AL-MUHALLA

كِتَابُ الْعَوَاقِلِ وَالْقَسَامَةِ وَقَتْلِ أَهْلِ الْبَغْيِ

The Book of Liable Kin Groups, Collective Oaths and Rebellion

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

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[كِتَابُ الْعَوَاقِلِ وَالْقَسَامَةِ وَقَتْلِ أَهْلِ الْبَغْيِ] [مَسْأَلَةُ الْعَوَاقِلِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَعَلَى آلِهِ وَصَحْبِهِ وَسَلَّمَ تَسْلِيمًا كِتَابُ الْعَوَاقِلِ، وَالْقَسَامَةِ، وَقَتْلِ أَهْلِ الْبَغْيِ ٢١٤٣ - (مُكَرَّرٌ) - مَسْأَلَةٌ: الْعَوَاقِلِ؟ قَالَ الْفَقِيهُ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «كَتَبَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى كُلِّ بَطْنٍ عُقُولَهُ، ثُمَّ كَتَبَ اللَّهُ: أَنَّهُ لَا يَحِلُّ أَنْ يُتَوَالَى مَوْلَى رَجُلٍ بِغَيْرِ إِذْنِهِ» .

L39176–39177 **The Book of Liable Kin Groups, Collective Oaths, and the Killing of Rebellious Factions The Section on Liable Kin Groups**

L39178 In the name of Allah, the Most Gracious, the Most Merciful, and may Allah send blessings and grant him abundant peace upon Muhammad, his family, and his companions. The Book of Collective Liability of Kin, Collective Oaths in Homicide Cases, and the Killing of Rebels. 2143 (repeated) – Question: Regarding collective liability? The jurist Abū Muḥammad – may Allah have mercy on him – said: From ʿAbdullāh ibn Yūsuf, from Aḥmad ibn Fatḥ, from ʿAbd al-Wahhāb ibn ʿĪsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ʿAlī, from Muslim ibn al-Ḥajjāj, from Muḥammad ibn Rāfiʿ, from ʿAbd al-Razzāq, from Ibn Jurayh, who informed me from Abū al-Zubayr, that he heard Jābir ibn ʿAbdillāh say: "The Prophet – peace and blessings of Allah be upon him – decreed that each tribe is responsible for their blood money. Then Allah ordained: It is unlawful for a patron to be inherited by a freed slave without the latter's permission."

وَبِهِ: إِلَى مُسْلِمٍ نا قُتَيْبَةُ نا اللَّيْثُ عَنِ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، ثُمَّ إِنَّ الَّتِي قَضَى عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا، وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» .

L39179 In Ṣaḥīḥ Muslim: Qutaybah narrated to us, Al-Layth narrated to us from Ibn Shihāb from Saʿīd ibn al-Musayyab from Abū Hurayrah that he said: "The Messenger of Allah (peace and blessings of Allah be upon him) ruled regarding a woman from the Banū Liḥyān whose fetus was delivered stillborn with a ghurrah [compensation for a fetus] of a male or female slave. When the woman upon whom the ghurrah was ruled died, the Messenger of Allah decreed that her inheritance should go to her sons and husband, and that the liability for blood money (ʿaql) rests upon her male agnates."

وَبِهِ: إِلَى مُسْلِمٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ الْحَنْظَلِيُّ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُبَيْدِ بْنِ نَضْلَةَ عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ قَالَ «ضَرَبَتْ امْرَأَةٌ ضَرَّتَهَا بِعَمُودِ فُسْطَاطٍ - وَهِيَ حُبْلَى - فَقَتَلَتْهَا وَإِحْدَاهُمَا لِحْيَانِيَّةٌ، فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دِيَةَ الْمَقْتُولَةِ عَلَى عَصَبَةِ الْقَاتِلَةِ، وَغُرَّةً لِمَا فِي بَطْنِهَا، فَقَالَ رَجُلٌ مِنْ عَصَبَةِ الْقَاتِلَةِ: أَنَغْرَمُ دِيَةَ مَنْ لَا أَكَلَ وَلَا نَطَقَ وَلَا اسْتَهَلَّ، فَمِثْلُ ذَلِكَ يُطَلُّ؟

L39180–39182 And by his chain to Muslim: Isḥāq ibn Ibrāhīm al-Ḥanẓalī narrated to us; Jarīr ibn ʿAbd al-Ḥamīd narrated to us, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, from ʿUbayd ibn Naḍlah, from al-Mughīrah ibn Shuʿbah. He said, "A woman struck her co-wife with a tent pole—while the victim was pregnant—killing her. One of them was a Lihyānī woman. The Messenger of Allah—peace and blessings be upon him—ruled that the blood money for the slain woman be paid by the agnates of the killer and imposed a *ghurrah* for what was in her womb. A man from the killer's agnates said, 'Shall we pay

blood money for one who neither ate, spoke, nor uttered a birth cry? Should such a thing be waived?' The Messenger of Allah—peace and blessings be upon him—responded, 'Is this rhymed prose like that of the Bedouins?' He then imposed the blood money ruling upon them."

فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسَجْعٌ كَسَجْعِ الْأَعْرَابِ؟ قَالَ: وَجَعَلَ عَلَيْهِمْ الدِّيَةَ» .

L39183 Abu Muhammad—may Allah have mercy on him—said: It is thus established that the blood money for accidental killing and the ghurrah (compensation) mandated for a fetus are obligations upon the killer's liable male agnatic relatives (aqilah) by the ruling of the Messenger of Allah. It is also confirmed that the Messenger of Allah—peace be upon him—clarified who the liable male agnatic relatives (aqilah) responsible for paying the blood money for accidental killing and the ghurrah for the fetus are. They are the offender's male agnatic kin, his agnatic relatives, extending to the clan from which he originates—as we previously mentioned—since the Messenger of Allah—peace be upon him—assigned the blood money responsibilities to each clan.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ الدِّيَةَ فِي قَتْلِ الْخَطَأِ وَفِي الْغُرَّةِ الْوَاجِبُ فِي الْجَنِينِ عَلَى عَاقِلَةِ الْقَاتِلِ، وَالْجَانِي، بِحُكْمِ رَسُولِ اللَّهِ، وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَّنَ مَنْ هُمْ الْعَاقِلَةُ الْغَارِمَةُ لِدِيَةِ الْخَطَأِ، وَلِغُرَّةِ الْجَنِينِ، وَأَنَّهُمْ أَوْلِيَاءُ الْجَانِي الَّذِينَ هُمْ عَصَبَتُهُ وَمُنْتَهَاهُمْ الْبَطْنُ الَّذِي هُوَ مِنْهُمْ - عَلَى مَا أَوْرَدْنَا آنِفًا - مِنْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ عَلَى كُلِّ بَطْنٍ عُقُولَهُ؟ .

L39184 Abū Muḥammad—may Allāh have mercy on him—said: The majority of scholars hold that the aforementioned kinsmen are liable for the blood money. However, there are conflicting reports attributed to 'Uthmān al-Battī regarding this matter. It is narrated from him that he said, "I do not know what the kinsmen are," and it is also narrated from him that he affirmed our position. The majority of scholars hold that these narrations are relied upon due to their authenticity. Other narrations exist beyond these—there is no harm in mentioning some of them, even though they are not authoritative, but mentioned so that they may be known: Narrated by Muḥammad ibn Nubāt from 'Abdullāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Mu'āwiyah from Wakī' from Ibn Abī Laylā, who reported from al-Sha'bī that he said: "The Messenger of Allāh—peace and blessings be upon him—assigned the blood money liability of Quraysh upon Quraysh and the blood money liability of the Anṣār upon the Anṣār."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَجُمْهُورُ النَّاسِ يَقُولُونَ: تَغْرَمُ الْعَاقِلَةُ الْمَذْكُورَةُ الدِّيَةَ، إلَّا أَنَّهُ قَدْ اخْتَلَفَ عَنْ عُثْمَانَ الْبَتِّيِّ فِي ذَلِكَ، فَرُوِيَ عَنْهُ أَنَّهُ قَالَ: لَا أَدْرِي مَا الْعَاقِلَةُ؟ وَرُوِيَ عَنْهُ أَنَّهُ قَالَ بِمَا قُلْنَا - وَجُمْهُورُ النَّاسِ يَقُولُونَ: هَذِهِ الْآثَارُ الْمُعْتَمَدُ عَلَيْهَا لِصِحَّتِهَا - وَقَدْ جَاءَتْ آثَارٌ غَيْرُ هَذِهِ - لَا بَأْسَ بِذِكْرِ بَعْضِهَا - وَإِنْ كَانَتْ لَا حُجَّةَ فِيهَا لَكِنْ لِتُعْرَفَ: نا مُحَمَّدُ بْنُ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا ابْنُ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ قَالَ: «جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَقْلَ قُرَيْشٍ عَلَى قُرَيْشٍ، وَعَقْلَ الْأَنْصَارِ عَلَى الْأَنْصَارِ» .

L39185 Hammam narrated from Abdullah ibn Muhammad ibn Ali al-Baji from Abdullah ibn Yunus from Baqi ibn Makhlad from Abu Bakr ibn Abi Shaybah from Hafs ibn Ghiyath from al-Hajjaj ibn Artah from al-Hakam ibn Miqsam from Ibn Abbas, who said: "The Messenger of Allah (peace and blessings be upon him) wrote a document between the Muhajireen and the Ansar stipu-

نا 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 حَفْصُ بْنُ غِيَاثٍ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْحَكَمِ بْنِ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ، قَالَ: «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كِتَابًا بَيْنَ الْمُهَاجِرِينَ

lating that they fulfill their blood money obligations, ransom their captives in a fair manner, and reconcile among people." The first chain is disconnected and includes Ibn Abi Layla, who was poor in memorization.

L39186 The second [chain]: In it is Ḥajjāj ibn Arṭāh—who is rejected—and Miqsam—who is weak.

L39187–39188 Abu Muhammad said: If someone were to say, "How is it permissible to rule that the liable kin group pays a fine for the wrongdoing of another? And Allah the Exalted has said, *No soul bears a burden except its own, and no bearer of burdens bears another's* [Surah Al-An'am 6:164]."[1]

L39189 And He, the Exalted, said: "Every soul is held as a pledge for what it has earned" [Al-Muddaththir:38].[2]

L39190 The Messenger of Allah—peace and blessings be upon him—said regarding that: 'Abdullah ibn Rabee' al-Tameemi narrated to us, Muhammad ibn Mu'awiyah al-Hashimi narrated to us, Ahmad ibn Shu'ayb informed me, Harun ibn 'Abdullah narrated to us, Shaqiq narrated to me from 'Abd al-Malik ibn Abjar, from Ziyad ibn Laqīṭ, from Abu Rimthah, who said: "I came to the Messenger of Allah—peace and blessings be upon him—with my father. He said: 'Who is this with you?' He replied: 'My son—I testify to his lineage.' He said: 'Indeed, you shall not harm him, nor shall he harm you.'"

L39191 Abdullah ibn Rabee' narrated: Muhammad narrated: Ahmad ibn Mu'awiyah narrated: Ahmad ibn Shu'ayb narrated: Mahmud ibn Ghaylan narrated: Bishr ibn As-Sarī narrated: Sufyan narrated from Ash'ath – he is Ibn Abi Ash-Sha'tha – from Al-Aswad ibn Hilal from Tha'labah ibn Zuhdam Al-Yarbū'ī, who said: "The Prophet – peace and blessings be upon him – was delivering a sermon when some people from the Ansar came and said, 'O Messenger of Allah, these are Banu Tha'labah ibn Yarbū'—did they kill so-and-so in the pre-Islamic era?' The Prophet – peace and blessings be upon

وَالْأَنْصَارِ: أَنْ يَعْقِلُوا مَعَاقِلَهُمْ، وَيَفْدُوا عَانِيَهُمْ بِالْمَعْرُوفِ، وَالْإِصْلَاحِ بَيْنَ النَّاسِ» : فَالْأَوَّلُ: مُنْقَطِعٌ، وَفِيهِ ابْنُ أَبِي لَيْلَى، وَهُوَ سَيِّئُ الْحِفْظِ.

وَالثَّانِي: فِيهِ حَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ سَاقِطٌ - وَفِيهِ مِقْسَمٌ وَهُوَ ضَعِيفٌ.

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قَالَ قَائِلٌ: كَيْفَ يَجُوزُ الْحُكْمُ بِأَنْ تَغْرَمَ الْعَاقِلَةُ جَرِيرَةَ غَيْرِهَا؟ وَقَدْ قَالَ اللَّهُ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

وَقَالَ تَعَالَى {كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ} [المدثر: ٣٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ: مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّمِيمِيُّ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْهَاشِمِيُّ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي هَارُونُ بْنُ عَبْدِ اللَّهِ نا شَقِيقٌ نِي عَبْدُ الْمَلِكِ بْنُ أَبْجَرَ عَنْ زِيَادِ بْنِ لَقِيطٍ عَنْ أَبِي رِمْثَةَ قَالَ: «أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ أَبِي فَقَالَ: مَنْ هَذَا مَعَكَ؟ فَقَالَ: ابْنِي أَشْهَدُ بِهِ، قَالَ: أَمَا إِنَّكَ لَا تَجْنِي عَلَيْهِ وَلَا يَجْنِي عَلَيْكَ» .

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدٌ نا أَحْمَدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مَحْمُودُ بْنُ غَيْلَانَ نا بِشْرُ بْنُ السَّرِيِّ نا سُفْيَانُ عَنْ أَشْعَثَ - هُوَ ابْنُ أَبِي الشَّعْثَاءِ - عَنِ الْأَسْوَدِ بْنِ هِلَالٍ عَنْ ثَعْلَبَةَ بْنِ زَهْدَمٍ الْيَرْبُوعِيِّ قَالَ «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْطُبُ فَجَاءَ نَاسٌ مِنَ الْأَنْصَارِ فَقَالُوا: يَا رَسُولَ اللَّهِ هَؤُلَاءِ بَنُو ثَعْلَبَةَ بْنِ يَرْبُوعٍ قَتَلُوا فُلَانًا فِي الْجَاهِلِيَّةِ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَتَفَ بِصَوْتِهِ: أَلَا لَا تَجْنِي نَفْسٌ عَلَى أُخْرَى» .

[1] **Qur'an references (L39188):** Qur'an 6:164 (Al-An'am).
[2] **Qur'an references (L39189):** Qur'an 74:38 (Al-Muddaththir).

him – declared loudly in his voice: 'Listen! No soul shall bear the sin of another!'"

L39192 And through him: To Mahmud ibn Ghaylan, narrated to us Abu Dawud al-Tayalisi, narrated to us Shu'bah from Ash'ath ibn Abi al-Sha'tha', who said: I heard al-Aswad ibn Hilal narrating from a man of Banu Tha'labah ibn Yarbu': "That some people from Banu Tha'labah ibn Yarbu' came to the Prophet—peace and blessings of Allah be upon him. A man said: 'O Messenger of Allah, these are Banu Tha'labah ibn Yarbu'; they killed so-and-so, a man from the Companions of the Messenger of Allah—peace and blessings of Allah be upon him.' The Prophet—peace be upon him—said: 'No soul bears the sin of another.'"

L39193 Abu Muhammad—may Allah have mercy on him—said: Our response—and with Allah alone is success—is that these ḥadīths, even if their chains of narration are criticized, their meaning is sound. The verses you cited are sufficient, for they encompass the meaning of these ḥadīths.

L39194–39196 Then we say—and with Allah, the Exalted, is divine success—: Verily, Allah, the Exalted, has decreed that "No soul earns except against itself, and no bearer of burdens shall bear the burden of another" [Al-An'am: 164] and that "Every person is bound by what he has earned" [At-Tur: 21]. And indeed, no one bears the sin of another, nor does any soul bear another's burden. However, the One who said all this and decreed it is also He who said, "There is no blame upon you for what you have erred in, but only what your hearts have deliberately intended" (al-Aḥzāb 33:5).[3]

L39197 He is the One who informed us through His servant and Messenger—peace and blessings be upon him—that He has pardoned us for mistakes and forgetfulness. Yet despite this, He the Exalted has obligated blood money (diyah) for accidental killing, along with expiation (kaffarah) of freeing a slave or fasting two consecutive months for those unable to perform the kaffarah.

وَبِهِ: إِلَى مَحْمُودِ بْنِ غَيْلَانَ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا شُعْبَةُ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ قَالَ: سَمِعْت الْأَسْوَدَ بْنَ هِلَالٍ يُحَدِّثُ عَنْ رَجُلٍ مِنْ بَنِي ثَعْلَبَةَ بْنِ يَرْبُوعٍ: «أَنَّ نَاسًا مِنْ بَنِي ثَعْلَبَةَ بْنِ يَرْبُوعٍ أَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ هَؤُلَاءِ بَنُو ثَعْلَبَةَ بْنِ يَرْبُوعٍ قَتَلُوا فُلَانًا رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - لَا تَجْنِي نَفْسٌ عَلَى أُخْرَى» .

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّ هَذِهِ الْأَحَادِيثَ - وَإِنْ كَانَ فِي أَسَانِيدِهَا مُعْتَرَضٌ - فَإِنَّ مَعْنَاهَا صَحِيحٌ، وَفِي الْآيَاتِ الَّتِي ذَكَرْتُمْ كِفَايَةٌ؛ لِأَنَّهَا مُنْتَظِمَةٌ لِمَعْنَى هَذِهِ الْأَحَادِيثِ.

ثُمَّ نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: نَعَمْ إنَّ اللَّهَ تَعَالَى حَكَمَ بِأَنْ {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] وَأَنَّ {كُلُّ امْرِئٍ بِمَا كَسَبَ رَهِينٌ} [الطور: ٢١] وَنَعَمْ، لَا يَجْنِي أَحَدٌ عَلَى أَحَدٍ، وَلَا تَجْنِي نَفْسٌ عَلَى أُخْرَى، وَلَكِنَّ الَّذِي قَالَ هَذَا كُلَّهُ، وَحَكَمَ بِهِ، هُوَ أَيْضًا الْقَائِلُ {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَهُوَ الْمُخْبِرُ لَنَا عَلَى لِسَانِ عَبْدِهِ وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَدْ عَفَا لَنَا عَنْ الْخَطَأِ وَالنِّسْيَانِ - وَهُوَ تَعَالَى مَعَ ذَلِكَ الْمُوجِبُ فِي قَتْلِ الْخَطَأِ دِيَةً، وَكَفَّارَةَ عِتْقِ رَقَبَةٍ، أَوْ صِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ لِمَنْ لَمْ يَقْدِرْ عَلَى الْكَفَّارَةِ.

[3] **Qur'an references (L39194):** Qur'an 6:164 (Al-An'am); Qur'an 52:21 (At-Tur); Qur'an 33:5 (Al-Ahzab).

وَهُوَ الْمُوجِبُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - عَلَى عَصَبَةِ قَاتِلِ الْخَطَأِ وَأَهْلِ بَطْنِهِ الَّذِي يَنْتَمِي إلَيْهِمْ دِيَةَ قَتْلِ الْمُؤْمِنِ خَطَأً، وَالْغُرَّةَ الْوَاجِبَةَ فِي الْجَنِينِ، وَكُلُّ قَوْلُ حَقٍّ، وَكُلُّ حُكْمُهُ وَاجِبٌ، يُضَمُّ بَعْضُ ذَلِكَ إلَى بَعْضٍ، وَيُسْتَثْنَى الْأَقَلُّ مِنْ الْأَكْثَرِ.

L39198 He is the One who obligates through the words of His Messenger - peace be upon him - upon the agnatic relatives of an unintentional killer and the members of his paternal clan to whom he belongs: the *diyah* for the unintentional killing of a believer, and the obligatory *ghurrah* for the fetus. Each constitutes a true ruling, and each ruling is obligatory. These obligations are combined with one another, and the lesser amount is excluded from the greater.

وَلَا يَحِلُّ لِأَحَدٍ أَخْذُ بَعْضِ أَوَامِرِهِ دُونَ بَعْضٍ، وَلَا ضَرْبُ أَحْكَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْضِهَا بِبَعْضٍ، إذْ كُلُّهَا فَرْضٌ وَحَقٌّ، وَلَيْسَ شَيْءٌ مِنْهَا أَوْلَى بِالطَّاعَةِ لَهُ مِنْ شَيْءٍ آخَرَ، وَلَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ فِي قَتْلِ الْعَمْدِ، وَلَا يَجُوزُ تَكْلِيفُ أَحَدٍ غَرَامَةً عَنْ أَحَدٍ إلَّا أَنْ يُوجِبَهَا نَصٌّ أَوْ إجْمَاعٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَاجِبٌ أَنْ نَنْظُرَ مَنْ الْعَصَبَةُ، وَالْبَطْنُ، وَالْأَوْلِيَاءُ - الَّذِينَ أَوْجَبَ اللَّهُ تَعَالَى عَلَيْهِمْ الدِّيَةَ فِي قَتْلِ الْخَطَأِ - وَالْغُرَّةَ فِي الْجَنِينِ - فَوَجَدْنَا النَّاسَ قَدْ اخْتَلَفُوا فِي ذَلِكَ: فَقَالَتْ طَائِفَةٌ: الْعَاقِلَةُ هُمْ مَنْ كَانَ مَعَهُ فِي دِيوَانٍ وَاحِدٍ فِي الْعَطَاءِ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَمِعْت الزُّهْرِيَّ - أَوْ بَلَغَنِي عَنْهُ - أَنَّهُ قَالَ: الثُّلُثُ فِيمَا دُونَهُ، فِي خَاصَّةِ مَالِهِ - يَعْنِي: مَالَ الْجَانِي، وَمَا زَادَ عَلَى ذَلِكَ عَلَى أَهْلِ الدِّيوَانِ.

L39199 It is not permissible for anyone to adopt some of the Prophet's commands while neglecting others, nor to contradict the rulings of Allah's Messenger—peace and blessings be upon him—against one another, for all of them are obligations and truths. No part of them is more deserving of obedience than another. No text or consensus exists concerning intentional killing, nor is it permissible to impose compensation on one person for another unless a text or consensus mandates it. Abu Muhammad—may Allah have mercy on him—said: "It is obligatory to examine who the agnatic relatives, lineage group, and legal guardians are—those whom Allah the Exalted has obligated to pay blood money in cases of accidental killing and the ghurrah (compensation for a fetus). We have found that people disagreed on this: a group said, 'The al-ʿāqilah [responsible kin group] are those registered together in a single state register.'" Narrated by Humaam, on the authority of Ibn Mufarrij, who narrated from Ibn al-Aʿrabī, who narrated from al-Dabarī, who narrated from ʿAbd al-Razzāq, from Maʿmar, who said: "I heard al-Zuhrī—or it reached me from him—state: 'A third [is paid] from his personal wealth for what is below that threshold,' and anything exceeding that falls upon those listed in the state register."

وَبِهِ: قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: الدِّيَةُ فِي قَتْلِ الْخَطَأِ عَلَى الْعَاقِلَةِ فِي ثَلَاثِ سِنِينَ مِنْ يَوْمِ يُقْضَى بِهَا - وَالْعَاقِلَةُ: هُمْ أَهْلُ دِيوَانِهِ، يُؤْخَذُ ذَلِكَ مِنْ أُعْطِيَاتِهِمْ، حَتَّى يُصِيبَ الرَّجُلُ مِنْهُمْ مِنْ الدِّيَةِ أَرْبَعَةَ دَرَاهِمَ أَوْ ثَلَاثَةً، فَإِنْ أَصَابَهُ أَكْثَرُ ضَمَّ إلَيْهِمْ أَقْرَبَ الْقَبَائِلِ إلَيْهِمْ فِي النَّسَبِ مِنْ أَهْلِ الدِّيوَانِ.

L39200 And by him: Abū Ḥanīfah and his companions stated: The blood money for accidental killing is incumbent upon the ʿāqilah (responsible kin group) over three years from the day the ruling [on it] is issued—the ʿāqilah being those registered in the state register (dīwān). It is collected from their stipends until each man among them is assessed a share of three or four dirhams from the blood money. If his share exceeds this, they add to them the closest tribes related by lineage among those registered in the state register.

L39201–39202 If the killer is not enrolled in the state registry, the blood money is imposed

upon his paternal male relatives—the closest then the next closest—over three years. The nearest clans related to them by lineage are joined until each man receives three or four silver dirhams.

وَإِنْ كَانَ الْقَاتِلُ لَيْسَ مِنْ أَهْلِ الدِّيوَانِ، فُرِضَتْ الدِّيَةُ عَلَى عَاقِلَتِهِ - الْأَقْرَبِ فَالْأَقْرَبِ - فِي ثَلَاثِ سِنِينَ وَيُضَمُّ إلَيْهِمْ أَقْرَبُ الْقَبَائِلِ إلَيْهِمْ فِي النَّسَبِ حَتَّى يُصِيبَ الرَّجُلُ مِنْ الدِّيَةِ ثَلَاثَةَ دَرَاهِمَ أَوْ أَرْبَعَةً.

L39203 Sufyan al-Thawri said: The diyah (blood money) is incumbent upon the men at the time of its allocation.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: الدِّيَةُ تَكُونُ عِنْدَ الْأَعْطِيَةِ عَلَى الرِّجَالِ.

L39204 Al-Hasan ibn Hayy said: Blood money rests upon the heads of men as obligatory compensation for the fighters.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: الْعَقْلُ عَلَى رُءُوسِ الرِّجَالِ فِي عَطِيَّةِ الْمُقَاتِلَةِ.

L39205 Al-Layth ibn Sa'd said: Blood money is incumbent upon the killer and the group with whom he shares the stipend, and his tribe bears no responsibility for it whatsoever.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: الْعَقْلُ عَلَى الْقَاتِلِ، وَعَلَى الْقَوْمِ الَّذِينَ يَأْخُذُ مَعَهُمْ الْعَطَاءَ، وَلَا يَكُونُ عَلَى قَوْمِهِ مِنْهُ شَيْءٌ.

L39206 Mālik said: The blood money is incumbent upon the tribes, with the wealthy paying according to their capacity and those of lesser means according to theirs. The liability for clients' blood money falls upon the responsible kin group—whether they consent or refuse, be they people registered in the *diwan* (state stipend system) or those without tribal ties. People mutually upheld this responsibility during the time of the Messenger of Allah (peace and blessings be upon him) and Abū Bakr, whereas the *diwan* was only instituted in the era of ʿUmar ibn al-Khaṭṭāb. If a man from the desert dwellers relocates to settled areas such as Medina or similar major towns, inhabiting and settling there, I hold that his blood money liability should be assigned to his people within the village community. If no one from his people in the village can bear his liability, it transfers to the closest members of his tribe among the tribal groups.

وَقَالَ مَالِكٌ: الدِّيَةُ عَلَى الْقَبَائِلِ عَلَى الْغَنِيِّ قَدَرُهُ، وَمَنْ دُونَهُ عَلَى قَدْرِهِ، وَعَقْلُ الْمَوَالِي يَلْتَزِمُهُ أَهْلُ الْعَاقِلَةِ - شَاءُوا أَمْ أَبَوْا، كَانُوا أَهْلَ دِيوَانٍ، أَوْ مُنْقَطِعِينَ - قَدْ تَعَاقَلَ النَّاسُ زَمَنَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ، وَإِنَّمَا كَانَ الدِّيوَانُ فِي زَمَانِ عُمَرَ بْنِ الْخَطَّابِ، فَإِذَا انْقَطَعَ الرَّجُلُ مِنْ أَهْلِ الْبَادِيَةِ إلَى الْقُرَى، إلَى الْمَدِينَةِ، وَمَا يُشْبِهُهَا مِنْ أُمَّهَاتِ الْقُرَى فَسَكَنَهَا وَثَوَى بِهَا: رَأَيْت أَنْ يَضُمَّ عَقْلَهُ إلَى قَوْمِهِ مِنْ أَهْلِ الْقُرَى، فَإِنْ لَمْ يَكُنْ فِي الْقَرْيَةِ مَنْ يَحْمِلُ عَقْلَهُ مِنْ قَوْمِهِ ضُمَّ إلَى أَقْرَبِ النَّاسِ بِقَبِيلَتِهِ مِنْ الْقَبَائِلِ.

L39207 Al-Shāfiʿī, Abū Sulaymān, and their companions maintained that blood money liability rests with agnatic relatives, not those listed in the state register or sworn allies. The order of responsibility proceeds from the closest to the next closest among the father's male descendants, then the grandfather's male descendants, followed by the male descendants of the father's grandfather.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: الْعَقْلُ عَلَى ذَوِي الْأَنْسَابِ دُونَ أَهْلِ الدِّيوَانِ، وَالْحُلَفَاءِ: الْأَقْرَبُ فَالْأَقْرَبُ مِنْ بَنِي أَبِيهِ، ثُمَّ مِنْ بَنِي جَدِّهِ، ثُمَّ مِنْ بَنِي جَدِّ أَبِيهِ.

L39208 Abū Muḥammad—may Allāh have mercy on him—said: When they dif-

fered—as we mentioned—it became necessary to examine the evidence each group cited for their position regarding that matter, after the opinions on it were reduced to only three. One is the opinion of Abū Ḥanīfa and those with him: that the liable kinship group (al-ʿāqila) rests upon the people of the state register, not upon the offender's agnatic relatives.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا بَعْدَ أَنْ رَجَعَتْ الْأَقْوَالُ فِي ذَلِكَ إلَى ثَلَاثَةِ أَقْوَالٍ فَقَطْ: أَحَدُهَا - قَوْلُ أَبِي حَنِيفَةَ وَمَنْ مَعَهُ: عَلَى أَنَّ الْعَاقِلَةَ عَلَى أَهْلِ الدِّيوَانِ، لَا عَلَى عَصَبَةِ الْجَانِي.

L39209 The other opinion is that of Mālik and those with him: the responsible kin group is incumbent upon his tribe who are in the city and the like thereof, not upon those of them who are in rural regions.

وَالْآخَرُ - قَوْلُ مَالِكٍ وَمَنْ مَعَهُ: أَنَّ الْعَاقِلَةَ عَلَى قَوْمِهِ الَّذِينَ مَعَهُ فِي الْمَدِينَةِ وَنَحْوِهَا، لَا عَلَى مَنْ كَانَ مِنْهُمْ فِي الْبَادِيَةِ.

L39210–39212 The third opinion is the view of al-Shāfiʿī, Abū Sulaymān, and those who concur with them: that the ʿāqila are the closest agnates then the next closest among them, beginning with the sons of the father, then the sons of his paternal grandfathers, ascending generation by generation through the paternal line. We found those who assigned the ʿāqilah (collective liability group) specifically to those enrolled in the diwan [state registry], arguing that blood money had been the responsibility of the tribes during the time of the Messenger of Allah (peace and blessings be upon him) until ʿUmar assigned it to the diwan.

وَالثَّالِثُ - قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَمَنْ مَعَهُمَا: أَنَّ الْعَاقِلَةَ عَلَى الْأَقْرَبِ فَالْأَقْرَبِ مِنْ عَصَبَتِهِ، مِنْ بَنِي أَبِيهِ، ثُمَّ مِنْ بَنِي أَجْدَادِهِ أَبًا فَأَبًا فَوَجَدْنَا مَنْ جَعَلَ الْعَاقِلَةَ عَلَى أَهْلِ الدِّيوَانِ خَاصَّةً يَقُولُونَ: إنَّ الدِّيَةَ كَانَتْ عَلَى الْقَبَائِلِ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى جَعَلَهَا عُمَرُ عَلَى الدِّيوَانِ.

L39213 They said: "If the administrative register becomes invalid, would the matter revert to its state during the time of the Messenger of Allah—peace and blessings of Allah be upon him—and Abu Bakr—may Allah be pleased with him? Have we found no doubt for them except this?" Abu Muhammad—may Allah have mercy on him—said: "This claim of theirs is false. What they allege—that Umar ibn al-Khattab nullified the ruling of the ʿāqilah (collective liability) which the Messenger of Allah—peace and blessings of Allah be upon him—had established and Abu Bakr subsequently upheld, then introduced a new legal ruling—is utterly baseless, without any foundation, and a fabricated lie."

قَالُوا: فَإِنْ بَطَلَ الدِّيوَانُ رَجَعَ الْأَمْرُ إلَى مَا كَانَ عَلَيْهِ فِي زَمَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - لَمْ نَجِدْ لَهُمْ شُبْهَةً غَيْرَ هَذِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا الَّذِي قَالُوهُ بَاطِلٌ - إنَّ الَّذِي ادَّعَوْهُ مِنْ أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَبْطَلَ حُكْمَ الْعَاقِلَةِ الَّذِي حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ جَرَى عَلَيْهِ أَبُو بَكْرٍ بَعْدَهُ، وَأَحْدَثَ حُكْمًا آخَرَ، فَإِنَّهُ بَاطِلٌ لَا أَصْلَ لَهُ، وَكَذِبٌ مُفْتَرَى.

L39214 Perhaps a fabricator might attempt to distort this by citing the narration transmitted by Muḥammad ibn Saʿīd ibn Nubāt, who narrated from ʿAbdullāh ibn Naṣr, who narrated from Qāsim ibn Aṣbagh, who narrated from Ibn Waḍḍāḥ, who narrated from Mūsā ibn Muʿāwiyah, who narrated from Wakīʿ, who narrated from Sufyān al-Thawrī, who narrated from an unnamed source

وَلَعَلَّ مُمَوِّهًا أَنْ يُمَوِّهَ فِي ذَلِكَ -: بِمَا ناه مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَمَّنْ

that heard al-Shaʿbī say: "'Umar imposed the blood money on the responsible kin group in the grants." Thus, this is something they have no basis for, as it is transmitted from an unknown narrator.

سَمِعَ الشَّعْبِيَّ يَقُولُ: جَعَلَ عُمَرُ الدِّيَةَ عَلَى الْعَاقِلَةِ فِي الْأَعْطِيَةِ فَهَذَا مِمَّا لَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّهُ عَمَّنْ لَا يُدْرَى.

L39215 It has been narrated to us from Yaḥyā ibn Saʿīd that he said regarding the one whom al-Thawrī did not name: "Had there been any merit in al-Thawrī's authority, it would have been evident in him." Then this is attributed to al-Shaʿbī—though al-Shaʿbī was not born until after ʿUmar's death. We have exerted ourselves to find any basis for what they ascribed to ʿUmar—may Allah be pleased with him—but found nothing whatsoever, nor any foundation at all. May Allah have mercy on the one who said: "The chain of transmission is integral to religion. Were it not for chains of narration, whoever wished could say whatever they wished." And indeed, what is reliably preserved from ʿUmar contradicts this.

وَقَدْ رُوِّينَا عَنْ يَحْيَى بْنِ سَعِيدٍ: أَنَّهُ قَالَ فِيمَنْ لَمْ يُسَمِّهِ الثَّوْرِيُّ: لَوْ كَانَ فِي شَيْخِ الثَّوْرِيِّ خَيْرٌ لَبَرِحَ بِهِ - ثُمَّ هُوَ عَنْ الشَّعْبِيِّ - وَلَمْ يُولَدْ الشَّعْبِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ؟ وَقَدْ جَهَدْنَا أَنْ نَجِدَ هَذَا الَّذِي قَالُوهُ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَمَا وَجَدْنَاهُ وَلَا لَهُ أَصْلٌ أَلْبَتَّةَ - وَرَحِمَ اللَّهُ الْقَائِلَ: الْإِسْنَادُ مِنْ الدِّينِ، وَلَوْلَا الْإِسْنَادُ لَقَالَ مَنْ شَاءَ مَا شَاءَ، وَأَنَّ الْمَحْفُوظَ عَنْ عُمَرَ خِلَافُ هَذَا.

L39216 As narrated by Muḥammad ibn Saʿīd ibn Nubāt, from ʿAbdullāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Muʿāwiyah, from Wakīʿ, from al-Rabīʿ ibn Ṣabīḥ, from al-Ḥasan al-Baṣrī: ʿUmar ibn al-Khaṭṭāb said to ʿAlī ibn Abī Ṭālib regarding an offense ʿUmar had committed, "I insist that you divide the blood money among your father's clan," so he divided it upon Quraysh. This was the ruling of ʿUmar and ʿAlī in the presence of the Companions—may Allah be pleased with them—among the Emigrants and the Helpers, with no objection recorded from them concerning the division of what the agnatic kin are liable to pay by the tribe, not upon the people of the state register, nor upon the people of Medina specifically, as Mālik said. Yet they would use even weaker evidence than this if it were available to them.

كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ عَبْدِ اللَّهِ بْنِ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا الرَّبِيعُ بْنُ صَبِيحٍ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ لِعَلِيِّ بْنِ أَبِي طَالِبٍ فِي جِنَايَةٍ جَنَاهَا عُمَرُ: عَزَمْت عَلَيْك إلَّا قَسَمْت الدِّيَةَ عَلَى بَنِي أَبِيك فَقَسَمَهَا؟ عَلَى قُرَيْشٍ، فَهَذَا حُكْمُ عُمَرَ، وَعَلِيٍّ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مِنْ الْمُهَاجِرِينَ وَالْأَنْصَارِ، وَلَا يُعْرَفُ عَلَيْهِمَا مُنْكِرٌ مِنْهُمْ فِي قَسْمِ مَا تَغْرَمُهُ الْعَاقِلَةُ عَلَى الْقَبِيلَةِ، لَا عَلَى أَهْلِ الدِّيوَانِ، وَلَا عَلَى أَهْلِ الْمَدِينَةِ خَاصَّةً كَمَا قَالَ مَالِكٌ، وَهُمْ يَحْتَجُّونَ بِأَقَلَّ مِنْ هَذَا لَوْ وَجَدُوهُ.

L39217 As for ʿUmar—may Allah be pleased with him—would Allah the Exalted have purified him from invalidating the ruling of the Messenger of Allah—peace and blessings be upon him—and instituting another ruling? Abu Muhammad—may Allah have mercy on him—said: "This claim has collapsed, its corruption has become evident, and the weakness of its root and branches has been exposed."

وَأَمَّا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - فَقَدْ نَزَّهَهُ اللَّهُ تَعَالَى عَنْ أَنْ يُبْطِلَ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيُحْدِثَ حُكْمًا آخَرَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَسَقَطَ هَذَا الْقَوْلُ، وَلَاحَ فَسَادُهُ، وَضَعْفُ أَصْلِهِ وَفَرْعِهِ.

L39218–39219 Then we examined Mālik's statement and found that he had argued against

those who assigned blood money liability to the people of the state register, citing the conclusive evidence from what we have previously mentioned. This very argument stands as evidence against him in his assertion: "If a Bedouin relocates from nomadic regions to a mother city such as Medina, the liable kin group for him is the townspeople, while his original kin remain in the Bedouin areas."

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ، فَوَجَدْنَاهُ قَدْ احْتَجَّ عَلَى مَنْ جَعَلَ الدِّيَةَ عَلَى أَهْلِ الدِّيوَانِ بِمَا فِيهِ الْكِفَايَةُ مِمَّا قَدْ ذَكَرْنَا، وَتِلْكَ الْحُجَّةُ بِعَيْنِهَا حُجَّةٌ عَلَيْهِ، فِي قَوْلِهِ " إنَّ مَنْ نَزَعَ مِنْ أَهْلِ الْبَدْوِ إلَى قَرْيَةٍ مِنْ أُمَّهَاتِ الْقُرَى، كَالْمَدِينَةِ وَغَيْرِهَا، فَإِنَّ الْعَاقِلَةَ عَنْهُ: أَهْلُ الْقُرَى، وَأَهْلُهُ بِالْبَادِيَةِ ".

L39220 This is baseless, as it is not supported by any authentic or weak Sunnah, nor by consensus, nor by the statement of a companion. We know of no one who held this opinion before Mālik, nor is this supported by sound reasoning or analogy: so is it invalid? Abū Muḥammad—may Allah have mercy on him—said: Since these two opinions are invalid, only the third opinion remains—the view of our companions, which is the truth. It aligns with the decisive proof: the statement of Allah's Messenger—peace and blessings be upon him—on this matter. We are therefore obligated to examine what Allah's Messenger—peace and blessings be upon him—said and to refer new legal cases to his rulings, as Allah the Exalted has commanded. We find that he—peace and blessings be upon him—decreed that each clan's blood money responsibilities be assigned to them. His ruling—peace and blessings be upon him—regarding blood money and the ghurra (compensation for fetal loss), as we previously mentioned, along with his ruling—peace be upon him—that the liable kin (al-ʿāqilah) are the guardians and agnates, confirms the validity of what we have stated.

وَهَذَا لَيْسَ بِشَيْءٍ؛ لِأَنَّهُ لَمْ يَأْتِ بِهِ سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَمَا عَلِمْنَاهُ قَالَ بِهِ أَحَدٌ قَبْلَ مَالِكٍ، وَلَيْسَ هَذَا مِمَّا يُؤَيِّدُهُ نَظَرٌ، وَلَا قِيَاسٌ: فَبَطَلَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمْ يَبْقَ - إذْ بَطَلَ هَذَانِ الْقَوْلَانِ - إلَّا الْقَوْلُ الثَّالِثُ، وَهُوَ قَوْلُ أَصْحَابِنَا، وَهُوَ الْحَقُّ؛ لِمُوَافَقَتِهِ مَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ الَّذِي هُوَ الْحُجَّةُ، فَوَجَبَ عَلَيْنَا أَنْ نَنْظُرَ فِيمَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَرُدَّ إلَيْهِ النَّوَازِلَ فِي ذَلِكَ، كَمَا أَمَرَ اللَّهُ تَعَالَى: فَوَجَدْنَاهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ كَتَبَ عَلَى كُلِّ بَطْنٍ عُقُولَهُ، وَجَاءَ حُكْمُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الدِّيَةِ، وَفِي الْغُرَّةِ كَمَا قَدْ قَدَّمْنَا وَجَاءَ حُكْمُهُ - عَلَيْهِ السَّلَامُ -: أَنَّ الْعَاقِلَةَ هُمْ الْأَوْلِيَاءُ وَهُمْ الْعَصَبَةُ - فَصَحَّ بِهَذَا مَا قُلْنَاهُ.

L39221 As for the narration stating that he—may Allah's blessings and peace be upon him—assigned to Quraysh their blood money (ʿuqūl) and to the Ansar their blood money, it is mursal as we have mentioned, and there is no proof in a mursal narration.

وَأَمَّا الْأَثَرُ - الَّذِي فِيهِ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ عَلَى قُرَيْشٍ عُقُولَهُ، وَعَلَى الْأَنْصَارِ عُقُولَهُ فَإِنَّهُ مُرْسَلٌ كَمَا أَوْرَدْنَاهُ وَلَا حُجَّةَ فِي مُرْسَلٍ.

L39222 It is obligatory that we begin with the agnates in blood money as the Messenger of Allah—peace and blessings be upon him—commanded, and that we do not extend beyond the closest male relatives, as the Messenger of Allah—peace and blessings be upon him—delimited. No consideration is to be given to the dīwān registry or the inhabitants of a city, for neither a Qur'anic text, nor a Sunnah, nor consensus, nor a companion's opinion, nor analogy has

فَوَجَبَ أَنْ نَبْدَأَ فِي الْعَقْلِ بِالْعَصَبَةِ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنْ لَا نَتَجَاوَزَ الْبَطْنَ، كَمَا حَدَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنْ لَا يُلْتَفَتَ إلَى دِيوَانٍ، وَلَا إلَى أَهْلِ مَدِينَةٍ، إذْ لَمْ يُوجِبْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ

established this. However, those agnates are obligated wherever they exist up to the closest male relatives. If they are unknown or their responsibility becomes unmanageable due to people's dispersal across regions, then the agnates and closest relatives at that point are among the debtors and those bound by that financial liability, which is incumbent upon their wealth. Thus, they are counted among the debtors, and their due is fulfilled through the zakāh funds allocated to the debtors' share, thereby settling their liability from it. This is the ruling concerning the ʿāqilah—the agnatic liability group—which we have clarified and elucidated.

صَاحِبٍ، وَلَا قِيَاسٌ، لَكِنْ يُكَلَّفُ ذَلِكَ الْعَصَبَةُ حَيْثُ كَانُوا إِلَى الْبَطْنِ، فَإِنْ جَهِلُوا أَوْ تَعَذَّرَ أَمْرُهُمْ لِافْتِرَاقِ النَّاسِ فِي الْبِلَادِ، الْعَصَبَةُ وَالْبَطْنُ حِينَئِذٍ مِنْ الْغَارِمِينَ، وَمِمَّنْ قَدْ لَزِمَتْهُمْ تِلْكَ الْغَرَامَةُ، وَوَجَبَتْ فِي أَمْوَالِهِمْ، فَإِذْ هُمْ مِنْ الْغَارِمِينَ فَيُؤَدَّى حَقُّهُمْ فِي الصَّدَقَاتِ فِي سَهْمِ الْغَارِمِينَ فَيُؤَدَّى عَنْهُمْ مِنْ ذَلِكَ - فَهَذَا حُكْمُ الْعَاقِلَةِ قَدْ بَيَّنَّاهُ وَأَوْضَحْنَاهُ.

[مَسْأَلَة هَلْ تَحْمِلُ الْعَاقِلَةُ الصُّلْحَ فِي الْعَمْدِ أَوْ الِاعْتِرَافِ بِقَتْلِ الْخَطَأِ]

L39223

Issue: Is the ʿāqila (liable kin group) responsible for undertaking the settlement in cases of intentional homicide or when there is a confession regarding accidental killing?

L39224–39226

2144 - Issue: Does the responsible kin group undertake the settlement in cases of intentional killing, in the acknowledgment of accidental killing, or in the case of a slave killed accidentally? Abu Muhammad—may Allah have mercy on him—said: People have differed regarding this. Intentional homicide, the slave, settlement, and confession are from the offender's property; the agnatic kin do not bear them.

٢١٤٤ - مَسْأَلَةٌ: هَلْ تَحْمِلُ الْعَاقِلَةُ الصُّلْحَ فِي الْعَمْدِ، أَوْ الِاعْتِرَافِ بِقَتْلِ الْخَطَأِ؟ أَوْ الْعَبْدِ الْمَقْتُولِ فِي الْخَطَأِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ: نا مُوسَى بْنُ مُعَاوِيَةَ، نا وَكِيعٌ، نا عَبْدُ الْمَلِكِ بْنُ حُسَيْنٍ أَبُو مَالِكٍ: عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ، قَالَ: الْعَمْدُ، وَالْعَبْدُ، وَالصُّلْحُ، وَالِاعْتِرَافُ فِي مَالِ الْجَانِي لَا تَحْمِلُهُ الْعَاقِلَةُ.

L39227

From Al-Shaʿbī, who said: The Muslim jurists agreed that they would not pay blood money for intentional acts, slaves, settlements, or admissions [of guilt].

وَعَنْ الشَّعْبِيِّ - قَالَ: اصْطَلَحَ الْمُسْلِمُونَ عَلَى أَنْ لَا يَعْقِلُوا عَمْدًا وَلَا عَبْدًا، وَلَا صُلْحًا، وَلَا اعْتِرَافًا.

L39228

And from Ibrāhīm al-Nakhaʿī, he said: The kinship group is not liable for intentional killing, nor for a slave, nor for a settlement, nor for a confession. And from ʿUmar ibn ʿAbd al-ʿAzīz: unless the kinship group so wills.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا تَحْمِلُ الْعَاقِلَةُ عَمْدًا وَلَا عَبْدًا، وَلَا صُلْحًا وَلَا اعْتِرَافًا - وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: إلَّا أَنْ يَشَاءُوا.

L39229

From Abu Hanifa, from Hammad, from Ibrahim al-Nakha'i, who said: The

ʿĀqilah does not pay blood money for intentional acts, nor reconciliation, nor confessions, nor a slave.

وَعَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا تَعْقِلُ الْعَاقِلَةُ الْعَمْدَ وَلَا الصُّلْحَ، وَلَا الِاعْتِرَافَ، وَلَا الْعَبْدَ.

L39230 On the authority of Ibn Shihāb, he said: The Sunnah holds that the ʿāqilah (kinsmen responsible for blood money) do not bear liability for intentional acts unless they willingly assist the perpetrator. Mālik said: Yaḥyā ibn Saʿīd narrated the same to me.

وَعَنْ ابْنِ شِهَابٍ قَالَ: مَضَتْ السُّنَّةُ أَنَّ الْعَاقِلَةَ لَا تَحْمِلُ شَيْئًا مِنْ الْعَمْدِ إِلَّا أَنْ تُعِينَهُ عَنْ طِيبِ نَفْسٍ - قَالَ مَالِكٌ: وَحَدَّثَنِي يَحْيَى بْنُ سَعِيدٍ مِثْلَ ذَلِكَ.

L39231 From Malik, from Hisham ibn Urwah, from his father, who said: The ʿāqilah (agnatic kin group) bears no blood money for intentional acts unless they willingly agree to it. Their obligation is solely for blood money in cases of unintentional harm.

وَعَنْ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: لَيْسَ عَلَى الْعَاقِلَةِ عَقْلٌ مِنْ قِبَلِ الْعَمْدِ إِلَّا أَنْ يَشَاءُوا ذَلِكَ، إِنَّمَا عَلَيْهِمْ عَقْلُ الْخَطَأِ.

L39232 Abu Hanifah, Al-Shafi'i, Ibn Shubrumah, Sufyan Al-Thawri, Al-Awza'i, Malik, Abu Sulayman, and their adherents said: The liable agnatic group does not bear anything from all of this.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَابْنُ شُبْرُمَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ وَمَالِكٌ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: لَا تَحْمِلُ الْعَاقِلَةُ شَيْئًا مِنْ هَذَا كُلِّهِ.

L39233 A group said: The responsible kin group does not bear any of this liability at all, but rather assists him. This is based on what was narrated that 'Umar ibn al-Khaṭṭāb said: "They have no right to abandon him in any matter that occurred as a result of the reconciliation agreement." It is also reported from al-Zuhrī: "They are obligated to assist him."

وَقَالَتْ طَائِفَةٌ: لَا تَحْمِلُ الْعَاقِلَةُ شَيْئًا مِنْ هَذَا كُلِّهِ وَلَكِنْ تُعِينُهُ؛ لِمَا رُوِيَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَيْسَ لَهُمْ أَنْ يَخْذُلُوهُ عَنْ شَيْءٍ أَصَابَهُ فِي الصُّلْحِ - وَعَنْ الزُّهْرِيِّ: وَعَلَيْهِمْ أَنْ يُعِينُوهُ.

L39234 Another group disagreed based on what was narrated from Shu'bah, who said: "I asked al-Ḥakam ibn 'Utaybah and Ḥammād ibn Abī Sulaymān about a free man who encountered a slave by chance, and both died together?" They both responded: "The diyah for the slave falls upon the free man's agnatic kin, and no liability is incurred for the slave."

وَقَالَتْ طَائِفَةٌ غَيْرَ هَذَا لِمَا رُوِيَ عَنْ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ رَجُلٍ حُرٍّ اسْتَقْبَلَ مَمْلُوكًا فَتَصَادَفَا فَمَاتَا جَمِيعًا؟ فَقَالَا جَمِيعًا: دِيَةُ الْعَبْدِ عَلَى عَاقِلَةِ الْحُرِّ وَلَيْسَ عَلَى الْعَبْدِ شَيْءٌ.

L39235–39236 It is narrated from ʿAṭāʾ that he said: If a man kills a slave unintentionally, the liability falls upon his ʿāqilah, and if he kills a beast of burden unintentionally, the liability falls upon his ʿāqilah.

وَرُوِيَ عَنْ عَطَاءٍ قَالَ: إِنْ قَتَلَ رَجُلٌ عَبْدًا خَطَأً فَهُوَ عَلَى عَاقِلَتِهِ، وَإِنْ قَتَلَ دَابَّةً خَطَأً فَهُوَ عَلَى عَاقِلَتِهِ.

L39237 From Ibn Jurayj: Muhammad ibn Nasr and al-Ṣalt informed me that a man in Basra shot someone he assumed was a dog and killed him, but it turned out to be a human! The people did not know who the killer was. Then ʿAdī

وَعَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي مُحَمَّدُ بْنُ نَصْرٍ، وَالصَّلْتُ: أَنَّ رَجُلًا بِالْبَصْرَةِ رَمَى إِنْسَانًا ظَنَّ أَنَّهُ كَلْبٌ فَقَتَلَهُ، فَإِذَا هُوَ إِنْسَانٌ؟ فَلَمْ يَدْرِ النَّاسُ مَنْ قَاتِلُهُ، فَجَاءَ عَدِيُّ بْنُ أَرْطَاةَ فَأَخْبَرَهُ:

أَنَّهُ قَتَلَهُ فَسَجَنَهُ، وَكَتَبَ فِيهِ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَكَتَبَ إلَيْهِ: إنَّك بِئْسَ مَا صَنَعْت إذْ سَجَنْتَهُ وَقَدْ جَاءَ مِنْ قِبَلِ نَفْسِهِ، فَخَلِّ سَبِيلَهُ وَاجْعَلْ دِيَتَهُ عَلَى الْعَشِيرَةِ.

ibn Arṭāʿa arrived, and the man informed him (ʿAdī) that he had killed the victim. ʿAdī imprisoned him and wrote to ʿUmar ibn ʿAbd al-ʿAzīz about the matter. ʿUmar wrote back: "You have done a terrible thing by imprisoning him when he came forward voluntarily! Release him and impose the blood money upon his clan."

وَزَعَمَ الصَّلْتُ: أَنَّهُ مِنْ الْأَزْدِ - الْقَاتِلُ وَالْمَقْتُولُ - وَأَنَّ الْقَاتِلَ كَانَ عَاسًّا يَعُسُّ.

L39238 Al-Salt claimed that both the killer and the slain were from the Azd tribe, and that the killer was a goat-herder who practiced herding.

وَقَالَ الزُّهْرِيُّ: الْعَبْدُ تَحْمِلُ قِيمَتَهُ الْعَاقِلَةُ.

L39239 Az-Zuhri said: The ʻaqilah (male agnatic relatives liable for blood money) assumes responsibility for the slave's compensatory value.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ قَالَ: لَا تَحْمِلُ الْعَاقِلَةُ عَمْدًا، وَلَا عَبْدًا، وَلَا صُلْحًا، وَلَا اعْتِرَافًا؟ فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ هَذَا قَوْلٌ رُوِيَ عَنْ عُمَرَ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، إذْ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39240 Abū Muḥammad—may Allah have mercy on him—said: When they differed as we mentioned, it became obligatory for us to examine the evidence presented by each group to ascertain the truth and follow it. We then examined the evidence of those who argued: "The *ʿāqila* [kinsmen liable for blood money] is not responsible for intentional injury, nor for a slave, nor for reconciliation (*ṣulḥ*), nor for legal confessions?" We found them claiming: "This is the view narrated from ʿUmar and Ibn ʿAbbās (may Allah be pleased with them), and no dissenting opinion from the Companions is recorded." This provides no proof for their position, for there is no proof in the opinion of anyone apart from the Messenger of Allah—peace and blessings be upon him.

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ أَهْلُ الْقَوْلِ الثَّانِي: فَوَجَدْنَاهُمْ يَذْكُرُونَ مَا رُوِيَ عَنْ الزُّهْرِيِّ، قَالَ: بَلَغَنِي أَنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الْكِتَابِ الَّذِي كَتَبَهُ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ: لَا تَتْرُكُوا مُفْرَجًا أَنْ تُعِينُوهُ فِي فِكَاكٍ أَوْ عَقْلٍ» وَالْمُفْرِجُ: كُلُّ مَا لَا تَحْمِلُهُ الْعَاقِلَةُ - وَهَذَا مُرْسَلٌ يُوجِبُ أَنْ تُعِينَ الْعَاقِلَةُ فِيمَا لَمْ تَحْمِلْ جَمِيعَهُ - وَقَدْ رُوِيَ أَيْضًا مِنْ عُمَرَ كَمَا ذَكَرْنَا.

L39241 Then we examined the evidence cited by proponents of the second opinion. We found them referencing what was reported from al-Zuhri, who said: "It reached me that the Prophet—peace and blessings of Allah be upon him—stated in the document he wrote between Quraysh and the Ansar: 'Do not abandon any mufraj without assisting in ransom or diya.'" The mufraj refers to any obligation the responsible kin group cannot bear. This mursal narration obligates the responsible kin group to assist in obligations they cannot cover in full. A similar report has also been transmitted from Umar, as we mentioned.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي مُرْسَلٍ، فَلَمَّا لَمْ يَكُنْ فِيمَا احْتَجُّوا بِهِ حُجَّةٌ وَجَبَ أَنْ نَنْظُرَ فِيمَا اخْتَلَفُوا فِيهِ مِنْ ذَلِكَ، فَبَدَأْنَا بِالْعَمْدِ مَا أُلْزِمَ فِيهِ دِيَةٌ، أَوْ صُولِحَ فِيهِ، فَوَجَدْنَا

L39242 As for us, we do not consider any proof valid in a mursal report. Since there is no evidence in what they cited as proof, we must examine the matters over which they disagreed. We began with intentional killing where blood money

النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَمْ يَجُزْ أَنْ نُكَلِّفَ عَاقِلَةً غَرَامَةً حَيْثُ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَلَمْ يُوجِبْهَا قَطُّ نَصٌّ ثَابِتٌ فِي الْعَمْدِ، فَوَجَبَ أَنْ لَا تَحْمِلَ الْعَاقِلَةُ الْعَمْدَ، وَلَا الصُّلْحَ فِي الْعَمْدِ.

was imposed or a settlement was reached. We found the Prophet (peace be upon him) stating: "Your blood and your property are inviolable among you." Thus, it is impermissible to impose compensation on the *ʿāqilah* when neither Allah the Exalted nor His Messenger (peace be upon him) has mandated it, nor has any established authentic textual evidence ever mandated it in intentional killing. Therefore, it is obligatory that the *ʿāqilah* not bear responsibility for intentional killing or settlement in intentional killing.

ثُمَّ نَظَرْنَا فِي الِاعْتِرَافِ بِقَتْلِ الْخَطَأِ، فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L39243–39244 Then we examined the confession of unintentional killing, and we found Allah, the Exalted, states: "No soul earns [a sin] except upon itself, and no burdened soul bears the burden of another" [Quran 6:164].[4]

وَوَجَدْنَا الْمُقِرَّ بِقَتْلِ الْخَطَأِ لَيْسَ مُقِرًّا عَلَى نَفْسِهِ، لِأَنَّ الدِّيَةَ فِيمَا أَقَرَّ بِهِ عَلَى الْعَاقِلَةِ، لَا عَلَيْهِ، فَإِذْ لَيْسَ مُقِرًّا عَلَى نَفْسِهِ فَوَاجِبٌ أَنْ لَا يُصَدَّقَ عَلَيْهِمْ، إِلَّا أَنَّنَا نَقُولُ: إِنَّهُ إِنْ كَانَ عَدْلًا حَلَفَ أَوْلِيَاءُ الْقَتِيلِ مَعَهُ وَاسْتَحَقُّوا الدِّيَةَ عَلَى الْعَاقِلَةِ، فَإِنْ نَكَلُوا فَلَا شَيْءَ لَهُمْ.

L39245 We hold that one who admits to accidental killing is not confessing against himself, for the blood money arising from his admission falls upon the liable kinsmen, not upon himself. Therefore, since he does not confess against himself, his testimony against them must not be accepted. However, we maintain: If he is a credible person, the slain's guardians must swear an oath along with him, thereby establishing their right to claim blood money from the liable kinsmen. If they refuse to swear, they are not entitled to anything.

فَلَوْ أَقَرَّ اثْنَانِ عَدْلَانِ بِقَتْلِ خَطَأٍ وَجَبَتْ الدِّيَةُ عَلَى عَوَاقِلِهِمَا بِلَا يَمِينٍ، لِأَنَّهُمَا شَاهِدَا عَدْلٍ عَلَى الْعَاقِلَةِ.

L39246 If two upright individuals confess to an accidental killing, the blood money is incumbent upon their agnates without requiring an oath, as their testimony serves as proof of the agnates' liability.

وَقَدْ اخْتَلَفَ [النَّاسُ] فِي هَذَا: فَقَالَ أَبُو حَنِيفَةَ: وَالشَّافِعِيُّ، وَالْأَوْزَاعِيُّ، وَالثَّوْرِيُّ: الدِّيَةُ عَلَى الْمُقِرِّ فِي مَالِهِ.

L39247 Scholars have differed regarding this: Abū Ḥanīfah, al-Shāfiʿī, al-Awzāʿī, and al-Thawrī said: The diyah, or blood money, is incumbent upon the admitting party from his wealth.

وَقَالَ مَالِكٌ: لَا شَيْءَ عَلَيْهِ، قَالَ: وَإِنْ لَمْ يُتَّهَمْ بِمَنْ أَقَرَّ لَهُ أَقْسَمَ أَوْلِيَاءُ الْمَقْتُولِ، وَوَجَبَتْ الدِّيَةُ عَلَى الْعَاقِلَةِ.

L39248 Mālik said: There is nothing incumbent upon him. He said: Even if he is not suspected of involvement with the one who confessed to him, the heirs of the slain must swear an oath, and the blood money is incumbent upon the agnatic male kin.

ثُمَّ نَظَرْنَا فِي الْعَبْدِ يُقْتَلُ خَطَأً، هَلْ تَحْمِلُ قِيمَتَهُ الْعَاقِلَةُ أَمْ لَا؟ فَوَجَدْنَا مَنْ لَمْ تَحْمِلْهُ الْعَاقِلَةُ لَا حُجَّةَ لَهُمْ إِلَّا مَا ذَكَرْنَا مِنْ أَنَّهُ رُوِيَ ذَلِكَ عَنْ عُمَرَ.

L39249 Then we looked into [the case of] a slave killed unintentionally: does the *ʿāqila* bear his value or not? We found that those who hold the *ʿāqila*

[4] **Qur'an references (L39244):** Qur'an 6:164 (Al-An'am).

does not bear it have no proof except what we mentioned—that this was narrated from ʿUmar.

L39250 And from Ibn Abbas—and this is a statement not authentically reported from Umar, as we mentioned, because it is transmitted through Al-Shaʿbi from Umar, and Al-Shaʿbi was not born except years after the death of Umar—may Allah be pleased with him—nor do we know it to be authentically transmitted from Ibn Abbas. We have mentioned major rulings from a group of the Companions—may Allah be pleased with them—that they contradicted, as we have cited elsewhere. Therefore, it is obligatory to refer to what Allah the Exalted has obligated in cases of dispute, as He says: "If you disagree over something, refer it to Allah and the Messenger" [Quran 4:59], so we have done.[5]

وَعَنْ ابْنِ عَبَّاسٍ - وَهُوَ قَوْلٌ لَمْ يَصِحَّ عَنْ عُمَرَ كَمَا ذَكَرْنَا، لِأَنَّهُ عَنْ الشَّعْبِيِّ عَنْ عُمَرَ وَلَمْ يُولَدْ الشَّعْبِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِسِنِينَ وَلَا نَعْلَمُهُ أَيْضًا يَصِحُّ عَنْ ابْنِ عَبَّاسٍ وَقَدْ ذَكَرْنَا قَضَايَا عَظِيمَةً عَنْ جَمَاعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خَالَفُوهَا، قَدْ ذَكَرْنَاهَا فِي غَيْرِ مَوْضِعٍ، فَالْوَاجِبُ الرُّجُوعُ إلَى مَا أَوْجَبَ اللَّهُ تَعَالَى عِنْدَ التَّنَازُعِ، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ، فَفَعَلْنَا.

L39251 We found what ʿAbdullāh ibn Rabīʿ narrated, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from al-Qāsim ibn Zakariyyā, from Saʿīd ibn ʿAmr, from Ḥammād ibn Zayd, from Ayyūb al-Sakhtiyānī, from ʿIkrimah, from Ibn ʿAbbās: "A mukātab was killed during the time of Allah's Messenger - peace and blessings be upon him - so the Prophet - peace be upon him - ordered that the portion he had paid be compensated as a free person's diyah, and the remainder as a slave's diyah."

فَوَجَدْنَا مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا الْقَاسِمُ بْنُ زَكَرِيَّا نا سَعِيدُ بْنُ عَمْرٍو نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ مُكَاتَبًا قُتِلَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ - عَلَيْهِ السَّلَامُ - أَنْ يُودَى مَا أَدَّى دِيَةَ الْحُرِّ، وَمَا لَا دِيَةَ الْمَمْلُوكِ» .

L39252–39253 It has been narrated from Yahya ibn Abi Kathir that he said: Ali ibn Abi Talib and Marwan held the opinion regarding the mukatab that the blood money of a free person is paid proportionally to the amount he has contributed toward his emancipation, while the remaining portion is subject to the blood money of a slave.

وَقَدْ رُوِيَ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: إنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَمَرْوَانَ كَانَا يَقُولَانِ فِي الْمُكَاتَبِ أَنَّهُ يُودَى مِنْهُ دِيَةَ الْحُرِّ بِقَدْرِ مَا أَدَّى، وَمَا رُقَّ مِنْهُ دِيَةَ الْعَبْدِ.

L39254 We found the Messenger of Allah—may Allah bless him and grant him peace—who is the authority in religion, having termed what is paid in the killing of **the** slave as "diyah," and Ali ibn Abi Talib—who is the authority in language—also termed it "diyah."

فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ الْحُجَّةُ فِي الدِّينِ سَمَّى مَا يُودَى فِي قَتْلِ الْعَبْدِ " دِيَةً " وَسَمَّاهُ أَيْضًا عَلِيُّ بْنُ أَبِي طَالِبٍ - وَهُوَ حُجَّةٌ - فِي اللُّغَةِ " دِيَةً ".

L39255 It has been authentically reported from the Prophet (peace be upon him) that the blood money for accidental killing is incumbent upon the ʿāqilah.

وَقَدْ صَحَّ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - أَنَّ الدِّيَةَ فِي النَّفْسِ فِي الْخَطَأِ عَلَى الْعَاقِلَةِ - وَصَحَّ الْإِجْمَاعُ عَلَى أَنَّ فِي قَتْلِ الْعَبْدِ الْمُؤْمِنِ خَطَأً: كَفَّارَةً بِعِتْقِ رَقَبَةٍ، أَوْ صِيَامِ شَهْرَيْنِ مُتَتَابِعَيْنِ

[5] **Qur'an references (L39250):** Qur'an 4:59 (An-Nisa).

A consensus has also been established that accidentally killing an enslaved believer necessitates expiation through freeing a slave or fasting two consecutive months for one who cannot find a slave. Thus, it is established by textual evidence and consensus that what is paid for an enslaved person is blood money, and this blood money falls upon the ʿāqilah. This is our doctrine.

لِمَنْ لَمْ يَجِدْ رَقَبَةً - فَصَحَّ بِالنَّصِّ، وَالْإِجْمَاعِ: أَنَّ مَا يُودَى فِي الْعَبْدِ دِيَةٌ، وَالدِّيَةُ عَلَى الْعَاقِلَةِ - وَبِهَذَا نَقُولُ.

L39256 As for the diyah and other forms of wealth, they are not [considered diyah], because none of those are termed "diyah." Wealth is prohibited unless established by a textual ruling or consensus. And divine facilitation is with Allah, the Exalted.

وَأَمَّا الدِّيَةُ وَسَائِرُ الْأَمْوَالِ فَلَا، لِأَنَّهُ لَا يُسَمَّى شَيْءٌ مِنْ ذَلِكَ " دِيَةً " وَالْأَمْوَالُ مَحْظُورَةٌ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39257 **The Issue of the Measure Borne by the ʿĀqilah (Responsible Kin Group).**

[مَسْأَلَة مِقْدَارُ مَا تَحْمِلُهُ الْعَاقِلَةُ]

L39258 **2145 – Issue:** What is the extent of the _ʿāqilah's_ liability? Abū Muḥammad—may Allah have mercy on him—said: A school of jurists held that the _ʿāqilah_ is only liable for unintentional offenses if the amount exceeds one-third of the _diyah_ (blood money). If the amount is less than or equal to one-third, it is paid from the perpetrator's own wealth.

٢١٤٥ - مَسْأَلَةٌ: مِقْدَارُ مَا تَحْمِلُهُ الْعَاقِلَةُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: قَالَتْ طَائِفَةٌ: لَا تَحْمِلُ الْعَاقِلَةُ مِنْ جِنَايَاتِ الْخَطَأِ إلَّا مَا كَانَ أَكْثَرَ مِنْ ثُلُثِ الدِّيَةِ فَصَاعِدًا، فَإِنْ كَانَ أَقَلَّ مِنْ الثُّلُثِ أَوْ كَانَ الثُّلُثَ، فَهُوَ فِي مَالِ الْجَانِي.

L39259 A group stated that the male agnatic kin (al-ʿāqila) are only liable for a third of the diya (blood money) or more. Any amount less than a third of the diya must be paid from the offender's own wealth.

وَقَالَتْ طَائِفَةٌ: لَا تَحْمِلُ الْعَاقِلَةُ إلَّا مَا كَانَ ثُلُثَ الدِّيَةِ فَصَاعِدًا، فَمَا كَانَ أَقَلَّ مِنْ ثُلُثِ الدِّيَةِ فَهُوَ فِي مَالِ الْجَانِي.

L39260 A faction holds that amounts of one-third or more are borne by the male agnates, while any amount less than one-third is borne exclusively by his immediate male kin.

وَقَالَتْ طَائِفَةٌ: الثُّلُثُ فَصَاعِدًا عَلَى الْعَاقِلَةِ، وَمَا كَانَ أَقَلَّ مِنْ الثُّلُثِ فَعَلَى قَوْمِهِ خَاصَّةً.

L39261 A group maintained that the kinship group is responsible only for amounts equivalent to half of a tenth of the blood money or higher, while anything less than that is borne by the offender's personal wealth.

وَقَالَتْ طَائِفَةٌ: لَا تَحْمِلُ الْعَاقِلَةُ إلَّا مَا كَانَ نِصْفَ عُشْرِ الدِّيَةِ فَصَاعِدًا، وَمَا كَانَ أَقَلَّ فَهُوَ فِي مَالِ الْجَانِي.

L39262 A group held that if a woman causes injury to a man or a woman, and the compensation reaches one-third of the victim's *diyah*, it is borne by her *ʿāqila*. If it amounts to less than that, it is payable from her wealth.

وَقَالَتْ طَائِفَةٌ: إنْ جَنَتْ امْرَأَةٌ عَلَى رَجُلٍ أَوْ امْرَأَةٍ، فَبَلَغَتْ ثُلُثَ دِيَتِهَا كَانَ عَلَى عَاقِلَتِهِ، وَإِنْ بَلَغَ أَقَلَّ فَفِي مَالِهِ.

وَقَالَتْ طَائِفَةٌ: الْمُرَاعَى فِي ذَلِكَ الْمَجْنِيِّ عَلَيْهِ، فَإِنْ كَانَ امْرَأَةً فَبَلَغَ نِصْفَ عُشْرِ دِيَتِهَا حَمَلَتْهُ عَاقِلَةُ الْجَانِي - رَجُلًا كَانَ أَوْ امْرَأَةً - وَإِنْ كَانَ الْمَجْنِيُّ عَلَيْهِ رَجُلًا فَبَلَغَ نِصْفَ عُشْرِ دِيَتِهِ فَإِنَّهُ عَلَى عَاقِلَةِ الْجَانِي - رَجُلًا كَانَ أَوْ امْرَأَةً - وَمَا كَانَ دُونَ ذَلِكَ فَفِي مَالِ الْجَانِي.

L39263–39265 A group said: What is considered in this matter is the victim. If the victim is a woman and the amount reaches one-twentieth of her blood money, the offender's agnatic kin (whether the offender is male or female) bear responsibility for it. If the victim is a man and the amount reaches... Half of one-tenth of the blood money is the responsibility of the perpetrator's agnatic kin (whether the perpetrator is male or female), and whatever is less than that is from the perpetrator's wealth.

وَقَالَتْ طَائِفَةٌ: تَحْمِلُ الْعَاقِلَةُ مَا قَلَّ أَوْ كَثُرَ.

L39266 And a group said: The agnatic kin bear what is little or much.

وَقَالَتْ طَائِفَةٌ: الْحُكْمُ فِي ذَلِكَ عَلَى مَا اتَّفَقُوا عَلَيْهِ، فَإِنْ كَانَ تَآلَفُوا عَلَى الْكَثِيرِ فَقَطْ حَمَلُوا الْكَثِيرَ فَقَطْ - وَلَمْ تَحُدَّ لِلْقَلِيلِ وَلَا لِلْكَثِيرِ حَدًّا -.

L39267 A group held: The ruling in this matter is based on what they mutually agreed upon. If they settled on the large amount exclusively, they are only liable for the large amount - with no prescribed penalty established for either the small or the large amount.

قَالَ أَبُو مُحَمَّد: فَالْقَوْلُ الْأَوَّلُ كَمَا رُوِيَ عَنْ الزُّهْرِيِّ، قَالَ: الثُّلُثُ فَمَا دُونَهُ فِي خَاصَّةِ مَالِهِ وَمَا زَادَ فَهُوَ عَلَى الْعَاقِلَةِ.

L39268 Abu Muhammad said: The first opinion is as reported from Al-Zuhri, who said: Up to one-third is from his personal wealth, and anything exceeding that is the responsibility of al-aqilah.

وَالْقَوْلُ الثَّانِي - كَمَا رُوِيَ عَنْ ابْنِ وَهْبٍ، قَالَ: أَخْبَرَنِي ابْنُ سَمْعَانَ قَالَ: سَمِعْت رِجَالًا مِنْ عُلَمَائِنَا يَقُولُونَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الدِّيَةِ أَنْ لَا يُحْمَلَ مِنْهَا شَيْءٌ عَلَى الْعَاقِلَةِ حَتَّى تَبْلُغَ ثُلُثَ الدِّيَةِ فَإِنَّهَا عَلَى الْعَاقِلَةِ - عَقْلُ الْمَأْمُومَةِ وَالْجَائِفَةِ - فَإِذَا بَلَغَتْ ذَلِكَ فَصَاعِدًا حُمِلَتْ عَلَى الْعَاقِلَةِ.

L39269 The second opinion—as narrated from Ibn Wahb, who said: Ibn Sam'ān informed me, saying: I heard some of our scholars state: 'Umar ibn al-Khaṭṭāb ruled regarding blood money that no portion of it is to be borne by the agnatic clan until it reaches a third thereof, for the compensation for a skull fracture exposing the brain membrane and a penetrating wound to the body cavity is upon the agnatic clan. When it reaches that amount or beyond, it is borne by the agnatic clan.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ مِثْلُهُ - وَعَنْ الزُّهْرِيِّ مِثْلُهُ.

L39270 And from Sa'īd ibn al-Musayyib and Sulaymān ibn Yasār, a similar narration—and from al-Zuhrī, the like of it.

وَقَالَ عُرْوَةُ بْنُ الزُّبَيْرِ: مَا كَانَ مِنْ خَطَأٍ فَلَيْسَ عَلَى الْعَاقِلَةِ مِنْهُ شَيْءٌ حَتَّى يَبْلُغَ ثُلُثَ الدِّيَةِ - عَلَى ذَلِكَ أَمْرُ السُّنَّةِ -.

L39271 Urwah ibn al-Zubayr said: Whatever act occurs by mistake does not fall upon the ʿāqilah [liable kinship group] until it amounts to one-third of the blood money—this is the ruling established by the Sunnah.

وَعَنْ اللَّيْثِ بْنِ سَعْدٍ أَنَّهُ سَمِعَ يَحْيَى بْنَ سَعِيدٍ يَقُولُ: إنَّ مِنْ الْأَمْرِ - الْقَدِيمِ عِنْدَنَا - أَنْ لَا يَكُونَ عَلَى الْعَاقِلَةِ عَقْلٌ حَتَّى يَبْلُغَ الْجُرْحُ ثُلُثَ الدِّيَةِ.

L39272 And from al-Layth ibn Saʿd that he heard Yaḥyā ibn Saʿīd say: Among the long-established principles in our tradition is that no liability (ʿaql) is

incumbent on the ʿāqilah (liable kin group) until the injury reaches one-third of the full diyah (blood money).

وَعَنْ رَبِيعَةَ لَا تَحْمِلُ الْعَاقِلَةُ مَا دُونَ الثُّلُثِ إِلَّا أَنْ يَصْطَلِحُوا عَلَى شَيْءٍ.

L39273 And from Rabi'ah: The 'aqila (the kinship group responsible for blood money payments) is not liable for what is less than a third of the blood money unless they settle by mutual agreement upon something.

وَعَنْ ابْنِ جُرَيْجٍ، وَمَعْمَرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ قَالَ: نَحْنُ مُجْتَمِعُونَ أَوْ قَدْ كِدْنَا أَنْ نَجْتَمِعَ: أَنَّ مَا دُونَ الثُّلُثِ فِي مَالِهِ خَاصَّةً.

L39274 From Ibn Jurayj and Ma'mar, from 'Ubayd Allāh ibn 'Umar, who said: We have reached consensus, or we had nearly attained it, that anything less than a third of one's wealth pertains specifically.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى فِي مَوْلًى جُرِحَ، فَكَانَ دُونَ الثُّلُثِ مِنْ الدِّيَةِ وَلَمْ يَكُنْ لَهُ شَيْءٌ أَنْ يَكُونَ دَيْنًا يُتْبَعُ بِهِ - وَبِهَذَا يَقُولُ عَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ.

L39275 And from Yahya ibn Sa'id that 'Umar ibn 'Abd al-'Aziz ruled regarding a client who was wounded, where the compensation amounted to less than a third of the *diyah* and he possessed no assets, thus it becomes a debt to be pursued. This is the position of 'Abd al-'Aziz ibn Abi Salama.

وَالْقَوْلُ الثَّالِثُ - قَالَ مَالِكٌ: مَا بَلَغَ ثُلُثَ الدِّيَةِ مِنْ الرَّجُلِ مِنْ جِنَايَةِ الرَّجُلِ جَرَحَ رَجُلًا أَوْ امْرَأَةً فَعَلَى الْعَاقِلَةِ فَإِنْ كَانَ أَقَلَّ مِنْ ذَلِكَ فَفِي مَالِهِ، وَمَا بَلَغَ ثُلُثَ دِيَةِ الْمَرْأَةِ فَعَلَى الْعَاقِلَةِ فَمَا كَانَ أَقَلَّ فَفِي مَالِهِ سَوَاءٌ جَرَحَتْ رَجُلًا أَوْ امْرَأَةً.

L39276–39278 The third opinion—Mālik said: If a man's offense against a man or a woman results in compensation reaching a third of a man's _diyah_, it falls upon the _ʿāqilah_. If the amount is less than that, it is paid from his own wealth. And what reaches a third of a woman's _diyah_... Thus, the liability lies on the ʿāqila (liable male kin group); whatever lesser amount [is due] is to be paid from his wealth, equally, whether the injury was sustained by a man or a woman.

وَالْقَوْلُ الرَّابِعُ - كَمَا رُوِيَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ قَالَ: لَا تَعْقِلُ الْعَاقِلَةُ مَا دُونَ الْمُوضِحَةِ.

L39279 The fourth opinion—as reported from Ḥammād ibn Abī Sulaymān, on the authority of Ibrāhīm, who said: The liable kin (al-ʿāqila) are not responsible for blood money (al-ʿaql) for injuries below the bone-exposing wound (al-mūḍiḥah).

قَالَ وَكِيعٌ: وَسَمِعْت سُفْيَانَ الثَّوْرِيَّ يَقُولُ: لَا تَعْقِلُ الْعَاقِلَةُ مُوضِحَةَ الْمَرْأَةِ إِلَّا فِي قَوْلِ مَنْ رَآهَا كَمُوضِحَةِ الرَّجُلِ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ.

L39280 Waki' said: I heard Sufyan al-Thawri say: The male liable kin group does not pay compensation for a woman's front tooth except according to those who equate it to a man's front tooth—and this is the opinion of Ibn Shubrumah.

وَأَمَّا الْقَوْلُ الْخَامِسُ - فَإِنَّ أَبَا حَنِيفَةَ وَأَصْحَابَهُ قَالُوا بِهِ فَرَاعَوْا الْمَجْنِيَّ عَلَيْهِ، قَالُوا: فَإِنْ كَانَ الْمَجْنِيُّ عَلَيْهِ امْرَأَةً فَبَلَغَتْ الْجِنَايَةُ نِصْفَ عُشْرِ دِيَتِهَا فَصَاعِدًا فَهِيَ عَلَى الْعَاقِلَةِ، فَإِنْ

L39281 As for the fifth opinion, Abū Ḥanīfah and his companions held it, considering the victim's status. They stated: If the victim is a woman and the liability reaches one-twentieth (5%) of her blood money (diyah) or more, the responsibility falls upon the male kin group (ʿāqila). If it is less, it is paid from the perpetrator's wealth—whether the perpetrator is male or female. If

بَلَغَتْ أَقَلَّ فَهِيَ فِي مَالِ الْجَانِي - رَجُلًا كَانَ أَوْ امْرَأَةً - فَإِنْ كَانَ الْمَجْنِيُّ عَلَيْهِ رَجُلًا فَبَلَغَتْ الْجِنَايَةُ نِصْفَ عُشْرِ دِيَتِهِ فَصَاعِدًا فَهِيَ عَلَى الْعَاقِلَةِ، فَإِنْ بَلَغَتْ أَقَلَّ فَفِي مَالِ الْجَانِي - رَجُلًا كَانَ أَوْ امْرَأَةً.

the victim is a man and the liability reaches one-twentieth of his diyah or more, the responsibility falls upon the ʿāqila. If it is less, it is paid from the perpetrator's wealth—whether the perpetrator is male or female.

L39282 وَالْقَوْلُ السَّادِسُ - كَمَا رَوَى عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، قَالَ: إذَا بَلَغَ الثُّلُثَ فَهُوَ عَلَى الْعَاقِلَةِ، وَقَالَ لِي ذَلِكَ ابْنُ أَيْمَنَ، وَلَا أَشُكُّ أَنَّهُ قَالَ: فَمَا لَمْ يَبْلُغْ الثُّلُثَ فَعَلَى قَوْمِ الرَّجُلِ خَاصَّةً.

L39282 The sixth opinion—as reported by ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ, who said: "If it reaches a third, it is upon the ʿāqilah (the collective liable for blood money)." Ibn Ayman related this to me, and I have no doubt he said, "Any amount that does not reach a third is exclusively upon the man's paternal kin."

L39283 وَالْقَوْلُ السَّابِعُ - كَمَا رُوِيَ عَنْ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ أَبِي الزِّنَادِ قَالَ: كُلُّ شَيْءٍ مِنْ جِرَاحٍ أَوْ دَمٍ كَانَ خَطَأً، فَإِنَّ عَقْلَ مَا ائْتَلَفَتْ عَلَيْهِ الْقَبِيلَةُ مِنْ الْخَطَأِ عَلَى مَا ائْتَلَفُوا عَلَيْهِ إنْ كَانَتْ إلْفَتُهُمْ عَلَى الْكَثِيرِ، وَلَيْسَتْ عَلَى الْقَلِيلِ، فَإِنَّ عَقْلَ مَا ائْتَلَفُوا عَلَيْهِ عَلَى الْعَاقِلَةِ وَعَقْلَ مَا لَمْ يَأْتَلِفُوا عَلَيْهِ عَلَى الْجَارِحِ فِي مَالِهِ - وَلَيْسَ بِشَيْءٍ مِنْ ذَلِكَ - اصْطَلَحَتْ عَلَيْهِ الْقَبِيلَةُ - بَأْسٌ.

L39283 The seventh opinion—as narrated from Ibn Wahb, who informed me from Yunus, from Abū al-Zinād, who said: Every instance of injury or bloodshed occurring unintentionally—the blood money for what the tribe has agreed upon as unintentional shall be determined by their agreement, provided their agreement applies to the majority of cases rather than the minority. Thus, the blood money for what they have agreed upon falls upon the agnatic kin, while the blood money for what they have not agreed upon is borne by the injuring party from his wealth. None of this holds validity unless the tribe has mutually agreed upon it—otherwise, there is harm.

L39284 وَقَدْ كَانَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ أَلَّفَ مُعَقِّلَةَ قُرَيْشٍ، إذْ كَانَ أَمِيرًا عَلَى الْمَدِينَةِ: عَلَى أَنَّهُمْ يَعْقِلُونَ ثُلُثَ الدِّيَةِ فَمَا فَوْقَهَا، وَأَنَّ مَا دُونَ ذَلِكَ يَكُونُ عَلَى الْجَارِحِ فِي مَالِهِ.

L39284 Umar ibn Abd al-Aziz established the muʿaqqilah of Quraysh when he was governor of Medina, stipulating that they would pay a third of the blood money *diyah* or more, while anything below that would be borne by the injurer from his own wealth.

L39285 وَالْقَوْلُ الثَّامِنُ - قَالَهُ عُثْمَانُ الْبَتِّيُّ، وَالشَّافِعِيُّ: أَنَّ الْعَاقِلَةَ تَحْمِلُ مَا قَلَّ أَوْ كَثُرَ - كَمَا ذَكَرْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا قَوْلَ عَطَاءٍ وَغَيْرِهِ: أَنَّ الْعَاقِلَةَ تَحْمِلُ ثَمَنَ الْعَبْدِ - وَلَمْ يَخُصَّ قَلِيلًا مِنْ كَثِيرٍ - وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L39285 The eighth opinion—stated by ʿUthmān al-Battī and al-Shāfiʿī—is that al-ʿaqilah bear the payment, whether small or large, as we mentioned in the chapter preceding this one: the opinion of ʿAṭāʾ and others that al-ʿaqilah bear the price of the slave—without distinguishing between a small or large amount. This is the opinion of al-Ḥakam ibn ʿUtaybah, Ḥammād ibn Abī Sulaymān, and others.

L39286–39288 قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ تَعَالَى -: فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّهُ إلَى الثُّلُثِ فَمَا فَوْقَهُ... إلَخْ الْجَارِحُ: فَإِنْ كَانَ الْعَقْلُ أَكْثَرَ مِنْ الْعَاقِلَةِ

L39286–39288 Abu Muhammad (may Allah have mercy on him) said: We examined the view of those who stated, "Indeed, up to one-third of the estate..." The perpetrator: and if the compensation exceeds the ʿāqilah (liable kin group)?

We found they have no proof whatsoever that we fundamentally recognize. Thus, this opinion is dismissed, for any opinion without proof is invalid, and it is impermissible to uphold it.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّ الثُّلُثَ فَمَا دُونَهُ فِي مَالِ الْجَانِي، وَإِنَّ مَا زَادَ عَلَى الْعَاقِلَةِ؟ فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ نَعْلَمُهَا أَصْلًا - فَسَقَطَ هَذَا الْقَوْلُ، إذْ كُلُّ قَوْلٍ لَا حُجَّةَ لَهُ، فَهُوَ سَاقِطٌ لَا يَجُوزُ الْقَوْلُ بِهِ.

L39289 Then we examined the second opinion and found them citing what Yunus ibn Yazid narrated from Rabi'ah, that he said: "The Messenger of Allah—peace and blessings of Allah be upon him—organized people according to their clan-based liability units. Banu Sa'idah, though separate, were grouped into a single unit jointly paying one-third of the blood money or more, while anything below that amount fell upon the one who incurred liability through his deliberate act or committed the offense."

ثُمَّ نَظَرْنَا فِي الْقَوْلِ الثَّانِي - فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا رَوَاهُ يُونُسُ بْنُ يَزِيدَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلَّفَ بَيْنَ النَّاسِ فِي مَعَاقِلِهِمْ فَكَانَتْ بَنُو سَاعِدَةَ فُرَادَى عَلَى مَعْقُلَةٍ يَتَعَاقَلُونَ ثُلُثَ الدِّيَةِ فَصَاعِدًا، وَيَكُونُ مَا دُونَ ذَلِكَ عَلَى مَنْ اكْتَسَبَ وَجَنَى» .

L39290 Ibn Wahb said: 'Abd al-Jabbar ibn 'Umar narrated to me from Rabi'ah that he said: "The Messenger of Allah (peace and blessings be upon him) mediated the blood money between Quraysh and the Ansar, setting the diya between them up to one-third of the full amount."

وَقَالَ ابْنُ وَهْبٍ: وَحَدَّثَنِي عَبْدُ الْجَبَّارِ بْنُ عُمَرَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ: «عَاقَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ: فَجَعَلَ الْعَقْلَ بَيْنَهُمْ إلَى ثُلُثِ الدِّيَةِ» .

L39291 Hammam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, al-Harith ibn Abi Usamah narrated to us, Muhammad ibn Umar al-Waqidi narrated to us, Musa ibn Shaybah narrated from Kharijah ibn Abdullah ibn Ka'b ibn Malik, from his father, from his grandfather, who said: "During our Age of Ignorance, we only bore a portion of the collective liability equivalent to a third of the *diya*, and we were required to pay it immediately. If it was unavailable to us, it was treated as a deferred obligation. When Allah Almighty brought Islam, we were among those for whom the Messenger of Allah (peace and blessings be upon him) instituted the pre-Islamic system of collective liability between Quraysh and the Ansar: a third of the *diya*. This was reported from Umar, and no disagreement from any of the Companions—may Allah be pleased with them—is known regarding this matter."

وَمَا ناه حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا الْحَارِثُ بْنُ أَبِي أُسَامَةَ نا مُحَمَّدُ بْنُ عُمَرَ الْوَاقِدِيُّ نا مُوسَى بْنُ شَيْبَةَ عَنْ خَارِجَةَ بْنِ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: كُنَّا فِي جَاهِلِيَّتِنَا وَإِنَّمَا نَحْمِلُ مِنْ الْعَقْلِ مَا بَلَغَ ثُلُثَ الدِّيَةِ، وَنُؤْخَذُ بِهِ حَالًّا، فَإِنْ لَمْ يُوجَدْ عِنْدَنَا كَانَ بِمَنْزِلَةِ الَّذِي يَتَجَازَى، فَلَمَّا جَاءَ اللَّهُ تَعَالَى بِالْإِسْلَامِ كُنَّا فِيمَنْ سَنَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الْمَعَاقِلِ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ: ثُلُثَ الدِّيَةِ - رُوِيَ عَنْ عُمَرَ - وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L39292 Abu Muhammad—may Allah have mercy on him—said: We examined this argument and found that it does not constitute a valid proof, for the two reports from Rabi'ah are mursal.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي هَذَا الِاحْتِجَاجِ، فَوَجَدْنَاهُ لَا تَقُومُ بِهِ حُجَّةٌ، لِأَنَّ الْخَبَرَيْنِ عَنْ رَبِيعَةَ مُرْسَلَانِ.

L39293 As for the *Musnad*—it is completely invalid, for it is narrated by Al-Ḥārith ibn Abī Usāmah, a narrator denounced for unreliable hadiths who was abandoned in the end. It is also narrated by Al-Wāqidī, who is charged with fabrication.

أَمَّا الْمُسْنَدُ - فَهَالِكٌ أَلْبَتَّةَ؛ لِأَنَّهُ عَنْ الْحَارِثِ بْنِ أَبِي أُسَامَةَ وَهُوَ مُنْكَرُ الْحَدِيثِ، تُرِكَ بِأَخَرَةٍ - وَهُوَ أَيْضًا عَنْ الْوَاقِدِيِّ، وَهُوَ مَذْكُورٌ بِالْكَذِبِ.

L39294 Then from Khārijah ibn ʿAbd Allāh ibn Kaʿb ibn Mālik—and he is unknown.

ثُمَّ عَنْ خَارِجَةَ بْنِ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ - وَهُوَ مَجْهُولٌ.

L39295 And they have abandoned many a mursal report more authentic than this one, such as the mursal report concerning the blind eye: one-third of its blood money, and other such cases—thus this opinion has been invalidated.

وَرُبَّ مُرْسَلٍ أَصَحَّ مِنْ هَذَا قَدْ تَرَكُوهُ، كَالْمُرْسَلِ فِي: أَنَّ فِي الْعَيْنِ الْعَوْرَاءِ: ثُلُثَ دِيَتِهَا وَغَيْرِ ذَلِكَ - فَسَقَطَ هَذَا الْقَوْلُ.

L39296 As for it being from ʿUmar—may Allah be pleased with him—it is a mursal narration via Ibn Samʿān, and Ibn Samʿān is accused of lying. Moreover, even if it were authentic, the statement of anyone other than the Messenger of Allah—peace and blessings be upon him—could not serve as authoritative evidence.

وَأَمَّا كَوْنُهُ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَهُوَ مُرْسَلٌ عَنْ ابْنِ سَمْعَانَ وَابْنِ سَمْعَانَ مَذْكُورٌ بِالْكَذِبِ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُجَّةٌ.

L39297–39299 It has been authentically reported from ʿUmar—in a ruling more sound than his own—that for an animal's eye, a quarter of its value is due, as recorded in his written ruling. He thereby informed the judges across the land, and in his sermon to the Companions (may Allah be pleased with them), he said: "There is a camel in the rib and a camel in the collarbone."

وَقَدْ جَاءَ عَنْ عُمَرَ بِمَا هُوَ أَصَحُّ مِنْ حُكْمِهِ: فِي عَيْنِ الدَّابَّةِ رُبُعُ ثَمَنِهَا، وَكِتَابُهُ بِذَلِكَ إلَى الْقُضَاةِ فِي الْبِلَادِ، وَمِنْ خُطْبَتِهِ عَلَى الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ فِي الضِّلْعِ جَمَلًا، وَفِي التَّرْقُوَةِ جَمَلًا.

L39300 It is invalid that a statement authentically established from ʿUmar should not be a valid proof, while a fabricated statement unauthenticated from him is considered a valid proof—thus collapsing all the evidence they have cited.

وَمِنْ الْبَاطِلِ أَنْ يَكُونَ قَوْلُ عُمَرَ قَدْ صَحَّ عَنْهُ لَيْسَ حُجَّةً، وَيَكُونَ قَوْلٌ مَكْذُوبٌ لَمْ يَصِحَّ عَنْهُ حُجَّةً - فَسَقَطَ كُلُّ مَا احْتَجُّوا بِهِ.

