma'idah); Qur'an 5:107 (Al-Ma'idah); Qur'an 5:108 (Al-Ma'idah).

الْآيَةِ لَكَانُوا أَوْلَى بِهَا مِمَّنْ احْتَجَّ فِي رَدِّ الْيَمِينِ عَلَى الطَّالِبِ، لَا سِيَّمَا مَعَ مَا فِي نَصِّهَا مِنْ قَوْلِ اللَّهِ تَعَالَى: {ذَلِكَ أَدْنَى أَنْ يَأْتُوا بِالشَّهَادَةِ عَلَى وَجْهِهَا} [المائدة: ١٠٨] وَلَكِنْ يُبْطِلُ هَذَا أَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، إِلَّا أَنَّهُ مِنْ أَقْوَى قِيَاسٍ فِي الْأَرْضِ.

Khālid ibn Saʿd mentioned this in his book on *Reports of the Jurists of Cordoba*. If the adherents of this school were to cite this verse as evidence, they would have a stronger claim to it than those who cited it in shifting the oath back to the plaintiff—particularly given the explicit wording of the verse where Allah Almighty states: *"That is nearer to their giving testimony properly"* [5:108]. However, this is nullified as it constitutes qiyas, and all qiyas is invalid—though this is among the strongest forms of qiyas in existence.[6]

وَأَمَّا حَدِيثُ الْقَسَامَةِ فَاحْتِجَاجُهُمْ بِهِ أَيْضًا إِحْدَى فَضَائِحِهِمْ؛ لِأَنَّ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ مُخَالِفُونَ لِمَا فِيهِ -: فَأَمَّا الْمَالِكِيُّونَ: فَخَالَفُوهُ جُمْلَةً.

L29137 As for the ḥadīth of *qasāmah*, their use of it as evidence also constitutes one of their scandals, for both the Mālikīs and Shāfiʿīs contradict its contents. As for the Mālikīs, they oppose it in its entirety.

وَأَمَّا الشَّافِعِيُّونَ: فَخَالَفُوا مَا فِيهِ مِنْ إِيجَابِ الْقَوَدِ، فَكَيْفَ يَسْتَحِلُّونَ الِاحْتِجَاجَ بِحَدِيثٍ قَدْ هَانَ عَلَيْهِمْ خِلَافُهُ فِيمَا فِيهِ وَأَرَادُوا مِنْ ذَلِكَ تَثْبِيتَ الْبَاطِلِ الَّذِي لَيْسَ فِي الْحَدِيثِ مِنْهُ أَثَرٌ أَصْلًا.

L29138 As for the Shāfiʿīs: they opposed the obligation of retaliation (qawad) mentioned in the ḥadīth. How then do they deem it permissible to cite a ḥadīth whose contradictions they dismissed as trivial, seeking thereby to establish a falsehood that has no trace whatsoever in the ḥadīth.

وَإِنَّمَا فِي هَذَا الْحَدِيثِ تَحْلِيفُ الْمُدَّعِينَ أَوَّلًا خَمْسِينَ يَمِينًا - بِخِلَافِ جَمِيعِ الدَّعَاوَى - ثُمَّ رَدُّ الْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِمْ - بِخِلَافِ قَوْلِهِمْ - فَمِنْ أَيْنَ رَأَوْا أَنْ يَقِيسُوا عَلَيْهِ ضِدَّهُ مِنْ تَحْلِيفِ الْمُدَّعَى عَلَيْهِ أَوَّلًا.

L29139 In this ḥadīth lies the unique ruling of first requiring fifty oaths from the claimants—contrary to all other claims—then returning the oath to the defendants, contrary to their doctrine. From what basis then did they see fit to apply the opposite analogy to this ruling by first administering oaths to the defendant?

فَإِنْ نَكَلَ حَلَفَ الْمُدَّعِي وَلَمْ يَقِيسُوا عَلَيْهِ فِي تَبْدِيَةِ الْمُدَّعِي فِي سَائِرِ الدَّعَاوَى.

L29140 If he refuses, the claimant must swear, and they do not apply qiyas (analogical reasoning) to his case in the claimant's presentation of all other claims.

وَأَنْ يَجْعَلُوا الْأَيْمَانَ فِي كُلِّ دَعْوَى خَمْسِينَ يَمِينًا، فَهَلْ فِي التَّخْلِيطِ، وَخِلَافِ السُّنَنِ، وَعَكْسِ الْقِيَاسِ وَضَعْفِ النَّظَرِ: أَكْثَرُ مِنْ هَذَا؟

L29141 And that they impose fifty oaths for every legal claim. Is there greater confusion, greater contradiction of the Sunnah, greater reversal of Qiyas, or greater weakness in legal reasoning than this?

وَأَمَّا خَبَرُ الْيَمِينِ مَعَ الشَّاهِدِ: فَحَقٌّ، وَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ قَوْلَهُمْ: إِنَّ النُّكُولَ يَقُومُ مَقَامَ الشَّاهِدِ: بَاطِلٌ، لَمْ يَأْتِ بِهِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، وَقَدْ يَنْكُلُ الْمَرْءُ عَنْ

L29142 As for the matter of the oath alongside a witness: it is valid, and they have no argument against it. This is because their claim that refusal substitutes for the witness is invalid—neither the Quran, the Sunnah, nor rational reasoning has ever brought it forth. A person may refuse to swear out of modesty or fear

[6] **Qur'an references (L29136):** Qur'an 5:108 (Al-Ma'idah).

of public exposure. Otherwise, whoever deems it permissible to wrongfully seize forbidden wealth, it is not inconceivable that he would swear falsely.

الْيَمِينِ تَصَاوُنًا وَخَوْفَ الشُّهْرَةِ، وَإِلَّا فَمَنْ اسْتَجَازَ أَكْلَ الْمَالِ الْحَرَامِ بِالْبَاطِلِ فَلَا يُنْكَرُ مِنْهُ أَنْ يَحْلِفَ كَاذِبًا.

L29143 The burden of proof lies upon the claimant, and thus the oath is not yet incumbent upon the respondent. When the claimant produced a single witness, the ruling necessitating his provision of evidence remained in effect, and the oath still did not become obligatory upon the respondent. Thereupon, the Prophet (peace be upon him) ruled for the claimant based on his oath ab initio—not as a rebuttal of the oath against him. If he refuses, he has invalidated the legal effect of his witness. Having invalidated the legal effect of his witness, he possesses no evidence. Since he possesses no evidence, the oath now becomes obligatory upon the respondent—not that there exists any original rebuttal of the oath whatsoever. Thus, their reliance upon the cited textual evidences is invalidated, and all praise is due to Allah, Lord of the worlds.

وَإِنَّمَا الْبَيِّنَةُ عَلَى الْمُدَّعِي، فَلَمْ يَجِبْ بَعْدُ عَلَى الْمُنْكِرِ يَمِينٌ، فَلَمَّا أَتَى الْمُدَّعِي بِشَاهِدٍ وَاحِدٍ: كَانَ بَعْدُ حُكْمِ طَلَبِهِ الْبَيِّنَةَ، وَلَمْ يَجِبْ بَعْدُ يَمِينٌ عَلَى الْمَطْلُوبِ، فَحَكَمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلطَّالِبِ بِيَمِينِهِ ابْتِدَاءً لَا رَدًّا لِلْيَمِينِ عَلَيْهِ، فَإِنْ أَبَى فَقَدْ أَسْقَطَ حُكْمَ شَاهِدِهِ، وَإِذَا أَسْقَطَ حُكْمَ شَاهِدِهِ فَلَا بَيِّنَةَ لَهُ، وَإِذْ لَا بَيِّنَةَ لَهُ: فَالْآنَ وَجَبَتْ الْيَمِينُ عَلَى الْمَطْلُوبِ، لَا أَنَّ هَاهُنَا رَدَّ يَمِينٍ أَصْلًا - فَبَطَلَ تَعَلُّقُهُمْ بِالنُّصُوصِ الْمَذْكُورَةِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L29144–29145 Some of them mentioned a lost narration: We have narrated it through the chain of transmission of ʿAbd al-Malik ibn Ḥabīb al-Andalusī from Aṣbagh ibn al-Faraj from Ibn Wahb from Ḥaywah ibn Shurayḥ, that Sālim ibn Ghaylān al-Tujībī informed him that the Messenger of Allah—peace and blessings be upon him—said: "Whoever has a claim against his brother must produce evidence." The defendant is more entitled to take the oath. If he refuses to swear, the claimant may take an oath and take it.

وَذَكَرَ بَعْضُهُمْ رِوَايَةً هَالِكَةً: رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ عَنْ أَصْبَغَ بْنِ الْفَرَجِ عَنْ ابْنِ وَهْبٍ عَنْ حَيْوَةَ بْنِ شُرَيْحٍ: أَنَّ سَالِمَ بْنَ غَيْلَانَ التُّجِيبِيَّ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ طَلِبَةٌ عِنْدَ أَخِيهِ فَعَلَيْهِ الْبَيِّنَةُ» وَالْمَطْلُوبُ أَوْلَى بِالْيَمِينِ فَإِنْ نَكَلَ حَلَفَ الطَّالِبُ وَأَخَذَ.

L29146 Abu Muhammad said: This is a mursal narration (a narration with an incomplete chain), and there is no valid proof in a mursal narration according to our school nor the Shafiʿis. — Furthermore, even if it were authentic, it would constitute a decisive proof against the Malikis, for they contradict its explicit content regarding the universal rejection of oaths in every claimant's demand. There is no dispute that the ruling's initial application encompasses all claims involving bloodshed, marriage, divorce, manumission, or other such matters. Thus, their restriction of its final application to financial matters is invalid, a contradiction, and opposition to the textual evidence they attempted to exploit. This constitutes a grave inconsistency.

قَالَ أَبُو مُحَمَّد: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ عِنْدَنَا وَلَا عِنْدَ الشَّافِعِيِّينَ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى الْمَالِكِيِّينَ، لِأَنَّهُمْ مُخَالِفُونَ لِمَا فِيهِ مِنْ عُمُومِ رَدِّ الْيَمِينِ فِي كُلِّ طَلِبَةِ طَالِبٍ، وَلَا خِلَافَ فِي أَنَّ أَوَّلَهُ فِي كُلِّ دَعْوَى مِنْ دَمٍ، أَوْ نِكَاحٍ، أَوْ طَلَاقٍ، أَوْ عَتَاقٍ، أَوْ غَيْرِ ذَلِكَ، فَتَخْصِيصُهُمْ آخِرَهُ فِي الْأَمْوَالِ بَاطِلٌ وَتَنَاقُضٌ، وَخِلَافٌ لِلْخَبَرِ الَّذِي مَوَّهُوا بِهِ، وَهَذَا قَبِيحٌ جِدًّا.

وَقَالَ مَالك فِي " مُوَطَّئِهِ فِي بَابِ الْيَمِينِ مَعَ الشَّاهِدِ فِي كِتَابِ الْأَقْضِيَةِ " أَرَأَيْت رَجُلًا ادَّعَى عَلَى رَجُلٍ مَالًا أَلَيْسَ يَحْلِفُ الْمَطْلُوبُ: مَا ذَلِكَ الْحَقُّ عَلَيْهِ، فَإِنْ حَلَفَ بَطَلَ ذَلِكَ عَنْهُ وَإِنْ أَبَى أَنْ يَحْلِفَ وَنَكَلَ عَنْ الْيَمِينِ حَلَفَ طَالِبُ الْحَقِّ أَنَّ حَقَّهُ لَحَقٌّ وَثَبَتَ حَقُّهُ عَلَى صَاحِبِهِ - فَهَذَا مَا لَا اخْتِلَافَ فِيهِ عِنْدَ أَحَدٍ مِنْ النَّاسِ، وَلَا فِي بَلَدٍ مِنْ الْبُلْدَانِ، فَبِأَيِّ شَيْءٍ أَخَذَ هَذَا؟ أَمْ فِي أَيِّ كِتَابِ اللَّهِ وَجَدَهُ؟ فَإِذَا أَقَرَّ بِهَذَا فَلْيُقِرَّ بِالْيَمِينِ مَعَ الشَّاهِدِ، وَإِنْ لَمْ يَكُنْ ذَلِكَ فِي كِتَابِ اللَّهِ تَعَالَى.

L29147 Malik said in his *Muwatta'* under "The Oath with a Witness" in the Book of Judgments: "Suppose a man claims another owes him property. Should the defendant not swear, 'This right is not upon me'? If he swears, the claim against him is voided. But if he refuses to take the oath and recoils from swearing, the claimant swears that his right is indeed a right, and his right becomes binding upon the other party. This principle is undisputed among any people or in any land. By what authority is this established? In which Book of God is it found? Whoever acknowledges this ruling must acknowledge the oath with a witness, even if it is not in the Book of God Almighty."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا احْتِجَاجٌ نَاهِيكَ بِهِ عَجَبًا فِي الْغَفْلَةِ -: أَوَّلُ ذَلِكَ قَوْلُهُ: إنَّهُ لَا خِلَافَ فِي رَدِّ الْيَمِينِ بَيْنَ أَحَدٍ مِنْ النَّاسِ، وَلَا فِي بَلَدٍ مِنْ الْبُلْدَانِ - فَلَئِنْ كَانَ خَفِيَ عَلَيْهِ قَضَاءُ أَهْلِ الْعِرَاقِ بِالنُّكُولِ فَإِنَّهُ لَعَجَبٌ.

L29148 Abū Muḥammad said: This is an argument—a marvel in itself regarding negligence: The first instance of this is his statement, "There is no disagreement among any people or in any country concerning the administering of the oath." If he has indeed remained ignorant of the Iraqi jurists' ruling regarding refusal to swear, then this is truly astonishing.

ثُمَّ قَوْلُهُ: إذَا أَقَرَّ بِرَدِّ الْيَمِينِ - وَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ تَعَالَى فَلْيُقِرَّ - بِالْيَمِينِ عَلَى الشَّاهِدِ - وَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ تَعَالَى - فَهَذَا أَيْضًا عَجَبٌ آخَرُ؛ لِأَنَّ الْيَمِينَ مَعَ الشَّاهِدِ ثَابِتٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ قَالَ اللَّهُ تَعَالَى: {وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا} [الحشر: ٧] .

L29149 Then his statement: "If he acknowledges the responsive oath—even if it is not in the Book of Allah (the Exalted and Majestic)—he must affirm it with an oath alongside the witness—even if it is not in the Book of Allah (the Exalted and Majestic)"—this is another astonishing matter. For the oath combined with a witness is established from the Messenger of Allah, peace be upon him, and thus it is in the Book of Allah, the Exalted and Majestic. Allah, the Exalted and Majestic, said: "Whatever the Messenger gives you, take it; and whatever he forbids you, desist from it" [Al-Ḥashr 59:7].[7]

وَأَمَّا رَدُّ الْيَمِينِ عَلَى الطَّالِبِ إذَا نَكَلَ الْمَطْلُوبُ - فَمَا كَانَ قَطُّ فِي كِتَابِ اللَّهِ تَعَالَى، وَلَا فِي سُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَيْنَ الْأَمْرَيْنِ فَرْقٌ، كَمَا بَيْنَ السَّمَاءِ وَالْأَرْضِ.

L29150 As for transferring the oath to the plaintiff when the defendant refuses to swear—this has never been established in the Book of Allah the Exalted nor in the Sunnah of His Messenger (peace be upon him). The difference between the two is as vast as that between the heavens and the earth.

وَإِذَا وَجَبَ الْأَخْذُ بِمَا جَاءَتْ بِهِ السُّنَّةُ، وَإِنْ لَمْ يُوجَبْ فِي لَفْظِ آيَاتِ الْقُرْآنِ فَمَا وَجَبَ قَطُّ مِنْ ذَلِكَ أَنْ يُؤْخَذَ بِمَا لَا يُوجَدُ فِي الْقُرْآنِ، وَلَا فِي سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29151–29153 And when it becomes obligatory to adhere to what the Sunnah has conveyed, even if it is not stipulated in the wording of the Quranic verses, then what...

[7] **Qur'an references (L29149):** Qur'an 59:7 (Al-Hashr).

It is absolutely impermissible to adopt what is not found in the Qur'an or the Sunnah of the Messenger of Allah (peace and blessings be upon him).

L29154 As for Abū Thawr, he said: When the defendant refuses to take the oath and the judge compels the claimant to swear, we have agreed upon the obligation to rule in his favor for that claim as long as the claimant has not sworn. Where we did not agree to rule in his favor for that claim, it becomes obligatory to adhere to what we have unanimously agreed upon, and that no judgment may be passed against anyone based on a disagreement unaccompanied by textual evidence.

وَأَمَّا أَبُو ثَوْرٍ فَإِنَّهُ قَالَ: إذَا نَكَلَ الْمَطْلُوبُ عَنْ الْيَمِينِ وَأَحْلَفَ الْحَاكِمُ الطَّالِبَ فَقَدْ اتَّفَقْنَا عَلَى وُجُوبِ الْقَضَاءِ لَهُ بِتِلْكَ الدَّعْوَى مَا لَمْ يَحْلِفْ الطَّالِبُ فَلَمْ نَتَّفِقْ عَلَى الْقَضَاءِ لَهُ بِتِلْكَ الدَّعْوَى فَوَجَبَ الْقَوْلُ بِمَا أَجْمَعْنَا عَلَيْهِ، وَأَنْ لَا يُقْضَى عَلَى أَحَدٍ بِاخْتِلَافٍ لَا نَصَّ مَعَهُ.

L29155 Abu Muhammad said: The opinion of four Followers, weak narrations with unreliable chains of transmission, and then baseless conjectures about six differing Companions—this cannot be termed consensus except by one who does not grasp what constitutes consensus.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ قَوْلُ أَرْبَعَةٍ مِنْ التَّابِعِينَ، وَرِوَايَاتٌ سَاقِطَةٌ لَا تَصِحُّ أَسَانِيدُهَا، ثُمَّ بِظُنُونٍ غَيْرِ صَادِقَةٍ عَلَى سِتَّةٍ مِنْ الصَّحَابَةِ مُخْتَلِفِينَ مِمَّا يَقُولُ: إنَّهُ إجْمَاعٌ إلَّا مَنْ لَا يَدْرِي مَا الْإِجْمَاعُ.

L29156 That which Abū Ḥanīfah, Mālik, and al-Shāfiʿī have agreed upon is not an authoritative proof against those who do not adhere to their legal schools.

وَلَيْسَ مَا اتَّفَقَ عَلَيْهِ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: حُجَّةً عَلَى مَنْ لَا يُقَلِّدُهُمْ.

L29157 Allah the Exalted said: {If you disagree over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day} [An-Nisa: 59]. He, the Almighty and Majestic, has not commanded to refer disputed matters to any of those we mentioned. Whoever refers it to them has indeed contravened the command of Allah the Exalted—thus this claim is also invalidated—and success comes only from Allah the Exalted.[8]

قَالَ اللَّهُ تَعَالَى: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] فَلَمْ يَأْمُرْ عَزَّ وَجَلَّ بِرَدِّ مَا اُخْتُلِفَ فِيهِ إلَى أَحَدٍ مِمَّنْ ذَكَرْنَا، فَمَنْ رَدَّ إلَيْهِمْ فَقَدْ خَالَفَ أَمْرَ اللَّهِ تَعَالَى - فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29158 As for their argument citing ʿUmar, al-Miqdād, and ʿUthmān—may Allah be pleased with them—there is no valid proof in the statement of anyone apart from the Messenger of Allah—peace and blessings of Allah be upon him—even if that were authentically reported from them. How could it be, when it is not authentic? For it is transmitted through al-Shaʿbī, and al-Shaʿbī did not meet ʿUthmān or al-Miqdād—how then ʿUmar?

وَأَمَّا احْتِجَاجُهُمْ: بِعُمَرَ، وَالْمِقْدَادِ، وَعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ صَحَّ ذَلِكَ عَنْهُمْ فَكَيْفَ وَهُوَ لَا يَصِحُّ لِأَنَّهُ مِنْ طَرِيقِ الشَّعْبِيِّ وَالشَّعْبِيُّ لَمْ يُدْرِكْ عُثْمَانَ وَلَا الْمِقْدَادَ فَكَيْفَ عُمَرُ.

L29159 As for the narration from Ali, it is invalid because it is transmitted through

[8] **Qur'an references (L29157):** Qur'an 4:59 (An-Nisa).

al-Ḥasan ibn Ḍumayrah from his father—who is an abandoned narrator (matruk), the son of an abandoned narrator—and it is impermissible to cite his narration as evidence. Thus, no word from any of the Companions has been authenticated regarding this matter.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَسَاقِطَةٌ، لِأَنَّهَا عَنْ الْحَسَنِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ - وَهُوَ مَتْرُوكٌ ابْنُ مَتْرُوكٍ - لَا يَحِلُّ الِاحْتِجَاجُ بِرِوَايَتِهِ - فَلَمْ يَصِحَّ فِي هَذَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ كَلِمَةٌ.

L29160 Abu Muhammad said: As for our statement—it is as was narrated to us through the chain of Waki‘ who narrated to us from Isma‘il ibn Abi Khalid, from al-Sha‘bi, who said: A dispute and contention arose between Ubayy ibn Ka‘b and ‘Umar ibn al-Khattab over a walled orchard. Ubayy said: “Let Zayd ibn Thabit arbitrate between us.” They went to him and knocked at his door. He came out and said: “O commander of the faithful, why didn’t you send for me so I could come to you?” ‘Umar replied: “The judge is approached in his own house.” Zayd brought out a cushion and laid it down. ‘Umar said to him: “This is your first act of injustice,” and refused to sit on it. They argued their case, and Zayd said to Ubayy ibn Ka‘b: “Where is your evidence? If you wish to exempt the commander of the faithful from taking an oath, then exempt him.” ‘Umar retorted: “Would you rule against me with an oath while I refuse to swear?” So he swore.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا قَوْلُنَا -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ بَيْنَ أُبَيِّ بْنِ كَعْبٍ، وَعُمَرَ بْنِ الْخَطَّابِ مُنَازَعَةٌ وَخُصُومَةٌ فِي حَائِطٍ فَقَالَ: بَيْنِي وَبَيْنَك زَيْدُ بْنُ ثَابِتٍ فَأَتَيَاهُ فَضَرَبَا عَلَيْهِ الْبَابَ، فَخَرَجَ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ أَلَا أَرْسَلْتَ إلَيَّ حَتَّى آتِيَك؟ فَقَالَ لَهُ عُمَرُ: فِي بَيْتِهِ يُؤْتَى الْحَكَمُ، فَأَخْرَجَ زَيْدٌ وِسَادَةً فَأَلْقَاهَا، فَقَالَ لَهُ عُمَرُ: هَذَا أَوَّلُ جَوْرِك وَأَبَى أَنْ يَجْلِسَ عَلَيْهَا، فَتَكَلَّمَا فَقَالَ زَيْدٌ لِأُبَيِّ بْنِ كَعْبٍ: بَيِّنَتُك؟ وَإِنْ رَأَيْت أَنْ تُعْفِيَ أَمِيرَ الْمُؤْمِنِينَ مِنْ الْيَمِينِ فَأَعْفِهِ؟ فَقَالَ عُمَرُ: تَقْضِي عَلَيَّ بِالْيَمِينِ وَلَا أَحْلِفُ؟ فَحَلَفَ -.

L29161–29163 Thus, Zayd did not mention redirecting the oath or issuing a ruling based on refusal to swear; rather, he definitively obligated the oath upon the denier. Unless the claimant waives it, and this is ‘Umar’s denial that a judge may rule by an oath without administering the oath to the denier—and this is our explicitly stated position.

فَهَذَا زَيْدٌ لَمْ يَذْكُرْ رَدَّ يَمِينٍ وَلَا حُكْمًا بِنُكُولٍ، بَلْ أَوْجَبَ الْيَمِينَ عَلَى الْمُنْكِرِ قَطْعًا إلَّا أَنْ يُسْقِطَهَا الطَّالِبُ، وَهَذَا عُمَرُ يُنْكِرُ أَنْ يَحْكُمَ الْحَاكِمُ بِالْيَمِينِ وَلَا يُحَلِّفَ الْمُنْكِرَ - وَهُوَ قَوْلُنَا نَصًّا.

L29164 And through the chain of Abū Ubayd: Kathīr ibn Hishām narrated to us from Ja‘far ibn Burqān, who said: “Umar ibn al-Khaṭṭāb wrote to Abū Mūsā al-Ash‘arī in a letter he mentioned: ’The burden of proof lies upon the claimant, and the oath is upon the one who denies.’ He did not mention refusal [to swear] or redirection of the oath.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا كَثِيرُ بْنُ هِشَامٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إلَى أَبِي مُوسَى الْأَشْعَرِيِّ فِي رِسَالَةٍ ذَكَرَهَا: الْبَيِّنَةُ عَلَى مَنْ ادَّعَى وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ - فَلَمْ يَذْكُرْ نُكُولًا وَلَا رَدَّ يَمِينٍ.

L29165 Hummam ibn Ahmad narrated to us from Abbas ibn Asbagh from Muhammad ibn Abdul-Malik ibn Ayman from Muhammad ibn Isma’il al-Sa’igh from Yahya ibn Abi Bakr al-Karmani from Nafi’ ibn Umar al-Jumahi, who reported from Ibn Abi Mulaikah: I wrote to Ibn Abbas regarding two women guarding a secured deposit in a house where young attendants were present. One

حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إسْمَاعِيلَ الصَّائِغُ نا يَحْيَى بْنُ أَبِي بَكْرٍ الْكَرْمَانِيُّ نا نَافِعُ بْنُ عُمَرَ الْجُمَحِيُّ عَنْ ابْنِ أَبِي مُلَيْكَةَ قَالَ: كَتَبْت إلَى ابْنِ عَبَّاسٍ فِي امْرَأَتَيْنِ كَانَتَا تُحْرِزَانِ حَرِيزًا فِي بَيْتٍ، وَفِي الْحُجْرَةِ حِدَاثٌ،

of them extended her hand flowing with blood and said, “This has happened to me,” while the other denied responsibility. Ibn Abbas wrote back to me: “Allah’s Messenger—peace and blessings be upon him—judged that the oath rests upon the defendant, stating: ’If people were granted [claims] based on mere assertions, some would falsely claim others’ blood and wealth.’ Summon her and recite to her: {Those who sell Allah’s covenant and their oaths for a trivial price} [3:77].” Ibn Abi Mulaikah said: “I recited it to her, and she confessed.”[9]

فَأَخْرَجَتْ إِحْدَاهُمَا يَدَهَا تَشْخَبُ دَمًا فَقَالَتْ: أَصَابَتْنِي هَذِهِ، وَأَنْكَرَتْ الْأُخْرَى، قَالَ: فَكَتَبَ إِلَيَّ ابْنِ عَبَّاسٍ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى أَنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ، وَقَالَ: لَوْ أَنَّ النَّاس أُعْطُوا بِدَعْوَاهُمْ لَادَّعَى نَاسٌ دِمَاءَ قَوْمٍ وَأَمْوَالَهُمْ» ، اُدْعُهَا فَاقْرَأْ عَلَيْهَا: {إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلا} [آل عمران: ٧٧] الْآيَةَ، قَالَ ابْنُ أَبِي مُلَيْكَةَ فَقَرَأْت عَلَيْهَا، فَاعْتَرَفَتْ “.

L29166 This is a narration of the highest authenticity from Ibn Abbas. He issued no legal ruling except to impose the oath exclusively, invalidating any judgment in favor of the claimant based on their claim. He made no exception in that ruling whatsoever for the defendant’s refusal to swear the oath or the redirection of the oath.

فَهَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ عَبَّاسٍ وَلَمْ يُفْتِ إِلَّا بِإِيجَابِ الْيَمِينِ فَقَطْ، وَأَبْطَلَ أَنْ يُعْطَى الْمُدَّعِي بِدَعْوَاهُ وَلَمْ يَسْتَثْنِ فِي ذَلِكَ نُكُولَ الْمَطْلُوبِ وَلَا رَدَّ الْيَمِينِ أَصْلًا.

L29167 Through the narration of Abu ‘Ubayd: ‘Abd al-Rahman ibn Mahdi narrated to us, Sufyan al-Thawri narrated to us, from Abu Ishaq al-Shaybani, from al-Hakam ibn ‘Utaybah, who said: “I do not reject the oath.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: لَا أَرُدُّ الْيَمِينَ.

L29168 And through the chain of Al-Kashūrī from Al-Ḥudhāfī from ʿAbd al-Razzāq, who reported from Sufyān al-Thawrī, he said: Ibn Abī Laylā and Al-Ḥakam ibn ʿUtaybah did not uphold the oath—meaning they did not approve of returning it to the claimant if the defendant refused to swear.

وَمِنْ طَرِيقِ الْكَشْوَرِيِّ عَنْ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ قَالَ: كَانَ ابْنِ أَبِي لَيْلَى، وَالْحَكَمُ بْنُ عُتَيْبَةَ لَا يَرَيَانِ الْيَمِينَ - يَعْنِي لَا يَرَيَانِ رَدَّهَا - عَلَى الطَّالِبِ إِذَا نَكَلَ الْمَطْلُوبُ.

L29169 We have mentioned Abū Ḥanīfah’s opinion: that if the defendant accused of homicide refuses to take the oath, the oath is not redirected to the claimant, nor is a judgment passed against him for refusing the oath (nukūl). Instead, he is imprisoned indefinitely until he swears.

وَقَدْ ذَكَرْنَا قَوْلَ أَبِي حَنِيفَةَ: أَنَّ الْمُدَّعَى عَلَيْهِ بِالدَّمِ يَأْبَى عَنْ الْيَمِينِ أَنَّهُ لَا يُرَدُّ الْيَمِينُ عَلَى الطَّالِبِ، وَلَا يُقْضَى عَلَيْهِ بِالنُّكُولِ، لَكِنْ يُسْجَنُ أَبَدًا حَتَّى يَحْلِفَ.

L29170–29172 This is the opinion of Mālik regarding someone whose wife had claimed that he had pronounced a divorce against her, or his female slave or male slave had claimed that he had freed them, and they produced a witness. The single just principle is that the oath is incumbent upon him, and no judgment

وَهُوَ قَوْلُ مَالِكٍ فِيمَنْ ادَّعَتْ عَلَيْهِ امْرَأَتُهُ طَلَاقًا وَأَمَتُهُ أَوْ عَبْدُهُ عَتَاقًا وَأَقَامُوا شَاهِدًا وَاحِدًا عَدْلًا بِذَلِكَ أَنَّهُ يَلْزَمُهُ الْيَمِينُ، وَأَنَّهُ لَا يُقْضَى عَلَيْهِ بِالنُّكُولِ، وَلَا بِرَدِّ الْيَمِينِ، لَكِنْ يُسْجَنُ أَبَدًا حَتَّى يَحْلِفَ -.

[9] **Qur’an references (L29165):** Qur’an 3:77 (Ali ’Imran).

may be issued against him for refusal or rejection of the oath. However, he is imprisoned indefinitely until he takes the oath.

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا: فِي كُلِّ شَيْءٍ.

L29173 This is the opinion of Abū Sulaymān and our school's scholars, applying to all matters.

قَالَ أَبُو مُحَمَّد: فَإِنْ قِيلَ: فَإِنَّكُمْ رَدَدْتُمْ الرِّوَايَةَ فِي رَدِّ الْيَمِينِ بِأَنَّهَا عَنْ الشَّعْبِيِّ - وَلَمْ يُدْرِكْ عُثْمَانَ، وَلَا الْمِقْدَادَ، وَلَا عُمَرُ - ثُمَّ ذَكَرْتُمْ لِأَنْفُسِكُمْ رِوَايَةَ حُكُومَةٍ كَانَتْ بَيْنَ عُمَرَ، وَأُبَيٍّ.

L29174 Abu Muhammad said: If it is objected, "You have rejected the narration concerning the rebuttal of the oath because it is from al-Shaʿbī - who did not meet ʿUthmān, nor al-Miqdād, nor ʿUmar - yet you have cited for yourselves a narration of an arbitration that occurred between ʿUmar and Ubayy."

قُلْنَا: لَمْ نُورِدْ شَيْئًا مِنْ هَذَا كُلِّهِ احْتِجَاجًا لِأَنْفُسِنَا فِي تَصْحِيحِ مَا قُلْنَاهُ، وَنَعُوذُ بِاَللَّهِ مِنْ أَنْ نَرَى فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُجَّةً فِي الدِّينِ، وَلَكِنْ تَكْذِيبًا لِمَنْ قَدْ سَهَّلَ الشَّيْطَانُ لَهُ الْكَذِبَ عَلَى جَمِيعِ الْأُمَّةِ فِي دَعْوَى الْإِجْمَاعِ مُجَاهَرَةً، حَيْثُ لَا يَجِدُ إلَّا رِوَايَاتٍ كُلَّهَا هَالِكَةٌ، بِظُنُونٍ كَاذِبَةٍ، عَلَى ثَلَاثَةٍ مِنْ الصَّحَابَةِ قَدْ رُوِيَ مِثْلُهَا بِخِلَافِهَا عَنْ ثَلَاثَةٍ آخَرِينَ مِنْهُمْ، فَأَرَيْنَاهُمْ لِأَنْفُسِنَا مِثْلَهَا، بَلْ أَحْسَنَ مِنْهَا عَنْ ثَلَاثَةٍ أَيْضًا مِنْهُمْ أَوْ أَرْبَعَةٍ، إلَّا أَنَّ الْمُوَافَقَةَ لِقَوْلِنَا أَصَحُّ، لِأَنَّهَا عَنْ الشَّعْبِيِّ فِي ذِكْرِ قَضِيَّةٍ بَيْنَ عُمَرَ وَأُبَيٍّ قَضَى فِيهَا زَيْدُ بْنُ ثَابِتٍ بَيْنَهُمَا وَالشَّعْبِيُّ: قَدْ لَقِيَ زَيْدَ بْنَ ثَابِتٍ وَصَحِبَهُ وَأَخَذَ عَنْهُ كَثِيرًا - فَهَذِهِ أَقْرَبُ بِلَا شَكٍّ إلَى أَنْ تَكُونَ مُسْنَدَةً مِنْ تِلْكَ الَّتِي لَمْ يَلْقَ الشَّعْبِيُّ أَحَدًا مِمَّنْ ذَكَرَ فِي تِلْكَ الْقِصَّةِ وَلَا أَدْرَكَهُ بِعَقْلِهِ.

L29175 We said: We have not presented any of this as evidence to validate our own position, and we seek refuge in Allah from considering anyone's statement—other than the Messenger of Allah, peace and blessings be upon him—as authoritative in matters of religion. Rather, this is to refute those whom Satan has facilitated lying for, openly claiming consensus while relying solely on entirely invalid narrations built upon false conjectures—attributed to three Companions, though contradictory narrations have been reported from three others among them. We have presented for ourselves narrations equivalent to theirs, indeed superior, from three or four others among them. However, the narrations supporting our position are more authentic, as they originate from al-Shaʿbi's account of a legal dispute between ʿUmar and Ubayy, wherein Zayd ibn Thabit issued a judgment. Al-Shaʿbi met Zayd ibn Thabit, accompanied him, and acquired extensive knowledge from him. Thus, these narrations are undoubtedly closer to being substantiated by chains of transmission than those in which al-Shaʿbi neither met any of the individuals mentioned in that incident nor comprehended it through his own reasoning.

قَالَ أَبُو مُحَمَّد: مِنْ الْعَجَبِ أَنْ يُجَوِّزَ أَهْلُ الْجَهْلِ وَالْغَبَاوَةِ لِأَبِي حَنِيفَةَ أَنْ لَا يَقْضِيَ بِالنُّكُولِ، وَلَا بِرَدِّ الْيَمِينِ، لَكِنْ بِالْأَخْذِ بِالْيَمِينِ وَلَا بُدَّ فِي بَعْضِ الدَّعَاوَى دُونَ بَعْضٍ بِرَأْيِهِ - وَيُجَوِّزَ مِثْلَ ذَلِكَ لِمَالِكٍ فِي دَعْوَى الطَّلَاقِ وَالْعَتَاقِ، وَلَا يُجَوِّزَ لِمَنْ اتَّبَعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ذَلِكَ فِي جَمِيعِ الدَّعَاوَى، إنَّ هَذَا لَعَجَبٌ.

L29176 Abu Muhammad said: It is astonishing that people of ignorance and stupidity would permit Abu Hanifah not to rule by relying on the defendant's refusal to swear or the plaintiff's counter-oath, but instead to mandate the oath necessarily in some cases but not others according to his opinion—and would permit the like of that for Malik in claims of divorce and emancipation—yet would not permit those who follow the Messenger of Allah, may Allah bless

him and his family and grant him peace, to do so in all claims. Verily, this is truly astonishing.

L29177 Abu Muhammad said: Since the opinion advocating judgment based on refusal to take the oath, and the opinion advocating the reversion of the oath to the claimant when the defendant refuses, have been invalidated—because these two opinions lack any evidence from the Quran or the Sunnah, and because no valid statement from the Companions (may Allah be pleased with them) exists regarding either of them—it is obligatory for us to provide proof for the validity of our position.

قَالَ أَبُو مُحَمَّد: فَإِذْ قَدْ بَطَلَ الْقَوْلُ بِالْقَضَاءِ بِالنُّكُولِ، وَالْقَوْلُ بِرَدِّ الْيَمِينِ عَلَى الطَّالِبِ إِذَا نَكَلَ الْمَطْلُوبُ، لِتَعَرِّي هَذَيْنِ الْقَوْلَيْنِ عَنْ دَلِيلٍ مِنْ الْقُرْآنِ، أَوْ مِنْ السُّنَّةِ - وَبَطَلَ أَنْ يَصِحَّ فِي أَحَدِهِمَا قَوْلٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَالْوَاجِبُ أَنْ نَأْتِيَ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا -.

L29178 And with Allah, the Most High, is [all] divine facilitation.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29179–29181 Abu Muhammad said: It is established that what we previously cited from the Prophet—peace be upon him and his family—regarding judgment by the defendant's oath, and that "were people granted their claims based solely on their assertions, some would claim the blood of a people." "and their wealth", and what we have discussed previously in the preceding issue from the statement of the Messenger of Allah—may Allah bless him and grant him peace—: "Either you provide evidence, or he must swear an oath – that is your only option."

قَالَ أَبُو مُحَمَّد: قَدْ صَحَّ مَا قَدْ أَوْرَدْنَاهُ آنِفًا مِنْ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالْقَضَاءِ بِالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ، وَأَنَّهُ «لَوْ أَعْطَى النَّاسَ بِدَعْوَاهُمْ لَادَّعَى نَاسٌ دِمَاءَ قَوْمٍ وَأَمْوَالَهُمْ» ، وَمَا قَدْ أَتَيْنَا بِهِ قَبْلُ فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «بَيِّنَتُكَ أَوْ يَمِينُهُ لَيْسَ لَك إلَّا ذَلِكَ» .

L29182 Thus, it is established with certainty that it is impermissible to grant the claimant [a judgment] based on his claim without evidence. Thereby, it becomes invalid to grant anything due to the opponent's refusal or the claimant's oath upon such refusal, because he is awarded [a judgment] based on his claim.

فَصَحَّ يَقِينًا أَنَّهُ لَا يَجُوزُ أَنْ يُعْطَى الْمُدَّعِي بِدَعْوَاهُ دُونَ بَيِّنَةٍ، فَبَطَلَ بِهَذَا أَنْ يُعْطَى شَيْئًا بِنُكُولِ خَصْمِهِ أَوْ بِيَمِينِهِ إذَا نَكَلَ خَصْمُهُ؛ لِأَنَّهُ أُعْطِيَ بِالدَّعْوَى.

L29183 It has been established that the oath by Allah's decree rests upon the defendant, as conveyed through the tongue of His Messenger—peace and blessings be upon him. Therefore, it becomes obligatory that the claimant is never granted an oath except where explicit texts specify its application—solely in cases of collective oath (qasāmah) when a slain Muslim is discovered, and when a claimant produces a single just witness only. Whoever grants the claimant the oath merely due to his opponent's refusal, or grants him the oath when the defendant refuses, has committed a grave error. This

وَصَحَّ أَنَّ الْيَمِينَ بِحُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى الْمُدَّعَى عَلَيْهِ، فَوَجَبَ بِذَلِكَ أَنَّهُ لَا يُعْطَى الْمُدَّعِي يَمِينًا أَصْلًا إلَّا حَيْثُ جَاءَ النَّصُّ بِأَنْ يُعْطَاهَا، وَلَيْسَ ذَلِكَ إلَّا فِي الْقَسَامَةِ فِي الْمُسْلِمِ يُوجَدُ مَقْتُولًا، وَفِي الْمُدَّعِي يُقِيمُ شَاهِدًا عَدْلًا فَقَطْ، وَكَانَ مَنْ أَعْطَى الْمُدَّعِيَ بِنُكُولِ خَصْمِهِ فَقَطْ أَوْ بِيَمِينِهِ إذَا نَكَلَ خَصْمُهُ قَدْ أَخْطَأَ كَثِيرًا، وَذَلِكَ أَنَّهُ أَعْطَاهُ مَا أَخْبَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ لَيْسَ

لَهُ، وَأَعْطَاهُ بِدَعْوَاهُ الْمُجَرَّدَةِ عَنْ الْبَيِّنَةِ وَأَسْقَطَ الْيَمِينَ عَمَّنْ أَوْجَبَهَا اللَّهُ تَعَالَى عَلَيْهِ، وَلَمْ يُزِلْهَا عَنْهُ إلَّا أَنْ يُسْقِطَهَا الَّذِي هِيَ لَهُ - وَهُوَ الطَّالِبُ - الَّذِي جَعَلَ اللَّهُ تَعَالَى لَهُ الْبَيِّنَةَ فَيَأْخُذُ أَوْ يَمِينَ مَطْلُوبِهِ، فَإِذْ هِيَ لَهُ فَلَهُ تَرْكُ حَقِّهِ - إنْ شَاءَ - فَظَهَرَ صِحَّةُ قَوْلِنَا يَقِينًا.

is because he grants what the Prophet—peace and blessings of Allah upon him and his family—declared the claimant undeserving of, granting it for a mere unsubstantiated claim while absolving the defendant of the oath Allah obligated upon him. The oath cannot be removed from the defendant except by the claimant (the one entitled to it)—to whom Allah granted the right to demand evidence, thereby either claiming his right or compelling his defendant's oath. Since the oath rightfully belongs to the claimant, he may relinquish his claim if he chooses. Thus, the soundness of our position becomes undeniably evident.

وَقَالَ اللَّهُ تَعَالَى: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L29184 "And Allah, the Most High, said: 'Do not cooperate in sin and transgression' [*Al-Mā'idah* 2]."[10]

فَمَنْ أَطْلَقَ لِلْمَطْلُوبِ الامْتِنَاعَ مِنْ الْيَمِينِ وَلَمْ يَأْخُذْهُ بِهَا - وَقَدْ أَوْجَبَهَا اللَّهُ تَعَالَى عَلَيْهِ - فَقَدْ أَعَانَهُ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَعَلَى تَرْكِ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ إلْزَامَهُ إيَّاهُ وَأَخْذَهُ بِهِ.

L29185 Whoever allows the one pursued to refuse the oath and does not hold him to it—though God Almighty has obligated it upon him—has indeed assisted him in sin, transgression, and abandoning what God Almighty has obligated: to enforce it upon him and hold him to it.

وَقَدْ ذَكَرْنَا فِي كَلَامِنَا " فِي الْإِمَامَةِ " قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» فَوَجَدْنَا الْمُمْتَنِعَ مِمَّا أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ أَخْذَهُ بِهِ مِنْ الْيَمِينِ قَدْ أَتَى مُنْكَرًا بِيَقِينٍ، فَوَجَبَ تَغْيِيرُهُ بِالْيَدِ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالتَّغْيِيرُ بِالْيَدِ: هُوَ الضَّرْبُ فِيمَنْ لَمْ يَمْتَنِعْ، أَوْ بِالسِّلَاحِ فِي الْمُدَافِعِ بِيَدِهِ، الْمُمْتَنِعِ مِنْ أَخْذِهِ بِالْحَقِّ فَوَجَبَ ضَرْبُهُ أَبَدًا حَتَّى يُحْيِيَهُ الْحَقُّ مِنْ إقْرَارِهِ، أَوْ يَمِينِهِ، أَوْ يَقْتُلَهُ الْحَقُّ، مِنْ تَغْيِيرِ مَا أَعْلَنَ بِهِ مِنْ الْمُنْكَرِ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَمَنْ أَطَاعَ اللَّهَ تَعَالَى فَقَدْ أَحْسَنَ.

L29186 In our discussion on "The Imamate," we cited the statement of Allah's Messenger - may Allah bless him and his family and grant him peace: "Whoever among you sees evil, let him change it with his hand if he is able." We concluded that one who refuses what Allah the Mighty and Majestic has obligated to be taken by the right hand has undeniably committed evil. Thus, changing it through physical action becomes obligatory by the command of Allah's Messenger - may Allah bless him and his family and grant him peace. Changing with the hand entails striking those who do not resist, or using weapons against those who physically defend themselves while refusing rightful compliance. Such a person must be struck continuously until the truth revives him through his admission or his oath, or the truth kills him for persisting in the openly manifested evil: {Whoever transgresses Allah's limits has wronged himself} [at-Talāq 65:1]. Whoever obeys Allah the Exalted has done well.[11]

وَأَمَّا السِّجْنُ: فَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَكُنْ لَهُ قَطُّ سِجْنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29187 As for imprisonment: No two differ in opinion that the Messenger of Allah

[10] **Qur'an references (L29184):** Qur'an 5:2 (Al-Ma'idah).
[11] **Qur'an references (L29186):** Qur'an 65:1 (At-Talaq).

(peace and blessings be upon him and his family) never had a prison at all. And success comes only from Allah, the Exalted.

L29188–29189 From what we have mentioned, it has become clear that our statement is confirmed through Ibn Abbas as we have cited, and no authentic contrary report from any of the Companions (may Allah be pleased with them) exists. All praise is due to Allah, Lord of all the worlds.

L29190 **Issue: There is no obligation upon one for whom an oath is required to swear except by Allah, the Exalted.**

L29191 1788 - Issue: One upon whom an oath has become obligatory must swear only by Allah the Exalted or by one of His names, exclusively in the judge's council. He may do so in whatever manner he chooses—whether sitting, standing, or in any other state—and he need not concern himself with the direction his face is turned.

L29192 People have differed regarding this matter. It has been reported to us from Mālik that he learned that a man from Iraq wrote to ʿUmar ibn al-Khaṭṭāb, stating that a man had said to his wife, "Your rope is on your nape." ʿUmar wrote to his governor to have the man meet him in Mecca during the pilgrimage season. He complied, and the man came to him while ʿUmar was circumambulating the House. The man said, "I am the man you ordered to be brought before you." ʿUmar said, "I adjure you by the Lord of this building: Did you intend by your words 'Your rope is on your nape' to effect divorce?" The man replied, "Had you adjured me anywhere other than this place, I would not have told you the truth. I did intend divorce by that." ʿUmar said, "It is as you intended."

L29193 Through the narration of Abd al-Razzaq from Ma'mar from Layth ibn Abi Sulaym from Mujahid: A man said to his wife during the time of Umar, "Your marital bond is on your back," three times. Umar then made him swear an oath between the Black Stone and the Station of Ibrahim, whereupon the man declared, "I intended three divorces." Umar consequently enforced it upon him.

L29194 Via the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from ʿAbd al-Malik ibn Abī

وَقَدْ لَاحَ بِمَا ذَكَرْنَا أَنَّ قَوْلَنَا ثَابِتٌ عَنْ ابْنِ عَبَّاسٍ كَمَا أَوْرَدْنَا، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَة لَيْسَ عَلَى مَنْ وَجَبَتْ عَلَيْهِ يَمِينٌ أَنْ يَحْلِفَ إلَّا بِاَللَّهِ تَعَالَى]

١٧٨٨ - مَسْأَلَةٌ: وَلَيْسَ عَلَى مَنْ وَجَبَتْ عَلَيْهِ يَمِينٌ أَنْ يَحْلِفَ إلَّا بِاَللَّهِ تَعَالَى، أَوْ بِاسْمٍ مِنْ أَسْمَاءِ اللَّهِ تَعَالَى فِي مَجْلِسِ الْحَاكِمِ فَقَطْ، كَيْفَمَا شَاءَ مِنْ قُعُودٍ أَوْ قِيَامٍ أَوْ غَيْرِ ذَلِكَ مِنْ الْأَحْوَالِ، وَلَا يُبَالِي إلَى أَيِّ جِهَةٍ كَانَ وَجْهُهُ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا عَنْ مَالِكٍ أَنَّهُ بَلَغَهُ أَنَّهُ كَتَبَ إلَى عُمَرَ بْنِ الْخَطَّابِ رَجُلٌ مِنْ الْعِرَاقِ: أَنَّ رَجُلًا قَالَ لِامْرَأَتِهِ: حَبْلُكِ عَلَى غَارِبِكِ، فَكَتَبَ عُمَرُ إلَى عَامِلِهِ أَنْ يُوَافِيَهُ الرَّجُلُ بِمَكَّةَ فِي الْمَوْسِمِ، فَفَعَلَ، فَأَتَاهُ الرَّجُلُ - وَعُمَرُ يَطُوفُ بِالْبَيْتِ - فَقَالَ لِعُمَرَ: أَنَا الرَّجُلُ الَّذِي أَمَرْتَ أَنْ أُجْلَبَ عَلَيْكَ فَقَالَ لَهُ عُمَرُ: أَنْشُدُكَ بِرَبِّ هَذِهِ الْبِنْيَةِ مَا أَرَدْت بِقَوْلِك " حَبْلُكِ عَلَى غَارِبِكِ " الْفِرَاقَ فَقَالَ لَهُ الرَّجُلُ: لَوْ اسْتَحْلَفْتَنِي فِي غَيْرِ هَذَا الْمَكَانِ مَا صَدَقْتُك؟ أَرَدْت بِذَلِكَ الْفِرَاقَ قَالَ عُمَرُ: هُوَ مَا أَرَدْتَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ أَنَّ رَجُلًا قَالَ لِامْرَأَتِهِ فِي زَمَنِ عُمَرَ: حَبْلُكِ عَلَى غَارِبِكِ ثَلَاثَ مَرَّاتٍ فَاسْتَحْلَفَهُ عُمَرُ بَيْنَ الرُّكْنِ وَالْمَقَامِ فَقَالَ: أَرَدْت الطَّلَاقَ ثَلَاثًا، فَأَمْضَاهُ عَلَيْهِ.

Sulaymān al-ʿArzamī, from ʿAṭāʾ ibn Abī Rabāḥ: A man said to his wife, "Your marital bond is on your shoulder." The man consulted Ibn Masʿūd, who wrote to ʿUmar. ʿUmar instructed him to meet during the pilgrimage rites. When he met him, the narrator mentioned the hadith.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ الْعَرْزَمِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّ رَجُلًا قَالَ لِامْرَأَتِهِ: حَبْلُكِ عَلَى غَارِبِكِ، فَسَأَلَ ابْنَ مَسْعُودٍ فَكَتَبَ إِلَى عُمَرَ، فَكَتَبَ عُمَرُ بِأَنْ يُوَافِيَهُ بِالْمَوْسِمِ، فَوَافَاهُ - وَذَكَرَ الْحَدِيثَ.

L29195 And through the chain of Al-Kashwārī from Al-Ḥudhāfī from ʿAbd al-Razzāq, who reported to us from Maʿmar from Al-Zuhrī, he said: Muʿāwiyah administered an oath regarding blood [matter] between the Rukn (Black Stone corner) and the Maqām (Station of Abraham).

وَمِنْ طَرِيقِ الْكَشْوَرِيِّ عَنْ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ قَالَ: اسْتَحْلَفَ مُعَاوِيَةُ فِي دَمٍ بَيْنَ الرُّكْنِ وَالْمَقَامِ.

L29196 Al-Shafiʿī mentioned without citing a chain of transmission that ʿAbd al-Raḥmān ibn ʿAwf rejected the administration of oaths at the Kaaba except in cases involving bloodshed or a large amount of wealth.

وَذَكَرَ الشَّافِعِيُّ بِغَيْرِ إسْنَادٍ: أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ أَنْكَرَ التَّحْلِيفَ عِنْدَ الْكَعْبَةِ إلَّا فِي دَمٍ أَوْ كَثِيرٍ مِنْ الْمَالِ.

L29197–29199 As for the aforementioned action of Mu'awiyah: We have narrated it through the chain of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Sa'id ibn al-Musayyab, that Mu'awiyah adjured Mus'ab ibn Abd al-Rahman ibn Awf. And Mu'adh ibn Ubayd Allāh ibn Ma'mar, and Uqbah ibn Ja'wana ibn Sha'ūb al-Laythī concerning the blood of Ismā'īl ibn Habbār between the Corner and the Station—and these were Medinans whom he had brought to Mecca.

وَأَمَّا فِعْلُ مُعَاوِيَةَ الْمَذْكُورُ: فَإِنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ مُعَاوِيَةَ أَحْلَفَ مُصْعَبَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَمُعَاذَ بْنَ عُبَيْدِ اللَّهِ بْنِ مَعْمَرٍ، وَعُقْبَةَ بْنَ جَعْوَنَةَ بْنِ شَعُوبٍ اللَّيْثِيُّ فِي دَمِ إسْمَاعِيلَ بْنِ هَبَّارٍ بَيْنَ الرُّكْنِ وَالْمَقَامِ - وَهَؤُلَاءِ مَدَنِيُّونَ اسْتَجْلَبَهُمْ إلَى مَكَّةَ.

L29200 And from the chain of Waki', from Sufyan al-Thawri, from 'Abdullah ibn Abi al-Safar, from al-Sha'bi, from Shurayh, who said: The People of the Book are made to swear by Allah's name in situations they dislike.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: يُسْتَحْلَفُ أَهْلُ الْكِتَابِ " بِاَللَّهِ " حَيْثُ يَكْرَهُونَ.

L29201 And through him to Sufyan from Ayyub al-Sikhtiyani from Ibn Sirin that Ka'b ibn Sawwar brought a Jew into the synagogue, placed the Torah on the Jew's head, and made him swear by God.

وَبِهِ إلَى سُفْيَانَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ أَنَّ كَعْبَ بْنَ سَوَّارٍ أَدْخَلَ يَهُودِيًّا الْكَنِيسَةَ وَوَضَعَ التَّوْرَاةَ عَلَى رَأْسِهِ وَاسْتَحْلَفَهُ بِاَللَّهِ.

L29202 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Ayyūb al-Sikhtiyānī from Ibn Sīrīn: Kaʿb ibn Sawwār would administer oaths to the People of the Book—referring to Christians—by placing the Gospel upon his head, then bringing him to the altar where he would make him swear by Allah.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ سِيرِينَ أَنَّ كَعْبَ بْنَ سَوَّارٍ كَانَ يُحَلِّفُ أَهْلَ الْكِتَابِ - يَعْنِي النَّصَارَى - يَضَعُ الْإِنْجِيلَ عَلَى رَأْسِهِ، ثُمَّ يَأْتِي بِهِ إِلَى الْمَذْبَحِ فَيُحَلِّفُهُ بِاللَّهِ.

L29203 Through the chain of Abu ʻUbayd, who narrated to us: Muhammad ibn ʻUbayd narrated from Ishaq ibn Abi Masirah, who said: A Muslim and a Christian brought their dispute to Al-Shaʻbi. The Christian said, “I swear by Allah.” Al-Shaʻbi declared, “No, O wicked one! You have been negligent toward Allah. Rather, go to the church and have him swear there by what those of his faith swear by.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُحَمَّدُ بْنُ عُبَيْدٍ عَنْ إِسْحَاقَ بْنِ أَبِي مسيرة قَالَ: اخْتَصَمَ إِلَى الشَّعْبِيِّ مُسْلِمٌ وَنَصْرَانِيٌّ، فَقَالَ النَّصْرَانِيُّ: أَحْلِفُ بِاللَّهِ فَقَالَ لَهُ الشَّعْبِيُّ: لَا، يَا خَبِيثُ قَدْ فَرَّطْت فِي اللَّهِ، وَلَكِنْ اذْهَبْ إِلَى الْبَيْعَةِ فَاسْتَحْلَفَهُ بِمَا يُسْتَحْلَفُ بِهِ مِثْلُهُ.

L29204 From the path of Mālik, from Dāwud ibn al-Ḥuṣayn, that he heard Abū Ghaṭafān ibn Ṭarīf al-Murrī say: Zayd ibn Thābit and Ibn Muṭīʿ disputed before Marwān regarding a property. Marwān ruled against Zayd, requiring him to swear upon the pulpit. Zayd said to him: “Shall I swear to him in my place?” Marwān replied: “No, by Allah—except in the places where rights are decided.” Zayd then began to swear that his right was indeed a true right, yet refused to swear upon the pulpit. Marwān began to marvel at Zayd.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ أَنَّهُ سَمِعَ أَبَا غَطَفَانَ بْنَ طَرِيفٍ الْمُرِّيَّ يَقُولُ: اخْتَصَمَ زَيْدُ بْنُ ثَابِتٍ، وَابْنُ مُطِيعٍ إِلَى مَرْوَانَ فِي دَارٍ، فَقَضَى مَرْوَانُ عَلَى زَيْدٍ بِالْيَمِينِ عَلَى الْمِنْبَرِ فَقَالَ لَهُ زَيْدٌ: أَحْلِفُ لَهُ مَكَانِي؟ فَقَالَ لَهُ مَرْوَانُ: لَا، وَاَللَّهِ إلَّا فِي مَقَاطِعِ الْحُقُوقِ، فَجَعَلَ زَيْدٌ يَحْلِفُ أَنَّ حَقَّهُ لَحَقٌّ، وَيَأْبَى أَنْ يَحْلِفَ عَلَى الْمِنْبَرِ فَجَعَلَ مَرْوَانُ يَعْجَبُ مِنْ زَيْدٍ.

L29205 It has been reported that ʿUmar ibn ʿAbd al-ʿAzīz made Sulaymān’s governors swear an oath at the Rock in Jerusalem, known as Bayt al-Maqdis.

وَقَدْ رُوِيَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَحْلَفَ عُمَّالَ سُلَيْمَانَ عِنْدَ الصَّخْرَةِ فِي بَيْتِ الْمَقْدِسِ.

L29206 And via the chain of narration of Al-Kashwārī from Ḥudhāfī from ʿAbd al-Razzāq from Isrāʾīl from Simāk ibn Ḥarb from Al-Shaʿbī: that Abū Mūsā al-Ashʿarī administered an oath to a Jew by Allah the Exalted. Al-Shaʿbī said: If only he had entered the Jewish prayer house with him.

وَمِنْ طَرِيقِ الْكَشْوَرِيِّ عَنْ الْحُذَافِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ إِسْرَائِيلَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ الشَّعْبِيِّ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ أَحْلَفَ يَهُودِيًّا بِاللَّهِ تَعَالَى: فَقَالَ الشَّعْبِيُّ: لَوْ أَدْخَلَهُ الْكَنِيسَةَ.

L29207–29208 So this clarifies that Abu Musa did not bring him into the church.

فَهَذَا يُوضِحُ أَنَّ أَبَا مُوسَى لَمْ يُدْخِلْهُ الْكَنِيسَةَ.

L29209 And through the chain of Abū ʻUbayd: Azhar al-Sammān narrated to us from ʻAbdullāh ibn ʻAwn from Nāfiʻ that Ibn ʻUmar was the trustee of a man. A man came to him with a document whose witnesses’ names had faded. Ibn

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَزْهَرُ السَّمَّانُ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ كَانَ وَصِيَّ رَجُلٍ فَأَتَاهُ رَجُلٌ بِصَكٍّ قَدْ دَرَسَتْ أَسْمَاءُ شُهُودِهِ، فَقَالَ ابْنُ عُمَرَ: يَا نَافِعُ

‘Umar said, “O Nāfi‘, take him to the pulpit and have him swear an oath.” The man said, “O Ibn ‘Umar—do you want to make me heard in the place where I am heard, then have me heard here?” Ibn ‘Umar replied, “He has spoken the truth,” so he administered the oath to him and granted him his due.

اذْهَبْ بِهِ إِلَى الْمِنْبَرِ فَاسْتَحْلِفْهُ فَقَالَ: يَا ابْنَ عُمَرَ أَتُرِيدُ أَنْ تُسْمِعَ فِي الَّذِي يَسْمَعُنِي، ثُمَّ يَسْمَعُنِي هَاهُنَا فَقَالَ ابْنُ عُمَرَ: صَدَقَ فَاسْتَحْلَفَهُ، وَأَعْطَاهُ إِيَّاهُ.

L29210 Abu Muhammad said: This does not indicate that Ibn Umar maintained the position of redirecting the oath to the claimant. It may be that this document serves as an acquittal from a liability against that man, in which case his entitlement is to swear the oath, unless he establishes conclusive proof of the acquittal.

قَالَ أَبُو مُحَمَّد: لَيْسَ فِي هَذَا أَنَّ ابْنَ عُمَرَ كَانَ يَرَى رَدَّ الْيَمِينِ عَلَى الطَّالِبِ، وَقَدْ يَكُونُ ذَلِكَ الصَّكُّ بَرَاءَةً مِنْ حَقٍّ عَلَى ذَلِكَ الرَّجُلِ فَحَقُّهُ الْيَمِينُ، إلَّا أَنْ يُقِيمَ بَيِّنَةً بِالْبَرَاءَةِ.

L29211 And through the chain of Waki‘ from Sharik from Jabir from a man among the descendants of Abu al-Hayyaj: that Ali ibn Abi Talib sent Abu al-Hayyaj as a judge to Sawad and ordered him to have them swear by Allah.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شَرِيكٍ عَنْ جَابِرٍ عَنْ رَجُلٍ مِنْ وَلَدِ أَبِي الْهَيَّاجِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ بَعَثَ أَبَا الْهَيَّاجِ قَاضِيًا إلَى السَّوَادِ، وَأَمَرَ أَنْ يُحَلِّفَهُمْ بِاَللَّهِ.

L29212 In this context: It is reported from Umar ibn al-Khattab and Ibn Mas’ud that a man was brought from Iraq to Mecca for judgment and to swear an oath at the Kaaba; Muawiyah’s administration of oaths concerning bloodshed between the Rukn (Black Stone Corner) and the Maqam (Station of Ibrahim); and Abd al-Rahman ibn Awf’s disapproval of oath-taking at the Kaaba except in cases involving bloodshed or substantial wealth.

فَفِي هَذَا: عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ: جُلِبَ رَجُلٌ مِنْ الْعِرَاقِ إلَى مَكَّةَ لِلْحُكْمِ وَاحْلَافِهِ عِنْدَ الْكَعْبَةِ، وَاسْتِحْلَافُ مُعَاوِيَةَ فِي دَمٍ بَيْنَ الرُّكْنِ وَالْمَقَامِ، وَإِنْكَارُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ الِاسْتِحْلَافَ عِنْدَ الْكَعْبَةِ، إلَّا فِي دَمٍ أَوْ كَثِيرٍ مِنْ الْمَالِ.

L29213 From Shurayh and Al-Shaʿbī: Administering oaths to disbelievers should be conducted according to their own revered practices. Similarly, Kaʿb ibn Sawwār added: placing the Torah on a Jew’s head and the Gospel on a Christian’s head.

وَعَنْ شُرَيْحٍ، وَالشَّعْبِيِّ: اسْتِحْلَافُ الْكُفَّارِ حَيْثُ يُعَظِّمُونَ وَكَذَلِكَ كَعْبُ بْنُ سَوَّارٍ - وَزَادَ: وَضْعَ التَّوْرَاةِ عَلَى رَأْسِ الْيَهُودِيِّ، وَالْإِنْجِيلِ عَلَى رَأْسِ النَّصْرَانِيِّ.

L29214 It is narrated from Marwan that the administering of oaths in Medina takes place near the pulpit of the Prophet (peace and blessings be upon him).

وَعَنْ مَرْوَانَ: أَنَّ الِاسْتِحْلَافَ بِالْمَدِينَةِ عِنْدَ مِنْبَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29215 It is narrated that Umar ibn Abd al-Aziz administered the oath to officials at the Rock of Jerusalem.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ اسْتِحْلَافُ الْعُمَّالِ عِنْدَ صَخْرَةِ بَيْتِ الْمَقْدِسِ.

L29216 From Ibn ‘Umar, ‘Ali, Zayd, and Abu Musa al-Ash‘ari: The administration of the oath is by Allah alone when conducted as part of the judge’s court proceedings.

وَعَنْ ابْنِ عُمَرَ، وَعَلِيٍّ، وَزَيْدٍ، وَأَبِي مُوسَى الْأَشْعَرِيِّ: الِاسْتِحْلَافُ " بِاَللَّهِ " فَقَطْ حَيْثُ كَانَ مِنْ مَجْلِسِ الْحَاكِمِ -.

L29217 It is narrated from Ibn ʻUmar and Zayd with the utmost soundness—and similarly from Abū ʻUbaydah ibn ʻAbdullāh ibn Masʻūd, according to what we will mention after this—if Allāh the Exalted wills.

وَهُوَ عَنْ ابْنِ عُمَرَ، وَزَيْدٍ فِي غَايَةِ الصِّحَّةِ - وَكَذَلِكَ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى.

L29218 As for what they swear by, we have previously mentioned in “the chapter on rulings related to refusal to take an oath” that ʿUthmān made Ibn ʿUmar swear by Allah alone.

وَأَمَّا بِمَاذَا يَحْلِفُونَ - فَقَدْ ذَكَرْنَا قَبْلَ هَذَا فِي " بَابِ الْحُكْمِ بِالنُّكُولِ " تَحْلِيفَ عُثْمَانَ لِابْنِ عُمَرَ " بِاَللَّهِ " فَقَطْ.

L29219 And from Zayd ibn Thabit: He swore by Allah that he had indeed sold the slave, and there was no disease in him that he [the seller] was aware of.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ الْحَلِفُ بِاَللَّهِ لَقَدْ بَاعَ الْعَبْدَ وَمَا بِهِ دَاءٌ يَعْلَمُهُ.

L29220 We previously mentioned—as reported by ʿAlī and Abū Mūsā—the imposition of an oath upon the disbelievers by Allah alone.

وَذَكَرْنَا آنِفًا عَنْ عَلِيٍّ، وَأَبِي مُوسَى اسْتِحْلَافَ الْكُفَّارِ " بِاَللَّهِ " فَقَطْ.

L29221–29222 And from Zayd ibn Thābit: “Swearing by Allah” alone - and it is from him, and from ʿUthmān in the utmost soundness.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ الْحَلِفُ " بِاَللَّهِ " فَقَطْ - وَهُوَ عَنْهُ، وَعَنْ عُثْمَانَ فِي غَايَةِ الصِّحَّةِ.

L29223 And through the chain of Abu ʾUbayd: Hushaym narrated to us - I, Al-Mughirah ibn Miqsam, said: “Umar ibn Abd al-Aziz wrote concerning the People of the Book that they should be made to swear by Allah.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ أَنَا الْمُغِيرَةُ بْنُ مِقْسَمٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي أَهْلِ الْكِتَابِ أَنْ يُسْتَحْلَفُوا " بِاَللَّهِ ".

L29224 And through the chain of Saʿīd ibn Manṣūr: Ismāʿīl ibn Sālim narrated: I heard Al-Shaʿbī say in extensive discourse: “If they fail to provide conclusive proof, then his oath is by Allah.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا إسْمَاعِيلُ بْنُ سَالِمٍ سَمِعْت الشَّعْبِيَّ يَقُولُ فِي كَلَامٍ كَثِيرٍ: إنْ لَمْ يُقِيمُوا الْبَيِّنَةَ فَيَمِينُهُ " بِاَللَّهِ ".

L29225 And through the chain of Abī ʻUbayd from Marwān ibn Muʿāwiyah al-Fazārī from Yaḥyā ibn Maysarah from ʻAmr ibn Murrah, who said: I was with Abū ʻUbaydah ibn ʻAbd Allāh ibn Masʻūd when he was a judge, and a Muslim and a Christian came to him disputing. He ruled to impose the oath on the Christian. The Muslim said to him: “Make him swear to me regarding the pledge?” Abū ʻUbaydah replied: “Make him swear by Allāh” and release him. A similar [ruling] is reported from ʻAṭā’.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ عَنْ يَحْيَى بْنِ مَيْسَرَةَ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ: كُنْت مَعَ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ وَهُوَ قَاضٍ فَاخْتَصَمَ إلَيْهِ: مُسْلِمٌ، وَنَصْرَانِيٌّ، فَقَضَى بِالْيَمِينِ عَلَى النَّصْرَانِيِّ فَقَالَ لَهُ الْمُسْلِمُ: اسْتَحْلِفْهُ لِي فِي الْبَيْعَةِ؟ فَقَالَ لَهُ أَبُو عُبَيْدَةَ: اسْتَحْلِفْهُ " بِاَللَّهِ " وَخَلِّ سَبِيلَهُ - وَنَحْوُهُ عَنْ عَطَاءٍ.

L29226 They require oaths to be sworn solely by Allah.

وَعَنْ مَسْرُوقٍ: اسْتِحْلَافُهُمْ بِاَللَّهِ فَقَطْ.

L29227 Through the chain of Ibrāhīm al-Nakhaʿī: They are adjured to swear by Allah, and a more stringent oath is imposed on them in accordance with their religion.

وَمِنْ طَرِيقِ إبْرَاهِيمَ النَّخَعِيِّ: يُسْتَحْلَفُونَ " بِاَللَّهِ " وَيُغَلَّظُ عَلَيْهِمْ بِدِينِهِمْ.

وَعَنْ شُرَيْحٍ: أَنَّهُ كَانَ يَسْتَحْلِفُهُمْ بِدِينِهِمْ وَقَدْ ذَكَرْنَاهُ قَبْلُ عَنْ الشَّعْبِيِّ.

L29228 And it is narrated from Shuraih that he would require them to swear by their religion, and we have mentioned this previously through the narration of Al-Sha'bi.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ قَالَ: يُسْتَحْلَفُ الْمُسْلِمُ وَالْكَافِرُ فِي مَجْلِسِ الْحَاكِمِ.

L29229 As for the later scholars, Abū Ḥanīfah said: A Muslim and a non-Muslim must be made to swear an oath in the judge's council.

فَأَمَّا الْمُسْلِمُ فَيُسْتَحْلَفُ " بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ عَالِمُ الْغَيْبِ وَالشَّهَادَةِ الرَّحْمَنُ الرَّحِيمُ الطَّالِبُ الْغَالِبُ الَّذِي يَعْلَمُ مِنْ السِّرِّ مَا يَعْلَمُ مِنْ الْعَلَانِيَةِ ".

L29230 As for the Muslim, he is to be made to swear by Allah, there is no deity except Him, the Knower of the unseen and the seen, the Most Gracious, the Most Merciful, the All-Pursuing, the Overpowering, Who knows from the hidden what He knows from the manifest.[12]

وَيُسْتَحْلَفُ الْيَهُودِيُّ " بِاَللَّهِ الَّذِي أَنْزَلَ التَّوْرَاةَ عَلَى مُوسَى ".

L29231 The Jew is made to swear: "By God, who revealed the Torah to Moses."

وَيُسْتَحْلَفُ النَّصْرَانِيُّ " بِاَللَّهِ الَّذِي أَنْزَلَ الْإِنْجِيلَ عَلَى عِيسَى ".

L29232 The Christian is made to swear by Allah, who sent down the Gospel upon Jesus.

وَيُسْتَحْلَفُ الْمَجُوسِيُّ " بِاَللَّهِ الَّذِي خَلَقَ النَّارَ ".

L29233 The Zoroastrian is made to swear, "By God, who created the fire."

وَكُلُّ هَذَا هُوَ قَوْلُ الشَّافِعِيِّ، إلَّا أَنَّهُ لَمْ يَذْكُرْ فِي التَّحْلِيفِ الطَّالِبَ الْغَالِبَ - وَرَأَى أَنْ يُحَلَّفَ فِي عِشْرِينَ دِينَارًا أَوْ فِي جِرَاحِ الْعَمْدِ عِنْدَ الْمَقَامِ بِمَكَّةَ، وَعِنْدَ مِنْبَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَدِينَةِ، وَأَنْ يُحَلَّفَ سَائِرُ أَهْلِ الْبِلَادِ فِي جَوَامِعِهِمْ.

L29234 All of this is the opinion of al-Shāfiʿī, except that he did not mention the prevailing claimant in the oath-taking. He held that the oath should be administered in twenty dinars or in intentional injury at the Station in Mecca and at the pulpit of the Prophet—peace and blessings be upon him—in Medina, and that all the people of the regions be made to swear in their congregational mosques.

وَأَمَّا مَا دُونَ عِشْرِينَ دِينَارًا فَفِي مَجْلِسِ الْحَاكِمِ.

L29235 As for what is less than twenty dinars, the ruling applies during the judge's session.

وَرَأَى أَنْ يُحَلَّفَ الْكُفَّارُ حَيْثُ يُعَظِّمُونَ.

L29236 He held the view that disbelievers should be made to swear oaths in the places they hold sacred.

وَقَالَ مَالِكٌ: يُحَلَّفُونَ فِي ثَلَاثَةِ دَرَاهِمَ فَصَاعِدًا فِي مَكَّةَ عِنْدَ الْمَقَامِ، وَفِي الْمَدِينَةِ عِنْدَ مِنْبَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَمَّا سَائِرُ أَهْلِ الْبِلَادِ فَحَيْثُ يُعَظَّمُ مِنْ الْجَوَامِعِ - وَتَخْرُجُ الْمَرْأَةُ الْمَسْتُورَةُ لِذَلِكَ لَيْلًا.

L29237–29238 Mālik said: They are to be sworn in cases involving three dirhams and upwards in Mecca at the Station of Abraham, and in Medina at the pulpit of the Prophet (peace and blessings of God be upon him and his family). As for the rest of the inhabitants of the regions, it is where the most venerated

[12] **Qur'an references (L29230):** Qur'an 59:22 (Al-Hashr).

among the congregational mosques is. A modestly covered woman may go out for this purpose at night.

وَأَمَّا مَا دُونَ ثَلَاثَةِ دَرَاهِمَ فَفِي مَجْلِسِ الْحَاكِمِ.

L29239 As for amounts below three dirhams, they are addressed in the judge's court.

وَيُحَلَّفُ الْمُسْلِمُ وَالْكَافِرُ " بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ ".

L29240 The Muslim and the disbeliever are made to swear, "By Allah, there is no deity except Him."

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: يُحَلَّفُ الْمُسْلِمُ " بِاللَّهِ " فِي مَجْلِسِ الْحَاكِمِ فِي الْمُصْحَفِ.

L29241 Ahmad ibn Hanbal said: A Muslim is adjured to swear by Allah in the judge's court upon the Quran.

وَأَمَّا الْكَافِرُ فَكَمَا قَالَ الشَّافِعِيُّ فِيهِمْ سَوَاءٌ سَوَاءٌ.

L29242 As for the disbeliever, Al-Shāfiʿī said concerning them: "Equal, equal."

وَمَا رُوِّينَا مِثْلُ قَوْلِ مَالِكٍ إِلَّا عَنْ شُرَيْحٍ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ، نا دَاوُد عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ: أَنَّهُ قَالَ فِي كَلَامٍ كَثِيرٍ " وَيَمِينُك بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ " يَعْنِي عَلَى الْمَطْلُوبِ.

L29243 Nothing resembling Mālik's statement has been narrated to us except from Shuraīḥ via the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us; Dāwūd narrated to us from al-Shaʿbī, from Shuraīḥ—that he said in a lengthy discourse: "Your oath by Allah—there is no deity except Him—" meaning this applies against the respondent.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ فِيمَا يُسْتَحْلَفُ بِهِ الْمُسْلِمُ فَمَا نَدْرِي مِنْ أَيْنَ أَخَذَاهُ، وَلَا مُتَعَلَّقَ لَهُمْ فِيهِ بِقُرْآنٍ، وَلَا بِسُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا بِقَوْلِ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ.

L29244 Abu Muhammad said: As for the opinion of Abū Ḥanīfa and al-Shāfiʿī concerning what a Muslim is obligated to swear by, we do not know where the two of them derived it from. They have no basis for it in the Quran, nor in a sound Sunnah or a sick one, nor in the juridical opinions of any scholar before Abū Ḥanīfa.

وَقَالَ بَعْضُهُمْ: قُلْنَا عَلَى سَبِيلِ التَّأْكِيدِ فِي الْيَمِينِ.

L29245 And some of them said, "We stated this to emphasize the binding nature of the oath."

