

AL-MUHALLA

كِتَابُ الْأَيْمَانِ

The Book of Oaths

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[The Book of Oaths] [A Principle: No oath is valid unless sworn by Allah, the Exalted and Majestic]

[كِتَابُ الْأَيْمَانِ] [مَسْأَلَةٌ لَا يَمِينَ إِلَّا بِاللَّهِ عَزَّ وَجَلَّ]

1127. Issue: There is no valid oath except by Allah, the Mighty and Majestic, whether through one of His exalted names or through attributes reported about Him—with nothing other than Him being intended by them—such as "Turner of hearts," "Inheritor of the earth and all upon it," "the One in whose hand is my soul—the Lord of the Worlds," and similar expressions (applying to all languages), or by His knowledge, power, might, strength, majesty, or any such matters mentioned in the texts. Whoever swears by these has taken a binding oath. If they break it, expiation becomes obligatory.

١١٢٧ - مَسْأَلَةٌ: لَا يَمِينَ إِلَّا بِاللَّهِ عَزَّ وَجَلَّ، إِمَّا بِاسْمٍ مِنْ أَسْمَائِهِ تَعَالَى، أَوْ بِمَا يُخْبِرُ بِهِ عَنْ اللَّهِ تَعَالَى وَلَا يُرَادُ بِهِ غَيْرُهُ، مِثْلَ: مُقَلِّبِ الْقُلُوبِ، وَوَارِثِ الْأَرْضِ وَمَا عَلَيْهَا، الَّذِي نَفْسِي بِيَدِهِ رَبِّ الْعَالَمِينَ، وَمَا كَانَ مِنْ هَذَا النَّحْوِ، - وَيَكُونُ ذَلِكَ بِجَمِيعِ اللُّغَاتِ - أَوْ بِعِلْمِ اللَّهِ تَعَالَى، أَوْ قُدْرَتِهِ، أَوْ عِزَّتِهِ، أَوْ قُوَّتِهِ، أَوْ جَلَالِهِ، وَكُلِّ مَا جَاءَ بِهِ النَّصُّ مِنْ مِثْلِ هَذَا، فَهَذَا هُوَ الَّذِي إِنْ حَلَفَ بِهِ الْمَرْءُ كَانَ حَالِفًا، فَإِنْ حَنِثَ فِيهِ كَانَتْ فِيهِ الْكَفَّارَةُ.

As for one who swears by anything other than what we have mentioned—whatever it may be, without exception—he is not truly swearing, nor is it deemed an oath. There is no expiation required if he breaks it, nor is he bound to fulfill what he swore upon by that act. He is solely disobeying Allah the Exalted, and nothing is required of him except repentance and seeking forgiveness.

وَأَمَّا مَنْ حَلَفَ بِغَيْرِ مَا ذَكَرْنَا - أَيُّ شَيْءٍ كَانَ لَا تَحَاشَ شَيْئًا - فَلَيْسَ حَالِفًا، وَلَا هِيَ يَمِينًا وَلَا كَفَّارَةٌ فِي ذَلِكَ إِنْ حَنِثَ - وَلَا يَلْزَمُهُ الْوَفَاءُ بِمَا حَلَفَ عَلَيْهِ بِذَلِكَ، وَهُوَ عَاصٍ لِلَّهِ تَعَالَى فَقَطْ، وَلَيْسَ عَلَيْهِ إِلَّا التَّوْبَةُ مِنْ ذَلِكَ وَالِاسْتِغْفَارُ.

The evidence for this is what we mentioned earlier in the "Book of Vows" from the statement of the Messenger of Allah (peace and blessings be upon him and his family): "Whoever takes an oath must swear only by Allah."

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ قَبْلُ فِي " كِتَابِ النُّذُورِ " مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» .

And His statement, the Most High: "Say, 'Call upon Allah or call upon Ar-Rahman. Whichever you call upon, to Him belong the Most Beautiful Names.'" [Surah Al-Isra 17:110][1]

وَقَوْلِهِ تَعَالَى {قُلِ ادْعُوا اللَّهَ أَوِ ادْعُوا الرَّحْمَنَ أَيًّا مَا تَدْعُوا فَلَهُ الأَسْمَاءُ الْحُسْنَى} [الإسراء: ١١٠] .

And He, the Exalted, said: "To Allah belong the most beautiful names, so invoke Him by them, and abandon those who deviate concerning His names." [Al-Aʿrāf: 180][2]

وَقَالَ تَعَالَى {وَلِلَّهِ الأَسْمَاءُ الْحُسْنَى فَادْعُوهُ بِهَا وَذَرُوا الَّذِينَ يُلْحِدُونَ فِي أَسْمَائِهِ} [الأعراف: ١٨٠] .

Everything we have mentioned before refers solely to Allah, the Exalted—nothing besides Him—and none of that is attributed to anything other than

وَكُلُّ مَا ذَكَرْنَا قَبْلُ فَإِنَّمَا يُرَادُ بِهِ اللَّهُ تَعَالَى، لَا شَيْءَ سِوَاهُ، وَلَا يُرْجَعُ مِنْ كُلِّ ذَلِكَ إِلَى شَيْءٍ غَيْرِ اللَّهِ تَعَالَى -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ هُوَ الْحَكَمُ بْنُ نَافِعٍ

[1] **Qur'an references (L17984):** Qur'an 17:110 (Al-Isra).
[2] **Qur'an references (L17985):** Qur'an 7:180 (Al-A'raf).

Allah, the Exalted. It has been narrated to us through the chain of Al-Bukhārī: Abū al-Yamān—he is Al-Ḥakam ibn Nāfiʿ—Shuʿayb ibn Abī Ḥamzah—Abū az-Zināد—Al-Aʿraj—Abū Hurayrah [may Allah be pleased with him]—that the Messenger of Allah, peace and blessings be upon him and his family, said: "Allah has ninety-nine names—one hundred minus one. Whoever enumerates them will enter Paradise."[3]

- أَنَا شُعَيْبُ بْنُ أَبِي حَمْزَةَ نا أَبُو الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ [- رَضِيَ اللَّهُ عَنْهُ -] أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «إِنَّ لِلَّهِ تِسْعَةً وَتِسْعِينَ اسْمًا، مِائَةً إِلَّا وَاحِدًا مَنْ أَحْصَاهَا دَخَلَ الْجَنَّةَ» .

L17987–17988 And the Exalted said: "They are nothing but names you have named—you and your forefathers—for which Allah has sent down no authority." [Surah An-Najm 53:23][4]

وَقَالَ تَعَالَى: {إِنْ هِيَ إِلا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ} [النجم: ٢٣] .

L17989 It has thus been established that it is impermissible for anyone to name Allah the Exalted except with that which He has named Himself with.

فَصَحَّ أَنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى إِلَّا بِمَا سَمَّى بِهِ نَفْسَهُ.

L17990 It has been established that His names do not exceed ninety-nine things, according to his statement—peace be upon him—"a hundred except one," thereby negating any increase and nullifying it. However, He is made known through what He does, the Exalted.

وَصَحَّ أَنَّ أَسْمَاءَهُ لَا تَزِيدُ عَلَى تِسْعَةٍ وَتِسْعِينَ شَيْئًا، لِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «مِائَةً إِلَّا وَاحِدًا» فَنَفَى الزِّيَادَةَ، وَأَبْطَلَهَا، لَكِنْ يُخْبِرُ عَنْهُ بِمَا يَفْعَلُ تَعَالَى.

L17991 Narrations concerning the enumeration of the ninety-nine names have been transmitted, yet they are conflicting and entirely unauthentic. They are derived solely from the Quranic text.

وَجَاءَتْ أَحَادِيثُ فِي إِحْصَاءِ التِّسْعَةِ وَالتِّسْعِينَ أَسْمَاءً مُضْطَرِبَةً لَا يَصِحُّ مِنْهَا شَيْءٌ أَصْلًا، فَإِنَّمَا تُؤْخَذُ مِنْ نَصِّ الْقُرْآنِ.

L17992 And among what has been authentically reported from the Prophet—may Allah's blessings and peace be upon him and his family—and our enumeration of them has reached what we mention: they are: Allah, the Most Merciful, the Especially Merciful, the All-Knowing, the All-Wise, the Most Generous, the Most Great, the Forbearing, the Self-Subsisting, the Most Honorable, the Source of Peace, the Acceptor of Repentance, the Lord, the Bestower, the Deity, the Ever-Near, the All-Hearing, the Responder, the All-Encompassing, the Almighty, the Appreciative, the Subduer, the Last, the Manifest, the Most Great, the All-Aware, the All-Powerful, the All-Seeing, the Oft-Forgiving, the Most Appreciative, the Ever-Forgiving, the All-Dominant, the Compeller, the Supreme in Greatness, the Fashioner, the Most Kind, the Omnipotent, the

وَمِمَّا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَقَدْ بَلَغَ إِحْصَاؤُنَا مِنْهَا إِلَى مَا نَذْكُرُ -: وَهِيَ -: اللَّهُ، الرَّحْمَنُ، الرَّحِيمُ، الْعَلِيمُ، الْحَكِيمُ، الْكَرِيمُ، الْعَظِيمُ، الْحَلِيمُ، الْقَيُّومُ، الْأَكْرَمُ، السَّلَامُ، التَّوَّابُ، الرَّبُّ، الْوَهَّابُ، الْإِلَهُ، الْقَرِيبُ، السَّمِيعُ، الْمُجِيبُ، الْوَاسِعُ، الْعَزِيزُ، الشَّاكِرُ، الْقَاهِرُ، الْآخِرُ، الظَّاهِرُ، الْكَبِيرُ، الْخَبِيرُ، الْقَدِيرُ، الْبَصِيرُ، الْغَفُورُ، الشَّكُورُ، الْغَفَّارُ، الْقَهَّارُ، الْجَبَّارُ، الْمُتَكَبِّرُ، الْمُصَوِّرُ، الْبَرُّ، مُقْتَدِرٌ، الْبَارِي، الْعَلِيُّ، الْغَنِيُّ، الْوَلِيُّ، الْقَوِيُّ، الْحَيُّ، الْحَمِيدُ، الْمَجِيدُ، الْوَدُودُ، الصَّمَدُ، الْأَحَدُ، الْوَاحِدُ، الْأَوَّلُ، الْأَعْلَى، الْمُتَعَالِ، الْخَالِقُ، الْخَلَّاقُ، الرَّزَّاقُ، الْحَقُّ، اللَّطِيفُ، رَءُوف، عَفُوٌّ، الْفَتَّاحُ، الْمَتِينُ،

[3] **Hadith references (L17986):** Sahih al-Bukhari 2736; Sahih al-Bukhari 7392; Sunan Ibn Majah 3860.

[4] **Qur'an references (L17988):** Qur'an 53:23 (An-Najm).

Originator, the Most High, the Self-Sufficient, the Protector, the All-Strong, the Ever-Living, the Praiseworthy, the Glorious, the Most Loving, the Eternal Refuge, the One, the Unique, the First, the Most Exalted, the Supreme, the Creator, the Creator of All, the Provider, the Truth, the Subtle, the Compassionate, the Oft-Pardoning, the Opener, the Firm, the Clear, the Granter of Security, the Guardian, the Hidden, the Most Holy, the Sovereign, the Absolute Sovereign, the Greatest, the Most Mighty, the Master, the All-Perfect, the Singular, the Beneficent, the Beautiful, the Gentle, the One who Sets Measures, the Withholder, the Expander, the Healer, the Giver, the Advancer, the Delayer, the Eternal.

الْمُبِينُ، الْمُؤْمِنُ، الْمُهَيْمِنُ، الْبَاطِنُ، الْقُدُّوسُ، الْمَلِكُ، مَلِيكٌ، الْأَكْبَرُ، الْأَعَزُّ، السَّيِّدُ، سُبُّوحٌ، وِتْرٌ، مِحْسَانٌ، جَمِيلٌ، رَفِيقٌ، الْمُسَعِّرُ، الْقَابِضُ، الْبَاسِطُ، الشَّافِي، الْمُعْطِي، الْمُقَدِّمُ، الْمُؤَخِّرُ، الدَّهْرُ.

L17993 We received the narration through the chain of Aḥmad ibn Shuʿayb: Isḥāq ibn Ibrāhīm—that is, Ibn Rāhwayh—narrated to us, from al-Faḍl ibn Mūsā, who narrated to us, from Muḥammad ibn ʿAmr, who narrated to us, from Abū Salamah [Ibn ʿAbd al-Raḥmān ibn ʿAwf], from Abū Hurayrah, from the Messenger of Allah—peace and blessings be upon him—who mentioned the ḥadīth of the creation of Paradise and Hell. In it is [the statement]: "When Gabriel—peace be upon him—saw Paradise and that it was surrounded by hardships, he said to Allah, the Exalted and Majestic: 'By Your Might, I feared that none would enter it.'"

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا الْفَضْلُ بْنُ مُوسَى نا مُحَمَّدُ بْنُ عَمْرٍو نا أَبُو سَلَمَةَ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ حَدِيثَ خَلْقِ الْجَنَّةِ وَالنَّارِ - وَفِيهِ «أَنَّ جِبْرِيلَ - عَلَيْهِ السَّلَامُ - لَمَّا رَأَى الْجَنَّةَ وَأَنَّهَا حُفَّتْ بِالْمَكَارِهِ قَالَ لِلَّهِ عَزَّ وَجَلَّ: وَعِزَّتِكَ لَقَدْ خَشِيتُ أَنْ لَا يَدْخُلَهَا أَحَدٌ» .

L17994 And He, the Exalted, said: He sent it down with His knowledge (An-Nisa 4:166).[5]

وَقَالَ تَعَالَى: {أَنْزَلَهُ بِعِلْمِهِ} [النساء: ١٦٦] .

L17995–17997 From the chain of Al-Bukhārī: Muṭarrif ibn ʿAbdillāh Abū Muṣʿab narrated to us, from ʿAbdur-Raḥmān ibn Abī Al-Mawālī. From Muhammad ibn al-Munkadir, from Jabir ibn Abdullah, who said: "The Messenger of Allah (peace and blessings be upon him) taught us to seek divine guidance in all matters with the same meticulousness as teaching a Surah from the Quran: 'When one of you resolves to undertake an affair, let him pray two rakʿahs, then say: O Allah, I seek Your counsel through Your knowledge, and I seek capability through Your power.'"

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُطَرِّفُ بْنُ عَبْدِ اللَّهِ أَبُو مُصْعَبٍ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الْمَوَالِي عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعَلِّمُنَا الِاسْتِخَارَةَ فِي الْأُمُورِ كُلِّهَا، كَالسُّورَةِ مِنْ الْقُرْآنِ: إذَا هَمَّ أَحَدُكُمْ بِالْأَمْرِ فَلْيَرْكَعْ رَكْعَتَيْنِ ثُمَّ يَقُولُ: اللَّهُمَّ إنِّي أَسْتَخِيرُكَ بِعِلْمِكَ وَأَسْتَقْدِرُكَ بِقُدْرَتِكَ» .

L17998 And He, the Exalted and Majestic, said: {He is stronger than them in strength}

وَقَالَ عَزَّ وَجَلَّ: {هُوَ أَشَدُّ مِنْهُمْ قُوَّةً} [فصلت: ١٥] .

[5] **Qur'an references (L17994):** Qur'an 4:166 (An-Nisa).

[41:15].[6]

L17999 And He, the Exalted, said: “Lord of Majesty and Honor” (Surah Ar-Rahman 55:27).[7]

وَقَالَ تَعَالَى: {ذُو الْجَلَالِ وَالإِكْرَامِ} [الرحمن: ٢٧] .

[6] **Qur’an references (L17998):** Qur’an 41:15 (Fussilat).
[7] **Qur’an references (L17999):** Qur’an 55:27 (Ar-Rahman).

وَقَالَ تَعَالَى: {فَثَمَّ وَجْهُ اللَّهِ} [البقرة: ١١٥] .

وَقَالَ تَعَالَى {يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ} [الفتح: ١٠] .

وَقَالَ تَعَالَى {وَلِتُصْنَعَ عَلَى عَيْنِي} [طه: ٣٩] .

وَقَالَ تَعَالَى {فَإِنَّكَ بِأَعْيُنِنَا} [الطور: ٤٨] .

فَهَذِهِ جَاءَ النَّصُّ بِهَا.

وَأَمَّا الْيَمِينُ بِعَظَمَةِ اللَّهِ، وَإِرَادَتِهِ، وَكَرَمِهِ، وَحِلْمِهِ، وَحِكْمَتِهِ، وَسَائِرِ مَا لَمْ يَأْتِ بِهِ نَصٌّ، فَلَيْسَ شَيْءٌ مِنْ ذَلِكَ يَمِينًا؛ لِأَنَّهُ لَمْ يَأْتِ بِهَا نَصٌّ، فَلَا يَجُوزُ الْقَوْلُ بِهَا

[مَسْأَلَةٌ حَلَفَ بِعَظَمَةِ اللَّهِ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا]

١١٢٨ - مَسْأَلَةٌ: وَمَنْ حَلَفَ بِمَا ذَكَرْنَا أَنْ لَا يَفْعَلَ أَمْرًا كَذَا، أَوْ أَنْ يَفْعَلَ أَمْرًا كَذَا فَإِنْ وَقَّتَ وَقْتًا مِثْلَ: غَدًا، أَوْ يَوْمَ كَذَا، أَوْ الْيَوْمَ أَوْ فِي وَقْتٍ يُسَمِّيهِ، فَإِنْ مَضَى ذَلِكَ الْوَقْتُ وَلَمْ يَفْعَلْ مَا حَلَفَ أَنْ يَفْعَلَهُ فِيهِ عَامِدًا ذَاكِرًا لِيَمِينِهِ، أَوْ فَعَلَ مَا حَلَفَ أَنْ لَا يَفْعَلَهُ فِيهِ عَامِدًا ذَاكِرًا لِيَمِينِهِ، فَعَلَيْهِ كَفَّارَةُ الْيَمِينِ.

هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، وَبِهِ جَاءَ الْقُرْآنُ وَالسُّنَّةُ، فَإِنْ لَمْ يُوَقِّتْ وَقْتًا فِي قَوْلِهِ: لَأَفْعَلَنَّ كَذَا، فَهُوَ عَلَى الْبِرِّ أَبَدًا حَتَّى يَمُوتَ.

L18000 And He, the Exalted, said: “So there is the Face of Allah” [Al-Baqarah 2:115].[1]

L18001 And He, the Exalted, said, “Allah’s hand is above their hands” [Al-Fath: 10].[2]

L18002 And He, the Exalted, said, “So that you may be fashioned under My very eye.” [20:39][3]

L18003 And He, the Exalted, said, “For indeed you are within Our Sight” [At-Tur: 48].[4]

L18004 Thus, this is explicitly stated in the text.

L18005 As for swearing by the greatness of Allah, His will, His generosity, His forbearance, His wisdom, or any other attributes not explicitly mentioned in a textual source, none of these constitutes a valid oath, since no text has explicitly affirmed these attributes. It is therefore impermissible to deem such oaths legally binding.

L18006 **Issue: He swore by the greatness of Allah that he would not perform such an action.**

L18007 1128 – Legal Ruling: If someone swears by what we have mentioned to abstain from such-and-such an action or to perform such-and-such an action, and specifies a timeframe—such as ’tomorrow,’ ’a specific day,’ ’today,’ or a named period—then if that timeframe elapses and he intentionally, while being aware of his oath, fails to perform what he swore to do within it, or deliberately does what he swore to avoid within it, he must offer the expiation for the oath.

L18008 This is a matter in which there is no disagreement from anyone, as has been established in the Qur’an and the Sunnah. If one does not specify a time when saying, “I will certainly do such and such,” they remain bound in righteousness forever until they die.

[1] **Qur’an references (L18000):** Qur’an 2:115 (Al-Baqarah).
[2] **Qur’an references (L18001):** Qur’an 48:10 (Al-Fath).
[3] **Qur’an references (L18002):** Qur’an 20:39 (Taha).
[4] **Qur’an references (L18003):** Qur’an 52:48 (At-Tur).

وَكَذَلِكَ لَوْ وَقَّتَ وَقْتًا، وَلَا فَرْقَ، وَلَا حِنْثَ عَلَيْهِ، وَهَذَا مَكَانٌ فِيهِ خِلَافٌ -: قَالَ مَالِكٌ: هُوَ حَانِثٌ فِي كِلَا الْأَمْرَيْنِ وَعَلَيْهِ الْكَفَّارَةُ.

L18009 Similarly, if he specified a time, there is no distinction, and no oath-breaking is incurred. This is a point where there is disagreement—Malik said, "He is guilty of oath-breaking in both cases and must perform atonement (kaffārah)."

وَقَالَ الشَّافِعِيُّ: هُوَ عَلَى الْبِرِّ إلَى آخِرِ أَوْقَاتِ صِحَّتِهِ الَّتِي يَقْدِرُ فِيهَا عَلَى فِعْلِ مَا حَلَفَ أَنْ يَفْعَلَهُ، فَحِينَئِذٍ يَحْنَثُ وَعَلَيْهِ الْكَفَّارَةُ.

L18010 Al-Shafi'i said: "He remains obligated to fulfill the oath until the end of its valid period, during which he is capable of performing what he swore to do. At that point, he violates the oath, and the expiation becomes obligatory for him."

وَقَالَ أَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ كَقَوْلِنَا.

L18011 And Abu Thawr and Abu Sulayman said the same as we hold.

قَالَ أَبُو مُحَمَّدٍ: فَنَسْأَلُ مَنْ قَالَ بِقَوْلِ مَالِكٍ: أَحَانِثٌ هُوَ مَا لَمْ يَفْعَلْ مَا حَلَفَ أَنْ يَفْعَلَهُ أَمْ بَارٌّ؟ وَلَا سَبِيلَ إلَى قَسَمٍ ثَالِثٍ، فَإِنْ قَالُوا: هُوَ بَارٌّ؟ قُلْنَا: صَدَقْتُمْ، وَهُوَ قَوْلُنَا لَا قَوْلُكُمْ - وَإِنْ قَالُوا: هُوَ حَانِثٌ؟ قُلْنَا: فَأَوْجِبُوا عَلَيْهِ الْكَفَّارَةَ، وَطَلَاقَ امْرَأَتِهِ فِي قَوْلِكُمْ - إنْ كَانَ حَانِثًا - وَهُمْ لَا يَقُولُونَ بِذَلِكَ.

L18012–18014 Abu Muhammad said: We ask those who adhere to Mālik's position: Is he among the oath-breakers for not fulfilling what he swore to do, or is he a fulfiller? There exists no third category. If they respond, "He is a fulfiller," we say: "You have spoken truthfully—yet this contradicts our position: No." If they say, "He is an oath-breaker?"—we respond: "Then, according to your own statement—if he is an oath-breaker—you must oblige him to perform the expiation and the divorce of his wife." Yet they do not hold this opinion.

فَظَهَرَ يَقِينُ فَسَادِ قَوْلِهِمْ بِلَا مِرْيَةٍ، وَأَنَّ قَوْلَهُمْ: هُوَ عَلَى حِنْثٍ، وَلَيْسَ حَانِثًا، وَلَا حِنْثَ بَعْدُ -: كَلَامٌ مُتَنَاقِضٌ فِي غَايَةِ الْفَسَادِ وَالتَّخْلِيطِ.

L18015 Thus, the invalidity of their claim became indisputably evident, and their assertion that "he is in a state of oath-breaking, yet he is not an oath-breaker, nor does any breach exist" constitutes a self-contradictory statement, thoroughly invalid and logically incoherent.

وَأَمَّا قَوْلُ الشَّافِعِيِّ فَخَطَأٌ؛ لِأَنَّهُ أَوْجَبَ الْحِنْثَ بَعْدَ الْبِرِّ بِلَا نَصٍّ وَلَا إجْمَاعٍ - وَلَا يَقَعُ الْحِنْثُ عَلَى مَيِّتٍ بَعْدَ مَوْتِهِ - فَلَاحَ أَنَّ قَوْلَهُ دَعْوَى بِلَا بُرْهَانٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18016 As for the statement of Al-Shāfi'ī, it is erroneous because he imposed oath-breaking after righteous fulfillment without textual evidence or consensus—and oath-breaking does not apply to a deceased person after their death—thus it becomes clear that his claim lacks evidence. Success comes only from Allah, the Exalted.

[مَسْأَلَةٌ الْحَلِفُ بِالْأَمَانَةِ وَبِعَهْدِ اللَّهِ وَمِيثَاقِهِ]

Issue: Swearing an oath by the Trust, Allah's covenant, and His solemn pact.