L39301 Then we considered the statement of those who assert: "The responsible kin group does not bear compensation amounting to less than half of a tenth of the diyah," but we found no evidence supporting their position except their claim that wealth is not borne by the responsible kin group because it entails no fixed injury compensation with a non-exceeding limit. However, we established that the responsible kin group does bear a third of the diyah because it involves an established injury compensation with a defined limit. Hence, it is incumbent that the same principle applies: all cases entailing a precisely defined injury compensation are borne by the responsible kin

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لَا تَحْمِلُ الْعَاقِلَةُ مَا دُونَ نِصْفِ الْعُشْرِ مِنْ الدِّيَةِ فَلَمْ نَجِدْ لَهُمْ حُجَّةً إلَّا أَنْ قَالُوا: إنَّ الْأَمْوَالَ لَا تَحْمِلُهَا الْعَاقِلَةُ؛ لِأَنَّهُ لَيْسَ فِيهَا أَرْشٌ مُؤَقَّتٌ لَا يَتَعَدَّى - وَوَجَدْنَا ثُلُثَ الدِّيَةِ تَحْمِلُهَا الْعَاقِلَةُ؛ لِأَنَّ فِيهَا أَرْشًا مَعْلُومًا لَا يَتَعَدَّى، فَوَجَبَ أَنْ يَكُونَ كَذَلِكَ كُلُّ مَا لَهُ أَرْشٌ مَحْدُودٌ فَتَحَمَّلُهُ الْعَاقِلَةُ، وَمَا لَا أَرْشَ لَهُ مَحْدُودًا فَلَا تَحْمِلُهُ الْعَاقِلَةُ؟ .

group, whereas those lacking a defined injury compensation are not borne by them.

L39302 Abū Muḥammad—may God have mercy on him—said: "This is baseless, a false statement, and a fabricated falsehood. We do not know where they found this—except through conjectures?" God Almighty said: *They follow nothing but conjecture, and indeed, conjecture avails nothing against the truth* [53:28].[6]

L39303 Then we examined the division of Abū Ḥanīfa and Mālik: Mālik's consideration of one-third of the woman's diyah when she is the perpetrator, or one-third of the man's diyah when he is the perpetrator; and Abū Ḥanīfa's consideration of half of one-tenth of the diyah specifically in the case of the victim—whether male or female. We found that no one known to us had preceded Abū Ḥanīfa in these divisions regarding that matter, nor had anyone known to us preceded Mālik in this division of his. If it is permissible for Abū Ḥanīfa and Mālik to state an opinion based on their personal reasoning—a view unattributed to anyone before them—then God Almighty has never prohibited this for others besides them, nor permitted them anything He did not permit for every Muslim other than them. This applies especially to one who upholds what the Quran and the Sunnah of God's Messenger—peace and blessings be upon him—have made obligatory. To approve of Mālik and Abū Ḥanīfa for an opinion based on reasoning unattested before them, while rejecting those who follow the speech of God Almighty and His Messenger—peace and blessings be upon him—in stating a position unreported from any predecessor, with no valid consensus opposing it—what room does this leave for falsehood to argue? We then examined the view of those who assert: "Whatever equals a third of the diyah or more falls upon the male kin liable for collective compensation (ʿāqilah), while anything less than a third rests solely on the perpetrator's tribe." Finding no evidence for this, it is dismissed.

L39304–39305 Then we considered what Abū al-Zināد related - that the ruling in this matter is based solely on what the tribes have collectively agreed upon and

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا لَيْسَ بِشَيْءٍ، وَقَوْلٌ كَاذِبٌ، وَبَاطِلٌ مَوْضُوعٌ، وَلَا نَدْرِي أَيْنَ وَجَدُوا هَذَا إِلَّا بِظُنُونٍ؟ قَالَ اللَّهُ تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

ثُمَّ نَظَرْنَا فِي تَقْسِيمِ أَبِي حَنِيفَةَ، وَمَالِك، وَمُرَاعَاةِ مَالِك ثُلُثَ دِيَةِ الْمَرْأَةِ إذَا كَانَتْ هِيَ الْجَانِيَةَ، أَوْ ثُلُثَ دِيَةِ الرَّجُلِ إذَا كَانَ هُوَ الْجَانِيَ، وَمُرَاعَاةِ أَبِي حَنِيفَةَ نِصْفَ عُشْرِ الدِّيَةِ فِي الْمَجْنِيِّ عَلَيْهِ خَاصَّةً - رَجُلًا كَانَ أَوْ امْرَأَةً - فَوَجَدْنَاهُمَا تَقْسِيمَيْنِ لَمْ يَسْبِقْ أَبَا حَنِيفَةَ إلَى تَقْسِيمِهِ فِي ذَلِكَ أَحَدٌ نَعْلَمُهُ، وَلَا سَبَقَ مَالِكًا فِي تَقْسِيمِهِ هَذَا أَحَدٌ نَعْلَمُهُ، وَلَئِنْ جَازَ لِأَبِي حَنِيفَةَ، وَمَالِك أَنْ يَقُولَا قَوْلًا بِرَأْيِهِمَا لَا يُعْرَفُ لَهُ قَائِلٌ قَبْلَهُمَا، فَمَا حَظَرَ اللَّهُ تَعَالَى قَطُّ ذَلِكَ عَلَى غَيْرِهِمَا، وَلَا أَبَاحَ لَهُمَا مِنْ ذَلِكَ مَا لَمْ يُبِحْهُ لِكُلِّ مُسْلِمٍ دُونَهُمَا، لَا سِيَّمَا مَنْ قَالَ بِمَا أَوْجَبَهُ الْقُرْآنُ، وَسُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّ مَنْ صَوَّبَ لِمَالِك، وَلِأَبِي حَنِيفَةَ قَوْلًا بِالرَّأْيِ لَمْ يُعْرَفْ أَنَّ أَحَدًا قَالَ بِهِ قَبْلَهُمَا ثُمَّ أَنْكَرَ عَلَى مَنْ قَالَ مُتَّبِعًا لِكَلَامِ اللَّهِ تَعَالَى، وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلًا لَمْ يَأْتِ عَنْ أَحَدٍ قَبْلَهُ أَنَّهُ قَالَ بِهِ، وَلَا صَحَّ إجْمَاعٌ بِخِلَافِهِ - فَمَا تَرَكَ لِلْبَاطِلِ شَغَبًا؟ ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: مَا كَانَ ثُلُثَ الدِّيَةِ فَصَاعِدًا فَعَلَى الْعَاقِلَةِ، وَمَا كَانَ أَقَلَّ مِنْ ثُلُثِ الدِّيَةِ فَعَلَى قَوْمِ الْجَانِي خَاصَّةً - فَوَجَدْنَاهُ لَا حُجَّةَ لَهُ فِيهِ - فَسَقَطَ.

ثُمَّ نَظَرْنَا فِيمَا حَكَاهُ أَبُو الزِّنَادِ مِنْ أَنَّ الْحُكْمَ فِي ذَلِكَ إنَّمَا هُوَ عَلَى مَا ائْتَلَفَتْ عَلَيْهِ الْقَبَائِلُ وَتَرَاضَتْ بِهِ فَقَطْ، فَوَجَدْنَاهُ مُخْبِرًا عَنْ حَقِيقَةِ الْحُكْمِ فِي هَذِهِ الْمَسْأَلَةِ.

[6] **Qur'an references (L39302):** Qur'an 53:28 (An-Najm).

mutually ratified - and we found it to reveal the true nature of the legal ruling regarding this issue.

وَصَحَّ بِإِخْبَارِ أَبِي الزِّنَادِ أَنَّ هَذَا أَمْرٌ لَا سُنَّةَ فِيهِ، وَإِنَّمَا هُوَ تَرَاضٍ فَقَطْ فَهَذَا لَا يَجُوزُ الْحُكْمُ بِهِ قَطْعًا فِي دِينِ اللَّهِ تَعَالَى.

L39306 It has been authenticated through the reports of Abū al-Zināد that this is a matter in which there is no established Sunnah, and it is merely mutual consent. Therefore, ruling on this is categorically impermissible in the religion of Allāh, the Exalted.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّ الْعَاقِلَةَ تَحْمِلُ الْقَلِيلَ وَالْكَثِيرَ فَوَجَدْنَا حُجَّتَهُمْ أَنْ قَالُوا: لَمَّا حَمَلَتْ الدِّيَةَ بِالنَّصِّ وَالْإِجْمَاعِ كَانَ حَمْلُهَا لِبَعْضِ الدِّيَةِ وَلِلْقَلِيلِ أَوْلَى، إذْ مَنْ حَمَلَ الْكَثِيرَ وَجَبَ أَنْ يَحْمِلَ الْقَلِيلَ - وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L39307 Then we examined the position of those who say: "The liable kinship group bears both minor and major [compensation]." We found their evidence to be: Since they have borne the blood-money by scriptural injunction and consensus, their bearing a portion of the blood-money or a lesser amount is even more incumbent - for whoever bears the greater must necessarily bear the lesser. This constitutes analogy, and all analogy is invalid.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَصَحَّ أَنَّهَا آرَاءٌ مُجَرَّدَةٌ لَا سُنَّةَ فِي شَيْءٍ مِنْ ذَلِكَ وَلَا إجْمَاعَ وَجَبَ الرُّجُوعُ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى عِنْدَ التَّنَازُعِ فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] الْآيَةَ.

L39308 Abū Muḥammad—may Allah have mercy on him—said: When they differed, and it was confirmed that these were mere opinions with neither an established Sunnah nor consensus in any of that, it became obligatory to return to what Allah the Exalted has prescribed in cases of dispute. We found Allah the Exalted saying, "No soul earns except against itself"—the verse [al-Anʿam 6:164].[7]

وَقَالَ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L39309 And He, the Exalted, said: "Do not consume one another's wealth unjustly" [Al-Baqarah: 188].[8]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L39310 The Messenger of Allah—peace and blessings be upon him—said: "Verily, your blood and your wealth are inviolable for you."

فَوَجَبَ أَنْ لَا تَلْزَمَ الْعَاقِلَةَ غَرَامَةٌ أَصْلًا إلَّا حَيْثُ أَوْجَبَهَا النَّصُّ وَالْإِجْمَاعُ وَقَدْ صَحَّ النَّصُّ بِإِيجَابِ دِيَةِ النَّفْسِ فِي الْخَطَأِ عَلَيْهَا وَصَحَّ النَّصُّ بِإِيجَابِ الْغُرَّةِ الْوَاجِبَةِ فِي الْجَنِينِ عَلَى الْعَاقِلَةِ أَيْضًا، لَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ بِأَنْ تَلْزَمَ غَرَامَةٌ فِي غَيْرِ مَا ذَكَرْنَا فَوَجَبَ أَنْ لَا يَجِبَ عَلَيْهَا غَرَامَةٌ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - وَلَا يَصِحُّ

L39311 It is thus established that the *ʿāqilah* (liable kin group) bears no indemnity whatsoever except where mandated by textual evidence or consensus. Authentic texts have established their obligation to pay the *diyah* (blood money) for accidental homicide, and authentic texts likewise confirm their liability for the obligatory *ghurrah* (indemnity for a fetus). No textual evidence or consensus exists requiring them to bear indemnity beyond these specified cases. Therefore, it is established that no indemnity not mandated

[7] **Qur'an references (L39308):** Qur'an 6:164 (Al-An'am).
[8] **Qur'an references (L39309):** Qur'an 2:188 (Al-Baqarah).

by Allah the Exalted or His Messenger—peace be upon him—is obligatory upon them. Nor is there any valid statement from a single Companion on this matter at all. Rather, there exist only narrations from twelve Successors, holding divergent opinions without consensus. This confirms that these are juristic opinions whose proponents are excused due to their independent legal reasoning and pursuit of righteousness. And success comes from Allah, the Exalted.

Question: Does the perpetrator pay [financial compensation] alongside the ʿāqilah (responsible kin group)?

Issue 2146: Is the unintentional killer required to pay alongside his agnatic kin (ʿāqilah) or not? Abu Muhammad—may Allah have mercy on him—said: People have differed regarding this matter. Abu Hanifah, Malik, Al-Layth, and Ibn Shubrumah stated: The unintentional killer must pay the blood money alongside his agnatic kin.

Al-Awzāʿī, al-Ḥasan, Abū Sulaymān, and our companions said: He does not share liability for the penalty with them.

Al-Shāfiʿī said: It is upon the agnatic group. Whatever the agnatic group is unable to cover is to be covered from his wealth.

Abū Muḥammad—may God have mercy on him—said: When they differed, it became obligatory for us to examine the evidence each group cited for its position. We found that those who hold the killer in error liable to pay blood money in addition to his clan cite as evidence: Saʿd ibn Ṭāriq reported from Nuʿaym ibn Abī Hind from Salamah ibn Nuʿaym that he said: "I killed a man during the Battle of Yamāmah, assuming he was a disbeliever. He said: 'O God, I am a Muslim, innocent of what Musaylimah brought.'" He said: "I informed ʿUmar ibn al-Khaṭṭāb of this, and he declared: 'The blood money is incumbent upon you and your clan.'"

They said: This has been narrated from ʿUmar ibn ʿAbd al-ʿAzīz, and no dissenting opinion from the Salaf regarding him is known.

They said: "The blood money liability falls upon the extended family (ʿaqilah) who pay on his behalf as an act of support, since he is foremost in bearing

فِيهَا كَلِمَةٌ عَنْ صَاحِبٍ أَصْلًا، وَإِنَّمَا فِيهَا آثَارٌ عَنْ اثْنَيْ عَشَرَ مِنْ التَّابِعِينَ مُخْتَلِفِينَ غَيْرَ مُتَّفِقِينَ - فَصَحَّ أَنَّهَا أَقْوَالٌ عُذِرَ قَائِلُهَا بِالِاجْتِهَادِ وَقَصْدِ الْخَيْرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ يَغْرَمُ الْجَانِي مَعَ الْعَاقِلَةِ]

٢١٤٦ - مَسْأَلَةٌ: هَلْ يَغْرَمُ الْجَانِي مَعَ الْعَاقِلَةِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَاللَّيْثُ، وَابْنُ شُبْرُمَةَ: يَغْرَمُ الْقَاتِلُ خَطَأً مَعَ عَاقِلَتِهِ.

وَقَالَ الْأَوْزَاعِيّ، وَالْحَسَنُ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: لَا يَدْخُلُ مَعَهُمْ فِي الْغَرَامَةِ.

وَقَالَ الشَّافِعِيُّ: هِيَ عَلَى الْعَاقِلَةِ، فَمَا عَجَزَتْ عَنْهُ الْعَاقِلَةُ فَهُوَ فِي مَالِهِ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا -: فَوَجَدْنَا الْمُوجِبِينَ عَلَى الْقَاتِلِ خَطَأً أَنْ يَغْرَمَ مَعَ عَاقِلَتِهِ يَقُولُونَ: إنَّ سَعْدَ بْنَ طَارِقٍ رَوَى عَنْ نُعَيْمِ بْنِ أَبِي هِنْدٍ عَنْ سَلَمَةَ بْنِ نُعَيْمٍ أَنَّهُ قَالَ: قَتَلْتُ يَوْمَ الْيَمَامَةِ رَجُلًا ظَنَنْته كَافِرًا، فَقَالَ: اللَّهُمَّ إنِّي مُسْلِمٌ بَرِيءٌ مِمَّا جَاءَ بِهِ مُسَيْلِمَةُ، قَالَ: فَأَخْبَرْتُ بِذَلِكَ عُمَرَ بْنَ الْخَطَّابِ، فَقَالَ: الدِّيَةُ عَلَيْك وَعَلَى قَوْمِك.

قَالُوا: وَرُوِيَ هَذَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَلَا يُعْرَفُ لَهُمَا مِنْ السَّلَفِ مُخَالِفٌ.

this responsibility himself." We know of no valid proof for their position besides this, nor is there any valid proof in the words of anyone other than the Messenger of Allah (peace be upon him).

وَقَالُوا: إِنَّمَا الْغُرْمُ عَلَى الْعَاقِلَةِ تَغْرَمُ عَنْهُ عَلَى وَجْهِ النُّصْرَةِ لَهُ، فَهُوَ أَوْلَى بِذَلِكَ فِي نَفْسِهِ - مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39320 Then we examined the statement of Al-Shāfiʿī and found it entirely devoid of any valid evidence—neither from the Quran, nor the Sunnah, nor the saying of a Companion, nor a Successor (Tābiʿī), nor qiyas (analogical reasoning). Nor did we find it upheld by any scholar before him—thus it is invalidated. And success is attained only through Allah, the Most High.

ثُمَّ نَظَرْنَا فِي قَوْلِ الشَّافِعِيِّ، فَوَجَدْنَاهُ لَا حُجَّةَ لَهُ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا وَجَدْنَاهُ لِأَحَدٍ قَبْلَهُ - فَسَقَطَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39321 Then we examined the statements of al-Awzāʿī, al-Ḥasan ibn Ḥayy, and Abū Sulaymān, and found that the Messenger of Allah—peace and blessings be upon him—had ruled blood money to be incumbent upon the liable male agnates (al-ʿāqilah). As narrated by Muslim ibn al-Ḥajjāj: Qutaybah ibn Saʿīd narrated to us; al-Layth ibn Saʿd narrated to us from Ibn Shihāb from Saʿīd ibn al-Musayyib from Abū Hurayrah, who said: "The Messenger of Allah—peace and blessings be upon him—ruled regarding the fetus of a woman from Banū Liḥyān that fell dead as a miscarriage, requiring a ghurrah (compensation equivalent to the value of a male or female slave). Then the woman for whom the ghurrah was imposed died, so the Messenger of Allah—peace and blessings be upon him—ruled that her inheritance belongs to her sons and husband, and that the liability for the blood money (diyah) is upon her agnates."

ثُمَّ نَظَرْنَا فِي قَوْلِ الْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي سُلَيْمَانَ، فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ حَكَمَ بِالدِّيَةِ عَلَى عَصَبَةِ الْعَاقِلَةِ: كَمَا رُوِّينَاهُ عَنْ مُسْلِمِ بْنِ الْحَجَّاجِ نا قُتَيْبَةُ - هُوَ ابْنُ سَعِيدٍ - نا اللَّيْثُ بْنُ سَعْدٍ عَنِ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، ثُمَّ إِنَّ الَّتِي قَضَى عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ، فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» .

L39322–39324 Through the chain of Muslim: Isḥāq ibn Ibrāhīm narrated to us, Jarīr ibn ʿAbd al-Ḥamīd narrated to us, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, from ʿUbayd ibn Naḍla, from al-Mughīra ibn Shuʿba, who said: "A woman struck her co-wife with a tent pole, killing her. One of them was a Lihyāniyyah woman, whereupon the Messenger of Allah—peace and blessings be upon him—assigned the diyah." The blood money for the slain woman falls upon the male paternal kin of the female killer, along with a compensatory payment for the fetus in her womb. A man from the female killer's paternal kin protested: "Must we pay blood money for one who never ate, spoke, or cried? Is such a thing a mere clot?" The Messenger of Allah

وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُبَيْدِ بْنِ نَضْلَةَ عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ قَالَ: «ضَرَبَتْ امْرَأَةٌ ضَرَّتَهَا بِعَمُودِ فُسْطَاطٍ فَقَتَلَتْهَا وَإِحْدَاهُمَا لِحْيَانِيَّةٌ، فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دِيَةَ الْمَقْتُولَةِ عَلَى عَصَبَةِ الْقَاتِلَةِ، وَغُرَّةً لِمَا فِي بَطْنِهَا، فَقَالَ رَجُلٌ مِنْ عَصَبَةِ الْقَاتِلَةِ: أَنَغْرَمُ دِيَةَ مَنْ لَا أَكَلَ وَلَا نَطَقَ وَلَا اسْتَهَلَّ، فَمِثْلُ ذَلِكَ يُطَلُّ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ

(peace be upon him) responded: “Is this rhyming speech like the Bedouins’ verses?” and ruled the blood money obligatory upon them. This constitutes the definitive ruling of Allah’s Messenger (peace be upon him) that the female perpetrator is fully absolved of the blood money, that her inheritance belongs to her husband and male sons - with no basis for penalty therein - and that the blood money rests upon her male paternal kin. She herself cannot be considered an agnatic relative under divine law or linguistic convention.

L39325 Is it thus established with certainty that an offender causing harm unintentionally owes nothing from the blood money for a life or the compensation for a fetus? Abū Muḥammad—may Allah have mercy on him—said: If the _ʿāqilah_ is unable [to pay], then the blood money and the compensation for the fetus are incumbent upon all Muslims from the debtors’ share of zakāt, because they are debtors, and their right to the debtors’ share is established by the explicit text of the Quran, and because the Messenger of Allah—peace and blessings be upon him—ruled that the blood money is upon their responsible kin.

L39326 Another proof is that wealth is inviolable except by explicit text or consensus. The text and the consensus of the people of truth have been established, affirming that the responsible kin group is liable to pay the blood money. There is no text or consensus stating that the killer must pay anything alongside them. Therefore, it is impermissible to remove anything from his wealth. And success is from Allah, the Most High.

L39327 Abū Muḥammad—may God have mercy on him—said: “The wonder is their citing ʿUmar—may God be pleased with him—as proof, while they opposed him in this very instance itself and in others. Among what has been recounted to us of this is the report we narrated from Maʿmar, from Qatādah: A man accidentally gouged out his own eye, so ʿUmar ibn al-Khaṭṭāb ruled that the blood money for it is incumbent upon the collective kin (al-ʿāqilah)—yet they do not hold this opinion?”

L39328 **Issue: What amount is each man in the liable kin group obligated to pay?**

L39329 2147 - Issue: How much must each man from the ʿāqilah pay? Abū Muḥam-

عَلَيْهِ وَسَلَّمَ - أَسَجْعٌ كَسَجْعِ الْأَعْرَابِ وَجَعَلَ عَلَيْهِمْ الدِّيَةَ» فَهَذَا نَصُّ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِبَرَاءَةِ الْجَانِيَةِ مِنْ الدِّيَةِ جُمْلَةً، وَأَنَّ مِيرَاثَهَا لِزَوْجِهَا وَبَنِيهَا، لَا مَدْخَلَ لِلْغَرَامَةِ فِيهِ، وَالدِّيَةُ عَلَى عَصَبَتِهَا، وَهِيَ لَيْسَتْ عَصَبَةً لِنَفْسِهَا، لَا فِي شَرِيعَةٍ، وَلَا فِي لُغَةٍ.

فَصَحَّ يَقِينًا أَنَّهُ لَا يَغْرَمُ الْجَانِي خَطَأً مِنْ دِيَةِ النَّفْسِ، وَلَا مِنْ الْغُرَّةِ شَيْئًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ عَجَزَتْ الْعَاقِلَةُ: فَالدِّيَةُ، وَالْغُرَّةُ عَلَى جَمِيعِ الْمُسْلِمِينَ فِي سَهْمِ الْغَارِمِينَ مِنْ الزَّكَاةِ؛ لِأَنَّهُمْ غَارِمُونَ، فَحَقُّهُمْ فِي سَهْمِ الْغَارِمِينَ بِنَصِّ الْقُرْآنِ وَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالدِّيَةِ عَلَى أَوْلِيَائِهَا.

وَبُرْهَانٌ آخَرُ: وَهُوَ أَنَّ الْأَمْوَالَ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَقَدْ صَحَّ النَّصُّ وَإِجْمَاعُ أَهْلِ الْحَقِّ عَلَى أَنَّ الْعَاقِلَةَ تَغْرَمُ الدِّيَةَ، وَلَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ بِأَنَّ الْقَاتِلَ يَغْرَمُ مَعَهُمْ شَيْئًا، فَلَمْ يَحِلَّ أَنْ يُخْرَجَ مِنْ مَالِهِ شَيْءٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ - وَالْعَجَبُ مِنْ احْتِجَاجِهِمْ بِعُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَهُمْ قَدْ خَالَفُوهُ فِي هَذَا الْمَكَانِ نَفْسِهِ، وَفِي غَيْرِهِ، فَمِمَّا حَضَرَنَا ذِكْرُهُ مِنْ ذَلِكَ: مَا رُوِّينَاهُ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَنَّ رَجُلًا فَقَأَ عَيْنَ نَفْسِهِ خَطَأً، فَقَضَى لَهُ عُمَرُ بْنُ الْخَطَّابِ بِالدِّيَةِ فِيهَا عَلَى الْعَاقِلَةِ - وَهُمْ لَا يَقُولُونَ بِهَذَا؟ .

[مَسْأَلَةٌ كَمْ يَغْرَمُ كُلُّ رَجُلٍ مِنْ الْعَاقِلَةِ]

mad—may Allāh have mercy on him—said: We have said: From the ʿāqilah.

٢١٤٧ - مَسْأَلَةٌ: كَمْ يَغْرَمُ كُلُّ رَجُلٍ مِنْ الْعَاقِلَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَدْ قُلْنَا: مِنْ الْعَاقِلَةِ.

L39330–39332 Then it is obligatory to examine: Are boys, the insane, women, and the poor included in this obligation or not? We investigated this with the help of Allah (Exalted is He) and found the Prophet (peace and blessings of Allah be upon him) only ruled for blood money to be imposed upon the male agnates (ʿaṣabah). Women are not agnates in any sense, nor does this term apply to them. Property is forbidden except through a textual evidence or... There is no consensus, textual evidence, or established agreement obligating the women of the tribe to bear responsibility for the blood money (diyah) that the agnatic kinship group (ʿāqilah) is required to pay.

ثُمَّ وَجَبَ النَّظَرُ: أَيَدْخُلُ فِيهَا: الصِّبْيَانُ، وَالْمَجَانِينُ، وَالنِّسَاءُ، وَالْفُقَرَاءُ أَمْ لَا؟ فَنَظَرْنَا فِي ذَلِكَ بِعَوْنِ اللَّهِ تَعَالَى فَوَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا قَضَى بِالدِّيَةِ عَلَى الْعَصَبَةِ، وَلَيْسَ النِّسَاءُ عَصَبَةً أَصْلًا، وَلَا يَقَعُ عَلَيْهِنَّ هَذَا الِاسْمُ، وَالْأَمْوَالُ مُحَرَّمَةٌ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ، وَلَا نَصَّ وَلَا إجْمَاعَ فِي إيجَابِ الْغُرْمِ عَلَى نِسَاءِ الْقَوْمِ فِي الدِّيَةِ الَّتِي تَغْرَمُهَا الْعَاقِلَةُ.

L39333 Then we looked into the condition of the poor, and we found that Allah the Exalted says: {He does not burden any soul beyond its capacity} [Al-Baqarah: 286].[9]

ثُمَّ نَظَرْنَا فِي الْفُقَرَاءِ، فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] .

L39334 "And let those of ample means spend from their means..." up to His words "...except what He has granted it" [Qur'an 65:7].[10]

وَ {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ} [الطلاق: ٧] إلَى قَوْلِهِ: {إلا مَا آتَاهَا} [الطلاق: ٧] .

L39335 This is a general principle regarding every expenditure in righteousness that a person is obligated to fulfill. It is not permissible to restrict this ruling to one expenditure—to the exclusion of another—because it is an independent matter in itself. Therefore, it is impermissible for anyone to definitively assert that Allah the Exalted intended by this only what preceded it. Thus, it is confirmed with certainty that the poor are excluded from what the *ʿaqilah* is required to provide.

فَهَذَا عُمُومٌ فِي كُلِّ نَفَقَةٍ فِي بِرٍّ، يُكَلَّفُهَا الْمَرْءُ، لَا يَجُوزُ أَنْ يُخَصَّ بِهَذَا الْحُكْمِ نَفَقَةٌ - دُونَ نَفَقَةٍ - لِأَنَّهَا قَضِيَّةٌ قَائِمَةٌ بِنَفْسِهَا، فَلَا يَحِلُّ الْقَطْعُ لِأَحَدٍ: بِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَرَادَ بِذَلِكَ مَا قَبْلَهَا خَاصَّةً فَصَحَّ يَقِينًا أَنَّ الْفُقَرَاءَ خَارِجُونَ مِمَّا تُكَلَّفُهُ الْعَاقِلَةُ.

L39336 Then we examined the case of minors and the insane, and found that the term "agnatic relatives" applies to them. We found neither textual evidence nor scholarly consensus exempting them from this obligation. Rather, we established that rulings concerning financial penalties and property obligations—such as Zakat, for which an authentic text has validated its obligation upon them—are binding. The opposing scholars present among us unani-

ثُمَّ نَظَرْنَا فِي الصِّبْيَانِ وَالْمَجَانِينِ، فَوَجَدْنَا اسْمَ " عَصَبَةٍ " يَقَعُ عَلَيْهِمْ، وَلَمْ نَجِدْ نَصًّا وَلَا إجْمَاعًا عَلَى إخْرَاجِهِمْ عَنْ هَذِهِ الْكُلْفَةِ، بَلْ قَدْ وَجَدْنَا أَحْكَامَ غَرَامَاتِ الْأَمْوَالِ تَلْزَمُهُمْ، كَالزَّكَاةِ الَّتِي قَدْ صَحَّ النَّصُّ بِإِيجَابِهَا عَلَيْهِمْ، وَأَجْمَعَ الْحَاضِرُونَ مِنْ الْمُخَالِفِينَ مَعَنَا عَلَى

[9] **Qur'an references (L39333):** Qur'an 2:286 (Al-Baqarah).
[10] **Qur'an references (L39334):** Qur'an 65:7 (At-Talaq).

mously agreed that Zakat on what the earth produces and Zakat on fruits, along with Zakat al-Fitr, are their obligation, and that the financial support provided by guardians and mothers is incumbent upon them.

أَنَّ زَكَاةَ مَا أَخْرَجَتْ الْأَرْضُ، وَالثِّمَارِ عَلَيْهِمْ، وَأَنَّ زَكَاةَ الْفِطْرِ عَلَيْهِمْ، وَأَنَّ النَّفَقَاتِ عَلَى الْأَوْلِيَاءِ وَالْأُمَّهَاتِ عَلَيْهِمْ.

L39337 We did not employ this argument for ourselves, but rather against our opponents, for they claim to adhere to analogy, yet they unanimously affirm the obligation of all we have mentioned regarding the wealth of minors and the insane. What, then, distinguishes the obligation of maintenance and zakāh upon them from the obligation of blood money upon them alongside the collective liability of the agnate relatives? This is especially pertinent since they deem blood money payable from the wealth of a minor or insane person if he kills, and they likewise deem compensation for injuries (*arsh*) payable from them—a contradiction so evident it cannot be concealed. If they retort: "You yourselves do not hold blood money to be due from them or against them for their own offenses, yet you impose it upon them for offenses committed by others?" We respond: Indeed, for we do not base our rulings on analogies in matters of religion, nor do we hold that the Sharīʿah is founded upon human opinions. Rather, we deem such a claim tantamount to disbelief and disavow it before Allah, the Exalted.

وَلَمْ نَحْتَجَّ بِهَذَا لِأَنْفُسِنَا، لَكِنْ عَلَى الْمُخَالِفِينَ لَنَا، لِأَنَّهُمْ يَزْعُمُونَ أَنَّهُمْ أَصْحَابُ قِيَاسٍ، وَقَدْ أَجْمَعُوا عَلَى وُجُوبِ كُلِّ مَا ذَكَرْنَاهُ فِي أَمْوَالِ الصِّبْيَانِ، وَالْمَجَانِينِ، فَمَا الْفَرْقُ بَيْنَ لُزُومِ النَّفَقَاتِ وَالزَّكَوَاتِ لَهُمْ، وَبَيْنَ لُزُومِ الدِّيَةِ مَعَ سَائِرِ الْعَصَبَةِ لَهُمْ؟ لَا سِيَّمَا وَهُمْ يَرَوْنَ الدِّيَةَ فِي مَالِ الصَّبِيِّ وَالْمَجْنُونِ، إذَا قَتَلَ، وَيَرَوْنَ أُرُوشَ الْجِرَاحَاتِ عَلَيْهِمْ أَيْضًا - وَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ؟ فَإِنْ قَالُوا: فَأَنْتُمْ لَا تَرَوْنَ الدِّيَةَ عَلَيْهِمْ وَلَا عَنْهُمْ فِيمَا جَنَوْهُ، ثُمَّ تَرَوْنَهَا عَلَيْهِمْ فِيمَا جَنَاهُ غَيْرُهُمْ؟ قُلْنَا نَعَمْ، لِأَنَّنَا لَا نَقُولُ بِالْمَقَايِيسِ فِي الدِّينِ، وَلَا أَنَّ الشَّرِيعَةَ مَوْضُوعَةٌ عَلَى مَا تُوجِبُهُ الْآرَاءُ، بَلْ نَكْفُرُ بِهَذَا الْقَوْلِ، وَنَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْهُ.

L39338–39340 We have found that when a killer unjustly kills a number of Muslims, and their guardians pardon him, retaliation becomes prohibited. His blood is spared, and he departs unscathed with no liability upon him. Then he steals a dinar or commits adultery with a black female slave, and the owner of the dinar and the master of the black [female slave] forgive him. Yet neither the amputation [for theft] nor the stoning to death—if he is married—is waived for him. How does a dinar compare to the killing of an inviolable soul? Furthermore, we find you claiming that the obligation of Zakat al-Fitr lies upon the woman, yet she does not pay it herself. Rather, someone else—her husband—pays it on her behalf.

وَقَدْ وَجَدْنَا الْقَاتِلَ يَقْتُلُ عَدَدًا مِنْ الْمُسْلِمِينَ ظُلْمًا فَيَعْفُو عَنْهُ أَوْلِيَاؤُهُمْ، فَيُحَرَّمُ دَمُهُ، وَيَمْضِي سَالِمًا لَا شَيْءَ عَلَيْهِ، ثُمَّ يَسْرِقُ دِينَارًا، أَوْ يَزْنِي بِأَمَةٍ سَوْدَاءَ فَيَعْفُو عَنْهُ رَبُّ الدِّينَارِ، وَسَيِّدُ السَّوْدَاءِ، فَلَا يَسْقُطُ عَنْهُ الْقَطْعُ، وَلَا الْقَتْلُ بِالْحِجَارَةِ - إنْ كَانَ مُحْصَنًا - وَأَيْنَ هَذَا وَالدِّينَارُ مِنْ قَتْلِ النَّفْسِ الْمُحَرَّمَةِ؟ وَوَجَدْنَاكُمْ تَقُولُونَ: إنَّ زَكَاةَ الْفِطْرِ عَلَى الْمَرْأَةِ، وَلَا تُؤَدِّيهَا عَنْ نَفْسِهَا، بَلْ يُؤَدِّيهَا عَنْهَا غَيْرُهَا - وَهُوَ زَوْجُهَا.

L39341 The Hanafis say: The Udhiyah is obligatory upon the woman, therefore she does not perform it herself; rather, her husband performs it on her behalf. If you assert this when Allah—the Exalted—and His Messenger (peace be upon him) have not obligated it—and you are people who rely on opinion and

وَيَقُولُ الْحَنَفِيُّونَ: الْأُضْحِيَّةُ فَرْضٌ عَلَى الْمَرْأَةِ فَلَا تُؤَدِّيهَا هِيَ، لَكِنْ يُؤَدِّيهَا عَنْهَا زَوْجُهَا، فَإِذَا قُلْتُمْ هَذَا حَيْثُ لَمْ يُوجِبْهُ اللَّهُ سُبْحَانَهُ وَتَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَأَنْتُمْ

analogy in religion—then are we not more entitled to affirm what Allah the Exalted and His Messenger (peace be upon him) have obligated? All praise belongs to Allah, Lord of the worlds.

أَهْلُ آرَاءٍ وَقِيَاسٍ فِي الدِّينِ؟ فَنَحْنُ أَوْلَى بِأَنْ نَقُولَ مَا أَوْجَبَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L39342 If it is objected: "Your argument relies on the Messenger of Allah's saying (peace be upon him), 'The pen is lifted from three—and he mentioned—the child until he reaches puberty, the insane until he regains sanity, and the sleeper until he awakens.'"

فَإِنْ قِيلَ: فَإِنَّ احْتِجَاجَكُمْ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ - فَذَكَرَ - الصَّبِيِّ حَتَّى يَبْلُغَ، وَالْمَجْنُونَ حَتَّى يُفِيقَ» .

L39343 We say—and all praise is due to Allah—that we uphold this ruling and exempt the minor and the insane from every ruling conveyed through addressing those subject to it, for they are undeniably not among the legally accountable. They lie outside the scope of those addressed by such rulings. However, we obligate them for every financial liability pertaining to property when the ruling concerns that property without addressing those responsible for it. Here, the ruling states that the Prophet—peace and blessings be upon him—judged that the blood money (*diyah*) and compensation for fetal loss (*ghurrah*) are incumbent upon the male agnates of the female killer, without addressing the agnates themselves. He did not turn—peace and blessings be upon him—to consider the objections raised by any among them, but enforced the ruling upon them. Thus, we enforce the ruling by obligating blood money from the agnates' wealth, irrespective of whether they are minors, insane, absent, or present. We do not impose this obligation for offenses committed by a minor or an insane person, as blood money is only mandated by the Quranic text for those liable for expiation (*kaffārah*), and this attribute does not apply to minors or the insane—and all praise is due to Allah, Lord of the worlds.

قُلْنَا: نَحْنُ - وَلِلَّهِ الْحَمْدُ - قَائِلُونَ بِهِ، وَمُسْقِطُونَ عَنْ الصَّبِيِّ وَالْمَجْنُونِ كُلَّ حُكْمٍ وَرَدَ بِخِطَابِ أَهْلِ ذَلِكَ الْحُكْمِ، لِأَنَّهُمَا غَيْرُ مُخَاطَبِينَ بِيَقِينٍ لَا شَكَّ فِيهِ، فَهُمَا خَارِجَانِ عَمَّنْ خُوطِبَ بِذَلِكَ الْحُكْمِ، وَنَحْنُ نُلْزِمُهُمَا كُلَّ غَرَامَةٍ فِي مَالٍ جَاءَ الْحُكْمُ فِي ذَلِكَ الْمَالِ بِغَيْرِ خِطَابٍ لِأَهْلِهِ، وَالْحُكْمُ هَاهُنَا جَاءَ بِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِأَنَّ الدِّيَةَ وَالْغُرَّةَ عَلَى عَصَبَةِ الْقَاتِلَةِ وَلَمْ يُخَاطِبْ الْعَصَبَةَ، وَلَا الْتَفَتَ - عَلَيْهِ السَّلَامُ - إلَى اعْتِرَاضِ مَنْ اعْتَرَضَ مِنْهُمْ، بَلْ أَنْفَذَ الْحُكْمَ عَلَيْهِمْ، فَنَحْنُ نُنْفِذُ الْحُكْمَ بِإِيجَابِ الدِّيَةِ فِي مَالِ الْعَصَبَةِ وَلَا نُبَالِي صِبْيَانًا كَانُوا أَوْ مَجَانِينَ أَوْ غُيَّبًا أَوْ حَاضِرِينَ، وَلَمْ نُوجِبْ ذَلِكَ فِيمَا جَنَاهُ صَبِيٌّ أَوْ مَجْنُونٌ، لِأَنَّ الدِّيَةَ إنَّمَا وَجَبَتْ بِنَصِّ الْقُرْآنِ فِيمَا قَتَلَهُ مُخَاطَبُ الْكَفَّارَةِ، وَلَيْسَ هَذَا مِنْ صِفَاتِ الصِّبْيَانِ وَالْمَجَانِينِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L39344 Abu Muhammad—may Allah have mercy on him—said: Then we examined the measure to be taken from each individual among the agnates. We found a group who stated: "Nothing is taken from any one of them except four or three dirhams."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِي مِقْدَارِ مَا يُؤْخَذُ مِنْ كُلِّ إنْسَانٍ مِنْ الْعَصَبَةِ؟ فَوَجَدْنَا قَوْمًا قَالُوا: لَا يُؤْخَذُ مِنْ كُلِّ وَاحِدٍ إلَّا أَرْبَعَةُ دَرَاهِمَ أَوْ ثَلَاثَةٌ.

L39345–39347 And a group held that half a dinar should be taken from the affluent, and a quarter dinar from the less affluent. These were set as limits not supported by any ruling from Allah the Exalted nor His Messenger—peace be upon

وَقَوْمًا قَالُوا: يُؤْخَذُ مِنْ الْغَنِيِّ نِصْفُ دِينَارٍ، وَمِنْ الْمُقِلِّ رُبُعُ دِينَارٍ - فَكَانَتْ هَذِهِ حُدُودًا لَمْ يَأْتِ بِهَا حُكْمٌ مِنْ اللَّهِ تَعَالَى وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَبَ أَنْ لَا

him—thus it is obligatory to disregard them. And it became obligatory to consider: What is obligatory in this matter? We found that Allah, the Exalted, says: “Allah does not burden any soul beyond its capacity” (Quran 2:286).[11]

L39348 And He, the Exalted, said: “He has not imposed any hardship upon you in the religion.” [Al-Hajj: 78][12]

L39349 The Most High says, “Allah intends ease for you, not hardship” (Quran 2:185).[13]

L39350 The Messenger of Allah—peace and blessings of Allah be upon him—ruled regarding blood money and the ghurra (compensation for the unborn child), imposing it upon the agnate relatives. It became obligatory for them to bear from that what they can manage, what does not burden them, and what does not leave them in financial destitution afterward. Indeed, Allah the Exalted never intended that—I mean hardship upon us—at all. Thus, nothing is taken from a person’s wealth that would leave them impoverished afterward, or else fairness must be enforced among them in this matter. Whoever’s wealth can sustain many camels without it being oppressive to them is required to bear this responsibility. And whoever can only manage a portion of a camel must jointly contribute with others from their group toward the camel. This continues until the blood money is fully settled. The same ruling applies to the ghurra. Success is from Allah the Exalted.

L39351 Consideration is given solely to the wealth of the individual among them and his dependents. The diyah and ghurra are imposed upon the surplus from their wealth that remains after providing for their dependents—such that if [the surplus] were depleted, [the liable individuals] would remain financially secure. Equity is thus maintained among them in this matter, as the Exalted stated: “Be just; that is nearer to piety” [Al-Mā’idah: 8].[14]

L39352 Justice is acting according to the Sunnah, not by equating between one with little surplus and one with much surplus—so that an equal amount is taken

يُلْتَفَتَ إِلَيْهَا وَوَجَبَ أَنْ نَنْظُرَ مَا الْوَاجِبُ فِي ذَلِكَ؟ فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَقَالَ تَعَالَى {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] .

وَقَالَ تَعَالَى {يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلا يُرِيدُ بِكُمُ الْعُسْرَ} [البقرة: ١٨٥] .

وَحَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالدِّيَةِ، وَبِالْغُرَّةِ عَلَى الْعَاقِلَةِ، فَوَجَبَ أَنْ يَحْمِلُوا مِنْ ذَلِكَ مَا يُطِيقُونَ، وَمَا لَا حَرَجَ عَلَيْهِمْ فِيهِ، وَمَا لَا يَبْقَوْنَ بَعْدَهُ فِي عُسْرٍ، فَإِنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ ذَلِكَ - أَعْنِي الْعُسْرَ بِنَا - قَطُّ، فَيُؤْخَذُ مِنْ مَالِ الْمَرْءِ مَا لَا يَبْقَى بَعْدَهُ مُعْسِرًا، أَوْ يُعْدَلُ بَيْنَهُمْ فِي ذَلِكَ، فَمَنْ احْتَمَلَ مَالُهُ أَبْعِرَةً كَثِيرَةً، وَلَمْ يُجْحِفْ ذَلِكَ بِهِ كُلِّفَ ذَلِكَ - وَمَنْ لَمْ يَحْتَمِلْ إِلَّا جُزْءًا مِنْ بَعِيرٍ كَذَلِكَ: أَشْرَكَ بَيْنَ الْجَمَاعَةِ مِنْهُمْ فِي الْبَعِيرِ، هَكَذَا حَتَّى تَتِمَّ الدِّيَةُ - وَهَكَذَا فِي حُكْمِ الْغُرَّةِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

إِنَّمَا يُنْظَرُ إِلَى مَالِ الْمَرْءِ مِنْهُمْ وَعِيَالِهِ، فَتُفْرَضُ الدِّيَةُ، وَالْغُرَّةُ عَلَى الْفَضَلَاتِ مِنْ أَمْوَالِهِمْ - الَّتِي يَبْقَوْنَ بَعْدَهَا - لَوْ ذَهَبَتْ - أَغْنِيَاءَ - فَيُعْدَلُ بَيْنَهُمْ فِي ذَلِكَ، كَمَا قَالَ تَعَالَى {اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى} [المائدة: ٨] .

وَالْعَدْلُ: هُوَ الْأَخْذُ بِالسُّنَّةِ، لَا بِأَنْ يُسَاوَى بَيْنَ ذِي الْفَضْلَةِ الْقَلِيلَةِ، وَالْفَضْلَةِ الْكَثِيرَةِ - فَيُؤْخَذَ مِنْهُمْ سَوَاءً - لَكِنْ يُؤْخَذُ مِنْ الْكَثِيرِ كَثِيرٌ، وَمِنْ الْقَلِيلِ قَلِيلٌ - وَهَذَا قَوْلُ أَصْحَابِنَا وَهُوَ الْحَقُّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur’an references (L39345):** Qur’an 2:286 (Al-Baqarah).
[12] **Qur’an references (L39348):** Qur’an 22:78 (Al-Hajj).
[13] **Qur’an references (L39349):** Qur’an 2:185 (Al-Baqarah).
[14] **Qur’an references (L39351):** Qur’an 5:8 (Al-Ma’idah).

from both—but rather by taking much from those with abundance and little from those with scarcity. This is the position of our school's jurists, and it is the truth. Success comes only from Allah, the Most High.

L39353 **Issue: Is blood money payable on behalf of the confederate, the patron, and the slave, or is it not?**

L39354–39356 2148. Issue: Is blood money (ʿaql) owed by a confederate? By a client from below or a patron from above? By a slave or not? Is it owed by one who embraced Islam under his responsibility or not? Does patronage (walāʾ) transfer via the blood money (ʿaql) or not? Abū Muḥammad—may Allāh have mercy on him—said: A group of scholars held: Blood money is owed by the manumitting patron who holds superior patronage (from above) over his freed clients. As transmitted by Muḥammad ibn Saʿīd ibn Nubāt; ʿAbdullāh ibn Naṣr; Qāsim ibn Aṣbagh; Ibn Waḍḍāḥ; Mūsā ibn Muʿāwiyah; Wakīʿ; Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from... Ibrāhīm said: "'Alī and al-Zubayr disputed regarding the clients of Ṣafiyyah." ʿUmar ibn al-Khaṭṭāb ruled that the inheritance belonged to al-Zubayr, and the blood-money fell upon ʿAlī.

L39357 From Ibrāhīm al-Nakhaʿī concerning a man emancipated by one group and his father emancipated by others: He said, "They inherit from one another based on kinship ties, and blood money is the responsibility of the patrons."

L39358 And from Abu Musa: He wrote to Umar ibn al-Khattab, "A man dies before us without any blood relatives or legal guardian?" Umar wrote back: "If he leaves a blood relative, then the blood relative [inherits]. Otherwise, the right of patronage. Otherwise, the state treasury inherits him and it pays blood money (diya) on his behalf."

L39359 On the authority of Mujāhid, he said: A man came to ʿUmar ibn al-Khaṭṭāb and said: "A man accepted Islam at my hands, then died and left a thousand dirhams. I felt religiously uneasy about them, so I referred the matter to you." Umar asked: "What do you think? If he had incurred a debt, who would be liable?" The man replied: "Me?" Umar said: "Then his inheritance is yours."

[مَسْأَلَة هَلْ يُعْقَلُ عَنْ الْحَلِيفِ وَعَنْ الْمَوْلَى وَعَنْ الْعَبْدِ أَمْ لَا]

٢١٤٨ - مَسْأَلَةٌ: هَلْ يُعْقَلُ عَنْ الْحَلِيفِ؟ وَعَنْ الْمَوْلَى مِنْ أَسْفَلَ؟ أَوْ مِنْ فَوْقُ؟ وَعَنْ الْعَبْدِ أَمْ لَا؟ وَهَلْ يُعْقَلُ عَمَّنْ أَسْلَمَ عَنْ يَدَيْهِ أَمْ لَا؟ وَهَلْ يَنْتَقِلُ الْوَلَاءُ بِالْعَقْلِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: يَعْقِلُ عَنْ الْمَوْلَى الْمُعْتِقِ مَوَالِيهِ مِنْ فَوْقُ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ، قَالَ: اخْتَصَمَ عَلِيٌّ، وَالزُّبَيْرُ، فِي مَوَالٍ لِصَفِيَّةَ؟ فَقَضَى عُمَرُ بْنُ الْخَطَّابِ بِأَنَّ الْمِيرَاثَ لِلزُّبَيْرِ، وَالْعَقْلَ عَلَى عَلِيٍّ.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي رَجُلٍ أَعْتَقَهُ قَوْمٌ، وَأَعْتَقَ أَبَاهُ آخَرُونَ؟ قَالَ: يَتَوَارَثُونَ بِالْأَرْحَامِ، وَالْعَقْلُ عَلَى الْمَوَالِي.

وَعَنْ أَبِي مُوسَى أَنَّهُ كَتَبَ إلَى عُمَرَ بْنِ الْخَطَّابِ أَنَّ رَجُلًا يَمُوتُ قَبْلَنَا، وَلَيْسَ لَهُ رَحِمٌ وَلَا وَلِيٌّ؟ فَكَتَبَ إلَيْهِ عُمَرُ: إنْ تَرَكَ ذَا رَحِمٍ، فَالرَّحِمُ، وَإِلَّا فَالْوَلَاءُ، وَإِلَّا فَبَيْتُ الْمَالِ يَرِثُونَهُ وَيَعْقِلُونَ عَنْهُ.

وَعَنْ مُجَاهِدٍ قَالَ: إنَّ رَجُلًا أَتَى عُمَرَ بْنَ الْخَطَّابِ فَقَالَ: إنَّ رَجُلًا أَسْلَمَ عَلَى يَدَيْ فَمَاتَ وَتَرَكَ أَلْفَ دِرْهَمٍ، فَتَحَرَّجْت مِنْهَا فَرَفَعْتهَا إلَيْك؟ فَقَالَ: أَرَأَيْت لَوْ جَنَى جِنَايَةً عَلَى مَنْ كَانَتْ تَكُونُ؟ قَالَ عَلَيَّ؟ قَالَ: فَمِيرَاثُهُ لَكَ.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: إذَا وَالَى الرَّجُلُ رَجُلًا فَلَهُ مِيرَاثُهُ، وَعَلَى عَاقِلَتِهِ عَقْلُهُ.

L39360 Narrated Ma'mar from al-Zuhrī, who said: 'Umar ibn al-Khaṭṭāb said: "If a man takes another as his client, the client inherits from him, and the patron's agnatic kin are liable for the client's blood money."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: أَبَى الْقَوْمُ أَنْ يَعْقِلُوا عَنْ مَوْلَاهُمْ، أَيَكُونُ مَوْلَى مَنْ عَقَلَ عَنْهُ؟ فَقَالَ: قَالَ مُعَاوِيَةُ: إمَّا أَنْ يَعْقِلُوا عَنْهُ، وَإِمَّا أَنْ نَعْقِلَ عَنْهُ، وَهُوَ مَوْلَانَا، قَالَ عَطَاءٌ فَإِنْ أَبَى أَهْلُهُ أَنْ يَعْقِلُوا عَنْهُ، وَأَبَى النَّاسُ، فَهُوَ مَوْلَى الْمُصَابِ.

L39361 And from the narration of Abd al-Razzaq, from Ibn Jurayj, who said: I asked Ata: "The people refused to pay blood money on behalf of their patron. Would he then become the patron of whoever assumes liability for him?" He replied: "Muawiya said: 'Either they pay blood money for him, or we pay for him, and he is our patron.'" Ata said: "If his family refuses to pay blood money for him, and the people refuse, then he is the patron of the victim."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، قَالَ: إذَا أَبَتْ الْعَاقِلَةُ أَنْ يَعْقِلُوا عَنْ مَوْلَاهُمْ أُجْبِرُوا عَلَى ذَلِكَ.

L39362 From 'Abd al-Razzāq, from Sufyān al-Thawrī, who said: If the ʿāqilah (agnatic kin) refuse to pay the diya on behalf of their dependent, they are obligated to do so.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: إذَا أَسْلَمَ الرَّجُلُ عَلَى يَدَيْ الرَّجُلِ فَلَهُ مِيرَاثُهُ وَيَعْقِلُ عَنْهُ وَعَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِي رَجُلٍ تَوَلَّى قَوْمًا قَالَ: إذَا عَقَلَ عَنْهُمْ فَهُوَ مِنْهُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَالَتْ طَائِفَةٌ: غَيْرَ هَذَا - كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حُمَيْدٍ أَنَّ مَوْلًى لِبَنِي جَشْمٍ قَتَلَ رَجُلًا خَطَأً فَسَأَلَ عَدِيُّ بْنُ أَرْطَاةَ الْحَسَنَ الْبَصْرِيَّ عَنْ ذَلِكَ؟ فَقَالَ: لَا تَعْقِلُ الْعَرَبُ عَنْ الْمَوَالِي.

L39363 From Ibrahim al-Nakhai: If a man embraces Islam through the hands of another man, the convert inherits from him, and the latter pays blood money on his behalf. From al-Hakam ibn Utaybah concerning a man who assumes patronage over a people: He said, "If he pays blood money for them, does this make him one of them?" Abu Muhammad - may Allah have mercy on him - said: A group stated otherwise, as narrated through the chain of al-Hajjaj ibn al-Minhal, who narrated to us from Hammad ibn Salama from Humayd: A freed slave of Banu Jashm accidentally killed a man. Adiy ibn Arta'ah asked al-Hasan al-Basri about this matter, to which he replied: "Arabs do not pay blood money for freed slaves."

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: تَعْقِلُ الْعَاقِلَةُ عَنْ الْمَوْلَى وَالْحَلِيفِ وَقَالَ أَبُو حَنِيفَةَ: مَنْ وَالَى غَيْرَ مَنْ أَعْتَقَهُ لَكِنْ مَنْ أَسْلَمَ عَلَى أَيْدِيهِمْ فَلَهُ أَنْ يَنْتَقِلَ عَنْهُمْ وَيُوَالِيَ غَيْرَهُمْ مَا لَمْ يَعْقِلُوا عَنْهُ، فَإِذَا عَقَلُوا عَنْهُ فَلَا يُمْكِنُهُ الِانْتِقَالُ عَنْهُمْ بِوِلَايَةٍ أَبَدًا.

L39364–39366 Abū Ḥanīfa and Mālik said: The ʿāqila (liable kinship group) pays the blood money for the patron (*mawlā*) and the confederate (*ḥalīf*). Abu Hanifah said: Whoever pledges clientage to someone other than their emancipator—however, if someone embraced Islam under their authority, they may transfer allegiance to others provided they [the guardians] have not paid blood money on his behalf. But if blood money has been paid for him, they can never sever ties through clientage, ever.

L39367 Abu Sulayman and our companions stated: The agnatic kin group does

not pay blood money on behalf of clients from below, patrons from above, confederates, or slaves.

وَقَالَ أَبُو سُلَيْمَانَ وَأَصْحَابُنَا: لَا تَعْقِلُ الْعَاقِلَةُ عَنْ الْمَوَالِي مِنْ أَسْفَلَ، وَلَا عَنْ الْمَوْلَى مِنْ فَوْقُ، وَلَا عَنْ الْحَلِيفِ، وَلَا عَنْ الْعَبْدِ.

L39368 When they disagreed, it became necessary for us to clarify their statements, then present all the evidence each faction cited for their position so the truth might become evident, enabling us to follow it with Allah's assistance and grace. The ruling derived from ʿUmar ibn al-Khaṭṭāb's statement—may Allah be pleased with him—is that higher-ranking patrons are responsible for paying blood money (ʿaql) on behalf of the patrons who manumitted [the freed slave] or those from their own lineage who manumitted him. Blood relatives hold priority in inheritance over the manumitting patrons, followed by [other] manumitters, then the public treasury (Bayt al-Māl).

فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نُخَلِّصَ أَقْوَالَهُمْ ثُمَّ نَذْكُرَ كُلَّ مَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا، لِيَظْهَرَ الْحَقُّ مِنْ ذَلِكَ فَنَتَّبِعَهُ بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ: فَكَانَ الْحَاصِلُ - مِنْ قَوْلِ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - أَنَّ الْمَوَالِيَ مِنْ فَوْقُ يَعْقِلُونَ عَنْ الْمَوَالِي الَّذِينَ أَعْتَقُوهُ، أَوْ أَعْتَقَهُ مَنْ هُوَ مِنْهُمْ، وَأَنَّ ذَوِي الرَّحِمِ أَوْلَى بِالْمِيرَاثِ مِنْ الْمَوَالِي الَّذِينَ أَعْتَقُوهُ، ثُمَّ الْمُعْتِقُونَ، ثُمَّ الْمُسْلِمُونَ.

L39369 The apparent meaning of this is that all those we mentioned are responsible for paying blood money on each other's behalf, and whoever embraces Islam through the agency of a person - their allegiance belongs to that patron, so the patron inherits from them and pays blood money on their behalf.

وَظَاهِرُ هَذَا: أَنَّ كُلَّ مَنْ ذَكَرْنَا يَعْقِلُ عَنْهُ، وَأَنَّ مَنْ أَسْلَمَ عَلَى يَدِ إنْسَانٍ فَوَلَاؤُهُ لَهُ يَرِثُهُ وَيَعْقِلُ عَنْهُ.

L39370 It is authentically reported from Muʿāwiyah's statement that higher-ranking patrons are obligated to pay blood money on behalf of those they manumitted. If they refuse, the imam pays on their behalf, and the freed slave's clientage shifts from the manumitters to the one who paid the blood money. This is an authentic report from Muʿāwiyah, as ʿAṭā ibn Abī Rabāḥ was his contemporary.

وَصَحَّ مِنْ قَوْلِ مُعَاوِيَةَ أَنَّ الْمَوَالِيَ مِنْ فَوْقُ يَعْقِلُونَ عَمَّنْ أَعْتَقُوهُ، فَإِنْ أَبَوْا عَقَلَ عَنْهُمْ الْإِمَامُ وَزَالَ وَلَاؤُهُ عَنْ الَّذِينَ أَعْتَقُوهُ إلَى الَّذِي عَقَلَ عَنْهُ - وَهَذَا صَحِيحٌ عَنْ مُعَاوِيَةَ ثَابِتٌ؛ لِأَنَّ عَطَاءَ بْنَ أَبِي رَبَاحٍ أَدْرَكَهُ.

L39371 It is authentically reported from Ibrahim al-Nakhai that emancipators are responsible for paying blood money on behalf of their emancipated slave and for anyone who embraced Islam under the guardianship of a man among them. It is also authentically reported from al-Hasan that emancipators do not pay blood money for those they emancipated. Abu Muhammad—may Allah have mercy on him—said: We are obligated to seek evidence in these disputed matters from what Allah has enjoined upon us—which are the Quran and the Sunnah. We found those who assert that emancipators pay blood money for their emancipated slaves saying: The Messenger of Allah—peace

وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ الْمُعْتِقِينَ يَعْقِلُونَ عَنْ مَوْلَاهُمْ الَّذِي أَعْتَقُوهُ، وَعَمَّنْ أَسْلَمَ عَلَى يَدَيْ رَجُلٍ مِنْهُمْ - وَصَحَّ عَنْ الْحَسَنِ: أَنَّهُ لَا يَعْقِلُ الْمُعْتِقُونَ عَمَّنْ أَعْتَقُوا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ أَنْ نَنْظُرَ فِي طَلَبِ الْبُرْهَانِ فِيمَا اخْتَلَفُوا فِيهِ مِنْ ذَلِكَ مِمَّا أَوْجَبَ اللَّهُ تَعَالَى عَلَيْنَا - وَهُوَ الْقُرْآنُ وَالسُّنَّةُ - فَوَجَدْنَا مَنْ يَقُولُ: إنَّ الْمُعْتِقِينَ يَعْقِلُونَ عَمَّنْ أَعْتَقُوهُ يَقُولُونَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ» .

and blessings be upon him—stated: "The freed slave is part of the community that freed him."

L39372 The Prophet (peace be upon him) said, "Every pact that existed in the pre-Islamic era—Islam did not increase it except in strength."

L39373–39375 As was narrated to us through the chain of Muslim: Abu Bakr ibn Abi Shaybah reported to us, Abdullah ibn Numayr and Abu Usamah from Zakariyya, from Sa'd ibn Ibrahim, from his father, from Jubayr ibn Mut'im, who said: The Messenger of Allah (peace be upon him) said, "Do not..." A pact in Islam, and any pact that existed during the pre-Islamic era: Islam only intensified their binding force.

L39376 From the path of Muslim: Zuhayr ibn Harb reported to us via Muslim, Isma'il ibn Ibrahim—he is Ibn Ulayyah—narrated to us, Ayyub al-Sakhtiyani narrated from Abu Qilabah from Abu al-Muhallab from Imran ibn al-Husayn, who said: "Thaqif were allies of Banu Aqil. Thaqif captured a man from the companions of the Messenger of Allah (peace be upon him), while the companions of the Messenger of Allah (peace be upon him) captured a man from Banu Aqil and seized al-Adhba along with him. The Messenger of Allah (peace be upon him) passed by him while he was bound. The man called out: 'O Muhammad?' The Messenger of Allah (peace be upon him) approached him and said: 'What is your matter?' He replied: 'For what have you seized me and taken the leading she-camel of the pilgrims?' He said: 'Out of gravity for that, I seized you for the crime of your allies, Thaqif.' Then he turned away. The man called out again: 'O Muhammad! O Muhammad!'—and the Messenger of Allah (peace be upon him) was gentle—so he returned to him and said: 'What is your matter?' He said: 'I am a Muslim.' He replied: 'Had you declared it while you had control over your affairs, you would have attained all success.'" He related the remainder of the hadith. They said: "If the client is from the people, and the ally is from the people—and they are held accountable for his offense—then the blood money is upon him."

L39377 Abu Muhammad—may Allah have mercy on him—said: These reports are of the utmost authenticity, yet they possess no valid proof in any of them. As for

وَقَالَ - عَلَيْهِ السَّلَامُ - «كُلُّ حِلْفٍ كَانَ فِي الْجَاهِلِيَّةِ فَلَمْ يَزِدْهُ الْإِسْلَامُ إلَّا شِدَّةً» .

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، وَأَبُو أُسَامَةَ عَنْ زَكَرِيَّا عَنْ سَعْدِ بْنِ إبْرَاهِيمَ عَنْ أَبِيهِ عَنْ جُبَيْرِ بْنِ مُطْعِمٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا حِلْفَ فِي الْإِسْلَامِ وَأَيُّمَا حِلْفٍ كَانَ فِي الْجَاهِلِيَّةِ فَلَمْ يَزِدْهُ الْإِسْلَامُ إلَّا شِدَّةً» .

وَمِنْ طَرِيقِ مُسْلِمٍ نِي زُهَيْرُ بْنُ حَرْبٍ نا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ: «كَانَتْ ثَقِيفُ حُلَفَاءَ لِبَنِي عَقِيلٍ فَأَسَرَتْ ثَقِيفُ رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَسَرَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا مِنْ بَنِي عَقِيلٍ وَأَصَابُوا مَعَهُ الْعَضْبَاءَ، فَأَتَى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي الْوَثَاقِ فَقَالَ: يَا مُحَمَّدُ؟ فَأَتَاهُ فَقَالَ: مَا شَأْنُكَ؟ فَقَالَ: بِمَ أَخَذْتَنِي وَأَخَذْتَ سَابِقَةَ الْحَاجِّ؟ قَالَ: إعْظَامًا لِذَلِكَ أَخَذْتُكَ بِجَرِيرَةِ حُلَفَائِكَ ثَقِيفَ، ثُمَّ انْصَرَفَ، فَنَادَاهُ: يَا مُحَمَّدُ، يَا مُحَمَّدُ، يَا مُحَمَّدُ - وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَفِيقًا - فَرَجَعَ إلَيْهِ فَقَالَ: مَا شَأْنُكَ؟ فَقَالَ: إنِّي مُسْلِمٌ، قَالَ: لَوْ قُلْتَهَا وَأَنْتَ تَمْلِكُ أَمْرَكَ أَفْلَحْتَ كُلَّ الْفَلَاحِ» وَذَكَرَ بَاقِيَ الْحَدِيثِ - قَالُوا: فَإِذَا كَانَ الْمَوْلَى مِنْ الْقَوْمِ، وَالْحَلِيفُ مِنْ الْقَوْمِ - وَهُمْ مَأْخُوذُونَ بِجَرِيرَتِهِ - فَالْعَقْلُ عَلَيْهِ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ الْأَخْبَارُ فِي غَايَةِ الصِّحَّةِ، إلَّا أَنَّهُمْ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا: أَمَّا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ» فَحَقٌّ لَا شَكَّ فِيهِ، وَلَيْسَ كَوْنُهُ مِنْهُمْ مُوجِبًا أَنْ يَعْقِلُوا عَنْهُ؛ لِأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ أَيْضًا «ابْنُ أُخْتِ الْقَوْمِ مِنْهُمْ» وَلَمْ يَكُنْ ذَلِكَ مُوجِبًا عِنْدَهُمْ أَنْ يَعْقِلُوا عَنْهُ: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ - هُوَ غُنْدَرٌ - نا شُعْبَةُ قَالَ: سَمِعْت قَتَادَةَ يُحَدِّثُ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «جَمَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْأَنْصَارَ وَقَالَ: أَفِيكُمْ أَحَدٌ مِنْ غَيْرِكُمْ؟ قَالُوا: لَا، إلَّا ابْنَ أُخْتٍ لَنَا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ ابْنَ أُخْتِ الْقَوْمِ مِنْهُمْ» وَذَكَرَ الْحَدِيثَ.

L39378 فَبَطَلَ أَنْ يَكُونَ قَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ» أَنْ يَكُونَ مُوجِبًا لَأَنْ يَعْقِلَ عَنْهُمْ، أَوْ يَعْقِلُوا عَنْهُ إذْ لَا يَقْتَضِي قَوْلُهُ - عَلَيْهِ السَّلَامُ - «مَوْلَى الْقَوْمِ مِنْهُمْ» أَنْ يَعْقِلُوا عَنْهُ.

L39379–39381 وَأَمَّا حَدِيثُ عِمْرَانَ بْنِ الْحُصَيْنِ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِلْعُقَيْلِيِّ «أَخَذْتُكَ بِجَرِيرَةِ حُلَفَائِكَ مِنْ ثَقِيفَ» فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا لِوُجُوهٍ -: أَحَدُهَا - أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَأْخُذْ مِنْهُ - إذْ أَخَذَهُ مُسْلِمًا حَرَامٌ أَخْذُهُ - لَوْلَا جَرِيرَةُ حُلَفَائِهِ، بَلْ أَخَذَ كَافِرًا حَلَالًا أَخْذُهُ، وَدَمُهُ، وَمَالُهُ عَلَى كُلِّ حَالٍ، إلَّا أَنَّهُ تَأَكَّدَ أَمْرُهُ مِنْ أَجْلِ جَرِيرَةِ حُلَفَائِهِ فَقَطْ - وَلَسْنَا فِي هَذِهِ الْمَسْأَلَةِ - إنَّمَا نَحْنُ فِي مُسْلِمِينَ حَرَامٌ دِمَاؤُهُمْ وَأَمْوَالُهُمْ، هَلْ يُؤْخَذُونَ بِجَرِيرَةِ حُلَفَائِهِمْ أَمْ لَا؟ .

the statement of the Messenger of Allah—peace and blessings be upon him—"The client of a people is one of them," it is undeniably true. However, his being counted among them does not necessitate their liability for his blood-money, for the Prophet—peace and blessings be upon him—also said, "The maternal nephew of a people is one of them," yet this did not obligate them to pay blood-money on his behalf. This is as we have been narrated through Imam Muslim's transmission: Muhammad ibn al-Muthannā narrated to us, Muhammad ibn Ja'far—known as Ghundar—narrated to us, Shu'bah narrated to us, saying: I heard Qatādah narrating from Anas ibn Mālik, who said: "The Messenger of Allah—peace and blessings be upon him—gathered the Ansār and asked, 'Is there anyone among you not of your kin?' They replied, 'No, except a maternal nephew of ours.' The Messenger of Allah—peace and blessings be upon him—then said, 'The maternal nephew of a people is indeed one of them,'" and he related the hadith.

L39378 Thus, it is invalidated that the Prophet's statement—peace be upon him (PBUH)—"the client of a people is from among them" should necessitate that he pay blood money on their behalf or that they pay on his behalf, for his statement—(PBUH)—"the client of a people is from among them" does not entail that they pay blood money on his behalf.

L39379–39381 As for the narration of 'Imrān ibn al-Ḥuṣayn that the Messenger of Allāh—peace and blessings be upon him—said to al-'Uqaylī: «I took you» "Due to the crime of your allies from Thaqif." They have no valid argument in this matter whatsoever, for several reasons. The first is that the Prophet (peace be upon him) did not seize him, since seizing him as a Muslim would have been unlawful. Rather, he seized a non-Muslim whose seizure was permissible, for his blood and wealth were lawful under all circumstances. His liability was merely intensified due to the crime of his allies. However, this is not the issue at hand here. Our discussion concerns Muslims whose blood and wealth are sacrosanct: can they be seized for the crimes of their allies or not?

L39382 The second of them is that regarding such a crime, no two people among the Muslims would differ in holding it impermissible to seize a Muslim for [the offense of] another Muslim—even if a person's allies, brothers, father,

or son were to capture a Muslim man or commit highway robbery. It is not permissible for anyone to take his ally, brother, son, or father in his stead.

وَثَانِيهَا: أَنَّ مِثْلَ تِلْكَ الْجَرِيرَةِ لَا يَخْتَلِفُ اثْنَانِ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّهُ لَا يَحِلُّ أَنْ يُؤْخَذَ بِهَا مُسْلِمٌ عَنْ مُسْلِمٍ وَلَوْ أَنَّ حُلَفَاءَ الْإِنْسَانِ أَوْ إِخْوَانَهُ أَوْ أَبَاهُ أَوْ وَلَدَهُ: يَأْسِرُ رَجُلًا مِنْ الْمُسْلِمِينَ، أَوْ يَقْطَعُ الطَّرِيقَ: لَمْ يَحِلَّ لِأَحَدٍ أَنْ يَأْخُذَ حَلِيفَهُ، وَلَا أَخَاهُ، وَلَا ابْنَهُ، وَلَا أَبَاهُ عَنْهُ.

L39383 The third is that this constitutes an analogy, and all analogy is invalid, for it is an analogy of a thing to its opposite: an analogy of a believer to a disbeliever, or an analogy of the offense of accidental killing to a believer's capture of disbelievers. This confusion stems from those who have distorted this report, thereby diverting it from its proper context.

وَثَالِثُهَا: أَنَّ هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؛ لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ، وَقِيَاسُ مُؤْمِنٍ عَلَى كَافِرٍ، وَجِنَايَةِ قَتْلٍ خَطَأً عَلَى أَسْرِ كُفَّارٍ لِمُؤْمِنٍ - وَهَذَا تَخْلِيطٌ مِمَّنْ مَوَّهَ بِهَذَا الْخَبَرِ فَحَرَّفَهُ عَنْ مَوْضِعِهِ.

L39384 As for the ḥadīth of Jubayr ibn Muṭʿim: "There is no alliance in Islam, and every alliance from the pre-Islamic era—Islam did not increase it except in strength"—they have no ground to rely on this, for we do not disagree with them regarding the continuation of pre-Islamic alliances and the invalidation of alliances in Islam, so that they might use this report to argue against us. The discussion, rather, is whether allies are financially liable for one another or not. This report contains nothing pertaining to that meaning. As for the question: "What is the meaning of the alliance's continuation if we say its meaning is apparent?" It is that they are with them as though they are part of them: if they raid, they raid with them; if they have a need, they speak about it as family would, and the like. However, this does not entail imposing financial liability.

وَأَمَّا حَدِيثُ - جُبَيْرِ بْنِ مُطْعِمٍ: «لَا حِلْفَ فِي الْإِسْلَامِ، وَكُلُّ حِلْفٍ كَانَ فِي الْجَاهِلِيَّةِ فَلَمْ يَزِدْهُ الْإِسْلَامُ إلَّا شِدَّةً» فَلَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّنَا لَمْ نُخَالِفْهُمْ فِي بَقَاءِ حِلْفِ الْجَاهِلِيَّةِ وَإِبْطَالِ الْحِلْفِ فِي الْإِسْلَامِ فَيَحْتَجُّوا عَلَيْنَا بِهَذَا الْخَبَرِ، وَإِنَّمَا الْكَلَامُ هَلْ يَعْقِلُ الْحُلَفَاءُ بَعْضُهُمْ عَنْ بَعْضٍ أَمْ لَا؟ وَلَيْسَ فِي هَذَا الْخَبَرِ شَيْءٌ مِنْ هَذَا الْمَعْنَى وَمَا مَعْنَى بَقَاءِ الْحِلْفِ إذَا قُلْنَا: مَعْنَاهُ ظَاهِرٌ، وَهُوَ أَنْ يَكُونُوا مَعَهُمْ كَأَنَّهُمْ مِنْهُمْ، فَإِذَا غَزَوْا غَزَوْا مَعَهُمْ، وَإِذَا كَانَتْ لَهُمْ حَاجَةٌ تَكَلَّمُوا فِيهَا كَمَا يَتَكَلَّمُ الْأَهْلُ، وَمَا أَشْبَهَ ذَلِكَ - وَأَمَّا إيجَابُ غَرَامَةٍ فَلَا.

L39385 We have been narrated through the chain of Muslim: Muslim narrated to us, from Abu Jaʿfar ibn Muhammad ibn al-Sabah, from Hafs ibn Ghiyath, from ʿAsim al-Ahwal, who said: It was said to Anas ibn Malik, "We have heard that the Messenger of Allah (peace be upon him) concluded a pact between Quraysh and the Ansar in his home."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو جَعْفَرِ بْنُ مُحَمَّدِ بْنِ الصَّبَّاحِ نا حَفْصُ بْنُ غِيَاثٍ نا عَاصِمٌ الْأَحْوَلُ قَالَ: قِيلَ لِأَنَسِ بْنِ مَالِكٍ: بَلَغَنَا «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَالَفَ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ فِي دَارِهِ» .

L39386–39388 In another hadith reported by Muslim from Anas: "In his home in Medina?" ʿAlī—may Allah have mercy on him—said: "This constitutes the most deci-

sive evidence invalidating the notion that an ally may pay blood money on behalf of his ally, for 'the Messenger of Allah—peace and blessings of Allah be upon him—established a pact between Quraysh and the Anṣār,' and no pact is stronger or more binding than one he contracted." The Messenger of Allah—peace be upon him—said: "If allies were to pay blood money on behalf of their ally, it would become obligatory for Quraysh to pay blood money for the Ansar and the Ansar for Quraysh"—but would they ever say this? Abu Muhammad—may Allah have mercy on him—said: "It is obligatory upon us to determine the time when the Messenger of Allah—peace be upon him—abolished pre-Islamic alliances in Islam." It was narrated from Umar ibn al-Khattab through the chain of Abd al-Aziz ibn Umar ibn Abd al-Aziz ibn Umar ibn Abd al-Rahman ibn Awf, who said: "Every alliance formed before Hudaybiyah remains valid, and every alliance formed after Hudaybiyah is annulled. For when the Messenger of Allah—peace be upon him—made peace with Quraysh at Hudaybiyah, he—peace be upon him—drafted a treaty between himself and them stating: 'Whoever wishes to enter into the covenant and pact of Quraysh may do so, and whoever wishes to enter into the covenant and pact of Muhammad—peace be upon him—may do so.'"

وَفِي حَدِيثٍ آخَرَ لِمُسْلِمٍ عَنْ أَنَسٍ: «فِي دَارِهِ بِالْمَدِينَةِ» ؟ قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: فَهَذَا أَعْظَمُ حُجَّةٍ فِي إبْطَالِ أَنْ يَعْقِلَ الْحَلِيفُ عَنْ حَلِيفِهِ؛ لِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَالَفَ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ» ، وَلَا حِلْفَ أَقْوَى وَأَشَدَّ مِنْ حِلْفٍ عَقَدَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَوْ عَقَلَ الْحُلَفَاءُ عَنْ الْحَلِيفِ لَوَجَبَ أَنْ تَعْقِلَ قُرَيْشٌ عَنْ الْأَنْصَارِ، وَالْأَنْصَارُ عَنْ قُرَيْشٍ - وَهَذَا مَا لَا يَقُولُونَهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَاجِبٌ أَنْ نَطْلُبَ مَعْرِفَةَ الْوَقْتِ الَّذِي قَطَعَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحِلْفَ فِي الْإِسْلَامِ -: فَذُكِرَ عَنْ عُمَرَ بْنِ الْخَطَّابِ مِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، قَالَ: إنَّ كُلَّ حِلْفٍ كَانَ قَبْلَ الْحُدَيْبِيَةِ فَهُوَ مَشْدُودٌ، وَكُلَّ حِلْفٍ كَانَ بَعْدَ الْحُدَيْبِيَةِ فَهُوَ مَنْقُوضٌ؛ لِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ وَادَعَ قُرَيْشًا يَوْمَ الْحُدَيْبِيَةِ كَتَبَ - عَلَيْهِ السَّلَامُ - حِينَئِذٍ بَيْنَهُ وَبَيْنَهُمْ: أَنَّهُ مَنْ أَحَبَّ أَنْ يَدْخُلَ فِي عَهْدِ قُرَيْشٍ وَعَقْدِهَا دَخَلَ، وَمَنْ أَحَبَّ أَنْ يَدْخُلَ فِي عَهْدِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَقْدِهِ دَخَلَ» .

L39389 Uthman ruled that every alliance established before the Hijrah remains a valid pre-Islamic covenant, while every alliance formed after the Hijrah belongs to Islam but is annulled. He issued this ruling regarding a case involving the Banu Bahz clan of the Banu Sulaym tribe. Ali ibn Abi Talib ruled that every alliance concluded before the revelation of *"For the accustomed security of Quraysh"* (Surah Quraysh 106:1) remains a valid pre-Islamic covenant, while every alliance formed after its revelation is Islamic and annulled. This is because anyone who formed an alliance to gain membership within Quraysh after the revelation of *"For the accustomed security of Quraysh"* (Surah Quraysh 106:1), despite not originally belonging to them, did not thereby become part of them. He issued this ruling concerning the alliance of Rabi'ah al-'Uqayli, specifically regarding Ju'fi, who was the grandfather of Ishaq ibn

وَقَضَى عُثْمَانُ: أَنَّ كُلَّ حِلْفٍ كَانَ قَبْلَ الْهِجْرَةِ فَهُوَ جَاهِلِيٌّ ثَابِتٌ، وَكُلَّ حِلْفٍ كَانَ بَعْدَ الْهِجْرَةِ فَهُوَ فِي الْإِسْلَامِ، وَهُوَ مَفْسُوخٌ، قَضَى بِذَلِكَ فِي قَوْمٍ مِنْ بَنِي بَهْزٍ مِنْ بَنِي سُلَيْمٍ. وَقَضَى عَلِيُّ بْنُ أَبِي طَالِبٍ: أَنَّ كُلَّ حِلْفٍ كَانَ قَبْلَ نُزُولِ {لِإِيلَافِ قُرَيْشٍ} [قريش: ١] فَهُوَ جَاهِلِيٌّ ثَابِتٌ وَكُلَّ حِلْفٍ كَانَ بَعْدَ نُزُولِهَا فَهُوَ إسْلَامِيٌّ مَفْسُوخٌ؛ لِأَنَّ مَنْ حَالَفَ لِيَدْخُلَ فِي قُرَيْشٍ بَعْدَ نُزُولِ {لِإِيلَافِ قُرَيْشٍ} [قريش: ١] مِمَّنْ لَمْ يَكُنْ مِنْهُمْ لَمْ يَكُنْ بِذَلِكَ دَاخِلًا فِيهِمْ، قَضَى فِي ذَلِكَ فِي حِلْفِ رَبِيعَةَ الْعُقَيْلِيِّ، فِي جُعْفِيٍّ،

Muslim al-ʻUqayli. Ibn Abbas stated: Every alliance established before the revelation of *"To each We have appointed heirs/kinsmen for what is left by parents and relatives"* (Surah an-Nisāʼ 4:33) up to His words *"then give them their share"* (Surah an-Nisāʼ 4:33) remains binding, while every alliance formed after its revelation is annulled. It is therefore necessary to examine the soundness of these positions. As for Uthman's assertion—may Allah be pleased with him—that the cessation boundary for alliances is the beginning of the Hijrah, this is not valid, for Anas narrated, as we mentioned, that "the Messenger of Allah—peace be upon him—established an alliance between Quraysh and the Ansar in Medina," and no one disputes that this alliance occurred after the Hijrah.[15]

وَهُوَ جَدُّ إِسْحَاقَ بْنِ مُسْلِمٍ الْعُقَيْلِيِّ، وَقَالَ ابْنُ عَبَّاسٍ: كُلُّ حِلْفٍ كَانَ قَبْلَ نُزُولِ {وَلِكُلٍّ جَعَلْنَا مَوَالِيَ مِمَّا تَرَكَ الْوَالِدَانِ وَالأَقْرَبُونَ} [النساء: ٣٣] إِلَى قَوْلِهِ {فَآتُوهُمْ نَصِيبَهُمْ} [النساء: ٣٣] فَهُوَ مَشْدُودٌ، وَكُلُّ حِلْفٍ كَانَ بَعْدَ نُزُولِهَا فَهُوَ مَفْسُوخٌ، فَوَجَبَ أَنْ نَنْظُرَ فِي الصَّحِيحِ مِنْ ذَلِكَ -: فَأَمَّا قَوْلُ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - إِنَّ حَدَّ انْقِطَاعِ الْحِلْفِ إِنَّمَا هُوَ أَوَّلُ وَقْتِ الْهِجْرَةِ، فَلَا يَصِحُّ، لِأَنَّ أَنَسًا رَوَى - كَمَا ذَكَرْنَا - أَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَالَفَ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ بِالْمَدِينَةِ» ، وَلَا يَشُكُّ أَحَدٌ فِي أَنَّ هَذَا الْحِلْفَ كَانَ بَعْدَ الْهِجْرَةِ.

L39390–39392 As for the statement of ʻUmar (may Allah be pleased with him) regarding his specification that the alliance had ceased on the Day of Ḥudaybiyya, this... This issue is also suspended; because the Prophet's alliance (peace and blessings of Allah be upon him) between Quraysh and the Ansar occurred after the Hijrah, and we do not know whether it was before al-Hudaybiyah or after it.

وَأَمَّا قَوْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي تَحْدِيدِهِ انْقِطَاعَ الْحِلْفِ بِيَوْمِ الْحُدَيْبِيَةِ فَهَذَا أَيْضًا مُتَوَقِّفٌ، لِأَنَّ حِلْفَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ كَانَ بَعْدَ الْهِجْرَةِ، وَلَا نَدْرِي أَقَبْلَ الْحُدَيْبِيَةِ أَمْ بَعْدَهَا.

L39393 As for the revelation of {For the accustomed security of Quraysh} [Quraysh: 1] and the other verse, we do not know when they were revealed. This is because Jubayr ibn Muṭʻim—the narrator of "Every alliance formed during the *Jāhiliyyah* was only strengthened by Islam"—did not accept Islam until the day of the Conquest. Therefore, this report can only be understood as pertaining to the day of the Conquest. And Allah knows best. Thus, their reliance on these reports is entirely invalidated.[16]

فَأَمَّا نُزُولُ {لِإِيلافِ قُرَيْشٍ} [قريش: ١] وَالْآيَةِ الْأُخْرَى فَمَا نَدْرِي مَتَى نَزَلَتَا؟ لِأَنَّ جُبَيْرَ بْنَ مُطْعِمٍ - رَاوِي «كُلُّ حِلْفٍ كَانَ فِي الْجَاهِلِيَّةِ فَلَمْ يَزِدْهُ الْإِسْلَامُ إِلَّا شِدَّةً» لَمْ يُسْلِمْ إِلَّا يَوْمَ الْفَتْحِ، فَلَا يُحْمَلُ هَذَا الْخَبَرُ إِلَّا عَلَى يَوْمِ الْفَتْحِ، وَاللَّهُ أَعْلَمُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْأَخْبَارِ جُمْلَةً.

L39394 Abū Muḥammad—may Allāh have mercy on him—said: It thus became incumbent upon us to seek the ruling on these issues from sources other than these reports. We ascertained that the Messenger of Allāh—peace and blessings of Allāh be upon him—had ruled blood money to be incumbent upon the agnates—as explicitly stated—in the report concerning blood money owed

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ عَلَيْنَا أَنْ نَطْلُبَ حُكْمَ هَذِهِ الْمَسَائِلِ مِنْ غَيْرِ هَذِهِ الْأَخْبَارِ، فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَضَى بِالدِّيَةِ عَلَى الْعَصَبَةِ - هَكَذَا جَاءَ النَّصُّ - فِي خَبَرِ دِيَةِ الْقَاتِلَةِ، فَوَجَبَ أَنْ تَكُونَ الدِّيَةُ عَلَى الْعَصَبَةِ، وَمَنْ هُمْ الْعَصَبَةُ؟ فَوَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ حَكَمَ بِمِيرَاثِ الْقَاتِلَةِ لِبَنِيهَا

[15] **Qur'an references (L39389):** Qur'an 106:1 (Quraysh); Qur'an 4:33 (An-Nisa).
[16] **Qur'an references (L39393):** Qur'an 106:1 (Quraysh).

by a female killer. Therefore, blood money must necessarily fall upon the agnates. Who are the agnates? We ascertained that the Prophet—peace and blessings of Allāh be upon him—had ruled the inheritance of a female killer passes to her sons and husband, while ruling blood money incumbent upon her agnates. Thus, it is invalid for the heirs to be the agnates—contrary to al-Shaʿbī's assertion. He said: Blood money is incumbent upon those who receive the inheritance. Since this is the case, perhaps a disputant might cite as evidence the statement of the Messenger of Allāh—peace and blessings of Allāh be upon him—: "Assign the ordained shares to their rightful recipients. Whatever remains after the ordained shares belongs to the nearest male relative."

وَزَوْجِهَا وَحَكَمَ بِالدِّيَةِ عَلَى عَصَبَتِهَا - فَبَطَلَ أَنْ تَكُونَ الْوَرَثَةُ هُمْ الْعَصَبَةُ؟ بِخِلَافِ مَا قَالَ الشَّعْبِيُّ، قَالَ: الْعَقْلُ عَلَى مَنْ لَهُ الْمِيرَاثُ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَعَلَّ مُحْتَجًّا يَحْتَجُّ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» .

L39395 He will say: "Is this the ruling of the patron from above?" It will be said to him: "Yes, this is correct. This is the ruling of inheritance, not the ruling of the *ʿaqilah*; because a woman may inherit through *wala'* if she manumits her client, and the woman is not among the *ʿaṣabah*?"

فَيَقُولُ: إنَّ هَذَا حُكْمُ الْمَوْلَى مِنْ فَوْقُ؟ فَيُقَالُ لَهُ: نَعَمْ، هَذَا صَحِيحٌ، وَهَذَا حُكْمُ الْمَوَارِيثِ لَا حُكْمُ الْعَاقِلَةِ؛ لِأَنَّهُ قَدْ تَرِثُ بِالْوَلَاءِ الْمَرْأَةُ إذَا أَعْتَقَتْ مَوْلًى لَهَا وَلَيْسَتْ الْمَرْأَةُ مِنْ الْعَصَبَةِ؟ .

L39396 The Issue of Collective Liability Among Dhimmis.

[مَسْأَلَة تَعَاقُلُ أَهْلِ الذِّمَّةِ]

L39397 It has been narrated to us through the chain of Abū Bakr ibn Abī Shaybah, from Ḥafṣ ibn Ghiyāth, from ʿAmr—who is Ibn ʿUbayd—that al-Ḥasan would rule regarding the covenanted non-Muslim that he is to be killed. He said: "If they engage in the ʿāqilah system, then upon the ʿāqilah. If they do not, it becomes a debt against his wealth and his dhimma."

رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ نا عَمْرٌو - هُوَ ابْنُ عُبَيْدٍ - أَنَّ الْحَسَنَ كَانَ يَقُولُ فِي الْمُعَاهِدِ يَقْتُلُ، قَالَ: إنْ كَانُوا يَتَعَاقَلُونَ فَعَلَى الْعَوَاقِلِ، وَإِنْ كَانَ لَا، فَدَيْنٌ عَلَيْهِ فِي مَالِهِ وَذِمَّتِهِ.

L39398 And through the chain of Abū Bakr ibn Abī Shaybah as well, Ḥafṣ ibn Ghiyāth narrated from Ashʿath from Al-Shaʿbī regarding the treaty-bound combatant who is killed: he said, "His blood money belongs to the Muslims, and the liability for it rests upon them."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَيْضًا نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ فِي الْمُعَاهِدِ يَقْتُلُ، قَالَ: دِيَتُهُ لِلْمُسْلِمِينَ، وَعَقْلُهُ عَلَيْهِمْ.

L39399 And through the chain of Abū Bakr ibn Abī Shaybah as well, narrated Muḥammad ibn Bishr from Saʿīd ibn Abī ʿArūbah from Qatādah concerning a dhimmi who gouged out the eye of a Muslim man, Qatādah said: "His blood money falls upon the people of his administrative district (ṭasūjihi)."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَيْضًا نا مُحَمَّدُ بْنُ بِشْرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ فِي رَجُلٍ مِنْ أَهْلِ الذِّمَّةِ فَقَأَ عَيْنَ رَجُلٍ مُسْلِمٍ قَالَ: دِيَتُهُ عَلَى أَهْلِ طسوجه.

L39400–39401 Among these statements is that the people of his region pay the blood money

on his behalf—but this is baseless, as there is unanimous agreement that the people of Ṭusūjah are not considered his agnatic relatives.

فَهَذِهِ أَقْوَالٌ مِنْهَا -: أَنَّ أَهْلَ إِقْلِيمِهِ يَعْقِلُونَ عَنْهُ - وَهُوَ لَيْسَ بِشَيْءٍ، لِأَنَّ أَهْلَ طسوجه لَا يُسَمَّوْنَ عَصَبَةً لَهُ بِلَا خِلَافٍ.

L39402 Another opinion is that his blood money is upon the Muslims, and this applies if he has no agnate relatives. If he has agnate relatives, then the blood money for accidental killing and the fetal compensation (ghurra) are obligatory upon the killer and his agnate relatives, as ruled by the Messenger of Allah—peace and blessings be upon him—who did not restrict this to Arabs over non-Arabs. Rather, he established blood monies for every clan, thus he generalized it {Nor does he speak from [his own] inclination} [53:3] {And your Lord is not forgetful} [19:64].[17]

وَقَوْلٌ آخَرُ - أَنَّ عَقْلَهُ عَلَى الْمُسْلِمِينَ، وَهَذَا كَذَلِكَ إِذَا لَمْ تَكُنْ لَهُ عَصَبَةٌ فَإِنْ كَانَ لَهُ عَصَبَةٌ فَعَقْلُ مَنْ قَتَلَ خَطَأً وَالْغُرَّةُ تَجِبُ عَلَيْهِ وَعَلَى عَصَبَتِهِ كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَخُصَّ بِذَلِكَ عَرَبًا مِنْ عَجَمٍ بَلْ جَعَلَ عَلَى كُلِّ بَطْنٍ عُقُولَهُ فَعَمَّ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

The Issue of the Slave's Penal Offense

[مَسْأَلَة جِنَايَة الْعَبْد]

L39404 Issue 2150: The ruling regarding what a slave is liable for in such cases: If a slave, a mudabbar, an umm al-walad, or a mukatab accidentally kills a Muslim, or they cause harm to a pregnant woman resulting in the loss of her fetus, we have clarified that the Messenger of Allah—peace and blessings be upon him—judged in such matters (and his judgment is from the judgment of Allah the Exalted) that the diyah and ghurrah fall upon the agnatic relatives of the perpetrator in that case, and that each clan bears its compensatory payments. He did not make a distinction between a free person and a slave.

٢١٥٠ - مَسْأَلَةٌ: حُكْمُ مَا جَنَى الْعَبْدُ فِي ذَلِكَ: إِنْ قَتَلَ الْعَبْدُ أَوْ الْمُدَبَّرُ أَوْ أُمُّ الْوَلَدِ، أَوْ الْمُكَاتَبُ مُسْلِمًا خَطَأً، أَوْ جَنَوْا عَلَى حَامِلٍ فَأُصِيبَ جَنِينُهَا، فَقَدْ بَيَّنَّا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي ذَلِكَ - وَهُوَ الَّذِي قَضَاؤُهُ مِنْ قَضَاءِ اللَّهِ تَعَالَى أَنَّ الدِّيَةَ وَالْغُرَّةَ عَلَى عَصَبَةِ الْجَانِي فِي ذَلِكَ، وَأَنَّ عَلَى كُلِّ بَطْنٍ عُقُولَهُ وَلَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ.

L39405 Nor does he speak from [his own] whim. It is but a revelation revealed [An-Najm 53:3-4]. And your Lord is not forgetful [Maryam 19:64].[18]

{وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] . {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L39406 We bear witness—by the testimony of Allah, the Most High—that if Allah, the Most High, had intended to distinguish a free person from a slave, He would have made it clear and would not have neglected or overlooked it.

وَنَحْنُ نَشْهَدُ - بِشَهَادَةِ اللَّهِ تَعَالَى - أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَخُصَّ حُرًّا مِنْ عَبْدٍ لَبَيَّنَهُ وَلَمَا أَهْمَلَهُ وَلَا أَغْفَلَهُ، وَقَدْ قَالَ تَعَالَى {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَكُلُّ

[17] **Qur'an references (L39402):** Qur'an 53:3 (An-Najm); Qur'an 19:64 (Maryam).

[18] **Qur'an references (L39405):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

He, the Most High, has said: “To make clear to mankind what has been sent down to them” [Quran 16:44]. Thus, everything the Messenger—peace be upon him—did not clarify or elaborate is invalid; Allah, the Most High, did not intend it at all, and the Messenger—peace be upon him—has judged each tribe according to their intellects.[19]

L39407 The sub-lineages—which are successive generations traced father after father—apply among non-Arab communities as they do among Arabs, and among slaves as they do among free persons. It is therefore obligatory that if a slave with a known lineage and paternal relatives—whether Qurayshī, Arab, or non-Arab—marries a slave woman, their child’s lineage is distinguished through him and separated from her, making the blood money incumbent upon his paternal relatives.

