

AL-MUHALLA

كِتَابُ الْجِهَادِ

The Book of Jihad

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

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[كِتَابُ الْجِهَادِ] [مَسْأَلَةٌ الْجِهَادُ فَرْضٌ عَلَى الْمُسْلِمِينَ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ بِك اللَّهُمَّ أَسْتَعِينُ كِتَابُ الْجِهَادِ ٩٢٠ - مَسْأَلَةٌ:

وَالْجِهَادُ فَرْضٌ عَلَى الْمُسْلِمِينَ فَإِذَا قَامَ بِهِ مَنْ يَدْفَعُ الْعَدُوَّ وَيَغْزُوهُمْ فِي عُقْرِ دَارِهِمْ وَيَحْمِي ثُغُورَ الْمُسْلِمِينَ سَقَطَ فَرْضُهُ عَنْ الْبَاقِينَ وَإِلَّا فَلَا، قَالَ اللَّهُ - تَعَالَى -: {انْفِرُوا خِفَافًا وَثِقَالا وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ} [التوبة: ٤١] .

رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نَا مُحَمَّدُ بْنُ خِدَاشٍ نَا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - نَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: كَانَ أَبُو أَيُّوبَ الْأَنْصَارِيُّ يَقُولُ: قَالَ اللَّهُ - تَعَالَى -: {انْفِرُوا خِفَافًا وَثِقَالا} [التوبة: ٤١] فَلَا أَحَدَ مِنْ النَّاسِ إلَّا خَفِيفٌ أَوْ ثَقِيلٌ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ سَهْمٍ الْأَنْطَاكِيُّ أَخْبَرَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ وُهَيْبٍ الْمَكِّيِّ عَنْ عُمَرَ بْنِ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ سُمَيٍّ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: " مَنْ مَاتَ وَلَمْ يَغْزُ وَلَمْ يُحَدِّثْ [بِهِ] نَفْسَهُ مَاتَ عَلَى شُعْبَةٍ مِنْ نِفَاقٍ "

قَالَ أَبُو مُحَمَّدٍ: هَذَا وَعِيدٌ شَدِيدٌ نَعُوذُ بِاَللَّهِ مِنْهُ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ نَا يَحْيَى بْنُ أَبِي كَثِيرٍ نَا أَبُو سَعِيدٍ مَوْلَى الْمَهْرِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

L15357–15358 ****[Book of Jihad]** **[Issue]** Jihad is an obligatory duty on the Muslims.**

L15359 In the name of Allah, the Most Gracious, the Most Merciful. Through You, O Allah, I seek assistance. Book of the Jihad: Legal Question 920 -

L15360 Jihad is an obligation upon Muslims. If those who undertake it [jihad]—by repelling the enemy, conducting expeditions against them in the core of their homeland, and safeguarding the frontiers of the Muslims—fulfill this duty, the obligation ceases to bind the rest. Otherwise, it remains incumbent. Allah—Exalted is He—says: “Go forth, whether lightly or heavily equipped, and strive with your wealth and your lives in the cause of Allah” [Surah al-Tawbah 9:41].[1]

L15361 It was narrated to us through the chain of Ismāʿīl ibn Isḥāq, from Muḥammad ibn Khidāsh, from Ismāʿīl ibn Ibrāhīm (Ibn ʿUlayyah), from Ayyūb (al-Sikhtiyānī), from Muḥammad ibn Sīrīn, who said: Abū Ayyūb al-Anṣārī used to say: Allāh—Exalted is He—said: {Go forth, whether light or heavy} [At-Tawbah: 41]. Thus, there is no one among the people except that he is either light or heavy.[2]

L15362 From the chain of Muslim: Muḥammad ibn ʿAbd al-Raḥmān ibn Sahm al-Anṭākī narrated to us, reporting from ʿAbd Allāh ibn al-Mubārak, from Wuḥayb al-Makkī, from ʿUmar ibn Muḥammad ibn al-Munkadir, from Sumayy, from Abu Ṣāliḥ, from Abu Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said: “Whoever dies without having fought and without speaking to himself [about it] dies upon a branch of hypocrisy.”[3]

L15363 Abu Muhammad said: This is a stern warning—we seek refuge in Allah from it.

L15364–15365 From the transmission of Muslim, he informed us: Ismāʿīl ibn Ulayyah narrated from ʿAlī ibn al-Mubārak, who narrated from Yaḥyā ibn Abī Kathīr,

[1] **Qur’an references (L15360):** Qur’an 9:41 (At-Tawbah).
[2] **Qur’an references (L15361):** Qur’an 9:41 (At-Tawbah).
[3] **Hadith references (L15362):** Sahih Muslim 1910.

who narrated from Abū Saʿīd (the client of al-Mahrī) from Abū Saʿīd al-Khudrī: “The Messenger of Allah (peace and blessings be upon him) sent a military detachment to Banū Lihyān of Hudhayl and said: ’One of every two men should set out, and the reward shall be shared between them.”’[4]

L15366 **Issue: The commander ordered him to engage in jihad against the Abode of War.**

L15367 921 – Issue:

L15368 Whoever is commanded by the ruler to wage jihad toward the abode of war, it becomes a compulsory duty upon him to obey him in that, except one who has a decisive excuse.

L15369 It was narrated to us via the chain recorded by Al-Bukhārī: from ʿAlī ibn ʿAbdullāh, from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sufyān (al-Thawrī), from Manṣūr (ibn al-Muʿtamir), from Mujāhid, from Ṭāwūs, from Ibn ʿAbbās (may Allāh be pleased with them both), who said: The Messenger of Allāh (peace and blessings of Allāh be upon him) said: “There is no emigration after the Conquest, but only jihad and intention remain. When you are summoned to arms, then go forth.”[5]

L15370 **Chapter: Jihad Is Impermissible Without the Permission of Both Parents**

L15371 ٩٢٢ - Issue:

L15372 It is not permissible to undertake jihad except with the permission of both parents, unless the enemy attacks a group of Muslims. In that case, it becomes an obligatory duty upon everyone capable of aiding them to go to their assistance as rescuers—whether the parents have granted permission or not—unless both parents or one of them would be neglected after his departure. In

[4]**Hadith references (L15365):** Sahih Muslim 1896a; Mishkat al-Masabih 3800; Riyad as-Salihin 178.

[5]**Hadith references (L15369):** Sahih al-Bukhari 2783; Sahih al-Bukhari 2825; Sahih Muslim 1864.

- بَعَثَ بَعْثًا إِلَى بَنِي لَحْيَانَ مِنْ هُذَيْلٍ فَقَالَ: لِيَنْبَعِثْ مِنْ كُلِّ رَجُلَيْنِ أَحَدُهُمَا وَالْأَجْرُ بَيْنَهُمَا» .

[مَسْأَلَةٌ أَمَرَهُ الْأَمِيرُ بِالْجِهَادِ إِلَى دَارِ الْحَرْبِ]

٩٢١ - مَسْأَلَةٌ:

وَمَنْ أَمَرَهُ الْأَمِيرُ بِالْجِهَادِ إِلَى دَارِ الْحَرْبِ فَفَرْضٌ عَلَيْهِ أَنْ يُطِيعَهُ فِي ذَلِكَ إِلَّا مَنْ لَهُ عُذْرٌ قَاطِعٌ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَلِيُّ بْنُ عَبْدِ اللَّهِ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نَا سُفْيَانُ هُوَ الثَّوْرِيُّ - حَدَّثَنِي مَنْصُورٌ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ [- رَضِيَ اللَّهُ عَنْهُمَا -] قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا هِجْرَةَ بَعْدَ الْفَتْحِ وَلَكِنْ جِهَادٌ وَنِيَّةٌ وَإِذَا اُسْتُنْفِرْتُمْ فَانْفِرُوا» .

[مَسْأَلَةٌ لَا يَجُوزُ الْجِهَادُ إِلَّا بِإِذْنِ الْأَبَوَيْنِ]

٩٢٢ - مَسْأَلَةٌ:

وَلَا يَجُوزُ الْجِهَادُ إِلَّا بِإِذْنِ الْأَبَوَيْنِ إِلَّا أَنْ يَنْزِلَ الْعَدُوُّ بِقَوْمٍ مِنْ الْمُسْلِمِينَ فَفَرْضٌ عَلَى كُلِّ مَنْ يُمْكِنُهُ إعَانَتُهُمْ أَنْ يَقْصِدَهُمْ مُغِيثًا لَهُمْ أَذِنَ الْأَبَوَانِ أَمْ لَمْ يَأْذَنَا - إلَّا أَنْ يَضِيعَا أَوْ أَحَدُهُمَا بَعْدَهُ، فَلَا يَحِلُّ لَهُ تَرْكُ مَنْ يَضِيعُ مِنْهُمَا.

such a case, it is impermissible for him to neglect whichever of them would be left uncared for.

L15373–15375 It has been narrated to us via Al-Bukhārī's transmission: Adam narrated to us, Shu'bah narrated to us, Habīb ibn Abī Thābit narrated: I heard Abū al-'Abbās al-Shā'ir (a narrator not accused of fabrication in hadith) say: I heard 'Abdullāh ibn 'Amr ibn al-'Āṣ say: "A man came to the Messenger of Allah (peace and blessings be upon him) seeking permission to engage in jihad. He (peace and blessings be upon him) said: 'Are your parents alive?' The man replied: 'Yes.' He said: 'Then strive in jihad by serving them.'" Through the chain of al-Bukhārī: Musaddad narrated to us, from Yaḥyā ibn Sa'īd al-Qaṭṭān, from 'Ubayd Allāh ibn 'Umar, from Nāfi', from Ibn 'Umar, from the Prophet—peace and blessings of Allah be upon him—who said: "Listening and obedience are an obligation so long as one is not commanded to disobey Allah. If commanded to disobey, there shall be no listening and no obedience."

L15376 And it has been narrated to us from Ali ibn Abi Talib—may Allah be pleased with him—that he said: "Obedience applies solely to what is right."

L15377 From 'Alqamah, from Ibn Mas'ud (may Allah be pleased with him), who said: "There is no obedience to anyone in disobedience to Allah, the Most High."

L15378 **Ruling: It is not permissible for a Muslim to flee from a polytheist.**

L15379 923 – Question:

L15380 It is impermissible for a Muslim to flee from one polytheist or two polytheists, even if their numbers are fundamentally large. However, during retreat, he must intend either to join the Muslim forces if he anticipates reaching them or to counterattack. If his sole intention is to expose his back in flight, he becomes a transgressor unless he repents.

L15381 Allah, the Mighty and Sublime, said: "O you who have believed, when you encounter the disbelievers advancing, do not turn your backs to them." [Al-

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا آدَم نَا شُعْبَةُ نَا حَبِيبُ بْنُ أَبِي ثَابِتٍ قَالَ: سَمِعْت أَبَا الْعَبَّاسِ الشَّاعِرَ وَكَانَ لَا يُتَّهَمُ فِي الْحَدِيثِ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ يَقُولُ «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسْتَأْذَنَهُ فِي الْجِهَادِ فَقَالَ لَهُ - عَلَيْهِ السَّلَامُ -: أَحَيٌّ وَالِدَاكَ؟ قَالَ: نَعَمْ. قَالَ: فَفِيهِمَا فَجَاهِدْ» وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا مُسَدَّدٌ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «السَّمْعُ وَالطَّاعَةُ حَقٌّ مَا لَمْ يُؤْمَرْ بِمَعْصِيَةٍ فَإِذَا أُمِرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ» .

وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ: «إنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ» .

وَعَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ «لَا طَاعَةَ لِأَحَدٍ فِي مَعْصِيَةِ اللَّهِ - تَعَالَى -» .

[مَسْأَلَةٌ لَا يَحِلُّ لِمُسْلِمٍ أَنْ يَفِرَّ عَنْ مُشْرِكٍ]

٩٢٣ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَفِرَّ عَنْ مُشْرِكٍ، وَلَا عَنْ مُشْرِكَيْنِ وَلَوْ كَثُرَ عَدَدُهُمْ أَصْلًا؛ لَكِنْ يَنْوِي فِي رُجُوعِهِ التَّحَيُّزَ إلَى جَمَاعَةِ الْمُسْلِمِينَ إنْ رَجَا الْبُلُوغَ إلَيْهِمْ، أَوْ يَنْوِي الْكَرَّ إلَى الْقِتَالِ، فَإِنْ لَمْ يَنْوِ إلَّا تَوْلِيَةَ دُبُرِهِ هَارِبًا فَهُوَ فَاسِقٌ مَا لَمْ يَتُبْ.

Anfal: 15] “Whoever turns his back to them on that day - unless maneuvering for battle or regrouping with a unit - has indeed incurred wrath from Allah, and his refuge will be Hellfire.” [Al-Anfal: 16].[6]

قَالَ اللَّهُ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا زَحْفًا فَلا تُوَلُّوهُمُ الأَدْبَارَ} [الأنفال: ١٥] {وَمَنْ يُوَلِّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلا مُتَحَرِّفًا لِقِتَالٍ أَوْ مُتَحَيِّزًا إِلَى فِئَةٍ فَقَدْ بَاءَ بِغَضَبٍ مِنَ اللَّهِ وَمَأْوَاهُ جَهَنَّمُ} [الأنفال: ١٦] .

L15382 A group held: Fleeing is permissible for one against three or more—and this is incorrect.

قَالَ قَوْمٌ: إِنَّ الْفِرَارَ لَهُ مُبَاحٌ مِنْ ثَلَاثَةٍ فَصَاعِدًا - وَهَذَا خَطَأٌ.

L15383 They argued in that regard by citing Allah’s statement—Exalted is He—: “Now Allah has lightened for you, and He knew that there is weakness in you. So if there are among you a hundred steadfast ones, they would overcome two hundred; and if there are among you a thousand, they would overcome two thousand by the leave of Allah” [Al-Anfal: 66].[7]

وَاحْتَجُّوا فِي ذَلِكَ بِقَوْلِ اللَّهِ - تَعَالَى -: {الآنَ خَفَّفَ اللَّهُ عَنْكُمْ وَعَلِمَ أَنَّ فِيكُمْ ضَعْفًا فَإِنْ يَكُنْ مِنْكُمْ مِائَةٌ صَابِرَةٌ يَغْلِبُوا مِائَتَيْنِ وَإِنْ يَكُنْ مِنْكُمْ أَلْفٌ يَغْلِبُوا أَلْفَيْنِ بِإِذْنِ اللَّهِ} [الأنفال: ٦٦] .

L15384 It has been narrated to us from Ibn Abbas that he said: “If a man flees from two opponents, he has indeed fled, but if he flees from three opponents, he has not fled.”

وَرُوِّينَا عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ " إِنْ فَرَّ رَجُلٌ مِنْ رَجُلَيْنِ فَقَدْ فَرَّ، وَإِنَّ فَرَّ مِنْ ثَلَاثَةٍ فَلَمْ يَفِرَّ ".

L15385–15387 Abu Muhammad said: As for Ibn Abbas, they differed with him in numerous legal rulings, including the recitation of Umm al-Qur’an. Reciting the Quran aloud during the funeral prayer, his declaration that no prayer exists except with it [the Quran], and much else besides—there is no proof except in the Speech of Allah, the Most High, or the speech of His Messenger (peace and blessings be upon him).

قَالَ أَبُو مُحَمَّدٍ: أَمَّا ابْنُ عَبَّاسٍ فَقَدْ خَالَفُوهُ فِي مِئِينَ مِنَ الْقَضَايَا، مِنْهَا قِرَاءَةُ أُمِّ الْقُرْآنِ جَهْرًا فِي صَلَاةِ الْجَنَازَةِ، وَإِخْبَارُهُ: أَنَّهُ لَا صَلَاةَ إِلَّا بِهَا وَغَيْرُ ذَلِكَ كَثِيرٌ، وَلَا حُجَّةَ إِلَّا فِي كَلَامِ اللَّهِ - تَعَالَى -، أَوْ كَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L15388 As for the verse, they have no valid claim to it, for it contains neither an explicit text nor proof permitting fleeing from the mentioned number. It merely states that Allah—Glorified and Exalted is He—knew there is weakness within us. This is true: truly, weakness exists within us. There is no strong one except that he has weakness relative to what is stronger than him—except Allah, Glorified and Exalted is He, alone. He is the All-Powerful, who neither weakens nor is defeated.

وَأَمَّا الْآيَةُ فَلَا مُتَعَلَّقَ لَهُمْ فِيهَا؛ لِأَنَّهُ لَيْسَ فِيهَا لَا نَصٌّ وَلَا دَلِيلٌ بِإِبَاحَةِ الْفِرَارِ عَنْ الْعَدَدِ الْمَذْكُورِ، وَإِنَّمَا فِيهَا: أَنَّ اللَّهَ - تَعَالَى - عَلِمَ أَنَّ فِينَا ضَعْفًا، وَهَذَا حَقٌّ إنَّ فِينَا لَضَعْفًا وَلَا قُوِيَّ إلَّا وَفِيهِ ضَعْفٌ بِالْإِضَافَةِ إلَى مَا هُوَ أَقْوَى مِنْهُ إلَّا اللَّهُ - تَعَالَى - وَحْدَهُ فَهُوَ الْقَوِيُّ الَّذِي لَا يَضْعُفُ وَلَا يُغْلَبُ.

[6] **Qur’an references (L15381):** Qur’an 8:15 (Al-Anfal); Qur’an 8:16 (Al-Anfal).
[7] **Qur’an references (L15383):** Qur’an 8:66 (Al-Anfal).

وَفِيهَا: أَنَّ اللَّهَ - تَعَالَى - خَفَّفَ عَنَّا فَلَهُ الْحَمْدُ وَمَا زَالَ رَبُّنَا - تَعَالَى - رَحِيمًا بِنَا يُخَفِّفُ عَنَّا فِي جَمِيعِ الْأَعْمَالِ الَّتِي أَلْزَمَنَا.

L15389 And in this is that Allah—the Exalted—has lightened [the burden] for us, so all praise is due to Him. Our Lord—the Exalted—never ceases to be merciful to us, continually lightening for us all the deeds He has enjoined upon us.

وَفِيهَا: أَنَّهُ إنْ كَانَ مِنَّا مِائَةٌ صَابِرُونَ يَغْلِبُوا مِائَتَيْنِ، وَإِنْ يَكُنْ مِنَّا أَلْفٌ يَغْلِبُوا أَلْفَيْنِ بِإِذْنِ اللَّهِ، وَهَذَا حَقٌّ، وَلَيْسَ فِيهِ أَنَّ الْمِائَةَ لَا تَغْلِبُ أَكْثَرَ مِنْ مِائَتَيْنِ وَلَا أَقَلَّ أَصْلًا؛ بَلْ قَدْ تَغْلِبُ ثَلَاثَمِائَةٍ، نَعَمْ وَأَلْفَيْنِ وَثَلَاثَ آلَافٍ وَلَا أَنَّ الْأَلْفَ لَا يَغْلِبُونَ إلَّا أَلْفَيْنِ فَقَطْ لَا أَكْثَرَ وَلَا أَقَلَّ، وَمَنْ ادَّعَى هَذَا فِي الْآيَةِ فَقَدْ أَبْطَلَ وَادَّعَى مَا لَيْسَ فِيهَا مِنْهُ أَثَرٌ، وَلَا إشَارَةٌ، وَلَا نَصٌّ، وَلَا دَلِيلٌ، بَلْ قَدْ قَالَ - عَزَّ وَجَلَّ -: {كَمْ مِنْ فِئَةٍ قَلِيلَةٍ غَلَبَتْ فِئَةً كَثِيرَةً بِإِذْنِ اللَّهِ وَاللَّهُ مَعَ الصَّابِرِينَ} [البقرة: ٢٤٩] ، فَظَهَرَ أَنَّ قَوْلَهُمْ لَا دَلِيلَ عَلَيْهِ أَصْلًا، وَنَسْأَلُهُمْ عَنْ فَارِسٍ بَطَلٍ شَاكِي السِّلَاحِ قَوِيٍّ لَقِيَ ثَلَاثَةً مِنْ شُيُوخِ الْيَهُودِ الْحَرْبِيِّينَ هَرْمَى مَرْضَى رِجَالَةً عُزَّلًا أَوْ عَلَى حَمِيرٍ، أَلَهُ أَنْ يَفِرَّ عَنْهُمْ؟ لَئِنْ قَالُوا: نَعَمْ - لَيَأْتِيَنَّ بِطَامَّةٍ يَأْبَاهَا اللَّهُ وَالْمُؤْمِنُونَ وَكُلُّ ذِي عَقْلٍ، وَإِنْ قَالُوا: لَا لَيَتْرُكُنَّ قَوْلَهُمْ.

L15390 And in this verse: that if there are a hundred steadfast ones among us, they would overcome two hundred, and if there are a thousand of us, they would overcome two thousand by Allah's permission—and this is the truth. It does not state that a hundred cannot overcome more than two hundred or fewer in principle; rather, they might overcome three hundred, indeed even two thousand or three thousand. Nor does it state that a thousand cannot overcome except two thousand exactly, neither more nor less. Whoever claims this in the verse has made a false claim and asserted something for which there is no trace, indication, explicit text, or evidence. Rather, Allah—Exalted and Majestic—has said: *"How many a small company has overcome a large force by Allah's permission! And Allah is with the steadfast"* (Surah Al-Baqarah 2:249). Thus, it becomes clear that their claim has no basis whatsoever. Ask them about a champion warrior, fully equipped and strong, who encounters three elderly Jewish hostile combatants—frail, sick, on foot, unarmed, or mounted on donkeys: Is he permitted to flee from them? If they say yes, they have brought forth an abomination rejected by Allah, the believers, and every rational being. If they say no, they must abandon their claim.[8]

وَكَذَلِكَ نَسْأَلُهُمْ عَنْ أَلْفِ فَارِسٍ، نُخْبَةٍ، أَبْطَالٍ، أَمْجَادٍ، مُسَلَّحِينَ، ذَوِي بَصَائِرَ، لَقَوْا ثَلَاثَةَ آلَافٍ، مِنْ مَحْشُودَةِ بَادِيَةِ النَّصَارَى، رِجَالَةً، مُسَخَّرِينَ أَلَهُمْ أَنْ يَفِرُّوا عَنْهُمْ؟ وَرُوِّينَا عَنْ وَكِيعٍ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ الْحَسَنِ قَالَ: لَيْسَ الْفِرَارُ مِنْ الزَّحْفِ مِنْ الْكَبَائِرِ، إنَّمَا كَانَ ذَلِكَ يَوْمَ بَدْرٍ خَاصَّةً. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَخْصِيصٌ لِلْآيَةِ بِلَا دَلِيلٍ.

L15391 And likewise, we ask them about a thousand elite horsemen: champions, glorious warriors, fully armed, and possessing discernment, who encountered three thousand from the mobilized forces of the Christian desert-dwellers - conscripted men. Did He inspire them to flee from them? It has been narrated to us from Waki' from Al-Rabi' ibn Subayh from Al-Hasan, who said: Fleeing from battle is not among the major sins; that occurred specifically on the day of Badr. Abu Muhammad said: This restricts the verse's generality without evidence.

L15392–15394 It was narrated to us via Al-Bazzar: Amr ibn Ali and Muhammad ibn Muthanna both narrated to us, from Yahya, who narrated to us... Ibn Sa'īd

[8] **Qur'an references (L15390):** Qur'an 2:249 (Al-Baqarah).

al-Qaṭṭān narrated to us: ʿAwf al-Aʿrābī narrated to us from Yazīd al-Fārisī, who narrated to us Ibn ʿAbbās that ʿUthmān said to him: “Al-Anfāl was among the first revelations sent down in Medina.”

رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نَا عَمْرُو بْنُ عَلِيٍّ، وَمُحَمَّدُ بْنُ مُثَنَّى، قَالَا جَمِيعًا: نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نَا عَوْفٌ الْأَعْرَابِيُّ عَنْ يَزِيدَ الْفَارِسِيِّ نَا ابْنُ عَبَّاسٍ أَنَّ عُثْمَانَ قَالَ لَهُ: كَانَتْ (الْأَنْفَالُ) مِنْ أَوَّلِ مَا أُنْزِلَ بِالْمَدِينَةِ.

L15395 We have been narrated through the chain of Muslim: Hārūn ibn Saʿīd al-Abulī narrated to us, Ibn Wahb narrated to us, Sulaymān ibn Bilāl narrated from Thawr ibn Zayd from Abū al-Ghayth from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: “Avoid the seven ruinous sins.” It was said: “O Messenger of Allah, what are they?” He said: “Associating partners with Allah, sorcery, killing a soul which Allah has forbidden except by right, consuming the wealth of the orphan, consuming usury, fleeing during the military advance, and accusing chaste, unaware, believing women of adultery.” Thus, he—peace be upon him—spoke in general terms and did not specify.[9][10]

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا هَارُونُ بْنُ سَعِيدٍ الْأُبُلِّيُّ نَا ابْنُ وَهْبٍ أَخْبَرَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ أَبِي الْغَيْثِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ قِيلَ يَا رَسُولَ اللَّهِ وَمَا هُنَّ؟ قَالَ: الشِّرْكُ بِاللَّهِ وَالسِّحْرُ وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ مَالِ الْيَتِيمِ، وَأَكْلُ الرِّبَا، وَالتَّوَلِّي يَوْمَ الزَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ» فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ.

L15396 From the path of Al-Bukhārī: ʿAbdullāh ibn Muḥammad narrated to us, Muʿāwiyah ibn ʿAmr narrated to us, Abū Isḥāq—who is Al-Fazārī—from Mūsā ibn ʿUqbah, from Sālim Abū al-Naḍr, the freed slave of ʿUmar ibn ʿUbaydillāh, who said: ʿAbdullāh ibn Abī Awfā wrote to him, and he read it—that the Messenger of Allah—peace be upon him—said: “O people, do not wish to meet the enemy, and ask Allah for safety. But if you do meet them, then be patient and know that Paradise is beneath the shades of swords.” Thus, he—peace be upon him—spoke generally and did not specify. The conversion of Abū Hurayrah and ʿAbdullāh ibn Abī Awfā occurred without doubt after the revelation of Sūrah al-Anfāl, which contains the verse they cited as evidence for something of which there is nothing in it.[11]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ نَا مُعَاوِيَةُ بْنُ عَمْرٍو نَا أَبُو إِسْحَاقَ هُوَ الْفَزَارِيُّ - عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ سَالِمٍ أَبِي النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ قَالَ: كَتَبَ إِلَيْهِ عَبْدُ اللَّهِ بْنُ أَبِي أَوْفَى فَقَرَأْتُهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَا أَيُّهَا النَّاسُ لَا تَتَمَنَّوْا لِقَاءَ الْعَدُوِّ وَاسْأَلُوا اللَّهَ الْعَافِيَةَ؟ فَإِذَا لَقِيتُمُوهُمْ فَاصْبِرُوا وَاعْلَمُوا أَنَّ الْجَنَّةَ تَحْتَ ظِلَالِ السُّيُوفِ» فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ، وَإِسْلَامُ أَبِي هُرَيْرَةَ وَابْنِ أَبِي أَوْفَى بِلَا شَكٍّ بَعْدَ نُزُولِ " سُورَةِ الْأَنْفَالِ " الَّتِي فِيهَا الْآيَةُ الَّتِي احْتَجُّوا بِهَا فِيمَا لَيْسَ فِيهَا مِنْهُ شَيْءٌ.

L15397 Ibn ʿAbbās differed from others as narrated to us by ʿAbdullāh ibn Rabīʿ at-

وَقَدْ خَالَفَ ابْنُ عَبَّاسٍ غَيْرَهُ كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّيْمِيُّ نَا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْمَرْوَانِيُّ أَخْبَرَنَا أَبُو خَلِيفَةَ الْفَضْلُ بْنُ الْحُبَابِ الْجُمَحِيُّ، نَا عَبْدُ اللَّهِ بْنُ عَبْدِ الْوَهَّابِ

[9] **Hadith references (L15395):** Sahih Muslim 89.

[10] **Qur’an references (L15395):** Qur’an 6:151 (Al-An’am); Qur’an 17:33 (Al-Isra); Qur’an 25:68 (Al-Furqan).

[11] **Hadith references (L15396):** Sahih Muslim 1742a; Riyad as-Salihin 53.

Tamīmī, who narrated to us from Muḥammad ibn Muʿāwiyah al-Marwānī, who informed us from Abū Khalīfah al-Faḍl ibn al-Ḥubāb al-Jumaḥī, who narrated to us from ʿAbdullāh ibn ʿAbd al-Wahhāb al-Ḥajabī, who narrated to us from Khālid ibn al-Ḥārith al-Hujaymī, who narrated to us from Shuʿbah, from Abū Isḥāq as-Sabīʿī, who said: I heard a man ask al-Barāʾ ibn ʿĀzib: "What is your view if a man were to charge into a detachment of a thousand, would he be casting himself into destruction?" Al-Barāʾ replied: "No. Rather, destruction is when a man commits a sin and casts his hand, saying: 'There is no repentance for me.'"

الْحَجَبِيُّ نَا خَالِدُ بْنُ الْحَارِثِ الْهُجَيْمِيُّ نَا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: سَمِعْت رَجُلًا سَأَلَ الْبَرَاءَ بْنَ عَازِبٍ: أَرَأَيْت لَوْ أَنَّ رَجُلًا حَمَلَ عَلَى الْكَتِيبَةِ وَهُمْ أَلْفٌ، أَلْقَى بِيَدِهِ إلَى التَّهْلُكَةِ؟ قَالَ الْبَرَاءُ لَا، وَلَكِنَّ التَّهْلُكَةَ: أَنْ يُصِيبَ الرَّجُلُ الذَّنْبَ فَيُلْقِي بِيَدِهِ وَيَقُولُ: لَا تَوْبَةَ لِي.

L15398 Narrated by Umar ibn al-Khattab: When you meet, do not flee.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ: إذَا لَقِيتُمْ فَلَا تَفِرُّوا.

L15399 Narrated by Ali and Ibn Umar: Fleeing from battle is one of the major sins.

وَعَنْ عَلِيٍّ، وَابْنِ عُمَرَ: الْفِرَارُ مِنْ الزَّحْفِ مِنْ الْكَبَائِرِ.

L15400 They did not specify a particular number, and neither Abū Ayyūb al-Ansārī nor Abū Mūsā al-Ashʿarī denied that a man alone should charge into the vast, advancing army and stand firm until he is killed.

وَلَمْ يَخُصُّوا عَدَدًا مِنْ عَدَدٍ، وَلَمْ يُنْكِرْ أَبُو أَيُّوبَ الْأَنْصَارِيُّ، وَلَا أَبُو مُوسَى الْأَشْعَرِيُّ أَنْ يَحْمِلَ الرَّجُلُ وَحْدَهُ، عَلَى الْعَسْكَرِ الْجَرَّارِ وَيَثْبُتَ حَتَّى يُقْتَلَ.

L15401–15402 They mentioned a mursal hadith through the chain of Al-Hasan: "The Muslims encountered the polytheists, and a man said, 'O Messenger of Allah, shall I press the assault against them or charge at them?' The Messenger of Allah—peace and blessings be upon him—said to him, 'Do you think you can kill all of them? Sit. When your companions rise, rise with them, and when they intensify their attack, intensify yours.'" This is a mursal narration holding no legal authority. Rather, the authenticated report from the Prophet—peace be upon him—states: "A man among his companions asked, 'What causes Allah to laugh at His servant?' He replied, 'His plunging into the enemy without armor.' Thereupon the man removed his armor and charged into the enemy ranks until he was slain—may Allah be pleased with him."

وَقَدْ ذَكَرُوا حَدِيثًا مُرْسَلًا مِنْ طَرِيقِ الْحَسَنِ «أَنَّ الْمُسْلِمِينَ لَقُوا الْمُشْرِكِينَ فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ أَشُدُّ عَلَيْهِمْ، أَوْ أَحْمِلُ عَلَيْهِمْ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَتُرَاكَ قَاتِلٌ هَؤُلَاءِ كُلَّهُمْ اجْلِسْ، فَإِذَا نَهَضَ أَصْحَابُكَ فَانْهَضْ وَإِذَا شَدُّوا فَشُدَّ» وَهَذَا مُرْسَلٌ لَا حُجَّةَ فِيهِ، بَلْ قَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ -: «أَنَّ رَجُلًا مِنْ أَصْحَابِهِ سَأَلَهُ مَا يُضْحِكُ اللَّهُ مِنْ عَبْدِهِ؟ قَالَ: غَمْسُهُ يَدَهُ فِي الْعَدُوِّ حَاسِرًا فَنَزَعَ الرَّجُلُ دِرْعَهُ وَدَخَلَ فِي الْعَدُوِّ حَتَّى قُتِلَ - رَضِيَ اللَّهُ عَنْهُ -» .

[An Issue Regarding the Burning and Demolition of the Polytheists' Trees and Houses]

[مَسْأَلَةُ تَحْرِيقُ أَشْجَارِ الْمُشْرِكِينَ وَدُورِهِمْ وَهَدْمُهَا]

L15404 924 – Issue:

٩٢٤ - مَسْأَلَةٌ:

L15405 It is permissible to burn the trees of the polytheists, their provisions, their crops, and their dwellings, and to demolish them. Allah the Exalted said: "Whatever palm trees you cut down or left standing on their roots, it was by Allah's permission, so that He might disgrace the defiantly disobedient" [59:5]. And He the Exalted said: "Nor do they set foot in any place that angers the disbelievers, nor do they gain any advantage over an enemy except that a righteous deed is recorded for them because of it" [9:120]. The Messenger of Allah—peace and blessings of Allah be upon him—burned the date palms of Banu al-Nadir, which were on the outskirts of Medina, and he knew they would come into the possession of the Muslims in a day or two.[12]

وَجَائِزٌ تَحْرِيقُ أَشْجَارِ الْمُشْرِكِينَ، وَأَطْعِمَتِهِمْ، وَزَرْعِهِمْ وَدُورِهِمْ، وَهَدْمُهَا، قَالَ اللَّهُ - تَعَالَى -: {مَا قَطَعْتُمْ مِنْ لِينَةٍ أَوْ تَرَكْتُمُوهَا قَائِمَةً عَلَى أُصُولِهَا فَبِإِذْنِ اللَّهِ وَلِيُخْزِيَ الْفَاسِقِينَ} [الحشر: ٥] وَقَالَ - تَعَالَى - {وَلا يَطَئُونَ مَوْطِئًا يَغِيظُ الْكُفَّارَ وَلا يَنَالُونَ مِنْ عَدُوٍّ نَيْلا إِلا كُتِبَ لَهُمْ بِهِ عَمَلٌ صَالِحٌ} [التوبة: ١٢٠] وَقَدْ أَحْرَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَخْلَ بَنِي النَّضِيرِ - وَهِيَ فِي طَرَفِ دُورِ الْمَدِينَةِ - وَقَدْ عَلِمَ أَنَّهَا تَصِيرُ لِلْمُسْلِمِينَ فِي يَوْمٍ أَوْ غَدِهِ.

L15406 We have been narrated from Abu Bakr al-Siddiq, may Allah be pleased with him: "Do not ever cut down a fruit-bearing tree nor destroy a thriving structure." No one has a valid argument against the Messenger of Allah, peace and blessings be upon him. Abu Bakr may prohibit such actions voluntarily, because refraining from such actions is also permissible as indicated in the aforementioned verse. The Prophet, peace and blessings be upon him, did not cut down the palm trees of Khaybar either. All of this is commendable—and with Allah, the Exalted, lies all success.

وَقَدْ رُوِّينَا عَنْ أَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ -: لَا تَقْطَعَنَّ شَجَرًا مُثْمِرًا وَلَا تُخَرِّبَنَّ عَامِرًا، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ يَنْهَى أَبُو بَكْرٍ عَنْ ذَلِكَ اخْتِيَارًا، لِأَنَّ تَرْكَ ذَلِكَ أَيْضًا مُبَاحٌ كَمَا فِي الْآيَةِ الْمَذْكُورَةِ، وَلَمْ يَقْطَعْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيْضًا نَخْلَ خَيْبَرَ، فَكُلُّ ذَلِكَ حَسَنٌ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L15407 925 – Issue:

٩٢٥ - مَسْأَلَةٌ:

L15408 It is impermissible to maim any of their animals whatsoever—neither camels, cattle, sheep, horses, chickens, pigeons, geese, wild ducks, nor others—except solely for consumption. Pigs are wholly excluded and must be maimed (killed) without exception. Horses are excluded exclusively during combat. This applies whether Muslims have captured them or not, whether the enemy overtakes them and Muslims cannot prevent their seizure, or if the enemy does not reach them. All such animals must inevitably be left untouched if it is not possible to prevent their seizure or drive them away. None of their bees may be maimed, drowned, or have their hives burned.

وَلَا يَحِلُّ عَقْرُ شَيْءٍ مِنْ حَيَوَانِهِمْ أَلْبَتَّةَ لَا إبِلٍ، وَلَا بَقَرٍ، وَلَا غَنَمٍ، وَلَا خَيْلٍ، وَلَا دَجَاجٍ، وَلَا حَمَامٍ، وَلَا أَوَزٍّ، وَلَا بَرَكٍ، وَلَا غَيْرِ ذَلِكَ إلَّا لِلْأَكْلِ فَقَطْ، حَاشَا الْخَنَازِيرَ جُمْلَةً فَتُعْقَرُ، وَحَاشَا الْخَيْلَ فِي حَالِ الْمُقَاتَلَةِ فَقَطْ، وَسَوَاءٌ أَخَذَهَا الْمُسْلِمُونَ، أَوْ لَمْ يَأْخُذُوهَا أَدْرَكَهَا الْعَدُوُّ وَلَمْ يَقْدِرْ الْمُسْلِمُونَ عَلَى مَنْعِهَا، أَوْ لَمْ يُدْرِكُوهَا وَيُخَلَّى كُلُّ ذَلِكَ وَلَا بُدَّ إنْ لَمْ يُقْدَرْ عَلَى مَنْعِهِ، وَلَا عَلَى سَوْقِهِ، وَلَا يُعْقَرُ شَيْءٌ مِنْ نَحْلِهِمْ، وَلَا يُغَرَّقُ، وَلَا تُحَرَّقُ خَلَايَاهُ.

L15409 Similarly, if someone's animal falls into the Domain of War (Dār al-Ḥarb), it

[12] **Qur'an references (L15405):** Qur'an 59:5 (Al-Hashr); Qur'an 9:120 (At-Tawbah).

is not permissible for him to slaughter it. Rather, he must leave it as it is, and it remains his property perpetually, as part of his wealth, just as it originally was. No ruling lacking textual evidence can invalidate his ownership of it.

وَكَذَلِكَ مَنْ وَقَعَتْ دَابَّتُهُ فِي دَارِ الْحَرْبِ فَلَا يَحِلُّ لَهُ عَقْرُهَا لَكِنْ يَدَعُهَا كَمَا هِيَ وَهِيَ لَهُ أَبَدًا مَالٌ مِنْ مَالِهِ كَمَا كَانَتْ لَا يُزِيلُ مِلْكَهُ عَنْهَا حُكْمٌ بِلَا نَصٍّ.

L15410 This is the opinion of Mālik and Abū Sulaymān.

وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي سُلَيْمَانَ.

L15411–15412 The Hanafis and Malikis said: All such animals are to be slaughtered. As for camels, cattle, and sheep, they are to be slaughtered and then burned. As for horses, mules, and donkeys, they are only to be slaughtered.

وَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: يُعْقَرُ كُلُّ ذَلِكَ، فَأَمَّا الْإِبِلُ، وَالْبَقَرُ، وَالْغَنَمُ، فَتُعْقَرُ، ثُمَّ تُحْرَقُ، وَأَمَّا الْخَيْلُ، وَالْبِغَالُ، وَالْحَمِيرُ فَتُعْقَرُ فَقَطْ.

L15413 The Malikis said: As for mules and donkeys, they are to be slaughtered. As for horses, they are not to be slaughtered nor hamstrung, but rather they are to be disabled by cutting their tendons or have their bellies split.

وَقَالَ الْمَالِكِيُّونَ: أَمَّا الْبِغَالُ، وَالْحَمِيرُ، فَتُذْبَحُ، وَأَمَّا الْخَيْلُ فَلَا تُذْبَحُ، وَلَا تُعْقَرُ، لَكِنْ تُعَرْقَبُ، أَوْ تُشَقُّ أَجْوَافُهَا.

L15414 Abu Muhammad said: In this speech lies confusion unmistakable to a person of understanding. The first issue is that it is an unsubstantiated claim and a differentiation unattested before them. Their argument was that they occasionally ate camels, cattle, sheep, and horses if they found them slaughtered by nahr. This argument, however, caused greater confusion than the position it sought to defend.

قَالَ أَبُو مُحَمَّدٍ: فِي هَذَا الْكَلَامِ مِنَ التَّخْلِيطِ مَا لَا خَفَاءَ بِهِ عَلَى ذِي فَهْمٍ، أَوَّلُ ذَلِكَ: أَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَتَفْرِيقٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُمْ، وَكَانَتْ حُجَّتُهُمْ فِي ذَلِكَ أَنَّهُمْ رُبَّمَا أَكَلُوا الْإِبِلَ، وَالْبَقَرَ، وَالْغَنَمَ، وَالْخَيْلَ إِذَا وَجَدُوهَا مَنْحُورَةً فَكَانَ هَذَا الِاحْتِجَاجُ أَدْخَلَ فِي التَّخْلِيطِ مِنَ الْقَوْلَةِ الْمُحْتَجِّ لَهَا.

L15415 I wish I knew when the Christians, Zoroastrians, or idol worshippers ever avoided eating donkeys or mules and restricted themselves to eating livestock and horses. And all these people eat carrion while prohibiting no animal whatsoever. As for the Jews and the Sabians: they do not eat anything at all that was ritually slaughtered by others - and this is most astonishing.

وَلَيْتَ شِعْرِي مَتَى كَانَتِ النَّصَارَى، أَوِ الْمَجُوسُ، أَوْ عُبَّادُ الْأَوْثَانِ يَتَجَنَّبُونَ أَكْلَ حِمَارٍ، أَوْ بَغْلٍ، وَيَقْتَصِرُونَ عَلَى أَكْلِ الْأَنْعَامِ، وَالْخَيْلِ، وَكُلُّ هَؤُلَاءِ يَأْكُلُونَ الْمَيْتَةَ، وَلَا يُحَرِّمُونَ حَيَوَانًا أَصْلًا - وَأَمَّا الْيَهُودُ، وَالصَّابِئُونَ: فَلَا يَأْكُلُونَ شَيْئًا ذَكَّاهُ غَيْرُهُمْ أَصْلًا - وَهَذَا عَجَبٌ جِدًّا.

L15416 They argued for permitting the killing of all such individuals based on the statement of Allah, the Exalted: “Nor do they tread any ground that enrages the disbelievers, nor do they strike any blow against an enemy except that a good deed is thereby recorded for them.” [At-Tawbah: 120][13]

وَاحْتَجُّوا فِي إِبَاحَتِهِمْ قَتْلَ كُلِّ ذَلِكَ بِقَوْلِ اللَّهِ - تَعَالَى -: {وَلا يَطَئُونَ مَوْطِئًا يَغِيظُ الْكُفَّارَ وَلا يَنَالُونَ مِنْ عَدُوٍّ نَيْلا إِلا كُتِبَ لَهُمْ بِهِ عَمَلٌ صَالِحٌ} [التوبة: ١٢٠] .

[13] **Qur’an references (L15416):** Qur’an 9:120 (At-Tawbah).

L15417 Abū Muḥammad said: So we said to them: “Then kill their children, their infants, and their women by this juridical reasoning - would this not undoubtedly provoke them more than killing their animals?” They replied: “The Messenger of God - peace and blessings of God be upon him - prohibited killing women and children.” We said to them: “And he (peace be upon him) likewise prohibited killing animals except for consumption, and there is no distinction. Indeed, God - Exalted is He - has commanded us to provoke them through what He has not forbidden, not by means of what He has prohibited us from doing.”

قَالَ أَبُو مُحَمَّد: فَقُلْنَا لَهُمْ: فَاقْتُلُوا أَوْلَادَهُمْ، وَصِغَارَهُمْ، وَنِسَاءَهُمْ، بِهَذَا الِاسْتِدْلَالِ فَهُوَ بِلَا شَكٍّ أَغِيظُ لَهُمْ مِنْ قَتْلِ حَيَوَانِهِمْ؟ فَقَالُوا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ قَتْلِ النِّسَاءِ، وَالصِّبْيَانِ. فَقُلْنَا لَهُمْ: وَهُوَ - عَلَيْهِ السَّلَامُ - نَهْيٌ عَنْ قَتْلِ الْحَيَوَانِ، إلَّا لِمَأْكَلِهِ، وَلَا فَرْقَ؛ وَإِنَّمَا أَمَرَنَا اللَّهُ - تَعَالَى - أَنْ نَغِيظَهُمْ فِيمَا لَمْ يَنْهَ عَنْهُ لَا بِمَا حُرِّمَ عَلَيْنَا فِعْلُهُ.

L15418 It was narrated to us through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn ʿAbdullāh ibn Yazīd al-Muqrī narrated to us: Sufyān ibn ʿUyaynah narrated to us from ʿAmr (he is Ibn Dīnār) from Ṣuhayb, the freedman of Ibn ʿĀmir, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ that the Messenger of Allah—peace and blessings be upon him—said: “No person kills a sparrow or anything beyond that unjustly but Allah—the Mighty and Majestic—will hold him accountable for it.” They asked: “O Messenger of Allah, what is its rightful due?” He replied: “Slaughter it properly to eat it, and do not cut off its head to throw it away.”

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرٍو هُوَ ابْنُ دِينَارٍ - عَنْ صُهَيْبٍ مَوْلَى ابْنِ عَامِرٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَا مِنْ إنْسَانٍ يَقْتُلُ عُصْفُورًا فَمَا فَوْقَهَا بِغَيْرِ حَقِّهَا إلَّا سَأَلَهُ اللَّهُ - عَزَّ وَجَلَّ - عَنْهَا. قِيلَ: يَا رَسُولَ اللَّهِ وَمَا حَقُّهَا؟ قَالَ يَذْبَحُهَا فَيَأْكُلُهَا وَلَا يَقْطَعُ رَأْسَهَا يَرْمِي بِهِ» .

L15419–15420 From the chain of Muslim ibn al-Ḥajjāj: Muḥammad ibn Ḥātim reported to us, Yaḥyā ibn Saʿīd al-Qaṭṭān reported to us from Ibn Jurayj, who narrated to me from Abū al-Zubayr that he heard Jābir ibn ʿAbd Allāh say: “The Prophet—peace and blessings be upon him—forbade killing any animal by immobilization.”

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا مُحَمَّدُ بْنُ حَاتِمٍ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ ابْنِ جُرَيْجٍ حَدَّثَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَنْ يُقْتَلَ شَيْءٌ مِنْ الدَّوَابِّ صَبْرًا»

L15421 Through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Zunbur al-Makkī informed us, [saying:] Ibn Abī Ḥāzim informed us, from Yazīd ibn al-Hādī, from Muʿāwiyah ibn ʿAbdillāh ibn Jaʿfar, from his father, who said: The Messenger of Allāh (peace be upon him) said: “Do not disfigure the bodies of animals.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنَا مُحَمَّدُ بْنُ زُنْبُورٍ الْمَكِّيُّ نَا ابْنُ أَبِي حَازِمٍ عَنْ يَزِيدَ بْنِ الْهَادِ عَنْ مُعَاوِيَةَ بْنِ عَبْدِ اللَّهِ بْنِ جَعْفَرٍ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُمَثِّلُوا بِالْبَهَائِمِ» .

L15422 From the narration of Malik, from Yahya ibn Saʿid al-Ansari, that Abu Bakr al-Siddiq—may Allah be pleased with him—said to the military commander he dispatched to Syria: “Do not hamstring a sheep or a camel except for con-

sumption, do not burn beehives or drown them." None of the Companions are known to have disagreed with him on this matter.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ لِأَمِيرِ جَيْشٍ بَعَثَهُ إِلَى الشَّامِ: لَا تَعْقِرَنَّ شَاةً وَلَا بَعِيرًا إِلَّا لِمَأْكَلَةٍ وَلَا تُحَرِّقَنَّ نَحْلًا وَلَا تُغْرِقَنَّهُ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مِنْ الصَّحَابَةِ مُخَالِفٌ.

L15423 As for pigs, we have been narrated through the chain of Al-Bukhārī: From Isḥāq ibn Rāhwayh, from Yaʿqūb ibn Ibrāhīm ibn Saʿd, from his father, from Ṣāliḥ ibn Kayṣān, from Ibn Shihāb, that Saʿīd ibn al-Musayyib heard Abū Hurayrah say: The Messenger of Allah, peace and blessings be upon him, said, "By the One in whose hand my soul rests, it is imminent that Jesus son of Mary will descend among you as a just arbiter. He will break the cross and kill the pig." Thus, he, peace be upon him, informed that killing the pig is part of the firmly established justice in his religion, which his brother in faith ʿĪsā, peace be upon them both, will revive.[14]

وَأَمَّا الْخَنَازِيرُ فَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ - نَا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدٍ نَا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ عَنْ ابْنِ شِهَابٍ أَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ سَمِعَ أَبَا هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَالَّذِي نَفْسِي بِيَدِهِ لَيُوشِكَنَّ أَنْ يَنْزِلَ فِيكُمْ ابْنُ مَرْيَمَ حَكَمًا عَدْلًا فَيَكْسِرَ الصَّلِيبَ، وَيَقْتُلَ الْخِنْزِيرَ» فَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ قَتْلَ الْخِنْزِيرِ مِنْ الْعَدْلِ الثَّابِتِ فِي مِلَّتِهِ الَّتِي يُحْيِيهَا عِيسَى أَخُوهُ - عَلَيْهِمَا السَّلَامُ -.

L15424 Some people mentioned an unsubstantiated report stating that Jaʿfar ibn Abī Ṭālib hamstrung his horse on the day he was killed. This is a narration transmitted by ʿAbbād ibn ʿAbdullāh ibn al-Zubayr from an unnamed man of Banū Murrah. Even if it were authentic, it would not constitute evidence, for it contains no indication that the Prophet—peace be upon him—knew of this act and approved it.

وَذَكَرَ بَعْضُ النَّاسِ خَبَرًا لَا يَصِحُّ، فِيهِ: أَنَّ جَعْفَرَ بْنَ أَبِي طَالِبٍ عَرْقَبَ فَرَسَهُ يَوْمَ قُتِلَ - وَهَذَا خَبَرٌ رَوَاهُ عَبَّادُ بْنُ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ رَجُلٍ مِنْ بَنِي مُرَّةَ لَمْ يُسَمِّهِ، وَلَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَ ذَلِكَ فَأَقَرَّهُ.

L15425 In defensive situations, a Muslim may defend his horse against anyone seeking to kill it or seize it by whatever means available.

وَأَمَّا الْفَرَسُ فِي الْمُدَافَعَةِ فَإِنَّ لِلْمُسْلِمِ أَنْ يَدْفَعَ عَنْهُ مَنْ أَرَادَ قَتْلَهُ أَوْ أَسْرَهُ بِأَيِّ شَيْءٍ أَمْكَنَهُ.

L15426 Issue: The Killing of the Women of the Polytheists and Those Who Have Not Attained Maturity Among Them

[مَسْأَلَةٌ قَتْلُ نِسَاءِ الْمُشْرِكِينَ وَمَنْ لَمْ يَبْلُغْ مِنْهُمْ]

L15427 Issue 926:

٩٢٦ - مَسْأَلَةٌ:

L15428 It is not permissible to kill their women nor those among them who have

[14] **Hadith references (L15423):** Mishkat al-Masabih 5505.

not reached the age of discernment, unless one of those we mentioned takes up arms, leaving the Muslim no means of escape from him except by killing him, in which case the Muslim is permitted to kill him at that point.

L15429–15431 It was narrated to us through the chain of Al-Bukhārī: Aḥmad ibn Yūnus narrated to us, Al-Layth ibn Saʿd narrated to us, from Nāfiʿ that... Ibn ʿUmar reported that a woman was found killed during some of the military expeditions of the Prophet (peace and blessings be upon him), and he rejected the killing of women and boys.

L15432 927 - Issue:

L15433 If they are harmed without intent during night raids or in the chaos of intense battle, there is no blame in that.

L15434 It was narrated to us through the chain of Al-Bukhārī: ʿAlī ibn ʿAbdullāh narrated to us, Sufyān narrated to us, Al-Zuhrī narrated to us from ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah from Ibn ʿAbbās from Al-Ṣaʿb ibn Jaththāmah al-Laythī that "the Messenger of Allah, peace and blessings be upon him, was asked about the people of a household from among the polytheists who are attacked by night, leading to harm of their offspring and women. He said: 'They are reckoned with their fathers.'"

L15435 928. Issue:

L15436 It is permissible to kill all others besides those we have mentioned among the polytheists—whether combatants or non-combatants, merchants, hired laborers (the laborer bound by contract), elderly men whether of sound judgment or not, farmers, bishops, priests, monks, blind persons, or disabled persons confined to seats. Do not exclude anyone.

L15437 It is also permissible to spare them. Allah, the Exalted, said: {So kill the polytheists wherever you find them, seize them, besiege them, and lie in wait for them at every lookout. But if they repent, establish prayer, and give Zakāh, then release them} [Al-Tawbah: 5]. Thus, the Almighty and Majestic

وَلَا يَحِلُّ قَتْلُ نِسَائِهِمْ وَلَا قَتْلُ مَنْ لَمْ يَبْلُغْ مِنْهُمْ، إِلَّا أَنْ يُقَاتِلَ أَحَدٌ مِمَّنْ ذَكَرْنَا فَلَا يَكُونُ لِلْمُسْلِمِ مَنْجًى مِنْهُ إِلَّا بِقَتْلِهِ فَلَهُ قَتْلُهُ حِينَئِذٍ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا أَحْمَدُ بْنُ يُونُسَ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ أَخْبَرَهُ " أَنَّ [امْرَأَةً وُجِدَتْ فِي بَعْضِ مَغَازِي النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَقْتُولَةً فَأَنْكَرَ] رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَتْلَ النِّسَاءِ وَالصِّبْيَانِ ".

٩٢٧ - مَسْأَلَةٌ:

فَإِنْ أُصِيبُوا فِي الْبَيَاتِ أَوْ فِي اخْتِلَاطِ الْمَلْحَمَةِ عَنْ غَيْرِ قَصْدٍ فَلَا حَرَجَ فِي ذَلِكَ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَلِيُّ بْنُ عَبْدِ اللَّهِ نَا سُفْيَانُ نَا الزُّهْرِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ الصَّعْبِ بْنِ جَثَّامَةَ اللَّيْثِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ أَهْلِ الدَّارِ يُبَيَّتُونَ مِنْ الْمُشْرِكِينَ فَيُصَابُ مِنْ ذَرَارِيِّهِمْ وَنِسَائِهِمْ؟ فَقَالَ: هُمْ مِنْ آبَائِهِمْ» .

٩٢٨ - مَسْأَلَةٌ:

وَجَائِزٌ قَتْلُ كُلِّ مَنْ عَدَا مِنْ ذَكَرْنَا مِنْ الْمُشْرِكِينَ مِنْ مُقَاتِلٍ، أَوْ غَيْرِ مُقَاتِلٍ، أَوْ تَاجِرٍ، أَوْ أَجِيرٍ - وَهُوَ الْعَسِيفُ - أَوْ شَيْخٍ كَبِيرٍ كَانَ ذَا رَأْيٍ، أَوْ لَمْ يَكُنْ، أَوْ فَلَّاحٍ، أَوْ أُسْقُفٍ، أَوْ قِسِّيسٍ، أَوْ رَاهِبٍ، أَوْ أَعْمَى، أَوْ مُقْعَدٍ لَا تُحَاشِ أَحَدًا.

وَجَائِزٌ اسْتِبْقَاؤُهُمْ أَيْضًا قَالَ اللَّهُ - تَعَالَى -: {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] فَعَمَّ - عَزَّ وَجَلَّ - كُلَّ مُشْرِكٍ بِالْقَتْلِ إِلَّا أَنْ يُسْلِمَ.

has encompassed all polytheists with the ruling of killing unless they embrace Islam.[15]

L15438 A group said: None of those we mentioned should be killed. They argued using a report we narrated through the chain of Ahmad ibn Shu'ayb—who informed us—from Qutaybah, from al-Mughirah, from Abu al-Zinad, from al-Muraqqaʿ, from his grandfather Rabah ibn al-Rabiʿ, who said: "We were with the Messenger of Allah—peace and blessings be upon him—when he told a man: 'Overtake Khalid and say to him: Do not kill any offspring or hired worker.'"

وَقَالَ قَوْمٌ: لَا يُقْتَلُ أَحَدٌ مِمَّنْ ذَكَرْنَا، وَاحْتَجُّوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنَا قُتَيْبَةُ نَا الْمُغِيرَةُ عَنْ أَبِي الزِّنَادِ عَنْ الْمُرَقَّعِ عَنْ جَدِّهِ رَبَاحِ بْنِ الرَّبِيعِ قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لِرَجُلٍ: أَدْرِكْ خَالِدًا وَقُلْ لَهُ: لَا تَقْتُلَنَّ ذُرِّيَّةً، وَلَا عَسِيفًا» .

L15439 And by the narration of Sufyān from ʿAbdullāh ibn Dhakwān from al-Muraqqiʿ ibn Ṣayfī from his uncle Ḥanẓalah the scribe: "The Messenger of Allah, peace and blessings be upon him, said: 'Do not kill children or hired workers.'"

وَمِنْ طَرِيقِ سُفْيَانَ عَنْ عَبْدِ اللَّهِ بْنِ ذَكْوَانَ عَنْ الْمُرَقَّعِ بْنِ صَيْفِيٍّ عَنْ عَمِّهِ حَنْظَلَةَ الْكَاتِبِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَقْتُلُوا الذُّرِّيَّةَ وَلَا عَسِيفًا» .

L15440–15442 From the path of Abū Bakr ibn Abī Shaybah, who narrated to us: Yaḥyā ibn Ādam narrated to us, al-Ḥasan ibn Ṣāliḥ ibn Ḥuyayy narrated to us, from Khālid ibn al-Firr, from Anas ibn Mālik that the Messenger of Allāh—may Allāh's peace and blessings be upon him—said to them: "Depart in the name of Allāh and in the path of Allāh; you will fight the enemies of Allāh. Do not kill a frail elderly man, a child, or a woman." Through the chain of Ibn Abi Shaybah, who informed us: From Humaid, from a sheikh among the people of Medina—a client of Banī Abd al-Ashhal—from Dāwūd ibn al-Husayn, from Ikrimah, from Ibn Abbās: "The Messenger of Allah (may Allah bless him and grant him peace), when dispatching his armies, would say: 'Do not kill the dwellers of the hermitages.'"

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا يَحْيَى بْنُ آدَمَ نَا الْحَسَنُ بْنُ صَالِحِ بْنِ حُيَيٍّ عَنْ خَالِدِ بْنِ الْفِرْزِ «عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُمْ: انْطَلِقُوا بِاسْمِ اللَّهِ وَفِي سَبِيلِ اللَّهِ تُقَاتِلُونَ عَدُوَّ اللَّهِ لَا تَقْتُلُوا شَيْخًا فَانِيًا، وَلَا طِفْلًا، وَلَا امْرَأَةً» وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حُمَيْدٌ عَنْ شَيْخٍ مِنْ أَهْلِ الْمَدِينَةِ مَوْلًى لِبَنِي عَبْدِ الْأَشْهَلِ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ إذَا بَعَثَ جُيُوشَهُ قَالَ: لَا تَقْتُلُوا أَصْحَابَ الصَّوَامِعِ» .

L15443 And through the path of al-Qaʿnabī, who narrated to us: Ibrāhīm ibn Ismāʿīl from Dāwūd ibn al-Ḥuṣayn from ʿIkrimah, who said: The Messenger of Allah (peace be upon him) said, "Do not kill the inhabitants of monasteries."

وَمِنْ طَرِيقِ الْقَعْنَبِيِّ نَا إبْرَاهِيمُ بْنُ إسْمَاعِيلَ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تَقْتُلُوا أَصْحَابَ الصَّوَامِعِ» .

L15444 Through the transmission of Hammad ibn Salamah, Ubaydullah ibn Umar reported to us, saying: "Umar ibn Abd al-Aziz wrote to some of his gover-

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ قَالَ: «كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إلَى بَعْضِ أُمَرَائِهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: لَا تَقْتُلُوا صَغِيرًا وَلَا امْرَأَةً وَلَا شَيْخًا كَبِيرًا» .

[15] **Qur'an references (L15437):** Qur'an 9:5 (At-Tawbah).

nors: 'The Messenger of Allah (peace and blessings be upon him) said: Do not kill a child, a woman, or an elderly man.'"

L15445 From Hammad ibn Salamah, from an elder in Mina, from his father: "The Messenger of Allah (peace and blessings be upon him) forbade the killing of small ants and lizards."

L15446 And narrated via the chain of Qays ibn al-Rabiʿ, from ʿUmar, the freed slave of ʿAnbasah, from Zayd ibn ʿAli ibn al-Ḥusayn, from his father, from ʿAli ibn Abī Ṭālib: "The Prophet—peace and blessings of Allah be upon him—prohibited killing an elder or uprooting a tree, except a tree that harms them [i.e., the Muslims]."

L15447 And via the chain of Ibn Abi Shaybah from Isa ibn Yunus, from al-Ahwas, from Rashid ibn Sa'd: "The Prophet (peace be upon him) prohibited the killing of the elderly man who is unable to move."

L15448 They narrated from Abu Bakr—may Allah be pleased with him—that he said to one of his commanders: "Do not kill a woman, a child, or a feeble old man. You will encounter people who have secluded themselves in monasteries, claiming devotion to Allah—leave them and what they have devoted themselves to. You will also encounter people who have scraped the centers of their heads, leaving headband-like strips of hair in those areas—strike the scraped regions with the sword."

L15449 On the authority of Jābir ibn ʿAbdullāh, he said: They would not kill the merchants of the polytheists, saying, "We only kill those who fight us—and these do not fight." This was the full extent of their contentious claim, and none of it is valid.

L15450 As for the hadith of al-Muraqqa', al-Muraqqa' is unknown. As for the hadith of Ibn Abbas, it is narrated from an unnamed Medinan shaykh. Some of them named him, mentioning Ibrāhīm ibn Ismāʿīl ibn Abī Ḥabībah, and he is weak (ḍaʿīf).

L15451–15452 The other two reports are mursal. Similarly, the hadith of Rashid is mursal, and there is no valid proof in a mursal narration. As for the hadith of

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ شَيْخٍ بِمِنًى عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ قَتْلِ الْعُسَفَاءِ وَالْوُصَفَاءِ» .

وَمِنْ طَرِيقِ قَيْسِ بْنِ الرَّبِيعِ عَنْ عُمَرَ مَوْلَى عَنْبَسَةَ عَنْ زَيْدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى أَنْ يُقْتَلَ شَيْخٌ كَبِيرٌ أَوْ يُعْقَرَ شَجَرٌ إلَّا شَجَرٌ يَضُرُّ بِهِمْ» .

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عِيسَى بْنِ يُونُسَ عَنْ الْأَحْوَصِ عَنْ رَاشِدِ بْنِ سَعْدٍ «نَهَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِ الشَّيْخِ الَّذِي لَا حَرَاكَ بِهِ» .

وَذَكَرُوا عَنْ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ لِأَمِيرٍ لَهُ: لَا تَقْتُلَنَّ امْرَأَةً، وَلَا صَبِيًّا، وَلَا كَبِيرًا هَرِمًا، إنَّك سَتَمُرُّ عَلَى قَوْمٍ قَدْ حَبَسُوا أَنْفُسَهُمْ فِي الصَّوَامِعِ زَعَمُوا لِلَّهِ فَدَعْهُمْ وَمَا حَبَسُوا أَنْفُسَهُمْ لَهُ، وَسَتَمُرُّ عَلَى قَوْمٍ قَدْ فَحَصُوا مِنْ أَوْسَاطِ رُءُوسِهِمْ وَتَرَكُوا فِيهَا مِنْ شُعُورِهِمْ أَمْثَالَ الْعَصَائِبِ فَاضْرِبْ مَا فَحَصُوا عَنْهُ بِالسَّيْفِ.

وَعَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: كَانُوا لَا يَقْتُلُونَ تُجَّارَ الْمُشْرِكِينَ وَقَالُوا: إنَّمَا نَقْتُلُ مَنْ قَاتَلَ - وَهَؤُلَاءِ لَا يُقَاتِلُونَ. هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَكُلُّ ذَلِكَ لَا يَصِحُّ.

أَمَّا حَدِيثُ الْمُرَقَّعِ فَالْمُرَقَّعُ مَجْهُولٌ. وَأَمَّا حَدِيثُ ابْنِ عَبَّاسٍ فَعَنْ شَيْخٍ مَدَنِيٍّ لَمْ يُسَمِّ، وَقَدْ سَمَّاهُ بَعْضُهُمْ فَذَكَرَ إبْرَاهِيمَ بْنَ إسْمَاعِيلَ بْنِ أَبِي حَبِيبَةَ وَهُوَ ضَعِيفٌ.

وَالْخَبَرَانِ الْآخَرَانِ، مُرْسَلَانِ. وَكَذَلِكَ حَدِيثُ رَاشِدٍ مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ. وَأَمَّا حَدِيثُ أَنَسٍ فَعَنْ خَالِدِ بْنِ الْفَرْزِ وَهُوَ مَجْهُولٌ. وَحَدِيثُ حَمَّادِ بْنِ سَلَمَةَ عَنْ شَيْخٍ بِمِنًى عَنْ أَبِيهِ - وَهَذَا عَجَبٌ جِدًّا وَأَعْجَبُ مِنْهُ أَنْ يُتْرَكَ لَهُ الْقُرْآنُ وَأَمَّا حَدِيثُ قَيْسِ بْنِ الرَّبِيعِ فَلَيْسَ قَيْسٌ بِالْقَوِيِّ، وَلَا عُمَرُ مَوْلَى عَنْبَسَةَ مَعْرُوفًا، وَعَلِيُّ بْنُ الْحُسَيْنِ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ جَدِّهِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ.

Anas, it is narrated from Khalid ibn al-Faraz—who is unknown. The hadith of Hammad ibn Salamah is from a sheikh in Mina [who narrated] from his father—this is exceedingly strange, and even more astonishing is that the Qur'an is disregarded in favor of it. As for the hadith of Qays ibn al-Rabi', Qays is not a strong narrator, nor is 'Umar—the mawlā of 'Anbasah—known. Moreover, 'Ali ibn al-Husayn—may Allah be pleased with them—was not born until after his grandfather's death. Thus, all their embellished arguments collapse.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ فَمِنْ عَجَائِبِهِمْ هَذَا الْخَبَرُ نَفْسُهُ: عَنْ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - فِيهِ جَاءَ نَهْيُ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - عَنْ عَقْرِ شَيْءٍ مِنْ الْإِبِلِ، أَوْ الشَّاةِ إلَّا لِمَأْكَلَةٍ.

L15453 As for the narration from Abū Bakr (RA), this very report is among their marvels: it contains Abū Bakr's (RA) prohibition against hamstringing any camels or sheep except for consumption.

وَفِيهِ جَاءَ: أَنْ لَا يُقْطَعَ الشَّجَرُ وَلَا يُغَرَّقُ النَّحْلُ - فَخَالَفُوهُ كَمَا اشْتَهَوْا حَيْثُ لَا يَحِلُّ خِلَافُهُ، لِأَنَّ السُّنَّةَ مَعَهُ، وَحَيْثُ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ.

L15454 In it, it was stipulated that trees should not be cut down and bee colonies should not be submerged. Yet they opposed him according to their whims in matters where opposition is impermissible—because the Sunnah supports it, and no dissent from the Companions is recorded.

ثُمَّ احْتَجُّوا بِهِ حَيْثُ خَالَفَهُ غَيْرُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا عَجَبٌ جِدًّا فِي خَبَرٍ وَاحِدٍ وَأَمَّا قَوْلُ جَابِرٍ لَمْ يَكُونُوا يَقْتُلُونَ تُجَّارَ الْمُشْرِكِينَ فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَمْ يَقُلْ: إنَّ تَرْكَهُمْ قَتْلَهُمْ كَانَ فِي دَارِ الْحَرْبِ وَإِنَّمَا أَخْبَرَ عَنْ جُمْلَةِ أَمْرِهِمْ.

L15455 Then they cited it as evidence where other Companions—may Allah be pleased with them—disagreed with him, and this is utterly astonishing regarding a single narration. As for Jābir's statement, "They did not kill the traders of the polytheists," there is no proof for them in it, because he did not say that their abstention from killing them was in the abode of war. Rather, he merely reported about the general context of their matter.

ثُمَّ لَوْ صَحَّ مُبَيِّنًا عَنْهُ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّهُ لَيْسَ فِيهِ نَهْيٌ عَنْ قَتْلِهِمْ، وَإِنَّمَا فِيهِ اخْتِيَارُهُمْ لِتَرْكِهِمْ فَقَطْ.

L15456 Then, had it been valid as an explicit statement from him, they would have had no legal grounds to rely on, since it contains no prohibition against killing them, but rather only their choice to leave them.

وَرُوِّينَا عَنْ الْحَسَنِ، وَمُجَاهِدٍ، وَالضَّحَّاكِ النَّهْيَ عَنْ قَتْلِ الشَّيْخِ الْكَبِيرِ وَلَا يَصِحُّ عَنْ مُجَاهِدٍ، وَالضَّحَّاكِ، لِأَنَّهُ مِنْ طَرِيقِ جُوَيْبِرٍ، وَلَيْثِ بْنِ أَبِي سُلَيْمٍ وَكَذَلِكَ أَيْضًا هَذَا الْخَبَرُ

L15457–15459 It has been narrated to us from al-Ḥasan, Mujāhid, and al-Ḍaḥḥāk the prohibition against killing elderly individuals. However, the narrations from Mujāhid and al-Ḍaḥḥāk are not authentic, as they are transmitted via the chain of Juwaybir and Layth ibn Abī Sulaym. Likewise, this report con-

cerning Abū Bakr—may Allah be pleased with him—is also inauthentic, for it is narrated through Yaḥyā ibn Saʿīd, ʿAṭāʾ, and Thābit ibn al-Ḥajjāj—none of whom were born except after Abū Bakr's death a long time afterward. Another chain includes al-Ḥajjāj ibn Arṭāʾah—who is rejected (as a narrator)—and if we wished to adduce as a juridical proof the report of al-Ḥasan from Samurah from the Prophet—peace and blessings be upon him—and the Musnad report of al-Ḥajjāj: "Kill the elderly polytheists and spare the youths." "Their flaw" — had we followed it, we would have sunk deeper into illusion than they. But Allah, the Exalted and Majestic, protects us from citing as evidence what we deem unsound, for in the Quran and the authentic Sunan there is sufficiency.

عَنْ أَبِي بَكْرٍ لَا يَصِحُّ؛ لِأَنَّهُ عَنْ يَحْيَى بْنِ سَعِيدٍ، وَعَطَاءٍ، وَثَابِتِ بْنِ الْحَجَّاجِ، وَكُلُّهُمْ لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - بِدَهْرٍ. وَمِنْ طَرِيقٍ فِيهَا الْحَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ هَالِكٌ - وَلَوْ شِئْنَا أَنْ نَحْتَجَّ بِخَبَرِ الْحَسَنِ عَنْ سَمُرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِخَبَرِ الْحَجَّاجِ مُسْنَدًا «اُقْتُلُوا شُيُوخَ الْمُشْرِكِينَ وَاسْتَبْقُوا شَرْخَهُمْ» لَكُنَّا أَدْخَلَ مِنْهُمْ فِي الْإِيهَامِ؛ وَلَكِنْ يُعِيذُنَا اللَّهُ - عَزَّ وَجَلَّ - مِنْ أَنْ نَحْتَجَّ بِمَا لَا نَرَاهُ صَحِيحًا، وَفِي الْقُرْآنِ وَصَحِيحِ السُّنَنِ كِفَايَةٌ.

L15460 As for their claim, "We only kill those who fight," it is false. Rather, we kill every one among them who is called to Islam until he believes or pays the jizya if he is from the People of the Book, as God—Exalted is He—has commanded in the Quran, not as Abū Ḥanīfa ruled when he said: "If a woman apostatizes, she is not killed, but if she kills, she is killed," and "If the polytheists among the protected non-Muslim subjects (dhimmis) insult the Prophet—peace and blessings be upon him—they are spared, and he allows their insults toward him until they vent their rancor, thereby causing the Muslims to be humiliated." Perish this statement and its speaker!

وَأَمَّا قَوْلُهُمْ: إِنَّمَا نَقْتُلُ مَنْ قَاتَلَ، فَبَاطِلٌ؛ بَلْ نَقْتُلُ كُلَّ مَنْ يُدْعَى إِلَى الْإِسْلَامِ مِنْهُمْ حَتَّى يُؤْمِنَ أَوْ يُؤَدِّيَ الْجِزْيَةَ إِنْ كَانَ كِتَابِيًّا كَمَا أَمَرَ اللَّهُ - تَعَالَى - فِي الْقُرْآنِ لَا كَمَا أَمَرَ أَبُو حَنِيفَةَ إِذْ يَقُولُ: إِنْ ارْتَدَّتْ الْمَرْأَةُ لَمْ تُقْتَلْ، فَإِنْ قَتَلَتْ قُتِلَتْ، وَإِنْ سَبَّ الْمُشْرِكُونَ أَهْلُ الذِّمَّةِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تُرِكُوا، وَسَبُّهُمْ لَهُ حَتَّى يَشْفُوا صُدُورَهُمْ وَيَخْزَى الْمُسْلِمُونَ بِذَلِكَ. تَبًّا لِهَذَا الْقَوْلِ وَقَائِلِهِ.

L15461 It was narrated to us through the chain of Waki', from Sufyān, from 'Abd al-Malik ibn 'Umayr al-Quraẓī, from 'Aṭiyyah al-Quraẓī, who said: "I was presented on the Day of Qurayẓah before the Messenger of Allah (peace be upon him). Those who had reached puberty were killed, and those who had not were released. I was among those who had not reached puberty."

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ نَا عَبْدُ الْمَلِكِ بْنُ عُمَيْرٍ الْقُرَظِيّ نَا «عَطِيَّةُ الْقُرَظِيّ قَالَ: عُرِضْتُ يَوْمَ قُرَيْظَةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَانَ مَنْ أَنْبَتَ قُتِلَ، وَمَنْ لَمْ يُنْبِتْ خُلِّيَ سَبِيلُهُ، فَكُنْتُ فِيمَنْ لَمْ يُنْبِتْ» .

L15462 This is a general ruling from the Prophet—peace and blessings of Allah be upon him—in which he did not spare any of them: neither a hired laborer, nor a merchant, nor a farmer, nor an old man. This constitutes a sound and definitive consensus from them—may Allah be pleased with them—because they were in an area among the areas of Medina, a fact not hidden from any of its inhabitants.

فَهَذَا عُمُومٌ مِنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَسْتَبْقِ مِنْهُمْ عَسِيفًا، وَلَا تَاجِرًا، وَلَا فَلَّاحًا، وَلَا شَيْخًا كَبِيرًا، وَهَذَا إِجْمَاعٌ صَحِيحٌ مِنْهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - مُتَيَقَّنٌ؛ لِأَنَّهُمْ فِي عَرَضٍ مِنْ أَعْرَاضِ الْمَدِينَةِ لَمْ يَخْفَ ذَلِكَ عَلَى أَحَدٍ مِنْ أَهْلِهَا.

L15463 From the path of Ḥammād ibn Salamah: Ayyūb al-Sakhtiyānī and Ubayd

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: أَخْبَرَنَا أَيُّوبُ السِّخْتِيَانِيُّ، وَعُبَيْدُ اللَّهِ بْنُ عُمَرَ كِلَاهُمَا عَنْ نَافِعٍ عَنْ أَسْلَمَ مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أُمَرَاءِ الْأَجْنَادِ: أَنْ لَا يَجْلِبُوا إِلَيْنَا مِنَ الْعُلُوجِ أَحَدًا، اقْتُلُوهُمْ، وَلَا تَقْتُلُوا مِنْ جَرَتْ عَلَيْهِمُ الْمُوَاسِي وَلَا تَقْتُلُوا صَبِيًّا، وَلَا امْرَأَةً.

Allāh ibn Umar informed us, from Nāfiʿ, from Aslam—the freed slave of Umar ibn al-Khaṭṭāb—who said: Umar ibn al-Khaṭṭāb wrote to the commanders of the armies: “Do not bring any hostile combatants to us—kill them. But do not kill those under the protection of treaties, nor any non-combatant child or woman.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنِ ابْنِ نُمَيْرٍ نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: كَتَبَ عُمَرُ إِلَى الْأَجْنَادِ: لَا تَقْتُلُوا امْرَأَةً، وَلَا صَبِيًّا، وَأَنْ يَقْتُلُوا كُلَّ مَنْ جَرَتْ عَلَيْهِ الْمُوَاسِي.

L15464 From the path of Ibn Abi Shaybah from Ibn Numayr, narrated to us by ’Ubayd Allah ibn ’Umar from Nafi’ from Ibn ’Umar, who said: ’Umar wrote to the soldiers: “Do not kill a woman or a child, and kill everyone upon whom the razor has passed.”

فَهَذَا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَسْتَثْنِ شَيْخًا، وَلَا رَاهِبًا، وَلَا عَسِيفًا، وَلَا أَحَدًا إِلَّا النِّسَاءَ، وَالصِّبْيَانَ فَقَطْ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ خِلَافُهُ - وَقَدْ قُتِلَ دُرَيْدُ بْنُ الصِّمَّةِ وَهُوَ شَيْخٌ هَرِمٌ قَدِ اهْتَزَّ عَقْلُهُ فَلَمْ يُنْكِرِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: لِأَنَّهُ كَانَ ذَا رَأْيٍ؟ فَقُلْنَا لَهُمْ: وَمَنْ ذَا الَّذِي قَسَّمَ لَكُمْ ذَا الرَّأْيَ مِنْ غَيْرِهِ، فَلَا سَمْعًا لَهُ وَلَا طَاعَةً - وَمِثْلُ هَذِهِ التَّقَاسِيمِ لَا تُؤْخَذُ إِلَّا مِنَ الْقُرْآنِ، أَوْ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاللَّهِ - تَعَالَى - نَتَأَيَّدُ.

L15465 So this ʿUmar—may Allah be pleased with him—did not exclude elders, monks, hired workers, or anyone except women and children alone. No authentic report from any Companion contradicts him. Indeed, Duraīd ibn al-Ṣimmah was killed while being a decrepit elder whose mind had weakened, yet the Prophet—peace and blessings be upon him—did not disapprove. They argued: “Because he was a man of judgment?” We countered: “Who is it that has designated for you those possessing judgment apart from others, so that there is no hearing or obedience for him?” Such classifications are taken only from the Quran or the Prophet—peace and blessings be upon him—and we seek support through Allah—Exalted is He.

[مَسْأَلَةُ يُغْزَى أَهْلُ الْكُفْرِ مَعَ كُلِّ فَاسِقٍ مِنَ الْأُمَرَاءِ وَغَيْرِ فَاسِقٍ]

A jurisprudential issue: The people of disbelief are to be fought under the leadership of every ruler, whether sinful or righteous.

مَسْأَلَةٌ:

Issue:

وَيُغْزَى أَهْلُ الْكُفْرِ مَعَ كُلِّ فَاسِقٍ مِنَ الْأُمَرَاءِ، وَغَيْرِ فَاسِقٍ، وَمَعَ الْمُتَغَلِّبِ وَالْمُحَارِبِ، كَمَا يُغْزَى مَعَ الْإِمَامِ، وَيَغْزُوهُمُ الْمَرْءُ وَحْدَهُ إِنْ قَدَرَ أَيْضًا، قَالَ اللَّهُ - تَعَالَى -: {وَتَعَاوَنُوا

L15469 The people of disbelief are to be fought alongside every sinful ruler among the commanders, and non-sinful ones, and alongside usurpers and aggressors, just as they are fought alongside the Imam. A person may fight them alone if capable as well. Allah the Exalted said: {Cooperate in righteous-

ness and piety, and do not cooperate in sin and transgression} [Al-Mā'idah: 2]. We previously mentioned from the Prophet—peace be upon him—at the beginning of the Jihad chapter here: "Hearing and obeying are obligatory unless commanded to sin." Allah the Exalted said: {Go forth, whether lightly or heavily equipped} [At-Tawbah: 41]. Allah the Exalted knew there would be sinful rulers yet did not exclude them from others. Whoever calls to obedience to Allah through prayer performed as He commanded, charity properly placed in its due positions and rightfully taken for its rightful purposes, fasting likewise, pilgrimage likewise, jihad likewise, and all other acts of obedience in their entirety—responding to him becomes obligatory based on the aforementioned texts. Whoever calls—whether a rightful Imam or otherwise—to sin must neither be heard nor obeyed. The Book of Allah holds greater authority, and Allah's stipulation is more binding. The Prophet—peace be upon him—said: "Every person shall have what they intended."[16]

عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَقَدْ ذَكَرْنَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَوَّلِ بَابٍ مِنْ كِتَابِ الْجِهَادِ هَاهُنَا: السَّمْعُ وَالطَّاعَةُ حَقٌّ مَا لَمْ يُؤْمَرْ بِمَعْصِيَةٍ وَقَالَ - تَعَالَى - {انْفِرُوا خِفَافًا وَثِقَالا} [التوبة: ٤١] ، وَقَدْ عَلِمَ اللَّهُ - تَعَالَى - أَنَّهُ سَتَكُونُ أُمَرَاءُ فُسَّاقٌ فَلَمْ يَخُصَّهُمْ مِنْ غَيْرِهِمْ، وَكُلُّ مَنْ دَعَا إلَى طَاعَةِ اللَّهِ فِي الصَّلاةِ الْمُؤَدَّاةِ كَمَا أَمَرَ اللَّهُ - تَعَالَى -، وَالصَّدَقَةِ الْمَوْضُوعَةِ مَوَاضِعَهَا، وَالْمَأْخُوذَةِ فِي حَقِّهَا، وَالصِّيَامِ كَذَلِكَ، وَالْحَجِّ كَذَلِكَ، وَالْجِهَادِ كَذَلِكَ، وَسَائِرِ الطَّاعَاتِ كُلِّهَا، فَفَرْضٌ إجَابَتُهُ لِلنُّصُوصِ الْمَذْكُورَةِ. وَكُلُّ مَنْ دَعَا مِنْ إمَامٍ - حَقٍّ، أَوْ غَيْرِهِ -، إلَى مَعْصِيَةٍ فَلا سَمْعَ، وَلا طَاعَةَ، كِتَابُ اللَّهِ أَحَقُّ، وَشَرْطُ اللَّهِ أَوْثَقُ - وَقَالَ - عَلَيْهِ السَّلامُ -: «لِكُلِّ امْرِئٍ مَا نَوَى» .

L15470 It was narrated to us through the chain reported by Al-Bukhārī: Abū Al-Yamān informed us that Shu'ayb—who is Ibn Abī Ḥamzah—narrated to us, from Az-Zuhrī, from Sa'īd ibn Al-Musayyib: that Abū Hurayrah said, "Allah's Messenger—peace be upon him—commanded Bilāl to proclaim to the people: 'No soul shall enter Paradise except a Muslim soul, and verily Allah upholds this religion through an immoral man.'"

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا أَبُو الْيَمَانِ أَخْبَرَنَا شُعَيْبٌ هُوَ ابْنُ أَبِي حَمْزَةَ - عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ أَبَا هُرَيْرَةَ قَالَ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلالًا فَنَادَى فِي النَّاسِ: إنَّهُ لا يَدْخُلُ الْجَنَّةَ إلَّا نَفْسٌ مُسْلِمَةٌ، وَإِنَّ اللَّهَ لَيُؤَيِّدُ هَذَا الدِّينَ بِالرَّجُلِ الْفَاجِرِ» .

L15471 930 – Issue:

٩٣٠ - مَسْأَلَةٌ:

L15472 Whoever wages jihad alongside a sinful Muslim must kill the disbelievers, destroy their crops, demolish their homes, and ruin their produce, and must necessarily take captive their women and children. For extracting them from the darkness of disbelief into the light of Islam is an obligation—whoever neglects it while capable disobeys Allah. The sin of embezzling them (the spoils) falls upon those who misappropriate them, and every sin is lesser than abandoning them in disbelief and aiding their persistence therein. Could any

فَمَنْ غَزَا مَعَ فَاسِقٍ فَلْيَقْتُلْ الْكُفَّارَ وَلْيُفْسِدْ زُرُوعَهُمْ وَدُورَهُمْ وَثِمَارَهُمْ، وَلْيَجْلِبْ النِّسَاءَ وَالصِّبْيَانَ وَلا بُدَّ، فَإِنَّ إخْرَاجَهُمْ مِنْ ظُلُمَاتِ الْكُفْرِ إلَى نُورِ الإِسْلامِ فَرْضٌ يَعْصِي اللَّهَ مَنْ تَرَكَهُ قَادِرًا عَلَيْهِ، وَإِثْمُهُمْ عَلَى مَنْ غَلَّهُمْ، وَكُلُّ مَعْصِيَةٍ فَهِيَ أَقَلُّ مِنْ تَرْكِهِمْ فِي الْكُفْرِ وَعَوْنِهِمْ عَلَى الْبَقَاءِ فِيهِ، وَلا إثْمَ بَعْدَ الْكُفْرِ أَعْظَمُ مِنْ إثْمِ مَنْ نَهَى عَنْ جِهَادِ

[16] **Qur'an references (L15469):** Qur'an 5:2 (Al-Ma'idah); Qur'an 9:41 (At-Tawbah).

sin after disbelief be greater than the sin of one who forbids jihad against the disbelievers and commands surrendering the protected families of Muslims to them merely due to the transgression of a Muslim man, when others are not held accountable for his sin?

الْكُفَّارِ وَأَمَرَ بِإِسْلَامِ حَرِيمِ الْمُسْلِمِينَ [إِلَيْهِمْ] مِنْ أَجْلِ فِسْقِ رَجُلٍ مُسْلِمٍ لَا يُحَاسَبُ غَيْرُهُ بِفِسْقِهِ؟

L15473 **Issue: Warring disbelievers (ḥarbī) do not own the property of a Muslim nor the property of a protected non-Muslim (dhimmī).**

[مَسْأَلَةٌ لَا يَمْلِكُ أَهْلُ الْكُفْرِ الْحَرْبِيُّونَ مَالَ مُسْلِمٍ وَلَا مَالَ ذِمِّيٍّ]

L15474 931 – Issue

٩٣١ - مَسْأَلَةٌ:

L15475–15477 The warring disbelievers do not own the property of a Muslim or a Dhimmi under any circumstances, except through a valid purchase, a valid gift, an inheritance from a disbelieving Dhimmi, or a transaction. In the sound principles of Islam, whatever they acquire from the wealth of a *dhimmi*, Muslim, or fugitive slave seeking their protection remains the owner's property. Whenever recovered, it must be restored to its owner before or after distribution, whether taken into enemy territory or not. The owner incurs no obligation to provide compensation or payment. However, the commander compensates those entitled to shares from the collective wealth of the Muslim community. Neither is the emancipation of a slave allotted to someone's share valid, nor their charity, gift, sale, or transfer. The female slave does not attain the status of *umm walad* for her master. The ruling here equates to property a Muslim usurps from another Muslim, without distinction.

وَلَا يَمْلِكُ أَهْلُ الْكُفْرِ الْحَرْبِيُّونَ مَالَ مُسْلِمٍ، وَلَا مَالَ ذِمِّيٍّ أَبَدًا إِلَّا بِالِابْتِيَاعِ الصَّحِيحِ، أَوْ الْهِبَةِ الصَّحِيحَةِ، أَوْ بِمِيرَاثٍ مِنْ ذِمِّيٍّ كَافِرٍ، أَوْ بِمُعَامَلَةٍ صَحِيحَةٍ فِي دِينِ الْإِسْلَامِ، فَكُلُّ مَا غَنِمُوهُ مِنْ مَالِ ذِمِّيٍّ أَوْ مُسْلِمٍ، أَوْ آبِقٍ إِلَيْهِمْ، فَهُوَ بَاقٍ عَلَى مِلْكِ صَاحِبِهِ، فَمَتَى قُدِرَ عَلَيْهِ رُدَّ عَلَى صَاحِبِهِ قَبْلَ الْقِسْمَةِ وَبَعْدَهَا، دَخَلُوا بِهِ أَرْضَ الْحَرْبِ، أَوْ لَمْ يَدْخُلُوا وَلَا يُكَلَّفُ مَالِكُهُ عِوَضًا وَلَا ثَمَنًا، لَكِنْ يُعَوِّضُ الْأَمِيرُ مَنْ كَانَ صَارَ فِي سَهْمِهِ مِنْ كُلِّ مَالٍ لِجَمَاعَةِ الْمُسْلِمِينَ، وَلَا يَنْفُذُ فِيهِ عِتْقُ مَنْ وَقَعَ فِي سَهْمِهِ، وَلَا صَدَقَتُهُ، وَلَا هِبَتُهُ، وَلَا بَيْعُهُ، وَلَا تَكُونُ لَهُ الْأَمَةُ أُمَّ وَلَدٍ، وَحُكْمُهُ حُكْمُ الشَّيْءِ الَّذِي يَغْصِبُهُ الْمُسْلِمُ مِنْ الْمُسْلِمِ، وَلَا فَرْقَ.

L15478 This is the opinion of al-Shafi'i and Abu Sulayman—and as for those who preceded them, there are three opinions other than this one.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ - وَلِمَنْ سَلَفَ أَقْوَالٌ ثَلَاثَةٌ سِوَى هَذَا.

L15479 One of them is that none of that may be returned to its owner—neither before the partition nor after it, whether with payment or without—and it belongs to the one in whose share it has fallen.

أَحَدُهَا: - أَنَّهُ لَا يُرَدُّ شَيْءٌ مِنْ ذَلِكَ إلَى صَاحِبِهِ لَا قَبْلَ الْقِسْمَةِ، وَلَا بَعْدَهَا، لَا بِثَمَنٍ، وَلَا بِغَيْرِ ثَمَنٍ، وَهُوَ لِمَنْ صَارَ فِي سَهْمِهِ.

L15480 It was reported to us through the chain of Ibn Abi Shaybah, from Mu'tamir ibn Sulayman al-Taymi, from his father: that Ali ibn Abi Talib said, "Whatever

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: مَا أَحْرَزَهُ الْعَدُوُّ مِنْ أَمْوَالِ الْمُسْلِمِينَ فَهُوَ بِمَنْزِلَةِ أَمْوَالِهِمْ.

wealth the enemy acquires from Muslims is equivalent to the enemy's own property."

L15481 Al-Hasan al-Baṣrī would issue rulings in accordance with that.

وَكَانَ الْحَسَنُ الْبَصْرِيُّ يَقْضِي بِذَلِكَ.

L15482 From Qatadah: A mukātab was captured by the enemy, and a man bought him from them. Bakr ibn Qirwash asked Ali ibn Abi Talib about him, and Ali said: "If his master ransoms him, he continues under his kitābah contract. But if he refuses to ransom him, he belongs to the one who purchased him."

وَعَنْ قَتَادَةَ: أَنَّ مُكَاتَبًا أَسَرَهُ الْعَدُوُّ فَاشْتَرَاهُ رَجُلٌ فَسَأَلَ بَكْرُ بْنُ قِرْوَاشَ عَنْهُ عَلِيَّ بْنَ أَبِي طَالِبٍ، فَقَالَ لَهُ عَلِيٌّ: إِنْ افْتَكَّهُ سَيِّدُهُ فَهُوَ عَلَى كِتَابَتِهِ، وَإِنْ أَبَى أَنْ يَفْتَكَّهُ فَهُوَ لِلَّذِي اشْتَرَاهُ.

L15483 Narrated by Qatādah, from Khilāṣ, from ʿAlī: Whatever the enemy has seized is permissible.

وَعَنْ قَتَادَةَ عَنْ خِلَاسٍ عَنْ عَلِيٍّ: مَا أَحْرَزَهُ الْعَدُوُّ فَهُوَ جَائِزٌ.

L15484 Narrated by Qatādah from ʿAlī: "It constitutes the fayʾ of the Muslims and cannot be reclaimed."

وَعَنْ قَتَادَةَ عَنْ عَلِيٍّ: هُوَ فَيْءُ الْمُسْلِمِينَ لَا يُرَدُّ.

L15485 From Maʿmar, from al-Zuhrī: Whatever the polytheists have captured, then the Muslims seized, it belongs to them unless the captive is a free person or a covenanted person.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: مَا أَحْرَزَهُ الْمُشْرِكُونَ ثُمَّ أَصَابَهُ الْمُسْلِمُونَ فَهُوَ لَهُمْ مَا لَمْ يَكُنْ حُرًّا أَوْ مُعَاهَدًا.

L15486 And from Maʿmar, from a man, from al-Ḥasan: similar to this.

وَعَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ الْحَسَنِ مِثْلُ هَذَا.

L15487–15489 The second opinion—that if it is recovered before division, it is returned to its owner. If it is not recovered until after division, then it belongs to the one to whom it was allotted in his share and is not returned to its owner, neither for payment nor otherwise. This is explicitly transmitted from ʿUmar through the chain of Saʿīd ibn Abī ʿArūbah from Qatādah from Rajāʾ ibn Ḥaywah from Qabīṣah ibn Dhuʾayb: that ʿUmar ibn al-Khaṭṭāb said, "What the polytheists have seized from [...]" In the case of Muslims' wealth: If a man identifies his property intact before the shares are distributed, he is most entitled to it. But if the shares have already been distributed, he has no right to it.

وَالْقَوْلُ الثَّانِي - أَنَّهُ إِنْ أُدْرِكَ قَبْلَ الْقِسْمَةِ رُدَّ إِلَى صَاحِبِهِ، فَإِنْ لَمْ يُدْرَكْ حَتَّى قُسِمَ فَهُوَ لِلَّذِي وَقَعَ فِي سَهْمِهِ لَا يُرَدُّ إِلَى صَاحِبِهِ لَا بِثَمَنٍ، وَلَا بِغَيْرِهِ. هَكَذَا رُوِّينَاهُ عَنْ عُمَرَ نَصًّا مِنْ طَرِيقِ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ رَجَاءِ بْنِ حَيْوَةُ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: مَا أَحْرَزَ الْمُشْرِكُونَ مِنْ أَمْوَالِ الْمُسْلِمِينَ فَوَجَدَ رَجُلٌ مَالَهُ بِعَيْنِهِ قَبْلَ أَنْ تُقْسَمَ السِّهَامُ فَهُوَ أَحَقُّ بِهِ، وَإِنْ كَانَ قُسِمَ فَلَا شَيْءَ لَهُ.

L15490 And through the chain of Ibn Abi Shaybah from Isa ibn Yunus from Thawr from Abu Awn from Zuhrah ibn Yazid al-Muradi: A slave woman belonging to a Muslim man fled to the enemy, and the Muslims seized her as war

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عِيسَى بْنِ يُونُسَ عَنْ ثَوْرٍ عَنْ أَبِي عَوْنٍ عَنْ زُهْرَةَ بْنِ يَزِيدَ الْمُرَادِيِّ أَنَّ أَمَةً لِرَجُلٍ مُسْلِمٍ أَبَقَتْ إِلَى الْعَدُوِّ فَغَنِمَهَا الْمُسْلِمُونَ فَعَرَفَهَا أَهْلُهَا فَكَتَبَ

فِيهَا أَبُو عُبَيْدَةَ بْنُ الْجَرَّاحِ إِلَى عُمَرَ، فَكَتَبَ إِلَيْهِ عُمَرُ: إِنْ كَانَتْ لَمْ تُخَمَّسْ وَلَمْ تُقْسَمْ فَهِيَ رَدٌّ عَلَى أَهْلِهَا، وَإِنْ كَانَتْ قَدْ خُمِّسَتْ وَقُسِمَتْ فَأَمْضِهَا لِسَبِيلِهَا.

spoils. Her owner recognized her, so Abu Ubaydah ibn al-Jarrah wrote to Umar regarding her case. Umar responded: If the *khums* had not been taken from her and she had not been divided [among the soldiers], she must be returned to her owner. But if the *khums* had been taken and she had been divided, then her status must stand according to its established course.

وَرُوِيَ نَحْوُهُ أَيْضًا عَنْ زَيْدِ بْنِ ثَابِتٍ.

L15491 Something similar to it was also narrated from Zayd ibn Thabit.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ أَبِي إِسْحَاقَ عَنْ سُلَيْمَانَ بْنِ رَبِيعَةَ فِيمَا أَحْرَزَ الْعَدُوُّ، قَالَ: صَاحِبُهُ أَحَقُّ بِهِ مَا لَمْ يُقْسَمْ.

L15492 And through the chain of Al-Ḥajjāj ibn Arṭāʾah from Abū Isḥāq from Sulaymān ibn Rabīʿah regarding that which the enemy has seized, he said: Its owner has a prior right to it, as long as it has not been distributed.

وَمِنْ طَرِيقِ هُشَيْمٍ عَنْ الْمُغِيرَةِ، وَيُونُسَ قَالَ الْمُغِيرَةُ عَنْ إبْرَاهِيمَ، وَقَالَ يُونُسُ عَنْ الْحَسَنِ، قَالَا جَمِيعًا: مَا غَنِمَهُ الْعَدُوُّ مِنْ مَالِ الْمُسْلِمِينَ فَغَنِمَهُ الْمُسْلِمُونَ فَصَاحِبُهُ أَحَقُّ بِهِ، فَإِنْ قُسِمَ فَقَدْ مَضَى.

L15493 Through the chain of Hushaym from al-Mughīrah and Yunus: al-Mughīrah reported from Ibrāhīm, and Yunus reported from al-Ḥasan. Both said in agreement: Whatever the enemy seizes as spoils from the Muslims' wealth, and the Muslims later reclaim as spoils—the original owner holds the strongest claim to it. But if it has been distributed [by the Muslims], the distribution stands irrevocably.

وَذَكَرَ ابْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ هَذَا الْقَوْلَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَخَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ، وَعُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ، وَأَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ، وَسُلَيْمَانَ بْنِ يَسَارٍ فِي مَشْيَخَةٍ مِنْ نُظَرَائِهِمْ، وَقَالُوا: مَا غَنِمَ الْعَدُوُّ مِنْ الْمُسْلِمِينَ ثُمَّ غَنِمَهُ الْمُسْلِمُونَ فَصَاحِبُهُ أَحَقُّ بِهِ مَا لَمْ يَقَعْ فِيهِ السُّهْمَانُ فَإِذَا قُسِمَ فَلَا سَبِيلَ لَهُ إلَيْهِ. وَصَحَّ عَنْ عَطَاءٍ أَيْضًا، وَأَخْبَرَ عَطَاءٌ أَنَّهُ رَأْيٌ مِنْهُ. وَهُوَ قَوْلُ اللَّيْثِ، وَأَحْمَدَ بْنِ حَنْبَلٍ.

L15494 Ibn Abī al-Zinād reported this opinion from his father, who narrated it from al-Qāsim ibn Muḥammad, ʿUrwah ibn al-Zubayr, Khārijah ibn Zayd ibn Thābit, ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, Abū Bakr ibn ʿAbd al-Raḥmān, and Sulaymān ibn Yasār—a group of their contemporaries. They said: "Whatever the enemy seizes as spoils from the Muslims, which the Muslims later recover as spoils, the original owner is most entitled to it provided the shares have not been allocated. Once they are divided, he has no claim to it." This is authentically reported from ʿAṭāʾ, who stated it was his own opinion. It is likewise the view of al-Layth and Aḥmad ibn Ḥanbal.

وَالْقَوْلُ الثَّالِثُ -

L15495 The third view -

L15496 If it is recovered before division, it is returned to its owner without payment. If it is not recovered until after division, then its owner has the greater right to it for its value—We have reported it through the chain of ʿAbd al-Razzāq from Muḥammad ibn Rāshid from Makhūl from ʿUmar ibn al-Khaṭṭāb, and through the chain of Sufyān from al-Mughīrah from Ibrāhīm al-Nakhaʿī.

أَنَّهُ إِنْ أُدْرِكَ قَبْلَ الْقِسْمَةِ رُدَّ إِلَى صَاحِبِهِ بِغَيْرِ ثَمَنٍ، وَإِنْ لَمْ يُدْرَكْ إِلَّا بَعْدَ الْقِسْمَةِ فَصَاحِبُهُ أَحَقُّ بِهِ بِقِيمَتِهِ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ. وَمِنْ طَرِيقِ سُفْيَانَ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ.

L15497 From the chain of Ibn Sīrīn from Shurayḥ. And from the chain of ʿAbd Allāh ibn Idrīs from his father, from Mujāhid.

وَمِنْ طَرِيقِ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ. وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ إِدْرِيسَ عَنْ أَبِيهِ عَنْ مُجَاهِدٍ.

L15498 So, the first opinion is—

فَالْقَوْلُ الْأَوَّلُ -

L15499–15501 What the polytheists have taken from our wealth is not returned to their rightful owners, nor before they... It is not to be divided before it is divided nor after it is divided, neither for a price nor anything else. This was narrated from Ali and authentically reported from Al-Hasan, Az-Zuhri, and Amr ibn Dinar.

لَا يُرَدُّ مَا أَخَذَهُ الْمُشْرِكُونَ مِنْ أَمْوَالِنَا إِلَى أَرْبَابِهَا، لَا قَبْلَ أَنْ تُقْسَمَ وَلَا بَعْدَ أَنْ تُقْسَمَ، لَا بِثَمَنٍ وَلَا بِغَيْرِهِ، رُوِيَ عَنْ عَلِيٍّ، وَصَحَّ عَنْ الْحَسَنِ، وَالزُّهْرِيِّ، وَعَمْرِو بْنِ دِينَارٍ.

وَلَمْ يَصِحَّ عَنْ عَلِيٍّ لِأَنَّهُ مِنْ طَرِيقِ سُلَيْمَانَ التَّيْمِيِّ، وَقَتَادَةَ عَنْ عَلِيٍّ وَلَمْ يُدْرِكَاهُ، وَرِوَايَةُ خِلَاسٍ عَنْ عَلِيٍّ صَحِيحَةٌ إِلَّا أَنَّهُ لَا بَيَانَ فِيهَا إِنَّمَا هِيَ مَا أَحْرَزَهُ الْعَدُوُّ فَهُوَ جَائِزٌ وَلَا نَدْرِي مَا مَعْنَى: فَهُوَ جَائِزٌ، وَلَعَلَّهُ أَرَادَ: أَنَّهُ جَائِزٌ لِأَصْحَابِهِ إِذَا ظُفِرَ بِهِ.

No authentic narration is established from Ali, as it is transmitted through Sulayman al-Taymi and Qatadah, who did not meet him. The narration of Khilas from Ali is authentic, except that it lacks clarification, merely stating: "What the enemy has seized is permissible." We do not understand the intended meaning of "it is permissible." Perhaps he meant that it becomes permissible for his companions if they prevail over them [and seize it].

وَالْقَوْلُ الثَّانِي -

And the second opinion:

أَنَّهُ يُرَدُّ إِلَى أَصْحَابِهِ قَبْلَ الْقِسْمَةِ، وَلَا يُرَدُّ بَعْدَ الْقِسْمَةِ، رُوِيَ عَنْ عُمَرَ، وَأَبِي عُبَيْدَةَ، وَزَيْدِ بْنِ ثَابِتٍ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ، لِأَنَّهُ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ وَلَمْ يُدْرِكْ عُمَرَ، وَمِنْ طَرِيقِ أَبِي عَوْنٍ، أَوْ ابْنِ عَوْنٍ، وَلَمْ يُدْرِكَا أَبَا عُبَيْدَةَ، وَلَا عُمَرَ، وَلَا نَدْرِي مَنْ رَوَاهُ عَنْ زَيْدِ بْنِ ثَابِتٍ - وَرُوِيَ عَنْ فُقَهَاءِ الْمَدِينَةِ السَّبْعَةِ، وَلَا يَصِحُّ عَنْهُمْ، لِأَنَّهُ مِنْ طَرِيقِ ابْنِ أَبِي الزِّنَادِ هُوَ ضَعِيفٌ - وَعَنْ سُلَيْمَانَ بْنِ رَبِيعَةَ، وَلَمْ يَصِحَّ عَنْهُ لِأَنَّهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ. وَصَحَّ عَنْ إِبْرَاهِيمَ [وَشُرَيْحٍ] وَالْحَسَنِ وَعَطَاءٍ.

That it is to be returned to their owners before division, and not returned after division. It was narrated from ʿUmar, Abū ʿUbaydah, and Zayd ibn Thābit – but none of these narrations are authentic. The report from ʿUmar is through Qabīṣah ibn Dhuʾayb, who did not meet him. It is reported through either Abū ʿAwn or Ibn ʿAwn, neither of whom met Abū ʿUbaydah nor ʿUmar, and we do not know who transmitted it from Zayd ibn Thābit. It was narrated from the Seven Jurists of Medina, but these reports are inauthentic, as they come through Ibn Abī al-Zinād, who is a weak narrator. It was also narrated from Sulaymān ibn Rabīʿah, but this is unauthentic as it comes through al-Ḥajjāj ibn Arṭāh. Authentic reports exist from Ibrāhīm [and Shurayḥ], al-Ḥasan, and ʿAṭāʾ.

وَالْقَوْلُ الثَّالِثُ -

The third opinion:

أَنَّهُ إِنْ أُدْرِكَ قَبْلَ الْقِسْمَةِ رُدَّ إِلَى صَاحِبِهِ بِغَيْرِ ثَمَنٍ، وَإِنْ لَمْ يُدْرَكْ إِلَّا بَعْدَ الْقِسْمَةِ فَصَاحِبُهُ أَحَقُّ بِهِ بِقِيمَتِهِ رُوِيَ عَنْ عُمَرَ وَلَمْ يَصِحَّ عَنْهُ، لِأَنَّهُ مِنْ رِوَايَةِ مَكْحُولٍ، وَلَمْ يُدْرِكْ عُمَرَ.

If it is recovered before division, it is returned to its owner without payment. But if it is only recovered after division, the owner has the rightful claim to it with its value. This was narrated from ʿUmar, though it is not authentically attributed to him, as it is from the narration of Makhūl—who did not meet ʿUmar.

وَصَحَّ عَنْ إِبْرَاهِيمَ وَشُرَيْحٍ، وَمُجَاهِدٍ - وَهُوَ قَوْلُ مَالِكٍ، وَالْأَوْزَاعِيِّ.

It has been authentically reported from Ibrāhīm, Shuraih, and Mujāhid—and this is the opinion of Mālik and al-Awzāʿī.

وَمِنْ قَوْلِ مَالِكٍ: إِنَّ الْآبِقَ وَالْمَغْنُومَ سَوَاءٌ فِي ذَلِكَ، وَإِنَّ الْمُدَبَّرَ، وَالْمُكَاتَبَ، وَأُمَّ الْوَلَدِ سَوَاءٌ فِي ذَلِكَ، إِلَّا أَنَّ سَيِّدَ أُمِّ الْوَلَدِ يُجْبَرُ عَلَى أَنْ يَفُكَّهَا.

Among the opinions of Mālik are that the runaway slave and the enslaved spoils of war are treated equally in this ruling, and that the mudabbar—a slave promised manumission after the master's death—the mukatab—a slave contracted for self-manumission—and the umm al-walad—mother of the mas-

ter's child—are similarly regarded in this ruling, except that the master of the umm al-walad is obligated by law to emancipate her.

وَهَا هُنَا قَوْلٌ خَامِسٌ - لَا يُعْرَفُ عَنْ أَحَدٍ مِنْ السَّلَفِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَلَا يُحْفَظُ أَنَّ أَحَدًا قَالَهُ قَبْلَهُ، وَهُوَ أَنَّ مَا أَبَقَ إلَى الْمُشْرِكِينَ مِنْ عَبْدٍ لِمُسْلِمٍ فَإِنَّهُ مَرْدُودٌ إلَى صَاحِبِهِ قَبْلَ الْقِسْمَةِ، وَبَعْدَهَا بِلَا ثَمَنٍ، وَكَذَلِكَ مَا غَنِمُوهُ مِنْ مُدَبَّرٍ، وَمُكَاتَبٍ، وَأُمِّ وَلَدٍ، وَلَا فَرْقَ. وَوَافَقَهُ فِي هَذَا سُفْيَانُ.

L15509 Here, there is a fifth opinion - not reported from any of the early predecessors - which is the view of Abū Ḥanīfa. It is not preserved that anyone articulated this before him. He held that any Muslim-owned slave who absconds to polytheists must be restored to their owner both before and after the division of war spoils without compensation. Similarly, whatever spoils they capture from among slaves designated for gradual emancipation (mudabbar), contracted manumission seekers (mukatab), or mothers bearing their owner's child (umm walad) must also be returned without any distinction among them. Sufyān aligned with him in this ruling.

قَالَ أَبُو حَنِيفَةَ: وَأَمَّا مَا غَنِمُوهُ مِنْ الْإِمَاءِ، وَالْعَبِيدِ، وَالْحَيَوَانِ، وَالْمَتَاعِ، فَإِنْ أُدْرِكَ قَبْلَ أَنْ يَدْخُلُوا بِهِ دَارَ الْحَرْبِ ثُمَّ غَنِمْنَاهُ رُدَّ إلَى صَاحِبِهِ قَبْلَ الْقِسْمَةِ وَبَعْدَهَا بِلَا ثَمَنٍ. وَإِنْ دَخَلُوا بِهِ دَارَ الْحَرْبِ ثُمَّ غَنِمْنَاهُ رُدَّ إلَى صَاحِبِهِ قَبْلَ الْقِسْمَةِ وَأَمَّا بَعْدَ الْقِسْمَةِ فَصَاحِبُهُ أَحَقُّ بِهِ بِالْقِيمَةِ إنْ شَاءَ؛ وَإِلَّا فَلَا يُرَدُّ إلَيْهِ.

L15510–15512 Abu Hanifah said: As for the spoils they seize—consisting of female captives, male slaves, animals, or possessions—if these are recovered before the captors bring them into the abode of war, then if we take them as spoils, they must be returned to their owner, whether before the distribution or after it, without... If they take something paid for with a price into the abode of war and we then seize it as booty, it must be returned to its owner before distribution. As for after distribution, the owner has the right to reclaim it by paying its value if he wishes; otherwise, it is not restored to him.

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ فِي غَايَةِ التَّخْلِيطِ وَالْفَسَادِ فِي التَّقْسِيمِ، لَا دَلِيلَ عَلَى صِحَّةِ تَقْسِيمِهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ.

L15513 Abu Muhammad said: This statement represents the height of confusion and corruption in categorization. There is no evidence to validate his division—neither from the Quran, nor the Sunnah, nor an unsound narration, nor the statement of a Companion, nor a Follower, nor analogical reasoning, nor sound judgment.

وَقَالَ بَعْضُهُمْ: إنَّمَا يَمْلِكُونَ عَلَيْنَا مَا يَمْلِكُهُ بَعْضُنَا عَلَى بَعْضٍ. قَالَ أَبُو مُحَمَّد: وَصَدَقَ هَذَا الْقَائِلُ وَلَا يَمْلِكُ بَعْضُنَا عَلَى بَعْضٍ مَالًا بِالْبَاطِلِ، وَلَا بِالْغَصْبِ أَصْلًا، وَلَا بَاطِلَ، وَلَا غَصْبَ أَحْرَمُ وَلَا أَبْطَلُ مِنْ أَخْذِ حَرْبِيٍّ مَالَ مُسْلِمٍ - فَسَقَطَ هَذَا الْقَوْلُ الْفَاسِدُ جُمْلَةً

L15514 Some of them said: "They only hold authority over us as some of us hold authority over others." Abū Muḥammad said: "This speaker has spoken truthfully, for none of us may own another's wealth through falsehood or usurpation at all. No wrongful act or usurpation is more forbidden or invalid than a ḥarbī taking a Muslim's property." Thus, this false claim is wholly invalidated.

L15515 Then we examined all opinions. We considered Mālik's view and found that if they rely on what is narrated from ʿUmar, it is contradicted by another

narration from ʿUmar that is better than the one they relied upon, and another from ʿAlī that is similar to the one they relied upon. What then renders some of these narrations more authoritative than others? Some said: The meaning of ʿUmar's statement in the other narration, "He has no right to it, and let it proceed on its way," implies "except for the price." We replied: What prevents someone without piety from lying? It may be said to you: The meaning of ʿUmar's statement "He has a greater right to it for its value" is conditional upon mutual agreement; otherwise, no. What then distinguishes one lie from another?

ثُمَّ نَظَرْنَا فِي سَائِرِ الْأَقْوَالِ. فَنَظَرْنَا فِي قَوْلِ مَالِكٍ فَوَجَدْنَاهُمْ إِنْ تَعَلَّقُوا بِمَا رُوِيَ عَنْ عُمَرَ، فَقَدْ عَارَضَتْهُ رِوَايَةٌ أُخْرَى عَنْ عُمَرَ هِيَ عَنْهُ أَمْثَلُ مِنْ الَّتِي تَعَلَّقُوا بِهَا - وَأُخْرَى عَنْ عَلِيٍّ هِيَ مِثْلُ الَّتِي تَعَلَّقُوا بِهَا، فَمَا الَّذِي جَعَلَ بَعْضَ هَذِهِ الرِّوَايَاتِ أَحَقَّ مِنْ بَعْضٍ؟ وَقَالَ بَعْضُهُمْ: مَعْنَى قَوْلِ عُمَرَ فِي الرِّوَايَةِ الْأُخْرَى: فَلَا شَيْءَ لَهُ وَأَمْضِهَا لِسَبِيلِهَا - أَيْ إِلَّا بِالثَّمَنِ. فَقُلْنَا: مَا يَعْجِزُ مَنْ لَا دِينَ لَهُ عَنْ الْكَذِبِ، وَيُقَالُ لَكُمْ: مَعْنَى قَوْلِ عُمَرَ إِنَّهُ أَحَقُّ بِهَا بِالْقِيمَةِ - أَيْ إِنْ تَرَاضَيَا جَمِيعًا عَلَى ذَلِكَ، وَإِلَّا فَلَا، فَمَا الْفَرْقُ بَيْنَ كَذِبٍ وَكَذِبٍ؟ ثُمَّ وَجَدْنَاهُمْ يَحْتَجُّونَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ وَغَيْرِهِ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ تَمِيمِ بْنِ طُرْفَةَ: «أَنَّ عُثْمَانَ اشْتَرَى بَعِيرًا مِنْ الْعَدُوِّ فَعَرَفَهُ صَاحِبُهُ فَخَاصَمَهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنْ شِئْتَ أَعْطَيْتَهُ الثَّمَنَ الَّذِي اشْتَرَاهُ بِهِ وَهُوَ لَكَ، وَإِلَّا فَهُوَ لَهُ» وَهَذَا مُنْقَطِعٌ لَا حُجَّةَ فِيهِ، وَسِمَاكٌ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ، شَهِدَ بِهِ عَلَيْهِ شُعْبَةُ، وَغَيْرُهُ - وَأَسْنَدَهُ يَاسِينُ الزَّيَّاتُ عَنْ سِمَاكٍ عَنْ تَمِيمِ بْنِ طُرْفَةَ عَنْ جَابِرِ بْنِ سَمُرَةَ. وَيَاسِينُ لَا تَحِلُّ الرِّوَايَةُ عَنْهُ، وَسِمَاكٌ قَدْ ذَكَرْنَاهُ.

Next, we found them citing a report we have narrated through the chain of Ḥammād ibn Salamah and others from Simāk ibn Ḥarb from Tamīm ibn Ṭurfah: "'Uthmān bought a camel from the enemy, and its owner recognized it. He brought the case to the Messenger of Allāh (peace be upon him), who said: 'If you wish, give him the price he paid for it, and it is yours; otherwise, it belongs to him.'" This chain is disconnected and thus invalid as evidence. Simāk is weak and accepts talqīn, as testified against him by Shuʿbah and others. Yāsīn al-Zayyāt ascribed it through a connected chain from Simāk from Tamīm ibn Ṭurfah from Jābir ibn Samurah. Yet Yāsīn is impermissible to narrate from, and Simāk's status has already been stated.

L15516 And some people narrated it from Ibrāhīm ibn Muḥammad al-Hamadhānī or al-Anbārī from Ziyād ibn ʿIlāqah from Jābir ibn Samurah as a musnad. As for Ibrāhīm ibn Muḥammad al-Anbārī or al-Hamadhānī, no one among the people knows who he is.

وَرَوَاهُ بَعْضُ النَّاسِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدٍ الْهَمَذَانِيِّ أَوْ الْأَنْبَارِيِّ عَنْ زِيَادِ بْنِ عِلَاقَةَ عَنْ جَابِرِ بْنِ سَمُرَةَ مُسْنَدًا، وَإِبْرَاهِيمُ بْنُ مُحَمَّدٍ الْأَنْبَارِيُّ أَوْ الْهَمَذَانِيُّ لَا يَدْرِي أَحَدٌ مَنْ هُوَ فِي الْخَلْقِ؟

L15517–15518 Al-Ḥasan ibn ʿUmārah and Ismāʿīl ibn ʿAyyāsh both narrated from ʿAbd al-Malik ibn Maysarah, from Ṭāwūs, from Ibn ʿAbbās: "The Prophet—peace and blessings be upon him—said regarding a camel seized by the enemy that Muslims later regained control of: 'If you recover it before distribution, you have the foremost right to it without compensation. If you recover it after

وَأَسْنَدَهُ أَيْضًا الْحَسَنُ بْنُ عُمَارَةَ وَإِسْمَاعِيلُ بْنُ عَيَّاشٍ كِلَاهُمَا: عَنْ عَبْدِ الْمَلِكِ بْنِ مَيْسَرَةَ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي بَعِيرٍ أَحْرَزَهُ

distribution, you have the right to reclaim it by paying its price, if you wish.'" Al-Ḥasan ibn ʿUmārah is discredited, and Ismāʿīl ibn ʿAyyāsh is deemed weak.

الْعَدُوُّ، ثُمَّ غَلَبَ عَلَيْهِ الْمُسْلِمُونَ إِنْ وَجَدْتَهُ قَبْلَ الْقِسْمَةِ فَأَنْتَ أَحَقُّ بِهِ بِغَيْرِ شَيْءٍ، وَإِنْ وَجَدْتَهُ بَعْدَ الْقِسْمَةِ فَأَنْتَ أَحَقُّ بِهِ بِالثَّمَنِ إِنْ شِئْتَ» وَالْحَسَنُ بْنُ عُمَارَةَ هَالِكٌ، وَإِسْمَاعِيلُ بْنُ عَيَّاشٍ ضَعِيفٌ.

L15519 Some people narrated it through the chain of ʿAlī ibn al-Madīnī and Aḥmad ibn Ḥanbal. ʿAlī said: "Yāḥyā ibn Saʿīd al-Qaṭṭān informed us," while Aḥmad said: "On the authority of Isḥāq al-Azraq"; then Yāḥyā and Isḥāq both narrated from Misʿar from ʿAbd al-Malik ibn Maysarah. This chain is disconnected and unsupported, given that the chain leading to ʿAlī and Aḥmad is invalid. Moreover, this report is entirely unknown in the authentic ḥadīth transmitted from Yāḥyā ibn Saʿīd al-Qaṭṭān. If they obstinately argue, claiming, "The mursal report constitutes valid proof, and the narration of al-Ḥasan ibn ʿUmārah and Ismāʿīl ibn ʿAyyāsh is evidence," we respond: "No obligation rests upon you."

وَرَوَاهُ بَعْضُ النَّاسِ مِنْ طَرِيقِ عَلِيِّ بْنِ الْمَدِينِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ. قَالَ عَلِيٌّ: نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَقَالَ أَحْمَدُ: عَنْ إِسْحَاقَ الْأَزْرَقِ، ثُمَّ اتَّفَقَ يَحْيَى وَإِسْحَاقُ عَنْ مِسْعَرٍ عَنْ عَبْدِ الْمَلِكِ بْنِ مَيْسَرَةَ، وَهَذَا مُنْقَطِعٌ غَيْرُ مُسْنَدٍ، عَلَى أَنَّ الطَّرِيقَ إِلَى عَلِيٍّ وَأَحْمَدَ تَالِفَةٌ، وَلَا يُعْرَفُ هَذَا الْخَبَرُ فِي حَدِيثِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ الصَّحِيحِ عَنْهُ أَصْلًا، فَإِنْ لَجُّوا وَقَالُوا: الْمُرْسَلُ حُجَّةٌ - وَرِوَايَةُ الْحَسَنِ بْنِ عُمَارَةَ، وَإِسْمَاعِيلَ بْنِ عَيَّاشٍ حُجَّةٌ. قُلْنَا: لَا عَلَيْكُمْ

L15520 It has been narrated to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ, who informed me that ʿIkrimah ibn Khālid said: "Usayd ibn Ẓuhayr al-Anṣārī—who governed Yamāmah during Muʿāwiyah's reign—informed me that the Prophet, peace and blessings be upon him, ruled regarding theft: 'If the purchaser of the stolen item from the thief is not under suspicion, the owner may choose: if he wishes, he may reclaim what was stolen by compensating its value, or if he wishes, he may pursue the thief.'" After him, Abū Bakr, ʿUmar, and ʿUthmān ruled according to this, as did Usayd ibn Ẓuhayr. Abū Muḥammad said: "'Umayrah ibn Yathrā, ʿUmar's appointed judge of Baṣrah, also ruled by this, and Isḥāq ibn Rāhwayh upholds it. This report is sounder than yours, more correct, and consistent in meaning. Adhere to it—otherwise, you are merely playing games."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَخْبَرَنِي عِكْرِمَةُ بْنُ خَالِدٍ قَالَ: أَخْبَرَنِي أُسَيْدُ بْنُ ظُهَيْرٍ الْأَنْصَارِيُّ وَكَانَ وَالِيَ الْيَمَامَةِ أَيَّامَ مُعَاوِيَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي السَّرِقَةِ: إِنْ كَانَ الَّذِي ابْتَاعَهَا مِنَ الَّذِي سَرَقَهَا غَيْرَ مُتَّهَمٍ يُخَيَّرُ سَيِّدُهَا إِنْ شَاءَ أَخَذَ الَّذِي سُرِقَ مِنْهُ بِثَمَنِهِ وَإِنْ شَاءَ اتَّبَعَ سَارِقَهُ» ثُمَّ قَضَى بِذَلِكَ بَعْدَهُ: أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ - وَقَضَى بِهِ أُسَيْدُ بْنُ ظُهَيْرٍ. قَالَ أَبُو مُحَمَّدٍ: وَقَدْ قَضَى بِهِ أَيْضًا: عُمَيْرَةُ بْنُ يَثْرَى قَاضِي الْبَصْرَةِ لِعُمَرَ - وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ. فَهَذَا خَبَرٌ أَحْسَنُ مِنْ خَبَرِكُمْ وَأَقْوَمُ، وَهُوَ فِي مَعْنَاهُ فَخُذُوا بِهِ وَإِلَّا فَأَنْتُمْ مُتَلَاعِبُونَ.

L15521 As for us, we have abandoned his narration because 'Ikrimah ibn Khālid is not strong. Yet in any case—by Allah, with no one disputing this—he is more similar to Yāsīn than to al-Ḥasan ibn Umārah or Ismāʿīl ibn ʿAyyāsh, and he is not inferior to Simāk in any way whatsoever.

وَأَمَّا نَحْنُ فَتَرَكْنَاهُ، لِأَنَّ عِكْرِمَةَ بْنَ خَالِدٍ لَيْسَ بِالْقَوِيِّ، وَعَلَى كُلِّ حَالٍ، فَهُوَ وَاللَّهِ بِلَا خِلَافٍ مِنْ أَحَدٍ أَشْبَهَ مِنْ يَاسِينَ وَالْحَسَنِ بْنِ عُمَارَةَ وَإِسْمَاعِيلَ بْنِ عَيَّاشٍ، وَمَا هُوَ بِدُونِ سِمَاكٍ أَصْلًا.

L15522 The utmost astonishment is that the companions of Abū Ḥanīfah rejected the ḥadīth: “Whoever finds his commodity in its original form with a bankrupt person is more entitled to it than the creditors,” and this is an established, authentic ḥadīth.

وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّ أَصْحَابَ أَبِي حَنِيفَةَ رَدُّوا حَدِيثَ " مَنْ وَجَدَ سِلْعَتَهُ بِعَيْنِهَا عِنْدَ مُفْلِسٍ فَهُوَ أَحَقُّ مِنْ الْغُرَمَاءِ " وَهَذَا حَدِيثٌ ثَابِتٌ صَحِيحٌ.

L15523–15525 If they say: This contradicts the foundational principles (uṣūl), and the bankrupt person cannot be free from having [or having had]... Whether he had ownership of it or did not have ownership; if he had not owned it, then you do not uphold this position; and if he had owned it, then the seller has no right to what the buyer has acquired from him by his own choice. Yet they abandoned this very objection here and adhered to a fabricated narration contradicting the foundational principles, the Quran, and the Sunnah. For the hostile forces must either have ownership of what they seized from us or not have ownership of it. If they did not own it, then this is our position, which contradicts their position. It is obligatory to return it to its owner under all circumstances, before and after distribution, without imposing any cost upon him. If they did own it, then the one from whom it was taken has no claim against it, neither through payment nor otherwise, neither before distribution nor after it, for it is like the rest of the war spoils with no distinction. What wonder is there to marvel at in this?

فَإِنْ قَالُوا: هَذَا خِلَافُ الْأُصُولِ وَلَا يَخْلُو الْمُفْلِسُ مِنْ أَنْ يَكُونَ [كَانَ] قَدْ مَلَكَهَا أَوْ لَمْ يَكُنْ مَلَكَهَا، فَإِنْ كَانَ لَمْ يَمْلِكْهَا فَأَنْتُمْ لَا تَقُولُونَ بِهَذَا، وَإِنْ كَانَ قَدْ مَلَكَهَا فَلَا حَقَّ لِبَائِعِهَا فِيمَا قَدْ مَلَكَهُ مِنْهُ الْمُشْتَرِي بِاخْتِيَارِهِ وَتَرَكُوا هَذَا الِاعْتِرَاضَ بِعَيْنِهِ هُنَا وَأَخَذُوا بِخَبَرٍ مَكْذُوبٍ مُخَالِفٍ لِلْأُصُولِ وَلِلْقُرْآنِ وَلِلسُّنَنِ لِأَنَّهُ لَا يَخْلُو الْحَرْبِيُّونَ مِنْ أَنْ يَكُونُوا مَلَكُوا مَا أَخَذُوا مِنَّا أَوْ لَمْ يَمْلِكُوهُ، فَإِنْ كَانُوا لَمْ يَمْلِكُوهُ فَهَذَا قَوْلُنَا وَهُوَ خِلَافُ قَوْلِهِمْ، وَالْوَاجِبُ أَنْ يُرَدَّ إلَى مَالِكِهِ بِكُلِّ حَالٍ قَبْلَ الْقِسْمَةِ وَبَعْدَهَا بِلَا ثَمَنٍ يُكَلَّفُهُ، وَإِنْ كَانُوا قَدْ مَلَكُوهُ فَلَا سَبِيلَ لِلَّذِي أُخِذَ مِنْهُ عَلَيْهِ لَا بِثَمَنٍ وَلَا بِغَيْرِ ثَمَنٍ لَا قَبْلَ الْقِسْمَةِ وَلَا بَعْدَ الْقِسْمَةِ، لِأَنَّهُ كَسَائِرِ الْغَنِيمَةِ وَلَا فَرْقَ، فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ هَذَا

L15526 Furthermore, the person to whose share it was allocated can only be either one who owned it or one who did not own it. If he did not own it, then that is our view, and it is obligatory to return it to its owner.

وَأَيْضًا: فَإِنَّهُ لَا يَخْلُو الَّذِي وَقَعَ فِي سَهْمِهِ مِنْ أَنْ يَكُونَ مَلَكَهُ أَوْ لَمْ يَمْلِكْهُ، فَإِنْ كَانَ لَمْ يَمْلِكْهُ فَهُوَ قَوْلُنَا وَالْوَاجِبُ رَدُّهُ إلَى مَالِكِهِ.

L15527 If they say, “Rather, he owned it,” we respond: Then it is impermissible to remove his property from his possession without his willing consent—neither for a price nor without compensation. Has there ever been clearer corruption than these corrupt assertions, flagrant contradictions, and arbitrary control over the religion of Allah Almighty and people’s wealth through falsehood

وَإِنْ قَالُوا: بَلْ مَلَكَهُ. قُلْنَا: فَمَا يَحِلُّ إخْرَاجُ مِلْكِهِ عَنْ يَدِهِ بِغَيْرِ طِيبِ نَفْسٍ مِنْهُ لَا بِثَمَنٍ وَلَا بِغَيْرِ ثَمَنٍ؛ فَهَلْ سُمِعَ بِأَبْيَنَ فَسَادٍ مِنْ هَذِهِ الْأَقْوَالِ الْفَاسِدَةِ وَالتَّنَاقُضِ الْفَاحِشِ

that is unconcealed? Thus, this claim is wholly invalidated, as no transmitted evidence substantiates it, nor does rational analysis confirm it.

L15528 As for the statement of those who say, “It must be rejected before division but not after”—this claim also lacks any foundation for its validity whatsoever: neither through an explicit textual source, nor via a weak ḥadīth report, nor through legal reasoning, nor any juristic basis of any kind.

L15529 As for the statement of those who say, “It cannot be rejected before division nor after,” this is the least contradictory statement. The foundation of their argument is that the people of war have acquired ownership over what they seized from us. Had their foundational principle been valid, their claim would have been true. However, we say to them: Allah the Exalted declared, *“Do not consume your wealth among yourselves wrongfully”* [Al-Baqarah 2:188], and the Messenger of Allah—peace be upon him—said, *“Your blood and your wealth are inviolable to you,”* and he—peace be upon him—said, *“There is no right for an unjust basis,”* and he—peace be upon him—said, *“Whoever performs an act contrary to our command, it is rejected.”*[1][2]

L15530 Inform us regarding what the enemy combatants have taken from us: did they seize it legitimately or illegitimately? Is our wealth part of what Allah the Exalted has permitted them, or part of what He has forbidden them? Are they wrongdoers in this, or are they not?

L15531–15532 Have they performed any deed from that in accordance with the command of Allah the Exalted and the command of His Prophet—peace be upon him—or a deed contrary to the command of Allah the Exalted and the command of His Messenger—peace and blessings of Allah be upon him? Are they obligated by the religion of Islam and destined to abide eternally in the Fire due to their opposition to it, or not? One of these must necessarily be the case. The claim that they took it rightfully—that it is among what Allah the Exalted has

[1] **Hadith references (L15529):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[2] **Qur’an references (L15529):** Qur’an 2:188 (Al-Baqarah).

وَالتَّحَكُّمِ فِي دِينِ اللَّهِ تَعَالَى وَفِي أَمْوَالِ النَّاسِ بِالْبَاطِلِ الَّذِي لَا خَفَاءَ بِهِ؟ فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً؛ إِذْ لَمْ يَصِحَّ فِيهِ أَثَرٌ وَلَا صَحَّحَهُ نَظَرٌ.

وَأَمَّا قَوْلُ مَنْ قَالَ: يُرَدُّ قَبْلَ الْقِسْمَةِ وَلَا يُرَدُّ بَعْدَهَا. فَقَوْلٌ أَيْضًا لَا يَقُومُ عَلَى صِحَّتِهِ دَلِيلٌ أَصْلًا، لَا مِنْ نَصٍّ وَلَا مِنْ رِوَايَةٍ ضَعِيفَةٍ، وَلَا مِنْ نَظَرٍ، وَلَا مِنْ وَجْهٍ مِنْ الْوُجُوهِ.

وَأَمَّا قَوْلُ مَنْ قَالَ: لَا يُرَدُّ قَبْلَ الْقِسْمَةِ وَلَا بَعْدَهَا فَهُوَ أَقَلُّهَا تَنَاقُضًا، وَعُمْدَتُهُمْ أَنَّ أَهْلَ الْحَرْبِ قَدْ مَلَكُوا مَا أَخَذُوا مِنَّا، وَلَوْ صَحَّ لَهُمْ هَذَا الْأَصْلُ لَكَانَ قَوْلُهُمْ هُوَ الْحَقَّ، لَكِنْ نَقُولُ لَهُمْ: قَالَ اللَّهُ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» ، وَقَالَ - عَلَيْهِ السَّلَامُ - «لَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» ، وَقَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

فَأَخْبِرُونَا عَمَّا أَخَذَهُ مِنَّا أَهْلُ الْحَرْبِ أَبِحَقٍّ أَخَذُوهُ أَمْ بِبَاطِلٍ؟ وَهَلْ أَمْوَالُنَا مِمَّا أَحَلَّهُ اللَّهُ تَعَالَى لَهُمْ أَوْ مِمَّا حَرَّمَهُ عَلَيْهِمْ؟ وَهَلْ هُمْ ظَالِمُونَ فِي ذَلِكَ أَوْ غَيْرُ ظَالِمِينَ؟

وَهَلْ عَمِلُوا مِنْ ذَلِكَ عَمَلًا مُوَافِقًا لِأَمْرِ اللَّهِ تَعَالَى وَأَمْرِ نَبِيِّهِ - عَلَيْهِ السَّلَامُ -، أَوْ عَمَلًا مُخَالِفًا لِأَمْرِهِ تَعَالَى وَأَمْرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ وَهَلْ يَلْزَمُهُمْ دِينُ الْإِسْلَامِ وَيَخْلُدُونَ فِي النَّارِ لِخِلَافِهِمْ لَهُ أَمْ لَا؟ وَلَا بُدَّ مِنْ أَحَدِهَا. فَالْقَوْلُ بِأَنَّهُمْ أَخَذُوهُ بِحَقٍّ أَنَّهُ مِمَّا أَحَلَّهُ اللَّهُ تَعَالَى لَهُمْ وَأَنَّهُمْ غَيْرُ ظَالِمِينَ فِي ذَلِكَ، وَأَنَّهُمْ لَمْ يَعْمَلُوا بِذَلِكَ عَمَلًا مُخَالِفًا لِأَمْرِ اللَّهِ تَعَالَى وَأَمْرِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -، وَأَنَّهُ لَا يَلْزَمُهُمْ دِينُ الْإِسْلَامِ: كُفْرٌ صُرَاحٌ بَرَاحٌ لَا مِرْيَةَ فِيهِ، فَسَقَطَ هَذَا الْقَوْلُ، وَإِذْ قَدْ سَقَطَ فَلَمْ يَبْقَ إِلَّا الْآخَرُ، وَهُوَ

permitted for them, that they are not wrongdoers in that, that they did not act contrary to the command of Allah the Exalted and the command of His Messenger—peace be upon him—and that they are not obligated to adhere to the religion of Islam is utterly manifest and unequivocal disbelief, leaving no doubt. Thus, this claim is nullified. Since it is nullified, only the other remains, which is the certain truth: that they took it unjustly, took what is forbidden to them, and in doing so, they are the most unjust of wrongdoers; that they acted in a manner not in accordance with the command of Allah the Exalted or the command of His Messenger—peace and blessings of Allah be upon him; and that adherence to the religion of Islam is an obligation upon them.

الْحَقُّ الْيَقِينُ مِنْ أَنَّهُمْ إِنَّمَا أَخَذُوهُ بِالْبَاطِلِ وَأَخَذُوا حَرَامًا عَلَيْهِمْ، وَهُمْ فِي ذَلِكَ أَظْلَمُ الظَّالِمِينَ، وَأَنَّهُمْ عَمِلُوا بِذَلِكَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُ اللَّهِ تَعَالَى: وَأَمْرُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّ الْتِزَامَ دِينِ الْإِسْلَامِ فَرْضٌ عَلَيْهِمْ.

L15533 Since there is no doubt about this, their taking of what they took is invalid and rejected - an injustice that is nullified. They have no right, nor does anyone resembling them in this matter; thus, it remains perpetually under the ownership of its owner. This is a matter we do not know how it could be concealed from anyone, especially since those present among the dissenters have unanimously agreed that they hold no ownership whatsoever over our free people, and that they are released before and after distribution without being required to pay a price. What difference is there between owning a free person and owning property through injustice and falsehood, if they were just to themselves? They have agreed that a Muslim does not gain ownership over another Muslim through usurpation, so how has this concern for the disbelievers occurred in this matter, given their profound contradiction in claiming ownership over us when they do not own over us? Some of them have made a grave statement that reveals the corruption of his religion, saying: "It is an enforceable injustice," likening it to favoring some of his children over others. Thus, this ignorant one has attained falsehood and disbelief.

فَإِذْ لَا شَكَّ فِي هَذَا فَأَخْذُهُمْ لِمَا أَخَذُوا بَاطِلٌ مَرْدُودٌ، وَظُلْمٌ مَفْسُوخٌ وَلَا حَقَّ لَهُمْ وَلَا لِأَحَدٍ يُشْبِهُهُمْ فِيهِ؛ فَهُوَ عَلَى مِلْكِ مَالِكِهِ أَبَدًا. وَهَذَا أَمْرٌ مَا نَدْرِي كَيْفَ يَخْفَى عَلَى أَحَدٍ، وَقَدْ أَجْمَعَ الْحَاضِرُونَ مِنْ الْمُخَالِفِينَ عَلَى أَنَّهُمْ لَا يَمْلِكُونَ أَحْرَارَنَا أَصْلًا، وَأَنَّهُمْ مُسَرَّحُونَ قَبْلَ الْقِسْمَةِ وَبَعْدَهَا بِلَا تَكْلِيفِ ثَمَنٍ، فَأَيُّ فَرْقٍ بَيْنَ تَمَلُّكِ الْحُرِّ، وَبَيْنَ تَمَلُّكِ الْمَالِ بِالظُّلْمِ وَالْبَاطِلِ لَوْ أَنْصَفُوا أَنْفُسَهُمْ؟ وَقَدْ اتَّفَقُوا عَلَى أَنَّ الْمُسْلِمَ لَا يَمْلِكُ عَلَى الْمُسْلِمِ بِالْغَصْبِ، فَكَيْف وَقَعَتْ لَهُمْ هَذِهِ الْعِنَايَةُ بِالْكُفَّارِ فِي ذَلِكَ مَعَ عَظِيمِ تَنَاقُضِهِمْ فِي أَنَّهُمْ يَمْلِكُونَ عَلَيْنَا لَا يَمْلِكُونَ عَلَيْنَا؟ وَقَدْ قَالَ بَعْضُهُمْ عَظِيمَةً دَلَّتْ عَلَى فَسَادِ دِينِهِ، وَهُوَ أَنَّهُ قَالَ: هُوَ جَوْرٌ يَنْفُذُ، وَنَظَرُهُ بِمُفَضِّلِ بَعْضِ وَلَدِهِ عَلَى بَعْضٍ - فَجَعَلَ هَذَا الْجَاهِلُ عَلَى الْكَذِبِ وَالْكُفْرِ

L15534 He attributed to the Prophet—peace and blessings be upon him—that he implemented Bashīr's preferential treatment of some of his children over others. And he indeed lied about that; rather, the Prophet—peace be upon him—explicitly commanded Bashīr to retract it.

وَهُوَ أَنَّهُ نَسَبَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَنْفَذَ تَفْضِيلَ بَشِيرٍ لِبَعْضِ وَلَدِهِ عَلَى بَعْضٍ - وَقَدْ كَذَبَ فِي ذَلِكَ؛ بَلْ أَمَرَهُ - عَلَيْهِ السَّلَامُ - بِرَدِّهِ نَصًّا.

L15535 Then it was ascribed to the Prophet—peace and blessings be upon him—

that he enacted injustice and implemented it. This constitutes disbelief by the one who said it—and we seek refuge in Allah from being forsaken.

ثُمَّ نَسَبَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَنْفَذَ الْجَوْرَ وَأَمْضَاهُ، وَهَذَا كُفْرٌ مِنْ قَائِلِهِ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L15536 Abu Muhammad said: Then all these statements were dismissed.

قَالَ أَبُو مُحَمَّدٍ: فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا.

L15537–15538 We have stated: There is no statement among them authentically reported from any of the Companions; rather, it has been authentically reported only from some of the Followers. As for error, no one after the Prophet—peace be upon him—is protected from it.

وَقَدْ قُلْنَا: إنَّهُ لَيْسَ مِنْهَا قَوْلٌ يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَإِنَّمَا صَحَّتْ عَنْ بَعْضِ التَّابِعِينَ فَقَطْ، وَالْخَطَأُ لَمْ يُعْصَمْ مِنْهُ أَحَدٌ بَعْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L15539 When all of them are dismissed, nothing remains except our stance—which is the undeniable truth that cannot be opposed, as we previously stated: they have no right to our wealth except what Allah the Exalted has permitted through what He wills to be transferred from some of us to others. He the Exalted said: "Fight them until there is no strife and all religion belongs wholly to Allah" [8:39]. And this is what has been established from the Messenger of Allah—peace and blessings of Allah be upon him.[3]

فَإِذْ سَقَطَتْ كُلُّهَا، فَلَمْ يَبْقَ إلَّا قَوْلُنَا وَهُوَ الْحَقُّ الَّذِي لَا يَحِلُّ خِلَافُهُ بِمَا ذَكَرْنَا آنِفًا مِنْ أَنَّهُمْ لَا يَحِلُّ لَهُمْ شَيْءٌ مِنْ أَمْوَالِنَا إلَّا بِمَا أَحَلَّهُ اللَّهُ تَعَالَى فِيمَا يَشَاءُ مِنْ بَعْضِنَا لِبَعْضٍ قَالَ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] ثُمَّ هُوَ الثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L15540 It was reported to us through the chain of Abū Dāwūd: Ṣāliḥ ibn Suhayl narrated to us, who narrated from Yaḥyā—meaning ibn Abī Zā'idah—from 'Ubaydullāh ibn 'Umar, from Nāfi', from Ibn 'Umar, who said: "A slave absconded to the enemy. When the Muslims prevailed over them, the Messenger of Allāh—peace and blessings be upon him—returned him to Ibn 'Umar, and he was not included in the spoils distribution."

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا صَالِحُ بْنُ سُهَيْلٍ نَا يَحْيَى يَعْنِي ابْنَ أَبِي زَائِدَةَ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إنَّ غُلَامًا أَبَقَ إلَى الْعَدُوِّ فَظَهَرَ عَلَيْهِ الْمُسْلِمُونَ فَرَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى ابْنِ عُمَرَ وَلَمْ يُقْسَمْ» .

L15541 Abu Muhammad said: The Prophet's (peace be upon him) prohibition against dividing it constitutes proof that dividing it is impermissible and that the two participants in the spoils have no right to it. Had they possessed any right to it, he would have divided it among them. From the transmission of Abd al-Razzaq via Ibn Jurayj: I heard Nafi', the freed slave of Ibn Umar, assert that Abdullah ibn Umar's horse was seized by the enemy. When the enemy was routed, Khalid ibn al-Walid found the horse and restored it to Abdullah ibn Umar.

قَالَ أَبُو مُحَمَّدٍ: مَنْعُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قِسْمَتِهِ بُرْهَانٌ بِأَنَّهُ لَا يَجُوزُ قِسْمَتُهُ وَأَنَّهُ لَا حَقَّ فِيهِ لِلْغَانِمِينَ، وَلَوْ كَانَ لَهُمْ فِيهِ حَقٌّ لَقَسَمَهُ - عَلَيْهِ السَّلَامُ - فِيهِمْ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْتُ نَافِعًا مَوْلَى ابْنِ عُمَرَ يَزْعُمُ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ ذَهَبَ الْعَدُوُّ بِفَرَسِهِ فَلَمَّا هُزِمَ الْعَدُوُّ وَجَدَ خَالِدُ بْنُ الْوَلِيدِ فَرَسَهُ فَرَدَّهُ إلَى عَبْدِ اللَّهِ بْنِ عُمَرَ.

[3] **Qur'an references (L15539):** Qur'an 8:39 (Al-Anfal).

L15542 And through him to ʿAbd al-Razzāq from Maʿmar from Ayyūb from Nāfiʿ from Ibn ʿUmar, who said: A slave of mine absconded on the day of Yarmouk. Then the Muslims overcame him and returned him to me.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: أَبَقَ لِي غُلَامٌ يَوْمَ الْيَرْمُوكِ، ثُمَّ ظَهَرَ عَلَيْهِ الْمُسْلِمُونَ فَرَدُّوهُ إِلَيَّ.

L15543 Narrated to us via the chain of Ibn Abi Shaybah: Shariq narrated from al-Rukayn from his father or uncle, who said: A horse of mine was detained, and the enemy seized it. When the Muslims prevailed over him, I found it in Sa'd's stable. I said, "This is my horse." He said, "Provide evidence." I said, "If I call it, it will neigh." Sa'd said, "If it responds to you, we will not demand evidence from you." This ruling applies only after the division [of spoils], and this is the practice of the Muslims: Khalid ibn al-Walid and Ibn 'Umar did not differentiate between the state following division and what preceded it. We have transmitted this opinion from al-Hakam ibn 'Utaybah. And success is from Allah alone.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا شَرِيكٌ عَنْ الرُّكَيْنِ عَنْ أَبِيهِ أَوْ عَمِّهِ قَالَ: حُبِسَ لِي فَرَسٌ فَأَخَذَهُ الْعَدُوُّ فَظَهَرَ عَلَيْهِ الْمُسْلِمُونَ فَوَجَدْته فِي مَرْبِطِ سَعْدٍ فَقُلْت: فَرَسِي. فَقَالَ: بَيِّنَتُك، فَقُلْت: أَنَا أَدْعُوهُ فَيُحْمِحِمُ. فَقَالَ سَعْدٌ: إنْ أَجَابَك فَإِنَّا لَا نُرِيدُ مِنْك بَيِّنَةً - فَهَذَا لَيْسَ إلَّا بَعْدَ الْقِسْمَةِ، فَهَذَا فِعْلُ الْمُسْلِمِينَ، وَخَالِدِ بْنِ الْوَلِيدِ، وَابْنِ عُمَرَ: لَمْ يُفَرِّقُوا بَيْنَ حَالِ الْقِسْمَةِ وَمَا قَبْلَ الْقِسْمَةِ. وَرُوِّينَا هَذَا الْقَوْلَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ أَهْلُ الْحَرْبِ لَوْ نَزَلُوا عِنْدَك تُجَّارًا بِأَمَانٍ]

A legal question: If inhabitants of the abode of war (ahl al-ḥarb) were to reside with you as traders under a safe conduct (amān)...

L15544

L15545 932: Issue

٩٣٢ - مَسْأَلَةٌ:

L15546–15548 Similarly, if the people of war come to you as merchants under security, or as envoys, or as musta'mins, or as asylum-seekers, or as those undertaking the *dhimma* covenant with us, and we found Muslim captives in their possession, or... Protected non-Muslims, male slaves, female slaves belonging to Muslims, property of a Muslim, or of a Dhimmi: all such possessions shall be seized from them without compensation, whether they like it or not. The property shall be returned to its owners, and it is not permissible for us to honor any covenant they made contrary to this principle, in accordance with the words of Allah's Messenger—peace and blessings be upon him: "Every condition not in Allah's Book is invalid."[4]

وَكَذَلِكَ لَوْ نَزَلَ أَهْلُ الْحَرْبِ عِنْدَك تُجَّارًا بِأَمَانٍ، أَوْ رُسُلًا، أَوْ مُسْتَأْمِنِينَ مُسْتَجِيرِينَ، أَوْ مُلْتَزِمِينَ لَأَنْ يَكُونُوا ذِمَّةً لَنَا فَوَجَدْنَا بِأَيْدِيهِمْ أَسْرَى مُسْلِمِينَ، أَوْ أَهْلَ ذِمَّةٍ، أَوْ عَبِيدًا، أَوْ إمَاءً لِلْمُسْلِمِينَ، أَوْ مَالًا لِمُسْلِمٍ، أَوْ لِذِمِّيٍّ: فَإِنَّهُ يُنْتَزَعُ كُلُّ ذَلِكَ مِنْهُمْ بِلَا عِوَضٍ أَحَبُّوا أَمْ كَرِهُوا. وَيُرَدُّ الْمَالُ إلَى أَصْحَابِهِ، وَلَا يَحِلُّ لَنَا الْوَفَاءُ بِكُلِّ عَهْدٍ أُعْطُوهُ عَلَى خِلَافِ هَذَا؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

L15549 We ask those who differ with us: What would they say if we made a covenant

[4] **Hadith references (L15546):** Sunan Ibn Majah 2521.

with them that we would not pray or fast? Similarly, if they were to embrace Islam or enter the *dhimma* covenant, all property in their possession - whether it belongs to a free Muslim or a *dhimmi*, or is held for a Muslim or a *dhimmi* - must be taken and returned to its rightful owners without compensation. They bear no responsibility for what they consumed while they were *ḥarbīyīn* (enemy combatants).

وَنَسْأَلُ مَنْ خَالَفَنَا مَا يَقُولُ لَوْ عَاهَدْنَاهُمْ عَلَى أَنْ لَا نُصَلِّيَ، أَوْ لَا نَصُومَ وَكَذَلِكَ لَوْ أَسْلَمُوا، أَوْ تَذَمَّمُوا فَإِنَّهُ يُؤْخَذُ كُلُّ مَا فِي أَيْدِيهِمْ مِنْ حُرِّ مُسْلِمٍ أَوْ ذِمِّيٍّ، أَوْ لِمُسْلِمٍ، أَوْ لِذِمِّيٍّ، وَيُرَدُّ إِلَى أَصْحَابِهِ بِلَا عِوَضٍ وَلَا شَيْءَ عَلَيْهِمْ فِيمَا اسْتَهْلَكُوا فِي حَالِ كَوْنِهِمْ حَرْبِيِّينَ.

L15550 If a merchant or an envoy enters the abode of war and ransoms a captive, or they give him the captive, or he purchases property for a Muslim or a dhimmi, or they gift the property to him, then returns to the abode of Islam. All such possessions shall be confiscated from him and restored to their original owner, with the loss borne by the purchaser. The captive shall be released without any penalty, as we mentioned in the preceding chapter, for the utmost invalidity and gravest injustice is the taking by a polytheist of a Muslim, his property, a dhimmi, or his property. Injustice cannot be ratified; rather, it must be revoked and nullified.

وَلَوْ أَنَّ تَاجِرًا، أَوْ رَسُولًا دَخَلَ إِلَى دَارِ الْحَرْبِ فَافْتَدَى أَسِيرًا، أَوْ أَعْطَوْهُ إِيَّاهُ، أَوْ ابْتَاعَ مَتَاعًا لِمُسْلِمٍ أَوْ لِذِمِّيٍّ أَوْ وَهَبُوهُ لَهُ، فَخَرَجَ إِلَى دَارِ الْإِسْلَامِ: انْتُزِعَ مِنْهُ كُلُّ ذَلِكَ، وَرُدَّ إِلَى صَاحِبِهِ، وَهُوَ مِنْ خَسَارَةِ الْمُشْتَرِي، وَأُطْلِقَ الْأَسِيرُ بِلَا غَرَامَةٍ لِمَا ذَكَرْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا مِنْ أَنَّ أَبْطَلَ الْبَاطِلِ، وَأَظْلَمَ الظُّلْمِ: أَخْذُ الْمُشْرِكِ لِلْمُسْلِمِ، أَوْ لِمَالِهِ، أَوْ لِذِمِّيٍّ أَوْ لِمَالِهِ، وَالظُّلْمُ لَا يَجُوزُ إِمْضَاؤُهُ بَلْ يُرَدُّ وَيُفْسَخُ.

L15551 If a captive were to say to a Muslim or a protected non-Muslim who has entered the abode of war: “Ransom me from them, and whatever you give them is a debt you hold against me,” then it is as he declared, and it is a debt upon him. This is because he requested to borrow from him, and he lent it to him, and this is a right.

فَلَوْ أَنَّ الْأَسِيرَ قَالَ لِمُسْلِمٍ، أَوْ لِذِمِّيٍّ دَخَلَ دَارَ الْحَرْبِ: افْدِنِي مِنْهُمْ، وَمَا تُعْطِيهِمْ دَيْنٌ لَكَ عَلَيَّ، فَهُوَ كَمَا قَالَ، وَهُوَ دَيْنٌ عَلَيْهِ، لِأَنَّهُ اسْتَقْرَضَهُ فَأَقْرَضَهُ، وَهَذَا حَقٌّ.

L15552 Mālik and Ibn al-Qāsim said: If Ḥarbīs encamp under an amān (pledge of safe conduct) while they have captive Muslim women in their possession, the women are not to be seized from them, nor may the Ḥarbīs be barred from having sexual relations with them.

وَقَالَ مَالِكٌ، وَابْنُ الْقَاسِمِ: لَوْ نَزَلَ حَرْبِيُّونَ بِأَمَانٍ وَعِنْدَهُمْ مُسْلِمَاتٌ مَأْسُورَاتٌ: لَمْ يُنْتَزَعْنَ مِنْهُمْ، وَلَا يُمْنَعُونَ مِنَ الْوَطْءِ لَهُنَّ.

L15553 Ibn al-Qasim said: If the Harbis were to enter into the covenant of dhimma while holding free Muslims as captives, those Muslims would remain in the hands of the Dhimmis as slaves to them, just as they were [under the Harbis].

وَقَالَ ابْنُ الْقَاسِمِ: لَوْ تَذَمَّمَ حَرْبِيُّونَ وَبِأَيْدِيهِمْ أَسْرَى مُسْلِمُونَ أَحْرَارٌ: فَهُمْ بَاقُونَ فِي أَيْدِي أَهْلِ الذِّمَّةِ عَبِيدٌ لَهُمْ كَمَا كَانُوا.

L15554 These two opinions—we know of none more corrupt than them, and we seek refuge in Allah from them. If only I knew what the ruling would be if they had Muslim elders in their possession while legalizing the acts of Lot’s

وَهَذَانِ الْقَوْلَانِ لَا نَعْلَمُ قَوْلًا أَعْظَمَ فَسَادًا مِنْهُمَا، وَنَعُوذُ بِاللَّهِ مِنْهُمَا، وَلَيْتَ شِعْرِي مَا الْقَوْلُ لَوْ كَانَ بِأَيْدِيهِمْ شُيُوخٌ مُسْلِمُونَ وَهُمْ يَسْتَحِلُّونَ فِعْلَ قَوْمِ لُوطٍ أَيُتْرَكُونَ وَذَلِكَ؟

أَوْ لَوْ أَنَّ بِأَيْدِيهِمْ مَصَاحِفَ أَيُتْرَكُونَ يَمْسَحُونَ بِهَا الْعَذِرَ عَنْ أَسْتَاهِهِمْ؟ نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ هَذَا الْقَوْلِ أَتَمَّ الْبَرَاءَةِ - وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ. ٩٣٣ - مَسْأَلَةٌ:

people? How could they be left to that? Or if they had copies of the Quran in their possession, how could they be left to wipe excrement from their buttocks with them? We disavow to Allah, the Exalted, this opinion with the most complete disavowal—and we seek refuge in Allah from being forsaken. Issue 933:

فَإِنْ ذَكَرُوا حَدِيثَ أَبِي جَنْدَلٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَدَّهُ عَلَى الْمُشْرِكِينَ - فَلَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ.

L15555 If they cite the hadith of Abū Jandal and that the Messenger of Allah—may Allah bless him and grant him peace—returned him to the polytheists, there is no valid argument for them in this matter for several considerations.

أَوَّلُهَا - أَنَّهُ - عَلَيْهِ السَّلَامُ - رَدَّهُ وَلَمْ يَكُنْ الْعَهْدُ تَمَّ بَيْنَهُمْ، وَهُمْ لَا يَقُولُونَ بِهَذَا.

L15556–15557 The first of them is that he—peace be upon him—rejected it, and the covenant had not been completed between them, and they do not say this.

وَالثَّانِي - أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَرُدَّهُ حَتَّى أَجَارَهُ لَهُ مُكْرَزُ بْنُ حَفْصٍ مِنْ أَنْ يُؤْذَى.

L15558 The second [point] is that he—peace be upon him—did not turn him away until Mukarraz ibn Ḥafṣ granted him protection to ensure he would not be harmed.

وَالثَّالِثُ - أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ كَانَ اللَّهُ تَعَالَى أَعْلَمَهُ أَنَّهُ سَيَجْعَلُ اللَّهُ لَهُ فَرَجًا وَمَخْرَجًا وَنَحْنُ لَا نَعْلَمُ ذَلِكَ.

L15559 The third is that he—peace be upon him—had been informed by Allah, the Exalted, that He will grant him deliverance and an escape, whereas we have no such knowledge.

وَالرَّابِعُ -

L15560 And the fourth:

أَنَّهُ خَبَرٌ مَنْسُوخٌ نَسَخَهُ قَوْلُ اللَّهِ تَعَالَى بَعْدَ قِصَّةِ أَبِي جَنْدَلٍ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لا هُنَّ حِلٌّ لَهُمْ وَلا هُمْ يَحِلُّونَ لَهُنَّ} [الممتحنة: ١٠] فَأَبْطَلَ اللَّهُ تَبَارَكَ وَتَعَالَى بِهَذِهِ الْآيَةِ عَهْدَهُمْ فِي رَدِّ النِّسَاءِ، ثُمَّ أَنْزَلَ اللَّهُ تَعَالَى: (بَرَاءَةٌ) بَعْدَ ذَلِكَ فَأَبْطَلَ الْعَهْدَ كُلَّهُ وَنَسَخَهُ بِقَوْلِهِ تَعَالَى: {بَرَاءَةٌ مِنَ اللَّهِ وَرَسُولِهِ إِلَى الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ} [التوبة: ١] {فَسِيحُوا فِي الأَرْضِ أَرْبَعَةَ أَشْهُرٍ} [التوبة: ٢] ٠ وَبِقَوْلِهِ تَعَالَى فِي (بَرَاءَةٌ) أَيْضًا: {كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ رَسُولِهِ إِلا الَّذِينَ

L15561 That it is an abrogated report superseded by the statement of Allah, the Exalted, after the account of Abū Jandal: “O you who believe, when believing women come to you as emigrants, test them. Allah knows best about their faith. If you verify them as believers, do not return them to the disbelievers - neither are they lawful for the disbelievers, nor are the disbelievers lawful for them” [Al-Mumtaḥanah: 10]. Through this verse, Allah, Blessed and Exalted is He, invalidated their pact concerning the return of women. Then Allah, the Exalted, revealed Surah At-Tawbah (Bara’ah) thereafter, thereby nullifying the entire pact and abrogating it with His statement: “A repudiation from Allah and His Messenger to those polytheists with whom you made a pact” [At-Tawbah: 1] “So move freely in the land for four months” [At-Tawbah: 2]. And through His statement in At-Tawbah: “How can there be any pact with the polytheists with Allah and His Messenger, except for those with whom you made a pact at the Sacred Mosque?” [At-Tawbah: 7]. Thus the

Exalted invalidated every pact with the polytheists except those with whom a covenant was made at the Sacred Mosque.[5]

L15562 And by His saying, the Exalted: "When the sacred months have passed, then kill the polytheists wherever you find them, seize them, besiege them, and lie in wait for them at every strategic position. But if they repent, establish prayer, and give *Zakat*, then release them freely" [At-Tawbah: 5]. And He, the Exalted, said: "Fight those who do not believe in Allah nor in the Last Day, nor forbid what Allah and His Messenger have forbidden, nor adhere to the religion of truth—from among those given the Scripture—until they pay the *jizyah* personally while they are humbled" [At-Tawbah: 29]. Thus, Allah the Exalted nullified every treaty and did not validate it, and did not make for the polytheists except killing or Islam. For the People of the Scripture specifically, there is the payment of *jizyah* while they are humbled. He granted security to the asylum-seeker and the Messenger until he delivers his message, and the asylum-seeker hears the words of Allah. Then both are to be returned to their respective lands, with no further obligation. Therefore, every treaty other than this is invalid and annulled; it is impermissible to honor it, for it contradicts the stipulation of Allah, the Mighty and Majestic, and opposes His command.[6]

L15563–15564 We have been narrated via the chain of Al-Bukhari: Abdullah ibn Muhammad narrated to us, from Abd al-Razzaq who informed us, from Ma'mar who informed me from Al-Zuhri, who said: "Urwah ibn al-Zubayr informed me from al-Miswar ibn Makhramah and others," mentioning the incident of al-Hudaybiyah. And in it, the Muslims exclaimed: "Glory be to Allah! How can he be returned to the polytheists when he has come as a Muslim?" While they were in this state, suddenly Abu Jandal ibn Suhayl ibn Amr entered, shackled in his chains, having emerged from the lower part of Mecca until he threw himself into the midst of the Muslims. Suhayl declared: "This is the first condition I stipulate against you—that you return him to me."

عَاهَدْتُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ} [التوبة: ٧] الْآيَةَ فَأَبْطَلَ تَعَالَى كُلَّ عَهْدٍ لِلْمُشْرِكِينَ حَاشَا الَّذِينَ عَاهَدُوا عِنْدَ الْمَسْجِدِ الْحَرَامِ.

وَبِقَوْلِهِ تَعَالَى: {فَإِذَا انْسَلَخَ الأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] ، وَقَالَ تَعَالَى: {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] ، فَأَبْطَلَ اللَّهُ تَعَالَى كُلَّ عَهْدٍ وَلَمْ يُقِرَّهُ، وَلَمْ يَجْعَلْ لِلْمُشْرِكِينَ إِلَّا الْقَتْلَ، أَوْ الْإِسْلَامَ، وَلِأَهْلِ الْكِتَابِ خَاصَّةً إِعْطَاءُ الْجِزْيَةِ وَهُمْ صَاغِرُونَ وَأَمَّنَ الْمُسْتَجِيرَ وَالرَّسُولَ حَتَّى يُؤَدِّيَ رِسَالَتَهُ وَيَسْمَعَ الْمُسْتَجِيرُ كَلَامَ اللَّهِ ثُمَّ يُرَدَّانِ إِلَى بِلَادِهِمَا وَلَا مَزِيدَ، فَكُلُّ عَهْدٍ غَيْرِ هَذَا فَهُوَ بَاطِلٌ مَفْسُوخٌ لَا يَحِلُّ الْوَفَاءُ بِهِ؛ لِأَنَّهُ خِلَافُ شَرْطِ اللَّهِ عَزَّ وَجَلَّ وَخِلَافُ أَمْرِهِ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ نَا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا مَعْمَرٌ أَخْبَرَنِي الزُّهْرِيُّ قَالَ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ «عَنْ الْمِسْوَرِ بْنِ مَخْرَمَةَ وَغَيْرِهِ فَذَكَرَ حَدِيثَ الْحُدَيْبِيَةِ، وَفِيهِ فَقَالَ الْمُسْلِمُونَ: سُبْحَانَ اللَّهِ كَيْفَ يُرَدُّ إِلَى الْمُشْرِكِينَ وَقَدْ جَاءَ مُسْلِمًا؟ فَبَيْنَمَا هُمْ كَذَلِكَ إِذْ دَخَلَ أَبُو جَنْدَلِ بْنُ سُهَيْلِ بْنِ عَمْرٍو يَرْسُفُ فِي قُيُودِهِ وَقَدْ خَرَجَ مِنْ أَسْفَلِ مَكَّةَ حَتَّى رَمَى بِنَفْسِهِ بَيْنَ أَظْهُرِ الْمُسْلِمِينَ فَقَالَ سُهَيْلٌ: هَذَا أَوَّلُ مَا أُقَاضِيكَ عَلَيْهِ أَنْ تَرُدَّهُ إِلَيَّ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنَّا لَمْ نَقْضِ الْكِتَابَ بَعْدُ، قَالَ: فَوَاَللَّهِ إِذًا لَا أُصَالِحُكَ عَلَى شَيْءٍ أَبَدًا، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -:

[5] **Qur'an references (L15561):** Qur'an 60:10 (Al-Mumtahanah); Qur'an 9:1 (At-Tawbah); Qur'an 9:2 (At-Tawbah); Qur'an 9:7 (At-Tawbah).

[6] **Qur'an references (L15562):** Qur'an 9:5 (At-Tawbah); Qur'an 9:29 (At-Tawbah).

فَأَجِزْهُ لِي قَالَ: مَا أَنَا بِمُجِيزِهِ لَكَ قَالَ: بَلَى فَافْعَلْ. قَالَ: مَا أَنَا بِفَاعِلٍ، قَالَ مُكَرَّزٌ - هُوَ ابْنُ حَفْصِ بْنِ الْأَحْنَفِ: بَلْ قَدْ أَجَزْنَاهُ لَكَ» فَهَذَا خِلَافُ قَوْلِهِمْ كُلِّهِمْ وَحَدِيثُ أَبِي جَنْدَلٍ حُجَّةٌ عَلَيْهِمْ كَمَا أَوْرَدْنَا.

The Prophet—peace and blessings be upon him—responded: "We have not yet finalized the treaty." Suhayl retorted: "By Allah, then I shall never make peace with you on anything ever!" The Prophet—peace and blessings be upon him—entreated: "Permit him to me." He answered: "I will not permit him to you." The Prophet urged: "Indeed, do so." He insisted: "I will not." Mukarraz—Ibn Hafs ibn al-Ahnaf—interjected: "Rather, we have permitted him to you." This contradicts all their claims, and Abu Jandal's narration stands as decisive evidence against them, as we have presented.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا عَفَّانُ هُوَ ابْنُ مُسْلِمٍ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ ثَابِتٍ عَنْ أَنَسٍ: «أَنَّ قُرَيْشًا صَالَحُوا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاشْتَرَطُوا عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّ مَنْ جَاءَ مِنْكُمْ لَمْ نَرُدَّهُ عَلَيْكُمْ وَمَنْ جَاءَ مِنَّا رَدَدْتُمُوهُ عَلَيْنَا. فَقَالُوا يَا رَسُولَ اللَّهِ أَتَكْتُبُ هَذَا؟ قَالَ: نَعَمْ، إنَّهُ مَنْ ذَهَبَ مِنَّا إلَيْهِمْ فَأَبْعَدَهُ اللَّهُ، وَمَنْ جَاءَنَا مِنْهُمْ فَسَيَجْعَلُ اللَّهُ لَهُ فَرَجًا وَمَخْرَجًا» وَهَذَا خَبَرٌ مِنْهُ - عَلَيْهِ السَّلَامُ - مَقْطُوعٌ بِصِدْقِهِ.

L15565 From the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Affan—who is Ibn Muslim—narrated to us, Hammad ibn Salamah narrated from Thabit from Anas: "The Quraysh made a peace treaty with the Prophet—peace and blessings be upon him—and stipulated upon the Prophet—peace and blessings be upon him—that anyone who comes to them from your side will not be returned to you, and anyone who comes to you from our side must be returned to us. They said, 'O Messenger of Allah, will you write this?' He said, 'Yes. Indeed, whoever leaves us to join them, Allah will banish him utterly, and whoever comes to us from them, Allah will grant him relief and a way out.'" This is a report from him—peace and blessings be upon him—decisively authenticated in its truthfulness.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا يَحْيَى بْنُ بُكَيْرٍ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ أَنَّهُ سَمِعَ الْمِسْوَرَ بْنَ مَخْرَمَةَ، وَآخَرَ: يُخْبِرَانِ عَنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَا «حَدِيثَ الْحُدَيْبِيَةِ، وَفِيهِ: فَرَدَّ يَوْمَئِذٍ أَبَا جَنْدَلٍ إلَى أَبِيهِ سُهَيْلِ بْنِ عَمْرٍو، وَلَمْ يَأْتِهِ أَحَدٌ مِنْ الرِّجَالِ إلَّا رَدَّهُ فِي تِلْكَ الْمُدَّةِ وَإِنْ كَانَ مُسْلِمًا، وَجَاءَتْ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ، وَجَاءَتْ أُمُّ كُلْثُومِ بِنْتُ عُقْبَةَ بْنِ أَبِي مُعَيْطٍ مِمَّنْ خَرَجَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَئِذٍ وَهِيَ عَاتِقٌ فَجَاءَ أَهْلُهَا يَسْأَلُونَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرْجِعَهَا إلَيْهِمْ فَلَمْ يُرْجِعْهَا إلَيْهِمْ لِمَا أَنْزَلَ اللَّهُ تَعَالَى فِيهِنَّ:

L15566 And through the chain of Al-Bukhārī: Yahyā ibn Bukayr narrated to us, Al-Layth—that is, Ibn Saʿd—narrated to us from ʿUqayl ibn Khālid from Ibn Shihāb, who informed me that ʿUrwah ibn Al-Zubayr heard Al-Miswar ibn Makhramah and another person informing him about the Companions of the Prophet (ﷺ). They mentioned the narration of Al-Ḥudaybiyyah, in which it states: "On that day, he returned Abu Jandal to his father Suhayl ibn ʿAmr. Whenever a man came to him during that period, the Prophet would return him, even if he was Muslim. The believing women came as female emigrants, including Umm Kulthūm bint ʿUqbah ibn Abī Muʿayṭ from among those who came to the Messenger of Allah (ﷺ) on that day as a young woman of mature age. Her family came asking the Prophet to return her to them, but he refused due to what Allah the Exalted had revealed concerning them:

{When the believing women come to you as female emigrants, test them. Allah knows best about their faith} [Al-Mumtaḥanah 60:10]."[7]

The ruling regarding a captive held by disbelievers who made a pact with him for ransom and released him.

934. - Legal Question:

Whoever is a captive with the disbelievers, and they make a pact with him for ransom and release him, then it is not permissible. He has the right to return to them and not to give them anything, nor is it permissible for the imam to compel him to give them anything. If he cannot depart except through ransom, then it becomes obligatory upon the Muslims to ransom him if he lacks wealth sufficient for his ransom. Allah the Exalted says: "And do not consume one another's wealth unjustly" [Al-Baqarah: 188]. The captivity of a Muslim constitutes the most wrongful of wrongs, and the taking of a disbeliever's or tyrant's wealth as ransom represents the most wrongful of wrongs. Therefore, it is impermissible to give wrongful things or assist in them. Those covenants and oaths he granted them impose no obligation upon him, for he was coerced into them when no means of escape existed except through such pledges. It is unlawful for him to remain in the land of disbelief while capable of leaving. The Messenger of Allah—peace and blessings be upon him—said: "There has been lifted from my ummah [responsibility for] error, forgetfulness, and what they are compelled to do." Similarly, every covenant we grant them remains valid only until we gain the capacity to rescue Muslims and their possessions from their control. If we cannot achieve their liberation except through ransom, then ransoming them becomes obligatory upon us, in accordance with the narration of the Messenger of Allah—peace and blessings be upon him—reported through Abū Mūsā al-Ash'ari: "Feed the hungry and free the captive." This constitutes the opinion of Abū Sulaymān and al-Shāfi'ī.[8]

[7] **Qur'an references (L15566):** Qur'an 60:10 (Al-Mumtahanah).

[8] **Qur'an references (L15569):** Qur'an 2:188 (Al-Baqarah).

{إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ} [الممتحنة: ١٠] » الْآيَةَ

[مَسْأَلَةٌ مَنْ كَانَ أَسِيرًا عِنْدَ الْكُفَّارِ فَعَاهَدُوهُ عَلَى الْفِدَاءِ وَأَطْلَقُوهُ]

٩٣٤ - مَسْأَلَةٌ:

وَمَنْ كَانَ أَسِيرًا عِنْدَ الْكُفَّارِ فَعَاهَدُوهُ عَلَى الْفِدَاءِ وَأَطْلَقُوهُ فَلَا يَحِلُّ لَهُ أَنْ يَرْجِعَ إِلَيْهِمْ، وَلَا أَنْ يُعْطِيَهُمْ شَيْئًا، وَلَا يَحِلُّ لِلْإِمَامِ أَنْ يُجْبِرَهُ عَلَى أَنْ يُعْطِيَهُمْ شَيْئًا، فَإِنْ لَمْ يَقْدِرْ عَلَى الِانْطِلَاقِ إِلَّا بِالْفِدَاءِ فَفَرْضٌ عَلَى الْمُسْلِمِينَ أَنْ يَفْدُوهُ إِنْ لَمْ يَكُنْ لَهُ مَالٌ يَفِي بِفِدَائِهِ. قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَإِسَارُ الْمُسْلِمِ أَبْطَلُ الْبَاطِلِ، وَأَخْذُ الْكَافِرِ أَوْ الظَّالِمِ مَالَهُ فِدَاءً مِنْ أَبْطَلِ الْبَاطِلِ، فَلَا يَحِلُّ إعْطَاءُ الْبَاطِلِ، وَلَا الْعَوْنُ عَلَيْهِ، وَتِلْكَ الْعُهُودُ وَالْأَيْمَانُ الَّتِي أَعْطَاهُمْ لَا شَيْءَ عَلَيْهِ فِيهَا، لِأَنَّهُ مُكْرَهٌ عَلَيْهَا، إذْ لَا سَبِيلَ لَهُ إلَى الْخَلَاصِ إلَّا بِهَا، وَلَا يَحِلُّ لَهُ الْبَقَاءُ فِي أَرْضِ الْكُفْرِ وَهُوَ قَادِرٌ عَلَى الْخُرُوجِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» وَهَكَذَا كُلُّ عَهْدٍ أَعْطَيْنَاهُمْ، حَتَّى نَتَمَكَّنَ مِنْ اسْتِنْقَاذِ الْمُسْلِمِينَ وَأَمْوَالِهِمْ مِنْ أَيْدِيهِمْ، فَإِنْ عَجَزْنَا عَنْ اسْتِنْقَاذِهِ إلَّا بِالْفِدَاءِ فَفَرْضٌ عَلَيْنَا فِدَاؤُهُ لِخَبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَبِي مُوسَى الْأَشْعَرِيِّ «أَطْعِمُوا الْجَائِعَ وَفُكُّوا الْعَانِيَ» وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَالشَّافِعِيِّ

[مَسْأَلَةٌ فِدَاءُ الْأَسِيرِ الْمُسْلِمِ]

A Legal Question: The Redemption of Muslim Captives

935. Question:

It is not permissible to ransom a Muslim captive except either with wealth or with a non-Muslim captive. It is also impermissible to return a minor taken as a war captive from the territory of war to the enemy, whether for ransom or without ransom, because the rulings of Islam have become binding upon him due to the Muslims' ownership over him. Thus, he and Muslim minors are equal, with no distinction—and this is the opinion of Al-Muzani.

Issue: What is the ruling on gifts granted by the People of War to a Muslim envoy to them or a merchant residing among them?