١١٢٩ - مَسْأَلَةٌ: وَأَمَّا الْحَلِفُ بِالْأَمَانَةِ، وَبِعَهْدِ اللَّهِ وَمِيثَاقِهِ، وَمَا أَخَذَ يَعْقُوبُ عَلَى بَنِيهِ، وَأَشَدَّ مَا أَخَذَ أَحَدٌ عَلَى أَحَدٍ، وَحَقِّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَقِّ

L18017 **Issue: Swearing an oath by the Trust, Allah's covenant, and His solemn pact.**

L18018 Issue 1129: As for swearing by the trust, by Allah's covenant and His pact; the oath Ya'qub exacted from his sons; the most stringent pledge one can impose upon another; the right of the Messenger of Allah - peace and blessings of Allah be upon him - the right of the Mus'haf, the right of Islam, the right

of the Kaaba; “I am a disbeliever,” “by my life,” “by your life,” “I will certainly do such-and-such,” “I swear,” “I have sworn,” “I swear,” “I have sworn,” “I testify,” “an oath is binding upon me,” “a thousand oaths are binding upon me,” or “all oaths are binding upon me” - none of this constitutes an oath. Swearing by these constitutes disobedience, requiring only repentance and seeking forgiveness, for all of this is other than Allah. It is not permissible to swear except by Allah.

L18019 Abu Muhammad said: How astonishing is one who considers these expressions as oaths, who regards swearing by walking to Mecca, by divorce, by manumission, and by donating wealth as oaths—yet they do not require people to swear by any of these in matters involving people’s rights pertaining to bloodshed, chastity, property, or bodily integrity—and these are more binding in their view since they entail no expiation—whereas they require them to swear by Allah, which entails expiation. Is this not astonishing? If these are indeed oaths in their view—nay, among the most solemn and severe oaths—then it is obligatory to require people to swear by such weighty oaths. But if they are not oaths, why do they claim they are? Allah suffices us, and He is the One sought for aid.

L18020 In all that we have mentioned, there exists an ancient disagreement among the Salaf regarding their view that all such matters constitute oaths. It has been narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl, from Abū ʻAwanah, from Layth, from Mujāhid, from Ibn Masʻūd, who said: “It is more beloved to me to swear falsely by Allah than to swear truthfully by anything other than Him.”

L18021 Ibn Masʻūd or Ibn ʿUmar said: “That I swear by Allah falsely is more beloved to me than that I swear by other than Him truthfully.”

L18022–18023 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj: I heard ʿAbd Allāh ibn Abī Mulaykah say: I heard Ibn al-Zubayr state: “‘Umar said to him - when he heard him swear by the Kaaba - ’If I knew you had reflected on the oath before swearing, I would punish you. Swear by Allah: then sin or fulfill.’”

الْمُصْحَفِ، وَحَقِّ الْإِسْلَامِ، وَحَقِّ الْكَعْبَةِ، وَأَنَا كَافِرٌ، وَلَعَمْرِي، وَلَعَمْرُكَ، وَلَأَفْعَلَنَّ كَذَا، وَأُقْسِمُ، وَأَقْسَمْتُ، وَأَحْلِفُ، وَحَلَفْتُ، وَأَشْهَدُ، وَعَلَيَّ يَمِينٌ، أَوْ عَلَيَّ أَلْفُ يَمِينٍ، أَوْ جَمِيعُ الْأَيْمَانِ تَلْزَمُنِي -: فَكُلُّ هَذَا لَيْسَ يَمِينًا - وَالْيَمِينُ بِهَا مَعْصِيَةٌ، لَيْسَ فِيهَا إِلَّا التَّوْبَةُ وَالِاسْتِغْفَارُ، لِأَنَّهُ كُلَّهُ غَيْرُ اللَّهِ - وَلَا يَجُوزُ الْحَلِفُ إِلَّا بِاللَّهِ.

قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ مِمَّنْ يَرَى هَذِهِ الْأَلْفَاظَ يَمِينًا، وَيَرَى الْحَلِفَ بِالْمَشْيِ إِلَى مَكَّةَ، وَبِالطَّلَاقِ، وَبِالْعِتْقِ، وَبِصَدَقَةِ الْمَالِ: أَيْمَانًا - ثُمَّ لَا يُحَلِّفُ فِي حُقُوقِ النَّاسِ مِنَ الدِّمَاءِ، وَالْفُرُوجِ، وَالْأَمْوَالِ، وَالْأَبْشَارِ بِشَيْءٍ مِنْ ذَلِكَ - وَهِيَ أَوْكَدُ عِنْدَهُمْ -، لِأَنَّهَا لَا كَفَّارَةَ لَهَا، وَيُحَلِّفُونَهُمْ بِاللَّهِ، وَفِيهِ الْكَفَّارَةُ، أَلَيْسَ هَذَا عَجَبًا؟ وَلَئِنْ كَانَتْ أَيْمَانًا عِنْدَهُمْ -: بَلْ مِنْ أَغْلَظِ الْأَيْمَانِ وَأَشَدِّهَا -: فَالْوَاجِبُ أَنْ يُحَلِّفُوا النَّاسَ بِالْأَيْمَانِ الْغَلِيظَةِ، وَلَئِنْ كَانَتْ لَيْسَتْ أَيْمَانًا فَلِمَ يَقُولُونَ: إِنَّهَا أَيْمَانٌ؟ حَسْبُنَا اللَّهُ، وَهُوَ الْمُسْتَعَانُ.

وَفِي كُلِّ مَا ذَكَرْنَا خِلَافٌ قَدِيمٌ مِنَ السَّلَفِ يَرَوْنَ كُلَّ ذَلِكَ أَيْمَانًا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ عَنِ ابْنِ مَسْعُودٍ قَالَ: لَأَنْ أَحْلِفَ بِاللَّهِ كَاذِبًا أَحَبُّ إِلَيَّ مِنْ أَنْ أَحْلِفَ بِغَيْرِ اللَّهِ صَادِقًا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ وَبَرَةَ قَالَ: قَالَ ابْنُ مَسْعُودٍ، أَوِ ابْنُ عُمَرَ: لَأَنْ أَحْلِفَ بِاللَّهِ كَاذِبًا أَحَبُّ إِلَيَّ مِنْ أَنْ أَحْلِفَ بِغَيْرِهِ صَادِقًا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي مُلَيْكَةَ سَمِعْتُ ابْنَ الزُّبَيْرِ يَقُولُ: إِنَّ عُمَرَ قَالَ لَهُ - وَقَدْ سَمِعَهُ يَحْلِفُ بِالْكَعْبَةِ -: لَوْ أَعْلَمُ أَنَّكَ فَكَّرْتَ فِيهَا قَبْلَ أَنْ تَحْلِفَ لَعَاقَبْتُكَ، احْلِفْ بِاللَّهِ فَأْثَمْ أَوْ ابْرَرْ

[مَسْأَلَةٌ حَلَفَ بِالْقُرْآنِ أَوْ بِكَلَامِ اللَّهِ عَزَّ وَجَلَّ]

١١٣٠ - مَسْأَلَةٌ: وَمَنْ حَلَفَ بِالْقُرْآنِ، أَوْ بِكَلَامِ اللَّهِ عَزَّ وَجَلَّ، فَإِنْ نَوَى فِي نَفْسِهِ الْمُصْحَفَ، أَوْ الصَّوْتَ الْمَسْمُوعَ، أَوْ الْمَحْفُوظَ فِي الصُّدُورِ فَلَيْسَ يَمِينًا، وَإِنْ لَمْ يَنْوِ ذَلِكَ بَلْ نَوَاهُ عَلَى الْإِطْلَاقِ، فَهِيَ يَمِينٌ وَعَلَيْهِ كَفَّارَةٌ إنْ حَنِثَ؛ لِأَنَّ كَلَامَ اللَّهِ تَعَالَى هُوَ عِلْمُهُ.

قَالَ تَعَالَى {وَلَوْلا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ إِلَى أَجَلٍ مُسَمًّى لَقُضِيَ بَيْنَهُمْ} [الشورى: ١٤] .

وَعِلْمُ اللَّهِ تَعَالَى لَيْسَ هُوَ غَيْرَ اللَّهِ تَعَالَى، وَالْقُرْآنُ كَلَامُ اللَّهِ تَعَالَى.

وَقَدْ رُوِّينَا خِلَافَ هَذَا [رُوِّينَا] مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، وَالْحَجَّاجِ بْنِ الْمِنْهَالِ، قَالَ عَبْدُ الرَّزَّاقِ: عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ، وَقَالَ الْحَجَّاجُ بْنُ الْمِنْهَالِ: نا أَبُو الْأَشْهَبِ عَنْ الْحَسَنِ الْبَصْرِيِّ - ثُمَّ اتَّفَقَ الْحَسَنُ، وَمُجَاهِدٌ قَالَا جَمِيعًا: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ حَلَفَ بِسُورَةٍ مِنْ الْقُرْآنِ فَعَلَيْهِ بِكُلِّ آيَةٍ مِنْهَا يَمِينُ صَبْرٍ فَمَنْ شَاءَ بَرَّ وَمَنْ شَاءَ فَجَرَ» .

وَلَفْظُ الْحَسَنِ «إنْ شَاءَ بَرَّ وَإِنْ شَاءَ فَجَرَ» .

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي سِنَانٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي الْهُذَيْلِ عَنْ عَبْدِ اللَّهِ بْنِ حَنْظَلَةَ قَالَ: أَتَيْت مَعَ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ السُّوقَ فَسَمِعَ رَجُلًا يَحْلِفُ بِسُورَةِ الْبَقَرَةِ؟ فَقَالَ ابْنُ مَسْعُودٍ: أَمَا إنَّ عَلَيْهِ بِكُلِّ آيَةٍ يَمِينًا.

A jurisprudential case: If someone has sworn by the Qur'an or by the Speech of Allah, the Exalted and Majestic.

Issue 1130: If someone swore by the Quran or by the Word of Allah Almighty and intended in their heart the physical book, the audibly recited sound, or what is preserved in the hearts, it is not an oath. If they did not intend these specific meanings but intended it in an absolute sense, then it constitutes an oath requiring expiation if broken, because the Word of Allah the Exalted is His knowledge.

He, the Exalted, said: "And were it not for a word that had already been decreed by your Lord for a specified term, it would have been judged between them." [42:14][5]

The knowledge of Allah, the Exalted, is not other than Allah, the Exalted, and the Quran is the speech of Allah, the Exalted.

And it has been narrated to us contrary to this [It has been narrated to us] via the paths of Abd al-Razzaq and al-Hajjaj ibn al-Minhal. Abd al-Razzaq said: From Sufyan al-Thawri, from Layth, from Mujahid. Al-Hajjaj ibn al-Minhal said: Abu al-Ashhab narrated to us from al-Hasan al-Basri. Then al-Hasan and Mujahid concurred, and both said together: The Messenger of Allah (peace and blessings of Allah be upon him) said, "Whoever swears by a surah of the Quran must make a binding oath requiring expiation for each verse in it. Then, whoever wishes may act righteously, and whoever wishes may commit sin."

And the wording of al-Ḥasan is, "If Allah wills, one acts righteously, and if He wills, one transgresses."

It was narrated to us via the chain of transmission of Abd al-Rahman ibn Mahdi from Sufyan al-Thawri from Abu Sinan from Abdullah ibn Abi al-Hudhayl from Abdullah ibn Hanzalah, who said: I came to the market with Abdullah ibn Mas'ud, and he heard a man swearing by Surah al-Baqarah. Ibn Mas'ud said: Indeed, he owes an oath for each verse.

[5] **Qur'an references (L18026):** Qur'an 42:14 (Ash-Shuraa).

L18031 From the chain of Abd al-Razzaq, from Sufyan al-Thawri, from al-A'mash, from Ibrahim al-Nakha'i, from Ibn Mas'ud, who said: Whoever disbelieves in a single letter of the Qur'an has disbelieved in it entirely, and whoever swears by the Qur'an is bound by an oath for every verse.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: مَنْ كَفَرَ بِحَرْفٍ مِنْ الْقُرْآنِ فَقَدْ كَفَرَ بِهِ أَجْمَعَ، وَمَنْ حَلَفَ بِالْقُرْآنِ فَعَلَيْهِ بِكُلِّ آيَةٍ يَمِينٌ.

L18032 This is the view of Al-Ḥasan al-Baṣrī and Aḥmad ibn Ḥanbal.

وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ.

L18033 It has been narrated to us from Sahm ibn Minjāb: Whoever swears by the Quran, then upon him is a sin for every verse.

وَرُوِّينَا عَنْ سَهْمِ بْنِ مِنْجَابٍ: مَنْ حَلَفَ بِالْقُرْآنِ فَعَلَيْهِ بِكُلِّ آيَةٍ خَطِيئَةٌ.

L18034 And Abū 'Ubayd said, "It is one oath."

وَقَالَ أَبُو عُبَيْدٍ: هُوَ يَمِينٌ وَاحِدَةٌ.

L18035–18037 It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj, who said: I heard Ata—when a man had asked him— He said: I said, "By the House and the Book of Allah?" ʿAṭā said: "They are not lords for you, nor are they oaths"—and this is what Abū Ḥanīfah says.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْت عَطَاءً - وَقَدْ سَأَلَهُ رَجُلٌ - فَقَالَ: قُلْت: وَالْبَيْتُ، وَكِتَابُ اللَّهِ؟ فَقَالَ عَطَاءٌ: لَيْسَا لَك بِرَبٍّ، لَيْسَا يَمِينًا - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ.

L18038 It was incumbent upon the Ḥanafīs and Mālikīs to adopt the opinion of Ibn Masʿūd, as no opposing view from the Companions to his opinion in that matter is known.

وَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ أَنْ يَقُولُوا بِقَوْلِ ابْنِ مَسْعُودٍ، لِأَنَّهُ لَا يُعْلَمُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ.

L18039 ## The Issue of Vain Oaths.

[مَسْأَلَةٌ لَغْوُ الْيَمِينِ]

L18040 1131 – Issue: There is no atonement in a frivolous oath, nor sin, and it has two viewpoints:

١١٣١ - مَسْأَلَةٌ: وَلَغْوُ الْيَمِينِ لَا كَفَّارَةَ فِيهِ، وَلَا إثْمَ، وَهُوَ وَجْهَانِ -:

L18041 One of the two cases is when a person swears to something, having no doubt that it is as he swore, but later it becomes clear to him that it is contrary to that. This is the opinion of Abū Ḥanīfah, Mālik, and Abū Sulaymān.

أَحَدُهُمَا: مَا حَلَفَ عَلَيْهِ الْمَرْءُ - وَهُوَ لَا يَشُكُّ فِي أَنَّهُ كَمَا حَلَفَ عَلَيْهِ - ثُمَّ تَبَيَّنَ لَهُ أَنَّهُ بِخِلَافِ ذَلِكَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَأَبِي سُلَيْمَانَ.

L18042 The second type is what a person's tongue utters amidst his speech without intent, such as saying during his talk: "No, by Allah!" or "Yes, by Allah!"—this is the opinion of Al-Shāfiʿī and Abū Sulaymān.

وَالثَّانِي: مَا جَرَى بِهِ لِسَانُ الْمَرْءِ فِي خِلَالِ كَلَامِهِ بِغَيْرِ نِيَّةٍ فَيَقُولُ فِي أَثْنَاءِ كَلَامِهِ: لَا وَاَللَّهِ، وَأَيْ وَاَللَّهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18043 Allah, the Exalted, said: “Allah does not hold you accountable for frivolous oaths in your oaths, but He holds you accountable for the binding oaths you have made.” [Al-Mā’idah 5:89][6]

قَالَ اللَّهُ تَعَالَى: {لا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ} [المائدة: ٨٩] .

L18044 It has been authentically reported through the chain of Ma’mar from al-Zuhri from Salim ibn Abdullah ibn Umar, who said: Often, Ibn Umar would say to one of his sons: “I have recorded against you in this gathering eleven oaths,” and he did not instruct him to perform expiation.

وَصَحَّ مِنْ طَرِيقِ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: رُبَّمَا قَالَ ابْنُ عُمَرَ لِبَعْضِ بَنِيهِ: لَقَدْ حَفِظْت عَلَيْك فِي هَذَا الْمَجْلِسِ أَحَدَ عَشَرَ يَمِينًا، وَلَا يَأْمُرُهُ بِكَفَّارَةٍ.

L18045 From the narration of ʿAbd al-Razzāq: Ibn Jurayj reported to us, saying, “I heard from ʿAṭāʾ that he heard ʿĀ’ishah, the Mother of the Believers”—when ʿUbayd ibn ʿUmayr asked her about Allah’s statement, “Allah does not hold you accountable for what is vain in your oaths” [Q 5:89]—say: “It refers to a person’s utterances: ’No, by Allah,’ and ’Yes, by Allah.’”[7]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَنَا عَطَاءٌ أَنَّهُ سَمِعَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ وَقَدْ سَأَلَهَا عُبَيْدُ بْنُ عُمَيْرٍ عَنْ قَوْلِ اللَّهِ تَعَالَى: {لا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ} [المائدة: ٨٩] قَالَتْ: هُوَ قَوْلُ الرَّجُلِ لَا وَاَللَّهِ، وَبَلَى وَاَللَّهِ.

L18046 From the route of Ma’mar via al-Zuhri, from Salim ibn ’Abdullah, from ’Urwah, from ’Ā’ishah the Mother of the Believers, who said concerning idle speech: It refers to people’s speech when they dispute over a matter. One says: “No, by Allah,” another says: “Yes, by Allah,” and another says: “Certainly not, by Allah,” while their hearts are not bound to it.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ فِي اللَّغْوِ: هُوَ قَوْلُ الْقَوْمِ يَتَدَارَءُونَ فِي الْأَمْرِ يَقُولُ هَذَا: لَا وَاَللَّهِ، وَبَلَى وَاَللَّهِ، وَكَلَا وَاَللَّهِ، وَلَا تَعْقِدُ عَلَيْهِ قُلُوبُهُمْ.

L18047 This is the opinion of al-Qasim ibn Muhammad, Ata’, Ibrahim, _al-Shaʿbi_, Ikrimah, Mujahid, Tawus, al-Hasan, al-Zuhri, Abū Qilābah and others.

وَهُوَ قَوْلُ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَعَطَاءٍ، وَإِبْرَاهِيمَ، وَالشَّعْبِيِّ، وَعِكْرِمَةَ، وَمُجَاهِدٍ، وَطَاوُسٍ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَأَبِي قِلَابَةَ، وَغَيْرِهِمْ.

L18048 And from the chain of Ibn Abbas—though it is not authentically reported from him due to transmission through Al-Kalbi—a frivolous oath is when a man says, “By Allah, this is so-and-so,” while he is not so-and-so.

وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ - وَلَا يَصِحُّ عَنْهُ؛ لِأَنَّهُ مِنْ طَرِيقِ الْكَلْبِيِّ -: لَغْوُ الْيَمِينِ هُوَ قَوْلُ الرَّجُلِ هَذَا وَاَللَّهِ فُلَانٌ، وَلَيْسَ بِفُلَانٍ.

L18049–18051 This is also the view of Al-Hasan, Ibrāhīm, Al-Shaʿbī, Mujāhid, Qatādah, and Zurārah ibn Awfā. And Sulaymān ibn Yasar, Sufyān al-Thawrī, al-Awzāʿī, al-Ḥasan ibn Ḥayy, Aḥmad ibn Ḥanbal, and others among them.

وَهُوَ أَيْضًا قَوْلُ الْحَسَنِ، وَإِبْرَاهِيمَ، وَالشَّعْبِيِّ، وَمُجَاهِدٍ، وَقَتَادَةَ، وَزُرَارَةَ بْنِ أَوْفَى وَسُلَيْمَانَ بْنِ يَسَارٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَغَيْرِهِمْ.

L18052 Abu Muhammad said: As for a person saying “No, by Allah” and “Indeed,

[6] **Qur’an references (L18043):** Qur’an 5:89 (Al-Ma’idah).
[7] **Qur’an references (L18045):** Qur’an 2:225 (Al-Baqarah); Qur’an 5:89 (Al-Ma’idah).

by Allah" without intention, the ruling is evident and unambiguous, because it is the explicit text of the Qur'an, as stated by the Mother of the Believers – may Allah be pleased with her.

L18053 As for one who swears upon something while believing it to be so without any doubt, he neither intended oath-breaking nor purposed it, for there is no oath-breaking except upon one who deliberately intends it. However, this is among the matters where the Hanafis and the Malikis have contradicted each other: they waived expiation here but imposed it upon performing what one swore upon—whether forgetfully or under duress—with no distinction between such cases. And success is from Allah, the Exalted.

L18054 And it is also astonishing that they deemed oaths sworn by Allah, the Exalted, to be frivolous, yet did not apply the same ruling to oaths sworn by other than Him—such as those sworn by walking to Mecca, divorce, emancipation, and similar matters.

L18055 A narration corroborates our view: We narrated it through the chain of Abū Dāwūd al-Sijistānī — Ḥumayd ibn Mas'adah narrated to us, Ḥassān (Ibn Ibrāhīm) narrated to us, Ibrāhīm (the goldsmith) — from 'Aṭā' ibn Abī Rabāḥ, who said: "The inconsequential oath [in speech] — 'Ā'ishah reported from the Prophet (may Allah's peace and blessings be upon him) — is a man's casual remark in his household: 'No, by Allah,' and 'Yes, by Allah.'" And with Allah alone is success.

L18056 **Legal case: If someone swore not to do a certain thing (such-and-such) but then did so unintentionally or under coercion.**

L18057 Issue 1132: If someone swears not to do a certain thing but then does it forgetfully, under compulsion, or is overcome by a circumstance that placed a barrier between him and fulfilling it; or if they swear that someone else will perform a specific action they mentioned to him or will refrain from a certain action—and the subject of the oath then does it intentionally, forgetfully, or the swearer doubted whether the subject of the oath did what was sworn against or not; or if the action is done while the subject of the oath is not in

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ الْمَرْءِ: لَا وَاللَّهِ، وَأَيْ وَاللَّهِ بِغَيْرِ نِيَّةٍ، فَأَمْرُهُ ظَاهِرٌ لَا إِشْكَالَ فِيهِ؛ لِأَنَّهُ نَصُّ الْقُرْآنِ، كَمَا قَالَتْ أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -.

وَأَمَّا مَنْ أَقْسَمَ عَلَى شَيْءٍ وَهُوَ يَرَى، وَلَا يَشُكُّ فِي أَنَّهُ كَمَا حَلَفَ عَلَيْهِ، فَإِنَّهُ لَمْ يَعْمِدْ الْحِنْثَ، وَلَا قَصَدَ لَهُ، وَلَا حِنْثَ إِلَّا عَلَى مَنْ قَصَدَ إِلَيْهِ إِلَّا أَنَّ هَذَا مِمَّا تَنَاقَضَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، فَأَسْقَطُوا الْكَفَّارَةَ هَهُنَا، وَأَوْجَبُوهَا عَلَى فِعْلِ مَا حَلَفَ عَلَيْهِ نَاسِيًا أَوْ مُكْرَهًا، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَالْعَجَبُ أَيْضًا - أَنَّهُمْ رَأَوْا اللَّغْوَ فِي الْيَمِينِ بِاللَّهِ تَعَالَى، وَلَمْ يَرَوْهُ فِي الْيَمِينِ بِغَيْرِهِ تَعَالَى، كَالْمَشْيِ إِلَى مَكَّةَ، وَالطَّلَاقِ، وَالْعِتْقِ، وَغَيْرِ ذَلِكَ.

وَقَدْ جَاءَ أَثَرٌ بِقَوْلِنَا: رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا حُمَيْدُ بْنُ مَسْعَدَةَ نا حَسَّانُ هُوَ ابْنُ إِبْرَاهِيمَ - نا إِبْرَاهِيمُ هُوَ الصَّائِغُ - عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: «اللَّغْوُ فِي الْيَمِينِ قَالَتْ عَائِشَةُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ كَلَامُ الرَّجُلِ فِي بَيْتِهِ: كَلَا وَاللَّهِ، وَبَلَى وَاللَّهِ» وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا فَفَعَلَهُ نَاسِيًا أَوْ مُكْرَهًا]

١١٣٢ - مَسْأَلَةٌ: وَمَنْ حَلَفَ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا، فَفَعَلَهُ نَاسِيًا أَوْ مُكْرَهًا، أَوْ غُلِبَ بِأَمْرٍ حِيلَ بَيْنَهُ وَبَيْنَهُ بِهِ، أَوْ حَلَفَ عَلَى غَيْرِهِ أَنْ يَفْعَلَ فِعْلًا ذَكَرَهُ لَهُ، أَوْ أَنْ لَا يَفْعَلَ فِعْلًا كَذَا - فَفَعَلَهُ الْمَحْلُوفُ عَلَيْهِ عَامِدًا أَوْ نَاسِيًا، أَوْ شَكَّ الْحَالِفُ أَفَعَلَ مَا حَلَفَ أَنْ

their right mind—then there is no expiation required for the swearer in any of these cases, nor is there any sin.