L39408 If it is said, “They do not inherit him,” we respond, “Indeed,” for we have clarified that blood money is incumbent upon the agnates, not the heirs, by the textual ruling of the Prophet—peace and blessings be upon him—and this is the definitive truth in the sight of Allah, the Exalted, and that he never intended anything other than this for matters not addressed by the Quran or Sunnah.

The issue of differing opinions regarding one who lacks an ʿāqilah [male kin group liable for blood money].

L39409–39410

L39411 Issue: Regarding one who has no liable kin (aqila)? People have differed on this matter. A group said: The responsibility lies upon the Muslims, as we have been narrated that Abū Mūsā al-Ashʿarī wrote to ʿUmar ibn al-Khaṭṭāb regarding a man who dies among us without any blood relatives, client, or agnates. ʿUmar wrote back to him: If he leaves blood relatives, then they are responsible; if not, then the client; if neither, then the Muslim public treasury (Bayt al-Mal) – it inherits from him and pays blood money on his behalf.

L39412 A group said: His blood money is incumbent on his maternal relatives—as we have transmitted that when Ali ibn Abi Talib stoned the woman, he said

[19] **Qur’an references (L39406):** Qur’an 16:44 (An-Nahl).

مَا لَمْ يُبَيِّنْهُ الرَّسُولُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فَصَّلَهُ فَهُوَ بَاطِلٌ، مَا أَرَادَهُ اللَّهُ تَعَالَى قَطُّ - وَقَدْ حَكَمَ - عَلَيْهِ السَّلَامُ - عَلَى كُلِّ بَطْنٍ عُقُولَهُ.

وَالْبُطُونُ - هِيَ الْوِلَادَاتُ أَبًا بَعْدَ أَبٍ، فَهِيَ فِي الْعَجَمِ، كَمَا هِيَ فِي الْعَرَبِ وَفِي الْأَحْرَارِ، كَمَا هِيَ فِي الْعَبِيدِ، فَوَاجِبٌ أَنَّ كُلَّ مَنْ كَانَ مِنْ الْعَبِيدِ يُعْرَفُ نَسَبُهُ وَلَهُ عَصَبَةٌ، كَقُرَشِيٍّ، أَوْ عَرَبِيٍّ، أَوْ عَجَمِيٍّ، تَزَوَّجَ أَمَةً فَرَقَّ وَلَدُهَا مِنْهَا، فَإِنَّ الدِّيَةَ عَلَى عَصَبَتِهِ.

فَإِنْ قِيلَ: إنَّهُمْ لَا يَرِثُونَهُ قُلْنَا: نَعَمْ، وَقَدْ بَيَّنَّا أَنَّ الدِّيَةَ عَلَى الْعَصَبَةِ لَا عَلَى الْوَرَثَةِ بِنَصِّ حُكْمِ النَّبِيِّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهُوَ الْحَقُّ الْمَقْطُوعُ بِهِ عِنْدَ اللَّهِ تَعَالَى، وَأَنَّهُ لَمْ يُرِدْ قَطُّ غَيْرَهُ مِمَّا لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ.

[مَسْأَلَة الِاخْتِلَاف فِيمَنْ لَا عَاقِلَة لَهُ]

مَسْأَلَةٌ: مَنْ لَا عَاقِلَةَ لَهُ؟ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: عَلَى الْمُسْلِمِينَ -: كَمَا رُوِّينَا أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ كَتَبَ إلَى عُمَرَ بْنِ الْخَطَّابِ أَنَّ الرَّجُلَ يَمُوتُ بَيْنَنَا لَيْسَ لَهُ رَحِمٌ وَلَا مَوْلًى وَلَا عَصَبَةٌ؟ فَكَتَبَ إلَيْهِ عُمَرُ: إنْ تَرَكَ رَحِمًا فَرَحِمٌ، وَإِلَّا فَالْمَوْلَى، وَإِلَّا فَلْيَبِتْ مَالُ الْمُسْلِمِينَ: يَرِثُونَهُ، وَيَعْقِلُونَ عَنْهُ.

وَقَالَتْ طَائِفَةٌ: عَقْلُهُ عَلَى عَصَبَةِ أُمِّهِ -: كَمَا رُوِّينَا أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ لَمَّا رَجَمَ الْمَرْأَةَ قَالَ لِأَوْلِيَائِهَا: هَذَا ابْنُكُمْ تَرِثُونَهُ وَيَرِثُكُمْ، وَإِنْ جَنَى جِنَايَةً فَعَلَيْكُمْ.

to her guardians: “This is your son; you inherit him, and he inherits you. If he commits an offense requiring compensation, it becomes your obligation.”

L39413 When a man invokes liʿān against his wife, they are separated permanently and may never reunite. The child is affiliated with the mother’s agnatic relatives, the mother inherits from the child, and the mother’s agnatic kin assume liability for his blood money.

وَعَنْ إِبْرَاهِيمَ قَالَ: إِذَا لَاعَنَ الرَّجُلُ امْرَأَتَهُ: فُرِّقَ بَيْنَهُمَا وَلَا يَجْتَمِعَانِ أَبَدًا، وَأُلْحِقَ الْوَلَدُ بِعَصَبَةِ أُمِّهِ، وَتَرِثُهُ، وَيَعْقِلُونَ عَنْهُ.

L39414 From Ibrāhīm al-Nakhaʿī concerning the child of liʿān: His entire inheritance devolves upon his mother, and her agnatic kin are liable for his blood money. This ruling likewise applies to the child of unlawful intercourse and the child of a Christian [father] with a Muslim mother.

وَعَنْ إِبْرَاهِيمَ أَيْضًا - وَهُوَ النَّخَعِيُّ - فِي وَلَدِ الْمُلَاعَنَةِ قَالَ: مِيرَاثُهُ كُلُّهُ لِأُمِّهِ، وَيَعْقِلُ عَنْهُ عَصَبَتُهَا، كَذَلِكَ وَلَدُ الزِّنَى، وَوَلَدُ النَّصْرَانِيِّ وَأُمُّهُ مُسْلِمَةٌ.

L39415 A group said: “The liability falls upon one like him.” As narrated to us from Maymūn ibn Mihrān: A man from the people of Al-Jazīrah embraced Islam while having no kinsmen. He killed a man unintentionally, so ʿUmar ibn ʿAbd al-ʿAzīz wrote: “Assign the blood-money upon his equivalents among those who embraced Islam.”

وَقَالَتْ طَائِفَةٌ: عَلَى مَنْ كَانَ مِثْلَهُ -: كَمَا رُوِّينَا عَنْ مَيْمُونِ بْنِ مِهْرَانَ أَنَّ رَجُلًا مِنْ أَهْلِ الْجَزِيرَةِ أَسْلَمَ وَلَيْسَ لَهُ مَوَالٍ، فَقَتَلَ رَجُلًا خَطَأً؟ فَكَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ اجْعَلُوهَا دِيَةً عَلَى نَحْوِهِ مِمَّنْ أَسْلَمَ.

L39416 And a faction said: “The obligation is incumbent upon whoever is like him.”

وَقَالَتْ طَائِفَةٌ: عَلَى مَنْ كَانَ مِثْلَهُ.

L39417 A group held: “There is no liability in that matter,” as we have narrated through the chain of Abd al-Razzaq from Ibn Jurayj, who said: Ata’ claimed that an animal dedicated through pre-Islamic ritual among Mecca’s consecrated animals injured a man. The injured party came to Umar ibn al-Khattab, who told him: “You have no right. Suppose I had wounded his head—what then?” The man replied: “Would I take his due compensation from you, while you do not take mine from him?” Umar said: “No.” The man retorted: “Is this then the speckled snake—that you force me to endure harm while letting them kill me, and I would seek vengeance?” Umar concluded: “Then it is the speckled snake.”

وَقَالَتْ طَائِفَةٌ: لَا شَيْءَ فِي ذَلِكَ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ، قَالَ: زَعَمَ عَطَاءٌ أَنَّ سَائِبَةً مِنْ سُيَّبِ مَكَّةَ أَصَابَتْ إِنْسَانًا فَجَاءَ إِلَى عُمَرَ بْنِ الْخَطَّابِ، فَقَالَ لَهُ عُمَرُ: لَيْسَ لَكَ شَيْءٌ، أَرَأَيْتَ لَوْ شَجَجْتَه؟ قَالَ: آخُذُ لَهُ مِنْكَ حَقَّهُ، وَلَا تَأْخُذُ لِي مِنْهُ؟ قَالَ: لَا، قَالَ: هُوَ إِذًا الْأَرْقَمُ أَنْ يَتْرُكَنِي أُلْقِمُ وَأَنْ يَقْتُلُونِي أَنْقِمُ، قَالَ عُمَرُ: فَهُوَ الْأَرْقَمُ.

L39418 Abū Muḥammad—may Allah have mercy on him—said: We deliberated on this? We found Allah, Glorified and Exalted is He, says the verse: {Whoever kills a believer unintentionally...} [al-Nisā’: 92], the verse.[20]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي هَذَا؟ فَوَجَدْنَا اللَّهَ سُبْحَانَهُ وَتَعَالَى يَقُولُ {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً} [النساء: ٩٢] الْآيَةَ.

[20]**Qur’an references (L39418):** Qur’an 4:92 (An-Nisa).

وَوَجَدْنَا «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَضَى مُجْمَلًا فِي الْجَنِينِ بِغُرَّةِ عَبْدٍ أَوْ أَمَةٍ» ، فَكَانَ هَذَانِ النَّصَّانِ عَامَّيْنِ لِكُلِّ مَنْ لَهُ عَاقِلَةٌ، وَلِكُلِّ مَنْ لَا عَاقِلَةَ لَهُ وَلَا عَصَبَةَ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ قَضَى بِالدِّيَةِ وَالْغُرَّةِ عَلَى الْعَصَبَةِ لَمْ يَقُلْ: إنَّهُ لَا يَجِبُ مِنْ ذَلِكَ شَيْءٌ عَلَى مَنْ لَا عَصَبَةَ لَهُ - فَإِذْ لَمْ يَقُلْ، وَقَضَى بِالْغُرَّةِ جُمْلَةً، وَقَضَى اللَّهُ تَعَالَى بِدِيَةٍ مُسَلَّمَةٍ إلَى أَهْلِ الْمَقْتُولِ خَطَأً عُمُومًا: كَانَ ذَلِكَ وَاجِبًا فِيمَنْ قَتَلَهُ خَطَأً مَنْ لَهُ عَصَبَةٌ، وَمَنْ لَا عَصَبَةَ لَهُ، وَكَذَلِكَ الْغُرَّةُ - فَوَجَبَ أَنْ لَا تَسْقُطَ الدِّيَةُ، وَلَا الْغُرَّةُ هَاهُنَا أَيْضًا، إذْ لَمْ يُسْقِطْهَا نَصٌّ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - عَلَيْهِ السَّلَامُ -.

L39419–39421 We found that the Messenger of Allah—peace and blessings of Allah be upon him—had issued a general ruling regarding the fetus, mandating a ghurrah of a male or female slave. These two texts constituted general rulings applying to all who possess a liable kinship group (*ʿāqilah*), and to all who lack both liable kin and male agnatic relatives (*ʿaṣabah*). This is because when the Messenger of Allah—peace and blessings of Allah be upon him—ruled that diyah and the ghurrah were obligations upon the *ʿaṣabah*, he did not exempt those without [liable kin] from this obligation. Since it was not specified and a comprehensive ruling was made for the ghurra, and since Allah the Exalted has decreed blood money to be delivered to the family of the one slain by mistake as a general ruling—this obligation applies whether the perpetrator has agnates or not, and likewise the ghurra—it becomes obligatory that neither the blood money nor the ghurra be invalidated here, as neither Allah the Exalted nor His Messenger—peace be upon him—has abrogated them through a textual ruling.

فَنَظَرْنَا فِي هَذِهِ الْأَقْوَالِ فَوَجَدْنَا مَنْ جَعَلَهَا فِي مَالِ الْجَانِي، أَوْ عَلَى عَصَبَةِ أُمِّهِ، أَوْ عَلَى مِثْلِهِ مِمَّنْ أَسْلَمَ: قَدْ خَصَّ بِالْغَرَامَةِ قَوْمًا دُونَ سَائِرِ النَّاسِ - وَهَذَا لَا يَجُوزُ؛ لِأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَمْ يَجُزْ أَنْ يَغْرَمَ أَحَدٌ غَرَامَةً لَمْ يَأْتِ بِإِيجَابِهَا نَصٌّ وَلَا إجْمَاعٌ، وَلَمْ يَقُلْ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - إنَّ الدِّيَةَ يَغْرَمُهَا الْأَخْوَالُ، وَلَا الْجَانِي، وَلَا مَنْ أَسْلَمَ مَعَ الْجَانِي - فَلَا يَجُوزُ تَخْصِيصُهُمْ؛ لِأَنَّهُمْ وَغَيْرَهُمْ سَوَاءٌ فِي تَحْرِيمِ أَمْوَالِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ: إنَّ الدِّيَةَ وَالْغُرَّةَ فِي سَهْمِ الْغَارِمِينَ مِنْ الصَّدَقَاتِ، أَوْ بَيْتِ مَالِ الْمُسْلِمِينَ فِي كُلِّ مَالٍ مَوْقُوفٍ لِجَمِيعِ مَصَالِحِهِمْ - فَوَجَبَ الْقَوْلُ بِهَذَا؛ لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ الدِّيَةَ فِي كُلِّ مُؤْمِنٍ قُتِلَ خَطَأً، وَأَوْجَبَ الْغُرَّةَ فِي كُلِّ جَنِينٍ أُصِيبَ عُمُومًا، إلَّا وَلَدَ الزِّنَى وَحْدَهُ، وَمَنْ لَا يَلْحَقُ بِمَنْ حَمَلَتْ بِهِ أُمُّهُ مِنْهُ فَقَطْ؛ لِأَنَّ الْوِلَادَاتِ مُتَّصِلَةٌ

L39422 We examined these opinions and found that those who assigned the compensatory fine (*gharāmah*) to the offender's wealth, the maternal agnates, or those like him among who converted to Islam have unjustly specified certain groups for liability to the exclusion of others. This is impermissible, for the Prophet (peace be upon him) stated, "Your blood and wealth are inviolable to you." Thus, it is unlawful to impose any compensatory obligation without a textual proof or consensus. Neither Allah the Exalted nor His Messenger (peace be upon him) decreed that blood money (*diyah*) must be paid by maternal agnates, the offender, or those like him who embraced Islam. Therefore, singling them out is invalid, as they and others share equal protection regarding their wealth. Abu Muhammad (may Allah have mercy on him) remarked: Consequently, only the opinion remains valid which holds that blood money and fetal compensation (*ghurrah*) are drawn from the share of *zakāt* funds allocated to debtors, the Muslim treasury, or any endowment designated for communal welfare. This view is obligatory to uphold, for Allah has universally mandated blood money for every believer killed unintentionally and fetal compensation for every unborn child harmed—except solely the child of adultery and a child not legally affiliated

with the father of the mother who bore him. This exception arises because lineage extends continuously from Adam (peace be upon him) through successive fathers until the end of time. Every descendant of Adam on earth has agnatic relatives known to Allah—necessarily, even if distantly removed—except those explicitly excluded.

مِنْ آدَمَ - عَلَيْهِ السَّلَامُ - إلَيْنَا، وَإِلَى انْقِرَاضِ الدُّنْيَا - أَبًا بَعْدَ أَبٍ - فَكُلُّ مَنْ عَلَى ظَهْرِ الْأَرْضِ مِنْ وَلَدِ آدَمَ فَلَهُ عَصَبَةٌ يَعْلَمُهَا اللَّهُ تَعَالَى - وَإِنْ بَعِدُوا عَنْهُ وَلَا بُدَّ - إلَّا مَنْ ذَكَرْنَا.

L39423 If the agnatic relatives are unknown or impoverished, we know with certainty (yaqīn) that since Allah the Exalted has obligated them to pay the blood money (diyah) and the compensation (ghurrah)—while their circumstances remain obscure—they are, in Allah's sight, among the debt-ridden (gharimīn). Thus, their right to the share designated for the indebted in obligatory alms (ṣadaqāt) is obligatory, and it must be discharged on their behalf from those funds.

فَإِنْ كَانَتْ الْعَصَبَةُ مَجْهُولَةً، أَوْ كَانُوا فُقَرَاءَ، فَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى إذْ أَوْجَبَ عَلَيْهِمْ الدِّيَةَ، وَالْغُرَّةَ - وَخَفِيَ أَمْرُهُمْ - فَهُمْ عِنْدَ اللَّهِ تَعَالَى مِنْ الْغَارِمِينَ، فَحَقُّهُمْ فِي سَهْمِ الْغَارِمِينَ مِنْ الصَّدَقَاتِ وَاجِبٌ، فَتُؤَدَّى عَنْهُمْ مِنْ ذَلِكَ.

L39424 As for one who has no father—such as a child of adultery, a child of liʿān (mutual cursing), one to whom a woman other than his wife is unlawfully given in marriage, the child of a woman raped by an insane person, and the like—such a person has no agnatic relatives whatsoever, with certainty. However, Allah the Exalted has obligated blood money for accidental killing and ghurrah for the fetus upon the entire Muslim community collectively, not some of them to the exclusion of others. Therefore, it is not permissible to specify some of them to the exclusion of others.

وَأَمَّا مَنْ لَمْ يَكُنْ لَهُ أَبٌ - كَوَلَدِ الزِّنَى، وَابْنِ الْمُلَاعَنَةِ، وَمَنْ زُفَّتْ إلَيْهِ غَيْرُ امْرَأَتِهِ، وَوَلَدِ الْمَرْأَةِ مِنْ الْمَجْنُونِ يَغْتَصِبُهَا، وَنَحْوِ ذَلِكَ، فَهَذَا لَا عَصَبَةَ لَهُ بِيَقِينٍ أَصْلًا، لَكِنَّ اللَّهَ تَعَالَى قَدْ أَوْجَبَ فِي قَتْلِ الْخَطَأِ الدِّيَةَ، وَفِي الْجَنِينِ الْغُرَّةَ، عَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ عَامًّا، لَا بَعْضَهُمْ دُونَ بَعْضٍ، فَلَا يَجُوزُ أَنْ يَخُصَّ بَعْضَهُمْ دُونَ بَعْضٍ.

L39425–39427 And thus we hold that the Messenger of Allah (peace be upon him) did so by compensating for Abdullāh ibn Sahl (may Allah be pleased with him). Among the zakāt obligations is one hundred camels. We have cited this with its chain of transmission in the *Book of Qasāmah* when it was not known who killed him. And success is with Allah, the Most High.

وَهَكَذَا وَجَدْنَا «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَلَ، إذْ وَدَى عَبْدَ اللَّهِ بْنَ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - مِنْ الصَّدَقَاتِ مِائَةً مِنْ الْإِبِلِ» ، وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الْقَسَامَةِ " إذْ لَمْ يُعْرَفْ مَنْ قَتَلَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39428 **Qasāmah (a juridical procedure of collective oath-swearing in unresolved homicide cases).**

[الْقَسَامَةُ]

L39429 **An Issue of Disagreement Among the People Regarding the *Qasāmah***

[مَسْأَلَةُ اخْتِلَافُ النَّاسُ فِي الْقَسَامَةِ]

L39430 Qasāmah (Oath-Swearing) – A Legal Issue: Abū Muḥammad—may Allah have mercy on him—said: People have differed regarding Qasāmah in various

opinions. We shall mention—from what Allah has facilitated of them, if Allah wills—some of these opinions according to what has been transmitted from those from whom reports concerning this matter have been narrated: from the Companions (may Allah be pleased with them), then from the Successors (may Allah have mercy on them), then from those who came after them—if Allah, the Exalted, wills.

الْقَسَامَةُ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي الْقَسَامَةِ عَلَى أَقْوَالٍ نَذْكُرُ مِنْهَا - مَا يَسَّرَ اللَّهُ تَعَالَى مِنْهَا إنْ شَاءَ اللَّهُ تَعَالَى عَلَى حَسَبِ مَا وَرَدَتْ عَمَّنْ جَاءَ عَنْهُ فِي ذَلِكَ أَثَرٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - ثُمَّ عَنْ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - ثُمَّ عَمَّنْ بَعْدَهُمْ إنْ شَاءَ اللَّهُ تَعَالَى.

L39431 Then we mention the evidence of each group for their statement—by the assistance of Allah, the Exalted, and His favor—so that the truth may become evident from this. As it was narrated to us via the chain of transmission of ʿAbd al-Razzāq from Maʿmar from ʿAbd Allāh ibn ʿUmar, who said: "Abū Bakr did not practice *qasamah*, nor did ʿUmar."

ثُمَّ نَذْكُرُ حُجَّةَ كُلِّ طَائِفَةٍ لِقَوْلِهَا - بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ، لِيَلُوحَ مِنْ ذَلِكَ الْحَقُّ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: لَمْ يَقُدْ أَبُو بَكْرٍ، وَلَا عُمَرُ بِالْقَسَامَةِ.

L39432 It was narrated to us via Abū Bakr ibn Abī Shaybah, from ʿAbd al-Salām ibn Ḥarb, from ʿAmr—who is Ibn ʿUbayd—from al-Ḥasan al-Baṣrī that Abū Bakr and the First Community did not impose qiṣāṣ (retaliation) based on qasāmah (oath-swearing).

رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ السَّلَامِ بْنُ حَرْبٍ عَنْ عَمْرٍو - هُوَ ابْنُ عُبَيْدٍ - عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّ أَبَا بَكْرٍ وَالْجَمَاعَةَ الْأُولَى لَمْ يَكُونُوا يَقِيدُونَ بِالْقَسَامَةِ.

L39433–39435 From the narration of Abu Bakr ibn Abi Shaybah: Waki' narrated to us from al-Mas'udi, from al-Qasim ibn 'Abd al-Rahman ibn 'Abd Allah ibn Mas'ud, who said: Two men from the people of Kufa went to 'Umar ibn al-Khattab and found him having departed from the Kaaba while intending to go to Mina. He performed Tawaf around the House, then they caught up with him and related their story, saying: "O Commander of the Faithful, our cousin was killed, and we are equally entitled to his blood." He remained silent, giving them no response, until they adjured him by Allah. Then he charged at them, but when they reminded him of Allah, he restrained himself. 'Umar ibn al-Khattab then said: "Woe to us if we fail to remind others of Allah, and woe to us if we are not reminded of Allah! If there are two just witnesses among you who bring forth evidence against the one who killed him, we will exact retaliation for you from him. Otherwise, the accused must swear an oath." Who can exonerate you? By Allah, we did not kill, nor do we know who the killer is. If they refuse to swear, fifty of you must swear, then the diyah (blood money) becomes due to you. Indeed, diyah is owed through compurgation oaths, but retribution is not enforced through them.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: انْطَلَقَ رَجُلَانِ مِنْ أَهْلِ الْكُوفَةِ إلَى عُمَرَ بْنِ الْخَطَّابِ فَوَجَدَاهُ قَدْ صَدَرَ عَنْ الْبَيْتِ عَامِدًا إلَى مِنًى فَطَافَ بِالْبَيْتِ ثُمَّ أَدْرَكَاهُ فَقَصَّا عَلَيْهِ قِصَّتَهُمَا، فَقَالَا: يَا أَمِيرَ الْمُؤْمِنِينَ إنَّ ابْنَ عَمٍّ لَنَا قُتِلَ، نَحْنُ إلَيْهِ شَرَعٌ سَوَاءٌ فِي الدَّمِ - وَهُوَ سَاكِتٌ لَا يُرْجِعُ إلَيْهِمَا شَيْئًا - حَتَّى نَاشَدَاهُ اللَّهَ، فَحَمَلَ عَلَيْهِمَا، ثُمَّ ذَكَّرَاهُ اللَّهَ؟ فَكَفَّ عَنْهُمَا، ثُمَّ قَالَ عُمَرُ بْنُ الْخَطَّابِ: وَيْلٌ لَنَا إذَا لَمْ نُذَكِّرْ بِاَللَّهِ، وَوَيْلٌ لَنَا إذَا لَمْ نُذَكَّرْ اللَّهَ: فِيكُمْ شَاهِدَانِ ذَوَا عَدْلٍ، يَجِيئَانِ بِهِ عَلَى مَنْ قَتَلَهُ فَنُقِيدُكُمْ مِنْهُ، وَإِلَّا حَلَفَ مَنْ يَدْرَؤُكُمْ: بِاَللَّهِ مَا قَتَلْنَا وَلَا عَلِمْنَا قَاتِلًا؟ فَإِنْ نَكَلُوا حَلَفَ مِنْكُمْ خَمْسُونَ، ثُمَّ كَانَتْ لَكُمْ الدِّيَةُ، إنَّ الْقَسَامَةَ تُسْتَحَقُّ بِهَا الدِّيَةُ وَلَا يُقَادُ بِهَا.

L39436 It has been narrated to us through the chain of ʿAbd al-Razzāq, from Maʿmar, from Abū al-Zināد, from Saʿīd ibn al-Musayyib, that ʿUmar ibn al-Khaṭṭāb obligated a woman to swear fifty oaths, then established them as diyah.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي الزِّنَادِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ اسْتَحْلَفَ امْرَأَةً خَمْسِينَ يَمِينًا، ثُمَّ جَعَلَهَا دِيَةً.

L39437 And through the chain of Abd al-Razzaq from Abu Bakr ibn Abdullah from Abu al-Zinad from Sa'id ibn al-Musayyib that Umar ibn al-Khattab said regarding a slain person found within a tribe: "Fifty members of the tribe in which he was found take an oath by Allah: 'Verily, our blood is among you!' Then they are liable to pay the blood money."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي الزِّنَادِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنْ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْقَتِيلِ يُوجَدُ فِي الْحَيِّ يُقْسِمُ خَمْسُونَ مِنْ الْحَيِّ الَّذِي وُجِدَ فِيهِ: بِاَللَّهِ إنَّ دَمَنَا فِيكُمْ ثُمَّ يَغْرَمُونَ الدِّيَةَ.

L39438 We have been narrated via the chain of Al-Bukhari → Qutaybah → Abū Bishr Ismāʿīl ibn Ibrāhīm al-Asadī → Ḥajjāj ibn Abī ʿUthmān → Abū Rajāʾ from the family of Abū Qilābah, who narrated: Abū Qilābah said to ʿUmar ibn ʿAbd al-ʿAzīz: "During the Age of Ignorance, the Hudhayl tribe had expelled their ally. He raided a Yemeni household in Al-Baṭḥāʾ. A man from them noticed him and struck him with a sword, killing him. Hudhayl came and seized the Yemeni. They brought him to ʿUmar ibn al-Khaṭṭāb during the pilgrimage season, claiming: 'He killed our companion.' ʿUmar said: 'They had expelled him.' They replied: 'Shall fifty men of Hudhayl swear they did not expel him?' Forty-nine men swore. A man from Syria arrived, and they asked him to swear. He redeemed his oath from them for a thousand dirhams, so they substituted another in his place. ʿUmar handed him over to the slain man's brother. Their hands were bound together as they departed"—and he mentioned the full account.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ نا أَبُو بِشْرٍ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ الْأَسَدِيُّ نا حَجَّاجُ بْنُ أَبِي عُثْمَانَ نِي أَبُو رَجَاءٍ مِنْ آلِ أَبِي قِلَابَةَ حَدَّثَنِي أَبُو قِلَابَةَ أَنَّهُ قَالَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: كَانَتْ هُذَيْلٌ خَلَعُوا حَلِيفًا لَهُمْ فِي الْجَاهِلِيَّةِ، وَطَرَقَ أَهْلَ بَيْتٍ مِنْ الْيَمَنِ بِالْبَطْحَاءِ فَانْتَبَهَ لَهُ رَجُلٌ مِنْهُمْ فَحَذَفَهُ بِالسَّيْفِ فَقَتَلَهُ؟ فَجَاءَتْ هُذَيْلٌ فَأَخَذُوا الْيَمَانِيَّ فَرَفَعُوهُ إلَى عُمَرَ بْنِ الْخَطَّابِ بِالْمَوْسِمِ، وَقَالُوا: قَتَلَ صَاحِبَنَا، قَالَ: إنَّهُمْ خَلَعُوهُ، قَالَ: يُقْسِمُ خَمْسُونَ مِنْ هُذَيْلٍ مَا خَلَعُوا؟ فَأَقْسَمَ مِنْهُمْ تِسْعَةٌ وَأَرْبَعُونَ رَجُلًا، وَقَدِمَ رَجُلٌ مِنْ الشَّامِ فَسَأَلُوهُ أَنْ يُقْسِمَ؟ فَافْتَدَى يَمِينَهُ مِنْهُمْ بِأَلْفِ دِرْهَمٍ، فَأَدْخَلُوا مَكَانَهُ آخَرَ، فَدَفَعَهُ عُمَرُ إلَى أَخِي الْمَقْتُولِ، فَقُرِنَتْ يَدُهُ بِيَدِهِ فَانْطَلَقَا - وَذَكَرَ الْخَبَرَ.

L39439–39440 From Al-Ḍaḥḥāk, from Muḥammad ibn al-Muntashir, who said: A man was slain in Yemen between two tribes. ʿUmar ibn al-Khaṭṭāb commanded them to apply qiyas (analogical reasoning) between the two tribes, and the analogy was closer to Wadaʿah. ʿUmar then ordered them to take an oath and then pay the diya (blood money).

وَعَنْ الضَّحَّاكِ عَنْ مُحَمَّدِ بْنِ الْمُنْتَشِرِ قَالَ: إنَّ قَتِيلًا قُتِلَ بِالْيَمَنِ بَيْنَ حَيَّيْنِ فَأَمَرَهُمْ عُمَرُ بْنُ الْخَطَّابِ أَنْ يَقِيسُوا بَيْنَ الْحَيَّيْنِ، فَكَانَ إلَى وَدَاعَةَ أَقْرَبَ، فَأَمَرَهُمْ عُمَرُ: أَنْ يُقْسِمُوا ثُمَّ يَدُوا.

L39441 From Al-Sha'bi regarding a slain man found under communal responsibility in Yemen: Umar ibn al-Khattab confined fifty men from among them to al-Hatim [adjacent to the Kaaba in Mecca]. He then administered individual oaths to each man: "By Allah, we neither killed him nor know the killer." He commanded them: "Pay the blood money and transfer the liability." They

وَعَنْ الشَّعْبِيِّ فِي قَتِيلٍ وُجِدَ فِي وَدَاعَةَ بِالْيَمَنِ: فَأَدْخَلَ عُمَرُ بْنُ الْخَطَّابِ الْحَطِيمَ مِنْهُمْ خَمْسِينَ رَجُلًا مِنْهُمْ، ثُمَّ اسْتَحْلَفَهُمْ رَجُلًا رَجُلًا: بِاَللَّهِ مَا قَتَلْنَا، وَلَا عَلِمْنَا قَاتِلًا، فَقَالَ لَهُمْ: أَدُّوا وَحَوِّلُوا، فَقَالُوا: يَا أَمِيرَ الْمُؤْمِنِينَ تُغَرِّمُنَا وَتُحَلِّفُنَا؟ قَالَ: نَعَمْ.

protested: “O Commander of the Faithful, do you hold us collectively liable for blood money while binding us by oath?” He affirmed: “Yes.”

L39442 And through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Ismāʿīl ibn Abī Uways narrated to us: My brother narrated to us from Sulaymān ibn Bilāl from Ṣāliḥ ibn Kaysān: Ibn Shihāb informed me that ʿUmar ibn ʿAbd al-ʿAzīz asked him about the Qasāmah. He said: I replied to him, “It was a matter from the days of Jāhiliyyah which the Messenger of Allah—peace and blessings be upon him and his family—ratified. However, it is part of our tradition and what has reached us: that if the slain person speaks, his family is absolved; if he does not speak, the defendants must take an oath. That was the practice of ʿUmar ibn al-Khaṭṭāb, and it is what we have witnessed the people upholding.”

L39443 From Ibn Shihab, from Sa’id ibn al-Musayyab, from Umar ibn al-Khattab that he ruled the claimant must present evidence and the defendant must take an oath, except in blood-related cases. This is from what was narrated of Umar—may Allah be pleased with him.

L39444 From the narration of Abd al-Razzaq, from Ma’mar, from al-Zuhri, who said: Sulayman ibn Hisham wrote to me asking about a man found killed in the home of a group. They claimed: “He intruded upon us to steal,” while his relatives countered: “They lied. Rather, they invited him to their home, then killed him.” Al-Zuhri said: I wrote to him: “Fifty of the slain man’s relatives must swear: ’They are lying—he did not come to steal from them, nor did they invite him except as an invitation before killing him.’ If they swear, they receive the right to qisas. If they refuse, fifty of the accused must swear by Allah: ’He intruded upon us to steal.’ Then they owe the blood money.” Al-Zuhri said: “Uthman ibn Affan—may Allah be pleased with him—had ruled thus in the case of Ibn Baqirah al-Taghlibi when the accused’s kinsmen refused to swear, so he obligated them to pay the blood money. This is what is reported from Uthman—may Allah be pleased with him.”

L39445–39446 It has been narrated to us through the chain of Abū Bakr ibn Abī Shaybah: narrated by ʿAbd al-Raḥmān ibn Sulaymān, narrated by Muḥammad ibn Isḥāq, narrated by Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn that ʿAlī

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنَ إِسْحَاقَ الْقَاضِي نا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ نا أَخِي عَنْ سُلَيْمَانَ بْنِ بِلَالٍ عَنْ صَالِحِ بْنِ كَيْسَانَ أَخْبَرَنِي ابْنُ شِهَابٍ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ سَأَلَهُ عَنْ الْقَسَامَةِ؟ قَالَ: فَقُلْت لَهُ: كَانَتْ مِنْ أَمْرِ الْجَاهِلِيَّةِ أَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَلَكِنْ مِنْ سُنَّتِنَا، وَمَا بَلَغَنَا: أَنَّ الْقَتِيلَ إذَا تَكَلَّمَ بَرِئَ أَهْلُهُ، إنْ لَمْ يَتَكَلَّمْ حَلَفَ الْمُدَّعَى عَلَيْهِمْ، وَذَلِكَ فِعْلُ عُمَرَ بْنِ الْخَطَّابِ، وَالَّذِي أَدْرَكْنَا عَلَيْهِ النَّاسَ.

وَعَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَضَى بِالْبَيِّنَةِ عَلَى الطَّالِبِ، وَالْأَيْمَانِ عَلَى الْمَطْلُوبِ، إلَّا فِي الدَّمِ فَهَذَا مِمَّا رُوِيَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، قَالَ: كَتَبَ إلَيَّ سُلَيْمَانُ بْنُ هِشَامٍ يَسْأَلُ عَنْ رَجُلٍ وُجِدَ مَقْتُولًا فِي دَارِ قَوْمٍ، فَقَالُوا: طَرَقَنَا لِيَسْرِقَنَا، وَقَالَ أَوْلِيَاؤُهُ: كَذَبُوا بَلْ دَعَوْهُ إلَى مَنْزِلِهِمْ، ثُمَّ قَتَلُوهُ. قَالَ الزُّهْرِيُّ: فَكَتَبَ إلَيْهِ: يَحْلِفُ مِنْ أَوْلِيَاءِ الْمَقْتُولِ خَمْسُونَ: إنَّهُمْ لَكَاذِبُونَ مَا جَاءَ لِيَسْرِقَهُمْ، وَمَا دَعَوْهُ إلَّا دُعَاءً، ثُمَّ قَتَلُوهُ - فَإِنْ حَلَفُوا أُعْطُوا الْقَوَدَ، وَإِنْ نَكَلُوا حَلَفَ مِنْ أُولَئِكَ خَمْسُونَ: بِاَللَّهِ لَطَرَقَنَا لِيَسْرِقَنَا، ثُمَّ عَلَيْهِمْ الدِّيَةُ. قَالَ الزُّهْرِيُّ: وَقَدْ قَضَى بِذَلِكَ عُثْمَانُ بْنُ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - فِي ابْنِ بَاقِرَةَ التَّغْلِبِيِّ أَبَى قَوْمُهُ أَنْ يَحْلِفُوا، فَأَغْرَمَهُمْ الدِّيَةَ فَهَذَا مَا جَاءَ عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ -.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ إذَا وَجَدَ الْقَتِيلَ بَيْنَ قَرْيَتَيْنِ قَاسَ مَا بَيْنَهُمَا.

ibn Abī Ṭālib, whenever he found a slain person between two villages, would measure the distance between them.

L39447 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Muḥammad ibn Isḥāq, from Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn ibn ʿAlī ibn Abī Ṭālib, who said: "'Alī ibn Abī Ṭālib said: 'Any man killed in a desolate area of the earth—his blood money is from the public treasury, so that no blood is left unavenged in Islam. As for any slain person found between two villages, it [the blood money] is incumbent upon the more responsible of them—that is, the nearer one.'"

L39448 And from Ali ibn Abi Talib – that he made the accused swear an oath and forty-nine others with him, completing fifty – this is what has been reported on the matter from Ali ibn Abi Talib, may Allah be pleased with him.

L39449 And through the chain of Abu Bakr ibn Abi Shaybah: Abu Muʿāwiyah narrated to us from Muṭīʿ, from Fuḍayl ibn ʿUmar, and from Ibn ʿAbbās: that he decreed qasāmah against the accused.

L39450 From the path of Abd al-Razzaq from Ibrahim—he is the son of Yahya—from Dawud ibn al-Husayn from Ikrimah from Ibn Abbas, who said: There is no qasāmah except if there be clear evidence. And he says: No one is to be killed based on qasāmah, nor should a Muslim's blood be left unavenged.

L39451 This is the text of the ḥadīth, which has been reported from Ibn ʿAbbās—may Allāh be pleased with him—.

L39452 It is reported from Ibn al-Zubayr that he applied qisas (retaliation) through qasamah. And from Abdullah ibn Abi Mulaikah, who said: Umar ibn Abd al-Aziz asked me about qasamah? So I informed him that Abdullah ibn al-Zubayr applied qisas through it, while Muawiyah did not apply qisas through it.

L39453–39455 From Al-Musayyab: The collective oath (qasāmah) in blood cases had traditionally required fifty men. If their oath fell short in number, or if a single man among them withdrew from swearing, their oath would be rejected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: أَيُّمَا رَجُلٍ قُتِلَ بِفَلَاةٍ مِنْ الْأَرْضِ فَدِيَتُهُ مِنْ بَيْتِ الْمَالِ؛ لِكَيْ لَا يُطَلَّ دَمٌ فِي الْإِسْلَامِ، وَأَيُّمَا قَتِيلٍ وُجِدَ بَيْنَ قَرْيَتَيْنِ فَهُوَ عَلَى أَصْقَبِهِمَا - يَعْنِي أَقْرَبَهُمَا.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - أَنَّهُ اسْتَحْلَفَ الْمُتَّهَمَ، وَتِسْعَةً وَأَرْبَعِينَ مَعَهُ تَمَامَ خَمْسِينَ - فَهَذَا مَا جَاءَ فِي ذَلِكَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ عَنْ مُطِيعٍ عَنْ فُضَيْلِ بْنِ عُمَرَ، وَعَنْ ابْنِ عَبَّاسٍ - أَنَّهُ قَضَى بِالْقَسَامَةِ عَلَى الْمُدَّعَى عَلَيْهِمْ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ - هُوَ ابْنُ يَحْيَى - عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا قَسَامَةَ، إلَّا أَنْ تَكُونَ بَيِّنَةٌ. وَيَقُولُ: لَا يُقْتَلُ بِالْقَسَامَةِ، وَلَا يُطَلُّ دَمُ مُسْلِمٍ

- هَذَا نَصُّ الْحَدِيثِ. فَهَذَا مَا جَاءَ عَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُ -.

وَعَنْ ابْنِ الزُّبَيْرِ - أَنَّهُ أَقَادَ بِالْقَسَامَةِ، وَعَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ قَالَ: سَأَلَنِي عُمَرُ بْنُ عَبْدِ الْعَزِيزِ عَنْ الْقَسَامَةِ؟ فَأَخْبَرْته أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ أَقَادَ بِهَا، وَأَنَّ مُعَاوِيَةَ لَمْ يَقُدْ بِهَا.

This persisted until Mu‘āwiyah performed Hajj, at which time Banū Asad (the tribe of Asad ibn ‘Abd al-‘Uzzā) accused Muṣ‘ab ibn ‘Abd al-Raḥmān ibn ‘Awf al-Zuhrī, Mu‘ādh ibn ‘Ubayd Allāh ibn Ma‘mar al-Taymī, and ‘Uqbah ibn Ja‘wanah ibn Sha‘ūb al-Laythī of killing Ismā‘īl ibn Habbār? They appealed to Mu‘āwiyah for judgment during his Hajj, while ‘Abd Allāh ibn al-Zubayr presented no evidence except the accusation itself. Mu‘āwiyah ruled that the oath should be sworn by the accused and their kinsmen. Banū Zuhrah, Banū Taym, and Banū Layth refused to swear on their behalf. Mu‘āwiyah then said to Banū Asad, “Swear,” but Ibn al-Zubayr responded, “We will swear against the three.” Do we all deserve it? But Mu’awiyah refused to let them swear except upon one - so he restricted the qasamah, confining it to the three who were claimed against. They swore fifty oaths between the Corner [of the Black Stone] and the Station of Ibrahim, and thus were acquitted. This was the first time the qasamah was restricted. Later, Marwan and Abd al-Malik issued rulings following this. Then the qasamah was restored to its original practice.

وَعَنْ الْمُسَيِّبِ: أَنَّ الْقَسَامَةَ فِي الدَّمِ لَمْ تَزَلْ عَلَى خَمْسِينَ رَجُلًا، فَإِنْ نَقَصَتْ قَسَامَتُهُمْ، أَوْ نَكَلَ مِنْهُمْ رَجُلٌ وَاحِدٌ: رُدَّتْ قَسَامَتُهُمْ، حَتَّى حَجَّ مُعَاوِيَةُ فَاتَّهَمَتْ بَنُو أَسَدِ بْنُ عَبْدِ الْعُزَّى مُصْعَبَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ الزُّهْرِيَّ، وَمُعَاذَ بْنَ عُبَيْدِ اللَّهِ بْنِ مَعْمَرٍ التَّيْمِيَّ، وَعُقْبَةَ بْنَ جَعْوَنَةَ بْنِ شَعُوبٍ اللَّيْثِيَّ: بِقَتْلِ إِسْمَاعِيلَ بْنِ هَبَّارٍ؟ فَاخْتَصَمُوا إِلَى مُعَاوِيَةَ إِذْ حَجَّ - وَلَمْ يُقِمْ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ بَيِّنَةً إِلَّا بِالتُّهَمَةِ، فَقَضَى مُعَاوِيَةُ بِالْقَسَامَةِ عَلَى الْمُدَّعَى عَلَيْهِمْ، وَعَلَى أَوْلِيَائِهِمْ، فَأَبَى بَنُو زُهْرَةَ، وَبَنُو تَيْمٍ، وَبَنُو لَيْثٍ: أَنْ يَحْلِفُوا عَنْهُمْ؟ فَقَالَ مُعَاوِيَةُ لِبَنِي أَسَدٍ: احْلِفُوا؟ فَقَالَ ابْنُ الزُّبَيْرِ: نَحْلِفُ نَحْنُ عَلَى الثَّلَاثَةِ جَمِيعًا فَنَسْتَحِقُّ؟ فَأَبَى مُعَاوِيَةُ أَنْ يُقْسِمُوا إِلَّا عَلَى وَاحِدٍ - فَقَصَرَ مُعَاوِيَةُ الْقَسَامَةَ فَرَدَّهَا عَلَى الثَّلَاثَةِ الَّذِينَ اُدُّعِيَ عَلَيْهِمْ، فَحَلَفُوا خَمْسِينَ يَمِينًا بَيْنَ الرُّكْنِ وَالْمَقَامِ، فَبَرِئُوا - وَكَانَ ذَلِكَ أَوَّلَ مَا قُصِرَتْ الْقَسَامَةُ، ثُمَّ قَضَى بِذَلِكَ مَرْوَانُ، وَعَبْدُ الْمَلِكِ - ثُمَّ رُدَّتْ الْقَسَامَةُ إِلَى الْأَمْرِ الْأَوَّلِ.

L39456 As for the unification of oaths—it is narrated from Sufyan al-Thawri, from Abdullah ibn Zayd, from Abu Malih: that Umar ibn al-Khattab administered the oaths to them one after another. Regarding the Successors—it is narrated through the chain of Abu Bakr ibn Abi Shaybah, who narrated from Abdul-A’la, from Yunus ibn Ubayd, from al-Hasan concerning a slain person found killed by ambush: He said: Fifty of the accused must swear: “We neither killed nor knew the killer.” If they swear, they are absolved. If they refuse, fifty of the claimants must swear: “Our blood is your responsibility,” then they pay the diyah.

وَأَمَّا تَوْحِيدُ الْأَيْمَانِ - فَرُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدٍ عَنْ أَبِي مَلِيحٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ رَدَّدَ الْأَيْمَانَ عَلَيْهِمْ، الْأَوَّلَ فَالْأَوَّلَ، وَأَمَّا التَّابِعُونَ - فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ حَدَّثَنَا عَبْدُ الْأَعْلَى عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ فِي الْقَتِيلِ يُوجَدُ غِيلَةً؟ قَالَ: يُقْسِمُ مِنْ الْمُدَّعَى عَلَيْهِمْ خَمْسُونَ: مَا قَتَلْنَا، وَلَا عَلِمْنَا قَاتِلًا، فَإِنْ حَلَفُوا فَقَدْ بَرِئُوا، وَإِنْ نَكَلُوا أَقْسَمَ مِنْ الْمُدَّعِينَ خَمْسُونَ: أَنَّ دَمَنَا قِبَلَكُمْ، ثُمَّ يُودُوا.

L39457 It is reported from al-Ḥasan that they are entitled, by means of *qasāmah*, to the *diyah*, but they are not entitled through it to blood [i.e., *qiṣāṣ*].

وَعَنْ الْحَسَنِ - يَسْتَحِقُّونَ بِالْقَسَامَةِ الدِّيَةَ، وَلَا يَسْتَحِقُّونَ بِهَا الدَّمَ.

L39458 From Abdullah ibn Umar - that he heard some of his companions narrating

that Umar ibn Abd al-Aziz exonerated the defendants through their oath, then held them liable for the diya (blood money).

وَعَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ - أَنَّهُ سَمِعَ أَصْحَابًا لَهُ يُحَدِّثُونَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ بَرَّأَ الْمُدَّعَى عَلَيْهِمْ بِالْيَمِينِ ثُمَّ ضَمَّنَهُمْ الْعَقْلَ.

L39459 And from Ibn Abi Mulaykah that ʻUmar ibn ʻAbd al-ʻAziz enforced qisas through qasamah during his governorship in Medina.

وَعَنْ ابْنِ أَبِي مُلَيْكَةَ - أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَقَادَ بِالْقَسَامَةِ فِي إمَارَتِهِ بِالْمَدِينَةِ.

L39460 From Yahya ibn Saʻid al-Ansari: When Umar ibn Abd al-Aziz observed people swearing oaths regarding the qasāmah without valid knowledge, he compelled them to take the oath, obligated them to pay the diyah, and prevented the execution.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ - لَمَّا رَأَى النَّاسَ يَحْلِفُونَ عَلَى الْقَسَامَةِ - بِغَيْرِ عِلْمٍ - اسْتَحْلَفَهُمْ، وَأَلْزَمَهُمْ الدِّيَةَ، وَدَرَأَ عَنْ الْقَتْلِ.

L39461 From Abd al-Rahman ibn Abdullah ibn Dhakwan, from his father, from Umar ibn Abd al-Aziz—that he administered the oaths repeatedly to seven men, one of whom was a culprit. And from Shurayh, who said: The oaths are reiterated upon them, starting with the first each time.

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ ذَكْوَانَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - أَنَّهُ رَدَّدَ الْأَيْمَانَ عَلَى سَبْعَةِ نَفَرٍ أَحَدُهُمْ جَانٍ، وَعَنْ شُرَيْحٍ - قَالَ: تُرَدَّدُ الْأَيْمَانُ عَلَيْهِمْ، الْأَوَّلَ فَالْأَوَّلَ.

L39462 From Muhammad ibn Sirin: A group of people accused another group of harboring a murder victim. Shurayh required fifty of them to take an oath. Each man among them swore: “By Allah, I did not kill, nor do I know of any killer.” He then demanded the oath from them. Shurayh said: “Complete the oaths, even though I know [the truth].” When they failed to complete fifty men, he compelled a few among them to repeat their oaths to fulfill the fifty. From Ibrahim: He said: “Retaliation through collective oaths is an injustice. Blood money becomes obligatory through it, but retaliation cannot be enforced through it.”

وَعَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ قَوْمًا ادَّعَوْا عَلَى قَوْمٍ قَتِيلًا؟ فَاسْتَحْلَفَ شُرَيْحٌ خَمْسِينَ مِنْهُمْ، فَحَلَفَ كُلُّ رَجُلٍ مِنْهُمْ: بِاَللَّهِ مَا قَتَلْت، وَلَا عَلِمْت قَاتِلًا، فَاسْتَحْلَفَهُمْ، فَقَالَ شُرَيْحٌ: أَتَمَّهُمْ وَأَنَا أَعْلَمُ، فَلَمْ يُتِمُّوا خَمْسِينَ رَجُلًا، فَرَدَّدَ عَلَيْهِمْ أَيْمَانَ نَفَرٍ مِنْهُمْ تَمَامَ الْخَمْسِينَ، وَعَنْ إبْرَاهِيمَ، قَالَ: الْقَوَدُ بِالْقَسَامَةِ جَوْرٌ يُسْتَحَقُّ بِهَا الدِّيَةُ وَلَا يُقَادُ بِهَا.

L39463–39464 Through the chain of Abu Bakr ibn Abi Shaybah: Ibn Ulayyah narrated to us from Yahya ibn Abi Ishaq, who said: I heard Salim ibn Abdullah ibn Umar say—when some people from Banu Layth prepared themselves to swear oaths the next day in the Qasamah [collective oath]—he exclaimed: “O servants of Allah! Such people are those who swear regarding what they did not see, were not present for, and did not witness! If I had any authority in this matter, I would punish them, deter them, and set them as a warning, and I would not accept their testimony.”

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ - حَدَّثَنَا ابْنُ عُلَيَّةَ عَنْ يَحْيَى بْنِ أَبِي إِسْحَاقَ، قَالَ: سَمِعْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ يَقُولُ - وَقَدْ تَيَسَّرَ قَوْمٌ مِنْ بَنِي لَيْثٍ لِيَحْلِفُوا الْغَدَ فِي الْقَسَامَةِ - فَقَالَ: يَا لِعِبَادِ اللَّهِ لَقَوْمٌ يَحْلِفُونَ عَلَى مَا لَمْ يَرَوْهُ، وَلَمْ يَحْضُرُوهُ، وَلَمْ يَشْهَدُوهُ، وَلَوْ كَانَ لِي مِنْ الْأَمْرِ شَيْءٌ لَعَاقَبْتُهُمْ، وَلَنَكَّلْتُهُمْ، وَلَجَعَلْتُهُمْ نَكَالًا، وَمَا قَبِلْت لَهُمْ شَهَادَةً.

L39465 From the path of Al-Bukhari: Qutaybah Abu Bishr Isma’il ibn Ibrahim Al-

وَمِنْ طَرِيقِ الْبُخَارِيِّ - نا قُتَيْبَةُ أَبُو بِشْرٍ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ الْأَسَدِيُّ نا حَجَّاجُ بْنُ أَبِي عُثْمَانَ نِي أَبُو رَجَاءٍ مِنْ آلِ بَنِي قِلَابَةَ أَنَا أَبُو قِلَابَةَ: «أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَبْرَزَ سَرِيرَهُ يَوْمًا لِلنَّاسِ، ثُمَّ أَذِنَ لَهُمْ، فَدَخَلُوا، فَقَالَ: مَا تَقُولُونَ فِي الْقَسَامَةِ؟ فَقَالُوا: الْقَوَدُ بِهَا حَقٌّ، وَقَدْ أَقَادَتْ بِهَا الْخُلَفَاءُ، فَقَالَ لِي: مَا تَقُولُ يَا أَبَا قِلَابَةَ؟ فَقُلْتُ: يَا أَمِيرَ الْمُؤْمِنِينَ عِنْدَكَ رُءُوسُ الْأَخْيَارِ وَأَشْرَافُ الْعَرَبِ، أَرَأَيْتَ لَوْ أَنَّ خَمْسِينَ مِنْهُمْ شَهِدُوا عَلَى رَجُلٍ مُحْصَنٍ بِدِمَشْقَ أَنَّهُ قَدْ زَنَى لَمْ يَرَوْهُ، أَكُنْتَ تَرْجُمُهُ؟ قَالَ: لَا، قُلْتُ: أَرَأَيْتَ لَوْ أَنَّ خَمْسِينَ مِنْهُمْ شَهِدُوا عَلَى رَجُلٍ بِحِمْصَ أَنَّهُ سَرَقَ، أَكُنْتَ تَقْطَعُهُ وَلَمْ يَرَوْهُ؟ قَالَ: لَا، قُلْتُ: فَوَاللَّهِ مَا قَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَدًا قَطُّ إِلَّا فِي إِحْدَى ثَلَاثِ خِصَالٍ: رَجُلٌ قَتَلَ بِجَرِيرَةِ نَفْسِهِ فَقُتِلَ أَوْ رَجُلٌ زَنَى بَعْدَ إِحْصَانٍ، أَوْ رَجُلٌ حَارَبَ اللَّهَ وَرَسُولَهُ وَارْتَدَّ عَنْ الْإِسْلَامِ» .

Asadi narrated to us: Hajjaj ibn Abi Uthman reported to us from Abu Raja' of the family of Banu Qilabah—I am Abu Qilabah—who said: "Umar ibn Abd al-Aziz once displayed his throne publicly for the people, then permitted them to enter. They entered, and he said: 'What do you say regarding qasamah?' They replied: 'Retaliation through it is a right, and the caliphs have enacted qisas by it.' He said to me: 'What do you say, O Abu Qilabah?' I said: 'O Commander of the Faithful, you have before you the leaders of the righteous and the nobles of the Arabs. Suppose fifty of them testified against a married man in Damascus that he committed adultery without witnessing it—would you stone him?' He said: 'No.' I said: 'Suppose fifty of them testified against a man in Homs that he stole without witnessing it—would you amputate his hand?' He said: 'No.' I said: 'By Allah, the Messenger of Allah—peace and blessings be upon him—never killed anyone except in one of three circumstances: a man who killed [another] for a crime he himself committed, so he was killed; a man who committed adultery after being married; or a man who waged war against Allah and His Messenger and apostatized from Islam.'"

قَالَ الزُّهْرِيُّ: وَدَعَانِي عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فَقَالَ: يَا بُنَيَّ أُرِيدُ أَنْ أَدَعَ الْقَسَامَةَ، يَأْتِي رَجُلٌ مِنْ أَرْضِ كَذَا، وَآخَرُ مِنْ أَرْضِ كَذَا، فَيَحْلِفُونَ، فَقُلْت لَهُ: لَيْسَ ذَلِكَ لَك، قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْخُلَفَاءُ بَعْدَهُ، وَإِنَّك إنْ تَرَكْتَهَا أَوْشَكَ رَجُلٌ أَنْ يُقْتَلَ عِنْدَ بَابِك فَيُطَلُّ دَمُهُ، وَإِنَّ لِلنَّاسِ فِي الْقَسَامَةِ حَيَاةً.

L39466 Al-Zuhri said: 'Umar ibn 'Abd al-'Azīz summoned me and said, "O my son, I intend to abolish the *qasamah*. Men come from such-and-such a land and another land, and they swear oaths." I replied: "This is not within your authority. The Messenger of Allah – peace and blessings of Allah be upon him – and the caliphs after him established this practice. If you abandon it, it is imminent that a man will be killed at your doorstep and his blood will go unavenged. Truly, the *qasamah* safeguards the people's lives."

وَقَالَ الزُّهْرِيُّ فِي رَجُلٍ اُتُّهِمَ بِقَتْلِهِ أَخَوَانِ فَخَافَ أَبُوهُمَا أَنْ يُقْتَلَا، فَقَالَ: أَنَا قَتَلْت صَاحِبَكُمْ، فَقَالَ كُلُّ وَاحِدٍ مِنْ الْأَخَوَيْنِ: أَنَا قَتَلْته - وَبَرَّأَ بَعْضُهُمْ بَعْضًا، قَالَ الزُّهْرِيُّ: أَرَى ذَلِكَ إلَى أَوْلِيَاءِ الْمَيِّتِ، فَيَحْلِفُونَ قَسَامَةَ الدَّمِ عَلَى أَحَدِهِمْ.

L39467 Al-Zuhri commented regarding a man accused of killing two brothers. Their father feared the two would be killed, so he said: "I killed your companion." Thereupon each of the two brothers declared: "I killed him"—thereby exonerating one another. Al-Zuhri said: "I hold that the matter rests with the heirs of the deceased; they must swear the qasāmah oath against one of them."

L39468 From Ibn Shihāb: He said concerning three cases where each individual confessed to killing a person while exonerating their companion: The legal

guardians swear an oath against one, while the other two are each flogged a hundred lashes and imprisoned for a year.

وَعَنْ ابْنِ شِهَابٍ - قَالَ فِي ثَلَاثَةٍ اعْتَرَفَ كُلُّ وَاحِدٍ مِنْهُمْ بِقَتْلِ إِنْسَانٍ، وَبَرَّأَ صَاحِبَهُ: إِنَّ الْأَوْلِيَاءَ يُقْسِمُونَ عَلَى وَاحِدٍ، وَيُجْلَدُ الْآخَرَانِ مِائَةً مِائَةً، وَيُسْجَنَانِ سَنَةً.

L39469–39470 If they agree upon the blood money, it is incumbent upon all of them collectively; every one of them is to be lashed one hundred lashes and imprisoned for a year.

فَإِنْ اصْطَلَحُوا عَلَى الدِّيَةِ فَهِيَ عَلَيْهِمْ كُلِّهِمْ، يُجْلَدُونَ كُلُّهُمْ مِائَةً مِائَةً، وَيُسْجَنُونَ سَنَةً.

L39471 And from Sa‘id ibn al-Musayyab—he informed them that Rabi‘ah ibn Ya‘qub, the client of Banu Siba‘, was beaten and carried to his family. When asked, “Who beat you?” he replied: “The two sons of Bilsanah and the two sons of Tawlamānah beat me.” This statement was preserved from his words, and testimony was provided regarding his statement. Rabi‘ah then died. Sa‘id ibn al-‘As seized that group and imprisoned them. When Marwan arrived as governor of Medina, they brought their dispute to him. He demanded evidence for Rabi‘ah’s statement and the identification of the group he had named. They produced evidence for this, and Marwan compelled ‘Abdullah ibn Siba‘, his son Muhammad, ‘Ata’ ibn Ya‘qub, and nearly ten members of the group from the family of Siba‘ to swear fifty repeated oaths administered to them near the pulpit of the Messenger of Allah—peace and blessings be upon him—concerning the killing of Rabi‘ah ibn Ya‘qub by the two sons of Bilsanah and the two sons of Tawlamānah. They swore the oaths, and Marwan then handed over the two sons of Bilsanah and the two sons of Tawlamānah to the heirs of the slain man, who executed them.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ - أَخْبَرَهُمْ أَنَّ رَبِيعَةَ بْنَ يَعْقُوبَ مَوْلَى بَنِي سِبَاعٍ ضُرِبَ، فَاحْتُمِلَ إِلَى أَهْلِهِ فَسُئِلَ مَنْ ضَرَبَهُ؟ فَقَالَ: ضَرَبَنِي ابْنَا بِلْسَانَةَ وَابْنَا تَوْلَمَانَةَ - فَحُفِظَ ذَلِكَ مِنْ قَوْلِهِ، وَشَهِدَ عَلَيْهِ، وَمَاتَ رَبِيعَةُ، فَأَخَذَ سَعِيدُ بْنُ الْعَاصِ أُولَئِكَ الرَّهْطَ فَسَجَنَهُمْ، وَقَدِمَ مَرْوَانُ أَمِيرًا عَلَى الْمَدِينَةِ، قَالَ: فَاخْتَصَمُوا إِلَيْهِ، فَسَأَلَهُمُ الْبَيِّنَةَ عَلَى كَلَامِ رَبِيعَةَ، وَتَسْمِيَةِ الرَّهْطِ الَّذِينَ سَمَّى، فَجَاءُوا بِالْبَيِّنَةِ عَلَى ذَلِكَ، فَأَحْلَفَ عَبْدَ اللَّهِ بْنَ سِبَاعٍ، وَابْنَهُ مُحَمَّدًا، وَعَطَاءَ بْنَ يَعْقُوبَ فِي قَرِيبٍ مِنْ عَشَرَةِ رَهْطٍ مِنْ آلِ سِبَاعٍ عِنْدَ مِنْبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَمْسِينَ يَمِينًا مُرَدَّدَةً عَلَيْهِمْ؛ لِقَتْلِ ابْنَا بِلْسَانَةَ، وَابْنَا تَوْلَمَانَةَ رَبِيعَةُ بْنُ يَعْقُوبَ، فَحَلَفُوا، فَدَفَعَ مَرْوَانُ ابْنَيْ بِلْسَانَةَ، وَابْنَيْ تَوْلَمَانَةَ، إِلَى أَوْلِيَاءِ الْمَقْتُولِ فَقَتَلُوهُمْ.

L39472 Abu Muhammad—may Allah have mercy on him—said: Among the Companions—may Allah be pleased with them—are Abu Bakr, Umar, Uthman, Ali, Ibn Abbas, Al-Mughirah ibn Shu‘bah, Ibn al-Zubayr, Mu‘awiyah, Abdullah ibn Amr ibn al-‘As, and a group of the Companions in Medina—listed thus in summary. As for those named, they are nine.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَمِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَابْنُ عَبَّاسٍ، وَالْمُغِيرَةُ بْنُ شُعْبَةَ، وَابْنُ الزُّبَيْرِ، وَمُعَاوِيَةُ، وَعَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ، وَجُمْلَةُ الصَّحَابَةِ بِالْمَدِينَةِ - هَكَذَا مُجْمَلًا - فَأَمَّا الْمُسَمَّوْنَ فَهُمْ تِسْعَةٌ.

L39473 Among the Followers (Tabi’un) are al-Hasan, Umar ibn Abd al-Aziz, Shurayh, Ibrahim al-Nakha’i, al-Sha’bi, Sa’id ibn al-Musayyib, Qatadah, Salim ibn Abd Allah ibn Umar, Abu Qilabah, al-Zuhri, Urwah ibn al-Zubayr, Marwan ibn al-Hakam, Abd al-Malik ibn Marwan, and others, along with the majority of scholars in Medina—those from whom the Followers narrated in this

وَمِنْ التَّابِعِينَ - الْحَسَنُ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَشُرَيْحٌ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالشَّعْبِيُّ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَقَتَادَةُ، وَسَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَأَبُو قِلَابَةَ، وَالزُّهْرِيُّ، وَعُرْوَةُ

concisely transmitted manner. All of them held differing views, and the Companions likewise. Most of what we have mentioned is not established as authentic, as we shall clarify if Allah, the Exalted, wills.

بْنُ الزُّبَيْرِ، وَمَرْوَانُ بْنُ الْحَكَمِ، وَعَبْدُ الْمَلِكِ بْنُ مَرْوَانَ وَغَيْرُهُمْ، وَجُمْهُورُ الْعُلَمَاءِ بِالْمَدِينَةِ - الَّذِينَ رَوَى عَنْهُمْ التَّابِعُونَ هَكَذَا مُجْمَلًا - كُلُّهُمْ مُخْتَلِفُونَ، وَالصَّحَابَةُ أَيْضًا كَذَلِكَ، وَأَكْثَرُ مَا ذَكَرْنَا لَا يَصِحُّ عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

L39474 Abu Muhammad—may Allah have mercy on him—said: The transmitted report from Abu Bakr al-Siddiq—may Allah be pleased with him—is that he did not implement *qasamah*, except that it is not valid because it is *mursal*. It is only narrated through Ubayd Allah ibn Umar ibn Hafs and al-Hasan. In the chain of transmission of al-Hasan is Abd al-Salam ibn Harb—and he is deemed weak.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَالْمَأْثُورُ مِنْ ذَلِكَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ لَمْ يُقِدْ بِالْقَسَامَةِ، إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ مُرْسَلٌ، إنَّمَا هُوَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصٍ، وَعَنْ الْحَسَنِ، وَفِي طَرِيقِ الْحَسَنِ عَبْدِ السَّلَامِ بْنِ حَرْبٍ - وَهُوَ ضَعِيفٌ.

L39475 It is reported from ʿUmar—may Allah be pleased with him—that he did not adjudicate via *qasāmah* (collective oath procedure in homicide cases), and it is *mursal* (a narration with an incomplete chain, as defined in ḥadīth criticism) and not authentic, as we have previously mentioned.

وَعَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ لَمْ يُقِدْ بِالْقَسَامَةِ - وَهُوَ مُرْسَلٌ لَا يَصِحُّ كَمَا ذَكَرْنَا.

L39476–39477 It has also been reported from him that he sought evidence from the guardians of the slain person. If they could not produce it, the accused would take an oath and no liability would be imposed upon them. But if they refused to swear, the plaintiffs would take the oath and become entitled to the blood money.

وَرُوِيَ عَنْهُ أَيْضًا أَنَّهُ طَلَبَ الْبَيِّنَةَ مِنْ أَوْلِيَاءِ الْمَقْتُولِ، فَإِنْ لَمْ يَجِدُوهَا حَلَفَ الْمُدَّعَى عَلَيْهِمْ، وَلَا شَيْءَ عَلَيْهِمْ، فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعُونَ وَاسْتَحَقُّوا الدِّيَةَ

L39478 This is a *mursal* narration from him—because it is from al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd, from ʿUmar—and al-Qāsim's father was not born until after ʿUmar's death. It is also narrated from him: "The burden of proof lies upon the claimants; otherwise, the defendants must swear an oath [to] thereby be acquitted," except that it is *mursal*.

- وَهَذَا مُرْسَلٌ عَنْهُ - لِأَنَّهُ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ عُمَرَ - وَلَمْ يُولَدْ وَالِدُ الْقَاسِمِ إلَّا بَعْدَ مَوْتِ عُمَرَ - وَرُوِيَ عَنْهُ أَيْضًا: الْبَيِّنَةُ عَلَى الْمُدَّعِينَ، وَإِلَّا حَلَفَ الْمُدَّعَى عَلَيْهِمْ وَبَرُّوا فَقَطْ، إلَّا أَنَّهُ مُرْسَلٌ.

L39479 It is narrated from him regarding a slain person found between two communities or villages that the distance is measured to determine which of them he is closer to. The community closer to it must swear fifty oaths and pay the blood money in addition. A similar ruling is reported from Al-Mughīrah ibn Shuʿbah, except it is a disconnected narration (mursal), as it is attributed to ʿUmar and Al-Mughīrah through the chain of Al-Shaʿbī—who was not born

وَرُوِيَ عَنْهُ - فِي قَتِيلٍ وُجِدَ بَيْنَ حَيَّيْنِ، أَوْ قَرْيَتَيْنِ - أَنْ يُذْرَعَ إلَى أَيِّهِمَا هُوَ أَقْرَبُ فَالَّذِي هُوَ أَقْرَبُ إلَيْهَا حَلَفُوا خَمْسِينَ يَمِينًا وَغَرِمُوا الدِّيَةَ مَعَ ذَلِكَ. وَمِثْلُ هَذَا عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ إلَّا أَنَّهُ مُرْسَلٌ؛ لِأَنَّهُ عَنْ عُمَرَ، وَالْمُغِيرَةِ، مِنْ طَرِيقِ الشَّعْبِيِّ - وَلَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ بِأَزْيَدَ مِنْ عَشَرَةِ أَعْوَامٍ أَوْ نَحْوِهَا وَقَبْلَ الشَّعْبِيِّ.

until over ten years or thereabouts after ʿUmar's death and before Al-Shaʿbī (text unclear)—thereby rendering the chain disconnected.

L39480 In the report of al-Mughīrah, Ashʿath—who is deemed weak—it is narrated that he compelled a female claimant to swear fifty oaths regarding the blood of her freed slave, then ruled in her favor for the blood money. This narration is mursal—a report with an incomplete chain—as it is transmitted from Abū al-Zināد and Ibn al-Musayyib, both citing him [Ashʿath].

وَفِي خَبَرِ الْمُغِيرَةِ أَشْعَثُ - وَهُوَ ضَعِيفٌ - وَرُوِيَ عَنْهُ: أَنَّهُ حَلَّفَ امْرَأَةً مُدَّعِيَةً مِنْ دَمِ مَوْلًى لَهَا خَمْسِينَ يَمِينًا، ثُمَّ قَضَى لَهَا بِالدِّيَةِ - وَهَذَا مُرْسَلٌ - لِأَنَّهُ عَنْ أَبِي الزِّنَادِ عَنْهُ، وَعَنْ ابْنِ الْمُسَيِّبِ عَنْهُ.

L39481 As for ʿUthmān—may Allāh be pleased with him—it is narrated concerning a slain person found in the dwelling of a people who confessed to killing him after he came to steal from them: the legal guardians of the slain must swear an oath while possessing the right to qisas (retribution). If they refuse to swear, the residents of the dwelling swear and pay the diyah (prescribed compensation). But this ruling is invalid as it is mursal (a narration with interrupted chain), for it comes through al-Zuhrī—who was not born until after ʿUthmān's death, making the transmission impossible.

وَأَمَّا عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّهُ رُوِيَ عَنْهُ فِي قَتِيلٍ وُجِدَ فِي دَارِ قَوْمٍ فَأَقَرُّوا بِقَتْلِهِ، وَأَنَّهُ جَاءَهُمْ لِيَسْرِقَهُمْ: أَنْ يَحْلِفَ أَوْلِيَاءُ الْمَقْتُولِ، وَلَهُمْ الْقَوَدُ، فَإِنْ نَكَلُوا: حَلَفَ أَهْلُ الدَّارِ وَغَرِمُوا الدِّيَةَ، إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ مُرْسَلٌ؛ لِأَنَّهُ مِنْ طَرِيقِ الزُّهْرِيِّ: أَنَّ عُثْمَانَ - وَلَمْ يُولَدْ الزُّهْرِيُّ، إلَّا بَعْدَ مَوْتِهِ - أَعْنِي بَعْدَ مَوْتِ عُثْمَانَ -.

L39482 As for Ali—may Allah be pleased with him—if a slain person is found between two villages, he would measure the distance between them and hold the nearest village responsible. If the slain person is found in an open area of land, the blood money is to be paid from the public treasury. He also required the defendant in a murder case to take an oath along with forty-nine oath-helpers. However, this ruling is invalid because it is reported from Abu Jaʿfar, who was not born until ten to nineteen years after Ali's death.

وَأَمَّا عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ -: إذَا وُجِدَ الْقَتِيلُ بَيْنَ قَرْيَتَيْنِ قَاسَ مَا بَيْنَهُمَا وَجَعَلَهُ عَلَى أَقْرَبِهِمَا وَإِنْ وُجِدَ بِفَلَاةٍ مِنْ الْأَرْضِ فَدِيَتُهُ عَلَى بَيْتِ الْمَالِ وَأَنَّهُ أَحْلَفَ الْمُدَّعَى عَلَيْهِ الدَّمَ، وَتِسْعَةً وَأَرْبَعِينَ مَعَهُ - إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ أَبِي جَعْفَرٍ - وَلَمْ يُولَدْ أَبُو جَعْفَرٍ إلَّا بَعْدَ مَوْتِ عَلِيٍّ بِبِضْعَةِ عَشَرَ عَامًا.

L39483 And through another chain involving Al-Ḥārith al-Aʿwar—and he is a liar—and al-Ḥajjāj ibn Arṭāʾah—and he is abandoned.

وَمِنْ طَرِيقٍ أُخْرَى فِيهَا الْحَارِثُ الْأَعْوَرُ - وَهُوَ كَذَّابٌ - وَالْحَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ هَالِكٌ.

L39484–39486 As for Ibn Abbas, it is reported that he ruled to impose oaths upon the defendants in cases of *qasāmah* (collective oath-taking), that retaliation should not be enacted through it, and that the blood of a Muslim should not be released. However, this ruling is invalid because one of the two chains of transmission from him [...] Muṭīʿ—who is a majhūl (unknown narrator)—and the other from Ibrāhīm ibn Abī Yaḥyā—who is categorically rejected.

وَأَمَّا ابْنُ عَبَّاسٍ - فَجَاءَ عَنْهُ أَنَّهُ قَضَى بِالْأَيْمَانِ عَلَى الْمُدَّعَى عَلَيْهِمْ فِي الْقَسَامَةِ وَأَنْ لَا يُقَادَ بِهَا، وَأَنْ لَا يُطَلَّ دَمُ مُسْلِمٍ، إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّ إحْدَى الطَّرِيقَيْنِ عَنْ مُطِيعٍ - وَهُوَ مَجْهُولٌ - وَالْأُخْرَى عَنْ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى - وَهُوَ هَالِكٌ.

L39487 As for Ibn al-Zubayr, it is authentically reported through the most eminent chain of transmission that he enforced retaliation based on collective oath-taking, held that retaliation applied through this method in the case of a slain person found dead, maintained that the legal judgment belonged to the claimants by oaths, and affirmed that retaliation could be exacted from among a group for an individual. The most reliable authority among people, Saʿīd ibn al-Musayyab—who had witnessed the entire incident—transmitted this from him.

وَأَمَّا ابْنُ الزُّبَيْرِ - فَصَحَّ عَنْهُ مِنْ أَجَلِّ إِسْنَادٍ أَنَّهُ أَقَادَ بِالْقَسَامَةِ، وَأَنَّهُ رَأَى الْقَوَدَ بِهَا فِي قَتِيلٍ وُجِدَ، وَأَنَّهُ رَأَى الْحُكْمَ لِلْمُدَّعِينَ بِالْأَيْمَانِ، وَأَنَّهُ رَأَى أَنْ يُقَادَ بِهَا مِنْ الْجَمَاعَةِ لِلْوَاحِدِ: رَوَى ذَلِكَ عَنْهُ أَوْثَقُ النَّاسِ سَعِيدُ بْنُ الْمُسَيِّبِ - وَقَدْ شَاهَدَ تِلْكَ الْقِصَّةَ كُلَّهَا.

L39488 Abdullah ibn Abi Mulaykah, the judge of Ibn al-Zubayr.

وَعَبْدُ اللَّهِ بْنُ أَبِي مُلَيْكَةَ قَاضِي ابْنِ الزُّبَيْرِ.

L39489 As for Muʿāwiyah, it is narrated from him that the legal guardians of those accused in *qasāmah* cases are absolved through oaths. If the defendants' legal guardians refuse to swear, the claimants swear against only one individual, and retribution is enforced against him alone, not against multiple parties. If the claimants refuse to swear, the accused themselves swear fifty oaths, with the oaths reiterated among them. Muʿāwiyah's act of transporting the defendants from Medina to Mecca for administering the oaths is of utmost authenticity, as it was narrated by Saʿīd ibn al-Musayyab, who witnessed the event.

وَأَمَّا مُعَاوِيَةُ - فَرُوِيَ عَنْهُ تَبْرِئَةُ أَوْلِيَاءِ الْمُدَّعَى عَلَيْهِمْ بِالْأَيْمَانِ فِي الْقَسَامَةِ، فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعُونَ عَلَى وَاحِدٍ فَقَطْ، وَأُقِيدُوا بِهِ لَا عَلَى أَكْثَرَ، فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعَى عَلَيْهِمْ بِأَنْفُسِهِمْ خَمْسِينَ يَمِينًا، تُرَدَّدُ الْأَيْمَانُ عَلَيْهِمْ، وَحَمْلُهُ إيَّاهُمْ لِلتَّحْلِيفِ مِنْ الْمَدِينَةِ إلَى مَكَّةَ - وَهَذَا فِي غَايَةِ الصِّحَّةِ؛ لِأَنَّهُ رَوَاهُ عَنْهُ سَعِيدُ بْنُ الْمُسَيِّبِ، وَقَدْ شَهِدَ الْأَمْرَ.

L39490 It has also been narrated from him that he began by administering oaths to the claimants and executed them, with more than a thousand Companions - may Allah be pleased with them - concurring with him on this. However, this narration is unsound because its chain includes ʿAbd al-Raḥmān ibn Abī al-Zināḍ, who is deemed a weak narrator.

وَرُوِيَ عَنْهُ أَيْضًا: أَنَّهُ بَدَأَ الْمُدَّعِينَ بِالْأَيْمَانِ وَأَقَادَ بِهَا، وَوَافَقَهُ عَلَى ذَلِكَ أَزْيَدُ مِنْ أَلْفٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا أَنَّ هَذَا لَا يَصِحُّ؛ لِأَنَّ فِي الطَّرِيقِ عَبْدَ الرَّحْمَنِ بْنَ أَبِي الزِّنَادِ، وَهُوَ ضَعِيفٌ.

L39491 As for ʿAbdullāh ibn ʿAmr, it is narrated from him that in every legal claim, the defendant must take the oath first, except in bloodshed cases. If the victim claims that a specific person killed him, his kinsmen initiate the oath. However, this ruling is invalid because it is transmitted through Ibn Samʿān—who is notorious for lying and deemed unreliable. It is also narrated from the earlier scholars that no retribution (qisas) is enacted through qasāmah, but this too is invalid because it is a mursal narration from al-Ḥasan.

وَأَمَّا عَبْدُ اللَّهِ بْنُ عَمْرٍو - فَإِنَّهُ رُوِيَ عَنْهُ أَنَّ كُلَّ دَعْوَى فَإِنَّ الْمُدَّعَى عَلَيْهِ يَبْدَأُ بِالْيَمِينِ، إلَّا فِي الدَّمِ، فَإِنَّ الْمُصَابَ إذَا ادَّعَى أَنَّ فُلَانًا قَتَلَهُ، فَأَوْلِيَاؤُهُ مُبْدِئُونَ، إلَّا أَنَّ هَذَا لَا يَصِحُّ؛ لِأَنَّهُ مِنْ طَرِيقِ ابْنِ سَمْعَانَ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ هَالِكٌ - وَرُوِيَ عَنْ الْجَمَاعَةِ الْأُولَى، أَنْ لَا قَوَدَ بِالْقَسَامَةِ، إلَّا أَنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ مُرْسَلٌ عَنْ الْحَسَنِ.

L39492 And in the chain (of transmission) is ʿAbdus-Salām ibn Ḥarb—who is weak.

وَفِي الطَّرِيقِ عَبْدُ السَّلَامِ بْنُ حَرْبٍ - وَهُوَ ضَعِيفٌ.

L39493 It has been narrated that the matter was pre-existing before Mu‘āwiyah, that oaths should not be repeated, and that if even one is missing from the fifty, the qasāmah is nullified—and this is authentic. It was narrated by Sa‘īd ibn al-Musayyib, who lived during the time of ‘Uthmān and ‘Alī—may Allah be pleased with them both. All that has been narrated from the Companions—may Allah be pleased with them—is disputed and lacks consensus, and none of it is reliable except what was narrated from Ibn al-Zubayr and Mu‘āwiyah, and what was narrated regarding the nullification of the qasāmah if the fifty are not completed: this is authentic.

وَرُوِيَ: أَنَّ الْأَمْرَ كَانَ قَدِيمًا قَبْلَ مُعَاوِيَةَ، أَلَّا تُرَدَّدَ الْأَيْمَانُ، وَأَنَّهُ إِنْ نَقَصَ مِنْ الْخَمْسِينَ وَاحِدٌ بَطَلَتْ الْقَسَامَةُ - وَهُوَ صَحِيحٌ - رَوَاهُ سَعِيدُ بْنُ الْمُسَيِّبِ وَقَدْ أَدْرَكَ أَيَّامَ عُثْمَانَ، وَعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - فَهَذَا كُلُّ مَا رُوِيَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كُلُّهُ مُخْتَلَفٌ فِيهِ غَيْرُ مُتَّفَقٍ، وَكُلُّهُ لَا يَصِحُّ، إلَّا مَا رُوِيَ عَنْ ابْنِ الزُّبَيْرِ، وَمُعَاوِيَةَ، وَعَنْ إبْطَالِ الْقَسَامَةِ إذَا لَمْ يَتِمَّ الْخَمْسُونَ: فَهُوَ صَحِيحٌ.

L39494 As for the Successors (Tābiʿūn)—may Allah have mercy on them—Al-Ḥasan is authentically established to have ruled that retaliation (qiṣāṣ) is not carried out through qasāmah. Rather, the defendants must swear: “By Allah, we did not do it,” and they are acquitted. If they refuse to swear, the claimants swear and claim the blood money (diyah). This applies when the slain person is found.

وَأَمَّا التَّابِعُونَ - رَحِمَهُمُ اللَّهُ -: فَأَمَّا الْحَسَنُ: فَصَحَّ عَنْهُ أَنْ لَا يُقَادَ بِالْقَسَامَةِ لَكِنْ يَحْلِفُ الْمُدَّعَى عَلَيْهِمْ: بِاَللَّهِ مَا فَعَلْنَا، وَيُبَرَّءُونَ - فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعُونَ وَأَخَذُوا الدِّيَةَ - هَذَا فِي الْقَتِيلِ يُوجَدُ.

L39495–39496 As for ʿUmar ibn ʿAbd al-ʿAzīz, it is reported from him: “I begin with the defendants, then impose the blood money upon them along with their oaths”—and this is authentically reported from him. It is also authentically reported that he reverted to this opinion. Furthermore, it is authentically established that he enforced retaliation through the qasamah with validity that has no flaw in it, that he began with the claimants by administering the oaths in the qasamah, and that he reiterated the oaths. It is likewise authentically reported that he entirely abandoned the qasamah and discontinued ruling by it.

وَأَمَّا عُمَرُ بْنُ عَبْدِ الْعَزِيزِ - فَجَاءَ عَنْهُ: يَبْدَأُ الْمُدَّعَى عَلَيْهِمْ، ثُمَّ أُغَرِّمُهُمْ الدِّيَةَ مَعَ أَيْمَانِهِمْ - وَهَذَا عَنْهُ صَحِيحٌ، وَأَنَّهُ رَجَعَ إلَى هَذَا الْقَوْلِ - وَصَحَّ عَنْهُ: أَنَّهُ أَقَادَ بِالْقَسَامَةِ صِحَّةً لَا مَغْمَزَ فِيهَا، وَأَنَّهُ بَدَأَ الْمُدَّعِينَ بِالْأَيْمَانِ فِي الْقَسَامَةِ، وَرَدَّدَ الْأَيْمَانَ - وَصَحَّ عَنْهُ: أَنَّهُ رَجَعَ عَنْ الْقَسَامَةِ جُمْلَةً وَتَرَكَ الْحُكْمَ بِهَا.

L39497 It has been authentically established from him, akin to the ruling of ʿUmar ibn al-Khaṭṭāb in explicitly obligating payment of the blood money due to the refusal of both the claimants and the defendants to take the oaths jointly.

وَصَحَّ عَنْهُ مِثْلُ حُكْمِ عُمَرَ بْنِ الْخَطَّابِ فِي إغْرَامِهِ نَصًّا الدِّيَةَ فِي نُكُولِ الْمُدَّعِينَ وَنُكُولِ الْمُدَّعَى عَلَيْهِمْ عَنْ الْأَيْمَانِ مَعًا.

L39498 As for Shurayh, it is authentically transmitted from him that multiple oaths are to be reiterated. He held that when a slain person is found in the dwelling of a people, and his heirs accuse someone other than the inhabitants of that dwelling, the qasāma becomes nullified. They consequently have no legal claim against anyone unless they produce conclusive proof.

وَأَمَّا شُرَيْحٌ - فَصَحَّ عَنْهُ تَرَدُّدُ الْأَيْمَانِ، وَأَنَّ الْقَتِيلَ إذَا وُجِدَ فِي دَارِ قَوْمٍ فَادَّعَى أَهْلُهُ عَلَى غَيْرِ تِلْكَ الدَّارِ فَقَدْ بَطَلَتْ الْقَسَامَةُ وَلَا شَيْءَ لَهُمْ عَلَى أَحَدٍ إلَّا بِبَيِّنَةٍ.

L39499 As for Ibrāhīm al-Nakhaʿī, it is authentically reported from him that he invalidated retribution through collective oaths. However, the process begins with the accused; they then swear fifty oaths, after which they pay the blood money—despite this—alongside that. He also endorsed the reiteration of oaths.

وَأَمَّا إبْرَاهِيمُ النَّخَعِيُّ - فَصَحَّ عَنْهُ إبْطَالُ الْقَوَدِ بِالْقَسَامَةِ لَكِنْ يُبْدَأُ بِالْمُدَّعَى عَلَيْهِمْ فَيَحْلِفُونَ خَمْسِينَ يَمِينًا ثُمَّ يَغْرَمُونَ الدِّيَةَ - مَعَ ذَلِكَ - وَرَأَى تَرْدِيدَ الْأَيْمَانِ.

وَأَمَّا الشَّعْبِيُّ - فَرُوِيَ عَنْهُ فِي الْقَتِيلِ يُوجَدُ بَيْنَ قَرْيَتَيْنِ: أَنَّهُ عَلَى أَقْرَبِهِمَا إلَيْهِ وَفِيهِ الدِّيَةُ، لَهُ إنْ وُجِدَ بَدَنُهُ فِي دَارِ قَوْمٍ فَعَلَيْهِمْ دَمُهُ، وَإِنْ وُجِدَ رَأْسُهُ فِي دَارِ قَوْمٍ فَلَا شَيْءَ فِيهِ - وَلَا دِيَةَ وَلَا غَيْرَهَا - إلَّا أَنَّهُ لَا يَصِحُّ عَنْهُ؛ لِأَنَّهُ عَمَّنْ لَمْ يُسَمَّ، أَوْ عَنْ صَاعِدٍ الْيَشْكُرِيِّ، وَلَا نَعْرِفُهُ.

L39500 As for Al-Shaʿbī—it is narrated from him regarding a slain person found between two villages that the responsibility falls upon the nearest of them to him, and the blood money is incumbent upon them. If his body is found in the land of a community, the blood money is owed to his heirs and they are liable for it. If his head is found in the land of a people, there is no liability—neither blood money nor anything else. However, this ruling is not authentically established from him, as it is attributed to an unnamed source or to Saʿīd al-Yashkuri, whom we do not recognize.

وَأَمَّا سَعِيدُ بْنُ الْمُسَيِّبِ - فَصَحَّ عَنْهُ أَنَّ الْقَسَامَةَ عَلَى الْمُدَّعَى عَلَيْهِمْ - وَرُوِيَ عَنْهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِهَا، وَلَوْ عَلِمَ أَنَّ النَّاسَ يَجْتَرِئُونَ عَلَيْهَا لَمْ يَقْضِ بِهَا - وَهَذَا كَلَامُ سَوْءٍ قَدْ أَعَاذَ اللَّهُ تَعَالَى سَعِيدَ بْنَ الْمُسَيِّبِ عَنْهُ.

L39501 As for Saʿīd ibn al-Musayyib, it is soundly established from him that the qasāmah oath is imposed upon the accused parties. It is narrated from him that the Messenger of Allah, peace and blessings of Allah be upon him, ruled by it, though if he had known people would dare to resort to it, he would not have ruled by it. This is a reprehensible statement, and Allah the Exalted has protected Saʿīd ibn al-Musayyib from being attributed to it.

وَرِوَايَةٌ عَنْ يُونُسَ بْنِ يُوسُفَ - وَهُوَ مَجْهُولٌ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَحْكُمُ مِنْ عِنْدِهِ.

L39502 A narration transmitted by Yunus ibn Yusuf—a narrator of unknown status—and the Messenger of Allah—may the peace and blessings of Allah be upon him—does not judge based on his own opinion.

L39503 He does not speak from [his own] whim. It is not but a revelation that is revealed. [An-Najm 53:3-4][1]

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

وَلَقَدْ عَلِمَ اللَّهُ تَعَالَى إذْ أَوْحَى إلَيْهِ بِأَنْ يَحْكُمَ فِي الْقَسَامَةِ بِمَا حَكَمَ بِهِ مِنْ الْحَقِّ أَنَّ النَّاسَ سَيَجْتَرِئُونَ عَلَى الْكُفْرِ، وَعَلَى الدِّمَاءِ، فَكَيْفَ عَلَى الْأَيْمَانِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L39504 Allah, the Most High, certainly knew - when He revealed to him to judge in the matter of qasamah with what He decreed of the truth - that people would dare to commit acts of disbelief and bloodshed; how much more so with oaths? {And your Lord is never forgetful} [Maryam 19:64].[2]

وَأَمَّا قَتَادَةُ - فَصَحَّ عَنْهُ أَنَّ الْقَسَامَةَ تُسْتَحَقُّ بِهَا الدِّيَةُ، وَلَا يُقَادُ بِهَا.

L39505 As for Qatādah, it has been authentically reported from him that the qasāmah (collective oath) entitles to blood money, but qisās (retributive punishment) is not imposed through it.

وَأَمَّا سَالِمٌ - فَصَحَّ عَنْهُ إنْكَارُ الْقَسَامَةِ جُمْلَةً، وَأَنَّ مَنْ حَلَفَ فِيهَا يَسْتَحِقُّ أَنْ يُنَكَّلَ، وَأَنْ لَا تُقْبَلَ لَهُ شَهَادَةٌ.

L39506 As for Sālim—it is reliably transmitted that he rejected qasāmah in its entirety, maintaining that whoever takes an oath in such a procedure deserves disciplinary punishment and that no testimony from them may be accepted.

[1] **Qur'an references (L39503):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[2] **Qur'an references (L39504):** Qur'an 19:64 (Maryam).

وَأَمَّا أَبُو قِلَابَةَ - فَصَحَّ عَنْهُ إِنْكَارُ الْقَسَامَةِ جُمْلَةً.

L39507–39508 As for Abū Qilābah, it is reliably transmitted from him that he categorically rejected al-qasāmah (oaths of collective liability) in its entirety.

وَأَمَّا الزُّهْرِيُّ - فَصَحَّ عَنْهُ أَنَّ الْقَسَامَةَ إِذَا لَمْ تَتِمَّ الْخَمْسُونَ عَدَدُ الْمُدَّعِينَ بَطَلَتْ، وَلَا تُرَدَّدُ الْأَيْمَانُ فِيهَا وَأَنَّ تَرْدِيدَهَا مُحْدَثٌ.

L39509 As for Al-Zuhri, it is authentically reported from him that if the number of claimants in qasamah does not reach fifty, the qasamah becomes invalid. The oaths are not repeated in such a case, and their repetition constitutes a blameworthy innovation.

أَمَّا عُرْوَةُ بْنُ الزُّبَيْرِ، وَأَبُو بَكْرِ بْنُ عَمْرِو بْنِ حَزْمٍ، وَأَبَانُ بْنُ عُثْمَانَ، فَإِنَّهُ رُوِيَ عَنْهُمْ: إِنْ ادَّعَى الْمُصَابُ عَلَى إِنْسَانٍ أَنَّهُ قَتَلَهُ، أَوْ عَلَى جَمَاعَةٍ، فَإِنَّ أَوْلِيَاءَ الْمُدَّعِي يَبْدَءُونَ فَيَحْلِفُونَ خَمْسِينَ يَمِينًا عَلَى وَاحِدٍ، وَتُرَدَّدُ عَلَيْهِمْ الْأَيْمَانُ إِنْ لَمْ يُتِمُّوا خَمْسِينَ يَمِينًا، فَإِذَا حَلَفُوا دُفِعَ إِلَيْهِمْ الْوَاحِدُ فَيَقْتُلُوهُ، وَجُلِدَ الْآخَرُونَ مِائَةً مِائَةً، وَسُجِنُوا سَنَةً.

L39510 As for Urwah ibn al-Zubayr, Abu Bakr ibn Amr ibn Hazm, and Aban ibn Uthman, it has been reported from them: If the aggrieved party accuses a person or a group of having killed him, the claimant's guardians begin by swearing fifty oaths against one individual. If they fail to complete fifty oaths, the oaths are repeated to them. When they swear, the accused individual is handed over to them to kill him. Each of the others is flogged one hundred lashes and imprisoned for a year.

وَأَنَّ عَبْدَ الْمَلِكِ بْنَ مَرْوَانَ أَوَّلُ مَنْ قَضَى بِأَنْ لَا يُقْتَلَ فِي الْقَسَامَةِ إِلَّا وَاحِدٌ، وَكَانَ مَنْ قَبْلَهُ يَقْتُلُونَ فِيهَا الرَّهْطَ بِالْوَاحِدِ.

L39511 And that ʿAbd al-Malik ibn Marwān was the first to decree that only one person should be executed in cases of qasāmah (a procedure of collective oath-swearing to establish liability in unresolved killings), whereas his predecessors used to execute a raht (small group) in retaliation for the death of one person.

وَهَذَا كُلُّهُ خَبَرٌ وَاحِدٌ سَاقِطٌ، لَا يَصِحُّ؛ لِأَنَّهُ انْفَرَدَ بِرِوَايَتِهِ عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ، وَابْنُ سَمْعَانَ مَعًا - وَهُمَا سَاقِطَانِ؛ وَأَمَّا أَبُو الزِّنَادِ - فَرُوِيَ عَنْهُ: أَنَّهُ يَبْدَأُ فِي الْقَسَامَةِ مَنْ لَهُ بَعْضُ بَيِّنَةٍ أَوْ شُبْهَةٌ، صَحَّ ذَلِكَ عَنْهُ.

L39512 This entire report is a single rejected narration, inauthentic, because it was solely transmitted by ʿAbd al-Raḥmān ibn Abī al-Zinād and Ibn Samʿān—both of whom are rejected. As for Abū al-Zinād, it is reported that he begins the qasāmah for someone with some evidence or suspicion, and this is soundly attributed to him.