936: Issue

What the people of war grant to the Muslim envoy sent to them or the trader residing among them is lawful—a valid gift—provided it is not the property of a Muslim or a protected non-Muslim. Likewise, what a Muslim purchases from them constitutes a valid purchase, provided it is not the property of a Muslim or a protected non-Muslim. This is because they retain ownership of their wealth until Muslims seize it from them, based on Allah's statement: {He made you inherit their land, their homes, and their wealth} [Al-Aḥzāb: 27]. Thus, Allah decreed their property to remain theirs until He made us inherit it. Inheritance occurs only through seizure and acquisition; otherwise, it is not inherited after we have been unable to attain it. For Allah has designated their wealth exclusively for those who seize it as spoils, not for everyone who did not acquire it through conquest.[9]

A Question: The Ḥarbī Disbeliever When He Embraces Islam

937: Question

٩٣٥٠ - مَسْأَلَةٌ:

وَلَا يَحِلُّ فِدَاءُ الْأَسِيرِ الْمُسْلِمِ إِلَّا إِمَّا بِمَالٍ، وَإِمَّا بِأَسِيرٍ كَافِرٍ، وَلَا يَحِلُّ أَنْ يُرَدَّ صَغِيرٌ سُبِيَ مِنْ أَرْضِ الْحَرْبِ إِلَيْهِمْ لَا بِفِدَاءٍ وَلَا بِغَيْرِ فِدَاءٍ، لِأَنَّهُ قَدْ لَزِمَهُ حُكْمُ الْإِسْلَامِ بِمِلْكِ الْمُسْلِمِينَ لَهُ، فَهُوَ وَأَوْلَادُ الْمُسْلِمِينَ سَوَاءٌ وَلَا فَرْقَ - وَهُوَ قَوْلُ الْمُزَنِيِّ.

[مَسْأَلَةٌ مَا وَهَبَ أَهْلُ الْحَرْبِ لِلْمُسْلِمِ الرَّسُولِ إِلَيْهِمْ أَوْ التَّاجِرِ عِنْدَهُمْ]

٩٣٦ - مَسْأَلَةٌ:

وَمَا وَهَبَ أَهْلُ الْحَرْبِ لِلْمُسْلِمِ الرَّسُولِ إِلَيْهِمْ، أَوْ التَّاجِرِ عِنْدَهُمْ فَهُوَ حَلَالٌ، وَهِبَةٌ صَحِيحَةٌ مَا لَمْ يَكُنْ مَالَ مُسْلِمٍ، أَوْ ذِمِّيٍّ، وَكَذَلِكَ مَا ابْتَاعَهُ الْمُسْلِمُ مِنْهُمْ فَهُوَ ابْتِيَاعٌ صَحِيحٌ مَا لَمْ يَكُنْ مَالًا لِمُسْلِمٍ، أَوْ ذِمِّيٍّ، لِأَنَّهُمْ مَالِكُونَ لِأَمْوَالِهِمْ مَا لَمْ يَنْتَزِعْهَا الْمُسْلِمُ مِنْهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {وَأَوْرَثَكُمْ أَرْضَهُمْ وَدِيَارَهُمْ وَأَمْوَالَهُمْ} [الأحزاب: ٢٧] فَجَعَلَهَا اللَّهُ تَعَالَى لَهُمْ إِلَى أَنْ أَوْرَثَنَا إِيَّاهَا، وَالتَّوْرِيثُ لَا يَكُونُ إِلَّا بِالْأَخْذِ وَالتَّمَلُّكِ، وَإِلَّا فَلَمْ يُورَثْ بَعْدَمَا لَمْ تَقْدِرْ أَيْدِينَا عَلَيْهِ، وَإِنَّمَا جَعَلَ اللَّهُ تَعَالَى أَمْوَالَهُمْ لِلْغَانِمِ لَهَا، لَا لِكُلِّ مَنْ لَمْ يَغْنَمْهَا.

[مَسْأَلَةٌ الْكَافِرُ الْحَرْبِيُّ إِذَا أَسْلَمَ]

٩٣٧ - مَسْأَلَةٌ:

[9] **Qur'an references (L15577):** Qur'an 33:27 (Al-Ahzab).

L15580 When a ḥarbī disbeliever embraces Islam, it is the same whether he embraces Islam in the territory of war (dār al-ḥarb) and then leaves for the abode of Islam (dār al-Islām), remains in dār al-ḥarb without leaving, or leaves for dār al-Islām first and then embraces Islam: all these cases are equivalent.

وَإِذَا أَسْلَمَ الْكَافِرُ الْحَرْبِيُّ فَسَوَاءٌ أَسْلَمَ فِي دَارِ الْحَرْبِ، ثُمَّ خَرَجَ إِلَى دَارِ الْإِسْلَامِ، أَوْ لَمْ يَخْرُجْ، أَوْ خَرَجَ إِلَى دَارِ الْإِسْلَامِ ثُمَّ أَسْلَمَ، كُلُّ ذَلِكَ سَوَاءٌ.

L15581–15582 And all his property that is with him in the land of Islam, or in the abode of war, or that he left behind in the abode of war—of immovable property, or a house, or land, or animals, or cash, or movable property in his residence, or deposited items, or a debt—all of it is his; no one has any right to it, nor do the Muslims own it if they acquire it as war spoils or conquer that land.

وَجَمِيعُ مَالِهِ الَّذِي مَعَهُ فِي أَرْضِ الْإِسْلَامِ، أَوْ فِي دَارِ الْحَرْبِ، أَوْ الَّذِي تَرَكَ وَرَاءَهُ فِي دَارِ الْحَرْبِ مِنْ عَقَارٍ، أَوْ دَارٍ، أَوْ أَرْضٍ، أَوْ حَيَوَانٍ، أَوْ نَاضٍّ، أَوْ مَتَاعٍ فِي مَنْزِلِهِ، أَوْ مُودَعًا، أَوْ كَانَ دَيْنًا: هُوَ كُلُّهُ لَهُ، لَا حَقَّ لِأَحَدٍ فِيهِ، وَلَا يَمْلِكُهُ الْمُسْلِمُونَ إنْ غَنِمُوهُ أَوْ افْتَتَحُوا تِلْكَ الْأَرْضَ.

L15583 And whoever usurps anything from it—whether from a non-Muslim belonging to hostile territory (ḥarbī), a Muslim, or a protected non-Muslim (dhimmī)—it must be returned to its owner. If the usurper dies, his heirs are obligated to return it, and his minor children are free Muslims. The same applies to the fetus in his wife's womb.

وَمَنْ غَصَبَهُ مِنْهَا شَيْئًا مِنْ حَرْبِيٍّ، أَوْ مُسْلِمٍ، أَوْ ذِمِّيٍّ: رُدَّ إلَى صَاحِبِهِ وَيَرِثُهُ وَرَثَتُهُ إنْ مَاتَ، وَأَوْلَادُهُ الصِّغَارُ مُسْلِمُونَ أَحْرَارٌ - وَكَذَلِكَ الَّذِي فِي بَطْنِ امْرَأَتِهِ.

L15584 As for his wife and adult children, they are deemed fay' (booty) if captured. He remains married to her, and she becomes a slave belonging to the one allotted her as his share.

وَأَمَّا امْرَأَتُهُ وَأَوْلَادُهُ الْكِبَارُ فَفَيْءٌ إنْ سُبُوا وَهُوَ بَاقٍ عَلَى نِكَاحِهِ مَعَهَا، وَهِيَ رَقِيقٌ لِمَنْ وَقَعَتْ لَهُ سَهْمَهُ.

L15585 The proof thereof is that when he embraces Islam, he is—without doubt or dispute and by the definitive text of the Quran and Sunnah—a Muslim. Since he is a Muslim, he is like all other Muslims. The Messenger of Allah, peace and blessings be upon him, said: "Your blood, wealth, and honors are inviolable to you." Thus, it is established that his blood, body, honor, and wealth are inviolable to all except himself. The marriages of disbelievers are valid, for the Prophet, peace and blessings be upon him, upheld their marriages. Had they been invalid, he would not have upheld them. Moreover, he—peace and blessings be upon him—was created from a valid marriage, for he was not created except from a valid marriage. Thus, the two spouses remain bound by their marriage; nothing whatsoever, nor anything else invalidates it except what is explicitly nullified by the explicit text.

بُرْهَانُ ذَلِكَ - أَنَّهُ إذَا أَسْلَمَ فَهُوَ بِلَا شَكٍّ، وَبِلَا خِلَافٍ، وَبِنَصِّ الْقُرْآنِ وَالسُّنَّةِ: مُسْلِمٌ، وَإِذْ هُوَ مُسْلِمٌ، فَهُوَ كَسَائِرِ الْمُسْلِمِينَ - وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ» ، فَصَحَّ أَنَّ دَمَهُ، وَبَشَرَتَهُ، وَعِرْضَهُ، وَمَالَهُ حَرَامٌ عَلَى كُلِّ أَحَدٍ سِوَاهُ، وَنِكَاحُ أَهْلِ الْكُفْرِ صَحِيحٌ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَرَّهُمْ عَلَى نِكَاحِهِمْ، وَلَوْ كَانَ فَاسِدًا لَمَا أَقَرَّهُ، وَمِنْهُ خُلِقَ - عَلَيْهِ السَّلَامُ -، وَلَمْ يُخْلَقْ إلَّا مِنْ نِكَاحٍ صَحِيحٍ، فَهُمَا بَاقِيَانِ عَلَى نِكَاحِهِمَا لَا يَفْسُدُ شَيْءٌ، وَلَا غَيْرُهُ إلَّا مَا جَاءَ فِيهِ النَّصُّ بِفَسَادِهِ.

L15586 What is astonishing is that the present opponents do not dispute with us

that his blood, honor, and skin are forbidden - yet they vacillate regarding the matter of his wealth. This is truly astonishing. All of this statement of ours constitutes the statement of Al-Awzāʿī, Al-Shāfiʿī, and Abū Sulaymān.

وَالْعَجَبُ أَنَّ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ لَا يُنَازِعُونَنَا فِي أَنَّ دَمَهُ، وَعِرْضَهُ، وَبَشَرَتَهُ، حَرَامٌ - ثُمَّ يَضْطَرِبُونَ فِي أَمْرِ مَالِهِ، وَهَذَا عَجَبٌ جِدًّا وَقَوْلُنَا هَذَا كُلُّهُ هُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L15587 Abu Hanifa said: If someone embraces Islam in the abode of war and remains there until the Muslims gain control over it, he is free, and all his wealth belongs to him—nothing is taken as spoils from it, nor from what he had entrusted to a Muslim or a *dhimmi*. His minor children are free Muslims, except his land and the fetus in his wife's womb, all of which is spoils and *fay'*. However, the fetus is Muslim.

وَقَالَ أَبُو حَنِيفَةَ: إنْ أَسْلَمَ فِي دَارِ الْحَرْبِ وَأَقَامَ هُنَاكَ حَتَّى تَغَلَّبَ الْمُسْلِمُونَ عَلَيْهَا فَإِنَّهُ حُرٌّ، وَأَمْوَالُهُ كُلُّهَا لَهُ، لَا يُغْنَمُ مِنْهَا شَيْئًا، وَلَا مِمَّا كَانَ لَهُ وَدِيعَةً عِنْدَ مُسْلِمٍ، أَوْ ذِمِّيٍّ، وَأَوْلَادُهُ الصِّغَارُ مُسْلِمُونَ أَحْرَارٌ، حَاشَا أَرْضَهُ - وَحَمْلَ امْرَأَتِهِ فَكُلُّ ذَلِكَ غَنِيمَةٌ وَفَيْءٌ وَيَكُونُ الْجَنِينُ مَعَ ذَلِكَ مُسْلِمًا.

L15588 As for his wife and his adult children, they are fay'.

وَأَمَّا امْرَأَتُهُ وَأَوْلَادُهُ الْكِبَارُ فَفَيْءٌ.

L15589 And Abū Yūsuf said: His land also belongs to him.

وَقَالَ أَبُو يُوسُفَ: وَأَرْضُهُ لَهُ أَيْضًا.

L15590–15592 Abu Hanifa said: If someone embraces Islam in the abode of war and then departs to the abode of Islam, his minor children... Free Muslims are not to be seized as spoils. All that is deposited with a Muslim or a protected non-Muslim (dhimmi) belongs to the owner and is not subject to confiscation. As for all other possessions left behind in enemy territory—whether land, real estate, furnishings, or animals—they are considered *fay'* yet deemed seized spoils. Likewise, the belongings of his wife are treated in the same manner, provided he remains a Muslim.

قَالَ أَبُو حَنِيفَةَ: فَإِنْ أَسْلَمَ فِي دَارِ الْحَرْبِ ثُمَّ خَرَجَ إلَى دَارِ الْإِسْلَامِ فَأَوْلَادُهُ الصِّغَارُ أَحْرَارٌ مُسْلِمُونَ لَا يُغْنَمُونَ، وَكُلُّ مَا أَوْدَعَ عِنْدَ مُسْلِمٍ، أَوْ ذِمِّيٍّ فَلَهُ، وَلَا يُغْنَمُ - وَأَمَّا سَائِرُ مَا تَرَكَ فِي أَرْضِ الْحَرْبِ مِنْ أَرْضٍ، أَوْ عَقَارٍ، أَوْ أَثَاثٍ، أَوْ حَيَوَانٍ فَفَيْءٌ مَغْنُومٌ - وَكَذَلِكَ حَمْلُ امْرَأَتِهِ، وَهُوَ مَعَ ذَلِكَ مُسْلِمٌ.

L15593 If he departs to the Abode of Islam as a disbeliever and then embraces Islam there, he becomes a free Muslim. As for all the land, real estate, possessions, livestock, or minor children he leaves behind, these are designated as fay' and constitute booty; his minor children do not become Muslims through his conversion.

فَإِنْ خَرَجَ إلَى دَارِ الْإِسْلَامِ كَافِرًا، ثُمَّ أَسْلَمَ فِيهَا فَهُوَ حُرٌّ مُسْلِمٌ - وَأَمَّا كُلُّ مَا تَرَكَ مِنْ أَرْضٍ، أَوْ عَقَارٍ، أَوْ مَتَاعٍ، أَوْ حَيَوَانٍ، أَوْ أَوْلَادِهِ الصِّغَارِ فَفَيْءٌ مَغْنُومٌ، وَلَا يَكُونُونَ مُسْلِمِينَ بِإِسْلَامِهِ.

L15594 Abu Muhammad said: If one were told to demean oneself and strive, they could not do more than this. These classifications are unknown to any Muslim before him, nor are they connected to any Quranic verse, Sunnah, defec-

قَالَ أَبُو مُحَمَّدٍ: لَوْ قِيلَ لِإِنْسَانٍ أَسْخِفْ وَاجْتَهِدْ مَا قَدَرَ عَلَى أَكْثَرَ مِنْ هَذَا، وَلَا تُعْرَفُ هَذِهِ التَّقَاسِيمُ لِأَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُ، وَمَا تَعَلَّقَ فِيهَا لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا

tive narration, opinion of a Companion, a Successor, analogy, or rationally sound view. We seek refuge in Allah from being forsaken. Rather, this opposes the Quran and the Sunnah by permitting the wrongful seizure of a Muslim's wealth and young children as unlawful spoils, and contradicts reason, for he deems one's personal flight to the land of Islam and embracing Islam there a grave sin, warranting that his young children be permitted for captivity and disbelief, and all his wealth be seized as spoils. This is his recompense according to Abu Hanifah. He considered remaining in the land of disbelief an attribute that renders all his wealth prohibited except his land, and his young children prohibited except the fetus—despite permitting disbelievers and belligerents to appropriate Muslims' wealth as we previously outlined, and despite prohibiting striking or killing them if they openly revile the Messenger of Allah—peace and blessings be upon him—with the basest insults and publicly deny him in markets. Yet if a Muslim kills one of them, he is subject to retaliation. How do you judge this? It also opposes definitive consensus, for no believer, disbeliever, ignorant person, or scholar doubts that the Companions of the Messenger of Allah—peace and blessings be upon him—went through distinct phases.

بِرِوَايَةٍ فَاسِدَةٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا بِقِيَاسٍ، وَلَا بِرَأْيٍ يُعْقَلُ، وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ، بَلْ هُوَ خِلَافُ الْقُرْآنِ، وَالسُّنَنِ: فِي إبَاحَتِهِ مَالَ الْمُسْلِمِ وَوَلَدِهِ الصِّغَارِ لِلْغَنِيمَةِ بِالْبَاطِلِ، وَخِلَافُ الْمَعْقُولِ، إذْ صَارَ عِنْدَهُ فِرَارُهُ إلَى أَرْضِ الْإِسْلَامِ بِنَفْسِهِ وَإِسْلَامُهُ فِيهَا: ذَنْبًا عَظِيمًا يَسْتَحِقُّ بِهِ مِنْهُ إبَاحَةَ صِغَارِ أَوْلَادِهِ لِلْإِسَارِ وَالْكُفْرِ، وَإِبَاحَةَ جَمِيعِ مَالِهِ لِلْغَنِيمَةِ، هَذَا جَزَاؤُهُ عِنْدَ أَبِي حَنِيفَةَ، وَجَعَلَ بَقَاءَهُ فِي دَارِ الْكُفْرِ خَصْلَةً حَرَّمَ بِهَا أَمْوَالَهُ كُلَّهَا حَاشَا أَرْضِهِ، وَحَرَّمَ بِهَا صِغَارَ أَوْلَادِهِ حَاشَا الْجَنِينِ، هَذَا مَعَ إبَاحَتِهِ لِلْكُفَّارِ وَالْحَرْبِيِّينَ: تَمَلُّكَ أَمْوَالِ الْمُسْلِمِينَ كَمَا قَدَّمْنَا قَبْلُ، وَتَحْرِيمِهِ ضَرْبَهُمْ وَقَتْلَهُمْ إنْ أَعْلَنُوا بِسَبِّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَقْزَعِ السَّبِّ، وَتَكْذِيبِهِ فِي الْأَسْوَاقِ، فَإِنْ قَتَلَ مُسْلِمٌ مِنْهُمْ قَتِيلًا قُتِلَ بِهِ فَكَيْفَ تَرَوْنَ؟ وَهُوَ أَيْضًا خِلَافُ الْإِجْمَاعِ الْمُتَيَقَّنِ؛ لِأَنَّهُ لَا يَشُكُّ مُؤْمِنٌ، وَلَا كَافِرٌ، وَلَا جَاهِلٌ، وَلَا عَالِمٌ فِي أَنَّ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانُوا أَطْوَارًا.

L15595 A group embraced Islam in Mecca, then fled to preserve their faiths, including Abu Bakr, Umar, Uthman, and other Companions (may Allah be pleased with them all).

فَطَائِفَةٌ أَسْلَمُوا بِمَكَّةَ، ثُمَّ فَرُّوا عَنْهَا بِأَدْيَانِهِمْ: كَأَبِي بَكْرٍ وَعُمَرَ، وَعُثْمَانَ وَغَيْرِهِمْ - رَضِيَ اللَّهُ عَنْهُمْ -.

L15596 And a group left as disbelievers, then embraced Islam: such as Amr ibn al-As, who embraced Islam while with the Negus, and Abu Sufyan, who did so in the camp of the Prophet (peace and blessings be upon him).

وَطَائِفَةٌ خَرَجُوا كُفَّارًا، ثُمَّ أَسْلَمُوا: كَعَمْرِو بْنِ الْعَاصِ أَسْلَمَ عِنْدَ النَّجَاشِيِّ، وَأَبِي سُفْيَانَ أَسْلَمَ فِي عَسْكَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L15597–15599 And a group embraced Islam and remained in Mecca, like all the oppressed among the women and others. Allah the Exalted said: "He is the One who restrained their hands from you and your hands from them within Mecca after He had granted you victory over them" [48:24] to His saying: "Were it not for believing men and believing women whom you did not recognize—lest you trample them and thereby incur harm for something you did not know—so that Allah might admit into His mercy whom He wills. If they

وَطَائِفَةٌ أَسْلَمُوا وَبَقُوا بِمَكَّةَ كَجَمِيعِ الْمُسْتَضْعَفِينَ مِنْ النِّسَاءِ، وَغَيْرِهِمْ، قَالَ اللَّهُ تَعَالَى: {وَهُوَ الَّذِي كَفَّ أَيْدِيَهُمْ عَنْكُمْ وَأَيْدِيَكُمْ عَنْهُمْ بِبَطْنِ مَكَّةَ مِنْ بَعْدِ أَنْ أَظْفَرَكُمْ عَلَيْهِمْ} [الفتح: ٢٤] إلَى قَوْلِهِ: {وَلَوْلا رِجَالٌ مُؤْمِنُونَ وَنِسَاءٌ مُؤْمِنَاتٌ لَمْ تَعْلَمُوهُمْ أَنْ تَطَئُوهُمْ

had been separated, We would have punished those who disbelieved among them with a painful punishment" [48:25]. All these individuals, when the Messenger of God — may God bless him and grant him peace — conquered Mecca, the emigrant returned to his home, his real estate, and his community's farms in Ta'if and elsewhere, while the vulnerable one remained in his home, his real estate, and his furnishings as well. So where would these people go if they had heeded their own counsel? Some of them advanced a baseless argument here, claiming that God Almighty said: "For the poor emigrants who were expelled from their homes and their property" (59:8). He cited what was narrated to us through the chain of Abu 'Ubaydah from Abu al-Aswad al-Misri from Ibn Lahī'ah from Yazīd ibn Abī Habīb that 'Umar wrote to Sa'd ibn Abī Waqqās: "Whoever embraced Islam before the battle is among the Muslims; he has what the Muslims have and a share in the community's spoils. But whoever embraced Islam after the battle or the defeat, his property becomes fay' for the Muslims, as they had already secured it before his conversion." He said: "Thus, God named them 'poor' — does this confirm that their property had been seized by the disbelievers from them?" Abu Muhammad said: "He ought to have been restrained by shame from this disgraceful public assertion. What in this verse points to his claim? Rather, it disproves his falsehood, for God Almighty preserved their property and homes as their rightful ownership by attributing these to them, and condemned their unjust expulsion. Yes, they were undoubtedly poor, as they possessed no wealth."[10]

فَتُصِيبَكُمْ مِنْهُمْ مَعَرَّةٌ بِغَيْرِ عِلْمٍ لِيُدْخِلَ اللَّهُ فِي رَحْمَتِهِ مَنْ يَشَاءُ لَوْ تَزَيَّلُوا لَعَذَّبْنَا الَّذِينَ كَفَرُوا مِنْهُمْ عَذَابًا أَلِيمًا} [الفتح: ٢٥] وَكُلُّ هَؤُلَاءِ إِذْ فَتَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَكَّةَ رَجَعَ الْخَارِجُ إِلَى دَارِهِ، وَعَقَارِهِ وَضِيَاعِهِمْ بِالطَّائِفِ وَغَيْرِهَا، وَبَقِيَ الْمُسْتَضْعَفُ فِي دَارِهِ وَعَقَارِهِ وَأَثَاثِهِ كَذَلِكَ، فَأَيْنَ يَذْهَبُ بِهَؤُلَاءِ الْقَوْمِ لَوْ نَصَحُوا أَنْفُسَهُمْ؟ وَأَتَى بَعْضُهُمْ هَاهُنَا بِآبِدَةٍ هِيَ أَنَّهُ قَالَ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ} [الحشر: ٨] وَذَكَرَ مَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدَةَ عَنْ أَبِي الْأَسْوَدِ الْمِصْرِيِّ عَنِ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ عُمَرَ كَتَبَ إِلَى سَعْدِ بْنِ أَبِي وَقَّاصٍ: مَنْ أَسْلَمَ قَبْلَ الْقِتَالِ فَهُوَ مِنَ الْمُسْلِمِينَ لَهُ مَا لِلْمُسْلِمِينَ وَلَهُ سَهْمٌ فِي الْإِسْلَامِ، وَمَنْ أَسْلَمَ بَعْدَ الْقِتَالِ، أَوْ الْهَزِيمَةِ فَمَالُهُ فَيْءٌ لِلْمُسْلِمِينَ، لِأَنَّهُمْ قَدْ أَحْرَزُوهُ قَبْلَ إِسْلَامِهِ، قَالَ: فَسَمَّاهُمْ تَعَالَى فُقَرَاءَ، فَصَحَّ أَنَّ أَمْوَالَهُمْ قَدْ مَلَكَهَا الْكُفَّارُ عَلَيْهِمْ؟ قَالَ أَبُو مُحَمَّدٍ: لَقَدْ كَانَ يَنْبَغِي أَنْ يَرْدَعَهُ الْحَيَاءُ عَنْ هَذِهِ الْمُجَاهَرَةِ الْقَبِيحَةِ وَأَيُّ إِشَارَةٍ فِي هَذِهِ الْآيَةِ إِلَى مَا قَالَ؟ بَلْ هِيَ دَالَّةٌ عَلَى كَذِبِهِ فِي قَوْلِهِ، لِأَنَّهُ تَعَالَى أَبْقَى أَمْوَالَهُمْ وَدِيَارَهُمْ فِي مِلْكِهِمْ، بِأَنْ نَسَبَهَا إِلَيْهِمْ، وَجَعَلَهَا لَهُمْ، وَعَظَّمَ بِالْإِنْكَارِ إِخْرَاجَهُمْ ظُلْمًا مِنْهَا - وَنَعَمْ، هُمْ فُقَرَاءُ بِلَا شَكٍّ، إِذْ لَا يَجِدُونَ غِنًى.

L15600 They unanimously agree with us that if a man from the Maghreb or the Mashriq performs Hajj and depletes all the funds he has with him in Mecca or Medina—even though he owns estates in his homeland worth a million dinars and furnishings of equivalent value, and is unable to secure a loan, purchase, or sell—he is considered poor and eligible for Zakat. His wealth in

وَهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّ رَجُلًا مِنْ أَهْلِ الْمَغْرِبِ، أَوْ الْمَشْرِقِ لَوْ حَجَّ فَفَرَغَ مَا فِي يَدِهِ بِمَكَّةَ أَوْ بِالْمَدِينَةِ، وَلَهُ فِي بِلَادِهِ ضِيَاعٌ بِأَلْفِ أَلْفِ دِينَارٍ، وَأَثَاثٌ بِمِثْلِ ذَلِكَ، وَهُوَ حَيْثُ لَا يَقْدِرُ عَلَى قَرْضٍ، وَلَا عَلَى ابْتِيَاعٍ، وَلَا بَيْعٍ فَإِنَّهُ فَقِيرٌ تَحِلُّ لَهُ الزَّكَاةُ الْمَفْرُوضَةُ، وَمَالُهُ فِي بِلَادِهِ مُنْطَلِقَةٌ عَلَيْهِ يَدُهُ.

[10] **Qur'an references (L15597):** Qur'an 48:24 (Al-Fath); Qur'an 48:25 (Al-Fath); Qur'an 59:8 (Al-Hashr).

his homeland remains under his legal ownership but is inaccessible to him in practice.

L15601 Similarly, whoever is barred from their wealth due to persecution or unlawful seizure—and there is no distinction—grave indeed is the calamity that has afflicted the weak among the Muslims, those deceived by others within their community. We praise Allah, the Exalted, for guiding us to the truth.

وَكَذَلِكَ مَنْ حَالَ بَيْنَهُ وَبَيْنَ مَالِهِ فِتْنَةٌ، أَوْ غَصْبٌ، وَلَا فَرْقَ، وَلَقَدْ عَظُمَتْ مُصِيبَةُ ضُعَفَاءِ الْمُسْلِمِينَ الْمُغْتَرِّينَ بِهِمْ مِنْهُمْ - وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى مَا هَدَانَا لَهُ مِنَ الْحَقِّ.

L15602 As for the narration attributed to Umar (may Allah be pleased with him), it is rejected because its chain is interrupted, for Yazīd ibn Abī Ḥabīb was not born until a very long time had passed after the death of Umar (may Allah be pleased with him), and it includes Ibn Lahīʿah, who is deemed worthless.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَسَاقِطَةٌ، لِأَنَّهَا مُنْقَطِعَةٌ - لَمْ يُولَدْ يَزِيدُ بْنُ أَبِي حَبِيبٍ إِلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِدَهْرٍ طَوِيلٍ - وَفِيهَا: ابْنُ لَهِيعَةَ، وَهُوَ لَا شَيْءَ.

L15603–15605 Then, if it were valid, they would have no claim to it; rather, it aligns with our position and contradicts their position, because the text states: "Whoever embraces Islam before combat is among the Muslims and has the same rights as Muslims." This confirms that all his property, wherever it may be, remains his own, just as it does for every Muslim. Furthermore, in it [the text]: "If he embraces Islam after..." In the case of combat or retreat, his property becomes fay' for the Muslims, because they had taken possession of it before his conversion to Islam. This is our position, since his property had already become the rightful possession of the Muslims before he embraced Islam. Be astonished at their obfuscation and deceit in using what is inherently against them to mislead those deluded by them.

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ فِيهَا مُتَعَلَّقٌ، بَلْ هِيَ مُوَافِقَةٌ لِقَوْلِنَا وَخِلَافٌ لِقَوْلِهِمْ لِأَنَّ نَصَّهَا، مَنْ أَسْلَمَ قَبْلَ الْقِتَالِ فَهُوَ مِنَ الْمُسْلِمِينَ لَهُ مَا لِلْمُسْلِمِينَ، فَصَحَّ بِهَذَا أَنَّ مَالَهُ كُلَّهُ حَيْثُ كَانَ لَهُ كَمَا كَانَ لِكُلِّ مُسْلِمٍ، ثُمَّ فِيهَا إِنْ أَسْلَمَ بَعْدَ الْقِتَالِ، أَوْ الْهَزِيمَةِ فَمَالُهُ لِلْمُسْلِمِينَ فَيْءٌ، لِأَنَّهُ قَدْ أَحْرَزَهُ الْمُسْلِمُونَ قَبْلَ إِسْلَامِهِ - فَهَذَا قَوْلُنَا، لِأَنَّهُ قَدْ صَارَ مَالُهُ لِلْمُسْلِمِينَ قَبْلَ أَنْ يُسْلِمَ، فَاعْجَبُوا لِتَمْوِيهِهِمْ وَتَدْلِيسِهِمْ بِمَا هُوَ عَلَيْهِمْ لِيُضِلُّوا بِهِ مِنِ اغْتَرَّ بِهِمْ

[مَسْأَلَةٌ مِنْ نُفِخَ فِيهِ الرُّوحُ قَبْلَ إِسْلَامِ أَبِيهِ]

L15606 **A legal issue concerning a fetus that was ensouled before its father embraced Islam.**

L15607 938. Issue: If the soul has not yet been blown into the fetus, his wife is free and cannot be enslaved, for the fetus at that stage is part of her and cannot be enslaved, as it is a Muslim fetus.

٩٣٨ - مَسْأَلَةٌ: فَإِنْ كَانَ الْجَنِينُ لَمْ يُنْفَخْ فِيهِ الرُّوحُ بَعْدُ فَامْرَأَتُهُ حُرَّةٌ لَا تُسْتَرَقُّ، لِأَنَّ الْجَنِينَ حِينَئِذٍ بَعْضُهَا، وَلَا يُسْتَرَقُّ، لِأَنَّهُ جَنِينٌ مُسْلِمٌ.

L15608 If any part of her is free, then all of her is free, due to what we will mention in the Book of Manumission, if Allah the Exalted wills—contrary to its ruling when the soul is breathed into it before the father's acceptance of Islam, for

at that point it is distinct from her, and it may be male while she is female. And success is from Allah the Exalted.

A case of a woman who embraced Islam while married to a disbelieving husband.

939 - Question:

Any woman who embraces Islam while married to a disbeliever—whether a *dhimmi* or a *ḥarbī*—her marriage to him is dissolved upon her conversion. This applies whether he embraces Islam in the blink of an eye after her, after a longer period, or never. He has no claim over her unless through initiating a new marriage with her consent; otherwise, none.

If they both embrace Islam together, their marriage remains valid. If he embraces Islam before her, then if she is a woman of the Book, their marriage persists whether she embraces Islam afterward or not. But if she is not a woman of the Book, their marriage is annulled immediately upon his embrace of Islam—even if she embraces Islam an instant later or beyond. He has no recourse to retain her except by initiating a new marriage with her consent, provided she embraces Islam; otherwise, he has no right whatsoever. This ruling applies uniformly, whether they were both ḥarbīs or both dhimmīs.

This is the opinion of ʿUmar ibn al-Khaṭṭāb, Jābir ibn ʿAbdullāh, and Ibn ʿAbbās (may Allah be pleased with them), and it is also held by Ḥammād ibn Zayd, al-Ḥakam ibn ʿUtaybah, Saʿīd ibn Jubayr, ʿUmar ibn ʿAbd al-ʿAzīz, ʿAdiyy ibn ʿAdiyy al-Kindī, al-Ḥasan al-Baṣrī, Qatādah, al-Shaʿbī, and others.

Abu Hanifah said: Whichever of the two embraced Islam before the other in the abode of Islam, the one who embraced Islam first must offer Islam to the other. If the latter embraces Islam, they remain married. If he refuses, then

وَمَنْ كَانَ بَعْضُهَا حُرًّا فَهِيَ كُلُّهَا حُرَّةٌ لِمَا نَذْكُرُ فِي كِتَابِ الْعِتْقِ إِنْ شَاءَ اللَّهُ تَعَالَى بِخِلَافِ حُكْمِهَا إِذَا نُفِخَ فِيهِ الرُّوحُ قَبْلَ إِسْلَامِ أَبِيهِ لِأَنَّهُ حِينَئِذٍ غَيْرُهَا، وَهُوَ رُبَّمَا كَانَ ذَكَرًا وَهِيَ أُنْثَى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَسْلَمَتْ وَلَهَا زَوْجٌ كَافِرٌ]

٩٣٩ - مَسْأَلَةٌ:

وَأَيُّمَا امْرَأَةٍ أَسْلَمَتْ وَلَهَا زَوْجٌ كَافِرٌ ذِمِّيٌّ، أَوْ حَرْبِيٌّ فَحِينَ إِسْلَامِهَا انْفَسَخَ نِكَاحُهَا مِنْهُ - سَوَاءٌ أَسْلَمَ بَعْدَهَا بِطَرْفَةِ عَيْنٍ، أَوْ أَكْثَرَ أَوْ لَمْ يُسْلِمْ. لَا سَبِيلَ لَهُ عَلَيْهَا إِلَّا بِابْتِدَاءِ نِكَاحٍ بِرِضَاهَا وَإِلَّا فَلَا.

فَلَوْ أَسْلَمَا مَعًا بَقِيَا عَلَى نِكَاحِهِمَا، فَإِنْ أَسْلَمَ هُوَ قَبْلَهَا، فَإِنْ كَانَتْ كِتَابِيَّةً بَقِيَا عَلَى نِكَاحِهِمَا أَسْلَمَتْ هِيَ، أَمْ لَمْ تُسْلِمْ وَإِنْ كَانَتْ غَيْرَ كِتَابِيَّةٍ فَسَاعَةَ إِسْلَامِهِ قَدْ انْفَسَخَ نِكَاحُهَا مِنْهُ، أَسْلَمَتْ بَعْدَهُ بِطَرْفَةِ عَيْنٍ فَأَكْثَرَ. لَا سَبِيلَ لَهُ عَلَيْهَا إِلَّا بِابْتِدَاءِ نِكَاحٍ بِرِضَاهَا إِنْ أَسْلَمَتْ، وَإِلَّا فَلَا، سَوَاءٌ حَرْبِيَّيْنِ أَوْ ذِمِّيَّيْنِ كَانَا.

وَهُوَ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِهِ يَقُولُ حَمَّادُ بْنُ زَيْدٍ، وَالْحَكَمُ بْنُ عُتَيْبَةَ وَسَعِيدُ بْنُ جُبَيْرٍ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَعَدِيُّ بْنُ عَدِيٍّ الْكِنْدِيِّ، وَالْحَسَنُ الْبَصْرِيُّ، وَقَتَادَةُ، وَالشَّعْبِيُّ، وَغَيْرُهُمْ.

separation occurs immediately, and there is no consideration for observing the ʿiddah (waiting period) in this case.

وَقَالَ أَبُو حَنِيفَةَ: أَيُّهُمَا أَسْلَمَ قَبْلَ الْآخَرِ فِي دَارِ الْإِسْلَامِ فَإِنَّهُ يَعْرِضُ الْإِسْلَامَ عَلَى الَّذِي لَمْ يُسْلِمْ مِنْهُمَا، فَإِنْ أَسْلَمَ بَقِيَا عَلَى نِكَاحِهِمَا، وَإِنْ أَبَى فَحِينَئِذٍ تَقَعُ الْفُرْقَةُ، وَلَا مَعْنَى لِمُرَاعَاةِ الْعِدَّةِ فِي ذَلِكَ.

L15615 He said: If she embraces Islam in the abode of war and departs as a Muslim or a dhimmī, the annulment between them occurs at the moment she enters the abode of Islam—not before that. If she does not leave the abode of war and experiences three menstrual cycles before he embraces Islam, the dissolution occurs at that point, obliging her to begin three additional menstrual cycles as a mandatory waiting period from him. But if he embraces Islam before that occurs, the marriage remains valid between them.

قَالَ: فَإِنْ أَسْلَمَتْ فِي دَارِ الْحَرْبِ فَخَرَجَتْ مُسْلِمَةً أَوْ ذِمِّيَّةً فَسَاعَةَ حُصُولِهَا فِي دَارِ الْإِسْلَامِ يَقَعُ الْفَسْخُ بَيْنَهُمَا لَا قَبْلَ ذَلِكَ، فَإِنْ لَمْ تَخْرُجْ مِنْ دَارِ الْحَرْبِ فَإِنْ حَاضَتْ ثَلَاثَ حِيَضٍ قَبْلَ أَنْ يُسْلِمَ هُوَ وَقَعَتْ الْفُرْقَةُ حِينَئِذٍ وَعَلَيْهَا أَنْ تَبْتَدِئَ ثَلَاثَ حِيَضٍ أُخَرَ عِدَّةً مِنْهُ، وَإِنْ أَسْلَمَ هُوَ قَبْلَ ذَلِكَ فَهُوَ عَلَى نِكَاحِهِ مَعَهَا.

L15616–15617 He said: If either of them apostatizes, the marriage is annulled from the moment of apostasy.

قَالَ: فَلَوْ ارْتَدَّ أَحَدُهُمَا انْفَسَخَ النِّكَاحُ مِنْ وَقْتِهِ.

L15618 Mālik said: If a woman converts to Islam while her husband does not, then if he converts during her waiting period, they remain married. But if he does not convert until her waiting period has ended, she is divorced from him.

وَقَالَ مَالِكٌ: إِنْ أَسْلَمَتْ الْمَرْأَةُ وَلَمْ يُسْلِمْ زَوْجُهَا، فَإِنْ أَسْلَمَ فِي عِدَّتِهَا فَهُمَا عَلَى نِكَاحِهِمَا، وَإِنْ لَمْ يُسْلِمْ حَتَّى انْقَضَتْ عِدَّتُهَا فَقَدْ بَانَتْ مِنْهُ.

L15619 He said: If he embraced Islam while she is not a Kitabi woman, Islam is presented to her; if she embraced Islam, they both remain in their marriage. But if she refused, the marriage is annulled at the moment of her refusal. Should either of them apostatize, the marriage is annulled at that very moment.

قَالَ: فَلَوْ أَسْلَمَ هُوَ، وَهِيَ غَيْرُ كِتَابِيَّةٍ عُرِضَ الْإِسْلَامُ عَلَيْهَا، فَإِنْ - أَسْلَمَتْ بَقِيَا عَلَى نِكَاحِهِمَا، وَإِنْ أَبَتْ انْفَسَخَ النِّكَاحُ سَاعَةَ إبَائِهَا، فَلَوْ ارْتَدَّ أَحَدُهُمَا انْفَسَخَ النِّكَاحُ سَاعَتَئِذٍ.

L15620 Ibn Shubrumah held an opinion contrary to Malik's view: If a man accepts Islam while his wife remains an idolatress, she remains his wife provided she converts before the iddah is completed. Otherwise, the separation occurs upon its completion. If she converts at the very moment of the separation, it takes effect instantaneously.

وَقَالَ ابْنُ شُبْرُمَةَ عَكْسَ قَوْلِ مَالِكٍ إِنْ أَسْلَمَ هُوَ وَهِيَ وَثَنِيَّةٌ، فَإِنْ أَسْلَمَتْ قَبْلَ تَمَامِ الْعِدَّةِ فَهِيَ امْرَأَتُهُ، وَإِلَّا فَبِتَمَامِهَا تَقَعُ الْفُرْقَةُ، وَإِنْ أَسْلَمَتْ هِيَ وَقَعَتْ الْفُرْقَةُ فِي الْحِينِ.

L15621 Al-Awza'i, Al-Layth, and Al-Shafi'i said: All of that is equivalent, and the waiting period is observed. If the disbeliever of the two accepts Islam before the completion of the waiting period, their marriage remains intact. If the disbeliever does not accept Islam until the waiting period is completed, the

وَقَالَ الْأَوْزَاعِيُّ، وَاللَّيْثُ، وَالشَّافِعِيُّ: وَكُلُّ ذَلِكَ سَوَاءٌ، وَتُرَاعَى الْعِدَّةُ، فَإِنْ أَسْلَمَ الْكَافِرُ مِنْهُمَا قَبْلَ انْقِضَاءِ الْعِدَّةِ فَهُمَا عَلَى نِكَاحِهِمَا، وَإِنْ لَمْ يُسْلِمْ حَتَّى تَمَّتْ الْعِدَّةُ

separation takes effect. This is the opinion of Al-Zuhri, Ahmad ibn Hanbal, Ishaq, and one of the two views of Al-Ḥasan ibn Ḥayy.

وَقَعَتْ الْفُرْقَةُ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَحَدُ قَوْلَيِّ الْحَسَنِ بْنِ حَيٍّ.

L15622 Abū Muḥammad said: Woe to Abū Ḥanīfah's opinion—it is manifestly invalid, for he has no proof from the Qur'ān, the Sunnah, or consensus. They ought to define a period for proselytizing Islam, but this can only be done through flawed reasoning. This is also a view whose division is unknown to any Muslim scholar before him. Similarly, Mālik's opinion is equally invalid, equally invalid. Some have obscured the matter with what silence would have been wiser for, had he truly advised himself—as we shall elaborate, God, the Exalted, willing.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَظَاهِرُ الْفَسَادِ، لِأَنَّهُ لَا حُجَّةَ لَهُ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَيَنْبَغِي لَهُمْ أَنْ يُحَدُّوا وَقْتَ عَرْضِ الْإِسْلَامِ وَلَا سَبِيلَ إلَى ذَلِكَ إلَّا بِرَأْيٍ فَاسِدٍ، وَهُوَ أَيْضًا قَوْلٌ لَا يُعْرَفُ مِثْلُ تَقْسِيمِهِ لِأَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُ - وَكَذَلِكَ قَوْلُ مَالِكٍ سَوَاءٌ سَوَاءٌ، وَقَدْ مَوَّهَ بَعْضُهُمْ بِمَا كَانَ السُّكُوتُ أَوْلَى بِهِ لَوْ نَصَحَ نَفْسَهُ، مِمَّا سَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

L15623 It has been narrated to us through the chain of Ibn Abī Shaybah: Muḥammad ibn Faḍl reported to us from Muṭarrif ibn Ṭarīf from al-Shaʿbī from ʿAlī ibn Abī Ṭālib, who said: If the wife of a Jew or a Christian embraces Islam, he has the greater right to her conjugal relations, because he has a covenant.

[وَرُوِّينَا] مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مُحَمَّدُ بْنُ فَضْلٍ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إذَا أَسْلَمَتْ امْرَأَةُ الْيَهُودِيِّ، أَوْ النَّصْرَانِيِّ -: كَانَ أَحَقَّ بِبُضْعِهَا، لِأَنَّ لَهُ عَهْدًا.

L15624 It has been narrated to us through the chain of Shuʿbah from al-Ḥakam ibn ʿUtaybah that Hāni' ibn Hāni' ibn Qabīṣah al-Shaybānī—who was a Christian—had four wives who embraced Islam. He then came to Medina and stayed with ʿAbd al-Raḥmān ibn ʿAwf, and ʿUmar allowed the wives to remain with Hāni'. Shuʿbah said: "I asked al-Ḥakam: 'From whom is this?' He replied: 'This is something well-known.'"

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ هَانِئَ بْنَ هَانِئِ بْنِ قَبِيصَةَ الشَّيْبَانِيَّ - وَكَانَ نَصْرَانِيًّا - عِنْدَهُ أَرْبَعُ نِسْوَةٍ فَأَسْلَمْنَ فَقَدِمَ الْمَدِينَةَ وَنَزَلَ عَلَى عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ فَأَقَرَّهُنَّ عُمَرُ عِنْدَهُ - قَالَ شُعْبَةُ: قُلْت لِلْحَكَمِ: عَمَّنْ هَذَا؟ قَالَ: هَذَا شَيْءٌ مَعْرُوفٌ.

L15625–15627 It has been narrated to us through the chain of Abd al-Rahman ibn Mahdi and Ibn Jaʿfar Ghundar. Abd al-Rahman narrated: From Sufyan al-Thawri, from Mansur ibn al-Muʿtamir and al-Mughira ibn Miqsam. Ghundar narrated: He informed us. Shuʿbah narrated to us from Ḥammād ibn Abī Sulaymān. Then al-Mughīrah, Manṣūr, and Ḥammād all concurred in their narration from Ibrāhīm al-Nakhaʿī regarding a *dhimmi* woman who embraced Islam while married to a *dhimmi* man. He said: "She is to remain with him"—this being the fatwā issued by Ḥammād ibn Abī Sulaymān, which reflects the opinion of Abī Sulaymān except that he stated: "He is to

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَابْنِ جَعْفَرٍ غُنْدَرَ قَالَ عَبْدُ الرَّحْمَنِ: عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَالْمُغِيرَةِ بْنِ مِقْسَمٍ وَقَالَ غُنْدَرُ: نَا شُعْبَةُ نَا حَمَّادُ بْنُ أَبِي سُلَيْمَانَ، ثُمَّ اتَّفَقَ الْمُغِيرَةُ، وَمَنْصُورٌ، وَحَمَّادٌ، كُلُّهُمْ: عَنْ إبْرَاهِيمَ النَّخَعِيِّ: فِي ذِمِّيَّةٍ أَسْلَمَتْ تَحْتَ ذِمِّيٍّ، قَالَ: تُقَرُّ عِنْدَهُ - وَبِهِ أَفْتَى حَمَّادُ بْنُ أَبِي سُلَيْمَانَ. وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ إلَّا أَنَّهُ قَالَ: يُمْنَعُ مِنْ وَطْئِهَا - فَهَذَا قَوْلٌ. وَعَنْ عُمَرَ أَيْضًا قَوْلٌ آخَرُ: صَحَّ

be barred from having intercourse with her." This constitutes one opinion. Another opinion is authentically reported from ʿUmar, transmitted through two chains: via Ḥammād ibn Salamah from Ayyūb al-Sikhtiyānī, and via Qatādah from Muḥammad ibn Sīrīn from ʿAbdullāh ibn Yazīd al-Khiṭmī—that when a Christian's wife embraced Islam, ʿUmar ibn al-Khaṭṭāb granted her the choice: to separate from him if she wished, or to remain with him if she so desired.

عَنْهُ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَقَتَادَةَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْخِطْمِيِّ: أَنَّ نَصْرَانِيًّا أَسْلَمَتْ امْرَأَتُهُ فَخَيَّرَهَا عُمَرُ بْنُ الْخَطَّابِ إِنْ شَاءَتْ فَارَقَتْهُ، وَإِنْ شَاءَتْ أَقَامَتْ عَلَيْهِ.

L15628 We have also narrated through the chain of Ma'mar from Ayyūb, from Ibn Sīrīn, from ʿAbdullāh ibn Yazīd al-Khuṭmī, from ʿUmar with a similar narration—and this ʿAbdullāh ibn Yazīd was a Companion of the Prophet.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنِ ابْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْخِطْمِيِّ عَنْ عُمَرَ بِمِثْلِهِ - وَعَبْدُ اللَّهِ بْنُ يَزِيدَ هَذَا لَهُ صُحْبَةٌ.

L15629 And from Umar also comes a third opinion: We have transmitted it through the chain of Hammad ibn Salamah from Dawud al-Ta'i from Ziyad ibn Abd al-Rahman that Hanzalah ibn Bishr married off his daughter, who was Muslim, to a Christian nephew of his. Awf ibn al-Qa'qa' then went to Umar ibn al-Khattab and informed him of this. Umar wrote concerning the matter: "If he embraces Islam, she is his wife; but if he does not embrace Islam, they are to be separated." He did not embrace Islam, so they were separated, and Awf ibn al-Qa'qa' married her. However, they do not endorse this opinion, as they do not permit under any circumstances the initiation of a marriage contract between a Muslim woman and a non-Muslim, whether he embraced Islam afterward or not.

وَعَنْ عُمَرَ أَيْضًا قَوْلٌ ثَالِثٌ: رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد الطَّائِيِّ عَنْ زِيَادِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ حَنْظَلَةَ بْنَ بِشْرٍ زَوَّجَ ابْنَتَهُ وَهِيَ مُسْلِمَةٌ مِنِ ابْنِ أَخٍ لَهُ نَصْرَانِيٍّ فَرَكِبَ عَوْفُ بْنُ الْقَعْقَاعِ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَأَخْبَرَهُ بِذَلِكَ، فَكَتَبَ عُمَرُ فِي ذَلِكَ: إِنْ أَسْلَمَ فَهِيَ امْرَأَتُهُ، وَإِنْ لَمْ يُسْلِمْ فُرِّقَ بَيْنَهُمَا، فَلَمْ يُسْلِمْ، فَفُرِّقَ بَيْنَهُمَا، فَتَزَوَّجَهَا عَوْفُ بْنُ الْقَعْقَاعِ - وَهُمْ لَا يَقُولُونَ بِهَذَا، لِأَنَّهُمْ لَا يُجِيزُونَ أَلْبَتَّةَ ابْتِدَاءَ عَقْدِ نِكَاحِ مُسْلِمَةٍ مِنْ كَافِرٍ أَسْلَمَ إِثْرَ ذَلِكَ أَوْ لَمْ يُسْلِمْ.

L15630 And from ʿUmar also comes a fourth statement not authentically attributed to him: We have narrated it through the route of ʿAbd al-Razzāq from Sufyān al-Thawrī from Abū Isḥāq al-Shaybānī, who said: The son of the woman between whom ʿUmar had effected separation informed me, "Islam was presented to him, but he refused."

وَعَنْ عُمَرَ أَيْضًا قَوْلٌ رَابِعٌ لَا يَصِحُّ عَنْهُ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ قَالَ: أَنْبَأَنِي ابْنُ الْمَرْأَةِ الَّتِي فَرَّقَ بَيْنَهُمَا عُمَرُ، عُرِضَ عَلَيْهِ الْإِسْلَامُ فَأَبَى.

L15631 From the chain of Ibn Abī Shaybah: He narrated to us from ʿAbbād ibn al-ʿAwwām from Abū Isḥāq al-Shaybānī from Yazīd ibn ʿAlqamah that ʿUbādah ibn al-Nuʿmān al-Taghlibī was married to a woman from Banū Tamīm. She embraced Islam, so ʿUmar ibn al-Khaṭṭāb said to him: "Either you embrace Islam, or we will take her away from you." He refused, so ʿUmar took her away from him.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبَّادُ بْنُ الْعَوَّامِ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ يَزِيدَ بْنِ عَلْقَمَةَ أَنَّ عُبَادَةَ بْنَ النُّعْمَانِ التَّغْلِبِيَّ كَانَ نَاكِحًا بِامْرَأَةٍ مِنْ بَنِي تَمِيمٍ فَأَسْلَمَتْ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: إِمَّا أَنْ تُسْلِمَ وَإِمَّا أَنْ نَنْتَزِعَهَا مِنْكَ؟ فَأَبَى، فَنَزَعَهَا عُمَرُ مِنْهُ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ السَّفَّاحِ بْنِ مُضَرَ التَّغْلِبِيِّ عَنْ دَاوُد بْنِ كُرْدُوسٍ أَنَّ عُبَادَةَ بْنَ النُّعْمَانِ بْنِ زُرْعَةَ أَسْلَمَتْ امْرَأَتُهُ التَّمِيمِيَّةُ، وَأَبَى أَنْ يُسْلِمَ، فَفَرَّقَ عُمَرُ بَيْنَهُمَا.

L15632 And from the narration of Ibn Abi Shaybah: narrated to us Ali ibn Mushir; from Abu Ishaq al-Shaybani; from al-Saffah ibn Mudar al-Taghlibi; from Dawud ibn Kurdus that the Tamimi wife of Ubadah ibn Nu'man ibn Zur'ah embraced Islam and he refused to embrace Islam, so Umar separated them.

أَبُو إِسْحَاقَ لَمْ يُدْرِكْ عُمَرَ - وَالسَّفَّاحُ، وَدَاوُد بْنُ كُرْدُوسٍ مَجْهُولَانِ.

L15633 Abu Ishaq did not meet Umar—Al-Saffah and Dawud ibn Kurdūs are both unknown.

وَكَذَلِكَ يَزِيدُ بْنُ عَلْقَمَةَ، وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَوْلٌ آخَرُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الزَّوْجَيْنِ الْكَافِرِينَ يُسْلِمُ أَحَدُهُمَا: هُوَ أَمْلَكُ بِبُضْعِهَا مَا دَامَتْ فِي دَارِ هِجْرَتِهَا.

L15634–15636 Similarly, Yazīd ibn ʿAlqamah; another opinion is narrated from ʿAlī ibn Abī Ṭālib via the narration of Ḥammād ibn Salama. From Qatādah, from Saʿīd ibn al-Musayyab, that ʿAlī ibn Abī Ṭālib said concerning two disbelieving spouses when one of them embraces Islam: The one who embraces Islam retains greater authority over the conjugal rights of the spouse who remains, so long as they remain in the abode of their emigration (Hijrah).

وَرُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ: هُوَ أَحَقُّ بِهَا مَا لَمْ يَخْرُجْ مِنْ مِصْرِهَا.

L15637 We narrated it via the chain of Sufyān ibn ʻUyaynah from Muṭarrif ibn Ṭarīf from Al-Shaʻbī from ʻAlī: He has a greater right to it as long as he has not departed from its city.

وَقَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: إنْ أَسْلَمَتْ وَلَمْ يُسْلِمْ زَوْجُهَا، فَهُمَا عَلَى نِكَاحِهِمَا إلَّا أَنْ يُفَرِّقَ بَيْنَهُمَا سُلْطَانٌ.

L15638 Another opinion: We have transmitted it via the route of Ibn Abi Shaybah - he narrated to us (nā) from Muʿtamir ibn Sulaymān, from Maʿmar, from al-Zuhrī: If she accepts Islam while her husband does not embrace it, their marriage persists unless a ruling authority effects separation between them.

وَأَمَّا مَنْ رَاعَى عَرْضَ الْإِسْلَامِ فَكَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: إذَا أَسْلَمَتْ وَأَبِي أَنْ يُسْلِمَ فَإِنَّهَا تَبِينُ مِنْهُ بِوَاحِدَةٍ - وَقَالَهُ عِكْرِمَةُ.

L15639 As for the one who safeguards the dignity of Islam, as narrated to us through the chain from Ibn Abī Shaybah, from Abdah ibn Sulaymān, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from al-Ḥasan, who said: If she embraces Islam and her husband refuses to embrace Islam, she is immediately separated from him in marriage—and this was also stated by ʿIkrimah.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ فِي هَذَا بَيَانُ إبَايَتِهِ بَعْدَ إسْلَامِهَا وَقَدْ يُرِيدُ أَنْ يُسْلِمَ مَعَهَا.

L15640 Abu Muhammad said: This does not contain a clarification of his repudiation after her conversion to Islam, and he may intend to convert to Islam along with her.

وَأَمَّا مَنْ رَاعَى الْعِدَّةَ - فَصَحَّ عَنْ عَطَاءٍ، وَمُجَاهِدٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L15641 As for the one who observed the waiting period, then it is authentically reported from ʿAṭāʾ, Mujāhid, and ʿUmar ibn ʿAbd al-ʿAzīz.

وَأَمَّا قَوْلُنَا فَمَرْوِيٌّ عَنْ طَائِفَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ أَخْبَرَنِي أَبُو إِسْحَاقَ الشَّيْبَانِيُّ قَالَ: سَمِعْتُ يَزِيدَ بْنَ عَلْقَمَةَ أَنَّ جَدَّهُ وَجَدَّتَهُ كَانَا نَصْرَانِيَّيْنِ فَأَسْلَمَتْ جَدَّتُهُ، فَفَرَّقَ عُمَرُ بْنُ الْخَطَّابِ بَيْنَهُمَا.

L15642 As for our statement, it is narrated from a group of the Companions—may Allah be pleased with them—as was narrated to us via Shu'bah's chain: Abu Ishaq al-Shaybani reported to me, saying: I heard Yazid ibn Alqamah that Yazid's grandfather and grandmother were Christians, then his grandmother embraced Islam, so 'Umar ibn al-Khattab legally separated them.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ فِي الْيَهُودِيَّةِ، أَوْ النَّصْرَانِيَّةِ تُسْلِمُ تَحْتَ الْيَهُودِيِّ، أَوْ النَّصْرَانِيِّ. قَالَ: يُفَرَّقُ بَيْنَهُمَا، الْإِسْلَامُ يَعْلُو وَلَا يُعْلَى عَلَيْهِ - وَبِهِ يُفْتِي حَمَّادُ بْنُ زَيْدٍ.

L15643 Through the chain of Hammad ibn Zayd, from Ayyub al-Sakhtiyānī, from Ikrimah, from Ibn Abbas concerning a Jewish or Christian woman who embraces Islam while married to a Jewish or Christian man. He said: They are to be separated, for Islam prevails and is not to be surpassed. Hammad ibn Zayd issues fatwas based on this ruling.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: نِسَاءُ أَهْلِ الْكِتَابِ لَنَا حِلٌّ، وَنِسَاؤُنَا عَلَيْهِمْ حَرَامٌ.

L15644 Via the transmission of Abd al-Razzaq from Abu al-Zubayr, who heard Jabir ibn Abdillah say: "The women of the People of the Book are lawful for us, and our women are unlawful for them."

وَصَحَّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّهُ قَالَ فِي الْمَجُوسِيَّيْنِ يُسْلِمُ أَحَدُهُمَا، قَالَ: قَدْ انْقَطَعَ مَا بَيْنَهُمَا - وَصَحَّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي نَصْرَانِيَّةٍ أَسْلَمَتْ تَحْتَ نَصْرَانِيٍّ؟ قَالَ: قَدْ فَرَّقَ الْإِسْلَامُ بَيْنَهُمَا.

L15645 It is authentically established from Al-Hakam ibn Utaybah that he ruled regarding two Magians when one of them embraces Islam, saying: "The bond between them is severed." It is likewise authentically established from Sa'id ibn Jubayr when asked about a Christian woman who embraced Islam while married to a Christian husband. He said: "Islam has separated them."

وَصَحَّ عَنْ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ فِي كَافِرَةٍ تُسْلِمُ تَحْتَ كَافِرٍ. قَالُوا: قَدْ فَرَّقَ الْإِسْلَامُ بَيْنَهُمَا.

L15646 It has been authentically reported from ʿAṭāʾ, Ṭāwūs, Mujāhid, and al-Ḥakam ibn 'Utaybah regarding a disbelieving woman who embraces Islam under a disbeliever. They said: "Islam has annulled the marriage between them."

وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَدِيِّ بْنِ عَدِيٍّ: هَذَا بِعَيْنِهِ أَيْضًا.

L15647–15648 It is authentically narrated from ʿUmar ibn ʿAbd al-ʿAzīz and ʿAdī ibn ʿAdī: "This very same thing also."

وَعَنْ الْحَسَنِ، ثَابِتٌ أَيْضًا: أَيُّهُمَا أَسْلَمَ فَرَّقَ الْإِسْلَامُ بَيْنَهُمَا.

L15649 From al-Ḥasan and also Thābit: Whichever of the two embraces Islam, Islam separates between them.

وَرُوِيَ أَيْضًا عَنْ الشَّعْبِيِّ.

L15650 And it has also been reported from al-Sha'bi.

L15651 Abū Muḥammad said: As for all these opinions we have presented, we do not know of any valid evidence for them whatsoever, except those who maintained that she should remain with him while he is prohibited from

having intercourse with her. They argued by stating: “A marriage contracted in disbelief remains valid, and it is impermissible to nullify a valid marriage without definitive proof.” They also cited as evidence what was narrated to us through Abū Dāwūd al-Sijistānī, who said: “‘Abdullāh ibn Muḥammad al-Nufaylī, Muḥammad ibn ʿAmr al-Rāzī, and al-Ḥasan ibn ʿAlī, known as al-Ḥulwānī, narrated to us.” Al-Nufaylī said: “Muḥammad ibn Salamah narrated to us,” al-Rāzī said: “Salamah ibn al-Faḍl narrated to us,” and al-Ḥulwānī said: “Yazīd – either ibn Zuraiʿ or ibn Hārūn, one of them without doubt – narrated to us.” Then the chains of transmission converged through Salamah, Ibn Salamah, and Yazīd, all of whom narrated from Muḥammad ibn Isḥāq, from Dāwūd ibn al-Ḥuṣayn, from ʿIkrimah, from Ibn ʿAbbās: “The Messenger of Allāh – peace and blessings be upon him – reinstated his daughter Zaynab to her husband Abū al-ʿĀṣ through the original marriage.”

قَالَ أَبُو مُحَمَّد: أَمَّا جَمِيعُ هَذِهِ الْأَقْوَالِ الَّتِي قَدَّمْنَا فَمَا نَعْلَمُ لِشَيْءٍ مِنْهَا حُجَّةً أَصْلًا إِلَّا مَنْ قَالَ بِأَنَّهَا تُقَرُّ عِنْدَهُ وَيُمْنَعُ مِنْ وَطْئِهَا؛ فَإِنَّهُمْ احْتَجُّوا بِأَنْ قَالُوا: نِكَاحُ الْكُفْرِ صَحِيحٌ فَلَا يَجُوزُ إِبْطَالُ نِكَاحٍ صَحِيحٍ بِغَيْرِ يَقِينٍ وَاحْتَجُّوا أَيْضًا بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ قَالَ: نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ، وَمُحَمَّدُ بْنُ عَمْرٍو الرَّازِيّ، وَالْحَسَنُ بْنُ عَلِيٍّ هُوَ الْحُلْوَانِيُّ - قَالَ النُّفَيْلِيُّ: نَا مُحَمَّدُ بْنُ سَلَمَةَ، وَقَالَ الرَّازِيّ: نَا سَلَمَةُ بْنُ الْفَضْلِ، وَقَالَ الْحُلْوَانِيُّ: نَا يَزِيدُ هُوَ ابْنُ زُرَيْعٍ أَوْ ابْنُ هَارُونَ أَحَدُهُمَا بِلَا شَكٍّ، ثُمَّ اتَّفَقَ سَلَمَةُ، وَابْنُ سَلَمَةَ، وَيَزِيدُ، كُلُّهُمْ: عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَدَّ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ بِالنِّكَاحِ الْأَوَّلِ» .

L15652 Muhammad ibn Salamah added: Nothing happened.

زَادَ مُحَمَّدُ بْنُ سَلَمَةَ: لَمْ يَحْدُثْ شَيْءٌ.

L15653 And Salamah added: after six years.

وَزَادَ سَلَمَةُ: بَعْدَ سِتِّ سِنِينَ.

L15654 And Yazīd added: after two years had passed.

وَزَادَ يَزِيدُ: بَعْدَ سَنَتَيْنِ.

L15655 They said: The Prophet—peace and blessings be upon him—ratified all Arab disbelievers regarding their women. Among them were women who embraced Islam before their husbands, and among them were men who embraced Islam before their wives.

وَقَالُوا: قَدْ أَقَرَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمِيعَ كُفَّارِ الْعَرَبِ عَلَى نِسَائِهِمْ، وَفِيهِمْ مَنْ أَسْلَمَتْ قَبْلَهُ، وَفِيهِمْ مَنْ أَسْلَمَ قَبْلَهَا.

L15656 Abu Muhammad said: They have no proof except what we have mentioned. As for their claim that the marriage contract of people of disbelief is valid and it is not permissible to annul it without certainty—they are indeed correct, and certainty has been established as we shall mention after this, if Allah the Almighty and Majestic wills.

قَالَ أَبُو مُحَمَّد: لَا حُجَّةَ لَهُمْ غَيْرُ مَا ذَكَرْنَا، فَأَمَّا قَوْلُهُمْ: إِنَّ نِكَاحَ أَهْلِ الْكُفْرِ صَحِيحٌ فَلَا يَجُوزُ فَسْخُهُ بِغَيْرِ يَقِينٍ - فَصَدَقُوا، وَالْيَقِينُ قَدْ جَاءَ كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L15657 As for the narration, it is authentic—referring to the hadith of Zainab with

وَأَمَّا الْخَبَرُ فَصَحِيحٌ - يَعْنِي حَدِيثَ زَيْنَبَ مَعَ أَبِي الْعَاصِ - رَضِيَ اللَّهُ عَنْهُمَا - وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ إسْلَامَ أَبِي الْعَاصِ كَانَ قَبْلَ الْحُدَيْبِيَةِ، وَلَمْ يَكُنْ نَزَلَ بَعْدُ تَحْرِيمُ الْمُسْلِمَةِ عَلَى الْمُشْرِكِ، وَأَمَّا احْتِجَاجُهُمْ - بِإِسْلَامِ الْعَرَبِ فَلَا سَبِيلَ لَهُمْ إلَى خَبَرٍ صَحِيحٍ بِأَنَّ إسْلَامَ رَجُلٍ تَقَدَّمَ إسْلَامَ امْرَأَتِهِ، أَوْ تَقَدَّمَ إسْلَامُهَا فَأَقَرَّهُمَا - عَلَيْهِ السَّلَامُ - عَلَى النِّكَاحِ الْأَوَّلِ، فَإِذْ لَا سَبِيلَ إلَى هَذَا فَلَا يَجُوزُ أَنْ يُطْلَقَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ إطْلَاقُ الْكَذِبِ، وَالْقَوْلُ بِغَيْرِ عِلْمٍ.

Abū al-ʻĀṣ—may Allah be pleased with them both—but they have no valid argument therein. This is because Abū al-ʻĀṣ's acceptance of Islam occurred before Ḥudaybiyah, and the prohibition of a Muslim woman [marrying] a polytheist had not yet been revealed. As for their argument regarding the Arabs' acceptance of Islam, they have no valid basis for an authentic narration stating that a man's acceptance of Islam preceded his wife's acceptance of Islam, or that her acceptance of Islam preceded his, and that the Prophet—peace be upon him—allowed them to remain in their original marriage. Since there is no basis for this, it is impermissible to attribute such a claim to the Messenger of Allah—peace and blessings be upon him—for that would be attributing falsehood and speaking without knowledge.

فَإِنْ قِيلَ: قَدْ رُوِيَ أَنَّ أَبَا سُفْيَانَ أَسْلَمَ قَبْلَ هِنْدٍ، وَامْرَأَةَ صَفْوَانَ أَسْلَمَتْ قَبْلَ صَفْوَانَ؟ قُلْنَا: وَمِنْ أَيْنَ لَكُمْ أَنَّهُمَا بَقِيَا عَلَى نِكَاحِهِمَا وَلَمْ يُجَدِّدَا عَقْدًا؟ وَهَلْ جَاءَ ذَلِكَ قَطُّ بِإِسْنَادٍ صَحِيحٍ مُتَّصِلٍ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ عَرَفَ ذَلِكَ فَأَقَرَّهُ؟ حَاشَا لِلَّهِ مِنْ هَذَا.

L15658–15659 If it is said: It has been narrated that Abū Sufyān accepted Islam before Hind, and Ṣafwān's wife accepted Islam before Ṣafwān? We respond: From where do you derive that they remained upon their marriage bond without renewing it? Has this ever been conveyed through a sound, unbroken chain of transmission reaching the Prophet—peace and blessings of Allāh be upon him—indicating his awareness and approval of it? Allāh is utterly free from this!

قَالَ أَبُو مُحَمَّد: وَهُنَا شَغَبَ الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ -: فَأَمَّا الشَّافِعِيُّونَ فَاحْتَجُّوا بِهَذَا كُلِّهِ وَبِحَدِيثِ أَبِي الْعَاصِ وَجَعَلُوا الْمُرَاعَى فِي ذَلِكَ الْعِدَّةَ.

L15660 Abu Muhammad said: At this point, the Malikis and the Shafiʻis raised objections: As for the Shafiʻis, they cited all of this along with the hadith of Abu al-ʻAs as evidence, holding that the consideration in such cases was the waiting period.

فَيُقَالُ لَهُمْ: هَبْكُمْ أَنَّهُ قَدْ صَحَّ كُلُّ مَا ذَكَرْنَا مِنْ أَيْنَ لَكُمْ أَنَّ الْمُرَاعَى فِي أَمْرِ أَبِي الْعَاصِ، وَأَمْرِ هِنْدٍ، وَامْرَأَةِ صَفْوَانَ، وَسَائِرِ مَنْ أَسْلَمَ: إنَّمَا هُوَ الْعِدَّةُ؟ وَمَنْ أَخْبَرَكُمْ بِهَذَا؟ وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ كُلِّهَا ذِكْرُ عِدَّةٍ وَلَا دَلِيلَ عَلَيْهَا أَصْلًا، وَلَا عِدَّةَ فِي دِينِ اللَّهِ تَعَالَى إلَّا مِنْ طَلَاقٍ، أَوْ وَفَاةٍ، وَالْمُعْتَقَةُ تَخْتَارُ نَفْسَهَا، وَلَيْسَتْ الْمُسْلِمَةُ تَحْتَ كَافِرٍ، وَلَا الْبَاقِيَةُ عَلَى الْكُفْرِ تَحْتَ الْمُسْلِمِ، وَلَا الْمُرْتَدَّةُ وَاحِدَةً مِنْهُنَّ، فَمِنْ أَيْنَ جِئْتُمُونَا بِهَذِهِ الْعِدَّةِ؟ وَلَا سَبِيلَ لَهُمْ إلَى وُجُودِ ذَلِكَ أَبَدًا إلَّا بِالدَّعْوَى الْكَاذِبَةِ، فَكَيْفَ وَقَدْ

L15661 It will be said to them: Suppose all we have mentioned is valid—from where do you claim that the consideration in the matter of Abū al-ʻĀṣ, Hind, Ṣafwān's wife, and all who embraced Islam was specifically the waiting period? Who informed you of this? None of these reports mention a waiting period whatsoever, nor provide any evidence for it. There is no waiting period in God's religion except after divorce or death. An emancipated woman may choose for herself, a Muslim woman cannot remain wed to a disbeliever, nor may a woman persisting in disbelief remain with a Muslim husband, nor can a single apostate woman among them. From where then have you produced this waiting period? They can never substantiate this except through false claims. How can this be, when Zaynab embraced Islam at the dawn

of her father's mission—peace be upon him—there being no disagreement about this—then migrated to Medina while her husband remained a disbeliever? Over eighteen years passed between her embracing Islam and his embracing it, during which she bore her son ʿAlī ibn Abī al-ʿĀṣ. Where then is this waiting period—if you were to reason?

أَسْلَمَتْ زَيْنَبُ فِي أَوَّلِ بَعْثِ أَبِيهَا - عَلَيْهِ السَّلَامُ -؟ لَا خِلَافَ فِي ذَلِكَ، ثُمَّ هَاجَرَتْ إِلَى الْمَدِينَةِ - وَزَوْجُهَا كَافِرٌ - وَكَانَ بَيْنَ إِسْلَامِهَا وَإِسْلَامِهِ أَزْيَدُ مِنْ ثَمَانِي عَشْرَةَ سَنَةً وَقَدْ وَلَدَتْ فِي خِلَالِ هَذَا ابْنَهَا عَلِيَّ بْنَ أَبِي الْعَاصِ فَأَيْنَ الْعِدَّةُ لَوْ عَقَلْتُمْ؟

L15662 As for the Mālikīs, if they obscured [the ruling] by citing the case of Ṣafwān's wife, they were countered with this [argument] and the precedent of Abū Sufyān's marital status. If they invoked as evidence Allah's words: {Do not hold fast to marriage bonds with disbelieving women} [Quran 60:10], they were reminded of His verse: {They are not lawful for them, nor are they lawful for them} [Quran 60:10]. Thus, the corruption of all these opinions became evident—and with Allah the Exalted lies all success.[11]

وَأَمَّا الْمَالِكِيُّونَ فَإِنْ مَوَّهُوا بِامْرَأَةِ صَفْوَانَ. عُورِضُوا بِهَذَا، وَأَبِي سُفْيَانَ، وَإِنْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {وَلا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ} [الممتحنة: ١٠] ذُكِّرُوا بِقَوْلِ اللَّهِ تَعَالَى: {لا هُنَّ حِلٌّ لَهُمْ وَلا هُمْ يَحِلُّونَ لَهُنَّ} [الممتحنة: ١٠] ، فَظَهَرَ فَسَادُ هَذِهِ الْأَقْوَالِ كُلِّهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L15663 Abu Muhammad said: The proof of the validity of our position is the statement of Allah the Exalted: {O you who have believed, when believing women come to you as emigrants} [Al-Mumtahanah: 10], up to His words: {That is the judgment of Allah by which He judges between you} [Al-Mumtahanah: 10]. This is the judgment of Allah, which no one may defy, for Allah the Exalted has prohibited a believing woman from returning to the disbeliever.[12]

قَالَ أَبُو مُحَمَّدٍ: بُرْهَانُ صِحَّةِ قَوْلِنَا قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ} [الممتحنة: ١٠] الْآيَةَ إِلَى قَوْلِهِ: {ذَلِكُمْ حُكْمُ اللَّهِ يَحْكُمُ بَيْنَكُمْ} [الممتحنة: ١٠] فَهَذَا حُكْمُ اللَّهِ الَّذِي لَا يَحِلُّ لِأَحَدٍ أَنْ يَخْرُجَ عَنْهُ، فَقَدْ حَرَّمَ اللَّهُ تَعَالَى رُجُوعَ الْمُؤْمِنَةِ إِلَى الْكَافِرِ.

L15664–15665 It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—that he said: "The muhājir is one who abandons what Allah has forbidden." Thus, everyone who submits to Islam has indeed abandoned the disbelief that was forbidden; therefore, he is a muhājir.

وَصَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْمُهَاجِرُ مَنْ هَجَرَ مَا نَهَى اللَّهُ عَنْهُ» فَكُلُّ مَنْ أَسْلَمَ فَقَدْ هَجَرَ الْكُفْرَ الَّذِي قَدْ نُهِيَ عَنْهُ فَهُوَ مُهَاجِرٌ.

L15666 The Most High has explicitly decreed that her marriage is permissible for us, thus the severance of the marital bond is valid by her embracing Islam.

وَنَصَّ تَعَالَى عَلَى أَنَّ نِكَاحَهَا مُبَاحٌ لَنَا، فَصَحَّ انْقِطَاعُ الْعِصْمَةِ بِإِسْلَامِهَا.

L15667 It has been established that the one who embraces Islam is commanded not to maintain a disbelieving marital bond. Thus, it is established that at the moment Islam is embraced or apostasy occurs, the Muslim woman's marital bond with the unbeliever is severed, and the unbelieving woman's marital bond with the Muslim is severed—whether one of them embraces Islam

وَصَحَّ أَنَّ الَّذِي يُسْلِمُ مَأْمُورٌ بِأَنْ لَا يُمْسِكَ عِصْمَةً كَافِرَةً، فَصَحَّ أَنَّ سَاعَةَ يَقَعُ الْإِسْلَامُ، أَوْ الرِّدَّةُ، فَقَدْ انْقَطَعَتْ عِصْمَةُ الْمُسْلِمَةِ مِنَ الْكَافِرِ، وَعِصْمَةُ الْكَافِرَةِ مِنَ الْمُسْلِمِ - سَوَاءٌ أَسْلَمَ أَحَدُهُمَا وَكَانَا كَافِرَيْنِ، أَوِ ارْتَدَّ أَحَدُهُمَا وَكَانَا مُسْلِمَيْنِ - وَالْفَرْقُ بَيْنَ ذَلِكَ تَخْلِيطٌ، وَقَوْلٌ فِي الدِّينِ بِلَا بُرْهَانٍ.

[11] **Qur'an references (L15662):** Qur'an 60:10 (Al-Mumtahanah).
[12] **Qur'an references (L15663):** Qur'an 60:10 (Al-Mumtahanah).

while they were both unbelievers, or one apostatizes while they were both Muslims. Distinguishing between these cases is confusion and a baseless assertion in religion.

L15668 And with Allah, the Exalted, is the success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L15669 **A legal question regarding one from among the disbelievers who says, "There is no deity but Allah."**

[مَسْأَلَةٌ مِنْ قَالَ مِنْ أَهْلِ الْكُفْرِ لَا إِلَهَ إِلَّا اللَّهُ]

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٩٤٠ - مَسْأَلَةٌ:

L15671 And whoever among the people of disbelief other than the Jews, Christians, or Zoroastrians says, "There is no god but Allah," or says, "Muhammad is the Messenger of Allah," is thereby a Muslim, and the laws of Islam become binding upon him. If he refuses Islam, he is to be killed.

وَمَنْ قَالَ مِنْ أَهْلِ الْكُفْرِ مِمَّا سِوَى الْيَهُودِ، وَالنَّصَارَى، أَوْ الْمَجُوسِ: لَا إِلَهَ إِلَّا اللَّهُ، أَوْ قَالَ: مُحَمَّدٌ رَسُولُ اللَّهِ، كَانَ بِذَلِكَ مُسْلِمًا تَلْزَمُهُ شَرَائِعُ الْإِسْلَامِ، فَإِنْ أَبَى الْإِسْلَامَ قُتِلَ.

L15672 As for the Jews, Christians, and Magians, one does not become a Muslim by declaring "There is no god but Allah, Muhammad is the Messenger of Allah" unless he also says: "I am a Muslim," "I have embraced Islam," or "I renounce every religion except Islam." It has been narrated to us through the chain of Imam Muslim: Haramala ibn Yaḥyā narrated to us, Ibn Wahb narrated to us, Yunus narrated to us from Ibn Shihab, who narrated that Sa'īd ibn al-Musayyab reported from his father, who said: "When Abu Ṭālib's death approached, the Messenger of Allah (peace and blessings be upon him) said to him: 'O uncle, say: There is no god but Allah - a word by which I will testify for you before Allah.'" And he mentioned the ḥadīth.[13]

وَأَمَّا مِنْ الْيَهُودِ، وَالنَّصَارَى، وَالْمَجُوسِ، فَلَا يَكُونُ مُسْلِمًا بِقَوْلِ: لَا إِلَهَ إِلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ، إِلَّا حَتَّى يَقُولَ: وَأَنَا مُسْلِمٌ، أَوْ قَدْ أَسْلَمْتُ، أَوْ أَنَا بَرِيءٌ مِنْ كُلِّ دِينٍ حَاشَا الْإِسْلَامِ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا حَرْمَلَةُ بْنُ يَحْيَى نَا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ عَنْ أَبِيهِ قَالَ «لَمَّا حَضَرَتْ أَبَا طَالِبٍ الْوَفَاةُ قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا عَمِّ قُلْ: لَا إِلَهَ إِلَّا اللَّهُ كَلِمَةً أَشْهَدُ لَكَ بِهَا عِنْدَ اللَّهِ» وَذَكَرَ الْحَدِيثَ.

L15673–15675 Through the chain of Muslim: Ya'qub al-Dawraqi reported to us; Hushaym reported to us; Husayn ibn 'Abd al-Rahman reported to us, from Abu Ẓabyan who informed us: I heard Usamah ibn Zayd ibn Harithah narrating, saying: "The Messenger of Allah—peace and blessings be upon him—sent us with a detachment. We reached al-Ḥurqāt of Juhaynah at dawn and routed them. A man from the Ansar and I pursued one of their men. When we overtook him, he declared: 'There is no god but Allah.' The Ansari refrained from

وَمِنْ طَرِيقِ مُسْلِمٍ نَا يَعْقُوبُ الدَّوْرَقِيُّ نَا هُشَيْمٌ نَا حُصَيْنٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ أَخْبَرَنَا أَبُو ظَبْيَانَ سَمِعْتُ أُسَامَةَ بْنَ زَيْدِ بْنِ حَارِثَةَ يُحَدِّثُ قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَرِيَّةٍ فَصَبَّحْنَا الْحُرُقَاتِ مِنْ جُهَيْنَةَ فَهَزَمْنَاهُمْ وَلَحِقْتُ أَنَا وَرَجُلٌ مِنْ الْأَنْصَارِ رَجُلًا مِنْهُمْ فَلَمَّا غَشِينَاهُ قَالَ: لَا إِلَهَ إِلَّا اللَّهُ، فَكَفَّ عَنْهُ الْأَنْصَارِيُّ، وَطَعَنْتُهُ

[13] **Hadith references (L15672):** Sahih Muslim 24a.

attacking him, but I stabbed and killed him. When this was conveyed to the Messenger of Allah—peace and blessings be upon him—he said to me: 'O Usamah, did you kill him after he uttered: "There is no god but Allah"?' I responded: 'O Messenger of Allah...'" "Was he merely seeking refuge?" He then said, "Did you kill him after he said, 'There is no god but Allah?'" He kept repeating this to me until I wished I had not embraced Islam before that day."

فَقَتَلْتُهُ فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لِي: يَا أُسَامَةُ أَقَتَلْتَهُ بَعْدَمَا قَالَ: لَا إِلَهَ إِلَّا اللَّهُ؟ قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّمَا كَانَ مُتَعَوِّذًا؟ فَقَالَ: أَقَتَلْتَهُ بَعْدَمَا قَالَ: لَا إِلَهَ إِلَّا اللَّهُ؟ فَمَا زَالَ يُكَرِّرُهَا عَلَيَّ حَتَّى تَمَنَّيْتُ أَنِّي لَمْ أَكُنْ أَسْلَمْتُ قَبْلَ ذَلِكَ الْيَوْمِ» .

L15676 Abu Muhammad said: This pertains to the final period of Islam, while the hadith regarding Abu Talib concerns the main phase of Islam after several years into it. The Ansari refrained from killing him - as you observe - when he declared, "There is no deity but Allah," and Usama was not obligated for retribution because he killed him while presuming him to be a disbeliever, thus he was not deemed a deliberate killer.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا فِي آخِرِ الْإِسْلَامِ، وَحَدِيثُ أَبِي طَالِبٍ فِي مُعْظَمِ الْإِسْلَامِ بَعْدَ أَعْوَامٍ مِنْهُ، وَقَدْ كَفَّ الْأَنْصَارِيُّ كَمَا تَرَى عَنْ قَتْلِهِ إِذْ قَالَ: لَا إِلَهَ إِلَّا اللَّهُ وَلَمْ يَلْزَمْ أُسَامَةَ قَوَدٌ لِأَنَّهُ قَتَلَهُ وَهُوَ يَظُنُّهُ كَافِرًا فَلَيْسَ قَاتِلَ عَمْدٍ.

L15677 From the path of Muslim: Al-Hasan ibn Ali Al-Hulwani narrated to us, Abu Taubah—that is, Ar-Rabi' ibn Nafi'—narrated to us, Muawiyah—meaning Ibn Salam—related from Zaid—meaning his brother—that he heard Abu Salam say: Abu Asma' Ar-Rahabi narrated to us that Thawban, the freed slave of Allah's Messenger (peace be upon him), narrated that he said: "I was standing near Allah's Messenger (peace be upon him) when a Jewish scholar came and said: 'Peace be upon you, O Muhammad!' I pushed him so forcefully that he almost fell. He asked: 'Why do you push me?' I replied: 'Will you not say "O Messenger of Allah"?' The Jew responded: 'We only call him by the name his family gave him.' Thereupon Allah's Messenger (peace be upon him) said: 'My name is indeed Muhammad—the name my family gave me.'" Then he mentioned the hadith, and at its end: The Jew said to him: "You have spoken truthfully, and you are certainly a prophet," then departed. This account demonstrates that Thawban (may Allah be pleased with him) struck the Jew for failing to say "Messenger of Allah," while Allah's Messenger (peace be upon him) did not disapprove. This confirms that such correction is an obligatory duty, for had it been impermissible, he would have prohibited it. It further shows that though the Jew acknowledged his prophethood, the Prophet (peace be upon him) did not compel him to abandon his religion.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نَا أَبُو تَوْبَةَ هُوَ الرَّبِيعُ بْنُ نَافِعٍ - نَا مُعَاوِيَةُ يَعْنِي ابْنَ سَلَامٍ - عَنْ زَيْدٍ يَعْنِي أَخَاهُ أَنَّهُ سَمِعَ أَبَا سَلَامٍ قَالَ: نَا أَبُو أَسْمَاءَ الرَّحَبِيُّ «أَنَّ ثَوْبَانَ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّثَهُ قَالَ: كُنْتُ قَائِمًا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَاءَ حَبْرٌ مِنْ أَحْبَارِ الْيَهُودِ فَقَالَ: السَّلَامُ عَلَيْكَ يَا مُحَمَّدُ، فَدَفَعْتُهُ دَفْعَةً كَادَ يُصْرَعُ مِنْهَا، فَقَالَ: لِمَ تَدْفَعُنِي؟ قُلْتُ: أَلَا تَقُولُ: يَا رَسُولَ اللَّهِ؟ فَقَالَ الْيَهُودِيُّ: إِنَّمَا نَدْعُوهُ بِاسْمِهِ الَّذِي سَمَّاهُ بِهِ أَهْلُهُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ اسْمِي مُحَمَّدٌ الَّذِي سَمَّانِي بِهِ أَهْلِي ثُمَّ ذَكَرَ الْحَدِيثَ، وَفِي آخِرِهِ إِنَّ الْيَهُودِيَّ قَالَ لَهُ: لَقَدْ صَدَقْتَ وَإِنَّكَ لَنَبِيٌّ، ثُمَّ انْصَرَفَ» . فَفِي هَذَا الْخَبَرِ ضَرَبَ ثَوْبَانُ - رَضِيَ اللَّهُ عَنْهُ - الْيَهُودِيَّ إِذْ لَمْ يَقُلْ: رَسُولَ اللَّهِ، وَلَمْ يُنْكِرْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَحَّ أَنَّهُ حَقٌّ وَاجِبٌ، إِذْ لَوْ كَانَ غَيْرَ جَائِزٍ لَأَنْكَرَهُ عَلَيْهِ - وَفِيهِ أَنَّ الْيَهُودِيَّ قَالَ لَهُ: إِنَّكَ لَنَبِيٌّ، وَلَمْ يُلْزِمْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ تَرْكَ دِينِهِ.

L15678 From the chain of Al-Bukhari: Abdullah ibn Muhammad narrated to us, Abu Rawh Harami ibn Umara narrated to us, Shu'bah narrated from Waqid—who is the son of Muhammad ibn Zayd ibn Abdullah ibn Umar ibn Al-Khattab—who said: "I heard my father narrating from Ibn Umar, who said: The Messenger of Allah, peace and blessings be upon him, said: 'I have been commanded to fight the people until they testify that there is no god but Allah and that Muhammad is the Messenger of Allah, establish the prayer, and give the zakat. When they do that, they have safeguarded their blood and wealth from me, except by the right of Islam, and their reckoning rests with Allah.'" All of this is the statement of Al-Shafi'i and Abu Sulayman.[14]

L15679 **The ruling is that Jizya is not to be accepted from a Jew, a Christian, or a Zoroastrian.**

L15680 941– *Mas'ala*:

L15681–15683 Neither from a Jew, nor a Christian, nor a Magian is jizya accepted, save upon the stipulation that... They must acknowledge that Muhammad is the Messenger of Allah to us and refrain from attacking him or disparaging any aspect of the religion of Islam, due to the hadith of Thawban mentioned earlier and the words of Allah Almighty: "If they violate your religion, then fight the leaders of disbelief—indeed, their oaths are meaningless" (Quran 9:12).[15]

L15684 This is the opinion of Mālik. He said regarding the hypothetical case: If a dhimmi says, "Muhammad was only sent to you, not to us," he bears no penalty. Then if he says, "He was not a prophet," he is to be executed.

L15685 **An issue concerning one who claims there exists a hidden aspect in any part of Islam, other than the apparent.**

L15686 Mas'ala 942 -:

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ نَا أَبُو رَوْحٍ حَرَمِيُّ بْنُ عُمَارَةَ نَا شُعْبَةُ عَنْ وَاقِدٍ هُوَ ابْنُ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ قَالَ " سَمِعْتُ أَبِي يُحَدِّثُ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّ الْإِسْلَامِ وَحِسَابُهُمْ عَلَى اللَّهِ» . وَهَذَا كُلُّهُ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

[مَسْأَلَةٌ لَا يُقْبَلُ مِنْ يَهُودِيٍّ وَلَا نَصْرَانِيٍّ وَلَا مَجُوسِيٍّ جِزْيَةٌ]

٩٤١ - مَسْأَلَةٌ:

وَلَا يُقْبَلُ مِنْ يَهُودِيٍّ، وَلَا نَصْرَانِيٍّ، وَلَا مَجُوسِيٍّ: جِزْيَةٌ، إِلَّا بِأَنْ يُقِرُّوا بِأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ إِلَيْنَا، وَأَنْ لَا يَطْعَنُوا فِيهِ، وَلَا فِي شَيْءٍ مِنْ دِينِ الْإِسْلَامِ، لِحَدِيثِ ثَوْبَانَ الَّذِي ذَكَرْنَا آنِفًا وَلِقَوْلِ اللَّهِ تَعَالَى: {وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ إِنَّهُمْ لا أَيْمَانَ لَهُمْ} [التوبة: ١٢]

وَهُوَ قَوْلُ مَالِكٍ، قَالَ فِي الْمُسْتَخْرَجَةِ: مَنْ قَالَ مِنْ أَهْلِ الذِّمَّةِ: إِنَّمَا أُرْسِلَ مُحَمَّدٌ إِلَيْكُمْ لَا إِلَيْنَا فَلَا شَيْءَ عَلَيْهِ، قَالَ: فَإِنْ قَالَ لَمْ يَكُنْ نَبِيًّا قُتِلَ.

[مَسْأَلَةٌ مَنْ قَالَ إِنَّ فِي شَيْءٍ مِنْ الْإِسْلَامِ بَاطِنًا غَيْرَ الظَّاهِرِ]

٩٤٢ - مَسْأَلَةٌ:

[14] **Hadith references (L15678):** Sahih al-Bukhari 25; Riyad as-Salihin 1076; Riyad as-Salihin 1209.

[15] **Qur'an references (L15681):** Qur'an 9:12 (At-Tawbah).

L15687 Whoever asserts that there is a hidden aspect in any part of Islam other than the apparent [meaning] known to all people is a disbeliever who must be killed without exception, due to Allah's statement: "Our Messenger's duty is only to convey clearly" [At-Taghabun 64:12] and His saying: "To make clear to mankind what was sent down to them" [An-Nahl 16:44]. Thus, whoever contradicts this has denied the Quran.[16]

L15688 **Issue: Every male or female slave owned by two disbelievers who embrace Islam in the Abode of War...**

L15689 943. Chapter:

L15690 Every male or female slave owned by two disbelievers or one disbeliever—if both slaves embrace Islam, whether in the abode of war or outside it—they are both freed immediately. If two such slaves belong to a *dhimmī* and embrace Islam, they are freed at the moment of their conversion. Similarly, the *mudabbar* (a slave promised emancipation) of a *dhimmī* or a *ḥarbī*, their *mukatab* (a slave under a manumission contract), or their *umm walad* (mother of the owner's child)—whichever of these embraces Islam becomes free at the moment of conversion. The manumission contract or its remaining portion is annulled. The convert does not forfeit anything they had paid toward it before conversion but may reclaim what they paid after Islamization and take it back. This is based on Allah's decree: "Allah will never grant the disbelievers authority over the believers" [4:141]. Allah the Exalted undoubtedly meant by this the rulings of the religion, not worldly dominance through tyranny. Enslavement constitutes the greatest form of authority, which Allah has abolished through Islam. We ask the one who sells them: Why do you sell them? Are they owned by him or not? There is no alternative to one of these two [options].[17]

L15691 If he says, "The two are not enslaved by him," he is truthful—and this is our opinion—and since the two are not enslaved by him, they are both free. And if he says, "The two are enslaved by him."

وَمَنْ قَالَ: إِنَّ فِي شَيْءٍ مِنْ الْإِسْلَامِ بَاطِنًا غَيْرَ الظَّاهِرِ الَّذِي يَعْرِفُهُ الْأَسْوَدُ وَالْأَحْمَرُ، فَهُوَ كَافِرٌ يُقْتَلُ وَلَا بُدَّ، لِقَوْلِ اللَّهِ تَعَالَى: {فَإِنَّمَا عَلَى رَسُولِنَا الْبَلاغُ الْمُبِينُ} [التغابن: ١٢] وَقَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَمَنْ خَالَفَ هَذَا فَقَدْ كَذَّبَ بِالْقُرْآنِ.

[مَسْأَلَةٌ كُلُّ عَبْدٍ أَوْ أَمَةٍ كَانَا لِكَافِرَيْنِ أَسْلَمَا فِي دَارِ الْحَرْبِ]

٩٤٣ - مَسْأَلَةٌ:

وَكُلُّ عَبْدٍ، أَوْ أَمَةٍ كَانَا لِكَافِرَيْنِ، أَوْ أَحَدِهِمَا أَسْلَمَا فِي دَارِ الْحَرْبِ، أَوْ فِي غَيْرِ دَارِ الْحَرْبِ: فَهُمَا حُرَّانِ، فَلَوْ كَانَا كَذَلِكَ لِذِمِّيٍّ فَأَسْلَمَا: فَهُمَا حُرَّانِ سَاعَةَ إِسْلَامِهِمَا، وَكَذَلِكَ مُدَبَّرُ الذِّمِّيِّ، أَوْ الْحَرْبِيِّ، أَوْ مُكَاتَبُهُمَا، أَوْ أُمُّ وَلَدِهِمَا، أَيُّهُمْ أَسْلَمَ فَهُوَ حُرٌّ سَاعَةَ إِسْلَامِهِ وَتَبْطُلُ الْكِتَابَةُ، أَوْ مَا بَقِيَ مِنْهَا، وَلَا يَرْجِعُ الَّذِي أَسْلَمَ بِشَيْءٍ مِمَّا كَانَ أَعْطَى مِنْهَا قَبْلَ إِسْلَامِهِ، وَيَرْجِعُ بِمَا أَعْطَى مِنْهَا بَعْدَ إِسْلَامِهِ فَيَأْخُذُهُ لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] وَإِنَّمَا عَنَى تَعَالَى بِهَذَا أَحْكَامَ الدِّينِ بِلَا شَكٍّ، وَأَمَّا تَسَلُّطُ الدُّنْيَا بِالظُّلْمِ فَلَا، وَالرِّقُّ أَعْظَمُ السَّبِيلِ، وَقَدْ أَسْقَطَهُ اللَّهُ تَعَالَى بِالْإِسْلَامِ، وَنَسْأَلُ مَنْ بَاعَهُمَا عَلَيْهِ: لِمَ تَبِيعُهُمَا؟ أَهُمَا مَمْلُوكَانِ لَهُ أَمْ غَيْرُ مَمْلُوكَيْنِ؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا.

فَإِنْ قَالَ: لَيْسَا مَمْلُوكَيْنِ لَهُ صَدَقَ - وَهُوَ قَوْلُنَا - وَإِذْ لَمْ يَكُونَا مَمْلُوكَيْنِ لَهُ فَهُمَا حُرَّانِ، وَإِنْ قَالَ: هُمَا مَمْلُوكَانِ لَهُ.

[16] **Qur'an references (L15687):** Qur'an 64:12 (At-Taghabun); Qur'an 16:44 (An-Nahl).
[17] **Qur'an references (L15690):** Qur'an 4:141 (An-Nisa).

قُلْنَا: فَلِمَ تُبْطِلُ مِلْكَهُ الَّذِي أَنْتَ تُصَحِّحُهُ بِلَا نَصٍّ وَلَا إِجْمَاعٍ؟ وَأَيُّ فَرْقٍ بَيْنَ إِقْرَارِك لَهُمَا فِي مِلْكِهِ سَاعَةً، أَوْ سَاعَتَيْنِ، أَوْ يَوْمًا، أَوْ يَوْمَيْنِ، أَوْ جُمُعَةً، أَوْ جُمُعَتَيْنِ، أَوْ شَهْرًا، أَوْ شَهْرَيْنِ، أَوْ عَامًا، أَوْ عَامَيْنِ، أَوْ بَاقِيَ عُمُرِهَا، أَوْ عُمُرِهِ، وَكَيْفَ صَحَّ إقْرَارُك لَهُمَا فِي مِلْكِهِ مُدَّةَ تَعْرِيضِهِمَا لِلْبَيْعِ؟ وَلَمْ يَصِحَّ، وَلَمْ يَصِحَّ إبْقَاؤُهُمَا فِي مِلْكِهِ أَكْثَرَ، وَلَعَلَّهُمَا لَا يَسْتَبِيعَانِ فِي شَهْرٍ، أَوْ أَكْثَرَ، وَهَلَّا أَقْرَرْتُمُوهُمَا فِي مِلْكِهِ وَحُلْتُمْ بَيْنَهُ وَبَيْنَهُمَا كَمَا فَعَلْتُمْ فِي الْمُدَبَّرِ، وَأُمِّ الْوَلَدِ، وَالْمُكَاتَبِ إذَا أَسْلَمُوا؟ وَلَئِنْ كَانَ يَجُوزُ إبْقَاؤُهُمْ فِي مِلْكِهِ إنَّ ذَلِكَ لَجَائِزٌ فِي الْعَبْدِ، وَلَئِنْ حَرُمَ إبْقَاءُ الْعَبْدِ فِي مِلْكِهِ لَيَحْرُمُ ذَلِكَ فِي أُمِّ الْوَلَدِ، وَالْمُدَبَّرِ، وَالْمُكَاتَبِ وَلَا فَرْقَ - وَهَذَا تَنَاقُضٌ ظَاهِرٌ لَا خَفَاءَ بِهِ، وَقَوْلٌ فَاسِدٌ لَا مِرْيَةَ فِيهِ، وَنَسْأَلُهُمْ أَيْضًا عَنْ كَافِرٍ اشْتَرَى عَبْدًا مُسْلِمًا، أَوْ أَمَةً مُسْلِمَةً، فَمِنْ قَوْلِهِمْ: إنَّهُمْ يُفْسَخُونَ ذَلِكَ الشِّرَاءَ. فَنَقُولُ لَهُمْ: وَلِمَ فَسَخْتُمُوهُ؟ وَهَلَّا بِعْتُمُوهُمَا عَلَيْهِ كَمَا تَفْعَلُونَ إذَا أَسْلَمَ فِي مِلْكِهِ؟ وَمَا الْفَرْقُ؟ فَإِنْ قَالُوا: لِأَنَّ هَذَا ابْتِدَاءُ تَمَلُّكٍ. قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَلَا يَخْلُو ابْتِيَاعُهُ لَهُمَا مِنْ أَنْ يَكُونَ ابْتِدَاءَ تَمَلُّكٍ لِمَا يَحِلُّ تَمَلُّكُهُ، وَلَا سَبِيلَ إلَى ثَالِثٍ.

L15692–15694 We said: Then why do you invalidate his ownership—which you yourself validate—without any textual proof or consensus? What distinction exists between your legal acknowledgment for them both in his ownership for an hour, two hours, a day, two days, a week, two weeks, a month, two months, a year, two years, the remainder of her lifespan, or his lifespan? How can your legal acknowledgment for them both in his ownership be valid during their being put up for sale, while it is invalid—and equally invalid—to retain them both in his ownership longer? Perhaps they will not succeed in selling within a month or more. Why do you not legally acknowledge them both in his ownership, and why do you intervene between him and them? Just as you have done concerning the *mudabbar*, the *umm al-walad*, and the *mukatab* when they embraced Islam? If retaining them in his ownership is permissible, then this is permissible for the *slave*. And if retaining the *slave* in his ownership is prohibited, then this is prohibited for the *umm al-walad*, the *mudabbar*, and the *mukatab*—there is no distinction. This is an evident contradiction, unmistakably clear, and a corrupt opinion without doubt. We also ask them about a disbeliever who purchased a Muslim male slave or a Muslim female slave. According to their doctrine, they nullify such a purchase. We say to them: Why did you nullify it? Why do you not sell them to him, as you do when a slave embraces Islam under his ownership? What is the difference? If they say: “Because this is an initial acquisition,” we reply: Yes—so what? His purchase of them can only be either an initial acquisition of what is lawfully ownable, or it is not. There is no third possibility.

فَإِنْ قَالُوا: بَلْ لِمَا لَا يَحِلُّ تَمَلُّكُهُ. قُلْنَا: صَدَقْتُمْ، فَكَيْفَ أَحْلَلْتُمْ تَمَلُّكَهُ لَهُمَا مُدَّةَ تَعْرِيضِكُمْ إيَّاهُمَا لِلْبَيْعِ إذَا أَسْلَمَا فِي مِلْكِهِ؟ وَإِنْ قَالُوا: بَلْ لِمَا يَحِلُّ تَمَلُّكُهُ. قُلْنَا: فَلِمَ فَسَخْتُمْ ابْتِيَاعَهُ لِمَا يَحِلُّ لَهُ تَمَلُّكُهُ؟ بَلْ لِمَ تَبِيعُونَ عَلَيْهِ مَا يَحِلُّ لَهُ تَمَلُّكُهُ؟ فَإِنْ قَالُوا: إنَّهُمَا كَانَا فِي مِلْكِهِ قَبْلَ أَنْ يُسْلِمَا فَلِمَ يَبْطُلُ مِلْكُهُ بِإِسْلَامِهِمَا. قُلْنَا: نَعَمْ، فَلِمَ بِعْتُمُوهُمَا عَلَيْهِ؟ وَهَذَا تَنَاقُضٌ فَاحِشٌ لَا إشْكَالَ فِيهِ، وَقَوْلٌ بَاطِلٌ بِلَا بُرْهَانٍ، وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّهُمْ يُنْكِرُونَ

L15695 If they say: “No, because it is impermissible to own them,” we reply: “You are correct. Then how did you permit their ownership by him during the time you offered them for sale if they embraced Islam while in his possession?” If they say: “Rather, because it is permissible to own them,” we say: “Then why did you invalidate his purchase of what he is permitted to own? Why do you sell him what he may rightfully own?” If they argue: “They were his property before embracing Islam, so why should his ownership cease through their conversion?” we counter: “True—then why did you sell them to him?”

This constitutes a blatant contradiction without ambiguity—a baseless claim devoid of proof.

What is utterly astonishing is their objection against Allah Almighty and His Messenger (peace be upon him) regarding his marriage to Safiyyah, Mother of the Believers—making her manumission her dowry—by asserting: "It must either be that he married her before her emancipation, which is unlawful for a man to marry his own slave, or after her emancipation—but then the manumission preceded the marriage, so where is the dowry?" They raise similar invalid objections concerning manumission by lottery and the recovery of goods from a bankrupt debtor. None of these matters entail the corrupt objections they have inserted into them.

Yet they do not censure themselves where censure is truly warranted, for they speak and rule by their corrupt opinions, while he (peace be upon him) only speaks and judges by the authority of Allah Almighty—He who "is not questioned about what He does, but they will be questioned" [21:23].[18]

L15696–15697 If they say: "We sell the slave to a disbeliever just as you sell a Muslim's male and female slaves when harm is complained of and in cases of insolvency," we respond to them—and with Allah's success—that we do not sell a Muslim's male or female slave under any circumstance except in the case of a binding, obligatory right that we cannot possibly attain by any means whatsoever except through their sale; otherwise, we refrain. The primary principle is that we only sell them to settle his debt that has become legally binding upon him, for obligatory maintenance required for himself, his male or female slave, or those he is obligated to support, or for legally established harm. Regarding the obligatory right: As long as we find dirhams or dinars to settle his debt, we do not sell them. If we find no alternative and no way to fulfill that right except by selling them, then they constitute part of his property that may be sold at that point, as Allah—Exalted is He—says: {Be steadfast in justice, as witnesses for Allah} [An-Nisa: 135]. Upholding justice includes granting every rightful claimant their due. The Messenger of Allah—peace

[18] **Qur'an references (L15695):** Qur'an 21:23 (Al-Anbya).

مِثْلَ هَذَا عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَقُولُونَ فِي تَزَوُّجِهِ - عَلَيْهِ السَّلَامُ - صَفِيَّةَ أُمِّ الْمُؤْمِنِينَ وَجَعْلِ عِتْقِهَا صَدَاقَهَا: لَا يَخْلُو أَنْ يَكُونَ تَزَوَّجَهَا قَبْلَ عِتْقِهَا، أَوْ بَعْدَ عِتْقِهَا، فَإِنْ كَانَ تَزَوَّجَهَا قَبْلَ عِتْقِهَا فَزَوَاجُ الرَّجُلِ أَمَتَهُ لَا يَحِلُّ، وَإِنْ كَانَ تَزَوَّجَهَا بَعْدَ عِتْقِهَا، فَقَدْ مَضَى عِتْقُهَا فَأَيْنَ الصَّدَاقُ؟ وَقَالُوا مِثْلَ هَذَا فِي الْعِتْقِ بِالْقُرْعَةِ، وَفِي وُجُودِ الْمَرْءِ سِلْعَتَهُ عِنْدَ مُفْلِسٍ، وَكُلُّ هَذَا لَا يَدْخُلُ فِيهِ مَا أَدْخَلُوهُ فِيهِ مِنْ هَذِهِ الِاعْتِرَاضَاتِ الْفَاسِدَةِ، ثُمَّ لَا يُنْكِرُونَ هَذَا عَلَى أَنْفُسِهِمْ وَهُوَ مَوْضِعُ الْإِنْكَارِ حَقًّا، لِأَنَّهُمْ إنَّمَا يَتَكَلَّمُونَ وَيَقْضُونَ بِرَأْيِهِمْ الْفَاسِدِ، وَهُوَ - عَلَيْهِ السَّلَامُ - إنَّمَا يَتَكَلَّمُ وَيَقْضِي عَنْ اللَّهِ تَعَالَى الَّذِي {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣] .

فَإِنْ قَالُوا: نَبِيعُهُ عَلَى الْكَافِرِ كَمَا تَبِيعُونَ أَنْتُمْ عَبْدَ الْمُسْلِمِ وَأَمَتَهُ إذْ شَكَوْا الضَّرَرَ، وَفِي التَّفْلِيسِ. قُلْنَا لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: لَا نَبِيعُ عَبْدًا لِمُسْلِمٍ وَلَا أَمَتَهُ أَصْلًا إلَّا فِي حَقٍّ وَاجِبٍ لَازِمٍ لَا يُمْكِنُنَا التَّوَصُّلُ إلَيْهِ أَلْبَتَّةَ بِوَجْهٍ مِنْ الْوُجُوهِ إلَّا بِبَيْعِهِمَا وَإِلَّا فَلَا، أَوَّلُ ذَلِكَ: أَنَّا لَا نَبِيعُهُمَا عَلَيْهِ إلَّا فِي دَيْنٍ لَزِمَهُ، أَوْ فِي نَفَقَةٍ لَزِمَتْهُ لِنَفْسِهِ أَوْ لِلْمَمْلُوكِ وَالْمَمْلُوكَةِ، أَوْ لِمَنْ تَلْزَمُهُ نَفَقَتُهُ، أَوْ لِضَرَرٍ ثَابِتٍ، فَأَمَّا الْحَقُّ الْوَاجِبُ فَمَا دُمْنَا نَجِدُ لَهُ دَرَاهِمَ أَوْ دَنَانِيرَ لَمْ نَبِعْهُمَا عَلَيْهِ، فَإِنْ لَمْ نَجِدْ لَهُ غَيْرَهُمَا وَلَمْ يَكُنْ سَبِيلٌ إلَى أَدَاءِ ذَلِكَ الْحَقِّ إلَّا بِبَيْعِهِمَا فَهُمَا مَالٌ مِنْ مَالِهِ يُبَاعُ عِنْدَ ذَلِكَ لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] وَمِنْ الْقِيَامِ بِالْقِسْطِ: إعْطَاءُ كُلِّ ذِي حَقٍّ حَقَّهُ، وَصَوَّبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - هَذَا الْقَوْلَ، إذْ قَالَهُ سَلْمَانُ لِأَبِي الدَّرْدَاءِ - رَضِيَ اللَّهُ عَنْهُمَا -.

and blessings be upon him and his family—endorsed this ruling when Salman said it to Abu Ad-Darda—may Allah be pleased with them both.[19]

وَأَمَّا الضَّرَرُ الثَّابِتُ فَإِنْ أَمْكَنَنَا مَنْعُ الضَّرَرِ بِأَنْ نَحُولَ بَيْنَهُ وَبَيْنَ الْأَمَةِ، وَالْعَبْدِ، بِأَنْ يُؤَاجَرَا، أَوْ يُجْعَلَا عِنْدَ ثِقَةٍ يَمْنَعُ مِنَ الْإِضْرَارِ بِهِمَا لَمْ نَبِعْهُمَا، فَإِذَا لَمْ يُقْدَرْ عَلَى ذَلِكَ أَلْبَتَّةَ بِعْنَاهُمَا، لِأَنَّنَا لَا نَقْدِرُ عَلَى الْمَنْعِ مِنَ الظُّلْمِ وَالْعُدْوَانِ وَالْإِثْمِ إِلَّا بِذَلِكَ، وَقَالَ تَعَالَى: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L15698 As for the established harm, if we can interpose between it and the female slave or male slave by renting them out or placing them with a trustworthy guardian who prevents harm to them, we do not sell either. If it is entirely impossible to do so, we sell them both, for we cannot prevent oppression, transgression, and sin except through this means. Allah, the Exalted, said: "And do not cooperate in sin and transgression" [Surah Al-Mā'idah 5:2].[20]

فَإِنْ قَالُوا: كَذَلِكَ تَحَكُّمُ الْكَافِرِ عَلَى الْمُسْلِمِ مِنْ عَبِيدِهِمْ ضَرَرٌ. قُلْنَا: فَإِنْ صَحَّ أَنَّهُ لَا ضَرَرَ عَلَى الْأَمَةِ وَالْعَبْدِ مِنْ سَيِّدِهِمَا الْكَافِرِ، أَوْ سَيِّدَتِهِمَا الْكَافِرَةِ، بَلْ هُمَا مُعْتَرِفَانِ بِالْإِحْسَانِ وَالرِّفْقِ جُمْلَةً، أَلَيْسَ قَدْ بَطَلَ تَعَلُّقُكُمْ بِالضَّرَرِ؟ هَذَا مَا لَا شَكَّ فِيهِ.

L15699 If they say: "Similarly, the non-Muslim's control over a Muslim from among their slaves is harm," we say: "If it is established that no harm befalls the female slave or male slave from their non-Muslim master or non-Muslim mistress—rather, they both acknowledge kindness and gentleness entirely—does this not invalidate your reliance on harm? This is without doubt."

فَإِنْ قَالُوا: نَخَافُ أَنْ يُفْسِدَا دِينَهُمَا بِطُولِ الصُّحْبَةِ. قُلْنَا: فَفَرِّقُوا بَيْنَهُمَا وَبَيْنَ ابْنَيْهِمَا إِذَا أَسْلَمَ خَوْفَ أَنْ يَفْسُدَ دِينُهُ، وَبِيعُوا عَبْدَ الْمُسْلِمِ الْفَاسِقِ وَأَمَتَهُ بِهَذَا الِاعْتِلَالِ، لِأَنَّهُ مَظْنُونٌ مِنْهُ تَدْرِيبُهُمَا عَلَى شُرْبِ الْخَمْرِ، وَإِضَاعَةِ الصَّلَاةِ وَالظُّلْمِ، وَلَا فَرْقَ، وَهَذَا مَا لَا مُخَلَّصَ مِنْهُ أَصْلًا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L15700 If they say: "We fear that the two of them will corrupt the two's religion through prolonged companionship," we respond: Then separate the two of them from their two sons if the parent embraces Islam, fearing that his religion may be corrupted. And sell the slave of a sinful Muslim and his slave woman for this reason, for he is suspected of training the two of them to drink wine, neglect prayer, and commit oppression—and there is no difference. This is a matter from which there is absolutely no escape—and all praise is to Allah, Lord of the worlds.

وَقَوْله تَعَالَى: {إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لا هُنَّ حِلٌّ لَهُمْ وَلا هُمْ يَحِلُّونَ لَهُنَّ وَآتُوهُمْ مَا أَنْفَقُوا وَلا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [الممتحنة: ١٠] بُرْهَانٌ قَاطِعٌ فِي وُجُوبِ عِتْقِ أَمَةِ الذِّمِّيِّ، أَوِ الْحَرْبِيِّ إِذَا أَسْلَمَتْ لِأَنَّهُ تَعَالَى أَمَرَ أَنْ لَا نَرْجِعَهَا إِلَى الْكُفَّارِ وَأَنَّهُنَّ لَا يَحِلِّينَ لَهُمْ وَأَبَاحَ لَنَا نِكَاحَهُنَّ، وَهَذَا عُمُومٌ يُوجِبُ الْحُرِّيَّةَ ضَرُورَةً.

L15701–15703 And His statement, the Exalted: "When believing women come to you as emigrant women (for faith), test them; Allah knows best concerning their faith. If you ascertain that they are believers, do not return them to the disbelievers. They are not lawful for the disbelievers, nor are the disbelievers lawful for them. Reimburse the disbelievers for what they spent [on them]. There is no sin upon you if you marry them when you have given them their bridal dues (mahr)." [Al-Mumtahanah: 10] is proof. A decisive ruling obligating the emancipation of a female slave belonging to a dhimmi or harbi

[19] **Qur'an references (L15697):** Qur'an 4:135 (An-Nisa).
[20] **Qur'an references (L15698):** Qur'an 5:2 (Al-Ma'idah).

upon her conversion to Islam, for He, the Exalted, has commanded that she not be returned to the disbelievers, established that they are no longer lawful for them [as wives], and permitted us to marry them. This general principle necessarily entails granting freedom as an imperative.[21]

فَإِنْ قِيلَ: قَوْله تَعَالَى فِي هَذِهِ الْآيَةِ: {وَآتُوهُمْ مَا أَنْفَقُوا} [الممتحنة: ١٠] دَلِيلٌ عَلَى أَنَّهُ تَعَالَى أَرَادَ الزَّوْجَاتِ. قُلْنَا: الْآيَةُ كُلُّهَا عَامَّةٌ لِكُلِّ مُؤْمِنَةٍ هَاجَرَتْ بِالْإِيمَانِ لِتَدْخُلَ فِي جُمْلَةِ الْمُسْلِمِينَ، وَهَذَا الْحُكْمُ فِي إيتَاءِ مَا أَنْفَقُوا خَاصٌّ فِي الزَّوْجَاتِ، وَلَا يُوجِبُ أَنْ يَكُونَ سَائِرُ عُمُومِ الْآيَةِ خُصُوصًا، إذْ لَمْ يُوجِبْ ذَلِكَ لُغَةٌ وَلَا شَرِيعَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L15704 If it is said: The saying of Allah, the Most High, in this verse: {And give them what they have spent} [60:10] indicates that He, the Most High, intended wives. We respond: The entire verse is general, applying to every believing woman who emigrated out of faith to join the community of Muslims. This ruling regarding the obligation to return what was spent is specific to wives. This does not necessitate that the remaining general applicability of the verse be made specific, as neither linguistic convention nor divine law requires this—and all success is by Allah, the Most High.[22]

وَقَدْ صَحَّ أَنَّ أَبَا بَكْرَةَ خَرَجَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُسْلِمًا فَعَتَقَ.

L15705 It has been authentically established that Abu Bakrah went out to the Messenger of Allah (peace be upon him) as a Muslim and was emancipated.

فَإِنْ قَالُوا: هَذَا حُكْمُ مَنْ خَرَجَ مِنْ دَارِ الْحَرْبِ إلَى دَارِ الْإِسْلَامِ. قُلْنَا: مَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ مَنْ قَالَ: بَلْ هَذَا حُكْمُ مَنْ خَرَجَ مِنْ الطَّائِفِ خَاصَّةً؟ وَهَلْ بَيْنَ الْحُكْمَيْنِ فَرْقٌ؟ ثُمَّ نَقُولُ لَهُمْ: وَمَا دَلِيلُكُمْ عَلَى هَذَا؟ وَإِنَّمَا جَاءَ مُسْلِمًا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ عَبْدٌ لِكَافِرٍ فَأَعْتَقَهُ، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنِّي إنَّمَا أَعْتَقْته، لِأَنَّهُ خَرَجَ مِنْ دَارِ الْحَرْبِ، فَمَنْ نَسَبَ هَذَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ كَذَبَ عَلَيْهِ، وَقَالَ عَلَيْهِ بِلَا بُرْهَانٍ، وَأَنْتُمْ تَقِيسُونَ الْجِصَّ عَلَى التَّمْرِ، السَّقَمُونْيَا عَلَى الْبُرِّ، وَالْكَمُّونَ عَلَيْهِمَا بِلَا بُرْهَانٍ، وَفَرْجَ الْمُسْلِمَةِ الْمُتَزَوِّجَةِ عَلَى يَدِ السَّارِقِ، ثُمَّ تُفَرِّقُونَ بَيْنَ عَبْدٍ مُسْلِمٍ وَعَبْدٍ مُسْلِمٍ كِلَاهُمَا أَسْلَمَ فِي مِلْكِ كَافِرٍ، إنَّ هَذَا لَعَوَجٌ مَا شِئْتُمْ.

L15706 If they say: "This is the ruling concerning one who departs from the abode of war to the abode of Islam," we respond: What distinguishes your position from those who assert: "Rather, this is the ruling concerning one who departs from Ṭā'if exclusively"? Is there any distinction between the two rulings? Then we ask them: What is your evidence for this? He came as a Muslim to the Messenger of Allah—peace and blessings be upon him—while being a slave owned by a disbeliever, so he freed him. Yet he—peace and blessings be upon him—did not state: "I freed him solely because he departed from the abode of war." Thus, whoever attributes this claim to the Messenger of Allah—peace and blessings be upon him—has lied against him and spoken without proof. You liken gypsum to dates, scammony to wheat, and cumin to both of them without proof, and equate the private part of a married Muslim woman to the thief's hand. Then you distinguish between one Muslim slave and another Muslim slave, both of whom embraced Islam under the ownership of a disbeliever. This is indeed sheer distortion, plain and simple.

[21] **Qur'an references (L15701):** Qur'an 60:10 (Al-Mumtahanah).
[22] **Qur'an references (L15704):** Qur'an 60:10 (Al-Mumtahanah).

فَإِنْ ذَكَرُوا أَمْرَ بِلَالٍ، وَسَلْمَانَ، - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّ كِلَيْهِمَا أَسْلَمَ وَهُمَا مَمْلُوكَانِ لِوَثَنِيٍّ وَيَهُودِيٍّ، فَابْتَاعَ بِلَالًا أَبُو بَكْرٍ، وَكَاتَبَ سَلْمَانَ سَيِّدُهُ، فَلَوْ كَانَا حُرَّيْنِ بِنَفْسِ إِسْلَامِهِمَا لَمَا كَانَ أَبُو بَكْرٍ مَالِكَ وَلَاءِ بِلَالٍ، وَلَا صَحِيحَ الْعِتْقِ فِيهِ؟ قُلْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا أَمْرُ بِلَالٍ فَكَانَ فِي أَوَّلِ الْإِسْلَامِ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَقَبْلَ نُزُولِ الْآيَةِ الَّتِي ذَكَرْنَا بِبِضْعَ عَشْرَةَ سَنَةً، لِأَنَّ الْآيَةَ مَدَنِيَّةٌ فِي " سُورَةِ النِّسَاءِ " وَلَمْ تَكُنْ الصَّلَاةُ يَوْمَئِذٍ لَازِمَةً، وَلَا الزَّكَاةُ، وَلَا الصِّيَامُ، وَلَا الْحَجُّ، وَلَا الْمَوَارِيثُ، وَلَا كَانَ حَرَامًا نِكَاحُ الْوَثَنِيِّ الْمُسْلِمَةَ، وَلَا نِكَاحُ الْمُسْلِمِ الْوَثَنِيَّةَ، وَلَا مِلْكُ الْوَثَنِيِّ لِلْمُسْلِمِ، فَلَا حُجَّةَ فِي أَمْرِ بِلَالٍ.

L15707

If they cite the case of Bilāl and Salmān—may Allah be pleased with them—that both embraced Islam while enslaved to a polytheist and a Jew, whereupon Abū Bakr purchased Bilāl, and Salmān's master entered into a *kitābah* contract with him, then [argue] had they been free by mere conversion, Abū Bakr would not have held Bilāl's patronage nor would Bilāl's emancipation have been legally valid? We answer—and with Allah, the Exalted, lies all success—: As for Bilāl's case, it occurred in Islam's earliest period without dispute, roughly ten years before the revelation of the cited verse, for the verse is Medinan in *Sūrat al-Nisāʾ*. At that time, prayer was not yet obligatory, nor *zakāh*, nor fasting, nor pilgrimage, nor inheritances, nor was a polytheist permitted to marry a Muslim woman, nor a Muslim permitted to marry a polytheist woman, nor prohibited a polytheist from owning a Muslim slave. Thus Bilāl's case cannot be cited as evidence.

وَأَمَّا أَمْرُ سَلْمَانَ فَكَانَ بِالْمَدِينَةِ وَكَانَ مَمْلُوكًا لِرَجُلٍ مِنْ بَنِي قُرَيْظَةَ، وَهُمْ مُمْتَنِعُونَ لَا يَجْرِي عَلَيْهِمْ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ هُمْ فِي حُصُونِهِمْ مَالِكُونَ لِأَنْفُسِهِمْ، وَكَانَ إِسْلَامُ سَلْمَانَ - رَضِيَ اللَّهُ عَنْهُ - بِلَا خِلَافٍ قَبْلَ الْخَنْدَقِ، وَهُوَ أَوَّلُ مَشَاهِدِهِ، وَهَلَاكُ بَنِي قُرَيْظَةَ وَقَتْلُهُمْ، وَحِصَارُهُمْ، بَعْدَ الْخَنْدَقِ بِلَا خِلَافٍ مِنْ أَحَدٍ.

L15708–15709

As for the matter of Salmān—may Allah be pleased with him—he was in Medina, enslaved to a man from the Banū Qurayẓah, who were resistant and not under the jurisdiction of the Messenger of Allah—may Allah bless him and grant him peace—rather, they remained in their fortresses, retaining autonomy. His acceptance of Islam occurred unquestionably before the Battle of the Trench, which marked the first battle he participated in. The annihilation, killing, and siege of the Banū Qurayẓah occurred after the Trench without any disagreement from anyone.

وَمِنْ الْبُرْهَانِ الْقَاطِعِ عَلَى أَنَّ مِلْكَ سَيِّدِهِ لَهُ بَطَلَ عَنْهُ بِإِسْلَامِهِ أَنَّهُ كَانَ مُكَاتَبًا لَهُ بِلَا شَكٍّ وَمَا انْتَمَى قَطُّ إِلَى وَلَاءِ ذَلِكَ لُقُرَظِيِّ بَلْ انْتَمَى مَوْلَى اللَّهِ تَعَالَى وَرَسُولِهِ، وَهَذَا كُلُّهُ مُتَّفَقٌ عَلَيْهِ مِنْ الْمُؤَالِفِ، وَالْمُخَالِفِ، وَالصَّالِحِ وَالطَّالِحِ، فَلَوْ كَانَ مِلْكُهُ لَهُ صَحِيحًا وَكِتَابَتُهُ لَهُ صَحِيحَةً بِحَقِّ الْمِلْكِ لَكَانَ وَلَاؤُهُ لَهُ، وَلَوْ كَانَ وَلَاؤُهُ لَهُ لَمَا تَرَكَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْتَفِي عَنْ وَلَائِهِ - وَفِي هَذَا حُجَّةٌ لِمَنْ نَصَحَ نَفْسَهُ وَكِفَايَةٌ، وَكَيْفَ وَلَوْ

L15710

And among the decisive proofs that his master's ownership of him became invalid due to his embracing Islam is that he was undoubtedly a mukatab slave belonging to him, yet he never ascribed himself to the allegiance of that Qurayẓī. Rather, he ascribed himself as a client of Allah, the Exalted, and of His Messenger. All of this is agreed upon by both supporters and opponents, the righteous and the corrupt. If the master's ownership of him had been valid and his mukatab contract had been valid by right of ownership, his allegiance would have been to him. And if his allegiance had been to him, the Prophet—peace and blessings of Allah be upon him—would not have allowed him to renounce his allegiance. In this lies a sufficient argument for whoever reflects sincerely upon himself and a sufficiency. How could it be

otherwise? For if this proof had not been established, they would have no argument in the matter, as they have no evidence that he had commanded him after the revelation of the aforementioned verse. And success is from Allah, the Exalted.

لَمْ يَقُمْ هَذَا الْبُرْهَانُ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؟ لِأَنَّهُمْ لَا دَلِيلَ لَهُمْ عَلَى أَنَّهُ كَانَ أَمَرَهُ بَعْدَ نُزُولِ الْآيَةِ الْمَذْكُورَةِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L15711 Some of Mālik's companions uphold this opinion (as Ibn Shaʿbān cited from them) that the slave owned by a dhimmī is free the moment he converts to Islam.

وَبِهَذَا الْقَوْلِ يَقُولُ بَعْضُ أَصْحَابِ مَالِكٍ - ذَكَرَ ذَلِكَ ابْنُ شَعْبَانَ عَنْهُمْ أَنَّ عَبْدَ الذِّمِّيِّ سَاعَةَ يُسْلِمْ فَهُوَ حُرٌّ.

L15712 Ashhab said: The moment a ḥarbī slave converts to Islam, he is emancipated, whether he departs or remains.

وَقَالَ أَشْهَبُ: سَاعَةَ يُسْلِمُ عَبْدُ الْحَرْبِيِّ فَهُوَ حُرٌّ، خَرَجَ أَوْ لَمْ يَخْرُجْ.

L15713 And Malik said: If the umm walad (slave woman who has borne her master a child) of the Dhimmi converts to Islam, she is freed.

وَقَالَ مَالِكٌ: إذَا أَسْلَمَتْ أُمُّ وَلَدِ الذِّمِّيِّ فَهِيَ حُرَّةٌ.

L15714 Abu Hanifa and his companions said: If a slave from the abode of war embraces Islam while in the abode of war, he remains under the ownership of his [original] owner. If his owner sells or gifts him to a Muslim or disbeliever, he becomes free at the moment of sale or gift, and the sale and gift are rendered null and void.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إنْ أَسْلَمَ عَبْدُ الْحَرْبِيِّ فِي دَارِ الْحَرْبِ فَهُوَ بَاقٍ عَلَى مِلْكِهِ، فَإِنْ بَاعَهُ أَوْ وَهَبَهُ مِنْ مُسْلِمٍ، أَوْ كَافِرٍ، أَوْ لِمُسْلِمٍ، أَوْ كَافِرٍ فَهُوَ حُرٌّ سَاعَةَ بَيْعِهِ أَوْ هِبَتِهِ، وَبَطَلَ الْبَيْعُ وَالْهِبَةُ.

L15715 He said: If a harbī (non-Muslim from hostile territory) purchases a Muslim slave, he retains ownership over him. But when he takes him to the abode of war (dār al-ḥarb), the moment he enters it, he becomes free. Has anything more shocking or outrageous than this muddled reasoning ever been heard? These are opinions unknown to have been stated by anyone before his time.

قَالَ: فَإِنْ اشْتَرَى الْحَرْبِيُّ عَبْدًا مُسْلِمًا فَهُوَ عَلَى مِلْكِهِ، فَإِذَا حَمَلَهُ إلَى أَرْضِ الْحَرْبِ فَسَاعَةَ دُخُولِهِ إلَى أَرْضِ الْحَرْبِ فَهُوَ حُرٌّ - فَهَلْ سُمِعَ بِأَوْحَشَ أَوْ أَفْحَشَ مِنْ هَذَا التَّخْلِيطِ؟ وَهِيَ أَقْوَالٌ لَا يُعْرَفُ أَنَّ أَحَدًا قَالَهَا قَبْلَهُ.

L15716 As for Imam Malik: If he manumits his *umm walad* [a slave woman who has borne her master a child] upon her embracing Islam while she is his slave, he has contradicted himself, since he did not free male or female slaves upon their embracing Islam, and there is no distinction between these cases.

وَأَمَّا مَالِكٌ: فَإِذَا أَعْتَقَ أُمَّ وَلَدِهِ بِإِسْلَامِهَا، وَهِيَ أَمَةٌ لَهُ فَقَدْ نَاقَضَ، إذْ لَمْ يُعْتِقْ الْعَبْدَ وَالْأَمَةَ بِإِسْلَامِهِمَا، وَلَا فَرْقَ بَيْنَ ذَلِكَ.

L15717 It has been narrated to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who informed us that he heard Sulaymān ibn Mūsā saying: A non-Muslim cannot enslave a Muslim—and this is the same as our opinion, because the ruling entirely invalidates his enslavement of the Muslim.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنَا أَنَّهُ سَمِعَ سُلَيْمَانَ بْنَ مُوسَى يَقُولُ: لَا يَسْتَرِقُّ الْكَافِرُ الْمُسْلِمَ - وَهَذَا نَفْسُ قَوْلِنَا؛ لِأَنَّهُ أَبْطَلَ اسْتِرْقَاقَهُ إيَّاهُ جُمْلَةً.

L15718–15719 Ibn Jurayj said: Ibn Shihab was asked about the Christian's *umm walad*

who embraced Islam. Ibn Shihab replied: Islam separates them, and she is freed.

قَالَ ابْنُ جُرَيْجٍ: وَسُئِلَ ابْنُ شِهَابٍ عَنْ أُمِّ وَلَدِ النَّصْرَانِيِّ أَسْلَمَتْ؟ فَقَالَ ابْنُ شِهَابٍ: يُفَرِّقُ الْإِسْلَامُ بَيْنَهُمَا وَتَعْتِقُ.

L15720 Ibn Jurayj said: She is not to be freed until her owner is invited to Islam. If he refuses, she is to be freed.

قَالَ ابْنُ جُرَيْجٍ: لَا تَعْتِقُ حَتَّى يُدْعَى هُوَ إِلَى الْإِسْلَامِ، فَإِنْ أَبَى عَتَقَتْ.

L15721 Abu Muhammad said: Each of them has made her emancipation obligatory, and there is no justification for delaying the presentation of Islam to him.

قَالَ أَبُو مُحَمَّدٍ: كِلَاهُمَا قَدْ أَوْجَبَ عِتْقَهَا، وَلَا مَعْنَى لِتَأَنِّي عَرْضِ الْإِسْلَامِ عَلَيْهِ.

L15722 And through the chain of Ibn Abī Shaybah, Maʿn ibn ʿĪsā narrated to us from Ibn Abī Dhi'b from al-Zuhrī, who said: The Sunnah has decreed that it is not permissible for a disbeliever to enslave a Muslim.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مَعْنُ بْنُ عِيسَى عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ قَالَ: مَضَتْ السُّنَّةُ أَنْ لَا يَسْتَرِقَّ كَافِرٌ مُسْلِمًا.

L15723 From the narration of Abd al-Razzaq through Ma'mar from Amr ibn Maymun, who said: Umar ibn Abd al-Aziz decreed regarding slaves of protected non-Muslims who embrace Islam that they must be sold and not left to be re-enslaved by their owners. The proceeds from their sale shall be given to them. If you apprehend someone who, after prior notice from you, enslaves any captives [held by Muslims] from among those who have embraced Islam and performed the prayer, you must free those captives.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ مَيْمُونٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِيمَنْ أَسْلَمَ مِنْ رَقِيقِ أَهْلِ الذِّمَّةِ أَنْ يُبَاعُوا وَلَا يُتْرَكُونَ يَسْتَرِقُّونَهُمْ، وَيُدْفَعُ أَثْمَانُهُمْ إلَيْهِمْ، فَمَنْ قَدَرْت عَلَيْهِ بَعْدَ تَقَدُّمِك إلَيْهِ اسْتَرَقَّ شَيْئًا مِنْ سَبْيِ الْمُسْلِمِينَ مِمَّنْ قَدْ أَسْلَمَ وَصَلَّى فَأَعْتِقْهُ.

L15724 From the chain of Abd al-Razzaq, from Ibn Jurayj, who said: A certain man from our land reported to me that a Christian emancipated a Muslim. Umar ibn Abd al-Aziz said: "Pay him his monetary value from the public treasury, and his patronage rights belong to the Muslims."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي بَعْضُ أَهْلِ أَرْضِنَا أَنَّ نَصْرَانِيًّا أَعْتَقَ مُسْلِمًا فَقَالَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَعْطُوهُ قِيمَتَهُ مِنْ بَيْتِ الْمَالِ، وَوَلَاؤُهُ لِلْمُسْلِمِينَ.

L15725 Abu Muhammad stated: He deemed his manumission for him as non-effective and ruled that his allegiance belonged to the Muslims. This is the explicit text of our opinion. As for giving him the slave's value from the public treasury, we do not uphold this, for disbelievers have no right to the public treasury of Muslims.

قَالَ أَبُو مُحَمَّدٍ: قَدْ رَأَى عِتْقَهُ لَهُ غَيْرَ نَافِذٍ وَرَأَى وَلَاءَهُ لِلْمُسْلِمِينَ وَهَذَا هُوَ نَصُّ قَوْلِنَا، وَأَمَّا إعْطَاؤُهُ قِيمَتَهُ مِنْ بَيْتِ الْمَالِ فَلَا نَقُولُ بِهَذَا: فَإِنَّهُ لَا حَقَّ لِلْكُفَّارِ فِي بَيْتِ مَالِ الْمُسْلِمِينَ.

[مَسْأَلَةٌ مِنْ سُبِيَ مِنْ أَهْلِ الْحَرْبِ مِنْ الرِّجَالِ وَلَهُ زَوْجَةٌ]

L15726 **A legal question regarding a male captive from the people of war who has a wife.**

٩٤٤ - مَسْأَلَةٌ:

L15727 944 - Issue:

وَمَنْ سُبِيَ مِنْ أَهْلِ الْحَرْبِ مِنَ الرِّجَالِ وَلَهُ زَوْجَةٌ، أَوْ مِنَ النِّسَاءِ وَلَهَا زَوْجٌ فَسَوَاءٌ سُبِيَ مَعَهَا، أَوْ لَمْ يُسْبَ مَعَهَا، وَلَا سُبِيَتْ مَعَهُ فَهُمَا عَلَى زَوْجِيَّتِهِمَا فَإِنْ أَسْلَمَتْ انْفَسَخَ نِكَاحُهَا حِينَ تُسْلِمُ لِمَا قَدَّمْنَا

L15728 If a man from the enemy combatants who has a wife, or a woman who has a husband, is taken captive—whether he was captured with her, without her, or she was not captured with him—the two spouses remain bound in their marriage. If the woman converts to Islam, her marriage is annulled at the moment of her conversion, as we have previously established.

وَأَمَّا بَقَاءُ الزَّوْجِيَّةِ فَلِأَنَّ نِكَاحَ أَهْلِ الشِّرْكِ صَحِيحٌ قَدْ أَقَرَّهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ، وَلَمْ يَأْتِ نَصٌّ بِأَنَّ سِبَاءَهُمَا، أَوْ سَبَاءَ أَحَدِهِمَا يَفْسَخُ نِكَاحَهُمَا.

L15729 As for the continuation of the marriage, this is because the marriage of polytheists remains valid—as the Messenger of Allah (peace be upon him) affirmed it for them—and no textual evidence exists indicating that the enslavement of both spouses, or either spouse, nullifies their marriage.

فَإِنْ قِيلَ: فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] قُلْنَا: نَعَمْ، إِذَا أَسْلَمَتْ حَلَّتْ لِسَيِّدِهَا الْمُسْلِمِ، وَلَوْ كَانَتْ هَذِهِ الْآيَةُ عَلَى عُمُومِهَا لَكَانَ مَنْ لَهُ أَمَةٌ نَاكِحٌ تَحِلُّ لَهُ؛ لِأَنَّهَا مِلْكُ يَمِينِهِ، وَهَذَا مَا لَا يَقُولُهُ الْحَاضِرُونَ مِنْ خُصُومِنَا.

L15730 If it is said: "But Allah the Exalted has stated: {And chaste free women are forbidden to you except those whom your right hands possess} [Quran 4:24]," we respond: Yes, if she converts to Islam, she becomes lawful for her Muslim master. Were this verse to apply according to its general meaning, then anyone owning a female slave married to another would find her lawful for him, since she is among those whom his right hand possesses; yet this is a position none of those present among our opponents uphold.[23]

وَقَدْ قَالَ بِهِ ابْنُ عَبَّاسٍ وَغَيْرُهُ: مَنِ ابْتَاعَ أَمَةً ذَاتَ زَوْجٍ فَبَيْعُهَا طَلَاقُهَا - وَلَا نَقُولُ بِهَذَا، لِمَا سَنَذْكُرُهُ فِي كِتَابِ النِّكَاحِ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ

L15731–15732 Ibn Abbas and others held the opinion that whoever purchases a slave woman with a husband, the sale itself results in her divorce. But we do not hold this opinion because of what we will mention in the Book of Nikah, God willing.

[مَسْأَلَةُ الْأَبَوَانِ الْكَافِرَانِ إِذَا أَسْلَمَ أَحَدهُمَا]

A Legal Issue Concerning Two Disbelieving Parents When One of Them Embraces Islam

٩٤٥٠ - مَسْأَلَةٌ:

945 – Issue:

وَأَيُّ الْأَبَوَيْنِ الْكَافِرَيْنِ أَسْلَمَ؟ فَكُلُّ مَنْ لَمْ يَبْلُغْ مِنْ أَوْلَادِهِمَا مُسْلِمٌ بِإِسْلَامِ مَنْ أَسْلَمَ مِنْهُمَا - الْأُمُّ أَسْلَمَتْ أَوْ الْأَبُ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ كُلِّهِمْ.

L15733 **A Legal Issue Concerning Two Disbelieving Parents When One of Them Embraces Islam**

L15734 945 – Issue:

L15735 Which of the two disbelieving parents embraced Islam? Every child of theirs who has not reached puberty is Muslim by the Islam of whichever of them converted—whether the mother or the father. This is the opinion of ʿUthmān al-Battī, al-Awzāʿī, al-Layth ibn Saʿd, al-Ḥasan ibn Ḥayyin, Abū Ḥanīfah, al-Shāfiʿī, and all their companions.

وَقَالَ مَالِكٌ، وَأَبُو سُلَيْمَانَ: لَا يَكُونُونَ مُسْلِمِينَ إِلَّا بِإِسْلَامِ الْأَبِ، لَا بِإِسْلَامِ الْأُمِّ.

L15736 Malik and Abu Sulayman said: They are not considered Muslims except

[23] **Qur'an references (L15730):** Qur'an 4:24 (An-Nisa).

through the father's Islam, not the mother's Islam.

L15737 Some jurists of Medina said: They do not become Muslims except through the mother's Islam. As for the father's Islam, then no; because they are dependent upon the mother, not the father, in freedom and slavery.

وَقَالَ بَعْضُ فُقَهَاءِ الْمَدِينَةِ: لَا يَكُونُونَ مُسْلِمِينَ إِلَّا بِإِسْلَامِ الْأُمِّ، وَأَمَّا بِإِسْلَامِ الْأَبِ فَلَا؛ لِأَنَّهُمْ تَبَعٌ لِلْأُمِّ فِي الْحُرِّيَّةِ، وَالرِّقِّ لَا لِلْأَبِ.

L15738 Abū Muḥammad said: We know of no valid argument at all for those who consider children Muslim solely based on the father's conversion. We ask them about their ruling regarding a child born to a Muslim woman through adultery under coercion – for they assert such a child is Muslim by her Islam, thereby abandoning their own position. They agree with us that if both parents embrace Islam, or one of them, while having sons and daughters who have indeed reached the age of men and women, those children remain upon their religion and cannot be compelled to accept Islam – this is our view, based on Allah's decree: {No soul bears the burden of another} [6:164]. A mature individual is legally accountable and bound by rulings pertaining to disbelief or dhimmi status, whereas a minor is not accountable, as we previously established. Mālik said: Yes, even if the child is a ḥazawwar (one nearing puberty) but has not yet reached maturity, he remains upon his religion.[24]

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لِمَنْ جَعَلَهُمْ بِإِسْلَامِ الْأَبِ خَاصَّةً مُسْلِمِينَ حُجَّةً أَصْلًا، وَنَسْأَلُهُمْ عَنْ قَوْلِهِمْ فِي ابْنِ الْمُسْلِمَةِ مِنْ زِنَا اسْتِكْرَاهٍ فَمِنْ قَوْلِهِمْ: إِنَّهُ مُسْلِمٌ بِإِسْلَامِهَا وَهَذَا تَرْكٌ مِنْهُمْ لِقَوْلِهِمْ، وَوَافَقُونَا أَنَّهُ إِنْ أَسْلَمَ الْأَبَوَانِ، أَوْ أَحَدُهُمَا، وَلَهُمَا بُنُونَ وَبَنَاتٌ قَدْ بَلَغُوا مَبْلَغَ الرِّجَالِ وَالنِّسَاءِ فَإِنَّهُمْ عَلَى دِينِهِمْ لَا يُجْبَرُونَ عَلَى الْإِسْلَامِ - وَبِهِ نَقُولُ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَالْبَالِغُ مُخَاطَبٌ قَدْ لَزِمَهُ حُكْمُ الْكُفْرِ أَوْ الذِّمَّةِ، وَلَيْسَ غَيْرُ الْبَالِغِ مُخَاطَبًا كَمَا قَدَّمْنَا قَالَ مَالِكٌ: نَعَمْ، وَلَوْ كَانَ الْوَلَدُ حَزَوَّرًا قَدْ قَارَبَ الْبُلُوغَ وَلَمْ يَبْلُغْ فَهُوَ عَلَى دِينِهِ.

L15739 Abū Muḥammad said: This is a grave error, for he has not attained puberty. Whoever has not attained puberty is subject to the rulings applicable to those who have not reached puberty, not those who have attained it—and success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ فَاحِشٌ؛ لِأَنَّهُ لَيْسَ بَالِغًا، وَمَا لَمْ يَكُنْ بَالِغًا فَحُكْمُهُ حُكْمُ مَنْ لَمْ يَبْلُغْ لَا مَنْ بَلَغَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L15740 As for those who analogize religion with freedom and slavery, the entire analogy is invalid. Allah the Exalted said: "So direct your face toward the religion as a Hanif - adhering to the natural disposition Allah has instilled in mankind at creation. There is no alteration to the creation of Allah. That is the upright religion, but most people do not know" [Ar-Rum 30:30].[25]

وَأَمَّا مَنْ قَاسَ الدِّينَ عَلَى الْحُرِّيَّةِ وَالرِّقِّ فَالْقِيَاسُ كُلُّهُ بَاطِلٌ قَالَ اللَّهُ تَعَالَى: {فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لا يَعْلَمُونَ} [الروم: ٣٠] .

L15741–15743 It is established that it is not permissible for anyone to alter the religion of Islam, nor should anyone be left who alters it except those whom Allah

فَصَحَّ أَنَّهُ لَا يَجُوزُ تَبْدِيلُ دِينِ الْإِسْلَامِ لِأَحَدٍ وَلَا يُتْرَكُ أَحَدٌ يُبَدِّلُهُ إِلَّا مَنْ أَمَرَ اللَّهُ تَعَالَى بِتَرْكِهِ عَلَى تَبْدِيلِهِ فَقَطْ، وَقَالَ تَعَالَى: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ

[24] **Qur'an references (L15738):** Qur'an 6:164 (Al-An'am).
[25] **Qur'an references (L15740):** Qur'an 30:30 (Ar-Rum).

the Exalted has commanded to be left upon their changing it only. Allah the Exalted said: “Whoever seeks a religion other than Islam, it will never be accepted from him” [Āl ʿImrān: 85]. Thus, it is established that no religion other than Islam may be accepted in this world or the Hereafter from anyone, except those whom Allah has commanded to accept their faith and sanctioned it for them.[26]

L15744 And through the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Abu Muʿawiyah narrated from Al-Aʿmash from Abu Salih from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said, “No child is born except upon this religion until he expresses himself.” Thus, it is established that no one is born except upon Islam until he expresses himself. Therefore, whoever Allah the Exalted permits to affirm his departure from Islam—the religion he was born upon—we acknowledge him, and whoever He does not permit, we do not acknowledge his adherence to anything other than Islam.

L15745 And through the chain of Muslim: Ḥājib ibn al-Walīd narrated to us, Muḥammad ibn Ḥarb from al-Zubaydī from al-Zuhrī, who informed me that Saʿīd ibn al-Musayyab reported from Abū Hurayrah, who said: The Messenger of Allāh (peace and blessings of Allāh be upon him) said: “No child is born except upon the innate monotheistic disposition. It is his parents who make him a Jew, a Christian, or a Magian, just as an animal gives birth to a sound offspring. Do you find in it any defect?”

L15746 Abu Muhammad said: Thus, it is established that none remain in opposition to Islam except only those whose parents jointly agreed to raise him as a Jew, Christian, or Zoroastrian. If either parent embraces Islam, and his parents do not raise him as a Jew, Christian, or Zoroastrian, he remains upon what he was born upon—Islam—necessarily, by the explicit text of the Quran and Sunnah.

L15747 And indeed, some people have erred concerning this verse and these reports, and it is clear, and it is the covenant that Allah the Exalted made with the souls when He created them, as He the Exalted said: “And when your Lord

[26] **Qur’an references (L15741):** Qur’an 3:85 (Ali ’Imran); Qur’an 40:43 (Ghafir).

مِنْهُ} [آل عمران: ٨٥] ، فَصَحَّ أَنَّهُ لَا يَجُوزُ أَنْ يُقْبَلَ فِي الدُّنْيَا وَلَا فِي الْآخِرَةِ دِينٌ مِنْ أَحَدٍ غَيْرَ دِينِ الْإِسْلَامِ إِلَّا مَنْ أَمَرَ اللَّهُ تَعَالَى بِأَنْ يُقْبَلَ مِنْهُ وَيُقَرَّ عَلَيْهِ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا مِنْ مَوْلُودٍ يُولَدُ إِلَّا عَلَى هَذِهِ الْمِلَّةِ حَتَّى يُبِينَ عَنْهُ لِسَانُهُ» فَصَحَّ أَنَّهُ لَا يَكُونُ أَحَدٌ إِلَّا عَلَى الْإِسْلَامِ حَتَّى يُعَبِّرَ عَنْ نَفْسِهِ، فَمَنْ أَذِنَ اللَّهُ تَعَالَى فِي إقْرَارِهِ عَلَى مُفَارَقَةِ الْإِسْلَامِ الَّذِي وُلِدَ عَلَيْهِ أَقْرَرْنَاهُ، وَمَنْ لَا لَمْ نُقِرَّهُ عَلَى غَيْرِ الْإِسْلَامِ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا حَاجِبُ بْنُ الْوَلِيدِ نَا مُحَمَّدُ بْنُ حَرْبٍ عَنْ الزُّبَيْدِيِّ عَنْ الزُّهْرِيِّ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا مِنْ مَوْلُودٍ إِلَّا يُولَدُ عَلَى الْفِطْرَةِ أَبَوَاهُ يُهَوِّدَانِهِ وَيُنَصِّرَانِهِ وَيُمَجِّسَانِهِ كَمَا تُنْتَجُ الْبَهِيمَةُ بَهِيمَةً جَمْعَاءَ هَلْ تُحِسُّ فِيهَا مِنْ جَدْعَاءَ» .

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّهُ لَا يَتْرُكُ أَحَدٌ عَلَى مُخَالَفَةِ الْإِسْلَامِ إِلَّا مَنْ اتَّفَقَ أَبَوَاهُ عَلَى تَهْوِيدِهِ، أَوْ تَنْصِيرِهِ، أَوْ تَمْجِيسِهِ فَقَطْ، فَإِذَا أَسْلَمَ أَحَدُهُمَا فَلَمْ يُمَجِّسْهُ أَبَوَاهُ، وَلَا نَصَّرَاهُ، وَلَا هَوَّدَاهُ فَهُوَ بَاقٍ عَلَى مَا وُلِدَ عَلَيْهِ مِنْ الْإِسْلَامِ وَلَا بُدَّ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ.

وَقَدْ وَهَلَ قَوْمٌ فِي هَذِهِ الْآيَةِ وَهَذِهِ الْأَخْبَارِ وَهِيَ بَيِّنَةٌ وَهِيَ الْعَهْدُ الَّذِي أَخَذَهُ اللَّهُ تَعَالَى عَلَى الْأَنْفُسِ حِينَ خَلَقَهَا كَمَا قَالَ تَعَالَى: {وَإِذْ أَخَذَ رَبُّكَ مِنْ بَنِي آدَمَ مِنْ ظُهُورِهِمْ

took from the children of Adam—from their loins—their descendants and made them testify against themselves, [saying], 'Am I not your Lord?' They said, 'Yes, we testify'—lest you should say on the Day of Resurrection, 'Indeed, we were unaware of this.'" [Al-A'raf 7:172][27]

L15748 The statements of ʿAṭāʾ differed regarding this matter. At times, he stated in accordance with our opinion: He is a Muslim by virtue of whichever of his two parents embraced Islam.

L15749 And on one occasion he said: They are Muslims by virtue of their mother's embracing Islam, not their father's.

L15750–15751 And once he said: "When a minor child of theirs dies, which of the two [parents] embraced Islam [first], so they both inherit jointly from the deceased child? And their minor children inherit from them [the parents]."

L15752 All these statements have been reported to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj from him; it has been reported to us from Shuʿbah from al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān that both of them stated regarding a minor when one of his parents is Muslim, then he dies: the Muslim inherits him, and the funeral prayer is performed for him.

L15753 And from the narration of Maʾmar on the authority of ʿAmr and al-Mughīrah: ʿAmr narrated from al-Ḥasan, while al-Mughīrah narrated from Ibrāhīm al-Nakhaʿī. They both said regarding two Christians who had young children together, then one of them embraced Islam: "The Muslim parent is the most entitled of the two to them. He inherits from them and they inherit from him."

L15754 Al-Awzaʾi said: If the grandfather or uncle of a minor embraces Islam, the child becomes Muslim by the Islam of whichever of them embraces it. Sulayman ibn Musa said: The established ruling among our predecessors, which is acted upon without doubt and which we follow now, is that when Christian parents have minor children and the mother embraces Islam, she inherits them according to the Book of Allah (the Quran), and what remains belongs to the Muslims. If both parents are Christian while the child is a

ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَى أَنْفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى شَهِدْنَا أَنْ تَقُولُوا يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ} [الأعراف: ١٧٢]

وَقَدْ اخْتَلَفَ قَوْلُ عَطَاءٍ فِي هَذَا. فَمَرَّةً قَالَ كَقَوْلِنَا: إِنَّهُ مُسْلِمٌ بِإِسْلَامِ أَيِّ أَبَوَيْهِ أَسْلَمَ.

وَمَرَّةً قَالَ: هُمْ مُسْلِمُونَ بِإِسْلَامِ أُمِّهِمْ لَا بِإِسْلَامِ أَبِيهِمْ.

وَمَرَّةً قَالَ: أَيُّهُمَا أَسْلَمَ وَرِثَا جَمِيعًا مَنْ مَاتَ مِنْ صِغَارِ وَلَدِهِمَا وَوَرِثَهُمَا صِغَارُ وَلَدِهِمَا.

رُوِّينَا هَذِهِ الْأَقْوَالَ كُلَّهَا عَنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْهُ - رُوِّينَا عَنْ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُمَا قَالَا جَمِيعًا فِي الصَّغِيرِ يَكُونُ أَحَدُ أَبَوَيْهِ مُسْلِمًا فَيَمُوتُ: إِنَّهُ يَرِثُهُ الْمُسْلِمُ وَيُصَلَّى عَلَيْهِ.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ عَمْرٍو وَالْمُغِيرَةِ قَالَ عَمْرٌو: عَنِ الْحَسَنِ، وَقَالَ الْمُغِيرَةُ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَا جَمِيعًا فِي نَصْرَانِيَّيْنِ بَيْنَهُمَا وَلَدٌ صِغَارٌ فَأَسْلَمَ أَحَدُهُمَا: إِنَّ أَوْلَاهُمَا بِهِمُ الْمُسْلِمُ يَرِثُهُمْ وَيَرِثُونَهُ.

وَقَالَ الْأَوْزَاعِيُّ: إِنْ أَسْلَمَ جَدُّ الصَّغِيرِ، أَوْ عَمُّهُ فَهُوَ مُسْلِمٌ بِإِسْلَامِ أَيِّهِمَا أَسْلَمَ، وَقَالَ سُلَيْمَانُ بْنُ مُوسَى: الْأَمْرُ فِيمَا مَضَى فِي أَوَّلِينَا الَّذِي يُعْمَلُ بِهِ وَلَا يُشَكُّ فِيهِ وَنَحْنُ عَلَيْهِ الْآنَ أَنَّ النَّصْرَانِيَّيْنِ بَيْنَهَا وَلَدٌ صِغَارٌ فَأَسْلَمَتِ الْأُمُّ وَرِثَتْهُ كِتَابَ اللَّهِ تَعَالَى وَمَا بَقِيَ فَلِلْمُسْلِمِينَ، فَإِنْ كَانَ أَبَوَاهُ نَصْرَانِيَّيْنِ وَهُوَ صَغِيرٌ وَلَهُ أَخٌ مِنْ أُمٍّ مُسْلِمٍ، أَوْ أُخْتٌ مُسْلِمَةٌ وَرِثَهُ أَخُوهُ، أَوْ أُخْتُهُ كِتَابَ اللَّهِ، ثُمَّ كَانَ مَا بَقِيَ لِلْمُسْلِمِينَ. رُوِّينَا هَذَا عَنْهُ مِنْ طَرِيقِ

[27] **Qur'an references (L15747):** Qur'an 7:172 (Al-A'raf).

minor and he has a maternal Muslim brother or Muslim sister, his brother or sister inherits him according to the Book of Allah, then what remains belongs to the Muslims. This was narrated to us through Abd al-Razzaq from Ibn Jurayj, who heard Sulayman ibn Musa stating this to ʻAṭāʼ ibn Abī Rabāḥ. Sulayman was the jurist of the people of Syria who lived during the time of the eminent Tabi'un (successors). We do not consider the child a Muslim by the Islam of a grandfather, uncle, brother, or sister if both parents agree to make him Jewish, Christian, or Magian, as the Messenger of Allah—peace and blessings be upon him—said [as the Prophet said].

L15755 **Issue: The child of the disbelieving woman who is a Dhimmi or Harbi, born as a result of fornication or coerced intercourse.**

L15756 946 – Issue:

L15757 The child of a non-Muslim woman—whether a dhimmi or ḥarbī—born as a result of fornication or coercion is necessarily Muslim, because he is born into the Islamic faith as previously stated, and he has no two parents to remove him from Islam; thus, he is Muslim. And with Allah, the Exalted, is success.

L15758 **An issue regarding minors captured from among the people of war.**

L15759 947 – Issue:

L15760 As for a minor captured from the people of war, it makes no difference whether they were captured with both parents, one parent, or neither parent—they must remain Muslim. This is because the legal ruling pertaining to their parents no longer applies to them, and their master holds a stronger claim over them. Consequently, the parents' act of removing them from Islam—the faith upon which they were born—is rendered void.

L15761–15763 It has been narrated to us via the chain of ʻAbd al-Razzāq from Ibn Jurayj: Khallād informed us, saying: ʻAmr ibn Shuʻayb reported to me that ʻUmar

عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَنَّهُ سَمِعَ سُلَيْمَانَ بْنَ مُوسَى يَقُولُ هَذَا لِعَطَاءٍ، وَسُلَيْمَانُ فَقِيهُ أَهْلِ الشَّامِ أَدْرَكَ التَّابِعِينَ الْأَكَابِرَ. وَلَسْنَا نَرَاهُ مُسْلِمًا بِإِسْلَامِ جَدٍّ، وَلَا عَمٍّ، وَلَا أَخٍ، وَلَا أُخْتٍ، إِذَا اجْتَمَعَ أَبَوَاهُ عَلَى تَهْوِيدِهِ، أَوْ تَنْصِيرِهِ، أَوْ تَمْجِيسِهِ كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

[مَسْأَلَةٌ وَلَدُ الْكَافِرَةِ الذِّمِّيَّةِ أَوْ الْحَرْبِيَّةِ مِنْ زِنًا أَوْ إكْرَاهٍ]

٩٤٦ - مَسْأَلَةٌ:

وَوَلَدُ الْكَافِرَةِ الذِّمِّيَّةِ، أَوْ الْحَرْبِيَّةِ مِنْ زِنًا، أَوْ إكْرَاهٍ مُسْلِمٌ، وَلَا بُدَّ؛ لِأَنَّهُ وُلِدَ عَلَى مِلَّةِ الْإِسْلَامِ كَمَا ذَكَرْنَا وَلَا أَبَوَيْنِ لَهُ يُخْرِجَانِهِ مِنْ الْإِسْلَامِ فَهُوَ مُسْلِمٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقِ.

[مَسْأَلَةٌ مِنْ سُبِيَ مِنْ صِغَارِ أَهْلِ الْحَرْبِ]

٩٤٧ - مَسْأَلَةٌ:

وَمَنْ سُبِيَ مِنْ صِغَارِ أَهْلِ الْحَرْبِ فَسَوَاءٌ سُبِيَ مَعَ أَبَوَيْهِ أَوْ مَعَ أَحَدِهِمَا، أَوْ دُونَهُمَا هُوَ مُسْلِمٌ، وَلَا بُدَّ؛ لِأَنَّ حُكْمَ أَبَوَيْهِ قَدْ زَالَ عَنْ النَّظَرِ لَهُ، وَصَارَ سَيِّدُهُ أَمْلَكَ بِهِ، فَبَطَلَ إخْرَاجُهُمَا لَهُ عَنْ الْإِسْلَامِ الَّذِي وُلِدَ عَلَيْهِ.

ibn al-Khaṭṭāb would not permit any Jew or Christian to raise their child as Jewish, nor... He grants him victory in the dominion of the Arabs - this being the explicit text of our position, with no dissenting opinion known among the Companions (may Allah be pleased with them) concerning this matter. It is the view of Sufyan al-Thawri, al-Awzaʿi, and al-Muzani - success is by Allah, the Exalted.

A juristic case: He found buried wealth (rikāz) from the property buried by a disbeliever not under protection (non-dhimmi).

948. Legal Issue:

Whoever finds a treasure buried by a disbeliever not under protection (dhimma)—whether the burier belonged to the era of ignorance (Jāhiliyya) or otherwise—may lawfully keep four-fifths of it. He must distribute the fifth portion where the fifth of war spoils is allocated. Nothing from this treasure is given to the ruling authority unless it is a just Imam, in which case only the fifth is given to him. This ruling applies equally whether the treasure is found in Arab wilderness, tax land, conquered territory, treaty land, one's own home, a Muslim's house, a protected non-Muslim's dwelling, or any other location—the ruling remains consistent as outlined. It also applies whether the finder is a free person, slave, or woman. Allah Almighty said: "Know that whatever you acquire as spoils, one-fifth belongs to Allah and the Messenger" [Al-Anfāl:41], the verse. He the Exalted also said: "So consume what you have taken as spoils, lawful and wholesome" [Al-Anfāl:69]. The property of a disbeliever not under protection constitutes spoils for whoever finds it.[28]

It has been reported to us through the chain of Mālik from Ibn Shihāb from Saʿīd ibn al-Musayyib from Abū Hurayrah that the Messenger of Allāh—may Allāh's blessings and peace be upon him—said: "And in the rikāz (buried treasure) is the khums (one-fifth)."

[28] **Qur'an references (L15766):** Qur'an 8:41 (Al-Anfal); Qur'an 8:69 (Al-Anfal).

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنَا خَلَّادٌ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ شُعَيْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ لَا يَدَعُ يَهُودِيًّا، وَلَا نَصْرَانِيًّا يُهَوِّدُ وَلَدَهُ، وَلَا يُنَصِّرُهُ فِي مِلْكِ الْعَرَبِ - وَهَذَا نَصُّ قَوْلِنَا، وَلَا نَعْلَمُ لَهُ مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْمُزَنِيِّ - بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ وَجَدَ كَنْزًا مِنْ دَفْنِ كَافِرٍ غَيْرِ ذِمِّيٍّ]

٩٤٨ - مَسْأَلَةٌ:

وَمَنْ وَجَدَ كَنْزًا مِنْ دَفْنِ كَافِرٍ غَيْرِ ذِمِّيٍّ - جَاهِلِيًّا كَانَ الدَّافِنُ، أَوْ غَيْرَ جَاهِلِيٍّ - فَأَرْبَعَةُ أَخْمَاسِهِ لَهُ حَلَالٌ، وَيَقْسِمُ الْخُمُسَ حَيْثُ يُقْسَمُ خُمُسُ الْغَنِيمَةِ، وَلَا يُعْطِي لِلسُّلْطَانِ مِنْ كُلِّ ذَلِكَ شَيْئًا إلَّا إنْ كَانَ إمَامَ عَدْلٍ فَيُعْطِيه الْخُمُسَ فَقَطْ، وَسَوَاءٌ وَجَدَهُ فِي فَلَاةٍ فِي أَرْضِ الْعَرَبِ، أَوْ فِي أَرْضِ خَرَاجٍ، أَوْ أَرْضِ عَنْوَةٍ، أَوْ أَرْضِ صُلْحٍ، أَوْ فِي دَارِهِ، أَوْ فِي دَارِ مُسْلِمٍ، أَوْ فِي دَارِ ذِمِّيٍّ، أَوْ حَيْثُ مَا وَجَدَهُ حُكْمُهُ سَوَاءٌ كَمَا ذَكَرْنَا، وَسَوَاءٌ وَجَدَهُ حُرٌّ، أَوْ عَبْدٌ، أَوْ امْرَأَةٌ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ} [الأنفال: ٤١] الْآيَةَ، وَقَالَ تَعَالَى: {فَكُلُوا مِمَّا غَنِمْتُمْ حَلَالا طَيِّبًا} [الأنفال: ٦٩] ، وَمَالُ الْكَافِرِ غَيْرِ الذِّمِّيِّ غَنِيمَةٌ لِمَنْ وَجَدَهُ.

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَفِي الرِّكَازِ الْخُمُسُ»

وَمِنْ حَدِيثٍ رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نَا شُعْبَةُ حَدَّثَنِي إبْرَاهِيمُ بْنُ مُحَمَّدِ بْنِ الْمُنْتَشِرِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - " أَنَّ رَجُلًا قَالَ لَهَا: أَصَبْت كَنْزًا فَرَفَعْته إلَى السُّلْطَانِ فَقَالَتْ عَائِشَةُ: بِفِيك الْكَثْكَثُ " الْكَثْكَثُ التُّرَابُ وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَلَا يَكُونُ وُجُودُهُ فِي أَرْضٍ مُمْتَلَكَةٍ لِمُسْلِمٍ، أَوْ ذِمِّيٍّ مُوجِبًا لِمِلْكِ صَاحِبِ الْأَرْضِ لَهُ لِأَنَّهُ غَيْرُ الْأَرْضِ، فَلَا يَكُونُ مِلْكُ الْأَرْضِ مِلْكًا لِمَا فِيهَا مِنْ غَيْرِهَا مِنْ صَيْدٍ، أَوْ لُقَطَةٍ، أَوْ دَفِينَةٍ، أَوْ غَيْرِ ذَلِكَ.

L15768 And from a hadith we have narrated through the chain of Yahya ibn Sa'id al-Qattan: Shu'bah narrated to us, saying: Ibrahim ibn Muhammad ibn al-Muntashir related to me from his father from 'A'ishah, the Mother of the Believers—may Allah be pleased with her—that a man said to her: "I found a treasure and reported it to the ruler." 'A'ishah replied: "May your mouth be filled with dust!" Al-Kathkath means dust. Our position here aligns with the statement of Abu Sulayman. The presence of such treasure in land owned by a Muslim or a protected non-Muslim does not grant ownership rights to the landholder, for it is distinct from the land itself. Ownership of land does not entail ownership of what lies within it apart from the soil—whether game, found property, buried treasure, or anything else.

وَقَالَ الشَّافِعِيُّ كَقَوْلِنَا، إلَّا أَنَّهُ قَالَ: إنْ ادَّعَى صَاحِبُ الْأَرْضِ الَّتِي وُجِدَ فِيهَا أَنَّهُ قَدْ وَجَدَهُ ثُمَّ أَقَرَّهُ فَهُوَ لَهُ - وَهَذَا لَيْسَ بِشَيْءٍ لِأَنَّهَا دَعْوَى لَا بَيِّنَةَ لَهُ عَلَيْهَا فَهُوَ لِمَنْ وَجَدَهُ، لِأَنَّهُ فِي يَدِهِ وَهُوَ غَانِمُهُ إلَّا أَنْ يُوجَدَ أَثَرُ اسْتِخْرَاجِهِ، ثُمَّ رَدِّهِ فَيَكُونُ حِينَئِذٍ قَوْلُ صَاحِبِ الْأَرْضِ حَقًّا، وَأَمَّا إذَا وُجِدَ كَمَا وُضِعَ أَوَّلَ مَرَّةٍ فَكَذِبُ مُدَّعِيهِ ظَاهِرٌ بِلَا شَكٍّ.

L15769–15771 Al-Shafi'i maintained the same position as ours, except that he said: If the owner of the land where the lost property was found alleges that he discovered it and then acknowledges it, it belongs to him—but this holds no validity, for it is a claim without legal evidence to support it. It belongs to the one who found it, as it is in his possession and he is its rightful claimant unless there is a trace of its extraction and subsequent return. In that case, the landowner's claim becomes valid. However, if it is found as it was originally deposited, the claimant's dishonesty is incontrovertibly clear.

وَقَالَ مَالِكٌ: لَا يَكُونُ لِوَاجِدِهِ إلَّا أَنْ يَجِدَهُ فِي صَحَارَى أَرْضِ الْعَرَبِ فَهُوَ لَهُ بَعْدَ الْخُمُسِ، فَإِنْ وَجَدَهُ فِي أَرْضِ عَنْوَةٍ فَهُوَ كُلُّهُ لِبَقَايَا مُفْتَتِحِي تِلْكَ الْبِلَادِ، وَفِيهِ الْخُمُسُ؛ فَإِنْ وَجَدَهُ فِي أَرْضِ صُلْحٍ فَهُوَ كُلُّهُ لِأَهْلِ الصُّلْحِ، وَلَا خُمُسَ فِيهِ.

L15772 Malik said: A finder has no right to it unless he finds it in the deserts of Arab lands—in which case it belongs to him after deducting the khums. If he finds it in land seized by conquest, all of it belongs to the remaining descendants of the conquerors of those lands, and the khums is taken from it. If he finds it in land governed by a peace treaty, all of it belongs to the people of the peace treaty, and no khums is taken.

وَهَذَا خَطَأٌ ظَاهِرٌ مِنْ وُجُوهٍ: أَوَّلُهَا: أَنَّهُ أَسْقَطَ الْخُمُسَ عَمَّا وُجِدَ مِنْ ذَلِكَ فِي أَرْضِ صُلْحٍ، وَهَذَا خِلَافُ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَفِي الرِّكَازِ الْخُمُسُ» فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ أَرْضَ صُلْحٍ مِنْ غَيْرِهَا.

L15773 This is a manifest error for multiple reasons. The first: he neglected to apply the khums (one-fifth) to that which was found in treaty land (arḍ ṣulḥ), contradicting the statement of Allah's Messenger - peace be upon him - "In rikāz lies the khums." He - peace be upon him - applied it universally and did not specifically exclude treaty land from other lands.

L15774 The second [point] is that they only agreed to peace terms concerning what

they own—that is, what is in their possession—not what they do not own, nor what is not in their hands, nor what they do not recognize.

وَثَانِيهَا: أَنَّهُمْ إِنَّمَا صَالَحُوا عَلَى مَا يَمْلِكُونَهُ مِمَّا بِأَيْدِيهِمْ لَا عَلَى مَا لَا يَمْلِكُونَهُ وَلَا هُوَ بِأَيْدِيهِمْ وَلَا يَعْرِفُونَهُ.

L15775 The third is that if they were to own every buried treasure in the land they made peace over, it would logically follow that the Arabs who submitted to Islam over their lands would likewise own it. Thus, any buried treasure found therein would belong to those who embraced Islam in relation to that land—and this contradicts their stated position.

وَثَالِثُهَا: أَنَّهُمْ لَوْ مَلَكُوا كُلَّ رِكَازٍ فِي الْأَرْضِ الَّتِي صَالَحُوا عَلَيْهَا لَوَجَبَ أَنْ تَمْلِكَهُ أَيْضًا الْعَرَبُ الَّذِينَ أَسْلَمُوا عَلَى بِلَادِهِمْ فَيَكُونُ مَا وُجِدَ فِيهَا مِنْ رِكَازٍ لِلَّذِينَ أَسْلَمُوا عَلَى تِلْكَ الْأَرْضِ - وَهَذَا خِلَافُ قَوْلِهِمْ.

L15776 As for his statement regarding what is found in the land of ʻanwah (territory conquered by force) that it belongs to the heirs of the conquerors: this is erroneous. The conquerors of the land only own what they seized as spoils, not what they did not seize. Pre-Islamic buried wealth (rikāz) falls among what they neither seized, nor obtained, nor took possession of. Therefore, they have no right to it.

وَأَمَّا قَوْلُهُ: فِيمَا وُجِدَ فِي أَرْضِ الْعَنْوَةِ أَنَّهُ لِوَرَثَةِ الْمُفْتَتِحِينَ. فَخَطَأٌ لِأَنَّ الْمُفْتَتِحِينَ لِلْأَرْضِ إِنَّمَا يَمْلِكُونَ مَا غَنِمُوا، لَا مَا لَمْ يَغْنَمُوا، وَالرِّكَازُ مِمَّا لَمْ يَغْنَمُوا، وَلَا حَصَلُوا عَلَيْهِ، وَلَا أَخَذُوهُ، فَلَا حَقَّ لَهُمْ فِيهِ.

L15777 The utmost wonder is that they do not assign the land of *ʻanwah* (seized by force) as rightful ownership to the conquerors, while they seized it as spoils; then they assign the *rikāz* (buried treasures) within it as rightful ownership to themselves, even though they did not seize it as spoils.

وَالْعَجَبُ كُلُّهُ أَنَّهُمْ لَا يَجْعَلُونَ الْأَرْضَ حَقًّا لِلْمُفْتَتِحِينَ أَرْضَ الْعَنْوَةِ وَهُمْ غَنِمُوهَا ثُمَّ يَجْعَلُونَ الرِّكَازَ الَّذِي فِيهَا حَقًّا لَهُمْ وَهُمْ لَمْ يَغْنَمُوهُ.

L15778 The Hanafis said: It belongs to the finder, and the fifth is due from it. He may take the fifth if he is in need, unless he finds it in a settlement demarcated by a Muslim or in the land of war. If he finds it in a settlement demarcated by a Muslim, it belongs to the plot owner with the fifth due from it; if he finds it in the land of war after entering under safe conduct, all of it belongs to the enemy resident; if he finds it in an open wilderness within the land of war, all of it belongs to the finder with no fifth obligation upon him.

وَقَالَ الْحَنَفِيُّونَ: هُوَ لِوَاجِدِهِ وَعَلَيْهِ فِيهِ الْخُمُسُ، وَلَهُ أَنْ يَأْخُذَ الْخُمُسَ إِنْ كَانَ مُحْتَاجًا إِلَّا أَنْ يَجِدَهُ فِي دَارٍ اخْتَطَّهَا مُسْلِمٌ، أَوْ فِي دَارِ الْحَرْبِ، فَإِنَّهُ إِنْ وَجَدَهُ فِي دَارٍ اخْتَطَّهَا مُسْلِمٌ فَهُوَ لِصَاحِبِ الْخُطَّةِ وَفِيهِ الْخُمُسُ؛ وَإِنْ وَجَدَهُ فِي دَارِ حَرْبِيٍّ وَقَدْ دَخَلَهَا بِأَمَانٍ فَهُوَ كُلُّهُ لِلْحَرْبِيِّ، وَإِنْ وَجَدَهُ فِي صَحْرَاءَ فِي دَارِ الْحَرْبِ فَهُوَ كُلُّهُ لِوَاجِدِهِ وَلَا خُمُسَ عَلَيْهِ فِيهِ.

L15779–15780 This division is utterly corrupt and contrary to the command of Allah's Messenger—peace and blessings be upon him—who stated generally (peace be upon him) that one-fifth is due on buried wealth without specifying exceptions. This division was unknown to anyone before Abū Ḥanīfah, and it remains a baseless opinion despite existing narrations from the early gen-

وَهَذَا تَقْسِيمٌ فِي غَايَةِ الْفَسَادِ، وَخِلَافٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ فِي الرِّكَازِ الْخُمُسَ - فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ؛ وَلَا يُعْرَفُ هَذَا التَّقْسِيمُ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَهُوَ مَعَ ذَلِكَ قَوْلٌ بِلَا بُرْهَانٍ، وَفِيهِ عَنْ السَّلَفِ آثَارٌ. مِنْهَا: مَا رُوِّينَاهُ

erations. Among these is what we narrated through Ibn ʾUyaynah's chain from Ismāʾīl ibn Abī Khālid, from al-Shaʿbī: A man came to ʿAlī with fifteen hundred dirhams he found in a ruined structure in Sawād. ʿAlī said: "If you found it in an abandoned village whose land tax is maintained by an inhabited village, then it belongs to them. If its tax is not maintained by any village, then four-fifths of it are yours and one-fifth is ours. And I will make the entire amount lawful for you."

مِنْ طَرِيقِ ابْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ: أَنَّ عَلِيًّا أَتَاهُ رَجُلٌ بِأَلْفٍ وَخَمْسِمِائَةِ دِرْهَمٍ وَجَدَهَا فِي خَرِبَةٍ بِالسَّوَادِ، فَقَالَ عَلِيٌّ: إنْ كُنْت وَجَدْتَهَا فِي قَرْيَةٍ خَرِبَةٍ تَحْمِلُ خَرَاجَهَا قَرْيَةٌ عَامِرَةٌ فَهِيَ لَهُمْ، وَإِنْ كَانَتْ لَا تَحْمِلُ خَرَاجَهَا فَلَك أَرْبَعَةُ أَخْمَاسِهِ وَلَنَا خُمُسُهُ، وَسَأُطَيِّبُهُ لَك جَمِيعًا.