L18058 It has been reported to us via Hushaym, on the authority of al-Mughirah, from Ibrāhīm al-Nakhaʿī, who said: "A vain oath is when one swears to something and later forgets it." Hushaym added: "Mansūr informed me, reporting from al-Ḥasan, the same [ruling]."

L18059 The proof of that is the words of Allah, the Most High: "But He will hold you accountable for the oaths you have bound" (Quran 5:89).[8]

L18060 And He, the Exalted, said: "But only what your hearts have intended." [Quran 33:5][9]

L18061 We have stated: Indeed, oath-breaking is only applicable to one who deliberately intends it according to the Quranic text. None of them intended it, so they are not guilty of oath-breaking, as they did not commit it willfully in their hearts.

L18062–18063 It has been authentically reported from the Prophet (peace be upon him): "Has been pardoned for my Ummah - mistakes, forgetfulness, and what they have been compelled to do."

L18064 And that "the pen is lifted from the sleeper until he awakens and from the insane until he recovers reason."

L18065 And because of the saying of Allah, the Most High: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286].[10]

L18066 Through observation, we know that it is not within people's capacity, nor one who is overcome in any way, to avoid doing what is forgotten or compelled. Thus, it is established by the text of the Quran that one is not obligated to prevent such actions. Since one is not obligated to prevent them, the requirement to fulfill what one was not obligated to fulfill is waived. This is

لَا يَفْعَلَهُ أَمْ لَا؟ أَوْ فَعَلَهُ فِي غَيْرِ عَقْلِهِ، فَلَا كَفَّارَةَ عَلَى الْحَالِفِ فِي شَيْءٍ مِنْ كُلِّ ذَلِكَ وَلَا إِثْمَ.

رُوِّينَا مِنْ طَرِيقِ هُشَيْمٍ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَغْوُ الْيَمِينِ: هُوَ أَنْ يَحْلِفَ عَلَى الشَّيْءِ ثُمَّ يَنْسَى - قَالَ هُشَيْمٌ: وَأَخْبَرَنِي مَنْصُورٌ عَنْ الْحَسَنِ بِمِثْلِهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ} [المائدة: ٨٩] .

وَقَالَ تَعَالَى {وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَقَدْ قُلْنَا: إنَّ الْحِنْثَ لَيْسَ إلَّا عَلَى قَاصِدٍ إلَى الْحِنْثِ يَتَعَمَّدُ لَهُ بِنَصِّ الْقُرْآنِ، وَهَؤُلَاءِ كُلُّهُمْ غَيْرُ قَاصِدِينَ إلَيْهِ، فَلَا حِنْثَ عَلَيْهِمْ، إذْ لَمْ يَتَعَمَّدُوهُ بِقُلُوبِهِمْ.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «عُفِيَ لِأُمَّتِي عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» .

وَأَنَّهُ «رُفِعَ الْقَلَمُ عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَالْمَجْنُونِ حَتَّى يُفِيقَ» .

وَلِقَوْلِ اللَّهِ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَبِالْمُشَاهَدَةِ نَدْرِي أَنَّهُ لَيْسَ فِي وُسْعِ النَّاسِ، وَلَا الْمَغْلُوبِ بِأَيِّ وَجْهٍ: مَنْعٌ أَنْ يَفْعَلَ مَا نَسِيَ وَلَا مَا غُلِبَ عَلَى فِعْلِهِ - فَصَحَّ بِنَصِّ الْقُرْآنِ أَنَّهُ لَمْ يُكَلَّفْ فِعْلَ ذَلِكَ، وَإِذْ لَيْسَ مُكَلَّفًا لِذَلِكَ فَقَدْ سَقَطَ عَنْهُ الْوَفَاءُ بِمَا لَمْ يُكَلَّفْ الْوَفَاءَ بِهِ وَهَذَا فِي غَايَةِ الْبَيَانِ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَهُوَ قَوْلُ الْحَسَنِ، وَإِبْرَاهِيمَ.

[8] **Qur'an references (L18059):** Qur'an 5:89 (Al-Ma'idah).
[9] **Qur'an references (L18060):** Qur'an 33:5 (Al-Ahzab).
[10] **Qur'an references (L18065):** Qur'an 2:286 (Al-Baqarah).

supremely evident, and all praise belongs to Allah, Lord of the worlds. This is the view of Al-Ḥasan and Ibrahim.

L18067 It has been narrated to us through the chain of Saʿīd ibn Manṣūr: from Hushaym, who stated: "Mansur—the son of al-Muʿtamir—" from al-Ḥasan al-Baṣrī, who said: If a person takes an oath against another and then violates it, no expiation is required of him.

L18068 From the transmission of Hushaym: Mughīrah reported to us from Ibrāhīm regarding one who compels another to swear an oath and then causes them to break it: "It is more preferable to me that the swearer should perform expiation." However, Ibrāhīm did not deem this obligatory—only recommended.

L18069 A jurisprudential case concerning one who swears an oath about something they do not know - whether it is true or not.

L18070 1133: Issue — And from this category is one who swears upon something he does not know whether it is the case or not, or upon what may or may not occur—such as one who swears, "It will certainly rain tomorrow," whether it rains or not. There is no expiation required in any of these instances, because he did not intentionally intend to break the oath. Expiation applies only to one who deliberately intends to break the oath, in accordance with Allah's statement: "But only what your hearts have intended" [Al-Aḥzāb: 5].[11]

L18071 It has been authentically established that ʿUmar swore in the presence of the Prophet (peace and blessings be upon him) that Ibn Ṣayyād is the Dajjāl. Yet the Prophet (peace be upon him) did not command him to perform expiation.

L18072 Malik said: The expiation is obligatory upon him whether the sworn-upon matter existed or had not occurred. This is erroneous because there is no textual evidence supporting his claim, as wealth is prohibited except by textual authority, and religious laws are not obligatory except through such evidence. Success is from Allah, the Exalted.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مَنْصُورٌ هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا أَقْسَمَ عَلَى غَيْرِهِ فَأَحْنَثَ فَلَا كَفَّارَةَ عَلَيْهِ.

وَمِنْ طَرِيقِ هُشَيْمٍ نا مُغِيرَةُ عَنْ إبْرَاهِيمَ فِيمَنْ أَقْسَمَ عَلَى غَيْرِهِ فَأَحْنَثَهُ أَحَبُّ إلَيَّ لِلْمُقْسِمِ أَنْ يُكَفِّرَ، فَلَمْ يُوجِبْهُ إلَّا اسْتِحْبَابًا.

[مَسْأَلَةٌ حَلَفَ عَلَى مَا لَا يَدْرِي أَهْوَ كَذَلِكَ أَمْ لَا]

١١٣٣ - مَسْأَلَةٌ: وَمِنْ هَذَا مَنْ حَلَفَ عَلَى مَا لَا يَدْرِي أَهْوَ كَذَلِكَ أَمْ لَا، وَعَلَى مَا قَدْ يَكُونُ وَلَا يَكُونُ؟ كَمَنْ حَلَفَ لَيَنْزِلَنَّ الْمَطَرُ غَدًا، فَنَزَلَ أَوْ لَمْ يَنْزِلْ، فَلَا كَفَّارَةَ فِي شَيْءٍ مِنْ ذَلِكَ؛ لِأَنَّهُ لَمْ يَتَعَمَّدْ الْحِنْثَ وَلَا كَفَّارَةَ إلَّا عَلَى مَنْ تَعَمَّدَ الْحِنْثَ وَقَصَدَهُ لِقَوْلِهِ تَعَالَى: {وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَقَدْ صَحَّ «أَنَّ عُمَرَ حَلَفَ بِحَضْرَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ ابْنَ صَيَّادٍ هُوَ الدَّجَّالُ؟ فَلَمْ يَأْمُرْهُ - عَلَيْهِ السَّلَامُ - بِكَفَّارَةٍ» .

وَقَالَ مَالِكٌ: عَلَيْهِ الْكَفَّارَةُ كَانَ مَا حَلَفَ عَلَيْهِ أَوْ لَمْ يَكُنْ - وَهَذَا خَطَأٌ؛ لِأَنَّهُ لَا نَصَّ بِمَا قَالَ، وَالْأَمْوَالُ مَحْظُورَةٌ إلَّا بِنَصٍّ، وَالشَّرَائِعُ لَا تَجِبُ إلَّا بِنَصٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur'an references (L18070):** Qur'an 33:5 (Al-Ahzab).

L18073 **A legal issue: One who intentionally swears a false oath concerning the matter of his oath.**

L18074 1134. Legal Question: Whoever intentionally swears falsely concerning the matter he swears about, then he must perform expiation. This is the opinion of Al-Awza'i, Al-Hasan ibn Ḥayy, and Al-Shafi'i.

L18075 A group of scholars said: There is no expiation for that—and this is the opinion of Abū Ḥanīfah, Mālik, Sufyān al-Thawrī, and Abū Sulaymān.

L18076–18078 A narration akin to our own statement has reached us from the early Salaf via Shu'bah, who said: "I asked al-Ḥakam ibn 'Utaybah." Concerning a man who swears by a false oath, is there an expiation for it? He replied: Yes.

L18079 Through the narration of Hushaym from Al-Ḥajjāj from ʿAṭāʾ ibn Abī Rabāḥ regarding one who deliberately swears a false oath while intending to lie, ʿAṭāʾ said: The expiation is upon him, and he will only increase in good through the expiation.

L18080 And via the chain of Waki' from Sufyan al-Thawri from Ibn Abi Najih from Mujahid regarding the verse, "But He will hold you accountable for what you have made of oaths" [Al-Ma'idah 5:89], he said, "For what you have intentionally committed."[12]

L18081 And through the narration of Qatādah from Al-Ḥasan regarding the statement of the Exalted, "But He will hold you accountable for the oaths you have sworn, so its expiation is..." [Al-Mā'idah: 89], he said: "For the sin you deliberately committed in it."[13]

L18082 Sa'īd ibn Jubayr said: It is an oath pertaining to an act of disobedience.

L18083 Via the chain of ʿAbd al-Razzāq from Maʿmar concerning a man who deliberately swears falsely about a matter: saying "By Allah, I have done it" when

[12] **Qur'an references (L18080):** Qur'an 5:89 (Al-Ma'idah).
[13] **Qur'an references (L18081):** Qur'an 5:89 (Al-Ma'idah).

[مَسْأَلَةٌ حَلَفَ عَامِدًا لِلْكَذِبِ فِيمَا يَحْلِفُ]

١١٣٤ - مَسْأَلَةٌ: وَمَنْ حَلَفَ عَامِدًا لِلْكَذِبِ فِيمَا يَحْلِفُ، فَعَلَيْهِ الْكَفَّارَةُ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالشَّافِعِيِّ.

وَقَالَتْ طَائِفَةٌ: لَا كَفَّارَةَ فِي ذَلِكَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُلَيْمَانَ.

وَرُوِّينَا مِثْلَ قَوْلِنَا عَنْ السَّلَفِ الْمُتَقَدِّمِ مِنْ طَرِيقِ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ عَنْ الرَّجُلِ يَحْلِفُ بِالْحَلِفِ الْكَاذِبِ؟ أَفِيهِ كَفَّارَةٌ؟ قَالَ: نَعَمْ.

وَمِنْ طَرِيقِ هُشَيْمٍ عَنْ الْحَجَّاجِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ فِيمَنْ حَلَفَ عَلَى كَذِبٍ يَتَعَمَّدُ فِيهِ الْكَذِبَ، قَالَ عَطَاءٌ: عَلَيْهِ الْكَفَّارَةُ، وَلَا يَزِيدُ بِالْكَفَّارَةِ إلَّا خَيْرًا.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ} [المائدة: ٨٩] قَالَ: بِمَا تَعَمَّدْتُمْ.

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ فِي قَوْله تَعَالَى {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ فَكَفَّارَتُهُ} [المائدة: ٨٩] قَالَ: بِمَا تَعَمَّدْتُمْ فِيهِ الْمَأْثَمَ.

وَقَالَ سَعِيدُ بْنُ جُبَيْرٍ: هِيَ الْيَمِينُ فِي الْمَعْصِيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ فِي الرَّجُلِ يَحْلِفُ عَلَى أَمْرٍ يَتَعَمَّدُهُ كَاذِبًا يَقُولُ: وَاَللَّهِ لَقَدْ فَعَلْت، وَلَمْ يَفْعَلْ، أَوْ وَاَللَّهِ مَا فَعَلْت، وَقَدْ فَعَلَ، قَالَ: أَحَبُّ إلَيَّ أَنْ يُكَفِّرَ.

he has not, or “By Allah, I have not done it” when he has—Maʿmar said: “It is more fitting, in my view, that he offer _kaffārah_.”

وَرُوِّينَا الْقَوْلَ الثَّانِيَ مِنْ طَرِيقِ رُفَيْعٍ أَبِي الْعَالِيَةِ: أَنَّ ابْنَ مَسْعُودٍ كَانَ يَقُولُ: كُنَّا نَعُدُّ مِنْ الذَّنْبِ الَّذِي لَا كَفَّارَةَ لَهُ الْيَمِينَ الْغَمُوسَ أَنْ يَحْلِفَ الرَّجُلُ كَاذِبًا عَلَى مَالِ أَخِيهِ لِيَقْتَطِعَهُ.

L18084 It has been narrated to us as the second position through the chain of Rufayʿ Abu al-ʿĀliyah that Ibn Masʿūd would say: “We counted among the sins for which there is no expiation the perjurious oath (that drowns in sin) – when a man swears a false oath to wrongfully take a portion of his brother’s property.”

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ: أَنَّ هَذَا الْيَمِينَ أَعْظَمُ مِنْ أَنْ تُكَفَّرَ أَوْ أَنَّهَا كِذْبَةٌ، لَا كَفَّارَةَ فِيهَا.

L18085 And from Ibrāhīm al-Nakhaʿī, al-Ḥasan, and Ḥammād ibn Abī Sulaymān: This oath is either too grave to be expiated or constitutes a false oath—there is no expiation for it.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ لَمْ يَرَ الْكَفَّارَةَ فِي ذَلِكَ بِالْأَخْبَارِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهَا - مِنْ طَرِيقِ ابْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى يَمِينِ صَبْرٍ يَقْتَطِعُ بِهَا مَالَ امْرِئٍ مُسْلِمٍ لَقِيَ اللَّهَ وَهُوَ عَلَيْهِ غَضْبَانُ» فَأَنْزَلَ اللَّهُ تَعَالَى تَصْدِيقَ ذَلِكَ {إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلا أُولَئِكَ لا خَلاقَ لَهُمْ فِي الآخِرَةِ وَلا يُكَلِّمُهُمُ اللَّهُ وَلا يَنْظُرُ إِلَيْهِمْ يَوْمَ الْقِيَامَةِ وَلا يُزَكِّيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ} [آل عمران: ٧٧] .

L18086 Abu Muhammad said: Those who do not hold the view of expiation in that matter cite as evidence the authentic narrations from the Messenger of Allah (peace and blessings of Allah be upon him) - among them is the narration transmitted through Ibn Mas’ud from the Prophet (peace and blessings of Allah be upon him): “Whoever swears a deliberate oath to seize the property of a Muslim thereby will meet Allah while He is wrathful toward him.” Then Allah, the Exalted, revealed in confirmation of that: {Indeed, those who exchange the covenant of Allah and their oaths for a trifling price - those will have no share in the Hereafter, nor will Allah speak to them, nor look upon them on the Day of Resurrection, nor purify them; and for them is a painful punishment} [Āl ʿImrān 3:77].[14]

وَمِنْ طَرِيقِ أَبِي ذَرٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ثَلَاثَةٌ لَا يُكَلِّمُهُمْ اللَّهُ يَوْمَ الْقِيَامَةِ وَلَا يَنْظُرُ إلَيْهِمْ وَلَا يُزَكِّيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ فَذَكَرَ - عَلَيْهِ السَّلَامُ - فِيهِمْ الْمُنْفِقَ سِلْعَتَهُ بِالْحَلِفِ الْكَاذِبِ» .

L18087 From the narration of Abū Dharr, the Prophet (peace and blessings be upon him) said: “Three whom Allah will not address on the Day of Resurrection, nor look at them, nor purify them - and for them is a painful punishment.” He (peace be upon him) then mentioned among them: “the one who sells his merchandise through false swearing.”[15][16]

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْكَبَائِرُ: الْإِشْرَاكُ بِاَللَّهِ، وَعُقُوقُ الْوَالِدَيْنِ، وَقَتْلُ النَّفْسِ، وَالْيَمِينُ الْغَمُوسُ» .

L18088–18090 And through the narration of Abdullah ibn Amr from the Prophet (peace be upon him): “The major sins are associating partners with Allah and disobe-

[14] **Qur’an references (L18086):** Qur’an 3:77 (Ali ’Imran).

[15] **Hadith references (L18087):** Sunan Ibn Majah 2208; Sahih Muslim 106a; Sunan an-Nasai 4458.

[16] **Qur’an references (L18087):** Qur’an 2:174 (Al-Baqarah); Qur’an 3:77 (Ali ’Imran).

dience to parents..." "the two parents, the killing of a soul, and the plunging oath."[17]

L18091 From the narration of ʿImrān ibn al-Ḥuṣayn from the Prophet (peace be upon him): "Whoever swears a false compelled oath, let him prepare a place in Hellfire with his face."[18]

L18092 Narrated by Al-Ashʿath ibn Qays from the Prophet (peace be upon him): "Whoever swears a binding oath while being deceitful in it to wrongfully take the property of a Muslim will meet Allah under His wrath."

L18093 From the narration of Jābir ibn ʿAbdullāh, the Prophet (peace be upon him) said: "Whoever swears upon this pulpit of mine with a sinful oath will have taken his seat in the Fire."[19]

L18094 And some of them added, "even if it were a green siwak." All of these are sound narrations.

L18095 They also mentioned: an authentic report via the chain of Yaḥyā ibn Abī Kathīr, from ʿIkrimah, from Abū Hurayrah, from the Prophet—peace and blessings be upon him—: "Whoever insistently swears oaths within his family, his sin is graver, and the expiation does not suffice."

L18096 And in a narration: We were narrated through the chain of Ibn al-Jahm, from Yusuf ibn al-Dahhak, from Musa ibn Isma'il, from Hammad ibn Salamah, from Thabit, from Ibn 'Umar, from the Prophet (peace be upon him), that he said to a man: "Did you do such-and-such?" The man replied: "No, by the One besides whom there is no god—I did not do it." Then Gabriel (peace be upon him) came and said: "He did indeed do it, but Allah has forgiven him due to his sincerity."

L18097 And Abū Dāwūd narrated it through the chain of Mūsā ibn Ismāʿīl → Ḥam-

وَمِنْ طَرِيقِ عِمْرَانَ بْنِ الْحُصَيْنِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى يَمِينٍ مَصْبُورَةٍ كَاذِبًا فَلْيَتَبَوَّأْ بِوَجْهِهِ مَقْعَدَهُ مِنْ النَّارِ» .

وَمِنْ طَرِيقِ الْأَشْعَثِ بْنِ قَيْسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى يَمِينِ صَبْرٍ وَهُوَ فِيهَا فَاجِرٌ يَقْتَطِعُ بِهَا مَالَ امْرِئٍ مُسْلِمٍ لَقِيَ اللَّهَ وَهُوَ عَلَيْهِ غَضْبَانُ» .

وَمِنْ طَرِيقِ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى مِنْبَرِي هَذَا بِيَمِينٍ آثِمَةٍ تَبَوَّأَ مَقْعَدَهُ مِنْ النَّارِ» .

وَزَادَ بَعْضُهُمْ «وَلَوْ كَانَ سِوَاكًا أَخْضَرَ» هَذِهِ كُلُّهَا آثَارٌ صِحَاحٌ.

وَذَكَرُوا أَيْضًا: خَبَرًا صَحِيحًا مِنْ طَرِيقِ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ اسْتَلَجَّ فِي أَهْلِهِ بِيَمِينٍ فَهُوَ أَعْظَمُ إثْمًا لَيْسَ تُغْنِي الْكَفَّارَةُ» .

وَبِخَبَرٍ: رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا يُوسُفُ بْنُ الضَّحَّاكِ نا مُوسَى بْنُ إسْمَاعِيلَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ ثَابِتٍ عَنْ ابْنِ عُمَرَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِرَجُلٍ: فَعَلْتَ كَذَا وَكَذَا؟ قَالَ: لَا وَالَّذِي لَا إلَهَ إلَّا هُوَ مَا فَعَلْتُ، فَجَاءَ جِبْرِيلُ - عَلَيْهِ السَّلَامُ - فَقَالَ: بَلَى قَدْ فَعَلَ، لَكِنَّ اللَّهَ غَفَرَ لَهُ بِالْإِخْلَاصِ» .

وَرَوَاهُ أَبُو دَاوُد مِنْ طَرِيقِ مُوسَى بْنِ إسْمَاعِيلَ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ.

[17] **Hadith references (L18088):** Sahih al-Bukhari 6675; Sunan an-Nasai 4011; Sunan an-Nasai 4868.

[18] **Hadith references (L18091):** Sunan Abi Dawud 3242.

[19] **Hadith references (L18093):** Bulugh al-Maram 1428.

mād ibn Salama → ʿAṭāʾ ibn al-Sāʾib → Abū Yaḥyā → Ibn ʿAbbās.

وَهَكَذَا رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ، فَإِنْ لَمْ يَكُنْ أَخْطَأَ فِيهِ يُوسُفُ بْنُ الضَّحَّاكِ فَهُوَ حَدِيثٌ جَيِّدٌ، وَإِلَّا فَهُوَ ضَعِيفٌ؟ قَالُوا: فَلَمْ يَأْمُرْهُ - عَلَيْهِ السَّلَامُ - بِكَفَّارَةٍ؟ قَالُوا: إِنَّمَا الْكَفَّارَةُ فِيمَا حَلَفَ فِيهِ فِي الْمُسْتَأْنَفِ.

L18098 And likewise, we have also narrated it through the chain of Ibn Abi Shaybah from Waki‘ from Sufyan al-Thawri from ‘Ata’ ibn al-Sa’ib from Abu Yahya from Ibn ‘Abbas. If Yusuf ibn al-Dahhak did not err in the narration, then it is a sound hadith; otherwise, it is weak. They said: “Did he (peace be upon him) not instruct him to perform expiation?” They replied: “Expiation applies only to what one swears upon in the newly initiated matter.”

وَمَوَّهُوا فِي ذَلِكَ بِذِكْرِ قَوْلِ اللَّهِ تَعَالَى {وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] .

L18099 They disguised this by invoking the words of Allah, the Exalted: “Guard your oaths” [al-Mā’idah 5:89].[20]

قَالُوا: وَحِفْظُهَا إِنَّمَا يَكُونُ بَعْدَ مُوَاقَعَتِهَا.

L18100 They said: Her maintenance is only after consummation.

هَذَا كُلُّ مَا شَغَبُوا بِهِ - وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ.

L18101 This is all they have clamored about—and none of it constitutes valid proof for them.

أَمَّا حَدِيثُ ابْنِ مَسْعُودٍ، وَأَبِي ذَرٍّ، وَعِمْرَانَ، وَجَابِرٍ، وَالْأَشْعَثِ، وَقَوْلُ اللَّهِ تَعَالَى {إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ} [آل عمران: ٧٧] فَلَيْسَ فِي شَيْءٍ مِنْ ذَلِكَ إِسْقَاطُ الْكَفَّارَةِ وَلَا إِيجَابُهَا، كَمَا لَيْسَ فِيهَا ذِكْرٌ لِتَوْبَةٍ أَصْلًا، وَإِنَّمَا فِيهَا كُلِّهَا الْوَعِيدُ الشَّدِيدُ بِالنَّارِ وَالْعِقَابِ -.

L18102–18103 As for the narrations of Ibn Mas’ud, Abu Dharr, Imran, Jabir, and Al-Ash’ath, and the verse of Allah the Exalted: {Indeed, those who exchange the covenant of Allah and their oaths} [Al-Imran:77], there is nothing in any of that regarding the waiver of expiation or its obligation, just as they make no mention of repentance whatsoever. Rather, all of them contain the severe threat of the Fire and punishment—[21]

فَسَقَطَ تَعَلُّقُهُمْ بِهَا فِي إِسْقَاطِ الْكَفَّارَةِ.

L18104 Therefore, their attachment to it was nullified due to the removal of the expiation.