وَأَمَّا رَبِيعَةُ - فَصَحَّ عَنْهُ: أَنَّ شَهَادَةَ الْيَهُودِ، وَالنَّصَارَى، وَالْمَجُوسِ، أَوْ الصِّبْيَانِ أَوْ الْمَرْأَةِ: يُؤْخَذُ بِهَا فِي الْقَتْلِ، وَيَبْدَأُ مَعَهَا أَوْلِيَاءُ الْمَقْتُولِ، وَذَلِكَ دَعْوَى الْمُصَابِ دُونَ بَيِّنَةٍ أَصْلًا - بَالِغًا كَانَ أَوْ غَيْرَ بَالِغٍ - هَكَذَا رَوَى عَنْهُ ابْنُ وَهْبٍ فَيَبْدَأُ أَوْلِيَاؤُهُ فَيَحْلِفُونَ خَمْسِينَ يَمِينًا وَتُرَدَّدُ عَلَيْهِمْ الْأَيْمَانُ إِنْ لَمْ يُتِمُّوا خَمْسِينَ، وَيَسْتَحِقُّونَ الْقَوَدَ، فَإِنْ نَكَلُوا حَلَفَ أَوْلِيَاءُ الْمُدَّعَى عَلَيْهِ خَمْسِينَ يَمِينًا، تُرَدَّدُ أَيْضًا عَلَيْهِمْ، وَيَبْرَءُونَ وَيَبْرَأُ الْمُدَّعَى

L39513 As for Rabiʿah—it is authentically reported from him that the testimony of Jews, Christians, Zoroastrians, boys, or women is accepted in cases of murder. The legal guardians of the deceased initiate the claim in conjunction with such testimony, which constitutes the legal claim of the aggrieved party without requiring evidence—regardless of whether the deceased was of age or not. This is how Ibn Wahb narrated from him. Thus, the legal guardians of the deceased begin by swearing fifty oaths, and the oaths are administered again to them if they fail to complete fifty. They then become entitled to retribution. If they refuse to swear, the legal guardians of the accused swear

عَلَيْهِ، فَلَا قَوَدَ وَلَا دِيَةَ، فَإِنْ نَكَلُوا وَجَبَ لِأَوْلِيَاءِ الْمَقْتُولِ الْقَوَدُ عَلَى مَنْ ادَّعَوْا عَلَيْهِ دُونَ يَمِينٍ.

وَأَمَّا مَرْوَانُ - فَرُوِيَ عَنْهُ: إِذَا ادَّعَى الْجَرِيحُ عَلَى قَوْمٍ، فَإِنَّ أَوْلِيَاءَهُ يَبْدَءُونَ فَيَحْلِفُونَ خَمْسِينَ يَمِينًا، وَتُكَرَّرُ عَلَيْهِمُ الْأَيْمَانُ، ثُمَّ يُدْفَعُ إِلَيْهِمْ كُلُّ مَنِ ادَّعَوْا عَلَيْهِ - وَإِنْ كَانُوا جَمَاعَةً فَيَقْتُلُونَ - إِنْ شَاءُوا - وَلَمْ يَصِحَّ هَذَا، لِأَنَّهُ مِنْ رِوَايَةِ ابْنِ سَمْعَانَ.

وَأَمَّا السَّالِفُونَ مِنْ عُلَمَاءِ أَهْلِ الْمَدِينَةِ جُمْلَةً - فَإِنَّهُ رُوِيَ عَنْهُمْ: أَنَّ مَنِ ادَّعَى - وَهُوَ مُصَابٌ - أَنَّ فُلَانًا قَتَلَهُ، فَإِنَّ أَوْلِيَاءَهُ يَبْدَءُونَ فِي الْقَسَامَةِ، فَإِنْ لَمْ يَدَّعِ عَلَى أَحَدٍ بَرِئَ الْمُدَّعَى عَلَيْهِمْ، فَإِنْ حَلَفَ الْأَوْلِيَاءُ مَعَ دَعْوَى الْمُصَابِ كَانَ لَهُمُ الْقَوَدُ، فَإِنْ عَفَوْا عَنِ الدَّمِ وَأَرَادُوا الدِّيَةَ قُضِيَ لَهُمْ بِذَلِكَ، وَجُلِدَ الْمَعْفُوُّ عَنْهُمْ مِائَةً مِائَةً، وَحُبِسُوا سَنَةً، وَإِنْ عَفَا الْأَوْلِيَاءُ عَنِ الْقَوَدِ وَعَنِ الدِّيَةِ: فَلَا ضَرْبَ عَلَى الْمَعْفُوِّ عَنْهُمْ، وَلَا سَجْنَ، فَإِنْ نَكَلُوا حَلَفَ الْمُدَّعَى عَلَيْهِ مَعَ أَوْلِيَائِهِ خَمْسِينَ يَمِينًا، فَإِنْ نَكَلُوا غَرِمَ الْمُدَّعَى عَلَيْهِ الدِّيَةَ فِي مَالِهِ خَاصَّةً.

وَأَنَّ الْقَسَامَةَ تَكُونُ مَعَ شَهَادَةِ الصِّبْيَانِ، أَوِ النِّسَاءِ، أَوِ الْيَهُودِ، أَوِ النَّصَارَى كَمَا قُلْنَا فِي دَعْوَى الْقَتِيلِ سَوَاءً سَوَاءً وَلَا فَرْقَ.

وَأَنَّ الْأَيْمَانَ تُرَدَّدُ فِي ذَلِكَ إِنْ لَمْ يُتِمُّوا خَمْسِينَ، فَإِنْ كَانَ دَعْوَى قَتْلِ عَمْدٍ لَمْ يَجُزْ أَنْ يَحْلِفَ فِي ذَلِكَ أَقَلُّ مِنْ ثَلَاثَةٍ، وَإِنْ كَانَتْ دَعْوَى قَتْلِ خَطَأٍ: حَلَفَ فِي ذَلِكَ وَاحِدٌ - إِنْ لَمْ يُوجَدْ غَيْرُهُ - خَمْسِينَ يَمِينًا وَأَخَذَ الدِّيَةَ.

fifty oaths, which are likewise administered again to them. They are thereby exonerated, and the accused is acquitted, so neither retribution nor blood money is due. If they too refuse to swear, the legal guardians of the deceased become entitled to retribution against the accused without an oath.

L39514 As for Marwān, it is reported from him: If an injured person accuses a group, his guardians must initiate by swearing fifty oaths, then these oaths are repeated upon them. Thereafter, all those they accused are surrendered to them—even if they are a collective—so they kill them if they so choose. However, this ruling is not valid, as it derives from the narration of Ibn Samʿān.

L39515–39517 As for the early scholars of the people of Medina collectively, it has been reported from them that if a victim accuses a specific individual of killing him, his next of kin must begin the qasamah. If he did not accuse anyone. The defendants are acquitted. If the guardians swear alongside the victim's claim, they are entitled to retribution. If they forgo the bloodshed and seek blood money, it is granted to them; the pardoned individuals are flogged one hundred each and imprisoned for one year. If the guardians pardon both retribution and blood money, there shall be no flogging or imprisonment for the pardoned individuals. If the guardians refuse to swear, the defendant swears fifty oaths with the victim's guardians. If they refuse, the defendant is obligated to pay the blood money from his wealth specifically.

L39518 And that the *qasāmah* (oath-swearing) applies with the testimony of children, women, Jews, or Christians, just as we stated regarding the legal case of homicide—wholly equal, with no distinction.

L39519 And that oaths are administered in that matter if fifty oaths are not completed. If the claim is one of intentional killing, it is not permissible for fewer than three individuals to swear an oath in that regard. If the claim is one of accidental killing, a single individual (if no one else is available) must swear fifty oaths himself in that matter and receive the *diyah*.

L39520 In a claim of intentional killing (ʿamd), the one seeking legal retribution (qiṣāṣ) must swear an oath - even if not an heir - while in a claim of accidental

killing (khaṭaʾ), only an heir may swear an oath. All of this is invalid as a legal ruling, for it is narrated by Ibn Sam'ān, who is described as a liar.

وَيَحْلِفُ فِي دَعْوَى الْعَمْدِ مَنْ أَرَادَ الْقَوَدَ - وَإِنْ لَمْ يَكُنْ وَارِثًا - وَلَا يَحْلِفُ فِي دَعْوَى الْخَطَأِ إِلَّا مَنْ يَرِثُ - وَكُلُّ هَذَا لَا يَصِحُّ؛ لِأَنَّهُ مِنْ رِوَايَةِ ابْنِ سَمْعَانَ وَهُوَ مَوْصُوفٌ بِالْكَذِبِ.

L39521 Abū Muḥammad—may Allah have mercy on him—said: This is all that has come to us to mention regarding what has been transmitted from any of the Followers on this matter. We have cited them—and they are differing, as you see, not in agreement. As for the later scholars, we shall also mention—Allah the Exalted willing—from their statements what He has facilitated.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّ مَا حَضَرَنَا ذِكْرُهُ: أَنَّهُ رُوِيَ عَنْ أَحَدٍ مِنْ التَّابِعِينَ فِي ذَلِكَ وَقَدْ ذَكَرْنَاهُمْ - وَهُمْ مُخْتَلِفُونَ - كَمَا تَرَى غَيْرُ مُتَّفِقِينَ؟ وَأَمَّا الْمُتَأَخِّرُونَ - فَنَذْكُرُ أَيْضًا - إنْ شَاءَ اللَّهُ تَعَالَى - مِنْ أَقْوَالِهِمْ مَا يَسَّرَ.

L39522 As for Sufyan al-Thawri, it is reliably established that he said: If a slain person is found among a tribe, the evidence lies upon the legal heirs of the slain. If they produce it, qisas is decreed for them; otherwise, the accused must swear fifty oaths, and they are obligated to pay the blood money in addition to that.

فَأَمَّا سُفْيَانُ الثَّوْرِيُّ - فَإِنَّهُ صَحَّ عَنْهُ: أَنَّهُ قَالَ: إنْ وُجِدَ الْقَتِيلُ فِي قَوْمٍ فَالْبَيِّنَةُ عَلَى أَوْلِيَاءِ الْقَتِيلِ فَإِنْ أَتَوْا بِهَا قُضِيَ لَهُمْ بِالْقَوَدِ، وَإِلَّا حَلَفَ الْمُدَّعَى عَلَيْهِمْ خَمْسِينَ يَمِينًا، وَغَرِمُوا الدِّيَةَ مع ذَلِكَ.

L39523 Ma'mar said: If someone is struck, sustains an injury, survives bedridden, then dies, the qasāmah becomes applicable at that point. The claimants must swear: "He did not die from being struck by him." If they swear fifty oaths to this effect, they become entitled to the diyah. If they refuse to swear, the defendants must swear fifty oaths: "He did not die from being struck by him," and they must pay the diyah regardless. This ruling applies specifically to injury, not homicide. If both parties refuse to swear, the defendants must pay half the diyah. This position follows what was narrated from 'Umar.

وَقَالَ مَعْمَرٌ: مَنْ ضُرِبَ فَجُرِحَ فَعَاشَ صِمِّيتًا ثُمَّ مَاتَ فَالْقَسَامَةُ تَكُونُ حِينَئِذٍ، فَيَحْلِفُ الْمُدَّعُونَ: لَمَاتَ مِنْ ضَرْبِهِ إيَّاهُ، فَإِنْ حَلَفُوا خَمْسِينَ يَمِينًا كَذَلِكَ اسْتَحَقُّوا الدِّيَةَ، وَإِنْ نَكَلُوا حَلَفَ مِنْ الْمُدَّعَى عَلَيْهِمْ خَمْسُونَ: مَا مَاتَ مِنْ ضَرْبِهِ إيَّاهُ، وَيَغْرَمُونَ الدِّيَةَ مَعَ ذَلِكَ فَالْجُرْحُ خَاصَّةً لَا فِي النَّفْسِ، فَإِنْ نَكَلَ الْفَرِيقَانِ جَمِيعًا غَرِمَ الْمُدَّعَى عَلَيْهِمْ نِصْفَ الدِّيَةِ - ذَهَبَ إلَى مَا رُوِيَ عَنْ عُمَرَ.

L39524 Ma'mar said: I said to 'Ubayd Allah ibn 'Umar: Are you not aware that the Messenger of Allah, peace be upon him, exacted retaliation through *qasāmah*? He said, "No." I said: What about Abu Bakr? He said: "No." I said: And 'Umar? He said: "No." I said: Then how do you dare to prescribe it? So he remained silent.

وَقَالَ مَعْمَرٌ: قُلْت لِعُبَيْدِ اللَّهِ بْنِ عُمَرَ: أَمَا عَلِمْت أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَادَ بِالْقَسَامَةِ؟ قَالَ، لَا، قُلْت: فَأَبُو بَكْرٍ، قَالَ: لَا، قُلْت: فَعُمَرُ، قَالَ: لَا، قُلْت: فَكَيْفَ تَجْتَرِئُونَ عَلَيْهَا؟ فَسَكَتَ.

L39525–39526 Ma'mar said: "I said that to Malik." He replied: "Do not base the command of the Messenger of Allah—peace and blessings be upon him—on legal artifices. If he were afflicted with them [as a trial], he would be led by them."

قَالَ مَعْمَرٌ: فَقُلْت ذَلِكَ لِمَالِكٍ؟ فَقَالَ: لَا تَضَعُ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْحِيَلِ، لَوْ ابْتُلِيَ بِهَا أَقَادَ بِهَا.

L39527 وَقَالَ عُثْمَانُ الْبَتِّيُّ فِيمَنْ ادُّعِيَ عَلَيْهِمْ بِقَتِيلٍ وُجِدَ فِيهِمْ: فَالْبَيِّنَةُ عَلَى الْمُدَّعِينَ وَيُقْضَى لَهُمْ، فَإِنْ لَمْ يَكُنْ لَهُمْ بَيِّنَةٌ حَلَفَ خَمْسُونَ رَجُلًا مِنْ الْمُدَّعَى عَلَيْهِمْ، وَبَرِئُوا، وَلَا غَرَامَةَ فِي ذَلِكَ، وَلَا دِيَةَ، وَلَا قَوَدَ.

L39528 وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا تَكُونُ الْقَسَامَةُ بِدَعْوَى الْمُصَابِ أَصْلًا، وَلَا قَوَدَ فِي ذَلِكَ، وَلَا دِيَةَ، لَكِنْ إنْ وُجِدَ قَتِيلٌ فِي مَحَلَّةٍ وَبِهِ أَثَرٌ، وَادَّعَى الْوَلِيُّ عَلَى أَهْلِ الْمَحَلَّةِ أَنَّهُمْ قَتَلُوهُ، وَادَّعَوْا عَلَى وَاحِدٍ بِعَيْنِهِ مِنْهُمْ؟ فَإِنْ كَانَتْ لَهُمْ بَيِّنَةُ عَدْلٍ قُضِيَ لَهُمْ بِهَا، وَإِنْ لَمْ تَكُنْ لَهُمْ بَيِّنَةٌ حَلَفَ الْمُدَّعَى عَلَيْهِمْ خَمْسُونَ رَجُلًا مِنْ أَهْلِ الْخِطَّةِ، لَا مِنْ السُّكَّانِ، وَلَا مِنْ الَّذِينَ انْتَقَلَ إلَيْهِمْ مِلْكُ الْخِطَّةِ بِالشِّرَاءِ، لَكِنْ عَلَى الَّذِينَ كَانُوا مَالِكِينَ لَهَا فِي الْأَصْلِ، يَخْتَارُهُمْ الْوَلِيُّ، فَإِنْ نَقَصَ مِنْهُمْ رُدَّتْ عَلَيْهِمْ الْأَيْمَانُ - فَإِذَا حَلَفُوا غَرِمُوا الدِّيَةَ مَعَ ذَلِكَ، فَإِنْ نَكَلُوا سُجِنُوا أَبَدًا حَتَّى يُقِرُّوا أَوْ يَحْلِفُوا.

L39529 وَقَالَ مَالِكٌ: لَا تَكُونُ الْقَسَامَةُ إلَّا بِأَنْ يَقُولَ الْمُصَابُ: فُلَانٌ قَتَلَنِي عَمْدًا، فَإِذَا قَالَ ذَلِكَ ثُمَّ مَاتَ قَبْلَ أَنْ يُفِيقَ: حَلَفَ خَمْسُونَ مِنْ أَوْلِيَائِهِ قِيَامًا فِي الْمَسْجِدِ الْجَامِعِ، مُسْتَقْبِلِينَ الْقِبْلَةَ: لَقَدْ قَتَلَهُ فُلَانٌ عَمْدًا؟ فَإِذَا حَلَفُوا، فَإِنْ حَلَفُوا عَلَى وَاحِدٍ فَلَهُمْ الْقَوَدُ مِنْهُ، وَإِنْ حَلَفُوا عَلَى جَمَاعَةٍ لَمْ يَكُنْ لَهُمْ الْقَوَدُ إلَّا مِنْ وَاحِدٍ، وَيُضْرَبُ الْبَاقُونَ مِائَةً مِائَةً، وَيُسْجَنُونَ سَنَةً - فَإِنْ شَهِدَ شَاهِدٌ وَاحِدٌ عَدْلٌ: بِأَنَّ فُلَانًا قَتَلَ فُلَانًا كَانَتْ الْقَسَامَةُ أَيْضًا كَمَا ذَكَرْنَا.

Uthman al-Batti ruled concerning those against whom a claim is made regarding a slain person found among them: The burden of proof lies upon the claimants, and judgment is rendered in the claimants' favor. If they have no proof, fifty men from the accused must swear an oath, and they are absolved, with no fine, blood money, or retaliation in such a case.

Abu Hanifa and his companions said: Qasamah (collective oath) cannot be initiated through the victim's claim at all, nor does retaliation (qisas) or blood money (diyah) apply in such cases. However, if a slain person is found in a district bearing traces [of violence], and the legal guardian claims that the residents of that district killed him—or if the residents accuse a specific individual among them—then if the claimants provide testimony from upright witnesses, judgment is rendered in their favor. If they lack evidence, fifty men from the original landowners of the district—excluding current residents or those who acquired ownership through purchase, but only those who held primary ownership—must take an oath, selected by the guardian. If their number is insufficient, the oaths are repeated by the remaining men. Upon swearing, they are nevertheless obligated to pay the blood money. If they refuse to swear, they are imprisoned perpetually until they confess or take the oath.

Mālik said: The qasāmah is only valid if the injured person states: "So-and-so intentionally killed me." If he utters this and then dies before regaining consciousness, fifty of his male agnate relatives must swear while standing in the congregational mosque, facing the qiblah: "Indeed, so-and-so intentionally killed him." If they swear—and if they swear against one individual, they are entitled to retaliate against him. If they swear against a group, retaliation is only permissible against one among them, while the remaining accused shall each receive one hundred lashes and be imprisoned for a year. If a single just witness testifies that so-and-so killed so-and-so, the qasāmah is likewise applied as we have mentioned.

وَكَذَلِكَ إِنْ شَهِدَ لَوْثٌ مِنْ نِسَاءٍ أَوْ غَيْرِ عُدُولٍ، فَإِنْ لَمْ يَكُونُوا خَمْسِينَ رُدَّتْ عَلَيْهِمْ الْأَيْمَانُ حَتَّى يَتِمَّ خَمْسِينَ - وَلَا يَحْلِفُ فِي الْقَسَامَةِ أَقَلُّ مِنْ اثْنَيْنِ فَإِنْ كَانَ الْقَائِلُ: فُلَانٌ قَتَلَنِي، غَيْرَ بَالِغٍ، فَلَا قَسَامَةَ فِي ذَلِكَ، وَلَا قَوَدَ، وَلَا غَرَامَةَ: قَالَ: فَإِنْ نَكَلَ جَمِيعُ أَوْلِيَاءِ الْقَتِيلِ حَلَفَ الْمُدَّعَى عَلَيْهِمْ خَمْسِينَ يَمِينًا، فَإِنْ لَمْ يَبْلُغُوا خَمْسِينَ رُدَّتْ الْأَيْمَانُ عَلَيْهِمْ، فَإِنْ لَمْ يُوجَدْ إلَّا الْمُدَّعَى عَلَيْهِ وَحْدَهُ حَلَفَ خَمْسِينَ يَمِينًا وَبَرِئَ، فَإِنْ نَكَلَ أَحَدٌ مِمَّنْ لَهُ الْعَفْوُ مِنْ الْأَوْلِيَاءِ: بَطَلَتْ الْقَسَامَةُ وَوَجَبَتْ الْأَيْمَانُ عَلَى الْمُدَّعَى عَلَيْهِمْ - وَلَا قَسَامَةَ فِي قَتِيلٍ وُجِدَ فِي دَارِ قَوْمٍ، وَلَا غَرَامَةَ، وَلَا فِي دَعْوَى عَبْدٍ: أَنَّ فُلَانًا قَتَلَهُ.

L39530–39532 Similarly, if presumptive evidence is provided by women or non-upright individuals, and if they are not fifty in number, the oaths are returned to them until fifty are completed. No oath in qasāmah is sworn by fewer than two. If the declarant stating, “A certain person killed me,” is not of legal age, then there is no qasāmah, no qisas (retaliation), and no diyya (blood money). If all the legal guardians of the slain refuse to swear, the defendants swear fifty oaths. If they do not reach fifty, the oaths are returned to them. If none is found except the accused alone, he swears fifty oaths and is absolved. If any guardian entitled to pardon refuses, the qasāmah is invalidated and the prescribed penalty is incurred. Oaths are incumbent on the defendants. There is no collective oath (qasāma) for a slain person found in a tribe’s dwelling, no financial liability, and no validity to a slave’s claim that so-and-so killed him.

وَفِي دَعْوَى الْمَرِيضِ: أَنَّ فُلَانًا قَتَلَنِي خَطَأً رِوَايَتَانِ: إحْدَاهُمَا: أَنَّ فِي ذَلِكَ الْقَسَامَةَ - وَالْأُخْرَى: لَا قَسَامَةَ فِي ذَلِكَ وَلَا فِي كَافِرٍ.

L39533 Regarding the claim of a sick person that so-and-so killed him unintentionally, there are two narrations: one states that the legal procedure of *qasāmah* (collective oath-swearing) applies in that case, and the other states that there is no *qasāmah* in that case nor in cases involving a non-Muslim.

وَقَالَ الشَّافِعِيُّ: لَا قَسَامَةَ فِي دَعْوَى إنْسَانٍ: أَنَّ فُلَانًا قَتَلَنِي أَصْلًا سَوَاءٌ قَالَ عَمْدًا أَوْ خَطَأً - وَلَا غَرَامَةَ فِي ذَلِكَ - وَإِنَّمَا الْقَسَامَةُ فِي قَتِيلٍ وُجِدَ بَيْنَ دُورِ قَوْمٍ كُلُّهُمْ عَدُوٌّ لِلْمَقْتُولِ، فَادَّعَى أَوْلِيَاؤُهُ عَلَيْهِمْ، فَإِنَّ أَوْلِيَاءَ الْقَتِيلِ يَبْدَءُونَ فَيَحْلِفُ مِنْهُمْ خَمْسُونَ رَجُلًا يَمِينًا يَمِينًا: أَنَّهُمْ قَتَلُوهُ عَمْدًا أَوْ خَطَأً، فَإِنْ نَقَصَ عَدَدُهُمْ رُدَّتْ الْأَيْمَانُ، فَإِنْ لَمْ يَكُنْ إلَّا وَاحِدٌ حَلَفَ خَمْسِينَ يَمِينًا، وَاسْتُحِقَّتْ الدِّيَةُ عَلَى سُكَّانِ تِلْكَ الدُّورِ، وَلَا يُسْتَحَقُّ بِالْقَسَامَةِ قَوَدٌ أَصْلًا - وَإِنْ شَهِدَ وَاحِدٌ عَدْلٌ، أَوْ جَمَاعَةٌ مُتَوَاتِرَةٌ غَيْرُ عُدُولٍ أَنَّ فُلَانًا قَتَلَ فُلَانًا، فَتَجِبُ الْقَسَامَةُ كَمَا ذَكَرْنَا، وَالدِّيَةُ - أَوْ وُجِدَ قَتِيلٌ فِي زِحَامٍ فَالْقَسَامَةُ أَيْضًا، وَالدِّيَةُ، كَمَا ذَكَرْنَا.

L39534 Al-Shafi’i said: There is no oath-swearing whatsoever in a person’s claim that so-and-so killed him—whether he alleges intentional or accidental killing—nor is there any penalty in that matter. Oath-swearing applies only to a slain person found among the dwellings of a community entirely hostile to the deceased. If the kinsmen of the slain accuse them, the kinsmen of the slain must initiate by having fifty men from them each swear an oath that they killed him intentionally or accidentally. If their number is insufficient, the oaths are repeated proportionally. If there is only one man, he swears fifty oaths, and the blood money becomes obligatory upon the inhabitants of those dwellings. Retaliation is never incurred through oath-swearing. If a single upright witness or a large number of consistent but inadmissible witnesses testify that so-and-so killed so-and-so, oath-swearing becomes obligatory as we described, along with the blood money. If a slain person is found in a public gathering, oath-swearing and blood money also apply as we mentioned.

L39535 Our companions said: If a slain person is found in the dwelling of a people

who are his enemies, and his relatives accuse one of them, fifty of them must swear an oath. They become entitled to qisas - retaliation in kind - or diyah - blood money. There is no qasāmah - oath of collective liability - except in the case of a free Muslim.

L39536–39538 Abū Muḥammad—may Allah have mercy on him—said: These are the statements of the later jurists. We have cited from them what Allah the Exalted has facilitated. We now present the authentic, established narrations from the Messenger of Allah—peace and blessings be upon him—regarding qasāmah, all of them compiled exhaustively in one place and thoroughly investigated, so that truth may become clear from error through them. They stand as evidence for whoever adheres to their contents that he has been guided to truth—by Allah's grace—and testify against whoever opposes them that he has been facilitated toward error: as a mujtahid—if he was among the predecessors—or as a disobedient—if he was a follower—with the proof established against him. We have compiled the statements of the Companions—may Allah be pleased with them—the Successors—may Allah have mercy on them—and the subsequent jurists. We then presented the authentic ḥadīths—as Allah enabled from them—pertaining to this subject, for the rulings of qasāmah are interwoven within all these matters. It has been narrated to us through al-Bukhārī's chain: Abū Nuʿaym al-Faḍl ibn Dukayn narrated to us; Saʿīd ibn ʿUbayd narrated to us from Bashīr ibn Yasār, who asserted: A man from the Anṣār—named Sahl ibn Abī Ḥathmah—informed him... That a group from his people departed to Khaybar and dispersed there, and one of them was found slain. They said to those among whom he was discovered: "Did you kill our companion?" They replied: "We neither killed him nor know the killer." They went to the Prophet (peace be upon him) and said: "O Messenger of Allah, we went to Khaybar and found one of us slain." He declared: "The greater oath! The greater oath [al-Kasamah]!" Then he asked them: "Can you produce evidence against his killer?" They answered: "We have no evidence." He said: "Then fifty of you must swear oaths to claim compensation for your slain companion or demand retribution against his killer." They objected: "How can we swear when we witnessed nothing?" He responded: "Shall the Jews then swear fifty oaths to exonerate themselves?"

وَقَالَ أَصْحَابُنَا: إنْ وُجِدَ قَتِيلٌ فِي دَارِ قَوْمٍ أَعْدَاءٍ لَهُ، وَادَّعَى أَوْلِيَاؤُهُ عَلَى وَاحِدٍ مِنْهُمْ: حَلَفَ خَمْسُونَ مِنْهُمْ، وَاسْتَحَقُّوا الْقَوَدَ أَوْ الدِّيَةَ - وَلَا قَسَامَةَ، إلَّا فِي مُسْلِمٍ حُرٍّ.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذِهِ أَقْوَالُ الْفُقَهَاءِ الْمُتَأَخِّرِينَ قَدْ ذَكَرْنَا مِنْهَا مَا يَسَّرَ اللَّهُ تَعَالَى - وَنَذْكُرُ الْآنَ الْأَخْبَارَ الصِّحَاحَ الثَّابِتَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقَسَامَةِ مَجْمُوعَةً كُلَّهَا فِي مَكَان وَاحِد، مُسْتَقْصَاةً، لِيَلُوحَ الْحَقُّ بِهَا مِنْ الْخَطَأِ، وَلِتَكُونَ شَاهِدَةً لِمَنْ أَصَابَ مَا فِيهَا بِأَنَّهُ وُفِّقَ لِلصَّوَابِ - بِمَنِّ اللَّهِ تَعَالَى وَشَاهِدَةً لِمَنْ خَالَفَ مَا فِيهَا بِأَنَّهُ يُسِّرَ لِلْخَطَأِ مُجْتَهِدًا - إنْ كَانَ مِمَّنْ سَلَفَ، وَعَاصِيًا إنْ كَانَ مُقَلِّدًا - وَقَامَتْ الْحُجَّةُ عَلَيْهِ، وَإِنَّمَا جَمَعْنَا مَا ذَكَرْنَا مِنْ أَقْوَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمِنْ أَقْوَالِ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - وَمِنْ أَقْوَالِ الْفُقَهَاءِ بَعْدَهُمْ، ثُمَّ أَتَيْنَا بِالْأَحَادِيثِ الصِّحَاحِ مَا يَسَّرَ اللَّهُ تَعَالَى مِنْهَا، الْوَارِدَةِ فِي ذَلِكَ، لِأَنَّ أَحْكَامَ الْقَسَامَةِ مُتَدَاخِلَةٌ فِي كُلِّ ذَلِكَ: وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ - نا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ نا سَعِيدُ بْنُ عُبَيْدٍ «عَنْ بَشِيرِ بْنِ يَسَارٍ، زَعَمَ: أَنَّ رَجُلًا مِنْ الْأَنْصَارِ - يُقَالُ لَهُ: سَهْلُ بْنُ أَبِي حَثْمَةَ - أَخْبَرَهُ أَنَّ نَفَرًا مِنْ قَوْمِهِ انْطَلَقُوا إلَى خَيْبَرَ فَتَفَرَّقُوا فِيهَا، وَوُجِدَ أَحَدُهُمْ قَتِيلًا، وَقَالُوا لِلَّذِينَ وُجِدَ فِيهِمْ: قَتَلْتُمْ صَاحِبَنَا؟ قَالُوا: مَا قَتَلْنَا، وَلَا عَلِمْنَا قَاتِلًا، فَانْطَلَقُوا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: يَا رَسُولَ اللَّهِ انْطَلَقْنَا إلَى خَيْبَرَ فَوَجَدْنَا أَحَدَنَا قَتِيلًا، فَقَالَ: الْكُبْرَ الْكُبْرَ فَقَالَ لَهُمْ: تَأْتُونَ بِالْبَيِّنَةِ عَلَى مَنْ قَتَلَهُ؟ قَالُوا: مَا لَنَا بَيِّنَةٌ. قَالَ: فَتَحْلِفُونَ خَمْسِينَ يَمِينًا فَتَسْتَحِقُّونَ صَاحِبَكُمْ أَوْ قَاتِلَكُمْ. قَالُوا: كَيْفَ نَحْلِفُ وَلَمْ نَشْهَدْ؟ قَالَ: فَتُبْرِيكُمْ يَهُودُ بِخَمْسِينَ يَمِينًا؟ قَالُوا: وَكَيْفَ نَقْبَلُ أَيْمَانَ قَوْمٍ كُفَّارٍ؟ قَالُوا: لَا نَرْضَى بِأَيْمَانِ الْيَهُودِ،

They protested: "How can we accept oaths from disbelievers? We reject the oaths of Jews!" The Messenger of Allah (peace be upon him) disliked leaving the bloodshed unresolved, so he compensated it with a hundred camels from the Zakat fund.

فَكَرِهَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبْطِلَ دَمَهُ فَوَدَاهُ بِمِائَةٍ مِنْ إِبِلِ الصَّدَقَةِ» .

L39539 Through the chain of Muslim: Qutaybah ibn Saʿīd narrated to us, al-Layth ibn Saʿd narrated to us from Yaḥyā—he is Ibn Saʿīd al-Anṣārī—from Bashīr ibn Yasār from Sahl ibn Abī Ḥathmah. Yaḥyā said: "I considered he said: And from Rāfiʿ ibn Khadīj, that they both said: ʿAbdullāh ibn Sahl ibn Zayd and Muḥayyiṣah ibn Masʿūd ibn Zayd set out until they reached Khaybar, where they parted ways in that vicinity. Then, Muḥayyiṣah found ʿAbdullāh ibn Sahl slain, so he buried him. He then came to the Messenger of Allāh—peace and blessings be upon him—along with Ḥuwayyiṣah ibn Masʿūd and ʿAbd al-Raḥmān ibn Sahl—who was the youngest of the group. ʿAbd al-Raḥmān began to speak before his two companions, but the Messenger of Allāh—peace and blessings be upon him—said: 'Give precedence to the eldest in age.' So he fell silent, and his two companions spoke, and he spoke along with them. They related to the Messenger of Allāh—peace and blessings be upon him—the killing of ʿAbdullāh ibn Sahl. He said to them: 'Will you swear fifty oaths to establish your right regarding your companion or his killer?' They replied: 'How can we swear when we did not witness it?' He said: 'Then would the Jews exonerate you with fifty oaths?' They said: 'How can we accept the oaths of a disbelieving people?' When the Messenger of Allāh saw this, he gave him his blood money."

وَمِنْ طَرِيقِ مُسْلِمٍ - نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْأَنْصَارِيُّ - عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، قَالَ يَحْيَى: وَحَسِبْته قَالَ: وَعَنْ رَافِعِ بْنِ خَدِيجٍ أَنَّهُمَا قَالَا: «خَرَجَ عَبْدُ اللَّهِ بْنُ سَهْلِ بْنِ زَيْدٍ وَمُحَيِّصَةُ بْنُ مَسْعُودِ بْنِ زَيْدٍ حَتَّى إذَا كَانَا بِخَيْبَرَ تَفَرَّقَا فِي بَعْضِ مَا هُنَالِكَ، ثُمَّ إذَا مُحَيِّصَةُ يَجِدُ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَتِيلًا فَدَفَنَهُ - ثُمَّ أَقْبَلَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ وَحُوَيِّصَةُ بْنُ مَسْعُودٍ، وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ - وَكَانَ أَصْغَرَ الْقَوْمِ - فَذَهَبَ عَبْدُ الرَّحْمَنِ لِيَتَكَلَّمَ قَبْلَ صَاحِبَيْهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَبِّرْ الْكُبْرَ فِي السِّنِّ فَصَمَتَ وَتَكَلَّمَ صَاحِبَاهُ وَتَكَلَّمَ مَعَهُمَا فَذَكَرُوا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَقْتَلَ عَبْدِ اللَّهِ بْنِ سَهْلٍ فَقَالَ لَهُمْ: أَتَحْلِفُونَ خَمْسِينَ يَمِينًا فَتَسْتَحِقُّونَ صَاحِبَكُمْ أَوْ قَاتِلَكُمْ؟ قَالُوا: كَيْفَ نَحْلِفُ وَلَمْ نَشْهَدْ؟ قَالَ: فَتُبْرِيكُمْ يَهُودُ بِخَمْسِينَ يَمِينًا؟ قَالُوا: وَكَيْفَ نَقْبَلُ أَيْمَانَ قَوْمٍ كُفَّارٍ؟ فَلَمَّا رَأَى ذَلِكَ رَسُولُ اللَّهِ أَعْطَاهُ عَقْلَهُ» .

L39540–39542 From the narration of Muslim: Abdullah ibn Umar al-Qawariri reported to us, Hammad ibn Zayd reported to us, Yahya ibn Sa'id reported to us from Bashir ibn Yasar from Sahl ibn Abi Hathmah and Rafi' ibn Khadij that Muḥayyiṣah ibn Mas'ud and Abdullah ibn Sahl set out toward Khaybar and separated among the palm trees. Abdullah ibn Sahl was killed, and they accused the Jews. The kinsmen of Abd al-Rahman - his cousin Ḥuwayyiṣah and Muḥayyiṣah - came to the Prophet, peace and blessings be upon him. Abd al-Rahman spoke about his brother's matter - he being the youngest among them - so Allah's Messenger said, "Give precedence to the elder," or he said, "Let the eldest begin." Then the two of them spoke about their

وَمِنْ طَرِيقِ مُسْلِمٍ - نا عَبْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نا حَمَّادُ بْنُ زَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعِ بْنِ خَدِيجٍ «أَنَّ مُحَيِّصَةَ بْنَ مَسْعُودٍ، وَعَبْدَ اللَّهِ بْنَ سَهْلٍ انْطَلَقَا قِبَلَ خَيْبَرَ فَتَفَرَّقَا فِي النَّخْلِ فَقُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ، فَاتَّهَمُوا الْيَهُودَ فَجَاءَ إخْوَةُ عَبْدِ الرَّحْمَنِ، وَابْنُ عَمِّهِ حُوَيِّصَةُ، وَمُحَيِّصَةَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَكَلَّمَ عَبْدُ الرَّحْمَنِ فِي أَمْرِ أَخِيهِ - وَهُوَ أَصْغَرُ الْقَوْمِ - فَقَالَ رَسُولُ اللَّهِ كَبِّرْ الْكُبْرَ، أَوْ

companion's case. The Messenger of Allah, peace and blessings be upon him, said, "Shall fifty of you take an oath implicating a man among them, requiring him to pay blood money?" They replied, "A matter we did not witness - how can we swear?" He said, "Then the Jews will exonerate themselves before you." "They asked, 'By the oaths of fifty of them?' They said, 'O Messenger of Allah, how can we accept the oaths of disbelievers?' The Messenger of Allah—may Allah bless him and grant him peace—then paid the blood money for him from his own resources: one hundred camels." Sahl said, "I went intending to approach them, and a she-camel from those camels kicked me with her leg." Hammad said, "This, or something similar."

قَالَ: لِيَبْدَأْ الْأَكْبَرُ؟ فَتَكَلَّمَا فِي أَمْرِ صَاحِبِهِمْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ؟ فَقَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَحْلِفُ؟ قَالَ: فَتُبْرِيكُمْ يَهُودُ بِأَيْمَانِ خَمْسِينَ مِنْهُمْ؟ قَالُوا: يَا رَسُولَ اللَّهِ وَكَيْفَ نَقْبَلُ بِأَيْمَانِ قَوْمٍ كُفَّارٍ؟ قَالَ: فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قِبَلِهِ مِائَةً مِنْ الْإِبِلِ، قَالَ سَهْلٌ: فَدَخَلْت مُرِيدًا لَهُمْ فَرَكَضَتْنِي نَاقَةٌ مِنْ تِلْكَ الْإِبِلِ رَكْضَةً بِرِجْلِهَا» ، قَالَ حَمَّادٌ: هَذَا، أَوْ نَحْوَهُ.

L39543 Abu Muhammad—may Allah have mercy on him—said: Yahya doubted regarding Al-Layth's narration—whether he mentioned Bashir ibn Yasar and Rafiʿ ibn Khadij alongside Sahl ibn Abi Hathmah or not. However, he did not doubt Hammad ibn Zayd's narration from him, which states that Bashir narrated this report from Rafiʿ. Each of the two men is trustworthy and a memorizer, and Hammad is more precise in memorization than Al-Layth. Both narrations are authentic when considered together.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَشَكَّ يَحْيَى فِي رِوَايَةِ اللَّيْثِ: هَلْ ذَكَرَ بَشِيرَ بْنَ يَسَارٍ، وَرَافِعَ بْنَ خَدِيجٍ مَعَ سَهْلِ بْنِ أَبِي حَثْمَةَ أَوْ لَمْ يَذْكُرْ؟ وَلَمْ يَشُكَّ فِي رِوَايَةِ حَمَّادِ بْنِ زَيْدٍ عَنْهُ فِي أَنَّ رَافِعًا رَوَى عَنْهُ هَذَا الْخَبَرَ بَشِيرٌ، وَكِلَا الرَّجُلَيْنِ ثِقَةٌ، حَافِظٌ، وَحَمَّادٌ أَحْفَظُ مِنْ اللَّيْثِ، وَالرِّوَايَتَانِ مَعًا صَحِيحَتَانِ.

L39544 It was established as sound that Yahyā once doubted whether Bashīr mentioned Rāfiʿ alongside Sahl or not. And Yahyā concluded decisively on another occasion that Bashīr did mention Rāfiʿ with Sahl, and he did not doubt. This constitutes a ziyādah (addition) from Ḥammād, and the ziyādah of a trustworthy narrator (ʿadl) is accepted.

فَصَحَّ - أَنَّ يَحْيَى شَكَّ مَرَّةً: هَلْ ذَكَرَ بَشِيرٌ رَافِعًا مَعَ سَهْلٍ أَمْ لَا؟ وَقَطَعَ يَحْيَى مَرَّةً فِي أَنَّ بَشِيرًا ذَكَرَ رَافِعًا مَعَ سَهْلٍ، وَلَمْ يَشُكَّ؟ فَهِيَ زِيَادَةٌ مِنْ حَمَّادٍ، وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ.

L39545 And through the chain (ṭarīq) of Muslim, Isḥāq ibn Manṣūr narrated to us, Bashīr ibn ʿUmar narrated to us, who said: I heard Mālik ibn Anas.

وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ نا بَشِيرُ بْنُ عُمَرَ قَالَ: سَمِعْت مَالِكَ بْنَ أَنَسٍ.

L39546–39548 Abdullah ibn Rabīʿah also narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Aḥmad ibn ʿAmr ibn al-Sarḥ and Muḥammad ibn Maslamah. Aḥmad said: Muḥammad ibn Wahb narrated to us, and Muḥammad said: Ibn al-Qāsim narrated to us. Then Ibn Wahb, Ibn al-Qāsim, and Bashīr ibn ʿUmar concurred, all stating: Mālik ibn Anas narrated to us: Abū Laylā ibn ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Sahl narrated to us from Sahl ibn Abī Ḥathmah that he informed him from men among the elders of his tribe: ʿAbdullāh ibn Sahl and Muḥayyiṣah went out

وَنَاهُ أَيْضًا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ، وَمُحَمَّدُ بْنُ مَسْلَمَةَ، قَالَ أَحْمَدُ: نا مُحَمَّدُ بْنُ وَهْبٍ، وَقَالَ مُحَمَّدٌ: نا ابْنُ الْقَاسِمِ، ثُمَّ اتَّفَقَ ابْنُ وَهْبٍ، وَابْنُ الْقَاسِمِ، وَبَشِيرُ بْنُ عُمَرَ، كُلُّهُمْ يَقُولُ: نا مَالِكُ بْنُ أَنَسٍ نا أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْمِهِ: «أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ، وَمُحَيِّصَةَ، خَرَجَا إِلَى خَيْبَرَ مِنْ جُهْدٍ أَصَابَهُمَا فَأَتَى

مُحَيِّصَةُ فَأَخْبَرَ: أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَطُرِحَ فِي عَيْنٍ أَوْ فِي فَقِيرٍ، فَأَتَى يَهُودَ فَقَالَ: أَنْتُمْ وَاللَّهِ قَتَلْتُمُوهُ، قَالُوا: وَاللَّهِ مَا قَتَلْنَاهُ، ثُمَّ أَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ، فَذَكَرَ لَهُمْ ذَلِكَ، ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ حُوَيِّصَةُ - وَهُوَ أَكْبَرُ مِنْهُ - وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ فَذَهَبَ مُحَيِّصَةُ لِيَتَكَلَّمَ - وَهُوَ الَّذِي كَانَ بِخَيْبَرَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِمُحَيِّصَةَ: كَبِّرْ كَبِّرْ - يُرِيدُ السِّنَّ - فَتَكَلَّمَ حُوَيِّصَةُ، ثُمَّ تَكَلَّمَ مُحَيِّصَةُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِمَّا أَنْ يَدُوا صَاحِبَكُمْ وَإِمَّا أَنْ يُؤْذَنُوا بِحَرْبٍ، فَكَتَبَ رَسُولُ اللَّهِ إِلَيْهِمْ فِي ذَلِكَ، فَكَتَبُوا: إِنَّا وَاللَّهِ مَا قَتَلْنَاهُ، فَقَالَ رَسُولُ اللَّهِ أَتَحْلِفُونَ؟ وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ؟ قَالُوا: لَا قَالَ: فَتَحْلِفُ لَكُمْ يَهُودُ؟ قَالُوا: لَيْسُوا مُسْلِمِينَ، فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عِنْدِهِ، فَبَعَثَ إِلَيْهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِائَةَ نَاقَةٍ، حَتَّى دَخَلَتْ عَلَيْهِمْ الدَّارَ، قَالَ سَهْلٌ: فَلَقَدْ رَكَضَنِي مِنْهَا نَاقَةٌ حَمْرَاءُ» .

to Khaybar due to hardship that afflicted them. Muḥayyiṣah arrived and reported that ʿAbdullāh ibn Sahl had been killed and thrown into a spring or a dry well. He confronted the Jews, declaring: “By Allah, you killed him!” They responded: “By Allah, we did not kill him.” He then returned to his people and informed them. Afterward, he set out with his brother Ḥuwayyiṣah (the elder) and ʿAbd al-Raḥmān ibn Sahl. When Muḥayyiṣah—who had been in Khaybar—began to speak, the Messenger of Allah (peace be upon him) directed him: “Let the elder speak, let the elder speak”—intending age. Ḥuwayyiṣah spoke, followed by Muḥayyiṣah. The Messenger of Allah (peace be upon him) ruled: “Either they pay the blood money (diyah) for your companion, or they will face a declaration of war.” The Messenger wrote to them concerning this, and they replied: “By Allah, we did not kill him.” The Messenger of Allah asked: “Will you swear an oath? And do you assert your entitlement to your companion’s blood?” They refused. He inquired: “Shall the Jews swear to you?” They countered: “They are not Muslims.” Thereupon the Messenger of Allah (peace be upon him) paid the blood money (diyah) from... The Messenger of Allah—peace and blessings be upon him—sent from his possession a hundred camels to them until they reached their dwelling. Sahl said: “A red she-camel among them struck me.”

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ نا يَحْيَى بْنُ سَعِيدٍ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ قَالَ: «وُجِدَ عَبْدُ اللَّهِ بْنُ سَهْلٍ قَتِيلًا فَجَاءَ أَخُوهُ، وَحُوَيِّصَةُ، وَمُحَيِّصَةُ، وَهُمَا عَمَّا عَبْدِ اللَّهِ بْنِ سَهْلٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَهَبَ عَبْدُ الرَّحْمَنِ يَتَكَلَّمُ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكُبْرَ الْكُبْرَ، قَالُوا: يَا رَسُولَ اللَّهِ إِنَّا وَجَدْنَا عَبْدَ اللَّهِ بْنَ سَهْلٍ قَتِيلًا فِي قَلِيبٍ - يَعْنِي مِنْ قُلُبِ خَيْبَرَ - قَالَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: مَنْ تَتَّهِمُونَ؟ قَالُوا: نَتَّهِمُ يَهُودَ، قَالَ: فَتُقْسِمُونَ خَمْسِينَ يَمِينًا: أَنَّ الْيَهُودَ قَتَلَتْهُ، قَالُوا: وَكَيْفَ نُقْسِمُ عَلَى مَا لَمْ نَرَ؟ قَالَ: فَتُبْرِيكُمْ الْيَهُودُ بِخَمْسِينَ يَمِينًا: أَنَّهُمْ

L39549 From the narration of Sufyan ibn ’Uyaynah, Yahya ibn Sa’id reported from Bashir ibn Yasar from Sahl ibn Abi Hathma, who said: “Abdullah ibn Sahl was found slain. His brother, along with Huwayyisah and Muḥayyiṣah (the two uncles of Abdullah ibn Sahl), came to the Messenger of Allah (peace be upon him). His brother began to speak, but the Messenger of Allah (peace be upon him) said to him, ’Let the elder speak first!’ They said, ’O Messenger of Allah, we found Abdullah ibn Sahl slain in a well—one of the wells of Khaybar.’ The Prophet (peace be upon him) asked, ’Whom do you accuse?’ They replied, ’We accuse the Jews.’ He said, ’Will you swear fifty oaths that the Jews killed him?’ They said, ’How can we swear to what we did not witness?’ He said, ’Then let the Jews absolve themselves by swearing fifty oaths that they did not kill him.’ They said, ’How can we accept their oaths when they are disbelievers?’ So the Messenger of Allah (peace be upon him) paid his blood money from his own means.”

لَمْ يَقْتُلُوهُ، قَالُوا: وَكَيْفَ نَرْضَى بِأَيْمَانِهِمْ وَهُمْ مُشْرِكُونَ؟ فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عِنْدِهِ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ قَالَ: حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَسُلَيْمَانُ بْنُ يَسَارٍ مَوْلَى مَيْمُونَةَ زَوْجِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الْأَنْصَارِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَرَّ الْقَسَامَةَ عَلَى مَا كَانَتْ عَلَيْهِ فِي الْجَاهِلِيَّةِ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ هَاشِمٍ الْبَعْلَبَكِّيُّ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا الْأَوْزَاعِيّ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ عَنْ أُنَاسٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّ الْقَسَامَةَ كَانَتْ فِي الْجَاهِلِيَّةِ فَأَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا كَانَتْ عَلَيْهِ، وَقَضَى بِهَا بَيْنَ أُنَاسٍ مِنْ الْأَنْصَارِ فِي قَتِيلٍ ادَّعَوْهُ عَلَى يَهُودَ خَيْبَرَ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ الْأَخْبَارُ مِمَّا صَحَّتْ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقَسَامَةِ، لَمْ يَصِحَّ عَنْهُ إلَّا هِيَ أَصْلًا.

[مَسْأَلَةٌ هَلْ يَجِبُ الْحُكْمُ بِالْقَسَامَةِ]

٢١٥٣ - مَسْأَلَةٌ: هَلْ يَجِبُ الْحُكْمُ بِالْقَسَامَةِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَذَكَرْنَا قَوْلَ ابْنِ عَبَّاسٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ، فَنَظَرْنَا فِيمَا يُمْكِنُ أَنْ يُحْتَجَّ بِهِ؟

L39550 Via the chain of Muslim: Abu al-Tahir narrated to us, Ibn Wahb narrated to us, Yunus informed me from Ibn Shihab, who said: Abu Salama ibn Abd al-Rahman and Sulayman ibn Yasar, the freed slave of Maymunah, the wife of the Prophet (peace be upon him), narrated to me from a man among the Companions of the Messenger of Allah (peace and blessings be upon him) from the Ansar: "That the Messenger of Allah (peace and blessings be upon him) confirmed al-qasamah as it was during the Age of Ignorance."[3]

L39551 From the path of Ahmad ibn Shu'ayb: Muhammad ibn Hashim al-Ba'labakkī reported to us, from al-Walid ibn Muslim who reported to us from al-Awzā'ī, from Ibn Shihāb, from Abū Salamah ibn 'Abd al-Raḥmān ibn 'Awf and Sulaymān ibn Yasār, from some Companions of the Messenger of Allah (peace and blessings be upon him): "The practice of qasāmah existed in the pre-Islamic era, and the Messenger of Allah (peace and blessings be upon him) affirmed it as it was. He ruled with it between some people of the Ansar concerning a slain person whom they accused the Jews of Khaybar of killing."

L39552 Abū Muḥammad—may Allah have mercy on him—said: "These reports are from what has been authenticated of the Prophet—peace and blessings be upon him—regarding *qasāmah*; none have been authentically established from him at all except these fundamentally."

L39553 ## The Issue: Is Ruling by *Qasāmah* Obligatory?

L39554 2153 - Issue: Is judgment by *qasāmah* obligatory or not? Abu Muhammad, may Allah have mercy on him, said: We mentioned the statement of Ibn Abbas and Salim ibn Abdullah ibn Umar ibn al-Khattab, and then examined what could be cited as evidence.

[3] **Hadith references (L39550):** Sunan an-Nasai 4707; Sahih Muslim 1670a.

فَوَجَدْنَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ نا ابْنُ وَهْبٍ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعَى نَاسٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ» . وَقَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» . وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - لِلْمُدَّعِي «بَيِّنَتُكَ أَوْ يَمِينُهُ لَيْسَ لَكَ إلَّا ذَلِكَ» .

L39555–39556 We found through the chain narrated by Muslim: Abu al-Tahir narrated to us, from Ibn Wahb, from Ibn Jurayj, from Ibn Abi Mulaykah, from Ibn Abbas that the Prophet - peace be upon him - said: "If people were ruled in favor of merely based on their claims, some would falsely claim the lives of men and seize their wealth. But the oath rests upon the defendant." And his statement - peace be upon him - "Your blood and your wealth are sacred to you." And his statement - peace be upon him - to the claimant: "Either present your proof or [require] his oath; you have no other option."[4]

قَالُوا: فَقَدْ سَوَّى اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْنَ تَحْرِيمِ الدِّمَاءِ وَالْأَمْوَالِ، وَبَيْنَ الدَّعْوَى فِي الدِّمَاءِ وَالْأَمْوَالِ، وَأَبْطَلَ كُلَّ ذَلِكَ، وَلَمْ يَجْعَلْهُ إلَّا بِالْبَيِّنَةِ أَوْ الْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ، فَوَجَبَ أَنْ يَكُونَ الْحُكْمُ فِي كُلِّ ذَلِكَ سَوَاءً لَا يَفْتَرِقُ فِي شَيْءٍ أَصْلًا: لَا فِي مَنْ يَحْلِفُ، وَلَا فِي عَدَدِ يَمِينٍ، وَلَا فِي إسْقَاطِ الْغَرَامَةِ، إلَّا بِالْبَيِّنَةِ وَلَا مَزِيدَ.

L39557 They said: Indeed, Allah the Exalted has established through the words of His Prophet—peace and blessings be upon him—an equivalence between the prohibition of bloodshed and wealth, and claims regarding bloodshed and wealth. He nullified all that, ordaining its establishment solely through evidence or the oath of the defendant. Thus, the ruling must be uniform in all such matters without divergence in any respect: neither regarding the one who must swear, nor the number of oaths, nor the waiver of the penalty—except through evidence and nothing more.

وَهَذَا كُلُّهُ حَقٌّ، إلَّا أَنَّهُمْ تَرَكُوا مَا لَا يَجُوزُ تَرْكُهُ مِمَّا فَرَضَ اللَّهُ تَعَالَى عَلَى النَّاسِ إضَافَتَهُ إلَى مَا ذَكَرُوا، وَهُوَ أَنَّ الَّذِي حَكَمَ بِمَا ذَكَرُوا، وَهُوَ الْمُرْسَلُ إلَيْنَا مِنْ اللَّهِ تَعَالَى هُوَ الَّذِي حَكَمَ بِالْقَسَامَةِ، وَفَرَّقَ بَيْنَ حُكْمِهَا وَبَيْنَ سَائِرِ الدِّمَاءِ وَالْأَمْوَالِ الْمُدَّعَاةِ، وَلَا يَحِلُّ أَخْذُ شَيْءٍ مِنْ أَحْكَامِهِ وَتَرْكُ سَائِرِهَا، إذْ كُلُّهَا مِنْ عِنْدِ اللَّهِ تَعَالَى، وَكُلُّهَا حَقٌّ، وَفَرَضَ الْوُقُوفَ عِنْدَهُ، وَالْعَمَلَ بِهِ وَلَيْسَ بَعْضُ أَحْكَامِهِ - عَلَيْهِ السَّلَامُ - أَوْلَى بِالطَّاعَةِ مِنْ بَعْضٍ، وَمَنْ خَالَفَ هَذَا فَقَدْ دَخَلَ تَحْتَ الْمَعْصِيَةِ، وَتَحْتَ قَوْله تَعَالَى {أَفَتُؤْمِنُونَ بِبَعْضِ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ} [البقرة: ٨٥] .

L39558 All of this is true, except that they neglected what Allah Almighty has mandated people to ascribe to Him—that which He obligated them to uphold alongside what they mentioned. This refers to the fact that the One who decreed what they mentioned—the Messenger sent to us by Allah—is the same who instituted qasāmah (collective oaths in homicide cases), distinguishing its ruling from other claimed cases of bloodshed and property disputes. It is impermissible to adopt part of his rulings while abandoning others, for all of them originate from Allah Almighty, all are true, and He has mandated adherence to them and implementation of them. No part of the rulings of the Prophet—peace be upon him—holds greater claim to obedience than another. Whoever contravenes this has entered into disobedience and fallen under the condemnation of Allah's words: *"Do you believe in part of the Scripture and disbelieve in another part?"* [Al-Baqarah: 85].[5]

[4] **Hadith references (L39556):** Sahih Muslim 1711a; Bulugh al-Maram 1423; Mishkat al-Masabih 3758.

[5] **Qur'an references (L39558):** Qur'an 2:85 (Al-Baqarah).

وَلَا فَرْقَ بَيْنَ مَنْ تَرَكَ حَدِيثَ «بَيِّنَتُكَ أَوْ يَمِينُهُ» لِحَدِيثِ الْقَسَامَةِ، وَبَيْنَ مَنْ تَرَكَ حَدِيثَ الْقَسَامَةِ لِتِلْكَ الْأَحَادِيثِ. فَإِنْ قَالُوا: الدِّمَاءُ حُدُودٌ، وَلَا يَمِينَ فِي الْحُدُودِ؟ قِيلَ لَهُمْ: مَا هِيَ مِنَ الْحُدُودِ، لِأَنَّ الْحُدُودَ لَيْسَتْ مَوْكُولَةً إِلَى اخْتِيَارِ أَحَدٍ - إِنْ شَاءَ أَقَامَهَا، وَإِنْ شَاءَ عَطَّلَهَا - بَلْ هِيَ وَاجِبَةٌ لِلَّهِ تَعَالَى وَحْدَهُ، لَا خِيَارَ فِيهَا لِأَحَدٍ، وَلَا حُكْمَ.

L39559–39561 There is no distinction between one who disregards the narration "your evidence or his oath" in favor of the narration on qasāmah (collective oaths) and one who disregards the narration on qasāmah in favor of those narrations. If they say: "Cases involving bloodshed are Hudūd (prescribed punishments), and an oath is not applicable in Hudūd," they are told: "These are not part of Hudūd, for Hudūd are not left to the discretion of anyone—if..." If He wills, He establishes it, and if He wills, He nullifies it—rather, it is an obligation mandated by Allah, the Exalted, alone; no one has any choice, nor any right to legislate.

وَأَمَّا الدِّمَاءُ فَهِيَ مَوْكُولَةٌ إِلَى اخْتِيَارِ الْوَلِيِّ - إِنْ شَاءَ اسْتَقَادَ، وَإِنْ شَاءَ عَفَا - فَبَطَلَ أَنْ تَكُونَ مِنَ الْحُدُودِ، وَصَحَّ أَنَّهَا مِنْ حُقُوقِ النَّاسِ - وَفَسَدَ قَوْلُ مَنْ فَرَّقَ بَيْنَهَا وَبَيْنَ حُقُوقِ النَّاسِ مِنَ الْأَمْوَالِ وَغَيْرِهَا، لَا حَيْثُ فَرَّقَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - بَيْنَ الدِّمَاءِ وَالْحُقُوقِ وَغَيْرِهَا، وَلَيْسَ ذَلِكَ إِلَّا حَيْثُ الْقَسَامَةُ فَقَطْ.

L39562 As for bloodshed, it is entrusted to the guardian's discretion—if he wills, he may demand retribution, and if he wills, he may pardon—thus invalidating its inclusion among the prescribed punishments (Hudud) and establishing it as part of people's rights. The claim of those who differentiate between bloodshed and the rights of people concerning wealth and other matters is invalid, for this differentiation does not occur in the cases where Allah the Exalted and His Messenger—peace be upon him—distinguished between bloodshed, people's rights, and other matters. This distinction applies solely in the context of Qasamah (collective oaths).

وَأَمَّا مَنْ جَعَلَ الْيَمِينَ فِي دَعْوَى الدَّمِ خَمْسِينَ يَمِينًا وَلَا بُدَّ - وَلَا أَقَلَّ - فَلَا حُجَّةَ لَهُمْ، إِلَّا أَنَّهُمْ قَاسُوا كُلَّ دَعْوَى فِي الدَّمِ عَلَى الْقَسَامَةِ - وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، لِأَنَّهُمْ لَمْ يَحْكُمُوا لِلدَّعْوَى الْمُجَرَّدَةِ فِي الدَّمِ بِحُكْمِ الْقَسَامَةِ فِي غَيْرِ هَذَا الْمَوْضِعِ، لِأَنَّ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ يَرَوْنَ فِي الْقَسَامَةِ تَبْرِئَةَ الْمُدَّعِينَ، وَلَا يَرَوْنَ تَبْرِئَتَهُمْ فِي دَعْوَى الدَّمِ الْمُجَرَّدَةِ، وَالْحَنَفِيُّونَ يَرَوْنَ إِيجَابَ الْغَرَامَةِ مَعَ الْأَيْمَانِ فِي الْقَسَامَةِ، وَلَا يَرَوْنَ ذَلِكَ فِي دَعْوَى الدَّمِ الْمُجَرَّدَةِ - فَصَحَّ أَنَّهُمْ قَدْ تَرَكُوا قِيَاسَ دَعْوَى الدَّمِ الْمُجَرَّدَةِ عَلَى الْقَسَامَةِ فِي شَيْءٍ مِنْ أَحْكَامِهَا، إِلَّا فِي عَدَدِ الْأَيْمَانِ فَقَطْ - فَظَهَرَ بِذَلِكَ بَاطِلُ قَوْلِهِمْ.

L39563 As for those who set the oath in a blood claim as fifty oaths necessarily—with no fewer—they have no valid proof except that they analogized every blood claim to sworn collective testimony (qasāmah). All analogy in its entirety is invalid, for they never applied the rulings of qasāmah to mere blood claims in other contexts. The Mālikīs and Shāfiʿīs hold that qasāmah results in the claimants' absolution, yet do not consider their absolution valid in mere blood claims. The Ḥanafīs hold that financial liability is imposed alongside oaths in qasāmah, yet do not apply this in mere blood claims. Thus it is confirmed that they rejected the analogy of mere blood claims to qasāmah in all its rulings except solely the number of oaths—thereby exposing the falsity of their claim.

L39564 In our school, the position is as we have stated: evidence in all claims—whether involving bloodshed or otherwise—is entirely equal, and the oath in all such matters is the same—a single oath only—upon the defendant, except

in cases of adultery and *qasāmah*. For adultery, four witnesses or more are required, no fewer, due to the explicit textual ruling specific to this matter. For *qasāmah*, fifty oaths are required, no fewer, similarly due to an explicit textual ruling.

وَالْقَوْلُ عِنْدَنَا هُوَ مَا قُلْنَاهُ مِنْ أَنَّ الْبَيِّنَةَ فِي الدَّعَاوَى كُلِّهَا دِمَاءً كَانَتْ أَوْ غَيْرَهَا سَوَاءٌ سَوَاءٌ، وَالْيَمِينُ فِي كُلِّ ذَلِكَ سَوَاءٌ - يَمِينٌ وَاحِدَةٌ فَقَطْ - عَلَى مَنْ ادُّعِيَ عَلَيْهِ إلَّا فِي الزِّنَى، وَالْقَسَامَةِ، فَفِي الزِّنَى أَرْبَعَةٌ مِنْ الشُّهُودِ فَصَاعِدًا، لَا أَقَلُّ؛ لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ خَاصَّةً، وَفِي الْقَسَامَةِ خَمْسُونَ يَمِينًا لَا أَقَلُّ لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ.

L39565 Everything else besides that remains under the general scope of the statement of the Messenger of Allah (peace be upon him): "Your evidence or the defendant's oath—there is no other option for you," and his statement (peace be upon him): "If people were granted their demands based solely on their claims, some would falsely claim men's lives and wealth, but the oath is incumbent upon the defendant." Therefore, nothing is exempt from this principle except what is excluded by scriptural evidence.

وَبَقِيَ كُلُّ مَا عَدَا ذَلِكَ عَلَى عُمُومِ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «بَيِّنَتُك أَوْ يَمِينُهُ لَيْسَ لَكَ إلَّا ذَلِكَ» . وَعَلَى قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعَى قَوْمٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى مَنْ ادُّعِيَ عَلَيْهِ» فَلَا يَخْرُجُ مِنْ هَذَا إلَّا مَا أَخْرَجَهُ النَّصُّ.

L39566–39568 Then we examined the statement of those who claim that qasāmah (collective oath-swearing) applies based on a sick person's allegation that a specific individual killed him, but we found no valid basis whatsoever for their position; except the narration transmitted by Aḥmad ibn ʿUmar, from ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl, from Ibrāhīm ibn Muḥammad al-Dīnawarī, from Muḥammad ibn Aḥmad ibn al-Jahm, from Ismāʿīl ibn Isḥāq, from Ibn Abī Uways, from his brother, from Sulaymān ibn Bilāl, from Ṣāliḥ ibn Kayṣān, from Ibn Shihāb, who narrated to me that... Umar ibn Abd al-Aziz summoned him and said: "What is your opinion regarding this oath of collective liability?" I replied: "It was a practice from the pre-Islamic era, and the Messenger of Allah—peace and blessings be upon him—upheld it to emphasize the sanctity of blood, establishing it as a safeguard for their lives. However, according to its established precedent and what has been transmitted to us about it: If the slain person speaks, his family is absolved; but if he does not speak, the defendants must swear an oath—and that was the practice of Umar ibn al-Khattab. This is what we have found people acting upon."

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّ الْقَسَامَةَ تَكُونُ بِدَعْوَى الْمَرِيضِ أَنَّ فُلَانًا قَتَلَهُ، فَلَمْ نَجِدْ لَهُمْ شُبْهَةً أَصْلًا، إلَّا مَا ناه أَحْمَدُ بْنُ عُمَرَ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا إسْمَاعِيلُ بْنُ إسْحَاقَ نا ابْنُ أَبِي أُوَيْسٍ نا أَخِي عَنْ سُلَيْمَانَ بْنِ بِلَالٍ عَنْ صَالِحِ بْنِ كَيْسَانَ أَخْبَرَنِي ابْنُ شِهَابٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ دَعَاهُ فَقَالَ لَهُ: مَا عِنْدَك فِي هَذِهِ الْقَسَامَةِ؟ فَقُلْت لَهُ: كَانَتْ مِنْ أَمْرِ الْجَاهِلِيَّةِ فَأَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَعْظِيمًا لِلدِّمَاءِ، وَجَعَلَهَا سُتْرَةً لِدِمَائِهِمْ، وَلَكِنْ مِنْ سُنَّتِهَا وَمَا بَلَغَنَا فِيهَا: أَنَّ الْقَتِيلَ إذَا تَكَلَّمَ بَرِئَ أَهْلُهُ، وَإِنْ لَمْ يَتَكَلَّمْ حَلَفَ الْمُدَّعَى عَلَيْهِمْ - وَذَلِكَ فِعْلُ عُمَرَ بْنِ الْخَطَّابِ، وَأَنَّ ذَلِكَ الَّذِي أَدْرَكْنَا النَّاسَ عَلَيْهِ.

L39569 Abu Muhammad said: The proponents of this statement have exceeded in number and brought forth matters whose latter part makes one forget the former, to the extent that the ignorant one is deluded into thinking they have

produced something—while they have produced nothing at all. This is an invalid chain, for it is mursal.

قَالَ أَبُو مُحَمَّد: إِنَّ أَهْلَ هَذِهِ الْمَقَالَةِ أَكْثَرُوا وَأَتَوْا بِمَا يُنْسِي آخِرُهُ أَوَّلَهُ، حَتَّى يَغْتَرَّ الْجَاهِلُ فَيَظُنَّ أَنَّهُمْ أَتَوْا بِشَيْءٍ، وَهُمْ لَمْ يَأْتُوا بِشَيْءٍ أَصْلًا، وَهَذَا سَنَدٌ فَاسِدٌ، لِأَنَّهُ مُرْسَلٌ.

L39570 In its chain of transmission is Abu Bakr ibn Abi Uways, and Al-Bukhari cited him in his collection. However, Al-Mawsili, the Ḥāfiẓ (memorizer) Al-Asadi, mentioned: "Yusuf ibn Muhammad reported to him that Ibn Abi Uways used to fabricate hadiths, and this is a grave matter." Nevertheless, the mursal transmission suffices for this report.

وَفِي إِسْنَادِهِ أَبُو بَكْرِ بْنُ أَبِي أُوَيْسٍ وَقَدْ خَرَّجَ عَنْهُ الْبُخَارِيُّ، إِلَّا أَنَّ الْمَوْصِلِيَّ الْحَافِظَ الْأَسَدِيَّ ذَكَرَ: أَنَّ يُوسُفَ بْنَ مُحَمَّدٍ أَخْبَرَهُ أَنَّ ابْنَ أَبِي أُوَيْسٍ كَانَ يَضَعُ الْحَدِيثَ، وَهَذِهِ عَظِيمَةٌ، إِلَّا أَنَّ الْإِرْسَالَ يَكْفِي فِي هَذَا الْخَبَرِ.

L39571 Even if it were authentically transmitted, they would have no basis for it, for it contains nothing from the Prophet—peace be upon him—indicating that he ruled by qasamah regarding claims made on behalf of the slain. Rather, it states that this was a practice from the pre-Islamic era which Allah's Messenger—peace be upon him—upheld to honor the sanctity of blood, and we do not deny this. Since it is not established from the Prophet—peace be upon him—it holds no authority. Moreover, the Maliki school opposes this ruling and do not recognize qasamah at all if no one speaks.

وَلَوْ صَحَّ مُسْنَدًا لَمْ يَكُنْ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّهُ لَيْسَ فِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَضَى بِالْقَسَامَةِ فِيمَا يَدَّعِيهِ الْمَقْتُولُ، وَإِنَّمَا فِيهِ: أَنَّهَا كَانَتْ مِنْ أَمْرِ الْجَاهِلِيَّةِ فَأَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَعْظِيمًا لِلدِّمَاءِ - وَنَحْنُ لَا نُنْكِرُ هَذَا، فَإِذَا لَمْ يَكُنْ عَنِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - فَلَا حُجَّةَ فِيهِ - وَأَنَّ الْمَالِكِيِّينَ مُخَالِفُونَ لِهَذَا الْحُكْمِ، وَلَا يَرَوْنَ فِيهِ قَسَامَةً أَصْلًا إِذَا لَمْ يَتَكَلَّمْ.

L39572–39574 They recounted—as transmitted by Hishām ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Muḥammad ibn Yaḥyā ibn ʿAbdillāh, from Abū Maʿmar al-Baṣrī, from ʿAbd al-Wārith, from Fiṭr, Abū al-Haytham, from Abū Yazīd al-Madanī, from ʿIkrimah, from Ibn ʿAbbās, who said: The first instance of qasāmah occurred in the pre-Islamic era. A man from Banū Hāshim was hired by a man from Quraysh of another clan. He traveled with him among his camels. A man from Banū Hāshim passed by, the strap of his saddlebag having snapped. He pleaded, "Give me a hobble to secure the strap of my saddlebag, to prevent the camels from scattering." So he gave him a hobble to fasten his saddlebag. When they halted, all camels were tethered except one. The employer asked, "Why is this camel untethered among the others?" He replied, "It has no hobble." He demanded, "Where is its hobble?" He explained, "A man from Banū Hāshim passed by me—his saddlebag's strap had torn—and sought help. He said, 'Give me a hobble to secure my saddle-

وَذَكَرُوا - مَا نَاهِ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ نا أَبُو مَعْمَرٍ الْبَصْرِيُّ نا عَبْدُ الْوَارِثِ نا فِطْرٌ أَبُو الْهَيْثَمِ نا أَبُو يَزِيدَ الْمَدَنِيُّ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: أَوَّلُ الْقَسَامَةِ كَانَتْ فِي الْجَاهِلِيَّةِ، كَانَ رَجُلٌ مِنْ بَنِي هَاشِمٍ اسْتَأْجَرَهُ رَجُلٌ مِنْ قُرَيْشٍ مِنْ نَخْذٍ أُخْرَى فَانْطَلَقَ مَعَهُ فِي إِبِلِهِ، فَمَرَّ رَجُلٌ مِنْ بَنِي هَاشِمٍ قَدْ انْقَطَعَتْ عُرْوَةُ جُوَالِقِهِ؟ فَقَالَ: أَعْثِنِي بِعِقَالٍ أَشُدُّ بِهِ عُرْوَةَ جُوَالِقِي لَا تَنْفِرُ الْإِبِلُ، فَأَعْطَاهُ عِقَالًا يَشُدُّ بِهِ جُوَالِقَهُ، فَلَمَّا نَزَلُوا عُقِلَتْ الْإِبِلُ إِلَّا بَعِيرًا وَاحِدًا، فَقَالَ الَّذِي اسْتَأْجَرَهُ: مَا شَأْنُ هَذَا الْبَعِيرِ لَمْ يُعْقَلْ مِنْ بَيْنِ الْإِبِلِ؟ قَالَ: لَيْسَ لَهُ عِقَالٌ، قَالَ فَأَيْنَ عِقَالُهُ؟ قَالَ: مَرَّ بِي رَجُلٌ مِنْ بَنِي هَاشِمٍ قَدْ انْقَطَعَتْ عُرْوَةُ

bag's strap, to prevent the camels from scattering,' so I gave him his hobble." Then he struck him with a stick that carried his destined death. A Yemeni man passed by and asked, "Will you attend the pilgrimage gathering?" He answered, "I do not plan to attend, but I might." The Yemeni said, "Will you convey a timeless message on my behalf?" He agreed. The Yemeni instructed, "If you attend the gathering, proclaim: 'O clan of Quraysh!' When they respond..." Then call out: "O clan of Banu Hashim!" When they answer, ask for Abu Talib and inform him: "So-and-so killed me over a blood-money guarantee, and the hired man died." When the one who had hired him arrived, Abu Talib came to him and said: "What happened to our companion?" He replied: "He fell ill and I cared for him properly, then died and I undertook his burial." Abu Talib asked: "Did you do this?" After some time had passed, the Yamani man entrusted with delivering the message arrived during the pilgrimage season. He called: "O people of Quraysh!" They responded: "Here are Quraysh." He called: "O Banu Hashim!" They said: "Here are Banu Hashim." He asked: "Where is Abu Talib?" They replied: "This is Abu Talib." He said: "So-and-so commanded me to convey his message: 'So-and-so killed him over a blood-money guarantee.'" Abu Talib approached him and said: "Choose one of three options: If you wish, pay a diyah of one hundred camels, for you killed our companion by mistake. If you prefer, let fifty of your tribesmen swear they did not kill him. If you refuse, we will kill you in retaliation." The man went to his people and informed them. They asked: "Should we swear?" A woman from Banu Hashim married to one of them came to Abu Talib and said: "O Abu Talib, I wish you would count my son as one of the fifty men, and not subject his oath to where oaths are formally administered." He agreed. A man from them approached and said: "O Abu Talib, you seek fifty men to swear instead of accepting one hundred camels—each man substituting for two camels. Here are two camels—accept them from me and do not subject my oath to where oaths are formally administered." He accepted them. Forty-eight men came forward to swear. Ibn Abbas said: "By Him in whose Hand my soul rests, before a year had passed, not a single one of the forty-eight remained with an eye that could blink." Abu Muhammad—may Allah have mercy on him—added: They linked this account to the hadith we previously mentioned in the chapter on

جُوَالِقِهِ فَاسْتَغَاثَنِي؟ فَقَالَ: أَغِثْنِي بِعِقَالٍ أَشُدُّ بِهِ عُرْوَةَ جُوَالِقِي لَا تَنْفِرُ الْإِبِلُ، فَأَعْطَيْته عِقَالَهُ، فَخَذَفَهُ بِعَصًا كَانَ فِيهِ أَجَلُهُ، فَمَرَّ بِهِ رَجُلٌ مِنْ أَهْلِ الْيَمَنِ فَقَالَ: أَتَشْهَدُ الْمَوْسِمَ؟ قَالَ: مَا أَشْهَدُ وَرُبَّمَا أَشْهَدُ. قَالَ: هَلْ أَنْتَ عَنِّي مُبَلِّغٌ رِسَالَةً مِنْ الدَّهْرِ؟ قَالَ: نَعَمْ، قَالَ: إذَا شَهِدْت الْمَوْسِمَ فَنَادِ: يَا آلَ قُرَيْشٍ، فَإِذَا أَجَابُوكَ فَنَادِ: يَا آلَ بَنِي هَاشِمٍ، فَإِذَا أَجَابُوك، فَسَلْ عَنْ أَبِي طَالِبٍ فَأَخْبِرْهُ: أَنَّ فُلَانًا قَتَلَنِي فِي عِقَالٍ وَمَاتَ الْمُسْتَأْجَرُ. فَلَمَّا قَدِمَ الَّذِي اسْتَأْجَرَهُ أَتَاهُ أَبُو طَالِبٍ، فَقَالَ: مَا فَعَلَ صَاحِبُنَا؟ قَالَ: مَرِضَ فَأَحْسَنْت الْقِيَامَ عَلَيْهِ، ثُمَّ مَاتَ فَوَلَّيت دَفْنَهُ، فَقَالَ: أَهَلْ ذَلِكَ مِنْك؟ فَمَكَثَ حِينًا - ثُمَّ إنَّ الرَّجُلَ الْيَمَانِيَّ الَّذِي كَانَ أَوْصَى إلَيْهِ أَنْ يُبَلِّغَ عَنْهُ وَافَى الْمَوْسِمَ، قَالَ: يَا آلَ قُرَيْشٍ؟ فَقَالُوا: هَذِهِ قُرَيْشٌ، قَالَ: يَا بَنِي هَاشِمٍ، قَالُوا: هَذِهِ بَنُو هَاشِمٍ، قَالَ: أَيْنَ أَبُو طَالِبٍ؟ قَالُوا: هَذَا أَبُو طَالِبٍ، قَالَ: أَمَرَنِي فُلَانٌ أَنْ أُبَلِّغَك رِسَالَتَهُ: أَنَّ فُلَانًا قَتَلَهُ فِي عِقَالٍ، فَأَتَاهُ أَبُو طَالِبٍ فَقَالَ: اخْتَرْ مِنَّا إحْدَى ثَلَاثٍ إنْ شِئْت أَنْ تُودِيَ مِائَةً مِنْ الْإِبِلِ فَإِنَّك قَتَلْت صَاحِبَنَا خَطَأً، وَإِنْ شِئْت حَلَفَ خَمْسُونَ مِنْ قَوْمِك أَنَّك لَمْ تَقْتُلْهُ، فَإِنْ أَبَيْت قَتَلْنَاك بِهِ، فَأَتَى قَوْمَهُ فَذَكَرَ ذَلِكَ لَهُمْ، فَقَالُوا: نَحْلِفُ؟ فَأَتَتْهُ امْرَأَةٌ مِنْ بَنِي هَاشِمٍ كَانَتْ تَحْتَ رَجُلٍ مِنْهُمْ قَدْ وَلَدَتْ لَهُ، فَقَالَتْ: يَا أَبَا طَالِبٍ أُحِبُّ أَنْ تُجِيزَ ابْنِي هَذَا بِرَجُلٍ مِنْ الْخَمْسِينَ، وَلَا تُصْبِرْ يَمِينَهُ حَيْثُ تُصْبَرُ الْأَيْمَانُ؟ فَفَعَلَ، فَأَتَاهُ رَجُلٌ مِنْهُمْ فَقَالَ: يَا أَبَا طَالِبٍ أَرَدْت خَمْسِينَ رَجُلًا أَنْ يَحْلِفُوا مَكَانَ مِائَةٍ مِنْ الْإِبِلِ يُصِيبُ كُلُّ رَجُلٍ بَعِيرَانِ، فَهَذَانِ بَعِيرَانِ فَاقْبَلْهُمَا عَنِّي وَلَا تُصْبِرْ يَمِينِي حَيْثُ تُصْبَرُ الْأَيْمَانُ؟ فَقَبِلَهُمَا، وَجَاءَ ثَمَانِيَةٌ وَأَرْبَعُونَ رَجُلًا حَلَفُوا - قَالَ ابْنُ عَبَّاسٍ: فَوَالَّذِي نَفْسِي بِيَدِهِ مَا حَالَ الْحَوْلُ وَمِنْ الثَّمَانِيَةِ

authenticated narrations from the Messenger of Allah regarding qasāmah—that qasāmah existed in the pre-Islamic era and the Prophet upheld it as it was, ruling with it between some Ansar claimants and the Jews of Khaybar regarding a slain person they alleged was killed by them. This provides no proof for their position—rather, it is proof against them, for the qasāmah the Prophet applied concerned a discovered corpse, not an unsubstantiated claim that so-and-so killed someone. Thus, this refutes their argument.

وَأَرْبَعِينَ عَيْنٌ تَطْرِفُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَضَافُوا إِلَى هَذَا الْخَبَرِ الْحَدِيثَ الَّذِي قَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِأَوْرَاقٍ فِي بَابِ الْأَحَادِيثِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقَسَامَةِ، وَهُوَ أَنَّ الْقَسَامَةَ كَانَتْ فِي الْجَاهِلِيَّةِ فَأَقَرَّهَا رَسُولُ اللَّهِ عَلَى مَا كَانَتْ عَلَيْهِ فِي الْجَاهِلِيَّةِ وَقَضَى بِهَا بَيْنَ نَاسٍ مِنْ الْأَنْصَارِ فِي قَتِيلٍ ادَّعَوْهُ عَلَى يَهُودَ خَيْبَرَ - وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ صِفَةَ الْقَسَامَةِ الَّتِي حَكَمَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ نَاسٍ مِنْ الْأَنْصَارِ فِي قَتِيلٍ - ادَّعَوْهُ عَلَى يَهُودَ قَدْ ذَكَرْنَاهَا وَإِنَّمَا هِيَ فِي قَتِيلٍ وُجِدَ، لَا فِي مُصَابٍ ادَّعَى أَنَّ فُلَانًا قَتَلَهُ - فَهَذَا حُجَّةٌ عَلَيْهِمْ.

L39575 As for this hadith of Ibn Abbas, all of it stands against them, not in their favor. Even if that narration were considered authoritative evidence, they have contradicted it in three instances, and there is absolutely no authoritative evidence in it for them in any respect.

وَأَمَّا حَدِيثُ ابْنِ عَبَّاسٍ هَذَا، فَهُوَ كُلُّهُ عَلَيْهِمْ، لَا لَهُمْ، وَلَئِنْ كَانَ ذَلِكَ الْخَبَرُ حُجَّةً، فَلَقَدْ خَالَفُوهُ فِي ثَلَاثَةِ مَوَاضِعَ، وَمَا فِيهِ لَهُمْ حُجَّةٌ أَصْلًا فِي شَيْءٍ.

L39576 Because the statement of that slain person was not substantiated by two witnesses; it was presented by a single man, and they do not accept *qasāmah* in such a case.

لِأَنَّ قَوْلَ ذَلِكَ الْمَقْتُولِ لَمْ يَتَبَيَّنْ بِشَاهِدَيْنِ، وَإِنَّمَا أَتَى بِهِ رَجُلٌ وَاحِدٌ - وَهُمْ لَا يَرَوْنَ الْقَسَامَةَ فِي مِثْلِ هَذَا.

L39577–39578 And that Abū Ṭālib initiated the case by imposing oaths upon the defendants—and they do not support this.

وَأَنَّ أَبَا طَالِبٍ بَدَأَ الْمُدَّعَى عَلَيْهِمْ بِالْأَيْمَانِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

L39579 And that Abu Talib affirmed that the Qurayshi man had killed the Hashimi man by mistake, then said to him: “If you refuse to pay the blood money or refuse the option of fifty men from your tribe swearing an oath, we will kill you in retaliation for it”—though they do not recognize lethal retribution for accidental killing.

وَأَنَّ أَبَا طَالِبٍ أَقَرَّ: أَنَّ ذَلِكَ الْقُرَشِيَّ قَتَلَ الْهَاشِمِيَّ خَطَأً، ثُمَّ قَالَ لَهُ: فَإِنْ أَبَيْت مِنْ الدِّيَةِ، أَوْ مِنْ أَنْ يَحْلِفَ خَمْسُونَ مِنْ قَوْمِك قَتَلْنَاك بِهِ - وَهُمْ لَا يَرَوْنَ الْقَوَدَ فِي قَتْلِ الْخَطَأِ.

L39580 It is astonishing that they cite a report as evidence—they are the first to oppose it. As for us, we do not deny that qasāmah existed in the pre-Islamic era in the case where a slain person is found, and that the Messenger of Allah—peace and blessings be upon him—sanctioned it as such. Rather, this

is a truth in our view due to the report's authenticity regarding that matter, and success is from Allah, the Exalted.

فَمِنْ الْعَجَبِ احْتِجَاجُهُمْ بِخَبَرٍ: هُمْ أَوَّلُ مُخَالِفٍ لَهُ، وَأَمَّا نَحْنُ فَلَا نُنْكِرُ أَنْ تَكُونَ الْقَسَامَةُ كَانَتْ فِي الْجَاهِلِيَّةِ فِي الْقَتِيلِ يُوجَدُ فَأَقَرَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ذَلِكَ، بَلْ هَذَا حَقٌّ عِنْدَنَا لِصِحَّةِ الْخَبَرِ بِذَلِكَ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39581 They also mentioned—and this being among the obscure contrivances they devised—the saying of Allah the Exalted after His command to the Children of Israel to slaughter a cow: "And when you killed a soul and disputed concerning it—while Allah brought forth what you were concealing" [Al-Baqarah: 72]. "So We said: 'Strike it with part of it.' Thus does Allah revive the dead" [Al-Baqarah: 73].[6]

وَذَكَرُوا أَيْضًا - وَهُوَ مِنْ غَامِضِ اخْتِرَاعِهِمْ - قَوْلَ اللَّهِ تَعَالَى بَعْدَ أَمْرِهِ بَنِي إِسْرَائِيلَ بِذَبْحِ الْبَقَرَةِ {وَإِذْ قَتَلْتُمْ نَفْسًا فَادَّارَأْتُمْ فِيهَا وَاللَّهُ مُخْرِجٌ مَا كُنْتُمْ تَكْتُمُونَ} [البقرة: ٧٢] {فَقُلْنَا اضْرِبُوهُ بِبَعْضِهَا كَذَلِكَ يُحْيِي اللَّهُ الْمَوْتَى} [البقرة: ٧٣] .

L39582 In connection with this verse, they cited the narration transmitted by Ahmad ibn Umar ibn Anas al-Udhri from Abdullah ibn al-Husayn ibn Iqal al-Zubayri, who narrated from Ibrahim ibn Muhammad al-Dinawari, who narrated from Muhammad ibn al-Jahm, who narrated from Abu Bakr al-Wazzan, who narrated from Ali ibn Abdullah—known as Ibn al-Madini—who narrated from Yahya ibn Sa'id al-Qattan, who narrated from Rabi'ah ibn Kulthum, who narrated from his father, from Sa'id ibn Jubayr: That Ibn Abbas said, "The people of a city among the Children of Israel found an old man slain at the outskirts of their city. Then inhabitants of another city came and said: 'You killed our companion!' A young nephew of the deceased stood weeping, crying: 'You killed my uncle?' They sought Moses—peace be upon him—whereupon Allah the Exalted revealed to him: 'Allah commands you to slaughter a cow.'" He then recounted the full narrative of the cow. He continued: "They brought the cow until they reached the old man's grave—situated between the two cities, his nephew standing beside it weeping—and slaughtered it. They struck the grave with a portion of its flesh, whereupon the old man rose shaking his head, declaring: 'My nephew killed me! He grew weary of my long life and coveted my wealth.' Then he died."[7]

وَذَكَرُوا - مَعَ هَذِهِ الْآيَةِ -: مَا ناه أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ الْحُسَيْنِ بْنِ عِقَالٍ الزُّبَيْرِيِّ نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ الْجَهْمِ نا أَبُو بَكْرٍ الْوَزَّانُ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - وَهُوَ ابْنُ الْمَدِينِيُّ - نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا رَبِيعَةُ بْنُ كُلْثُومٍ نا أَبِي عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّ ابْنَ عَبَّاسٍ قَالَ: إِنَّ أَهْلَ مَدِينَةٍ مِنْ بَنِي إِسْرَائِيلَ وَجَدُوا شَيْخًا قَتِيلًا فِي أَصْلِ مَدِينَتِهِمْ، فَأَقْبَلَ أَهْلُ مَدِينَةٍ أُخْرَى فَقَالُوا: قَتَلْتُمْ صَاحِبَنَا، وَابْنُ أَخٍ لَهُ شَابٌّ يَبْكِي وَيَقُولُ: قَتَلْتُمْ عَمِّي؟ فَأَتَوْا مُوسَى - عَلَيْهِ السَّلَامُ -، فَأَوْحَى اللَّهُ تَعَالَى إِلَيْهِ: إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً؟ فَذَكَرَ حَدِيثَ الْبَقَرَةِ بِطُولِهِ، قَالَ: فَأَقْبَلُوا بِالْبَقَرَةِ حَتَّى انْتَهَوْا بِهَا إِلَى قَبْرِ الشَّيْخِ - وَهُوَ بَيْنَ الْمَدِينَتَيْنِ، وَابْنُ أَخِيهِ قَائِمٌ عِنْدَ قَبْرِهِ يَبْكِي - فَذَبَحُوهَا، فَضَرَبَ بِبِضْعَةٍ مِنْ لَحْمِهَا الْقَبْرَ؟ فَقَامَ الشَّيْخُ يَنْفُضُ رَأْسَهُ وَيَقُولُ: قَتَلَنِي ابْنُ أَخِي، طَالَ عَلَيْهِ عُمُرِي، وَأَرَادَ أَكْلَ مَالِي؟ وَمَاتَ.

L39583–39585 And through him—to Ibn al-Jahm: Muḥammad ibn Salamah narrated to us,

وَبِهِ - إِلَى ابْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ سَلَمَةَ نا يَزِيدُ بْنُ هَارُونَ نا هِشَامٌ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: كَانَ فِي بَنِي إِسْرَائِيلَ عَقِيمٌ لَا يُولَدُ لَهُ، وَكَانَ لَهُ مَالٌ كَثِيرٌ وَكَانَ

[6] **Qur'an references (L39581):** Qur'an 2:72 (Al-Baqarah); Qur'an 2:73 (Al-Baqarah).
[7] **Qur'an references (L39582):** Qur'an 2:67 (Al-Baqarah).

Yazīd ibn Hārūn narrated to us, Hishām narrated to us from Muḥammad ibn Sīrīn from ʿUbaydah al-Salmānī, who said: Among the Children of Israel was an infertile man who had no children, and he possessed abundant wealth. His nephew was his heir. The man killed his nephew, then carried him by night until he brought him to another tribe and placed him at the door of a man among them. Then, in the morning, he accused them. They came to Moses, peace be upon him. He said: "Indeed, Allah commands you to slaughter a cow"—then he mentioned the story of the cow—so they slaughtered it and struck him with a part of it. He stood up, and they asked: "Who killed you?" He replied: "This one"—pointing to his nephew—then he fell dead. Consequently, the nephew was not given anything from the deceased's wealth, and a killer was thereafter barred from inheritance.

ابْنُ أَخِيهِ وَارِثُهُ فَقَتَلَهُ، ثُمَّ احْتَمَلَهُ لَيْلًا حَتَّى أَتَى بِهِ حَيَّ آخَرِينَ، فَوَضَعَهُ عَلَى بَابِ رَجُلٍ مِنْهُمْ، ثُمَّ أَصْبَحَ يَدَّعِيهِ عَلَيْهِمْ، فَأَتَوْا مُوسَى - عَلَيْهِ السَّلَامُ -، فَقَالَ: إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً - فَذَكَرَ حَدِيثَ الْبَقَرَةِ - فَذَبَحُوهَا فَضَرَبُوهُ بِبَعْضِهَا، فَقَامَ، فَقَالُوا: مَنْ قَتَلَكَ؟ فَقَالَ: هَذَا - لِابْنِ أَخِيهِ - ثُمَّ مَالَ مَيِّتًا، فَلَمْ يُعْطَ ابْنُ أَخِيهِ مِنْ مَالِهِ شَيْئًا، وَلَمْ يُوَرَّثْ قَاتِلٌ بَعْدُ.

L39586 And through him—to Ibn al-Jahm—al-Wazzān reported to us—ʿAlī ibn ʿAbdullāh reported to us—Sufyān ibn Sūqah said: I heard ʿIkrimah say: The Children of Israel had a mosque with twelve gates, each tribe assigned a gate. They found a slain man killed at one gate, so they dragged him to another gate. They disputed his killing, and Satan sowed discord. They sought judgment from Moses—peace be upon him—and he said, "Allah commands you to slaughter a cow" [Al-Baqarah: 67]. They slaughtered it and struck him with its thigh. He said, "So-and-so killed me"—the slain man was a man of abundant wealth—and his nephew had killed him. In the narration of the cow, there are additional details I have abbreviated.[8]

وَبِهِ - إِلَى ابْنِ الْجَهْمِ نا الْوَزَّانُ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ سُوقَةَ، قَالَ: سَمِعْت عِكْرِمَةَ يَقُولُ: كَانَ لِبَنِي إِسْرَائِيلَ مَسْجِدٌ لَهُ اثْنَا عَشَرَ بَابًا، لِكُلِّ سَبْطٍ بَابٌ فَوَجَدُوا قَتِيلًا قُتِلَ عَلَى بَابٍ فَجَرُّوهُ إِلَى بَابٍ آخَرَ، فَتَدَاعَوْا قَتْلَهُ، وَتَدَارَى الشَّيْطَانُ فَتَحَاكَمُوا إِلَى مُوسَى - عَلَيْهِ السَّلَامُ - فَقَالَ {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً} [البقرة: ٦٧] فَذَبَحُوهَا، فَضَرَبُوهُ بِفَخِذِهَا، فَقَالَ: قَتَلَنِي فُلَانٌ - وَكَانَ رَجُلًا لَهُ مَالٌ كَثِيرٌ - وَكَانَ ابْنُ أَخِيهِ قَتَلَهُ - وَفِي حَدِيثِ الْبَقَرَةِ زِيَادَةٌ اقْتَصَرْتهَا.