قُلْنَا: مَا هَذَا بِتَأْكِيدٍ، لِأَنَّ اللَّهَ تَعَالَى إذَا ذُكِرَ بِاسْمِهِ اقْتَضَى الْقُدْرَةَ وَالْعِلْمَ وَأَنَّهُ لَمْ يَزَلْ، وَأَنَّهُ خَالِقُ كُلِّ شَيْءٍ، وَاقْتَضَى كُلَّ مَا يُخْبَرُ بِهِ عَنْ اللَّهِ تَعَالَى، فَإِنْ أَرَدْتُمْ أَنْ تَسْلُكُوا مَسْلَكَ الدُّعَاءِ وَالتَّعَبُّدِ فَكَانَ أَوْلَى بِكُمْ أَنْ تَزِيدُوا مَا زَادَهُ اللَّهُ تَعَالَى إذْ يَقُولُ: {الْمَلِكُ الْقُدُّوسُ السَّلامُ الْمُؤْمِنُ الْمُهَيْمِنُ الْعَزِيزُ الْجَبَّارُ الْمُتَكَبِّرُ سُبْحَانَ اللَّهِ عَمَّا يُشْرِكُونَ}

L29246 We said: This is not an affirmation, for when Allah the Exalted is mentioned by His name, it inherently necessitates His power, knowledge, eternal existence without beginning, His being the Creator of all things, and all that is attributed to Him. If you intend to adopt the path of supplication and devotion, it would be more appropriate for you to enumerate what Allah the Exalted Himself enumerated when He says: {The Sovereign, the Most Holy, the Source of Peace, the Affirmer of Truth, the Overseer, the Almighty, the Compeller, the Supreme. Glory be to Allah, above what they associate with Him} [al-Ḥashr 59:23]. Continue adding thus until your lifespans conclude

and your breaths cease. We are presently in the realm of legal judgment, not in a state of leisure for remembrance and worship.[13]

[الحشر: ٢٣] الْآيَةَ، فَزِيدُوا هَكَذَا حَتَّى تَفْنَى أَعْمَارُكُمْ، وَتَنْقَطِعَ أَنْفَاسُكُمْ، وَإِنَّمَا نَحْنُ فِي مَكَانِ حُكْمٍ لَا فِي تَفَرُّغٍ لِذِكْرٍ وَعِبَادَةٍ.

L29247 The most bizarre thing is Abū Ḥanīfah's addition to the names of Allah the Exalted: "the Seeker, the Prevailing One"—we do not know how he arrived at this. Whoever speaks excessively about matters they were neither commanded nor encouraged to engage with—their errors multiply. We seek refuge in Allah from going astray.

ثُمَّ أَغْرَبُ شَيْءٍ زِيَادَةُ أَبِي حَنِيفَةَ فِي أَسْمَاءِ اللَّهِ تَعَالَى: " الطَّالِبَ الْغَالِبَ " فَمَا نَدْرِي مِنْ أَيْنَ وَقَعَ عَلَيْهِ، وَمَنْ كَثُرَ كَلَامُهُ بِمَا لَمْ يُؤْمَرْ بِهِ، وَلَا نُدِبَ إِلَيْهِ -: كَثُرَ خَطَؤُهُ - وَنَعُوذُ بِاللَّهِ مِنْ الضَّلَالِ.

L29248–29250 If they say: "We intended by that to impose a harsher penalty," we say: "Then force them to relocate from Iraq and other regions to Mecca, for this is a severer sanction as reported from 'Umar, or make them swear upon the Quran as Ahmad ibn Hanbal stated, for this is..." It is more severe in strictness, and administer oaths you deem valid—such as those pertaining to divorce, manumission, and alms of wealth—for these are in your view stricter and more binding than swearing by Allah. Whatever arguments they present, refute them regarding these additions they have introduced, and there is no distinction.

فَإِنْ قَالُوا: قَصَدْنَا بِذَلِكَ التَّغْلِيظَ قُلْنَا: فَاجْلُبُوهُمْ مِنْ الْعِرَاقِ وَغَيْرِهَا إلَى مَكَّةَ فَهُوَ أَشَدُّ تَغْلِيظًا كَمَا رُوِيَ عَنْ عُمَرَ، أَوْ حَلِّفُوهُمْ فِي الْمُصْحَفِ كَمَا قَالَ أَحْمَدُ بْنُ حَنْبَلٍ، فَهُوَ أَشَدُّ تَغْلِيظًا، وَحَلِّفُوهُمْ بِمَا تَرَوْنَهُ أَيْمَانًا مِنْ الطَّلَاقِ، وَالْعَتَاقِ، وَصَدَقَةِ الْمَالِ، فَهُوَ عِنْدَكُمْ أَغْلَظُ وَأَوْكَدُ مِنْ الْيَمِينِ بِاَللَّهِ، فَأَيُّ شَيْءٍ قَالُوا رُدَّ عَلَيْهِمْ فِي هَذِهِ الزِّيَادَاتِ الَّتِي زَادُوهَا وَلَا فَرْقَ.

L29251 Or we say: Have them swear, "Upon him is the curse of Allah if he is lying," by juristic analogy to the procedure of mutual imprecation (liʿān), or respond to his oaths with reciprocal ones in the same manner.

أَوْ نَقُولُ: حَلِّفُوهُمْ بِ " عَلَيْهِ لَعْنَةُ اللَّهِ إنْ كَانَ كَاذِبًا " قِيَاسًا عَلَى الْمُلَاعِنِ، أَوْ رُدُّوا عَلَيْهِ الْأَيْمَانَ كَذَلِكَ.

L29252 As for his statement and that of al-Shafi'i - that a Christian should be made to swear "by Allah who revealed the Injīl to Jesus" - this is perplexing. We do not know from where they derived this, for there is no Quranic basis for them in this oath, neither a sound Sunnah nor a weak one, nor any statement of a Companion of the Prophet whatsoever.

وَأَمَّا قَوْلُهُ وَقَوْلُ الشَّافِعِيِّ: أَنْ يُحَلَّفَ النَّصْرَانِيُّ " بِاَللَّهِ الَّذِي أَنْزَلَ الْإِنْجِيلَ عَلَى عِيسَى " فَعَجَبٌ، وَلَا نَدْرِي مِنْ أَيْنَ أَخَذَاهُ، فَمَا فِي الْأَمْرِ لَهُمْ بِهَذِهِ الْيَمِينِ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ أَصْلًا.

L29253 The most astonishing thing is the ignorance of one who makes them swear by this, while they neither recognize it nor acknowledge it, nor has any Christian ever said: "Indeed, God revealed the Gospel to Jesus." Rather, the Gospel according to all Christians (without excluding a single one among them) consists of four histories: one was authored by Matthew, another by

وَأَعْجَبُ شَيْءٍ جَهْلُ مَنْ يُحَلِّفُهُمْ بِهَذَا، وَهُمْ لَا يَعْرِفُونَهُ وَلَا يُقِرُّونَ بِهِ، وَلَا قَالَ نَصْرَانِيٌّ قَطُّ: إنَّ اللَّهَ أَنْزَلَ الْإِنْجِيلَ عَلَى عِيسَى، وَإِنَّمَا الْإِنْجِيلُ عِنْدَ جَمِيعِ النَّصَارَى - لَا نُحَاشِي

[13] **Qur'an references (L29246):** Qur'an 59:23 (Al-Hashr).

John - both being disciples in their view - while the remaining two were authored by others.

مِنْهُمْ أَحَدًا - أَرْبَعَةُ تَوَارِيخَ -: أَلَّفَ أَحَدَهَا: مَتَّى - وَأَلَّفَ الْآخَرَ: يُوحَنَّا - وَهُمَا عِنْدَهُمْ حَوَارِيَّانِ.

L29254 And the third was authored by Marcos, and the fourth by Luke. They were disciples of some of the apostles according to all Christians on the face of the earth.

وَأَلَّفَ الثَّالِثَ: مُرْقُسُ - وَأَلَّفَ الرَّابِعَ: لُوقَا، وَهُمَا تِلْمِيذَانِ لِبَعْضِ الْحَوَارِيِّينَ عِنْدَ كُلِّ نَصْرَانِيٍّ عَلَى ظَهْرِ الْأَرْضِ.

L29255 They do not differ that its composition took place over years since the ascension of Jesus (peace be upon him).

وَلَا يَخْتَلِفُونَ: أَنَّ تَأْلِيفَهَا كَانَ عَلَى سِنِينَ مِنْ رَفْعِ عِيسَى - عَلَيْهِ السَّلَامُ -.

L29256 If they say, “We have made them swear by what is the truth,” we say: “Then make them swear by the Qur’an, for it is the truth.”

فَإِنْ قَالُوا: حَلَّفْنَاهُمْ بِمَا هُوَ الْحَقُّ قُلْنَا: فَحَلِّفُوهُمْ " بِالْقُرْآنِ " فَهُوَ حَقٌّ.

L29257 Then if they said: “They do not admit to it.”

فَإِنْ قَالُوا: هُمْ لَا يُقِرُّونَ بِهِ.

L29258 We said: They do not acknowledge that Allah, the Exalted, sent down the Gospel to Jesus (peace be upon him), nor do they acknowledge any distinction.

قُلْنَا: وَهُمْ لَا يُقِرُّونَ بِأَنَّ الْإِنْجِيلَ أَنْزَلَهُ اللَّهُ تَعَالَى عَلَى عِيسَى - عَلَيْهِ السَّلَامُ - وَلَا فَرْقَ.

L29259 As for their adjuring the Jews by “Allah who revealed the Torah to Moses,” they justified this through two authentic reports—one narrated via Al-Bara: “A lashed, soot-covered Jew passed by him (the Messenger of Allah, peace be upon him and his family), whereupon he summoned one of their scholars and said: ’I solemnly ask you by Allah who revealed the Torah to Moses—do you find this to be the prescribed punishment for the adulterer in your book?’ He replied: ’No. Had you not adjured me by this oath, I would not have informed you about the hadd of stoning.’”[14]

وَأَمَّا تَحْلِيفُهُمْ الْيَهُودَ " بِاللَّهِ الَّذِي أَنْزَلَ التَّوْرَاةَ عَلَى مُوسَى " فَإِنَّهُمْ مَوَّهُوا فِي ذَلِكَ بِالْخَبَرَيْنِ الصَّحِيحَيْنِ -: أَحَدُهُمَا: مِنْ طَرِيقِ الْبَرَاءِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَرَّ عَلَيْهِ يَهُودِيٌّ مُحَمَّمٌ مَجْلُودٌ، فَدَعَا رَجُلًا مِنْ عُلَمَائِهِمْ فَقَالَ: أَنْشُدُكَ بِاللَّهِ الَّذِي أَنْزَلَ التَّوْرَاةَ عَلَى مُوسَى أَهَكَذَا تَجِدُونَ حَدَّ الزَّانِي فِي كِتَابِكُمْ؟ قَالَ: لَا، وَلَوْلَا أَنَّكَ أَنْشَدْتَنِي بِهَذَا مَا أَخْبَرْتُكَ بِحَدِّ الرَّجْمِ» .

L29260–29261 Another narration is through the chain of Abu Hurairah: “The Messenger of Allah—peace and blessings be upon him and his family—said to the Jewish man: ’I adjure you by Allah who revealed the Torah to Moses, what do you find in the Torah as the punishment for a muḥṣan [a lawfully married person who has consummated marriage] who commits adultery?’ They replied: ’He

وَالْآخَرُ: مِنْ طَرِيقِ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِلْيَهُودِيِّ أَنْشُدُكُمْ بِاللَّهِ الَّذِي أَنْزَلَ التَّوْرَاةَ عَلَى مُوسَى مَا تَجِدُونَ فِي التَّوْرَاةِ عَلَى مَنْ زَنَى إذَا أَحْصَنَ قَالُوا: يُحَمَّمُ وَيُجَبَّهُ، وَشَابٌّ مِنْهُمْ سَكَتَ -» وَذَكَرَ الْحَدِيثَ.

[14] **Hadith references (L29259):** Sahih Muslim 1700a.

is blackened and struck on the forehead,' while a young man among them remained silent." And he mentioned the hadith.[15]

L29262 Abu Muhammad said: "This provides no proof for their argument, because this swearing of an oath did not occur during litigation, but rather during a solemn appeal. We do not prevent the appellant from invoking whatever he wishes of glorifying Allah—the Almighty and Majestic."

L29263 And there is not in both of them that the Messenger of Allah—peace be upon him and his family—commanded an oath to be administered thus. Therefore, whoever enforced this in the administration of oaths would be assuming the role of a legislator without Allah the Exalted's permission.

L29264 As for Mālik's statement that both the Muslim and the non-Muslim are to be made to swear "By Allah, there is no deity except Him," they based this on a report we narrated through the chain of Abū Dāwūd: Musaddad narrated to us, from Abū al-Ahwas, from ʿAṭāʾ ibn al-Sāʾib, from Abū Yaḥyā, from Ibn ʿAbbās: "The Prophet—peace be upon him and his family and grant him peace—said to a man whom he compelled to take an oath: 'Swear: By Allah, there is no deity except Him, that nothing of his is in your possession.'"[16]

L29265 Abu Muhammad said: This is a rejected ḥadīth for two reasons—the first: that it is narrated by Abū Yaḥyā, known as Miṣdaʿ the Lame—a discredited narrator whose Achilles tendons were severed for Shiʿism.

L29266 The second [point] is that Abu al-Ahwas only heard from 'Ata' ibn al-Sa'ib after the latter's mental confusion. Those who heard from 'Ata' before his mental decline were Sufyan, Shu'bah, Hammad ibn Zayd, and the well-known senior scholars.

L29267 It has been narrated to us through the chain of Waki' from Sufyan al-Thawri from 'Ata' ibn al-Sa'ib from Abu Yahya from Ibn 'Abbas, who said: "Two men came disputing to the Messenger of Allah (peace and blessings be upon him and his family). He said to the claimant: 'Present your evidence,' but he did

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ هَذَا التَّحْلِيفَ لَمْ يَكُنْ فِي خُصُومَةٍ، وَإِنَّمَا كَانَ فِي مُنَاشَدَةٍ، وَنَحْنُ لَا نَمْنَعُ الْمُنَاشِدَ أَنْ يَنْشُدَ بِمَا شَاءَ مِنْ تَعْظِيمِ اللَّهِ عَزَّ وَجَلَّ.

وَلَيْسَ فِيهِمَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَ أَنْ يُحَلَّفَ هَكَذَا فَكَانَ مَنْ أَلْزَمَ ذَلِكَ فِي التَّحْلِيفِ شَارِعًا مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

وَأَمَّا قَوْلُ مَالِكٍ يُسْتَحْلَفُ الْمُسْلِمُ وَالْكَافِرُ " بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ " فَإِنَّهُمْ عَوَّلُوا فِي ذَلِكَ عَلَى خَبَرٍ: رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا أَبُو الْأَحْوَصِ نا عَطَاءُ بْنُ السَّائِبِ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِرَجُلٍ أَحْلَفَهُ احْلِفْ: بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ مَا لَهُ عِنْدَكَ شَيْءٌ» .

قَالَ أَبُو مُحَمَّد: هَذَا حَدِيثٌ سَاقِطٌ لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ عَنْ أَبِي يَحْيَى - وَهُوَ مِصْدَعٌ الْأَعْرَجُ - وَهُوَ مُجَرَّحٌ قُطِعَتْ عُرْقُوبَاهُ فِي التَّشَيُّعِ.

وَالثَّانِي - أَنَّ أَبَا الْأَحْوَصِ لَمْ يَسْمَعْ مِنْ عَطَاءِ بْنِ السَّائِبِ إلَّا بَعْدَ اخْتِلَاطِ عَطَاءٍ، وَإِنَّمَا سَمِعَ مِنْ عَطَاءٍ قَبْلَ اخْتِلَاطِهِ: سُفْيَانُ، وَشُعْبَةُ، وَحَمَّادُ بْنُ زَيْدٍ، وَالْأَكَابِرُ الْمَعْرُوفُونَ.

وَقَدْ رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ " قَالَ: «جَاءَ رَجُلَانِ يَخْتَصِمَانِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لِلْمُدَّعِي: أَقِمْ الْبَيِّنَةَ، فَلَمْ يُقِمْ، وَقَالَ لِلْآخَرِ: احْلِفْ، فَحَلَّفَ -

[15] **Hadith references (L29261):** Sunan Abi Dawud 4450; Sunan Abi Dawud 3624.

[16] **Qur'an references (L29264):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr).

not present it. Then he said to the other: 'Swear an oath,' so he swore by Allah, the One who there is no deity except Him. The Prophet (peace and blessings be upon him and his family) said to him: 'Give him his right, and the oath you swore by "There is no deity except Him" will atone for what you did.'"

بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ - فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ادْفَعْ حَقَّهُ وَسَتُكَفِّرُ عَنْكَ لَا إِلَهَ إِلَّا هُوَ مَا صَنَعْتَ» .

L29268 Sufyan—whose hearing from ʿAṭāʾ is authenticated—states that the man swore in that manner because the Messenger of Allah—peace and blessings be upon him and his family—commanded him to swear thus. In any case, Abu Yaḥyā is of no account. How astonishing that even if it were authentic, it would contradict the doctrine of Mālik regarding a judge ruling based on his own knowledge without evidence.

فَسُفْيَانُ الَّذِي صَحَّ سَمَاعُهُ مِنْ عَطَاءٍ يَذْكُرُ أَنَّ الرَّجُلَ حَلَفَ كَذَلِكَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَهُ أَنْ يَحْلِفَ كَذَلِكَ، وَعَلَى كُلِّ حَالٍ فَأَبُو يَحْيَى لَا شَيْءَ ثُمَّ الْعَجَبُ أَنَّهُ لَوْ صَحَّ لَكَانَ خِلَافًا لِمَذْهَبِ مَالِكٍ فِي حُكْمِ الْحَاكِمِ بِعِلْمِهِ بِلَا بَيِّنَةٍ.

L29269–29270 Moreover, it is a rejected, fabricated, and corrupt narration, for it constitutes falsehood that is utterly impossible—that the Messenger of Allah (may Allah bless him and his family and grant him peace) would command him to swear a false oath while he (peace and blessings be upon him) knowingly recognizes him as a liar, thereby commanding him to lie. Allah is far exalted above such a thing!

ثُمَّ هُوَ حَدِيثٌ مُنْكَرٌ مَكْذُوبٌ فَاسِدٌ، لِأَنَّ مِنْ الْبَاطِلِ الْمُحَالِ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَأْمُرُهُ بِالْيَمِينِ الْكَاذِبَةِ، وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يَدْرِي أَنَّهُ كَاذِبٌ فَيَأْمُرُهُ بِالْكَذِبِ، حَاشَ لِلَّهِ مِنْ هَذَا.

L29271 And according to another report: narrated via Shuʿbah from ʿAṭāʾ ibn al-Sāʾib from Abu al-Bakhtariyy from ʿAbīdah al-Salmānī from Ibn al-Zubayr from the Prophet—may Allah bless him and his family and grant him peace—that a man swore falsely by Allah, besides whom there is no deity, and he was forgiven.[17]

وَعَلَى خَبَرٍ آخَرَ: مِنْ طَرِيقِ شُعْبَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ عَنْ ابْنِ الزُّبَيْرِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّ رَجُلًا حَلَفَ بِاللَّهِ الَّذِي لَا إِلَهَ إِلَّا هُوَ كَاذِبًا فَغُفِرَ لَهُ» .

L29272 Abū Muḥammad said: This contains no valid proof for them, as there exists neither an explicit text nor any evidence whatsoever indicating the obligation of swearing by this in matters of rights. Rather, it contradicts their assertion that they added this for emphasis and veneration. According to this report, it is merely an additional leniency that grants forgiveness for the liar in his oath, thereby facilitating for transgressors to swear falsely by it.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِيهِ نَصٌّ، وَلَا دَلِيلٌ عَلَى وُجُوبِ الْحَلِفِ بِذَلِكَ فِي الْحُقُوقِ أَصْلًا، بَلْ هُوَ ضِدُّ قَوْلِهِمْ: إنَّهُمْ زَادُوا ذَلِكَ تَأْكِيدًا وَتَعْظِيمًا فَعَلَى هَذَا الْخَبَرِ مَا هِيَ إلَّا زِيَادَةُ تَخْفِيفٍ مُوجِبَةٌ لِلْمَغْفِرَةِ لِلْكَاذِبِ فِي يَمِينِهِ، مُسَهِّلَةٌ عَلَى الْفُسَّاقِ أَنْ يَحْلِفُوا بِهَا كَاذِبِينَ.

[17] **Qur'an references (L29271):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr).

وَنَحْنُ لَا نُنْكِرُ أَنْ يَكُونَ تَعْظِيمُ اللَّهِ تَعَالَى وَالتَّوْحِيدُ لَهُ يُوَازِنُ مَا شَاءَ اللَّهُ أَنْ يُوَازِنَهُ مِنْ الْمَعَاصِي فَيُذْهِبُهَا.

L29273 We do not deny that glorifying Allah the Exalted and affirming His oneness counterbalances whatever sins Allah wills to counterbalance, so He eradicates them.

قَالَ تَعَالَى: {إِنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] .

L29274 He, the Exalted, said: "Indeed, good deeds remove the evil deeds" [Surah Hud 11:114].[18]

وَذَكَرُوا حَدِيثًا آخَرَ: رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ حَفْصِ بْنِ عَبْدِ اللَّهِ حَدَّثَنِي أَبِي نا إبْرَاهِيمُ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَأَى عِيسَى ابْنُ مَرْيَمَ رَجُلًا يَسْرِقُ فَقَالَ لَهُ أَسَرَقْتَ فَقَالَ: لَا، وَاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ فَقَالَ عِيسَى - عَلَيْهِ السَّلَامُ -: آمَنْتُ بِاَللَّهِ وَكَذَّبْتُ بَصَرِي» .

L29275 They mentioned another narration: We have reported it via the chain of Ahmad ibn Shuʿayb—Ahmad ibn Hafs ibn ʿAbdullāh reported: My father narrated to me, from Ibrāhīm, who informed us from Mūsā ibn ʿUqbah, from Ṣafwān ibn Sulaym, from ʿAṭāʾ ibn Yasār, from Abū Hurayrah, who said: "The Messenger of Allah—peace and blessings be upon him and his family—said: 'ʿĪsā ibn Maryam saw a man stealing and said to him: "Did you steal¿' He replied: "No, by Allah—the One besides whom there is no deity¡' Then ʿĪsā—peace be upon him—said: "I have believed in Allah and disbelieved my own sight.'"'"[19]

قَالَ أَبُو مُحَمَّدٍ: وَحَتَّى لَوْ صَحَّ هَذَا، فَلَيْسَ فِيهِ أَنَّ عِيسَى - عَلَيْهِ السَّلَامُ - أَمَرَهُ بِأَنْ يَحْلِفَ كَذَلِكَ فِي خُصُومَةٍ - ثُمَّ لَوْ كَانَ ذَلِكَ فِيهِ فَشَرِيعَةُ عِيسَى - عَلَيْهِ السَّلَامُ - لَا تَلْزَمُنَا، إنَّمَا يَلْزَمُنَا مَا أَتَانَا بِهِ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L29276 Abū Muḥammad said: Even if this were valid, there is no indication in it that Jesus—peace be upon him—commanded him to swear thus in a dispute. Moreover, even if that were present in it, the divine law of Jesus—peace be upon him—would not bind us. Only what Muḥammad—may Allah bless him, his family, and grant him peace—brought to us binds us.

وَذَكَرُوا الْخَبَرَ الَّذِي رُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ هِشَامٍ الْحَرَّانِيُّ نا مُحَمَّدُ بْنُ مَسْلَمَةَ عَنْ أَبِي عَبْدِ الرَّحِيمِ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ أَبِي إسْحَاقَ عَنْ عَمْرِو بْنِ مَيْمُونٍ الْأَوْدِيِّ عَنْ ابْنِ مَسْعُودٍ فَذَكَرَ «أَنَّهُ قَتَلَ أَبَا جَهْلٍ يَوْمَ بَدْرٍ، قَالَ: ثُمَّ أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَخْبَرْتُهُ فَقَالَ: آللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ، قُلْتُ: آللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ، قَالَ: آللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ؟ قُلْتُ: آللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ قَالَ: انْطَلِقْ فَاسْتَثْبِتْ؟ فَانْطَلَقْتُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنْ جَاءَكُمْ يَسْعَى مِثْلَ الطَّيْرِ يَضْحَكُ فَقَدْ صَدَقَ، فَانْطَلَقْتُ فَاسْتَثْبَتُّ ثُمَّ جِئْتُ وَأَنَا أَسْعَى

L29277–29279 They mentioned the report that we have also narrated through the chain of Aḥmad ibn Shuʿayb — ʿAmr ibn Hishām al-Ḥarrānī — Muḥammad ibn Maslamah — Abū ʿAbd al-Raḥīm — Zayd ibn Abī Unaysah — Abū Isḥāq — ʿAmr ibn Maymūn al-Awdī — Ibn Masʿūd, who mentioned that he killed Abū Jahl on the day of Badr. He said, "Then I came to the Messenger of Allah — may Allah bless him and his family and grant him peace — and informed him. He said, 'By Allah, besides whom there is no deity.' I said, 'By Allah.'" The One besides whom there is no deity. He said: "By Allah, besides whom there is no deity?" I responded: "By Allah, besides whom there is no deity." He said: "Go and verify?" I departed, and the Messenger of Allah (peace

[18] **Qur'an references (L29274):** Qur'an 11:114 (Hud).

[19] **Qur'an references (L29275):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr).

be upon him and his family) said: “If he comes to you hastening like a bird while laughing, he has spoken truthfully.” I went to verify, then returned hastening like a bird, laughing, and informed him. He said: “Go and show me the place.” I went with him and showed him the place. He praised Allah and said: “This is the Pharaoh of this nation.”[20]

مِثْلَ الطَّيْرِ أَضْحَكُ فَأَخْبَرْتُهُ فَقَالَ: انْطَلِقْ فَأَرِنِي مَكَانَهُ فَانْطَلَقْتُ مَعَهُ فَأَرَيْتُهُ مَكَانَهُ؟ فَحَمِدَ اللَّهَ وَقَالَ: هَذَا فِرْعَوْنُ هَذِهِ الْأُمَّةِ» .

L29280 Ali said: “This is a narrative to which they have no valid connection whatsoever, for several reasons—among them, that its chain of transmission is disputed. The authentic account is that none other than the two sons of Afraʾ killed Abū Jahl.”

قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ لَا مُتَعَلَّقَ لَهُمْ بِهِ أَصْلًا، لِوُجُوهٍ -: مِنْهَا - أَنَّهُ إسْنَادٌ مُتَكَلَّمٌ فِيهِ، وَالصَّحِيحُ: أَنَّهُ إنَّمَا قَتَلَ أَبَا جَهْلٍ ابْنَا عَفْرَاءَ.

L29281 Furthermore, it was not a dispute, but rather an appeal.

ثُمَّ إنَّهَا لَمْ تَكُنْ خُصُومَةً، إنَّمَا كَانَتْ مُنَاشَدَةً.

L29282 Then, if the Prophet’s oath to Ibn Mas‘ud—may Allah bless him and his household and grant him peace—necessitates that swearing in matters of rights must only be in that manner, his repetition of the oath—peace be upon him—would require reiterating the oath upon the swearer in such cases. Since this is invalid, your reliance upon it is thereby invalidated.

ثُمَّ إنْ كَانَتْ مُنَاشَدَةُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِابْنِ مَسْعُودٍ تُوجِبُ أَنْ لَا يَكُونَ التَّحْلِيفُ فِي الْحُقُوقِ إلَّا كَذَلِكَ، فَإِنَّ تَكْرَارَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مُنَاشَدَتَهُ يُوجِبُ أَنْ تَتَكَرَّرَ الْيَمِينُ عَلَى الْحَالِفِ فِي الْحُقُوقِ، وَهَذَا بَاطِلٌ - فَبَطَلَ مَا تَعَلَّقْتُمْ بِهِ.

L29283 Abū Muḥammad said: Thus, they were left with no valid justification whatsoever for stipulating this additional requirement in oath-taking.

قَالَ أَبُو مُحَمَّدٍ: فَلَمْ يَبْقَ لَهُمْ حُجَّةٌ أَصْلًا فِي إيجَابِهِمْ هَذِهِ الزِّيَادَةَ فِي التَّحْلِيفِ.

L29284 If they say, “It is an increase of good.”

فَإِنْ قَالُوا: هِيَ زِيَادَةُ خَيْرٍ.

L29285 We said: Yes, so oblige him to give charity and to pray four *rak’ahs*, for all of that is an increase in goodness—and it is not permissible for anyone to obligate another to perform a specific act of remembrance or righteous deed except through texts from the Qur’an or Sunnah that explicitly mandate that obligation; otherwise, the one who imposes what has no textual mandate in its obligation is disobedient to Allah, the Exalted and Glorious, and is transgressing His boundaries.

قُلْنَا: نَعَمْ فَأَلْزِمُوهُ الصَّدَقَةَ، وَأَنْ يُصَلِّيَ أَرْبَعَ رَكَعَاتٍ، فَكُلُّ ذَلِكَ زِيَادَةُ خَيْرٍ - وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُلْزِمَ آخَرَ فِعْلَ شَيْءٍ مُعَيَّنٍ مِنْ الذِّكْرِ وَالْبِرِّ إلَّا بِقُرْآنٍ أَوْ سُنَّةٍ يُوجِبُ نَصُّهُمَا ذَلِكَ، وَإِلَّا فَالْمُوجِبُ مَا لَا نَصَّ فِي إيجَابِهِ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ مُتَعَدٍّ لِحُدُودِهِ.

L29286 Abu Muhammad said: It is obligatory for us to examine what supports the validity of our position from the texts—so we found Allah, the Mighty and

قَالَ أَبُو مُحَمَّدٍ: وَوَجَبَ أَنْ نَنْظُرَ فِيمَا يَشْهَدُ بِصِحَّةِ قَوْلِنَا مِنْ النُّصُوصِ -: فَوَجَدْنَا اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {تَحْبِسُونَهُمَا مِنْ بَعْدِ الصَّلَاةِ فَيُقْسِمَانِ بِاللَّهِ إنِ ارْتَبْتُمْ} [المائدة: ١٠٦] .

[20] **Qur’an references (L29277):** Qur’an 20:98 (Taha); Qur’an 59:22 (Al-Hashr); Qur’an 59:23 (Al-Hashr).

Majestic, saying: “Detain them both after the prayer; then they shall swear by Allah if you are in doubt” [Al-Ma’idah: 106].[21]

L29287 And He, the Exalted, said: “Then they both swear by Allah: Our testimony is more rightful than theirs.” [Al-Ma’idah: 107][22]

L29288 And He, the Exalted, said: {So the testimony of one of them shall be four testimonies by Allah} [An-Nur: 6].[23]

L29289 And He, the Exalted, said: “That she testifies four testimonies by Allah averts the punishment from her” [An-Nur: 8].[24]

L29290 And Allah, the Most High, said: “They swore by Allah with the strongest of their oaths” [Al-An‘am 109].[25]

L29291 And He, the Most High, said: “Say, ’Yes, by my Lord!’” [Jonah 53].[26]

L29292–29293 Allah, the Exalted, has never commanded anyone to add anything in the act of swearing by Him beyond [saying] “by Allah.” Therefore, it is not permissible for anyone to add anything beyond that, thereby making such an addition obligatory.

L29294 Yunus ibn Abdullah narrated to us: Abu Bakr ibn Ahmad ibn Khalid narrated to us: Abi Ali ibn Abd al-Aziz narrated to us: Abu Ubayd narrated to us: Ismail ibn Ja’far—al-Muqri (the Quran reciter)—narrated to us: Abdullah ibn Dinar narrated from Ibn Umar, who said: “The Messenger of Allah—peace and blessings be upon him and his family—said: ’Whoever takes an oath, let him not swear except by Allah.’”

L29295 This is a clear text invalidating their additions and their imposition thereof as obligatory, contrary to what Allah, the Exalted, has commanded in the Qur’an and the Sunnah.

وَقَالَ تَعَالَى: {فَيُقْسِمَانِ بِاللَّهِ لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا} [المائدة: ١٠٧] .

وَقَالَ تَعَالَى: {فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ} [النور: ٦] .

وَقَالَ تَعَالَى: {وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ} [النور: ٨] .

وَقَالَ تَعَالَى: {وَأَقْسَمُوا بِاللَّهِ جَهْدَ أَيْمَانِهِمْ} [الأنعام: ١٠٩] .

وَقَالَ تَعَالَى: {قُلْ إِي وَرَبِّي} [يونس: ٥٣] .

فَلَمْ يَأْمُرْ اللَّهُ تَعَالَى قَطُّ أَحَدًا بِأَنْ يَزِيدَ فِي الْحَلِفِ عَلَى " بِاللَّهِ " شَيْئًا، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَزِيدَ عَلَى ذَلِكَ شَيْئًا مُوجِبًا لِتِلْكَ الزِّيَادَةِ.

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ نا أَبِي عَلِيِّ بْنِ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ نا إِسْمَاعِيلُ بْنُ جَعْفَرٍ - هُوَ الْمُقْرِي - نا عَبْدُ اللَّهِ بْنُ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» .

وَهَذَا نَصٌّ جَلِيٌّ عَلَى إبْطَالِ زِيَادَتِهِمْ وَإِيجَابِهِمْ مِنْ ذَلِكَ خِلَافَ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ وَالسُّنَّةِ -.

وَصَحَّ: «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَانَ يَحْلِفُ: لَا وَمُقَلِّبِ الْقُلُوبِ» .

[21] **Qur’an references (L29286):** Qur’an 5:106 (Al-Ma’idah).
[22] **Qur’an references (L29287):** Qur’an 5:107 (Al-Ma’idah).
[23] **Qur’an references (L29288):** Qur’an 24:6 (An-Nur).
[24] **Qur’an references (L29289):** Qur’an 24:8 (An-Nur).
[25] **Qur’an references (L29290):** Qur’an 6:109 (Al-An’am).
[26] **Qur’an references (L29291):** Qur’an 10:53 (Yunus).

فَصَحَّ: أَنَّ أَسْمَاءَ اللَّهِ تَعَالَى كُلَّهَا يَحْلِفُ الْحَالِفُ بِأَيِّهَا شَاءَ.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا خَالَفُوا فِيهِ عُثْمَانَ بْنَ عَفَّانَ، وَزَيْدَ بْنَ ثَابِتٍ مِمَّا صَحَّ عَنْهُمَا، وَمَا رُوِيَ عَنْ أَبِي مُوسَى، وَعَلِيٍّ، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - مُخَالِفٌ فِي ذَلِكَ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَمَا وَجَدْنَا قَوْلَ أَبِي حَنِيفَةَ فِي ذَلِكَ عَنْ أَحَدٍ قَبْلَهُ.

وَأَمَّا قَوْلُ مَالِكٍ: فَعَنْ شُرَيْحٍ وَحْدَهُ كَمَا ذَكَرْنَا.

وَأَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ: مِنْ حَيْثُ يَحْلِفُ النَّاسُ، فَقَوْلٌ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَقَلَّدُوا فِيهَا مَرْوَانَ.

وَخَالَفُوا: زَيْدَ بْنَ ثَابِتٍ، وَابْنَ عُمَرَ، وَهَذَا عَجَبٌ جِدًّا.

وَخَالَفُوا: عُمَرَ بْنَ الْخَطَّابِ فِي جَلْبِهِ رَجُلًا مِنْ الْعِرَاقِ لِيَحْلِفَ بِمَكَّةَ بِحَضْرَةِ الصَّحَابَةِ بِالْعِرَاقِ، وَالْحِجَازِ، وَمُعَاوِيَةَ فِي جَلْبِهِ مِنْ الْمَدِينَةِ إلَى مَكَّةَ بِحَضْرَةِ الصَّحَابَةِ - وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ أَهْوَاءَهُمْ - وَمَا نَعْلَمُ لِقَوْلِهِمْ سَلَفًا مِنْ الصَّحَابَةِ تَعَلَّقُوا بِهِ، إلَّا أَنَّهُمْ شَغَبُوا بِأَخْبَارٍ نَذْكُرُهَا - إنْ شَاءَ اللَّهُ تَعَالَى.

L29296 And it is authenticated that he—peace and blessings be upon him—would swear: “No, by Him who turns the hearts!”

L29297 It is valid for the swearer to swear by all the names of Allah the Exalted, as he chooses.

L29298 Abu Muhammad said: This is among the matters in which they opposed Uthman ibn Affan and Zayd ibn Thabit regarding what is authentically reported from them and what has been narrated from Abu Musa and Ali. No opponent among the Companions—may Allah the Exalted be pleased with them—is known to have opposed them in this matter at all. And success comes from Allah, the Exalted.

L29299 And we have not found Abu Hanifa’s statement on that transmitted from anyone before him.

L29300 As for Mālik’s opinion, it is from Shurayḥ alone, as we have mentioned.

L29301 As for the statement of Mālik and al-Shāfiʿī concerning the place where people swear oaths, it is a position not established by the Quran, the Sunnah, nor even an unsound narration, and they blindly followed Marwan in this matter.

L29302 They differed from Zayd ibn Thābit and Ibn ʿUmar, and this is a matter of profound astonishment.

L29303 They opposed ʿUmar ibn al-Khaṭṭāb regarding his bringing a man from Iraq to swear an oath in Mecca in the presence of the Companions in Iraq and the Hijaz, and Muʿāwiyah regarding his bringing someone from Medina to Mecca in the presence of the Companions—even though they revere such actions when these align with their desires. We know of no predecessor from the Companions to support their position, except that they clamored with reports we shall mention—if Allah the Exalted wills.

L29304–29306 It was narrated to us via the route of Mālik from Hāshim ibn Hāshim ibn ʿUtbah ibn Abī Waqqāṣ from ʿAbdullāh ibn Niṣṭās. Jabir ibn Abdullah reported that the Messenger of Allah—peace and blessings be upon him—

said: “Whoever swears a sinful oath near this pulpit of mine has taken his seat in the Fire.”

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ هَاشِمِ بْنِ هَاشِمِ بْنِ عُتْبَةَ بْنِ أَبِي وَقَّاصٍ عَنْ عَبْدِ اللَّهِ بْنِ نِسْطَاسٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ حَلَفَ عِنْدَ مِنْبَرِي هَذَا بِيَمِينٍ آثِمَةٍ تَبَوَّأَ مَقْعَدَهُ مِنْ النَّارِ» .

L29307 Through the chain of Aḥmad ibn Shuʿayb: From Ibrāhīm ibn Yaʿqūb, from Ibn Abī Maryam, from ʿAbdullāh ibn Munīb ibn ʿAbdillāh ibn Abī Umāmah ibn Thaʿlabah: My father informed me from ʿAbdullāh ibn ʿAṭiyyah, from ʿAbdullāh ibn Unays, from Abū Umāmah ibn Thaʿlabah, that the Messenger of Allah—peace and blessings be upon him and his family—said: “Whoever swears a false oath by this pulpit of mine to unlawfully seize a Muslim person’s property by it, upon him shall be the curse of Allah, the angels, and all humankind. Allah the Exalted will accept from him neither compensation nor ransom.”[27]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي إبْرَاهِيمُ بْنُ يَعْقُوبَ نا ابْنُ أَبِي مَرْيَمَ نا عَبْدُ اللَّهِ بْنُ مُنِيبِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي أُمَامَةَ بْنِ ثَعْلَبَةَ أَخْبَرَنِي أَبِي عَنْ عَبْدِ اللَّهِ بْنِ عَطِيَّةَ عَنْ عَبْدِ اللَّهِ بْنِ أُنَيْسٍ نا أَبُو أُمَامَةَ بْنُ ثَعْلَبَةَ، أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ حَلَفَ عِنْدَ مِنْبَرِي هَذَا بِيَمِينٍ كَاذِبَةٍ يَسْتَحِلُّ بِهَا مَالَ امْرِئٍ مُسْلِمٍ فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ لَا يَقْبَلُ اللَّهُ تَعَالَى مِنْهُ عَدْلًا وَلَا صَرْفًا» .

L29308 From the path of Ibn Waḍḍāḥ, from Abū Bakr ibn Abī Shaybah, narrated by Abū al-Aḥwaṣ from Simāk from ʿAlqamah ibn Wāʾil ibn Ḥujr from his father: “Two men disputed over land before the Messenger of Allah (peace be upon him). The Messenger of Allah (peace be upon him and his family) said to the claimant: ’Do you have evidence?’ He replied: ’No.’ He said: ’Then you may require his oath.’ The man said: ’O Messenger of Allah, he is a transgressor who does not care what he swears; he refrains from nothing.’ The Messenger of Allah (peace be upon him and his family) said: ’You have no option against him except that.’ When he went to swear for him, the Messenger of Allah (peace be upon him and his family) said: ’By Allah! If he swears falsely to wrongfully seize wealth, he will surely meet Allah with Him turning away from him.’”

وَمِنْ طَرِيقِ ابْنِ وَضَّاحٍ عَنْ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ سِمَاكٍ عَنْ عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ عَنْ أَبِيهِ، «أَنَّ رَجُلَيْنِ اخْتَصَمَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَرْضٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِلْمُدَّعِي: أَلَكَ بَيِّنَةٌ قَالَ: لَا، قَالَ: فَلَكَ يَمِينُهُ. فَقَالَ: يَا رَسُولَ اللَّهِ إنَّهُ فَاجِرٌ لَيْسَ يُبَالِي مَا حَلَفَ لَيْسَ يَتَوَرَّعُ مِنْ شَيْءٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَيْسَ لَكَ مِنْهُ إلَّا ذَلِكَ قَالَ: فَانْطَلَقَ لِيَحْلِفَ لَهُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَا وَاَللَّهِ لَئِنْ حَلَفَ عَلَى مَالِهِ لِيَأْكُلَهُ ظُلْمًا لَيَلْقَيَنَّ اللَّهَ وَهُوَ عَنْهُ مُعْرِضٌ» .

L29309 And through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Maʿmar narrated to us: Ḥibbān - he is Ibn Hilāl - narrated to us: Abū ʿAwānah narrated from ʿAbd al-Malik - he is Ibn ʿUmayr - from ʿAlqamah - he is Ibn Wāʾil - from Wāʾil ibn Ḥujr: “He heard the Prophet - may Allah’s peace and blessings be upon him and his family - say to a claimant regarding land:

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ مَعْمَرٍ نا حِبَّانُ - هُوَ ابْنُ هِلَالٍ - نا أَبُو عَوَانَةَ عَنْ عَبْدِ الْمَلِكِ - هُوَ ابْنُ عُمَيْرٍ - عَنْ عَلْقَمَةَ - هُوَ ابْنُ وَائِلٍ - عَنْ وَائِلِ بْنِ حُجْرٍ " أَنَّهُ «سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ لِلْمُدَّعِي فِي أَرْضٍ: بَيِّنَتُكَ قَالَ: لَيْسَ

[27] **Qur’an references (L29307):** Qur’an 2:161 (Al-Baqarah); Qur’an 3:87 (Ali ’Imran).

'Present your evidence.' He said: 'I have none.' The Prophet said: 'Then his oath.' He said: 'Then he will take away my property.' The Prophet said: 'You have nothing but that.' When he stood to swear, the Messenger of Allah - may Allah's peace and blessings be upon him and his family - said: 'Whoever seizes land unjustly will meet Allah on the Day of Resurrection while He is angry with him.'"

L29310 Abū Muḥammad said: This covers all their objections—as for the narration of ʿAlqamah ibn Wāʾil: The transmitter of the word "he proceeded" is Simāk ibn Ḥarb—and he is weak, prone to influence—moreover, the narration does not state that he proceeded to the pulpit. It may instead mean he proceeded in his speech to take an oath. Nor does it contain any indication that the Messenger of Allāh—may Allāh bless him and his family and grant him peace—commanded him to proceed or to stand. There is no proof in the action of anyone unless the Messenger of Allāh—may Allāh bless him and his family and grant him peace—had commanded him to do so.

L29311–29312 As for the first two reports: they contain nothing but emphasizing the gravity of the oath at his pulpit—peace and blessings be upon him—and they do not indicate that he—peace and blessings be upon him—commanded that the defendant should not swear an oath except before him. We have not differed with them on this point.

L29313 If these two reports had necessitated that the defendant only swear an oath at his *minbar*—peace and blessings be upon him—then Mālik and al-Shāfiʿī would have contradicted them on two points. The first is that they administer oaths at his *minbar* only for a certain amount of property, not for lesser quantities. I wonder where they derived this, for these two reports contain no restriction to specific quantities in oath-taking at his *minbar*. Rather, they explicitly establish equal treatment between small and large amounts in this matter—as narrated to us by Ḥumām, who narrated from ʿAbd Allāh ibn Muḥammad ibn ʿAlī al-Bājī, who narrated from ʿAbd Allāh ibn Yūnus, who narrated from Baqī ibn Makhlad, who narrated from Abū Bakr ibn Abī Shaybah, who narrated from ʿAbd Allāh ibn Numayr, who narrated from Hāshim ibn Hāshim ibn ʿUtbah, who reported: ʿAbd Allāh ibn Nisṭās informed me that he heard Jābir ibn ʿAbd Allāh say: The Messenger of God—peace and

لِي، قَالَ: يَمِينُهُ، قَالَ: إِذًا يَذْهَبُ بِمَالِي قَالَ: لَيْسَ لَكَ إِلَّا ذَلِكَ، فَلَمَّا قَامَ لِيَحْلِفَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَنْ اقْتَطَعَ أَرْضًا ظَالِمًا لَقِيَ اللَّهَ يَوْمَ الْقِيَامَةِ وَهُوَ عَلَيْهِ غَضْبَانُ» .

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا شَغَبُوا بِهِ -: فَأَمَّا خَبَرُ عَلْقَمَةَ بْنِ وَائِلٍ: فَإِنَّ رَاوِيَ لَفْظَةِ " انْطَلَقَ ": سِمَاكُ بْنُ حَرْبٍ - وَهُوَ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ - ثُمَّ لَيْسَ فِيهِ: أَنَّهُ انْطَلَقَ إلَى الْمِنْبَرِ، وَقَدْ يُرِيدُ انْطَلَقَ فِي كَلَامِهِ لِيَحْلِفَ، وَلَا فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَهُ بِالِانْطِلَاقِ، وَلَا بِالْقِيَامِ، وَلَا حُجَّةَ فِي فِعْلِ أَحَدٍ دُونَ أَنْ يَأْمُرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَأَمَّا الْخَبَرَانِ الْأَوَّلَانِ: فَلَيْسَ فِيهِمَا إلَّا تَعْظِيمُ الْيَمِينِ عِنْدَ مِنْبَرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَقَطْ، وَلَيْسَ فِيهِمَا: أَنَّهُ أَمَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنْ لَا يَحْلِفُ الْمَطْلُوبُ إلَّا عِنْدَهُ، وَنَحْنُ لَمْ نُخَالِفْهُمْ فِي هَذَا.

وَلَوْ كَانَ هَذَانِ الْخَبَرَانِ يُوجِبَانِ أَنْ لَا يَحْلِفَ الْمَطْلُوبُ إلَّا عِنْدَ مِنْبَرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَكَانَ مَالِكٌ، وَالشَّافِعِيُّ، قَدْ خَالَفَهَا فِي مَوْضِعَيْنِ -: أَحَدُهُمَا: أَنَّهُمَا لَا يُحَلِّفَانِ عِنْدَهُ إلَّا فِي مِقْدَارٍ مَا مِنْ الْمَالِ لَا فِي أَقَلَّ مِنْهُ، فَلَيْتَ شِعْرِي أَيْنَ وَجَدَا هَذَا؟ وَلَيْسَ فِي هَذَيْنِ الْخَبَرَيْنِ تَخْصِيصُ الْحَلِفِ عِنْدَهُ فِي عَدَدٍ دُونَ عَدَدٍ، بَلْ فِيهِ نَصُّ التَّسْوِيَةِ بَيْنَ الْقَلِيلِ وَالْكَثِيرِ فِي ذَلِكَ -: كَمَا حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نا هَاشِمُ بْنُ هَاشِمِ بْنِ عُتْبَةَ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ نِسْطَاسٍ: أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ

blessings be upon him—said: “No one swears a sinful oath at this *minbar* of mine, even concerning a green *miswak* (a tooth-stick), except that they will take their seat in the Fire.”[28]

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا يَحْلِفُ أَحَدٌ عِنْدَ مِنْبَرِي هَذَا عَلَى يَمِينٍ آثِمَةٍ وَلَوْ عَلَى سِوَاكٍ أَخْضَرَ إِلَّا تَبَوَّأَ مَقْعَدَهُ مِنْ النَّارِ» .

L29314 Thus, their disagreement became apparent concerning this very report.

فَظَهَرَ خِلَافُهُمْ لِهَذَا الْخَبَرِ نَفْسِهِ.

L29315 The other position is that they both administer oaths to those who are distant in other mosques besides it, thereby contradicting this ḥadīth as well. If it were permissible not to administer an oath to someone distant from the judge, it would necessarily be permissible for one who is near as well, for there is absolutely no distinction. There is no defined measure for distance or proximity in the Sharīʿah, unless someone arbitrarily sets a limit by personal opinion, thereby increasing hardship and introducing into the legal framework what Allah the Exalted has not authorized. Indeed, we find one for whom walking a hundred cubits is burdensome due to weakness, and another for whom walking fifty mīls is not burdensome. Thus, the invalidity of their statement in its entirety becomes evident.

وَالْمَوْضِعُ الْآخَرُ: أَنَّهُمَا يُحَلِّفَانِ مَنْ بَعُدَ فِي غَيْرِهِ مِنْ الْجَوَامِعِ، فَقَدْ خَالَفَا هَذَا الْخَبَرَ أَيْضًا، وَلَئِنْ جَازَ أَنْ لَا يُحَلَّفَ مَنْ بَعُدَ عَنْهُ عَلَيْهِ إنَّهُ لَجَائِزٌ فِيمَا قَرُبَ أَيْضًا وَلَا فَرْقَ، وَلَيْسَ لِلْبُعْدِ وَالْقُرْبِ حَدٌّ فِي الشَّرِيعَةِ، إلَّا أَنْ يَحُدَّ حَادٌّ بِرَأْيِهِ فَيَزِيدُ فِي الْبَلَاءِ وَالشَّرْعِ بِمَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَقَدْ نَجِدُ مَنْ يَشُقُّ عَلَيْهِ الْمَشْيُ لِضَعْفِهِ مِائَةَ ذِرَاعٍ وَمَنْ لَا يَشُقُّ عَلَيْهِ مَشْيُ خَمْسِينَ مِيلًا، فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً.

L29316 Moreover, it has been authentically established from the Messenger of Allah—peace and blessings be upon him and his family—through the strongest chain of these two reports: what we have narrated via the chain of Mālik, from al-ʿAlāʾ ibn ʿAbd al-Raḥmān, from Maʿbad ibn Kaʿb ibn Mālik, from his brother ʿAbdullāh ibn Kaʿb, from Abū Umāmah, that the Messenger of Allah—peace and blessings be upon him and his family—said: “Whoever seizes the right of a Muslim by his oath, Allah has forbidden Paradise to him and decreed the Fire for him.” They said: “Even if it is something minor, O Messenger of Allah?” He said: “Even if it is a twig from an arak tree.” He repeated it three times.

وَأَيْضًا: فَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَصَحِّ طَرِيقٍ مِنْ هَذَيْنِ الْخَبَرَيْنِ: مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ مَعْبَدِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَخِيهِ عَبْدِ اللَّهِ بْنِ كَعْبٍ عَنْ أَبِي أُمَامَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ اقْتَطَعَ حَقَّ امْرِئٍ مُسْلِمٍ بِيَمِينِهِ حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ وَأَوْجَبَ النَّارَ، قَالُوا: وَإِنْ كَانَ شَيْئًا يَسِيرًا يَا رَسُولَ اللَّهِ قَالَ: وَإِنْ كَانَ قَضِيبًا مِنْ أَرَاكٍ قَالَهَا ثَلَاثًا» .

L29317–29318 It was narrated through Al-Bazzar’s chain: Ahmad ibn Mansur → Abdur-Rahman ibn Yunus → Sufyan ibn Uyaynah → Amr ibn Dinar → Abi Salih → Abi Hurairah → the Prophet (peace and blessings be upon him and his household), who said: “Three whom Allah will not speak to on the Day of Resurrection,” including among them “a man who swears upon an oath

وَرُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نا أَحْمَدُ بْنُ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ بْنُ يُونُسَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «ثَلَاثَةٌ لَا يُكَلِّمُهُمْ اللَّهُ يَوْمَ الْقِيَامَةِ فَذَكَرَ فِيهِمْ وَرَجُلٌ حَلَفَ عَلَى يَمِينٍ بَعْدَ

[28] **Hadith references (L29313):** Sunan Abi Dawud 3246; Mishkat al-Masabih 3778.

after the Asr prayer to unlawfully seize the property of a Muslim man." Abu Muhammad said: If treating oaths with utmost gravity at his pulpit (peace and blessings be upon him) necessitates that those required to swear may only be made to do so in his presence, then his emphasis (peace and blessings be upon him) on the gravity of oaths after Asr prayer would similarly necessitate that those required to swear may only be made to do so at that specific time. Yet this contradicts their own position.

صَلَاةِ الْعَصْرِ لِيَقْتَطِعَ بِهَا مَالَ امْرِئٍ مُسْلِمٍ» . قَالَ أَبُو مُحَمَّد: فَإِنْ كَانَ تَعْظِيمُ الْحَلَفِ عِنْدَ مِنْبَرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مُوجِبًا لِأَنْ لَا يُحَلَّفَ الْمَطْلُوبُونَ إِلَّا عِنْدَهُ، فَإِنَّ تَعْظِيمَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْحَلَفَ بَعْدَ صَلَاةِ الْعَصْرِ مُوجِبٌ أَيْضًا: أَنْ لَا يُحَلَّفَ الْمَطْلُوبُونَ إِلَّا فِي ذَلِكَ الْوَقْتِ، وَهَذَا خِلَافُ قَوْلِهِمْ.

L29319 The height of amazement lies entirely in their analogy of all congregational mosques to his mosque—may Allah bless him and his family and grant him peace—when there is no dispute that no congregational mosque in all lands holds superiority over other mosques, and that if another mosque were designated as a congregational mosque while congregational prayers were abandoned in the existing one, there would fundamentally be no harm nor any [religious] disapproval. How, then, did these invalid analogies arise?

ثُمَّ الْعَجَبُ كُلُّهُ قِيَاسُهُمْ سَائِرَ الْجَوَامِعِ عَلَى مَسْجِدِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا خِلَافَ فِي أَنَّهُ لَا فَضْلَ لِجَامِعٍ فِي سَائِرِ الْبِلَادِ عَلَى سَائِرِ الْمَسَاجِدِ، وَأَنَّهُ لَوْ جُعِلَ مَسْجِدٌ آخَرُ جَامِعًا وَتُرِكَ التَّجْمِيعُ فِي الْجَامِعِ لَمَا كَانَ فِي ذَلِكَ حَرَجٌ أَصْلًا وَلَا كَرَاهَةٌ، فَمِنْ أَيْنَ خَرَجَتْ هَذِهِ الْقِيَاسَاتُ الْفَاسِدَةُ.

L29320 If they say, "We did that to deter the wrongdoer," we reply: "Then apply this to the minor and the major alike, for the warning in the Qur'an and Sunnah applies equally to all such cases—even to a twig of the arak tree (used for a toothstick)—unless you deem the minor [offense] trivial. This is the doctrine of an-Naẓẓām, Abū al-Hudhayl al-ʿAllāf, and Bishr ibn al-Muʿtamir—a group of no significant number."

فَإِنْ قَالُوا: فَعَلْنَا ذَلِكَ لِيَزْدَجِرَ الْمُبْطِلُ؟ قُلْنَا: فَافْعَلُوا ذَلِكَ فِي الْقَلِيلِ وَالْكَثِيرِ، فَإِنَّ الْوَعِيدَ جَاءَ فِي ذَلِكَ كُلِّهِ فِي الْقُرْآنِ وَالسُّنَّةِ سَوَاءً، حَتَّى فِي قَضِيبٍ مِنْ أَرَاكٍ، إِلَّا إِنْ كَانَ الْقَلِيلُ عِنْدَكُمْ خَفِيفًا - فَهَذَا مَذْهَبُ النَّظَّامِ، وَأَبِي الْهُذَيْلِ الْعَلَّافِ، وَبِشْرِ بْنِ الْمُعْتَمِرِ، وَهُمْ الْقَوْمُ لَا يُتَكَثَّرُ بِهِمْ.

L29321 Moreover, the rightful claimant may fear reputation and fame in bringing his case to the mosque, causing him to abandon his right. By your reasoning, you have caused the nullification of rights—fie on such reasoning!

وَأَيْضًا: فَإِنَّ الْمُحِقَّ قَدْ يَخْشَى السُّمْعَةَ وَالشُّهْرَةَ فِي حَمْلِهِ إِلَى الْجَامِعِ فَيَتْرُكُ حَقَّهُ، فَقَدْ حَصَلْتُمْ بِنَظَرِكُمْ عَلَى إبْطَالِ الْحُقُوقِ، وَأُفٍّ لِهَذَا نَظَرًا.

L29322 Abu Muhammad said: It became evident that if the oath had been obligatory in one place to the exclusion of another, or in one circumstance to the exclusion of another, the Prophet—peace and blessings be upon him—would have specified it. Since he did not specify this, no place may be singled out to the exclusion of another, nor any circumstance to the exclusion of another for the oath.

قَالَ أَبُو مُحَمَّد: فَصَحَّ أَنَّهُ لَوْ وَجَبَتْ الْيَمِينُ فِي مَكَانٍ دُونَ مَكَانٍ، وَفِي حَالٍ دُونَ حَالٍ: لَبَيَّنَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَإِذْ لَمْ يُبَيِّنْ ذَلِكَ فَلَا يُخَصُّ بِالْيَمِينِ مَكَانٌ دُونَ مَكَانٍ، وَلَا حَالٌ دُونَ حَالٍ.

L29323–29325 As for the extent of what Mālik and Al-Shāfiʿī hold regarding swearing in mosques, we have mentioned that Al-Shāfiʿī stated: ʿAbd al-Raḥmān ibn ʿAwf

rejected swearing near the Kaaba except in cases involving bloodshed or a substantial amount of wealth. This is baseless for several reasons, the first of which is: it is a weak narration with no known basis, origin, or chain of transmission. Then, even if it were authentic, there is no authoritative evidence in anyone other than the Messenger of Allah—peace and blessings be upon him and his family. Then, Abd al-Rahman died during the time of Uthman (may Allah be pleased with them both), and the governor of Mecca at that time was undoubtedly from the Companions due to the closeness of the Prophet's era. Therefore, the statement of Abd al-Rahman is not more valid than the statements of other Companions.

وَأَمَّا مِقْدَارُ مَا يُرَى فِيهِ مَالِكٌ، وَالشَّافِعِيُّ: التَّحْلِيفَ فِي الْجَوَامِعِ، فَقَدْ ذَكَرْنَا أَنَّ الشَّافِعِيَّ ذَكَرَ: أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ أَنْكَرَ التَّحْلِيفَ عِنْدَ الْكَعْبَةِ إلَّا فِي دَمٍ أَوْ كَثِيرٍ مِنْ الْمَالِ وَهَذَا لَيْسَ بِشَيْءٍ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهَا رِوَايَةٌ سَاقِطَةٌ لَا يُدْرَى لَهَا أَصْلٌ وَلَا مُنْبَعَثٌ وَلَا مَخْرَجٌ، ثُمَّ لَوْ صَحَّتْ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؛ ثُمَّ إنَّ عَبْدَ الرَّحْمَنِ مَاتَ زَمَنَ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا - فَوَالِي مَكَّةَ يَوْمئِذٍ كَانَ بِلَا شَكٍّ مِنْ الصَّحَابَةِ لِقُرْبِ الْعَهْدِ، فَلَيْسَ قَوْلُ عَبْدِ الرَّحْمَنِ أَوْلَى مِنْ قَوْلِ غَيْرِهِ مِنْ الصَّحَابَةِ.

L29326 Moreover, Abd al-Rahman did not set the limit regarding abundant wealth as Malik and al-Shafi'i did. We know of no one who preceded Malik in setting this limit at three dirhams, nor anyone who preceded al-Shafi'i in setting it at twenty dinars.

ثُمَّ لَمْ يَحُدَّ عَبْدُ الرَّحْمَنِ فِي كَثِيرِ الْمَالِ مَا حَدَّهُ مَالِكٌ، وَالشَّافِعِيُّ، وَمَا نَعْلَمُ أَحَدًا سَبَقَ مَالِكًا إلَى تَحْدِيدِ ذَلِكَ بِثَلَاثَةِ دَرَاهِمَ، وَلَا مَنْ سَبَقَ الشَّافِعِيَّ إلَى تَحْدِيدِهِ بِعِشْرِينَ دِينَارًا.

L29327 If it is said: "That the hand is severed for three dirhams for which [this punishment applies]..."

فَإِنْ قِيلَ: إنَّ فِي ثَلَاثَةِ دَرَاهِمَ تُقْطَعُ الْيَدُ فِيهَا.

L29328 We said: And who set that limit? Only a group of scholars set it at a quarter dinar, while regarding three dirhams they did not. This contradicts al-Shāfiʿī's specification that twenty dinars constitute the threshold for obligatory zakāh. How then did they arrive at this particularization, excluding the two hundred dirhams for which the scriptural text is authenticated?

قُلْنَا: وَمَنْ حَدَّ ذَلِكَ، إنَّمَا حَدَّ قَوْمٌ بِرُبُعِ دِينَارٍ، وَأَمَّا بِثَلَاثَةِ دَرَاهِمَ فَلَا - وَيُعَارِضُ هَذَا تَحْدِيدُ الشَّافِعِيِّ بِأَنَّ عِشْرِينَ دِينَارًا تَجِبُ فِيهَا الزَّكَاةُ، فَمِنْ أَيْنَ وَقَعَ لَهُمْ تَخْصِيصُ ذَلِكَ دُونَ مِائَتَيْ دِرْهَمٍ الَّتِي صَحَّ فِيهَا النَّصُّ.

L29329 Or others contest them with an equivalent to the diyah, and all of this is confused and meaningless.

أَوْ يُعَارِضُهُمْ آخَرُونَ بِمِقْدَارِ الدِّيَةِ، وَهَذَا كُلُّهُ تَخْلِيطٌ لَا مَعْنَى لَهُ.

L29330 They are told: "Do you not see that oppression against Muslims is taken lightly in cases below the value that necessitates hand amputation? Allah is far removed from this! We find a million dinars seized through usurpation without requiring amputation, though usurpation and theft are equal as unjust acts and wrongful appropriation of wealth. Indeed, the usurper may bear greater sin for openly humiliating a Muslim - we have no doubt that one who usurps a single dinar commits greater sin than a thief stealing

وَيُقَالُ لَهُمْ: أَتَرَوْنَ مَا دُونَ مَا تُقْطَعُ فِيهِ الْيَدُ أَيُتَسَاهَلُ فِي ظُلْمِ الْمُسْلِمِينَ فِيهِ؟ حَاشَ لِلَّهِ مِنْ هَذَا، وَقَدْ وَجَدْنَا أَلْفَ أَلْفِ دِينَارٍ تُؤْخَذُ غَصْبًا فَلَا يَجِبُ فِيهَا قَطْعٌ، وَالْغَصْبُ وَالسَّرِقَةُ سَوَاءٌ فِي أَنَّهُمَا ظُلْمٌ، وَأَخْذُ مَالٍ بِالْبَاطِلِ وَلَعَلَّ الْغَاصِبَ أَعْظَمُ إثْمًا، لِاهْتِضَامِهِ

a quarter-dinar. Among Muslims, a dirhem is of immense value to a poor person, while a thousand dinars are trivial to a wealthy person. Thus, the corruption of these claims becomes evident through undeniable certainty - all praise belongs to Allah, Lord of the worlds."

الْمُسْلِمَ عَلَانِيَةً، بَلْ لَا نَشُكُّ فِي أَنَّ غَاصِبَ دِينَارٍ أَعْظَمُ إِثْمًا مِنْ سَارِقِ رُبُعِ دِينَارٍ، وَفِي الْمُسْلِمِينَ مَنْ الدِّرْهَمُ عِنْدَهُ عَظِيمٌ لِفَقْرِهِ، وَفِيهِمْ مَنْ أَلْفُ دِينَارٍ عِنْدَهُ قَلِيلٌ لِيَسَارِهِ، فَظَهَرَ فَسَادُ هَذِهِ الْأَقْوَالِ بِيَقِينٍ لَا إِشْكَالَ فِيهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.



AL-MUHALLA

كِتَابُ الشَّهَادَاتِ

The Book of Testimony

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

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The Book of Testimony

[كِتَابُ الشَّهَادَاتِ]

In the name of Allah, the Most Gracious, the Most Merciful. Book of Testimonies 1789 – Chapter: It is impermissible to accept any testimony from men or women except [that of] a just and approved person.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الشَّهَادَاتِ ١٧٨٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُقْبَلَ فِي شَيْءٍ مِنْ الشَّهَادَاتِ مِنْ الرِّجَالِ وَالنِّسَاءِ إلَّا عَدْلٌ رَضِيٌّ.

A just person is one who is not known to have committed a major sin nor openly persists in a minor sin.

وَالْعَدْلُ: هُوَ مَنْ لَمْ تُعْرَفْ لَهُ كَبِيرَةٌ، وَلَا مُجَاهَرَةٌ بِصَغِيرَةٍ.

A major sin is that which the Messenger of Allah—may Allah bless him and grant him peace—has termed a major sin, or that which entails a divine threat of punishment.

وَالْكَبِيرَةُ: هِيَ مَا سَمَّاهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَبِيرَةً، أَوْ مَا جَاءَ فِيهِ الْوَعِيدُ.

A minor sin is one for which no divine punishment is prescribed.

وَالصَّغِيرَةُ: مَا لَمْ يَأْتِ فِيهِ وَعِيدٌ.

The proof of this is the statement of Allah the Exalted: “O you who believe, if a transgressor comes to you with information, verify it, lest you harm a people in ignorance and become regretful for what you have done” [Al-Hujurat 49:6].[1]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا أَنْ تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْبِحُوا عَلَى مَا فَعَلْتُمْ نَادِمِينَ} [الحجرات: ٦] .

There is none except a transgressor or a non-transgressor. The transgressor is one from whom transgression originates, and all major sins are transgressions. Thus, the acceptance of a transgressor’s report is invalidated, leaving none except the just: he who is not a transgressor.

وَلَيْسَ إلَّا فَاسِقٌ أَوْ غَيْرُ فَاسِقٍ، فَالْفَاسِقُ: هُوَ الَّذِي يَكُونُ مِنْهُ الْفِسْقُ، وَالْكَبَائِرُ كُلُّهَا فُسُوقٌ - فَسَقَطَ قَبُولُ خَبَرِ الْفَاسِقِ، فَلَمْ يَبْقَ إلَّا الْعَدْلُ: وَهُوَ مَنْ لَيْسَ بِفَاسِقٍ.

As for minor sins, Allah, the Almighty and Majestic, said: “If you avoid the major sins which you are forbidden, We will remove your misdeeds” [An-Nisa: 31].[2]

وَأَمَّا الصَّغَائِرُ: فَإِنَّ اللَّهَ عَزَّ وَجَلَّ قَالَ: {إِنْ تَجْتَنِبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ} [النساء: ٣١] .

It is established that sins lesser than major ones are expiated by avoiding major sins. As for what Allah the Exalted has expiated and remitted, no one may blame his companion for it nor describe him with it.

فَصَحَّ: أَنَّ مَا دُونَ الْكَبَائِرِ مُكَفَّرَةٌ بِاجْتِنَابِ الْكَبَائِرِ، وَمَا كَفَّرَهُ اللَّهُ تَعَالَى وَأَسْقَطَهُ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَذُمَّ بِهِ صَاحِبَهُ وَلَا أَنْ يَصِفَهُ بِهِ.

Similarly, whoever repents from disbelief or what is lesser than it - when

وَكَذَلِكَ مَنْ تَابَ مِنْ الْكُفْرِ فَمَا دُونَهُ فَإِنَّهُ إذَا سَقَطَ عَنْهُ بِالتَّوْبَةِ مَا تَابَ عَنْهُ لَمْ يَجُزْ لِأَحَدٍ أَنْ يَذُمَّهُ بِمَا سَقَطَ عَنْهُ، وَلَا أَنْ يَصِفَهُ بِهِ.

[1] **Qur’an references (L29337):** Qur’an 49:6 (Al-Hujurat).
[2] **Qur’an references (L29339):** Qur’an 4:31 (An-Nisa).

what he repented from has been lifted from him through repentance, it becomes impermissible for anyone to censure him for what has been removed, nor to attribute those lifted misdeeds to him.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: كُلُّ مُسْلِمٍ فَهُوَ عَدْلٌ حَتَّى يَثْبُتَ عَلَيْهِ الْفِسْقُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدَةَ قَالَ: نا كَثِيرُ بْنُ هِشَامٍ قَالَ: نا جَعْفَرُ بْنُ بُرْقَانَ قَالَ: كَتَبَ عُمَرُ إِلَى أَبِي مُوسَى: الْمُسْلِمُونَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ إِلَّا مُجَرَّبًا عَلَيْهِ شَهَادَةُ زُورٍ، أَوْ مَجْلُودًا فِي حَدٍّ، أَوْ ظَنِينًا فِي وَلَاءٍ، أَوْ قَرَابَةٍ.

L29342–29344 And indeed, people have differed concerning this: A group said: Every Muslim is deemed trustworthy until moral transgression is established against him, as transmitted through Abū ʿUbaydah's chain: Kathīr ibn Hishām narrated to us, saying: Jaʿfar ibn Burqān narrated to us, saying: ʿUmar wrote to Abū Mūsā: "Muslims are deemed trustworthy by one another, except one proven to have given false testimony, one flogged for a ḥadd, or one suspected of partiality in patronage or kinship."

وَحَدَّثَنَاهُ أَيْضًا: أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ قَالَ: نا أَبُو ذَرٍّ الْهَرَوِيُّ، وَعَبْدُ الرَّحْمَنِ بْنُ الْحَسَنِ الْفَارِسِيُّ قَالَ: نا أَبُو ذَرٍّ: نا الْخَلِيلُ بْنُ أَحْمَدَ الْقَاضِي السِّجِسْتَانِيُّ نا يَحْيَى بْنُ مُحَمَّدِ بْنِ صَاعِدٍ نا يُوسُفُ بْنُ مُوسَى الْقَطَّانُ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى نا عَبْدُ الْمَلِكِ بْنُ الْوَلِيدِ بْنُ مَعْدَانَ عَنْ أَبِيهِ: أَنَّ عُمَرَ كَتَبَ إِلَى أَبِي مُوسَى فَذَكَرَهُ كَمَا هُوَ - وَقَالَ عَبْدُ الرَّحْمَنِ بْنُ الْحَسَنِ الْفَارِسِيُّ: نا الْقَاضِي أَحْمَدُ بْنُ مُحَمَّدٍ الْكَرْخِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْعَلَّافُ نا أَحْمَدُ بْنُ عَلِيِّ بْنُ مُحَمَّدٍ الْوَرَّاقُ نا عَبْدُ اللَّهِ بْنُ أَبِي سَعِيدٍ نا مُحَمَّدُ بْنُ يَحْيَى بْنُ أَبِي عُمَرَ الْعَدَنِيُّ نا سُفْيَانُ عَنْ إِدْرِيسَ بْنِ يَزِيدَ الْأَوْدِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ، فَذَكَرَهُ كَمَا أَوْرَدْنَاهُ.

L29345 And it was also narrated to us by Ahmad ibn Umar ibn Anas al-Udhuri, who said: Abu Dharr al-Harawi and Abd al-Rahman ibn al-Hasan al-Farisi narrated to us from Abu Dharr: Al-Khalil ibn Ahmad al-Qadi al-Sijistani narrated to us: Yahya ibn Muhammad ibn Ṣāʿid narrated to us: Yusuf ibn Musa al-Qattan narrated to us: Ubayd Allah ibn Musa narrated to us: Abd al-Malik ibn al-Walid ibn Maʿdan narrated from his father: that Umar wrote to Abu Musa and mentioned it as it is. And Abd al-Rahman ibn al-Hasan al-Farisi narrated: Al-Qadi Ahmad ibn Muhammad al-Karkhi narrated to us: Muhammad ibn Abd Allah al-Allaf narrated to us: Ahmad ibn Ali ibn Muhammad al-Warraq narrated to us: Abdullah ibn Abi Saʿid narrated to us: Muhammad ibn Yahya ibn Abi Umar al-Adani narrated to us: Sufyan narrated from Idris ibn Yazid al-Awdi from Abdullah ibn Abi Burdah ibn Abi Musa al-Ashʿari from his father, who said: Umar ibn al-Khattab wrote to Abu Musa al-Ashʿari, and mentioned it as we have cited it.

قَالَ أَبُو مُحَمَّدٍ: فِي هَذِهِ الرِّسَالَةِ بِبَعْضِ هَذِهِ الْأَسَانِيدِ " وَقِسْ الْأُمُورَ بَعْضَهَا بِبَعْضٍ " وَفِي بَعْضِهَا " وَاعْرِفْ الْأَشْبَاهَ وَالْأَمْثَالَ " وَعَلَيْهَا عَوَّلَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فِي الْحُكْمِ بِالْقِيَاسِ، ثُمَّ لَمْ يُبَالُوا بِخِلَافِهَا فِي أَنَّ " الْمُسْلِمِينَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ، إِلَّا مُجَرَّبًا عَلَيْهِ شَهَادَةُ زُورٍ، أَوْ ظَنِينًا فِي وَلَاءٍ، أَوْ قَرَابَةٍ ".

L29346 Abu Muhammad said: In this treatise, with some of these chains of transmission, "Measure matters against one another," and in some of them, "Recognize the analogies and examples." Upon this the Hanafis, Malikis, and Shafi'is relied in ruling by analogy. Then they disregarded its contradiction to the principle that "Muslims are upright among each other, except one proven to have faced false testimony, or suspected due to allegiance (walā') or kinship."

L29347 The Mālikīs and Shāfiʿīs openly oppose this position, maintaining that Muslims are subject to rejection in their school until their moral integrity becomes valid.

فَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: مُجَاهِرُونَ بِخِلَافِ هَذَا، وَالْمُسْلِمُونَ عِنْدَهُمْ عَلَى الرَّدِّ حَتَّى تَصِحَّ الْعَدَالَةُ.

L29348 According to Abū Ḥanīfah, Muslims are presumed to possess integrity until the opposing party impugns the witness. If the opposing party does so, the testimony remains suspended until the witness's integrity is conclusively established.

وَأَمَّا أَبُو حَنِيفَةَ: فَالْمُسْلِمُونَ عِنْدَهُ عَلَى الْعَدَالَةِ حَتَّى يَطْعَنَ الْخَصْمُ فِي الشَّاهِدِ فَإِذَا طَعَنَ فِيهِ الْخَصْمُ تَوَقَّفَ فِي شَهَادَتِهِ حَتَّى تَثْبُتَ لَهُ الْعَدَالَةُ.

L29349 All of this contradicts the position of ʿUmar, for sometimes his statement is authoritative evidence, and sometimes his statement is not authoritative evidence - as is evident. If it is argued: "You have narrated through the chain of transmission of Abū ʿUbayd, from al-Ashjaʿī, from Sufyān al-Thawrī, from Manṣūr, from Ibrāhīm al-Nakhaʿī, who said: 'The reliable narrator among Muslims is one from whom no moral doubt has arisen'..."

فَهَذَا كُلُّهُ بِخِلَافِ قَوْلِ عُمَرَ، فَمَرَّةً قَوْلُهُ حُجَّةٌ، وَمَرَّةً قَوْلُهُ لَيْسَ بِحُجَّةٍ، وَهَذَا كَمَا تَرَى، فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا الْأَشْجَعِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْعَدْلُ مِنْ الْمُسْلِمِينَ الَّذِي لَمْ تَظْهَرْ مِنْهُ رِيبَةٌ.

L29350–29352 And via the chain of Al-Bukhari: Al-Ḥakam ibn Nāfiʿ (Abū al-Yamān) narrated to us, Shuʿayb (Ibn Abī Ḥamzah) narrated to us. From Az-Zuhri, Humaid ibn Abdur-Rahman ibn Awf narrated to us: That Abdullah ibn Utbah ibn Mas'ud said: I heard Umar ibn al-Khattab say: "People were judged by revelation during the time of Allah's Messenger ﷺ, but revelation has now ceased. We now judge you only by your apparent deeds. Whoever shows us good, we grant him security and draw him close, though we have nothing to do with his inner state - Allah will call him to account for his inner state. But whoever shows us evil, we neither grant him security nor believe him, even if he says his inner state is good."