L15781 This is contrary to the opinion of the Hanafis and Malikis, because the Sawad was seized by conquest, not through a peace treaty, and it had been part of the abode of Islam during the era of Ali and long before that. Something we have narrated through Qatadah: Abu Musa found Daniel in Susa when he conquered it, with wealth alongside him. People would borrow from it for a fixed term, and when the term arrived and the borrower failed to repay, he was afflicted with leprosy. He wrote to Umar regarding this matter. Umar responded: Shroud him, embalm him, pray over him, and bury him as prophets are buried. Deposit the wealth in the public treasury of the Muslims. This ruling is sound, for it was not rikāz but rather known and visible property. It did not belong to the disbelievers' wealth to be subjected to khums tax and war booty; rather, it was the wealth of a prophet, thus belonging to the Muslims for their communal interests.

وَهَذَا خِلَافُ قَوْلِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، لِأَنَّ السَّوَادَ أُخِذَ عَنْوَةً لَا صُلْحًا، وَكَانَ فِي أَيَّامِ عَلِيٍّ دَارَ إسْلَامٍ، وَقَبْلَ ذَلِكَ بِدَهْرٍ، وَشَيْءٌ رُوِّينَاهُ مِنْ طَرِيقِ قَتَادَةَ: أَنَّ أَبَا مُوسَى وَجَدَ دَانْيَالَ بِالسُّوسِ إذْ فَتَحَهَا وَمَعَهُ مَالٌ إلَى جَنْبِهِ، كَانُوا يَسْتَقْرِضُونَ مِنْهُ مَا احْتَاجُوا إلَى أَجَلٍ مُسَمًّى، فَإِذَا جَاءَ ذَلِكَ الْأَجَلُ وَلَمْ يَرُدَّهُ الْمُسْتَقْرِضُ بَرِصَ فَكَتَبَ إلَى عُمَرَ بِذَلِكَ. فَكَتَبَ إلَيْهِ عُمَرُ: كَفِّنْهُ، وَحَنِّطْهُ، وَصَلِّ عَلَيْهِ، وَادْفِنْهُ كَمَا دُفِنَتْ الْأَنْبِيَاءُ وَاجْعَلْ الْمَالَ فِي بَيْتِ مَالِ الْمُسْلِمِينَ، وَهَذَا صَحِيحٌ، لِأَنَّهُ لَمْ يَكُنْ رِكَازًا، إنَّمَا كَانَ مَعْلُومًا ظَاهِرًا، وَلَمْ يَكُنْ مِنْ أَمْوَالِ الْكُفَّارِ فَيُخَمَّسَ وَيُغْنَمَ؛ بَلْ كَانَ مَالَ نَبِيٍّ فَهُوَ لِلْمُسْلِمِينَ فِي مَصَالِحِهِمْ.

L15782 Among them is a report from ʿUmar through the chain of Simāk ibn Ḥarb from Jarīr ibn Riyāḥ from his father: that they discovered a grave in Al-Madāʾin containing a deceased person wearing garments woven with gold, and with him was wealth. ʿAmmār ibn Yāsir wrote to ʿUmar about it, and ʿUmar replied: "Give it to them and do not strip it from them"—this is our position, not theirs. However, there is no mention of Khums; yet Khums remains obligatory according to both our view and theirs.

وَمِنْهَا: خَبَرٌ عَنْ عُمَرَ مِنْ طَرِيقِ سِمَاكِ بْنِ حَرْبٍ عَنْ جَرِيرِ بْنِ رِيَاحٍ عَنْ أَبِيهِ: أَنَّهُمْ أَصَابُوا قَبْرًا بِالْمَدَائِنِ، وَفِيهِ مَيِّتٌ عَلَيْهِ ثِيَابٌ مَنْسُوجَةٌ بِالذَّهَبِ، وَمَعَهُ مَالٌ؟ فَكَتَبَ فِيهِ عَمَّارُ بْنُ يَاسِرٍ إلَى عُمَرَ؟ فَكَتَبَ إلَيْهِ عُمَرُ أَعْطِهِمْ إيَّاهُ وَلَا تَنْزِعْهُ مِنْهُمْ - وَهَذَا قَوْلُنَا لَا قَوْلُهُمْ، إلَّا أَنَّهُ لَيْسَ فِيهِ ذِكْرُ خُمُسٍ، وَلَا بُدَّ مِنْ الْخُمُسِ عِنْدَنَا وَعِنْدَهُمْ.

L15783 A report from the chain of Hushaym from Mujālid from Al-Shaʿbī: A man found one thousand dinars buried outside the city and brought them to ʿUmar. ʿUmar took one-fifth of them—two hundred dinars—and gave him the remainder. Then ʿUmar began distributing the two hundred among the

وَخَبَرٌ مِنْ طَرِيقِ هُشَيْمٍ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ: أَنَّ رَجُلًا وَجَدَ أَلْفَ دِينَارٍ مَدْفُونَةً خَارِجَ الْمَدِينَةِ، فَأَتَى بِهَا عُمَرَ، فَأَخَذَ خُمُسَهَا مِائَتَيْ دِينَارٍ وَدَفَعَ إلَيْهِ الْبَاقِيَ؛ ثُمَّ جَعَلَ عُمَرُ يَقْسِمُ

Muslims present until a portion remained from it, which he gave to the finder. This is our opinion, except regarding the manner of the division of the fifth.

الْمِائَتَيْنِ بَيْنَ مَنْ حَضَرَ مِنْ الْمُسْلِمِينَ إلَى أَنْ فَضَلَ مِنْهَا فَضْلَةٌ فَدَفَعَهَا إلَى وَاجِدِهَا - وَهَذَا قَوْلُنَا، إلَّا فِي صِفَةِ قِسْمَتِهِ الْخُمُسَ.

L15784 And through the chain of Ibn Jurayj: that ʻAmr ibn Shuʻayb reported to him that a slave found a rikaz during the era of ʻUmar, so he manumitted him from a portion of it, gave him a share from it, and placed the remainder into the public treasury—though other scholars do not uphold this opinion. In our view, whether a free person or a slave finds the rikaz, the ruling remains one in our view, as we established previously.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ: أَنَّ عَمْرَو بْنَ شُعَيْبٍ أَخْبَرَهُ أَنَّ عَبْدًا وَجَدَ رِكْزَةً عَلَى عَهْدِ عُمَرَ فَأَعْتَقَهُ مِنْهَا، وَأَعْطَاهُ مِنْهَا، وَجَعَلَ سَائِرَهَا فِي بَيْتِ الْمَالِ - وَهُمْ لَا يَقُولُونَ بِهَذَا، وَسَوَاءٌ عِنْدَنَا وَجَدَ الرِّكَازَ حُرٌّ، أَوْ عَبْدٌ، الْحُكْمُ [عِنْدَنَا] وَاحِدٌ عَلَى مَا قَدَّمْنَا.

L15785–15786 We have been transmitted two accounts: One of them - through the chain of al-Zamʻī from his aunt Quraibah bint ʻAbd Allāh ibn Wahb, from her mother Karīmah bint al-Miqdād ibn al-Aswad, from Ḍubāʻah bint al-Zubayr ibn ʻAbd al-Muṭṭalib: "Al-Miqdād went out to relieve himself at Baqīʻ al-Khabkhabah, where a rat began pulling out dinar after dinar from a burrow, then brought out a red cloth—amounting to eighteen dinars. He took them and brought them to the Prophet (peace and blessings of Allah be upon him). The Messenger of Allah (peace and blessings of Allah be upon him) asked him: 'Did you reach into the burrow?' He replied: 'No.' The Messenger of Allah said: 'May Allah bless you in it.'" This account does not align with the position of any scholar we have mentioned, and its chain is obscure. Al-Zamʻī's narration from his aunt Quraibah—who is unknown—is problematic. It is plausible that those dinars were from the buried wealth of an unknown Muslim with no hope of identification; thus, in our view, they belong wholly to whoever finds them.

وَرُوِّينَا خَبَرَيْنِ: أَحَدُهُمَا - مِنْ طَرِيقِ الزَّمْعِيِّ عَنْ عَمَّتِهِ قُرَيْبَةَ بِنْتِ عَبْدِ اللَّهِ بْنِ وَهْبٍ عَنْ أُمِّهَا كَرِيمَةَ بِنْتِ الْمِقْدَادِ بْنِ الْأَسْوَدِ عَنْ ضُبَاعَةَ بِنْتِ الزُّبَيْرِ بْنِ عَبْدِ الْمُطَّلِبِ: «أَنَّ الْمِقْدَادَ خَرَجَ إلَى حَاجَتِهِ بِبَقِيعِ الْخَبْخَبَةِ فَإِذَا جُرَذٌ يُخْرِجُ مِنْ جُحْرٍ دِينَارًا بَعْدَ دِينَارٍ، ثُمَّ أَخْرَجَ خِرْقَةً حَمْرَاءَ فَكَانَتْ ثَمَانِيَةَ عَشَرَ دِينَارًا فَأَخَذَهَا وَحَمَلَهَا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هَلْ أَهْوَيْتَ الْجُحْرَ؟ قَالَ: لَا، قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بَارَكَ اللَّهُ لَكَ فِيهَا» وَهَذَا خَبَرٌ لَيْسَ مُوَافِقًا لِقَوْلِ أَحَدٍ مِمَّنْ ذَكَرْنَا وَإِسْنَادُهُ مُظْلِمٌ، الزَّمْعِيُّ عَنْ عَمَّتِهِ قُرَيْبَةَ وَهِيَ مَجْهُولَةٌ، وَلَعَلَّ تِلْكَ الدَّنَانِيرَ مِنْ دَفْنِ مُسْلِمٍ مَجْهُولٍ مَيْئُوسٍ عَنْ مَعْرِفَتِهِ فَهِيَ لِمَنْ وَجَدَهَا عِنْدَنَا كُلَّهَا.

L15787 Another report: Through the chain of Yahya ibn Maʻin from Wahb ibn Jarir ibn Hazim from his father from Muhammad ibn Ishaq from Yahya ibn Abi Bujayr: "Abdullah ibn Amr ibn al-As reported that he was with the Messenger of Allah (peace and blessings be upon him) during his journey to Ta'if. They passed by a grave, and the Messenger of Allah (peace and blessings be upon him) said: 'This is the grave of Abu Righal. He was protected by this sanctuary, but when he left, the punishment that befell his people struck him in this place, and he was buried here. A sign of this is that a golden branch was buried with him. If you dig it up, you will find it.' People hastened to

وَخَبَرٌ آخَرُ: مِنْ طَرِيقِ يَحْيَى بْنِ مَعِينٍ عَنْ وَهْبِ بْنِ جَرِيرِ بْنِ حَازِمٍ عَنْ أَبِيهِ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَحْيَى بْنِ أَبِي بُجَيْرٍ «عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي خُرُوجِهِ إلَى الطَّائِفِ فَمَرُّوا بِقَبْرٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هَذَا قَبْرُ أَبِي رِغَالٍ وَكَانَ بِهَذَا الْحَرَمِ يَدْفَعُ عَنْهُ، فَلَمَّا خَرَجَ أَصَابَتْهُ النِّقْمَةُ الَّتِي أَصَابَتْ قَوْمَهُ بِهَذَا الْمَكَانِ فَدُفِنَ فِيهِ، وَآيَةُ ذَلِكَ أَنَّهُ دُفِنَ مَعَهُ غُصْنٌ مِنْ

dig it up and found the branch." This narration is not authentic, as it is from Yahya ibn Abi Bujayr, a narrator of unknown status. Moreover, it contains no valid proof to support the opinion of any of those we previously mentioned. It merely concerns the exhumation of polytheists' graves exclusively. And with Allah alone is success.

A legal issue: The fifth of the buried treasure and the fifth of the spoils of war is to be divided into five shares.

949: Question

The fifth of mineral wealth and the fifth of spoils of war are divided into five shares, each allocated by the Imam to all endeavors that inherently embody welfare and righteousness for Muslims.

The second share is for Banū Hāshim and al-Muṭṭalib, the descendants of ʿAbd Manāf—the rich and poor among them, their males and females, young and old, righteous and sinful, are equal in it. There is no portion in it for their clients, nor their allies, nor the sons of their daughters [from non-lineage], nor for any of Allah's creation besides them, nor for a disbeliever among them.

And the third share is for the orphans from the Muslims, likewise.

The fourth share is allocated for the poor among the Muslims.

The fifth share is for the wayfarer among the Muslims.

We have already explained the poor and the wayfarer in the Book of Zakāh, rendering repetition unnecessary. The orphans are those whose fathers have died only; once they reach puberty, the designation of "orphan" is lifted from them, and they cease to be entitled to the share.

The proof of this is Allah the Exalted's statement: {And know that what-

ذَهَبٍ إِنْ أَنْتُمْ نَبَشْتُمْ عَنْهُ وَجَدْتُمُوهُ، فَابْتَدَرَهُ النَّاسُ فَوَجَدُوا الْغُصْنَ» وَهَذَا لَا يَصِحُّ، لِأَنَّهُ عَنْ يَحْيَى بْنِ أَبِي بُجَيْرٍ وَهُوَ مَجْهُولٌ، ثُمَّ لَا حُجَّةَ فِيهِ لِقَوْلِ أَحَدٍ مِمَّنْ ذَكَرْنَا، وَإِنَّمَا فِيهِ نَبْشُ قُبُورِ الْمُشْرِكِينَ فَقَطْ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ يُقْسَمُ خُمُسُ الرِّكَازِ وَخُمُسُ الْغَنِيمَةِ عَلَى خَمْسَةِ أَسْهُمٍ]

٩٤٩ - مَسْأَلَةٌ:

وَيُقْسَمُ خُمُسُ الرِّكَازِ وَخُمُسُ الْغَنِيمَةِ عَلَى خَمْسَةِ أَسْهُمٍ: فَسَهْمٌ يَضَعُهُ الْإِمَامُ حَيْثُ يَرَى مِنْ كُلِّ مَا فِيهِ صَلَاحٌ وَبِرٌّ لِلْمُسْلِمِينَ.

وَسَهْمٌ ثَانٍ لِبَنِي هَاشِمٍ، وَالْمُطَّلِبِ بَنِي عَبْدِ مَنَافٍ، غَنِيُّهُمْ وَفَقِيرُهُمْ، وَذَكَرُهُمْ وَأُنْثَاهُمْ، وَصَغِيرُهُمْ وَكَبِيرُهُمْ، وَصَالِحُهُمْ وَطَالِحُهُمْ فِيهِ سَوَاءٌ - وَلَا حَظَّ فِيهِ لِمَوَالِيهِمْ، وَلَا لِحُلَفَائِهِمْ، وَلَا لِبَنِي بَنَاتِهِمْ [مِنْ غَيْرِهِمْ] وَلَا لِأَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى سِوَاهُمْ، وَلَا لِكَافِرٍ مِنْهُمْ.

وَسَهْمٌ ثَالِثٌ لِلْيَتَامَى مِنْ الْمُسْلِمِينَ كَذَلِكَ أَيْضًا.

وَسَهْمٌ رَابِعٌ لِلْمَسَاكِينِ مِنْ الْمُسْلِمِينَ.

وَسَهْمٌ خَامِسٌ لِابْنِ السَّبِيلِ مِنْ الْمُسْلِمِينَ.

وَقَدْ فَسَّرْنَا الْمَسَاكِينَ، وَابْنَ السَّبِيلِ فِي كِتَابِ الزَّكَاةِ فَأَغْنَى عَنْ إعَادَةِ ذَلِكَ وَالْيَتَامَى هُمْ الَّذِينَ قَدْ مَاتَ آبَاؤُهُمْ فَقَطْ، فَإِذَا بَلَغُوا فَقَدْ سَقَطَ عَنْهُمْ اسْمُ الْيُتْمِ وَخَرَجُوا مِنْ السَّهْمِ.

ever you acquire as spoils of war, indeed one-fifth of it belongs to Allah, the Messenger, the near relatives, the orphans, the poor, and the wayfarer} [8:41], and His saying: {So that wealth does not circulate exclusively among the affluent from you} [59:7]. Thus, it is impermissible for anyone to deviate from the division ordained by Allah the Exalted as He explicitly decreed. Through the chain of Abu Dawud: Musaddad narrated to us, Hushaym narrated from Muhammad ibn Ishaq from al-Zuhri from Sa'id ibn al-Musayyab, who said: Jubayr ibn Mut'im informed me, stating: "On the day of Khaybar, the Messenger of Allah (peace and blessings of Allah be upon him) allocated the share designated for near relatives to Banu Hashim and Banu al-Muttalib, excluding Banu Nawfal and Banu 'Abd Shams." He said: "'Uthman ibn 'Affan and I went to the Messenger of Allah (peace and blessings of Allah be upon him) and said: 'O Messenger of Allah, we do not contest the superiority of Banu Hashim due to the noble position Allah has granted you among them. But why have you given our brothers from Banu al-Muttalib their share while excluding us, though our degree of kinship is the same?' The Messenger of Allah (peace and blessings of Allah be upon him) replied: 'We and Banu al-Muttalib do not separate in pre-Islamic ignorance or in Islam. We and they are one and the same'—and he interlaced his fingers to demonstrate." This is unequivocally clear, and its chain of transmission is of the highest authenticity. Ahmad ibn Muhammad al-Ṭalamankī narrated to us: Muhammad ibn Ahmad ibn Faraj narrated to us: Ibrāhīm ibn Ahmad ibn Firās al-'Abqasī al-Makkī narrated to us: Ahmad ibn Muhammad ibn Sālim al-Naysābūrī narrated to us: Isḥāq ibn Rāhawayh narrated to us: Wahb ibn Jarīr ibn Ḥāzim narrated to us: My father said: I heard Muhammad ibn Isḥāq say: al-Zuhrī narrated to me from Sa'īd ibn al-Musayyab from Jubayr ibn Mut'im from the Prophet (peace and blessings of Allah be upon him) a similar narration to the one we mentioned, which states: "The Messenger of Allah (peace and blessings of Allah be upon him) distributed among them a fifth of the fifth from the wheat, dates, and date pits."[29][30]

L15798 This is also a chain of transmission in the utmost authenticity and clarity; it

بُرْهَانُ ذَلِكَ قَوْله تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ} [الأنفال: ٤١] ، وَلِقَوْلِهِ تَعَالَى: {كَيْ لا يَكُونَ دُولَةً بَيْنَ الأَغْنِيَاءِ مِنْكُمْ} [الحشر: ٧] ، فَلَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْ قِسْمَةِ اللَّهِ تَعَالَى الَّتِي نَصَّ عَلَيْهَا: وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُسَدَّدٌ نَا هُشَيْمٌ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: أَخْبَرَنِي «جُبَيْرُ بْنُ مُطْعِمٍ قَالَ لَمَّا كَانَ يَوْمُ خَيْبَرَ وَضَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَهْمَ ذِي الْقُرْبَى فِي بَنِي هَاشِمٍ، وَبَنِي الْمُطَّلِبِ، وَتَرَكَ: بَنِي نَوْفَلٍ، وَبَنِي عَبْدِ شَمْسٍ، قَالَ: فَانْطَلَقْتُ أَنَا وَعُثْمَانُ بْنُ عَفَّانَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْنَا: يَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَنُو هَاشِمٍ لَا نُنْكِرُ فَضْلَهُمْ لِلْمَوْضِعِ الَّذِي وَضَعَكَ اللَّهُ بِهِ مِنْهُمْ، فَمَا بَالُ إخْوَانِنَا بَنِي الْمُطَّلِبِ أَعْطَيْتَهُمْ وَتَرَكْتَنَا، وَقَرَابَتُنَا وَاحِدَةٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّا وَبَنُو الْمُطَّلِبِ لَا نَفْتَرِقُ فِي جَاهِلِيَّةٍ وَلَا إسْلَامٍ، وَإِنَّمَا نَحْنُ وَهُمْ شَيْءٌ وَاحِدٌ - وَشَبَّكَ بَيْنَ أَصَابِعِهِ» وَهَذَا بَيِّنٌ جَلِيٌّ وَإِسْنَادٌ فِي غَايَةِ الصِّحَّةِ. نَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ فَرَجٍ نَا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ الْعَبْقَسِيُّ الْمَكِّيُّ نَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ نَا إِسْحَاقُ بْنُ رَاهْوَيْهِ نَا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ نَا أَبِي قَالَ: سَمِعْتُ مُحَمَّدَ بْنَ إِسْحَاقَ يَقُولُ: حَدَّثَنِي الزُّهْرِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ جُبَيْرِ بْنِ مُطْعِمٍ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - مِثْلَ الْحَدِيثِ الَّذِي ذَكَرْنَا، وَفِيهِ " قَالَ: «فَقَسَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ خُمُسَ الْخُمُسِ مِنْ الْقَمْحِ وَالتَّمْرِ وَالنَّوَى» .

وَهَذَا أَيْضًا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ وَالْبَيَانِ، وَهُوَ يُبَيِّنُ أَنَّ سَهْمَ اللَّهِ تَعَالَى، وَسَهْمَ رَسُولِهِ وَاحِدٌ، وَهُوَ خُمُسُ الْخُمُسِ.

[29] **Hadith references (L15797):** Sunan Abi Dawud 2980; Mishkat al-Masabih 4027.
[30] **Qur'an references (L15797):** Qur'an 8:41 (Al-Anfal); Qur'an 59:7 (Al-Hashr).

clarifies that the share of Allah, the Exalted, and the share of His Messenger are one, and it constitutes a fifth of the fifth.

L15799–15800 Yusuf ibn Abdullah al-Namari narrated to us; Abd al-Warith ibn Sufyan ibn Jabrun narrated to us; Qasim ibn Asbagh narrated to us; Ahmad ibn Zuhayr ibn Harb narrated to us; my father narrated to us; Rawh ibn Ubada narrated to us; Ali ibn Suwayd ibn Manjuf narrated to us; Abdullah ibn Buraidah al-Aslami narrated from his father: "The Messenger of Allah—may Allah bless him and grant him peace—sent Ali to Khalid to distribute the Khums. Ali selected a female captive from them, and the next morning his head was dripping. Khalid said to Buraidah: 'Do you not see what this man has done?' Buraidah said: 'I hated Ali, so I went to the Prophet of Allah—may Allah bless him and grant him peace. When I informed him, he said: 'Do you hate Ali?' I said: 'Yes.' He said: 'Then love him, for he has more in the Khums than that.'"

L15801 This is a chain of transmission of utmost authenticity and clarity, demonstrating that the apportioned share for each person among relatives with close kinship is precisely defined and quantifiable. Through the narration of Abu Dawud: 'Ubayd Allah ibn 'Umar ibn Maysarah reported to us, from 'Abd al-Rahman ibn Mahdi, from 'Abd Allah ibn al-Mubarak, from Yunus ibn Zayd, from al-Zuhri, who said: Sa'id ibn al-Musayyab informed me, narrating: Jubayr ibn Mut'im recounted that he and 'Uthman ibn 'Affan approached the Messenger of Allah (peace and blessings be upon him) to question his distribution of the Khums among Banu Hashim and Banu al-Muttalib. I said, "O Messenger of Allah, you granted portions to our brethren Banu al-Muttalib but allotted us nothing, though our degree of relation and theirs to you is identical?" The Prophet (peace and blessings be upon him) responded, "Banu Hashim and Banu al-Muttalib are indeed one and the same." Jubayr added, "He did not allocate any portion from that Khums to Banu 'Abd Shams or Banu Nawfal, as he did for Banu Hashim and Banu al-Muttalib." He further stated: Abu Bakr maintained the same method of distributing the Khums as

نَا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نَا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ بْنِ جَبْرُونَ نَا قَاسِمُ بْنُ أَصْبَغَ نَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نَا أَبِي نَا رَوْحُ بْنُ عُبَادَةَ نَا عَلِيُّ بْنُ سُوَيْدِ بْنِ مَنْجُوفٍ نَا عَبْدُ اللَّهِ بْنُ بُرَيْدَةَ الْأَسْلَمِيُّ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ عَلِيًّا إِلَى خَالِدٍ لِيَقْسِمَ الْخُمُسَ فَاصْطَفَى عَلِيٌّ مِنْهَا سَبِيَّةً فَأَصْبَحَ يَقْطُرُ رَأْسُهُ، فَقَالَ خَالِدٌ لِبُرَيْدَةَ: أَلَا تَرَى مَا صَنَعَ هَذَا الرَّجُلُ؟ قَالَ بُرَيْدَةَ: وَكُنْتُ أُبْغِضُ عَلِيًّا، فَأَتَيْتُ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا أَخْبَرْتُهُ، قَالَ: أَتُبْغِضُ عَلِيًّا؟ قُلْتُ: نَعَمْ، قَالَ: فَأَحِبَّهُ، فَإِنَّ لَهُ فِي الْخُمُسِ أَكْثَرَ مِنْ ذَلِكَ» .

وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ، وَفِي غَايَةِ الْبَيَانِ فِي أَنَّ نَصِيبَ كُلِّ امْرِئٍ مِنْ ذَوِي الْقُرْبَى مَحْدُودٌ مَعْرُوفُ الْقَدْرِ. وَمِنْ طَرِيقِ أَبِي دَاوُد نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ يُونُسَ بْنِ زَيْدٍ عَنْ الزُّهْرِيِّ (قَالَ) أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ أَخْبَرَنِي «جُبَيْرُ بْنُ مُطْعِمٍ أَنَّهُ جَاءَ هُوَ وَعُثْمَانُ بْنُ عَفَّانَ يُكَلِّمَانِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا قَسَمَ مِنْ الْخُمُسِ بَيْنَ بَنِي هَاشِمٍ، وَبَنِي الْمُطَّلِبِ فَقُلْتُ يَا رَسُولَ اللَّهِ قَسَمْتَ لِإِخْوَانِنَا بَنِي الْمُطَّلِبِ وَلَمْ تُعْطِنَا شَيْئًا، وَقَرَابَتُنَا وَقَرَابَتُهُمْ مِنْكَ وَاحِدَةٌ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنَّمَا بَنُو هَاشِمٍ وَبَنُو الْمُطَّلِبِ شَيْءٌ وَاحِدٌ، قَالَ جُبَيْرٌ: وَلَمْ يَقْسِمْ لِبَنِي عَبْدِ شَمْسٍ، وَلَا لِبَنِي نَوْفَلٍ مِنْ ذَلِكَ الْخُمُسِ كَمَا قَسَمَ لِبَنِي هَاشِمٍ وَبَنِي الْمُطَّلِبِ» ، قَالَ: وَكَانَ أَبُو بَكْرٍ يَقْسِمُ الْخُمُسَ نَحْوَ قَسْمِ رَسُولِ

the Messenger of Allah, except that he withheld the specific allocation the Prophet had granted to his own kinsfolk.[31]

L15802–15804 Umar ibn al-Khattab used to give them from it, as did Uthman after him. This is a chain of narration of the highest authenticity and clarity. As for Abu Bakr not giving them, it was like the Prophet—peace and blessings be upon him—who would give them from his own share. It was what he—peace be upon him—would return to them from his portion, and it was the need... The Muslims during the days of Abu Bakr were stricter. As for preventing them from the ordained right that Allah and His Messenger—peace be upon him—named for them, then Allah the Exalted protects Abu Bakr—may Allah be pleased with him—from that.

L15805 From the chain of Abu Dawud, from Abbas ibn Abd al-Azim al-Anbari, from Yahya Abi Bukayr, from Abu Ja'far—who is Abdullah ibn Abdullah al-Razi, the judge of Ray—from Mutarrif, who is the son of Tarif, from Abd al-Rahman ibn Abi Layla, who said: "I heard Ali say: 'The Messenger of Allah—peace and blessings be upon him—appointed me in charge of the fifth of the fifth. I placed it in its rightful places during the lifetime of the Messenger of Allah—peace and blessings be upon him—, the lifetime of Abu Bakr, and the lifetime of Umar. Then wealth was brought, and he summoned me saying: 'Take it." I replied: 'I do not want it." He said: 'Take it, for you [all] are more deserving of it." I said: 'We have no need of it." So he placed it in the public treasury.'"[32]

L15806 Abu Ja'far al-Razi is trustworthy. Abd al-Rahman bin Mahdi and other scholars narrated from him.

L15807 Through Muslim's narration: Ibn Abi 'Umar narrated to us; Sufyan ibn 'Uyaynah from Isma'il ibn Umayyah ibn 'Amr ibn Sa'id ibn al-'As, from Sa'id ibn Abi Sa'id al-Maqburi, from Yazid ibn Hurmuz, who said: "Ibn 'Abbas ordered him to write to Najdah. I wrote: 'You ask me about the close

[31] **Hadith references (L15801):** Sunan Abi Dawud 2978.
[32] **Hadith references (L15805):** Sunan Abi Dawud 2983.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرَ أَنَّهُ لَمْ يَكُنْ يُعْطِي قُرْبَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعْطِيهِمْ.

وَكَانَ عُمَرُ بْنُ الْخَطَّابِ يُعْطِيهِمْ مِنْهُ، وَعُثْمَانُ بَعْدَهُ ". فَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ وَالْبَيَانِ، وَإِنَّمَا كَانَ الَّذِي لَمْ يُعْطِهِمْ أَبُو بَكْرٍ كَمَا كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعْطِيهِمْ، فَهُوَ مَا كَانَ - عَلَيْهِ السَّلَامُ - يَعُودُ بِهِ عَلَيْهِمْ مِنْ سَهْمِهِ، وَكَانَتْ حَاجَةُ الْمُسْلِمِينَ أَيَّامَ أَبِي بَكْرٍ أَشَدَّ، وَأَمَّا أَنْ يَمْنَعَهُمْ الْحَقَّ الْمَفْرُوضَ الَّذِي سَمَّاهُ اللَّهُ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُمْ فَيُعِيذُ اللَّهُ تَعَالَى أَبَا بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - مِنْ ذَلِكَ.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا عَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعَنْبَرِيُّ نَا يَحْيَى أَبِي بُكَيْرٍ نَا أَبُو جَعْفَرٍ هُوَ عَبْدُ اللَّهِ بْنِ عَبْدِ اللَّهِ الرَّازِيّ قَاضِي الرَّيِّ عَنْ مُطَرِّفٍ هُوَ ابْنُ طَرِيفٍ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: " سَمِعْتُ «عَلِيًّا يَقُولُ: وَلَّانِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُمُسَ الْخُمُسِ فَوَضَعْتُهُ مَوَاضِعَهُ حَيَاةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَيَاةَ أَبِي بَكْرٍ وَحَيَاةَ عُمَرَ، فَأَتَى بِمَالٍ فَدَعَانِي فَقَالَ: خُذْهُ فَقُلْتُ: لَا أُرِيدُهُ، قَالَ: خُذْهُ فَأَنْتُمْ أَحَقُّ بِهِ، قُلْتُ: قَدْ اسْتَغْنَيْنَا عَنْهُ، فَجَعَلَهُ فِي بَيْتِ الْمَالِ» .

أَبُو جَعْفَرٍ الرَّازِيّ ثِقَةٌ رَوَى عَنْهُ عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ وَغَيْرُهُ.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا ابْنُ أَبِي عُمَرَ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ بْنِ عَمْرِو بْنِ سَعِيدِ بْنِ الْعَاصِ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ يَزِيدَ بْنِ هُرْمُزَ قَالَ: إِنَّ ابْنَ عَبَّاسٍ أَمَرَهُ أَنْ يَكْتُبَ إِلَى نَجْدَةَ: وَكَتَبْت تَسْأَلُنِي عَنْ ذَوِي الْقُرْبَى مَنْ هُمْ؛ وَإِنَّا زَعَمْنَا أَنَّا هُمْ، فَأَبَى ذَلِكَ عَلَيْنَا قَوْمُنَا.

relatives – who are they? We claimed that we are the ones, but our people denied that from us.'"

L15808 These authentic, clear reports are not contradicted by what is unsound or what has been falsified in matters where there is nothing of them present. Our position in this is the position of Abu al-ʻAliyah - and it has also been reported from Umar ibn Abd al-ʻAziz.

فَهَذِهِ الْأَخْبَارُ الصِّحَاحُ الْبَيِّنَةُ وَلَا يُعَارِضُهَا مَا لَا يَصِحُّ، أَوْ مَا مَوَّهَ بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ، وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ أَبِي الْعَالِيَةِ - وَقَدْ رُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَيْضًا.

L15809 And it has been narrated to us through the chain of ʿAbd ibn Ḥumayd, from Abū Nuʿaym, from Zuhayr, from al-Ḥasan ibn al-Ḥurr, from al-Ḥakam, from ʿAmr ibn Shuʿayb, from his father, who said: The fifth portion of the *khums* is the share of Allah, the Exalted, and the share of His Messenger – peace and blessings of Allah be upon him –.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نَا أَبُو نُعَيْمٍ عَنْ زُهَيْرٍ عَنْ الْحَسَنِ بْنِ الْحُرِّ نَا الْحَكَمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ قَالَ: خُمُسُ الْخُمُسِ سَهْمُ اللَّهِ تَعَالَى، وَسَهْمُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L15810 And from the path of Abd ibn Humaid as well, Amr ibn Awn informed us from Hushaym from al-Mughirah from Ibrahim an-Nakhaʿī {And know that whatever you take as spoils, then indeed, one-fifth of it is for Allah, and for the Messenger, the near relatives, the orphans, and the needy} [Al-Anfal:41]. He said: Everything belongs to Allah the Exalted, and the fifth of Allah the Exalted and His Messenger—peace and blessings of Allah be upon him—is a single portion. The remaining four-fifths are divided into four shares.[33]

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ أَيْضًا أَخْبَرَنَا عَمْرُو بْنُ عَوْنٍ عَنْ هُشَيْمٍ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ} [الأنفال: ٤١] ، قَالَ: كُلُّ شَيْءٍ لِلَّهِ تَعَالَى، وَخُمُسُ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاحِدٌ، وَيُقْسَمُ مَا سِوَى ذَلِكَ عَلَى أَرْبَعَةِ أَسْهُمٍ.

L15811–15812 From the path of Abd ibn Humaid: Abdullah—son of Abdul-Majid ath-Thaqafi—informed us, from Saʿid—son of Abu Arubah—from Qatadah, who said: The spoils are divided into five fifths. Four fifths are for those who fought for them. Then the remainder is divided into five fifths: one fifth for Allah the Exalted and the Messenger, one fifth for the relatives of the Messenger—peace and blessings of Allah be upon him—one fifth for orphans, one fifth for wayfarers, and one fifth for the poor.

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ: أَخْبَرَنَا عَبْدُ اللَّهِ هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - عَنْ سَعِيدٍ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ قَالَ: تُقْسَمُ الْغَنَائِمُ خَمْسَةَ أَخْمَاسٍ، فَأَرْبَعَةُ أَخْمَاسٍ لِمَنْ قَاتَلَ عَلَيْهَا، ثُمَّ يُقْسَمُ الْبَاقِي عَلَى خَمْسَةِ أَخْمَاسٍ، فَخُمُسٌ مِنْهَا لِلَّهِ تَعَالَى وَلِلرَّسُولِ، وَخُمُسٌ لِقَرَابَةِ الرَّسُولِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخُمُسٌ لِلْيَتَامَى، وَخُمُسٌ لِابْنِ السَّبِيلِ، وَخُمُسٌ لِلْمَسَاكِينِ.

L15813 Abu Muhammad said: This is the opinion of Al-Awzaʿī, Sufyān al-Thawrī, Al-Shāfiʿī, Abu Thawr, Isḥāq, Abu Sulaymān, An-Nasā'ī, the majority of ḥadīth scholars, and the latter of Judge Abū Yūsuf's two opinions, to which he reverted.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَالنَّسَائِيُّ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ، وَآخِرُ قَوْلَيْ أَبِي يُوسُفَ الْقَاضِي الَّذِي رَجَعَ إلَيْهِ.

[33] **Qur'an references (L15810):** Qur'an 8:41 (Al-Anfal).

L15814 However, Al-Shāfiʿī stated that a male among **two close relatives** receives a share equivalent to that of two females—but this is a mistake, as there is **no explicit scriptural basis** for it whatsoever, nor is it an inheritance **[which would necessitate]** dividing it in such a manner. Rather, it is **a discretionary grant** from Allah, **Exalted is He**, and they are equal in it.

إِلَّا أَنَّ الشَّافِعِيَّ قَالَ: لِلذَّكَرِ مِنْ ذَوِي الْقُرْبَى مِثْلُ حَظِّ الْأُنْثَيَيْنِ - وَهَذَا خَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ أَصْلًا وَلَيْسَ مِيرَاثًا فَيُقْسَمُ كَذَلِكَ، وَإِنَّمَا هِيَ عَطِيَّةٌ مِنَ اللَّهِ تَعَالَى، فَهُمْ فِيهَا سَوَاءٌ.

L15815 Mālik said: The entire fifth is to be placed in the public treasury, and the kin of the Messenger of Allah—may Allah bless him and grant him peace—are to be given as the Imam judges, there being no specific or defined limit for that.

وَقَالَ مَالِكٌ: يُجْعَلُ الْخُمُسُ كُلُّهُ فِي بَيْتِ الْمَالِ، وَيُعْطَى أَقْرِبَاءُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا يَرَى الْإِمَامُ لَيْسَ فِي ذَلِكَ حَدٌّ مَحْدُودٌ.

L15816 His relatives—peace be upon him—are the entire Quraysh tribe.

قَالَ أَصْبَغُ بْنُ فَرَجٍ: أَقْرِبَاؤُهُ - عَلَيْهِ السَّلَامُ - هُمْ جَمِيعُ قُرَيْشٍ.

L15817 Abū Ḥanīfa said: The khums is divided into three shares: the destitute, the impoverished, and the stranded traveler.

وَقَالَ أَبُو حَنِيفَةَ: يُقْسَمُ الْخُمُسُ عَلَى ثَلَاثَةِ أَسْهُمٍ: الْفُقَرَاءِ، وَالْمَسَاكِينِ، وَابْنِ السَّبِيلِ.

L15818 Ali said: These statements are utterly invalid, as they explicitly contradict the Quran, oppose the established Sunnah, and no opinion of Abū Ḥanīfah is known to have been held by any of the people of Islam before him. We have exhaustively examined all they disputed in the book *Al-Iṣāl*, and the sum total of this for anyone who reflects is that they only argued with fabricated narrations transmitted by al-Zubayrī and his peers, disconnected reports, or authentic narrations containing no evidence whatsoever for their claims, or statements from a companion contradicted by others among them—and nothing more. And success is from Allah, the Most High.

قَالَ عَلِيٌّ: هَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهَا خِلَافُ الْقُرْآنِ نَصًّا، وَخِلَافُ السُّنَنِ الثَّابِتَةِ، وَلَا يُعْرَفُ قَوْلُ أَبِي حَنِيفَةَ عَنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُ، وَقَدْ تَقَصَّيْنَا كُلَّ مَا شَغَبُوا بِهِ فِي كِتَابِ الْإِيصَالِ، وَجِمَاعُ كُلِّ ذَلِكَ لِكُلِّ مَنْ تَأَمَّلَهُ أَنَّهُمْ إِنَّمَا احْتَجُّوا بِأَحَادِيثَ مَوْضُوعَةٍ مِنْ رِوَايَةِ الزُّبَيْرِيِّ، وَنُظَرَائِهِ، أَوْ مُرْسَلَةٍ، أَوْ صِحَاحٍ لَيْسَ فِيهَا دَلِيلٌ عَلَى مَا ادَّعَوْهُ أَصْلًا، أَوْ قَوْلٍ عَنْ صَاحِبٍ قَدْ خَالَفَهُ غَيْرُهُ مِنْهُمْ وَلَا مَزِيدَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L15819 950 – Issue:

٩٥٠ - مَسْأَلَةٌ:

L15820 The remaining four-fifths after the deduction of the fifth (khums) are distributed among those present at the battle or the acquisition of spoils. The owner of a horse receives three shares: one share for himself and two shares for his horse. The foot soldier, the rider of a mule, the rider of a donkey, and the rider of a camel are each entitled to only one share. This is the position of Malik, Al-Shāfiʿī, and Abū Sulaymān.

وَتُقْسَمُ الْأَرْبَعَةُ الْأَخْمَاسُ الْبَاقِيَةُ بَعْدَ الْخُمُسِ عَلَى مَنْ حَضَرَ الْوَقْعَةَ، أَوْ الْغَنِيمَةَ، لِصَاحِبِ الْفَرَسِ ثَلَاثَةُ أَسْهُمٍ: لَهُ سَهْمٌ، وَلِفَرَسِهِ سَهْمَانِ، وَلِلرَّاجِلِ، وَرَاكِبِ الْبَغْلِ، وَالْحِمَارِ، وَالْجَمَلِ: سَهْمٌ وَاحِدٌ فَقَطْ. وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L15821–15822 Abū Ḥanīfah said: A horseman receives two shares—one for himself and one for his horse—and the rest of the aforementioned receive one share each—this is the opinion of Abū Mūsā al-Ashʿarī.

وَقَالَ أَبُو حَنِيفَةَ: لِلْفَارِسِ سَهْمَانِ: لَهُ سَهْمٌ، وَلِفَرَسِهِ سَهْمٌ، وَلِسَائِرِ مَنْ ذَكَرْنَا سَهْمٌ - وَهُوَ قَوْلُ أَبِي مُوسَى الْأَشْعَرِيِّ.

L15823 Aḥmad said: The horseman receives three shares, the camel-mounted warrior two shares, and others besides these two one share.

وَقَالَ أَحْمَدُ: لِلْفَارِسِ ثَلَاثَةُ أَسْهُمٍ، وَلِرَاكِبِ الْبَعِيرِ سَهْمَانِ، وَلِغَيْرِهِمَا سَهْمٌ.

L15824 Abu Muhammad said: As for the opinion of Ahmad, we do not know of any valid legal argument for it.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَحْمَدَ فَمَا نَعْلَمُ لَهُ حُجَّةً.

L15825 As for the statement of Abū Ḥanīfah, they cited weak narrations as evidence for it. Among them is a report transmitted through the chain of Mujammiʿ ibn Yaʿqūb ibn Mujammiʿ ibn Yazīd ibn Jāriyah al-Anṣārī, from his father, from his uncle ʿAbd al-Raḥmān ibn Yazīd, from his uncle Mujammiʿ ibn Jāriyah al-Anṣārī—who was one of the Qur'an reciters—"that the Messenger of Allāh (peace and blessings of Allāh be upon him) gave two shares to the horseman and one share to the foot soldier." Mujammiʿ is unknown, and his father is likewise.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَإِنَّهُمْ احْتَجُّوا لَهُ بِآثَارٍ ضَعِيفَةٍ. مِنْهَا: مِنْ طَرِيقِ مُجَمِّعِ بْنِ يَعْقُوبَ بْنِ مُجَمِّعِ بْنِ يَزِيدَ بْنِ جَارِيَةَ الْأَنْصَارِيِّ عَنْ أَبِيهِ عَنْ عَمِّهِ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ عَنْ عَمِّهِ مُجَمِّعِ بْنِ جَارِيَةَ الْأَنْصَارِيِّ - وَكَانَ أَحَدَ الْقُرَّاءِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى لِلْفَارِسِ سَهْمَيْنِ، وَالرَّاجِلِ سَهْمًا» . مُجَمِّعٌ مَجْهُولٌ وَأَبُوهُ كَذَلِكَ.

L15826 Through the chain of ʿAbdullāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar: "The Messenger of Allah (peace be upon him) assigned two shares for the horseman and one share for the foot soldier."

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لِلْفَارِسِ سَهْمَيْنِ، وَلِلرَّاجِلِ سَهْمًا» .

L15827 Abdullah ibn Umar, who narrates from Nāfiʿ, is graded as extremely weak.

عَبْدُ اللَّهِ بْنُ عُمَرَ الَّذِي يَرْوِي عَنْ نَافِعٍ فِي غَايَةِ الضَّعْفِ.

L15828 From a sheikh of the people of Ash-Sham (the Levant), from Makḥūl, the like of that.

وَعَنْ شَيْخٍ مِنْ أَهْلِ الشَّامِ عَنْ مَكْحُولٍ مِثْلُ ذَلِكَ.

L15829 This is a scandalous [matter]—unknown (majhūl) and disconnected (mursal).

وَهَذِهِ فَضِيحَةٌ مَجْهُولٌ، وَمُرْسَلٌ.

L15830 Abu Hanifah argued by stating: "I do not prefer an animal over a human." It is said to him: "Yet you equate between them? This is truly astonishing! If equating them is permissible, what prohibits preferential treatment?" Moreover, he allocates a war share for the horse even if it does not fight, yet denies shares to Muslim traders or hired workers unless they fight. Thus he has preferred animals over humans. Furthermore, he rules regarding a person who kills a Muslim's dog, a distinguished Muslim slave, or a Dhimmi's pig: the value of each of them is twenty thousand dirhams. He therefore pays

وَاحْتَجَّ أَبُو حَنِيفَةَ بِأَنْ قَالَ: لَا أُفَضِّلُ بَهِيمَةً عَلَى إنْسَانٍ، فَيُقَالُ لَهُ: وَتُسَاوِي بَيْنَهُمَا إنَّ هَذَا لَعَجَبٌ، فَإِذَا جَازَتْ الْمُسَاوَاةُ فَمَا مَنَعَ التَّفْضِيلَ؟ ثُمَّ هُوَ يُسْهِمُ لِلْفَرَسِ وَإِنْ لَمْ يُقَاتَلْ عَلَيْهِ، وَلَا يُسْهِمُ لِلْمُسْلِمِ التَّاجِرِ، وَلَا الْأَجِيرِ إلَّا أَنْ يُقَاتِلَا، فَقَدْ فَضَّلَ بَهِيمَةً عَلَى إنْسَانٍ، ثُمَّ هُوَ يَقُولُ فِي إنْسَانٍ قَتَلَ كَلْبًا لِمُسْلِمٍ، وَعَبْدًا مُسْلِمًا فَاضِلًا، وَخِنْزِيرًا لِذِمِّيٍّ:

twenty thousand dirhams for the dog, the same for the pig, but gives only ten thousand dirhams minus ten dirhams (9,990) for the Muslim slave. Marvel at this invalid opinion and praise Allah the Exalted for granting safety, for he has indeed preferred animals over humans.

- قِيمَةُ كُلِّ وَاحِدٍ مِنْهُمْ عِشْرُونَ أَلْفَ دِرْهَمٍ، فَإِنَّهُ يُؤَدِّي فِي الْكَلْبِ عِشْرِينَ أَلْفَ دِرْهَمٍ، وَفِي الْخِنْزِيرِ ذَلِكَ، وَلَا يُعْطِي فِي الْعَبْدِ الْمُسْلِمِ إِلَّا عَشَرَةَ آلَافِ دِرْهَمٍ غَيْرَ عَشَرَةِ دَرَاهِمَ، فَاعْجَبُوا لِهَذَا الرَّأْيِ السَّاقِطِ وَاحْمَدُوا اللَّهَ تَعَالَى عَلَى السَّلَامَةِ، فَقَدْ فَضَّلَ الْبَهِيمَةَ عَلَى الْإِنْسَانِ.

L15831–15833 They said: "Has consensus truly been established regarding the two shares?" We replied to them: "If you do not accept what is authentically established from the Prophet (peace be upon him), we addressed you on that matter. How then can your claim of consensus here be anything but false? We do not know; perhaps those who erred did so as you did. Then who could possibly say 'No'?" A horseman is preferred over a pedestrian, just as a mule rider is not preferred over a pedestrian, nor is the brave, heroic, and seasoned warrior preferred over the cowardly, weak, or sick individual.

قَالُوا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى السَّهْمَيْنِ؟ فَقُلْنَا لَهُمْ: إِنْ كُنْتُمْ لَا تَقُولُونَ بِمَا صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَلَّمْنَاكُمْ فِي ذَلِكَ فَكَيْفَ وَدَعْوَاكُمُ الْإِجْمَاعَ هَاهُنَا كَذِبٌ؟ وَمَا نَدْرِي لَعَلَّ فِيمَنْ أَخْطَأَ نَخْطِئُكُمْ، ثُمَّ مَنْ يَقُولُ: لَا يُفَضَّلُ فَارِسٌ عَلَى رَاجِلٍ، كَمَا لَا يُفَضَّلُ رَاكِبُ الْبَغْلِ عَلَى الرَّاجِلِ، وَكَمَا لَا يُفَضَّلُ الشُّجَاعُ الْبَطَلُ الْمُبْلِي، عَلَى الْجَبَانِ الضَّعِيفِ الْمَرِيضِ.

L15834 Then, if you were to consistently apply your principle, it would necessitate abolishing zakah on everything you have imposed it upon—such as honey and other items—and your position regarding blood money pertaining to the unbeliever would be invalidated, as there is no consensus on any of that. This would demolish the majority of your jurisprudential schools of thought.

ثُمَّ لَوْ طَرَدْتُمْ أَصْلَكُمْ هَذَا لَوَجَبَ أَنْ تُسْقِطُوا الزَّكَاةَ عَنْ كُلِّ مَا أَوْجَبْتُمُوهَا فِيهِ مِنَ الْعَسَلِ وَغَيْرِ ذَلِكَ، وَلَبَطَلَ قَوْلُكُمْ فِي دِيَةِ الْكَافِرِ لِأَنَّهُ لَمْ يُجْمَعْ عَلَى شَيْءٍ مِنْ ذَلِكَ، وَهَذَا يَهْدِمُ عَلَيْكُمْ أَكْثَرَ مَذَاهِبِكُمْ.

L15835 They reported that the first to assign two shares to the horse was 'Umar ibn al-Khaṭṭāb via the *isnad* of Layth from al-Ḥakam—though this chain is disconnected. Yet they consider 'Umar's ruling of eighty lashes as the ḥadd punishment for intoxicants to be a sunnah. Therefore, they should likewise make this act of assigning two shares to the horse a sunnah.

وَرَوَوْا: أَنَّ أَوَّلَ مَنْ جَعَلَ لِلْفَرَسِ سَهْمَيْنِ عُمَرُ بْنُ الْخَطَّابِ، مِنْ طَرِيقِ لَيْثٍ عَنِ الْحَكَمِ - وَهَذَا مُنْقَطِعٌ، وَهُمْ يَرَوْنَ حُكْمَ عُمَرَ فِي حَدِّ الْخَمْرِ ثَمَانِينَ سُنَّةً، فَهَذَا يَنْبَغِي أَنْ يَجْعَلُوهُ سُنَّةً أَيْضًا.

L15836 It was narrated to us via Al-Bukhārī's transmission: Ubayd ibn Ismāʿīl → Abū Usāmah → Ubaydullāh ibn ʿUmar → Nāfiʿ → Ibn ʿUmar, who said: "The Messenger of Allah (peace be upon him) assigned two shares for [maintaining] the horse and one share for its rider."

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عُبَيْدُ بْنُ إِسْمَاعِيلَ عَنْ أَبِي أُسَامَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: «جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْفَرَسِ سَهْمَيْنِ، وَلِصَاحِبِهِ سَهْمًا» .

L15837 Through the chain of al-Bukhārī: Al-Ḥasan ibn Isḥāq narrated to us,

Muḥammad ibn Sābiq narrated to us, Zā'idah narrated to us from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar, who said: "The Messenger of Allāh (peace be upon him) allocated two shares to the horse and one share to the footman on the day of Khaybar."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا الْحَسَنُ بْنُ إِسْحَاقَ نَا مُحَمَّدُ بْنُ سَابِقٍ نَا زَائِدَةُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «قَسَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْفَرَسِ سَهْمَيْنِ وَلِلرَّاجِلِ سَهْمًا يَوْمَ خَيْبَرَ» .

L15838 This is what must not be opposed due to its soundness, and because if those reports were authentic, this would be an addition to them, and the addition of a just person may not be rejected. This is the opinion of Saʿd ibn Abī Waqqāṣ, al-Ḥasan, and Ibn Sīrīn. This has been narrated from the Companions—and this is the view of ʿUmar ibn ʿAbd al-ʿAzīz [and by Allah, the Exalted, is all success].

فَهَذَا هُوَ الَّذِي لَا يَجُوزُ خِلَافُهُ لِصِحَّتِهِ، وَلِأَنَّهُ لَوْ صَحَّتْ تِلْكَ الْأَخْبَارُ لَكَانَ هَذَا زَائِدًا عَلَيْهَا، وَزِيَادَةُ الْعَدْلِ لَا يَجُوزُ رَدُّهَا. وَهُوَ قَوْلُ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَالْحَسَنِ، وَابْنِ سِيرِينَ، ذُكِرَ ذَلِكَ عَنْ الصَّحَابَةِ - وَبِهِ يَقُولُ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ [وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ] .

L15839 951 - Issue:

٩٥١ - مَسْأَلَةٌ:

L15840 Whoever is present with horses is not allocated any shares except three only. Some have said that shares are allocated for two horses only.

وَمَنْ حَضَرَ بِخَيْلٍ لَمْ يُسْهَمْ لَهُ إلَّا ثَلَاثَةُ أَسْهُمٍ فَقَطْ، وَقَدْ قَالَ قَوْمٌ: يُسْهَمُ لِفَرَسَيْنِ فَقَطْ.

L15841 Others said: A share is allotted to each horse from them [the spoils], and this lacks any conclusive proof.

وَقَالَ آخَرُونَ: يُسْهَمُ لِكُلِّ فَرَسٍ مِنْهَا - وَهَذَا لَا يَقُومُ بِهِ بُرْهَانٌ.

L15842 If it is asked, "It is narrated that the Prophet—peace and blessings of Allah be upon him—granted al-Zubayr a share because he had two horses?"

فَإِنْ قِيلَ: قَدْ رُوِيَ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسْهَمَ لِلزُّبَيْرِ لِفَرَسَيْنِ؟

L15843–15844 We said: This is a *mursal* narration that is not authentic. The most authentic narration on this matter is the one we transmitted via Ibn Wahb's chain from Saʿīd ibn ʿAbd al-Raḥmān, from Hishām ibn ʿUrwah, from Yaḥyā ibn ʿAbbād ibn ʿAbd Allāh ibn al-Zubayr, from his grandfather, who said: "During the year of Khaybar, the Messenger of Allah (may Allah bless him and grant him peace) apportioned four shares for al-Zubayr: a share for al-Zubayr himself, a kinship share for Ṣafiyyah bint ʿAbd al-Muṭṭalib, and two shares for the warhorse."

قُلْنَا: هَذَا مُرْسَلٌ لَا يَصِحُّ، وَأَصَحُّ حَدِيثٍ فِيهِ هُوَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ يَحْيَى بْنِ عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ جَدِّهِ قَالَ «ضَرَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ خَيْبَرَ لِلزُّبَيْرِ بِأَرْبَعَةِ أَسْهُمٍ: سَهْمٍ لِلزُّبَيْرِ، وَسَهْمٍ الْقُرْبَى لِصَفِيَّةَ بِنْتِ عَبْدِ الْمُطَّلِبِ، وَسَهْمَيْنِ لِلْفَرَسِ» .

L15845 952. Issue:

٩٥٢ - مَسْأَلَةٌ:

L15846 Shares are allocated equally to the hired worker, the merchant, the slave, the free person, the sick, and the healthy—they are all equal. This is based on Allah's statement, the Exalted: *"So consume what you have gained as

وَيُسْهَمُ لِلْأَجِيرِ، وَلِلتَّاجِرِ، وَلِلْعَبْدِ، وَلِلْحُرِّ، وَالْمَرِيضِ، وَالصَّحِيحِ سَوَاءٌ سَوَاءٌ كُلُّهُمْ؛ لِقَوْلِ اللَّهِ تَعَالَى: {فَكُلُوا مِمَّا غَنِمْتُمْ حَلالا طَيِّبًا} [الأنفال: ٦٩] وَلِلْأَثَرِ الَّذِي أَوْرَدْنَا آنِفًا مِنْ

spoils, lawful and good”* (Al-Anfal 8:69), and the narration we previously mentioned that the Prophet (peace be upon him) *“assigned three shares to the horseman and one share to the foot soldier.”* The Prophet (peace be upon him) did not distinguish between a free person and a slave, a hired worker and others, or a merchant and others. It is therefore impermissible to restrict any of this through baseless conjecture.[34]

L15847 If they cite as evidence the statement of Ibn Abbas in his letter to Najdah, where he wrote: “You asked me about the slave and the woman present during the distribution of spoils—is a share apportioned to them, or do they receive nothing except what they can personally acquire?”—then this is the statement of Ibn Abbas.

L15848 It has been narrated to us through the chain of ʿAmr ibn Shuʿayb from Saʿīd ibn al-Musayyib that ʿUmar said: “A slave has no share of the spoils, nor does anyone besides the Messenger of Allah (peace be upon him) possess decisive authority.”

L15849 And how many cases have they disagreed with Ibn Abbas on? Such as opinions on the sale of ummahāt al-awlād (enslaved mothers who bore children to their masters), rulings regarding ṣarf (exchange of currencies under Islamic jurisprudence), the share of near relatives (dhī al-qurbā) in inheritance, and other such matters.

L15850 If they mention what was narrated to us through the chain of Ahmad ibn Hanbal—Bishr ibn al-Mufaḍḍal narrated to us from Muḥammad ibn Zayd ibn al-Muhājir, who narrated to me that ‘Umayr, the freedman of Abi al-Lahm, said: “I was present at Khaybar with my masters. They petitioned the Messenger of Allah—peace and blessings be upon him—regarding me. He ordered that I be girded with a sword, but I began dragging it. When it was reported that I was a slave, he commanded that I be given some old belongings.”

L15851 This [report] provides no valid proof because Muḥammad ibn Zayd is not established as reliable.

أَنَّهُ - عَلَيْهِ السَّلَامُ - «قَسَمَ لِلْفَارِسِ ثَلَاثَةَ أَسْهُمٍ وَلِلرَّاجِلِ سَهْمًا» ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - حُرًّا مِنْ عَبْدٍ، وَلَا أَجِيرًا مِنْ غَيْرِهِ، وَلَا تَاجِرًا مِنْ سِوَاهُ، فَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ بِالظَّنِّ الْكَاذِبِ.

فَإِنْ احْتَجُّوا بِقَوْلِ ابْنِ عَبَّاسٍ فِي كِتَابِهِ إِلَى نَجْدَةَ تَسْأَلُنِي عَنْ الْعَبْدِ وَالْمَرْأَةِ يَحْضُرَانِ الْمَغْنَمَ، هَلْ يُقْسَمُ لَهُمَا؟ أَوْ أَنَّهُ لَيْسَ لَهُمَا شَيْءٌ إلَّا أَنْ يَحْذِيَا فَهَذَا قَوْلُ ابْنِ عَبَّاسٍ.

وَقَدْ رُوِّينَا أَيْضًا مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ لَيْسَ لِلْعَبْدِ مِنْ الْغَنِيمَةِ شَيْءٌ، وَلَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا ابْنَ عَبَّاسٍ؟ كَقَوْلٍ فِي بَيْعِ أُمَّهَاتِ الْأَوْلَادِ، وَالصَّرْفِ، وَسَهْمِ ذِي الْقُرْبَى، وَغَيْرِ ذَلِكَ.

فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ: نَا بِشْرُ بْنُ الْمُفَضَّلِ عَنْ مُحَمَّدِ بْنِ زَيْدِ بْنِ الْمُهَاجِرِ حَدَّثَنِي «عُمَيْرٌ مَوْلَى آبِي اللَّحْمِ قَالَ شَهِدْتُ خَيْبَرَ مَعَ سَادَاتِي فَكَلَّمُوا فِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِي فَقُلِّدْتُ السَّيْفَ فَإِذَا أَنَا أَجُرُّهُ، فَأُخْبِرَ أَنِّي مَمْلُوكٌ، فَأَمَرَ لِي بِشَيْءٍ مِنْ خُرْثِيِّ الْمَتَاعِ» .

فَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ مُحَمَّدَ بْنَ زَيْدٍ غَيْرُ مَشْهُورٍ.

[34] **Qur’an references (L15846):** Qur’an 8:69 (Al-Anfal).

وَقَدْ رُوِّينَاهُ مِنْ طَرِيقِ حَفْصِ بْنِ غِيَاثٍ فَقَالَ مُحَمَّدُ بْنُ زَيْدٍ وَأَيْضًا فَإِنَّهُ ذَكَرَ أَنَّهُ كَانَ يَجُرُّ السَّيْفَ، وَهَذَا صِفَةُ مَنْ لَمْ يَبْلُغْ.

L15852 We have narrated it through the chain of Ḥafṣ ibn Ghiyāth. Muḥammad ibn Zayd also stated, for he [the subject] mentioned that he used to drag the sword, and this is a characteristic of one who has not attained maturity.

وَهَكَذَا نَقُولُ: إِنَّ مَنْ لَمْ يَبْلُغْ لَا يُسْهَمُ لَهُ.

L15853–15854 And thus we say: Indeed, no share is allocated to one who has not reached puberty.

فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ الثَّوْرِيِّ عَنْ ابْنِ أَبِي لَيْلَى «عَنْ فَضَالَةَ بْنِ عُبَيْدٍ أَنَّهُمْ كَانُوا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةٍ وَفِينَا مَمْلُوكُونَ فَلَمْ يَقْسِمْ لَهُمْ» ، وَهَذَا مُنْقَطِعٌ؛ لِأَنَّهُ إِنْ كَانَ ابْنُ أَبِي لَيْلَى هُوَ مُحَمَّدٌ - فَلَمْ يُدْرِكْ فَضَالَةَ؛ وَلَا وُلِدَ إِلَّا بَعْدَ مَوْتِهِ بِدَهْرٍ طَوِيلٍ؛ وَإِنْ كَانَ - هُوَ عَبْدُ الرَّحْمَنِ - فَالثَّوْرِيُّ لَمْ يُدْرِكْهُ وَلَا وُلِدَ إِلَّا بَعْدَ مَوْتِهِ بِسِنِينَ.

L15855 If they cite what has been narrated to us via the chain of al-Thawrī from Ibn Abī Laylā: “from Faḍāla ibn ʻUbayd that they were with the Prophet, peace and blessings of Allah be upon him, in a ghazwa—a military expedition—and among us were slaves, yet he did not apportion a share for them”—this chain is disconnected (munqaṭiʻ). For if Ibn Abī Laylā is Muḥammad, he never met Faḍāla and was born only a very long time after his death. If it is ʻAbd al-Raḥmān, then al-Thawrī never met him either and was born only years after his death.

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا إِبْرَاهِيمُ بْنُ مُوسَى الرَّازِيّ أَخْبَرَنَا عِيسَى أَخْبَرَنَا ابْنُ أَبِي ذِئْبٍ عَنْ الْقَاسِمِ بْنِ عَبَّاسٍ الْهُبَلِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارَ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: كَانَ أَبِي يَقْسِمُ لِلْحُرِّ وَلِلْعَبْدِ.

L15856 It was narrated to us via Abu Dawud, who narrated to us: Ibrahim ibn Musa al-Razi informed us; Isa reported; Ibn Abi Dhi'b conveyed—narrating from al-Qasim ibn Abbas al-Lahbi, from Abdullah ibn Dinar, from Urwah, from Aisha, the Mother of the Believers, who said: “My father used to allocate portions to the free person and the slave.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعُ بْنُ أَبِي ذِئْبٍ عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي قُرَّةَ قَالَ: قَسَمَ لِي أَبُو بَكْرٍ الصِّدِّيقُ كَمَا قَسَمَ لِسَيِّدِي.

L15857 On the authority of Ibn Abi Shaybah who reported to us: Wakiʻ ibn Abi Dhi'b narrated from his maternal uncle al-Harith ibn Abd al-Rahman, from Abu Qurrah, who said: “Abu Bakr al-Siddiq allocated to me just as he allocated to my master.”

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَالْحَسَنِ الْبَصْرِيِّ، وَمُحَمَّدِ بْنِ سِيرِينَ، قَالُوا: مَنْ شَهِدَ الْبَأْسَ مِنْ حُرٍّ، أَوْ عَبْدٍ، أَوْ أَجِيرٍ، فَلَهُ سَهْمٌ.

L15858 It has been narrated to us through the chain of Ibn Abi Shaybah: Hafs ibn Ghiyath narrated to us from Ash'ath, from al-Hakam ibn 'Utaybah; al-Hasan al-Basri; and Muhammad ibn Sirin - all of whom said: Whoever witnesses combat as a free person, a slave, or a hired worker shall receive a share.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ حَمَّادٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي الْغَنَائِمِ يَسْبِيهَا الْجَيْشُ قَالَ: إنْ أَعَانَهُمْ التَّاجِرُ، وَالْعَبْدُ: ضُرِبَ لَهُ بِسِهَامِهِمْ مَعَ الْجَيْشِ.

L15859 And from the narration of Ibn Abi Shaybah: Jarir narrated from al-Mughira from Hammad from Ibrahim al-Nakha'i concerning spoils seized by the army.

He said: If a merchant and a slave assist them, a share is allotted to them with their shares with the army.

L15860 Abu Bakr said: It was narrated to us by Muhammad ibn Fudayl from al-Mughirah from Hammad from Ibrahim al-Nakha'i, who said: If the merchant and the slave are present, a share is allocated to the merchant, and a share is allocated to the slave.

L15861 And via the chain of Ibn Abī Shaybah: Ibn Abī Shaybah informed us from Ghundar from Ibn Jurayj from ʻAmr ibn Shuʻayb, who said: A share is assigned to the slave, and this is the position of Abū Sulaymān.

L15862 Abū Muḥammad said: They concur with us that a share is allotted for the horse, though they claim to be proponents of analogy. Why then do they not allot a share for the slave by analogy to this? If they cite two reports—wherein it is stated that "a hired worker was contracted during the Prophet's time, peace and blessings be upon him, for a military expedition for three dinars, and he, peace and blessings be upon him, did not assign him a share beyond this"—then these are not authentic.

L15863–15864 Because one of them is through the chain of ʻAbd al-ʻAzīz ibn Abī Rawwād from Abū Salama al-Ḥimṣī: "that the Messenger of Allāh (peace and blessings of Allāh be upon him)" – and Abū Salama is unknown, while the chain is also interrupted. The second is through the chain of Ibn Wahb from ʻĀṣim ibn Ḥakīm ibn Yaḥyā ibn Abī ʻAmr al-Shaybānī from ʻAbdullāh ibn al-Daylamī that Yaʻlā ibn Munyah narrated. However, ʻĀṣim ibn Ḥakīm and ʻAbdullāh ibn al-Daylamī are both unknown.

L15865 Al-Hasan, Ibn Sīrīn, Al-Awzaʿī, and Al-Layth held the view: No share is allotted to a hired laborer.

L15866 Abu Hanifa and Malik said: No war booty share is allotted to the two of them unless they fight.

L15867 Sufyan al-Thawri said: A share is allotted to the merchant – Al-Hasan ibn Hayy said: A share is allotted to the hired worker.

L15868 953 – Issue:

قَالَ أَبُو بَكْرٍ: وَحَدَّثَنَاهُ مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ الْمُغِيرَةِ عَنْ حَمَّادٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا شَهِدَ التَّاجِرُ، وَالْعَبْدُ، قُسِمَ لَهُ، وَقُسِمَ لِلْعَبْدِ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا غُنْدَرُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: يُسْهَمُ لِلْعَبْدِ، وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

قَالَ أَبُو مُحَمَّدٍ: وَهُمْ مُوَافِقُونَ لَنَا عَلَى أَنْ يُسْهَمَ لِلْفَرَسِ، وَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا أَسْهَمُوا لِلْعَبْدِ قِيَاسًا عَلَى ذَلِكَ؟ فَإِنْ ذَكَرُوا فِي الْأَجِيرِ خَبَرَيْنِ - فِيهِمَا «أَنَّ أَجِيرًا اُسْتُؤْجِرَ فِي زَمَانِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةٍ بِثَلَاثَةِ دَنَانِيرَ فَلَمْ يَجْعَلْ لَهُ - عَلَيْهِ السَّلَامُ - سَهْمًا غَيْرَهَا» فَلَا يَصِحَّانِ.

لِأَنَّ أَحَدَهُمَا مِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ أَبِي رَوَّادٍ عَنْ أَبِي سَلَمَةَ الْحِمْصِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " وَأَبُو سَلَمٍ مَجْهُولٌ، وَهُوَ مُنْقَطِعٌ أَيْضًا. وَالثَّانِي مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَاصِمِ بْنِ حَكِيمِ بْنِ يَحْيَى بْنِ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ الدَّيْلَمِيِّ أَنَّ يَعْلَى بْنَ مُنْيَةَ - وَعَاصِمَ بْنَ حَكِيمٍ، وَعَبْدَ اللَّهِ بْنَ الدَّيْلَمِيِّ مَجْهُولَانِ.

وَقَالَ الْحَسَنُ، وَابْنُ سِيرِينَ وَالْأَوْزَاعِيُّ، وَاللَّيْثُ: لَا يُسْهَمُ لِلْأَجِيرِ.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يُسْهَمُ لَهُمَا إلَّا أَنْ يُقَاتِلَا.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: يُسْهَمُ لِلتَّاجِرِ - وَقَالَ الْحَسَنُ بْنُ حَيٍّ: يُسْهَمُ لِلْأَجِيرِ.

٩٥٣ - مَسْأَلَةٌ:

L15869 No share is allocated to a woman or to one who has not reached puberty—whether they fought or not—and they receive additional spoils without a foot soldier's share. A disbeliever may not accompany the military campaigns of the Muslims. If he does accompany them, no share is allocated to him whatsoever, nor is he granted additional spoils—whether he fought or not. It has been narrated to us through the chain of Muslim ibn Ibrāhīm: Ibn Qa'nab narrated to us; Sulaymān—that is, Ibn Bilāl—narrated to us from Ja'far ibn Muḥammad ibn 'Alī ibn al-Ḥusayn, from his father, from Yazīd ibn Hurmuz, from Ibn 'Abbās.

وَلَا يُسْهَمُ لِامْرَأَةٍ، وَلَا لِمَنْ لَمْ يَبْلُغْ - قَاتَلَا، أَوْ لَمْ يُقَاتِلَا - وَيُنْفَلَانِ دُونَ سَهْمِ رَاجِلٍ؛ وَلَا يَحْضُرُ مَغَازِيَ الْمُسْلِمِينَ كَافِرٌ فَإِنْ حَضَرَ لَمْ يُسْهَمْ لَهُ أَصْلًا، وَلَا يُنْفَلُ - قَاتَلَ أَوْ لَمْ يُقَاتِلْ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا ابْنُ قَعْنَبٍ نَا سُلَيْمَانُ هُوَ ابْنُ بِلَالٍ - عَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ يَزِيدَ بْنِ هُرْمُزَ عَنْ ابْنِ عَبَّاسٍ.

L15870 That the Messenger of Allah (peace be upon him) would take women on military campaigns where they would treat the wounded and were granted a portion from the spoils, but as for a share, he did not assign one to them.

«أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَغْزُو بِالنِّسَاءِ فَيُدَاوِينَ الْجَرْحَى وَيُحْذَيْنَ مِنْ الْغَنِيمَةِ وَأَمَّا بِسَهْمٍ فَلَمْ يَضْرِبْ لَهُنَّ» .

L15871 Abu Muhammad said: If the discretionary portion (nafl) for her had amounted to a foot soldier's share, he would have assigned shares to them—and this is the view of Sa'īd ibn al-Musayyab, Abū Ḥanīfah, al-Shāfi'ī, Sufyān al-Thawrī, al-Laith, and Abū Sulaymān.

قَالَ أَبُو مُحَمَّد: لَوْ بَلَغَ بِالنَّفْلِ لَهَا سَهْمَ رَاجِلٍ لَكَانَ قَدْ أَسْهَمَ لَهُنَّ - وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ، وَأَبِي سُلَيْمَانَ.

L15872 Mālik said: "No grant is allocated to them"—and this is an error, contradicting the aforementioned tradition. Abū Muḥammad said: It has been reported through the chain of Abū Dāwūd: Ibrāhīm ibn Sa'īd narrated to us, Zayd ibn al-Ḥubāb narrated from Rufay' ibn Salamah ibn Ziyād, who said: Ḥashraj ibn Ziyād narrated to me from his paternal grandmother that she campaigned with the Messenger of Allah—peace be upon him—among six women. She said: "He—peace be upon him—allocated shares of the spoils to us just as he allocated shares of the spoils to the men."

وَقَالَ مَالِكٌ: لَا يُرْضَخُ لَهُنَّ - وَهَذَا خَطَأٌ، وَخِلَافُ الْأَثَرِ الْمَذْكُورِ. قَالَ أَبُو مُحَمَّد: وَقَدْ رُوِيَ مِنْ طَرِيقِ أَبِي دَاوُد نَا إبْرَاهِيمُ بْنُ سَعِيدٍ أَخْبَرَنِي زَيْدُ بْنُ الْحُبَابِ نَا رُفَيْعُ بْنُ سَلَمَةَ بْنِ زِيَادٍ [قَالَ] حَدَّثَنِي «حَشْرَجُ بْنُ زِيَادٍ عَنْ جَدَّتِهِ أُمِّ أَبِيهِ أَنَّهَا غَزَتْ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سِتِّ نِسْوَةٍ قَالَتْ: فَأَسْهَمَ لَنَا - عَلَيْهِ السَّلَامُ - كَمَا أَسْهَمَ لِلرِّجَالِ» .

L15873–15874 And this is an obscure chain of transmission, Rāfi' and Ḥashraj: both are unknown.

وَهَذَا إسْنَادٌ مُظْلِمٌ، رَافِعٌ، وَحَشْرَجٌ: مَجْهُولَانِ.

L15875 From the path of Waki': Muḥammad ibn 'Abdullāh al-Shu'aythī narrated to us via Waki', from Khālid ibn Ma'dān, who said: "The Messenger of Allah—peace and blessings be upon him—granted shares for women, children, and horses." This is mursal. From the path of Ibn Abī Shaybah: Muḥammad ibn Rāshid narrated to us via Waki', from an unverified narrator, who said: "The

وَمِنْ طَرِيقِ وَكِيعٍ نَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الشُّعَيْثِيُّ عَنْ خَالِدِ بْنِ مَعْدَانَ قَالَ: «أَسْهَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلنِّسَاءِ وَلِلصِّبْيَانِ وَالْخَيْلِ» وَهَذَا مُرْسَلٌ. وَمِنْ طَرِيقِ ابْنِ

Messenger of Allah—peace and blessings be upon him—granted shares for women, children, and horses." This is also mursal.

أَبِي شَيْبَةَ نَا وَكِيعٌ نَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ مَجْهُولٍ قَالَ: «أَسْهَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلنِّسَاءِ وَالصِّبْيَانِ وَالْخَيْلِ» وَهَذَا أَيْضًا مُرْسَلٌ.

L15876 From the chain of Ibn Abī Shaybah: Abū Khālid al-Aḥmar narrated to us from ʿAbd al-Ḥamīd ibn Jaʿfar from Yazīd ibn Abī Ḥabīb from Sufyān ibn Wahb al-Khawlānī, who said: "'Umar ibn al-Khaṭṭāb distributed the spoils among the people, giving each person a dinar, and made the share of the man and the woman equal."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ سُفْيَانَ بْنِ وَهْبٍ الْخَوْلَانِيِّ قَالَ: قَسَمَ عُمَرُ بْنُ الْخَطَّابِ بَيْنَ النَّاسِ غَنَائِمَهُمْ فَأَعْطَى كُلَّ إنْسَانٍ دِينَارًا وَجَعَلَ سَهْمَ الرَّجُلِ وَالْمَرْأَةِ سَوَاءً.

L15877 From the narration of Wakīʿ: Shuʿbah reported from al-ʿAwwām ibn Muzāḥim, from Khālid ibn Sayḥān, who said: Four women, including Umm Majzaʾah ibn Thawr, were present with Abū Mūsā, and Abū Mūsā al-Ashʿarī assigned war spoils shares to them. This is the opinion of al-Awzāʿī, and it logically compelled the proponents of qiyās to adopt this position, for when a share is assigned to a horse—a mere beast—then a woman has a stronger right to a share if qiyās is truly valid.

وَمِنْ طَرِيقِ وَكِيعٍ نَا شُعْبَةُ عَنْ الْعَوَّامِ بْنِ مُزَاحِمٍ عَنْ خَالِدِ بْنِ سَيْحَانَ قَالَ: شَهِدَ مَعَ أَبِي مُوسَى أَرْبَعُ نِسْوَةٍ مِنْهُنَّ أُمُّ مَجْزَأَةَ بْنِ ثَوْرٍ فَأَسْهَمَ لَهُنَّ أَبُو مُوسَى الْأَشْعَرِيُّ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَقَدْ كَانَ يَلْزَمُ أَهْلَ الْقِيَاسِ أَنْ يَقُولُوا بِهَذَا لِأَنَّهُ إذَا أَسْهَمَ لِلْفَرَسِ - وَهُوَ بَهِيمَةٌ - فَالْمَرْأَةُ أَحَقُّ بِالسَّهْمِ إنْ كَانَ الْقِيَاسُ حَقًّا.

L15878 Abu Muhammad said: The action of the Messenger of Allah - peace and blessings of Allah be upon him - is decisive over all else. As for children, they are not legally obligated. As for granting extra shares to children from the fifth of the fifth share, there is no harm, for this falls under the general welfare of Muslims. As for disbelievers, it has been narrated to us through Waki', who narrated to us from Sufyan al-Thawri, from Ibn Jurayj, from al-Zuhri: "The Messenger of Allah - peace and blessings of Allah be upon him - would conduct military campaigns with Jews and allocate shares to them equivalent to those of the Muslims."

قَالَ أَبُو مُحَمَّدٍ: فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الْقَاضِي عَلَى مَا سِوَاهُ، وَأَمَّا الصِّبْيَانُ فَغَيْرُ مُخَاطَبِينَ، وَأَمَّا النَّفَلُ لِلصِّبْيَانِ أَيْضًا مِنْ خُمُسِ الْخُمُسِ فَلَا بَأْسَ، لِأَنَّهُ فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ، وَأَمَّا الْكَافِرُ فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ ابْنِ جُرَيْجٍ عَنْ الزُّهْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَغْزُو بِالْيَهُودِ فَيُسْهِمُ لَهُمْ كَسِهَامِ الْمُسْلِمِينَ» .

L15879 We have narrated it from al-Zuhrī through various chains, all of which are authentic. From the chain of Wakīʿ—via al-Ḥasan ibn Ḥayy, from al-Shaybānī (who is Abū Isḥāq)—that Saʿd ibn Mālik, who is Ibn Abī Waqqāṣ, conducted a military campaign with a group of Jews and granted them a portion of the spoils.

وَرُوِّينَاهُ عَنْ الزُّهْرِيِّ مِنْ طُرُقٍ كُلُّهَا صِحَاحٍ عَنْهُ. وَمِنْ طَرِيقِ وَكِيعٍ نَا الْحَسَنُ بْنُ حَيٍّ عَنْ الشَّيْبَانِيِّ هُوَ أَبُو إِسْحَاقَ - أَنَّ سَعْدَ بْنَ مَالِكٍ هُوَ ابْنُ أَبِي وَقَّاصٍ - غَزَا بِقَوْمٍ مِنْ الْيَهُودِ فَرَضَخَ لَهُمْ.

L15880 And through the chain of Waki', who narrated to us from Sufyan, from Jābir, who said: I asked Al-Sha'bī about Muslims including dhimmis in their

military campaigns. Al-Sha'bī replied: I encountered the Imams—those who were jurists and those who were not—conducting campaigns with dhimmis, allocating shares for them and reducing a portion of their jizya. This constituted a generous additional share for them. —Al-Sha'bī was born during the early days of 'Alī's caliphate and met companions who lived afterward (may Allah be pleased with them)—.

وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ عَنْ جَابِرٍ قَالَ: سَأَلْتُ الشَّعْبِيَّ عَنْ الْمُسْلِمِينَ يَغْزُونَ بِأَهْلِ الْكِتَابِ؟ فَقَالَ الشَّعْبِيُّ: أَدْرَكْت الْأَئِمَّةَ الْفَقِيهَ مِنْهُمْ وَغَيْرَ الْفَقِيهِ يَغْزُونَ بِأَهْلِ الذِّمَّةِ فَيَقْسِمُونَ لَهُمْ، وَيَضَعُونَ عَنْهُمْ مِنْ جِزْيَتِهِمْ؛ فَذَلِكَ لَهُمْ نَفْلٌ حَسَنٌ - وَالشَّعْبِيُّ وُلِدَ فِي أَوَّلِ أَيَّامِ عَلِيٍّ وَأَدْرَكَ مَنْ بَعْدَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L15881 And this is the opinion of Al-Awza'i. Sufyan Al-Thawri held that he should apportion to the polytheist, if he is present, a share like that of a Muslim.

وَهُوَ قَوْلُ الْأَوْزَاعِيِّ. وَسُفْيَانُ الثَّوْرِيُّ: أَنَّهُ يَقْسِمُ لِلْمُشْرِكِ إذَا حَضَرَ كَسَهْمِ الْمُسْلِمِ.

L15882–15883 It has been narrated to us through the chain via ʿAbd al-Razzāq, from Maʿmar. I heard Qatādah was asked about the people under covenant fighting alongside the Muslims. He said: "They are entitled to what they covenanted for; whatever was stipulated for them is theirs."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ: سَمِعْتُ قَتَادَةَ سُئِلَ عَنْ أَهْلِ الْعَهْدِ يَغْزُونَ مَعَ الْمُسْلِمِينَ؟ قَالَ: لَهُمْ مَا صَالَحُوا عَلَيْهِ مَا جُعِلَ لَهُمْ فَهُوَ لَهُمْ.

L15884 Abu Hanifah, Malik, al-Shafi'i, and Abu Sulayman all said: "They are not assigned a sahm." Abu Sulayman added: "Nor are they granted a raḍḥ, nor should assistance be sought from them."

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَا يُسْهَمُ لَهُمْ - قَالَ أَبُو سُلَيْمَانَ: وَلَا يُرْضَخُ لَهُمْ، وَلَا يُسْتَعَانُ بِهِمْ.

L15885 Abu Muhammad said: The hadith of al-Zuhri is mursal, and there is no proof in a mursal report. It would indeed obligate the Hanafis and Malikis – those who accept mursal narrations – to adopt this position, for it is among the finest mursal reports, particularly when combined with al-Sha'bi's statement that he encountered people following this practice. We know of no dissenting opinion among the Companions against Sa'd regarding this matter. Salman ibn Rabi'ah used to seek help from polytheists against polytheists. However, the proof in this matter is what we narrated through Malik's chain from al-Fuḍayl ibn Abī ʿAbd Allāh, from ʿAbd Allāh ibn Dīnār, from ʿUrwah, from ʿĀ'ishah, that the Messenger of Allah (PBUH) said: "We do not seek assistance from polytheists."

قَالَ أَبُو مُحَمَّدٍ: حَدِيثُ الزُّهْرِيِّ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ الْقَائِلِينَ بِالْمُرْسَلِ أَنْ يَقُولُوا بِهَذَا، لِأَنَّهُ مِنْ أَحْسَنِ الْمَرَاسِيلِ لَا سِيَّمَا مَعَ قَوْلِ الشَّعْبِيِّ: أَنَّهُ أَدْرَكَ النَّاسَ عَلَى هَذَا، وَلَا نَعْلَمُ لِسَعْدٍ مُخَالِفًا فِي ذَلِكَ مِنْ الصَّحَابَةِ وَكَانَ سَلْمَانُ بْنُ رَبِيعَةَ يَسْتَعِينُ بِالْمُشْرِكِينَ عَلَى الْمُشْرِكِينَ، لَكِنَّ الْحُجَّةَ فِي هَذَا هُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ الْفُضَيْلِ بْنِ أَبِي عَبْدِ اللَّهِ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّا لَا نَسْتَعِينُ بِمُشْرِكٍ» .

L15886 From the chain of Muslim: Muḥammad ibn Rāfiʿ narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar ibn Hammām ibn Munabbiḥ informed us, Abū Hurayrah narrated to us from the Messenger of Allah—peace and blessings be upon him—in a ḥadīth that he said: "The spoils were not made lawful for

وَمِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ رَافِعٍ نَا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا مَعْمَرُ بْنُ هَمَّامِ بْنِ مُنَبِّهٍ نَا أَبُو هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثٍ أَنَّهُ قَالَ: «فَلَمْ تَحِلَّ الْغَنَائِمُ لِأَحَدٍ مِنْ قَبْلِنَا» . فَصَحَّ أَنَّهُ لَا حَقَّ فِي الْغَنَائِمِ لِغَيْرِ الْمُسْلِمِينَ.

anyone before us." Thus, it is confirmed that non-Muslims have no rightful claim to the spoils.

An issue where we were compelled to seek directions from a polytheist concerning the road.

954 – Question:

If we are compelled to seek a polytheist to show the way on a path, he may be hired for this with a specified payment from other than war spoils. This is based on what has been transmitted via Al-Bukhari's narration: Ibrāhīm ibn Mūsā narrated to us; Hishām, he is ibn Yūsuf, narrated to us; from Maʿmar, from Az-Zuhrī, from ʿUrwah ibn Az-Zubayr, from ʿĀ'ishah [may Allah be pleased with her], who said: "The Prophet [peace be upon him] and Abū Bakr hired a man from Banī al-Dīl, who adhered to the religion of the disbelievers of Quraysh, as a guide for the path."

Issue: He who slays a person from among the polytheists

955 - Issue:

Whoever kills a polytheist shall retain the slain's spoils—whether or not the Imam has declared it—regardless of the manner of killing, be it after capture or during combat. The spoils are exempt from the fifth levy whether little or much, and the claim to them is not valid except with evidence. In a legal ruling, if he has no evidence, fears it may be forcibly seized from him, or fears it may be subject to Khums (a fifth as an Islamic tax), he may conceal it and hide its matter.

The spoils of the slain combatant include: his horse, saddle, bridle, all clothing on him, ornaments, spurs (or riding equipment), every weapon in his possession, and all wealth carried in his girdle, held in his hand, or however it is transported with him.

Narrated to us via the chain of Mālik from Yaḥyā ibn Saʿīd al-Ansārī, from

[مَسْأَلَةٌ اُضْطُرِرْنَا إِلَى الْمُشْرِكِ فِي الدَّلَالَةِ فِي الطَّرِيقِ]

٩٥٤ - مَسْأَلَةٌ:

فَإِنْ اُضْطُرِرْنَا إِلَى الْمُشْرِكِ فِي الدَّلَالَةِ فِي الطَّرِيقِ اُسْتُؤْجِرَ لِذَلِكَ بِمَالٍ مُسَمًّى مِنْ غَيْرِ الْغَنِيمَةِ. لَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا إِبْرَاهِيمُ بْنُ مُوسَى نَا هِشَامٌ هُوَ ابْنُ يُوسُفَ - نَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ [- رَضِيَ اللَّهُ عَنْهَا -] قَالَتْ «وَاسْتَأْجَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ رَجُلًا مِنْ بَنِي الدِّيلِ وَهُوَ عَلَى دِينِ كُفَّارِ قُرَيْشٍ هَادِيًا» يَعْنِي بِالطَّرِيقِ ".

[مَسْأَلَةٌ مَنْ قَتَلَ قَتِيلًا مِنْ الْمُشْرِكِينَ]

٩٥٥ - مَسْأَلَةٌ:

وَكُلُّ مَنْ قَتَلَ قَتِيلًا مِنْ الْمُشْرِكِينَ فَلَهُ سَلَبُهُ قَالَ ذَلِكَ الْإِمَامُ، أَوْ لَمْ يَقُلْهُ كَيْفَمَا قَتَلَهُ صَبْرًا، أَوْ فِي الْقِتَالِ؟ وَلَا يُخَمَّسُ السَّلَبُ قَلَّ، أَوْ كَثُرَ، وَلَا يُصَدَّقُ إلَّا بِبَيِّنَةٍ فِي الْحُكْمِ، فَإِنْ لَمْ تَكُنْ لَهُ بَيِّنَةٌ، أَوْ خَشِيَ أَنْ يُنْتَزَعَ مِنْهُ، أَوْ أَنْ يُخَمَّسَ فَلَهُ أَنْ يُغَيِّبَهُ، وَيُخْفِيَ أَمْرَهُ.

وَالسَّلَبُ: فَرَسُ الْمَقْتُولِ، وَسَرْجُهُ، وَلِجَامُهُ، وَكُلُّ مَا عَلَيْهِ مِنْ لِبَاسٍ، وَحِلْيَةٍ، وَمَهَامِيزَ وَكُلُّ مَا مَعَهُ مِنْ سِلَاحٍ، وَكُلُّ مَا مَعَهُ مِنْ مَالٍ فِي نِطَاقِهِ أَوْ فِي يَدِهِ، أَوْ كَيْفَمَا كَانَ مَعَهُ.

Ibn Aflaḥ—who is ʿUmar ibn Kathīr ibn Aflaḥ—from Abū Muḥammad, the freed slave of Abū Qatādah, from Abū Qatādah: "After the conclusion of battle on the Day of Ḥunayn, the Messenger of Allāh—peace and blessings be upon him—said: 'Whoever kills an enemy combatant and can substantiate it with evidence, their spoils belong to him.'" This is reported as part of a ḥadīth.

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ ابْنِ أَفْلَحَ هُوَ عُمَرُ بْنُ كَثِيرِ بْنِ أَفْلَحَ - عَنْ أَبِي مُحَمَّدٍ مَوْلَى أَبِي قَتَادَةَ عَنْ أَبِي قَتَادَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ بَعْدَ انْقِضَاءِ الْقِتَالِ يَوْمَ حُنَيْنٍ: مَنْ قَتَلَ قَتِيلًا لَهُ عَلَيْهِ بَيِّنَةٌ فَلَهُ سَلَبُهُ» فِي حَدِيثٍ.

L15897 From the chain of Al-Bukhari: Abu Nuʿaym narrated to us → Abu Al-ʿUmayṣ (who is ʿUtbah ibn ʿAbdullāh ibn ʿUtbah ibn ʿAbdullāh ibn Masʿūd) → Iyās ibn Salamah ibn Al-Akwaʿ → his father, who said: "A spy from the polytheists came to the Prophet (peace and blessings of Allah be upon him) while he was traveling. He sat near the companions conversing, then turned away. The Prophet (peace and blessings of Allah be upon him) said: 'Seek him and kill him?' Salamah said: 'I killed him, and Allah's Messenger (peace and blessings of Allah be upon him) awarded me his spoils.'"

From the chain of Abū Dāwūd: Mūsā ibn Ismāʿīl narrated to us → Ḥammād (who is Ibn Zayd) → Isḥāq ibn ʿAbdullāh ibn Abī Ṭalḥah → Anas ibn Mālik: "Allah's Messenger (peace and blessings of Allah be upon him) said on the day of Ḥunayn: 'Whoever kills a disbeliever shall have his spoils.' Abū Ṭalḥah killed twenty men that day and took their spoils."

These narrations establish what we have stated, being mass-transmitted as you observe. We were narrated from the chain of Wakiʿ → Sufyān → Al-Aswad ibn Qays Al-ʿAbdī: that Bishr ibn ʿAlqamah killed a prominent Persian commander in single combat during the battle of Al-Qādisiyyah and took his spoils. He brought them to Saʿd ibn Abī Waqqāṣ, who appraised them at twelve thousand. Saʿd then awarded them to him.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا أَبُو نُعَيْمٍ نَا أَبُو الْعُمَيْسِ هُوَ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - عَنْ إِيَاسِ بْنِ سَلَمَةَ بْنِ الْأَكْوَعِ عَنْ أَبِيهِ قَالَ «أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَيْنٌ مِنْ الْمُشْرِكِينَ وَهُوَ فِي سَفَرٍ فَجَلَسَ عِنْدَ أَصْحَابِهِ يَتَحَدَّثُ ثُمَّ انْفَتَلَ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اُطْلُبُوهُ وَاقْتُلُوهُ؟ قَالَ سَلَمَةُ: فَقَتَلْتُهُ، فَنَفَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَلَبَهُ» . وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُوسَى بْنُ إِسْمَاعِيلَ نَا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ يَوْمَ حُنَيْنٍ: مَنْ قَتَلَ كَافِرًا فَلَهُ سَلَبُهُ فَقَتَلَ أَبُو طَلْحَةَ يَوْمَئِذٍ عِشْرِينَ رَجُلًا وَأَخَذَ أَسْلَابَهُمْ» . فَهَذِهِ الْأَحَادِيثُ تُوجِبُ مَا قُلْنَاهُ وَهِيَ مَنْقُولَةٌ نَقْلَ التَّوَاتُرِ كَمَا تَرَى. رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ الْأَسْوَدِ بْنِ قَيْسٍ الْعَبْدِيِّ: أَنَّ بِشْرَ بْنَ عَلْقَمَةَ قَتَلَ يَوْمَ الْقَادِسِيَّةِ عَظِيمًا مِنْ الْفُرْسِ مُبَارَزَةً وَأَخَذَ سَلَبَهُ فَأَتَى بِهِ إلَى سَعْدِ بْنِ أَبِي وَقَّاصٍ فَقَوَّمَهُ اثْنَيْ عَشَرَ أَلْفًا، فَنَفَلَهُ إيَّاهُ سَعْدٌ.

L15898–15899 From the account of Wāthila ibn al-Asqaʿ is that he rode alone until he reached the gate of Damascus. Horsemen from the city came out to him, so he killed three of them and seized their horses. He brought them to Khālid ibn al-Walīd, and with him was a prominent Byzantine leader. The Byzantine leader purchased the saddle of one of the horses from him for ten thousand dirhams, and Khālid ibn al-Walīd granted him all that he had taken from

وَمِنْ طَرِيقِ وَاثِلَةَ بْنِ الْأَسْقَعِ أَنَّهُ رَكِبَ وَحْدَهُ حَتَّى أَتَى بَابَ دِمَشْقَ فَخَرَجَتْ إلَيْهِ خَيْلٌ مِنْهَا فَقَتَلَ مِنْهُمْ ثَلَاثَةً وَأَخَذَ خَيْلَهُمْ فَأَتَى بِهَا خَالِدَ بْنَ الْوَلِيدِ وَعِنْدَهُ عَظِيمُ الرُّومِ فَابْتَاعَ مِنْهُ سَرْجَ أَحَدِهَا بِعَشَرَةِ آلَافٍ وَنَفَلَهُ خَالِدُ بْنُ الْوَلِيدِ كُلَّ مَا أَخَذَ مِنْ ذَلِكَ، فَهَذَا وَاثِلَةُ، وَخَالِدٌ وَسَعِيدٌ بِحَضْرَةِ الصَّحَابَةِ.

that encounter. This account involves Wāthila, Khālid, and Saʿīd, all in the presence of the Companions.

L15900 From the narration of Ibn Abi Shaybah: Abd al-Rahim ibn Sulayman narrated from Hisham ibn Hassan, from Muhammad ibn Sirin, from Anas ibn Malik, who said: The spoils were not subjected to the fifth. The first spoils from which the fifth was taken in Islam were those of al-Barā' ibn Malik. He had killed Marzubān al-Za'rah and cut off his belt and bracelets. When we arrived in Medina, Umar led the dawn prayer, then came to us and said: "Peace be upon you. Is Abu Talha present?" They replied: "Yes." He came out to him, and Umar said: "We did not previously take the fifth from spoils, but al-Barā's spoils constitute wealth, so I will take the fifth of it." He summoned appraisers, who valued it at thirty thousand, and he took six thousand from it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَ السَّلَبُ لَا يُخَمَّسُ وَكَانَ أَوَّلُ سَلَبٍ خُمِّسَ فِي الْإِسْلَامِ سَلَبَ الْبَرَاءَ بْنَ مَالِكٍ، وَكَانَ قَتَلَ مَرْزُبَانَ الزَّأْرَةِ وَقَطَعَ مِنْطَقَتَهُ وَسِوَارَيْهِ، فَلَمَّا قَدِمْنَا الْمَدِينَةَ صَلَّى عُمَرُ الصُّبْحَ، ثُمَّ أَتَانَا فَقَالَ: السَّلَامُ عَلَيْكُمْ أَثَمَّ أَبُو طَلْحَةَ؟ فَقَالُوا: نَعَمْ، فَخَرَجَ إِلَيْهِ فَقَالَ عُمَرُ: إِنَّا كُنَّا لَا نُخَمِّسُ السَّلَبَ وَإِنَّ سَلَبَ الْبَرَاءِ مَالٌ وَإِنِّي خَامِسُهُ، فَدَعَا الْمُقَوِّمِينَ فَقَوَّمُوا ثَلَاثِينَ أَلْفًا، فَأَخَذَ مِنْهَا سِتَّةَ آلَافٍ.

L15901 From the narration of Ibn Jurayj: "I heard Nāfi' say: 'We have always heard since the earliest times that when Muslims and disbelievers meet in battle, if a Muslim kills a polytheist, he is entitled to his spoils - unless this occurs in the thick of combat, for then it cannot be ascertained whether anyone killed anyone.'" This relates to what was practiced before.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ سَمِعْت نَافِعًا يَقُولُ: لَمْ نَزَلْ نَسْمَعُ مُنْذُ قَطُّ إذَا الْتَقَى الْمُسْلِمُونَ وَالْكُفَّارُ فَقَتَلَ مُسْلِمٌ مُشْرِكًا فَلَهُ سَلَبُهُ إلَّا أَنْ يَكُونَ فِي مَعْمَعَةِ الْقِتَالِ فَإِنَّهُ لَا يُدْرَى أَحَدٌ قَتَلَ أَحَدًا - فَهَذَا يُخْبِرُ عَمَّا سَلَفَ.

L15902 Thus, it has been established that this was the practice of Abū Bakr, those who came after him, and all their leaders.

فَصَحَّ أَنَّهُ فِعْلُ أَبِي بَكْرٍ وَمَنْ بَعْدَهُ وَجَمِيعِ أُمَرَائِهِمْ.

L15903 This Nāfi' reports that he consistently heard this while having encountered the Companions, thereby confirming it as the statement of all of them in Medina. It is impermissible to presume that 'Umar deliberately opposed the Messenger of Allah—peace be upon him—thus affirming that he deemed al-Barāʾ himself valid.

وَهَذَا نَافِعٌ يُخْبِرُ: أَنَّهُ لَمْ يَزَلْ يَسْمَعُ ذَلِكَ وَهُوَ قَدْ أَدْرَكَ الصَّحَابَةَ، فَصَحَّ أَنَّهُ قَوْلُ جَمِيعِهِمْ بِالْمَدِينَةِ، وَلَا يَجُوزُ أَنْ يُظَنَّ بِعُمَرَ تَعَمُّدُ خِلَافِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَحَّ أَنَّهُ اسْتَطَابَ نَفْسَ الْبَرَاءِ.

L15904 This is a sound and good position which we do not deny—and it is the view of Al-Awza'i, Sa'id ibn 'Abd al-'Aziz, Al-Layth ibn Sa'd, Al-Shafi'i, Ahmad, Abu Thawr, Abu 'Ubayd, Abu Sulayman, and all the hadith scholars, except that Al-Shafi'i and Ahmad said: If he killed him when it was not impossible, the killer does not receive his spoils—but this is incorrect due to the hadith of Salamah ibn al-Akwa' which we mentioned, for he killed him when it was

وَهَذَا صَحِيحٌ حَسَنٌ لَا نُنْكِرُهُ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسَعِيدِ بْنِ عَبْدِ الْعَزِيزِ وَاللَّيْثِ بْنِ سَعْدٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِ الْحَدِيثِ، إلَّا أَنَّ الشَّافِعِيَّ، وَأَحْمَدَ قَالَا: إنْ قَتَلَهُ غَيْرَ مُمْتَنِعٍ فَلَا يَكُونُ لَهُ سَلَبُهُ - وَهَذَا خَطَأٌ لِحَدِيثِ

not impossible and not in combat, yet took his spoils by the command of the Messenger of Allah—peace and blessings be upon him.

L15905–15907 If it is said: "If you adhere to the generality of his hadith—peace be upon him—in this matter, then give his spoils to one who kills a Muslim rightfully in retaliation, stoning, waging war, or rebellion." We say: Had Allah the Exalted not forbidden a Muslim's wealth through the words of His Prophet—peace and blessings of Allah be upon him—and in the Qur'an, we would have done what... You said: Thus, the personal effects of the Muslim were removed from the entirety of this report through this, while the personal effects of the disbeliever remained subject to the ruling of Allah, the Exalted, as stated by His Messenger, may Allah's peace and blessings be upon him.

L15908 It was narrated to us through the chain of Ibn Abi Shaybah—from al-Dahhak ibn Makhlad, who is Abu Asim al-Nabil—from al-Awza'i, from al-Zuhri, from al-Qasim ibn Muhammad, who said: Ibn Abbas was asked about the spoils. He replied: "There are no spoils except from the spoils of war, and the khums (one-fifth) applies to the spoils of war." Thus, Ibn Abbas asserts that spoils are solely from the spoils of war, making this a statement in line with those we cited, except that he held the khums applies to it—and this is the position of Ishaq ibn Rāhawayh.

L15909 Abu Hanifah, Sufyan, and Malik held that the slain's personal effects do not belong to the killer unless the commander declares before combat: "Whoever kills a slain person shall take his personal effects." If such a declaration is made, it stands as stated, and the effects are exempt from the fifth share. Abu Muhammad said: This is an invalid opinion, for they gave the false impression of following the ḥadīth but did not do so; rather, they contradicted it, since the Messenger of Allah—peace and blessings be upon him—only uttered this after battle. Thus, this plainly contradicts their own opinion.

L15910 And some of them said: The Messenger of Allah (peace and blessings be upon him) did not say that except on the day of Hunayn.

L15911 Abu Muhammad said: "This was truly astonishing!"

سَلَمَةَ بْنِ الْأَكْوَعِ الَّذِي ذَكَرْنَا فَإِنَّهُ قَتَلَهُ غَيْرَ مُمْتَنِعٍ، وَفِي غَيْرِ قِتَالٍ، وَأَخَذَ سَلَبَهُ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

فَإِنْ قِيلَ: فَإِنْ أَخَذْتُمْ بِعُمُومِ حَدِيثِهِ - عَلَيْهِ السَّلَامُ - فِي ذَلِكَ فَأَعْطُوا مَنْ قَتَلَ مُسْلِمًا بِحَقٍّ فِي قَوَدٍ، أَوْ رَجْمٍ، أَوْ مُحَارَبَةٍ، أَوْ بَغْيٍ، سَلَبَهُ. قُلْنَا: لَوْلَا أَنَّ اللَّهَ تَعَالَى حَرَّمَ عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي الْقُرْآنِ مَالَ الْمُسْلِمِ لَفَعَلْنَا مَا قُلْتُمْ؛ فَخَرَجَ سَلَبُ الْمُسْلِمِ بِهَذَا عَنْ جُمْلَةِ هَذَا الْخَبَرِ، وَبَقِيَ سَلَبُ الْكَافِرِ عَلَى حُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا الضَّحَّاكُ بْنُ مَخْلَدٍ هُوَ أَبُو عَاصِمٍ النَّبِيلُ - عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: سُئِلَ ابْنُ عَبَّاسٍ عَنْ السَّلَبِ؟ فَقَالَ: لَا سَلَبَ إلَّا مِنْ النَّفْلِ وَفِي النَّفْلِ الْخُمُسُ. فَهَذَا ابْنُ عَبَّاسٍ يَمْنَعُ أَنْ يَكُونَ السَّلَبُ إلَّا نَفْلًا، فَقَوْلٌ كَقَوْلِ مَنْ ذَكَرْنَا، إلَّا أَنَّهُ رَأَى فِيهِ الْخُمُسَ - وَهُوَ قَوْلُ إسْحَاقَ بْنِ رَاهْوَيْهِ.

وَذَهَبَ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَمَالِكٌ: إلَى أَنَّهُ لَا يَكُونُ السَّلَبُ لِلْقَاتِلِ إلَّا أَنْ يَقُولَ الْأَمِيرُ قَبْلَ الْقِتَالِ: مَنْ قَتَلَ قَتِيلًا فَلَهُ سَلَبُهُ، فَإِذَا قَالَ ذَلِكَ فَهُوَ كَمَا قَالَ، وَلَا يُخَمَّسُ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلٌ فَاسِدٌ؛ لِأَنَّهُمْ أَوْهَمُوا أَنَّهُمْ اتَّبَعُوا الْحَدِيثَ وَلَمْ يَفْعَلُوا، بَلْ خَالَفُوهُ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا قَالَ ذَلِكَ بَعْدَ الْقِتَالِ، فَهَذَا خِلَافُ قَوْلِهِمْ صُرَاحًا.

وَقَالَ بَعْضُهُمْ: لَمْ يَقُلْ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا يَوْمَ حُنَيْنٍ.

قَالَ أَبُو مُحَمَّدٍ: فَكَانَ هَذَا عَجَبًا

نَعَمْ، فَهَبْكَ أَنَّهُ لَمْ يَقُلْهُ - عَلَيْهِ السَّلَامُ - قَطُّ إِلَّا يَوْمَئِذٍ، أَوْ قَالَهُ قَبْلُ وَبَعْدُ، أَتَرَى يَجِدُونَ فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَى بِهِ مَرَّةً، أَوْ يَرَوْنَهُ بَاطِلًا حَتَّى يُكَرِّرَ الْقَضَاءَ بِهِ؟ حَاشَا لِلَّهِ مِنْ هَذَا الضَّلَالِ، وَلَا فَرْقَ بَيْنَ مَا قَالَ مَرَّةً، أَوْ أَلْفَ أَلْفَ مَرَّةٍ، كُلُّهُ دِينٌ، وَكُلُّهُ حَقٌّ، وَكُلُّهُ حُكْمُ اللَّهِ تَعَالَى، وَكُلُّهُ لَا يَحِلُّ لِأَحَدٍ خِلَافُهُ.

L15912 Yes, suppose he—peace be upon him—never uttered it except on that day, or had said it before that day and after. Do you think they would harbor any unease in their souls concerning what he decreed once, or would consider it invalid until he reiterates the decree? Far be it from Allah—He is exalted above such misguidance! There is no distinction between what he pronounced once or a thousand thousand times. All of it is religion; all of it is truth; all of it is the judgment of Allah the Exalted; all of it is impermissible for anyone to oppose.

وَمَوَّهُوا بِفِعْلِ عُمَرَ، وَهُمْ مُخَالِفُونَ لَهُ، لِأَنَّ عُمَرَ قَضَى بِالسَّلَبِ لِلْقَاتِلِ دُونَ أَنْ يَقُولَ ذَلِكَ قَبْلَ الْقِتَالِ، إِلَّا أَنَّهُ خَمَّسَهُ وَلَمْ يُمَانِعْهُ الْبَرَاءُ، فَصَحَّ أَنَّهُ طَابَتْ بِهِ نَفْسُهُ، وَهَذَا حَسَنٌ لَا نُنْكِرُهُ.

L15913 They justified their position by citing ʿUmar's action while contradicting his ruling, for ʿUmar had judged that the spoils belonged to the killer without declaring this before the battle. However, he deducted the khums from it, and al-Barā' did not oppose him. Thus, it was established that ʿUmar was content with it, and this is a valid position—we do not reject it.

وَشَغَبُوا أَيْضًا بِأَشْيَاءَ نَذْكُرُهَا إِنْ شَاءَ اللَّهُ تَعَالَى، فَمَوَّهَ بَعْضُ الْمُخَالِفِينَ فِي نَصْرِ تَقْلِيدِهِمْ بِقَوْلِ اللَّهِ تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ} [الأنفال: ٤١] . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَلَيْهِمْ لَا لَهُمْ، لِأَنَّ الَّذِي أَمَرَنَا بِهَذَا هُوَ الَّذِي أَوْحَى إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ السَّلَبَ لِلْقَاتِلِ، ثُمَّ يُقَالُ لَهُمْ: فَأَبْطِلُوا بِهَذَا الدَّلِيلِ قَوْلَكُمْ: إِنَّ الْإِمَامَ إِذَا قَالَ: السَّلَبُ لِلْقَاتِلِ كَانَ لَهُ. فَقَدْ جَعَلْتُمْ قَوْلَ إِمَامٍ لَعَلَّهُ لَا تَجِبُ طَاعَتُهُ حُجَّةً عَلَى الْآيَةِ، وَلَمْ تَجْعَلُوا قَوْلَ الْإِمَامِ الَّذِي لَا إِمَامَةَ لِأَحَدٍ إِلَّا بِطَاعَتِهِ بَيَانًا لِلْآيَةِ، وَهَذَا عَجَبٌ جِدًّا ثُمَّ أَعْجَبُ شَيْءٍ أَنَّهُمْ لَا يَحْتَجُّونَ بِهَذِهِ الْآيَةِ عَلَى أَنْفُسِهِمْ فِي قَوْلِهِمْ: إِنَّ الْأَرْضَ الْمَغْنُومَةَ لَا خُمُسَ فِيهَا، وَهَذَا مَوْضِعُ الِاحْتِجَاجِ بِالْآيَةِ حَقًّا

L15914–15916 They also raised objections regarding certain matters, which we shall mention if God Almighty wills. Some opponents deceptively justified defending their adherence to their school of thought (taqlīd) by citing God's statement: "And know that whatever spoils of war you seize, indeed one-fifth of it is for Allah and for the Messenger" [Al-Anfāl: 41]. Abū Muḥammad said: This argument works against them, not in their favor, for the One who commanded us this is the same who revealed to the Messenger of Allah—peace and blessings be upon him—that the spoils [taken from the slain] belong to the killer. Then they are told: Invalidate with this evidence your claim that the Imam... If he said, "The slain's personal belongings belong to the killer," they become his. You have considered the statement of an imam—whose obedience it is possible is not obligatory—as a valid proof against the verse, yet you have not deemed the statement of the imam for whom no one's leadership is valid unless they obey him as an elucidation of the verse. This is truly astonishing. What is even more astonishing is that they do not invoke this verse as a valid proof against their own position in their claim that there is no fifth due on conquered land, though this is indeed the rightful context to invoke the verse as proof.[35]

[35] **Qur'an references (L15914):** Qur'an 8:41 (Al-Anfal).

وَذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيِّ فِي «أَنَّ رَجُلًا قَتَلَ فَارِسًا مِنْ الرُّومِ يَوْمَ مُؤْتَةَ وَأَخَذَ سِلَاحَهُ وَفَرَسَهُ؟ فَبَعَثَ إلَيْهِ خَالِدُ بْنُ الْوَلِيدِ فَأَخَذَ مِنْ السَّلَبِ قَالَ عَوْفٌ: فَأَتَيْتُ خَالِدًا فَقُلْتُ لَهُ: أَمَا عَلِمْتَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالسَّلَبِ لِلْقَاتِلِ؟ قَالَ: بَلَى، وَلَكِنِّي اسْتَكْثَرْتُهُ، قُلْتُ: لَتَرُدَّنَّهُ أَوْ لَأُعَرِّفَنَّكَهُ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَبَى أَنْ يَرُدَّ عَلَيْهِ، قَالَ عَوْفٌ: فَاجْتَمَعْنَا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرْتُ ذَلِكَ لَهُ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا خَالِدُ مَا حَمَلَكَ عَلَى مَا صَنَعْتَ؟ فَقَالَ: يَا رَسُولَ اللَّهِ اسْتَكْثَرْتُهُ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: يَا خَالِدُ رُدَّ عَلَيْهِ مَا أَخَذْتَ مِنْهُ، قَالَ عَوْفٌ: فَقُلْتُ لَهُ: دُونَكَ يَا خَالِدُ، أَلَمْ أَفِ لَكَ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا ذَلِكَ؟ قَالَ: فَأَخْبَرْتُهُ فَغَضِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: يَا خَالِدُ لَا تَرُدَّ عَلَيْهِ، هَلْ أَنْتُمْ تَارِكُونَ لِي أُمَرَائِي؟ لَكُمْ صَفْوَةُ أَمْرِهِمْ وَعَلَيْهِمْ كَدَرُهُ» .

L15917 They mentioned a report we have narrated through the chain of Awf ibn Malik al-Ashja'i: "A man killed a horseman from the Romans during the Battle of Mu'tah and took his weapon and horse? Khalid ibn al-Walid sent for him and took the spoils. Awf said: I went to Khalid and said to him: Do you not know that the Messenger of Allah—peace and blessings of Allah be upon him—ruled that the spoils belong to the killer? He said: Yes, but I considered it excessive. I said: You must return it, or I will bring your matter to the attention of the Messenger of Allah—peace and blessings of Allah be upon him. But he refused to return it. Awf said: We gathered before the Messenger of Allah—peace and blessings of Allah be upon him—and I mentioned this to him. The Prophet—peace and blessings of Allah be upon him—said: O Khalid, what compelled you to do what you did? He replied: O Messenger of Allah, I considered it excessive. He—peace be upon him—said: O Khalid, return to him what you took. Awf said: I said to him: There you go, O Khalid! Did I not keep my word to you? The Prophet—peace and blessings of Allah be upon him—said: And what is that? I informed him, and the Messenger of Allah—peace and blessings of Allah be upon him—became angry and said: O Khalid, do not return it to him. Will you not leave my commanders alone? For you is the purity of their affairs, and upon them is its hardship."[36]

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ فِي هَذَا، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ لِوُجُوهٍ.

L15918 Abu Muhammad stated: There is no proof for them in this; rather, it serves as proof against them for various aspects.

أَوَّلُهَا: أَنَّ فِيهِ نَصًّا جَلِيًّا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالسَّلَبِ لِلْقَاتِلِ - وَهَذَا قَوْلُنَا.

L15919 The first is that it contains a clear text that the Prophet (may Allah bless him and grant him peace) ruled regarding the spoils of the slain belonging to the killer—and this is our position.

وَثَانِيهَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ خَالِدًا بِالرَّدِّ عَلَيْهِ.

L15920 The second point is that he—peace be upon him—commanded Khalid to refute him.

وَثَالِثُهَا: أَنَّ فِي نَصِّهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَمَرَهُ بِأَنْ لَا يَرُدَّ عَلَيْهِ، لِأَنَّهُ عَلِمَ أَنَّ الْقَاتِلَ صَاحِبَ السَّلَبِ أَعْطَاهُ بِطَيِّبِ نَفْسٍ وَلَمْ يَطْلُبْ خَالِدًا بِهِ، وَأَنَّ عَوْفًا يَتَكَلَّمُ فِيمَا لَا حَقَّ لَهُ فِيهِ وَهَذَا هُوَ نَصُّ الْخَبَرِ.

L15921 The third point is that the text states the Prophet—peace and blessings be upon him—instructed him (as stated in the text) not to return it, because he knew the killer—being the owner of the spoils—had given it willingly with a contented heart and had not demanded it from Khalid, and that 'Awf was

[36] **Hadith references (L15917):** Sunan Abi Dawud 2719.

speaking about a matter in which he had no right. This is the exact text of the report.

L15922–15924 The fourth is that if it were as they suggest, they would have no argument regarding it, because the day of Hunayn—on which the Prophet (peace be upon him) said, "Whoever kills a disbeliever, his spoils belong to him"—occurred after the day of Mu'tah without any dispute, and the day of Hunayn. This occurred after the conquest of Mecca, while the killing of Ja'far, Zayd ibn Ḥārithah, and Ibn Rawāḥah—may Allah be pleased with them—had taken place before the conquest of Mecca on the Day of Mu'tah. Thus, the ruling of the Day of Ḥunayn abrogates what preceded if there was any contradiction therein.

وَرَابِعُهَا: أَنَّهُ لَوْ كَانَ كَمَا يُوهِمُونَ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ يَوْمَ حُنَيْنٍ الَّذِي قَالَ فِيهِ - عَلَيْهِ السَّلَامُ -: «مَنْ قَتَلَ كَافِرًا فَلَهُ سَلَبُهُ» كَانَ بَعْدَ يَوْمِ مُؤْتَةَ، بِلَا خِلَافٍ، وَيَوْمَ حُنَيْنٍ كَانَ بَعْدَ فَتْحِ مَكَّةَ، وَقَدْ كَانَ قَتْلُ جَعْفَرٍ، وَزَيْدِ بْنِ حَارِثَةَ، وَابْنِ رَوَاحَةَ - رَضِيَ اللَّهُ عَنْهُمْ - قَبْلَ فَتْحِ مَكَّةَ يَوْمَ مُؤْتَةَ، فَيَوْمُ حُنَيْنٍ حُكْمُهُ نَاسِخٌ لِمَا تَقَدَّمَ لَوْ كَانَ خِلَافَهُ.

L15925 They also obscured matters with the report about the killing of Abū Jahl during the Battle of Badr, asserting that the Messenger of Allah—peace be upon him—awarded his spoils to Muʿādh ibn ʿAmr ibn al-Jamūḥ, who was one of his two killers—the second being Muʿādh ibn ʿAfrāʾ—and that Ibn Masʿūd likewise killed him. Consequently, the Messenger of Allah—peace be upon him—granted Ibn Masʿūd Abū Jahl's sword as a discretionary war grant.

وَمَوَّهُوا أَيْضًا بِخَبَرِ قَتْلِ أَبِي جَهْلٍ يَوْمَ بَدْرٍ وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِسَلَبِهِ لِمُعَاذِ بْنِ عَمْرِو بْنِ الْجُمُوحِ وَهُوَ أَحَدُ قَاتِلَيْهِ، وَالثَّانِي: مُعَاذُ ابْنُ عَفْرَاءَ، وَأَنَّ ابْنَ مَسْعُودٍ قَتَلَهُ أَيْضًا فَنَفَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَيْفَهُ.

L15926 Abu Muhammad said: They possess no valid argument in any of this. What comparison is there between the day of Badr and the day of Ḥunayn, when years lie between them? The ruling concerning spoils was only divinely revealed after Badr—so how could the spoils of the slain be granted to the killer?

قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ لَهُمْ فِي هَذَا كُلِّهِ، وَأَيْنَ يَوْمُ بَدْرٍ مِنْ يَوْمِ حُنَيْنٍ وَبَيْنَهُمَا أَعْوَامٌ؟ وَمَا نَزَلَ حُكْمُ الْغَنَائِمِ إِلَّا بَعْدَ يَوْمِ بَدْرٍ فَكَيْفَ يَكُونُ السَّلَبُ لِلْقَاتِلِ؟

L15927 They embellished their argument with a rejected report we narrated through the chain of Ḥammād ibn Salama from Budayl ibn Maysara from ʿAbdullāh ibn Shaqīq from a man from Bulqīn, who said: "I asked, 'O Messenger of God, does anyone have a greater right to a portion of the spoils than another?' He replied, 'No. Even the arrow one of you takes from his quiver - he has no more right to it than his brother.'"

Abū Muḥammad said: This is narrated from an unknown man whose reliability in claiming to be a companion of the Prophet is undetermined. Even if it were authentic, it would not serve as proof for their argument, because

وَمَوَّهُوا بِخَبَرٍ سَاقِطٍ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ بُدَيْلِ بْنِ مَيْسَرَةَ عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ «عَنْ رَجُلٍ مِنْ بُلْقِينَ، قُلْتُ: يَا رَسُولَ اللَّهِ هَلْ أَحَدٌ أَحَقُّ بِشَيْءٍ مِنْ الْمَغْنَمِ مِنْ أَحَدٍ؟ قَالَ: لَا، حَتَّى السَّهْمُ يَأْخُذُهُ أَحَدُكُمْ مِنْ جَنْبِهِ فَلَيْسَ أَحَقَّ مِنْ أَخِيهِ بِهِ» . قَالَ أَبُو مُحَمَّدٍ: هَذَا عَنْ رَجُلٍ مَجْهُولٍ لَا يُدْرَى أَصَدَقَ فِي ادِّعَائِهِ الصُّحْبَةَ أَمْ لَا؟ ثُمَّ

the fifth portion is part of the total spoils and is rightfully allocated to those who did not participate in the battle without disagreement. The spoils of the slain (السَّلَبُ) are explicitly incorporated into that fifth by textual injunction.

L15928 Then it is said to them: Why do you not use this narration as evidence against your own claim that the killer is more entitled to the salb than others when the Imam says: "Whoever kills someone, his salb belongs to him?" Yet you regard this narration as restricted to the statement of one who holds no weight with Allah the Exalted, while you do not confine it to the words of those you yourselves disbelieve in—if you refuse to submit to His command and decree. Perish these scheming minds!

L15929 They obscured the issue by citing what was narrated through 'Amr ibn Wāqid from Mūsā ibn Yasār from Makḥūl from Junādah ibn Abī Umayyah: "Habīb ibn Maslamah killed a man, and Abū 'Ubaydah intended to take one-fifth of his spoils. Habīb said to him: 'The Messenger of Allah—peace and blessings of Allah be upon him—ruled that spoils belong to the slayer.' Mu'ādh then said: 'Hold back, O Habīb! I heard the Messenger of Allah—peace and blessings of Allah be upon him—say: A person possesses only what his leader's soul is pleased with.'"

L15930–15931 Abu Muhammad said: This is undoubtedly a false and reprehensible report, for it originates in the narration of Amr ibn Waqid—a transmitter denounced in hadith criticism, as stated by al-Bukhari and others on the authority of Musa ibn Yasar. Yahya al-Qattan has abandoned him.

L15932 And it has been narrated to us from this Mūsā that he said: "The Companions of Allah's Messenger Muḥammad (may Allah's blessings and peace be upon him) were barefoot Bedouins. Then we, the sons of Persia, came and condensed this religion. So observe whom they invoke to argue against the established Sunnahs."

L15933 Then from Makḥūl, from Junādah—though Makḥūl did not meet Junādah. Furthermore, if it were authentic, it would be evidence against them, because it invalidates their claim that "the one who finds buried pre-Islamic wealth

لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ لِأَنَّ الْخُمُسَ مِنْ جُمْلَةِ الْغَنِيمَةِ يَسْتَحِقُّهُ دُونَ أَهْلِ الْغَنِيمَةِ مَنْ لَمْ يَشْهَدْ الْغَنِيمَةَ بِلَا خِلَافٍ، فَالسَّلَبُ مَضْمُومٌ إلَى ذَلِكَ بِالنَّصِّ.

ثُمَّ يُقَالُ لَهُمْ: هَلَّا احْتَجَجْتُمْ بِهَذَا الْخَبَرِ عَلَى أَنْفُسِكُمْ فِي قَوْلِكُمْ: إنَّ الْقَاتِلَ أَحَقُّ بِالسَّلَبِ مِنْ غَيْرِهِ إذَا قَالَ الْإِمَامُ: مَنْ قَتَلَ قَتِيلًا فَلَهُ سَلَبُهُ؟ فَكَانَ هَذَا الْخَبَرُ عِنْدَكُمْ مَخْصُوصًا بِقَوْلِ مَنْ لَا وَزْنَ لَهُ عِنْدَ اللَّهِ تَعَالَى وَلَمْ تَخُصُّوهُ بِقَوْلِ مَنْ لَا إيمَانَ لَكُمْ إنْ لَمْ تُسَلِّمُوا لِأَمْرِهِ وَقَضَائِهِ، تَبًّا لِهَذِهِ الْعُقُولِ الْمَكِيدَةِ.

وَمَوَّهُوا بِمَا رُوِيَ مِنْ طَرِيقِ عَمْرِو بْنِ وَاقِدٍ عَنْ مُوسَى بْنِ يَسَارٍ عَنْ مَكْحُولٍ عَنْ جُنَادَةَ بْنِ أَبِي أُمَيَّةَ «أَنَّ حَبِيبَ بْنَ مَسْلَمَةَ قَتَلَ قَتِيلًا فَأَرَادَ أَبُو عُبَيْدَةَ أَنْ يُخَمِّسَ سَلَبَهُ، فَقَالَ لَهُ حَبِيبٌ إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالسَّلَبِ لِلْقَاتِلِ، فَقَالَ لَهُ مُعَاذٌ: مَهْلًا يَا حَبِيبُ، سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: إنَّمَا لِلْمَرْءِ مَا طَابَتْ بِهِ نَفْسُ إمَامِهِ» .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرُ سُوءٍ مَكْذُوبٌ بِلَا شَكٍّ، لِأَنَّهُ مِنْ رِوَايَةِ عَمْرِو بْنِ وَاقِدٍ، وَهُوَ مُنْكَرُ الْحَدِيثِ قَالَهُ الْبُخَارِيُّ وَغَيْرُهُ: عَنْ مُوسَى بْنِ يَسَارٍ، وَقَدْ تَرَكَهُ يَحْيَى الْقَطَّانُ.

وَقَدْ رُوِّينَا عَنْ مُوسَى هَذَا أَنَّهُ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْرَابًا حُفَاةً جِئْنَا نَحْنُ أَبْنَاءَ فَارِسٍ فَلَخَّصْنَا هَذَا الدِّينَ - فَانْظُرُوا بِمَنْ يَحْتَجُّونَ عَلَى السُّنَنِ الثَّابِتَةِ.

ثُمَّ عَنْ مَكْحُولٍ عَنْ جُنَادَةَ - وَمَكْحُولٌ لَمْ يُدْرِكْ جُنَادَةَ. ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّهُ مُبْطِلٌ لِقَوْلِهِمْ: إنَّ الَّذِي وَجَدَ الرِّكَازَ لَهُ أَنْ يَنْفَرِدَ بِجَمِيعِهِ دُونَ طِيبِ نَفْسِ إمَامِهِ.

has the right to claim exclusive ownership of all of it without the voluntary approval of his Imam."

L15934 Then we say to the one citing this report as proof: Tell me - if the Imam is not personally content toward some soldiers regarding their share of the spoils, does this invalidate their right? This is truly astonishing, yet they themselves do not accept this. Thus they became the first to contradict what they themselves established and argued with - and this is the act of one devoid of scrupulousness.

ثُمَّ نَقُولُ لِلْمُحْتَجِّ بِهَذَا الْخَبَرِ: أَرَأَيْت إنْ لَمْ تَطِبْ نَفْسُ الْإِمَامِ لِبَعْضِ الْجَيْشِ بِسَهْمِهِمْ مِنْ الْغَنِيمَةِ أَيَبْطُلُ بِذَلِكَ حَقَّهُمْ؟ إنَّ هَذَا لَعَجِيبٌ وَهُمْ لَا يَقُولُونَ بِهَذَا، فَصَارُوا أَوَّلَ مُخَالِفٍ لِمَا حَقَّقُوهُ وَاحْتَجُّوا بِهِ، وَهَذَا فِعْلُ مَنْ لَا وَرَعَ لَهُ.

L15935 They said: It has been narrated via Ghālib ibn Ḥijrah from Umm ʿAbdil-lāh bint al-Milqām ibn al-Talib, from her father [from his father], that the Messenger of Allah—peace be upon him—said: "Whoever kills a freed slave (mawlā), his spoils belong to him." They said: "Therefore, adhere to this ruling as well."

وَقَالُوا: قَدْ رُوِيَ مِنْ طَرِيقِ غَالِبِ بْنِ حَجْرَةَ عَنْ أُمِّ عَبْدِ اللَّهِ بِنْتِ الْمِلْقَامِ بْنِ التَّلِبِ عَنْ أَبِيهَا [عَنْ أَبِيهِ] أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَتَى بِمَوْلًى فَلَهُ سَلَبُهُ» قَالُوا: فَقُولُوا بِهَذَا أَيْضًا ".

L15936 Abu Muhammad said: We stated that this opinion applies only to those who uphold the hadith of Mubashshir ibn ʻUbayd al-Himsi—"There is no valid dowry less than ten dirhams"—and those who uphold the hadith of Abu Zayd, the client of ʻAmr ibn Hurayth, permitting ablution with wine, as well as those who affirm the rulings concerning goring animals and accidental falls. This narration is to be considered alongside those authoritative precedents.

قَالَ أَبُو مُحَمَّد: فَقُلْنَا إنَّمَا يَلْزَمُ الْقَوْلُ بِهَذَا مَنْ يَقُولُ بِحَدِيثِ مُبَشِّرِ بْنِ عُبَيْدٍ الْحِمْصِيِّ لَا صَدَاقَ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ، وَمَنْ يَقُولُ بِحَدِيثِ أَبِي زَيْدٍ مَوْلَى عَمْرِو بْنِ حُرَيْثٍ فِي إبَاحَةِ الْوُضُوءِ بِالْخَمْرِ، وَتِلْكَ النَّطَائِحُ وَالْمُتَرَدِّيَاتُ. فَهَذَا الْخَبَرُ مُضَافٌ إلَى تِلْكَ.

L15937 As for one who accepts only what a trustworthy narrator has transmitted from another trustworthy narrator, he is not bound to accept the narration of the unknown Ghalib ibn Hajrah from Umm ʿAbd Allāh bint al-Milqām—an obscure figure (who is she?)—from her unidentified father. These people wander in blindness—we seek refuge in Allah from the test He has subjected them to. By Allah, were this narration authentic, we would have upheld it without the slightest reservation in our hearts.

وَأَمَّا مَنْ لَا يَأْخُذُ إلَّا بِمَا رَوَى الثِّقَةُ عَنْ الثِّقَةِ فَلَيْسَ يَلْزَمُهُ أَنْ يَأْخُذَ بِمَا رَوَاهُ غَالِبُ بْنُ حَجْرَةَ الْمَجْهُولُ عَنْ أُمِّ عَبْدِ اللَّهِ بِنْتِ الْمِلْقَامِ الَّتِي لَا يُدْرَى مَنْ هِيَ؟ عَنْ أَبِيهَا الَّذِي لَا يُعْرَفُ، وَالْقَوْمُ فِي عَمًى نَعُوذُ بِاَللَّهِ مِمَّا ابْتَلَاهُمْ بِهِ، وَتَاَللَّهِ لَوْ صَحَّ لَقُلْنَا بِهِ وَلَمْ نَجِدْ فِي أَنْفُسِنَا حَرَجًا مِنْهُ.

L15938 If they mention what we have narrated through the chain of Saʻīd from Qatādah—and it has been said that ʻAmr ibn Shuʻayb narrated it from his father from his grandfather regarding the occasion of revelation for Al-Anfāl: "The Prophet—peace and blessings of Allah be upon him—used to award a Muslim the spoils of a disbeliever he slew as a special grant, then he commanded them to return some of the spoils to one another. He said, *'So fear

فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدٍ عَنْ قَتَادَةَ وَقَدْ قِيلَ: إنَّ عَمْرَو بْنَ شُعَيْبٍ رَوَاهُ عَنْ أَبِيهِ عَنْ جَدِّهِ فِي سَبَبِ نُزُولِ الْأَنْفَالِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ

Allah and set things right between yourselves'* [Al-Anfāl:1]—meaning, 'Some of you must return the spoils to others.'"[37]

L15939–15940 Abu Muhammad said: This is nothing, for it is a written record and a *mursal* narration. Even if it were authentic, it would pertain to the Battle of Badr, and we have stated that the ruling granting the spoils of the slain to the killer was established during Hunayn six years, or so, after that.

L15941 Then they obscured [the matter] with frivolous analogies—all binding upon them yet not binding upon us. Among these is their claim: "Since the spoils do not rightfully belong to the one who seizes them, the killer is likewise not entitled to the salb. If the salb were truly the killer's right, then salb items—when the killers of their owners are unknown—would be held in custody like lost property." Abū Muḥammad said: "The analogy is invalid. Such analogies bind only those who validate them, and since they validate them, let them invalidate their own doctrine—that the salb belongs to the killer if the Imam declares [before battle], 'Whoever kills an enemy may take his salb'—using these two absurdities, for this now binds them by their own logic. As for us, we say: Any property of unknown ownership is allocated to the public interests of the Muslims, and any salb for which there is no clear evidence identifying its killer is included in the general spoils by the ruling of Allah's Messenger—peace and blessings be upon him—and his explicit statement, which we do not overstep. All praise is to Allah, Lord of all the worlds."[38]

L15942 Abu Muhammad said: What suffices in this regard is that Allah the Exalted stated: {It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, to have any choice in their affair} [Al-Ahzab: 36]. The Messenger of Allah—peace and blessings be upon him—ruled that the salb (spoils) belong to the killer if clear evidence is established for him. If obedience to him—peace be upon him—is obligatory, then the salb is a right for the killer whenever evidence is established, and no one—neither an Imam nor anyone else—has any choice in their matter, by the explicit text

يُنْفِلُ الرَّجُلَ مِنْ الْمُسْلِمِينَ سَلَبَ الْكَافِرِ إذَا قَتَلَهُ، فَأَمَرَهُمْ أَنْ يَرُدَّ بَعْضُهُمْ عَلَى بَعْضٍ، قَالَ {فَاتَّقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ} [الأنفال: ١] أَيْ لِيَرُدَّنَّ بَعْضَكُمْ عَلَى بَعْضٍ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا شَيْءَ لِأَنَّهَا صَحِيفَةٌ وَمُرْسَلٌ، وَلَوْ صَحَّ لَكَانَ فِي أَمْرِ بَدْرٍ وَقَدْ قُلْنَا: إنَّ الْقَضَاءَ بِالسَّلَبِ لِلْقَاتِلِ كَانَ فِي حُنَيْنٍ بَعْدَ ذَلِكَ بِأَعْوَامٍ سِتَّةٍ أَوْ نَحْوِهَا.

ثُمَّ مَوَّهُوا بِقِيَاسَاتٍ سَخِيفَةٍ كُلُّهَا لَازِمٌ لَهُمْ وَغَيْرُ لَازِمٍ لَنَا. مِنْهَا: أَنْ قَالُوا: لَمَّا كَانَ الْغَانِمُ لَيْسَ أَحَقَّ بِمَا غَنِمَ كَانَ الْقَاتِلُ فِي السَّلَبِ كَذَلِكَ، وَلَوْ كَانَ السَّلَبُ حَقًّا لِلْقَاتِلِ لَكَانَتْ الْأَسْلَابُ - إذَا لَمْ يُعْرَفْ قَاتِلُو أَهْلِهَا - مُوقَفَةً كَاللُّقَطَةِ. قَالَ أَبُو مُحَمَّدٍ: الْقِيَاسُ بَاطِلٌ، وَإِنَّمَا يَلْزَمُ الْقِيَاسُ مَنْ صَحَّحَهُ، وَهُمْ يُصَحِّحُونَهُ فَهُوَ لَهُمْ لَازِمٌ فَلْيُبْطِلُوا بِهَاتَيْنِ الْأُحْمُوقَتَيْنِ قَوْلَهُمْ: [إنَّ السَّلَبَ] لِلْقَاتِلِ إذَا قَالَ الْإِمَامُ [قَبْلَ الْقِتَالِ] : مَنْ قَتَلَ قَتِيلًا فَلَهُ سَلَبُهُ - فَهَذَا يَلْزَمُهُمْ إذْ عَدَلُوا هَذَا الْإِلْزَامَ عَلَى أَنْفُسِهِمْ. وَأَمَّا نَحْنُ فَنَقُولُ: إنَّ كُلَّ مَالٍ لَا يُعْرَفُ صَاحِبُهُ فَهُوَ فِي مَصَالِحِ الْمُسْلِمِينَ، وَكُلُّ سَلَبٍ لَا تَقُومُ لَقَاتَلَهُ بَيِّنَةٌ فَهُوَ فِي جُمْلَةِ الْغَنِيمَةِ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَصِّ قَوْلِهِ لَا نَتَعَدَّاهُ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

قَالَ أَبُو مُحَمَّدٍ: وَيَكْفِي مِنْ هَذَا أَنَّ اللَّهَ تَعَالَى قَالَ: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] وَقَدْ قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ السَّلَبَ لِلْقَاتِلِ إذَا قَامَتْ لَهُ بَيِّنَةٌ، فَإِنْ كَانَتْ طَاعَتُهُ - عَلَيْهِ السَّلَامُ - وَاجِبَةً فَالسَّلَبُ حَقٌّ لِلْقَاتِلِ مَتَى قَامَتْ لَهُ بِهِ بَيِّنَةٌ وَلَا خِيَرَةَ لِأَحَدٍ - لَا إمَامٍ وَلَا غَيْرِهِ - فِي خِلَافِ ذَلِكَ، لِنَصِّ كَلَامِ اللَّهِ تَعَالَى، وَإِنْ كَانَتْ طَاعَتُهُ - عَلَيْهِ السَّلَامُ - لَيْسَتْ وَاجِبَةً فَهَذَا كُفْرٌ مِنْ قَائِلِهِ، وَإِذَا لَمْ يَكُنْ السَّلَبُ مِنْ حَقِّ الْقَاتِلِ

[37] **Qur'an references (L15938):** Qur'an 8:1 (Al-Anfal).
[38] **Qur'an references (L15941):** Qur'an 37:182 (As-Saffat).

بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: إنَّهُ لَهُ إذَا قَامَتْ لَهُ بِهِ بَيِّنَةٌ، فَمِنْ أَيْنَ خَرَجَ لَهُمْ؟ وَأَيْنَ وَجَدُوا مَا يُوجِبُ قَوْلَهُمْ الْفَاسِدَ؟ : فِي أَنَّ الْإِمَامَ إذَا قَالَ: مَنْ قَتَلَ قَتِيلًا فَلَهُ سَلَبُهُ. كَانَ السَّلَبُ حِينَئِذٍ لِلْقَاتِلِ، وَلَا نُعْمَى عَيْنٍ لِلْإِمَامِ أَنْ يَكُونَ قَوْلُهُ تَحْرِيمًا أَوْ إيجَابًا.

of Allah the Exalted's words. If obedience to him—peace be upon him—is not obligatory, then this constitutes disbelief from its proponent. If the salb does not rightfully belong to the killer by the Prophet's statement—peace and blessings be upon him—that it is his when evidence is established, then from where did they derive this? Where did they find what necessitates their invalid claim? This concerns the view that if the Imam says, "Whoever kills someone, their salb is his," then the salb at that point belongs to the killer. The Imam has no authority to declare his statement a ruling of prohibition or obligation.[39]

فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً وَتَعَرِّيه مِنْ الدَّلِيلِ، وَهُوَ قَوْلٌ لَمْ يُحْفَظْ قَطُّ قَبْلَهُمْ لَا عَنْ صَاحِبٍ، وَلَا عَنْ تَابِعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L15943 Thus, the invalidity of their statement has become evident in its entirety, and it is stripped of evidence. This is a statement that has never been preserved before their time, neither from a Companion nor from a Follower—and with Allah, the Exalted, is success.

[مَسْأَلَةٌ تنفيل الْإِمَام مِنْ رَأْسِ الْغَنِيمَةِ بَعْدَ الْخُمُسِ وَقَبْلَ الْقِسْمَةِ]

An issue regarding the leader's receipt of a bonus share from the principal portion of the spoils after allocating the fifth (khums) and before distribution.

٩٥٦ - مَسْأَلَةٌ:

956 – Question

وَإِنْ نَفَّلَ الْإِمَامُ مِنْ رَأْسِ الْغَنِيمَةِ - بَعْدَ الْخُمُسِ وَقَبْلَ الْقِسْمَةِ - مَنْ رَأَى أَنْ يُنَفِّلَهُ مِمَّنْ أَغْنَى عَنْ الْمُسْلِمِينَ، وَمِمَّنْ مَعَهُ مِنْ النِّسَاءِ اللَّوَاتِي يَنْتَفِعُ بِهِنَّ أَهْلُ الْجَيْشِ، وَمَنْ قَاتَلَ مِمَّنْ لَمْ يَبْلُغْ: فَحَسَنٌ.

L15946 If the leader grants an extra portion from the principal spoils - after deducting the fifth share and before division - to those he decides to grant from those who sufficed the Muslims, to the women accompanying him whom the army benefits from, and to those who fought from those who have not reached [the age of maturity]: this is commendable.

وَإِنْ رَأَى أَنْ يُنَفِّلَ مَنْ أَتَى بِمَغْنَمٍ فِي الدُّخُولِ رُبْعَ مَا سَاقَ بَعْدَ الْخُمُسِ فَأَقَلَّ، أَوْ ثُلُثَ مَا سَاقَ بَعْدَ الْخُمُسِ فَأَقَلَّ، لَا أَكْثَرَ أَصْلًا: فَحَسَنٌ، لِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا عَبْدُ الْمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ حَدَّثَنِي أَبِي عَنْ جَدِّي حَدَّثَنِي عُقَيْلُ بْنُ خَالِدٍ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

L15947–15948 If he deems it appropriate to grant a discretionary bonus to those who brought spoils in battle—a quarter of what they collected after deducting the obligatory fifth (khums) or less, or a third of what they collected after the khums or less, with no excess whatsoever—this is sound, as transmitted in Imam Muslim's collection via the chain: 'Abd al-Malik ibn Shu'ayb ibn al-Layth narrated to us, reporting: My father narrated to me from my grandfather, who narrated to me from 'Uqayl ibn Khālid, from Ibn Shihāb, from Sālim ibn 'Abd Allāh ibn 'Umar, from his father, who said: "The Mes-

[39] **Qur'an references (L15942):** Qur'an 33:36 (Al-Ahzab).

senger of Allāh—peace and blessings of Allāh be upon him—would grant a discretionary bonus specifically to some of those he dispatched on military expeditions, separate from the army's general share, while the entire khums remained obligatory in that matter."

وَسَلَّمَ - يُنَفِّلُ بَعْضَ مَنْ يَبْعَثُ مِنْ السَّرَايَا لِأَنْفُسِهِمْ خَاصَّةً سِوَى قِسْمَةِ عَامَّةِ الْجَيْشِ، وَالْخُمُسُ فِي ذَلِكَ وَاجِبٌ كُلُّهُ»

L15949 Through the chain of Abū Dāwūd: Mahmūd ibn Khālid → Marwān ibn Muḥammad → Yaḥyā ibn Ḥamzah, who said: [I heard Abū Wahb say]: I heard Makhūl say: I heard Ziyād ibn Jāriyah say: I heard Ḥabīb ibn Maslamah say: "I witnessed the Messenger of Allāh, peace and blessings of Allāh be upon him, grant one-fourth at the outset and one-third upon return."

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مَحْمُودُ بْنُ خَالِدٍ نَا مَرْوَانُ بْنُ مُحَمَّدٍ نَا يَحْيَى بْنُ حَمْزَةَ قَالَ: [سَمِعْت: أَبَا وَهْبٍ يَقُولُ] : سَمِعْت مَكْحُولًا قَالَ: سَمِعْتُ زِيَادَ بْنَ جَارِيَةَ سَمِعْتُ حَبِيبَ بْنَ مَسْلَمَةَ يَقُولُ «شَهِدْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفَلَ الرُّبْعَ فِي الْبَدَاءَةِ وَالثُّلُثَ فِي الرَّجْعَةِ»

L15950 Through the chain of transmission of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā reported to us via ʿAbd al-Raḥmān ibn Mahdī via Sufyān al-Thawrī from ʿAbd al-Raḥmān ibn al-Ḥārith from Sulaymān ibn Mūsā from Makhūl from Abū Salām Mammṭūr al-Ḥabashī from Abū Umāmah al-Bāhilī from ʿUbādah ibn al-Ṣāmit: "The Messenger of Allah (peace and blessings be upon him) would grant an additional quarter during the initial expedition and a third during the return journey."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ مَكْحُولٍ عَنْ أَبِي سَلَّامٍ مَمْطُورٍ الْحَبَشِيِّ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُنَفِّلُ فِي الْبَدَاءَةِ الرُّبْعَ وَفِي الْقُفُولِ الثُّلُثَ»

L15951 From the chain of Ibn Abī Shaybah, who narrated to us: ʿAffān ibn Muslim narrated from Abū ʿAwanah from ʿĀṣim ibn Kulayb from Abū al-Juwayriyah, who said: Maʿn ibn Yazīd al-Sulamī said to me, "I heard the Messenger of Allah (peace and blessings be upon him) say: 'There is no additional share except after the _khums_.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَفَّانَ بْنُ مُسْلِمٍ عَنْ أَبِي عَوَانَةَ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِي الْجُوَيْرِيَةِ قَالَ لِي مَعْنُ بْنُ يَزِيدَ السُّلَمِيُّ " سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا نَفْلَ إلَّا مِنْ بَعْدِ الْخُمُسِ»

L15952 A group of the Salaf said this. It has been narrated to us through the chain of Hammad ibn Salamah, from Dawud ibn Abi Hind, from al-Sha'bi, that Jarir ibn 'Abdullah al-Bajali came to 'Umar ibn al-Khattab among his own people intending to go to Syria. 'Umar said to him: "Would you like to come to Kufa, and I will allocate you a third, after the fifth has been deducted from every land and item?"

وَقَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ. رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ أَنَّ جَرِيرَ بْنَ عَبْدِ اللَّهِ الْبَجَلِيَّ قَدِمَ عَلَى عُمَرَ بْنِ الْخَطَّابِ فِي قَوْمِهِ يُرِيدُ الشَّامَ فَقَالَ لَهُ عُمَرُ: هَلْ لَك أَنْ تَأْتِيَ الْكُوفَةَ وَأُنْفِلُكَ الثُّلُثَ مِنْ بَعْدِ الْخُمُسِ مِنْ كُلِّ أَرْضٍ وَشَيْءٍ؟

L15953–15954 From the chain of Abd al-Razzaq, from Ibn Jurayj, who reported to me:

Sulayman ibn Musa said, “People used to grant extra allocations beyond a third. When Umar ibn Abd al-Aziz assumed authority, he wrote that no report had reached us indicating the Messenger of Allah—peace and blessings be upon him—granted extra allocations beyond a third.” This is the opinion of al-Awza’i and Abu Sulayman.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ مُوسَى قَالَ: كَانَ النَّاسُ يُنَفِّلُونَ أَكْثَرَ مِنْ الثُّلُثِ حَتَّى إذَا كَانَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ كَتَبَ أَنَّهُ لَمْ يَبْلُغْنَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفَّلَ بِأَكْثَرَ مِنْ الثُّلُثِ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَبِي سُلَيْمَانَ.

L15955 Abu Muhammad said: Allah the Exalted has ordained the khums for its designated recipients whom He named. The extra grant from it pertains exclusively to the share of the Prophet (peace be upon him), constituting one-fifth of the fifth (of the total spoils). The remainder of the spoils belongs to the combatants. It is unlawful to remove anything from it except what Allah has permitted or obligated through the decree of His Messenger (peace be upon him). Nothing is permitted except granting the spoils stripped from the slain entirely to the killer, and granting an extra portion of a quarter or less (of the total spoils), or a third or less upon return (from battle).

قَالَ أَبُو مُحَمَّدٍ: الْخُمُسُ قَدْ جَعَلَهُ اللَّهُ تَعَالَى لِأَهْلِهِ الَّذِينَ سَمَّى، فَالنَّفَلُ مِنْهُ مِنْ سَهْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَاصَّةً، وَهُوَ خُمُسُ الْخُمُسِ، وَسَائِرُ الْغَنِيمَةِ لِلْغَانِمِينَ، فَلَا يَحِلُّ أَنْ يَخْرُجَ مِنْهُ شَيْءٌ إلَّا مَا أَبَاحَ اللَّهُ تَعَالَى إخْرَاجَهُ، أَوْ أَوْجَبَ إخْرَاجَهُ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ إلَّا السَّلَبُ جُمْلَةً لِلْقَاتِلِ، وَتَنْفِيلُ مَا ذَكَرْنَا مِنْ الرُّبْعِ فَأَقَلَّ، أَوْ الثُّلُثِ فِي الْقُفُولِ فَأَقَلَّ.

L15956 And similarly, as narrated to us from Anas and Sa‘īd ibn al-Musayyib: There is no supererogatory prayer except after the five [prayers], and success is from Allah, the Most High.

وَكَذَلِكَ كَمَا رُوِّينَا عَنْ أَنَسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، لَا نَفْلَ إلَّا بَعْدَ الْخُمْسِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L15957 A legal issue: Spoils are to be divided as they are by their value and are not to be sold.

[مَسْأَلَةٌ تُقْسَمُ الْغَنَائِمُ كَمَا هِيَ بِالْقِيمَةِ وَلَا تُبَاعُ]

L15958 957 – Issue:

٩٥٧ - مَسْأَلَةٌ:

L15959 The spoils are divided according to their value without being sold, as no textual evidence permits their sale. The division is expedited in the abode of war (dār al-ḥarb). Land is divided and subjected to khums (the fifth), like all other spoils, without distinction. If all combatants willingly agree to relinquish their shares, the Imam dedicates it as a waqf for Muslims; otherwise, he does not. If one surrenders their share, those who retain theirs preserve their rightful entitlement. No alternative is permissible—this being the doctrine of Al-Shāfi‘ī and Abū Sulaymān.

وَتُقْسَمُ الْغَنَائِمُ كَمَا هِيَ بِالْقِيمَةِ وَلَا تُبَاعُ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِبَيْعِهَا، وَتُعَجَّلُ الْقِسْمَةُ فِي دَارِ الْحَرْبِ، وَتُقْسَمُ الْأَرْضُ وَتُخَمَّسُ، كَسَائِرِ الْغَنَائِمِ، وَلَا فَرْقَ، فَإِنْ طَابَتْ نُفُوسُ جَمِيعِ أَهْلِ الْعَسْكَرِ عَلَى تَرْكِهَا أَوْقَفَهَا الْإِمَامُ حِينَئِذٍ لِلْمُسْلِمِينَ وَإِلَّا فَلَا، وَمَنْ أَسْلَمَ نَصِيبَهُ كَانَ مَنْ لَمْ يُسَلِّمْ عَلَى حَقِّهِ، لَا يَجُوزُ غَيْرُ ذَلِكَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L15960 Mālik said: The spoils are sold, their proceeds are distributed, and the land

is designated as a waqf—it is neither to be divided nor does it become owned by anyone.

وَقَالَ مَالِكٌ: تُبَاعُ الْغَنِيمَةُ وَتُقْسَمُ أَثْمَانُهَا وَتُوقَفُ الْأَرْضُ وَلَا تُقْسَمُ وَلَا تَكُونُ مِلْكًا لِأَحَدٍ.

L15961 Abu Hanifah said: The Imam may choose—if he wills, he distributes the spoils, and if he wills, he places them in waqf. If he places them in waqf, they become the property of the disbelievers to whom they originally belonged. The spoils are not distributed except after departing from Dār al-Ḥarb (enemy territory). Abu Muhammad said: What we have stated is clarified by the words of Allah the Exalted: {So consume what you have taken as lawful and good} [8:69], for He did not say "from the prices of what you have taken."[40]

وَقَالَ أَبُو حَنِيفَةَ: الْإِمَامُ مُخَيَّرٌ إِنْ شَاءَ قَسَّمَهَا وَإِنْ شَاءَ أَوْقَفَهَا، فَإِنْ أَوْقَفَهَا فَهِيَ مِلْكٌ لِلْكُفَّارِ الَّذِينَ كَانَتْ لَهُمْ، وَلَا تُقْسَمُ الْغَنَائِمُ إِلَّا بَعْدَ الْخُرُوجِ مِنْ دَارِ الْحَرْبِ. قَالَ أَبُو مُحَمَّد: يُبَيِّنُ مَا قُلْنَا قَوْلُ اللَّهِ تَعَالَى: {فَكُلُوا مِمَّا غَنِمْتُمْ حَلالا طَيِّبًا} [الأنفال: ٦٩] وَلَمْ يَقُلْ مِنْ أَثْمَانِ مَا غَنِمْتُمْ.

L15962 And through the chain of Al-Bukhārī: Musaddad narrated to us, Abū al-Aḥwaṣ narrated to us, Saʿīd ibn Masrūq narrated from ʿAbāyah ibn Rifāʿah ibn Rāfiʿ from his father, from his grandfather Rāfiʿ ibn Khadīj, "that they acquired spoils of war, and the Prophet—may Allah's peace and blessings be upon him—distributed them among them, equating one camel to ten sheep."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا مُسَدَّدٌ نَا أَبُو الْأَحْوَصِ نَا سَعِيدُ بْنُ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعٍ عَنْ أَبِيهِ عَنْ جَدِّهِ رَافِعِ بْنِ خَدِيجٍ «أَنَّهُمْ أَصَابُوا غَنَائِمَ فَقَسَمَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ فَعَدَلَ بَعِيرًا بِعَشْرِ شِيَاهٍ» .

L15963–15964 Thus, it was confirmed that he (peace be upon him) apportioned only the specific items of the spoils of war.

فَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - إِنَّمَا قَسَّمَ أَعْيَانَ الْغَنِيمَةِ.

L15965 Moreover, their right pertains solely to what they acquired as spoils. Therefore, selling their rights and property without the consent of all of them—or the first of them instead of the last—is unlawful, based on the statement of Allah's Messenger (peace and blessings of Allah be upon him): "Your blood and your property are sacred to one another."

وَأَيْضًا فَإِنَّ حَقَّهُمْ إِنَّمَا هُوَ فِيمَا غَنِمُوا، فَبَيْعُ حُقُوقِهِمْ وَأَمْوَالِهِمْ بِغَيْرِ رِضًا مِنْ جَمِيعِهِمْ أَوَّلِهِمْ عَنْ آخِرِهِمْ لَا يَحِلُّ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L15966 If the entire army consents to the sale except one individual, then that is valid for him, and he is given his due share from the spoils in kind. His share may be sold if he wishes to sell, as Allah, the Exalted, said: "No soul earns [a sin] except against itself" [Al-Anʿām 6:164].[41]

فَإِنْ رَضِيَ الْجَيْشُ كُلُّهُمْ بِالْبَيْعِ إِلَّا وَاحِدًا فَلَهُ ذَلِكَ وَيُعْطَى حَقَّهُ مِنْ عَيْنِ الْغَنِيمَةِ، وَيُبَاعُ إِنْ أَرَادَ الْبَيْعَ قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L15967 This is supported by the narrations concerning Hunayn, Badr, these two and others, such as the statement of Ali: "An old she-camel from the spoils

وَبِهَذَا جَاءَتْ الْآثَارُ فِي حُنَيْنٍ، وَبَدْرٍ، وَغَيْرِهِمَا، كَقَوْلِ عَلِيٍّ: إنَّهُ وَقَعَ لِي شَارِفٌ مِنْ الْمَغْنَمِ، وَكَوُقُوعِ جُوَيْرِيَةَ أُمِّ الْمُؤْمِنِينَ فِي سَهْمِ ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ، وَغَيْرُ ذَلِكَ

[40] **Qur'an references (L15961):** Qur'an 8:69 (Al-Anfal).
[41] **Qur'an references (L15966):** Qur'an 6:164 (Al-An'am).

was allotted to me," and the assignment of Juwayriyah, the Mother of the Believers, to the share of Thabit ibn Qays ibn al-Shammās, among many other instances. Similarly, after the Prophet (may Allah bless him and grant him peace), as in the statement of Ibn Umar: "A female captive was allotted to my share on the day of Jalula." This is the statement of Sa'id ibn al-Musayyib and others.

كَثِيرٌ، وَكَذَلِكَ بَعْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَقَوْلِ ابْنِ عُمَرَ، وَقَعَتْ فِي سَهْمِي يَوْمَ جَلُولَاءَ جَارِيَةٌ وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ - وَغَيْرِهِ.

L15968 And through the chain of Abd al-Razzaq from Ibn Jurayj: Abu al-Zubayr reported to me that he heard Jabir ibn Abdullah saying: "I disapprove of the sale of the *khums* before its distribution, and we do not know of any opponent to their opinion among the Companions whatsoever."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: أَكْرَهُ بَيْعَ الْخُمْسِ حَتَّى يُقْسَمَ، وَلَا نَعْرِفُ لَهُمْ مُخَالِفًا مِنْ الصَّحَابَةِ أَصْلًا

L15969 As for hastening the division: delaying the right-holder's right is an injustice, while hastening to give each right-holder their right is a duty. The Ḥanafīs say: Whoever among the members of the army dies before departing to the abode of Islam or is killed in war has no share.

وَأَمَّا تَعْجِيلُ الْقِسْمَةِ فَإِنَّ مَطْلَ ذِي الْحَقِّ لِحَقِّهِ ظُلْمٌ، وَتَعْجِيلَ إعْطَاءِ كُلِّ ذِي حَقٍّ حَقَّهُ فَرْضٌ، وَالْحَنَفِيُّونَ يَقُولُونَ: مَنْ مَاتَ مِنْ أَهْلِ الْجَيْشِ قَبْلَ الْخُرُوجِ إلَى دَارِ الْإِسْلَامِ، أَوْ قُتِلَ فِي الْحَرْبِ فَلَا سَهْمَ لَهُ.

L15970 He said: If they departed from the abode of war and reinforcements joined them before they left for the abode of Islam, their share of the spoils remains with them—and this is an unmistakable injustice, a statement reaching the pinnacle of corruption without proof. Rather, anyone who participated in any part of the combat that led to the spoils, or took part in gathering them, their share in it is inherited from them. But whoever did not participate in any of that has no share in it. Has there ever been a more vile injustice than depriving those who fought and acquired spoils while giving to those who neither fought nor acquired? As for the land, the Companions disagreed. It has been narrated that Ibn al-Zubayr, Bilāl, and others called for dividing the land, while 'Umar, 'Alī, Mu'ādh, and Abū 'Ubaydah held the opinion of leaving it intact. When they disputed, the matter must be referred back to what Allah the Exalted has ordained to be referred to Him, as He says: *"If you disagree over something, refer it to Allah and the Messenger, if you believe in Allah and the Last Day"* (Quran 4:59).[42]

قَالَ: فَلَوْ خَرَجُوا عَنْ دَارِ الْحَرْبِ فَلَحِقَ بِهِمْ مَدَدٌ قَبْلَ خُرُوجِهِمْ إلَى دَارِ الْإِسْلَامِ فَحَقُّهُمْ مَعَهُمْ فِي الْغَنِيمَةِ - وَهَذَا ظُلْمٌ لَا خَفَاءَ بِهِ، وَقَوْلٌ فِي غَايَةِ الْفَسَادِ بِغَيْرِ بُرْهَانٍ، بَلْ كُلُّ مَنْ شَهِدَ شَيْئًا مِنْ الْقِتَالِ الَّذِي كَانَ سَبَبَ الْغَنِيمَةِ، أَوْ شَهِدَ شَيْئًا مِنْ جَمْعِ الْغَنِيمَةِ فَحَقُّهُ فِيهَا يُورَثُ عَنْهُ، وَمَنْ لَمْ يَشْهَدْ مِنْ ذَلِكَ شَيْئًا فَلَا حَقَّ لَهُ فِيهَا - فَهَلْ سُمِعَ بِظُلْمٍ أَقْبَحَ مِنْ مَنْعِ مَنْ قَاتَلَ وَغَنِمَ وَإِعْطَاءِ مَنْ لَمْ يُقَاتِلْ وَلَا غَنِمَ؟ وَأَمَّا الْأَرْضُ، فَإِنَّ الصَّحَابَةَ اخْتَلَفُوا. فَرُوِّينَا أَنَّ ابْنَ الزُّبَيْرِ، وَبِلَالًا، وَغَيْرَهُمْ دَعَوْا إلَى قِسْمَةِ الْأَرْضِ، وَأَنَّ عُمَرَ، وَعَلِيًّا، وَمُعَاذًا، وَأَبَا عُبَيْدَةَ، رَأَوْا إبْقَاءَهَا رَأْيًا مِنْهُمْ، وَإِذْ تَنَازَعُوا فَالْمَرْدُودُ إلَيْهِ هُوَ مَا افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إلَيْهِ إذْ يَقُولُ: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ إنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩]

[42] **Qur'an references (L15970):** Qur'an 4:59 (An-Nisa).

فَوَجَدْنَا مَنْ قَلَّدَ عُمَرَ فِي ذَلِكَ يَذْكُرُ مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ: لَوْلَا آخِرُ الْمُسْلِمِينَ مَا افْتَتَحْت قَرْيَةً إلَّا قَسَّمْتهَا كَمَا قَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ. قَالَ أَبُو مُحَمَّد: وَهَذَا أَعْظَمُ حُجَّةً عَلَيْهِمْ لِوُجُوهٍ. أَوَّلُهَا: إقْرَارُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَسَّمَ خَيْبَرَ. وَالثَّانِي: أَنَّهُ قَدْ أَخْبَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ إنَّمَا فَعَلَ ذَلِكَ نَظَرًا لِآخِرِ الْمُسْلِمِينَ، وَالَّذِي لَا شَكَّ فِيهِ [فَهُوَ] أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ أَنْظَرَ لِأَوَّلِ الْمُسْلِمِينَ وَلِآخِرِهِمْ مِنْ عُمَرَ، فَمَا رَأَى هَذَا الرَّأْيَ؛ بَلْ أَبْقَى لِآخِرِ الْمُسْلِمِينَ مَا أَبْقَى لِأَوَّلِهِمْ الْجِهَادَ فِي سَبِيلِ اللَّهِ، فَإِمَّا الْغَنِيمَةُ وَإِمَّا الشَّهَادَةُ، وَأَبْقَى لَهُمْ مَوَارِيثَ مَوْتَاهُمْ، وَالتِّجَارَةَ، وَالْمَاشِيَةَ، وَالْحَرْثَ. وَالثَّالِثُ: أَنَّهُ قَدْ خَالَفَ عُمَرَ الزُّبَيْرُ، وَلَيْسَ بَعْضُهُمْ أَحَقَّ بِالِاتِّبَاعِ مِنْ بَعْضٍ؛ فَحَتَّى لَوْ صَحَّ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مَا ظَنُّوهُ بِهِ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، وَلَكَانَ رَأْيًا مِنْهُ غَيْرُهُ خَيْرٌ مِنْهُ، وَهُوَ مَا أَخْبَرَ بِهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَعُمَرُ قَوْلُهُ كَقَوْلِنَا فِي هَذِهِ الْمَسْأَلَةِ؟ كَمَا نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L15971–15973 We found those who practiced *taqlīd* of Umar in that matter mentioning what we have narrated through the chain of transmission of Malik from Zayd ibn Aslam from [narrators]. His father said: Umar said: "Were it not for later Muslims, I would not conquer any village without dividing it as Allah's Messenger—peace be upon him—divided Khaybar." Abu Muhammad said: "This constitutes the greatest proof against them for multiple reasons. First: Umar's acknowledgment—may Allah be pleased with him—that Allah's Messenger—peace be upon him—divided Khaybar. Second: He—may Allah be pleased with him—stated that he only took this action out of consideration for later Muslims. What is certain is that Allah's Messenger—peace be upon him—possessed greater foresight for both the earliest and latest Muslims than Umar. Therefore, he did not adopt this view; rather, he preserved for later Muslims what he preserved for the earliest: jihad in Allah's path—either spoils or martyrdom—while also preserving for them the inheritance of their deceased, commerce, livestock, and cultivation. Third: Al-Zubayr opposed Umar, and none of them is more entitled to be followed than another. Even if what they assumed about Umar—may Allah be pleased with him—were valid, it would not constitute proof for them, for his opinion would remain one where others' opinions are better than his—namely, what he transmitted from the Prophet—peace be upon him. How then could Umar's opinion accord with ours in this matter? We shall clarify this subsequently, Allah the Exalted willing."

وَهَذَا الْخَبَرُ مِنْ عُمَرَ يُكَذِّبُ كُلَّ مَا مَوَّهُوا بِهِ مِنْ أَحَادِيثَ مَكْذُوبَةٍ مِنْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُقَسِّمْ خَيْبَرَ كُلَّهَا، فَهُمْ دَأَبًا يَسْعَوْنَ فِي تَكْذِيبِ قَوْلِ عُمَرَ نَصْرًا لِرَأْيِهِمْ الْفَاسِدِ وَظَنِّهِمْ الْكَاذِبِ.

L15974 This report from ʿUmar refutes all the embellished fabricated ḥadīths they have circulated - those claiming that the Messenger of Allah, peace and blessings of Allah be upon him, did not divide the entirety of Khaybar. Thus, they persistently strive to discredit ʿUmar's statement to support their corrupt opinion and false assumption.

وَقَدْ رُوِّينَا عَنْ عُمَرَ أَنَّهُ قَالَ: إنْ عِشْت إلَى قَابِلٍ لَا تُفْتَحُ قَرْيَةٌ إلَّا قَسَّمْتهَا كَمَا قَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ -، فَهَذَا رُجُوعٌ مِنْ عُمَرَ إلَى الْقِسْمَةِ.

L15975 It has been narrated to us on the authority of ʿUmar that he said: "If I live until the coming year, no village will be conquered without me dividing it as the Messenger of Allah (may Allah bless him and grant him peace) divided Khaybar." This is a reversion by ʿUmar to division.

L15976 They cited an authentic report we narrated through the chain of Abū Hurayrah that the Messenger of Allah (peace be upon him) said: «Iraq withheld

its dirham and qafīz, Syria withheld its mudd and dinar, Egypt withheld its irdabb and dinar, and you have returned as you began.»

وَاحْتَجُّوا بِخَبَرٍ صَحِيحٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنَعَتْ الْعِرَاقُ دِرْهَمَهَا وَقَفِيزَهَا، وَمَنَعَتْ الشَّامُ مُدَّهَا وَدِينَارَهَا، وَمَنَعَتْ مِصْرُ إرْدَبَّهَا وَدِينَارَهَا وَعُدْتُمْ كَمَا بَدَأْتُمْ» .

L15977 They said: "So, this is the kharaj levied upon the land, and it necessitates its suspension."

قَالُوا: فَهَذَا هُوَ الْخَرَاجُ الْمَضْرُوبُ عَلَى الْأَرْضِ، وَهُوَ يُوجِبُ إيقَافَهَا.

L15978 Abu Muhammad said: This is their distortion of the report through falsehood and a baseless assertion of what it does not contain—devoid of any textual basis or evidence. This report cannot exist except within one of two aspects only, or it may encompass both together through its apparent wording.

قَالَ أَبُو مُحَمَّد: وَهَذَا تَحْرِيفٌ مِنْهُمْ لِلْخَبَرِ بِالْبَاطِلِ وَادِّعَاءُ مَا لَيْسَ فِي الْخَبَرِ بِلَا نَصٍّ وَلَا دَلِيلٍ، وَلَا يَخْلُو هَذَا الْخَبَرُ مِنْ أَحَدِ وَجْهَيْنِ فَقَطْ، أَوْ قَدْ يَجْمَعُهُمَا جَمِيعًا بِظَاهِرِ لَفْظِهِ.

L15979–15981 One of them is that he—peace be upon him—reported about the jizyah imposed upon the people of this land when it is conquered— And this is our statement—because the *jizya* is undoubtedly obligatory by the explicit text of the Qur'an, and there is no text that obligates the *kharaj* which they claim.

أَحَدُهُمَا: أَنَّهُ أَخْبَرَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْجِزْيَةِ الْمَضْرُوبَةِ عَلَى أَهْلِ هَذِهِ الْبِلَادِ إذَا فُتِحَتْ - وَهُوَ قَوْلُنَا - لِأَنَّ الْجِزْيَةَ بِلَا شَكٍّ وَاجِبَةٌ بِنَصِّ الْقُرْآنِ، وَلَا نَصَّ يُوجِبُ الْخَرَاجَ الَّذِي يَدَّعُونَ.

L15982 The second is that it is a warning from him—peace be upon him—of an evil consequence in the final outcome, and that Muslims will be denied their rights in these lands and will revert to their initial state. This, too, is a truth that has become evident—*Indeed, to Allah we belong, and to Him we shall return*—thus this report became an authoritative argument against them.

وَالثَّانِي: أَنَّهُ إنْذَارٌ مِنْهُ - عَلَيْهِ السَّلَامُ - بِسُوءِ الْعَاقِبَةِ فِي آخِرِ الْأَمْرِ، وَأَنَّ الْمُسْلِمِينَ سَيُمْنَعُونَ حُقُوقَهُمْ فِي هَذِهِ الْبِلَادِ وَيَعُودُونَ كَمَا بَدَءُوا، وَهَذَا أَيْضًا حَقٌّ قَدْ ظَهَرَ - وَإِنَّا لِلَّهِ وَإِنَّا إلَيْهِ رَاجِعُونَ - فَعَادَ هَذَا الْخَبَرُ حُجَّةً عَلَيْهِمْ

L15983 Abu Muhammad said: Since there is no evidence to validate their assertion, let us now mention the conclusive proofs supporting the correctness of our view. Allah the Exalted said: "And He made you inherit their land, their dwellings, and their wealth" [Al-Ahzab: 27]. Thus, the Exalted equated all these without distinction, so it is impermissible to differentiate between the rulings concerning wealth or land that has come to us from combatants, by the Quranic text. And the Exalted said: "And know that whatever you obtain

قَالَ أَبُو مُحَمَّد: فَإِذْ لَا دَلِيلَ عَلَى صِحَّةِ قَوْلِهِمْ فَلْنَذْكُرْ الْآنَ الْبَرَاهِينَ عَلَى صِحَّةِ قَوْلِنَا. قَالَ اللَّهُ تَعَالَى: {وَأَوْرَثَكُمْ أَرْضَهُمْ وَدِيَارَهُمْ وَأَمْوَالَهُمْ} [الأحزاب: ٢٧] فَسَوَّى تَعَالَى بَيْنَ كُلِّ ذَلِكَ وَلَمْ يُفَرِّقْ، فَلَا يَجُوزُ أَنْ يُفَرَّقَ بَيْنَ حُكْمِ مَا صَارَ إلَيْنَا مِنْ أَهْلِ الْحَرْبِ مِنْ مَالٍ، أَوْ أَرْضٍ بِنَصِّ الْقُرْآنِ، وَقَالَ تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى} [الأنفال: ٤١] .

as spoils, then indeed one-fifth of it is for Allah, the Messenger, and the near relatives" [Al-Anfal: 41].[43]

L15984 And it was narrated to us through the chain of Al-Bukhārī: from ʿAbdullāh ibn Muḥammad (Al-Musnadī), from Muʿāwiyah ibn ʿAmr, from Abū Isḥāq (Al-Fazārī), from Mālik ibn Anas, who said: "Thawr narrated to me from Sālim, the freed slave of Ibn Muṭīʿ, that he heard Abū Hurayrah say: 'We conquered Khaybar but took no gold or silver as booty. We only took as booty camels, cattle, household goods, and enclosed orchards.'"

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ هُوَ الْمُسْنَدِيُّ نَا مُعَاوِيَةُ بْنُ عَمْرٍو نَا أَبُو إِسْحَاقَ هُوَ الْفَزَارِيُّ - عَنْ مَالِكِ بْنِ أَنَسٍ حَدَّثَنِي ثَوْرٌ عَنْ سَالِمٍ مَوْلَى ابْنِ مُطِيعٍ " أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: افْتَتَحْنَا خَيْبَرَ فَلَمْ نَغْنَمْ ذَهَبًا، وَلَا فِضَّةً إِنَّمَا غَنِمْنَا الْإِبِلَ، وَالْبَقَرَ، وَالْمَتَاعَ، وَالْحَوَائِطَ ".

L15985 Thus, it is established that enclosed gardens—namely estates and orchards—are considered spoils like all other goods. They are subject to the fifth (khums) by the Quran's explicit ruling, and this portion is to be divided without disagreement.

فَصَحَّ أَنَّ الْحَوَائِطَ، وَهِيَ: الضِّيَاعُ، وَالْبَسَاتِينُ: مَغْنُومَةٌ كَسَائِرِ الْمَتَاعِ فَهِيَ مُخَمَّسَةٌ بِنَصِّ الْقُرْآنِ، وَالْمُخَمَّسُ مَقْسُومٌ بِلَا خِلَافٍ

L15986 It was narrated to us through the chain of Aḥmad ibn Ḥanbal and Isḥāq ibn Rāhawayh, both from ʿAbd al-Razzāq, who narrated to us from Maʿmar, from Hammām ibn Munabbih, from Abū Hurayrah, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—said: "Whichever village you approach and settle in, your share is therein. Whichever village disobeys Allāh and His Messenger, its khums belongs to Allāh and His Messenger, then it is yours." This constitutes an explicit text from which there is no escape.

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، كِلَاهُمَا عَنْ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ نَا أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا قَرْيَةٍ أَتَيْتُمُوهَا، وَأَقَمْتُمْ فِيهَا فَسَهْمُكُمْ فِيهَا، وَأَيُّمَا قَرْيَةٍ عَصَتْ اللَّهَ وَرَسُولَهُ فَإِنَّ خُمُسَهَا لِلَّهِ وَرَسُولِهِ، ثُمَّ هِيَ لَكُمْ» وَهَذَا نَصٌّ جَلِيٌّ لَا مَحِيصَ عَنْهُ.

L15987 It has been authentically established that the Prophet—may Allah bless him and grant him peace—divided the land of Banu Qurayẓah and Khaybar.

وَقَدْ صَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَسَّمَ أَرْضَ بَنِي قُرَيْظَةَ، وَخَيْبَرَ.

L15988–15989 Then the height of all astonishment is that Malik here followed Umar's precedent, yet in what you mentioned is a waqf - for he did not clarify how to administer its land tax. He acknowledged he did not know Umar's practice in that matter. Is there anything on earth more astounding than ignorance being taken as a proof?