L39587 Abū Muḥammad—may Allāh have mercy on him—said: Every argument they have cited from this is mere illusion and deception directed at misleading the distant. As for the verse, it is true, but there is absolutely nothing in it that corresponds to what is mentioned in these reports. It merely states that Allāh the Exalted commanded the Children of Israel to slaughter a yellow cow, intensely bright in color, pleasing to beholders—sound, unblemished, neither trained to till the earth nor irrigate the field, neither aged nor a young heifer, but in its prime between those two states. They had killed a man and disputed among themselves about it, so Allāh the Exalted commanded them

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَكُلُّ مَا احْتَجُّوا بِهِ مِنْ هَذَا فَإِيهَامٌ وَتَمْوِيهٌ عَلَى الْمُغْتَرِبِينَ: أَمَّا الْآيَةُ فَحَقٌّ، وَلَيْسَ فِيهَا شَيْءٌ مِمَّا فِي هَذِهِ الْأَخْبَارِ الْبَتَّةَ، وَإِنَّمَا فِيهَا: أَنَّ اللَّهَ تَعَالَى أَمَرَ بَنِي إِسْرَائِيلَ بِذَبْحِ بَقَرَةٍ صَفْرَاءَ فَاقِعٍ لَوْنُهَا تَسُرُّ النَّاظِرِينَ، مُسَلَّمَةٍ لَا شِيَةَ فِيهَا غَيْرِ ذَلُولٍ تُثِيرُ الْأَرْضَ وَلَا تَسْقِي الْحَرْثَ لَا فَارِضٍ وَلَا بِكْرٍ عَوَانٍ بَيْنَ ذَلِكَ وَأَنَّهُمْ كَانُوا قَتَلُوا قَتِيلًا فَتَدَارَءُوا فِيهِ، فَأَمَرَهُمْ اللَّهُ تَعَالَى أَنْ يَضْرِبُوهُ بِبَعْضِهَا، إذْ ذَبَحُوهَا {كَذَلِكَ يُحْيِي اللَّهُ الْمَوْتَى وَيُرِيكُمْ آيَاتِهِ} [البقرة: ٧٣] .

[8] **Qur'an references (L39586):** Qur'an 2:67 (Al-Baqarah).

to strike him with a part of it when they slaughtered it: *"Thus does Allāh revive the dead and show you His signs."* [Al-Baqarah: 73].[9]

L39588 The verse contains nothing more than this—not that the slain person accused anyone, nor that he was thereby killed, nor that there was a collective oath procedure in it. Thus, whatever Allah the Exalted has declared is the truth, and whatever they have forcibly inserted through their opinions into the verse is null and void. Therefore, any claim they have to a foundational basis in the verse is invalid.

وَلَيْسَ فِي الْآيَةِ أَكْثَرُ مِنْ هَذَا، لَا أَنَّ الْمَقْتُولَ ادَّعَى عَلَى أَحَدٍ، وَلَا أَنَّهُ قُتِلَ بِهِ، وَلَا أَنَّهُ كَانَتْ فِيهِ قَسَامَةٌ، فَكُلُّ مَا أَخْبَرَ اللَّهُ تَعَالَى بِهِ فَهُوَ حَقٌّ، وَكُلُّ مَا أَقْحَمُوهُ بِآرَائِهِمْ فِي الْآيَةِ فَهُوَ بَاطِلٌ - فَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي الْآيَةِ مُتَعَلَّقٌ أَصْلًا.

L39589–39591 Then we examined the reports we mentioned and found them all to be disconnected narrations, none of which provide authoritative evidence except the one we introduced initially - which is a narration attributed solely to Ibn Abbas. No authoritative evidence can be derived from anyone below the Messenger of Allah (peace and blessings be upon him), thereby invalidating any basis for their reliance on these reports. Even if the mentioned reports from the Messenger of Allah (peace and blessings be upon him and his family) were authentic, all of them would still lack authoritative evidence for them due to several reasons: The first being that this ruling applied to the Children of Israel, and we are not obligated to follow what applied to them, for indeed it was. Among them are the Sabbath [as ordained for earlier communities], the prohibition of prohibited fats, and other such matters—and we are bound only by what our Prophet—peace be upon him—has commanded us.

ثُمَّ نَظَرْنَا فِي الْأَخْبَارِ الَّتِي ذَكَرْنَا فَوَجَدْنَاهَا كُلَّهَا مُرْسَلَةً، لَا حُجَّةَ فِي شَيْءٍ مِنْهَا، إلَّا الَّذِي صَدَّرْنَا بِهِ فَهُوَ مَوْقُوفٌ عَلَى ابْنِ عَبَّاسٍ وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي شَيْءٍ مِنْهَا مُتَعَلَّقٌ ثُمَّ لَوْ صَحَّتْ الْأَخْبَارُ الْمَذْكُورَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَكَانَتْ كُلُّهَا لَا حُجَّةَ لَهُمْ فِيهَا لِوُجُوهٍ: أَوَّلُهَا - أَنَّ ذَلِكَ حُكْمٌ كَانَ فِي بَنِي إسْرَائِيلَ، وَلَا يَلْزَمُنَا مَا كَانَ فِيهِمْ، فَقَدْ كَانَ فِيهِمْ السَّبْتُ، وَتَحْرِيمُ الشُّحُومِ، وَغَيْرُ ذَلِكَ - وَلَا يَلْزَمُنَا إلَّا مَا أَمَرَنَا بِهِ نَبِيُّنَا - عَلَيْهِ السَّلَامُ -.

L39592 Allah the Exalted said: "To each [community] among you We have prescribed a law and a path" [5:48]. The Messenger of Allah—may Allah send blessings upon him and his family and grant him peace—said: "I have been favored over the prophets with six distinctions"—among which he mentioned: "Those before him were sent only to their specific people, whereas he—peace be upon him—was sent to the Red and the Black."[10]

قَالَ اللَّهُ تَعَالَى {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «فُضِّلْتُ عَلَى الْأَنْبِيَاءِ بِستٍّ - فَذَكَرَ فِيهَا -: أَنَّ مَنْ كَانَ قَبْلَهُ: إنَّمَا كَانَ يُبْعَثُ إلَى قَوْمِهِ خَاصَّةً، وَبُعِثَ هُوَ - عَلَيْهِ السَّلَامُ - إلَى الْأَحْمَرِ وَالْأَسْوَدِ» .

L39593 Thus, it is established with certainty that Moses—peace be upon him—and the rest of the prophets before Muhammad—peace be upon him—were not

[9] **Qur'an references (L39587):** Qur'an 2:73 (Al-Baqarah).
[10] **Qur'an references (L39592):** Qur'an 5:48 (Al-Ma'idah).

فَصَحَّ يَقِينًا أَنَّ مُوسَى - عَلَيْهِ السَّلَامُ - وَسَائِرَ الْأَنْبِيَاءِ قَبْلَ مُحَمَّدٍ - عَلَيْهِ السَّلَامُ - لَمْ يُبْعَثُوا إلَيْنَا، فَبِيَقِينٍ نَدْرِي أَنَّ شَرَائِعَ مَنْ لَمْ يُبْعَثْ إلَيْنَا لَيْسَتْ لَازِمَةً لَنَا، وَإِنَّمَا يَلْزَمُنَا الْإِقْرَارُ بِنُبُوَّتِهِمْ فَقَطْ.

sent to us. Therefore, we know with certainty that the laws of those who were not sent to us are not binding upon us; rather, only the acknowledgment of their prophethood is obligatory upon us.

وَثَانِيهَا - أَنَّهُ لَا يَخْتَلِفُ اثْنَانِ مِنْ الْمُسْلِمِينَ فِي أَنَّهُ لَا يَلْزَمُنَا فِي شَيْءٍ مِنْ دَعْوَى الدِّمَاءِ ذَبْحُ بَقَرَةٍ - وَصَحَّ بُطْلَانُ احْتِجَاجِهِمْ بِتِلْكَ الْأَخْبَارِ، إذْ لَيْسَ فِيهَا أَنْ يُسْمَعَ مِنْ الْمَقْتُولِ بَعْدَ: أَنْ تُذْبَحَ بَقَرَةٌ وَيُضْرَبَ بِهَا.

L39594 The second is that no two Muslims differ regarding the fact that we are not obligated in any matter of blood money claims to slaughter a cow. The invalidity of their argument through those narrations has been established, as they do not state that testimony is heard from the slain person after slaughtering a cow and striking with it.

وَثَالِثُهَا - أَنَّ تِلْكَ الْأَخْبَارَ فِيهَا مُعْجِزَةُ نَبِيٍّ وَإِحَالَةُ الطَّبِيعَةِ مِنْ إحْيَاءِ مَيِّتٍ - فَهُمْ يُرِيدُونَ أَنْ نُصَدِّقَ حَيًّا قَدْ حَرَّمَ اللَّهُ تَعَالَى عَلَيْنَا تَصْدِيقَهُ عَلَى غَيْرِ نَفْسِهِ مُمْكِنًا مِنْهُ الْكَذِبُ مِنْ أَجْلِ أَنْ صَدَّقَ بَنُو إسْرَائِيلَ مَيِّتًا أَحْيَاهُ اللَّهُ تَعَالَى بَعْدَ مَوْتِهِ - وَهَذَا ضِدُّ الْقِيَاسِ بِلَا شَكٍّ، وَضِدُّ مَا فِي هَذِهِ الْأَخْبَارِ بِلَا شَكٍّ.

L39595 And the third is that those reports contain the miracle of a prophet and the alteration of natural laws through reviving a dead person. Thus, they want us to believe a living person—whom Allah the Exalted has forbidden us to believe regarding matters beyond himself, and from whom lying is possible—merely because the Children of Israel believed a dead person whom Allah the Exalted revived after his death. This is unquestionably contrary to analogy and unquestionably contrary to what is in these reports.

وَالْأَمْرُ بَيْنَنَا وَبَيْنَهُمْ فِي هَذِهِ الْمَسْأَلَةِ قَرِيبٌ، فَلْيُرُونَا مَقْتُولًا رَدَّ اللَّهُ تَعَالَى رُوحَهُ إلَيْهِ بِحَضْرَةِ نَبِيٍّ أَوْ بِغَيْرِ حَضْرَتِهِ وَيُخْبِرُنَا بِالشَّيْءِ وَنَحْنُ حِينَئِذٍ نُصَدِّقُهُ، وَأَمَّا أَنْ نُصَدِّقَ حَيًّا يَدَّعِي عَلَى غَيْرِهِ، فَهُوَ أَبْطَلُ الْبَاطِلِ بِعَيْنِهِ، فَذِكْرُهُمْ لِهَذِهِ الْآيَةِ وَهَذِهِ الْأَخْبَارِ: قَبِيحٌ، لَوْ تَوَرَّعَ عَنْهُمْ لَكَانَ أَسْلَمَ، وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L39596 The matter between us and them in this issue is comparable. Let them show us a slain person to whom Allah the Exalted has restored his soul—whether in the presence of a prophet or otherwise—and inform us of it; then we will believe it. As for accepting the testimony of a living person who alleges against another, that is the very epitome of falsehood. Their citation of this verse and these reports is reprehensible. Had they shown piety by avoiding such claims, it would have been more upright. We ask Allah the Exalted for well-being.

وَذَكَرُوا - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ الْحَارِثِيِّ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، قَالَ يَحْيَى: نا خَالِدُ بْنُ الْحَارِثِ، وَقَالَ ابْنُ الْمُثَنَّى: نا مُحَمَّدُ بْنُ جَعْفَرٍ ثُمَّ اتَّفَقَ خَالِدٌ، وَمُحَمَّدٌ: كِلَاهُمَا عَنْ شُعْبَةَ عَنْ هِشَامِ بْنِ زَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ: «أَنَّ يَهُودِيًّا قَتَلَ جَارِيَةً عَلَى أَوْضَاحٍ لَهَا فَقَتَلَهَا بِحَجَرٍ فَجِيءَ بِهَا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِهَا رَمَقٌ، فَقَالَ لَهَا: أَقَتَلَكِ

L39597–39599 They mentioned—as we have narrated via the isnād (chain) of Imam Muslim from Yaḥyā ibn al-Ḥārithī and Muḥammad ibn al-Muthannā. Yaḥyā said: Khālid ibn al-Ḥārith narrated to us, while Ibn al-Muthannā said: Muḥammad ibn Jaʿfar narrated to us. Then their chains converged—both Khālid and Muḥammad narrating from Shuʿbah from Hishām ibn Zayd from Anas ibn Mālik: “That a Jew killed a girl over her jewelry, striking her with a stone. She was brought to the Prophet—peace and blessings be upon him—while

still clinging to her last breath." He said to her: "Did so-and-so kill you?" She gestured 'no' with her head. Then he asked her a second time, and she gestured 'no' with her head. He asked her a third time, whereupon she said: "Yes," nodding her head in confirmation. The Messenger of Allah - peace and blessings of Allah be upon him - then killed him by crushing him between two stones. Abu Muhammad (may Allah have mercy on him) said: "This provides no valid proof for their claim, for this is a report we have transmitted via the mentioned chain reaching Muslim: From 'Abd ibn Ḥumayd, from 'Abd al-Razzāq, from Ma'mar, from Ayyūb al-Sikhtiyānī, from Abū Qilābah, from Anas: 'A Jewish man killed a girl from the Ansar over her ornaments, threw her into a well, and crushed her head with stones. He was apprehended and brought to the Messenger of Allah - peace and blessings of Allah be upon him - who commanded that he be stoned to death.'" Similarly, it was narrated by Sa'īd ibn Abī 'Arūbah and Abbān ibn Yazīd al-'Aṭṭār, both from Qatādah, from Anas.

فُلَانٌ؟ فَأَشَارَتْ بِرَأْسِهَا: أَنْ لَا، ثُمَّ قَالَ لَهَا الثَّانِيَةَ، فَأَشَارَتْ بِرَأْسِهَا: أَنْ لَا، سَأَلَهَا الثَّالِثَةَ؟ فَقَالَتْ: نَعَمْ، وَأَشَارَتْ بِرَأْسِهَا، فَقَتَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ حَجَرَيْنِ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ هَذَا خَبَرٌ رُوِّينَاهُ بِالسَّنَدِ الْمَذْكُورِ إلَى مُسْلِمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ: «أَنَّ رَجُلًا مِنْ الْيَهُودِ قَتَلَ جَارِيَةً مِنْ الْأَنْصَارِ عَلَى حُلِيٍّ لَهَا ثُمَّ أَلْقَاهَا فِي قَلِيبٍ وَرَضَخَ رَأْسَهَا بِالْحِجَارَةِ؟ وَأُخِذَ فَأُتِيَ بِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِهِ أَنْ يُرْجَمَ حَتَّى يَمُوتَ» وَهَكَذَا رَوَاهُ سَعِيدُ بْنُ أَبِي عَرُوبَةَ، وَأَبَانُ بْنُ يَزِيدَ الْعَطَّارُ، كِلَاهُمَا عَنْ قَتَادَةَ عَنْ أَنَسٍ.

L39600 If they say: Indeed, Shu'bah added the mention of the slain woman's claim in this narrative, and the addition of a reliable narrator is acceptable? We reply: You have spoken truthfully, for Hammām ibn Yaḥyā added from Qatādah from Anas—in this report—an addition that it is impermissible to omit: as we have been informed via the chain of Muslim: Haddāb ibn Khālid narrated, Hammām narrated from Qatādah from Anas: "A girl was found whose head had been crushed between two stones. They asked her, 'Who did this to you?' So-and-so, so-and-so—until they mentioned a Jew, and she gestured with her head. The Jew was seized, and he confessed. The Messenger of Allah—peace and blessings be upon him—then ordered that his head be crushed with stones." Thus, it is confirmed that he—peace and blessings be upon him—did not kill the Jew except based on his confession, not due to the claim of the slain woman.

فَإِنْ قَالُوا: إنَّ شُعْبَةَ زَادَ ذِكْرَ دَعْوَى الْمَقْتُولَةِ فِي هَذِهِ الْقِصَّةِ وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ؟ قُلْنَا: صَدَقْتُمْ، وَقَدْ زَادَ هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ أَنَسٍ - فِي هَذَا الْخَبَرِ زِيَادَةً لَا يَحِلُّ تَرْكُهَا: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامٌ عَنْ قَتَادَةَ عَنْ أَنَسٍ: «أَنَّ جَارِيَةً وُجِدَ رَأْسُهَا قَدْ رُضَّ بَيْنَ حَجَرَيْنِ فَسَأَلُوهَا مَنْ صَنَعَ هَذَا بِكِ؟ فُلَانٌ، فُلَانٌ، حَتَّى ذَكَرُوا يَهُودِيًّا فَأَوْمَأَتْ بِرَأْسِهَا، فَأُخِذَ الْيَهُودِيُّ فَأَقَرَّ؟ فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرَضَّ رَأْسُهُ بِالْحِجَارَةِ» ، فَصَحَّ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْتُلْ الْيَهُودِيَّ إلَّا بِإِقْرَارِهِ، لَا بِدَعْوَى الْمَقْتُولَةِ.

L39601 Another aspect is that if they were to validate what can never be valid—namely, that the Prophet (peace be upon him) killed the man solely based on the claim of the killed woman—then this report would constitute a proof against them. They would thereby oppose his ruling, for it contains no mention whatsoever of *qasāmah* (collective oath-swearing). Yet they cat-

وَوَجْهٌ آخَرُ - وَهُوَ أَنَّهُ لَوْ صَحَّ لَهُمْ مَا لَا يَصِحُّ أَبَدًا مِنْ أَنَّهُ - عَلَيْهِ السَّلَامُ - إنَّمَا قَتَلَهُ بِدَعْوَاهَا لَكَانَ هَذَا الْخَبَرُ حُجَّةً عَلَيْهِمْ، وَلَكَانُوا مُخَالِفِينَ لَهُ، لِأَنَّهُ لَيْسَ فِيهِ ذِكْرُ قَسَامَةٍ

egorically refrain from executing anyone based on the claim of the killed woman unless at least two guardians must swear fifty oaths without fail.

أَصْلًا، وَهُمْ لَا يَقْتُلُونَ بِدَعْوَى الْمَقْتُولَةِ أَلْبَتَّةَ إلَّا حَتَّى يَحْلِفَ اثْنَانِ فَصَاعِدًا مِنْ الْأَوْلِيَاءِ خَمْسِينَ يَمِينًا وَلَا بُدَّ.

L39602 Moreover, they do not accept *qasamah* on the claim of someone who has not reached puberty.

وَأَيْضًا - فَهُمْ لَا يَرَوْنَ الْقَسَامَةَ بِدَعْوَى مَنْ لَمْ يَبْلُغْ.

L39603 The most apparent interpretation in this report is that she had not reached puberty, because he mentioned a girl with clear features. This description among the Arabs—whose language Anas used—is only applied to a young girl, not to a mature woman.

وَالْأَظْهَرُ فِي هَذَا الْخَبَرِ أَنَّهَا كَانَتْ لَمْ تَبْلُغْ، لِأَنَّهُ ذَكَرَ جَارِيَةً ذَاتَ أَوْضَاحٍ، وَهَذِهِ الصِّفَةُ عِنْدَ الْعَرَبِ الَّذِينَ بِلُغَتِهِمْ تَكَلَّمَ أَنَسٌ، إنَّمَا يُوقِعُونَهَا عَلَى الصَّبِيَّةِ، لَا عَلَى الْمَرْأَةِ الْبَالِغِ.

L39604–39605 Thus, their reliance on this narration has been invalidated in every respect, and their disagreement in that matter has become apparent. Therefore, it is obligatory to uphold this position, and it is not permissible for anyone to deviate from it.

فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ بِكُلِّ وَجْهٍ، وَلَاحَ خِلَافُهُمْ فِي ذَلِكَ، فَوَجَبَ الْقَوْلُ بِهِ، وَلَا يَحِلُّ لِأَحَدٍ الْعُدُولُ عَنْهُ.

L39606 The Malikis and those who do not recognize qasāmah in this matter objected by saying: "What if the slain person could be killed, then his killer carries him and throws him at someone's door or in a people's dwelling?" Our response—and by Allah's exalted facilitation—is that this is possible, but one cannot oppose the ruling of Allah, the Exalted, and the ruling of His Messenger—peace be upon him—by claiming such a scenario is possible. Every Muslim knows with certainty that a witness might lie, an oath-taker might lie, and a claimant might lie [by saying], "So-and-so killed him." This reality no one can deny. By this argument through which they rejected the ruling of the Messenger of Allah—peace and blessings be upon him—and opposed him, they should consequently not kill anyone based on two witnesses' testimony, for they might lie. Retaliation based on two witnesses is not established by consensus, so it cannot be relied upon, since Al-Ḥasan states: "Retaliation is not accepted except with four witnesses."

وَاعْتَرَضَ الْمَالِكِيُّونَ، وَمَنْ لَا يَرَى الْقَسَامَةَ فِي هَذَا، بِأَنْ قَالُوا: وَالْقَتِيلُ قَدْ يُقْتَلُ ثُمَّ يَحْمِلُهُ قَاتِلُهُ فَيُلْقِيهِ عَلَى بَابِ إنْسَانٍ أَوْ فِي دَارِ قَوْمٍ؟ فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: أَنَّ هَذَا مُمْكِنٌ، وَلَكِنْ لَا يُعْتَرَضُ عَلَى حُكْمِ اللَّهِ تَعَالَى، وَحُكْمِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -: بِأَنَّهُ يُمْكِنُ أَمْرُ كَذَا، وَبِيَقِينٍ يَدْرِي كُلُّ مُسْلِمٍ أَنَّهُ قَدْ يُمْكِنُ أَنْ يَكْذِبَ الشَّاهِدُ، وَيَكْذِبَ الْحَالِفُ، وَيَكْذِبَ الْمُدَّعِي: أَنَّ فُلَانًا قَتَلَهُ - هَذَا أَمْرٌ لَا يَقْدِرُ أَحَدٌ عَلَى دَفْعِهِ، فَيَنْبَغِي عَلَى هَذَا الْقَوْلِ الَّذِي رَدُّوا بِهِ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخَالَفُوهُ: أَنْ لَا يَقْتُلُوا أَحَدًا بِشَهَادَةِ شَاهِدَيْنِ، فَقَدْ يَكْذِبَانِ، وَلَيْسَ الْقَوَدُ بِالشَّاهِدَيْنِ إجْمَاعًا فَيَتَعَلَّقُ بِهِ؛ لِأَنَّ الْحَسَنَ يَقُولُ: لَا يُقْبَلُ فِي الْقَوَدِ إلَّا أَرْبَعَةٌ.

L39607 Then we return to our issue and say (and with Allah the Exalted is divine guidance): It is not permissible for a Muslim who knows that Allah's promise is true to object to what the Messenger of Allah (peace and blessings be upon him) ruled by saying, "This ruling is invalid, because his killer might throw him at another person's door—and yes, this is possible."

ثُمَّ نَرْجِعُ إلَى مَسْأَلَتِنَا فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ لَا يَحِلُّ لِمُسْلِمٍ - يَدْرِي أَنَّ وَعْدَ اللَّهِ حَقٌّ - أَنْ يَعْتَرِضَ عَلَى مَا حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ

يَقُولَ: لَا يَجُوزُ هَذَا الْحُكْمُ، لِأَنَّهُ قَدْ يُمْكِنُ أَنْ يَرْمِيَهُ قَاتِلُهُ عَلَى بَابِ غَيْرِهِ - وَنَعَمْ، - هَذَا مُمْكِنٌ.

أَتَرَى لَوْ أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ أَهْلِ مَدِينَةٍ بِأَسْرِهَا أَوْ بِقَتْلِ أُمَّهَاتِنَا وَآبَائِنَا وَأَنْفُسِنَا، كَمَا أَمَرَ مُوسَى - عَلَيْهِ السَّلَامُ - قَوْمَهُ بِقَتْلِ أَنْفُسِهِمْ إِذْ أَخْبَرَ اللَّهُ تَعَالَى بِذَلِكَ فِي قَوْلِهِ {فَاقْتُلُوا أَنْفُسَكُمْ ذَلِكُمْ خَيْرٌ لَكُمْ عِنْدَ بَارِئِكُمْ} [البقرة: ٥٤] أَكَانَ يَكُونُ فِي الْإِسْلَامِ نَصِيبٌ لِمَنْ يَعْنِدُ عَنْ ذَلِكَ؟ إِنَّ هَذَا لَعَظِيمٌ جِدًّا.

L39608 Do you think that if the Messenger of Allah—may Allah bless him and grant him peace—commanded us to kill the inhabitants of an entire city, or to kill our mothers, fathers, and ourselves, as Moses, peace be upon him, commanded his people to kill themselves when Allah the Exalted informed them of this in His verse, *Kill yourselves; that is better for you all in the sight of your Creator* [Surah Al-Baqarah, 2:54], would there remain any place in Islam for one who stubbornly refuses this? Truly, this is an immensely grave matter.[11]

وَالْعَجَبُ كُلُّهُ أَنَّ ذَلِكَ الْحُكْمَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمٌ ظَاهِرٌ مُعَلَّقٌ فِي دَمِ رَجُلٍ مِنْ بَنِي حَارِثَةَ مِنْ الْأَنْصَارِ عَلَى يَهُودَ خَيْبَرَ، وَبَيْنَهُمَا مِنْ الْمَسَافَةِ سِتَّةٌ وَتِسْعُونَ مِيلًا مِائَةُ مِيلٍ غَيْرَ أَرْبَعَةِ أَمْيَالٍ تَتَرَدَّدُ فِي ذَلِكَ الرُّسُلُ، وَتَخْتَلِفُ الْكُتُبُ، وَيَقَعُ فِي ذَلِكَ التَّوَعُّدُ بِالْحَرْبِ.

L39609 The most astonishing thing is that this ruling from the Messenger of Allah (peace and blessings be upon him) was a clear judgment dependent on the blood of a man from Banu Harithah of the Ansar against the Jews of Khaybar. The distance between them was ninety-six miles (equivalent to a hundred miles less four), over which envoys traveled back and forth regarding this matter. The letters contained conflicting accounts, and in this context threats of war arose.

كَمَا صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ «إمَّا أَنْ يَدُوا صَاحِبَكُمْ أَوْ يُؤْذِنُوا بِحَرْبٍ» .

L39610 As authentically reported from him (peace be upon him): “Either they pay the blood money for your companion or declare war.”

فَهَذَا أَمْرٌ لَا يَشُكُّ ذُو حِسٍّ سَلِيمٍ - مِنْ مُؤْمِنٍ أَوْ كَافِرٍ - فِي أَنَّهُ لَمْ تَخْفَ هَذِهِ الْقِصَّةُ، وَلَا هَذَا الْحُكْمُ عَلَى أَحَدٍ مِنْ الْمُسْلِمِينَ بِالْمَدِينَةِ، وَلَا عَنْ الْيَهُودِ، وَلَا إسْلَامَ يَوْمَئِذٍ فِي غَيْرِ الْمَدِينَةِ، إلَّا مَنْ كَانَ مُهَاجِرًا بِالْحَبَشَةِ، أَوْ مُسْتَضْعَفًا بِمَكَّةَ؛ لِأَنَّ ذَلِكَ كَانَ قَبْلَ فَتْحِ خَيْبَرَ.

L39611–39613 This is a matter that no person of sound judgment—whether believer or disbeliever—doubts: neither this incident nor this ruling concerning any of the Muslims in Medina was hidden, nor hidden from the Jews, nor was Islam hidden. At that time, in other than Medina except those who had migrated to Abyssinia or were oppressed in Mecca, since this was before the conquest of Khaybar.

لِأَنَّ فِي الْحَدِيثِ الثَّابِتِ الَّذِي أَوْرَدْنَاهُ قَبْلُ مِنْ طَرِيقِ سُلَيْمَانَ بْنِ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ بَشِيرِ بْنِ يَسَارٍ: أَنَّ خَيْبَرَ كَانَتْ يَوْمَئِذٍ صُلْحًا وَلَمْ تَكُنْ قَطُّ صُلْحًا بَعْدَ فَتْحِهَا

L39614 This is because in the authentic ḥadīth we previously cited through the chain of Sulaymān ibn Bilāl, from Yaḥyā ibn Saʿīd, from Bashīr ibn Yasār: Khaybar was under a peace agreement at that time. No peace agreement was ever established after its conquest by force. Rather, they were dhimmah, with

[11] **Qur’an references (L39608):** Qur’an 2:54 (Al-Baqarah).

subjugation applied to them. They were not termed a peace agreement, nor were they permitted to initiate war.

عَنْوَةً، بَلْ كَانُوا ذِمَّةً تَجْرِي عَلَيْهِمْ الصَّغَارُ، لَا يُسَمُّونَ صُلْحًا، وَلَا يُمَكَّنُونَ مِنْ أَنْ يَأْذَنُوا بِحَرْبٍ.

L39615 It was definitively established with certainty that this ruling from the Messenger of Allah (peace be upon him) constitutes a consensus by all the Companions (may Allah be pleased with them, the first and last among them) - a certainty leaving no room for doubt.

فَصَحَّ يَقِينًا أَنَّ ذَلِكَ الْحُكْمَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إجْمَاعٌ مِنْ جَمِيعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَوَّلِهِمْ وَآخِرِهِمْ بِيَقِينٍ لَا مَجَالَ لِلشَّكِّ فِيهِ.

L39616 Abū Muḥammad—may Allāh have mercy on him—said: If someone were to ask, “What is your ruling regarding a slain person found with a faint sign of life, who is then carried away and dies in another place, on the way, or dies immediately after being found with life still in him?” Our response is: There is no oath of collective liability (qasāmah) in this case. It involves only mutual claims. The legal guardians of the deceased are obligated to provide evidence, regardless of whether the deceased accused someone or not. If they present evidence, the ruling is issued in accordance with their testimony. If they fail to provide evidence, the defendants—if there is only one—must take a single oath. If there are multiple defendants, all of them must take an oath individually without exception, and they are compelled to do so indefinitely.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ قَالَ قَائِلٌ: فَمَا تَقُولُونَ فِي قَتِيلٍ يُوجَدُ وَفِيهِ رَمَقٌ، فَيُحْمَلُ فَيَمُوتُ فِي مَكَانٍ آخَرَ، أَوْ فِي الطَّرِيقِ، أَوْ يَمُوتُ إثْرَ وُجُودِهِمْ لَهُ وَفِيهِ حَيَاةٌ؟ فَجَوَابُنَا: أَنَّهُ لَا قَسَامَةَ فِي هَذَا، وَإِنَّمَا فِيهِ التَّدَاعِي فَقَطْ، يُكَلَّفُ أَوْلِيَاؤُهُ الْبَيِّنَةَ، سَوَاءٌ ادَّعَى هُوَ عَلَى أَحَدٍ أَوْ لَمْ يَدَّعِ، فَإِنْ جَاءُوا بِالْبَيِّنَةِ قَضَى لَهُمْ بِمَا شَهِدَتْ بِهِ بَيِّنَتُهُمْ، وَإِنْ لَمْ يَأْتُوا بِالْبَيِّنَةِ حَلَفَ الْمُدَّعَى عَلَيْهِمْ يَمِينًا وَاحِدَةً - إنْ كَانَ وَاحِدًا - فَإِنْ كَانُوا أَكْثَرَ مِنْ وَاحِدٍ حَلَفُوا كُلُّهُمْ يَمِينًا يَمِينًا وَلَا بُدَّ وَيُجْبَرُونَ عَلَى ذَلِكَ أَبَدًا.

L39617 Our proof for this is that the universally established principle in Islam regarding every legal claim—whether pertaining to bloodshed, property, or other rights, without exception—is: “The burden of proof rests on the claimant, and the oath of denial rests on the accused.”

وَبُرْهَانُنَا عَلَى ذَلِكَ: هُوَ أَنَّ الْأَصْلَ الْمُطَّرِدَ فِي كُلِّ دَعْوَى فِي الْإِسْلَامِ مِنْ دَمٍ أَوْ مَالٍ أَوْ غَيْرِ ذَلِكَ مِنْ الْحُقُوقِ، وَلَا نُحَاشِ شَيْئًا - هُوَ " أَنَّ الْبَيِّنَةَ عَلَى الْمُدَّعِي وَالْيَمِينَ عَلَى مَنْ ادُّعِيَ عَلَيْهِ ".

L39618 As the Messenger of Allah (peace be upon him) taught when he said: “If people were granted their claims based on their assertions, some would claim the blood of men and their wealth. But the oath lies upon the respondent.”

كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ يَقُولُ «لَوْ أُعْطِيَ النَّاسُ بِدَعْوَاهُمْ لَادَّعَى قَوْمٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ» .

L39619 His statement (may Allah’s peace and blessings be upon him and his family), “Your proof or his oath,” and these two are general. It is not permissible for anyone to exclude anything from them except what is excluded by an explicit text or consensus. There is no explicit text except regarding the slain person

وَقَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «بَيِّنَتُك أَوْ يَمِينُهُ» ، وَهَذَانِ عَامَّانِ، وَلَا يَصِحُّ لِأَحَدٍ أَنْ يُخْرِجَ عَنْهُمَا شَيْئًا، إلَّا مَا أَخْرَجَهُ نَصٌّ أَوْ إجْمَاعٌ، وَلَا نَصَّ إلَّا فِي الْقَتِيلِ يُوجَدُ فَقَطْ، فَمَتَى وَجَدَهُ حَيًّا أَحَدٌ مِنْ النَّاسِ فَلَا قَسَامَةَ فِيهِ أَلْبَتَّةَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

when he is found. Thus, if someone finds the slain person alive, there is no qasāmah whatsoever in the matter—and success is from Allah, the Exalted.

فَإِنْ وُجِدَ لَا أَثَرَ فِيهِ؟ فَقَدْ قُلْنَا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا حَكَمَ فِي مَقْتُولٍ، وَلَيْسَ كُلُّ مَيِّتٍ مَقْتُولًا، فَإِنْ تَيَقَّنَّا أَنَّهُ قُتِلَ بِأَثَرٍ وُجِدَ فِيهِ مِنْ: ضَرْبٍ أَوْ شَدْخٍ أَوْ خَنْقٍ، أَوْ ذَبْحٍ أَوْ طَعْنٍ، أَوْ جُرْحٍ أَوْ كَسْرٍ، أَوْ سُمٍّ - فَهُوَ مَقْتُولٌ وَالْقَسَامَةُ فِيهِ.

L39620–39621 If no trace was found in him, we have stated that the Messenger of Allah—peace and blessings be upon him—ruled specifically regarding a slain person, and not every deceased person is slain. If we ascertain that he was killed through a trace found in him resulting from striking, skull-crushing, strangling, throat-cutting, stabbing, wounding, bone-breaking, or poison—then he is slain, and the qasāmah (oath-swearing procedure for homicide) applies in his case.

وَإِنْ تَيَقَّنَّا أَنَّهُ مَيِّتٌ حَتْفَ أَنْفِهِ لَا أَثَرَ فِيهِ أَلْبَتَّةَ فَلَا قَسَامَةَ؛ لِأَنَّهُ لَيْسَتْ هِيَ الْحَالَ الَّتِي حَكَمَ فِيهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقَسَامَةِ.

L39622 And if we are certain that he died a natural death with no trace in him whatsoever, then there is no oath of collective liability (qasāmah), because this is not the case in which the Messenger of Allah—may Allah's blessings and peace be upon him—ruled on the qasāmah.

إنْ أَشْكَلَ أَمْرُهُ فَأَمْكَنَ أَنْ يَكُونَ مَيِّتًا حَتْفَ أَنْفِهِ، وَأَمْكَنَ أَنْ يَكُونَ مَقْتُولًا، غَمَّهُ بِشَيْءٍ وَضَعَهُ عَلَى فِيهِ فَقَطَعَ نَفَسَهُ فَمَاتَ: فَالْقَسَامَةُ فِيهِ.

L39623 If the matter is ambiguous where it is possible he died by natural causes and possible he was killed—such as being overwhelmed by something placed over his mouth, cutting off his breath and causing death—then the qasāmah applies.

فَإِنْ قِيلَ: لِمَ قُلْتُمْ هَذَا وَالْأَصْلُ أَنَّ مَنْ مَاتَ غَيْرَ مَقْتُولٍ فَلَا قَسَامَةَ فِيهِ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ الْمَقْتُولَ أَيْضًا مُمْكِنٌ أَنْ يَكُونَ قَتَلَ نَفْسَهُ أَوْ قَتَلَهُ سَبُعٌ، فَلَمَّا كَانَ إمْكَانُ مَا ذَكَرْنَا لَا يَمْنَعُ مِنْ الْقَسَامَةِ لِإِمْكَانِ أَنْ يَكُونَ قَدْ قَتَلَهُ مَنْ ادَّعَى عَلَيْهِ أَنَّهُ قَتَلَهُ، وَوَجَبَتْ الْقَسَامَةُ؛ لِإِمْكَانِ أَنْ يَكُونَ قَتَلَهُ مَنْ ادَّعَى عَلَيْهِ أَنَّهُ قَتَلَهُ - فَلَيْسَ هَذَا قِيَاسًا، فَلَا تَكُنْ غَافِلًا مُتَعَسِّفًا أَنَّنَا قَدْ قِسْنَا أَحَدَهُمَا عَلَى الْآخَرِ - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ، لَكِنَّهُ بَابٌ وَاحِدٌ كُلُّهُ، إنَّمَا هُوَ مَنْ وُجِدَ مَيِّتًا وَادَّعَى أَوْلِيَاؤُهُ عَلَى قَوْمٍ أَنَّهُمْ قَتَلُوهُ، أَوْ عَلَى وَاحِدٍ أَنَّهُ قَتَلَهُ وَكَانَ قَتْلُهُمْ لَهُ الَّذِي ادَّعَى أَوْلِيَاؤُهُ عَلَيْهِمْ مُمْكِنًا - فَهَذِهِ هِيَ الْقِصَّةُ الَّتِي حَكَمَ فِيهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَيْنِهَا بِالْقَسَامَةِ، فَفَرْضٌ عَلَيْنَا أَنْ نَحْكُمَ فِيهَا بِالْقَسَامَةِ إذَا أَمْكَنَ أَنْ يَكُونَ مَنْ ادَّعَى أَوْلِيَاؤُهُ حَقًّا، وَإِنَّمَا يَبْطُلُ الْحُكْمُ

L39624 If it is said: Why do you hold this position when the foundational principle states that if someone dies without being slain, there is no qasāmah in his case? We respond—and success comes only from Allah, the Exalted—that even the slain person could have killed himself or been killed by a predatory beast. However, this possibility does not preclude qasāmah, as it remains plausible that the accused killed him—thereby obligating qasāmah. This is not an analogy, so do not be heedless and stubbornly insist that we have analogized one case to another—Allah forbid! Rather, it constitutes a single legal category: whenever a deceased is found and their heirs accuse a group or individual of killing them—provided the accused could plausibly have committed the killing—this is precisely the scenario in which Allah's Messenger (peace and blessings be upon him) ruled with qasāmah. Thus, we are obligated to rule with qasāmah if the heirs' claim could be valid. The ruling through qasāmah is invalidated only when we are undeniably certain their claim is false. Abū Muḥammad (may Allah have mercy on him) said: It

is irrelevant whether the slain is found in the abode of hostile disbelievers, hostile believers, allied disbelievers, allied believers, in his brother's abode, his son's abode, or wherever he is found—qasāmah applies. This is the view of Ibn al-Zubayr and Muʿāwiyah, established in the presence of the Companions (may Allah be pleased with them), with no authentic disagreement from any Companion reported. They ruled with qasāmah in the case of Ismāʿīl ibn Hibbār, who was found slain in Medina. A group accused three men from disparate tribes—Zuhra, Taymī, and Laythī Kinānī, residing in separate dwellings—of killing him, though the slain was not found in their midst. This is our position—and success comes only from Allah, the Exalted.

بِالْقَسَامَةِ إِذَا أَيْقَنَّا أَنَّ الَّذِي يَدَّعُونَهُ بَاطِلٌ بِيَقِينٍ لَا شَكَّ فِيهِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَسَوَاءٌ وُجِدَ الْقَتِيلُ فِي دَارِ أَعْدَاءٍ كُفَّارٍ، أَوْ أَعْدَاءٍ مُؤْمِنِينَ، أَوْ أَصْدِقَاءٍ كُفَّارٍ، أَوْ أَصْدِقَاءٍ مُؤْمِنِينَ، أَوْ فِي دَارِ أَخِيهِ، أَوْ ابْنِهِ أَوْ حَيْثُمَا وُجِدَ، فَالْقَسَامَةُ فِي ذَلِكَ - وَهُوَ قَوْلُ ابْنِ الزُّبَيْرِ وَمُعَاوِيَةَ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يَصِحُّ خِلَافُهُمَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ؛ لِأَنَّهُمَا حَكَمَا بِالْقَسَامَةِ فِي إسْمَاعِيلَ بْنِ هَبَّارٍ وُجِدَ مَقْتُولًا بِالْمَدِينَةِ، وَادَّعَى قَوْمٌ قَتْلَهُ عَلَى ثَلَاثَةٍ مِنْ قَبَائِلَ شَتَّى - مُفْتَرِقَةِ الدُّورِ - وَلَمْ يُوجَدْ الْمَقْتُولُ بَيْنَ أَظْهُرِهِمْ وَهُمْ: زُهْرَى، وَتَيْمِيٌّ، وَلَيْثِيٌّ كِنَانِيٌّ، وَبِهَذَا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39625–39626 Abū Muḥammad—may Allāh have mercy on him—said: It is equally applicable whether the slain is found in a mosque, or in his own home, or in the congregational mosque, or in a marketplace, or in a desert, or on a ship, or in a river with flowing water, or in the sea, or on a person's neck, or on a roof, or in a tree, or in a cave, or on a stationary or moving animal—all of that is equivalent, as we have stated.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَسَوَاءٌ وُجِدَ الْمَقْتُولُ فِي مَسْجِدٍ، أَوْ فِي دَارِهِ نَفْسِهِ، أَوْ فِي الْمَسْجِدِ الْجَامِعِ، أَوْ فِي السُّوقِ، أَوْ بِالْفَلَاةِ، أَوْ فِي سَفِينَةٍ، أَوْ نَهْرٍ يَجْرِي فِيهِ الْمَاءُ، أَوْ فِي بَحْرٍ، أَوْ عَلَى عُنُقِ إنْسَانٍ، أَوْ فِي سَقْفٍ، أَوْ فِي شَجَرَةٍ، أَوْ فِي غَارٍ، أَوْ عَلَى دَابَّةٍ وَاقِفَةٍ، أَوْ سَائِرَةٍ - كُلُّ ذَلِكَ سَوَاءٌ كَمَا قُلْنَا.

L39627 And whenever his guardians bring a claim against anyone in such matters, the oath-swearing (qasāmah) therein is as ruled by the Messenger of Allah (peace be upon him), and success is by Allah, the Most High.

وَمَتَى ادَّعَى أَوْلِيَاؤُهُ - فِي كُلِّ ذَلِكَ - عَلَى أَحَدٍ فَالْقَسَامَةُ فِي ذَلِكَ كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39628 As for their statement: If he was found between two villages, the distance between them is measured, and whichever he was closer to, they swore an oath and paid a fine—alongside their statement: If he was found within a village, they swore an oath and paid blood money.

وَأَمَّا قَوْلُهُمْ: إنْ وُجِدَ بَيْنَ قَرْيَتَيْنِ فَإِنَّهُ يُذْرَعُ مَا بَيْنَهُمَا فَإِلَى أَيِّهِمَا كَانَ أَقْرَبَ: حَلَفُوا وَغَرِمُوا مَعَ قَوْلِهِمْ: إنْ وُجِدَ فِي قَرْيَةٍ حَلَفُوا وَوَدَوْا.

L39629 If they cite in that regard what Yūsuf ibn ʿAbd Allāh al-Namarī narrated—from ʿAbd Allāh ibn Muḥammad ibn Yūsuf al-Azdī, from Yūsuf ibn Aḥmad, from Abū Jaʿfar al-ʿUqaylī, from Muḥammad ibn Ismāʿīl, from Ismāʿīl ibn Abān al-Warrāq, from Abū Isrāʾīl al-Mulāʾī, from ʿAṭiyyah (al-ʿAwfī)—from Abū Saʿīd al-Khudrī, who said: "A slain man was found between two villages.

فَإِنْ تَعَلَّقُوا فِي ذَلِكَ مِمَّا نَاهِ يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ نا يُوسُفُ بْنُ أَحْمَدَ نا أَبُو جَعْفَرٍ الْعُقَيْلِيُّ نا مُحَمَّدُ بْنُ إسْمَاعِيلَ نا إسْمَاعِيلُ بْنُ أَبَانَ الْوَرَّاقُ نا أَبُو إسْرَائِيلَ الْمُلَائِيُّ نا عَطِيَّةُ - هُوَ الْعَوْفِيُّ - عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ

«وُجِدَ قَتِيلٌ بَيْنَ قَرْيَتَيْنِ فَأَمَرَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - فَقِيسَ إِلَى أَيَّتِهِمَا أَقْرَبُ؟ فَوُجِدَ أَقْرَبَ إِلَى إِحْدَاهُمَا بِشِبْرٍ، فَكَأَنِّي أَنْظُرُ إِلَى شِبْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَضَمَّنَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - مَنْ كَانَتْ أَقْرَبَ إِلَيْهِ» .

The Prophet (peace be upon him) ordered that the distance be measured to determine which was nearer. It was found closer to one of them by a handspan—it is as though I can still see the handspan of Allah's Messenger (peace be upon him). Thus the Prophet (peace be upon him) obligated those who were nearer to it."

L39630 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: «كَانَتْ أُمُّ عَمْرِو بْنِ سَعْدٍ عِنْدَ الْجُلَاسِ بْنِ سُوَيْدٍ - هُوَ ابْنُ الصَّامِتِ - فَقَالَ الْجُلَاسُ فِي غَزْوَةِ تَبُوكَ: إِنْ كَانَ مَا يَقُولُ مُحَمَّدٌ حَقًّا لَنَحْنُ شَرٌّ مِنَ الْحَمِيرِ؟ فَسَمِعَهَا عُوَيْمِرٌ، فَقَالَ: وَاللَّهِ إِنِّي لَا شَيْءَ إِنْ لَمْ أَرْفَعْهَا إِلَى النَّبِيِّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَنْزِلَ الْقُرْآنُ فِيهِ، وَأَنْ أَخْلِطَ بِخُطْبَتِهِ، وَلَنِعْمَ الْأَبُ هُوَ لِي فَأَخْبَرَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَكَتُوا، فَدَعَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْجُلَاسَ فَعَرَفَهُ - وَهُمْ يَتَرَحَّلُونَ - فَلَمْ يَتَحَرَّكْ أَحَدٌ، كَذَلِكَ كَانُوا يَفْعَلُونَ، لَا يَتَحَرَّكُونَ إِذَا نَزَلَ الْوَحْيُ، فَرُفِعَ عَنِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - فَقَالَ {يَحْلِفُونَ بِاللَّهِ مَا قَالُوا وَلَقَدْ قَالُوا كَلِمَةَ الْكُفْرِ} [التوبة: ٧٤] إِلَى قَوْلِهِ {فَإِنْ يَتُوبُوا يَكُ خَيْرًا لَهُمْ} [التوبة: ٧٤] فَقَالَ الْجُلَاسُ: اسْتَتَبْ إِلَيَّ رَبِّي، فَإِنِّي أَتُوبُ إِلَى اللَّهِ، وَأَشْهَدُ لَهُ بِصِدْقِ {وَمَا نَقَمُوا إِلا أَنْ أَغْنَاهُمُ اللَّهُ وَرَسُولُهُ} [التوبة: ٧٤] قَالَ عُرْوَةُ: كَانَ مَوْلَى الْجُلَاسِ قُتِلَ فِي بَنِي عَمْرِو بْنِ عَوْفٍ، فَأَبَى بَنُو عَمْرِو بْنِ عَوْفٍ: أَنْ يَعْقِلُوهُ، فَلَمَّا قَدِمَ - النَّبِيُّ - عَلَيْهِ السَّلَامُ - جَعَلَ عَقْلَهُ عَلَى عَمْرِو بْنِ عَوْفٍ، قَالَ عُرْوَةُ: فَمَا زَالَ عُمَيْرٌ مِنْهَا بِعَلِيًّا حَتَّى مَاتَ» .

From the narration of Abd al-Razzaq, from Ibn Jurayj, from Hisham ibn Urwah, from his father, who said: "The mother of Amr ibn Sa'd was married to Julas ibn Suwayd—he was the son of al-Samit—and Julas said during the expedition of Tabuk: 'If what Muhammad claims is true, then we are worse than donkeys!' Uwaymir overheard this and declared: 'By Allah, I am nothing if I do not report this to the Prophet—peace and blessings be upon him—so that Quran may be revealed concerning it, and so I may involve myself in his affair. How excellent a brother he has been to me!' He informed the Prophet—peace and blessings be upon him—at which point they fell silent. The Prophet—peace and blessings be upon him—summoned Julas, and he recognized him while they were breaking camp—but no one moved. That was their practice: they would not move when revelation descended. When the revelation ceased from the Prophet—peace and blessings be upon him—he recited: 'They swear by Allah that they said nothing, yet they certainly uttered the word of disbelief...' [Quran 9:74] up to '...but if they repent, it will be better for them' [Quran 9:74]. Julas then said: 'My Lord has granted me repentance. I repent to Allah and testify to His truthfulness: "They resented nothing except that Allah and His Messenger had enriched them..." [Quran 9:74].' Urwah said: Julas's freed slave was killed among the Banu Amr ibn Awf, but the Banu Amr ibn Awf refused to pay the diya (blood money). When the Prophet—peace and blessings be upon him—arrived, he obligated them to pay the diya upon the tribe of Amr ibn Awf. Urwah added: 'Umayr remained steadfastly with Ali concerning it until he died.'"[12]

L39631–39632 ونا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الشُّعَيْبِيُّ عَنْ مَكْحُولٍ «أَنَّ قَتِيلًا وُجِدَ فِي

Muhammad ibn Sa'id ibn Nubat narrated from Abdullah ibn Nasr, who narrated from Qasim ibn Asbagh, who narrated from Muhammad ibn Waddah, who narrated from Musa ibn Mu'awiyah, who narrated from Waki', who

[12] **Qur'an references (L39630):** Qur'an 9:74 (At-Tawbah).

narrated from Muhammad ibn Abdullah al-Shu'aybi, from Makhul: "A slain man was found among the tribe of Hudhayl, so they came to the Prophet (peace be upon him) and informed him. He summoned fifty of them and made each man swear an oath by Allah the Exalted about himself: 'I did not kill him, nor do I know a killer.' Then he imposed the diyah (blood money) on them collectively."

هُذَيْلٍ، فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرُوهُ فَدَعَا خَمْسِينَ مِنْهُمْ، فَأَحْلَفَهُمْ، كُلَّ رَجُلٍ عَنْ نَفْسِهِ يَمِينًا: بِاللَّهِ تَعَالَى مَا قَتَلْنَا وَلَا عَلِمْنَا قَاتِلًا، ثُمَّ أَغْرَمَهُمْ الدِّيَةَ» .

L39633 From Muḥammad ibn Saʿīd ibn Nubāt, from Aḥmad ibn ʿAwn Allāh, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn Bashshār, from Muḥammad ibn Jaʿfar Ghundar, from Shuʿbah, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī, who said: "The qasāmah (oath-based procedure) in the pre-Islamic era was such that when a slain person was found among a tribe, fifty of them would swear: 'We did not kill him, nor do we know the killer.' If the oaths fell short, they were returned to them, and they would pay the diya (blood money)."

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرَ غُنْدَرٌ نا شُعْبَةُ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: إنَّمَا كَانَتْ الْقَسَامَةُ فِي الْجَاهِلِيَّةِ إذَا وُجِدَ الْقَتِيلُ بَيْنَ ظَهْرَانَيْ قَوْمٍ أَقْسَمَ مِنْهُمْ خَمْسُونَ: مَا قَتَلْنَا، وَلَا عَلِمْنَا قَاتِلًا - فَإِنْ عَجَزَتْ الْأَيْمَانُ رُدَّتْ عَلَيْهِمْ، ثُمَّ عَقَلُوا.

L39634 We have been narrated through the chain of Ismāʿīl al-Tirmidhī who narrated to us: Saʿīd ibn ʿAmr Abū ʿUthmān narrated to us: Ismāʿīl ibn ʿAyyāsh narrated to us, from al-Shaʿbī, from Makhūl who narrated: "'Amr ibn Abī Khuzaʿah reported that a man was killed among them during the time of the Messenger of Allah (peace and blessings be upon him). He imposed the qasāmah oath on Khuzāʿah, and they swore by Allah: 'We did not kill him, nor do we know the killer.' Each of them swore individually, and they were held liable to pay the blood money." It is mentioned: "We have previously cited this ruling from ʿUmar and ʿAlī."

وَرُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ التِّرْمِذِيِّ نا سَعِيدُ بْنُ عَمْرٍو أَبُو عُثْمَانَ نا إسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ الشَّعْبِيِّ عَنْ مَكْحُولٍ «نا عَمْرُو بْنُ أَبِي خُزَاعَةَ أَنَّهُ قُتِلَ فِيهِمْ قَتِيلٌ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَعَلَ الْقَسَامَةَ عَلَى خُزَاعَةَ: بِاللَّهِ مَا قَتَلْنَا وَلَا نَعْلَمُ قَاتِلًا، وَحَلَفَ كُلٌّ مِنْهُمْ عَنْ نَفْسِهِ، وَغَرِمُوا الدِّيَةَ» . قَالُوا: وَقَدْ ذَكَرْنَا هَذَا عَنْ عُمَرَ، وَعَلِيٍّ قَبْلُ.

L39635 Abū Muḥammad—may Allah have mercy on him—said: None of these statements require engagement based on what we shall clarify—if Allah Almighty wills. As for the ḥadīth we introduced initially, it is invalid, for it was solely transmitted by ʿAṭiyyah ibn Saʿd al-ʿAwfī, who is profoundly weak. Hushaym, Sufyān al-Thawrī, Yaḥyā ibn Maʿīn, and Aḥmad ibn Ḥanbal all deemed him weak. We do not know of anyone who declared him reliable. Aḥmad ibn Ḥanbal mentioned that it reached him that ʿAṭiyyah would approach al-Kalbī, the notorious liar, take ḥadīths from him, assign him the *kunyah* Abū Saʿīd, and narrate them as if they came from Abū Saʿīd, thereby misleading people

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكُلُّ هَذِهِ الْأَقَاوِيلِ فَلَا يَجِبُ الِاشْتِغَالُ بِهَا عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى: أَمَّا الْحَدِيثُ الَّذِي صَدَّرْنَا بِهِ: فَهَالِكٌ؛ لِأَنَّهُ انْفَرَدَ بِهِ عَطِيَّةُ بْنُ سَعْدٍ الْعَوْفِيُّ وَهُوَ ضَعِيفٌ جِدًّا ضَعَّفَهُ هُشَيْمٌ، وَسُفْيَانُ الثَّوْرِيُّ، وَيَحْيَى بْنُ مَعِينٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَمَا نَدْرِي أَحَدًا وَثَّقَهُ - وَذَكَرَ عَنْهُ أَحْمَدُ بْنُ حَنْبَلٍ أَنَّهُ بَلَغَهُ عَنْهُ أَنَّهُ كَانَ يَأْتِي الْكَلْبِيَّ الْكَذَّابَ فَيَأْخُذُ عَنْهُ الْأَحَادِيثَ، ثُمَّ يُكَنِّيهِ بِأَبِي سَعِيدٍ وَيُحَدِّثُ بِهَا عَنْ

into believing he was Abū Saʿīd al-Khudrī. This ḥadīth is among such [weak] ḥadīths—and Allah knows best—and is thus discarded.

أَبِي سَعِيدٍ، فَيُوهِمُ النَّاسَ أَنَّهُ الْخُدْرِيِّ، وَهَذَا مِنْ تِلْكَ الْأَحَادِيثِ - وَاَللَّهُ أَعْلَمُ - فَهُوَ سَاقِطٌ.

L39636 Moreover, it is also from the narration of Abū Isrāʾīl al-Mulāʾī—Ismāʿīl ibn Abī Isḥāq—a defect compounded by another defect, for this al-Mulāʾī is extremely weak. There is absolutely no report whatsoever concerning the cubit measurement between the two villages apart from this one—neither a musnad (a report with a continuous chain) nor a mursal (a report with an interrupted chain).

ثُمَّ هُوَ أَيْضًا مِنْ رِوَايَةِ أَبِي إِسْرَائِيلَ الْمُلَائِيِّ - هُوَ إِسْمَاعِيلُ بْنُ أَبِي إِسْحَاقَ، فَهُوَ بَلِيَّةٌ عَنْ بَلِيَّةٍ، وَالْمُلَائِيُّ هَذَا ضَعِيفٌ جِدًّا - وَلَيْسَ فِي الذَّرْعِ بَيْنَ الْقَرْيَتَيْنِ خَبَرٌ غَيْرُ هَذَا الْبَتَّةَ، لَا مُسْنَدٌ وَلَا مُرْسَلٌ.

L39637–39639 As for the ḥadīth of al-Julās ibn Suwayd ibn al-Ṣāmit and Umayr ibn Saʿd, for it is mursal from... Urwah ibn al-Zubayr reported: The Messenger of Allah (peace be upon him) — since the narration merely states that the freed slave of Julas was killed among Banu Amr ibn Awf, and that when the Messenger of Allah (peace be upon him) migrated, he assigned the blood money liability to Banu Amr ibn Awf. This does not indicate that a slain person was discovered among them, nor that he (peace be upon him) imposed the qasāmah oath in this matter — which contradicts their assertion. Rather, it only states that the killing occurred among them, so the killer was from their ranks. If the killer was among them, the blood money is incumbent upon them — this pertains to accidental killing, and this is our ruling. Thus, their misuse of this narration is refuted. Success comes only from Allah, the Exalted.

وَأَمَّا حَدِيثُ الْجُلَاسِ بْنِ سُوَيْدِ بْنِ الصَّامِتِ، وَعُمَيْرِ بْنِ سَعْدٍ، فَإِنَّهُ مُرْسَلٌ عَنْ عُرْوَةُ بْنُ الزُّبَيْرِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ إِنَّمَا فِيهِ: أَنَّ مَوْلَى الْجُلَاسِ قُتِلَ فِي بَنِي عَمْرِو بْنِ عَوْفٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا هَاجَرَ جَعَلَ عَقْلَهُ عَلَى بَنِي عَمْرِو بْنِ عَوْفٍ، وَلَيْسَ فِي هَذَا أَنَّهُ وُجِدَ مَقْتُولًا فِيهِمْ، وَلَا أَنَّهُ - عَلَيْهِ السَّلَامُ - أَوْجَبَ فِيهِ قَسَامَةً - وَهَذَا خِلَافُ قَوْلِهِمْ - وَإِنَّمَا فِيهِ: أَنَّهُ قُتِلَ فِيهِمْ، فَقَاتِلُهُ مِنْهُمْ، وَإِذَا كَانَ قَاتِلُهُ مِنْهُمْ فَالْعَقْلُ عَلَيْهِمْ - فَهَذِهِ صِفَةُ قَتْلِ الْخَطَأِ - وَبِهِ نَقُولُ - فَبَطَلَ تَمْوِيهِهِمْ بِهَذَا الْخَبَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39640 As for the ḥadīth of ʿAmr ibn Abī Khuzaʿah, it involves an unverified narrator (majhūl) and is mursal, thereby invalidating it.

وَأَمَّا حَدِيثُ عَمْرِو بْنِ أَبِي خُزَاعَةَ فَهُوَ مَجْهُولٌ وَمُرْسَلٌ - فَبَطَلَ.

L39641 As for what they mentioned from ʿUmar ibn al-Khaṭṭāb and ʿAlī ibn Abī Ṭālib, we have previously stated that the narration from ʿAlī is entirely unauthentic. This is because it is transmitted via Abū Jaʿfar from him—constituting an interrupted chain—and via al-Ḥārith al-Aʿwar, whom al-Shaʿbī described as a liar. The chain also includes al-Ḥajjāj ibn Arṭāʾ.

وَأَمَّا مَا ذَكَرُوهُ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ فَقَدْ قَدَّمْنَا أَنَّهُ عَنْ عَلِيٍّ لَا يَصِحُّ أَلْبَتَّةَ؛ لِأَنَّهُ عَنْ أَبِي جَعْفَرٍ عَنْهُ - فَهُوَ مُنْقَطِعٌ، وَعَنْ الْحَارِثِ الْأَعْوَرِ، وَقَدْ وَصَفَهُ الشَّعْبِيُّ بِالْكَذِبِ - وَفِيهِ أَيْضًا: الْحَجَّاجُ بْنُ أَرْطَاةَ.

L39642 As for the narration attributed to Umar, we have clarified that it is unsound. We know of no evidence in the Qur'an, the established Sunnah of Allah's Messenger (peace and blessings be upon him), consensus, or analogy requir-

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ فَقَدْ بَيَّنَّا أَنَّهَا لَا تَصِحُّ، وَمَا نَعْلَمُ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فِي الْإِجْمَاعِ، وَلَا فِي الْقِيَاسِ: أَنْ يَحْلِفَ

ing a defendant to both swear an oath and pay a fine. These people claim to be adherents of analogy; why then do they not analogize claims involving bloodshed with claims pertaining to wealth and other matters? They have neither correctly followed the Sunnah nor properly applied analogy.

The issue of *qasāmah* concerning the slave found murdered.

Issue 2154: Concerning sworn oaths (qasāmah) for a slain slave found dead - scholars have disagreed on this matter. Abū Ḥanīfah and Muḥammad ibn al-Ḥasan ruled: Sworn oaths apply to a slain slave just as they apply to a free man. The oath-takers must pay his market value over three years, though this sum does not reach the blood money owed for a free person. It is narrated from Abū Yūsuf: There are no sworn oaths or financial liabilities for his death, and no compensation is due - this is also the view of Mālik, his disciples, and Ibn Shubruma.

And Al-Awzāʿī said: There is no collective oath-liability in it; rather, they are liable to pay its price (as blood money).

He said: Zufar and al-Shafiʿi stated: The case involves qasāmah (oath-swearing) and qīmah (monetary value). However, Zufar said: They swear the oath and pay its qīmah (value). Al-Shafiʿi said: The slave swears the oath, and the community pays his qīmah (value).

Abu Muhammad said: Our position is that the *qasāmah* in this matter is like a free man—exactly equal, exactly equal—in every legal ruling pertaining to it? When they disagreed, it became incumbent upon us to examine the evidence each faction presented to support their position.

We found those who said, "There is no collective oath [qasāmah] for a slave," arguing, "The Messenger of Allah—may Allah bless him and grant him peace—only judged." The oath of qasāmah applies to a free person, not a slave, and we may not rule by it except where the Messenger of Allah (peace and blessings be upon him) ruled by it.

Some of them said: A slave is property like an animal, and there is no collective oath for animals nor for other properties—and what argument do

مُدَّعًى عَلَيْهِ وَيَغْرَمَ - وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا الدَّعْوَى فِي الدَّمِ عَلَى الدَّعْوَى فِي الْمَالِ، وَغَيْرِ ذَلِكَ، وَلَكِنْ لَا السُّنَّةَ أَصَابُوا، وَلَا الْقِيَاسَ أَحْسَنُوا.

[مَسْأَلَةُ الْقَسَامَةُ فِي الْعَبْدِ يُوجَدُ مَقْتُولًا]

٢١٥٤ - مَسْأَلَةٌ: وَأَمَّا الْقَسَامَةُ فِي الْعَبْدِ يُوجَدُ مَقْتُولًا؟ فَإِنَّ النَّاسَ اخْتَلَفُوا فِي ذَلِكَ: فَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: الْقَسَامَةُ فِي الْعَبْدِ يُوجَدُ قَتِيلًا كَمَا هِيَ فِي الْحُرِّ، وَعَلَيْهِمْ قِيمَتُهُ فِي ثَلَاثِ سِنِينَ، لَا يُبْلِغُ بِهَا دِيَةَ حُرٍّ - وَرُوِيَ عَنْ أَبِي يُوسُفَ: لَا قَسَامَةَ فِيهِ، وَلَا غَرَامَةَ وَهُوَ هَدَرٌ - وَهُوَ قَوْلُ مَالِكٍ، وَأَصْحَابِهِ، وَابْنِ شُبْرُمَةَ.

وَقَالَ الْأَوْزَاعِيُّ: لَا قَسَامَةَ فِيهِ، وَلَكِنْ يَغْرَمُونَ ثَمَنَهُ.

وَقَالَ: زُفَرُ، وَالشَّافِعِيُّ: فِيهِ الْقَسَامَةُ وَالْقِيمَةُ، إِلَّا أَنَّ زُفَرَ قَالَ: يُقْسِمُونَ وَيَغْرَمُونَ قِيمَتَهُ - وَقَالَ الشَّافِعِيُّ: يَحْلِفُ الْعَبْدُ وَيَغْرَمُ الْقَوْمُ قِيمَتَهُ.

قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُنَا فِيهِ إِنَّ الْقَسَامَةَ فِيهِ كَالْحُرِّ - سَوَاءً سَوَاءً - فِي كُلِّ حُكْمٍ مِنْ أَحْكَامِهِ؟ فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا.

فَوَجَدْنَا مَنْ قَالَ: لَا قَسَامَةَ فِي الْعَبْدِ يَقُولُونَ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا حَكَمَ بِالْقَسَامَةِ فِي حُرٍّ لَا فِي عَبْدٍ، فَلَا يَجُوزُ أَنْ نَحْكُمَ بِهَا إِلَّا حَيْثُ حَكَمَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

we know they have besides this? When we examined this matter, we found these two arguments of theirs to have no valid foundation. As for their claim that the Messenger of God—peace be upon him—only ruled by the collective oath in the case of a free person: we have said enough regarding this. Did the Prophet—peace be upon him—ever state: "I ruled this way only because he was free"? Thus we would be attributing to him what he did not say, and asserting intentions he never expressed—peace be upon him. This amounts to conjecture and baseless fabrication, which are fundamentally impermissible. The collective oath applies to a slain slave, as the Messenger of God—peace be upon him—ruled, with nothing added.

وَقَالَ بَعْضُهُمْ: الْعَبْدُ مَالٌ كَالْبَهِيمَةِ وَلَا قَسَامَةَ فِي الْبَهِيمَةِ، وَلَا فِي سَائِرِ الْأَمْوَالِ - وَمَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا؟ فَلَمَّا نَظَرْنَا فِي ذَلِكَ وَجَدْنَا هَاتَيْنِ الْحُجَّتَيْنِ لَا مُتَعَلَّقَ لَهُمْ فِيهِمَا: أَمَّا قَوْلُهُمْ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَحْكُمْ بِالْقَسَامَةِ إلَّا فِي حُرٍّ؟ فَقَدْ قُلْنَا: فِي هَذَا مَا كَفَى، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - إنِّي إنَّمَا حَكَمْتُ بِهَذَا، لِأَنَّهُ كَانَ حُرًّا؟ فَنَقُولُ عَلَيْهِ مَا لَمْ يَقُلْ، وَنُخْبِرُ عَنْ مُرَادِهِ بِمَا لَمْ يُخْبِرْ - عَلَيْهِ السَّلَامُ - عَنْ نَفْسِهِ وَهَذَا تَكَهُّنٌ وَتَخَرُّصٌ بِالْبَاطِلِ، وَهَذَا لَا يَحِلُّ أَصْلًا، وَالْعَبْدُ قَتِيلٌ فَفِيهِ الْقَسَامَةُ كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا مَزِيدَ.

L39652 As for the statement of those who claim: "The slave is property, therefore no collective oath (qasāmah) applies to him, just as it does not apply to an animal"—this is a corrupt argument, for it constitutes analogical reasoning, and all analogical reasoning is invalid. Though the slave may be property, they seek to assign him the legal status of properties and animals merely because he is classified as property. Yet the free person is also a living being, just as an animal is a living being. By this logic, we would have to invalidate qasāmah for free persons through analogy to its invalidity for other animals. Furthermore, there is no disagreement that the sin incurred before Allah Almighty for killing a slave is equivalent to that of killing a free person, for both constitute inviolable souls falling under His decree: *"Whoever intentionally kills a believer, his recompense is Hell"* [4:93]. But this is not the case for one who kills an animal.[13]

وَأَمَّا قَوْلُ مَنْ قَالَ: إنَّ الْعَبْدَ مَالٌ فَلَا قَسَامَةَ فِيهِ كَمَا لَا قَسَامَةَ فِي الْبَهِيمَةِ؟ فَقَوْلٌ فَاسِدٌ، لِأَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، فَالْعَبْدُ - وَإِنْ كَانَ مَالًا فَأَرَادُوا أَنْ يَجْعَلُوا لَهُ حُكْمَ الْأَمْوَالِ وَالْبَهَائِمِ مِنْ أَجْلِ أَنَّهُ مَالٌ، فَإِنَّ الْحُرَّ أَيْضًا حَيَوَانٌ كَمَا أَنَّ الْبَهِيمَةَ حَيَوَانٌ، فَيَنْبَغِي أَنْ نُبْطِلَ الْقَسَامَةَ فِي الْحُرِّ قِيَاسًا عَلَى بُطْلَانِهَا فِي سَائِرِ الْحَيَوَانِ؟ وَأَيْضًا - فَلَا خِلَافَ فِي أَنَّ الْإِثْمَ عِنْدَ اللَّهِ عَزَّ وَجَلَّ فِي قَتْلِ الْعَبْدِ، كَالْإِثْمِ فِي قَتْلِ الْحُرِّ، لِأَنَّهُمَا جَمِيعًا نَفْسٌ مُحَرَّمَةٌ، وَدَاخِلَانِ تَحْتَ قَوْلِهِ تَعَالَى {وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ} [النساء: ٩٣] وَلَيْسَ كَذَلِكَ قَاتِلُ الْبَهِيمَةِ.

L39653 According to their foundational principles, it is incumbent that we rule for a slave found slain in the same manner as for a free person found slain—not as for an animal—particularly in the Hanafis' position mandating qisas between a free person and a slave in cases of intentional killing. This establishes a valid equivalence between them. Similarly, the Malikis and Shafiis—who obligate expiation for the accidental killing of a slave, just as they obligate it for the accidental killing of a free person, unlike the accidental killing of an

فَوَجَبَ عَلَى أُصُولِهِمْ - أَنْ نَحْكُمَ لِلْعَبْدِ إذَا وُجِدَ مَقْتُولًا بِمِثْلِ الْحُكْمِ فِي الْحُرِّ إذَا وُجِدَ مَقْتُولًا، لَا بِمِثْلِ الْحُكْمِ فِي الْبَهِيمَةِ - لَا سِيَّمَا فِي قَوْلِ الْحَنَفِيِّينَ الْمُوجِبِينَ لِلْقَوَدِ بَيْنَ الْحُرِّ وَالْعَبْدِ فِي الْعَمْدِ - فَهَذِهِ تَسْوِيَةٌ بَيْنَهُمَا صَحِيحَةٌ، وَكَذَلِكَ فِي قَوْلِ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: الْمُوجِبِينَ لِلْكَفَّارَةِ فِي قَتْلِ الْعَبْدِ خَطَأً، كَمَا يُوجِبُونَهَا فِي قَتْلِ الْحُرِّ خَطَأً بِخِلَافِ قَتْلِ

[13] **Qur'an references (L39652):** Qur'an 4:93 (An-Nisa).

animal, is it not?—thereby all their specious claims are nullified. It is thus confirmed that the oath of compurgation is obligatory for a slave, as it is for a free person, based on the ruling of the Messenger of God (peace be upon him), not by analogy.

L39654–39656 As for the statement of those who obligated the one found among them to pay the value of the slave without qasāmah (a procedure of collective oaths), it is a view lacking supporting evidence. Neither the Qur'an, nor the Sunnah, nor consensus, nor analogy, nor independent legal reasoning—since this constitutes wrongful consumption of wealth and imposing an obligated payment on those from whom no valid right has been established. Allah the Exalted said: *"Do not consume one another's wealth unjustly"* (al-Baqarah 2:188). There is no collective oath (qasāmah) for an animal found slain, nor for any properties found invalidated, because an animal is not termed "slain" linguistically or legally. The Messenger of Allah (peace be upon him) ruled by collective oath only for a slain human. Thus, transgressing His ruling is impermissible: *"Whoever transgresses Allah's limits has wronged themselves"* (al-Ṭalāq 65:1), *"He does not speak from desire; it is nothing but revelation revealed"* (al-Najm 53:3-4). Wealth remains inviolable except by explicit textual proof or consensus. Therefore, the obligation regarding an animal found slain or destroyed, and all properties, is what Allah the Exalted mandated through His Messenger (PBUH) when he said: *"Present your evidence or require his oath—you have no recourse beyond this."*[14]

L39657 The obligation in such a case—when the owner of a beast claims it was found slain, or the owner of property claims its destruction against someone—is to require the claimant to produce evidence. If he provides it, the judge must rule in his favor. If he fails to provide it, the defendant must necessarily take an oath. Liability in such matters arises only through evidence or confession. This ruling applies to all claims involving homicide, property, or other matters—except when a slain person is discovered, in which case the collective oath (qasāmah) applies, as the Messenger of Allah (peace and blessings be upon him) specifically prescribed.

[14] **Qur'an references (L39654):** Qur'an 2:188 (Al-Baqarah); Qur'an 65:1 (At-Talaq); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

الْبَهِيمَةِ خَطَأً؟ فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ، وَصَحَّ أَنَّ الْقَسَامَةَ وَاجِبَةٌ فِي الْعَبْدِ كَمَا هِيَ فِي الْحُرِّ مِنْ طَرِيقِ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا طَرِيقِ الْقِيَاسِ.

وَأَمَّا قَوْلُ مَنْ أَلْزَمَ قِيمَةَ الْعَبْدِ مَنْ وُجِدَ بَيْنَ أَظْهُرِهِمْ دُونَ قَسَامَةٍ، فَقَوْلٌ لَا يُؤَيِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ وَلَا قِيَاسٌ، وَلَا نَظَرٌ - وَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَإِغْرَامُ قَوْمٍ لَمْ يَثْبُتْ قِبَلَهُمْ حَقٌّ؟ قَالَ اللَّهُ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَلَا قَسَامَةَ فِي بَهِيمَةٍ وُجِدَتْ مَقْتُولَةً، وَلَا فِي شَيْءٍ وُجِدَ مِنْ الْأَمْوَالِ مَفْسُودًا؛ لِأَنَّ الْبَهِيمَةَ لَا تُسَمَّى " قَتِيلًا " فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ، وَإِنَّمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقَسَامَةِ فِي الْقَتِيلِ، فَلَا يَحِلُّ تَعَدِّي حُكْمِهِ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] ، {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] وَالْأَمْوَالُ مُحَرَّمَةٌ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ؟ فَالْوَاجِبُ فِي الْبَهِيمَةِ - تُوجَدُ مَقْتُولَةً أَوْ تُتْلَفُ - وَفِي الْأَمْوَالِ كُلِّهَا: مَا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - إذْ يَقُولُ «بَيِّنَتُكَ أَوْ يَمِينُهُ لَيْسَ لَكَ إلَّا ذَلِكَ» .

فَالْوَاجِبُ فِي ذَلِكَ إنْ ادَّعَى صَاحِبُ الْبَهِيمَةِ تُوجَدُ مَقْتُولَةً أَوْ صَاحِبُ الْمَالِ إتْلَافَ مَالِهِ عَلَى أَحَدٍ أَنْ يُكَلِّفَهُ الْبَيِّنَةَ؟ فَإِنْ أَتَى بِهَا قَضَى لَهُ بِهَا، وَإِنْ لَمْ يَأْتِ بِهَا حَلَفَ الْمُدَّعَى عَلَيْهِ وَلَا بُدَّ، وَلَا ضَمَانَ فِي ذَلِكَ إلَّا بِبَيِّنَةٍ أَوْ إقْرَارٍ - وَهَذَا حُكْمُ كُلِّ دَعْوَى فِي دَمٍ، أَوْ مَالٍ، أَوْ غَيْرِ ذَلِكَ، حَاشَا الْقَتِيلَ يُوجَدُ، فَفِيهِ الْقَسَامَةُ كَمَا خَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39658 People have differed regarding the case of a slain Dhimmi being found. A group said, “There is no qasāmah [oath-swearing] here,” while Abū Ḥanīfah held the opinion that qasāmah applies in such cases.

وَاخْتَلَفَ النَّاسُ فِي الذِّمِّيِّ يُوجَدُ قَتِيلًا؟ فَقَالَتْ طَائِفَةٌ: لَا قَسَامَةَ فِيهِ - وَرَأَى أَبُو حَنِيفَةَ فِيهِ الْقَسَامَةَ.

L39659 Abū Muḥammad—may Allāh have mercy on him—said: The ruling in this matter is as we stated regarding the slave, because although the Messenger of Allāh—peace and blessings be upon him—applied the oath-swearing procedure in the case of a Muslim who made a claim against the Jews of Khaybar, he—peace and blessings be upon him—did not say, “Did I rule this way because a Muslim made a claim against a Jew?” It is impermissible to ascribe to him—peace and blessings be upon him—what he did not say. Rather, he—peace and blessings be upon him—applied it in the case of a slain person who was found, and he—peace and blessings be upon him—did not specify any particular circumstance. A protected non-Muslim is a slain person; thus, oath-swearing is obligatory in his case if his guardians demand it against a protected non-Muslim or group of protected non-Muslims. For if they were to claim it against a Muslim—even if their claim were valid—there would be no retaliation or blood money due. However, if they wish to swear the oaths and have the Imam pay the blood money, that is permissible for them, for what we have mentioned.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْقَوْلُ فِيهِ كَمَا قُلْنَا فِي الْعَبْدِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنْ كَانَ إنَّمَا حَكَمَ بِالْقَسَامَةِ فِي مُسْلِمٍ ادَّعَى عَلَى يَهُودِ خَيْبَرَ فَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: إنَّمَا حَكَمْت بِهَا، لِأَنَّهُ مُسْلِمٌ ادَّعَى عَلَى يَهُودِيٍّ؟ فَلَا يَجُوزُ أَنْ يُقَوَّلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَقُلْهُ، لَكِنَّهُ - عَلَيْهِ السَّلَامُ - حَكَمَ بِهَا فِي قَتِيلٍ وُجِدَ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - حَالًا مِنْ حَالٍ، وَالذِّمِّيُّ قَتِيلٌ، فَالْقَسَامَةُ فِيهِ وَاجِبَةٌ إذَا ادَّعَاهَا أَوْلِيَاؤُهُ عَلَى ذِمِّيٍّ أَوْ ذِمِّيِّينَ، لِأَنَّهُ إنْ ادَّعَوْهَا عَلَى مُسْلِمٍ - فَحَتَّى لَوْ صَحَّ مَا ادَّعَوْهُ بِالْبَيِّنَةِ - فَلَا قَوَدَ فِيهِ وَلَا دِيَةَ، وَلَكِنْ إنْ أَرَادُوا أَنْ يُقْسِمُوا وَيُودِيَهُ الْإِمَامُ، فَذَلِكَ لَهُمْ، لِمَا ذَكَرْنَا.

L39660–39662 Those who uphold qasamah unanimously agree that while the Messenger of Allah—peace and blessings be upon him—ruled by it regarding a Muslim who brought a claim against Jews, the obligation to apply qasamah lies in cases where a Muslim claims against fellow Muslims. This differs from the circumstance in which the Messenger of Allah—peace and blessings be upon him—ruled by qasamah for a Muslim claimant according to their juristic principles, nor... There is a distinction between applying it [the prescribed punishment] to a Muslim against Muslims, and applying it to a protected non-Muslim against protected non-Muslims or against Muslims, due to the general applicability of his ruling (peace be upon him) and because he (peace be upon him) did not specify any particular category. All success comes from Allah, the Most High.

وَقَدْ اتَّفَقَ الْقَائِلُونَ بِالْقَسَامَةِ عَلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنْ كَانَ - حَكَمَ بِهَا فِي مُسْلِمٍ ادَّعَى عَلَى يَهُودَ؟ فَإِنَّ الْحُكْمَ بِهَا وَاجِبٌ فِي مُسْلِمٍ ادَّعَى - عَلَى مُسْلِمِينَ، وَهَذِهِ غَيْرُ الْحَالِ الَّتِي حَكَمَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مُسْلِمٍ ادَّعَى بِالْقَسَامَةِ عَلَى أُصُولِهِمْ، وَلَا فَرْقَ بَيْنَ الْحُكْمِ بِهَا فِي مُسْلِمٍ عَلَى مُسْلِمِينَ، وَبَيْنَ الْحُكْمِ بِهَا فِي ذِمِّيٍّ عَلَى ذِمِّيِّينَ أَوْ عَلَى مُسْلِمِينَ، لِعُمُومِ حُكْمِهِ - عَلَيْهِ السَّلَامُ - وَإِنَّهُ لَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - صِفَةً مِنْ صِفَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39663 **An issue concerning one who swears by al-qasāmah.**

[مَسْأَلَة فِيمَنْ يَحْلِفُ بِالْقَسَامَةِ]

L39664 2155 - Issue: Regarding those who swear by qasāmah (collective oath). Abū Muḥammad—may Allāh have mercy on him—said: Those who affirm qasāmah agree that the oath is sworn by free, adult, sane agnates of the slain person who are his heirs. They differ beyond this in several aspects, including: Does an agnate who does not inherit swear or not? Does a slave swear among them or not? Does a woman swear among them or not? Does the superior patron swear or not? Does the inferior patron swear among them or not? Does an ally swear or not? Thus, when they disputed, what Allāh the Exalted obligated upon us in cases of dispute became binding, as He says: {If you disagree over something, refer it to Allāh and the Messenger} [4:59] the verse. We complied—and found the Messenger of Allāh—peace and blessings be upon him—saying in the ḥadīth of qasāmah (the only authentic one from him), as we previously detailed: "You swear and claim your right, and fifty of you swear." So the Prophet—peace and blessings be upon him—addressed the Banū Ḥārithah, the agnates of the slain.[15]

٢١٥٥ - مَسْأَلَةٌ: فِيمَنْ يَحْلِفُ بِالْقَسَامَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اتَّفَقَ الْقَائِلُونَ بِالْقَسَامَةِ عَلَى أَنَّهُ يَحْلِفُ فِيهَا الرِّجَالُ الْأَحْرَارُ الْبَالِغُونَ الْعُقَلَاءُ مِنْ عَشِيرَةِ الْمَقْتُولِ الْوَارِثِينَ لَهُ، وَاخْتَلَفُوا فِيمَا وَرَاءَ ذَلِكَ فِي وُجُوهٍ، مِنْهَا: هَلْ يَحْلِفُ مَنْ لَا يَرِثُ مِنْ الْعَصَبَةِ أَمْ لَا؟ وَهَلْ يَحْلِفُ الْعَبْدُ فِي جُمْلَتِهِمْ أَمْ لَا؟ وَهَلْ تَحْلِفُ الْمَرْأَةُ فِيهِمْ أَمْ لَا؟ وَهَلْ يَحْلِفُ الْمَوْلَى مِنْ فَوْقُ أَمْ لَا؟ وَهَلْ يَحْلِفُ الْمَوْلَى الْأَسْفَلُ فِيهِمْ أَمْ لَا؟ وَهَلْ يَحْلِفُ الْحَلِيفُ أَمْ لَا؟ فَوَجَبَ لَمَّا تَنَازَعُوا مَا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْنَا عِنْدَ التَّنَازُعِ، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ؟ فَفَعَلْنَا - فَوَجَدْنَا رَسُولَ اللَّهِ - عَلَيْهِ السَّلَامُ - قَالَ فِي حَدِيثِ الْقَسَامَةِ - الَّذِي لَا يَصِحُّ عَنْهُ غَيْرُهُ - كَمَا قَدْ تَقَصَّيْنَاهُ قَبْلُ «تَحْلِفُونَ وَتَسْتَحِقُّونَ وَيَحْلِفُ خَمْسُونَ مِنْكُمْ» فَخَاطَبَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَنِي حَارِثَةَ عَصَبَةَ الْمَقْتُولِ.

L39665 And with certainty, every possessor of knowledge knows that the heirs of ʿAbd Allāh ibn Sahl—may Allāh be pleased with him—were not fifty, and he had no heir except his brother ʿAbd al-Raḥmān alone. Those required to swear the oath were his two paternal cousins, Muḥayyiṣah and Ḥuwayyiṣah—and are they not his non-inheriting kin? Thus, it is established that agnates take the oath even if they are not heirs.

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي مَعْرِفَةٍ: أَنَّ وَرَثَةَ عَبْدِ اللَّهِ بْنِ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَكُونُوا خَمْسِينَ، وَمَا كَانَ لَهُ وَارِثٌ إلَّا أَخُوهُ عَبْدُ الرَّحْمَنِ وَحْدَهُ، وَكَانَ الْمُخَاطَبُ بِالتَّحْلِيفِ ابْنَيْ عَمِّهِ مُحَيِّصَةُ، وَحُوَيِّصَةَ، وَهُمَا غَيْرُ وَارِثِينَ لَهُ؟ فَصَحَّ - أَنَّ الْعَصَبَةَ يَحْلِفُونَ، وَإِنْ لَمْ يَكُونُوا وَارِثِينَ.

L39666 It is established that whoever among them was prepared to swear the oath, it was valid for him—whether he was closer in relation to the slain or farther from him—because the Messenger of Allah, peace and blessings be upon him, addressed the two paternal cousins just as he addressed the brother with equal regard, without prioritizing any of them.

وَصَحَّ - أَنَّ مَنْ نَشِطَ لِلْيَمِينِ مِنْهُمْ كَانَ ذَلِكَ لَهُ - سَوَاءٌ كَانَ بِذَلِكَ أَقْرَبَ إلَى الْمَقْتُولِ أَوْ أَبْعَدَ مِنْهُ - لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَاطَبَ ابْنَيْ الْعَمِّ، كَمَا خَاطَبَ الْأَخَ خِطَابًا مُسْتَوِيًا، لَمْ يُقَدِّمْ أَحَدًا مِنْهُمْ.

L39667–39668 Similarly, the oath-taking applied only to the sub-tribe to which the slain person was known by lineage, because the Messenger of Allah—peace and

وَكَذَلِكَ لَمْ يَدْخُلْ فِي التَّحْلِيفِ إلَّا الْبَطْنُ الَّذِي يُعْرَفُ الْمَقْتُولُ بِالِانْتِسَابِ إلَيْهِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُخَاطِبْ بِذَلِكَ إلَّا بَنِي حَارِثَةَ الَّذِي كَانَ الْمَقْتُولُ

[15] **Qur'an references (L39664):** Qur'an 4:59 (An-Nisa).

blessings be upon him—addressed none but Banū Ḥārithah, among whom the slain person was known through lineage. He did not address the remaining sub-tribes of the Anṣār—such as Banū ʿAbd al-Ashhal, Banū Ẓafar, and Banū Zaʿwar, who were the brother tribes of Banū Ḥārithah. Thus, it is not permissible to include among them anyone whom the Messenger of Allah—peace and blessings be upon him—did not include.

L39669 Abu Muhammad—may Allah have mercy on him—said: If there is among the agnates a slave of pure lineage within their kinship, except that his father married a slave woman belonging to a people—resulting in his enslavement for that reason—then he may swear with them if he wishes, for he is from them. The Prophet—peace be upon him—did not specify exclusion when he said: "Fifty free men among you, not counting a slave"—if he is from them—just as Ammar ibn Yasir—may Allah be pleased with him—was of their origin: affiliated with Anas, yet enslavement befell him through Banu Makhzum. Similarly, Amir ibn Fuhayrah was an Azdi of pure lineage, yet enslavement befell him because his father married Fuhayrah—the slave woman of Abu Bakr—may Allah be pleased with him. Likewise, Miqdad ibn Amr was a Bahrani of pure lineage, yet enslavement befell him through his mother. And with Allah—the Exalted—lies all success.

L39670 As for women, we previously mentioned that ʿUmar ibn al-Khaṭṭāb—may Allah be pleased with him—required a woman seeking redress in a case of qasāmah (oath-based collective liability in homicide) to swear an oath. She swore, and he ruled the blood money obligation upon her male guardian. Later scholars claimed women cannot swear oaths at all, arguing that "only those obligated to provide support swear oaths." This constitutes a fallacy buttressed by another fallacy, for providing support is incumbent upon every Muslim, as we have narrated through Bukhārī's chain: Musaddad narrated to us, Muʿtamir ibn Sulaymān narrated to us, from Ḥumayd, from Anas, who said: Allah's Messenger—peace be upon him—declared, "Support your brother whether he is an oppressor or oppressed." They asked, "O Messenger of Allah, we support him if oppressed—but how if he is an oppressor?" He replied, "By restraining his hand."

L39671 We reported through the chain of Muslim: Ahmad ibn Abdullah ibn Yunus

مَعْرُوفًا بِالنَّسَبِ فِيهِمْ، وَلَمْ يُخَاطِبْ بِذَلِكَ سَائِرَ بُطُونِ الْأَنْصَارِ - كَبَنِي عَبْدِ الْأَشْهَلِ وَبَنِي ظَفَرٍ، وَبَنِي زَعْوَرٍ، وَهُمْ إِخْوَةُ بَنِي حَارِثَةَ - فَلَا يَجُوزُ أَنْ يَدْخُلَ فِيهِمْ مَنْ لَمْ يُدْخِلْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ كَانَ فِي الْعَصَبَةِ عَبْدٌ صَرِيحُ النَّسَبِ فِيهِمْ، إلَّا أَنَّ أَبَاهُ تَزَوَّجَ أَمَةً لِقَوْمٍ فَلَحِقَهُ الرِّقُّ لِذَلِكَ، فَإِنَّهُ يَحْلِفُ مَعَهُمْ إنْ شَاءَ؛ لِأَنَّهُ مِنْهُمْ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - إذْ قَالَ: خَمْسُونَ مِنْكُمْ حُرًّا مِنْ عَبْدٍ - إذَا كَانَ مِنْهُمْ - كَمَا كَانَ عَمَّارُ بْنُ يَاسِرٍ - رَضِيَ اللَّهُ عَنْهُ - مِنْ طِينَتِهِ: عَنَسٌ، وَلَحِقَهُ الرِّقُّ لِبَنِي مَخْزُومٍ - وَكَمَا كَانَ عَامِرُ بْنُ فُهَيْرَةَ أَزْدِيًّا صَرِيحًا فَلَحِقَهُ الرِّقُّ؛ لِأَنَّ أَبَاهُ تَزَوَّجَ فُهَيْرَةَ أَمَةَ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - وَكَمَا كَانَ الْمِقْدَادُ بْنُ عَمْرٍو بَهْرَانِيًّا حُرًّا، وَلَحِقَهُ الرِّقُّ مِنْ قِبَلِ أُمِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الْمَرْأَةُ - فَقَدْ ذَكَرْنَا قَبْلُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - أَحْلَفَ امْرَأَةً فِي الْقَسَامَةِ - وَهِيَ طَالِبَةٌ - فَحَلَفَتْ، وَقَضَى لَهَا بِالدِّيَةِ عَلَى مَوْلًى لَهَا. وَقَالَ الْمُتَأَخِّرُونَ: لَا تَحْلِفُ الْمَرْأَةُ أَصْلًا - وَاحْتَجُّوا بِأَنَّهُ إنَّمَا يَحْلِفُ مَنْ تَلْزَمُهُ لَهُ النُّصْرَةُ، وَهَذَا بَاطِلٌ مُؤَيَّدٌ بِبَاطِلٍ؛ لِأَنَّ النُّصْرَةَ وَاجِبَةٌ عَلَى كُلِّ مُسْلِمٍ. بِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ حُمَيْدٍ عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «انْصُرْ أَخَاكَ ظَالِمًا كَانَ أَوْ مَظْلُومًا، قَالُوا: يَا رَسُولَ اللَّهِ هَذَا نَنْصُرُهُ مَظْلُومًا فَكَيْفَ نَنْصُرُهُ ظَالِمًا؟ قَالَ: تَأْخُذُ فَوْقَ يَدَيْهِ» .

narrated to us, Zuhayr (the son of Mu'awiyah) narrated to us, Ash'ath (the son of Abi Ash-Sha'atha) narrated to us from Mu'awiyah ibn Suwayd ibn Muqarrin, who said: We entered upon Al-Bara' ibn Azib, and I heard him say, "The Messenger of Allah—peace and blessings be upon him—commanded us with seven things and forbade us from seven. He commanded us: [1] to visit the sick, [2] to follow funeral processions, [3] to say 'Yarḥamuk Allāh' to one who sneezes, [4] to honor the oath or the one who swears, [5] to support the oppressed, [6] to respond to invitations, and [7] to spread the salām."

وَرَوَيْنَا مِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ يُونُسَ نا زُهَيْرٌ - هُوَ ابْنُ مُعَاوِيَةَ - نا أَشْعَثُ - هُوَ ابْنُ أَبِي الشَّعْثَاءِ - نِي مُعَاوِيَةُ بْنُ سُوَيْدِ بْنِ مُقَرِّنٍ قَالَ: دَخَلْنَا عَلَى الْبَرَاءِ بْنِ عَازِبٍ فَسَمِعْتُهُ يَقُولُ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَبْعٍ، وَنَهَانَا عَنْ سَبْعٍ أَمَرَنَا: بِعِيَادَةِ الْمَرِيضِ، وَاتِّبَاعِ الْجَنَائِزِ، وَتَشْمِيتِ الْعَاطِسِ، وَإِبْرَارِ الْقَسَمِ - أَوْ الْمُقْسِمِ - وَنَصْرِ الْمَظْلُومِ، وَإِجَابَةِ الدَّاعِي، وَإِفْشَاءِ السَّلَامِ» .

L39672–39673 Allah the Exalted has obligated the support of our brethren. Allah the Exalted said, "The believers are but brothers" [Al-Hujurāt 49:10]. Indeed, supporting the dhimmis is an obligation. Allah the Exalted said, "And if they seek your aid in religion, then upon you is the support, except against a people with whom you have a covenant" [Al-Anfāl 8:72].[16]

فَقَدْ افْتَرَضَ اللَّهُ تَعَالَى نَصْرَ إخْوَانِنَا. قَالَ اللَّهُ تَعَالَى {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] . نَعَمْ، وَنَصْرُ أَهْلِ الذِّمَّةِ فَرْضٌ، قَالَ اللَّهُ تَعَالَى {وَإِنِ اسْتَنْصَرُوكُمْ فِي الدِّينِ فَعَلَيْكُمُ النَّصْرُ إلا عَلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ} [الأنفال: ٧٢] .

L39674 It is authentically established that no one among the people of Islam has a greater right to support than another. Therefore, a woman must swear an oath if she so wishes. The statement of the Messenger of Allah—peace and blessings be upon him—"Fifty among you are to swear" is a wording that encompasses both men and women.