وَمِنْ طَرِيقِ الْبُخَارِيِّ: نا الْحَكَمُ بْنُ نَافِعٍ - هُوَ أَبُو الْيَمَانِ - نا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ عَنْ الزُّهْرِيِّ نا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ بْنُ عَوْفٍ: أَنَّ عَبْدَ اللَّهِ بْنَ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: سَمِعْت عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: إنَّ نَاسًا كَانُوا يُؤْخَذُونَ بِالْوَحْيِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّ الْوَحْيَ قَدْ انْقَطَعَ، وَإِنَّمَا نَأْخُذُكُمْ الْآنَ بِمَا ظَهَرَ مِنْ أَعْمَالِكُمْ، فَمَنْ أَظْهَرَ لَنَا خَيْرًا أَمِنَّاهُ وَقَرَّبْنَاهُ، وَلَيْسَ لَنَا مِنْ سَرِيرَتِهِ شَيْءٌ، وَاَللَّهُ يُحَاسِبُهُ فِي سَرِيرَتِهِ، وَمَنْ أَظْهَرَ لَنَا سُوءًا لَمْ نَأْمَنْهُ وَلَمْ نُصَدِّقْهُ، وَإِنْ قَالَ: إنَّ سَرِيرَتَهُ حَسَنَةٌ.

L29353 We said: This is an authentic report from ʿUmar, and all that we have mentioned from him is agreed upon as we have mentioned - that every Muslim is upright unless wrongdoing becomes apparent from him. Similarly, the statement of Ibrāhīm, and likewise what has been narrated - that it was said to ʿUmar, "False testimony has become widespread," and he replied, "No man in Islam is facilitated except through the just ones" - its apparent meaning is that the just ones refer to Muslims, except one against whom false testimony is established.

قُلْنَا: هَذَا خَبَرٌ صَحِيحٌ عَنْ عُمَرَ، وَكُلُّ مَا ذَكَرْنَا عَنْهُ فَمُتَّفَقٌ عَلَى مَا ذَكَرْنَا مِنْ أَنَّ كُلَّ مُسْلِمٍ فَهُوَ عَدْلٌ مَا لَمْ يَظْهَرْ مِنْهُ شَرٌّ، وَكَذَلِكَ قَوْلُ إبْرَاهِيمَ، وَكَذَلِكَ مَا رُوِيَ مِنْ أَنَّ عُمَرَ قِيلَ لَهُ: إنَّ شَهَادَةَ الزُّورِ قَدْ فَشَتْ؟ فَقَالَ: لَا يُوسَرُ رَجُلٌ فِي الْإِسْلَامِ بِغَيْرِ الْعُدُولِ: مَعْنَاهُ عَلَى ظَاهِرِهِ: أَنَّ الْعُدُولَ هُمْ الْمُسْلِمُونَ إلَّا مَنْ صَحَّتْ عَلَيْهِ شَهَادَةُ زُورٍ.

L29354 This was narrated to us by Ḥumām from al-Bājī from ʿAbd Allāh ibn Yūnus;

narrated to us Baqī ibn Makhlad; narrated to us Abū Bakr ibn Abī Shaybah; narrated to us Wakīʿ; narrated to us al-Masʿūdī from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad from his father, who said: ʿUmar ibn al-Khaṭṭāb declared: Indeed, let no one in Islam be granted ease through false testimony, for we accept none except the just.

حَدَّثَنَا بِذَلِكَ حُمَامٌ عَنْ الْبَاجِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: أَلَّا لَا يُوسَرُ أَحَدٌ فِي الْإِسْلَامِ بِشُهُودِ الزُّورِ، فَإِنَّا لَا نَقْبَلُ إِلَّا الْعُدُولَ.

L29355 It has been narrated to us through Ibn Abī Shaybah's chain: Ibn Abī Zā'idah reported from Ṣāliḥ ibn Ḥayy from al-Shaʿbī, who said: "The testimony of a Muslim man is admissible provided he has not committed an offense against a free person or is known to have corruption in his religion."

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ: نا ابْنُ أَبِي زَائِدَةَ عَنْ صَالِحِ بْنِ حَيٍّ عَنْ الشَّعْبِيِّ قَالَ: تَجُوزُ شَهَادَةُ الرَّجُلِ الْمُسْلِمِ مَا لَمْ يُصِبْ حُرًّا أَوْ تُعْلَمْ عَلَيْهِ خَرَبَةٌ فِي دِينِهِ.

L29356 Through the chain of Ibn Abi Shaybah: 'Abbād ibn al-'Awwām narrated to us from 'Awf from al-Ḥasan that he would accept the testimony of one who prays unless the opposing party presented evidence to impugn him.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ عَوْفٍ عَنْ الْحَسَنِ أَنَّهُ كَانَ يُجِيزُ شَهَادَةَ مَنْ صَلَّى إِلَّا أَنْ يَأْتِيَ الْخَصْمُ بِمَا يُجَرِّحُهُ بِهِ.

L29357 If it is said: You have transmitted via Ibn Abi Shaybah's chain—narrated to us by Jarir, who reported from Mansur from Ibrahim: "Neither the testimony of a person of doubtful integrity nor that of an accused party is valid in divorce matters."

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ لَا يَجُوزُ فِي الطَّلَاقِ شَهَادَةُ ظَنِينٍ وَلَا مُتَّهَمٍ.

L29358 We said: It is possible that He specified divorce, due to Allah's statement, exalted is He, regarding it: {When you divorce women, divorce them for their waiting period} [At-Talaq: 1] up to His statement: {And take two just witnesses from among you} [At-Talaq: 2]. Thus, by the definitive text, divorce is only permissible if initiated by someone known, not someone suspected.[3]

قُلْنَا: قَدْ يُمْكِنُ أَنْ يَكُونَ خَصَّ الطَّلَاقَ، لِقَوْلِ اللَّهِ تَعَالَى فِيهِ: {إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] إِلَى قَوْلِهِ تَعَالَى: {وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] فَلَمْ يَجُزْ فِي الطَّلَاقِ بِالنَّصِّ إِلَّا مَنْ عُرِفَ لَا مَنْ يُتَّهَمُ.

L29359 Abu Muhammad said: Those who held the view that Muslims are presumed upright individuals until valid impugnment is established argued: Before puberty, one is free from any grounds for impugnment. When he reaches puberty as a Muslim—given that Islam constitutes goodness, nay, it encompasses all that is good—goodness is confirmed in him. Thus he remains upright until certainty is established of the contrary.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ ذَهَبَ إِلَى أَنَّ الْمُسْلِمِينَ عُدُولٌ حَتَّى تَصِحَّ الْجُرْحَةُ: بِأَنَّهُ قَبْلَ الْبُلُوغِ بَرِيءٌ مِنْ كُلِّ جُرْحَةٍ، فَلَمَّا بَلَغَ مُسْلِمًا، فَالْإِسْلَامُ خَيْرٌ، بَلْ هُوَ جَامِعٌ لِكُلِّ خَيْرٍ فَقَدْ صَحَّ مِنْهُ الْخَيْرُ، فَهُوَ عَدْلٌ حَتَّى يُوقَنَ مِنْهُ بِضِدِّ ذَلِكَ.

L29360–29361 Thus, we said: When a Muslim reaches puberty, he enters the category of those for whom good is recorded and evil is recorded against him, and it is not possible for anyone to be free from sin.

فَقُلْنَا: إِذَا بَلَغَ الْمُسْلِمُ فَقَدْ صَارَ فِي نِصَابِ مَنْ يُكْتَبُ لَهُ الْخَيْرُ، وَيُكْتَبُ عَلَيْهِ الشَّرُّ، وَلَا يُمْكِنُ أَنْ يَكُونَ أَحَدٌ سَلِمَ مِنْ ذَنْبٍ.

[3] **Qur'an references (L29358):** Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq).

L29362 He, the Exalted, said: “And if Allah were to punish people for their wrongdoing, He would not leave upon the earth any creature” [An-Nahl: 61]. And He said: “And if Allah were to punish people for what they have earned, He would not leave upon the earth any creature” [Fatir: 45].[4]

L29363 It is established that there is no one who has not wronged himself or committed sin. Since this is confirmed and inevitable, judgment regarding his report and testimony must be suspended until it is determined where his sins have placed him—whether among the transgressors (in which case his testimony becomes invalid by God’s explicit decree: *{If a transgressor comes to you with news, verify it}* [Al-Hujurat: 6]) or among those forgiven for their sins, the wrong they did to themselves in them, and the sins they committed—whether through repentance, abstaining from major sins, or having minor sins covered [by divine grace]—by the boundless favor of God Almighty upon us.[5]

L29364 Abu Muhammad said: Abu Yusuf said: Whoever is free from the immoral acts that incur prescribed punishments and from major sins among those resembling offenses requiring prescribed punishments, performs the obligatory duties, and whose virtuous traits outweigh his disobedience—we accept his testimony, for no servant [of God] is entirely free from sin.

L29365 And if sins exceed the morals of righteousness, we reject his testimony.

L29366 We do not permit the testimony of someone who plays chess and gambles in connection with it.

L29367 Nor the one who plays with the pigeons by racing them.

L29368 Nor the one who habitually swears false oaths.

L29369 Abu Muhammad said: This is a contradictory statement; because he based it on the abundance of good and the abundance of evil—and this is invalid. For whoever is confirmed to have committed adultery once is a sinner until he repents.

قَالَ تَعَالَى: {وَلَوْ يُؤَاخِذُ اللَّهُ النَّاسَ بِظُلْمِهِمْ مَا تَرَكَ عَلَيْهَا مِنْ دَابَّةٍ} [النحل: ٦١] وَقَالَ تَعَالَى: {وَلَوْ يُؤَاخِذُ اللَّهُ النَّاسَ بِمَا كَسَبُوا مَا تَرَكَ عَلَى ظَهْرِهَا مِنْ دَابَّةٍ} [فاطر: ٤٥] .

فَصَحَّ: أَنَّهُ لَا أَحَدَ إِلَّا وَقَدْ ظَلَمَ نَفْسَهُ وَاكْتَسَبَ إِثْمًا، فَإِذْ قَدْ صَحَّ هَذَا وَلَا بُدَّ، فَلَا بُدَّ مِنْ التَّوَقُّفِ فِي خَبَرِهِ وَشَهَادَتِهِ حَتَّى يُعْلَمَ أَيْنَ أَحَلَّتْهُ ذُنُوبُهُ فِي جُمْلَةِ الْفَاسِقِينَ: فَتَسْقُطُ شَهَادَتُهُ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى: {إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا} [الحجرات: ٦] أَمْ فِي جُمْلَةِ الْمَغْفُورِ لَهُمْ مَا أَذْنَبُوا، وَمَا ظَلَمُوا فِيهِ أَنْفُسَهُمْ، وَمَا كَسَبُوا مِنْ إثْمٍ بِالتَّوْبَةِ، أَوْ بِاجْتِنَابِ الْكَبَائِرِ، وَالتَّسَتُّرِ بِالصَّغَائِرِ: بِفَضْلِ اللَّهِ تَعَالَى عَلَيْنَا.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو يُوسُفَ: مَنْ سَلِمَ مِنْ الْفَوَاحِشِ الَّتِي تَجِبُ فِيهَا الْحُدُودُ وَمَا يُشْبِهُ مَا يَجِبُ فِيهِ الْحُدُودُ مِنْ الْعَظَائِمِ، وَكَانَ يُؤَدِّي الْفَرَائِضَ، وَأَخْلَاقُ الْبِرِّ فِيهِ أَكْثَرُ مِنْ الْمَعَاصِي: قَبِلْنَا شَهَادَتَهُ، لِأَنَّهُ لَا يَسْلَمُ عَبْدٌ مِنْ ذَنْبٍ.

وَإِنْ كَانَتْ الْمَعَاصِي أَكْثَرَ مِنْ أَخْلَاقِ الْبِرِّ رَدَدْنَا شَهَادَتَهُ.

وَلَا نُجِيزُ شَهَادَةَ مَنْ يَلْعَبُ بِالشِّطْرَنْجِ وَيُقَامِرُ عَلَيْهَا.

وَلَا مَنْ يَلْعَبُ بِالْحَمَامِ وَيُطَيِّرُهَا.

وَلَا مَنْ يُكْثِرُ الْحَلِفَ بِالْكَذِبِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَلَامٌ مُتَنَاقِضٌ، لِأَنَّهُ بَنَاهُ عَلَى كَثْرَةِ الْخَيْرِ وَكَثْرَةِ الشَّرِّ - وَهَذَا بَاطِلٌ، لِأَنَّهُ مَنْ ثَبَتَ عَلَيْهِ زِنًى مَرَّةً فَهُوَ فَاسِقٌ حَتَّى يَتُوبَ.

[4] **Qur’an references (L29362):** Qur’an 16:61 (An-Nahl); Qur’an 35:45 (Fatir).

L29370 Then he rejected the testimony on the grounds of playing with pigeons—and we are not certain that such an act is forbidden unless there is theft of people's pigeons.

ثُمَّ رَدَّ الشَّهَادَةَ بِاللَّعِبِ بِالْحَمَامِ - وَمَا نَدْرِي ذَلِكَ مُحَرَّمًا مَا لَمْ يَسْرِقْ حَمَامَ النَّاسِ.

L29371 Al-Shafiʿi said: If obedience and moral integrity predominantly characterize his conduct, his testimony is accepted. However, if transgression and behavior contrary to moral integrity predominantly characterize his conduct, his testimony is rejected.

وَقَالَ الشَّافِعِيُّ: إِذَا كَانَ الْأَغْلَبُ وَالْأَظْهَرُ مِنْ أَمْرِهِ الطَّاعَةَ وَالْمُرُوءَةَ: قُبِلَتْ شَهَادَتُهُ، وَإِذَا كَانَ الْأَغْلَبُ مِنْ أَمْرِهِ الْمَعْصِيَةَ، وَخِلَافَ الْمُرُوءَةِ: رُدَّتْ شَهَادَتُهُ.

L29372–29374 Abū Muḥammad said: It should have sufficed to mention obedience and disobedience. As for his mention of virtuous conduct here, it is a superfluity of speech and a flaw in the matter, for if it is part of obedience, then obedience suffices. Regarding that, even if it is not an act of obedience, it is impermissible to stipulate it in religious matters, as no explicit text from the Quran or Sunnah has been provided regarding it.

قَالَ أَبُو مُحَمَّدٍ: كَانَ يَجِبُ أَنْ يَكْتَفِيَ بِذِكْرِ الطَّاعَةِ وَالْمَعْصِيَةِ، وَأَمَّا ذِكْرُهُ الْمُرُوءَةَ هَاهُنَا فَفُضُولٌ مِنْ الْقَوْلِ وَفَسَادٌ فِي الْقَضِيَّةِ؛ لِأَنَّهَا إنْ كَانَتْ مِنْ الطَّاعَةِ فَالطَّاعَةُ تُغْنِي عَنْهَا، وَإِنْ كَانَتْ لَيْسَتْ مِنْ الطَّاعَةِ فَلَا يَجُوزُ اشْتِرَاطُهَا فِي أُمُورِ الدِّيَانَةِ، إذْ لَمْ يَأْتِ بِذَلِكَ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ.

L29375 Mālik said in the narration transmitted by Muḥammad ibn ʿAbd al-Ḥakam from him: Whoever's predominant behavior is obedience and has not committed a major sin is considered upright—and this is the view of Abū Sulaymān, our companions, and it is the truth as we have clarified—and success is through Allah, the Exalted.

وَقَالَ مَالِكٌ فِي رِوَايَةِ مُحَمَّدِ بْنِ عَبْدِ الْحَكَمِ عَنْهُ: مَنْ كَانَ أَكْثَرُ أَمْرِهِ الطَّاعَةَ وَلَمْ يُقْدِمْ عَلَى كَبِيرَةٍ فَهُوَ عَدْلٌ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَهُوَ الْحَقُّ كَمَا بَيَّنَّا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29376 The issue of what is admissible in testimony in cases of zina [unlawful sexual intercourse].

[مَسْأَلَةُ مَا يُقْبَلُ فِي شَهَادَةِ الزِّنَا]

L29377 Issue 1790: It is impermissible to accept fewer than four upright Muslim male witnesses in cases of unlawful sexual intercourse (zinā). If four men are unavailable, two upright Muslim women may testify in place of each missing man. This results in the following valid configurations: three men and two women, two men and four women, one man and six women, or eight women alone.

١٧٩٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُقْبَلَ فِي الزِّنَى أَقَلُّ مِنْ أَرْبَعَةِ رِجَالٍ عُدُولٍ مُسْلِمِينَ، أَوْ مَكَانَ كُلِّ رَجُلٍ امْرَأَتَانِ مُسْلِمَتَانِ عَدْلَتَانِ، فَيَكُونُ ذَلِكَ ثَلَاثَةَ رِجَالٍ وَامْرَأَتَيْنِ، أَوْ رَجُلَيْنِ وَأَرْبَعَ نِسْوَةٍ، أَوْ رَجُلًا وَاحِدًا وَسِتَّ نِسْوَةٍ، أَوْ ثَمَانِ نِسْوَةٍ فَقَطْ.

L29378 And in all rights—including prescribed punishments, blood money, retribution, marriage, divorce, retraction of divorce, and financial matters—no

وَلَا يُقْبَلُ فِي سَائِرِ الْحُقُوقِ كُلِّهَا مِنْ الْحُدُودِ وَالدِّمَاءِ، وَمَا فِيهِ الْقِصَاصُ وَالنِّكَاحُ، وَالطَّلَاقُ، وَالرَّجْعَةُ، وَالْأَمْوَالُ، إلَّا رَجُلَانِ مُسْلِمَانِ عَدْلَانِ، أَوْ رَجُلَانِ وَامْرَأَتَانِ

[5] **Qur'an references (L29363):** Qur'an 49:6 (Al-Hujurat).

testimony is accepted except from two upright Muslim men; or two men and two women of the same qualifications; or four women of the same qualifications. However, in all these matters except the prescribed punishments, the testimony of a single upright man or two women of the same qualifications is accepted alongside the plaintiff's oath.

كَذَلِكَ، أَوْ أَرْبَعُ نِسْوَةٍ كَذَلِكَ - وَيُقْبَلُ فِي كُلِّ ذَلِكَ - حَاشَا الْحُدُودَ - رَجُلٌ وَاحِدٌ عَدْلٌ أَوْ امْرَأَتَانِ كَذَلِكَ مَعَ يَمِينِ الطَّالِبِ.

L29379 In breastfeeding alone, one righteous woman or one righteous man is accepted.

وَيُقْبَلُ فِي الرَّضَاعِ وَحْدَهُ امْرَأَةٌ وَاحِدَةٌ عَدْلَةٌ أَوْ رَجُلٌ وَاحِدٌ عَدْلٌ.

L29380 As for the obligation of accepting four witnesses in cases of illicit sexual intercourse, it is established by the explicit text of the Quran, and there is no disagreement concerning it. Allah, the Exalted, said: "And those who accuse chaste women and then do not produce four witnesses, flog them eighty lashes" [An-Nur: 4].[6]

فَأَمَّا وُجُوبُ قَبُولِ أَرْبَعَةٍ فِي الزِّنَى فَبِنَصِّ الْقُرْآنِ، وَلَا خِلَافَ فِيهِ، قَالَ تَعَالَى: {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] .

L29381–29383 As for the acceptance of two men in all rights comprehensively, or a man and two women in deferred debts, Allah the Exalted said: {When you incur debt between yourselves for a fixed term, record it} [Al-Baqarah: 282] up to His statement: {And take as witnesses two men from your people. If two men are not available, then a man and two women from those you approve as witnesses} [Al-Baqarah: 282]. Allah the Exalted also said: {When you divorce women, divorce them at the commencement of their waiting period} [At-Talaq: 1] up to His statement: {Then either retain them honorably or release them honorably, and take as witnesses two just men from among you} [At-Talaq: 2]. And a group claimed that the acceptance of two just male witnesses in all legal rulings is established by analogy to the explicit text of Allah the Exalted concerning divorce and revocable divorce.[7]

وَأَمَّا قَبُولُ رَجُلَيْنِ فِي سَائِرِ الْحُقُوقِ كُلِّهَا، أَوْ رَجُلٍ وَامْرَأَتَيْنِ فِي الدُّيُونِ الْمُؤَجَّلَةِ، فَإِنَّ اللَّهَ تَعَالَى قَالَ: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] إِلَى قَوْلِهِ - {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ} [البقرة: ٢٨٢] وَقَالَ تَعَالَى: {إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] إِلَى قَوْلِهِ -: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] وَادَّعَى قَوْمٌ: أَنَّ قَبُولَ عَدْلَيْنِ مِنَ الرِّجَالِ فِي سَائِرِ الْأَحْكَامِ قِيَاسًا عَلَى نَصِّ اللَّهِ تَعَالَى فِي الطَّلَاقِ وَالرَّجْعَةِ.

L29384 They differed regarding the acceptance of women's testimony when given independently in any matter, and regarding their testimony alongside a man's in cases other than deferred debts.

وَاخْتَلَفُوا فِي قَبُولِ شَهَادَةِ النِّسَاءِ مُنْفَرِدَاتٍ فِي شَيْءٍ مِنَ الْأَشْيَاءِ، وَفِي قَبُولِهِنَّ مَعَ رَجُلٍ فِيمَا عَدَا الدُّيُونَ الْمُؤَجَّلَةَ.

L29385 Those who assert the acceptability of female narrators as single transmitters

وَاخْتَلَفَ الْقَائِلُونَ بِقَبُولِهِنَّ مُنْفَرِدَاتٍ فِي كَمْ يُقْبَلُ مِنْهُنَّ فِي ذَلِكَ.

[6] **Qur'an references (L29380):** Qur'an 24:4 (An-Nur).

[7] **Qur'an references (L29381):** Qur'an 2:282 (Al-Baqarah); Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq).

differed regarding how many of them should be accepted in this matter.

وَاخْتَلَفُوا أَيْضًا فِي الشَّاهِدِ وَيَمِينِ الطَّالِبِ؟ فَقَالَ زُفَرُ صَاحِبُ أَبِي حَنِيفَةَ: لَا يَجُوزُ قَبُولُ النِّسَاءِ مُنْفَرِدَاتٍ دُونَ رَجُلٍ فِي شَيْءٍ أَصْلًا، لَا فِي وِلَادَةٍ وَلَا فِي رَضَاعٍ، وَلَا فِي عُيُوبِ النِّسَاءِ، وَلَا فِي غَيْرِ ذَلِكَ - وَأَجَازَهُنَّ مَعَ رَجُلٍ فِي الطَّلَاقِ، وَالنِّكَاحِ، وَالْعِتْقِ.

L29386 They also differed regarding testimony and the claimant's oath. Zufar, the companion of Abu Hanifah, said: "It is impermissible to accept women's testimony alone without a man in any matter whatsoever—not in childbirth, breastfeeding, women's defects, nor anything else. However, he permitted their testimony alongside a man in divorce, marriage, and manumission."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ بُرْدٍ عَنْ مَكْحُولٍ قَالَ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ إلَّا فِي الدَّيْنِ.

L29387 Through the chain of Ibn Abi Shaybah, 'Abd al-Rahman ibn Mahdi reported from Sufyan al-Thawri from Burd from Makhul, who said: The testimony of women is not valid except in debt.

وَرُوِّينَا ضِدَّ هَذَا عَنْ الشَّعْبِيِّ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: مِنْ الشَّهَادَاتِ شَهَادَةٌ لَا يَجُوزُ فِيهَا إلَّا شَهَادَاتُ النِّسَاءِ.

L29388 It has been narrated to us, contrary to this, from al-Sha'bī – as we have received through the chain of Ibn Abī Shaybah: Ibn Abī Zā'idah narrated to us from Ismā'īl ibn Abī Khālid, from al-Sha'bī, who said, "Among testimonies, there is a type in which only the testimonies of women are permissible."

وَمِنْ طَرِيقِ الزُّهْرِيِّ قَالَ: مَضَتْ السُّنَّةُ أَنْ تَجُوزَ شَهَادَةُ النِّسَاءِ فِيمَا لَا يَطَّلِعُ عَلَيْهِ غَيْرُهُنَّ - وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي سَبْرَةَ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ الْقَعْقَاعِ عَنْ ابْنِ عُمَرَ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ وَحْدَهُنَّ إلَّا عَلَى مَا لَا يَطَّلِعُ عَلَيْهِ غَيْرُهُنَّ مِنْ عَوْرَاتِ النِّسَاءِ وَحَمْلِهِنَّ وَحَيْضِهِنَّ.

L29389–29390 And through the chain of transmission of Al-Zuhri, he said: The Sunnah has established that women's testimony is valid in matters others cannot witness. It has been narrated to us through Ibn Abi Sabrah's chain of transmission, from Musa ibn Uqbah, from Al-Qa'qa', from Ibn Umar: The testimony of women alone is not permissible except regarding matters such as women's intimate parts, their pregnancy, and their menstruation—matters that none besides them can observe.

وَمِنْ طَرِيقِ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنْ ابْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيٍّ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ بَحْتًا حَتَّى يَكُونَ مَعَهُنَّ رَجُلٌ.

L29391 And through the chain of Ibrāhīm ibn Abī Yaḥyā, from Ibn Ḍumayrah, from his father, from his grandfather, from 'Alī: The testimony of women alone is not permissible unless there is a man with them.

وَعَنْ عَطَاءٍ مِثْلُ هَذَا - وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مِثْلُهُ صَحَّ عَنْهُمَا.

L29392 And from 'Aṭā' like this — and from 'Umar ibn 'Abd al-'Azīz the same. It is soundly narrated.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعَبْدِ اللَّهِ بْنِ عُتْبَةَ: لَا تُقْبَلُ النِّسَاءُ إلَّا فِيمَا لَا يَطَّلِعُ عَلَيْهِ غَيْرُهُنَّ.

L29393 According to Sa'īd ibn al-Musayyab and 'Abdullāh ibn 'Utbah, the testimony of women is not accepted except in matters that others besides them cannot witness.

L29394 It has been narrated to us through the chain of al-Ḥasan ibn 'Umārah from

وَرُوِّينَا مِنْ طَرِيقِ الْحَسَنِ بْنِ عُمَارَةَ عَنْ الزُّهْرِيِّ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، قَالَ الزُّهْرِيُّ: عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ، وَقَالَ الْحَكَمُ: عَنْ عَلِيٍّ، ثُمَّ اتَّفَقَ عُمَرُ، وَعَلِيٌّ: عَلَى أَنَّهُ لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الطَّلَاقِ، وَلَا فِي النِّكَاحِ، وَلَا فِي الدِّمَاءِ، وَلَا الْحُدُودِ.

al-Zuhrī and al-Ḥakam ibn ʻUtaybah. Al-Zuhrī narrated from Saʻīd ibn al-Musayyib, who narrated from ʻUmar, while al-Ḥakam narrated from ʻAlī. Then ʻUmar and ʻAlī concurred that women's testimony is not permissible in matters of divorce, nor in marriage, nor in bloodshed, nor in Ḥudūd.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الزُّهْرِيِّ: مَضَتْ السُّنَّةُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْخَلِيفَتَيْنِ بَعْدَهُ: أَنَّهُ لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الْحُدُودِ، وَالنِّكَاحِ، وَالطَّلَاقِ.

L29395 From the narration chain of Ibn Wahb, from Ismāʻīl ibn ʻAyyāsh, from al-Ḥajjāj ibn Arṭāʾ, from al-Zuhrī: It is established in the Sunnah through the Messenger of Allah—peace and blessings of Allah be upon him—and the two caliphs after him that the testimony of women is not valid in matters of Ḥudūd [prescribed punishments], and marriage, and divorce.

وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الطَّلَاقِ، وَلَا فِي النِّكَاحِ، وَلَا فِي الْحُدُودِ - وَأَجَازَ شَهَادَةَ امْرَأَتَيْنِ مَعَ رَجُلٍ فِي الْعِتْقِ، وَالْوَصِيَّةِ، وَالدَّيْنِ.

L29396 It is authentically established from *Ibrāhīm al-Nakhaʻī* that women's testimony is not valid in divorce, marriage, or ḥudūd (prescribed punishments), but he deemed valid the testimony of two women in conjunction with one man in matters of manumission, wills, and debts.

وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الْحُدُودِ، وَلَا فِي جِرَاحِ الْعَمْدِ، وَلَا فِي الطَّلَاقِ، وَلَا فِي النِّكَاحِ، وَلَا مَعَ رَجُلٍ وَلَا دُونَهُ، وَأَنَّهَا جَائِزَةٌ فِي جِرَاحِ الْخَطَأِ، وَفِي الْوَصَايَا، وَفِي الدُّيُونِ مَعَ رَجُلٍ، وَفِيمَا لَا بُدَّ مِنْهُ.

L29397 It has been authentically reported from Al-Hasan Al-Basri: The testimony of women is not valid in cases involving prescribed punishments, nor in intentional injuries, nor in divorce, nor in marriage—neither alongside a man nor independently. However, their testimony is valid in cases of accidental injuries, in wills, in debts when alongside a man, and in matters of necessity.

وَعَنْ ابْنِ الْمُسَيِّبِ لَا تَجُوزُ شَهَادَةُ النِّسَاءِ: فِي قَتْلٍ، وَلَا فِي حَدٍّ، وَلَا فِي طَلَاقٍ، وَلَا نِكَاحٍ.

L29398 It is reported from Ibn al-Musayyib that women's testimony is not admissible in cases of homicide, prescribed punishments (ḥudūd), divorce, or marriage.

وَعَنْ قَتَادَةَ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ: فِي طَلَاقٍ، وَلَا فِي نِكَاحٍ.

L29399 It is narrated from Qatadah that the testimony of women is not permissible: neither in divorce nor in marriage contracts.

وَعَنْ الزُّهْرِيِّ لَا تُقْبَلُ شَهَادَةُ النِّسَاءِ: فِي حَدٍّ، وَلَا طَلَاقٍ، وَلَا نِكَاحٍ وَلَا عِتْقٍ - وَأَجَازَهَا: فِي الْوَصَايَا فِي الدُّيُونِ، وَفِي الْقَتْلِ.

L29400–29401 The testimony of women is not accepted in ḥadd punishments, divorce, marriage, or emancipation of slaves. However, Az-Zuhri permitted their testimony in wills, in debts, and in homicide cases.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الطَّلَاقِ.

L29402 Narrated from Umar ibn Abd al-Aziz: Women's testimony in divorce is not permissible.

وَعَنْ رَبِيعَةَ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ فِي طَلَاقٍ، وَلَا نِكَاحٍ، وَلَا حَدٍّ، وَلَا عِتْقٍ - وَتَجُوزُ فِي الْبُيُوعِ، وَفِي كُلِّ حَقٍّ يَتَرَاضَوْنَ فِيهِ، وَيَتَعَاطَوْنَ الْمَعْرُوفَ عَلَيْهِ.

L29403 From Rabi'ah: The testimony of women is not permissible in divorce, marriage, prescribed punishments, or manumission—but it is permissible in sales and in every right in which they mutually agree and upon which they practice customary good deeds.

وَعَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ: تَجُوزُ شَهَادَةُ النِّسَاءِ فِي الدِّيَةِ.

L29404 On the authority of Muhammad ibn al-Hanafiyyah: The testimony of women is permissible in diyah (blood money).

وَصَحَّ عَنْ شُرَيْحٍ: أَنَّهُ أَجَازَ شَهَادَةَ امْرَأَتَيْنِ فِي عَتَاقَةٍ مَعَ رَجُلٍ.

L29405 It has been authentically reported from Shuraih that he permitted the testimony of two women in manumission with a man.

وَصَحَّ عَنِ الشَّعْبِيِّ: قَبُولُ شَهَادَةِ رَجُلٍ وَامْرَأَتَيْنِ فِي الطَّلَاقِ، وَجِرَاحِ الْخَطَأِ، وَلَمْ يُجِزْ شَهَادَةَ النِّسَاءِ فِي جِرَاحِ عَمْدٍ، وَلَا فِي حَدٍّ.

L29406 It has been authentically reported from Ash-Sha'bī that the testimony of one man and two women is acceptable in divorce and accidental injuries, but he did not permit the testimony of women in intentional injuries or in a ḥadd punishment.

وَصَحَّ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ: قَبُولُ النِّسَاءِ مَعَ رَجُلٍ فِي الطَّلَاقِ وَالنِّكَاحِ.

L29407 It has been authentically reported from Abu al-Sha'thā' Jābir ibn Zayd that the acceptance of women alongside a man in divorce and marriage is permissible.

وَصَحَّ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ: قَبُولُ امْرَأَتَيْنِ فِي الطَّلَاقِ.

L29408 It has been authentically reported from Iyas ibn Muʿāwiyah: the acceptance of the testimony of two women in divorce.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ: لَا تُقْبَلُ النِّسَاءُ فِي الْحُدُودِ.

L29409 From Hammad ibn Abi Sulaiman: Women are not accepted in ḥudūd cases.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ شُرَيْحًا أَجَازَ شَهَادَةَ أَرْبَعِ نِسْوَةٍ عَلَى رَجُلٍ فِي صَدَاقِ امْرَأَةٍ.

L29410 And through the chain of al-Hajjaj ibn al-Minhal, from Hammad ibn Salamah, from Abdullah ibn Awn, from Muhammad ibn Sirin: that Shuraij accepted the testimony of four women against a man concerning the dowry of a woman.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ حُجَيْرٍ عَمَّنْ يَرْضَى - كَأَنَّهُ يُرِيدُ طَاوُسًا - قَالَ: تَجُوزُ شَهَادَةُ النِّسَاءِ فِي كُلِّ شَيْءٍ مَعَ الرِّجَالِ، إِلَّا الزِّنَى مِنْ أَجْلِ أَنَّهُ لَا يَنْبَغِي أَنْ يَنْظُرْنَ إِلَى ذَلِكَ.

L29411 Via ʿAbd al-Razzāq, from Ibn Jurayj, from Hishām ibn Ḥujayr, from someone he deemed reliable—likely referring to Ṭāwūs—who said: The testimony of women is permissible in all matters together with men, except in cases of unlawful sexual intercourse, because it is improper for them to look upon such acts.

L29412 Through the chain of Abu 'Ubayd: Yazid (Ibn Harun) narrated to us from Jarir ibn Hazim from al-Zubayr ibn al-Khirrīt from Abu Labid, who said: An intoxicated man divorced his wife thrice, and four women testified against

him. The case was elevated to ʻUmar ibn al-Khattab, who validated the women's testimony and irrevocably separated the couple.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ - هُوَ ابْنُ هَارُونَ - عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ الزُّبَيْرِ بْنِ الْخِرِّيتِ عَنْ أَبِي لَبِيدٍ قَالَ: إنَّ سَكْرَانَ طَلَّقَ امْرَأَتَهُ ثَلَاثًا، فَشَهِدَ عَلَيْهِ أَرْبَعُ نِسْوَةٍ، فَرُفِعَ إلَى عُمَرَ بْنِ الْخَطَّابِ، فَأَجَازَ شَهَادَةَ النِّسْوَةِ، وَفَرَّقَ بَيْنَهُمَا.

L29413–29415 From the chain of transmission of Muḥammad ibn al-Muthannā, who narrated to us from ʿAbd al-Raḥmān ibn Mahdī, from Ḥirāsh ibn Mālik al-Jahḍamī, who narrated to us from Yaḥyā ibn ʿUbayd, from his father: that a man from Oman filled himself with drink and then divorced his wife. Three times, and married women testified against him. A report was sent regarding it to Umar ibn al-Khattab, so he accepted the testimony of the married women and finalized the divorce as irrevocable for him.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ حِرَاشِ بْنِ مَالِكٍ الْجَهْضَمِيِّ نا يَحْيَى بْنُ عُبَيْدٍ عَنْ أَبِيهِ: أَنَّ رَجُلًا مِنْ عُمَانَ تَمَلَّأَ مِنْ الشَّرَابِ فَطَلَّقَ امْرَأَتَهُ ثَلَاثًا، فَشَهِدَ عَلَيْهِ نِسْوَةٌ، فَكُتِبَ فِي ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَجَازَ شَهَادَةَ النِّسْوَةِ، وَأَبَتَّ عَلَيْهِ الطَّلَاقَ.

L29416 Through the chain of Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqri, who narrated to us from Sufyān ibn ʿUyaynah, who narrated to us from Abū Ṭalq, from a woman: A woman had intercourse with a boy and killed him. Four women testified against her, and ʿAlī ibn Abī Ṭālib accepted their testimony.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا سُفْيَانُ بْنُ عُيَيْنَةَ نا أَبُو طَلْقٍ عَنْ امْرَأَةٍ: أَنَّ امْرَأَةً وَطِئَتْ صَبِيًّا فَقَتَلَتْهُ، فَشَهِدَ عَلَيْهَا أَرْبَعُ نِسْوَةٍ، فَأَجَازَ عَلِيُّ بْنُ أَبِي طَالِبٍ شَهَادَتَهُنَّ.

L29417 From the path of Abū Bakr ibn Abī Shaybah, informed by Ḥafṣ ibn Ghiyāth from Abū Ṭalq from his sister Hind bint Ṭalq, who said: I was among a group of women when a shrouded child lay [on the ground]. A woman stood up, passed by, and stepped on him. The child's mother said, "By Allah, you have killed him!" Ten women testified before Ali—I being the tenth among them—so Ali ruled against her for the blood money and aided her with two thousand.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَبِي طَلْقٍ عَنْ أُخْتِهِ هِنْدَ بِنْتِ طَلْقٍ قَالَتْ: كُنْت فِي نِسْوَةٍ وَصَبِيٌّ مُسَجًّى، فَقَامَتْ امْرَأَةٌ فَمَرَّتْ فَوَطِئَتْهُ، فَقَالَتْ أُمُّ الصَّبِيِّ: قَتَلْتِهِ وَاَللَّهِ، فَشَهِدَ عِنْدَ عَلِيٍّ عَشْرُ نِسْوَةٍ - أَنَا عَاشِرَتُهُنَّ - فَقَضَى عَلِيٌّ عَلَيْهَا بِالدِّيَةِ وَأَعَانَهَا بِأَلْفَيْنِ.

L29418 From the transmission of Abū ʻUbayd, who reported to us via Hushaym, from Ḥajjāj ibn Arṭāh, from ʻAṭāʼ, who said: ʻUmar ibn al-Khaṭṭāb permitted the testimony of women together with men in matters of divorce and marriage.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ عَنْ حَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَطَاءٍ قَالَ: أَجَازَ عُمَرُ بْنُ الْخَطَّابِ شَهَادَةَ النِّسَاءِ مَعَ الرِّجَالِ: فِي الطَّلَاقِ، وَالنِّكَاحِ.

L29419 And through the chain of transmission of Abu ʼUbayd, Yazid reported to us from Hajjaj from ʼAtaʼ ibn Abi Rabah that he permitted women's witnessing in marriage.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ عَنْ حَجَّاجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّهُ أَجَازَ شَهَادَةَ النِّسَاءِ فِي النِّكَاحِ.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا أَبُو مُعَاوِيَةَ - وَهُوَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ - عَنْ أَبِيهِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: لَوْ شَهِدَ عِنْدِي ثَمَانِي نِسْوَةٍ عَلَى امْرَأَةٍ بِالزِّنَى لَرَجَمْتُهَا.

L29420 Through the chain of Muḥammad ibn al-Muthannā: Abū Muʿāwiyah (Muḥammad ibn Khāzim al-Ḍarīr) narrated to us from his father from ʿAṭāʾ ibn Abī Rabāḥ, who said: "If eight women testified before me against a woman for adultery, I would carry out her stoning [as the legal punishment]."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: تَجُوزُ شَهَادَةُ النِّسَاءِ مَعَ الرِّجَالِ فِي كُلِّ شَيْءٍ - وَتَجُوزُ عَلَى الزِّنَى امْرَأَتَانِ وَثَلَاثَةُ رِجَالٍ.

L29421 Through the chain of ʿAbd al-Razzāq, who narrated to us from Ibn Jurayj, from ʿAṭāʾ ibn Abī Rabāḥ, who said: "The testimony of women alongside men is permissible in all matters. In cases of adultery, the testimony of two women and three men is permissible."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ رَجُلًا ادَّعَى مَتَاعَ الْبَيْتِ، فَجَاءَ أَرْبَعُ نِسْوَةٍ يَشْهَدْنَ فَقُلْنَ: دَفَعْنَا إِلَيْهِ الصَّدَاقَ وَقُلْنَا: جَهِّزْهَا؟ فَقَضَى شُرَيْحٌ عَلَيْهِ بِالْمَتَاعِ وَقَالَ لَهُ: إِنَّ عُقْرَهَا مِنْ مَالِكَ - هَذَا فِي غَايَةِ الصِّحَّةِ.

L29422 From the chain of Ibn Abi Shaybah, narrated to us by Ismāʿīl ibn ʿUlayyah from ʿAbdullāh ibn ʿAwn from Muḥammad ibn Sīrīn: A man claimed ownership of the trousseau. Four women came to testify, saying: "We gave him the dowry and asked: 'Should we not prepare her trousseau?'" Shurayḥ ruled against him, ordering him to surrender the trousseau, and said: "Her indemnity is from your wealth." This ruling is entirely sound.

وَأَمَّا الْمُتَأَخِّرُونَ: فَإِنَّ سُفْيَانَ الثَّوْرِيَّ قَالَ فِي أَحَدِ قَوْلَيْهِ: تُقْبَلُ الْمَرْأَتَانِ مَعَ رَجُلٍ فِي الْقِصَاصِ، وَفِي الطَّلَاقِ، وَالنِّكَاحِ، وَكُلِّ شَيْءٍ - حَاشَ الْحُدُودَ - وَيُقْبَلْنَ مُنْفَرِدَاتٍ فِيمَا لَا يَطَّلِعُ عَلَيْهِ إِلَّا النِّسَاءُ.

L29423 As for the later jurists: Sufyan al-Thawri held in one of his two opinions that two women are accepted alongside one man in matters of retribution (qisas), divorce, marriage, and everything—excluding Hudud punishments—and their testimony alone is accepted in matters that only women can have knowledge of.

وَقَالَ عُثْمَانُ الْبَتِّيُّ، وَسُفْيَانُ فِي أَحَدِ قَوْلَيْهِ: يُقْبَلْنَ مَعَ رَجُلٍ فِي الطَّلَاقِ، وَالنِّكَاحِ، وَكُلِّ شَيْءٍ - حَاشَ الْحُدُودِ وَالْقِصَاصِ - وَيُقْبَلْنَ مُنْفَرِدَاتٍ فِيمَا لَا يَطَّلِعُ عَلَيْهِ إِلَّا النِّسَاءُ، وَلَا يُقْبَلُ فِي الرَّضَاعِ إِلَّا رَجُلٌ وَامْرَأَتَانِ.

L29424–29425 Uthman al-Batti and Sufyan, in one of his two opinions, said: [Women] are accepted alongside a man in divorce, marriage, and all matters—excluding Ḥudūd and Qiṣāṣ—and they are accepted alone in matters only women would be privy to. And in breastfeeding, only a man and two women are accepted.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: لَا تَجُوزُ شَهَادَةُ النِّسَاءِ مَعَ رَجُلٍ فِي الْحُدُودِ، وَتُصَدَّقُ الْمَرْأَةُ وَحْدَهَا فِي الْوِلَادَةِ: أَنَّهَا وَلَدَتْ هَذَا الْوَلَدَ، وَيُلْحَقُ نَسَبُهُ - وَإِنْ لَمْ يَشْهَدْ لَهَا بِذَلِكَ أَحَدٌ سِوَاهَا.

L29426 Al-Ḥasan ibn Ḥayy said: The testimony of women alongside a man is not permissible in prescribed punishments, but a woman alone is deemed truthful regarding childbirth: that she gave birth to this child, and his lineage is established—even if no one besides her testifies to that effect for him.

L29427 Ibn Abi Layla said: Women's testimony is accepted individually in cases

involving women's defects or matters only women can know. In matters of breastfeeding, testimony is not accepted except from one man and two women or two men.

وَقَالَ ابْنُ أَبِي لَيْلَى: يُقْبَلْنَ مُنْفَرِدَاتٍ فِي عُيُوبِ النِّسَاءِ، وَمَا لَا يَطَّلِعُ عَلَيْهِ إِلَّا النِّسَاءُ، وَلَا يُقْبَلُ فِي الرَّضَاعِ إِلَّا رَجُلٌ وَامْرَأَتَانِ أَوْ رَجُلَانِ.

L29428 And Layth ibn Sa'd said: Women's testimony is accepted individually in matters that men are not privy to, but women's testimonies are not accepted alongside a man in cases of qisas, ḥudūd (prescribed punishments), divorce, or marriage. The testimony of two women and a man is permissible in manumission and wills.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: يُقْبَلْنَ مُنْفَرِدَاتٍ فِيمَا لَا يَطَّلِعُ عَلَيْهِ الرِّجَالُ، وَلَا يُقْبَلْنَ مَعَ رَجُلٍ: لَا فِي قِصَاصٍ، وَلَا حَدٍّ، وَلَا طَلَاقٍ، وَلَا نِكَاحٍ - وَتَجُوزُ شَهَادَةُ امْرَأَتَيْنِ وَرَجُلٍ فِي الْعِتْقِ وَالْوَصِيَّةِ.

L29429 Abu Hanifah said: The testimony of two women and one man is accepted comprehensively in all legal rulings excepting entirely qisas and hudud. They are accepted in divorce, marriage, and retraction of divorce when accompanied by a man. Their testimony alone is not accepted in breastfeeding matters, the completion of the waiting period through childbirth, or istihlāl unless joined by a man. However, their testimony is accepted independently in cases of unrestricted childbirth and physical defects in women.

وَقَالَ أَبُو حَنِيفَةَ: تُقْبَلُ شَهَادَةُ امْرَأَتَيْنِ، وَرَجُلٍ فِي جَمِيعِ الْأَحْكَامِ أَوَّلِهَا عَنْ آخِرِهَا، حَاشَ الْقِصَاصَ وَالْحُدُودَ - وَيُقْبَلْنَ فِي الطَّلَاقِ وَالنِّكَاحِ وَالرَّجْعَةِ مَعَ رَجُلٍ - وَلَا يُقْبَلْنَ مُنْفَرِدَاتٍ: لَا فِي الرَّضَاعِ، وَلَا فِي انْقِضَاءِ الْعِدَّةِ بِالْوِلَادَةِ، وَلَا فِي الِاسْتِهْلَالِ لَكِنْ مَعَ رَجُلٍ - وَيُقْبَلْنَ فِي الْوِلَادَةِ الْمُطْلَقَةِ، وَعُيُوبِ النِّسَاءِ مُنْفَرِدَاتٍ.

L29430 Abū Yūsuf and Muḥammad ibn al-Ḥasan said: Women are accepted as solitary [witnesses] in the expiration of the waiting period through childbirth and in the sighting of the new moon.

قَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: وَيُقْبَلْنَ مُنْفَرِدَاتٍ فِي انْقِضَاءِ الْعِدَّةِ بِالْوِلَادَةِ، وَفِي الِاسْتِهْلَالِ.

L29431 Malik said: Women are not accepted either alongside a man or independently in matters of retaliation (qiṣāṣ), prescribed penalties (ḥudūd), divorce, marriage, revocation of divorce, manumission, lineage, clientage, or marital status (iḥṣān).

وَقَالَ مَالِكٌ: لَا تُقْبَلُ النِّسَاءُ مَعَ رَجُلٍ وَلَا دُونَهُ: فِي قِصَاصٍ، وَلَا حَدٍّ، وَلَا طَلَاقٍ، وَلَا نِكَاحٍ، وَلَا رَجْعَةٍ، وَلَا عِتْقٍ، وَلَا نَسَبٍ، وَلَا وَلَاءٍ، وَلَا إحْصَانٍ.

L29432 Their testimony is permissible alongside a man in debts, properties, agency, and wills that do not involve manumission. They are accepted alone in matters of defects in women, childbirth, breastfeeding, and the commencement of puberty. In cases where a witness and the claimant's oath are accepted, judgment is rendered based on the testimony of two women and the claimant's oath. Judgment is also rendered with two women alongside the claimant's oaths in *qasamah* (the collective oath procedure).

وَتَجُوزُ شَهَادَتُهُنَّ مَعَ رَجُلٍ فِي الدُّيُونِ، وَالْأَمْوَالِ، وَالْوَكَالَةِ، وَالْوَصِيَّةِ الَّتِي لَا عِتْقَ فِيهَا - وَيُقْبَلْنَ مُنْفَرِدَاتٍ: فِي عُيُوبِ النِّسَاءِ، وَالْوِلَادَةِ، وَالرَّضَاعِ وَالِاسْتِهْلَالِ - وَحَيْثُ يُقْبَلُ شَاهِدٌ وَيَمِينُ الطَّالِبِ، فَإِنَّهُ يُقْضَى فِيهِ بِشَهَادَةِ امْرَأَتَيْنِ وَيَمِينِ الطَّالِبِ، وَيُقْضَى بِامْرَأَتَيْنِ مَعَ أَيْمَانِ الْمُدَّعِي فِي الْقَسَامَةِ.

L29433–29435 Al-Shafi'ī said: The testimony of two women alongside one man is acceptable in all matters pertaining to wealth and manumission, because he [...] In

wealth, accidental killing, and bequests of wealth to a person, women's testimonies are not accepted in the basic ruling of bequests—neither alongside a man nor without him. However, they are valid as sole witnesses in matters to which only women are privy.

وَقَالَ الشَّافِعِيُّ: تُقْبَلُ شَهَادَةُ امْرَأَتَيْنِ مَعَ رَجُلٍ فِي الْأَمْوَالِ كُلِّهَا، وَفِي الْعِتْقِ، لِأَنَّهُ مَالٌ، وَفِي قَتْلِ الْخَطَأِ، وَفِي الْوَصِيَّةِ لِإِنْسَانٍ بِمَالٍ - وَلَا يُقْبَلْنَ فِي أَصْلِ الْوَصِيَّةِ لَا مَعَ رَجُلٍ وَلَا دُونَهُ - وَيُقْبَلْنَ مُنْفَرِدَاتٍ فِيمَا لَا يَطَّلِعُ عَلَيْهِ إِلَّا النِّسَاءُ.

L29436 Abū ʿUbayd said: Women are not accepted alongside a man except in matters of wealth specifically.

وَقَالَ أَبُو عُبَيْدٍ: لَا تُقْبَلُ النِّسَاءُ مَعَ رَجُلٍ إِلَّا فِي الْأَمْوَالِ خَاصَّةً.

L29437 Abu Sulayman said: Their testimonies are not accepted even when accompanied by a man, except specifically in financial matters.

وَقَالَ أَبُو سُلَيْمَانَ: لَا يُقْبَلْنَ مَعَ رَجُلٍ إِلَّا فِي الْأَمْوَالِ خَاصَّةً.

L29438 As for their differing opinions regarding the number of women from whom acceptance applies where they are accepted individually.

وَأَمَّا اخْتِلَافُهُمْ فِي عَدَدِ مَا يُقْبَلُ مِنْهُنَّ حَيْثُ يُقْبَلْنَ مُنْفَرِدَاتٍ.

L29439 It has been narrated to us from Umar ibn al-Khattab, as previously cited, that the place of one male witness is taken by two women. Thus, in matters where two male witnesses are accepted, testimony is not valid unless four women [testify].

فَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ كَمَا ذَكَرْنَا أَنَّ مَكَانَ كُلِّ شَاهِدٍ رَجُلٌ امْرَأَتَانِ فَلَا يُقْبَلُ فِيمَا يُقْبَلُ فِيهِ رَجُلَانِ إِلَّا أَرْبَعُ نِسْوَةٍ.

L29440 And from ʿAli ibn Abi Talib is a similar position. This is the view of al-Shaʿbi; al-Nakhaʿi (in one of his two opinions); ʿAta' and Qatadah in their general opinion; Ibn Shubrumah; al-Shafiʿi and his school; and Abu Sulayman and his school—except that they said: The testimony of a single woman is accepted concerning breastfeeding.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِثْلُ ذَلِكَ - وَهُوَ قَوْلُ الشَّعْبِيِّ، وَالنَّخَعِيِّ فِي أَحَدِ قَوْلَيْهِمَا، وَعَطَاءٍ، وَقَتَادَةَ فِي قَوْلِهِ جُمْلَةً، وَابْنِ شُبْرُمَةَ، وَالشَّافِعِيُّ، وَأَصْحَابِهِ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِ، إِلَّا أَنَّهُمْ قَالُوا: تُقْبَلُ فِي الرَّضَاعِ امْرَأَةٌ وَاحِدَةٌ.

L29441 Uthman al-Batti said: It is not accepted in matters where women's testimony alone suffices except with three women—not fewer.

وَقَالَ عُثْمَانُ الْبَتِّيُّ: لَا يُقْبَلُ فِيمَا يُقْبَلُ فِيهِ النِّسَاءُ مُنْفَرِدَاتٍ إِلَّا ثَلَاثُ نِسْوَةٍ لَا أَقَلُّ.

L29442 A group held that two women are accepted in all matters where women are accepted when alone—and that is the view of Al-Zuhri—except specifically in *al-istihlāl* (certification of childbirth onset), where only the midwife is accepted alone.

وَقَالَتْ طَائِفَةٌ: تُقْبَلُ امْرَأَتَانِ فِي كُلِّ مَا يُقْبَلُ فِيهِ النِّسَاءُ مُنْفَرِدَاتٍ - وَهُوَ قَوْلُ الزُّهْرِيِّ إِلَّا فِي الِاسْتِهْلَالِ خَاصَّةً، فَإِنَّهُ يُقْبَلُ فِيهِ الْقَابِلَةُ وَحْدَهَا.

L29443 Al-Hakam ibn Utaybah said: In all of this, two women are accepted as witnesses (and this is the opinion of Ibn Abi Layla, Malik, his companions, and Abu ʿUbayd), while a group said: One woman is accepted as witnesses.

وَقَالَ الْحَكَمُ بْنُ عُتَيْبَةَ: يُقْبَلُ فِي ذَلِكَ كُلِّهِ امْرَأَتَانِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى وَمَالِكٍ وَأَصْحَابِهِ، وَأَبِي عُبَيْدٍ - وَقَالَتْ طَائِفَةٌ: تُقْبَلُ امْرَأَةٌ وَاحِدَةٌ.

L29444 It has been reported to us from Ali ibn Abi Talib—may Allah be pleased with

him—that he permitted the testimony of a midwife alone. Similar reports are narrated from Abu Bakr and Umar—may Allah be pleased with them both—regarding the newborn's cry, and it is reported that Umar granted inheritance based on that [testimony]. This is the opinion of al-Zuhri, al-Nakha'i, and al-Sha'bi in one of the two opinions of them both. It is also the view of al-Hasan al-Basri, Shurayh, Abu al-Zinad, Yahya ibn Sa'id al-Ansari, Rabi'ah, and Hammad ibn Abi Sulayman.

رُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -: أَنَّهُ أَجَازَ شَهَادَةَ الْقَابِلَةِ وَحْدَهَا وَرُوِّينَا ذَلِكَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - فِي الِاسْتِهْلَالِ، وَأَنَّ عُمَرَ وَرَّثَ بِذَلِكَ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ فِي أَحَدِ قَوْلَيْهِمَا - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَشُرَيْحٍ، وَأَبِي الزِّنَادِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ وَرَبِيعَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ

L29445 He said: If she were a Jewish woman, all of them said this regarding the commencement of the lunar month—except al-Sha'bi and Hammad, who instead said: "In anything that cannot be ascertained except by women"—and this is the opinion of al-Layth ibn Sa'd.

- قَالَ: وَإِنْ كَانَتْ يَهُودِيَّةً كُلُّ ذَلِكَ قَالُوهُ فِي الِاسْتِهْلَالِ، إلَّا الشَّعْبِيُّ، وَحَمَّادًا فَقَالَا: فِي كُلِّ مَا لَا يَطَّلِعُ عَلَيْهِ إلَّا النِّسَاءُ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ.

L29446–29448 Sufyan al-Thawri said: Testimony is accepted concerning defects in women and matters only women can know, with one woman's testimony being sufficient—this being the opinion of Abū Ḥanīfah and his companions. It is authentically reported from Ibn ʿAbbās and narrated from ʿUthmān. Ali—Commander of the Faithful—Ibn Umar, al-Ḥasan al-Baṣrī, and al-Zuhrī hold that the ruling concerning breastfeeding is established by the testimony of one woman. This is narrated from Rabīʿah, Yaḥyā ibn Saʿīd, Abū al-Zinād, al-Nakhaʿī, Shurayḥ, Ṭāwūs, and al-Shaʿbī.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: يُقْبَلُ فِي عُيُوبِ النِّسَاءِ، وَمَا لَا يَطَّلِعُ عَلَيْهِ إلَّا النِّسَاءُ امْرَأَةٌ وَاحِدَةٌ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ - وَصَحَّ عَنْ ابْنِ عَبَّاسٍ، وَرُوِيَ عَنْ عُثْمَانَ، وَعَلِيٍّ - أَمِيرَيْ الْمُؤْمِنِينَ - وَابْنُ عُمَرَ، وَالْحَسَنُ الْبَصْرِيُّ، وَالزُّهْرِيُّ - وَرُوِيَ عَنْ رَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ وَأَبِي الزِّنَادِ، وَالنَّخَعِيِّ، وَشُرَيْحٍ، وَطَاوُسٍ، وَالشَّعْبِيِّ: الْحُكْمُ فِي الرَّضَاعِ بِشَهَادَةِ امْرَأَةٍ وَاحِدَةٍ.

L29449 And that Uthman separated men from their wives based on the testimony of two witnesses. Al-Zuhri mentioned that the people upheld this practice. Al-Sha'bi mentioned this as a general principle concerning judicial rulings. It is narrated from Ibn Abbas that the wife is required to take an oath in addition to that.

وَأَنَّ عُثْمَانَ فَرَّقَ بِشَهَادَتِهِمَا بَيْنَ الرِّجَالِ وَنِسَائِهِمْ - وَذَكَرَ الزُّهْرِيُّ أَنَّ النَّاسَ عَلَى ذَلِكَ - وَذَكَرَ الشَّعْبِيُّ ذَلِكَ عَنْ الْقَضَاءِ جُمْلَةً - وَرُوِيَ عَنْ ابْنِ عَبَّاسٍ أَنَّهَا تُسْتَحْلَفُ مَعَ ذَلِكَ.

L29450 It has been authentically established from Mu'awiyah that he ruled regarding a house based on the testimony of Umm Salamah, the Mother of the Believers—may Allah be pleased with her—without summoning anyone else as a witness for that matter.

وَصَحَّ عَنْ مُعَاوِيَةَ: أَنَّهُ قَضَى فِي دَارٍ بِشَهَادَةِ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَلَمْ يُشْهِدْ بِذَلِكَ غَيْرَهَا.

L29451 It has been narrated to us from Umar, Ali, al-Mughīrah ibn Shu'bah, and Ibn Abbas that they did not effect separation based on the testimony of a single woman concerning breastfeeding. This is the position of Abū Ubayd,

وَرُوِّينَا عَنْ عُمَرَ، وَعَلِيٍّ، وَالْمُغِيرَةِ بْنِ شُعْبَةَ، وَابْنِ عَبَّاسٍ: أَنَّهُمْ لَمْ يُفَرِّقُوا بِشَهَادَةِ امْرَأَةٍ وَاحِدَةٍ فِي الرَّضَاعِ - وَهُوَ قَوْلُ أَبِي عُبَيْدٍ، قَالَ: أُفْتِي فِي ذَلِكَ بِالْفُرْقَةِ - وَلَا أَقْضِي بِهَا.

who said: “I was asked for a legal opinion on separation in that matter and provided it, but I do not rule based on that testimony.”

L29452 It has been reported to us from Umar that he said: If we were to open this door, no woman would wish to separate a man from his wife but that she would do so.

وَرُوِّينَا عَنْ عُمَرَ: أَنَّهُ قَالَ: لَوْ فَتَحْنَا هَذَا الْبَابَ لَمْ تَشَأْ امْرَأَةٌ أَنْ تُفَرِّقَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ إِلَّا فَعَلَتْ.

L29453 Al-Awzaʿī said: I accept the testimony of a single woman before marriage and prohibit the marriage, but I do not annul it based on the testimony of two women after marriage.

وَقَالَ الْأَوْزَاعِيِّ: أَقْضِي بِشَهَادَةِ امْرَأَةٍ وَاحِدَةٍ، قَبْلَ النِّكَاحِ، وَأَمْنَعُ مِنْ النِّكَاحِ، وَلَا أُفَرِّقُ بِشَهَادَتِهِمَا بَعْدَ النِّكَاحِ.

L29454 Abu Muhammad said: Among the arguments of those who do not accept the testimony of women alone nor the testimony of a woman alongside a man except in deferred debts exclusively is that they stated: Allah, the Exalted, commanded four male witnesses for adultery; two men or a man and two women for deferred debts; two Muslims for bequests during travel; or two non-Muslims who swear an oath alongside their testimony; and two just men from among us for divorce and retraction of divorce.

قَالَ أَبُو مُحَمَّدٍ: فَكَانَ مِنْ حُجَّةِ مَنْ لَمْ يَرَ قَبُولَ النِّسَاءِ مُنْفَرِدَاتٍ، وَلَا قَبُولَ امْرَأَةٍ مَعَ رَجُلٍ إِلَّا فِي الدُّيُونِ الْمُؤَجَّلَةِ فَقَطْ، أَنْ قَالُوا: أَمَرَ اللَّهُ تَعَالَى فِي الزِّنَى بِقَبُولِ أَرْبَعَةٍ، وَفِي الدُّيُونِ الْمُؤَجَّلَةِ بِرَجُلَيْنِ، أَوْ رَجُلٍ وَامْرَأَتَيْنِ، وَفِي الْوَصِيَّةِ فِي السَّفَرِ بِاثْنَيْنِ مِنْ الْمُسْلِمِينَ، أَوْ بِاثْنَيْنِ مِنْ غَيْرِ الْمُسْلِمِينَ يَحْلِفَانِ مَعَ شَهَادَتِهِمَا، وَفِي الطَّلَاقِ وَالرَّجْعَةِ بِذَوَيْ عَدْلٍ مِنَّا.

L29455–29457 The Messenger of Allah (prayers and peace be upon him) said regarding a dispute over land: “Your two witnesses or his oath; you have nothing but that.” Neither Allah the Exalted nor His Messenger (prayers and peace be upon him) mentioned the number of witnesses or their attributes except [...] Therefore, in these texts alone, it is obligatory to abide by them, not to exceed, and to accept nothing beyond them except what Muslims have agreed to accept.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي التَّدَاعِي فِي أَرْضٍ «شَاهِدَاكَ أَوْ يَمِينُهُ، لَيْسَ لَكَ إِلَّا ذَلِكَ» فَلَمْ يَذْكُرْ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَدَدَ الشُّهُودِ وَصِفَتَهُمْ إِلَّا فِي هَذِهِ النُّصُوصِ فَقَطْ، فَوَجَبَ الْوُقُوفُ عِنْدَهَا، وَأَنْ لَا نَتَعَدَّى، وَأَنْ لَا يُقْبَلَ فِيمَا عَدَا ذَلِكَ إِلَّا مَا اتَّفَقَ الْمُسْلِمُونَ عَلَى قَبُولِهِ.

L29458 Abū Muḥammad said: We do not know of anyone among those who oppose us who has followed in their rulings on testimonies the established texts from the Qur’ān, nor from the Sunnah, nor from consensus, nor from legal analogy, nor from the precautionary principle, nor from the statements of the Companions—may Allah be pleased with them. All rulings formulated thus are feeble, mutually contradictory, and invalid. It is religiously impermissible to uphold them in the religion of Allah the Exalted, nor is it lawful to judge

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ أَحَدًا مِمَّنْ يُخَالِفُنَا اتَّبَعَ فِي أَقْوَالِهِ فِي الشَّهَادَاتِ النُّصُوصَ الثَّابِتَةَ مِنْ الْقُرْآنِ، وَلَا مِنْ السُّنَنِ، وَلَا مِنْ الْإِجْمَاعِ، وَلَا مِنْ الْقِيَاسِ، وَلَا مِنْ الِاحْتِيَاطِ، وَلَا مِنْ قَوْلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكُلُّ أَقْوَالٍ كَانَتْ هَكَذَا فَهِيَ مُتَخَاذِلَةٌ مُتَنَاقِضَةٌ بَاطِلٌ، لَا يَحِلُّ الْقَوْلُ بِهَا فِي دِينِ اللَّهِ تَعَالَى، وَلَا يَجُوزُ الْحُكْمُ بِهَا، فِي دِمَاءِ الْمُسْلِمِينَ،

by them concerning the blood, private parts, bodily integrity, or wealth of Muslims. This is because suppose we were to abstain now from challenging their reliance on the aforementioned texts, we would still demonstrate to them—by Allah's might—their blatant contravention of these texts. As for Abū Ḥanīfah: He permitted women's testimony in marriage, divorce, and revocation alongside a man's testimony. Yet this finds no basis in any of the verses, which explicitly state: *"When they have fulfilled their term, either retain them honorably or separate from them honorably, and appoint two just witnesses from among you..."* [At-Ṭalāq 65:2].[8]

وَفُرُوجِهِمْ، وَأَبْشَارِهِمْ، وَأَمْوَالِهِمْ، وَذَلِكَ أَنَّنَا هَبْكَ أَمْسَكْنَا الْآنَ عَنْ الِاعْتِرَاضِ عَلَى احْتِجَاجِهِمْ بِالنُّصُوصِ الْمَذْكُورَةِ، لَكِنْ لِنُرِيَهُمْ - بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ - مُخَالَفَتَهُمْ لَهَا جِهَارًا -: أَمَّا أَبُو حَنِيفَةَ: فَأَجَازَ شَهَادَةَ النِّسَاءِ فِي النِّكَاحِ، وَالطَّلَاقِ، وَالرَّجْعَةِ مَعَ رَجُلٍ، وَلَيْسَ هَذَا فِي شَيْءٍ مِنْ الْآيَاتِ، بَلْ فِيهَا: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] .

L29459 Who is more astonishing in circumstance than one who deems sworn testimony alongside the witness to contradict the words of Allah the Exalted: {And take two witnesses from among your men. If there are not two men, then a man and two women...} [Al-Baqarah: 282], yet does not regard his opinion permitting two women with a man as contradicting the words of Allah the Exalted: {And take as witnesses two just men from among you...} [At-Talaq: 2]?[9]

فَمَنْ أَعْجَبُ شَأْنًا مِمَّنْ يَرَى خَبَرَ الْيَمِينِ مَعَ الشَّاهِدِ خِلَافًا لِقَوْلِ اللَّهِ تَعَالَى: {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ} [البقرة: ٢٨٢] وَلَا يَرَى قَوْلَهُ بِإِجَازَةِ امْرَأَتَيْنِ مَعَ رَجُلٍ خِلَافًا لِقَوْلِهِ تَعَالَى: {وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] .

L29460 If they say: "Does the testimony of one just woman and one just man suffice as two just witnesses from us?" We reply: "The testimony of three men and two women suffices for adultery, but four witnesses are required for one of the two parties involved—with no distinction."

فَإِنْ قَالُوا: إنَّ امْرَأَةً عَدْلَةً وَرَجُلًا عَدْلًا يَقَعُ عَلَيْهِمَا ذَوَيْ عَدْلٍ مِنَّا؟ قُلْنَا: وَشَهَادَةُ ثَلَاثَةِ رِجَالٍ وَامْرَأَتَيْنِ فِي الزِّنَى يَقَعُ عَلَيْهِمْ وَعَلَى وَاحِدَةٍ مِنْهُمَا أَرْبَعَةُ شُهَدَاءَ وَلَا فَرْقَ.

L29461 Then they accepted the testimony of a single woman in cases where women's testimony is accepted independently, but they did not accept it in matters of breastfeeding where the Sunnah explicitly establishes its acceptance—and this is the position upheld by the majority of the Salaf (early scholars).

ثُمَّ قَبِلُوا شَهَادَةَ امْرَأَةٍ وَاحِدَةٍ حَيْثُ تُقْبَلُ النِّسَاءُ مُنْفَرِدَاتٍ وَلَمْ يَقْبَلُوهَا فِي الرَّضَاعِ حَيْثُ جَاءَتْ السُّنَّةُ بِقَبُولِهَا - وَبِهِ قَالَ جُمْهُورُ السَّلَفِ.

L29462–29464 If they say, "We have analogized that to deferred debts." We said: Therefore, apply analogy in this matter to the prescribed punishments and retaliation based on deferred debts, as there is no distinction. If they claim that there is a consensus that deferred debts are not accepted in the prescribed punishments, 'Aṭā' would have refuted them.

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الدُّيُونِ الْمُؤَجَّلَةِ قُلْنَا: فَقِيسُوا الْحُدُودَ فِي ذَلِكَ وَالْقِصَاصَ عَلَى الدُّيُونِ الْمُؤَجَّلَةِ وَلَا فَرْقَ فَإِنْ ادَّعَوْا إجْمَاعًا عَلَى أَنْ لَا يُقْبَلْنَ فِي الْحُدُودِ أَكْذَبَهُمْ عَطَاءٌ.

L29465 If they say, "He opposed the majority of scholars," we respond, "And you

فَإِنْ قَالُوا: خَالَفَ جُمْهُورَ الْعُلَمَاءِ: قُلْنَا: وَأَنْتُمْ خَالَفْتُمْ فِي أَنْ لَا يُقْبَلْنَ النِّسَاءُ مُنْفَرِدَاتٍ فِي الرَّضَاعِ جُمْهُورَ الْعُلَمَاءِ.

[8] **Qur'an references (L29458):** Qur'an 65:2 (At-Talaq).
[9] **Qur'an references (L29459):** Qur'an 2:282 (Al-Baqarah); Qur'an 65:2 (At-Talaq).

opposed the majority of scholars in not accepting women [as witnesses] alone in matters of breastfeeding (al-rida‘).”

وَأَمَّا مَالِكٌ: فَقَاسَ بَعْضَ الْأَمْوَالِ عَلَى الدُّيُونِ الْمُؤَجَّلَةِ وَلَمْ يَقِسْ عَلَيْهَا الْعِتْقَ - وَقَبِلَ امْرَأَتَيْنِ لَا رَجُلَ مَعَهُمَا مَعَ يَمِينِ الطَّالِبِ فِي الْأَمْوَالِ وَالْقَسَامَةِ - وَمَا نَعْلَمُ لَهُ سَلَفًا فِي هَذَا رُوِيَ عَنْهُ هَذَا الْقَوْلُ.

L29466 As for Mālik: he analogized certain assets to deferred debts but did not extend this analogy to manumission. He accepted [the testimony of] two women with no man accompanying them in matters of wealth and qasamah along with the claimant’s oath. We know of no precedent for this position among earlier scholars, and this opinion has been narrated from him.

وَخَالَفَ جُمْهُورَ الْعُلَمَاءِ فِي رَدِّ شَهَادَةِ امْرَأَةٍ وَاحِدَةٍ فِي الِاسْتِهْلَالِ.

L29467 He opposed the majority of scholars in their rejection of the testimony of a single woman regarding the crescent sighting.

وَفِي قَبُولِ امْرَأَتَيْنِ تُقْبَلُ النِّسَاءُ مُنْفَرِدَاتٍ.

L29468 In the acceptance of two women as witnesses, women are admissible alone.

وَأَمَّا الشَّافِعِيُّ: فَقَاسَ الْأَمْوَالَ عَلَى الدُّيُونِ الْمُؤَجَّلَةِ؟ فَيُقَالُ لَهُ: هَلَّا قِسْت سَائِرَ الْأَحْكَامِ عَلَى ذَلِكَ؟ وَمَا الْفَرْقُ بَيْنَ مَنْ قَالَ: أَقِيسُ عَلَى ذَلِكَ كُلَّ حُكْمٍ، لِأَنَّهُ حُكْمٌ وَحُكْمٌ، وَبَيْنَ قَوْلِك أَقِيسُ عَلَى ذَلِكَ الْأَمْوَالَ كُلَّهَا، لِأَنَّهُ مَالٌ وَمَالٌ، وَهَلْ هَاهُنَا إلَّا التَّحَكُّمُ؟ فَهَذَا خِلَافُهُمْ لِلنُّصُوصِ، وَلِلْقِيَاسِ، وَلِقَوْلِ السَّلَفِ، وَلَيْسَ مِنْهُمْ أَحَدٌ رَاعَى الْإِجْمَاعَ، لِأَنَّنَا قَدْ ذَكَرْنَا عَنْ زُفَرَ أَنَّهُ لَا يُقْبَلُ النِّسَاءُ مُنْفَرِدَاتٍ فِي شَيْءٍ مِنْ الْأَشْيَاءِ.

L29469 As for Al-Shafi‘i: he analogized property to deferred debts. It may be said to him: Why did you not analogize all other rulings to this principle? What distinguishes one who says, “I analogize every ruling to this, since both are rulings,” from your statement, “I analogize all property to this, since both are forms of property”? Is this not merely arbitrary imposition? This reflects their contradiction of textual evidences, analogical reasoning, and the positions of earlier scholars. None of them adhered to scholarly consensus, for we have reported from Zufar that women’s testimony alone is not accepted in any category of legal cases.

وَقَدْ حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ نا أَبِي نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ نا هُشَيْمٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: الشَّهَادَةُ عَلَى الْقَتْلِ أَرْبَعَةٌ كَالشَّهَادَةِ عَلَى الزِّنَى.

L29470 Yunus ibn Abdullah narrated to us: Abu Bakr ibn Ahmad ibn Khalid informed us, his father informed us, Ali ibn Abd al-Aziz informed us, Abu Ubayd informed us, Hushaym informed us, from Yunus ibn Ubayd, from al-Hasan al-Basri, who said: Testimony for murder requires four witnesses, like testimony for adultery.

وَلَيْتَ شِعْرِي مِنْ أَيْنَ قَاسُوا الْقَتْلَ، وَالْقِصَاصَ، وَالْحُدُودَ عَلَى مَا يُقْبَلُ فِيهِ رَجُلَانِ فَقَطْ دُونَ أَنْ يَقِيسُوهَا عَلَى الزِّنَى الَّذِي هُوَ أَشْبَهُ بِهَا، لِأَنَّهُ حَدٌّ وَحَدٌّ، وَدَمٌ وَدَمٌ - أَوْ عَلَى مَا يُقْبَلُ فِيهِ رَجُلٌ وَامْرَأَتَانِ، لِأَنَّهُ حُكْمٌ وَحُكْمٌ، وَشَهَادَةٌ وَشَهَادَةٌ؟ فَظَهَرَ فَسَادُ قَوْلِهِمْ بِيَقِينٍ.

L29471 I wish I knew from where they analogized killing, retribution, and hudud to cases where only two men are accepted, rather than analogizing them to adultery - which more closely resembles them, since it is a hudud and a hudud, blood and blood - or to cases where one man and two women are accepted, since it is a ruling and a ruling, testimony and testimony? Thus, the corruption of their claim became evident with certainty.

L29472 Thus, the aforementioned statements are dismissed. For the correct understanding and bold declaration of the truth are that Allah, the Exalted, has commanded us to have witnesses when engaging in buying and selling. He, the Exalted, said: “And take witnesses when you engage in trade” [Al-Baqarah: 282].[10]

فَإِذًا قَدْ سَقَطَتْ الْأَقْوَالُ الْمَذْكُورَةُ فَإِنَّ وَجْهَ الْكَلَامِ وَالصَّدْعِ بِالْحَقِّ: هُوَ أَنَّ اللَّهَ تَعَالَى أَمَرَنَا عِنْدَ التَّبَايُعِ بِالْإِشْهَادِ، فَقَالَ تَعَالَى: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] .

L29473 He has commanded us that when we incur a deferred debt, we must document it and have it witnessed by two men from our men, or one man and two approved women.

وَأَمَرَنَا إذَا تَدَايَنَّا بِدَيْنٍ مُؤَجَّلٍ أَنْ نَكْتُبَهُ، وَأَنْ نُشْهِدَ شَهِيدَيْنِ مِنْ رِجَالِنَا، أَوْ رَجُلًا وَامْرَأَتَيْنِ مَرْضِيَّتَيْنِ.

L29474–29475 And He has commanded us, upon divorce or revocation, to obtain the testimony of two just witnesses from among us.

وَأَمَرَنَا عِنْدَ الطَّلَاقِ وَالْمُرَاجَعَةِ بِإِشْهَادِ ذَوَيْ عَدْلٍ مِنَّا.

L29476 None of these texts mention the basis for our rulings in cases of dispute regarding that matter and conflict over the number of witnesses, for the two witnesses—or one of them—may die, forget, or alter their testimony.

وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ النُّصُوصِ ذِكْرُ مَا نَحْكُمُ بِهِ عِنْدَ التَّنَازُعِ فِي ذَلِكَ وَالْخِصَامِ مِنْ عَدَدِ الشُّهُودِ، إذْ قَدْ يَمُوتُ الشَّاهِدَانِ أَوْ أَحَدُهُمَا، أَوْ يَنْسَيَانِ أَوْ أَحَدُهُمَا، أَوْ يَتَغَيَّرَانِ أَوْ أَحَدُهُمَا.

L29477 Who is more astonishing in conduct or more misguided in their way than one who openly opposes God Almighty’s command in the aforementioned verses by declaring: “When you conduct trade transactions, you need not have witnesses present,” and “When you incur time-bound debts, do not write them down if you wish”?

فَمَنْ أَعْجَبُ شَأْنًا أَوْ أَضَلُّ سَبِيلًا مِمَّنْ خَالَفَ أَمْرَ اللَّهِ تَعَالَى فِي الْآيَاتِ الْمَذْكُورَةِ جِهَارًا فَقَالَ: إذَا تَبَايَعْتُمْ فَلَيْسَ عَلَيْكُمْ أَنْ تُشْهِدُوا؟ وَإِذَا تَدَايَنْتُمْ بِدَيْنٍ إلَى أَجَلٍ مُسَمًّى فَلَا تَكْتُبُوهُ إنْ شِئْتُمْ.