ثُمَّ الْعَجَبُ كُلُّهُ: أَنَّ مَالِكًا قَلَّدَ هَاهُنَا عُمَرَ، ثُمَّ فِيمَا ذَكَرْتُمْ وَقْفٌ، فَلَمْ يُخْبِرْ كَيْفَ يَعْمَلُ فِي خَرَاجِهَا، وَأَقَرَّ أَنَّهُ لَا يَدْرِي فِعْلَ عُمَرَ فِي ذَلِكَ، فَهَلْ فِي الْأَرْضِ أَعْجَبُ مِنْ جَهَالَةٍ تُجْعَلُ حُجَّةً؟

L15990 As for Abū Ḥanīfah, he adopted a weak narration attributed to ʿUmar regarding this matter while disregarding other reports from him. They imposed their judgment erroneously without proof, though we have exhaustively an-

وَأَمَّا أَبُو حَنِيفَةَ فَأَخَذَ فِي ذَلِكَ بِرِوَايَةٍ غَيْرِ قَوِيَّةٍ جَاءَتْ عَنْ عُمَرَ، وَتَرَكَ سَائِرَ مَا رُوِيَ عَنْهُ، وَتَحَكَّمُوا فِي الْخَطَأِ بِلَا بُرْهَانٍ، وَقَدْ تَقَصَّيْنَا ذَلِكَ فِي كِتَابِ الْإِيصَالِ - وَاَللَّهُ

[43] **Qur'an references (L15983):** Qur'an 33:27 (Al-Ahzab); Qur'an 8:41 (Al-Anfal).

alyzed this in *Al-Iṣāl*—and Allah is the One whose help is sought [and all praise belongs to Allah, the Exalted]. How could this stand when the authentic narration from ʿUmar aligns with our position? As transmitted to us by Aḥmad ibn Muḥammad ibn Al-Jasūr—from Muḥammad ibn ʿĪsā ibn Rifāʿah, from ʿAlī ibn ʿAbd al-ʿAzīz, from Abū ʿUbayd, from Hushaym, from Ismāʿīl ibn Abī Khālid, from Qays ibn Abī Ḥāzim—who said: The Bajīlah tribe constituted a quarter of the forces at Al-Qādisiyyah. ʿUmar granted them a quarter of the Sawād lands, which they retained for two or three years. When ʿAmmār ibn Yāsir came to ʿUmar ibn Al-Khaṭṭāb as an envoy, accompanied by Jarīr ibn ʿAbdullāh, ʿUmar said: "O Jarīr, were I not an accountable distributor, you would retain your allotted share. But seeing the population has increased, I deem it fit for you to return it to them." Jarīr complied. Then Umm Kurz Al-Bajaliyyah protested: "O Commander of the Faithful, my father died while his share in the Sawād remained valid, yet I have not become Muslim." ʿUmar replied: "O Umm Kurz, your people have acted as you well know." She retorted: "Even if they did so, I shall not embrace Islam until you provide me with a trained she-camel bearing a red covering and fill my palms with gold." ʿUmar fulfilled her demand, the gold amounting to roughly eighty dinars. This constitutes the most authentic report from ʿUmar on this issue—and it affirms our stance. For he did not cease until he appeased the minds of the combatants entitled to spoils and the heirs of the deceased among them. This is what must be presumed of ʿUmar, and it is impermissible to presume otherwise. There are many cases where they contradicted ʿUmar, as we previously detailed—such as his deduction of the fifth from personal spoils, his allocation of the remainder to the slayer, and other rulings. Is it not among their absurdities that they exempted the jizya from those liable for the land tax? We have received a narration through Ibn Abī Shaybah—from Ḥafṣ ibn Ghiyāth, from Muḥammad ibn Qays, from Abū ʿAwn Muḥammad ibn ʿUbaydullāh Al-Thaqafī—that ʿUmar and ʿAlī declared: "When a landowner embraces Islam, we lift the jizya from him while collecting the land tax."

L15991–15993 It was narrated to us by Ibn Abī Shaybah from Hushaym, from Ḥuṣayn, that two men from the people of Ullays embraced Islam, so he wrote... Umar

الْمُسْتَعَانُ [وَلِلَّهِ تَعَالَى الْحَمْدُ] فَكَيْفَ وَالرِّوَايَةُ عَنْ عُمَرَ الصَّحِيحَةُ هِيَ قَوْلُنَا؟ كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نَا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ نَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نَا أَبُو عُبَيْدٍ نَا هُشَيْمٌ نَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ قَالَ: كَانَتْ بَجِيلَةُ رُبْعَ النَّاسِ يَوْمَ الْقَادِسِيَّةِ فَجَعَلَ لَهُمْ عُمَرُ رُبْعَ السَّوَادِ فَأَخَذُوا سَنَتَيْنِ، أَوْ ثَلَاثًا، فَوَفَدَ عَمَّارُ بْنُ يَاسِرٍ إِلَى عُمَرَ بْنِ الْخَطَّابِ وَمَعَهُ جَرِيرُ بْنُ عَبْدِ اللَّهِ، فَقَالَ عُمَرُ: يَا جَرِيرُ لَوْلَا أَنِّي قَاسِمٌ مَسْئُولٌ لَكُنْتُمْ عَلَى مَا جُعِلَ لَكُمْ، وَأَرَى النَّاسَ قَدْ كَثُرُوا فَأَرَى أَنْ تَرُدَّهُ عَلَيْهِمْ. فَفَعَلَ جَرِيرٌ ذَلِكَ، فَقَالَتْ أُمُّ كُرْزٍ الْبَجَلِيَّةُ: يَا أَمِيرَ الْمُؤْمِنِينَ إِنَّ أَبِي هَلَكَ وَسَهْمُهُ ثَابِتٌ فِي السَّوَادِ وَإِنِّي لَمْ أُسْلِمْ. فَقَالَ لَهَا عُمَرُ: يَا أُمَّ كُرْزٍ إِنَّ قَوْمَكِ قَدْ صَنَعُوا مَا قَدْ عَلِمْتِ، فَقَالَتْ: إِنْ كَانُوا صَنَعُوا مَا صَنَعُوا فَإِنِّي لَسْتُ أُسْلِمُ حَتَّى تَحْمِلَنِي عَلَى نَاقَةٍ ذَلُولٍ عَلَيْهَا قَطِيفَةٌ حَمْرَاءُ وَتَمْلَأُ كَفَّيَّ ذَهَبًا. فَفَعَلَ عُمَرُ ذَلِكَ، فَكَانَتْ الذَّهَبُ نَحْوَ ثَمَانِينَ دِينَارًا، فَهَذَا أَصَحُّ مَا جَاءَ عَنْ عُمَرَ فِي ذَلِكَ - وَهُوَ قَوْلُنَا، فَإِنَّهُ لَمْ يُوقِفْ حَتَّى اسْتَطَابَ نُفُوسَ الْغَانِمِينَ وَوَرَثَةَ مَنْ مَاتَ مِنْهُمْ، وَهَذَا الَّذِي لَا يَجُوزُ أَنْ يُظَنَّ بِعُمَرَ غَيْرُهُ، وَرُبَّ قَضِيَّةٍ خَالَفُوا فِيهَا عُمَرَ مِمَّا قَدْ ذَكَرْنَاهُ قَبْلُ مِنْ تَخْمِيسِهِ السَّلَبَ وَإِمْضَائِهِ سَائِرَهُ لِلْقَاتِلِ وَغَيْرِ ذَلِكَ، وَمِنْ عَجَائِبِهِمْ إِسْقَاطُهُمْ الْجِزْيَةَ عَنْ أَهْلِ الْخَرَاجِ؟ وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا حَفْصُ بْنُ غِيَاثٍ عَنْ مُحَمَّدِ بْنِ قَيْسٍ عَنْ أَبِي عَوْنٍ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ عَنْ عُمَرَ، وَعَلِيٍّ أَنَّهُمَا قَالَا: إِذَا أَسْلَمَ وَلَهُ أَرْضٌ وَضَعْنَا عَنْهُ الْجِزْيَةَ وَأَخَذْنَا مِنْهُ خَرَاجَهَا.

instructed Uthman ibn Hunayf to lift the jizya from the two of them and to take the fixed agricultural tax from their two lands.

حَدَّثَنَا ابْنُ أَبِي شَيْبَةَ عَنْ هُشَيْمٍ عَنْ حُصَيْنٍ أَنَّ رَجُلَيْنِ مِنْ أَهْلِ أُلَّيْسٍ أَسْلَمَا فَكَتَبَ عُمَرُ إِلَى عُثْمَانَ بْنِ حُنَيْفٍ أَنْ يَرْفَعَ الْجِزْيَةَ عَنْ رُءُوسِهِمَا وَأَنْ يَأْخُذَ الطَّسْقَ مِنْ أَرْضَيْهِمَا.

L15994 Ibn Abi Shaybah → Waki‘ → Sufyan → Qays ibn Muslim → Tariq ibn Shihab: A female dihqān from Nahr al-Malik embraced Islam. Umar said: “Return her land to her so she may pay its kharaj.”

حَدَّثَنَا ابْنُ أَبِي شَيْبَةَ نَا وَكِيعٌ نَا سُفْيَانُ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ أَنَّ دُهْقَانَةً مِنْ نَهْرِ الْمَلِكِ أَسْلَمَتْ فَقَالَ عُمَرُ: ادْفَعُوا إِلَيْهَا أَرْضَهَا تُؤَدِّي عَنْهَا الْخَرَاجَ.

Ibn Abi Shaybah → Waki‘ → Sufyan → Jabir → al-Sha‘bi: Al-Rafayl, the dihqān of al-Nahrayn (the Two Rivers), embraced Islam. Umar assigned him two thousand, lifted the jizya from his person, and obligated him to pay the kharaj on his land.

نَا ابْنُ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ سُفْيَانَ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ أَنَّ الرَّفَيْلَ دُهْقَانَ النَّهْرَيْنِ أَسْلَمَ فَفَرَضَ لَهُ عُمَرُ فِي أَلْفَيْنِ، وَوَضَعَ عَنْ رَأْسِهِ الْجِزْيَةَ، وَأَلْزَمَهُ خَرَاجَ أَرْضِهِ.

L15995 If it is said: “The ḥadīth of Ibn ‘Awn is mursal?” We respond: Glory be to Allah! When the mursal narration transmitted from Mu‘ādh concerning independent legal reasoning was considered valid evidence, yet now it is not considered as such, nor is any dissent known from the Companions concerning those we have mentioned.

فَإِنْ قِيلَ: حَدِيثُ ابْنِ عَوْنٍ مُرْسَلٌ؟ قُلْنَا: سُبْحَانَ اللَّهِ وَإِذْ رُوِيَ الْمُرْسَلُ عَنْ مُعَاذٍ فِي اجْتِهَادِ الرَّأْيِ كَانَ حُجَّةً وَالْآنَ لَيْسَ بِحُجَّةٍ، وَلَا يُعْرَفُ لِمَنْ ذَكَرْنَا مُخَالِفٌ مِنَ الصَّحَابَةِ.

L15996 A legal ruling: Nothing is accepted from a disbeliever except Islam or the sword.

[مَسْأَلَةٌ لَا يُقْبَلُ مِنْ كَافِرٍ إِلَّا الْإِسْلَامُ أَوْ السَّيْفُ]

L15997 958 – Question:

٩٥٨ - مَسْأَلَةٌ:

L15998 Nothing is accepted from a disbeliever except Islam or the sword [i.e., forced submission]—this ruling applies equally to men and women—except the People of the Book specifically: the Jews, Christians, and Zoroastrians alone. If they pay the *jizya* (poll tax), they are permitted to retain their status under humiliation.

وَلَا يُقْبَلُ مِنْ كَافِرٍ إِلَّا الْإِسْلَامُ، أَوْ السَّيْفُ - الرِّجَالُ وَالنِّسَاءُ فِي ذَلِكَ سَوَاءٌ - حَاشَا أَهْلَ الْكِتَابِ خَاصَّةً، وَهُمْ الْيَهُودُ، وَالنَّصَارَى، وَالْمَجُوسُ فَقَطْ، فَإِنَّهُمْ إِنْ أَعْطُوا الْجِزْيَةَ أُقِرُّوا عَلَى ذَلِكَ مَعَ الصَّغَارِ.

L15999 Abu Hanifa and Malik said: As for those who are Arabs and not People of the Book specifically, [the choice is] Islam or the sword.

وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ: أَمَّا مَنْ لَمْ يَكُنْ كِتَابِيًّا مِنَ الْعَرَبِ خَاصَّةً فَالْإِسْلَامُ أَوْ السَّيْفُ.

L16000 As for non-Arabs, the People of the Book and others are equally obliged, and all of them are required to pay the *jizya*.

وَأَمَّا الْأَعَاجِمُ فَالْكِتَابِيُّ وَغَيْرُهُ سَوَاءٌ، وَيُقَرُّ جَمِيعُهُمْ عَلَى الْجِزْيَةِ.

L16001 Abū Muḥammad said: This is false due to Allah the Most High's statement: "Fight the polytheists wherever you find them, capture them, besiege them, and lie in wait for them at every vantage point. But if they repent, establish ṣalāh, and give zakāh, then let them go free" [9:5], and His statement: "Combat those among the People of the Scripture who do not believe in Allah nor in the Last Day, nor forbid what Allah and His Messenger have forbidden, nor embrace the religion of truth, until they pay the jizyah willingly while they are subdued" [9:29]. Thus, the Most High did not specify any distinction between Arab and non-Arab in either of these two rulings.[1]

قَالَ أَبُو مُحَمَّد: هَذَا بَاطِلٌ لِقَوْلِ اللَّهِ تَعَالَى: {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] ، وَقَالَ تَعَالَى: {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] فَلَمْ يَخُصَّ تَعَالَى عَرَبِيًّا مِنْ عَجَمِيٍّ فِي كِلَا الْحُكْمَيْنِ.

L16002–16003 It has been authentically established that he—peace be upon him—took the jizya from the Zoroastrians of Hijr, thus confirming they are among the People of the Book. Were this not the case, the Messenger of Allah—may Allah's blessings and peace be upon him—would not have acted contrary to the Book of his Lord, the Most High.

وَصَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَخَذَ الْجِزْيَةَ مِنْ مَجُوسِ هَجَرٍ، فَصَحَّ أَنَّهُمْ مِنْ أَهْلِ الْكِتَابِ، وَلَوْلَا ذَلِكَ مَا خَالَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كِتَابَ رَبِّهِ تَعَالَى.

L16004 If they cite what is narrated from the Prophet—peace and blessings of Allah be upon him—regarding his saying, "I only intend for them to uphold a declaration to which the Arabs will submit, then the non-Arabs will submit by paying the jizya," this constitutes no valid argument for them. For they do not dispute that the People of the Book among the Arabs pay the jizya, nor that non-Arabs who embrace Islam do not pay the jizya.

فَإِنْ ذَكَرُوا مَا رُوِيَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ: «إِنَّمَا أُرِيدُهُمْ عَلَى كَلِمَةٍ تَدِينُ لَهُمْ بِهَا الْعَرَبُ ثُمَّ تُؤَدِّي إِلَيْهَا الْعَجَمُ الْجِزْيَةَ» فَلَا حُجَّةَ لَهُمْ فِي هَذَا؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ أَهْلَ الْكِتَابِ مِنَ الْعَرَبِ يُؤَدُّونَ الْجِزْيَةَ، وَأَنَّ مَنْ أَسْلَمَ مِنَ الْعَجَمِ لَا يُؤَدِّي الْجِزْيَةَ.

L16005 It has thus been established that this narration is not to be taken in its general sense, and that he—peace be upon him—only intended the imposition of jizyah to apply to certain non-Arabs, not all of them. Exalted is He has clarified who they are: they are the People of the Book alone.

فَصَحَّ أَنَّ هَذَا الْخَبَرَ لَيْسَ عَلَى عُمُومِهِ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - إِنَّمَا عَنَى بِأَدَاءِ الْجِزْيَةِ بَعْضَ الْعَجَمِ لَا كُلَّهُمْ، وَبَيَّنَ تَعَالَى مَنْ هُمْ، وَأَنَّهُمْ أَهْلُ الْكِتَابِ فَقَطْ.

L16006 The greatest wonder is that they deemed Allah's statement, the Exalted: {Then either grant favor or take ransom} [Muhammad: 4] as abrogated by

[1] **Qur'an references (L16001):** Qur'an 9:5 (At-Tawbah); Qur'an 9:29 (At-Tawbah).

وَالْعَجَبُ كُلُّهُ أَنَّهُمْ جَعَلُوا قَوْلَ اللَّهِ تَعَالَى: {فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً} [محمد: ٤] مَنْسُوخًا بِقَوْلِهِ تَعَالَى: {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] وَلَمْ يَجْعَلُوا ذَلِكَ مُبَيِّنًا لِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «تُؤَدِّي إلَيْكُمْ الْجِزْيَةَ» وَلَوْ قَلَبُوا لَأَصَابُوا وَهَذَا تَحَكُّمٌ بِالْبَاطِلِ.

وَقَالُوا: قَالَ اللَّهُ تَعَالَى: {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] ؟ فَقُلْنَا: أَنْتُمْ أَوَّلُ مَنْ يَقُولُ: إنَّ الْعَرَبَ الْوَثَنِيِّينَ يُكْرَهُونَ عَلَى الْإِسْلَامِ، وَإِنَّ الْمُرْتَدَّ يُكْرَهُ عَلَى الْإِسْلَامِ.

وَقَدْ صَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَكْرَهَ مُشْرِكِي الْعَرَبِ عَلَى الْإِسْلَامِ، فَصَحَّ أَنَّ [هَذِهِ] الْآيَةَ لَيْسَتْ عَلَى ظَاهِرِهَا وَإِنَّمَا هِيَ فِيمَنْ نَهَانَا اللَّهُ تَعَالَى أَنْ نُكْرِهَهُ، وَهُمْ أَهْلُ الْكِتَابِ خَاصَّةً - وَقَوْلُنَا هَذَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

٩٥٩ - مَسْأَلَةٌ:

وَالصَّغَارُ هُوَ أَنْ يَجْرِيَ حُكْمُ الْإِسْلَامِ عَلَيْهِمْ، وَأَنْ لَا يُظْهِرُوا شَيْئًا مِنْ كُفْرِهِمْ، وَلَا مِمَّا يُحَرَّمُ فِي دِينِ الْإِسْلَامِ قَالَ عَزَّ وَجَلَّ: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَبَنُو تَغْلِبَ وَغَيْرُهُمْ سَوَاءٌ لِأَنَّ اللَّهَ تَعَالَى وَرَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُفَرِّقَا بَيْنَ أَحَدٍ مِنْهُمْ، وَيَجْمَعُ الصَّغَارَ شُرُوطُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - عَلَيْهِمْ.

نَا مُحَمَّدُ بْنُ الْحَسَنِ بْنِ عَبْدِ الْوَارِثِ نَا عَبْدُ الرَّحْمَنِ بْنُ عُمَرَ بْنِ مُحَمَّدِ بْنِ النَّحَّاسِ نَا أَبُو الْعَبَّاسِ مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ أَبِي إِسْحَاقَ الصَّفَّارُ نَا أَبُو الْفَضْلِ الرَّبِيعُ بْنُ تَغْلِبَ نَا يَحْيَى بْنُ عُقْبَةَ عَنْ أَبِي الْعَيْزَارِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ عَنْ مَسْرُوقٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنْمٍ قَالَ: كَتَبْت لِعُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - حِينَ صَالَحَ نَصَارَى الشَّامِ وَشَرَطَ عَلَيْهِمْ فِيهِ: أَنْ لَا يُحْدِثُوا فِي مَدِينَتِهِمْ وَلَا مَا حَوْلَهَا دَيْرًا، وَلَا كَنِيسَةً، وَلَا

His statement: {Then kill the polytheists wherever you find them} [At-Tawbah: 5], yet they did not consider this as a clarification of the Prophet's statement (peace be upon him): «They will pay you the jizyah». Had they reversed their approach, they would have been correct. This is an arbitrary judgment based on falsehood.[2]

L16007 "They said, 'Allah the Exalted has said, "There is no compulsion in religion"? [Al-Baqarah: 256].' We replied, 'It is you who assert that the polytheist Arabs are compelled to Islam and that the apostate is compelled to Islam!'"[3]

L16008 It has been authenticated that the Prophet—peace and blessings of Allah be upon him—coerced the Arab polytheists to accept Islam. Thus, it is authenticated that [this] verse is not to be understood according to its apparent meaning, but rather concerns those whom Allah the Exalted has forbidden us to coerce—specifically the People of the Book. This is the position of Al-Shāfiʿī and Abū Sulaymān. And with Allah the Exalted is success.

L16009 959: Legal Question

L16010–16012 Humiliation entails that the ruling of Islam is applied to them and that they do not manifest anything of their disbelief or anything prohibited in the religion of Islam. Allah the Exalted said: "Fight them until there is no idolatrous strife and the religion is entirely for Allah" (8:39). Banu Taghlib and others are alike, for Allah the Exalted and His Messenger—peace and blessings be upon him—made no distinction among any of them. Umar's conditions (may Allah be pleased with him) collectively establish humiliation. Muhammad ibn al-Hasan ibn Abd al-Warith reported to us from Abd al-Rahman ibn Umar ibn Muhammad ibn al-Nahhas. Abu al-Abbas Muhammad ibn Ishaq ibn Abi Ishaq al-Saffar narrated to us: Abu al-Fadl al-Rabi' ibn Taghlib narrated to us: Yahya ibn 'Uqbah narrated to us from Abu al-'Ayzār from Sufyan al-Thawri from Talhah ibn Musarrif from Masruq from 'Abd al-Rahman ibn Ghanm, who said: I wrote for 'Umar ibn al-Khattab — may Allah be pleased with him — when he made peace with the Christians of Syria and

[2] **Qur'an references (L16006):** Qur'an 47:4 (Muhammad); Qur'an 9:5 (At-Tawbah).
[3] **Qur'an references (L16007):** Qur'an 2:256 (Al-Baqarah).

imposed upon them the conditions that they shall not build in their city or its surroundings a monastery, church, fortress, or monk's cell; nor renovate any ruined structures among them; nor prevent Muslims from lodging in their churches for three nights while providing them food; nor shelter spies; nor conceal deceit against Muslims; nor teach their children the Quran; nor manifest polytheism; nor prevent their close relatives from embracing Islam if they desire it; that they shall honor Muslims and rise from their seats for them when Muslims wish to sit; nor imitate Muslims in any element of their dress — neither in caps, turbans, sandals, nor hairstyles; nor part their hair as Muslims do; nor speak using Arabic phrases; nor adopt Muslim kunyas; nor ride with saddles; nor carry swords; nor possess weapons; nor engrave Arabic script on their signet rings; nor sell wine; that they shall shave the front of their heads; maintain their distinctive attire wherever they reside; fasten belts around their waists; nor display crosses or religious texts in Muslim thoroughfares; nor reside near Muslims with their dead; nor ring bells except softly; nor raise their voices during church services in Muslim presence; nor hold Palm Sunday processions; nor raise voices during funerals; nor display fire in their presence; nor purchase slaves designated as spoils for Muslims. Should they breach any condition, their protected status is void, and Muslims may treat them as people of obstinacy and discord. From 'Umar also: that they shall not keep pigs near us. Abu Muhammad said: Among their humiliations is that they shall not harm Muslims, nor employ them, nor shall any of them hold governmental authority enabling them to exercise power over Muslims.[4]

قَلِيَّةً وَلَا صَوْمَعَةَ رَاهِبٍ، وَلَا يُجَدِّدُوا مَا خَرِبَ مِنْهَا، وَلَا يَمْنَعُوا كَنَائِسَهُمْ أَنْ يَنْزِلَهَا أَحَدٌ مِنَ الْمُسْلِمِينَ ثَلَاثَ لَيَالٍ يُطْعِمُونَهُمْ، وَلَا يُؤْوُوا جَاسُوسًا، وَلَا يَكْتُمُوا غِشًّا لِلْمُسْلِمِينَ، وَلَا يُعَلِّمُوا أَوْلَادَهُمُ الْقُرْآنَ، وَلَا يُظْهِرُوا شِرْكًا، وَلَا يَمْنَعُوا ذَوِي قَرَابَاتِهِمْ مِنَ الْإِسْلَامِ إِنْ أَرَادُوهُ، وَأَنْ يُوَقِّرُوا الْمُسْلِمِينَ، وَيَقُومُوا لَهُمْ مِنْ مَجَالِسِهِمْ إِذَا أَرَادُوا الْجُلُوسَ، وَلَا يَتَشَبَّهُوا بِالْمُسْلِمِينَ فِي شَيْءٍ مِنْ لِبَاسِهِمْ: فِي قَلَنْسُوَةٍ، وَلَا عِمَامَةٍ، وَلَا نَعْلَيْنِ، وَلَا فَرْقِ شَعْرٍ، وَلَا يَتَكَلَّمُوا بِكَلَامِ الْمُسْلِمِينَ، وَلَا يَتَكَنَّوْا بِكُنَاهُمْ، لَا يَرْكَبُوا سُرُجًا، وَلَا يَتَقَلَّدُوا سَيْفًا، وَلَا يَتَّخِذُوا شَيْئًا مِنَ السِّلَاحِ، وَلَا يَنْقُشُوا خَوَاتِيمَهُمْ بِالْعَرَبِيَّةِ، وَلَا يَبِيعُوا الْخُمُورَ، وَأَنْ يَجُزُّوا مَقَادِمَ رُءُوسِهِمْ، وَأَنْ يَلْزَمُوا زِيَّهُمْ حَيْثُمَا كَانُوا، وَأَنْ يَشُدُّوا الزَّنَانِيرَ عَلَى أَوْسَاطِهِمْ، وَلَا يُظْهِرُوا صَلِيبًا وَلَا شَيْئًا مِنْ كُتُبِهِمْ فِي شَيْءٍ مِنْ طُرُقِ الْمُسْلِمِينَ، وَلَا يُجَاوِرُوا الْمُسْلِمِينَ بِمَوْتَاهُمْ، وَلَا يَضْرِبُوا نَاقُوسًا إِلَّا ضَرْبًا خَفِيفًا، وَلَا يَرْفَعُوا أَصْوَاتَهُمْ بِالْقِرَاءَةِ فِي كَنَائِسِهِمْ فِي شَيْءٍ مِنْ حَضْرَةِ الْمُسْلِمِينَ وَلَا يُخْرِجُوا سَعَانِينَ وَلَا يَرْفَعُوا مَعَ مَوْتَاهُمْ أَصْوَاتَهُمْ، وَلَا يُظْهِرُوا النِّيرَانَ مَعَهُمْ، وَلَا يَشْتَرُوا مِنَ الرَّقِيقِ مَا جَرَتْ عَلَيْهِ سِهَامُ الْمُسْلِمِينَ. فَإِنْ خَالَفُوا شَيْئًا مِمَّا شَرَطُوهُ فَلَا ذِمَّةَ لَهُمْ، وَقَدْ حَلَّ لِلْمُسْلِمِينَ مِنْهُمْ مَا يَحِلُّ مِنْ أَهْلِ الْمُعَانَدَةِ وَالشِّقَاقِ. وَعَنْ عُمَرَ أَيْضًا: أَنْ لَا يُجَاوِرُونَا بِخِنْزِيرٍ. قَالَ أَبُو مُحَمَّدٍ: وَمِنَ الصَّغَارِ أَنْ لَا يُؤْذُوا مُسْلِمًا، وَلَا يَسْتَخْدِمُوهُ، وَلَا يَتَوَلَّى أَحَدٌ مِنْهُمْ شَيْئًا مِنْ أُمُورِ السُّلْطَانِ يَجْرِي لَهُمْ فِيهِ أَمْرٌ عَلَى مُسْلِمٍ

[مَسْأَلَةٌ الْجِزْيَةُ لَازِمَةٌ لِلْحُرِّ وَالْعَبْدِ وَالذَّكَرِ وَالْأُنْثَى]

L16013 **A legal ruling: Jizyah is obligatory for the free, the slave, the male, and the female.**

L16014 960. Issue. The jizyah is obligatory equally upon the free and the enslaved,

[4]**Qur'an references (L16010):** Qur'an 8:39 (Al-Anfal).

male and female, the settled poor and the wealthy monastic, specifically from those who have reached puberty, due to the statement of Allah, the Exalted: “Until they give the jizyah from hand while they are humbled” [At-Tawbah: 29].[5]

٩٦٠ - مَسْأَلَةٌ وَالْجِزْيَةُ لَازِمَةٌ لِلْحُرِّ مِنْهُمْ وَالْعَبْدِ، وَالذَّكَرِ، وَالْأُنْثَى، وَالْفَقِيرِ الْبَاتِّ، وَالْغَنِيِّ الرَّاهِبِ سَوَاءٌ مِنْ الْبَالِغِينَ خَاصَّةً، لِقَوْلِ اللَّهِ تَعَالَى: {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] .

L16015–16017 There is no disagreement that religion is obligatory for women as it is obligatory for men, and no textual evidence has come indicating a distinction between women and men in this regard. It is authentically reported from Umar ibn Abd al-Aziz that he imposed the jizya upon the monks of the monasteries, requiring two dinar from every monk.

وَلَا خِلَافَ فِي أَنَّ الدِّينَ لَازِمٌ لِلنِّسَاءِ كَلُزُومِهِ لِلرِّجَالِ وَلَمْ يَأْتِ نَصٌّ بِالْفَرْقِ بَيْنَهُمْ فِي الْجِزْيَةِ صَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ فَرَضَ الْجِزْيَةَ عَلَى رُهْبَانِ الدِّيَارَاتِ، عَلَى كُلِّ رَاهِبٍ دِينَارَيْنِ.

L16018 Via the chain of Sufyān al-Thawrī: ʿUmar ibn ʿAbd al-ʿAzīz levied jizya from the Jews and Christians among the freed slaves of the Muslims.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَخَذَ الْجِزْيَةَ مِنْ عُتَقَاءِ الْمُسْلِمِينَ مِنْ الْيَهُودِ وَالنَّصَارَى

L16019 Mālik said: Jizya is not taken from one manumitted by a Muslim or a disbeliever.

وَقَالَ مَالِكٌ: لَا تُؤْخَذُ الْجِزْيَةُ مِمَّنْ أَعْتَقَهُ مُسْلِمٌ، أَوْ كَافِرٌ.

L16020 Abu Hanifah, al-Shafi’i, and Abu Sulayman said: The jizyah is taken from them, and we know of no argument for Malik’s opinion at all.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: تُؤْخَذُ الْجِزْيَةُ مِنْهُمْ وَمَا نَعْلَمُ لِقَوْلِ مَالِكٍ حُجَّةً أَصْلًا.

L16021 If it is said: It has been authentically reported from ʿUmar—may Allah be pleased with him—that jizyah is to be taken from everyone upon whom the age of legal responsibility has commenced, except women? We respond: You were the first to oppose this ruling and abolish it for freed slaves and monks. As for us, we recognize no proof in the statement of anyone other than the Messenger of Allah—peace and blessings be upon him.

فَإِنْ قِيلَ: قَدْ صَحَّ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - أَنْ تُؤْخَذَ الْجِزْيَةُ مِنْ كُلِّ مَنْ جَرَتْ عَلَيْهِ الْمَوَاسِي إلَّا النِّسَاءَ؟ قُلْنَا: أَنْتُمْ أَوَّلُ مَنْ خَالَفْتُمْ هَذَا الْحُكْمَ فَأَسْقَطْتُمُوهَا عَنْ الْمُعْتَقِينَ، وَالرُّهْبَانِ، وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ غَيْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L16022 Numerous mursal reports have been narrated regarding this matter. Among them is what was transmitted to us through the chain of ʿAbd al-Razzāq, who reported from Maʿmar, from al-Aʿmash, from Abū Wā’il Shaqīq ibn Salama, from Masrūq, who said: “The Messenger of Allah—peace and blessings be upon him—sent Muʿādh ibn Jabal to Yemen and commanded him to take

وَقَدْ جَاءَتْ فِي هَذَا آثَارٌ مُرْسَلَةٌ وَهِيَ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَخْبَرَنَا مَعْمَرٌ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ شَقِيقِ بْنِ سَلَمَةَ عَنْ مَسْرُوقٍ قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُعَاذَ بْنَ جَبَلٍ إلَى الْيَمَنِ وَأَمَرَهُ أَنْ يَأْخُذَ مِنْ كُلِّ حَالِمٍ وَحَالِمَةٍ مِنْ أَهْلِ الذِّمَّةِ دِينَارًا أَوْ قِيمَتَهُ مِنْ الْمَعَافِرِ» قَالَ أَبُو مُحَمَّدٍ: عَلَى هَذَا الْإِسْنَادِ عَوَّلُوا فِي

[5] **Qur’an references (L16014):** Qur’an 9:29 (At-Tawbah).

one dinar or its equivalent value in Maʿāfir from every pubescent male and female among the people of the Dhimmah." Abū Muḥammad said: They relied on this chain in taking a one-year-old calf for every thirty cattle and a two-year-old cow for every forty. It is absurd for a report to be valid as evidence for one matter but invalid for another.

أَخْذِ التَّبِيعِ مِنْ الثَّلَاثِينَ مِنْ الْبَقَرِ وَالْمُسِنَّةِ مِنْ الْأَرْبَعِينَ، وَمِنْ الْمُحَالِ أَنْ يَكُونَ خَبَرٌ حُجَّةٌ فِي شَيْءٍ غَيْرَ حُجَّةٍ فِي غَيْرِهِ.

L16023 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: "In the letter of the Messenger of Allah—may the peace and blessings of Allah be upon him—to the people of Yemen: If any Jew or Christian dislikes Islam, he shall not be compelled to abandon his religion, but he must pay the jizya, levied upon every pubescent male or female, free or enslaved; one full dinar according to the value of Maʿāfir cloth or its equivalent in merchandise."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ «فِي كِتَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أَهْلِ الْيَمَنِ: مَنْ كَرِهَ الْإِسْلَامَ مِنْ يَهُودِيٍّ، أَوْ نَصْرَانِيٍّ فَإِنَّهُ لَا يُحَوَّلُ عَنْ دِينِهِ وَعَلَيْهِ الْجِزْيَةُ عَلَى كُلِّ حَالِمٍ ذَكَرٍ، أَوْ أُنْثَى، حُرٍّ أَوْ عَبْدٍ: دِينَارٌ وَافٍ مِنْ قِيمَةِ الْمَعَافِرِ أَوْ عَرَضِهِ» .

L16024–16026 And through the chain of Abū ʿUbayd: Jarīr ibn ʿAbd al-Ḥamīd narrated to us from Manṣūr (who is Ibn al-Muʿtamir) from al-Ḥakam ibn ʿUtaybah, who said: "The Messenger of Allah—peace and blessings be upon him—wrote to Muʿādh while he was in Yemen concerning the male or female who experiences a nocturnal emission: a dinar or its equivalent from the Maʿāfir." Abu Muhammad said: The Hanafis and Malikis maintain that the mursal report is stronger than the musnad and adopt it when it conforms to their position. Thus, it is obligatory for them to adopt it in this case, for no mursal report is superior to these mursal reports. As for us, our reliance is solely on the generality of the verse.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى مُعَاذٍ وَهُوَ بِالْيَمَنِ: فِي الْحَالِمِ، أَوْ الْحَالِمَةِ دِينَارٌ، أَوْ عِدْلُهُ مِنْ الْمَعَافِرِ» قَالَ أَبُو مُحَمَّدٍ: الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ يَقُولُونَ: إنَّ الْمُرْسَلَ أَقْوَى مِنْ الْمُسْنَدِ وَيَأْخُذُونَ بِهِ إذَا وَافَقَهُمْ، فَالْفَرْضُ عَلَيْهِمْ أَنْ يَأْخُذُوا هَاهُنَا بِهَا فَلَا مُرْسَلَ أَحْسَنُ مِنْ هَذِهِ الْمَرَاسِيلِ، وَأَمَّا نَحْنُ فَإِنَّمَا مُعَوَّلُنَا عَلَى عُمُومِ الْآيَةِ فَقَطْ.

L16027 If they say, "Is the jizya only taken from those who fight?" We reply: Then do not take it from the sick, nor from the people of a town in the territories of disbelief who stayed in their homes and markets and did not fight Muslims.

فَإِنْ قَالُوا: إنَّمَا تُؤْخَذُ الْجِزْيَةُ مِمَّنْ يُقَاتِلُ؟ قُلْنَا: فَلَا تَأْخُذُوهَا مِنْ الْمَرْضَى، وَلَا مِنْ أَهْلِ بَلْدَةٍ مِنْ بِلَادِ الْكُفْرِ لَزِمُوا بُيُوتَهُمْ وَأَسْوَاقَهُمْ وَلَمْ يُقَاتِلُوا مُسْلِمًا.

L16028 If they say: The opening part of the verse states {Fight those who do not believe in Allah nor in the Last Day, nor forbid what Allah and His Messenger have forbidden, nor adhere to the religion of truth from among those who were given the Scripture until they pay the *jizyah* by hand while they are humbled} [At-Tawbah: 29]? We say: Yes, we are commanded to fight them **if they fight us** until all of them pay the *jizyah* by hand as ex-

فَإِنْ قَالُوا: أَوَّلُ الْآيَةِ {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ

plicitly stated in the verse, because the pronoun refers back to the nearest antecedent.[6]

L16029 It is astonishing that the Ḥanafīs impose multiples of the ṣadaqah upon Banū Taghlib in place of the jizya, then impose these multiples upon women, yet refuse to take the jizya from women.

L16030 If they say: "Umar prohibited taking it from women," we reply: "It is authentically established that Umar commanded the separation of those with mahram relations from the Magians, yet you contradict him. In a thousand cases—many of which we have mentioned—we do not know when Umar is a proof and when he is not a proof. If they claim consensus, they are lying, for they cannot find any prohibition of this from anyone other than Umar. Masrūq met Mu'ādh and witnessed his judicial decisions in Yemen, reporting that the Prophet—peace and blessings of Allah be upon him—instructed him to collect jizyah from women. It is inconceivable that Mu'ādh would oppose what the Messenger of Allah—peace and blessings of Allah be upon him—wrote to him. And success is from Allah, the Exalted."

L16031 It has been narrated to us via the transmission of Ibn Abi Shaybah: from Waki', from Al-Fuḍayl ibn Iyāḍ, from Layth, from Mujāhid, who said: The idol-worshippers are fought **to compel them to accept Islam**, and the People of the Book are fought **to compel them to pay the *jizyah***. This **is general in application to men and women** - and this is **our opinion**.

L16032 Al-Shafi'i and Abu Sulayman said: The jizya is not accepted except from a Scripturary person.

L16033–16034 As for those other than them: Islam or killing—men and women—and this is the explicit injunction of the Qur'an.

L16035 Therefore, it is impermissible to make any distinction among all these. Moreover, it is entirely unlawful for a legally accountable addressee (who

[6]**Qur'an references (L16028):** Qur'an 9:29 (At-Tawbah).

يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] ؟ قُلْنَا: نَعَمْ، أُمِرْنَا بِقِتَالِهِمْ إنْ قَاتَلُونَا حَتَّى يُعْطِيَ جَمِيعُهُمْ الْجِزْيَةَ عَنْ يَدٍ كَمَا فِي نَصِّ الْآيَةِ؛ لِأَنَّ الضَّمِيرَ رَاجِعٌ إلَى أَقْرَبِ مَذْكُورٍ.

وَالْعَجَبُ أَنَّ الْحَنَفِيِّينَ يُقِيمُونَ أَضْعَافَ الصَّدَقَةِ عَلَى بَنِي تَغْلِبَ مَقَامَ الْجِزْيَةِ، ثُمَّ يَضَعُونَهَا عَلَى النِّسَاءِ، ثُمَّ يَأْبَوْنَ مِنْ أَخْذِ الْجِزْيَةِ مِنْ النِّسَاءِ.

فَإِنْ قَالُوا: قَدْ نَهَى عُمَرُ عَنْ أَخْذِهَا مِنْ النِّسَاءِ؟ قُلْنَا: قَدْ صَحَّ عَنْ عُمَرَ الْأَمْرُ بِالتَّفْرِيقِ بَيْنَ كُلِّ ذِي مَحْرَمٍ مِنْ الْمَجُوسِ وَأَنْتُمْ تُخَالِفُونَهُ، وَفِي أَلْفِ قَضِيَّةٍ قَدْ ذَكَرْنَا مِنْهَا كَثِيرًا، فَلَا نَدْرِي مَتَى هُوَ عُمَرُ حُجَّةٌ، وَلَا مَتَى هُوَ لَيْسَ حُجَّةً؟ فَإِنْ ادَّعَوْا إجْمَاعًا كُذِّبُوا، وَلَا سَبِيلَ إلَى أَنْ يَجِدُوا نَهْيًا عَنْ ذَلِكَ عَنْ غَيْرِ عُمَرَ - وَمَسْرُوقٌ أَدْرَكَ مُعَاذًا وَشَاهَدَ حُكْمَهُ بِالْيَمَنِ، وَذَكَرَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَاطَبَهُ بِأَخْذِ الْجِزْيَةِ مِنْ النِّسَاءِ، وَمِنْ الْمُحَالِ أَنْ يُخَالِفَ مُعَاذٌ مَا كَتَبَ إلَيْهِ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ نَا الْفُضَيْلُ بْنُ عِيَاضٍ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: يُقَاتَلُ أَهْلُ الْأَوْثَانِ عَلَى الْإِسْلَامِ، وَيُقَاتَلُ أَهْلُ الْكِتَابِ عَلَى الْجِزْيَةِ، وَهَذَا عُمُومٌ لِلرِّجَالِ وَالنِّسَاءِ - وَهُوَ قَوْلُنَا.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَا تُقْبَلُ الْجِزْيَةُ إلَّا مِنْ كِتَابِيٍّ.

وَأَمَّا غَيْرُهُمْ: فَالْإِسْلَامُ، أَوْ الْقَتْلُ - الرِّجَالُ وَالنِّسَاءُ - وَهُوَ نَصُّ الْقُرْآنِ.

فَالتَّفْرِيقُ بَيْنَ [كُلِّ] ذَلِكَ لَا يَجُوزُ، وَلَا يَحِلُّ أَلْبَتَّةَ أَنْ يَبْقَى مُخَاطَبٌ مُكَلَّفٌ لَا يُسْلِمُ، وَلَا يُؤَدِّي الْجِزْيَةَ، وَلَا يُقْتَلُ؛ لِأَنَّهُ خِلَافُ الْقُرْآنِ وَالسُّنَنِ.

neither embraces Islam, nor pays the jizyah, nor is killed) to remain, as this contradicts the Quran and the Sunnah.

L16036 There is no disagreement among anyone in the Ummah regarding women being obligated by the religion of Islam to renounce disbelief, for the same obligations incumbent upon men apply to women completely equally. It is impermissible to leave them in disbelief without either killing or jizya.

L16037 It has been authentically reported from the Prophet—may Allah's blessings and peace be upon him—as we have previously mentioned with its chain of transmission: "I have been commanded to fight people until they testify that there is no deity but Allah and that I am the Messenger of Allah, establish the prayer, give zakāh, and believe in what I have been sent with. When they do that, they protect their blood and wealth from me, except for its rightful claim, and their reckoning rests with Allah."[7]

L16038 They do not differ in that all these obligations apply to women as they do to men, and that their wealth as non-Muslims is forfeitable as spoils of war like men's wealth. Thus, it is conclusively established that women cannot protect their blood and wealth except by the same means that protect men's wealth and blood, or the jizyah if they are women of the People of the Book, necessarily. And success is by Allah alone, the Most High.

L16039 An Issue Regarding Traveling with the Muṣḥaf to the Land of War.

L16040 961 – Issue:

L16041 It is not permissible to travel with the muṣḥaf (physical copy of the Quran) to the land of war, whether in a military camp or outside of it. It has been narrated to us via the chain of Maʿmar from Ayyūb al-Sikhtiyānī from Nāfiʿ from Ibn ʿUmar, who said: "The Messenger of Allah (may Allah bless him

[7] **Hadith references (L16037):** Sunan Ibn Majah 71; Sunan Ibn Majah 72; Sunan an-Nasai 3094.

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي النِّسَاءِ مُكَلَّفَاتٍ مِنْ دِينِ الْإِسْلَامِ وَمُفَارَقَةِ الْكُفْرِ مَا يَلْزَمُ الرِّجَالَ سَوَاءً سَوَاءً، فَلَا يَحِلُّ إبْقَاؤُهُنَّ عَلَى الْكُفْرِ بِغَيْرِ قَتْلٍ وَلَا جِزْيَةٍ.

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا [قَدْ] ذَكَرْنَاهُ قَبْلُ بِإِسْنَادِهِ: «أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إلَهَ إلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، وَيُؤْمِنُوا بِمَا أُرْسِلْتُ بِهِ - فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ، إلَّا بِحَقِّهَا وَحِسَابُهُمْ عَلَى اللَّهِ» .

وَلَا يَخْتَلِفُونَ فِي أَنَّ هَذِهِ اللَّوَازِمَ كُلَّهَا هِيَ عَلَى النِّسَاءِ كَمَا هِيَ عَلَى الرِّجَالِ، وَأَنَّ أَمْوَالَهُنَّ فِي الْكُفْرِ مَغْنُومَةٌ كَأَمْوَالِ الرِّجَالِ؛ فَثَبَتَ يَقِينًا أَنَّهُنَّ لَا يَعْصِمْنَ دِمَاءَهُنَّ وَأَمْوَالَهُنَّ إلَّا بِمَا يَعْصِمُ الرِّجَالُ بِهِ أَمْوَالَهُمْ وَدِمَاءَهُمْ، أَوْ الْجِزْيَةِ إنْ كُنَّ كِتَابِيَّاتٍ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ السَّفَرُ بِالْمُصْحَفِ إلَى أَرْضِ الْحَرْبِ]

٩٦١ - مَسْأَلَةٌ:

وَلَا يَحِلُّ السَّفَرُ بِالْمُصْحَفِ إلَى أَرْضِ الْحَرْبِ لَا فِي عَسْكَرٍ وَلَا فِي غَيْرِ عَسْكَرٍ. رُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُسَافَرَ بِالْقُرْآنِ إلَى أَرْضِ الْعَدُوِّ مَخَافَةَ أَنْ يَنَالَهُ الْعَدُوُّ» .

and grant him peace) forbade traveling with the Quran [as a physical book] to the land of the enemy, fearing that the enemy might seize it."[8]

L16042 And Malik said: If there is a trustworthy army, there is no harm in it.

L16043 Abu Muhammad said: This is a mistake, for even a reliable army may be defeated. It is impermissible to challenge the command of the Messenger of Allah — may Allah bless him and grant him peace — and thus restrict it without scriptural proof.

L16044 ## The issue of trading to the land of war.

L16045 962 - Issue:

L16046 Trade is not permissible with the abode of war if their laws are enforced upon the traders, nor is it permissible to convey to them weapons, horses, or anything they might use to strengthen themselves against the Muslims.

L16047–16048 This is the statement of ʿUmar ibn ʿAbd al-ʿAzīz, ʿAṭāʾ, ʿAmr ibn Dīnār, and others. We have reported through the chain of narration from Abū Dāwūd: Hannād ibn al-Sarri narrated to us, Abū Muʿāwiyah narrated from Ismāʿīl ibn Abī Khālid, from Qays ibn Abī Ḥāzim, from Jarīr ibn ʿAbd Allāh al-Bajalī, who said: The Messenger of Allah—peace and blessings be upon him—said: "I am free from every Muslim who resides among polytheists."[9]

L16049 Abū Muḥammad said: Whoever enters among them without engaging in jihad or being sent as a messenger by the ruler, then even staying an hour constitutes valid residency. Allah the Exalted said: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" (Qur'an 5:2). He also said: "Prepare against them whatever strength you can muster and cavalry forces to instill fear thereby in the enemy of Allah and your enemy" (Qur'an 8:60). Thus, He obligated us to instill fear in them. Whoever aids

[8] **Hadith references (L16041):** Riyad as-Salihin 1794.
[9] **Hadith references (L16048):** Jami at-Tirmidhi 1604; Sunan Abi Dawud 2645.

وَقَالَ مَالِكٌ: إنْ كَانَ عَسْكَرٌ مَأْمُونٌ فَلَا بَأْسَ بِهِ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، وَقَدْ يُهْزَمُ الْعَسْكَرُ الْمَأْمُونُ، وَلَا يَجُوزُ أَنْ يُعْتَرَضَ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُخَصَّ بِلَا نَصٍّ.

[مَسْأَلَةٌ التِّجَارَةُ إلَى أَرْضِ الْحَرْبِ]

٩٦٢ - مَسْأَلَةٌ:

وَلَا تَحِلُّ التِّجَارَةُ إلَى أَرْضِ الْحَرْبِ إذَا كَانَتْ أَحْكَامُهُمْ تَجْرِي عَلَى التُّجَّارِ، وَلَا يَحِلُّ أَنْ يُحْمَلَ إلَيْهِمْ سِلَاحٌ، وَلَا خَيْلٌ، وَلَا شَيْءٌ يَتَقَوَّوْنَ بِهِ عَلَى الْمُسْلِمِينَ.

وَهُوَ قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ، وَغَيْرِهِمْ. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا هَنَّادُ بْنُ السَّرِيِّ نَا أَبُو مُعَاوِيَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ»

قَالَ أَبُو مُحَمَّدٍ: مَنْ دَخَلَ إلَيْهِمْ لِغَيْرِ جِهَادٍ، أَوْ رِسَالَةٍ مِنْ الْأَمِيرِ فَإِقَامَةُ سَاعَةٍ إقَامَةٌ، قَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَقَالَ تَعَالَى: {وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ} [الأنفال: ٦٠] فَفَرَضَ عَلَيْنَا إرْهَابَهُمْ، وَمَنْ أَعَانَهُمْ بِمَا يَحْمِلُ إلَيْهِمْ فَلَمْ يُرْهِبْهُمْ؛ بَلْ أَعَانَهُمْ عَلَى الْإِثْمِ وَالْعُدْوَانِ.

them by supplying them with anything he carries—thereby failing to instill fear—instead assists them in sin and aggression.[10]

L16050 **Legal Ruling: It is not permissible for anyone to take anything from the spoils that the army has seized.**

L16051 963: Issue

L16052 It is not permissible for anyone to take anything from the spoils captured by an army or detachment—not even a thread or anything beyond it.

L16053 As for food, all that can be carried is forbidden for Muslims except what they are compelled to eat out of necessity and could not find anything else.

L16054 As for that which can be carried, it is permissible to spoil and eat it, even if they are not compelled to do so. This applies only to what they own. As for what they do not own—such as game, stones, hair sticks, fruits, or other items—all of it is permissible, just as it is in Islamic lands, with no distinction. The Almighty has said: "Whoever embezzles will bring what he has misappropriated on the Day of Resurrection" [Quran 3:161].[11]

L16055–16057 It was narrated through Malik's chain from Thawr ibn Zayd al-Dili from Abu al-Ghayth, the client of Ibn Mut'i, from Abu Hurayrah, who said: A black slave named Mid'am was gifted to the Messenger of Allah (PBUH). When they reached Wadi al-Qura, while Mid'am was unloading the saddlebag of the Messenger of Allah (PBUH), a stray arrow struck and killed him. The people exclaimed, "Paradise is his reward!" But the Messenger of Allah (PBUH) declared: "No! By the One who holds my soul in His hand, the cloak he took from Khaybar's spoils—which were not allocated by the divisions—will indeed blaze upon him as fire." When they heard that, a man brought one or two sandal straps to the Messenger of Allah—peace and blessings be upon

[10] **Qur'an references (L16049):** Qur'an 5:2 (Al-Ma'idah); Qur'an 8:60 (Al-Anfal).

[11] **Qur'an references (L16054):** Qur'an 3:161 (Ali 'Imran).

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَأْخُذَ شَيْئًا مِمَّا غَنِمَ الْجَيْشُ]

٩٦٣ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَأْخُذَ مِمَّا غَنِمَ جَيْشٌ، أَوْ سَرِيَّةٌ شَيْئًا خَيْطًا فَمَا فَوْقَهُ

وَأَمَّا الطَّعَامُ فَكُلُّ مَا أَمْكَنَ حَمْلُهُ فَحَرَامٌ عَلَى الْمُسْلِمِينَ إلَّا مَا اُضْطُرُّوا إلَى أَكْلِهِ وَلَمْ يَجِدُوا شَيْئًا غَيْرَهُ.

وَأَمَّا مَا يُقْدَرُ عَلَى حَمْلِهِ فَجَائِزٌ إفْسَادُهُ وَأَكْلُهُ، وَإِنْ لَمْ يُضْطَرُّوا إلَيْهِ. وَإِنَّمَا هَذَا فِيمَا مَلَكُوهُ، وَأَمَّا مَا لَمْ يَمْلِكُوهُ مِنْ صَيْدٍ، أَوْ حَجَرٍ، أَوْ عَوْدِ شَعْرٍ، أَوْ ثِمَارٍ، أَوْ غَيْرِ ذَلِكَ، فَهُوَ كُلُّهُ مُبَاحٌ كَمَا هُوَ فِي أَرْضِ الْإِسْلَامِ وَلَا فَرْقَ، قَالَ عَزَّ وَجَلَّ: {وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ} [آل عمران: ١٦١] .

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ ثَوْرِ بْنِ زَيْدٍ الدِّيلِيِّ عَنْ أَبِي الْغَيْثِ مَوْلَى ابْنِ مُطِيعٍ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ «أُهْدِيَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَبْدٌ أَسْوَدُ يُقَالُ لَهُ: مِدْعَمٌ، حَتَّى إذَا كَانُوا بِوَادِي الْقُرَى فَبَيْنَا مِدْعَمٌ يَحُطُّ رَحْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ جَاءَهُ سَهْمٌ عَائِرٌ فَأَصَابَهُ فَقَتَلَهُ، فَقَالَ النَّاسُ: هَنِيئًا لَهُ الْجَنَّةُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَلَّا وَالَّذِي نَفْسِي بِيَدِهِ إنَّ الشَّمْلَةَ الَّتِي أَخَذَهَا يَوْمَ خَيْبَرَ مِنْ الْغَنَائِمِ لَمْ تُصِبْهَا الْمَقَاسِمُ لَتَشْتَعِلُ عَلَيْهِ نَارًا، فَلَمَّا سَمِعُوا ذَلِكَ جَاءَ رَجُلٌ

him. The Prophet—peace be upon him—said to him: “A strap or two from the Fire.” And the food was among their wealth.

بِشِرَاكٍ، أَوْ شِرَاكَيْنِ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ - عَلَيْهِ السَّلَامُ -: شِرَاكٌ، أَوْ شِرَاكَانِ مِنْ نَارٍ» وَالطَّعَامُ مِنْ جُمْلَةِ أَمْوَالِهِمْ.

L16058 If someone mentions what we have narrated through the chain of Ibn Umar—“An army obtained spoils of food and honey during the time of Allah’s Messenger (peace be upon him), and the fifth was not taken from them”—this position applies to their school of thought, for they assert: “If such spoils are abundant and transportable, the fifth must necessarily be taken.” As for our position, the Quranic verse exceeds what is mentioned in this report, which is Allah’s statement: “Know that whatever spoils you obtain, a fifth is allocated to Allah, the Messenger, the near relatives, the orphans…” (8:41).[12]

فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عُمَرَ «غَنِمَ جَيْشٌ فِي زَمَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا وَعَسَلًا فَلَمْ يُؤْخَذْ مِنْهُمُ الْخُمُسُ» فَهَذَا عَلَيْهِمْ؛ لِأَنَّهُمْ يَقُولُونَ: إِنْ كَثُرَ ذَلِكَ وَأَمْكَنَ حَمْلُهُ خُمِّسَ وَلَا بُدَّ، وَأَمَّا نَحْنُ فَإِنَّ الْآيَةَ زَائِدَةٌ عَلَى مَا فِي هَذَا الْخَبَرِ، وَهِيَ قَوْله تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى} [الأنفال: ٤١] .

L16059 The hadith concerning misappropriation is additional to it. This report therefore indicates that before the revelation of *Khums*, only this was permissible, because taking the surplus is an obligatory duty whose abandonment is unlawful. We are certain that the verse and the hadith on misappropriation have not been abrogated since their revelation.

وَحَدِيثُ الْغُلُولِ زَائِدٌ عَلَيْهِ، فَيَخْرُجُ هَذَا الْخَبَرُ عَلَى أَنَّهُ كَانَ قَبْلَ نُزُولِ الْخُمْسِ لَا يَجُوزُ إِلَّا هَذَا، لِأَنَّ الْأَخْذَ بِالزَّائِدِ فَرْضٌ لَا يَحِلُّ تَرْكُهُ، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ الْآيَةَ، وَحَدِيثَ الْغُلُولِ غَيْرُ مَنْسُوخَيْنِ مُذْ نَزَلَا.

L16060 If they also cite the ḥadīth of Ibn Umar: “During our military campaigns, we would acquire grapes and honey and eat them without preserving them,” this is clear—it shows it was impossible to transport them. Since they did not store them, consuming them was better than letting them spoil or leaving them [to perish]. Thus we hold.

فَإِنْ ذَكَرُوا أَيْضًا حَدِيثَ ابْنِ عُمَرَ " كُنَّا نُصِيبُ فِي مَغَازِينَا الْعِنَبَ وَالْعَسَلَ فَنَأْكُلُهُ وَلَا نَرْفَعُهُ " فَهَذَا بَيِّنٌ وَهُوَ أَنَّهُ كَانَ لَا يُمْكِنُ حَمْلُهُ؛ إِذْ لَمْ يَرْفَعُوهُ فَأَكْلُهُ خَيْرٌ مِنْ إِفْسَادِهِ، أَوْ تَرْكِهِ، وَهَكَذَا نَقُولُ.

L16061 If they cite the ḥadīth of Ibn Mughaffal regarding the grease container, they have no valid proof in this matter, for they are the first to contradict it. They claim: “Taking the container is impermissible, though only the grease itself is permissible according to some of them.” This narration we have transmitted with additional clarification through the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman from Aḥmad ibn Zuhayr ibn Ḥarb from ʿAffān ibn Muslim and Muslim ibn Ibrāhīm, who both said: Shuʿbah narrated from Ḥumayd ibn Hilāl from ʿAbd Allāh ibn Mughaffal, who said: “We were besieging Khaybar when a container of grease was lowered to us. I wanted to take it, having

فَإِنْ ذَكَرُوا حَدِيثَ ابْنِ مُغَفَّلٍ فِي جِرَابِ الشَّحْمِ، فَلَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُمْ أَوَّلُ مُخَالِفٍ لَهُ فَيَقُولُونَ: لَا يَحِلُّ أَخْذُ الْجِرَابِ وَإِنَّمَا يَحِلُّ عِنْدَ بَعْضِهِمْ الشَّحْمُ فَقَطْ. وَهَذَا خَبَرٌ قَدْ رُوِّينَاهُ بِزِيَادَةِ بَيَانٍ، كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نَا عَفَّانُ بْنُ مُسْلِمٍ، وَمُسْلِمُ بْنُ إِبْرَاهِيمَ قَالَا: نَا شُعْبَةُ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ قَالَ «كُنَّا مُحَاصِرِي خَيْبَرَ فَدُلِّيَ إِلَيْنَا جِرَابٌ فِيهِ شَحْمٌ فَأَرَدْتُ

[12] **Qur’an references (L16058):** Qur’an 8:41 (Al-Anfal).

resolved with my companions not to give anyone any portion of it. When I turned around, the Messenger of Allāh (peace be upon him) was behind me smiling. I felt too ashamed to take it."

L16062–16064 Then, if it were valid that he took it, it would align with what we mentioned regarding the need for it. This is clarified by that which... We have narrated it through the chain of Al-Bukhari: Ali ibn al-Hakam al-Ansari reported to us, Abu Awanah reported to us, from Sa'id ibn Masruq, from Abayah ibn Rifa'ah ibn Rafi' ibn Khadij, from his grandfather, who said: "We were with the Messenger of Allah—peace be upon him (PBUH)—at Dhu al-Hulayfah when the people suffered hunger. They found camels and sheep, while the Prophet—peace be upon him (PBUH)—was at the rear of the people. They hastened, slaughtered them, and set up the cooking pots. The Prophet—peace be upon him (PBUH)—ordered the pots to be emptied. Then he divided [the animals], equating ten sheep to one camel. He did not permit them to eat anything since the distribution had been finalized, so that every entitled person attains their right. And success is from Allah, the Most High."

L16065 964 - Issue:

L16066 Every Muslim who enters into enemy territory and acquires spoils—whether he acts alone or with others, whether with the ruler's permission or without it—the same ruling applies to all such cases. One-fifth of what is acquired is designated [for Allah], and the remainder belongs to those who seized it, in accordance with the decree of Allah, the Exalted: "Know that whatever spoils you acquire, a fifth is for Allah" (8:41), and His decree: "So consume what you have acquired as spoils" (8:69).[13]

L16067 Abu Hanifah said: There is no khums except on what a group has acquired.

L16068 Abū Yūsuf said: Nine or more—and these opinions are utterly corrupt for contradicting the Qur'ān, the Sunnah, and reason. The Almighty has indeed said: *"Fight those of the disbelievers who are close to you, and let them find harshness in you"* [9:123]. He did not specify [the need for] the Imam's

أَنْ آخُذَهُ وَنَوَيْنَا أَنْ لَا نُعْطِيَ أَحَدًا مِنْهُ شَيْئًا فَالْتَفَتُّ فَإِذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَلْفِي يَبْتَسِمُ، فَاسْتَحْيَيْتُ أَنْ آخُذَهُ» .

ثُمَّ لَوْ صَحَّ أَنَّهُ أَخَذَهُ لَكَانَ عَلَى مَا ذَكَرْنَا مِنْ الْحَاجَةِ إلَيْهِ. يُبَيِّنُ ذَلِكَ مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَلِيُّ بْنُ الْحَكَمِ الْأَنْصَارِيُّ نَا أَبُو عَوَانَةَ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ قَالَ: «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذِي الْحُلَيْفَةِ فَأَصَابَ النَّاسَ جُوعٌ فَأَصَابُوا إبِلًا وَغَنَمًا وَالنَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أُخْرَيَاتِ النَّاسِ فَعَجَّلُوا فَذَبَحُوا وَنَصَبُوا الْقُدُورَ فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقُدُورِ فَأُكْفِئَتْ، ثُمَّ قَسَّمَ فَعَدَلَ عَشَرَةً مِنْ الْغَنَمِ بِبَعِيرٍ» فَلَمْ يُبِحْ لَهُمْ أَكْلَ شَيْءٍ إذْ قَدْ كَانَتْ الْقِسْمَةُ قَدْ حَضَرَتْ فَيَصِلُ كُلُّ ذِي حَقٍّ إلَى حَقِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

٩٦٤ - مَسْأَلَةٌ:

وَكُلُّ مَنْ دَخَلَ مِنْ الْمُسْلِمِينَ فَغَنِمَ فِي أَرْضِ الْحَرْبِ سَوَاءٌ كَانَ وَحْدَهُ أَوْ فِي أَكْثَرَ مِنْ وَاحِدٍ بِإِذْنِ الْإِمَامِ وَبِغَيْرِ إذْنِهِ فَكُلُّ ذَلِكَ سَوَاءٌ، وَالْخُمُسُ فِيمَا أُصِيبَ، وَالْبَاقِي لِمَنْ غَنِمَهُ؛ لِقَوْلِ اللَّهِ تَعَالَى: {وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ} [الأنفال: ٤١] ، وقَوْله تَعَالَى: {فَكُلُوا مِمَّا غَنِمْتُمْ} [الأنفال: ٦٩] .

وَقَالَ أَبُو حَنِيفَةَ: لَا خُمُسَ إلَّا فِيمَا أَصَابَتْهُ جَمَاعَةٌ.

قَالَ أَبُو يُوسُفَ: تِسْعَةٌ فَأَكْثَرُ - وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ لِمُخَالَفَتِهَا الْقُرْآنَ، وَالسُّنَنَ، وَالْمَعْقُولَ، وَقَدْ قَالَ تَعَالَى: {قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ وَلْيَجِدُوا فِيكُمْ غِلْظَةً}

[13] **Qur'an references (L16066):** Qur'an 8:41 (Al-Anfal); Qur'an 8:69 (Al-Anfal).

command or the absence of it. If an imam were to prohibit fighting against those at war [with Muslims], it would be obligatory to disobey him in that, for he would be enjoining disobedience [to God]. Thus, there is no [duty to] hear or obey him.[14]

L16069 And He, the Exalted, said: {So fight in the cause of Allah; you are only tasked with your own soul} [An-Nisa: 84]. This is an address directed to every Muslim, for each person is commanded to strive in jihad even if no one else is with him. He, the Exalted, said: {Go forth, whether light or heavy} [At-Tawbah: 41], and He, the Exalted, said: {Go forth in detachments or go forth all together} [An-Nisa: 71].[15]

L16070 ## Legal Question on Setting Out for Travel on Thursday

L16071 965 - Issue:

L16072–16074 We recommend departing for travel on Thursday. It has been narrated to us through the chain of transmission of al-Bukhārī: ʻAbdullāh ibn Muḥammad narrated to us, Hishām ibn Yūsuf narrated to us, who informed us... Maʼmar narrated via al-Zuhri via ʼAbd al-Rahman ibn Kaʼb ibn Malik from his father: "The Messenger of Allah (peace be upon him) preferred to set out on journeys every Thursday."

L16075 966. Question:

L16076 Whoever arrives from a journey during the day should not enter until night, and whoever arrives at night should not enter until daytime, unless there is an excuse. It has been narrated to us through Shuʻbah from Yasār from Al-Shaʻbī from Jābir ibn ʻAbdullāh, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "When any of you returns at night,

[14] **Qur'an references (L16068):** Qur'an 9:123 (At-Tawbah).

[15] **Qur'an references (L16069):** Qur'an 4:84 (An-Nisa); Qur'an 9:41 (At-Tawbah); Qur'an 4:71 (An-Nisa).

[التوبة: ١٢٣] فَلَمْ يَخُصَّ بِأَمْرِ الْإِمَامِ وَلَا بِغَيْرِ أَمْرِهِ وَلَوْ أَنَّ إمَامًا نَهَى عَنْ قِتَالِ أَهْلِ الْحَرْبِ لَوَجَبَتْ مَعْصِيَتُهُ فِي ذَلِكَ، لِأَنَّهُ أَمَرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ لَهُ.

وَقَالَ تَعَالَى: {فَقَاتِلْ فِي سَبِيلِ اللَّهِ لا تُكَلَّفُ إِلا نَفْسَكَ} [النساء: ٨٤] وَهَذَا خِطَابٌ مُتَوَجِّهٌ إلَى كُلِّ مُسْلِمٍ، فَكُلُّ أَحَدٍ مَأْمُورٌ بِالْجِهَادِ وَإِنْ لَمْ يَكُنْ مَعَهُ أَحَدٌ، وَقَالَ تَعَالَى: {انْفِرُوا خِفَافًا وَثِقَالا} [التوبة: ٤١] ، وَقَالَ تَعَالَى: {فَانْفِرُوا ثُبَاتٍ أَوِ انْفِرُوا جَمِيعًا} [النساء: ٧١] .

[مَسْأَلَةُ الْخُرُوجِ لِلسَّفَرِ يَوْمَ الْخَمِيسِ]

٩٦٥ - مَسْأَلَةٌ:

وَنَسْتَحِبُّ الْخُرُوجَ لِلسَّفَرِ يَوْمَ الْخَمِيسِ. رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ نَا هِشَامُ بْنُ يُوسُفَ أَخْبَرَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُحِبُّ أَنْ يَخْرُجَ يَوْمَ الْخَمِيسِ» .

٩٦٦ - مَسْأَلَةٌ:

وَمَنْ قَدِمَ مِنْ سَفَرٍ نَهَارًا فَلَا يَدْخُلُ إلَّا لَيْلًا، وَمَنْ قَدِمَ لَيْلًا فَلَا يَدْخُلُ إلَّا نَهَارًا إلَّا لِعُذْرٍ. رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ يَسَارٍ عَنْ الشَّعْبِيِّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا قَدِمَ أَحَدُكُمْ لَيْلًا فَلَا يَأْتِيَنَّ أَهْلَهُ طُرُوقًا حَتَّى تَسْتَحِدَّ الْمُغِيبَةُ وَتَمْتَشِطَ الشَّعِثَةُ» .

do not come upon your family suddenly until the wife who stayed behind has removed her pubic hair and combed her disheveled hair."[16]

L16077 We arrived with the Messenger of Allah—peace and blessings be upon him—in Medina and proceeded to enter. He—peace and blessings be upon him—said: "Wait until we enter at night, so that secluded women may groom themselves and disheveled women may comb their hair."

وَمِنْ طَرِيقِ هُشَيْمٍ عَنْ يَسَارٍ عَنْ الشَّعْبِيِّ عَنْ جَابِرٍ «قَدِمْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ فَذَهَبْنَا لِنَدْخُلَ فَقَالَ - عَلَيْهِ السَّلَامُ -: أَمْهِلُوا حَتَّى نَدْخُلَ لَيْلًا كَيْ تَسْتَحِدَّ الْمُغِيبَةُ وَتَمْتَشِطَ الشَّعِثَةُ»

L16078 An issue: Camels must not be adorned with collars, nor may bells be used within the caravan.

[مَسْأَلَةٌ لَا تُقَلَّدُ الْإِبِلُ وَلَا يُسْتَعْمَلُ الْجَرَسُ فِي الرِّفَاقِ]

L16079 967 – Issue:

٩٦٧ - مَسْأَلَةٌ:

L16080 It is not permissible to hang collars on camels' necks, nor may bells be used in caravans. It has been narrated to us through Malik's chain from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm, from Abbad ibn Tamim, that Abu Bashir al-Ansari informed him [Abbad] that he [Abu Bashir] was with the Messenger of Allah—peace be upon him—on a journey, whereupon he—peace be upon him—sent a messenger proclaiming: "Do not leave a collar made of bowstring on any camel's neck, or any [other] collar—you must cut them all off."

وَلَا يَجُوزُ أَنْ تُقَلَّدَ الْإِبِلُ فِي أَعْنَاقِهَا شَيْئًا، وَلَا أَنْ يُسْتَعْمَلُ الْجَرَسُ فِي الرِّفَاقِ. رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَبَّادِ بْنِ تَمِيمٍ «أَنَّ أَبَا بَشِيرٍ الْأَنْصَارِيَّ أَخْبَرَهُ أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَأَرْسَلَ - عَلَيْهِ السَّلَامُ - رَسُولًا: لَا تُبْقِيَنَّ فِي رَقَبَةِ بَعِيرٍ قِلَادَةً مِنْ وَتَرٍ، أَوْ قِلَادَةً إِلَّا قَطَعْتَ»

L16081 From the chain of Abū Dāwūd: Aḥmad ibn Yūnus reported to us from Zuhayr—that is, Ibn Muʿāwiyah—who reported from Suhayl ibn Abī Ṣāliḥ, from his father, from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said, "Angels do not accompany a traveling group that includes a dog or a bell."[17]

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ يُونُسَ نَا زُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - نَا سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَصْحَبُ الْمَلَائِكَةُ رُفْقَةً فِيهَا كَلْبٌ، أَوْ جَرَسٌ» .

L16082 The prohibition of bells has been authentically established from Aisha and Umm Salamah, the Mothers of the Believers, and Abu Hurairah, with no known opposition to them in that matter from the Companions—may Allah be pleased with them—and no authentic report has been established regarding the prohibition of hanging items around the necks of horses and others.

وَصَحَّ النَّهْيُ عَنْ الْجَرَسِ عَنْ عَائِشَةَ، وَأُمِّ سَلَمَةَ أُمَّيْ الْمُؤْمِنِينَ وَأَبِي هُرَيْرَةَ وَلَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَمْ يَصِحَّ فِي النَّهْيِ عَنْ تَقْلِيدِ أَعْنَاقِ الْخَيْلِ وَغَيْرِهَا أَثَرٌ

[16] **Hadith references (L16076):** Sahih Muslim 715x.
[17] **Hadith references (L16081):** Sunan Abi Dawud 2555.

[مَسْأَلَةُ تَحْلِيَةُ السُّيُوفِ وَالرُّمْحِ وَالسَّرْجِ وَاللِّجَامِ بِالْفِضَّةِ وَالْجَوْهَرِ]

مَسْأَلَةٌ:

وَجَائِزٌ تَحْلِيَةُ السُّيُوفِ، وَالدَّوَاةِ، وَالرُّمْحِ، وَالْمِهَامِيزِ، وَالسَّرْجِ، وَاللِّجَامِ، وَغَيْرِ ذَلِكَ بِالْفِضَّةِ وَالْجَوْهَرِ وَلَا شَيْءَ مِنْ الذَّهَبِ فِي شَيْءٍ مِنْ ذَلِكَ، قَالَ عَزَّ وَجَلَّ: {وَمِنْ كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا وَتَسْتَخْرِجُونَ حِلْيَةً تَلْبَسُونَهَا} [فاطر: ١٢] فَأَبَاحَ لَنَا لِبَاسَ اللُّؤْلُؤِ، وَقَالَ تَعَالَى: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] ، وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] ، فَكُلُّ شَيْءٍ فَهُوَ حَلَالٌ إِلَّا مَا فُصِّلَ لَنَا تَحْرِيمُهُ وَلَمْ يُفَصَّلْ تَحْرِيمُ الْفِضَّةِ أَصْلًا إِلَّا فِي الْآنِيَةِ فَقَطْ. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا مُسْلِمُ بْنُ إِبْرَاهِيمَ نَا جَرِيرُ بْنُ حَازِمٍ نَا قَتَادَةُ عَنْ أَنَسٍ قَالَ «كَانَتْ قَبِيعَةُ سَيْفِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِضَّةً»

قَالَ أَبُو مُحَمَّدٍ: فَقَاسَ قَوْمٌ عَلَى السَّيْفِ وَالْخَاتَمِ الْمُصْحَفَ وَالْمِنْطَقَةَ وَمَنَعُوا مِنْ سَائِرِ ذَلِكَ، فَلَا الْقِيَاسَ طَرَدُوا وَلَا النُّصُوصَ اتَّبَعُوا.

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ تَحْرِيمِهِمْ التَّحَلِّي بِالْفِضَّةِ فِي السَّرْجِ وَاللِّجَامِ وَلَا نَهْيَ فِي ذَلِكَ وَإِبَاحَتِهِمْ لِبَاسَ الْحَرِيرِ فِي الْحَرْبِ، وَقَدْ صَحَّ تَحْرِيمُهُ جُمْلَةً

[مَسْأَلَةُ الرِّبَاطُ فِي الثُّغُورِ]

٩٦٩ - مَسْأَلَةٌ: وَالرِّبَاطُ فِي الثُّغُورِ حَسَنٌ، وَلَا يَحِلُّ الرِّبَاطُ إلَى مَا لَيْسَ ثَغْرًا - كَانَ فِيمَا مَضَى ثَغْرًا أَوْ لَمْ يَكُنْ - وَهُوَ بِدْعَةٌ عَظِيمَةٌ.

An issue pertaining to the adornment of swords, spears, saddles, and bridles with silver and jewels.

Issue:

It is permissible to adorn swords, inkwells, spears, stirrups, saddles, bridles, and other such items with silver and jewels, but no gold is permitted in any of these things. Almighty God said: {And from both you eat fresh meat and extract ornaments that you wear} [35:12], thus permitting us to wear pearls. He also said: {He created for you all that is on the earth} [2:29], and said: {And He has detailed for you what He has forbidden upon you} [6:119]. Therefore, all things are lawful except what has been explicitly prohibited for us, and the prohibition of silver has not been detailed at all except solely for vessels. It has been narrated to us through the chain of Abu Dawud: Muslim ibn Ibrahim narrated to us, Jarir ibn Hazim narrated to us, Qatadah narrated from Anas, who said: "The pommel of the sword of the Messenger of God—peace and blessings be upon him—was made of silver."[18][19]

Abu Muhammad said: Some people analogized the Quranic codex and the belt to the sword and the ring, while prohibiting the rest of such items. Thus they neither applied analogy systematically nor adhered to the textual rulings.

What is utterly astonishing is their prohibition of adorning lamps and bridles with silver—despite there being no injunction against it—while permitting the donning of silk in war, even though its prohibition has been categorically established in totality.

The issue of maintaining vigilance at the border outposts.

Issue 969: Maintaining frontier posts in border regions is praiseworthy, but it is impermissible to establish such posts in locations that are not frontier

[18] **Hadith references (L16086):** Sunan Abi Dawud 2583; Sunan Abi Dawud 2584.

[19] **Qur'an references (L16086):** Qur'an 35:12 (Fatir); Qur'an 2:29 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

regions—whether it was formerly a frontier region or not—as this constitutes a grave innovation.

L16091 It was narrated to us through the chain of Muslim: ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Bahram al-Dārimī → Abū al-Walīd al-Ṭayālisī → Layth (Ibn Saʿd) → Ayyūb ibn Mūsā → Makhūl → Shuraḥbīl ibn al-Simṭ → Salmān al-Fārisī, who said: I heard the Messenger of Allāh (peace and blessings be upon him) say: "Maintaining a vigil (ribāṭ) on the frontier for a day and night is better than fasting a month and performing its night prayers. If one dies, the deeds he used to perform will continue to be recorded for him, his provision will be sustained, and he will be secured from the tempter."

L16092–16094 Abu Muhammad said: Every place besides Medina, the city of the Messenger of Allah (may Allah bless him and grant him peace), is both a frontier and a territory. War and the purpose of jihad; thus to single out a specific place from the entire earth with intent - because the enemy has struck there while excluding the rest of the entire earth - is misguidance, folly, sin, sedition, and innovation.

L16095 If it is for a mosque therein, then this constitutes a more severe form of misguidance due to the Prophet's prohibition - peace be upon him - against traveling to any mosque except the Mosque of Mecca, his own mosque in Medina, and Al-Aqsa Mosque.

L16096 If it is a seacoast, the entire coast of it from the east of the earth to its west is equal. There is no distinction between the coast of a sea and the shore of a river in the religion, nor does any part of it hold superiority.

L16097 If it is a trace of a prophet from among the prophets, then intending to visit it is commendable. The Companions of the Prophet—peace and blessings be upon him—sought blessings through the place where he prayed. They invited him to pray in a designated prayer area within their homes, and he—peace and blessings be upon him—responded favorably to this.

L16098 **A legal issue concerning teaching archery and frequent**

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ بَهْرَامَ الدَّارِمِيُّ نَا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ نَا لَيْثٌ هُوَ ابْنُ سَعْدٍ - عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ مَكْحُولٍ عَنْ شُرَحْبِيلَ بْنِ السِّمْطِ عَنْ سَلْمَانَ الْفَارِسِيِّ سَمِعْتُ: رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «رِبَاطُ يَوْمٍ وَلَيْلَةٍ خَيْرٌ مِنْ صِيَامِ شَهْرٍ وَقِيَامِهِ، وَإِنَّ مَنْ مَاتَ جَرَى عَلَيْهِ عَمَلُهُ الَّذِي كَانَ يَعْمَلُهُ، وَأُجْرِيَ عَلَيْهِ رِزْقُهُ، وَأَمِنَ مِنْ الْفَتَّانِ» .

قَالَ أَبُو مُحَمَّد: وَكُلُّ مَوْضِعٍ سِوَى مَدِينَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ كَانَ ثَغْرًا وَدَارَ حَرْبٍ، وَمَغْزَى جِهَادٍ، فَتَخْصِيصُ مَكَانٍ مِنْ الْأَرْضِ كُلِّهَا بِالْقَصْدِ لِأَنَّ الْعَدُوَّ ضَرَبَ فِيهِ دُونَ سَائِرِ الْأَرْضِ كُلِّهَا ضَلَالٌ، وَحُمْقٌ، وَإِثْمٌ، وَفِتْنَةٌ، وَبِدْعَةٌ.

فَإِنْ كَانَ لِمَسْجِدٍ فِيهِ فَهَذَا أَشَدُّ فِي الضَّلَالِ لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ السَّفَرِ إلَى شَيْءٍ مِنْ الْمَسَاجِدِ حَاشَا مَسْجِدَ مَكَّةَ، وَمَسْجِدَهُ بِالْمَدِينَةِ، وَمَسْجِدَ بَيْتِ الْمَقْدِسِ.

فَإِنْ كَانَ سَاحِلَ بَحْرٍ فَسَاحِلُ الْبَحْرِ كُلِّهِ مِنْ شَرْقِ الْأَرْضِ إلَى غَرْبِهَا سَوَاءٌ، وَلَا فَرْقَ بَيْنَ سَاحِلِ بَحْرٍ وَسَاحِلِ نَهْرٍ فِي الدِّينِ، وَلَا فَضْلَ لِشَيْءٍ مِنْ ذَلِكَ.

فَإِنْ كَانَ أَثَرُ نَبِيٍّ مِنْ الْأَنْبِيَاءِ فَالْقَصْدُ إلَيْهِ حَسَنٌ، قَدْ تَبَرَّكَ أَصْحَابُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَوْضِعِ مُصَلَّاهُ وَاسْتَدْعُوهُ لِيُصَلِّيَ فِي بُيُوتِهِمْ فِي مَوْضِعٍ يَتَّخِذُونَهُ مُصَلًّى فَأَجَابَ إلَى ذَلِكَ - عَلَيْهِ السَّلَامُ -

practice of it.

[مَسْأَلَةٌ تَعْلِيمُ الرَّمْيِ عَلَى الْقَوْسِ وَالْإِكْثَارُ مِنْهُ]

L16099 970. Issue:

٩٧٠ - مَسْأَلَةٌ:

L16100 Learning archery with the bow and practicing it frequently is an excellent virtue, equally applicable to Arabic and non-Arabic bows. It has been narrated to us through Muslim's chain: Hārūn ibn Maʿrūf narrated to us, from Ibn Wahb, from ʿAmr ibn al-Ḥārith, from Abū ʿAlī Thumāmah ibn Shufayy, from ʿUqbah ibn ʿĀmir, who said: I heard Allah's Messenger (peace be upon him) say: "Prepare against them whatever force you can muster and horses tethered for battle, striking terror thereby in Allah's enemy and your enemy" [8:60]. Know that strength lies in archery! Know that strength lies in archery! Lands shall be opened for you, and Allah will suffice you. Let none of you fail to occupy himself with practicing his archery.[20]

وَتَعْلِيمُ الرَّمْيِ عَلَى الْقَوْسِ وَالْإِكْثَارُ مِنْهُ فَضْلٌ حَسَنٌ سَوَاءٌ الْعَرَبِيَّةُ وَالْعَجَمِيَّةُ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا هَارُونُ بْنُ مَعْرُوفٍ نَا ابْنُ وَهْبٍ نَا عَمْرُو بْنُ الْحَارِثِ عَنْ أَبِي عَلِيٍّ ثُمَامَةَ بْنِ شُفَيٍّ عَنْ عُقْبَةَ بْنِ عَامِرٍ يَقُولُ سَمِعْتُ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: {وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ} [الأنفال: ٦٠] أَلَا إِنَّ الْقُوَّةَ الرَّمْيُ أَلَا إِنَّ الْقُوَّةَ الرَّمْيُ سَتُفْتَحُ عَلَيْكُمْ أَرَضُونَ وَيَكْفِيكُمْ اللَّهُ فَلَا يَعْجِزُ أَحَدُكُمْ أَنْ يَلْهُوَ بِسَهْمِهِ» .

L16101 Narrated through Al-Layth, from Al-Hārith ibn Yaʿqūb, from ʿAbd al-Raḥmān ibn Shimāsah: ʿUqbah ibn ʿĀmir said, "The Messenger of Allah - may Allah bless him and grant him peace - said: 'Whoever learns archery then abandons it is not one of us, or it is as if he has disobeyed.'"[21]

وَمِنْ طَرِيقِ اللَّيْثِ عَنْ الْحَارِثِ بْنِ يَعْقُوبَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِمَاسَةَ قَالَ عُقْبَةُ بْنُ عَامِرٍ " إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ عَلِمَ الرَّمْيَ، ثُمَّ تَرَكَهُ فَلَيْسَ مِنَّا أَوْ قَدْ عَصَى»

[مَسْأَلَةٌ الْمُسَابَقَةُ بِالْخَيْلِ وَالْبِغَالِ وَالْحَمِيرِ وَعَلَى الْأَقْدَامِ]

L16102 ****Issue: Racing involving horses, mules, donkeys, and races on foot.****

٩٧١ - مَسْأَلَةٌ:

L16103 971 – Issue:

L16104 Racing with horses, mules, donkeys, and on foot is commendable, and competitions involving spears, arrows, and swords are commendable.

وَالْمُسَابَقَةُ بِالْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ، وَعَلَى الْأَقْدَامِ: حَسَنٌ، وَالْمُنَاضَلَةُ بِالرِّمَاحِ، وَالنِّبَلِ، وَالسُّيُوفِ: حَسَنٌ.

L16105–16106 It has been narrated to us through the chain of Abū Dāwūd: Abū Ṣāliḥ Maḥbūb ibn Mūsā al-Anṭākī narrated to us, who informed us: Abū Isḥāq al-Fazārī reported from Hishām ibn 'Urwah, from his father, from 'Ā'ishah the

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا أَبُو صَالِحٍ مَحْبُوبُ بْنُ مُوسَى الْأَنْطَاكِيُّ أَخْبَرَنَا أَبُو إِسْحَاقَ الْفَزَارِيّ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ مَعَ النَّبِيِّ

[20] **Qur'an references (L16100):** Qur'an 8:60 (Al-Anfal).

[21] **Hadith references (L16101):** Sahih Muslim 1919; Mishkat al-Masabih 3863.

Mother of the Believers, that she was with the Prophet—peace and blessings of Allah be upon him—on a journey. She said: "I raced the Messenger of Allah—peace and blessings of Allah be upon him—on foot and outran him. Then when I had gained weight, I raced him again and he outran me. He said: 'This victory compensates for that race.'"

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ قَالَتْ سَابَقْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَبَقْتُهُ عَلَى رِجْلِي فَلَمَّا حَمَلْتُ اللَّحْمَ سَابَقْتُهُ فَسَبَقَنِي، فَقَالَ: هَذِهِ بِتِلْكَ السَّبْقَةِ» .

L16107 From the chain of Abu Dawud: Ahmad ibn Yunus informed us, from Ibn Abi Dhi'b, from Nafi' ibn Abi Nafi'—the client of Abu Ahmad—from Abu Hurayrah, that the Messenger of Allah—peace and blessings be upon him—said: "There is no competition except in a horse's hoof, a camel's hoof, or an arrowhead."

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ يُونُسَ نَا ابْنُ أَبِي ذِئْبٍ عَنْ نَافِعِ بْنِ أَبِي نَافِعٍ هُوَ مَوْلَى أَبِي أَحْمَدَ - عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا سَبَقَ إلَّا فِي حَافِرٍ، أَوْ خُفٍّ، أَوْ نَصْلٍ» .

L16108 Abu Muhammad said: Al-Khuff is a term that applies to camels in the Arabic language.

قَالَ أَبُو مُحَمَّدٍ: الْخُفُّ اسْمٌ يَقَعُ عَلَى الْإِبِلِ فِي اللُّغَةِ الْعَرَبِيَّةِ.

L16109 The term *al-ḥāfir* in the Arabic language applies exclusively to horses, mules, and donkeys. *Al-naṣl* applies exclusively to swords, spears, and arrows. *As-sabaq* refers to what is given to the winner. 972 - Issue: *As-sabaq* occurs when a ruler or another person allocates wealth as a prize for the winner in one of these categories, and this is commendable. If one of two competitors in the aforementioned scenarios offers wealth and tells his counterpart, "If you outperform me, it is yours; but if I outperform you, you have no claim against me, nor do I have any claim against you," this is also commendable.

وَالْحَافِرُ فِي اللُّغَةِ لَا يَقَعُ إلَّا عَلَى الْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ. وَالنَّصْلُ لَا يَقَعُ إلَّا عَلَى السَّيْفِ، وَالرُّمْحِ، وَالنَّبْلِ. وَالسَّبَقُ هُوَ مَا يُعْطَاهُ السَّابِقُ. ٩٧٢ - مَسْأَلَةٌ: وَالسَّبَقُ هُوَ أَنْ يُخْرِجَ الْأَمِيرُ، أَوْ غَيْرُهُ مَالًا يَجْعَلُهُ لِمَنْ سَبَقَ فِي أَحَدِ هَذِهِ الْوُجُوهِ، فَهَذَا حَسَنٌ. وَيُخْرِجُ أَحَدُ الْمُتَسَابِقَيْنِ فِيمَا ذَكَرْنَا مَالًا فَيَقُولُ لِصَاحِبِهِ: إنْ سَبَقْتنِي فَهُوَ لَك، وَإِنْ سَبَقْتُك فَلَا شَيْءَ لَك عَلَيَّ، وَلَا شَيْءَ لِي عَلَيْك، فَهَذَا حَسَنٌ.

L16110 Thus, these two opinions are valid in all that we have mentioned.

فَهَذَانِ الْوَجْهَانِ يَجُوزَانِ فِي كُلِّ مَا ذَكَرْنَا

L16111 It is not permissible at all to give money in any race other than this one, because of the narration we previously cited.

وَلَا يَجُوزُ إعْطَاءُ مَالٍ فِي سَبَقٍ غَيْرِ هَذَا أَصْلًا لِلْخَبَرِ الَّذِي ذَكَرْنَا آنِفًا.

L16112 If each of them intends to contribute property that would belong to the one who precedes first, this is categorically impermissible except in the case of horses only.

فَإِنْ أَرَادَ أَنْ يُخْرِجَ كُلُّ وَاحِدٍ مِنْهُمَا مَالًا يَكُونُ لِلسَّابِقِ مِنْهُمَا لَمْ يَحِلَّ ذَلِكَ أَصْلًا إلَّا فِي الْخَيْلِ فَقَطْ.

L16113–16115 Furthermore, this is also impermissible regarding horses unless the two include with them a rider mounted on a suitable horse. That he may outpace both of them, and it is possible he does not outpace them. This arbitrator does not contribute any money at all. Whichever of the two contributors of

ثُمَّ لَا يَجُوزُ ذَلِكَ فِي الْخَيْلِ أَيْضًا إلَّا بِأَنْ يُدْخِلَا مَعَهَا فَارِسًا عَلَى فَرَسٍ يُمْكِنُ أَنْ يَسْبِقَهُمَا، وَيُمْكِنُ أَنْ لَا يَسْبِقَهُمَا، وَلَا يُخْرِجُ هَذَا الْفَارِسُ مَالًا أَصْلًا فَأَيُّ الْمُخْرِجَيْنِ

wealth outpaces the other retains his own money and takes what his companion contributed as permissible (ḥalāl). If the arbitrator whom the two appointed - who is termed the resolver (al-muḥallil) - outpaces both of them, he takes both sums entirely. If he is outpaced, he owes nothing. Whatever differs from this is prohibited (ḥarām).

L16116 It is not permissible to stipulate upon the winner the feeding of those present. We have transmitted through the chain of Abū Dāwūd: Musaddad → al-Ḥuṣayn ibn Numayr → Sufyān ibn Ḥusayn → al-Zuhrī → Saʿīd ibn al-Musayyib → Abū Hurayrah → the Prophet—peace and blessings of Allah be upon him—who said: "Whoever introduces a horse between two horses—meaning while he is not certain it will be surpassed—then it is not gambling. But whoever introduces a horse between two horses while being certain it will not be surpassed, then it is gambling." Abū Muḥammad said: Whatever exceeds this is wrongful consumption of wealth. And with Allah, the Exalted, is all success.[22]

[22] **Hadith references (L16116):** Sunan Abi Dawud 2579.

لِلْمَالِ سَبَقَ أَمْسَكَ مَالَهُ نَفْسَهُ وَأَخَذَ مَا أَخْرَجَ صَاحِبُهُ حَلَالًا، وَإِنْ سَبَقَهُمَا الْفَارِسُ الَّذِي أَدْخَلَا وَهُوَ يُسَمَّى الْمُحَلِّلَ أَخَذَ الْمَالَيْنِ جَمِيعًا فَإِنْ سُبِقَ فَلَا شَيْءَ عَلَيْهِ - وَمَا عَدَا هَذَا فَحَرَامٌ.

وَلَا يَجُوزُ أَنْ يُشْتَرَطَ عَلَى السَّابِقِ إطْعَامُ مَنْ حَضَرَ. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا مُسَدَّدٌ نَا الْحُصَيْنُ بْنُ نُمَيْرٍ نَا سُفْيَانُ بْنُ حُسَيْنٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَدْخَلَ فَرَسًا بَيْنَ فَرَسَيْنِ - يَعْنِي - وَهُوَ لَا يُؤْمِنُ أَنْ يُسْبَقَ فَلَيْسَ بِقِمَارٍ، وَمَنْ أَدْخَلَ فَرَسًا بَيْنَ فَرَسَيْنِ وَقَدْ أَمِنَ أَنْ يُسْبَقَ فَهُوَ قِمَارٌ» . قَالَ أَبُو مُحَمَّدٍ: مَا عَدَا هَذَا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

AL-MUHALLA

كِتَابُ الْأَضَاحِيِّ

The Book of Sacrificial Offerings

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

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[كِتَابُ الْأَضَاحِيِّ] [مَسْأَلَةٌ الْأُضْحِيَّةُ سُنَّةٌ حَسَنَةٌ]

[Book of Sacrifices] [Issue: The sacrificial offering is a confirmed Sunnah]

٩٧٣ - مَسْأَلَةٌ: الْأُضْحِيَّةُ سُنَّةٌ حَسَنَةٌ، وَلَيْسَتْ فَرْضًا، وَمَنْ تَرَكَهَا غَيْرَ رَاغِبٍ عَنْهَا فَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ. وَمَنْ ضَحَّى عَنْ امْرَأَتِهِ، أَوْ وَلَدِهِ، أَوْ أَمَتِهِ فَحَسَنٌ، وَمَنْ لَا فَلَا حَرَجَ فِي ذَلِكَ.

Issue 973: The sacrificial offering (Uḍḥiyyah) is a commendable Sunnah and is not obligatory. Whoever refrains from it without aversion to the practice incurs no blame. Whoever sacrifices on behalf of his wife, child, or maidservant has done well, and whoever does not do so incurs no blame in this matter.

وَمَنْ أَرَادَ أَنْ يُضَحِّيَ فَفَرْضٌ عَلَيْهِ إِذَا أَهَلَّ هِلَالُ ذِي الْحِجَّةِ أَنْ لَا يَأْخُذَ مِنْ شَعْرِهِ وَلَا مِنْ أَظْفَارِهِ شَيْئًا حَتَّى يُضَحِّيَ، لَا بِحَلْقٍ، وَلَا بِقَصٍّ وَلَا بِنُورَةٍ وَلَا بِغَيْرِ ذَلِكَ، وَمَنْ لَمْ يُرِدْ أَنْ يُضَحِّيَ لَمْ يَلْزَمْهُ ذَلِكَ.

Whoever intends to perform Udhiyah, it becomes obligatory upon him once the crescent of Dhu al-Hijjah appears to refrain from removing anything from his hair or nails—not by shaving, trimming, using depilatory paste (nūrah), or any other means—until he performs Udhiyah. Whoever does not intend to perform Udhiyah is not bound by this obligation.

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا عُبَيْدُ اللَّهِ بْنُ مُعَاذِ بْنِ مُعَاذٍ الْعَنْبَرِيُّ نَا أَبِي نَا مُحَمَّدُ بْنُ عَمْرٍو نَا عُمَرُ بْنُ مُسْلِمٍ سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: سَمِعْت أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَ لَهُ ذِبْحٌ يَذْبَحُهُ فَأَهَلَّ هِلَالُ ذِي الْحِجَّةِ فَلَا يَأْخُذَنَّ مِنْ شَعْرِهِ، وَلَا مِنْ أَظْفَارِهِ شَيْئًا حَتَّى يُضَحِّيَ» .

It has been reported to us through the chain of Abū Dāwūd: Ubaydullāh ibn Muʿādh ibn Muʿādh al-ʿAnbarī reported from his father, from Muḥammad ibn ʿAmr, from ʿUmar ibn Muslim, who said: I heard Saʿīd ibn al-Musayyab say: I heard Umm Salamah, the Mother of the Believers, say: The Messenger of Allah—peace and blessings be upon him—said, "Whoever has a sacrificial animal he intends to slaughter, and the crescent of Dhul-Ḥijjah is sighted, let him not remove anything from his hair or nails until he performs the Udḥiyah."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سُلَيْمَانُ بْنُ سَلْمٍ الْبَلْخِيّ ثِقَةٌ أَنَا النَّضْرُ بْنُ شُمَيْلٍ أَنَا شُعْبَةُ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ ابْنِ مُسْلِمٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أُمِّ سَلَمَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ رَأَى هِلَالَ ذِي الْحِجَّةِ فَأَرَادَ أَنْ يُضَحِّيَ فَلَا يَأْخُذَنَّ مِنْ شَعْرِهِ وَلَا مِنْ أَظْفَارِهِ حَتَّى يُضَحِّيَ» .

From the narration chain of Aḥmad ibn Shuʿayb: Sulaymān ibn Salm al-Balkhī (reliable) narrated to us; al-Naḍr ibn Shumayl narrated to us; Shuʿbah reported from Mālik ibn Anas, from Ibn al-Muslim, from Saʿīd ibn al-Musayyib, from Umm Salamah, from the Prophet—peace be upon him—who said: "Whoever sights the crescent of Dhū al-Ḥijjah and intends to perform the sacrifice, he must not cut his hair or clip his nails until he performs the sacrifice."

فَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: " فَأَرَادَ أَنْ يُضَحِّيَ بُرْهَانٌ بِأَنَّ الْأُضْحِيَّةَ مَرْدُودَةٌ إلَى إرَادَةِ الْمُسْلِمِ، وَمَا كَانَ هَكَذَا فَلَيْسَ فَرْضًا.

His statement—peace be upon him—"So he intended to sacrifice" is evidence that the sacrificial offering is contingent upon the Muslim's intention, and whatever is like this is not an obligation.

Abu Hanifah said: The sacrificial offering is an obligation, and a person is

required to sacrifice on behalf of his wife. His position encompasses various aspects of error. The first is imposing it as obligatory upon himself, secondly imposing it upon his wife. Since it is an obligation, it is... Such as Zakah: no one is obligated to pay Zakah on behalf of his wife, nor to offer the tamattuʿ sacrificial animal on her behalf, nor to pay the compensation for hunting [game], nor the expiation for shaving the head to remove harm.

وَقَالَ أَبُو حَنِيفَةَ: الْأُضْحِيَّةُ فَرْضٌ، وَعَلَى الْمَرْءِ أَنْ يُضَحِّيَ عَنْ زَوْجَتِهِ - فَجَمَعَ وُجُوهًا مِنَ الْخَطَأِ، أَوَّلُهَا: إِيجَابُهَا عَلَيْهِ، ثُمَّ إِيجَابُهَا عَلَى امْرَأَتِهِ، وَإِذْ هِيَ فَرْضٌ فَهِيَ كَالزَّكَاةِ، وَمَا يَلْزَمُ أَحَدٌ أَنْ يُزَكِّيَ عَنْ امْرَأَتِهِ، وَلَا أَنْ يُهْدِيَ عَنْهَا هَدْيَ مُتْعَةٍ، وَلَا جَزَاءَ صَيْدٍ، وَلَا فِدْيَةَ حَلْقِ الرَّأْسِ مِنَ الْأَذَى.

L16128 The Prophet—may Allah's peace and blessings be upon him—commanded that whoever intends to perform the udḥiyah must not cut or trim anything from their hair or nails, as we have mentioned.

ثُمَّ خِلَافُ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَرَادَ أَنْ يُضَحِّيَ أَنْ لَا يَمَسَّ مِنْ شَعْرِهِ، وَلَا مِنْ ظُفْرِهِ شَيْئًا كَمَا ذَكَرْنَا.

L16129 If it is said: How is it not an obligation when you deem it obligatory for one who intends to sacrifice that he must not touch any of his hair or nails once the crescent of Dhul-Hijjah appears until he sacrifices? We say: Yes, because the Prophet—peace and blessings of Allah be upon him—commanded this for whoever intended to sacrifice, but he did not command us to perform the Udhiyah. Thus, we do not exceed what he prescribed. Every recommended practice that is not obligatory has ordained boundaries that are not valid except through them, just as one who intends to perform voluntary prayer is obligated to pray only with ablution, facing the qiblah—unless he is riding—and to recite in it, bow, prostrate, and must necessarily sit. Similarly, one who intends to fast is obligated to avoid what a fasting person avoids; otherwise, it is not fasting.

فَإِنْ قِيلَ: كَيْفَ لَا تَكُونُ فَرْضًا وَأَنْتُمْ تَرَوْنَ فَرْضًا عَلَى مَنْ أَرَادَ أَنْ يُضَحِّيَ: أَنْ لَا يَمَسَّ مِنْ شَعْرِهِ، وَلَا مِنْ ظُفْرِهِ إِذَا أَهَلَّ هِلَالُ ذِي الْحِجَّةِ حَتَّى يُضَحِّيَ؟ قُلْنَا: نَعَمْ، لِأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِذَلِكَ مَنْ أَرَادَ أَنْ يُضَحِّيَ، وَلَمْ يَأْمُرْنَا بِالْأُضْحِيَّةِ، فَلَمْ نَتَعَدَّ مَا حَدَّ، وَكُلُّ سُنَّةٍ لَيْسَتْ فَرْضًا، فَإِنَّ لَهَا حُدُودًا مَفْرُوضَةً لَا تَكُونُ إِلَّا بِهَا كَمَنْ أَرَادَ أَنْ يَتَطَوَّعَ بِصَلَاةٍ فَفَرْضٌ عَلَيْهِ أَلَّا يُصَلِّيَهَا إِلَّا بِوُضُوءٍ، وَإِلَى الْقِبْلَةِ، إِلَّا أَنْ يَكُونَ رَاكِبًا، وَأَنْ يَقْرَأَ فِيهَا وَيَرْكَعَ، وَيَسْجُدَ، وَيَجْلِسَ وَلَا بُدَّ، وَكَمَنْ أَرَادَ أَنْ يَصُومَ فَفَرْضٌ عَلَيْهِ أَنْ يَجْتَنِبَ مَا يَجْتَنِبُهُ الصَّائِمُ وَإِلَّا فَلَيْسَ صَوْمًا.

L16130 Similarly, every supererogatory act in religious practice—the Uḍḥiyah (ritual sacrifice) follows this same principle. If one fulfills it as prescribed, it remains valid; otherwise, it becomes merely a sheep slaughtered for meat and not a valid Uḍḥiyah.

وَهَكَذَا كُلُّ تَطَوُّعٍ فِي الدِّيَانَةِ، وَالْأُضْحِيَّةُ كَذَلِكَ إِنْ أَدَّاهَا كَمَا أُمِرَ وَإِلَّا فَهِيَ شَاةُ لَحْمٍ وَلَيْسَتْ أُضْحِيَّةً.

L16131–16133 If it is objected: "There has come the hadith, 'What right does a person have who owns something he wishes to bequeath...' [to the end of the narration]. Yet this wording from him—peace be upon him—does not constitute evidence for you that bequest is not obligatory? Rather, you hold it to be obligatory!" We reply: Yes, because another explicit text has been estab-

فَإِنْ قِيلَ: فَقَدْ جَاءَ «مَا حَقُّ امْرِئٍ لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ فِيهِ» إِلَى آخِرِ الْحَدِيثِ، وَلَمْ يَكُنْ هَذَا اللَّفْظُ مِنْهُ - عَلَيْهِ السَّلَامُ - دَلِيلًا عِنْدَكُمْ عَلَى أَنَّ الْوَصِيَّةَ لَيْسَتْ فَرْضًا، بَلْ هِيَ عِنْدَكُمْ فَرْضٌ؟ قُلْنَا: نَعَمْ، لِأَنَّهُ قَدْ جَاءَ نَصٌّ آخَرُ بِإِيجَابِ الْوَصِيَّةِ فِي الْقُرْآنِ وَالسُّنَّةِ

lished in the Quran and Sunnah obligating bequest. Allah, the Most High, said: “Prescribed for you when death approaches any of you, if he leaves wealth, is a will for parents and close relatives” [Al-Baqarah: 180]. So we have adopted this, and no textual evidence has come obligating the Uḍḥiyah. Had it come, we would have adhered to it.[1]

قَالَ تَعَالَى: {كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ} [البقرة: ١٨٠] الْآيَةَ فَأَخَذْنَا بِهَذَا وَلَمْ يَأْتِ نَصٌّ بِإِيجَابِ الْأُضْحِيَّةِ، وَلَوْ جَاءَ لَأَخَذْنَا بِهِ.

L16134 They adduced as proof a report from it—a narration transmitted through the chain of Aḥmad ibn Zuhayr ibn Ḥarb from Yaḥyā ibn Ayyūb from Muʿādh ibn Muʿādh from Ibn ʿAwn from Abu Ramlah from Mikhnaf ibn Sulaym: “Indeed, the Messenger of Allah—peace and blessings be upon him—said while in Arafah: ’Every household must offer an Uḍḥiyah and an ʿAtīrah every year. Do you know what the ʿAtīrah is? It is what people call the Rajabīyah.’”

وَاحْتَجُّوا بِأَشْيَاءَ مِنْهَا - خَبَرٌ مِنْ طَرِيقِ أَحْمَدَ بْنِ زُهَيْرِ بْنِ حَرْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ مُعَاذِ بْنِ مُعَاذٍ عَنِ ابْنِ عَوْنٍ عَنْ أَبِي رَمْلَةَ عَنْ مِخْنَفِ بْنِ سُلَيْمٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ بِعَرَفَةَ: إِنَّ عَلَى كُلِّ أَهْلِ بَيْتٍ فِي كُلِّ عَامٍ أَضْحَى وَعَتِيرَةً، أَتَدْرُونَ مَا الْعَتِيرَةُ؟ هِيَ الَّتِي يُسَمِّيهَا النَّاسُ الرَّجَبِيَّةَ» .

L16135 From the chain of Abd al-Razzaq, from Ibn Jurayj, from Abd al-Karim, from Habib ibn Mikhnaf, from his father, that he heard the Messenger of Allah—peace and blessings be upon him—say at Arafat: “It is obligatory upon every household to slaughter a sheep in every Rajab and a sheep in every Eid al-Adha.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ عَنْ حَبِيبِ بْنِ مِخْنَفٍ عَنْ أَبِيهِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ بِعَرَفَةَ «عَلَى كُلِّ أَهْلِ بَيْتٍ أَنْ يَذْبَحُوا فِي كُلِّ رَجَبٍ شَاةً وَفِي كُلِّ أَضْحَى شَاةً» .

L16136–16138 From the path of Muḥammad ibn Jarīr al-Ṭabarī: Ibn Sinān al-Qazzāz informed us, Abū ʿĀṣim informed us, from Yaḥyā ibn Zurārah ibn Karīm ibn al-Ḥārith. My father narrated to me from his grandfather that he heard the Messenger of Allah (peace be upon him) say during the Farewell Pilgrimage: “Whoever wishes may offer the Fara‘ sacrifice or not, and whoever wishes may offer the ‘Atīrah sacrifice or not. As for sheep, their Udhiyah is valid.”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ نَا ابْنُ سِنَانٍ الْقَزَّازُ نَا أَبُو عَاصِمٍ عَنْ يَحْيَى بْنِ زُرَارَةَ بْنِ كَرِيمِ بْنِ الْحَارِثِ حَدَّثَنِي أَبِي عَنْ جَدِّهِ أَنَّهُ «سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ فِي حَجَّةِ الْوَدَاعِ مَنْ شَاءَ فَرَّعَ، وَمَنْ شَاءَ لَمْ يُفَرِّعْ وَمَنْ شَاءَ عَتَرَ، وَمَنْ شَاءَ لَمْ يَعْتِرْ، وَفِي الْغَنَمِ أُضْحِيَتُهَا» .

L16139 And also through the chain of al-Ṭabarī: Abū ʿĀṣim Marwān ibn Muḥammad al-Anṣārī informed us: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to me, Muḥammad ibn Abī Yaḥyā narrated to me, my mother narrated to me from Umm Bilāl al-Aslamiyyah, who said: The Messenger of Allah (peace and blessings be upon him) said, “Sacrifice a jadhaʿ from the sheep.”

وَمِنْ طَرِيقِ الطَّبَرِيِّ أَيْضًا -: حَدَّثَنِي أَبُو عَاصِمٍ مَرْوَانُ بْنُ مُحَمَّدٍ الْأَنْصَارِيُّ نَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ حَدَّثَنِي مُحَمَّدُ بْنُ أَبِي يَحْيَى حَدَّثَتْنِي أُمِّي عَنْ أُمِّ بِلَالٍ الْأَسْلَمِيَّةِ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «ضَحُّوا بِالْجَذَعِ مِنَ الضَّأْنِ» .

[1] **Qur’an references (L16131):** Qur’an 2:180 (Al-Baqarah).

L16140 And through the chain of Waki‘ from Isra’il from Jabir al-Ju‘fi from ‘Ikrimah from Ibn ‘Abbas that the Prophet (peace be upon him) said: “I have been commanded regarding the Udhiyah, but it was not made obligatory.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْرَائِيلَ عَنْ جَابِرٍ الْجُعْفِيُّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أُمِرْتُ بِالْأَضْحَى وَلَمْ تُكْتَبْ» .

L16141 From the chain of Ibn Lahīʿah, from Ibn Anʿum, from ʿUtbah ibn Ḥumayd al-Ḍabbī, from ʿUbādah ibn Nusayy, from ʿAbd al-Raḥmān ibn Ghanm al-Ashʿarī, from Muʿādh ibn Jabal, who said: “The Messenger of Allah (peace and blessings be upon him) would command that we sacrifice, and command that we feed from its meat the neighbor and the needy.”

وَمِنْ طَرِيقِ ابْنِ لَهِيعَةَ عَنْ ابْنِ أَنْعُمٍ عَنْ عُتْبَةَ بْنِ حُمَيْدٍ الضَّبِّيِّ عَنْ عُبَادَةَ بْنِ نُسَيٍّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنْمٍ الْأَشْعَرِيِّ عَنْ مُعَاذِ بْنِ جَبَلٍ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ أَنْ نُضَحِّيَ وَيَأْمُرُ أَنْ نُطْعِمَ مِنْهَا الْجَارَ وَالسَّائِلَ» .

L16142 Through the chain of Waki‘, al-Rabi’ narrated to us from al-Hasan that the Messenger of Allah—may Allah bless him and grant him peace—commanded the Uḍḥiyah.

وَمِنْ طَرِيقِ وَكِيعٍ نَا الرَّبِيعُ عَنْ الْحَسَنِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِالْأَضْحَى» .

L16143 And via the chain of Ibn Wahb’s nephew from his uncle, from Abdullah ibn Ayyash ibn Abbas al-Qitbani, from Isa ibn Abd al-Rahman, from al-Zuhri, from Ibn al-Musayyib, from Abu Hurayrah, that the Messenger of Allah - peace and blessings be upon him - said: “Whoever has the means, let him offer a sacrifice.”

وَمِنْ طَرِيقِ ابْنِ أَخِي ابْنِ وَهْبٍ عَنْ عَمِّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَيَّاشِ بْنِ عَبَّاسٍ الْقِتْبَانِيِّ عَنْ عِيسَى بْنِ عَبْدِ الرَّحْمَنِ عَنْ الزُّهْرِيِّ عَنْ ابْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ وَجَدَ سَعَةً فَلْيُضَحِّ» .

L16144 From the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Abū Yaḥyā ibn Abī Masarra, from ʿAbdullāh ibn Yazīd the Quran reciter, from ʿAbdullāh ibn ʿAyyāsh ibn ʿAbbās al-Qitbānī: ʿAbd al-Raḥmān ibn Hurmuz al-Aʿraj narrated to me from Abū Hurayrah, who said, “The Messenger of Allāh - peace and blessings be upon him - said: ’Whoever has the means but does not sacrifice, let him not approach our prayer space.”’ All of this is unreliable.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نَا أَبُو يَحْيَى بْنُ أَبِي مَسَرَّةَ نَا عَبْدُ اللَّهِ بْنُ يَزِيدَ الْمُقْرِي نَا عَبْدِ اللَّهِ بْنِ عَيَّاشِ بْنِ عَبَّاسٍ الْقِتْبَانِيِّ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ هُرْمُزٍ الْأَعْرَجُ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ وَجَدَ سَعَةً فَلَمْ يُضَحِّ فَلَا يَقْرَبْ مُصَلَّانَا» وَكُلُّ هَذَا لَيْسَ بِشَيْءٍ.

L16145–16146 As for the hadith of Mikhnaf, it is narrated by Abu Ramlah al-Ghamidi and Habib ibn Mikhnaf—both are unknown and not known. As for the hadith of al-Harith, it is narrated by Yahya ibn Zurarah from his father—both are likewise unknown and not known. As for the hadith of Umm Bilal, in it is Umm Muhammad ibn Abi Yahya—she is unknown.

أَمَّا حَدِيثُ مِخْنَفٍ فَعَنْ أَبِي رَمْلَةَ الْغَامِدِيِّ، وَحَبِيبِ بْنِ مِخْنَفٍ - وَكِلَاهُمَا مَجْهُولٌ لَا يُدْرَى. وَأَمَّا حَدِيثُ الْحَارِثِ فَهُوَ عَنْ يَحْيَى بْنِ زُرَارَةَ عَنْ أَبِيهِ - وَكِلَاهُمَا مَجْهُولٌ لَا يُدْرَى. وَأَمَّا حَدِيثُ أُمِّ بِلَالٍ فَفِيهِ أُمُّ مُحَمَّدِ بْنِ أَبِي يَحْيَى - هِيَ مَجْهُولَةٌ.

L16147 As for the *ḥadīth* of Ibn ʿAyyāsh, in its chain is Jābir al-Juʿfī—who is a fabricator.

وَأَمَّا حَدِيثُ ابْنِ عَيَّاشٍ فَفِيهِ جَابِرُ الْجُعْفِيُّ - وَهُوَ كَذَّابٌ.

As for the ḥadīth of Muʿādh, its chain includes Ibn Lahīʿah and Ibn Anʿam—both of whom are in the utmost weakness.

وَأَمَّا حَدِيثُ مُعَاذٍ فَفِيهِ ابْنُ لَهِيعَةَ، وَابْنُ أَنْعُمٍ - وَكِلَاهُمَا فِي غَايَةِ السُّقُوطِ.

As for the ḥadīth of al-Ḥasan, it is mursal (a ḥadīth with an incomplete chain of transmission).

وَأَمَّا حَدِيثُ الْحَسَنِ فَمُرْسَلٌ.

As for the ḥadīth of Abū Hurayrah—both its chains are transmitted via the narration of ʿAbdullāh ibn ʿAyyāsh ibn ʿAbbās al-Qitbānī, who is not recognized as trustworthy—all they embellished in this matter has thereby collapsed.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ - فَكِلَا طَرِيقَيْهِ مِنْ رِوَايَةِ عَبْدِ اللَّهِ بْنِ عَيَّاشِ بْنِ عَبَّاسٍ الْقِتْبَانِيِّ فَلَيْسَ مَعْرُوفًا بِالثِّقَةِ - فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ فِي ذَلِكَ.

They mentioned the words of Allah, the Most High: “So pray to your Lord and sacrifice” [Surah Al-Kawthar: 2], and they said, “It is the Uḍḥiyah.”[2]

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {فَصَلِّ لِرَبِّكَ وَانْحَرْ} [الكوثر: ٢] فَقَالُوا: هُوَ الْأُضْحِيَّةُ.

Abū Muḥammad said: This is ascribing to Allah, the Exalted, without knowledge, and He, the Exalted, said: “To associate with Allah what He has not sent down any authority for, and to ascribe to Allah what you do not know” [Al-Aʿrāf: 33].[3]

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ عَلَى اللَّهِ تَعَالَى بِغَيْرِ عِلْمٍ، وَقَالَ تَعَالَى: {وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [الأعراف: ٣٣] .

It has been reported to us from Ali, Ibn Abbas, and others that “he placed his hand near the throat [or upper chest] during prayer,” and it may refer to the slaughtering of sacrificial animals at the throat in contexts where it is obligatory.

وَقَدْ رُوِّينَا عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ، وَغَيْرِهِمَا: «أَنَّهُ وَضَعَ الْيَدَ عِنْدَ النَّحْرِ فِي الصَّلَاةِ» ، وَلَعَلَّهُ نَحْرُ الْبُدْنِ فِيمَا وَجَبَتْ فِيهِ.

It was narrated from Mujāhid and Ismāʿīl ibn Abī Khālid—and we do not know of anyone before them who said—that they are the sacrificial animals (al-Adāḥī).

كَمَا رُوِّينَا عَنْ مُجَاهِدٍ، وَإِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ - وَمَا نَعْلَمُ أَحَدًا قَبْلَهُمْ قَالَ: إنَّهَا الْأَضَاحِيُّ.

They also referenced the verse of the Exalted: {For every community We have ordained an act of worship} [al-Ḥajj 22:34]. This provides no evidence for it being obligatory; it only signifies that the act of worship is designated for us, making it a divine grace, not an obligation.[4]

وَذَكَرُوا أَيْضًا قَوْله تَعَالَى: {وَلِكُلِّ أُمَّةٍ جَعَلْنَا مَنْسَكًا} [الحج: ٣٤] وَهَذَا لَا دَلِيلَ فِيهِ عَلَى الْفَرْضِ، وَإِنَّمَا فِيهِ أَنَّ النُّسُكَ لَنَا فَهُوَ فَضْلٌ لَا فَرْضٌ.

They mentioned the authentic narration from the Messenger of Allah—peace and blessings be upon him—: “Whoever sacrifices before the prayer

وَذَكَرُوا الْخَبَرَ الصَّحِيحَ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَمَنْ ذَبَحَ قَبْلَ الصَّلَاةِ فَلْيُعِدْ ذَبْحًا، وَمَنْ لَمْ يَذْبَحْ فَلْيَذْبَحْ عَلَى اسْمِ اللَّهِ» .

[2] **Qur’an references (L16151):** Qur’an 108:2 (Al-Kawthar).
[3] **Qur’an references (L16152):** Qur’an 7:33 (Al-A’raf).
[4] **Qur’an references (L16155):** Qur’an 22:34 (Al-Hajj).

must sacrifice again, and whoever does not sacrifice must do so in the name of Allah."

L16157–16158 Ali said: As for his command—peace be upon him—to repeat the slaughter for one who slaughtered before the prayer, it is obligatory upon him because it is a command from him—peace be upon him—and there is no objection to the existence of a command in the religion that is not obligatory, while the making up for it becomes obligatory. Thus, they agree with us regarding one who voluntarily fasts a day and then intentionally breaks it, that making up (qada) for it is obligatory upon him.

قَالَ عَلِيٌّ: أَمَّا أَمْرُهُ - عَلَيْهِ السَّلَامُ - بِإِعَادَةِ الذَّبْحِ مَنْ ذَبَحَ قَبْلَ الصَّلَاةِ فَفَرْضٌ عَلَيْهِ لِأَنَّهُ أَمْرٌ مِنْهُ - عَلَيْهِ السَّلَامُ -، وَلَا نَكِرَةَ فِي وُجُودِ أَمْرٍ فِي الدِّينِ لَيْسَ فَرْضًا وَيَكُونُ الْعِوَضُ مِنْهُ فَرْضًا - فَهُمْ مُوَافِقُونَ لَنَا فِيمَنْ تَطَوَّعَ بِيَوْمٍ لَيْسَ فَرْضًا فَأَفْطَرَ عَمْدًا أَنَّ قَضَاءَهُ عَلَيْهِ فَرْضٌ.

L16159 They say concerning one who performed a voluntary Hajj and invalidated it: "He must make it up as an obligation." But rather, one must reference the command of Allah, the Exalted, and the command of His Messenger—peace be upon him. Thus, whatever is stipulated therein becomes obligatory, and whatever is not stipulated therein is not obligatory.

وَيَقُولُونَ فِيمَنْ حَجَّ تَطَوُّعًا فَأَفْسَدَهُ: أَنَّ قَضَاءَهُ فَرْضٌ، وَإِنَّمَا يُرَاعِي أَمْرَ اللَّهِ تَعَالَى وَأَمْرَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَا وُجِدَ فِيهِ فَهُوَ فَرْضٌ، وَمَا لَمْ يُوجَدْ فِيهِ فَلَيْسَ فَرْضًا.

L16160 As for his statement—peace be upon him—"Whoever does not slaughter, let him slaughter in the name of Allah," the evidence that this is not an obligatory injunction lies in the validity of the Consensus that whoever sacrifices a camel by nahr (the prescribed method for camels) is not obligated to perform slaughter—thus it is established that it is a recommended injunction—and by Allah, the Exalted, is success.

وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «وَمَنْ لَمْ يَذْبَحْ فَلْيَذْبَحْ عَلَى اسْمِ اللَّهِ» فَالدَّلِيلُ عَلَى أَنَّهُ لَيْسَ أَمْرَ فَرْضٍ صِحَّةُ الْإِجْمَاعِ عَلَى أَنَّ مَنْ ضَحَّى بِبَعِيرٍ فَنَحَرَهُ فَلَيْسَ عَلَيْهِ فَرْضًا أَنْ يَذْبَحَ - فَصَحَّ أَنَّهُ أَمْرُ نَدْبٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L16161 Among those from whom we have received narrations regarding the obligation of the Udḥiyyah are Mujāhid and Makḥūl.

وَمِمَّنْ رُوِّينَا عَنْهُ إِيجَابَ الْأُضْحِيَّةِ: مُجَاهِدٌ، وَمَكْحُولٌ.

L16162 From Al-Shaʿbī: They did not permit abandoning the sacrifice (Uḍḥiyah) except for a pilgrim or a traveler.

وَعَنْ الشَّعْبِيِّ: لَمْ يَكُونُوا يُرَخِّصُونَ فِي تَرْكِ الْأُضْحِيَّةِ إِلَّا لِحَاجٍّ، أَوْ مُسَافِرٍ.

L16163 And it was narrated from Abū Hurayrah but it is not authentic.

وَرُوِيَ عَنْ أَبِي هُرَيْرَةَ وَلَا يَصِحُّ.

L16164 It has been narrated to us through the chain of ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Muṭarrif ibn Ṭarīf, from al-Shaʿbī, from Abū Surayḥah Ḥudhayfah ibn Usayd al-Ghifārī, who said: "I indeed saw Abū Bakr and ʿUmar—they did not perform Udhiyah, disliking that others might imitate them."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ عَنْ أَبِي سُرَيْحَةَ حُذَيْفَةَ بْنَ أُسَيْدَ الْغِفَارِيِّ قَالَ: لَقَدْ رَأَيْت أَبَا بَكْرٍ، وَعُمَرَ وَمَا يُضَحِّيَانِ كَرَاهِيَةَ أَنْ يُقْتَدَى بِهِمَا.

L16165 And through the chain of Sufyan al-Thawri from Mansur ibn al-Mu'tamir from Abu Wa'il (who is Shaqiq ibn Salama) from Abu Mas'ud 'Uqbah ibn 'Amr al-Badri, the Companion of the Battle of Badr, that he said: "I thought of refraining from offering the *udhiyah* sacrifice, though I am among those most able to afford it, fearing people might consider it an absolute obligation."

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي وَائِلٍ هُوَ شَقِيقُ بْنِ سَلَمَةَ - عَنْ أَبِي مَسْعُودٍ عُقْبَةَ بْنِ عَمْرٍو الْبَدْرِيِّ أَنَّهُ قَالَ: لَقَدْ هَمَمْت أَنْ أَدَعَ الْأُضْحِيَّةَ وَإِنِّي لَمِنْ أَيْسَرِكُمْ مَخَافَةَ أَنْ يَحْسِبَ النَّاسُ أَنَّهَا حَتْمٌ وَاجِبٌ.

L16166 From the chain of Sa'īd ibn Manṣūr: Abū al-Aḥwaṣ informed us: 'Imrān ibn Muslim—al-Ju'fī—from Suwayd ibn Ghafalah, who said: Bilāl said to me: "I would not mind if I sacrificed a rooster. Indeed, taking the price of the Udhiyah and giving it in charity to a destitute person is more beloved to me than performing the sacrifice."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو الْأَحْوَصِ أَنَا عِمْرَانُ بْنُ مُسْلِمٍ هُوَ الْجُعْفِيُّ - عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: قَالَ لِي بِلَالٌ: مَا كُنْت أُبَالِي لَوْ ضَحَّيْت بِدِيكٍ، وَلَأَنْ آخُذَ ثَمَنَ الْأُضْحِيَّةِ فَأَتَصَدَّقَ بِهِ عَلَى مِسْكِينٍ مُقْتِرٍ فَهُوَ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ.

L16167 And through the chain of Ḥammād ibn Salamah from ʿAqīl ibn Ṭalḥah from Ziyād ibn ʿAbd al-Raḥmān from Ibn ʿUmar, who said: The *Udhiyah* is a recommended practice (Sunnah).

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَقِيلِ بْنِ طَلْحَةَ عَنْ زِيَادِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ ابْنِ عُمَرَ قَالَ: الْأُضْحِيَّةُ سُنَّةٌ.

L16168–16169 And through the chain of Shuʿbah from Tamīm ibn Ḥuwayṣ al-Azdī, who said: "My sacrificial animal went missing before I could slaughter it, so I asked Ibn ʿAbbās." He replied: "It does not harm you." All of this is authentic. And through the chain of Wakīʿ, who narrated to us from Abū Maʿshar al-Madanī, from ʿAbdullāh ibn ʿUmayr, the freed slave of Ibn ʿAbbās, from Ibn ʿAbbās, that he gave his freed slave two dirhams and said: "Purchase meat with these. Whoever you meet, say: 'This is the sacrifice of Ibn ʿAbbās.'"

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ تَمِيمِ بْنِ حُوَيْصٍ الْأَزْدِيُّ قَالَ: ضَلَّتْ أُضْحِيَتِي قَبْلَ أَنْ أَذْبَحَهَا فَسَأَلْت ابْنَ عَبَّاسٍ؟ فَقَالَ: لَا يَضُرُّك - هَذَا كُلُّهُ صَحِيحٌ -: وَمِنْ طَرِيقِ وَكِيعٍ نَا أَبُو مَعْشَرٍ الْمَدِينِيُّ عَنْ عَبْدِ اللَّهِ بْنِ عُمَيْرٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ أَعْطَى مَوْلًى لَهُ دِرْهَمَيْنِ وَقَالَ: اشْتَرِ بِهِمَا لَحْمًا وَمَنْ لَقِيَك فَقُلْ: هَذِهِ أُضْحِيَّةُ ابْنِ عَبَّاسٍ.

L16170 Abu Muhammad said: It is not authentically reported from any of the Companions that the Uḍḥiyah is obligatory.

قَالَ أَبُو مُحَمَّدٍ: لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ أَنَّ الْأُضْحِيَّةَ وَاجِبَةٌ.

L16171 It has been established that the Udhiyah (ritual sacrifice) is not obligatory according to Sa'īd ibn al-Musayyab and al-Sha'bī, and that al-Sha'bī said: "To give three silver dirhams in charity is more beloved to me than to perform the Udhiyah."

وَصَحَّ أَنَّ الْأُضْحِيَّةَ لَيْسَتْ وَاجِبَةً عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَالشَّعْبِيِّ وَأَنَّهُ قَالَ: لَأَنْ أَتَصَدَّقَ بِثَلَاثَةِ دَرَاهِمَ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ.

L16172 From Sa'īd ibn Jubayr, 'Aṭā', al-Ḥasan, Ṭāwūs, and Abū al-Sha'thā' Jābir ibn Zayd; and it is also reported from 'Alqamah and Muḥammad ibn 'Alī ibn al-Ḥusayn.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَعَنْ عَطَاءٍ، وَعَنْ الْحَسَنِ، وَعَنْ طَاوُسٍ، وَعَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ - وَرُوِيَ أَيْضًا عَنْ عَلْقَمَةَ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ.

L16173 This is the opinion of Sufyan, Ubayd Allāh ibn al-Ḥasan, al-Shāfiʿī, Aḥmad ibn Ḥanbal, Isḥāq, and Abū Sulaymān—and this is among the matters in which the Ḥanafīs differed from the majority of scholars.

وَهُوَ قَوْلُ سُفْيَانَ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ - وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ جُمْهُورَ الْعُلَمَاءِ.

L16174 **Issue: The lame female animal is not permissible as the sacrificial offering (al-Uḍḥiyah).**

[مَسْأَلَةٌ لَا تَجْزِي الْعَرْجَاءُ فِي الْأُضْحِيَّةِ]

L16175 Issue 974: A lame animal with evident lameness does not suffice for sacrificial offering, whether it has met the required conditions [for sacrifice] or not, and whether it can walk or not.

٩٧٤ - مَسْأَلَةٌ: وَلَا تَجْزِي فِي الْأُضْحِيَّةِ الْعَرْجَاءُ الْبَيِّنُ عَرَجُهَا، بَلَغَتْ الْمَنْسَكَ أَوْ لَمْ تَبْلُغْ، مَشَتْ أَوْ لَمْ تَمْشِ.

L16176 Nor the sick woman whose disease is evident - and mange is a disease - if all that we mentioned does not manifest, then it suffices.

وَلَا الْمَرِيضَةُ الْبَيِّنُ مَرَضُهَا - وَالْجَرَبُ مَرَضٌ - فَإِنْ كَانَ كُلُّ مَا ذَكَرْنَا لَا يَبِينُ أَجْزَأَ.

L16177 The emaciated animal that is not free of flaws does not suffice, nor one with a deficiency, severed part, or perforating hole in its ear, nor one with a defect in its eye or likewise in both eyes, nor the animal with a docked tail.

وَلَا تَجْزِي الْعَجْفَاءُ الَّتِي لَا تُنْقِي وَلَا تَجْزِي الَّتِي فِي أُذُنِهَا شَيْءٌ مِنْ النَّقْصِ أَوْ الْقَطْعِ، أَوْ الثَّقْبِ النَّافِذِ، وَلَا الَّتِي فِي عَيْنِهَا شَيْءٌ مِنْ الْعَيْبِ، أَوْ فِي عَيْنَيْهَا كَذَلِكَ، وَلَا الْبَتْرَاءُ فِي ذَنَبِهَا.

L16178 Then, every defect other than what we have mentioned does not invalidate the sacrificial animal, such as a castrated animal, a broken horn (whether it bled or not), an animal with worn or broken teeth, a tail-docked animal, and similar defects. Do not avoid any defect except those we have specified.

ثُمَّ كُلُّ عَيْبٍ سِوَى مَا ذَكَرْنَا فَإِنَّهَا تَجْزِي بِهِ الْأُضْحِيَّةُ كَالْخَصِيِّ، وَكَسْرِ الْقَرْنِ دَمِيَ، أَوْ لَمْ يَدْمَ - وَالْهَتْمَاءُ وَالْمَقْطُوعَةُ الْأَلْيَةِ، وَغَيْرُ ذَلِكَ لَا تَحَاشَ شَيْئًا غَيْرَ مَا ذَكَرْنَا.

L16179–16181 It was transmitted to us via the route of ʿAbd al-Raḥmān ibn Mahdī, Yaḥyā al-Qaṭṭān, and others from them—all being disciples of Shuʿbah. Shuʿbah reported: I heard Sulaymān ibn ʿAbd al-Raḥmān say: I heard ʿUbayd ibn Fayrūz relate that... The Messenger of Allah, peace and blessings be upon him, said to Al-Barāʾ ibn ʿĀzib: "Four defects make an animal unacceptable for sacrifice: the one-eyed animal whose defect is evident, the sick animal whose sickness is evident, the lame animal whose lameness is evident, and the animal with a broken bone devoid of marrow."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَيَحْيَى الْقَطَّانِ، وَغَيْرِهِمَا مِنْ أَصْحَابِ شُعْبَةَ كُلِّهِمْ: نَا شُعْبَةُ سَمِعْت سُلَيْمَانَ بْنَ عَبْدِ الرَّحْمَنِ قَالَ: سَمِعْت عُبَيْدَ بْنَ فَيْرُوزَ أَنَّ الْبَرَاءَ بْنَ عَازِبٍ قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَرْبَعٌ لَا تُجْزِي فِي الْأَضَاحِيِّ: الْعَوْرَاءُ الْبَيِّنُ عَوَرُهَا، وَالْمَرِيضَةُ الْبَيِّنُ مَرَضُهَا، وَالْعَرْجَاءُ الْبَيِّنُ ظَلْعُهَا، وَالْكَسِيرُ الَّتِي لَا تُنْقِي» .

L16182 Al-Barāʾ said: Whatever you disliked thereof, leave it, and do not declare it forbidden upon anyone.

قَالَ الْبَرَاءُ: فَمَا كَرِهْت مِنْهُ فَدَعْهُ، وَلَا تُحَرِّمْهُ عَلَى أَحَدٍ.

قَالَ عَلِيٌّ: الَّتِي لَا تُنْقِي هِيَ الَّتِي لَا شَيْءَ مِنَ الشَّحْمِ لَهَا، فَإِنْ كَانَ لَهَا مِنْهُ شَيْءٌ - وَإِنْ قَلَّ - أَجْزَأَتْ عَنْهُ - وَإِنْ كَانَتْ عَجْفَاءَ -: رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ آدَمَ عَنْ عَبْدِ الرَّحِيمِ هُوَ ابْنُ سُلَيْمَانَ - عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ شُرَيْحِ بْنِ النُّعْمَانِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَسْتَشْرِفَ الْعَيْنَ وَالْأُذُنَ وَأَنْ لَا نُضَحِّيَ بِمُقَابَلَةٍ، وَلَا بِمُدَابَرَةٍ، وَلَا بَتْرَاءَ، وَلَا خَرْقَاءَ» .

L16183 Ali said: “The unfit [for sacrifice] is one that has no fat at all. If it has any fat—even a small amount—it suffices for sacrifice, even if the animal is emaciated.” It was narrated to us through the chain of Ahmad ibn Shuʿayb: Muḥammad ibn Ādam narrated to us from ʿAbd al-Raḥīm (son of Sulaymān) from Zakariyyā ibn Abī Zāʾida, from Abū Isḥāq al-Sabīʿī, from Shurayḥ ibn al-Nuʿmān, from ʿAlī ibn Abī Ṭālib, who said: “The Messenger of Allah—peace and blessings be upon him—commanded us to inspect rigorously the eye and the ear, and not to sacrifice an animal with a front-slit ear, a back-slit ear, a docked tail, or a torn ear.”

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ نَا زُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - نَا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيِّ - عَنْ شُرَيْحِ بْنِ النُّعْمَانِ - وَكَانَ رَجُلَ صِدْقٍ - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ " قَالَ: «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَسْتَشْرِفَ الْعَيْنَ، وَالْأُذُنَ، وَلَا نُضَحِّيَ بِعَوْرَاءَ، وَلَا مُقَابَلَةٍ، وَلَا مُدَابَرَةٍ، وَلَا خَرْقَاءَ، وَلَا شَرْقَاءَ» .

L16184 From the narration of Abū Dāwūd: ʿAbdullāh ibn Muḥammad al-Nufaylī narrated to us, from Zuhayr—that is, Ibn Muʿāwiyah—from Abū Isḥāq—that is, al-Sabiʿī—from Shurayḥ ibn al-Nuʿmān—and he was a truthful man—from ʿAlī ibn Abī Ṭālib, who said: “The Messenger of Allāh—peace and blessings be upon him—commanded us to inspect the eyes and ears, and not to sacrifice an animal that is blind, nor one with a front-cut ear, nor a rear-cut ear, nor one with a slit ear, nor one with a split ear.”

قَالَ زُهَيْرٌ: قُلْت لِأَبِي إِسْحَاقَ: مَا الْمُقَابَلَةُ؟ قَالَ: تُقْطَعُ طَرَفُ الْأُذُنِ، قُلْت: فَمَا الْمُدَابَرَةُ؟ قَالَ تُقْطَعُ مُؤَخَّرُ الْأُذُنِ، قُلْت فَمَا الشَّرْقَاءُ؟ قَالَ: تُشَقُّ الْأُذُنُ، قُلْت: فَمَا الْخَرْقَاءُ؟ قَالَ: تُخْرَقُ أُذُنُهَا السِّمَةُ.

L16185 Zuhayr said: I asked Abū Isḥāq, “What is al-muqābala?” He replied, “Cutting the tip of the ear.” I asked, “What is al-mudābara?” He said, “Cutting the back of the ear.” I asked, “What is al-sharqāʾ?” He answered, “Splitting the ear.” I inquired, “What is al-kharqāʾ?” He responded, “The branding mark pierces her ear.”

نَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا أَبُو ذَرٍّ الْهَرَوِيُّ نَا عَلِيُّ بْنُ عُمَرَ الدَّارَقُطْنِيّ نَا يَحْيَى بْنُ مُحَمَّدِ بْنِ صَاعِدٍ نَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْمَخْزُومِيُّ نَا أَبُو كَامِلٍ مُظَفَّرُ بْنُ مُدْرِكٍ نَا قَيْسُ بْنُ الرَّبِيعِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ شُرَيْحِ بْنِ النُّعْمَانِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْأَضَاحِيِّ قَالَ قَيْسٌ: قُلْت لِأَبِي إِسْحَاقَ: سَمِعْته مِنْ شُرَيْحٍ قَالَ: حَدَّثَنِي عَنْهُ سَعِيدُ بْنُ أَشْوَعَ.

L16186 Aḥmad ibn ʿUmar ibn Anas narrated to us; Abū Dharr al-Harawī narrated to us; ʿAlī ibn ʿUmar al-Dāraquṭnī narrated to us; Yaḥyā ibn Muḥammad ibn Ṣāʿid narrated to us; Muḥammad ibn ʿAbd Allāh al-Makhzūmī narrated to us; Abū Kāmil Muẓaffar ibn Mudrik narrated to us; Qays ibn al-Rabīʿ narrated to us from Abū Isḥāq al-Sabīʿī from Shurayḥ ibn al-Nuʿmān from ʿAlī ibn Abī Ṭālib concerning the sacrificial animals. Qays said: I said to Abū Isḥāq: “Did you hear this from Shurayḥ?” He said: “Saʿīd ibn Ashwaʿ narrated it to me from him.”

L16187–16189 Al-Daraqutni said: From Ali ibn Ibrahim, from Ibn Faris, from Muhammad

ibn Isma’il al-Bukhari, the author of *Sahih*; Shurayh ibn al-Nu’man al-Ṣāyidī said: He heard Ali ibn Abi Talib say. Abu Nu’aym and Waki’ reported from Sufyan al-Thawri, from Sa’id ibn Ashwa’, from Shurayh ibn al-Nu’man: I heard Ali ibn Abi Talib say, “The soundness is in the eye and the ear”—and Sa’id ibn Ashwa’ is trustworthy and well-known. Thus, this report is authentic, and a group of the Salaf affirm it.

قَالَ الدَّارَقُطْنِيّ: نَا عَلِيُّ بْنُ إِبْرَاهِيمَ عَنْ ابْنِ فَارِسٍ عَنْ مُحَمَّدِ بْنِ إِسْمَاعِيل الْبُخَارِيِّ مُؤَلِّفِ الصَّحِيحِ قَالَ شُرَيْحُ بْنُ النُّعْمَانِ الصَّايِدِيُّ: سَمِعَ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ أَبُو نُعَيْمٍ، وَوَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَعِيدِ بْنِ أَشْوَعَ عَنْ شُرَيْحِ بْنِ النُّعْمَانِ سَمِعْت عَلِيَّ بْنَ أَبِي طَالِبٍ يَقُولُ: سَلِيمَةُ الْعَيْنِ وَالْأُذُنِ - وَسَعِيدُ بْنُ أَشْوَعَ ثِقَةٌ مَشْهُورٌ. فَصَحَّ هَذَا الْخَبَرُ، وَبِهِ يَقُولُ طَائِفَةٌ مِنْ السَّلَفِ.

L16190 It has been narrated to us through the chain of ʿAlī ibn Abī Ṭālib that he issued a legal ruling on this matter and said regarding the sacrificial animal: “No animal with a frontally cut ear, no animal with a posteriorly cut ear, no animal with a split ear; it must be sound in its eye and ear.”

رُوِّينَا مِنْ طَرِيقِ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ أَفْتَى بِهَذَا وَقَالَ فِي الْأُضْحِيَّةِ: لَا مُقَابَلَةَ، وَلَا مُدَابَرَةَ، وَلَا شَرْقَاءَ، سَلِيمَةُ الْعَيْنِ وَالْأُذُنِ.

L16191 Narrated via ʿAmr ibn Murrah, from Shaqīq ibn Salamah, from ʿAbdullāh ibn Masʿūd, who said: “The soundness of the eye and the ear.”

وَمِنْ طَرِيقِ عَمْرِو بْنِ مُرَّةٍ عَنْ شَقِيقِ بْنِ سَلَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: سَلِيمُ الْعَيْنِ وَالْأُذُنِ.

L16192 From the transmission of Abū Bakr ibn Abī Shaybah, who narrated to us from Ibn ‘Ulayyah, from Ayyūb, from Nāfiʿ, from Ibn ‘Umar regarding sacrificial animals: he disliked sacrificing those with physical defects or those not having reached the required age.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ فِي الْأُضْحِيَّةِ أَنَّهُ كَرِهَ نَاقِصَ الْخَلْقِ وَالسِّنِّ.

L16193 It is reported through the chain of Shu‘bah, from Ḥammād ibn Abī Sulaymān, that he considered it disliked to sacrifice a tailless animal.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُ كَرِهَ أَنْ يُضَحَّى بِالْأَبْتَرِ.

L16194 And from Shu’bah, from al-Mughīrah, from Ibrāhīm: that he disapproved of sacrificing a short-tailed animal.

وَعَنْ شُعْبَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ أَنَّهُ كَرِهَ أَنْ يُضَحَّى بِالْأَبْتَرِ.

L16195 And it is related from Ibn Sīrīn that he deemed it reprehensible to sacrifice a congenitally tailless animal.

وَعَنْ ابْنِ سِيرِينَ أَنَّهُ كَرِهَ أَنْ يُضَحَّى بِالْأَبْتَرِ.

L16196 A group deemed it permissible to sacrifice a tailless animal, citing two weak narrations. The first is through the chain of Jābir al-Juʿfī from Muḥammad ibn Qaraẓa from Abū Saʿīd, who said: “I bought a ram to sacrifice, but a wolf attacked its tail and severed it. I asked the Prophet (peace be upon him), and he said: ’Sacrifice it.’” The second is through the chain of al-Ḥajjāj ibn Arṭāʾa

وَأَجَازَ قَوْمٌ أَنْ يُضَحَّى بِالْأَبْتَرِ، وَاحْتَجُّوا بِأَثَرَيْنِ رَدِيئَيْنِ - أَحَدُهُمَا: مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ عَنْ مُحَمَّدِ بْنِ قَرَظَةَ عَنْ أَبِي سَعِيدٍ قَالَ: «اشْتَرَيْتُ كَبْشًا لِأُضَحِّيَ بِهِ فَعَدَا الذِّئْبُ عَلَى ذَنَبِهِ فَقَطَعَهُ فَسَأَلْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَقَالَ: ضَحِّ بِهِ» ، وَالْآخَرُ:

from some of his teachers: “The Prophet (peace be upon him) was asked: ’Can one sacrifice a tailless ewe?’ He said: ’There is no harm in it.’” Jābir is a liar, al-Ḥajjāj is rejected, and the narration from “some of his teachers” is unreliable.

مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ بَعْضِ شُيُوخِهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ أَيُضَحَّى بِالْبَتْرَاءِ؟ قَالَ: لَا بَأْسَ بِهَا» . جَابِرٌ كَذَّابٌ، وَحَجَّاجٌ سَاقِطٌ، وَعَنْ بَعْضِ شُيُوخِهِ رِيبٌ.

L16197 It has been reported from Ibn ʿUmar, Saʿīd ibn al-Musayyib, ʿAṭāʾ, Saʿīd ibn Jubayr, al-Ḥasan, and al-Ḥakam that the permissibility of the *batrāʾ* (an animal born without ears or a tail) applies to the Udḥiyah sacrifice.

وَرُوِيَ عَنْ ابْنِ عُمَرَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعَطَاءٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالْحَسَنِ، وَالْحَكَمِ: إجَازَةُ الْبَتْرَاءِ فِي الْأُضْحِيَّةِ.

L16198 It is reported from Al-Hasan that he established the ḥadd punishment as cutting half of the ear and was excessive in doing so.

وَعَنْ الْحَسَنِ أَنَّهُ حَدَّ الْقَطْعَ فِي الْأُذُنِ بِالنِّصْفِ فَأَكْثَرَ.

L16199–16201 Abu Hanifa has two opinions: one is that if less than a third from the eye, ear, tail, or rump is lost: The sacrificial offering was valid; however, if a third or upwards of it was lost, it became invalid.

وَلِأَبِي حَنِيفَةَ قَوْلَانِ -: أَحَدُهُمَا: إنْ ذَهَبَ مِنْ الْعَيْنِ أَوْ الْأُذُنِ، أَوْ الذَّنَبِ، أَوْ الْأَلْيَةِ أَقَلُّ مِنْ الثُّلُثِ: أَجْزَأَتْ فِي الْأُضْحِيَّةِ، فَإِنْ ذَهَبَ الثُّلُثُ فَصَاعِدًا لَمْ تُجْزِ.

L16202 And the other is that he legally prescribed it as half in place of the third.

وَالْآخَرُ - أَنَّهُ حَدَّ ذَلِكَ بِالنِّصْفِ مَكَانَ الثُّلُثِ.

L16203 He said: If [the animal] is born without an ear, it suffices. However, it is reported from him that it does not suffice.

قَالَ: فَإِنْ خُلِقَتْ بِلَا أُذُنٍ أَجْزَأَتْ - وَرُوِيَ عَنْهُ لَا تُجْزِي.

L16204 Malik said: If the horn is missing and does not bleed, it is sufficient [for the sacrifice]; but if it bleeds, it is not sufficient. Abu Hanifah and Malik said regarding the lame animal: If it reaches the ritual place of sacrifice, it is sufficient.

وَقَالَ مَالِكٌ: إنْ كَانَ الْقَرْنُ ذَاهِبًا لَا يَدْمَى أَجْزَأَتْ، فَإِنْ كَانَ يَدْمَى لَمْ تُجْزِ، وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ فِي الْعَرْجَاءِ: إذَا بَلَغَتْ الْمَنْسَكَ: أَجْزَأَتْ.

L16205 Ali said: These are statements for which there is no evidence to authenticate any of them, nor is the determination of a third or half known in all of this to have been mentioned by anyone before Abū Ḥanīfah.

قَالَ عَلِيٌّ: هَذِهِ أَقْوَالٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، وَلَا يُعْرَفُ التَّحْدِيدُ الْمَذْكُورُ بِالثُّلُثِ، أَوْ النِّصْفِ فِي كُلِّ ذَلِكَ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ.

L16206 And it has been reported from ʿAlī through a weak chain concerning the lame animal (invalid for sacrifice) when it reaches the place of sacrifice.

وَرُوِيَ عَنْ عَلِيٍّ مِنْ طَرِيقٍ لَا تَصِحُّ فِي الْعَرْجَاءِ إذَا بَلَغَتْ الْمَنْسَكَ.

L16207 It has been reported from ʿUmar that there is a general prohibition against lame animals.

وَرُوِيَ عَنْ عُمَرَ الْمَنْعُ مِنْ الْعَرْجَاءِ جُمْلَةً.

L16208 It is said to those who validated this: Indeed, the sacrificial site may extend a cubit or less, or it may extend a league—so which of these do you uphold?

وَيُقَالُ لِمَنْ صَحَّحَ هَذَا: إِنَّ الْمَنْسَكَ قَدْ يَكُونُ عَلَى ذِرَاعٍ وَأَقَلَّ وَيَكُونُ عَلَى فَرْسَخٍ فَأَيَّ ذَلِكَ تُرَاعُونَ؟ وَرُوِيَ فِي الْأَعْضَبِ أَثَرٌ: أَنَّهُ لَا يُجْزِي - وَلَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ جَرِيِّ بْنِ كُلَيْبٍ، وَلَيْسَ مَشْهُورًا عَمَّنْ لَمْ يُسَمَّ عَنْ عَلِيٍّ.

A report is narrated concerning al-Aʿḍab stating that it does not suffice—nor is it valid—because it is transmitted through Jarī ibn Kulayb, and it is not well-known from the unnamed narrator who reported from Ali.

وَجَاءَ خَبَرٌ فِي أَنَّهُ لَا تُجْزِي الْمُسْتَأْصَلَةُ قَرْنُهَا - وَلَا يَصِحُّ؛ لِأَنَّهُ مِنْ طَرِيقِ أَبِي حُمَيْدٍ الرُّعَيْنِيِّ عَنْ أَبِي مُضَرَ - وَهُمَا مَجْهُولَانِ.

L16209 A report states that a female animal with a completely removed horn is not valid. This ruling is invalid, as the report is transmitted through the chain of Abū Ḥumayd al-Ruʿaynī from Abū Muḍar—and both of them are unknown narrators.

وَحَدِيثٌ آخَرُ فِي أَنَّهُ لَا تُجْزِي الْجَدْعَاءُ - وَلَا يَصِحُّ؛ لِأَنَّهُ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ.

L16210 Another hadith concerning that the ear-slit ewe is not valid; and it is not authentic because it is narrated through Jābir al-Juʿfī.

[مَسْأَلَةُ الْجَذَعِ مِنَ الضَّأْنِ فِي الْأُضْحِيَّةِ]

L16211 **The legal issue of the jadhaʿ - a one-year-old sheep - as a valid sacrificial animal for Eid al-Adha.**

٩٧٥ - مَسْأَلَةٌ:

L16212 975: Issue

وَلَا تُجْزِي فِي الْأَضَاحِيِّ جَذَعَةٌ وَلَا جَذَعٌ أَصْلًا لَا مِنَ الضَّأْنِ وَلَا مِنْ غَيْرِ الضَّأْنِ - وَيُجْزِي مَا فَوْقَ الْجَذَعِ، وَمَا دُونَ الْجَذَعِ، وَالْجَذَعُ مِنَ الضَّأْنِ، وَالْمَاعِزِ، وَالظِّبَاءِ، وَالْبَقَرِ: هُوَ مَا أَتَمَّ عَامًا كَامِلًا وَدَخَلَ فِي الثَّانِي مِنْ أَعْوَامِهِ، فَلَا يَزَالُ جَذَعًا حَتَّى يُتِمَّ عَامَيْنِ وَيَدْخُلَ فِي الثَّالِثِ فَيَكُونُ ثَنِيًّا حِينَئِذٍ.

L16213 In sacrificial animals, neither a jadhaʿah (female yearling) nor a jadhaʿ (male yearling) is acceptable at all—whether from sheep or other species. What suffices is what is above the jadhaʿ stage and what is below the jadhaʿ stage. The jadhaʿ among sheep, goats, camels, and cattle refers to that which has completed one full year and entered its second year. It remains a jadhaʿ until completing two full years and entering its third year, at which point it becomes a _thani_.

هَكَذَا قَالَ فِي الضَّأْنِ وَالْمَاعِزِ الْكِسَائِيُّ، وَالْأَصْمَعِيُّ، وَأَبُو عُبَيْدٍ، وَهَؤُلَاءِ عُدُولُ أَهْلِ الْعِلْمِ فِي اللُّغَةِ، وَقَالَهُ ابْنُ قُتَيْبَةَ وَهُوَ ثِقَةٌ فِي دِينِهِ وَعِلْمِهِ.

L16214 Thus stated Al-Kisāʾī, Al-Aṣmaʿī, and Abū ʿUbayd regarding sheep and goats. These are trustworthy authorities among scholars of language. Ibn Qutaybah also stated it, and he is trustworthy in both his religious commitment and scholarly knowledge.

وَقَالَهُ الْعَدَبَّسُ الْكِلَابِيُّ، وَأَبُو فَقْعَسٍ الْأَسَدِيُّ، وَهُمَا ثِقَتَانِ فِي اللُّغَةِ.

L16215 Al-ʿAdabbas al-Kilābī and Abū Faqʿas al-Asadī also stated it, and both are trustworthy authorities in the language.

وَقَالَ ذَلِكَ فِي الْبَقَرِ وَالظِّبَاءِ أَبُو فَقْعَسٍ، وَلَا نَعْلَمُ لَهُ مُخَالِفًا مِنْ أَهْلِ الْعِلْمِ بِاللُّغَةِ.

L16216–16217 Abu Faqʿaṣ made this statement about cows and gazelles, and we do not know of any linguistic scholars who oppose him.

L16218 The jadhaʿ of camels is that which has completed four years and entered the

fifth. It remains a jadhaʿ until it enters its sixth year, whereupon it becomes a thaniyy (six-year-old camel). There is no disagreement about this.

وَالْجَذَعُ مِنْ الْإِبِلِ مَا أَكْمَلَ أَرْبَعَ سِنِينَ وَدَخَلَ فِي الْخَامِسَةِ، فَهُوَ جَذَعٌ إلَى أَنْ يَدْخُلَ السَّادِسَةَ فَيَكُونُ ثَنِيًّا - هَذَا مَا لَا خِلَافَ فِيهِ.

L16219 It has been narrated to us through the chain of Wakīʿ **who narrated to us**, from Sufyān al-Thawrī, from Abī Isḥāq al-Sabīʿī, from Hubayrah ibn Yarīm, from ʿAlī ibn Abī Ṭālib, who said: When you purchase a sacrificial animal, **fatten it**, for **if you eat [from it], you eat wholesome**, and **if you feed [others], you feed wholesome**. Purchase **a mature animal (at least two years old) or older**.

رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ هُبَيْرَةَ بْنِ يَرِيمَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إذَا اشْتَرَيْت أُضْحِيَّةً فَاسْتَسْمِنْ فَإِنْ أَكَلْت أَكَلْت طَيِّبًا، وَإِنْ أَطْعَمْت أَطْعَمْت طَيِّبًا، وَاشْتَرِ ثَنِيًّا فَصَاعِدًا.

L16220 Through the chain of ʿAbd al-Razzāq: Maʿmar reported from Abī Isḥāq al-Sabīʿī, who reported from Hubayrah ibn Yarīm, who said: ʿAlī ibn Abī Ṭālib said: “Sacrifice a *thaniyy* or older animal, free from defects in the eyes and ears.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ نَا هُبَيْرَةُ بْنُ يَرِيمَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: ضَحُّوا بِثَنِيٍّ فَصَاعِدًا، وَسَلِيمِ الْعَيْنِ وَالْأُذُنِ.

L16221 Through the chain of Abd al-Razzaq, he informed us that Sufyan al-Thawri narrated from Jabala ibn Suhaym, who heard Ibn Umar say: “Sacrifice an animal that is *thani* (two-year-old) or older, and do not sacrifice a one-eyed animal.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ جَبَلَةَ بْنِ سُحَيْمٍ سَمِعْت ابْنَ عُمَرَ يَقُولُ: ضَحُّوا بِثَنِيٍّ فَصَاعِدًا، وَلَا تُضَحُّوا بِأَعْوَرَ.

L16222 Through the chain of ʿAbd al-Razzāq: He narrated from Mālik, from Nāfiʿ, from Ibn ʿUmar, who said: “Only an animal that has reached the *thaniyya* stage (specific to its kind) or older is acceptable.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَالِكٌ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا تُجْزِي إلَّا الثَّنِيَّةُ فَصَاعِدًا.

L16223 From the chain of Saʿeed ibn Mansoor: Hushaym reported from Husayn ibn ʿAbdur-Rahman, who said: “I saw Hilāl ibn Yasaf sacrificing a six-month-old sheep. I asked: ’Do you do this?’ He replied: ’I saw Abū Hurayrah sacrificing a six-month-old sheep.’”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا حُصَيْنٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ قَالَ: رَأَيْت هِلَالَ بْنَ يَسَافٍ يُضَحِّي بِجَذَعٍ مِنْ الضَّأْنِ فَقُلْت: أَتَفْعَلُ هَذَا؟ فَقَالَ: رَأَيْت أَبَا هُرَيْرَةَ يُضَحِّي بِجَذَعٍ مِنْ الضَّأْنِ.

L16224 Thus, Ḥuṣayn has rejected the jadhaʿ (a sheep aged six months to one year) from sheep as valid for the sacrificial offering (udhiyah).

فَهَذَا حُصَيْنٌ قَدْ أَنْكَرَ الْجَذَعَ مِنْ الضَّأْنِ فِي الْأُضْحِيَّةِ.

L16225 And through the chain of Ibn Abī Shaybah: Ibn ʿUlayyah narrated to us from Yūnus ibn ʿUbayd from al-Ḥasan al-Baṣrī, who said: Camels younger than the jadhaʿ suffice as a sacrificial offering on behalf of one person.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ عُلَيَّةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: يُجْزِي مَا دُونَ الْجَذَعِ مِنْ الْإِبِلِ عَنْ وَاحِدٍ فِي الْأُضْحِيَّةِ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي مُعَاذٍ عَنْ الْحَسَنِ قَالَ: يُجْزِي الْحُوَارُ عَنْ وَاحِدٍ يَعْنِي الْأُضْحِيَّةَ وَالْحُوَارُ هُوَ وَلَدُ النَّاقَةِ سَاعَةَ تَلِدُهُ.

L16226–16228 And via the chain of transmission of Abu Bakr ibn Abi Shaybah, Waki' narrated to us from Sufyan al-Thawri from Abu Mu'adh from... Al-Ḥasan said: A camel in its first year suffices for one as an Eid sacrifice, and al-ḥuwār refers to the she-camel's offspring at the moment she gives birth to it.

وَبُرْهَانُ صِحَّةِ قَوْلِنَا هَذَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى أَنَا هُشَيْمٌ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ بْنِ عَازِبٍ فَذَكَرَ الْحَدِيثَ وَفِيهِ «أَنَّ خَالَهُ أَبَا بُرْدَةَ قَالَ: يَا رَسُولَ اللَّهِ إنَّ عِنْدِي عَنَاقَ لَبَنٍ، وَهِيَ خَيْرٌ مِنْ شَاتَيْ لَحْمٍ قَالَ: هِيَ خَيْرُ نَسِيكَتَيْكَ وَلَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» .

L16229 The evidence supporting the validity of our position is what we have narrated through Muslim's chain: Yahyā ibn Yahyā narrated to us, [saying]: Hushaym narrated to us from Dāwūd ibn Abī Hind from al-Sha'bī from al-Barā' ibn 'Āzib. He related the ḥadīth which states: "His maternal uncle Abū Burdah said: 'O Messenger of God, I have a lactating young she-goat, which is better than two meat sheep.' He replied: 'It is the finest of your two sacrificial offerings, but a sheep that has reached the age of jadha'ah (six to twelve months) will not suffice for anyone after you.'"

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ زُبَيْدِ بْنِ الْحَارِثِ الْيَامِيِّ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ: «أَنَّ أَبَا بُرْدَةَ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: عِنْدِي جَذَعَةٌ خَيْرٌ مِنْ مُسِنَّتَيْنِ قَالَ: اذْبَحْهَا وَلَنْ تُجْزِيَ عَنْ أَحَدٍ بَعْدَكَ» .

L16230 From the path of Shu'bah from Zubayd ibn al-Ḥārith al-Yāmī from al-Sha'bī from al-Barā': "Abū Burdah said to the Messenger of Allah (peace and blessings of Allah be upon him): 'I have a one-year-old sheep *jadha'ah* that is better than two two-year-old sheep *musinnatayn*.' He said: 'Sacrifice it, but it will not suffice for anyone after you.'"

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ عَاصِمٍ الْأَحْوَلِ عَنْ الشَّعْبِيِّ أَنَّ الْبَرَاءَ حَدَّثَهُ بِذَلِكَ.

L16231–16232 And similarly, we have received this narration through the route of ʿĀṣim al-Aḥwal, from al-Shaʿbī, that al-Barāʾ narrated it to al-Shaʿbī.

وَمِنْ طَرِيقِ أَبِي عَوَانَةَ عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ أَيْضًا.

L16233 And via the chain of Abū 'Awanah, on the authority of Firās, on the authority of al-Sha'bī, on the authority of al-Barā' also.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ أَبِي جُحَيْفَةَ عَنْ الْبَرَاءِ بْنِ عَازِبٍ فَقَطَعَ - عَلَيْهِ السَّلَامُ - أَنْ لَا تُجْزِيَ جَذَعَةٌ عَنْ أَحَدٍ بَعْدَ أَبِي بُرْدَةَ، فَلَا يَحِلُّ لِأَحَدٍ تَخْصِيصُ نَوْعٍ دُونَ نَوْعٍ بِذَلِكَ، وَلَوْ أَنَّ مَا دُونَ الْجَذَعَةِ لَا يُجْزِي لَبَيَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورُ بِالْبَيَانِ مِنْ رَبِّهِ تَعَالَى: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16234 And through the narration of Shu'bah from Salamah ibn Kuhayl from Abū Juḥayfah from al-Barā' ibn 'Āẓib, he (peace be upon him) ruled that a jadha'ah does not suffice as a sacrifice on behalf of anyone after Abū Burdah. Thus, it is impermissible for anyone to specify one type [of animal] to the exclusion of another in this matter. Had animals younger than the jadha'ah not sufficed, the Messenger of Allah (peace and blessings be upon him)—commanded by his Lord, the Exalted, to clarify—would have clarified it: {And your Lord is never forgetful} [19:64]. Success comes solely from Allah, the Exalted.[5]

L16235 If some overly rigid critics were to object and say: "This ḥadīth of Abū

[5] **Qur'an references (L16234):** Qur'an 19:64 (Maryam).

فَإِنْ اعْتَرَضَ بَعْضُ الْمُتَعَسِّفِينَ فَقَالَ: إِنَّ حَدِيثَ أَبِي بُرْدَةَ هَذَا قَدْ رَوَاهُ مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ فَقَالَ فِيهِ «إِنَّ عِنْدِي عَنَاقًا جَذَعَةً فَهَلْ تُجْزِي عَنِّي؟ قَالَ: نَعَمْ، وَلَنْ تُجْزِيَ عَنْ أَحَدٍ بَعْدَكَ» ؟ . قُلْنَا: نَعَمْ، وَالْعَنَاقُ اسْمٌ يَقَعُ عَلَى الضَّانِيَةِ كَمَا يَقَعُ عَلَى الْمَاعِزَةِ وَلَا فَرْقَ.

Burdah was narrated by Manṣūr ibn al-Muʿtamir from al-Shaʿbī from al-Barāʾ, who reported in it: ‘I have a jadhaʿah she-goat; will it suffice for me?’ He said: ‘Yes, and it will never suffice for anyone after you.’” We reply: Yes, and the term ʿanāq applies to ewes just as it applies to goats, with no distinction.

وَقَالَ الْعَدَبَّسُ الْكِلَابِيُّ، وَأَبُو فَقْعَسٍ الْأَسَدِيُّ، وَكِلَاهُمَا مِمَّا نَقَلَ الْأَئِمَّةُ عَنْهُمَا اللُّغَةَ: الْجَفْرُ، وَالْعَنَاقُ، وَالْجَدْيُ، مِنْ أَوْلَادِ الْمَاعِزِ إذَا بَلَغَ أَرْبَعَةَ أَشْهُرٍ، وَكَذَلِكَ مِنْ أَوْلَادِ الضَّأْنِ.

L16236 Al-ʻAdabbās al-Kilābī and Abū Faʻqas al-Asadī—both of whom were sources for the Imams’ transmission of linguistic terminology—stated: Al-Jafr, al-ʻAnāq, and al-Jady refer to those among the offspring of goats when they reach four months of age, and likewise those among the offspring of ewes.

فَإِنْ قَالُوا: فَإِنَّ مُطَرِّفَ بْنَ طَرِيفٍ رَوَاهُ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ فَذَكَرَ فِيهِ «أَنَّ أَبَا بُرْدَةَ قَالَ: يَا رَسُولَ اللَّهِ إنَّ عِنْدِي دَاجِنًا جَذَعَةً مِنْ الْمَعْزِ، قَالَ: اذْبَحْهَا وَلَا تَصْلُحُ لِغَيْرِكَ» . قُلْنَا: نَعَمْ، وَلَا خِلَافَ فِي أَنَّ هَذَا كُلَّهُ خَبَرٌ وَاحِدٌ عَنْ قِصَّةٍ وَاحِدَةٍ فِي مَوْطِنٍ وَاحِدٍ، فَرِوَايَةُ مَنْ رَوَى عَنْ الْبَرَاءِ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» هِيَ الزَّائِدَةُ مَا لَمْ يَرْوِهِ مَنْ لَمْ يَرْوِ هَذِهِ اللَّفْظَةَ، وَزِيَادَةُ الْعَدْلِ خَبَرٌ قَائِمٌ بِنَفْسِهِ وَحُكْمٌ وَارِدٌ لَا يَسَعُ أَحَدًا تَرْكُهُ.

L16237–16239 If they say: Indeed, Mutarrif ibn Tarif narrated it from al-Sha’bi from al-Bara’, wherein al-Bara’ related that Abu Burdah said: “O Messenger of Allah, I possess a domesticated jadhʿah (a one-year-old goat).” He replied: “Slaughter it, for it is not valid for anyone else.” We respond: Indeed, and there is no disagreement that all this constitutes a single report concerning one incident in one setting. Thus, the narration of the one who transmitted from al-Bara’ regarding the Prophet’s statement—peace and blessings be upon him—“A jadhʿah shall not be acceptable for anyone after you” is... The addition is what was not narrated by those who did not narrate this wording, and the addition from a reliable narrator constitutes a standalone narration—an established ruling that no one is permitted to neglect.

وَإِنَّمَا يَحْتَجُّ بِرِوَايَةِ مُطَرِّفٍ هَذَا مَنْ لَمْ يَمْنَعْ مِنْ الْجَذَعِ إلَّا مِنْ الْمَاعِزِ فَقَطْ، وَأَمَّا مَنْ مَنَعَ مِنْ الْجِذَاعِ كُلِّهَا مِمَّا عَدَا الضَّأْنِ فَلَا حُجَّةَ لَهُ فِي شَيْءٍ مِنْ هَذَا الْخَبَرِ، بَلْ هُوَ حُجَّةٌ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16240–16241 Only those who prohibit goats alone from being classified as jadhaʿ (young sheep/goat) can rely on this narration of Muṭarrif. As for those who prohibit all jidhāʿ (young animals) other than sheep, they have no valid basis in any part of this report. Rather, it constitutes evidence against them—and by Allah, the Exalted, is success.

L16242–16243 Just as this very report was narrated by Zakariyā from Firās from al-Shaʻbī from al-Barā’: “Abū Burdah said to the Messenger of Allah (peace be upon him): ‘Is a sheep I have better than two sheep?’ He replied: ‘Sacrifice it, for

it is the finest sacrificial animal,'" without mentioning the phrase "it will not suffice for anyone after you."

كَمَا أَنَّ هَذَا الْخَبَرَ نَفْسَهُ قَدْ رَوَاهُ زَكَرِيَّا عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ: «أَنَّ أَبَا بُرْدَةَ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّ عِنْدِي شَاةً خَيْرٌ مِنْ شَاتَيْنِ؟ قَالَ: ضَحِّ بِهَا فَإِنَّهَا خَيْرُ نَسِيكَةٍ» وَلَمْ يَذْكُرْ أَنَّهَا «لَا تُجْزِي عَنْ أَحَدٍ بَعْدَكَ» .

L16244 Similarly, our narration through Sufyan ibn Uyaynah, from Ayyub al-Sikhtiyani, from Muhammad ibn Sirin, from Anas ibn Malik—he cited this same report, mentioning that the questioner said: "O Messenger of Allah, I have a young she-camel (jadhaʿah) which I value more than two sheep for slaughter. Should I sacrifice it?" So he gave him a concession.

وَكَذَلِكَ رِوَايَتُنَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ فَذَكَرَ هَذَا الْخَبَرَ نَفْسَهُ وَأَنَّ ذَلِكَ الْقَائِلَ قَالَ «يَا رَسُولَ اللَّهِ عِنْدِي جَذَعَةٌ هِيَ أَحَبُّ إلَيَّ مِنْ شَاتَيْ لَحْمٍ أَفَأَذْبَحُهَا؟ فَرَخَّصَ لَهُ» .

L16245 Anas said: "So I do not know whether a concession from someone other than him was conveyed or not?" The opponents did not consider Zakariyya's silence regarding what others added to him as indicating its specificity, nor Anas's silence about that either — and the absence of that from him serves as proof for rejecting the addition mentioned by others besides them. So what makes this addition obligatory to accept, while the addition of those who included the term 'al-Jadhaʿah' is not obligatory to accept? Truly, this is an arbitrary imposition of falsehood in religion, and we seek refuge with Allah from this."

قَالَ أَنَسٌ: فَلَا أَدْرِي أَبْلَغَتْ رُخْصَةٌ مِنْ سِوَاهُ أَمْ لَا؟ فَلَمْ يَجْعَلْ الْمُخَالِفُونَ سُكُوتَ زَكَرِيَّا عَمَّا زَادَهُ غَيْرُهُ مِنْ بَيَانِ أَنَّهُ خُصُوصٌ، وَلَا سُكُوتَ أَنَسٍ عَنْ ذَلِكَ أَيْضًا - وَمَغِيبُ ذَلِكَ عَنْهُ حُجَّةٌ فِي رَدِّ الزِّيَادَةِ الَّتِي ذَكَرَهَا غَيْرُهُمَا فَمَا الَّذِي جَعَلَ هَذِهِ الزِّيَادَةَ وَاجِبًا أَخْذُهَا، وَزِيَادَةُ مَنْ زَادَ لَفْظَةَ " الْجَذَعَةِ " لَا يَجِبُ أَخْذُهَا؟ إنَّ هَذَا لَتَحَكُّمٌ فِي الدِّينِ بِالْبَاطِلِ، وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

L16246 Abu Muhammad said: A report has come that could be used to stir dispute, which is what we transmitted through the chain of Muslim Nasr ibn Ali al-Jahdhami, who narrated to us: Yazid ibn Zurai' narrated to us: Abdullah ibn Awn narrated from Muhammad ibn Sirin, from Abd al-Rahman ibn Abi Bakrah, from his father, who said: "When that day came, the Prophet (peace be upon him) mounted his camel and said: 'Do you know what day this is?'" He mentioned the hadith, in which he (peace be upon him) said: "Is this not the Day of Sacrifice?" They replied: "Indeed it is." He then continued the narration, stating: "He then turned to two white rams and slaughtered them, and to a yearling she-goat from the sheep which he divided among us."

قَالَ أَبُو مُحَمَّد: وَقَدْ جَاءَ خَبَرٌ يُمْكِنُ أَنْ يُشْغَبَ بِهِ، وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَصْرِ بْنِ عَلِيٍّ الْجَهْضَمِيِّ نَا يَزِيدُ بْنُ زُرَيْعٍ نَا عَبْدُ اللَّهِ بْنُ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ عَنْ أَبِيهِ قَالَ «لَمَّا كَانَ ذَلِكَ الْيَوْمُ قَعَدَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى بَعِيرِهِ وَقَالَ: أَتَدْرُونَ أَيُّ يَوْمٍ هَذَا؟ وَذَكَرَ الْحَدِيثَ وَفِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: أَلَيْسَ بِيَوْمِ النَّحْرِ؟ قَالُوا: بَلَى ثُمَّ ذَكَرَ الْحَدِيثَ وَفِيهِ ثُمَّ انْكَفَأَ إلَى كَبْشَيْنِ أَمْلَحَيْنِ فَذَبَحَهُمَا وَإِلَى جَذِيعَةٍ مِنْ الْغَنَمِ فَقَسَّمَهَا بَيْنَنَا» .

L16247 Ali said: There is no mention in the report that he gave it to them for them

to sacrifice it, nor that they sacrificed it. Rather, it only states that he (peace be upon him) distributed it among them, and lying is impermissible.

قَالَ عَلِيٌّ: لَيْسَ فِيهِ أَنَّهُ أَعْطَاهُمْ إيَّاهَا لِيُضَحُّوا بِهَا، وَلَا أَنَّهُمْ ضَحَّوْا بِهَا وَإِنَّمَا فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَسَّمَهَا بَيْنَهُمْ، وَالْكَذِبُ لَا يَحِلُّ.

L16248–16250 Moreover, the term “ghanam” (sheep and goats) applies to goats just as it applies to sheep. If it serves as proof for them to permit sacrificing the jadhʿa of sheep, then it is proof to permit sacrificing the jadhʿa of goats, and if... The evidence does not justify permitting the sacrifice of a one-year-old goat, and thus cannot justify permitting the sacrifice of a six-month-old sheep. The prohibition was upheld for one year, establishing that a six-month-old sheep does not suffice as a valid sacrifice after [the case of] Abu Burdah.

وَأَيْضًا فَاسْمُ الْغَنَمِ يَقَعُ عَلَى الْمَاعِزِ كَمَا يَقَعُ عَلَى الضَّأْنِ، فَإِنْ كَانَ حُجَّةً لَهُمْ فِي إبَاحَةِ التَّضْحِيَةِ بِالْجَذَاعِ مِنْ الضَّأْنِ فَهُوَ حُجَّةٌ فِي إبَاحَةِ التَّضْحِيَةِ بِالْجَذَاعِ مِنْ الْمَعْزِ، وَإِنْ لَمْ يَكُنْ حُجَّةً فِي إبَاحَةِ التَّضْحِيَةِ بِالْجَذَاعِ مِنْ الْمَاعِزِ فَلَيْسَ حُجَّةً فِي إبَاحَةِ التَّضْحِيَةِ بِجَذَاعِ الضَّأْنِ، وَالنَّهْيُ قَدْ صَحَّ عَامًّا فِي أَنْ لَا تُجْزِئَ جَذَعَةٌ بَعْدَ أَبِي بُرْدَةَ.

L16251 And another narration we mention is what we transmitted via Imam Muslim’s compilation: Ahmad ibn Yunus reported to us, Zuhayr ibn Muʿawiyah reported to us, Abu al-Zubayr reported to us from Jabir, who said: The Messenger of Allah—peace and blessings be upon him—said: “Do not slaughter except a musinnah (mature animal), unless it becomes difficult for you, then slaughter a jadhaʿah (young sheep).”

وَخَبَرٌ آخَرُ نَذْكُرُهُ أَيْضًا وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا أَحْمَدُ بْنُ يُونُسَ نَا زُهَيْرُ بْنُ مُعَاوِيَةَ نَا أَبُو الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَذْبَحُوا إلَّا مُسِنَّةً إلَّا أَنْ تَعْسُرَ عَلَيْكُمْ فَتَذْبَحُوا جَذَعَةً مِنْ الضَّأْنِ» .

L16252 Abu Muhammad said: This is a proof against the present opponents among the dissenters, for they permit sacrificing a six-month-old sheep from the flock despite the presence of mature ones, thereby opposing him [the Prophet] while they validate it [the practice]. As for us, we do not validate it, because Abu al-Zubayr is a mudallis (a narrator known for concealing transmission defects) unless he states in the report that he heard it from Jabir - he himself admitted to this, as we have received this narration from him through the chain of al-Layth ibn Sa’d.

قَالَ أَبُو مُحَمَّد: هَذَا حُجَّةٌ عَلَى الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ لِأَنَّهُمْ يُجِيزُونَ الْجَذَعَ مِنْ الضَّأْنِ مَعَ وُجُودِ الْمُسِنَّاتِ فَقَدْ خَالَفُوهُ وَهُمْ يُصَحِّحُونَهُ، وَأَمَّا نَحْنُ فَلَا نُصَحِّحُهُ، لِأَنَّ أَبَا الزُّبَيْرِ مُدَلِّسٌ مَا لَمْ يَقُلْ فِي الْخَبَرِ أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ، هُوَ أَقَرَّ بِذَلِكَ عَلَى نَفْسِهِ، رُوِّينَا ذَلِكَ عَنْهُ مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ.