فَقَدْ صَحَّ أَنَّهُ لَيْسَ أَحَدٌ أَوْلَى بِالنُّصْرَةِ مِنْ غَيْرِهِ مِنْ أَهْلِ الْإِسْلَامِ - فَوَجَبَ أَنْ تَحْلِفَ الْمَرْأَةُ إنْ شَاءَتْ - وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَحْلِفُ خَمْسُونَ مِنْكُمْ» وَهَذَا لَفْظٌ يَعُمُّ النِّسَاءَ وَالرِّجَالَ.

L39675 We have only mentioned the ruling of 'Umar to prevent them from claiming consensus on our behalf.

وَإِنَّمَا ذَكَرْنَا حُكْمَ عُمَرَ لِئَلَّا يَدَّعُوا لَنَا الْإِجْمَاعَ.

L39676 As for children and the insane, they are not addressed at all in matters of religion. The Prophet, peace be upon him, said, "The pen is lifted from three [categories]"—mentioning the child and the insane… Even though there is a certain and undoubted consensus that the two of them cannot take oaths in the *qasāmah*.

فَأَمَّا الصِّبْيَانُ وَالْمَجَانِينُ، فَغَيْرُ مُخَاطَبِينَ أَصْلًا بِشَيْءٍ مِنْ الدِّينِ - قَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ. فَذَكَرَ: الصَّبِيَّ وَالْمَجْنُونَ» مَعَ أَنَّهُ إجْمَاعٌ أَنْ لَا يَحْلِفَا فِي الْقَسَامَةِ مُتَيَقَّنٌ لَا شَكَّ فِيهِ.

L39677 As for the patron from above, the patron from below, and the confederate, some people have said: It is established that the Messenger of Allah (peace be upon him and his family) stated, "The patron of a people is from among them, and the patron of a people is one of their own."

وَأَمَّا الْمَوْلَى مِنْ فَوْقُ، وَالْمَوْلَى مِنْ أَسْفَلَ، وَالْحَلِيفُ، فَإِنَّ قَوْمًا قَالُوا: قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَوْلَى الْقَوْمِ مِنْهُمْ - وَمَوْلَى الْقَوْمِ مِنْ أَنْفُسِهِمْ» .

[16] **Qur'an references (L39673):** Qur'an 49:10 (Al-Hujurat); Qur'an 8:72 (Al-Anfal).

وَأَثْبَتَ الْحَلَفَ فِي الْجَاهِلِيَّةِ - قَالُوا: وَنَحْنُ نَعْلَمُ يَقِينًا - أَنَّهُ قَدْ كَانَ لِبَنِي حَارِثَةَ مَوَالٍ مِنْ أَسْفَلَ، وَحُلَفَاءُ، لَا شَكَّ فِي ذَلِكَ، وَلَا مِرْيَةَ، فَوَجَبَ أَنْ يَحْلِفُوا مَعَهُمْ.

L39678 He affirmed the oath from the pre-Islamic era. They said: "We know with certainty that Banū Ḥārithah had allies from the lower regions and pact-bound partners—there is no doubt or ambiguity about this—thus it became obligatory for them to swear the oath alongside them."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ - وَمِنْ أَنْفُسِهِمْ» فَصَحِيحٌ - وَكَذَلِكَ كَوْنُ بَنِي حَارِثَةَ لَهُمْ الْحُلَفَاءُ وَالْمَوَالِي مِنْ أَسْفَلَ بِلَا شَكٍّ؟ إلَّا أَنَّنَا لَسْنَا عَلَى يَقِينٍ مِنْ أَنَّ بَنِي حَارِثَةَ إذْ قَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَحْلِفُونَ وَتَسْتَحِقُّونَ وَيَحْلِفُ خَمْسُونَ مِنْكُمْ» حَضَرَ ذَلِكَ الْقَوْلَ فِي ذَلِكَ الْمَجْلِسِ حَلِيفٌ لَهُمْ، أَوْ مَوْلًى لَهُمْ - وَلَوْ أَيْقَنَّا أَنَّهُ حَضَرَ هَذَا الْخِطَابَ مَوْلًى لَهُمْ، أَوْ حَلِيفٌ لَهُمْ، لَقُلْنَا بِأَنَّ الْحَلِيفَ وَالْمَوْلَى يَحْلِفُونَ مَعَهُمْ، وَإِذْ لَا يَقِينَ عِنْدَنَا أَنَّهُ حَضَرَ هَذَا الْخِطَابَ حَلِيفٌ وَمَوْلًى؟ فَلَا يَجُوزُ أَنْ يَحْلِفَ فِي حُكْمٍ مُنْفَرِدٍ بِرَسْمِهِ، إلَّا مَنْ نَحْنُ عَلَى يَقِينٍ مِنْ لُزُومِ ذَلِكَ الْحُكْمِ لَهُ.

L39679 Abu Muhammad—may Allah have mercy on him—said: As for the statement of the Messenger of Allah—peace and blessings be upon him—"The client of a people is from among them, and from their own selves," it is authentic. Similarly, is the fact that Banu Harithah have allies and clients from subordinate groups not without doubt? However, we are not certain that when the Messenger of Allah—peace and blessings be upon him—said to Banu Harithah, "You swear and are entitled, and fifty among you swear," an ally or client of theirs was present in that gathering during that statement. If we were certain that a client or ally of theirs was present during this address, we would affirm that the ally and the client swear alongside them. But since we lack certainty that an ally or client was present during this address, is it permissible for a client or ally to swear separately under an established ruling except for those we are certain are bound by that ruling?

فَإِنْ قِيلَ: قَدْ قَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَوْلَى الْقَوْمِ مِنْهُمْ» يُغْنِي عَنْ حُضُورِ الْمَوَالِي هُنَالِكَ، وَالْحَلِيفُ أَيْضًا - يُسَمَّى فِي لُغَةِ الْعَرَبِ " مَوْلًى " كَمَا قَالَ - عَلَيْهِ السَّلَامُ - لِلْأَنْصَارِ أَوَّلَ مَا لَقِيَهُمْ «أَمِنَ مَوَالِي يَهُودَ» يُرِيدُ مِنْ حُلَفَائِهِمْ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: قَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا ذَكَرْتُمْ.

L39680–39681 If it is said: The Prophet (peace and blessings of Allah be upon him) stated, "The mawla (client/ally) of a people is among them," which dispenses with the need for the mawālī's presence there—and the ḥalīf (ally) is also termed "mawla" in Arabic, as he (peace and blessings of Allah be upon him) said to the Anṣār upon first meeting them: "Are you the protected mawālī of the Jews?" meaning their confederates? We say—and success comes only from Allah, the Exalted—: He (peace and blessings of Allah be upon him) indeed uttered what you cited.

وَقَالَ أَيْضًا «ابْنُ أُخْتِ الْقَوْمِ مِنْهُمْ» ، وَقَدْ أَوْرَدْنَاهُ قَبْلُ بِإِسْنَادِهِ فِي " كِتَابِ الْعَاقِلَةِ " وَلَا خِلَافَ فِي أَنَّهُ لَا يَحْلِفُ مَعَ أَخْوَالِهِ؟ فَنَحْنُ نَقُولُ: إنَّ ابْنَ أُخْتِ الْقَوْمِ مِنْهُمْ: حَقٌّ؛ لِأَنَّهُ مُتَوَلَّدٌ مِنْ امْرَأَةٍ هِيَ مِنْهُمْ بِحَقِّ الْوِلَادَةِ، وَالْحَلِيفُ وَالْمَوْلَى أَيْضًا مِنْهُمْ؛ لِأَنَّهُمَا مِنْ

L39682 He also said, "The sister's son of the clan is among them as a rightful member," and we previously cited this with its chain of transmission in *The Book of Collective Blood-Money Liability*. There is no disagreement that he does not swear an oath alongside his maternal uncles. Thus, we assert: The sister's son of the clan is among them as a rightful member because he is born from a woman who belongs to them by right of birth. Similarly, the ally and the client are also among them, as they are part of their group. However, this

statement from him, peace be upon him, does not entail granting the client and the ally every legal ruling that applies to the clan.

L39683 The consensus of the people of truth is soundly established that the caliphate is not entitled to a client of Quraysh, nor their ally, nor the sister's son of the tribe—even if he is from among them—

L39684 The oath-swearing procedure (qasāmah) applies equally to intentional and unintentional acts—as previously discussed—concerning those who swear the oaths in such cases, with no distinction between them.

L39685 **The issue of the number who swear in the *qasamah*.**

L39686 2156 - Issue: How many must swear in the Qasāmah? Scholars have differed regarding this. A group held: Only fifty must swear. If the number falls short by one or more, the ruling of Qasāmah is invalidated, and the matter reverts to mutual claims.

L39687 Others said: If the number is reduced by one or more, the oaths are re-iterated upon them until they number two. If the legal guardians are only two, the qasamah (oath ritual for homicide) becomes invalid in cases of intentional killing. As for unintentional killing, a single individual swears fifty oaths. This is an opinion narrated from the earlier scholars among the people of Medina.

L39688 Others said: Fifty must swear. If their number decreases by one or more, the oaths are to be reinstated against them until they return to one. If the slain person has only one heir, the qasāma becomes invalid, and the judgment returns to mutual claims. This is the opinion of Mālik.

L39689 Other scholars held: The oaths are to be repeated. Even if there is only one [oath], he must swear fifty oaths individually—and this is the opinion of al-Shāfiʿī.

جُمْلَتِهِمْ - وَلَيْسَ فِي هَذَا الْقَوْلِ مِنْهُ - عَلَيْهِ السَّلَامُ - مَا يُوجِبُ أَنْ يُحْكَمَ لِلْمَوْلَى وَالْحَلِيفِ بِكُلِّ حُكْمٍ وَجَبَ لِلْقَوْمِ.

وَقَدْ صَحَّ إجْمَاعُ أَهْلِ الْحَقِّ عَلَى أَنَّ الْخِلَافَةَ لَا يَسْتَحِقُّهَا مَوْلَى قُرَيْشٍ، وَلَا حَلِيفُهُمْ، وَلَا ابْنُ أُخْتِ الْقَوْمِ، وَإِنْ كَانَ مِنْهُمْ -.

وَالْقَسَامَةُ فِي الْعَمْدِ وَالْخَطَأِ سَوَاءٌ - فِيمَا ذَكَرْنَا - فِيمَنْ يَحْلِفُ فِيهَا، وَلَا فَرْقَ.

[مَسْأَلَة كَمْ يَحْلِفُ فِي الْقَسَامَةِ.]

٢١٥٦ - مَسْأَلَةٌ: كَمْ يَحْلِفُ فِي الْقَسَامَةِ؟ اخْتَلَفَ النَّاسُ فِي هَذَا؟ فَقَالَتْ طَائِفَةٌ: لَا يَحْلِفُ إلَّا خَمْسُونَ، فَإِنْ نَقَصَ مِنْ هَذَا الْعَدَدِ وَاحِدٌ فَأَكْثَرُ: بَطَلَ حُكْمُ الْقَسَامَةِ، وَعَادَ الْأَمْرُ إلَى التَّدَاعِي.

وَقَالَ آخَرُونَ: إنْ نَقَصَ وَاحِدٌ فَصَاعِدًا: رُدِّدَتْ الْأَيْمَانُ عَلَيْهِمْ حَتَّى يَبْلُغُوا اثْنَيْنِ، فَإِنْ كَانَ الْأَوْلِيَاءُ اثْنَيْنِ فَقَطْ بَطَلَتْ الْقَسَامَةُ فِي الْعَمْدِ - وَأَمَّا فِي الْخَطَأِ فَيَحْلِفُ فِيهِ وَاحِدٌ خَمْسِينَ - وَهُوَ قَوْلٌ رُوِيَ عَنْ عُلَمَاءِ أَهْلِ الْمَدِينَةِ الْمُتَقَدِّمِينَ مِنْهُمْ.

وَقَالَ آخَرُونَ: يَحْلِفُ خَمْسُونَ، فَإِنْ نَقَصَ مِنْ عَدَدِهِمْ وَاحِدٌ فَصَاعِدًا: رُدَّتْ الْأَيْمَانُ عَلَيْهِمْ، حَتَّى يَرْجِعُوا إلَى وَاحِدٍ، فَإِنْ لَمْ يَكُنْ لِلْمَقْتُولِ إلَّا وَلِيٌّ وَاحِدٌ: بَطَلَتْ الْقَسَامَةُ، وَعَادَ الْحُكْمُ إلَى التَّدَاعِي - وَهَذَا قَوْلُ مَالِك.

وَقَالَ آخَرُونَ: تُرَدَّدُ الْأَيْمَانُ، وَإِنْ لَمْ يَكُنْ إلَّا وَاحِدٌ فَإِنَّهُ يَحْلِفُ خَمْسِينَ يَمِينًا وَحْدَهُ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

وَهَكَذَا قَالُوا فِي أَيْمَانِ الْمُدَّعَى عَلَيْهِمْ: أَنَّهَا تُرَدَّدُ عَلَيْهِمْ وَإِنْ لَمْ يَبْقَ إِلَّا وَاحِدٌ وَيُجْبَرُ الْكَسْرُ عَلَيْهِمْ - فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ: فَوَجَدْنَا مَنْ قَالَ بِتَرْدِيدِ الْأَيْمَانِ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ فِي كِتَابٍ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي الْأَيْمَانِ أَنْ يَحْلِفَ الْأَوْلِيَاءُ، فَإِنْ لَمْ يَكُنْ عَدَدُ عَصَبَتِهِ تَبْلُغُ خَمْسِينَ رُدِّدَتْ الْأَيْمَانُ عَلَيْهِمْ بَالِغًا مَا بَلَغُوا» .

L39690–39691 Similarly, they stated concerning the oaths of defendants: the oaths are reiterated upon them even if only a single individual remains, and the numerical shortfall is compensated by them. When they differed, we were obliged to investigate. We discovered those who advocated the repetition of oaths through the transmission of ʿAbd al-Razzāq from Ibn Jurayj from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, who reported that in a written ruling of ʿUmar ibn ʿAbd al-ʿAzīz, it is recorded: "The Prophet—peace and blessings of Allah be upon him—judged regarding oaths that the guardians must swear. If the number of his agnatic male relatives does not reach fifty, the oaths are repeatedly administered among them to the extent of their number."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ عَمْرٍو عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ، قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخَمْسِينَ يَمِينًا، ثُمَّ يَحِقُّ دَمُ الْمَقْتُولِ إِذَا حُلِفَ عَلَيْهِ، ثُمَّ يُقْتَلُ قَاتِلُهُ، أَوْ تُؤْخَذُ دِيَتُهُ، وَيَحْلِفُ عَلَيْهِ أَوْلِيَاؤُهُ - مَنْ كَانُوا قَلِيلًا أَوْ كَثِيرًا - فَمَنْ تَرَكَ مِنْهُمْ الْيَمِينَ ثَبَتَتْ عَلَى مَنْ بَقِيَ مِمَّنْ يَحْلِفُ - فَإِنْ نَكَلُوا كُلُّهُمْ: حَلَفَ الْمُدَّعَى عَلَيْهِمْ خَمْسِينَ يَمِينًا: مَا قَتَلْنَاهُ، ثُمَّ بَطَلَ دَمُهُ - وَإِنْ نَكَلُوا كُلُّهُمْ: عَقَلَهُ الْمُدَّعَى عَلَيْهِمْ - وَلَا يُطَلُّ دَمُ مُسْلِمٍ إِذَا ادُّعِيَ إِلَّا بِخَمْسِينَ يَمِينًا» .

L39692 Via the chain of Ibn Wahb, Muḥammad ibn ʻAmr informed me from Ibn Jurayj from ʻAmr ibn Shuʻayb, who said: "Allah's Messenger (peace be upon him) ruled with fifty oaths. The slain person's blood claim becomes due if sworn upon, whereupon the killer is executed or his blood money (*diya*) is taken. The heirs – whether few or many – must swear the oath. Whoever among them abandons the oath, it remains binding upon those remaining who swear. If they all refuse, those against whom the claim is made must swear fifty oaths: 'We did not kill him,' whereupon his blood claim is annulled. If they all refuse, the accused party must pay the blood money (*diya*). The blood of a Muslim is not shed without redress when claimed except through fifty oaths."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا لَا شَيْءَ؛ لِأَنَّهُمَا مُرْسَلَانِ، وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ: أَمَّا حَدِيثُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَفِيهِ: أَنْ يَحْلِفَ الْأَوْلِيَاءُ، وَهَذَا لَا يَقُولُ بِهِ الْحَنَفِيُّونَ؛ فَإِنْ تَعَلَّقَ بِهِ الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ. قِيلَ لِلْمَالِكِيِّينَ: هُوَ أَيْضًا حُجَّةٌ عَلَيْكُمْ؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنْ لَا يَحْلِفَ إِلَّا اثْنَانِ.

L39693 Abū Muḥammad—may Allah have mercy on him—said: This is invalid because both are *mursal* hadiths; a *mursal* hadith does not constitute valid proof. As for the ḥadīth of ʿUmar ibn ʿAbd al-ʿAzīz, it states that the guardians must swear an oath, but this is not upheld by the Ḥanafīs. If the Mālikīs and Shāfiʿīs rely on it, it was said to the Mālikīs: "It is also a valid proof against you, for it does not specify that the oath is restricted to two."

وَأَيْضًا - فَلَيْسَ هُوَ بِأَوْلَى مِنْ الْمُرْسَلِ الَّذِي بَعْدَهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ، وَهُوَ مُخَالِفٌ لِقَوْلِ جَمِيعِهِمْ؛ لِأَنَّ فِيهِ: إنْ نَكَلَ الْفَرِيقَانِ عَقَلَهُ الْمُدَّعَى عَلَيْهِمْ وَلَا يَقُولُ بِهِ مَالِكِيٌّ، وَلَا

L39694 Moreover, the ruling is not more authoritative than the subsequent unattributed report transmitted through Ibn Wahb, for it contradicts all their positions. It contains the provision that if both parties refuse to swear, the blood money is paid by the defendants—a view no Mālikī or Shāfiʿī scholar upholds. It also prescribes legal retribution through collective oaths

(qasāmah)—a position no Ḥanafī or Shāfiʿī endorses. Furthermore, it mandates the collective repetition of oaths without specifying their number as two—contrary to Mālik's explicit assertion requiring two oaths.

L39695–39697 Abū Muḥammad—may Allāh have mercy on him—said: Moreover, those who uphold the repetition of oaths in collective oath-swearing (qasāmah) have differed about the manner of repetition. It has been narrated to us from ʿUmar that he had the oaths repeated by the two parties—the first group then the same group again—meaning: as if they were forty men who swore forty oaths, leaving ten oaths unfulfilled. Thus, the ten who had sworn first swore those ten oaths only. Another narration differs, stating that the oaths are repeated by two individuals at a time, as narrated to us through Ibn Wahb's chain: Ibn Samʿān said: I heard from those I met among... Our scholars state regarding qasāmah (oaths of compurgation) that it applies in cases of accidental killing to the heirs. If the slain person has no heir in the case of accidental killing except a single heir, he must swear fifty reiterated oaths, then the diyah (blood money) is given to him. If there are two sons or two brothers, with no other heirs besides them, and one of them consents to the qasāmah while the other refuses, the one who consents must swear twenty-five reiterated oaths, then half the diyah is given to him, and the other receives nothing. If the heirs are three individuals, the qasāmah is divided into thirds among them. If the oaths do not suffice for them, the remaining oaths are distributed among the pairs in succession. Indeed, the qasāmah is imposed upon the heirs according to their inheritance shares. We have mentioned through a connected chain of transmission from Saʿīd ibn al-Musayyab and al-Zuhrī that the reiteration of oaths in qasāmah is impermissible, and that it is an innovation that did not exist before, and that the first to reiterate oaths in qasāmah was Muʿāwiyah. There exists an unauthenticated report on this matter; had they found its like, they would have been overjoyed.

L39698 It is valid that there is no collective oath (qasāmah) except with fifty men swearing: that so-and-so killed our companion intentionally or by mistake, in whatever way they knew it. If they are short by one or more, the collective oath becomes void and the matter reverts to the ruling of mutual litigation. They must swear in the judge's assembly while seated, regardless of their

شَافِعِيٌّ، وَفِيهِ الْقَوَدُ بِالْقَسَامَةِ - وَلَا يَقُولُ بِهِ حَنَفِيٌّ، وَلَا شَافِعِيٌّ، وَفِيهِ تَرْدِيدُ الْأَيْمَانِ جُمْلَةً دُونَ تَخْصِيصٍ أَنْ يَكُونَا اثْنَيْنِ كَمَا يَقُولُ مَالِكٌ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَيْضًا - فَإِنَّ الْقَائِلِينَ بِتَرْدِيدِ الْأَيْمَانِ فِي الْقَسَامَةِ قَدْ اخْتَلَفُوا فِي التَّرْدِيدِ، فَرُوِّينَا عَنْ عُمَرَ: أَنَّهُ رَدَّدَ الْأَيْمَانَ عَلَيْهِمَا الْأَوَّلَ فَالْأَوَّلَ مَعْنَاهُ: كَأَنَّهُمْ كَانُوا أَرْبَعِينَ فَحَلَفُوا أَرْبَعِينَ يَمِينًا، فَبَقِيَتْ عَشَرَةُ أَيْمَانٍ، فَحَلَفَ الْعَشَرَةُ الَّذِينَ حَلَفُوا أَوَّلًا فَقَطْ، وَرُوِيَ غَيْرُ ذَلِكَ وَأَنَّهَا تُرَدَّدُ عَلَى الِاثْنَيْنِ فَالِاثْنَيْنِ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ قَالَ: قَالَ ابْنُ سَمْعَانَ: سَمِعْت مَنْ أَدْرَكْت مِنْ عُلَمَائِنَا يَقُولُونَ فِي الْقَسَامَةِ تَكُونُ فِي الْخَطَأِ عَلَى الْوَارِثِ، فَإِنْ لَمْ يَكُنْ لِلْمَقْتُولِ خَطَأً إلَّا وَارِثٌ وَاحِدٌ حَلَفَ خَمْسِينَ يَمِينًا مُرَدَّدَةً ثُمَّ يُدْفَعُ إلَيْهِ الدِّيَةَ: فَإِنْ كَانُوا ابْنَيْنِ أَوْ أَخَوَيْنِ، لَيْسَ لَهُ وَارِثٌ غَيْرُهُمَا فَطَاعَ أَحَدُهُمَا بِالْقَسَامَةِ وَأَبَى الْآخَرُ، فَعَلَى الَّذِي طَاعَ بِالْقَسَامَةِ خَمْسَةٌ وَعِشْرُونَ مُرَدَّدَةً عَلَيْهِ ثُمَّ يَدْفَعُ إلَيْهِ نِصْفَ الدِّيَةِ وَلَيْسَ لِلْآخَرِ شَيْءٌ: فَإِنْ كَانَ الْوَرَثَةُ ثَلَاثَةَ رَهْطٍ كَانَتْ الْقَسَامَةُ عَلَيْهِمْ أَثْلَاثًا، فَإِنْ لَمْ تَنْفُقْ الْأَيْمَانُ عَلَيْهِمْ جُعِلَ الْفَضْلُ عَلَى الِاثْنَيْنِ فَالِاثْنَيْنِ وَأَنَّ الْقَسَامَةَ عَلَى الْوَرَثَةِ بِقَدْرِ الْمِيرَاثِ، وَقَدْ ذَكَرْنَا بِالْإِسْنَادِ الْمُتَّصِلِ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَالزُّهْرِيِّ: أَنَّ تَرْدِيدَ الْأَيْمَانِ فِي الْقَسَامَةِ لَا يَجُوزُ، وَأَنَّهُ أَمْرٌ حَدَثٌ لَمْ يَكُنْ قَبْلُ، وَأَنَّ أَوَّلَ مَنْ رَدَّدَ الْأَيْمَانَ مُعَاوِيَةُ فِي الْقَسَامَةِ، وَقَدْ جَاءَ فِي هَذَا خَبَرٌ مُرْسَلٌ لَوْ وَجَدُوا مِثْلَهُ لَطَارُوا بِهِ.

فَصَحَّ أَنْ لَا قَسَامَةَ إلَّا بِخَمْسِينَ يَحْلِفُونَ: أَنَّ فُلَانًا قَتَلَ صَاحِبَنَا عَمْدًا أَوْ خَطَأً كَيْفَمَا عَلِمُوا مِنْ ذَلِكَ، فَإِنْ نَقَصَ مِنْهُمْ وَاحِدٌ فَصَاعِدًا بَطَلَتْ الْقَسَامَةُ وَعَادَ الْأَمْرُ إلَى حُكْمِ

facing direction, using only the phrase “By Allah the Exalted” - they are not required to add anything beyond the name of Allah the Exalted, in accordance with the Prophet’s (peace be upon him) saying: “Whoever takes an oath must swear by Allah or remain silent.” There is no distinction between adding “the One besides whom there is no deity” and adding “the Sovereign, the Holy, the Source of Peace, the Believer, the Overseer, the Almighty, the Compeller, the Supreme.” All of this constitutes rulings not established by any explicit text from Allah the Exalted, nor from His Messenger (peace and blessings be upon him), nor from any Companions (may Allah be pleased with them). These rulings are neither made obligatory by analogical reasoning nor derived from juristic discretion.[17]

التَّدَاعِي، وَيَحْلِفُونَ فِي مَجْلِسِ الْحَاكِمِ وَهُمْ قُعُودٌ حَيْثُ كَانَتْ وُجُوهُهُمْ: بِاللَّهِ تَعَالَى فَقَطْ، لَا يُكَلَّفُونَ زِيَادَةً عَلَى اسْمِ اللَّهِ تَعَالَى لِقَوْلِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - «مَنْ كَانَ حَالِفًا فَلْيَحْلِفْ بِاللَّهِ أَوْ لِيَصْمُتْ» وَلَا فَرْقَ بَيْنَ زِيَادَةِ " الَّذِي لَا إِلَهَ إِلَّا هُوَ " وَزِيَادَةِ " الْمَلِكِ الْقُدُّوسِ السَّلَامِ الْمُؤْمِنِ الْمُهَيْمِنِ الْعَزِيزِ الْجَبَّارِ الْمُتَكَبِّرِ " وَكُلُّ هَذَا حُكْمٌ لَمْ يَأْتِ بِهِ عَنْ اللَّهِ تَعَالَى نَصٌّ، وَلَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا أَوْجَبَهُ قِيَاسٌ، وَلَا نَظَرٌ.

L39699 Similarly, they are not obligated to stand at the right side, nor to turn their faces toward the *qiblah*, nor to remove their cloaks or their *ṭaylasān*. None of these rulings is established by any Quranic text, nor any *Sunnah*—neither sound nor weak—nor the statement of a Companion, nor consensus, nor analogy, nor juristic reasoning.

وَكَذَلِكَ لَا يُكَلَّفُونَ الْوُقُوفَ عِنْدَ الْيَمِينِ، وَلَا صَرْفَ وُجُوهِهِمْ إلَى الْقِبْلَةِ، وَلَا يَنْزِعُوا أَرْدِيَتَهُمْ أَوْ طَيَالِسَتَهُمْ - وَكُلُّ هَذِهِ أَحْكَامٌ لَمْ يَأْتِ بِهَا نَصُّ قُرْآنٍ، وَلَا سُنَّةٌ لَا صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ، وَلَا نَظَرٌ.

L39700–39702 If they say: “It is deterrence through awe to make the liar desist?” Respond to them: “But it is public exposure. If you intend deterrence, then make him ascend the minaret, or raise him upon the minaret, or bind his waist with a rope and strip him in undergarments”—all of this is meaningless, utterly meaningless. To swear in the mosque is impermissible unless it houses the judge’s court or entails no burden of movement for the oath-taker, for neither Allah the Exalted, nor His Messenger (peace and blessings be upon him), nor any Companion commanded this. Rather, this is reported from Umar ibn al-Khattab and Muawiyah. For instance, Umar summoned defendants in the qasamah from Yemen to Mecca and from Kufa to Mecca to have them swear oaths there.

فَإِنْ قَالُوا: هُوَ تَهْيِيبٌ لِيَرْتَدِعَ الْكَاذِبُ؟ قِيلَ لَهُمْ: وَهُوَ تَشْهِيرٌ وَإِنْ أَرَدْتُمْ التَّهْيِيبَ فَأَصْعِدُوهُ الْمَنَارَ، أَوْ ارْفَعُوهُ عَلَى الْمَنَارِ، أَوْ شُدُّوا وَسَطَهُ بِحَبْلٍ وَجَرِّدُوهُ فِي سَرَاوِيلَ - وَكُلُّ هَذَا لَا مَعْنَى لَهُ، وَلَا مَعْنَى لِأَنْ يَحْلِفَ فِي الْجَامِعِ إلَّا إنْ كَانَ مَجْلِسُ الْحَاكِمِ فِيهِ، أَوْ لَمْ يَكُنْ فِيهِ عَلَى الْمُحَلَّفِ كُلْفَةُ حَرَكَةٍ؛ لِأَنَّهُ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَحَدٌ مِنْ الصَّحَابَةِ، بَلْ إنَّمَا جَاءَ ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَمُعَاوِيَةَ أَنَّ عُمَرَ جَلَبَ الْمُدَّعَى عَلَيْهِمْ فِي الْقَسَامَةِ مِنْ الْيَمَنِ إلَى مَكَّةَ وَمِنْ الْكُوفَةِ إلَى مَكَّةَ لِيَحْلِفُوا فِيهَا.

L39703 And from Muʿāwiyah, Thābit reported: that he transported them from Medina to Mecca to have oaths administered at al-Ḥaṭīm or between the Corner

وَعَنْ مُعَاوِيَةَ ثَابِتٌ: أَنَّهُ حَمَلَهُمْ مِنْ الْمَدِينَةِ إلَى مَكَّةَ لِلتَّحْلِيفِ فِي الْحَطِيمِ أَوْ بَيْنَ الرُّكْنِ وَالْمَقَامِ، وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ مُخَالِفُونَ لَهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - فِي

[17] **Qur’an references (L39698):** Qur’an 20:98 (Taha); Qur’an 59:22 (Al-Hashr); Qur’an 59:23 (Al-Hashr).

and the Maqām. The Mālikīs, Ḥanafīs, and Shāfiʿīs oppose both of them—may Allah be pleased with them—in this matter. Yet they now invoke both as evidence against us regarding the very matter in which they themselves have also opposed their stance. And with Allah the Exalted lies all success.

ذَلِكَ، وَهُمْ الْآنَ يَحْتَجُّونَ عَلَيْنَا بِهِمَا فِي التَّرْدِيدِ الَّذِي قَدْ خَالَفُوهُمَا أَيْضًا فِيهِ نَفْسِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39704 We compile here the ruling of qasāmah—if Allah, the Exalted, wills—then we say—and with Allah, the Exalted, is all success.

وَنَجْمَعُ هَاهُنَا حُكْمَ الْقَسَامَةِ - إنْ شَاءَ اللَّهُ تَعَالَى - فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39705 If a slain person is found in the home of a people, a wilderness, a mosque, a market, or his own home.

إذَا وُجِدَ قَتِيلٌ فِي دَارِ قَوْمٍ، أَوْ فِي صَحْرَاءَ، أَوْ فِي مَسْجِدٍ، أَوْ فِي سُوقٍ، أَوْ فِي دَارِهِ.

L39706 Or wherever the body is found, and the legal guardians of the slain claim against one individual or multiple individuals from the inhabitants of that residence or others, and their assertion and claim could plausibly be true—provided it is not certain they are lying—then fifty sane adult agnatic relatives of the slain, whether heirs or non-heirs, are to be made to swear, each stating: "I swear by Allah the Exalted that so-and-so killed him," or "so-and-so, so-and-so, and so-and-so collaborated in his killing."

أَوْ حَيْثُ وُجِدَ، فَادَّعَى أَوْلِيَاؤُهُ عَلَى وَاحِدٍ، أَوْ عَلَى جَمَاعَةٍ مِنْ أَهْلِ تِلْكَ الدَّارِ، أَوْ مِنْ غَيْرِهِمْ، وَأَمْكَنَ أَنْ يَكُونَ مَا قَالُوهُ وَادَّعَوْهُ حَقًّا، وَلَمْ يُتَيَقَّنْ كَذِبُهُمْ فِي ذَلِكَ فَإِنَّهُ يُحَلَّفُونَ خَمْسِينَ بَالِغًا، عَاقِلًا، مِنْ رَجُلٍ أَوْ امْرَأَةٍ مِنْ عَصَبَةِ الْمَقْتُولِ، لَا نُبَالِي وَرَثَةً أَوْ غَيْرَ وَرَثَةٍ بِاَللَّهِ تَعَالَى أَنَّ فُلَانًا قَتَلَهُ، أَوْ أَنَّ فُلَانًا وَفُلَانًا وَفُلَانًا اشْتَرَكُوا فِي قَتْلِهِ ".

L39707 Then they are liable for retribution (qisas), blood money (diyah), or ransom. If they refuse to swear and say, "We do not know who specifically killed him," fifty members of that district or tribe must swear, each declaring, "By Allah, I did not kill him," and they are not burdened further—thereby absolving them. If they refuse, all are compelled to take the oath—willingly or unwillingly—until fifty swear as stipulated.

ثُمَّ لَهُمْ الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ، فَإِنْ أَبَوْا أَنْ يَحْلِفُوا، وَقَالُوا: لَا نَدْرِي مَنْ قَتَلَهُ بِعَيْنِهِ: حَلَفَ مِنْ أَهْلِ تِلْكَ الْمَحَلَّةِ خَمْسُونَ كَذَلِكَ، أَوْ مِنْ أَهْلِ تِلْكَ الْقَبِيلَةِ، يَقُولُ كُلُّ حَالِفٍ مِنْهُمْ " بِاَللَّهِ مَا قَتَلْتُ " وَلَا يُكَلَّفُ أَكْثَرَ وَيُبَرَّءُونَ - فَإِنْ نَكَلُوا أُجْبِرُوا كُلُّهُمْ عَلَى الْيَمِينِ - أَحَبُّوا أَمْ كَرِهُوا - حَتَّى يَحْلِفَ خَمْسُونَ مِنْهُمْ كَمَا قُلْنَا.

L39708 It is not permissible to require them to state "nor have we known a killer," because a person's knowledge of who killed so-and-so constitutes testimony alone. If they deliver it, they have discharged their obligation.

وَلَا يَجُوزُ أَنْ يُكَلَّفُوا أَنْ يَقُولُوا " وَلَا عَلِمْنَا قَاتِلًا "؛ لِأَنَّ عِلْمَ الْمَرْءِ بِمَنْ قَتَلَ فُلَانًا إنَّمَا هِيَ شَهَادَةٌ، فَإِنْ أَدَّاهَا أَدَّى مَا عَلَيْهِ.

L39709 If he accepts: it is accepted, and that suffices; and if he does not accept, there is no sin upon him.

فَإِنْ قَبِلَ: قُبِلَ، فَذَلِكَ، وَإِنْ لَمْ يَقْبَلْ فَلَا حَرَجَ عَلَيْهِ.

L39710 It is not permissible for anyone to swear an oath concerning a testimony in their possession in order to present it without contradiction.

وَلَا يَجُوزُ أَنْ يَحْلِفَ أَحَدٌ شَهَادَةً عِنْدَهُ لِيُؤَدِّيَهَا بِلَا خِلَافٍ.

L39711 If the male relatives of the slain decrease by one or more from fifty, or the

victim presumed dead is found alive, or the fifty refuse to swear oaths and do not accept the oaths of the accused, then the *qasāmah* becomes invalid.

فَإِنْ نَقَصَ عَصَبَةَ الْمَقْتُولِ وَاحِدٌ فَأَكْثَرُ مِنْ خَمْسِينَ، أَوْ وُجِدَ الْقَتِيلُ وَفِيهِ حَيَاةٌ، أَوْ لَمْ يُرِدْ الْخَمْسُونَ أَنْ يَحْلِفُوا وَلَا رَضُوا بِأَيْمَانِ الْمُدَّعَى عَلَيْهِمْ، فَقَدْ بَطَلَتْ الْقَسَامَةُ.

L39712–39714 As for a deficiency in the number below fifty, and the slain being found alive, there is nothing in this except... The ruling regarding the claim is that the defendant(s)—whether one or multiple—must swear only a single oath each. If they refuse, they are compelled to take their oaths regardless of willingness.

فَأَمَّا فِي نُقْصَانِ الْعَدَدِ عَنْ خَمْسِينَ، وَفِي وُجُودِ الْقَتِيلِ حَيًّا، فَلَيْسَ فِي هَذَا إلَّا حُكْمُ الدَّعْوَى، وَيَحْلِفُ الْمُدَّعَى عَلَيْهِ وَاحِدًا - كَانَ أَوْ أَكْثَرَ - يَمِينًا وَاحِدَةً فَقَطْ، فَإِنْ نَكَلَ، أَوْ نَكَلُوا: أُجْبِرُوا عَلَى الْأَيْمَانِ أَحَبُّوا أَمْ كَرِهُوا.

L39715 Similarly, if the number of inhabitants in the locality against whom the claim is made is insufficient, then there is no qasāma at all. Likewise, if the guardians of the slain and his agnates do not prove their claim, the ruling is the same: diyah must be paid for the slain, whether he was free or enslaved, from the treasury of the Muslims or from the share of debtors among the alms, as Allah the Exalted has commanded: *"And whoever kills a believer by mistake must free a believing slave and pay diyah to his family"* (Quran 4:92).[18]

وَهَكَذَا إنْ نَقَصَ عَدَدُ أَهْلِ الْمَحَلَّةِ الْمُدَّعَى عَلَيْهِمْ فَلَا قَسَامَةَ أَصْلًا، وَكَذَلِكَ إنْ لَمْ يُحَقِّقْ أَوْلِيَاءُ الْمَقْتُولِ دَعْوَاهُمْ وَعَصَبَتُهُ، فَإِنَّ الْحُكْمَ فِي ذَلِكَ وَاحِدٌ، وَهُوَ أَنْ لَا بُدَّ أَنْ يُودَى الْمَقْتُولُ - حُرًّا كَانَ أَوْ عَبْدًا - مِنْ بَيْتِ مَالِ الْمُسْلِمِينَ، أَوْ مِنْ سَهْمِ الْغَارِمِينَ مِنْ الصَّدَقَاتِ كَمَا أَمَرَ اللَّهُ تَعَالَى {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ} [النساء: ٩٢] .

L39716 Just as the Prophet—peace be upon him—said: "Whoever has someone killed after this declaration of mine, their family has two choices: either to seek retaliation (qisas) or to accept blood money (diya)."

وَكَمَا قَالَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - «مَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ إمَّا أَنْ يُقَادَ أَوْ أَنْ يُعْقَلَ» .

L39717 The killing that occurs among people is only accidental or intentional. In both cases, the blood money is prescribed by the ruling of Allah the Exalted and that of His Messenger—peace and blessings be upon him.

وَلَيْسَ الْقَتْلُ الْوَاقِعُ بَيْنَ النَّاسِ إلَّا خَطَأً أَوْ عَمْدًا فَقَطْ، وَفِي كِلَيْهِمَا الدِّيَةُ بِحُكْمِ اللَّهِ تَعَالَى، وَحُكْمِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L39718 Moreover, the compensation for accidental killing falls upon the responsible male relatives of the killer from among those liable for compensatory obligations, while in intentional killing, the killer becomes bound by compensatory obligations if blood money is accepted from him. Thus, their right to a share from the compensatory obligations is mandatory, or from every waqf property designated for all beneficial matters pertaining to Muslims. This ruling

وَأَيْضًا - فَإِنَّ الْخَطَأَ يَكُونُ عَلَى عَاقِلَةِ قَاتِلِ الْخَطَأِ مِنْ الْغَارِمِينَ، وَفِي الْعَمْدِ يَكُونُ الْقَاتِلُ إذَا قُبِلَتْ مِنْهُ الدِّيَةُ غَارِمًا مِنْ الْغَارِمِينَ، فَحَظُّهُمْ فِي سَهْمِ الْغَارِمِينَ وَاجِبٌ، أَوْ فِي كُلِّ مَالٍ مَوْقُوفٍ لِجَمِيعِ مَصَالِحِ أُمُورِ الْمُسْلِمِينَ فَهَذَا حُكْمُ كُلِّ مَقْتُولٍ بِلَا شَكٍّ، حَتَّى يَثْبُتَ

[18] **Qur'an references (L39715):** Qur'an 4:92 (An-Nisa).

applies to every slain person without doubt, until it is established that he was killed neither intentionally nor accidentally, but rather due to the action of an animal, or someone with the legal status of an animal among the insane or children, or that he intentionally killed himself - and with Allah, the Exalted, lies all success.

أَنَّهُ قُتِلَ، لَا عَمْدًا وَلَا خَطَأً، لَكِنْ بِفِعْلِ بَهِيمَةٍ، أَوْ مَنْ لَهُ حُكْمُ الْبَهِيمَةِ مِنْ الْمَجَانِينِ، أَوْ الصِّبْيَانِ، أَوْ أَنَّهُ قَتَلَ نَفْسَهُ عَمْدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39719 Abū Muḥammad—may Allāh have mercy on him—said: There remains in the matter of qasāmah a report we will present, Allāh willing, so that no one—deceived due to ignorance of its weakness—is misled by it, nor due to the presumption of one who assumes it was overlooked and unmentioned, thereby resulting in a deficiency in the Sunnah's ruling on qasāmah.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَبَقِيَ فِي الْقَسَامَةِ خَبَرٌ نُورِدُهُ - إنْ شَاءَ اللَّهُ تَعَالَى - لِئَلَّا يَغْتَرَّ بِهِ مُغْتَرٌّ بِجَهْلِ ضَعْفِهِ، أَوْ بِظَنِّ ظَانٍّ أَنَّهُ أُغْفِلَ وَلَمْ يُذْكَرْ، فَيَكُونُ نَقْصًا مِنْ حُكْمِ السُّنَّةِ فِي الْقَسَامَةِ.

L39720–39722 It is as informed to us by ʿAbdullāh ibn Rabīʿ: from Ibn Mufarrij, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Sahnūn, from Ibn Wahb, who said: I heard Ibn Samʿān saying: Ibn Shihāb reported to me from ʿAbdullāh ibn Mawhab, from Qabīṣah ibn Dhuʾayb al-Kaʿbī that he said: "The Messenger of Allah (peace and blessings be upon him) dispatched a military detachment. They encountered the polytheists at Iḍam or near it. The polytheists were routed. Muhallim ibn Jaththāmah al-Laythī launched a surprise attack." Amir ibn al-Adbat al-Ashjaʿi. When he caught up with him, Amir declared: "I bear witness that there is no god but Allah." Yet the attacker did not desist despite his declaration until he killed him. When this was reported to the Messenger of Allah (peace be upon him), he summoned Muhallim and asked: "Did you kill him after he said 'There is no god but Allah'?" He replied: "O Messenger of Allah, even if he uttered it, he only sought refuge with it while being a disbeliever." The Messenger of Allah (peace be upon him) said: "Why did you not probe his heart?" By this, he meant – and Allah knows best – that the tongue merely articulates what the heart contains.

Uyaynah ibn Badr then came forward among his people, inflamed with tribal zeal and anger for Qays, saying: "O Messenger of Allah, our companion was killed while he was a believer. Grant us retribution!" The Messenger of Allah (peace be upon him) responded: "Will fifty men from among you each swear one oath by Allah that your companion was killed while he was a believer whose faith was audible?" They complied. After they swore, the Messenger

وَهُوَ كَمَا نَاهِ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ قَالَ: سَمِعْت ابْنَ سَمْعَانَ يَقُولُ: أَخْبَرَنِي ابْنُ شِهَابٍ عَنْ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ الْكَعْبِيِّ أَنَّهُ قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَرِيَّةً فَلَقُوا الْمُشْرِكِينَ بِإِضَمٍ أَوْ قَرِيبًا مِنْهُ فَهُزِمَ الْمُشْرِكُونَ وَغَشِيَ مُحَلِّمُ بْنُ جَثَّامَةَ اللَّيْثِيُّ عَامِرَ بْنَ الْأَضْبَطِ الْأَشْجَعِيَّ، فَلَمَّا لَحِقَهُ، قَالَ عَامِرٌ: أَشْهَدُ أَنْ لَا إلَهَ إلَّا اللَّهُ، فَلَمْ يَنْتَهِ عَنْهُ لِكَلِمَتِهِ حَتَّى قَتَلَهُ، فَذُكِرَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَرْسَلَ إلَى مُحَلِّمٍ فَقَالَ: أَقَتَلْتَهُ بَعْدَ أَنْ قَالَ لَا إلَهَ إلَّا اللَّهُ؟ فَقَالَ: يَا رَسُولَ اللَّهِ إنْ كَانَ قَالَهَا فَإِنَّمَا تَعَوَّذَ بِهَا وَهُوَ كَافِرٌ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَلَّا ثَقَبْتَ عَنْ قَلْبِهِ؟ يُرِيدُ بِذَلِكَ - وَاَللَّهُ أَعْلَمُ - إنَّمَا يُعْرِبُ اللِّسَانُ عَنْ الْقَلْبِ - وَأَقْبَلَ عُيَيْنَةُ بْنُ بَدْرٍ فِي قَوْمِهِ حَمِيَّةً وَغَضَبًا لِقَيْسٍ فَقَالَ: يَا رَسُولَ اللَّهِ قُتِلَ صَاحِبُنَا وَهُوَ مُؤْمِنٌ، فَأَقِدْنَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَحْلِفُونَ بِاَللَّهِ خَمْسِينَ يَمِينًا عَلَى خَمْسِينَ رَجُلًا مِنْكُمْ أَنْ كَانَ صَاحِبُكُمْ قُتِلَ وَهُوَ مُؤْمِنٌ قَدْ سُمِعَ إيمَانُهُ؟ فَفَعَلُوا، فَلَمَّا حَلَفُوا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْفُوا عَنْهُ وَاقْبَلُوا الدِّيَةَ، فَقَالَ عُيَيْنَةُ بْنُ حِصْنٍ إنَّا نَسْتَحِي أَنْ تَسْمَعَ الْعَرَبُ

of Allah (peace be upon him) said: “Pardon the killer and accept the blood money.”

Uyaynah ibn Hisn protested: “We would be shamed if the Arabs heard we accepted blood money for our companion.” Al-Aqra‘ ibn Habis al-Tamimi, burning with tribal fervor for Khindaf, challenged Uyaynah ibn Hisn: “By what justification do you demand this man’s blood?” He answered: “Fifty of our men swore our companion was killed as a believer.” Al-Aqra‘ retorted: “Did the Messenger of Allah (peace be upon him) not bid you pardon the killing and accept blood money, yet you refused? By Allah, you will surely accept what the Messenger of Allah (peace be upon him) proposes, or I shall bring a hundred men from Banu Tamim to swear by Allah that your companion was killed while a disbeliever!”

At this they relented: “Hold on! We shall accept what the Messenger of Allah (peace be upon him) has urged upon us.” Returning to the Messenger of Allah (peace be upon him), they said: “O Messenger of Allah, we accept the blood money you proposed. Is this the blood money prescribed for your father Abdullah ibn Abdul-Muttalib?” The Messenger of Allah (peace be upon him) then paid his blood money in camels.

L39723 Abū Muḥammad, may Allāh have mercy on him, said: This is a narration that is entirely unsupported by any reliable chain of transmission. It was solely narrated by Ibn Samʿān - who is noted for falsehood in his claim about the oath of fifty men affirming that he was killed as a Muslim - and it is also a disconnected chain (mursal). Had it been authentic, we would have adhered to it. Since it is not authentic, it is impermissible to rely on it. And success comes only from Allāh, the Exalted.

L39724 **A problematic case concerning blood matters.**

L39725–39727 2157 – Legal Question: A complex legal issue pertaining to blood. Abū Muḥammad—may Allāh have mercy on him—said: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl ibn Bahrām al-Dīnawarī narrated to us: Muḥammad ibn Jarīr al-Ṭabarī narrated to us: ‘Ubayd Allāh ibn Sa‘d ibn Ibrāhīm al-Zuhrī narrated to us: My uncle Ya‘qūb ibn Ibrāhīm ibn

أَنَّا أَكَلْنَا ثَمَنَ صَاحِبِنَا؟ وَوَاثَبَهُ الْأَقْرَعُ بْنُ حَابِسٍ التَّمِيمِيُّ فِي قَوْمِهِ غَضَبًا وَحَمِيَّةً لِخِنْدَفَ فَقَالَ لِعُيَيْنَةَ بْنِ حِصْنٍ: بِمَاذَا اسْتَطَلْتُمْ دَمَ هَذَا الرَّجُلِ؟ فَقَالَ: أَقْسَمَ مِنَّا خَمْسُونَ رَجُلًا: أَنَّ صَاحِبَنَا قُتِلَ وَهُوَ مُؤْمِنٌ، فَقَالَ الْأَقْرَعُ: فَسَأَلَكُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَعْفُوا عَنْ قَتْلِهِ وَتَقْبَلُوا الدِّيَةَ فَأَبَيْتُمْ؟ فَأُقْسِمُ: بِاللَّهِ لَتَقْبَلُنَّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي دَعَاكُمْ إِلَيْهِ، أَوْ لَآتِيَنَّ بِمِائَةٍ مِنْ بَنِي تَمِيمٍ فَيُقْسِمُونَ بِاللَّهِ لَقَدْ قُتِلَ صَاحِبُكُمْ وَهُوَ كَافِرٌ؟ فَقَالُوا عِنْدَ ذَلِكَ: عَلَى رِسْلِكَ، بَلْ نَقْبَلُ مَا دَعَانَا إِلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَجَعُوا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالُوا: يَا رَسُولَ اللَّهِ نَقْبَلُ الَّذِي دَعَوْتَنَا إِلَيْهِ مِنَ الدِّيَةِ، فَدِيَةُ أَبِيكَ عَبْدِ اللَّهِ بْنِ عَبْدِ الْمُطَّلِبِ؟ فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنَ الْإِبِلِ» .

قَالَ أَبُو مُحَمَّد رَحِمَهُ اللَّهُ: فَهَذَا خَبَرٌ لَا يَنْسَنِدُ أَلْبَتَّةَ مِنْ طَرِيقٍ يُعْتَدُّ بِهَا - وَانْفَرَدَ بِهِ ابْنُ سَمْعَانَ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - بِذِكْرِ قَسَامَةِ خَمْسِينَ عَلَى أَنَّهُ قُتِلَ مُسْلِمًا، وَهُوَ أَيْضًا مُرْسَلٌ - وَلَوْ صَحَّ لَقُلْنَا بِهِ، فَإِذْ لَمْ يَصِحَّ فَلَا يَجُوزُ الْأَخْذُ بِهِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي الدِّمَاءِ مُشْكِلٌ]

٢١٥٧ - مَسْأَلَةٌ: فِي الدِّمَاءِ مُشْكِلٌ. قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ بْنِ بَهْرَامَ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ نا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ الزُّهْرِيُّ نا عَمِّي - هُوَ يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ

Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn al-ʿAwf narrated to us: Shuʿbah ibn al-Ḥajjāj reported from ʿAbd Allāh ibn Abī al-Safar from ʿĀmir al-Shaʿbī from ʿAbd Allāh ibn Muṭīʿ ibn al-Aswad from his father Muṭīʿ, brother of Banū ʿAdī ibn Kaʿb—whose name was al-ʿĀṣ before the Messenger of Allāh renamed him. He obediently said: I heard the Messenger of Allah - peace be upon him - in Mecca saying: "Mecca shall not be invaded after this year ever again, and no man from Quraysh shall be killed after being taken captive following this year ever again."

الرَّحْمَنِ بْنِ عَوْفٍ - نا شُعْبَةُ بْنُ الْحَجَّاجِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مُطِيعِ بْنِ الْأَسْوَدِ عَنْ أَبِيهِ «مُطِيعٍ أَخِي بَنِي عَدِيِّ بْنِ كَعْبٍ - وَكَانَ اسْمُهُ الْعَاصِ فَسَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُطِيعًا - قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَكَّةَ يَقُولُ: لَا تُغْزَى مَكَّةُ بَعْدَ هَذَا الْعَامِ أَبَدًا، وَلَا يُقْتَلُ رَجُلٌ مِنْ قُرَيْشٍ بَعْدَ هَذَا الْعَامِ صَبْرًا أَبَدًا» .

L39728 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl narrated to us: Muḥammad ibn Jarīr narrated to us: ʿAbd Allāh ibn Muḥammad al-Zuhrī narrated to me: Sufyān ibn ʿUyaynah narrated from Zakariyyā (who is ibn Abī Zāʾidah) from al-Shaʿbī, who said: Al-Ḥārith ibn Mālik ibn al-Barṣāʾ said: The Messenger of Allāh—peace and blessings be upon him—said: "Mecca will never be invaded after this year."

نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ نا مُحَمَّدُ بْنُ جَرِيرٍ نِي عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ قَالَ: قَالَ الْحَارِثُ بْنُ مَالِكِ بْنِ الْبَرْصَاءِ: قَالَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا تُغْزَى مَكَّةُ بَعْدَ هَذَا الْعَامِ أَبَدًا» .

L39729 Aḥmad ibn Muḥammad narrated to us: Aḥmad ibn al-Faḍl narrated to us: Muḥammad ibn Jarīr reported to us: Naṣr ibn ʿAbd al-Raḥmān al-Awdī narrated to us: Muḥammad ibn ʿUbayd reported from Zakariyyā, from al-Shaʿbī, from al-Ḥārith ibn Mālik ibn al-Barṣā, who said: "I heard the Messenger of Allah—peace and blessings be upon him—say on the day of Mecca's conquest: 'Mecca shall not be invaded after this until the Day of Resurrection.'"

ʿAlī—may Allah have mercy on him—said: "The first is an authentic ḥadīth. As for the other, if al-Shaʿbī's direct hearing from al-Ḥārith ibn Mālik is established, then both are authentic. This al-Ḥārith is al-Ḥārith ibn Qays ibn ʿAwn, ibn Jābir, ibn ʿAbd Manāf, ibn Kinānah, ibn Ashjaʿ, ibn ʿĀmir, ibn Layth, ibn Bakr, ibn ʿAbd Manāf, ibn Kinānah, ibn Khuzaymah, ibn Mudrikah, ibn Ilyās, ibn Muḍar, ibn Nizār, ibn Maʿadd, ibn ʿAdnān."

نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ الْفَضْلِ أَنَا مُحَمَّدُ بْنُ جَرِيرٍ نا نَصْرُ بْنُ عَبْدِ الرَّحْمَنِ الْأَوْدِيُّ نا مُحَمَّدُ بْنُ عُبَيْدٍ عَنْ زَكَرِيَّا عَنْ الشَّعْبِيِّ عَنْ الْحَارِثِ بْنِ مَالِكِ بْنِ الْبَرْصَاءِ قَالَ «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ فَتْحِ مَكَّةَ وَهُوَ يَقُولُ: لَا تُغْزَى مَكَّةُ بَعْدَهَا إِلَى يَوْمِ الْقِيَامَةِ» قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: الْأَوَّلِ حَدِيثٌ صَحِيحٌ، وَالْآخَرُ إِنْ صَحَّ سَمَاعُ الشَّعْبِيِّ مِنْ الْحَارِثِ بْنِ مَالِكٍ فَهُمَا صَحِيحَانِ - وَالْحَارِثُ هَذَا: هُوَ الْحَارِثُ بْنُ قَيْسِ بْنِ عَوْنِ بْنِ جَابِرِ بْنِ عَبْدِ مَنَافِ بْنِ كِنَانَةَ بْنِ أَشْجَعَ بْنِ عَامِرِ بْنِ لَيْثِ بْنِ بَكْرِ بْنِ عَبْدِ مَنَافِ بْنِ كِنَانَةَ بْنِ خُزَيْمَةَ بْنِ مُدْرِكَةَ بْنِ إِلْيَاسَ بْنِ مُضَرَ بْنِ نِزَارِ بْنِ مَعْدِ بْنِ عَدْنَانَ.

L39730 Abū Muḥammad—may Allah have mercy on him—said: The meaning of these ḥadīths is clear, which is that the Messenger of Allah—peace and blessings be upon him—specifically stated this about himself: that he would never conquer Mecca thereafter, and that he would never kill any man from

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَوَجْهُ هَذِهِ الْأَحَادِيثِ بَيِّنٌ، وَهُوَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا أَخْبَرَ بِهَذَا عَنْ نَفْسِهِ: أَنَّهُ لَا يَغْزُو مَكَّةَ بَعْدَهَا أَبَدًا، وَأَنَّهُ لَا يَقْتُلُ

Quraysh after capture thereafter. This occurred exactly as he—peace be upon him—declared, for he did not kill any Qurayshī after that.

بَعْدَهَا رَجُلًا مِنْ قُرَيْشٍ صَبْرًا أَبَدًا، وَكَانَ هَذَا كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، فَمَا قَتَلَ بَعْدَهَا قُرَشِيًّا.

L39731 The evidence for this is that he—peace be upon him—had forewarned of the killing of Uthmān ibn ʿAffān—may Allah be pleased with him—and forewarned of the assault on the Kaʿba. This is as we have been narrated through Muslim's chain: Muḥammad ibn al-Muthannā narrated to us, from Ibn Abī ʿAdī, from ʿUthmān, from Ghiyāth, from Abū ʿUthmān al-Nahdī, from Abū Mūsā al-Ashʿarī, who mentioned the ḥadīth. And in it: "A man sought permission to enter, so Allah's Messenger—peace and blessings be upon him—sat and said: 'Open for him and give him glad tidings of Paradise despite an impending trial.' I went and found ʿUthmān ibn ʿAffān. I opened for him, conveyed the glad tidings, and repeated what he had said. He responded: 'O Allah, grant me patience—and Allah is the One sought for help.'"

بُرْهَانُ هَذَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ أَنْذَرَ بِقَتْلِ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - وَأَنْذَرَ بِغَزْوِ الْكَعْبَةِ - وَهُوَ كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا ابْنُ أَبِي عَدِيٍّ عَنْ عُثْمَانَ عَنْ غِيَاثٍ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ فَذَكَرَ الْحَدِيثَ، وَفِيهِ «أَنَّ رَجُلًا اسْتَفْتَحَ فَجَلَسَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: افْتَحْ لَهُ وَبَشِّرْهُ بِالْجَنَّةِ عَلَى بَلْوَى تَكُونُ قَالَ: فَذَهَبْتُ فَإِذَا عُثْمَانُ بْنُ عَفَّانَ ففَتَحْتُ لَهُ وَبَشَّرْتُهُ بِالْجَنَّةِ، وَقُلْتُ الَّذِي قَالَ، فَقَالَ: اللَّهُمَّ صَبْرًا، وَاَللَّهُ الْمُسْتَعَانُ» .

L39732–39734 And through the chain (*ṭarīq*) of Muslim, Abū Bakr ibn Abī Shaybah, Ibn Abī ʿUmar, and Ḥarmalah ibn Yaḥyā narrated to us. Abū Bakr and Ibn Abī ʿUmar said: Sufyān ibn ʿUyaynah narrated to us from Ziyād ibn Saʿd. Ḥarmalah said: Ibn Wahb narrated to us. Yunus—that is, Ibn Yazid—reported to me, then both Ziyad and Yunus's chains converged via Al-Zuhri, from Saʿid ibn al-Musayyib, from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said, "The Kaʿbah will be destroyed by the man with two small shins from the Ethiopians." Abu Muhammad—may Allah have mercy on him—said: Thus, it is established that a group from Quraysh will be killed in cold blood.

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَابْنُ أَبِي عُمَرَ، وَحَرْمَلَةُ بْنُ يَحْيَى، قَالَ أَبُو بَكْرٍ، وَابْنُ أَبِي عُمَرَ: نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ زِيَادِ بْنِ سَعْدٍ، وَقَالَ حَرْمَلَةُ: نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ - هُوَ ابْنُ يَزِيدَ - ثُمَّ اتَّفَقَ زِيَادٌ، وَيُونُسُ كِلَاهُمَا عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يُخَرِّبُ الْكَعْبَةَ ذُو السُّوَيْقَتَيْنِ مِنَ الْحَبَشَةِ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ قَوْمًا مِنْ قُرَيْشٍ سَيُقْتَلُونَ صَبْرًا.

L39735 There is no disagreement among any of the entire Ummah that if a Qurayshi were to kill, he would be executed; if he committed adultery while being a lawfully married person (muḥṣan), he would be stoned until death. Similarly, we state concerning him: if he apostatizes, wages war, or was punished for wine consumption three times then drinks a fourth—just as Allah the Exalted said: *"Do not fight them at the Sacred Mosque unless they fight you there. But if they fight you, then kill them"* [Al-Baqarah: 191].[19]

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنَ الْأُمَّةِ كُلِّهَا فِي أَنَّ قُرَشِيًّا لَوْ قَتَلَ لَقُتِلَ، وَلَوْ زَنَى وَهُوَ مُحْصَنٌ لَرُجِمَ حَتَّى يَمُوتَ - وَهَكَذَا نَقُولُ فِيهِ: لَوِ ارْتَدَّ، أَوْ حَارَبَ أَوْ حُدَّ فِي الْخَمْرِ ثَلَاثًا ثُمَّ شَرِبَ الرَّابِعَةَ - وَكَذَلِكَ قَالَ اللَّهُ تَعَالَى {وَلا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ فَإِنْ قَاتَلُوكُمْ فَاقْتُلُوهُمْ} [البقرة: ١٩١] .

[19] **Qur'an references (L39735):** Qur'an 2:191 (Al-Baqarah).

L39736 There is no disagreement among any of the Ummah that if disbelievers, combatants, or rebels were to seize control of Mecca - may Allah honor and protect it - preventing the manifestation of truth therein, it becomes obligatory upon the Ummah to fight them rather than attack Mecca itself. If they submit or depart, that suffices. If they neither resist nor depart, they must be expelled from it. Should they resist and fight, there is no disagreement that they must be combated within Mecca and near the Kaaba. These points of consensus, textual evidences, and the Prophet's warning (peace be upon him) about the demolition of the Kaaba by Dhu al-Suwayqatayn (the prophesied destroyer) all affirm this ruling.

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ مَكَّةَ - أَعَزَّهَا اللَّهُ وَحَرَسَهَا - لَوْ غَلَبَ عَلَيْهَا الْكُفَّارُ، أَوْ الْمُحَارِبُونَ، أَوْ الْبُغَاةُ، فَمَنَعُوا فِيهَا مِنْ إظْهَارِ الْحَقِّ - أَنَّ فَرْضًا عَلَى الْأُمَّةِ غَزْوُهُمْ لَا غَزْوُ مَكَّةَ، فَإِنْ انْقَادُوا، أَوْ خَرَجُوا فَذَلِكَ، وَإِنْ لَمْ يَمْتَنِعُوا وَلَا خَرَجُوا: أَنَّهُمْ يُخْرَجُونَ مِنْهَا، فَإِنْ هُمْ امْتَنَعُوا وَقَاتَلُوا، فَلَا خِلَافَ فِي أَنَّهُمْ يُقَاتَلُونَ فِيهَا وَعِنْدَ الْكَعْبَةِ - فَكَانَتْ هَذِهِ الْإِجْمَاعَاتُ، وَهَذِهِ النُّصُوصُ وَإِنْذَارُ النَّبِيِّ - عَلَيْهِ السَّلَامُ - بِهَدْمِ ذِي السُّوَيْقَتَيْنِ لِلْكَعْبَةِ.

L39737 By necessity, we know that this will never occur except after its invasion—and it was invaded by Al-Ḥusayn ibn Numayr, Al-Ḥajjāj ibn Yūsuf, and Sulaymān ibn al-Ḥasan al-Jayyānī—may Allah curse them all—who committed sacrilege therein and violated the sanctity of the House. Among them is the sinful Al-Ḥajjāj, who launched catapults at the Kaʿba, killed within the Sacred Mosque the Commander of the Believers ʿAbdullāh ibn al-Zubayr and ʿAbdullāh ibn Ṣafwān ibn Umayya—may Allah be pleased with them both—while the latter clung to the Kaʿba's curtains. Among them too is the cursed disbeliever Sulaymān ibn al-Ḥasan al-Qarmaṭī, who wrenched out the Black Stone and plundered the slain Muslims around it. All this confirms the truth of the Messenger of Allah's—peace and blessings be upon him and his family—prophecy in the narrations of Muṭīʿ ibn al-Aswad and al-Ḥārith ibn al-Barṣāʾ, and that he—peace be upon him—spoke this solely from his own knowledge. This is among the signs of his prophethood—peace and blessings be upon him—for he foretold that none would invade it until the Day of Resurrection, and that he—peace be upon him—would never execute a captive from Quraysh after capture. Thus it was.

وَبِالضَّرُورَةِ نَدْرِي أَنَّ ذَلِكَ لَا يَكُونُ أَلْبَتَّةَ إلَّا بَعْدَ غَزْوٍ مِنْهُ - وَقَدْ غَزَاهَا الْحُصَيْنُ بْنُ نُمَيْرٍ، وَالْحَجَّاجُ بْنُ يُوسُفَ، وَسُلَيْمَانُ بْنُ الْحَسَنِ الْجَيَّانِيُّ - لَعَنَهُمْ اللَّهُ أَجْمَعِينَ - وَأَلْحَدُوا فِيهَا وَهَتَكُوا حُرْمَةَ الْبَيْتِ، فَمِنْ رَامٍ لِلْكَعْبَةِ بِالْمَنْجَنِيقِ - وَهُوَ الْفَاسِقُ الْحَجَّاجُ - وَقَتَلَ دَاخِلَ الْمَسْجِدِ الْحَرَامِ أَمِيرَ الْمُؤْمِنِينَ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ، وَقَتَلَ عَبْدَ اللَّهِ بْنَ صَفْوَانَ بْنِ أُمَيَّةَ - رَضِيَ اللَّهُ عَنْهُمَا - وَهُوَ مُتَعَلِّقٌ بِأَسْتَارِ الْكَعْبَةِ، وَمِنْ قَالِعٍ لِلْحَجَرِ الْأَسْوَدِ، وَسَالِبِ الْمُسْلِمِينَ الْمَقْتُولِينَ حَوْلَهَا - وَهُوَ الْكَافِرُ الْمَلْعُونُ - سُلَيْمَانُ بْنُ الْحَسَنِ الْقُرْمُطِيُّ، فَكَانَ هَذَا كُلُّهُ مُبَيِّنًا إخْبَارَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِمَا أَخْبَرَ فِي حَدِيثِ مُطِيعِ بْنِ الْأَسْوَدِ، وَالْحَارِثِ بْنِ الْبَرْصَاءِ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - إنَّمَا أَخْبَرَ بِذَلِكَ عَنْ نَفْسِهِ فَقَطْ - وَهَذَا مِنْ أَعْلَامِ نُبُوَّتِهِ - عَلَيْهِ السَّلَامُ - أَنْ أَخْبَرَ بِأَنَّهُ لَا يَغْزُوهَا إلَى يَوْمِ الْقِيَامَةِ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَقْتُلُ أَبَدًا رَجُلًا مِنْ قُرَيْشٍ صَبْرًا، فَكَانَ كَذَلِكَ.

L39738 It is not permissible to confine oneself to portions of his speech—may Allah's blessings and peace be upon him and his family—while disregarding others, for this is a corrupt arbitrariness. Rather, his teachings—peace be upon him—must all be combined, each part with the others, for all of them are true.

وَلَا يَجُوزُ أَنْ يَقْتَصِرَ عَلَى بَعْضِ كَلَامِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - دُونَ بَعْضٍ، فَهَذَا تَحَكُّمٌ فَاسِدٌ، بَلْ تُضَمُّ أَقْوَالُهُ - عَلَيْهِ السَّلَامُ - كُلُّهَا بَعْضُهَا إلَى بَعْضٍ، فَكُلُّهَا حَقٌّ.

L39739–39740 It is not permissible to interpret his statement—peace be upon him—"Mecca shall not be invaded after this year until the Day of Resurrection, and no Qurayshī shall be killed in captivity after this day" as a command. How can this align with the established consensus on the obligation to kill a Qurayshī in retaliation (qisas) or by stoning for adultery—if he is a lawfully married person (muḥṣan)—and on the obligation to invade those who seek refuge in Mecca among the people of disbelief, armed rebellion, and oppression? If it is argued: "This merely prohibits invading Mecca unjustly and killing a Qurayshī in captivity unjustly," we respond—and success comes only from Allah, the Exalted—: These rulings apply uniformly to Mecca and other lands, and to Quraysh and others alike. Without disagreement, it is impermissible to unjustly invade any territory or unjustly kill any member of the community. This would render the statement devoid of benefit, which is impermissible—and success comes only from Allah, the Exalted.

The killing of the rebellious faction (ahl al-baghy).

L39741–39742

L39743 Question 2158: On killing transgressors. Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted stated, "If two groups of believers fight, reconcile between them. But if one transgresses against the other, fight the transgressors until they return to Allah's command" [Surah Al-Hujurat 49:9], the verse.[20]

L39744 The fighting among Muslims occurred in two forms: fighting against rebels (al-bughāt) and fighting against combatants (al-muḥāribīn). Rebels are of two categories with no third: either a group that revolted based on a religious interpretation in which they erred, such as the Kharijites and those who follow their path from the rest of deviant desires contradicting the truth.

L39745 And another faction who sought worldly gains for themselves and rose against a rightful imam or against one whose conduct resembles theirs. If this faction transgresses by terrorizing travelers, seizing property from those they encounter, or shedding blood indiscriminately, their legal ruling transitions

[20] **Qur'an references (L39743):** Qur'an 49:9 (Al-Hujurat).

وَلَا يَجُوزُ أَنْ يُحْمَلَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «لَا تُغْزَى مَكَّةُ بَعْدَ هَذَا الْعَامِ إِلَى يَوْمِ الْقِيَامَةِ، وَلَا يُقْتَلُ قُرَشِيٌّ صَبْرًا بَعْدَ هَذَا الْيَوْمِ» عَلَى الْأَمْرِ، لِمَا ذَكَرْنَا مِنْ صِحَّةِ الْإِجْمَاعِ عَلَى وُجُوبِ قَتْلِ الْقُرَشِيِّ قَوَدًا أَوْ رَجْمًا فِي الزِّنَى - وَهُوَ مُحْصَنٌ - عَلَى وُجُوبِ غَزْوِ مَنْ لَاذَ بِمَكَّةَ مِنْ أَهْلِ الْكُفْرِ وَالْحِرَابَةِ وَالْبَغْيِ؟ فَإِنْ قِيلَ: إِنَّمَا مَنَعَ بِذَلِكَ مِنْ غَزْوِهَا ظُلْمًا، وَمِنْ قَتْلِ قُرَشِيٍّ صَبْرًا ظُلْمًا؟ قُلْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: هَذِهِ أَحْكَامٌ لَا يَخْتَلِفُ فِيهَا حُكْمُ مَكَّةَ وَغَيْرِهَا، وَلَا حُكْمُ قُرَيْشٍ وَغَيْرِهِمْ، فَلَا يَحِلُّ بِلَا خِلَافٍ: أَنْ تُغْزَى بَلَدٌ مِنْ الْبُلَادِ ظُلْمًا، وَلَا أَنْ يُقْتَلَ أَحَدٌ مِنْ الْأُمَّةِ ظُلْمًا، وَكَأَنْ يَكُونَ الْكَلَامُ حِينَئِذٍ عَارِيًّا مِنْ الْفَائِدَةِ، وَهَذَا لَا يَجُوزُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[قَتْلُ أَهْلِ الْبَغْيِ]

٢١٥٨ - مَسْأَلَةٌ: قَتْلُ أَهْلِ الْبَغْيِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ} [الحجرات: ٩] الْآيَةَ.

فَكَانَ قِتَالُ الْمُسْلِمِينَ فِيمَا بَيْنَهُمْ عَلَى وَجْهَيْنِ: قِتَالِ الْبُغَاةِ، وَقِتَالِ الْمُحَارِبِينَ - فَالْبُغَاةُ قِسْمَانِ لَا ثَالِثَ لَهُمَا: إِمَّا قِسْمٌ خَرَجُوا عَلَى تَأْوِيلٍ فِي الدِّينِ فَأَخْطَئُوا فِيهِ، كَالْخَوَارِجِ وَمَا جَرَى مَجْرَاهُمْ مِنْ سَائِرِ الْأَهْوَاءِ الْمُخَالِفَةِ لِلْحَقِّ.

وَإِمَّا قِسْمٌ أَرَادُوا لِأَنْفُسِهِمْ دُنْيَا فَخَرَجُوا عَلَى إِمَامِ حَقٍّ، أَوْ عَلَى مَنْ هُوَ فِي السِّيرَةِ مِثْلُهُمْ، فَإِنْ تَعَدَّتْ هَذِهِ الطَّائِفَةُ إِلَى إِخَافَةِ الطَّرِيقِ، أَوْ إِلَى أَخْذِ مَالِ مَنْ لَقُوا، أَوْ سَفْكِ الدِّمَاءِ هَمَلًا: انْتَقَلَ حُكْمُهُمْ إِلَى حُكْمِ الْمُحَارِبِينَ، وَهُمْ مَا لَمْ يَفْعَلُوا ذَلِكَ فِي حُكْمِ الْبُغَاةِ.

to that of muḥāribīn (brigands). And they, as long as they refrain from such acts, remain under the ruling of bughāt (rebellious factions).

L39746 The first category concerning the rebels clarifies their ruling: From Hisham ibn Sa‘d al-Khayr; from ‘Abd al-Jabbar ibn Ahmad al-Muqri’; from al-Hasan ibn al-Husayn al-Bujayrami; from Ja‘far ibn Muhammad al-Asbahani; from Yunus ibn Habib; from Abu Dawud al-Tayalisi; from Shu‘bah, who narrated to me from Ayyub al-Sikhtiyani and Khalid al-Hadhdhā’—both of whom said: From al-Hasan al-Basri, who narrated to us from Umm Hani, from Umm Salamah: “The Messenger of Allah (peace be upon him) said regarding ‘Ammar: ’The rebellious faction will kill you.”’ Abu Muhammad (may Allah have mercy on him) said: Verily, ‘Ammar (may Allah be pleased with him) was killed by the companions of Mu‘awiyah (may Allah be pleased with him). Though they erred in understanding the truth, they acted upon their interpretive reasoning in this matter and are granted a single reward for their intent toward good.

L39747–39748 Among those who engage in interpretation are a people who are not excused, and they will have no reward. As we have been narrated through the chain of Al-Bukhārī: from ‘Umar ibn Ḥafṣ ibn Ghiyāth, from his father, from Al-Aʿmash, from Khaythamah, from Suwayd ibn Ghaflah, who said: ‘Alī said: I heard the Messenger of Allah, peace be upon him, say: “There will emerge at the end of time a people, young in years and feeble in intellect, who utter the words of the best of creation, yet their faith does not surpass their throats. They will dart out of the religion as an arrow passes through the target. Wherever you encounter them, kill them, for in their killing lies a reward on the Day of Resurrection for those who slay them.”

L39749 We have been narrated from the path of Muslim: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Abī ʿAdiyy narrated to us from Sulaymān—he is al-Aʿmash—from Abū Nadrah from Abū Saʿīd al-Khudrī: “That the Messenger of Allah—peace and blessings of Allah be upon him—mentioned a people who would arise within his nation, emerging as part of a faction among the people. Their distinguishing mark is head-shaving. They

فَالْقِسْمُ الْأَوَّلُ مِنْ أَهْلِ الْبَغْيِ يُبَيِّنُ حُكْمَهُمْ: مَا نا هِشَامُ بْنُ سَعْدِ الْخَيْرِ نا عَبْدُ الْجَبَّارِ بْنُ أَحْمَدَ الْمُقْرِئُ نا الْحَسَنُ بْنُ الْحُسَيْنِ الْبُجَيْرَمِيُّ نا جَعْفَرُ بْنُ مُحَمَّدٍ الْأَصْبَهَانِيُّ نا يُونُسُ بْنُ حَبِيبٍ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا شُعْبَةُ أَخْبَرَنِي أَيُّوبُ السِّخْتِيَانِيُّ، وَخَالِدٌ الْحَذَّاءُ، كِلَاهُمَا قَالَ: عَنِ الْحَسَنِ الْبَصْرِيِّ أَخْبَرَتْنَا أُمُّنَا عَنْ أُمِّ سَلَمَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي عَمَّارٍ تَقْتُلُكَ الْفِئَةُ الْبَاغِيَةُ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَإِنَّمَا قَتَلَ عَمَّارَ - رَضِيَ اللَّهُ عَنْهُ - أَصْحَابُ مُعَاوِيَةَ - رَضِيَ اللَّهُ عَنْهُ - وَكَانُوا مُتَأَوِّلِينَ تَأْوِيلَهُمْ فِيهِ - وَإِنْ أَخْطَئُوا الْحَقَّ - مَأْجُورُونَ أَجْرًا وَاحِدًا: لِقَصْدِهِمْ الْخَيْرَ.

وَيَكُونُ مِنْ الْمُتَأَوِّلِينَ قَوْمٌ لَا يُعْذَرُونَ، وَلَا أَجْرَ لَهُمْ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ نا خَيْثَمَةَ نا سُوَيْدُ بْنُ غَفَلَةَ قَالَ قَالَ عَلِيٌّ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «سَيَخْرُجُ قَوْمٌ فِي آخِرِ الزَّمَانِ، أَحْدَاثُ الْأَسْنَانِ، سُفَهَاءُ الْأَحْلَامِ، يَقُولُونَ مِنْ قَوْلِ خَيْرِ الْبَرِيَّةِ، لَا يُجَاوِزُ إيمَانُهُمْ حَنَاجِرَهُمْ، يَمْرُقُونَ مِنْ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ، فَأَيْنَمَا لَقِيتُمُوهُمْ فَاقْتُلُوهُمْ، فَإِنَّ فِي قَتْلِهِمْ أَجْرًا لِمَنْ قَتَلَهُمْ يَوْمَ الْقِيَامَةِ» .

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ سُلَيْمَانَ هُوَ الْأَعْمَشُ - عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَكَرَ قَوْمًا يَكُونُونَ فِي أُمَّتِهِ يَخْرُجُونَ فِي فُرْقَةٍ مِنْ النَّاسِ، سِيمَاهُمْ التَّحَالُقُ، هُمْ شَرُّ الْخَلْقِ، أَوْ مِنْ شَرِّ الْخَلْقِ، تَقْتُلُهُمْ أَدْنَى الطَّائِفَتَيْنِ إلَى الْحَقِّ» وَذَكَرَ الْحَدِيثَ.

are the worst of creation—or among the worst of creation—and the nearer of the two factions to the truth will kill them." And he mentioned the hadith.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَفِي هَذَا الْحَدِيثِ نَصٌّ جَلِيٌّ بِمَا قُلْنَا، وَهُوَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَكَرَ هَؤُلَاءِ الْقَوْمَ فَذَمَّهُمْ أَشَدَّ الذَّمِّ، وَأَنَّهُمْ مِنْ شَرِّ الْخَلْقِ، وَأَنَّهُمْ يَخْرُجُونَ فِي فُرْقَةٍ مِنْ النَّاسِ.

L39750 Abū Muḥammad (may Allāh have mercy on him) said: In this ḥadīth there is a clear text confirming what we have stated—that the Prophet (peace and blessings of Allāh be upon him) mentioned these people, condemned them most severely, and that they are among the worst of creation, and that they emerge within a faction from among the people.

فَصَحَّ أَنَّ أُولَئِكَ أَيْضًا: مُفْتَرِقُونَ، وَأَنَّ الطَّائِفَةَ الْمَذْمُومَةَ تَقْتُلُهَا أَدْنَى الطَّائِفَتَيْنِ الْمُفْتَرِقَتَيْنِ إلَى الْحَقِّ، فَجَعَلَ - عَلَيْهِ السَّلَامُ - فِي الِافْتِرَاقِ تَفَاضُلًا، وَجَعَلَ إحْدَى الطَّائِفَتَيْنِ الْمُفْتَرِقَتَيْنِ لَهَا دُنُوٌّ مِنْ الْحَقِّ - وَإِنْ كَانَتْ الْأُخْرَى أَوْلَى بِهِ - وَلَمْ يَجْعَلْ لِلثَّالِثَةِ شَيْئًا مِنْ الدُّنُوِّ إلَى الْحَقِّ.

L39751 Thus, it becomes evident that they too are divided, and that the blameworthy group is destroyed by the lesser of the two divergent groups in proximity to the truth. He (peace be upon him) thereby established a hierarchy of merit in division, ascribing to one of the two divergent groups a measure of proximity to the truth—even if the other is more entitled to it—while granting the blameworthy third group no share of nearness to the truth.

فَصَحَّ أَنَّ التَّأْوِيلَ يَخْتَلِفُ، فَأَيُّ طَائِفَةٍ تَأَوَّلَتْ فِي بُغْيَتِهَا طَمْسًا لِشَيْءٍ مِنْ السُّنَّةِ، كَمَنْ قَامَ بِرَأْيِ الْخَوَارِجِ لِيُخْرِجَ الْأَمْرَ عَنْ قُرَيْشٍ، أَوْ لِيَرُدَّ النَّاسَ إلَى الْقَوْلِ بِإِبْطَالِ الرَّجْمِ، أَوْ تَكْفِيرِ أَهْلِ الذُّنُوبِ، أَوْ اسْتِقْرَاضِ الْمُسْلِمِينَ، أَوْ قَتْلِ الْأَطْفَالِ وَالنِّسَاءِ، وَإِظْهَارِ الْقَوْلِ بِإِبْطَالِ الْقَدَرِ، أَوْ إبْطَالِ الرُّؤْيَةِ، أَوْ إلَى أَنَّ اللَّهَ تَعَالَى لَا يَعْلَمُ شَيْئًا إلَّا حَتَّى يَكُونَ، أَوْ إلَى الْبَرَاءَةِ عَنْ بَعْضِ الصَّحَابَةِ، أَوْ إبْطَالِ الشَّفَاعَةِ، أَوْ إلَى إبْطَالِ الْعَمَلِ بِالسُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَدَعَا إلَى الرَّدِّ إلَى مَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إلَى الْمَنْعِ مِنْ الزَّكَاةِ، أَوْ مِنْ أَدَاءِ حَقٍّ مِنْ مُسْلِمٍ، أَوْ حَقٍّ لِلَّهِ تَعَالَى: فَهَؤُلَاءِ لَا يُعْذَرُونَ بِالتَّأْوِيلِ الْفَاسِدِ، لِأَنَّهَا جَهَالَةٌ تَامَّةٌ.

L39752 It has thus been established that interpretations differ. Any faction that interprets through their rebellious aims to obscure any aspect of the Sunnah - such as those who adopted the Kharijite doctrine to remove authority from Quraysh, to lead people to nullify stoning, to declare sinners as disbelievers, to borrow from Muslims, to kill children and women, to propagate the nullification of divine decree, to deny the vision of Allah, to claim Allah the Exalted knows nothing until it occurs, to disavow certain Companions, to nullify intercession, to reject established Sunnahs transmitted from Allah's Messenger (pbuh), to call people to refer to those below the Messenger (pbuh), to prohibit zakah, to prevent Muslims from fulfilling their obligations, or to withhold rights due to Allah the Exalted - such people cannot be excused by their corrupt interpretations, for they are utter ignorance.

L39753–39754 As for one who calls to an interpretation by which a Sunnah is not violated—such as Mu'āwiyah's interpretation regarding exacting retribution from 'Uthmān's killers before the pledge of allegiance to 'Alī—such a person is excused, for there is no alteration of any aspect of the religion in this.

Rather, it is a specific error confined to that particular incident, having no broader implications.

وَأَمَّا مَنْ دَعَا إِلَى تَأْوِيلٍ لَا يَحِلُّ بِهِ سُنَّةٌ، لَكِنْ مِثْلَ تَأْوِيلِ مُعَاوِيَةَ فِي أَنْ يَقْتَصَّ مِنْ قَتَلَةِ عُثْمَانَ قَبْلَ الْبَيْعَةِ لِعَلِيٍّ: فَهَذَا يُعْذَرُ، لِأَنَّهُ لَيْسَ فِيهِ إِحَالَةُ شَيْءٍ مِنَ الدِّينِ، وَإِنَّمَا هُوَ خَطَأٌ خَاصٌّ فِي قِصَّةٍ بِعَيْنِهَا لَا تَتَعَدَّى.

L39755 And those who rose solely for worldly pursuits, as did Yazid ibn Mu'awiyah, Marwan ibn al-Hakam, and 'Abd al-Malik ibn Marwan in rising against Ibn al-Zubayr, and as Marwan ibn Muhammad did in rising against Yazid ibn al-Walid, and those who likewise rose against Marwan—these are not excused, for they have no legitimate interpretive basis whatsoever, and it is sheer transgression.

وَمَنْ قَامَ لِعَرَضِ دُنْيَا فَقَطْ، كَمَا فَعَلَ يَزِيدُ بْنُ مُعَاوِيَةَ، وَمَرْوَانُ بْنُ الْحَكَمِ، وَعَبْدُ الْمَلِكِ بْنُ مَرْوَانَ فِي الْقِيَامِ عَلَى ابْنِ الزُّبَيْرِ، وَكَمَا فَعَلَ مَرْوَانُ بْنُ مُحَمَّدٍ فِي الْقِيَامِ عَلَى يَزِيدَ بْنِ الْوَلِيدِ، وَكَمَنْ قَامَ أَيْضًا عَنْ مَرْوَانَ، فَهَؤُلَاءِ لَا يُعْذَرُونَ، لِأَنَّهُمْ لَا تَأْوِيلَ لَهُمْ أَصْلًا، وَهُوَ بَغْيٌ مُجَرَّدٌ.

L39756 As for one who calls to righteousness, forbids evil, manifests the Quran and the Sunnahs, and judges with justice—he is not a transgressor. Rather, the transgressor is whoever opposes him. Success lies with Allah, the Exalted.

وَأَمَّا مَنْ دَعَا إِلَى أَمْرٍ بِمَعْرُوفٍ، أَوْ نَهْيٍ عَنْ مُنْكَرٍ، وَإِظْهَارِ الْقُرْآنِ، وَالسُّنَنِ، وَالْحُكْمِ بِالْعَدْلِ: فَلَيْسَ بَاغِيًا، بَلْ الْبَاغِي مَنْ خَالَفَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39757 And likewise, if wrongdoing was intended against someone and he defends himself against it—whether the ruler or another intended it—this is an instance where people have differed. A faction said: "The ruler in this regard differs from others [i.e., non-rulers], and the ruler is not to be fought even if he intended wrongdoing."

وَهَكَذَا إِذَا أُرِيدَ بِظُلْمٍ فَمَنَعَ مِنْ نَفْسِهِ - سَوَاءٌ أَرَادَهُ الْإِمَامُ أَوْ غَيْرُهُ - وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ: فَقَالَتْ طَائِفَةٌ: إِنَّ السُّلْطَانَ فِي هَذَا بِخِلَافِ غَيْرِهِ، وَلَا يُحَارَبُ السُّلْطَانُ وَإِنْ أَرَادَ ظُلْمًا.

L39758 As it has been narrated to us through the chain of Abd al-Razzaq from Ma'mar from Ayyub al-Sikhtiyani: Some men asked Ibn Sirin, saying: "We approached the Kharijites during such-and-such time—they ask about nothing except that they kill those they meet?" Ibn Sirin replied: "I do not know of anyone who refrained from killing these people out of fear of sinning, nor from killing anyone who intends to fight you except the ruler. For the ruler has a distinct consideration."

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ أَنَّ رِجَالًا سَأَلُوا ابْنَ سِيرِينَ فَقَالُوا: أَتَيْنَا الْحَرُورِيَّةَ زَمَانَ كَذَا وَكَذَا، لَا يَسْأَلُونَ عَنْ شَيْءٍ غَيْرَ أَنَّهُمْ يَقْتُلُونَ مَنْ لَقُوا؟ فَقَالَ ابْنُ سِيرِينَ: مَا عَلِمْت أَنَّ أَحَدًا كَانَ يَتَحَرَّجُ مِنْ قَتْلِ هَؤُلَاءِ تَأَثُّمًا، وَلَا مِنْ قَتْلِ مَنْ أَرَادَ قِتَالَك إِلَّا السُّلْطَانَ، فَإِنَّ لِلسُّلْطَانِ نَحْوًا.

L39759 Others differed with them, saying: "The ruler and others are equal," as we have related through the narration chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb from Abī Qilābah, who said: "Muʿāwiyah ibn Abī Sufyān sent

وَخَالَفَهُمْ آخَرُونَ فَقَالُوا: السُّلْطَانُ وَغَيْرُهُ سَوَاءٌ، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ قَالَ: «أَرْسَلَ مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ إِلَى عَامِلٍ لَهُ أَنْ

to one of his governors ordering him to seize al-Waḥṭ. When this reached ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, he donned his weapon along with his freed slaves and servants, saying: 'I heard Allah's Messenger - may Allah's peace and blessings be upon him - say: Whoever is killed defending his property (while being wronged) is a martyr.'"

L39760 From the narration of 'Abd al-Razzāq, from Ibn Jurayj, who informed me that 'Amr ibn Dīnār said: "'Abdullāh ibn 'Amr ibn al-'Āṣ prepared himself for battle in defense of al-Waḥṭ, then said: 'Why should I not fight for it? I heard the Messenger of Allāh—peace and blessings be upon him and his family—say: "Whoever is killed defending his property is a martyr."'"

L39761–39762 Ibn Jurayj said: Sulayman al-Ahwal informed me that Thabit, the freed slave of Umar ibn Abd al-Rahman, informed him, saying: When a dispute arose between Abdullah ibn Amr ibn al-As and Anbasa ibn Abi Sufyan, and they prepared for combat, Khalid ibn al-As—who was of the lineage of Hisham ibn al-Mughirah al-Makhzumi—rode to Abdullah ibn Amr and counseled him. Abdullah ibn Amr ibn al-As responded: "Do you not know that the Messenger of Allah (peace be upon him and his family) said, 'Whoever is slain defending his property is a martyr'?" Abu Muhammad (may Allah have mercy on him) remarked: Here was Abdullah ibn Amr ibn al-As, a remaining Companion among his peers (may Allah be pleased with them), intending to fight Anbasa ibn Abi Sufyan, the governor appointed by his brother Muʿawiyah, Commander of the Faithful, when he ordered him to seize "al-Waht." Abdullah ibn Amr viewed its confiscation as unlawful, though Muʿawiyah (may Allah have mercy on him) would not have committed outright injustice but rather acted on an interpretation he undoubtedly deemed valid. Abdullah ibn Amr judged the act itself illegitimate, took up arms for battle, and none of the other Companions (may Allah be pleased with them) opposed him. Similarly, it is related from Abu Hanifah, al-Shafiʿi, Abu Sulayman, and their adherents that when a rebellious faction rises against the Imam, they are questioned about their revolt. If they cite grievances, justice is secured for them; otherwise, they are summoned to desist. If they comply, no penalty is imposed, but if they refuse, they are fought. We do not consider this position except as the opinion of Malik as well.

يَأْخُذَ الْوَهْطَ فَبَلَغَ ذَلِكَ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ فَلَبِسَ سِلَاحَهُ هُوَ وَمَوَالِيهِ وَغِلْمَتُهُ، وَقَالَ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: مَنْ قُتِلَ دُونَ مَالِهِ - مَظْلُومًا - فَهُوَ شَهِيدٌ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ، قَالَ: «إِنَّ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ تَيَسَّرَ لِلْقِتَالِ دُونَ الْوَهْطِ، ثُمَّ قَالَ: مَالِي لَا أُقَاتِلُ دُونَهُ وَقَدْ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ» .

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي سُلَيْمَانُ الْأَحْوَلُ أَنَّ ثَابِتًا مَوْلَى عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ أَخْبَرَهُ، قَالَ: لَمَّا كَانَ بَيْنَ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، وَبَيْنَ عَنْبَسَةَ بْنِ أَبِي سُفْيَانَ مَا كَانَ وَتَيَسَّرُوا لِلْقِتَالِ رَكِبَ خَالِدُ بْنُ الْعَاصِ - هُوَ ابْنُ هِشَامِ بْنِ الْمُغِيرَةِ الْمَخْزُومِيّ - إِلَى عَبْدِ اللَّهِ بْنِ عَمْرٍو فَوَعَظَهُ، فَقَالَ لَهُ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ: أَمَا عَلِمْتَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ قُتِلَ عَلَى مَالِهِ فَهُوَ شَهِيدٌ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ بَقِيَّةُ الصَّحَابَةِ وَبِحَضْرَةِ سَائِرِهِمْ - رَضِيَ اللَّهُ عَنْهُمْ - يُرِيدُ قِتَالَ عَنْبَسَةَ بْنِ أَبِي سُفْيَانَ عَامِلَ أَخِيهِ مُعَاوِيَةَ أَمِيرِ الْمُؤْمِنِينَ إِذْ أَمَرَهُ بِقَبْضِ " الْوَهْطِ " وَرَأَى عَبْدُ اللَّهِ بْنُ عَمْرٍو أَنَّ أَخْذَهُ مِنْهُ غَيْرُ وَاجِبٍ، وَمَا كَانَ مُعَاوِيَةُ - رَحِمَهُ اللَّهُ - لِيَأْخُذَ ظُلْمًا صُرَاحًا، لَكِنْ أَرَادَ ذَلِكَ بِوَجْهٍ تَأَوَّلَهُ بِلَا شَكٍّ، وَرَأَى عَبْدُ اللَّهِ بْنُ عَمْرٍو أَنَّ ذَلِكَ لَيْسَ بِحَقٍّ، وَلَبِسَ السِّلَاحَ لِلْقِتَالِ، وَلَا مُخَالِفَ لَهُ فِي ذَلِكَ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهَكَذَا جَاءَ عَنْ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ: أَنَّ الْخَارِجَةَ عَلَى الْإِمَامِ إِذَا خَرَجَتْ سُئِلُوا عَنْ خُرُوجِهِمْ؟ فَإِنْ

ذَكَرُوا مَظْلَمَةً ظُلِمُوهَا أُنْصِفُوا، وَإِلَّا دُعُوا إِلَى الْفَيْئَةِ، فَإِنْ فَاءُوا فَلَا شَيْءَ عَلَيْهِمْ، وَإِنْ أَبَوْا قُوتِلُوا، وَلَا نَرَى هَذَا إِلَّا قَوْلَ مَالِكٍ أَيْضًا.