L29478 And do not take anyone as a witness against him if you intended. Then he sought to distort using the aforementioned text—which contains nothing of it—thereby contradicting the verse’s explicit content and falsely attributing to it what it does not contain. We seek refuge in Allah from such tribulation.

وَلَا تُشْهِدُوا عَلَيْهِ أَحَدًا إنْ أَرَدْتُمْ؟ ثُمَّ أَرَادَ التَّمْوِيهَ بِالنَّصِّ الْمَذْكُورِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ فَخَالَفَ الْآيَةَ فِيمَا فِيهَا وَادَّعَى عَلَيْهَا مَا لَيْسَ فِيهَا - نَعُوذُ بِاَللَّهِ مِنْ الْبَلَاءِ.

L29479 Thus, their reliance on the aforementioned scriptural texts has ceased to apply.

فَسَقَطَ تَعَلُّقُهُمْ بِالنُّصُوصِ الْمَذْكُورَةِ.

L29480 As for the statement of the Messenger of Allah—peace and blessings be upon him—“Your two witnesses or his oath; that is all you have,” the Ḥanafīs, Mālikīs, and Shāfiʿīs are the first to add to this text what it does not contain, permitting one man and two women in all matters of wealth. This ruling

وَأَمَّا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «شَاهِدَاكَ أَوْ يَمِينُهُ، لَيْسَ لَكَ إلَّا ذَلِكَ» فَإِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ أَوَّلُ مَنْ يَضُمُّ إلَى هَذَا النَّصِّ مَا لَيْسَ

[10] **Qur’an references (L29472):** Qur’an 2:282 (Al-Baqarah).

is not in the Quran except for deferred debts alone. They have thus added beyond what is in this narration through their invalid analogy.

فِيهِ، فَيُجِيزُونَ فِي الْأَمْوَالِ كُلِّهَا رَجُلًا وَامْرَأَتَيْنِ، وَلَيْسَ ذَلِكَ فِي الْقُرْآنِ إِلَّا فِي الدُّيُونِ الْمُؤَجَّلَةِ فَقَطْ، فَقَدْ زَادُوا عَلَى مَا فِي هَذَا الْخَبَرِ بِقِيَاسِهِمْ الْفَاسِدِ.

L29481 As for us, our approach in this matter differs from theirs. However, we say—and with Allah the Exalted we seek assistance—it has been authentically established from him (peace and blessings be upon him) what we narrated through the chain of Abd al-Razzaq from Sufyan al-Thawri, from both Mansur ibn al-Mu'tamir and al-A'mash—each narrating from Abu Wa'il: "Al-Ash'ath entered upon Abdullah ibn Mas'ud while he was explaining to them the revelation of Allah's words the Exalted: {Indeed those who sell Allah's covenant and their oaths for a small price} [Al-Imran:77]. Al-Ash'ath said: 'This verse was revealed concerning my case—regarding a man I disputed with over a well. The Prophet (peace and blessings be upon him) asked: "Do you have clear proof؟' I replied: "No." He said: "Then let him swear.""[11]

وَأَمَّا نَحْنُ: فَطَرِيقُنَا فِي ذَلِكَ غَيْرُ طَرِيقِهِمْ، لَكِنْ نَقُولُ - وَبِاَللَّهِ تَعَالَى نَسْتَعِينُ -: قَدْ صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَالْأَعْمَشِ، كِلَاهُمَا عَنْ أَبِي وَائِلٍ «أَنَّ الْأَشْعَثَ دَخَلَ عَلَى عَبْدِ اللَّهِ بْنِ مَسْعُودٍ وَهُوَ يُحَدِّثُهُمْ بِنُزُولِ قَوْلِ اللَّهِ تَعَالَى: {إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلا} [آل عمران: ٧٧] فَقَالَ الْأَشْعَثُ: فِي نَزَلَتْ، وَفِي رَجُلٍ خَاصَمْتُهُ فِي بِئْرٍ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَلَكَ بَيِّنَةٌ؟ قُلْتُ: لَا، قَالَ: فَلْيَحْلِفْ» .

L29482 We found him—peace and blessings be upon him—having required the claimant at one time to produce two witnesses, and at another time absolute evidence. Thus, it follows that evidence must be whatever any Muslim considers valid as proof.

فَوَجَدْنَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَدْ كَلَّفَ الْمُدَّعِيَ مَرَّةً شَاهِدَيْنِ، وَمَرَّةً بَيِّنَةً مُطْلَقَةً، فَوَجَبَ أَنْ تَكُونَ الْبَيِّنَةُ كُلَّ مَا قَالَ قَائِلٌ مِنْ الْمُسْلِمِينَ إنَّهُ بَيِّنَةٌ.

L29483–29484 We have determined that the two upright witnesses, to whom the term 'bayyinah' (conclusive proof) applies: their acceptance is obligatory in all matters, except where Allah, the Exalted, has required only four.

وَوَجَدْنَا الشَّاهِدَيْنِ الْعَدْلَيْنِ يَقَعُ عَلَيْهِمَا اسْمُ بَيِّنَةٍ، فَوَجَبَ قَبُولُهُمَا فِي كُلِّ شَيْءٍ، حَاشَ حَيْثُ أَلْزَمَ اللَّهُ تَعَالَى أَرْبَعَةً فَقَطْ.

L29485 We found him—peace and blessings be upon him—saying: What we have narrated through the chain of Muslim ibn al-Hajjaj: Muhammad ibn Rumh narrated to us, al-Layth—that is Ibn Sa'd—narrated to us, from Ibn al-Hadi, from 'Abdullah ibn Dinar, from 'Abdullah ibn 'Umar, from the Messenger of Allah—may Allah's prayers and peace be upon him—that he said: "The testimony of two women equals the testimony of one man."

وَوَجَدْنَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ الْهَادِي عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي حَدِيثٍ «فَشَهَادَةُ امْرَأَتَيْنِ تَعْدِلُ شَهَادَةَ رَجُلٍ» .

L29486 From the chain of transmission of al-Bukhārī: Saʿīd ibn Abī Maryam narrated to us, Muḥammad ibn Jaʿfar narrated to us, Zayd—who is Ibn Aslam—

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا مُحَمَّدُ بْنُ جَعْفَرٍ أَخْبَرَنِي زَيْدٌ - هُوَ ابْنُ أَسْلَمَ - عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ

[11] **Qur'an references (L29481):** Qur'an 3:77 (Ali 'Imran).

informed me, from ʿIyāḍ ibn ʿAbd Allāh, from Abū Saʿīd al-Khudrī, "That the Messenger of Allāh (PBUH) said in a ḥadīth: 'Is not the testimony of a woman equivalent to half the testimony of a man?' We replied: 'Yes, O Messenger of Allāh.' Then he (PBUH) affirmed conclusively that the testimony of two women equals the testimony of one man. It necessarily follows that wherever a man's testimony would be accepted if he testified, only the testimony of two women is accepted, and likewise for any greater number."

عَلَيْهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ: «أَلَيْسَ شَهَادَةُ الْمَرْأَةِ مِثْلَ نِصْفِ شَهَادَةِ الرَّجُلِ؟ قُلْنَا: بَلَى يَا رَسُولَ اللَّهِ» فَقَطَعَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ شَهَادَةَ امْرَأَتَيْنِ تَعْدِلُ شَهَادَةَ رَجُلٍ، فَوَجَبَ ضَرُورَةً: أَنَّهُ لَا يُقْبَلُ حَيْثُ يُقْبَلُ رَجُلٌ لَوْ شَهِدَ إلَّا امْرَأَتَانِ، وَهَكَذَا مَا زَادَ.

L29487 If it is said: "Why do you not accept this evidence from a single man, for it has been authentically reported from Shuraih, Mutarrif ibn Mazin, and Zurarah ibn Awfa—or the testimony of a single woman, which Muawiyah accepted?" We respond: What prevents us is the ruling of the Messenger of Allah—peace and blessings be upon him—requiring an oath alongside a single witness. Were it permissible to accept the testimony of a single man in matters where the Messenger of Allah—peace and blessings be upon him—did not accept it, the oath would become redundant. Far is He above such a thing! Thus, it is established that it is impermissible to accept the testimony of a single man or a single woman except in moon-sighting, as we specified solely in the "Book of Fasting," and in cases of nursing (radāʿ).

فَإِنْ قِيلَ: فَهَلَّا قَبِلْتُمْ بِهَذَا الِاسْتِدْلَالِ رَجُلًا وَاحِدًا، فَقَدْ صَحَّ ذَلِكَ عَنْ شُرَيْحٍ، وَمُطَرِّفِ بْنِ مَازِنٍ، وَزُرَارَةَ بْنِ أَوْفَى، أَوْ شَهَادَةَ امْرَأَةٍ وَاحِدَةٍ، فَقَدْ قَبِلَهَا مُعَاوِيَةُ؟ قُلْنَا: مَنَعَنَا مِنْ ذَلِكَ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ مَعَ الشَّاهِدِ، فَلَوْ جَازَ قَبُولُ وَاحِدٍ حَيْثُ لَمْ يَقْبَلْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكَانَتْ الْيَمِينُ فُضُولًا، وَحَاشَ لَهُ مِنْ ذَلِكَ، فَصَحَّ: أَنَّهُ لَا يَجُوزُ قَبُولُ رَجُلٍ وَاحِدٍ، وَلَا امْرَأَةٍ وَاحِدَةٍ إلَّا فِي الْهِلَالِ كَمَا ذَكَرْنَا فِي " كِتَابِ الصِّيَامِ " فَقَطْ وَفِي الرَّضَاعِ.

L29488–29490 From what has been narrated to us through the chain of ʿAbdullāh ibn Rabīʿ who narrated from Muḥammad ibn Abān al-Balkhī and Yaʿqūb ibn Ibrāhīm, both of whom said: "Ismāʿīl ibn Ibrāhīm – he is Ibn ʿUlayyah – narrated to us from Ayyūb al-Sakhtiyānī, from Ibn Abī Mulaykah: ʿUbayd ibn Abī Maryam narrated to me from ʿUqbah ibn al-Ḥārith, who said..." Ibn Abī Mulaykah added: "I heard it directly from ʿUqbah ibn al-Ḥārith, but I preserve ʿUbayd's narration more accurately." He said: "I married a woman. Then a black woman came and said: 'I have breastfed both of you.' I went to the Messenger of Allah (peace be upon him) and said: 'O Messenger of Allah, I married a woman, and a black woman came claiming, "I have breastfed both of you" (and she was lying).' But the Messenger of Allah turned away." He moved away from me, so I approached him from the front and said: "She is lying." He responded: "What about her when she claimed that she breastfed both of you? Leave her alone."

لَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ رَبِيعٍ نا مُحَمَّدُ بْنُ أَبَانَ الْبَلْخِيّ، وَيَعْقُوبُ بْنُ إبْرَاهِيمَ، قَالَا جَمِيعًا: نا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ أَبِي مُلَيْكَةَ حَدَّثَنِي عُبَيْدُ بْنُ أَبِي مَرْيَمَ عَنْ عُقْبَةَ بْنِ الْحَارِثِ قَالَ ابْنُ أَبِي مُلَيْكَةَ: وَقَدْ سَمِعْتُهُ مِنْ عُقْبَةَ بْنِ الْحَارِثِ، وَلَكِنِّي لِحَدِيثِ عُبَيْدٍ أَحْفَظُ، قَالَ: «تَزَوَّجْتُ امْرَأَةً فَجَاءَتْ امْرَأَةٌ سَوْدَاءُ فَقَالَتْ: إنِّي قَدْ أَرْضَعْتُكُمَا؟ فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: يَا رَسُولَ اللَّهِ إنِّي تَزَوَّجْتُ امْرَأَةً، فَجَاءَتْ امْرَأَةٌ سَوْدَاءُ فَقَالَتْ إنِّي قَدْ أَرْضَعْتُكُمَا - وَهِيَ كَاذِبَةٌ - فَأَعْرَضَ عَنِّي، فَأَتَيْتُهُ مِنْ قِبَلِ وَجْهِهِ فَقُلْتُ: إنَّهَا كَاذِبَةٌ، فَقَالَ: كَيْفَ بِهَا وَقَدْ زَعَمَتْ أَنَّهَا أَرْضَعَتْكُمَا؟ دَعْهَا عَنْك» .

L29491 Abū Muḥammad said: The Prophet's prohibition—peace and blessings of

Allāh be upon him—constitutes a legal prohibition. It was narrated to us through the route of Al-Ḥudhāfī, from ʿAbd al-Razzāq, from Ibn Jurayj, who said: Ibn Shihāb said: A black woman came to three families that had intermarried and said, "They are my sons and daughters," so ʿUthmān—may Allāh be pleased with him—dissolved the marriages between them.

قَالَ أَبُو مُحَمَّدٍ: فَنَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَحْرِيمٌ، وَرُوِّينَا مِنْ طَرِيقِ الْحُذَافِيِّ نا عَبْدُ الرَّزَّاقِ قَالَ: نا ابْنُ جُرَيْجٍ قَالَ " قَالَ ابْنُ شِهَابٍ: جَاءَتْ امْرَأَةٌ سَوْدَاءُ إلَى أَهْلِ ثَلَاثَةِ أَبْيَاتٍ تَنَاكَحُوا فَقَالَتْ: هُمْ بَنِيَّ وَبَنَاتِي، فَفَرَّقَ عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - بَيْنَهُمْ.

L29492 And it has been narrated to us from Az-Zuhri that he said: "People today adopt that ruling from ʿUthman's opinion concerning nursing women if they are not suspected."

وَرُوِّينَا عَنْ الزُّهْرِيِّ أَنَّهُ قَالَ: فَالنَّاسُ يَأْخُذُونَ الْيَوْمَ بِذَلِكَ مِنْ قَوْلِ عُثْمَانَ فِي الْمُرْضِعَاتِ إذَا لَمْ يُتَّهَمْنَ.

L29493 Narrated through the chain of Qatadah from Jabir ibn Zayd Abu al-Sha'tha from Ibn Abbas, who said: The testimony of a single woman is permissible regarding breastfeeding.

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ جَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ عَنْ ابْنِ عَبَّاسٍ قَالَ: تَجُوزُ شَهَادَةُ امْرَأَةٍ وَاحِدَةٍ فِي الرَّضَاعِ.

L29494 Abu Muhammad said: As for the report we introduced from al-Zuhri's statement - "The Sunnah has been established from the Prophet, peace be upon him, and from Abu Bakr and Umar that women's testimony is inadmissible in divorce, marriage, or hudud" - it is baseless, for its chain is disconnected through Ismāʿīl ibn ʿAyyāsh - who is weak - from al-Ḥajjāj ibn Arṭāh - who is rejected.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْخَبَرُ الَّذِي صَدَّرْنَا بِهِ مِنْ قَوْلِ الزُّهْرِيِّ مَضَتْ السُّنَّةُ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ أَبِي بَكْرٍ، وَعُمَرَ: أَنْ لَا تَجُوزَ شَهَادَةُ النِّسَاءِ فِي الطَّلَاقِ، وَلَا فِي النِّكَاحِ، وَلَا فِي الْحُدُودِ: فَبَلِيَّةٌ؛ لِأَنَّهُ مُنْقَطِعٌ مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ عَيَّاشٍ - وَهُوَ ضَعِيفٌ - عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ.

L29495 As for the narration attributed to ʿUmar—"If we were to open this door, there would be no woman who wishes to separate a man from his wife but that she would do so"—it is transmitted by al-Ḥārith al-Ghanawī—who is an unknown narrator—that ʿUmar...

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ " لَوْ فَتَحْنَا هَذَا الْبَابَ لَمْ تَشَأْ امْرَأَةٌ أَنْ تُفَرِّقَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ إلَّا فَعَلَتْ ذَلِكَ " فَهُوَ عَنْ الْحَارِثِ الْغَنَوِيِّ - وَهُوَ مَجْهُولٌ - أَنَّ عُمَرَ.

L29496 Moreover, such a statement is far removed from ʿUmar's position - or any similar wording from him - because there is no distinction between this case and two men refraining from willing to kill a man, give his wealth to another, or separate his wife from him, except through their capacity to accomplish this by testifying against him.

وَأَيْضًا - فَإِنَّ هَذَا كَلَامٌ بَعِيدٌ عَنْ عُمَرَ قَوْلُ مِثْلِهِ؛ لِأَنَّهُ لَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ أَنْ لَا يَشَاءَ رَجُلَانِ قَتْلَ رَجُلٍ وَإِعْطَاءَ مَالِهِ لِآخَرَ، وَتَفْرِيقَ امْرَأَتِهِ عَنْهُ إلَّا قَدَرَا عَلَى ذَلِكَ، بِأَنْ يَشْهَدَا عَلَيْهِ بِذَلِكَ.

L29497 By the necessity of reason, everyone knows that there is no distinction between a woman and a man, between two men and two women, and between four men and four women regarding the permissibility of intentional false-

وَبِضَرُورَةِ الْعَقْلِ يَدْرِي كُلُّ أَحَدٍ: أَنَّهُ لَا فَرْقَ بَيْنَ امْرَأَةٍ وَبَيْنَ رَجُلٍ، وَبَيْنَ رَجُلَيْنِ، وَبَيْنَ امْرَأَتَيْنِ، وَبَيْنَ أَرْبَعَةِ رِجَالٍ، وَبَيْنَ أَرْبَعِ نِسْوَةٍ، فِي جَوَازِ تَعَمُّدِ الْكَذِبِ وَالتَّوَاطُؤِ

hood or collusion against them. Likewise, heedlessness—even momentary—applies to this as well. However, the soul finds it more agreeable with the testimony of eight women over that of four men.

L29498–29499 And all of this is meaningless - it is only the Quran and the Sunnah, with no addition.

عَلَيْهِمْ، وَكَذَلِكَ الْغَفْلَةُ - وَلَوْ حِينًا - إِلَى هَذَا، لَكِنَّ النَّفْسَ أَطْيَبُ عَلَى شَهَادَةِ ثَمَانِي نِسْوَةٍ مِنْهَا عَلَى شَهَادَةِ أَرْبَعَةِ رِجَالٍ.

وَهَذَا كُلُّهُ لَا مَعْنَى لَهُ، إِنَّمَا هُوَ الْقُرْآنُ وَالسُّنَّةُ وَلَا مَزِيدَ.

وَأَمَّا مَنْ احْتَجَّ بِتَخْصِيصِ مَا لَا يَجُوزُ أَنْ يَنْظُرَ إِلَيْهِ الرِّجَالُ فَبَاطِلٌ، وَمَا يَحِلُّ لِلْمَرْأَةِ مِنْ النَّظَرِ إِلَى عَوْرَةِ الْمَرْأَةِ إِلَّا كَالَّذِي يَحِلُّ لِلرَّجُلِ مِنْ ذَلِكَ، وَلَا يَجُوزُ ذَلِكَ إِلَّا عِنْدَ الشَّهَادَةِ أَوْ الضَّرُورَةِ، كَنَظَرِهِمْ إِلَى عَوْرَةِ الزَّانِيَيْنِ، وَالرِّجَالُ وَالنِّسَاءُ فِي ذَلِكَ سَوَاءٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29500 As for those who argue by specifying what men are not permitted to look at, their argument is invalid. What is permissible for a woman regarding looking at the *ʿawrah* of a woman is equivalent to what is permissible for a man in that regard. This is permitted only in cases of testimony or necessity, such as viewing the *ʿawrah* of the two adulterers. Men and women are equal in this ruling, and success is through Allah, the Most High's facilitation.

وَأَمَّا الْيَمِينُ مَعَ الشَّاهِدِ: فَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ الْوَاحِدِ.

L29501 As for the oath in conjunction with a witness, it was narrated to us that ʾUmar ibn al-Khaṭṭāb ruled with the oath together with a single witness.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ أَنَسِ بْنِ عِيَاضٍ أَخْبَرَنِي ضَمْرَةُ: أَنَّ جَعْفَرَ بْنَ مُحَمَّدٍ أَخْبَرَهُمْ قَالَ: سَمِعْت أَبِي يَقُولُ لِلْحَكَمِ بْنِ عُتَيْبَةَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ مَعَ الشَّاهِدِ» وَقَضَى بِهَا عَلِيٌّ بَيْنَ أَظْهُرِكُمْ.

L29502 And through the chain of Ibn Wahb from Anas ibn ʿIyāḍ, who reported that Ḍamrah informed me: that Jaʿfar ibn Muḥammad reported to them, saying: I heard my father say to al-Ḥakam ibn ʿUtaybah: "The Messenger of Allah - may Allah bless him and grant him peace - adjudicated by the oath alongside the witness," and ʿAlī implemented this ruling among you.[1]

وَمِنْ طَرِيقِ هُشَيْمٍ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ عَبْدَ اللَّهِ بْنَ عُتْبَةَ بْنِ مَسْعُودٍ قَضَى عَلَيْهِ بِدَيْنٍ لِإِنْسَانٍ أَقَامَ شَاهِدًا وَاحِدًا وَأَحْلَفَهُ مَعَ شَاهِدِهِ.

L29503 From the chain of Hushaym, from Husayn ibn Abd al-Rahman: that Abdullah ibn Utbah ibn Mas'ud ruled against him regarding a debt owed to a man who produced one witness and was made to swear an oath alongside his witness.

وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَبْدِ الرَّحْمَنِ بْنِ عَبْدِ الْحَمِيدِ، وَعَنْ شُرَيْحٍ.

L29504 It has been authenticated from Umar ibn Abd al-Aziz and Abd al-Rahman ibn Abd al-Hamid, and from Shurayh.

وَرُوِيَ عَنْ جَمَاعَةٍ: مِنْهُمْ سُلَيْمَانُ بْنُ يَسَارٍ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَأَبُو الزِّنَادِ، وَرَبِيعَةُ، وَيَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ، وَإِيَاسُ بْنُ مُعَاوِيَةَ، وَيَحْيَى بْنُ مَعْمَرٍ، وَالْفُقَهَاءُ السَّبْعَةُ، وَغَيْرُهُمْ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، إلَّا أَنَّهُمَا لَا يَقْضِيَانِ بِذَلِكَ إلَّا فِي الْأَمْوَالِ.

L29505 It has been reported from a group: among them are Sulaymān ibn Yasār, Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, Abū al-Zinād, Rabīʿah, Yaḥyā ibn Saʿīd al-Anṣārī, Iyās ibn Muʿāwiyah, Yaḥyā ibn Maʿmar, the Seven Fuqahā, and others—and this is the opinion of Mālik and al-Shāfiʿī, however, they only rule by this in financial matters.

وَجَاءَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ قَضَى بِذَلِكَ فِي جِرَاحِ الْعَمْدِ وَالْخَطَأِ، وَيَقْضِي بِهِ مَالِكٌ أَيْضًا فِي الْقِصَاصِ فِي النَّفْسِ وَلَا يَقْضِي بِهِ فِي الْعِتْقِ، وَالشَّافِعِيُّ يَقْضِي بِهِ فِي الْعِتْقِ.

L29506 It is reported from Umar ibn Abd al-Aziz that he ruled in accordance with that principle regarding intentional and accidental injuries. Malik also rules by it in cases of retaliation for homicide but does not rule by it in matters

[1] **Hadith references (L29502):** Jami at-Tirmidhi 1343.

of manumission, whereas al-Shafi'i rules in accordance with it in cases of manumission.

L29507 It has been reported to us that the disapproval of ruling by it is narrated from al-Zuhrī, who said: "It is an innovation among what people have newly introduced. The first to issue judgments based on it was Muʿāwiyah." ʿAṭā said: "The first to issue judgments based on it was ʿAbd al-Malik ibn Marwān." Al-Ḥakam ibn ʿUtaybah also pointed to his disapproval of it.

وَرُوِّينَا إِنْكَارَ الْحُكْمِ بِهِ عَنْ الزُّهْرِيِّ، وَقَالَ: هُوَ بِدْعَةٌ مَا أَحْدَثَهُ النَّاسُ أَوَّلُ مَنْ قَضَى بِهِ مُعَاوِيَةُ وَقَالَ عَطَاءٌ: أَوَّلُ مَنْ قَضَى بِهِ عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ، وَأَشَارَ إلَى إنْكَارِهِ الْحَكَمُ بْنُ عُتَيْبَةَ.

L29508 It is related from ʿUmar ibn ʿAbd al-ʿAzīz that he returned to abandoning the ruling on it because he found the people of Syria opposed to it. Ibn Shubrumah, Abū Ḥanīfa, and his companions prohibited it.

وَرُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: الرُّجُوعُ إلَى تَرْكِ الْقَضَاءِ بِهِ، لِأَنَّهُ وَجَدَ أَهْلَ الشَّامِ عَلَى خِلَافِهِ، وَمَنَعَ مِنْهُ: ابْنُ شُبْرُمَةَ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

L29509 Abu Muhammad said: We have already discussed the invalidity of relying [on this approach] to reject this ruling and others like it, when such reliance is based on the saying of Allah, the Exalted: {And seek the testimony of two witnesses from among your men} [Al-Baqarah: 282].[2]

قَالَ أَبُو مُحَمَّد: قَدْ ذَكَرْنَا بُطْلَانَ التَّعَلُّقِ فِي رَدِّ هَذَا الْحُكْمِ وَغَيْرِهِ بِالتَّعَلُّقِ بِقَوْلِ اللَّهِ تَعَالَى: {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ} [البقرة: ٢٨٢] .

L29510–29511 And by His statement, the Most High: {And have two just witnesses from among you} [At-Talaq: 2] in the section preceding this one.[3]

وَبِقَوْلِهِ تَعَالَى: {وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] فِي الْفَصْلِ الَّذِي قَبْلَ هَذَا.

L29512 Similarly, by his statement – peace and blessings be upon him – "your two witnesses or his oath," and all that they have relied upon in preventing judgment by an oath and a witness is baseless talk. It is astonishing that their objection here is based on al-Zuhri's statement: "The first to pass judgment on that was Mu'awiyah," while they themselves have adopted a valuation introduced by Mu'awiyah concerning the Zakāt al-Fiṭr, even though there is no authentic report from the Prophet – peace and blessings be upon him – regarding it.

وَكَذَلِكَ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «شَاهِدَاكَ أَوْ يَمِينُهُ» وَسَائِرُ مَا تَعَلَّقُوا بِهِ فِي مَنْعِ الْحُكْمِ بِيَمِينٍ وَشَاهِدٍ أَهْذَارٌ، وَالْعَجَبُ اعْتِرَاضُهُمْ فِي هَذَا بِقَوْلِ الزُّهْرِيِّ أَوَّلُ مَنْ قَضَى بِذَلِكَ مُعَاوِيَةُ، وَهُمْ قَدْ أَخَذُوا بِقِيمَةٍ أَحْدَثَهَا مُعَاوِيَةُ فِي زَكَاةِ الْفِطْرِ وَلَا يَصِحُّ فِيهَا أَثَرٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29513 Abū Muḥammad said: It was narrated to us through the ṭarīq of Muslim: Abū Bakr ibn Abī Shaybah narrated to us, Muḥammad ibn Bishr and ʿAbdullāh ibn Numayr both narrated to us—they said together: Sayf ibn Sulaymān narrated to us, informing me through Qays ibn Saʿd from ʿAmr ibn Dīnār from Ibn ʿAbbās that the Messenger of Allāh—peace and blessings of Allāh

قَالَ أَبُو مُحَمَّد: وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بِشْرٍ، وَعَبْدُ اللَّهِ بْنُ نُمَيْرٍ، قَالَا جَمِيعًا: نا سَيْفُ بْنُ سُلَيْمَانَ أَخْبَرَنِي قَيْسُ بْنُ سَعْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِيَمِينٍ وَشَاهِدٍ» -: نا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ سُلَيْمَانَ الْمُنْقِرِيُّ

[2] **Qur'an references (L29509):** Qur'an 2:282 (Al-Baqarah).
[3] **Qur'an references (L29511):** Qur'an 65:2 (At-Talaq).

be upon him—ruled by [accepting] an oath alongside a witness. Aḥmad ibn Qāsim narrated to us, Qāsim ibn Muḥammad ibn Qāsim narrated to us, his grandfather Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn Sulaymān al-Munqirī narrated to us, Musaddad, Muḥammad ibn al-Muthannā, and ʿAbdullāh ibn ʿAbd al-Wahhāb narrated to us—they all said: ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī narrated to us from Jaʿfar ibn Muḥammad from his father from Jābir ibn ʿAbdillāh that the Prophet—peace and blessings of Allāh be upon him—ruled by [accepting] an oath alongside a witness.[4]

نا مُسَدَّدٌ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، وَعَبْدُ اللَّهِ بْنُ عَبْدِ الْوَهَّابِ قَالُوا كُلُّهُمْ: نا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ» .

L29514 From the chain of Abū Dāwūd: Abū al-Muṣʿab narrated to us, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī narrated to us, from Rabīʿah ibn Abī ʿAbd al-Raḥmān, from Suhayl ibn Abī Ṣāliḥ, from his father, from Abū Hurayrah: "That the Prophet (peace be upon him) ruled on the basis of the oath along with the witness."[5]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَبُو الْمُصْعَبِ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ رَبِيعَةَ ابْنِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ» .

L29515 Abū Dāwūd said: Al-Rabīʿ ibn Sulaymān added to me in this report. He said: I am Al-Shāfiʿī, from ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī, who said: I mentioned that to Suhayl ibn Abī Ṣāliḥ, and he said: Rabīʿah—who is trustworthy in my view—informed me that I narrated it to him, but I do not remember it. ʿAbd al-ʿAzīz said: An illness had afflicted Suhayl which impaired part of his mind and caused him to forget some of his ḥadīth. After that, Suhayl would narrate it to ʿAbd al-ʿAzīz from Rabīʿah, from his father, from Abū Hurayrah.

قَالَ أَبُو دَاوُد: وَزَادَنِي الرَّبِيعُ بْنُ سُلَيْمَانَ فِي هَذَا الْخَبَرِ قَالَ: أَنَا الشَّافِعِيُّ عَنْ عَبْدِ الْعَزِيزِ بْنِ مُحَمَّدٍ الدَّرَاوَرْدِيِّ قَالَ: فَذَكَرْت ذَلِكَ لِسُهَيْلِ بْنِ أَبِي صَالِحٍ فَقَالَ: أَخْبَرَنِي رَبِيعَةُ - وَهُوَ ثِقَةٌ عِنْدِي - أَنِّي حَدَّثْتُهُ إيَّاهُ وَلَا أَحْفَظُهُ، قَالَ عَبْدُ الْعَزِيزِ: وَقَدْ كَانَتْ أَصَابَتْ سُهَيْلًا عِلَّةٌ أَذْهَبَتْ بَعْضَ عَقْلِهِ وَنَسِيَ بَعْضَ حَدِيثِهِ، فَكَانَ سُهَيْلٌ بَعْدُ يُحَدِّثُهُ عَنْ رَبِيعَةَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ.

L29516 Abū Muḥammad said: These are overwhelmingly corroborated reports that it is not permissible to disregard. Therefore, it is obligatory to adjudicate based on them concerning bloodshed, retributive justice, marriage, divorce, retraction [of divorce], and wealth—with the explicit exception of the ḥudūd—because these matters fall under the universal scope of the cited reports, and no prohibition of this has been transmitted in any of the narrations.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ آثَارٌ مُتَظَاهِرَةٌ لَا يَحِلُّ التَّرْكُ لَهَا، فَالْوَاجِبُ أَنْ يُحْكَمَ بِذَلِكَ فِي الدِّمَاءِ وَالْقِصَاصِ، وَالنِّكَاحِ، وَالطَّلَاقِ، وَالرَّجْعَةِ، وَالْأَمْوَالِ، حَاشَا الْحُدُودَ؛ لِأَنَّ ذَلِكَ عُمُومُ الْأَخْبَارِ الْمَذْكُورَةِ، وَلَمْ يَأْتِ فِي شَيْءٍ مِنْ الْأَخْبَارِ مَنْعٌ مِنْ ذَلِكَ.

[4] **Hadith references (L29513):** Sunan Abi Dawud 3608; Sahih Muslim 1712; Mishkat al-Masabih 3763; Sunan Ibn Majah 2369; Jami at-Tirmidhi 1344; Jami at-Tirmidhi 1343.

[5] **Hadith references (L29514):** Sunan Ibn Majah 2369; Jami at-Tirmidhi 1344; Jami at-Tirmidhi 1343.

وَأَمَّا الْحُدُودُ: فَلَا طَالِبَ لَهَا إِلَّا اللَّهُ تَعَالَى، وَلَا حَقَّ لِلْمَقْذُوفِ فِي إِثْبَاتِهَا، وَلَا فِي إِسْقَاطِهَا، وَلَا فِي طَلَبِهَا، وَكَذَلِكَ الْمَسْرُوقُ مِنْهُ، وَالْمَزْنِيُّ بِامْرَأَتِهِ أَوْ حَرِيمَتِهِ أَوْ أَمَتِهِ، أَوْ غَيْرِ ذَلِكَ -: فَلَيْسَ لِذَلِكَ كُلِّهِ طَالِبٌ بِلَا يَمِينٍ فِي شَيْءٍ مِنْهَا.

L29517–29519 As for the prescribed punishments (ḥudūd), there is no claimant for them except Allah, the Exalted, and the person accused of defamation (qadhf) has no right to establishing them nor to... In cases of dropping a claim, pursuing it, the victim of theft, the husband who committed adultery with his wife, his female mahram relative, his female slave, or other such matters—for all these, there is no claimant without an oath.

وَقَالَ الشَّافِعِيُّ: إِنَّ فِي بَعْضِ الْآثَارِ إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِذَلِكَ فِي الْأَمْوَالِ - وَهَذَا لَا يُوجَدُ أَبَدًا فِي شَيْءٍ مِنْ الْآثَارِ الثَّابِتَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29520 Al-Shafi'i said: "Indeed, in some reports, the Prophet—peace and blessings of Allah be upon him—ruled thus concerning wealth—but this is never found in any of the established reports—and success is from Allah, the Most High."

وَالْعَجَبُ مِنْ أَصْحَابِ أَبِي حَنِيفَةَ يَقُولُونَ دَهْرَهُمْ كُلَّهُ: الْمُرْسَلُ، وَالْمُسْنَدُ: سَوَاءٌ، فِي كُلِّ بَلِيَّةٍ يَقُولُونَ بِهَا، ثُمَّ يَرُدُّونَ خَبَرَ جَابِرٍ هَذَا: بِأَنَّ غَيْرَ الثَّقَفِيِّ أَرْسَلَهُ، وَأَنَّهُ رُوِيَ مُرْسَلًا مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ، وَغَيْرِهِ، فَاعْجَبُوا لِعَدَمِ الْحَيَاءِ وَرِقَّةِ الدِّينِ.

L29521 It is astonishing that the followers of Abū Ḥanīfah persistently claim throughout their entire time that the *mursal* and *musnad* are equivalent in every jurisprudential issue they invoke. Yet they reject this report of Jābir by arguing that a narrator other than al-Thaqafī transmitted it as *mursal*, and that it was narrated as *mursal* through the chain of Saʿīd ibn al-Musayyib and others. Marvel at their brazenness and the deficiency in their religious adherence.

وَعَجَبٌ آخَرُ: وَهُوَ أَنَّهُمْ يَقْضُونَ بِالنُّكُولِ فِي الدِّمَاءِ، وَالْأَمْوَالِ، فَيُعْطُونَ الْمُدَّعِيَ بِلَا شَاهِدٍ وَلَا يَمِينٍ، لَكِنْ بِدَعْوَاهُ الْمُجَرَّدَةِ - وَإِنْ كَانَ يَهُودِيًّا أَوْ نَصْرَانِيًّا - بِرَأْيِهِمْ الْفَاسِدِ، وَيَرُدُّونَ الْحُكْمَ بِالْيَمِينِ وَالشَّاهِدِ، وَيَقْضُونَ بِالْعَظَائِمِ بِشَهَادَةِ امْرَأَتَيْنِ دُونَ يَمِينِ الطَّالِبِ بِآرَائِهِمْ الْفَاسِدَةِ، وَاخْتِيَارِهِمْ الْمُهْلِكِ، وَيُنْكِرُونَ الْحُكْمَ بِشَهَادَةِ امْرَأَتَيْنِ مَعَ يَمِينِ الطَّالِبِ، وَبِشَهَادَةِ رَجُلٍ مَعَ يَمِينِ الطَّالِبِ، وَيُنْكِرُونَ الْحُكْمَ بِشَهَادَةِ مُسْلِمٍ ثِقَةٍ مَعَ يَمِينِ الطَّالِبِ، وَهُمْ يَقْضُونَ بِشَهَادَةِ يَهُودِيَّيْنِ، أَوْ نَصْرَانِيَّيْنِ حَيْثُ لَمْ يَأْتِ بِذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَيُضَعِّفُونَ سَيْفَ بْنَ سُلَيْمَانَ - وَهُوَ ثِقَةٌ -.

L29522 Another astonishment is their ruling in cases involving bloodshed and property based on the defendant's refusal to swear, granting judgments to claimants—even if the claimant is a Jew or a Christian—without a witness or an oath (from the defendant), relying solely on their corrupt opinions. They reject rulings based on oaths and witnesses, yet issue judgments in grave matters using the testimony of two women without the claimant's oath, following their corrupt views and ruinous choices. They deny rulings founded on the testimony of two women alongside the claimant's oath, or a man's testimony alongside the claimant's oath, and reject judgments based on the testimony of a trustworthy Muslim combined with the claimant's oath. Yet they rule by the testimony of two Jews or two Christians despite the absence of any Quranic text or authentic Sunnah supporting this, while discrediting Sayf ibn Sulaymān—though he is a reliable narrator.

وَهُمْ آخَذُ النَّاسِ بِرِوَايَةِ كُلِّ كَذَّابٍ، كَجَابِرِ الْجُعْفِيِّ، وَغَيْرِهِ، وَيَحْتَجُّونَ بِمَغِيبِ ذَلِكَ عَنْ الزُّهْرِيِّ وَعَطَاءٍ وَقَدْ غَابَ عَنْهُمَا حُكْمُ زَكَاةِ الذَّهَبِ وَزَكَاةِ الْبَقَرِ، أَوْ عَلِمَاهُ وَرَأَيَاهُ

L29523 They are the foremost among people in narrating from every liar, such as Jābir al-Juʿfī and others. They argue by citing that this ruling was unknown to al-Zuhri and ʿAṭāʾ—though the rulings on zakat for gold and cattle were

either unknown to both of them, or they knew them and deemed them abrogated. Yet they disregarded their opinion in that ruling while emulating them in this ruling. This—as you see—we ask Allah for the outcome—Mālik and al-Shāfiʿī held that judgment should not be issued by oath and witness except in matters of wealth.

L29524 Malik said: As for qasāmah [oath-sworn testimony]—this has no meaning, as it arbitrarily specifies the report without evidence.

L29525 ## The Issue of the Testimony of the Disbeliever.

L29526 Issue 1791: It is impermissible to accept a disbeliever as a witness under any circumstance—neither against a disbeliever nor a Muslim—except exclusively in the case of a will during travel. In such a case, two Muslims, two disbelievers (from any religion they may belong to), one male and two female disbelievers, or four female disbelievers are accepted as witnesses.

L29527–29529 The non-Muslims are to be sworn here along with their testimony, and it is necessary after the prayer—whichever prayer it was, even if it was... If the time [of death] had been more pressing for us: "By Allah - if you doubt - we would not accept any compensation for this even if it involved a close relative, nor conceal what Allah has testified to. Indeed, we would then be among the sinful." [Al-Ma'idah: 106] Judgment is then rendered according to their testimony. Should clear evidence come from Muslims that the disbelievers lied, the Muslim male witnesses must swear by Allah - whether two men, one man and two women, or four women [as witnesses]: "Our testimony is more valid than their testimony. We have not transgressed, for we would then surely be among the wrongdoers." [Al-Ma'idah: 107] Thereupon, the testimony given by the disbelievers is annulled.[6]

L29530 The proof of this is the statement of Allah, the Exalted: "O you who have believed, if a transgressor comes to you with news, ascertain" [Al-Hujurat: 6]. Since the disbeliever is a transgressor, it is necessary that his report not be accepted.[7]

[6] **Qur'an references (L29527):** Qur'an 5:106 (Al-Ma'idah); Qur'an 5:107 (Al-Ma'idah).
[7] **Qur'an references (L29530):** Qur'an 49:6 (Al-Hujurat).

مَنْسُوخًا، فَلَمْ يَلْتَفِتُوا هُنَالِكَ إِلَى قَوْلِهِمَا، وَقَلَّدُوهُمَا هَاهُنَا، وَهَذَا كَمَا تَرَوْنَ - وَنَسْأَلُ اللَّهَ الْعَاقِبَةَ وَرَأَى مَالِكٌ، وَالشَّافِعِيُّ: أَنْ لَا يُقْضَى بِالْيَمِينِ وَالشَّاهِدِ، إِلَّا فِي الْأَمْوَالِ.

قَالَ مَالِكٌ: وَفِي الْقَسَامَةِ - وَهَذَا لَا مَعْنَى لَهُ، لِأَنَّهُ تَخْصِيصٌ لِلْخَبَرِ بِلَا دَلِيلٍ.

[مَسْأَلَة شَهَادَة الْكَافِر]

١٧٩١ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُقْبَلَ كَافِرٌ أَصْلًا، لَا عَلَى كَافِرٍ، وَلَا عَلَى مُسْلِمٍ حَاشَ الْوَصِيَّةَ فِي السَّفَرِ فَقَطْ، فَإِنَّهُ يُقْبَلُ فِي ذَلِكَ مُسْلِمَانِ، أَوْ كَافِرَانِ - مِنْ أَيِّ دِينٍ كَانَا - أَوْ كَافِرٌ وَكَافِرَتَانِ، أَوْ أَرْبَعُ كَوَافِرَ.

وَيُحَلَّفُ الْكُفَّارُ هَاهُنَا مَعَ شَهَادَتِهِمْ وَلَا بُدَّ بَعْدَ الصَّلَاةِ - أَيِّ صَلَاةٍ كَانَتْ وَلَوْ أَنَّهَا الْعَصْرُ - لَكَانَ أَحَبَّ إِلَيْنَا {بِاللَّهِ إِنِ ارْتَبْتُمْ لا نَشْتَرِي بِهِ ثَمَنًا وَلَوْ كَانَ ذَا قُرْبَى وَلا نَكْتُمُ شَهَادَةَ اللَّهِ إِنَّا إِذًا لَمِنَ الآثِمِينَ} [المائدة: ١٠٦] ثُمَّ يُحْكَمُ بِمَا شَهِدُوا بِهِ، فَإِنْ جَاءَتْ بَيِّنَةٌ مُسْلِمُونَ: بِأَنَّ الْكُفَّارَ كَذَبُوا: حَلَفَ الْمُسْلِمَانِ الشَّاهِدَانِ، أَوْ الْمُسْلِمُ وَالْمَرْأَتَانِ، أَوْ الْأَرْبَعُ نِسْوَةٍ {بِاللَّهِ لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا وَمَا اعْتَدَيْنَا إِنَّا إِذًا لَمِنَ الظَّالِمِينَ} [المائدة: ١٠٧] ثُمَّ يُفْسَخُ مَا شَهِدَ بِهِ الْكُفَّارُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا} [الحجرات: ٦] وَالْكَافِرُ فَاسِقٌ فَوَجَبَ أَنْ لَا يُقْبَلَ -.

وَقَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِنْكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ إِنْ أَنْتُمْ ضَرَبْتُمْ فِي الأَرْضِ} [المائدة: ١٠٦] الْآيَةَ فَوَجَبَ أَخْذُ حُكْمِ اللَّهِ تَعَالَى كُلِّهِ، وَأَنْ يَسْتَثْنِيَ الْأَخَصَّ مِنَ الْأَعَمِّ، لِيُتَوَصَّلَ بِذَلِكَ إِلَى طَاعَةِ الْجَمِيعِ، وَمَنْ تَعَدَّى هَذَا الطَّرِيقَ فَقَدْ خَالَفَ بَعْضَ أَوَامِرِ اللَّهِ تَعَالَى: وَهَذَا لَا يَحِلُّ -: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ أَبِي النَّضْرِ عَنْ زَاذَانَ مَوْلَى أُمِّ هَانِئٍ عَنِ ابْنِ عَبَّاسٍ «عَنْ تَمِيمٍ الدَّارِيِّ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ {شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ} [المائدة: ١٠٦] الْآيَةَ، قَالَ: بَرِئَ النَّاسُ مِنْهَا غَيْرِي، وَغَيْرَ عَدِيِّ بْنِ بُدَاءٍ، وَكَانَا نَصْرَانِيَّيْنِ يَخْتَلِفَانِ إِلَى الشَّامِ، فَأَتَيَا إِلَى الشَّامِ، وَقَدِمَ عَلَيْهِمَا بُدَيْلُ بْنُ أَبِي مَرْيَمَ مَوْلَى بَنِي سَهْمٍ، وَمَعَهُ جَامٌ مِنْ فِضَّةٍ يُرِيدُ بِهِ الْمَلِكَ هُوَ عُظْمُ تِجَارَتِهِ، فَمَرِضَ، فَأَوْصَى إِلَيْهَا، قَالَ تَمِيمٌ: فَلَمَّا مَاتَ أَخَذْنَا ذَلِكَ الْجَامَ فَبِعْنَاهُ بِأَلْفٍ ثُمَّ اقْتَسَمْنَاهُ أَنَا وَعَدِيُّ بْنُ بُدَاءٍ، فَلَمَّا قَدِمْنَا دَفَعْنَاهُ إِلَى أَهْلِهِ، فَسَأَلُوا عَنِ الْجَامِ؟ فَقُلْنَا: مَا دَفَعَ إِلَيْنَا غَيْرَ هَذَا، فَلَمَّا أَسْلَمْتُ بَعْدَ قُدُومِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ تَأَثَّمْتُ مِنْ ذَلِكَ، فَأَتَيْتُ أَهْلَهُ فَأَخْبَرْتُهُمُ الْخَبَرَ، وَأَدَّيْتُ إِلَيْهِمْ خَمْسَمِائَةِ دِرْهَمٍ، وَأَخْبَرْتُهُمْ: أَنَّ عِنْدَ صَاحِبِي مِثْلَهَا، فَأَتَوْا بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَهُمُ الْبَيِّنَةَ؟ فَلَمْ يَجِدُوا، فَأَحْلَفَهُ بِمَا يُعْظَمُ بِهِ عَلَى أَهْلِ دِينِهِ فَحَلَفَ فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ} [المائدة: ١٠٦] الْآيَةَ، فَحَلَفَ عَمْرُو بْنُ الْعَاصِ وَوَاحِدٌ مِنْهُمْ، فَنُزِعَتِ الْخَمْسُمِائَةِ دِرْهَمٍ مِنْ عَدِيِّ بْنِ بُدَاءٍ» .

L29531 Allah the Exalted said: “O you who have believed, let there be testimony between you when death approaches one of you at the time of bequest, two just men from among you or two others from beyond you if you are traveling through the land” [Al-Mā’idah: 106]. Thus, it is obligatory to uphold all of Allah’s rulings and to make an exception of the specific from the general ruling, so that the obedience of all may be achieved. Whoever transgresses this path has opposed some of Allah’s commands, and this is impermissible. We were narrated through the chain of Muḥammad ibn Isḥāq from Abū al-Naḍr from Zādhan – freed slave of Umm Hāni’ – from Ibn ʿAbbās regarding Tamīm al-Dāri’s account concerning Allah’s words “let there be testimony between you when death approaches one of you” [Al-Mā’idah: 106]. Tamīm said: “People were absolved of this except me and ʿAdī ibn Budāʾ. We were two Christians who traveled frequently to Syria. We went to Syria where Budayl ibn Abī Maryam – freed slave of Banū Sahm – arrived carrying a silver jar that formed the bulk of his merchandise, intending it for the king. He fell ill and entrusted it to us. When he died, we took the jar, sold it for a thousand dirhams, and divided it between me and ʿAdī ibn Budāʾ. Upon our return, we delivered the proceeds to his family. They inquired about the jar, and we replied: ‘He entrusted nothing else to us.’ After embracing Islam following the Prophet’s (peace be upon him) arrival in Medina, I felt guilty for this deed. I went to his family, disclosed the truth, and paid them five hundred dirhams, informing them that my companion held an equal amount. They brought the case to the Prophet (peace be upon him), who demanded evidence. Finding none, he required him to swear by that which is revered among his people. When he swore, Allah revealed: ‘O you who have believed, let there be testimony between you when death approaches one of you’ [Al-Mā’idah: 106]. ʿAmr ibn al-ʿĀṣ and another man then took oath, whereupon the five hundred dirhams were seized from ʿAdī ibn Budāʾ.”[8]

وَمِنْ طَرِيقِ يَحْيَى بْنِ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ أَبِي الْقَاسِمِ عَنْ عَبْدِ الْمَلِكِ بْنِ سَعِيدِ بْنِ جُبَيْرٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ قَالَ: «كَانَ تَمِيمٌ الدَّارِيِّ، وَعَدِيُّ بْنُ بُدَاءٍ: يَخْتَلِفَانِ

L29532–29534 Through the chain of Yaḥyā ibn Abī Zāʾidah, from Muḥammad ibn Abī al-Qāsim, from ʿAbd al-Malik ibn Saʿīd ibn Jubayr, from his father, from Ibn

[8]**Qur’an references (L29531):** Qur’an 5:106 (Al-Ma’idah).

ʿAbbās, who said: "Tamīm al-Dārī and ʿAdī ibn Budā' used to travel frequently to Mecca." A man from the tribe of Sahm accompanied them for trade and died in a land with no Muslims. He had entrusted two men with his will, and they delivered his estate to his family but withheld a silver cup inlaid with gold. When his legal guardians noticed its absence, they came to Allah's Messenger—peace and blessings be upon him. Allah's Messenger—peace and blessings be upon him—made the two swear they had neither concealed it nor gained knowledge of it. Later, the cup was identified in Mecca, where people claimed: "We bought it from Tamim and Adi." Two legal guardians of the Sahmi man stood and swore by Allah: "Indeed, this is the Sahmi's cup. **'Our testimony has greater right than their testimony, and we have not transgressed—for then we would surely be among the wrongdoers'** [Quran 5:107]." They took back the cup, and this verse was revealed concerning them.[9]

إِلَى مَكَّةَ لِلتِّجَارَةِ فَخَرَجَ مَعَهُمْ رَجُلٌ مِنْ بَنِي سَهْمٍ، فَتُوُفِّيَ بِأَرْضٍ لَيْسَ فِيهَا مُسْلِمٌ، فَأَوْصَى إِلَيْهِمَا، فَدَفَعَا تَرِكَتَهُ إِلَى أَهْلِهِ وَحَبَسَا جَامًا مِنْ فِضَّةٍ، مُخَوَّصًا بِالذَّهَبِ، فَفَقَدَهُ أَوْلِيَاؤُهُ، فَأَتَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسْتَحْلَفَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا كَتَمْنَا، وَلَا اطَّلَعْنَا، ثُمَّ عُرِفَ الْجَامُ بِمَكَّةَ، فَقَالُوا: اشْتَرَيْنَاهُ مِنْ تَمِيمٍ، وَعَدِيٍّ، فَقَامَ رَجُلَانِ مِنْ أَوْلِيَاءِ السَّهْمِيِّ فَحَلَفَا بِاللَّهِ إِنَّ هَذَا لَجَامُ السَّهْمِيِّ، {لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا وَمَا اعْتَدَيْنَا إِنَّا إِذًا لَمِنَ الظَّالِمِينَ} [المائدة: ١٠٧] فَأَخَذَا الْجَامَ، وَفِيهِمْ نَزَلَتْ هَذِهِ الْآيَةُ» .

L29535 In accordance with our position, Jahwar al-Salaf states: We have received narrations through the chain of Aisha, the Mother of the Believers—may Allah be pleased with her—that the last chapter revealed was Surah al-Mā'idah. Therefore, whatever you find therein permissible, consider it lawful, and whatever you find therein forbidden, consider it prohibited. As for this verse in al-Mā'idah, its abrogation is thereby invalidated, and its status as unequivocal is confirmed.

وَبِقَوْلِنَا يَقُولُ جَهْوَرُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -: أَنَّ آخِرَ سُورَةٍ نَزَلَتْ سُورَةُ الْمَائِدَةِ، فَمَا وَجَدْتُمْ فِيهَا حَلَالًا فَحِلُّوهُ، وَمَا وَجَدْتُمْ فِيهَا حَرَامًا فَحَرِّمُوهُ، وَهَذِهِ الْآيَةُ فِي الْمَائِدَةِ - فَبَطَلَ أَنَّهَا مَنْسُوخَةٌ وَصَحَّ أَنَّهَا مُحْكَمَةٌ.

L29536 From the narration of Ibn Abbas, he said regarding this verse: This applies to one who dies while Muslims are present with him, so Allah the Exalted and Majestic commanded him to have two just men from the Muslims bear witness to his will. Then He the Exalted and Majestic said: {or two others from non-you [i.e., non-Muslims] if you are journeying through the land} [Al-Ma'idah: 106]. This applies to one who dies with no Muslims present, so Allah the Exalted commanded him to have two men from the disbelievers bear witness to his will. If doubt arises regarding their testimony, they are required to swear by Allah after the prayer: "We will not trade our testimony for a trivial price." If the guardians discover the two disbelievers lied, they

وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي هَذِهِ الْآيَةِ: هَذَا لِمَنْ مَاتَ وَعِنْدَهُ الْمُسْلِمُونَ فَأَمَرَهُ اللَّهُ عَزَّ وَجَلَّ أَنْ يُشْهِدَ عَلَى وَصِيَّتِهِ عَدْلَيْنِ مِنْ الْمُسْلِمِينَ، ثُمَّ قَالَ عَزَّ وَجَلَّ: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ إِنْ أَنْتُمْ ضَرَبْتُمْ فِي الأَرْضِ} [المائدة: ١٠٦] فَهَذَا لِمَنْ مَاتَ وَلَيْسَ عِنْدَهُ أَحَدٌ مِنْ الْمُسْلِمِينَ، فَأَمَرَهُ اللَّهُ تَعَالَى أَنْ يُشْهِدَ عَلَى وَصِيَّتِهِ رَجُلَيْنِ مِنْ غَيْرِ الْمُسْلِمِينَ، فَإِنْ ارْتِيبَ بِشَهَادَتِهِمَا اسْتُحْلِفَا بَعْدَ الصَّلَاةِ بِاللَّهِ لَا نَشْتَرِي بِشَهَادَتِنَا ثَمَنًا قَلِيلًا فَإِذَا اطَّلَعَ الْأَوَّلِيَّانِ عَلَى الْكَافِرَيْنِ كَذِبًا حَلَفَا: بِاللَّهِ إِنَّ شَهَادَةَ الْكَافِرَيْنِ بَاطِلٌ، وَإِنَّا لَمْ نَغْدِرْ.

[9] **Qur'an references (L29532):** Qur'an 5:107 (Al-Ma'idah).

must swear: “By Allah, the testimony of these two disbelievers is invalid, and we have not acted treacherously.”[10]

L29537 And from the narration of Ibn Abbas also: regarding the statement of the Most High, “or two others from among those besides you” [Al-Mā’idah: 106], he said: “from non-Muslims among the People of the Book.”[11]

L29538 It has been reported to us through the chain of Saʿīd ibn Manṣūr and Ziyād ibn Ayyūb—both of whom said: Hushaym narrated to us—Zakariyyā ibn Abī Zā’idah narrated to us from al-Shaʿbī: A Muslim man was on his deathbed in Daqūqā and found no Muslims to witness his will. He therefore had two men from the People of the Book bear witness. They came to Abū Mūsā al-Ashʿarī, informed him, and brought the deceased’s estate and will. Abū Mūsā said: “This is a matter that has not occurred after what took place in the time of the Messenger of Allah—peace and blessings be upon him and his family.” He then made them swear after the ʿAṣr prayer: “By Allah, they did not betray, lie, alter, withhold, or obscure anything, and that this was indeed the man’s will and estate.” Abū Mūsā then upheld their testimony.

L29539–29541 And via the chain of ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Abū Isḥāq al-Sabīʿī from Abu Maysarah is ‘Amr ibn Shurahbil. He said: “Nothing from Surah Al-Mā’idah was abrogated.”

L29542 Via the chain of Waki‘ from Shu‘bah from Qatadah from Sa‘id ibn al-Musayyab concerning Allah’s statement, the Almighty and Majestic: “or two others from besides you” [Al-Ma’idah: 106] – he said: “From among the People of the Book.”[12]

L29543 And through the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us, Sulaymān al-Taymī narrated to us, from Saʿīd ibn al-Musayyab regarding the statement of the Exalted: {or two others from other than you} [Al-Mā’idah

وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ أَيْضًا: فِي قَوْلِه تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ الْمُسْلِمِينَ مِنْ أَهْلِ الْكِتَابِ.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، وَزِيَادِ بْنِ أَيُّوبَ، قَالَا جَمِيعًا: نا هُشَيْمٌ نا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ: أَنَّ رَجُلًا مِنْ الْمُسْلِمِينَ حَضَرَتْهُ الْوَفَاةُ " بِدَقُوقَا " فَلَمْ يَجِدْ أَحَدًا مِنْ الْمُسْلِمِينَ يَشْهَدُ عَلَى وَصِيَّتِه، فَأَشْهَدَ رَجُلَيْنِ مِنْ أَهْلِ الْكِتَابِ، فَأَتَيَا أَبَا مُوسَى الْأَشْعَرِيَّ فَأَخْبَرَاهُ وَقَدِمَا بِتَرِكَتِه وَوَصِيَّتِه فَقَالَ أَبُو مُوسَى: هَذَا أَمْرٌ لَمْ يَكُنْ بَعْدَ الَّذِي كَانَ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِه وَسَلَّمَ - فَأَحْلَفَهُمَا بَعْدَ الْعَصْرِ " بِاَللَّهِ مَا خَانَا وَلَا كَذَبَا وَلَا بَدَّلَا وَلَا كَتَمَا، وَلَا غَيَّبَا، وَأَنَّهَا لَوَصِيَّةُ الرَّجُلِ وَتَرِكَتُهُ " فَأَمْضَى أَبُو مُوسَى شَهَادَتَهُمَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي مَيْسَرَةَ هُوَ عَمْرُو بْنُ شُرَحْبِيلَ - قَالَ: لَمْ يُنْسَخْ مِنْ سُورَةِ الْمَائِدَةِ - شَيْءٌ.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ أَهْلِ الْكِتَابِ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا سُلَيْمَانُ التَّيْمِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي قَوْلِه تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ مِلَّتِكُمْ.

[10] **Qur’an references (L29536):** Qur’an 5:106 (Al-Ma’idah).
[11] **Qur’an references (L29537):** Qur’an 5:106 (Al-Ma’idah).
[12] **Qur’an references (L29542):** Qur’an 5:106 (Al-Ma’idah).

5:106]. He [Ibn al-Musayyab] said: “[This means:] From those outside your creed.”[13]

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنِ ابْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ الْمِلَّةِ.

L29544 Via Wakiʿ from ʿAbdullāh ibn ʿAwn from Ibn Sīrīn from ʿUbaydah al-Salmānī concerning Allah’s statement, the Exalted: {or two others from other than yourselves} [al-Māʾidah 5:106], he said: “From other than the people of the millah.”[14]

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ شُرَيْحٍ قَالَ: لَا تَجُوزُ شَهَادَةُ الْمُشْرِكِينَ عَلَى الْمُسْلِمِينَ إِلَّا فِي وَصِيَّةٍ، وَلَا تَجُوزُ فِي وَصِيَّةٍ إِلَّا أَنْ يَكُونَ مُسَافِرًا.

L29545 From the narration of Sufyan al-Thawri from Mansur ibn al-Mu’tamir from Ibrahim al-Nakha’i from Shurayh, who said: The testimony of polytheists against Muslims is not permissible except in a will, nor is it permissible in a will except when he is a traveler.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ شُرَيْحٍ قَالَ: لَا تَجُوزُ شَهَادَةُ الْيَهُودِيِّ وَالنَّصْرَانِيِّ، إِلَّا فِي السَّفَرِ، وَلَا تَجُوزُ فِي السَّفَرِ إِلَّا فِي الْوَصِيَّةِ.

L29546 Via the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, from Shurayḥ, who said: “The testimony of a Jew or Christian is inadmissible except during travel, and it is not permissible during travel except for a testamentary bequest.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدُ بْنُ عَبْدِ اللَّهِ الطَّحَّانُ عَنْ دَاوُد الطَّائِيِّ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: إِذَا مَاتَ الرَّجُلُ فِي أَرْضٍ غُرْبَةٍ، وَلَمْ يَجِدْ مُسْلِمًا فَأَشْهَدَ مِنْ غَيْرِ الْمُسْلِمِينَ شَاهِدَيْنِ، فَشَهَادَتُهُمَا جَائِزَةٌ، فَإِنْ جَاءَ مُسْلِمَانِ فَشَهِدَا بِخِلَافِ ذَلِكَ أُخِذَ بِشَهَادَةِ الْمُسْلِمَيْنِ وَتُرِكَتْ شَهَادَتُهُمَا.

L29547 Through the chain of Saʿīd ibn Manṣūr: Khālid ibn ʿAbdullāh al-Ṭaḥḥān narrated to us from Dāwūd al-Ṭāʾī from al-Shaʿbī from Shuraih, who said: If a man dies in a foreign land and no Muslim is found [to witness], then two non-Muslim witnesses may be sought—their testimony is valid. But if two Muslims come forward and testify contrary to that, the testimony of the two Muslims is upheld, and the testimony of the non-Muslims is disregarded.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ مِلَّتِكُمْ.

L29548 And via the chain of transmission: Saʿīd ibn Manṣūr → Hushaym → al-Mughīrah, from Ibrāhīm al-Nakhaʿī concerning Allah the Exalted’s verse: {or two others from those other than you} [al-Māʾidah: 106], he said: *From people not of your religious community*.[15]

وَمِنْ طَرِيقِ شُعْبَةَ نا أَبُو بِشْرٍ - هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: إِذَا كَانَ بِأَرْضِ الشِّرْكِ فَأَوْصَى إِلَى

L29549 From the path of Shuʿbah: Abū Bishr—who is Jaʿfar ibn Abī Waḥshiyyah—narrated from Saʿīd ibn Jubayr, who said regarding the verse: *“or two others

[13] **Qur’an references (L29543):** Qur’an 5:106 (Al-Ma’idah).
[14] **Qur’an references (L29544):** Qur’an 5:106 (Al-Ma’idah).
[15] **Qur’an references (L29548):** Qur’an 5:106 (Al-Ma’idah).

from among those other than you”* [5:106]: If one is in a land of polytheism and bequeaths **to** a man from the People of the Book, then the two of them are to be sworn after the ʿAṣr prayer. If it is discovered after their oath that the two of them betrayed, the heirs of the deceased swear that it was such-and-such, thereby establishing their right.[16]

رَجُلٍ مِنْ أَهْلِ الْكِتَابِ فَإِنَّهُمَا يُحَلَّفَانِ بَعْدَ الْعَصْرِ، فَإِنْ أُطُّلِعَ بَعْدَ حَلِفِهِمَا عَلَى أَنَّهُمَا خَانَا حَلَفَ أَوْلِيَاءُ الْمَيِّتِ أَنَّهُ كَانَ كَذَا وَكَذَا وَاسْتَحَقُّوا.

L29550–29551 From the chain of transmission of Ismāʿīl ibn Isḥāq al-Qāḍī, who said: Muḥammad ibn Abī Bakr al-Muqaddamī narrated to us from ʿUmar ibn ʿAlī al-Muqaddamī, from al-Ashʿath, from al-Shaʿbī: {“Or two others from those other than you”} [Al-Mā’idah: 106]. He said: “From the Jews and the Christians.”[17]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي قَالَ: نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ نا عُمَرُ بْنُ عَلِيٍّ الْمُقَدَّمِيُّ عَنِ الْأَشْعَثِ عَنِ الشَّعْبِيِّ: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنَ الْيَهُودِ وَالنَّصَارَى.

L29552 And via the chain of Ismāʿīl: Sulaymān ibn Ḥarb narrated to us, Ḥammād ibn Zayd narrated to us from Ibn Abī Najīḥ from Mujāhid, who said regarding *“Two just men from among you”* [5:106]: “From the adherents of the faith,” and regarding *“or two others from other than you”* [5:106]: “From those outside the adherents of the faith.”[18]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ أَيْضًا نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: {اثْنَانِ ذَوَا عَدْلٍ مِنْكُمْ} [المائدة: ١٠٦] مِنْ أَهْلِ الْمِلَّةِ: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ الْمِلَّةِ.

L29553 And through the chain of Ismail: Mahmud ibn Khidash narrated to us, who narrated from Hushaym, who narrated from Sulayman al-Taymi, from Abu Mijlaz concerning Allah the Exalted’s statement: “or two others from among those not of you” [Al-Ma’idah: 106]. He said: “From those not belonging to the people of the religion.”[19]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا مَحْمُودُ بْنُ خِدَاشٍ نا هُشَيْمٌ نا سُلَيْمَانُ التَّيْمِيُّ عَنْ أَبِي مِجْلَزٍ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ الْمِلَّةِ.

L29554 And through the chain of Ismāʿīl, Ibrāhīm ibn al-Ḥajjāj narrated to us, ʿAbd al-Wārith ibn Saʿīd narrated to us, Isḥāq ibn Suwayd narrated to us from Yaḥyā ibn Yaʿmur concerning Allah the Exalted’s statement: {or two others from those besides you} [Al-Mā’idah: 106]. He said: “From those other than the people of the religion.”[20]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا إِبْرَاهِيمُ بْنُ الْحَجَّاجِ نا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ نا إِسْحَاقُ بْنُ سُوَيْدٍ عَنْ يَحْيَى بْنِ يَعْمُرَ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ أَهْلِ الْمِلَّةِ.

L29555 From the chain of al-Ṭaḥāwī: Muḥammad ibn Khuzaymah narrated to us; Ḥajjāj ibn al-Minhāl and ʿUthmān ibn al-Haytham narrated to us. Ḥajjāj said:

وَمِنْ طَرِيقِ الطَّحَاوِيِّ نا مُحَمَّدُ بْنُ خُزَيْمَةَ نا حَجَّاجُ بْنُ الْمِنْهَالِ، وَعُثْمَانُ بْنُ الْهَيْثَمِ قَالَ الْحَجَّاجُ: نا أَبُو هِلَالٍ الرَّاسِبِيُّ، وَقَالَ عُثْمَانُ: نا عَوْفُ بْنُ أَبِي جَمِيلَةَ، كِلَاهُمَا عَنْ مُحَمَّدِ بْنِ سِيرِينَ فِي قَوْلِهِ تَعَالَى: {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] قَالَ: مِنْ غَيْرِ الْمُسْلِمِينَ.

[16] **Qur’an references (L29549):** Qur’an 5:106 (Al-Ma’idah).
[17] **Qur’an references (L29551):** Qur’an 5:106 (Al-Ma’idah).
[18] **Qur’an references (L29552):** Qur’an 5:106 (Al-Ma’idah).
[19] **Qur’an references (L29553):** Qur’an 5:106 (Al-Ma’idah).
[20] **Qur’an references (L29554):** Qur’an 5:106 (Al-Ma’idah).

Abū Hilāl al-Rāsibī narrated to us, and ʿUthmān said: ʿAwf ibn Abī Jamīlah narrated to us; both from Muḥammad ibn Sīrīn regarding the verse of Allah, the Exalted: *"or two others from besides you"* [5:106]. He said: "From those other than the Muslims."[21]

L29556 These individuals are: the Mother of the Believers, Abu Musa al-Ash'ari, Ibn Abbas—and a narration similar to that has also been reported from Ali (may Allah be pleased with them)—with no dissenter among the Companions (may Allah be pleased with them) opposing them.

L29557 Among the Followers are ʿAmr ibn Shurahbil, Shurayḥ, ʿUbaydah al-Salmānī, Ibrāhīm al-Nakhaʿī, al-Shaʿbī, Saʿīd ibn Jubayr, Saʿīd ibn al-Musayyib, Mujāhid, Abū Mijlaz, Ibn Sīrīn, Yaḥyā ibn Yaʿmur, and others such as Ibn Abī Laylā, Sufyān al-Thawrī, Yaḥyā ibn Ḥamzah, al-Awzāʿī, Abū ʿUbayd, Aḥmad ibn Ḥanbal, and the majority of the scholars of Hadith.

L29558 And with this, Abu Sulaymān and all our companions hold the same opinion, while others disagreed with them. It has been narrated to us from Al-Hasan that he said, "{or two others from among those not of you} [Al-Ma'idah: 106] from outside your tribe."[22]

L29559–29560 It was narrated from Az-Zuhri similarly to this, and that he said: "Among those entitled to inheritance," and that he refrained from a definitive stance on the matter - and it was also narrated from Ikrimah.

L29561 And it has been narrated to us from Zayd ibn Aslam that it is abrogated—and from Ibrāhīm also the same as that.

L29562 Abu Muhammad said: As for the claim of abrogation, it is invalid. It is not permissible to declare a verse abrogated—thereby rendering obedience to it and acting upon it impermissible—except based on an authentic text or a necessity that precludes [its application]. None of these exist here. Were such

فَهَؤُلَاءِ: أُمُّ الْمُؤْمِنِينَ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَابْنُ عَبَّاسٍ - وَرُوِيَ أَيْضًا نَحْوُ ذَلِكَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَمِنْ التَّابِعِينَ عَمْرُو بْنُ شُرَحْبِيلَ، وَشُرَيْحٌ، وَعَبِيدَةُ السَّلْمَانِيُّ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالشَّعْبِيُّ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَمُجَاهِدٌ، وَأَبُو مِجْلَزٍ، وَابْنُ سِيرِينَ، وَيَحْيَى بْنُ يَعْمُرَ، وَغَيْرُهُمْ، كَابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَيَحْيَى بْنِ حَمْزَةَ، وَالْأَوْزَاعِيِّ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ وَجَمِيعُ أَصْحَابِنَا، وَخَالَفَهُمْ آخَرُونَ فَرُوِّينَا عَنْ الْحَسَنِ أَنَّهُ قَالَ، {أَوْ آخَرَانِ مِنْ غَيْرِكُمْ} [المائدة: ١٠٦] مِنْ غَيْرِ قَبِيلَتِكُمْ.

وَرُوِيَ عَنْ الزُّهْرِيِّ نَحْوُ هَذَا، وَأَنَّهُ قَالَ: مِنْ أَهْلِ الْمِيرَاثِ، وَأَنَّهُ تَوَقَّفَ فِي ذَلِكَ - وَرُوِيَ أَيْضًا: عَنْ عِكْرِمَةَ.

وَرُوِّينَا عَنْ زَيْدِ بْنِ أَسْلَمَ أَنَّهَا مَنْسُوخَةٌ - وَعَنْ إبْرَاهِيمَ أَيْضًا مِثْلُ ذَلِكَ.

قَالَ أَبُو مُحَمَّد: أَمَّا دَعْوَى النَّسْخِ فَبَاطِلٌ، لَا يَحِلُّ أَنْ يُقَالَ فِي آيَةٍ إنَّهَا مَنْسُوخَةٌ لَا تَحِلُّ طَاعَتُهَا وَالْعَمَلُ بِهَا إلَّا بِنَصٍّ صَحِيحٍ، أَوْ ضَرُورَةٍ مَانِعَةٍ، وَلَيْسَ هَاهُنَا شَيْءٌ مِنْ ذَلِكَ، وَلَوْ جَازَ مِثْلُ هَذَا لَمَا عَجَزَ أَحَدٌ عَنْ أَنْ يَدَّعِيَ فِيمَا شَاءَ مِنْ الْقُرْآنِ أَنَّهُ مَنْسُوخٌ، وَهَذَا لَا يَحِلُّ.

[21] **Qur'an references (L29555):** Qur'an 5:106 (Al-Ma'idah).
[22] **Qur'an references (L29558):** Qur'an 5:106 (Al-Ma'idah).

a claim permissible, no one would be unable to assert abrogation regarding whatever part of the Quran they wished, and this is impermissible.

وَأَمَّا مَنْ قَالَ: مِنْ غَيْرِ قَبِيلَتِكُمْ فَقَوْلٌ ظَاهِرُ الْفَسَادِ، وَالْبُطْلَانِ، لِأَنَّهُ لَيْسَ فِي أَوَّلِ الْآيَةِ خِطَابٌ لِقَبِيلَةٍ دُونَ قَبِيلَةٍ إِنَّمَا أَوَّلُهَا: {يَا أَيُّهَا الَّذِينَ آمَنُوا} [المائدة: ١٠٦] وَلَا يَشُكُّ مُنْصِفٌ فِي أَنَّ غَيْرَ الَّذِينَ آمَنُوا هُمُ الَّذِينَ لَمْ يُؤْمِنُوا، وَلَكِنَّهَا مِنَ الْحَسَنِ زَلَّةُ عَالِمٍ لَمْ يَتَدَبَّرْهَا.

L29563 As for those who say "from other than your tribe," this is a statement of manifest invalidity and falsehood, for the opening of the verse does not address one tribe to the exclusion of another. Rather, its beginning states: {O you who have believed} [Al-Mā'idah: 106]. No fair-minded person would doubt that "other than those who have believed" are precisely those who did not believe. Yet this constitutes al-Ḥasan's lapse as a scholar who failed to reflect deeply upon it.[23]

وَقَالَ الْمُخَالِفُونَ: نَحْنُ نُهِينَا عَنْ قَبُولِ شَهَادَةِ الْفَاسِقِ، وَالْكَافِرُ أَفْسَقُ الْفُسَّاقِ؟ فَقُلْنَا: الَّذِي نَهَانَا عَنْ قَبُولِ شَهَادَةِ الْفَاسِقِ هُوَ الَّذِي أَمَرَنَا بِقَبُولِ شَهَادَةِ الْكَافِرِ فِي الْوَصِيَّةِ فِي السَّفَرِ فَنَقِفُ عِنْدَ أَمْرَيْهِ جَمِيعًا، وَلَيْسَ أَحَدُهُمَا بِأَوْلَى بِالطَّاعَةِ مِنَ الْآخَرِ.

L29564 The opponents said: "We have been prohibited from accepting the testimony of a morally corrupt person, and is the disbeliever not the most transgressing of transgressors?" We responded: "The One Who forbade us from accepting a corrupt person's testimony is the same Who commanded us to accept a disbeliever's testimony regarding a bequest made during travel. Thus we adhere to both of His commands, neither command holding greater claim to obedience than the other."

وَمِنْ عَجَائِبِ الدُّنْيَا الَّتِي لَا نَظِيرَ لَهَا: أَنَّ الْمُحْتَجِّينَ بِهَذَا هُمُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ.

L29565 And among the unparalleled marvels of the world is that those who argue with this are the Ḥanafīs, the Mālikīs, and the Shāfiʿīs.

فَأَمَّا الْحَنَفِيُّونَ: فَأَجَازُوا شَهَادَةَ الْكُفَّارِ فِي كُلِّ شَيْءٍ بَعْضِهِمْ عَلَى بَعْضٍ بِغَيْرِ أَمْرٍ مِنَ اللَّهِ تَعَالَى بِذَلِكَ، بَلْ خَالَفُوا الْقُرْآنَ فِي نَهْيِهِ عَنْ قَبُولِ نَبَأِ الْفَاسِقِ ثُمَّ خَالَفُوهُ فِي قَبُولِ الْكُفَّارِ فِي السَّفَرِ؟ فَاعْجَبُوا لِهَذِهِ الْفَضَائِحِ، وَالْمُضَادَّةِ لِلَّهِ تَعَالَى.

L29566 As for the Ḥanafīs: They permitted the testimony of non-believers in all matters - even among themselves - without any divine command sanctioning this. Rather, they contradicted the Qur'ān's prohibition against accepting the account of the transgressor, then further contradicted it by accepting the testimony of non-believers during travel. So marvel at these scandals and their opposition to Allah the Exalted!

وَأَمَّا الْمَالِكِيُّونَ: فَأَجَازُوا شَهَادَةَ طَبِيبَيْنِ كَافِرَيْنِ حَيْثُ لَا يُوجَدُ طَبِيبٌ مُسْلِمٌ بِغَيْرِ أَمْرٍ مِنَ اللَّهِ تَعَالَى بِذَلِكَ، بَلْ خَالَفُوا الْقُرْآنَ فِي كِلَا الْوَجْهَيْنِ، كَمَا ذَكَرْنَا.

L29567 As for the Mālikīs: they permitted the testimony of two non-Muslim physicians when no Muslim physician is available, without any command from Allah the Exalted regarding that. Rather, they contradicted the Quran in both rulings, as we have previously mentioned.

L29568–29570 Some of them said: "The will may contain an acknowledgment of debt.