ثُمَّ الْعَجَبُ كُلُّهُ أَنَّهُمْ فِي هَذِهِ الْأَحَادِيثِ، وَفِي هَذِهِ الْآيَةِ عَلَى قِسْمَيْنِ -:

L18105 Then the truly astonishing thing is that they, in these hadiths and in this verse, are divided into two groups:

قِسْمٌ يَقُولُ: إِنَّهُ لَيْسَ شَيْءٌ مِمَّا ذُكِرَ فِي هَذِهِ الْآيَةِ، وَفِي هَذِهِ الْأَحَادِيثِ -: يَقْطَعُ: بِكَوْنِهِ وَلَا بُدَّ، وَقَدْ يُمْكِنُ أَنْ يَغْفِرَ اللَّهُ عَزَّ وَجَلَّ.

L18106 A faction argues: Nothing mentioned in this Quranic verse or these hadiths conclusively confirms its inevitability, and it is indeed possible that Allah the Almighty might grant forgiveness.

وَقِسْمٌ قَالُوا: هُوَ نَافِذٌ مَا لَمْ يَتُبْ - فَمَنْ أَعْجَبُ شَأْنًا مِمَّنْ احْتَجَّ بِآيَةٍ وَأَخْبَارٍ صِحَاحٍ فِي إِسْقَاطِ كَفَّارَةِ يَمِينٍ لَيْسَ فِيهَا مِنْ ذَلِكَ ذِكْرٌ أَصْلًا، وَهُمْ قَدْ خَالَفُوا كُلَّ مَا فِيهَا عَلَانِيَةً

L18107 Another category [of scholars] said: It remains effective unless repentance

[20] **Qur’an references (L18099):** Qur’an 5:89 (Al-Ma’idah).
[21] **Qur’an references (L18103):** Qur’an 3:77 (Ali ’Imran).

occurs. Who could be more astonishing than one who cites a verse and authentic reports to argue for waiving the expiation of an oath—when these texts contain no mention of such [provision] whatsoever—while they have openly opposed everything therein? Is this not utterly astounding? As for the Prophet's statement (peace be upon him), "Whoever insists vehemently in swearing concerning his family, his sin becomes graver—the expiation does not suffice"—this constitutes no proof for them whatsoever. For in our view and theirs, among oaths exist vain utterances incurring no sin, and this type is unquestionably not referenced in this hadith.

- وَهَذَا عَجَبٌ جِدًّا؟ وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «مَنْ اسْتَلَجَّ فِي أَهْلِهِ بِيَمِينٍ فَهُوَ أَعْظَمُ إِثْمًا لَيْسَ تُغْنِي الْكَفَّارَةُ» فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا؛ لِأَنَّ الْأَيْمَانَ عِنْدَنَا وَعِنْدَهُمْ، مِنْهَا لَغْوٌ لَا إِثْمَ فِيهِ، وَلَمْ يَرِدْ هَذَا الصِّنْفُ فِي هَذَا الْخَبَرِ بِلَا شَكٍّ.

L18108 Among these is when a person swears an oath about something for which another option is better than it. There is no disagreement among us and among them that the expiation suffices for this.

وَمِنْهَا - مَا يَكُونُ الْمَرْءُ بِهَا حَالِفًا عَلَى مَا غَيْرُهُ خَيْرٌ مِنْهُ وَلَا خِلَافَ عِنْدَنَا وَعِنْدَهُمْ فِي أَنَّ الْكَفَّارَةَ تُغْنِي فِي هَذَا.

L18109 And through him, the text has come from the Prophet—may Allah bless him and grant him peace—as we will mention hereafter, if Allah, the Exalted, wills.

وَبِهِ جَاءَ النَّصُّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L18110 Among these is the perjurious oath about which we disagree. Through sensory perception and observation, we and they both know that one swearing it is not called 'persistent in falsehood' toward his family. Thus, it becomes invalid to claim this report refers to such an oath, and their argument for abolishing expiation in perjurious oaths loses validity.

وَمِنْهَا - الْيَمِينُ الْغَمُوسُ الَّتِي اخْتَلَفْنَا فِيهَا، وَبِالْحِسِّ وَالْمُشَاهَدَةِ نَدْرِي نَحْنُ وَهُمْ أَنَّ الْحَالِفَ بِهَا لَا يُسَمَّى مُسْتَلِجًّا فِي أَهْلِهِ، فَبَطَلَ أَنْ يُرَادَ بِهَذَا الْخَبَرِ هَذَا الْقَسَمَ، وَبَطَلَ احْتِجَاجُهُمْ بِهِ فِي إِسْقَاطِهِمْ الْكَفَّارَةَ فِي الْيَمِينِ الْغَمُوسِ.

L18111–18113 If it is said: What is the meaning of this report according to you, given that it is authentic? We say: Yes, its meaning—and all praise is due to God—is clear according to the apparent wording, without alteration, distortion, addition, or omission. It refers to a person swearing to treat his family kindly or to refrain from harming them, then persisting in breaking it—harming them, failing to treat them well, and expiating his oath. This person, without doubt, is obstinately persisting in violating his oath toward his family by not fulfilling it, and he is undoubtedly more sinful. The expiation does not suffice for him, nor does it absolve [his sin]. Even if wronging them was obligatory upon him, this narration does not bear any meaning other than this whatsoever.

فَإِنْ قِيلَ: فَمَا مَعْنَى هَذَا الْخَبَرِ عِنْدَكُمْ وَهُوَ صَحِيحٌ؟ قُلْنَا: نَعَمْ، مَعْنَاهُ - وَلِلَّهِ الْحَمْدُ - بَيِّنٌ عَلَى ظَاهِرِ لَفْظِهِ دُونَ تَبْدِيلٍ وَلَا إِحَالَةٍ وَلَا زِيَادَةٍ وَلَا نَقْصٍ، وَهُوَ أَنْ يَحْلِفَ الْمَرْءُ أَنْ يُحْسِنَ إِلَى أَهْلِهِ، أَوْ أَنْ لَا يَضُرَّ بِهِمْ، ثُمَّ لَجَّ فِي أَنْ يَحْنَثَ، فَيَضُرَّ بِهِمْ، وَلَا يُحْسِنَ إِلَيْهِمْ وَيُكَفِّرَ عَنْ يَمِينِهِ - فَهَذَا بِلَا شَكٍّ مُسْتَلِجٌّ بِيَمِينِهِ فِي أَهْلِهِ أَنْ لَا يَفِيَ بِهَا، وَهُوَ أَعْظَمُ إِثْمًا بِلَا شَكٍّ - وَالْكَفَّارَةُ لَا تُغْنِي عَنْهُ، وَلَا تَحُطُّ إِثْمَ إِسَاءَتِهِ إِلَيْهِمْ وَإِنْ كَانَتْ وَاجِبَةً عَلَيْهِ - لَا يَحْتَمِلُ أَلْبَتَّةَ هَذَا الْخَبَرُ مَعْنًى غَيْرَ هَذَا.

L18114 As for the narration of Ḥammād ibn Salamah and Sufyān, the chain of

Sufyān is not authentic. If the chain of Ḥammād is authentic, it contains no mention of waiving expiation. It merely states that Allah the Exalted forgave him solely due to sincerity. Not every legal precept exists in every narration, and there is no doubt that one is commanded to repent from intentional false swearing. This narration makes no mention of it. If the Prophet's silence—peace be upon him—regarding expiation constitutes proof of its waiver, then his silence regarding repentance necessarily constitutes proof of its waiver. Yet they do not uphold this position.

وَأَمَّا حَدِيثُ حَمَّادِ بْنِ سَلَمَةَ، وَسُفْيَانَ، فَطَرِيقُ سُفْيَانَ لَا تَصِحُّ، فَإِنْ صَحَّتْ طَرِيقُ حَمَّادٍ فَلَيْسَ فِيهِ لِإِسْقَاطِ الْكَفَّارَةِ ذِكْرٌ، وَإِنَّمَا فِيهِ: أَنَّ اللَّهَ تَعَالَى غَفَرَ لَهُ بِالْإِخْلَاصِ فَقَطْ، وَلَيْسَ كُلُّ شَرِيعَةٍ تُوجَدُ فِي كُلِّ حَدِيثٍ - وَلَا شَكَّ فِي أَنَّهُ مَأْمُورٌ بِالتَّوْبَةِ مِنْ تَعَمُّدِ الْحَلِفِ عَلَى الْكَذِبِ، وَلَيْسَ فِي هَذَا الْخَبَرِ لَهَا ذِكْرٌ، فَإِنْ كَانَ سُكُوتُهُ - عَلَيْهِ السَّلَامُ - عَنْ ذِكْرِ الْكَفَّارَةِ حُجَّةً فِي سُقُوطِهَا فَسُكُوتُهُ عَنْ ذِكْرِ التَّوْبَةِ حُجَّةٌ فِي سُقُوطِهَا وَلَا بُدَّ، وَهُمْ لَا يَقُولُونَ بِهَذَا.

L18115 If they say, "He has commanded repentance in other texts?" We respond, "He has also commanded expiation in other texts, which we shall mention, Allah, the Exalted, willing."

فَإِنْ قَالُوا: قَدْ أَمَرَ بِالتَّوْبَةِ فِي نُصُوصٍ أُخَرَ؟ قُلْنَا: وَقَدْ أَمَرَ بِالْكَفَّارَةِ فِي نُصُوصٍ أُخَرَ نَذْكُرُهَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L18116 And we say to them: If his silence—peace be upon him—regarding the mention of expiation in all these reports constitutes evidence for its nullification, then his silence (peace be upon him) regarding the mention of its lapse would equally constitute evidence for its obligation—with no distinction. This is a claim like any claim; thus, must the ruling on expiation be sought in a text other than these? As for Allah's statement, *"And fulfill your oaths"* (Al-Ma'idah: 89), it is an established ruling.[22]

وَنَقُولُ لَهُمْ: إِنْ كَانَ سُكُوتُهُ - عَلَيْهِ السَّلَامُ - عَنْ ذِكْرِ الْكَفَّارَةِ فِي هَذِهِ الْأَخْبَارِ كُلِّهَا حُجَّةً فِي إِسْقَاطِهَا فَسُكُوتُهُ - عَلَيْهِ السَّلَامُ - عَنْ ذِكْرِ سُقُوطِهَا حُجَّةٌ فِي إِيجَابِهَا وَلَا فَرْقَ - وَهِيَ دَعْوَى كَدَعْوَى، فَالْوَاجِبُ طَلَبُ حُكْمِ الْكَفَّارَةِ فِي نَصٍّ غَيْرِ هَذِهِ؟ وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] فَحَقٌّ.

L18117 As for their claim that preservation only applies after the enactment of oaths, this is falsehood, fabrication, calumny, and pure misguidance. Rather, the preservation of oaths is obligatory before swearing by them, during the swearing, and after swearing by them. Thus, one must not swear in any of these instances except truthfully.

وَأَمَّا قَوْلُهُمْ: إِنَّ الْحِفْظَ لَا يَكُونُ إِلَّا بَعْدَ مُوَاقَعَةِ الْيَمِينِ فَكَذِبٌ، وَافْتِرَاءٌ، وَبُهْت، وَضَلَالٌ مَحْضٌ، بَلْ حِفْظُ الْأَيْمَانِ وَاجِبٌ قَبْلَ الْحَلِفِ بِهَا، وَفِي الْحَلِفِ بِهَا، وَبَعْدَ الْحَلِفِ بِهَا، فَلَا يَحْلِفُ فِي كُلِّ ذَلِكَ إِلَّا عَلَى حَقٍّ.

L18118 Then suppose the matter is as they claim, and that the Exalted's statement "Guard your oaths" [Al-Mā'idah: 89] applies only after swearing—what evidence does this provide that no expiation is required for one who deliberately swears a false oath? Is this anything but blatant deception and obfuscation, distorting Allah's speech from its proper context? Anyone possessing even

ثُمَّ هَبْكَ أَنَّ الْأَمْرَ كَمَا قَالُوا، وَأَنَّ قَوْله تَعَالَى: {وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] إِنَّمَا هُوَ بَعْدَ أَنْ يَحْلِفَ، فَأَيُّ دَلِيلٍ فِي هَذَا عَلَى أَنْ لَا كَفَّارَةَ عَلَى مَنْ تَعَمَّدَ الْحَلِفَ كَاذِبًا؟ وَهَلْ هَذَا مِنْهُمْ إِلَّا الْمُبَاهَتَةَ وَالتَّمْوِيهَ، وَتَحْرِيفَ كَلَامِ اللَّهِ عَنْ مَوَاضِعِهِ وَمَا يَشُكُّ كُلُّ

[22] **Qur'an references (L18116):** Qur'an 5:89 (Al-Ma'idah).

a trace of discernment knows that whoever intentionally swears falsely has failed to guard his oath, thus exposing the corruption of all they deceitfully fabricate.[23]

ذِي مَسْكَةِ تَمْيِيزٍ فِي أَنَّ مَنْ تَعَمَّدَ الْحَلِفَ كَاذِبًا فَمَا حَفِظَ يَمِينَهُ - فَظَهَرَ فَسَادُ كُلِّ مَا يُمَخْرِقُونَ بِهِ.

L18119 As for their claim that expiation is only obligatory upon him concerning what he swore upon in the renewed oath, this is invalid—a baseless assertion with no evidence from the Quran, the Sunnah, or *Ijma*.

وَأَمَّا قَوْلُهُمْ: إنَّ الْكَفَّارَةَ إنَّمَا تَجِبُ عَلَيْهِ فِيمَا حَلَفَ عَلَيْهِ فِي الْمُسْتَأْنَفِ فَبَاطِلٌ، وَدَعْوَى بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ.

L18120 If they mention the saying of the Messenger of Allah—peace and blessings be upon him—: "One does not swear an oath and then see something better than it unless he does what is better and expiates his oath."

فَإِنْ ذَكَرُوا «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ لَا يَحْلِفُ عَلَى يَمِينٍ فَيَرَى غَيْرَهَا خَيْرًا مِنْهَا إلَّا أَتَى الَّذِي هُوَ خَيْرٌ وَكَفَّرَ عَنْ يَمِينِهِ» .

L18121–18123 They have no proof in this matter, for expiation according to them and according to us is obligatory in other than this attribute, which is: Whoever swears an oath while considering something else worse than it, then commits that which is worse, expiation is obligatory upon him in that matter according to both them and us.

فَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ الْكَفَّارَةَ عِنْدَهُمْ وَعِنْدَنَا تَجِبُ فِي غَيْرِ هَذِهِ الصِّفَةِ، وَهِيَ: مَنْ حَلَفَ عَلَى يَمِينٍ وَرَأَى غَيْرَهَا شَرًّا مِنْهَا فَفَعَلَ الَّذِي هُوَ شَرٌّ، فَإِنَّ الْكَفَّارَةَ عِنْدَهُمْ وَعِنْدَنَا وَاجِبَةٌ عَلَيْهِ فِي ذَلِكَ.

L18124 Abu Muhammad said: As for their statement that it is too great to be expiated—from where do they derive this? Where did they find it? Is this not merely a ruling from themselves, not from Allah the Exalted? They may be countered by saying: A better claim than theirs can be made. Rather, the greater the sin, the more its committer requires expiation, and it becomes more obligatory for him than for matters that are not sins at all or for minor sins. Regarding one who intentionally breaks the fast in Ramadan—we and they agree that expiation is required of him. Perhaps his sin is greater than that of one who swears a false oath or similar to it. They hold the view that expiation is required for one who intentionally invalidates his Hajj through the sacrificial animal according to their opinions, and perhaps his sin is greater than that of one who swears a false oath or similar to it.

قَالَ أَبُو مُحَمَّد: وَأَمَّا قَوْلُهُمْ: هِيَ أَعْظَمُ مِنْ أَنْ تُكَفَّرَ فَمِنْ أَيْنَ لَهُمْ هَذَا؟ وَأَيْنَ وَجَدُوهُ؟ وَهَلْ هُوَ إلَّا حُكْمٌ مِنْهُمْ لَا مِنْ عِنْدِ اللَّهِ تَعَالَى؟ وَيُعَارَضُونَ بِأَنْ يُقَالَ لَهُمْ: دَعْوَى أَحْسَنُ مِنْ دَعْوَاهُمْ، بَلْ كُلَّمَا عَظُمَ الذَّنْبُ كَانَ صَاحِبُهُ أَحْوَجَ إلَى الْكَفَّارَةِ، وَكَانَتْ أَوْجَبَ عَلَيْهِ مِنْهَا فِيمَا لَيْسَ ذَنْبًا أَصْلًا، وَفِيمَا هُوَ صَغِيرٌ مِنْ الذُّنُوبِ، وَهَذَا الْمُتَعَمِّدُ لِلْفِطْرِ فِي رَمَضَانَ نَحْنُ وَهُمْ مُتَّفِقُونَ عَلَى أَنَّ الْكَفَّارَةَ عَلَيْهِ، وَلَعَلَّهُ أَعْظَمُ إثْمًا مِنْ حَالِفٍ عَلَى يَمِينِ غَمُوسٍ، أَوْ مِثْلِهِ وَهُمْ يَرَوْنَ الْكَفَّارَةَ عَلَى مَنْ تَعَمَّدَ إفْسَادَ حَجِّهِ بِالْهَدْيِ بِآرَائِهِمْ، وَلَعَلَّهُ أَعْظَمُ إثْمًا مِنْ حَالِفِ يَمِينِ غَمُوسٍ أَوْ مِثْلِهِ.

L18125 And more astonishing than all of this is their ruling regarding one who swore not to kill a believer intentionally, to pray the obligatory prayers of that day, not to commit adultery with a forbidden woman, and not to engage

وَأَعْجَبُ مِنْ هَذَا كُلِّهِ قَوْلُهُمْ فِيمَنْ حَلَفَ أَنْ لَا يَقْتُلَ مُؤْمِنًا مُتَعَمِّدًا، وَأَنْ يُصَلِّيَ الْيَوْمَ الصَّلَوَاتِ الْمَفْرُوضَةَ، وَأَنْ لَا يَزْنِيَ بِحَرِيمَةٍ وَأَنْ لَا يَعْمَلَ بِالرِّبَا، ثُمَّ لَمْ يُصَلِّ مِنْ يَوْمِهِ

[23] **Qur'an references (L18118):** Qur'an 5:89 (Al-Ma'idah).

in usury—then he did not pray that day, killed the soul Allah has forbidden, committed adultery, and engaged in usury—thus ritual expiation is incumbent upon him for those very oaths. By Allah! What would Muslims say [to this]? Which of the two is the graver sin—one who deliberately swears falsely that he did not see Zaid that day when he had indeed seen him, yet they invalidated ritual expiation for it due to the oath's deliberate falsehood?

L18126 Or one who breaks an oath by failing to perform the five prayers, by killing a soul, by fornicating with his daughter or mother, or by engaging in usury - yet they fail to perceive the enormity of his oath-breaking through these tremendous sins which, by Allah, are certainly - according to every religiously knowledgeable person - more sinful than a thousand oaths sworn with intentional falsehood. Does no expiation apply to it because it is too grave to be expiated? Do the statements of these people follow textual adherence or analogical reasoning? As for their obfuscation by claiming this was narrated from Ibn Mas'ud - with no known opposition from the Companions, may Allah be pleased with them - this is a disconnected narration that is invalid. Abu al-'Aliyah never met Ibn Mas'ud or his peers among the Companions, may Allah be pleased with them. He only encountered the youngest Companions like Ibn Abbas and his contemporaries, may Allah be pleased with them.

L18127–18129 They differed from Ibn Mas'ud concerning his statement: "Whoever swears by the Quran or by a surah from it incurs an expiation for every verse," and no opposing opinion from the Companions is known in this matter. Therefore, Ibn Mas'ud's view constitutes authoritative evidence when it is disputed. And it is not valid as evidence if they did not intend for it to serve as such.

L18130 Abū Muḥammad said: Since all that they clamored against has collapsed, let us bring forth proof for the soundness of our position. So we say: And with Allah, the Exalted, is divine success (tawfīq).

L18131 Allah, the Almighty and Majestic, said: "The expiation for it is feeding ten needy people from the average food you feed your families, or clothing them, or freeing a slave" [Al-Ma'idah: 89], up to His statement: "That is

ذَلِكَ، وَقَتَلَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ، وَزَنَى، وَأَرْبَى فَإِنَّ عَلَيْهِ الْكَفَّارَةُ فِي أَيْمَانِهِ تِلْكَ فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ أَيُّمَا أَعْظَمُ إِثْمًا: مَنْ حَلَفَ عَامِدًا لِلْكَذِبِ أَنَّهُ مَا رَأَى زَيْدًا الْيَوْمَ، وَهُوَ قَدْ رَآهُ فَأَسْقَطُوا فِيهِ الْكَفَّارَةَ لِعَظْمِهِ.

أَوْ مَنْ حَنِثَ بِأَنْ لَا يُصَلِّيَ الْخَمْسَ صَلَوَاتٍ، وَبِأَنْ قَتَلَ النَّفْسَ، وَبِأَنْ زَنَى بِابْنَتِهِ أَوْ بِأُمِّهِ، وَبِأَنْ عَمِلَ بِالرِّبَا - ثُمَّ لَا يَرَوْنَ عِظَمَ حِنْثِهِ فِي إِتْيَانِهِ هَذِهِ الْكَبَائِرِ الْعَظِيمَةِ الَّتِي هِيَ وَاَللَّهِ قَطْعًا عِنْدَ كُلِّ مَنْ لَهُ عِلْمٌ بِالدِّينِ أَعْظَمُ إِثْمًا مِنْ أَلْفِ يَمِينٍ تَعَمَّدَ فِيهَا الْكَذِبَ، لَا تَجِبُ فِيهِ كَفَّارَةٌ، لِأَنَّهُ أَعْظَمُ مِنْ أَنْ يُكَفِّرَ؟ فَهَلْ تَجْرِي أَقْوَالُ هَؤُلَاءِ الْقَوْمِ عَلَى اتِّبَاعِ نَصٍّ أَوْ عَلَى الْتِزَامِ قِيَاسٍ؟ وَأَمَّا تَمْوِيهُهُمْ بِأَنَّهُ رُوِيَ ذَلِكَ عَنْ ابْنِ مَسْعُودٍ وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَهِيَ رِوَايَةٌ مُنْقَطِعَةٌ لَا تَصِحُّ؛ لِأَنَّ أَبَا الْعَالِيَةِ لَمْ يَلْقَ ابْنَ مَسْعُودٍ وَلَا أَمْثَالَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إنَّمَا أَدْرَكَ أَصَاغِرَ الصَّحَابَةِ كَابْنِ عَبَّاسٍ، وَمِثْلِهِ، رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ.

وَقَدْ خَالَفُوا ابْنَ مَسْعُودٍ فِي قَوْلِهِ: إنَّ مَنْ حَلَفَ بِالْقُرْآنِ، أَوْ بِسُورَةٍ مِنْهُ، فَعَلَيْهِ بِكُلِّ آيَةٍ كَفَّارَةٌ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ؛ فَابْنُ مَسْعُودٍ حُجَّةٌ إذَا اُشْتُهُوا، وَغَيْرُ حُجَّةٍ إذَا لَمْ يَشْتَهُوا أَنْ يَكُونَ حُجَّةً.

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ سَقَطَ كُلُّ مَا شَغَبُوا بِهِ فَلْنَأْتِ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا -: فَنَقُولُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

the expiation for your oaths when you have sworn. And guard your oaths" [Al-Ma'idah: 89].[24]

قَالَ اللَّهُ عَزَّ وَجَلَّ {فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ} [المائدة: ٨٩] إِلَى قَوْلِه تَعَالَى {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] .

L18132 The apparent meaning of the Quran obligates expiation for every oath. Thus, it is impermissible to exempt any oath from expiation at all unless a Quranic text or Sunnah exempts it. There is no Quranic text or Sunnah whatsoever that exempts the one who swears a deliberately false oath (ghamūs) from expiation; it is therefore obligatory upon him by the text of the Quran.

فَظَاهِرُ الْقُرْآنِ إِيجَابُ الْكَفَّارَةِ فِي كُلِّ يَمِينٍ، فَلَا يَجُوزُ أَنْ تُسْقَطَ كَفَّارَةٌ عَنْ يَمِينٍ أَصْلًا إِلَّا حَيْثُ أَسْقَطَهَا نَصُّ قُرْآنٍ، أَوْ سُنَّةٍ، وَلَا نَصَّ قُرْآنٍ، وَلَا سُنَّةَ، أَصْلًا فِي إِسْقَاطِ الْكَفَّارَةِ عَنْ الْحَالِفِ يَمِينًا غَمُوسًا، فَهِيَ وَاجِبَةٌ عَلَيْهِ بِنَصِّ الْقُرْآنِ.

L18133 The greatest wonder is how those who exempt him from expiation [act] despite the Quran requiring it. Yet they obligate it upon one who breaks an oath unintentionally or in error, though the Quran and Sunnah have exempted such a person from it.