L39763 When they disagreed as we mentioned, it became obligatory for us to refer their disagreement to what Allah, the Exalted, has obligated us to refer to, as He says: "If you disagree over anything, refer it to Allah and the Messenger" (Quran 4:59).[21]

فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَرُدَّ مَا اخْتَلَفُوا فِيهِ إِلَى مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا الرَّدَّ إِلَيْهِ، إِذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] .

L39764 We did: We found that Allah, the Exalted, did not differentiate between a ruler and others regarding fighting a rebellious faction against another. Rather, He commanded - in general terms - to fight whoever rebels against their Muslim brother until they return to the command of Allah, the Exalted: (And your Lord is never forgetful) [Maryam: 64]. Similarly, the statement of the Prophet, peace be upon him, "Whoever is killed defending his property is a martyr," is also general, not specifying a ruler over others. There is no distinction in the Quran, the Hadith, consensus, or analogy between one whose property is targeted, whose life is targeted, whose wife's sexual honor is targeted, or if such harm is sought from all Muslims.[22]

فَفَعَلْنَا: فَلَمْ نَجِدْ اللَّهَ تَعَالَى فَرَّقَ فِي قِتَالِ الْفِئَةِ الْبَاغِيَةِ عَلَى الْأُخْرَى بَيْنَ سُلْطَانٍ وَغَيْرِهِ، بَلْ أَمَرَ تَعَالَى بِقِتَالِ مَنْ بَغَى عَلَى أَخِيهِ الْمُسْلِمِ - عُمُومًا - حَتَّى يَفِيءَ إِلَى أَمْرِ اللَّهِ تَعَالَى {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ» أَيْضًا - عُمُومٌ - لَمْ يَخُصَّ مَعَهُ سُلْطَانًا مِنْ غَيْرِهِ، وَلَا فَرْقَ فِي قُرْآنٍ، وَلَا حَدِيثٍ، وَلَا إجْمَاعٍ وَلَا قِيَاسٍ: بَيْنَ مَنْ أُرِيدَ مَالُهُ، أَوْ أُرِيدَ دَمُهُ، أَوْ أُرِيدَ فَرْجُ امْرَأَتِهِ، أَوْ أُرِيدَ ذَلِكَ مِنْ جَمِيعِ الْمُسْلِمِينَ.

L39765–39766 Unrestricted application in this matter leads to the corruption of the religion and its people, and this is unanimously unlawful—and all success comes from Allah, the Exalted.

وَفِي الْإِطْلَاقِ عَلَى هَذَا هَلَاكُ الدِّينِ وَأَهْلِهِ، وَهَذَا لَا يَحِلُّ بِلَا خِلَافٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39767 Abū Muḥammad—may Allāh have mercy on him—said: "As for those captured from the rebels, people have differed concerning them: should they be killed or not? Some companions of Abū Ḥanīfah stated: 'So long as combat continues, captives taken from them are to be killed. When the conflict subsides, no captive from them is to be killed.'"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمَنْ أُسِرَ مِنْ أَهْلِ الْبَغْيِ، فَإِنَّ النَّاسَ قَدْ اخْتَلَفُوا فِيهِ: أَيُقْتَلُ أَمْ لَا؟ فَقَالَ بَعْضُ أَصْحَابِ أَبِي حَنِيفَةَ: مَا دَامَ الْقِتَالُ قَائِمًا فَإِنَّهُ يُقْتَلُ أَسَرَاهُمْ، فَإِذَا انْجَلَتْ الْحَرْبُ فَلَا يُقْتَلُ مِنْهُمْ أَسِيرٌ.

L39768 Abū Muḥammad—may Allah have mercy on him—said: These people argued that ʿAlī—may Allah be pleased with him—killed Ibn Yathribi when he was

[21] **Qur'an references (L39763):** Qur'an 4:59 (An-Nisa).
[22] **Qur'an references (L39764):** Qur'an 19:64 (Maryam).

brought as a captive. Al-Shāfiʿī said: "It is fundamentally impermissible to kill any captive among them, whether while the war is ongoing or after its conclusion"—and this is our view.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاحْتَجَّ هَؤُلَاءِ بِأَنَّ عَلِيًّا - رَضِيَ اللَّهُ عَنْهُ - قَتَلَ ابْنَ يَثْرِبِيٍّ - وَقَدْ أُتِيَ بِهِ أَسِيرًا وَقَالَ الشَّافِعِيُّ: لَا يَحِلُّ أَنْ يُقْتَلَ مِنْهُمْ أَسِيرٌ أَصْلًا مَا دَامَتْ الْحَرْبُ قَائِمَةً، وَلَا بَعْدَ تَمَامِ الْحَرْبِ - وَبِهَذَا نَقُولُ.

L39769 The proof of this is that it has been authentically established from the Prophet—peace and blessings be upon him—that he said: "It is not lawful to shed the blood of a Muslim except for one of three things: apostasy after faith, adultery after being in a state of lawful marriage, or a life for a life."

بُرْهَانُ ذَلِكَ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ صَحَّ عَنْهُ أَنَّهُ قَالَ «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إيمَانٍ، أَوْ زِنًى بَعْدَ إحْصَانٍ، أَوْ نَفْسٌ بِنَفْسٍ» .

L39770 Allah the Exalted has sanctioned the execution of those who wage war against society, and the Messenger of Allah—may Allah bless him and grant him peace—has sanctioned the execution of one who was subjected to the ḥadd punishment for consuming intoxicants and then drank it a fourth time.

وَأَبَاحَ اللَّهُ تَعَالَى دَمَ الْمُحَارِبِ، وَأَبَاحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَمَ مَنْ حُدَّ فِي الْخَمْرِ ثُمَّ شَرِبَهَا فِي الرَّابِعَةِ.

L39771 Every person for whom there exists an explicit text permitting their blood, their blood is permitted. As for every person whose blood neither God Almighty nor His Messenger—may God's blessings and peace be upon him—have permitted, their blood is forbidden by the words of God Almighty: "Do not kill yourselves" [4:29], and the words of the Messenger of God—may God's blessings and peace be upon him: "Your blood and your wealth are sacred to you." As for their argument citing the action of Ali—may God be pleased with him—it holds no validity for several reasons: The first is that no proof can be derived from the words of anyone other than the Messenger of God—may God's blessings and peace be upon him.[23]

فَكُلُّ مَنْ وَرَدَ نَصٌّ بِإِبَاحَةِ دَمِهِ: مُبَاحُ الدَّمِ، وَكُلُّ مَنْ لَمْ يُبِحْ اللَّهُ تَعَالَى دَمَهُ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَرَامُ الدَّمِ بِقَوْلِ اللَّهِ تَعَالَى {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] ، وَبِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَأَمَّا احْتِجَاجُهُمْ بِفِعْلِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فَلَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ: أَحَدُهَا - أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39772 The second [point] is that it cannot be authentically ascribed to ʿAlī—may Allah be pleased with him.

وَالثَّانِي - أَنَّهُ لَا يَصِحُّ مُسْنَدًا إلَى عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -.

L39773–39775 The third point is that if it were valid, it would constitute an authoritative proof against them rather than in their favor. This is because the report in question pertains specifically to a man from Yathrib, who recited rajaz poetry on that day, saying: I am for whoever disavows me, the son of the Yathribi... the killer of Ali and Hind of the Battle of the Camel.

وَالثَّالِثُ - أَنَّهُ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّ ذَلِكَ الْخَبَرَ إنَّمَا هُوَ فِي ابْنِ يَثْرِبِيٍّ ارْتَجَزَ يَوْمَ ذَلِكَ، فَقَالَ: أَنَا لِمَنْ يُنْكِرُنِي ابْنُ يَثْرِبِيّ ... قَاتِلُ عَلِيًّا وَهِنْدَ الْجَمَلِ

[23] **Qur'an references (L39771):** Qur'an 4:29 (An-Nisa).

L39776 Then the son of Ṣuḥān was upon the religion of ʿAlī.

ثُمَّ ابْنَ صُوحَانَ عَلَى دِينِ عَلِيٍّ

L39777 He was captured and brought to Ali ibn Abi Talib. He pleaded, “Spare me!” Ali said to him, “After your confession to killing three Muslims—Ali, Hind, and Ibn Ṣuḥān—should you be spared?” He then ordered his neck to be struck. Ali killed him as qawd (retributive killing) by the explicit wording of his own statement—though they themselves do not recognize qawd in such a case? Thus their own argument became evidence against them, revealing their contradiction of Ali’s statement and action in this matter. Fourthly, it is authentically established that Ali prohibited killing captives during the Battles of al-Jamal and Ṣiffīn—as we shall mention, if Allah the Exalted wills. Therefore, their reliance on Ali’s action in this matter was invalidated, and we know they never objected to anything other than this.

فَأُسِرَ، فَأُتِيَ بِهِ عَلِيَّ بْنَ أَبِي طَالِبٍ، فَقَالَ لَهُ: اسْتَبْقِنِي؟ فَقَالَ لَهُ عَلِيٌّ: أَبَعْدَ إِقْرَارِكَ بِقَتْلِ ثَلَاثَةٍ مِنْ الْمُسْلِمِينَ: عَلِيًّا، وَهِنْدًا، وَابْنَ صُوحَانَ - وَأَمَرَ بِضَرْبِ عُنُقِهِ - فَإِنَّمَا قَتَلَهُ عَلِيٌّ قَوَدًا بِنَصِّ كَلَامِهِ - وَهُمْ لَا يَرَوْنَ الْقَوَدَ فِي مِثْلِ هَذَا؟ فَعَادَ احْتِجَاجُهُمْ بِهِ حُجَّةً عَلَيْهِمْ، وَلَاحَ أَنَّهُمْ مُخَالِفُونَ لِقَوْلِ عَلِيٍّ فِي ذَلِكَ وَلِفِعْلِهِ وَالرَّابِعُ - أَنَّهُ قَدْ صَحَّ عَنْ عَلِيٍّ النَّهْيُ عَنْ قَتْلِ الْأُسَرَاءِ فِي الْجَمَلِ وَصِفِّينَ - عَلَى مَا نَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى - فَبَطَلَ تَعَلُّقُهُمْ بِفِعْلِ عَلِيٍّ فِي ذَلِكَ، وَمَا نَعْلَمُهُمْ شَغَبُوا بِشَيْءٍ غَيْرَ هَذَا.

L39778 If they say: “His killing was permissible without disagreement before captivity, so it remains permissible afterward unless prevented by a text or consensus,” we respond: This is invalid. His killing was never unconditionally permissible before captivity, but rather permissible only while he was a rebel actively fighting. When he is no longer a rebel or actively fighting, his killing becomes forbidden. Once captured, he is neither a rebel nor actively fighting; thus, his blood is forbidden.

فَإِنْ قَالُوا: قَدْ كَانَ قَتْلُهُ - بِلَا خِلَافٍ - مُبَاحًا قَبْلَ الْإِسَارِ، فَهُوَ عَلَى ذَلِكَ بَعْدَ الْإِسَارِ حَتَّى يَمْنَعَ مِنْهُ نَصٌّ، أَوْ إِجْمَاعٌ؟ قُلْنَا لَهُمْ: هَذَا بَاطِلٌ، وَمَا حَلَّ قَتْلُهُ قَطُّ قَبْلَ الْإِسَارِ مُطْلَقًا، لَكِنْ حَلَّ قَتْلُهُ مَا دَامَ بَاغِيًا مُدَافِعًا، فَإِذَا لَمْ يَكُنْ بَاغِيًا مُدَافِعًا: حَرُمَ قَتْلُهُ - وَهُوَ إِذَا أُسِرَ فَلَيْسَ حِينَئِذٍ بَاغِيًا، وَلَا مُدَافِعًا: فَدَمُهُ حَرَامٌ.

L39779 Similarly, if he abandons fighting, remains in his place, and does not defend himself, his blood becomes inviolable—even if he is not captured. And success comes from Allah, the Exalted.

وَكَذَلِكَ لَوْ تَرَكَ الْقِتَالَ وَقَعَدَ مَكَانَهُ وَلَمْ يُدَافِعْ لَحَرُمَ دَمُهُ - وَإِنْ لَمْ يُؤْسَرْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39780 Allah the Exalted said, “Fight the faction that transgresses until they return to the command of Allah” [Al-Hujurat: 9], and He did not say: “Fight those who remain.” Fighting and combat are actions involving two parties. Thus, only fighting the transgressor and combating him are permissible, but it is never permissible to kill him outside the context of combat and fighting. This is the text of the Quran—and success comes from Allah, the Exalted.[24]

وَإِنَّمَا قَالَ اللَّهُ تَعَالَى {فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ} [الحجرات: ٩] وَلَمْ يَقُلْ: قَاتِلُوا الَّتِي تَبْقَى، وَالْقِتَالُ وَالْمُقَاتَلَةُ فِعْلٌ مِنْ فَاعِلَيْنِ، فَإِنَّمَا حَلَّ قِتَالُ الْبَاغِي، وَمُقَاتَلَتُهُ، وَلَمْ يَحِلَّ قَتْلُهُ قَطُّ فِي غَيْرِ الْمُقَاتَلَةِ، وَالْقِتَالِ، فَهَذَا نَصُّ الْقُرْآنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39781 If they say, “Do we analogize him to the muḥārib?” We reply: The subdued

فَإِنْ قَالُوا نَقِيسُهُ عَلَى الْمُحَارِبِ؟ قُلْنَا: الْمُحَارِبُ الْمَقْدُورُ عَلَيْهِ يُقْتَلُ إِنْ رَأَى الْإِمَامُ ذَلِكَ قَبْلَ تَمَامِ الْحَرْبِ وَبَعْدَهَا بِلَا خِلَافٍ فِي أَنَّ حُكْمَهُ فِي كِلَا الْأَمْرَيْنِ سَوَاءٌ - وَأَيْضًا

[24] **Qur’an references (L39780):** Qur’an 49:9 (Al-Hujurat).

muḥārib is to be killed if the Imam deems it necessary, whether before the war's conclusion or after, without disagreement that his ruling is identical in both scenarios. Moreover, no one disputes that the ruling for the bāghī differs from the ruling of the muḥārib, and the Quran came with the differentiation between their rulings.

فَلَيْسَ يَخْتَلِفُ أَحَدٌ فِي أَنَّ حُكْمَ الْبَاغِي غَيْرُ حُكْمِ الْمُحَارِبِ، وَبِالتَّفْرِيقِ بَيْنَ حُكْمِهِمَا جَاءَ الْقُرْآنُ.

L39782–39784 Abu Muhammad—may Allah have mercy on him—said: They also differed concerning finishing off their wounded, and the opinion is... The ruling concerning them is identical to that regarding captives without exception, because if a wounded person is overpowered, he becomes a captive. As for one who cannot be overpowered and remains resistant, he is a rebel like the rest of his companions.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاخْتَلَفُوا أَيْضًا فِي الْإِجْهَازِ عَلَى جَرْحَاهُمْ، وَالْقَوْلُ فِيهِمْ كَالْقَوْلِ فِي الْأُسَرَاءِ سَوَاءً، لِأَنَّ الْجَرِيحَ إذَا قُدِرَ عَلَيْهِ فَهُوَ أَسِيرٌ، وَأَمَّا مَا لَمْ يُقْدَرْ عَلَيْهِ وَكَانَ مُمْتَنِعًا فَهُوَ بَاغٍ كَسَائِرِ أَصْحَابِهِ.

L39785 It has been narrated to us through the chain of ʻAbd al-Razzāq from Ibn Jurayj, who said: Jaʻfar ibn Muḥammad informed me from his father Muḥammad ibn ʻAlī ibn al-Ḥusayn ibn ʻAlī ibn Abī Ṭālib, who said: ʻAlī ibn Abī Ṭālib stated: "Do not finish off the wounded, do not kill captives, and do not pursue those who flee." He would not seize the property of a slain person, saying: "Whoever acknowledges something, let him take it."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: لَا يُذَفَّفُ عَلَى جَرِيحٍ، وَلَا يُقْتَلُ أَسِيرٌ، وَلَا يُتْبَعُ مُدْبِرٌ - وَكَانَ لَا يَأْخُذُ مَالًا لِمَقْتُولٍ، يَقُولُ: مَنْ اعْتَرَفَ شَيْئًا فَلْيَأْخُذْهُ.

L39786 From the chain of Abd al-Razzaq, from Yahya ibn al-Ala', from Juwaybir, who said: A woman from Banu Asad reported to me, saying: I heard Ammar, after Ali had concluded with the Companions of the Camel, proclaiming: "Do not kill anyone retreating or advancing, nor finish off a wounded person, nor enter a house. Whoever lays down his weapon is safe, like a prisoner. We have ordained to reconcile between him and the one against whom aggression is committed through equitable arbitration, which is to prevent him from aggression by restraining the aggressor and not allowing him to fight."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَحْيَى بْنِ الْعَلَاءِ عَنْ جُوَيْبِرٍ قَالَ: أَخْبَرَتْنِي امْرَأَةٌ مِنْ بَنِي أَسَدٍ قَالَتْ: سَمِعْت عَمَّارًا بَعْد مَا فَرَغَ عَلِيٌّ مِنْ أَصْحَابِ الْجَمَلِ يُنَادِي: لَا تَقْتُلُنَّ مُدْبِرًا وَلَا مُقْبِلًا، وَلَا تُذَفِّفُوا عَلَى جَرِيحٍ، وَلَا تَدْخُلُوا دَارًا، وَمَنْ أَلْقَى السِّلَاحَ فَهُوَ آمِنٌ، كَالْمَأْسُورِ، قَدْ قَدَرْنَا أَنْ نُصْلِحَ بَيْنَهُ وَبَيْنَ الْمَبْغِيِّ عَلَيْهِ بِالْعَدْلِ، وَهُوَ أَنْ نَمْنَعَهُ مِنْ الْبَغْيِ، بِأَنْ نُمْسِكَهُ وَلَا نَدَعَهُ يُقَاتِلَ.

L39787 Similarly, the wounded when overpowered. The text of this verse establishes the prohibition of killing captives and those overpowered, for it obligates reconciliation between the two parties—the transgressor and the wronged—and reconciliation is impermissible between a living and a deceased individual, but is valid only between two living parties. Thus, the prohibition of killing

وَكَذَلِكَ الْجَرِيحُ إذَا قَدَرْنَا عَلَيْهِ، وَنَصُّ هَذِهِ الْآيَةِ يَقْتَضِي تَحْرِيمَ دَمِ الْأَسِيرِ، وَمَنْ قُدِرَ عَلَيْهِ؛ لِأَنَّ فِيهَا إيجَابَ الْإِصْلَاحِ بَيْنَهُمَا - نَعْنِي الْبَاغِيَ وَالْمَبْغِيَّ عَلَيْهِ - وَلَا يَجُوزُ أَنْ

captives and those overpowered among the rebels is conclusively established with certainty.

يُصْلَحَ بَيْنَ حَيٍّ وَمَيِّتٍ، وَإِنَّمَا يُصْلَحُ بَيْنَ حَيَّيْنِ - فَصَحَّ تَحْرِيمُ دَمِ الْأَسِيرِ، وَمَنْ قُدِرَ عَلَيْهِ مِنْ أَهْلِ الْبَغْيِ بِيَقِينٍ.

L39788 They differed regarding whether it is permissible to follow those among them who turn away. A group asserted: Those among them who turn away are not to be followed in any respect.

وَاخْتَلَفُوا هَلْ يَجُوزُ اتِّبَاعُ مُدْبِرِهِمْ؟ فَقَالَتْ طَائِفَةٌ: لَا يُتْبَعُ الْمُدْبِرُ مِنْهُمْ أَصْلًا.

L39789 Others said: If they have entirely abandoned fighting, withdrawing to their homes, it is impermissible to pursue them under any circumstance. But if they have aligned with a faction, taken refuge in a fortress where they hold out, withdrawn from those from the people of justice who have prevailed over them to a place where they secure themselves until nightfall, or retreated due to the distance and hardship of the journey then return to their state—they are to be pursued.

وَقَالَ آخَرُونَ: إنْ كَانُوا تَارِكِينَ لِلْقِتَالِ جُمْلَةً، مُنْصَرِفِينَ إلَى بُيُوتِهِمْ، فَلَا يَحِلُّ اتِّبَاعُهُمْ أَصْلًا، وَإِنْ كَانُوا مُنْحَازِينَ إلَى فِئَةٍ أَوْ لَائِذِينَ بِمَعْقِلٍ يَمْتَنِعُونَ فِيهِ، أَوْ زَائِلِينَ عَنْ الْغَالِبِينَ لَهُمْ مِنْ أَهْلِ الْعَدْلِ إلَى مَكَانٍ يَأْمَنُونَهُمْ فِيهِ لِمَجِيءِ اللَّيْلِ، أَوْ بِبُعْدِ الشُّقَّةِ ثُمَّ يَعُودُونَ إلَى حَالِهِمْ: فَيُتْبَعُونَ.

L39790–39792 Abū Muḥammad—may Allāh have mercy on him—said: This is our position, for it is the text of the Quran. Allāh the Exalted has obligated us to fight them until they return to the command of Allāh. When they return, it becomes forbidden for us to kill them or fight them. Thus, if they retreat—abandoning their aggression, returning to their dwellings, or dispersing from what they were upon—their abandonment of transgression makes them those who return to Allāh's command. When they return to Allāh's command, their killing becomes unlawful. If their killing is unlawful, then there is no... The reason for their adherence; we have nothing with them at that time.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا نَقُولُ، لِأَنَّهُ نَصُّ الْقُرْآنِ، لِأَنَّ اللَّهَ تَعَالَى افْتَرَضَ عَلَيْنَا قِتَالَهُمْ حَتَّى يَفِيئُوا إلَى أَمْرِ اللَّهِ تَعَالَى، فَإِذَا فَاءُوا حَرُمَ عَلَيْنَا قَتْلُهُمْ وَقِتَالُهُمْ، فَهُمْ إذَا أَدْبَرُوا تَارِكِينَ لِبَغْيِهِمْ، رَاجِعِينَ إلَى مَنَازِلِهِمْ، أَوْ مُتَفَرِّقِينَ عَمَّا هُمْ عَلَيْهِ، فَبِتَرْكِهِمْ الْبَغْيَ صَارُوا فَائِئِينَ إلَى أَمْرِ اللَّهِ، فَإِذَا فَاءُوا إلَى أَمْرِ اللَّهِ فَقَدْ حَرُمَ قَتْلُهُمْ، وَإِذَا حَرُمَ قَتْلُهُمْ فَلَا وَجْهَ لِاتِّبَاعِهِمْ، وَلَا شَيْءَ لَنَا عِنْدَهُمْ حِينَئِذٍ.

L39793 As for when their retreat is to free themselves from the dominance of the people of truth—while they persist in their transgression—fighting them remains our obligation afterward, because they have not yet returned to compliance with the command of Allah, the Most High.

وَأَمَّا إذَا كَانَ إدْبَارُهُمْ لِيَتَخَلَّصُوا مِنْ غَلَبَةِ أَهْلِ الْحَقِّ - وَهُمْ بَاقُونَ عَلَى بَغْيِهِمْ - فَقِتَالُهُمْ بَاقٍ عَلَيْنَا بَعْدُ، لِأَنَّهُمْ لَمْ يَفِيئُوا بَعْدُ إلَى أَمْرِ اللَّهِ تَعَالَى.

L39794 If someone were to argue using what was transmitted by ʿAbdullāh ibn Aḥmad al-Ṭalamankī, who narrated from Aḥmad ibn Mufarrij, who narrated from Muḥammad ibn Ayyūb al-Ṣamūt al-Raqqī, who narrated from Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār, who narrated from Muḥammad ibn Maʿmar, who narrated from ʿAbd al-Malik ibn ʿAbd al-ʿAzīz, who narrated from Kawthar ibn Ḥakīm, from Nāfiʿ, from Ibn ʿUmar, who said: The Mes-

فَإِنْ احْتَجَّ مُحْتَجٌّ بِمَا ناه عَبْدُ اللَّهِ بْنُ أَحْمَدَ الطَّلَمَنْكِيُّ نا أَحْمَدُ بْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيُّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا مُحَمَّدُ بْنُ مَعْمَرٍ نا عَبْدُ الْمَلِكِ بْنُ عَبْدِ الْعَزِيزِ نا كَوْثَرُ بْنُ حَكِيمٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى

senger of Allah—peace and blessings be upon him—said, “O son of Umm ʿAbd, do you know how Allah has judged concerning those who rebel from this Ummah?” He replied, “Allah and His Messenger know best.” He said, “Their wounded are not to be finished off, their captives are not to be killed, those who flee are not to be pursued, and their booty is not to be distributed.” However, Kawthar ibn Ḥakīm is entirely unreliable and abandoned in ḥadīth narration. Even if it were authentic, it would be proof for us, because “the fleeing” refers to one who abandons their cause, whereas one who extricates themselves to return is not considered fleeing. And with Allah, the Exalted, is success.

اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَا ابْنَ أُمِّ عَبْدٍ هَلْ تَدْرِي كَيْفَ حَكَمَ اللَّهُ فِيمَنْ بَغَى مِنْ هَذِهِ الْأُمَّةِ؟ قَالَ: اللَّهُ وَرَسُولُهُ أَعْلَمُ، قَالَ: لَا يُجْهَزُ عَلَى جَرِيحِهَا، وَلَا يُقْتَلُ أَسِيرُهَا، وَلَا يُطْلَبُ هَارِبُهَا، وَلَا يُقَسَّمُ فَيْئُهَا» فَإِنَّ كَوْثَرَ بْنَ حَكِيمٍ سَاقِطٌ أَلْبَتَّةَ مَتْرُوكُ الْحَدِيثِ - وَلَوْ صَحَّ لَكَانَ حُجَّةً لَنَا، لِأَنَّ الْهَارِبَ: هُوَ التَّارِكُ لِمَا هُوَ فِيهِ، فَأَمَّا الْمُتَخَلِّصُ؛ لِيَعُودَ فَلَيْسَ هَارِبًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39795 Abu Muhammad (may Allah have mercy on him) said: They also differed regarding fighting rebels. Some scholars of Hadith said: Their wealth should be divided and subject to khums. This is also the opinion of Al-Ḥasan ibn Ḥayy, who stated: The wealth of brigands who wage war is considered spoils subject to khums, including whatever wealth they possessed in their camp.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاخْتَلَفُوا أَيْضًا فِي قِتَالِ أَهْلِ الْبَغْيِ؟ فَقَالَ بَعْضُ أَصْحَابِ الْحَدِيثِ: تُقَسَّمُ أَمْوَالُهُمْ وَتُخَمَّسُ - وَبِهِ قَالَ الْحَسَنُ بْنُ حَيٍّ: أَمْوَالُ اللُّصُوصِ الْمُحَارِبِينَ مَغْنُومَةٌ مُخَمَّسَةٌ، مَا كَانَ مِنْهَا فِي عَسْكَرِهِمْ.

L39796 Abu Yusuf, the companion of Abu Hanifah, said: Whatever weapons and cavalry mounts are found in the possession of rebels constitute *fay’* (spoils acquired without combat), which is divided with one-fifth taken [as *khums*]—and he did not hold this opinion regarding anything other than weapons and mounts.

وَقَالَ أَبُو يُوسُفَ صَاحِبُ أَبِي حَنِيفَةَ: مَا وُجِدَ فِي أَيْدِي أَهْلِ الْبَغْيِ مِنْ السِّلَاحِ وَالْكُرَاعِ فَإِنَّهُ فَيْءٌ يُقَسَّمُ وَيُخَمَّسُ - وَلَمْ يَرَ ذَلِكَ فِي غَيْرِ السِّلَاحِ وَالْكُرَاعِ.

L39797 Abu Hanifa and all his companions said: As long as hostilities persist, it is permissible to use captured weapons and *kurāʿ* specifically for combatting them. If any such items are destroyed during warfare, no compensation is due. When hostilities cease, nothing may be taken from their possessions—neither weapons, nor *kurāʿ*, nor anything else. Whatever remains of their weapons and *kurāʿ* used in battle must be restored to them. Malik, Al-Shafi’i, and our companions said: Nothing from their possessions becomes lawful for us—neither weapons, nor *kurāʿ*, nor anything else—whether during warfare or after its conclusion. Abu Muhammad—may Allah have mercy on him—said: Since they differed as we have mentioned, it became obligatory to examine this matter to discern the truth and follow it, with the aid of Allah the Exalted.

وَقَالَ أَبُو حَنِيفَةَ وَسَائِرُ أَصْحَابِهِ: أَمَّا مَا دَامَتْ الْحَرْبُ قَائِمَةً فَإِنَّهُ يُسْتَعَانُ فِي قِتَالِهِمْ بِمَا أُخِذَ مِنْ سِلَاحِهِمْ وَكُرَاعِهِمْ خَاصَّةً؛ فَإِذَا تَلِفَ مِنْ ذَلِكَ شَيْءٌ فِي حَالِ الْحَرْبِ فَلَا ضَمَانَ فِيهِ، فَإِذَا وَضَعَتْ الْحَرْبُ أَوْزَارَهَا لَمْ يُؤْخَذْ شَيْءٌ مِنْ أَمْوَالِهِمْ لَا سِلَاحٌ، وَلَا كُرَاعٌ، وَلَا غَيْرُ ذَلِكَ - يُرَدُّ عَلَيْهِمْ مَا بَقِيَ مِمَّا قَاتَلُوا بِهِ فِي الْحَرْبِ مِنْ سِلَاحِهِمْ وَكُرَاعِهِمْ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُنَا: لَا يَحِلُّ لَنَا شَيْءٌ مِنْ أَمْوَالِهِمْ: لَا سِلَاحٌ، وَلَا كُرَاعٌ، وَلَا غَيْرُ ذَلِكَ - لَا فِي حَالِ الْحَرْبِ وَلَا بَعْدَهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ، بِعَوْنِ اللَّهِ تَعَالَى.

فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، بِأَنْ يَسْتَعْمِلَ سِلَاحَهُمْ، وَكُرَاعَهُمْ مَا دَامَتْ الْحَرْبُ قَائِمَةً - فَلَمْ نَجِدْ لَهُمْ فِي ذَلِكَ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا إجْمَاعٍ - وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِلَا شَكٍّ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالسِّلَاحُ وَالْكُرَاعُ مَالٌ مِنْ مَالِهِمْ فَهُوَ مُحَرَّمٌ عَلَى غَيْرِهِمْ، لَكِنَّ الْوَاجِبَ أَنْ يُحَالَ بَيْنَهُمْ وَبَيْنَ كُلِّ مَا يَسْتَعِينُونَ بِهِ عَلَى بَاطِلِهِمْ؛ لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L39798–39799 We examined the argument put forth by Abū Ḥanīfah and his followers justifying their use of weapons and mounts as long as warfare continues, but found no valid proof whatsoever to support this—neither from the Qur'an, nor from an authentic or weak Sunnah, nor from the statement of a Companion, nor from consensus. Whatever is based on such grounds is undoubtedly invalid. The Messenger of Allah—peace and blessings of Allah be upon him—said, "Your blood and wealth are inviolable upon you." Weapons and mounts are part of their wealth, thus they are forbidden to others. However, it is obligatory to block all means they use to promote their falsehood, in accordance with Allah's decree: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [al-Mā'idah 5:2].[25]

فَصَحَّ بِهَذَا يَقِينًا أَنَّ تَخْلِيَتَهُمْ يَسْتَعْمِلُونَ السِّلَاحَ فِي دِمَاءِ أَهْلِ الْعَدْلِ وَالْكُرَاعَ فِي قِتَالِهِمْ تَعَاوُنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ فَهُوَ مُحَرَّمٌ بِنَصِّ الْقُرْآنِ.

L39800 Thus, it is established with certainty through this that their forsaking [justice], their employing weapons to shed the blood of the people of justice, and their use of cavalry to fight against them constitute cooperation in sin and transgression—and this is prohibited by the explicit text of the Quran.

وَصَحَّ أَنَّ الْحَيْلُولَةَ بَيْنَهُمْ وَبَيْنَ السِّلَاحِ وَالْكُرَاعِ فِي حَالِ الْبَغْيِ: تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى، وَأَمَّا اسْتِعْمَالُهُ فَلَا يَحِلُّ؛ لِمَا ذَكَرْنَا، إلَّا أَنْ يُضْطَرَّ إلَيْهِ فَيَجُوزُ حِينَئِذٍ، وَمَنْ اُضْطُرَّ إلَى الدِّفَاعِ عَنْ نَفْسِهِ بِحَقٍّ فَفَرْضٌ عَلَيْهِ أَنْ يَدْفَعَ الظُّلْمَ عَنْ نَفْسِهِ، وَعَنْ غَيْرِهِ، بِمَا أَمْكَنَهُ مِنْ سِلَاحِ نَفْسِهِ أَوْ سِلَاحِ غَيْرِهِ، فَإِنْ لَمْ يَفْعَلْ فَهُوَ مُلْقٍ بِيَدِهِ إلَى التَّهْلُكَةِ، وَهَذَا حَرَامٌ عَلَيْهِ - فَسَقَطَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ.

L39801 It has been established that preventing rebels from access to weapons and mounts during a state of rebellion constitutes cooperation in righteousness and piety. However, using it is impermissible for the reasons we mentioned, except when compelled by necessity, in which case it becomes permissible. Whoever is compelled to rightfully defend himself is obligated to repel injustice from himself and others using whatever weapons he possesses or others' weapons. If he fails to do so, he is throwing himself into ruin, and this is prohibited for him. Thus, the opinion of Abū Ḥanīfah and his companions is invalidated.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي يُوسُفَ فَلَمْ نَجِدْ لَهُمْ شُبْهَةً إلَّا خَبَرًا رَوَاهُ فِطْرُ بْنُ خَلِيفَةَ عَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ: أَنَّ عَلِيًّا قَسَّمَ يَوْمَ الْجَمَلِ فِيهِمْ بَيْنَ أَصْحَابِهِ مَا قُوتِلَ بِهِ مِنْ الْكُرَاعِ وَالسِّلَاحِ - وَهَذَا خَبَرٌ فَاسِدٌ، لِأَنَّ فِطْرًا ضَعِيفٌ.

L39802 Then we examined the statement of Abū Yūsuf and found no basis for their argument except a report narrated by Fiṭr ibn Khalīfah from Muḥammad ibn al-Ḥanafiyyah: that ʿAlī distributed among his companions on the Day of the Camel the livestock and weapons used in battle. And this is an unsound report, for Fiṭr is a weak narrator.

L39803–39805 They also mentioned what was written to Yusuf ibn Abd al-Barr al-Namari,

[25] **Qur'an references (L39799):** Qur'an 5:2 (Al-Ma'idah).

who said: Ahmad ibn Muhammad ibn al-Jasur narrated to us, from Muhammad ibn Isa ibn Rifa'ah al-Khulani, from Bakr ibn Sahl, from Nu'aym ibn Hammad, from Muhammad ibn Fudayl, from Ata ibn al-Sa'ib, from Abu al-Bakhtari, al-Sha'bi, and the companions of Ali—from Ali—that when he prevailed over the People of the Camel in Basra on the Day of the Camel, he assigned to them the weapons in the enemy's camp. They said: "How can their blood be lawful for us while their wealth and women remain unlawful?" He responded: "Bring your arrows and cast lots concerning Aisha." They said: "We seek Allah's forgiveness." Ali—may Allah be pleased with him—refuted them and clarified that if she was not lawful, her offspring would not be lawful either. This narration is also weak, as its foundation rests on Nu'aym ibn Hammad, who narrated the same report via a stronger chain from the Prophet. Peace and blessings be upon him: "My nation will split into seventy-three sects. The most harmful among them to my nation are those who apply analogical reasoning in matters, thereby permitting the forbidden and forbidding the lawful. If they permit it here, let them permit it there."

وَذَكَرُوا أَيْضًا مَا كَتَبَ بِهِ إِلَى يُوسُفَ بْنِ عَبْدِ الْبَرِّ النَّمَرِيِّ قَالَ: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ الْخَوْلَانِيُّ نا بَكْرُ بْنُ سَهْلٍ نا نُعَيْمُ بْنُ حَمَّادٍ نا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ، وَالشَّعْبِيِّ، وَأَصْحَابِ عَلِيٍّ " عَنْ عَلِيٍّ أَنَّهُ لَمَّا ظَهَرَ عَلَى أَصْحَابِ الْجَمَلِ بِالْبَصْرَةِ يَوْمَ الْجَمَلِ جَعَلَ لَهُمْ مَا فِي عَسْكَرِ الْقَوْمِ مِنَ السِّلَاحِ، فَقَالُوا: كَيْفَ تَحِلُّ لَنَا دِمَاؤُهُمْ وَلَا تَحِلُّ لَنَا أَمْوَالُهُمْ وَلَا نِسَاؤُهُمْ؟ قَالَ: هَاتُوا سِهَامَكُمْ فَأَقْرِعُوا عَلَى عَائِشَةَ، فَقَالُوا: نَسْتَغْفِرُ اللَّهَ، فَخَصَمَهُمْ عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ - وَعَرَّفَهُمْ أَنَّهَا إِذَا لَمْ تَحِلَّ لَمْ يَحِلَّ بَنُوهَا " وَهَذَا أَيْضًا أَثَرُهُ ضَعِيفٌ، وَمَدَارُهُ عَلَى نُعَيْمِ بْنِ حَمَّادٍ وَهُوَ الَّذِي رَوَى بِإِسْنَادٍ أَحْسَنَ مِنْ هَذَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَفْتَرِقُ أُمَّتِي عَلَى بِضْعٍ وَسَبْعِينَ فِرْقَةً أَشَدُّهَا فِتْنَةً عَلَى أُمَّتِي قَوْمٌ يَقِيسُونَ الْأُمُورَ بِرَأْيِهِمْ فَيُحِلُّونَ الْحَرَامَ وَيُحَرِّمُونَ الْحَلَالَ» فَإِنْ أَجَازُوهُ هُنَا فَلْيُجِيزُوهُ هُنَالِكَ.

L39806 Moreover, even if it were valid, they would have no authoritative evidence in it, for there is no authoritative evidence for anyone besides the Messenger of Allah (may Allah bless him and grant him peace). And how many of Ali's sayings (may Allah be pleased with him) have they opposed with their own opinions.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَمْ قَوْلَةٍ لِعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - قَدْ خَالَفُوهَا بِآرَائِهِمْ.

L39807 Then we examined the position held by al-Ḥasan ibn Ḥayy and found no basis for them except through ʿAbd al-Razzāq's transmission from Ibn ʿUyaynah, from his companions, from Ḥakīm ibn Jubayr, from ʿIṣmah al-Asadī, who said: The people crowded around ʿAlī and said, "Apportion their women and children among us." ʿAlī responded, "The men troubled me, so I troubled them with it. These are offspring of a people who are Muslims in their land. You have no legal claim over them. Whatever wealth the dwelling contains belongs to them, and whatever they brought against you in their military encampment becomes your spoils."

ثُمَّ نَظَرْنَا فِيمَا ذَهَبَ إِلَيْهِ الْحَسَنُ بْنُ حَيٍّ فَلَمْ نَجِدْ لَهُمْ عَلَقَةً إِلَّا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ عُيَيْنَةَ عَنْ أَصْحَابِهِ عَنْ حَكِيمِ بْنِ جُبَيْرٍ عَنْ عِصْمَةَ الْأَسَدِيِّ قَالَ: بَهَشَ النَّاسُ إِلَى عَلِيٍّ فَقَالُوا: اقْسِمْ بَيْنَنَا نِسَاءَهُمْ وَذَرَارِيَّهُمْ، فَقَالَ عَلِيٌّ: عَنَّتْنِي الرِّجَالُ فَعَنَّيْتُهَا وَهَذِهِ ذُرِّيَّةُ قَوْمٍ مُسْلِمِينَ فِي دَارِهِمْ، لَا سَبِيلَ لَكُمْ عَلَيْهِمْ مَا أَوَتِ الدَّارُ مِنْ مَالٍ فَهُوَ لَهُمْ، وَمَا أَجْلَبُوا بِهِ عَلَيْكُمْ فِي عَسْكَرِهِمْ فَهُوَ لَكُمْ مَغْنَمٌ.

L39808 Abū Muḥammad—may Allāh have mercy on him—said: This is a report of

utmost invalidity, because Ibn ʿUyaynah—may Allāh have mercy on him—narrated it through his unidentified narrators, then through Ḥakīm ibn Jubayr—a condemned liar. Thus, there remained only those who asserted that "all their wealth is subject to khums and classified as spoils" and those who declared "nothing from it is permissible." We therefore examined those.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا خَبَرٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّ ابْنَ عُيَيْنَةَ - رَحِمَهُ اللَّهُ - رَوَاهُ عَنْ أَصْحَابِهِ الَّذِينَ لَا يُدْرَى مَنْ هُمْ، ثُمَّ عَنْ حَكِيمِ بْنِ جُبَيْرٍ - وَهُوَ هَالِكٌ كَذَّابٌ فَلَمْ يَبْقَ إِلَّا مَنْ قَالَ: إِنَّ جَمِيعَ أَمْوَالِهِمْ مُخَمَّسَةٌ مَغْنُومَةٌ، وَقَوْلُ مَنْ قَالَ: لَا يَحِلُّ مِنْهَا شَيْءٌ فَنَظَرْنَا فِي تِلْكَ.

L39809 We found them citing the narration reported by Ḥumām ibn Aḥmad, who said: From ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Aḥmad ibn Zuhayr ibn Ḥarb, from ʿAffān ibn Muslim, from Muḥammad ibn Maymūn, from Muḥammad ibn Sīrīn, from his brother Maʿbad ibn Sīrīn, from Abū Saʿīd al-Khudrī, from the Prophet—peace and blessings of Allah be upon him—who said: "A people will emerge from the East who recite the Quran, but it does not go beyond their throats. They will pass through the religion as an arrow pierces through its target, and they will not return to it until the arrow returns to its notch. Their distinguishing mark will be shaving their heads and closely cropping their hair."

فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا نا بِهِ حُمَامُ بْنُ أَحْمَدَ قَالَ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نا عَفَّانُ بْنُ مُسْلِمٍ نا مُحَمَّدُ بْنُ مَيْمُونٍ نا مُحَمَّدُ بْنُ سِيرِينَ عَنْ أَخِيهِ مَعْبَدِ بْنِ سِيرِينَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَخْرُجُ نَاسٌ مِنْ قِبَلِ الْمَشْرِقِ يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ تَرَاقِيَهُمْ يَمْرُقُونَ مِنَ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنَ الرَّمِيَّةِ ثُمَّ لَا يَعُودُونَ فِيهِ حَتَّى يَعُودَ السَّهْمُ إِلَى فُوقِهِ سِيمَاهُمُ التَّحْلِيقُ وَالتَّسْبِيدُ» .

L39810 And through the chain of Muslim: Muhammad ibn al-Muthannā reported to us, Muhammad ibn Abī ʿAdiyy reported from Sulaymān (al-Aʿmash) from Abū Naḍrah from Abū Saʿīd al-Khudrī that the Messenger of Allah—peace and blessings of Allah be upon him—mentioned a people who would arise within his nation, emerging as a faction among the people. Their distinguishing mark is shaving their heads, and they are the worst of creation or among the worst of creation. The closer of the two factions to the truth will kill them. He then related the rest of the narration.

وَمِنْ طَرِيقِ مُسْلِمٍ نِي مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ سُلَيْمَانَ - هُوَ الْأَعْمَشُ - عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَكَرَ قَوْمًا يَكُونُونَ فِي أُمَّتِهِ يَخْرُجُونَ فِي فُرْقَةٍ مِنَ النَّاسِ سِيمَاهُمُ التَّحَالُقُ وَهُمْ شَرُّ الْخَلْقِ أَوْ مِنْ شَرِّ الْخَلْقِ تَقْتُلُهُمْ أَدْنَى الطَّائِفَتَيْنِ إِلَى الْحَقِّ» ، وَذَكَرَ بَاقِيَ الْخَبَرِ.

L39811–39812 They said: And indeed, Allah the Exalted has said: "Those who disbelieve among the People of the Scripture and the polytheists will be in the Fire of Hell; they will abide therein eternally. They themselves are the worst of creatures" [Al-Bayyinah: 6]. "Those who believe and do righteous deeds—they themselves are the best of creatures" [Al-Bayyinah: 7].[26]

قَالُوا: وَقَدْ قَالَ اللَّهُ تَعَالَى {إِنَّ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَالْمُشْرِكِينَ فِي نَارِ جَهَنَّمَ خَالِدِينَ فِيهَا أُولَئِكَ هُمْ شَرُّ الْبَرِيَّةِ} [البينة: ٦] {إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ أُولَئِكَ هُمْ خَيْرُ الْبَرِيَّةِ} [البينة: ٧] .

[26] **Qur'an references (L39812):** Qur'an 98:6 (Al-Bayyinah); Qur'an 98:7 (Al-Bayyinah).

L39813 They said: It is certain falsehood that they could be Muslims while the Messenger of Allah (peace be upon him) states: "They are the worst of creation" or "among the worst of creation"—for "creation" and "created beings" are equivalent. They said: Since they, by the testimony of the Messenger of Allah (peace be upon him and his family), are among the worst of creation, and have apostatized from the religion as an arrow pierces through prey, never to return to it, they are unquestionably polytheists—those whom Allah the Exalted described as "the worst of created beings" [98:6], not of those who believed whom Allah the Exalted testified are among "the best of created beings" [98:7]. Thus, their wealth constitutes spoils subject to khums (one-fifth levy), like the wealth of disbelievers.[27]

قَالُوا: فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونُوا مُسْلِمِينَ وَيَقُولَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّهُمْ شَرُّ الْخَلْقِ، أَوْ مِنْ شَرِّ الْخَلْقِ، فَالْخَلْقُ وَالْبَرِيَّةُ سَوَاءٌ، قَالُوا: فَإِذْ هُمْ بِشَهَادَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ شَرِّ الْخَلْقِ، وَقَدْ مَرَقُوا مِنْ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ ثُمَّ لَا يَعُودُونَ فِيهِ أَبَدًا، فَهُمْ بِيَقِينٍ مِنْ الْمُشْرِكِينَ، الَّذِينَ قَالَ اللَّهُ تَعَالَى: إنَّهُمْ {شَرُّ الْبَرِيَّةِ} [البينة: ٦] لَا مِنْ الَّذِينَ آمَنُوا الَّذِينَ شَهِدَ اللَّهُ تَعَالَى لَهُمْ أَنَّهُمْ مِنْ {خَيْرُ الْبَرِيَّةِ} [البينة: ٧] فَأَمْوَالُهُمْ مَغْنُومَةٌ مُخَمَّسَةٌ كَأَمْوَالِ الْكُفَّارِ.

L39814 Abū Muḥammad—may Allah have mercy on him—said: "This is a sound statement and a truthful argument, except that it is general and unorganized. The correct approach in this matter is the collection of verses and ḥadīths. Whoever diverges through an erroneous interpretation—having not opposed consensus, nor intending to contradict the Qur'ān or the ruling of Allah's Messenger (peace and blessings be upon him and his family) while deliberately opposing both of them, nor obstinately persisting against them after the proof has been established against him, nor rebelling seeking worldly supremacy without fearing the proper path, nor shedding blood indiscriminately, nor seizing wealth unjustly—such is the rebel who must be reconciled with those against whom he has rebelled, in accordance with the verse on rebels and the Prophet's statement (peace be upon him) concerning the emergence of the deviant faction between two groups of his nation: one being the aggressor—the one that kills Ammar as foretold by the Prophet—and the other being more entitled to the truth. He (peace be upon him) praised those who reconcile between them."

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا قَوْلٌ صَحِيحٌ، وَاحْتِجَاجٌ صَادِقٌ، إلَّا أَنَّهُ مُجْمَلٌ غَيْرُ مُرَتَّبٍ، وَالصَّحِيحُ مِنْ هَذَا هُوَ جَمْعُ الْآيَاتِ وَالْأَحَادِيثِ، فَمَنْ خَرَجَ بِتَأْوِيلٍ هُوَ فِيهِ مُخْطِئٌ، لَمْ يُخَالِفْ فِيهِ الْإِجْمَاعَ، وَلَا قَصَدَ فِيهِ خِلَافَ الْقُرْآنِ وَحُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهُوَ يَتَعَمَّدُ خِلَافَهُمَا، أَوْ يَعْنِدُ عَنْهُمَا بَعْدَ قِيَامِ الْحُجَّةِ عَلَيْهِ، أَوْ خَرَجَ طَالِبًا غَلَبَةً فِي دُنْيَا، وَلَمْ يَخَفْ طَرِيقًا، وَلَا سَفَكَ الدَّمَ جِزَافًا، وَلَا أَخَذَ الْمَالَ ظُلْمًا، فَهَذَا هُوَ الْبَاغِي الَّذِي يُصْلَحُ بَيْنَهُ وَبَيْنَ مَنْ بَغَى عَلَيْهِ، عَلَى مَا فِي آيَةِ الْبُغَاةِ وَعَلَى مَا قَالَ - عَلَيْهِ السَّلَامُ - مِنْ خُرُوجِ الْمَارِقَةِ بَيْنَ الطَّائِفَتَيْنِ مِنْ أُمَّتِهِ، إحْدَاهُمَا بَاغِيَةٌ، وَهِيَ الَّتِي تَقْتُلُ عَمَّارًا، وَالْأُخْرَى أَوْلَى بِالْحَقِّ، وَحَمِدَ - عَلَيْهِ السَّلَامُ - مَنْ أَصْلَحَ بَيْنَهُمَا.

L39815 As we have narrated through the chain of al-Bukhārī: Ṣadaqah from Ibn ʿUyaynah from Abū Mūsā, from al-Ḥasan, who heard Abā Bakrah say: "I heard the Messenger of Allah—may the peace and blessings of Allah be upon him and his family—on the pulpit, while al-Ḥasan was beside him, glancing at the people once and at him another time, saying: 'This son of mine is a noble,

كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا صَدَقَةُ نا ابْنُ عُيَيْنَةَ نا أَبُو مُوسَى عَنْ الْحَسَنِ سَمِعَ أَبَا بَكْرَةَ قَالَ «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى الْمِنْبَرِ، وَالْحَسَنُ إلَى جَنْبِهِ يَنْظُرُ إلَى النَّاسِ مَرَّةً، وَإِلَيْهِ مَرَّةً، وَيَقُولُ: ابْنِي هَذَا سَيِّدٌ، وَلَعَلَّ اللَّهَ يُصْلِحُ بِهِ بَيْنَ فِئَتَيْنِ مِنْ الْمُسْلِمِينَ» فَإِنْ زَادَ الْأَمْرُ حَتَّى يُخِيفُوا السَّبِيلَ، وَيَأْخُذُوا مَالَ الْمُسْلِمِينَ

[27] **Qur'an references (L39813):** Qur'an 98:6 (Al-Bayyinah); Qur'an 98:7 (Al-Bayyinah).

and perhaps Allah will reconcile through him two factions of Muslims.'" If the matter escalates to the point where they endanger travelers on the road, seize the wealth of Muslims by force without any pretext, or similarly shed blood, then these are combatants subject to the legal rulings of warfare. If the matter further escalates to the point where they violate the consensus, then they are apostates: all their wealth is seized as spoils at that point, with a fifth allocated and the remainder distributed. And success is from Allah, the Most High.

L39816–39817 The property of a highway robber or a rebel is not permissible, nor is any portion of it, for though they have committed injustice, they remain Muslims. Nothing from a Muslim's property is permissible except by due right. However, the Muslim's blood may be lawfully shed while their property remains inviolable, as in the case of a married adulterer or an intentional murderer. Conversely, their property may become permissible while their blood remains inviolable, as in the case of a usurper or similar circumstances. The ruling follows the scriptural texts: whatever Allah the Exalted and His Messenger—peace and blessings of Allah be upon him—have permitted concerning blood or property is permissible, and whatever they have prohibited remains forbidden. The foundational principle is prohibition until permissibility is established, in accordance with the statement of Allah's Messenger—peace and blessings of Allah be upon him: "Verily, your blood and your wealth are sacrosanct to you." And success comes only from Allah, the Exalted.

L39818 **The legal issue concerning bloodshed or property [damage] inflicted by the transgressor.**

L39819 2159 - Issue: What is the ruling on the bloodshed or property damage perpetrated by rebels? People have differed concerning what they caused during combat—whether bloodshed, property damage, or sexual violation. Abū Ḥanīfah, Mālik, al-Shāfiʿī, and some of our companions stated: They are not held accountable for any of that. There is no retaliation (qisas) for bloodshed, no blood money, and no liability for the property they destroyed—

غَلَبَةً، بِلَا تَأْوِيلٍ، أَوْ يَسْفِكُوا دَمًا كَذَلِكَ، فَهَؤُلَاءِ مُحَارِبُونَ لَهُمْ حُكْمُ الْمُحَارَبَةِ، فَإِنْ زَادَ الْأَمْرُ حَتَّى يَخْرِقُوا الْإِجْمَاعَ فَهُمْ مُرْتَدُّونَ: تُغْنَمُ أَمْوَالُهُمْ كُلُّهَا حِينَئِذٍ وَتُخَمَّسُ وَتُقَسَّمُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَا يَحِلُّ مَالُ الْمُحَارِبِ، وَلَا مَالُ الْبَاغِي وَلَا شَيْءٌ مِنْهُ؛ لِأَنَّهُمَا وَإِنْ ظَلَمَا فَهُمَا مُسْلِمَانِ - وَلَا يَحِلُّ شَيْءٌ مِنْ مَالِ الْمُسْلِمِ، إلَّا بِحَقٍّ، وَقَدْ يَحِلُّ دَمُهُ، وَلَا يَحِلُّ مَالُهُ، كَالزَّانِي الْمُحْصَنِ، وَالْقَاتِلِ عَمْدًا - وَقَدْ يَحِلُّ مَالُهُ وَلَا يَحِلُّ دَمُهُ، كَالْغَاصِبِ وَنَحْوِ ذَلِكَ، وَإِنَّمَا يُتْبَعُ النَّصُّ، فَمَا أَحَلَّ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ دَمٍ أَوْ مَالٍ حَلَّ، وَمَا حَرَّمَا مِنْ دَمٍ أَوْ مَالٍ فَهُوَ حَرَامٌ، وَالْأَصْلُ فِي ذَلِكَ التَّحْرِيمُ حَتَّى يَأْتِيَ إحْلَالٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنْ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَا أَصَابَهُ الْبَاغِي مِنْ دَمٍ أَوْ مَالٍ]

٢١٥٩ - مَسْأَلَةٌ: مَا أَصَابَهُ الْبَاغِي مِنْ دَمٍ أَوْ مَالٍ؟ اخْتَلَفَ النَّاسُ فِيمَا أَصَابُوهُ فِي حَالِ الْقِتَالِ مِنْ دَمٍ أَوْ مَالٍ أَوْ فَرْجٍ، فَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَبَعْضُ أَصْحَابِنَا: لَا يُؤَاخَذُونَ بِشَيْءٍ مِنْ ذَلِكَ، وَلَا قَوَدَ فِي الدِّمَاءِ وَلَا دِيَةَ، وَلَا ضَمَانَ فِيمَا أَتْلَفُوهُ مِنْ الْأَمْوَالِ، إلَّا أَنْ يُوجَدَ بِأَيْدِيهِمْ شَيْءٌ قَائِمٌ مِمَّا أَخَذُوهُ فَيُرَدُّ إلَى أَصْحَابِهِ.

unless they are found in possession of something intact they took, in which case it is to be returned to its rightful owners.

L39820 Al-Awzaʿī said: If the two factions are such that one is rebellious and the other is just within the main body of the common people, the leader of the community who reconciles between them takes from the rebellious faction against the other what they inflicted upon them through retaliation for the slain and the wounded, just as the case of those two factions about whom the Quran was revealed to the Messenger of Allah—peace and blessings be upon him—was brought, and [whose ruling applies] to the rulers.

L39821 Abū Muḥammad—may Allāh have mercy on him—said: Some of our companions held that legal retaliation applies to them, and they are liable to compensate for what they damaged like others. When they disagreed, it became imperative for us to examine this matter to discern the truth and follow it—by Allāh's grace and bounty. We found those who asserted they bear no liability, citing as proof a transmission from ʻAbd al-Razzāq via Maʻmar: Al-Zuhrī informed me that Sulaymān ibn Hishām wrote to him inquiring about a woman who left her husband, accused her people of polytheism, joined the Khārijites, and married among them. Then she returned to her people a second time? He wrote back: "As for what follows: The first upheaval arose, and many of the Messenger of Allāh's Companions—those who had witnessed Badr—unanimously agreed not to enforce any prescribed punishment for sexual violations committed under Quranic interpretation, unless identifiable property was found, which should be returned to its owner. I hold that she must be returned to her husband, and whoever falsely accused her should receive the ḥadd punishment."

L39822–39824 And through the narration chain of Abū Bakr ibn Abī Shaybah: ʿĪsā ibn Yūnus reported to us from Maʿmar, from al-Zuhrī. He said: The winds of discord arose while the Companions of the Messenger of Allah—may Allah bless him and grant him peace—were numerous. They reached a consensus that neither retaliation nor blood money applies for harm incurred in the course of interpreting the Quran, except what is found in its actual form.

L39825 It is narrated from Sa'id ibn al-Musayyab that he said: When two factions

وَقَالَ الْأَوْزَاعِيّ: إنْ كَانَتْ الْفِئَتَانِ إحْدَاهُمَا بَاغِيَةٌ وَالْأُخْرَى عَادِلَةٌ فِي سَوَادِ الْعَامَّةِ، فَإِمَامُ الْجَمَاعَةِ الْمُصْلِحُ بَيْنَهُمَا يَأْخُذُ مِنْ الْبَاغِيَةِ عَلَى الْأُخْرَى مَا أَصَابَتْ مِنْهَا بِالْقِصَاصِ فِي الْقَتْلَى، وَالْجِرَاحَةِ، كَمَا كَانَ أَمْرُ تِينِكَ الْفِئَتَيْنِ اللَّتَيْنِ نَزَلَ فِيهِمَا الْقُرْآنُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِلَى الْوُلَاةِ.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَقَالَ بَعْضُ أَصْحَابِنَا: الْقِصَاصُ عَلَيْهِمْ، وَضَمَانُ مَا أَتْلَفُوا كَغَيْرِهِمْ، فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعُهُ - بِمَنِّ اللَّهِ تَعَالَى وَطَوْلِهِ - فَوَجَدْنَا مَنْ قَالَ: لَا يُؤَاخَذُونَ بِشَيْءٍ، يَحْتَجُّونَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ أَخْبَرَنِي الزُّهْرِيُّ: أَنَّ سُلَيْمَانَ بْنَ هِشَامٍ كَتَبَ إلَيْهِ يَسْأَلُهُ عَنْ امْرَأَةٍ خَرَجَتْ مِنْ عِنْدِ زَوْجِهَا، وَشَهِدَتْ عَلَى قَوْمِهَا بِالشِّرْكِ، وَلَحِقَتْ بِالْحَرُورِيَّةِ، فَتَزَوَّجَتْ فِيهِمْ: ثُمَّ إنَّهَا رَجَعَتْ إلَى قَوْمِهَا ثَانِيَةً؟ فَكَتَبَ إلَيْهِ: أَمَّا بَعْدُ فَإِنَّ الْفِتْنَةَ الْأُولَى ثَارَتْ وَأَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّنْ شَهِدَ بَدْرًا كَثِيرٌ، فَاجْتَمَعَ رَأْيُهُمْ عَلَى أَنْ لَا يُقِيمُوا عَلَى أَحَدٍ حَدًّا فِي فَرْجٍ اسْتَحَلُّوهُ بِتَأْوِيلِ الْقُرْآنِ، إلَّا أَنْ يُوجَدَ شَيْءٌ بِعَيْنِهِ فَيُرَدُّ إلَى صَاحِبِهِ وَإِنِّي أَرَى أَنْ تُرَدَّ إلَى زَوْجِهَا، وَأَنْ يُحَدَّ مَنْ افْتَرَى عَلَيْهَا.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: هَاجَتْ رِيحُ الْفِتْنَةِ وَأَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُتَوَافِرُونَ، فَاجْتَمَعَ رَأْيُهُمْ عَلَى أَنَّهُ لَا يُقَادُ وَلَا يُودَى مَا أُصِيبَ عَلَى تَأْوِيلِ الْقُرْآنِ إلَّا مَا يُوجَدُ بِعَيْنِهِ.

clash, any bloodshed or injury occurring between them is not subject to blood money. Do you not hear the words of Allah the Exalted: “If two factions of believers fight, then reconcile between them” [Al-Hujurat:9], the entire verse, until he finished reciting it? He said: Each faction views the other as transgressors.[28]

L39826 Abu Muhammad—may Allah have mercy on him—said: We know of no doubt on their part other than this; this is baseless due to two aspects.

L39827–39829 The first is that the chain is interrupted because al-Zuhri—may Allah have mercy on him—did not witness that turmoil, nor was he born until several years after it. The second is that even if it were authentic, as he claimed, this would only represent the opinion of some Companions—neither a definitive text nor their consensus. There is no proof in the opinion of some of them against others. Allah the Exalted has obligated us, the Muslim community, to follow the Quran, what is authentically reported from the Prophet—peace and blessings be upon him and his family, and grant him peace—or what the Ummah unanimously agrees upon. Allah the Exalted has never commanded us to follow what some of our leaders unanimously agree upon. When that turmoil occurred, there is no doubt that those who had died among the Companions of Allah’s Messenger—peace and blessings be upon him and his family, and grant him peace—were more numerous than those who remained. Indeed, the Companions who fought at Badr numbered three hundred and over ten men. When ‘Abd al-Rahman ibn ‘Awf—may Allah be pleased with him—died, only exactly one hundred of them remained alive. Thus, reliance on al-Zuhri’s narration—even if authentic—is invalidated. How much more so when it is fundamentally unauthentic?

Through the chain of ‘Abd al-Razzaq, from Ma‘mar, who said: More than one person from the tribe of ‘Abd al-Qays informed me through Humayd ibn Hilal from his father, who said: “I approached the Kharijites when they were the most beloved people on earth to me. I stayed among them until they disagreed. It was said to ‘Ali ibn Abi Talib: ’Fight them,’ but he replied: ’No, not until they kill [someone].’ A man whose appearance they disapproved of

[28] **Qur’an references (L39825):** Qur’an 49:9 (Al-Hujurat).

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: إذَا الْتَقَتْ الْفِئَتَانِ فَمَا كَانَ بَيْنَهُمَا مِنْ دَمٍ أَوْ جِرَاحَةٍ فَهُوَ هَدَرٌ، أَلَا تَسْمَعُ إلَى قَوْلِهِ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا} [الحجرات: ٩] الْآيَةَ، حَتَّى فَرَغَ مِنْهَا؟ قَالَ: فَكُلُّ طَائِفَةٍ تَرَى الْأُخْرَى بَاغِيَةً.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ هَذَا، وَهَذَا لَيْسَ بِشَيْءٍ لِوَجْهَيْنِ.

أَحَدُهُمَا - أَنَّهُ مُنْقَطِعٌ لِأَنَّ الزُّهْرِيَّ - رَحِمَهُ اللَّهُ - لَمْ يُدْرِكْ تِلْكَ الْفِتْنَةَ وَلَا وُلِدَ إلَّا بَعْدَهَا بِبِضْعِ عَشْرَةَ سَنَةً وَالثَّانِي - أَنَّهُ لَوْ صَحَّ - كَمَا قَالَ - لَمَا كَانَ هَذَا إلَّا رَأْيًا مِنْ بَعْضِ الصَّحَابَةِ لَا نَصًّا وَلَا إجْمَاعًا مِنْهُمْ، وَلَا حُجَّةً فِي رَأْيِ بَعْضِهِمْ دُونَ بَعْضٍ، وَإِنَّمَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا أَهْلَ الْإِسْلَامِ اتِّبَاعَ الْقُرْآنِ، وَمَا صَحَّ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -، أَوْ مَا أَجْمَعَتْ عَلَيْهِ الْأُمَّةُ، وَلَمْ يَأْمُرْ اللَّهُ تَعَالَى قَطُّ بِاتِّبَاعِ مَا أَجْمَعَ عَلَيْهِ بَعْضُ أُولِي الْأَمْرِ مِنَّا، وَإِذَا وَقَعَتْ تِلْكَ الْفِتْنَةُ فَبِلَا شَكٍّ أَنَّ الْمَاضِينَ بِالْمَوْتِ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانُوا أَكْثَرَ مِنْ الْبَاقِينَ، وَلَقَدْ كَانَ أَصْحَابُ بَدْرٍ ثَلَاثَمِائَةٍ وَبِضْعَةَ عَشَرَ رَجُلًا، وَعُدُّوا، إذْ مَاتَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ - رَضِيَ اللَّهُ عَنْهُ - فَمَا وُجِدَ مِنْهُمْ فِي الْحَيَاةِ إلَّا نَحْوُ مِائَةٍ وَاحِدَةٍ فَقَطْ، فَبَطَلَ التَّعَلُّقُ بِمَا رَوَاهُ الزُّهْرِيُّ لَوْ صَحَّ، فَكَيْفَ وَهُوَ لَا يَصِحُّ أَصْلًا؟ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ أَخْبَرَنِي غَيْرُ وَاحِدٍ مِنْ عَبْدِ الْقَيْسِ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ أَبِيهِ، قَالَ: لَقَدْ أَتَيْتُ الْخَوَارِجَ وَإِنَّهُمْ لَأَحَبُّ قَوْمٍ عَلَى وَجْهِ الْأَرْضِ إلَيَّ فَلَمْ أَزَلْ فِيهِمْ حَتَّى اخْتَلَفُوا، فَقِيلَ لِعَلِيِّ بْنِ أَبِي طَالِبٍ قَاتِلْهُمْ، فَقَالَ: لَا، حَتَّى يَقْتُلُوا، فَمَرَّ بِهِمْ رَجُلٌ اسْتَنْكَرُوا هَيْئَتَهُ، فَثَارُوا إلَيْهِ، فَإِذَا هُوَ عَبْدُ اللَّهِ بْنُ خَبَّابٍ، فَقَالُوا: حَدِّثْنَا مَا سَمِعْتَ أَبَاكَ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ

عَلَيْهِ وَسَلَّمَ - فَقَالَ: سَمِعْتُهُ يَقُولُ: سَمِعْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «تَكُونُ فِتْنَةٌ الْقَاعِدُ فِيهَا خَيْرٌ مِنْ الْقَائِمِ، وَالْقَائِمُ خَيْرٌ مِنْ الْمَاشِي، وَالْمَاشِي خَيْرٌ مِنْ السَّاعِي وَالسَّاعِي فِي النَّارِ» قَالَ: فَأَخَذُوهُ وَأُمَّ وَلَدِهِ فَذَبَحُوهُمَا جَمِيعًا عَلَى شَطِّ النَّهْرِ فَلَقَدْ رَأَيْتُ دَمَاهُمَا فِي النَّهْرِ كَأَنَّهُمَا شَرِيكَانِ فَأُخْبِرَ بِذَلِكَ عَلِيُّ بْنُ أَبِي طَالِبٍ فَقَالَ: أَقِيدُونِي مِنْ ابْنِ خَبَّابٍ؟ قَالُوا: كُلُّنَا قَتَلْنَاهُ فَحِينَئِذٍ اسْتَحَلَّ قِتَالَهُمْ، فَقَتَلَهُمْ.

passed by them. They rushed toward him and found him to be ʻAbdullah ibn Khabbab. They demanded: ”Tell us what you heard your father narrate from the Prophet—peace and blessings be upon him and his family, and grant him peace.’ He said: ’I heard him say: I heard the Prophet—peace and blessings be upon him and his family, and grant him peace—say: ”There will be a turmoil where the one sitting is better than the one standing, the one standing better than the walking, the walking better than the running, and the runner is in the Fire.“’ They seized him and his umm walad, slaughtered them both on the riverbank. I saw their blood in the river as if they were two partners. When ʻAli ibn Abi Talib was informed of this, he said...” “Exact retribution from Ibn Khabbāb for me?” They said: “We all killed him.” Thereupon he deemed it lawful to combat them, and then he killed them.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا أَثَرٌ أَصَحُّ مِنْ أَثَرِ الزُّهْرِيِّ، أَوْ مِثْلُهُ، بِأَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ رَأَى الْقَوَدَ عَلَى الْخَوَارِجِ فِيمَنْ قَتَلُوهُ بِتَأْوِيلِ الْقُرْآنِ، بِخِلَافِ مَا ذَكَرَ الزُّهْرِيُّ مِنْ إجْمَاعِهِمْ.

L39830 Abu Muhammad—may Allah have mercy on him—said: This is a narration more authentic than, or equivalent to, the narration of al-Zuhri, demonstrating that Ali ibn Abi Talib upheld legal retaliation against the Kharijites for those they killed under their Quranic interpretation, contrary to al-Zuhri’s report of their consensus.

فَصَحَّ الْخِلَافُ فِي ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَبِلَا شَكٍّ نَدْرِي أَنَّ الْقَائِلِينَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لِأَبِي بَكْرٍ الصِّدِّيقِ أَنْ لَا يُقَاتِلَ أَهْلَ الرِّدَّةِ أَكْثَرُ عَدَدًا وَأَتَمُّ فَضْلًا، مِنْ الَّذِينَ ذَكَرَ الزُّهْرِيُّ عَنْهُ أَنَّهُ إجْمَاعٌ لَا يَصِحُّ عَلَى أَنْ لَا يُؤْخَذَ أَحَدٌ بِدَمٍ أَصَابَهُ عَلَى تَأْوِيلِ الْقُرْآنِ.

L39831 Thus, the valid disagreement among the Companions—may Allah be pleased with them—regarding that matter became evident. Without doubt, we know that those among the Companions—may Allah be pleased with them—who advised Abū Bakr al-Ṣiddīq not to fight the apostates were greater in number and more complete in virtue than those from whom al-Zuhrī narrated an invalid consensus that no one should be held accountable for bloodshed they committed based on an interpretation of the Quran.

لَا بِقَوَدٍ وَلَا بِدِيَةٍ، وَأَنْ لَا يَضْمَنَ أَحَدٌ مَالًا أَصَابَهُ عَلَى تَأْوِيلِ الْقُرْآنِ، وَلَمْ يَكُنْ قَوْلُهُمْ ذَلِكَ حُجَّةً يَسُوغُ الْأَخْذُ بِمِثْلِ مَا قَالُوا، وَإِنَّمَا رَجَعَ الْأَمْرُ فِيمَا ذَكَرَ الزُّهْرِيُّ إجْمَاعًا إلَى حُكْمِ الْوَالِي، وَلَمْ يَكُنْ إلَّا عَلِيًّا، وَالْأَشْهَرُ عَنْهُ إيجَابُ الْقَوَدِ كَمَا ذَكَرْنَا، أَوْ مُعَاوِيَةَ، وَإِنَّمَا

L39832 There is neither retaliation nor blood money, and no one is liable for property acquired based on an interpretation of the Quran. Their statement in that regard is not a valid proof permitting the adoption of a similar ruling. Rather, the matter mentioned by Al-Zuhri reverts by consensus to the judgment of the ruler, and this was none other than Ali. The most well-known opinion from him is the obligation of retaliation, as we mentioned; whereas Muʻawiyah held a different view. However, the rightful authority in that

matter lay with Ali, not with Muawiyah. Mu'awiyah was an erring mujtahid who is nonetheless rewarded—and success is from Allah, the Exalted.

كَانَ الْحَقُّ فِي ذَلِكَ بِيَدِ عَلِيٍّ لَا بِيَدِهِ، وَإِنَّمَا كَانَ مُعَاوِيَةُ مُجْتَهِدًا مُخْطِئًا مَأْجُورًا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39833 As for Ibn al-Musayyib's argument that "each faction considers the other to be transgressors," it holds no weight, for Allah the Exalted has not left us to rely on the judgment of the two factions. Rather, He commanded whoever ascertains the transgression of one of them to fight the transgressing faction. If what Sa'īd—may Allah be pleased with him—said were true, neither faction would have a greater right to be fought than the other, and the verse would be rendered void, which is impermissible.

وَأَمَّا احْتِجَاجُ ابْنِ الْمُسَيِّبِ " بِأَنَّ كُلَّ طَائِفَةٍ تَرَى الْأُخْرَى بَاغِيَةً " فَلَيْسَ بِشَيْءٍ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَكِلْنَا إلَى رَأْيِ الطَّائِفَتَيْنِ، لَكِنْ أَمَرَ مَنْ صَحَّ عَنْدَهُ بَغْيُ إحْدَاهُمَا بِقِتَالِ الْبَاغِيَةِ، وَلَوْ كَانَ مَا قَالَهُ سَعِيدٌ - رَضِيَ اللَّهُ عَنْهُ - لَمَا كَانَتْ إحْدَاهُمَا أَوْلَى بِالْمُقَاتَلَةِ مِنْ الْأُخْرَى، وَلَبَطَلَتْ الْآيَةُ وَهَذَا لَا يَجُوزُ.

L39834 Abū Muḥammad—may Allāh have mercy on him—said: Our position is that the rebels, as we previously stated at the outset of our discussion, are of three categories: A category who advanced an interpretation whose basis is obscure to many scholars, such as those who clung to a verse particularized by another verse, a ḥadīth restricted by another, or a text abrogated by another. These individuals, as we stated, are deemed excused. Their ruling is equivalent to that of a mujtahid judge who errs—such as one who mistakenly orders an execution, destroys property, or issues an erroneous judgment regarding illicit sexual intercourse through ijtihād—provided definitive proof has not been established against him in that matter. In such cases, blood money is owed by the public treasury, not by the rebel or his kinsmen. Whoever causes property damage is liable to compensate for it, all their judgments are nullified, and no punishment is imposed for engaging in illicit sexual intercourse if they were ignorant of its prohibition, provided they were unaware of it. The same also applies to one who adopts an interpretation that flagrantly violates scholarly consensus due to ignorance, provided definitive proof has not been established against him and he was unaware of it, nor had it been conveyed to him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْقَوْلُ عِنْدَنَا أَنَّ الْبُغَاةَ كَمَا قَدَّمْنَا فِي صَدْرِ كَلَامِنَا ثَلَاثُ أَصْنَافٍ: صِنْفٌ تَأَوَّلُوا تَأْوِيلًا يَخْفَى وَجْهُهُ عَلَى كَثِيرٍ مِنْ أَهْلِ الْعِلْمِ، كَمَنْ تَعَلَّقَ بِآيَةٍ خَصَّتْهَا أُخْرَى، أَوْ بِحَدِيثٍ قَدْ خَصَّهُ آخَرُ، أَوْ نَسَخَهَا نَصٌّ آخَرُ، فَهَؤُلَاءِ كَمَا قُلْنَا مَعْذُورُونَ، حُكْمُهُمْ حُكْمُ الْحَاكِمِ الْمُجْتَهِدِ يُخْطِئُ فَيَقْتُلُ مُجْتَهِدًا، أَوْ يُتْلِفُ مَالًا مُجْتَهِدًا، أَوْ يَقْضِي فِي فَرْجٍ خَطَأً مُجْتَهِدًا، وَلَمْ تَقُمْ عَلَيْهِ الْحُجَّةُ فِي ذَلِكَ، فَفِي الدَّمِ دِيَةٌ عَلَى بَيْتِ الْمَالِ، لَا عَلَى الْبَاغِي، وَلَا عَلَى عَاقِلَتِهِ وَيَضْمَنُ الْمَالَ كُلُّ مَنْ أَتْلَفَهُ، وَنَسَخَ كُلَّ مَا حَكَمُوا بِهِ، وَلَا حَدَّ عَلَيْهِ فِي وَطْءِ فَرْجٍ جَهِلَ تَحْرِيمَهُ مَا لَمْ يَعْلَمْ بِالتَّحْرِيمِ - وَهَكَذَا أَيْضًا مَنْ تَأَوَّلَ تَأْوِيلًا خَرَقَ بِهِ الْإِجْمَاعَ بِجَهَالَةٍ وَلَمْ تَقُمْ عَلَيْهِ الْحُجَّةُ وَلَا بَلَغَتْهُ.

L39835–39837 As for the one who advances a corrupt interpretation - in which he is not excused - but breaches the consensus (whatever it may be)... He did not base his argument on the Quran or Sunnah, nor was definitive proof established against him that he understood. If he offered a valid interpretation, but after

وَأَمَّا مَنْ تَأَوَّلَ تَأْوِيلًا فَاسِدًا لَا يُعْذَرُ فِيهِ، لَكِنْ خَرَقَ الْإِجْمَاعَ - أَيَّ شَيْءٍ كَانَ - وَلَمْ يَتَعَلَّقْ بِقُرْآنٍ وَلَا سُنَّةٍ، وَلَا قَامَتْ عَلَيْهِ الْحُجَّةُ وَفَهِمَهَا، وَتَأَوَّلَ تَأْوِيلًا يَسُوغُ، وَقَامَتْ

proof was established against him he obstinately persisted, then qisās (retaliation for homicide) becomes obligatory for whoever kills in this manner—applying to homicide or lesser injuries—the prescribed punishment for what he committed through unlawful intercourse, and compensation for wealth he unlawfully destroyed.

عَلَيْهِ الْحُجَّةُ وَعَنَدَ، فَعَلَى مَنْ قَتَلَ هَكَذَا الْقَوَدُ فِي النَّفْسِ فَمَا دُونَهَا، وَالْحَدُّ فِيمَا أَصَابَ بِوَطْءٍ حَرَامٍ، وَضَمَانِ مَا اسْتَهْلَكَ مِنْ مَالٍ.

L39838 Similarly, one who devotes themselves solely to pursuing worldly matters without any valid justification is not excused at all, for he deliberately engages in what he knows to be forbidden—and success is from Allah, the Most High.

وَهَكَذَا مَنْ قَامَ فِي طَلَبِ دُنْيَا مُجَرَّدًا بِلَا تَأْوِيلٍ، وَلَا يُعْذَرُ هَذَا أَصْلًا، لِأَنَّهُ عَامِدٌ لِمَا يَدْرِي أَنَّهُ حَرَامٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39839 Similarly, whoever rises in partisan solidarity—with no distinction—and the two factions may both be transgressors if they rise together in falsehood. In such a case, retribution (qawd) applies to the killer, regardless of which faction he belongs to. The same ruling applies to those who wage unlawful warfare when they kill one another.

وَهَكَذَا مِنْ قَامَ عَصَبِيَّةً وَلَا فَرْقَ - وَقَدْ تَكُونُ الْفِئَتَانِ بَاغِيَتَيْنِ إِذَا قَامَتَا مَعًا فِي بَاطِلٍ، فَإِذَا كَانَ هَكَذَا فَالْقَوَدُ أَيْضًا عَلَى الْقَاتِلِ، مِنْ أَيِّ الطَّائِفَتَيْنِ كَانَ - وَهَكَذَا الْقَوْلُ فِي الْمُحَارِبِينَ يَقْتُلُ بَعْضُهُمْ بَعْضًا.

L39840 Abu Muhammad—may Allah have mercy on him—said: We will present the evidence for each of these matters section by section. As for our statement, “Upon whom the proof has not been established bears no liability for retaliation or hadd punishment,” this is based on Allah’s words: *“That I may warn you thereby and whomever it reaches”* (6:19). Thus, the proof is only binding upon those to whom it has been conveyed. Indeed, the Messenger of Allah—peace and blessings be upon him—was in Medina, while Jaʿfar ibn Abī Ṭālib and those with him from the eminent Companions—may Allah be pleased with them—were in the land of Abyssinia, separated by vast deserts, distant lands, and the depths of the sea. Religious obligations were revealed in Medina, and these rulings did not reach them except after a year or many years. Nevertheless, they were not held blameworthy before Allah—Exalted is He—nor before His Messenger—peace and blessings be upon him and his family—nor before anyone in the Ummah.[29]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَنَذْكُرُ الْبُرْهَانَ فِي كُلِّ هَذَا فَصْلًا فَصْلًا: أَمَّا قَوْلُنَا: مَنْ لَمْ تَقُمْ عَلَيْهِ الْحُجَّةُ فَلَا قَوَدَ عَلَيْهِ وَلَا حَدَّ، فَلِقَوْلِ اللَّهِ تَعَالَى {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] فَلَا حُجَّةَ إِلَّا عَلَى مَنْ بَلَغَتْهُ الْحُجَّةُ، وَقَدْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَدِينَةِ وَجَعْفَرُ بْنُ أَبِي طَالِبٍ وَمَنْ مَعَهُ مِنْ أَفَاضِلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِأَرْضِ الْحَبَشَةِ، بَيْنَهُمْ الْمَهَامِهُ الْفِيحُ، وَالْبِلَادُ الْبَعِيدَةُ، وَلُجَّةُ الْبَحْرِ - وَالْفَرَائِضُ تَنْزِلُ بِالْمَدِينَةِ وَلَا تَبْلُغُهُمْ إِلَّا بَعْدَ عَامٍ أَوْ أَعْوَامٍ كَثِيرَةٍ، وَمَا لَزِمَتْهُمْ مَلَامَةٌ عِنْدَ اللَّهِ تَعَالَى، وَلَا عِنْدَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا عِنْدَ أَحَدٍ مِنْ الْأُمَّةِ.

L39841 Thus, it is established with certainty that whoever is ignorant of a ruling in the Sharīʿah is not held accountable for it, except only for liability regarding property he destroyed, because he destroyed it without rightful claim. There-

فَصَحَّ يَقِينًا: أَنَّ مَنْ جَهِلَ حُكْمَ شَيْءٍ مِنْ الشَّرِيعَةِ فَهُوَ غَيْرُ مُؤَاخَذٍ بِهِ إِلَّا فِي ضَمَانِ مَا أَتْلَفَ مِنْ مَالٍ فَقَطْ، لِأَنَّهُ اسْتَهْلَكَهُ بِغَيْرِ حَقٍّ، فَعَلَيْهِ مَتَى عَلِمَ أَنْ يُؤَدِّيَهُ إِلَى صَاحِبِهِ إِنْ أَمْكَنَ، وَأَنْ لَا يُصِرَّ عَلَى مَا فَعَلَ وَهُوَ يَعْلَمُ -.

[29] **Qur’an references (L39840):** Qur’an 6:19 (Al-An’am).

fore, upon learning [the ruling], he must restore it to its owner if possible, and he must not persist in what he did while knowing [the ruling].

L39842 As for the obligation of the blood money in this matter being specifically incumbent upon the public treasury, this is due to what we have mentioned in "The Book of Blood Money and Retaliation," and due to what we narrated through the chain of Abu Dawud: Musaddad reported to us, narrated by Yahya ibn Sa'id al-Qattan, narrated by Ibn Abi Dhib, reported by Sa'id—who is Ibn Abi Sa'id al-Maqburi—who said: I heard Abu Shurayh al-Ka'bi say: The Messenger of Allah—peace and blessings be upon him—said: "O tribe of Khuza'ah, you have killed this slain man from Hudhayl, and I am responsible for his blood money. Whoever is killed after this statement of mine, his family has two valid options: either to take the blood money or to seek retribution." They killed him while acting on a misinterpretation of the law on the day of the Conquest of Mecca.

وَأَمَّا وُجُوبُ الدِّيَةِ فِي ذَلِكَ عَلَى بَيْتِ الْمَالِ خَاصَّةً فَلِمَا ذَكَرْنَاهُ فِي " كِتَابِ الدِّمَاءِ وَالْقِصَاصِ " وَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد ثنا مُسَدَّدٌ ثنا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ ثنا ابْنُ أَبِي ذِئْبٍ نِي سَعِيدٌ - هُوَ ابْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ - قَالَ سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُول: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّكُمْ مَعْشَرَ خُزَاعَةَ قَتَلْتُمْ هَذَا الْقَتِيلَ مِنْ هُذَيْلٍ وَإِنِّي عَاقِلُهُ فَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ وَبَيْنَ أَنْ يَقْتُلُوا» وَإِنَّمَا قَتَلُوهُ مُتَأَوِّلِينَ يَوْمَ الْفَتْحِ.

L39843–39845 As for the one against whom the proof has been established, and to whom the rulings of Allah, the Exalted, the rulings of His Messenger—peace and blessings of Allah be upon him—and his understanding have reached, yet he did not... He has nothing but obstinacy and clinging—whether to mere imitation, isolated opinion, or analogy—thus he bears no excuse. He is liable for either qisas (legal retribution) or diyah (blood money), compensation for what he destroyed, and the hadd punishment in the private parts, according to Allah's statement: "So whoever transgressed against you, then transgress against him in the same manner as he transgressed against you" [Quran 2:194]. These are undoubtedly transgressors, so upon them falls the same as what they transgressed with—and with Allah alone is success.[30]

وَأَمَّا مَنْ قَامَتْ عَلَيْهِ الْحُجَّةُ وَبَلَغَهُ حُكْمُ اللَّهِ تَعَالَى وَحُكْمُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفَهْمُهُ وَلَمْ يَكُنْ عِنْدَهُ إلَّا الْعِنَادُ وَالتَّعَلُّقُ: إمَّا بِتَقْلِيدٍ مُجَرَّدٍ، أَوْ بِرَأْيٍ مُفْرَدٍ أَوْ بِقِيَاسٍ، فَلَيْسَ مَعْذُورًا أَوْ عَلَيْهِ الْقَوَدُ أَوْ الدِّيَةُ، وَضَمَانُ مَا أَتْلَفَ، وَالْحَدُّ فِي الْفَرْجِ، لِقَوْلِ اللَّهِ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَهَؤُلَاءِ مُعْتَدُونَ بِلَا شَكٍّ فَعَلَيْهِمْ مِثْلُ مَا اعْتَدَوْا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39846 Abu Muhammad (may Allah have mercy on him) said: As for those killed by others, some scholars held that he is a martyr who should not be washed nor prayed over, but buried as he is. Others held he should be washed, shrouded, and prayed over—and this is the position we adopt. For even though they are martyrs—as established through the transmission chain of Ahmad ibn Shu'ayb from 'Amr ibn 'Ali from 'Abd al-Raḥmān ibn Mahdī

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ قَتَلُوهُ فَقَدْ قَالَ قَوْمٌ: إنَّهُ شَهِيدٌ فَلَا يُغَسَّلُ وَلَا يُصَلَّى عَلَيْهِ، لَكِنْ يُدْفَنُ كَمَا هُوَ وَقَالَ آخَرُونَ: بَلْ يُغَسَّلُ وَيُكَفَّنُ وَيُصَلَّى عَلَيْهِ - وَبِهَذَا نَأْخُذُ، لِأَنَّهُمْ، وَإِنْ كَانُوا شُهَدَاءَ - كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا إبْرَاهِيمُ بْنُ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ عَنْ

[30] **Qur'an references (L39843):** Qur'an 2:194 (Al-Baqarah).

from Ibrāhīm ibn Sa‘d ibn Ibrāhīm ibn ‘Abd al-Raḥmān ibn ‘Awf from his father from Abū ‘Ubaydah ibn Muḥammad ibn ‘Ammār ibn Yāsir from Ṭalḥah ibn ‘Ubayd Allāh ibn ‘Awf from Sa‘īd ibn Zayd ibn ‘Amr ibn Nufayl—who reported the Messenger of Allah (peace and blessings of Allah be upon him) said: “Whoever is slain defending his property is a martyr; whoever is slain defending his life is a martyr; and whoever is slain defending his family is a martyr.”

أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ بْنِ عَوْفٍ عَنْ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ» .

L39847 From the transmission of Aḥmad ibn Shu’ayb: Muḥammad ibn Rāfi‘ and Muḥammad ibn Ismā‘īl ibn Ibrāhīm informed me. They said: Sulaymān—he is the son of Dāwūd al-Hāshimī—narrated to us. Ibrāhīm—he is the son of Sa‘d—narrated from his father from Abū ‘Ubaydah ibn Muḥammad ibn ‘Ammār ibn Yāsir from Ṭalḥah ibn ‘Ubaydullāh ibn ‘Awf from Sa‘īd ibn Zayd, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—said, “Whoever is killed defending his property is a martyr; whoever is killed defending his family is a martyr; whoever is killed defending his religion is a martyr; and whoever is killed defending his blood is a martyr.”[31]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ رَافِعٍ، وَمُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ قَالَا: نا سُلَيْمَانُ - هُوَ ابْنُ دَاوُد الْهَاشِمِيُّ نا إِبْرَاهِيمُ - هُوَ ابْنُ سَعْدٍ - عَنْ أَبِيهِ عَنْ أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ بْنِ عَوْفٍ عَنْ سَعِيدِ بْنِ زَيْدٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ دِينِهِ فَهُوَ شَهِيدٌ وَمَنْ قُتِلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ» .

L39848 And through the chain of Aḥmad ibn Shuʿayb conveying it up to the Prophet - peace be upon him -: “Whoever is killed defending himself against injustice is a martyr.” Abū Muḥammad - may God have mercy on him - said: It is authenticated that whoever is killed by the rebels is only killed under one of these grounds; he is outwardly a martyr, though not every martyr is buried without ritual washing or funeral prayer.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ يَبْلُغُ بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَمَنْ قُتِلَ دُونَ مَظْلِمَتِهِ فَهُوَ شَهِيدٌ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ مَنْ قَتَلَهُ مِنْ الْبُغَاةِ فَإِنَّمَا قُتِلَ عَلَى أَحَدِ هَذِهِ الْوُجُوهِ، فَهُوَ فِي ظَاهِرِ الْأَمْرِ شَهِيدٌ، وَلَيْسَ كُلُّ شَهِيدٍ يُدْفَنُ دُونَ غُسْلٍ وَلَا صَلَاةٍ.

L39849 It has been authentically reported that the one who dies of an abdominal ailment is a martyr, the plague victim is a martyr, the drowned is a martyr, the one afflicted with pleuritic ailment is a martyr, the woman who dies during childbirth is a martyr, and the one afflicted by a collapsing structure is a martyr. There is no disagreement that all of these individuals are to be washed, shrouded, and have the funeral prayer offered for them.

وَقَدْ صَحَّ: أَنَّ الْمَبْطُونَ شَهِيدٌ، وَالْمَطْعُونَ شَهِيدٌ، وَالْغَرِيقَ شَهِيدٌ، وَصَاحِبَ ذَاتِ الْجَنْبِ شَهِيدٌ، وَالْمَرْأَةَ تَمُوتُ بِجُمْعٍ شَهِيدٌ، وَصَاحِبَ الْهَدْمِ شَهِيدٌ - وَكُلُّ هَؤُلَاءِ لَا خِلَافَ فِي أَنَّهُمْ يُغَسَّلُونَ وَيُكَفَّنُونَ وَيُصَلَّى عَلَيْهِمْ.

L39850–39851 The fundamental ruling for every Muslim is to be washed, shrouded, and have the funeral prayer performed over him, except those excluded by a

وَالْأَصْلُ فِي كُلِّ مُسْلِمٍ أَنْ يُغَسَّلَ وَيُكَفَّنَ وَيُصَلَّى عَلَيْهِ، إلَّا مَنْ خَصَّهُ نَصٌّ أَوْ إجْمَاعٌ، وَلَا نَصَّ، وَلَا إجْمَاعَ، إلَّا فِيمَنْ قَتَلَهُ الْكُفَّارُ فِي الْمُعْتَرَكِ وَمَاتَ فِي مَصْرَعِهِ - فَهَؤُلَاءِ

[31] **Hadith references (L39847):** Sunan an-Nasai 4095.

textual ruling or consensus. There is no textual ruling or consensus except regarding those killed by disbelievers in battle who die where they were struck down. These are the ones whom the Messenger of Allah (peace be upon him) commanded to be wrapped in their blood-stained garments and buried as they were, without washing or shrouding, and no obligatory funeral prayer is required for them. All other martyrs and the deceased remain subject to the Islamic rulings concerning washing, shrouding, and funeral prayer. And success is from Allah, the Most High.

هُمْ الَّذِينَ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُزَمَّلُوا بِدِمَائِهِمْ فِي ثِيَابِهِمْ وَيُدْفَنُوا كَمَا هُمْ دُونَ غُسْلٍ وَلَا تَكْفِينٍ - وَلَا يَجِبُ فَرْضًا عَلَيْهِمْ صَلَاةٌ، فَبَقِيَ سَائِرُ الشُّهَدَاءِ، وَالْمَوْتَى، عَلَى حُكْمِ الْإِسْلَامِ فِي الْغُسْلِ، وَالتَّكْفِينِ وَالصَّلَاةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39852 **Issue: Is it permissible for the just individual to intentionally kill his rebel father, or not?**

[مَسْأَلَةَ هَلْ لِلْعَادِلِ أَنْ يَعْمِدَ قَتْلَ أَبِيهِ الْبَاغِي أَمْ لَا]

L39853 2160. Issue: Is it permissible for a just person to intentionally kill his rebellious father, or not? Abū Muḥammad—may Allah have mercy on him—said: Some scholars have stated that it is unlawful for adherents of justice to intentionally kill their father, brother, or kin among the rebels. However, if he subdues him to prevent him from obstructing the enforcement of what is rightfully due, there is no blame on him for that.

٢١٦٠ - مَسْأَلَةٌ: هَلْ لِلْعَادِلِ أَنْ يَعْمِدَ قَتْلَ أَبِيهِ الْبَاغِي أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَائِلُونَ: لَا يَحِلُّ لِمَنْ كَانَ مِنْ أَهْلِ الْعَدْلِ قَتْلُ أَبِيهِ، أَوْ أَخِيهِ، أَوْ ذِي رَحِمٍ مِنْ أَهْلِ الْبَغْيِ عَمْدًا، لَكِنْ إنْ ضَرَبَهُ لِيَصِيرَ بِذَلِكَ غَيْرَ مُمْتَنِعٍ مِنْ أَخْذِ الْحَقِّ مِنْهُ، فَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ.