[23] **Qur'an references (L29563):** Qur'an 5:106 (Al-Ma'idah).

وَقَالَ بَعْضُهُمْ: الْوَصِيَّةُ يَكُونُ فِيهَا إقْرَارٌ بِدَيْنٍ فَلَمَّا نُسِخَ ذَلِكَ مِنْ الْآيَةِ دَلَّ عَلَى نَسْخِ سَائِرِ ذَلِكَ؟ فَقُلْنَا: كَذَبْتُمْ مَا سَمَّى اللَّهُ تَعَالَى - قَطُّ - الْإِقْرَارَ بِالدَّيْنِ وَصِيَّةً، لِأَنَّ الْوَصِيَّةَ مِنْ الثُّلُثِ، وَالْإِقْرَارَ بِالدَّيْنِ مِنْ رَأْسِ الْمَالِ، وَمَا دَخَلَ - قَطُّ - الْإِقْرَارُ بِالدَّيْنِ فِي الْوَصِيَّةِ، وَلَا نُسِخَ مِنْ الْآيَةِ شَيْءٌ - ثُمَّ لَهُمْ بَعْدَ هَذَا أَهْذَارٌ يُشْبِهُ تَخْلِيطَ الْمُبَرْسَمِينَ لَا مَعْنَى لَهَا، وَهَذَا مِمَّا خَالَفُوا فِيهِ جُمْهُورَ الْعُلَمَاءِ وَالصَّحَابَةِ، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ، وَهُمْ يُعَظِّمُونَ ذَلِكَ إذَا وَافَقَ أَهْوَاءَهُمْ.

When that [provision] was abrogated from the verse, does it indicate the abrogation of the rest of that?" We replied: "You have lied! Allah the Exalted has never - at all - termed the acknowledgment of debt as a will, for the will is from..." The third [of the estate], the acknowledgment of debt from the principal amount, and the acknowledgment of debt has never been included in the will, nor has any part of the verse been abrogated. Then, after this, they have baseless assertions resembling the incoherent ramblings of those afflicted with barsam (a neurological ailment), which hold no meaning. This is among the matters in which they have opposed the majority of scholars and the Companions, with no dissenter from the Companions against them. Yet they magnify this when it aligns with their desires.

وَذَكَرُوا خَبَرًا: رُوِّينَاهُ مِنْ طَرِيقِ عُمَرَ بْنِ رَاشِدٍ الْيَمَامِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَجُوزُ شَهَادَةُ مِلَّةٍ عَلَى مِلَّةٍ إلَّا مِلَّةُ مُحَمَّدٍ فَإِنَّهَا تَجُوزُ عَلَى غَيْرِهِمْ» .

L29571 They mentioned a report which we have narrated via the chain of transmission of ʿUmar ibn Rāshid al-Yamāmī, from Yaḥyā ibn Abī Kathīr, from Abū Salama, from Abū Hurayrah, that the Prophet—peace be upon him—said: "The testimony of one community against another is not valid, except the community of Muḥammad, for their testimony is valid against others besides them."

قَالَ أَبُو مُحَمَّدٍ: عُمَرُ بْنُ رَاشِدٍ سَاقِطٌ، وَهَذَا خَبَرُ أَوَّلُ مَنْ خَالَفَهُ أَبُو حَنِيفَةَ لِأَنَّهُ يُجِيزُ شَهَادَةَ الْيَهُودِيِّ عَلَى النَّصْرَانِيِّ وَمَالِكٌ، فَإِنَّهُ يُجِيزُ شَهَادَةَ الْكُفَّارِ الْأَطِبَّاءِ عَلَى الْمُسْلِمِينَ - وَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا التَّخْصِيصُ لِلْأَطِبَّاءِ دُونَ سَائِرِ مَنْ يُضْطَرُّ إلَيْهِ مِنْ الشَّهَادَاتِ مِنْ النِّكَاحِ، وَالطَّلَاقِ، وَالدِّمَاءِ وَالْأَمْوَالِ، وَالْعِتْقِ؟ وَمَا نَعْلَمُ هَذَا التَّفْرِيقَ عَنْ أَحَدٍ قَبْلَهُ.

L29572 Abu Muhammad said: Umar ibn Rashid is rejected. This is the account of Abu Hanifah being the first to oppose him, for he permits the testimony of a Jew against a Christian. As for Malik, he permits the testimony of infidel physicians against Muslims - though we do not know from where they obtained this specification for physicians, to the exclusion of others whose testimony is necessitated in matters of marriage, divorce, bloodshed, financial affairs, and manumission. We know of no one before him who made this distinction.

وَأَمَّا شَهَادَةُ الْكُفَّارِ فِي غَيْرِ ذَلِكَ، فَطَائِفَةٌ: مَنَعَتْ مِنْ ذَلِكَ جُمْلَةً - وَهُوَ قَوْلُنَا.

L29573 As for the testimony of disbelievers in matters other than those [previously mentioned], a group of scholars has categorically prohibited it—and this is our position.

وَطَائِفَةٌ أَجَازَتْهَا عَلَى الْكُفَّارِ، وَلَمْ يُرَاعُوا اخْتِلَافَ مِلَلِهِمْ.

L29574 And a group of scholars permitted it against the disbelievers without respecting the differences among their creeds.

وَطَائِفَةٌ أَجَازَتْ شَهَادَةَ كُلِّ مِلَّةٍ عَلَى مِثْلِهَا وَلَمْ تُجِزْهَا عَلَى غَيْرِ مِثْلِهَا.

L29575 A group permitted the testimony of every religious community concerning

their own members but did not permit it concerning those outside their community.

فَأَمَّا قَوْلُنَا فَقَدْ ذَكَرْنَاهُ عَنْ جَمَاعَةٍ مِنْ السَّلَفِ.

L29576 As for our statement, we have indeed mentioned it from a group of the Salaf.

وَأَمَّا الْقَوْلُ الثَّانِي: فَصَحَّ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ مَيْمُونِ بْنِ مِهْرَانَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ أَجَازَ شَهَادَةَ نَصْرَانِيٍّ عَلَى مَجُوسِيٍّ، أَوْ مَجُوسِيٍّ عَلَى نَصْرَانِيٍّ.

L29577 As for the second opinion: It is authentically narrated through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sufyān al-Thawrī, from ʿAmr ibn Maymūn ibn Mihrān, from ʿUmar ibn ʿAbd al-ʿAzīz, that he deemed it permissible for a Christian to testify against a Zoroastrian, or a Zoroastrian against a Christian.

وَصَحَّ مِنْ طَرِيقِ شُعْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُ قَالَ: تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى الْيَهُودِيِّ، وَالْيَهُودِيِّ عَلَى النَّصْرَانِيِّ - هُمْ كُلُّهُمْ أَهْلُ الشِّرْكِ.

L29578 It has been authentically reported through Shu'bah's narration from Ḥammād ibn Abī Sulaymān that he said: "The testimony of a Christian against a Jew is permissible, and the testimony of a Jew against a Christian is permissible—they are all people of polytheism."

وَصَحَّ أَيْضًا هَذَا عَنْ الشَّعْبِيِّ، وَشُرَيْحٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ.

L29579 And authenticated also is this on the authority of al-Sha'bī, Shurayh and Ibrāhīm al-Nakha'ī.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ عَوْنِ بْنِ مَعْمَرٍ عَنْ إبْرَاهِيمَ الصَّائِغِ قَالَ: سَأَلْت نَافِعًا هُوَ مَوْلَى بْنِ عُمَرَ - عَنْ شَهَادَةِ أَهْلِ الْكِتَابِ بَعْضِهِمْ عَلَى بَعْضٍ؟ فَقَالَ: تَجُوزُ.

L29580–29582 And via the path of Ibn Abī Shaybah: Zayd ibn al-Ḥubāb narrated to us from ʿAwn ibn Maʿmar from Ibrāhīma al-Ṣāʾigh. He said: I asked Nāfiʿ—the client of Ibn ʿUmar—about the testimony of the People of the Book against one another. He replied: "It is permissible."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَنْ شَهَادَةِ أَهْلِ الْكِتَابِ بَعْضِهِمْ عَلَى بَعْضٍ؟ فَقَالَ: تَجُوزُ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَوَكِيعٍ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَعُثْمَانَ الْبَتِّيِّ.

L29583 And via the chain of ʿAbd al-Razzāq from Maʿmar, he said: I asked al-Zuhrī about the testimony of the People of the Book against one another. He replied: "It is permissible." This is the opinion of Sufyān al-Thawrī, Wakīʿ, Abū Ḥanīfah, his companions, and ʿUthmān al-Battī.

وَالثَّالِثُ: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ أَبِي الْأَسْوَدِ عَنْ ابْنِ لَهِيعَةَ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ قَتَادَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى النَّصْرَانِيِّ.

L29584 The third: As was narrated to us through Abu 'Ubayd, from Abu al-Aswad, from Ibn Lahīʿah, from ʿAmr ibn al-Ḥārith, from Qatādah, that ʿAlī ibn Abī Ṭālib said: "The testimony of a Christian against a Christian is valid."

L29585 From the narration of Abu 'Ubayd from 'Abdullah ibn Salih from al-Layth from Yunus ibn Yazid from Ibn Shihab al-Zuhri, who said: The testimony of

a Christian is permissible regarding a Christian, and the testimony of a Jew is permissible regarding a Jew, and the testimony of either against the other is not permissible.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ صَالِحٍ عَنْ اللَّيْثِ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ الزُّهْرِيِّ قَالَ: تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى النَّصْرَانِيِّ، وَالْيَهُودِيِّ عَلَى الْيَهُودِيِّ، وَلَا تَجُوزُ شَهَادَةُ أَحَدِهِمَا عَلَى الْآخَرِ.

L29586 On the authority of Ibn Wahb, from Mu'awiyah ibn Salih: that he heard Yahya ibn Sa'id al-Ansari say, "The testimony of a Christian against a Jew is not valid, nor is the testimony of a Jew against a Christian."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ: أَنَّهُ سَمِعَ يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ يَقُولُ: لَا تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى الْيَهُودِيِّ، وَلَا شَهَادَةُ الْيَهُودِيِّ عَلَى النَّصْرَانِيِّ.

L29587 From the transmission of Abd al-Razzaq, from Ma'mar, from Qatadah and Rabi'ah ibn Abi Abd al-Rahman - both of whom said: A Jew's testimony regarding a Jew is valid, but it is not valid regarding a Christian, nor is a Christian's testimony regarding a Jew valid.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَرَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ كِلَاهُمَا قَالَ: تَجُوزُ شَهَادَةُ الْيَهُودِيِّ عَلَى الْيَهُودِيِّ، وَلَا تَجُوزُ عَلَى النَّصْرَانِيِّ، وَلَا تَجُوزُ شَهَادَةُ النَّصْرَانِيِّ عَلَى الْيَهُودِيِّ.

L29588 From the chain of Shu'bah on the authority of Al-Hakam ibn 'Utaybah: The testimony of a Jew against a Christian is not valid, nor is the testimony of a Christian against a Jew.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: لَا تَجُوزُ شَهَادَةُ الْيَهُودِيِّ عَلَى النَّصْرَانِيِّ، وَلَا النَّصْرَانِيِّ عَلَى الْيَهُودِيِّ.

L29589 From the transmission of Ibn Abī Shaybah: Ibn ʿUlayyah reported to us from Yūnus, from al-Ḥasan, who said: When religious communities differ, the testimony of some of them against others is not permissible.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ يُونُسَ عَنْ الْحَسَنِ قَالَ: إذَا اخْتَلَفَتْ الْمِلَلُ لَمْ تَجُزْ شَهَادَةُ بَعْضِهِمْ عَلَى بَعْضٍ.

L29590 From the transmission of Ibn Abī Shaybah: Ibn Idrīs narrated from al-Layth from ʿAṭāʾ, who said: The testimony of a Jew against a Christian is not valid, nor is that of a Christian against a Zoroastrian valid, nor is the testimony of any religious community against another of a different faith valid, except when it concerns Muslims.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ إدْرِيسَ عَنْ اللَّيْثِ عَنْ عَطَاءٍ قَالَ: لَا تَجُوزُ شَهَادَةُ الْيَهُودِيِّ عَلَى النَّصْرَانِيِّ، وَلَا النَّصْرَانِيِّ عَلَى الْمَجُوسِيِّ، وَلَا مِلَّةٍ عَلَى غَيْرِ مِلَّتِهَا إلَّا الْمُسْلِمِينَ.

L29591–29592 The testimony of one religious community against another is not valid except that of Muslims.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ دَاوُد عَنْ الشَّعْبِيِّ لَا تَجُوزُ شَهَادَةُ مِلَّةٍ عَلَى مِلَّةٍ إلَّا الْمُسْلِمِينَ.

L29593 And via the chain of Ibn Abi Shaybah: He informed us from Ibn ʻUlayyah, from Maʻmar, from al-Zuhri, who said: The testimony of the People of the Book when they testify against each other is not permissible.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: لَا تَجُوزُ شَهَادَةُ أَهْلِ الْكِتَابِ بَعْضِهِمْ عَلَى بَعْضٍ.

L29594 From the chain of narration (isnād) of Ibn Abi Shaybah: Hafs reported to us from Ash'ath, who reported to us from Hammad, who reported to us from Ibrāhīm al-Nakhaʿī, who said: The testimony of people belonging to a religious community is not valid except against members of their own community: a Jew against a Jew, and a Christian against a Christian.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ أَشْعَثَ نا حَمَّادٌ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا تَجُوزُ شَهَادَةُ أَهْلِ مِلَّةٍ إِلَّا عَلَى أَهْلِ مِلَّتِهَا: الْيَهُودِيِّ عَلَى الْيَهُودِيِّ، وَالنَّصْرَانِيِّ عَلَى النَّصْرَانِيِّ.

L29595 And through the chain of Wakiʿ from ʿUmar ibn Rāshid from Yaḥyā ibn Abī Kathīr from Abū Salama ibn ʿAbd al-Raḥman ibn ʿAwf: The testimony of one religious community against another is not permissible, except Muslims — Wakiʿ said: This is the opinion of Ibn Abī Laylā.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عُمَرَ بْنِ رَاشِدٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: لَا تَجُوزُ شَهَادَةُ مِلَّةٍ عَلَى مِلَّةٍ إِلَّا الْمُسْلِمِينَ - قَالَ وَكِيعٌ: وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى.

L29596 Abū Muḥammad said: It is the opinion of al-Awzāʿī, al-Layth, and al-Ḥasan ibn Ḥayyin.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَاللَّيْثِ، وَالْحَسَنِ بْنِ حَيٍّ.

L29597 ʿAlī said: Both opinions are reported, as we have mentioned from Ḥammād ibn Abī Sulaymān, al-Zuhrī, al-Shaʿbī, and al-Nakhaʿī. The first opinion is reported from Nāfiʿ.

قَالَ عَلِيٌّ: فَرُوِيَ كِلَا الْقَوْلَيْنِ كَمَا أَوْرَدْنَا عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالزُّهْرِيِّ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ - وَرُوِيَ الْقَوْلُ الْأَوَّلُ: عَنْ نَافِعٍ.

L29598 The second narration is reported from Yaḥyā ibn Saʿīd al-Anṣārī, Abī Salamah ibn ʿAbd al-Raḥmān, Rabīʿah al-Raʾy, Qatādah, al-Ḥasan, and ʿAṭāʾ.

وَرُوِيَ الثَّانِي: عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ وَرَبِيعَةَ الرَّأْيِ، وَقَتَادَةَ، وَالْحَسَنِ، وَعَطَاءٍ.

L29599 Abū Muḥammad said: Nothing is authentically established from ʿAlī at all, for it is from Ibn Lahīʿah, and furthermore, the chain is disconnected. ʿAlī said: "As for Abū Ḥanīfah's statement—it has not been narrated, neither sound nor unsound, from any of the Companions—this contradicts all that has been reported on this issue from the Companions."

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَصِحُّ عَنْ عَلِيٍّ أَصْلًا، لِأَنَّهُ عَنِ ابْنِ لَهِيعَةَ، ثُمَّ هُوَ أَيْضًا مُنْقَطِعٌ - قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَلَمْ يُرْوَ - لَا صَحِيحًا وَلَا سَقِيمًا - عَنْ أَحَدٍ مِنَ الصَّحَابَةِ، فَهُوَ خِلَافٌ لِكُلِّ مَا جَاءَ فِي هَذِهِ الْمَسْأَلَةِ عَنِ الصَّحَابَةِ.

L29600 As for Mālik, he opposed his Medinan shaykhs—Abū Salama ibn ʿAbd al-Raḥmān, Nāfiʿ, al-Zuhrī; Rabīʿa, and Yaḥyā ibn Saʿīd al-Anṣārī—though they revered this [stance] only when it aligned with their Imam's opinion.

وَأَمَّا مَالِكٌ: فَخَالَفَ شُيُوخَهُ الْمَدَنِيِّينَ: أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ، وَنَافِعًا، وَالزُّهْرِيَّ؛ وَرَبِيعَةَ، وَيَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ - وَهُمْ يُعَظِّمُونَ هَذَا إِذَا وَافَقَ رَأْيَ صَاحِبِهِمْ.

وَاحْتَجَّ مَنْ أَجَازَ قَبُولَ شَهَادَةِ بَعْضِهِمْ عَلَى بَعْضٍ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الطَّحَاوِيِّ: نا رَوْحُ بْنُ الْفَرَجِ نا يَحْيَى بْنُ سُلَيْمَانَ الْجُعْفِيُّ نا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ الرَّازِيّ نا مُجَالِدٌ عَنِ الشَّعْبِيِّ عَنْ جَابِرٍ قَالَ فِي حَدِيثِ «الْيَهُودِيَّيْنِ اللَّذَيْنِ زَنَيَا لِلْيَهُودِ: ائْتُونِي بِالشُّهُودِ؟ فَشَهِدَ أَرْبَعَةٌ مِنْهُمْ عَلَى ذَلِكَ، فَرَجَمَهُمَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L29601–29603 Those who deemed it permissible to accept the testimony of some of them against others argued based on the narration we transmitted through the chain of al-Ṭaḥāwī: Narrated to us by Rūḥ ibn al-Faraj, narrated to us by Yaḥyā ibn Sulaymān al-Juʿfī, narrated to us by ʿAbd al-Raḥīm ibn Sulaymān al-Rāzī, narrated to us by Mujalid reported from Al-Shaʿbi from Jabir, who said in the narration about *the two Jews who committed adultery among the Jews*: “Bring me the witnesses.” So four of them testified to that, and the Prophet, peace be upon him, stoned them both.

قَالَ أَبُو مُحَمَّدٍ: مُجَالِدٌ هَالِكٌ، رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَّهُ قَالَ: لَوْ شِئْت أَنْ يَجْعَلَهَا لِي مُجَالِدٌ كُلَّهَا عَنِ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ لَفَعَلَ.

L29604 Abu Muhammad said: “Mujalid is rejected. It was narrated to us via Yahya ibn Saʿid al-Qattān’s transmission that he said: ’If I had wished, Mujalid would have fabricated all of them for me - entirely through al-Shaʿbī → Masrūq → ʿAbdullāh - and he would have done it!’”

وَعَنْ شُعْبَةَ: أَسْتَخِيرُ اللَّهَ وَأُدَمِّرُ عَلَى مُجَالِدٍ.

L29605 And from Shuʿbah: I seek guidance from Allah and reject Mujālid’s position.

وَعَنْ أَحْمَدَ بْنِ حَنْبَلٍ: إنَّ مُجَالِدًا يَزِيدُ فِي الْإِسْنَادِ.

L29606 And from Aḥmad ibn Ḥanbal: Indeed, Mujālid adds in the Isnād.

وَعَنْ ابْنِ مَعِينٍ: مُجَالِدٌ لَا يُحْتَجُّ بِحَدِيثِهِ.

L29607 From Ibn Maʿīn: Mujālid’s narrations are not relied upon as evidence.

وَالْعَجَبُ كُلُّهُ مِنْ احْتِجَاجِهِمْ بِقَوْلِ اللَّهِ تَعَالَى: {إذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ} [المائدة: ١٠٦] وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذِهِ الْآيَةِ - وَقَالُوا ظَاهِرُهَا جَوَازُهَا عَلَى الْمُسْلِمِينَ وَالْكُفَّارِ فِي كُلِّ شَيْءٍ، ثُمَّ نُسِخَتْ عَنِ الْمُسْلِمِينَ، فَبَقِيَتْ عَلَى الْكُفَّارِ.

L29608 The height of astonishment is their citing of the words of Allah, the Most High: {When death approaches one of you at the time of making a will} [Al-Mā’idah: 106], while they themselves are the foremost in contradicting this verse. They claim its apparent meaning permits the will for both Muslims and disbelievers in all matters, then assert it was abrogated for Muslims, thus remaining applicable to disbelievers.[24]

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَجْلِيحٌ مِنْهُمْ بِالْكَذِبِ عَلَى اللَّهِ تَعَالَى جِهَارًا مِرَارًا. إحْدَاهَا - دَعْوَى النَّسْخِ بِلَا بُرْهَانٍ. وَالثَّانِيَةُ - قَوْلُهُمْ: إنَّ ظَاهِرَهَا جَوَازُ شَهَادَتِهِمْ فِي كُلِّ شَيْءٍ، وَلَيْسَ فِي الْآيَةِ إلَّا عِنْدَ حُضُورِ الْمَوْتِ حِينَ الْوَصِيَّةِ فَقَطْ، ثُمَّ تَحْلِيفُهُمَا، ثُمَّ تَحْلِيفُ الْمُسْلِمَيْنِ الشَّاهِدَيْنِ بِخِلَافِ شَهَادَتِهِمَا، فَمَا رَأَيْت أَقَلَّ حَيَاءً مِمَّنْ قَالَ مَا ذَكَرْنَا - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ وَالِاسْتِخْفَافِ بِالْكَذِبِ عَلَى الْقُرْآنِ.

L29609 Abu Muhammad said: This is slander from them—lying against Allah the Exalted repeatedly and openly. First: their claim of abrogation without proof. Second: their assertion that the verse’s apparent meaning permits their testimony in all matters, whereas the verse explicitly pertains only to testimony at the time of death, specifically during will-making, then administering oaths to them, followed by oaths administered to the two Muslim witnesses contrary to the testimony of the two [non-Muslim witnesses]. I have never

[24] **Qur’an references (L29608):** Qur’an 5:106 (Al-Ma’idah).

encountered anyone more shameless than those who make the claims we have described—and we seek refuge with Allah from being forsaken by Him and from trivializing the act of lying against the Quran.

L29610 The third [argument] is their statement: "It was abrogated for Muslims but remains obligatory for disbelievers." This is false because the entire religion is one upon us and upon disbelievers. No one may judge over them, nor may they [disbelievers] judge, except by the ruling of Islam applicable to us and binding on us, except where an explicit text establishes a distinction between us and them. And success is by Allah, the Most High.

L29611 ## On the Issue of Testimony by a Male Slave and a Bondwoman

L29612 1792. Issue: The testimony of a male slave and a female slave is accepted in all matters for their master and for another, like the testimony of a free man and a free woman, and there is no difference.

L29613 People have differed regarding this. It has been authentically reported through the chain of Ibn Wahb from Yunus from al-Zuhrī from Saʿīd ibn al-Musayyab that ʿUthmān ibn ʿAffān ruled concerning a minor who testifies after reaching adulthood, the Christian after embracing Islam, and the slave after emancipation: that such testimonies are valid provided they have not been rejected.

L29614 And it has been narrated to us through the chain of ʿAmr ibn Shuʿayb, and through the chain of ʿAṭāʾ from ʿUmar ibn al-Khaṭṭāb in a similar manner.

L29615–29616 It has been narrated to us regarding the testimony of an enslaved person via the transmission of ʿAbd al-Razzāq, from Abū Bakr, from ʿAmr ibn Sulaym, from Ibn al-Musayyab, from ʿUmar.

L29617 Narrated via the chain of al-Ḥajjāj ibn Arṭāʾah, from ʿAṭāʾ, from Ibn ʿAbbās: The testimony of a male slave is not valid.

L29618 And from the chain of Abū ʿUbayd from Ḥassān ibn Ibrāhīm al-Karmānī from Ibrāhīm al-Ṣāʾigh from Nāfiʿ from Ibn ʿUmar: The testimony of a mukātab is not permissible so long as he owes even a single dirham.

وَالثَّالِثَةُ - قَوْلُهُمْ: نُسِخَتْ عَنْ الْمُسْلِمِينَ وَبَقِيَتْ عَلَى الْكُفَّارِ - وَهَذَا بَاطِلٌ لِأَنَّ الدِّينَ كُلَّهُ وَاحِدٌ عَلَيْنَا وَعَلَى الْكُفَّارِ، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَحْكُمَ عَلَيْهِمْ وَلَا لَهُمْ، إلَّا بِحُكْمِ الْإِسْلَامِ لَنَا وَعَلَيْنَا، إلَّا حَيْثُ جَاءَ النَّصُّ بِالْفَرْقِ بَيْنَنَا وَبَيْنَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة شَهَادَة الْعَبْد والأمة]

١٧٩٢ - مَسْأَلَةٌ: وَشَهَادَةُ الْعَبْدِ وَالْأَمَةِ مَقْبُولَةٌ فِي كُلِّ شَيْءٍ لِسَيِّدِهِمَا وَلِغَيْرِهِ كَشَهَادَةِ الْحُرِّ وَالْحُرَّةِ وَلَا فَرْقَ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَصَحَّ مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى فِي الصَّغِيرِ يَشْهَدُ بَعْدَ كِبَرِهِ، وَالنَّصْرَانِيِّ بَعْدَ إسْلَامِهِ، وَالْعَبْدِ بَعْدَ عِتْقِهِ: أَنَّهَا جَائِزَةٌ إنْ لَمْ تَكُنْ رُدَّتْ عَلَيْهِمْ -.

وَرُوِّينَا مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ، وَعَطَاءٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ مِثْلَ ذَلِكَ.

وَرُوِّينَا ذَلِكَ فِي شَهَادَةِ الْعَبْدِ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرٍ عَنْ عَمْرِو بْنِ سُلَيْمٍ عَنْ ابْنِ الْمُسَيِّبِ عَنْ عُمَرَ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ: لَا تَجُوزُ شَهَادَةُ الْعَبْدِ.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ حَسَّانَ بْنِ إبْرَاهِيمَ الْكَرْمَانِيِّ عَنْ إبْرَاهِيمَ الصَّائِغِ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: لَا تَجُوزُ شَهَادَةُ الْمُكَاتَبِ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ.

L29619 It has been narrated to us through Ibn Abī Shaybah from Ibn al-Mubārak and Wakīʿ. Ibn al-Mubārak said: from Ibn Jurayj from ʿAṭāʾ. Wakīʿ said: from Zakariyyā ibn Abī Zāidah from al-Shaʿbī. Both of them said together: The testimony of a slave is not permissible.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ الْمُبَارَكِ، وَوَكِيعٍ قَالَ ابْنُ الْمُبَارَكِ: عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، وَقَالَ وَكِيعٌ: عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ قَالَا جَمِيعًا: لَا تَجُوزُ شَهَادَةُ الْعَبْدِ.

L29620 From the chain of Ibn Abī Shayba from Ibn al-Mubārak from Muḥammad ibn Rāshid from Makhūl: The testimony of a slave is not valid.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ الْمُبَارَكِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ لَا تَجُوزُ شَهَادَةُ الْعَبْدِ.

L29621 From the transmission of Waki‘ from Sufyan al-Thawri, from Ibn Abi Najih, from Mujahid, who said regarding {two witnesses from your men} [Al-Baqarah: 282]: “From the free men.” Waki‘ said: “Sufyan does not accept the testimony of a slave.” This is also the view of Waki‘.[25]

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: {شَهِيدَيْنِ مِنْ رِجَالِكُمْ} [البقرة: ٢٨٢] قَالَ: مِنْ الْأَحْرَارِ - قَالَ وَكِيعٌ: وَلَا يُجِيزُ سُفْيَانُ شَهَادَةَ عَبْدٍ - وَهُوَ قَوْلُ وَكِيعٍ.

L29622 And through the chain of Ibn Abi Shaybah: Isa ibn Yunus, Waki’, Abd al-Rahman ibn Mahdi, and Mu’adh ibn Mu’adh narrated. Isa said: from al-Awza’i, from al-Zuhri. Waki’ said: from Shu’bah, from al-Hakam ibn Utaybah, from Ibrahim al-Nakha’i. Abd al-Rahman ibn Mahdi said: from Hammad ibn Salamah and Abu Awanah. Abu Awanah said: from Umar ibn Abi Salamah ibn Abd al-Rahman ibn Awf, from his father. Hammad ibn Salamah said: from Qatadah, from Shuraih. Mu’adh ibn Mu’adh said: from Ash’ath (Ibn Abd al-Malik al-Humrani) from al-Hasan al-Basri. All of them held regarding a slave who gives testimony which is rejected, then is emancipated and repeats the testimony: that it is invalid, except al-Hasan al-Basri and al-Hakam ibn Utaybah, for they said: it is valid.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عِيسَى بْنُ يُونُسَ، وَوَكِيعٌ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَمُعَاذُ بْنُ مُعَاذٍ، قَالَ عِيسَى: عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ، وَقَالَ وَكِيعٌ: عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: عَنْ حَمَّادِ بْنِ سَلَمَةَ، وَأَبِي عَوَانَةَ، قَالَ أَبُو عَوَانَةَ: عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ، وَقَالَ حَمَّادُ بْنُ سَلَمَةَ: عَنْ قَتَادَةَ عَنْ شُرَيْحٍ، وَقَالَ مُعَاذُ بْنُ مُعَاذٍ: عَنْ أَشْعَثَ هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ - عَنْ الْحَسَنِ الْبَصْرِيِّ، وَقَالُوا كُلُّهُمْ: فِي الْعَبْدِ يُؤَدِّي الشَّهَادَةَ فَتُرَدُّ ثُمَّ يُعْتَقُ فَيَشْهَدُ بِهَا: أَنَّهَا لَا تَجُوزُ، إلَّا الْحَسَنَ، وَالْحَكَمَ فَإِنَّهُمَا قَالَا: إنَّهَا تَجُوزُ.

L29623 Through the chain of transmission from Abu ‘Ubayd, via ‘Abd al-Rahman ibn Mahdi, via Isra’il ibn Yunus, via Mansur, via Mujahid, who said: The people of Mecca and the people of Medina do not accept the testimony of a slave.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ إسْرَائِيلَ بْنِ يُونُسَ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ قَالَ: أَهْلُ مَكَّةَ، وَأَهْلُ الْمَدِينَةِ: لَا يُجِيزُونَ شَهَادَةَ الْعَبْدِ.

[25] **Qur’an references (L29621):** Qur’an 2:282 (Al-Baqarah).

L29624–29626 The testimony of the mukātab is not permissible, nor does he inherit. Via the chain of Abd al-Razzaq from Ma'mar from Qatadah: If a slave bears witness and his testimony is rejected, then he is freed and testifies to it, it is not accepted—this has been reported from the Seven Fuqaha of Medina—and it is the view of Abi al-Zinad.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ مُغِيرَةَ عَنْ إِبْرَاهِيمَ قَالَ: لَا تَجُوزُ شَهَادَةُ الْمُكَاتَبِ، وَلَا يَرِثُ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: إِذَا شَهِدَ الْعَبْدُ فَرُدَّتْ شَهَادَتُهُ، ثُمَّ أُعْتِقَ فَشَهِدَ بِهَا لَمْ تُقْبَلْ - وَرُوِيَ ذَلِكَ عَنْ فُقَهَاءِ الْمَدِينَةِ السَّبْعَةِ - وَهُوَ قَوْلُ أَبِي الزِّنَادِ.

L29627 This is also the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, Ibn Abī Laylā, al-Ḥasan ibn Ḥayyin, Abū ʿUbayd, and one of the two opinions held by Ibn Shubrumah.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ وَمَالِكٌ، وَالشَّافِعِيُّ، وَابْنُ أَبِي لَيْلَى، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو عُبَيْدٍ، وَأَحَدُ قَوْلَيْ ابْنِ شُبْرُمَةَ.

L29628 A group permitted the testimony of a slave in certain circumstances and rejected it in others - as we have reported through the chain of Ismail ibn Ishaq al-Qadi, reporting from Ali ibn al-Madini, Sulayman ibn Harb, and Ibrahim al-Harawi. Ali narrated from Jarir from Mansur from Ibrahim from Shuraih; Sulayman narrated from Abu Awanah from Mutarrif ibn Tarif from al-Shaʿbi; and al-Harawi narrated from Hisham: I, Mughirah, from Ibrahim. All three of them used to permit the testimony of a slave in minor matters.

وَأَجَازَتْ طَائِفَةٌ شَهَادَةَ الْعَبْدِ فِي بَعْضِ الْأَحْوَالِ، وَرَدَّتْهَا فِي بَعْضٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ الْمَدِينِيِّ، وَسُلَيْمَانُ بْنُ حَرْبٍ، وَإِبْرَاهِيمُ الْهَرَوِيُّ، قَالَ عَلِيٌّ عَنْ جَرِيرٍ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ عَنْ شُرَيْحٍ، وَقَالَ سُلَيْمَانُ: عَنْ أَبِي عَوَانَةَ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنِ الشَّعْبِيِّ وَقَالَ الْهَرَوِيُّ: عَنْ هِشَامٍ أَنَا مُغِيرَةُ عَنْ إِبْرَاهِيمَ: إِنَّهُمْ ثَلَاثَتُهُمْ كَانُوا يُجِيزُونَ شَهَادَةَ الْعَبْدِ فِي الشَّيْءِ الْيَسِيرِ.

L29629 From the transmission chain of ʿAbd al-Razzāq: Muḥammad ibn Yaḥyā al-Māzinī narrated to us from Sufyān al-Thawrī from Ibrāhīm al-Nakhaʿī, who said, "The testimony of an enslaved person for their master is not permissible, but it is permissible on behalf of others."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مُحَمَّدُ بْنُ يَحْيَى الْمَازِنِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا تَجُوزُ شَهَادَةُ الْعَبْدِ لِسَيِّدِهِ، وَتَجُوزُ لِغَيْرِهِ.

L29630 And via the chain of transmission of Jābir al-Juʿfī from al-Shaʿbī regarding a slave who is partially freed: his testimony is admissible.

وَمِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ فِي الْعَبْدِ يُعْتَقُ بَعْضُهُ أَنَّ شَهَادَتَهُ جَائِزَةٌ.

L29631 A group permitted a slave's testimony in all matters like that of a free person: as we have narrated through the chain of Ibn Abī Shaybah—Hafs ibn Ghiyāth al-Nakhaʿī reported to us from Ashʿath from al-Shaʿbī, who said: Shurayḥ stated, "A slave's testimony is not valid." ʿAlī responded, "But we permit it." Thereafter, Shurayḥ would permit it except in matters involving his master.

وَأَجَازَتْ طَائِفَةٌ شَهَادَتَهُ فِي كُلِّ شَيْءٍ كَالْحُرِّ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ النَّخَعِيُّ عَنْ أَشْعَثَ عَنِ الشَّعْبِيِّ قَالَ: قَالَ شُرَيْحٌ: لَا تَجُوزُ شَهَادَةُ الْعَبْدِ، فَقَالَ عَلِيٌّ: لَكِنَّا نُجِيزُهَا، فَكَانَ شُرَيْحٌ بَعْدَ ذَلِكَ يُجِيزُهَا إِلَّا لِسَيِّدِهِ.

L29632 And through him to Ibn Abi Shaybah: Hafs ibn Ghiyath informed us from

Al-Mukhtar ibn Fulful, who said: I asked Anas ibn Malik about the testimony of a slave? He replied: It is valid.

وَبِهِ إِلَى ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ الْمُخْتَارِ بْنِ فُلْفُلٍ قَالَ: سَأَلْت أَنَسَ بْنَ مَالِكٍ عَنْ شَهَادَةِ الْعَبْدِ؟ فَقَالَ: جَائِزَةٌ.

L29633 From Waki', who narrated to us: Sufyān al-Thawrī reported from 'Ammār al-Duhnī, who said: I attended Shuraih's court when a slave testified before him concerning a house, and he accepted his testimony. It was said: "Is he not a slave?" Shuraih replied: "All of us are male and female slaves."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَمَّارٍ الدُّهْنِيِّ قَالَ: شَهِدْت شُرَيْحًا شَهِدَ عِنْدَهُ عَبْدٌ عَلَى دَارٍ فَأَجَازَ شَهَادَتَهُ فَقِيلَ: إنَّهُ عَبْدٌ؟ فَقَالَ شُرَيْحٌ: كُلُّنَا عَبِيدٌ وَإِمَاءٌ.

L29634 And through the chain of Abdullah ibn Ahmad ibn Hanbal: My father [Ahmad ibn Hanbal] narrated to us from Abd al-Rahman ibn Mahdi from Hammad ibn Zayd from Yahya ibn Atiq from Muhammad ibn Sirin: "He did not deem the testimony of a slave problematic if they were upright."

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ عَتِيقٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّهُ كَانَ لَا يَرَى بِشَهَادَةِ الْمَمْلُوكِ بَأْسًا إذَا كَانَ عَدْلًا

L29635–29637 And from the chain of Ibn al-Jahm, from Ismāʿīl ibn Isḥāq al-Qāḍī, who narrated to us via ʿĀrim ibn al-Faḍl, who narrated to us... Abdullah ibn al-Mubarak on the authority of Ya'qub, on the authority of 'Ata ibn Abi Rabah, who said: The testimony of the male slave and the woman is permissible in marriage and divorce.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ عَنْ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا عَارِمُ بْنُ الْفَضْلِ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ يَعْقُوبَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: شَهَادَةُ الْعَبْدِ، وَالْمَرْأَةِ جَائِزَةٌ فِي النِّكَاحِ، وَالطَّلَاقِ.

L29638 Abdullah ibn Abdul Wahid wrote to me, narrating from Al-Hasan ibn Abdul Wahid, who said: Abu Muslim the Scribe narrated to us, Abdullah ibn Ahmad ibn Al-Mughallis narrated to us, Abdullah ibn Ahmad ibn Hanbal narrated to us, my father narrated to us, Affan ibn Muslim narrated to us, who said: Hammad ibn Salamah narrated to us, saying: Iyas ibn Mu'awiyah was asked about the testimony of a slave. He replied: "I reject the testimony of Abdul Aziz ibn Suhayb due to the disavowal necessitating its rejection."

كَتَبَ إلَيَّ عَبْدُ اللَّهِ بْنُ عَبْدِ الْوَاحِدِ عَنْ الْحَسَنِ بْنِ عَبْدِ الْوَاحِدِ قَالَ: نا أَبُو مُسْلِمٍ الْكَاتِبُ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ الْمُغَلِّسِ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا عَفَّانُ بْنُ مُسْلِمٍ قَالَ: نا حَمَّادُ بْنُ سَلَمَةَ قَالَ: سُئِلَ إيَاسُ بْنُ مُعَاوِيَةَ عَنْ شَهَادَةِ الْعَبْدِ؟ قَالَ: أَنَا أَرُدُّ شَهَادَةَ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَلَى الْإِنْكَارِ لِرَدِّهَا.

L29639 Abu Muhammad said: "This is the opinion of Zurara ibn Awfa, Uthman al-Battī, Abu Thawr, Ahmad ibn Hanbal, Ishaq ibn Rāhuyah, Abu Sulayman, their companions, and one of Ibn Shubrumah's two opinions."

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ زُرَارَةَ بْنِ أَوْفَى، وَعُثْمَانَ الْبَتِّيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، وَأَحَدُ قَوْلَيْ ابْنِ شُبْرُمَةَ.

L29640 Ali said: As for the statement of Umar and Uthman, which we introduced at the outset, it is incumbent upon the Hanafis, Malikis, and Shafi'is - not for their benefit - because they opposed both of them concerning the pre-

قَالَ عَلِيٌّ: أَمَّا قَوْلُ عُمَرَ، وَعُثْمَانَ الَّذِي صَدَّرْنَا بِهِ فَهُوَ عَلَى الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ لَا لَهُمْ؛ لِأَنَّهُمْ خَالَفُوهُمَا فِي الصَّبِيِّ يَشْهَدُ فَيُرَدُّ، ثُمَّ يَبْلُغُ فَيَشْهَدُ.

pubescent child who testifies and is rejected, then reaches puberty and testifies.

L29641 They said, "It is admissible."

فَقَالُوا: يُقْبَلُ.

L29642 It is invalid to consider some statements of ʿUmar and ʿUthmān as valid proof while rejecting others, for this constitutes trivializing the religion by those who take this approach. The attribution of this approach to Ibn ʿAbbās is unreliable, as it is transmitted through al-Ḥajjāj ibn Arṭāʾah. Thus, they are left with nothing but Ibn ʿUmar's position, though his disagreement with this method is authentically transmitted via Anas. Therefore, their reliance on transmitted reports is invalidated, and only the Quran and Sunnah remain as valid evidence.

وَمِنْ الْبَاطِلِ أَنْ يَكُونَ بَعْضُ قَوْلِ عُمَرَ وَعُثْمَانَ حُجَّةً، وَبَعْضُهُ غَيْرَ حُجَّةٍ، وَهَذَا تَلَاعُبٌ بِالدِّينِ مِمَّنْ سَلَكَ هَذَا الطَّرِيقَ - وَهُوَ عَنْ ابْنِ عَبَّاسٍ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ، فَلَمْ يَبْقَ لَهُمْ إلَّا ابْنَ عُمَرَ، وَقَدْ صَحَّ خِلَافُهُ عَنْ أَنَسٍ - فَبَطَلَ تَعَلُّقُهُمْ بِالْآثَارِ، وَبَقِيَ الِاحْتِجَاجُ بِالْقُرْآنِ وَالسُّنَّةِ.

L29643 Abu Muhammad said: As for the statement of Mujāhid and those who followed him that "two witnesses from among your men" [Al-Baqarah: 282] refers specifically to free men, this is invalid - a scholar's misstep - and an unjustified specification of Allah's exalted words without evidence. It is necessarily known to every person of sound perception that male slaves are men among our men, and female slaves are women among our women. Allah exalted states: "Your women are tillable land for you" [Al-Baqarah: 223], which indisputably includes both free women and female slaves. Thus the falsity of this opinion becomes evident. Rather, Allah exalted addressed the believers at the beginning of the verse - and slaves, without any disagreement among them, are included among those being instructed regarding financial transactions, procuring witnesses, and testifying.[26]

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مُجَاهِدٍ وَمَنْ اتَّبَعَهُ: {شَهِيدَيْنِ مِنْ رِجَالِكُمْ} [البقرة: ٢٨٢] مِنْ الْأَحْرَارِ، فَبَاطِلٌ وَزَلَّةُ عَالِمٍ، وَتَخْصِيصٌ لِكَلَامِ اللَّهِ تَعَالَى بِلَا بُرْهَانٍ، وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ: أَنَّ الْعَبِيدَ رِجَالٌ مِنْ رِجَالِنَا، وَأَنَّ الْإِمَاءَ نِسَاءٌ مِنْ نِسَائِنَا، قَالَ تَعَالَى: {نِسَاؤُكُمْ حَرْثٌ لَكُمْ} [البقرة: ٢٢٣] فَدَخَلَ فِي ذَلِكَ - بِلَا خِلَافٍ - الْحَرَائِرُ وَالْإِمَاءُ - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ، وَإِنَّمَا خَاطَبَ اللَّهُ تَعَالَى فِي أَوَّلِ الْآيَةِ الَّذِينَ آمَنُوا: وَالْعَبِيدُ، بِلَا خِلَافٍ مِنْهُمْ، فَهُمْ فِي جُمْلَةِ الْمُخَاطَبِينَ بِالْمُدَايَنَةِ، وَالْإِشْهَادِ وَالشَّهَادَةِ.

L29644 And some of them cited as evidence the statement of Allah, the Exalted: "an owned slave who has no power over anything" [Quran 16:75].[27]

وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٥]

L29645–29647 Abu Muhammad said: Distorting the speech of Allah, the Exalted, from its proper positions leads to ruin in the worldly life and the Hereafter. And the Exalted did not say, "Indeed, every servant is incapable of anything." Rather, Allah the Exalted set forth the example of a servant from among His servants—such is his attribute—and this attribute is found in many free

قَالَ أَبُو مُحَمَّد: تَحْرِيفُ كَلَامِ اللَّهِ تَعَالَى عَنْ مَوَاضِعِهِ مُهْلِكٌ فِي الدُّنْيَا وَالْآخِرَةِ، وَلَمْ يَقُلْ تَعَالَى: إنَّ كُلَّ عَبْدٍ فَهُوَ لَا يَقْدِرُ عَلَى شَيْءٍ، إنَّمَا ضَرَبَ اللَّهُ تَعَالَى الْمَثَلَ بِعَبْدٍ مِنْ عِبَادِهِ هَذِهِ صِفَتُهُ، وَقَدْ تُوجَدُ هَذِهِ الصِّفَةُ فِي كَثِيرٍ مِنْ الْأَحْرَارِ، وَمَنْ نَسَبَ غَيْرَ هَذَا إلَى اللَّهِ

[26] **Qur'an references (L29643):** Qur'an 2:282 (Al-Baqarah); Qur'an 2:223 (Al-Baqarah).
[27] **Qur'an references (L29644):** Qur'an 16:75 (An-Nahl).

people. Whoever attributes anything other than this to Allah the Exalted has lied about Him openly and perpetrated the gravest of major sins, for Allah the Exalted says only the truth. Through direct evidence, we know that many servants are more capable than many free people.

L29648 And we say to them: Are slaves obligated to pray, fast, and perform ritual purification, and are they prohibited from all that is forbidden to free people—including foods, drinks, and illicit sexual acts? If anyone among them answers "Yes," they have contradicted themselves and testified to being capable of many things, thus invalidating their attachment to and obfuscation through this verse.

L29649 They said, "Let not the witnesses refuse whenever they are called" [Quran 2:282].[28]

L29650 They said: The slave cannot bear witness because he is legally responsible for his master's service.

L29651 Rather, he is capable of bearing witness, praying, and proceeding to someone from whom he can learn what is obligatory for him in religion.

L29652 If a slave is excused from bearing witness due to his preoccupation with serving his master, the free woman who has a husband is likewise excused, owing to her obligation to devote herself to attending to her husband.

L29653 Some of them said: "The slave is a commodity – how can a commodity bear witness?" We responded: "What then? A commodity bears witness, just as prayer, fasting, and speaking the truth are incumbent upon a commodity." We know of no basis for their stance in this matter – neither in the Quran, nor the Sunnah, nor a sound narration, nor a weak one, nor speculative reasoning, nor rational proof, nor analogy – except through chaotic arguments in the extreme of corruption and feeble absurdities. We have exhaustively examined this in *The Book of Conveyance*, and all praise belongs to Allah, Lord of the worlds.

L29654 Abu Muhammad said: Every text in the Quran or Sunnah regarding rulings

تَعَالَى فَقَدْ كَذَبَ عَلَيْهِ جِهَارًا، وَأَتَى بِأَكْبَرِ الْكَبَائِرِ، لِأَنَّ اللهَ تَعَالَى لَا يَقُولُ إِلَّا حَقًّا، وَبِالْمُشَاهَدَةِ نَعْرِفُ كَثِيرًا مِنْ الْعَبِيدِ أَقْدَرَ عَلَى الْأَشْيَاءِ مِنْ كَثِيرٍ مِنْ الْأَحْرَارِ.

وَنَقُولُ لَهُمْ: هَلْ يَلْزَمُ الْعَبِيدَ الصَّلَاةُ، وَالصِّيَامُ، وَالطَّهَارَةُ، وَيُحَرَّمُ عَلَيْهِمْ مِنْ الْمَآكِلِ، وَالْمَشَارِبِ، وَالْفُرُوجِ، كُلُّ مَا يُحَرَّمُ عَلَى الْأَحْرَارِ، فَمَنْ قَوْلُهُمْ: نَعَمْ، فَقَدْ أَكَذَبُوا أَنْفُسَهُمْ، وَشَهِدُوا بِأَنَّهُمْ يَقْدِرُونَ عَلَى أَشْيَاءَ كَثِيرَةٍ - فَبَطَلَ تَعَلُّقُهُمْ وَتَمْوِيهُهُمْ بِهَذِهِ الْآيَةِ.

وَقَالُوا: {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢] .

قَالُوا: وَالْعَبْدُ لَا يَقْدِرُ عَلَى أَدَاءِ الشَّهَادَةِ، لِأَنَّهُ مُكَلَّفٌ خِدْمَةَ سَيِّدِهِ.

فَقُلْنَا: كَذَبَ مَنْ قَالَ هَذَا، بَلْ هُوَ قَادِرٌ عَلَى أَدَاءِ الشَّهَادَةِ كَمَا يَقْدِرُ عَلَى الصَّلَاةِ، وَعَلَى النُّهُوضِ إِلَى مَنْ يَتَعَلَّمُ مِنْهُ مَا يَلْزَمُهُ مِنْ الدِّينِ.

وَلَوْ سَقَطَ عَنْ الْعَبْدِ الْقِيَامُ بِالشَّهَادَةِ لِشُغْلِهِ بِخِدْمَةِ سَيِّدِهِ لَسَقَطَ أَيْضًا عَنْ الْحُرَّةِ ذَاتِ الزَّوْجِ لِشُغْلِهَا بِمُلَازَمَةِ زَوْجِهَا.

وَقَالَ بَعْضُهُمْ: الْعَبْدُ سِلْعَةٌ وَكَيْفَ تَشْهَدُ سِلْعَةٌ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ تَشْهَدُ السِّلْعَةُ، كَمَا يَلْزَمُ السِّلْعَةَ الصَّلَاةُ، وَالصِّيَامُ، وَالْقَوْلُ بِالْحَقِّ - وَمَا نَعْلَمُ لَهُمْ فِي هَذِهِ الْمَسْأَلَةِ مُتَعَلَّقًا، لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا بِرِوَايَةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا نَظَرٍ وَلَا مَعْقُولٍ، وَلَا قِيَاسٍ، إِلَّا بِتَخَالِيطَ فِي غَايَةِ الْفَسَادِ، وَأَهْذَارٍ بَارِدَةٍ - وَقَدْ تَقَصَّيْنَا هَذَا فِي " كِتَابِ الْإِيصَالِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[28] **Qur'an references (L29649):** Qur'an 2:282 (Al-Baqarah).

قَالَ أَبُو مُحَمَّد: وَكُلُّ نَصٍّ فِي قُرْآنٍ أَوْ سُنَّةٍ فِي شَيْءٍ مِنْ أَحْكَامِ الشَّهَادَاتِ فَكُلُّهَا شَاهِدَةٌ بِصِحَّةِ قَوْلِنَا، إِذْ لَوْ أَرَادَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - تَخْصِيصَ عَبْدٍ مِنْ حُرٍّ فِي ذَلِكَ لَكَانَ مَقْدُورًا عَلَيْهِ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

قَالَ تَعَالَى: {مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ} [البقرة: ٢٨٢] .

وَقَالَ تَعَالَى: {إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ أُولَئِكَ هُمْ خَيْرُ الْبَرِيَّةِ} [البينة: ٧] {جَزَاؤُهُمْ عِنْدَ رَبِّهِمْ جَنَّاتُ عَدْنٍ تَجْرِي مِنْ تَحْتِهَا الأَنْهَارُ خَالِدِينَ فِيهَا أَبَدًا رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ} [البينة: ٨] .

فَلَمْ يَخْتَلِفْ مُسْلِمَانِ قَطُّ فِي أَنَّ هَذَا خَيْرٌ يَدْخُلُ فِيهِ الْعَبِيدُ وَالْإِمَاءُ كَدُخُولِ الْأَحْرَارِ وَالْحَرَائِرِ، وَحَرَامٌ عَلَى كُلِّ أَحَدٍ أَنْ لَا يَرْضَى عَمَّنْ أَخْبَرَ اللَّهُ تَعَالَى أَنَّهُ قَدْ رَضِيَ عَنْهُ، فَإِذْ قَدْ رَضِيَ اللَّهُ عَنْ الْعَبْدِ الْمُؤْمِنِ الْعَامِلِ بِالصَّالِحَاتِ، فَفُرِضَ عَلَيْنَا أَنْ نَرْضَى عَنْهُ، وَإِذْ فُرِضَ عَلَيْنَا أَنْ نَرْضَى عَنْهُ، فَفُرِضَ عَلَيْنَا قَبُولُ شَهَادَتِهِ.

وَأَمَّا مَنْ رَدَّهَا لِسَيِّدِهِ فَإِنَّهُ قَالَ: قَدْ يُجْبِرُهُ سَيِّدُهُ عَلَى الشَّهَادَةِ لَهُ.

قُلْنَا: لَوْ كَانَ هَذَا مَانِعًا مِنْ قَبُولِ الْعَبْدِ لِسَيِّدِهِ لَكَانَ مَانِعًا مِنْ قَبُولِ أَحَدٍ مِنْ الْمُسْلِمِينَ لِلْإِمَامِ إِذَا شَهِدَ لَهُ، لِأَنَّ الْإِمَامَ أَقْدَرُ عَلَى رَعِيَّتِهِ مِنْ السَّيِّدِ عَلَى عَبْدِهِ، لِأَنَّ الْعَبْدَ تُعْدِيهِ جَمِيعُ الْحُكَّامِ عَلَى سَيِّدِهِ إِذَا تَظَلَّمَ مِنْهُ وَيَحُولُونَ بَيْنَهُ وَبَيْنَ أَذَاهُ، وَلَا يَقْدِرُ أَحَدٌ عَلَى أَنْ يَحُولَ بَيْنَ الْإِمَامِ وَالرَّجُلِ مِنْ رَعِيَّتِهِ، فَظَهَرَ فَسَادُ قَوْلِ مُخَالِفِينَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

on testimonies testifies to the validity of our position. For if Allah the Exalted and His Messenger - peace and blessings be upon him - had intended to distinguish between a slave and a free person in this matter, they could have done so: {Your Lord is never forgetful} [Maryam: 64].[29]

L29655 He, the Exalted, said: "From those among the witnesses whom you approve of" (Al-Baqarah: 282).[30]

L29656 Allah the Exalted said: "Indeed, those who believe and do righteous deeds—it is they who are the best of mankind." [Al-Bayyinah: 7] "Their reward with their Lord is Gardens of Eden, beneath which rivers flow, abiding therein forever. Allah is pleased with them, and they are pleased with Him." [Al-Bayyinah: 8][31]

L29657–29658 No two Muslims have ever disagreed that this is a good thing encompassing both male and female servants just as it encompasses free men and women. It is forbidden for anyone to disapprove of one whom Allah the Exalted has declared He has been pleased with. Since Allah has been pleased with a faithful servant who performs righteous deeds, it was made obligatory upon us to approve of him. When it was made obligatory upon us to approve of him, it was made obligatory upon us to accept his testimony.

L29659 As for the one who returns the testimony to his master, he said: "His master may compel him to testify for him."

L29660 We said: If this were an impediment to the master's acceptance of his slave, it would also be an impediment to any Muslim's allegiance to the Imam when bearing witness for him. For the Imam has greater power over his subjects than a master over his slave, since all rulers would assist the slave against his master if he claimed oppression and intervene to protect him from harm. Yet none has the power to intervene between the Imam and any man among his

[29] **Qur'an references (L29654):** Qur'an 19:64 (Maryam).
[30] **Qur'an references (L29655):** Qur'an 2:282 (Al-Baqarah).
[31] **Qur'an references (L29656):** Qur'an 98:7 (Al-Bayyinah); Qur'an 98:8 (Al-Bayyinah).

subjects. Thus, the corruption of our opponents' assertion is made manifest - and all praise belongs to Allah, Lord of the worlds.

The Issue of Testimony of the Relatives

[مَسْأَلَة شَهَادَة الْأَقَارِب]

1793 - Issue: Every just witness is acceptable on behalf of everyone and against them, such as a father and mother for their two sons and for their father; a son and daughter for their parents and grandfathers; grandfathers and grandmothers for their grandsons; a husband for his wife, and a wife for her husband. Likewise, all relatives - each other - such as distant relatives, with no distinction.

١٧٩٣ - مَسْأَلَةٌ: وَكُلُّ عَدْلٍ فَهُوَ مَقْبُولٌ لِكُلِّ أَحَدٍ وَعَلَيْهِ، كَالْأَبِ وَالْأُمِّ لِابْنَيْهِمَا، وَلِأَبِيهِمَا وَالِابْنِ وَالِابْنَةِ لِلْأَبَوَيْنِ وَالْأَجْدَادِ، وَالْجَدَّاتِ، وَالْجَدِّ، وَالْجَدَّةِ لِبَنِي بَنِيهِمَا، وَالزَّوْجِ لِامْرَأَتِهِ، وَالْمَرْأَةِ لِزَوْجِهَا، وَكَذَلِكَ سَائِرُ الْأَقَارِبِ بَعْضِهِمْ لِبَعْضٍ، كَالْأَبَاعِدِ وَلَا فَرْقَ.

Likewise, the affectionate friend toward his companion, the worker toward his employer, the ward toward his guarantor, the employer toward his worker, the guarantor toward his ward, and the guardian toward his orphan.

وَكَذَلِكَ الصَّدِيقُ الْمُلَاطِفُ لِصَدِيقِهِ، وَالْأَجِيرُ لِمُسْتَأْجِرِهِ، وَالْمَكْفُولُ لِكَافِلِهِ، وَالْمُسْتَأْجِرُ لِأَجِيرِهِ، وَالْكَافِلُ لِمَكْفُولِهِ، وَالْوَصِيُّ لِيَتِيمِهِ.

There is disagreement in what we have mentioned. It has been reported to us through an unauthentic chain from Shuraih that the father is not accepted for his son, nor the son for his father, nor either spouse for the other.

وَفِيمَا ذَكَرْنَا خِلَافٌ -: فَرُوِّينَا مِنْ طَرِيقٍ لَا تَصِحُّ عَنْ شُرَيْحٍ أَنَّهُ لَا يُقْبَلُ الْأَبُ لِابْنِهِ، وَلَا الِابْنُ لِأَبِيهِ، وَلَا أَحَدُ الزَّوْجَيْنِ لِلْآخَرِ.

All of this has been authentically reported from Ibrāhīm al-Nakhaʿī, as well as from al-Ḥasan and al-Shaʿbī—in one of their two opinions regarding the father and the son.

وَصَحَّ هَذَا كُلُّهُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَعَنْ الْحَسَنِ، وَالشَّعْبِيِّ فِي أَحَدِ قَوْلَيْهِمَا فِي الْأَبِ، وَالِابْنِ.

It is narrated from Al-Ḥasan and Al-Shaʿbī that there is another opinion: a child's testimony is accepted on behalf of his father, but the father's testimony is not accepted on behalf of his son, because the father may take his property whenever he wishes. Similarly, a husband's testimony is accepted on behalf of his wife, but she is not accepted on his behalf. This is the opinion of Ibn Abī Laylā and Sufyān al-Thawrī.

وَرُوِيَ عَنْ الْحَسَنِ، وَالشَّعْبِيِّ: قَوْلٌ آخَرُ، وَهُوَ أَنَّ الْوَلَدَ يُقْبَلُ لِأَبِيهِ، وَلَا يُقْبَلُ الْأَبُ لِابْنِهِ؛ لِأَنَّهُ يَأْخُذُ مَالَهُ مَتَى شَاءَ، وَأَنَّ الزَّوْجَ يُقْبَلُ لِامْرَأَتِهِ وَلَا تُقْبَلُ هِيَ لَهُ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ.

Al-Awzāʿī, Al-Thawrī, Aḥmad ibn Ḥanbal, and Abū ʿUbayd did not permit the father concerning the son, nor the son concerning the father.

وَلَمْ يُجِزْ الْأَوْزَاعِيِّ، وَالثَّوْرِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو عُبَيْدٍ الْأَبَ لِلِابْنِ، وَلَا الِابْنَ لِلْأَبِ.

They permitted the grandfather and grandmother to inherit from their

grandchildren, and the grandchildren to inherit from them.

وَأَجَازُوا الْجَدَّ وَالْجَدَّةَ لِأَوْلَادِ بَنِيهِمَا، وَأَوْلَادَ بَنِيهِمَا لَهُمَا.

L29670 Abu Hanifa, Malik, and al-Shafi'i did not permit any of these individuals, except that al-Shafi'i allowed each of the two spouses to the other.

وَلَمْ يُجِزْ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ أَحَدًا مِنْ هَؤُلَاءِ، إِلَّا أَنَّ الشَّافِعِيَّ أَجَازَ كُلَّ وَاحِدٍ مِنَ الزَّوْجَيْنِ لِلْآخَرِ.

L29671 As for the one from whom it has been reported that he affirmed the permissibility of all that, then as it was narrated to us through ʿAbd al-Razzāq from Abū Bakr ibn Abī Sabrah from Abū al-Zinād from ʿAbd Allāh ibn ʿĀmir ibn Rabīʿah, who said: ʿUmar ibn al-Khaṭṭāb declared: "The testimony of a parent for his child, a child for his parent, and a brother for his brother is admissible."

وَأَمَّا مَنْ رُوِيَ عَنْهُ إِجَازَةُ كُلِّ ذَلِكَ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرِ بْنِ أَبِي سَبْرَةَ عَنْ أَبِي الزِّنَادِ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: تَجُوزُ شَهَادَةُ الْوَالِدِ لِوَلَدِهِ، وَالْوَلَدِ لِوَالِدِهِ، وَالْأَخِ لِأَخِيهِ.

L29672 And from ʿAmr ibn Sulaym al-Zuraqī, from Saʿīd ibn al-Musayyib: a similar [report].

وَعَنْ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ هَذَا.

L29673 It has been narrated that Ali ibn Abi Talib—may Allah be pleased with him—testified for Fatimah—may Allah be pleased with her—before Abu Bakr as-Siddiq—may Allah be pleased with him—with Umm Ayman present alongside Ali. Abu Bakr said to him: "If a man or another woman in addition had testified with you, I would have ruled in her favor."

وَرُوِيَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - شَهِدَ - لِفَاطِمَةَ - رَضِيَ اللَّهُ عَنْهَا - عِنْدَ أَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ - وَمَعَهُ أُمُّ أَيْمَنَ فَقَالَ لَهُ أَبُو بَكْرٍ: لَوْ شَهِدَ مَعَكَ رَجُلٌ أَوْ امْرَأَةٌ أُخْرَى لَقَضَيْتُ لَهَا بِذَلِكَ.

L29674 From the path of Ibn Wahb, from Yunus ibn Yazid, from al-Zuhri, who said: The righteous predecessors among the Muslims did not reject the testimony of a parent for their child, nor a child for their parent, nor a brother for their brother, nor a husband for his wife. Then people entered thereafter, and matters emerged among them that compelled the authorities to suspect them. Thus the testimony of those suspected was abandoned when it came from relatives, and this came to include the child, the parent, the brother, the husband, and the wife. None were suspected except these in later times.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنِ الزُّهْرِيِّ قَالَ: لَمْ يَكُنْ يَتَّهِمُ سَلَفُ الْمُسْلِمِينَ الصَّالِحُ شَهَادَةَ الْوَالِدِ لِوَلَدِهِ، وَلَا الْوَلَدِ لِوَالِدِهِ، وَلَا الْأَخِ لِأَخِيهِ، وَلَا الزَّوْجِ لِامْرَأَتِهِ - ثُمَّ دَخَلَ النَّاسُ بَعْدَ ذَلِكَ، فَظَهَرَتْ مِنْهُمْ أُمُورٌ حَمَلَتِ الْوُلَاةَ عَلَى اتِّهَامِهِمْ، فَتُرِكَتْ شَهَادَةُ مَنْ يُتَّهَمُ إِذَا كَانَتْ مِنْ قَرَابَةٍ وَصَارَ ذَلِكَ مِنَ الْوَلَدِ، وَالْوَالِدِ، وَالْأَخِ، وَالزَّوْجِ، وَالْمَرْأَةِ، لَمْ يُتَّهَمْ إِلَّا هَؤُلَاءِ فِي آخِرِ الزَّمَانِ.

L29675 Through the chain of Abu ʿUbayd: Al-Hasan ibn ʿAzib narrated to us from his grandfather Shabib ibn Gharqadah, who said: I was sitting with Shuraih when ʿAli ibn Kahil came to him along with a woman and her opponent. ʿAli ibn Kahil—her husband—testified in her favor, and her father also testified in

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا الْحَسَنُ بْنُ عَازِبٍ عَنْ جَدِّهِ شَبِيبِ بْنِ غَرْقَدَةَ قَالَ: كُنْتُ جَالِسًا عِنْدَ شُرَيْحٍ، فَأَتَاهُ عَلِيُّ بْنُ كَاهِلٍ، وَامْرَأَةٌ وَخَصْمٌ لَهَا، فَشَهِدَ لَهَا عَلِيُّ بْنُ كَاهِلٍ -

her favor. Shuraih deemed their testimony permissible. The opponent said: "This is her father, and this is her husband." Shuraih replied: "Do you know anything that impugns their testimony? The testimony of every Muslim is permissible."

وَهُوَ زَوْجُهَا - وَشَهِدَ لَهَا أَبُوهَا، فَأَجَازَ شُرَيْحٌ شَهَادَتَهُمَا، فَقَالَ الْخَصْمُ: هَذَا أَبُوهَا، وَهَذَا زَوْجُهَا. فَقَالَ لَهُ شُرَيْحٌ: هَلْ تَعْلَمُ شَيْئًا تُجَرِّحُ بِهِ شَهَادَتَهُمَا؟ كُلُّ مُسْلِمٍ شَهَادَتُهُ جَائِزَةٌ.

L29676 From the chain of ʿAbd al-Razzāq: Sufyān ibn ʿUyaynah narrated to us from Shabīb ibn Gharqadah, who said: I heard Shurayḥ—he permitted the testimony of the woman's father and husband to stand on her behalf. The man said: "Indeed, he is her father and her husband!" Shurayḥ replied: "Who would testify for the woman except her father and her husband?"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ شَبِيبِ بْنِ غَرْقَدَةَ قَالَ: سَمِعْت شُرَيْحًا: أَجَازَ لِامْرَأَةٍ شَهَادَةَ أَبِيهَا وَزَوْجِهَا فَقَالَ الرَّجُلُ: إنَّهُ أَبُوهَا وَزَوْجُهَا. فَقَالَ شُرَيْحٌ: فَمَنْ يَشْهَدُ لِلْمَرْأَةِ إلَّا أَبُوهَا وَزَوْجُهَا.

L29677–29678 From Ibn Abi Shaybah, from Shababah, from Ibn Abi Dhi'b, from Sulayman ibn Abi Sulayman, who said: I testified for my mother before Abu Bakr ibn Muhammad ibn Amr ibn Hazm, and he ruled based on my testimony.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا شَبَابَةُ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سُلَيْمَانَ بْنِ أَبِي سُلَيْمَانَ، قَالَ: شَهِدْت لِأُمِّي عِنْدَ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، فَقَضَى بِشَهَادَتِي.

L29679 From the narration of ʿAbd al-Razzāq, from Maʿmar, from ʿAbd al-Raḥmān ibn ʿAbd Allāh al-Anṣārī, who said: "'Umar ibn ʿAbd al-ʿAzīz permitted the testimony of a son on behalf of his father, provided the son was just."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ قَالَ: أَجَازَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ شَهَادَةَ الِابْنِ لِأَبِيهِ إذَا كَانَ عَدْلًا.

L29680 So these are: ʿUmar ibn al-Khaṭṭāb, all the Companions, Shurayḥ, ʿUmar ibn ʿAbd al-ʿAzīz, and Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm.

فَهَؤُلَاءِ: عُمَرُ بْنُ الْخَطَّابِ، وَجَمِيعُ الصَّحَابَةِ، وَشُرَيْحٌ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَأَبُو بَكْرِ بْنُ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ.

L29681 This is also the view of Iyās ibn Muʿāwiyah, ʿUthmān al-Battī, Isḥāq ibn Rāhwayh, Abū Thawr, al-Muzanī, Abū Sulaymān, and all the companions of our school.

وَبِهَذَا يَقُولُ إيَاسُ بْنُ مُعَاوِيَةَ، وَعُثْمَانُ الْبَتِّيُّ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَأَبُو ثَوْرٍ، وَالْمُزَنِيُّ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L29682 Al-Shāfiʿī and his companions held that the testimony of the two spouses—each testifying on behalf of the other—is admissible.

وَرَأَى الشَّافِعِيُّ: وَأَصْحَابُهُ: قَبُولَ شَهَادَةِ الزَّوْجَيْنِ: كُلِّ وَاحِدٍ مِنْهُمَا لِلْآخَرِ

L29683 Al-Awzaʿī held that a brother is not accepted for his brother.

وَرَأَى الْأَوْزَاعِيِّ: أَنْ لَا يُقْبَلُ الْأَخُ لِأَخِيهِ.

L29684 Al-Zuhri mentioned this regarding the later rulers who restored the father to his son, the son to his father, and one of the two spouses to the other.

وَذَكَرَ ذَلِكَ الزُّهْرِيُّ عَنْ الْمُتَأَخِّرِينَ مِنْ الْوُلَاةِ الَّذِينَ رَدُّوا الْأَبَ لِابْنِهِ وَالِابْنَ لِأَبِيهِ، وَأَحَدَ الزَّوْجَيْنِ لِصَاحِبِهِ.

L29685 Abu Hanifa and Al-Shafi'i permitted: the brother for his brother.

وَأَجَازَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: الْأَخَ لِأَخِيهِ.

L29686 Malik permitted it for his brother except specifically in matters of lineage.

وَأَجَازَ مَالِكٌ لِأَخِيهِ إِلَّا فِي النَّسَبِ خَاصَّةً.

L29687 Malik rejected the testimony of an affectionate friend for his friend.

وَرَدَّ مَالِكٌ شَهَادَةَ الصَّدِيقِ الْمُلَاطِفِ لِصَدِيقِهِ

L29688 Abu Muhammad said: Those who differ with us have cited as evidence the narration we reported through the chain of Abu Ubayd, from Marwan ibn Muawiyah, from Yazid al-Jazari, I think he is Yazid ibn Sinan, from al-Zuhri, from Urwah, from Aisha, from the Prophet, peace and blessings of Allah be upon him: "The testimony of a treacherous man or a treacherous woman is not valid, nor is the testimony of one suspected of partiality in clientage or kinship, nor is the testimony of one flogged for a *hadd* offense."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمُخَالِفُونَ لَنَا بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مَرْوَانُ بْنُ مُعَاوِيَةَ عَنْ يَزِيدَ الْجَزَرِيِّ، قَالَ: أَحْسَبُهُ يَزِيدَ بْنَ سِنَانٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تَجُوزُ شَهَادَةُ خَائِنٍ وَلَا خَائِنَةٍ، وَلَا ظَنِينٍ فِي وَلَاءٍ أَوْ قَرَابَةٍ، وَلَا مَجْلُودٍ فِي حَدٍّ» .

L29689 Abu Muhammad said: This is against them, not in their favor, for several reasons. First: It is invalid because it is narrated from Yazid—an unknown narrator. If this refers to Yazid ibn Sinan, he is known to be a liar. Even if the narration were authentic, they would be the first to contradict it in two matters. First: Their differentiation between brother and father, uncle and nephew, and father and son—all of whom are equal, as they are equally subject to suspicion of partiality due to kinship.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَلَيْهِمْ لَا لَهُمْ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ لَا يَصِحُّ لِأَنَّهُ عَنْ يَزِيدَ - وَهُوَ مَجْهُولٌ - فَإِنْ كَانَ يَزِيدُ بْنُ سِنَانٍ فَهُوَ مَعْرُوفٌ بِالْكَذِبِ، ثُمَّ لَوْ صَحَّ لَكَانُوا أَوَّلَ مُخَالِفٍ لَهُ فِي مَوْضِعَيْنِ -: أَحَدُهُمَا - تَفْرِيقُهُمْ بَيْنَ الْأَخِ وَالْأَبِ، وَبَيْنَ الْعَمِّ وَابْنِ الْأَخِ، وَبَيْنَ الْأَبِ وَالِابْنِ - وَكُلُّهُمْ سَوَاءٌ - إذْ هُمْ مُتَقَارِبُونَ فِي التُّهْمَةِ بِالْقَرَابَةِ.

L29690–29691 All of them deem it permissible for the patron to rule over his client—and this contradicts the textual evidence—.

وَكُلُّهُمْ يُجِيزُ الْمَوْلَى لِمَوْلَاهُ - وَهَذَا خِلَافُ الْخَبَرِ -.

L29692 All of them permit the flogged person in a *hadd* punishment if he repents—contrary to this report—so who is more misguided in his path or corrupt in his reasoning than one who cites a report that serves as evidence against himself, despite contradicting it? They mentioned what we narrated from Wakīʿ, from ʿAbd Allāh ibn Abī Ḥumayd, who said: ʿUmar wrote to Abū Mūsā: "Muslims are admissible witnesses against one another except a flogged person in a *hadd* punishment, one against whom false testimony has been proven, one suspected in clientage, or in kinship." The statement regarding this is like the one before it, in that it has never been authentically established from ʿUmar. Moreover, they have opposed it just as we men-

وَكُلُّهُمْ يُجِيزُ الْمَجْلُودَ فِي الْحَدِّ إذَا تَابَ - وَهُوَ خِلَافُ هَذَا الْخَبَرِ - فَمَنْ أَضَلُّ سَبِيلًا، أَوْ أَفْسَدُ دَلِيلًا مِمَّنْ يَحْتَجُّ بِخَبَرٍ هُوَ حُجَّةٌ عَلَيْهِ، وَهُوَ مُخَالِفٌ لَهُ. وَذَكَرُوا: مَا رُوِّينَاهُ عَنْ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي حُمَيْدٍ قَالَ: كَتَبَ عُمَرُ إلَى أَبِي مُوسَى: الْمُسْلِمُونَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ إلَّا مَجْلُودًا فِي حَدٍّ، أَوْ مُجَرَّبًا عَلَيْهِ شَهَادَةُ زُورٍ، أَوْ ظَنِينًا فِي وَلَاءٍ، أَوْ فِي قَرَابَةٍ، وَالْقَوْلُ فِي هَذَا كَالَّذِي قَبْلَهُ مِنْ أَنَّهُ لَمْ يَصِحَّ قَطُّ عَنْ عُمَرَ، ثُمَّ قَدْ خَالَفُوهُ كَمَا ذَكَرْنَا سَوَاءً وَالْأَثْبَتُ عَنْ عُمَرَ: قَبُولُ الْأَبِ لِابْنِهِ.

tioned. The most established view from ʿUmar is the acceptance of a father regarding his son.

L29693 And among the marvels of the worldly life is their resorting to the sound hadith from the Prophet—peace be upon him—"You and your property belong to your father."

L29694 And among his commands is, "Hind is to claim her sustenance from her husband's wealth."

L29695 They are the foremost contradictor of these two narrations, and this constitutes an immense marvel.

L29696 As for us, we validate both and affirm: There is no prohibition in either case against accepting a son's testimony for his parents or the parents' testimony for him—even if he and his wealth belong to them—so what is the matter? All of us belong to Allah the Exalted, as do our possessions, and He has commanded us to testify for His sake. The Almighty said: *"Be upholders of justice, witnesses for Allah"* [4:135]. Every rightful claimant is commanded to take their right from whoever withholds it, whether a stranger or not, whenever capable. Whoever fails to do so has disobeyed Allah the Almighty, aided in sin and transgression, and possessed the ability to reform an evil yet refrained—thereby affirming wrongdoing, falsehood, and the forbidden without altering any of it. Among the strangest arguments presented by some in this matter is their citation of Allah's words as proof: *"Show gratitude to Me and to your parents"* [31:14].[32]

L29697 Abu Muhammad said: This constitutes the strongest argument against them, for gratitude toward them after gratitude to Allah the Most High entails bearing truthful witness for them. Gratitude toward them does not require bearing false witness on their behalf.

L29698–29700 Allah the Almighty has said: *"And show kindness to parents, close relatives, orphans, the needy, the neighboring kinsman, the distant neighbor, the companion by your side, the wayfarer, and those under your author-

[32]**Qur'an references (L29696):** Qur'an 4:135 (An-Nisa); Qur'an 31:14 (Luqman).

وَمِنْ عَجَائِبِ الدُّنْيَا: احْتِجَاجُهُمْ فِي هَذَا بِالْخَبَرِ الثَّابِتِ مِنْ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنْتَ وَمَالُكَ لِأَبِيكَ» .

وَمِنْ «أَمْرِهِ هِنْدًا بِأَخْذِ قُوتِهَا مِنْ مَالِ زَوْجِهَا» .

وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَيْنِ الْخَبَرَيْنِ وَهَذَا عَجَبٌ جِدًّا.