L16253 Then, if it were valid, the narration of Al-Barā’ would have abrogated it. For the Prophet’s statement—peace and blessings be upon him: “A jidhaʿah does not suffice for anyone after you,” constitutes a decisive, established report enduring as long as the world exists—abrogating all that preceded it. It is impermissible to abrogate this, as that would constitute falsehood. Who would attribute falsehood to the Messenger of Allah—peace and blessings be upon him—except a disbeliever? Those who permitted the jidhāʿ of sheep cited a narration we transmitted through Ibn Wahb’s chain from ‘Amr ibn

ثُمَّ لَوْ صَحَّ لَكَانَ خَبَرُ الْبَرَاءِ نَاسِخًا لَهُ، لِأَنَّ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» خَبَرٌ قَاطِعٌ ثَابِتٌ مَا دَامَتْ الدُّنْيَا، نَاسِخٌ لِكُلِّ مَا تَقَدَّمَ لَا يَجُوزُ نَسْخُهُ، لِأَنَّهُ كَانَ يَكُونُ كَذِبًا، وَلَا يَنْسُبُ الْكَذِبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا كَافِرٌ؟ وَاحْتَجَّ مَنْ أَجَازَ الْجِذَاعَ مِنْ الضَّأْنِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ

al-Ḥārith, from Bukayr ibn al-Ashajj, from Muʿādh ibn ʿAbdullāh ibn Ḥabīb, from ʿUqbah ibn ʿĀmir, who said: "We sacrificed along with the Messenger of Allah—peace and blessings be upon him—using jidhāʿ of sheep."

وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ مُعَاذِ بْنِ عَبْدِ اللَّهِ بْنِ حَبِيبٍ عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: «ضَحَّيْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِجِذَاعٍ مِنْ الضَّأْنِ» .

L16254 And through the chain of Waki‘ from Usāmah ibn Zayd from Muʿādh ibn ʿAbdullāh ibn Ḥabīb from Saʿīd ibn al-Musayyib from ʿUqbah ibn ʿĀmir: "I asked the Messenger of Allah (peace be upon him) about the jadha‘ of the sheep. He said, 'Sacrifice it.'"

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ مُعَاذِ بْنِ عَبْدِ اللَّهِ بْنِ حَبِيبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُقْبَةَ بْنِ عَامِرٍ «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْجَذَعِ مِنْ الضَّأْنِ؟ فَقَالَ: ضَحِّ بِهِ» .

L16255–16257 And with a report we have related via Yaḥyā ibn Saʿīd al-Qaṭṭān from Muḥammad ibn Abī Yaḥyā from his mother from Umm Bilāl al-Aslamiyyah—whose father witnessed Ḥudaybiyah with the Prophet (may Allah bless him and grant him peace)—who reported that the Messenger of Allah (may Allah bless him and grant him peace) said: Sacrifice a jadhaʿ (a six-month-old sheep) of the sheep, for it is valid.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مُحَمَّدِ بْنِ أَبِي يَحْيَى عَنْ أُمِّهِ عَنْ أُمِّ بِلَالٍ الْأَسْلَمِيَّةِ شَهِدَ أَبُوهَا الْحُدَيْبِيَةَ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَتْ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «ضَحُّوا بِالْجَذَعِ مِنْ الضَّأْنِ فَإِنَّهُ جَائِزٌ» .

L16258 And through the chain of Al-Ḥajjāj ibn Arṭāʾah, from Ibn al-Nuʿaymān, from Bilāl ibn Abu al-Dardāʾ, from his father: "The Messenger of Allāh (peace and blessings of Allāh be upon him) sacrificed two six-month-old rams." Another chain via Al-Ḥajjāj ibn Arṭāʾah, from Abū Jaʿfar: "The Messenger of Allāh (peace and blessings of Allāh be upon him) sacrificed two six-month-old rams."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ ابْنِ النُّعَيْمَانِ عَنْ بِلَالِ بْنِ أَبِي الدَّرْدَاءِ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَحَّى بِكَبْشَيْنِ جَذَعَيْنِ» وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ أَبِي جَعْفَرٍ «ضَحَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَبْشَيْنِ جَذَعَيْنِ» .

L16259 And through the chain of Waki‘ from Uthman ibn Waqid from Kidam ibn ʿAbd al-Rahman from Abu Kibash that Abu Hurayrah said to him: "I heard the Messenger of Allah—peace be upon him—say: 'How excellent—or rather, how excellent indeed is the sacrificial animal: the *jadhaʿ* of the sheep.'"

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عُثْمَانَ بْنِ وَاقِدٍ عَنْ كِدَامِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي كَبَاشٍ أَنَّ أَبَا هُرَيْرَةَ قَالَ لَهُ " سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «نِعْمَ، أَوْ نِعْمَتْ الْأُضْحِيَّةُ الْجَذَعُ مِنْ الضَّأْنِ» .

L16260 And through the chain of Hishām ibn Saʿd ibn Zayd ibn Aslam, from ʿAṭāʾ ibn Yasār, from Abū Hurayrah: "That Gabriel said to the Prophet (peace be upon him): 'O Muḥammad, a jadhʿa (young sheep) from the sheep is better than a sayyid (prime male goat) from the goats.'" And he mentioned the remainder of the narration.

وَمِنْ طَرِيقِ هِشَامِ بْنِ سَعْدِ بْنِ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ جِبْرِيلَ قَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا مُحَمَّدُ إنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ السَّيِّدِ مِنْ الْمَعْزِ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L16261 Through the chain of Sa'id ibn Mansur, from 'Isa ibn Yunus, from Isma'il ibn Rafi', from a sheikh among the people of Homs: "The Prophet—peace and blessings of Allah be upon him—said: 'Jibril said to me: "O Muhammad, a young one of the sheep is better than an aged one of the goats,"'" and he mentioned the rest of the report.

مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ عِيسَى بْنِ يُونُسَ عَنْ إِسْمَاعِيلَ بْنَ رَافِعٍ عَنْ شَيْخٍ مِنْ أَهْلِ حِمْصٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «قَالَ لِي جِبْرِيلُ: يَا مُحَمَّدُ إِنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ الْمُسِنِّ مِنْ الْمَعْزِ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L16262 Narrated via the chain of Ibn Abī Shaybah from Ibn Mushir from Ibn Abī Laylā from al-Ḥakam from ʿUbāda ibn Abī al-Dardāʾ from his father: "The Prophet—peace and blessings of Allah be upon him—sacrificed two six-month-old male rams."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ مُسْهِرٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ عَنْ عُبَادَةَ بْنِ أَبِي الدَّرْدَاءِ عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَحَّى بِكَبْشَيْنِ جَذَعَيْنِ» .

L16263 And through the narration of Sulaymān ibn Mūsā from Makhūl, that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Sacrifice a six-month-old sheep and a one-year-old goat."

وَمِنْ طَرِيقِ سُلَيْمَانَ بْنِ مُوسَى عَنْ مَكْحُولٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فَضَحُّوا بِالْجَذَعَةِ مِنْ الضَّأْنِ وَالثَّنِيَّةِ مِنْ الْمَعْزِ» .

L16264–16266 Abu Muhammad said: No one cites these narrations except someone lacking knowledge of their weakness—and is thus excused—or someone deficient in religion who cites fabrications from which it is impermissible to derive religious rulings. As for the ḥadīth of ʿUqbah ibn ʿĀmir with which we commenced, it comes through the chain of Muʿādh ibn ʿAbd Allāh ibn Ḥabīb—who is unknown—and the narration of Ibn Wahb from him lacks a connected chain because it does not state that the Prophet (PBUH) recognized this matter. They do not regard the statement of Asmāʾ bint al-Ṣiddīq: "We slaughtered a horse during the time of the Messenger of Allāh (PBUH) and ate it" as having a connected chain, nor the statement of Jābir: "We used to sell the mothers of the children (ummahāt al-awlād, enslaved women who bore children to their masters) during the time of the Messenger of Allāh (PBUH)" as having a connected chain, nor the statement of Ibn ʿAbbās: "The triple divorce was reverted to a single [declaration] during the time of the Messenger of Allāh (PBUH)" as having a connected chain—and all these are of the highest authenticity. Yet they claim: "None of these contain [mention] that the Messenger of Allāh (PBUH) was aware of this," while they treat this weak, invalid report as having a connected chain. This demonstrates a lack of modesty and a trivialization of religious discourse. It comes through

قَالَ أَبُو مُحَمَّدٍ: لَا يَحْتَجُّ بِهَذِهِ الْآثَارِ إلَّا قَلِيلُ الْعِلْمِ بِوَهْيِهَا فَيُعْذَرُ، أَوْ قَلِيلُ الدِّينِ يَحْتَجُّ بِالْأَبَاطِيلِ الَّتِي لَا يَحِلُّ أَخْذُ الدِّينِ بِهَا: أَمَّا حَدِيثُ عُقْبَةَ بْنِ عَامِرٍ الَّذِي صَدَّرْنَا بِهِ فَمِنْ طَرِيقِ مُعَاذِ بْنِ عَبْدِ اللَّهِ بْنِ حَبِيبٍ - وَهُوَ مَجْهُولٌ، وَرِوَايَةُ ابْنِ وَهْبٍ لَهُ غَيْرُ مُسْنَدَةٍ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَ ذَلِكَ، وَهُمْ لَا يَجْعَلُونَ قَوْلَ أَسْمَاءَ بِنْتِ الصِّدِّيقِ: «نَحَرْنَا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَسًا فَأَكَلْنَاهُ» مُسْنَدًا، وَلَا قَوْلَ جَابِرٍ: «كُنَّا نَبِيعُ أُمَّهَاتِ الْأَوْلَادِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» مُسْنَدًا، وَلَا قَوْلَ ابْنِ عَبَّاسٍ: «إنَّ طَلَاقَ الثَّلَاثِ كَانَ يُرَدُّ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الْوَاحِدَةِ» مُسْنَدًا، وَكُلُّهَا فِي غَايَةِ الصِّحَّةِ، وَيَقُولُونَ: لَيْسَ فِيهَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْرِفُ ذَلِكَ، ثُمَّ يَجْعَلُونَ هَذَا الْخَبَرَ السَّاقِطَ الْوَاهِيَ مُسْنَدًا، وَهَذَا قِلَّةُ حَيَاءٍ وَاسْتِخْفَافٌ بِالْكَلَامِ فِي الدِّينِ، وَهُوَ مِنْ طَرِيقِ وَكِيعٍ مِنْ رِوَايَةِ أُسَامَةَ بْنِ زَيْدٍ - وَهُوَ ضَعِيفٌ جِدًّا - عَنْ مَجْهُولٍ.

the chain of Wakiʿ from the narration of Usāmah ibn Zayd—who is severely weak—from an unknown [source].[6]

L16267 As for the ḥadīth of Umm Bilāl, it is narrated through Umm Muḥammad ibn Abī Yaḥyā—whose identity is unknown—via Umm Bilāl—who is likewise unidentified—and we do not know whether she possessed the status of a Companion or not.

L16268 The narrations of Abū al-Dardāʾ and Abū Jaʿfar—both transmitted through the chain of al-Ḥajjāj ibn Arṭāh, who is discredited—and the first chain of Abū Hurayrah, he omitted all of them, along with the disgrace of the era. This is because it is transmitted from ʿUthmān ibn Wāqid—an unknown narrator—from Kidām ibn ʿAbd al-Raḥmān, and we do not know who he is, from Abū Kibbāsh, who brought the yearling rams to Medina, and they multiplied successfully under his care.

L16269 Thus is the text of his hadith. This includes whatever Abu Kibash conveyed came to pass, though he did not comprehend what Abu Kibash [conveyed]. What Allah wills, occurs. Similarly, the report of the scholar from the people of Homs is sufficient for you.

L16270 And from another chain of Abu Hurairah via Hisham ibn Sa'd—who is weak—and the report of Makḥūl is mursal (interrupted chain).

L16271 The hadith of Abu al-Darda is transmitted through the chain of transmission of Ibn Abi Layla—who is poor in retention.

L16272 Then, even if all of them were authenticated through impeccable chains of narration, they would have no valid proof against any of it, because the sacrificial offering was unquestionably permissible for all livestock. Its ruling had been established without doubt from anyone before the incident of Abu Burda, and Abu Burda and a group with him had performed the sacrifice with certainty before the Prophet (peace be upon him) said, "A one-year-old sheep (jadha'ah) will not suffice for anyone after you."

وَأَمَّا حَدِيثُ أُمِّ بِلَالٍ فَهُوَ عَنْ أُمِّ مُحَمَّدِ بْنِ أَبِي يَحْيَى - وَلَا يُدْرَى مَنْ هِيَ - عَنْ أُمِّ بِلَالٍ - وَهِيَ مَجْهُولَةٌ - وَلَا نَدْرِي لَهَا صُحْبَةٌ أَمْ لَا؟

وَحَدِيثُ أَبِي الدَّرْدَاءِ وَأَبِي جَعْفَرٍ كِلَاهُمَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ - وَطَرِيقُ أَبِي هُرَيْرَةَ الْأُولَى أَسْقَطَهَا كُلَّهَا وَفَضِيحَةُ الدَّهْرِ؛ لِأَنَّهُ عَنْ عُثْمَانَ بْنِ وَاقِدٍ - وَهُوَ مَجْهُولٌ - عَنْ كِدَامِ بْنِ عَبْدِ الرَّحْمَنِ وَلَا نَدْرِي مَنْ هُوَ؟ عَنْ أَبِي كِبَاشٍ الَّذِي جَلَبَ الْكِبَاشَ الْجَذَعَةَ إِلَى الْمَدِينَةِ فَبَارَتْ عَلَيْهِ.

هَكَذَا نَصُّ حَدِيثِهِ، وَهُنَا جَاءَ مَا جَاءَ أَبُو كِبَاشٍ وَمَا أَدْرَكَ مَا أَبُو كِبَاشٍ مَا شَاءَ اللَّهُ كَانَ، وَكَذَلِكَ خَبَرُ الشَّيْخِ مِنْ أَهْلِ حِمْصٍ، وَكَفَاك بِهِ.

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ الْأُخْرَى مِنْ طَرِيقِ هِشَامِ بْنِ سَعْدٍ - وَهُوَ ضَعِيفٌ - وَحَدِيثُ مَكْحُولٍ مُرْسَلٌ.

وَحَدِيثُ أَبِي الدَّرْدَاءِ مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ.

ثُمَّ لَوْ صَحَّتْ كُلُّهَا بِالْأَسَانِيدِ الَّتِي لَا مَغْمَزَ فِيهَا لَمَا كَانَ لَهُمْ فِي شَيْءٍ مِنْهَا حُجَّةٌ؛ لِأَنَّ الْأُضْحِيَّةَ كَانَتْ مُبَاحَةً فِي كُلِّ مَا كَانَ مِنْ الْأَنْعَامِ بِلَا شَكٍّ، وَقَدْ كَانَ نَزَلَ حُكْمُهَا بِلَا شَكٍّ مِنْ أَحَدٍ قَبْلَ قِصَّةِ أَبِي بُرْدَةَ، وَضَحَّى أَبُو بُرْدَةَ وَقَوْمٌ مَعَهُ بِيَقِينٍ قَبْلَ أَنْ يَقُولَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» .

[6] **Hadith references (L16264):** Sahih al-Bukhari 5512.

فَلَوْ صَحَّتْ هَذِهِ الْأَخْبَارُ كُلُّهَا لَكَانَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» ، نَاسِخًا لَهَا بِلَا شَكٍّ، وَمَنْ ادَّعَى عَوْدَةَ حُكْمِ الْمَنْسُوخِ فَقَدْ كَذَبَ إلَّا أَنْ يَأْتِيَ عَلَى ذَلِكَ بِبُرْهَانٍ، فَكَيْفَ وَكُلُّهَا بَاطِلٌ لَا خَيْرَ فِي شَيْءٍ مِنْهَا ".

L16273–16275 If all these reports were authentic, his statement, peace be upon him, "A jadhaʿah (a sheep or goat younger than the required age for sacrifice) does not suffice from anyone" would remain authoritative. "after you," abrogating them without doubt. Whoever claims the reinstatement of an abrogated ruling has lied unless he provides proof for it. How could this be, when all such rulings are void and there is no good whatsoever in any of them?"

وَذَكَرُوا عَنْ بَعْضِ السَّلَفِ إجَازَةَ الْأُضْحِيَّةِ بِالْجَذَعِ مِنْ الضَّأْنِ فَذَكَرُوا عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: يُجْزِي مِنْ الضَّأْنِ الْجَذَعُ، وَعَنْ حِبَّةَ الْعُرَنِيِّ عَنْ عَلِيٍّ مِثْلُهُ مَعَ رِوَايَةِ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيًّا قَالَ: يُجْزِي مِنْ الْبُدْنِ، وَمِنْ الْبَقَرِ، وَمِنْ الْمَعْزِ الثَّنِيُّ فَصَاعِدًا.

L16276 They mentioned from some of the early scholars the permissibility of offering a *jadhʿ* from sheep as a sacrificial animal. They narrated from Jaʿfar ibn Muḥammad, from his father, that ʿAlī ibn Abī Ṭālib said: "A *jadhʿ* suffices among sheep." From Ḥibba al-ʿUranī, a similar report is transmitted from ʿAlī, alongside the narration of Jaʿfar ibn Muḥammad from his father that ʿAlī said: "A *thaniyy* or older suffices for sacrificial animals among camels, cattle, and goats."

وَعَنْ ابْنِ عُمَرَ لَأَنْ أُضَحِّيَ بِجَذَعَةٍ سَمِينَةٍ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ بِجِدَاءٍ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا خَالِدُ بْنُ عَبْدِ اللَّهِ هُوَ الطَّحَّانُ - عَنْ عَبْدِ الْعَزِيزِ بْنِ حَكِيمٍ سَمِعْت ابْنَ عُمَرَ يَقُولُ: لَأَنْ أُضَحِّيَ بِجَذَعَةٍ سَمِينَةٍ عَظِيمَةٍ تُجْزِي فِي الصَّدَقَةِ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ بِجَذَعِ الْمَعْزِ مَعَ قَوْلِهِ: لَا تُجْزِي إلَّا الثَّنِيَّةُ مِنْ الْإِبِلِ، وَالْبَقَرِ.

L16277 From Ibn ʿUmar: "I would prefer to sacrifice a fat yearling sheep (jadhʿah) over sacrificing a young goat (jidaʾ)." Through the chain of Saʿīd ibn Manṣūr: Khālid ibn ʿAbdillāh al-Ṭaḥḥān reported to us from ʿAbd al-ʿAzīz ibn Ḥakīm, who said: I heard Ibn ʿUmar state: "I would prefer to sacrifice a large, fat yearling sheep (jadhʿah) that is valid for charity over sacrificing a yearling goat (jadhʿ)," despite his ruling: "Only the thaniyah (mature) of camels and cattle are valid [sacrifices]."

وَعَنْ أُمِّ سَلَمَةَ لَأَنْ أُضَحِّيَ بِجَذَعٍ مِنْ الضَّأْنِ أَحَبُّ إلَيَّ مِنْ أَنْ أُضَحِّيَ بِمُسِنٍّ مِنْ الْمَعْزِ.

L16278 I would prefer to sacrifice a six-month-old sheep rather than a two-year-old goat.

وَعَنْ أَبِي هُرَيْرَةَ لَا بَأْسَ بِالْجَذَعِ مِنْ الضَّأْنِ فِي الْأُضْحِيَّةِ.

L16279 From Abu Hurairah: There is no objection to offering a six-month-old sheep (jadhaʿ) as Uḍḥiyah.

وَعَنْ عِمْرَانَ بْنِ الْحُصَيْنِ إنِّي لَأُضَحِّي بِالْجَذَعِ مِنْ الضَّأْنِ وَإِنَّهَا لَتَرُوحُ عَلَى أَلْفِ شَاةٍ.

L16280 From Imran ibn Husayn: "I indeed sacrifice a jadhaʿ, a six-month-old from the sheep, and indeed it suffices for a thousand sheep."

وَعَنْ ابْنِ عَبَّاسٍ: لَا بَأْسَ بِالْجَذَعِ مِنْ الضَّأْنِ - فَهُمْ سِتَّةٌ مِنْ الصَّحَابَةِ.

L16281 On the authority of Ibn Abbas: There is no harm in a six-month-old sheep (jadhaʿ) of sheep—they are six of the Companions.

L16282 It has been narrated to us regarding the permissibility of sacrificing a six-month-old sheep as Udḥiyyah from Hilāl ibn Yasāf, Kaʿb, ʿAṭāʾ, Ṭāwūs,

Ibrāhīm, Abū Razīn, and Suwayd ibn Ghafalah—making them seven of the Followers.

وَرُوِّينَا إجَازَةَ الْجَذَعِ مِنْ الضَّأْنِ فِي الْأُضْحِيَّةِ عَنْ هِلَالِ بْنِ يَسَافٍ وَعَنْ كَعْبٍ، وَعَطَاءٍ، وَطَاوُسٍ، وَإِبْرَاهِيمَ، وَأَبِي رَزِينٍ، وَسُوَيْدِ بْنِ غَفَلَةَ - فَهُمْ سَبْعَةٌ مِنْ التَّابِعِينَ.

L16283 Ibrahim said: No goats are acceptable unless they are *thani* (two-year-old) or older — and that is the opinion of Abu Hanifah, Malik, and al-Shafi'i.

وَقَالَ إبْرَاهِيمُ: لَا يُجْزِي مِنْ الْمَاعِزِ إلَّا الثَّنِيُّ فَصَاعِدًا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L16284–16285 Abu Muhammad said: All of this contains no proof for them. As for the narration from ʿAlī, it is disconnected, and the other is weak. Moreover, they contain no prohibition against sacrificing a *jadhaʿ* from among the goats, nor against sacrificing camels or cows. Even if they were authentic, we would have narrated from him reports contradicting them, as we presented earlier. When a disagreement is found among the Companions, the obligation is to refer back to the Quran and the Sunnah.

قَالَ أَبُو مُحَمَّد: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، أَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَمُنْقَطِعَةٌ، وَالْأُخْرَى وَاهِيَةٌ، ثُمَّ لَيْسَ فِيهَا الْمَنْعُ مِنْ التَّضْحِيَةِ بِالْجَذَعِ مِنْ الْمَاعِزِ وَلَا مِنْ الْإِبِلِ، وَالْبَقَرِ، ثُمَّ لَوْ صَحَّتْ لَكُنَّا قَدْ رُوِّينَا عَنْهُ خِلَافَهَا كَمَا قَدَّمْنَا قَبْلُ، وَإِذَا وُجِدَ خِلَافٌ مِنْ الصَّحَابَةِ فَالْوَاجِبُ الرَّدُّ إلَى الْقُرْآنِ وَالسُّنَّةِ.

L16286 As for Ibn ʿUmar, there is no evidence in his position for them; rather, it is against them. For his narration here mentions only the preference for sheep over goats and prohibits only camels and cattle below the thaniyy age, not goats.

وَأَمَّا ابْنُ عُمَرَ فَلَا حُجَّةَ لَهُمْ فِيهِ، بَلْ هُوَ عَلَيْهِمْ لِأَنَّهُ لَيْسَ فِي هَذِهِ الرِّوَايَةِ عَنْهُ إلَّا اخْتِيَارُ الضَّأْنِ عَلَى الْمَاعِزِ فَقَطْ وَالْمَنْعُ مِمَّا دُونَ الثَّنِيِّ مِنْ الْإِبِلِ وَالْبَقَرِ فَقَطْ لَا مِنْ الْمَاعِزِ.

L16287 Indeed, we have previously narrated from him this disagreement, as we cited—thus it constitutes a disagreement arising from his own statements. When disagreement is reported from the Companions—may Allah be pleased with them—it becomes obligatory to return to the Qur'an and the Sunnah, as Allah, the Mighty and Majestic, has commanded.

وَقَدْ رُوِّينَا عَنْهُ قَبْلُ خِلَافَ هَذَا كَمَا أَوْرَدْنَا فَهُوَ اخْتِلَافٌ مِنْ قَوْلِهِ وَإِذَا جَاءَ الِاخْتِلَافُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَقَدْ وَجَبَ الرَّدُّ إلَى الْقُرْآنِ وَالسُّنَّةِ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ.

L16288 As for the narration from Umm Salamah, the Mother of the Believers, it only specifies choosing the jadhʿ (six-month-old) from sheep, and it does not prohibit the jadhʿ from other than sheep. Similarly, [this applies] to all the Companions we mentioned—may Allah be pleased with them. How, then, can there be any valid argument in the opinion of anyone alongside the Messenger of Allah—peace and blessings be upon him? How many cases are there where they opposed the majority of scholars? As we have mentioned in multiple issues.

وَأَمَّا الرِّوَايَةُ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ فَإِنَّمَا فِيهَا اخْتِيَارُ الْجَذَعِ مِنْ الضَّأْنِ وَلَيْسَ فِيهَا الْمَنْعُ مِنْ الْجَذَعِ مِنْ غَيْرِ الضَّأْنِ، وَكَذَلِكَ عَنْ سَائِرِ مَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَكَيْفَ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ وَكَمْ قِصَّةً خَالَفُوا فِيهَا جُمْهُورَ الْعُلَمَاءِ؟ كَمَا ذَكَرْنَا فِي غَيْرِ مَا مَسْأَلَةٍ.

L16289 It is astonishing that authentic narrations from Ibn Abbas, Jabir, Ibn Masʿud, and Zayd ibn Thabit affirm that ʿUmrah is obligatory like Hajj, yet no authentic disagreement from any of the Companions—may Allah be pleased with them—opposing them has been established. Thus they considered Ibn ʿUmar's statement, "Islam is built upon five pillars," in which he mentioned Hajj but omitted ʿUmrah, as a disagreement on this matter. Moreover, they do not regard his explicit declaration that an animal younger than a *jadhaʿah* (one-year-old sheep) is insufficient as constituting disagreement on that issue.

وَمِنْ الْعَجَبِ أَنَّ الرِّوَايَةَ صَحَّتْ عَنْ ابْنِ عَبَّاسٍ، وَجَابِرٍ، وَابْنِ مَسْعُودٍ، وَزَيْدِ بْنِ ثَابِتٍ: بِأَنَّ الْعُمْرَةَ فَرْضٌ كَالْحَجِّ وَلَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافٌ لَهُمْ؛ فَجَعَلُوا قَوْلَ ابْنِ عُمَرَ «بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ» فَذَكَرَ فِيهِنَّ الْحَجَّ، وَلَمْ يَذْكُرْ الْعُمْرَةَ خِلَافًا فِي ذَلِكَ، ثُمَّ لَا يَجْعَلُونَ تَصْرِيحَهُ بِأَنَّ مَا دُونَ الْجَذَعِ لَا يُجْزِي خِلَافًا فِي ذَلِكَ.

L16290–16292 A group of the Companions and the Successors—may Allah be pleased with them—indicated that it is permissible to sacrifice a one-year-old goat, a five-year-old camel, or a two-year-old cow, as we will mention, Allah the Exalted willing. Narrations from the Prophet—peace and blessings be upon him—have been transmitted regarding this matter, which we will present, Allah the Exalted willing, so that we may see who has sincerely advised themselves that the Hanafis, Malikis, and Shafiʿis possess no valid proof at all for their position permitting the sacrifice of a jadhaʿ sheep while prohibiting the jadhaʿ of camels, cows, and goats. It has been narrated to us through the chain of Abu Bakr ibn Abi Shaybah: Abdullah ibn Numayr narrated to us from Muhammad ibn Ishaq from Umarah (the son of Abdullah ibn Ta'mah) from Sa'id ibn al-Musayyib from Zayd ibn Khalid al-Juhani, who said: The Messenger of Allah (peace and blessings be upon him) distributed sacrificial animals among his companions and gave me a young male goat. I brought it to the Prophet (peace and blessings be upon him) and said, "Is it a jadhaʿ (young goat)?" He replied, "Offer it as a sacrifice."

وَقَدْ أَشَارَ قَوْمٌ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - أَنْ يُضَحَّى بِالْجَذَعِ مِنْ الْمَاعِزِ، وَبِالْجَذَعِ مِنْ الْإِبِلِ، وَالْبَقَرِ، كَمَا نُورِدُ إنْ شَاءَ اللَّهُ تَعَالَى، وَجَاءَتْ بِذَلِكَ آثَارٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُورِدُهَا إنْ شَاءَ اللَّهُ تَعَالَى لِنَرَى مَنْ نَصَحَ نَفْسَهُ أَنَّهُ لَا حُجَّةَ لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ أَصْلًا فِي إجَازَتِهِمْ الْجَذَعَ مِنْ الضَّأْنِ وَمَنْعِهِمْ مِنْ الْجَذَعِ مِنْ الْإِبِلِ، وَالْبَقَرِ، وَالْمَاعِزِ -: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ عُمَارَةَ هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ طَعْمَةَ - عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ قَالَ «قَسَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَصْحَابِهِ ضَحَايَا فَأَعْطَانِي عَتُودًا مِنْ الْمَعْزِ، فَجِئْتُ بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: إنَّهُ جَذَعٌ؟ فَقَالَ: ضَحِّ بِهِ» .

L16293 From the transmission of Al-Bukhari and Muslim jointly: Al-Bukhari stated: "Reported to us by Amr ibn Khalid," while Muslim stated: "Reported to us by Muhammad ibn Rumh." Then Amr and Ibn Rumh agreed in reporting that Al-Layth ibn Sa'd informed them both through Yazid - who is Ibn Abi Habib - from Abu Al-Khayr, from Uqbah ibn Amir who said: "The Prophet - peace and blessings of Allah be upon him - granted him sheep to distribute among his companions. A young ram remained, and he mentioned this to the Messenger of Allah - peace and blessings of Allah be upon him - who

وَمِنْ طَرِيقِ الْبُخَارِيِّ وَمُسْلِمٍ جَمِيعًا قَالَ الْبُخَارِيُّ: نَا عَمْرُو بْنُ خَالِدٍ، وَقَالَ مُسْلِمٌ: نَا مُحَمَّدُ بْنُ رُمْحٍ، ثُمَّ اتَّفَقَ عَمْرٌو، وَابْنُ رُمْحٍ عَلَى أَنَّ اللَّيْثَ بْنَ سَعْدٍ أَخْبَرَهُمَا عَنْ يَزِيدَ هُوَ ابْنُ أَبِي حَبِيبٍ - عَنْ أَبِي الْخَيْرِ «عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: إنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ

instructed him: 'Sacrifice it yourself.'" This is the wording of Amr. The wording of Ibn Rumh is: "You, sacrifice it."

وَسَلَّمَ - أَعْطَاهُ غَنَمًا يَقْسِمُهَا بَيْنَ أَصْحَابِهِ فَبَقِيَ عَتُودٌ فَذَكَرَهُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ: ضَحِّ أَنْتَ بِهِ» هَذَا لَفْظُ عَمْرٍو، وَلَفْظُ ابْنِ رُمْحٍ «ضَحِّ بِهِ أَنْتَ» .

L16294 Abū Muḥammad said: The ʿatūd refers to the yearling goat without any disagreement. These two narrations are of the highest reliability, and two Companions—ʿUqbah ibn ʿĀmir and Zayd ibn Khālid—permitted sacrificing the yearling goat in them.

قَالَ أَبُو مُحَمَّد: الْعَتُودُ هُوَ الْجَذَعُ مِنْ الْمَعْزِ بِلَا خِلَافٍ - وَهَذَانِ خَبَرَانِ فِي غَايَةِ الصِّحَّةِ، وَقَدْ أَجَازَ التَّضْحِيَةَ بِالْجَذَعِ مِنْ الْمَعْزِ فِيهِمَا اثْنَانِ مِنْ الصَّحَابَةِ: عُقْبَةُ بْنُ عَامِرٍ، وَزَيْدُ بْنُ خَالِدٍ.

L16295 We have previously mentioned from Umm Salamah—the Mother of the Believers—and Ibn Umar the permissibility of a yearling goat (jadhaʿ) from goats as a valid offering in the udḥiyyah, though others are better than it.

وَقَدْ ذَكَرْنَا قَبْلُ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ جَوَازَ الْجَذَعِ مِنْ الْمَعْزِ فِي الْأُضْحِيَّةِ وَإِنْ كَانَ غَيْرُهُ خَيْرًا مِنْهُ.

L16296 If they say: "This is abrogated by the narration of al-Barā'?" We respond: The narration of al-Barā' contains no evidence to restrict the prohibition specifically to the jadhʿa of goats while excluding the jadhʿa of sheep, camels, and cows, except through a false assertion.

فَإِنْ قَالُوا: هَذَا مَنْسُوخٌ بِخَبَرِ الْبَرَاءِ؟ قُلْنَا: خَبَرُ الْبَرَاءِ لَا دَلِيلَ فِيهِ عَلَى تَخْصِيصِ الْجَذَعِ مِنْ الْمَعْزِ دُونَ الْجَذَعِ مِنْ الضَّأْنِ وَالْإِبِلِ، وَالْبَقَرِ بِالْمَنْعِ إلَّا بِدَعْوَى كَاذِبَةٍ.

L16297 As for the reports permitting the ritual sacrifice of the *jadhʿa* in entirety for every purpose, it has been transmitted to us from ʿAbd al-Razzāq from Sufyān al-Thawrī from ʿĀṣim ibn Kulayb from his father, who said: We were with a man from the Companions of the Prophet—peace and blessings be upon him—called Mujāshiʿ of Banū Sulaym. He instructed a caller to announce: "The Messenger of Allah—peace and blessings be upon him—would say: 'The *jadhʿa* fulfills the same requirements as the *thaniyya*.'"

وَأَمَّا الْآثَارُ الَّتِي فِيهَا إبَاحَةُ التَّضْحِيَةِ بِالْجَذَعِ جُمْلَةً مِنْ كُلِّ شَيْءٍ فَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ قَالَ: كُنَّا مَعَ رَجُلٍ مِنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقَالُ لَهُ: مُجَاشِعٌ مِنْ بَنِي سُلَيْمٍ فَأَمَرَ مُنَادِيًا يُنَادِي «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَقُولُ: الْجَذَعُ تُوفِي مِمَّا تُوفِي مِنْهُ الثَّنِيَّةُ» .

L16298–16300 From the chain of Abū al-Jahm: Yūsuf—he is Ibn Yaʿqūb al-Qāḍī—narrated to us; Abū al-Rabīʿ—he is al-Zahrānī—narrated to us. Hibbān ibn ʿAlī narrated to us from ʿĀṣim ibn Kulayb from his father, who said: "During military campaigns, Companions of Allah's Messenger (peace be upon him) would be appointed to lead us. A man from the Anṣār was placed in command over us and said: 'I witnessed with Allah's Messenger (peace be upon him) that day'—meaning the Day of Sacrifice—'when we sought a mature sacrificial animal (musinnah), but it became scarce for us.' Thereupon Allah's Messenger (peace

وَمِنْ طَرِيقِ أَبِي الْجَهْمِ نَا يُوسُفُ هُوَ ابْنُ يَعْقُوبَ الْقَاضِي - نَا أَبُو الرَّبِيعِ هُوَ الزَّهْرَانِيُّ نَا حِبَّانُ بْنُ عَلِيٍّ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ قَالَ: كُنَّا يُؤَمَّرُ عَلَيْنَا فِي الْمَغَازِي أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأُمِّرَ عَلَيْنَا رَجُلٌ مِنْ الْأَنْصَارِ فَقَالَ: إنِّي شَهِدْت مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا الْيَوْمَ يَعْنِي يَوْمَ النَّحْرِ فَطَلَبْنَا الْمُسِنَّ فَغَلَتْ عَلَيْنَا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ الْجَذَعَ يَفِي مِمَّا يَفِي مِنْهُ الْمُسِنُّ» .

be upon him) said: 'A young sheep (jadhaʿ) suffices for the same purpose as a mature animal.'"

L16301 Abu Muhammad said: The first hadith is of the utmost authenticity. Mujāshiʿ al-Sulamī - who is Mujāshiʿ ibn Masʿūd, a well-known, distinguished Companion among those who embraced Islam, contributed wealth, and fought before the conquest of Mecca - participated in the conquest of Kirmān. All its narrators are reliable and prominent. The other hadith is sound and authentically established, for the validity or invalidity of the commander of the army's companionship cannot remain obscure.

L16302 It has been narrated to us through Maʿmar, from Ayyūb al-Sakhtiyānī, from Ibn Sīrīn, from ʿImrān ibn al-Ḥuṣayn, who said: "To sacrifice a yearling is dearer to me than sacrificing an aged animal, for Allah is more deserving of [receiving] the finest and most generous [offerings]. The one I would most cherish to sacrifice is the one I would most cherish to keep."

L16303 We previously mentioned from Ibn Umar: "Sacrificing a large yearling valid for sacrifice is more beloved to me than sacrificing a kid." This establishes a general ruling regarding the yearling.

L16304 From the path of Waki' and Yaḥyā ibn Saʿīd al-Qaṭṭān, both of whom jointly narrated: ʿAlī ibn al-Mubārak reported to us from Abū al-Sāwiyyah al-Tamīmī, who said: A man came to Ibn ʿAbbās and asked, "I am obligated to offer a *badana* (mature sacrificial camel). Will a *jadhaʿah* (young camel) suffice for me?" He replied, "Yes." In Waki''s narration, the man specified: "A *jadhaʿah* from the camels?" Ibn ʿAbbās said, "Yes."

L16305 And through the narration of Waki', who narrated from 'Umar ibn Dharr al-Hamdani: I said to Tāwus, "O Abu 'Abd al-Rahman, when we enter the market, we find al-jadha' (yearling) among the fat, large cattle, so we choose the thani (two-year-old) based on its age." Tāwus replied, "The one I prefer is the fattest of them and the largest of them."

L16306 And through the chain of Abd al-Razzaq from Ma'mar, from Abdullah ibn Tawus, from his father, who said: A one-year-old goat suffices, a yearling

قَالَ أَبُو مُحَمَّد: الْحَدِيثُ الْأَوَّلُ فِي غَايَةِ الصِّحَّةِ، وَمُجَاشِعٌ السُّلَمِيُّ هُوَ مُجَاشِعُ بْنُ مَسْعُودٍ - مَشْهُورٌ مِنْ فُضَلَاءِ الصَّحَابَةِ مِمَّنْ أَسْلَمَ، وَأَنْفَقَ، وَقَاتَلَ قَبْلَ فَتْحِ مَكَّةَ، وَهُوَ فَتْحُ كَرْمَانَ، وَرُوَاتُهُ كُلُّهُمْ ثِقَاتٌ مَشَاهِيرُ، وَالْآخَرُ جَيِّدٌ صَحِيحٌ لِأَنَّ أَمِيرَ الْعَسْكَرِ لَا تَخْفَى صِحَّةُ صُحْبَتِهِ مِنْ بُطْلَانِهَا.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ: لَأَنْ أُضَحِّيَ بِجَذَعٍ أَحَبُّ إِلَيَّ مِنْ أَنْ أُضَحِّيَ بِهَرِمٍ، اللَّهُ أَحَقُّ بِالْغِنَى وَالْكَرَمِ، وَأَحَبُّهُنَّ إِلَيَّ أَنْ أُضَحِّيَ بِهِ أَحَبُّهُنَّ إِلَيَّ بِأَنْ أَقْتَنِيَهُ.

وَقَدْ ذَكَرْنَا قَبْلُ عَنْ ابْنِ عُمَرَ لَأَنْ أُضَحِّيَ بِجَذَعَةٍ عَظِيمَةٍ تَجُوزُ فِي الصَّدَقَةِ أَحَبُّ إِلَيَّ مِنْ أَنْ أُضَحِّيَ بِجِدَاءٍ فَهَذَا عُمُومٌ فِي الْجَذَعِ.

وَمِنْ طَرِيقِ وَكِيعٍ، وَيَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، قَالَا جَمِيعًا: نَا عَلِيُّ بْنُ الْمُبَارَكِ عَنْ أَبِي السَّوِيَّةِ التَّمِيمِيِّ قَالَ: جَاءَ رَجُلٌ إِلَى ابْنِ عَبَّاسٍ فَقَالَ عَلَيَّ بَدَنَةٌ أَتُجْزِي عَنِّي جَذَعَةٌ؟ قَالَ: نَعَمْ، وَفِي رِوَايَةِ وَكِيعٍ جَذَعَةٌ مِنْ الْإِبِلِ؟ قَالَ: نَعَمْ.

وَمِنْ طَرِيقِ وَكِيعٍ نَا عُمَرُ بْنُ ذَرٍّ الْهَمْدَانِيُّ قُلْت لِطَاوُسٍ: يَا أَبَا عَبْدِ الرَّحْمَنِ إنَّا نَدْخُلُ السُّوقَ فَنَجِدُ الْجَذَعَ مِنْ الْبَقَرِ السَّمِينِ الْعَظِيمِ فَنَخْتَارُ الثَّنِيَّ لِسِنِّهِ فَقَالَ طَاوُسٌ: أَحَبُّهُمَا إلَيَّ أَسْمَنُهُمَا وَأَعْظَمُهُمَا.

sheep suffices, a five-year-old camel suffices, and a cow suffices—meaning as sacrificial offerings.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: يُجْزِي الثَّنِيُّ مِنْ الْمَعْزِ وَالْجَذَعُ مِنْ الضَّأْنِ، وَالْجَذَعُ مِنْ الْإِبِلِ، وَالْبَقَرِ - يَعْنِي فِي الْأَضَاحِيِّ.

L16307 From the chain of Waki‘: Sufyan reported from Ibn Jurayj, from ʿAṭāʾ ibn Abī Rabāḥ, who said: “A jadha‘ (eligible sheep) suffices on behalf of seven.”

وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: يُجْزِي الْجَذَعُ عَنْ سَبْعَةٍ.

L16308–16309 From the narration of Abd al-Razzaq, from Ibn Jurayj, from Ata, he said: A jadh‘ camel (five years old) or older suffices [as a sacrifice].

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: يُجْزِي مِنْ الْإِبِلِ الْجَذَعُ فَصَاعِدًا.

L16310 From the transmission of Ibn Abī Shaybah: Ibn ʿUlayyah narrated to us from Yūnus ibn ʿUbayd from al-Ḥasan al-Baṣrī that he reported: He would say: “A jadha‘ (a camel of at least six years) is eligible for the Udḥiyah sacrifice. Cows may be sacrificed on behalf of three people, while any camel below the jadha‘ age suffices for one person.” These are chains of transmission of the highest authenticity.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ عُلَيَّةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ: كَانَ يَقُولُ: يُضَحَّى بِالْجَذَعِ مِنْ الْإِبِلِ، وَالْبَقَرِ عَنْ ثَلَاثَةٍ، وَمَا دُونَ الْجَذَعِ مِنْ الْإِبِلِ عَنْ وَاحِدٍ - فَهَذِهِ أَسَانِيدُ فِي غَايَةِ الصِّحَّةِ.

L16311 From Ṭāwus, ʿAṭāʾ, and al-Ḥasan regarding the permissibility of five-year-old camels and two-year-old cattle for Udhiyah.

وَعَنْ طَاوُسٍ، وَعَطَاءٍ، وَالْحَسَنِ فِي جَوَازِ الْجَذَعِ مِنْ الْإِبِلِ وَالْبَقَرِ فِي الْأَضَاحِيِّ.

L16312 Ibn Abbas permitted the use of a jadha‘ (four-year-old camel) among sacrificial camels.

وَعَنْ ابْنِ عَبَّاسٍ جَوَازُ الْجَذَعِ مِنْ الْإِبِلِ فِي الْبُدْنِ.

L16313 If it is said: “It has been reported from ʿAṭāʾ that he disliked this?” We reply: It was transmitted by al-Ḥajjāj ibn Arṭāh—a weak narrator—and none would oppose Ibn Jurayj with this except an ignorant person. Abū Muḥammad said: What abrogates all of this is the statement of Allah’s Messenger—peace and blessings be upon him—: “A *jadhaʿah* is not valid from anyone after you.” It is utterly false to claim this statement abrogates the permissibility of certain *jadhaʿahs* but not others. How astonishing is it that they found no report whatsoever prohibiting *jadhaʿahs* of camels and cattle except this very wording? How then did they restrict it specifically to *jadhaʿahs* of camels and cattle, excluding *jadhaʿahs* of sheep?

فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ عَطَاءٍ كَرَاهَةُ ذَلِكَ؟ قُلْنَا: رَوَاهُ الْحَجَّاجُ بْنُ أَرْطَاةَ وَهُوَ سَاقِطٌ، وَلَا يُعَارِضُ بِهِ ابْنَ جُرَيْجٍ إلَّا جَاهِلٌ؟ قَالَ أَبُو مُحَمَّدٍ: وَالنَّاسِخُ لِهَذَا كُلِّهِ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُجْزِي جَذَعَةٌ عَنْ أَحَدٍ بَعْدَكَ» وَمِنْ الْبَاطِلِ الْبَحْتِ أَنْ يُجْعَلَ هَذَا الْقَوْلُ نَاسِخًا لِإِبَاحَةِ بَعْضِ الْجِذَاعِ دُونَ بَعْضٍ، وَالْعَجَبُ أَنَّهُمْ لَمْ يَجِدُوا فِي النَّهْيِ عَنْ الْجِذَاعِ مِنْ الْإِبِلِ وَالْبَقَرِ خَبَرًا أَصْلًا إلَّا هَذَا اللَّفْظَ فَمِنْ أَيْنَ خَصُّوا بِهِ جِذَاعَ الْإِبِلِ وَالْبَقَرِ دُونَ جِذَاعِ الضَّأْنِ.

L16314 If they say: “We analogized the jadh‘ (a one-year-old) of camels and cattle to the jadh‘ of goats?” We respond: “Why did you not analogize them to

فَإِنْ قَالُوا: قِسْنَا جِذَاعَ الْإِبِلِ وَالْبَقَرِ عَلَى جِذَاعِ الْمَاعِزِ؟ قُلْنَا: وَهَلَّا قِسْتُمُوهَا عَلَى جِذَاعِ الضَّأْنِ الْجَائِزَةِ عِنْدَكُمْ، وَمَا الَّذِي جَعَلَ قِيَاسَ الْإِبِلِ وَالْبَقَرِ عَلَى الْمَاعِزِ أَوْلَى مِنْ قِيَاسِهَا عَلَى الضَّأْنِ؟ لَا سِيَّمَا وَالْجَذَعُ عِنْدَكُمْ مِنَ الْإِبِلِ وَالْبَقَرِ يَجْزِيَانِ فِي الزَّكَاةِ، فَهَلَّا قِسْتُمْ جَوَازَهَا فِي الْأُضْحِيَّةِ عَلَى جَوَازِهَا فِي الزَّكَاةِ - فَلَاحَ أَنَّهُمْ لَا النَّصَّ اتَّبَعُوا، وَلَا الْقِيَاسَ عَرَفُوا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

They say: the jadhʿ of sheep which you deem permissible? What makes analogizing camels and cattle to goats more valid than analogizing them to sheep? Especially since the jadhʿ of camels and cattle are both permissible for zakāh according to your position. Why did you not analogize their permissibility in ʿUdḥiyyah to their permissibility in zakāh?" Thus it became clear they neither followed textual authority nor properly understood legal analogy. Success comes solely from Allah, the Exalted.

وَيَقُولُونَ أَيْضًا: إِنْ وَلَدَتْ الْأُضْحِيَّةُ الشَّاةُ، أَوْ الْمَاعِزُ، أَوْ الْبَقَرَةُ أَوْ النَّاقَةُ ضُحِّيَ بِوَلَدِهَا مَعَهَا - فَتَنَاقَضُوا وَأَجَازُوا فِي الْأُضْحِيَّةِ الصَّغِيرَ جِدًّا.

They also say: If a sacrificial animal—whether a sheep, goat, cow, or camel—gives birth, its offspring should be sacrificed alongside her. Thus they contradict themselves, permitting the extremely young animal as a sacrifice.

فَإِنْ قَالُوا: إنَّمَا هُوَ تَبَعٌ؟ قُلْنَا: هَذَا كَلَامٌ فَاسِدٌ لَا مَعْنَى لَهُ، وَعَرِّفُونَا مَا مَعْنَى تَبَعٌ؟ أَهُوَ بَعْضُهَا - فَهَذَا كَذِبٌ بِالْعِيَانِ، بَلْ هُوَ غَيْرُهَا، وَهُوَ ذَكَرٌ وَهِيَ أُنْثَى، وَإِنْ كَانَ غَيْرَهَا، فَهُوَ قَوْلُنَا، وَلَا فَضْلَ فِي ذَلِكَ.

If they say, "It is merely a subordinate?" We reply: This is an invalid statement devoid of meaning. Explain to us what "subordinate" signifies. Is it a part of it? That is evident falsehood, for it is distinct from her—grammatically masculine while she is feminine. If it is distinct, then this is our assertion, and there is no merit in such a claim.

[مَسْأَلَةٌ اشْتَرَى أُضْحِيَّةً وَدَخَلَ الْعَشْرُ]

A legal issue: He purchased a sacrificial animal and the ten had begun.

مَسْأَلَةٌ:

Issue:

قَالَ عَلِيٌّ: ذَكَرْنَا فِي أَوَّلِ كَلَامِنَا هَهُنَا فِي الْأَضَاحِيِّ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَرَادَ أَنْ يُضَحِّيَ أَنْ لَا يَمَسَّ مِنْ شَعْرِهِ وَلَا مِنْ أَظْفَارِهِ شَيْئًا» ، وَلَمْ نَذْكُرْ اعْتِرَاضَ الْمُخَالِفِينَ فِي ذَلِكَ بِالنِّسْيَانِ فَاسْتَدْرَكْنَا هَهُنَا مَا رُوِيَ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا أَفْتَتْ بِذَلِكَ.

Ali said: At the beginning of our discussion here concerning sacrificial animals, we mentioned the command of Allah's Messenger—peace and blessings be upon him—"Whoever intends to offer a sacrifice must not remove anything from his hair or nails." However, we neglected to mention the objections of the opponents regarding this matter due to oversight. We now supplement here what has been narrated from Umm Salamah, the Mother of the Believers, that she issued a fatwa regarding this.

وَنَا حَمَامٌ نَا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نَا بَكْرُ بْنُ حَمَّادٍ نَا مُسَدَّدٌ نَا يَزِيدُ بْنُ زُرَيْعٍ نَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ نَا ابْنُ أَبِي كَثِيرٍ هُوَ يَحْيَى - أَنَّ يَحْيَى بْنَ يَعْمَرَ

From Hamam, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Bakr ibn Hammad, from Musaddad, from Yazid ibn Zurai', from Sa'id ibn Abi Arubah, from Ibn Abi Kathir (he is Yahya) - that Yahya ibn Ya'mar used to issue legal rulings in Khurasan: When a man purchases

كَانَ يُفْتِي بِخُرَاسَانَ: أَنَّ الرَّجُلَ إِذَا اشْتَرَى أُضْحِيَّةً، وَدَخَلَ الْعَشْرُ أَنْ يَكُفَّ عَنْ شَعْرِهِ وَأَظْفَارِهِ حَتَّى يُضَحِّيَ.

a sacrificial animal and the ten days of Dhul-Hijjah begin, he must refrain from cutting his hair and nails until he performs the sacrifice.

L16322 قَالَ سَعِيدٌ: قَالَ قَتَادَةُ: فَذَكَرْت ذَلِكَ لِسَعِيدِ بْنِ الْمُسَيِّبِ فَقَالَ: نَعَمْ، فَقُلْت: عَمَّنْ يَا أَبَا مُحَمَّدٍ؟ قَالَ: عَنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

Sa'īd reported that Qatādah said: "I mentioned this to Sa'īd ibn al-Musayyib, who replied, 'Yes.' I asked, 'From whom, O Abū Muḥammad?' He said, 'From the Companions of the Messenger of Allah—peace be upon him—.'"

L16323 قَالَ مُسَدَّدٌ: وَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ سَمِعْت أَبِي يَقُولُ: كَانَ ابْنُ سِيرِينَ يَكْرَهُ إِذَا دَخَلَ الْعَشْرُ أَنْ يَأْخُذَ الرَّجُلُ مِنْ شَعْرِهِ حَتَّى يَكْرَهَ أَنْ يَحْلِقَ الصِّبْيَانُ فِي الْعَشْرِ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَخَالَفَ ذَلِكَ أَبُو حَنِيفَةَ، وَمَالِكٌ - وَمَا نَعْلَمُ لَهُمَا حُجَّةً أَصْلًا، إلَّا أَنَّ بَعْضَهُمْ ذَكَرَ مَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عُمَارَةَ بْنِ عَبْدِ اللَّهِ بْنِ صَيَّادٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالِادِّهَانِ فِي الْعَشْرِ، قَالُوا: وَهُوَ رَاوِي هَذَا الْخَبَرِ.

Musaddad said: Al-Mu'tamir ibn Sulayman Al-Taymi reported: I heard my father say: Ibn Sirin disliked a man removing any of his hair upon the commencement of the last ten days [of Ramadan], even to the extent of disliking that children be shaved during these ten days. This is the position of Ash-Shāfi'ī, Abū Thawr, Ahmad, Isḥāq, Abū Sulaymān, and Al-Awzā'ī. Abū Ḥanīfah and Mālik opposed this view - though we know of no evidence at all for their position. However, some mentioned what was narrated to us through Mālik from 'Amārah ibn 'Abdullāh ibn Ṣayyād, from Sa'īd ibn Al-Musayyab, who deemed it permissible to apply oil or dye (such as henna) during the ten days. They said: He is the narrator of this report.

L16324 وَمَا رُوِّينَا مِنْ طَرِيقِ عِكْرِمَةَ أَنَّهُ ذَكَرَ لَهُ هَذَا الْخَبَرَ فَقَالَ: فَهَلَّا اجْتَنَبَ النِّسَاءَ وَالطِّيبَ - وَمَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا أَصْلًا، وَهَذَا كُلُّهُ لَا شَيْءَ -:

It was narrated to us via the chain of Ikrimah that when this report was mentioned to him, he said: "Why did he not avoid women and perfume?" - We know of no basis for them other than this at all, and all of this is nothing - :

L16325 أَمَّا الرِّوَايَةُ عَنْ سَعِيدٍ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالِادِّهَانِ فِي الْعَشْرِ، فَالِاحْتِجَاجُ بِهِ بَاطِلٌ لِوُجُوهٍ -:

As for the narration from Sa'īd that he used to consider no harm in applying dye during the ten days, the argument based on it is invalid for several reasons:

L16326 أَوَّلُهَا: أَنَّهُ لَا حُجَّةَ فِي قَوْلِ سَعِيدٍ، وَإِنَّمَا الْحُجَّةُ الَّتِي أَلْزَمَنَاهَا اللَّهُ تَعَالَى فَهِيَ رِوَايَتُهُ وَرِوَايَةُ غَيْرِهِ مِنْ الثِّقَاتِ.

The first is that there is no authoritative evidence in the statement of Sa'īd; rather, the authoritative evidence that Allah, the Exalted, has made it incumbent upon us is his narration and the narration of others from the trustworthy ones.

L16327 وَثَانِيهَا: أَنَّهُ قَدْ صَحَّ عَنْ سَعِيدٍ خِلَافُ ذَلِكَ مِمَّا ذَكَرْنَا قَبْلُ وَهُوَ أَوْلَى بِسَعِيدٍ.

Secondly, it has been authentically established that Sa'īd held a contrary position to what we mentioned before, and this is more fitting to Sa'īd.

L16328–16329 The third point is that Sa'īd might interpret the scrutiny [of hair] as differing

from the legal ruling for other hair, maintaining that the prohibition applies solely to the hair on the head.

وَثَالِثُهَا: أَنَّهُ قَدْ يَتَأَوَّلُ سَعِيدٌ فِي الِاطِّلَاءِ أَنَّهُ بِخِلَافِ حُكْمِ سَائِرِ الشَّعْرِ، وَأَنَّ النَّهْيَ إِنَّمَا هُوَ شَعْرُ الرَّأْسِ فَقَطْ.

L16330 The fourth is that it should be said to them: Just as you argued that Sa'īd's reported contradiction of this hadith indicates the weakness of that hadith—since one would only abandon a narration for what he considers stronger—it is more appropriate for you to apply this reasoning to Sa'īd's own narrations from the Prophet (peace be upon him) and his Companions (may Allah be pleased with them) which conflict with other reports attributed to Sa'īd. This proves the weakness of those narrations from Sa'īd, as it is impermissible for him to issue rulings contradicting what he himself transmitted. This objection holds greater validity than yours.

وَرَابِعُهَا: أَنْ يُقَالَ لَهُمْ: كَمَا قُلْتُمْ لِمَا رُوِيَ عَنْ سَعِيدٍ خِلَافُ هَذَا الْحَدِيثِ الَّذِي رُوِيَ دَلَّ عَلَى ضَعْفِ ذَلِكَ الْحَدِيثِ، لِأَنَّهُ لَا يَدَعُ مَا رُوِيَ إِلَّا لِمَا هُوَ أَقْوَى عِنْدَهُ مِنْهُ، فَالْأَوْلَى بِكُمْ أَنْ تَقُولُوا لِمَا رَوَى سَعِيدٌ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافَ مَا رُوِيَ عَنْ سَعِيدٍ: دَلَّ ذَلِكَ عَلَى ضَعْفِ تِلْكَ الرِّوَايَةِ عَنْ سَعِيدٍ، إِذْ لَا يَجُوزُ أَنْ يُفْتِيَ بِخِلَافِ مَا رَوَى - فَهَذَا اعْتِرَاضٌ أَوْلَى مِنْ اعْتِرَاضِكُمْ.

L16331 The fifth is that the intended meaning of Sa'id's statement regarding applying oil during "the ten" might specifically be the ten days of Muḥarram, not the ten days of Dhū al-Ḥijjah. Otherwise, from where do you derive that he meant the ten days of Dhū al-Ḥijjah? Does the term "the ten" not apply to the ten days of Muḥarram just as it applies to the ten days of Dhū al-Ḥijjah?

وَخَامِسُهَا: أَنَّهُ قَدْ يَكُونُ الْمُرَادُ بِقَوْلِ سَعِيدٍ فِي الِاطِّلَاءِ فِي الْعَشْرِ إِنَّمَا أَرَادَ عَشْرَ الْمُحَرَّمِ لَا عَشْرَ ذِي الْحِجَّةِ، وَإِلَّا فَمِنْ أَيْنَ لَكُمْ أَنَّهُ أَرَادَ عَشْرَ ذِي الْحِجَّةِ؟ وَاسْمُ الْعَشْرِ يُطْلَقُ عَلَى عَشْرِ الْمُحَرَّمِ كَمَا يُطْلَقُ عَلَى عَشْرِ ذِي الْحِجَّةِ؟

L16332 The sixth of these is that we say: Perhaps Sa'īd held that view regarding one who does not intend to offer a sacrifice, and this is valid. As for 'Ikrimah's opinion, it is invalid, because the religion is not derived from 'Ikrimah's statements or opinion. Rather, this is nothing but his qiyas, and all qiyas is invalid.

وَسَادِسُهَا: أَنْ نَقُولَ: لَعَلَّ سَعِيدًا رَأَى ذَلِكَ لِمَنْ لَا يُرِيدُ أَنْ يُضَحِّيَ، فَهَذَا صَحِيحٌ، وَأَمَّا قَوْلُ عِكْرِمَةَ فَفَاسِدٌ، لِأَنَّ الدِّينَ لَا يُؤْخَذُ بِقَوْلِ عِكْرِمَةَ وَرَأْيِهِ، إِنَّمَا هَذَا مِنْهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L16333 Furthermore, if the analogy were valid, this would be the epitome of falsehood, because the obligation to refrain from touching hair and nails, as per the textual ruling on that, does not necessitate refraining from sexual relations with women and using perfume, just as the obligation to refrain from sexual intercourse and using perfume does not thereby necessitate refraining from touching hair and nails.

ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُ لَيْسَ إِذَا وَجَبَ أَنْ لَا يَمَسَّ الشَّعْرَ، وَالظُّفْرَ، بِالنَّصِّ الْوَارِدِ فِي ذَلِكَ يَجِبُ أَنْ يَجْتَنِبَ النِّسَاءَ وَالطِّيبَ، كَمَا أَنَّهُ إِذَا وَجَبَ اجْتِنَابُ الْجِمَاعِ وَالطِّيبِ، لَمْ يَجِبْ بِذَلِكَ اجْتِنَابُ مَسِّ الشَّعْرِ وَالظُّفْرِ.

L16334 A fasting person is obligated to abstain from sexual relations, but he is not required to avoid perfume, nor cutting hair or nails—and the same applies to one in i'tikaf (seclusion in the mosque). As for a woman in her waiting

period (iddah), intercourse and perfume are prohibited for her, but she is not obligated to abstain from cutting her hair or nails.

فَهَذَا الصَّائِمُ فَرْضٌ عَلَيْهِ اجْتِنَابُ النِّسَاءِ، وَلَا يَلْزَمُهُ اجْتِنَابُ الطِّيبِ، وَلَا مَسُّ الشَّعْرِ، وَالظُّفْرِ - وَكَذَلِكَ الْمُعْتَكِفُ، وَهَذِهِ الْمُعْتَدَّةُ يَحْرُمُ عَلَيْهَا الْجِمَاعُ وَالطِّيبُ، وَلَا يَلْزَمُهَا اجْتِنَابُ قَصِّ الشَّعْرِ وَالْأَظْفَارِ.

L16335 Thus, the foolishness of their analogy and their invalid statements in religion became evident. This legal opinion is authentically established from the Companions—may Allah be pleased with them—and no dissent from any of them against it is known. Yet they opposed it based on their independent reasoning.

فَظَهَرَ حَمَاقَةُ قِيَاسِهِمْ وَقَوْلِهِمْ فِي الدِّينِ بِالْبَاطِلِ، وَهَذِهِ فُتْيَا صَحَّتْ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يُعْرَفُ فِيهَا مُخَالِفٌ مِنْهُمْ لَهُمْ، فَخَالَفُوا ذَلِكَ بِرَأْيِهِمْ.

L16336 Mālik narrated it as a mursal narration, so they contradicted the mursal narration and the musnad narration—and success comes only from Allāh, the Exalted.

وَرَوَاهُ مَالِكٌ مُرْسَلًا، فَخَالَفُوا الْمُرْسَلَ وَالْمُسْنَدَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16337 **Issue: The Udhiyah is valid with any animal whose meat is religiously permissible to eat.**

[مَسْأَلَةٌ الْأُضْحِيَّةُ جَائِزَةٌ بِكُلِّ حَيَوَانٍ يُؤْكَلُ لَحْمُهُ]

L16338–16340 Issue 977: The *uḍḥīyah* sacrifice is permissible with every animal whose flesh is eaten among four-legged creatures or birds, such as horses, camels, wild cattle, roosters, and all other birds and lawful animals to eat. The best among all these is an animal that has wholesome meat, is abundant, and commands a high price.

٩٧٧ - مَسْأَلَةٌ: وَالْأُضْحِيَّةُ جَائِزَةٌ بِكُلِّ حَيَوَانٍ يُؤْكَلُ لَحْمُهُ مِنْ ذِي أَرْبَعٍ، أَوْ طَائِرٍ، كَالْفَرَسِ، وَالْإِبِلِ، وَبَقَرِ الْوَحْشِ، وَالدِّيكِ، وَسَائِرِ الطَّيْرِ وَالْحَيَوَانِ الْحَلَالِ أَكْلُهُ، وَالْأَفْضَلُ فِي كُلِّ ذَلِكَ مَا طَابَ لَحْمُهُ وَكَثُرَ وَغَلَا ثَمَنُهُ.

L16341 We mentioned at the beginning of our discourse on sacrificial animals the statement of Bilāl: "I see no harm in sacrificing a rooster," and the report concerning Ibn ʿAbbās's act of purchasing meat for two dirhams, wherein he said: "This is Ibn ʿAbbās's substitute for a sacrificial offering."

وَقَدْ ذَكَرْنَا فِي أَوَّلِ كَلَامِنَا فِي الْأَضَاحِيِّ قَوْلَ بِلَالٍ: مَا أُبَالِي لَوْ ضَحَّيْت بِدِيكٍ، وَعَنْ ابْنِ عَبَّاسٍ فِي ابْتِيَاعِهِ لَحْمًا بِدِرْهَمَيْنِ وَقَالَ: هَذِهِ أُضْحِيَّةُ ابْنِ عَبَّاسٍ.

L16342 And it has also been narrated to us through the chain of Wakīʿ, from Kathīr ibn Zayd, from ʿIkrimah, from Ibn ʿAbbās. This Kathīr ibn Zayd is the one they relied upon in their argument by using the report that is not authentic: "Muslims are bound by their stipulations." They deemed him reliable in that context, and no one other than him narrated it.

وَرُوِّينَا أَيْضًا مِنْ طَرِيقِ وَكِيعٍ عَنْ كَثِيرِ بْنِ زَيْدٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ وَكَثِيرِ بْنِ زَيْدٍ هَذَا هُوَ الَّذِي عَوَّلُوا عَلَيْهِ فِي احْتِجَاجِهِمْ بِالْأَثَرِ الَّذِي لَا يَصِحُّ " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ " وَثَّقُوهُ هُنَالِكَ وَلَمْ يَرْوِهِ غَيْرُهُ.

L16343 Al-Ḥasan ibn Ḥayy permits the Udhiyah with a wild cow for seven people, and with a gazelle for one person.

وَالْحَسَنُ بْنُ حَيٍّ يُجِيزُ الْأُضْحِيَّةَ بِبَقَرَةٍ وَحْشِيَّةٍ عَنْ سَبْعَةٍ، وَبِالظَّبْيِ أَوْ الْغَزَالِ عَنْ وَاحِدٍ.

وَأَجَازَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ التَّضْحِيَةَ بِمَا حَمَلَتْ بِهِ الْبَقَرَةُ الْإِنْسِيَّةُ مِنَ الثَّوْرِ الْوَحْشِيِّ، وَبِمَا حَمَلَتْ بِهِ الْعَنْزُ مِنَ الْوَعْلِ.

L16344 Abu Hanifa and his companions permitted the sacrificial offering of the offspring conceived by the domestic cow from a wild bull and the offspring conceived by the domestic goat from an ibex.

وَقَالَ مَالِكٌ: لَا تُجْزِي إِلَّا مِنَ الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ.

L16345 Mālik said: It is only valid from camels, cattle, or sheep and goats.

وَرَأَى مَالِكٌ: النَّعْجَةَ، وَالْعَنْزَ، وَالتَّيْسَ أَفْضَلَ مِنَ الْإِبِلِ، وَالْبَقَرِ: فِي الْأُضْحِيَّةِ.

L16346 Malik held that ewes, female goats, and male goats are preferable to camels and cows as the sacrificial offering (al-uḍḥiyyah).

وَخَالَفَهُ فِي ذَلِكَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ فَرَأَيَا الْإِبِلَ أَفْضَلَ، ثُمَّ الْبَقَرَ، ثُمَّ الضَّأْنَ، ثُمَّ الْمَاعِزَ - وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً فَنُورِدُهَا أَصْلًا، إِلَّا أَنْ يَدَّعُوا إِجْمَاعًا فِي جَوَازِهَا مِنْ هَذِهِ الْأَنْعَامِ، وَالْخِلَافَ فِي غَيْرِهَا.

L16347 Abu Hanifah and Al-Shafi'i disagreed with him on this, both holding that camels are preferable, followed by cows, then sheep, then goats. We know of no evidence for this opinion that can be cited as a basis, unless they claim Ijmaʿ (consensus) exists regarding the permissibility concerning these livestock, while disagreement applies to other types.

فَهَذَا لَيْسَ بِشَيْءٍ، وَيُعَارِضُونَ بِمَا صَحَّ فِي ذَلِكَ عَنْ بِلَالٍ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا عِنْدَهُمْ حُجَّةٌ إِذَا وَافَقَهُمْ.

L16348 This is not valid. They oppose it with what has been authentically reported from Bilāl regarding that, and no opposing view from the Companions—may Allah be pleased with them—is known to contradict him in that matter. This, according to them, serves as evidence when it agrees with them.

وَأَمَّا مُرَاعَاةُ الْإِجْمَاعِ فَيُؤْخَذُ بِهِ وَيُتْرَكُ مَا اخْتُلِفَ فِيهِ، فَهَذَا يَهْدِمُ عَلَيْهِمْ جَمِيعَ مَذَاهِبِهِمْ إِلَّا يَسِيرًا جِدًّا مِنْهَا، وَيَلْزَمُهُمْ أَنْ لَا يُوجِبُوا فِي الصَّلَاةِ، أَوِ الصَّوْمِ، وَالْحَجِّ، وَالزَّكَاةِ وَالْبُيُوعِ، إِلَّا مَا أُجْمِعَ عَلَيْهِ، وَفِي هَذَا هَدْمُ مَذْهَبِهِمْ كُلِّهِ.

L16349 As for adhering to consensus, it is to be followed, and whatever is disputed is to be discarded. This would undermine nearly all their legal schools, leaving only a very few intact, and oblige them not to mandate anything in prayer, fasting, Hajj, Zakat, or transactions except what has been established by consensus. This would destroy their entire school of thought.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْمَرْدُودُ إِلَيْهِ عِنْدَ التَّنَازُعِ فَهُوَ مَا افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إِلَيْهِ فَوَجَدْنَا النُّصُوصَ تَشْهَدُ لِقَوْلِنَا، وَذَلِكَ أَنَّ الْأُضْحِيَّةَ قُرْبَةٌ إِلَى اللَّهِ تَعَالَى، فَالتَّقَرُّبُ إِلَى اللَّهِ تَعَالَى - بِكُلِّ مَا لَمْ يَمْنَعْ مِنْهُ قُرْآنٌ وَلَا نَصُّ سُنَّةٍ - حَسَنٌ، وَقَالَ تَعَالَى: {وَافْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ} [الحج: ٧٧] وَالتَّقَرُّبُ إِلَيْهِ عَزَّ وَجَلَّ بِمَا لَمْ يَمْنَعْ مِنَ التَّقَرُّبِ إِلَيْهِ بِهِ فِعْلُ خَيْرٍ.

L16350–16352 Abu Muhammad said: As for that which is referred back to in disputes, it is what Allah the Exalted has obligated referring back to. We found the texts supporting our view: the Udhiyah is an act of devotion to Allah the Exalted. Drawing near to Him through any means not prohibited by Quranic text or Sunnah-based text is virtuous. He the Exalted said: "And do good that you may prosper" (Surah Al-Ḥajj 22:77). And seeking nearness to Him, the Almighty and Majestic, through that which has not been prohibited as a means of seeking nearness to Him is an act of goodness.[7]

[7] **Qur'an references (L16350):** Qur'an 22:77 (Al-Hajj).

L16353 Yunus ibn Abdullah ibn Mughith narrated from Ahmad ibn Abdullah ibn Abd al-Rahim, from Ahmad ibn Khalid, from Muhammad ibn Abd al-Salam al-Khushani, from Muhammad ibn Bashshar (Bundār), from Safwan ibn Isa, from Ibn Ajlan from his father, from Abu Hurayrah who said: The Messenger of Allah (peace be upon him) said, "The example of one who proceeds early to Friday prayer is like that of one who sacrifices a camel, then the merit decreases to that of one who sacrifices a cow, then to that of one who sacrifices a chicken."

نَا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ نَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نَا أَحْمَدُ بْنُ خَالِدٍ نَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نَا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نَا صَفْوَانُ بْنُ عِيسَى نَا ابْنُ عَجْلَانَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَثَلُ الْمُهَجِّرِ إِلَى الْجُمُعَةِ كَمَثَلِ مَنْ يُهْدِي بَدَنَةً، ثُمَّ كَمَنْ يُهْدِي بَقَرَةً، ثُمَّ كَمَنْ يُهْدِي بَيْضَةً» .

L16354 It has been narrated to us through the chain of Mālik from Sumayy, the freed slave of Abū Bakr, from Abū Ṣāliḥ the oil seller, from Abū Hurayrah, that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever performs ghusl on Friday and proceeds, it is as though he has sacrificed a camel. Whoever proceeds during the second period, it is as though he has sacrificed a cow. Whoever proceeds during the third period, it is as though he has sacrificed a horned ram. Whoever proceeds during the fourth period, it is as though he has sacrificed a hen. Whoever proceeds during the fifth period, it is as though he has sacrificed an egg."

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ سُمَيٍّ مَوْلَى أَبِي بَكْرٍ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اغْتَسَلَ يَوْمَ الْجُمُعَةِ ثُمَّ رَاحَ فَكَأَنَّمَا قَرَّبَ بَدَنَةً، وَمَنْ رَاحَ فِي السَّاعَةِ الثَّانِيَةِ فَكَأَنَّمَا قَرَّبَ بَقَرَةً، وَمَنْ رَاحَ فِي السَّاعَةِ الثَّالِثَةِ فَكَأَنَّمَا قَرَّبَ كَبْشًا أَقْرَنَ، وَمَنْ رَاحَ فِي السَّاعَةِ الرَّابِعَةِ فَكَأَنَّمَا قَرَّبَ دَجَاجَةً، وَمَنْ رَاحَ فِي السَّاعَةِ الْخَامِسَةِ فَكَأَنَّمَا قَرَّبَ بَيْضَةً» .

L16355 In these two narrations is the ruling concerning the sacrificial offering of a hen, a sparrow, their ritual offering, and the offering of an egg. The *Udhiyah* (Eid al-Adha sacrifice) is undoubtedly a sacrificial act. Within them also lies the merit of prioritizing the physically larger [animal] in bodily substance and in benefit to the poor. There is absolutely no valid objection whatsoever to these two foundational texts.

فَفِي هَذَيْنِ الْخَبَرَيْنِ هَدْيُ دَجَاجَةٍ، وَعُصْفُورٍ، وَتَقْرِيبُهُمَا، وَتَقْرِيبُ بَيْضَةٍ؛ وَالْأُضْحِيَّةُ تَقْرِيبٌ بِلَا شَكٍّ، وَفِيهِمَا أَيْضًا فَضْلُ الْأَكْبَرِ فَالْأَكْبَرِ جِسْمًا فِيهِ وَمَنْفَعَةً لِلْمَسَاكِينِ، وَلَا مُعْتَرَضَ عَلَى هَذَيْنِ النَّصَّيْنِ أَصْلًا.

L16356–16358 Abu Muhammad said: Among the proofs that camels and cows are superior to sheep is the established report from the Messenger of Allah (peace be upon him), as has been narrated to us through the chain of al-Bukhari, and the report we cited in the following question. For this reason, in it lies his directive (peace be upon him) concerning sacrificial animals to be slaughtered through nahr [throat-slitting while standing].

قَالَ أَبُو مُحَمَّد: وَمِنْ الْبُرْهَانِ عَلَى أَنَّ الْإِبِلَ وَالْبَقَرَ أَفْضَلُ مِنْ الْغَنَمِ الْخَبَرُ الثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ، وَالْخَبَرُ الَّذِي أَوْرَدْنَا فِي الْمَسْأَلَةِ التَّالِيَةِ لِهَذِهِ فَفِيهَا أَمْرُهُ - عَلَيْهِ السَّلَامُ - فِي الْأَضَاحِيِّ بِالنَّحْرِ.

L16359 This scenario entails one of two possibilities: either the Prophet (peace be upon him) commanded slaughter by nahr (cutting the throat) for camels and cattle, or for sheep. If he commanded this for sheep, it invalidates Mālik's

وَلَا يَخْلُو هَذَا مِنْ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - أَمَرَ بِالنَّحْرِ فِي الْإِبِلِ وَالْبَقَرِ، أَوْ فِي الْغَنَمِ، فَإِنْ كَانَ أَمَرَ بِذَلِكَ فِي الْغَنَمِ، فَهَذَا مُبْطِلٌ لِقَوْلِ مَالِكٍ: إنَّ النَّحْرَ فِي الْغَنَمِ لَا يَحِلُّ،

view that nahr is impermissible for sheep and does not constitute valid ritual slaughter. If he (peace be upon him) commanded it for camels, cattle, and sheep, this would lead to an absurd, invalid, and impossible conclusion—beyond any doubt—that the Prophet (peace be upon him) would urge his community and companions to sacrifice camels and cattle despite their immense burden, exorbitant prices, while abandoning the less expensive and lower-priced option which is superior. This constitutes squandering wealth, which Allah, the Mighty and Majestic, has prohibited. Sacrificing sheep—both rams and goats—is an act of kindness to people due to their low cost, the simplicity of the matter, and as a relief for them from the superior option that entails greater financial hardship for Allah, the Mighty and Majestic. This is beyond any doubt.

وَلَا يَكُونُ ذَكَاةً فِيهَا، وَإِنْ كَانَ أَمَرَ بِذَلِكَ - عَلَيْهِ السَّلَامُ - فِي الْإِبِلِ وَالْبَقَرِ وَالْغَنَمِ لَحَسُنَ الْمُحَالُ الْبَاطِلُ الْمُمْتَنِعُ بِيَقِينٍ لَا شَكَّ فِيهِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَحُضُّ أُمَّتَهُ وَأَصْحَابَهُ عَلَى التَّضْحِيَةِ بِالْإِبِلِ وَالْبَقَرِ مَعَ عَظِيمِ الْكُلْفَةِ فِيهَا وَغُلُوِّ أَثْمَانِهَا وَيَتْرُكُونَ الْأَرْخَصَ وَالْأَقَلَّ ثَمَنًا وَهُوَ أَفْضَلُ، وَهَذِهِ إضَاعَةُ الْمَالِ الَّتِي حَرَّمَهَا اللَّهُ تَعَالَى، وَإِنَّمَا التَّضْحِيَةُ بِالْغَنَمِ ضَأْنِهَا وَمَاعِزِهَا رِفْقٌ بِالنَّاسِ لِقِلَّةِ أَثْمَانِهَا وَتَفَاهَةِ أَمْرِهَا وَتَخْفِيفٌ لَهُمْ بِذَلِكَ عَنْ الْأَفْضَلِ الَّذِي هُوَ أَشَقُّ فِي النَّفَقَةِ لِلَّهِ عَزَّ وَجَلَّ، وَهَذَا مِمَّا لَا شَكَّ فِيهِ.

L16360 Those who held that sheep are superior argued with a narration we transmitted through the chain of Hishām ibn Saʿd from Zayd ibn Aslam from ʿAṭāʾ ibn Yasār from Abū Hurayrah: "Gabriel said to the Prophet (peace and blessings of Allah be upon him) on the Day of Sacrifice: 'O Muḥammad, a six-month-old sheep is superior to a prime specimen among goats, a six-month-old sheep is superior to a prime specimen among cattle, and a six-month-old sheep is superior to a prime specimen among camels. Had Allah known a sacrificial offering greater than it, He would have ransomed Ibrāhīm (peace be upon him) with that sacrifice.'"

وَاحْتَجَّ مَنْ رَأَى أَنَّ الضَّأْنَ أَفْضَلُ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ هِشَامِ بْنِ سَعْدٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ جِبْرِيلَ قَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْأَضْحَى: يَا مُحَمَّدُ إنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ السَّيِّدِ مِنْ الْمَعْزِ، وَإِنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ السَّيِّدِ مِنْ الْبَقَرِ، وَإِنَّ الْجَذَعَ مِنْ الضَّأْنِ خَيْرٌ مِنْ السَّيِّدِ مِنْ الْإِبِلِ، وَلَوْ عَلِمَ اللَّهُ ذَبْحًا هُوَ أَفْضَلُ مِنْهُ لَفَدَى بِهِ إبْرَاهِيمَ - عَلَيْهِ السَّلَامُ -» .

L16361 And with a report we have narrated via Abd al-Razzaq from Ma'mar, from Yahya ibn Abi Kathir, from Muhammad ibn Abd al-Rahman ibn Thawban, who said: "Al-Nu'man ibn Abi Fatimah passed by the Messenger of Allah (peace and blessings be upon him) while carrying a horned, one-eyed ram. The Prophet (peace be upon him) said: 'How similar this ram is to the ram slaughtered by Ibrahim, peace be upon him!'"

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ قَالَ: «مَرَّ النُّعْمَانُ بْنُ أَبِي فَطِيمَةَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَبْشٍ أَقْرَنَ أَعْيَنَ فَقَالَ - عَلَيْهِ السَّلَامُ -: مَا أَشْبَهَ هَذَا الْكَبْشَ بِالْكَبْشِ الَّذِي ذَبَحَ إبْرَاهِيمُ - عَلَيْهِ السَّلَامُ -» .

L16362 A similar narration was narrated through the chain of Ziyād ibn Maymūn from Anas ibn Mālik.

وَرُوِيَ نَحْوُهُ مِنْ طَرِيقِ زِيَادِ بْنِ مَيْمُونٍ عَنْ أَنَسٍ.

L16363 And with a narration that was narrated to us through the route of Waki', from Hisham ibn Sa'd, from Hatim ibn Abi Nasr, from 'Ubadah ibn Nusayy,

that the Prophet (peace be upon him) said: “The best sacrificial animal is the ram.”

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ سَعْدٍ عَنْ حَاتِمِ بْنِ أَبِي نَصْرٍ عَنْ عُبَادَةَ بْنِ نُسَيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «خَيْرُ الْأُضْحِيَّةِ الْكَبْشُ» .

L16364 Abū Muḥammad said: These are fabricated narrations:

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَخْبَارٌ مَكْذُوبَةٌ -:

L16365–16367 As for the report of Abū Hurayrah and ʿUbādah ibn Nusayyin, it is transmitted through Hishām ibn Saʿd - who is very weak. Aḥmad very severely weakened him, discarded him, spoke very ill of him, and did not... Yahya ibn Saʿid permits narrating from him through it; Ziyad ibn Maymun is noted for lying.

أَمَّا خَبَرُ أَبِي هُرَيْرَةَ، وَعُبَادَةَ بْنِ نُسَيٍّ فَعَنْ هِشَامِ بْنِ سَعْدٍ وَهُوَ ضَعِيفٌ جِدًّا، ضَعَّفَهُ جِدًّا وَاطَّرَحَهُ أَحْمَدُ، وَأَسَاءَ الْقَوْلَ فِيهِ جِدًّا وَلَمْ يُجِزْ الرِّوَايَةَ بِهِ عَنْهُ يَحْيَى بْنُ سَعِيدٍ - وَزِيَادُ بْنُ مَيْمُونٍ مَذْكُورٌ بِالْكَذِبِ.

L16368 The report of ʿAbd al-Razzāq from Muḥammad ibn ʿAbd al-Raḥmān ibn Thawbān—who is weak—and the narration is also *mursal* (a report with a broken chain). Furthermore, the narration attributed to Abū Hurayrah contains an obvious falsehood in his statement: “Indeed, Allah ransomed Ibrāhīm with him,” for He undoubtedly did not ransom Ibrāhīm; rather, He ransomed his son.

وَخَبَرُ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ وَهُوَ ضَعِيفٌ وَمُرْسَلٌ مَعَ ذَلِكَ - وَأَيْضًا فَفِي الْخَبَرِ الْمَنْسُوبِ إلَى أَبِي هُرَيْرَةَ كَذِبٌ ظَاهِرٌ وَهُوَ قَوْلُهُ: إنَّهُ فَدَى اللَّهُ بِهِ إبْرَاهِيمَ وَلَمْ يَفْدِ إبْرَاهِيمَ بِلَا شَكٍّ وَإِنَّمَا فَدَى ابْنَهُ.

L16369 As for the argument that he redeemed the sacrifice with a ram, it is invalid. That has never been substantiated. It has been said it was a mountain goat. Even if we assume it were valid, it does not indicate the superiority of all rams over other animals, nor was Abraham’s command—peace be upon him—an udhiyah. Thus, udhiyah sacrifices find no basis in it. Allah the Exalted said: “Indeed, Allah commands you to slaughter a cow” [Al-Baqarah: 67] until His statement: “So We said, ‘Strike him with part of it.’ This is how Allah revives the dead and shows you His signs” [Al-Baqarah: 73]. By this clear and manifest verse, cows ought to be superior to sheep—not by the false conjecture regarding the ram of the sacrifice.[8]

وَأَمَّا الِاحْتِجَاجُ بِأَنَّهُ فَدَى الذَّبِيحَ بِكَبْشٍ فَبَاطِلٌ، مَا صَحَّ ذَلِكَ قَطُّ، وَقَدْ قِيلَ: إنَّهُ كَانَ أُرْوِيَّةً، وَهَبْكَ لَوْ صَحَّ فَلَيْسَ فِيهِ فَضْلُ سَائِرِ الْكِبَاشِ عَلَى سَائِرِ الْحَيَوَانِ، وَلَا كَانَ أَمْرُ إبْرَاهِيمَ - عَلَيْهِ السَّلَامُ - أُضْحِيَّةً فَلَا مَدْخَلَ لِلْأَضَاحِيِّ فِيهِ، وَقَدْ قَالَ تَعَالَى: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً} [البقرة: ٦٧] إلَى قَوْله تَعَالَى: {فَقُلْنَا اضْرِبُوهُ بِبَعْضِهَا كَذَلِكَ يُحْيِي اللَّهُ الْمَوْتَى وَيُرِيكُمْ آيَاتِهِ} [البقرة: ٧٣] فَيَنْبَغِي عَلَى هَذَا أَنْ يَكُونَ الْبَقَرُ أَفْضَلَ مِنْ الضَّأْنِ بِهَذِهِ الْآيَةِ الْبَيِّنَةِ الْوَاضِحَةِ لَا بِالظَّنِّ الْكَاذِبِ فِي كَبْشِ الذَّبِيحِ.

L16370 Allah the Exalted has said: *“The she-camel of Allah and her watering”* [Ash-Shams 91:13] regarding the she-camel of Salih. Thus, camels should be considered superior to sheep based on this clear and manifest verse - not

وَقَدْ قَالَ اللَّهُ تَعَالَى: {نَاقَةَ اللَّهِ وَسُقْيَاهَا} [الشمس: ١٣] فِي نَاقَةِ صَالِحٍ فَيَنْبَغِي أَنْ تَكُونَ الْإِبِلُ أَفْضَلَ مِنْ الضَّأْنِ بِهَذِهِ الْآيَةِ الْبَيِّنَةِ الْوَاضِحَةِ لَا بِالظَّنِّ الْكَاذِبِ فِي كَبْشِ إبْرَاهِيمَ - عَلَيْهِ السَّلَامُ -.

[8] **Qur’an references (L16369):** Qur’an 2:67 (Al-Baqarah); Qur’an 2:73 (Al-Baqarah).

through the false conjecture concerning the ram of Abraham (peace be upon him).[9]

L16371 Some of them obscured by citing the narration concerning prayer in sheep resting places and the prohibition of prayer in camel resting areas, saying: "Because they are jinn created from jinn?" We responded: Let this be evidence for you of the superiority of sheep over them regarding sacrificial offerings for Hajj—yet you yourselves do not accept this.

L16372 If they mention that the Messenger of Allah—peace and blessings be upon him—sacrificed two rams?, we say: Yes, and it is authentically established that ʿĀ'ishah said: "The Messenger of Allah—peace and blessings be upon him—would refrain from an act he loves to perform, fearing that people might act upon it, and it would then be made obligatory upon them."

L16373–16375 Moreover, he offered sheep adorned with garlands as we mentioned in the Book of Hajj, yet this was not considered by you as evidence that sheep are superior to cows for Hajj sacrifices. How then did you derive this conclusion regarding the udhiyah? Furthermore, the Prophet (peace be upon him) sacrificed cows—it has been narrated to us through Al-Bukhari's chain from Musaddad, who narrated from Sufyan Al-Thawri, from Abdur-Rahman ibn Al-Qasim ibn Muhammad, from his father, from Aisha, the Mother of the Believers, who said in a hadith, "When we were in Mina, I was brought some cow meat..." There was much, so I asked: "What is this?" They replied: "The Messenger of Allah (peace and blessings of Allah be upon him) sacrificed cows on behalf of his wives." This occurred during the Farewell Pilgrimage—his final act (peace be upon him)—and he never sacrificed again afterward.

L16376 It was conveyed to us through the chain of transmission reported by Muslim: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Jaʿfar (known as Ghundar) narrated to us, Shuʿbah narrated to us from Zubayd al-Yāmī from al-Shaʿbī from al-Barāʾ ibn ʿĀzib, who said: The Messenger of Allah

[9] **Qur'an references (L16370):** Qur'an 91:13 (Ash-Shams).

وَمَوَّهَ بَعْضُهُمْ بِذِكْرِ الْأَثَرِ الَّذِي فِيهِ الصَّلَاةُ فِي مَبَارِكِ الْغَنَمِ وَالنَّهْيُ عَنْ الصَّلَاةِ فِي مَعَاطِنِ الْإِبِلِ، لِأَنَّهُ جِنٌّ خُلِقَتْ مِنْ جِنٍّ؟ فَقُلْنَا: فَلْيَكُنْ هَذَا عِنْدَكُمْ دَلِيلًا فِي فَضْلِ الْغَنَمِ عَلَيْهَا فِي الْهَدْيِ، وَأَنْتُمْ لَا تَقُولُونَ بِهَذَا.

فَإِنْ ذَكَرُوا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَحَّى بِكَبْشَيْنِ؟ قُلْنَا: نَعَمْ، وَقَدْ صَحَّ أَنَّ عَائِشَةَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَتْرُكُ الْعَمَلَ وَهُوَ يُحِبُّ أَنْ يَعْمَلَ بِهِ مَخَافَةَ أَنْ يَعْمَلَ بِهِ النَّاسُ فَيُكْتَبَ عَلَيْهِمْ» .

وَأَيْضًا: فَقَدْ أَهْدَى غَنَمًا مُقَلَّدَةً كَمَا ذَكَرْنَا فِي كِتَابِ الْحَجِّ فَلَمْ يَكُنْ ذَلِكَ عِنْدَكُمْ دَلِيلًا عَلَى أَنَّ الْغَنَمَ أَفْضَلُ فِي الْهَدْيِ مِنْ الْبَقَرِ، فَمِنْ أَيْنَ وَقَعَ لَكُمْ هَذَا الِاسْتِدْلَالُ فِي الْأَضَاحِيِّ؟ - وَأَيْضًا: «فَقَدْ ضَحَّى - عَلَيْهِ السَّلَامُ - بِالْبَقَرِ» : رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُسَدَّدٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ فِي حَدِيثٍ «لَمَّا كُنَّا بِمِنًى أُتِيتُ بِلَحْمِ بَقَرٍ كَثِيرٍ فَقُلْتُ: مَا هَذَا؟ قَالُوا: ضَحَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ نِسَائِهِ بِالْبَقَرِ» وَهَذَا فِي حَجَّةِ الْوَدَاعِ وَهُوَ آخِرُ عَمَلِهِ - عَلَيْهِ السَّلَامُ - وَلَمْ يُضَحِّ بَعْدَهَا.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ الْمُثَنَّى نَا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نَا شُعْبَةُ عَنْ زُبَيْدٍ الْيَامِيِّ عَنْ الشَّعْبِيِّ عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَوَّلُ مَا نَبْدَأُ بِهِ فِي يَوْمِنَا هَذَا أَنْ نُصَلِّيَ ثُمَّ نَرْجِعَ فَنَنْحَرَ» .

(peace be upon him) stated, “The first act we undertake on this day is to pray, then return to our homes to perform the sacrifice.”[10]

L16377 Via the chain of Al-Bukhārī: Yaḥyā ibn Bukayr narrated to us, from Al-Layth ibn Saʿd, from Kathīr ibn Farqad, from Nāfiʿ, that Ibn ʿUmar reported to him, saying: “The Messenger of Allah (peace and blessings of Allah be upon him) used to slaughter livestock and sacrifice camels at the Eid prayer ground.”[11]

L16378 As for slaughtering by nahr, according to Mālik—who differs with us on this issue—it is entirely impermissible for sheep. His position restricts it to camels and permits it for cows only as disliked. Yet it is authentically established that the Prophet (peace be upon him) sacrificed camels and cows. This necessitates either abandoning Mālik’s opinion (thereby permitting nahr for sheep) or rejecting his view entirely—one of these two conclusions is unavoidable. It is invalid to cite an action the Prophet (peace be upon him) performed—whether that action was permissible or otherwise—while disregarding the explicit textual hierarchy in his statement (peace be upon him): camels taking precedence, followed by cows, then sheep.

L16379 It has been narrated to us from Muslim ibn Yasar that he would sacrifice male camels from the camels.

L16380 Saʿīd ibn al-Musayyib would sometimes offer a camel, sometimes a cow, sometimes a sheep, and sometimes he would not perform the *udḥiyah* at all.

L16381 As for Mālik’s statement regarding the superiority of goats over cows and camels, and the superiority of cows over camels: we know of no basis connected to it, nor anyone who stated it before him—and guidance is from Allah, the Most High.

L16382–16383 Issue: The time for slaughtering (dhabḥ) the Udhiyah or performing its nahr (ritual slaughter).

L16384 Issue: The time for slaughtering the sacrificial animal (udḥiyah) by dhabḥ

[10] **Hadith references (L16376):** Sahih al-Bukhari 5545; Mishkat al-Masabih 1435.

[11] **Hadith references (L16377):** Mishkat al-Masabih 1438.

وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ يَحْيَى بْنِ بُكَيْرٍ نَا اللَّيْثُ بْنُ سَعْدٍ عَنْ كَثِيرِ بْنِ فَرْقَدٍ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ أَخْبَرَهُ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَذْبَحُ وَيَنْحَرُ بِالْمُصَلَّى» .

وَالنَّحْرُ عِنْدَ مَالِكٍ - وَهُوَ الَّذِي يُخَالِفُنَا فِي هَذِهِ الْمَسْأَلَةِ - لَا يَجُوزُ أَلْبَتَّةَ فِي الْغَنَمِ وَإِنَّمَا هُوَ عِنْدَهُ فِي الْإِبِلِ وَعَلَى تَكَرُّهٍ فِي الْبَقَرِ - وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يُضَحِّي بِالْإِبِلِ وَالْبَقَرِ، أَوْ يَتْرُكُ قَوْلَهُ فَيُجِيزُ النَّحْرَ فِي الْغَنَمِ وَلَا بُدَّ مِنْ أَحَدِهِمَا، وَلَا يَجُوزُ أَنْ يُحْتَجَّ بِفِعْلٍ فَعَلَهُ - عَلَيْهِ السَّلَامُ - مُبَاحُ ذَلِكَ الْفِعْلِ أَوْ غَيْرُهُ بِإِقْرَارِ الْمُحْتَجِّ عَلَى نَصِّ قَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي تَفْضِيلِ الْإِبِلِ، ثُمَّ الْبَقَرِ، ثُمَّ الضَّأْنِ.

رُوِّينَا عَنْ مُسْلِمِ بْنِ يَسَارٍ أَنَّهُ كَانَ يُضَحِّي بِجُزُورٍ مِنْ الْإِبِلِ.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ كَانَ يُضَحِّي مَرَّةً بِنَاقَةٍ، وَمَرَّةً بِبَقَرَةٍ، وَمَرَّةً بِشَاةٍ، وَمَرَّةً لَا يُضَحِّي.

فَأَمَّا قَوْلُ مَالِكٍ فِي فَضْلِ الْمَاعِزِ عَلَى الْبَقَرِ، وَالْإِبِلِ، وَفَضْلِ الْبَقَرِ عَلَى الْإِبِلِ: فَلَا نَعْلَمُ لَهُ مُتَعَلَّقًا أَصْلًا وَلَا أَحَدًا قَالَ بِهِ قَبْلَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ وَقْتُ ذَبْحِ الْأُضْحِيَّةِ أَوْ نَحْرِهَا]

مَسْأَلَةٌ: وَوَقْتُ ذَبْحِ الْأُضْحِيَّةِ أَوْ نَحْرِهَا هُوَ أَنْ يُمْهِلَ حَتَّى تَطْلُعَ الشَّمْسُ مِنْ يَوْمِ النَّحْرِ، ثُمَّ تَبْيَضَّ وَتَرْتَفِعَ، وَيُمْهِلَ حَتَّى يَمْضِيَ مِقْدَارُ مَا يُصَلِّي رَكْعَتَيْنِ يَقْرَأُ فِي الْأُولَى بَعْدَ ثَمَانِ

or nahr begins after waiting until the sun has risen on the Day of Sacrifice, brightened, and ascended. Then one waits for a duration equivalent to performing two rakʿahs: in the first rakʿah, after eight takbīrs, one recites the Opening Chapter (Sūrat al-Fātiḥah) and Sūrat Qāf, and in the second rakʿah, after six takbīrs, one recites the Opening Chapter and Sūrat al-Qamar, with slow, deliberate recitation (tartīl). One must properly complete the bowing and prostration in both rakʿahs, sit and recite the Tashahhud, and conclude with the salutation.

تَكْبِيرَاتٍ " أُمَّ الْقُرْآنِ " وَسُورَةَ " ق " وَفِي الثَّانِيَةِ بَعْدَ سِتِّ تَكْبِيرَاتٍ " أُمَّ الْقُرْآنِ " وَسُورَةَ: " اقْتَرَبَتْ السَّاعَةُ وَانْشَقَّ الْقَمَرُ " بِتَرْتِيلٍ وَيُتِمُّ فِيهِمَا الرُّكُوعَ وَالسُّجُودَ، وَيَجْلِسُ، وَيَتَشَهَّدُ، وَيُسَلِّمُ.

L16385 Then he slaughters his uḍḥiyyah (sacrificial animal) by dhabh or nahr—Bedouins, urban dwellers, villagers, desert inhabitants, and city residents are all equal in this matter. Whoever slaughters or sacrifices before the aforementioned time must necessarily perform the uḍḥiyyah after the designated time begins. There is no basis for considering the Imam's prayer timing or his sacrificial act.

ثُمَّ يَذْبَحُ أُضْحِيَّتَهُ أَوْ يَنْحَرُهَا - الْبَادِي، وَالْحَاضِرُ، وَأَهْلُ الْقُرَى، وَالصَّحَارِي، وَالْمُدُنِ سَوَاءٌ فِي كُلِّ ذَلِكَ، فَمَنْ ذَبَحَ، أَوْ نَحَرَ قَبْلَ مَا ذَكَرْنَا فَفَرْضٌ عَلَيْهِ أَنْ يُضَحِّيَ وَلَا بُدَّ بَعْدَ دُخُولِ الْوَقْتِ الْمَذْكُورِ، وَلَا مَعْنَى لِمُرَاعَاةِ صَلَاةِ الْإِمَامِ، وَلَا لِمُرَاعَاةِ تَضْحِيَتِهِ.

L16386 The proof of this is what we mentioned at the beginning of the preceding chapter from his saying (peace be upon him): "The first thing we begin with on this day is that we pray, then we return and slaughter."

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَا فِي أَوَّلِ الْبَابِ الَّذِي قَبْلَ هَذَا مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «أَوَّلُ مَا نَبْدَأُ بِهِ فِي يَوْمِنَا هَذَا أَنْ نُصَلِّيَ، ثُمَّ نَرْجِعَ فَنَنْحَرَ» .

L16387 From the narration of Shuʿbah from Salamah ibn Kuhayl, from Abu Juḥayfah, from Al-Bara' ibn 'Azib, who said: "Abu Burdah slaughtered before the prayer, so the Prophet, peace and blessings of Allah be upon him, said to him: 'Replace it.'"

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ سَلَمَةَ هُوَ ابْنُ كُهَيْلٍ - عَنْ أَبِي جُحَيْفَةَ عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: «ذَبَحَ أَبُو بُرْدَةَ قَبْلَ الصَّلَاةِ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَبْدِلْهَا» .

L16388 From the narration of Hammad ibn Zayd, via Ayyub, on the authority of Muhammad ibn Sirin, who reported from Anas ibn Malik: "The Messenger of Allah—peace and blessings be upon him—performed the Eid prayer, then delivered a sermon and ordered whoever had slaughtered their sacrificial animal before the prayer to repeat the ritual sacrifice."[12]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ نَا أَيُّوبُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى، ثُمَّ خَطَبَ فَأَمَرَ مَنْ كَانَ ذَبَحَ قَبْلَ الصَّلَاةِ أَنْ يُعِيدَ ذَبْحًا» .

L16389 From the narration of Waki', who informed us: Sufyan al-Thawri narrated from al-Aswad ibn Qays, who said: I heard Jundub saying: "On the Day of Sacrifice, the Messenger of Allah (peace be upon him) passed by people who had sacrificed or slaughtered. He said: 'Whoever sacrificed **or** slaugh-

وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ الْأَسْوَدِ بْنِ قَيْسٍ قَالَ: سَمِعْت جُنْدُبًا يَقُولُ: «مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ النَّحْرِ عَلَى قَوْمٍ قَدْ نَحَرُوا وَذَبَحُوا فَقَالَ: مَنْ نَحَرَ وَذَبَحَ قَبْلَ صَلَاتِنَا فَلْيُعِدْ، وَمَنْ لَمْ يَذْبَحْ أَوْ يَنْحَرْ فَلْيَذْبَحْ وَلْيَنْحَرْ بِاسْمِ اللَّهِ» .

[12] **Hadith references (L16388):** Sahih Muslim 1962b.

tered before our prayer, let him repeat it. Whoever has not slaughtered **or** sacrificed, let him slaughter **or** sacrifice in the name of Allah.'"

وَمِنْ طَرِيقِ مُسْلِمٍ نَا مُحَمَّدُ بْنُ حَاتِمٍ نَا مُحَمَّدُ بْنُ بَكْرٍ نَا ابْنُ جُرَيْجٍ أَنَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ كَانَ نَحَرَ قَبْلَهُ أَنْ يُعِيدَ بِنَحْرٍ آخَرَ وَلَا يَنْحَرُوا حَتَّى يَنْحَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L16390 Through the transmission of Muslim: Muhammad ibn Hatim narrated to us, Muhammad ibn Bakr narrated to us, Ibn Jurayj narrated to us, from Abu al-Zubayr, who heard Jabir ibn Abdullah say: "The Messenger of Allah (peace and blessings be upon him) commanded whoever performed ritual slaughter before him to repeat it with another sacrifice, and he forbade them from ritually slaughtering until the Prophet (peace and blessings be upon him) had slaughtered."

فَالْوَقْتُ الَّذِي حَدَّدْنَا هُوَ وَقْتُ صَلَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، إلَّا أَنَّ الشَّافِعِيَّ لَمْ يُجِزْ التَّضْحِيَةَ قَبْلَ تَمَامِ الْخُطْبَةِ - وَلَا مَعْنَى لِهَذَا لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَحُدَّ وَقْتَ الْأُضْحِيَّةِ بِذَلِكَ.

L16391–16392 The time we have specified corresponds to the time of the Prophet's Eid prayer—may Allah bless him and grant him peace—and this is the opinion of Al-Shāfiʿī and Abū Sulaymān, except that Al-Shāfiʿī did not permit performing Udhiyah before the completion of the khutbah. However, this has no basis, for the Prophet—may Allah bless him and grant him peace—did not designate the time of Udhiyah based on that.

وَقَالَ سُفْيَانُ: إنْ ضَحَّى قَبْلَ الْخُطْبَةِ أَجْزَأَهُ.

L16393 And Sufyan said: If he performs the Udhiyah before the sermon, it sufficed for him.

وَقَالَ أَبُو حَنِيفَةَ: أَمَّا أَهْلُ الْمُدُنِ وَالْأَمْصَارِ فَمَنْ ضَحَّى مِنْهُمْ قَبْلَ تَمَامِ صَلَاةِ الْإِمَامِ فَعَلَيْهِ أَنْ يُعِيدَ وَلَمْ يُضَحِّ، وَأَمَّا أَهْلُ الْقُرَى وَالْبَوَادِي فَإِنْ ضَحَّوْا بَعْدَ طُلُوعِ الْفَجْرِ مِنْ يَوْمِ الْأَضْحَى أَجْزَأَهُمْ.

L16394 Abu Hanifah said: As for the people of cities and towns, if any of them sacrifices before the completion of the Imam's prayer, he must repeat it and his sacrifice is invalid. As for the people of villages and rural areas, if they sacrifice after the dawn of the Day of Sacrifice begins, it suffices for them.

وَقَالَ مَالِكٌ: مَنْ ضَحَّى قَبْلَ أَنْ يُضَحِّيَ الْإِمَامُ فَلَمْ يُضَحِّ؛ ثُمَّ اخْتَلَفَ أَصْحَابُهُ فَطَائِفَةٌ قَالَتْ: الْإِمَامُ هُوَ أَمِيرُ الْمُؤْمِنِينَ، وَطَائِفَةٌ قَالَتْ: بَلْ هُوَ أَمِيرُ الْبَلْدَةِ، وَطَائِفَةٌ قَالَتْ: بَلْ هُوَ الَّذِي يُصَلِّي بِالنَّاسِ صَلَاةَ الْعِيدِ.

L16395 Malik said: "Whoever sacrifices before the Imam does so, his sacrifice is not valid." Then his companions disagreed. Some said: "The Imam is the Commander of the Faithful"; others said: "Rather, he is the governor of the city"; while others said: "Rather, he is the one who leads the people in Eid prayer."

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَخِلَافٌ مُجَرَّدٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أَوْرَدْنَا بِلَا بُرْهَانٍ.

L16396 Abu Muhammad said: As for the statement of Abu Hanifah, it constitutes a sheer difference of opinion with the Messenger of Allah (peace and blessings be upon him) as we have cited it without evidence.

L16397 As for Mālik's opinion, it has no basis in proof whatsoever and contradicts

the ḥadīth, since the Prophet (may Allah's blessings and peace be upon him) never commanded consideration of another's udḥiyah.

وَأَمَّا قَوْلُ مَالِكٍ فَلَا حُجَّةَ لَهُ أَصْلًا، وَخِلَافٌ لِلْخَبَرِ أَيْضًا إذْ لَمْ يَأْمُرْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ بِمُرَاعَاةِ تَضْحِيَةِ غَيْرِهِ.

L16398 We say to both groups: Have you considered—if the Imam neglects the Eid al-Adha prayer and fails to sacrifice—would the Decree of Allah the Exalted concerning sacrifices for people thereby be nullified? Far be it from Allah! Rather, the truth is: If the Imam prays at the time during which Allah's Messenger—peace and blessings be upon him—prayed, he has done well and is one of the Muslims during the time he performs his sacrifice. If he neglects this, he has erred, but this does not impair his integrity, for he has not abandoned an obligation, nor does it invalidate anything regarding the rulings of the people concerning their sacrifices.

وَنَقُولُ لِلطَّائِفَتَيْنِ مَعًا: أَرَأَيْتُمْ إنْ ضَيَّعَ الْإِمَامُ صَلَاةَ الْأَضْحَى وَلَمْ يُضَحِّ أَتَبْطُلُ سُنَّةُ اللَّهِ تَعَالَى فِي الْأَضَاحِيِّ عَلَى النَّاسِ؟ حَاشَا لِلَّهِ مِنْ هَذَا، بَلْ هُوَ الْحَقُّ أَنَّ الْإِمَامَ إنْ صَلَّى فِي الْوَقْتِ الَّذِي كَانَ يُصَلِّي فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ أَحْسَنَ وَهُوَ أَحَدُ الْمُسْلِمِينَ فِي وَقْتِ تَضْحِيَتِهِ، وَإِنْ أَغْفَلَ ذَلِكَ فَقَدْ أَخْطَأَ وَلَيْسَ ذَلِكَ بِكَادِحٍ فِي عَدَالَتِهِ، لِأَنَّهُ لَمْ يُعَطِّلْ فَرْضًا، وَلَيْسَ ذَلِكَ بِمُحِيلٍ شَيْئًا مِنْ حُكْمِ النَّاسِ فِي أَضَاحِيهِمْ.

L16399 We also say to the Malikis: What do you think—if the Imam sacrifices before the time of the Eid al-Adha prayer, would this constitute a valid precedent for the people's sacrifices? If they say yes, they have committed a grave error. If they say no, they speak truthfully and thereby abandon their position regarding adherence to the Imam's sacrifice. And with Allah, the Exalted, is success.

وَنَقُولُ لِلْمَالِكِيِّينَ أَيْضًا: أَرَأَيْتُمْ إنْ ضَحَّى الْإِمَامُ قَبْلَ وَقْتِ صَلَاةِ الْأَضْحَى أَيَكُونُ ذَلِكَ عَلَمًا لِأَضَاحِيِّ النَّاسِ؟ فَإِنْ قَالُوا: نَعَمْ، أَتَوْا بِعَظِيمَةٍ وَإِنْ قَالُوا: لَا، صَدَقُوا، وَتَرَكُوا قَوْلَهُمْ فِي مُرَاعَاةِ تَضْحِيَةِ الْإِمَامِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16400–16402 It has been narrated to us from ʿAṭā a statement akin to Abū Ḥanīfah's regarding the distinction between rural dwellers and urban dwellers. As for Ibrahim, we do not know Mālik's opinion regarding the requirement for the Imam to ensure his sacrifice applies on behalf of someone prior [to him]—and with Allah, the Exalted, lies all divine guidance.

وَقَدْ رُوِّينَا مِثْلَ قَوْلِ أَبِي حَنِيفَةَ فِي الْفَرْقِ بَيْنَ أَهْلِ الْقُرَى وَأَهْلِ الْمُدُنِ عَنْ عَطَاءٍ، وَإِبْرَاهِيمَ، وَمَا نَعْرِفُ قَوْلَ مَالِكٍ فِي مُرَاعَاةِ تَضْحِيَةِ الْإِمَامِ عَنْ أَحَدٍ قَبْلَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16403 A legal issue: The sacrificial animal for the pilgrim and the traveler.

[مَسْأَلَةٌ الْأُضْحِيَّةُ لِلْحَاجِّ وَلِلْمُسَافِرِ]

L16404 Issue 979: The Uḍḥiyah is recommended for pilgrims in Mecca and travelers just as it is for residents - there is no distinction. Similarly for a slave and a woman, due to Allah the Exalted's statement: {And do good} [22:77], for the Uḍḥiyah constitutes an act of goodness.[13]

٩٧٩ - مَسْأَلَةٌ: وَالْأُضْحِيَّةُ مُسْتَحَبَّةٌ لِلْحَاجِّ بِمَكَّةَ وَلِلْمُسَافِرِ كَمَا هِيَ لِلْمُقِيمِ وَلَا فَرْقَ، وَكَذَلِكَ الْعَبْدُ وَالْمَرْأَةُ لِقَوْلِ اللَّهِ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] وَالْأُضْحِيَّةُ فِعْلُ خَيْرٍ.

[13] **Qur'an references (L16404):** Qur'an 22:77 (Al-Hajj).

وَكُلُّ مَنْ ذَكَرْنَا مُحْتَاجٌ إِلَى فِعْلِ الْخَيْرِ مَنْدُوبٌ إِلَيْهِ، وَلَمَّا ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي التَّضْحِيَةِ وَالتَّقْرِيبِ وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - بَادِيًا مِنْ حَاضِرٍ، وَلَا مُسَافِرًا مِنْ مُقِيمٍ، وَلَا ذَكَرًا مِنْ أُنْثَى، وَلَا حُرًّا مِنْ عَبْدٍ، وَلَا حَاجًّا مِنْ غَيْرِهِ، فَتَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ بَاطِلٌ لَا يَجُوزُ، وَقَدْ ذَكَرْنَا قَبْلُ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَحَّى بِالْبَقَرِ عَنْ نِسَائِهِ بِمَكَّةَ وَهُنَّ حَوَاجُّ مَعَهُ» .

L16405 Everyone we have mentioned is required to perform good deeds, which are recommended. Since we have cited the saying of the Messenger of Allah (peace and blessings be upon him) regarding sacrificial offerings and drawing near to Allah, he (peace and blessings be upon him) did not distinguish between a Bedouin and a settled person, a traveler and a resident, a male and a female, a free person and a slave, or a pilgrim and a non-pilgrim. Therefore, specifying any of these distinctions is invalid and impermissible. We previously mentioned that "the Prophet (peace and blessings be upon him) sacrificed cattle on behalf of his wives in Mecca while they were female Hajj pilgrims with him."

وَرُوِّينَا مِنْ طَرِيقِ النَّخَعِيِّ أَنَّ عُمَرَ كَانَ يَحُجُّ فَلَا يُضَحِّي - وَهَذَا مُرْسَلٌ.

L16406 And it has been reported to us through the narration chain of Al-Nakhaʿī that ʿUmar would perform the pilgrimage but not offer the Udḥiyah sacrifice (and this is a *mursal* report).

وَمِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيٍّ لَيْسَ عَلَى الْمُسَافِرِ أُضْحِيَّةٌ -. وَالْحَارِثُ كَذَّابٌ.

L16407 And through the narration of Al-Harith from Ali: "There is no Udḥiyah (sacrificial offering) obligatory on the traveler" - and Al-Harith is a fabricator.

وَعَنْ أَصْحَابِ ابْنِ مَسْعُودٍ أَنَّهُمْ كَانُوا لَا يُضَحُّونَ فِي الْحَجِّ - وَلَيْسَ فِي شَيْءٍ مِنْ هَذَا كُلِّهِ مَنْعٌ لِلْحَاجِّ وَلَا لِلْمُسَافِرِ مِنْ التَّضْحِيَةِ وَإِنَّمَا فِيهِ تَرْكُهَا فَقَطْ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L16408 And from the companions of Ibn Masʿud: they would not offer sacrifices during Hajj. None of these rulings, in any way, prohibits pilgrims or travelers from sacrificing; it is merely abstaining from it. No valid argument can be derived from anyone other than the Messenger of Allah—peace and blessings be upon him.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي الْجَهْمِ نَا أَحْمَدُ بْنُ فَرَجٍ نَا الْهَرَوِيُّ نَا ابْنُ فُضَيْلٍ عَنْ عَطَاءٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ سَافَرَ مَعِي تَمِيمُ بْنُ سَلَمَةَ فَلَمَّا ذَبَحْنَا أُضْحِيَّتَهُ أَخَذَ مِنْهَا بَضْعَةً فَقَالَ: آكُلُهَا؟

L16409 It was narrated to us through the chain of Abū al-Jahm: Aḥmad ibn Faraj reported to us, al-Harawī reported to us, Ibn Fuḍayl reported to us from ʿAṭāʾ from Ibrāhīm al-Nakhaʿī: Tamīm ibn Salamah traveled with me, and when we sacrificed his sacrificial animal (Uḍḥiyah), he took a portion of it and said, "May I eat this?"

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ قَالَ: كَانَ عُمَرُ يَحُجُّ وَلَا يُضَحِّي وَكَانَ أَصْحَابُنَا يَحُجُّونَ مَعَهُمْ الْوَرِقُ وَالذَّهَبُ فَلَا يُضَحُّونَ مَا يَمْنَعُهُمْ مِنْ ذَلِكَ إلَّا لِيَتَفَرَّغُوا لِنُسُكِهِمْ.

Through the chain of Saʿīd ibn Manṣūr: Abū ʿAwānah reported to us from Manṣūr from Ibrāhīm, who said, "'Umar would perform Ḥajj without offering a sacrifice. Our companions would perform Ḥajj while carrying silver coins and gold, yet they abstained from sacrificing. The only thing that kept them from doing so was their desire to fully dedicate themselves to their pilgrimage rites (nusuk)."

L16410 From the path of Saʿīd ibn Manṣūr: Mahdī ibn Maymūn narrated to us from

Wāṣil al-Aḥdab from Ibrāhīm, who said: I performed Ḥajj and my provisions were depleted. My companions said, “Shall we lend you so you may offer a sacrifice?” I replied, “No.” This demonstrates that they did not prevent him from it, and it is impermissible to forbid a good deed except through explicit textual evidence from the Messenger of Allah (may Allah bless him and grant him peace) clarifying that it is not a virtuous act.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا مَهْدِيُّ بْنُ مَيْمُونٍ عَنْ وَاصِلٍ الْأَحْدَبِ عَنْ إبْرَاهِيمَ قَالَ: حَجَجْت فَهَلَكَتْ نَفَقَتِي فَقَالَ أَصْحَابِي: أَلَا نُقْرِضُك فَتُضَحِّيَ؟ فَقُلْت: لَا - فَهَذَا بَيَانُ أَنَّهُمْ لَمْ يَمْنَعُوا مِنْهَا وَالنَّهْيُ عَنْ فِعْلِ الْخَيْرِ لَا يَجُوزُ إلَّا بِنَصٍّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُبَيِّنُ أَنَّهُ لَيْسَ خَيْرًا.

Issue: If someone intends to sacrifice an animal...

[مَسْأَلَةٌ نَوَى أَنْ يُضَحِّيَ بِحَيَوَانٍ]

L16411–16412

L16413 Issue: One who intends to sacrifice an animal from the categories we have mentioned is not necessarily obligated to do so. Rather, he may refrain unless he vows to offer it, in which case fulfilling the vow becomes incumbent upon him.

مَسْأَلَةٌ: وَلَا يَلْزَمُ مَنْ نَوَى أَنْ يُضَحِّيَ بِحَيَوَانٍ مِمَّا ذَكَرْنَا أَنْ يُضَحِّيَ بِهِ وَلَا بُدَّ، بَلْ لَهُ أَنْ لَا يُضَحِّيَ بِهِ إنْ شَاءَ إلَّا أَنْ يَنْذُرَ ذَلِكَ فِيهِ فَيَلْزَمُهُ الْوَفَاءُ بِهِ.

L16414 The proof of this is that the Eid sacrifice, as we have previously mentioned, is not obligatory. Since it is not obligatory, one is not required to perform it unless textual evidence obligates it. There is no textual evidence except regarding one who sacrificed before the designated time of sacrifice—requiring repetition—and regarding one who has vowed to fulfill the vow.

بُرْهَانُ ذَلِكَ -: أَنَّ الْأُضْحِيَّةَ كَمَا قَدَّمْنَا لَيْسَتْ فَرْضًا فَإِذْ لَيْسَتْ فَرْضًا فَلَا يَلْزَمُهُ التَّضْحِيَةُ إلَّا أَنْ يُوجِبَهَا نَصٌّ وَلَا نَصَّ إلَّا فِيمَنْ ضَحَّى قَبْلَ وَقْتِ التَّضْحِيَةِ فِي أَنْ يُعِيدَ، وَفِيمَنْ نَذَرَ أَنْ يَفِيَ بِالنَّذْرِ.

L16415 It has been reported to us through the chain of Mujāhid that there is no harm in a man selling his sacrificial animal to someone from among those who would sacrifice it and purchasing a better one. Regarding one who bought a sacrificial animal then changed his mind, ʿAṭāʾ said: “There is no harm in him selling it.” It has been reported to us from ʿAlī, al-Shaʿbī, al-Ḥasan, and ʿAṭāʾ that they disliked that. ʿAlī said: “We do not know of any evidence for those who disliked that.”

وَرُوِّينَا مِنْ طَرِيقِ مُجَاهِدٍ لَا بَأْسَ بِأَنْ يَبِيعَ الرَّجُلُ أُضْحِيَّتَهُ مِمَّنْ يُضَحِّي بِهَا وَيَشْتَرِي خَيْرًا مِنْهَا - وَعَنْ عَطَاءٍ فِيمَنْ اشْتَرَى أُضْحِيَّةً، ثُمَّ بَدَا لَهُ؟ قَالَ: لَا بَأْسَ بِأَنْ يَبِيعَهَا - وَرُوِّينَا عَنْ عَلِيٍّ، وَالشَّعْبِيِّ، وَالْحَسَنِ، وَعَطَاءٍ، كَرَاهَةَ ذَلِكَ. قَالَ عَلِيٌّ: مَا نَعْلَمُ لِمَنْ كَرِهَ ذَلِكَ حُجَّةً.

Ruling: The Udhiyah does not become a valid Udhiyah unless it is slaughtered with the intention to perform the sacrifice.

[مَسْأَلَةٌ لَا تَكُونُ الْأُضْحِيَّةُ أُضْحِيَّةً إلَّا بِذَبْحِهَا بِنِيَّةِ التَّضْحِيَةِ]

L16416

L16417 981 - Issue: An animal does not become a valid Uḍḥiyyah except through slaughtering or sacrificing with the intention of Uḍḥiyyah. The intention must not precede this act at all. As long as he has not slaughtered or sacrificed

٩٨١ - مَسْأَلَةٌ: وَلَا تَكُونُ الْأُضْحِيَّةُ أُضْحِيَّةً إلَّا بِذَبْحِهَا، أَوْ نَحْرِهَا بِنِيَّةِ التَّضْحِيَةِ لَا قَبْلَ ذَلِكَ أَصْلًا وَلَهُ مَا لَمْ يَذْبَحْهَا، أَوْ يَنْحَرْهَا كَذَلِكَ أَنْ لَا يُضَحِّيَ بِهَا وَأَنْ يَبِيعَهَا وَأَنْ يَجُزَّ

it in this manner, he retains full rights: he may abstain from offering it as Uḍḥiyyah, sell it, shear its wool for any purpose, consume or sell its milk. If it gives birth, he may sell its offspring, keep it, or slaughter it. If the animal is lost and he purchases another, then finds the original one, he is not obligated to slaughter either. If he offers Uḍḥiyyah with both, with one of them, or with another animal besides them, he has acted commendably. If he abstains entirely from sacrificing, there is no blame upon him. If he purchased an animal with a disqualifying defect for Uḍḥiyyah—such as being one-eyed, emaciated, lame, or ill—and the defect later disappears, he may validly offer it as Uḍḥiyyah. However, if he owned it while sound and it then acquired a disqualifying defect before the slaughter is fully completed—even during the slaughtering process—it becomes invalid.

صُوفَهَا وَيَفْعَلَ فِيهِ مَا شَاءَ وَيَأْكُلَ لَبَنَهَا وَيَبِيعَهُ، وَإِنْ وَلَدَتْ فَلَهُ أَنْ يَبِيعَ وَلَدَهَا أَوْ يُمْسِكَهُ أَوْ يَذْبَحَهُ، فَإِنْ ضَلَّتْ فَاشْتَرَى غَيْرَهَا، ثُمَّ وَجَدَ الَّتِي ضَلَّتْ لَمْ يَلْزَمْهُ ذَبْحُهَا وَلَا ذَبْحُ وَاحِدَةٍ مِنْهُمَا، فَإِنْ ضَحَّى بِهِمَا، أَوْ بِأَحَدِهِمَا، أَوْ بِغَيْرِهِمَا فَقَدْ أَحْسَنَ، وَإِنْ لَمْ يُضَحِّ أَصْلًا فَلَا حَرَجَ، وَإِنْ اشْتَرَاهَا وَبِهَا عَيْبٌ لَا تُجْزِي بِهِ فِي الْأَضَاحِيِّ كَعَوَرٍ، أَوْ عَجَفٍ: أَوْ عَرَجٍ، أَوْ مَرَضٍ، ثُمَّ ذَهَبَ الْعَيْبُ وَصَحَّتْ جَازَ لَهُ أَنْ يُضَحِّيَ بِهَا، وَلَوْ أَنَّهُ مَلَكَهَا سَلِيمَةً مِنْ كُلِّ ذَلِكَ، ثُمَّ أَصَابَهَا عَيْبٌ لَا تُجْزِي بِهِ فِي الْأُضْحِيَّةِ قَبْلَ تَمَامِ ذَكَاتِهَا، وَلَوْ فِي حَالِ التَّذْكِيَةِ لَمْ تُجْزِهِ.

L16418–16420 The proof of this is what we have mentioned: that it is not an obligation. Since this is the case, it does not become a sacrificial animal unless one sacrifices it, and one does not sacrifice it unless its slaughter is completed with the intention of sacrifice. Thus, as long as it is not sacrificed, it remains property from his wealth, which he may use as he wishes, like the rest of his possessions. Whoever contradicts this and permits sacrificing an animal that develops a defect while in his possession has openly opposed the prohibition of the Messenger of Allah—peace and blessings be upon him—and it becomes incumbent upon him, if he purchases a defective sacrificial animal and considers it valid despite the defect, that sacrificing it does not suffice. Yet they do not say this. It has been narrated to us from Ali ibn Abi Talib through the chain of Abu Ishaq from Hubayrah ibn Yarim, who said: He stated… Ali: If you purchased a sacrificial animal in sound condition, but a physical defect or lameness occurred while in your custody, and it has reached the designated time for sacrifice, then sacrifice it.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ مِنْ أَنَّهَا لَيْسَتْ فَرْضًا فَإِذْ هِيَ كَذَلِكَ فَلَا تَكُونُ أُضْحِيَّةً إِلَّا حَتَّى يُضَحِّيَ بِهَا وَلَا يُضَحِّي بِهَا إِلَّا حَتَّى تَتِمَّ ذَكَاتُهَا بِنِيَّةِ التَّضْحِيَةِ فَهِيَ مَا لَمْ يُضَحِّ بِهَا مَالٌ مِنْ مَالِهِ يَفْعَلُ فِيهِ مَا أَحَبَّ كَسَائِرِ مَالِهِ وَمَنْ خَالَفَ هَذَا فَأَجَازَ أَنْ يُضَحِّيَ بِالَّتِي يُصِيبُهَا عِنْدَهُ الْعَيْبُ فَقَدْ خَالَفَ نَهْيَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَهَارًا وَلَزِمَهُ إِنْ اشْتَرَى أُضْحِيَّةً مَعِيبَةً فَصَحَّتْ عِنْدَهُ أَنْ لَا تُجْزِئَهُ أَنْ يُضَحِّيَ بِهَا، وَهُمْ لَا يَقُولُونَ هَذَا -: رُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِنْ طَرِيقِ أَبِي إِسْحَاقَ عَنْ هُبَيْرَةَ بْنِ يَرِيمَ قَالَ: قَالَ عَلِيٌّ: إِذَا اشْتَرَيْت الْأُضْحِيَّةَ سَلِيمَةً فَأَصَابَهَا عِنْدَك عَوَارٌ، أَوْ عَرَجٌ فَبَلَغَتْ الْمَنْسَكَ فَضَحِّ بِهَا.

L16421 From the narration of Al-Ḥārith through ʿAlī - he was asked about a man who purchased a sound sacrificial animal that later developed a one-eyed defect in his care. He replied: “He should sacrifice it.” This is the opinion of Ḥammād ibn Abī Sulaymān - We have narrated it from him through the chain of Shuʿbah. This is also the view of Al-Ḥasan and Ibrāhīm. We have narrated it through Ibn ʿAbbās regarding one who bought a sacrificial animal that strayed

وَمِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيٍّ أَنَّهُ سُئِلَ عَنْ رَجُلٍ اشْتَرَى أُضْحِيَّةً سَلِيمَةً - فَاعْوَرَّتْ عِنْدَهُ؟ قَالَ: يُضَحِّي بِهَا - وَهُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ -: رُوِّينَاهُ عَنْهُ مِنْ طَرِيقِ شُعْبَةَ، وَهُوَ قَوْلُ الْحَسَنِ، وَإِبْرَاهِيمَ -: وَرُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ فِيمَنْ اشْتَرَى

- he stated: “It causes no harm to you.” From Al-Ḥasan and Al-Ḥakam ibn ʿUtaybah concerning a man whose sacrificial animal strayed, whereupon he purchased another and subsequently found the first: “He should slaughter both of them.” Ḥammād said: “He should slaughter the first sacrificial animal.”

أُضْحِيَّةً فَضَلَّتْ؟ قَالَ: لَا يَضُرُّكَ؟ وَعَنْ الْحَسَنِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ ضَلَّتْ أُضْحِيَّتُهُ فَاشْتَرَى أُخْرَى فَوَجَدَ الْأُولَى أَنَّهُ يَذْبَحُهُمَا جَمِيعًا، قَالَ حَمَّادٌ: يَذْبَحُ الْأُولَى.

L16422 Abu Hanifah said: If one purchases an animal in sound condition and it becomes emaciated under his care to the point of being unable to regain health, it suffices for him to sacrifice it. But if it becomes one-eyed while in his possession, it does not suffice. However, if during slaughter the knife accidentally strikes its eye or its leg breaks, it suffices. These are corrupt and contradictory rulings, and we know of no such classifications from anyone preceding him.

وَقَالَ أَبُو حَنِيفَةَ: إنْ اشْتَرَاهَا صَحِيحَةً، ثُمَّ عَجِفَتْ عِنْدَهُ حَتَّى لَا تُنْقِي أَجْزَأَتْهُ أَنْ يُضَحِّيَ بِهَا، فَلَوْ اعْوَرَّتْ عِنْدَهُ لَمْ تُجْزِهِ، فَلَوْ أَنَّهُ إذْ ذَبَحَهَا أَصَابَ السِّكِّينُ عَيْنَهَا، أَوْ انْكَسَرَ رِجْلُهَا أَجْزَأَتْهُ. - وَهَذِهِ أَقْوَالٌ فَاسِدَةٌ مُتَنَاقِضَةٌ وَلَا نَعْلَمُ هَذِهِ التَّقَاسِيمَ عَنْ أَحَدٍ قَبْلَهُ.

L16423 Abu Hanifa, Malik, and Al-Shafi’i said: Its wool is not permissible, nor does he drink its milk.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: لَا يَجُزُّ صُوفَهَا وَلَا يَشْرَبُ لَبَنَهَا.

L16424 Al-Shafi’i said: except the excess related to her child.

قَالَ الشَّافِعِيُّ: إلَّا مَا فَضَلَ عَنْ وَلَدِهَا.

L16425 It has been narrated from ‘Aṭā’ concerning someone who purchased a sacrificial animal that he may shear its wool, and al-Ḥasan instructed that if he does so, he must give the wool in charity. Abū Ḥanīfah and al-Shāfiʿī said: If she gives birth, he must slaughter her offspring along with her. Mālik said: He is not obligated to do that.

وَرُوِّينَا عَنْ عَطَاءٍ فِيمَنْ اشْتَرَى أُضْحِيَّةً أَنَّ لَهُ أَنْ يَجُزَّ صُوفَهَا وَأَمَرَهُ الْحَسَنُ إنْ فَعَلَ أَنْ يَتَصَدَّقَ بِهِ، وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: إنْ وَلَدَتْ ذَبَحَ وَلَدَهَا مَعَهَا - وَقَالَ مَالِكٌ: لَيْسَ عَلَيْهِ ذَلِكَ.

L16426 It has been narrated to us from Ali that a man with a cow that had given birth asked him: “Did I buy it to sacrifice it?” Ali replied: “Do not milk it except for the surplus beyond its calf’s needs. When the day of Eid al-Adha arrives, slaughter it and its calf as a sacrifice on behalf of seven people.”

رُوِّينَا عَنْ عَلِيٍّ أَنَّهُ سَأَلَهُ رَجُلٌ مَعَهُ بَقَرَةٌ قَدْ وَلَدَتْ فَقَالَ: كُنْت اشْتَرَيْتهَا لِأُضَحِّيَ بِهَا؟ فَقَالَ لَهُ عَلِيٌّ: لَا تَحْلِبْهَا إلَّا فَضْلًا عَنْ وَلَدِهَا فَإِذَا كَانَ يَوْمُ الْأَضْحَى فَاذْبَحْهَا وَوَلَدَهَا عَنْ سَبْعَةٍ.

L16427 ## Issue: The Taḍḥiyah (Sacrifice) During Night and Day

[مَسْأَلَةُ التَّضْحِيَةُ لَيْلًا وَنَهَارًا]

L16428 982 - Issue: Sacrifice is permissible from the time we mentioned on the Day of Slaughter until the crescent of Muharram is sighted, and sacrifice is permissible both night and day.

٩٨٢ - مَسْأَلَةٌ: وَالتَّضْحِيَةُ جَائِزَةٌ مِنْ الْوَقْتِ الَّذِي ذَكَرْنَا يَوْمَ النَّحْرِ إلَّا أَنْ يُهِلَّ هِلَالُ الْمُحَرَّمِ، وَالتَّضْحِيَةُ لَيْلًا وَنَهَارًا جَائِزٌ.

L16429 People have differed regarding this. It was narrated to us through the chain of Ibn Abī Shaybah, from Abū Usāmah, from Hishām (ibn Hassān), from Muḥammad ibn Sirīn, who said: "The time for ritual slaughter is a single day, lasting until sunset."

وَاخْتَلَفَ النَّاسُ فِي هَذَا فَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو أُسَامَةَ عَنْ هِشَامٍ هُوَ ابْنُ حَسَّانَ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: النَّحْرُ يَوْمٌ وَاحِدٌ إِلَى أَنْ تَغِيبَ الشَّمْسُ.

L16430–16431 It is reported from Ḥumayd ibn ʿAbd al-Raḥmān that he did not consider slaughter valid except on the Day of Sacrifice, and this is the opinion of Abū Sulaymān.

وَعَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّهُ كَانَ لَا يَرَى الذَّبْحَ إِلَّا يَوْمَ النَّحْرِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

L16432 Another opinion: We narrated it through the route of Wakiʿ from Muḥammad ibn ʿAbd al-ʿAzīz from Jābir ibn Zayd, who said: The sacrifice [period] in cities is one day, and in Mina it is three days.

وَقَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الْعَزِيزِ عَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: النَّحْرُ فِي الْأَمْصَارِ يَوْمٌ، وَبِمِنًى ثَلَاثَةُ أَيَّامٍ.

L16433 A third opinion is that the time for sacrifice spans the Day of Sacrifice and the two subsequent days. We have been narrated through the chain of Ibn Abī Laylā from al-Minhāl ibn ʿAmr from Zirr from ʿAlī, who said: "The sacrificial period is three days, the best of them being the first day."

وَقَوْلٌ ثَالِثٌ: أَنَّ التَّضْحِيَةَ يَوْمَ النَّحْرِ وَيَوْمَانِ بَعْدَهُ - رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى عَنْ الْمِنْهَالِ بْنِ عَمْرٍو عَنْ زِرٍّ عَنْ عَلِيٍّ قَالَ: النَّحْرُ ثَلَاثَةُ أَيَّامٍ أَفْضَلُهَا أَوَّلُهَا.

L16434 Via the chain of Ibn Abī Shaybah: He reported to us, Jarīr narrated from Manṣūr from Mujāhid from Mālik ibn Māʿiz al-Thaqafī (or Māʿiz ibn Mālik al-Thaqafī) - that Mālik/Māʿiz's father heard ʿUmar say: "The sacrifice is only during these three days."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ مَالِكِ بْنِ مَاعِزٍ، أَوْ مَاعِزِ بْنِ مَالِكٍ الثَّقَفِيِّ: أَنَّ أَبَاهُ سَمِعَ عُمَرَ يَقُولُ: إنَّمَا النَّحْرُ فِي هَذِهِ الثَّلَاثَةِ الْأَيَّامِ.

L16435 From the chain of Ibn Abi Shaybah: He informed us [that] Hushaym narrated from Abu Hamzah, from Harb ibn Nājiyah, from Ibn Abbas, who said, "The Days of Sacrifice are three days."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا هُشَيْمٌ عَنْ أَبِي حَمْزَةَ عَنْ حَرْبِ بْنِ نَاجِيَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَيَّامُ النَّحْرِ ثَلَاثَةُ أَيَّامٍ.

L16436 Via the chain of Wakiʿ from Ibn Abī Laylā, from al-Minhāl, from Saʿīd ibn Jubayr, from Ibn ʿAbbās: The sacrificial slaughtering is three days.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْمِنْهَالِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ النَّحْرُ ثَلَاثَةُ أَيَّامٍ.

L16437 Reported through the chain of Ibn Abi Shaybah from Isma'il ibn 'Ayyash, from 'Ubayd Allah ibn 'Umar, from Nafi', from Ibn 'Umar, who said: "Al-Adha is the Day of Sacrifice (Yawm al-Nahr) and two days following it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: الْأَضْحَى يَوْمُ النَّحْرِ وَيَوْمَانِ بَعْدَهُ.

L16438 And through the chain of Waki' from 'Abdullāh ibn Nāfi' from his father

from Ibn ʻUmar, who said: Whatever I slaughtered on the Day of Sacrifice, the second day, and the third day—they are sacrificial animals.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ نَافِعٍ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ قَالَ: مَا ذَبَحْت يَوْمَ النَّحْرِ، وَالثَّانِيَ، وَالثَّالِثَ فَهِيَ الضَّحَايَا.

L16439 And via the transmission of Ibn Abi Shaybah: Zayd ibn al-Hubab reported to us from Mu'awiyah ibn Salih. Abu Maryam narrated to me, saying: "I heard Abu Hurayrah state: Al-Adha lasts for three days."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا زَيْدُ بْنُ الْحُبَابِ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ حَدَّثَنِي أَبُو مَرْيَمَ سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: الْأَضْحَى ثَلَاثَةُ أَيَّامٍ.

L16440 It was narrated through Waki', from Shu'bah, from Qatādah, from Anas, who said: The Sacrificial Feast (al-Adha) is the Day of Sacrifice and the two Days of Tashreeq following it.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: الْأَضْحَى يَوْمُ النَّحْرِ وَيَوْمَانِ بَعْدَهُ.

L16441 And with this, Abu Hanifah and Malik hold the view—and none of this is reliably established except through Anas alone, because it is reported from Umar via a chain containing an unknown narrator from his father (the narrator's father), who is also unknown.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ - وَلَا يَصِحُّ شَيْءٌ مِنْ هَذَا كُلِّهِ إلَّا عَنْ أَنَسٍ وَحْدَهُ لِأَنَّهُ عَنْ عُمَرَ مِنْ طَرِيقٍ مَجْهُولٍ عَنْ أَبِيهِ - مَجْهُولٌ أَيْضًا.

L16442–16444 And from ʿAlī through the transmission of Ibn Abī Laylā (who was poor in memory) and al-Minhāl (a criticized narrator). In it; and from Ibn Abbas via the narration of Ibn Abi Layla (poor in retention) and Abu Hamzah (weak).

وَعَنْ عَلِيٍّ مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ - عَنْ الْمِنْهَالِ - وَهُوَ مُتَكَلَّمٌ فِيهِ؛ وَعَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ - وَأَبِي حَمْزَةَ - وَهُوَ ضَعِيفٌ.

L16445 And from the chain of Ibn ʿUmar, narrated by Ismāʿīl ibn ʿAyyāsh and ʿAbdullāh ibn Nāfiʿ; both of whom are weak.

وَمِنْ طَرِيقِ ابْنِ عُمَرَ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ وَعَبْدِ اللَّهِ بْنِ نَافِعٍ، وَكِلَاهُمَا ضَعِيفٌ.

L16446 And from the chain of Abū Hurayrah, from Muʿāwiyah ibn Ṣāliḥ (who is weak), from Abū Maryam (who is unknown).

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ - وَلَيْسَ بِالْقَوِيِّ - عَنْ أَبِي مَرْيَمَ - وَهُوَ مَجْهُولٌ.

L16447 The fourth opinion is that the sacrificial period comprises the Day of Sacrifice and the three days following it. It has been narrated to us through the chain of Muḥammad ibn al-Muthannā, who narrated to us from ʻUbayd Allāh ibn Mūsā, who narrated to us from Ibn Abī Laylā, from al-Ḥakam ibn ʻUtaybah, from Miqsam, from Ibn ʻAbbās, who said: "The appointed days are the Day of Sacrifice and the three days after it." This is how it is recorded in

وَقَوْلٌ رَابِعٌ وَهُوَ أَنَّ التَّضْحِيَةَ يَوْمُ النَّحْرِ وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ -: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نَا عُبَيْدُ اللَّهِ بْنُ مُوسَى نَا ابْنُ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْأَيَّامُ الْمَعْلُومَاتُ: يَوْمُ النَّحْرِ، وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ -: هَكَذَا فِي كِتَابِي وَلَا أَدْرِي لَعَلَّهُ وَهْمٌ، وَاَللَّهُ أَعْلَمُ.

my book, though I do not know – perhaps it is an error. And Allāh knows best.

L16448 And through the chain of Ibn Abi Shaybah: Abu Usamah narrated to us from Hisham from ʻAta' who said, "The slaughtering spans four days, lasting until the end of the Days of *Tashriq*."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو أُسَامَةَ عَنْ هِشَامٍ عَنْ عَطَاءٍ قَالَ: النَّحْرُ أَرْبَعَةُ أَيَّامٍ إِلَى آخِرِ أَيَّامِ التَّشْرِيقِ.

L16449 From the chain of Wakiʻ: Hammām ibn Yaḥyā reported to us, "I heard ʿAṭāʾ say: The sacrificial slaughter is four days, lasting until the end of the days of Tashrīq."

وَمِنْ طَرِيقِ وَكِيعٍ نَا هَمَّامُ بْنُ يَحْيَى سَمِعْت عَطَاءً يَقُولُ: النَّحْرُ أَرْبَعَةُ أَيَّامٍ إلَى آخِرِ أَيَّامِ التَّشْرِيقِ.

L16450 From Wakiʻ, from Hammām ibn Yaḥyā, who said: "I heard ʻAṭāʾ say: The time for slaughtering [the sacrificial animal] lasts as long as the tents remain pitched in Mina."

وَمِنْ وَكِيعٍ نَا هَمَّامُ بْنُ يَحْيَى سَمِعْت عَطَاءً يَقُولُ: النَّحْرُ مَا دَامَتْ الْفَسَاطِيطُ بِمِنًى.

L16451 Through the chain of Wakīʻ from Shuʻbah from Qatādah from al-Ḥasan, who said: The time for the sacrificial rite is the Day of Sacrifice and the three days following it.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: النَّحْرُ يَوْمُ النَّحْرِ وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ.

L16452 From the chain of Ibn Wahb → Yunus ibn Yazid → al-Zuhri regarding one who forgot to perform the Udhiyah on the Day of Sacrifice: He said: "There is no harm in performing it during the Days of Tashrīq."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ فِيمَنْ نَسِيَ أَنْ يُضَحِّيَ يَوْمَ النَّحْرِ؟ قَالَ: لَا بَأْسَ أَنْ يُضَحِّيَ أَيَّامَ التَّشْرِيقِ.

L16453 And via the chain of Ibn Abī Shaybah from Ismāʻīl ibn ʿAyyāsh from ʿUmar ibn Muhājir from ʿUmar ibn ʿAbd al-ʿAzīz, who said: "The days of sacrifice (al-Aḍḥā) are four days: the Day of Sacrifice and three days following it." This is the opinion of al-Shāfiʻī.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عُمَرَ بْنِ مُهَاجِرٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: الْأَضْحَى أَرْبَعَةُ أَيَّامٍ يَوْمُ النَّحْرِ وَثَلَاثَةُ أَيَّامٍ بَعْدَهُ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

L16454 A fifth opinion: As we have narrated through the chain of Ibn Abi Shaybah – narrated by Abu Dawud al-Tayalisi, from Harb ibn Shaddad, from Yahya ibn Abi Kathir, from Muhammad ibn Ibrahim, who is al-Taymi, from Abu Salamah ibn Abd al-Rahman ibn Awf and Sulayman ibn Yasar – both jointly stated: The Udhiyah (sacrificial rite) lasts until the sighting of Muharram's crescent moon for those who intentionally extend it for a valid reason.

وَقَوْلٌ خَامِسٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو دَاوُد الطَّيَالِسِيُّ عَنْ حَرْبِ بْنِ شَدَّادٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ هُوَ التَّيْمِيُّ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ، قَالَا جَمِيعًا: الْأَضْحَى إلَى هِلَالِ الْمُحَرَّمِ لِمَنْ اسْتَأْنَى بِذَلِكَ.

L16455–16456 Abu Muhammad said: As for those who claim that sacrificial slaughter is confined to the Day of Sacrifice alone, arguing: "It is unanimously agreed

upon, while other days are disputed," [we ask]: Can divine law be established through disagreements lacking textual evidence? Ali said: They have spoken truthfully, and the textual evidence supports our position, in accordance with what we will present hereafter, God Almighty willing.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ قَالَ النَّحْرُ يَوْمُ الْأَضْحَى وَحْدَهُ فَقَالَ: إنَّهُ مُجْمَعٌ عَلَيْهِ وَمَا عَدَاهُ فَمُخْتَلَفٌ فِيهِ، فَلَا تُوجَدُ شَرِيعَةٌ بِاخْتِلَافٍ لَا نَصَّ فِيهِ؟ قَالَ عَلِيٌّ: صَدَقُوا، وَالنَّصُّ يُجِيزُ قَوْلَنَا عَلَى مَا نَأْتِي بِهِ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L16457 As for those who adhere to the opinion of Abū Ḥanīfa and Mālik, they argued that this position was narrated from ʿUmar, ʿAlī, Ibn ʿUmar, Ibn ʿAbbās, Abū Hurayra, and Anas, and no opponent to them is known among the Companions—may Allah be pleased with them—and such a position is not attributed to mere opinion.

وَأَمَّا مَنْ قَالَ بِقَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، فَإِنَّهُمْ احْتَجُّوا بِأَنَّهُ قَوْلٌ رُوِيَ عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَأَبِي هُرَيْرَةَ، وَأَنَسٍ، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، وَمِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ.

L16458 Ali said: We have mentioned major legal cases in which they opposed a group of the Companions—may Allah be pleased with them—where no opponent from among them is known. How then can this stand, when nothing we have mentioned is authenticated except through Anas alone, as we clarified before? If this were deemed consensus, then indeed ʻAṭāʼ, ʻUmar ibn ʻAbd al-ʻAzīz, al-Ḥasan, al-Zuhrī, Abū Salamah ibn ʻAbd al-Raḥmān, and Sulaymān ibn Yasār contradicted the consensus. Shame on any consensus from which such as these depart!

قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا قَضَايَا عَظِيمَةً خَالَفُوا فِيهَا جَمَاعَةً مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، فَكَيْفَ وَلَا يَصِحُّ شَيْءٌ مِمَّا ذَكَرْنَا إلَّا عَنْ أَنَسٍ وَحْدَهُ عَلَى مَا بَيَّنَّا قَبْلُ وَإِنْ كَانَ هَذَا إجْمَاعًا فَقَدْ خَالَفَ عَطَاءٌ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَالْحَسَنُ، وَالزُّهْرِيُّ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَسُلَيْمَانُ بْنُ يَسَارٍ -: الْإِجْمَاعَ، وَأُفٍّ لِكُلِّ إجْمَاعٍ يَخْرُجُ عَنْهُ هَؤُلَاءِ.

L16459 We have received narrations from Ibn Abbas indicating its contradiction to this opinion, and we do not know of any basis for those who say, "Four days are also valid evidence," except that the days of Mina are three days: the Day of Sacrifice alone. This is not valid evidence.

وَقَدْ رُوِّينَا عَنْ ابْنِ عَبَّاسٍ مَا يَدُلُّ عَلَى خِلَافِهِ لِهَذَا الْقَوْلِ وَلَا نَعْلَمُ لِمَنْ قَالَ: أَرْبَعَةُ أَيَّامٍ حُجَّةً أَيْضًا، إلَّا أَنَّ أَيَّامَ مِنًى ثَلَاثَةُ أَيَّامٍ يَوْمُ النَّحْرِ فَقَطْ وَلَيْسَ هَذَا حُجَّةً.

L16460 Abu Muhammad said: The ritual sacrifice is an act of virtue and a means of drawing near to Allah, the Exalted. Acts of virtue are good at all times, as Allah, the Exalted, said: "And the camels and cattle We have appointed for you as among the symbols of Allah; for you therein is good" [Al-Hajj: 36]. He, the Exalted, specified no particular time over another, nor did His Messenger—peace be upon him—specify any time. Thus, it is impermissible to restrict its timing without a textual basis. Drawing near to Allah, the Exalted, through sacrifice is good unless prohibited by a text or consensus,

قَالَ أَبُو مُحَمَّدٍ: الْأُضْحِيَّةُ فِعْلُ خَيْرٍ وَقُرْبَةٌ إلَى اللَّهِ تَعَالَى: وَفِعْلُ الْخَيْرِ حَسَنٌ فِي كُلِّ وَقْتٍ، قَالَ اللَّهُ تَعَالَى: {وَالْبُدْنَ جَعَلْنَاهَا لَكُمْ مِنْ شَعَائِرِ اللَّهِ لَكُمْ فِيهَا خَيْرٌ} [الحج: ٣٦] فَلَمْ يَخُصَّ تَعَالَى وَقْتًا مِنْ وَقْتٍ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، فَلَا يَجُوزُ تَخْصِيصُ وَقْتٍ بِغَيْرِ نَصٍّ، فَالتَّقْرِيبُ إلَى اللَّهِ تَعَالَى بِالتَّضْحِيَةِ حَسَنٌ مَا لَمْ يَمْنَعْ مِنْهُ نَصٌّ أَوْ إجْمَاعٌ، وَلَا نَصَّ فِي ذَلِكَ وَلَا إجْمَاعَ إلَى آخِرِ ذِي الْحُجَّةِ.

and there exists neither text nor consensus prohibiting it, even up to the end of Dhu al-Hijjah.[14]

وَقَدْ رُوِّينَا خَبَرًا يَلْزَمُهُمْ الْأَخْذُ بِهِ - وَأَمَّا نَحْنُ فَلَا نَحْتَجُّ بِهِ وَيُعِيذُنَا اللَّهُ تَعَالَى مِنْ أَنْ نَحْتَجَّ بِمُرْسَلٍ، وَهُوَ مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نَا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نَا أَحْمَدُ بْنُ الْهَيْثَمِ نَا مُسْلِمٌ نَا يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ، قَالَا جَمِيعًا " بَلَغَنَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَضْحَى إلَى هِلَالِ الْمُحَرَّمِ لِمَنْ أَرَادَ أَنْ يَسْتَأْنِيَ بِذَلِكَ» وَهَذَا مِنْ أَحْسَنِ الْمَرَاسِيلِ وَأَصَحِّهَا فَيَلْزَمُ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ الْقَوْلُ بِهِ وَإِلَّا فَقَدْ تَنَاقَضُوا.

L16461–16463 We have been transmitted a report that requires them to act upon it - but as for us, we do not rely on it as evidence, and may Allah the Exalted safeguard us from relying on a *mursal* hadith. This is what Ahmad ibn Umar ibn Anas narrated to us, who narrated to us from Abdullah ibn al-Husayn ibn Iqal, who narrated to us from Ibrahim ibn Muhammad al-Dinawari, who narrated to us from Muhammad ibn Ahmad ibn al-Jahm, who narrated to us from Ahmad ibn al-Haytham, who narrated to us from Muslim, who narrated to us from Yahya - who is Ibn Abi Kathir - from Muhammad ibn Ibrahim al-Taymi, from Abu Salamah ibn Abd al-Rahman ibn Awf and Sulayman ibn Yasar, both of whom said: "It has reached us that the Messenger of Allah - may Allah's blessings and peace be upon him - said:" "The Udhiyah sacrifice may be performed until the sighting of Muharram's crescent moon for whoever wishes to extend the period thereby. This is among the finest and most authentic mursal reports. Hence, it becomes obligatory for the Ḥanafīs and Mālikīs to adhere to this opinion; otherwise, they would be contradicting themselves."

قَالَ عَلِيٌّ: وَأَجَازَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: أَنْ يُضَحَّى بِاللَّيْلِ - وَهُوَ قَوْلُ عَطَاءٍ.

L16464 Ali ibn Abi Talib said: Abū Ḥanīfah and al-Shāfiʿī permitted that the sacrifice be offered at night—this is the opinion of ʿAṭāʾ.

وَقَالَ مَالِكٌ: لَا يَجُوزُ أَنْ يُضَحَّى لَيْلًا - وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا إلَّا أَنَّهُمْ قَالَ قَائِلُهُمْ: قَالَ اللَّهُ تَعَالَى: {وَيَذْكُرُوا اسْمَ اللَّهِ فِي أَيَّامٍ مَعْلُومَاتٍ عَلَى مَا رَزَقَهُمْ مِنْ بَهِيمَةِ الْأَنْعَامِ} [الحج: ٢٨] قَالُوا: فَلَمْ يَذْكُرْ اللَّيْلَ.

L16465 Mālik said: It is not permissible to sacrifice at night. We do not know of any definitive proof for this opinion except that a speaker among them stated: Allah the Exalted said: {And let them mention the name of Allah on appointed days over what He has provided them of beasts of cattle} [Al-Ḥajj: 28]. They said, "So He did not mention the night."[15]

قَالَ عَلِيٌّ: وَهَذَا مِنْهُمْ إيهَامٌ يُمَقِّتُ اللَّهُ تَعَالَى عَلَيْهِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَذْكُرْ فِي هَذِهِ الْآيَةِ ذَبْحًا، وَلَا تَضْحِيَةً، وَلَا نَحْرًا لَا فِي نَهَارٍ، وَلَا فِي لَيْلٍ، وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِذِكْرِهِ فِي تِلْكَ الْأَيَّامِ الْمَعْلُومَاتِ أَفَتَرَى يَحْرُمُ ذِكْرُهُ فِي لَيَالِيهِنَّ؟ إنَّ هَذَا لَعَجَبٌ وَمَعَاذَ اللَّهِ مِنْ

L16466 Ali said: This is from them an ambiguity that Allah the Exalted abhors, for He mentioned no slaughtering, sacrificing, or ritual slaughter (of camels) in this verse—neither by day nor by night. Rather, Allah the Exalted commanded His remembrance during those appointed days. Would you then deem His remembrance forbidden during their nights? This is truly aston-

[14] **Qur'an references (L16460):** Qur'an 22:36 (Al-Hajj).
[15] **Qur'an references (L16465):** Qur'an 22:28 (Al-Hajj).

ishing, and Allah protect us from such a claim! This text does not prevent the remembrance of Him the Exalted nor praise of Him and gratitude for the livestock He has granted us—by night or day, throughout the entire year.

هَذَا، وَلَيْسَ هَذَا النَّصُّ بِمَانِعٍ مِنْ ذِكْرِهِ تَعَالَى وَحَمْدِهِ عَلَى مَا رَزَقَنَا مِنْ بَهِيمَةِ الْأَنْعَامِ فِي لَيْلٍ أَوْ نَهَارٍ فِي الْعَامِ كُلِّهِ.

L16467 This is among the distortions they committed by diverting words from their proper contexts. They do not differ regarding one who swears not to speak to Zayd for three days that the night enters into that along with the daytime.

وَهَذَا مِمَّا حَرَّفُوا فِيهِ الْكَلِمَ عَنْ مَوَاضِعِهِ، وَلَا يَخْتَلِفُونَ فِيمَنْ حَلَفَ أَنْ لَا يُكَلِّمَ زَيْدًا ثَلَاثَةَ أَيَّامٍ أَنَّ اللَّيْلَ يَدْخُلُ فِي ذَلِكَ مَعَ النَّهَارِ.

L16468 They mentioned a ḥadīth that is not authentic; we narrated it via the chain (ṭarīq) of Baqiyya ibn al-Walīd from Mubashshir ibn ʿUbayd al-Ḥalabī from Zayd ibn Aslam from ʿAṭāʾ ibn Yasār: "The Messenger of Allah—peace and blessings be upon him—prohibited ritual slaughter at night."

وَذَكَرُوا حَدِيثًا لَا يَصِحُّ رُوِّينَاهُ مِنْ طَرِيقِ بَقِيَّةَ بْنِ الْوَلِيدِ عَنْ مُبَشِّرِ بْنِ عُبَيْدٍ الْحَلَبِيِّ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الذَّبْحِ بِاللَّيْلِ» .

L16469 Abu Muhammad said: This is an everlasting disgrace, and Baqiyya is not strong. Mubashshar ibn ʻUbayd is mentioned for intentionally fabricating hadith. Moreover, the narration is mursal. Even if it were sound, they would have no valid argument in it, for they permit slaughtering at night—contradicting what it contains—while citing it as evidence for what it does not mention. This is extremely grave.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ فَضِيحَةُ الْأَبَدِ، وَبَقِيَّةُ لَيْسَ بِالْقَوِيِّ، وَمُبَشِّرُ بْنُ عُبَيْدٍ مَذْكُورٌ بِوَضْعِ الْحَدِيثِ عَمْدًا، ثُمَّ هُوَ مُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ لِأَنَّهُمْ يُجِيزُونَ الذَّبْحَ بِاللَّيْلِ فَيُخَالِفُونَهُ فِيمَا فِيهِ وَيَحْتَجُّونَ بِهِ فِيمَا لَيْسَ فِيهِ وَهَذَا عَظِيمٌ جِدًّا.

L16470 And a speaker among them said: Since sacrificing is not permissible during the Night of Nahr but is permissible during its day [Yawm al-Nahr], the nights of the rest of the days of sacrificing are likewise [not permissible].

وَقَالَ قَائِلٌ مِنْهُمْ: لَمَّا كَانَتْ لَيْلَةُ النَّحْرِ لَا يَجُوزُ التَّضْحِيَةُ فِيهَا وَكَانَ يَوْمُهُ تَجُوزُ التَّضْحِيَةُ فِيهِ كَانَتْ لَيَالِي سَائِرِ أَيَّامِ التَّضْحِيَةِ كَذَلِكَ.

L16471–16473 Ali said: "This is *qiyas*, and all *qiyas* is invalid. Even were it valid, this instance would represent the epitome of invalidity, for the Day of Sacrifice marks the commencement of entry into the ritual sacrifice timeframe - what precedes it is not a time for ritual sacrifice. They do not differ with us that from sunrise until some duration has elapsed after the sun's brightening and ascent on the Day of Sacrifice, there remains an extended period wherein sacrifice is impermissible. Thus they would be compelled to apply analogy from that day to subsequent..." As for the days of sacrifice, they do not permit ritual sacrifice during those days except after the same amount of time has passed. Otherwise they would have contradicted themselves, and the flaw in

قَالَ عَلِيٌّ: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ يَوْمَ النَّحْرِ هُوَ مَبْدَأُ دُخُولِ وَقْتِ التَّضْحِيَةِ وَمَا قَبْلَهُ لَيْسَ وَقْتًا لِلتَّضْحِيَةِ، وَلَا يَخْتَلِفُونَ مَعَنَا فِي أَنَّ مِنْ طُلُوعِ الشَّمْسِ إلَى أَنْ يَمْضِيَ بَعْدَ ابْيِضَاضِهَا وَارْتِفَاعِهَا وَقْتٌ وَاسِعٌ مِنْ يَوْمِ النَّحْرِ لَا تَجُوزُ فِيهِ التَّضْحِيَةُ فَيَلْزَمُهُمْ أَنْ يَقِيسُوا عَلَى ذَلِكَ الْيَوْمِ مَا بَعْدَهُ مِنْ أَيَّامِ التَّضْحِيَةِ فَلَا يُجِيزُوا التَّضْحِيَةَ فِيهَا إلَّا بَعْدَ مُضِيِّ مِثْلِ ذَلِكَ الْوَقْتِ

their argument would become evident. We know of no one among the Salaf before Mālik who prohibited ritual sacrifice at night.

L16474 **A juristic issue pertains to the person performing the Udhiyah slaughtering his sacrificial animal personally.**

L16475 983 - Issue: We recommend for the sacrificer - whether male or female - to slaughter their sacrificial animal or perform *nahr* with their own hand. If another Muslim or a Kitabi slaughters it or performs *nahr* on it on their behalf by their command, it suffices them, and there is no harm in that. We have been narrated through Muslim's chain: Yahya ibn Yahya narrated to us, from Waki' from Shu'bah from Qatadah from Anas, who said: "Allah's Messenger - peace and blessings be upon him - sacrificed two predominantly white horned rams. I saw him slaughter them with his own hand, placing his foot on the sides of their necks while pronouncing Allah's name and saying 'Allahu Akbar'." Muslim reported: Yahya ibn Habib narrated to us, from Khalid ibn al-Harith, from Shu'bah: I heard Qatadah narrate from Anas a similar account. Therefore, we recommend following the example of the Prophet - peace and blessings be upon him - in this matter, as Allah the Exalted said: {There has certainly been for you in the Messenger of Allah an excellent model} [Al-Ahzab: 21].[16]

L16476 And He, the Exalted, said: {The food of those who were given the Scripture is lawful for you} [Al-Mā'idah: 5]. What He, the Almighty and Majestic, certainly meant is what they slaughter according to rites, not what they consume, for they eat carrion, blood, swine, and what is prepared using wine or in which its influence is evident. Thus, since their slaughtered animals and pilgrimage sacrifices are lawful, there is no basis for distinguishing between the Eid sacrifice and others.[17]

L16477 This statement of ours is the view of Abū Ḥanīfah, al-Shāfi'ī, and Abū Sulaymān.

[16] **Qur'an references (L16475):** Qur'an 33:21 (Al-Ahzab).
[17] **Qur'an references (L16476):** Qur'an 5:5 (Al-Ma'idah).

وَإِلَّا فَقَدْ تَنَاقَضُوا وَظَهَرَ فَسَادُ قَوْلِهِمْ، وَمَا نَعْلَمُ أَحَدًا مِنَ السَّلَفِ قَبْلَ مَالِكٍ مَنَعَ مِنَ التَّضْحِيَةِ لَيْلًا.

[مَسْأَلَةٌ لِلْمُضَحِّي أَنْ يَذْبَحَ أُضْحِيَّتَهُ بِيَدِهِ]

٩٨٣ - مَسْأَلَةٌ: وَنَسْتَحِبُّ لِلْمُضَحِّي رَجُلًا كَانَ أَوْ امْرَأَةً أَنْ يَذْبَحَ أُضْحِيَّتَهُ أَوْ يَنْحَرَهَا بِيَدِهِ، فَإِنْ ذَبَحَهَا أَوْ نَحَرَهَا لَهُ بِأَمْرِهِ مُسْلِمٌ غَيْرُهُ أَوْ كِتَابِيٌّ أَجْزَأَهُ وَلَا حَرَجَ فِي ذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى نَا وَكِيعٌ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: «ضَحَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَبْشَيْنِ أَمْلَحَيْنِ أَقْرَنَيْنِ وَرَأَيْتُهُ يَذْبَحُهُمَا بِيَدِهِ وَاضِعًا قَدَمَهُ عَلَى صِفَاحِهِمَا وَسَمَّى اللَّهَ وَكَبَّرَ» قَالَ مُسْلِمٌ نَا يَحْيَى بْنُ حَبِيبٍ نَا خَالِدُ بْنُ الْحَارِثِ نَا شُعْبَةُ أَنَا قَتَادَةُ قَالَ: سَمِعْت أَنَسًا فَذَكَرَ مِثْلَ هَذَا الْحَدِيثِ، فَنَحْنُ نَسْتَحِبُّ الِاقْتِدَاءَ بِهِ - عَلَيْهِ السَّلَامُ - فِي هَذَا قَالَ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] .

وَقَالَ تَعَالَى: {وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ} [المائدة: ٥] وَإِنَّمَا عَنَى عَزَّ وَجَلَّ بِيَقِينٍ مَا يُذَكُّونَهُ لَا مَا يَأْكُلُونَهُ، لِأَنَّهُمْ يَأْكُلُونَ الْمَيْتَةَ، وَالدَّمَ، وَالْخِنْزِيرَ، وَمَا عُمِلَ بِالْخَمْرِ وَظَهَرَتْ فِيهِ؛ فَإِذْ ذَبَائِحُهُمْ وَنَحَائِرُهُمْ حَلَالٌ، فَالتَّفْرِيقُ بَيْنَ الْأُضْحِيَّةِ وَغَيْرِهَا لَا وَجْهَ لَهُ.

وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L16478 It was narrated to us via the chain of Ibn Abi Shaybah: from Jarīr, who narrated to us, from Manṣūr, who said: "I said to Ibrāhīm: 'If a boy has a Jewish wet nurse establishing kinship, may he slaughter his sacrificial animal?' He replied: 'Yes.'"

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا جَرِيرٌ عَنْ مَنْصُورٍ قُلْت لِإِبْرَاهِيمَ: صَبِيٌّ لَهُ ظِئْرٌ يَهُودِيَّةٌ أَيَذْبَحُ أُضْحِيَّتَهُ؟ قَالَ: نَعَمْ.

L16479 From the chain of Abd al-Razzaq: I [Abd al-Razzaq] narrate from Ibn Jurayj and Ma'mar. Ibn Jurayj reported that Ata said, while Ma'mar reported that al-Zuhri said. Later, Ata and al-Zuhri both concurred, stating jointly: "The Jew and the Christian may slaughter your sacrifice if you wish." Al-Zuhri added: "And the woman may slaughter it if you wish."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ: أَنَا ابْنُ جُرَيْجٍ، وَمَعْمَرٌ، قَالَ ابْنُ جُرَيْجٍ قَالَ عَطَاءٌ، وَقَالَ مَعْمَرٌ: قَالَ الزُّهْرِيُّ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَالزُّهْرِيُّ قَالَا جَمِيعًا: يَذْبَحُ نُسُكَك الْيَهُودِيُّ وَالنَّصْرَانِيُّ إنْ شِئْت، قَالَ الزُّهْرِيُّ: وَالْمَرْأَةُ إنْ شِئْت.

L16480 Mālik said: No one may slaughter it except a Muslim. If a Person of the Book slaughters it, Ibn al-Qāsim said: He must replace it.

وَقَالَ مَالِكٌ: لَا يَذْبَحُهَا إلَّا مُسْلِمٌ، فَإِنْ ذَبَحَهَا كِتَابِيٌّ قَالَ ابْنُ الْقَاسِمِ: يَضْمَنُهَا.

L16481 It has been narrated to us through the chain of Ja'far ibn Muḥammad from his father that 'Alī ibn Abī Ṭālib said: "Let not the Jews or the Christians slaughter your sacrificial animals. None may slaughter them save a Muslim." From Jarīr through Qābūs ibn Abī Ẓabyān from his father from Ibn 'Abbās: "Let none slaughter your sacrificial animal except a Muslim."

رُوِّينَا مِنْ طَرِيقِ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا يَذْبَحُ أَضَاحِيَّكُمْ الْيَهُودُ، وَلَا النَّصَارَى، لَا يَذْبَحُهَا إلَّا مُسْلِمٌ - وَعَنْ جَرِيرٍ عَنْ قَابُوسَ بْنِ أَبِي ظَبْيَانَ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ لَا يَذْبَحُ أُضْحِيَّتَك إلَّا مُسْلِمٌ.

L16482 From Abū Sufyān, from Jābir: None may perform the ritual sacrifices except a Muslim.

وَعَنْ أَبِي سُفْيَانَ عَنْ جَابِرٍ: لَا يَذْبَحُ النُّسُكَ إلَّا مُسْلِمٌ.

L16483–16484 From Sa'id ibn Jubayr, Al-Hasan, Ata' al-Khurasani, Ash-Sha'bi, Mujahid, and Ata' ibn Abi Rabah also: Only a Muslim may slaughter the sacrificial animal.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَالْحَسَنِ، وَعَطَاءٍ الْخُرَاسَانِيِّ، وَالشَّعْبِيِّ، وَمُجَاهِدٍ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ أَيْضًا: لَا يَذْبَحُ النُّسُكَ إلَّا مُسْلِمٌ.

L16485 From Ibrāhīm, it is reported that they used to say: "No one may slaughter the ritual sacrifice except a Muslim." This is among the matters where the Hanafis and Shafiʿis disagreed with a group of the Companions and the majority of scholars, with no known dissenting opinion among the Companions. What we mentioned is not authentically established from any of the Companions, as the narration from ʿAlī has an interrupted chain, while Qābūs and Abū Sufyān are weak narrators. However, what is narrated from al-Ḥasan, Ibrāhīm, al-Shaʿbī, and Saʿīd ibn Jubayr is sound, and nothing is authentically reported from others besides them. We know of no evidence

وَعَنْ إبْرَاهِيمَ كَانُوا يَقُولُوا: لَا يَذْبَحُ النُّسُكَ إلَّا مُسْلِمٌ، وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ جَمَاعَةً مِنْ الصَّحَابَةِ وَجُمْهُورُ الْعُلَمَاءِ لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ مَا ذَكَرْنَا لِأَنَّهُ عَنْ عَلِيٍّ مُنْقَطِعٌ - وَقَابُوسُ، وَأَبُو سُفْيَانَ ضَعِيفَانِ - إلَّا أَنَّهُ عَنْ الْحَسَنِ، وَإِبْرَاهِيمَ، وَالشَّعْبِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ: صَحِيحٌ وَلَا يَصِحُّ

whatsoever for this opinion—neither from the Quran, nor the Sunnah, nor a feeble narration, nor analogical reasoning.

Issue: A group sharing in a single sacrificial animal.

Issue 984: It is permissible for any number of people, whether members of the same household or others, to share in a single sacrificial animal. It is also permissible for one person to offer multiple sacrificial animals. The Messenger of Allah (peace be upon him) sacrificed two mostly white rams with some black markings, as we mentioned earlier, and he did not prohibit offering more than two. Sacrifice is an act of goodness, and seeking abundance in goodness is commendable.[18]

Abu Hanifah, Sufyan al-Thawri, al-Awzaʿi, al-Shafiʿi, Ahmad, Ishaq, Abu Thawr, and Abu Sulayman said: A cow (female) or a she-camel is sufficient for seven or fewer people, whether strangers or non-strangers share in it. It does not suffice for more than seven, and a sheep is only sufficient for one person.

Malik said: One head of camel, cow, or sheep suffices for one person and the members of a household—even if they are numerous and exceed seven, provided he voluntarily includes them in it. It does not suffice if they purchase it through partnership among themselves, nor does it suffice for two or more unrelated persons.

Abu Muhammad said: The sacrificial offering is an act of goodness and a voluntary deed of righteousness. Therefore, shared participation in this voluntary act is permissible unless there exists a textual evidence that prohibits it. Allah the Exalted said: “And do good deeds” [Al-Hajj: 77]. Thus, those who jointly participate in it are performing good deeds. There is no valid basis for restricting the prohibition to strangers, nor any justification

[18] **Hadith references (L16487):** Sunan an-Nasai 4386; Sahih Muslim 1966b; Sunan an-Nasai 4415.

عَنْ غَيْرِهِمْ، وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ أَثَرٍ سَقِيمٍ، وَلَا مِنْ قِيَاسٍ.

[مَسْأَلَةٌ يَشْتَرِكُ فِي الْأُضْحِيَّةِ الْوَاحِدَةِ الْجَمَاعَةُ]

٩٨٤ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ يَشْتَرِكَ فِي الْأُضْحِيَّةِ الْوَاحِدَةِ أَيُّ شَيْءٍ كَانَتْ الْجَمَاعَةُ مِنْ أَهْلِ الْبَيْتِ وَغَيْرِهِمْ، وَجَائِزٌ أَنْ يُضَحِّيَ الْوَاحِدُ بِعَدَدٍ مِنْ الْأَضَاحِيِّ «ضَحَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكَبْشَيْنِ أَمْلَحَيْنِ» كَمَا ذَكَرْنَا آنِفًا وَلَمْ يَنْهَ عَنْ أَكْثَرَ مِنْ ذَلِكَ، وَالْأُضْحِيَّةُ فِعْلُ خَيْرٍ، فَالِاسْتِكْثَارُ مِنْ الْخَيْرِ حَسَنٌ.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَإِسْحَاقُ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ: تُجْزِئُ الْبَقَرَةُ، أَوْ النَّاقَةُ عَنْ سَبْعَةٍ فَأَقَلَّ أَجْنَبِيِّينَ وَغَيْرَ أَجْنَبِيِّينَ يَشْتَرِكُونَ فِيهَا، وَلَا تُجْزِئُ عَنْ أَكْثَرَ، وَلَا تُجْزِئُ الشَّاةُ إلَّا عَنْ وَاحِدٍ.

وَقَالَ مَالِكٌ: يُجْزِئُ الرَّأْسُ الْوَاحِدُ مِنْ الْإِبِلِ، أَوْ الْبَقَرِ، أَوْ الْغَنَمِ عَنْ وَاحِدٍ، وَعَنْ أَهْلِ الْبَيْتِ - وَإِنْ كَثُرَ عَدَدُهُمْ وَكَانُوا أَكْثَرَ مِنْ سَبْعَةٍ إذَا أَشْرَكَهُمْ فِيهَا تَطَوُّعًا - وَلَا تُجْزِئُ إذَا اشْتَرَوْهَا بَيْنَهُمْ بِالشَّرِكَةِ وَلَا عَنْ أَجْنَبِيِّينَ فَصَاعِدًا.

قَالَ أَبُو مُحَمَّد: الْأُضْحِيَّةُ فِعْلُ خَيْرٍ وَتَطَوُّعٌ بِالْبِرِّ فَالِاشْتِرَاكُ فِي التَّطَوُّعِ جَائِزٌ مَا لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ قَالَ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] فَالْمُشْتَرِكُونَ فِيهَا فَاعِلُونَ لِلْخَيْرِ، فَلَا مَعْنَى لِتَخْصِيصِ الْأَجْنَبِيِّينَ بِالْمَنْعِ، وَلَا مَعْنَى لِمَنْعِ ذَلِكَ بِالشِّرَاءِ، لِأَنَّهُ كُلَّهُ قَوْلٌ بِلَا بُرْهَانٍ أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ.

for prohibiting such participation through purchase. For all of this is an assertion without any evidence whatsoever—neither from the Quran, nor the Sunnah, nor a weak narration, nor analogical reasoning.[19]

وَقَدْ أَبَاحَ اللَّيْثُ الِاشْتِرَاكَ فِي الْأُضْحِيَّةِ فِي السَّفَرِ - وَهَذَا تَخْصِيصٌ لَا مَعْنَى لَهُ أَيْضًا.

L16491 Al-Layth permitted sharing in the udḥiyah (sacrificial offering) during travel - but this specification is likewise meaningless.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَوْ أَبِي هُرَيْرَةَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ كَانَ إذَا أَرَادَ أَنْ يُضَحِّيَ اشْتَرَى كَبْشَيْنِ عَظِيمَيْنِ، سَمِينَيْنِ، أَقْرَنَيْنِ أَمْلَحَيْنِ، مَوْجُوءَيْنِ، فَيَذْبَحُ أَحَدَهُمَا عَنْ أُمَّتِهِ مَنْ شَهِدَ لِلَّهِ بِالتَّوْحِيدِ وَلَهُ بِالْبَلَاغِ، وَيَذْبَحُ الْآخَرَ عَنْ مُحَمَّدٍ وَآلِ مُحَمَّدٍ» .

L16492–16493 It has been narrated to us through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from ʿAbd Allāh ibn Muḥammad ibn ʿAqīl, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, from ʿĀ'isha the Mother of the Believers or Abū Hurayrah, from the Messenger of Allah—peace and blessings be upon him—that when he intended to offer a sacrifice, he would purchase two massive, fat, horned rams, mostly white with some black markings, castrated. He would slaughter one of them on behalf of his nation (those who testify to Allah's oneness and bear witness to his conveying of the message), and slaughter the other on behalf of the Prophet Muḥammad and his household.

فَهَذَا أَثَرٌ صَحِيحٌ عِنْدَهُمْ، وَعَلَى رِوَايَةِ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَوَّلَ الْمَالِكِيُّونَ فِي خَبَرِ الصَّلَاةِ «تَحْرِيمُهَا التَّكْبِيرُ وَتَحْلِيلُهَا التَّسْلِيمُ» .

L16494 This is a sound narration according to them. The Malikis relied on the report transmitted by ʿAbdullāh ibn Muḥammad ibn ʿAqīl regarding prayer: "Its prohibition [i.e., the act that initiates the prayer's sacred state] is the takbīr, and its permission [i.e., the act that terminates it] is the taslīm."

وَرُوِّينَا مِنْ طَرِيقِ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: الْبَدَنَةُ عَنْ وَاحِدٍ، وَالْبَقَرَةُ عَنْ وَاحِدٍ، وَالشَّاةُ عَنْ وَاحِدٍ، لَا أَعْلَمُ شِرْكًا.