L39854 Abu Muhammad—may Allah have mercy on him—said: We do not hold this view, for dutifulness to parents and maintaining kinship ties are only commanded by Allah the Exalted as long as there is no disobedience to Him in those acts; otherwise, it is not. It is authentically reported from the Prophet—peace and blessings of Allah be upon him—that he said, "There is no obedience to anyone in disobedience to Allah the Exalted." Allah has commanded fighting the rebellious faction without distinguishing between one's son and a stranger; He similarly commanded the enforcement of Ḥudūd punishments. Allah the Exalted said in the verse: "Allah does not forbid you from those who did not fight you in religion" [Al-Mumtahanah: 8].[32]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَسْنَا نَقُولُ بِهَذَا، فَإِنَّ بِرَّ الْوَالِدَيْنِ وَصِلَةَ الرَّحِمِ إنَّمَا أَمَرَ اللَّهُ تَعَالَى بِهِمَا مَا لَمْ يَكُنْ فِي ذَلِكَ مَعْصِيَةٌ لِلَّهِ تَعَالَى وَإِلَّا فَلَا، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «لَا طَاعَةَ لِأَحَدٍ فِي مَعْصِيَةِ اللَّهِ تَعَالَى» وَقَدْ أَمَرَ اللَّهُ تَعَالَى بِقِتَالِ الْفِئَةِ الْبَاغِيَةِ وَلَمْ يَخُصَّ بِذَلِكَ ابْنًا مِنْ أَجْنَبِيٍّ، وَأَمَرَ بِإِقَامَةِ الْحُدُودِ كَذَلِكَ قَالَ اللَّهُ تَعَالَى {لا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ} [الممتحنة: ٨] الْآيَةَ.

L39855 Allah only forbids you concerning those who fought you in religion [Al-Mumtahanah: 9] up to His saying, the Exalted, "and whoever takes them as allies, then those are the wrongdoers" [Al-Mumtahanah: 9]. And Allah, the Exalted, said, "You will not find a people who believe in Allah and the Last

{إِنَّمَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ قَاتَلُوكُمْ فِي الدِّينِ} [الممتحنة: ٩] إلَى قَوْله تَعَالَى {وَمَنْ يَتَوَلَّهُمْ فَأُولَئِكَ هُمُ الظَّالِمُونَ} [الممتحنة: ٩] وَقَالَ تَعَالَى {لا تَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ وَرَسُولَهُ} [المجادلة: ٢٢] الْآيَةَ.

[32] **Qur'an references (L39854):** Qur'an 60:8 (Al-Mumtahanah).

Day befriending those who oppose Allah and His Messenger" [Al-Mujadilah: 22] the verse.[33]

وَقِتَالُ أَهْلِ الْبَغْيِ قِتَالٌ فِي الدِّينِ، إِلَّا أَنَّنَا لَا نَخْتَارُ أَنْ يَعْمِدَ الْمَرْءُ إِلَى أَبِيهِ - خَاصَّةً - أَوْ جَدِّهِ، مَا دَامَ يَجِدُ غَيْرَهُمَا، فَإِنْ لَمْ يَفْعَلْ فَلَا حَرَجَ.

L39856 The fighting against rebels (ahl al-baghy) is combat in the cause of religion. However, we do not approve that a person deliberately turn to his father (especially) or his grandfather, as long as he can find others besides them. If he does not do so, there is no blame.

وَهَكَذَا الْقَوْلُ فِي إِقَامَةِ الْحَدِّ عَلَيْهِمَا، وَعَلَى الْأُمِّ وَالْجَدَّةِ فِي الْقَتْلِ، وَالْقَطْعِ وَالْقِصَاصِ، وَالْجَلْدِ، وَلَا فَرْقَ.

L39857 Such is the ruling regarding establishing the ḥadd punishment upon them both, and upon the mother and grandmother in cases of killing, amputation, retaliation, and flogging, without any distinction.

فَأَمَّا إِذَا رَأَى الْعَادِلُ أَبَاهُ الْبَاغِيَ، أَوْ جَدَّهُ، يَقْصِدُ إِلَى مُسْلِمٍ يُرِيدُ قَتْلَهُ، أَوْ ظُلْمَهُ، فَفَرْضٌ عَلَى الِابْنِ حِينَئِذٍ أَنْ لَا يَشْتَغِلَ بِغَيْرِهِ عَنْهُ، وَفَرْضٌ عَلَيْهِ دَفْعُهُ عَنْ الْمُسْلِمِ - بِأَيِّ وَجْهٍ أَمْكَنَهُ - وَإِنْ كَانَ فِي ذَلِكَ قَتْلُ الْأَبِ، وَالْجَدِّ، وَالْأُمِّ.

L39858–39859 If a righteous person sees his aggressing father or grandfather intent on killing or oppressing a Muslim, it becomes obligatory for the son at that moment to not occupy himself with anything else besides this. It is obligatory upon him to repel the aggressor from the Muslim by whatever means possible—even if that involves killing the father, grandfather, or mother.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا سَعِيدُ بْنُ الرَّبِيعِ نا شُعْبَةُ عَنْ الْأَشْعَثِ بْنِ سُلَيْمٍ قَالَ: سَمِعْتُ مُعَاوِيَةَ بْنَ سُوَيْدِ بْنِ مُقَرِّنٍ يَقُولُ: سَمِعْتُ الْبَرَاءَ بْنَ عَازِبٍ قَالَ: «أَمَرَنَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَبْعٍ وَنَهَانَا عَنْ سَبْعٍ - فَذَكَرَ - عِيَادَةَ الْمَرِيضِ، وَاتِّبَاعَ الْجَنَائِزِ، وَتَشْمِيتَ الْعَاطِسِ، وَرَدَّ السَّلَامِ، وَنَصْرَ الْمَظْلُومِ، وَإِجَابَةَ الدَّاعِي، وَإِبْرَارَ الْمُقْسِمِ» وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «انْصُرْ أَخَاكَ ظَالِمًا أَوْ مَظْلُومًا، قِيلَ: يَا رَسُولَ اللَّهِ هَذَا نَنْصُرُهُ مَظْلُومًا فَكَيْفَ نَنْصُرُهُ ظَالِمًا؟ قَالَ: تَمْنَعُهُ، تَأْخُذُ فَوْقَ يَدِهِ» وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» فَهَذَا أَمْرٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يُسْلِمَ الْمَرْءُ أَخَاهُ الْمُسْلِمَ لِظُلْمٍ ظَالِمٍ، وَأَنْ يَأْخُذَ فَوْقَ يَدِ كُلِّ ظَالِمٍ، وَأَنْ يَنْصُرَ كُلَّ مَظْلُومٍ، فَإِذَا رَأَى الْمُسْلِمُ أَبَاهُ الْبَاغِيَ، أَوْ ذَا رَحِمِهِ - كَذَلِكَ - يُرِيدُ ظُلْمَ مُسْلِمٍ، أَوْ ذِمِّيٍّ، فَفَرْضٌ عَلَيْهِ مَنْعُهُ مِنْ

L39860 The evidence for this is what has been narrated to us through Al-Bukhārī's chain of transmission: Saʿīd ibn Ar-Rabīʿ reported to us, Shuʿbah reported to us from Al-Ashʿath ibn Sulaym, who said: I heard Muʿāwiyah ibn Suwayd ibn Muqarrin say: I heard Al-Barāʾ ibn ʿĀzib say: "The Prophet—peace and blessings of Allah be upon him—commanded us with seven matters and forbade us from seven matters." He then mentioned: visiting the sick, attending funerals, invoking mercy for the sneezer, returning greetings, aiding the oppressed, accepting invitations, and fulfilling sworn oaths. The Messenger of Allah—peace and blessings of Allah be upon him—said: "Support your brother whether he is an oppressor or oppressed." It was asked: "O Messenger of Allah, we understand supporting him when oppressed, but how do we support him as an oppressor?" He replied: "By seizing him by the upper hand." The Messenger of Allah—peace and blessings of Allah be upon him—also said: "A Muslim is a brother to another Muslim; he neither wrongs him nor surrenders him." This constitutes a command from the Messenger of Al-

[33] **Qur'an references (L39855):** Qur'an 60:9 (Al-Mumtahanah); Qur'an 58:22 (Al-Mujadila).

lah—peace and blessings of Allah be upon him—that one must not abandon a Muslim brother to an oppressor's injustice, that one must restrain every oppressor by seizing his upper hand, and that one must support every oppressed person. Therefore, if a Muslim witnesses his father transgressing, or a relative similarly intending to wrong a Muslim or a protected non-Muslim, it becomes obligatory upon him to prevent this by all necessary means, including combat or killing if required to stop it, and by lesser measures as indicated by the general scope of these narrations. Allah the Exalted has obligated kindness to parents—not to harshly repel them and to lower for them the wing of humility through mercy—but only in matters that do not entail any disobedience to Allah the Exalted.

ذَلِكَ، بِكُلِّ مَا لَا يَقْدِرُ عَلَى مَنْعِهِ إِلَّا بِهِ مِنْ قِتَالٍ أَوْ قَتْلٍ، فَمَا دُونَ ذَلِكَ عَلَى عُمُومِ هَذِهِ الْأَحَادِيثِ وَإِنَّمَا افْتَرَضَ اللَّهُ تَعَالَى الْإِحْسَانَ إِلَى الْأَبَوَيْنِ، وَأَنْ لَا يُنْهَرَا، وَأَنْ يُخْفَضَ لَهُمَا جَنَاحُ الذُّلِّ مِنَ الرَّحْمَةِ، فِيمَا لَيْسَ فِيهِ مَعْصِيَةُ اللَّهِ تَعَالَى فَقَطْ.

L39861 Similarly, we state that it is not permissible for a Muslim who has a disbelieving father or disbelieving mother to guide them to the path of the church, nor to transport them there, nor to obtain sacrificial offerings for them, nor to procure wine for them in accordance with their corrupt religious laws, nor to assist them in any acts of disobedience to Allah the Exalted - such as adultery, theft, or other sins - and that he must not let either parent commit such acts if he is capable of preventing them. Allah the Exalted said: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Mā'idah 5:2]. This is a comprehensive injunction encompassing all good in the world.[34]

وَهَكَذَا نَقُولُ: أَنَّهُ لَا يَحِلُّ لِمُسْلِمٍ لَهُ أَبٌ كَافِرٌ أَوْ أُمٌّ كَافِرَةٌ، أَنْ يُهْدِيَهُمَا إِلَى طَرِيقِ الْكَنِيسَةِ، وَلَا أَنْ يَحْمِلَهُمَا إِلَيْهَا، وَلَا أَنْ يَأْخُذَ لَهُمَا قُرْبَانًا، وَلَا أَنْ يَسْعَى لَهُمَا فِي خَمْرٍ لِشَرِيعَتِهِمَا الْفَاسِدَةِ، وَلَا أَنْ يُعِينَهُمَا عَلَى شَيْءٍ مِنْ مَعَاصِي اللَّهِ تَعَالَى مِنْ زِنًى، أَوْ سَرِقَةٍ، أَوْ غَيْرِ ذَلِكَ، وَأَنْ لَا يَدَعَهُ يَفْعَلُ شَيْئًا مِنْ ذَلِكَ - وَهُوَ قَادِرٌ عَلَى مَنْعِهِ، قَالَ اللَّهُ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَهَذِهِ وَصِيَّةٌ جَامِعَةٌ لِكُلِّ خَيْرٍ فِي الْعَالَمِ.

L39862–39863 Abu Muhammad—may Allah have mercy on him—said: As for the two mutually transgressing rebellious factions, it is not permissible for Muslims except to restrain them and fight them collectively, for each of them is transgressing against the other. Whoever is incapable of this is permitted to practice taqiyya (concealment) and must adhere to remaining in his home, attending his mosque, and maintaining his livelihood—with nothing beyond that. Neither of them calls to commanding good or forbidding evil.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا الْفِئَتَانِ الْبَاغِيَتَانِ مَعًا فَلَا يَحِلُّ لِلْمُسْلِمِينَ إِلَّا مَنْعُهُمَا وَقِتَالُهُمْ جَمِيعًا، لِأَنَّ كُلَّ وَاحِدَةٍ مِنْهُمَا بَاغِيَةٌ عَلَى الْأُخْرَى، فَمَنْ عَجَزَ عَنْ ذَلِكَ وَسِعَتْهُ التَّقِيَّةُ وَأَنْ يَلْزَمَ مَنْزِلَهُ، وَمَسْجِدَهُ، وَمَعَاشَهُ، وَلَا مَزِيدَ، وَكِلَاهُمَا لَا يَدْعُو إِلَى الْأَمْرِ بِالْمَعْرُوفِ وَالنَّهْيِ عَنِ الْمُنْكَرِ.

L39864 The evidence for this is what we have narrated through the chain of Muslim: 'Amr al-Nāqid narrated to us, Sufyān ibn 'Uyaynah narrated to us from Ayyūb

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نِي عَمْرٌو النَّاقِدُ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: قَالَ أَبُو الْقَاسِمِ - صَلَّى اللَّهُ

[34] **Qur'an references (L39861):** Qur'an 5:2 (Al-Ma'idah).

al-Sikhtiyānī, from Muḥammad ibn Sīrīn, who said: I heard Abū Hurayrah say: Abū al-Qāsim—peace and blessings of Allāh be upon him—said, "Whoever points an iron weapon at his brother, the angels curse him, even if he were his brother through both his father and mother." And through another chain of Muslim: Muḥammad ibn Rāfiʿ narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar narrated to us from Hammām ibn Munabbih, who said: This is what Abū Hurayrah narrated to us from the Messenger of Allāh—peace and blessings of Allāh be upon him and his family—and he mentioned several ḥadīths, among them: The Messenger of Allāh—peace and blessings of Allāh be upon him and his family—said, "Let none of you point a weapon at his brother, for none of you knows whether Satan might incite his hand, so he falls into a pit of the Fire."

عَلَيْهِ وَسَلَّمَ - «مَنْ أَشَارَ إِلَى أَخِيهِ بِحَدِيدَةٍ فَإِنَّ الْمَلَائِكَةَ تَلْعَنُهُ، وَحَتَّى إِنْ كَانَ أَخَاهُ لِأَبِيهِ وَأُمِّهِ» وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ قَالَ: هَذَا مَا نا أَبُو هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ أَحَادِيثَ: مِنْهَا: وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يُشِرْ أَحَدُكُمْ إِلَى أَخِيهِ بِالسِّلَاحِ فَإِنَّهُ لَا يَدْرِي أَحَدُكُمْ لَعَلَّ الشَّيْطَانَ يَنْزِغُ فِي يَدِهِ فَيَقَعُ فِي حُفْرَةٍ مِنْ النَّارِ» .

L39865 From the path of Ahmad ibn Shu'ayb: Mahmud ibn Ghaylan narrated to us; Abu Dawud al-Tayalisi narrated to us from Shu'bah. Mansur (that is, Ibn al-Mu'tamir) informed me, saying: "I heard Rib'i (that is, Ibn Hirash) narrating from Abu Bakrah, who said: The Messenger of Allah—peace and blessings be upon him and his family (ﷺ)—said: 'If a Muslim points a weapon at his fellow Muslim, they are both on the edge of Hell. If he kills him, they both will plunge into it together.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مَحْمُودُ بْنُ غَيْلَانَ نا أَبُو دَاوُد الطَّيَالِسِيُّ عَنْ شُعْبَةَ أَخْبَرَنِي مَنْصُورٌ - هُوَ ابْنُ الْمُعْتَمِرِ - قَالَ: سَمِعْت رِبْعِيًّا - هُوَ ابْنُ حِرَاشٍ - يُحَدِّثُ عَنْ أَبِي بَكْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا أَشَارَ الْمُسْلِمُ عَلَى أَخِيهِ بِالسِّلَاحِ فَهُمَا عَلَى حَرْفِ جَهَنَّمَ فَإِذَا قَتَلَهُ خَرَّا فِيهَا جَمِيعًا» .

L39866 This is the description of the two factions when they are both transgressing, and it is impossible for both to be just together. We ask Allah, the Exalted, for well-being.

فَهَذِهِ صِفَةُ الطَّائِفَتَيْنِ إذَا كَانَتَا بَاغِيَتَيْنِ، وَلَا يُمْكِنُ أَنْ تَكُونَا مَعًا عَادِلَتَيْنِ وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L39867 We have stated that retaliation against the transgressor applies only when fighting is undertaken so that he may return to Allah's command. We have not permitted this through any other means. Thus, whoever kills a transgressor so that he may return to the command of Allah the Exalted has killed him as Allah has commanded him. Similarly, if one severs his limb in battle, hamstrings the horse beneath him, or damages his garment during combat, there is no liability for any of these acts, for all were done in obedience to Allah's command. Whoever acts according to what Allah the Exalted has commanded him has done rightly, and no blame falls upon those who do

وَإِنَّمَا قُلْنَا: أَنْ يُقَادَ لِلْبَاغِي إذَا قُوتِلَ لِيَفِيءَ إلَى أَمْرِ اللَّهِ فَقَطْ، وَلَمْ نُحِلَّهُ بِغَيْرِ هَذَا الْوَجْهِ، فَمَنْ قَتَلَ بَاغِيًا لِيَفِيءَ إلَى أَمْرِ اللَّهِ تَعَالَى فَقَدْ قَتَلَهُ كَمَا أَمَرَهُ اللَّهُ تَعَالَى - وَكَذَلِكَ لَوْ قَطَعَ لَهُ عُضْوًا فِي الْحَرْبِ، أَوْ عَقَرَ تَحْتَهُ فَرَسًا، أَوْ أَفْسَدَ لَهُ لِبَاسًا فِي الْمُضَارَبَةِ، فَلَا ضَمَانَ فِي شَيْءٍ مِنْ ذَلِكَ، لِأَنَّهُ فَعَلَ كُلَّ ذَلِكَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَمَنْ فَعَلَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى فَقَدْ أَحْسَنَ، وَمَنْ أَحْسَنَ فَلَا شَيْءَ عَلَيْهِ، لِقَوْلِهِ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١]

good, as stated by the Exalted: “There is no blame upon those who do good” [at-Tawbah 9:91].[35]

L39868 **Issue: The Rulings on Rebels**

L39869–39871 2161 – Issue: What are the rulings pertaining to rebels? People differed regarding the rulings concerning rebels. Abū Ḥanīfah and his companions maintained—except... Al-Tahawi stated that whatever judgment a judge of the rebellious faction issues, it is not permissible for a judge of the just faction to validate it or accept his written ruling. They said: Any alms they collected should not be taken again by the Imam. However, it is preferable for those from whom they took the alms to give them again.

L39872 They said: As for any trader who passed by them, they levied a tenth on him, since the Imam collects it again from the traders.

L39873 Al-Shafi’i said: Every judgment they passed is valid if it conforms to the truth, the zakat they collected is valid, and the hudud punishments they enforced are valid. This is also the opinion of Malik.

L39874 Abu Sulayman said—and our associates hold that none of their judicial rulings are to be implemented, and it is necessary to redo them. What they have collected in Zakah does not suffice, nor the prescribed punishments they have enforced. It is necessary to collect the Zakah anew and to enforce the prescribed punishments a second time.

L39875 Abū Muḥammad—may Allāh have mercy on him—said: So when they differed, it became incumbent upon us to investigate the matter so that we may know the truth and follow it by the help of Allāh, the Exalted.

L39876 We examined the statement of Abū Ḥanīfah and found them arguing by saying: “The collection of alms becomes obligatory [on the Imam] only when his neglect occurs, thus requiring him to enforce their payment. As for those who pass by the collectors, they have risked their wealth’s destruction.” Abū Muḥammad—may Allah have mercy on him—said: “We know of no argu-

[35] **Qur’an references (L39867):** Qur’an 9:91 (At-Tawbah).

[مَسْأَلَةٌ أَحْكَامُ أَهْلِ الْبَغْيِ]

٢١٦١ - مَسْأَلَةٌ: أَحْكَامُ أَهْلِ الْبَغْيِ؟ اخْتَلَفَ النَّاسُ فِي أَحْكَامِ أَهْلِ الْبَغْيِ فَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ - حَاشَا الطَّحَاوِيَّ - أَنَّهُ مَا حَكَمَ بِهِ قَاضِي أَهْلِ الْبَغْيِ فَلَا يَجُوزُ لِقَاضِي أَهْلِ الْعَدْلِ أَنْ يُجِيزَ ذَلِكَ، وَلَا أَنْ يَقْبَلَ كِتَابَهُ قَالُوا: وَمَا أَخَذُوهُ مِنْ صَدَقَةٍ فَلَا يَأْخُذُهَا الْإِمَامُ ثَانِيَةً، لَكِنَّ الْأَفْضَلَ لِمَنْ أَخَذُوهَا مِنْهُ أَنْ يُؤَدِّيَهَا مَرَّةً أُخْرَى.

قَالُوا: وَأَمَّا مَنْ مَرَّ عَلَيْهِمْ مِنْ التُّجَّارِ فَعَشَّرُوهُ فَإِنَّ الْإِمَامَ يَأْخُذُهُ ثَانِيَةً مِنْ التُّجَّارِ.

وَقَالَ الشَّافِعِيُّ: يَنْفُذُ كُلُّ قَضِيَّةٍ قَضَوْهَا إذَا وَافَقَتْ الْحَقَّ، وَيَجْزِي مَا أَخَذُوهُ مِنْ الزَّكَاةِ، وَمَا أَقَامُوا مِنْ الْحُدُودِ - وَهُوَ قَوْلُ مَالِكٍ.

وَقَالَ أَبُو سُلَيْمَانَ - وَأَصْحَابُنَا لَا يَنْفُذُ شَيْءٌ مِنْ قَضَايَاهُمْ، وَلَا بُدَّ مِنْ إعَادَتِهَا وَلَا يُجْزِئُ مَا أَخَذُوهُ مِنْ الصَّدَقَاتِ، وَلَا مَا أَقَامُوا مِنْ الْحُدُودِ، وَلَا بُدَّ مِنْ أَخْذِ الصَّدَقَاتِ، وَمِنْ إقَامَةِ الْحُدُودِ ثَانِيَةً.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتْبَعُهُ بِعَوْنِ اللَّهِ تَعَالَى.

فَنَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِأَنْ قَالُوا: إنَّ أَخْذَ الصَّدَقَاتِ إنَّمَا جَاءَ التَّضْيِيعُ مِنْ قِبَلِ الْإِمَامِ فَقَدْ يَجِبُ عَلَيْهِ دَفْعُهُمْ، وَأَمَّا مَنْ مَرَّ عَلَيْهِمْ فَقَدْ عَرَّضَ مَالَهُ لِلتَّلَفِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ هَذَا وَهَذَا لَا شَيْءَ؛

ment for them other than this, and this is baseless; for no textual evidence or consensus states that the Imam's negligence nullifies the obligatory rights due to Allah Almighty. Moreover, just as they collected the tithe a second time from those whose sin was risking their wealth's destruction, they are likewise bound to collect zakāh a second time, attributing the sin to the owners for risking their wealth's destruction. Indeed, they could have fled the rebels' territory or presented valid excuses to the tax collectors."

L39877 Then we examined the evidence relied upon by Mālik and al-Shāfiʿī, and found them asserting: When they judge by the truth as Allah the Exalted has commanded, when they collect zakāh as Allah the Exalted has commanded, and when they enforce the hudud as Allah the Exalted has commanded - then all of this has been fulfilled in accordance with Allah's command. Once fulfilled as Allah the Exalted has commanded, it is impermissible to enforce these obligations again upon those bound by them, for this would constitute oppression.

L39878–39880 Some of them said: Just as they are not held accountable for harm to life or property they incurred, so too are they not... They, and none others—by what they have judged, or imposed a ḥadd punishment, or taken from wealth of alms or others, whether rightfully or wrongfully—and there is no distinction.

L39881 Abū Muḥammad—may God have mercy on him—said: All of this is not as they have claimed. We ask them: What do you say? If the Imam is present, empowered, and just, is it permissible to collect alms without him, enforce prescribed penalties without him, or judge between two parties without him—or is this impermissible? There is no third option. If they say all of this is permissible, they violate the consensus, abandon their own position, nullify the divine trust God Almighty has obligated, and thereby necessitate that people have no need for an Imam—and this contradicts both consensus and revealed texts. If they say it is impermissible to engage in any of these acts as long as the Imam is in authority, then it is confirmed that none may judge except those the Imam appoints to judge, none may enforce prescribed penalties except those the Imam appoints for that, and none may be an authorized collector of alms except those the Imam appoints to collect them. Thus,

لِأَنَّهُ لَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ بِأَنَّ تَضْيِيعَ الْإِمَامِ يُسْقِطُ الْحُقُوقَ الْوَاجِبَاتِ لِلَّهِ تَعَالَى وَأَيْضًا - فَكَمَا أَخَذُوا الْعُشْرَ ثَانِيَةً مِمَّنْ جَعَلُوا ذَنْبَهُ أَنَّهُ عَرَّضَ مَالَهُ لِلتَّلَفِ فَكَذَلِكَ يَلْزَمُهُمْ أَنْ يَأْخُذُوا الزَّكَاةَ ثَانِيَةً، وَيَجْعَلُوا ذَنْبَ أَهْلِهَا أَنَّهُمْ عَرَّضُوا أَمْوَالَهُمْ لِلتَّلَفِ، فَقَدْ كَانَ يُمْكِنُهُمْ الْهَرَبُ عَنْ مَوْضِعِ الْبُغَاةِ، أَوْ يُعَذِّرُوا الْمُعَشِّرِينَ.

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ مَالِكٌ، وَالشَّافِعِيُّ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّهُمْ إذَا حَكَمُوا بِالْحَقِّ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَإِذَا أَخَذُوا الزَّكَاةَ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَأَقَامُوا الْحُدُودَ كَمَا أَمَرَ اللَّهُ تَعَالَى، فَقَدْ تَأَدَّى كُلُّ ذَلِكَ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَإِذَا تَأَدَّى كَمَا أَمَرَ اللَّهُ تَعَالَى، فَلَا يَجُوزُ أَنْ يُقَامَ ذَلِكَ عَلَى أَهْلِهِ ثَانِيَةً، فَيَكُونُ ذَلِكَ ظُلْمًا.

وَقَالَ بَعْضُهُمْ: كَمَا لَا يُؤَاخَذُونَ بِمَا أَصَابُوا مِنْ دَمٍ أَوْ مَالٍ، فَكَذَلِكَ لَا يُؤَاخَذُونَ - هُمْ وَلَا غَيْرُهُمْ - بِمَا حَكَمُوا أَوْ أَقَامُوا مِنْ حَدٍّ، أَوْ أَخَذُوا مِنْ مَالِ صَدَقَةٍ، أَوْ غَيْرِهَا - بِحَقٍّ أَوْ بِبَاطِلٍ - وَلَا فَرْقَ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا كُلُّهُ لَيْسَ كَمَا قَالُوا، وَذَلِكَ أَنَّا نَسْأَلُهُمْ، فَنَقُولُ لَهُمْ: مَاذَا تَقُولُونَ: إذَا كَانَ الْإِمَامُ حَاضِرًا مُمَكَّنًا عَدْلًا، أَيَحِلُّ أَنْ يَأْخُذَ صَدَقَةً دُونَهُ، أَوْ يُقِيمَ حَدًّا دُونَهُ، أَوْ يَحْكُمَ بَيْنَ اثْنَيْنِ دُونَهُ، أَمْ لَا يَحِلُّ ذَلِكَ؟ وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ؟ فَإِنْ قَالُوا: هَذَا كُلُّهُ مُبَاحٌ: خَرَقُوا الْإِجْمَاعَ، وَتَرَكُوا قَوْلَهُمْ، وَأَبْطَلُوا الْأَمَانَةَ الَّتِي افْتَرَضَهَا اللَّهُ تَعَالَى، وَأَوْجَبُوا أَنْ لَا حَاجَةَ بِالنَّاسِ إلَى إمَامٍ - وَهَذَا خِلَافُ الْإِجْمَاعِ وَالنَّصِّ. وَإِنْ قَالُوا: بَلْ لَا يَحِلُّ أَخْذُ شَيْءٍ مِنْ ذَلِكَ كُلِّهِ مَا دَامَ الْإِمَامُ قَائِمًا فَقَدْ صَحَّ أَنْ لَا يَحِلَّ أَنْ يَكُونَ حَاكِمًا إلَّا مَنْ وَلَّاهُ الْإِمَامُ الْحُكْمَ، وَلَا أَنْ يَكُونَ آخِذًا لِلْحُدُودِ إلَّا مَنْ وَلَّاهُ

anyone who enforces a penalty, collects alms, or adjudicates a case without being among those God has authorized through the Imam's appointment has not judged as God Almighty commanded, nor enforced penalties as He commanded, nor collected alms as He commanded. Since they did not act as commanded, they acted illegitimately. If their actions lacked legitimacy, they thus acted unjustly. By acting unjustly, they transgressed. God Almighty says: *"Whoever transgresses the bounds set by God has wronged themselves"* (65:1). The Messenger of God—peace and blessings be upon him—said: *"Whoever does an act not in accordance with our command, it is rejected."* Since this is wrongdoing, such wrongdoing must be rejected and annulled. It is thus confirmed that whoever among them collects alms must return them, for they took them unlawfully and are transgressors. They are liable for what they took unless they deliver it to the categories specified in the Quran. If they deliver it to them, the zakat has reached its rightful recipients—and success is by God Almighty.[36][37]

الْإِمَامُ ذَلِكَ، وَلَا أَنْ يَكُونَ مُصَدِّقًا إِلَّا مَنْ وَلَّاهُ الْإِمَامُ أَخْذَهَا، فَإِنَّ ذَلِكَ كَذَلِكَ فَكُلُّ مَنْ أَقَامَ - حَدًّا، أَوْ أَخَذَ صَدَقَةً، أَوْ قَضَى قَضِيَّةً، وَلَيْسَ مِمَّنْ جَعَلَ اللَّهُ ذَلِكَ لَهُ بِتَقْدِيمِ الْإِمَامِ، فَلَمْ يَحْكُمْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَلَا أَقَامَ الْحَدَّ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَلَا أَخَذَ الصَّدَقَةَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى؛ فَإِذْ لَمْ يَفْعَلْ ذَلِكَ كَمَا أُمِرَ، فَلَمْ يَفْعَلْ شَيْئًا مِنْ ذَلِكَ بِحَقٍّ، وَإِذَا لَمْ يَفْعَلْ ذَلِكَ بِحَقٍّ، فَإِنَّمَا فَعَلَهُ بِبَاطِلٍ، وَإِذْ فَعَلَهُ بِبَاطِلٍ فَقَدْ تَعَدَّى؛ وَقَالَ تَعَالَى {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَإِذْ هُوَ ظُلْمٌ، فَالظُّلْمُ لَا حُكْمَ لَهُ إِلَّا رَدُّهُ وَنَقْضُهُ فَصَحَّ مِنْ هَذَا أَنَّ كُلَّ مَنْ أَخَذَ مِنْهُمْ صَدَقَةً فَعَلَيْهِ رَدُّهَا؛ لِأَنَّهُ أَخَذَهَا بِغَيْرِ حَقٍّ، فَهُوَ مُتَعَدٍّ، فَعَلَيْهِ ضَمَانُ مَا أَخَذَ، إِلَّا أَنْ يُوَصِّلَهُ إِلَى الْأَصْنَافِ الْمَذْكُورَةِ فِي الْقُرْآنِ فَإِذَا أَوْصَلَهَا إِلَيْهِمْ فَقَدْ تَأَدَّتْ الزَّكَاةُ إِلَى أَهْلِهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39882 It is established from this that every hadd punishment they enforced is an injustice and invalid. The punishments must be reapplied a second time without exception, the diyah (blood money) must be taken from the wealth of those they executed under qisas (retribution), and every judgment they issued must be annulled without exception.

وَصَحَّ مِنْ هَذَا أَنَّ كُلَّ حَدٍّ أَقَامُوهُ فَهُوَ مَظْلَمَةٌ لَا يُعْتَدُّ بِهِ، وَتُعَادُ الْحُدُودُ ثَانِيَةً وَلَا بُدَّ، وَتُؤْخَذُ الدِّيَةُ مِنْ مَالِ مَنْ قَتَلُوهُ قَوَدًا، وَأَنْ يُفْسَخَ كُلُّ حُكْمٍ حَكَمُوهُ وَلَا بُدَّ.

L39883–39885 And he clarifies what we have stated explicitly: what was narrated to us via the chain (isnad) of Muslim—Muḥammad ibn Numayr narrated to us, who narrated from ʿAbdullāh (he is Ibn Idrīs), who narrated from Ibn ʿIjlān, Yaḥyā ibn Saʿīd al-Anṣārī, and ʿUbaydullāh ibn ʿUmar—all of them. From Ubadah ibn al-Walid ibn Ubadah ibn al-Samit, from his father, from his grandfather, who said: "We pledged allegiance to the Messenger of Allah,

وَيُبَيِّنُ مَا قُلْنَاهُ نَصًّا: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ: نا مُحَمَّدُ بْنُ نُمَيْرٍ نا عَبْدُ اللَّهِ - هُوَ ابْنُ إِدْرِيسَ - نا ابْنُ عِجْلَانَ، وَيَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ، وَعُبَيْدُ اللَّهِ بْنُ عُمَرَ، كُلُّهُمْ عَنْ عُبَادَةَ بْنِ الْوَلِيدِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ عَنْ أَبِيهِ عَنْ جَدِّهِ، قَالَ: «بَايَعْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى السَّمْعِ وَالطَّاعَةِ فِي الْعُسْرِ وَالْيُسْرِ وَالْمَنْشَطِ وَالْمَكْرَهِ،

[36] **Hadith references (L39881):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[37] **Qur'an references (L39881):** Qur'an 65:1 (At-Talaq).

peace and blessings of Allah be upon him and his family, to hear and obey in hardship and ease, willingness and compulsion, to accept preference being given over us, to not contend with the people in command, and to uphold the truth wherever we may be, fearing no blame in Allah from any blamer."

وَعَلَى أَثَرَةٍ عَلَيْنَا، وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ، وَعَلَى أَنْ نَقُولَ بِالْحَقِّ أَيْنَمَا كُنَّا، لَا نَخَافُ فِي اللَّهِ لَوْمَةَ لَائِمٍ» .

L39886 Through Muslim's transmission: Abū Bakr ibn Nāfiʿ narrated to us, Gundar narrated to us, Shuʿbah narrated to us from Ziyād ibn ʿIlāqah, who said: I heard ʿArfajah say: I heard the Messenger of Allah—may Allah bless him and his family and grant him peace—say: "There will indeed be calamities upon calamities, so whoever seeks to divide the affair of this community, while it is whole, strike him with the sword, whoever he may be."[38]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ نَافِعٍ ثنا غُنْدَرٌ ثنا شُعْبَةُ عَنْ زِيَادِ بْنِ عِلَاقَةَ قَالَ: سَمِعْتُ عَرْفَجَةَ، قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «إِنَّهُ سَيَكُونُ هَنَاتٌ وَهَنَاتٌ فَمَنْ أَرَادَ أَنْ يُفَرِّقَ أَمْرَ هَذِهِ الْأُمَّةِ - وَهِيَ جَمِيعٌ - فَاضْرِبُوهُ بِالسَّيْفِ، كَائِنًا مَنْ كَانَ» .

L39887 Abu Muhammad—may Allah have mercy on him—said: It has been established that this matter belongs to its qualified people, and it is impermissible for anyone to contest them over it; likewise, splitting this Ummah after its unity is impermissible.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ لِهَذَا الْأَمْرِ أَهْلًا لَا يَحِلُّ لِأَحَدٍ أَنْ يُنَازِعَهُمْ إيَّاهُ، وَأَنَّ تَفْرِيقَ هَذِهِ الْأُمَّةِ بَعْدَ اجْتِمَاعِهَا لَا يَحِلُّ.

L39888 It has thus become clear that those who dispute sovereignty and leadership intend to split the unity of this nation's community, that they challenge those in authority regarding their command, and that they are disobedient in all these matters.

فَصَحَّ أَنَّ الْمُنَازِعِينَ فِي الْمُلْكِ وَالرِّيَاسَةِ مُرِيدُونَ تَفْرِيقَ جَمَاعَةِ هَذِهِ الْأُمَّةِ، وَأَنَّهُمْ مُنَازِعُونَ أَهْلَ الْأَمْرِ أَمْرَهُمْ، فَهُمْ عُصَاةٌ بِكُلِّ ذَلِكَ.

L39889 Thus, it is confirmed that the people of rebellion are defiant in their contestation of the imam whose obedience is obligatory. Given that they are defiant in this, every judgment they pass from what is due to the imam, every zakāh they collect whose collection is incumbent upon the imam, and every ḥadd punishment they enforce whose enforcement is reserved for the imam—all these actions of theirs are oppression and encroachment.

فَصَحَّ أَنَّ أَهْلَ الْبَغْيِ عُصَاةٌ فِي مُنَازَعَتِهِمْ الْإِمَامَ الْوَاجِبَ الطَّاعَةَ، وَإِذْ هُمْ فِيهِ عُصَاةٌ، فَكُلُّ حُكْمٍ حَكَمُوهُ مِمَّا هُوَ إلَى إمَامٍ، وَكُلُّ زَكَاةٍ قَبَضُوهَا مِمَّا قَبْضُهَا إلَى الْإِمَامِ، وَكُلُّ حَدٍّ أَقَامُوهُ مِمَّا إقَامَتُهُ إلَى الْإِمَامِ - فَكُلُّ ذَلِكَ مِنْهُمْ ظُلْمٌ وَعُدْوَانٌ.

L39890 Among the false notions is that disobedience to Allah the Exalted should stand in the place of obedience to Him, that injustice should compensate for justice, that falsehood should occupy the position of truth, and that aggression should supplant fairness.

وَمِنْ الْبَاطِلِ أَنْ تَنُوبَ مَعْصِيَةُ اللَّهِ تَعَالَى عَنْ طَاعَتِهِ، وَأَنْ يُجْزِيَ الظُّلْمُ عَنْ الْعَدْلِ، وَأَنْ يَقُومَ الْبَاطِلُ مَقَامَ الْحَقِّ، وَأَنْ يُغْنِيَ الْعُدْوَانُ عَنْ الْإِنْصَافِ.

L39891 Thus, what we have stated is textually sound, and it is obligatory to reject all they have enacted in that regard, based on the Prophet's declaration—

[38] **Hadith references (L39886):** Mishkat al-Masabih 3677.

peace be upon him—"Whoever performs an act not in accordance with our command, it is rejected." If there is no established Imam for the people, we have stated: Verily, whoever upholds the truth at that time, their rulings are effective. As for the rebels—if they are Muslims—all they enact in that context remains effective. But if they are disbelievers, nothing from a disbeliever's judgment holds effect in the religion of Allah, the Exalted, whatsoever. And with Allah, the Exalted, is all success.[39]

فَصَحَّ مَا قُلْنَا نَصًّا وَوَجَبَ رَدُّ كُلِّ مَا عَمِلُوا مِنْ ذَلِكَ لِقَوْلِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَإِنْ لَمْ يَكُنْ لِلنَّاسِ إمَامٌ مُمَكَّنٌ فَقَدْ قُلْنَا: إنَّ كُلَّ مَنْ قَامَ بِالْحَقِّ حِينَئِذٍ فَهُوَ نَافِذٌ، فَالْبُغَاةُ - إنْ كَانُوا مُسْلِمِينَ - فَكُلُّ مَا فَعَلُوهُ فِي ذَلِكَ فَهُوَ نَافِذٌ - وَأَمَّا إنْ كَانُوا كُفَّارًا فَلَا يَنْفُذُ مِنْ حُكْمِ الْكَافِرِ فِي دِينِ اللَّهِ تَعَالَى شَيْءٌ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39892 **Issue: Is it permissible to seek assistance against the rebellious faction by means of ahl al-ḥarb (those at war) or others besides them?**

[مَسْأَلَةٌ هَلْ يُسْتَعَانُ عَلَى أَهْلِ الْبَغْيِ بِأَهْلِ الْحَرْبِ أَوْ غَيْرِهِمْ]

L39893 2162 - Issue: Is it permissible to seek assistance against rebels from the people of war, Dhimmis (non-Muslim subjects), or other rebel factions?

٢١٦٢ - مَسْأَلَةٌ: هَلْ يُسْتَعَانُ عَلَى أَهْلِ الْبَغْيِ بِأَهْلِ الْحَرْبِ؟ أَوْ بِأَهْلِ الذِّمَّةِ؟ أَوْ بِأَهْلِ بَغْيٍ آخَرِينَ؟ .

L39894–39895 Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding this matter. A group held that it is impermissible to seek assistance against them through those in a state of war, dhimmīs, or those who consider fighting them lawful as deserters—this being the opinion of al-Shāfiʿī, may Allāh be pleased with him. The adherents of Abū Ḥanīfah maintained: There is no objection to seeking aid against them from people of war, people under covenant, or their equivalents among rebels. We have previously mentioned this in the "Book of Jihād" regarding the statement of the Messenger of Allāh—peace and blessings be upon him and his family—"We do not seek assistance from polytheists." This constitutes a general prohibition against seeking their help in governance, warfare, or any affair—except where valid consensus has been established permitting their assistance in matters such as tending to animals, hiring, attending to necessities, or similar tasks wherein they remain confined to a state of humiliation.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ أَنْ يُسْتَعَانَ عَلَيْهِمْ بِحَرْبِيٍّ، وَلَا بِذِمِّيٍّ، وَلَا بِمَنْ يَسْتَحِلُّ قِتَالَهُمْ، مُدْبِرِينَ - وَهَذَا قَوْلُ الشَّافِعِيِّ - رَضِيَ اللَّهُ عَنْهُ - وَقَالَ أَصْحَابُ أَبِي حَنِيفَةَ: لَا بَأْسَ بِأَنْ يُسْتَعَانَ عَلَيْهِمْ بِأَهْلِ الْحَرْبِ، وَبِأَهْلِ الذِّمَّةِ، وَبِأَمْثَالِهِمْ مِنْ أَهْلِ الْبَغْيِ، وَقَدْ ذَكَرْنَا هَذَا فِي " كِتَابِ الْجِهَادِ " مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّا لَا نَسْتَعِينُ بِمُشْرِكٍ» وَهَذَا عُمُومٌ مَانِعٌ مِنْ أَنْ يُسْتَعَانَ بِهِ فِي وِلَايَةٍ، أَوْ قِتَالٍ، أَوْ شَيْءٍ مِنْ الْأَشْيَاءِ، إلَّا مَا صَحَّ الْإِجْمَاعُ عَلَى جَوَازِ الِاسْتِعَانَةِ بِهِ فِيهِ: كَخِدْمَةِ الدَّابَّةِ، أَوْ الِاسْتِئْجَارِ، أَوْ قَضَاءِ الْحَاجَةِ، وَنَحْوِ ذَلِكَ مِمَّا لَا يَخْرُجُونَ فِيهِ عَنْ الصَّغَارِ.

وَالْمُشْرِكُ: اسْمٌ يَقَعُ عَلَى الذِّمِّيِّ وَالْحَرْبِيِّ.

[39] **Hadith references (L39891):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

L39896 The term *mushrik* (disbeliever/non-Muslim) applies to both the *dhimmi* (protected non-Muslim) and the *harbi* (belligerent non-Muslim).

L39897 Abū Muḥammad—may Allah have mercy on him—said: In our view, as long as the people of justice possess the means of defense, [it remains impermissible]. But if they are on the brink of destruction, compelled by necessity, and have no recourse, there is no harm in them seeking refuge with the people of war or seeking protection with the dhimmis—provided they are certain that in seeking support from them, [the allies] will not harm a Muslim or a dhimmi in life, wealth, or honor through any means that is inherently unlawful.

L39898 The proof of this is the statement of Allah, the Most High: "And He has explicitly detailed what He has forbidden to you, except that to which you are compelled." [Al-An'ām 6:119] This constitutes a generality applicable to everyone compelled to it, unless excluded by a scriptural text or scholarly consensus.[40]

L39899 If a Muslim—whether an individual or a group—knows that those among the people of war or protected non-Muslims (dhimmis) **who seek his help** are wrongfully harming a Muslim or a dhimmi, it is forbidden for him to assist **either of them**, even if he perishes. He must instead patiently endure in compliance with Allah's decree—even if his life, family, or wealth are destroyed—or fight until he dies as a noble martyr. Death is inevitable, and no one's appointed term can be exceeded.

L39900 The evidence for this is that it is impermissible for anyone to repel injustice from oneself by means of an injustice that transfers it to others. This is a matter of unanimous agreement.

L39901 As for seeking help against them through transgressors akin to them—some have forbidden this, citing as evidence the words of Allah, the Most High: "And I would not take those who lead astray as assistants" [Al-Kahf: 51].[41]

L39902–39904 Others deemed it permissible—and this is the position we adopt—because

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا عِنْدَنَا - مَا دَامَ فِي أَهْلِ الْعَدْلِ مَنَعَةٌ - فَإِنْ أَشْرَفُوا عَلَى الْهَلَكَةِ وَاضْطُرُّوا وَلَمْ تَكُنْ لَهُمْ حِيلَةٌ، فَلَا بَأْسَ بِأَنْ يَلْجَئُوا إلَى أَهْلِ الْحَرْبِ، وَأَنْ يَمْتَنِعُوا بِأَهْلِ الذِّمَّةِ، مَا أَيْقَنُوا أَنَّهُمْ فِي اسْتِنْصَارِهِمْ: لَا يُؤْذُونَ مُسْلِمًا وَلَا ذِمِّيًّا - فِي دَمٍ أَوْ مَالٍ أَوْ حُرْمَةٍ مِمَّا لَا يَحِلُّ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] وَهَذَا عُمُومٌ لِكُلِّ مَنْ اُضْطُرَّ إلَيْهِ، إلَّا مَا مَنَعَ مِنْهُ نَصٌّ، أَوْ إجْمَاعٌ.

فَإِنْ عَلِمَ الْمُسْلِمُ - وَاحِدًا كَانَ أَوْ جَمَاعَةً - أَنَّ مَنْ اسْتَنْصَرَ بِهِ مِنْ أَهْلِ الْحَرْبِ، أَوْ الذِّمَّةِ يُؤْذُونَ مُسْلِمًا، أَوْ ذِمِّيًّا فِيمَا لَا يَحِلُّ، فَحَرَامٌ عَلَيْهِ أَنْ يَسْتَعِينَ بِهِمَا، وَإِنْ هَلَكَ، لَكِنْ يَصْبِرُ لِأَمْرِ اللَّهِ تَعَالَى - وَإِنْ تَلِفَتْ نَفْسُهُ وَأَهْلُهُ وَمَالُهُ - أَوْ يُقَاتِلُ حَتَّى يَمُوتَ شَهِيدًا كَرِيمًا، فَالْمَوْتُ لَا بُدَّ مِنْهُ، وَلَا يَتَعَدَّى أَحَدًا أَجَلُهُ.

بُرْهَانُ هَذَا: أَنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يَدْفَعَ ظُلْمًا عَنْ نَفْسِهِ بِظُلْمٍ يُوصِلُهُ إلَى غَيْرِهِ - هَذَا مَا لَا خِلَافَ فِيهِ.

وَأَمَّا الِاسْتِعَانَةُ عَلَيْهِمْ بِبُغَاةٍ أَمْثَالِهِمْ - فَقَدْ مَنَعَ مِنْ ذَلِكَ قَوْمٌ - وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى {وَمَا كُنْتُ مُتَّخِذَ الْمُضِلِّينَ عَضُدًا} [الكهف: ٥١] .

[40] **Qur'an references (L39898):** Qur'an 6:119 (Al-An'am).
[41] **Qur'an references (L39901):** Qur'an 18:51 (Al-Kahf).

we do not take them as allies (Allah forbid!), but rather set them against their own kind to protect the people of justice, as Allah, the Exalted, said: "And thus We make some wrongdoers dominate others" (Quran 6:129). If it is possible for us to instigate discord among the combatant disbelievers so that they fight one another, and there enters among them someone from the Muslims who uses them as a means to harm others of their group, this is good.[42]

وَأَجَازَهُ آخَرُونَ - وَبِهِ نَأْخُذُ، لِأَنَّنَا لَا نَتَّخِذُهُمْ عَضُدًا، وَمَعَاذَ اللَّهِ، وَلَكِنْ نَضْرِبُهُمْ بِأَمْثَالِهِمْ صِيَانَةً لِأَهْلِ الْعَدْلِ كَمَا قَالَ اللَّهُ تَعَالَى {وَكَذَلِكَ نُوَلِّي بَعْضَ الظَّالِمِينَ بَعْضًا} [الأنعام: ١٢٩] وَإِنْ أَمْكَنَنَا أَنْ نَضْرِبَ بَيْنَ أَهْلِ الْحَرْبِ مِنَ الْكُفَّارِ، حَتَّى يُقَاتِلَ بَعْضُهُمْ بَعْضًا، وَيَدْخُلَ إِلَيْهِمْ مِنَ الْمُسْلِمِينَ مَنْ يَتَوَصَّلُ بِهِمْ إِلَى أَذَى غَيْرِهِمْ، بِذَلِكَ حَسَنٌ.

L39905 The Messenger of Allah—peace be upon him and his family—said: "Indeed Allah aids this religion through people without merit." As narrated to us by Abdullah ibn Rabi'; Muhammad ibn Mu'awiyah; Ahmad ibn Shu'ayb; Imran ibn Bakkar ibn Rashid informed me; Abu al-Yaman narrated to us; Shu'ayb—who is the son of Abi Hamzah—narrated to us from al-Zuhri; Sa'id ibn al-Musayyab informed me; Abu Hurayrah narrated to us, saying: The Messenger of Allah—peace be upon him and his family—said: "Indeed Allah strengthens this religion through a wicked man."

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِنَّ اللَّهَ يَنْصُرُ هَذَا الدِّينَ بِقَوْمٍ لَا خَلَاقَ لَهُمْ» كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي عِمْرَانُ بْنُ بَكَّارِ بْنِ رَاشِدٍ ثنا أَبُو الْيَمَانِ نا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - عَنِ الزُّهْرِيِّ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيَّبِ نا أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِنَّ اللَّهَ لَيُؤَيِّدُ هَذَا الدِّينَ بِالرَّجُلِ الْفَاجِرِ» .

L39906 Abdullah ibn Rabeeʿ narrated to us, Muhammad ibn Muʿawiyah narrated to us, Ahmad ibn Shuʿayb narrated to us, Muhammad ibn Sahl ibn ʿAskar narrated to us, Abd al-Razzaq narrated to us, from Riyāḥ ibn Zayd, from Maʿmar ibn Rashid, from Ayyub al-Sikhtiyānī, from Abu Qilabah, from Anas ibn Malik, who said: The Messenger of Allah (peace and blessings be upon him and his family) said, "Verily, Allah indeed supports this religion through people who have no share in the Hereafter."

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ سَهْلِ بْنِ عَسْكَرٍ ثنا عَبْدُ الرَّزَّاقِ أَنَا رِيَاحُ بْنُ زَيْدٍ عَنْ مَعْمَرِ بْنِ رَاشِدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِنَّ اللَّهَ لَيُؤَيِّدُ هَذَا الدِّينَ بِأَقْوَامٍ لَا خَلَاقَ لَهُمْ» .

L39907 Abu Muhammad (may Allah have mercy on him) said: This permits seeking assistance against the people of war by means of those similar to them, and against the rebels by means of their likes from among the Muslims—specifically the transgressors who have no share of reward.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا يُبِيحُ الِاسْتِعَانَةَ عَلَى أَهْلِ الْحَرْبِ بِأَمْثَالِهِمْ، وَعَلَى أَهْلِ الْبَغْيِ بِأَمْثَالِهِمْ مِنَ الْمُسْلِمِينَ الْفُجَّارِ الَّذِينَ لَا خَلَاقَ لَهُمْ.

L39908 Moreover, the transgressor has an obligation imposed upon him to engage in jihad and to repel the aggressors, just as the obligation imposed upon the virtuous believer. Therefore, it is not permissible to prevent them from that;

[42] **Qur'an references (L39902):** Qur'an 6:129 (Al-An'am).

rather, the obligation is to urge them to it—and success is from Allah, the Exalted.

وَأَيْضًا - فَإِنَّ الْفَاسِقَ مُفْتَرَضٌ عَلَيْهِ مِنْ الْجِهَادِ، وَمِنْ دَفْعِ أَهْلِ الْبَغْيِ، كَالَّذِي افْتُرِضَ عَلَى الْمُؤْمِنِ الْفَاضِلِ، فَلَا يَحِلُّ مَنْعُهُمْ مِنْ ذَلِكَ، بَلْ الْفَرْضُ أَنْ يَدْعُوَ إلَى ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَتْلَ رَجُل رَجُلًا فِي الْحَرْب ثُمَّ قَالَ حسبته مِنْ أَهْل الْبَغْي]

L39909 **The jurisprudential issue of a man killing another during war, after which the killer said, "I thought he was from the rebellious faction (*baghy*)."**

٢١٦٣ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَوْ أَنَّ رَجُلًا مِنْ أَهْلِ الْعَدْلِ قَتَلَ فِي الْحَرْبِ رَجُلًا مِنْ أَهْلِ الْعَدْلِ، ثُمَّ قَالَ: حَسِبْتُهُ مِنْ أَهْلِ الْبَغْيِ، فَإِنْ كَانَ مَا يَقُولُ مُمْكِنًا، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ، ثُمَّ يَضْمَنُ دِيَتَهُ فِي مَالِهِ؛ لِأَنَّهُ لَمْ يَقْتُلْهُ خَطَأً بَلْ قَتَلَهُ عَمْدًا قَصْدًا إلَى قَتْلِهِ إلَّا أَنَّهُ لَمْ يَعْلَمْ أَنَّهُ حَرَامُ الدَّمِ، فَلِذَلِكَ لَمْ يُقَدْ مِنْهُ - وَإِنْ لَمْ يُمْكِنْ مَا قَالَ فَعَلَيْهِ الْقَوَدُ، أَوْ الدِّيَةُ بِاخْتِيَارِ أَوْلِيَاءِ الْمَقْتُولِ وَهَكَذَا الْقَوْلُ - سَوَاءٌ سَوَاءٌ، إذَا قَتَلَهُ فِي أَرْضِ الْحَرْبِ، وَلَا فَرْقَ.

L39910 Issue 2163: Abū Muḥammad—may Allah have mercy on him—said: If a man from the just party kills another man from the just party during war, then says, "I presumed him to be from the faction of rebellion," if his claim is possible, his statement is accepted upon his oath. He must then pay the *diyah* from his wealth, for he killed him not unintentionally but intentionally and deliberately, except that he did not know the victim's blood was legally protected. For this reason, retaliatory punishment (*qisas*) is not exacted from him. If his claim is impossible, then *qisas* or *diyah* becomes obligatory, based on the choice of the legal guardians of the slain. This ruling applies uniformly and without exception whether the killing occurred in the land of war—there is absolutely no distinction.

وَكَذَلِكَ لَوْ رَجَعَ إلَيْنَا بَعْضُ أَهْلِ الْبَغْيِ تَائِبًا فَقَتَلَهُ رَجُلٌ مِنْ أَهْلِ الْعَدْلِ وَقَالَ: إنِّي ظَنَنْتُهُ دَخَلَ لِيَطْلُبَ غِرَّةً، فَإِنْ نَكَلَ هَؤُلَاءِ عَنْ الْيَمِينِ حُبِسُوا حَتَّى يَحْلِفُوا وَلَا بُدَّ؛ لِأَنَّ الْيَمِينَ قَدْ وَجَبَتْ عَلَيْهِمْ، وَلَا قَوَدَ أَصْلًا؛ لِأَنَّهُ لَمْ يَثْبُتْ عَلَيْهِمْ مَا يُوجِبُ الْقَوَدَ مِنْ التَّعَمُّدِ وَهُمْ عَالِمُونَ.

L39911–39912 Similarly, if some of the rebels were to return to us repentant, and a man from the upholders of justice killed him, saying, "I suspected he entered to exploit a lapse in vigilance," then if these individuals refuse to take the oath, they must be detained until they swear it without fail, for the oath is obligatory upon them. There is absolutely no retaliation, because what necessitates retaliation - intentional action and their conscious intent - has not been proven against them.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إذَا كَانَتْ جَمَاعَةٌ مِنْ أَهْلِ الْعَدْلِ وَالسُّنَّةِ فِي عَسْكَرِ الْخَوَارِجِ وَأَهْلِ الْبَغْيِ، فَقَتَلَ بَعْضُهُمْ بَعْضًا عَمْدًا، وَجَرَحَ بَعْضُهُمْ بَعْضًا عَمْدًا، وَأَخَذَ بَعْضُهُمْ مَالَ بَعْضٍ عَمْدًا، فَلَا شَيْءَ فِي ذَلِكَ: لَا قَوَدَ، وَلَا دِيَةَ - غَلَبَ أَهْلُ الْجَمَاعَةِ وَالْإِمَامُ الْعَدْلُ

L39913 Abu Hanifa and his disciples said: If there exists a group of just people adhering to the Sunnah within the army of the Kharijites or rebels, and they intentionally kill one another, intentionally wound one another, or intentionally seize one another's wealth, there is no legal consequence for this—no retaliation, no blood money—whether the united community and the just Imam ultimately prevail over them or not. Abu Muhammad—may Allah have

mercy on him—said: The only response to this statement is that it constitutes the ruling of Satan. By Allah, we cannot comprehend how any Muslim's conscience could accept this claim that opposes Allah the Exalted and His Messenger—peace be upon him—nor how any believer's tongue could utter this absurd pronouncement while knowing that Allah has already commanded and prohibited him, yet he employs this frivolous statement to justify commandments. We beseech Allah the Exalted for complete protection. It is as though the proponents of this view have never heard Allah's revelations in the Quran—nor the teachings conveyed through His Messenger, may Allah bless him and his family and grant him peace—regarding the obligation of retribution for lives and injuries, and the prohibition against seizing wealth.

L39914 This is a statement for which we know no precedent from Abu Hanifah—neither from a companion nor a successor—and we absolve ourselves before Allah the Exalted from this claim. They obscured the truth using what was narrated in the report of Ubayd Allah ibn Umar: As narrated from Hammam, who narrated from Ibn Mufarrij, who narrated from Ibn al-A'rabi, who narrated from al-Dabari, who narrated from Abd al-Razzaq, from Ma'mar, from al-Zuhri—who mentioned the killing of Umar. He said: Sa'id ibn al-Musayyib informed me that Abd al-Rahman ibn Abi Bakr al-Siddiq (and we never knew him to tell a lie) said: "When Umar ibn al-Khattab was killed, I came upon Hurmuzan, Jufaynah, and Abu Lu'lu'ah while they were still alive. I pursued them, and they fled, dropping a dagger with two edges, its hilt in the middle." Abd al-Rahman added: "Examine what Umar was killed with," and they found it to be a dagger matching the description he had given. Ubayd Allah ibn Umar then emerged, concealing his sword beneath his garment, until he approached Hurmuzan and said: "Accompany me to inspect a horse of mine" (Hurmuzan was an expert on horses). As Hurmuzan walked ahead, Ubayd Allah struck him with the sword. When he felt the sword's bite, he cried: "There is no god but Allah," and Ubayd Allah killed him.

L39915–39916 Then he went to Jufaynah—who was a Christian—and when he confronted him, he struck him with the sword, cleaving the space between his eyes.

عَلَيْهِمْ بَعْدَ ذَلِكَ: أَوْ لَمْ يَغْلِبُوا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا لِهَذَا الْقَوْلِ جَوَابٌ إِلَّا أَنَّهُ حُكْمُ إِبْلِيسَ، وَاَللَّهِ مَا نَدْرِي كَيْفَ انْشَرَحَتْ نَفْسُ مُسْلِمٍ لِاعْتِقَادِ هَذَا الْقَوْلِ الْمُعَانِدِ لِلَّهِ تَعَالَى، وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ -، أَوْ كَيْفَ انْطَلَقَ لِسَانُ مُؤْمِنٍ يَدْرِي أَنَّ اللَّهَ تَعَالَى أَمَرَهُ وَنَهَاهُ بِهَذَا الْقَوْلِ السَّخِيفِ - وَنَسْأَلُ اللَّهَ تَعَالَى عَافِيَةً شَامِلَةً - كَأَنَّ أَصْحَابَ هَذَا الْقَوْلِ لَمْ يَسْمَعُوا مَا أَنْزَلَ اللَّهُ تَعَالَى مِنْ وُجُوبِ الْقِصَاصِ فِي النُّفُوسِ، وَالْجِرَاحِ، وَمِنْ تَحْرِيمِ الْأَمْوَالِ، فِي الْقُرْآنِ، وَعَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَهَذَا قَوْلٌ مَا نَعْلَمُ فِيهِ لِأَبِي حَنِيفَةَ سَلَفًا: لَا مِنْ صَاحِبٍ وَلَا مِنْ تَابِعٍ، وَنَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ هَذَا الْقَوْلِ، فَإِنَّمَا مَوَّهُوا بِمَا رُوِيَ مِنْ حَدِيثِ عُبَيْدِ اللَّهِ بْنِ عُمَرَ: كَمَا ثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، وَذَكَرَ قَتْلَ عُمَرَ، قَالَ: فَأَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ أَنْ عَبْدَ الرَّحْمَنِ بْنَ أَبِي بَكْرٍ الصِّدِّيقَ وَلَمْ نُجَرِّبْ عَلَيْهِ كَذِبَةً قَطُّ، قَالَ: حِينَ قُتِلَ عُمَرُ بْنُ الْخَطَّابِ انْتَهَيْتُ إِلَى الْهُرْمُزَانِ، وَجُفَيْنَةَ، وَأَبِي لُؤْلُؤَةَ - وَهُمْ بِحَيٍّ - فَتَبِعْتُهُمْ فَثَارُوا وَسَقَطَ مِنْ بَيْنِهِمْ خَنْجَرٌ لَهُ رَأْسَانِ نِصَابُهُ فِي وَسَطِهِ. وَقَالَ عَبْدُ الرَّحْمَنِ فَانْظُرُوا بِمَا قُتِلَ بِهِ عُمَرُ فَوَجَدُوهُ خِنْجَرًا عَلَى النَّعْتِ الَّذِي نَعَتَ عَبْدُ الرَّحْمَنِ، فَخَرَجَ عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ الْخَطَّابِ مُشْتَمِلًا عَلَى السَّيْفِ حَتَّى أَتَى الْهُرْمُزَانَ فَقَالَ: اصْحَبْنِي نَنْظُرُ إِلَى فَرَسٍ لِي - وَكَانَ الْهُرْمُزَانُ بَصِيرًا بِالْخَيْلِ - فَخَرَجَ بَيْنَ يَدَيْهِ، فَعَلَاهُ عُبَيْدُ اللَّهِ بِالسَّيْفِ، فَلَمَّا وَجَدَ حَدَّ السَّيْفِ قَالَ: لَا إِلَهَ إِلَّا اللَّهُ، فَقَتَلَهُ.

ثُمَّ أَتَى جُفَيْنَةَ - وَكَانَ نَصْرَانِيًّا - فَلَمَّا أَشْرَفَ لَهُ عَلَاهُ بِالسَّيْفِ فَضَرَبَهُ فَصَلَبَ مَا بَيْنَ عَيْنَيْهِ - ثُمَّ أَتَى ابْنَةَ أَبِي لُؤْلُؤَةَ - جَارِيَةً صَغِيرَةً تَدَّعِي الْإِسْلَامَ - فَقَتَلَهَا، فَأَظْلَمَتْ الْأَرْضُ يَوْمَئِذٍ عَلَى أَهْلِهَا. - ثُمَّ أَقْبَلَ بِالسَّيْفِ صَلْتًا فِي يَدِهِ وَهُوَ يَقُولُ: وَاَللَّهِ لَا أَتْرُكُ فِي الْمَدِينَةِ سَبْيًا إلَّا قَتَلْته وَغَيْرَهُمْ؟ كَأَنَّهُ يُعَرِّضُ بِنَاسٍ مِنْ الْمُهَاجِرِينَ، فَجَعَلُوا يَقُولُونَ لَهُ: أَلْقِ السَّيْفَ، فَأَبَى - وَيَهَابُونَهُ أَنْ يَقْرَبُوا مِنْهُ - حَتَّى أَتَاهُ عَمْرُو بْنُ الْعَاصِ فَقَالَ: أَعْطِنِي السَّيْفَ يَا ابْنَ أَخِي؟ فَأَعْطَاهُ إيَّاهُ، ثُمَّ ثَارَ إلَيْهِ عُثْمَانُ فَأَخَذَ بِرَأْسِهِ، فَتَنَاصَبَا حَتَّى حَجَزَ النَّاسُ بَيْنَهُمَا. - فَلَمَّا وَلِيَ عُثْمَانُ قَالَ: أَشِيرُوا عَلَيَّ فِي هَذَا الرَّجُلِ الَّذِي فَتَقَ فِي الْإِسْلَامِ مَا فَتَقَ - يَعْنِي عُبَيْدَ اللَّهِ بْنَ عُمَرَ - فَأَشَارَ عَلَيْهِ الْمُهَاجِرُونَ أَنْ يَقْتُلَهُ، وَقَالَ جَمَاعَةٌ مِنْ النَّاسِ: قُتِلَ عُمَرُ بِالْأَمْسِ وَتُرِيدُونَ أَنْ تُتْبِعُوهُ ابْنَهُ الْيَوْمَ، أَبْعَدَ اللَّهُ الْهُرْمُزَانَ، وَجُفَيْنَةَ؟ فَقَامَ عَمْرُو بْنُ الْعَاصِ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ، إنَّ اللَّهَ قَدْ أَعْفَاك أَنْ يَكُونَ هَذَا الْأَمْرُ وَلَك عَلَى النَّاسِ مِنْ سُلْطَانٍ، إنَّمَا كَانَ هَذَا الْأَمْرُ وَلَا سُلْطَانَ لَك، فَاصْفَحْ عَنْهُ يَا أَمِيرَ الْمُؤْمِنِينَ قَالَ: فَتَفَرَّقَ النَّاسُ عَلَى خُطْبَةِ عَمْرٍو، وَوَدَى عُثْمَانُ الرَّجُلَيْنِ وَالْجَارِيَةَ.

Next, he approached the daughter of Abī Lu'lu'ah—a young girl who claimed to profess Islam—and killed her. The earth darkened upon its inhabitants that day. He then advanced with the bare sword in his hand, declaring: "By Allah, I will not leave any captive in the city without killing them and others!"—as though alluding to some of the Emigrants. They kept urging him: "Drop the sword!" but he refused, and they feared approaching him until 'Amr ibn al-'Āṣ came and said: "Hand me the sword, O nephew!" He complied. 'Uthmān then rushed at him, seizing his head, and they grappled until the people separated them. When 'Uthmān assumed leadership, he said: "Advise me regarding this man who caused such division in Islam"—referring to 'Ubayd Allāh ibn 'Umar. The Emigrants advised execution, but a group protested: "'Umar was slain yesterday, and you would kill his son today? May Allah banish Hurmuzān and Jufaynah!" 'Amr ibn al-'Āṣ stood and said: "O Commander of the Faithful, Allah has absolved you of responsibility, for this occurred when you held no authority over the people. Pardon him, O Commander of the Faithful." The people dispersed following 'Amr's counsel, and 'Uthmān paid blood money for the two men and the girl.

L39917 قَالَ الزُّهْرِيُّ: وَأَخْبَرَنِي حَمْزَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ أَنَّ أَبَاهُ قَالَ: فَيَرْحَمُ اللَّهُ حَفْصَةَ أَنْ كَانَتْ لَمِنْ شَيَّعَ عُبَيْدَ اللَّهِ عَلَى قَتْلِ الْهُرْمُزَانِ، وَجُفَيْنَةَ - قَالَ مَعْمَرٌ: قَالَ غَيْرُ الزُّهْرِيِّ: قَالَ عُثْمَانُ: أَنَا وَلِيُّ الْهُرْمُزَانِ، وَجُفَيْنَةَ، وَالْجَارِيَةِ، وَإِنِّي قَدْ جَعَلْتُهَا دِيَةً.

Al-Zuhri said: Hamzah ibn Abdullah ibn Umar ibn al-Khattab informed me that his father said: May Allah have mercy on Hafsah, for she was among those who supported Ubaydullah regarding the killing of Hurmuzan and Jufaynah. Ma'mar reported that a narrator other than al-Zuhri stated: Uthman said, "I am the legal guardian of Hurmuzan, Jufaynah, and the maidservant, and I have designated the blood money for her [death]."

L39918 قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَقَدْ رُوِّينَا عَنْ أَحْمَدَ بْنِ مُحَمَّدٍ عَنْ أَحْمَدَ بْنِ الْفَضْلِ عَنْ مُحَمَّدِ بْنِ جَرِيرٍ بِإِسْنَادٍ لَا يَحْضُرُنِي الْآنَ ذِكْرُهُ: أَنَّ عُثْمَانَ أَقَادَ وَلَدَ الْهُرْمُزَانِ مِنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ، وَأَنَّ وَلَدَ الْهُرْمُزَانِ عَفَا عَنْهُ.

Abu Muhammad—may Allah have mercy on him—said: It has been narrated to us from Ahmad ibn Muhammad from Ahmad ibn al-Fadl from Muhammad ibn Jarir through a chain of transmission whose specifics I cannot recall at the moment: that Uthman carried out qisas against Ubayd Allah ibn Umar ibn al-Khattab on behalf of the son of al-Hurmuzan, and that the son of al-Hurmuzan pardoned him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَيُّ ذَلِكَ كَانَ فَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ؛ لِأَنَّ عُبَيْدَ اللَّهِ بْنَ عُمَرَ لَمْ يَقْتُلْ مَنْ قَتَلَ فِي عَسْكَرِ أَهْلِ الْبَغْيِ، وَلَا فِي وَقْتٍ كَانَ فِيهِ بَاغٍ مِنْ الْمُسْلِمِينَ عَلَى وَجْهِ الْأَرْضِ يُعْرَفُ فِي دَارِ الْهِجْرَةِ، وَمَحَلَّةِ الْجَمَاعَةِ وَصِحَّةِ الْأُلْفَةِ، وَفِي أَفْضَلِ عِصَابَةٍ وَأَعْدَلِهَا.

L39919 Abū Muḥammad—may Allah have mercy on him—said: "Whichever of those scenarios it may be, they have no valid argument in any of it. This is because Ubayd Allāh ibn ʿUmar did not kill anyone from the camp of the rebellious faction, nor during a time when a known rebel from among the Muslims existed on the face of the earth—one recognized in the Abode of Migration, the center of the united community and the bastion of harmony—and not among the best group of people or the most just of them."

وَهَذَا خِلَافُ قَوْلِهِمْ فِي الْمَسْأَلَةِ الَّتِي نَحْنُ فِيهَا مَنْ قَتَلَ فِي عَسْكَرِ أَهْلِ الْبَغْيِ وَهُمْ لَا يَقُولُونَ بِإِهْدَارِ الْقَوَدِ عَمَّنْ قَتَلَ فِي الْجَمَاعَةِ بَيْنَ مَوْتِ إمَامٍ وَوِلَايَةِ آخَرَ، فَقَدْ خَالَفُوا عُثْمَانَ وَمَنْ مَعَهُ فِي هَذِهِ الْقِصَّةِ.

L39920–39922 And this contradicts their position on the issue we are discussing regarding one who kills within the rebel army while they [text cut off]... They do not uphold invalidating retribution for one who kills within the community during the period between the death of an imam and the appointment of another, for they opposed ʿUthmān and his supporters on this matter.

وَأَيْضًا - فَإِنَّ فِي هَذَا الْخَبَرِ: أَنَّ عُثْمَانَ جَعَلَهَا دِيَةً - وَهَذَا خِلَافُ قَوْلِهِمْ؛ لِأَنَّهُمْ لَا يَرَوْنَ فِي ذَلِكَ دِيَةً، وَالْوَاجِبُ أَنْ نَحْكُمَ فِي كُلِّ ذَلِكَ كَمَا نَحْكُمُ فِي مَحَلَّةِ الْجَمَاعَةِ وَلَا فَرْقَ؛ لِأَنَّ دِينَ اللَّهِ تَعَالَى وَاحِدٌ فِي كُلِّ مَكَانٍ، وَكُلِّ زَمَانٍ، وَعَلَى كُلِّ لِسَانٍ، وَمَا خَصَّ اللَّهُ تَعَالَى بِإِيجَابِ الْقَوَدِ، وَأَخْذِ الْحُدُودِ، وَضَمَانِ الْأَمْوَالِ وَإِقَامِ الصَّلَاةِ، وَإِيتَاءِ الزَّكَاةِ وَصَوْمِ رَمَضَانَ، وَسَائِرِ شَرَائِعِ الْإِسْلَامِ مَكَانًا دُونَ مَكَانٍ، وَلَا زَمَانًا دُونَ زَمَانٍ، وَلَا حَالًا دُونَ حَالٍ، وَلَا أُمَّةً دُونَ أُمَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39923 Moreover, in this report, it is stated that Uthman deemed it blood money—contrary to their view, as they do not recognize blood money in that matter. We must rule in all such cases as we rule in the place of the community, without distinction, for the religion of Allah the Exalted is one in every place, every time, and upon every tongue. Allah the Exalted has not restricted the obligation of qisas, enforcement of prescribed penalties, safeguarding property, establishing prayer, paying zakat, fasting Ramadan, or any other ordinances of Islam to one place over another, one time over another, one condition over another, or one community over another. And success is from Allah alone.

[مَسْأَلَة إذَا كَانَ فِي الْبَاغِينَ غُلَامٌ لَمْ يَبْلُغْ أَوْ امْرَأَةٌ فَقَاتَلَا]

Issue: If among the rebels there is a boy who has not reached puberty or a woman, and they fought...

٢١٦٤ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَوْ كَانَ فِي الْبَاغِينَ غُلَامٌ لَمْ يَبْلُغْ أَوْ امْرَأَةٌ فَقَاتَلَا دُوفِعَا، فَإِنْ أَدَّى ذَلِكَ إلَى قَتْلِهِمَا فِي حَالِ الْمُقَاتَلَةِ فَهُمَا هَدَرٌ؛ لِأَنَّ فَرْضًا عَلَى كُلِّ مَنْ أَرَادَهُ مُرِيدٌ بِغَيْرِ حَقٍّ أَنْ يَدْفَعَ عَنْ نَفْسِهِ الضُّرَّ كَيْفَ أَمْكَنَهُ - وَلَا دِيَةَ فِي ذَلِكَ، وَلَا قَوَدَ.

L39924 L39925 Issue 2164: Abū Muḥammad—may God have mercy on him—said: If among the rebels is a minor boy or a woman, and they fight, they must be fought back. If this leads to their killing during combat, their lives are legally forfeit, because it is obligatory for anyone wrongfully targeted to repel harm from themselves by any means possible. There is no blood money nor retaliation in such a case.

L39926 Allah, the Most High, said, “And do not throw yourselves by your own hands into destruction” (Al-Baqarah 2:195).[43]

قَالَ اللَّهُ تَعَالَى {وَلا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ} [البقرة: ١٩٥] .

L39927 Abū Muḥammad—may Allāh have mercy on him—said: If the rebellious faction requests a delay to reconsider their stance, and this is not a deceptive ploy, it becomes incumbent upon the ruler to grant them a period adequate solely for deliberation. This duration corresponds strictly to the time required for earnest appeal and presentation of evidence. Any extension beyond this is impermissible, as Allāh the Exalted states: *“If two groups of believers clash, make peace between them. But if one faction persists in aggression against the other, fight the aggressors until they submit to Allāh’s decree”* (49:9). Allāh only permits suspending combat against them during reconciliation efforts. Whoever refuses [to cease aggression] is to be fought.[44]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَلَوْ أَنَّ أَهْلَ الْبَغْيِ سَأَلُوا النَّظْرَةَ حَتَّى يَنْظُرُوا فِي أُمُورِهِمْ؟ فَإِنْ لَمْ يَكُنْ ذَلِكَ مَكِيدَةً، فَعَلَيْهِ أَنْ يُنْظِرَهُمْ مُدَّةً يُمْكِنُ فِي مِثْلِهَا النَّظَرُ فَقَطْ - وَهَذَا مِقْدَارُ الدُّعَاءِ، وَبَيَانُ الْحُجَّةِ فَقَطْ، وَأَمَّا مَا زَادَ عَلَى ذَلِكَ فَلَا يَجُوزُ، لِقَوْلِ اللَّهِ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ} [الحجرات: ٩] فَلَمْ يُفْسِحْ اللَّهُ تَعَالَى فِي تَرْكِ قِتَالِهِمْ إلَّا مُدَّةَ الْإِصْلَاحِ، فَمَنْ أَبَى قُوتِلَ.

L39928 Moreover, it is an obligation upon the Imam to enforce the rights [that are due] from them, to secure the people from all among them, and to compel them to disperse toward attending to the interests of their religion and their worldly life.

وَأَيْضًا - فَإِنَّ فَرْضًا عَلَى الْإِمَامِ إنْفَاذُ الْحُقُوقِ عَلَيْهِمْ وَتَأْمِينُ النَّاسِ مِنْ جَمِيعِهِمْ، وَأَنْ يَأْخُذُوهُمْ بِالِافْتِرَاقِ إلَى مَصَالِحِ دِينِهِمْ وَدُنْيَاهُمْ.

L39929 Whoever states other than this, we will ask him: What would he say if they requested postponement for a day, two days, or three days—and thus we progressively increase it hour by hour and day by day until that reaches the expiration of their lifetimes? In this lies the destruction of religion and worldly affairs, along with preoccupation with guarding against them, just as it is his obligation to deliberate on this matter. If he sets a specific limit in this—three days or otherwise—he must provide evidence for it from the Qur’an or from the prescribed limit of the Messenger of Allah (peace be upon him) regarding this matter, and he has no means to do so.

وَمَنْ قَالَ غَيْرَ هَذَا سَأَلْنَاهُ: مَاذَا يَقُولُ، إنْ اسْتَنْظَرُوهُ يَوْمًا أَوْ يَوْمَيْنِ أَوْ ثَلَاثَةً، وَهَكَذَا نَزِيدُهُ سَاعَةً سَاعَةً، وَيَوْمًا يَوْمًا حَتَّى يَبْلُغَ ذَلِكَ إلَى انْقِضَاءِ أَعْمَارِهِمْ، وَفِي هَذَا إهْلَاكُ الدِّينِ وَالدُّنْيَا وَالِاشْتِغَالُ بِالتَّحَفُّظِ عَنْهُمْ، كَمَا هُوَ فَرْضٌ عَلَيْهِ النَّظَرُ فِيهِ، فَإِنْ حَدَّ فِي ذَلِكَ حَدًّا مِنْ ثَلَاثَةِ أَيَّامٍ أَوْ غَيْرِ ذَلِكَ كُلِّفَ أَنْ يَأْتِيَ بِالدَّلِيلِ عَلَى ذَلِكَ مِنْ الْقُرْآنِ أَوْ مِنْ تَحْدِيدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، وَلَا سَبِيلَ لَهُ إلَيْهِ.

L39930–39931 If they argue that the Messenger of Allah—peace and blessings of Allah be upon him and his family—stipulated in his treaty with Quraysh to remain in Mecca for three days, stipulated a three-day period for the animal with a tied udder, granted the defrauded party in a sale a three-day option period, and that Allah the Exalted granted Thamud a respite of three days, we respond:

فَإِنْ ذَكَرُوا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ قَاضَى قُرَيْشًا عَلَى أَنْ يُقِيمَ بِمَكَّةَ ثَلَاثًا وَجَعَلَ أَجَلَ الْمُصَرَّاةِ ثَلَاثًا، وَخِيَارَ الْمَخْدُوعِ فِي الْبَيْعِ ثَلَاثًا، وَأَنَّ اللَّهَ تَعَالَى أَجَّلَ ثَمُودَ ثَلَاثَةَ أَيَّامٍ؟ قُلْنَا لَهُمْ: نَعَمْ، هَذَا حَقٌّ، وَقَدْ جَعَلَ اللَّهُ تَعَالَى أَجَلَ الْمُولِي أَرْبَعَةَ أَشْهُرٍ، وَأَجَلَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا فِي الْعِدَّةِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَمَا الَّذِي جَعَلَ بَعْضَ

[43] **Qur’an references (L39926):** Qur’an 2:195 (Al-Baqarah).
[44] **Qur’an references (L39927):** Qur’an 49:9 (Al-Hujurat).

Yes, this is true. For Allah the Exalted has set the oath of abstinence at four months, and the waiting period for a widow at four months and ten days. What then makes some of these legal excuses more valid than others? What Allah the Exalted has decreed is the truth. As for one who intends to augment Allah's decree through personal opinion or analogy—this is falsehood. And by Allah, the Exalted, is success.

Issue concerning rebels taking refuge in a fortress where there are women or male children.

2165 - Issue: If the rebels fortify themselves in a fortress containing women and children, it is impermissible to cut off their essential provisions. However, they should be granted from it an amount sufficient for the women, children, and those who are not among the rebels exclusively, while the rebels are denied anything beyond that.

It is permissible to fight them using mangonels and projectiles, but it is not permissible to fight them with fire that burns those within it who are not among the people of rebellion, nor by drowning that would drown them in the same manner, due to the words of Allah, the Most High: {No soul earns except against itself, and no bearer of burdens will bear the burden of another} [al-Anʿām 6:164].[45]

As for when none remain but the rebels alone, it is obligatory to cut off their water and food until they submit to the truth. Otherwise, they are the killers of their own selves through their refusal to accept what is right.

Similarly, it is permissible to light fires around them and to leave for them a place from which they can escape to the camp of the people of truth, because this is a fire we have kindled, and we have not set it loose; they are capable of escaping from it if they wish. It is not permissible to burn them or drown them unless they escape, because Allah, the Exalted, did not command that, nor did His Messenger—may Allah bless him and his family and grant him peace—but rather He has commanded fighting only.

[45] **Qur'an references (L39934):** Qur'an 6:164 (Al-An'am).

هَذِهِ الْأَعْذَارِ أَوْلَى مِنْ بَعْضٍ، فَكَانَ مَا حَكَمَ اللَّهُ تَعَالَى بِهِ، فَهُوَ الْحَقُّ، وَكَانَ مَا أَرَادَهُ مُرِيدٌ أَنْ يَزِيدَهُ فِي حُكْمِ اللَّهِ تَعَالَى بِرَأْيِهِ وَقِيَاسِهِ فَهُوَ الْبَاطِلُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة تحصن البغاة فِي حصن فِيهِ نِسَاء أَوْ صبيان]

٢١٦٥ - مَسْأَلَةٌ: فَإِنْ تَحَصَّنَ الْبُغَاةُ فِي حِصْنٍ فِيهِ النِّسَاءُ وَالصِّبْيَانُ، فَلَا يَحِلُّ قَطْعُ الْمِيرِ عَنْهُمْ، لَكِنْ يُطْلَقُ لَهُمْ مِنْهُ بِمِقْدَارِ مَا يَسَعُ النِّسَاءَ وَالصِّبْيَانَ، وَمَنْ لَمْ يَكُنْ مِنْ أَهْلِ الْبَغْيِ فَقَطْ، وَيُمْنَعُونَ مَا وَرَاءَ ذَلِكَ.

وَجَائِزٌ قِتَالُهُمْ بِالْمَنْجَنِيقِ وَالرَّمْيِ، وَلَا يَحِلُّ قِتَالُهُمْ بِنَارٍ تُحْرِقُ مَنْ فِيهِ مِنْ غَيْرِ أَهْلِ الْبَغْيِ، وَلَا بِتَغْرِيقٍ يُغْرِقُهُمْ كَذَلِكَ؛ لِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

وَأَمَّا إذَا لَمْ يَكُنْ فِيهِ إلَّا الْبُغَاةُ فَقَطْ فَفَرْضٌ أَنْ يُمْنَعُوا الْمَاءَ وَالطَّعَامَ حَتَّى يَنْزِلُوا إلَى الْحَقِّ، وَإِلَّا فَهُمْ قَاتِلُو أَنْفُسِهِمْ بِامْتِنَاعِهِمْ مِنْ الْحَقِّ.

وَكَذَلِكَ يَجُوزُ أَنْ تُوقَدَ النِّيرَانُ حَوَالَيْهِمْ، وَيُتْرَكُ لَهُمْ مَكَانٌ يَتَخَلَّصُونَ مِنْهُ إلَى عَسْكَرِ أَهْلِ الْحَقِّ؛ لِأَنَّ هَذِهِ نَارٌ أَوْقَدْنَاهَا، وَمَا أَطْلَقْنَاهُ هُمْ قَادِرُونَ عَلَى الْخَلَاصِ مِنْهَا - إنْ أَحَبُّوا - وَلَا يَحِلُّ - إحْرَاقُهُمْ، وَلَا تَغْرِيقُهُمْ دُونَ أَنْ يَتَخَلَّصُوا؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ بِذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَإِنَّمَا أَمَرَ بِالْمُقَاتَلَةِ فَقَطْ.

L39937 It is not permissible for them to spend the night unless we arrest them. As for those who do not fight, it is not permissible to kill them—and success comes only from Allah, the Exalted.

L39938 **A question regarding the security of the slave, the woman, and the free man.**

L39939 2166 - Issue: Abu Muhammad (may Allah have mercy on him) said: A group held that a guarantee of safety issued by a slave, woman, or free man is permissible for the rebels (ahl al-baghy).

L39940–39942 In our view, this holds no validity because the rebels' amnesty is in their hands; whenever they abandon fighting, combat against them becomes prohibited. Their blood is inviolable, for they are our brothers. As long as they remain aggressors and rebels, it is unlawful for any Muslim to grant them *aman* (safe conduct) on that account. In such cases, *aman* and *ijarah* (pledge of protection) are null and void. *Aman* and *ijarah* apply exclusively to the disbeliever whom the Imam may lawfully kill—if captured—or spare. These rulings do not pertain to a Muslim. If he abandons his rebellion, he then becomes one who may be granted *aman* and afforded protection.

L39943 If someone from the rebellious faction grants safe conduct to a disbeliever, his protection is valid like that of others, with no distinction—due to the statement of Allah's Messenger (peace and blessings be upon him): "The lowest-ranking among them may grant protection on behalf of the Muslims."

L39944 If rebels were to enter as combatants into the territory of war and coincided with the just party, fighting alongside them and acquiring spoils, the spoils are to be distributed equally among them, for they are all Muslims.

L39945 If a rebel kills a combatant from the enemy forces, he is entitled to the spoils, for he is among those addressed by that ruling.

L39946 If the disbelievers' combatants and the Muslim combatants are left confronting a group of rebels, then it is obligatory upon all Muslims and upon

وَلَا يَحِلُّ بِأَنْ يَبِيتُوا إِلَّا بِأَنْ نَقْبِضَ عَلَيْهِمْ، وَأَمَّا مَنْ لَمْ يُقَاتِلْ فَلَا يَحِلُّ قَتْلُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَمَانَ الْعَبْدِ وَالْمَرْأَةِ وَالرَّجُلِ الْحُرِّ]

٢١٦٦ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: إنَّ أَمَانَ الْعَبْدِ، وَالْمَرْأَةِ، وَالرَّجُلِ الْحُرِّ جَائِزٌ لِأَهْلِ الْبَغْيِ.

وَهَذَا عِنْدَنَا لَيْسَ بِشَيْءٍ؛ لِأَنَّ أَمَانَ أَهْلِ الْبَغْيِ بِأَيْدِيهِمْ، مَتَى تَرَكُوا الْقِتَالَ حَرُمَتْ دِمَاؤُهُمْ، وَكَانُوا إخْوَانَنَا، وَمَا دَامُوا مُقَاتِلِينَ بَاغِينَ فَلَا يَحِلُّ لِمُسْلِمٍ إعْطَاؤُهُمْ الْأَمَانَ عَلَى ذَلِكَ، فَالْأَمَانُ وَالْإِجَارَةُ هَاهُنَا هَدَرٌ وَلَغْوٌ، وَإِنَّمَا الْأَمَانُ وَالْإِجَارَةُ لِلْكَافِرِ الَّذِي يَحِلُّ لِلْإِمَامِ قَتْلُهُ - إذَا أَسَرُوهُ - وَاسْتِبْقَاؤُهُ، لَا فِي مُسْلِمٍ - إنْ تَرَكَ بَغْيَهُ - كَانَ هُوَ مِمَّنْ يُعْطَى الْأَمَانَ وَيُجَارُ.

وَلَوْ أَنَّ أَحَدًا مِنْ أَهْلِ الْبَغْيِ أَجَارَ كَافِرًا جَازَتْ إجَارَتُهُ، كَإِجَارَةِ غَيْرِهِ، وَلَا فَرْقَ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يُجِيرُ عَلَى الْمُسْلِمِينَ أَدْنَاهُمْ» .

وَلَوْ أَنَّ أَهْلَ الْبَغْيِ دَخَلُوا غُزَاةً إلَى دَارِ الْحَرْبِ فَوَافَقُوا أَهْلَ الْعَدْلِ فَقَاتَلُوا مَعَهُمْ فَغَنِمُوا، فَالْغَنِيمَةُ بَيْنَهُمْ عَلَى السَّوَاءِ؛ لِأَنَّهُمْ كُلَّهُمْ مُسْلِمُونَ.

وَمَنْ قَتَلَ مِنْ أَهْلِ الْبَغْيِ قَتِيلًا مِنْ أَهْلِ الْحَرْبِ فَلَهُ سَلَبُهُ؛ لِأَنَّهُ مِنْ جُمْلَةِ الْمُخَاطَبِينَ بِذَلِكَ الْحُكْمِ.

the Imam to render aid to the rebels and rescue them from the disbelievers and from the people of war, for the rebels are Muslims.

وَلَوْ تُرِكَ أَهْلُ الْحَرْبِ مِنْ الْكُفَّارِ، وَأَهْلُ الْمُحَارَبَةِ مِنْ الْمُسْلِمِينَ عَلَى قَوْمٍ مِنْ أَهْلِ الْبَغْيِ، فَفَرْضٌ عَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ، وَعَلَى الْإِمَامِ عَوْنُ أَهْلِ الْبَغْيِ وَإِنْقَاذُهُمْ مِنْ أَهْلِ الْكُفْرِ، وَمِنْ أَهْلِ الْحَرْبِ؛ لِأَنَّ أَهْلَ الْبَغْيِ مُسْلِمُونَ.

L39947 Allah the Exalted has said: {The believers are but brothers} [Al-Hujurat: 10]. He also said: {Humble toward the believers, mighty against the disbelievers} [Al-Ma'idah: 54]. Furthermore, He said: {Severe against the disbelievers, compassionate among themselves} [Al-Fath: 29]. As for the Muslims who engage in warfare, they seek to wrong the transgressors by seizing their wealth, and preventing injustice is obligatory—Allah the Exalted said: {Cooperate in righteousness and piety, and do not cooperate in sin and transgression} [Al-Ma'idah: 2]. Thus, whoever refrains from confronting the aggressor and neglects to aid the oppressed party has indeed assisted him in his sin and transgression, and this is forbidden.[46]

وَقَدْ قَالَ اللَّهُ تَعَالَى {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] وَقَالَ تَعَالَى {أَذِلَّةٍ عَلَى الْمُؤْمِنِينَ أَعِزَّةٍ عَلَى الْكَافِرِينَ} [المائدة: ٥٤] وَقَالَ تَعَالَى {أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ} [الفتح: ٢٩] وَأَمَّا أَهْلُ الْمُحَارَبَةِ مِنْ الْمُسْلِمِينَ فَإِنَّهُمْ يُرِيدُونَ ظُلْمَ أَهْلِ الْبَغْيِ فِي أَخْذِ أَمْوَالِهِمْ، وَالْمَنْعُ مِنْ الظُّلْمِ وَاجِبٌ - قَالَ اللَّهُ تَعَالَى {وتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَمَنْ تَرَكَ الْمُحَارِبَ، لَمْ يُعِنْ الْمَطْلُوبَ فَقَدْ أَعَانَ الْمُحَارِبَ عَلَى إثْمِهِ وَعُدْوَانِهِ، وَهَذَا حَرَامٌ.

L39948–39950 If the just rulers and the transgressors were to mutually cease hostilities and exchange pledges, such an agreement is impermissible unless the just rulers are incapable of combat, in accordance with Allah's decree: *"Then fight those who rebel until they return to Allah's command"* (Quran 49:9). As long as we retain the capacity to confront them, no alternative course is permissible for us at all, and we are not... We are capable of abandoning it for an hour or longer. If we are unable to do so, then Allah, the Exalted, has said: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286].[47]

وَلَوْ أَنَّ أَهْلَ الْعَدْلِ وَأَهْلَ الْبَغْيِ تَوَادَعُوا وَتَعَاطَوْا الرِّهَانَ فَهَذَا لَا يَجُوزُ، إلَّا مَعَ ضَعْفِ أَهْلِ الْعَدْلِ عَلَى الْمُقَاتَلَةِ؛ لِقَوْلِ اللَّهِ تَعَالَى {فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ} [الحجرات: ٩] فَمَا دُمْنَا قَادِرِينَ عَلَى الْمُقَاتَلَةِ لَهُمْ لَمْ يَحِلَّ لَنَا غَيْرُهَا أَصْلًا، وَلَسْنَا فِي سِعَةٍ مِنْ تَرْكِهَا سَاعَةً فَمَا فَوْقَهَا، فَإِنْ ضَعُفْنَا عَنْ ذَلِكَ، فَقَدْ قَالَ اللَّهُ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L39951 The Messenger of Allah (peace be upon him) said, "If I command you to do something, do as much of it as you are able." Therefore, if they kill the captives held by the people of justice, it is not permissible for us to retaliate by killing their captives, because they are Muslims who are not combatants and have not killed anyone from our side. Rather, others killed the captives,

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَإِنْ قَتَلُوا رَهْنَ أَهْلِ الْعَدْلِ لَمْ يَحِلَّ لَنَا قَتْلُ رَهْنِهِمْ؛ لِأَنَّهُمْ مُسْلِمُونَ غَيْرُ مُقَاتِلِينَ، وَلَمْ يَقْتُلُوا لَنَا أَحَدًا وَإِنَّمَا قَتَلَ الرَّهْنَ غَيْرُهُمْ، وَقَدْ قَالَ اللَّهُ تَعَالَى {وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

[46] **Qur'an references (L39947):** Qur'an 49:10 (Al-Hujurat); Qur'an 5:54 (Al-Ma'idah); Qur'an 48:29 (Al-Fath); Qur'an 5:2 (Al-Ma'idah).

[47] **Qur'an references (L39948):** Qur'an 49:9 (Al-Hujurat); Qur'an 2:286 (Al-Baqarah).

and Allah, the Most High, has said, "No soul burdened with sin will bear the burden of another" [Al-An'ām 6:164].[48]

[48] **Qur'an references (L39951):** Qur'an 6:164 (Al-An'am); Qur'an 17:15 (Al-Isra); Qur'an 35:18 (Fatir); Qur'an 39:7 (Az-Zumar).