وَأَمَّا نَحْنُ فَنُصَحِّحُهُمَا، وَنَقُولُ: لَيْسَ فِيهِمَا مَنْعٌ مِنْ قَبُولِ شَهَادَةِ الِابْنِ لِأَبَوَيْهِ، وَلَا مِنْ قَبُولِ الْأَبَوَيْنِ لَهُ - وَإِنْ كَانَ هُوَ وَمَالُهُ لَهُمَا - فَكَانَ مَاذَا؟ وَنَحْنُ كُلُّنَا لِلَّهِ تَعَالَى وَأَمْوَالُنَا وَقَدْ أَمَرَنَا بِأَنْ نَشْهَدَ لَهُ عَزَّ وَجَلَّ، فَقَالَ عَزَّ وَجَلَّ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] وَكُلُّ ذِي حَقٍّ فَهُوَ مَأْمُورٌ بِأَخْذِ حَقِّهِ مِمَّنْ هُوَ لَهُ عِنْدَهُ مَتَى قَدَرَ عَلَى ذَلِكَ أَجْنَبِيًّا كَانَ أَوْ غَيْرَ أَجْنَبِيٍّ وَمَنْ لَمْ يَفْعَلْ ذَلِكَ فَقَدْ عَصَى اللَّهَ عَزَّ وَجَلَّ وَأَعَانَ عَلَى الْإِثْمِ وَالْعُدْوَانِ وَقَدَرَ عَلَى تَغْيِيرِ مُنْكَرٍ فَلَمْ يَفْعَلْ بَلْ أَقَرَّ الْمُنْكَرَ وَالْبَاطِلَ وَالْحَرَامَ وَلَمْ يُغَيِّرْ شَيْئًا مِنْ ذَلِكَ، وَمِنْ أَغْرَبِ مَا وَقَعَ: احْتِجَاجُ بَعْضِهِمْ فِي هَذَا بِقَوْلِ اللَّهِ تَعَالَى: {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] .

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ؛ لِأَنَّ مِنْ الشُّكْرِ لَهُمَا بَعْدَ شُكْرِ اللَّهِ تَعَالَى: أَنْ يَشْهَدَ لَهُمَا بِالْحَقِّ، وَلَيْسَ مِنْ الشُّكْرِ لَهُمَا أَنْ يَشْهَدَ لَهُمَا بِالْبَاطِلِ.

وَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَالْجَارِ ذِي الْقُرْبَى وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ بِالْجَنْبِ وَابْنِ السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣٦] فَقَدْ سَوَّى اللَّهُ تَعَالَى بَيْنَ كُلِّ مَنْ ذَكَرْنَا فِي وُجُوبِ الْإِحْسَانِ إِلَيْهِمْ،

ity”* (An-Nisā’ 4:36). Thus Allah the Most High has equated all those we have mentioned in the obligation to show kindness to them. Therefore, it becomes binding upon one who is accused of failing in this duty toward parents, toward some close relatives and companions by one’s side, and what... Those whom his right hand possesses: that he (the authority) accuses any of them (the dependents) among the rest, so he does not accept the testimony of any of them on behalf of a relative entirely, nor for a neighbor, nor for a wayfarer, nor for an orphan, nor for a needy person. Otherwise, they have tainted themselves by mixing in falsehood as they pleased, leaving them retaining nothing but accusation, and accusation is inadmissible.[33]

فَيَلْزَمُ مَنْ اتَّهَمَهُ لِذَلِكَ فِي الْوَالِدَيْنِ، وَفِي بَعْضِ ذَوِي الْقُرْبَى وَالصَّاحِبِ بِالْجَنْبِ، وَمَا مَلَكَتْ يَمِينُهُ: أَنْ يَتَّهِمَهُ فِي سَائِرِهِمْ، فَلَا يَقْبَلُ شَهَادَةَ أَحَدِهِمْ لِقَرِيبٍ جُمْلَةً، وَلَا لِجَارٍ، وَلَا لِابْنِ سَبِيلٍ، وَلَا لِيَتِيمٍ، وَلَا لِمِسْكِينٍ، وَإِلَّا فَقَدْ تَلَوَّثُوا فِي التَّخْلِيطِ بِالْبَاطِلِ مَا شَاءُوا، فَلَمْ يَبْقَ فِي أَيْدِيهِمْ إِلَّا التُّهْمَةُ، وَالتُّهْمَةُ لَا تَحِلُّ.

L29701 By necessity, we know that whoever is compelled by the kinship of their parents, children, and spouse to bear false witness for them is categorically barred from testifying for those who bribe them—even those among distant relatives. There is no distinction.

وَبِالضَّرُورَةِ نَدْرِي أَنَّ مَنْ حَمَلَتْهُ قَرَابَةُ أَبَوَيْهِ وَبَنِيهِ وَامْرَأَتِهِ عَلَى أَنْ يَشْهَدَ لَهُمْ بِالْبَاطِلِ فَمَضْمُونٌ مَنْعُهُ قَطْعًا أَنْ يَشْهَدَ لِمَنْ يَرْشُوهُ مِنَ الْأَبَاعِدِ لَا فَرْقَ.

L29702 Accusation has no place in Islam—and we ask them about Abū Dharr and Umm Salamah, the Mother**s** of the Believers: If **the two of them** were to **truthfully claim** against a Jew **a dirham**, would you rule in their favor based on their claim? If they say, “Yes,” they would have **defied** Allah **and His Messenger—peace be upon him—**and the **indisputable** consensus of the Ummah, **abandoning their own legal principle**.

وَلَيْسَ لِلتُّهَمَةِ فِي الْإِسْلَامِ مَدْخَلٌ - وَنَحْنُ نَسْأَلُهُمْ عَنْ أَبِي ذَرٍّ، وَأُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ: لَوِ ادَّعَيَا عَلَى يَهُودِيٍّ بِدِرْهَمٍ بِحَقٍّ، أَتَقْضُونَ لَهُمَا بِدَعْوَاهُمَا؟ فَإِنْ قَالُوا: نَعَمْ، خَالَفُوا اللَّهَ وَرَسُولَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَإِجْمَاعَ الْأُمَّةِ الْمُتَيَقَّنَ وَتَرَكُوا قَوْلَهُمْ.

L29703 If they say: No, we say: Glory be to Allah. By Allah, there is no one on the face of the earth who, claiming to be Muslim, accuses Abū Dharr and Umm Salamah—may Allah be pleased with them both—of asserting falsehood in the entire world, so how then over a dirham against a Jew? Then we ask them: Do you absolve the lying Jew—notorious for immorality—of their claim by his oath? If they say: Yes, we say to them: Is the proper place for accusation and suspicion not with the disbelievers whose falsehood against Allah the Exalted and His Messenger—peace and blessings be upon him—is certain?

وَإِنْ قَالُوا: لَا، قُلْنَا: سُبْحَانَ اللَّهِ، وَاللَّهِ مَا عَلَى أَدِيمِ الْأَرْضِ مَنْ يَقُولُ: إِنَّهُ مُسْلِمٌ يَتَّهِمُ أَبَا ذَرٍّ، وَأُمَّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّهُمَا يَدَّعِيَانِ الْبَاطِلَ فِي الدُّنْيَا بِأَسْرِهَا، فَكَيْفَ فِي دِرْهَمٍ عَلَى يَهُودِيٍّ؟ ثُمَّ نَسْأَلُهُمْ أَتُبَرِّئُونَ الْيَهُودِيَّ الْكَذَّابَ الْمَشْهُورَ بِالْفِسْقِ بِيَمِينِهِ مِنْ دَعْوَاهُمَا؟ فَمَنْ قَوْلُهُمْ: نَعَمْ، قُلْنَا لَهُمْ: وَهَلْ مَقَرُّ التُّهَمَةِ، وَالظِّنَّةِ، إِلَّا فِي الْكُفَّارِ الْمُتَيَقَّنِ كَذِبُهُمْ عَلَى اللَّهِ تَعَالَى وَعَلَى رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -؟ .

L29704 The utter astonishment lies in Mālik and al-Shāfiʿī awarding immense wealth to a claimant merely through his claim and oath—even if he is more notori-

وَالْعَجَبُ كُلُّهُ: مِنْ إِعْطَاءِ مَالِكٍ، وَالشَّافِعِيِّ: الْمُدَّعِيَ الْمَالَ الْعَظِيمَ بِدَعْوَاهُ وَيَمِينِهِ، وَإِنْ كَانَ أَشْهَرَ فِي الْكَذِبِ وَالْمُجُونِ مِنْ حَاتِمٍ فِي الْجُودِ، إِذَا أَبَى الْمُدَّعَى عَلَيْهِ مِنَ الْيَمِينِ،

[33] **Qur’an references (L29698):** Qur’an 4:36 (An-Nisa).

ous for falsehood and immorality than Ḥātim was for generosity—when the defendant refuses to swear; and in Abū Ḥanīfah granting him that through his bare claim without evidence or oath, while they do not hold him accountable by their own opinion—neither by the Qur'ān nor the Sunnah—yet they accuse the devout, virtuous, righteous, and pious ascetic in his testimony for his son, his wife, or his father concerning a mere dirham. We declare our innocence before Allah the Exalted from these schools of thought—nothing is more corrupt than them.

وَإِعْطَاءِ أَبِي حَنِيفَةَ إِيَّاهُ ذَلِكَ بِدَعْوَاهُ الْمُجَرَّدَةِ بِلَا بَيِّنَةٍ وَلَا يَمِينٍ، وَلَا يَتَّهِمُونَهُ بِرَأْيِهِمْ: لَا بِقُرْآنٍ وَلَا بِسُنَّةٍ، ثُمَّ يَتَّهِمُونَ النَّاسِكَ الْفَاضِلَ الْبَرَّ التَّقِيَّ فِي شَهَادَتِهِ لِابْنِهِ، أَوْ لِامْرَأَتِهِ أَوْ لِأَبِيهِ بِدِرْهَمٍ - نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ هَذِهِ الْمَذَاهِبِ الَّتِي لَا شَيْءَ أَفْسَدُ مِنْهَا.

L29705 Abu Muhammad said: They censure others for diverging from the Companion's view—despite there being no recognized dissenter against him—yet they themselves oppose him on this very point, and no dissent from the Companions regarding his view is known.

قَالَ أَبُو مُحَمَّدٍ: وَهُمْ يُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَقَدْ خَالَفُوهُ هَاهُنَا، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ.

L29706–29708 Then Az-Zuhri reported that the early predecessors did not differ regarding a father's acceptance of testimony for his son, spouses accepting testimony for one another, and relatives accepting testimony from each other - until discord infiltrated the people. This is a report. Regarding the consensus of the Companions—may Allah be pleased with them—how did those from later generations deem it permissible to oppose them based on a corrupt assumption?

ثُمَّ قَدْ حَكَى الزُّهْرِيُّ: أَنَّهُ لَمْ يَخْتَلِفْ الصَّدْرُ الْأَوَّلُ فِي قَبُولِ الْأَبِ لِابْنِهِ وَالزَّوْجَيْنِ أَحَدِهِمَا لِلْآخَرِ، وَالْقَرَابَةِ بَعْضِهِمْ لِبَعْضٍ حَتَّى دَخَلَتْ فِي النَّاسِ الدَّاخِلَةُ - وَهَذَا إِخْبَارٌ عَنْ إِجْمَاعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكَيْفَ اسْتَجَازُوا خِلَافَهُمْ لِظَنٍّ فَاسِدٍ مِنْ الْمُتَأَخِّرِينَ.

L29709 Then I wish I knew: what new occurrence has manifested that was not present before? By Allah, during the time of Allah's Messenger (may Allah bless him and grant him peace), there existed hypocrites (who are the worst of Allah's creation—Exalted and Majestic is He), disbelievers, adulterers, thieves, and liars. Thus we cannot discern what new development has arisen. Far be it from Allah the Exalted that anything should occur outside the framework of the Sharia.

ثُمَّ لَيْتَ شِعْرِي: مَا الَّذِي حَدَثَ مِمَّا لَمْ يَكُنْ، وَاَللَّهِ لَقَدْ كَانَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُنَافِقُونَ - الَّذِينَ هُمْ شَرُّ خَلْقِ اللَّهِ عَزَّ وَجَلَّ - وَالْكُفَّارُ، وَالزُّنَاةُ، وَالسُّرَّاقُ، وَالْكَذَّابُونَ، فَمَا نَدْرِي مَا الَّذِي حَدَثَ، وَحَاشَ لِلَّهِ تَعَالَى أَنْ يَحْدُثَ شَيْءٌ بِغَيْرِ الشَّرِيعَةِ.

L29710 We bear witness by the testimony of Allah, the Mighty and Majestic: that He, the Exalted, had He willed that none of those we mentioned be accepted for those who bear witness for Him, He would have clarified it and not neglected it. Thus, the falsehood of the statement of our opponents has become evident with a certainty in which there is no doubt.

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ: أَنَّهُ تَعَالَى لَوْ أَرَادَ أَنْ لَا يُقْبَلَ أَحَدٌ مِمَّنْ ذَكَرْنَا لِمَنْ شَهِدَ لَهُ لَبَيَّنَهُ وَمَا أَغْفَلَهُ - فَظَهَرَ فَسَادُ قَوْلِ مُخَالِفِينَا بِيَقِينٍ لَا مِرْيَةَ فِيهِ.

L29711 The most astonishing thing is that they deemed it permissible for a brother

to his brother, while Al-Zuhri narrates that later scholars accused him of this. Thus, they contradicted both those who preceded them and those who came after them, and this alone suffices as a disgrace. And success is from Allah, the Most High.

The Jurisprudential Question of Testimony Against the Enemy

1794. Issue: If someone testifies against their enemy, it is considered. If their enmity toward him drives them to act in a religiously impermissible manner, this constitutes a flaw invalidating their testimony for everyone and in every matter. But if their enmity does not drive them to act impermissibly, the witness is deemed a credible witness whose testimony is accepted against the enemy. This is the position of Abū Sulaymān and our companions.

Abu Hanifah said: The testimony of a hired worker in favor of the one who hired him is not permissible in any matter whatsoever—and this is the opinion of Al-Awza'i.

Mālik also said likewise, unless the individual is distinguished in uprightness, except when he is among the household dependents of the litigant, in which case his testimony in the latter's favor is invalid.

Al-Shafi'i said: The testimony of a hired worker concerning his employer is not admissible specifically in the matter for which he was hired, but it is admissible for the employer in other matters. This is the opinion of Sufyan al-Thawri and Abu Thawr.

Similarly, they stated concerning the legal agent: the same ruling applies equally in all cases.

Malik said: If a witness is affiliated with a party, his testimony is not accepted for them, and the testimony of an enemy against their enemy is impermissible.

Abu Hanifa and Malik stated: The testimony of the opposing party is inadmissible—neither for the principal who appointed him nor for the agent appointed on the condition that he litigate against the principal.

وَأَعْجَبُ شَيْءٍ أَنَّهُمْ أَجَازُوا الْأَخَ لِأَخِيهِ وَالزُّهْرِيُّ يَحْكِي عَنْ الْمُتَأَخِّرِينَ اتِّهَامَهُمْ لَهُ، فَقَدْ خَالَفُوا مَنْ تَقَدَّمَ وَمَنْ تَأَخَّرَ، وَكَفَى بِهَذَا شُنْعَةً -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الشَّهَادَةِ عَلَى الْعَدُوِّ]

١٧٩٤ - مَسْأَلَةٌ: وَمَنْ شَهِدَ عَلَى عَدُوِّهِ نُظِرَ، فَإِنْ كَانَ تُخْرِجُهُ عَدَاوَتُهُ لَهُ إلَى مَا لَا يَحِلُّ فَهِيَ جُرْحَةٌ فِيهِ تَرُدُّ شَهَادَتَهُ لِكُلِّ أَحَدٍ، وَفِي كُلِّ شَيْءٍ - وَإِنْ كَانَ لَا تُخْرِجُهُ عَدَاوَتُهُ إلَى مَا لَا يَحِلُّ فَهُوَ عَدْلٌ يُقْبَلُ عَلَيْهِ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

وَقَالَ أَبُو حَنِيفَةَ: لَا تَجُوزُ شَهَادَةُ الْأَجِيرِ لِمَنْ اسْتَأْجَرَهُ فِي شَيْءٍ أَصْلًا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

وَقَالَ مَالِكٌ كَذَلِكَ، إلَّا أَنْ يَكُونَ عَدْلًا مُبَرَّزًا فِي الْعَدَالَةِ، إلَّا أَنْ يَكُونَ فِي عِيَالِهِ فَلَا تَجُوزُ شَهَادَتُهُ لَهُ.

وَقَالَ الشَّافِعِيُّ: لَا تَجُوزُ شَهَادَةُ الْأَجِيرِ لِمَنْ اسْتَأْجَرَهُ فِيمَا اسْتَأْجَرَهُ فِيهِ خَاصَّةً، وَتَجُوزُ لَهُ فِيمَا عَدَا ذَلِكَ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي ثَوْرٍ.

وَكَذَلِكَ قَالُوا: فِي الْوَكِيلِ سَوَاءً سَوَاءً.

وَقَالَ مَالِكٌ: إنْ كَانَ مُنْضَافًا إلَيْهِ لَمْ يُقْبَلْ لَهُ، وَلَمْ تَجُزْ شَهَادَةُ الْعَدُوِّ عَلَى عَدُوِّهِ.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا تُقْبَلُ شَهَادَةُ الْخَصْمِ، لَا لِلَّذِي وَكَّلَهُ، وَلَا لِلَّذِي وُكِّلَ عَلَى أَنْ يُخَاصِمَهُ.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: تَجُوزُ شَهَادَةُ الْفُقَرَاءِ وَالسُّؤَّالِ وَقَالَ مَالِكٌ: لَا تَجُوزُ إِلَّا فِي الشَّيْءِ الْيَسِيرِ.

L29720–29722 Abu Hanifa and Al-Shafi'i said: The testimony of the poor and beggars is permissible. Mālik said: It is permissible only in minor matters.

وَقَالَ ابْنُ أَبِي لَيْلَى: لَا تُقْبَلُ شَهَادَةُ فَقِيرٍ - وَأَشَارَ شَرِيكٌ إِلَى ذَلِكَ.

L29723 Ibn Abi Layla said: The testimony of a poor person is not accepted - and Shurayk indicated this.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَنْ ذَكَرْنَا فِي هَؤُلَاءِ مَقْبُولُونَ لِكُلِّ مَنْ ذَكَرْنَا، كَالْأَجْنَبِيَّيْنِ وَلَا فَرْقَ.

L29724 Abu Muhammad said: All those we have mentioned here are accepted for everyone we have mentioned, just as with the two non-relatives, with no distinction.

وَاحْتَجَّ الْمُخَالِفُ بِمَا رُوِّينَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَنَّهُ «لَا تَجُوزُ شَهَادَةُ ذِي غِمْرٍ عَلَى أَخِيهِ، وَلَا تَجُوزُ شَهَادَةُ الظِّنَّةِ، وَلَا الْإِحْنَةِ وَلَا شَهَادَةُ خَصْمٍ، وَلَا ظَنِينٍ، وَلَا الْقَانِعِ مِنْ أَهْلِ الْبَيْتِ لَهُمْ» .

L29725 The dissenting scholar argued based on what has been narrated from the Prophet—may Allah's peace and blessings be upon him—that "the testimony of one harboring enmity against his brother is invalid; nor is the testimony of suspicion valid; nor the testimony of hatred; nor the testimony of a litigant; nor that of one of doubtful integrity; nor the testimony of a dependent from the household in their favor."

وَصَحَّ عَنْ شُرَيْحٍ: لَا تَجُوزُ عَلَيْكَ شَهَادَةُ الْخَصْمِ، وَلَا الشَّرِيكِ، وَلَا الْأَجِيرِ لِمَنْ اسْتَأْجَرَهُ.

L29726 It is authentically reported from Shurayḥ: The testimony of a litigant is not admissible against you, nor that of a partner, nor that of a hired worker for the one who hired him.

وَرُوِيَ عَنِ الشَّعْبِيِّ - وَلَمْ يَصِحَّ - لَا أُجِيزُ شَهَادَةَ وَصِيٍّ، وَلَا وَلِيٍّ، لِأَنَّهُمَا خَصْمَانِ.

L29727 It has been reported from Al-Sha'bī—though unauthenticated—"I do not validate the testimony of an executor or a legal guardian, as they are both litigants."

وَصَحَّ عَنْ إِبْرَاهِيمَ: لَا تَجُوزُ شَهَادَةُ الشَّرِيكِ لِشَرِيكِهِ فِيمَا بَيْنَهُمَا، وَتَجُوزُ لَهُ فِي غَيْرِ ذَلِكَ.

L29728 It is reliably established from Ibrahim: A partner's testimony for his partner is not permissible in disputes between them, but it is permissible for him in other cases.

وَعَنْ شُرَيْحٍ مَضَتْ السُّنَّةُ فِي الْإِسْلَامِ: أَنَّهُ لَا تَجُوزُ شَهَادَةُ خَصْمٍ.

L29729 It is narrated from Shuraih that the established Sunnah in Islam is that the testimony of a litigant is inadmissible.

وَمِنْ طَرِيقِ ابْنِ سَمْعَانَ - وَهُوَ كَذَّابٌ - لَمْ يَكُنْ السَّلَفُ يُجِيزُونَ شَهَادَةَ الْقَانِعِ

L29730 And from the transmission of Ibn Samʿān—a liar—the Salaf did not permit the testimony of a contented witness.

L29731 Abu Muhammad said: The contented one and the asker. It is authentically reported from Rabi'ah: The testimony of an adversary, and [that of] one suspected in his morals, appearance, or deviation from upright witnesses

in his conduct—even if no other fault is detected in him—is rejected. The testimony of an enemy against his enemy is also rejected.

قَالَ أَبُو مُحَمَّد: الْقَانِعُ السَّائِلُ، وَصَحَّ عَنْ رَبِيعَةَ: تُرَدُّ شَهَادَةُ الْخَصْمِ، وَالظَّنِينِ فِي خَلَائِقِهِ، وَشَكْلِهِ، وَمُخَالَفَتِهِ الْعُدُولَ فِي سِيرَتِهِ - وَإِنْ لَمْ يُوقَفْ مِنْهُ عَلَى غَيْرِ ذَلِكَ - وَتُرَدُّ شَهَادَةُ الْعَدُوِّ عَلَى عَدُوِّهِ.

L29732 And from Yaḥyā ibn Saʿīd al-Anṣārī: The testimony of the enemy against his enemy is rejected.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: تُرَدُّ شَهَادَةُ الْعَدُوِّ عَلَى عَدُوِّهِ.

L29733 This is all that is mentioned in that matter from those who preceded.

هَذَا كُلُّ مَا يُذْكَرُ فِي ذَلِكَ عَمَّنْ سَلَفَ.

L29734 Abu Muhammad said: As for the narrations concerning that matter, all of them are invalid because some have disconnected chains, while others are transmitted from the chain of Isḥāq ibn Rāshid (who is not strong).

قَالَ أَبُو مُحَمَّد: أَمَّا الْآثَارُ فِي ذَلِكَ فَكُلُّهَا بَاطِلٌ؛ لِأَنَّ بَعْضَهَا مَرْوِيٌّ مُنْقَطِعٌ، وَمِنْ طَرِيقِ إِسْحَاقَ بْنَ رَاشِدٍ - وَلَيْسَ بِالْقَوِيِّ -.

L29735 Or via the narration of Ibrāhīm ibn Muḥammad ibn Abī Yaḥyā al-Aslamī—who was criticized for lying, as Mālik and others described him—...

أَوْ مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى الْأَسْلَمِيِّ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - وَصَفَهُ بِذَلِكَ مَالِكٌ، وَغَيْرُهُ.

L29736 Or through the chain of ʿAmr ibn Shuʿayb, from his father, from his grandfather - and this is a written compilation (ṣaḥīfah).

أَوْ مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ - وَهِيَ صَحِيفَةٌ.

L29737–29738 Or a *mursal* via the chain of ʿAbd al-Raḥmān ibn Farrūkha.

أَوْ مُرْسَلٌ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ فَرُّوخَ.

L29739 Or a mursal ḥadīth transmitted through the chain of Isḥāq ibn ʿAbd Allāh narrating from Yazīd ibn Ṭalḥah—and the identities of these two narrators are unknown among the people.

أَوْ مُرْسَلٌ مِنْ طَرِيقِ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ عَنْ يَزِيدَ بْنِ طَلْحَةَ - وَلَا يُدْرَى مَنْ هُمَا فِي النَّاسِ.

L29740 Or two *mursal* narrations transmitted through the chain of ʿAbd al-Raḥmān ibn Abī al-Zināḍ.

أَوْ مُرْسَلَانِ: مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ.

L29741 And from the chain of Ibn Samʿān - while Mālik and others besides him have rejected these two.

وَمِنْ طَرِيقِ ابْنِ سَمْعَانَ، وَقَدْ كَذَّبَهُمَا مَالِكٌ، وَغَيْرُهُ.

L29742 Or from the chain of Yazīd al-Jazari - and he is unknown - then if it refers to Ibn Sinan, he is noted for lying.

أَوْ مِنْ طَرِيقِ يَزِيدَ الْجَزَرِيِّ - وَهُوَ مَجْهُولٌ - فَإِنْ كَانَ ابْنُ سِنَانٍ - فَهُوَ مَذْكُورٌ بِالْكَذِبِ.

L29743 Or a Mursal narration reported by Abdullah ibn Salih—and he is weak.

أَوْ مُرْسَلٌ مِنْ رِوَايَةِ عَبْدِ اللَّهِ بْنِ صَالِحٍ - وَهُوَ ضَعِيفٌ.

L29744 All of this is not permissible to cite as evidence.

وَكُلُّ هَذَا لَا يَحِلُّ الِاحْتِجَاجُ بِهِ.

L29745 Moreover, if it were valid, it would contradict their position, for it entails that the testimony of a biased party against his brother is impermissible absolutely and universally—which is our view—whereas they only disallow its acceptance against his enemy and permit it in other cases. This contradicts those authoritative precedents.

ثُمَّ لَوْ صَحَّتْ لَكَانَتْ مُخَالِفَةً لَهُمْ، لِأَنَّ فِيهَا أَنْ لَا تَجُوزَ شَهَادَةُ ذِي الْغِمْرِ عَلَى أَخِيهِ مُطْلَقًا عَامًّا - وَهُوَ قَوْلُنَا - وَهُمْ يَمْنَعُونَهَا مِنْ الْقَبُولِ عَلَى عَدُوِّهِ فَقَطْ، وَيُجِيزُونَهَا عَلَى غَيْرِهِ - وَهَذَا خِلَافٌ لِتِلْكَ الْآثَارِ.

L29746 As for the testimony of a litigant: the claim of a claimant who is litigating on his own behalf is not accepted without evidence.

وَأَمَّا شَهَادَةُ الْخَصْمِ: فَإِنَّ الْمُدَّعِيَ لِنَفْسِهِ الْمُخَاصِمَ لَا تُقْبَلُ دَعْوَاهُ لِنَفْسِهِ بِلَا شَكٍّ.

L29747 Thus, their reliance on those traditions is invalidated even if they were authentic, so how when they are not authentic?

فَبَطَلَ تَعَلُّقُهُمْ بِتِلْكَ الْآثَارِ لَوْ صَحَّتْ، فَكَيْفَ وَهِيَ لَا تَصِحُّ.

L29748 Then We found that Allah, the Most High, has said: “Let not the enmity of a people lead you to abandon justice. Be just; that is nearer to piety” [Al-Mā’idah: 8]. Thus, Allah, the Exalted and Glorious, has commanded us to act justly toward our enemies.[34]

ثُمَّ وَجَدْنَا اللَّهَ تَعَالَى قَدْ قَالَ: {وَلا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ عَلَى أَلا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى} [المائدة: ٨] فَأَمَرَنَا اللَّهُ عَزَّ وَجَلَّ بِالْعَدْلِ عَلَى أَعْدَائِنَا.

L29749 It is valid that whoever judges justly—whether regarding an enemy, a friend, or both—or testifies—being a just person—regarding an enemy, a friend, or both, their testimony is accepted and their judgment is binding. Success is from Allah, the Exalted.

فَصَحَّ أَنَّ مَنْ حَكَمَ بِالْعَدْلِ عَلَى عَدُوِّهِ أَوْ صَدِيقِهِ أَوْ لَهُمَا، أَوْ شَهِدَ - وَهُوَ عَدْلٌ - عَلَى عَدُوِّهِ أَوْ صَدِيقِهِ أَوْ لَهُمَا، فَشَهَادَتُهُ مَقْبُولَةٌ وَحُكْمُهُ نَافِذٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29750 We do not know of anyone who preceded Mālik in asserting the view to reject the testimony of a benevolent friend.

وَمَا نَعْلَمُ أَحَدًا سَبَقَ مَالِكًا إلَى الْقَوْلِ بِرَدِّ شَهَادَةِ الصَّدِيقِ الْمُلَاطِفِ.

L29751 As for those who reject the testimony of the poor, this is a grave matter. Allah the Exalted said: “For the poor Emigrants who were driven from their homes and wealth, seeking bounty from Allah and His approval... It is they who are the truthful” [59:8]. Thus, whoever rejects the testimony of these people is surely at loss, and whoever singles them out to the exclusion of other poor people is self-contradictory. Success is with Allah the Exalted.[35]

وَأَمَّا مَنْ رَدَّ شَهَادَةَ الْفَقِيرِ فَعَظِيمَةٌ، قَالَ اللَّهُ تَعَالَى: {لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلا مِنَ اللَّهِ وَرِضْوَانًا} [الحشر: ٨]- إلَى قَوْلِهِ -: {أُولَئِكَ هُمُ الصَّادِقُونَ} [الحشر: ٨] فَمَنْ رَدَّ شَهَادَةَ هَؤُلَاءِ لَخَاسِرٌ، وَإِنَّ مَنْ خَصَّهُمْ دُونَ سَائِرِ الْفُقَرَاءِ لَمُتَنَاقِضٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29752 We do not know of any precedent for these statements of theirs among the

وَمَا نَعْلَمُ لَهُمْ فِي هَذِهِ الْأَقْوَالِ سَلَفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَصْلًا.

[34] **Qur’an references (L29748):** Qur’an 5:8 (Al-Ma’idah).
[35] **Qur’an references (L29751):** Qur’an 59:8 (Al-Hashr); Qur’an 49:15 (Al-Hujurat).

Companions—may Allah be pleased with them—at all.

L29753–29755 The strangest view is that of Rabi'ah: the testimony of one who contradicts upright individuals in his conduct is rejected, even if he has not been formally charged. From him, regarding matters beyond that—this is utterly astonishing; we do not know from where he derived its permissibility in the religion of Allah, the Exalted and Glorious.

وَأَطْرَفُ شَيْءٍ قَوْلُ رَبِيعَةَ: تُرَدُّ شَهَادَةُ مَنْ خَالَفَ الْعُدُولَ فِي سِيرَتِهِ وَإِنْ لَمْ يُوقَفْ مِنْهُ عَلَى غَيْرِ ذَلِكَ -: فَهَذَا عَجَبٌ جِدًّا، لَا نَدْرِي مِنْ أَيْنَ أَطْلَقَهُ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ.

L29756 **The juridical question of the testimony of two boys who have not attained legal maturity.**

[مَسْأَلَة شَهَادَة مَنْ لَمْ يَبْلُغ مِنْ الصِّبْيَانِ]

L29757 1795 — Issue: The testimony of minors who have not attained legal maturity is not accepted—neither males nor females among them, nor some of them against one another, nor against others [non-minors]—whether in cases involving life, injury, or property. It is impermissible to pass judgment based on any such testimony, neither before their separation nor after their separation—though there is extensive disagreement on this matter. It is authentically reported that Ibn al-Zubayr said: If they are presented at the time of the incident in question, their testimony becomes valid.

١٧٩٥ - مَسْأَلَةٌ: وَلَا تُقْبَلُ شَهَادَةُ مَنْ لَمْ يَبْلُغْ مِنْ الصِّبْيَانِ، لَا ذُكُورِهِمْ وَلَا إنَاثِهِمْ، وَلَا بَعْضِهِمْ عَلَى بَعْضٍ، وَلَا عَلَى غَيْرِهِمْ، لَا فِي نَفْسٍ وَلَا جِرَاحَةٍ، وَلَا فِي مَالٍ، وَلَا يَحِلُّ الْحُكْمُ بِشَيْءٍ مِنْ ذَلِكَ، لَا قَبْلَ افْتِرَاقِهِمْ وَلَا بَعْدَ افْتِرَاقِهِمْ - وَفِي هَذَا خِلَافٌ كَثِيرٌ -: فَصَحَّ عَنْ ابْنِ الزُّبَيْرِ أَنَّهُ قَالَ: إذَا جِيءَ بِهِمْ عِنْدَ الْمُصِيبَةِ جَازَتْ شَهَادَتُهُمْ.

L29758 Ibn Abi Mulaykah said: The judges adopted the opinion of Ibn al-Zubayr—and some of them permitted the testimony of a boy or a slave in a specific matter, not in all things—as was narrated to us from Qatadah through al-Hasan, who reported that Ali ibn Abi Talib said: "A boy's testimony about another boy is permissible, and a slave's testimony about another slave is permissible."

قَالَ ابْنُ أَبِي مُلَيْكَةَ: فَأَخَذَ الْقُضَاةُ بِقَوْلِ ابْنِ الزُّبَيْرِ - وَأَجَازَ بَعْضُهُمْ شَهَادَتَهُمْ فِي خَاصٍّ مِنْ الْأَمْرِ، لَا فِي كُلِّ شَيْءٍ -: كَمَا رُوِّينَا عَنْ قَتَادَةَ عَنْ الْحَسَنِ، قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: شَهَادَةُ الصَّبِيِّ عَلَى الصَّبِيِّ جَائِزَةٌ، وَشَهَادَةُ الْعَبْدِ عَلَى الْعَبْدِ جَائِزَةٌ.

L29759 Al-Hasan said: Mu'awiyah said, "The testimony of prepubescent boys against prepubescent boys is permissible, provided they have not entered houses where they could be coached." A similar ruling is also reported from Ali.

قَالَ الْحَسَنُ: وَقَالَ مُعَاوِيَةُ: شَهَادَةُ الصِّبْيَانِ عَلَى الصِّبْيَانِ جَائِزَةٌ، مَا لَمْ يَدْخُلُوا الْبُيُوتَ فَيُعَلَّمُوا - وَعَنْ عَلِيٍّ مِثْلُ هَذَا أَيْضًا.

L29760 Through the narration of Ibn Abī Shaybah from Wakīʿ, who reported from ʿAbdullāh ibn Ḥabīb ibn Abī Thābit, from al-Shaʿbī, from Masrūq: Six youths went to swim, and one drowned. Three testified against two that they had drowned him, while two testified against three that they had drowned him. ʿAlī ibn Abī Ṭālib ruled that the three were liable for three-fifths of the diyah and the two for two-fifths of the diyah.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ نا عَبْدُ اللَّهِ بْنُ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ: أَنَّ سِتَّةَ غِلْمَانٍ ذَهَبُوا يَسْبَحُونَ، فَغَرِقَ أَحَدُهُمْ، فَشَهِدَ ثَلَاثَةٌ عَلَى اثْنَيْنِ

أَنَّهُمَا غَرَّقَاهُ، وَشَهِدَ اثْنَانِ عَلَى ثَلَاثَةٍ أَنَّهُمْ غَرَّقُوهُ -: فَقَضَى عَلِيُّ بْنُ أَبِي طَالِبٍ عَلَى الثَّلَاثَةِ خُمُسَيْ الدِّيَةِ، وَعَلَى الِاثْنَيْنِ ثَلَاثَةَ أَخْمَاسِ الدِّيَةِ.

L29761 It has also been narrated to us in a similar manner to this from Masruq.

وَرُوِّينَا أَيْضًا نَحْوَ هَذَا عَنْ مَسْرُوقٍ.

L29762 It was narrated to us from Yaḥyā ibn Saʿīd al-Qaṭṭān: Sufyān al-Thawrī narrated to us from Firās, from al-Shaʿbī, from Masrūq that three young male witnesses testified against four, and the four testified against the three. Masrūq thus assigned to the four three-sevenths of the *diyah*, and to the three four-sevenths of the *diyah*.

وَرُوِّينَا عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ: أَنَّ ثَلَاثَةَ غِلْمَانٍ شَهِدُوا عَلَى أَرْبَعَةٍ، وَشَهِدَ الْأَرْبَعَةُ عَلَى الثَّلَاثَةِ، فَجَعَلَ مَسْرُوقٌ عَلَى الْأَرْبَعَةِ ثَلَاثَةَ أَسْبَاعِ الدِّيَةِ، وَعَلَى الثَّلَاثَةِ أَرْبَعَةَ أَسْبَاعِ الدِّيَةِ.

L29763 It has also been reported to us from Ibn al-Musayyab and al-Zuhri that the testimony of minors is permissible based on their statements - alongside the claimant's oaths - provided they have not yet separated, and that he ruled in accordance with the judgment issued by Ali ibn Abi Talib regarding the blood money for a molar tooth.

وَرُوِّينَا أَيْضًا عَنْ ابْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ: جَوَازَ شَهَادَةِ الصِّبْيَانِ بِقَوْلِهِمْ - مَعَ أَيْمَانِ الْمُدَّعِي - مَا لَمْ يَتَفَرَّقُوا، وَأَنَّهُ قَضَى بِمِثْلِ مَا قَضَى بِهِ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي دِيَةِ ضِرْسٍ.

L29764 Abu al-Zinad stated: The sunnah is to accept the testimony of minors against one another in injury cases, alongside the oaths of the plaintiffs.

وَعَنْ أَبِي الزِّنَادِ: السُّنَّةُ أَنْ يُؤْخَذَ فِي شَهَادَةِ الصِّبْيَانِ بَعْضِهِمْ عَلَى بَعْضٍ فِي الْجِرَاحِ مَعَ أَيْمَانِ الْمُدَّعِينَ.

L29765–29766 From Umar ibn Abd al-Aziz: He permitted the testimony of minors against one another in cases of closely related injuries. When it involved capital cases, he ruled based on their testimony combined with the oaths of the claimants.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ أَجَازَ شَهَادَةَ الصِّبْيَانِ بَعْضِهِمْ عَلَى بَعْضٍ فِي الْجِرَاحِ الْمُتَقَارِبَةِ، فَإِذَا بَلَغَتْ النُّفُوسَ قَضَى بِشَهَادَتِهِمْ مَعَ أَيْمَانِ الطَّالِبِينَ.

L29767 And from Rabiʿah: It is permissible for some prepubescent children to testify against others, provided they have not dispersed from the incident.

وَعَنْ رَبِيعَةَ: جَوَازُ شَهَادَةِ بَعْضِ الصِّبْيَانِ عَلَى بَعْضٍ مَا لَمْ يَتَفَرَّقُوا.

L29768 From Shuraih: The testimony of children is accepted if they agree and rejected if they disagree. He also permitted the testimony of children in a penetrating head wound.

وَعَنْ شُرَيْحٍ: أَنَّ شَهَادَةَ الصِّبْيَانِ تُقْبَلُ إذَا اتَّفَقُوا، وَلَا تُقْبَلُ إذَا اخْتَلَفُوا، وَأَنَّهُ أَجَازَ شَهَادَةَ صِبْيَانٍ فِي مَأْمُومَةٍ.

L29769 From Ibn Qusayṭ and Abū Bakr ibn Ḥazm: The testimony of children regarding their mutual affairs is admissible provided they have not yet dispersed [from the scene].

وَعَنْ ابْنِ قُسَيْطٍ، وَأَبِي بَكْرِ بْنِ حَزْمٍ: قَبُولُ شَهَادَةِ الصِّبْيَانِ فِيمَا بَيْنَهُمْ مَا لَمْ يَتَفَرَّقُوا.

وَعَنْ عَطَاءٍ، وَالْحَسَنِ: تَجُوزُ شَهَادَةُ الصِّبْيَانِ عَلَى الصِّبْيَانِ.

L29770 The testimony of prepubescent children against prepubescent children is valid.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: تَجُوزُ شَهَادَةُ الصِّبْيَانِ بَعْضِهِمْ عَلَى بَعْضٍ، وَقَالَ: كَانُوا يُجِيزُونَهَا فِيمَا بَيْنَهُمْ.

L29771 From Ibrāhīm al-Nakhaʿī: The testimony of young boys among each other is permissible. He said: They would permit it among themselves.

وَقَالَ ابْنُ أَبِي لَيْلَى: تَجُوزُ شَهَادَةُ الصِّبْيَانِ بَعْضِهِمْ عَلَى بَعْضٍ فِي كُلِّ شَيْءٍ.

L29772 Ibn Abī Laylā said: The testimony of prepubescent boys against one another is permissible in all matters.

وَقَالَ مَالِكٌ: تَجُوزُ شَهَادَةُ الصِّبْيَانِ عَلَى الصِّبْيَانِ فَقَطْ، وَلَا تَجُوزُ شَهَادَتُهُمْ عَلَى صَغِيرٍ أَنَّهُ جَرَحَ كَبِيرًا، وَلَا عَلَى كَبِيرٍ أَنَّهُ جَرَحَ صَغِيرًا، وَلَا تَجُوزُ إلَّا فِي الْجِرَاحِ خَاصَّةً، وَلَا تَجُوزُ شَهَادَةُ الصَّبَايَا فِي شَيْءٍ مِنْ ذَلِكَ أَصْلًا، وَلَا تَجُوزُ فِي شَيْءٍ مِنْ ذَلِكَ شَهَادَةُ مَنْ كَانَ مِنْهُمْ عَبْدًا، فَإِنْ اخْتَلَفُوا لَمْ يُلْتَفَتْ شَيْءٌ مِنْ قَوْلِهِمْ وَقُضِيَ عَلَى جَمِيعِهِمْ بِالدِّيَةِ سَوَاءً.

L29773 Malik said: The testimony of male minors is permissible only regarding male minors. Their testimony is not permissible concerning a minor that he injured an adult, nor concerning an adult that he injured a minor. It is not permissible except in cases of injuries specifically. The testimony of female minors is entirely invalid in any such matters whatsoever, nor is the testimony of those among them who are slaves permissible in these cases. If their testimonies contradict, none of their statements are considered, and judgment is rendered against all of them collectively for the payment of the *diyah* equally.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ عَنْ أَحَدٍ قَبْلَهُ فَرْقًا بَيْنَ صَبِيٍّ وَصَبِيَّةٍ وَلَا بَيْنَ عَبْدٍ مِنْهُمْ مِنْ حُرٍّ.

L29774 Abu Muhammad said: We do not know of anyone before him making a distinction between a boy and a girl, nor between a slave among them and a free person.

وَقَالَتْ طَائِفَةٌ: لَا تُقْبَلُ شَهَادَتُهُمْ فِي شَيْءٍ أَصْلًا، كَمَا ذَكَرْنَا قَبْلُ عَنْ عُمَرَ، وَعُثْمَانَ فِي الصَّغِيرِ يَشْهَدُ فَتُرَدُّ شَهَادَتُهُ، ثُمَّ يَبْلُغُ فَيَشْهَدُ بِتِلْكَ الشَّهَادَةِ أَنَّهَا لَا تُقْبَلُ.

L29775 A group has stated: their testimony is not accepted in any matter whatsoever, as we previously mentioned from Umar ibn al-Khattab and Uthman ibn Affan regarding the minor who testifies—his testimony is rejected. Then, when he reaches adulthood and testifies to that same testimony, it is not accepted.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ ابْنِ أَبِي مُلَيْكَةَ: لَا تُقْبَلُ شَهَادَةُ الصِّبْيَانِ فِي شَيْءٍ.

L29776 It is authentically reported from Ibn Abbas via the chain of Ibn Abi Mulaykah: The testimony of pre-pubescent children is not accepted in any legal case.

وَعَنْ عَطَاءٍ: لَا تَجُوزُ شَهَادَةُ الْغِلْمَانِ حَتَّى يَكْبَرُوا - وَعَنْ قَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمٍ، وَالنَّخَعِيِّ مِثْلُ قَوْلِ عَطَاءٍ.

L29777 And from ‘Ata’: The testimony of boys is not permissible until they reach legal maturity. Qasim ibn Muhammad, Salim, and al-Nakha’i held the same opinion as ‘Ata’.

وَعَنْ الْحَسَنِ: لَا تُقْبَلُ شَهَادَةُ الْغِلْمَانِ عَلَى الْغِلْمَانِ.

L29778 And from al-Ḥasan: The testimony of minors against other minors is not accepted.

وَعَنْ ابْنِ سِيرِينَ: لَا تُقْبَلُ شَهَادَتُهُمْ حَتَّى يَبْلُغُوا.

L29779–29780 It is narrated from Ibn Sīrīn: Their testimony is not accepted until they reach maturity.

وَعَنْ الشَّعْبِيِّ، وَشُرَيْحٍ: أَنَّهُمَا كَانَا يَقْبَلَانِهَا إذَا ثَبَتُوا عَلَيْهَا حَتَّى يَبْلُغُوا.

L29781 It is narrated from Al-Sha'bī and Shurayḥ that they [the two jurists] would accept the testimony [of minors] if the witnesses persisted in their account until they reached puberty.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ الزُّهْرِيِّ فِي غِلْمَانٍ شَهِدَ بَعْضُهُمْ عَلَى بَعْضٍ بِكَسْرِ يَدِ صَبِيٍّ مِنْهُمْ؟ فَقَالَ: لَمْ تَكُنْ شَهَادَةُ الْغِلْمَانِ فِيمَا مَضَى مِنْ الزَّمَانِ تُقْبَلُ - وَأَوَّلُ مَنْ قَضَى بِذَلِكَ مَرْوَانُ.

L29782 From Abd al-Razzaq, from Ibn Jurayj, from al-Zuhri concerning a case where some boys testified against others about the fracture of a boy's hand among them. He was asked: "Was the testimony of boys not accepted in past times?" He replied: "It was not accepted—the first to judge by this ruling was Marwan."

قَالَ أَبُو مُحَمَّد: وَبِمِثْلِ قَوْلِنَا يَقُولُ مَكْحُولٌ، وَسُفْيَانُ الثَّوْرِيُّ، وَابْنُ شُبْرُمَةَ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَأَبُو عُبَيْدَةَ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L29783 Abu Muhammad said: The following hold an opinion similar to ours: Makḥūl, Sufyān al-Thawrī, Ibn Shubrumah, Isḥāq ibn Rāhawayh, Abū 'Ubayda, Abū Ḥanīfa, al-Shāfi'ī, Aḥmad ibn Ḥanbal, Abū Sulaymān, and all our companions.

قَالَ عَلِيٌّ: لَمْ نَجِدْ لِمَنْ أَجَازَ شَهَادَةَ الصِّبْيَانِ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا نَظَرٍ، وَلَا احْتِيَاطٍ، بَلْ هُوَ قَوْلٌ مُتَنَاقِضٌ، لِأَنَّهُمْ فَرَّقُوا بَيْنَ شَهَادَتِهِمْ عَلَى كَبِيرٍ أَوْ لِكَبِيرٍ، وَبَيْنَ شَهَادَتِهِمْ عَلَى صَغِيرٍ أَوْ لِصَغِيرٍ.

L29784 Ali said: We have found no foundational proof whatsoever for those who validate the testimony of minors—neither from the Quran, nor the Sunnah, nor a weak narration, nor analogy, nor rational consideration, nor precautionary principle. Rather, it is a self-contradictory view, for they differentiated between their testimony against an adult or in favor of an adult, and their testimony against a minor or in favor of a minor.

وَفَرَّقَ مَالِكٌ بَيْنَ الْجِرَاحِ وَغَيْرِهَا، فَلَمْ يُجِزْهَا فِي تَخْرِيقِ ثَوْبٍ يُسَاوِي رُبُعَ دِرْهَمٍ، وَأَجَازَهَا فِي النَّفْسِ وَالْجِرَاحِ.

L29785 Malik distinguished between injuries and other offenses, disallowing retaliation for tearing a garment worth a quarter of a dirham, but permitting it in cases involving loss of life or injuries.

وَفَرَّقَ بَيْنَ الصَّبَايَا وَالصِّبْيَانِ - وَهَذَا كُلُّهُ تَحَكُّمٌ بِالْبَاطِلِ، وَخَطَأٌ لَا خَفَاءَ بِهِ، وَأَقْوَالٌ لَا يَحِلُّ قَبُولُهَا مِنْ غَيْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29786 He differentiated between young girls and young boys—all of this represents arbitrary judgment based on falsehood, is a manifest error, and includes statements impermissible to accept from anyone besides the Messenger of Allah—may Allah bless him and grant him peace.

L29787 The Companions differed regarding that, and the evidence of those who held our opinion is the statement of Allah the Exalted: {And take as witnesses two

just men from among you} [At-Talaq: 2] and His saying: {from among those witnesses whom you approve} [Al-Baqarah: 282]. Boys are not considered two just men, nor are they approved. The Messenger of Allah - peace and blessings be upon him - said: “The pen is raised from three,” and among them he mentioned the boy until he reaches puberty.[36]

L29788 There is nothing more astonishing than rejecting the testimony of a virtuous, righteous, just, and approved enslaved person—while accepting the testimony of two minors who lack rationality and religion—for this alone suffices.

L29789 And success is from Allah, the Most High.

L29790–29791 The jurisprudential principle is that a judge’s ruling does not render unlawful things lawful nor declare lawful things unlawful.

L29792 Issue: The judgment of a judge does not render permissible what was unlawful prior to his ruling, nor does it render unlawful what was permissible prior to his ruling. The judge is merely an enforcer against the defiant party alone—he possesses no distinction beyond this.

L29793 Abu Hanifa said: If a man bribes two witnesses to testify falsely for him that so-and-so divorced his wife so-and-so and emancipated his slave girl so-and-so – while they are willfully lying – and the two women, after completing their waiting period, consent to marry so-and-so, and the judge rules in accordance with this testimony, then marital relations with those two women are lawful for the wrongdoer on whose behalf they testified falsely, and forbidden for the one against whom false testimony was given.

L29794 Similarly, if someone produced two false witnesses against so-and-so, testifying that he gave his daughter in marriage to him with her consent—though in reality she never consented to him at all, nor did her father give her in

[36] **Qur’an references (L29787):** Qur’an 65:2 (At-Talaq); Qur’an 2:282 (Al-Baqarah).

وَقَدْ اخْتَلَفَ الصَّحَابَةُ فِي ذَلِكَ، وَحُجَّةُ مَنْ قَالَ بِقَوْلِنَا هُوَ قَوْلُ اللَّهِ تَعَالَى {وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] وَقَالَ: {مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ} [البقرة: ٢٨٢] وَلَيْسَ الصِّبْيَانُ ذَوَيْ عَدْلٍ وَلَا يَرْضَاهُمْ. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ، فَذَكَرَ الصَّبِيَّ حَتَّى يَبْلُغَ» .

وَلَيْسَ فِي الْعَجَبِ أَكْثَرُ مِنْ رَدِّ شَهَادَةِ عَبْدٍ فَاضِلٍ، صَالِحٍ عَدْلٍ، رَضِيٍّ - وَتُقْبَلُ شَهَادَةِ صَبِيَّيْنِ لَا عَقْلَ لَهُمَا، وَلَا دِينَ، وَفِي هَذَا كِفَايَةٌ -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حُكْم الْقَاضِي لَا يَحِلّ حراما وَلَا يحرم حلالا]

مَسْأَلَةٌ: وَحُكْمُ الْقَاضِي لَا يُحِلُّ مَا كَانَ حَرَامًا قَبْلَ قَضَائِهِ، وَلَا يُحَرِّمُ مَا كَانَ حَلَالًا قَبْلَ قَضَائِهِ، إنَّمَا الْقَاضِي مُنَفِّذٌ عَلَى الْمُمْتَنِعِ فَقَطْ - لَا مَزِيَّةَ لَهُ سِوَى هَذَا.

وَقَالَ أَبُو حَنِيفَةَ: لَوْ أَنَّ امْرَأً رَشَا شَاهِدَيْنِ فَشَهِدَا لَهُ بِزُورٍ أَنَّ فُلَانًا طَلَّقَ امْرَأَتَهُ فُلَانَةَ، وَأَعْتَقَ أَمَتَهُ فُلَانَةَ - وَهُمَا كَاذِبَانِ مُتَعَمِّدَانِ - وَأَنَّ الْمَرْأَتَيْنِ بَعْدَ الْعِدَّةِ رَضِيَتَا بِفُلَانٍ زَوْجًا، فَقَضَى الْقَاضِي بِهَذِهِ الشَّهَادَةِ، فَإِنَّ وَطْءَ تَيْنِكَ الْمَرْأَتَيْنِ: حَلَالٌ لِلْفَاسِقِ الَّذِي شَهِدُوا لَهُ بِالزُّورِ، وَحَرَامٌ عَلَى الْمَشْهُودِ عَلَيْهِ بِالْبَاطِلِ.

وَكَذَلِكَ مَنْ أَقَامَ شَاهِدَيْ زُورٍ عَلَى فُلَانٍ أَنَّهُ أَنْكَحَهُ ابْنَتَهُ بِرِضَاهَا - وَهِيَ فِي الْحَقِيقَةِ لَمْ تَرْضَهُ قَطُّ، وَلَا زَوَّجَهَا إيَّاهُ أَبُوهَا - فَقَضَى الْقَاضِي بِذَلِكَ، فَوَطْؤُهُ لَهَا حَلَالٌ.

marriage to him—and the judge ruled accordingly, then his intercourse with her is permissible.

L29795 Abu Muhammad said: We know of no Muslim before him who perpetrated such calamitous deviations, and we disassociate ourselves to Allah the Exalted from them. Would that I knew: What difference exists between this and one who produces two false witnesses to testify against his mother that she is an unrelated woman, that she has consented to marry him, or to testify against a free man that he is his slave - so the judge ruled in his favor based on that? No Muslim before Abu Hanifah was ever known to differentiate between any of these matters.

L29796 It has been authentically reported from the Messenger of Allah (peace be upon him) that he said: "Indeed, your blood, your wealth, your honor, and your skins are forbidden for you to violate."

L29797 From the chain of Ahmad ibn Shu'ayb: Ishaq ibn Ibrahim narrated to us, reporting from Abd al-Razzaq, who reported from Ma'mar, from al-Zuhri, from Urwah ibn al-Zubayr, from Zaynab bint Umm Salamah, from Umm Salamah, the Mother of the Believers—may Allah be pleased with her—that the Prophet—peace and blessings be upon him—said: "You bring your disputes to me, though I am only human. It may be that one of you presents his case more effectively than another, so I rule in his favor based on what I hear and deem him truthful. Whoever I grant a ruling that awards him something rightfully belonging to another—this is but a fragment of Hellfire. Let him take it or leave it." If the ruling and judgment of the Prophet—peace and blessings be upon him—do not render lawful for anyone what was forbidden to them, then what of the rulings issued by others after him? We seek refuge in Allah the Exalted from divine forsakenness.

The issue of deliberation in executing the judgment once it becomes clear.

L29798–29799

L29800 Issue: It is not permissible to delay the execution of a ruling once it becomes evident. This is the view of al-Shāfiʿī, Abū Sulaymān, and our associates.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ مُسْلِمًا قَبْلَهُ أَتَى بِهَذِهِ الطَّوَامِّ، وَنَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْهَا وَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ مَنْ شَهِدَ لَهُ شَاهِدَا زُورٍ فِي أُمِّهِ أَنَّهَا أَجْنَبِيَّةٌ، وَأَنَّهَا قَدْ رَضِيَتْ بِهِ زَوْجًا، أَوْ عَلَى حُرٍّ أَنَّهُ عَبْدُهُ فَقَضَى لَهُ الْقَاضِي بِذَلِكَ؟ وَمَا عُلِمَ مُسْلِمٌ قَطُّ قَبْلَ أَبِي حَنِيفَةَ فَرَّقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّهُ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ وَإِنَّمَا أَنَا بَشَرٌ فَلَعَلَّ أَحَدَكُمْ أَنْ يَكُونَ أَعْلَمَ بِحُجَّتِهِ مِنْ بَعْضٍ فَأَقْضِيَ لَهُ بِمَا أَسْمَعُ وَأَظُنُّهُ صَادِقًا فَمَنْ قَضَيْتُ لَهُ بِشَيْءٍ مِنْ حَقِّ صَاحِبِهِ فَإِنَّمَا هِيَ قِطْعَةٌ مِنْ النَّارِ فَلْيَأْخُذْهَا أَوْ لِيَدَعْهَا» فَإِذَا كَانَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَقَضَاؤُهُ لَا يُحِلُّ لِأَحَدٍ مَا كَانَ عَلَيْهِ حَرَامًا فَكَيْفَ الْقَوْلُ فِي قَضَاءِ أَحَدٍ بَعْدَهُ - وَنَعُوذُ بِاَللَّهِ تَعَالَى مِنْ الْخِذْلَانِ.

[مَسْأَلَة التأني فِي أنفاذ الْحُكْم إِذا ظَهَرَ]

مَسْأَلَةٌ: وَلَا يَحِلُّ التَّأَنِّي فِي إنْفَاذِ الْحُكْمِ إذَا ظَهَرَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L29801 Abu Hanifah said: If the judge hopes for the two disputants to reconcile, there is no harm in adjourning the case once or twice. But if he loses hope in that, he should pass judgment.

وَقَالَ أَبُو حَنِيفَةَ: إِذَا طَمِعَ الْقَاضِي أَنْ يَصْطَلِحَ الْخَصْمَانِ فَلَا بَأْسَ أَنْ يَرُدَّهُمَا الْمَرَّةَ وَالْمَرَّتَيْنِ، فَإِنْ لَمْ يَطْمَعْ فِي ذَلِكَ فَصَلَ الْقَضَاءَ.

L29802 Malik said: There is no harm in allowing litigants to prolong their dispute. He then opined that for the defendant against whom testimony is sought or the claimant with unavailable evidence, a deadline should be set: eight days, then another eight days, then another eight days, followed by three mandatory days - totaling thirty days. The judge's adjournment day is excluded from the count of the eight-day periods.

وَقَالَ مَالِكٌ: لَا بَأْسَ بِتَرْدِيدِ الْخُصُومِ، ثُمَّ رَأَى أَنْ يُجْعَلَ لِلْمَشْهُودِ عَلَيْهِ أَوْ الْمُدَّعِي بَيِّنَةً غَائِبَةً: أَجَلُ ثَمَانِيَةُ أَيَّامٍ، ثُمَّ ثَمَانِيَةُ أَيَّامٍ، ثُمَّ ثَمَانِيَةُ أَيَّامٍ، ثُمَّ تَلْزَمُ ثَلَاثَةُ أَيَّامٍ، فَذَلِكَ ثَلَاثُونَ يَوْمًا - لَا يُعَدُّ فِي الثَّمَانِيَةِ يَوْمُ تَأْجِيلِ الْحَاكِمِ.

L29803 Ali said: As for the opinion of Abū Ḥanīfah, it is invalid because there is no difference between repeating two times and repeating three times or four, and so on, increasing until the end of one's lifetime. Otherwise: "Produce your proof, if you are truthful" [Quran 2:111].[37]

قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفَاسِدٌ، لِأَنَّهُ لَا فَرْقَ بَيْنَ تَرْدِيدِ مَرَّتَيْنِ وَتَرْدِيدِ ثَلَاثِ مِرَارٍ أَوْ أَرْبَعٍ، وَهَكَذَا مَا زَادَ إلَى انْقِضَاءِ الْعُمْرِ، وَإِلَّا فَ {هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

L29804 As for Mālik's statement—we know of none who asserted it before him given its inherent corruption, for there is no distinction between postponing thirty days and postponing two months, three months, four months, a year, two years, or four years. What difference is there between one who claims evidence within half a month and one who claims it in Khurāsān while being in al-Andalus, or claims it in al-Andalus while being in Khurāsān? Is this not mere arbitrary judgment based on falsehood? Abū Muḥammad said: Some of them argued using the report from 'Umar: "Repeatedly delay the litigants until they reconcile, for judicial rulings breed resentments."

وَأَمَّا قَوْلُ مَالِكٍ - فَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ مَعَ عَظِيمِ فَسَادِهِ، لِأَنَّهُ لَا فَرْقَ بَيْنَ تَأْجِيلِ ثَلَاثِينَ يَوْمًا، وَبَيْنَ تَأْجِيلِ شَهْرَيْنِ أَوْ ثَلَاثَةٍ أَوْ أَرْبَعَةٍ، أَوْ عَامٍ، أَوْ عَامَيْنِ، أَوْ أَرْبَعَةِ أَعْوَامٍ - وَمَا الْفَرْقُ بَيْنَ مَنْ ادَّعَى بَيِّنَةً عَلَى نِصْفِ شَهْرٍ وَبَيْنَ مَنْ ادَّعَاهَا بِخُرَاسَانَ، وَهُوَ بِالْأَنْدَلُسِ أَوْ ادَّعَاهَا بِالْأَنْدَلُسِ، وَهُوَ بِخُرَاسَانَ، وَهَلْ هُوَ إِلَّا التَّحَكُّمُ بِالْبَاطِلِ؟ قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ بَعْضُهُمْ بِالرِّوَايَةِ عَنْ عُمَرَ: رَدِّدُوا الْخُصُومَ حَتَّى يَصْطَلِحُوا فَإِنَّ فَصْلَ الْقَضَاءِ يُورِثُ الضَّغَائِنَ.

L29805 Ali said: This cannot be authentically attributed to Umar, for the strongest of its chains is through Muharib ibn Dithar – and Muharib did not meet Umar.

قَالَ عَلِيٌّ: هَذَا لَا يَصِحُّ عَنْ عُمَرَ، لِأَنَّ أَحْسَنَ طُرُقِهِ: مُحَارِبُ بْنُ دِثَارٍ أَنَّ عُمَرَ - وَمُحَارِبٌ لَمْ يُدْرِكْ عُمَرَ -.

L29806 Moreover, even if it were valid, it would contain no proof, for no valid proof exists in anyone other than the Messenger of Allah—may Allah bless him

ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ، لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَعَاذَ اللَّهِ أَنْ يَصِحَّ هَذَا عَنْ عُمَرَ، لِأَنَّ فِيهِ الْمَنْعَ جُمْلَةً مِنْ إنْفَاذِ الْحَقِّ، لِأَنَّ عِلَّةَ

[37] **Qur'an references (L29803):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

and grant him peace. Allah forbid that this could be authentically ascribed to Umar, for it completely obstructs the execution of justice, as the legal rationale for transmitting resentments is inherently perpetual within it. If observing it were obligatory, it would remain so forever, and if not obligatory, it would never be required even for an instant. In any case, they contradicted his position, for he did not specify a month or two months.

L29807–29809 In the forged letter attributed to ʿUmar: Set a deadline for anyone who claims an absent right or evidence, such that [the matter] must be concluded by that term. If he presents his evidence by that deadline, his right shall be secured; otherwise, fulfillment of the obligation is required, for this is more thorough in validating the excuse and clarifying ambiguity.

L29810 Abū Muḥammad said: This is not authentically reported from ʿUmar. In any case, Mālik opposed him because ʿUmar did not fix a month for that—neither a shorter nor a longer period. None of this has ever been reported from the Messenger of Allāh—peace and blessings be upon him—that he rejected litigants after the truth became evident. Rather, he ruled by evidence against the claimant, imposed the oath immediately upon the denier, and ordered the confessor to execute the judgment immediately.

L29811 And Allah, the Exalted, said: "Be upholders of justice." [An-Nisāʾ: 135][38]

L29812 Allah, the Exalted, said: "Cooperate with one another in furtherance of righteousness and piety" [Quran 5:2].[39]

L29813 And He, the Exalted, said: *"Hasten toward forgiveness from your Lord"* [Āl ʿImrān: 133].[40]

L29814 So whoever judges by the truth when it becomes apparent to him has indeed upheld justice, assisted in upholding righteousness and piety, and hastened toward forgiveness from his Lord. But whoever wavers in that: neither hastening toward forgiveness from his Lord, nor upholding justice, nor assisting in upholding righteousness and piety.

[38]**Qur'an references (L29811):** Qur'an 4:135 (An-Nisa).
[39]**Qur'an references (L29812):** Qur'an 5:2 (Al-Ma'idah).
[40]**Qur'an references (L29813):** Qur'an 3:133 (Ali 'Imran).

تَوْرِيثِ الضَّغَائِنِ مَوْجُودَةٌ فِي ذَلِكَ أَبَدًا، فَإِنْ وَجَبَ أَنْ يُرَاعَى وَجَبَ ذَلِكَ أَبَدًا، وَإِنْ لَمْ يَجِبْ أَنْ يُرَاعَى فَلَا يَجِبُ ذَلِكَ طَرْفَةَ عَيْنٍ، وَعَلَى كُلِّ حَالٍ فَقَدْ خَالَفُوهُ، لِأَنَّهُ لَمْ يَحُدَّ شَهْرًا وَلَا شَهْرَيْنِ.

وَفِي الرِّسَالَةِ الْمَكْذُوبَةِ عَنْ عُمَرَ: اجْعَلْ لِمَنْ ادَّعَى حَقًّا غَائِبًا أَوْ بَيِّنَةً أَمَدًا يَنْتَهِي إِلَيْهِ فَإِنْ أَحْضَرَ بَيِّنَتَهُ إِلَى ذَلِكَ الْأَمَدِ: أَخَذْت لَهُ بِحَقِّهِ، وَإِلَّا أَوْجَبْت عَلَيْهِ الْقَضَاءَ، فَإِنَّهُ أَبْلَغُ لِلْعُذْرِ وَأَجْلَى لِلْعَمَى.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا يَصِحُّ عَنْ عُمَرَ، وَعَلَى كُلِّ حَالٍ فَقَدْ خَالَفَهُ مَالِكٌ، لِأَنَّ عُمَرَ لَمْ يَحُدَّ فِي ذَلِكَ شَهْرًا - وَلَا أَقَلَّ وَلَا أَكْثَرَ - وَهَذَا كُلُّهُ لَمْ يَأْتِ قَطُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ رَدَّ خُصُومًا بَعْدَ مَا ظَهَرَ الْحَقُّ بَلْ قَضَى بِالْبَيِّنَةِ عَلَى الطَّالِبِ، وَأَلْزَمَ الْمُنْكِرَ الْيَمِينَ فِي الْوَقْتِ وَأَمَرَ الْمُقِرَّ بِالْقَضَاءِ فِي الْوَقْتِ.

وَقَالَ اللَّهُ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥]

وَقَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] .

وَقَالَ تَعَالَى: {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] .

فَمَنْ حَكَمَ بِالْحَقِّ حِينَ يَبْدُو إلَيْهِ فَقَدْ قَامَ بِالْقِسْطِ، وَأَعَانَ عَلَى الْبِرِّ وَالتَّقْوَى وَسَارَعَ إلَى مَغْفِرَةٍ مِنْ رَبِّهِ، وَمَنْ تَرَدَّدَ فِي ذَلِكَ، فَلَمْ يُسَارِعْ إلَى مَغْفِرَةٍ مِنْ رَبِّهِ وَلَا قَامَ بِالْقِسْطِ، وَلَا أَعَانَ عَلَى الْبِرِّ وَالتَّقْوَى.

[مَسْأَلَة إِذَا تداعى الزَّوْجَانِ فِي مَتَاع الْبَيْت]

١٧٩٨ - مَسْأَلَةٌ: وَإِذَا تَدَاعَى الزَّوْجَانِ فِي مَتَاعِ الْبَيْتِ بَعْدَ الطَّلَاقِ، أَوْ بِغَيْرِ طَلَاقٍ، أَوْ تَدَاعَى الْوَرَثَةُ بَعْدَ مَوْتِهِمَا أَوْ مَوْتِ أَحَدِهِمَا، فَهُوَ كُلُّهُ بَيْنَهُمَا بِنِصْفَيْنِ مَعَ الْأَيْمَانِ، سَوَاءٌ كَانَ مِمَّا لَا يَصْلُحُ إِلَّا لِلرِّجَالِ كَالسِّلَاحِ وَنَحْوِهِ، أَوْ مِمَّا لَا يَصْلُحُ إِلَّا لِلنِّسَاءِ كَالْحُلِيِّ وَنَحْوِهِ، أَوْ كَانَ مِمَّا يَصْلُحُ لِلْكُلِّ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا كَثِيرًا -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: الْبَيْتُ لِلْمَرْأَةِ إِلَّا مَا عُرِفَ لِلرَّجُلِ.

وَبِهِ إِلَى مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ مِثْلُ قَوْلِ الزُّهْرِيِّ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ الْحَسَنِ قَالَ: إِذَا مَاتَ الزَّوْجُ فَلِلْمَرْأَةِ مَا أُغْلِقَ عَلَيْهِ بَابُهَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: لَيْسَ لِلرَّجُلِ إِلَّا سِلَاحُهُ وَثِيَابُ جِلْدِهِ.

وَقَالَ ابْنُ أَبِي لَيْلَى: كُلُّ مَا فِي الْبَيْتِ فَلِلرَّجُلِ إِلَّا مَا كَانَ عَلَى الْمَرْأَةِ مِنْ الثِّيَابِ، وَالدِّرْعِ، وَالْخِمَارِ.

وَقَالَ إِبْرَاهِيمُ النَّخَعِيُّ: مَا كَانَ مِنْ مَتَاعِ الرِّجَالِ فَلِلرَّجُلِ، وَمَا كَانَ مِنْ مَتَاعِ النِّسَاءِ فَلِلْمَرْأَةِ، وَمَا صَلَحَ لَهُمَا فَهُوَ لِلْحَيِّ مِنْهُمَا فِي مَوْتِ أَحَدِهِمَا، وَأَمَّا فِي الْفُرْقَةِ فَهُوَ لِلرَّجُلِ.

An Issue: When the Two Spouses Dispute Ownership of Household Goods.

Issue 1798: If the spouses dispute over household belongings after divorce or without divorce, or if the legal heirs dispute after the death of both spouses or one of them, all property is divided between them in two halves with oaths - whether it is of the kind exclusively suitable for men (such as weapons), the kind exclusively suitable for women (such as jewelry), or the kind suitable for both.

People have differed greatly regarding this: It has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī: "The house belongs to the woman, except what is recognized for the man."

And through him up to Maʿmar, from Ayyūb al-Sikhtiyānī, from Abī Qilābah: similar to the opinion of al-Zuhrī.

And through the chain of ʿAbd al-Razzāq from al-Muʿtamir ibn Sulaymān al-Taymī from his father from al-Ḥasan, who said: When a husband dies, the wife is entitled to the contents of her residence.

Through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Yūnus ibn ʿUbayd, from al-Ḥasan, who said: "A man owns nothing except his weapon and his leather garments."

Ibn Abi Layla said: Everything in the house belongs to the man except what is on the woman—her garments, outer garment, and head-veil.

Ibrahim al-Nakhaʿī said: What is of men's personal effects belongs to the man, and what is of women's personal effects belongs to the woman. What is suitable for both belongs to the surviving spouse upon the death of either, but in divorce, it belongs to the man.

This is the opinion of Abū Ḥanīfah regarding cases requiring oaths: If one

party is free and the other is enslaved, the entire property is awarded to the free person upon his oath.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ مَعَ الْأَيْمَانِ، فَإِنْ كَانَ أَحَدُهُمَا حُرًّا وَالْآخَرُ مَمْلُوكًا، فَالْمَالُ كُلُّهُ لِلْحُرِّ مَعَ يَمِينِهِ.

L29825 And Muhammad ibn al-Hasan said likewise, except in the case of death, for it belongs to the man or his heirs along with an oath.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ كَذَلِكَ، إِلَّا فِي الْمَوْتِ فَإِنَّهُ لِلرَّجُلِ أَوْ لِوَرَثَتِهِ مَعَ الْيَمِينِ.

L29826 Abu Yusuf said: Regarding what is exclusively suitable for women, the woman is granted from it what is customarily prepared for her peers, except [what pertains to] her husband. The remainder—from this and other sources—is allocated to the man, along with his oath. Death and divorce are treated equally in this matter.

وَقَالَ أَبُو يُوسُفَ: مَا كَانَ لَا يَصْلُحُ إِلَّا لِلنِّسَاءِ فَإِنَّهُ يَقْضِي مِنْهُ لِلْمَرْأَةِ مَا يُجَهَّزُ بِهِ مِثْلُهَا، إِلَّا زَوْجَهَا وَالْبَاقِي مِنْهُ وَمِنْ غَيْرِهِ لِلرَّجُلِ مَعَ يَمِينِهِ - الْمَوْتُ وَالطَّلَاقُ سَوَاءٌ فِي ذَلِكَ.

L29827 Uthman al-Batti, Abdullah ibn al-Hasan, al-Hasan ibn Ḥiyy, and Zufar—in one of his two opinions—stated: What pertains to men belongs to the man upon his oath, what pertains to women belongs to the woman upon her oath, and what pertains to both is divided equally between them upon their oaths.

وَقَالَ عُثْمَانُ الْبَتِّيُّ وَعَبْدُ اللَّهِ بْنُ الْحَسَنِ، وَالْحَسَنُ بْنُ حَيٍّ، وَزُفَرُ فِي أَحَدِ قَوْلَيْهِ مَا صَلَحَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ مَعَ يَمِينِهِ، وَمَا صَلَحَ لِلنِّسَاءِ فَلِلْمَرْأَةِ مَعَ يَمِينِهَا وَمَا صَلَحَ لَهُمَا فَبَيْنَهُمَا بِنِصْفَيْنِ مَعَ أَيْمَانِهِمَا.

L29828 Mālik said: What is suitable for men belongs to the man with his oath; what is suitable for women belongs to the woman with her oath; and what is suitable for both belongs to the man with his oath. Death and divorce are the same.

وَقَالَ مَالِكٌ: مَا صَلَحَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ مَعَ يَمِينِهِ، وَمَا صَلَحَ لِلْمَرْأَةِ فَهُوَ لِلْمَرْأَةِ مَعَ يَمِينِهَا، وَمَا صَلَحَ لَهُمَا فَهُوَ لِلرَّجُلِ مَعَ يَمِينِهِ الْمَوْتُ وَالْفُرْقَةُ سَوَاءٌ.

L29829 Abū Muḥammad said: All these opinions—their mutual weakness alone suffices as evidence of their flaws. We know of no one preceding Mālik who advanced the aforementioned position.

وَقَالَ أَبُو مُحَمَّد: كُلُّ هَذِهِ آرَاءٌ يَكْفِي مِنْ فَسَادِهَا تَخَاذُلُهَا، وَمَا نَعْلَمُ لِمَالِكٍ أَحَدًا تَقَدَّمَهُ إِلَى قَوْلِهِ الْمَذْكُورِ.

L29830 Ali said: When a ruling is established according to them to apply what is exclusively suitable for men to a man, and what is exclusively suitable for women to a woman, what purpose do oaths serve in that matter? For it is established that the ruling belongs to the one for whom they ruled - even if it had not yet been established for him - and thus neither of the two has a greater entitlement to it than the other.

قَالَ عَلِيٌّ: إِذَا وَجَبَ عِنْدَهُمْ الْقَضَاءُ بِمَا لَا يَصْلُحُ إِلَّا لِلرِّجَالِ لِلرَّجُلِ، وَمَا لَا يَصْلُحُ إِلَّا لِلنِّسَاءِ لِلْمَرْأَةِ، فَأَيُّ مَعْنًى لِلْأَيْمَانِ فِي ذَلِكَ، إِذْ قَدْ ثَبَتَ أَنَّهُ لِمَنْ قَضَوْا لَهُ بِهِ، وَإِنْ كَانَ لَمْ يَثْبُتْ لَهُ بَعْدُ، فَمَا أَحَدُهُمَا أَوْلَى بِهِ مِنْ الْآخَرِ.

L29831 Ali said: And Sufyan al-Thawri said, and al-Qasim ibn Muʿadh ibn ʿAbd al-Rahman ibn ʿAbd Allah ibn Masʿud said, and Shariq said, and Zufar said -

قَالَ عَلِيٌّ: وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَالْقَاسِمُ بْنُ مُعَاذِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، وَشَرِيكٌ، وَزُفَرُ فِي أَحَدِ قَوْلَيْهِ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ وَأَصْحَابُهُمَا، كَمَا قُلْنَا نَحْنُ.

in one of his two opinions - and al-Shafi'i said, and Abu Sulayman said, and the companions of these two said, as we ourselves have said.

قَالَ أَبُو مُحَمَّدٍ: الْبَيْتُ بِأَيْدِيهِمَا فَصَحَّ أَنَّهُمَا فِيهِ سَوَاءٌ، فَلِكُلِّ وَاحِدٍ مِنْهُمَا مَا بِيَدِهِ، وَلَهُ الْيَمِينُ عَلَى الْآخَرِ فِيمَا ادَّعَى مِمَّا بِيَدِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L29832 Abū Muḥammad said: The house is in their possession, thus it is confirmed that they share it equally. Therefore, each of them retains what is in his own possession, and he has the right to demand the other to swear an oath regarding what he claims is in the other's possession—and success comes only from Allah, the Exalted.