L16495 It was narrated to us via the chain of 'Ubaydullāh ibn 'Umar, from Nāfiʿ, from Ibn 'Umar: A camel (as a sacrifice) is offered on behalf of one person, a cow on behalf of one person, and a goat on behalf of one person. I know of no sharing [in the sacrifice].

وَصَحَّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: لَا أَعْلَمُ دَمًا وَاحِدًا يُرَاقُ عَنْ أَكْثَرَ مِنْ وَاحِدٍ.

L16496 It is authentically reported from Muḥammad ibn Sīrīn: "I am not aware of any single blood money payment that is required for more than one person."

وَصَحَّ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي مُعَاوِيَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ: لَا تَكُونُ ذَكَاةُ نَفْسٍ عَنْ نَفْسَيْنِ وَكَرِهَهُ الْحَكَمُ.

L16497 It has been authentically reported through the chain of Ibn Abī Shaybah from Abū Muʿāwiyah from Misʿar ibn Kidām from Ḥammād ibn Abī Sulaymān that the ritual slaughter of one animal cannot fulfill the obligation on behalf of two persons, and al-Ḥakam deemed this practice reprehensible (makrūh).

وَقَوْلٌ آخَرُ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْجَزُورُ، وَالْبَقَرَةُ، عَنْ سَبْعَةٍ مِنْ أَهْلِ الْبَيْتِ لَا

L16498 Another statement we have transmitted through the chain of Ibn Abi Shaybah from Ḥātim ibn Ismāʿīl from Jaʿfar ibn Muḥammad from his father from

[19] **Qur'an references (L16490):** Qur'an 22:77 (Al-Hajj).

يَدْخُلُ مَعَهُمْ مِنْ غَيْرِهِمْ -: كُلُّ هَذَا مُخَالِفٌ لِقَوْلِ مَالِكٍ لِأَنَّ ابْنَ عُمَرَ لَمْ يُجِزْ الرَّأْسَ الْوَاحِدَ إِلَّا عَنْ وَاحِدٍ، وَكَذَلِكَ ابْنُ سِيرِينَ، وَحَمَّادٌ، وَعَلِيٌّ أَجَازَ النَّاقَةَ أَوْ الْبَقَرَةَ عَنْ سَبْعَةٍ مِنْ أَهْلِ الْبَيْتِ لَا أَكْثَرَ.

ʿAlī ibn Abī Ṭālib, who said: A she-camel and a cow may be offered on behalf of seven members of the household, and none from outside the household may join them. All of this contradicts Mālik's opinion, for Ibn ʿUmar did not permit a single animal except for one person. Similarly, Ibn Sīrīn, Ḥammād, and Ali permitted a she-camel or a cow on behalf of seven members of the household, but no more.

L16499

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ عُلَيَّةَ عَنْ سَعِيدٍ عَنْ قَتَادَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: الْبَقَرَةُ وَالْجَزُورُ عَنْ سَبْعَةٍ.

From the narration of Ibn Abi Shaybah, from Ibn ʿUlayyah, from Saʿid, from Qatadah, from Sulayman ibn Yasar, from ʿAisha, the Mother of the Believers, who said: A cow and a mature camel are for seven.

L16500 From Ibn Abi Shaybah, from Ali bin Mushir, from Sa'id bin Abi Arubah, from Qatadah, who narrated from Anas bin Malik, Sa'id bin al-Musayyib, and al-Hasan—all of whom said: A cow suffices for seven, and a sacrificial camel suffices for seven; participants may share in each even if they belong to different households.

وَعَنْ ابْنِ أَبِي شَيْبَةَ عَنْ عَلِيِّ بْنِ مُسْهِرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ قَالُوا كُلُّهُمْ: الْبَقَرَةُ عَنْ سَبْعَةٍ وَالْجَزُورُ عَنْ سَبْعَةٍ يَشْتَرِكُونَ فِيهَا وَإِنْ كَانُوا مِنْ غَيْرِ أَهْلِ دَارٍ وَاحِدَةٍ.

L16501–16502 And through the chain of Ibn Abi Shaybah: Muhammad ibn Fudayl narrated to us from Dawud ibn Abi Hind from al-Sha'bi, who said: I encountered the companions of Muhammad—may Allah bless him and grant him peace—when they were gathered in large numbers, and they would slaughter a cow and a camel on behalf of seven people.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ قَالَ: أَدْرَكْت أَصْحَابَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمْ مُتَوَافِرُونَ كَانُوا يَذْبَحُونَ الْبَقَرَةَ وَالْبَعِيرَ عَنْ سَبْعَةٍ.

L16503 And through the chain of Waki' from Sufyan from Hammad from Ibrahim, he said: The companions of Muhammad (peace be upon him) used to say: A cow or a mature camel is shared by seven people.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ حَمَّادٍ عَنْ إبْرَاهِيمَ قَالَ: كَانَ أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُونَ: الْبَقَرَةُ، وَالْجَزُورُ عَنْ سَبْعَةٍ.

L16504 Ali said: This Ḥammād has indeed narrated what we mentioned from the Companions, then he contradicted the transmitted reports and did not consider that matter to be a consensus as these people allege. From Ibn Abī Shaybah, from Ibn Fuḍayl, from Muslim, from Ibrāhīm, from ʿAlqamah, from Ibn Masʿūd: "A cow and a sacrificial camel are shared by seven." From Wakīʿ, from Sufyān, from Ḥuṣayn ibn ʿAbd al-Raḥmān, from Khālid ibn Saʿd, from Abī Masʿūd, who said: "A cow is shared by seven." We have also narrated this from Ḥudhayfah, Jābir, and ʿAlī. It is authentically established from Saʿīd ibn al-Musayyib: "A sacrificial camel is shared by ten." We have also narrated this from Ibn ʿAbbās, from the Companions - may Allah be pleased with them.

قَالَ عَلِيٌّ: هَذَا حَمَّادٌ قَدْ رَوَى مَا ذَكَرْنَا عَنْ الصَّحَابَةِ، ثُمَّ خَالَفَ مَا رُوِيَ وَلَمْ يَرَ ذَلِكَ إجْمَاعًا كَمَا يَزْعُمُ هَؤُلَاءِ -: وَعَنْ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ فُضَيْلٍ عَنْ مُسْلِمٍ عَنْ إبْرَاهِيمَ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ الْبَقَرَةُ وَالْجَزُورُ عَنْ سَبْعَةٍ -: وَعَنْ وَكِيعٍ عَنْ سُفْيَانَ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ خَالِدِ بْنِ سَعْدٍ عَنْ أَبِي مَسْعُودٍ قَالَ: الْبَقَرَةُ عَنْ سَبْعَةٍ - وَرُوِّينَاهُ أَيْضًا عَنْ حُذَيْفَةَ، وَجَابِرٍ، وَعَلِيٍّ، وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ الْبَدَنَةُ عَنْ عَشَرَةٍ - وَرُوِّينَا ذَلِكَ أَيْضًا عَنْ ابْنِ عَبَّاسٍ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L16505 Among those who permitted joint ownership of sacrificial animals by unrelated individuals—a cow is shared by seven and a camel is shared by seven—were Ṭāwus, Abū ʿUthmān al-Nahdī, ʿAṭāʾ, and the majority of the Successors.

وَمِمَّنْ أَجَازَ الِاشْتِرَاكَ فِي الْأَضَاحِيِّ بَيْنَ الْأَجْنَبِيِّينَ الْبَقَرَةَ عَنْ سَبْعَةٍ، وَالنَّاقَةَ عَنْ سَبْعَةٍ: طَاوُسٍ، وَأَبُو عُثْمَانَ النَّهْدِيُّ، وَعَطَاءٌ، وَجُمْهُورُ التَّابِعِينَ.

L16506 As for Ibn Umar, we have narrated through the chain of Ibn Abi Shaybah: Abdullah ibn Numayr narrated to us: Mujalid narrated to us from al-Sha'bi, who said: I asked Ibn Umar regarding a cow or a camel: "Does it suffice for seven?" He responded: "How? Is its first [requirement] seven persons?"

فَأَمَّا ابْنُ عُمَرَ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نَا مُجَالِدٌ عَنْ الشَّعْبِيِّ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ الْبَقَرَةِ وَالْبَعِيرِ تُجْزِي عَنْ سَبْعَةٍ؟ فَقَالَ: كَيْفَ، أَوَّلُهَا سَبْعَةٌ

أَنْفُسٍ؟ قُلْت: إنَّ أَصْحَابَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِينَ بِالْكُوفَةِ أَفْتَوْنِي فَقَالُوا: نَعَمْ قَالَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ، وَعُمَرُ، فَقَالَ ابْنُ عُمَرَ: مَا شَعُرْت - فَهَذَا تَوَقُّفٌ مِنْ ابْنِ عُمَرَ.

I said: "The Companions of Muhammad (peace and blessings of Allah be upon him) in Kufa issued me a fatwa, affirming: 'Yes, the Prophet (peace and blessings of Allah be upon him) stated it, as did Abu Bakr and Umar.'" Ibn Umar then said: "I was not aware of this." This constitutes reservation from Ibn Umar.

L16507 وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَرِيفِ بْنِ دِرْهَمٍ عَنْ جَبَلَةَ بْنِ سُحَيْمٍ عَنْ ابْنِ عُمَرَ قَالَ: الْبَقَرَةُ عَنْ سَبْعَةٍ، فَهَذَا يَدُلُّ عَلَى رُجُوعِهِ - وَهَذَا مِمَّا خَالَفَ فِيهِ مَالِكٌ كُلَّ رِوَايَةٍ رُوِيَتْ فِيهِ عَنْ صَاحِبٍ إلَّا رِوَايَةً عَنْ ابْنِ عُمَرَ رَجَعَ عَنْهَا، وَخَالَفَ جُمْهُورَ التَّابِعِينَ فِي ذَلِكَ.

And through the chain of Waki' from 'Arīf ibn Dirham from Jabalah ibn Suhaym from Ibn 'Umar, who said: "A cow is for seven." This indicates Mālik's retraction—this is among the matters in which he opposed every narration reported in this matter from a Companion except a narration from Ibn 'Umar, from which he retracted, and he opposed the majority of the Successors regarding that.

L16508 قَالَ أَبُو مُحَمَّدٍ: الْحُجَّةُ إنَّمَا هِيَ فِي فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَمْنَعْ - عَلَيْهِ السَّلَامُ - مِنْ الِاشْتِرَاكِ فِي التَّطَوُّعِ أَكْثَرَ مِنْ عَشَرَةٍ، وَسَبْعَةٍ، بَلْ قَدْ أَشْرَكَ - عَلَيْهِ السَّلَامُ - فِي أُضْحِيَّتِهِ جَمِيعَ أُمَّتِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Abū Muḥammad said: The proof lies solely in the action of Allah's Messenger—peace and blessings be upon him. He—peace and blessings be upon him—did not restrict participation in voluntary sacrifices to fewer than seventeen individuals. Rather, he included the entirety of his nation in his sacrificial offering. And success is from Allah, the Exalted.

[مَسْأَلَةٌ عَلَى كُلِّ مُضَحٍّ أَنْ يَأْكُلَ مِنْ أُضْحِيَّتِهِ]

It is recommended for every person offering an udhiyah to eat from it.

L16509–16510

L16511 مَسْأَلَةٌ: فَرْضٌ عَلَى كُلِّ مُضَحٍّ أَنْ يَأْكُلَ مِنْ أُضْحِيَّتِهِ وَلَا بُدَّ لَوْ لُقْمَةً فَصَاعِدًا، وَفَرْضٌ عَلَيْهِ أَنْ يَتَصَدَّقَ أَيْضًا مِنْهَا بِمَا شَاءَ قَلَّ أَوْ كَثُرَ وَلَا بُدَّ، وَمُبَاحٌ لَهُ أَنْ يُطْعِمَ مِنْهَا الْغَنِيَّ، وَالْكَافِرَ، وَأَنْ يُهْدِيَ مِنْهَا إنْ شَاءَ ذَلِكَ.

Issue: It is obligatory and necessary for every person offering a sacrifice to eat from his sacrifice, even a single morsel or more. It is also obligatory and necessary upon him to give charity from it, whatever he wishes, whether little or abundant. It is permissible for him to feed the wealthy person and the disbeliever from it, and to give gifts from it if he wishes.

L16512 فَإِنْ نَزَلَ بِأَهْلِ بَلَدِ الْمُضَحِّي جَهْدٌ أَوْ نَزَلَ بِهِ طَائِفَةٌ مِنْ الْمُسْلِمِينَ فِي جَهْدٍ جَازَ لِلْمُضَحِّي أَنْ يَأْكُلَ مِنْ أُضْحِيَّتِهِ مِنْ حِينِ يُضَحِّي بِهَا إلَى انْقِضَاءِ ثَلَاثِ لَيَالٍ كَامِلَةٍ مُسْتَأْنَفَةٍ يَبْتَدِئُهَا بِالْعَدَدِ مِنْ بَعْدِ تَمَامِ التَّضْحِيَةِ ثُمَّ لَا يَحِلُّ لَهُ أَنْ يُصْبِحَ فِي مَنْزِلِهِ مِنْهَا بَعْدَ تَمَامِ الثَّلَاثِ لَيَالٍ شَيْءٌ أَصْلًا - لَا مَا قَلَّ وَلَا مَا كَثُرَ.

If hardship befalls the people of the sacrificer's town, or if a group of Muslims faces severe hardship, it is permissible for the sacrificer to eat from his sacrificial animal from the moment he sacrifices it until the end of three full nights counted anew from the completion of the sacrifice. After the three nights have fully passed, it becomes categorically forbidden for any portion of it—whether little or much—to remain in his home by morning.

L16513 If he sacrifices at night, he does not repeat that night within the three, because part of it has already passed. If none of this applies, let him store from it as much as he wishes.

فَإِنْ ضَحَّى لَيْلًا لَمْ يُعِدْ تِلْكَ اللَّيْلَةَ فِي الثَّلَاثِ، لِأَنَّهُ تَقَدَّمَ مِنْهَا شَيْءٌ، فَإِنْ لَمْ يَكُنْ شَيْءٌ مِنْ هَذَا فَلْيَدَّخِرْ مِنْهَا مَا شَاءَ.

L16514 It was narrated to us via the transmission cited in al-Bukhārī: from us, Abū ʻĀṣim—who is al-Ḍaḥḥāk ibn Makhlad—from Zayd ibn Abī ʻUbayd, from Salamah ibn al-Akwaʻ, who said: The Prophet—peace and blessings of Allah be upon him—said, "Whoever among you sacrifices must not let the morning of the third day arrive while anything of it remains in his house." When the following year came, they asked, "O Messenger of Allah, should we do as we did last year?" He replied, "Eat from it, feed others, and store it, for that year the people were in severe hardship, and I wanted you to provide aid through it."

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا أَبُو عَاصِمٍ هُوَ الضَّحَّاكُ بْنُ مَخْلَدٍ - عَنْ زَيْدِ بْنِ أَبِي عُبَيْدٍ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ ضَحَّى مِنْكُمْ فَلَا يُصْبِحَنَّ بَعْدَ ثَالِثَةٍ وَفِي بَيْتِهِ مِنْهُ شَيْءٌ، فَلَمَّا كَانَ الْعَامُ الْمُقْبِلُ قَالُوا: يَا رَسُولَ اللَّهِ نَفْعَلُ كَمَا فَعَلْنَا الْعَامَ الْمَاضِيَ؟ قَالَ: كُلُوا، وَأَطْعِمُوا، وَادَّخِرُوا، فَإِنَّ ذَلِكَ الْعَامَ كَانَ بِالنَّاسِ جَهْدٌ فَأَرَدْتُ أَنْ تُعِينُوا فِيهَا» .

L16515 And through the chain of Malik from Abdullah ibn Abi Bakr ibn Amr ibn Hazm, that Amrah bint Abd al-Rahman said to him: "I heard Aisha, the Mother of the Believers, say: 'They said: "O Messenger of Allah, people are making water skins from their sacrificial animals and carrying fat in them." The Messenger of Allah (peace and blessings be upon him) said: "What is that¿' They said: "You prohibited us from eating the meat of the sacrifices after three days." He (peace be upon him) said: "From now on, eat, store, and give in charity."'"

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ " أَنَّ عَمْرَةَ بِنْتَ عَبْدِ الرَّحْمَنِ قَالَتْ لَهُ سَمِعْت عَائِشَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ: إنَّهُمْ قَالُوا: «يَا رَسُولَ اللَّهِ إنَّ النَّاسَ يَتَّخِذُونَ الْأَسْقِيَةَ مِنْ ضَحَايَاهُمْ وَيَحْمِلُونَ فِيهَا الْوَدَكَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَمَا ذَاكَ؟ قَالُوا: نَهَيْتَ أَنْ تُؤْكَلَ لُحُومُ الضَّحَايَا بَعْدَ ثَلَاثٍ قَالَ - عَلَيْهِ السَّلَامُ -: بَعْدُ كُلُوا، وَادَّخِرُوا، وَتَصَدَّقُوا» .

L16516 So these are commands from the Messenger of Allah—peace and blessings of Allah be upon him—and it is unlawful to contravene them. Allah, the Exalted, said, _"So let those who defy his command beware, lest a trial strike them or a painful punishment befall them"_ [Surah An-Nur 24:63].[1]

فَهَذِهِ أَوَامِرُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَحِلُّ خِلَافُهَا قَالَ تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] .

L16517–16518 And whoever claims that it is recommended has lied and asserted what he has no knowledge of. It suffices him that all the Companions—may Allah be pleased with them—did not interpret the Prophet's prohibition—peace be upon him—against keeping any of it in their homes beyond three days except as an obligation, nor did they contravene him except after his permission. There is no distinction between command and prohibition, for he said:

وَمَنْ ادَّعَى أَنَّهُ نَدْبٌ فَقَدْ كَذَبَ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ وَيَكْفِيهِ أَنَّ جَمِيعَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَمْ يَحْمِلُوا نَهْيَهُ - عَلَيْهِ السَّلَامُ - عَنْ أَنْ يُصْبِحَ فِي بُيُوتِهِمْ بَعْدَ ثَلَاثٍ مِنْهَا شَيْءٌ إلَّا عَلَى الْفَرْضِ وَلَمْ يُقْدِمُوا عَلَى مُخَالَفَتِهِ إلَّا بَعْدَ إذْنِهِ، وَلَا فَرْقَ بَيْنَ الْأَمْرِ وَالنَّهْيِ، قَالَ - عَلَيْهِ السَّلَامُ -: «إذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاتْرُكُوهُ وَإِذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا

[1] **Qur'an references (L16516):** Qur'an 24:63 (An-Nur).

مِنْهُ مَا اسْتَطَعْتُمْ» وَعَمَّ - عَلَيْهِ السَّلَامُ - بِالْإِطْعَامِ فَجَائِزٌ أَنْ يُطْعِمَ مِنْهُ كُلَّ آكِلٍ، إذْ لَوْ حُرِّمَ مِنْ ذَلِكَ شَيْءٌ لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ - {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] ، {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] وَادِّخَارُ سَاعَةٍ فَصَاعِدًا يُسَمَّى ادِّخَارًا.

"When I forbid you from something, leave it, and when I command you to do something, do as much of it as you are able." He—peace be upon him—generalized the feeding, so it is permissible to feed any eater from it. Had anything therein been prohibited, he would have clarified it, for "your Lord is not forgetful" [19:64], "nor does he speak out of desire" [53:3], "it is but a revelation revealed" [53:4]. Storing for an hour or longer is termed storing.[2]

L16519 وَالْعَجَبُ كُلُّهُ مِمَّنْ يَسْتَخْرِجُ بِعَقْلِهِ الْقَاصِرِ وَرَأْيِهِ الْفَاسِدِ عِلَلًا لِأَوَامِرِ اللَّهِ تَعَالَى وَأَوَامِرِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - لَا بُرْهَانَ لَهُ بِهَا إلَّا دَعْوَاهُ الْكَاذِبَةُ، ثُمَّ يَأْتِي إلَى حُكْمٍ جَعَلَهُ - عَلَيْهِ السَّلَامُ - مُوجِبًا لِحُكْمٍ آخَرَ فَلَا يَلْتَفِتُ إلَيْهِ، وَقَدْ جَعَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْجَهْدَ الْحَالَّ بِالنَّاسِ مُوجِبًا لِئَلَّا يَبْقَى عِنْدَ أَحَدٍ مِنْ أُضْحِيَّتِهِ شَيْءٌ بَعْدَ ثَالِثَةٍ فَلَمْ يَلْتَفِتُوا إلَى ذَلِكَ وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

All astonishment lies in those who, with their deficient intellects and corrupt reasoning, fabricate pretexts regarding the commandments of Allah the Exalted and the commandments of His Messenger—peace be upon him—having no proof for this except their false claims. Then they approach a ruling which the Prophet—peace and blessings of Allah be upon him—rendered it a basis for another ruling, yet they ignore it. Indeed, the Prophet—peace and blessings of Allah be upon him—made the current hardship affecting people a cause so that no one would retain any portion of their sacrificial animal beyond three days, yet they disregarded this. We seek refuge in Allah from this [behavior].

L16520 فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ إبْرَاهِيمَ الْحَرْبِيِّ عَنْ الْحَكَمِ بْنِ مُوسَى عَنْ الْوَلِيدِ عَنْ طَلْحَةَ بْنِ عَمْرٍو عَنْ عَطَاءٍ عَنْ ابْنِ مَسْعُودٍ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَأْكُلَ مِنْهَا ثُلُثًا وَنَتَصَدَّقَ بِثُلُثِهَا وَنُطْعِمَ الْجِيرَانَ ثُلُثَهَا» . فَطَلْحَةُ مَشْهُورٌ بِالْكَذِبِ الْفَاضِحِ، وَعَطَاءٌ لَمْ يُدْرِكْ ابْنَ مَسْعُودٍ وَلَا وُلِدَ إلَّا بَعْدَ مَوْتِهِ، وَلَوْ صَحَّ لَقُلْنَا بِهِ مُسَارِعِينَ إلَيْهِ، لَكِنْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ عَنْ عَاصِمٍ عَنْ أَبِي مِجْلَزٍ قَالَ: أَمَرَ ابْنُ عُمَرَ أَنْ يُرْفَعَ لَهُ مِنْ أُضْحِيَّتِهِ بَضْعَةٌ وَيُتَصَدَّقَ بِسَائِرِهَا.

If they mention what has been narrated to us through the chain of Ibrāhīm al-Ḥarbī from al-Ḥakam ibn Mūsā from al-Walīd from Ṭalḥah ibn ʿAmrū from ʿAṭāʾ from Ibn Masʿūd: "The Messenger of Allāh—peace and blessings be upon him—commanded us to eat one-third of it, give one-third in charity, and feed the neighbors one-third." Now Ṭalḥah is notorious for flagrant falsehood, and ʿAṭāʾ did not meet Ibn Masʿūd nor was he born until after his death. Had this narration been sound, we would have rushed to adopt it. However, it has been narrated to us through the chain of ʿAbd al-Razzāq from ʿUmar from ʿĀṣim from Abū Mijlaz, who reported: Ibn ʿUmar ordered that a portion of his sacrificial animal be reserved for him while the remainder be given in charity.

L16521 وَمِنْ طَرِيقِ أَبِي الْجَهْمِ نَا أَحْمَدُ بْنُ فَرَجٍ نَا الْهَرَوِيُّ نَا ابْنُ فُضَيْلٍ عَنْ عَطَاءٍ.

And via the chain of Abi al-Jahm: Aḥmad ibn Faraj reported to us, al-Harawī reported, Ibn Fuḍayl reported, from ʿAṭāʾ.

[2] **Qur'an references (L16518):** Qur'an 19:64 (Maryam); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: سَافَرَ مَعِي تَمِيمُ بْنُ سَلَمَةَ فَلَمَّا ذَبَحْنَا أُضْحِيَّتَهُ فَأَخَذَ مِنْهَا بَضْعَةً فَقَالَ: آكُلُهَا؟ فَقُلْتُ لَهُ: وَمَا عَلَيْكَ أَنْ لَا تَأْكُلَ مِنْهَا؟ فَقَالَ تَمِيمٌ: يَقُولُ اللَّهُ تَعَالَى: {فَكُلُوا مِنْهَا} [الحج: ٢٨] فَتَقُولُ أَنْتَ: وَمَا عَلَيْكَ أَنْ لَا تَأْكُلَ.

L16522–16524 From Ibrahim al-Nakha'i said: Tamim ibn Salama traveled with me. When we slaughtered his sacrificial animal, he took a portion of it and said: "Shall I eat it?" I said to him: "What harm is there if you do not eat from it?" Tamim said: "Allah the Most High says: *'So eat from it'* [Al-Hajj: 28], yet you say: 'What harm is there if you do not eat?'"[3]

قَالَ أَبُو مُحَمَّدٍ: حَمَلَ هَذَا الْأَمْرَ تَمِيمٌ عَلَى الْوُجُوبِ وَهَذَا الْحَقُّ الَّذِي لَا يَسَعُ أَحَدًا سِوَاهُ، وَتَمِيمٌ مِنْ أَكَابِرِ أَصْحَابِ ابْنِ مَسْعُودٍ.

L16525 Abu Muhammad said: Tamim interpreted this matter as being obligatory, and this is the truth that no one may validly oppose. Tamim was one of the most prominent companions of Ibn Mas'ud.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ فُضَيْلٍ عَنْ عَبْدِ الْمَلِكِ عَنْ مَوْلًى لِأَبِي سَعِيدٍ عَنْ أَبِي سَعِيدٍ أَنَّهُ كَانَ يَقُولُ لِبَنِيهِ: إِذَا ذَبَحْتُمْ أَضَاحِيَكُمْ فَأَطْعِمُوا، وَكُلُوا، وَتَصَدَّقُوا. وَعَنْ ابْنِ مَسْعُودٍ أَيْضًا نَحْوُ هَذَا - وَعَنْ عَطَاءٍ نَحْوُهُ، وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ: لَيْسَ لِصَاحِبِ الْأُضْحِيَّةِ إِلَّا رُبُعُهَا.

L16526 Through the narration of Ibn Abī Shaybah, from Muḥammad ibn Fuḍayl, from ʿAbd al-Malik, from a client of Abū Saʿīd, from Abū Saʿīd, that he would say to his sons: "When you slaughter your sacrificial animals, feed others, eat, and give charity." A similar statement is reported from Ibn Masʿūd as well – and from ʿAṭāʾ a similar statement. It is authentically reported from Saʿīd ibn al-Musayyib and ʿUrwah ibn al-Zubayr: "The owner of the sacrificial animal has no entitlement except to a quarter of it."

فَإِنْ ذَكَرُوا: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي أَخِي أَبُو بَكْرٍ عَنْ سُلَيْمَانَ هُوَ ابْنُ بِلَالٍ - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ «عَنْ عَائِشَةَ قَالَتْ فِي الضَّحِيَّةِ كُنَّا نُمَلِّحُ مِنْهُ فَنَقْدَمُ بِهِ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَدِينَةِ فَقَالَ: لَا تَأْكُلُوا إِلَّا ثَلَاثَةَ أَيَّامٍ» وَلَيْسَتْ بِعَزِيمَةٍ وَلَكِنْ أَرَادَ أَنْ يُطْعِمَ مِنْهُ، وَاَللَّهُ أَعْلَمُ.

L16527 If they mentioned: What we have narrated through the chain of Al-Bukhari—Ismail ibn Abi Uwais narrated to me, my brother Abu Bakr narrated to me from Sulayman (ibn Bilal) from Yahya ibn Sa'id al-Ansari from 'Amrah from 'A'ishah, who said regarding the sacrificial meat: "We would salt some of it and bring it to the Prophet (ﷺ) in Medina. He said: 'Do not eat from it for more than three days.'" This was not a binding obligation, but rather he intended for it to be distributed as food. Allah knows best.

فَهَذَا خَبَرٌ لَا حُجَّةَ فِيهِ، لِأَنَّ قَوْلَ الْقَائِلِ " لَيْسَتْ بِعَزِيمَةٍ " لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا هُوَ مِنْ ظَنِّ بَعْضِ رُوَاةِ الْخَبَرِ، يُبَيِّنُ ذَلِكَ قَوْلُهُ فِي آخِرِ هَذَا الْخَبَرِ «أَرَادَ أَنْ يُطْعِمَ مِنْهُ» وَاَللَّهُ أَعْلَمُ.

L16528 This is a report that holds no authoritative evidence, because the statement "It is not a binding obligation" is not from the speech of Allah's Messenger—peace and blessings be upon him—but rather arises from the conjecture of some narrators. This is clarified by the statement at the end of the report: "He intended to feed others from it," and Allah knows best.

وَأَيْضًا: فَإِنَّ أَبَا بَكْرِ بْنَ أَبِي أُوَيْسٍ مَذْكُورٌ عَنْهُ فِي رِوَايَتِهِ أَمْرٌ عَظِيمٌ، وَقَدْ حَمَلَ عَلِيُّ بْنُ أَبِي طَالِبٍ هَذَا الْقَوْلَ مِنْهُ - عَلَيْهِ السَّلَامُ - عَلَى الْوُجُوبِ، وَابْنُ عُمَرَ كَمَا ذَكَرْنَا.

L16529 Moreover, a significant matter is attributed to Abu Bakr ibn Abi Uways in

[3] **Qur'an references (L16522):** Qur'an 22:28 (Al-Hajj).

his narration. Ali ibn Abi Talib (AS) interpreted this statement from him as indicating obligation, as did Ibn Umar, as we mentioned.

L16530–16531 It has been narrated to us through the chain of Muslim: Harmala ibn Yahya narrated to me from Ibn Wahb, who informed me from Yunus from Ibn Shihab, who informed me from Abu Ubayd, the client of Ibn Azhar, that he attended the Eid with Umar ibn al-Khattab. He said: "Then I prayed with Ali ibn Abi Talib, and he led us in prayer before the sermon. Then he addressed the people and said: 'Indeed, the Messenger of Allah—peace and blessings be upon him—has forbidden you from eating the meat of your sacrifices beyond three nights, so do not eat it.'"

Through the chain of Waki': Sufyan al-Thawri narrated to us from Abu Husain from Abu Abd al-Rahman al-Sulami from Ali ibn Abi Talib, who said: "No one should eat from the meat of his sacrificial animal beyond three days."[4]

L16532 Ali said: The narration of Abu Ubayd, the client of Ibn Azhar, pertains to the year of Uthman's siege—may Allah be pleased with him—when the desert dwellers were driven by turmoil to Medina and faced hardship. He therefore commanded the same as what the Messenger of Allah—peace and blessings be upon him—had ordered when people were in hardship and the throng surged. And with Allah the Exalted is success.

L16533 **Issue: It is impermissible for the sacrificer to sell from his sacrificial animal.**

L16534 986 - Issue: It is not permissible for the sacrificer to sell anything from their sacrificial animal after sacrificing it: neither skin, wool, hair, fur, feathers, fat, meat, bones, cartilage, head, limb, innards, nor to give any part of it as sadaqah, rent it out, or purchase anything with it whatsoever—not even household items, a sieve, sifter, seasonings, or anything whatsoever.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى عَنْ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي أَبُو عُبَيْدٍ مَوْلَى ابْنِ أَزْهَرَ أَنَّهُ شَهِدَ الْعِيدَ مَعَ عُمَرَ بْنِ الْخَطَّابِ قَالَ: ثُمَّ صَلَّيْت مَعَ عَلِيِّ بْنِ أَبِي طَالِبٍ فَصَلَّى لَنَا قَبْلَ الْخُطْبَةِ ثُمَّ خَطَبَ النَّاسَ فَقَالَ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ نَهَاكُمْ أَنْ تَأْكُلُوا لُحُومَ نُسُكِكُمْ فَوْقَ ثَلَاثِ لَيَالٍ فَلَا تَأْكُلُوا» . وَمِنْ طَرِيقِ وَكِيعٍ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: لَا يَأْكُلْ أَحَدٌ مِنْ لَحْمِ أُضْحِيَّتِهِ فَوْقَ ثَلَاثٍ.

قَالَ عَلِيٌّ: حَدِيثُ أَبِي عُبَيْدٍ مَوْلَى ابْنِ أَزْهَرَ كَانَ عَامَ حَصْرِ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَكَانَ أَهْلُ الْبَوَادِي قَدْ أَجْأَتْهُمْ الْفِتْنَةُ إلَى الْمَدِينَةِ وَأَصَابَهُمْ جَهْدٌ فَأَمَرَ لِذَلِكَ بِمِثْلِ مَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ جَهِدَ النَّاسُ وَدَفَّتْ الدَّافَّةُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَحِلُّ لِلْمُضَحِّي أَنْ يَبِيعَ مِنْ أُضْحِيَّتِهِ]

٩٨٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمُضَحِّي أَنْ يَبِيعَ مِنْ أُضْحِيَّتِهِ بَعْدَ أَنْ يُضَحِّيَ بِهَا شَيْئًا: لَا جِلْدًا، وَلَا صُوفًا، وَلَا شَعْرًا، وَلَا وَبَرًا، وَلَا رِيشًا، وَلَا شَحْمًا، وَلَا لَحْمًا، وَلَا عَظْمًا، وَلَا غُضْرُوفًا، وَلَا رَأْسًا، وَلَا طَرَفًا، وَلَا حَشْوَةً، وَلَا أَنْ يُصْدِقَهُ، وَلَا أَنْ يُؤَاجِرَ بِهِ، وَلَا أَنْ يَبْتَاعَ بِهِ شَيْئًا أَصْلًا، لَا مِنْ مَتَاعِ الْبَيْتِ، وَلَا غِرْبَالًا، وَلَا مُنْخُلًا، وَلَا تَابِلًا وَلَا شَيْئًا أَصْلًا.

[4] **Hadith references (L16531):** Sahih Muslim 1969b.

L16535 He has the right to benefit from all of that, use it, inscribe on the leather, wear it, grant it as a gift (hiba), or offer it as a gift (hadiyya). Whoever acquires ownership of any such item through a grant, voluntary charity (sadaqah), or inheritance may then sell it if he wishes.

وَلَهُ أَنْ يَنْتَفِعَ بِكُلِّ ذَلِكَ، وَيَتَوَطَّأَهُ، وَيَنْسَخَ فِي الْجِلْدِ، وَيَلْبَسَهُ، وَيَهَبَهُ وَيُهْدِيَهُ، فَمَنْ مَلَكَ شَيْئًا مِنْ ذَلِكَ بِهِبَةٍ، أَوْ صَدَقَةٍ، أَوْ مِيرَاثٍ، فَلَهُ بَيْعُهُ حِينَئِذٍ إِنْ شَاءَ.

L16536 It is not permissible for him to give the butcher anything from the animal in return for slaughtering or skinning it. But he may give him something from other than it. Every occurrence of this practice is invalidated forever.

وَلَا يَحِلُّ لَهُ أَنْ يُعْطِيَ الْجَزَّارَ عَلَى ذَبْحِهَا، أَوْ سَلْخِهَا شَيْئًا مِنْهَا، وَلَهُ أَنْ يُعْطِيَهُ مِنْ غَيْرِهَا، وَكُلُّ مَا وَقَعَ مِنْ هَذَا فُسِخَ أَبَدًا.

L16537 The Salaf differed concerning this matter: We have been informed through the chain of Shu'bah, from Qatādah, from 'Uqbah ibn Ṣahbān: I asked Ibn 'Umar, "May I sell the hide of a cow that I had sacrificed?" And he permitted me.

وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ عُقْبَةَ بْنِ صَهْبَانَ قُلْت لِابْنِ عُمَرَ: أَبِيعُ جِلْدَ بَقَرٍ ضَحَّيْت بِهَا؟ فَرَخَّصَ لِي.

L16538 It has been narrated to us through ʿAṭāʾ's chain of narration that he said: If the sacrifice is obligatory, one must give its skin as charity, and if it is voluntary, one may sell it if one wishes.

وَرُوِّينَا مِنْ طَرِيقِ عَطَاءٍ أَنَّهُ قَالَ: إذَا كَانَ الْهَدْيُ وَاجِبًا يَتَصَدَّقُ بِإِهَابِهِ وَإِنْ كَانَ تَطَوُّعًا بَاعَهُ إنْ شَاءَ.

L16539–16540 And he also said: There is no harm in selling the hide of the Uḍḥiyah (Eid sacrificial animal) if you owe a debt.

وَقَالَ أَيْضًا: لَا بَأْسَ بِبَيْعِ جِلْدِ الْأُضْحِيَّةِ إذَا كَانَ عَلَيْك دَيْنٌ.

L16541 Ash-Sha'bī was asked about the hides of sacrificial animals. He replied: *"Neither their flesh nor their blood will ever reach Allah"* [Surah Al-Ḥajj 22:37]; if you wish, then sell them; if you wish, then keep them.[5]

وَسُئِلَ الشَّعْبِيُّ عَنْ جُلُودِ الْأَضَاحِيِّ؟ فَقَالَ {لَنْ يَنَالَ اللَّهَ لُحُومُهَا وَلا دِمَاؤُهَا} [الحج: ٣٧] إنْ شِئْت فَبِعْ، وَإِنْ شِئْت فَأَمْسِكْ.

L16542 It is authentically reported from Abu Al-'Aliyah that he said: There is no harm in selling the hides of sacrificial animals. What an excellent bounty: you eat the meat, fulfill the rites, and reclaim some of the price.

وَصَحَّ عَنْ أَبِي الْعَالِيَةِ أَنَّهُ قَالَ: لَا بَأْسَ بِبَيْعِ جُلُودِ الْأَضَاحِيِّ، نِعْمَ الْغَنِيمَةُ تَأْكُلُ اللَّحْمَ وَتَقْضِي النُّسُكَ، وَيُرْجَعُ إلَيْك بَعْضُ الثَّمَنِ.

L16543 Others held a similar view except that they permitted selling it by exchanging one item for another. It is authentically reported from Ibrāhīm al-Nakhaʿī that he disapproved of selling the sacrificial animal's hide, stating: "There is no harm in exchanging the hide for some household items." He said: "Give it as charity," but permitted as a concession to purchase sieves and sifters with it.

وَذَهَبَ آخَرُونَ إلَى مِثْلِ هَذَا إلَّا أَنَّهُمْ أَجَازُوا أَنْ يُبَاعَ بِهِ شَيْءٌ دُونَ شَيْءٍ -: صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَرِهَ بَيْعَ جِلْدِ الْأُضْحِيَّةِ وَقَالَ: لَا بَأْسَ بِأَنْ يُبَدِّلَ بِجِلْدِ الْأُضْحِيَّةِ بَعْضُ مَتَاعِ الْبَيْتِ وَأَنَّهُ قَالَ: تَصَدَّقْ بِهِ وَأَرْخَصَ أَنْ يُشْتَرَى بِهِ الْغِرْبَالُ وَالْمُنْخُلُ.

[5] **Qur'an references (L16541):** Qur'an 22:37 (Al-Hajj).

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَا يَجُوزُ بَيْعُهُ، وَلَكِنْ يُبْتَاعُ بِهِ بَعْضُ مَتَاعِ الْبَيْتِ كَالْغِرْبَالِ، وَالْمُنْخُلِ، وَالتَّابِلِ.

L16544 Abu Hanifa and Malik said: It is not permissible to sell it, but some household items such as sieves, sifters, and ropes may be purchased with it.

قَالَ هِشَامُ بْنُ عُبَيْدِ اللَّهِ الرَّازِيّ: أَيُبْتَاعُ بِهِ الْخَلُّ؟ قَالَ: لَا، قَالَ: فَقُلْت لَهُ: فَمَا الْفَرْقُ بَيْنَ الْخَلِّ وَالْغِرْبَالِ؟ قَالَ: فَقَالَ: لَا تَشْتَرِ بِهِ الْخَلَّ - وَلَمْ يَزِدْهُ عَلَى ذَلِكَ.

L16545 Hisham ibn ʻUbayd Allah al-Razi said: "Does one purchase vinegar in exchange for it?" He replied: "No." I then said to him: "What is the difference between vinegar and the sieve?" He said: "Do not purchase vinegar in exchange for it," and he added nothing beyond that.

قَالَ أَبُو مُحَمَّد: أَمَّا هَذَا الْقَوْلُ فَطَرِيفٌ جِدًّا، وَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ التَّوَابِلِ، الْكَمُّونِ، وَالْفُلْفُلِ، وَالْكُسْبُرَةِ، وَالْكَرَاوْيَا، وَالْغِرْبَالِ، وَالْمُنْخُلِ. وَبَيْنَ الْخَلِّ، وَالزَّيْتِ وَاللَّحْمِ، وَالْفَأْسِ، وَالْمِسْحَاةِ، وَالثَّوْبِ، وَالْبِرِّ، وَالنَّبِيذِ الَّذِي لَا يُسْكِرُ؟ وَهَلْ يَجُوزُ عِنْدَهُمْ فِي ابْتِيَاعِ: التَّوَابِلِ، وَالْغِرْبَالِ، وَالْمَنَاخِلِ، مِنْ الرِّبَا وَالْبُيُوعِ الْفَاسِدَةِ مَا لَا يَجُوزُ فِي غَيْرِ ذَلِكَ؟ إنَّ هَذَا لَعَجَبٌ لَا نَظِيرَ لَهُ وَهَذَا أَيْضًا قَوْلٌ خِلَافُ كُلِّ مَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L16546 Abu Muhammad said: As for this statement, it is exceedingly novel. Would that I knew: What is the distinction between spices—cumin, pepper, coriander, caraway, winnowing baskets, and sieve—and vinegar, oil, meat, axes, hoes, garments, wheat, and non-intoxicating nabīdh? Does their position permit in the purchase of spices, winnowing baskets, and sieves—regarding usury and invalid sales—what is impermissible in other matters? Truly, this is an unparalleled marvel. Moreover, this opinion contradicts all that has been transmitted from the Companions (may Allah be pleased with them) concerning this matter.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ فَقُلْت لِابْنِ عَبَّاسٍ: كَيْفَ نَصْنَعُ بِإِهَابِ الْبُدْنِ؟ قَالَ: يُتَصَدَّقُ بِهِ وَيُنْتَفَعُ بِهِ.

L16547 It has been narrated to us through Abd al-Razzaq, from Sufyan al-Thawri, from al-Aʻmash, from Abu Ẓabyān: I said to Ibn Abbas, "What should we do with the hides of sacrificial camels?" He replied, "They should be given as charity and utilized."

وَعَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنْ يُجْعَلَ مِنْ جِلْدِ الْأُضْحِيَّةِ سِقَاءً يُنْبَذُ فِيهِ.

L16548 That a water skin made from the hide of the sacrificial animal be designated for storing nabīdh (fermented drink).

وَعَنْ مَسْرُوقٍ أَنَّهُ كَانَ يَجْعَلُ مِنْ جِلْدِ أُضْحِيَّتِهِ مُصَلًّى يُصَلِّي فِيهِ.

L16549 And it is narrated from Masruq that he would use the skin of his sacrificial animal as a prayer mat to pray on.

وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ: انْتَفِعُوا بِمُسُوكِ الْأَضَاحِيِّ وَلَا تَبِيعُوهَا.

L16550 It is authentically reported from al-Ḥasan al-Baṣrī: Benefit from the hides of sacrificial animals, but do not sell them.

وَعَنْ طَاوُسٍ أَنَّهُ عَمِلَ مِنْ جِلْدِ عُنُقِ بَدَنَتِهِ نَعْلَيْنِ لِغُلَامِهِ.

L16551 From Ṭāwus: he made two sandals from the neck skin of his sacrificial camel for his enslaved youth.

وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ لَا يُعْطَى الْجَزَّارُ جِلْدَ الْبَدَنَةِ وَلَا يُبَاعُ.

L16552–16553 From Ma'mar, from Al-Zuhri: The butcher should not be given the hide of the sacrificial camel, nor should it be sold.

L16554 Sufyan ibn ‘Uyaynah narrated from Ibn Abi Najih that Mujahid and Sa‘id ibn Jubayr disliked selling the hide of the sacrificial camel, whether the sacrifice was voluntary or obligatory.

وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ أَنَّ مُجَاهِدًا، وَسَعِيدَ بْنَ جُبَيْرٍ كَرِهَا أَنْ يُبَاعَ جِلْدُ الْبَدَنَةِ تَطَوُّعًا كَانَتْ أَوْ وَاجِبَةً.

L16555 Abu Muhammad said: There are only two opinions: those who generally prohibit it and those who generally permit it. Those who generally permit it cited as evidence the statement of Allah, the Most High: “And Allah has made sale lawful” [Al-Baqarah: 275].[6]

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ إلَّا قَوْلُ مَنْ مَنَعَ جُمْلَةً أَوْ مَنْ أَبَاحَ جُمْلَةً فَاحْتَجَّ مَنْ أَبَاحَ جُمْلَةً بِقَوْلِ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L16556 Ali said: “This is right since nothing specific has come regarding it, and it is authentically established from the Prophet (peace be upon him) concerning ritual sacrifices as we have cited of his saying: ’Eat, feed others, give charity, and store up.’ Therefore, it is not permissible to overstep these manners, for that would transgress the limits set by Allah, the Exalted.”

قَالَ عَلِيٌّ: هَذَا حَقٌّ إذْ لَمْ يَأْتِ مَا يَخُصُّهُ، وَقَدْ صَحَّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَضَاحِيِّ مَا أَوْرَدْنَاهُ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: كُلُوا، وَأَطْعِمُوا، وَتَصَدَّقُوا، وَادَّخِرُوا» فَلَا يَحِلُّ تَعَدِّي هَذِهِ الْوُجُوهِ فَيَتَعَدَّى حُدُودَ اللَّهِ تَعَالَى.

L16557 Saving is a term that applies to withholding. We are therefore permitted to withhold it and give charity from it, and nothing else is permissible for us.

وَالِادِّخَارُ اسْمٌ يَقَعُ عَلَى الْحَبْسِ، فَأُبِيحَ لَنَا احْتِبَاسُهَا وَالصَّدَقَةُ بِهَا، فَلَيْسَ لَنَا غَيْرُ ذَلِكَ.

L16558 Moreover, when the sacrificial offering is presented to Allah the Exalted, the sacrificer has removed it from his ownership to Allah. Therefore, nothing from it becomes permissible for him except what the text has permitted. Were it not for the explicit directive regarding eating and storing, nothing from it would have been permissible for us. Thus, these two are exempted from the prohibition by the text, while all that is other than these entirely remains subject to the prohibition.

وَأَيْضًا: فَإِنَّ الْأُضْحِيَّةَ إذَا قُرِّبَتْ إلَى اللَّهِ تَعَالَى فَقَدْ أَخْرَجَهَا الْمُضَحِّي مِنْ مِلْكِهِ إلَى اللَّهِ تَعَالَى فَلَا يَحِلُّ لَهُ مِنْهَا شَيْءٌ إلَّا مَا أَحَلَّهُ لَهُ النَّصُّ، فَلَوْلَا الْأَمْرُ الْوَارِدُ بِالْأَكْلِ وَالِادِّخَارِ مَا حَلَّ لَنَا شَيْءٌ مِنْ ذَلِكَ، فَخَرَجَ هَذَانِ عَنْ الْحَظْرِ بِالنَّصِّ وَبَقِيَ مَا عَدَا ذَلِكَ كُلِّهِ عَلَى الْحَظْرِ.

L16559 They assert—and we hold the same view concerning the umm al-walad—that he may employ her services, have intercourse with her, and emancipate her, but it is unlawful for him to sell her, give her as a dowry, rent her out, or grant her ownership to another. And with Allah, the Exalted, is success.

وَهُمْ يَقُولُونَ وَنَحْنُ فِي أُمِّ الْوَلَدِ كَذَلِكَ أَنَّ لَهُ اسْتِخْدَامَهَا وَوَطْأَهَا وَعِتْقَهَا وَلَا يَحِلُّ لَهُ بَيْعُهَا، وَلَا إصْدَاقُهَا، وَلَا الْإِجَارَةُ بِهَا، وَلَا تَمْلِيكُهَا غَيْرَهُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16560 Any action that occurs which is unlawful must be annulled, based on the statement of Allah’s Messenger—peace and blessings be upon him: “Whoever performs an act not in accordance with our way, it is invalid.” As for one who acquires ownership of something from such [unlawful sources] through inheritance, gift, or charity, it remains part of his wealth that he has not yet

وَمَا وَقَعَ مِمَّا لَا يَجُوزُ فَيُفْسَخُ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَأَمَّا مَنْ تَمَلَّكَ مِنْ ذَلِكَ شَيْئًا بِمِيرَاثٍ أَوْ هِبَةٍ أَوْ صَدَقَةٍ فَهُوَ مَالٌ مِنْ مَالِهِ لَمْ يُخْرِجْهُ عَنْ يَدِهِ إلَى اللَّهِ تَعَالَى بَعْدُ فَلَهُ فِيهِ مَا لَهُ فِي سَائِرِ مَالِهِ وَلَا فَرْقَ.

[6] **Qur’an references (L16555):** Qur’an 2:275 (Al-Baqarah).

transferred from his possession to Allah's ownership. He retains the same rights to it as to the rest of his wealth, with no distinction.[7]

L16561 **A legal question: If a defect is discovered in the *Udhiyah* after he has sacrificed it.**

L16562 987 - Issue: If someone finds a defect in the sacrificial animal after sacrificing it without having stipulated soundness, they may reclaim the difference between its value when alive and sound versus its defective value. This is because they originally held the right to return or retain it. When this right becomes void due to the animal's exit through sacrifice to Allah the Exalted, it becomes impermissible for the seller to consume their brother's property through deceit and falsehood. Thus, the seller must return whatever excess they took beyond the animal's rightful equivalent value, as this was taken without legitimate right - unless the purchaser permits this, for it remains their rightful claim which they may relinquish to Allah the Exalted. This matter is comprehensively addressed in the Book of Transactions, if Allah the Exalted wills.

L16563–16564 He, the Exalted, said: "Do not consume one another's wealth wrongfully" (Quran 2:188).[8]

L16565 And He, the Exalted, said: "They deceive Allah and those who believe, but they deceive none except themselves" [Al-Baqarah: 9]. Thus, the deception here refers to usurping wealth wrongfully.[9]

L16566 ٩٨٨ - Issue:

L16567 If the condition of soundness was stipulated, it is deemed carrion. The buyer shall compensate the seller with its equivalent and reclaim the price. It may not be consumed, for the sound animal—with certainty and without doubt—is distinct from the defective one.

[7] **Hadith references (L16560):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[8] **Qur'an references (L16564):** Qur'an 2:188 (Al-Baqarah).

[9] **Qur'an references (L16565):** Qur'an 2:9 (Al-Baqarah).

[مَسْأَلَةٌ وَجَدَ بِالْأُضْحِيَّةِ عَيْبًا بَعْدَ أَنْ ضَحَّى بِهَا]

٩٨٧ - مَسْأَلَةٌ: وَمَنْ وَجَدَ بِالْأُضْحِيَّةِ عَيْبًا بَعْدَ أَنْ ضَحَّى بِهَا وَلَمْ يَكُنْ اشْتَرَطَ السَّلَامَةَ فَلَهُ الرُّجُوعُ بِمَا بَيْنَ قِيمَتِهَا حَيَّةً صَحِيحَةً وَبَيْنَ قِيمَتِهَا مَعِيبَةً، وَذَلِكَ لِأَنَّهُ كَانَ لَهُ الرَّدُّ أَوْ الْإِمْسَاكُ، فَلَمَّا بَطَلَ الرَّدُّ بِخُرُوجِهَا بِالتَّضْحِيَةِ إِلَى اللَّهِ تَعَالَى لَمْ يَجُزْ لِلْبَائِعِ أَكْلُ مَالِ أَخِيهِ بِالْخَدِيعَةِ وَالْبَاطِلِ فَعَلَيْهِ رَدُّ مَا اسْتَزَادَ عَلَى حَقِّهَا الَّذِي يُسَاوِيهِ، لِأَنَّهُ أَخَذَهُ بِغَيْرِ حَقٍّ، إِلَّا أَنْ يُحَلَّ لَهُ ذَلِكَ الْمُبْتَاعُ فَلَهُ ذَلِكَ، لِأَنَّهُ حَقُّهُ تَرَكَهُ لِلَّهِ تَعَالَى وَهَذَا مُتَقَصًّى فِي كِتَابِ الْبُيُوعِ إِنْ شَاءَ اللَّهُ تَعَالَى.

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

وَقَالَ تَعَالَى: {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩] فَالْخَدِيعَةِ أَكْلُ مَالٍ بِالْبَاطِلِ.

٩٨٨ - مَسْأَلَةٌ:

فَإِنْ كَانَ اشْتِرَاطَ السَّلَامَةَ فَهِيَ مَيْتَةٌ وَيَضْمَنُ مِثْلَهَا لِلْبَائِعِ وَيَسْتَرِدُّ الثَّمَنَ وَلَا تُؤْكَلُ لِأَنَّ السَّالِمَةَ بِيَقِينٍ لَا شَكَّ فِيهِ هِيَ غَيْرُ الْمَعِيبَةِ.

L16568 Whoever purchases a sound item and gives a defective one in return has indeed given something other than what he purchased. When he gives something other than what he purchased, he has taken what does not rightfully belong to him. Whoever takes what does not rightfully belong to him, it is forbidden for him. Allah the Exalted said: "Do not consume one another's wealth unjustly, except through trade by mutual consent among you." [An-Nisa: 29][10]

فَمَنْ اشْتَرَى سَالِمَةً وَأَعْطَى مَعِيبَةً فَإِنَّمَا أَعْطَى غَيْرَ مَا اشْتَرَى، وَإِذَا أَعْطَى غَيْرَ مَا اشْتَرَى فَقَدْ أَخَذَ مَا لَيْسَ لَهُ، وَمَنْ أَخَذَ مَا لَيْسَ لَهُ فَهُوَ حَرَامٌ عَلَيْهِ قَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L16569 Mutual consent occurs only through awareness to the extent of what is mutually agreed upon, not through ignorance of it. One who did not know the defect has not consented to it, and consent is valid only during the contract of the transaction, not after it.

وَالتَّرَاضِي لَا يَكُونُ إِلَّا بِالْمَعْرِفَةِ بِقَدْرِ مَا يَتَرَاضَيَانِ بِهِ لَا بِالْجَهْلِ بِهِ، فَمَنْ لَمْ يَعْرِفْ الْعَيْبَ فَلَمْ يَرْضَ بِهِ، وَالرِّضَا لَا يَكُونُ إِلَّا فِي عَقْدِ الصَّفْقَةِ لَا بَعْدَهُ.

L16570 Whoever slaughters another's livestock without the owner's permission has transgressed, and transgression is disobedience to Allah and an act of injustice. Allah the Exalted has ordained valid slaughter as an act of obedience to Him. There is no doubt that obedience to Allah the Exalted is not disobedience. Thus, the slaughter that is an act of obedience and valid slaughter differs from the slaughter that is disobedience and aggression. It is impermissible to consume any part of an animal except through the valid slaughter ordained by Allah the Exalted, not from that which He has forbidden of aggression. Thus, it is not properly slaughtered and is carrion. Whoever transgresses by destroying his brother's property is financially liable, and the sale transaction is invalid, so the price must be refunded.

وَمَنْ ذَبَحَ مَالَ غَيْرِهِ بِغَيْرِ إِذْنِ مَالِكِهِ فَقَدْ تَعَدَّى، وَالتَّعَدِّي مَعْصِيَةٌ لِلَّهِ وَظُلْمٌ، وَقَدْ أَمَرَ اللَّهُ تَعَالَى بِالذَّكَاةِ فَهِيَ طَاعَةٌ لَهُ تَعَالَى، وَلَا شَكَّ فِي أَنَّ طَاعَةَ اللَّهِ تَعَالَى غَيْرُ مَعْصِيَةٍ، فَالذَّبْحُ الَّذِي هُوَ طَاعَةٌ وَذَكَاةٌ، هُوَ غَيْرُ الذَّبْحِ الَّذِي هُوَ مَعْصِيَةٌ وَعُدْوَانٌ، وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الْحَيَوَانِ إِلَّا بِالذَّكَاةِ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا، لَا مِمَّا نَهَى عَنْهُ مِنْ الْعُدْوَانِ، فَلَيْسَتْ ذَكِيَّةً فَهِيَ مَيْتَةٌ، وَمَنْ تَعَدَّى بِإِتْلَافِ مَالِ أَخِيهِ فَهُوَ ضَامِنٌ، وَالصَّفْقَةُ فَاسِدَةٌ فَالثَّمَنُ مَرْدُودٌ.

L16571 Whoever differs from us in this matter has contradicted himself, since he prohibits eating the game killed in the Sacred Precinct or what the pilgrim in a state of consecration hunts, though there is no distinction between the two cases. And Abū Thawr and others have permitted eating the game killed by the pilgrim in a state of consecration based on the same rationale that they used to permit eating what was slaughtered unlawfully.

وَمَنْ خَالَفَنَا فِي هَذَا فَقَدْ تَنَاقَضَ، إِذْ حَرَّمَ أَكْلَ مَا ذُبِحَ مِنْ صَيْدِ الْحَرَمِ أَوْ مَا يَصِيدُهُ الْمُحْرِمُ، وَلَا فَرْقَ بَيْنَ الْأَمْرَيْنِ، وَقَدْ أَبَاحَ أَبُو ثَوْرٍ وَغَيْرُهُ أَكْلَ الصَّيْدِ الَّذِي يَقْتُلُهُ الْمُحْرِمُ بِالْعِلَّةِ الَّتِي بِهَا أَبَاحَ هَؤُلَاءِ أَكْلَ مَا ذُبِحَ بِغَيْرِ حَقٍّ.

L16572 **A case where someone erred and slaughtered another's sacrificial animal without their permission.**

[مَسْأَلَةٌ أَخْطَأَ فَذَبَحَ أُضْحِيَّةَ غَيْرِهِ بِغَيْرِ أَمْرِهِ]

[10] **Qur'an references (L16568):** Qur'an 4:29 (An-Nisa).

L16573 Issue 989: If a person mistakenly slaughters another's sacrificial animal without their permission, it becomes dead meat (maytah) that is not to be eaten. They are obligated to replace it, for the reasons stated.

٩٨٩ - مَسْأَلَةٌ: وَمَنْ أَخْطَأَ فَذَبَحَ أُضْحِيَّةَ غَيْرِهِ بِغَيْرِ أَمْرِهِ فَهِيَ مَيْتَةٌ لَا تُؤْكَلُ، وَعَلَيْهِ ضَمَانُهَا لِمَا ذَكَرْنَا.

L16574 For an absent person, it is permissible to instruct that a sacrifice be offered on his behalf, and this is valid, as it constitutes enjoining good. If a sacrifice is made on his behalf from his wealth without his instruction, it is considered unlawful to consume, like carrion, for the reason we have mentioned. If the guardian of a minor or an insane person offers a sacrifice on their behalf from their wealth, it is valid and is not deemed carrion, because he is their legal guardian. This does not apply to someone who is competent to manage their own affairs. And with Allah, exalted is He, lies all success.

وَلِلْغَائِبِ أَنْ يَأْمُرَ بِأَنْ يُضَحَّى عَنْهُ وَهُوَ حَسَنٌ، لِأَنَّهُ أَمْرٌ بِمَعْرُوفٍ، فَإِنْ ضُحِّيَ عَنْهُ مِنْ مَالِهِ بِغَيْرِ أَمْرِهِ فَهِيَ مَيْتَةٌ لِمَا ذَكَرْنَا، فَلَوْ ضَحَّى عَنْ الصَّغِيرِ أَوْ الْمَجْنُونِ وَلِيُّهُمَا مِنْ مَالِهِمَا فَهُوَ حَسَنٌ، وَلَيْسَتْ مَيْتَةً، لِأَنَّهُ النَّاظِرُ لَهُمَا وَلَيْسَ كَذَلِكَ مَالِكُ أَمْرِ نَفْسِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

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[The Book of Foods] [Issue on Eating Pork]

[كِتَابُ الْأَطْعِمَةِ] [مَسْأَلَةٌ أَكْلُ لَحْمِ الْخِنْزِيرِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْأَطْعِمَةِ مَا يَحِلُّ أَكْلُهُ وَمَا يَحْرُمُ أَكْلُهُ ٩٨٩ - مُكَرَّرٌ مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: لَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الْخِنْزِيرِ، لَا لَحْمِهِ، وَلَا شَحْمِهِ، وَلَا جِلْدِهِ، وَلَا عَصَبِهِ، وَلَا غُضْرُوفِهِ، وَلَا حَشْوَتِهِ، وَلَا مُخِّهِ، وَلَا عَظْمِهِ، وَلَا رَأْسِهِ، وَلَا أَطْرَافِهِ، وَلَا لَبَنِهِ، وَلَا شَعْرِهِ - الذَّكَرُ وَالْأُنْثَى وَالصَّغِيرُ وَالْكَبِيرُ سَوَاءٌ - وَلَا يَحِلُّ الِانْتِفَاعُ بِشَعْرِهِ لَا فِي خَرَزٍ، وَلَا فِي غَيْرِهِ.

L16577 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Foods: What is Permissible to Eat and What is Forbidden to Eat. Reiterated Issue 989. Abu Muhammad said: It is not permissible to eat any part of the pig—neither its meat, fat, skin, sinew, cartilage, innards, marrow, bones, head, extremities, milk, nor hair—whether the animal is male or female, young or old, the ruling remains the same. Nor is it permissible to use its hair, whether in beads or any other form.

وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الدَّمِ وَلَا اسْتِعْمَالُهُ - مَسْفُوحًا كَانَ أَوْ غَيْرَ مَسْفُوحٍ - إلَّا الْمِسْكُ وَحْدَهُ، وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِمَّا مَاتَ حَتْفَ أَنْفِهِ مِنْ حَيَوَانِ الْبَرِّ وَلَا مَا قُتِلَ مِنْهُ بِغَيْرِ الذَّكَاةِ الْمَأْمُورِ بِهَا، إلَّا الْجَرَادُ وَحْدَهُ، فَإِنْ خُنِقَ شَيْءٌ مِنْ حَيَوَانِ الْبَرِّ حَتَّى يَمُوتَ أَوْ ضُرِبَ بِشَيْءٍ حَتَّى يَمُوتَ، أَوْ سَقَطَ مِنْ عُلْوٍ فَمَاتَ، أَوْ نَطَحَهُ حَيَوَانٌ آخَرُ فَمَاتَ مِنْ ذَلِكَ فَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْهُ، وَلَا مَا قَتَلَهُ السَّبُعُ أَوْ حَيَوَانٌ آخَرُ حَاشَا الصَّيْدَ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى فَإِنْ أُدْرِكَ كُلُّ مَا ذَكَّيْنَا حَيًّا فَذُكِّيَ فَهُوَ حَلَالٌ أَكْلُهُ إنْ كَانَ مِمَّا لَمْ يَحْرُمْ أَكْلُهُ.

L16578 It is impermissible to consume any form of blood or use it—whether flowing or not—except musk alone. It is also impermissible to eat any animal that dies naturally on land or is killed without the commanded ritual slaughter, except locusts alone. If any land animal is strangled to death, struck with an object until it dies, falls from a height and dies, or is gored by another animal and dies from that injury, it is impermissible to consume any part of it. Nor is it permissible to eat what is killed by a beast of prey or another animal—except for hunted game as we will mention after this, God Almighty willing. If all the aforementioned animals are found alive and slaughtered properly, their consumption becomes lawful provided they belong to a category not prohibited for eating.

وَلَا يَحِلُّ أَكْلُ حَيَوَانٍ ذُبِحَ أَوْ نُحِرَ لِغَيْرِ اللَّهِ تَعَالَى، قَالَ اللَّهُ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنْزِيرِ وَمَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ وَالْمُنْخَنِقَةُ وَالْمَوْقُوذَةُ وَالْمُتَرَدِّيَةُ وَالنَّطِيحَةُ وَمَا أَكَلَ السَّبُعُ إِلا مَا ذَكَّيْتُمْ وَمَا ذُبِحَ عَلَى النُّصُبِ} [المائدة: ٣] فَحَرَّمَ تَعَالَى كُلَّ مَا ذَكَّيْنَا وَاسْتَثْنَى مِنْهُ بِالْإِبَاحَةِ كُلَّ مَا ذَكَّيْنَا وَلَا تَقْتَضِي الْآيَةُ غَيْرَ هَذَا أَصْلًا وَهَهُنَا قَوْلَانِ لِبَعْضِ مَنْ تَقَدَّمَ، أَحَدُهُمَا قَوْلُ مَالِكٍ وَهُوَ أَنَّهُ إذَا بَلَغَ بِالْحَيَوَانِ شَيْءٌ مِمَّا ذَكَّيْنَا مَبْلَغًا

L16579–16581 It is not permissible to eat an animal slaughtered by dhabh or slaughtered by nahr for other than Allah the Exalted. Allah the Exalted said: “Forbidden to you are carrion, blood, the flesh of swine, what is dedicated to other than Allah, the strangled, the beaten, the fallen, the gored, what wild animals have devoured—except what you properly slaughter—and what is slaughtered upon altars” [Al-Ma’idah 5:3]. Thus, He the Exalted prohibited all. What we have mentioned, and from which exemption is declared permissible, includes all that has been properly slaughtered. The verse does not necessitate anything beyond this at all. Here, there are two opinions among

some earlier scholars. The first is the opinion of Mālik: If an animal reaches, due to any of the causes we mentioned, a state where death is certain, then eating it remains unlawful even if slaughtered. The second opinion is that of Al-Muzanī, who said: If one determines that the animal will die from its injury before dying due to the slaughtering, eating it is prohibited. But if one determines that it will die from the slaughtering before dying from its injury, then eating it is permissible.[1]

يُوقَنُ أَنَّهُ يَمُوتُ مِنْهُ فَإِنَّهُ لَا يَحِلُّ أَكْلُهُ، وَإِنْ ذُكِّيَ وَالْقَوْلُ الثَّانِي قَالَهُ الْمُزَنِيّ وَهُوَ أَنَّهُ قَالَ: إِذَا عَرَفَ أَنَّهُ يَمُوتُ مِمَّا أَصَابَهُ قَبْلَ مَوْتِهِ مِنْ الذَّكَاةِ حَرُمَ أَكْلُهُ وَإِنْ عَرَفَ أَنَّهُ يَمُوتُ مِنْ الذَّكَاةِ قَبْلَ مَوْتِهِ مِمَّا أَصَابَهُ حَلَّ أَكْلُهُ.

L16582 Abu Muhammad said: As for Mālik's opinion, it is manifestly contrary to the verse, and likewise Imam Al-Muzanī's categorization as well. We shall expound this comprehensively in the Book of Ritual Slaughter (Dhakat), Allah the Exalted willing. As for blood, certain scholars prohibited solely the spilled blood—that which flows—adducing as proof Allah's declaration: {Say, "I find not in what has been revealed to me anything forbidden to one who eats it except carrion, or spilled blood, or swine's flesh—for it is impurity—or that which is sacrilegiously dedicated to other than Allah"} [6:145]. They contended: He indeed prohibited only the spilled blood.[2]

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِك فَخِلَافٌ لِلْآيَةِ ظَاهِرٌ، وَكَذَلِكَ تَقْسِيمُ الْمُزَنِيّ أَيْضًا وَسَنَسْتَقْصِي هَذَا فِي كِتَابِ الذَّكَاةِ إنْ شَاءَ اللَّهُ تَعَالَى، وَأَمَّا الدَّمُ فَإِنَّ قَوْمًا حَرَّمُوا الْمَسْفُوحَ وَحْدَهُ، وَهُوَ الْجَارِي، وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ} [الأنعام: ١٤٥] قَالُوا: فَإِنَّمَا حَرَّمَ الْمَسْفُوحَ فَقَطْ.

L16583 Abu Muhammad said: This argument of theirs is misplaced, for the verse they cited as evidence is in Surah Al-An'am—a Meccan revelation—whereas the verse we have recited is in Surah Al-Ma'idah—a Medinan revelation and among the final revelations. In the early period of Islam at Mecca, only flowing blood was prohibited, but later in Medina, all blood was universally prohibited in its entirety. Thus, whoever restricts the prohibition to flowing blood alone has permitted what God Almighty prohibited in the other verse, while whoever prohibits blood in its entirety has upheld both verses. Moreover, after that verse, other matters not mentioned in it—such as wine and other things—were prohibited. Therefore, it is obligatory to prohibit everything explicitly forbidden by textual rulings revealed after that verse, and the prohibition of blood in its entirety is among what was decreed after that verse.

قَالَ أَبُو مُحَمَّد: وَهَذَا اسْتِدْلَالٌ مِنْهُمْ مَوْضُوعٌ فِي غَيْرِ مَوْضِعِهِ لِأَنَّ الْآيَةَ الَّتِي احْتَجُّوا بِهَا فِي سُورَةِ الْأَنْعَامِ وَهِيَ مَكِّيَّةٌ وَالْآيَةُ الَّتِي تَلَوْنَا نَحْنُ فِي سُورَةِ الْمَائِدَةِ وَهِيَ مَدَنِيَّةٌ مِنْ آخِرِ مَا أُنْزِلَ فَحَرَّمَ فِي أَوَّلِ الْإِسْلَامِ بِمَكَّةَ الدَّمَ الْمَسْفُوحَ ثُمَّ حَرَّمَ بِالْمَدِينَةِ الدَّمَ كُلَّهُ جُمْلَةً عُمُومًا فَمَنْ لَمْ يُحَرِّمْ إلَّا الْمَسْفُوحَ وَحْدَهُ فَقَدْ أَحَلَّ مَا حَرَّمَ اللَّهُ تَعَالَى فِي الْآيَةِ الْأُخْرَى وَمَنْ حَرَّمَ الدَّمَ جُمْلَةً فَقَدْ أَخَذَ بِالْآيَتَيْنِ جَمِيعًا وَقَدْ حَرَّمَ بَعْدَ تِلْكَ الْآيَةِ أَشْيَاءَ لَيْسَتْ فِيهَا كَالْخَمْرِ وَغَيْرِ ذَلِكَ فَوَجَبَ تَحْرِيمُ كُلِّ مَا جَاءَ نَصٌّ بِتَحْرِيمِهِ بَعْدَ تِلْكَ الْآيَةِ وَالدَّمُ جُمْلَةً مِمَّا نَزَلَ تَحْرِيمُهُ بَعْدَ تِلْكَ الْآيَةِ. نَا أَبُو سَعِيدٍ الْفَتَى نَا مُحَمَّدُ بْنُ عَلِيٍّ الْمُقْرِي نَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ النَّحَّاسُ حَدَّثَنِي يَمُوتُ بْنُ الْمزرع نَا أَبُو حَاتِمٍ سَهْلُ بْنُ مُحَمَّدٍ السِّجِسْتَانِيُّ نَا أَبُو عُبَيْدَةَ مَعْمَرُ بْنُ الْمُثَنَّى نَا يُونُسُ بْنُ حَبِيبٍ قَالَ: سَمِعْت أَبَا عَمْرِو بْنِ

From Abu Sa'id Al-Fata; from Muhammad ibn 'Ali Al-Muqri; from Ahmad ibn Muhammad ibn Isma'il Al-Nahhas; from Yamut ibn Al-Mazra'; from

[1] **Qur'an references (L16579):** Qur'an 5:3 (Al-Ma'idah).
[2] **Qur'an references (L16582):** Qur'an 6:145 (Al-An'am).

الْعَلَاءِ قَالَ: سَأَلْت مُجَاهِدًا عَنْ تَلْخِيصِ آيِ الْقُرْآنِ الْمَدَنِيِّ مِنْ الْمَكِّيِّ؟ فَقَالَ: سَأَلْت ابْنَ عَبَّاسٍ عَنْ ذَلِكَ؟ فَقَالَ: سُورَةُ الْأَنْعَامِ نَزَلَتْ بِمَكَّةَ جُمْلَةً وَاحِدَةً إلَّا ثَلَاثَ آيَاتٍ مِنْهَا نَزَلَتْ بِالْمَدِينَةِ {قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ} [الأنعام: ١٥١] إلَى تَمَامِ الثَّلَاثِ الْآيَاتِ.

Abu Hatim Sahl ibn Muhammad Al-Sijistani; from Abu ʻUbaydah Maʻmar ibn Al-Muthanna; from Yunus ibn Habib, who said: I heard Abu ʻAmr ibn Al-ʻAla' say: I asked Mujahid about determining Medinan Quranic verses from Meccan ones. He replied: I asked Ibn ʻAbbas about that, and he said: Surah Al-Anʻam was revealed in Mecca in its entirety except for three verses revealed in Medina: {Say, "Come, I will recite what your Lord has forbidden to you"} [Al-Anʻam 6:151] to the completion of the three verses.[3]

قَالَ أَبُو مُحَمَّد: هِيَ قَوْلُ اللَّهِ تَعَالَى: {قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ أَلا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَلا تَقْتُلُوا أَوْلادَكُمْ مِنْ إِمْلاقٍ نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ وَلا تَقْرَبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَلا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ - وَلا تَقْرَبُوا مَالَ الْيَتِيمِ إِلا بِالَّتِي هِيَ أَحْسَنُ حَتَّى يَبْلُغَ أَشُدَّهُ وَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ بِالْقِسْطِ لا نُكَلِّفُ نَفْسًا إِلا وُسْعَهَا وَإِذَا قُلْتُمْ فَاعْدِلُوا وَلَوْ كَانَ ذَا قُرْبَى وَبِعَهْدِ اللَّهِ أَوْفُوا ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَذَكَّرُونَ - وَأَنَّ هَذَا صِرَاطِي مُسْتَقِيمًا فَاتَّبِعُوهُ وَلا تَتَّبِعُوا السُّبُلَ فَتَفَرَّقَ بِكُمْ عَنْ سَبِيلِهِ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَتَّقُونَ} [الأنعام: ١٥١ - ١٥٣] .

L16584–16586 Abū Muḥammad said: This is the word of Allah, the Exalted: Say, "Come, I will recite what your Lord has forbidden you: Do not associate anything with Him, show kindness to parents, and do not kill your children out of fear of poverty—We provide for you and them. Do not approach immoralities, whether overt or concealed. Do not kill the soul Allah has sanctified except by right. This He has commanded you so that you may reason. Do not approach the orphan's property except in the best manner until he reaches maturity. Give full measure and weight with justice. We task no soul beyond its capacity. When you speak, be just even if it concerns a relative. Fulfill Allah's covenant. This He has commanded you so that you may reflect. This is My straight path—follow it. Do not follow other paths, lest they scatter you from His way. This He has commanded you so that you may attain piety." [Al-An'am: 151–153][4]

فَهَذِهِ الثَّلَاثُ الْآيَاتُ هِيَ الَّتِي أُنْزِلَتْ مِنْهَا فِي الْمَدِينَةِ وَسَائِرُهَا بِمَكَّةَ، وَسُورَةُ الْمَائِدَةِ أُنْزِلَتْ بِالْمَدِينَةِ لَا خِلَافَ فِي ذَلِكَ، (فَإِنْ ذَكَرُوا) مَا رُوِيَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا سُئِلَتْ عَنْ الدَّمِ يَكُونُ فِي أَعْلَى الْقِدْرِ؟ فَلَمْ تَرَ بِهِ بَأْسًا وَقَرَأَتْ {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ} [الأنعام: ١٤٥] حَتَّى بَلَغَتْ (مَسْفُوحًا) فَإِنَّ هَذَا قَدْ عَارَضَهُ مَا رُوِّينَاهُ عَنْهَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ جُرَيٍّ

L16587 These three verses are those which were revealed in Medina, while the rest of the surah was revealed in Mecca. Surah al-Mā'idah was revealed in Medina with no disagreement concerning this. If they mention what has been narrated from ʻĀ'ishah, the Mother of the Believers—when she was asked about blood found at the top of a cooking pot and she saw no issue with it, reciting: "Say, 'I do not find within what has been revealed to me anything forbidden for one who eats it...'" [al-Anʻām 6:145] until she reached "poured forth [masfūḥ]"—this report conflicts with what we have transmitted from her through the chain of Ibn Wahb, from Muʻāwiyah ibn Ṣāliḥ, from

[3]**Qur'an references (L16583):** Qur'an 6:151 (Al-An'am).

[4]**Qur'an references (L16584):** Qur'an 6:151 (Al-An'am); Qur'an 6:152 (Al-An'am); Qur'an 6:153 (Al-An'am).

بْنِ كُلَيْبٍ عَنْ جُبَيْرِ بْنِ نُفَيْرٍ قَالَ: قَالَتْ لِي عَائِشَةُ أُمُّ الْمُؤْمِنِينَ: هَلْ تَقْرَأُ سُورَةَ الْمَائِدَةِ؟ قُلْت: نَعَمْ قَالَتْ: أَمَا إنَّهَا آخِرُ سُورَةٍ نَزَلَتْ فَمَا وَجَدْتُمْ فِيهَا حَرَامًا فَحَرِّمُوهُ.

Jurayy ibn Kulayb, from Jubayr ibn Nufayr, who said: ʻĀ'ishah, the Mother of the Believers, said to me: "Do you recite Surah al-Mā'idah?" I replied: "Yes." She said: "Know that it is the final surah revealed. Whatever you find therein to be forbidden, you must deem it forbidden."[5]

قَالَ أَبُو مُحَمَّد: وَأَيْضًا فَإِنَّ الدَّمَ الَّذِي فِي أَعْلَى الْقِدْرِ إنْ كَانَ أَحْمَرَ ظَاهِرًا فَهُوَ بِلَا شَكّ مَسْفُوحٌ وَلَا خِلَافَ فِي تَحْرِيمِهِ وَإِنْ كَانَ إنَّمَا هُوَ صُفْرَةٌ فَلَيْسَ دَمًا لِأَنَّ الدَّمَ أَحْمَرُ أَوْ أَسْوَدُ لَا أَصْفَرُ فَإِنْ بَطَلَتْ صِفَاتُهُ الَّتِي مِنْهَا يَقُومُ حَدُّهُ فَقَطْ سَقَطَ عَنْهُ اسْمُ الدَّمِ وَإِذْ لَمْ يَكُنْ دَمًا فَهُوَ حَلَالٌ، وَكَذَلِكَ مَا فِي الْعُرُوقِ وَخِلَالَ اللَّحْمِ فَإِنَّهُ لَيْسَ ظَاهِرًا وَإِذَا لَمْ يَكُنْ ظَاهِرًا فَلَيْسَ هُنَالِكَ دَمٌ يُحَرَّمُ وَإِنَّمَا نَسْأَلُ خُصُومَنَا عَنْ دَمٍ أَحْمَرَ ظَاهِرٍ إلَّا أَنَّهُ جَامِدٌ لَيْسَ جَارِيًا أَيَحِلُّ أَكْلُهُ أَمْ لَا؟ فَهَذَا مَكَانُ الِاخْتِلَافِ بَيْنَنَا وَبَيْنَهُمْ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16588 Abū Muḥammad said: Furthermore, the blood atop the cooking pot—if it is visibly red, it is undoubtedly shed blood, and there is no dispute concerning its prohibition (ḥarām). If it is merely yellow, it is not blood, for blood is red or black, not yellow. If its attributes that establish its legal definition (ḥadd) are nullified, the term "blood" no longer applies to it. Since it is not blood, it is lawful (ḥalāl). Similarly, what remains in the veins and permeates the meat is not apparent. When it is not apparent, there is no prohibited (ḥarām) blood present. We merely ask our opponents about visibly red blood that is clotted, not flowing: is it permissible to consume it or not? This is the point of disagreement between us and them. Success is attained solely through Allah, the Exalted.

وَأَمَّا الْمِسْكُ فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَزَلْ يَتَطَيَّبُ بِهِ فِي حَجَّةِ الْوَدَاعِ وَبَعْدَهَا وَقَبْلَهَا وَأَقَرَّهُ اللَّهُ تَعَالَى عَلَى ذَلِكَ وَأَبَاحَهُ لَهُ وَلَنَا وَقَدْ عَلِمَ اللَّهُ تَعَالَى أَنَّهُ فِي أَصْلِهِ دَمُ قُرْحَةٍ مُتَوَلِّدَةٍ فِي حَيَوَانٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L16589 As for musk, the Messenger of Allah—peace and blessings be upon him—never ceased to use it as perfume during the Farewell Pilgrimage, as well as before it and after it. Allah the Exalted affirmed him in this practice and permitted it for him and for us. Allah the Exalted certainly knew that its origin is blood from a sore generated in an animal, *"and your Lord is never forgetful"* [19:64].[6]

وَأَمَّا الْخِنْزِيرُ فَإِنَّ اللَّهَ تَعَالَى قَالَ: {أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا} [الأنعام: ١٤٥] وَالضَّمِيرُ فِي لُغَةِ الْعَرَبِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ رَاجِعٌ إلَى أَقْرَبِ مَذْكُورٍ إلَيْهِ فَصَحَّ بِالْقُرْآنِ أَنَّ الْخِنْزِيرَ بِعَيْنِهِ رِجْسٌ فَهُوَ كُلُّهُ رِجْسٌ وَبَعْضُ الرِّجْسِ رِجْسٌ، وَالرِّجْسُ حَرَامٌ وَاجِبٌ اجْتِنَابُهُ فَالْخِنْزِيرُ كُلُّهُ حَرَامٌ لَا يَخْرُجُ مِنْ ذَلِكَ شَعْرُهُ وَلَا غَيْرُهُ حَاشَا مَا أَخْرَجَهُ النَّصُّ مِنْ الْجِلْدِ إذَا دُبِغَ فَحَلَّ اسْتِعْمَالُهُ.

L16590–16592 As for the swine, Allah the Exalted said: "or the flesh of swine—for indeed, it is ritually impure or sinful" [Al-Anʻām 6:145]. In the Arabic language in which the Quran was revealed, the pronoun refers to the nearest antecedent, thereby confirming through the Quran that the swine itself is ritually impure. Thus, all of it is ritually impure, and any part of a ritually impure entity remains ritually impure. The ritually impure is categorically forbidden, and avoiding it is an obligatory duty. The entire pig is forbidden; nothing is excluded from this prohibition—neither its hair nor anything else—except

[5] **Qur'an references (L16587):** Qur'an 6:145 (Al-An'am).
[6] **Qur'an references (L16589):** Qur'an 19:64 (Maryam).

what the text has exempted regarding the skin when it is tanned, in which case its use is permissible.[7]

L16593 It has been narrated to us through the chain of Muslim: from Qutaybah ibn Saʿīd, from Layth—that is, Ibn Saʿd—from Ibn Shihāb, from Saʿīd ibn al-Musayyab that he heard Abū Hurayrah say: The Messenger of Allah—peace and blessings of Allah be upon him—said: "By the One in Whose Hand is my soul, the son of Mary—peace be upon him—will soon descend among you as a just judge. He will break the cross, kill the pigs, abolish the jizyah, and wealth will abound so plentifully that no one will accept it."[8]

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا لَيْثٌ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَالَّذِي نَفْسِي بِيَدِهِ لَيُوشِكَنَّ أَنْ يَنْزِلَ فِيكُمْ ابْنُ مَرْيَمَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمًا مُقْسِطًا فَيَكْسِرَ الصَّلِيبَ وَيَقْتُلَ الْخِنْزِيرَ وَيَضَعَ الْجِزْيَةَ وَيَفِيضَ الْمَالُ حَتَّى لَا يَقْبَلَهُ أَحَدٌ» .

L16594 Through the chain of Muslim: Hārūn ibn ʿAbdullāh narrated to us, Ḥajjāj ibn Muḥammad narrated to us from Ibn Jurayj, who narrated from Abū al-Zubayr that he heard Jābir ibn ʿAbdullāh say: I heard the Prophet—peace and blessings be upon him (ﷺ)—say: "A group from my ummah will persist in fighting for the truth, remaining dominant until the Day of Resurrection. Then Jesus son of Mary—peace be upon him (عليه السلام)—will descend, and their leader will say: 'Come lead us in prayer.' But he will respond: 'No, for Allah has appointed some of you as leaders over others as an honor for this ummah.'" Thus it is established that the Prophet—peace and blessings be upon him (ﷺ)—affirmed Jesus'—peace be upon him (عليه السلام)—slaying of pigs and clarified that he will descend governing by Islamic law and judge accordingly. It is also authenticated that the Prophet—peace and blessings be upon him (ﷺ)—forbade wasteful destruction of property. If ritual slaughter (dhabīḥah) could render any part of the pig permissible, he—peace and blessings be upon him (ﷺ)—would not have sanctioned killing it without benefit, thereby wasting it. Hence it is confirmed that every part of the pig is carrion, absolutely forbidden in all circumstances. Certain careless adherents of qiyās, who speak carelessly, have asserted that pig fat was prohibited merely

وَمِنْ طَرِيقِ مُسْلِمٍ نَا هَارُونُ بْنُ عَبْدِ اللَّهِ نَا حَجَّاجٌ هُوَ ابْنُ مُحَمَّدٍ - (عَنْ ابْنِ جُرَيْجٍ) نَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: سَمِعْت النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا تَزَالُ طَائِفَةٌ مِنْ أُمَّتِي يُقَاتِلُونَ عَلَى الْحَقِّ ظَاهِرِينَ إلَى يَوْمِ الْقِيَامَةِ فَيَنْزِلُ عِيسَى ابْنُ مَرْيَمَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَقُولُ: أَمِيرُهُمْ تَعَالَ صَلِّ لَنَا فَيَقُولُ: لَا إنَّ بَعْضَكُمْ عَلَى بَعْضٍ أُمَرَاءُ تَكْرِمَةَ اللَّهِ هَذِهِ الْأُمَّةَ» ، فَصَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَوَّبَ قَتْلَ عِيسَى - عَلَيْهِ السَّلَامُ - لِلْخَنَازِيرِ وَأَخْبَرَ أَنَّهُ بِحُكْمِ الْإِسْلَامِ يَنْزِلُ وَبِهِ يَحْكُمُ، وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - نَهَى عَنْ إضَاعَةِ الْمَالِ فَلَوْ كَانَتْ الذَّكَاةُ تَعْمَلُ فِي شَيْءٍ مِنْ الْخِنْزِيرِ لَمَا أَبَاحَ - عَلَيْهِ السَّلَامُ - قَتْلَهُ فَيُضَيِّعُ، فَصَحَّ أَنَّهُ كُلَّهُ مَيْتَةٌ مُحَرَّمٌ عَلَى كُلِّ حَالٍ، وَقَدْ ادَّعَى بَعْضُ مَنْ لَا يُبَالِي مَا أَطْلَقَ بِهِ لِسَانَهُ مِنْ أَصْحَابِ الْقِيَاسِ أَنَّ شَحْمَ الْخِنْزِيرِ إنَّمَا حُرِّمَ قِيَاسًا عَلَى لَحْمِهِ وَأَنَّ الْإِجْمَاعَ عَلَى تَحْرِيمِهِ إنَّمَا هُوَ مِنْ قِبَلِ الْقِيَاسِ الْمَذْكُورِ.

[7] **Qur'an references (L16590):** Qur'an 6:145 (Al-An'am).
[8] **Hadith references (L16593):** Sahih Muslim 155a.

through analogy to its flesh, claiming the consensus on its prohibition stems solely from this juristic analogy.[9]

قَالَ أَبُو مُحَمَّدٍ: فَيُقَالُ لِمَنْ قَالَ هَذَا التَّخْلِيطَ الظَّاهِرَ فَسَادُهُ: أَوَّلُ بُطْلَانِ قَوْلِك أَنَّهُ دَعْوَى

L16595–16597 Abu Muhammad said: To the one who propounded this evident confusion whose corruption is clear, it shall be said: The first invalidity of your assertion is that it constitutes a claim without evidence. The second is that it falsely accuses the entire Ummah by claiming they collectively agreed upon the falsehood arising from analogy. The third is that even were analogy valid, this instance from it would epitomize falsehood, for no effective cause unites fat and meat. Should they argue: "Because fat is a part of meat, and from meat because it is generated from meat," we reply: As for your claim that fat is part of meat - this is false, for were it so, fat would itself be meat, yet this has never been attested by any language or divine law. As for your argument that it is because fat is generated from meat - we were generated from dust yet are not dust. The hen was generated from the egg yet is not an egg, and dates were generated from the palm tree yet are not palm trees. And it is not palm trees. Meat is generated from blood, and milk is generated from blood, yet meat is not blood nor is milk blood; rather, both are permissible (ḥalāl), while blood is forbidden (ḥarām). Whatever is generated from a substance without retaining its name becomes a distinct category. It is impermissible to subject it to the legal ruling of its origin—neither linguistically nor religiously. Allāh the Exalted forbade abdominal fat for the Children of Israel, yet He did not forbid meat by virtue of forbidding fat. Indeed, He did not forbid the fat of the back, the fat of the chest, or the visceral fat due to the prohibition of abdominal fat. If meat were forbidden, how could a person of intellect know from where it would be necessitated that fat must also be forbidden? We have already clarified the distinction between them previously.

بِلَا بُرْهَانٍ، وَثَانِيه أَنَّهُ كَذِبٌ عَلَى الْأُمَّةِ كُلِّهَا إذْ قُلْت إنَّهَا إنَّمَا أَجْمَعَتْ عَلَى الْبَاطِلِ مِنْ الْقِيَاسِ، وَالثَّالِثُ أَنَّهُ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ لِأَنَّهُ لَا عِلَّةَ تَجْمَعُ بَيْنَ الشَّحْمِ وَاللَّحْمِ، فَإِنْ قَالُوا: لِأَنَّ الشَّحْمَ بَعْضُ اللَّحْمِ وَمِنْ اللَّحْمِ لِأَنَّهُ مِنْ اللَّحْمِ تُولَدُ قُلْنَا لَهُمْ: أَمَّا قَوْلُكُمْ: إنَّ الشَّحْمَ بَعْضُ اللَّحْمِ فَبَاطِلٌ لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَكَانَ الشَّحْمُ لَحْمًا وَهَذَا لَمْ تَأْتِ بِهِ لُغَةٌ قَطُّ وَلَا شَرِيعَةٌ، وَأَمَّا قَوْلُكُمْ لِأَنَّهُ مِنْ اللَّحْمِ تَوَلَّدَ فَنَحْنُ تَوَلَّدْنَا مِنْ التُّرَابِ وَلَسْنَا تُرَابًا، وَالدَّجَاجَةُ تَوَلَّدَتْ مِنْ الْبَيْضَةِ وَلَيْسَتْ بَيْضَةً، وَالتَّمْرُ تَوَلَّدَ مِنْ النَّخْلِ وَلَيْسَ نَخْلًا، وَاللَّحْمُ تَوَلَّدَ مِنْ الدَّمِ، وَاللَّبَنُ تَوَلَّدَ مِنْ الدَّمِ وَلَيْسَ اللَّحْمُ دَمًا وَلَا اللَّبَنُ دَمًا بَلْ هُمَا حَلَالَانِ، وَالدَّمُ حَرَامٌ وَكُلُّ مَا تَوَلَّدَ مِنْ شَيْءٍ فَلَمْ يَقَعْ عَلَيْهِ اسْمُ مَا تَوَلَّدَ مِنْهُ فَهُوَ نَوْعٌ آخَرُ وَلَا يَجُوزُ أَنْ يُحْكَمَ لَهُ بِحُكْمِهِ لَا فِي اللُّغَةِ وَلَا فِي الدِّيَانَةِ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى الشَّحْمَ عَلَى بَنِي إسْرَائِيلَ فَلَمْ يُحَرِّمْ اللَّحْمَ بِتَحْرِيمِ الشَّحْمِ. نَعَمْ وَلَا حَرَّمَ شَحْمَ الظَّهْرِ وَلَا شَحْمَ الصَّدْرِ وَلَا شَحْمَ الْحَوَايَا لِتَحْرِيمِ شَحْمِ الْبَطْنِ، وَلَا يَدْرِي ذُو عَقْلٍ مِنْ أَيْنَ وَجَبَ إذَا حُرِّمَ اللَّحْمُ أَنْ يُحَرِّمَ الشَّحْمَ؟ وَقَدْ بَيَّنَّا فَرْقَ مَا بَيْنَهُمَا آنِفًا.

L16598 The fourth argument is to ask them: Do you consider the shattering of its bone, eating its cartilage, and drinking its milk to be prohibited by analogy to its meat? This is truly astonishing, for all these are distinct from meat in their view without any disagreement among them. Moreover, ask them: Inform us—did Allah the Exalted prohibit pig's fat, cartilage, bone, hair, and

وَالرَّابِعُ أَنْ يُقَالَ لَهُمْ أَتَرَوْنَ سَفَّ عَظْمِهِ وَأَكْلَ غُضْرُوفِهِ وَشُرْبَ لَبَنِهِ حُرِّمَ قِيَاسًا عَلَى لَحْمِهِ؟ إنَّ هَذَا لَعَجَبٌ جِدًّا وَكُلُّ هَذِهِ عِنْدَهُمْ أَنْوَاعٌ غَيْرُ اللَّحْمِ بِلَا خِلَافٍ مِنْهُمْ، وَيُقَالُ لَهُمْ أَيْضًا أَخْبِرُونَا أَحَرَّمَ اللَّهُ تَعَالَى شَحْمَ الْخِنْزِيرِ وَغُضْرُوفَهُ وَعَظْمَهُ وَشَعْرَهُ وَلَبَنَهُ؟ أَمْ لَمْ

[9] **Hadith references (L16594):** Sahih Muslim 1923; Mishkat al-Masabih 5507.

milk, or did He not prohibit any of these? They must affirm one of the two options. If they say, "Allah the Exalted prohibited all of that," we respond: How can Allah's prohibition of what He forbade be known except through His detailed specification of its prohibition and His revelation of this to His Messenger—peace be upon him? Is not anyone who claims Allah the Exalted prohibited such matters without divine revelation concerning them but a brazen fabricator against Allah, lying against Him openly? For they have ascribed to Him what He neither revealed nor declared about Himself. Allah the Exalted says: "He has already detailed for you what He has forbidden to you" [al-An'ām 6:119].[10]

L16599–16601 If they say: "All of that became prohibited due to Allah's prohibition of meat," we respond: This is a reiterated false claim fabricated without any evidence for its validity. Concerning this false claim, we questioned you but found nothing from you except its mere repetition. Whatever stands thus is invalid with certainty. If they say: "Allah the Exalted did not prohibit these things through revelation from Himself, nor did His Messenger (peace be upon him) prohibit them through explicit text from Him, but Muslims reached consensus to prohibit all of that," we tell them: This is more grievous and reprehensible – that there exists something they acknowledge was not prohibited by Allah the Exalted nor by His Messenger (peace be upon him). Since Allah the Exalted and His Messenger (peace be upon him) did not prohibit it, Allah the Exalted has undoubtedly permitted it. Thus, Muslims reached consensus to contradict Allah the Exalted and contradict His Messenger (peace be upon him) by prohibiting what Allah the Exalted and His Messenger (peace be upon him) did not prohibit. Allah the Exalted has safeguarded Muslims from these bald-faced disbelievers. If they say: "When Muslims reached consensus to prohibit it, Allah the Exalted then prohibited it at that time," we reply: When did Allah the Exalted prohibit it – before their consensus, simultaneously with their consensus, or after their consensus? There is no fourth category. If they say: "After their consensus," they render the ruling of Allah, the Exalted, subordinate to the ruling of His servants – and this is sheer disbelief. If they say: "Rather, simultaneously with

يُحَرِّمْ شَيْئًا مِنْ ذَلِكَ؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا، فَإِنْ قَالُوا: حَرَّمَ اللَّهُ تَعَالَى كُلَّ ذَلِكَ قُلْنَا لَهُمْ: وَمِنْ أَيْنَ يُعْرَفُ تَحْرِيمُ اللَّهِ تَعَالَى مَا حَرَّمَ إلَّا بِتَفْصِيلِهِ تَحْرِيمَهُ وَبِوَحْيِهِ بِذَلِكَ إلَى رَسُولِهِ - عَلَيْهِ السَّلَامُ -، وَهَلْ يَكُونُ مَنْ ادَّعَى أَنَّ اللَّهَ تَعَالَى حَرَّمَ أَمْرَ كَذَا بِغَيْرِ وَحْيٍ مِنْ اللَّهِ تَعَالَى بِذَلِكَ إلَّا مُفْتَرِيًا عَلَى اللَّهِ تَعَالَى كَاذِبًا عَلَيْهِ جِهَارًا؟ إذْ أَخْبَرَ عَنْهُ تَعَالَى بِمَا لَمْ يُنَزِّلْ بِهِ وَحْيًا وَلَا أَخْبَرَ بِهِ عَنْ نَفْسِهِ، وَقَدْ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

فَإِنْ قَالُوا: حَرُمَ كُلُّ ذَلِكَ بِتَحْرِيمِهِ اللَّحْمَ قُلْنَا: وَهَذِهِ دَعْوَى مُكَرَّرَةٌ كَاذِبَةٌ مُفْتَرَاةٌ بِلَا دَلِيلٍ عَلَى صِحَّتِهَا، وَعَنْ هَذِهِ الدَّعْوَةِ الْكَاذِبَةِ سَأَلْنَاكُمْ فَلَمْ نَجِدْ عِنْدَكُمْ زِيَادَةً عَلَى تَكْرِيرِهَا فَقَطْ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِيَقِينٍ. فَإِنْ قَالُوا: لَمْ يُحَرِّمْهَا اللَّهُ تَعَالَى بِوَحْيٍ مِنْ عِنْدِهِ وَلَا حَرَّمَهَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - بِنَصٍّ مِنْهُ لَكِنْ أَجْمَعَ الْمُسْلِمُونَ عَلَى تَحْرِيمِ كُلِّ ذَلِكَ، قِيلَ لَهُمْ: هَذِهِ أَطَمُّ وَأَفْحَشُ أَنْ يَكُونَ شَيْءٌ يُقِرُّونَ أَنَّهُ لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِذَا لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ أَحَلَّهُ اللَّهُ تَعَالَى بِلَا شَكٍّ فَأَجْمَعَ الْمُسْلِمُونَ عَلَى مُخَالَفَةِ اللَّهِ تَعَالَى وَمُخَالَفَةِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - إذْ حَرَّمُوا مَا لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - وَقَدْ أَعَاذَ اللَّهُ تَعَالَى الْمُسْلِمِينَ مِنْ هَذِهِ الْكَفَرَةِ الصَّلْعَاءِ، فَإِنْ قَالُوا: لَمَّا أَجْمَعَ الْمُسْلِمُونَ عَلَى تَحْرِيمِهِ حَرَّمَهُ اللَّهُ تَعَالَى حِينَئِذٍ قُلْنَا لَهُمْ: مَتَى حَرَّمَهُ اللَّهُ تَعَالَى؟ أَقَبْلَ إجْمَاعِهِمْ أَمْ مَعَ إجْمَاعِهِمْ أَمْ بَعْدَ إجْمَاعِهِمْ؟ وَلَا سَبِيلَ إلَى قِسْمٍ رَابِعٍ. فَإِنْ قَالُوا: بَعْدَ إجْمَاعِهِمْ جَعَلُوا حُكْمَهُ تَعَالَى تَبَعًا لِحُكْمِ عِبَادِهِ وَهَذَا كُفْرٌ مَحْضٌ، وَإِنْ قَالُوا: بَلْ مَعَ إجْمَاعِهِمْ كَانُوا قَدْ أَوْجَبُوا أَنَّهُمْ ابْتَدَءُوا مُخَالَفَةَ اللَّهِ تَعَالَى فِي تَحْرِيمِ مَا لَمْ يُحَرِّمْهُ وَقَدْ بَيَّنَّا فُحْشَ

[10] **Qur'an references (L16598):** Qur'an 6:119 (Al-An'am).

their consensus," they would have asserted that they initiated contradiction of Allah the Exalted in... The prohibition of what He has not prohibited—we have already clarified the reprehensibility of this earlier. If they say: "Rather, before their consensus," we respond: "It has been verified that He, the Exalted, prohibited it, and His prohibition of it cannot be known except through a detailed clarification from Him regarding its prohibition. Such detailed clarification cannot exist except through a textual source—this being our position. Otherwise, it constitutes a false claim against Allah, the Exalted, mere conjecture, and an assertion in religion based on speculation." Thus, the certainty of our position and the invalidity of their claim have become evident. It is confirmed that Muslims only reached consensus on prohibiting all of that in adherence to the text that came regarding its prohibition, just as they did not agree on prohibiting its meat except after the arrival of the text forbidding it—and there is no difference. And with Allah, the Exalted, is success. We shall mention the ruling concerning locusts after this, Allah willing.

هَذَا آنِفًا. وَإِنْ قَالُوا: بَلْ قَبْلَ إِجْمَاعِهِمْ قُلْنَا: فَقَدْ صَحَّ أَنَّهُ تَعَالَى حَرَّمَهُ وَلَا يُعْرَفُ تَحْرِيمُهُ إِيَّاهُ إِلَّا بِتَفْصِيلٍ مِنْهُ تَعَالَى بِتَحْرِيمِهِ وَالتَّفْصِيلُ لَا يَكُونُ أَلْبَتَّةَ إِلَّا بِنَصٍّ وَهَذَا قَوْلُنَا وَإِلَّا فَهُوَ دَعْوَى كَذِبٌ عَلَى اللَّهِ تَعَالَى وَتَكَهُّنٌ. وَقَوْلٌ فِي الدِّينِ بِالظَّنِّ فَظَهَرَ يَقِينُ مَا قُلْنَاهُ وَفَسَادُ قَوْلِهِمْ وَصَحَّ أَنَّ الْمُسْلِمِينَ إِنَّمَا أَجْمَعُوا عَلَى تَحْرِيمِ كُلِّ ذَلِكَ اتِّبَاعًا لِلنَّصِّ الْوَارِدِ فِي تَحْرِيمِهِ كَمَا لَمْ يُجْمِعُوا عَلَى تَحْرِيمِ لَحْمِهِ إِلَّا بَعْدَ وُرُودِ النَّصِّ بِتَحْرِيمِهِ وَلَا فَرْقَ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ، وَسَنَذْكُرُ حُكْمَ الْجَرَادِ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

The ruling on eating that which dwells within water and cannot live except in it.

[مَسْأَلَة أَكْلُ مَا يَسْكُنُ جَوْفَ الْمَاءِ وَلَا يَعِيشُ إِلَّا فِيهِ]

990 – Issue: As for creatures that dwell exclusively in water and cannot survive outside it, all of them are entirely lawful to eat regardless of their condition: whether captured alive and later died, died naturally in water, floated or sank, or were killed by marine or terrestrial animals—all of it is lawful to eat. This ruling applies equally to aquatic swine, human-like sea creatures, aquatic canines, and similar beings. Their permissibility holds whether slaughtered by a polytheist, Muslim, People of the Book, or found dead without human intervention.

٩٩٠ - مَسْأَلَةٌ: وَأَمَّا مَا يَسْكُنُ جَوْفَ الْمَاءِ وَلَا يَعِيشُ إِلَّا فِيهِ فَهُوَ حَلَالٌ كُلُّهُ كَيْفَمَا وُجِدَ، سَوَاءٌ أُخِذَ حَيًّا ثُمَّ مَاتَ أَوْ مَاتَ فِي الْمَاءِ، طَفَا أَوْ لَمْ يَطْفُ، أَوْ قَتَلَهُ حَيَوَانٌ بَحْرِيٌّ أَوْ بَرِّيٌّ هُوَ كُلُّهُ حَلَالٌ أَكْلُهُ. وَسَوَاءٌ خِنْزِيرُ الْمَاءِ، أَوْ إِنْسَانُ الْمَاءِ، أَوْ كَلْبُ الْمَاءِ وَغَيْرُ ذَلِكَ كُلُّ ذَلِكَ حَلَالٌ أَكْلُهُ: قَتَلَ كُلَّ ذَلِكَ وَثَنِيٌّ أَوْ مُسْلِمٌ أَوْ كِتَابِيٌّ أَوْ لَمْ يَقْتُلْهُ أَحَدٌ.

The proof for this is the statement of Allah the Most High: "The two seas are not equal—this one is fresh, sweet, and pleasant to drink, while that one is salty and bitter. Yet from each you eat tender meat" [35:12]. And He said: "Lawful for you is the game of the sea and its food as a provision for you and for travelers" [5:96]. Thus, He generalized and did not exclude anything,

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَمَا يَسْتَوِي الْبَحْرَانِ هَذَا عَذْبٌ فُرَاتٌ سَائِغٌ شَرَابُهُ وَهَذَا مِلْحٌ أُجَاجٌ وَمِنْ كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا} [فاطر: ١٢] وَقَالَ تَعَالَى: {أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَكُمْ وَلِلسَّيَّارَةِ} [المائدة: ٩٦] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ شَيْئًا مِنْ

for “your Lord is never forgetful” [19:64]. The followers of Abū Ḥanīfah opposed all this and ruled: It is permissible to eat what dies among fish and what the tide has receded from, provided it did not float on the water—specifically what died of natural causes in the water. They prohibited eating anything that floats and restricted permissibility to fish alone, excluding water swine and water humans. They argued: “Allah has entirely forbidden the consumption of swine and humans, and these are swine and humans.” They stipulated: If a whale kills it, or a bird kills it, or it is struck and killed by a rock, or a polytheist hunts and kills it—then floats afterward—it remains permissible to eat. Muḥammad ibn al-Ḥasan ruled regarding a dead fish partially on land and partially in water: If only the head is outside the water, it is permissible to eat. If the head remains in the water, one must assess the portion on land: if the rear portion from its hind part is half or less, it is impermissible; but if the rear portion on land exceeds half, it becomes permissible.[11]

شَيْءٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَخَالَفَ أَصْحَابُ أَبِي حَنِيفَةَ هَذَا كُلَّهُ وَقَالُوا: يَحِلُّ أَكْلُ مَا مَاتَ مِنَ السَّمَكِ وَمَا جَزَرَ عَنْهُ الْمَاءُ مَا لَمْ يَطْفُ عَلَى الْمَاءِ مِمَّا مَاتَ فِي الْمَاءِ حَتْفَ أَنْفِهِ خَاصَّةً، وَلَا يَحِلُّ أَكْلُ مَا طَفَا مِنْهُ عَلَى الْمَاءِ، وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِمَّا فِي الْمَاءِ إِلَّا السَّمَكُ وَحْدَهُ، وَلَا يَحِلُّ أَكْلُ خِنْزِيرِ الْمَاءِ وَلَا إِنْسَانِ الْمَاءِ، وَاحْتَجُّوا فِي ذَلِكَ بِأَنْ قَالُوا: قَدْ حَرَّمَ اللَّهُ أَكْلَ الْخِنْزِيرِ جُمْلَةً وَالْإِنْسَانِ وَهَذَا خِنْزِيرٌ وَإِنْسَانٌ، قَالُوا: فَإِنْ ضَرَبَهُ حُوتٌ فَقَتَلَهُ أَوْ ضَرَبَهُ طَائِرٌ فَقَتَلَهُ أَوْ ضَرَبَتْهُ صَخْرَةٌ فَقَتَلَتْهُ أَوْ صَادَهُ وَثَنِيٌّ فَقَتَلَهُ فَطَفَا بَعْدَ كُلِّ هَذَا فَهُوَ حَلَالٌ أَكْلُهُ، وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ فِي سَمَكَةٍ مَيِّتَةٍ بَعْضُهَا فِي الْبَرِّ وَبَعْضُهَا فِي الْمَاءِ: إِنْ كَانَ الرَّأْسُ وَحْدَهُ خَارِجَ الْمَاءِ أُكِلَتْ وَإِنْ كَانَ الرَّأْسُ فِي الْمَاءِ نُظِرَ فَإِنْ كَانَ الَّذِي فِي الْبَرِّ مِنْ مُؤَخَّرِهَا النِّصْفَ فَأَقَلَّ لَمْ يَحِلَّ أَكْلُهَا وَإِنْ كَانَ الَّذِي فِي الْبَرِّ مِنْ مُؤَخَّرِهَا أَكْثَرَ مِنَ النِّصْفِ حَلَّ أَكْلُهَا.

L16605–16607

Abū Muḥammad said: These are assertions not known from any Muslim scholar before them. They contradict the Qur’an, the Sunnah, the scholars’ teachings, legal analogy, and rational principles, for they impose obligations beyond human capacity—matters for which there is no feasible path. To His knowledge: Did it die while floating therein, or die before floating, or perish from a whale’s strike, a collapsing rock, or death by its own nature? None knows this except Allah or an angel entrusted with that whale. We cannot know for certain—perhaps the devils have no means to ascertain this, or could they possibly know it, given they undoubtedly include divers? The Exalted said: *“And among the devils were those who dived for him”* [Al-Anbiyā’: 82]. Furthermore, the fish concerning which Muḥammad ibn al-Ḥasan formulated this absurd ruling necessitates a quantifier to measure what portion of it is outside the water and what remains within. How could the wretched man discern this? Perhaps most of the fish was submerged, then

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَقْوَالٌ لَا تُعْلَمُ عَنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُمْ وَهِيَ مُخَالِفَةٌ لِلْقُرْآنِ وَلِلسُّنَنِ وَلِأَقْوَالِ الْعُلَمَاءِ وَلِلْقِيَاسِ وَلِلْمَعْقُولِ لِأَنَّهَا تَكْلِيفُ مَا لَا يُطَاقُ مِمَّا لَا سَبِيلَ إِلَى عِلْمِهِ هَلْ مَاتَتْ وَهِيَ طَافِيَةٌ فِيهِ أَوْ مَاتَتْ قَبْلَ أَنْ تَطْفُوَ أَوْ مَاتَتْ مِنْ ضَرْبَةِ حُوتٍ أَوْ مِنْ صَخْرَةٍ مُنْهَدِمَةٍ أَوْ حَتْفَ أَنْفِهَا؟ وَلَا يَعْلَمُ هَذَا إِلَّا اللَّهُ أَوْ مَلَكٌ مُوَكَّلٌ بِذَلِكَ الْحُوتِ، وَمَا نَدْرِي لَعَلَّ الْجِنَّ لَا سَبِيلَ لَهَا إِلَى مَعْرِفَةِ ذَلِكَ أَمْ يُمْكِنُهَا عِلْمُ ذَلِكَ لِأَنَّ فِيهِمْ غَوَّاصِينَ بِلَا شَكٍّ؟ قَالَ تَعَالَى: {وَمِنَ الشَّيَاطِينِ مَنْ يَغُوصُونَ لَهُ} [الأنبياء: ٨٢] ثُمَّ لَا بُدَّ لِلسَّمَكَةِ الَّتِي شَرَعَ فِيهَا مُحَمَّدُ بْنُ الْحَسَنِ هَذِهِ الشَّرِيعَةَ السَّخِيفَةَ مِنْ مِذْرَعٍ يُذَرِّعُ مَا مِنْهَا خَارِجَ الْمَاءِ وَمَا مِنْهَا دَاخِلَ الْمَاءِ ثُمَّ مَا يُدْرِيهِ الْبَائِسُ لَعَلَّهُ كَانَ أَكْثَرُهَا فِي الْمَاءِ، ثُمَّ أَدَارَتْهَا الْأَمْوَاجُ فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ لِهَذِهِ الْحَمَاقَاتِ الَّتِي لَا تُشْبِهُ إِلَّا مَا يَتَطَايَبُ بِهِ

[11] **Qur’an references (L16604):** Qur’an 35:12 (Fatir); Qur’an 5:96 (Al-Ma’idah); Qur’an 19:64 (Maryam).

the waves tossed it about. O Allah! O Muslims! Such idiocies, resembling only the antics jesters employ to amuse witless kings! Most astounding is their assertion regarding the established reports that one suckling or two do not establish prohibition: "This is an addition to the Quran, so we accept it only through mass transmission." Yet they feel no shame in appending—with intellects such as these—additions like these to the Quran. We praise Allah greatly for preservation in religion and sanity.[12]

L16608 As for their claim that He has prohibited the pig and the human, and this [entity] is a pig and a human—and Al-Layth ibn Sa'd also held this view specifically—it is neither a pig nor a human, because it is merely a designation by someone who is not a definitive authority in linguistic matters, and designation belongs solely to Allah the Exalted. If this were left to people, then whoever wished to permit the forbidden could do so by calling it by the name of something permissible, and whoever wished to forbid the permissible could do so by calling it by the name of something forbidden. Thus, the argument of this group collapses completely beyond doubt, while the opinion of some of the early scholars remains regarding the prohibition of fish that float [on water].

L16609 It has been narrated to us through the chain of Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Abī al-Zubayr, from Jābir, who said: "Do not eat what floats, but eat what remains on its edges or what is left uncovered as the water recedes."

L16610 And via the chain of Saʿīd ibn Manṣūr: Ibrāhīm ibn ʿUlayyah narrated to us from Ayyūb, from Abū al-Zubayr, from Jābir, who said: "Whatever the sea exposes upon its two banks, eat it; but whatever dies floating within it, do not eat it."

L16611 Narrated via Ibn Fudayl: Ata ibn al-Sa'ib reported from Maysarah that Ali ibn Abi Talib said, "Do not eat what floats from the creatures of the sea." Narrated via Abd al-Razzaq: Sufyan al-Thawri reported from al-Ajlah that Abdullah ibn Abi al-Hudhayl heard Ibn Abbas reply to a man who said, "I see the sea has produced fish," "Do not eat any of it floating." Narrated via

[12]**Qur'an references (L16605):** Qur'an 21:82 (Al-Anbya).

الْمُجَّانُ لِإِضْحَاكِ سُخَفَاءِ الْمُلُوكِ، وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ قَوْلِهِمْ فِي الْأَخْبَارِ الثَّابِتَةِ فِي أَنَّهُ لَا تُحَرِّمُ الرَّضْعَةُ وَلَا الرَّضْعَتَانِ: هَذَا زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ فَلَا نَأْخُذُ بِهَا إِلَّا مِنْ طَرِيقِ التَّوَاتُرِ، ثُمَّ لَا يَسْتَحْيُونَ أَنْ يَزِيدُوا بِمِثْلِ هَذِهِ الْعُقُولِ مِثْلَ هَذِهِ الزِّيَادَةِ عَلَى مَا فِي الْقُرْآنِ. نَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ فِي الدِّينِ وَالْعَقْلِ كَثِيرًا.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ قَدْ حَرَّمَ الْخِنْزِيرَ وَالْإِنْسَانَ وَهَذَا خِنْزِيرٌ وَإِنْسَانٌ، وَقَدْ قَالَ اللَّيْثُ بْنُ سَعْدٍ بِهَذَا أَيْضًا خَاصَّةً: فَلَيْسَ خِنْزِيرًا وَلَا إِنْسَانًا لِأَنَّهَا إِنَّمَا هِيَ تَسْمِيَةُ مَنْ لَيْسَ حُجَّةً فِي اللُّغَةِ وَلَيْسَتْ التَّسْمِيَةُ إِلَّا لِلَّهِ تَعَالَى، وَلَوْ كَانَ ذَلِكَ إِلَى النَّاسِ لَكَانَ مَنْ شَاءَ أَنْ يُحِلَّ الْحَرَامَ أَحَلَّهُ بِأَنْ يُسَمِّيَهُ بِاسْمِ شَيْءٍ حَلَالٍ وَمَنْ شَاءَ أَنْ يُحَرِّمَ الْحَلَالَ حَرَّمَهُ بِأَنْ يُسَمِّيَهُ بِاسْمِ شَيْءٍ حَرَامٍ، فَسَقَطَ قَوْلُ هَذِهِ الطَّائِفَةِ سُقُوطًا لَا مِرْيَةَ فِيهِ وَبَقِيَ قَوْلُ لِبَعْضِ السَّلَفِ فِي تَحْرِيمِ الطَّافِي مِنْ السَّمَكِ.

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: مَا طَفَا فَلَا تَأْكُلُوهُ وَمَا كَانَ عَلَى حَافَتَيْهِ أَوْ حَسِرَ عَنْهُ فَكُلُوهُ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إِبْرَاهِيمُ هُوَ ابْنُ عُلَيَّةَ - نَا أَيُّوبُ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: مَا حَسِرَ الْمَاءُ عَنْ ضِفَّتَيْ الْبَحْرِ فَكُلْ وَمَا مَاتَ فِيهِ طَافِيًا فَلَا تَأْكُلْ.

وَمِنْ طَرِيقِ ابْنِ فُضَيْلٍ أَنَا عَطَاءُ بْنُ السَّائِبِ عَنْ مَيْسَرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَا طَفَا مِنْ صَيْدِ الْبَحْرِ فَلَا تَأْكُلُوهُ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَجْلَحِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي الْهُذَيْلِ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ وَقَدْ قَالَ لَهُ رَجُلٌ: إِنِّي أَجِدُ الْبَحْرَ وَقَدْ جَعَلَ سَمَكًا قَالَ: لَا تَأْكُلْ مِنْهُ طَافِيًا. وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ

Yahya ibn Sa'id al-Qattan: Ibn Abi Arubah reported from Qatadah that Sa'id ibn al-Musayyab said, "Do not eat what floats of the fish."

L16612–16613 It has been authentically reported from al-Ḥasan, Ibn Sīrīn, Jābir ibn Zayd, and Ibrāhīm al-Nakhaʿī that they disapproved of dead floating fish. Al-Ḥasan al-Basri ruled it impermissible. Regarding sea creatures other than fish, two opinions are narrated from Sufyān al-Thawrī: one permits eating them, while the other prohibits consumption unless slaughtered. Another opinion we have transmitted via Wakiʿ, who said: Jarīr ibn Ḥāzim informed us from ʿĪsā ibn ʿĀṣim from ʿAlī ibn Abī Ṭālib that he disapproved of the Magians' catch of fish. Through the chain of ʿAbd al-Razzāq, from Ibn Jurayj: Abū Bakr ibn Ḥafṣ informed me from Ibn Masʿūd, who said: "The proper slaughter method for a large sea creature is to split its jaws."

L16614 Abū Muḥammad said: As for this statement and the division of one of the two opinions of al-Thawrī, all are invalidated by what we have narrated via the chain of Imām Muslim: Yaḥyā ibn Yaḥyā narrated to us, Abū Khaythamah—who is Zuhayr ibn Muʿāwiyah—from Abū al-Zubayr al-Makkī, who said: Jābir narrated to me, saying: "Allah's Messenger (peace be upon him) dispatched us under Abū ʿUbaydah's command to intercept a Quraysh caravan, provisioning us only with a bag of dates. Abū ʿUbaydah would distribute one date to each man." Abū al-Zubayr said: I asked Jābir, "How did you manage with that?" He replied: "We would suck it as a child would, then drink water—this sufficed us until nightfall. We beat down dry foliage with our sticks, soaked it with water, and ate it." He continued: "While traveling along the coast, we encountered something like a massive sand dune. Approaching it, we found a dead sperm whale. Abū ʿUbaydah initially said, 'Carrion!' then declared: 'But we are messengers of Allah's Messenger (peace be upon him), acting in Allah's path. You are compelled by necessity—eat!' We three hundred stayed there a month, gaining weight. I witnessed us scooping ambergris oil from its eye socket with large pots and cutting bull-sized chunks from it. Abū ʿUbaydah seated thirteen men in its eye socket. He took one rib, propped it upright, and led our largest camel under it. We carried portions of its meat and dried meat. Upon returning to Medina, we

عَنْ ابْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: مَا طَفَا مِنْ السَّمَكِ فَلَا تَأْكُلْهُ.

وَصَحَّ عَنْ الْحَسَنِ وَابْنِ سِيرِينَ وَجَابِرِ بْنِ زَيْدٍ وَإِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُمْ كَرِهُوا الطَّافِيَ مِنْ السَّمَكِ، وَبِتَحْرِيمِهِ يَقُولُ الْحَسَنُ بْنُ حَيٍّ، وَرُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ فِيمَا فِي الْبَحْرِ مِمَّا عَدَا السَّمَكَ قَوْلَانِ، أَحَدُهُمَا أَنَّهُ يُؤْكَلُ، وَالْآخَرُ لَا يُؤْكَلُ حَتَّى يُذْبَحَ، وَهَهُنَا قَوْلٌ آخَرُ رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ قَالَ: نَا جَرِيرُ بْنُ حَازِمٍ عَنْ عِيسَى بْنِ عَاصِمٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ كَرِهَ صَيْدَ الْمَجُوسِ لِلسَّمَكِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو بَكْرِ بْنُ حَفْصٍ عَنْ ابْنِ مَسْعُودٍ قَالَ: ذَكَاةُ الْحُوتِ فَكُّ لَحْيَيْهِ.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا هَذَا الْقَوْلُ وَتَقْسِيمُ أَحَدِ قَوْلَيْ الثَّوْرِيِّ فَيُبْطِلُهَا كُلَّهَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى نَا أَبُو خَيْثَمَةَ هُوَ زُهَيْرُ بْنُ مُعَاوِيَةَ - عَنْ أَبِي الزُّبَيْرِ الْمَكِّيِّ حَدَّثَنِي جَابِرٌ قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمَّرَ عَلَيْنَا أَبَا عُبَيْدَةَ نَتَلَقَّى عِيرًا لِقُرَيْشٍ وَزَوَّدَنَا جِرَابًا مِنْ تَمْرٍ لَمْ يَجِدْ لَنَا غَيْرَهُ فَكَانَ أَبُو عُبَيْدَةَ يُعْطِينَا تَمْرَةً تَمْرَةً، قَالَ أَبُو الزُّبَيْرِ: فَقُلْت لِجَابِرٍ: كَيْفَ كُنْتُمْ تَصْنَعُونَ بِهَا؟ قَالَ: نَمُصُّهَا كَمَا يَمُصُّ الصَّبِيُّ ثُمَّ نَشْرَبُ عَلَيْهَا مِنْ الْمَاءِ فَتَكْفِينَا يَوْمَنَا إلَى اللَّيْلِ وَكُنَّا نَضْرِبُ بِعِصِيِّنَا الْخَبَطَ فَنَبُلُّهُ بِالْمَاءِ فَنَأْكُلُهُ قَالَ: وَانْطَلَقْنَا عَلَى سَاحِلِ الْبَحْرِ فَرُفِعَ لَنَا عَلَى سَاحِلِ الْبَحْرِ كَهَيْئَةِ الْكَثِيبِ الضَّخْمِ فَأَتَيْنَاهُ فَإِذَا هُوَ دَابَّةٌ تُدْعَى الْعَنْبَرَ قَالَ أَبُو عُبَيْدَةَ: مَيْتَةٌ، ثُمَّ قَالَ: لَا بَلْ نَحْنُ رُسُلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي سَبِيلِ اللَّهِ تَعَالَى وَقَدْ اُضْطُرِرْتُمْ فَكُلُوا فَأَقَمْنَا عَلَيْهِ شَهْرًا وَنَحْنُ ثَلَاثُمِائَةٍ حَتَّى سَمِنَّا وَلَقَدْ رَأَيْتُنَا نَغْتَرِفُ مِنْ وَقْبِ عَيْنَيْهِ بِالْقِلَالِ الدُّهْنَ وَنَقْتَطِعُ مِنْهُ الْفِدَرَ كَالثَّوْرِ أَوْ كَقَدْرِ الثَّوْرِ وَلَقَدْ أَخَذَ مِنَّا أَبُو عُبَيْدَةَ ثَلَاثَةَ عَشَرَ

informed Allah's Messenger (peace be upon him), who said: 'This was sustenance Allah provided you. Have you any left to share?' We sent him some, and he ate it."

رَجُلًا فَأَقْعَدَهُمْ فِي وَقْبِ عَيْنِهِ وَأَخَذَ ضِلْعًا مِنْ أَضْلَاعِهِ فَأَقَامَهَا، ثُمَّ رَحَلَ أَعْظَمَ بَعِيرٍ مَعَنَا فَمَرَّ مِنْ تَحْتِهَا وَتَزَوَّدْنَا مِنْ لَحْمِهِ وَشَائِقَ، فَلَمَّا قَدِمْنَا الْمَدِينَةَ ذَكَرْنَا ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ هُوَ رِزْقٌ أَخْرَجَهُ اللَّهُ تَعَالَى لَكُمْ فَهَلْ مَعَكُمْ مِنْ لَحْمِهِ شَيْءٌ فَتُطْعِمُونَا؟ فَأَرْسَلْنَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُ فَأَكَلَهُ» .

L16615–16617 Abu Muhammad said: This is not from fish but rather among what those we mentioned have prohibited, and it is not among what has its jaws split; rather, it is carrion. This is the authentic report from Jabir, as Abu al-Zubayr heard it directly from him, and this is evident in his statement to Jabir regarding the date: "What would you do with it?" Since the carrion of the sea is permissible, the game hunted by an idolater or others is equally permissible for consumption, as it does not require ritual slaughter—its ritual slaughter is simply its natural death. As for those who entirely prohibit floating carrion, the narration concerning... [text cut off]. That narration from Jābir is not authentic because Abū al-Zubayr did not mention hearing from Jābir within it. Since he did not mention that, it constitutes Tadlīs from him, as we shall mention after this if Allāh the Exalted wills. The narration from ʿAlī is not authentic because Ibn Fuḍayl only heard from ʿAṭāʾ ibn al-Sāʾib after his mental deterioration. The narration from Ibn ʿAbbās through Ajlaḥ's chain is not strong, but it is authentic from al-Ḥasan, Ibn Sīrīn, and Jābir ibn Zayd. They cited as evidence what we transmitted via Abū Dāwūd's chain: Aḥmad ibn ʿAbdah narrated to us, Yaḥyā ibn Sulaym al-Ṭāʾifī narrated to us, Ismāʿīl ibn Umayyah narrated to us from Abū al-Zubayr from Jābir ibn ʿAbd Allāh, who said: The Messenger of Allāh—peace and blessings be upon him—said, "What the sea casts ashore or leaves behind as it recedes, eat it. But what dies therein and floats, do not eat it." From Saʿīd ibn Manṣūr's chain: Ismāʿīl ibn ʿAyyāsh narrated to us, ʿAbd al-ʿAzīz ibn ʿUbayd Allāh narrated to me from Wahb ibn Kaysān and Nuʿaym ibn al-Mujmir (Ibn ʿAbd Allāh) from Jābir ibn ʿAbd Allāh from the Prophet—peace and blessings be upon him—who said,

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا لَيْسَ مِنَ السَّمَكِ بَلْ هُوَ مِمَّا حَرَّمَهُ مَنْ ذَكَرْنَا وَلَيْسَ مِمَّا فُكَّتْ لَحْيَاه بَلْ هُوَ مَيْتَةٌ وَهَذَا هُوَ الصَّحِيحُ عَنْ جَابِرٍ لِسَمَاعِ أَبِي الزُّبَيْرِ إِيَّاهُ مِنْهُ، وَهَذَا بَيِّنٌ فِيهِ لِقَوْلِهِ لِجَابِرٍ فِي التَّمْرَةِ كَيْفَ كُنْتُمْ تَصْنَعُونَ بِهَا؟ وَإِذْ مَيْتَةُ الْبَحْرِ حَلَالٌ فَصَيْدُ الْوَثَنِيِّ وَغَيْرِهِ لَهُ سَوَاءٌ لِأَنَّهُ لَا يَحْتَاجُ إِلَى ذَكَاةٍ إِنَّمَا ذَكَاتُهُ مَوْتُهُ فَقَطْ، وَأَمَّا مَنْ حَرَّمَ الطَّافِيَ جُمْلَةً فَالرِّوَايَةُ فِي ذَلِكَ عَنْ جَابِرٍ لَا تَصِحُّ لِأَنَّ أَبَا الزُّبَيْرِ لَمْ يَذْكُرْ فِيهِ سَمَاعًا مِنْ جَابِرٍ وَهُوَ مَا لَمْ يَذْكُرْ ذَلِكَ فَمُدَلَّسٌ عَنْهُ كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى، وَهِيَ عَنْ عَلِيٍّ لَا تَصِحُّ لِأَنَّ ابْنَ فُضَيْلٍ لَمْ يَسْمَعْ مِنْ عَطَاءِ بْنِ السَّائِبِ إِلَّا بَعْدَ اخْتِلَاطِهِ، وَهِيَ عَنِ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ أَجْلَحَ وَلَيْسَ بِالْقَوِيِّ لَكِنَّهُ صَحِيحٌ عَنِ الْحَسَنِ وَابْنِ سِيرِينَ وَجَابِرِ بْنِ زَيْدٍ. وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ عَبْدَةَ نَا يَحْيَى بْنُ سُلَيْمٍ الطَّائِفِيُّ نَا إِسْمَاعِيلُ بْنُ أُمَيَّةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أَلْقَى الْبَحْرُ أَوْ جَزَرَ عَنْهُ فَكُلُوهُ وَمَا مَاتَ فِيهِ فَطَفَا فَلَا تَأْكُلُوهُ» وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ حَدَّثَنِي عَبْدُ الْعَزِيزِ بْنُ عُبَيْدِ اللَّهِ عَنْ وَهْبِ بْنِ كَيْسَانَ وَنُعَيْمِ بْنِ الْمُجْمِرِ هُوَ ابْنُ عَبْدِ اللَّهِ - عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُوا مَا حَسَرَ عَنْهُ الْبَحْرُ وَمَا أَلْقَى وَمَا وَجَدْتُمُوهُ طَافِيًا مِنَ السَّمَكِ فَلَا تَأْكُلُوهُ» .

"Eat what the sea exposes, what it casts ashore. As for whatever you find floating of fish, do not eat it."[13]

L16618 Abu Muhammad said: We know of no argument for them except this, and it is not a valid proof. Even if it were sound, we would not hesitate for a moment to adopt it. However, first and foremost, even if it were sound, it would only serve as a proof against the followers of Abu Hanifah because they contradict its contents. This applies to every report we have received on this matter from a Companion or Successor, for they permit certain dead floating sea creatures that perish from an external cause—not natural death—while prohibiting much of what the sea washes up or exposes through receding waters. Thus, they contradicted the report in two aspects, as does anyone reported to have held a position on this. As for the weakness of these two reports: one comes via Ismail ibn Ayyash, who is weak, and the other through Abu al-Zubayr's narration from Jabir without explicitly mentioning direct transmission. Narrated by Yusuf ibn Abd Allah ibn Abd al-Barr al-Namari, from Abd Allah ibn Muhammad ibn Yusuf al-Azdi the judge, from Ishaq ibn Ahmad al-Dakhil, from Abu Ja'far al-'Uqayli, from Muhammad ibn Ismail and Zakariyya ibn Yahya al-Hulwani. Zakariyya said: From Ahmad ibn Sa'id ibn Abi Maryam. Muhammad ibn Ismail said: From al-Hasan ibn Ali. Then both Ahmad and al-Hasan agreed, both saying: From Sa'id ibn Abi Maryam, from al-Layth ibn Sa'd, who said: I came to Abu al-Zubayr, and he handed me two books. I asked him, "Did you hear all of this from Jabir?" He replied, "Some of it I heard from him, and some I narrated from him." I said, "Mark for me what you heard directly," so he marked the one in my possession.

L16619–16621 Abu Muhammad said: So what was not from the narration of al-Layth from Abu al-Zubayr, nor did Abu al-Zubayr say in it that he Jabir informed him of it, but he did not hear it through Jabir's explicit affirmation, nor do we know from whom he received it. Thus, it is impermissible to cite it as evidence. This report falls under that category [of invalid transmissions], and therefore it is invalidated. We praise Allah, the Exalted, for clarifying it to us.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا وَلَيْسَ بِحُجَّةٍ لِأَنَّهُ لَا يَصِحُّ وَلَوْ صَحَّ لَمَا تَرَدَّدْنَا طَرْفَةَ عَيْنٍ فِي الْقَوْلِ بِهِ إِلَّا أَنَّ قَبْلَ كُلِّ شَيْءٍ فَهُوَ لَوْ صَحَّ حُجَّةٌ عَلَى أَصْحَابِ أَبِي حَنِيفَةَ لِأَنَّهُمْ مُخَالِفُونَ لِمَا فِيهِ وَلِكُلِّ مَا رُوِّينَا فِي ذَلِكَ عَنْ صَاحِبٍ أَوْ تَابِعٍ لِأَنَّهُمْ يُبِيحُونَ بَعْضَ الطَّافِي إِذَا مَاتَ مِنْ عَارِضٍ عَرَضَ لَهُ لَا حَتْفَ أَنْفِهِ وَيُحَرِّمُونَ كَثِيرًا مِمَّا أَلْقَى الْبَحْرُ أَوْ حَسِرَ عَنْهُ فَخَالَفُوا الْخَبَرَ فِي مَوْضِعَيْنِ، وَكَذَلِكَ مَنْ رُوِيَ عَنْهُ فِي هَذَا شَيْءٌ، وَأَمَّا ضَعْفُ هَذَيْنِ الْخَبَرَيْنِ، فَأَحَدُهُمَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ عَيَّاشٍ وَهُوَ ضَعِيفٌ، وَالْآخَرُ مِنْ رِوَايَةِ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ وَلَمْ يَذْكُرْ فِيهِ سَمَاعًا. نَا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ الْقَاضِي نَا إِسْحَاقُ بْنُ أَحْمَدَ الدَّخِيلُ نَا أَبُو جَعْفَرٍ الْعُقَيْلِيُّ نَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ وَزَكَرِيَّا بْنُ يَحْيَى الْحُلْوَانِيُّ قَالَ زَكَرِيَّا: نَا أَحْمَدُ بْنُ سَعِيدِ بْنِ أَبِي مَرْيَمَ، وَقَالَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ: نَا الْحَسَنُ بْنُ عَلِيٍّ، ثُمَّ اتَّفَقَ أَحْمَدُ وَالْحَسَنُ قَالَا جَمِيعًا: نَا سَعِيدُ بْنُ أَبِي مَرْيَمَ نَا اللَّيْثُ بْنُ سَعْدٍ قَالَ: جِئْتُ أَبَا الزُّبَيْرِ فَدَفَعَ إِلَيَّ كِتَابَيْنِ فَقُلْتُ لَهُ: هَذَا كُلُّهُ سَمِعْتَهُ مِنْ جَابِرٍ فَقَالَ: مِنْهُ مَا سَمِعْتُ مِنْهُ، وَمِنْهُ مَا حَدَّثْتُ عَنْهُ فَقُلْتُ: أَعْلِمْ لِي عَلَى مَا سَمِعْتَ فَأَعْلَمَ لِي عَلَى هَذَا الَّذِي عِنْدِي.

قَالَ أَبُو مُحَمَّد: فَمَا لَمْ يَكُنْ مِنْ رِوَايَةِ اللَّيْثِ عَنْ أَبِي الزُّبَيْرِ وَلَا قَالَ فِيهِ أَبُو الزُّبَيْرِ أَنَّهُ أَخْبَرَهُ بِهِ جَابِرٌ فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ بِإِقْرَارِهِ وَلَا نَدْرِي عَمَّنْ أَخَذَهُ فَلَا يَجُوزُ الِاحْتِجَاجُ بِهِ، وَهَذَا مِنْ ذَلِكَ الْخَبَرِ فَسَقَطَ وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى بَيَانِهِ لَنَا.

[13] **Hadith references (L16615):** Sunan Ibn Majah 3247.

وَقَدْ رُوِيَ مِثْلُ قَوْلِنَا عَنْ طَائِفَةٍ مِنَ السَّلَفِ. رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَشِيرٍ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: أَشْهَدُ عَلَى أَبِي بَكْرٍ أَنَّهُ قَالَ: السَّمَكَةُ الطَّافِيَةُ حَلَالٌ لِمَنْ أَرَادَ أَكْلَهَا. نَا حُمَامٌ نَا الْبَاجِيَّ نَا ابْنُ أَيْمَنَ نَا أَحْمَدُ بْنُ مُسْلِمٍ نَا أَبُو ثَوْرٍ نَا مُعَلَّى نَا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَالَ: السَّمَكُ كُلُّهُ ذَكِيٌّ وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ قَالَ: قَالَ أَبُو بَكْرٍ الصِّدِّيقُ: طَعَامُ الْبَحْرِ كُلُّ مَا فِيهِ. وَمِنْ طَرِيقِ وَكِيعٍ نَا هَمَّامٌ هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ جَابِرِ بْنِ أَبِي الشَّعْثَاءِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: الْحِيتَانُ وَالْجَرَادُ ذَكِيٌّ.

L16622 A similar opinion to ours has been reported from a group of the Salaf. It was narrated through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from ʿAbd al-Malik ibn Abī Bashīr, from ʿIkrimah, from Ibn ʿAbbās, who said: "I bear witness regarding Abū Bakr that he said: 'The floating fish is lawful for whoever wishes to eat it.'" From Ḥammām, from al-Bājī, from Ibn Ayman, from Aḥmad ibn Muslim, from Abū Thawr, from Muʿallā, from Abū ʿAwānah, from Qatādah, from ʿIkrimah, from Ibn ʿAbbās, that Abū Bakr al-Ṣiddīq said: "All fish are lawful without slaughter." Through the chain of Saʿīd ibn Manṣūr, from Sufyān—he is Ibn ʿUyaynah—from ʿAmr ibn Dīnār, from ʿIkrimah, who said: "Abū Bakr al-Ṣiddīq said: 'The food of the sea: eat all that is in it.'" Through the chain of Wakīʿ, from Hammām—he is Ibn Yaḥyā—from Qatādah, from Jābir ibn Abī al-Shaʿthāʾ, who said: "'Umar ibn al-Khaṭṭāb said: 'Whales and locusts are lawful without slaughter.'"

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى: {فَالْتَقَمَهُ الْحُوتُ وَهُوَ مُلِيمٌ} [الصافات: ١٤٢] فَسَمَّى مَا يَلْتَقِمُ الْإِنْسَانَ فِي بَلْعَةٍ وَاحِدَةٍ حُوتًا. وَلَيْسَ هَذَا مِنَ الصِّفَةِ الَّتِي أَحَلَّ أَبُو حَنِيفَةَ، وَقَدْ قَالَ أَبُو بَكْرٍ وَعُمَرُ بِإِبَاحَتِهِ وَلَا يُعْلَمُ لَهُمَا فِي ذَلِكَ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا صَالِحُ بْنُ مُوسَى الطَّلْحِيُّ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ سُئِلَ عَنِ الْحِيتَانِ وَالْجَرَادِ؟ فَقَالَ: الْحِيتَانُ وَالْجَرَادُ ذَكِيٌّ ذَكَاتُهُمَا صَيْدُهُمَا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ أَنَّ أَبَا أَيُّوبَ أَكَلَ سَمَكَةً طَافِيَةً. وَمِنْ طَرِيقِ أَبِي ثَوْرٍ نَا مُعَلَّى نَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ نَا أَبُو التَّيَّاحِ عَنْ ثُمَامَةَ بْنِ أَنَسِ بْنِ مَالِكٍ أَنَّ أَبَا أَيُّوبَ الْأَنْصَارِيَّ سُئِلَ عَنْ سَمَكَةٍ طَافِيَةٍ؟ فَقَالَ: كُلْ وَأَطْعِمْنِي. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُبَيْدٍ الْكَلَاعِيِّ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ

L16623 Abū Muḥammad said: Allāh the Exalted stated: {Then the fish swallowed him while he was blaming himself} [Aṣ-Ṣāffāt: 142]. Thus, He named what engulfs a human in one gulp a "fish." This is not the type [of slaughter] deemed permissible by Abū Ḥanīfah. Abū Bakr and ʿUmar ruled its permissibility, with no known opposition from the Companions (may Allāh be pleased with them) regarding this.

Via the chain of Saʿīd ibn Manṣūr: Ṣāliḥ ibn Mūsā aṭ-Ṭalḥī narrated from Jaʿfar ibn Muḥammad from his father from his grandfather ʿAlī ibn Abī Ṭālib that he was asked about fish and locusts. He replied: "Fish and locusts are ritually pure – their slaughter is valid through their being caught."

Via the chain of Saʿīd ibn Manṣūr: Hushaym narrated from Manṣūr from Muʿāwiyah ibn Qurrah that Abū Ayyūb ate a dead fish floating [on water].

Via the chain of Abū Thawr: Muʿallā narrated from ʿAbd al-Wārith ibn Saʿīd at-Tannūrī from Abū at-Tayyāḥ from Thumāmah ibn Anas ibn Mālik that Abū Ayyūb al-Anṣārī asked about a dead floating fish. He responded: "Eat it and feed me."

Via the chain of Saʿīd ibn Manṣūr from Ismāʿīl ibn ʿAyyāsh from ʿUbaydullāh ibn ʿUbayd al-Kalāʿī from Sulaymān ibn Mūsā from al-Ḥasan, who said: "I

encountered seventy men from the Companions of Allāh's Messenger – peace and blessings be upon him – eating fish hunted by Zoroastrians, without any doubt arising in their hearts, for they did not consider the hunting of Zoroastrians as valid slaughter."

The permissibility of eating floating dead fish is upheld by Ibn Abī Laylā, al-Awzāʿī, Sufyān ath-Thawrī, Mālik, al-Layth ash-Shāfiʿī, and Abū Sulaymān.[14]

L16624–16625 Ali said: A fish does not float at all except when it dies or approaches death, and when it dies, it floats necessarily and unavoidably. Thus, their singling out of the floating [fish] for prohibition while permitting what died in the water is a contradiction.

L16626 **The issue of eating what lives in water and on land.**

L16627 991 - Issue: As for amphibious creatures, their consumption is impermissible unless properly slaughtered, such as the turtle, the dugong, the otter, the sable, and similar animals, for they are classified as land game and its creatures. If a pilgrim in the state of consecration (Iḥrām) kills one, he must provide compensation (fidyah). As for the frog, its consumption is fundamentally prohibited due to what we mentioned in the Book of Hajj regarding the Prophet's (peace be upon him) prohibition against slaughtering it, obviating the need to repeat it here.

L16628 **The issue of consuming what has not been slaughtered according to _dhabīḥah_.**

L16629 Issue 992: It is not permissible to eat any animal permitted for consumption while it remains alive, due to Allah the Exalted's decree: "Except what you have properly slaughtered" (Quran 5:3). Thus, He has forbidden us to eat what has not undergone ritual slaughter, for the living animal has not yet been slaughtered. Similarly, if an animal is slaughtered by dhabh or nahr, no part of it becomes lawful to eat until it dies, in accordance with Allah the Exalted's command: "Invoke Allah's name over them while they are properly

[14]**Qur'an references (L16623):** Qur'an 37:142 (As-Saffat).

الْحَسَنِ قَالَ: أَدْرَكْت سَبْعِينَ رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْكُلُونَ صَيْدَ الْمَجُوسِ مِنْ الْحِيتَانِ لَا يَخْتَلِجُ مِنْهُ شَيْءٌ فِي صُدُورِهِمْ وَلَمْ يَكُونُوا يَرَوْنَ صَيْدَهُ ذَكَاتَهُ، وَبِأَكْلِ الطَّافِي مِنْ السَّمَكِ يَقُولُ ابْنُ أَبِي لَيْلَى وَالْأَوْزَاعِيُّ وَسُفْيَانُ الثَّوْرِيُّ وَمَالِكٌ وَاللَّيْثُ الشَّافِعِيُّ وَأَبُو سُلَيْمَانَ.

قَالَ عَلِيٌّ: لَا يَطْفُو الْحُوتُ أَصْلًا إلَّا حَتَّى يَمُوتَ أَوْ يُقَارِبَ الْمَوْتَ فَإِذَا مَاتَ طَفَا ضَرُورَةً وَلَا بُدَّ، فَتَخْصِيصُهُمْ الطَّافِيَ بِالْمَنْعِ وَإِبَاحَتُهُمْ مَا مَاتَ فِي الْمَاءِ تَنَاقُضٌ.

[مَسْأَلَة أَكْلُ مَا يَعِيشُ فِي الْمَاءِ وَفِي الْبَرِّ]

٩٩١ - مَسْأَلَةٌ: وَأَمَّا مَا يَعِيشُ فِي الْمَاءِ وَفِي الْبَرِّ فَلَا يَحِلُّ أَكْلُهُ إلَّا بِذَكَاةٍ كَالسُّلَحْفَاةِ والباليمرين وَكَلْبِ الْمَاءِ وَالسَّمُّورِ وَنَحْوِ ذَلِكَ لِأَنَّهُ مِنْ صَيْدِ الْبَرِّ وَدَوَابِّهِ وَإِنْ قَتَلَهُ الْمُحْرِمُ جَزَاهُ، وَأَمَّا الضِّفْدَعُ فَلَا يَحِلُّ أَكْلُهُ أَصْلًا لِمَا ذَكَرْنَا فِي كِتَابِ الْحَجِّ مِنْ نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَبْحِهَا فَأَغْنَى عَنْ إعَادَتِهِ.

[مَسْأَلَة أَكْل مَا لَمْ يُذَكَّ]

٩٩٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ حَيَوَانٍ مِمَّا يَحِلُّ أَكْلُهُ مَا دَامَ حَيًّا لِقَوْلِ اللَّهِ تَعَالَى: {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] فَحَرَّمَ عَلَيْنَا أَكْلَ مَا لَمْ نُذَكِّ، وَالْحَيُّ لَمْ يُذَكَّ بَعْدُ. وَكَذَلِكَ لَوْ ذُبِحَ حَيَوَانٌ أَوْ نُحِرَ فَإِنَّهُ لَا يَحِلُّ أَكْلُ شَيْءٍ مِنْهُ حَتَّى يَمُوتَ لِقَوْلِ اللَّهِ تَعَالَى: {فَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهَا صَوَافَّ فَإِذَا وَجَبَتْ جُنُوبُهَا فَكُلُوا مِنْهَا} [الحج: ٣٦] .

positioned; then when their sides collapse lifeless, eat from them" (Quran 22:36).[15]

L16630 There is no disagreement that the ruling concerning the body [of an animal] and other creatures in this matter is equal. Thus, it is unlawful to swallow a living locust or a living fish, even though this constitutes torture, for it has been prohibited to torture animals. We have been narrated through the chain of ʿAbd al-Razzāq who narrated to us, from Maʿmar, from Yaḥyā ibn Abī Kathīr, from a man, from Ibn al-Furāfiṣah, from his father that ʿUmar ibn al-Khaṭṭāb said: "Verily, slaughtering according to Islamic law entails cutting the throat and jugular vein for those capable. Let the souls depart completely until they are fully expelled." And with Allah, the Exalted, lies all success.

L16631 **Issue: It is not permissible to eat any part of a terrestrial animal by twisting the neck.**

L16632 Issue 993: It is not permissible to eat any part of a land animal by twisting its neck, crushing its skull, or suffocating it, due to the statement of Allah, the Exalted: "except what you have ritually slaughtered" [Quran 5:3], for this [act] does not constitute valid slaughter.[16]

L16633 **The Issue of Eating Human Feces and Camel Dung**

L16634 Issue 994: It is not permissible to eat excrement, nor refuse, nor anything from the urine of horses, nor vomit, nor human flesh—even if slaughtered—nor to consume anything taken from a human being except milk alone. It is forbidden to eat any predatory beasts possessing fangs, nor the dog, nor the cat—whether domesticated or wild, they are equally prohibited—nor the fox. Save the hyena alone: its consumption is permissible. And if it were possible to properly slaughter an elephant according to Islamic rites, would its meat then become lawful to eat?

L16635 As for excrement and urine, this is based on what we mentioned in the Book

[15] **Qur'an references (L16629):** Qur'an 5:3 (Al-Ma'idah); Qur'an 22:36 (Al-Hajj).
[16] **Qur'an references (L16632):** Qur'an 5:3 (Al-Ma'idah).

وَلَا خِلَافَ فِي أَنَّ حُكْمَ الْبَدَنِ وَغَيْرِهَا فِي هَذَا سَوَاءٌ، فَلَا يَحِلُّ بَلْعُ جَرَادَةٍ حَيَّةٍ، وَلَا بَلْعُ سَمَكَةٍ حَيَّةٍ، مَعَ أَنَّهُ تَعْذِيبٌ، وَقَدْ نُهِيَ عَنْ تَعْذِيبِ الْحَيَوَانِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ رَجُلٍ عَنْ ابْنِ الْفُرَافِصَةِ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إنَّ الذَّكَاةَ: الْحَلْقُ وَاللَّبَّةُ لِمَنْ قَدَرَ، وَذَرُوا الْأَنْفُسَ حَتَّى تُزْهَقَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة لَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ حَيَوَانِ الْبَرِّ بِفَتْلِ عُنُقٍ]

٩٩٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ حَيَوَانِ الْبَرِّ بِفَتْلِ عُنُقٍ، وَلَا بِشَدْخٍ، وَلَا بِغَمٍّ؛ لِقَوْلِ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] وَلَيْسَ هَذَا ذَكَاةً.

[مَسْأَلَة أَكْلُ الْعَذِرَةِ وَالرَّجِيعِ]

٩٩٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ الْعَذِرَةِ، وَلَا الرَّجِيعِ، وَلَا شَيْءٍ مِنْ أَبْوَالِ الْخُيُولِ، وَلَا الْقَيْءِ، وَلَا لُحُومِ النَّاسِ - وَلَوْ ذُبِحُوا - وَلَا أَكْلُ شَيْءٍ يُؤْخَذُ مِنْ الْإِنْسَانِ إلَّا اللَّبَنَ وَحْدَهُ، وَلَا شَيْءٍ مِنْ السِّبَاعِ ذَوَاتِ الْأَنْيَابِ، وَلَا أَكْلُ الْكَلْبِ، وَالْهِرِّ - الْإِنْسِيُّ وَالْبَرِّيُّ سَوَاءٌ - وَلَا الثَّعْلَبِ، حَاشَا الضَّبُعَ وَحْدَهَا، فَهِيَ حَلَالٌ أَكْلُهَا، وَلَوْ أَمْكَنَتْ ذَكَاةُ الْفِيلِ لَحَلَّ أَكْلُهُ؟

of Prayer regarding the Prophet's prohibition—peace be upon him—against praying while suppressing the urge to relieve the two impurities: urine and feces, and in accordance with Allah's saying: "He makes lawful for them what is wholesome and forbids them what is impure" (Quran 7:157).[17]

أَمَّا الْعَذِرَةُ وَالْبَوْلُ فَلِمَا ذَكَرْنَا فِي كِتَابِ الصَّلَاةِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي النَّهْيِ عَنْ الصَّلَاةِ وَهُوَ يُدَافِعُ الْأَخْبَثَيْنِ الْبَوْلَ وَالْغَائِطَ، وَلِقَوْلِ اللَّهِ تَعَالَى: {وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ} [الأعراف: ١٥٧] .

L16636–16637 We mentioned there his statement—peace be upon him—: "Most of the punishment in the grave is due to urine." Thus, he—peace be upon him—made it a general ruling encompassing all urine.

وَذَكَرْنَا هُنَالِكَ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «أَكْثَرُ عَذَابِ الْقَبْرِ فِي الْبَوْلِ» فَعَمَّ - عَلَيْهِ السَّلَامُ - كُلَّ بَوْلٍ.

L16638 We clarified there that the Prophet's (peace be upon him) act of giving the 'Urayniyyin camels' urine to drink was solely to treat the ailments that had afflicted them, and we adduced the authentic chains of transmission for all of this.

وَبَيَّنَّا هُنَالِكَ أَنَّ سَقْيَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعُرَنِيِّينَ أَبْوَالَ الْإِبِلِ، إنَّمَا كَانَ عَلَى سَبِيلِ التَّدَاوِي لِلْعِلَلِ الَّتِي كَانَتْ أَصَابَتْهُمْ وَأَوْرَدْنَا الْأَسَانِيدَ الثَّابِتَةَ بِكُلِّ هَذَا.

L16639 We clarified the defect in the narration transmitted through Sawwār ibn Muṣʿab—who is rejected—regarding the permissibility of the urine of animals whose meat is lawful to eat. This is among the matters in which they abandoned analogical reasoning, for they analogized the urine and excrement of an animal to its meat. Why did they not instead analogize it to its blood? That would have been more deserving of analogy—or to the urine and excrement of human beings.

وَبَيَّنَّا فَسَادَ الرِّوَايَةِ مِنْ طَرِيقِ سَوَّارِ بْنِ مُصْعَبٍ - وَهُوَ سَاقِطٌ - لَا بَأْسَ بِبَوْلِ مَا أُكِلَ لَحْمُهُ وَهَذَا مِمَّا تَرَكُوا فِيهِ الْقِيَاسَ؛ إذْ قَاسُوا بَوْلَ الْحَيَوَانِ وَرَجِيعَهُ عَلَى لَحْمِهِ، فَهَلَّا قَاسُوهُ عَلَى دَمِهِ؟ فَهُوَ أَوْلَى بِالْقِيَاسِ، أَوْ عَلَى بَوْلِ الْآدَمِيِّينَ وَرَجِيعِهِمْ.

L16640 As for vomiting: Based on what we have narrated through Al-Bukhari's chain—Muslim ibn Ibrahim narrated to us, Hisham Al-Dastuwa'i and Shu'bah narrated to us, both saying: Qatadah narrated to us from Sa'id ibn Al-Musayyib from Ibn Abbas [may Allah be pleased with them] who said: Allah's Messenger [peace be upon him] stated, "The one who retracts his gift is like the one returning to his vomit." Vomit refers to what has undergone alteration. If food emerges unchanged, it does not constitute vomit—thus it is not prohibited. Regarding human flesh, Allah the Exalted says: {Nor backbite one another. Would any of you wish to eat the flesh of his dead brother? You would abhor it} [Al-Hujurat:12]. This aligns with the command of Allah's Messenger [peace be upon him]—mentioned in the Book of Funerals—that every deceased person, whether believer or disbeliever, must be buried.

وَأَمَّا الْقَيْءُ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُسْلِمُ بْنُ إبْرَاهِيمَ نَا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - وَشُعْبَةُ قَالَا جَمِيعًا: نَا قَتَادَةُ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ ابْنِ عَبَّاسٍ [- رَضِيَ اللَّهُ عَنْهُمَا -] قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ» وَالْقَيْءُ هُوَ مَا تَغَيَّرَ، فَإِنْ خَرَجَ الطَّعَامُ وَلَمْ يَتَغَيَّرْ فَلَيْسَ قَيْئًا، فَلَيْسَ حَرَامًا؟ وَأَمَّا لُحُومُ النَّاسِ فَإِنَّ اللَّهَ تَعَالَى قَالَ: {وَلا يَغْتَبْ بَعْضُكُمْ بَعْضًا أَيُحِبُّ أَحَدُكُمْ أَنْ يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ} [الحجرات: ١٢] . وَلِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[17] **Qur'an references (L16635):** Qur'an 7:157 (Al-A'raf).

Whoever consumes [human flesh] has failed to bury the deceased, and whoever neglects burial has disobeyed Allah the Exalted.[18]

L16641 And because of the statement of Allah the Exalted: {Except what you have slaughtered in the prescribed manner} [Al-Mā'idah: 3]. Thus, the Exalted has prohibited eating carrion and eating what has not been properly slaughtered. The human is of two categories: one whose killing is forbidden and one whose killing is legally sanctioned.[19]

L16642–16643 Therefore, it is forbidden to kill it if it dies naturally or is killed without proper ritual slaughter, and thus it is unlawful.

L16644 As for the one whose killing is lawful, it is not lawful to kill him except for one of three reasons:

L16645 Either due to his disbelief if he is not Muslim, or as qisas (prescribed retaliation), or due to a ḥadd punishment requiring his execution. Whichever of these methods applies, it is not validly slaughtered, because his killing is only permissible through a specific manner. Thus, it is impermissible to kill him by any other means, and Islamic ritual slaughter differs from these methods without doubt. Intending it [ritual slaughter] is sinful, and sinfulness does not constitute valid Islamic slaughter. Therefore, consuming its flesh is entirely forbidden. Since the entirety is forbidden, consuming any part of it is forbidden, because a portion of the forbidden is necessarily forbidden.

L16646 Included in this are mucus, phlegm, tears, sweat, pre-ejaculatory fluid, semen, nails, skin, hair, pus, and teeth—except for the permissible milk, as stated in the Quran, the Sunnah, and Consensus.

L16647 The Prophet (peace be upon him) permitted Salim - a man - to receive breastfeeding from the milk of Sahla bint Suhail. This ruling includes saliva, for the Messenger of Allah (peace and blessings of Allah be upon him) would perform tahneek for infants with a date he had chewed, whereby his saliva

- الَّذِي قَدْ ذَكَرْنَاهُ فِي كِتَابِ الْجَنَائِزِ بِأَنْ يُوَارَى كُلُّ مَيِّتٍ مِنْ مُؤْمِنٍ أَوْ كَافِرٍ؛ فَمَنْ أَكَلَهُ فَلَمْ يُوَارِهِ؛ وَمَنْ لَمْ يُوَارِهِ فَقَدْ عَصَى اللَّهَ تَعَالَى.

وَلِقَوْلِ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] فَحَرَّمَ تَعَالَى أَكْلَ الْمَيْتَةِ وَأَكْلَ مَا لَمْ يُذَكَّ، وَالْإِنْسَانُ قِسْمَانِ: قِسْمٌ حَرَامٌ قَتْلُهُ، وَقِسْمٌ مُبَاحٌ قَتْلُهُ.

فَالْحَرَامُ قَتْلُهُ إنْ مَاتَ، أَوْ قُتِلَ فَلَمْ يُذَكَّ فَهُوَ حَرَامٌ.

وَأَمَّا الْحَلَالُ قَتْلُهُ فَلَا يَحِلُّ قَتْلُهُ إلَّا لِأَحَدِ ثَلَاثَةِ أَوْجُهٍ -:

إمَّا لِكُفْرِهِ مَا لَمْ يُسْلِمْ، وَإِمَّا قَوَدًا، وَإِمَّا لِحَدٍّ أَوْجَبَ قَتْلَهُ، وَأَيُّ هَذِهِ الْوُجُوهِ كَانَ فَلَيْسَ مُذَكًّى؟ لِأَنَّهُ لَمْ يَحِلَّ قَتْلُهُ إلَّا بِوَجْهٍ مَخْصُوصٍ، فَلَا يَحِلُّ قَتْلُهُ بِغَيْرِ ذَلِكَ الْوَجْهِ وَالتَّذْكِيَةُ غَيْرُ تِلْكَ الْوُجُوهِ بِلَا شَكٍّ، فَالْقَصْدُ إلَيْهَا مَعْصِيَةٌ، وَالْمَعْصِيَةُ لَيْسَتْ ذَكَاةً فَهُوَ غَيْرُ مُذَكًّى، فَحَرَامٌ أَكْلُهُ بِكُلِّ وَجْهٍ، وَإِذْ هُوَ كُلُّهُ حَرَامٌ فَأَكْلُ بَعْضِهِ حَرَامٌ، لِأَنَّ بَعْضَ الْحَرَامِ حَرَامٌ بِالضَّرُورَةِ.

وَيَدْخُلُ فِي هَذَا الْمُخَاطُ، وَالنُّخَاعَةُ، وَالدَّمْعُ، وَالْعَرَقُ، وَالْمَذْيُ، وَالْمَنِيُّ، وَالظُّفْرُ، وَالْجِلْدُ، وَالشَّعْرُ، وَالْقَيْحُ، وَالسِّنُّ إلَّا اللَّبَنَ الْمُبَاحَ بِالْقُرْآنِ وَالسُّنَّةِ وَالْإِجْمَاعِ.

وَقَدْ أَبَاحَ - عَلَيْهِ السَّلَامُ - لِسَالِمٍ وَهُوَ رَجُلٌ الرَّضَاعَ مِنْ لَبَنِ سَهْلَةَ بِنْتِ سُهَيْلٍ. وَالرِّيقَ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَنَّكَ الصِّبْيَانَ بِتَمْرٍ مَضَغَهُ، فَرِيقُهُ فِي ذَلِكَ الْمَمْضُوغِ، فَالرِّيقُ حَلَالٌ بِالنَّصِّ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[18] **Qur'an references (L16640):** Qur'an 49:12 (Al-Hujurat).
[19] **Qur'an references (L16641):** Qur'an 5:3 (Al-Ma'idah).

was in that chewed [substance]. Thus, saliva is permissible solely through explicit textual evidence - and with Allah, the Exalted, is success.

L16648 As for beasts of prey: Based on what has been narrated to us through the chain of Mālik ibn Anas from Ismāʿīl ibn Abī Ḥakīm from ʿUbaydah ibn Sufyān from Abū Hurayrah from the Messenger of Allah (peace and blessings be upon him) who said: "Eating every fanged beast from among the beasts of prey is unlawful."

وَأَمَّا السِّبَاعُ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكِ بْنِ أَنَسٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي حَكِيمٍ عَنْ عُبَيْدَةَ بْنِ سُفْيَانَ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ ذِي نَابٍ مِنْ السِّبَاعِ فَأَكْلُهُ حَرَامٌ» .

L16649 And it has also been reported through other than this chain—we have omitted it for brevity.

وَجَاءَ أَيْضًا مِنْ غَيْرِ هَذِهِ الطَّرِيقِ تَرَكْنَاهَا اخْتِصَارًا.

L16650–16651 The dog, as a fanged predatory animal among beasts of prey, along with the cat and the fox—all of these are forbidden.

وَالْكَلْبُ ذُو نَابٍ مِنْ السِّبَاعِ، وَكَذَلِكَ الْهِرُّ، وَالثَّعْلَبُ، فَكُلُّ ذَلِكَ حَرَامٌ.

L16652 He (peace be upon him) ordered the killing of the dog and forbade the waste of wealth. Were it permissible to eat it, killing it would not be lawful, just as it is unlawful to kill any edible animal from among livestock or other categories.

وَقَدْ أَمَرَ - عَلَيْهِ السَّلَامُ - بِقَتْلِ الْكَلْبِ، وَنَهَى عَنْ إضَاعَةِ الْمَالِ، فَلَوْ جَازَ أَكْلُهَا مَا حَلَّ قَتْلُهَا، كَمَا لَا يَحِلُّ قَتْلُ كُلِّ مَا يُؤْكَلُ مِنْ الْأَنْعَامِ وَغَيْرِهَا.

L16653 It has been narrated to us through the chain of Waki', from Mubarak ibn Fadalah, from Al-Hasan Al-Basri, from Uthman (may Allah be pleased with him), who said: "Kill the dogs and slaughter the pigeons." He differentiated between them and ordered the slaughtering of what is eaten and the killing of what is not eaten.

رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا مُبَارَكٌ هُوَ ابْنُ فَضَالَةَ - عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: اُقْتُلُوا الْكِلَابَ وَاذْبَحُوا الْحَمَامَ، فَفَرَّقَ بَيْنَهُمَا فَأَمَرَ بِذَبْحِ مَا يُؤْكَلُ، وَقَتْلِ مَا لَا يُؤْكَلُ -:

L16654 From the narration of Ibn Wahb from Ibn Abī Dhi'b, that he heard Ibn Shihāb asking about the bile of predatory animals and the milk of female donkeys. Al-Zuhrī said: "The Messenger of Allah (peace be upon him) prohibited eating all fanged predators," and there is no goodness in what the Messenger of Allah (peace be upon him) has prohibited.[20]

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ أَبِي ذِئْبٍ أَنَّهُ سَمِعَ ابْنُ شِهَابٍ يَسْأَلُ عَنْ مَرَارَةِ السَّبُعِ، وَأَلْبَانِ الْأُتُنِ؟ فَقَالَ الزُّهْرِيُّ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ» ، وَلَا خَيْرَ فِيمَا نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L16655 The Messenger of Allah—peace and blessings be upon him—prohibited eating the meat of domestic donkeys. Thus, we do not regard their milk—which emerges from between their flesh and blood—except as equivalent in ruling to their meat.

وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ لُحُومِ الْحُمُرِ الْإِنْسِيَّةِ، فَلَا نَرَى أَلْبَانَهَا الَّتِي تَخْرُجُ مِنْ بَيْنِ لَحْمِهَا وَدَمِهَا إلَّا بِمَنْزِلَةِ لَحْمِهَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: الثَّعْلَبُ سَبُعٌ لَا يُؤْكَلُ.

[20] **Hadith references (L16654):** Sahih Muslim 1932b.

L16656 And from the transmission of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: "The fox is a predator - its consumption is forbidden."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ زَيْدٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ الْهِرِّ وَثَمَنِهِ» .

L16657 From the narration of Abd al-Razzaq, who reported from Umar ibn Zayd: Abu'l-Zubayr informed me that he heard Jabir ibn Abdullah say: "The Messenger of Allah—peace be upon him—forbade eating cats and profiting from their sale."

أَقَلُّ مَا فِي هَذَا الْأَثَرِ أَنْ يَكُونَ مَوْقُوفًا عَلَى جَابِرٍ.

L16658 The least that can be said about this narration is that it is mawqūf (attributed to the Companion Jabir).

وَبِتَحْرِيمِ السِّبَاعِ وَبِكُلِّ مَا ذَكَرْنَا يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ إِلَّا أَنَّ الشَّافِعِيَّ أَبَاحَ الثَّعْلَبَ، وَأَنْكَرَ الْمَالِكِيُّونَ تَحْرِيمَ السِّبَاعِ وَمَوَّهُوا بِأَنْ قَالُوا: قَدْ صَحَّ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا سَأَلَتْ عَنْ أَكْلِ لُحُومِ السِّبَاعِ؟ فَقَرَأَتْ {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنْزِيرٍ} [الأنعام: ١٤٥] الْآيَةَ.

L16659 Regarding the prohibition of beasts of prey and all that we have mentioned, Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān say so. However, al-Shāfiʿī permitted the fox. The Mālikīs denied the prohibition of beasts of prey and obscured the matter by asserting: "It has been authentically established from ʿĀ'ishah, the Mother of the Believers, that she was asked about eating the meat of beasts of prey. Then she recited: {Say, 'I find not in what has been revealed to me anything forbidden to one who eats it except carrion, spilled blood, or the flesh of swine'} [*al-Anʿām* 6:145]."[21]

وَرُوِيَ مِنْ طَرِيقِ جُوَيْبِرٍ عَنْ الضَّحَّاكِ قَالَ: تَلَا ابْنُ عَبَّاسٍ هَذِهِ الْآيَةَ {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا} [الأنعام: ١٤٥] قَالَ: مَا خَلَا هَذَا فَهُوَ حَلَالٌ.

L16660–16661 It has been reported through the chain of Juwaybir from al-Dahhak, who said: "Ibn Abbas recited this verse: 'Say, I do not find in what has been revealed to me anything forbidden' [al-Anʿam: 145]." He said: "What is other than this is permissible (ḥalāl)."[22]

وَقَالُوا: رَوَى الزُّهْرِيُّ خَبَرَ النَّهْيِ عَنْ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ، ثُمَّ قَالَ: لَمْ أَسْمَعْ هَذَا مِنْ عُلَمَائِنَا بِالْحِجَازِ حَتَّى حَدَّثَنِي أَبُو إِدْرِيسَ وَكَانَ مِنْ فُقَهَاءِ الشَّامِ. وَقَالَ بَعْضُهُمْ: إنَّمَا نَهَى عَنْهَا مِنْ أَجْلِ ضَرَرِ لَحْمِهَا.

L16662 They said: Al-Zuhri narrated the report prohibiting every predatory animal with fangs. Then he stated: "I did not hear this from our scholars in the Hijaz until Abu Idris (who was among the jurists of the Levant) related it to me." Some of them said: "The prohibition against them was solely due to the harm of their meat."

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا مَوَّهُوا بِهِ وَكُلُّهُ لَا شَيْءَ -:

L16663 Abū Muḥammad said: This is all that they have embellished - and all of it is nothing.

أَمَّا الْآيَةُ فَإِنَّهَا مَكِّيَّةٌ كَمَا قَدَّمْنَا وَلَا يَجُوزُ أَنْ تَبْطُلَ بِهَا أَحْكَامٌ نَزَلَتْ بِالْمَدِينَةِ، وَهُمْ يُحَرِّمُونَ الْحُمُرَ الْأَهْلِيَّةَ وَلَيْسَتْ فِي الْآيَةِ.

L16664 As for the verse, it is Meccan as we have previously established, and rulings revealed in Medinan [periods] cannot be invalidated by it. However, they

[21] **Qur'an references (L16659):** Qur'an 6:145 (Al-An'am).
[22] **Qur'an references (L16661):** Qur'an 6:145 (Al-An'am).

[claim to] prohibit domestic donkeys, though no such prohibition exists in the verse.

L16665–16666 They prohibit wine—though it is not mentioned in the verse—and the two mixtures even if they do not intoxicate and are not mentioned in the verse, which constitutes a great contradiction.

L16667 As for the statement of ʾĀʾishah, may Allah be pleased with her, "There is no valid argument for anyone alongside the Messenger of Allah, peace and blessings be upon him": had ʾĀʾishah, may Allah be pleased with her, been informed of the prohibition of the Messenger of Allah, peace and blessings be upon him, regarding that matter, she would not have opposed him. This is just as she complied with the prohibition of the crow when it reached her, even though it is not mentioned in the verse, as we will mention after this if Allah the Exalted wills.

L16668 As for the narration from Ibn Abbas, it is utterly defective because it is transmitted by Juwaybir—who is rejected—from al-Daḥḥāk—who is weak. No one besides the Prophet—peace and blessings be upon him—serves as a binding proof.

L16669 As for al-Zuhri's statement that he did not hear it from his scholars in the Hijaz—what does that signify? Suppose al-Zuhri never heard it at all; do you imagine that nothing from the Sunnah can be adopted until al-Zuhri knows it? This is truly astonishing—nothing like it has ever been heard! How can this be, when al-Zuhri himself did not pay attention to his not having heard it from his Hijazi scholars, yet issued a fatwa as we mentioned earlier? How many cases are there where they opposed ʿAʾishah in those cases, and al-Zuhri—even as Malik opposed them both—without trouble, as we have frequently discussed and will elaborate further, God the Exalted willing.

L16670 This very issue is among those in which they opposed ʿĀʾisha's fatwā concerning the crow and al-Zuhri's fatwā, as we have mentioned. They are like a drowning person clinging to whatever he finds, even if clinging to it entails his destruction.

L16671 As for their statement, "He only prohibited it due to the harm of its meat"—this is the speech of a group of scum and lies. As for the falsehood, it stems

وَيُحَرِّمُونَ الْخَمْرَ وَلَيْسَتْ فِي الْآيَةِ، وَالْخَلِيطَيْنِ وَإِنْ لَمْ يُسْكِرَا وَلَمْ يُذْكَرَا فِي الْآيَةِ، وَهَذَا تَنَاقُضٌ عَظِيمٌ.

وَأَمَّا قَوْلُ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَوْ أَنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - بَلَغَهَا نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ لَمَا خَالَفَتْهُ كَمَا فَعَلَتْ فِي تَحْرِيمِ الْغُرَابِ إذْ بَلَغَهَا وَلَيْسَ مَذْكُورًا فِي الْآيَةِ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهَا عَنْ جُوَيْبِرٍ - وَهُوَ هَالِكٌ - عَنْ الضَّحَّاكِ - وَهُوَ ضَعِيفٌ - وَلَا حُجَّةَ فِي أَحَدٍ غَيْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَأَمَّا قَوْلُ الزُّهْرِيِّ: إنَّهُ لَمْ يَسْمَعْهُ مِنْ عُلَمَائِهِ بِالْحِجَازِ فَكَانَ مَاذَا؟ وَهَبْك أَنَّ الزُّهْرِيَّ لَمْ يَسْمَعْهُ قَطُّ، أَتُرَى السُّنَنَ لَا يُؤْخَذُ مِنْهَا شَيْءٌ حَتَّى يَعْرِفَهَا الزُّهْرِيُّ؟ إنَّ هَذَا لَعَجَبٌ مَا سُمِعَ بِمِثْلِهِ فَكَيْفَ وَالزُّهْرِيُّ لَمْ يَلْتَفِتْ إلَى أَنَّهُ لَمْ يَسْمَعْهُ مِنْ عُلَمَائِهِ بِالْحِجَازِ، بَلْ أَفْتَى بِهِ كَمَا ذَكَرْنَا آنِفًا؟ وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عَائِشَةَ، وَالزُّهْرِيَّ إذَا خَالَفَهُمَا مَالِكٌ [إذْ] لَا مُؤْنَةَ عَلَيْهِمْ فِي ذَلِكَ كَمَا ذَكَرْنَا كَثِيرًا مِنْهُ وَنَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى.

وَهَذِهِ الْمَسْأَلَةُ نَفْسُهَا مِمَّا خَالَفُوا فِيهِ فُتْيَا عَائِشَةَ فِي الْغُرَابِ وَفُتْيَا الزُّهْرِيِّ كَمَا أَوْرَدْنَا وَإِنَّمَا هُمْ كَالْغَرِيقِ يَتَعَلَّقُ بِمَا يَجِدُ وَإِنْ كَانَ فِيهِ هَلَاكُهُ.

from what lies upon them in that assertion. Whoever attributed this to the Prophet—peace and blessings of Allah be upon him—has lied against him—peace and blessings of Allah be upon him—for they fabricated words he never spoke and reported from him what he never conveyed about himself. This is a damning narrative leading to Hellfire—we seek refuge in Allah from it.

وَأَمَّا قَوْلُهُمْ: إِنَّمَا نَهَى عَنْهَا لِضَرَرِ لَحْمِهَا - فَكَلَامُ جَمْعِ الْغَثَاثَةِ وَالْكَذِبِ، أَمَّا الْكَذِبُ مِمَّا عَلَيْهِمْ بِذَلِكَ، وَمَنْ أَخْبَرَهُمْ بِهَذَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا كَذِبٌ عَلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ قَوَّلُوهُ مَا لَمْ يَقُلْ، وَإِذْ أَخْبَرُوا عَنْهُ بِمَا لَمْ يُخْبِرْ بِهِ قَطُّ عَنْ نَفْسِهِ، وَهَذِهِ قِصَّةٌ مُهْلِكَةٌ مُؤَدِّيَةٌ إِلَى النَّارِ نَعُوذُ بِاللَّهِ مِنْهَا.

L16672 As for the paltriness [of their knowledge], their medical understanding regarding this matter is extremely lacking, and anyone with the slightest insight into foods would not doubt that the meat of a noble camel and an old buck is far more harmful than the meat of a dog, a cat, or a cheetah.

وَأَمَّا الْغَثَاثَةُ فَإِنَّ عِلْمَهُمْ بِالطِّبِّ فِي هَذِهِ الْمَسْأَلَةِ ضَعِيفٌ جِدًّا، وَمَا يَشُكُّ مَنْ لَهُ أَقَلُّ بَصَرٍ بِالْأَغْذِيَةِ فِي أَنَّ لَحْمَ الْجَمَلِ الشَّارِفِ وَالتَّيْسِ الْهَرِمِ أَشَدُّ ضَرَرًا مِنْ لَحْمِ الْكَلْبِ، وَالْهِرِّ، وَالْفَهْدِ.