وَالْعَجَبُ كُلُّهُ مِمَّنْ أَسْقَطَهَا عَنْهُ وَالْقُرْآنُ يُوجِبُهَا، ثُمَّ يُوجِبُونَهَا عَلَى مَنْ حَنِثَ نَاسِيًا مُخْطِئًا وَالْقُرْآنُ وَالسُّنَّةُ قَدْ أَسْقَطَاهَا عَنْهُ.

L18134 And they made it obligatory upon one who neither deliberately swore a sworn oath nor intended to swear it, and the Quran and the Sunnah both nullify it for him; this, as you can see.

وَأَوْجَبُوهَا عَلَى مَنْ لَمْ يَتَعَمَّدْ الْيَمِينَ وَلَا نَوَاهَا وَالْقُرْآنُ وَالسُّنَّةُ يَسْقُطَانِهَا عَنْهُ، وَهَذِهِ كَمَا تَرَى.

L18135 If they say: "Indeed, this verse contains an elision without doubt, for otherwise atonement would be obligatory upon everyone who swears an oath the moment they swear it—whether they fulfill it or break it?" We respond: "Yes, there is no doubt in this. However, no one can truthfully assert its identification except through an authentic text or certain consensus confirming it to be precisely what Allah the Exalted intended—not anything else. As for fabricated claims, then no—" We thus find the elision mentioned in the verse has been confirmed through certain consensus and authentic texts as referring to "then you [all] broke it." Since there is no doubt in this, one who deliberately swears a false oath, knowing it to be a lie, is a breaker of it by the certain ruling of the Sharia and the rulings of the language.

فَإِنْ قَالُوا: إنَّ هَذِهِ الْآيَةُ فِيهَا حَذْفٌ بِلَا شَكٍّ، وَلَوْلَا ذَلِكَ لَوَجَبَتْ الْكَفَّارَةُ عَلَى كُلِّ مَنْ حَلَفَ سَاعَةَ حَلَفَ بَرَّ أَوْ حَنِثَ؟ قُلْنَا: نَعَمْ لَا شَكَّ فِي ذَلِكَ إلَّا أَنَّ ذَلِكَ الْحَذْفَ لَا يَصْدُقُ أَحَدٌ فِي تَعْيِينِهِ لَهُ إلَّا بِنَصٍّ صَحِيحٍ، أَوْ إجْمَاعٍ مُتَيَقَّنٍ، عَلَى أَنَّهُ هُوَ الَّذِي أَرَادَ اللَّهُ تَعَالَى لَا مَا سِوَاهُ، وَأَمَّا بِالدَّعْوَى الْمُفْتَرَاةِ فَلَا -: فَوَجَدْنَا الْحَذْفَ الْمَذْكُورَ فِي الْآيَةِ قَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ وَالنَّصُّ عَلَى أَنَّهُ حَنِثْتُمْ، وَإِذْ لَا شَكَّ فِي هَذَا فَالْمُتَعَمِّدُ لِلْيَمِينِ عَلَى الْكَذِبِ عَالِمًا بِأَنَّهُ كَذِبٌ حَانِثٌ بِيَقِينِ حُكْمِ الشَّرِيعَةِ، وَحُكْمِ اللُّغَةِ.

L18136 Thus, it is established since he is an oath-breaker that expiation becomes obligatory upon him, and this is of utmost clarity — and success is from

[24] **Qur'an references (L18131):** Qur'an 5:89 (Al-Ma'idah).

فَصَحَّ إِذْ هُوَ حَانِثٌ أَنَّ عَلَيْهِ الْكَفَّارَةَ، وَهَذَا فِي غَايَةِ الْوُضُوحِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَقَدْ قَاسُوا حَالِقَ رَأْسِهِ لِغَيْرِ ضَرُورَةٍ مُحْرِمًا غَيْرَ عَاصٍ لِلَّهِ تَعَالَى.

Allah, the Most High. The people, as they claim, are proponents of analogy, and they have analogized the one who shaves his head without necessity to a person in *iḥrām* who is not disobeying Allah Almighty.

فَهَلَّا قَاسُوا الْحَالِفَ عَامِدًا لِلْكَذِبِ حَانِثًا عَاصِيًا عَلَى الْحَالِفِ أَنْ لَا يَعْصِيَ، فَحَنِثَ عَاصِيًا، أَوْ عَلَى مَنْ حَلَفَ أَنْ لَا يَبَرَّ فَبَرَّ: غَيْرَ عَاصٍ فِي إِيجَابِ الْكَفَّارَةِ فِي كُلِّ ذَلِكَ؟ وَلَكِنَّ هَذَا مِقْدَارُ عِلْمِهِمْ وَقِيَاسِهِمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18137–18138 Why do they not apply analogy between the deliberate oath-breaker who intends falsehood—a sinful transgressor—and one who swears not to disobey yet breaks his oath sinfully, or one who swears not to act righteously yet does so—without being sinful in the obligation of atonement for all such cases? But this is the extent of their knowledge and analogical reasoning—and all success lies with Allah the Exalted.

[مَسْأَلَةُ الْيَمِينُ فِي الْغَضَبِ]

A Jurisprudential Issue: The Oath in the State of Anger

١١٣٥ - مَسْأَلَةٌ

Issue 1135

وَالْيَمِينُ فِي الْغَضَبِ وَالرِّضَا، وَعَلَى أَنْ يُطِيعَ، أَوْ عَلَى أَنْ يَعْصِيَ، أَوْ عَلَى مَا لَا طَاعَةَ فِيهِ وَلَا مَعْصِيَةَ سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا إِنْ تَعَمَّدَ الْحِنْثَ فِي كُلِّ ذَلِكَ فَعَلَيْهِ الْكَفَّارَةُ، وَإِنْ لَمْ يَتَعَمَّدْ الْحِنْثَ، أَوْ لَمْ يَعْقِدْ الْيَمِينَ بِقَلْبِهِ فَلَا كَفَّارَةَ فِي ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] فَالْكَفَّارَةُ وَاجِبَةٌ فِي كُلِّ حِنْثٍ قَصَدَهُ الْمَرْءُ.

L18139 L18140 L18141 An oath made in anger or contentment, whether to obey, to disobey, or regarding matters that involve neither obedience nor disobedience, is the same in all the aforementioned situations. If one intentionally commits a breach of oath in any of these cases, expiation is required. If the breach was unintentional or the oath was not firmly resolved in one's heart, no expiation is required, based on the words of Allah Almighty: {That is the expiation for your oaths when you swear, and guard your oaths} [Al-Mā'idah 5:89]. Thus, expiation is obligatory for every intentional breach one resolves.[25]

وَقَدْ اخْتَلَفَ السَّلَفُ فِي ذَلِكَ -: فَرُوِيَ عَنْ ابْنِ عَبَّاسٍ أَنَّ لَغْوَ الْيَمِينِ هُوَ الْيَمِينُ فِي الْغَضَبِ وَلَا كَفَّارَةَ فِيهَا.

L18142 The Salaf differed regarding that—it is narrated from Ibn Abbas that a vain oath is an oath sworn in anger, and there is no expiation for it.

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، بَلْ الْبُرْهَانُ قَائِمٌ بِخِلَافِهِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو مَعْمَرٍ هُوَ عَبْدُ اللَّهِ بْنُ عَمْرٍو هُوَ الرَّقِّيِّ - نا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ نا أَيُّوبُ هُوَ السِّخْتِيَانِيُّ - نا الْقَاسِمُ بْنُ عَاصِمٍ عَنْ زَهْدَمٍ الْجَرْمِيِّ عَنْ أَبِي مُوسَى

L18143 Abu Muhammad said: This is a statement unsupported by evidence of its validity; rather, conclusive proof stands contrary to it. As narrated through Al-Bukhari's chain: Abu Ma'mar (Abdullah ibn Amr al-Raqqi) → Abdul-Warith ibn Sa'id al-Tannuri → Ayyub al-Sakhtiyani → al-Qasim ibn Asim → Zahdam

[25] **Qur'an references (L18141):** Qur'an 5:89 (Al-Ma'idah).

أَنَّهُ سَمِعَهُ يَقُولُ «أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نَفَرٍ مِنْ الْأَشْعَرِيِّينَ فَوَافَقْتُهُ وَهُوَ غَضْبَانُ فَاسْتَحْمَلْنَاهُ فَحَلَفَ أَنْ لَا يَحْمِلَنَا - ثُمَّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاَللَّهِ إنْ شَاءَ اللَّهُ لَا أَحْلِفُ عَلَى يَمِينٍ فَأَرَى غَيْرَهَا خَيْرًا مِنْهَا إلَّا أَتَيْتُ الَّذِي هُوَ خَيْرٌ وَتَحَلَّلْتُهَا» .

al-Jarmi → Abu Musa, who said: "I came to the Messenger of Allah (peace and blessings be upon him) with a group of Ash'aris. I encountered him while he was angry. We requested mounts from him, but he swore not to provide us any. Then the Messenger of Allah (peace and blessings be upon him) said: 'By Allah, Allah willing, if I ever swear an oath and then find a better course, I shall adopt what is better and atone for my oath.'"[26]

فَصَحَّ وُجُوبُ الْكَفَّارَةِ فِي الْيَمِينِ فِي الْغَضَبِ قَالَ تَعَالَى: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ} [المائدة: ٨٩] وَالْحَالِفُ فِي الْغَضَبِ مُعَقِّدٌ لِيَمِينِهِ فَعَلَيْهِ الْكَفَّارَةُ.

L18144 Thus, the obligation of expiation for an oath sworn in anger is established. He, the Exalted, said: **"But He will hold you accountable for what you have made binding as oaths. Its expiation is feeding ten needy people from the average of what you normally provide"** (5:89). The one who swears an oath in anger has made his oath binding, and thus expiation is required of him.[27]

وَأَمَّا الْيَمِينُ فِي الْمَعْصِيَةِ -: فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ: أَنَّ رَجُلًا أَضَافَهُ رَجُلٌ فَحَلَفَ أَنْ يَأْكُلَ، فَحَلَفَ الضَّيْفُ أَنْ لَا يَأْكُلَ، فَقَالَ لَهُ ابْنُ مَسْعُودٍ: كُلْ وَإِنِّي لَا أَظُنُّ أَنَّ أَحَبَّ إلَيْك أَنْ تُكَفِّرَ عَنْ يَمِينِك - فَلَمْ يَرَ الْكَفَّارَةَ فِي ذَلِكَ إلَّا اسْتِحْبَابًا.

L18145 As for an oath concerning a sinful matter, it has been narrated to us through the chain of Ḥammād ibn Salamah from ʿAṭāʾ ibn as-Sāʾib from Abū al-Bakhtarī: A man hosted another man. The host swore that the guest would eat, but the guest swore not to eat. Ibn Masʿūd said to him: "Eat, for I do not believe that what is most preferable to you is to expiate your oath." He did not consider the expiation in this case to be obligatory, but rather as merely recommended.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ هِنْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَابِسٍ أَنَّ ابْنَ عَبَّاسٍ حَلَفَ أَنْ يَجْلِدَ غُلَامَهُ مِائَةَ جَلْدَةٍ، ثُمَّ لَمْ يَجْلِدْهُ، قَالَ: فَقُلْنَا لَهُ فِي ذَلِكَ؟ فَقَالَ: أَلَمْ تَرَ مَا صَنَعْت؟ تَرَكْته، فَذَاكَ بِذَاكَ.

L18146–18148 Narrated through the chain of Ḥammād ibn Salamah, from Dāwūd ibn Hind, from ʿAbd al-Raḥmān ibn ʿĀbis, that... Ibn Abbas swore to lash his servant one hundred times, then refrained. We said to him concerning that, and he replied: "Did you not see what I did? I abandoned it, so that offsets that."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ سُلَيْمَانَ الْأَحْوَلِ قَالَ: مَنْ حَلَفَ عَلَى مِلْكِ يَمِينِهِ: أَنْ يَضْرِبَهُ، فَإِنَّ كَفَّارَةَ يَمِينِهِ أَنْ لَا يَضْرِبَهُ، وَهِيَ مَعَ الْكَفَّارَةِ حَسَنَةٌ.

L18149 And from the narration of Sufyān ibn ʿUyaynah through Sulaymān al-Aḥwal, who said: Whoever swears an oath to strike what his right hand possesses, the expiation for his oath is to refrain from striking him. Abstaining [from striking], along with the expiation, is a good deed.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ فِيمَنْ حَلَفَ أَنْ يَضْرِبَ مَمْلُوكَهُ؟ قَالَ إبْرَاهِيمُ: لَأَنْ يَحْنَثَ أَحَبُّ إلَيَّ

L18150 From the route of ʿAbd al-Razzāq, from Ibn Jurayj, from al-Muʿtamir ibn Su-

[26] **Hadith references (L18143):** Sahih al-Bukhari 6680.
[27] **Qur'an references (L18144):** Qur'an 5:89 (Al-Ma'idah).

laymān al-Taymī, from his father, from al-Mughīrah, from Ibrāhīm regarding one who swore to strike his slave: Ibrāhīm said, “It is more beloved to me that he break the oath than that he strike him.” Al-Muʿtamir said, “I swore to strike my slave girl, but my father forbade me and did not command me to perform expiation.”

مِنْ أَنْ يَضْرِبَهُ، قَالَ الْمُعْتَمِرُ: وَحَلَفْت أَنْ أَضْرِبَ مَمْلُوكَةً لِي، فَنَهَانِي أَبِي وَلَمْ يَأْمُرْنِي بِكَفَّارَةٍ.

L18151 From the narration chain of Muḥammad ibn al-Muthannā: Ubayd Allāh ibn Mūsá al-ʿAbsī narrated to us, from Ḥanẓala ibn Abī Sufyān al-Jumaḥī, who said: Ṭāwus was asked about a man who swore not to emancipate his slave but then emancipated him. Ṭāwus responded: “Do you seek more expiation than this?”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عُبَيْدُ اللَّهِ بْنُ مُوسَى الْعَبْسِيُّ نا حَنْظَلَةُ بْنُ أَبِي سُفْيَانَ الْجُمَحِيُّ قَالَ: سُئِلَ طَاوُسٌ عَمَّنْ حَلَفَ: أَنْ لَا يَعْتِقَ غُلَامًا لَهُ فَأَعْتَقَهُ؟ فَقَالَ طَاوُوسٌ: تُرِيدُ مِنْ الْكَفَّارَةِ أَكْثَرَ مِنْ هَذَا؟ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هُشَيْمٍ عَنْ أَبِي بِشْرٍ هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ فِي لَغْوِ الْيَمِينِ؟ قَالَ: هُوَ الرَّجُلُ يَحْلِفُ عَلَى الْحَرَامِ فَلَا يُؤَاخِذُهُ اللَّهُ بِتَرْكِهِ.

From the narration chain of ʿAbd al-Razzāq, from Hushaym, from Abū Bishr—who is Jaʿfar ibn Abī Waḥshiyya—regarding a frivolous oath: Saʿīd ibn Jubayr was asked about it. He said: “It is when a man swears to do what is unlawful, so Allāh does not hold him accountable for abandoning it.”

L18152 From the chain of Ismail ibn Ishaq: Musaddad narrated to us, Abd al-Wahid ibn Ziyad narrated to us, Asim narrated from Al-Sha’bi, who said: A vain oath is every oath involving disobedience. It has no expiation, for who would make expiation for Satan? From the chain of Ismail: He narrated to us Abdullah ibn Abd al-Wahhab Al-Hajabi, who narrated to us Abd al-Wahid ibn Ziyad, who narrated to us Sulayman Al-Shaybani. He said: I heard Ikrimah say: Whoever swears an oath then sees something better than it, let him adopt it: {Allah does not hold you accountable for vain oaths} [Al-Ma’idah 5:89]. It was revealed regarding this.[28]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُسَدَّدٌ نا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ نا عَاصِمٌ عَنْ الشَّعْبِيِّ قَالَ: اللَّغْوُ فِي الْيَمِينِ كُلُّ يَمِينٍ فِي مَعْصِيَةٍ فَلَيْسَتْ لَهَا كَفَّارَةٌ، مَنْ يُكَفِّرُ لِلشَّيْطَانِ؟ وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا عَبْدُ اللَّهِ بْنُ عَبْدِ الْوَهَّابِ الْحَجَبِيُّ نا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ نا سُلَيْمَانُ الشَّيْبَانِيُّ قَالَ: سَمِعْت عِكْرِمَةَ قَالَ: مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِهِ: {لا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ} [المائدة: ٨٩] فِيهِ نَزَلَتْ.

L18153 And through the chain of Ḥammād ibn Salamah: Dāwūd ibn Abī Hind narrated to us from al-Shaʿbī from Masrūq that he said regarding a man who swears not to uphold kinship ties with his father and mother: “His expiation [is required] upon abandoning [the oath].” I asked Saʿīd ibn Jubayr about this, and he replied: “He has gained nothing [by this oath]. Let him do what is better and expiate for his oath.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ قَالَ فِي الرَّجُلِ يَحْلِفُ أَنْ لَا يَصِلَ أَبَاهُ وَأُمَّهُ، قَالَ: كَفَّارَتُهُ تَرْكُهُ، فَسَأَلْت سَعِيدَ بْنَ جُبَيْرٍ؟ فَقَالَ: لَمْ يَصْنَعْ شَيْئًا لِيَأْتِ الَّذِي هُوَ خَيْرٌ، وَلْيُكَفِّرْ عَنْ يَمِينِهِ.

L18154–18156 The adherents of this position argued by citing what was narrated to us through the chain of Ibn Abi Shaybah: Abu Usamah from al-Walid ibn Kathir,

وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو أُسَامَةَ عَنْ الْوَلِيدِ بْنِ كَثِيرٍ نا عَبْدُ الرَّحْمَنِ بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: قَالَ

[28] **Qur’an references (L18152):** Qur’an 2:225 (Al-Baqarah); Qur’an 5:89 (Al-Ma’idah).

from Abd al-Rahman ibn al-Harith, from Amr ibn Shu'ayb, from his father, from his grandfather, who said: The Messenger of Allah, peace be upon him, said: "Whoever swears to commit an act of disobedience, then no..." An oath is binding upon him, and whoever swears to sever kinship ties, his oath holds no validity.[29]

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى مَعْصِيَةٍ فَلَا يَمِينَ لَهُ وَمَنْ حَلَفَ عَلَى قَطِيعَةِ رَحِمٍ فَلَا يَمِينَ لَهُ» .

L18157 Via the route of Abū Dāwūd: Al-Mundhir ibn al-Walīd narrated to us, from ʿAbdullāh ibn Bakr, from ʿUbaydullāh ibn al-Akhnas, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, who said: The Messenger of Allāh—peace and blessings be upon him—said: "There is no vow nor oath concerning what a human being does not own, nor in disobedience to Allāh, nor in severing kinship ties. Whoever swears an oath then perceives a better course, let him abandon it and pursue what is better, for abandoning it is its atonement."[30]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا الْمُنْذِرُ بْنُ الْوَلِيدِ نا عَبْدُ اللَّهِ بْنُ بَكْرٍ نا عُبَيْدُ اللَّهِ بْنُ الْأَخْنَسِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا نَذْرَ وَلَا يَمِينَ فِيمَا لَا يَمْلِكُ ابْنُ آدَمَ، وَلَا فِي مَعْصِيَةِ اللَّهِ، وَلَا فِي قَطِيعَةِ رَحِمٍ، وَمَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَدَعْهَا وَلْيَأْتِ الَّذِي هُوَ خَيْرٌ، فَإِنَّ تَرْكَهَا كَفَّارَتُهَا» .

L18158 Via Hajjaj ibn al-Minhal — Hushaym narrated to us from Yahya ibn Abdullah, from his father, from Abu Hurairah — the Prophet (PBUH) said: "Whoever swears an oath and then finds a better alternative to it, let him act upon what is better, for that is its expiation."

وَمِنْ طَرِيقِ حَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَالَ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ فَهُوَ كَفَّارَتُهَا» .

L18159 From the path of Abū Dāwūd: Muḥammad ibn al-Minhāl narrated to us, Yazīd ibn Zuraiʿ narrated to us, Ḥabīb al-Muʿallim narrated to us from ʿAmr ibn Shuʿayb from Saʿīd ibn al-Musayyib that ʿUmar ibn al-Khaṭṭāb said: "I heard the Messenger of Allāh—may Allāh bless him and grant him peace—say: 'No oath is binding upon you, no vow in disobedience to Allāh, no [act] in severing family ties, and no [obligation] concerning what you do not possess.'"

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ الْمِنْهَالِ نا يَزِيدُ بْنُ زُرَيْعٍ نا حَبِيبٌ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: لَا يَمِينَ عَلَيْكَ، وَلَا نَذْرَ فِي مَعْصِيَةِ اللَّهِ، وَلَا فِي قَطِيعَةِ الرَّحِمِ، وَفِيمَا لَا تَمْلِكُ» .

L18160–18161 From the path of Al-ʻUqayli: From Ahmad ibn ʻAmr, from Ibrahim ibn al-Mustamir, from Shuʿayb ibn Hayyan ibn Shuʿayb ibn Dirham, from Yazid ibn Abi Muʿadh, from Muslim ibn ʻAqrab, from the Prophet – peace be upon him

وَمِنْ طَرِيقِ الْعُقَيْلِيُّ نا أَحْمَدُ بْنُ عَمْرٍو نا إبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ نا شُعَيْبُ بْنُ حَيَّانَ بْنِ شُعَيْبِ بْنِ دِرْهَمٍ نا يَزِيدُ بْنُ أَبِي مُعَاذٍ عَنْ مُسْلِمِ بْنِ عَقْرَبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ حَلَفَ عَلَى مَمْلُوكِهِ لَيَضْرِبَنَّهُ فَإِنَّ كَفَّارَتَهُ أَنْ يَدَعَهُ، وَلَهُ مَعَ كَفَّارَتِهِ خَيْرٌ» .

[29] **Hadith references (L18154):** Sunan Abi Dawud 2191.
[30] **Hadith references (L18157):** Sunan Abi Dawud 3274.

– who said: “Whoever swears to strike his slave, his expiation is to refrain from striking him, and he will attain good in addition to the expiation.”

L18162 From the chain of transmission of Sa‘id ibn Mansur, who narrated to us: Hazm ibn Abi Hazm al-Qata‘i said, “I heard al-Hasan say, ‘It has reached us from the Messenger of Allah—peace and blessings be upon him—that he said, “There is no vow for the son of Adam concerning the wealth of another, nor any oath in disobedience.”’”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَزْمُ بْنُ أَبِي حَزْمٍ الْقَطَعِيُّ سَمِعْت الْحَسَنَ يَقُولُ: بَلَغَنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا نَذْرَ لِابْنِ آدَمَ فِي مَالِ غَيْرِهِ وَلَا يَمِينَ فِي مَعْصِيَةٍ» .

L18163 Abū Muḥammad said: All of this is invalid—the ḥadīth of ʿAmr ibn Shuʿayb is a written compilation. However, there is no blame on the Mālikīs, Shāfiʿīs, and Ḥanafīs if they cite his narration as evidence when it aligns with their positions and validate it in such cases. Yet when it opposes them, it becomes a weak written compilation. How can anyone who truly believes in the verse, *“Not a word does he utter without a vigilant observer present beside him”* [Qāf 50:18], speak thus? Or how can a soul aware that Allah the Exalted *“knows what is hidden and what is even more concealed”* [Ṭāha 20:7] hold this as religious conviction? As for the ḥadīth of ʿUmar, its chain is disconnected, for Saʿīd ibn al-Musayyib heard nothing from ʿUmar except his announcement of al-Nuʿmān ibn Muqrin al-Muzanī’s death from the pulpit. Yet these scholars claim disconnected and continuous chains are equivalent—how can they ignore this narration? As for the ḥadīth of Abū Hurayrah, it is narrated through Yaḥyā ibn ʿUbayd Allāh—a discarded and abandoned narrator. Muslim mentioned this, among others.[31]

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذَا لَا يَصِحُّ - حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ صَحِيفَةٌ، وَلَكِنْ لَا مُؤْنَةَ عَلَى الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، وَالْحَنَفِيِّينَ فِي أَنْ يَحْتَجُّوا بِرِوَايَتِهِ إذَا وَافَقَتْهُمْ وَيُصَحِّحُونَهَا حِينَئِذٍ، فَإِذَا خَالَفَتْهُمْ كَانَتْ حِينَئِذٍ صَحِيفَةً ضَعِيفَةً. مَا نَدْرِي كَيْفَ يَنْطِقُ بِهَذَا مَنْ يُوقِنُ أَنَّهُ: {مَا يَلْفِظُ مِنْ قَوْلٍ إلا لَدَيْهِ رَقِيبٌ عَتِيدٌ} [ق: ١٨] أَمْ كَيْفَ تَدِينُ بِهِ نَفْسٌ تَدْرِي أَنَّ اللَّهَ تَعَالَى: {يَعْلَمُ السِّرَّ وَأَخْفَى} [طه: ٧] وَأَمَّا حَدِيثُ عُمَرَ فَمُنْقَطِعٌ، لِأَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ لَمْ يَسْمَعْ مِنْ عُمَرَ شَيْئًا إلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقْرِنٍ الْمُزَنِيَّ عَلَى الْمِنْبَرِ فَقَطْ، وَهَؤُلَاءِ يَقُولُونَ: إنَّ الْمُنْقَطِعَ، وَالْمُتَّصِلَ سَوَاءٌ، فَأَيْنَ هُمْ عَنْ هَذَا الْأَثَرِ؟ وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَعَنْ يَحْيَى بْنِ عُبَيْدِ اللَّهِ - وَهُوَ سَاقِطٌ مَتْرُوكٌ ذَكَرَ - ذَلِكَ مُسْلِمٌ، وَغَيْرُهُ.