وَلَمْ يَخْتَلِفُوا فِي أَخٍ وَأُخْتٍ تَنَازَعَا فِي مَتَاعِ الْبَيْتِ، أَوْ أُمٍّ وَابْنِهَا: أَنَّ كُلَّ ذَلِكَ بَيْنَهُمَا بِأَيْمَانِهِمَا، وَلَا اخْتَلَفُوا فِي أَخَوَيْنِ سَاكِنَيْنِ فِي بَيْتٍ وَاحِدٍ، أَحَدُهُمَا: دَبَّاغٌ، وَالْآخَرُ: عَطَّارٌ، فَتَدَاعَيَا فِيمَا فِي الْبَيْتِ، وَالدَّارِ فَإِنَّهُ بَيْنَهُمَا بِأَيْمَانِهِمَا، وَلَمْ يَقْضُوا لِلدَّبَّاغِ بِآلَاتِ الدِّبَاغِ، وَلَا لِلْعَطَّارِ بِمَتَاعِ الْعِطْرِ، وَهَذَا تَنَاقُضٌ لَا خَفَاءَ فِيهِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L29833–29835 They did not differ that in cases of a brother and sister who disputed over household belongings, or a mother and her son, all such matters are between them. They did not differ concerning two brothers residing in one house—one being a tanner and the other a perfumer—who disputed over what was in the house and courtyard. The ruling between them was based on their oaths, yet they did not grant the tanner the tanning tools nor the perfumer the perfume goods. This constitutes a clear contradiction with no ambiguity, and success comes from Allah, the Exalted.

[مَسْأَلَةٌ يَحْكُمُ عَلَى الْيَهُودِ وَالنَّصَارَى وَالْمَجُوسِ بِحُكْمِ أَهْلِ الْإِسْلَامِ]

Issue: Judging the Jews, Christians, and Zoroastrians according to the ruling of the people of Islam.

١٧٩٩ - مَسْأَلَةٌ: وَيُحْكَمُ عَلَى الْيَهُودِ وَالنَّصَارَى وَالْمَجُوسِ بِحُكْمِ أَهْلِ الْإِسْلَامِ فِي كُلِّ شَيْءٍ - رَضُوا أَمْ سَخِطُوا، أَتَوْنَا أَوْ لَمْ يَأْتُونَا - وَلَا يَحِلُّ رَدُّهُمْ إلَى حُكْمِ دِينِهِمْ، وَلَا إلَى حُكَّامِهِمْ أَصْلًا.

L29837 Issue 1799: Jews, Christians, and Zoroastrians are subject to Islamic rulings in all matters—whether they consent or refuse, whether they seek our judgment or abstain. It is impermissible to refer them back to the legal rulings of their religion nor to their own judges under any circumstances.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: سَمِعْت بَجَالَةَ التَّمِيمِيَّ قَالَ: أَتَانَا كِتَابُ عُمَرَ بْنِ الْخَطَّابِ قَبْلَ مَوْتِهِ بِسَنَةٍ: أَنْ اُقْتُلُوا كُلَّ سَاحِرٍ وَسَاحِرَةٍ، وَفَرِّقُوا بَيْنَ كُلِّ ذِي رَحِمٍ مَحْرَمٍ مِنْ الْمَجُوسِ، وَانْهَوْهُمْ عَنْ الزَّمْزَمَةِ.

L29838 It has been reported to us through the chain of Abd al-Razzaq from Ibn Jurayj: Amr ibn Dinar informed me, stating: I heard Bajalah al-Tamimi say: "A letter from Umar ibn al-Khattab reached us one year before his death, commanding: 'Execute every sorcerer and sorceress, sever ties between all Magians related by prohibited kinship, and forbid them from ritual muttering.'"

L29839 Ibn Jurayj said: When dhimmis reside within our community, their hadd is the same as that of Muslims.

قَالَ ابْنُ جُرَيْجٍ: أَهْلُ الذِّمَّةِ إِذَا كَانُوا فِينَا فَحَدُّهُمْ كَحَدِّ الْمُسْلِمِ.

L29840 From the path of Ismāʿīl ibn Isḥāq al-Qāḍī (the Judge): Naṣr ibn ʿAlī narrated to us, ʿAbd al-Aʿlā narrated to us from Saʿīd ibn Abī ʿArūbah from Qatādah from al-Ḥasan al-Baṣrī regarding inheritance laws among the Dhimmis. He said: "They are ruled by what is in our Book" – which is the opinion of Qatādah, Abū Sulaymān, and our companions.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا نَصْرُ بْنُ عَلِيٍّ نا عَبْدُ الْأَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ فِي الْمَوَارِيثِ فِي أَهْلِ الذِّمَّةِ قَالَ: يُحْكَمُ عَلَيْهِمْ بِمَا فِي كِتَابِنَا - وَهُوَ قَوْلُ قَتَادَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L29841 Another narration has been related to us apart from this one: through the chain of Simāk ibn Ḥarb from Qābūs ibn Mukhāriq ibn Sulaym from his father - that Muḥammad ibn Abī Bakr wrote to ʿAlī ibn Abī Ṭālib concerning a Muslim who committed adultery with a Christian woman? ʿAlī ibn Abī Ṭālib wrote back to him directing that the ḥadd punishment be implemented upon the Muslim, while the Christian woman be returned to her religious community. And this is the position of Abū Ḥanīfah and Mālik.

وَرُوِّينَا غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ سِمَاكِ بْنِ حَرْبٍ عَنْ قَابُوسَ بْنِ مُخَارِقِ بْنِ سُلَيْمٍ عَنْ أَبِيهِ أَنَّ مُحَمَّدَ بْنَ أَبِي بَكْرٍ كَتَبَ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فِي مُسْلِمٍ زَنَى بِنَصْرَانِيَّةٍ؟ فَكَتَبَ إِلَيْهِ عَلِيُّ بْنُ أَبِي طَالِبٍ: أَنْ يُقَامَ الْحَدُّ عَلَى الْمُسْلِمِ، وَتُرَدُّ النَّصْرَانِيَّةُ إِلَى أَهْلِ دِينِهَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ.

L29842 Abū Muḥammad said: This is not authentically reported from ʿAlī, for it includes Simāk ibn Ḥarb—who is susceptible to coaching—and Qābūs ibn al-Mukhāriq and his father, both of whom are unreliable. Thus, its authenticity cannot be established as originating from the Companions—may Allah be pleased with them—on this matter, except for what has been transmitted to us from ʿUmar.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا يَصِحُّ عَنْ عَلِيٍّ؛ لِأَنَّ فِيهِ سِمَاكَ بْنَ حَرْبٍ - وَهُوَ يَقْبَلُ التَّلْقِينَ - وَقَابُوسُ بْنُ الْمُخَارِقِ وَأَبُوهُ - مَجْهُولَانِ - فَبَطَلَ أَنْ يَصِحَّ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي هَذَا الْبَابِ غَيْرُ مَا رُوِّينَا عَنْ عُمَرَ.

L29843 The dissenters said: Allah the Exalted has stated, "There is no compulsion in religion." Therefore, if they are judged by rulings other than those of their religion, they have been compelled to [follow] something contrary to their religion.[41]

وَقَالَ الْمُخَالِفُونَ: قَالَ اللَّهُ تَعَالَى: {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] فَإِذَا حُكِمَ عَلَيْهِمْ بِغَيْرِ حُكْمِ دِينِهِمْ فَقَدْ أُكْرِهُوا عَلَى غَيْرِ دِينِهِمْ.

L29844–29846 So we said: If this verse necessitates that they be judged only by the rulings of their religion, then you are the first to violate it—thereby binding yourselves to what opposes the truth, and this is profoundly grave. For you amputate them in theft cases by the rulings of our religion, not theirs, and you impose the ḥadd punishment for false accusation of unchastity by the rulings of our religion, not by the rulings of their religion. You impose their religion upon them, yet prevent them from enforcing their own religious rulings against

فَقُلْنَا: إِنْ كَانَتْ هَذِهِ الْآيَةُ تُوجِبُ أَنْ لَا يُحْكَمَ عَلَيْهِمْ بِغَيْرِ حُكْمِ دِينِهِمْ فَأَنْتُمْ أَوَّلُ مَنْ خَالَفَهَا فَأَقْرَرْتُمْ عَلَى أَنْفُسِكُمْ بِخِلَافِ الْحَقِّ، وَهَذَا عَظِيمٌ جِدًّا؛ لِأَنَّكُمْ تَقْطَعُونَهُمْ فِي السَّرِقَةِ بِحُكْمِ دِينِنَا، لَا بِحُكْمِ دِينِهِمْ، وَتَحُدُّونَهُمْ فِي الْقَذْفِ بِحُكْمِ دِينِنَا لَا بِحُكْمِ دِينِهِمْ،

[41] **Qur'an references (L29843):** Qur'an 2:256 (Al-Baqarah).

one another in cases of murder, accidental killing, or the selling of free persons—you have indeed contradicted yourselves.

وَتَمْنَعُونَهُمْ مِنْ إنْفَاذِ حُكْمِ دِينِهِمْ بَعْضِهِمْ عَلَى بَعْضٍ فِي الْقَتْلِ وَالْخَطَأِ، وَبَيْعِ الْأَحْرَارِ، فَقَدْ تَنَاقَضْتُمْ.

L29847 If they say, "This is injustice," they are not upheld upon it.

فَإِنْ قَالُوا: هَذَا ظُلْمٌ لَا يُقَرُّونَ عَلَيْهِ.

L29848 So we said to them: Any matter in which they opposed the ruling of Islam is an injustice, and they are not to be permitted to persist in it.

فَقُلْنَا لَهُمْ: وَكُلُّ مَا خَالَفُوا فِيهِ حُكْمَ الْإِسْلَامِ فَهُوَ ظُلْمٌ لَا يُقَرُّونَ عَلَيْهِ.

L29849 They said: "Allah the Exalted has said: *So if they come to you, so judge between them or turn away from them* [Al-Ma'idah: 42]." We replied: "This verse is abrogated by His Exalted's words: *And judge between them by what Allah has revealed* [Al-Ma'idah: 49]."[42]

وَقَالُوا: قَالَ اللَّهُ تَعَالَى: {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ} [المائدة: ٤٢] فَقُلْنَا: هَذِهِ مَنْسُوخَةٌ نَسَخَهَا قَوْله تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

L29850 Then they said, "Bring forth your proof in support of that."

فَقَالُوا: هَاتُوا بُرْهَانَكُمْ عَلَى ذَلِكَ.

L29851 We said: Yes, it has been narrated to us through the chain of Sufyān ibn Ḥusayn from al-Ḥakam ibn ʿUtaybah from Mujāhid from Ibn ʿAbbās, who said: "Two verses were abrogated from this surah: the verse of the garlands and the words of the Exalted: {If they come to you, judge between them or turn away from them} [Al-Mā'idah 5:42]. The Messenger of Allah—peace be upon him—was given the choice: if he wished, he could judge between them, and if he wished, he could turn away from them and return them to their own laws. Then the verse {And judge between them by what Allah has revealed} [Al-Mā'idah 5:49] was revealed, commanding the Messenger of Allah—peace be upon him—to judge between them according to what is in Our Book."[43]

قُلْنَا: نَعَمْ، رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ حُسَيْنٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «نُسِخَتْ مِنْ هَذِهِ السُّورَةِ آيَتَانِ -: آيَةُ: الْقَلَائِدَ وقَوْله تَعَالَى: {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ} [المائدة: ٤٢] فَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُخَيَّرًا إنْ شَاءَ حَكَمَ بَيْنَهُمْ، وَإِنْ شَاءَ أَعْرَضَ عَنْهُمْ فَرَدَّهُمْ إلَى أَحْكَامِهِمْ، فَنَزَلَتْ: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَحْكُمَ بَيْنَهُمْ بِمَا فِي كِتَابِنَا» .

L29852 Abū Muḥammad said: This is supported by a chain of narration; Ibn ʿAbbās reported the revelation of the verse concerning that matter. This is also the opinion of Mujāhid and ʿIkrimah.

قَالَ أَبُو مُحَمَّد: وَهَذَا مُسْنَدٌ، لِأَنَّ ابْنَ عَبَّاسٍ أَخْبَرَ بِنُزُولِ الْآيَةِ فِي ذَلِكَ - وَهُوَ قَوْلُ مُجَاهِدٍ، وَعِكْرِمَةَ.

L29853 Moreover, Allah the Exalted says: {And fight them until there is no persecution and all sovereignty belongs wholly to Allah} [Al-Anfāl: 39]. The term "dīn" in the Quran and the Arabic language denotes the Sharia, sovereign

وَأَيْضًا: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَالدِّينُ فِي الْقُرْآنِ وَاللُّغَةِ يَكُونُ الشَّرِيعَةَ، وَيَكُونُ الْحُكْمَ، وَيَكُونُ الْجَزَاءَ، فَالْجَزَاءُ فِي الْآخِرَةِ إلَى اللَّهِ تَعَالَى لَا إلَيْنَا.

[42] **Qur'an references (L29849):** Qur'an 5:42 (Al-Ma'idah); Qur'an 5:49 (Al-Ma'idah).
[43] **Qur'an references (L29851):** Qur'an 5:42 (Al-Ma'idah); Qur'an 5:49 (Al-Ma'idah).

authority, or retribution. As for retribution in the Hereafter, it rests solely with Allah the Exalted, not with us.[44]

وَالشَّرِيعَةُ قَدْ صَحَّ أَنْ نُقِرَّهُمْ عَلَى مَا يَعْتَقِدُونَ إذَا كَانُوا أَهْلَ كِتَابٍ، فَبَقِيَ الْحُكْمُ، فَوَجَبَ أَنْ يَكُونَ كُلُّهُ حُكْمَ اللَّهِ كَمَا أَمَرَ.

L29854 Islamic law has established that we permit People of the Book to retain their beliefs. Thus, the ruling remains in force, and it is obligatory that the entire ruling be Allah's, as He has commanded.

فَإِنْ قَالُوا: فَاحْكُمُوا عَلَيْهِمْ بِالصَّلَاةِ، وَالصِّيَامِ، وَالْحَجِّ، وَالْجِهَادِ، وَالزَّكَاةِ.

L29855 If they say: "Then judge them by Prayer, Fasting, Pilgrimage, Jihad, and Zakat."

قُلْنَا: قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُلْزِمْهُمْ شَيْئًا مِنْ هَذَا فَخَرَجَ بِنَصِّهِ وَبَقِيَ سَائِرُ الْحُكْمِ عَلَيْهِمْ عَلَى حُكْمِ الْإِسْلَامِ وَلَا بُدَّ.

L29856–29858 We said: It has been authentically established that the Messenger of Allah—may Allah's peace and blessings be upon him—did not impose anything of this upon them. Thus, he based it on his explicit text, and all other rulings concerning them remained subject to Islamic law—as it is imperative.

وَصَحَّ «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَتَلَ يَهُودِيًّا قَوَدًا بِصَبِيَّةٍ مُسْلِمَةٍ وَرَجَمَ يَهُودِيَّيْنِ زَنَيَا» وَلَمْ يَلْتَفِتْ إلَى حُكْمِ دِينِهِمْ.

L29859 It is authentically reported that he (peace be upon him) killed a Jew in retribution for a Muslim girl and stoned two Jews who committed adultery, without regard to the rulings of their religion.

فَقَالَ بَعْضُهُمْ بِآبِدَةٍ مُهْلِكَةٍ، وَهِيَ أَنْ قَالُوا: إنَّمَا أَنْفَذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرَّجْمَ بِحُكْمِ التَّوْرَاةِ، كَمَا قَالَ تَعَالَى: {يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا} [المائدة: ٤٤] .

L29860 Some of them asserted a destructive novelty, saying: "The Messenger of Allah—peace and blessings be upon him—only implemented stoning based on the ruling of the Torah, as the Exalted said: 'The prophets who submitted to Allah judge by it for those who are Jews'" [Al-Mā'idah 5:44].[45]

فَقُلْنَا: هَذَا كُفْرٌ مِمَّنْ قَالَهُ، إذْ جَعَلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مُنَفِّذًا لِحُكْمِ الْيَهُودِ، تَارِكًا لِتَنْفِيذِ حُكْمِ اللَّهِ تَعَالَى، حَاشَا لَهُ مِنْ ذَلِكَ.

L29861 So we said: This is disbelief on the part of whoever said it, since the claimant made him—peace and blessings be upon him—an executor of the Jews' ruling and a forsaker of implementing the law of Allah, the Exalted. Far be it from him to do such a thing.

وَأَيْضًا فَهَبْكَ أَنَّهُ كَمَا قُلْتُمْ فَارْجُمُوهُمْ أَنْتُمْ أَيْضًا عَلَى ذَلِكَ الْوَجْهِ نَفْسِهِ، وَإِلَّا فَقَدْ جَوَّرْتُمْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29862 Moreover, granted, as you say, that it is so, then you too must stone them in that very same manner; otherwise, you have wronged the Messenger of Allah, may Allah bless him and grant him peace.

وَأَمَّا الْآيَةُ: فَإِنَّمَا هِيَ خَبَرٌ عَنْ النَّبِيِّينَ السَّالِفِينَ فِيهِمْ، لِأَنَّهُمْ لَيْسُوا لَنَا نَبِيِّينَ، إنَّمَا لَنَا نَبِيٌّ وَاحِدٌ - فَصَحَّ أَنَّهُ غَيْرُ مَعْنِيٍّ بِهَذِهِ الْآيَةِ.

L29863 As for the verse, it is a report about the earlier prophets among them, for they are not prophets to us. We have only one prophet. Therefore, it is established that he is not the referent of this verse.

[44] **Qur'an references (L29853):** Qur'an 8:39 (Al-Anfal).
[45] **Qur'an references (L29860):** Qur'an 5:44 (Al-Ma'idah).

L29864 Then we say to them: “Inform us about the rulings of their religion—are they (to this day) true and firmly established, or false and abrogated? They must choose one of the two.” If they say, “They are true and firmly established,” they openly profess disbelief. But if they say, “Rather, they are false and abrogated...”

ثُمَّ نَقُولُ لَهُمْ: أَخْبِرُونَا عَنْ أَحْكَامِ دِينِهِمْ أَحَقٌّ - هِيَ إِلَى الْيَوْمِ - مُحْكَمٌ أَمْ بَاطِلٌ مَنْسُوخٌ؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا -: فَإِنْ قَالُوا: حَقٌّ مُحْكَمٌ كَفَرُوا جِهَارًا، وَإِنْ قَالُوا بَلْ بَاطِلٌ مَنْسُوخٌ.

L29865 We said: You have spoken the truth, and you have confessed against yourselves that you have turned them back to the abrogated, forbidden falsehood. This suffices.

قُلْنَا: صَدَقْتُمْ، وَأَقْرَرْتُمْ عَلَى أَنْفُسِكُمْ أَنَّكُمْ رَدَدْتُمُوهُمْ إِلَى الْبَاطِلِ الْمَنْسُوخِ الْحَرَامِ، وَفِي هَذَا كِفَايَةٌ.

L29866 And He, the Exalted, said: “Be upholders of justice.” [An-Nisā’: 135] It is not part of justice to permit them to rule by altered disbelief, by a judgment Allah has nullified, or [to accept] what He has prohibited in speech and action regarding it.[46]

وَقَالَ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] وَلَيْسَ مِنَ الْقِسْطِ تَرْكُهُمْ يَحْكُمُونَ بِالْكُفْرِ الْمُبَدَّلِ أَوْ بِحُكْمٍ قَدْ أَبْطَلَهُ اللَّهُ تَعَالَى، أَوْ حَرَّمَ الْقَوْلَ بِهِ وَالْعَمَلَ بِهِ.

L29867 And He, the Exalted, said: “Cooperate in righteousness and piety, and do not cooperate in sin and aggression” [Al-Ma’idah 5:2].[47]

وَقَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢]

L29868 And whoever turns them back to the rule of distorted disbelief and the command that has been abrogated and prohibited has not supported righteousness and piety, but rather aided sin and transgression—and we seek refuge in Allah from abandonment.

وَمَنْ رَدَّهُمْ إِلَى حُكْمِ الْكُفْرِ الْمُبَدَّلِ وَالْأَمْرِ الْمَنْسُوخِ الْمُحَرَّمِ، فَلَمْ يُعِنْ عَلَى الْبِرِّ وَالتَّقْوَى، بَلْ أَعَانَ عَلَى الْإِثْمِ وَالْعُدْوَانِ - وَنَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ.

L29869–29870 Allah the Exalted said: “Until they pay the jizyah willingly while they are humiliated” [al-Tawbah: 29]. This humiliation entails the enforcement of our laws upon them. If they are left to govern by their disbelief, then we have not humiliated them—rather, they would be humiliating us, and we seek refuge in Allah from such a state![48]

وَقَالَ تَعَالَى: {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] وَالصَّغَارُ هُوَ جَرْيُ أَحْكَامِنَا عَلَيْهِمْ، فَإِذَا مَا تُرِكُوا يَحْكُمُونَ بِكُفْرِهِمْ فَمَا أَصْغَرْنَاهُمْ بَلْ هُمْ أَصْغَرُونَا - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ.

[مَسْأَلَة عَلَى الْحَاكِمِ أَنْ يَحْكُم بعلمة]

L29871 **It is a jurisprudential principle that the judge must rule based on knowledge.**

L29872 1800 - Issue: It is incumbent upon the judge to rule based on his personal knowledge in matters involving blood, retribution, property, cases involving

١٨٠٠ - مَسْأَلَةٌ: وَفُرِضَ عَلَى الْحَاكِمِ أَنْ يَحْكُمَ بِعِلْمِهِ فِي الدِّمَاءِ، وَالْقِصَاصِ، وَالْأَمْوَالِ، وَالْفُرُوجِ، وَالْحُدُودِ، وَسَوَاءٌ عَلِمَ ذَلِكَ قَبْلَ وِلَايَتِهِ أَوْ بَعْدَ وِلَايَتِهِ، وَأَقْوَى مَا حَكَمَ بِعِلْمِهِ؛ لِأَنَّهُ يَقِينُ الْحَقِّ، ثُمَّ بِالْإِقْرَارِ، ثُمَّ بِالْبَيِّنَةِ.

[46] **Qur’an references (L29866):** Qur’an 4:135 (An-Nisa).
[47] **Qur’an references (L29867):** Qur’an 5:2 (Al-Ma’idah).
[48] **Qur’an references (L29870):** Qur’an 9:29 (At-Tawbah).

chastity, and ḥudūd punishments, whether he acquired that knowledge before or after assuming office. The strongest basis for his ruling is his personal knowledge, as it constitutes certainty of the truth; then by confession; then by witness testimony.

L29873 People have differed regarding this. It is narrated that Abū Bakr al-Ṣiddīq said: "If I saw a man liable for a ḥadd punishment, I would not call for him without another witness besides me." It is also reported that ʿUmar said to ʿAbd al-Raḥmān ibn ʿAwf: "What is your view if you saw a man who killed, consumed wine, or committed zinā?" He replied: "Your testimony counts as that of a Muslim man." ʿUmar then said to him: "You have spoken truthfully."

L29874 And that something similar to this was reported from Mu'awiyah and Ibn Abbas.

L29875 Through the narration of Al-Ḍaḥḥāk: that a dispute was brought to ʿUmar regarding a matter he knew. He responded to the claimant: "If you wish, I can testify without judging, or judge without testifying."

L29876 It has been authentically reported that two disputants came to Shuraih. One of them brought a witness and said to Shuraih: "And you are also my witness." Thereupon, Shuraih ruled in his favor based on his witness and the claimant's oath.

L29877 It has been reported from ʿUmar ibn ʿAbd al-ʿAzīz that a judge does not judge based on his own knowledge in matters of zina.

L29878 It is authentically reported from Al-Sha'bi: "I am not a witness and a judge."

L29879 And Mālik, Ibn Abī Laylā (in one of his two opinions), Aḥmad, Abū ʿUbaydah, and Muḥammad ibn al-Ḥasan (in one of his two opinions) said: A judge may not rule based on his personal knowledge in any matter at all.

L29880 Hammad ibn Abi Sulayman said: A judge may rule based on his verification of a confession in all matters, except exclusively in the case of ḥudūd.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِيَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: لَوْ رَأَيْت رَجُلًا عَلَى حَدٍّ لَمْ أَدْعُ لَهُ غَيْرِي حَتَّى يَكُونَ مَعِي شَاهِدٌ غَيْرِي، وَأَنَّ عُمَرَ قَالَ لِعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَرَأَيْت لَوْ رَأَيْت رَجُلًا قَتَلَ أَوْ شَرِبَ أَوْ زَنَى؟ قَالَ: شَهَادَتُك شَهَادَةُ رَجُلٍ مِنْ الْمُسْلِمِينَ فَقَالَ لَهُ عُمَرُ: صَدَقْت

- وَأَنَّهُ رُوِيَ نَحْوُ هَذَا عَنْ مُعَاوِيَةَ، وَابْنِ عَبَّاسٍ.

وَمِنْ طَرِيقِ الضَّحَّاكِ: أَنَّ عُمَرَ اُخْتُصِمَ إلَيْهِ فِي شَيْءٍ يَعْرِفُهُ فَقَالَ لِلطَّالِبِ: إنْ شِئْت شَهِدْت وَلَمْ أَقْضِ، وَإِنْ شِئْت قَضَيْت وَلَمْ أَشْهَدْ.

وَقَدْ صَحَّ عَنْ شُرَيْحٍ أَنَّهُ اخْتَصَمَ إلَيْهِ اثْنَانِ فَأَتَاهُ أَحَدُهُمَا بِشَاهِدٍ، فَقَالَ لِشُرَيْحٍ وَأَنْتَ شَاهِدِي أَيْضًا، فَقَضَى لَهُ شُرَيْحٌ مَعَ شَاهِدِهِ بِيَمِينِهِ.

وَرُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: لَا يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ فِي الزِّنَى.

وَصَحَّ عَنْ الشَّعْبِيِّ: لَا أَكُونُ شَاهِدًا وَقَاضِيًا.

وَقَالَ مَالِكٌ، وَابْنُ أَبِي لَيْلَى - فِي أَحَدِ قَوْلَيْهِ - وَأَحْمَدُ، وَأَبُو عُبَيْدَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ - فِي أَحَدِ قَوْلَيْهِ: لَا يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ فِي شَيْءٍ أَصْلًا.

وَقَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ: يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ بِالِاعْتِرَافِ فِي كُلِّ شَيْءٍ إلَّا فِي الْحُدُودِ خَاصَّةً -.

وَبِهِ قَالَ ابْنُ أَبِي لَيْلَى فِي أَحَدِ قَوْلَيْهِ.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ - فِي أَوَّلِ قَوْلَيْهِ -: يَحْكُمُ بِعِلْمِهِ فِي كُلِّ شَيْءٍ مِنْ قِصَاصٍ وَغَيْرِهِ، إِلَّا فِي الْحُدُودِ، وَسَوَاءٌ عَلِمَهُ قَبْلَ الْقَضَاءِ أَوْ بَعْدَهُ.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَحْكُمُ بِعِلْمِهِ قَبْلَ وِلَايَتِهِ الْقَضَاءَ أَصْلًا وَأَمَّا مَا عَلِمَهُ بَعْدَ وِلَايَتِهِ الْقَضَاءَ فَإِنَّهُ يَحْكُمُ بِهِ فِي كُلِّ شَيْءٍ، إِلَّا فِي الْحُدُودِ خَاصَّةً.

وَقَالَ اللَّيْثُ: لَا يَحْكُمُ بِعِلْمِهِ إِلَّا أَنْ يُقِيمَ الطَّالِبُ شَاهِدًا وَاحِدًا فِي حُقُوقِ النَّاسِ خَاصَّةً، فَيَحْكُمُ الْقَاضِي حِينَئِذٍ بِعِلْمِهِ مَعَ ذَلِكَ الشَّاهِدِ.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: كُلُّ مَا عَلِمَ قَبْلَ وِلَايَتِهِ لَمْ يَحْكُمْ فِيهِ بِعِلْمِهِ، وَمَا عَلِمَ بَعْدَ وِلَايَتِهِ حَكَمَ فِيهِ بِعِلْمِهِ بَعْدَ أَنْ يَسْتَحْلِفَهُ، وَذَلِكَ فِي حُقُوقِ النَّاسِ - وَأَمَّا الزِّنَا: فَإِنْ شَهِدَ بِهِ ثَلَاثَةٌ وَالْقَاضِي يَعْرِفُ صِحَّةَ ذَلِكَ حَكَمَ فِيهِ بِتِلْكَ الشَّهَادَةِ مَعَ عِلْمِهِ.

وَقَالَ الْأَوْزَاعِيِّ: إِنْ أَقَامَ الْمَقْذُوفُ شَاهِدًا وَاحِدًا عَدْلًا وَعَلِمَ الْقَاضِي بِذَلِكَ حَدَّ الْقَاذِفَ.

وَقَالَ الشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ كَمَا قُلْنَا.

قَالَ أَبُو مُحَمَّد: فَنَظَرْنَا فِيمَنْ فَرَّقَ بَيْنَ مَا عَلِمَ قَبْلَ الْقَضَاءِ وَمَا عَلِمَ بَعْدَ الْقَضَاءِ فَوَجَدْنَاهُ قَوْلًا لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا أَحَدٌ قَالَهُ قَبْلَ أَبِي حَنِيفَةَ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِلَا شَكٍّ.

L29881 And according to it, Ibn Abī Laylā said in one of his two opinions.

L29882 Abū Yūsuf and Muḥammad ibn al-Ḥasan—in the first of their two opinions—held that a judge may rule based on his personal knowledge in all matters, including cases of retaliation and other matters, except in prescribed punishments, whether he acquired the knowledge before the judgment or after it.

L29883–29885 Abū Ḥanīfa said: He does not judge based on knowledge he possessed prior to assuming judicial authority at all. As for what he comes to know after assuming this authority... As for judgment, indeed he rules by it in all matters, except in the Ḥudūd specifically.

L29886 Al-Layth said: A judge does not rule based on his personal knowledge unless the claimant presents one witness specifically in matters of people's rights. At that point, the judge rules according to his knowledge alongside that witness.

L29887 Al-Ḥasan ibn Ḥayy said: Regarding all matters he knew before assuming judgeship, he did not judge based on his prior knowledge. As for what he learned after assuming judgeship, he ruled according to his knowledge after administering an oath to the party—and this applies to people's rights. As for zinā: If three testified to it and the judge recognized the truthfulness of that testimony, he ruled based on that testimony alongside his knowledge.

L29888 Al-Awzaʿī said: If the person falsely accused presents a single upright witness, and the judge acknowledges this, he shall impose the ḥadd punishment upon the false accuser.

L29889 Al-Shafiʿi, Abu Thawr, Abu Sulayman, and their followers have stated the same opinion as we have.

L29890 Abu Muhammad said: We considered those who make a distinction between what he knew before the judgment and what he knew after it, and we found this to be an opinion unsupported by the Quran, nor the Sunnah, nor a weak narration, nor analogical reasoning, nor any precedent from scholars before Abu Hanifah. Such a thing is undoubtedly invalid.

L29891 Then we examined the case of one who distinguishes between what was

acknowledged in his legal session and other matters he had ascertained, and we found it consistent with our earlier statement regarding Abū Ḥanīfah's legal position. Any ruling issued in this manner is void, though some scholars asserted: "He presided solely to judge between people based on what he deemed valid according to his understanding."

ثُمَّ نَظَرْنَا فِيمَنْ فَرَّقَ بَيْنَ مَا اُعْتُرِفَ بِهِ فِي مَجْلِسِهِ وَبَيْنَ غَيْرِ ذَلِكَ مِمَّا عَلِمَهُ، فَوَجَدْنَاهُ أَيْضًا كَمَا قُلْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ إِلَّا أَنَّ بَعْضَهُمْ قَالَ: إِنَّمَا جَلَسَ لِيَحْكُمَ بَيْنَ النَّاسِ بِمَا صَحَّ عِنْدَهُ.

L29892 We said: You have spoken the truth. All that he knew prior to his authority, outside his council, and afterward has indeed been confirmed by his judgment.

قُلْنَا: صَدَقْتُمْ، وَقَدْ صَحَّ عِنْدَهُ كُلُّ مَا عَلِمَ قَبْلَ وِلَايَتِهِ، وَفِي غَيْرِ مَجْلِسِهِ وَبَعْدَ ذَلِكَ.

L29893 Then we considered the case of one who differentiated between matters attested by a single witness before him and matters to which no one testified before him. We found that this, too, aligns with the two preceding opinions, for in all such instances he ruled solely based on his own knowledge—and this is our position—

ثُمَّ نَظَرْنَا فِيمَنْ فَرَّقَ بَيْنَ مَا شَهِدَ بِهِ عِنْدَهُ شَاهِدٌ وَاحِدٌ وَبَيْنَ مَا لَمْ يَشْهَدْ بِهِ عِنْدَهُ أَحَدٌ -: فَوَجَدْنَاهُ أَيْضًا كَالْقَوْلَيْنِ الْمُتَقَدِّمَيْنِ، لِأَنَّهُ فِي كُلِّ ذَلِكَ إِنَّمَا حَكَمَ بِعِلْمِهِ فَقَطْ - وَهُوَ قَوْلُنَا -.

L29894 As for a judge ruling based on a single witness or three witnesses in cases of unlawful sexual intercourse, this is not permissible -.

وَأَمَّا حَاكِمٌ بِشَاهِدٍ وَاحِدٍ أَوْ بِثَلَاثَةٍ فِي الزِّنَى، فَهَذَا لَا يَجُوزُ -.

L29895–29896 As for a witness and judge together, there is no textual proof or consensus that specifically upholds this aspect as correct.

وَأَمَّا شَاهِدٌ حَاكِمٌ مَعًا، وَلَمْ يَأْتِ نَصٌّ وَلَا إِجْمَاعٌ بِتَصْوِيبِ هَذَا الْوَجْهِ خَاصَّةً.

L29897 Then we scrutinized the opinion of those who differentiate between prescribed punishments and other legal rulings, and found it to be a view that lacks reinforcement from the Qur'an or the Sunnah. Any such position is invalid.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ فَرَّقَ بَيْنَ الْحُدُودِ وَغَيْرِهَا، فَوَجَدْنَاهُ قَوْلًا لَا يُعَضِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L29898 If they mention: "Ward off the ḥudud by means of doubts."

فَإِنْ ذَكَرُوا «ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ» .

L29899 We said: This is invalid, for nothing authentic has ever been reported from the Prophet—peace and blessings of Allah be upon him—and there is no distinction between Ḥudūd and other matters in the obligation to judge truthfully in all cases. Thus, only the opinions remain: that of those who say, "A judge does not rule by his personal knowledge in anything," and that of those who say, "A judge rules by his personal knowledge in all matters." We found those who forbid judges from ruling by their personal knowledge asserting: "This is the position of Abū Bakr, ʿUmar, ʿAbd al-Raḥmān, Ibn ʿAbbās, and

قُلْنَا: هَذَا بَاطِلٌ مَا صَحَّ قَطُّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فَرْقَ بَيْنَ الْحُدُودِ وَغَيْرِهَا فِي أَنْ يَحْكُمَ فِي كُلِّ ذَلِكَ بِالْحَقِّ، فَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ قَالَ: لَا يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ فِي شَيْءٍ - وَقَوْلُ مَنْ قَالَ: يَحْكُمُ الْحَاكِمُ بِعِلْمِهِ فِي كُلِّ شَيْءٍ -: فَوَجَدْنَا مَنْ مَنَعَ مِنْ أَنْ يَحْكُمَ الْحَاكِمُ بِعِلْمِهِ يَقُولُ: هَذَا قَوْلُ أَبِي بَكْرٍ، وَعُمَرَ، وَعَبْدِ الرَّحْمَنِ، وَابْنِ عَبَّاسٍ، وَمُعَاوِيَةَ، وَلَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنْ الصَّحَابَةِ.

Muʿāwiyah, with no opposing authority among the Companions known to contradict them."

فَقُلْنَا: هُمْ مُخَالِفُونَ لَكُمْ فِي هَذِهِ الْقِصَّةِ، لِأَنَّهُ إِنَّمَا رُوِيَ أَنَّ أَبَا بَكْرٍ قَالَ: إِنَّهُ لَا يُثِيرُهُ حَتَّى يَكُونَ مَعَهُ شَاهِدٌ آخَرُ.

L29900 So we said: They oppose you in this matter because it was only narrated that Abū Bakr said: "He does not consider it unless there is another witness with him."

وَهُوَ قَوْلُ عُمَرَ، وَعَبْدِ الرَّحْمَنِ: أَنَّ شَهَادَتَهُ شَهَادَةُ رَجُلٍ مِنْ الْمُسْلِمِينَ، فَهَذَا يُوَافِقُ مَنْ رَأَى أَنْ يَحْكُمَ فِي الزِّنَى بِثَلَاثَةٍ هُوَ رَابِعُهُمْ، وَبِوَاحِدٍ مَعَ نَفْسِهِ فِي سَائِرِ الْحُقُوقِ.

L29901 This is the opinion of ʿUmar and ʿAbd al-Raḥmān: that his testimony equals the testimony of one man among the Muslims. This corresponds to those who hold that the ruling for adultery requires three - he being the fourth - and with one alongside himself in all other rights.

وَأَيْضًا - فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29902 Moreover - there is no authoritative evidence in the statement of anyone beneath the Messenger of Allah - peace be upon him -.

وَأَيْضًا - فَقَدْ خَالَفُوا أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَخَالِدَ بْنَ الْوَلِيدِ، وَأَبَا مُوسَى الْأَشْعَرِيَّ، وَابْنَ الزُّبَيْرِ فِي الْقِصَاصِ مِنْ اللَّطْمَةِ، وَمِنْ ضَرْبَةِ السَّوْطِ، وَمِمَّا دُونَ الْمُوضِحَةِ - وَهُوَ عَنْهُمْ أَصَحُّ مِمَّا رَوَيْتُمْ عَنْهُمْ هَاهُنَا -.

L29903 Moreover, they have opposed Abū Bakr, ʿUmar, ʿUthmān, Khālid ibn al-Walīd, Abū Mūsā al-Ashʿarī, and Ibn al-Zubayr concerning retaliation for a slap, a strike with a whip, and injuries less severe than al-mūḍiḥah (a wound exposing the bone)—and it is more soundly attested from them than what you have reported from them here.

وَاحْتَجُّوا بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «شَاهِدَاكَ أَوْ يَمِينُهُ لَيْسَ لَكَ إلَّا ذَلِكَ» .

L29904 They cited as evidence the statement of the Prophet—peace and blessings be upon him—: "Either your two witnesses or his oath. You have nothing except that."

قَالَ أَبُو مُحَمَّد: وَهَذَا قَدْ خَالَفَهُ الْمَالِكِيُّونَ الْمُحْتَجُّونَ بِهِ، فَجَعَلُوا لَهُ الْحُكْمَ بِالْيَمِينِ مَعَ الشَّاهِدِ، وَالْيَمِينِ مَعَ نُكُولِ خَصْمِهِ، وَلَيْسَ هَذَا مَذْكُورًا فِي الْخَبَرِ.

L29905 Abu Muhammad said: The Malikis who cite it as proof have opposed this, for they established rulings based on an oath alongside the witness, and an oath combined with his adversary's refusal to swear. Yet none of this is mentioned in the report.

وَجَعَلَ لَهُ الْحَنَفِيُّونَ الْحُكْمَ بِالنُّكُولِ وَلَيْسَ ذَلِكَ فِي الْخَبَرِ.

L29906 The Hanafis held that the ruling applies to one who refuses to swear an oath, but this is not found in the authenticated reports.

وَأَمَرُوهُ بِالْحُكْمِ بِعِلْمِهِ فِي الْأَمْوَالِ الَّتِي فِيهَا جَاءَ هَذَا الْخَبَرُ.

L29907 And they instructed him to adjudicate based on his knowledge in matters of wealth where this ḥadīth is found.

فَقَدْ خَالَفُوهُ جِهَارًا وَأَقْحَمُوا فِيهِ مَا لَيْسَ فِيهِ.

L29908 They have indeed openly opposed him and forcibly inserted into it what is not in it.

L29909–29910 Who is more misguided than one who cites a report as evidence yet is the

foremost in contradicting it based on his own opinion?

فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِخَبَرٍ هُوَ أَوَّلُ مُخَالِفٍ لَهُ بِرَأْيِهِ.

L29911 As for us, we say: It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—that he said, "Your evidence or his oath." There is no evidence clearer than the soundness of the judge's knowledge regarding the validity of his right. Thus, this is encompassed by the scope of this hadith.

وَأَمَّا نَحْنُ فَنَقُولُ: إِنَّهُ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «بَيِّنَتُكَ أَوْ يَمِينُهُ» وَمِنْ الْبَيِّنَةِ الَّتِي لَا بَيِّنَةَ أَبْيَنُ مِنْهَا صِحَّةُ عِلْمِ الْحَاكِمِ بِصِحَّةِ حَقِّهِ، فَهُوَ فِي جُمْلَةِ هَذَا الْخَبَرِ.

L29912 They cited as evidence the authentically established report from the Messenger of Allah (peace and blessings of Allah be upon him) that Jesus (peace be upon him) saw a man stealing and said to him: "Did you steal?" The man replied: "Certainly not! By Allah, the One besides whom there is no deity!" Jesus (peace be upon him) then said: "I believe in Allah and reject my own suspicion." They said: "Thus Jesus (peace be upon him) did not judge based on his knowledge."[49]

وَاحْتَجُّوا بِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ عِيسَى - عَلَيْهِ السَّلَامُ - رَأَى رَجُلًا يَسْرِقُ فَقَالَ لَهُ عِيسَى: سَرَقْتَ؟ قَالَ: كَلَّا وَاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ، فَقَالَ عِيسَى - عَلَيْهِ السَّلَامُ -: آمَنْتُ بِاَللَّهِ وَكَذَّبْت نَفْسِي» - فَقَالُوا: فَعِيسَى - عَلَيْهِ السَّلَامُ - لَمْ يَحْكُمْ بِعِلْمِهِ.

L29913 Abū Muḥammad said: We are not bound by the divine law of Jesus (peace be upon him). This narrative could be interpreted as him having seen him steal - meaning taking the item covertly by taking it. When he questioned him, he swore an oath, and he might be truthful because he reclaimed his property from someone who had wronged him.

قَالَ أَبُو مُحَمَّد: لَيْسَ يَلْزَمُنَا شَرْعُ عِيسَى - عَلَيْهِ السَّلَامُ -، وَقَدْ يُخَرَّجُ هَذَا الْخَبَرُ عَلَى أَنَّهُ رَآهُ يَسْرِقُ أَيْ يَأْخُذُ الشَّيْءَ مُخْتَفِيًا بِأَخْذِهِ، فَلَمَّا قَرَّرَهُ حَلَفَ، وَقَدْ يَكُونُ صَادِقًا، لِأَنَّهُ أَخَذَ مَالَهُ مِنْ ظَالِمٍ لَهُ.

L29914 They mentioned the saying of the Messenger of Allah—may Allah's peace and blessings be upon him—"If I were to stone someone without evidence, I would stone her." This contains no proof for them, because the knowledge of the judge is the clearest evidence and the most just thereof. We have thoroughly examined this issue in *Kitāb al-Iṣāl*, and all praise is due to Allah, the Most High.

وَذَكَرُوا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا» - وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ عِلْمَ الْحَاكِمِ أَبْيَنُ بَيِّنَةٍ وَأَعْدَلُهَا وَقَدْ تَقَصَّيْنَا هَذِهِ الْمَسْأَلَةَ فِي " كِتَابِ الْإِيصَالِ " وَلِلَّهِ تَعَالَى الْحَمْدُ.

L29915 And the proof of the validity of our statement is the saying of Allah the Exalted: "Be persistently steadfast in upholding justice as witnesses for Allah" [An-Nisā' 4:135].[50]

وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥].

L29916 It is not justice to leave the oppressor in his wrongdoing without changing

وَلَيْسَ مِنْ الْقِسْطِ أَنْ يَتْرُكَ الظَّالِمَ عَلَى ظُلْمِهِ لَا يُغَيِّرُهُ.

[49] **Qur'an references (L29912):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr).

[50] **Qur'an references (L29915):** Qur'an 4:135 (An-Nisa).

it.

L29917 that the transgressor openly declares disbelief in the presence of the ruler, confesses to oppression, and acknowledges divorce. Then the ruler proceeds to confirm the transgressor's standing with the woman, rules in her favor regarding the validity of the marital bond and inheritance, thereby wronging the heirs of their rightful share.

وَأَنْ يَكُونَ الْفَاسِقُ يُعْلِنُ الْكُفْرَ بِحَضْرَةِ الْحَاكِمِ، وَالْإِقْرَارَ بِالظُّلْمِ، وَالطَّلَاقِ، ثُمَّ يَكُونُ الْحَاكِمُ يُقِرُّهُ مَعَ الْمَرْأَةِ، وَيَحْكُمُ لَهَا بِالزَّوْجِيَّةِ وَالْمِيرَاثِ، فَيَظْلِمُ أَهْلَ الْمِيرَاثِ حَقَّهُمْ.

L29918 They have unanimously agreed that if the judge knows of impugnments against the witnesses—and others are unaware of it—or if he knows the falsehood of the impugners of them, he must rule based on his own knowledge in all such instances. Thus, they have contradicted their own principles.

وَقَدْ أَجْمَعُوا عَلَى أَنَّ الْحَاكِمَ إنْ عَلِمَ بِجُرْحَةِ الشُّهُودِ - وَلَمْ يَعْلَمْ ذَلِكَ غَيْرُهُ، أَوْ عَلِمَ كَذِبَ الْمُجَرِّحِينَ لَهُمْ - فَإِنَّهُ يَحْكُمُ فِي كُلِّ ذَلِكَ بِعِلْمِهِ - فَقَدْ تَنَاقَضُوا.

L29919 The Messenger of Allah - may Allah bless him and grant him peace - said: "Whoever among you observes a wrongdoing, let him correct it with his hand; if he is unable to do so, then with his tongue." If a ruler fails to rectify the wrongdoing he observes until evidence is presented concerning it, he has indeed disobeyed the Messenger of Allah - may Allah bless him and grant him peace.[51]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ» وَالْحَاكِمُ إنْ لَمْ يُغَيِّرْ مَا رَأَى مِنْ الْمُنْكَرِ حَتَّى تَأْتِيَ الْبَيِّنَةُ عَلَى ذَلِكَ فَقَدْ عَصَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L29920–29921 Thus, it is established that it is obligatory upon him to change, by his own hand, every reprehensible act he is aware of, and to give every entitled person their due; otherwise, he is unjust. And success is from Allah, the Exalted.

فَصَحَّ أَنَّ فَرْضًا عَلَيْهِ أَنْ يُغَيِّرَ كُلَّ مُنْكَرٍ عَلِمَهُ بِيَدِهِ، وَأَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ، وَإِلَّا فَهُوَ ظَالِمٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29922 ## The Issue of the Witness's Retraction of his Testimony.

[مَسْأَلَةُ رُجُوعِ الشَّاهِدِ عَنْ شَهَادَتِهِ]

L29923 1801 - Issue: If a witness retracts their testimony after a judgment has been issued based on it or before the judgment is issued, what was judged based on it is revoked. However, if the witness dies, becomes insane, or changes—whether after testifying but before the judgment is issued based on their testimony or after the judgment has been issued—the judgment remains in effect in all cases and is not invalidated.

١٨٠١ - مَسْأَلَةٌ: وَإِذَا رَجَعَ الشَّاهِدُ عَنْ شَهَادَتِهِ بَعْدَ أَنْ حَكَمَ بِهَا، أَوْ قَبْلَ أَنْ يَحْكُمَ بِهَا فُسِخَ مَا حَكَمَ بِهَا فِيهِ، فَلَوْ مَاتَ، أَوْ جُنَّ، أَوْ تَغَيَّرَ - بَعْدَ أَنْ شَهِدَ قَبْلَ أَنْ يَحْكُمَ بِشَهَادَتِهِ، أَوْ بَعْدَ أَنْ حَكَمَ بِهَا - نَفَذَتْ عَلَى كُلِّ حَالٍ، وَلَمْ تُرَدَّ.

L29924 Ali said: "As for his death, insanity, and change, the testimony has been soundly established, and what occurred afterward did not require revoking it after its confirmation."

قَالَ عَلِيٌّ: أَمَّا مَوْتُهُ وَجُنُونُهُ وَتَغَيُّرُهُ فَقَدْ تَمَّتْ الشَّهَادَةُ صَحِيحَةً، وَلَمْ يُوجِبْ فَسْخَهَا بَعْدَ ثُبُوتِهَا مَا حَدَثَ بَعْدَ ذَلِكَ.

[51] **Hadith references (L29919):** Sahih Muslim 49a; Riyad as-Salihin 184.

As for retracting one's testimony: if two just witnesses impugn him at the time he testified, his testimony must be rejected. His own admission of lying or negligence holds more weight against him than another's testimony to that effect.

Our position is that it is the position of Ḥammād ibn Abī Sulaymān, and al-Ḥasan al-Baṣrī.

The Issue of the Jurisprudential Ruling on the Performance of Testimony

Issue 1802: Bearing testimony is a farḍ upon everyone who knows it, unless doing so would cause them difficulty due to excessive hardship, loss of wealth, or physical weakness. In such cases, they need only declare it.

Allah, the Most High, said: "Nor let the witnesses refuse when they are called." [Al-Baqarah: 282][52]

Therefore, this applies in its general sense when they are summoned to testify or to fulfill their duty.

It is impermissible to particularize anything of that without a scriptural text, thus whoever does so is asserting about Allah, the Exalted, what he has no knowledge of.

Case: If the judge does not know the witnesses.

Issue 1803: If the judge does not recognize the witnesses, he must ask about them, inform the person testified against about those who testified against him, and require the party in whose favor testimony is given to establish their uprightness.

He said to the one against whom testimony is given: "Seek means to refute their testimony against yourself." If their integrity is confirmed to him, he must judge based on their testimony without hesitation, as mentioned previously. If they are discredited before judgment, he shall not rule by

[52]**Qur'an references (L29929):** Qur'an 2:282 (Al-Baqarah).

وَأَمَّا رُجُوعُهُ عَنْ شَهَادَتِهِ: فَلَوْ أَنَّ عَدْلَيْنِ شَهِدَا بِجُرْحَتِهِ حِينَ شَهِدَ لَوَجَبَ رَدُّ مَا شَهِدَ بِهِ، وَإِقْرَارُهُ عَلَى نَفْسِهِ بِالْكَذِبِ أَوْ الْغَفْلَةِ أَثْبَتُ عَلَيْهِ مِنْ شَهَادَةِ غَيْرِهِ عَلَيْهِ بِذَلِكَ -.

وَقَوْلُنَا هُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالْحَسَنِ الْبَصْرِيِّ.

[مَسْأَلَة حُكْم أَدَاء الشَّهَادَة]

١٨٠٢ - مَسْأَلَةٌ: وَأَدَاءُ الشَّهَادَةِ فَرْضٌ عَلَى كُلِّ مَنْ عَلِمَهَا، إلَّا أَنْ يَكُونَ عَلَيْهِ حَرَجٌ فِي ذَلِكَ لِبُعْدِ مَشَقَّةٍ، أَوْ لِتَضْيِيعِ مَالٍ، أَوْ لِضَعْفٍ فِي جِسْمِهِ، فَلْيُعْلِنْهَا فَقَطْ.

قَالَ تَعَالَى: {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢]

فَهَذَا عَلَى عُمُومِهِ إذَا دُعُوا لِلشَّهَادَةِ، أَوْ دُعُوا لِأَدَائِهَا.

وَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ بِغَيْرِ نَصٍّ، فَيَكُونُ مَنْ فَعَلَ ذَلِكَ قَائِلًا عَلَى اللَّهِ تَعَالَى مَا لَا عِلْمَ لَهُ بِهِ.

[مَسْأَلَة إذَا لَمْ يَعْرِف الْحَاكِم الشُّهُود]

١٨٠٣ - مَسْأَلَةٌ: فَإِنْ لَمْ يَعْرِفْ الْحَاكِمُ الشُّهُودَ سَأَلَ عَنْهُمْ، وَأَخْبَرَ الْمَشْهُودَ بِمَنْ شَهِدَ عَلَيْهِ، وَكَلَّفَ الْمَشْهُودَ لَهُ أَنْ يُعَرِّفَهُ بِعَدَالَتِهِمْ.

وَقَالَ لِلْمَشْهُودِ عَلَيْهِ: اُطْلُبْ مَا تَرُدُّ بِهِ شَهَادَتَهُمْ عَنْ نَفْسِك، فَإِنْ ثَبَتَ عِنْدَهُ عَدَالَتُهُمْ قَضَى بِهِمْ وَلَمْ يَتَرَدَّدْ لِمَا ذَكَرْنَا قَبْلُ وَإِنْ جُرِّحُوا قَبْلَ الْحُكْمِ لَمْ يَحْكُمْ بِشَهَادَتِهِمْ، وَإِنْ جُرِّحُوا عِنْدَهُ بَعْدَ الْحُكْمِ بِشَهَادَتِهِمْ فَسَخَ مَا حَكَمَ بِهِ بِشَهَادَتِهِمْ؛ لِأَنَّهُ مُفْتَرَضٌ عَلَيْهِ رَدُّ

their testimony. If they are discredited before him after judgment through their testimony, he must revoke what he judged by their testimony, for it is incumbent upon him to reject the account of the transgressor, enforce the testimony of the just, and verify what is uncertain until clarified. And success is from Allah, the Most High.

خَبَرِ الْفَاسِقِ، وَإِنْفَاذُ شَهَادَةِ الْعَدْلِ وَالتَّبَيُّنُ فِيمَا لَا يُدْرَى حَتَّى يُدْرَى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of a woman assuming governance.

[مَسْأَلَة تولي الْمَرْأَة الْحُكْم]

1804. Issue: It is permissible for a woman to hold judicial authority—this being the opinion of Abū Ḥanīfa. It is reported that ʿUmar ibn al-Khaṭṭāb appointed al-Shifāʾ, a woman from his tribe, to oversee the market.

١٨٠٤ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ تَلِيَ الْمَرْأَةُ الْحُكْمَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَقَدْ رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ وَلَّى الشِّفَاءَ امْرَأَةً مِنْ قَوْمِهِ السُّوقَ.

If it is said: The Messenger of Allah (peace be upon him) has stated, "A nation who entrusts their affairs to any single woman will never succeed."

فَإِنْ قِيلَ: قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَنْ يُفْلِحَ قَوْمٌ أَسْنَدُوا أَمْرَهُمْ إِلَى امْرَأَةٍ» .

We said: The Messenger of Allah (peace and blessings be upon him) only said that regarding the general communal matter, namely the caliphate.

قُلْنَا: إِنَّمَا قَالَ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَمْرِ الْعَامِّ الَّذِي هُوَ الْخِلَافَةُ.

The evidence for that is his statement—peace and blessings be upon him—: "A woman is a guardian over her husband's wealth and is responsible for those entrusted to her care."

بُرْهَانُ ذَلِكَ -: قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «الْمَرْأَةُ رَاعِيَةٌ عَلَى مَالِ زَوْجِهَا وَهِيَ مَسْئُولَةٌ عَنْ رَعِيَّتِهَا» .

The Malikis have permitted her to serve as an executor (waṣiyyah) and agent (wakīlah), and no textual evidence exists preventing her from undertaking certain matters. And with Allah, the Exalted, lies all success.

وَقَدْ أَجَازَ الْمَالِكِيُّونَ أَنْ تَكُونَ وَصِيَّةً وَوَكِيلَةً وَلَمْ يَأْتِ نَصٌّ مِنْ مَنْعِهَا أَنْ تَلِيَ بَعْضَ الْأُمُورِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of a male slave holding judicial authority.

[مَسْأَلَة تولي الْعَبْد الْقَضَاء]

It is permissible for a slave to assume the position of a judge, as he is commanded to enjoin good and forbid evil.

١٨٠٥ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ يَلِيَ الْعَبْدُ الْقَضَاءَ؛ لِأَنَّهُ مُخَاطَبٌ بِالْأَمْرِ بِالْمَعْرُوفِ وَالنَّهْيِ عَنْ الْمُنْكَرِ.

And by the saying of Allah, the Most High: "Indeed, Allah commands you

to render the trusts to those entitled to them, and when you judge between people, judge with justice" [an-Nisāʾ 4:58].[53]

وَبِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ} [النساء: ٥٨] .

L29945 This ruling applies universally to men, women, free persons, and slaves, as the entirety of religious law remains unified—except when the scriptural text specifies a distinction between women and men, or between free persons and slaves, in which case such rulings are then exempted from the general principles of the law.

وَهَذَا مُتَوَجِّهٌ بِعُمُومِهِ إِلَى الرَّجُلِ، وَالْمَرْأَةِ، وَالْحُرِّ، وَالْعَبْدِ، وَالدِّينُ كُلُّهُ وَاحِدٌ، إِلَّا حَيْثُ جَاءَ النَّصُّ بِالْفَرْقِ بَيْنَ الْمَرْأَةِ، وَالرَّجُلِ، وَبَيْنَ الْحُرِّ، وَالْعَبْدِ فَيُسْتَثْنَى حِينَئِذٍ مِنْ عُمُومِ إِجْمَالِ الدِّينِ.

L29946 Malik and Abu Hanifah said: It is not permissible to appoint a slave as a judge, and we know of no valid basis whatsoever for the proponents of this view. An authenticated narration from the Messenger of Allah—peace and blessings be upon him—has been reported via Shuʻbah's chain, from Abu Imran al-Jawni, from ʻAbdullah ibn al-Samit, from Abu Dharr: He arrived at al-Rabadhah when the prayer had been established, and there was a slave leading them in prayer. Someone said: "This is Abu Dharr," so the slave started to step back. Abu Dharr said: "My beloved friend"—meaning the Messenger of Allah, peace and blessings be upon him—"advised me to hear and obey, even if he were a slave with amputated limbs."

وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ: لَا يَجُوزُ تَوْلِيَةُ الْعَبْدِ الْقَضَاءَ، وَمَا نَعْلَمُ لِأَهْلِ هَذَا الْقَوْلِ حُجَّةً أَصْلًا - وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ شُعْبَةَ نا أَبُو عِمْرَانَ الْجَوْنِيُّ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ «أَبِي ذَرٍّ أَنَّهُ انْتَهَى إِلَى الرَّبَذَةِ - وَقَدْ أُقِيمَتْ الصَّلَاةُ - فَإِذَا عَبْدٌ يَؤُمُّهُمْ، فَقِيلَ لَهُ: هَذَا أَبُو ذَرٍّ، فَذَهَبَ يَتَأَخَّرُ، فَقَالَ أَبُو ذَرٍّ: أَوْصَانِي خَلِيلِي - يَعْنِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ أَسْمَعَ وَأُطِيعَ وَإِنْ كَانَ عَبْدًا مُجَدَّعَ الْأَطْرَافِ» .

L29947 This is an explicit text affirming the guardianship of a slave, being an established ruling by Uthman in the presence of the Companions without any of them objecting to it.

فَهَذَا نَصٌّ جَلِيٌّ عَلَى وِلَايَةِ الْعَبْدِ، وَهُوَ فِعْلُ عُثْمَانَ بِحَضْرَةِ الصَّحَابَةِ لَا يُنْكِرُ ذَلِكَ مِنْهُمْ أَحَدٌ.

L29948 Through the chain of Sufyan al-Thawri, from Ibrāhīm ibn al-ʻAlāʾ, from Suwayd ibn Ghafalah, who said: "Umar ibn al-Khattāb said to me, 'Obey the imam even if he is a maimed slave.'"

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ إِبْرَاهِيمَ بْنِ الْعَلَاءِ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: قَالَ لِي عُمَرُ بْنُ الْخَطَّابِ: أَطِعْ الْإِمَامَ وَإِنْ كَانَ عَبْدًا مُجَدَّعًا.

L29949 Thus, this ʻUmar—no opponent from the Companions is known for him.

فَهَذَا عُمَرُ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ.

L29950–29951 **The issue of the testimony of the child of fornication.**

[مَسْأَلَة شَهَادَة وَلَد الزِّنَا]

[53] **Qur'an references (L29944):** Qur'an 4:58 (An-Nisa).

مَسْأَلَةٌ: وَشَهَادَةُ وَلَدِ الزِّنَى جَائِزَةٌ فِي الزِّنَى وَغَيْرِهِ، وَيَلِي الْقَضَاءَ، وَهُوَ كَغَيْرِهِ مِنْ الْمُسْلِمِينَ.

L29952 Issue: The testimony of a child of adultery is permissible in cases of adultery and other issues. He is eligible for judgeship and is treated like other Muslims.

وَلَا يَخْلُو أَنْ يَكُونَ عَدْلًا فَيُقْبَلَ، فَيَكُونَ كَسَائِرِ الْعُدُولِ، أَوْ غَيْرَ عَدْلٍ فَلَا يُقْبَلَ فِي شَيْءٍ أَصْلًا.

L29953 He must either be just—in which case he is accepted, and thus becomes like all other just individuals—or non-just, in which case he is not accepted in any matter at all.

وَلَا نَصَّ فِي التَّفْرِيقِ بَيْنَهُ وَبَيْنَ غَيْرِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ - وَهُوَ قَوْلُ الْحَسَنِ، وَالشَّعْبِيِّ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَالزُّهْرِيِّ - وَرُوِيَ عَنْ ابْنِ عَبَّاسٍ.

L29954 There is no explicit textual evidence regarding the legal differentiation between him and others—this being the opinion of Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, Isḥāq, and Abū Sulaymān—and likewise the opinion of al-Ḥasan, al-Shaʿbī, ʿAṭāʾ ibn Abī Rabāḥ, and al-Zuhrī—and it is reported from Ibn ʿAbbās.

وَرُوِيَ عَنْ نَافِعٍ: لَا تَجُوزُ شَهَادَتُهُ، وَقَالَ مَالِكٌ، وَاللَّيْثُ: يُقْبَلُ فِي كُلِّ شَيْءٍ إلَّا فِي الزِّنَى - وَهَذَا فَرْقٌ لَا نَعْرِفُهُ عَنْ أَحَدٍ قَبْلَهُمَا - قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ} [الأحزاب: ٥] وَإِذَا كَانُوا إخْوَانَنَا فِي الدِّينِ فَلَهُمْ مَا لَنَا وَعَلَيْهِمْ مَا عَلَيْنَا.

L29955 It is narrated from Nāfiʿ: His testimony is inadmissible. Mālik and al-Layth said: It is accepted in all matters except unlawful sexual intercourse—this distinction was not known from anyone before them. Allah, the Exalted and Glorious, said: "If you do not know their fathers, then they are your brothers in faith and your clients" [Al-Aḥzāb: 5]. Since they are our brothers in faith, they are entitled to what we are entitled to and obligated by what we are obligated by.[54]

فَإِنْ قِيلَ: قَدْ جَاءَ " وَلَدُ الزِّنَا شَرُّ الثَّلَاثَةِ ".

L29956 If it is said, "It has been narrated that the child of adultery is the worst of the three [involved in the act],"

فَقُلْنَا: هَذَا عَلَيْكُمْ لِأَنَّكُمْ تَقْبَلُونَهُ فِيمَا عَدَا الزِّنَى، وَمَعْنَى هَذَا الْخَبَرِ عِنْدَنَا: أَنَّهُ فِي إنْسَانٍ بِعَيْنِهِ لِلْآيَةِ الَّتِي ذَكَرْنَا، وَلِأَنَّهُ قَدْ كَانَ فِيمَنْ لَا يُعْرَفُ أَبُوهُ، وَمَنْ لَا يَعْدِلُهُ جَمِيعُ أَهْلِ الْأَرْضِ، مِنْ حِينِ انْقِرَاضِ عَصْرِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَى يَوْمِ الْقِيَامَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L29957 So we said: This is incumbent upon you because you accept it in matters other than adultery. The meaning of this narration according to us is that it concerns a specific individual due to the verse we mentioned, and because the ruling applies to those whose father is not known and those whom all people of the earth cannot match, from the end of the era of the Companions (may Allah be pleased with them) until the Day of Resurrection. And with Allah, the Most High, is success.

[مَسْأَلَة شَهَادَة مِنْ حُدَّ فِي زنا أَوْ قَذف أَوْ خَمْر أَوْ سَرِقَة ثُمَّ تاب]

The legal ruling on the testimony of a person who was subjected to ḥadd punishment for adultery (zinā), slander

L29958

[54] **Qur'an references (L29955):** Qur'an 33:5 (Al-Ahzab).

(qadhf), consuming intoxicants (khamr), or theft (sariqa) and subsequently repented.

L29959 1807 - Issue: If someone is subjected to a prescribed punishment for fornication, slanderous accusation (qadhf), alcohol consumption, or theft, then repents and reforms his condition, his testimony is permissible in all matters, including cases involving the same offense for which he was punished. This is because, as we previously explained, this scenario must be one of two possibilities: either he is upright (عدل)—in which case his testimony cannot be rejected for other matters and is valid in all things except where a specific text exists (and we only know of such a text regarding a Bedouin against a settled townsman exclusively)—or he is not upright, in which case his testimony is not accepted in anything. Any ruling beyond this is invalid and constitutes arbitrary judgment based on false conjecture without [support from] the Qur'an, the Sunnah, or sound rational evidence.

١٨٠٧ - مَسْأَلَةٌ: وَمَنْ حُدَّ فِي زِنًى، أَوْ قَذْفٍ، أَوْ خَمْرٍ، أَوْ سَرِقَةٍ، ثُمَّ تَابَ وَصَلَحَتْ حَالُهُ، فَشَهَادَتُهُ جَائِزَةٌ فِي كُلِّ شَيْءٍ، وَفِي مِثْلِ مَا حُدَّ فِيهِ لِمَا ذَكَرْنَا مِنْ أَنَّهُ لَا يَخْلُو هَذَا مِنْ أَنْ يَكُونَ عَدْلًا، فَلَا يَجُوزُ رَدُّ شَهَادَتِهِ لِغَيْرِهِ، وَفِي كُلِّ شَيْءٍ إلَّا حَيْثُ جَاءَ النَّصُّ وَلَا نَعْلَمُهُ إلَّا فِي الْبَدَوِيِّ عَلَى صَاحِبِ الْقَرْيَةِ فَقَطْ، أَوْ لَا يَكُونُ عَدْلًا فَلَا يُقْبَلُ فِي شَيْءٍ، وَمَا عَدَا هَذَا فَبَاطِلٌ وَتَحَكُّمٌ بِالظَّنِّ الْكَاذِبِ بِلَا قُرْآنٍ وَلَا سُنَّةٍ وَلَا مَعْقُولٍ.

L29960 A group held the opinion that concerning one subjected specifically to the ḥadd penalty for *qadhf* (defamatory accusation of unchastity), his testimony is never accepted—even if he repents—in any matter at all.

وَقَالَتْ طَائِفَةٌ فِي الْمَحْدُودِ فِي الْقَذْفِ خَاصَّةً: لَا تُقْبَلُ شَهَادَتُهُ أَبَدًا - وَإِنْ تَابَ - فِي شَيْءٍ أَصْلًا.

L29961 Others said that the testimony of someone subjected to hadd for drinking wine or other hadd offenses is not accepted at all.

وَقَالَ آخَرُونَ: لَا تُقْبَلُ شَهَادَةُ مَنْ حُدَّ فِي خَمْرٍ أَوْ غَيْرِ ذَلِكَ أَصْلًا.

L29962–29964 Thus, this statement was reported from ʿUmar in that forged letter: "Muslims are trustworthy." Some of them against others, except one who has been flogged as a prescribed ḥadd punishment, one against whom false testimony has been attempted, or one suspected due to clientage or kinship ties—and this is the statement of Al-Ḥasan ibn Ḥayy.

فَهَذَا الْقَوْلُ قَدْ جَاءَ عَنْ عُمَرَ فِي تِلْكَ الرِّسَالَةِ الْمَكْذُوبَةِ " الْمُسْلِمُونَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ إلَّا مَجْلُودًا حَدًّا أَوْ مُجَرَّبًا عَلَيْهِ شَهَادَةُ زُورٍ أَوْ ظَنِينًا فِي وَلَاءٍ أَوْ قَرَابَةٍ " وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ.

L29965 We have previously stated: There is no valid proof in anyone apart from the Messenger of Allah (may Allah's peace and blessings be upon him), nor is there an explicit text invalidating the testimony of those we have mentioned.

وَقَدْ قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا نَصَّ فِي رَدِّ شَهَادَةِ مَنْ ذَكَرْنَا.

L29966 As for the second opinion regarding the restriction applying to one who received the legal punishment for false accusation (qadhf), we have received a narration through Ibn Jurayj via Aṭāʾ al-Khurāsānī from Ibn ʿAbbās: "The testimony of the false accuser (qādhif) is not valid, even if he repents."

فَأَمَّا الْقَوْلُ الثَّانِي: فِي تَخْصِيصِ مَنْ حُدَّ فِي الْقَذْفِ، فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ ابْنِ عَبَّاسٍ: شَهَادَةُ الْقَاذِفِ لَا تَجُوزُ وَإِنْ تَابَ.

L29967 From the transmission of Ismāʿīl ibn Isḥāq: He said, “Abū al-Walīd al-Ṭayālisī narrated to us. Qays narrated to us from Sālim al-Aftas from Qays ibn ʿĀṣim: When a man would come to Abū Bakra seeking his testimony, he would say to him: ’Seek another witness besides me, for the Muslims have declared me a transgressor.”’

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - نا قَيْسٌ عَنْ سَالِمٍ - هُوَ الْأَفْطَسُ - عَنْ قَيْسِ بْنِ عَاصِمٍ: كَانَ أَبُو بَكْرَةَ إِذَا أَتَاهُ رَجُلٌ يُشْهِدُهُ قَالَ لَهُ: أَشْهِدْ غَيْرِي فَإِنَّ الْمُسْلِمِينَ قَدْ فَسَّقُونِي.

L29968 And it has been authentically reported from Al-Shaʿbi (in one of his two opinions), Al-Nakhaʿi, Ibn al-Musayyib (in one of his two opinions), Al-Hasan al-Basrī, Mujāhid (in one of his two opinions), Masrūq (in one of his two opinions), and Ikrimah (in one of his two opinions) that the testimony of a false accuser of unchastity is never accepted, even if he repents.

وَصَحَّ عَنْ الشَّعْبِيِّ فِي أَحَدِ قَوْلَيْهِ، وَالنَّخَعِيِّ، وَابْنِ الْمُسَيِّبِ - فِي أَحَدِ قَوْلَيْهِ - وَالْحَسَنِ الْبَصْرِيِّ، وَمُجَاهِدٍ - فِي أَحَدِ قَوْلَيْهِ - وَمَسْرُوقٍ - فِي أَحَدِ قَوْلَيْهِ - وَعِكْرِمَةَ - فِي أَحَدِ قَوْلَيْهِ -: أَنَّ الْقَاذِفَ لَا تُقْبَلُ شَهَادَتُهُ أَبَدًا وَإِنْ تَابَ.

L29969 It is reported from Shurayh that the testimony of one who has received the hadd punishment for false accusation of unchastity is never accepted.

وَعَنْ شُرَيْحٍ: الْمَحْدُودُ فِي الْقَذْفِ لَا تُقْبَلُ لَهُ شَهَادَةٌ أَبَدًا.

L29970 This is the opinion of Abū Ḥanīfah, his companions and Sufyān.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَسُفْيَانَ.

L29971 Others said: If one punished with the *hadd* for *qadhf* repents, his testimony becomes acceptable. This was transmitted to us from ʿUmar ibn al-Khaṭṭāb through Abū ʿUbayd’s chain: Saʿīd ibn Abī Maryam narrated to us from Muḥammad ibn Sālim from Ibrāhīm ibn Maysarah from Saʿīd ibn al-Musayyib that ʿUmar ibn al-Khaṭṭāb formally demanded their repentance—specifically Abū Bakrah and those who testified alongside him. Two repented while Abū Bakrah refused. The testimony of the two repentant witnesses was accepted, but Abū Bakrah’s testimony was not accepted.

وَقَالَ آخَرُونَ: إِنْ تَابَ الْمَحْدُودُ فِي الْقَذْفِ قُبِلَتْ شَهَادَتُهُ -: رُوِّينَا ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ عَنْ مُحَمَّدِ بْنِ سَالِمٍ عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ اسْتَتَابَهُمْ - يَعْنِي أَبَا بَكْرَةَ وَالَّذِينَ شَهِدُوا مَعَهُ - فَتَابَ اثْنَانِ وَأَبَى أَبُو بَكْرَةَ أَنْ يَتُوبَ، وَكَانَتْ شَهَادَتُهُمَا تُقْبَلُ وَكَانَ أَبُو بَكْرَةَ لَا تُقْبَلُ شَهَادَتُهُ.

L29972 And through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Muḥammad ibn Kathīr narrated to us, Sulaymān ibn Kathīr narrated to us from al-Zuhrī from Saʿīd ibn al-Musayyab that ʿUmar ibn al-Khaṭṭāb flogged Abū Bakrah, Shibl ibn Maʿbad, and Nāfiʿ (Abū ʿAbdullāh) for their false accusation of unlawful sexual intercourse against al-Mughīrah ibn Shuʿbah, and he said to them: “Whoever among you repents, his testimony will be accepted.”

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُلَيْمَانُ بْنُ كَثِيرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَلَدَ أَبَا بَكْرَةَ، وَشِبْلَ بْنَ مَعْبَدٍ، وَنَافِعًا أَبَا عَبْدِ اللَّهِ، عَلَى قَذْفِهِمْ الْمُغِيرَةَ بْنَ شُعْبَةَ، وَقَالَ لَهُمْ: مَنْ تَابَ مِنْكُمْ قُبِلَتْ شَهَادَتُهُ

L29973 And through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyib, who said: Three men testified against al-Mughīrah ibn Shuʿbah for unlawful sexual intercourse (zinā), so ʿUmar flogged them and said to them: “Repent; then your testimony will be accepted.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: شَهِدَ عَلَى الْمُغِيرَةِ بْنِ شُعْبَةَ ثَلَاثَةٌ بِالزِّنَى فَجَلَدَهُمْ عُمَرُ وَقَالَ لَهُمْ: تُوبُوا تُقْبَلُ شَهَادَتُكُمْ.

L29974 From the narration of Ali ibn Abi Talhah, from Ibn Abbas: If a slanderer of unchastity repents, his testimony is accepted with Allah, the Almighty and Majestic, in His Book.

وَمِنْ طَرِيقِ عَلِيِّ بْنِ أَبِي طَلْحَةَ عَنْ ابْنِ عَبَّاسٍ: الْقَاذِفُ إذَا تَابَ فَشَهَادَتُهُ عِنْدَ اللَّهِ عَزَّ وَجَلَّ فِي كِتَابِهِ تُقْبَلُ.

L29975–29976 It has also been authentically reported from Umar ibn Abd al-Aziz, Abu Bakr ibn Muhammad ibn Amr ibn Hazm, Ubayd Allah ibn Abd Allah ibn Utbah ibn Mas'ud, Ata', Tawus, Mujahid, Ibn Abi Najih, al-Sha'bi, al-Zuhri, Habib ibn Abi Thabit, Umar ibn Abd Allah ibn Abi Talhah al-Ansari, Sa'id ibn al-Musayyib, Ikrimah, Sa'id ibn Jubayr, al-Qasim ibn Muhammad, Salim ibn Abd Allah, Sulayman ibn Yasar, Ibn Qusayt, Yahya ibn Sa'id al-Ansari, Rabi'ah, and Shurayh.

وَصَحَّ أَيْضًا: عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَأَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ وَعُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ، وَعَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَابْنِ أَبِي نَجِيحٍ، وَالشَّعْبِيِّ، وَالزُّهْرِيِّ، وَحَبِيبِ بْنِ أَبِي ثَابِتٍ، وَعُمَرَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ الْأَنْصَارِيِّ، وَسَعِيدِ بْنِ الْمُسَيَّبِ، وَعِكْرِمَةَ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ: وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَسُلَيْمَانِ بْنِ يَسَارٍ، وَابْنِ قُسَيْطٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ، وَشُرَيْحٍ.

L29977 And this is the opinion of ʿUthmān al-Battī.

وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ.

L29978 Ibn Abi Layla, Malik, al-Shafi'i, Abi Thawr, Abi Ubayd, Ahmad, Ishaq, and some of our companions. However, Malik said: His testimony is not accepted in cases analogous to those for which a hadd was imposed, and we do not know of this distinction from anyone before him.

وَابْنِ أَبِي لَيْلَى، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَبَعْضِ أَصْحَابِنَا، إلَّا أَنَّ مَالِكًا قَالَ: لَا تُقْبَلُ شَهَادَتُهُ فِي مِثْلِ مَا حُدَّ فِيهِ، وَلَا نَعْلَمُ هَذَا الْفَرْقَ عَنْ أَحَدٍ قَبْلَهُ.

L29979 As for Abū Ḥanīfa, we know of no predecessors in holding that opinion except Shuraiḥ alone. He differed from all others from whom anything regarding that matter was transmitted, because they did not distinguish between one subject to a ḥadd punishment and one not subject to it. Thus, he differed from the majority of scholars in that.

وَأَمَّا أَبُو حَنِيفَةَ - فَلَا نَعْلَمُ لَهُ سَلَفًا فِي قَوْلٍ إلَّا شُرَيْحًا وَحْدَهُ، وَخَالَفَ سَائِرَ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ شَيْءٌ؛ لِأَنَّهُمْ لَمْ يَخُصُّوا مَحْدُودًا مِنْ غَيْرِ مَحْدُودٍ، فَقَدْ خَالَفَ جُمْهُورَ الْعُلَمَاءِ فِي ذَلِكَ.