L16673–16675 Then, suppose you grant that it is as they claimed—is there anything in that which nullifies the prohibition against them? It is nothing but an emphasis in prohibiting them. Moreover, they have incriminated themselves by squandering wealth and committing sin therein, since they left the dogs. Cats die in garbage dumps and homes, yet people do not slaughter them to eat their meat—even though they are permissible? If someone were to do this [let die without slaughter] to their sheep or cattle, they would be disobeying Allah the Exalted by squandering their wealth.

ثُمَّ هَبْكَ أَنَّهُ كَمَا قَالُوا فَهَلْ فِي ذَلِكَ مَا يُبْطِلُ النَّهْيَ عَنْهَا؟ مَا هُوَ إِلَّا تَأْكِيدٌ فِي الْمَنْعِ مِنْهَا، ثُمَّ قَدْ شَهِدُوا عَلَى أَنْفُسِهِمْ بِإِضَاعَةِ الْمَالِ وَالْمَعْصِيَةِ فِي ذَلِكَ، إِذْ تَرَكُوا الْكِلَابَ، وَالسَّنَانِيرَ تَمُوتُ عَلَى الْمَزَابِلِ، وَفِي الدُّورِ، وَلَا يَذْبَحُونَهَا فَيَأْكُلُونَهَا، إِذْ هِيَ حَلَالٌ؟ وَلَوْ أَنَّ امْرَءًا فَعَلَ هَذَا بِغَنَمِهِ وَبَقَرِهِ لَكَانَ عَاصِيًا لِلَّهِ تَعَالَى بِإِضَاعَةِ مَالِهِ.

L16676 As for hyenas, Al-Shafi'i and Abu Sulayman permitted their consumption. The proof for this is what we have transmitted through Abd al-Razzaq's chain from Ibn Jurayj, who stated: Abdullah ibn Ubayd ibn Umayr reported to me that Abd al-Rahman ibn Abi Ammar informed him, saying: "I asked Jabir ibn Abdullah regarding the hyena: 'Do I eat it?' He replied: 'Yes.' I asked: 'Is it considered game?' He answered: 'Yes.' I inquired: 'Did you hear this from Allah's Prophet (Peace be upon him)?' He responded: 'Yes.'" Ibn Jurayj added: Nafi', the freedman of Ibn Umar, narrated to us that a man informed Ibn Umar of Sa'd ibn Abi Waqqas consuming hyenas. Nafi' remarked: Ibn Umar did not object to this.

وَأَمَّا الضِّبَاعُ فَإِنَّ الشَّافِعِيَّ وَأَبَا سُلَيْمَانَ، أَبَاحَا أَكْلَهَا -: وَالْحُجَّةُ لِذَلِكَ مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ عُبَيْدِ بْنِ عُمَيْرٍ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ أَبِي عَمَّارٍ أَخْبَرَهُ قَالَ: «سَأَلْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ عَنِ الضَّبُعِ أَآكُلُهَا؟ قَالَ: نَعَمْ قُلْتُ: أَصَيْدٌ هِيَ؟ قَالَ: نَعَمْ، قُلْتُ: أَسَمِعْتَ ذَلِكَ مِنْ نَبِيِّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: نَعَمْ» ، قَالَ ابْنُ جُرَيْجٍ: نَا نَافِعُ مَوْلَى ابْنِ عُمَرَ قَالَ: أَخْبَرَ رَجُلٌ ابْنَ عُمَرَ أَنَّ سَعْدَ بْنَ أَبِي وَقَّاصٍ يَأْكُلُ الضِّبَاعَ؟ قَالَ نَافِعٌ: فَلَمْ يُنْكِرْ ابْنُ عُمَرَ ذَلِكَ.

L16677 Narrated by ʿAbd al-Razzāq from Maʿmar from Ibn Abī Najīḥ from Mujāhid, who said: ʿAlī ibn Abī Ṭālib did not see any harm in eating hyena meat.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ لَا يَرَى بِأَكْلِ الضِّبَاعِ بَأْسًا.

L16678 Ma'mar reported from 'Amr ibn Muslim, who said, "I heard 'Ikrimah narrate from Ibn 'Abbas. He was asked, 'What about the hyena?'" He replied, "I saw it on Ibn Abbas's table."

وَقَالَ مَعْمَرٌ عَنْ عَمْرِو بْنِ مُسْلِمٍ: سَمِعْت عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ وَسُئِلَ عَنْ الضَّبُعِ؟ فَقَالَ: رَأَيْتهَا عَلَى مَائِدَةِ ابْنِ عَبَّاسٍ.

L16679 And via the chain of Waki' from Abū al-Minhāl al-Ṭā'ī from 'Abdullāh ibn Zayd, who narrated from his uncle, he said: I asked Abū Hurayrah about the hyena? He replied, "A ewe of the sheep."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي الْمِنْهَالِ الطَّائِيِّ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدٍ عَمِّهِ قَالَ: سَأَلْت أَبَا هُرَيْرَةَ عَنْ الضَّبُعِ؟ فَقَالَ: نَعْجَةٌ مِنْ الْغَنَمِ.

L16680 It is narrated from 'Aṭā' that he said, "A hyena is more preferable to me than a ram."

وَعَنْ عَطَاءٍ قَالَ: ضَبُعٌ أَحَبُّ إلَيَّ مِنْ كَبْشٍ.

L16681 Abu Muhammad said: It is obligatory that hyenas be excluded from the category of predatory animals, as the Messenger of Allah (peace be upon him) excluded them, and none of his statements—peace be upon him—should be contradicted.

قَالَ أَبُو مُحَمَّدٍ: فَوَاجِبٌ أَنْ تُسْتَثْنَى الضِّبَاعُ مِنْ جُمْلَةِ السِّبَاعِ كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يُخَالَفُ شَيْءٌ مِنْ أَقْوَالِهِ - عَلَيْهِ السَّلَامُ -.

L16682 Abu Hanifah held the opinion that hyenas are prohibited - and we know of no argument he presented except his reliance upon the general prohibition by the Prophet (peace be upon him) against eating predatory animals. They said: "It is a predatory animal."

وَقَالَ أَبُو حَنِيفَةَ: بِتَحْرِيمِ الضِّبَاعِ - وَمَا نَعْلَمُ لَهُ حُجَّةً إلَّا تَعَلُّقَهُ بِعُمُومِ نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ السِّبَاعِ؟ قَالُوا: وَهِيَ سَبُعٌ.

L16683–16685 And they mentioned a corrupt narration that we narrated via the chain of Muḥammad ibn Jarīr al-Ṭabarī: Ibn Ḥumayd reported to me, Abū Zuhayr narrated to us, Muḥammad ibn Isḥāq narrated to us, from Ismā'īl ibn Muslim al-Makkī, from 'Abd al-Karīm ibn Abī al-Mukhāriq. From Habban ibn Juz' from his brother Khuzaymah ibn Juz', who said: "I said: 'O Messenger of Allah, what do you say about the hyena?' He said to me: 'Who would eat a hyena?'" They mentioned what we narrated through the chain of Mu'ammal ibn Ismā'īl from Sufyān al-Thawrī, who narrated to us from Suhayl ibn Abī Ṣāliḥ from 'Abdullāh ibn Yazīd, who said: "I asked Sa'īd ibn al-Musayyab about the hyena. He disliked it. I said to him: 'Your people eat it.' He replied: 'My people have no knowledge.'"

وَذَكَرُوا خَبَرًا فَاسِدًا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ أَنَا ابْنُ حُمَيْدٍ نَا أَبُو زُهَيْرٍ نَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ إسْمَاعِيلَ بْنِ مُسْلِمٍ الْمَكِّيِّ عَنْ عَبْدِ الْكَرِيمِ بْنِ أَبِي الْمُخَارِقِ عَنْ حِبَّانَ بْنِ جُزْءٍ عَنْ أَخِيهِ خُزَيْمَةَ بْنِ جُزْءٍ قَالَ «قُلْتُ: يَا رَسُولَ اللَّهِ: مَا تَقُولُ فِي الضَّبُعِ؟ فَقَالَ لِي: وَمَنْ يَأْكُلُ الضَّبُعَ» ؟ وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُؤَمَّلِ بْنِ إسْمَاعِيلَ عَنْ سُفْيَانَ الثَّوْرِيِّ نَا سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ الضَّبُعِ؟ فَكَرِهَهُ فَقُلْت لَهُ: إنَّ قَوْمَك يَأْكُلُونَهُ؟ فَقَالَ: إنَّ قَوْمِي لَا يَعْلَمُونَ.

L16686 Abū Muḥammad said: We do not know any proof for them other than this. As for their argument citing the Prophet—peace and blessings be upon him—and his prohibition of predatory animals, it is indeed valid. However, the One who prohibited predatory animals is the same One who permitted hyenas. Thus, there is no difference between permitting what was forbidden from predatory animals and forbidding what was permitted of hyenas, and it is not permissible to contravene both of them.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا -: فَأَمَّا احْتِجَاجُهُمْ بِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ السِّبَاعِ فَإِنَّهُ حَقٌّ وَلَكِنَّ الَّذِي نَهَى عَنْ السِّبَاعِ هُوَ الَّذِي أَحَلَّ الضِّبَاعَ فَلَا فَرْقَ بَيْنَ إبَاحَةِ مَا حُرِّمَ مِنْ السِّبَاعِ وَبَيْنَ تَحْرِيمِ مَا حُلِّلَ مِنْ الضِّبَاعِ، وَكِلَاهُمَا لَا تَحِلُّ مُخَالَفَتُهُ.

L16687 As for the mentioned report, it holds no validity, because Ismāʿīl ibn Muslim is weak, Ibn Abī al-Mukhāriq is disregarded, and Ḥibbān ibn Juzʾ is obscure. Moreover, even if it were authentic, they could not cite it as evidence, for it contains no prohibition whatsoever—it merely expresses astonishment at those who consume it.

وَأَمَّا الْخَبَرُ الْمَذْكُورُ فَلَا شَيْءَ، لِأَنَّ إسْمَاعِيلَ بْنَ مُسْلِمٍ ضَعِيفٌ وَابْنَ أَبِي الْمُخَارِقِ سَاقِطٌ، وَحِبَّانَ بْنَ جُزْءٍ مَجْهُولٌ. ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ لِأَنَّهُ لَيْسَ فِيهِ تَحْرِيمٌ أَصْلًا وَإِنَّمَا فِيهِ التَّعَجُّبُ مِمَّنْ يَأْكُلُهَا فَقَطْ.

L16688 We know that sheep bones are lawful; then, were we to see someone eating them or their hides, we would be utterly astounded to the utmost degree.

وَقَدْ عَلِمْنَا أَنَّ عِظَامَ الضَّأْنِ حَلَالٌ، ثُمَّ لَوْ رَأَيْنَا أَحَدًا يَأْكُلُهَا " أَوْ يَأْكُلُ جُلُودَهَا لَعَجِبْنَا مِنْ ذَلِكَ أَشَدَّ الْعَجَبِ.

L16689 As for the statement of Sa'id ibn al-Musayyib: "No one's opinion holds authority against the Messenger of Allah—peace and blessings be upon him," [this is because] Allah permitted trade in its entirety, then the Prophet—peace and blessings be upon him—by Allah's authority prohibited many specific types of sales. Later jurists did not prioritize the general permissibility over the specific prohibition, and this contradicts their actions here. This is among the matters in which they opposed a group of the Companions—with no known opponent among the Companions against them. And success is from Allah, the Most High.

وَأَمَّا قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ أَحَلَّ اللَّهُ الْبَيْعَ جُمْلَةً ثُمَّ حَرَّمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بُيُوعًا كَثِيرَةً فَلَمْ يُغَلِّبُوا عُمُومَ الْإِبَاحَةِ عَلَى تَخْصِيصِ النَّهْيِ وَهَذَا خِلَافُ فِعْلِهِمْ هَهُنَا، وَهَذَا مِمَّا خَالَفُوا فِيهِ جَمَاعَةً مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16690–16692 As for the elephant, it is not a predatory animal, nor has there been an explicit text prohibiting it. Allah the Exalted said: "He created for you all that is on the earth" [Surah Al-Baqarah 2:29], and He the Exalted said: "Say, 'I do not find in what has been revealed to me anything forbidden to one who eats it [...]" [Surah Al-Anʿam 6:145]. And He, the Exalted, has said: {He has detailed for you what He has forbidden upon you} [Al-Anʿam (6:119)]. Thus, all things are lawful except what has been prohibited by a text. This is

وَأَمَّا الْفِيلُ فَلَيْسَ سَبُعًا وَلَا جَاءَ فِي تَحْرِيمِهِ نَصٌّ، وَقَالَ تَعَالَى: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] وَقَالَ تَعَالَى: {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ} [الأنعام: ١٤٥] ؛ وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ}

affirmed by the text of the Quran and the Sunnah. Since no text has come prohibiting the elephant, it is lawful.[23]

[الأنعام: ١١٩] فَكُلُّ شَيْءٍ حَلَالٌ إِلَّا مَا جَاءَ نَصٌّ بِتَحْرِيمِهِ بِهَذَا جَاءَ نَصُّ الْقُرْآنِ وَالسُّنَنِ وَلَمْ يَأْتِ فِي الْفِيلِ نَصُّ تَحْرِيمٍ فَهُوَ حَلَالٌ.

The issue of the ruling on eating snakes.

[مَسْأَلَةُ حُكْمُ أَكْلِ الْحَيَّاتِ]

995 – Legal Question: It is impermissible to eat anything from snakes, nor any clawed birds that hunt with their claws among birds, nor scorpions, nor rats, nor kites, nor crows.

٩٩٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الْحَيَّاتِ وَلَا أَكْلُ شَيْءٍ مِنْ ذَوَاتِ الْمَخَالِبِ مِنْ الطَّيْرِ وَهِيَ الَّتِي تَصِيدُ الصَّيْدَ بِمَخَالِبِهَا، وَلَا الْعَقَارِبِ، وَلَا الْفِئْرَانِ وَلَا الْحِدَاءِ، وَلَا الْغُرَابِ.

We have been narrated via the transmission of Muslim: Shaybān ibn Farrūkh narrated to us, Abū ʿAwāna narrated to us from Zayd ibn Jubayr, who said: Ibn ʿUmar said, “One of the Prophet’s wives—peace and blessings be upon him—narrated to me that he—peace be upon him—commanded the killing of the vicious dog, the mouse, the scorpion, the kite, the crow, and the snake.” He added: “And also during prayer.”

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نَا شَيْبَانُ بْنُ فَرُّوخَ نَا أَبُو عَوَانَةَ عَنْ زَيْدِ بْنِ جُبَيْرٍ قَالَ " قَالَ ابْنُ عُمَرَ حَدَّثَتْنِي إحْدَى نِسْوَةِ «النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَانَ - عَلَيْهِ السَّلَامُ - يَأْمُرُ بِقَتْلِ الْكَلْبِ الْعَقُورِ، وَالْفَأْرَةِ، وَالْعَقْرَبِ، وَالْحُدَيَّا، وَالْغُرَابِ، وَالْحَيَّةِ، قَالَ: وَفِي الصَّلَاةِ أَيْضًا» .

From the transmission of Muslim: Isḥāq ibn Manṣūr narrated to me, Muḥammad ibn Jahḍam narrated to us, Ismāʿīl—whom we consider to be Ibn Jaʿfar—narrated from ʿUmar ibn Nāfiʿ from his father, who said: One day, while ʿAbdullāh ibn ʿUmar was engaged in demolition, he noticed the glint of a jinn and said, “Kill it!” Abū Lubābah al-Anṣārī then said: I heard the Messenger of Allah—peace and blessings be upon him—forbid the killing of jinn that reside in houses except for the tailless one and the one with two tufts, for they are the ones that snatch away eyesight and induce harm to what is in women’s wombs.

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ نَا مُحَمَّدُ بْنُ جَهْضَمٍ نَا إِسْمَاعِيلُ وَهُوَ عِنْدَنَا ابْنُ جَعْفَرٍ عَنْ عُمَرَ بْنِ نَافِعٍ عَنْ أَبِيهِ قَالَ كَانَ عَبْدُ اللَّهِ بْنُ عُمَرَ يَوْمًا [عِنْدَ هَدْمٍ لَهُ] رَأَى وَبِيصَ جَانٍّ فَقَالَ: اُقْتُلُوا؟ فَقَالَ أَبُو لُبَابَةَ الْأَنْصَارِيُّ: سَمِعْت «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ قَتْلِ الْجِنَّانِ الَّتِي تَكُونُ فِي الْبُيُوتِ إلَّا الْأَبْتَرَ وَذَا الطُّفْيَتَيْنِ فَإِنَّهُمَا اللَّذَانِ يَخْطِفَانِ الْبَصَرَ وَيَتْبَعَانِ مَا فِي بُطُونِ النِّسَاءِ» .

From the transmission of Malik from Sayfi, who is Ibn Aflah – Abu al-Sa’ib, the freedman of Hisham ibn Zuhrah, informed me that Abu Sa‘id al-Khudri informed him: “The Messenger of Allah (peace be upon him) said: ’There

وَمِنْ طَرِيقِ مَالِكٍ عَنْ صَيْفِي هُوَ ابْنُ أَفْلَحَ - أَخْبَرَنِي أَبُو السَّائِبِ مَوْلَى هِشَامِ بْنِ زُهْرَةَ أَنَّ أَبَا سَعِيدٍ الْخُدْرِيَّ أَخْبَرَهُ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ

[23] **Qur’an references (L16690):** Qur’an 2:29 (Al-Baqarah); Qur’an 6:145 (Al-An’am); Qur’an 6:119 (Al-An’am).

are jinn in Medina who have embraced Islam. If you see anything from it [Medina], notify it for three days. If it reappears to you after that, then kill it.”’

L16698–16700 Whatever the Messenger of Allah (peace and blessings be upon him) commanded to be killed has no ritual slaughter (dhakāh) applicable to it, for he (peace be upon him) prohibited the waste of It is unlawful to destroy property and to kill any edible creature. We have mentioned in the Book of Hajj the Prophet’s saying (peace be upon him): “Five corrupting creatures may be killed in both sacred and non-sacred territories”—he then listed the scorpion, the mouse, the kite, the crow, and the rabid dog.

L16701 Thus, it is established that there is sacrilegious slaughter in it, and sacrilegious slaughter is prohibited. The Exalted said: {Say, “I do not find in what has been revealed to me anything forbidden for someone to eat except dead flesh, flowing blood, the flesh of swine—for indeed, it is an abomination—or [meat] slaughtered in the name of other than Allah with it.”} [Al-An‘ām: 145].[24]

L16702 If a creature involving sin were slaughtered, it would fall under what is dedicated to other than Allah; for slaughtering what is not permissible to eat is an act of disobedience, and disobedience is an intent directed toward other than Allah, the Exalted. It has been narrated to us from ‘Umar ibn al-Khaṭṭāb: “Kill all snakes.”

L16703 From Ibn Mas‘ud: Whoever kills a snake or a scorpion has killed a disbeliever.

L16704 From the narration of Muḥammad ibn Zuhayr ibn Abī Khaythama: Ibn Abī Uways narrated to us, his father narrated to us, Yaḥyā ibn Saʿīd al-Anṣārī narrated to us from ʿAmra from ʿĀ’isha, the Mother of the Believers, who said: “I am truly astonished at someone who eats the crow, when the Messenger of Allah (peace and blessings of Allah be upon him) permitted its killing and called it a sinful creature. By Allah, it is not among the lawful things.”

L16705 From the chain of Sharik from Hisham ibn Urwah from his father from Ibn

بِالْمَدِينَةِ جِنًّا قَدْ أَسْلَمُوا فَإِذَا رَأَيْتُمْ مِنْهَا شَيْئًا فَآذِنُوهُ ثَلَاثَةَ أَيَّامٍ، فَإِنْ بَدَا لَكُمْ بَعْدَ ذَلِكَ فَاقْتُلُوهُ» .

فَكُلُّ مَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِهِ فَلَا ذَكَاةَ لَهُ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - نَهَى عَنْ إِضَاعَةِ الْمَالِ، وَلَا يَحِلُّ قَتْلُ شَيْءٍ يُؤْكَلُ، وَقَدْ ذَكَرْنَا فِي كِتَابِ الْحَجِّ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «خَمْسٌ فَوَاسِقُ يُقْتَلْنَ فِي الْحِلِّ وَالْحَرَمِ» فَذَكَرَ الْعَقْرَبَ، وَالْفَأْرَةَ، وَالْحِدَأَةَ، وَالْغُرَابَ، وَالْكَلْبَ الْعَقُورَ.

فَصَحَّ أَنَّ فِيهَا فِسْقًا، وَالْفِسْقُ مُحَرَّمٌ قَالَ تَعَالَى: {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ} [الأنعام: ١٤٥] .

فَلَوْ ذُبِحَ مَا فِيهِ فِسْقٌ لَكَانَ مِمَّا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ، لِأَنَّ ذَبْحَ مَا لَا يَحِلُّ أَكْلُهُ مَعْصِيَةٌ، وَالْمَعْصِيَةُ قَصْدٌ إِلَى غَيْرِ اللَّهِ تَعَالَى بِهِ -: رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ: اُقْتُلُوا الْحَيَّاتِ كُلَّهَا.

وَعَنْ ابْنِ مَسْعُودٍ: مَنْ قَتَلَ حَيَّةً أَوْ عَقْرَبًا قَتَلَ كَافِرًا.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ زُهَيْرِ بْنِ أَبِي خَيْثَمَةَ نَا ابْنُ أَبِي أُوَيْسٍ نَا أَبِي نَا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ عَمْرَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: إِنِّي لَأَعْجَبُ مِمَّنْ يَأْكُلُ الْغُرَابَ، وَقَدْ أَذِنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قَتْلِهِ وَسَمَّاهُ فَاسِقًا، وَاَللَّهِ مَا هُوَ مِنْ الطَّيِّبَاتِ.

[24] **Qur’an references (L16701):** Qur’an 6:145 (Al-An’am).

Umar, who said: “Who eats a crow when the Messenger of Allah (peace and blessings be upon him) named it a prohibited creature? By Allah, it is not among the pure things.”

وَمِنْ طَرِيقِ شَرِيكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ قَالَ: مَنْ يَأْكُلُ الْغُرَابَ؟ وَقَدْ سَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسِقًا، وَاَللَّهِ مَا هُوَ مِنْ الطَّيِّبَاتِ.

L16706 From the chain of Ibn Abi Shaybah, Abu Muʿawiyah narrated to us from Hisham ibn ʿUrwah from his father, who said: Who would eat a crow when the Messenger of Allah—peace and blessings be upon him—has declared it impure?

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو مُعَاوِيَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: مَنْ يَأْكُلُ الْغُرَابَ وَقَدْ سَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاسِقًا.

L16707 And via the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: Some scholars deemed it reprehensible to eat the kite and the crow because the Messenger of Allah—peace and blessings be upon him—named them among the verminous creatures that are to be killed in the sacred precinct.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: كَرِهَ رِجَالٌ مِنْ أَهْلِ الْعِلْمِ أَكْلَ الْحِدَاءِ وَالْغُرَابِ حَيْثُ سَمَّاهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ فَوَاسِقِ الدَّوَابِّ الَّتِي تُقْتَلُ فِي الْحَرَمِ.

L16708 If it is said: “It has been reported: ’Throw stones at the crow but do not kill it,’” we respond: This was narrated by one whose transmissions are inadmissible—Yazīd ibn Abī Ziyād—and we have previously mentioned the weakening of his reliability in the Book of Ḥajj. Our statement is the statement of al-Shāfiʿī and of Abū Sulaymān.

فَإِنْ قِيلَ: قَدْ رُوِيَ «وَتَرْمِي الْغُرَابَ وَلَا تَقْتُلُهُ» ؟ قُلْنَا: رَوَاهُ مَنْ لَا يَجُوزُ الْأَخْذُ بِرِوَايَتِهِ يَزِيدُ بْنُ أَبِي زِيَادٍ وَقَدْ ذَكَرْنَا تَضْعِيفَهُ فِي كِتَابِ الْحَجِّ وَقَوْلُنَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L16709 Abu Hanifah deemed the speckled crow impermissible but not the black crow, citing as evidence that certain textual reports specifically mention the speckled crow.

وَحَرَّمَ أَبُو حَنِيفَةَ الْغُرَابَ الْأَبْقَعَ، وَلَمْ يُحَرِّمْ الْأَسْوَدَ، وَاحْتَجَّ بِأَنَّ فِي بَعْضِ الْأَخْبَارِ ذَكَرَ الْغُرَابَ الْأَبْقَعَ.

L16710–16711 Abu Muhammad said: The narrations containing the general mention of crows have a supplementary ruling not found in the narration specifying the piebald crow. Whoever claims the Messenger of God (peace and blessings be upon him) meant by his statement “the crow” solely the piebald crow specifically, because he mentioned the piebald crow in another narration, has lied. He has presumed without knowledge what he cannot know, while we are certain the Prophet (peace and blessings be upon him) commanded the killing of the piebald crow in one narration and the collective killing of crows in another. Both are true, and it is impermissible to oppose it.

قَالَ أَبُو مُحَمَّد: الْأَخْبَارُ الَّتِي فِيهَا عُمُومُ ذِكْرِ الْغُرَابِ هُوَ الزَّائِدُ حُكْمًا لَيْسَ فِي الَّذِي فِيهِ تَخْصِيصُ الْأَبْقَعِ، وَمَنْ قَالَ: إنَّمَا عَنَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوْلِهِ " الْغُرَابُ " الْغُرَابَ الْأَبْقَعَ خَاصَّةً، لِأَنَّهُ قَدْ ذَكَرَ الْغُرَابَ الْأَبْقَعَ فِي خَبَرٍ آخَرَ -: فَقَدْ كَذَبَ، إذْ قَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ قَدْ أَمَرَ - عَلَيْهِ السَّلَامُ - بِقَتْلِ الْأَبْقَعِ فِي خَبَرٍ، وَبِقَتْلِ الْغُرَابِ جُمْلَةً فِي خَبَرٍ آخَرَ، وَكِلَاهُمَا حَقٌّ لَا يَحِلُّ خِلَافُهُ.

L16712 The Malikis expressed uncertainty concerning these beasts of burden which we have mentioned.

وَتَرَدَّدَ الْمَالِكِيُّونَ فِي هَذِهِ الدَّوَابِّ الَّتِي ذَكَرْنَا.

وَأَمَّا الْعَقَارِبُ وَالْحَيَّاتُ فَمَا يَمْتَرِي ذُو فَهْمٍ فِي أَنَّهُنَّ مِنْ أَخْبَثِ الْخَبَائِثِ وَقَدْ قَالَ تَعَالَى: {وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ} [الأعراف: ١٥٧] .

L16713 As for scorpions and snakes, no person of understanding would dispute that they are among the most impure of impure things, for Allah, the Exalted, says: “He prohibits for them impure things” [al-A‘rāf 7:157].[25]

وَأَمَّا الْفِئْرَانُ فَمَا زَالَ جَمِيعُ أَهْلِ الْإِسْلَامِ يَتَّخِذُونَ لَهَا الْقِطَاطَ، وَالْمَصَائِدَ الْقَتَّالَةَ، وَيَرْمُونَهَا مَقْتُولَةً عَلَى الْمَزَابِلِ، فَلَوْ كَانَ أَكْلُهَا حَلَالًا لَكَانَ ذَلِكَ مِنْ الْمَعَاصِي، وَمِنْ إضَاعَةِ الْمَالِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16714 As for mice, Muslims have always used cats to hunt them and lethal traps against them, discarding their dead bodies on rubbish heaps. If consuming them were permissible, such actions would be among the sins and a squandering of wealth - and success is from Allah, the Most High.

وَأَبَاحُوا أَكْلَ الْحَيَّاتِ الْمُذَكَّاةِ، وَهُمْ يُحَرِّمُونَ أَكْلَ مَا ذُكِّيَ مِنْ قَفَاهُ، وَلَا سَبِيلَ إلَى تَذْكِيَةِ الْحَيَّاتِ إلَّا مِنْ أَقْفَائِهَا؟ قَالَ أَبُو مُحَمَّدٍ: وَهِيَ وَالْخَمْرُ تَقَعُ فِي التِّرْيَاقِ فَلَا يَحِلُّ أَكْلُهُ إلَّا عِنْدَ الضَّرُورَةِ عَلَى سَبِيلِ التَّدَاوِي، لِأَنَّ الْمُتَدَاوِيَ مُضْطَرٌّ، وَقَدْ قَالَ تَعَالَى: {إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

L16715 They permitted the consumption of ritually slaughtered snakes, yet they prohibit eating what is ritually slaughtered from its nape. Is there no valid method for ritually slaughtering snakes except at their napes? Abu Muhammad said: “Snakes and wine are used in antidotes, so their consumption is not permissible except in cases of necessity for the purpose of treatment, as the one seeking treatment is compelled by necessity. Allah the Exalted has said: {except what you are compelled to consume} [Al-An‘am 6:119].”[26]

وَأَمَّا ذَوَاتُ الْمَخَالِبِ مِنْ الطَّيْرِ -: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا أَحْمَدُ بْنُ حَنْبَلٍ، وَعُبَيْدُ اللَّهِ بْنُ مُعَاذٍ قَالَ أَحْمَدُ: نَا هُشَيْمٌ أَنَّ أَبَا بِشْرٍ جَعْفَرَ بْنَ أَبِي وَحْشِيَّةَ أَخْبَرَهُ، وَقَالَ عُبَيْدُ اللَّهِ: نَا أَبِي نَا شُعْبَةُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، ثُمَّ اتَّفَقَ الْحَكَمُ، وَأَبُو بِشْرٍ، كِلَاهُمَا عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ وَعَنْ كُلِّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ» .

L16716 As for birds with talons—this is based on what we narrated via the chain of Muslim: Ahmad ibn Hanbal and Ubayd Allah ibn Mu‘adh reported. Ahmad said: Hushaym narrated to us that Abu Bishr Ja‘far ibn Abi Wahshiyyah informed him. Ubayd Allah said: My father narrated to us, and Shu‘bah narrated to us from al-Hakam ibn ‘Utaybah. Then their chains converged—both al-Hakam and Abu Bishr reported from Maymun ibn Mihrān from Ibn Abbas that the Messenger of Allah, peace be upon him, forbade every predatory animal with fangs and every bird with talons.[27]

قَالَ اللَّهُ تَعَالَى: {وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا} [الحشر: ٧] .

L16717 Allah the Exalted said: “And whatever We have forbidden you from, then refrain.” [Al-Hashr 7].[28]

وَلَا يَجُوزُ أَنْ يَنْهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ حَلَالٍ -: وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ.

L16718–16719 It is not permissible for the Messenger of Allah (peace and blessings be upon

[25] **Qur’an references (L16713):** Qur’an 7:157 (Al-A’raf).
[26] **Qur’an references (L16715):** Qur’an 6:119 (Al-An’am).
[27] **Hadith references (L16716):** Sahih Muslim 1934c.
[28] **Qur’an references (L16717):** Qur’an 59:7 (Al-Hashr).

him) to prohibit what is lawful. This is what Abu Hanifah, al-Shafi'i, Ahmad, and Abu Sulayman say.

L16720 The Malikis permitted the consumption of predatory birds. One of those whom Allah the Exalted has subjected to the trial of rigid imitation argued that Maymun ibn Mihran did not hear this report from Ibn Abbas, but rather heard it from Sa'id ibn Jubayr who narrated it from Ibn Abbas. He referenced a narration we have narrated through the chain of Ahmad ibn Shu'ayb—Isma'il ibn Mas'ud al-Jahdari informed us, from Bishr ibn al-Mufaddal, from Sa'id ibn Abi 'Arubah, from 'Ali ibn al-Hakam, from Maymun ibn Mihran, from Sa'id ibn Jubayr, from Ibn Abbas—that "the Messenger of Allah, peace be upon him, prohibited on the day of Khaybar every bird of prey with talons and every predatory animal with canine teeth."

وَأَبَاحَ الْمَالِكِيُّونَ أَكْلَ سِبَاعِ الطَّيْرِ، وَاحْتَجَّ بَعْضُ مَنْ ابْتَلَاهُ اللَّهُ تَعَالَى بِتَقْلِيدِهِ بِأَنَّ هَذَا الْخَبَرَ لَمْ يَسْمَعْهُ مَيْمُونُ بْنُ مِهْرَانَ مِنْ ابْنِ عَبَّاسٍ وَإِنَّمَا سَمِعَهُ مِنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ، وَأَشَارَ إلَى خَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إسْمَاعِيلُ بْنُ مَسْعُودٍ الْجَحْدَرِيُّ عَنْ بِشْرِ بْنِ الْمُفَضَّلِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ عَلِيِّ بْنِ الْحَكَمِ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى يَوْمَ خَيْبَرَ عَنْ كُلِّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ وَعَنْ كُلِّ ذِي نَابٍ مِنْ السِّبَاعِ»

L16721 Abū Muḥammad said: This nullifier sought to argue for himself but buried his argument, and he intended to weaken the report yet only strengthened it. For Saʿīd ibn Jubayr is the rising star in trustworthiness, authoritativeness, and reliability. How then could it be claimed when Shuʿbah, Hushaym, al-Ḥakam, and Abū Bishr—not one of whom is equivalent to ʿAlī ibn al-Ḥakam? The most sound view concerning ʿAlī ibn al-Ḥakam is that he was not described as having erred in this report, and to say: Maymūn ibn Mihrān heard it from Ibn ʿAbbās, and he also heard it from Saʿīd ibn Jubayr, who narrated it from Ibn ʿAbbās.

قَالَ أَبُو مُحَمَّدٍ: أَرَادَ هَذَا النَّاقِضُ أَنْ يَحْتَجَّ لِنَفْسِهِ فَدَفَنَهَا، وَأَرَادَ أَنْ يُوهِنَ الْخَبَرَ فَزَادَهُ قُوَّةً، لِأَنَّ سَعِيدَ بْنَ جُبَيْرٍ هُوَ النَّجْمُ الطَّالِعُ ثِقَةً وَإِمَامَةً وَأَمَانَةً، فَكَيْفَ وَشُعْبَةُ، وَهُشَيْمٌ، وَالْحَكَمُ، وَأَبُو بِشْرٍ، كُلُّ وَاحِدٍ مِنْهُمْ لَا يَعْدِلُ بِهِ عَلِيُّ بْنُ الْحَكَمِ؟ وَأَسْلَمُ الْوُجُوهِ لِعَلِيِّ بْنِ الْحَكَمِ أَنْ لَمْ يُوصَفْ بِأَنَّهُ أَخْطَأَ فِي هَذَا الْخَبَرِ أَنْ يُقَالَ: إنَّ مَيْمُونَ بْنَ مِهْرَانَ سَمِعَهُ مِنْ ابْنِ عَبَّاسٍ، وَسَمِعَهُ أَيْضًا مِنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ.

L16722 Ali said: Among the Arabs, none is called "possessor of a claw" except the one who hunts with his claw alone.

قَالَ عَلِيٌّ: لَا يُسَمَّى ذَا مِخْلَبٍ عِنْدَ الْعَرَبِ إلَّا الصَّائِدَ بِمِخْلَبِهِ وَحْدَهُ.

L16723 As for roosters, sparrows, starlings, doves and pigeons, and what does not hunt—none of these are referred to as having talons in the Arabic language. And with Allah, the Exalted, is success.

وَأَمَّا الدِّيكُ، وَالْعَصَافِيرُ، وَالزُّرْزُورُ، وَالْحَمَامُ، وَمَا لَمْ يَصِدْ، فَلَا يُسَمَّى شَيْءٌ مِنْهَا ذَا مِخْلَبٍ فِي اللُّغَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16724 The Ruling on Eating Wild Snails and Insects.

[مَسْأَلَة أَكْلُ الْحَلَزُونِ الْبَرِّيِّ وَالْحَشَرَاتِ]

L16725 996 – Issue: It is not permissible to eat wild snails or any insects whatsoever—such as geckos, beetles, ants, bees, flies, hornets, all worms (whether

from flying or non-flying insects), lice, fleas, bedbugs, mosquitoes, and all their types—due to the statement of Allah, exalted is He: "Forbidden to you is carrion" (Surah Al-Mā'idah 5:3).[29]

٩٩٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ الْحَلَزُونِ الْبَرِّيِّ، وَلَا شَيْءٍ مِنْ الْحَشَرَاتِ كُلِّهَا كَالْوَزَغِ وَالْخَنَافِسِ، وَالنَّمْلِ، وَالنَّحْلِ، وَالذُّبَابِ، وَالدُّبْرِ، وَالدُّودِ كُلِّهِ - طَيَّارَةٍ وَغَيْرِ طَيَّارَةٍ - وَالْقَمْلِ، وَالْبَرَاغِيثِ، وَالْبَقِّ، وَالْبَعُوضِ وَكُلِّ مَا كَانَ مِنْ أَنْوَاعِهَا لِقَوْلِ اللَّهِ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ} [المائدة: ٣] .

L16726 And the saying of the Most High: {except what you have slaughtered} [Al-Mā'idah: 3].[30]

وَقَوْله تَعَالَى {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] .

L16727–16729 Conclusive evidence has established that valid slaughter for an animal that can be subdued is lawful only by cutting the throat (including the esophagus and jugular veins) or... As for the chest, if it cannot be ritually slaughtered, there is no permissible way to consume it—thus, it is forbidden, because it cannot be eaten except as unslaughtered carrion.

وَقَدْ صَحَّ الْبُرْهَانُ عَلَى أَنَّ الذَّكَاةَ فِي الْمَقْدُورِ عَلَيْهِ لَا تَكُونُ إلَّا فِي الْحَلْقِ أَوْ الصَّدْرِ، فَمَا لَمْ يُقْدَرْ فِيهِ عَلَى ذَكَاةٍ فَلَا سَبِيلَ إلَى أَكْلِهِ -: فَهُوَ حَرَامٌ، لِامْتِنَاعِ أَكْلِهِ إلَّا مَيْتَةً غَيْرَ مُذَكًّى.

L16730 Another proof within all we have mentioned is that they are two categories: a category whose killing is permissible, such as geckos, beetles, fleas, lice, and wasps; and a category whose killing is forbidden, such as ants and bees. Those whose killing is permissible require no ritual slaughter, because killing what would otherwise require ritual slaughter constitutes waste of wealth. As for what it is unlawful to kill, ritual slaughter does not apply to it. We have been narrated through Al-Sha'bi's transmission: "Anything without flowing blood requires no ritual slaughter." And through 'Abd al-Razzaq's chain from Ma'mar, from Al-Zuhri, from 'Amir ibn Sa'd ibn Abi Waqqas, from his father: "The Prophet—peace and blessings of Allah be upon him—commanded the killing of geckos and called them 'minor corrupters,'" though they are deemed the most vile of vile creatures by every discerning soul.

وَبُرْهَانٌ آخَرُ -: فِي كُلِّ مَا ذَكَرْنَا أَنَّهُمَا قِسْمَانِ -: قِسْمٌ مُبَاحٌ قَتْلُهُ: كَالْوَزَغِ، وَالْخَنَافِسِ، وَالْبَرَاغِيثِ، وَالْبَقِّ، وَالدُّبْرِ، وَقِسْمٌ مُحَرَّمٌ قَتْلُهُ: كَالنَّمْلِ، وَالنَّحْلِ، فَالْمُبَاحُ قَتْلُهُ لَا ذَكَاةَ فِيهِ، لِأَنَّ قَتْلَ مَا تَجُوزُ فِيهِ الذَّكَاةُ إضَاعَةٌ لِلْمَالِ، وَمَا لَا يَحِلُّ قَتْلُهُ لَا تَجُوزُ فِيهِ الذَّكَاةُ -: رُوِّينَا مِنْ طَرِيقِ الشَّعْبِيِّ: «كُلُّ مَا لَيْسَ لَهُ دَمٌ سَائِلٌ فَلَا ذَكَاةَ فِيهِ» . وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَمَرَ بِقَتْلِ الْوَزَغِ وَسَمَّاهُ فُوَيْسِقًا» مَعَ أَنَّهُ مِنْ أَخْبَثِ الْخَبَائِثِ عِنْدَ كُلِّ ذِي نَفْسٍ.

L16731 From the transmission of Al-Bukhari: From Qutaybah, from Ismā'īl ibn Ja'far, from 'Utbah ibn Muslim - mawla of Banū Tamīm - from 'Ubayd ibn Ḥunayn - mawla of Banū Zurayq - from Abū Hurayrah that the Messenger of Allah (peace be upon him) said: "If a fly falls into the vessel of one of you,

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا قُتَيْبَةُ نَا إسْمَاعِيلُ بْنُ جَعْفَرٍ نَا عُتْبَةُ بْنُ مُسْلِمٍ مَوْلَى بَنِي تَمِيمٍ عَنْ عُبَيْدِ بْنِ حُنَيْنٍ مَوْلَى بَنِي زُرَيْقٍ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

[29] **Qur'an references (L16725):** Qur'an 5:3 (Al-Ma'idah).
[30] **Qur'an references (L16726):** Qur'an 5:3 (Al-Ma'idah).

let him immerse it entirely, then remove it." He [the narrator] mentioned the hadith, and the Prophet (peace be upon him) commanded its removal, for if it were lawful to eat it, he would not have commanded its discarding.

وَسَلَّمَ - قَالَ: «إِذَا وَقَعَ الذُّبَابُ فِي إِنَاءِ أَحَدِكُمْ فَلْيَغْمِسْهُ ثُمَّ لِيَطْرَحْهُ» وَذَكَرَ الْحَدِيثَ فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِطَرْحِهِ وَلَوْ كَانَ حَلَالًا أَكْلُهُ مَا أَمَرَ بِطَرْحِهِ.

L16732 And via the narration of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah from Ibn ʿAbbās: "The Messenger of Allah (peace be upon him) forbade killing four types of animals: the bee, the ant, the hoopoe, and the shrike."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ قَتْلِ أَرْبَعٍ مِنْ الدَّوَابِّ: النَّحْلَةُ، وَالنَّمْلَةُ، وَالْهُدْهُدُ، وَالصُّرَدُ» .

L16733–16734 From the chain of Abū Dāwūd: Muḥammad ibn Kathīr reported to us from Sufyān, from Ibn Abī Dhi'b, from Saʿīd ibn Khālid, from Saʿīd ibn al-Musayyib, from ʿAbd al-Raḥmān ibn ʿUthmān: "A physician asked the Prophet—peace and blessings of Allāh be upon him—whether he could incorporate a frog into a medicinal remedy. The Messenger of Allāh—peace and blessings of Allāh be upon him—forbade him from killing it."

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ كَثِيرٍ أَنَا سُفْيَانُ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سَعِيدِ بْنِ خَالِدٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ «أَنَّ طَبِيبًا سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ضِفْدَعٍ يَجْعَلُهَا فِي دَوَاءٍ؟ فَنَهَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِهَا» .

L16735 Abu Muhammad said: This annuls the Prophet's earlier hadith in which he burned the ant colony, for the Sharia of our Prophet—peace be upon him—abrogates every preceding religion. We have also mentioned how Umar ibn al-Khattab and other Companions—may Allah be pleased with them—killed the monkeys while being in a state of Ihram.

قَالَ أَبُو مُحَمَّدٍ: هَذَا يَقْضِي عَلَى حَدِيثِ النَّبِيِّ الَّذِي كَانَ قَدِيمًا فَأَحْرَقَ قَرْيَةَ النَّمْلِ لِأَنَّ شَرِيعَةَ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاسِخَةٌ لِكُلِّ دِينٍ سَلَفَ، وَقَدْ ذَكَرْنَا قَتْلَ عُمَرَ بْنِ الْخَطَّابِ وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لِلْقِرْدَانِ وَهُمْ مُحْرِمُونَ.

L16736 It has been authentically reported from Ibn Abbas, Ibn Umar, and Aisha, the Mother of the Believers, that the killing of geckos is established. Through the narration chain of Maʿmar from Qatadah: killing frogs was prohibited, and killing geckos was commanded.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَتْلُ الْأَوْزَاغِ؛ وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ قَتَادَةَ نَهَى عَنْ قَتْلِ الضِّفْدَعِ وَأَمَرَ بِقَتْلِ الْوَزَغِ.

L16737 Intimidate creeping pests before they intimidate you.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ أَخِيفُوا الْهَوَامَّ قَبْلَ أَنْ تُخِيفَكُمْ.

L16738 If someone mentions the ḥadīth of Ghālib ibn Ḥujrah from al-Milqām ibn al-Ṭalib from his father - "I accompanied the Prophet - peace and blessings of Allah be upon him - yet I never heard him declare insects unlawful" - then Ghālib ibn Ḥujrah and al-Milqām are unknown narrators. Moreover, even if the narration were authentic, it would not constitute valid proof, for one's

فَإِنْ ذَكَرَ ذَاكِرٌ حَدِيثَ غَالِبِ بْنِ حُجْرَةَ عَنْ الْمِلْقَامِ بْنِ التَّلِبِ عَنْ أَبِيهِ «صَحِبْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ أَسْمَعْ لِلْحَشَرَاتِ تَحْرِيمًا» - فَغَالِبُ بْنُ حُجْرَةَ، وَالْمِلْقَامُ مَجْهُولَانِ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ مَنْ لَمْ يَسْمَعْ حُجَّةً عَلَى مَا قَامَ بِهِ بُرْهَانُ النَّصِّ.

failure to hear something cannot override what has been established through textual evidence.

The Issue of Eating Human-Associated Donkeys

[مَسْأَلَة أَكْلُ الْحُمُرِ الْإِنْسِيَّةِ]

997. Issue: It is not permissible to eat any part of domesticated donkeys, whether they have become wild or remain domesticated. It is permissible to eat wild donkeys, whether they have become tame or remain untamed. It is permissible to eat horses and mules. We were narrated through the chain recorded by al-Bukhārī: Muḥammad ibn Salām narrated to us; ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī narrated to us; from Ayyūb—he is al-Sakhtiyānī—from Muḥammad—he is Ibn Sīrīn—from Anas ibn Mālik: "Allah's Messenger—peace and blessings be upon him—commanded a caller to proclaim: 'Allah and His Messenger forbid you from the meat of domesticated donkeys, for they are impure.' Thereupon the cooking pots were overturned while they were indeed boiling with meat."

٩٩٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ شَيْءٍ مِنْ الْحُمُرِ الْإِنْسِيَّةِ تَوَحَّشَتْ أَوْ لَمْ تَتَوَحَّشْ، وَحَلَالٌ أَكْلُ حُمُرِ الْوَحْشِ تَأَنَّسَتْ أَوْ لَمْ تَتَأَنَّسْ، وَحَلَالٌ أَكْلُ الْخَيْلِ وَالْبِغَالِ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ سَلَّامٍ نَا عَبْدُ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ أَنَا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - عَنْ مُحَمَّدٍ هُوَ ابْنُ سِيرِينَ - عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ مُنَادِيًا فَنَادَى إنَّ اللَّهَ وَرَسُولَهُ يَنْهَيَانِكُمْ عَنْ لُحُومِ الْحُمُرِ الْأَهْلِيَّةِ فَإِنَّهَا رِجْسٌ، فَأُكْفِئَتْ الْقُدُورُ وَإِنَّهَا لَتَفُورُ بِاللَّحْمِ» .

It is confirmed that all of it is impure, and the Companions—may Allah be pleased with them—pouring out the pots containing it in the presence of the Prophet—peace and blessings be upon him—which demonstrates that its soft fat, hard fat, bones, and every part of it are forbidden.

فَصَحَّ أَنَّهَا كُلَّهَا رِجْسٌ، وَإِهْرَاقُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - الْقُدُورَ بِهَا بِحَضْرَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَانُ أَنَّ وَدَكَهَا وَشَحْمَهَا وَعَظْمَهَا وَكُلَّ شَيْءٍ مِنْهَا حَرَامٌ.

And via the route of Ḥammād ibn Zayd; from ʿAmr ibn Dīnār; from Muḥammad ibn ʿAlī; from Jābir ibn ʿAbd Allāh. "The Messenger of Allah - peace be upon him - forbade the meat of domestic donkeys on the day of Khaybar and permitted the meat of horses."[31]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُحَمَّدِ بْنِ عَلِيٍّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى يَوْمَ خَيْبَرَ عَنْ لُحُومِ الْحُمُرِ الْأَهْلِيَّةِ وَأَذِنَ فِي لُحُومِ الْخَيْلِ» .

From the transmission of Muslim: Muhammad ibn Hatim narrated to me, Muhammad ibn Bakr reported to us, Ibn Jurayj said: Abu al-Zubayr informed me that he heard Jabir ibn Abdullah say: "We ate horses and wild donkeys during the time of Khaybar, so the Messenger of Allah (peace be upon him) prohibited us from domestic donkeys."

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ نَا مُحَمَّدُ بْنُ بَكْرٍ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «أَكَلْنَا زَمَنَ خَيْبَرَ الْخَيْلَ وَحُمُرَ الْوَحْشِ فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْحِمَارِ الْأَهْلِيِّ» .

It has been narrated to us regarding the prohibition of domestic donkeys

[31] **Hadith references (L16742):** Sahih Muslim 1941a; Mishkat al-Masabih 4107.

from the Prophet—peace and blessings of Allah be upon him—via the narrations of al-Barāʾ ibn ʿĀzib, ʿAbdullāh ibn Abī Awfā, ʿAlī ibn Abī Ṭālib, Abū Thaʿlabah al-Khushanī, al-Ḥakam ibn ʿAmr al-Ghifārī, Salamah ibn al-Akwaʿ, and Ibn ʿUmar, with chains of transmission as clear as the sun.

وَرُوِّينَا تَحْرِيمَ الْحُمُرِ الْأَهْلِيَّةِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ الْبَرَاءِ بْنِ عَازِبٍ، وَعَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَبِي ثَعْلَبَةَ الْخُشَنِيِّ، وَالْحَكَمِ بْنِ عَمْرٍو الْغِفَارِيِّ: وَسَلَمَةَ بْنِ الْأَكْوَعِ، وَابْنِ عُمَرَ بِأَسَانِيدَ كَالشَّمْسِ.

L16747 And from Anas and Jabir, as we have mentioned, it is a *tawatur* transmission that does not permit anyone to disagree with it.

وَعَنْ أَنَسٍ وَجَابِرٍ كَمَا ذَكَرْنَا، فَهُوَ نَقْلُ تَوَاتُرٍ لَا يَسَعُ أَحَدًا خِلَافُهُ.

L16748 It has been narrated to us through the chain of ʿAmr ibn Dīnār from Jābir ibn ʿAbdullāh that he used to prohibit donkey meat and command the eating of horse meat.

وَرُوِّينَا مِنْ طَرِيقِ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ كَانَ يَنْهَى عَنْ لُحُومِ الْحُمُرِ وَيَأْمُرُ بِلُحُومِ الْخَيْلِ.

L16749–16751 It has been narrated to us regarding the prohibition against them from Majzaʾah ibn Zāhir—one of those who pledged allegiance under the Tree—and from Saʿīd ibn Jubayr concerning donkey meat. He stated: "It is entirely forbidden." This is the position of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān. Mālik also inclined toward this ruling. Should someone mention that Ibn ʿAbbās permitted it, we respond: No one's opinion constitutes proof in comparison to the Messenger of Allah—peace and blessings be upon him. How then [could this be argued], when Ibn ʿAbbās himself reported his uncertainty about it? As narrated to us through the chain reported by al-Bukhārī: Muḥammad ibn Abī al-Ḥusayn narrated to us, ʿUmar ibn Ḥafṣ ibn Ghiyāth narrated to us, Ubayy narrated to us, ʿĀṣim ibn Abī al-Najūd narrated from ʿĀmir al-Shaʿbī from Ibn ʿAbbās, who said: "I do not know." The Messenger of Allah—peace be upon him—prohibited it because it served as people's pack animal, and he disliked the loss of their transportation means. Alternatively, he forbade the meat of domestic donkeys during Khaybar. This is mere conjecture and an error, for had the Prophet—peace be upon him—not entirely prohibited them, he would have clarified the rationale behind his prohibition rather than leaving people perplexed. How then, given his statement—peace be upon him—"Indeed, it is impure," which nullifies all conjecture? They were undeniably in greater need of horses than donkeys, yet this did not prompt him to prohibit horses. Instead, he permitted their consumption and slaughter since they were lawful. Thus, the claim of those

وَقَدْ رُوِّينَا النَّهْيَ عَنْهَا عَنْ مَجْزَأَةَ بْنِ زَاهِرٍ أَحَدِ الْمُبَايِعِينَ تَحْتَ الشَّجَرَةِ، وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي لُحُومِ الْحُمُرِ قَالَ: هِيَ حَرَامٌ أَلْبَتَّةَ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ - وَنَحَا نَحْوَهُ مَالِكٌ، فَإِنْ ذَكَرَ ذَاكِرٌ: أَنَّ ابْنَ عَبَّاسٍ أَبَاحَهَا؟ قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَابْنُ عَبَّاسٍ قَدْ أَخْبَرَ بِأَنَّهُ مُتَوَقِّفٌ فِيهَا؟ كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ أَبِي الْحُسَيْنِ نَا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نَا أُبَيٌّ نَا عَاصِمُ بْنُ أَبِي النَّجُودِ عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: لَا أَدْرِي أَنَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَجْلِ أَنَّهُ كَانَ حَمُولَةَ النَّاسِ فَكَرِهَ أَنْ تَذْهَبَ حَمُولَتُهُمْ، أَوْ حَرَّمَهُ فِي يَوْمِ خَيْبَرَ لَحْمَ الْحُمُرِ الْأَهْلِيَّةِ " فَهَذَا ظَنٌّ مِنْهُ، وَوَهْلَةٌ لِأَنَّهُ لَوْ لَمْ يُحَرِّمْهَا - عَلَيْهِ السَّلَامُ - جُمْلَةً لَبَيَّنَ وَجْهَ نَهْيِهِ عَنْهَا، وَلَمْ يَدَعْ النَّاسَ إلَى الْحَيْرَةِ، فَكَيْفَ «وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - فَإِنَّهَا رِجْسٌ» وَيُبْطِلُ كُلَّ ظَنٍّ؟ وَلَقَدْ كَانُوا إلَى الْخَيْلِ بِلَا شَكٍّ أَحْوَجَ مِنْهُمْ إلَى الْحُمُرِ، فَمَا حَمَلَهُ ذَلِكَ عَلَى نَهْيٍ عَنْهَا، بَلْ أَبَاحَ أَكْلَهَا وَذَكَاتَهَا، إذْ كَانَتْ حَلَالًا، وَبِذَلِكَ أَيْضًا يَبْطُلُ قَوْلُ مَنْ قَالَ: إنَّمَا نَهَى عَنْهَا لِأَنَّهَا لَمْ تُخَمَّسْ.

who argue “He only prohibited them because they were not subjected to the fifth” is likewise invalidated.

L16752 As for the statement of those who say: “It was prohibited solely because it was consuming excrement” - this too is a false assumption without evidence, for chickens consume more excrement than it does, yet it is halal.

L16753 If they argue: “‘Ā’ishah, the Mother of the Believers, cited the verse of the Exalted {Say, *I do not find in what has been revealed to me anything forbidden*} [al-Anʿām 6:145] as evidence,” we say: The prohibition had not reached her. Had it reached her, she would have adhered to it, as she did regarding the crow, for it is not mentioned in this verse.[32]

L16754 If they mention what has been narrated from his statement—peace be upon him—regarding donkey meat: “Feed your family from your fattened livestock, for I have only disliked for you the donkeys that roam the village. Do they not eat trees and graze in the wilderness? Hunt from them.”

L16755 All of this is invalid, because it is transmitted through Abd al-Rahman ibn Bishr – who is unknown – and the other narration is transmitted through Abd al-Rahman ibn Amr ibn Luwaym – who is unknown – or through Sharik – who is weak.

L16756–16758 Then from Abū al-Ḥasan - and it is not known who he is - from Ghālib ibn Dīj - and it is not known who he is - And through the chain of Salmā bint al-Naḍr al-Khiḍriyyah, and it is not known who she is.

L16759 As for wild donkeys, their permissibility [is] as we mentioned from the Prophet - peace be upon him.

L16760 Mālik said: If it is domesticated, it is not to be eaten. This is erroneous because there is no text establishing it; it is merely an assertion without proof. A wild animal belonging to a domesticated species does not become impermissible due to domestication, nor does a domesticated animal belonging to a wild species become permissible by reverting to a wild state.

وَأَمَّا قَوْلُ مَنْ قَالَ: إِنَّمَا حُرِّمَتْ لِأَنَّهَا كَانَتْ تَأْكُلُ الْعَذِرَةَ - فَظَنٌّ كَاذِبٌ أَيْضًا بِلَا بُرْهَانٍ، وَالدَّجَاجُ آكَلُ مِنْهَا لِلْعَذِرَةِ وَهِيَ حَلَالٌ.

فَإِنْ ذَكَرُوا: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ احْتَجَّتْ بِقَوْلِهِ تَعَالَى: {قُلْ لا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا} [الأنعام: ١٤٥] الْآيَةَ؟ قُلْنَا: لَمْ يَبْلُغْهَا التَّحْرِيمُ وَلَوْ بَلَغَهَا لَقَالَتْ بِهِ، كَمَا فَعَلَتْ فِي الْغُرَابِ، وَلَيْسَ مَذْكُورًا فِي هَذِهِ الْآيَةِ.

فَإِنْ ذَكَرُوا: مَا رُوِيَ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي لُحُومِ الْحُمُرِ «أَطْعِمْ أَهْلَكَ مِنْ سَمِينِ مَالِكَ، فَإِنَّمَا كَرِهْتُ لَكُمْ جَوَّالَ الْقَرْيَةِ، أَلَيْسَ تَأْكُلُ الشَّجَرَ وَتَرْعَى الْفَلَاةَ؟ فَأَصِدْ مِنْهَا» .

فَهَذَا كُلُّهُ بَاطِلٌ، لِأَنَّهَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ بِشْرٍ وَهُوَ مَجْهُولٌ، وَالْآخَرُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ عَمْرِو بْنِ لُوَيْمٍ - وَهُوَ مَجْهُولٌ - أَوْ مِنْ طَرِيقِ شَرِيكٍ - وَهُوَ ضَعِيفٌ.

ثُمَّ عَنْ أَبِي الْحَسَنِ - وَلَا يُدْرَى مَنْ هُوَ - عَنْ غَالِبِ بْنِ ديج وَلَا يُدْرَى مَنْ هُوَ - وَمِنْ طَرِيقِ سَلْمَى بِنْتِ النَّضْرِ الْخِضْرِيَّةِ وَلَا يُدْرَى مَنْ هِيَ.

وَأَمَّا حُمُرُ الْوَحْشِ: فَكَمَا ذَكَرْنَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَحْلِيلَهَا.

وَقَالَ مَالِكٌ: إنْ دَجَنَ لَمْ يُؤْكَلْ - وَهَذَا خَطَأٌ لِأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ، فَهُوَ قَوْلٌ بِلَا بُرْهَانٍ، وَلَا يَصِيرُ الْوَحْشِيُّ مِنْ جِنْسِ الْأَهْلِيِّ حَرَامًا بِالدُّجُونِ، وَلَا يَصِيرُ الْأَهْلِيُّ مِنْ جِنْسِ الْوَحْشِيِّ حَلَالًا بِالتَّوَحُّشِ.

[32] **Qur’an references (L16753):** Qur’an 6:145 (Al-An’am).

L16761 As for mules and horses: it has been narrated to us through the chain of Ṣāliḥ ibn Yaḥyā ibn al-Miqdām ibn Maʿdī Karib, from his father, from his grandfather, from Khālid ibn al-Walīd that the Prophet (peace and blessings be upon him) prohibited eating the meat of horses, mules, donkeys, all predatory animals with fangs, and birds with talons.

وَأَمَّا الْبِغَالُ، وَالْخَيْلُ: فَقَدْ رُوِّينَا مِنْ طَرِيقِ صَالِحِ بْنِ يَحْيَى بْنِ الْمِقْدَامِ بْنِ مَعْدِ كَرِبَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ خَالِدِ بْنِ الْوَلِيدِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ أَكْلِ لُحُومِ الْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ، وَكُلِّ ذِي نَابٍ مِنْ السِّبَاعِ، وَكُلِّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ» .

L16762 Via the narration of ʿIkrimah ibn ʿAmmār, from Yaḥyā ibn Abī Kathīr, from Abū Salamah, from Jābir: "The Messenger of Allāh (may Allāh bless him and grant him peace) forbade the meat of donkeys, horses, mules, every predatory beast with fangs, every bird with talons, and he prohibited the *mujaththama*—animals killed by confinement and beating."

وَمِنْ طَرِيقِ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ عَنْ جَابِرٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ لُحُومِ الْحُمُرِ وَالْخَيْلِ وَالْبِغَالِ وَكُلِّ ذِي نَابٍ مِنْ السِّبَاعِ وَكُلِّ ذِي مِخْلَبٍ مِنْ الطَّيْرِ وَحَرَّمَ الْمُجَثَّمَةَ» .

L16763 And a narration we have narrated via the route of Ḥammād ibn Salamah from Abū al-Zubayr from Jābir: "The Messenger of Allāh—ṣallā Allāhu ʿalayhi wa-sallam—forbade us regarding mules and donkeys, but he did not prohibit horses."

وَخَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ «نَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْبِغَالِ وَالْحَمِيرِ وَلَمْ يَنْهَنَا عَنْ الْخَيْلِ» .

L16764 And they mentioned the words of Allah, the Most High: "And the livestock—He created them for you. In them are means of warmth and benefits, and from them you obtain food." [An-Nahl: 5][33]

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {وَالأَنْعَامَ خَلَقَهَا لَكُمْ فِيهَا دِفْءٌ وَمَنَافِعُ وَمِنْهَا تَأْكُلُونَ} [النحل: ٥] .

L16765 And He, the Exalted, said: "And [He created] horses, mules, and donkeys for you to ride and as adornment" [16:8]. They said: He mentioned consumption in the context of livestock but did not mention it regarding horses, mules, and donkeys. They said: The mule is the offspring of a donkey, being procreated from it, and what is procreated from an unlawful union is unlawful.[34]

وَقَالَ تَعَالَى {وَالْخَيْلَ وَالْبِغَالَ وَالْحَمِيرَ لِتَرْكَبُوهَا وَزِينَةً} [النحل: ٨] . قَالُوا: فَذَكَرَ فِي الْأَنْعَامِ الْأَكْلَ، وَلَمْ يَذْكُرْهُ فِي الْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ. وَقَالُوا: الْبَغْلُ وَلَدُ الْحِمَارِ فَهُوَ مُتَوَلِّدٌ مِنْهُ وَالْمُتَوَلِّدُ مِنْ الْحَرَامِ حَرَامٌ.

L16766 Abu Muhammad said: This is all they have raised as objections. As for the narrations, none of them can be cited as proof.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا شَغَبُوا بِهِ - فَأَمَّا الْأَخْبَارُ فَلَا يُحْتَجُّ بِشَيْءٍ مِنْهَا -:

L16767–16769 As for the ḥadīth of Ṣāliḥ ibn Yaḥyā ibn al-Miqdām ibn Maʿdī Karib, it is invalid because they are unknown. All of them. Furthermore, therein lies evidence of fabrication, for it contains a narration narrated from Khālid ibn al-Walīd, reporting that he said: "I fought alongside the Prophet—may the

أَمَّا حَدِيثُ صَالِحِ بْنِ يَحْيَى بْنِ الْمِقْدَامِ بْنِ مَعْدِي كَرِبَ فَهَالِكٌ لِأَنَّهُمْ مَجْهُولُونَ كُلُّهُمْ، ثُمَّ فِيهِ دَلِيلُ الْوَضْعِ، لِأَنَّ فِيهِ عَنْ خَالِدِ بْنِ الْوَلِيدِ قَالَ: غَزَوْت مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ - وَهَذَا بَاطِلٌ، لِأَنَّهُ لَمْ يُسْلِمْ خَالِدٌ إلَّا بَعْدَ خَيْبَرَ بِلَا خِلَافٍ.

[33] **Qur'an references (L16764):** Qur'an 16:5 (An-Nahl).
[34] **Qur'an references (L16765):** Qur'an 16:8 (An-Nahl).

peace and blessings of Allah be upon him—in Khaybar." But this is baseless, as Khālid did not embrace Islam except after Khaybar, without dissent.

L16770 As for the ḥadīth of ʿIkrimah ibn ʿAmmār, ʿIkrimah is weak.

L16771 We have been transmitted a fabricated report through his chain of narration wherein none is accused except him. Either [the error] was introduced to him and he did not take notice of it, or the calamity originates from him. We have elaborated this in detail in *Kitāb al-Iṣāl*.

L16772 As for the narration of Ḥammād ibn Salamah, Abū al-Zubayr was not mentioned in it as having heard from Jābir. We previously stated before the authentic narration that whatever Ḥammād narrated from Jābir which was not present in al-Layth ibn Saʿd's transmissions, nor cited with audition from Jābir, was not heard by Ḥammād from Jābir—thus it is valid as a disconnected chain.

L16773 This report has been narrated to us through the chain of Abū Az-Zubayr, who heard it from Jābir. He did not mention mules in it—and indeed an authentic report regarding the permissibility of horses from the Prophet (peace be upon him) had previously been authenticated from Jābir.

L16774 As for the verse, there is no mention in it of eating—neither permitting nor prohibiting it—so they have no argument therein. Nor does it mention selling either. Thus, they should prohibit it, since it is not mentioned in the verse. Yet the Prophet's (PBUH) permissibility [of such matters] is the judge over all things.

L16775 It has been authentically established through the chain of Asmā bint Abī Bakr al-Ṣiddīq: "We ritually slaughtered a horse during the time of the Messenger of Allah—may Allah bless him and grant him peace—and we ate it." We narrated it through the chain of al-Bukhārī.[35]

L16776 From al-Ḥumaydī from Sufyān ibn ʿUyaynah from Hishām ibn ʿUrwah from Fāṭimah bint al-Mundhir ibn al-Zubayr from Asma.

وَأَمَّا حَدِيثُ عِكْرِمَةَ بْنِ عَمَّارٍ، فَعِكْرِمَةَ ضَعِيفٌ.

وَقَدْ رُوِّينَا مِنْ طَرِيقِهِ خَبَرًا مَوْضُوعًا لَيْسَ فِيهِ أَحَدٌ يُتَّهَمُ غَيْرَهُ -: فَإِمَّا أُدْخِلَ عَلَيْهِ فَلَمْ يَأْبَهُ لَهُ، وَإِمَّا الْبَلِيَّةُ مِنْ قِبَلِهِ؛ وَقَدْ ذَكَرْنَاهُ مُبَيَّنًا فِي كِتَابِ الْإِيصَالِ.

وَأَمَّا حَدِيثُ حَمَّادِ بْنِ سَلَمَةَ فَإِنَّهُ لَمْ يُذْكَرْ فِيهِ أَبُو الزُّبَيْرِ سَمَاعًا مِنْ جَابِرٍ؛ وَقَدْ ذَكَرْنَا قَبْلَ الرِّوَايَةَ الصَّحِيحَةَ أَنَّ مَا لَمْ يَكُنْ عِنْدَ اللَّيْثِ بْنِ سَعْدٍ مِنْ حَدِيثِهِ عَنْ جَابِرٍ، وَلَا ذَكَرَ فِيهِ سَمَاعًا مِنْ جَابِرٍ فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ فَصَحَّ مُنْقَطِعًا.

وَقَدْ رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَ مِنْ جَابِرٍ فَلَمْ يَذْكُرْ فِيهِ الْبِغَالَ - وَقَدْ صَحَّ قَبْلُ عَنْ جَابِرٍ إبَاحَةُ الْخَيْلِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَأَمَّا الْآيَةُ: فَلَا ذِكْرَ فِيهَا لِلْأَكْلِ لَا بِإِبَاحَةٍ وَلَا بِتَحْرِيمٍ، فَلَا حُجَّةَ لَهُمْ فِيهَا، وَلَا ذَكَرَ فِيهَا أَيْضًا الْبَيْعَ - فَيَنْبَغِي أَنْ يُحَرِّمُوهُ لِأَنَّهُ لَمْ يُذْكَرْ فِي الْآيَةِ، وَإِبَاحَةُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهَا حَاكِمٌ عَلَى كُلِّ شَيْءٍ.

وَقَدْ صَحَّ مِنْ طَرِيقِ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ «نَحَرْنَا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَسًا فَأَكَلْنَاهُ» . رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ

عَنْ الْحُمَيْدِيِّ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ بْنِ الزُّبَيْرِ عَنْ أَسْمَاءَ.

[35] **Hadith references (L16775):** Sahih al-Bukhari 5512.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ وَكِيعٍ، وَحَفْصِ بْنِ غِيَاثٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَعَبْدِ اللَّهِ بْنِ نُمَيْرٍ، وَمَعْمَرٍ، وَأَبِي مُعَاوِيَةَ، وَأَبِي أُسَامَةَ، كُلُّهُمْ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ.

L16777 We have also narrated it via the path of Wakiʿ, Ḥafṣ ibn Ghiyāth, Sufyān al-Thawrī, ʿAbdullāh ibn Numayr, Maʿmar, Abū Muʿāwiyah, and Abū Usāmah: all of them from Hishām ibn ʿUrwah, from Fāṭimah bint al-Mundhir, from Asmāʾ bint Abī Bakr al-Ṣiddīq.

وَمِنْ طَرِيقِ ابْنِ سَعِيدٍ الْقَطَّانِ عَنْ ابْنِ جُرَيْجٍ سَأَلْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ عَنْ لَحْمِ الْفَرَسِ؟ فَقَالَ: لَمْ يَزَلْ سَلَفُك يَأْكُلُونَهُ؟ قُلْتُ: أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: نَعَمْ.

L16778 From Ibn Sa’id al-Qattan, from Ibn Jurayj: I asked Ata ibn Abi Rabah about horse meat. He said: “Your predecessors never ceased to eat it.” I asked: “The Companions of Allah’s Messenger—peace and blessings of Allah be upon him—?” He replied: “Yes.”

وَقَدْ أَدْرَكَ عَطَاءٌ جُمْهُورَ الصَّحَابَةِ مِنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَمَنْ دُونَهَا.

L16779 And indeed ‘Aṭā’ met the majority of the Companions, including ‘Ā’ishah, the Mother of the Believers, and those after her.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَعَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: ذَبَحَ أَصْحَابُ ابْنِ مَسْعُودٍ فَرَسًا، قَالَ ابْنُ مَهْدِيٍّ: فَاقْتَسَمُوهُ بَيْنَهُمْ، وَقَالَ عَبْدُ الرَّزَّاقِ: فَأَكَلُوهُ.

L16780–16781 Via the transmission of ʿAbd al-Raḥmān ibn Mahdī and ʿAbd al-Razzāq—both narrating from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī—who said: The companions of Ibn Masʿūd slaughtered a horse. Ibn Mahdī said: So they divided it among themselves; ʿAbd al-Razzāq said: So they ate it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أَنَا مُغِيرَةُ عَنْ إبْرَاهِيمَ قَالَ: أُهْدِيَ لِلْأَسْوَدِ بْنِ يَزِيدَ لَحْمُ فَرَسٍ فَأَكَلَ مِنْهُ - وَبِهِ إلَى هُشَيْمٍ عَنْ الْقَاسِمِ بْنِ أَبِي أَيُّوبَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: مَا أَكَلْتُ لَحْمًا أَطْيَبَ مِنْ مَعْرَفَةِ بِرْذَوْنٍ.

L16782 And through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us: Mughīrah reported from Ibrāhīm, who said: Al-Aswad ibn Yazīd was gifted the meat of a horse, and he ate from it. And through Hushaym: From al-Qāsim ibn Abī Ayyūb, from Saʿīd ibn Jubayr, who said: I have never eaten meat more delicious than that of a mule I knew.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ أَنَّهُ سَأَلَ ابْنَ شِهَابٍ عَنْ لَحْمِ الْفَرَسِ، وَالْبَغْلِ، وَالْبِرْذَوْنِ؟ فَقَالَ: لَا أَعْلَمُهُ حَرَامًا وَلَا يُفْتِي أَحَدٌ مِنْ الْعُلَمَاءِ بِأَكْلِهِ.

L16783 And through the chain of Ibn Wahb from Yunus ibn Yazid, that he asked Ibn Shihab about the meat of horses, mules, and *birḏawn*. He said: “I do not know it to be forbidden, nor does any scholar issue a fatwa permitting its consumption.”

قَالَ أَبُو مُحَمَّد: لَمْ يُحَرِّمْ الزُّهْرِيُّ الْبَغْلَ، وَأَمَّا فُتْيَا الْعُلَمَاءِ بِأَكْلِ الْفَرَسِ فَتَكَادُ أَنْ تَكُونَ إجْمَاعًا عَلَى مَا ذَكَرْنَا قَبْلُ وَمَا نَعْلَمُ عَنْ أَحَدٍ مِنْ السَّلَفِ كَرَاهَةَ أَكْلِ لُحُومِ الْخَيْلِ إلَّا

L16784 Abu Muhammad said: Al-Zuhri did not prohibit mules. As for the scholars’ legal ruling on eating horse meat, this nearly amounts to consensus as we previously stated. We know of no disapproval (makruh) from any of the Salaf regarding the consumption of horse flesh except an unauthentic narration attributed to Ibn Abbas. This is because the narration comes through the

client of Nafi‘ ibn Alqama - who is unknown, as his name was not mentioned, so his identity is unknown.

رِوَايَةً عَنْ ابْنِ عَبَّاسٍ لَا تَصِحُّ؛ لِأَنَّهُ عَنْ مَوْلَى نَافِعِ بْنِ عَلْقَمَةَ - وَهُوَ مَجْهُولٌ لَمْ يُذْكَرْ اسْمُهُ فَلَا يُدْرَى مَنْ هُوَ.

L16785 If a prohibition concerning the mule had been established as valid according to us, we would have ruled accordingly.

وَلَوْ صَحَّ عِنْدَنَا فِي الْبَغْلِ نَهْيٌ لَقُلْنَا بِهِ.

L16786 As for their claim that the mule is the offspring of the donkey and generated from it: verily, the mule – from the moment the soul is breathed into it – is distinct from the donkey and is not called a donkey. Thus, it is impermissible to apply the legal ruling of the donkey to it, for the Text only stipulates the prohibition of the donkey, and the mule is neither a donkey nor a component of the donkey.

وَأَمَّا قَوْلُهُمْ: إنَّ الْبَغْلَ وَلَدُ الْحِمَارِ، وَمُتَوَلِّدٌ مِنْهُ، فَإِنَّ الْبَغْلَ مُذْ يُنْفَخُ فِيهِ الرُّوحُ فَهُوَ غَيْرُ الْحِمَارِ، وَلَا يُسَمَّى حِمَارًا، فَلَا يَجُوزُ أَنْ يُحْكَمَ لَهُ بِحُكْمِ الْحِمَارِ، لِأَنَّ النَّصَّ إنَّمَا جَاءَ بِتَحْرِيمِ الْحِمَارِ، وَالْبَغْلُ لَيْسَ حِمَارًا وَلَا جُزْءًا مِنْ الْحِمَارِ.

L16787 Some ignorant people said: “The donkey is prohibited by explicit text, and likewise the horse and mule, because they are possessors of a hoof like it.” This constitutes among the most absurd analogies on earth, for it would be said to him: “What distinguishes you from your opponent?” He would respond: “The permissibility of the horse is established by the established text, and the mule and donkey are possessors of a hoof like it, thus they are lawful. Are you two in opposition to the Messenger of Allah—peace and blessings of Allah be upon him—except as two wagered horses? Or one who tells you: ’The wild donkey is lawful by consensus, and it has a hoof’—then the horse and mule are like it.” All this is confusion. Rather, the wild donkey and horse are explicitly permitted by text, while the domestic donkey is explicitly prohibited by text. It is impermissible to contradict the texts.

وَقَالَ بَعْضُ الْجُهَّالِ: الْحِمَارُ حَرَامٌ بِالنَّصِّ، وَالْفَرَسُ، وَالْبَغْلُ مِثْلُهُ، لِأَنَّهُمَا ذَوَا حَافِرٍ مِثْلُهُ فَكَانَ هَذَا مِنْ أَسْخَفِ قِيَاسٍ فِي الْأَرْضِ، لِأَنَّهُ يُقَالُ لَهُ: مَا الْفَرْقُ بَيْنَك وَبَيْنَ مَنْ عَارَضَك؟ فَقَالَ: قَدْ صَحَّ تَحْلِيلُ الْفَرَسِ بِالنَّصِّ الثَّابِتِ، وَالْبَغْلُ وَالْحِمَارُ ذَوَا حَافِرٍ مِثْلُهُ، فَهُمَا حَلَالٌ، فَهَلْ أَنْتُمَا فِي مُخَالَفَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا فَرَسَا رِهَانٍ؟ أَوْ مَنْ قَالَ لَك: حِمَارُ وَحْشٍ حَلَالٌ بِإِجْمَاعٍ وَهُوَ ذُو حَافِرٍ، فَالْفَرَسُ، وَالْبَغْلُ مِثْلُهُ - وَهَذَا كُلُّهُ تَخْلِيطٌ، بَلْ حِمَارُ الْوَحْشِ، وَالْفَرَسِ مَنْصُوصٌ عَلَى تَحْلِيلِهِمَا، وَالْحِمَارُ الْأَهْلِيُّ مَنْصُوصٌ عَلَى تَحْرِيمِهِ، فَلَا يَجُوزُ مُخَالَفَةُ النُّصُوصِ.

L16788–16789 As for the mule, Allah the Exalted has said: “O people, eat of what is on the earth as lawful and wholesome” [Al-Baqarah: 168].[36]

وَأَمَّا الْبَغْلُ فَقَدْ قَالَ اللَّهُ تَعَالَى: {يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الأَرْضِ حَلالا طَيِّبًا} [البقرة: ١٦٨] .

L16790 And He, the Exalted, said: “He has made clear to you what He has forbidden, except what you are compelled to [consume] out of necessity” [Al-An‘ām: 119].[37]

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

[36] **Qur’an references (L16789):** Qur’an 2:168 (Al-Baqarah).
[37] **Qur’an references (L16790):** Qur’an 6:119 (Al-An’am).

L16791 The mule is permissible by the explicit text of the Quran because its prohibition has not been detailed, and nothing from the donkey is permissible except what the text has permitted only in terms of its ownership, selling, buying, and riding—and in Allah the Exalted we seek support.

L16792 **Issue: What is forbidden to eat its meat, then its sale and milk are also forbidden.**

L16793 998. Issue: Everything whose meat is forbidden to eat is also forbidden to sell, including its milk, because it is part of it and attributed to it—and success is from Allah, the Exalted—except women's milk, which is permissible as we mentioned previously—and success is from Allah, the Exalted.

L16794 It is said: the she-ass's milk, the swine's milk, the crow's eggs, the snake's eggs, and the kite's eggs—just as it is said: the swine's foreleg, the donkey's head, the crow's wing, and the kite's raptorial claws, with no difference [in ruling].

L16795 **The ruling on eating the hoopoe.**

L16796 999. Issue: It is not permissible to eat the hoopoe, the shrike, or the frog, due to the Prophet's prohibition (peace be upon him) against killing them, as previously mentioned.

L16797 **The issue of what can be lawfully slaughtered from that which the prohibition has not been specified.**

L16798 1000. Issue: Both land tortoises and sea turtles, as well as their eggs, are lawful to eat. This is based on Allah's command: "Eat of what is in the earth, lawful and wholesome" [Al-Baqarah: 168], alongside His clarification: "He has already detailed for you what He has forbidden you" [Al-An'am: 119]. Since He has not explicitly prohibited tortoises or turtles, they are entirely lawful—including all parts and their offspring.[38]

L16799 Likewise are the vultures, the Egyptian vulture, the gecko, the hedgehogs,

فَالْبَغْلُ حَلَالٌ بِنَصِّ الْقُرْآنِ لِأَنَّهُ لَمْ يُفَصَّلْ تَحْرِيمُهُ وَلَا يَحِلُّ مِنْ الْحِمَارِ إلَّا مَا أَحَلَّهُ النَّصُّ مِنْ مِلْكِهِ، وَبَيْعِهِ، وَابْتِيَاعِهِ، وَرُكُوبِهِ، فَقَطْ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَة مَا حَرُمَ أَكْلُ لَحْمِهِ فَحَرَامٌ بَيْعُهُ وَلَبَنُهُ]

٩٩٨ - مَسْأَلَةٌ: وَكُلُّ مَا حَرُمَ أَكْلُ لَحْمِهِ فَحَرَامٌ بَيْعُهُ وَلَبَنُهُ، لِأَنَّهُ بَعْضُهُ وَمَنْسُوبٌ إلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إلَّا أَلْبَانَ النِّسَاءِ فَهِيَ حَلَالٌ كَمَا ذَكَرْنَا قَبْلُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَيُقَالُ: لَبَنُ الْأَتَانِ، وَلَبَنُ الْخِنْزِيرِ، وَبَيْضُ الْغُرَابِ، وَبَيْضُ الْحَيَّةِ، وَبَيْضُ الْحِدَأَةِ - كَمَا يُقَالُ يَدُ الْخِنْزِيرِ، وَرَأْسُ الْحِمَارِ، وَجَنَاحُ الْغُرَابِ، وَزِمَكَّى الْحِدَأَةِ وَلَا فَرْقَ.

[مَسْأَلَة أَكْلُ الْهُدْهُدِ]

٩٩٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ الْهُدْهُدِ، وَلَا الصُّرَدِ، وَلَا الضِّفْدَعِ، لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِهَا، كَمَا ذَكَرْنَا قَبْلُ.

[مَسْأَلَة مَا أَمْكَنَ أَنْ يُذَكَّى مِمَّا لَمْ يُفَصَّلْ تَحْرِيمُهُ]

١٠٠٠ - مَسْأَلَةٌ: وَالسُّلَحْفَاةُ الْبَرِّيَّةُ وَالْبَحْرِيَّةُ حَلَالٌ أَكْلُهَا، وَأَكْلُ بَيْضِهَا لِقَوْلِ اللَّهِ تَعَالَى: {كُلُوا مِمَّا فِي الأَرْضِ حَلالا طَيِّبًا} [البقرة: ١٦٨] مَعَ قَوْلِهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] وَلَمْ يُفَصِّلْ لَنَا تَحْرِيمَ السُّلَحْفَاةِ، فَهِيَ حَلَالٌ كُلُّهَا وَمَا تَوَلَّدَ مِنْهَا.

[38] **Qur'an references (L16798):** Qur'an 2:168 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

the jerboa, the sand skink, the hyrax, the scorpion, the large rodents, the monitor lizard, all birds, and every animal that can be ritually slaughtered among those whose prohibition has not been explicitly detailed.

L16800 Similarly, the bat, the bat, and the swallow, and with Allah alone is all success.

L16801 It is reported from ʻAṭāʼ that it is permissible to eat turtles and crabs.

L16802 From Tāwus, al-Ḥasan, Muḥammad ibn ʿAlī, and the jurists of Medina: the permissibility of eating turtle.

L16803–16805 And from Ibn Abbas: that he prohibited those in ihram from killing the rakhama and imposed an expiation for it if it is mentioned. The report stating, "The hedgehog is vile among impure things," comes from an unknown, unnamed narrator. Were it authentic, we would have upheld it and would not have opposed it.

L16806 **A discussion on eating the meat of jallalah [animals fed impurities].**

L16807 1001 – Issue: It is impermissible to eat the meat of filth-eating animals (Jallalah), drink their milk, or consume their derivatives, because they are from them and part of them. It is also impermissible to ride them. These are animals that feed on impurities, including camels and other four-legged animals specifically.

L16808 Chickens and birds are not termed *jalālah* (animals feeding on filth), even if they consume excrement. If they are prevented from eating it, causing the name *jalālah* to cease, their consumption, their milk, and their use for riding become lawful.

L16809 For what has been narrated to us through the chain reported by Abu Dawud: Uthman ibn Abi Shaybah, from Abdah, from Muhammad ibn Ishaq, from Ibn Abi Najih, from Mujahid, from Ibn Umar, who said: "The Messenger of

وَكَذَلِكَ النُّسُورُ، وَالرَّخَمُ، والبلزج، وَالْقَنَافِذُ، وَالْيَرْبُوعُ، وَأُمُّ حُبَيْنٍ وَالْوَبْرُ، وَالسَّرَطَانُ، وَالْجَرَاذِينُ، وَالْوَرَلُ، وَالطَّيْرُ كُلُّهُ، وَكُلُّ مَا أَمْكَنَ أَنْ يُذَكَّى مِمَّا لَمْ يُفَصَّلْ تَحْرِيمُهُ.

وَكَذَلِكَ الْخُفَّاشُ، وَالْوَطْوَاطُ، وَالْخَطَّافُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

رُوِّينَا عَنْ عَطَاءٍ إبَاحَةَ أَكْلِ السُّلَحْفَاةِ، وَالسَّرَطَانِ.

وَعَنْ طَاوُسٍ، وَالْحَسَنِ، وَمُحَمَّدِ بْنِ عَلِيٍّ، وَفُقَهَاءِ الْمَدِينَةِ: إبَاحَةُ أَكْلِ السُّلَحْفَاةِ.

وَعَنْ ابْنِ عَبَّاسٍ: أَنَّهُ نَهَى الْمُحْرِمَ عَنْ قَتْلِ الرَّخَمَةِ وَجَعَلَ فِيهَا الْجَزَاءَ، فَإِنْ ذُكِرَ الْخَبَرُ الَّذِي فِيهِ: «الْقُنْفُذُ خَبِيثٌ مِنْ الْخَبَائِثِ» فَهُوَ عَنْ شَيْخٍ مَجْهُولٍ لَمْ يُسَمَّ وَلَوْ صَحَّ لَقُلْنَا بِهِ، وَمَا خَالَفْنَاهُ.

[مَسْأَلَة أَكْلُ لُحُومِ الْجَلَّالَةِ]

١٠٠١ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ لُحُومِ الْجَلَّالَةِ، وَلَا شُرْبُ أَلْبَانِهَا، وَلَا مَا تَصَرَّفُ مِنْهَا؛ لِأَنَّهُ مِنْهَا وَبَعْضُهَا، وَلَا يَحِلُّ رُكُوبُهَا، وَهِيَ الَّتِي تَأْكُلُ الْعَذِرَةَ مِنْ الْإِبِلِ وَغَيْرِ الْإِبِلِ مِنْ ذَوَاتِ الْأَرْبَعِ خَاصَّةً.

وَلَا يُسَمَّى الدَّجَاجُ، وَلَا الطَّيْرُ: جَلَّالَةً، وَإِنْ كَانَتْ تَأْكُلُ الْعَذِرَةَ فَإِذَا قُطِعَ عَنْهَا أَكَلَهَا فَانْقَطَعَ عَنْهَا الِاسْمُ حَلَّ أَكْلُهَا، وَأَلْبَانُهَا، وَرُكُوبُهَا.

لِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نَا عَبْدَةُ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَكْلِ الْجَلَّالَةِ وَأَلْبَانِهَا» .

Allah (peace and blessings be upon him) prohibited eating the Jallalah and their milk."[39]

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نَا أَحْمَدُ بْنُ يَزِيدَ نَا يَزِيدُ بْنُ مُحَمَّدٍ نَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ لَبَنِ الْجَلَّالَةِ وَلُحُومِهَا وَعَنْ أَكْلِ الْمُجَثَّمَةِ» وَهَذَا عُمُومٌ لِكُلِّ مَا طَعَامُهُ الْجِلَّةُ، وَهِيَ الْعَذِرَةُ - هَكَذَا رُوِّينَا عَنِ الْأَصْمَعِيِّ، وَأَبِي عُبَيْدٍ.

L16810 From the chain of Qāsim ibn Aṣbagh: Aḥmad ibn Yazīd transmitted to us, Yazīd ibn Muḥammad transmitted to us, Yazīd ibn Zuraiʿ transmitted to us from Saʿīd ibn Abī ʿArūbah from Qatādah from ʿIkrimah from Ibn ʿAbbās: "The Messenger of Allah (peace be upon him) prohibited the milk of animals that consume filth, their meat, and eating the confined animal." This constitutes a general ruling for anything fed on jillah, which is excrement – as we have been transmitted from al-Aṣmaʿī and Abū ʿUbayd.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ سُرَيْجٍ الرَّازِيّ أَنَا عَبْدُ اللَّهِ بْنُ جَهْمٍ نَا عَمْرٌو يَعْنِي ابْنَ أَبِي قَيْسٍ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الْجَلَّالَةِ فِي الْإِبِلِ أَنْ يُرْكَبَ عَلَيْهَا أَوْ يُشْرَبَ مِنْ أَلْبَانِهَا» فَفِي هَذَا بَعْضُ مَا فِي ذَلِكَ.

L16811 From the narration of Abu Dawud: Ahmad ibn Suraij al-Razi informed us, Abdullah ibn Jahm informed us, Amr—meaning Ibn Abi Qays—narrated from Ayyub al-Sikhtiyani, from Nafi', from Ibn Umar, who said: "The Messenger of Allah—peace and blessings be upon him—prohibited al-jallalah camels (those that consume filth) from being ridden or their milk being drunk." This includes some of the rulings related to that matter.[40]

وَفِيهِ أَيْضًا زِيَادَةُ الرُّكُوبِ وَتَحْرِيمُهُ.

L16812 In it is also excessive riding and its prohibition.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ عَنْ أَبِيهِ: أَنَّ عُمَرَ قَالَ لِرَجُلٍ لَهُ إِبِلٌ جَلَّالَةٌ: لَا تَحُجَّ عَلَيْهَا وَلَا تَعْتَمِرْ.

L16813 It was narrated through the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Ubayd Allah ibn Abi Yazid from his father that Umar said to a man who owned Jallalah camels: "Do not perform Hajj or Umrah on them."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ ابْنِ جُرَيْجٍ كَانَ عَطَاءٌ يَنْهَى عَنْ جَلَّالَةِ الْإِبِلِ، وَالْغَنَمِ أَنْ تُؤْكَلَ فَإِنْ حَبَسْتَهُمَا وَعَلَفْتَهُمَا حَتَّى تَطِيبَ بُطُونُهُمَا فَلَا بَأْسَ حِينَئِذٍ بِأَكْلِهَا.

L16814–16816 Through the transmission of Ibn Wahb from Ibn Jurayj, 'Ata would prohibit jallalah among camels and sheep from... They may be eaten. But if you confine the two of them and feed them until their stomachs are cleansed, there is no harm in eating them.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ قَالَ: لَا أُصَاحِبُ أَحَدًا رَكِبَ جَلَّالَةً.

L16817 Ibn Jurayj said: And 'Amr ibn Dīnār informed me from 'Abdullāh ibn 'Umar that he said: I do not accompany anyone who rides a *jallālah* animal.

[39] **Hadith references (L16809):** Sunan Abi Dawud 3785; Jami at-Tirmidhi 1824; Mishkat al-Masabih 4126.

[40] **Hadith references (L16811):** Sunan Abi Dawud 3787.

[مَسْأَلَة أَكْلُ مَا ذُبِحَ أَوْ نُحِرَ لِغَيْرِ اللَّهِ تَعَالَى]

The issue of consuming what has been slaughtered (by dhabh) or ritually slaughtered (by nahr) for other than Allah, the Exalted.

١٠٠٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا ذُبِحَ أَوْ نُحِرَ لِغَيْرِ اللَّهِ تَعَالَى، وَلَا مَا سُمِّيَ عَلَيْهِ غَيْرُ اللَّهِ تَعَالَى مُتَقَرِّبًا بِتِلْكَ الذَّكَاةِ إِلَيْهِ - سَوَاءٌ ذَكَرَ اللَّهَ تَعَالَى مَعَهُ أَوْ لَمْ يَذْكُرْ - وَكَذَلِكَ مَا ذُكِّيَ مِنْ الصَّيْدِ لِغَيْرِهِ تَعَالَى -: فَلَوْ قَالَ: بِاسْمِ اللَّهِ وَصَلَّى اللَّهُ عَلَى الْمَسِيحِ، أَوْ قَالَ: عَلَى مُحَمَّدٍ، أَوْ ذَكَرَ سَائِرَ الْأَنْبِيَاءِ، فَهُوَ حَلَالٌ؛ لِأَنَّهُ لَمْ يُهِلَّ بِهِ لَهُمْ، قَالَ اللَّهُ تَعَالَى: {أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ} [الأنعام: ١٤٥] فَسَوَاءٌ ذُكِرَ اللَّهُ تَعَالَى عَلَيْهِ، أَوْ لَمْ يُذْكَرْ هُوَ مِمَّا أُهِلَّ لِغَيْرِ اللَّهِ تَعَالَى بِهِ فَهُوَ حَرَامٌ سَوَاءٌ ذَبَحَهُ مُسْلِمٌ أَوْ كِتَابِيٌّ.

1002. Issue: It is not permissible to eat what is slaughtered or sacrificed (dhabḥ or nahr) for other than Allah the Exalted, nor what is slaughtered while invoking any name other than Allah the Exalted—seeking nearness to it through that slaughter—regardless of whether Allah's name is mentioned alongside it or not. Similarly prohibited is what is ritually slaughtered from hunted game for other than Him. If one says, "In the name of Allah, and may Allah send blessings upon the Messiah," or says, "upon Muhammad," or mentions other prophets, it remains lawful because the slaughter was not ritually dedicated to them. Allah the Exalted said: "Or [meat] offered in devotion to other than Allah" (6:145). Thus, whether Allah's name is mentioned over it or not, if the slaughter is devoted to other than Allah the Exalted, it is unlawful—whether performed by a Muslim or a person of the Book.[41]

وَقَالَ بَعْضُ الْقَائِلِينَ: قَدْ أَبَاحَ اللَّهُ تَعَالَى لَنَا أَكْلَ ذَبَائِحِهِمْ - وَهُوَ يَعْلَمُ مَا يَقُولُونَ -: وَهَذَا لَيْسَ حُجَّةً فِي إبَاحَةِ مَا حَرَّمَ اللَّهُ تَعَالَى، لِأَنَّ الَّذِي أَبَاحَ لَنَا ذَبَائِحَهُمْ، وَعَلِمَ مَا يَقُولُونَ هُوَ اللَّهُ عَزَّ وَجَلَّ الْمُحَرِّمُ عَلَيْنَا مَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ، فَلَا يَحِلُّ تَرْكُ شَيْءٍ مِنْ أَمْرِهِ تَعَالَى لِأَمْرٍ آخَرَ، وَلَا بُدَّ مِنْ اسْتِعْمَالِهِمَا جَمِيعًا، وَلَيْسَ ذَلِكَ إلَّا بِاسْتِثْنَاءِ الْأَقَلِّ مِنْ الْأَعَمِّ.

Some of those who said: "Allah the Exalted has permitted us to eat their slaughtered animals"—while He knows what they say—this cannot serve as evidence for permitting what Allah has prohibited. For He who permitted their slaughtered animals to us while knowing their statements is the same One who forbade us from what is dedicated to other than Allah with it. Therefore, it is impermissible to abandon any of His Exalted commands for another command. Both must be implemented together, and this can only be achieved by excepting the more specific from the more general.

وَرُوِيَتْ فِي هَذَا رِوَايَاتٌ عَنْ عُبَادَةَ بْنِ الصَّامِتِ، وَأَبِي الدَّرْدَاءِ، وَالْعِرْبَاضِ بْنِ سَارِيَةَ، وَعَلِيٍّ، وَابْنِ عَبَّاسٍ، وَأَبِي أُمَامَةَ، كُلُّهَا عَنْ مَجَاهِيلَ، أَوْ عَنْ كَذَّابٍ، أَوْ عَنْ ضَعِيفٍ؛ وَلَكِنَّهُ صَحِيحٌ عَنْ بَعْضِ التَّابِعِينَ. وَرُوِّينَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ امْرَأَةً سَأَلَتْهَا عَمَّا ذُبِحَ لِعِيدِ النَّصَارَى؟ فَقَالَتْ عَائِشَةُ: أَمَّا مَا ذُبِحَ لِذَلِكَ الْيَوْمِ فَلَا تَأْكُلُوا مِنْهُ.

Narrations have been reported concerning this matter from ʿUbādah ibn al-Ṣāmit, Abū al-Dardāʾ, al-ʿIrbaḍ ibn Sāriyah, ʿAlī, Ibn ʿAbbās, and Abū Umāmah—all are from obscure narrators, a liar, or a weak narrator. However, it is sound from some of the Successors. We have been narrated from ʿĀʾishah, the Mother of the Believers, that a woman asked her about what

[41] **Qur'an references (L16819):** Qur'an 6:145 (Al-An'am).

is slaughtered for the festival of the Christians such as Christmas or Easter. ʿĀ'ishah replied: "As for what is slaughtered for that day, do not eat from it."

وَمِنْ طَرِيقِ ابْنِ عُمَرَ مَا ذُبِحَ لِلْكَنِيسَةِ فَلَا تَأْكُلْهُ.

L16822 And via the chain of Ibn Umar: What is slaughtered for the church, do not eat it.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ قَيْسٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ زَاذَانَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا سَمِعْتَ النَّصْرَانِيَّ يَقُولُ: بِاسْمِ الْمَسِيحِ، فَلَا تَأْكُلْ، وَإِذَا لَمْ تَسْمَعْ فَكُلْ.

L16823 And through the chain of Abd al-Rahman ibn Mahdi from Qays from Ata ibn al-Sa'ib from Zadhan from Ali ibn Abi Talib, who said: If you hear a Christian say, "In the name of Christ," you must not eat; but if you do not hear it, you may eat.

وَصَحَّ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي ذَبِيحَةِ النَّصْرَانِيِّ إِذَا تَوَارَى عَنْكَ فَكُلْ.

L16824 It is reliably established from Ibrāhīm al-Nakhaʿī concerning an animal slaughtered by a Christian: if the slaughter is hidden from your view, you may still eat it.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ فِي ذَبَائِحِ أَهْلِ الْكِتَابِ، قَالَ: كُلُّ مَا لَمْ تَسْمَعْهُ أَهَلَّ بِهِ لِغَيْرِ اللَّهِ تَعَالَى.

L16825–16826 And from Hammad ibn Abi Sulayman regarding the slaughtered animals of the People of the Book, he said: All that you do not hear them invoke over it for other than Allah the Exalted.

وَعَنِ الْحَسَنِ، وَطَاوُسٍ، وَمُجَاهِدٍ: أَنَّهُمْ كَرِهُوا مَا ذُبِحَ لِلْآلِهَةِ.

L16827 It is reported from Al-Ḥasan, Ṭāwūs, and Mujāhid that they deemed reprehensible anything slaughtered for idols.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ وَكَّلَ بِهِمْ مَنْ يَمْنَعُهُمْ أَنْ يُشْرِكُوا عَلَى ذَبَائِحِهِمْ، وَيَأْمُرُهُمْ أَنْ يُسَمُّوا اللَّهَ تَعَالَى. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: إِذَا سَمِعْتَ فِي الذَّبِيحَةِ غَيْرَ اسْمِ اللَّهِ تَعَالَى، فَلَا تَأْكُلْ.

L16828 From Umar ibn Abd al-Aziz that he appointed someone to prevent them from associating partners in their slaughtered animals and commanded them to pronounce the name of Allah the Exalted. Through the chain of Ibn Abi Shaybah, who narrated to us from Abdullah ibn al-Mubarak, from Ma'mar, from al-Zuhri, who said: If you hear in the slaughtered animal other than the name of Allah the Exalted, do not eat it.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَلِيِّ بْنِ صَالِحٍ عَنْ مُحَمَّدِ بْنِ جُحَادَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: إِذَا سَمِعْتَه يُهِلُّ بِالْمَسِيحِ، فَلَا تَأْكُلْ.

L16829 And via the chain of Wakiʿ from ʿAli ibn Salih from Muḥammad ibn Juḥādah from Ibrāhīm al-Nakhaʿī, who said: If you hear him proclaiming Jesus the Messiah, do not eat [what he offers].

وَهُوَ قَوْلُ الْحَارِثِ الْعُكْلِيِّ، وَمُحَمَّدِ بْنِ سِيرِينَ.

L16830 It is the opinion of al-Ḥārith al-ʿUklī, and Muḥammad ibn Sīrīn.

L16831 Ali said: And it is said to those who oppose this: "Allah the Exalted has permitted their slaughtered animals, though He knows they slaughter pigs. Would he then eat it?" If they reply: "No, because Allah has prohibited pigs,"

it is said to them: “Allah the Exalted has prohibited what is slaughtered in the name of other than Him just as He prohibited pigs—equally and without distinction.”

قَالَ عَلِيٌّ: وَيُقَالُ لِمَنْ خَالَفَ هَذَا: قَدْ أَحَلَّ اللَّهُ تَعَالَى ذَبَائِحَهُمْ، وَهُوَ تَعَالَى يَعْلَمُ أَنَّهُمْ يَذْبَحُونَ الْخِنْزِيرَ، أَفَيَأْكُلُهُ؟ فَمِنْ قَوْلِهِمْ: لَا، لِأَنَّ اللَّهَ تَعَالَى حَرَّمَ الْخِنْزِيرَ؟ فَيُقَالُ لَهُمْ: وَاَللَّهُ تَعَالَى حَرَّمَ مَا أُهِلَّ بِهِ لِغَيْرِهِ كَمَا حَرَّمَ الْخِنْزِيرَ سَوَاءً سَوَاءً، وَلَا فَرْقَ.

The issue of eating what a pilgrim in *ihram* hunts and kills.

[مَسْأَلَة أَكْلُ مَا يَصِيدُهُ الْمُحْرِمُ فَقَتَلَهُ]

1003. Issue: It is not permissible to eat what a pilgrim in the state of consecration (iḥrām) hunts and then kills wherever he may be in the land, or what a person not in the state of iḥrām hunts within the sacred precincts of Mecca or Medina only and then kills. This is based on Allah the Exalted’s statement: “Do not kill game while you are in a state of consecration” (5:95). Therefore, any killing that Allah the Exalted has prohibited makes it forbidden to eat what has been killed in such a manner, because it is not the ritual slaughter commanded by Him.[42]

١٠٠٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا يَصِيدُهُ الْمُحْرِمُ فَقَتَلَهُ حَيْثُ كَانَ مِنْ الْبِلَادِ، أَوْ يَصِيدُهُ الْمُحِلُّ فِي حَرَمِ مَكَّةَ، أَوْ الْمَدِينَةِ فَقَطْ، فَقَتَلَهُ لِقَوْلِ اللَّهِ تَعَالَى: {لا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ} [المائدة: ٩٥] فَكُلُّ قَتْلٍ نَهَى اللَّهُ تَعَالَى عَنْهُ فَحَرَامٌ أَكْلُ مَا أُمِيتَ بِهِ، لِأَنَّهُ غَيْرُ الذَّكَاةِ الْمَأْمُورِ بِهَا.

Abu Thawr said: Consuming it is permissible, as with meat slaughtered by a usurper or thief, and there is no distinction [in ruling].

وَقَالَ أَبُو ثَوْرٍ: أَكْلُهُ حَلَالٌ، كَذَبِيحَةِ الْغَاصِبِ، وَالسَّارِقِ، وَلَا فَرْقَ.

The issue of consuming that upon which Allah, the Exalted, has not been mentioned.

[مَسْأَلَة أَكْلُ مَا لَمْ يُسَمَّ اللَّهُ تَعَالَى عَلَيْهِ]

1004 - A question: It is impermissible to eat anything over which the name of Allah, the Exalted, was not mentioned—whether the omission was intentional or due to forgetfulness.

١٠٠٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا لَمْ يُسَمَّ اللَّهُ تَعَالَى عَلَيْهِ بِعَمْدٍ أَوْ نِسْيَانٍ.

The proof of that is the words of Allah, the Exalted: “And do not eat from that over which the name of Allah has not been mentioned, and indeed, it is transgression” (Al-Anʿām 6:121). Thus, He, the Exalted, made it general and did not specify.[43]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ وَإِنَّهُ لَفِسْقٌ} [الأنعام: ١٢١] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ.

Abu Hanifah and Malik said: If one omits the act intentionally, the meat

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: إنْ تَرَكَ عَمْدًا لَمْ يَحِلَّ أَكْلُهُ، وَإِنْ تَرَكَ نِسْيَانًا حَلَّ أَكْلُهُ.

[42] **Qur’an references (L16833):** Qur’an 5:95 (Al-Ma’idah).
[43] **Qur’an references (L16837):** Qur’an 6:121 (Al-An’am).

is not permissible to eat. However, if one omits it out of forgetfulness, it is permissible to eat.

وَقَالَ الشَّافِعِيُّ: هُوَ حَلَالٌ تَرَكَ عَمْدًا، أَوْ نِسْيَانًا.

L16839 Al-Shafi'i said: It remains permissible whether omitted intentionally or due to forgetfulness.

رُوِّينَا عَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقٍ فِيهَا ابْنُ لَهِيعَةَ أَنَّهُ قَالَ: إذَا خَرَجْتَ قَانِصًا لَا تُرِيدُ إلَّا ذَلِكَ، فَذَكَرْتَ اسْمَ اللَّهِ حِينَ تَخْرُجُ، فَإِنَّ ذَلِكَ يَكْفِيك.

L16840–16842 It was narrated to us from Ibn Abbas through a chain of transmission that includes Ibn Lahi'ah that Ibn Abbas said: If you go out as a hunter, you do not intend... However, if you mention Allah's name when you go out, then that is indeed sufficient for you.

وَصَحَّ عَنْ أَبِي هُرَيْرَةَ فِيمَنْ ذَبَحَ وَهُوَ مُغْضَبٌ فَلَمْ يَذْكُرْ اللَّهَ تَعَالَى أَنَّهُ يُؤْكَلُ وَلْيُسَمِّ اللَّهَ تَعَالَى إذَا أَكَلَ.

L16843 It is authentically reported from Abu Hurairah that even if one slaughters [an animal] while angry and fails to invoke the name of Allah, the Most High, the meat may still be eaten - but let him invoke the name of Allah, the Most High, when he eats.

وَعَنْ عَطَاءٍ إذَا قَالَ الْمُسْلِمُ: بِاسْمِ الشَّيْطَانِ فَكُلْ.

L16844 It is reported from 'Aṭā': If a Muslim says, "In the name of Satan," then eat.

وَرُوِّينَا عَنْ جَمَاعَةٍ مِنْ التَّابِعِينَ إبَاحَةَ أَكْلِ مَا نُسِيَ ذِكْرُ اللَّهِ تَعَالَى عَلَيْهِ، وَلَمْ يُذْكَرْ عَنْهُمْ تَحْرِيمُهُ فِي تَعَمُّدِ تَرْكِ الذِّكْرِ.

L16845 It has been narrated to us from a group of the Tabi'un (Successors) that they permitted eating [an animal] where the remembrance of Allah, the Exalted, was forgotten. No prohibition was reported from them regarding the deliberate abandonment of the remembrance [of Allah].

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ أَهْلُ الْإِبَاحَةِ لِذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عِمْرَانَ بْنِ عُيَيْنَةَ أَخِي سُفْيَانَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «جَاءَتْ الْيَهُودُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: أَنَأْكُلُ مِمَّا قَتَلْنَا، وَلَا نَأْكُلُ مِمَّا قَتَلَ اللَّهُ عَزَّ وَجَلَّ؟ فَأَنْزَلَ اللَّهُ تَعَالَى: {وَلا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ} [الأنعام: ١٢١] إلَى آخِرِ الْآيَةِ» .

L16846 Abu Muhammad said: Proponents of unrestricted permissibility argued for this based on what we have reported through the chain of ʿImrān ibn ʿUyaynah—Sufyān's brother—from ʿAṭāʾ ibn al-Sāʾib, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "The Jews came to the Messenger of Allah (peace and blessings be upon him) and said: 'Do we eat from what we slaughter, yet refrain from eating what Allah the Almighty, the Majestic has killed?' Thereupon Allah revealed: *'And do not eat of that upon which Allah's name has not been invoked'* [al-Anʿām 6:121] to the end of the verse."[44]

قَالَ عَلِيٌّ: هَذَا مِنْ التَّمْوِيهِ الْقَبِيحِ، وَلَيْتَ شِعْرِي أَيُّ ذِكْرٍ فِي هَذَا الْخَبَرِ لِإِبَاحَةِ أَكْلِ مَا لَمْ يُسَمَّ اللَّهُ تَعَالَى عَلَيْهِ، بَلْ حُجَّةٌ عَلَيْهِمْ كَافِيَةٌ.

L16847 Ali said: "This is repugnant obfuscation. If only I knew what mention exists in this narration to permit eating that over which Allah the Exalted's name was not invoked! Rather, it is decisive proof against them."

[44] **Qur'an references (L16846):** Qur'an 6:121 (Al-An'am).

فَأَمَّا قَوْلُ الشَّافِعِيِّ فَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا.

L16848 As for the statement of Al-Shāfiʿī, we do not know of any valid proof for it in principle.

وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، فَإِنَّهُمْ ذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا عِيسَى بْنُ يُونُسَ نَا الْأَحْوَصُ بْنُ حَكِيمٍ عَنْ رَاشِدِ بْنِ سَعْدٍ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ ذَبِيحَةَ الْمُسْلِمِ حَلَالٌ وَإِنْ لَمْ يُسَمِّ إِذَا لَمْ يَتَعَمَّدْ» .

L16849 As for the Ḥanafīs and Mālikīs, they cited a report we have transmitted through the chain of Saʿīd ibn Manṣūr, narrated to us by ʿĪsā ibn Yūnus, who narrated to us from al-Aḥwaṣ ibn Ḥakīm, from Rāshid ibn Saʿd, who said: The Prophet (peace be upon him) stated, “The slaughter of a Muslim is permissible even if he did not utter Allah’s Name, provided it was not done deliberately.”

فَهَذَا مُرْسَلٌ، وَالْأَحْوَصُ بْنُ حَكِيمٍ لَيْسَ بِشَيْءٍ، وَرَاشِدُ بْنُ سَعْدٍ ضَعِيفٌ.

L16850 This is a *mursal*; al-Aḥwaṣ ibn Ḥakīm is dismissed, and Rāshid ibn Saʿd is weak.

وَخَبَرٌ آخَرُ: مِنْ طَرِيقِ وَكِيعٍ نَا ثَوْرٌ الشَّامِيُّ عَنْ الصَّلْتِ مَوْلَى سُوَيْدٍ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ذَبِيحَةُ الْمُسْلِمِ حَلَالٌ - وَإِنْ نَسِيَ أَنْ يَذْكُرَ اسْمَ اللَّهِ - لِأَنَّهُ إِذَا ذَكَرَ لَمْ يَذْكُرْ إلَّا اللَّهَ تَعَالَى» .

L16851 And another narration: Through the chain of Waki‘, who narrated to us from Thawr al-Shāmi, from al-Ṣalt—the client of Suwayd—who said: The Prophet (peace and blessings of Allah be upon him) said: “The slaughter of a Muslim is permissible, even if he forgot to mention Allah’s name, because when he mentions, he mentions none but Allah the Exalted.”

وَهَذَا مُرْسَلٌ لَا حُجَّةَ فِيهِ، وَالصَّلْتُ أَيْضًا مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ.

L16852 This is a mursal narration lacking juristic authority, and Ṣalt is likewise an undocumented narrator (majhūl) whose identity cannot be ascertained.

وَقَالَ بَعْضُهُمْ: إنَّمَا ذَبَحْت بِدِينِك.

L16853 Some of them said: “I only slaughtered according to your religion.”

قَالَ عَلِيٌّ: وَمَا نَذْبَحُ إلَّا بِأَدْيَانِنَا وَبِمَا يُنْهِرُ الدَّمَ، وَمِنْ الذَّبْحِ بِالدِّينِ أَنْ يُسَمَّى اللَّهُ تَعَالَى فَمَنْ لَمْ يُسَمِّهِ عَزَّ وَجَلَّ فَلَمْ يَذْبَحْ بِدِينِهِ وَلَا كَمَا أُمِرَ.

L16854 Ali said: We do not slaughter except in accordance with our religion and with what ensures the blood flows freely. Part of valid religious slaughter is that Allah the Exalted be mentioned by name. Whoever fails to mention the name of the Almighty and Majestic has neither slaughtered in accordance with his religion nor as he was commanded.

وَاحْتَجُّوا أَيْضًا بِأَنْ قَالُوا: قَالَ اللَّهُ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ} [الأحزاب: ٥] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» وَأَنْتُمْ تُجِيزُونَ صَلَاةَ مَنْ تَكَلَّمَ فِيهَا نَاسِيًا، وَصَوْمَ مَنْ

L16855–16856 They also argued by citing the following: Allah the Exalted said, **“There is no blame upon you for that in which you have erred”** [Al-Ahzab: 5], and the Messenger of Allah (peace be upon him) said, **“My nation has been absolved from error, forgetfulness, and what they are compelled into.”** Yet you validate the prayer of one who speaks out of forgetfulness during it and the fasting of one who eats out of forgetfulness during it—so what is the difference? They replied: Allah’s statement, **“Indeed, it is transgression”**

[Al-An'am: 121], removes the forgetful person from this general ruling, because forgetfulness does not constitute transgression.[45]

أَكَلَ فِيهِ نَاسِيًا، فَمَا الْفَرْقُ؟ قَالُوا: وَقَوْلُ اللَّهِ تَعَالَى: {وَإِنَّهُ لَفِسْقٌ} [الأنعام: ١٢١] إِخْرَاجٌ لِلنَّاسِي مِنْ هَذِهِ الْجُمْلَةِ، لِأَنَّ النِّسْيَانَ لَيْسَ فِسْقًا.

L16857 This is all they have adduced as evidence, and there is no proof for them in any of it. As for the exemption from sin in cases of error and the removal of accountability from us for forgetfulness and error—is that not the case? This is our position. Thus we say: In such a situation, sin and constraint are lifted from the person if they forgot to invoke Allah's name. However, we affirm that they did not perform the ritual slaughter, but rather presumed they had slaughtered when they had not—like one who forgot prayer and presumed they had prayed when they did not. Since they did not perform the ritual slaughter, it becomes carrion which is not permissible to eat, for Allah the Exalted has prohibited us from consuming that over which Allah's name was not invoked. Thus, any slaughtered animal, ritually sacrificed animal, or hunted game possessing this trait is impermissible to consume.

هَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ. أَمَّا سُقُوطُ الْجُنَاحِ فِي الْخَطَأِ، وَسُقُوطُ الْمُؤَاخَذَةِ بِالنِّسْيَانِ وَالْخَطَأِ، وَرَفْعُهُمَا عَنَّا، فَنَعَمْ؟ وَهُوَ قَوْلُنَا، وَهَكَذَا نَقُولُ: إِنَّهُ هَهُنَا مَرْفُوعٌ عَنْهُ الْإِثْمُ وَالْحَرَجُ إِذَا نَسِيَ التَّسْمِيَةَ، لَكِنَّا قُلْنَا: إِنَّهُ لَمْ يُذَكِّ، لَكِنْ ظَنَّ أَنَّهُ ذَكَّى وَلَمْ يُذَكِّ، كَمَنْ نَسِيَ الصَّلَاةَ وَظَنَّ أَنَّهُ صَلَّى وَهُوَ لَمْ يُصَلِّ، فَلَمَّا لَمْ يُذَكِّ كَانَ مَيْتَةً لَا يَحِلُّ أَكْلُهُ، لِأَنَّ اللَّهَ تَعَالَى نَهَانَا أَنْ نَأْكُلَ مَا لَمْ يُذْكَرْ اسْمُ اللَّهِ عَلَيْهِ فَكَانَتْ هَذِهِ الصِّفَةُ مَتَى وُجِدَتْ فِي مَذْبُوحٍ أَوْ مَنْحُورٍ أَوْ تَصَيُّدٍ لَمْ يَحِلَّ أَكْلُهُ.

L16858 The distinction between matters they were ignorant of distinguishing among those is that: regarding the commanded act - whoever forgot to perform it or intentionally neglected to perform it, so he did not perform it - the forgetful is not held accountable for his forgetfulness while the intentional is held accountable. Any commanded act a person performs wherein he forgetfully adds something not commanded within it, no accountability falls upon him for what he did forgetfully, and his performance of the commanded act is valid, permissible, and has been accepted. This constitutes the ruling of the Quran and Sunnah except where explicit textual evidence excludes a matter from this ruling, in which case it is deferred to.

وَالْفَرْقُ بَيْنَ مَا جَهِلُوا الْفَرْقَ بَيْنَهُ مِنْ ذَلِكَ: هُوَ أَنَّ الْعَمَلَ الْمَأْمُورَ بِهِ مَنْ نَسِيَ أَنْ يَعْمَلَهُ، أَوْ تَعَمَّدَ أَنْ لَا يَعْمَلَهُ، فَلَمْ يَعْمَلْهُ إِلَّا أَنَّ النَّاسِيَ غَيْرُ حَرِجٍ فِي نِسْيَانِهِ وَالْعَامِدَ فِي حَرَجٍ، وَكُلُّ عَمَلٍ عَمِلَهُ الْمَرْءُ مِمَّا أُمِرَ بِهِ فَزَادَ فِيهِ مَا لَمْ يُؤْمَرْ بِهِ نَاسِيًا فَلَا حَرَجَ عَلَيْهِ فِيمَا عَمِلَ نَاسِيًا، وَعَمَلُهُ لِمَا عَمِلَ مِمَّا أُمِرَ بِهِ صَحِيحٌ جَائِزٌ جَازَ - فَهَذَا هُوَ حُكْمُ الْقُرْآنِ وَالسُّنَنِ إِلَّا مَا جَاءَ نَصٌّ بِإِخْرَاجِهِ عَنْ هَذَا الْحُكْمِ فَيُوقَفُ عِنْدَهُ.

L16859 As for the statement of Allah the Exalted: {And indeed, it is transgression} [6:121], we have never asserted that a person's forgetfulness in invoking Allah's name over his slaughtered animal, sacrificial animal, or hunted game constitutes transgression. Nor have we claimed that Allah the Exalted termed his forgetfulness of this as transgression. Rather, Allah the Exalted explicitly termed the slaughtered animal (by throat-cutting) over which His name was

وَأَمَّا قَوْلُه تَعَالَى: {وَإِنَّهُ لَفِسْقٌ} [الأنعام: ١٢١] فَلَمْ نَقُلْ قَطُّ: إِنَّ نِسْيَانَ النَّاسِي لِتَسْمِيَةِ اللَّهِ تَعَالَى عَلَى ذَبِيحَتِهِ وَنَحِيرَتِهِ وَصَيْدِهِ -: فِسْقٌ؟ وَلَا قُلْنَا: إِنَّ اللَّهَ تَعَالَى سَمَّى نِسْيَانَهُ لِذَلِكَ: فِسْقًا، لَكِنَّ اللَّهَ تَعَالَى سَمَّى ذَلِكَ الْعَقِيرَ الَّذِي لَمْ يُذْكَرْ اسْمُ اللَّهِ عَلَيْهِ: فِسْقًا - هَذَا نَصُّ الْآيَةِ الَّذِي لَا يَجُوزُ إِحَالَتُهَا عَنْهُ أَنَّ مَا لَمْ يُذْكَرْ اسْمُ اللَّهِ تَعَالَى عَلَيْهِ، فَإِنَّهُ فِسْقٌ، وَالْفِسْقُ

[45] **Qur'an references (L16856):** Qur'an 33:5 (Al-Ahzab); Qur'an 6:121 (Al-An'am).

not invoked as transgression—this is the unequivocal text of the verse, which cannot be diverted from its meaning: that anything over which Allah's name is not invoked is transgression, and transgression is forbidden. Whatever is slaughtered without invoking Allah's name falls under what is dedicated to other than Allah, thereby being prohibited by the explicit text of the verse, which permits no interpretation contrary to this. And with Allah the Exalted is success.[46]

مُحَرَّمٌ، وَمَا لَمْ يُذْكَرْ اسْمُ اللَّهِ عَلَيْهِ فَهُوَ مِمَّا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ فَهُوَ حَرَامٌ بِنَصِّ الْآيَةِ الَّتِي لَا تَحْتَمِلُ تَأْوِيلًا سِوَاهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L16860–16862 Hammam ibn Ahmad narrated to us: Abu Muhammad al-Baji narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Ahmad ibn Muslim narrated to us: Abu Thawr narrated to us: Mu'alla narrated to us: Hushaym narrated to us—from Yunus ibn Ubayd—from Muhammad ibn Ziyad. He said: A man forgot to invoke the name of Allah the Exalted when he slaughtered a sheep, so Ibn Umar instructed his servant: "When you intend to sell any of it to someone, tell them: Ibn Umar says, 'Indeed, the name of Allah was not mentioned over it when it was slaughtered.'" This is a chain of transmission of the highest authenticity.

نَا حُمَامُ بْنُ أَحْمَدَ نَا أَبُو مُحَمَّدٍ الْبَاجِيَّ نَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نَا أَحْمَدُ بْنُ مُسْلِمٍ نَا أَبُو ثَوْرٍ نَا مُعَلَّى نَا هُشَيْمٌ، عَنْ يُونُسَ هُوَ ابْنُ عُبَيْدٍ - عَنْ مُحَمَّدِ بْنِ زِيَادٍ قَالَ: إِنَّ رَجُلًا نَسِيَ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى عَلَى شَاةٍ ذَبَحَهَا فَأَمَرَ ابْنُ عُمَرَ غُلَامَهُ فَقَالَ: إِذَا أَرَادَ أَنْ يَبِيعَ مِنْهَا لِأَحَدٍ؟ فَقُلْ لَهُ: إِنَّ ابْنَ عُمَرَ يَقُولُ: إِنَّ هَذَا لَمْ يُذْكَرْ اسْمِ اللَّهِ عَلَيْهَا حِينَ ذَبَحَهَا - وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ.

L16863 Through the chain of Ibn Abī Shaybah, Muʿtamir ibn Sulaymān narrated to us from Khālid—he is al-Khaddāʾ—from Ibn Sīrīn from ʿAbd Allāh ibn Yazīd, who said: "Do not eat anything unless the name of Allah has been mentioned over it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ خَالِدٍ هُوَ الْحَذَّاءُ - عَنْ ابْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ قَالَ: لَا تَأْكُلْ إِلَّا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ.

L16864 From the chain of Ibn Abi Shaybah: Yazeed ibn Harun narrated to us from Ash'ath (Al-Humrani) from Ibn Sireen, from Abdullah ibn Yazeed: A man asked him about one who slaughtered an animal but forgot to invoke Allah's name. Abdullah then recited Allah's statement: {Do not eat of that upon which Allah's name has not been pronounced, for it is indeed disobedience} [al-An'am 6:121]. This Abdullah is a reliable transmitter.[47]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا يَزِيدُ بْنُ هَارُونَ عَنْ أَشْعَثَ هُوَ الْحُمْرَانِيُّ - عَنْ ابْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ سَأَلَهُ رَجُلٌ عَمَّنْ ذَبَحَ وَنَسِيَ أَنْ يُسَمِّيَ اللَّهَ؟ فَتَلَا عَبْدُ اللَّهِ قَوْلَ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ وَإِنَّهُ لَفِسْقٌ} [الأنعام: ١٢١] وَعَبْدُ اللَّهِ هَذَا هُوَ صَحِيحُ الصُّحْبَةِ.

L16865 Narrated via the transmission of Ibn Abi Shaybah, from Abu Khalid al-Ahmar Sulayman ibn Hayyan, from Dawud ibn Abi Hind, from al-Sha'bi,

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا أَبُو خَالِدٍ الْأَحْمَرُ سُلَيْمَانُ بْنُ حَيَّانَ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنِ الشَّعْبِيِّ أَنَّهُ كَرِهَ مَا لَمْ يُذْكَرْ اسْمُ اللَّهِ تَعَالَى عَلَيْهِ بِنِسْيَانٍ.

[46] **Qur'an references (L16859):** Qur'an 6:121 (Al-An'am).
[47] **Qur'an references (L16864):** Qur'an 6:121 (Al-An'am).

that he disapproved of that which the name of Allah, the Exalted, was not invoked over due to forgetfulness.

L16866 Through the narration of Abd al-Razzaq from Ma'mar from a man from Ikrimah, who said: If you find an arrow in dead game, do not eat it, for you do not know who shot it nor whether he mentioned Allah's name upon it. Through the narration of Waki' from Abdullah ibn Rashid al-Munqiri from Ibn Sirin concerning someone who forgot to mention Allah's name upon it: "What do you think if I said, 'Eat,' when Allah has said, 'Do not eat'? Would you eat?" Through the narration of Ibn Abi Shaybah from Ibn Ulayyah from Ayyub al-Sakhtiyani from Nāfi', the freed slave of Ibn Umar, that he disliked eating meat from an animal whose slaughterer forgot to mention the name of Allah the Exalted upon it.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ قَالَ: إذَا وَجَدْت سَهْمًا فِي صَيْدٍ وَقَدْ مَاتَ فَلَا تَأْكُلْهُ، إنَّك لَا تَدْرِي مَنْ رَمَاهُ وَلَا تَدْرِي أَسَمَّى أَمْ لَمْ يُسَمِّ؟ وَمِنْ طَرِيقِ وَكِيعٍ نَا عَبْدُ اللَّهِ بْنُ رَاشِدٍ الْمُنْقِرِيُّ عَنْ ابْنِ سِيرِينَ فِيمَا نَسِيَ أَنْ يَذْكُرَ اسْمَ اللَّهِ عَلَيْهِ أَرَأَيْت لَوْ قُلْتُ: كُلْ وَقَالَ اللَّهُ: لَا تَأْكُلْ - أَكُنْتَ تَأْكُلُ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ أَنَّهُ كَرِهَ أَكْلَ مَا نَسِيَ ذَابِحُهُ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى عَلَيْهِ.

L16867 And from the narration of Hammad ibn Zayd, from Ayyub, from Ibn Sirin: He disliked eating what was slaughtered by one who forgot to name Allah, the Exalted, over it.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ أَنَّهُ كَرِهَ أَكْلَ مَا نَسِيَ ذَابِحُهُ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى عَلَيْهِ.

L16868 This is the opinion of Abū Thawr, Abū Sulaymān, and their companions, and it is established by the transmitted traditions.

وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِ، وَبِهَذَا جَاءَتْ السُّنَنُ.

L16869 It was narrated to us through the chain of Abū Dāwūd al-Ṭayālisī, who narrated to us: Zā'idah from Sa'īd ibn Masrūq from 'Abāyah ibn Rifā'ah ibn Rāfi' ibn Khadīj from his grandfather Rāfi' ibn Khadīj, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said to us: "Whatever causes the blood to flow and upon which the name of Allah the Exalted was mentioned, then eat it." He mentioned the remainder of the ḥadīth.

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نَا زَائِدَةُ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ نَا عَبَايَةُ بْنُ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ رَافِعِ بْنِ خَدِيجٍ قَالَ: قَالَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أَنْهَرَ الدَّمَ وَذُكِرَ اسْمُ اللَّهِ تَعَالَى عَلَيْهِ فَكُلْ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L16870–16871 From the narration of Shu'bah from al-Hakam ibn 'Utaybah, who informed us, from al-Sha'bi: I heard 'Adi ibn Ḥātim say, "I asked the Messenger of Allah (peace be upon him), 'I release my dog and then find another dog alongside my dog that has caught it, but I do not know which of them caught it.' The Messenger of Allah (peace be upon him) replied: 'Do not eat, for you only mentioned Allah's name upon your dog and did not mention it upon the other.'" Thus, the Prophet (peace be upon him) prohibited eating because the

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ نَا الشَّعْبِيُّ سَمِعْت عَدِيَّ بْنَ حَاتِمٍ يَقُولُ: «قُلْتُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُرْسِلُ كَلْبِي فَأَجِدُ مَعَ كَلْبِي كَلْبًا قَدْ أَخَذَ لَا أَدْرِي أَيُّهُمَا أَخَذَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَلَا تَأْكُلْ إنَّمَا سَمَّيْتَ

name was not mentioned upon the one whose involvement was uncertain—whether it killed the game or another.

The ruling on invoking Allah's name in a non-Arabic language during slaughter.

1005. Issue: Whoever gives a name in a non-Arabic language has fulfilled the naming obligation, for Allah the Exalted did not stipulate a specific language among languages nor one naming over another. Thus, however he names, he has discharged what was incumbent upon him - and success is through Allah, the Exalted.

A legal question: If someone slaughtered the property of another by his command but forgot to mention the name of Allah, the Exalted.

Issue 1006: If someone slaughters another's animal by his order but forgets to invoke Allah the Exalted's name, or intentionally omits it, he is liable to replace the equivalent of the animal he invalidated, as it becomes carrion (religiously impermissible) - as we previously established - for he has destroyed his fellow's property. People's property is compensable whether the harm is intentional or due to forgetfulness. Success comes only through Allah the Exalted.

The issue of consuming what a person has slaughtered by *nahr* (camel slaughter) or *dhabh* (throat-slitting) from an animal owned by someone else.

1007 - Issue: It is not permissible to eat what a person has slaughtered by nahr or dhabh from another's property without the owner's instruction—whether through usurpation, theft, or wrongful transgression—for it is carrion. This is impermissible for both its owner and others, and the slaughterer is liable to compensate for it, except in cases of valid consideration such as fearing the animal's imminent death and hastening to perform its

عَلَى كَلْبِكَ وَلَمْ تُسَمِّ عَلَى غَيْرِهِ» فَجَعَلَ - عَلَيْهِ السَّلَامُ - الْمَانِعَ مِنْ الْأَكْلِ لِأَنَّهُ لَمْ يُسَمِّ عَلَى الَّذِي لَا يَدْرِي أَهُوَ قَتَلَهُ أَمْ غَيْرُهُ.

[مَسْأَلَةُ التَّسْمِيَةُ بِالْعَجَمِيَّةِ عِنْدَ الذَّبْحِ]

١٠٠٥ - مَسْأَلَةٌ: وَمَنْ سَمَّى بِالْعَجَمِيَّةِ فَقَدْ سَمَّى كَمَا أُمِرَ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَشْتَرِطْ لُغَةً مِنْ لُغَةٍ وَلَا تَسْمِيَةً مِنْ تَسْمِيَةٍ، فَكَيْفَمَا سَمَّى فَقَدْ أَدَّى مَا عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ ذَبَحَ مَالَ غَيْرِهِ بِأَمْرِهِ فَنَسِيَ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى]

١٠٠٦ - مَسْأَلَةٌ: وَمَنْ ذَبَحَ مَالَ غَيْرِهِ بِأَمْرِهِ فَنَسِيَ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى، أَوْ تَعَمَّدَ فَهُوَ ضَامِنٌ مِثْلَ الْحَيَوَانِ الَّذِي أَفْسَدَ، لِأَنَّهُ مَيْتَةٌ - كَمَا قَدَّمْنَا - فَقَدْ أَفْسَدَ مَالَ أَخِيهِ، وَأَمْوَالُ النَّاسِ تُضْمَنُ بِالْعَمْدِ وَالنِّسْيَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ أَكْلُ مَا نَحَرَهُ أَوْ ذَبَحَهُ إنْسَانٌ مِنْ مَالِ غَيْرِهِ]

١٠٠٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا نَحَرَهُ أَوْ ذَبَحَهُ إنْسَانٌ مِنْ مَالِ غَيْرِهِ بِغَيْرِ أَمْرِ مَالِكِهِ بِغَصْبٍ أَوْ سَرِقَةٍ أَوْ تَعَدٍّ بِغَيْرِ حَقٍّ - وَهُوَ مَيْتَةٌ - لَا يَحِلُّ لِصَاحِبِهِ وَلَا لِغَيْرِهِ وَيَضْمَنُهُ قَاتِلُهُ إلَّا أَنْ يَكُونَ نَظَرًا صَحِيحًا كَخَوْفِ أَنْ يَمُوتَ فَبَادَرَ بِذَكَاتِهِ، أَوْ نَظَرًا لِصَغِيرٍ أَوْ مَجْنُونٍ أَوْ غَائِبٍ، أَوْ فِي حَقٍّ وَاجِبٍ.

ritual slaughter, acting on behalf of a minor, an insane person, or an absent individual, or in the case of an obligatory right.

L16878 The proof of that is the statement of Allah, the Exalted: “Except what you have ritually slaughtered” [Surah Al-Mā’idah 5:3].[48]

L16879 And the saying of the Messenger of Allah (peace be upon him): “Indeed, your blood and your wealth are forbidden [to violate] upon you.”

L16880 And He, the Exalted, said: “Do not devour one another’s wealth unjustly” [Al-Baqarah 2:188].[49]

L16881 So we ask those who oppose our view: Did he slaughter this animal by *dhabh* or *nahr* in a legitimate or illegitimate manner? It must necessarily be one of the two. No Muslim would say he slaughtered it legitimately. Since there is no doubt that he performed *nahr* and *dhabh* illegitimately, its consumption is prohibited by the explicit text of the Quran.

L16882–16884 Furthermore, consuming an animal is prohibited except what we have ritually slaughtered. Thus, ritual slaughter is an obligatory duty commanded by Allah, the Exalted, to be fulfilled in obedience to Him. It is not permissible to consume any prohibited animal except through proper slaughtering. The slaughter performed by one who transgresses the prescribed limits in slaughtering is invalid, forbidden for him, constituting a sinful defiance of Allah, the Exalted—a ruling established without any disagreement among scholars and in accordance with the texts of the Quran and the Sunnah.

L16885 And among the certain falsehoods is that sin could replace obedience. What is astonishing is that they agree with us that forbidden sexual relations remain unlawful except through the commanded contract, not the forbidden contract. How then did they come to permit prohibited animals through prohibited actions? What distinguishes a pilgrim hunting game forbidden to him from a transgressor slaughtering what he is prohibited from slaughtering? This is supported by the authentic Prophetic traditions:

L16886 It was narrated to us through the chain of Muslim ibn al-Hajjaj: from Ishaq

[48] **Qur’an references (L16878):** Qur’an 5:3 (Al-Ma’idah).
[49] **Qur’an references (L16880):** Qur’an 2:188 (Al-Baqarah).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {إِلا مَا ذَكَّيْتُمْ} [المائدة: ٣] .

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

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

فَنَسْأَلُ مَنْ خَالَفَ قَوْلَنَا أَبِحَقٍّ ذَبَحَ هَذَا الْحَيَوَانَ أَوْ نَحَرَ، أَمْ بِبَاطِلٍ، وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ وَلَا يَقُولُ مُسْلِمٌ: إِنَّهُ ذَبَحَ بِحَقٍّ، فَإِذْ لَا شَكَّ فِي أَنَّهُ نَحَرَ وَذَبَحَ بِبَاطِلٍ فَهُوَ مُحَرَّمٌ أَكْلُهُ بِنَصِّ الْقُرْآنِ.

وَأَيْضًا: فَإِنَّ الْحَيَوَانَ حَرَامٌ أَكْلُهُ إِلَّا مَا ذَكَّيْنَا، فَالذَّكَاةُ حَقٌّ مَأْمُورٌ بِهِ طَاعَةً لِلَّهِ تَعَالَى لَا يَحِلُّ أَكْلُ مَا حُرِّمَ مِنْ الْحَيَوَانِ إِلَّا بِهِ، وَذَبْحُ الْمُعْتَدِي بَاطِلٌ مُحَرَّمٌ عَلَيْهِ مَعْصِيَةٌ لِلَّهِ تَعَالَى بِلَا خِلَافٍ وَبِنَصِّ الْقُرْآنِ وَالسُّنَّةِ.

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ تَنُوبَ الْمَعْصِيَةُ عَنْ الطَّاعَةِ؟ وَالْعَجَبُ أَنَّهُمْ مُتَّفِقُونَ مَعَنَا عَلَى أَنَّ الْفُرُوجَ الْمُحَرَّمَةَ لَا تَحِلُّ إلَّا بِالْعَقْدِ الْمَأْمُورِ بِهِ لَا بِالْعَقْدِ الْمُحَرَّمِ: فَمِنْ أَيْنَ وَقَعَ لَهُمْ أَنْ يُبِيحُوا الْحَيَوَانَ الْمُحَرَّمَ بِالْفِعْلِ الْمُحَرَّمِ؟ وَمَا الْفَرْقُ بَيْنَ تَصَيُّدِ الْمُحْرِمِ لِلصَّيْدِ الْمُحَرَّمِ عَلَيْهِ، وَبَيْنَ ذَبْحِ الْمُتَعَدِّي لِمَا حُرِّمَ عَلَيْهِ ذَبْحُهُ؟ وَبِهَذَا جَاءَتْ السُّنَنُ الثَّابِتَةُ -:

رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نَا إِسْحَاقُ بْنُ إبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - نَا وَكِيعٌ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِيهِ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ رَافِعِ بْنِ خَدِيجٍ

ibn Ibrahim—Ibn Rahawayh—from Waki‘, from Sufyan al-Thawri, from his father, from ‘Abayah ibn Rifa‘ah ibn Rafi‘ ibn Khadij, from Rafi‘ ibn Khadij, who said: “We were with the Messenger of Allah—peace and blessings be upon him—at Dhu al-Hulayfah in Tihamah when we came upon sheep and camels. The people hurried to cook them in the pots. The Messenger of Allah—peace and blessings be upon him—ordered the pots to be overturned, then exchanged ten sheep for one camel.”

قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذِي الْحُلَيْفَةِ مِنْ تِهَامَةَ فَأَصَبْنَا غَنَمًا وَإِبِلًا فَعَجَّلَ الْقَوْمُ فَأَغْلَوْا بِهَا الْقُدُورَ فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأُكْفِئَتْ، ثُمَّ عَدَلَ عَشْرًا مِنْ الْغَنَمِ بِجَزُورٍ» .

L16887 Thus, the Messenger of Allah (peace be upon him) ordered the spilling of the pots containing meat slaughtered from the spoils before distribution. There is no doubt that if it had been lawful to eat, he would not have ordered its disposal, for he (peace be upon him) prohibited the waste of wealth. Thus, it is established with certainty that it is utterly forbidden, and that slaughtering or sacrificing it constitutes an unlawful act necessitating compensation and does not make it permissible to consume.

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَمَرَ بِهَرْقِ الْقُدُورِ الَّتِي فِيهَا اللَّحْمُ الْمَذْبُوحُ مِنْ الْغَنِيمَةِ قَبْلَ الْقِسْمَةِ، وَلَا شَكَّ فِي أَنَّهُ لَوْ كَانَ حَلَالًا أَكْلُهُ مَا أَمَرَ بِهَرْقِهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - نَهَى عَنْ إضَاعَةِ الْمَالِ - فَصَحَّ يَقِينًا أَنَّهُ حَرَامٌ مَحْضٌ، وَأَنَّ ذَبْحَهُ وَنَحْرَهُ تَعَدٍّ يُوجِبُ الضَّمَانَ وَلَا يُبِيحُ الْأَكْلَ.

L16888 We do not know of any argument at all for the opposing view—neither from the Qur’an, nor the Sunnah, nor the statement of a Companion, nor analogy—except that some of them have misleadingly cited a report we narrated through the chain of ʿĀṣim ibn Kulayb, from his father, from a man of the Anṣār, who said: “We were with the Messenger of Allah—peace and blessings of Allah be upon him—at a funeral. A woman’s inviter approached him, so he came, and food was brought. He placed his hand, then the people placed their hands and ate, while the Messenger of Allah—peace and blessings of Allah be upon him—was chewing a morsel in his mouth. Then he said: ’I sense the meat of a sheep taken without its owners’ permission.’ The woman sent [a message]: ’O Messenger of Allah, I sent someone to al-Baqīʿ to buy a sheep for me, but I did not find any. Then I sent to a neighbor of mine who had bought a sheep, asking him to send it to me for its price, but he was not found. So I sent to his wife, and she sent it to me.’ The Messenger of Allah—peace and blessings of Allah be upon him—said: ’Feed it to the captives.’”

وَمَا نَعْلَمُ لِلْمُخَالِفِ حُجَّةً أَصْلًا لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ وَلَا مِنْ قَوْلِ صَاحِبٍ وَلَا مِنْ قِيَاسٍ، إلَّا أَنَّ بَعْضَهُمْ مَوَّهَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جِنَازَةٍ، فَاسْتَقْبَلَهُ دَاعِي امْرَأَةٍ فَجَاءَ وَجِيءَ بِالطَّعَامِ فَوَضَعَ يَدَهُ ثُمَّ وَضَعَ الْقَوْمُ أَيْدِيَهُمْ فَأَكَلُوا وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَلُوكُ لُقْمَةً فِي فِيهِ ثُمَّ قَالَ: أَجِدُ لَحْمَ شَاةٍ أُخِذَتْ بِغَيْرِ إذْنِ أَهْلِهَا، فَأَرْسَلَتْ الْمَرْأَةُ: يَا رَسُولَ اللَّهِ إنِّي أَرْسَلْتُ إلَى الْبَقِيعِ مَنْ يَشْتَرِي لِي شَاةً فَلَمْ أَجِدْ فَأَرْسَلْتُ إلَى جَارٍ لِي قَدْ اشْتَرَى شَاةً أَنْ أَرْسِلْ بِهَا إلَيَّ بِثَمَنِهَا، فَلَمْ يُوجَدْ فَأَرْسَلْتُ إلَى امْرَأَتِهِ، فَأَرْسَلَتْ إلَيَّ بِهَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعِمِيهِ الْأُسَارَى» .

L16889–16891 Abu Muhammad said: “There is no argument for them in this; rather, were it sound, it would be an argument against them—” The first is that it concerns an unnamed man, and it is unknown whether his status as a Companion [of

the Prophet] was authentic or not. The second is that even if it were authentic, it would serve as evidence for us, because the Messenger of Allah—peace and blessings be upon him—did not permit eating carrion nor authorize any Muslim to consume any part of it. Rather, he ordered it to be fed to disbelievers who deem carrion permissible. Perhaps those captives were ill, for whom it is permissible to use carrion for treatment—though it was neither forcibly seized nor stolen, but acquired through a purchase they considered valid. However, since this was not done with the permission of the animal's original owner, it remained impermissible for Muslims to eat. Thus, their deception using this report is nullified.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، بَلْ هُوَ لَوْ صَحَّ حُجَّةٌ عَلَيْهِمْ -: أَوَّلُ ذَلِكَ: أَنَّهُ عَنْ رَجُلٍ لَمْ يُسَمَّ وَلَا يُدْرَى أَصَحَّتْ صُحْبَتُهُ أَمْ لَا؟ وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَسْتَحِلَّ أَكْلَهُ وَلَا أَبَاحَ لِأَحَدٍ مِنْ الْمُسْلِمِينَ أَكْلَ شَيْءٍ مِنْهُ، بَلْ أَمَرَ بِأَنْ يُطْعِمَ الْكُفَّارَ الْمُسْتَحِلِّينَ لِلْمَيْتَةِ، وَلَعَلَّ أُولَئِكَ الْأُسَارَى كَانُوا مَرْضَى يَحِلُّ لَهُمْ التَّدَاوِي بِالْمَيْتَةِ، مَعَ أَنَّهَا لَمْ تَكُنْ غَصْبًا وَلَا مَسْرُوقَةً، وَإِنَّمَا أَخَذَتْهَا بِشِرَاءٍ صَحِيحٍ عِنْدَ نَفْسِهَا، لَكِنْ لَمَّا لَمْ يَكُنْ بِإِذْنِ مَالِكِهَا لَمْ يَحِلَّ أَكْلُهَا لِمُسْلِمٍ، فَبَطَلَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ.

L16892 There is no doubt that the liability for that sheep rests upon the woman, as this is textually stipulated in the narration through her statement: "Send it to me with its price." We approach them through this very method – which stands as a manifest proof against them for us in this matter—

وَلَا شَكَّ فِي أَنَّ تِلْكَ الشَّاةَ مَضْمُونَةٌ عَلَى الْمَرْأَةِ، وَذَلِكَ مَنْصُوصٌ فِي الْخَبَرِ مِنْ قَوْلِ الْمَرْأَةِ " ابْعَثْهَا إلَيَّ بِثَمَنِهَا " وَنَحْنُ نَأْتِيهِمْ مِنْ هَذِهِ الطَّرِيقِ بِعَيْنِهَا بِمَا هُوَ حُجَّةٌ مُبَيِّنَةٌ عَلَيْهِمْ لَنَا فِي هَذِهِ الْمَسْأَلَةِ -:

L16893 We have been narrated through the chain of Abū Dāwūd al-Sijistānī: Hannād ibn al-Sarrī narrated to us, [saying]: Abū al-Aḥwaṣ—who is Salām ibn Sulaym—narrated to us from ʻĀṣim ibn Kulayb, from his father, from a man among the Anṣār, who said: "We set out with the Messenger of Allāh—peace and blessings be upon him—on a journey, and the people were afflicted by severe need and hardship. They came upon some sheep and plundered them. And indeed, our pots were boiling when the Messenger of Allāh—peace and blessings be upon him—came walking with his bow. He overturned our pots with his bow and began mixing the meat with the dust. Then he said: 'Plunder is not more permissible than carrion,' or 'Carrion is not more permissible than plunder'—Abū al-Aḥwaṣ doubted which of the two statements he—peace and blessings be upon him—uttered."

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نَا هَنَّادُ بْنُ السَّرِيِّ حَدَّثَنَا أَبُو الْأَحْوَصِ هُوَ سَلَّامُ بْنُ سُلَيْمٍ - عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ قَالَ «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَأَصَابَ النَّاسَ حَاجَةٌ شَدِيدَةٌ وَجَهْدٌ، فَأَصَابُوا غَنَمًا فَانْتَهَبُوهَا، فَإِنَّ قُدُورَنَا لَتَغْلِي، إذْ جَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَمْشِي عَلَى قَوْسِهِ فَأَكْفَأَ قُدُورَنَا بِقَوْسِهِ ثُمَّ جَعَلَ يُرَمِّلُ اللَّحْمَ بِالتُّرَابِ - ثُمَّ قَالَ: إنَّ النُّهْبَةَ لَيْسَتْ بِأَحَلَّ مِنْ الْمَيْتَةِ، أَوْ إنَّ الْمَيْتَةَ لَيْسَتْ بِأَحَلَّ مِنْ النُّهْبَةِ، شَكَّ أَبُو الْأَحْوَصِ فِي أَيَّتِهِمَا قَالَ - عَلَيْهِ السَّلَامُ -» .

L16894 This, then, is the very chain of narration with a clear explanation free of ambiguity concerning the Prophet's act—may Allah bless him and his family

and grant him peace—of spoiling the slaughtered meat that had been seized before apportionment, which he then mixed with soil.

L16895 It has thus been firmly established that this is purely forbidden and entirely impermissible, for if it were permissible, he (peace be upon him) would not have invalidated it. It is perplexing that a single method is considered authoritative evidence in matters lacking his clarification, yet is not deemed an authoritative argument in matters containing his explicit clarification.

L16896 It has been narrated to us through the chain of Tāwus and ʿIkrimah regarding the prohibition of eating meat slaughtered by a thief. This is the opinion of Isḥāq ibn Rāhawayh, Abū Sulaymān, and their companions. We do not know of any disagreement with our position on this matter from any of the Companions or any Successor except only al-Zuhrī, Rabīʿah, and Yaḥyā ibn Saʿīd. And the success is from Allah, the Most High.

L16897 **The issue of consuming animals slaughtered (dhabḥ) or ritually sacrificed by nahr (camel slaughter) out of pride or ostentation.**

L16898–16900 1008 – Issue: It is unlawful to eat what has been slaughtered or sacrificed by nahr out of pride or boastfulness, as per the statement of Allah, the Exalted: "Or [meat] sacrificed in transgression dedicated to other than Allah" [Al-An'am: 145], and this is part of what was dedicated to other than Allah.[50]

L16901 It has been narrated to us through the chain of Ahmad ibn Shu'ayb: Qutaybah narrated to us from Yahya—that is, Ibn Sa'id al-Qattan—from Mansur ibn Hayyan, from Amir ibn Wathilah, that Ali ibn Abi Talib said: "The Messenger of Allah—peace be upon him—said to him: 'May Allah curse whoever curses his father; may Allah curse whoever slaughters for other than Allah;

[50]**Qur'an references (L16898):** Qur'an 6:145 (Al-An'am).

فَهَذَا ذَلِكَ الْإِسْنَادُ نَفْسُهُ بِبَيَانٍ لَا إِشْكَالَ فِيهِ مِنْ إِفْسَادِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اللَّحْمَ الْمَذْبُوحَ مُنْتَهَبًا غَيْرَ مَقْسُومٍ وَخَلَطَهُ بِالتُّرَابِ.

فَصَحَّ يَقِينًا أَنَّهُ حَرَامٌ بَحْتٌ لَا يَحِلُّ أَصْلًا، إِذْ لَوْ حَلَّ لَمَا أَفْسَدَهُ - عَلَيْهِ السَّلَامُ -؛ فَمِنْ الْعَجَائِبِ أَنْ تَكُونَ طَرِيقٌ وَاحِدَةٌ حُجَّةً فِيمَا لَا بَيَانَ فِيهَا مِنْهُ، وَلَا تَكُونُ حُجَّةً فِيمَا فِيهَا الْبَيَانُ الْجَلِيُّ مِنْهُ.

وَرُوِّينَا مِنْ طَرِيقِ طَاوُسٍ، وَعِكْرِمَةَ النَّهْيَ عَنْ أَكْلِ ذَبِيحَةِ السَّارِقِ وَهُوَ قَوْلُ إِسْحَاقَ ابْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِ، وَلَا نَعْلَمُ خِلَافَ قَوْلِنَا فِي هَذِهِ الْمَسْأَلَةِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا عَنْ تَابِعٍ إِلَّا عَنْ الزُّهْرِيِّ، وَرَبِيعَةَ وَيَحْيَى بْنِ سَعِيدٍ، فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة أَكْلُ مَا ذُبِحَ أَوْ نُحِرَ نَخْرًا أَوْ مُبَاهَاةً]

١٠٠٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا ذُبِحَ أَوْ نُحِرَ نَخْرًا أَوْ مُبَاهَاةً لِقَوْلِ اللَّهِ تَعَالَى: {أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ} [الأنعام: ١٤٥] وَهَذَا مِمَّا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ.

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ نَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ مَنْصُورِ بْنِ حَيَّانَ عَنْ عَامِرِ بْنِ وَاثِلَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: " إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «لَعَنَ اللَّهُ مَنْ لَعَنَ وَالِدَهُ، وَلَعَنَ اللَّهُ مَنْ ذَبَحَ لِغَيْرِ اللَّهِ، وَلَعَنَ اللَّهُ مَنْ آوَى مُحْدِثًا، وَلَعَنَ اللَّهُ مَنْ غَيَّرَ مَنَارَ الْأَرْضِ» .

may Allah curse whoever shelters a religious innovator; and may Allah curse whoever alters the boundary markers of the earth.”’[51]

L16902 From the narration of Sa’id ibn Mansur: Ribʿī ibn Abdullah ibn al-Jarud reported, saying: I heard al-Jarud ibn Abi Sabrah state: There was a man from Banu Riyāh called Ibn Wathil—he was Suhaym—a prominent poet who surpassed Abu al-Farazdaq in poetry at a water source near Kufah, each pledging to slaughter one hundred of his camels when they arrived. When the camels reached the water, the two men attacked them with swords, severing their hamstrings. People rushed out on donkeys seeking meat while Ali—in Kufah—came out riding the mule of Allah’s Messenger (peace and blessings be upon him), proclaiming: “Do not eat their meat, for it belongs to what has been consecrated to other than Allah.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا رِبْعِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْجَارُودِ قَالَ: سَمِعْت الْجَارُودَ بْنَ أَبِي سَبْرَةَ يَقُولُ: كَانَ رَجُلٌ مِنْ بَنِي رِيَاحٍ يُقَالُ لَهُ: ابْنُ وَثِيلٍ هُوَ سُحَيْمٌ - قَالَ: وَكَانَ شَاعِرًا نَافِرًا غَالِبًا أَبَا الْفَرَزْدَقِ الشَّاعِرُ بِمَاءٍ بِظَهْرِ الْكُوفَةِ عَلَى أَنْ يَعْقِرَ هَذَا مِائَةً مِنْ إبِلِهِ وَهَذَا مِائَةً مِنْ إبِلِهِ إذَا وَرَدَتْ، فَلَمَّا وَرَدَتْ الْإِبِلُ الْمَاءَ قَامَا إلَيْهَا بِالسُّيُوفِ فَجَعَلَا يَكْسَعَانِ عَرَاقِيبَهَا، فَخَرَجَ النَّاسُ عَلَى الْحُمُرَاتِ يُرِيدُونَ اللَّحْمَ وَعَلِيٌّ بِالْكُوفَةِ فَخَرَجَ عَلَى بَغْلَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يُنَادِي: أَيُّهَا النَّاسُ لَا تَأْكُلُوا مِنْ لُحُومِهَا فَإِنَّهَا مِمَّا أُهِلَّ بِهَا لِغَيْرِ اللَّهِ.

L16903 And from ʿIkrimah: “The animal slaughtered by poets out of pride and show is not to be eaten, nor what Bedouins slaughter at their graves. No disagreement from the Companions (may Allah be pleased with them) is known regarding ʿAlī’s position (may Allah be pleased with him) on this matter.”

وَعَنْ عِكْرِمَةَ لَا تُؤْكَلُ ذَبِيحَةٌ ذَبَحَهَا الشُّعَرَاءُ فَخْرًا وَرِيَاءً، وَلَا مَا ذَبَحَهُ الْأَعْرَابُ عَلَى قُبُورِهِمْ، وَلَا يُعْلَمُ لِعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فِي هَذَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L16904 Everything in this chapter serves as decisive evidence confirming our position in the preceding chapter regarding the prohibition of slaughter by thieves, usurpers, and transgressors. For these individuals are unquestionably among those who slaughter for other than Allah the Almighty. Their slaughtered animals and dedicated offerings indisputably fall under what is consecrated to other than Allah the Exalted, since it is absolutely impermissible for one who intends Allah’s pleasure through such intention to commit disobedience. These individuals are undoubtedly disobedient to Allah the Exalted, opposing His command both in the very act of slaughter and in its idolatrous slaughter practice.

وَكُلُّ مَا فِي هَذَا الْبَابِ فَهُوَ بُرْهَانٌ عَلَى صِحَّةِ قَوْلِنَا فِي الْبَابِ الَّذِي قَبْلَهُ مِنْ تَحْرِيمِ ذَبِيحَةِ السَّارِقِ، وَالْغَاصِبِ، وَالْمُتَعَدِّي لِأَنَّ هَؤُلَاءِ بِلَا شَكٍّ مِمَّنْ ذَبَحَ لِغَيْرِ اللَّهِ عَزَّ وَجَلَّ، وَذَبَائِحُهُمْ وَنَحَائِرُهُمْ مِمَّنْ أُهِلَّ لِغَيْرِ اللَّهِ تَعَالَى بِهِ بِيَقِينٍ، إذْ لَا يَجُوزُ أَلْبَتَّةَ أَنْ يَعْصِيَ أَحَدٌ يُرِيدُ بِذَلِكَ وَجْهَ اللَّهِ تَعَالَى: وَهَؤُلَاءِ عُصَاةٌ لِلَّهِ تَعَالَى بِلَا شَكٍّ، مُخَالِفُونَ لِأَمْرِهِ فِي ذَلِكَ الذَّبْحِ نَفْسِهِ، وَفِي ذَلِكَ الْعَقْرِ نَفْسِهِ.

[مَسْأَلَة جَوَازُ مَا كَانَ مِنْ الْأَطْعِمَةِ نَظَرًا وَمَصْلَحَةً]

The issue of the permissibility of foods considered through

L16905

[51] **Hadith references (L16901):** Sunan an-Nasai 4422; Sahih Muslim 1978a.

deliberation and benefit.

L16906 Issue 1009: As for the permissibility of matters involving consideration and public interest, this is based on Allah's statement - the Exalted: {And cooperate in righteousness and piety, and do not cooperate in sin and transgression} [Al-Mā'idah: 2]. The Messenger of Allah - peace and blessings be upon him - prohibited the squandering of wealth. Therefore, preserving the wealth of a Muslim and a dhimmi is obligatory, being an act of righteousness and piety, while squandering it constitutes a sin, a transgression, and a forbidden act.[52]

١٠٠٩ - مَسْأَلَةٌ: وَأَمَّا جَوَازُ مَا كَانَ مِنْ ذَلِكَ نَظَرًا وَمَصْلَحَةً فَلِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ، فَحِفْظُ مَالِ الْمُسْلِمِ وَالذِّمِّيِّ وَاجِبٌ وَبِرٌّ وَتَقْوَى، وَإِضَاعَتُهُ إثْمٌ وَعُدْوَانٌ وَحَرَامٌ.

L16907–16909 It has been narrated to us through the chain of Al-Bukhārī: Muḥammad ibn Abī Bakr - who is Al-Muqaddamī - narrated to us; Al-Muʿtamir ibn Sulaymān al-Taymī narrated to us. From Ubaydullah ibn Umar, from Nāfiʿ, the freed servant of Ibn Umar, that he heard Ibn Kaʿb ibn Mālik relate to Ibn Umar that his father Kaʿb ibn Mālik informed him: Their servant girl who grazed sheep at Mount Salʿ noticed one of their ewes dying. She broke a stone to sharpen it and slaughtered the ewe. He [Kaʿb] instructed his household: "Do not eat until I approach the Messenger of Allah (peace and blessings be upon him) to ask him, or until I send someone to him to inquire." So he asked the Prophet (peace and blessings be upon him), and the Prophet (peace and blessings be upon him) commanded him to eat it.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ هُوَ الْمُقَدَّمِيُّ - نَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ أَنَّهُ سَمِعَ ابْنَ كَعْبِ بْنِ مَالِكٍ يُخْبِرُ ابْنَ عُمَرَ بِأَنَّ أَبَاهُ «كَعْبَ بْنَ مَالِكٍ أَخْبَرَهُ أَنَّ جَارِيَةً لَهُمْ كَانَتْ تَرْعَى غَنَمًا بِسَلْعٍ فَأَبْصَرَتْ بِشَاةٍ مِنْ غَنَمِهَا مَوْتًا فَكَسَرَتْ حَجَرًا فَذَبَحَتْهَا فَقَالَ لِأَهْلِهِ: لَا تَأْكُلُوا حَتَّى آتِيَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَسْأَلَهُ أَوْ أُرْسِلَ إلَيْهِ مَنْ يَسْأَلُهُ فَسَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَأَمَرَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَكْلِهَا»

L16910 **A legal question: An egg emerged from a dead hen or a dead bird.**

[مَسْأَلَةٌ خَرَجَتْ بَيْضَةٌ مِنْ دَجَاجَةٍ مَيِّتَةٍ أَوْ طَائِرٍ مَيِّتٍ]

L16911 1010 - Issue: If an egg emerges from a dead chicken or a dead bird whose meat would be permissible if slaughtered, then if it has a shell, eating it is lawful. If it does not yet have a shell, it is prohibited, because when it develops a shell, it has fully separated from the carcass and becomes distinct from it. If it lacks a shell, it is then part of its innards and attached to them, thus it is prohibited.

١٠١٠ - مَسْأَلَةٌ: فَلَوْ خَرَجَتْ بَيْضَةٌ مِنْ دَجَاجَةٍ مَيِّتَةٍ أَوْ طَائِرٍ مَيِّتٍ مِمَّا يُؤْكَلُ لَحْمُهُ لَوْ ذُكِّيَ فَإِنْ كَانَتْ ذَاتَ قِشْرٍ فَأَكْلُهَا حَلَالٌ، وَإِنْ لَمْ تَكُنْ ذَاتَ قِشْرٍ بَعْدُ فَهِيَ حَرَامٌ؛ لِأَنَّهَا إذَا صَارَتْ ذَاتَ قِشْرٍ فَقَدْ بَايَنَتْ الْمَيْتَةَ وَصَارَتْ مُنْحَازَةً عَنْهَا، وَإِذَا لَمْ تَكُنْ ذَاتَ قِشْرٍ فَهِيَ حِينَئِذٍ بَعْضُ حَشْوَتِهَا وَمُتَّصِلَةٌ بِهَا فَهِيَ حَرَامٌ.

L16912 **Issue: Eggs were cooked, and a spoiled one was found in the entire batch.**

[مَسْأَلَةٌ طُبِخَ بَيْضٌ فَوُجِدَ فِي جُمْلَتِهَا بَيْضَةٌ فَاسِدَةٌ]

[52] **Qur'an references (L16906):** Qur'an 5:2 (Al-Ma'idah).

L16913 1011 – Question: If eggs are cooked and a spoiled egg—having turned into blood or containing an embryo—is found among them, the spoiled one is discarded and the rest of the eggs are eaten, due to the statement of Allah, the Exalted: “No bearer of burdens shall bear the burden of another” (6:164). Thus, the lawful remains lawful; its proximity to the unlawful does not invalidate it, while the unlawful remains unlawful; its proximity to the lawful does not rectify it. And with Allah, the Exalted, lies success.[53]

١٠١١ - مَسْأَلَةٌ: وَلَوْ طُبِخَ بَيْضٌ فَوُجِدَ فِي جُمْلَتِهَا بَيْضَةٌ فَاسِدَةٌ قَدْ صَارَتْ دَمًا أَوْ فِيهَا فَرْخٌ رُمِيَتْ الْفَاسِدَةُ وَأُكِلَ سَائِرُ الْبَيْضِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَالْحَلَالُ حَلَالٌ لَا يُفْسِدُهُ مُجَاوَرَةُ الْحَرَامِ لَهُ، وَالْحَرَامُ حَرَامٌ لَا يُصْلِحُهُ مُجَاوَرَةُ الْحَلَالِ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Food cooked or roasted with impurity or carrion.

[مَسْأَلَةُ طَعَامٍ طُبِخَ أَوْ شُوِيَ بِعَذِرَةٍ أَوْ بِمَيْتَةٍ]

L16914

L16915 1012. Issue: Any bread, food, meat, or other item cooked or roasted with excrement or a dead animal is entirely lawful (halal), for it is neither a dead animal nor excrement itself. Excrement and dead animals are forbidden (haram), and what is permitted is lawful. Thus, if the actual excrement or dead animal is not evident in any part of it, it is lawful.

١٠١٢ - مَسْأَلَةٌ: وَكُلُّ خُبْزٍ أَوْ طَعَامٍ أَوْ لَحْمٍ أَوْ غَيْرِ ذَلِكَ طُبِخَ أَوْ شُوِيَ بِعَذِرَةٍ أَوْ بِمَيْتَةٍ فَهُوَ حَلَالٌ كُلُّهُ، لِأَنَّهُ لَيْسَ مَيْتَةً وَلَا عَذِرَةً، وَالْعَذِرَةُ وَالْمَيْتَةُ حَرَامٌ، وَمَا أُحِلَّ فَهُوَ حَلَالٌ فَإِذَا لَمْ يَظْهَرْ فِي شَيْءٍ مِنْهُ عَيْنُ الْعَذِرَةِ أَوْ الْمَيْتَةِ فَهُوَ حَلَالٌ.

L16916 Similarly, if food falls into wine or excrement and is washed until no trace of the prohibited substance remains, it is ḥalāl, as neither the Quran nor the Sunnah has mandated the prohibition of anything [i.e., the food] in such a case.

وَكَذَلِكَ لَوْ وَقَعَ طَعَامٌ فِي خَمْرٍ، أَوْ فِي عَذِرَةٍ فَغُسِلَ حَتَّى لَا يَكُونَ لِلْحَرَامِ فِيهِ عَيْنٌ فَهُوَ حَلَالٌ، إذْ لَمْ يُوجِبْ تَحْرِيمَ شَيْءٍ مِنْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ.

Issue: If an animal that would have been permissible to eat had it been Islamically slaughtered dies, and milk was extracted from it...

[مَسْأَلَةُ مَاتَ حَيَوَانٌ مِمَّا يَحِلُّ أَكْلُهُ لَوْ ذُكِّيَ فَحُلِبَ مِنْهُ لَبَنٌ]

L16917

L16918 1013 - Issue: If an animal whose meat would be permissible if slaughtered dies, and milk is milked from it, the milk is lawful. This is because milk is lawful by explicit textual ruling. Its presence in the udder of carrion does not prohibit it, as it has separated from the carcass afterwards. It and the milk milked from it during its life (after which the animal died) are equivalent. It is merely lawful milk in an unlawful vessel, being the same as milk in a gold or silver vessel. Success comes through God Almighty.

١٠١٣ - مَسْأَلَةٌ: فَلَوْ مَاتَ حَيَوَانٌ مِمَّا يَحِلُّ أَكْلُهُ لَوْ ذُكِّيَ فَحُلِبَ مِنْهُ لَبَنٌ فَاللَّبَنُ حَلَالٌ، لِأَنَّ اللَّبَنَ حَلَالٌ بِالنَّصِّ، فَلَا يُحَرِّمُهُ كَوْنُهُ فِي ضَرْعِ مَيْتَةٍ، لِأَنَّهُ قَدْ بَايَنَهَا بَعْدُ، وَهُوَ وَمَا حُلِبَ مِنْهَا فِي حَيَاتِهَا ثُمَّ مَاتَتْ سَوَاءٌ، وَإِنَّمَا هُوَ لَبَنٌ حَلَالٌ فِي وِعَاءٍ حَرَامٍ فَقَطْ، فَهُوَ وَالَّذِي فِي وِعَاءِ ذَهَبٍ أَوْ فِضَّةٍ سَوَاءٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The legal question of eating lethal poison slowly.

[مَسْأَلَةُ أَكْلُ السُّمِّ الْقَاتِلِ بِبُطْءٍ]

L16919

[53] **Qur’an references (L16913):** Qur’an 6:164 (Al-An’am); Qur’an 17:15 (Al-Isra); Qur’an 35:18 (Fatir); Qur’an 39:7 (Az-Zumar).

L16920–16922 Issue 1014: It is not permissible to eat deadly poison, whether consumed gradually or quickly, nor anything harmful from... the foods, nor the excessive consumption of a food whose excessive consumption causes illness, based on the statement of Allah the Exalted: “And do not kill yourselves” (an-Nisā’: 29).[54]

١٠١٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ السُّمِّ الْقَاتِلِ بِبُطْءٍ أَوْ تَعْجِيلٍ وَلَا مَا يُؤْذِي مِنْ الْأَطْعِمَةِ، وَلَا الْإِكْثَارُ مِنْ طَعَامٍ يُمْرِضُ الْإِكْثَارُ مِنْهُ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

L16923 It has been narrated to us through the chain of Sufyān ibn ʿUyaynah from Ziyād ibn ʿIlaqah, who said: I heard Usāmah ibn Sharīk say, “I witnessed the Messenger of Allah—peace and blessings be upon him—saying: ’Seek treatment, O servants of Allah, for Allah did not send down any disease without sending down a cure for it, except old age.”’ ʿAlī remarked: Ziyād is trustworthy and reliable. From him narrated Shuʿbah, Sufyān, Sufyān and Misʿar, Abū ʿAwanah, Abū Isḥāq al-Shaybānī, and others.

رُوِّينَا مِنْ طَرِيقِ سُفْيَانِ بْنِ عُيَيْنَةَ عَنْ زِيَادِ بْنِ عِلَاقَةَ قَالَ: سَمِعْت أُسَامَةَ بْنَ شَرِيكٍ قَالَ " شَهِدْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «تَدَاوَوْا عِبَادَ اللَّهِ فَإِنَّ اللَّهَ لَمْ يُنْزِلْ دَاءً إلَّا أَنْزَلَ بِهِ دَوَاءً إلَّا الْهَرَمَ» قَالَ عَلِيٌّ: زِيَادٌ ثِقَةٌ مَأْمُونٌ رَوَى عَنْهُ شُعْبَةُ، وَسُفْيَانُ، وَسُفْيَانُ وَمِسْعَرٌ، وَأَبُو عَوَانَةَ - وَأَبُو إسْحَاقَ الشَّيْبَانِيُّ، وَغَيْرُهُمْ.

L16924 The authentic ḥadīth states: “They are those who do not practice cauterization, do not seek healing through incantations, do not believe in omens, and rely on their Lord.” There is no praise in it for abandoning medicine entirely, nor any mention of prohibiting it. The Prophet’s command—peace be upon him—to seek treatment is a prohibition against abandoning it, for consuming what is harmful is abandoning treatment, and thus it is forbidden—and success is by Allah, the Exalted.

وَلَيْسَ فِي الْخَبَرِ الثَّابِتِ «هُمْ الَّذِينَ لَا يَكْتَوُونَ وَلَا يَسْتَرْقُونَ وَلَا يَتَطَيَّرُونَ وَعَلَى رَبِّهِمْ يَتَوَكَّلُونَ» حُمِدَ لِتَرْكِ الدَّوَاءِ أَصْلًا، وَلَا ذِكْرَ لِلْمَنْعِ مِنْهُ، وَأَمْرُهُ - عَلَيْهِ السَّلَامُ - بِالتَّدَاوِي: نَهْيٌ عَنْ تَرْكِهِ، وَأَكْلُ الْمُضِرِّ: تَرْكٌ لِلتَّدَاوِي، فَهُوَ مَنْهِيٌّ عَنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The Slaughter of the Fetus

L16925

[مَسْأَلَةُ ذَكَاةُ الْجَنِينِ]

L16926 1015. Issue: Every properly slaughtered animal in which a dead fetus is found—if the soul had already been breathed into it—is considered carrion, and its consumption is unlawful. If the fetus is found alive and then slaughtered, its consumption becomes permissible. If the soul had not yet been breathed into it, its consumption is permissible unless it is merely blood without flesh. There is no legal relevance to marking the mother during slaughter or omitting this practice—this is the opinion of Abū Ḥanīfah. The evidence for this is Allah’s statement: “Carrion and blood are forbidden to you” [5:3], and His statement: “except what you have ritually slaughtered” [5:3]. Through empirical observation, we know that the mother’s slaughter

١٠١٥ - مَسْأَلَةٌ: وَكُلُّ حَيَوَانٍ ذَكِيٍّ فَوُجِدَ فِي بَطْنِهِ جَنِينٌ مَيِّتٌ، وَقَدْ كَانَ نُفِخَ فِيهِ الرُّوحُ بَعْدُ فَهُوَ مَيْتَةٌ لَا يَحِلُّ أَكْلُهُ، فَلَوْ أُدْرِكَ حَيًّا فَذُكِّيَ حَلَّ أَكْلُهُ، فَلَوْ كَانَ لَمْ يُنْفَخْ فِيهِ الرُّوحُ بَعْدُ فَهُوَ حَلَالٌ إلَّا إنْ كَانَ بَعْدُ دَمًا لَا لَحْمَ فِيهِ، وَلَا مَعْنَى لِإِشْعَارِهِ وَلَا لِعَدَمِ إشْعَارِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ. بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ} [المائدة: ٣] . وَقَالَ تَعَالَى: {إلا مَا ذَكَّيْتُمْ} [المائدة: ٣] . وَبِالْعِيَانِ نَدْرِي

[54] **Qur’an references (L16920):** Qur’an 4:29 (An-Nisa).

does not suffice as slaughter for the living fetus, as it is distinct from her—it may be male while she is female. As for the fetus that is flesh into which the soul had not yet been breathed, it is part of her and was never at any point alive, thus not requiring slaughter.[55]

أَنَّ ذَكَاةَ الْأُمِّ لَيْسَتْ ذَكَاةً لِلْجَنِينِ الْحَيِّ، لِأَنَّهُ غَيْرُهَا وَقَدْ يَكُونُ ذَكَرًا وَهِيَ أُنْثَى، فَأَمَّا إِذَا كَانَ لَحْمًا لَمْ يُنْفَخْ فِيهِ الرُّوحُ بَعْدُ فَهُوَ بَعْضُهَا وَلَمْ يَكُنْ قَطُّ حَيًّا فَيَحْتَاجُ إِلَى ذَكَاةٍ.

L16927 The opponents have cited weak reports as evidence—among them is a narration via the chain of Waki‘, from Ibn Abi Layla, from ‘Atiyyah al-‘Awfi, from Abu Sa‘id al-Khudri, from the Prophet, peace and blessings be upon him: “The lawful slaughter of a fetus [in the womb] is dependent on the lawful slaughter of its mother.” And Ibn Abi Layla is weak in memorization, and ‘Atiyyah is rejected.

وَقَدْ احْتَجَّ الْمُخَالِفُونَ بِأَخْبَارٍ وَاهِيَةٍ -: مِنْهَا: مِنْ طَرِيقِ وَكِيعٍ عَنِ ابْنِ أَبِي لَيْلَى عَنْ عَطِيَّةَ الْعَوْفِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ» وَابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ وَعَطِيَّةُ هَالِكٌ.

L16928–16929 And via the chain of Isma‘īl ibn Muslim al-Makkī from al-Zuhrī from ‘Abd Allāh ibn Ka‘b ibn Mālik from his father from the Prophet – peace and blessings be upon him – with a similar narration. Isma‘īl ibn Muslim is a weak narrator. And via the chain of Ibn al-Mubārak from Mujālid ibn Sa‘īd from Abū al-Waddāk from Abū Sa‘īd from the Prophet – peace and blessings be upon him – regarding the fetus: “Eat it if you wish.” Mujālid is a weak narrator, and Abū al-Waddāk is a weak narrator.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ مُسْلِمٍ الْمَكِّيِّ عَنِ الزُّهْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ - إِسْمَاعِيلَ بْنِ مُسْلِمٍ ضَعِيفٌ. وَمِنْ طَرِيقِ ابْنُ الْمُبَارَكِ عَنْ مُجَالِدِ بْنِ سَعِيدٍ عَنْ أَبِي الْوَدَّاكِ عَنْ أَبِي سَعِيدٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَنِينِ «كُلُوهُ إِنْ شِئْتُمْ» ، مُجَالِدٌ ضَعِيفٌ، وَأَبُو الْوَدَّاكِ ضَعِيفٌ.

And via the chain of Abū al-Zubayr from Jābir from the Prophet – peace and blessings be upon him: “The slaughter of the fetus is the slaughter of its mother.” [The narration of Abū al-Zubayr] is not found in al-Layth’s transmission from him, nor did Abū al-Zubayr explicitly state therein that he heard it from Jābir. Thus, he did not hear it from Jābir – and this falls into the category of reports whose transmitter from Jābir is unknown, rendering it from an unknown narrator as we previously cited. Moreover, nothing is transmitted from Abū al-Zubayr except via the chains of Ḥammād ibn Shu‘ayb, al-Ḥasan ibn Bishr, and ‘Attāb ibn Bashīr from ‘Ubayd Allāh ibn Ziyād al-Qaddāḥ – all of whom are weak narrators.