L18164 As for the hadith of Muslim ibn ’Aqrab, its chain includes Shu’ayb ibn Hayyan (who is weak) and Yazid ibn Abi Mu’adh (who is unknown).

وَأَمَّا حَدِيثُ مُسْلِمِ بْنِ عَقْرَبٍ فَفِيهِ شُعَيْبُ بْنُ حَيَّانَ - وَهُوَ ضَعِيفٌ - وَيَزِيدُ بْنُ أَبِي مُعَاذٍ - وَهُوَ غَيْرُ مَعْرُوفٍ.

L18165 The ḥadīth of al-Ḥasan is mursal - so all that is in this chapter is invalidated.

وَحَدِيثُ الْحَسَنِ مُرْسَلٌ - فَسَقَطَ كُلُّ مَا فِي هَذَا الْبَابِ.

L18166–18168 We found the text of the Qur’an mandates expiation in that matter in its generality, along with the statement of the Messenger. Allah - may peace

[31] **Qur’an references (L18163):** Qur’an 50:18 (Qaf); Qur’an 20:7 (Taha).

and blessings be upon him - said: “Whoever swears an oath then considers something else better than it, let him act upon what is better and expiate it.”

وَوَجَدْنَا نَصَّ الْقُرْآنِ يُوجِبُ الْكَفَّارَةَ فِي ذَلِكَ بِعُمُومِهِ، وَمَعَ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ وَلْيُكَفِّرْهُ» .

L18169 If it is said: “This applies to cases where both have good, except that the other has more good?” We said: “This is a claim. Rather, all evil in the world and every act of disobedience: righteousness and piety are better than both. Allah the Exalted said: {Is Allah better, or what they associate with Him?} [An-Naml 27:59].”[32]

فَإِنْ قِيلَ: إنَّ هَذَا فِيمَا كَانَ فِي كِلَيْهِمَا خَيْرٌ إلَّا أَنَّ الْآخَرَ أَكْثَرُ خَيْرًا؟ قُلْنَا: هَذِهِ دَعْوَى، بَلْ كُلُّ شَرٍّ فِي الْعَالَمِ، وَكُلُّ مَعْصِيَةٍ، فَالْبِرُّ وَالتَّقْوَى خَيْرٌ مِنْهُمَا، قَالَ اللَّهُ تَعَالَى: {آللَّهُ خَيْرٌ أَمَّا يُشْرِكُونَ} [النمل: ٥٩] .

L18170 Thus, it is soundly established that Allah, the Exalted, is superior in goodness to the idols, and there is nothing of good in them.

فَصَحَّ أَنَّ اللَّهَ تَعَالَى خَيْرٌ مِنْ الْأَوْثَانِ، وَلَا شَيْءَ مِنْ الْخَيْرِ فِي الْأَوْثَانِ.

L18171 The Almighty said: “The companions of Paradise on that Day will be better in their abode and more excellent in their resting place” (Al-Furqān 25:24). And there is no good in Hellfire at all.[33]

وَقَالَ تَعَالَى: {أَصْحَابُ الْجَنَّةِ يَوْمَئِذٍ خَيْرٌ مُسْتَقَرًّا وَأَحْسَنُ مَقِيلا} [الفرقان: ٢٤] وَلَا خَيْرَ فِي جَهَنَّمَ أَصْلًا.

L18172 From the chain of Muslim: From Muhammad ibn Rafi’, from Abd al-Razzaq, [Ma’mar narrated to us], from Hammam ibn Munabbih, from Abu Hurairah, who said: The Messenger of Allah (peace and blessings be upon him) said: “By Allah, if one of you stubbornly clings to an oath regarding his family, it is far more sinful for him before Allah than to fulfill the atonement Allah has ordained.”[34]

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ [ثنا مَعْمَرٌ] عَنْ هَمَّامِ بْنِ مُنَبِّهٍ نا أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَاَللَّهِ لَأَنْ يَلِجَّ أَحَدُكُمْ بِيَمِينِهِ فِي أَهْلِهِ آثَمُ لَهُ عِنْدَ اللَّهِ مِنْ أَنْ يُعْطِيَ كَفَّارَتَهُ الَّتِي فَرَضَ اللَّهُ» .

L18173 This report confirms the obligation of expiation for breaking an oath where persisting in fulfilling it would be sinful. It has been transmitted to us that ’Umar ibn al-Khaṭṭāb held the view requiring expiation in such cases, which is also the position of those present. And with Allah, the Exalted, lies all success.

فَصَحَّ بِهَذَا الْخَبَرِ وُجُوبُ الْكَفَّارَةِ فِي الْحِنْثِ فِي الْيَمِينِ الَّتِي يَكُونُ التَّمَادِي عَلَى الْوَفَاءِ بِهَا إثْمًا - وَقَدْ رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ رَأَى فِي ذَلِكَ الْكَفَّارَةَ، وَهُوَ قَوْلُ الْحَاضِرِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18174 **A legal principle: The oath is contingent upon the swearer’s wording and his intention.**

[مَسْأَلَةٌ الْيَمِينُ مَحْمُولَةٌ عَلَى لُغَةِ الْحَالِفِ وَعَلَى نِيَّتِهِ]

[32] **Qur’an references (L18169):** Qur’an 27:59 (An-Naml).
[33] **Qur’an references (L18171):** Qur’an 25:24 (Al-Furqan).
[34] **Hadith references (L18172):** Sahih Muslim 1655.

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وَالْيَمِينُ مَحْمُولَةٌ عَلَى لُغَةِ الْحَالِفِ وَعَلَى نِيَّتِهِ، وَهُوَ مُصَدَّقٌ فِيمَا ادَّعَى مِنْ ذَلِكَ إِلَّا مَنْ لَزِمَتْهُ يَمِينٌ فِي حَقِّ خَصْمِهِ عَلَيْهِ - وَالْحَالِفُ مُبْطِلٌ - فَإِنَّ الْيَمِينَ هَهُنَا عَلَى نِيَّةِ الْمَحْلُوفِ لَهُ.

وَمَنْ قِيلَ لَهُ: قُلْ كَذَا أَوْ كَذَا؟ فَقَالَ - وَكَانَ ذَلِكَ الْكَلَامُ يَمِينًا بِلُغَةٍ لَا يُحْسِنُهَا الْقَائِلُ - فَلَا شَيْءَ عَلَيْهِ وَلَمْ يَحْلِفْ - وَمَنْ حَلَفَ بِلُغَتِهِ بِاسْمِ اللَّهِ تَعَالَى عِنْدَهُمْ فَهُوَ حَالِفٌ، فَإِنْ حَنِثَ فَعَلَيْهِ الْكَفَّارَةُ.

بُرْهَانُ ذَلِكَ -: أَنَّ الْيَمِينَ إِنَّمَا هِيَ إِخْبَارٌ مِنْ الْحَالِفِ عَمَّا يَلْتَزِمُ بِيَمِينِهِ تِلْكَ، وَكُلُّ وَاحِدٍ فَإِنَّمَا يُخْبِرُ عَنْ نَفْسِهِ بِلُغَتِهِ، وَعَمَّا فِي ضَمِيرِهِ.

- فَصَحَّ مَا قُلْنَاهُ، وَقَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

وَقَالَ اللَّهُ تَعَالَى: {وَإِنْ مِنْ أُمَّةٍ إِلا خَلا فِيهَا نَذِيرٌ} [فاطر: ٢٤] .

وَقَالَ تَعَالَى: {وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إِلا بِلِسَانِ قَوْمِهِ لِيُبَيِّنَ لَهُمْ} [إبراهيم: ٤] .

وَلِلَّهِ تَعَالَى فِي كُلِّ لُغَةٍ اسْمٌ، فَبِالْفَارِسِيَّةِ: أوزمز، وَبِالْعِبْرَانِيَّةِ: أذوناي، والوهيم، والوهاء، وَإِسْرَائِيلُ، وَبِاللَّاتِينِيَّةِ: داوش، وقريطور، وبالصقلبية: بغ، وَبِالْبَرْبَرِيَّةِ: يكش.

فَإِنْ حَلَفَ هَؤُلَاءِ بِهَذِهِ الْأَسْمَاءِ فَهِيَ يَمِينٌ صَحِيحَةٌ، وَفِي الْحِنْثِ فِيهِ الْكَفَّارَةُ.

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The oath is contingent upon the language and intent of the swearer, who is deemed truthful in their claim unless obligated to swear regarding a right owed to their adversary—while the swearer is invalidating—in which case the oath depends on the intent of the party to whom it is sworn.

If someone was told, “Say such a thing or such a thing,” and he responded—while that speech constituted an oath in a language the speaker was not proficient in—then nothing is binding upon him, and he has not sworn. Whoever swears in his own language by the name of God Almighty in their consideration has sworn an oath; if he breaks it, he must make expiation.

The proof of this is that the oath is merely a declaration by the swearer concerning what he binds himself to through that oath… and every… Indeed, one reports only about himself in his own language and what lies within his conscience.

Thus, what we have said is correct, and the statement of the Prophet—peace be upon him—“Actions are by intentions, and to every person belongs what they intended.”

And Allah, the Exalted, said: “There is no community but that a warner has passed among them” [Surah al-Fatir 35:24].[35]

And He, the Exalted, said: “We have not sent any messenger except in the language of his people so he might clarify for them” [Ibrahim 4].[36]

Allah, the Exalted, has a name in every language: in Persian: Awzmz; in Hebrew: Adonai, Elohim, Eloah, and Israel; in Latin: Dāwush and Creator; in Slavic: Bog; and in Berber: Yakuc.

If these individuals swear by these names, the oath is valid, and breaking it necessitates expiation.

As for the one obligated to swear an oath for his opponent while being a

[35] **Qur’an references (L18182):** Qur’an 35:24 (Fatir).
[36] **Qur’an references (L18183):** Qur’an 14:4 (Ibrahim).

wrongdoer, he gains no benefit from his ambiguous wording. He disobeys Allah the Exalted by denying the rightful claim and disobeys Him by repelling his opponent's due demand through that oath. Thus, he inevitably swears a false, submersive oath without doubt.

وَأَمَّا مَنْ لَزِمَتْهُ يَمِينٌ لِخَصْمِهِ - وَهُوَ مُبْطِلٌ - فَلَا يَنْتَفِعُ بِتَوْرِيَتِهِ، وَهُوَ عَاصٍ لِلَّهِ تَعَالَى فِي جُحُودِهِ الْحَقَّ، عَاصٍ لَهُ فِي اسْتِدْفَاعِ مَطْلَبِ خَصْمِهِ بِتِلْكَ الْيَمِينِ، فَهُوَ حَالِفُ يَمِينٍ غَمُوسٍ، وَلَا بُدَّ.

L18187 It has been narrated to us through the chain of transmission of Hushaym from 'Abbad ibn Abi Salih and 'Abdullah ibn Abi Salih, from Abu Salih al-Samman, from Abu Hurayrah, that the Prophet (peace be upon him) said: "Your oath is binding based on what your companion confirms from you."

رُوِّينَا مِنْ طَرِيقِ هُشَيْمٍ عَنْ عَبَّادِ بْنِ أَبِي صَالِحٍ وَعَبْدِ اللَّهِ بْنِ أَبِي صَالِحٍ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَمِينُكَ عَلَى مَا يُصَدِّقُكَ عَلَيْهِ صَاحِبُكَ» .

L18188 It has been said: "Abbad and Abdullah are one." A person's companion is none other than someone with whom he shares a matter that binds them together and in which they accompany one another. This refers solely to the possessor of a right who holds an oath over you that you must inevitably fulfill.

وَقَدْ قِيلَ: عَبَّادٌ، وَعَبْدُ اللَّهِ وَاحِد، وَلَا يَكُونُ صَاحِبُ الْمَرْءِ إلَّا مَنْ لَهُ مَعَهُ أَمْرٌ يَجْمَعُهُمَا يَصْطَحِبَانِ فِيهِ، وَلَيْسَ إلَّا ذُو الْحَقِّ الَّذِي لَهُ عَلَيْك يَمِينٌ تُؤَدِّيهَا إلَيْهِ وَلَا بُدَّ.

L18189 As for the one for whom there is no oath with you, he is not your partner in that oath.

وَأَمَّا مَنْ لَا يَمِينَ لَهُ عِنْدَك فَلَيْسَ صَاحِبَك فِي تِلْكَ الْيَمِينِ.

L18190 **A legal issue: He took an oath, then said, "I intended part of what the wording he uttered encompasses."**

[مَسْأَلَةٌ حَلَفَ ثُمَّ قَالَ نَوَيْت بَعْضَ مَا يَقَعُ عَلَيْهِ اللَّفْظُ الَّذِي نَطَقَ]

L18191 Issue 1137: If someone takes an oath and then says, "I intended some of what falls under the wording I uttered," they are to be believed. Similarly, if they say, "I spoke inadvertently and had no intention," they are also to be believed. If they say, "I did not intend one thing to the exclusion of another," their oath is interpreted according to the general meaning of their wording, as previously explained. And success is from Allah, the Most High.

١١٣٧ - مَسْأَلَةٌ وَمَنْ حَلَفَ ثُمَّ قَالَ: نَوَيْت بَعْضَ مَا يَقَعُ عَلَيْهِ اللَّفْظُ الَّذِي نَطَقَ صُدِّقَ، وَكَذَلِكَ لَوْ قَالَ: جَرَى لِسَانِي وَلَمْ يَكُنْ لِي نِيَّةٌ فَإِنَّهُ يُصَدَّقُ، فَإِنْ قَالَ: لَمْ أَنْوِ شَيْئًا دُونَ شَيْءٍ حُمِلَ عَلَى عُمُومِ لَفْظِهِ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18192–18193 **A case where someone swore an oath regarding something and then said, connected to his statement, "If Allah, the Exalted, wills."**

[مَسْأَلَةٌ حَلَفَ عَلَى شَيْءٍ ثُمَّ قَالَ مَوْصُولًا بِكَلَامِهِ إنْ شَاءَ اللَّهُ تَعَالَى]

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مَسْأَلَةٌ

L18195 And whoever swears an oath regarding something and then says connected to his speech: “If Allah the Exalted wills,” or “except if Allah wills,” or “except if Allah does not will,” or similar phrasing, or “except if I intend,” or “except if I do not intend,” or “except if Allah changes what is in my heart,” or “except if it becomes clear to me,” or “except if so-and-so wills,” or “if so-and-so wills,” then this constitutes a valid exception. The oath is thereby nullified for him through that exception, and no expiation is required if he contravenes what he swore upon.

وَمَنْ حَلَفَ عَلَى شَيْءٍ ثُمَّ قَالَ مَوْصُولًا بِكَلَامِه: إِنْ شَاءَ اللَّهُ تَعَالَى، أَوْ إِلَّا أَنْ يَشَاءَ اللَّهُ، أَوْ إِلَّا أَنْ لَا يَشَاءَ اللَّهُ، أَوْ نَحْوَ هَذَا، أَوْ إِلَّا أَنْ أَشَاءَ، أَوْ إِلَّا أَنْ لَا أَشَاءَ، أَوْ إِلَّا إِنْ بَدَّلَ اللَّهُ مَا فِي قَلْبِي، أَوْ إِلَّا أَنْ يَبْدُوَ إِلَيَّ، أَوْ إِلَّا أَنْ يَشَاءَ فُلَانٌ، أَوْ إِنْ شَاءَ فُلَانٌ، فَهُوَ اسْتِثْنَاءٌ صَحِيحٌ وَقَدْ سَقَطَتْ الْيَمِينُ عَنْهُ بِذَلِكَ، وَلَا كَفَّارَةَ عَلَيْهِ إِنْ خَالَفَ مَا حَلَفَ عَلَيْهِ.

L18196 If the exception is not connected to his oath but is severed by abandoning speech, and he subsequently reintroduces the exception, he does not benefit from that. The oath has become binding upon him, and if he violates it, expiation is obligatory.

فَلَوْ لَمْ يَصِلْ الِاسْتِثْنَاءُ بِيَمِينِهِ لَكِنْ قُطِعَ قَطْعَ تَرْكٍ لِلْكَلَامِ ثُمَّ ابْتَدَأَ الِاسْتِثْنَاءَ لَمْ يَنْتَفِعْ بِذَلِكَ، وَقَدْ لَزِمَتْهُ الْيَمِينُ، فَإِنْ حَنِثَ فِيهَا فَعَلَيْهِ الْكَفَّارَةُ.

L18197 The exception does not occur except by verbal expression, and it is not accepted by intention without verbal expression, due to the words of Allah, the Exalted: {But He will take you to task for what you have bound by oaths} [Al-Ma’idah: 89]. Thus, this person did not bind the oath.[37]

وَلَا يَكُونُ الِاسْتِثْنَاءُ إِلَّا بِاللَّفْظِ، وَأَمَّا بِنِيَّةٍ دُونَ لَفْظٍ فَلَا، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ} [المائدة: ٨٩] فَهَذَا لَمْ يُعَقِّدْ الْيَمِينَ.

L18198 And we are certain that if Allah the Exalted had willed the completion of that oath, He would have enacted it and perfected it. Since He, the Exalted, neither enacted it nor perfected it, we are certain He did not will its existence. He only bound Himself to it if Allah the Exalted willed it, and Allah the Exalted did not will it, so He never obligated Himself to it.

وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى لَوْ شَاءَ تَمَامَ تِلْكَ الْيَمِينِ لَأَنْفَذَهَا، وَأَتَمَّهَا، فَإِذْ لَمْ يُنَفِّذْهَا عَزَّ وَجَلَّ وَلَا أَتَمَّهَا، فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ تَعَالَى لَمْ يَشَأْ كَوْنَهَا وَهُوَ إِنَّمَا الْتَزَمَهَا إِنْ شَاءَ اللَّهُ تَعَالَى، وَاَللَّهُ تَعَالَى لَمْ يَشَأْهَا، فَلَمْ يَلْتَزِمْهَا قَطُّ.

L18199 Similarly, his stipulation of his own will or Zayd’s will – since his own will is only known by himself, and he is therefore believed regarding it – as for Zayd’s will, we do not know whether he is truthful in his claim that Zayd willed it or is not truthful. Nor do we know whether he is truthful in his claim that Zayd did not will it or is not truthful. Thus we lack certainty about the binding nature of this oath he has sworn, and it is not permissible to impose an expiation upon him based on doubt.

وَكَذَلِكَ اشْتِرَاطُهُ مَشِيئَةَ نَفْسِهِ، أَوْ مَشِيئَةَ زَيْدٍ، لِأَنَّ مَشِيئَتَهُ لَا تُعْلَمُ إِلَّا مِنْ قِبَلِهِ فَهُوَ مُصَدَّقٌ فِيهَا - وَمَشِيئَةُ زَيْدٍ لَا نَدْرِي أَصَدَقَ فِي دَعْوَاهُ أَنَّهُ شَاءَ أَوْ لَمْ يَصْدُقْ؟ وَلَا نَدْرِي أَيْضًا أَصَدَقَ فِي دَعْوَاهُ أَنَّهُ لَمْ يَشَأْ أَوْ لَمْ يَصْدُقْ؟ فَلَسْنَا عَلَى يَقِينٍ مِنْ لُزُومِ هَذِهِ الْيَمِينِ الَّتِي حَلَفَ بِهَا، فَلَمْ يَجُزْ أَنْ نُلْزِمَهُ كَفَّارَةً بِالشَّكِّ.

L18200 From the chain of Aḥmad ibn Zuhayr ibn Ḥarb: Yaḥyā ibn Maʿīn narrated to us from ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ زُهَيْرِ بْنِ حَرْبٍ نا يَحْيَى بْنُ مَعِينٍ عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُوسٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -:

[37] **Qur’an references (L18197):** Qur’an 5:89 (Al-Ma’idah).

from Abū Hurayrah, who said: The Messenger of Allah (peace be upon him) said, “Whoever swears an oath and says, ‘If Allah wills,’ does not break his oath.” From the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman: Bakr ibn Ḥammād narrated to us from Musaddad from ʿAbd al-Wārith ibn Saʿīd al-Tannūrī from Ayyūb al-Sikhtiyānī from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allah (peace be upon him) said, “Whoever swears an oath and makes an exception may withdraw if he wishes, or leave it without breaking his oath.” This constitutes a general ruling for all exceptions, as previously mentioned.[38]

L18201–18202 Abu Muhammad said: The statement of the Prophet—peace be upon him—when he said, “If Allah wills,” or when he made an exception [by saying “If Allah wills”], necessitates verbal utterance. Speech must be articulated verbally; it cannot be established through intent whatsoever.

L18203 And a school of jurists said: If he makes an inward exception, it suffices him.

L18204 It was narrated to us through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān from Muḥil ibn Muḥriz from Ibrāhīm al-Nakhaʿī, who said: “It is not valid unless one pronounces the conditional exception audibly, just as one pronounced the oath audibly.”

L18205 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Mughīrah, from Ibrāhīm: If someone mentally stipulates an exception, it holds no validity until they verbally declare it.

L18206 And from Maʿmar, from Ḥammād, regarding the exception: It is of no effect unless one hears oneself declare it.

L18207 Narrated by Qatadah on the authority of al-Ḥasan al-Baṣrī: If one moves his tongue [to speak], this suffices for him in making an exception.

L18208 Abu Muhammad said: “With this we say, for it is a valid opinion” – meaning the movement of the tongue.

L18209 As for connecting the exception to the oath, Abū Thawr said: One is not considered to have made an exception unless they intend it at the time of

[38] **Hadith references (L18200):** Sunan Abi Dawud 3262.

«مَنْ حَلَفَ فَقَالَ: إِنْ شَاءَ اللَّهُ، لَمْ يَحْنَثْ» وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ عَنْ عَبْدِ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيِّ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ فَاسْتَثْنَى فَإِنْ شَاءَ رَجَعَ وَإِنْ شَاءَ تَرَكَ غَيْرَ حِنْثٍ» فَهَذَا عُمُومٌ لِكُلِّ اسْتِثْنَاءٍ كَمَا ذَكَرْنَا.

قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُهُ - عَلَيْهِ السَّلَامُ - فَقَالَ: " إِنْ شَاءَ اللَّهُ " أَوْ " فَاسْتَثْنَى " يَقْتَضِي الْقَوْلَ، وَالْقَوْلُ لَا يَكُونُ إلَّا بِاللِّسَانِ، لَا يَكُونُ بِالنِّيَّةِ أَصْلًا.

وَقَدْ قَالَ قَوْمٌ: إنْ اسْتَثْنَى فِي نَفْسِهِ أَجْزَأَهُ.

وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مُحِلِّ بْنِ مُحْرِزٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا، حَتَّى يَجْهَرَ بِالِاسْتِثْنَاءِ كَمَا جَهَرَ بِالْيَمِينِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ: إنْ اسْتَثْنَى فِي نَفْسِهِ فَلَيْسَ بِشَيْءٍ حَتَّى يُظْهِرَهُ بِلِسَانِهِ.

وَعَنْ مَعْمَرٍ عَنْ حَمَّادٍ فِي الِاسْتِثْنَاءِ: لَيْسَ بِشَيْءٍ حَتَّى يَسْمَعَ نَفْسَهُ.

وَعَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ إذَا حَرَّكَ لِسَانَهُ أَجْزَأَ عَنْهُ فِي الِاسْتِثْنَاءِ.

قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا نَقُولُ، لِأَنَّهُ قَوْلٌ صَحِيحٌ - يَعْنِي حَرَكَةَ اللِّسَانِ.

uttering the oath—not after its completion. For if they finalize the oath without intending the exception during it, they have concluded their oath, and thus it becomes binding.

وَأَمَّا وَصْلُ الِاسْتِثْنَاءِ بِالْيَمِينِ فَإِنَّ أَبَا ثَوْرٍ قَالَ: لَا يَكُونُ مُسْتَثْنِيًا إِلَّا حَتَّى يَنْوِيَ الِاسْتِثْنَاءَ فِي حِينِ نُطْقِهِ بِالْيَمِينِ، لَا بَعْدَ تَمَامِهَا، لِأَنَّهُ إِذَا أَتَمَّ الْيَمِينَ وَلَمْ يَنْوِ فِيهَا الِاسْتِثْنَاءَ كَانَ قَدْ عَقَّدَ يَمِينَهُ فَلَزِمَتْهُ.