L29980 Abu Muhammad said: Those who prohibit the acceptance of testimony from a false accuser of adultery - even if he repents - have cited a report we transmitted as evidence, which states: "When Hilāl ibn Umayyah falsely accused his wife of adultery, the Ansār said: 'Now the Messenger of Allah—peace and blessings be upon him—will flog Hilāl ibn Umayyah and invalidate his testimony among the Muslims.'"

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ مَنَعَ مِنْ قَبُولِ شَهَادَةِ الْقَاذِفِ - وَإِنْ تَابَ -: بِخَبَرٍ رُوِّينَاهُ، فِيهِ «أَنَّ هِلَالَ بْنَ أُمَيَّةَ إذْ قَذَفَ امْرَأَتَهُ، قَالَتْ الْأَنْصَارُ: الْآنَ يَضْرِبُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هِلَالَ بْنَ أُمَيَّةَ، وَيُبْطِلُ شَهَادَتَهُ فِي الْمُسْلِمِينَ» .

L29981 This report is unsound because it was solely narrated by Abbad ibn Mansur,

and Yahya al-Qattan testified against him by stating that he did not memorize well and did not approve of him. Ibn Ma'in also said: "He is not reliable."

وَهَذَا خَبَرٌ لَا يَصِحُّ؛ لِأَنَّهُ انْفَرَدَ بِهِ عَبَّادُ بْنُ مَنْصُورٍ، وَقَدْ شَهِدَ عَلَيْهِ يَحْيَى الْقَطَّانُ: بِأَنَّهُ كَانَ لَا يَحْفَظُ وَلَمْ يَرْضَهُ - وَقَالَ ابْنُ مَعِينٍ: لَيْسَ بِذَلِكَ.

L29982 Furthermore, had it been sound, they would have no grounds to rely on in it, because it does not state that if he repents, his testimony is not accepted. We do not contest their view that the testimony of the false accuser of unchastity is inadmissible.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنَّهُ إنْ تَابَ لَمْ تُقْبَلْ شَهَادَتُهُ، وَنَحْنُ لَا نُخَالِفُهُمْ فِي أَنَّ الْقَاذِفَ لَا تُقْبَلُ شَهَادَتُهُ.

L29983 Moreover, it is not from the speech of the Prophet—peace and blessings of Allah be upon him—nor is there any proof except in his speech—upon him be peace and blessings.

وَأَيْضًا: فَلَيْسَ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُجَّةَ إلَّا فِي كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L29984 Moreover, indeed their statement is an assumption that has not been substantiated. Thus, no crescent was sighted, nor has his testimony been rejected. This is sufficient.

وَأَيْضًا - فَإِنَّ ذَلِكَ الْقَوْلَ مِنْهُمْ ظَنٌّ لَمْ يَصِحَّ، فَمَا ضُرِبَ هِلَالٌ، وَلَا سَقَطَتْ شَهَادَتُهُ - وَفِي هَذَا كِفَايَةٌ.

L29985–29987 And they mentioned a corrupt report: We transmitted it through the transmission path of Ḥajjāj ibn Arṭā'a from ʿAmr ibn Shuʿayb from... From his father, from his grandfather: The Prophet—may Allah's peace and blessings be upon him—said, "Muslims are considered upright witnesses against one another, except one who has been penalized under Ḥadd for false accusation."

وَذَكَرُوا خَبَرًا فَاسِدًا: رُوِّينَاهُ مِنْ طَرِيقِ حَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْمُسْلِمُونَ عُدُولٌ بَعْضُهُمْ عَلَى بَعْضٍ إلَّا مَحْدُودًا فِي قَذْفٍ» .

L29988 Abu Muhammad said: This is a written document, and Al-Hajjaj is doomed. Moreover, they are the foremost in opposing it, for they do not accept the parents for their two sons, nor a son for his parents, nor either spouse for the other, nor the slave. This constitutes a sheer contradiction of this report.

قَالَ أَبُو مُحَمَّد: هَذِهِ صَحِيفَةٌ وَحَجَّاجٌ هَالِكٌ - ثُمَّ هُمْ أَوَّلُ مُخَالِفِينَ لَهُ؛ لِأَنَّهُمْ لَا يَقْبَلُونَ الْأَبَوَيْنِ لِابْنَيْهِمَا، وَلَا الِابْنَ لِأَبَوَيْهِ، وَلَا أَحَدَ الزَّوْجَيْنِ لِلْآخَرِ وَلَا الْعَبْدَ وَهَذَا خِلَافٌ مُجَرَّدٌ لِهَذَا الْخَبَرِ.

L29989 Furthermore — the phrase "except if he repents" may be added to this report with other textual sources.

وَأَيْضًا - فَقَدْ يُضَافُ إلَى هَذَا الْخَبَرِ " إلَّا إنْ تَابَ " بِنُصُوصٍ أُخَرَ.

L29990 They mentioned the words of Allah, the Exalted: {And do not accept their testimony ever, for they are the transgressors} [An-Nur: 4] {except those who

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {وَلا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ} [النور: ٤] {إِلا الَّذِينَ تَابُوا} [النور: ٥] قَالُوا: فَإِنَّمَا اسْتَثْنَى تَعَالَى بِالتَّوْبَةِ مِنْ الْفِسْقِ فَقَطْ.

repent} [An-Nur: 5]. They said: The Exalted made an exception only through repentance from transgression.[55]

L29991 Abu Muhammad said: This is a specification of the verse without proof; rather, the exception relates to the prohibition of accepting their testimony due to their moral deviance, as well as the inherent nature of such deviance. This cannot be extended beyond the text without explicit textual authority.

L29992 Ali said: For everyone about whom it is narrated that their testimony is not accepted—even if they repent—it has also been narrated that their testimony is accepted, except in the case of al-Ḥasan and al-Nakhaʿī only.

L29993 As for the report from Ibn Abbas, it is weak, and the more evident opinion from him is contrary to that.

L29994 As for the narration from Abū Bakrah stating, "The Muslims declared me a transgressor"—Allah forbid that this be valid. We have not heard of any Muslim declaring Abū Bakrah a transgressor, nor did they refuse to accept his testimony regarding the Prophet—peace and blessings of Allah be upon him—in matters of religious rulings. And success is from Allah, the Exalted.

L29995 ## The Issue of the Testimony of a Blind Person

L29996 Issue 1808: The testimony of a blind person is acceptable, like that of a legally sound person.

L29997 People have differed regarding this matter, and a group has expressed the same view as ours.

L29998 This has been narrated from Ibn ʿAbbās and confirmed from al-Zuhrī, ʿAṭāʾ, al-Qāsim ibn Muḥammad, al-Shaʿbī, Shurayḥ, Ibn Sīrīn, al-Ḥakam ibn ʿUṭaybah, Rabīʿah, Yaḥyā ibn Saʿīd al-Anṣārī, Ibn Jurayj, one of two opinions of al-Ḥasan, one of two opinions of Iyās ibn Muʿāwiyah, and one of two opinions of Ibn Abī Laylā—which is also the opinion of Mālik, al-Layth, Aḥmad, Isḥāq, Abū Sulaymān, and our companions.

قَالَ أَبُو مُحَمَّد: هَذَا تَخْصِيصٌ لِلْآيَةِ بِلَا دَلِيلٍ بَلْ الِاسْتِثْنَاءُ رَاجِعٌ إلَى الْمَنْعِ مِنْ قَبُولِ شَهَادَتِهِمْ مِنْ أَجْلِ فِسْقِهِمْ، وَإِلَى الْفِسْقِ، وَهَذَا لَا يَجُوزُ تَعَدِّيهِ بِغَيْرِ نَصٍّ.

قَالَ عَلِيٌّ: كُلُّ مَنْ رُوِيَ عَنْهُ - أَنْ لَا تُقْبَلَ شَهَادَتُهُ وَإِنْ تَابَ - فَقَدْ رُوِيَ عَنْهُ قَبُولُهَا، إلَّا الْحَسَنُ، وَالنَّخَعِيُّ فَقَطْ.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَضَعِيفَةٌ، وَالْأَظْهَرُ عَنْهُ خِلَافُ ذَلِكَ.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرَةَ " إنَّ الْمُسْلِمِينَ فَسَّقُونِي " فَمَعَاذَ اللَّهِ أَنْ يَصِحَّ، مَا سَمِعْنَا أَنَّ مُسْلِمًا فَسَّقَ أَبَا بَكْرَةَ، وَلَا امْتَنَعَ مِنْ قَبُولِ شَهَادَتِهِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَحْكَامِ الدِّينِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة شَهَادَة الْأَعْمَى]

١٨٠٨ - مَسْأَلَةٌ: وَشَهَادَةُ الْأَعْمَى مَقْبُولَةٌ كَالصَّحِيحِ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا.

وَرُوِيَ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَصَحَّ ذَلِكَ عَنْ الزُّهْرِيِّ، وَعَطَاءٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَالشَّعْبِيِّ، وَشُرَيْحٍ، وَابْنِ سِيرِينَ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَرَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَابْنِ جُرَيْجٍ، وَأَحَدِ قَوْلَيْ الْحَسَنِ، وَأَحَدِ قَوْلَيْ إيَاسِ بْنِ مُعَاوِيَةَ، وَأَحَدِ قَوْلَيْ ابْنِ أَبِي لَيْلَى - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

[55] **Qur'an references (L29990):** Qur'an 24:4 (An-Nur); Qur'an 24:5 (An-Nur).

L29999 A group of scholars held that his testimony is valid for matters he knew before blindness but invalid for matters he knew after blindness—an opinion held by al-Ḥasan al-Baṣrī and one of the two positions of Ibn Abī Laylā.

وَقَالَتْ طَائِفَةٌ: تَجُوزُ شَهَادَتُهُ فِيمَا عَرَفَ قَبْلَ الْعَمَى، وَلَا تَجُوزُ فِيمَا عَرَفَ بَعْدَ الْعَمَى - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَأَحَدُ قَوْلَيْ ابْنِ أَبِي لَيْلَى.

L30000–30001 It is the view of Abū Yūsuf, al-Shāfiʿī, and his companions.

وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِ.

L30002 A group said: His testimony is permissible in minor matters. This has been narrated to us via the transmission of Ibrāhīm al-Nakhaʿī, who said: They used to permit the testimony of a blind person in light matters.

وَقَالَتْ طَائِفَةٌ: تَجُوزُ شَهَادَتُهُ فِي الشَّيْءِ الْيَسِيرِ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: كَانُوا يُجِيزُونَ شَهَادَةَ الْأَعْمَى فِي الشَّيْءِ الْخَفِيفِ.

L30003 A group has said: It is not accepted in anything whatsoever, except in matters of lineage—this being the statement of Zufar. It has been narrated to us through the chain of ʻAbd al-Razzāq from Wakīʻ from Abū Ḥanīfah, and Abū Ḥanīfah's companions do not recognize this narration.

وَقَالَتْ طَائِفَةٌ: لَا تُقْبَلُ فِي شَيْءٍ أَصْلًا، إِلَّا فِي الْأَنْسَابِ - وَهُوَ قَوْلُ زُفَرَ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ وَكِيعٍ عَنْ أَبِي حَنِيفَةَ، وَلَا يَعْرِفُ أَصْحَابُهُ هَذِهِ الرِّوَايَةَ.

L30004 A group has said: It is not accepted in general—we have received narrations from Ali ibn Abi Talib, Iyas ibn Mu'awiyah, Al-Hasan, and Al-Nakha'i—that the latter two disapproved of the testimony of the blind.

وَقَالَتْ طَائِفَةٌ: لَا تُقْبَلُ جُمْلَةً - رُوِّينَا ذَلِكَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَنْ إِيَاسِ بْنِ مُعَاوِيَةَ، وَعَنْ الْحَسَنِ، وَالنَّخَعِيِّ: أَنَّهُمَا كَرِهَا شَهَادَةَ الْأَعْمَى.

L30005 Abu Hanifah said: Testimony is not admissible in any matter at all—neither regarding what one knew prior to blindness nor what was recognized after becoming blind.

وَقَالَ أَبُو حَنِيفَةَ: لَا تُقْبَلُ فِي شَيْءٍ أَصْلًا، لَا فِيمَا عَرَفَ قَبْلَ الْعَمَى، وَلَا فِيمَا عَرَفَ بَعْدَهُ.

L30006 Abu Muhammad said: As for those who permit it in small matters but forbid it in large ones, this is an utterly corrupt opinion because there is no evidence to support it, for Allah the Exalted has not prohibited large amounts except what He prohibited in small amounts.

قَالَ أَبُو مُحَمَّد: أَمَّا مَنْ أَجَازَهُ فِي الشَّيْءِ الْيَسِيرِ دُونَ الْكَثِيرِ، فَقَوْلٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَمَا حَرَّمَ اللَّهُ تَعَالَى مِنْ الْكَثِيرِ إِلَّا مَا حَرَّمَ مِنْ الْقَلِيلِ.

L30007 It has been authentically reported from the Prophet - peace and blessings of Allah be upon him -: "Whoever usurps a Muslim's property with his right hand, even if it is a tooth-stick from an arak tree, Allah will condemn him to Hellfire."

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ اقْتَطَعَ بِيَمِينِهِ مَالَ مُسْلِمٍ وَلَوْ قَضِيبًا مِنْ أَرَاكٍ أَوْجَبَ اللَّهُ لَهُ النَّارَ» .

L30008 Furthermore, there is nothing in the world considered "much" except relative to what is less than it, and it is "little" relative to what is more than it—thus this statement is unreasonable and therefore invalid.

وَأَيْضًا فَإِنَّهُ لَيْسَ فِي الْعَالَمِ كَثِيرٌ إِلَّا بِالْإِضَافَةِ إلَى مَا هُوَ أَقَلُّ مِنْهُ، وَهُوَ قَلِيلٌ بِالْإِضَافَةِ إلَى مَا هُوَ أَكْثَرُ مِنْهُ - فَهُوَ قَوْلٌ لَا يُعْقَلُ فَسَقَطَ.

L30009 As for one who accepts this division solely in matters of lineage, it is invalid. For he only knows lineages insofar as he knows the informants who report on other matters and the witnesses sourced exclusively from those informants. Thus, this assertion too is invalidated.

وَأَمَّا مَنْ قَبِلَهُ فِي الْأَنْسَابِ فَقَطْ فَقِسْمَةٌ فَاسِدَةٌ، فَإِنَّهُ لَا يَعْرِفُ الْأَنْسَابَ إِلَّا مِنْ حَيْثُ يَعْرِفُ الْمُخْبِرِينَ بِغَيْرِ ذَلِكَ وَالْمُشْهِدِينَ لَهُ مِنْهُمْ فَقَطْ - فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا.

L30010 As for the one who does not accept it - neither in what he knew before blindness nor after it - this constitutes an invalid statement with no proof whatsoever for its validity, and there is no distinction between what he knew during his soundness and what a sound person knew while his soundness and sight persisted.

وَأَمَّا مَنْ لَمْ يَقْبَلْهُ لَا فِيمَا عَرَفَ قَبْلَ الْعَمَى وَلَا بَعْدَهُ، فَقَوْلٌ فَاسِدٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ أَصْلًا، وَلَا فَرْقَ بَيْنَ مَا عَرَفَهُ فِي حَالِ صِحَّتِهِ، وَبَيْنَ مَا عَرَفَهُ الصَّحِيحُ وَتَمَادَتْ صِحَّتُهُ وَبَصَرُهُ.

L30011 If it is said: It is a statement narrated from ʿAlī ibn Abī Ṭālib.

فَإِنْ قِيلَ: هُوَ قَوْلٌ رُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ.

L30012 We said: This is a lie. It has never at all been reported from Ali that he said, "It is not accepted regarding what one knew before becoming blind"—nor was this known from anyone before Abu Hanifah.

قُلْنَا: هَذَا كَذِبٌ، مَا جَاءَ قَطُّ عَنْ عَلِيٍّ أَنَّهُ قَالَ: لَا يُقْبَلُ فِيمَا عَرَفَ قَبْلَ الْعَمَى - وَمَا عُرِفَ هَذَا عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ.

L30013–30014 Moreover, it is not authentically reported from Ali because it is transmitted through Al-Aswad ibn Qays's chain from shaykhs among his people or via Al-Hajjaj ibn Artat — and it has been narrated from Ibn Abbas contrary to that — thus this statement is dismissed.

وَأَيْضًا - فَإِنَّهُ لَا يَصِحُّ عَنْ عَلِيٍّ، لِأَنَّهُ مِنْ طَرِيقِ الْأَسْوَدِ بْنِ قَيْسٍ عَنْ أَشْيَاخٍ مِنْ قَوْمِهِ أَوْ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَقَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ خِلَافُ ذَلِكَ - فَسَقَطَ هَذَا الْقَوْلُ.

L30015 As for those who permitted testimony regarding what one knew before blindness but did not permit it regarding what one knew after blindness, they cited as evidence the narration from the Prophet—peace and blessings be upon him—who was asked about testimony and replied: "Do you not see the sun in its position? Then testify or refrain."

وَأَمَّا مَنْ أَجَازَهُ فِيمَا عَلِمَ قَبْلَ الْعَمَى، وَلَمْ يُجِزْهُ فِيمَا عَلِمَ بَعْدَ الْعَمَى، فَإِنَّهُمْ احْتَجُّوا بِمَا رُوِيَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّهُ سُئِلَ عَنْ الشَّهَادَةِ؟ فَقَالَ: أَلَا تَرَى الشَّمْسَ عَلَى مِثْلِهَا فَاشْهَدْ أَوْ دَعْ» .

L30016 Abu Muhammad said: This is a report whose chain of transmission is invalid, as it comes through Muhammad ibn Sulayman ibn Masmuul (who is rejected) from Ubayd Allah ibn Salamah ibn Wahram (who is weak). However, its meaning is sound. They stated: Voices may resemble each other, and the blind person is like one placed in darkness or behind a wall - we know of nothing else for them besides this.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَبَرٌ لَا يَصِحُّ سَنَدُهُ، لِأَنَّهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ سُلَيْمَانَ بْنِ مَسْمُولٍ - وَهُوَ هَالِكٌ - عَنْ عُبَيْدِ اللَّهِ بْنِ سَلَمَةَ بْنِ وَهْرَامَ - وَهُوَ ضَعِيفٌ - لَكِنَّ مَعْنَاهُ صَحِيحٌ، وَقَالُوا: الْأَصْوَاتُ قَدْ تَشْتَبِهُ، وَالْأَعْمَى كَمَنْ أُشْهِدَ فِي ظُلْمَةٍ أَوْ خَلْفَ حَائِطٍ - مَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا.

L30017 Abu Muhammad said: If voices can be similar, then forms can also be similar. It is not permissible for a sighted person nor a blind person to testify except regarding that which he is certain of and has no doubt about it.

قَالَ أَبُو مُحَمَّد: إنْ كَانَتْ الْأَصْوَاتُ تَشْتَبِهُ فَالصُّوَرُ أَيْضًا قَدْ تَشْتَبِهُ، وَمَا يَجُوزُ لِمُبْصِرٍ وَلَا أَعْمَى أَنْ يَشْهَدَ إلَّا بِمَا يُوقِنُ وَلَا يَشُكُّ فِيهِ.

وَمَنْ أُشْهِدَ خَلْفَ حَائِطٍ أَوْ فِي ظُلْمَةٍ فَأَيْقَنَ بِلَا شَكٍّ بِمَنْ أَشْهَدَهُ فَشَهَادَتُهُ مَقْبُولَةٌ فِي ذَلِكَ.

وَلَوْ لَمْ يَقْطَعْ الْأَعْمَى بِصِحَّةِ الْيَقِينِ عَلَى مَنْ يُكَلِّمُهُ لَمَا حَلَّ لَهُ أَنْ يَطَأَ امْرَأَتَهُ، إذْ لَعَلَّهَا أَجْنَبِيَّةٌ، وَلَا يُعْطِي أَحَدًا دَيْنًا عَلَيْهِ، إذْ لَعَلَّهُ غَيْرُهُ، وَلَا أَنْ يَبِيعَ مِنْ أَحَدٍ وَلَا أَنْ يَشْتَرِيَ.

وَقَدْ قَبِلَ النَّاسُ كَلَامَ أُمَّهَاتِ الْمُؤْمِنِينَ مِنْ خَلْفِ الْحِجَابِ.

فَإِنْ قَالُوا: إنَّمَا حَلَّ لَهُ وَطْءُ امْرَأَتِهِ بِغَلَبَةِ الظَّنِّ، كَمَا يَحِلُّ لَهُ ذَلِكَ فِي دُخُولِهَا عَلَيْهِ أَوَّلَ مَرَّةٍ وَلَعَلَّهَا غَيْرُهَا.

قُلْنَا: هَذَا بَاطِلٌ وَلَا يَجُوزُ لَهُ وَطْؤُهَا حَتَّى يُوقِنَ أَنَّهَا الَّتِي تَزَوَّجَ.

وَقَدْ أَمَرَ اللَّهُ تَعَالَى بِقَبُولِ الْبَيِّنَةِ، وَلَمْ يَشْتَرِطْ أَعْمَى مِنْ مُبْصِرٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَمَا نَعْلَمُ فِي الضَّلَالَةِ بَعْدَ الشِّرْكِ وَالْكَبَائِرِ أَكْبَرَ مِمَّنْ دَانَ اللَّهَ بِرَدِّ شَهَادَةِ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ أُمِّ كُلْثُومٍ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ -.

وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

[مَسْأَلَة لُزُوم الشَّهَادَة بلفظ أَشْهَد]

١٨٠٩ - مَسْأَلَةٌ: وَكُلُّ مَنْ سَمِعَ إنْسَانًا يُخْبِرُ بِحَقٍّ لِزَيْدٍ عَلَيْهِ إخْبَارًا صَحِيحًا تَامًّا لَمْ يَصِلْهُ بِمَا يُبْطِلُهُ، أَوْ بِأَنَّهُ قَدْ وَهَبَ أَمْرًا كَذَا لِفُلَانٍ، أَوْ أَنَّهُ أَنْكَحَ زَيْدًا، أَوْ أَيَّ شَيْءٍ

L30018 Whoever is made a witness behind a wall or in darkness and becomes certain without doubt of the one who called them to witness, their testimony is accepted in that case.

L30019 If the blind man were not confident in the validity of his conviction regarding the one he addresses, it would not be lawful for him to have intercourse with his wife, for she might be a woman not lawful for him. Nor should he repay a debt to anyone, for the recipient might be someone other than the actual creditor. Nor should he sell to anyone or purchase from anyone.

L30020 And the people accepted the words of the Mothers of the Believers from behind the veil.

L30021 If they say: It is only permissible for him to have intercourse with his wife based on a strong legal presumption, just as it is permissible for him to do so upon their first consummation, for she might be another woman.

L30022 We said: This is invalid, and it is not permissible for him to have intercourse with her until he ascertains that she is the one he married.

L30023 Allah, the Exalted, has commanded the acceptance of clear evidence, and He has not stipulated favoring a blind person over a sighted one: “And your Lord is not forgetful” (Maryam 19:64).[1]

L30024 And we do not know of any misguidance greater than—after [the sins of] polytheism and grave transgressions—that of one who ascribes to Allah the rejection of the testimony of Jābir ibn ʿAbdullāh, Ibn Umm Kulthūm, Ibn ʿAbbās, and Ibn ʿUmar.

L30025 We seek refuge in Allah from abandonment.

L30026 **The question of the necessity of the *Shahādah* including the explicit wording “I bear witness.”**

L30027–30029 1809 – Issue: Every person who hears someone make a valid and complete announcement of a right owed by Zaid to him—provided no contradictory information invalidating it has reached him—or [hears] that he has gifted

[1] **Qur’an references (L30023):** Qur’an 19:64 (Maryam).

such-and-such a matter to so-and-so, or that he has married Zaid off [to someone], or anything of that nature... Thus, whether he said to him: “Bear witness to this against me,” or “I take you as a witness,” or he did not say anything of that sort to him, or did not address him at all but addressed someone else, or said to him: “Do not bear witness against me, for I do not take you as a witness”—all of that is treated equally. It is obligatory upon him to testify regarding all of that.

كَانَ، فَسَوَاءٌ قَالَ لَهُ: اشْهَدْ بِهَذَا عَلَيَّ أَوْ أَنَا أُشْهِدُك أَوْ لَمْ يَقُلْ لَهُ شَيْئًا مِنْ ذَلِكَ، أَوْ لَمْ يُخَاطِبْهُ أَصْلًا، لَكِنْ خَاطَبَ غَيْرَهُ، أَوْ قَالَ لَهُ: لَا تَشْهَدْ عَلَيَّ فَلَسْت أُشْهِدُك - كُلُّ ذَلِكَ سَوَاءٌ - وَفُرِضَ عَلَيْهِ أَنْ يَشْهَدَ بِكُلِّ ذَلِكَ.

L30030 And it is obligatory for the judge to accept that testimony and rule by it, because there has come neither a Quran nor a Sunnah, nor a statement from any of the Companions—may Allah be pleased with them—nor any analogy based on the distinction between anything of that.

وَفُرِضَ عَلَى الْحَاكِمِ قَبُولُ تِلْكَ الشَّهَادَةِ وَالْحُكْمُ بِهَا؛ لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا قَوْلُ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا قِيَاسٌ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

L30031 And Abu Hanifah said, “He does not bear witness unless he is told: ’Bear witness against us.”’

وَقَالَ أَبُو حَنِيفَةَ لَا يَشْهَدُ حَتَّى يُقَالَ لَهُ: اشْهَدْ عَلَيْنَا.

L30032 And similarly, if the witness said to the judge: “I inform you,” or “I tell you,” or “I make known to you,” or did not say: “I testify”—all of that is equivalent—and all of that constitutes valid testimony. The judge is obligated to rule based on it, because neither a Quranic verse, nor a Sunnah, nor a statement of a companion, nor analogy, nor sound reasoning has been established that distinguishes between any of these expressions.

قَالَ أَبُو مُحَمَّدٍ: وَكَذَلِكَ إنْ قَالَ الشَّاهِدُ لِلْقَاضِي: أَنَا أُخْبِرُك، أَوْ أَنَا أَقُولُ لَك، أَوْ أَنَا أُعْلِمُك، أَوْ لَمْ يَقُلْ: أَنَا أَشْهَدُ - فَكُلُّ ذَلِكَ سَوَاءٌ - وَكُلُّ ذَلِكَ شَهَادَةٌ تَامَّةٌ فُرِضَ عَلَى الْحَاكِمِ الْحُكْمُ بِهَا؛ لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا مَعْقُولٌ: بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ -.

L30033 And with Allah, the Exalted, is success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30034 If it is said: The Quran and the Sunnah have both mentioned the use of the term “testimony” for that.

فَإِنْ قِيلَ: إنَّ الْقُرْآنَ، وَالسُّنَّةَ وَرَدَا بِتَسْمِيَةِ ذَلِكَ شَهَادَةً.

L30035 We said: Yes, and this does not mean [the testimony] is not accepted unless he explicitly states, “I testify.” For we have established our basis—and you have established yours—concerning the rejection of the transgressor’s testimony, based on the statement of Allah, Exalted is He: *“If a wicked person comes to you with news, investigate...”* (Quran 49:6).[2]

قُلْنَا: نَعَمْ، وَلَيْسَ فِي ذَلِكَ أَنَّهُ لَا يُقْبَلُ حَتَّى يَقُولَ: أَنَا أَشْهَدُ فَقَدْ جَعَلْنَا مُعْتَمَدَنَا وَجَعَلْتُمْ مُعْتَمَدَكُمْ فِي رَدِّ شَهَادَةِ الْفَاسِقِ قَوْلَ اللَّهِ تَعَالَى: {إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا} [الحجرات: ٦] .

L30036 Thus, it is established that every testimony is a report, and every report is a

[2]**Qur’an references (L30035):** Qur’an 49:6 (Al-Hujurat).

testimony—both being statements, both being assertions, and all such being a recounting. And with Allah, the Exalted, is success.

- فَصَحَّ أَنَّ كُلَّ شَهَادَةٍ نَبَأٌ، وَكُلَّ نَبَأٍ شَهَادَةٌ وَكِلَاهُمَا خَبَرٌ، وَكِلَاهَا قَوْلٌ، وَكُلُّ ذَلِكَ حِكَايَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The jurisprudential issue of ruling through *qafah* in determining the child's lineage.

[مَسْأَلَة الْحُكْمِ بِالْقَافَةِ فِي لحاق الْوَلَد]

1810 – Issue: The ruling by the qāfah experts in attributing the child's parentage is obligatory for both free women and slave women—this is the opinion of Al-Shāfiʿī and Abī Sulaymān.

١٨١٠ - مَسْأَلَةٌ: وَالْحُكْمُ بِالْقَافَةِ فِي لِحَاقِ الْوَلَدِ وَاجِبٌ فِي الْحَرَائِرِ وَالْإِمَاءِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

Malik said: Judgment is passed on the basis of their testimony concerning the child of a female slave, but not concerning the child of a free woman—and this is a categorization without legal proof.

وَقَالَ مَالِكٌ: يُحْكَمُ بِشَهَادَتِهِمْ فِي وَلَدِ الْأَمَةِ، وَلَا يُحْكَمُ بِهِ فِي وَلَدِ الْحُرَّةِ - وَهَذَا تَقْسِيمٌ بِلَا بُرْهَانٍ.

Abu Hanifah said: No ruling is made through them in any matter.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُحْكَمُ بِهِمْ فِي شَيْءٍ.

The proof for the validity of our statement: «That the Messenger of Allah—prayers and peace be upon him—was pleased with the statement of Mujazziz al-Mudliji when he saw the feet of Zayd ibn Ḥāritha and his son Usāma, and said: 'These feet - some of them are from others'» - and he—prayers and peace be upon him—is not pleased with falsehood, nor is he pleased except with an incontrovertible truth.

بُرْهَانُ صِحَّةِ قَوْلِنَا: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُرَّ بِقَوْلِ مُجَزِّزٍ الْمُدْلِجِيِّ إذْ رَأَى أَقْدَامَ زَيْدِ بْنِ حَارِثَةَ، وَابْنِهُ أُسَامَةَ فَقَالَ: إنَّ هَذِهِ الْأَقْدَامَ بَعْضُهَا مِنْ بَعْضٍ» - وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يُسَرُّ بِبَاطِلٍ، وَلَا يُسَرُّ إلَّا بِحَقٍّ مَقْطُوعٍ بِهِ.

It is astonishing that Abū Ḥanīfah contradicts the ruling of the Messenger of Allāh—peace be upon him—established from him, rejects sound knowledge with a clear basis, and then opines that a child should be attributed to two fathers—each claimed as his father—and two mothers—each claimed as his mother—thereby producing something irrational, neither grounded in reason nor ever mentioned in the Qur'ān or the Sunnah.

فَمِنْ الْعَجَبِ أَنَّ أَبَا حَنِيفَةَ يُخَالِفُ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثَّابِتَ عَنْهُ وَيُنْكِرُ عِلْمًا صَحِيحًا مَعْرُوفَ الْوَجْهِ، ثُمَّ يَرَى أَنْ يُلْحِقَ الْوَلَدَ بِأَبَوَيْنِ كُلُّ وَاحِدٍ مِنْهُمَا أَبُوهُ، وَبِامْرَأَتَيْنِ كُلُّ وَاحِدَةٍ مِنْهُمَا أُمُّهُ - فَيَأْتِي مِنْ ذَلِكَ بِمَا لَا يُعْقَلُ، وَلَا جَاءَ بِهِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ.

It is surprising that Mālik cites the mentioned report of Mujazziz as evidence, then contradicts it, because Mujazziz only said that regarding the son of a free woman, not the son of a slave woman. And success comes only from Allah, the Exalted.

وَالْعَجَبُ مِنْ مَالِكٍ إذْ يَحْتَجُّ بِخَبَرِ مُجَزِّزٍ الْمَذْكُورِ، ثُمَّ يُخَالِفُهُ، لِأَنَّ مُجَزِّزًا إنَّمَا قَالَ ذَلِكَ فِي ابْنِ حُرَّةٍ لَا فِي ابْنِ أَمَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30045 **The ruling is that no one may issue legal rulings except those whom the Qurashi Imam—whose obedience is obligatory—has personally appointed.**

L30046 C:AH,AQ 1811 - Issue: It is not allowed to give a ruling except who is approved for it by the Qurashi Imam whose obedience is obligatory. If that is not possible then it is valid for any Muslim of virtue to fulfill any right and anything false is rejected.

L30047 The proof of that is: what we have previously mentioned regarding the obligation to obey the ruler. If one is unable to do so, then Allah, the Exalted, says: "Stand firmly for justice." [An-Nisā' 135][3]

L30048 Allah the Exalted said: "Be just; it is nearer to piety" [Al-Ma'idah 5:8]. This is a generality for every Muslim.[4]

L30049 The opponents have agreed with us that not every judgment is enforceable. Thus, it is obligatory upon them not to enforce anyone's judgment except those whose enforcement the Quran and the Messenger of Allah (peace and blessings of Allah be upon him) have mandated. And success is from Allah, the Most High.

L30050 **The Issue of Earning a Livelihood From the Judicial Function.**

L30051 1812 - Issue: Receiving payment for judicial rulings is permissible, as established by his saying (peace be upon him), "Whoever is given wealth without asking or covetousness of the soul, let him take it." Success comes only from Allah, the Most High.

L30052 **Issue: Does the Imam have the right to dismiss the judge whenever he wishes?**

L30053 1813 – Issue: It is permissible for the Imam to relieve a judge from duty at any time, absent misconduct. This is demonstrated by the precedent that "the

[3] **Qur'an references (L30047):** Qur'an 4:135 (An-Nisa).
[4] **Qur'an references (L30048):** Qur'an 5:8 (Al-Ma'idah).

[مَسْأَلَةَ لَا يَجُوزُ الْحُكْمُ إِلَّا مِمَّنْ وَلَّاهُ الْإِمَامُ الْقُرَشِيُّ الْوَاجِبَةُ طَاعَتُهُ]

١٨١١ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْحُكْمُ إِلَّا مِمَّنْ وَلَّاهُ الْإِمَامُ الْقُرَشِيُّ الْوَاجِبَةُ طَاعَتُهُ، فَإِنْ لَمْ يَقْدِرْ عَلَى ذَلِكَ فَكُلُّ مَنْ أَنْفَذَ حَقًّا فَهُوَ نَافِذٌ، وَمَنْ أَنْفَذَ بَاطِلًا فَهُوَ مَرْدُودٌ.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَا مِنْ وُجُوبِ طَاعَةِ الْإِمَامِ قَبْلُ فَإِذَا لَمْ يَقْدِرْ عَلَى ذَلِكَ فَاَللَّهُ تَعَالَى يَقُولُ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥]

وَقَالَ تَعَالَى: {اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى} [المائدة: ٨] وَهَذَا عُمُومٌ لِكُلِّ مُسْلِمٍ.

وَقَدْ وَافَقَنَا الْمُخَالِفُونَ عَلَى أَنَّهُ لَيْسَ كُلُّ مَنْ حَكَمَ فَهُوَ نَافِذٌ حُكْمُهُ، فَوَجَبَ عَلَيْهِمْ أَنْ لَا يُنْفِذُوا حُكْمَ أَحَدٍ إِلَّا مَنْ أَوْجَبَ الْقُرْآنُ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفَاذَ حُكْمِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ الِارْتِزَاقُ عَلَى الْقَضَاءِ]

١٨١٢ - مَسْأَلَةٌ: وَالِارْتِزَاقُ عَلَى الْقَضَاءِ جَائِزٌ لِلثَّابِتِ مِنْ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «مَنْ أَتَاهُ مَالٌ فِي غَيْرِ مَسْأَلَةٍ أَوْ إِشْرَافِ نَفْسٍ فَلْيَأْخُذْهُ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ هَلْ للإمام عَزْل الْقَاضِي مَتَى شَاءَ]

١٨١٣ - مَسْأَلَةٌ: وَجَائِزٌ لِلْإِمَامِ أَنْ يَعْزِلَ الْقَاضِيَ مَتَى شَاءَ عَنْ غَيْرِ خَرِبَةٍ، قَدْ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِيًّا إِلَى الْيَمَنِ قَاضِيًا، ثُمَّ صَرَفَهُ حِينَ حَجَّةِ الْوَدَاعِ وَلَمْ يَرْجِعْ إِلَى الْيَمَنِ بَعْدَهَا» .

Messenger of Allah—peace and blessings be upon him—sent ʿAlī to Yemen as a judge, then recalled him during the Farewell Pilgrimage, after which he did not resume his position in Yemen."

[مَسْأَلَة قَالَ لَهُ قَاضٍ قَدْ ثَبَتَ عَلَى هَذَا الصَّلْبُ أَوْ الْقَتْلُ وَغَيْر ذَلِكَ]

L30054 **Issue: A judge said to him, "Crucifixion, execution, or other such penalties have been established against this person."**

١٨١٤ - مَسْأَلَةٌ: وَمَنْ قَالَ لَهُ قَاضٍ: قَدْ ثَبَتَ عَلَى هَذَا: الصَّلْبُ، أَوْ الْقَتْلُ، أَوْ الْقَطْعُ، أَوْ الْجَلْدُ، أَوْ أَخْذُ مَالٍ مِقْدَارُهُ كَذَا مِنْهُ، فَأَنْفِذْ ذَلِكَ عَلَيْهِ -: فَإِنْ كَانَ الْمَأْمُورُ مِنْ أَهْلِ الْعِلْمِ بِالْقُرْآنِ وَالسُّنَنِ لَمْ يَحِلَّ لَهُ إنْفَاذُ شَيْءٍ مِنْ ذَلِكَ - إنْ كَانَ الْآمِرُ لَهُ جَاهِلًا، أَوْ غَيْرَ عَدْلٍ - إلَّا حَتَّى يُوقِنَ أَنَّهُ قَدْ وَجَبَ عَلَيْهِ مَا ذَكَرَ لَهُ فَيَلْزَمُهُ إنْفَاذُهُ حِينَئِذٍ وَإِلَّا فَلَا.

L30055 Issue 1814: If a judge instructs someone: "It has been established against this individual: crucifixion, execution, amputation, flogging, or the seizure of property amounting to such-and-such from him—then implement this against him," then if the instructed person is among the scholars of the Quran and the Sunnah, it is not permissible for him to carry out any of that if the one who commanded him is ignorant or unjust, unless he attains certainty that what has been mentioned is indeed obligatory upon him. In that case, he must implement it at that point; otherwise, he must not.

وَإِنْ كَانَ الْآمِرُ لَهُ عَالِمًا فَاضِلًا لَمْ يَحِلَّ لَهُ أَيْضًا إنْفَاذُ أَمْرِهِ إلَّا حَتَّى يَسْأَلَهُ مِنْ أَيِّ وَجْهٍ وَجَبَ ذَلِكَ عَلَيْهِ؟ فَإِذَا أَخْبَرَهُ، فَإِنْ كَانَ ذَلِكَ مُوجِبًا عَلَيْهِ مَا ذَكَرَ لَزِمَهُ إنْفَاذُ ذَلِكَ، وَعَلَيْهِ أَنْ يَكْتَفِيَ بِخَبَرِ الْحَاكِمِ الْعَدْلِ فِي ذَلِكَ، وَلَا يَجُوزُ لَهُ تَقْلِيدُهُ فِيمَا رَأَى أَنَّهُ فِيهِ مُخْطِئٌ.

L30056 If the authority is a knowledgeable and virtuous person, it is also impermissible for the subordinate to carry out his command until the subordinate asks him: "From what basis has this obligation been imposed **upon me**?" When he informs him, if that [explanation] establishes the obligation as the authority has asserted, then compliance becomes binding. The subordinate must confine himself to the statement of the just judge in this matter, and it is not permissible for him to blindly imitate the judge's opinion in what he believes the judge has erred.

وَأَمَّا الْجَاهِلُ فَلَا يَحِلُّ لَهُ إنْفَاذُ أَمْرِ مَنْ لَيْسَ عَالِمًا فَاضِلًا.

L30057 As for the unlearned person, it is not permissible for him to carry out the order of someone who is not both knowledgeable and virtuous.

فَإِنْ كَانَ الْآمِرُ لَهُ عَالِمًا فَاضِلًا سَأَلَهُ: أَوْجَبَ ذَلِكَ بِالْقُرْآنِ وَالسُّنَّةِ.

L30058 If the one in authority over him was a learned and virtuous scholar, he would ask: "Is this obligation established through the Quran and Sunnah?"

فَإِنْ قَالَ: نَعَمْ لَزِمَهُ إنْفَاذُ ذَلِكَ، وَإِلَّا فَلَا، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ» وَلَا يَحِلُّ أَخْذُ قَوْلِ أَحَدٍ بِلَا بُرْهَانٍ.

L30059–30061 Then, if he says, "Yes." He must implement that; otherwise not, based on the statement of the Messenger of Allah (peace be upon him): "Obedience is only in the good," and it is impermissible to accept anyone's statement without proof.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

And all success lies with Allah, the Most High.

[مَسْأَلَة ادَّعَى شَيْئًا فِي يَدِ غَيْرِهِ]

A jurisprudential matter pertaining to a claim regarding something in the hand of another.

١٨١٥ - مَسْأَلَةٌ: وَمَنْ ادَّعَى شَيْئًا فِي يَدِ غَيْرِهِ فَإِنْ أَقَامَ فِيهِ الْبَيِّنَةَ، أَوْ أَقَامَ كِلَاهُمَا الْبَيِّنَةَ قُضِيَ بِهِ لِلَّذِي لَيْسَ الشَّيْءُ فِي يَدِهِ، إلَّا أَنْ يَكُونَ فِي بَيِّنَةِ مَنْ الشَّيْءُ فِي يَدِهِ بَيَانٌ زَائِدٌ بِانْتِقَالِ ذَلِكَ الشَّيْءِ إلَيْهِ، أَوْ يُلَوِّحُ بِتَكْذِيبِ بَيِّنَةِ الْآخَرِ - وَهُوَ قَوْلُ سُفْيَانَ، وَأَبِي حَنِيفَةَ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ.

1815 - Legal Case: If someone claims ownership of something in another's possession and establishes evidence for it, or if both parties present evidence, the ruling is granted to the one not in possession unless the evidence of the possessor includes supplementary proof of the item's transfer to him, or points to discrediting the other party's evidence. And this is the opinion of Sufyān, Abū Ḥanīfah, Aḥmad ibn Ḥanbal, and Abū Sulaymān.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُقْضَى بِهِ لِلَّذِي هُوَ فِي يَدِهِ، وَحُجَّتُهُمْ أَنَّهُ قَدْ تَكَاذَبَتْ الْبَيِّنَتَانِ، فَوَجَبَ سُقُوطُهُمَا.

Mālik and al-Shāfiʿī said: Judgment is rendered in favor of the party in possession. Their proof is that the two testimonial proofs have conflicted irreconcilably, necessitating their dismissal.

قَالَ أَبُو مُحَمَّد: وَلَيْسَ كَمَا قَالُوا، بَلْ بَيِّنَةُ مَنْ الشَّيْءُ فِي يَدِهِ غَيْرُ مَسْمُوعَةٍ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُكَلِّفْهُمْ بِبَيِّنَةٍ، إنَّمَا حَكَمَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الْبَيِّنَةَ عَلَى الْمُدَّعِي وَالْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ.

Abu Muhammad said: It is not as they claimed; rather, the proof lies with the one in possession of the item without requiring oral testimony, for Allah the Exalted did not impose on them the obligation to provide proof. Rather, Allah the Exalted decreed through His Messenger—upon him be blessings and peace—that the burden of proof rests upon the claimant, and the oath is upon the one against whom the claim is made.

قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «بَيِّنَتُكَ أَوْ يَمِينُهُ لَيْسَ لَكَ غَيْرُ ذَلِكَ» .

He (peace be upon him) said: "Your clear proof or his formal oath - you have no alternative beyond this."

فَصَحَّ أَنَّهُ لَا يُلْتَفَتُ إلَى بَيِّنَةِ الْمُدَّعَى عَلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Thus, it is valid that no heed is paid to the evidence of the defendant. And success comes from Allah, the Exalted.

١٨١٦ - مَسْأَلَةٌ: فَلَوْ لَمْ يَكُنْ الشَّيْءُ فِي يَدِ أَحَدِهِمَا فَأَقَامَ كِلَاهُمَا الْبَيِّنَةَ قُضِيَ بِهِ بَيْنَهُمَا، فَلَوْ كَانَ فِي أَيْدِيهِمَا مَعًا، فَأَقَامَا فِيهِ بَيِّنَةً أَوْ لَمْ يُقِيمَا قُضِيَ بِهِ بَيْنَهُمَا.

1816 - Issue: If the item is not in the possession of either of them and both present conclusive evidence, it shall be adjudicated between them. If it is in the possession of both together, whether they present conclusive evidence regarding it or do not present it, it shall be adjudicated between them.

أَمَّا إذَا لَمْ يَكُنْ فِي أَيْدِيهِمَا فَإِنَّهُ قَدْ ثَبَتَتْ الْبَيِّنَتَانِ أَنَّهُ لَهُمَا فَهُوَ لَهُمَا.

If it is not in their possession, then the two pieces of evidence have established that it belongs to both of them, so it is theirs.

As for when it is in the possession of both of them, if no evidence is estab-

lished for them, then it belongs to them both, because it is in their possession along with their oaths.

وَأَمَّا إذَا كَانَ فِي أَيْدِيهِمَا فَإِنْ لَمْ تَقُمْ لَهُمَا بَيِّنَةٌ فَهُوَ لَهُمَا، لِأَنَّهُ بِأَيْدِيهِمَا مَعَ أَيْمَانِهِمَا.

L30072 As for when each of them presents evidence, his evidence is not heard regarding what is in his possession, as we have previously established, and since his evidence has testified to his right to what is under the other party's control, judgment is rendered in his favor accordingly.

وَأَمَّا إذَا أَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا بَيِّنَةً فَإِنَّ بَيِّنَتَهُ لَا تُسْمَعُ فِيمَا فِي يَدِهِ كَمَا قَدَّمْنَا وَقَدْ شَهِدَتْ لَهُ بَيِّنَتُهُ بِمَا فِي يَدِ الْآخَرِ فَيُقْضَى لَهُ بِذَلِكَ.

L30073 And with Allah, the Exalted, is all success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30074–30076 Issue 1817: If two parties dispute ownership of something not in their possession with no evidence, lots shall be drawn between them to determine the oath. Whosever lot is drawn shall swear, and the ruling is awarded to him. This applies to all matters they dispute over from cases where it is certainly known without doubt that neither party jointly owns the item - such as an animal certainly known to be the offspring of one of the two animals owned by the disputants. It was narrated to us via the chain of Abu Dawud: from Muhammad ibn Minhal, from Yazid ibn Zurai', from Sa'id ibn Abi 'Arubah. From Qatādah, from Saʿīd ibn Abī Burdah ibn Abī Mūsā al-Ashʿarī, from his father, from his grandfather Abū Mūsā: "Two men claimed a camel or a beast of burden and brought it to the Prophet (peace be upon him), and neither of them had evidence. The Messenger of Allah (peace be upon him) then assigned it jointly to them both."

١٨١٧ - مَسْأَلَةٌ: فَإِنْ تَدَاعَيَاهُ، وَلَيْسَ فِي أَيْدِيهِمَا، وَلَا بَيِّنَةَ لَهُمَا -: أُقْرِعَ بَيْنَهُمَا عَلَى الْيَمِينِ، فَأَيُّهُمَا خَرَجَ سَهْمُهُ حَلَفَ وَقُضِيَ لَهُ بِهِ - وَهَكَذَا كُلُّ مَا تَدَاعَيَا فِيهِ مِمَّا يُوقِنُ بِلَا شَكٍّ أَنَّهُ لَيْسَ لَهُمَا جَمِيعًا، كَدَابَّةٍ يُوقِنُ أَنَّهَا نِتَاجُ إحْدَى دَابَّتَيْهِمَا -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ مِنْهَالٍ نا يَزِيدُ بْنُ زُرَيْعٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ عَنْ جَدِّهِ أَبِي مُوسَى: «أَنَّ رَجُلَيْنِ ادَّعَيَا بَعِيرًا أَوْ دَابَّةً فَأَتَيَا بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَ لِوَاحِدٍ مِنْهُمَا بَيِّنَةٌ فَجَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمَا» .

L30077 And through him to Qatādah from Khilās ibn ʿAmr from Abū Rāfiʿ from Abū Hurayrah: "Two men disputed before the Messenger of Allah—peace and blessings of Allah be upon him—over goods for which neither had evidence. The Messenger of Allah—peace and blessings of Allah be upon him—said: 'Decide by lot with an oath,' whether they liked it or disliked it." Through the chain of Aḥmad ibn Shuʿayb: I, ʿAmr ibn ʿAlī, report: Khālid ibn al-Ḥārith reported to us: Saʿīd—that is, Ibn Abī ʿArūbah—reported from Qatādah from Khilās ibn ʿAmr from Abū Rāfiʿ from Abū Hurayrah: "Two men claimed ownership of an animal without evidence. The Messenger of Allah—peace and blessings of Allah be upon him—commanded them to decide by lot with an oath."

وَبِهِ إلَى قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اخْتَصَمَ إلَيْهِ رَجُلَانِ فِي مَتَاعٍ لَيْسَ لِوَاحِدٍ مِنْهُمَا بَيِّنَةٌ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اسْتَهِمَا عَلَى الْيَمِينِ» مَا كَانَ - أَحَبَّا ذَلِكَ أَمْ كَرِهَا - وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا خَالِدُ بْنُ الْحَارِثِ نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَجُلَيْنِ ادَّعَيَا دَابَّةً وَلَمْ تَكُنْ لَهُمَا بَيِّنَةٌ، فَأَمَرَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَسْتَهِمَا عَلَى الْيَمِينِ» .

قَالَ أَبُو مُحَمَّد: فَالْقِسْمَةُ بَيْنَهُمَا حَيْثُ هُوَ فِي أَيْدِيهِمَا، لِأَنَّهُ لَهُمَا بِظَاهِرِ الْيَدِ، وَالْقُرْعَةِ حَيْثُ لَا حَقَّ لَهُمَا، وَلَا لِأَحَدِهِمَا، وَلَا لِغَيْرِهِمَا فِيهِ.

L30078 Abu Muhammad said: The division between them is where it is in their possession, as it belongs to them by presumptive possession. The drawing of lots applies where neither they, nor either of them individually, nor anyone else besides them has a right in it.

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ بَشَّارٍ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ عَنْ أَبِيهِ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ: «أَنَّ رَجُلَيْنِ ادَّعَيَا بَعِيرًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَعَثَ كُلُّ وَاحِدٍ مِنْهُمَا شَاهِدَيْنِ فَقَسَمَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمَا بِنِصْفَيْنِ» .

L30079 From the chain of narration of Abu Dawud: Muhammad ibn Bishar narrated to us, Al-Hajjaj ibn Al-Minhal narrated to us, Hammam ibn Yahya narrated from Qatadah from Sa'id ibn Abi Burdah from his father from Abu Musa Al-Ash'ari: "Two men disputed over a camel during the time of the Messenger of Allah (peace be upon him). Each of them produced two witnesses, so the Messenger of Allah (peace be upon him) divided it into two halves between them."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي عَلِيُّ بْنُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ أَبِي الْمُضَاءِ قَاضِي الْمِصِّيصَةِ قَالَ: نا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنِ النَّضْرِ بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ «أَنَّ رَجُلَيْنِ ادَّعَيَا دَابَّةً وَجَدَاهَا عِنْدَ رَجُلٍ، فَأَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا شَاهِدَيْنِ أَنَّهَا دَابَّتُهُ فَقَضَى بِهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمَا بِنِصْفَيْنِ» .

L30080 From the path of Aḥmad ibn Shuʿayb: ʿAlī ibn Muḥammad ibn ʿAlī ibn Abī al-Muḍāʾ, the judge of al-Maṣṣīṣah, informed me, saying: Muḥammad ibn Kathīr narrated to us from Ḥammād ibn Salamah from Qatādah from al-Naḍr ibn Anas ibn Mālik from Abū Burdah ibn Abī Mūsā al-Ashʿarī from his father that two men claimed a riding animal they found in the possession of a man, and each of them produced two witnesses testifying it was his animal. The Prophet (peace and blessings of Allah be upon him) ruled to divide it into halves between them.

فَهَذَا نَصٌّ عَلَى إقَامَةِ الْبَيِّنَةِ مِنْ كُلِّ وَاحِدٍ مِنْهُمَا - وَلَيْسَ فِي أَيْدِيهِمَا أَوْ وَهُوَ فِي أَيْدِيهِمَا - لِأَنَّهُ إذَا كَانَ فِي أَيْدِيهِمَا مَعًا فَهُوَ بِلَا شَكٍّ لَهُمْ بِظَاهِرِ الْأَمْرِ، وَإِذَا لَمْ يَكُنْ فِي أَيْدِيهِمَا أَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا فِيهِ الْبَيِّنَةَ فَقَدْ شَهِدَ بِهِ لَهُمَا، وَلَيْسَتْ إحْدَى الْبَيِّنَتَيْنِ أَوْلَى مِنْ الْأُخْرَى، فَالْوَاجِبُ قِسْمَتُهُ فِي كُلِّ ذَلِكَ بَيْنَهُمَا.

L30081 This is a text stipulating the presentation of evidence by each of the two parties—whether the disputed property is in their possession or not. For if it is jointly in their possession, it unquestionably belongs to them by outward appearance. If it is not in their possession, and each of them presents evidence regarding it, the evidence testifies for both. Neither of the two pieces of evidence has more weight than the other. Therefore, the obligatory ruling in all such cases is to divide it between them.

وَأَمَّا إذَا لَمْ يَكُنْ فِي أَيْدِيهِمَا وَلَمْ يُقِمْ وَاحِدٌ مِنْهُمَا فِيهِ الْبَيِّنَةَ، وَلَا كِلَاهُمَا، فَهُمَا مُدَّعِيَانِ وَلَيْسَ لَهُمَا أَصْلًا وَلَا لِمُدَّعًى عَلَيْهِ سِوَاهُمَا.

L30082 If the property is not in their possession, and neither party has presented clear evidence for it—neither one nor both of them—then both are claimants with no basis whatsoever, nor is there anyone else claimed against besides them.

L30083–30085 Likewise, if the testimonial evidence is not permissible to apply to both

parties jointly, but [applies] to one of them or to others besides the two of them, except that... It is not in the possession of anyone other than them, nor in their joint possession. If it was in their shared possession, then in such cases the oath is determined by casting lots. Dividing it between them is impermissible, for this constitutes decisively established injustice and undoubted oppression. This is fundamentally impermissible. Allah the Exalted said: "And do not cooperate in sin and transgression" [Al-Mā'idah: 2]. Oppression conclusively known is sin and transgression without doubt. Success is granted by Allah, the Most High.[5]

وَكَذَلِكَ إِذَا كَانَ لَا تَجُوزُ الْبَيِّنَةُ أَنْ تَكُونَ لَهُمَا جَمِيعًا لَكِنْ لِأَحَدِهِمَا أَوْ لِغَيْرِهِمَا إِلَّا أَنَّهُ لَيْسَ فِي يَدِ أَحَدٍ غَيْرِهِمَا، وَلَا فِي أَيْدِيهِمَا، أَوْ كَانَ فِي أَيْدِيهِمَا جَمِيعًا، فَفِي هَذِهِ الْمَوَاضِعِ يُقْرَعُ عَلَى الْيَمِينِ، وَلَا تَجُوزُ قِسْمَتُهُ بَيْنَهُمَا فَيَكُونُ ذَلِكَ ظُلْمًا مَقْطُوعًا بِهِ، وَقَضِيَّةَ جَوْرٍ بِلَا شَكٍّ فِيهَا، وَهَذَا لَا يَحِلُّ أَصْلًا، قَالَ تَعَالَى: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَالْجَوْرُ الْمُتَيَقَّنُ إِثْمٌ وَعُدْوَانٌ لَا شَكَّ فِيهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30086 The people have differed regarding this: Abū Ḥanīfah said: If each of them produces evidence—whether the item is in their joint possession or not in the possession of either—it is divided equally between them, along with their oaths.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ أَبُو حَنِيفَةَ: إِذَا أَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا الْبَيِّنَةَ - فَسَوَاءٌ كَانَ الشَّيْءُ فِي أَيْدِيهِمَا مَعًا، أَوْ لَمْ يَكُنْ فِي يَدِ وَاحِدٍ مِنْهُمَا: هُوَ بَيْنَهُمَا بِنِصْفَيْنِ مَعَ أَيْمَانِهِمَا.

L30087 Similarly, if neither of them presents evidence while the item is in their joint possession, and the item is not in their possession, with no claimant for it other than them, then judgment is awarded to the one who swears the oath as opposed to the one who refuses to take it.

وَكَذَلِكَ إِذَا لَمْ يُقِيمَا بَيِّنَةً وَالشَّيْءُ فِي أَيْدِيهِمَا مَعًا وَلَيْسَ فِي أَيْدِيهِمَا وَلَا مُدَّعِيَ لَهُ سِوَاهُمَا، فَأَيُّهُمَا نَكَلَ قُضِيَ بِهِ لِلَّذِي حَلَفَ.

L30088 If both pieces of evidence specify a time, the judgment is ruled in favor of the party with the first time.

فَإِنْ وَقَّتَتْ كِلْتَا الْبَيِّنَتَيْنِ قُضِيَ بِهِ لِصَاحِبِ الْوَقْتِ الْأَوَّلِ.

L30089 If one of the two evidences specifies a time and the other does not, the judgment is decided between the two of them based on it.

فَإِنْ وَقَّتَتْ إِحْدَى الْبَيِّنَتَيْنِ وَلَمْ تُوَقِّتْ الْأُخْرَى قُضِيَ بِهِ بَيْنَهُمَا.

L30090 And Abu Yusuf said: The judgment was issued in favor of the one whose evidence specified the time.

وَقَالَ أَبُو يُوسُفَ: قُضِيَ بِهِ لِلَّذِي وَقَّتَتْ بَيِّنَتُهُ.

L30091 Muhammad ibn al-Hasan said: "Rather, it belongs to the one whose legal proof did not specify a timeframe."

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: بَلْ لِلَّذِي لَمْ تُوَقِّتْ بَيِّنَتُهُ.

L30092 Abu Muhammad said: Every ruling that contradicts the ruling of the Messenger of Allah—peace and blessings of Allah be upon him—that we have cited is invalid, because it is a statement without proof. And Malik said:

قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَا خَالَفَ مِمَّا ذَكَرْنَا حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أَوْرَدْنَا فَهُوَ بَاطِلٌ؛ لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ - وَقَالَ مَالِكٌ: يُقْضَى بِأَعْدَلِ الْبَيِّنَتَيْنِ.

[5] **Qur'an references (L30083):** Qur'an 5:2 (Al-Ma'idah).

Judgment should be rendered according to the more just of the two evidences.

قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ فَاسِدٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ بُرْهَانُ قُرْآنٍ وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا يُؤَيِّدُهُ قِيَاسٌ، وَإِنَّمَا كُلِّفْنَا عَدَالَةَ الشُّهُودِ فَقَطْ، وَلَا فَضْلَ فِي ذَلِكَ لِأَعْدَلِ الْبَرِيَّةِ عَلَى عَدْلٍ، وَهُمْ مُقِرُّونَ بِأَنَّهُ لَوْ شَهِدَ الصِّدِّيقُ - رَضِيَ اللَّهُ عَنْهُ - بِطَلَاقٍ، فَإِنَّهُ لَا يُقْضَى بِذَلِكَ، فَلَوْ شَهِدَ بِهِ عَدْلَانِ مِنْ عُرْضِ النَّاسِ قُضِيَ بِهِ.

L30093 Ali said: This is an invalid opinion, for it is not supported by any evidence from the Qur'an or Sunnah, nor by any defective narration, nor by any of the Companions, nor is it upheld through analogy. We are only obligated to verify the integrity of the witnesses, and there exists no superiority in this matter for the Most Just of Creation over another just individual. They themselves concede that if Al-Ṣiddīq—may Allah be pleased with him—were to testify to a divorce, no ruling would be issued based on his testimony. Yet if two just persons from among ordinary people were to testify to it, a ruling would be enacted.

وَأَيْنَ تَرْجِيحُ أَعْدَلِ الْبَيِّنَتَيْنِ مِنْ هَذَا الْعَمَلِ؟ وَهَذَا قَوْلٌ خَالَفَ فِيهِ كُلُّ مَنْ رُوِيَ عَنْهُ فِي هَذِهِ الْمَسْأَلَةِ لَفْظَةٌ مِنْ الصَّحَابَةِ إنَّمَا رُوِيَ الْقَوْلُ بِأَعْدَلِ الْبَيِّنَتَيْنِ عَنْ الزُّهْرِيِّ وَقَالَ: فَإِنْ تَكَافَأَتْ فِي الْعَدَالَةِ أُقْرِعَ بَيْنَهُمَا وَهُمْ لَا يَقُولُونَ بِهَذَا.

L30094 And where is the preference of the more reliable of the two testimonies in this action? This is an opinion that contradicts every Companion from whom any utterance has been narrated regarding this matter. The ruling to prefer the more reliable testimony has only been reported from Al-Zuhri, who said: "If they are equal in integrity, a lottery is drawn between them"—but they do not hold this opinion.

وَجَاءَ عَنْ عَطَاءٍ، وَالْحَسَنِ - وَرُوِيَ أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ تَغْلِيبُ أَكْثَرِ الْبَيِّنَتَيْنِ عَدَدًا - وَقَالَ بِهِ الْأَوْزَاعِيِّ إذَا تَكَافَأَ عَدَدُهُمَا.

L30095 It has been reported from 'Aṭā' and al-Ḥasan—and also from 'Alī ibn Abī Ṭālib—that precedence should be given to the more numerous of the two testimonies. Al-Awzā'ī applied this principle even when their strength was deemed equal.

وَاضْطَرَبَ قَوْلُ الشَّافِعِيِّ فِي ذَلِكَ -: فَمَرَّةً قَالَ: يُوقَفُ الشَّيْءُ.

L30096–30097 Al-Shafi'i's statements on this matter are inconsistent: on one occasion he said, "The asset is endowed as a waqf."

وَمَرَّةً قَالَ: يُقْسَمُ بَيْنَهُمَا.

L30098 And once, he said: It is to be divided between the two of them.

وَمَرَّةً قَالَ: يُقْرَعُ بَيْنَهُمَا.

L30099 Lots should be cast between them.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَأَبُو عُبَيْدٍ: إذَا ادَّعَى اثْنَانِ شَيْئًا لَيْسَ فِي أَيْدِيهِمَا، وَأَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا الْبَيِّنَةَ الْعَدْلَةَ: أُقْرِعَ بَيْنَهُمَا، وَقُضِيَ بِذَلِكَ الشَّيْءِ لِمَنْ خَرَجَتْ قُرْعَتُهُ، وَلَا مَعْنَى لِأَكْثَرِ الْبَيِّنَتَيْنِ، وَلَا لِأَعْدَلِهِمَا.

L30100 Ahmad ibn Hanbal, Ishaq ibn Rāhawayh, and Abu 'Ubayd said: If two claimants assert ownership of something not in their possession, and each produces just evidence, lots are drawn between them, and the item is awarded to the one whose lot is drawn. Neither the greater number of witnesses in the evidence nor the relative justice of the two is considered.

L30101 Abu Muhammad said: If someone mentions what we have narrated through the chain of Abd al-Razzaq from Ibrahim ibn Muhammad ibn Abi Yahya from Abd al-Rahman ibn al-Harith from Sa'id ibn al-Musayyab that the Messenger of Allah (peace be upon him) said, "When the witnesses are equal in standing, lots are drawn between the two disputing parties," then the ruling is incumbent upon them, for it involves drawing lots, yet they do not endorse this ruling.

قَالَ أَبُو مُحَمَّد: فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا اسْتَوَى الشُّهُودُ أُقْرِعَ بَيْنَ الْخَصْمَيْنِ» فَهُوَ عَلَيْهِمْ، لِأَنَّ فِيهِ الْإِقْرَاعَ، وَلَا يَقُولُونَ بِهِ.

The Issue of Testimony Based on Another Testimony

[مَسْأَلَةُ الشَّهَادَةُ عَلَى الشَّهَادَةِ]

L30102

L30103 1818 – Issue: Testimony based on [another] testimony is admissible in all matters, and in such cases, one [witness] is accepted upon another.

١٨١٨ - مَسْأَلَةٌ: الشَّهَادَةُ عَلَى الشَّهَادَةِ فِي كُلِّ شَيْءٍ، وَيُقْبَلُ فِي ذَلِكَ وَاحِدٌ عَلَى وَاحِدٍ.

L30104 Jurists have differed regarding this — Abū Yūsuf and Muḥammad ibn al-Ḥasan said: Testimony may be accepted based on the testimony of a witness present within the city, even if the witness is sound.

وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: تُقْبَلُ الشَّهَادَةُ عَلَى شَهَادَةِ الْحَاضِرِ فِي الْمِصْرِ، وَإِنْ كَانَ صَحِيحًا.

L30105 Malik said: The testimony of a present witness is not accepted unless he is ill or has not traveled beyond the distance at which, if a witness were distant by that measure, their testimony would be accepted based on his testimony.

وَقَالَ مَالِكٌ: لَا تُقْبَلُ عَلَى شَهَادَةِ الْحَاضِرِ إِلَّا أَنْ يَكُونَ مَرِيضًا، وَلَمْ يَحُدَّ عَنْهُ مِقْدَارَ الْمَسَافَةِ الَّتِي إِذَا كَانَ الشَّاهِدُ بَعِيدًا عَلَى قَدْرِهَا قُبِلَتْ الشَّهَادَةُ عَلَى شَهَادَتِهِ.

L30106 Abu Hanifah, al-Ḥasan ibn Ḥayy, and Sufyan al-Thawri said: Testimony based on another testimony is not accepted unless it pertains to the travel distance necessitating the shortening of prayer.

وَقَالَ أَبُو حَنِيفَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَسُفْيَانُ الثَّوْرِيُّ: لَا تُقْبَلُ شَهَادَةٌ عَلَى شَهَادَةٍ إِلَّا إِذَا كَانَ عَلَى مِقْدَارٍ تُقْصَرُ إِلَيْهِ الصَّلَاةُ.

L30107 Ali said: We have not found any valid argument whatsoever for those who prohibit [others] from accepting testimony despite the testimony of a present witness—neither from the Qur'an, nor the Sunnah, nor the statements of any predecessors, nor analogy, nor rational reasoning—especially these invalid Hudud.

قَالَ عَلِيٌّ: لَمْ نَجِدْ لِمَنْ مَنَعَ مِنْ قَبُولِ الشَّهَادَةِ عَلَى شَهَادَةِ الْحَاضِرِ -: حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا قَوْلِ أَحَدٍ سَلَفَ، وَلَا قِيَاسٍ، وَلَا مَعْقُولٍ، لَا سِيَّمَا هَذِهِ الْحُدُودُ الْفَاسِدَةُ.

L30108 Allah, the Exalted, has commanded us to accept the testimony of just witnesses. Testimony upon testimony constitutes the testimony of just wit-

وَقَدْ أَمَرَنَا اللَّهُ تَعَالَى، بِقَبُولِ شَهَادَةِ الْعُدُولِ، وَالشَّهَادَةُ عَلَى الشَّهَادَةِ شَهَادَةُ عُدُولٍ، فَقَبُولُهَا وَاجِبٌ، وَكَذَلِكَ لَوْ بَعُدَتْ جِدًّا وَلَا فَرْقَ.

nesses; therefore accepting it is obligatory. This ruling applies similarly even if it is extremely remote in time, as there is no difference.

وَاخْتَلَفُوا أَيْضًا فِي كَمْ تُقْبَلُ عَلَى شَهَادَةِ الْعُدُولِ؟ فَرُوِّينَا عَنْ عَلِيٍّ مِنْ طَرِيقِ ابْنِ ضُمَيْرَةَ - وَهُوَ مُطَّرِحٌ - أَنَّهُ لَا يُقْبَلُ عَلَى شَهَادَةِ وَاحِدٍ إِلَّا اثْنَانِ، وَعَنْ رَبِيعَةَ مِثْلُهُ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، إِلَّا أَنَّهُمَا أَجَازَا شَهَادَةَ ذَيْنِكَ الِاثْنَيْنِ أَيْضًا عَلَى شَهَادَةِ الْعَدْلِ الْآخَرِ.

L30109–30111 They also differed regarding how many [testimonies] are accepted based on the testimony of upright individuals. It was reported to us from Ali via the chain of Ibn Ḍumayrah—who is a rejected narrator—that it is not accepted based on the testimony of a single witness. Except two, and the same is reported from Rabīʿah—which is the opinion of Abū Ḥanīfah and Mālik. However, they both also permitted the testimony of those two to be added to the testimony of another upright witness.

وَقَالَ الشَّافِعِيُّ: لَا بُدَّ مِنْ أُخْرَى عَلَى شَهَادَةِ الْآخَرِ، فَلَا يُقْبَلُ عَلَى شَهَادَةِ اثْنَيْنِ إِلَّا أَرْبَعَةٌ، وَلَا يُقْبَلُ عَلَى شَهَادَةِ أَرْبَعَةٍ فِي الزِّنَى إِلَّا سِتَّةَ عَشَرَ عَدْلًا.

L30112 Al-Shafi'i said: There must be another testimony upon the testimony of the other. Thus, a testimony of two is not accepted unless four [witnesses testify], and a testimony of four in cases of adultery is not accepted unless sixteen just individuals [testify].

وَقَالَتْ طَائِفَةٌ - مِثْلَ قَوْلِنَا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ حَكِيمِ بْنِ رُزَيْقٍ قَالَ قَرَأْت فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إلَى أَبِي: أَنْ أَجِزْ شَهَادَةَ رَجُلٍ عَلَى شَهَادَةِ رَجُلٍ آخَرَ وَذَلِكَ فِي كَسْرِ سِنٍّ.

L30113 A group said—similar to our statement—: "We were narrated through ʿAbd al-Raḥmān ibn Mahdī from ʿAbd Allāh ibn al-Mubārak, from Ḥakīm ibn Ruzayq, who said: 'I read in ʿUmar ibn ʿAbd al-ʿAzīz's letter to my father: "Accept the testimony of one man based on another man's testimony," and this was regarding the breaking of a tooth.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ، وَمَعْمَرٍ، قَالَ سُفْيَانُ: عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: إنَّهُ كَانَ يُجِيزُ شَهَادَةَ رَجُلٍ عَلَى شَهَادَةِ رَجُلٍ - وَقَالَ مَعْمَرٌ عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ: إنَّهُ كَانَ يُجِيزُ شَهَادَةَ رَجُلٍ عَلَى شَهَادَةِ رَجُلٍ، وَيَقُولُ لَهُ: أَشْهِدْنِي ذَوَيْ عَدْلٍ.

L30114 And via the chain of ʿAbd al-Razzāq: Sufyān reported from al-Mughīrah ibn Miqsam from Ibrāhīm al-Nakhaʿī that he permitted a man's testimony based on another man's testimony. Maʿmar reported from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn from Shurayḥ that he permitted a man's testimony based on another man's testimony, and he would say to him: "Present to me two just witnesses."

وَرُوِّينَاهُ عَنْ الزُّهْرِيِّ، وَالْقُضَاةِ قَبْلَهُ، وَيَزِيدَ بْنِ أَبِي حَبِيبٍ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَعُثْمَانَ الْبَتِّيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L30115 It has been narrated to us from al-Zuhri, the judges before him, and Yazid ibn Abi Habib - and this is the opinion of al-Hasan al-Basri, Ibn Abi Layla, Sufyan al-Thawri, al-Layth ibn Saʿd, Uthman al-Batti, Ahmad ibn Hanbal, and Isḥāq ibn Rāhawayh.

L30116 Abu Muhammad said: The Messenger of Allah—peace and blessings be

upon him—declared, “Your evidence or his oath,” and there is no distinction between one person and two in clarifying the truth through this, for the same applies to both as applies to a single person. Whenever a scholar states that something constitutes evidence, it is evidence unless prohibited by a definitive text. It is simply a report, and a report is accepted from a single trustworthy individual.

قَالَ أَبُو مُحَمَّد: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «بَيِّنَتُكَ أَوْ يَمِينُهُ» وَلَا فَرْقَ بَيْنَ وَاحِدٍ وَبَيْنَ اثْنَيْنِ فِي تَبْيِينِ الْحَقِّ بِذَلِكَ، كِلَاهُمَا يَجُوزُ عَلَيْهِ مَا يَجُوزُ عَلَى الْوَاحِدِ، فَكُلَّمَا قَالَ قَائِلٌ مِنْ الْعُلَمَاءِ: إنَّهُ بَيِّنَةٌ فَهُوَ بَيِّنَةٌ، إلَّا أَنْ يَمْنَعَ مِنْ ذَلِكَ نَصٌّ - وَإِنَّمَا هُوَ خَبَرٌ، وَالْخَبَرُ يُؤْخَذُ مِنْ الْوَاحِدِ الثِّقَةِ.

L30117 They also differed concerning the matters in which a witness’s testimony based upon another witness’s testimony is accepted.

وَاخْتَلَفُوا أَيْضًا فِيمَا يُقْبَلُ فِيهِ شَهَادَةُ شَاهِدٍ عَلَى شَهَادَةِ شَاهِدٍ.

L30118–30120 It has been narrated to us via a chain that includes al-Ḥārith ibn Nabḥān (who is discredited) from al-Ḥasan ibn ʿUmārah (who is worthless) from Saʿīd ibn al-Musayyib: that ʿUmar ibn al-Khaṭṭāb did not hear anything from him except the announcement of his death. Al-Nu’man said: Secondary testimony is not permissible in cases involving prescribed punishments, blood money, divorce, marriage, or emancipation of slaves, except in property alone.

فَرُوِّينَا مِنْ طَرِيقٍ فِيهَا الْحَارِثُ بْنُ نَبْهَانَ - وَهُوَ هَالِكٌ - عَنْ الْحَسَنِ بْنِ عُمَارَةَ - وَهُوَ تَالِفٌ - عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ لَمْ يَسْمَعْ مِنْهُ غَيْرَ نَعْيِهِ النُّعْمَانُ، قَالَ: لَا تَجُوزُ شَهَادَةٌ عَلَى شَهَادَةٍ فِي حَدٍّ، وَلَا فِي دَمٍ وَلَا فِي طَلَاقٍ، وَلَا نِكَاحٍ، وَلَا عِتْقٍ، إلَّا فِي الْمَالِ وَحْدَهُ.

L30121 That was narrated to us from Ibrāhīm al-Nakhaʿī.

وَرُوِّينَا ذَلِكَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ.

L30122 It has been authentically reported from Al-Sha’bi, Qatadah, and Al-Nakha’i that testimony based on [another] testimony is not permissible in a hadd punishment - this is the opinion of Al-Awza’i.

وَصَحَّ عَنْ الشَّعْبِيِّ، وَقَتَادَةَ، وَالنَّخَعِيِّ: لَا تَجُوزُ شَهَادَةٌ عَلَى شَهَادَةٍ فِي حَدٍّ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L30123 We have also narrated it from Shurayh, Masruq, al-Hasan, and Ibn Sirin.

وَرُوِّينَاهُ أَيْضًا عَنْ شُرَيْحٍ، وَمَسْرُوقٍ، وَالْحَسَنِ، وَابْنِ سِيرِينَ.

L30124 Abu Hanifah said: It is permissible in all matters except the *ḥudūd* (prescribed punishments) and *qiṣāṣ* (retaliation in kind).

وَقَالَ أَبُو حَنِيفَةَ: تَجُوزُ فِي كُلِّ شَيْءٍ إلَّا الْحُدُودَ وَالْقِصَاصَ.

L30125 Mālik, al-Layth, and al-Shāfiʿī said: It is permissible in all matters—the *ḥudūd* and others.

وَقَالَ مَالِكٌ، وَاللَّيْثُ، وَالشَّافِعِيُّ: يَجُوزُ فِي كُلِّ شَيْءٍ الْحُدُودِ وَغَيْرِهَا.

L30126 Abu Muhammad said: Specifying a ḥadd punishment or other than it is not permissible except by an explicit text, and there is no text regarding that. This is among the matters in which they opposed the narration from Umar; no dissenting view from the Companions is known concerning it. This is

قَالَ أَبُو مُحَمَّد: تَخْصِيصُ حَدّ أَوْ غَيْرِهِ لَا يَجُوزُ إلَّا بِنَصّ، وَلَا نَصَّ فِي ذَلِكَ - هَذَا مِمَّا خَالَفُوا فِيهِ الرِّوَايَةَ عَنْ عُمَرَ لَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ، وَهَذَا مِمَّا خَالَفَ فِيهِ مَالِكٌ جُمْهُورَ الْعُلَمَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

also among the matters in which Mālik opposed the majority of scholars. And success comes only from Allah, the Most High.