وَمِنْ طَرِيقِ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ» [حَدِيثُ أَبِي الزُّبَيْرِ] مَا لَمْ يَكُنْ عِنْدَ اللَّيْثِ عَنْهُ، أَوْ لَمْ يَقُلْ فِيهِ أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ؛ فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ - وَهَذَا مِنْ هَذَا النَّمَطِ لَا يُدْرَى مِمَّنْ أَخَذَهُ عَنْ جَابِرٍ فَهُوَ عَنْ مَجْهُولٍ عَلَى مَا أَوْرَدْنَا قَبْلُ. ثُمَّ لَمْ يَأْتِ عَنْ أَبِي الزُّبَيْرِ إِلَّا مِنْ طَرِيقِ حَمَّادِ بْنِ شُعَيْبٍ، وَالْحَسَنِ بْنِ بِشْرٍ، وَعَتَّابِ بْنِ بَشِيرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ زِيَادٍ الْقَدَّاحِ - وَكُلُّهُمْ ضُعَفَاءُ. وَمِنْ طَرِيقِ أَبِي حُذَيْفَةَ نا مُحَمَّدُ بْنُ مُسْلِمٍ الطَّائِفِيُّ عَنْ أَيُّوبَ بْنِ مُوسَى قَالَ: ذُكِرَ لِي عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي «الْجَنِينِ إِذَا أَشْعَرَ فَذَكَاتُهُ ذَكَاةُ أُمِّهِ» أَبُو حُذَيْفَةَ ضَعِيفٌ، وَمُحَمَّدِ بْنِ مُسْلِمٍ أَسْقَطُ مِنْهُ - ثُمَّ هُوَ مُنْقَطِعٌ.

And via the chain of Abū Ḥudhayfah narrated to us: Muḥammad ibn Muslim al-Ṭā’ifī from Ayyūb ibn Mūsā, who said: It was mentioned to me from Ibn ‘Umar from the Prophet – peace and blessings be upon him – regarding the fetus: “If it grows hair, its slaughter is the slaughter of its mother.” Abū Ḥud-

[55] **Qur’an references (L16926):** Qur’an 5:3 (Al-Ma’idah).

hayfah is a weak narrator, and Muḥammad ibn Muslim is more unreliable than him – moreover, the chain is disconnected.

And via the chain of Ibn Abī Laylā from his brother ʿĪsā from his father from the Prophet – peace and blessings be upon him: "The slaughter of the fetus is the slaughter of its mother if it grows hair." Ibn Abī Laylā is deficient in memorization, and the chain is disconnected.

They said: This is the position of the majority of scholars – as we were informed via the chain of Sufyān from al-Zuhrī from Ibn Kaʿb ibn Mālik, who said: The Companions of the Messenger of Allāh – peace and blessings be upon him – would say, "The slaughter of the fetus is the slaughter of its mother."

And via the chain of Ibn Abī Shaybah: Ibn ʿUlayyah narrated from Ayyūb al-Sikhtiyānī from Ibn ʿUmar, who said regarding the fetus of a she-camel if it is fully formed and grows hair: "Its slaughter is the slaughter of its mother, and it is to be slaughtered."

And via the chain of al-Ḥārith from ʿAlī: "If the fetus of a she-camel grows hair, eat it, for its slaughter is the slaughter of its mother."

L16930–16932 And from Qābūs ibn Abī Ẓabyān, from his father, from Ibn ʿAbbās: He pointed to the fetus of the she-camel, grasped its tail, and said: "This is among the livestock animals." And from Abū al-Zubayr, from Jābir: "The slaughtering by nahr of the fetus of the she-camel is the slaughtering by nahr of its mother." And from Ibrāhīm, from Ibn Masʿūd: "The ritual slaughter of the fetus is the ritual slaughter of its mother." This is the position of Ibrāhīm, al-Shaʿbī, al-Qāsim ibn Muḥammad, Ṭāwūs, Abū Ẓabyān, Abū Isḥāq al-Sabīʿī, al-Ḥasan, and Saʿīd ibn al-Musayyib. Nafi', Ikrimah, Mujahid, Ata', Yahya ibn Sa'id al-Ansari, Abd al-Rahman ibn Abi Layla, al-Zuhri, Malik, al-Awza'i, al-Layth ibn Sa'd, Sufyan al-Thawri, al-Hasan ibn Hayyin, Abu Yusuf, Muhammad ibn al-Hasan, and al-Shafi'i.

L16933 It was reported to us through the chain of Ibn Abī Shaybah: Abū Muʿāwiyah reported to us from Misʿar ibn Kidām, from Ḥammād ibn Abī Sulaymān

وَمِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى عَنْ أَخِيهِ عِيسَى عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ إذَا أَشْعَرَ» ابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ، ثُمَّ هُوَ مُنْقَطِعٌ. وَقَالُوا: هُوَ قَوْلُ جُمْهُورِ الْعُلَمَاءِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ عَنْ الزُّهْرِيِّ عَنْ ابْنِ كَعْبِ بْنِ مَالِكٍ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُونَ «ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ» . وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ عُمَرَ قَالَ فِي جَنِينِ النَّاقَةِ إذَا تَمَّ وَأَشْعَرَ: فَذَكَاتُهُ ذَكَاةُ أُمِّهِ وَيُنْحَرُ. وَمِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيٍّ إذَا أَشْعَرَ جَنِينُ النَّاقَةِ فَكُلْهُ، فَإِنَّ ذَكَاتَهُ ذَكَاةُ أُمِّهِ -

وَعَنْ قَابُوسَ بْنِ أَبِي ظَبْيَانَ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ أَشَارَ إلَى جَنِينِ نَاقَةٍ وَأَخَذَ بِذَنَبِهِ وَقَالَ: هَذَا مِنْ بَهِيمَةِ الْأَنْعَامِ وَعَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ نَحْرُ جَنِينِ النَّاقَةِ نَحْرُ أُمِّهِ. وَعَنْ إبْرَاهِيمَ عَنْ ابْنِ مَسْعُودٍ ذَكَاةُ الْجَنِينِ ذَكَاةُ أُمِّهِ - وَهُوَ قَوْلُ إبْرَاهِيمَ، وَالشَّعْبِيِّ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَطَاوُسٍ، وَأَبِي ظَبْيَانَ، وَأَبِي إسْحَاقَ السَّبِيعِيِّ، وَالْحَسَنِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ وَنَافِعٍ، وَعِكْرِمَةَ، وَمُجَاهِدٍ، وَعَطَاءٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَالزُّهْرِيِّ، وَمَالِكٍ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَالشَّافِعِيِّ.

regarding the fetus of a slaughtered animal. He said: “The slaughter of one life cannot validate two lives”—this being the opinion of Abū Ḥanīfah and Zufar. It was reported to us by Aḥmad ibn ʿUmar ibn Anas: Muḥammad ibn ʿĪsā Ghundar reported to us from Khalaf ibn al-Qāsim, from Abū al-Maymūn, from ʿAbd al-Raḥmān ibn ʿUbayd Allāh ibn ʿUmar ibn Rāshid al-Bajalī, from Abū Zurʿah—who is ʿAbd al-Raḥmān ibn ʿUmar al-Naṣrī—from ʿAbd Allāh ibn Ḥayyān. I said to Mālik ibn Anas: “O Abā ʿAbd Allāh, if a camel is slaughtered while a fetus is moving in its womb, its belly is cut open, and the fetus emerges—may it be eaten?” He said: “Yes.” I said: “Al-Awzāʿī prohibits eating it.” He replied: “Al-Awzāʿī is correct”—this also being a view attributed to Mālik. Those who permitted its consumption differed: It was reported to us from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, who said: “If it is known that the fetus died before its mother’s death, it may be eaten; otherwise, it may not.” He was asked: “How is this known?” He answered: “If it emerges unswollen and unaltered, its death coincided with hers.” Others said: “It may not be eaten unless it has grown hair and is fully formed”—this being the opinion of Ibn ʿUmar, ʿAbd al-Raḥmān ibn Abī Laylā, al-Zuhrī, al-Shaʿbī, Nāfiʿ, ʿIkrimah, Mujāhid, ʿAṭāʾ, and Yaḥyā ibn Saʿīd. Yaḥyā stated: “If it emerges alive, it is unlawful to eat unless ritually slaughtered”—this being Mālik’s position, though he added: “If it emerges alive, eating it is disliked (makrūh) but not forbidden (ḥarām).”

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ فِي جَنِينِ الْمَذْبُوحَةِ؟ قَالَ: لَا تَكُونُ ذَكَاةُ نَفْسٍ عَنْ نَفْسَيْنِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَزُفَرَ -: نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا مُحَمَّدُ بْنُ عِيسَى غُنْدَرٌ نا خَلَفُ بْنُ الْقَاسِمِ نا أَبُو الْمَيْمُونِ نا عَبْدُ الرَّحْمَنِ بْنُ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ رَاشِدٍ الْبَجَلِيُّ نا أَبُو زُرْعَةَ - هُوَ عَبْدُ الرَّحْمَنِ بْنُ عُمَرَ النَّصْرِيُّ - نا عَبْدُ اللَّهِ بْنُ حَيَّانَ قُلْت لِمَالِكِ بْنِ أَنَسٍ: يَا أَبَا عَبْدِ اللَّهِ النَّاقَةُ تُذْبَحُ وَفِي بَطْنِهَا جَنِينٌ يَرْتَكِضُ فَيُشَقُّ بَطْنُهَا فَيَخْرُجُ جَنِينُهَا أَيُؤْكَلُ؟ قَالَ: نَعَمْ، قُلْت: إنَّ الْأَوْزَاعِيَّ قَالَ: لَا يُؤْكَلُ، قَالَ: أَصَابَ الْأَوْزَاعِيُّ - فَهَذَا قَوْلٌ لِمَالِكٍ أَيْضًا. وَاخْتَلَفَ الْقَائِلُونَ فِي إبَاحَةِ أَكْلِهِ -: فَرُوِّينَا عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ. قَالَ: إذَا عَلِمَ أَنَّ مَوْتَ الْجَنِينِ قَبْلَ مَوْتِ أُمِّهِ أُكِلَ وَإِلَّا لَمْ يُؤْكَلْ، قِيلَ لَهُ: مِنْ أَيْنَ يَعْلَمُ ذَلِكَ؟ قَالَ: إذَا خَرَجَ لَمْ يَنْتَفِخْ وَلَمْ يَتَغَيَّرْ فَهُوَ مَوْتُهَا. وَقَالَ بَعْضُهُمْ: لَا يُؤْكَلُ إلَّا أَنْ يَكُونَ قَدْ أَشْعَرَ وَتَمَّ - وَهُوَ قَوْلُ ابْنِ عُمَرَ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَالزُّهْرِيِّ، وَالشَّعْبِيِّ، وَنَافِعٍ، وَعِكْرِمَةَ، وَمُجَاهِدٍ، وَعَطَاءٍ، وَيَحْيَى بْنِ سَعِيدٍ، قَالَ يَحْيَى: فَإِنْ خَرَجَ حَيًّا لَمْ يَحِلَّ أَكْلُهُ إلَّا أَنْ يُذَكَّى - وَبِهِ قَالَ مَالِكٌ، إلَّا أَنَّهُ قَالَ: إنْ خَرَجَ حَيًّا كُرِهَ أَكْلُهُ، وَلَيْسَ حَرَامًا.

L16934–16936 Others said: Whether he formally declared the intention or not, it is permissible—and this is the position of Ibn Abbas, Ibrahim al-Nakhaʿi, Saʿid ibn al-Musayyib, al-Awzaʿi, al-Layth, Sufyan al-Thawri, al-Hasan ibn Salih ibn Hayy, Abu Yusuf, Muhammad ibn al-Hasan, and al-Shafiʿi. Abu Muhammad said: Had this been authentically established from the Prophet (peace be upon him), we would have affirmed it without hesitation. Since it is not authentically established from him, it is impermissible to abandon the Quran for the opinion of one or several individuals. As for Abu Hanifa, he censures

وَقَالَ آخَرُونَ: أَشْعَرَ أَوْ لَمْ يُشْعِرْ هُوَ حَلَالٌ - وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ، وَإِبْرَاهِيمَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ، وَسُفْيَانَ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَالشَّافِعِيِّ. قَالَ أَبُو مُحَمَّدٍ: لَوْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَقُلْنَا بِهِ مُسَارِعِينَ وَإِذَا لَمْ يَصِحَّ عَنْهُ فَلَا يَحِلُّ تَرْكُ الْقُرْآنِ لِقَوْلِ قَائِلٍ أَوْ قَائِلِينَ -: فَأَمَّا أَبُو

two matters: differing from a Companion when no dissenting opinion is known among them, and differing from the majority of scholars. He views this as contrary to the consensus of the scholars. This constitutes a matter wherein he opposed the Companions and the majority of scholars among the Successors, while the reports he adduces as evidence are weaker than those - a flagrant contradiction. As for Mālik, he did not prohibit the fetus if it emerged alive after its mother's slaughter, and we do not know this [ruling] about any of Allah's creatures before him.

L16937 According to this view of his, if the offspring is considered lawfully slaughtered by its mother's slaughter, then should it live, grow, impregnate, and produce offspring, it would be permissible to eat it upon its death—since it was slaughtered afterward by its mother's slaughter. But Allah is exalted far above this! Both positions thus oppose the consensus—or what he considers to be consensus—in this matter. [And with Allah, the Exalted, is success.]

L16938 ## A Question Regarding Eating and Drinking in Gold or Silver Vessels

L16939 1016 - Issue: It is not permissible to eat or drink from vessels of gold or silver, whether for men or women. If a vessel is banded with silver, eating and drinking from it becomes permissible for men and women, as it does not constitute a silver vessel. If it is banded with gold or adorned with gold, its use becomes forbidden for men due to the employment of gold, while remaining permissible for women since it is not a gold vessel. We have narrated through the chain transmitted by Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Ali ibn Mushir narrated to us from Ubayd Allah ibn Umar from Nāfi'—the client of Ibn Umar—from Zayd ibn Abd Allah ibn Umar ibn al-Khattāb from Abd Allah ibn Abd al-Rahmān ibn Abi Bakr al-Siddīq from Umm Salamah, the Mother of the Believers, that the Messenger of Allah—peace and blessings be upon him—said: "Whoever eats or drinks from vessels of gold or silver is filling his belly with the fire of Hell." This ruling applies generally to both men and women. It is authentically established from the Prophet—peace and blessings be upon him—that "gold is forbidden for the males of my nation but permissible for its women."

حَنِيفَةَ، فَإِنَّهُ يُشَنِّعُ، بِخِلَافِ الصَّاحِبِ لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَخِلَافِ جُمْهُورِ الْعُلَمَاءِ، وَيَرَى ذَلِكَ خِلَافًا لِلْإِجْمَاعِ، هَذَا مَكَانٌ خَالَفَ فِيهِ الصَّحَابَةَ وَجُمْهُورَ الْعُلَمَاءِ مِنْ التَّابِعِينَ وَالْآثَارُ الَّتِي يَحْتَجُّ هُوَ بِأَسْقَطَ مِنْهَا - وَهَذَا تَنَاقُضٌ فَاحِشٌ. وَأَمَّا مَالِكٌ، فَإِنَّهُ لَمْ يُحَرِّمْ الْجَنِينَ إذَا خَرَجَ بَعْدَ ذَبْحِ أُمِّهِ حَيًّا، وَمَا نَعْلَمُ هَذَا عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُ.

وَيَلْزَمُ عَلَى هَذَا أَنَّهُ إنْ كَانَ عِنْدَهُ ذَكِيًّا بِذَكَاةِ أُمِّهِ أَنَّهُ إنْ عَاشَ وَكَبُرَ وَأَلْقَحَ وَنَتَجَ أَنَّهُ حَلَالٌ أَكْلُهُ مَتَى مَاتَ، لِأَنَّهُ ذُكِّيَ بَعْدُ بِذَكَاةِ أُمِّهِ - وَحَاشَا لِلَّهِ مِنْ هَذَا، فَكِلَاهُمَا خَالَفَ الْإِجْمَاعَ، أَوْ مَا يَرَاهُ إجْمَاعًا فِي هَذِهِ الْمَسْأَلَةِ [وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ] .

[مَسْأَلَةُ الْأَكْلُ وَالشُّرْبُ فِي آنِيَةِ الذَّهَبِ أَوْ الْفِضَّةِ]

١٠١٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْأَكْلُ وَلَا الشُّرْبُ فِي آنِيَةِ الذَّهَبِ أَوْ الْفِضَّةِ لَا لِرَجُلٍ وَلَا لِامْرَأَةٍ، فَإِنْ كَانَ مُضَبَّبًا بِالْفِضَّةِ جَازَ الْأَكْلُ وَالشُّرْبُ فِيهِ لِلرِّجَالِ وَالنِّسَاءِ، لِأَنَّهُ لَيْسَ إنَاءَ فِضَّةٍ، فَإِنْ كَانَ مُضَبَّبًا بِالذَّهَبِ، أَوْ مُزَيَّنًا بِهِ حَرُمَ عَلَى الرِّجَالِ، لِأَنَّ فِيهِ اسْتِعْمَالَ ذَهَبٍ - وَحَلَّ لِلنِّسَاءِ لِأَنَّهُ لَيْسَ إنَاءُ ذَهَبٍ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ - هُوَ مَوْلَى ابْنِ عُمَرَ - عَنْ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الَّذِي يَأْكُلُ أَوْ يَشْرَبُ فِي آنِيَةِ الذَّهَبِ وَالْفِضَّةِ إنَّمَا يُجَرْجِرُ فِي بَطْنِهِ نَارَ جَهَنَّمَ» فَهَذَا عُمُومٌ

يَدْخُلُ فِيهِ الرِّجَالُ وَالنِّسَاءُ. وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّ الذَّهَبَ حَرَامٌ عَلَى ذُكُورِ أُمَّتِهِ حِلٌّ لِإِنَاثِهَا» .

L16940 We have been narrated from Ali—may Allah be pleased with him—that he was brought faloodaj in a silver vessel, so he removed it, placed it on bread, and ate it, except if the report transmitted to us by Muhammad ibn Isma'il al-'Udhri, judge of Saragossa, is valid: From Muhammad ibn Ali al-Muṭṭawwi'ī, from al-Hakim Muhammad ibn 'Abd Allah al-Naysaburi, from al-Husayn ibn al-Hasan al-Tusi in Naysabur and 'Abd Allah ibn Muhammad al-Khuza'i in Mecca—both saying: From Abu Yahya ibn Abi Maysarah, from Yahya ibn Muhammad al-Jari, from Zakariyya ibn Ibrahim ibn 'Abd Allah ibn Mutti', from his father, from his grandfather, from Ibn 'Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: "Whoever drinks from a vessel of gold or silver, or a vessel containing any of that, verily he gulps down into his belly the fire of Hell."[56]

وَرُوِّينَا عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ أُتِيَ بفالوذج فِي إنَاءِ فِضَّةٍ فَأَخْرَجَهُ وَجَعَلَهُ عَلَى رَغِيفٍ وَأَكَلَهُ إلَّا أَنْ يَصِحَّ مَا حَدَّثَنَا بِهِ مُحَمَّدُ بْنُ إسْمَاعِيلَ الْعُذْرِيُّ قَاضِي سَرَقُسْطَةَ نا مُحَمَّدُ بْنُ عَلِيٍّ الْمُطَّوِّعِيُّ نا الْحَاكِمُ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ النَّيْسَابُورِيُّ أَنَا الْحُسَيْنُ بْنُ الْحَسَنِ الطُّوسِيُّ بِنَيْسَابُورَ، وَعَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْخُزَاعِيُّ بِمَكَّةَ، قَالَا جَمِيعًا: نا أَبُو يَحْيَى بْنُ أَبِي مَيْسَرَةَ نا يَحْيَى بْنُ مُحَمَّدٍ الْجَارِي نا زَكَرِيَّا بْنُ إبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ مُطِيعٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ شَرِبَ فِي إنَاءِ ذَهَبٍ أَوْ فِضَّةٍ أَوْ إنَاءٍ فِيهِ شَيْءٌ مِنْ ذَلِكَ، فَإِنَّمَا يُجَرْجِرُ فِي بَطْنِهِ نَارَ جَهَنَّمَ» .

L16941–16942 If this report is authenticated, we adhere to its explicit text, and drinking from a vessel containing any gold or silver becomes impermissible for both men and women. However, we hesitate to adopt this position because Zakariya ibn Ibrahim is not known to us as reliable (ʿadl) or discredited (jarḥ)—and success is from Allah, the Most High.

فَإِنْ صَحَّ هَذَا الْخَبَرُ قُلْنَا بِهِ عَلَى نَصِّهِ، وَلَمْ يَحِلَّ الشُّرْبُ فِي إنَاءٍ فِيهِ شَيْءٌ مِنْ ذَهَبٍ أَوْ فِضَّةٍ لِرَجُلٍ وَلَا لِامْرَأَةٍ، وَإِنَّمَا تَوَقَّفْنَا عَنْهُ لِأَنَّ زَكَرِيَّا بْنَ إبْرَاهِيمَ لَا نَعْرِفُهُ بِعَدْلٍ وَلَا جَرَاحَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L16943 It was narrated to us through the chain of Ibn Abi Shaybah from Marwan ibn Mu'awiyah from al-'Ala' from Ya'la ibn al-Nu'man, who said: Amr said, "Whoever drinks from a silver-plated vessel, Allah will give him embers to drink on the Day of Resurrection." It has been authentically established from Ibn Umar that he would not drink from a vessel containing a silver rivet or a silver ring. The like of this is reported from a group [of scholars], while others permit it.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مَرْوَانَ بْنِ مُعَاوِيَةَ عَنْ الْعَلَاءِ عَنْ يَعْلَى بْنِ النُّعْمَانِ قَالَ: قَالَ عَمْرٌو: مَنْ شَرِبَ فِي قَدَحٍ مُفَضَّضٍ سَقَاهُ اللَّهُ جَمْرًا يَوْمَ الْقِيَامَةِ. وَصَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ لَا يَشْرَبُ بِقَدَحٍ فِيهِ ضَبَّةُ فِضَّةٍ وَلَا حَلَقَةُ فِضَّةٍ -: وَعَنْ جَمَاعَةٍ مِثْلُ هَذَا - وَعَنْ آخَرِينَ إبَاحَتُهُ

L16944

The Issue of Combining During Eating

[مَسْأَلَةُ الْقِرَانُ فِي الْأَكْلِ]

[56] **Hadith references (L16940):** Mishkat al-Masabih 4285.

L16945 1017 - Issue: It is not permissible to pair items while eating except with the permission of the one being dined with. This means you take two items at a time, two at a time, while he takes one at a time, such as two dates versus one, two figs versus one, or similar, unless the entire item is yours, in which case you may do as you wish. It was narrated to us through Al-Bukhari's chain of transmission: Adam narrated to us, Shu'bah narrated to us, Jabalah ibn Suhaym narrated to us that he heard Ibn 'Umar say—as he passed by people who were eating—"Do not pair, for the Messenger of Allah (peace be upon him) forbade pairing unless a man seeks permission from his companion." Shu'bah said the mention of permission is Ibn 'Umar's own addition. 'Ali said: This is more comprehensive than what Sufyan narrated from Jabalah ibn Suhaym. Therefore, if the one dining with you permits it, it is his right to forgo [the prohibition].

١٠١٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْقِرَانُ فِي الْأَكْلِ إلَّا بِإِذْنِ الْمُؤَاكِلِ، وَهُوَ أَنْ تَأْخُذَ أَنْتَ شَيْئَيْنِ شَيْئَيْنِ وَيَأْخُذَ هُوَ وَاحِدًا وَاحِدًا كَتَمْرَتَيْنِ وَتَمْرَةٍ، أَوْ تِينَتَيْنِ وَتِينَةٍ، وَنَحْوِ ذَلِكَ، إلَّا أَنْ يَكُونَ الشَّيْءُ كُلُّهُ لَك فَافْعَلْ فِيهِ مَا شِئْت. رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا آدَم نا شُعْبَةُ نا «جَبَلَةُ بْنُ سُحَيْمٍ: أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ - وَهُوَ يَمُرُّ بِهِمْ وَهُمْ يَأْكُلُونَ - لَا تُقَارِنُوا فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْقِرَانِ إلَّا أَنْ يَسْتَأْذِنَ الرَّجُلُ أَخَاهُ» قَالَ شُعْبَةُ: الْإِذْنُ مِنْ قَوْلِ ابْنِ عُمَرَ. قَالَ عَلِيٌّ: هَذَا أَعَمُّ مِمَّا رَوَاهُ سُفْيَانُ عَنْ جَبَلَةَ بْنِ سُحَيْمٍ، فَإِذَا أَذِنَ الْمُؤَاكِلُ فَهُوَ حَقُّهُ تَرَكَهُ.

Issue: The ruling on consuming dough kneaded with intoxicants (khamr).

[مَسْأَلَةٌ أَكْلُ مَا عُجِنَ بِالْخَمْرِ]

L16946–16949 1018 - Issue: It is not permissible to eat dough kneaded with wine or anything prohibited for consumption, nor [to use] a pot in which something from that category was used for cooking—unless the substance used to knead the flour and cook the food was lawful, and the prohibited substance added to it was minimal, having no detectable smell, taste, or color within it, and leaving no trace of the prohibited element whatsoever. In such a case, it becomes permissible, though whoever intentionally introduced any prohibited substance into it has disobeyed Allah Almighty. This is because when the defining attributes of a prohibited substance—those for which it was named in the scriptural evidence establishing its prohibition—are nullified, that designation ceases to apply. Once the designation ceases, the prohibition is lifted, as the prohibition applies only to what is designated by that name, such as wine, blood, or carrion. Thus, when blood transforms into meat, wine becomes vinegar, or carrion is assimilated through nourishment—such as when an animal consumes carrion and its flesh becomes permissible—it becomes lawful. As for chicken and other similar animals, the prohibition has indeed been lifted, and from Allah, the Exalted, is all success.

١٠١٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا عُجِنَ بِالْخَمْرِ، أَوْ بِمَا لَا يَحِلُّ أَكْلُهُ أَوْ شُرْبُهُ، وَلَا قِدْرٌ طُبِخَتْ بِشَيْءٍ مِنْ ذَلِكَ، إلَّا أَنْ يَكُونَ مِمَّا عُجِنَ بِهِ الدَّقِيقُ وَطُبِخَ بِهِ الطَّعَامُ شَيْئًا حَلَالًا وَكَانَ مَا رُمِيَ فِيهِ مِنْ الْحَرَامِ قَلِيلًا لَا رِيحَ لَهُ فِيهِ وَلَا طَعْمَ وَلَا لَوْنَ، وَلَا يَظْهَرُ لِلْحَرَامِ فِي ذَلِكَ أَثَرٌ أَصْلًا فَهُوَ حَلَالٌ حِينَئِذٍ، وَقَدْ عَصَى اللَّهَ تَعَالَى مَنْ رَمَى فِيهِ شَيْئًا مِنْهُ، لِأَنَّ الْحَرَامَ إذَا بَطَلَتْ صِفَاتُهُ الَّتِي بِهَا سُمِّيَ بِذَلِكَ الِاسْمِ الَّذِي بِهِ نَصَّ عَلَى تَحْرِيمِهِ فَقَدْ بَطَلَ ذَلِكَ الِاسْمُ عَنْهُ وَإِذَا بَطَلَ ذَلِكَ الِاسْمُ سَقَطَ التَّحْرِيمُ، لِأَنَّهُ إنَّمَا حَرَّمَ مَا يُسَمَّى بِذَلِكَ الِاسْمِ كَالْخَمْرِ، وَالدَّمِ، وَالْمَيْتَةِ، فَإِذَا اسْتَحَالَ الدَّمُ لَحْمًا، أَوْ الْخَمْرُ خَلًّا، أَوْ الْمَيْتَةُ بِالتَّغَذِّي أَجْزَاءً فِي الْحَيَوَانِ الْآكِلِ لَهَا مِنْ الدَّجَاجِ، وَغَيْرِهِ فَقَدْ سَقَطَ التَّحْرِيمُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L16950 Whoever opposes this position would consequently be obliged to prohibit milk, as it is blood transformed into milk, and to prohibit dates and crops irrigated with excrement and urine. Conversely, they would also be compelled to permit excrement and urine themselves, since they are originally permissible food and water that have transformed into entities explicitly prohibited by name in textual sources. The prohibition of dough or food cooked with them arises from the pervasive effect of their essence throughout the entire mixture. However, when the effect originates from a permissible substance while the prohibited element leaves no trace, we have now clarified what suffices. It has been narrated through Ibn Abi Shaybah's chain from Muhammad ibn Yazid, from Dawud ibn Amr, from Makhul, from Abu al-Darda regarding *murri* (a fermented sauce) mixed with wine. He said: "There is no harm in it, for fire and salt have nullified it."

وَمَنْ خَالَفَ هَذَا لَزِمَهُ أَنْ يُحَرِّمَ اللَّبَنَ، لِأَنَّهُ دَمٌ اسْتَحَالَ لَبَنًا، وَأَنْ يُحَرِّمَ التَّمْرَ وَالزَّرْعَ الْمَسْقِيَّ بِالْعَذِرَةِ وَالْبَوْلِ، وَلَزِمَهُ أَنْ يُبِيحَ الْعَذِرَةَ وَالْبَوْلَ، لِأَنَّهُمَا طَعَامٌ، وَمَاءٌ حَلَالَانِ اسْتَحَالَا إلَى اسْمٍ مَنْصُوصٍ عَلَى تَحْرِيمِ الْمُسَمَّى بِهِ. وَأَمَّا تَحْرِيمُ مَا عُجِنَ أَوْ طُبِخَ بِهِ، فَلِظُهُورِ أَثَرِهِ فِي جَمِيعِ الشَّيْءِ الْمَعْجُونِ وَالْمَطْبُوخِ، وَأَمَّا إذَا كَانَ الْأَثَرُ لِشَيْءٍ حَلَالٍ، وَكَانَ الْحَرَامُ لَا أَثَرَ لَهُ، فَقَدْ قُلْنَا الْآنَ مَا يَكْفِي -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ يَزِيدَ عَنْ دَاوُد بْنِ عَمْرٍو عَنْ مَكْحُولٍ عَنْ أَبِي الدَّرْدَاءِ: فِي الْمُرِّيِّ يُجْعَلُ فِيهِ الْخَمْرُ؟ قَالَ: لَا بَأْسَ بِهِ، ذَبَحَتْهُ النَّارُ وَالْمِلْحُ.

A legal question on the permissibility of eating cheese curdled with rennet from an animal that died without proper Islamic slaughter.

[مَسْأَلَةٌ أَكْلُ جُبْنٍ عُقِدَ بِإِنْفَحَةِ مَيْتَةٍ]

L16952 Issue 1019: It is not permissible to eat cheese coagulated with the rennet of a non-slaughtered carcass because its effect is evident in it - since it is the rennet that coagulates it, as per what was mentioned earlier. Likewise, everything mixed with impermissible substances, and with Allah, the Exalted, is success.

١٠١٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ جُبْنٍ عُقِدَ بِإِنْفَحَةِ مَيْتَةٍ لِأَنَّ أَثَرَهَا ظَاهِرٌ فِيهِ وَهُوَ عَقْدُهَا لَهُ لِمَا ذَكَرْنَا آنِفًا وَهَكَذَا كُلُّ مَا مُزِجَ بِحَرَامٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue concerning that in which a dog has lapped.

[مَسْأَلَةٌ مَا وَلَغَ فِيهِ الْكَلْبُ]

L16954 Issue 1020: It is not permissible to consume anything a dog has lapped into, due to the command of the Messenger of Allah (peace be upon him) to pour it out. If the dog ate from it without having lapped into it, all of it is permissible. We have already detailed this issue in the Book of Purification, making its repetition unnecessary. And success is from Allah, the Exalted.

١٠٢٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ مَا وَلَغَ فِيهِ الْكَلْبُ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَرْقِهِ، فَإِنْ أَكَلَ مِنْهُ وَلَمْ يَلَغْ فِيهِ فَهُوَ كُلُّهُ حَلَالٌ - وَقَدْ تَقَصَّيْنَا هَذِهِ الْمَسْأَلَةَ فِي كِتَابِ الطَّهَارَةِ فَأَغْنَى عَنْ إعَادَتِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An issue: Eating from the middle of the food.

[مَسْأَلَةٌ الْأَكْلُ مِنْ وَسَطِ الطَّعَامِ]

L16956 1021 - Issue: It is not permissible to eat from the middle of the dish, nor

to eat from what is not nearest to you, whether it is a single type or various types. If a person takes a portion from what is near others, places it before himself, leaves it, then takes it and eats it, there is no blame on him for doing so. We were narrated through the chain of Sufyān ibn ʿUyaynah, who narrated from ʿAṭāʾ ibn al-Sāʾib, who said: Saʿīd ibn Jubayr told us: I heard Ibn ʿAbbās say: The Messenger of Allah—peace and blessings be upon him—said: "Blessing descends in the middle of the dish, so eat from its sides and do not eat from its middle." The narration of Sufyān, Shuʿbah, and Ḥammād ibn Zayd from ʿAṭāʾ ibn al-Sāʾib was before his reports became mixed. From the chain of al-Bukhārī: ʿAbd al-ʿAzīz ibn ʿAbd Allāh al-Uwaysī narrated to us: Muḥammad ibn Jaʿfar narrated from Muḥammad ibn ʿAmr ibn Ḥalḥalah al-Dīlī from Wahb ibn Kaysān Abū Nuʿaym from ʿUmar ibn Abī Salamah al-Makhzūmī: "The Messenger of Allah—peace and blessings be upon him—said to him: 'Eat from what is nearest to you.'"

١٠٢١ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْأَكْلُ مِنْ وَسَطِ الطَّعَامِ وَلَا أَنْ تَأْكُلَ مِمَّا لَا يَلِيكَ سَوَاءٌ كَانَ صِنْفًا وَاحِدًا أَوْ أَصْنَافًا شَتَّى، فَلَوْ أَنَّ الْمَرْءَ أَخَذَ شَيْئًا مِمَّا يَلِي غَيْرَهُ ثُمَّ جَعَلَهُ أَمَامَ نَفْسِهِ وَتَرَكَهُ ثُمَّ أَخَذَهُ فَأَكَلَهُ فَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ. رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ قَالَ: نا عَطَاءُ بْنُ السَّائِبِ قَالَ: قَالَ لَنَا سَعِيدُ بْنُ جُبَيْرٍ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَرَكَةُ تَنْزِلُ وَسَطَ الطَّعَامِ فَكُلُوا مِنْ نَوَاحِيهِ وَلَا تَأْكُلُوا مِنْ وَسَطِهِ» سَمَاعُ سُفْيَانَ، وَشُعْبَةَ، وَحَمَّادِ بْنِ زَيْدٍ مِنْ عَطَاءِ بْنِ السَّائِبِ كَانَ قَبْلَ اخْتِلَاطِهِ. وَمِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ الْأُوَيْسِيُّ نا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَلْحَلَةَ الدِّيلِيِّ عَنْ وَهْبِ بْنِ كَيْسَانَ أَبِي نُعَيْمٍ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ الْمَخْزُومِيِّ: " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «كُلْ مِمَّا يَلِيكَ» .

L16957–16958 From the path of Ahmad ibn Shu'ayb: I am Abdullah ibn al-Sabbah al-Attar, narrated by Abd al-A'la, narrated by Ma'mar, from Hisham ibn Urwah, from his father, from Umar ibn Abi Salamah: "The Messenger of Allah—peace and blessings be upon him—said to him: 'Come closer, my son. Mention Allah's name, eat with your right hand, and eat from what is nearest to you.'" He—peace be upon him—did not specify a specific category among categories. Those who differentiate cited a narration we have reported through the path of Muhammad ibn Jarir al-Tabari: Narrated by Muhammad ibn al-Muthanna, narrated by al-Ala ibn al-Fadl ibn Abd al-Malik ibn Abi Sawiyyah al-Munqiri, narrated by Abu al-Hudhayl: "Ubaydullah ibn Ikraash ibn Dhu'ayb narrated from his father: He was with the Messenger of Allah—peace and blessings be upon him—when they brought a portion of tharid. The Messenger of Allah—peace and blessings be upon him—said to him: 'O Ikraash, eat from one place, for it is a single dish.' Then they brought a platter containing varieties of fresh dates or dried dates, and the Messenger of Allah—peace and blessings be upon him—said to him: 'O Ikraash, eat from wherever you wish, for

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ اللَّهِ بْنُ الصَّبَّاحِ الْعَطَّارُ نا عَبْدُ الْأَعْلَى نا مَعْمَرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ «عُمَرَ بْنِ أَبِي سَلَمَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: ادْنُهْ يَا بُنَيَّ فَسَمِّ اللَّهَ وَكُلْ بِيَمِينِكَ وَكُلْ مِمَّا يَلِيكَ» فَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - صِنْفًا مِنْ أَصْنَافٍ. وَذَكَرَ الْمُفَرِّقُونَ بَيْنَ ذَلِكَ خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا الْعَلَاءُ بْنُ الْفَضْلِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَبِي سَوِيَّةَ الْمُنْقِرِيُّ نا أَبُو الْهُذَيْلِ حَدَّثَنِي «عُبَيْدُ اللَّهِ بْنُ عِكْرَاشِ بْنِ ذُؤَيْبٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَتَوْا بِحَفْنَةٍ مِنْ ثَرِيدٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا عِكْرَاشُ كُلْ مِنْ مَوْضِعٍ وَاحِدٍ فَإِنَّهُ طَعَامٌ وَاحِدٌ ثُمَّ أَتَيْنَا بِطَبَقٍ فِيهِ أَلْوَانٌ مِنْ رُطَبٍ أَوْ تَمْرٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا عِكْرَاشُ

this is not a single dish.' He said: 'The Prophet's hand—peace and blessings be upon him—moved freely around the platter.'" However, Ubaydullah ibn Ikraash ibn Dhu'ayb is extremely weak and cannot be relied upon. It is impermissible to ascribe such a statement to the Messenger of Allah—peace and blessings be upon him—because food scarcely exists without comprising multiple categories except in rare instances. Tharid contains meat and bread, and perhaps onion and chickpeas, and broth similarly. Meat includes liver, fat, flesh, breast, and back, as do most things. If they cite the hadith of Anas: "A man invited the Messenger of Allah—peace and blessings be upon him—so I accompanied him. A broth containing pumpkin was brought, and the Messenger of Allah—peace and blessings be upon him—ate from that pumpkin which he favored. Anas said: 'I kept placing it near him without eating it.'" In another narration from some reliable narrators: "I saw the Messenger of Allah—peace and blessings be upon him—seeking the pumpkin around the dish." This is a sound report.

كُلْ مِنْ حَيْثُ شِئْتَ فَإِنَّهُ غَيْرُ طَعَامٍ وَاحِدٍ، قَالَ: وَجَالَتْ يَدُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الطَّبَقِ» فَعُبَيْدُ اللَّهِ بْنُ الْعِكْرَاشِ بْنِ ذُؤَيْبٍ ضَعِيفٌ جِدًّا لَا يُحْتَجُّ بِهِ، وَمِثْلُ هَذَا لَا يَجُوزُ أَنْ يَقُولَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ لَا يَكَادُ يُوجَدُ طَعَامٌ لَا يَكُونُ أَصْنَافًا إِلَّا فِي النُّدْرَةِ، فَالثَّرِيدُ فِيهِ لَحْمٌ وَخُبْزٌ، وَرُبَّمَا بَصَلٌ وَحِمَّصٌ وَالْمَرَقُ كَذَلِكَ، وَيَكُونُ فِي اللَّحْمِ كَبِدٌ وَشَحْمٌ وَلَحْمٌ وَصُدْرَةٌ وَظَهْرٌ، وَهَكَذَا فِي أَكْثَرِ الْأَشْيَاءِ. فَإِنْ ذَكَرُوا حَدِيثَ أَنَسٍ: «دَعَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلٌ فَانْطَلَقْتُ مَعَهُ فَجِيءَ بِمَرَقَةٍ فِيهَا دُبَّاءُ فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْكُلُ مِنْ ذَلِكَ الدُّبَّاءِ وَتُعْجِبُهُ، قَالَ أَنَسٌ: فَجَعَلْتُ أُلْقِيهِ إِلَيْهِ وَلَا أَطْعَمُهُ» . وَفِيهِ أَيْضًا فِي رِوَايَةِ بَعْضِ الثِّقَاتِ: «فَرَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَتَتَبَّعُ الدُّبَّاءَ مِنْ حَوْلِ الصَّحْفَةِ» فَإِنَّ هَذَا خَبَرٌ صَحِيحٌ.

L16959–16961 Some adherents of the literalist school said this applied specifically to the gourd. Abu Muhammad stated: This is not our position because it is an action of the Messenger of Allah (peace and blessings be upon him) without him stating it was exclusive to the gourd. Therefore, it is not appropriate for us to make such a statement. Rather, we say: This narration aligns with the established foundational principle. It was undoubtedly permissible before his instruction (peace be upon him) to "eat from what is nearest to you," and thus it is conclusively abrogated by his command (peace be upon him) to eat from what lies before the eater. Whoever claims the abrogated ruling has reverted to permissibility cannot be accepted without proof, for this is a baseless assertion. Moreover, upon examining this narration, we found it contains absolutely no explicit text or indication that... - Peace be upon him - took the gourd from what was not adjacent to him. Whoever claims this has made a false claim and uttered what is not in the *hadith*. The gourd might have been on the sides of the dish from what was adjacent to the Prophet - peace and blessings of Allah be upon him - to his right and left, where he

وَقَدْ قَالَ بَعْضُ أَهْلِ الظَّاهِرِ إِنَّمَا هَذَا فِي الدُّبَّاءِ خَاصَّةً. قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ هَذَا عِنْدَنَا كَذَلِكَ لِأَنَّهُ فِعْلٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَقُلْ: إِنَّهُ خَاصٌّ بِالدُّبَّاءِ، فَلَا يَنْبَغِي لَنَا أَنْ نَقُولَهُ، لَكِنْ نَقُولُ: إِنَّ هَذَا الْخَبَرَ مُوَافِقٌ لِمَعْهُودِ الْأَصْلِ، وَقَدْ كَانَ ذَلِكَ بِلَا شَكٍّ مُبَاحًا قَبْلَ أَنْ يَقُولَ - عَلَيْهِ السَّلَامُ -: «كُلْ مِمَّا يَلِيكَ» فَهُوَ مَنْسُوخٌ بِيَقِينٍ بِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِالْأَكْلِ مِمَّا يَلِي الْآكِلَ، وَمَنْ ادَّعَى أَنَّ الْمَنْسُوخَ عَادَ مُبَاحًا لَمْ يُصَدَّقْ إِلَّا بِبُرْهَانٍ لِأَنَّهُ دَعْوَى بِلَا دَلِيلٍ. وَأَيْضًا فَإِنَّ هَذَا الْخَبَرَ لَمَّا تَدَبَّرْنَاهُ وَجَدْنَاهُ لَيْسَ فِيهِ أَلْبَتَّةَ لَا نَصٌّ وَلَا دَلِيلٌ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - أَخَذَ الدُّبَّاءَ مِمَّا لَا يَلِيهِ وَمَنْ ادَّعَى هَذَا فَقَدْ ادَّعَى الْبَاطِلَ وَقَالَ مَا لَيْسَ فِي الْحَدِيثِ. وَقَدْ يَكُونُ الدُّبَّاءُ فِي نَوَاحِي

would seek it out from what was adjacent to him in all such instances. This alone is the permissible interpretation of the report, and none other may be adopted.

L16962 Since there is nothing in it that the dissenter presumes at all, their argument is invalidated—and all praise is due to Allah. When a person takes something from outside his immediate reach and places it before him, the prohibition applies only to eating from what is not within his immediate reach. In this case, he did not eat from what was outside his reach. Once it is placed before him, he may then eat it, as it is now within his immediate reach. Khalid ibn al-Walid once dragged a spiny-tailed lizard (dabb) toward himself from the hands of the Messenger of Allah—peace be upon him—and ate it, and the Prophet—peace be upon him—did not disapprove of that. We will mention this, if Allah the Exalted wills, in the chapter on the dabb. And with Allah alone is success.

L16963 **An issue: Whoever eats alone should only eat from what is directly in front of him.**

L16964 1022. Issue: If a person eats alone, he must eat only from what lies adjacent to him, as we previously mentioned. If he rotates the communal dish, he may do so since this is not prohibited. However, if the food belongs to another, it is impermissible for him to rotate the communal dish, for the one who placed it has the greater right over its placement. He was permitted only to eat from what is near him, not to rotate it. If both the communal dish and the food belong to him, he may rotate it as he pleases and lift it when he wishes, since it is his property. He must still eat only from what lies adjacent to him, for the Prophet's command (peace be upon him) regarding this is general.

L16965 And Allah, the Most High, said: "The Prophet has more right over the believers than their own selves" [Al-Ahzab: 6]. And He, the Most High, said: "It is not for a believing man nor a believing woman, when Allah and His

الصَّحْفَةِ مِمَّا يَلِي النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ يَمِينِهِ وَيَسَارِهِ فَيَتَتَبَّعُهُ مِمَّا يَلِيهِ فِي كُلِّ ذَلِكَ، وَهَذَا الَّذِي لَا يَجُوزُ أَنْ يُحْمَلَ الْخَبَرُ عَلَى مَا سِوَاهُ.

إذْ لَيْسَ فِيهِ مَا يَظُنُّ الْمُخَالِفُ أَصْلًا -: فَبَطَلَ تَعَلُّقُهُمْ بِهِ وَلِلَّهِ الْحَمْدُ. فَإِذَا أَخَذَ الْمَرْءُ الشَّيْءَ مِمَّا لَا يَلِيهِ ثُمَّ جَعَلَهُ أَمَامَهُ فَإِنَّمَا نَهَى عَنْ أَنْ يَأْكُلَ مِمَّا لَا يَلِيهِ، وَهَذَا لَمْ يَأْكُلْ مِمَّا لَا يَلِيهِ فَإِذَا صَارَ أَمَامَهُ فَلَهُ أَكْلُهُ حِينَئِذٍ، لِأَنَّهُ مِمَّا يَلِيهِ - وَقَدْ اجْتَرَّ خَالِدُ بْنُ الْوَلِيدِ الضَّبَّ مِنْ يَدَيْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَكَلَهُ وَلَمْ يُنْكِرْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ - وَسَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي بَابِ الضَّبِّ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ أَكَلَ وَحْدَهُ فَلَا يَأْكُلُ إلَّا مِمَّا يَلِيهِ]

١٠٢٢ - مَسْأَلَةٌ: وَمَنْ أَكَلَ وَحْدَهُ فَلَا يَأْكُلُ إلَّا مِمَّا يَلِيهِ لِمَا ذَكَرْنَا آنِفًا فَإِنْ أَدَارَ الصَّحْفَةَ فَلَهُ ذَلِكَ، لِأَنَّهُ لَمْ يُنْهَ عَنْ ذَلِكَ، فَإِنْ كَانَ الطَّعَامُ لِغَيْرِهِ لَمْ يَجُزْ لَهُ أَنْ يُدِيرَ الصَّحْفَةَ لِأَنَّ وَاضِعَهَا أَمْلَكُ بِوَضْعِهَا، وَلَمْ يَجْعَلْ لَهُ إدَارَتَهَا إنَّمَا جَعَلَ لَهُ الْأَكْلَ مِمَّا يَلِيهِ فَقَطْ، فَإِنْ كَانَتْ الْقَصْعَةُ وَالطَّعَامُ لَهُ فَلَهُ أَنْ يُدِيرَهَا كَمَا يَشَاءُ، وَأَنْ يَرْفَعَهَا إذَا شَاءَ، لِأَنَّهُ مَالُهُ وَلَيْسَ لَهُ أَنْ يَأْكُلَ إلَّا مِمَّا يَلِيهِ، لِأَنَّ أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ عُمُومٌ.

وَقَالَ اللَّهُ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦] . وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

Messenger have decreed a matter, that there should be for them any choice in their matter" [Al-Ahzab: 36].[57]

L16966 **An issue: Saying "Bismillāh" (In the name of Allah) is obligatory for every eater when beginning to eat.**

L16967 Issue 1023: The tasmiyah (mentioning Allah's name) is obligatory upon every eater when beginning one's meal. It is impermissible for anyone to eat with the left hand unless incapable, in which case one may use it, based on the command of the Prophet (peace and blessings be upon him) to Umar ibn Abi Salamah as previously mentioned regarding tasmiyah and eating with the right hand. Through the transmission of al-Layth from Abu al-Zubayr from Jabir from the Prophet (peace and blessings be upon him): "Do not eat with the left hand, for indeed Satan eats with the left hand." This constitutes a general prohibition against eating with one's own left hand or from another's left hand. If one is incapable, then Allah the Exalted states: {Allah does not burden any soul beyond its capacity} [Al-Baqarah 2:286]. The Prophet (peace and blessings be upon him) said: "When I command you to do something, fulfill it as much as you are able."[58]

L16968–16970 And whoever presumes to legislate, deeming some injunctions obligatory and others recommended, has indeed attributed to Allah and His Messenger what they did not say. knowledge he possesses thereof, and the Exalted said: "And you utter with your mouths what you have no knowledge of, and you deem it trivial while it is tremendous with Allah" [An-Nur: 15].[59]

L16971 **Issue: Eating from the Vessels of the People of the Book**

L16972 1024. Issue: It is not permissible to eat from the vessels of the People of the Book unless they are washed with water when no alternative vessels are available. This is based on what we narrated through Muslim's chain: Hannād ibn Sarriyy narrated to us, ʿAbdullāh ibn al-Mubārak narrated to us

[57] **Qur'an references (L16965):** Qur'an 33:6 (Al-Ahzab); Qur'an 33:36 (Al-Ahzab).
[58] **Qur'an references (L16967):** Qur'an 2:286 (Al-Baqarah).
[59] **Qur'an references (L16968):** Qur'an 24:15 (An-Nur).

[مَسْأَلَةٌ تَسْمِيَةُ اللَّهِ تَعَالَى فَرْضٌ عَلَى كُلِّ آكِلٍ عِنْدَ ابْتِدَاءِ أَكْلِهِ]

١٠٢٣ - مَسْأَلَةٌ: وَتَسْمِيَةُ اللَّهِ تَعَالَى فَرْضٌ عَلَى كُلِّ آكِلٍ عِنْدَ ابْتِدَاءِ أَكْلِهِ وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَأْكُلَ بِشِمَالِهِ إِلَّا أَنْ لَا يَقْدِرَ فَيَأْكُلَ بِشِمَالِهِ لِأَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُمَرَ بْنَ أَبِي سَلَمَةَ الَّذِي ذَكَرْنَا آنِفًا بِالتَّسْمِيَةِ وَالْأَكْلِ بِالْيَمِينِ. وَمِنْ طَرِيقِ اللَّيْثِ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَأْكُلُوا بِالشِّمَالِ فَإِنَّ الشَّيْطَانَ يَأْكُلُ بِالشِّمَالِ» وَهَذَا عُمُومٌ فِي النَّهْيِ عَنْ شِمَالِهِ وَشِمَالِ غَيْرِهِ فَإِنْ عَجَزَ فَاَللَّهُ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] . وَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

وَمَنْ تَحَكَّمَ فَجَعَلَ بَعْضَ الْأَوَامِرِ فَرْضًا وَبَعْضَهَا نَدْبًا فَقَدْ قَالَ عَلَى اللَّهِ وَرَسُولِهِ مَا لَا عِلْمَ لَهُ بِهِ، وَقَالَ تَعَالَى: {وَتَقُولُونَ بِأَفْوَاهِكُمْ مَا لَيْسَ لَكُمْ بِهِ عِلْمٌ وَتَحْسَبُونَهُ هَيِّنًا وَهُوَ عِنْدَ اللَّهِ عَظِيمٌ} [النور: ١٥] .

[مَسْأَلَةُ الْأَكْلُ فِي آنِيَةِ أَهْلِ الْكِتَابِ]

١٠٢٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْأَكْلُ فِي آنِيَةِ أَهْلِ الْكِتَابِ حَتَّى تُغْسَلَ بِالْمَاءِ إذَا لَمْ يَجِدْ غَيْرَهَا أَيْضًا لِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا هَنَّادُ بْنُ سَرِيٍّ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ حَيْوَةَ بْنِ شُرَيْحٍ قَالَ: سَمِعْت رَبِيعَةَ بْنِ يَزِيدَ الدِّمَشْقِيِّ يَقُولُ: نا أَبُو إدْرِيسَ عَائِذُ اللَّهِ الْخَوْلَانِيِّ قَالَ: سَمِعْت «أَبَا ثَعْلَبَةَ الْخُشَنِيَّ يَقُولُ: قُلْتُ: يَا رَسُولَ اللَّهِ إنَّا بِأَرْضِ قَوْمٍ

from Ḥaywah ibn Shurayḥ, who said: I heard Rabīʿah ibn Yazīd al-Dimashqī say: Abū Idrīs ʿĀ'idhullāh al-Khawlānī narrated to us, saying: I heard Abū Thaʿlabah al-Khushanī say: I asked, "O Messenger of Allah, we are in a land of People of the Book. May we eat from their vessels?" He (peace be upon him) replied, "Regarding your mention of being in a land of People of the Book and eating from their vessels: if you find vessels other than theirs, do not eat from theirs. If you find no alternative, wash them with water and eat from them."

Ḥammām narrated to us, ʿAbbās ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us, Abū Yaḥyā ibn Abī Masarrat narrated to us, al-Nuʿmān ibn Muḥammad al-Munqirī narrated to us: Ḥammād reported from Qatādah and Ayyūb al-Sikhtiyānī, from Abū Qilābah, from Abū Asmā' al-Raḥabī, from Abū Thaʿlabah al-Khushanī: I said, "O Messenger of Allah, we are in a land of People of the Book. May we cook in their pots and drink from their vessels?" He said, "If you find no alternative, wash them with water, then cook and drink from them."

Yūnus ibn ʿAbdillāh narrated to us, Abū ʿĪsā ibn Abī ʿĪsā narrated to us, Aḥmad ibn Khālid narrated to us, Ibn Waḍḍāḥ narrated to us, Abū Bakr ibn Abī Shaybah narrated to us, Muḥammad ibn Bishr narrated to us, Saʿīd ibn Abī ʿArūbah narrated to us, from Ayyūb al-Sikhtiyānī, from Abū Qilābah, from Abū Thaʿlabah al-Khushanī: He said, "O Messenger of Allah, grant me a written assignment of land?" He replied, "How can I write for you when it is in enemy territory?" Abū Thaʿlabah said, "By Him who sent you with the truth, you will indeed possess what lies beneath their feet." This pleased the Messenger of Allah (peace and blessings of Allah be upon him). The ḥadīth continues, including his question: "O Messenger of Allah, we are in a land whose inhabitants are People of the Book. We need to use their pots and vessels." The Prophet said, "Do not use them if you find an alternative. If you find no alternative, wash them with water, then cook and drink."

L16973–16975 Abu Muhammad said: A group who have opposed this authentic report have relied upon a report that we narrated through the chain of Abu Dawud al-Sijistani → Nasr ibn 'Asim al-Antaki → Muhammad ibn Shu'ayb → Abdullah ibn al-'Ala' ibn Zabr. From Abu Abdullah Muslim ibn Mishkam: From

أَهْلِ كِتَابٍ نَأْكُلُ فِي آنِيَتِهِمْ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: أَمَّا مَا ذَكَرْتَ أَنَّكُمْ بِأَرْضِ قَوْمٍ أَهْلِ كِتَابٍ تَأْكُلُونَ فِي آنِيَتِهِمْ فَإِنْ وَجَدْتُمْ غَيْرَ آنِيَتِهِمْ فَلَا تَأْكُلُوا فِيهَا. وَإِنْ لَمْ تَجِدُوا فَاغْسِلُوهَا وَكُلُوا فِيهَا» . نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَبُو يَحْيَى بْنُ أَبِي مَسَرَّةَ نا النُّعْمَانُ بْنُ مُحَمَّدٍ الْمُنْقِرِيُّ أَنَا حَمَّادٌ عَنْ قَتَادَةَ وَأَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي أَسْمَاءَ الرَّحَبِيِّ «عَنْ أَبِي ثَعْلَبَةَ الْخُشَنِيِّ قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّا بِأَرْضِ أَهْلِ كِتَابٍ أَفَنَطْبُخُ فِي قُدُورِهِمْ وَنَشْرَبُ فِي آنِيَتِهِمْ؟ قَالَ: إِنْ لَمْ تَجِدُوا غَيْرَهَا فَارْحَضُوهَا بِالْمَاءِ ثُمَّ اطْبُخُوا فِيهَا وَاشْرَبُوا» . نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَبُو عِيسَى بْنِ أَبِي عِيسَى نا أَحْمَدُ بْنُ خَالِدٍ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ مُحَمَّدِ بْنِ بِشْرٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ أَيُّوبَ هُوَ السِّخْتِيَانِيُّ عَنْ أَبِي قِلَابَةَ «عَنْ أَبِي ثَعْلَبَةَ الْخُشَنِيِّ أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ اكْتُبْ لِي بِأَرْضٍ؟ قَالَ: كَيْفَ أَكْتُبُ لَكَ وَهِيَ بِأَرْضِ الْحَرْبِ؟ قَالَ: وَالَّذِي بَعَثَكَ بِالْحَقِّ لَتَمْلِكَنَّ مَا تَحْتَ أَقْدَامِهِمْ، فَأَعْجَبَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرَ الْحَدِيثَ وَفِيهِ: أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ إِنَّا بِأَرْضٍ أَهْلُهَا أَهْلُ كِتَابٍ نَحْتَاجُ مِنْهَا إِلَى قُدُورِهِمْ وَآنِيَتِهِمْ، فَقَالَ: لَا تَقْرَبُوهَا مَا وَجَدْتُمْ مِنْهَا بُدًّا، فَإِذَا لَمْ تَجِدُوا بُدًّا فَاغْسِلُوهَا بِالْمَاءِ وَاطْبُخُوا وَاشْرَبُوا» .

قَالَ أَبُو مُحَمَّدٍ: وَتَعَلَّقَ قَوْمٌ قَدْ خَالَفُوا هَذَا الْخَبَرَ الثَّابِتَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا نَصْرُ بْنُ عَاصِمٍ الْأَنْطَاكِيُّ نا مُحَمَّدُ بْنُ شُعَيْبٍ نا عَبْدُ اللَّهِ بْنُ الْعَلَاءِ بْنِ زَبْرٍ

Abu Tha'labah al-Khushani that he asked the Messenger of Allah (peace and blessings be upon him): "We live adjacent to the People of the Book, and they cook pork in their pots and drink wine in their vessels?" The Messenger of Allah (peace and blessings be upon him) responded: "If you find other vessels, eat and drink from them. If you find no others, rinse them with water and then eat and drink." Abu Muhammad said: This is a weak narration, for it includes 'Abdullah ibn al-'Ala' ibn Zabr – who is not renowned – and Muslim ibn Mishkam, who is an unknown narrator.[60]

عَنْ أَبِي عَبْدِ اللَّهِ مُسْلِمِ بْنِ مِشْكَمٍ «عَنْ أَبِي ثَعْلَبَةَ الْخُشَنِيِّ: أَنَّهُ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: إِنَّا نُجَاوِرُ أَهْلَ الْكِتَابِ وَهُمْ يَطْبُخُونَ فِي قُدُورِهِمْ الْخِنْزِيرَ، وَيَشْرَبُونَ فِي آنِيَتِهِمْ الْخَمْرَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ وَجَدْتُمْ غَيْرَهَا فَكُلُوا فِيهَا وَاشْرَبُوا، وَإِنْ لَمْ تَجِدُوا غَيْرَهَا فَارْحَضُوهَا بِالْمَاءِ وَكُلُوا وَاشْرَبُوا» . قَالَ أَبُو مُحَمَّد: هَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّ فِيهِ عَبْدَ اللَّهِ بْنَ الْعَلَاءِ بْنِ زَبْرٍ وَلَيْسَ بِمَشْهُورٍ وَمُسْلِمَ بْنَ مِشْكَمٍ وَهُوَ مَجْهُولٌ.

The Issue of Eating Intoxicants

[مَسْأَلَةٌ أَكْلُ السَّيْكَرَانِ]

Issue 1025: It is not permissible to consume _sakarān_ due to the Prophet's prohibition—may Allah bless him and grant him peace—against all intoxicants, for _sakarān_ is intoxicating. If some people adulterate it with milk and darnel, it is not as they assumed, because milk and darnel are sedatives that nullify movement without causing intoxication, whereas _sakarān_ and _khamr_ are intoxicants that neither sedate nor nullify movement. And success comes from Allah, the Most High.

١٠٢٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَكْلُ السَّيْكَرَانِ لِتَحْرِيمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّ مُسْكِرٍ، وَالسَّيْكَرَانُ مُسْكِرٌ - فَإِنْ مَوَّهَ قَوْمٌ بِاللَّبَنِ وَالزُّوَانِ فَلَيْسَ كَمَا ظَنُّوا لِأَنَّ اللَّبَنَ وَالزُّوَانَ مُخَدِّرَانِ مُبْطِلَانِ لِلْحَرَكَةِ لَا يُسْكِرَانِ، وَالسَّيْكَرَانُ وَالْخَمْرُ مُسْكِرَانِ لَا يُخَدِّرَانِ وَلَا يُبْطِلَانِ الْحَرَكَةَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Forbidden foods and drinks become lawful in cases of necessity.

[مَسْأَلَةٌ مَا حَرُمَ مِنْ الْمَآكِلِ وَالْمَشَارِبِ حَلَالٌ عِنْدَ الضَّرُورَةِ]

1026. Issue: Every food and drink that Allah the Almighty has forbidden—such as pork, unlawful game, carrion, blood, the flesh of predatory animals, birds, four-legged animals, insects, intoxicants, or anything else—all becomes permissible under necessity, except for human flesh and anything that kills the one who consumes it; these remain absolutely impermissible neither by necessity nor otherwise. If someone is compelled to consume any of the aforementioned items and cannot find the property of a Muslim or a *Dhimmi*, they may eat until satisfied and take provisions until lawful means are found. Once lawful means become available, the previously permitted

١٠٢٦ - مَسْأَلَةٌ - وَكُلُّ مَا حَرَّمَ اللَّهُ عَزَّ وَجَلَّ مِنْ الْمَآكِلِ وَالْمَشَارِبِ مِنْ خِنْزِيرٍ أَوْ صَيْدٍ حَرَامٍ، أَوْ مَيْتَةٍ، أَوْ دَمٍ، أَوْ لَحْمِ سَبُعٍ أَوْ طَائِرٍ، أَوْ ذِي أَرْبَعٍ، أَوْ حَشَرَةٍ، أَوْ خَمْرٍ، أَوْ غَيْرِ ذَلِكَ: فَهُوَ كُلُّهُ عِنْدَ الضَّرُورَةِ حَلَالٌ - حَاشَا لُحُومِ بَنِي آدَمَ - وَمَا يُقْتَلُ مَنْ تَنَاوَلَهُ -: فَلَا يَحِلُّ مِنْ ذَلِكَ شَيْءٌ أَصْلًا لَا بِضَرُورَةٍ وَلَا بِغَيْرِهَا. فَمَنْ اُضْطُرَّ إلَى شَيْءٍ مِمَّا ذَكَرْنَا قَبْلُ وَلَمْ يَجِدْ مَالَ مُسْلِمٍ أَوْ ذِمِّيٍّ -: فَلَهُ أَنْ يَأْكُلَ حَتَّى يَشْبَعَ، وَيَتَزَوَّدَ حَتَّى يَجِدَ حَلَالًا، فَإِذَا وَجَدَهُ عَادَ الْحَلَالُ مِنْ ذَلِكَ حَرَامًا كَمَا كَانَ عِنْدَ ارْتِفَاعِ الضَّرُورَةِ.

[60] **Hadith references (L16973):** Sunan Abi Dawud 3839.

items revert to being forbidden, as they were before the necessity ceased. The definition of necessity is when a person remains for a day and a night without finding anything to eat or drink. If they fear harmful debilitating weakness that, if prolonged, would lead to death, or if it prevents them from continuing their journey or duties, it becomes permissible for them to consume whatever wards off death by hunger or thirst. All categories we mentioned are equal in ruling, with no preference for one over another. If they find two or more types, they may eat whichever they choose, since ritual slaughter is not required in such cases. The permissibility of all this under necessity is based on Allah's statement: "He has detailed for you what He has forbidden to you, except when compelled by necessity" (Quran 6:119). Allāh, exalted is He, has abolished the prohibition of what He had exhaustively detailed in its prohibition in cases of necessity, rendering it general without singling out exceptions. Thus, it is impermissible to make exceptions to any part of that.[61]

وَحَدُّ الضَّرُورَةِ أَنْ يبْقَى يوْمًا وَلَيْلَةً لَا يجِدُ فِيهَا مَا يأْكُلُ أَوْ يشْرَبُ، فَإِنْ خَشِيَ الضَّعْفَ الْمُؤْذِيَ الَّذِي إِنْ تَمَادَى أَدَّى إِلَى الْمَوْتِ، أَوْ قَطَعَ بِهِ عَنْ طَرِيقِهِ وَشُغْلِهِ - حَلَّ لَهُ الْأَكْلُ وَالشُّرْبُ فِيمَا يدْفَعُ بِهِ عَنْ نَفْسِهِ الْمَوْتَ بِالْجُوعِ أَوْ الْعَطَشِ. وَكُلُّ مَا ذَكَرْنَا سَوَاءٌ لَا فَضْلَ لِبَعْضِهَا عَلَى بَعْضٍ إِنْ وَجَدَ مِنْهَا نَوْعَيْنِ، أَوْ أَنْوَاعًا فَيأْكُلُ مَا شَاءَ مِنْهَا لِلتَّذْكِيَةِ فِيهَا. أَمَّا تَحْلِيلُ كُلِّ ذَلِكَ لِلضَّرُورَةِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] فَأَسْقَطَ تَعَالَى تَحْرِيمَ مَا فَصَّلَ تَحْرِيمَهُ عِنْدَ الضَّرُورَةِ، فَعَمَّ وَلَمْ يخُصَّ، فَلَا يجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ.

L16982 As for our statement that if one does not find the wealth of a Muslim, this is based on the saying of Allah's Messenger—peace and blessings be upon him—which we narrated through Abu Musa: "Feed the hungry." This means that if he finds the wealth of a Muslim or a dhimmi, he has found wealth from which Allah has commanded that feeding be done. He has a right to it, so he is not compelled to resort to carrion or other prohibited matters. If he is unjustly denied this, he is then compelled. Some scholars specifically prohibited wine—an error, as it constitutes a restriction of the Quran without proof—and this is Mālik's opinion. Abū Ḥanīfah and others opposed him. The Mālikīs argued that wine does not substitute for water—an error refuted by observation, for it is established among us that many addicts among disbelievers and licentious individuals drink no water at all while consuming wine. They contradicted themselves: it is narrated that Mālik permitted seeking aid through wine for one choking on a morsel and commanded him to do that. Yet there is no distinction between seeking its aid in the necessity of choking or thirst—no basis in the Quran, Sunnah, authentic narration, or analogy. Thus, they effectively command him to kill

وَأَمَّا قَوْلُنَا إِذَا لَمْ يجِدْ مَالَ مُسْلِمٍ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَبِي مُوسَى: «أَطْعِمُوا الْجَائِعَ» فَهُوَ إِذَا وَجَدَ مَالَ الْمُسْلِمِ أَوْ الذِّمِّيِّ فَقَدْ وَجَدَ مَالًا قَدْ أَمَرَ اللَّهُ تَعَالَى بِإِطْعَامِهِ مِنْهُ، فَحَقُّهُ فِيهِ، فَهُوَ غَيْرُ مُضْطَرٍّ إِلَى الْمَيْتَةِ وَسَائِرِ الْمُحَرَّمَاتِ، فَإِنْ مُنِعَ ذَلِكَ ظُلْمًا فَهُوَ مُضْطَرٌّ حِينَئِذٍ. وَخَصَّصَ قَوْمٌ الْخَمْرَ بِالْمَنْعِ - وَهَذَا خَطَأٌ لِأَنَّهُ تَخْصِيصٌ لِلْقُرْآنِ بِلَا بُرْهَانٍ - وَهُوَ قَوْلُ مَالِكٍ، وَخَالَفَهُ أَبُو حَنِيفَةَ وَغَيْرُهُ، وَاحْتَجَّ الْمَالِكِيُّونَ بِأَنَّهَا لَا تُرْوَى - وَهَذَا خَطَأٌ مُدْرَكٌ بِالْعِيَانِ، وَقَدْ صَحَّ عِنْدَنَا أَنَّ كَثِيرًا مِنْ الْمُدْمِنِينَ عَلَيْهَا مِنْ الْكُفَّارِ وَالْخِلَاعِ لَا يشْرَبُونَ الْمَاءَ أَصْلًا مَعَ شُرْبِهِمْ الْخَمْرَ. وَقَدْ اضْطَرَبُوا -: فَرُوِيَ عَنْ مَالِكٍ: الِاسْتِغَاثَةُ بِالْخَمْرِ لِمَنْ اخْتَنَقَ بِلُقْمَةٍ وَأَمَرَهُ بِذَلِكَ، وَلَا فَرْقَ بَيْنَ الِاسْتِغَاثَةِ إلَيْهَا فِي ضَرُورَةِ الِاخْتِنَاقِ أَوْ فِي ضَرُورَةِ الْعَطَشِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ صَحِيحَةٍ، وَلَا قِيَاسٍ. فَصَحَّ أَنَّهُمْ آمِرُونَ لَهُ بِقَتْلِ

[61] **Qur'an references (L16979):** Qur'an 6:119 (Al-An'am).

himself, for if he abstains from wine and dies, he becomes the killer of the soul that Allah has forbidden to kill. As for the exception of human flesh, this aligns with our earlier mention of the obligation to bury it, rendering other than that impermissible.

نَفْسِهِ وَأَنَّهُ إِنْ لَمْ يَشْرَبْ الْخَمْرَ فَمَاتَ فَهُوَ قَاتِلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ. وَأَمَّا اسْتِثْنَاءُ لُحُومِ بَنِي آدَمَ فَلِمَا ذَكَرْنَا قَبْلُ مِنْ الْأَمْرِ بِمُوَارَاتِهَا، فَلَا يَحِلُّ غَيْرُ ذَلِكَ.

L16983 As for killing oneself, forbidden matters are permitted solely out of fear of death or harm. Hastening death is unlawful due to Allah's saying: {Do not kill yourselves} [An-Nisā': 29]. Through this same verse, forbidden matters were made permissible out of fear that one abstaining from them would kill themselves, thereby disobeying Allah the Exalted and becoming a killer of an inviolable soul. This constitutes the gravest of major sins after polytheism. As for our stipulation of enduring a day and night without eating, it derives from the Prophet's prohibition—peace and blessings be upon him—against continuous fasting for a day and night. As for our statement that if one fears death or weakness before this duration, it is because they are then compelled by necessity. As for our assertion that no aspect of this holds superiority over another, it rests on Allah's words: {He does not speak from [his own] inclination} [An-Najm: 3], {It is but a revelation revealed} [An-Najm: 4].[62]

وَأَمَّا مَا يُقْتَلُ فَإِنَّمَا أُبِيحَتْ الْمُحَرَّمَاتُ خَوْفَ الْمَوْتِ أَوْ الضَّرَرِ فَاسْتِعْجَالُ الْمَوْتِ لَا يَحِلُّ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] وَبِهَذِهِ الْآيَةِ أَيْضًا حَلَّتْ الْمُحَرَّمَاتُ خَوْفَ أَنْ يَكُونَ الْمُمْتَنِعُ مِنْهَا قَاتِلَ نَفْسِهِ فَيَعْصِي اللَّهَ تَعَالَى بِذَلِكَ وَيَكُونُ قَاتِلَ نَفْسٍ مُحَرَّمَةٍ وَهَذَا أَكْبَرُ الْكَبَائِرِ بَعْدَ الشِّرْكِ. وَأَمَّا تَحْدِيدُنَا ذَلِكَ بِبَقَاءِ يَوْمٍ وَلَيْلَةٍ بِلَا أَكْلٍ فَلِتَحْرِيمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوِصَالَ يَوْمًا وَلَيْلَةً. وَأَمَّا قَوْلُنَا: إنْ خَافَ الْمَوْتَ قَبْلَ ذَلِكَ أَوْ الضَّعْفَ فَلِأَنَّهُ مُضْطَرٌّ حِينَئِذٍ. وَأَمَّا قَوْلُنَا: لَا فَضْلَ لِبَعْضِ ذَلِكَ عَلَى بَعْضٍ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

L16984–16985 It is firmly established that everything the Prophet—peace and blessings of Allah be upon him—prohibited is indeed prohibited by Allah the Exalted, and he—peace and blessings of Allah be upon him—conveyed it to us. All that Allah the Exalted prohibited in the Quran was conveyed to us by the Prophet—peace and blessings of Allah be upon him—for without him, we would not have known the Quran. Thus, it is conclusively established that every prohibition, obligation, or permissibility originates from the Prophet—peace and blessings of Allah be upon him—from Allah, the Almighty and Majestic, with no distinction. Our statement that it is impermissible for a person in the state of consecration (iḥrām) to kill game, or for one permitted [to hunt] within the sacred precincts (ḥaram) to do so as long as they find any of these prohibited things, does not negate this principle but rather extends it. This is because one who finds pork, carrion, blood, or other than that is not

فَصَحَّ أَنَّ كُلَّ شَيْءٍ حَرَّمَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّ اللَّهَ تَعَالَى حَرَّمَهُ وَبَلَّغَهُ هُوَ - عَلَيْهِ السَّلَامُ - إلَيْنَا، وَكُلُّ مَا حَرَّمَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ فَالنَّبِيُّ - عَلَيْهِ السَّلَامُ - بَلَّغَ الْقُرْآنَ إلَيْنَا، وَلَوْلَاهُ مَا عَرَفْنَا مَا هُوَ الْقُرْآنُ. فَصَحَّ يَقِينًا أَنَّ كُلَّ حَرَامٍ، أَوْ كُلَّ مُفْتَرَضٍ، أَوْ كُلَّ حَلَالٍ فَهُوَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ عَزَّ وَجَلَّ وَلَا فَرْقَ. وَلَيْسَ قَوْلُنَا: إنَّهُ لَا يَحِلُّ لِلْمُحْرِمِ قَتْلُ الصَّيْدِ وَلَا لِلْمُحِلِّ فِي الْحَرَمِ مَا دَامَ يَجِدُ شَيْئًا مِنْ هَذِهِ الْمُحَرَّمَاتِ نَاقِضًا لِهَذِهِ الْجُمْلَةِ، بَلْ هُوَ طَرْدٌ لَهَا؛ لِأَنَّ وَاجِدَ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَالدَّمِ، وَغَيْرِ ذَلِكَ غَيْرُ مُضْطَرٍّ مَعَهَا، بَلْ هُوَ وَاجِدُ حَلَالٍ، فَلَيْسَ مُضْطَرًّا إلَى الصَّيْدِ إلَّا حَتَّى لَا يَجِدَ غَيْرَهُ فَيَحِلُّ لَهُ حِينَئِذٍ. وَأَمَّا قَوْلُنَا: لَا مَعْنَى لِلتَّذْكِيَةِ فَلِأَنَّ الذَّكَاةَ إخْرَاجُ

[62] **Qur'an references (L16983):** Qur'an 4:29 (An-Nisa); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

compelled by necessity while these exist. Rather, they have lawful provisions available and are thus not driven to hunt unless no other provisions exist, in which case it becomes permissible for them. As for our statement that ritual slaughter has no applicability here, this is because slaughtering removes the ruling of prohibition from an animal by transitioning it from carrion to lawfully slaughtered. Every animal prohibited by Allah the Exalted is carrion, and thus ritual slaughter has no applicability to carrion—and success is attained only through Allah, the Exalted.

L16986 **A legal question: A highway robber attacked Muslims and could find no food except pigs.**

L16987 Issue 1027: None of the things we mentioned are permissible for one engaged in oppression against Muslims or withholding a rightful obligation. Rather, all such matters are forbidden to him. If he finds no food, he must repent from his state, cease oppression, and then eat and drink from what necessity compels him to consume—provided it is lawful for him. Should he refuse, he becomes a disobedient sinner against Allah the Exalted—a consumer of unlawful things. The proof lies in Allah's words: "But whoever is driven by necessity in famine, without inclining to sin, then Allah is Forgiving, Merciful" (5:3), and His words: "But whoever is compelled by necessity without being oppressive nor transgressing, there is no sin upon him" (2:173). For Allah only permits what He prohibited under necessity for those who do not incline to sin and refrain from oppression or transgression. This is the stance of all known scholars except the Malikis, who ruled that one who blocks roads against Muslims, awaits his allies among those waging war, besieges villages and cities as part of oppressors spilling Muslim blood, deems lawful their wealth and the private parts of Muslim women through injustice and aggression—if such a person finds nothing to eat except swine and carrion—may lawfully consume it. Thus, they supported him in the gravest injustice and severest oppression and transgression. Astonishingly, they jus-

لِحُكْمِ الْحَيَوَانِ عَلَى التَّحْرِيمِ بِكَوْنِهِ مَيْتَةً إِلَى التَّحْلِيلِ بِكَوْنِهِ مُذَكًّى، وَكُلُّ مَا حَرَّمَهُ اللَّهُ تَعَالَى مِنْ الْحَيَوَانِ فَهُوَ مَيْتَةٌ، فَالتَّذْكِيَةُ لَا مَدْخَلَ لَهَا فِي الْمَيْتَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَطَعَ الطَّرِيقَ عَلَى الْمُسْلِمِينَ فَلَمْ يَجِدْ مَأْكَلًا إلَّا الْخَنَازِيرَ]

١٠٢٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ شَيْءٌ مِمَّا ذَكَرْنَا لِمَنْ كَانَ فِي طَرِيقِ بَغْيٍ عَلَى الْمُسْلِمِينَ أَوْ مُمْتَنِعًا مِنْ حَقٍّ، بَلْ كُلُّ ذَلِكَ حَرَامٌ عَلَيْهِ، فَإِنْ لَمْ يَجِدْ مَا يَأْكُلُ فَلْيَتُبْ مِمَّا هُوَ فِيهِ وَلْيُمْسِكْ عَنْ الْبَغْيِ وَلْيَأْكُلْ حِينَئِذٍ وَلْيَشْرَبْ مِمَّا اُضْطُرَّ إلَيْهِ حَلَالًا لَهُ فَإِنْ لَمْ يَفْعَلْ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى فَاسِقٌ، آكِلُ حَرَامٍ. بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَمَنِ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} [المائدة: ٣] وَقَوْلُهُ: {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ فَلا إِثْمَ عَلَيْهِ} [البقرة: ١٧٣] فَإِنَّمَا أَبَاحَ تَعَالَى مَا حَرَّمَهُ بِالضَّرُورَةِ مَنْ لَمْ يَتَجَانَفْ لِإِثْمٍ، وَمَنْ لَمْ يَكُنْ بَاغِيًا وَلَا عَادِيًا -: وَهَذَا قَوْلُ كُلِّ مَنْ نَعْلَمُهُ مِنْ الْعُلَمَاءِ إلَّا الْمَالِكِيِّينَ، فَإِنَّهُمْ قَالُوا فِيمَنْ قَطَعَ الطَّرِيقَ عَلَى الْمُسْلِمِينَ، وَانْتَظَرَ رِفَاقَهُمْ مِنْ الْمُحَارِبِينَ، وَحَاصَرَ قُرَاهُمْ وَمُدُنَهُمْ مِنْ الْبَاغِينَ لِسَفْكِ دِمَاءِ الْمُسْلِمِينَ، وَيَسْتَبِيحُ أَمْوَالَهُمْ وَفُرُوجَ الْمُسْلِمَاتِ ظُلْمًا وَعُدْوَانًا، فَلَمْ يَجِدْ مَأْكَلًا إلَّا الْخَنَازِيرَ وَالْمَيْتَاتِ -: أَنَّهُ مُبَاحٌ لَهُ أَكْلُهُ، فَأَعَانُوهُ عَلَى أَعْظَمِ الظُّلْمِ، وَأَشَدِّ الْبَغْيِ وَالْعُدْوَانِ وَالْعَجَبُ أَنَّهُمْ مَوَّهُوا هَهُنَا بِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

tified their stance here using Allah's words: "And do not kill yourselves" (4:29).[63]

L16988–16989 Abu Muhammad said: This is among the most repugnant forms of ambiguity, for we did not command him to kill himself but rather to fulfill what Allah the Exalted has obligated upon him—repentance. Let him sincerely resolve it in his heart, refrain from transgression and withholding the truth with his hands, then eat what he is compelled to consume—lawful for him specifically. We have not heard a statement more repugnant than their claim here—that they do not command him to repent from transgression yet permit him to empower himself for spreading corruption on earth by eating carrion and swine. We disavow to Allah from this statement—

قَالَ أَبُو مُحَمَّد: وَهَذَا مِنْ أَقْبَحِ مَا يَكُونُ مِنْ الْإِبْهَامِ وَمَا أَمَرْنَاهُ بِقَتْلِ نَفْسِهِ بَلْ بِمَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ مِنْ التَّوْبَةِ، فَلْيَنْوِهَا بِقَلْبِهِ، وَلْيُمْسِكْ عَنْ الْبَغْيِ وَالِامْتِنَاعِ مِنْ الْحَقِّ بِيَدَيْهِ، ثُمَّ يَأْكُلُ مَا اُضْطُرَّ إلَيْهِ حَلَالًا لَهُ، وَمَا سَمِعْنَا بِقَوْلٍ أَقْبَحَ مِنْ قَوْلِهِمْ هَذَا أَنْ لَا يَأْمُرُوهُ بِالتَّوْبَةِ مِنْ الْبَغْيِ، وَيُبِيحُوا لَهُ التَّقَوِّي عَلَى الْإِفْسَادِ فِي الْأَرْضِ بِأَكْلِ الْمَيْتَةِ وَالْخِنْزِيرِ نَبْرَأُ إلَى اللَّهِ مِنْ هَذَا الْقَوْلِ -: رُوِّينَا عَنْ مُجَاهِدٍ {غَيْرَ بَاغٍ وَلا عَادٍ} [البقرة: ١٧٣] غَيْرَ بَاغٍ عَلَى الْمُسْلِمِينَ، وَلَا عَادٍ عَلَيْهِمْ - قَالَ مُجَاهِدٌ: وَمَنْ يَخْرُجُ لِقَطْعِ الطَّرِيقِ، أَوْ فِي مَعْصِيَةِ اللَّهِ تَعَالَى، فَاضْطُرَّ إلَى الْمَيْتَةِ لَمْ تَحِلَّ لَهُ، إنَّمَا تَحِلُّ لِمَنْ خَرَجَ فِي سَبِيلِ اللَّهِ تَعَالَى، فَإِنْ اُضْطُرَّ إلَيْهَا فَلْيَأْكُلْ. وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ} [البقرة: ١٧٣] قَالَ: إذَا خَرَجَ فِي سَبِيلٍ مِنْ سُبُلِ اللَّهِ تَعَالَى فَاضْطُرَّ إلَى الْمَيْتَةِ أَكَلَ، وَإِنْ خَرَجَ إلَى قَطْعِ الطَّرِيقِ فَلَا رُخْصَةَ لَهُ.

It has been narrated to us from Mujahid regarding {"except when compelled, neither transgressing nor aggressing"} [Al-Baqarah 2:173]: "Neither transgressing against the Muslims nor aggressing upon them." Mujahid said: "Whoever goes out to commit highway robbery or engaged in an act of disobedience to Allah the Exalted and is compelled to eat carrion, it is not lawful for him. It is only lawful for one who goes out in a path from the paths of Allah the Exalted; if he is compelled, let him eat."

From Sa'id ibn Jubayr regarding {"Whoever is compelled, neither transgressing nor aggressing"} [Al-Baqarah 2:173], he said: "If one goes out in a path from the paths of Allah the Exalted and is compelled to eat carrion, he may eat. But if he goes out to commit highway robbery, there is no dispensation for him."[64]

L16990–16992 They attempted to justify their position with what we narrated through the chain of Salama ibn Sabur from Atiyya from Ibn Abbas - that the meaning of "the transgressor" and "the oppressor" pertains specifically to consumption. Abu Muhammad said: This contains no valid evidence for them due to three aspects: First: No individual's statement holds authority in specifying the Quran's rulings except Allah's Messenger. Second: The chain is defective

وَمَوَّهُوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَلَمَةَ بْنِ سَابُورٍ عَنْ عَطِيَّةَ عَنْ ابْنِ عَبَّاسٍ أَنَّ مَعْنَى الْبَاغِي، وَالْعَادِي، إنَّمَا هُوَ فِي الْأَكْلِ. قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ ثَلَاثَةٍ -: أَوَّلُهَا: أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ فِي تَخْصِيصِ الْقُرْآنِ دُونَ رَسُولِ اللَّهِ. وَالثَّانِي: أَنَّهُ إسْنَادٌ فَاسِدٌ لَا يَصِحُّ، لِأَنَّ سَلَمَةَ بْنَ سَابُورٍ ضَعِيفٌ، وَعَطِيَّةَ مَجْهُولٌ. وَالثَّالِثُ: أَنَّهُ لَوْ صَحَّ لَكَانَ مُوَافِقًا لِقَوْلِنَا لَا لِقَوْلِهِمْ، لِأَنَّ الْبَاغِيَ فِي الْأَكْلِ، وَالْعَادِيَ فِيهِ: هُوَ مِنْ أَكْلِهِ

[63] **Qur'an references (L16987):** Qur'an 5:3 (Al-Ma'idah); Qur'an 2:173 (Al-Baqarah); Qur'an 4:29 (An-Nisa).

[64] **Qur'an references (L16989):** Qur'an 2:173 (Al-Baqarah); Qur'an 6:145 (Al-An'am); Qur'an 16:115 (An-Nahl).

and invalid, for Salama ibn Sabur is weak and Atiyya is unknown. Third: Even if authentic, it would support our position rather than theirs, for "the transgressor in consumption" and "the oppressor in it" refers to eating what is not permitted. Whoever consumes food through transgression against Muslims becomes a transgressor in consumption and an oppressor therein - which aligns exactly with our stance. No one we know of prior to them ever claimed that one spreading corruption on earth, when compelled to eat carrion while persisting in his corruption and strengthening himself to oppress Muslims, is permitted to consume it. We seek refuge in Allah from being forsaken. Some argued: "He may only eat what sustains his vital functions." Ali responded: This is erroneous, for Allah Almighty exempted the one compelled by necessity from the prohibition, so it is without doubt permissible. Since it is not included in the prohibition, and as it is not included within it, all of that is entirely permissible for him.

فِيمَا لَمْ يُبَحْ لَهُ، وَآكِلُهُ فِي الْبَغْيِ عَلَى الْمُسْلِمِينَ بَاغٍ فِي الْأَكْلِ وَعَادٍ فِيهِ، وَهَكَذَا نَقُولُ. وَمَا قَالَ قَطُّ أَحَدٌ نَعْلَمُهُ قَبْلَهُمْ: أَنَّ مَنْ خَرَجَ مُفْسِدًا فِي الْأَرْضِ فَاضْطُرَّ إِلَى الْمَيْتَةِ فَلَهُ أَكْلُهَا مُصِرًّا عَلَى إِفْسَادِهِ مُتَقَوِّيًا عَلَى ظُلْمِ الْمُسْلِمِينَ، وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ. وَقَالَ قَائِلُونَ: لَا يَحِلُّ لَهُ أَنْ يَأْكُلَ مِنْ ذَلِكَ إِلَّا مَا يُمْسِكُ رَمَقَهُ؟ قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّ اللَّهَ تَعَالَى اسْتَثْنَى الْمُضْطَرَّ مِنْ التَّحْرِيمِ، فَهُوَ بِلَا شَكٍّ غَيْرُ دَاخِلٍ فِي التَّحْرِيمِ، وَإِذْ هُوَ غَيْرُ دَاخِلٍ فِيهِ فَكُلُّ ذَلِكَ مُبَاحٌ لَهُ جُمْلَةً.

Issue: Extravagance is forbidden (ḥarām).

[مَسْأَلَةٌ السَّرَفُ حَرَامٌ]

L16993

L16994

Issue 1028: Extravagance is forbidden, defined as expenditure on what Allah the Exalted has prohibited—whether small or large, even if amounting to a portion the size of a mosquito's wing. This includes squandering wealth on what is not needed out of necessity, leaving the spender without lasting sufficiency thereafter, or wastefully disposing of wealth however minimal. Expenditures beyond these aspects are lawful and not considered extravagance, regardless of their quantity. We have transmitted this view from Sa'īd ibn Jubayr and others. Allah the Exalted states: "And do not be extravagant. Indeed, He does not love the extravagant" (6:141). Through Ibn Wahb's chain: I am Yūnus ibn Yazīd—reporting from Ibn Shihāb—who informed me that 'Abd al-Raḥmān ibn Ka'b ibn Mālik said: "I heard Ka'b ibn Mālik narrate a ḥadīth in which he stated: 'O Messenger of Allah, part of my repentance is to divest myself of my wealth as charity to Allah and His Messenger.' The Messenger of Allah (peace be upon him) replied: 'Retain some of your wealth, for that is better for you.'" It is authentically established that the Prophet (peace be upon him) said: "The best charity is what is given from what remains after sufficiency. Begin with those under your care." We

١٠٢٨ - مَسْأَلَةٌ: وَالسَّرَفُ حَرَامٌ، وَهُوَ النَّفَقَةُ فِيمَا حَرَّمَ اللَّهُ تَعَالَى قَلَّتْ أَوْ كَثُرَتْ، وَلَوْ أَنَّهَا جُزْءٌ مِنْ قَدْرِ جَنَاحِ بَعُوضَةٍ - أَوْ التَّبْذِيرُ فِيمَا لَا يَحْتَاجُ إلَيْهِ ضَرُورَةً مِمَّا لَا يَبْقَى لِلْمُنْفِقِ بَعْدَهُ غِنًى - أَوْ إضَاعَةُ الْمَالِ وَإِنْ قَلَّ بِرَمْيِهِ عَبَثًا، فَمَا عَدَا هَذِهِ الْوُجُوهِ فَلَيْسَ سَرَفًا وَهُوَ حَلَالٌ وَإِنْ كَثُرَتْ النَّفَقَةُ فِيهِ. وَقَوْلُنَا هَذَا رُوِّينَاهُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ وَغَيْرِهِ، قَالَ اللَّهُ تَعَالَى: {وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ} [الأنعام: ١٤١] . وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَنَا يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ كَعْبِ بْنِ مَالِكٍ قَالَ: «سَمِعْتُ كَعْبَ بْنَ مَالِكٍ فَذَكَرَ الْحَدِيثَ وَفِيهِ فَقُلْتُ: يَا رَسُولَ اللَّهِ إنَّ مِنْ تَوْبَتِي أَنْ أَنْخَلِعَ مِنْ مَالِي صَدَقَةً إلَى اللَّهِ وَرَسُولِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَمْسِكْ عَلَيْكَ بَعْضَ مَالِكَ فَهُوَ خَيْرٌ لَكَ» . وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: " أَنَّهُ قَالَ: «خَيْرُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى وَابْدَأْ بِمَنْ

transmit via Abū Mālik al-Ashja'ī from Ḥudhayfah that the Prophet (peace be upon him) said: "Every act of kindness is charity." Thus, it is confirmed that spending on acts of kindness or permissible matters is not lawful unless it preserves sufficiency—except for one compelled to provide basic sustenance for oneself and dependents, as it is impermissible to cause one's own death or neglect those under one's care. Allah the Exalted is the Provider. As for other expenditures, Allah states: "Eat from the pure provisions" (23:51), and says: "Do not prohibit the good things Allah has made lawful to you, nor transgress" (5:87). He further declares: "Say, 'Who has forbidden the adornment of Allah which He produced for His servants and the pure provisions?'" (7:32), and "Allah has permitted trade" (2:275). Whoever prohibits any of these without textual evidence has falsely attributed lies to Allah. If they cite the verse: "You consumed your pure provisions in your worldly life" (46:20), this applies exclusively to disbelievers, as the verse explicitly states: "On the Day the disbelievers are presented to the Fire: 'You consumed your pure provisions in your worldly life and indulged in them. Today you will be repaid with humiliating punishment for your arrogant oppression on earth without right and for your deviance'" (46:20).[65][66]

L16995–16996 Abu Muhammad said: Obfuscation by citing part of a verse while remaining silent about its beginning or its end is a corrupt practice of those whom Allah the Exalted intends to disgrace in this world and the Hereafter, for it is distorting the Words from their positions and lying against Allah the Exalted.

L16997 **An issue: What if a permissible-to-eat animal has been nourished with unlawful substances?**

[65] **Hadith references (L16994):** Sahih al-Bukhari 1426; Sahih al-Bukhari 5356; Sunan an-Nasai 2544.

[66] **Qur'an references (L16994):** Qur'an 6:141 (Al-An'am); Qur'an 7:31 (Al-A'raf); Qur'an 23:51 (Al-Mu'minun); Qur'an 5:87 (Al-Ma'idah); Qur'an 7:32 (Al-A'raf); Qur'an 2:275 (Al-Baqarah); Qur'an 46:20 (Al-Ahqaf).

تَعُولُ» : رُوِّينَا مِنْ طَرِيقِ أَبِي مَالِكٍ الْأَشْجَعِيِّ عَنْ حُذَيْفَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» ". فَصَحَّ أَنَّهُ لَا يَحِلُّ نَفَقَةُ شَيْءٍ مِنْ الْمَعْرُوفِ، وَلَا الْمُبَاحِ، إلَّا مَا أَبْقَى غِنًى، إلَّا مَنْ اُضْطُرَّ إلَى قُوتِ نَفْسِهِ وَمَنْ مَعَهُ، فَلَا يَحِلُّ لَهُ قَتْلُ نَفْسِهِ وَلَا تَضْيِيعُ مَنْ مَعَهُ، ثُمَّ اللَّهُ تَعَالَى هُوَ الرَّزَّاقُ، وَأَمَّا مَا دُونَ هَذَا فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {كُلُوا مِنَ الطَّيِّبَاتِ} [المؤمنون: ٥١] . وَقَالَ تَعَالَى: {لا تُحَرِّمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ وَلا تَعْتَدُوا} [المائدة: ٨٧] . وَقَالَ تَعَالَى: {قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ} [الأعراف: ٣٢] {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] . فَمَنْ حَرَّمَ شَيْئًا مِنْ ذَلِكَ بِغَيْرِ نَصٍّ فَقَدْ قَالَ عَلَى اللَّهِ تَعَالَى الْبَاطِلَ. فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {أَذْهَبْتُمْ طَيِّبَاتِكُمْ فِي حَيَاتِكُمُ الدُّنْيَا} [الأحقاف: ٢٠] فَإِنَّمَا هَذِهِ الْآيَةُ فِي الْكُفَّارِ خَاصَّةً بِنَصِّ الْآيَةِ قَالَ تَعَالَى: {وَيَوْمَ يُعْرَضُ الَّذِينَ كَفَرُوا عَلَى النَّارِ أَذْهَبْتُمْ طَيِّبَاتِكُمْ فِي حَيَاتِكُمُ الدُّنْيَا وَاسْتَمْتَعْتُمْ بِهَا فَالْيَوْمَ تُجْزَوْنَ عَذَابَ الْهُونِ بِمَا كُنْتُمْ تَسْتَكْبِرُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ وَبِمَا كُنْتُمْ تَفْسُقُونَ} [الأحقاف: ٢٠] .

قَالَ أَبُو مُحَمَّدٍ: التَّمْوِيهُ بِإِيرَادِ بَعْضِ آيَةٍ وَالسُّكُوتِ عَنْ أَوَّلِهَا أَوْ آخِرِهَا عَادَةُ سُوءٍ لِمَنْ أَرَادَ اللَّهَ تَعَالَى خِزْيَهُ فِي الدُّنْيَا وَالْآخِرَةِ، لِأَنَّهُ تَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ وَكَذِبٌ عَلَى اللَّهِ تَعَالَى.

[مَسْأَلَةٌ مَا تَغَذَّى مِنْ الْحَيَوَانِ الْمُبَاحِ أَكْلُهُ بِالْمُحَرَّمَاتِ]

L16998 1029. Issue: Any animal permissible to eat that consumed forbidden substances remains lawful—such as unrestricted chickens, ducks, vultures, and others. Even if a kid goat were suckled by a sow, its meat would still be lawful except for what we mentioned regarding al-jallalah (filth-fed animals), for Allah the Exalted said: "He has explicitly detailed what He forbade you" (6:119). He did not prohibit anything due to its consumption except al-jallalah, "and your Lord is never forgetful" (19:64). It is authentically reported from Abu Musa that he deemed chickens lawful to eat even when they consume filth. We narrate from Ibn Umar that when he wished to eat them, he would confine them for three days until their stomachs were purified. Abu Muhammad said: This reasoning is invalid, for if he confined them due to undigested waste in their crops from consumed matter, then such contents are entirely impermissible to eat as they constitute undigested waste. If this were due to the transformation of consumed forbidden substances, their flesh does not transform—neither in three days nor three months—rather, what they consumed becomes integral to their flesh. Were this prohibited, fruits and crops grown on manure would likewise be forbidden—which is erroneous. We previously established that when forbidden substances undergo transformation in their essential attributes and designation, the ruling attached to that designation becomes void. And success comes from Allah, the Exalted.[67]

١٠٢٩ - مَسْأَلَةٌ: وَكُلُّ مَا تَغَذَّى مِنْ الْحَيَوَانِ الْمُبَاحِ أَكْلُهُ بِالْمُحَرَّمَاتِ فَهُوَ حَلَالٌ: كَالدَّجَاجِ الْمُطْلَقِ، وَالْبَطِّ، وَالنَّسْرِ، وَغَيْرِ ذَلِكَ. وَلَوْ أَنَّ جَدْيًا أُرْضِعَ لَبَنَ خِنْزِيرَةٍ لَكَانَ أَكْلُهُ حَلَالًا حَاشَا مَا ذَكَرْنَا مِنْ الْجَلَّالَةِ لِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] . فَلَمْ يُفَصِّلْ لَنَا تَحْرِيمَ شَيْءٍ مِنْ أَجْلِ مَا يَأْكُلُ إلَّا الْجَلَّالَةَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَقَدْ صَحَّ عَنْ أَبِي مُوسَى تَحْلِيلُ الدَّجَاجِ وَإِنْ كَانَ يَأْكُلُ الْقَذَرَ. وَرُوِّينَا عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ إذَا أَرَادَ أَكْلَهَا حَبَسَهَا ثَلَاثًا حَتَّى يَطِيبَ بَطْنُهَا. قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا يَلْزَمُ لِأَنَّهُ إنْ كَانَ حَبَسَهَا مِنْ أَجْلِ مَا فِي قَانِصَتِهَا مِمَّا أَكَلَتْ فَالَّذِي فِي الْقَانِصَةِ لَا يَحِلُّ أَكْلُهُ جُمْلَةً، لِأَنَّهُ رَجِيعٌ، وَإِنْ كَانَ مِنْ أَجْلِ اسْتِحَالَةِ الْمُحَرَّمَاتِ الَّتِي أُكِلَتْ فَلَا يَسْتَحِيلُ لَحْمُهَا فِي ثَلَاثَةِ أَيَّامٍ، وَلَا فِي ثَلَاثَةِ أَشْهُرٍ بَلْ قَدْ صَارَ مَا تَغَذَّتْ بِهِ مِنْ ذَلِكَ لَحْمًا مِنْ لَحْمِهَا، وَلَوْ حَرُمَ مِنْ ذَلِكَ لَحَرُمَ مِنْ الثِّمَارِ وَالزَّرْعِ مَا يَنْبُتُ عَلَى الزِّبْلِ - وَهَذَا خَطَأٌ. وَقَدْ قَدَّمْنَا أَنَّ الْحَرَامَ إذَا اسْتَحَالَتْ صِفَاتُهُ وَاسْمُهُ بَطَلَ حُكْمُهُ الَّذِي عُلِّقَ عَلَى ذَلِكَ الِاسْمِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ أَكْلِ الْقِرْدِ]

L16999 **Issue: The ruling on eating the monkey.**

[67] **Qur'an references (L16998):** Qur'an 6:119 (Al-An'am); Qur'an 19:64 (Maryam).

L17000–17002 Issue 1030: The consumption of monkeys is forbidden because Allah the Exalted transformed disobedient people into swine and monkeys as a punishment for them. By necessity, every person of sound perception knows that He the Exalted does not transform anyone as punishment into the form of pure animals. Thus, it is established that the monkey does not belong to them. Since it does not belong to them, it must be among impure things - for nothing exists except pure or impure. Whatever is not counted among the pure becomes categorically impure. Therefore, the monkey is impure, and the swine [is likewise impure]. The swine is impure, so they are both prohibited - and this too constitutes evidence for the prohibition of swine in totality and every part of it - while every account concerning metamorphosed creatures other than the ape and the swine: these are invalid, false, and fabricated - and success comes only through Allah, the Exalted.

١٠٣٠ - مَسْأَلَةٌ: وَالْقِرْدُ حَرَامٌ أَكْلُهُ لِأَنَّ اللَّهَ تَعَالَى مَسَخَ نَاسًا عُصَاةً عُقُوبَةً لَهُمْ عَلَى صُورَةِ الْخِنْزِيرِ، وَالْقِرَدَةِ. وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّهُ تَعَالَى لَا يَمْسَخُ عُقُوبَةً فِي صُورَةِ الطَّيِّبَاتِ مِنْ الْحَيَوَانِ فَصَحَّ أَنَّهُ لَيْسَ مِنْهَا وَإِذْ لَيْسَ هُوَ مِنْهَا فَهُوَ مِنْ الْخَبَائِثِ؛ لِأَنَّهُ لَيْسَ إلَّا طَيِّبٌ أَوْ خَبِيثٌ، فَمَا لَمْ يَكُنْ مِنْ الطَّيِّبَاتِ طَيِّبًا فَهُوَ مِنْ الْخَبَائِثِ خَبِيثٌ فَإِذًا الْقِرْدُ خَبِيثٌ، وَالْخِنْزِيرُ خَبِيثٌ، فَهُمَا مُحَرَّمَانِ - وَهَذَا مِنْ الْبَرَاهِينِ أَيْضًا عَلَى تَحْرِيمِ الْخِنْزِيرِ جُمْلَةً وَكُلُّ شَيْءٍ مِنْهُ - وَكُلُّ مَا جَاءَ فِي الْمُسُوخِ فِي غَيْرِ الْقِرْدِ وَالْخِنْزِيرِ: فَبَاطِلٌ وَكَذِبٌ مَوْضُوعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of eating clay for one who is not harmed by it

[مَسْأَلَةٌ أَكْلُ الطِّينِ لِمَنْ لَا يَسْتَضِرُّ بِهِ]

L17003

L17004 Issue 1031: Eating clay is permissible for one who is not harmed by it. As for consuming what causes harm - whether clay, excessive water, or bread - this is forbidden because such acts are not among the specific prohibitions decreed for us, thus it remains permissible. However, anything causing harm becomes forbidden by the Prophet's statement (peace be upon him): "Allah has prescribed excellence in all matters." This was transmitted through multiple chains: Shu'bah, Sufyān, Hushaym, Manṣūr ibn al-Mu'tamir, Ibn 'Ulayyah, and 'Abd al-Wahhāb ibn 'Abd al-Majīd - all from Khālid al-Ḥadhdhā' from Abū Qilābah from Abū al-Ash'ath al-Ṣan'ānī from Shaddād ibn Aws, who preserved from Allah's Messenger (peace be upon him) the saying: "Allah has prescribed excellence in all matters" along with the remainder of the ḥadīth. Whoever harms themselves or others has failed to uphold excellence, thereby opposing Allah's decree of excellence in all matters.

False reports exist regarding clay's prohibition, including one through Suwayd ibn Sa'īd al-Ḥadathānī - a known liar - and mursal narrations. Some argue using Allah's verse: {O believers! Spend from the good things you have

١٠٣١ - مَسْأَلَةٌ: وَأَكْلُ الطِّينِ لِمَنْ لَا يَسْتَضِرُّ بِهِ حَلَالٌ، وَأَمَّا أَكْلُ مَا يَسْتَضِرُّ بِهِ مِنْ طِينٍ أَوْ إكْثَارٍ مِنْ الْمَاءِ أَوْ الْخُبْزِ -: فَحَرَامٌ؛ لِأَنَّهُ لَيْسَ مِمَّا فَصَّلَ تَحْرِيمَهُ لَنَا فَهُوَ حَلَالٌ، وَأَمَّا كُلُّ مَا أَضَرَّ فَهُوَ حَرَامٌ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ» . رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ، وَهُشَيْمٍ، وَمَنْصُورِ بْنِ الْمُعْتَمِرِ، وَابْنِ عُلَيَّةَ، وَعَبْدِ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ، كُلُّهُمْ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْأَشْعَثِ الصَّنْعَانِيِّ عَنْ شَدَّادِ بْنِ أَوْسٍ أَنَّهُ حَفِظَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ» وَذَكَرَ بَاقِيَ الْحَدِيثِ، فَمَنْ أَضَرَّ بِنَفْسِهِ أَوْ بِغَيْرِهِ فَلَمْ يُحْسِنْ، وَمَنْ لَمْ يُحْسِنْ فَقَدْ خَالَفَ كِتَابَ اللَّهِ تَعَالَى الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ. وَقَدْ رُوِيَ فِي تَحْرِيمِ الطِّينِ آثَارٌ كَاذِبَةٌ -: مِنْهَا: مِنْ طَرِيقِ سُوَيْدِ بْنِ سَعِيدٍ الْحَدَثَانِيِّ وَهُوَ مَذْكُورٌ بِالْكَذِبِ، وَمُرْسَلَاتٌ - وَاحْتَجَّ بَعْضُهُمْ

earned and what We have produced for you from the earth} [2:267], claiming clay is not among what the earth produces.

Abū Muḥammad responded: This exemplifies their habitual deception in creating the false impression that they are presenting evidence, when in reality they cite what contains no proof. While the verse permits earth-produced goods, it neither prohibits nor permits other substances. If it forbade non-earth products, all land and sea animals, honey, manna, hail, and snow would be unlawful - none being earth-produced. Clay in fact constitutes substances within the earth extracted from it, for it is among the minerals found in the earth. No religiously conscientious person would cite such arguments, which only exposes their disgrace - success comes only from Allah.[1]

بِقَوْلِ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الأَرْضِ} [البقرة: ٢٦٧] . قَالَ: وَالطِّينُ لَيْسَ مِمَّا أَخْرَجَ لَنَا مِنَ الْأَرْضِ. قَالَ أَبُو مُحَمَّد: وَهَذَا مِنَ التَّمْوِيهِ الَّذِي جَرَوْا عَلَى عَادَتِهِمْ فِيهِ فِي إِيهَامِهِمْ أَنَّهُمْ يَحْتَجُّونَ، وَإِنَّمَا يَأْتُونَ بِمَا لَا حُجَّةَ لَهُمْ فِيهِ، وَهَذِهِ الْآيَةُ حَقٌّ وَلَكِنْ لَيْسَ فِيهَا تَحْرِيمُ أَكْلِ مَا لَمْ يُخْرِجْ لَنَا مِنَ الْأَرْضِ وَإِنَّمَا فِيهَا إِبَاحَةُ مَا أَخْرَجَ لَنَا مِنَ الْأَرْضِ وَلَيْسَ فِيهَا ذِكْرُ مَا عَدَا ذَلِكَ لَا بِتَحْلِيلٍ وَلَا بِتَحْرِيمٍ، فَحُكْمُ مَا لَمْ يَخْرُجْ مِنَ الْأَرْضِ مَطْلُوبٌ مِنْ غَيْرِهَا. وَلَوْ كَانَتْ هَذِهِ الْآيَةُ مَانِعَةً مِنْ أَكْلِ مَا لَمْ يَخْرُجْ مِنَ الْأَرْضِ لَحَرُمَ أَكْلُ الْحَيَوَانِ كُلِّهِ بَرِّيِّهِ وَبَحْرِيِّهِ، وَلَحَرُمَ أَكْلُ الْعَسَلِ، والطرنجبين، وَالْبَرَدِ، وَالثَّلْجِ، لِأَنَّهُ لَيْسَ شَيْءٌ مِنْ ذَلِكَ مِمَّا أَخْرَجَ اللَّهُ تَعَالَى لَنَا مِنَ الْأَرْضِ؛ فَالطِّينُ وَاحِدٌ مِنْ هَذِهِ فَكَيْفَ وَهُوَ مِمَّا فِي الْأَرْضِ وَمِمَّا أَخْرَجَ اللَّهُ تَعَالَى مِنَ الْأَرْضِ؟ لِأَنَّهُ مَعَادِنُ فِي الْأَرْضِ مُسْتَخْرَجَةٌ مِنَ الْأَرْضِ، وَلَقَدْ كَانَ يَنْبَغِي لِمَنْ لَهُ دِينٌ أَنْ لَا يَحْتَجَّ بِمِثْلِ هَذَا مِمَّا يَفْتَضِحُ فِيهِ مِنْ قُرْبٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17005–17006 We know that a small amount of mushrooms, truffles, or the meat of an aged male goat is more harmful than a small amount of clay. Some of them proposed an absurd argument, claiming: "We were created from dust, so whoever eats dust consumes his own origin." We retorted: "What does that prove?" By this ludicrous logic, drinking water would also be forbidden, since the Quran explicitly states that we were created from water.

وَقَدْ عَلِمْنَا أَنَّ الْقَلِيلَ مِنَ الْفِطْرِ وَالْكَمْأَةِ، وَلَحْمِ التَّيْسِ الْهَرِمِ أَضَرُّ مِنْ قَلِيلِ الطِّينِ، وَأَتَى بَعْضُهُمْ بِطَرِيفَةٍ فَقَالَ: خُلِقْنَا مِنَ التُّرَابِ فَمَنْ أَكَلَ التُّرَابَ فَقَدْ أَكَلَ مَا خُلِقَ مِنْهُ. فَقُلْنَا: فَكَانَ مَاذَا؟ وَعَلَى هَذَا الِاسْتِدْلَالِ السَّخِيفِ يَحْرُمُ شُرْبُ الْمَاءِ لِأَنَّنَا مِنَ الْمَاءِ خُلِقْنَا بِنَصِّ الْقُرْآنِ.

L17007 The Ruling on Eating the Meat of the Spiny-tailed Lizard.

[مَسْأَلَةٌ أَكْلِ لَحْمِ الضَّبِّ]

L17008 1032 - Issue: The ḍabb is permissible, but Abū Ḥanīfah did not consider

[1] **Qur'an references (L17004):** Qur'an 2:267 (Al-Baqarah).

it permissible to eat. It has been narrated to us via al-Ḥārith's chain from ʿAlī ibn Abī Ṭālib that he deemed the ḍabb reprehensible. From Abū al-Zubayr, he said: I asked Jābir ibn ʿAbd Allāh about the ḍabb, and he replied: "Do not consume it." The proponents of this view cited several ḥadīths—some authentic, such as the one narrated through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān and Abū Muʿāwiyah al-Ḍarīr from al-Aʿmash from Zayd ibn Wahb from ʿAbd al-Raḥmān ibn Ḥasanah, who said: "We were with the Messenger of Allāh (peace be upon him) during a military campaign when we faced severe hunger. We found ḍabbs. As the pots were boiling with them, the Messenger of Allāh (peace be upon him) emerged and said: 'A community from the Children of Israel vanished, and I fear these may be them. Overturn them!' So we spilled them out." This is Abū Muʿāwiyah's wording, and Yaḥyā's is similar. Among the cited ḥadīths are non-authentic ones, such as the chain from Ismāʿīl ibn ʿAyyāsh from Ḍamḍam ibn Zurʿah from Shurayḥ ibn ʿUbayd from Abū Rāshid al-Ḥubrānī from ʿAbd al-Raḥmān ibn Shibl: "The Prophet (peace be upon him) forbade eating the flesh of the ḍabb." There are also reports expressing reservation about it, such as the narration via Muslim: Muḥammad ibn al-Muthannā narrated to us, Ibn Abī ʿAdī narrated from Dāwūd from Abū Naḍrah from Abū Saʿīd al-Khudrī: "The Prophet (peace be upon him) was asked about the ḍabb. He (peace be upon him) said: 'A nation from the Children of Israel was transformed,' but he neither commanded nor forbade." A similar authentic report with the same meaning is narrated through Jābir from the Prophet (peace be upon him).[2]

L17009–17010 And from the chain of Zayd ibn Wahb from Thābit ibn Yazīd from the Prophet, peace and blessings of Allah be upon him. And from the chain of Shu'bah from al-Ḥakam ibn 'Utaybah from Zayd ibn Wahb from al-Barā' ibn 'Āzib from Thābit ibn Wadi'ah from the Prophet, peace and blessings of Allah be upon him. And from the chain of Yaḥyā ibn Sa'īd al-Qaṭṭān from

[2]**Hadith references (L17008):** Mishkat al-Masabih 4127.

١٠٣٢ - مَسْأَلَةٌ: وَالضَّبُّ حَلَالٌ، وَلَمْ يَرَ أَبُو حَنِيفَةَ أَكْلَهُ. وَرُوِّينَا مِنْ طَرِيقِ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ كَرِهَ الضَّبَّ. وَعَنْ أَبِي الزُّبَيْرِ قَالَ: سَأَلْت جَابِرَ بْنَ عَبْدِ اللَّهِ عَنْ الضَّبِّ فَقَالَ: لَا تَطْعَمُوهُ. وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِأَحَادِيثَ -: مِنْهَا صَحِيحٌ: كَالَّذِي رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، وَأَبِي مُعَاوِيَةَ الضَّرِيرِ عَنْ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَسَنَةَ قَالَ: «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزَاةٍ فَأَصَابَتْنَا مَجَاعَةٌ فَوَجَدْنَا ضِبَابًا فَبَيْنَمَا الْقُدُورُ تَغْلِي بِالضِّبَابِ خَرَجَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إنَّ أُمَّةً مِنْ بَنِي إسْرَائِيلَ فُقِدَتْ، وَإِنِّي أَخَافُ أَنْ تَكُونَ هَذِهِ هِيَ فَأَكْفِئُوهَا، فَأَكْفَئْنَا بِهَا» . هَذَا لَفْظُ أَبِي مُعَاوِيَةَ، وَلَفْظُ يَحْيَى نَحْوُهُ. وَمِنْهَا غَيْرُ صَحِيحٍ: مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ ضَمْضَمِ بْنِ زُرْعَةَ عَنْ شُرَيْحِ بْنِ عُبَيْدٍ عَنْ أَبِي رَاشِدٍ الْحُبْرَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ أَكْلِ لَحْمِ الضَّبِّ» . وَجَاءَتْ أَخْبَارٌ فِيهَا التَّوَقُّفُ فِيهِ -: كَالَّذِي رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ الْمُثَنَّى نا ابْنُ أَبِي عَدِيٍّ عَنْ دَاوُد عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ سُئِلَ عَنْ الضَّبِّ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -. إنَّ أُمَّةً مِنْ بَنِي إسْرَائِيلَ مُسِخَتْ - فَلَمْ يَأْمُرْ وَلَمْ يَنْهَ» وَمِثْلُ هَذَا أَيْضًا بِمَعْنَاهُ صَحِيحٌ مِنْ طَرِيقِ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ زَيْدِ بْنِ وَهْبٍ عَنْ ثَابِتِ بْنِ يَزِيدَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ الْبَرَاءِ بْنِ عَازِبٍ عَنْ ثَابِتِ ابْنِ وَدِيعَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الضَّبِّ:

‘Ubayd Allāh ibn ‘Umar from Nāfi‘ from Ibn ‘Umar from the Prophet, peace and blessings of Allah be upon him, who said regarding the dabb: “I neither command it nor forbid it.” And from the chain of Ḥammād ibn Salamah from Ḥammād ibn Abī Sulaymān from Ibrāhīm from al-Aswad from ‘Ā’ishah, the Mother of the Believers: “The Prophet, peace and blessings of Allah be upon him, was presented with a dabb but did not eat it. She asked: ’O Messenger of Allah, should we not feed it to the poor?’ He replied: ’Do not feed them what you do not eat.”’

Abū Muḥammad said: As for this narration, it holds no legal proof. As for the ḥadīth of ‘Abd al-Raḥmān ibn Shibl, it contains weak and unknown narrators, thus it is dismissed. As for the ḥadīth of ‘Abd al-Raḥmān ibn Ḥasānah, it is a valid proof, though undoubtedly abrogated, for it states that the Prophet, peace and blessings of Allah be upon him, ordered inverting cooking pots containing dabbs only out of fear they might be remnants of the metamorphosed beings of past nations—this being the explicit text of the ḥadīth. If we find a definitive statement from him, peace and blessings of Allah be upon him, that dispels this assumption, the dislike or prohibition concerning the dabb is lifted. We thus investigated this matter and found what we narrated through the chain of Muslim: Isḥāq ibn Ibrāhīm—he is Ibn Rāhwayh—and Ḥajjāj ibn al-Shā‘ir (the wording is his), both from ‘Abd al-Razzāq, who said: Sufyān al-Thawrī reported from ‘Alqamah ibn Marthad from al-Mughīrah ibn ‘Abd Allāh al-Yashkurī from al-Ma‘rūr ibn Suwayd from ‘Abd Allāh ibn Mas‘ūd, who said: “A man asked: ’O Messenger of Allah, are monkeys and pigs among the metamorphosed beings?’ The Messenger of Allah, peace and blessings of Allah be upon him, replied: ’Allah, the Exalted, does not annihilate or punish a people and then grant them progeny. Monkeys and pigs existed prior to that.”’

And from the chain of Ibn Abī Shaybah from Wakī‘ from Mis‘ar ibn Kidām from ‘Alqamah ibn Marthad from al-Mughīrah ibn ‘Abd Allāh al-Yashkurī from al-Ma‘rūr ibn Suwayd from Ibn Mas‘ūd: “Monkeys were mentioned before the Prophet, peace and blessings of Allah be upon him, whereupon he said, peace and blessings of Allah be upon him: ’Allah does not grant

لَا آمُرُ بِهِ، وَلَا أَنْهَى عَنْهُ.» وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِضَبٍّ فَلَمْ يَأْكُلْهُ فَقَالَتْ: يَا رَسُولَ اللَّهِ أَلَا نُطْعِمُهُ الْمَسَاكِينَ؟ قَالَ: لَا تُطْعِمُوهُمْ مَا لَمْ تَأْكُلُوا» . قَالَ أَبُو مُحَمَّد: أَمَّا هَذِهِ فَلَا حُجَّةَ فِيهَا، وَأَمَّا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ فَفِيهِ ضُعَفَاءُ وَمَجْهُولُونَ - فَسَقَطَ - وَأَمَّا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ حَسَنَةَ فَهُوَ حُجَّةٌ إلَّا أَنَّهُ مَنْسُوخٌ بِلَا شَكٍّ، لِأَنَّ فِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَمَرَ بِإِكْفَاءِ الْقُدُورِ بِالضِّبَابِ خَوْفَ أَنْ تَكُونَ مِنْ بَقَايَا مَسْخِ الْأُمَّةِ السَّالِفَةِ، هَذَا نَصُّ الْحَدِيثِ، فَإِنْ وَجَدْنَا عَنْهُ - عَلَيْهِ السَّلَامُ - مَا يُؤَمِّنُ مِنْ هَذَا الظَّنِّ بِيَقِينٍ فَقَدْ ارْتَفَعَتْ الْكَرَاهَةُ أَوْ الْمَنْعُ فِي الضَّبِّ، فَنَظَرْنَا فِي ذَلِكَ -: فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ وَحَجَّاجُ بْنُ الشَّاعِرِ وَاللَّفْظُ لَهُ كِلَاهُمَا عَنْ عَبْدِ الرَّزَّاقِ قَالَ: أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ الْمُغِيرَةِ بْنِ عَبْدِ اللَّهِ الْيَشْكُرِيِّ عَنْ الْمَعْرُورِ بْنِ سُوَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «قَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ الْقِرَدَةُ وَالْخَنَازِيرُ هِيَ مِمَّا مُسِخَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يُهْلِكْ قَوْمًا أَوْ يُعَذِّبْ قَوْمًا فَيَجْعَلَ لَهُمْ نَسْلًا، وَإِنَّ الْقِرَدَةَ، وَالْخَنَازِيرَ كَانُوا قَبْلَ ذَلِكَ» . وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ الْمُغِيرَةِ بْنِ عَبْدِ اللَّهِ الْيَشْكُرِيِّ عَنْ الْمَعْرُورِ بْنِ سُوَيْدٍ عَنْ ابْنِ مَسْعُودٍ «أَنَّ الْقِرَدَةَ ذُكِرَتْ عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: إنَّ اللَّهَ لَمْ يَجْعَلْ لِمَسْخٍ نَسْلًا وَلَا عَقِبًا وَقَدْ كَانَتْ الْقِرَدَةُ وَالْخَنَازِيرُ قَبْلَ ذَلِكَ» .

offspring or descendants to any metamorphosed beings. Monkeys and pigs existed before that.”’[3]

L17011–17012 It was conclusively established that the previous apprehension concerning him—peace and blessings be upon him—regarding the dhabb (spiny-tailed lizard) being among metamorphosed creatures had been lifted. It was affirmed that the dhabb is neither among transformed beings nor does any metamorphosed creation exist in their forms—thus it was permitted. Subsequently, we verified the narration transmitted through Malik’s chain from Ibn Shihāb, from Abū Umāmah ibn Sahl ibn Ḥunayf, from ʿAbdullāh ibn ʿAbbās, who said: “Khalid ibn al-Walīd and I entered the house of Maymūnah with the Messenger of Allah—peace and blessings be upon him. A roasted dhabb was presented. The Messenger of Allah—peace and blessings be upon him—withdrew his hand. I inquired: ’Is it unlawful, O Messenger of Allah?’ He replied: ’No, but it was absent from my people’s land, so I find it repugnant.’ Khalid remarked: ’I pulled it toward me and consumed it while the Messenger of Allah—peace and blessings be upon him—watched.”’ This constitutes an explicit text affirming its lawfulness, representing the abrogating report. Undoubtedly, Ibn Abbas only joined the Messenger of Allah—peace and blessings be upon him—in Medina after the conclusion of the Conquest of Mecca, Ḥunayn, and Ṭā’if. After these, he—peace and blessings be upon him—waged no battle except Tabūk, during which no famine whatsoever afflicted them. It was decisively confirmed that ʿAbd al-Raḥmān ibn Ḥasana’s report predated this narration without doubt, thereby wholly resolving the ambiguity and validating its permissibility as affirmed by ʿUmar ibn al-Khaṭṭāb and others. And success comes only from Allah, the Exalted.

L17013 **Issue: The Ruling on Eating Rabbit**

L17014–17016 1033 - Issue: The rabbit is permissible because He did not specify its prohibition for us. The Salaf differed concerning it: We have narrated through Waki’’s chain from Hammām ibn Yaḥyā, from Qaṭādah, from Sa‘īd ibn al-Musayyib, from ‘Umar or Ibn ‘Umar, that he considered the rabbit reprehen-

[3]**Hadith references (L17010):** Sahih Muslim 2663d.

فَصَحَّ يَقِينًا أَنَّ تِلْكَ الْمَخَافَةَ مِنْهُ - عَلَيْهِ السَّلَامُ - فِي الضِّبَابِ أَنْ تَكُونَ مِمَّا مُسِخَ قَدْ ارْتَفَعَتْ، وَصَحَّ أَنَّ الضِّبَابَ لَيْسَتْ مِمَّا مُسِخَ، وَلَا مِمَّا مُسِخَ شَيْءٌ فِي صُوَرِهَا -: فَحَلَّتْ. ثُمَّ وَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ «عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ قَالَ: دَخَلْتُ أَنَا وَخَالِدُ بْنُ الْوَلِيدِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْتَ مَيْمُونَةَ: فَأُتِيَ بِضَبٍّ مَحْنُوذٍ فَرَفَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدَهُ، فَقُلْتُ: أَحَرَامٌ هُوَ يَا رَسُولَ اللَّهِ؟ قَالَ: لَا، وَلَكِنَّهُ لَمْ يَكُنْ بِأَرْضِ قَوْمِي فَأَجِدُنِي أَعَافُهُ، قَالَ خَالِدٌ: فَاجْتَرَرْتُهُ فَأَكَلْتُهُ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْظُرُ» . فَهَذَا نَصٌّ جَلِيٌّ عَلَى تَحْلِيلِهِ، وَهَذَا هُوَ الْآخَرُ النَّاسِخُ، لِأَنَّ ابْنَ عَبَّاسٍ بِلَا شَكٍّ لَمْ يَجْتَمِعْ قَطُّ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمَدِينَةِ إلَّا بَعْدَ انْقِضَاءِ غَزْوَةِ الْفَتْحِ، وَحُنَيْنٍ، وَالطَّائِفِ، وَلَمْ يَغْزُ - عَلَيْهِ السَّلَامُ - بَعْدَهَا إلَّا تَبُوكَ، وَلَمْ تُصِبْهُمْ فِي تَبُوكَ مَجَاعَةٌ أَصْلًا. وَصَحَّ يَقِينًا أَنَّ خَبَرَ عَبْدِ الرَّحْمَنِ بْنِ حَسَنَةَ كَانَ قَبْلَ هَذَا الْخَبَرِ بِلَا مِرْيَةٍ فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً وَصَحَّتْ إبَاحَتُهُ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَغَيْرِهِ -: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ أَكْلِ الْأَرْنَبُ]

١٠٣٣ - مَسْأَلَةٌ: وَالْأَرْنَبُ حَلَالٌ، لِأَنَّهُ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهَا، وَقَدْ اخْتَلَفَ السَّلَفُ فِيهَا؛ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ هَمَّامِ بْنِ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ أَوْ ابْنِ عُمَرَ أَنَّهُ كَرِهَ الْأَرْنَبَ. وَمِنْ طَرِيقِ قَتَادَةَ عَنْ ابْنِ الْمُسَيِّبِ أَيْضًا أَنَّ عَبْدَ

sible (makruh). Through Qaṭādah's chain, also from Ibn al-Musayyib, it is related that ʻAbdullāh ibn ʻAmr ibn al-ʻĀṣ and his father considered the rabbit reprehensible. Saʻd ibn Abī Waqqāṣ ate it. From ʻAbd al-Raḥmān ibn Abī Laylā, it is narrated that he considered the rabbit reprehensible. Those who deemed it reprehensible cited as evidence a report through Waki''s chain: Abū Makīn reported from ʻIkrimah that "the Prophet—peace be upon him—was presented with a rabbit and told, 'It menstruates,' so he disliked it." Another narration via ʻAbd al-Razzāq, from Ibrāhīm ibn ʻUmar, from ʻAbd al-Karīm Abū Umayyah, states: "Jarīr ibn Anas al-Aslamī asked the Prophet—peace be upon him—about rabbit. He replied: 'I do not eat it; I have been informed that it menstruates.'" Abū Muḥammad said: ʻAbd al-Karīm Abū Umayyah is rejected, and ʻIkrimah's ḥadīth is mursal (with an incomplete chain), and it has been authenticated. From the narration of Shuʻbah from Hishām ibn Zayd, from Anas ibn Mālik: He caught a rabbit and brought it to Abū Ṭalḥah, who slaughtered it and sent its haunch and both thighs to the Prophet—may Allah's peace and blessings be upon him. [Anas said:] I brought it to the Prophet—may Allah's peace and blessings be upon him—and he accepted it. From the narration of Abū Hurayrah: The Prophet—peace be upon him—was presented with a roasted rabbit, but he did not eat from it and commanded the people to eat. This is an authentic text regarding its permissibility. He—peace be upon him—may have disliked it due to its natural disposition, not due to any sin in it. By the life of Allah, we entirely dislike it and cannot bring ourselves to eat it at all. But does this constitute prohibition in any way?

L17017 **Issue concerning vinegar that has completely transformed from wine.**

L17018 1034 - Issue: Vinegar transformed from wine is permissible, whether one intentionally converted it or not, except that whoever retains wine without pouring it out until converting it into vinegar or letting it naturally turn to vinegar is a sinner against Allah Almighty and has inadmissible testimony. The proof lies in wine's prohibition being explicitly detailed in scripture, while vinegar remains permissible and unrestricted. We narrate through the chain of Sahih Muslim: ʻAbd al-Raḥmān ibn ʻAbdillāh al-Dārimī reported

اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ وَأَبَاهُ كَرِهَا الْأَرْنَبَ - وَأَكَلَهَا سَعْدُ بْنُ أَبِي وَقَّاصٍ. وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَنَّهُ كَرِهَ الْأَرْنَبَ. وَاحْتَجَّ مَنْ كَرِهَهَا بِخَبَرٍ مِنْ طَرِيقِ وَكِيعٍ نا أَبُو مَكِينٍ عَنْ عِكْرِمَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِأَرْنَبٍ فَقِيلَ لَهُ: إنَّهَا تَحِيضُ فَكَرِهَهَا» . وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ عُمَرَ عَنْ عَبْدِ الْكَرِيمِ أَبِي أُمَيَّةَ قَالَ: «سَأَلَ جَرِيرُ بْنُ أَنَسٍ الْأَسْلَمِيُّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْأَرْنَبِ؟ فَقَالَ: لَا آكُلُهَا أُنْبِئْتُ أَنَّهَا تَحِيضُ» . قَالَ أَبُو مُحَمَّدٍ: عَبْدُ الْكَرِيمِ أَبُو أُمَيَّةَ - هَالِكٌ - وَحَدِيثُ عِكْرِمَةَ مُرْسَلٌ، وَقَدْ صَحَّ مِنْ طَرِيقِ شُعْبَةَ عَنْ هِشَامِ بْنِ زَيْدٍ «عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّهُ صَادَ أَرْنَبًا فَأَتَى بِهَا أَبَا طَلْحَةَ فَذَبَحَهَا وَبَعَثَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِوَرِكِهَا وَفَخِذَيْهَا فَأَتَيْتُ بِهَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَبِلَهَا» . وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِأَرْنَبٍ مَشْوِيَّةٍ فَلَمْ يَأْكُلْ - عَلَيْهِ السَّلَامُ - مِنْهَا وَأَمَرَ - عَلَيْهِ السَّلَامُ - الْقَوْمَ فَأَكَلُوا» فَهَذَا نَصٌّ صَحِيحٌ فِي تَحْلِيلِهَا وَقَدْ يَكْرَهُهَا - عَلَيْهِ السَّلَامُ - خِلْقَةً، لَا لِإِثْمٍ فِيهَا، وَنَحْنُ لَعَمْرُ اللَّهِ نَكْرَهُهَا جُمْلَةً وَلَا نَقْدِرُ عَلَى أَكْلِهَا أَصْلًا، وَلَيْسَ هَذَا مِنْ التَّحْرِيمِ فِي شَيْءٍ؟

[مَسْأَلَةُ انْخَلُّ الْمُسْتَحِيلُ عَنْ الْخَمْرِ]

١٠٣٤ - مَسْأَلَةٌ: وَانْخَلُّ الْمُسْتَحِيلُ عَنْ الْخَمْرِ حَلَالٌ تَعَمَّدَ تَخْلِيلَهَا أَوْ لَمْ يَتَعَمَّدْ إلَّا أَنَّ الْمُمْسِكَ لِلْخَمْرِ لَا يُرِيقُهَا حَتَّى يُخَلِّلَهَا أَوْ تَتَخَلَّلَ مِنْ ذَاتِهَا -: عَاصٍ لِلَّهِ عَزَّ وَجَلَّ مُجَرَّحُ الشَّهَادَةِ. بُرْهَانُ ذَلِكَ -: أَنَّ الْخَمْرَ مُفَصَّلٌ تَحْرِيمُهَا، وَانْخَلُّ حَلَالٌ لَمْ يُحَرَّمْ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ الدَّارِمِيُّ أَنَا يَحْيَى بْنُ حَسَّانَ نا سُلَيْمَانُ بْنُ بِلَالٍ

to us, Yahyā ibn Ḥassān reported to us, Sulaymān ibn Bilāl reported from Hishām ibn ʻUrwah from his father from ʻĀ'ishah, Mother of the Believers, who said: Allah's Messenger (peace be upon him) declared, "What an excellent condiment vinegar is!" Thus vinegar is decisively permissible, being distinct from prohibited wine. When a permissible juice loses its original properties and acquires the characteristics of wine, it ceases to be lawful juice and becomes prohibited wine. Conversely, when wine loses its prohibited characteristics and acquires vinegar's lawful properties, it ceases to be prohibited wine and becomes lawful vinegar. This principle governs all things: rulings follow designated names. When names become invalid, their stipulated rulings lapse, replaced by those of the new designations. The minor has rulings specific to him; the adult, his own; the deceased, theirs; blood, its ruling; nourishment transformed from blood, its ruling; milk and meat transformed from blood, their rulings - this applies universally. There is no significance to intentional conversion versus natural transformation, as no Qur'anic verse, authentic Sunnah, weak report, Companion's opinion, or analogy distinguishes between them. The sole prohibition lies in retaining wine itself.

عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «نِعْمَ الْإِدَامُ الْخَلُّ» فَإِذًا الْخَلُّ حَلَالٌ، فَهُوَ بِيَقِينٍ غَيْرُ الْخَمْرِ الْمُحَرَّمَةِ، وَإِذَا سَقَطَتْ عَنْ الْعَصِيرِ الْحَلَالِ صِفَاتُ الْعَصِيرِ وَحَلَّتْ فِيهِ صِفَاتُ الْخَمْرِ فَلَيْسَتْ تِلْكَ الْعَيْنُ عَصِيرًا حَلَالًا، بَلْ هِيَ خَمْرٌ مُحَرَّمَةٌ، وَإِذَا سَقَطَتْ عَنْ تِلْكَ الْعَيْنِ صِفَاتُ الْخَمْرِ الْمُحَرَّمَةِ وَحَلَّتْ فِيهَا صِفَاتُ الْخَلِّ الْحَلَالِ، فَلَيْسَتْ خَمْرًا مُحَرَّمَةً، بَلْ هِيَ خَلٌّ حَلَالٌ. وَهَكَذَا كُلُّ مَا فِي الْعَالَمِ إنَّمَا الْأَحْكَامُ عَلَى الْأَسْمَاءِ فَإِذَا بَطَلَتْ تِلْكَ الْأَسْمَاءُ بَطَلَتْ تِلْكَ الْأَحْكَامُ الْمَنْصُوصَةُ عَلَيْهَا وَحَدَثَتْ لَهَا أَحْكَامُ الْأَسْمَاءِ الَّتِي انْتَقَلَتْ إلَيْهَا فَلِلصَّغِيرِ حُكْمُهُ، وَلِلْبَالِغِ حُكْمُهُ، وَلِلْمَيِّتِ حُكْمُهُ، وَلِلدَّمِ حُكْمُهُ، وَلِلْغِذَاءِ الَّذِي اسْتَحَالَ مِنْهُ حُكْمُهُ، وَلِلَّبَنِ، وَاللَّحْمِ الْمُسْتَحِيلَيْنِ عَنْ الدَّمِ حُكْمُهُمَا، وَهَكَذَا كُلُّ شَيْءٍ. وَلَا مَعْنَى لِتَعَمُّدِ تَخْلِيلِهَا، أَوْ لِتَخْلِيلِهَا مِنْ ذَاتِهَا لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَإِنَّمَا الْحَرَامُ إمْسَاكُ الْخَمْرِ فَقَطْ.

L17019–17020 There is no distinction between vinegarizing it or abstaining from vinegarizing it. Rather, the one who intends for it to remain as wine bears greater sin and graver offense than the one who deliberately seeks to corrupt it or intends to alter it. This view of ours is the position of Abū Ḥanīfah and Mālik. Al-Shāfiʻī and Abū Sulaymān said: If it vinegarizes spontaneously, it becomes lawful, but if vinegarized intentionally, it does not become lawful—this is a corrupt opinion. It has been reported to us from some Mālikī scholars that all vinegar originating from wine—whether by intent or without intent—is forbidden. This is erroneous due to what we have previously established.

وَلَا فَرْقَ بَيْنَ تَخْلِيلِهَا أَوْ تَرْكِ تَخْلِيلِهَا، بَلْ الْمُرِيدُ لِبَقَائِهَا خَمْرًا أَعْظَمُ إثْمًا وَأَكْثَرُ جُرْمًا مِنْ الْمُتَعَمِّدِ لِإِفْسَادِهَا وَالْقَاصِدِ لِتَغْيِيرِهَا - وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ. وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: إذَا تَخَلَّلَتْ حَلَّتْ، وَإِنْ خُلِّلَتْ لَمْ تَحِلَّ - وَهَذَا قَوْلٌ فَاسِدٌ وَرُوِّينَا عَنْ بَعْضِ الْمَالِكِيِّينَ: أَنَّ كُلَّ خَلٍّ تَوَلَّدَ مِنْ خَمْرٍ بِقَصْدٍ أَوْ بِغَيْرِ قَصْدٍ فَهُوَ حَرَامٌ - وَهَذَا خَطَأٌ لِمَا ذَكَرْنَا. وَأَمَّا عِصْيَانُ مُمْسِكِ الْخَمْرِ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ أَبِي خَلَفٍ قَالَ: نا زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - نا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عَمْرٍو - عَنْ زَيْدٍ - هُوَ ابْنُ أَبِي أُنَيْسَةَ - عَنْ يَحْيَى النَّخَعِيِّ قَالَ: سُئِلَ ابْنُ عَبَّاسٍ عَنْ النَّبِيذِ؟

Regarding the sinfulness of retaining wine: We have reported through Muslim's chain that Muḥammad ibn Aḥmad ibn Abī Khalaf narrated to us from Zakariyyā (son of Abī Zā'idah) from ʻUbayd Allāh (son of ʻAmr) from Zayd (son of Abī Unaysah) from Yaḥyā al-Nakhaʻī, who said: Ibn ʻAbbās was asked about *nabīdh*. He mentioned the ḥadīth in which the Prophet (peace be

upon him) commanded a waterskin to be prepared with raisins and water left overnight. He drank from it the next day, the following night, and the subsequent day until evening—drinking and giving others to drink. The next morning, he ordered the remainder to be discarded. Thus, retaining wine is absolutely impermissible.

If it is asked: How can vinegar be obtained without the handler incurring sin? We reply: Yes, by placing grapes whole into a container. When the approaching summer arrives, they are pressed, yielding only pure vinegar. It is not termed wine prior to extraction. Similarly, if one presses grapes or soaks raisins or dates, then adds sharp vinegar equal to both in quantity to the sweet juice or sweet *nabīdh* before fermentation begins, it will vinegarize without ever becoming wine. And with Allah, the Exalted, lies all success.

A Legal Issue: The Melted Clarified Butter into Which a Mouse Falls

L17021

L17022 Issue 1035: If a mouse falls into melted butter - whether it dies therein or not - it is forbidden. It is not permissible to retain it at all; rather, it must be poured away. If the butter is solid, the part surrounding the mouse is removed and discarded, and the remainder remains permissible as it was. As for anything other than butter into which a mouse or another animal falls - whether it dies or not - all of it remains permissible as it was, as long as its color, taste, or smell remains unchanged. If something forbidden becomes apparent in it, then it is forbidden.

L17023–17024 Similarly, if anything other than a mouse falls into clarified butter—whether it dies or not—all of it is permissible, provided no unlawful change becomes apparent in it, as we have previously stated. We have already fully explained this matter in the Book of Purification within this compendium of ours, making its repetition redundant. The core principle is that the prohibition applies only to melted clarified butter in which a mouse has fallen, and no

فَذَكَرَ الْحَدِيثَ، وَفِيهِ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِسِقَاءٍ فَجُعِلَ فِيهِ زَبِيبٌ وَمَاءٌ جُعِلَ مِنَ اللَّيْلِ فَأَصْبَحَ فَشَرِبَ مِنْهُ يَوْمَهُ وَاللَّيْلَةَ الْمُسْتَقْبَلَةَ وَمِنَ الْغَدِ حَتَّى أَمْسَى فَشَرِبَ وَسَقَى فَلَمَّا أَصْبَحَ أَمَرَ بِمَا بَقِيَ مِنْهُ فَأُهْرِقَ» . فَلَا يَحِلُّ إِمْسَاكُ الْخَمْرِ أَصْلًا. فَإِنْ قِيلَ: فَكَيْفَ السَّبِيلُ إِلَى خَلٍّ لَا يَأْثَمُ مُعَانِيهِ؟ قُلْنَا: نَعَمْ، بِأَنْ يَكُونَ الْعِنَبُ كَمَا هُوَ يُلْقَى فِي الظَّرْفِ صَحِيحًا فَإِذَا كَانَ فِي اسْتِقْبَالِ الصَّيْفِ الَّذِي يَأْتِي عُصِرَ فَإِنَّهُ لَا يَنْعَصِرُ إِلَّا الْخَلُّ الصِّرْفُ. وَلَا يُسَمَّى خَمْرًا مَا لَمْ يَبْرُزْ مِنَ الْعِنَبِ. وَأَيْضًا فَإِنَّ مَنْ عَصَرَ الْعِنَبَ، أَوْ نَبَذَ الزَّبِيبَ أَوِ التَّمْرَ ثُمَّ صَبَّ عَلَى الْعَصِيرِ الْحُلْوِ أَوِ النَّبِيذِ الْحُلْوِ قَبْلَ أَنْ يَبْدَأَ بِهِمَا الْغَلَيَانُ مِثْلَ كِلَيْهِمَا خَلًّا حَاذِقًا، فَإِنَّهُ يَتَخَلَّلُ، وَلَا يَصِيرُ خَمْرًا أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ السَّمْنُ الذَّائِبُ يَقَعُ فِيهِ الْفَأْرُ]

١٠٣٥ - مَسْأَلَةٌ: وَالسَّمْنُ الذَّائِبُ يَقَعُ فِيهِ الْفَأْرُ مَاتَ فِيهِ أَوْ لَمْ يَمُتْ -: فَهُوَ حَرَامٌ، لَا يَحِلُّ إِمْسَاكُهُ أَصْلًا، بَلْ يُهْرَاقُ، فَإِنْ كَانَ جَامِدًا أُخِذَ مَا حَوْلَ الْفَأْرِ فَرُمِيَ، وَكَانَ الْبَاقِي حَلَالًا كَمَا كَانَ. وَأَمَّا كُلُّ مَا عَدَا السَّمْنِ يَقَعُ فِيهِ الْفَأْرُ أَوْ غَيْرُ الْفَأْرِ فَيَمُوتُ أَوْ لَا يَمُوتُ فَهُوَ كُلُّهُ حَلَالٌ كَمَا كَانَ، مَا لَمْ يَتَغَيَّرْ لَوْنُهُ أَوْ طَعْمُهُ أَوْ رِيحُهُ، فَإِنْ ظَهَرَ فِيهِ الْحَرَامُ فَهُوَ حَرَامٌ.

وَكَذَلِكَ السَّمْنُ يَقَعُ فِيهِ غَيْرُ الْفَأْرِ فَيَمُوتُ أَوْ لَا يَمُوتُ فَهُوَ حَلَالٌ كُلُّهُ مَا لَمْ يَظْهَرْ فِيهِ تَغْيِيرُ الْحَرَامِ لَهُ كَمَا قَدَّمْنَا، وَقَدْ بَيَّنَّا هَذِهِ الْقِصَّةَ كُلَّهَا فِي كِتَابِ الطَّهَارَةِ مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إِعَادَتِهَا وَعُمْدَتُهُ أَنَّ النَّهْيَ إِنَّمَا جَاءَ فِي السَّمْنِ الذَّائِبِ فِيهِ الْفَأْرُ وَلَمْ يُنَصَّ عَلَى مَا عَدَاهُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

explicit ruling is given for other cases, *"Your Lord is not forgetful"* (Quran 19:64). Success is from Allah, the Exalted.[4]

L17025 **A juristic question regarding the ruling on what falls from food.**

L17026 1036. Issue: It is obligatory to eat whatever falls from food. Licking the fingers after completing the meal is obligatory, and licking the platter when its contents are finished is obligatory. This is based on what we have reported through Al-Bukhari's chain: Ali ibn Abdullah [Ibn Al-Madini] narrated to us, Sufyan ibn Uyaynah narrated to us from Amr ibn Dinar from Ata' from Ibn Abbas that the Messenger of Allah—peace and blessings be upon him—said: "When one of you eats, he must not wipe his hand until he licks it or has someone else lick it." Through Hammad ibn Salamah's chain: Thabit al-Bunani narrated to us from Anas ibn Malik that the Prophet—peace and blessings be upon him—said: "If a morsel falls from one of you, let him remove any impurity from it and eat it, and not leave it for Satan." He commanded us to wipe the platter, saying: "For you do not know in which part of your food the blessing resides."[5]

L17027 **The Legal Issue of Eating While Reclining**

L17028 1037. Question: It is disliked to eat while reclining, but we do not consider it disliked to eat lying on one's stomach. None of these positions is forbidden, as there is no explicit prohibition against any of them. Whatever is not explicitly defined as forbidden to us is permissible. It has been narrated to us through Bukhārī's chain: Abū Nu'aym narrated to us, from Mis'ar—Ibn Kidām—from 'Alī ibn al-Aqmar, who said: I heard Abū Juḥayfah say, "The Prophet—peace and blessings of Allah be upon him—said: 'I do not eat while reclining.'" This is not a prohibition at all; rather, he merely preferred the superior manner. If they cite what has been narrated to us through Abū Dāwūd's chain: from 'Uthmān ibn Abī Shaybah, from Kathīr ibn Hishām,

[4]**Qur'an references (L17024):** Qur'an 19:64 (Maryam).

[5]**Hadith references (L17026):** Mishkat al-Masabih 4166; Sahih Muslim 2034.

[مَسْأَلَةٌ حُكْمِ مَا سَقَطَ مِنْ الطَّعَامِ]

١٠٣٦ - مَسْأَلَةٌ: وَمَا سَقَطَ مِنْ الطَّعَامِ فَفَرْضٌ أَكْلُهُ، وَلَعْقُ الْأَصَابِعِ بَعْدَ تَمَامِ الْأَكْلِ فَرْضٌ. وَلَعْقُ الصَّحْفَةِ إذَا تَمَّ مَا فِيهَا فَرْضٌ -: لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أَكَلَ أَحَدُكُمْ فَلَا يَمْسَحْ يَدَهُ حَتَّى يَلْعَقَهَا، أَوْ يُلْعِقَهَا» . وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا ثَابِتٌ - هُوَ الْبُنَانِيُّ عَنْ أَنَسِ بْنِ مَالِكٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا سَقَطَتْ لُقْمَةُ أَحَدِكُمْ فَلْيُمِطْ عَنْهَا الْأَذَى، وَلْيَأْكُلْهَا وَلَا يَدَعْهَا لِلشَّيْطَانِ وَأَمَرَنَا أَنْ نَسْلُتَ الْقَصْعَةَ قَالَ: فَإِنَّكُمْ لَا تَدْرُونَ فِي أَيِّ طَعَامِكُمْ الْبَرَكَةُ» .

[مَسْأَلَةٌ الْأَكْلُ مُتَّكِئًا]

١٠٣٧ - مَسْأَلَةٌ: وَيُكْرَهُ الْأَكْلُ مُتَّكِئًا وَلَا نَكْرَهُهُ مُنْبَطِحًا عَلَى بَطْنِهِ وَلَيْسَ شَيْءٌ مِنْ ذَلِكَ حَرَامًا، لِأَنَّهُ لَمْ يَأْتِ نَهْيٌ عَنْ شَيْءٍ مِنْ ذَلِكَ، وَمَا لَمْ يُفَصَّلْ لَنَا تَحْرِيمُهُ فَهُوَ حَلَالٌ. وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو نُعَيْمٍ نا مِسْعَرٌ - هُوَ ابْنُ كِدَامٍ - عَنْ عَلِيِّ بْنِ الْأَقْمَرِ قَالَ: سَمِعْت أَبَا جُحَيْفَةَ يَقُولُ: «قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنِّي لَا آكُلُ مُتَّكِئًا» فَلَيْسَ هَذَا نَهْيًا أَصْلًا لَكِنَّهُ آثَرَ الْأَفْضَلَ فَقَطْ. فَإِنْ ذَكَرُوا: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد عَنْ عُثْمَانَ بْنِ أَبِي شَيْبَةَ عَنْ كَثِيرِ بْنِ هِشَامٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ

from Ja‘far ibn Burqān, from al-Zuhrī, from Sālim ibn ‘Abdillāh ibn ‘Umar, from his father, that the Prophet—peace and blessings of Allah be upon him—“forbade a man from eating while lying on his stomach.”

L17029–17030 We said: This is a report that Ja‘far did not hear from al-Zuhri. Abu Dawud said: Harun ibn Zayd ibn Abi al-Zarqa narrated to us; his father narrated to us; Ja‘far ibn Burqan narrated to us that this very same hadith reached him from al-Zuhri. So the chain was deemed defective. And Allah alone grants success.

L17031 ## Issue: Washing Hands Before and After the Meal

L17032 1038 - Issue: Washing the hands before and after meals is commendable. We have transmitted through Abū Dāwūd’s chain: Aḥmad ibn Yūnus narrated to us; Zuḥayr (Ibn Muʿāwiyah) narrated to us; Suhayl ibn Abī Ṣāliḥ reported from his father, from Abū Hurayrah, who said: Allah’s Messenger (peace and blessings be upon him) said: “Whoever sleeps with grease on their hand without washing it off, then suffers harm, let them blame none but themselves.” Abū Muḥammad said: This indicates a recommended act, not an obligation. A rat may bite a person’s fingers if it detects the smell of food on them. No prohibition exists against washing hands before eating. Some have claimed: “This is a practice of non-Arabs”—a most astonishing claim, for even eating bread is a practice of non-Arabs. Had Allah the Exalted intended its prohibition or disapproval, He would have clarified it. If it is argued: A verified report states that when food was presented to the Prophet (peace and blessings be upon him), he was asked: “Will you not perform ablution?” He replied: “Shall I perform ablution when I have not prayed?” This contains no reference whatsoever to washing hands before eating. It concerns ablution, as he (peace and blessings be upon him) stated: “No ablution is obligatory except for Prayer.”[6]

L17033 ## The praise of Allah, the Exalted, upon completion of eating.

الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ نَهَى عَنْ أَنْ يَأْكُلَ الرَّجُلُ مُنْبَطِحًا عَلَى بَطْنِهِ» .

قُلْنَا: هَذَا خَبَرٌ لَمْ يَسْمَعْهُ جَعْفَرٌ مِنْ الزُّهْرِيِّ، قَالَ أَبُو دَاوُد: نا هَارُونُ بْنُ زَيْدِ بْنِ أَبِي الزَّرْقَاءِ نا أَبِي نا جَعْفَرُ بْنُ بُرْقَانَ أَنَّهُ بَلَغَهُ عَنْ الزُّهْرِيِّ هَذَا الْحَدِيثُ نَفْسُهُ، فَسَقَطَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ غَسْلُ الْيَدِ قَبْلَ الطَّعَامِ وَبَعْدَهُ]

١٠٣٨ - مَسْأَلَةٌ: وَغَسْلُ الْيَدِ قَبْلَ الطَّعَامِ وَبَعْدَهُ حَسَنٌ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ يُونُسَ نا زُهَيْرٌ - هُوَ ابْنُ مُعَاوِيَةَ - نا سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ نَامَ وَفِي يَدِهِ غَمَرٌ وَلَمْ يَغْسِلْهُ فَأَصَابَهُ شَيْءٌ فَلَا يَلُومَنَّ إلَّا نَفْسَهُ» . قَالَ أَبُو مُحَمَّد: فَهَذَا نَدْبٌ لَا أَمْرٌ، وَالْجُرَذُ رُبَّمَا عَضَّ أَصَابِعَ الْمَرْءِ إذَا شَمَّ فِيهَا رَائِحَةَ الطَّعَامِ وَلَمْ يَأْتِ نَهْيٌ عَنْ غَسْلِ الْيَدِ قَبْلَ الطَّعَامِ، وَقَدْ قَالَ قَوْمٌ: هُوَ مِنْ فِعْلِ الْأَعَاجِمِ، وَهَذَا عَجَبٌ جِدًّا وَإِنَّ أَكْلَ الْخُبْزِ لَمِنْ فِعْلِ الْأَعَاجِمِ، وَلَوْ أَرَادَ اللَّهُ تَعَالَى تَحْرِيمَهُ أَوْ كَرَاهِيَتَهُ لَنَا لَبَيَّنَهُ فَإِنْ قِيلَ: فَقَدْ صَحَّ الْخَبَرُ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ قُرِّبَ إلَيْهِ الطَّعَامُ فَقِيلَ لَهُ: أَلَا تَتَوَضَّأُ؟ قَالَ: لَمْ أُصَلِّ فَأَتَوَضَّأُ» فَلَيْسَ فِي هَذَا ذِكْرٌ لِغَسْلِ الْيَدِ قَبْلَ الطَّعَامِ أَصْلًا، وَإِنَّمَا فِيهِ الْوُضُوءُ وَهُوَ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -: «لَا وُضُوءَ وَاجِبًا إلَّا لِلصَّلَاةِ» .

[مَسْأَلَةٌ حَمْدُ اللَّهِ تَعَالَى عِنْدَ الْفَرَاغِ مِنْ الْأَكْلِ]

[6] **Hadith references (L17032):** Sunan Abi Dawud 3852.

L17034 Issue 1039: Praising Allah the Exalted upon finishing eating is commendable, even if done after every morsel, because it is an act of goodness and virtuousness, and this applies in all circumstances.

L17035 **Issue: Cutting meat with a knife for consumption.**

L17036–17038 1040. Issue: Cutting meat with a knife for eating is commendable, and we do not consider it disliked to cut bread with a knife for eating as well (and rinsing the mouth after eating is recommended), as reported to us through the chain of al-Bukhārī: Narrated to us by ʿAlī ibn ʿAbd Allāh, narrated to us by Sufyān, who said: I heard Yaḥyā ibn Saʿīd al-Anṣārī say, from Bashīr ibn Yasār, from Suwayd ibn al-Nuʿmān: "The Messenger of Allah—peace be upon him—ate sawīq (a dish of ground barley or wheat), then called for water and rinsed his mouth." Also through the chain of al-Layth, from ʿUqayl ibn Khālid, from al-Zuhrī, from ʿAbd Allāh ibn ʿAbd Allāh, from Ibn ʿAbbās. The Prophet (peace and blessings of Allah be upon him) drank milk and then rinsed his mouth with water, saying: "Indeed it contains fat." It is authentically established that he (peace and blessings of Allah be upon him) drank milk without rinsing his mouth. Since this involves neither a command nor a prohibition, it constitutes a commendable and permissible act.

Through the chain of Al-Bukhari: Abu Al-Yaman narrated to us, saying: I am Shuʿayb ibn Abi Hamzah, from Az-Zuhri [who] said: Jaʿfar ibn ʿAmr ibn Umayyah informed me that his father told him he saw Allah's Messenger (peace and blessings of Allah be upon him) cutting meat from a sheep's shoulder. When called to prayer, he threw down the meat and the knife he was cutting with, then stood to pray without performing ablution.

No prohibition exists against cutting bread or other items with a knife, making it permissible. There is a narration stating: "Do not cut meat with a knife, for this is the practice of non-Arabs," but it lacks authenticity as it comes through Abu Maʿshar al-Madini - a weak narrator. Success is by Allah, the Exalted.

L17039 **A question regarding eating from a silver-plated vessel**

١٠٣٩ - مَسْأَلَةٌ: وَحَمْدُ اللَّهِ تَعَالَى عِنْدَ الْفَرَاغِ مِنْ الْأَكْلِ حَسَنٌ وَلَوْ بَعْدَ كُلِّ لُقْمَةٍ لِأَنَّهُ فِعْلُ خَيْرٍ وَبِرٍّ، وَفِي كُلِّ حَالٍ.

[مَسْأَلَةٌ قَطْعُ اللَّحْمِ بِالسِّكِّينِ لِلْأَكْلِ]

١٠٤٠ - مَسْأَلَةٌ: وَقَطْعُ اللَّحْمِ بِالسِّكِّينِ لِلْأَكْلِ حَسَنٌ، وَلَا نَكْرَهُ قَطْعَ الْخُبْزِ بِالسِّكِّينِ لِلْأَكْلِ أَيْضًا - وَتُسْتَحَبُّ الْمَضْمَضَةُ مِنْ الطَّعَامِ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ سَمِعْت يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ يَقُولُ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ سُوَيْدِ بْنِ النُّعْمَانِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَكَلَ سَوِيقًا ثُمَّ دَعَا بِمَاءٍ فَتَمَضْمَضَ» . وَمِنْ طَرِيقِ اللَّيْثِ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ الزُّهْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْ ابْنِ عَبَّاسٍ «إنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَرِبَ لَبَنًا ثُمَّ تَمَضْمَضَ بِالْمَاءِ وَقَالَ: إنَّ لَهُ دَسَمًا» . وَصَحَّ «أَنَّهُ - عَلَيْهِ السَّلَامُ - شَرِبَ لَبَنًا وَلَمْ يَتَمَضْمَضْ» فَلَمْ يَأْتِ بِهَا أَمْرٌ وَلَا نَهْيٌ فَهِيَ فِعْلٌ حَسَنٌ وَمُبَاحٌ -: وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ أَنَا شُعَيْبُ بْنُ أَبِي حَمْزَةَ عَنْ الزُّهْرِيِّ [قَالَ] أَخْبَرَنِي جَعْفَرُ بْنُ عَمْرِو بْنِ أُمَيَّةَ: " أَنَّ أَبَاهُ أَخْبَرَهُ أَنَّهُ «رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَحْتَزُّ مِنْ كَتِفِ شَاةٍ فَدُعِيَ إلَى الصَّلَاةِ فَأَلْقَاهَا وَالسِّكِّينَ الَّتِي يَحْتَزُّ بِهَا ثُمَّ قَامَ فَصَلَّى وَلَمْ يَتَوَضَّأْ.» وَلَمْ يَأْتِ نَهْيٌ عَنْ قَطْعِ الْخُبْزِ وَغَيْرِهِ بِالسِّكِّينِ فَهُوَ مُبَاحٌ. وَجَاءَ خَبَرٌ فِيهِ: «لَا تَقْطَعُوا اللَّحْمَ بِالسِّكِّينِ، فَإِنَّهُ مِنْ فِعْلِ الْأَعَاجِمِ» ، وَهُوَ لَا يَصِحُّ لِأَنَّهُ مِنْ رِوَايَةِ أَبِي مَعْشَرٍ لِلْمَدِينِيِّ - وَهُوَ ضَعِيفٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ الْأَكْلُ فِي إنَاءٍ مُفَضَّضٍ بِالْجَوْهَرِ وَالْيَاقُوتِ]

adorned with jewels and rubies.

L17040 1041 - Issue: Eating from a silver-plated vessel with jewels and rubies, and in crystal and onyx is permissible - and not considered extravagance. For if it were forbidden, its prohibition would have been explicitly detailed. Whatever is not explicitly prohibited remains permissible. Allah the Exalted has prohibited vessels of gold and silver, making them forbidden. He abstained from prohibiting anything beyond these entirely, therefore all else is permissible. It was narrated to us through Ibn al-Jahm's chain: Ahmad ibn al-Haytham narrated to us: Muhammad ibn Shariq narrated from 'Amr ibn Dinar from Abi al-Sha'tha' from Ibn 'Abbas, who said: "The people of pre-Islamic ignorance would eat some things and avoid others out of disgust. Then Allah the Exalted sent His Prophet (peace be upon him), revealed His Book, declared lawful what is lawful and forbidden what is forbidden. What He permitted is lawful, what He prohibited is forbidden, and what He remained silent about is pardoned." Through 'Abd al-Razzaq's chain from Sufyan ibn 'Uyaynah from 'Amr ibn Dinar, who heard 'Ubayd ibn 'Umayr say: "Allah declared lawful what is lawful and forbidden what is forbidden. What He permitted is lawful, what He prohibited is forbidden, and what He remained silent about is pardoned." Whoever claims that any of this constitutes extravagance or asserts this regarding food must define the precise boundary between the prohibited and permissible aspects of such matters, but they have no means to do so. Thus it is established [with certainty] that their claim is invalid. And success comes from Allah, the Most High.

An issue regarding the ruling on consuming garlic, onions, and kurrat.

L17041

L17042–17044 Issue 1042: Garlic, onions, and leeks are lawful except that whoever consumes any of them... It is forbidden for him to enter the mosque until the odor disappears. We have previously addressed this in the Book of Prayer, which suffices and makes its repetition unnecessary. He may sit in markets, public gatherings, weddings, and wherever he wishes except mosques, because the textual prohibition is explicitly limited to them.

١٠٤١ - مَسْأَلَةٌ: وَالْأَكْلُ فِي إنَاءٍ مُفَضَّضٍ بِالْجَوْهَرِ، وَالْيَاقُوتِ، وَفِي الْبَلُّورِ، وَالْجَزَعِ مُبَاحٌ - وَلَيْسَ مِنْ السَّرَفِ لِأَنَّهُ لَوْ كَانَ حَرَامًا لَفَصَّلَ تَحْرِيمَهُ، وَمَا لَمْ يُفَصَّلْ تَحْرِيمُهُ فَهُوَ حَلَالٌ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى آنِيَةَ الذَّهَبِ، وَالْفِضَّةِ فَهِيَ حَرَامٌ - وَأَمْسَكَ عَمَّا عَدَا ذَلِكَ كُلِّهِ فَهُوَ حَلَالٌ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ الْهَيْثَمِ نا مُحَمَّدُ بْنُ شَرِيكٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ أَهْلُ الْجَاهِلِيَّةِ يَأْكُلُونَ أَشْيَاءَ وَيَتْرُكُونَ أَشْيَاءَ تَقَذُّرًا فَبَعَثَ اللَّهُ تَعَالَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنْزَلَ كِتَابَهُ وَأَحَلَّ حَلَالَهُ وَحَرَّمَ حَرَامَهُ فَمَا أَحَلَّ فَهُوَ حَلَالٌ، وَمَا حَرَّمَ فَهُوَ حَرَامٌ، وَمَا سَكَتَ عَنْهُ فَهُوَ عَفْوٌ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ أَنَّهُ سَمِعَ عُبَيْدَ بْنَ عُمَيْرٍ يَقُولُ: أَحَلَّ اللَّهُ حَلَالَهُ وَحَرَّمَ حَرَامَهُ، فَمَا أَحَلَّ فَهُوَ حَلَالٌ وَمَا حَرَّمَ فَهُوَ حَرَامٌ وَمَا سَكَتَ عَنْهُ فَهُوَ عَفْوٌ. وَمَنْ ادَّعَى أَنَّ شَيْئًا مِنْ هَذَا سَرَفٌ أَوْ ادَّعَى ذَلِكَ فِي الْمَأْكَلِ كُلِّفَ أَنْ يَأْتِيَ بِحَدِّ مَا يَحْرُمُ مِنْ ذَلِكَ مِمَّا يَحِلُّ، وَلَا سَبِيلَ لَهُ إلَيْهِ، فَصَحَّ [يَقِينًا] أَنَّ قَوْلَهُ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ أَكْلِ الثُّومِ وَالْبَصَلِ وَالْكُرَّاثِ]

١٠٤٢ - مَسْأَلَةٌ: وَالثُّومُ، وَالْبَصَلُ، وَالْكُرَّاثُ حَلَالٌ إلَّا أَنَّ مَنْ أَكَلَ مِنْهَا شَيْئًا فَحَرَامٌ عَلَيْهِ أَنْ يَدْخُلَ الْمَسْجِدَ حَتَّى تَذْهَبَ الرَّائِحَةُ وَقَدْ ذَكَرْنَاهُ فِي كِتَابِ الصَّلَاةِ فَأَغْنَى عَنْ إعَادَتِهِ وَلَهُ الْجُلُوسُ فِي الْأَسْوَاقِ، وَالْجَمَاعَاتِ وَالْأَعْرَاسِ وَحَيْثُ شَاءَ إلَّا الْمَسَاجِدَ لِأَنَّ النَّصَّ لَمْ يَأْتِ إلَّا فِيهَا.

The Issue of the Eating of Locusts

[مَسْأَلَةُ أَكْلُ الْجَرَادِ]

L17045

L17046 Issue 1043: Locusts are permissible whether captured dead or alive, regardless of whether they subsequently die under those circumstances or not. It has been narrated to us through Al-Bukhari's chain: Abu Al-Walid Al-Tayalisi narrated to us, Shu'bah from Abu Ya'fur, who said: I heard 'Abdullah ibn Abi Awfa state: "We fought alongside Allah's Messenger—peace and blessings upon him—in six or seven campaigns, consuming locusts with him." It has also been narrated to us from 'Umar: "There is no harm in locusts"; from Ibn 'Umar: "The entire locust is validated [as permissible]"; and from Ibn 'Abbas regarding locusts: "There is no harm in eating them"—this being the view of Jabir ibn Zayd and others, without excluding any state or condition. This is likewise the position of Abu Hanifah and Al-Shafi'i. A faction maintained: "They remain impermissible even if captured alive unless killed"—this being Malik's opinion, though we find no valid evidence for it since ritual slaughter cannot feasibly be performed on them. Another group argued that locusts found dead are impermissible, but if captured alive, they become lawful irrespective of how they later die. It has been narrated to us via Ibn Wahb's chain from Ibn Abi Dhi'b from 'Ubayd ibn Salman, who heard Sa'id ibn Al-Musayyab declare concerning locusts: "Those captured alive and subsequently dead are permissible to eat." Through 'Ata's chain: "Capturing locusts constitutes their ritual slaughter"—this being Al-Layth's view.

Abu Muhammad—may Allah have mercy on him—stated: These proponents cited as evidence Allah's decree: {Carrion is forbidden to you} (5:3). Thus, whatever is found dead remains prohibited. He also said: {Allah will surely test you with game within reach of your hands and spears} (5:94). The permissibility of eating locusts is authentically established through the Prophet's precedent—peace and blessings upon him—while empirical observation confirms the impossibility of ritual slaughter for them, thereby nullifying its requirement. Thus, capturing them suffices as validation since they are game obtained by our hands. 'Ali remarked: Their argument holds no validity regarding this verse, for it does not distinguish between capturing game

١٠٤٣ - مَسْأَلَةٌ: وَالْجَرَادُ حَلَالٌ إذَا أُخِذَ مَيِّتًا أَوْ حَيًّا سَوَاءٌ بَعْدَ ذَلِكَ مَاتَ فِي الظُّرُوفِ أَوْ لَمْ يَمُتْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ نا شُعْبَةُ عَنْ أَبِي يَعْفُورٍ [قَالَ] سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي أَوْفَى قَالَ: «غَزَوْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَبْعَ غَزَوَاتٍ أَوْ سِتًّا نَأْكُلُ مَعَهُ الْجَرَادَ» وَرُوِّينَا عَنْ عُمَرَ لَا بَأْسَ بِالْجَرَادِ، وَعَنْ ابْنِ عُمَرَ الْجَرَادُ ذَكَاةٌ كُلُّهُ، وَعَنْ ابْنِ عَبَّاسٍ فِي الْجَرَادِ لَا بَأْسَ بِأَكْلِهِ - وَهُوَ قَوْلُ جَابِرِ بْنِ زَيْدٍ وَغَيْرِهِ، فَلَمْ يَسْتَثْنُوا فِيهِ حَالًا مِنْ حَالٍ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ. وَقَالَتْ طَائِفَةٌ: لَا يَحِلُّ وَإِنْ أُخِذَ حَيًّا إلَّا حَتَّى يُقْتَلَ - وَهُوَ قَوْلُ مَالِكٍ وَلَا نَعْلَمُ لَهُ حُجَّةً لِأَنَّ الذَّكَاةَ لَا تَمْكُنُ فِيهِ، وَذَهَبَ قَوْمٌ إلَى أَنَّهُ لَا يَحِلُّ إنْ وُجِدَ مَيِّتًا فَإِنْ أُخِذَ حَيًّا حَلَّ كَيْفَ مَاتَ بَعْدَ ذَلِكَ، رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ عُبَيْدِ بْنِ سَلْمَانَ أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ فِي الْجَرَادِ: مَا أُخِذَ وَهُوَ حَيٌّ ثُمَّ مَاتَ فَلَا بَأْسَ بِأَكْلِهِ. وَمِنْ طَرِيقِ عَطَاءٍ أَخْذُ الْجَرَادِ ذَكَاتُهُ - وَهُوَ قَوْلُ اللَّيْثِ. قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ هَؤُلَاءِ بِقَوْلِ اللَّهِ تَعَالَى: {حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ} [المائدة: ٣] . فَمَا وُجِدَ مَيِّتًا فَهُوَ حَرَامٌ، وَقَالَ تَعَالَى: {لَيَبْلُوَنَّكُمُ اللَّهُ بِشَيْءٍ مِنَ الصَّيْدِ تَنَالُهُ أَيْدِيكُمْ وَرِمَاحُكُمْ} [المائدة: ٩٤] . وَصَحَّ أَكْلُ الْجَرَادِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَصَحَّ بِالْحِسِّ أَنَّ الذَّكَاةَ لَا تُمْكِنُ فِيهِ فَسَقَطَتْ، فَصَحَّ أَنَّ أَخْذَهُ ذَكَاتُهُ لِأَنَّهُ صَيْدٌ نَالَتْهُ أَيْدِينَا. قَالَ عَلِيٌّ: وَلَا حُجَّةَ لَهُمْ فِي هَذِهِ الْآيَةِ لِأَنَّهُ لَيْسَ فِيهَا إبَاحَةُ مَا نَالَتْهُ أَيْدِينَا حَيًّا دُونَ مَا نَالَتْهُ مَيِّتًا، وَصَحَّ فِي كُلِّ مَقْدُورٍ عَلَى تَذْكِيَتِهِ أَنَّهُ لَا يَحِلُّ إلَّا بِالذَّكَاةِ وَالذَّكَاةُ الشَّقُّ وَهِيَ غَيْرُ

مَقْدُورٍ عَلَيْهَا فِي الْجَرَادِ فَارْتَفَعَ حُكْمُهَا عَنْهُ - رَحِمَهُ اللَّهُ تَعَالَى -: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَقَدْ صَحَّ تَحْلِيلُهُ بِالنَّصِّ فَهُوَ حَلَالٌ كَيْفَمَا وُجِدَ حَيًّا أَوْ مَيِّتًا بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

alive or dead. It is established that for any creature requiring ritual slaughter, permissibility hinges solely upon it—yet slaughter (i.e., throat-slitting) is unattainable for locusts, thus exempting them by divine mercy: {Allah does not burden any soul beyond its capacity} (2:286). Their lawfulness is unequivocally confirmed by scriptural texts, rendering them permissible whether found alive or dead according to Quranic and Prophetic injunctions. Success is attained only by the grace of Allah, the Exalted.[7]

[مَسْأَلَةٌ ذَمُّ مَا قُدِّمَ إِلَى الْمَرْءِ مِنْ الطَّعَامِ]

L17047–17048

A legal question concerning the censure of what has been offered to a person from the food.

مَسْأَلَةٌ: وَإِكْثَارُ الْمَرَقِ حَسَنٌ، وَتَعَاهُدُ الْجِيرَانِ مِنْهُ وَلَوْ مَرَّةً فَرْضٌ، وَذَمُّ مَا قُدِّمَ إِلَى الْمَرْءِ مِنْ الطَّعَامِ مَكْرُوهٌ، لَكِنْ إِنْ اشْتَهَاهُ فَلْيَأْكُلْهُ وَإِنْ كَرِهَهُ فَلْيَدَعْهُ وَلْيَسْكُتْ. وَالْأَكْلُ مُعْتَمِدًا عَلَى يُسْرَاهُ مُبَاحٌ -: رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي عِمْرَانَ الْجَوْنِيِّ عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ عَنْ أَبِي ذَرٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا طَبَخْتُمْ اللَّحْمَ فَأَكْثِرُوا الْمَرَقَ وَأَطْعِمُوا الْجِيرَانَ» . وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَإِنْ كَانَ الطَّعَامُ مَشْفُوهًا فَلْيُنَاوِلْهُ مِنْهُ أُكْلَةً أَوْ أُكْلَتَيْنِ» يَعْنِي صَانِعَهُ، فَصَحَّ أَنَّ التَّعْلِيلَ مِنْ الْمَرَقِ مُبَاحٌ. وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ عَنْ الْأَعْمَشِ عَنْ أَبِي حَازِمٍ - هُوَ الْأَشْجَعِيُّ - عَنْ أَبِي هُرَيْرَةَ قَالَ: «مَا عَابَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا قَطُّ إنْ اشْتَهَاهُ أَكَلَهُ وَإِنْ كَرِهَهُ تَرَكَهُ» . وَلَمْ يَصِحَّ فِي النَّهْيِ عَنْ الِاعْتِمَادِ عَلَى الْيَسَارِ شَيْءٌ - وَرُوِيَ فِيهِ أَثَرٌ مُرْسَلٌ لَا يَصِحُّ مِنْ طَرِيقِ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ «زَجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَعْتَمِدَ الرَّجُلُ عَلَى يَدِهِ الْيُسْرَى عِنْدَ الْأَكْلِ» وَلَا حُجَّةَ فِي مُرْسَلٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L17049

Issue: Abundant broth is commendable, and attending to neighbors with it—even once—is an obligation. Criticizing food presented to one is reprehensible; if desired, let him eat it, and if disliked, let him leave it and remain silent. Eating while leaning on the left hand is permissible. We narrate via Shu'bah from Abū 'Imrān al-Jawnī from 'Abdullāh ibn al-Ṣāmit from Abū Dharr that the Prophet—peace and blessings of Allah upon him—said: "When you cook meat, increase the broth and feed the neighbors." It is authentically established from the Prophet—peace and blessings of Allah upon him—: "If the food is minced, let its preparer offer a morsel or two from it." Thus, taking abundantly from the broth is confirmed permissible. Through Abū Dāwūd's chain: Muḥammad ibn Kathīr reported to us: Sufyān narrated from al-A'mash from Abū Ḥāzim al-Ashja'ī from Abū Hurayrah: "Allah's Messenger—peace and blessings upon him—never censured food. If he desired it, he ate; if disliked, he refrained." No authentic prohibition exists against leaning on the left hand. A mursal report via Ma'mar from Yaḥyā ibn Abī Kathīr states: "The Prophet forbade leaning on the left hand while eating," but a mursal narration holds no authority. And with Allah, the Exalted, lies all guidance to success.[8]

[7] **Qur'an references (L17046):** Qur'an 5:3 (Al-Ma'idah); Qur'an 5:94 (Al-Ma'idah); Qur'an 2:286 (Al-Baqarah).

[8] **Hadith references (L17049):** Sunan Abi Dawud 3763; Riyad as-Salihin 735.