L18210 Abu Muhammad said: One should not oppose with speculative reasoning the clarification of the Messenger of Allah (peace be upon him), for he stated: "Whoever takes an oath and says, 'If Allah wills,' does not break it." The Prophet first affirmed the oath for him, then nullified it through his subsequent statement: "and says, 'If Allah wills.'" The conjunction "fa" (and) indicates that the second utterance follows the first immediately without any delay - thereby confirming our position.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَعْتَرِضُ بِالنَّظَرِ عَلَى بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ حَلَفَ فَقَالَ إِنْ شَاءَ اللَّهُ لَمْ يَحْنَثْ» فَأَثْبَتَ لَهُ الْيَمِينَ أَوَّلًا، ثُمَّ أَسْقَطَهَا - عَلَيْهِ السَّلَامُ - عَنْهُ بِقَوْلِهِ: " فَقَالَ إِنْ شَاءَ اللَّهُ " وَالْفَاءُ تُعْطِي أَنْ تَكُونَ الثَّانِي بَعْدَ الْأَوَّلِ بِلَا مُهْلَةٍ - فَصَحَّ مَا قُلْنَاهُ.

L18211 A group said: The exception is perpetually permissible whenever one intends to make an exception, as it has been narrated to us through the chain of Al-Ḥajjāj ibn Minhāl - who narrated from ʿAbdullāh ibn Dāwūd (who is Al-Khuraibī) - from Sulaymān Al-Aʿmash, from Mujāhid, from Ibn ʿAbbās, who said: "He has two exceptions after such and such."

وَقَالَتْ طَائِفَةٌ: الِاسْتِثْنَاءُ جَائِزٌ أَبَدًا مَتَى أَرَادَ أَنْ يَسْتَثْنِيَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا عَبْدُ اللَّهِ بْنُ دَاوُد هُوَ الْخُرَيْبِيُّ - عَنْ سُلَيْمَانَ الْأَعْمَشِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَهُ ثُنْيَاهُ بَعْدَ كَذَا وَكَذَا.

L18212 And through the chain of Khuṣayf from Mujāhid, he said: If one says, after years, "If Allah, the Exalted, wills," then he has indeed made an exception.

وَمِنْ طَرِيقِ خُصَيْفٍ عَنْ مُجَاهِدٍ قَالَ: إِنْ قَالَ بَعْدَ سِنِينَ إِنْ شَاءَ اللَّهُ تَعَالَى فَقَدْ اسْتَثْنَى.

L18213 A group said after four months—as narrated through the chain of Sālim al-Afṭas from Saʿīd ibn Jubayr, who said: If he said after four months, "If Allah wills," then he has made an exception.

وَقَالَتْ طَائِفَةٌ بَعْدَ أَرْبَعَةِ أَشْهُرٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَالِمٍ الْأَفْطَسِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: إِنْ قَالَ بَعْدَ أَرْبَعَةِ أَشْهُرٍ - إِنْ شَاءَ اللَّهُ - فَقَدْ اسْتَثْنَى.

L18214–18216 And a group said: After a month—as we have been narrated through the chain of Yahya ibn Saʿīd al-Qaṭṭān from... From Sufyān al-Thawrī, from Sālim ibn ʿAjlān al-Afṭas, from Saʿīd ibn Jubayr, who said: If a man takes an oath and says, "After a month, God willing," he may retract it.

وَقَالَتْ طَائِفَةٌ: بَعْدَ شَهْرٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَالِمِ بْنِ عَجْلَانَ الْأَفْطَسِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: إِذَا حَلَفَ الرَّجُلُ فَقَالَ: بَعْدَ شَهْرٍ - إِنْ شَاءَ اللَّهُ - فَلَهُ ثُنْيَاهُ.

L18217 A group said: Whoever forgets may make a conditional exception whenever he remembers: as we have narrated through the chain of Ibn Abi Shaybah - Waki' narrated to us from Al-A'mash, from Mujahid, from Ibn 'Abbās, who said: "He may make a conditional exception in his oath whenever he

remembers," and he recited: {And remember your Lord when you forget} [Al-Kahf: 24].[39]

وَقَالَتْ طَائِفَةٌ: مَنْ نَسِيَ فَلَهُ أَنْ يَسْتَثْنِيَ مَتَى مَا ذَكَرَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ الْأَعْمَشِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: يَسْتَثْنِي فِي يَمِينِهِ مَتَى مَا ذَكَرَ، وَقَرَأَ: {وَاذْكُرْ رَبَّكَ إِذَا نَسِيتَ} [الكهف: ٢٤] .

L18218 And [this] has also been authenticated from Saʿīd ibn Jubayr and Abū al-ʿĀliyah.

وَصَحَّ [هَذَا] أَيْضًا عَنْ سَعِيدِ بْنِ جُبَيْرٍ [وَعَنْ] أَبِي الْعَالِيَةِ.

L18219 A group held the opinion that this [matter] involves an unlimited respite period - as narrated through the chain of Ḥammād ibn Salamah from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn ʾUtbah ibn ʿAbd Allāh ibn Masʿūd, from al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd, who reported that ʿAbd Allāh ibn Masʿūd said: "Whoever takes an oath then says 'If Allāh wills,' he retains the legal option."

وَقَالَتْ طَائِفَةٌ: فِي ذَلِكَ بِمُهْلَةٍ غَيْرِ مَحْدُودَةٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: مَنْ حَلَفَ ثُمَّ قَالَ: إنْ شَاءَ اللَّهُ - فَهُوَ بِالْخِيَارِ.

L18220 A group said: "Equivalent to the amount of milk obtained from milking a copious ewe" – as we have been narrated through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Ibn Abī Najīḥ from ʿAṭāʾ, who said: "The exception in oaths pertains to an amount equivalent to the milk obtained from milking a copious she-camel."

وَقَالَتْ طَائِفَةٌ: بِمِقْدَارِ حَلْبِ شَاةٍ غَزِيرَةٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ، قَالَ: لَهُ الِاسْتِثْنَاءُ فِي الْيَمِينِ بِمِقْدَارِ حَلْبِ النَّاقَةِ الْغَزِيرَةِ.

L18221 A group said: The exception is valid for him provided he has not risen from where he was seated or spoken – as narrated to us through Ḥammād ibn Salamah, from Qatādah, who said: "If someone takes an oath and then makes an exception before rising or speaking, his exception is valid."

وَطَائِفَةٌ قَالَتْ: لَهُ الِاسْتِثْنَاءُ مَا لَمْ يَقُمْ عَنْ مَجْلِسِهِ، أَوْ يَتَكَلَّمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ قَالَ: إذَا حَلَفَ ثُمَّ اسْتَثْنَى قَبْلَ أَنْ يَقُومَ أَوْ يَتَكَلَّمَ فَلَهُ ثُنْيَاهُ.

L18222 A group of scholars held that "so long as he does not rise at all" - as we have reported through the chain of ʿAbd al-Razzāq from Ibn Jurayj: Ibn Ṭāwūs reported from his father, who said: "Whoever stipulates an exception does not break his oath, and he has the exception clause as long as he does not rise from his seat."

وَطَائِفَةٌ قَالَتْ: مَا لَمْ يَقُمْ فَقَطْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي ابْنُ طَاوُوسٍ عَنْ أَبِيهِ قَالَ: مَنْ اسْتَثْنَى لَمْ يَحْنَثْ وَلَهُ الثُّنْيَا مَا لَمْ يَقُمْ مِنْ مَجْلِسِهِ.

L18223 And via the chain of Ibn Abī Shaybah from Ḥammād ibn Salama from Hishām ibn Ḥassān from al-Ḥasan al-Baṣrī: he held that the exception in an

[39] **Qur'an references (L18217):** Qur'an 18:24 (Al-Kahf).

oath—so long as a person has not risen from their seat—does not necessitate expiation if they made the exception before standing.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ يَرَى الِاسْتِثْنَاءَ فِي الْيَمِينِ مَا لَمْ يَقُمْ مِنْ مَقْعَدِهِ ذَلِكَ لَا يُوجِبُ عَلَيْهِ الْكَفَّارَةَ إنْ اسْتَثْنَى قَبْلَ أَنْ يَقُومَ.

L18224–18226 A group said: He may make the exception at the beginning of his day - as we transmitted via Abd al-Razzaq → Sufyan al-Thawri → Abd al-Rahman ibn Abd Allah ibn Utbah ibn Abd Allah ibn Mas'ud → al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas'ud, who said: Abd Allah ibn Mas'ud said: Abu Dharr al-Ghifari said: "He is the Ghifarite." There is no man who says when morning comes: O Allah, whatever words I have spoken, sworn as an oath, or made as a vow—Your will encompasses all of that. What You will of it shall be, and what You do not will shall not be. So forgive me for it and overlook it for me. O Allah, whomever You bless, then my blessings are upon him, and whomever You curse, then my curse is upon him—except that he will be granted this exception for the remainder of that day.

وَقَالَتْ طَائِفَةٌ: لَهُ الِاسْتِثْنَاءُ فِي أَوَّلِ نَهَارِهِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ قَالَ أَبُو ذَرٍّ هُوَ الْغِفَارِيُّ مَا مِنْ رَجُلٍ يَقُولُ حِينَ يُصْبِحُ: اللَّهُمَّ مَا قُلْت مِنْ قَوْلٍ، أَوْ حَلَفْت مِنْ حَلِفٍ، أَوْ نَذَرْت مِنْ نَذْرٍ فَمَشِيئَتُك بَيْنَ يَدَيْ ذَلِكَ كُلِّهِ، مَا شِئْت مِنْهُ كَانَ، وَمَا لَمْ تَشَأْ لَمْ يَكُنْ، فَاغْفِرْهُ لِي، وَتَجَاوَزْ لِي عَنْهُ، اللَّهُمَّ مَنْ صَلَّيْت عَلَيْهِ فَصَلَوَاتِي عَلَيْهِ، وَمَنْ لَعَنْته فَلَعْنَتِي عَلَيْهِ، إلَّا كَانَ فِي اسْتِثْنَائِهِ بَقِيَّةَ يَوْمِهِ ذَلِكَ

L18227 As for our statement: It has been narrated to us via the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb from Nāfiʿ that Ibn ʿUmar would swear, saying, "By Allah, I will not do such and such, if Allah wills," then he would do it and not make expiation.

وَأَمَّا قَوْلُنَا: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ كَانَ يَحْلِفُ يَقُولُ: وَاَللَّهِ لَا أَفْعَلُ كَذَا وَكَذَا إنْ شَاءَ اللَّهُ - ثُمَّ يَفْعَلُهُ وَلَا يُكَفِّرُ.

L18228 It has been authentically reported from Ibn Umar that he would perform expiation for other oaths. It has been established from him that the expiation is waived if the exception is connected to his statement, and nothing authentic has been reported from him regarding a grace period. The apparent meaning is that if his exception was not attached to his oath, he performed expiation.

وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يُكَفِّرُ أَيْمَانًا أُخَرَ -: فَقَدْ ثَبَتَ عَنْهُ إسْقَاطُ الْكَفَّارَةِ إذَا وَصَلَ الِاسْتِثْنَاءَ بِكَلَامِهِ، وَلَمْ يَصِحَّ عَنْهُ فِي الْمُهْلَةِ شَيْءٌ، فَظَاهِرُهُ أَنَّهُ إذَا لَمْ يَكُنْ اسْتِثْنَاؤُهُ مَوْصُولًا بِيَمِينِهِ كَفَّرَ.

L18229 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ told me, "If someone swears an oath and then makes an exception immediately after, alongside it, or at that point." Ibn Jurayj said, "It is as if he meant: provided he does not break the oath and abandon it." It is authentically transmitted from al-Aʿmash from Ibrāhīm regarding exceptions in oaths: He said, "What occurs within his speech as a declarative statement."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ لِي عَطَاءٌ: إذَا حَلَفَ ثُمَّ اسْتَثْنَى عَلَى أَثَرِ ذَلِكَ وَمَعَ ذَلِكَ، وَعِنْدَ ذَلِكَ، قَالَ ابْنُ جُرَيْجٍ كَأَنَّهُ يَقُولُ: مَا لَمْ يَقْطَعْ الْيَمِينَ وَيَتْرُكْهُ - وَصَحَّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ فِي الِاسْتِثْنَاءِ فِي الْيَمِينِ قَالَ: مَا كَانَ فِي كَلَامِهِ بِقَوْلٍ.

وَرُوِّينَاهُ أَيْضًا عَنْ الشَّعْبِيِّ، وَالْحَسَنِ، وَسُفْيَانَ الثَّوْرِيِّ.

L18230 It has also been narrated by us on the authority of Al-Shaʿbī, Al-Ḥasan, and Sufyān al-Thawrī.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18231 And this is the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Aḥmad ibn Ḥanbal.

قَالَ أَبُو مُحَمَّد: إنَّمَا قُلْنَا بِهَذَا لِقَوْلِ اللَّهِ تَعَالَى: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الأَيْمَانَ فَكَفَّارَتُهُ إطْعَامُ عَشَرَةِ مَسَاكِينَ} [المائدة: ٨٩] الْآيَةَ فَأَوْجَبَ اللَّهُ تَعَالَى الْكَفَّارَةَ عَلَى مَنْ عَقَّدَ الْيَمِينَ، ثُمَّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ فَقَالَ إنْ شَاءَ اللَّهُ لَمْ يَحْنَثْ» فَلَمْ يَجْعَلْ الِاسْتِثْنَاءَ مَرْدُودًا عَلَى الْيَمِينِ إلَّا بِالْفَاءِ، وَالْفَاءُ فِي لُغَةِ الْعَرَبِ تُوجِبُ تَعْقِيبًا بِلَا مُهْلَةٍ فَوَقَفْنَا عِنْدَ ذَلِكَ.

L18232 Abū Muḥammad said: We have only said this due to Allāh the Exalted's statement: *"But He will hold you accountable for the oaths you have bound. The expiation for it is feeding ten needy people"* [5:89], the verse. Thus, Allāh the Exalted has obligated expiation upon anyone who binds an oath. Then the Messenger of Allāh—peace and blessings of Allāh be upon him—said: *"Whoever swears an oath and says, 'If Allāh wills,' he has not broken his oath."* He did not consider the exception as valid for the oath unless connected by the particle *fa*. In the Arabic language, the particle *fa* necessitates immediate succession without delay. Therefore, we have upheld this ruling.[40]

وَقَالَ بَعْضُهُمْ: لَوْ كَانَ مَا قَالَ ابْنُ عَبَّاسٍ مَا لَزِمَتْ أَحَدًا كَفَّارَةٌ أَبَدًا.

L18233 And some of them said: If what Ibn Abbas had said were true, no one would have ever been liable for expiation.

قَالَ عَلِيٌّ: وَهَذَا لَا شَيْءَ، لِأَنَّ ابْنَ عَبَّاسٍ لَا يَمْنَعُ مَنْ أَرَادَ الْحِنْثَ وَإِيجَابَ الْكَفَّارَةِ مِنْ أَنْ يُكَفِّرَ، لَكِنْ لَوْ قَالُوا: هَذَا مِمَّا تَكْثُرُ بِهِ الْبَلْوَى فَمَا كَانَ مِثْلُ هَذَا لِيَخْفَى عَلَى ابْنِ عَبَّاسٍ لَكَانَ أَلْزَمَ لَهُمْ.

L18234 Ali said: "This is baseless, because Ibn Abbas does not prevent one who intends to break an oath and incur the obligation of expiation from fulfilling it. However, had they said: 'This is among matters that involve frequent predicaments, for something like this would not have eluded Ibn Abbas's knowledge'—their argument would have been more compelling."

وَالْعَجَبُ أَنَّ أَبَا حَنِيفَةَ وَمَالِكًا يَرَيَانِ الِاسْتِثْنَاءَ فِي الْيَمِينِ بِاَللَّهِ تَعَالَى فَقَطْ وَلَا يَرَيَانِهِ فِي سَائِرِ الْأَيْمَانِ، وَهَذَا عَجَبٌ جِدًّا أَنْ يَكُونَ الْأَيْمَانُ بِغَيْرِ اللَّهِ تَعَالَى أَوْكَدَ وَأَعْظَمَ مِنْ الْيَمِينِ بِاَللَّهِ، لِأَنَّ الْيَمِينَ بِاَللَّهِ تَعَالَى يُسْقِطُهَا الِاسْتِثْنَاءُ وَيُسْقِطُهَا الْكَفَّارَةُ، وَالْيَمِينُ بِغَيْرِ اللَّهِ تَعَالَى أَجَلُّ مِنْ أَنْ يُسْقِطَهَا الِاسْتِثْنَاءُ وَمِنْ أَنْ يُسْقِطَهَا الْكَفَّارَةُ، وَمِنْ أَنْ يَكُونَ فِيهَا غَيْرُ الْوَفَاءِ بِهَا.

L18235–18237 It is astonishing that Abū Ḥanīfah and Mālik consider exceptions valid only in oaths sworn by Allah the Exalted and do not recognize them in oaths sworn by other than Him. This is extremely astonishing: that oaths sworn by other than Allah the Exalted would be more emphatic and weightier. The oath by Allah the Exalted is annulled by exception (istithnāʾ) and annulled by expiation (kaffārah), whereas the oath by other than Allah is too sacred to be invalidated by exception or expiation, and too sacred to allow anything other than its fulfillment.

L18238 We disavow before Allah the Exalted this vile and heinous statement. The

[40] **Qur'an references (L18232):** Qur'an 5:89 (Al-Ma'idah).

expiation in the Quranic text came as a general ruling concerning oaths, and the exception in the clarification of the Messenger of Allah—peace and blessings be upon him—came in general terms. If those are oaths, then the exception and expiation apply to them, but if they are not oaths, how could they impose it? Another profoundly astonishing matter is that Malik said: "The exception in oaths is valid if the swearer intends by it the exception. But if he intends by it the statement of Allah Almighty: {And never say of anything, 'I will do that tomorrow,'} [18:23] {except if Allah wills} [18:24], then it is not an exception."[41]

وَنَحْنُ نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ هَذَا الْقَوْلِ الْبَشِيعِ الشَّنِيعِ، وَالْكَفَّارَةُ فِي نَصِّ الْقُرْآنِ جَاءَتْ عَلَى الْأَيْمَانِ جُمْلَةً، وَالِاسْتِثْنَاءُ فِي بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَاءَ فِي جُمْلَةٍ، فَإِنْ كَانَ تِلْكَ أَيْمَانًا فَالِاسْتِثْنَاءُ وَالْكَفَّارَةُ فِيهَا وَإِنْ لَمْ تَكُنْ أَيْمَانًا فَمِنْ أَيْنَ أَلْزَمُوهَا؟ وَعَجَبٌ آخَرُ عَجِيبٌ جِدًّا وَهُوَ أَنَّ مَالِكًا قَالَ: إِنَّ الِاسْتِثْنَاءَ فِي الْأَيْمَانِ إِنْ نَوَى بِهِ الْحَالِفُ الِاسْتِثْنَاءَ فَهُوَ اسْتِثْنَاءٌ صَحِيحٌ، فَإِنْ نَوَى بِهِ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَقُولَنَّ لِشَيْءٍ إِنِّي فَاعِلٌ ذَلِكَ غَدًا} [الكهف: ٢٣] {إِلا أَنْ يَشَاءَ اللَّهُ} [الكهف: ٢٤] لَمْ يَكُنْ اسْتِثْنَاءً.

L18239 Abū Muḥammad said: This is a statement whose meaning is unknown, nor what its speaker intended by it. We have indeed attempted to find among his adherents, from whom we derived his statement, a comprehensible meaning for these words. Yet we found nothing except that they take it as it is – just as we say regarding [Kāf-Hā-Yā-ʿAyn-Ṣād] [Maryam: 1], [Ṭā-Hā] [Ṭā-Hā: 1], and [We believe in it, all of it is from our Lord] [Āl ʿImrān: 7] – even though we do not understand its meaning.[42]

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَلَامٌ لَا يُدْرَى مَا هُوَ؟ وَلَا مَاذَا أَرَادَ قَائِلُهُ بِهِ، وَلَقَدْ رُمْنَا أَنْ نَجِدَ عِنْدَ مَنْ أَخَذْنَا قَوْلَهُ عَنْهُ مِنَ الْمُنْتَمِينَ إِلَيْهِ مَعْنًى يَصِحُّ فَهْمُهُ لِهَذَا الْكَلَامِ، فَمَا وَجَدْنَاهُ إِلَّا أَنَّهُمْ يَحْمِلُونَهُ كَمَا جَاءَ وَكَمَا نَقُولُ نَحْنُ فِي {كهيعص} [مريم: ١] وَ {طه} [طه: ١] {آمَنَّا بِهِ كُلٌّ مِنْ عِنْدِ رَبِّنَا} [آل عمران: ٧] ، وَإِنْ لَمْ نَفْهَمْ مَعْنَاهُ.

L18240 Abu Muhammad said: If someone seeks to justify the opinion of Ibn Abbas and others by citing what we have transmitted through the chain of Abu Dawud—who narrated from Muhammad ibn al-Ala', who narrated from Ibn Bishr, from Misʿar, from Simak ibn Harb [from Ikrimah], attributing it to the Prophet—that "Allah's Messenger, peace be upon him, said: 'By Allah, I will surely wage war against Quraysh!' Then he said: 'If Allah wills.' Then he repeated: 'By Allah, I will surely wage war against Quraysh!' Then he paused and said: 'If Allah wills.'" Abu Dawud stated: Al-Walid ibn Muslim from Sharik added: "Yet he did not wage war against them."

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ احْتَجَّ مُحْتَجٌّ لِقَوْلِ ابْنِ عَبَّاسٍ وَغَيْرِهِ بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ الْعَلَاءِ نا ابْنُ بِشْرٍ عَنْ مِسْعَرٍ عَنْ سِمَاكِ بْنِ حَرْبٍ [عَنْ عِكْرِمَةَ] يَرْفَعُهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: وَاللَّهِ لَأَغْزُوَنَّ قُرَيْشًا ثُمَّ قَالَ: إِنْ شَاءَ اللَّهُ ثُمَّ قَالَ وَاللَّهِ لَأَغْزُوَنَّ قُرَيْشًا، ثُمَّ سَكَتَ، ثُمَّ قَالَ: إِنْ شَاءَ اللَّهُ» قَالَ أَبُو دَاوُد: وَقَالَ الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ شَرِيكٍ، " ثُمَّ لَمْ يَغْزُهُمْ ".

L18241 We have also narrated it through the chain of Sharīk from Simāk from ʿIkrimah, and a group narrated it from Simāk from ʿIkrimah from Ibn ʿAbbās.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شَرِيكٍ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ، وَأَسْنَدَهُ جَمَاعَةٌ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ.

[41] **Qur'an references (L18238):** Qur'an 18:23 (Al-Kahf); Qur'an 18:24 (Al-Kahf).

[42] **Qur'an references (L18239):** Qur'an 3:7 (Ali 'Imran); Qur'an 19:1 (Maryam); Qur'an 20:1 (Taha).

قَالَ أَبُو مُحَمَّد: سِمَاكٌ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ وَيَلْزَمُ مَنْ اعْتَدَّ بِرِوَايَتِهِ فِي أَخْذِ الدَّنَانِيرِ مِنْ الدَّرَاهِمِ، وَالدَّرَاهِمِ مِنْ الدَّنَانِيرِ أَنْ يَأْخُذَ بِهَا هَهُنَا.

L18242 Abu Muhammad said: Simak is a weak narrator who accepts uncritical prompting. Therefore, whoever relies on his narration concerning the taking of dinars from dirhams and dirhams from dinars is obligated to apply it here.

وَمَنْ قَالَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ أَنْ يَقُولَ بِهَذَا أَيْضًا.

L18243–18244 And whoever said, "Indeed, the mursal [ḥadīth] is like the musnad [ḥadīth]," is also to say this.

وَيَلْزَمُهُمْ إذْ قَاسُوا مَا يَكُونُ صَدَاقًا عَلَى مَا تُقْطَعُ فِيهِ الْيَدُ فِي السَّرِقَةِ أَنْ يَقِيسُوا مُدَّةَ مُهْلَةِ الِاسْتِثْنَاءِ عَلَى مُدَّةِ الْإِيلَاءِ فَيَقُولُوا بِقَوْلِ سَعِيدِ بْنِ جُبَيْرٍ فِي ذَلِكَ أَوْ يَجْعَلُوهُ شَهْرًا عَلَى قَوْلِهِمْ فِي أَجَلِ الْمَدِينِ أَنَّهُ يُسْجَنُ شَهْرًا، ثُمَّ يُسْأَلُ عَنْهُ بَعْدَ الشَّهْرِ؟ أَوْ يَقِيسُوهُ عَلَى قَوْلِهِمْ الْفَاسِدِ فِي الْمُخَيَّرَةِ أَنَّ لَهَا الْخِيَارَ مَا لَمْ تَقُمْ عَنْ مَجْلِسِهَا أَوْ تَتَكَلَّمْ، فَأَيُّ فَرْقٍ بَيْنَ هَذِهِ التَّحَكُّمَاتِ فِي الدِّينِ بِالْبَاطِلِ فِي تَحْرِيمِ الْفُرُوجِ وَإِبَاحَتِهَا، وَغَيْرِ ذَلِكَ مِنْ الدِّيَانَةِ وَبَيْنَ مُهْلَةِ الِاسْتِثْنَاءِ؟ وَهَلْ هَذَا إلَّا شَبَهُ التَّلَاعُبِ بِالدِّينِ؟ وَالْعَجَبُ مِنْ إجَازَتِهِمْ أَكْلَ مَا ذُبِحَ أَوْ نُحِرَ وَنَسِيَ مُذْكِيهِ أَنْ يُسَمِّيَ اللَّهَ تَعَالَى عَلَيْهِ، ثُمَّ لَا يَرَوْنَ هَهُنَا نِسْيَانَ الِاسْتِثْنَاءِ عُذْرًا يُوجِبُونَ لِلْحَالِفِ بِهِ الِاسْتِثْنَاءَ مَتَى ذَكَرَ.

L18245 Since they analogize what constitutes a dowry to what mandates hand amputation in theft, they must analogize the duration of the exception's waiting period to the oath of abstention's term, thereby adopting Sa'īd ibn Jubayr's position. Alternatively, they should fix it at one month per their ruling that a debtor is jailed for a month then asked about repayment after the month. Or they should analogize it to their invalid opinion regarding the woman given the option - that her choice remains valid until she rises from her seat or speaks. What difference exists between these arbitrary religious rulings through falsehood - whether in prohibiting/intimacy permissions or other matters of faith - and the exception's waiting period? Is this not akin to resembling trifling with religion? Astonishingly, they permit eating animals slaughtered or sacrificed by nahr (jugular cut) when the slaughterer forgets to name Allah, yet they do not consider forgetfulness of the exception here as an excuse - though they require the swearer to apply the exception whenever remembered.

فَإِنْ قَالُوا: فَهَلَّا قُلْتُمْ أَنْتُمْ بِهَذَا كَمَا أَسْقَطْتُمْ الْكَفَّارَةَ عَمَّنْ فَعَلَ مَا حَلَفَ عَلَيْهِ نَاسِيًا؟ قُلْنَا: لَمْ نَفْعَلْ بِذَلِكَ، لِأَنَّ الْفَاعِلَ نَاسِيًا لَيْسَ حَانِثًا لِأَنَّ الْحَانِثَ هُوَ الْقَاصِدُ إلَى الْحِنْثِ، وَنَاسِي الِاسْتِثْنَاءِ لَمْ يَسْتَثْنِ، فَانْعَقَدَتْ الْيَمِينُ عَلَيْهِ فَوَجَبَتْ الْكَفَّارَةُ بِنَصِّ الْقُرْآنِ.

L18246 If they say: Why did you yourselves not say this, just as you exempted the expiation for one who did what he swore to avoid out of forgetfulness? We replied: We did not do so in that case, because the one who acts out of forgetfulness is not an oath-breaker, since the oath-breaker is the one who intentionally intends to break the oath. The one who forgot to include the stipulation failed to do so, so the oath became binding upon him, and the expiation became obligatory by the Quranic text.

وَالْكَفَّارَةُ لَا تَسْقُطُ بَعْدَ وُجُوبِهَا إلَّا بِنَصٍّ، وَلَمْ يُسْقِطْهَا النَّصُّ إلَّا إذَا قَالَ مَوْصُولًا بِالْيَمِينِ مَا يَسْتَثْنِي بِهِ.

L18247 Expiation does not cease to be obligatory after becoming incumbent except by a scriptural text. The text nullifies it only when one utters a statement connected to the oath that serves as an exemption.

L18248 And the wonder is that they say regarding such a case when it aligns with

their position: “Such a case is not decided by personal opinion”—so why do they not say the same regarding the statement of Abu Dharr?

L18249 And Ibn Abbas here: Such a ruling is not to be established through opinion, just as they stated in the narration of a sheikh from Banu Kinana reporting from Umar regarding “a sale based on a transaction or an option”: “This is not to be established through opinion,” thus rejecting the established Sunnah that between two sales, there is no sale unless the parties physically separate while remaining present together.

L18250 ## The Issue of the Mute’s Oath and Its Exception

L18251 Question 1139:

L18252 The oath of a mute person and his exception are both binding according to his capability—through vocalization or gesture if he is non-verbal and cannot do more than that—because, as previously explained, oaths are declarations by the swearer about himself. Both the mute and non-verbal are subject to the laws of Islam like other individuals.

L18253 Allah, the Most High, says: “Allah does not burden a soul beyond its capability” (Quran 2:286).[43]

L18254 The Messenger of Allah (peace be upon him) said: “When I command you to do something, fulfill it to the best of your ability.”

L18255–18257 Therefore, it is incumbent upon both of them, from this Sharia, to fulfill what they are capable of, and that what is not within [their capacity] be waived for them. and their capacity, that He accept from the two of them what they report about themselves according to what they are capable of, and what the two have committed to is incumbent upon them—and success comes from Allah, the Most High.

L18258 ## Issue: Men, women, free persons, and enslaved persons

[43] **Qur’an references (L18253):** Qur’an 2:286 (Al-Baqarah).

وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ فِي مِثْلِ هَذَا إذَا وَافَقَهُمْ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَهَلَّا قَالُوا فِي قَوْلِ أَبِي ذَرٍّ.

وَابْنِ عَبَّاسٍ هَهُنَا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، كَمَا قَالُوا فِي رِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ: هَذَا لَا يُقَالُ بِالرَّأْيِ، فَرَدُّوا بِهِ السُّنَّةَ الثَّابِتَةَ مِنْ أَنَّ كُلَّ بَيْعَيْنِ فَلَا بَيْعَ بَيْنَهُمَا مَا لَمْ يَتَفَرَّقَا وَكَانَا مَعًا.

[مَسْأَلَةٌ يَمِينُ الْأَبْكَمِ وَاسْتِثْنَاؤُهُ]

١١٣٩ - مَسْأَلَةٌ

وَيَمِينُ الْأَبْكَمِ وَاسْتِثْنَاؤُهُ لَازِمَانِ عَلَى حَسَبِ طَاقَتِهِ مِنْ صَوْتٍ يُصَوِّتُهُ أَوْ إشَارَةٍ إنْ كَانَ مُصْمَتًا لَا يَقْدِرُ عَلَى أَكْثَرَ، لِمَا ذَكَرْنَا مِنْ أَنَّ الْأَيْمَانَ إخْبَارٌ مِنْ الْحَالِفِ عَنْ نَفْسِهِ، وَالْأَبْكَمُ، وَالْمُصْمَتُ، مُخَاطَبَانِ بِشَرَائِعِ الْإِسْلَامِ كَغَيْرِهِمَا.

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

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

فَوَجَبَ عَلَيْهِمَا مِنْ هَذِهِ الشَّرِيعَةِ مَا اسْتَطَاعَاهُ، وَأَنْ يُسْقِطَ عَنْهُمَا مَا لَيْسَ فِي وُسْعِهِمَا، وَأَنْ يَقْبَلَ مِنْهُمَا مَا يُخْبِرَانِ بِهِ عَنْ أَنْفُسِهِمَا حَسْبَ مَا يُطِيقَانِ وَيَلْزَمُهُمَا مَا الْتَزَمَاهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الرِّجَالُ وَالنِّسَاءُ وَالْأَحْرَارُ وَالْمَمْلُوكُونَ فِي الْيَمِينِ سَوَاءٌ]

are equal in oaths.

L18259 1140 - Issue

١١٤٠ - مَسْأَلَةٌ

L18260 Men, women, free persons, slaves, women—whether married, virgins, or others among them—are equal in all the rulings we have discussed and will discuss, for Allah the Most High says: “That is the expiation for your oaths when you swear” [Surah Al-Ma’idah 5:89].[44]

وَالرِّجَالُ، وَالنِّسَاءُ، الْأَحْرَارُ، وَالْمَمْلُوكُونَ، وَذَوَاتُ الْأَزْوَاجِ وَالْأَبْكَارُ، وَغَيْرُهُنَّ، فِي كُلِّ مَا ذَكَرْنَا وَنَذْكُرُ سَوَاءٌ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ} [المائدة: ٨٩] .

L18261 And He, the Exalted, said: “But He will call you to account for the oaths you have sworn.” [Al-Ma’idah 89][45]

وَقَالَ تَعَالَى: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ} [المائدة: ٨٩] .

L18262 He (peace be upon him) said: “Whoever takes an oath should swear only by Allah.” He addressed exceptions as we have outlined, and there has been no text specifying a distinction between a slave and a free person, nor a married woman and an unmarried woman, nor a virgin and a previously married woman: *And your Lord is not forgetful* (Maryam 19:64).[46]

وَقَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» وَقَالَ فِي الِاسْتِثْنَاءِ مَا ذَكَرْنَا وَلَمْ يَأْتِ نَصٌّ بِتَخْصِيصِ عَبْدٍ مِنْ حُرٍّ، وَلَا ذَاتِ زَوْجٍ مِنْ أَيِّمٍ، وَلَا بِكْرٍ مِنْ ثَيِّبٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L18263 Domineering over religion with corrupt opinions is impermissible—and success is by Allah, the Exalted.

وَالتَّحَكُّمُ فِي الدِّينِ بِالْآرَاءِ الْفَاسِدَةِ لَا يَجُوزُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18264 They have concurred with us that all those we have mentioned are equally obligated by prayer, fasting, prohibiting what is forbidden, and permitting what is lawful. How then can they arbitrarily distinguish some of these obligations from others through falsehood and baseless claims? If they cite what we have narrated through ʿAbd al-Razzāq from Maʿmar from Ḥarām ibn ʿUthmān from ʿAbd al-Raḥmān and Muḥammad, the sons of Jābir ibn ʿAbd Allāh, from their father: that the Messenger of Allāh—peace and blessings be upon him—said, “A child’s oath cannot override a parent’s oath, a wife’s oath cannot override her husband’s oath, and an enslaved person’s oath cannot override their owner’s oath. There is no valid oath for severing kinship ties, no vow in disobedience, no divorce before marriage, no emancipation prior to ownership, no vow of silence lasting a full day until nightfall, no continuous fasting without interruption, no orphanhood after puberty, no

قَدْ وَافَقُونَا: عَلَى أَنَّ كُلَّ مَنْ ذَكَرْنَا مُخَاطَبٌ بِالصَّلَاةِ، وَبِالصِّيَامِ، وَتَحْرِيمِ مَا يُحَرَّمُ، وَتَحْلِيلِ مَا يَحِلُّ سَوَاءٌ، فَأَنَّى لَهُمْ تَخْصِيصُ بَعْضِ ذَلِكَ مِنْ بَعْضٍ بِالْبَاطِلِ، وَالدَّعَاوَى الْكَاذِبَةِ؟ فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَرَامِ بْنِ عُثْمَانَ عَنْ عَبْدِ الرَّحْمَنِ، وَمُحَمَّدٍ ابْنَيْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِمَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَمِينَ لِوَلَدٍ مَعَ يَمِينِ وَالِدٍ، وَلَا يَمِينَ لِزَوْجَةٍ مَعَ يَمِينِ زَوْجٍ، وَلَا يَمِينَ لِلْمَمْلُوكِ مَعَ يَمِينِ مَلِيكِهِ، وَلَا يَمِينَ فِي قَطِيعَةٍ، وَلَا نَذْرَ فِي مَعْصِيَةٍ، وَلَا طَلَاقَ قَبْلَ نِكَاحٍ، وَلَا عَتَاقَةَ قَبْلَ الْمِلْكِ وَلَا صَمْتَ يَوْمٍ إِلَى اللَّيْلِ، وَلَا مُوَاصَلَةَ فِي الصِّيَامِ، وَلَا يُتْمَ بَعْدَ الْحُلُمِ، وَلَا رَضَاعَةَ بَعْدَ الْفِطَامِ، وَلَا تَغَرُّبَ بَعْدَ الْهِجْرَةِ، وَلَا هِجْرَةَ بَعْدَ الْفَتْحِ» فَحَرَامُ بْنُ عُثْمَانَ سَاقِطٌ مُطْرَحٌ لَا تَحِلُّ الرِّوَايَةُ عَنْهُ، وَيَلْزَمُ مَنْ قَلَّدَ رِوَايَتَهُ فِي اسْتِظْهَارِ

[44] **Qur’an references (L18260):** Qur’an 5:89 (Al-Ma’idah).
[45] **Qur’an references (L18261):** Qur’an 5:89 (Al-Ma’idah).
[46] **Qur’an references (L18262):** Qur’an 19:64 (Maryam).

breastfeeding after weaning, no residing abroad after the Migration, and no Migration after the Conquest"—then Ḥarām ibn ʿUthmān is a discredited and rejected narrator from whom transmission is impermissible. Those who blindly imitate his narration concerning deeming the woman with chronic bleeding to have three days beyond her menstrual period—thereby invalidating her obligatory prayers and fasting and prohibiting lawful intercourse—must likewise accept his narration here. Otherwise, they are trivializing the religion.

الْمُسْتَحَاضَةِ بِثَلَاثٍ بَعْدَ أَيَّامِهَا، فَأَسْقَطَ بِهَا الصَّلَوَاتِ الْمَفْرُوضَةَ وَالصِّيَامَ الْمَفْرُوضَ، وَحَرَّمَ الْوَطْءَ الْمُبَاحَ أَنْ يَأْخُذُوا بِرِوَايَتِهِ هَهُنَا، وَإِلَّا فَهُمْ مُتَلَاعِبُونَ بِالدِّينِ.

L18265 Success is from Allah, the Exalted.

بِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18266 They have contradicted most of what is in this report. As for us—by Allah—if trustworthy narrators had authenticated it through a continuous chain of narration, we would have hastened to uphold it. And success is granted only by Allah, the Exalted.

وَقَدْ خَالَفُوا أَكْثَرَ مَا فِي هَذَا الْخَبَرِ - وَأَمَّا نَحْنُ فَوَاللَّهِ لَوْ صَحَّ بِرِوَايَتِهِ الثِّقَاتُ مُتَّصِلًا لَبَادَرْنَا إِلَى الْقَوْلِ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18267–18268 A legal issue concerning the oath of the intoxicated one, the insane one, the mentally distracted one, the sleeper, and the one who has not reached puberty.

[مَسْأَلَةٌ يَمِينَ السَّكْرَانِ وَالْمَجْنُونِ وَالْهَاذِي وَالنَّائِمِ وَمَنْ لَمْ يَبْلُغْ]

L18269 Legal Question

مَسْأَلَةٌ

L18270 No oath is legally binding for an intoxicated person, an insane person during their state of insanity, a delirious person in their illness, a sleeping person during their sleep, or a minor.

وَلَا يَمِينَ لِسَكْرَانَ، وَلَا لِمَجْنُونٍ فِي حَالِ جُنُونِهِ، وَلَا لِهَاذٍ فِي مَرَضِهِ، وَلَا لِنَائِمٍ فِي نَوْمِهِ، وَلَا لِمَنْ لَمْ يَبْلُغْ.

L18271 In all of this, Abū Ḥanīfah, Mālik, and al-Shāfiʿī agreed with us, except that they disagreed with us solely regarding the intoxicated person. And concerning the intoxicated person, our opinion here also agrees with the opinion of al-Muzanī, Abū Sulaymān, Abū Thawr, al-Ṭaḥāwī, al-Karkhī (among the companions of Abū Ḥanīfah), and others.

وَوَافَقَنَا فِي كُلِّ هَذَا أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، إِلَّا أَنَّهُمْ خَالَفُونَا فِي السَّكْرَانِ وَحْدَهُ، وَوَافَقَ فِي السَّكْرَانِ أَيْضًا قَوْلُنَا هَهُنَا قَوْلَ الْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ، وَأَبِي ثَوْرٍ، وَالطَّحَاوِيِّ، وَالْكَرْخِيِّ مِنْ أَصْحَابِ أَبِي حَنِيفَةَ، وَغَيْرِهِمْ.

L18272 Our evidence regarding the intoxicated person is Allah the Exalted's statement: "Do not approach prayer while you are intoxicated until you know what you are saying" [An-Nisa: 43]. For whoever Allah the Exalted testifies for him that he does not know what he says, it is impermissible to hold him

وَحُجَّتُنَا فِي السَّكْرَانِ قَوْلُ اللَّهِ تَعَالَى: {لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَمَنْ شَهِدَ اللَّهُ تَعَالَى لَهُ بِأَنَّهُ لَا يَدْرِي مَا يَقُولُ، فَلَا يَحِلُّ أَخْذُهُ

بِمَا لَا يَدْرِي مَا هُوَ مِنْ قَوْلِهِ، وَبِيَقِينٍ نَدْرِي أَنَّهُ لَمْ يَعْقِدْ الْيَمِينَ، وَاَللَّهُ تَعَالَى لَا يُؤَاخِذُ إلَّا بِمَا عَقَّدَ مِنْهَا بِنَصِّ الْقُرْآنِ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً إلَّا أَنَّهُمْ قَالُوا: هُوَ أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ؟ فَقُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَمَا تَقُولُونَ فِيمَنْ قَطَعَ الطَّرِيقَ فَجُرِحَ جِرَاحَةً أَقْعَدَتْهُ، أَوْ جَرَحَهَا نَفْسَهُ عَابِثًا عَاصِيًا، أَيَنْتَقِلُ إلَى حُكْمِ مَنْ أُقْعِدَ فِي سَبِيلِ اللَّهِ، أَوْ بِمَرَضٍ مِنْ عِنْدِهِ عَزَّ وَجَلَّ فِي جَوَازِ الصَّلَاةِ قَاعِدًا، وَفِي وُجُوبِ الْفِطْرِ فِي رَمَضَانَ فِي مَرَضِهِ أَمْ لَا؟ فَمِنْ قَوْلِهِمْ: نَعَمْ، فَظَهَرَ تَنَاقُضُهُمْ.

accountable for what he utters unknowingly. We know with certainty that he did not bind himself by oath, and Allah the Exalted only holds accountable for what one binds from oaths by the Quran's explicit text. We know of no argument for their position except their statement: "He brought this upon himself?" We respond: "Yes, then what?" What do you say concerning one who commits highway robbery and is injured with incapacitating wounds, or who injures himself frivolously and disobediently? Does he thereby become subject to the ruling of one incapacitated in the path of Allah, or to one afflicted by an illness from Him, the Almighty—regarding the permissibility of praying seated or the obligation to break the fast in Ramadan during his illness—or not? If they answer affirmatively, their contradiction becomes evident.[47]

L18273 وَكُلُّ مَنْ صَارَ إلَى حَالٍ يَبْطُلُ اخْتِيَارُهُ فِيهَا بِأَيِّ وَجْهٍ صَارَ إلَيْهَا، فَهُوَ فِي حُكْمِ مَنْ صَارَ إلَيْهَا بِغَلَبَةٍ، لِأَنَّ النُّصُوصَ لَمْ تَسْتَثْنِ هَهُنَا مِنْ أَحْوَالِ الْمَصِيرِ إلَى تِلْكَ الْحَالِ شَيْئًا.

L18273 And whoever enters a state that nullifies their volition (regardless of the manner by which they entered it) is subject to the same ruling as one who entered it under compulsion, because the revealed texts did not exclude any modes of arriving at that state in this context.

L18274 وَالْعَجَبُ مِنْ الْمَالِكِيِّينَ الْقَائِلِينَ فِيمَنْ خَرَجَ قَاطِعًا لِلطَّرِيقِ فَاضْطُرَّ إلَى الْمَيْتَةِ، وَالْخِنْزِيرِ: إنَّ لَهُ أَنْ يُقَوِّيَ نَفْسَهُ بِأَكْلِهَا، وَالْقُرْآنُ جَاءَ بِخِلَافِ ذَلِكَ - وَهُوَ قَادِرٌ عَلَى التَّوْبَةِ ثُمَّ يَأْكُلُ حَلَالًا فَلَا يَلْزَمُهُ ذَلِكَ، ثُمَّ لَا يَرَى السَّكْرَانَ فِي حُكْمِ مَنْ ذَهَبَ عَقْلُهُ مِنْ أَجْلِ أَنَّهُ هُوَ أَدْخَلَهُ عَلَى نَفْسِهِ.

L18274 It is astonishing that the Malikis who rule that a highway robber compelled to eat carrion or pig meat may sustain himself by consuming it—despite the Quran's contrary ruling—claim he faces no obligation to do so when capable of repentance and subsequent consumption of halal. Similarly, they refuse to regard the intoxicated as equivalent to one who lost mental capacity, arguing he self-inflicted this state.

L18275 وَالْعَجَبُ مِنْ أَبِي حَنِيفَةَ الَّذِي يَرَى أَنَّ النَّائِمَ فِي نَهَارِ رَمَضَانَ إنْ أَكَلَ فِي حَالِ نَوْمِهِ، أَوْ شَرِبَ مَا دَسَّ فِي فَمِهِ، أَنَّهُ مُفْطِرٌ، ثُمَّ يَرَاهُ هَهُنَا غَيْرَ حَالِفٍ ثُمَّ يُلْزِمُ السَّكْرَانَ يَمِينَهُ، وَهَذَا عَجَبٌ جِدًّا.

L18275 It is astonishing regarding Abu Hanifa, who holds that a sleeping person during the daytime of Ramadan breaks his fast if he eats while asleep or drinks what is put into his mouth, yet in this case he deems him not to have sworn an oath while still compelling the intoxicated person to fulfill his oath—and this is truly astonishing.

L18276–18278 فَإِنْ قَالُوا: لَعَلَّهُ مُتَسَاكِرٌ، وَمَنْ يَدْرِي أَنَّهُ سَكْرَانُ؟ قُلْنَا: وَلَعَلَّ الْمَجْنُونَ مُتَجَنِّنٌ، مُتَحَامِقٌ، وَمَنْ يَدْرِي أَنَّهُ مَجْنُونٌ، أَوْ أَحْمَقُ - وَجَوَابُنَا هَهُنَا أَنَّهُ مِنْ حَيْثُ يَدْرِي أَنَّهُ مَجْنُونٌ، يَدْرِي أَنَّهُ سَكْرَانُ، وَلَا فَرْقَ.

L18276–18278 If they say: "Perhaps he is pretending to be drunk—how can one know that he is truly intoxicated?" We say: "And perhaps the insane person is pretending to be insane, putting on a foolish act—how can one know that

[47] **Qur'an references (L18272):** Qur'an 4:43 (An-Nisa).

he is truly insane or foolish?" Our answer here is that insofar as he knows he is insane, he knows he is intoxicated, and there is no difference.

وَفِي الصَّبِيِّ يَحْلِفُ: خِلَافٌ نَذْكُرُهُ: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ طَاوُسٍ قَالَ: إذَا حَلَفَ الصَّبِيُّ ثُمَّ حَنِثَ بَعْدَ مَا يَكْبَرُ كَفَّرَ.

L18279 Regarding the male minor taking an oath, there is a disagreement we mention. It has been narrated to us through the chain of Muḥammad ibn al-Muthannā from Ḥafṣ ibn Ghiyāth from Layth ibn Abī Sulaym from Ṭāwūs, who said: If a minor takes an oath and then breaks it after attaining puberty, he must perform kaffarah.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ صَحَّ عَنْ بَعْضِ الصَّحَابَةِ: عُمَرَ، أَوْ عُثْمَانَ: إقَامَةُ الْحَدِّ عَلَى مَنْ بَلَغَ خَمْسَةَ أَشْبَارٍ وَإِنْ لَمْ يَبْلُغْ - وَيَلْزَمُ مَنْ يَرَى مِنْ الْمَالِكِيِّينَ أَنْ يُكَفِّرَ عَنْ الصَّبِيِّ يُصِيبُ لِصَيْدٍ فِي إحْرَامِهِ أَنْ يُكَفِّرَ عَنْهُ إنْ حَنِثَ وَإِلَّا فَقَدْ تَنَاقَضُوا.

L18280 Abū Muḥammad said: It has been authentically reported from some of the Companions—ʿUmar or ʿUthmān—that the prescribed punishment is applied to whoever attains pubic hair growth of five spans, even if he has not reached legal maturity. Moreover, those among the Mālikīs who hold that expiation must be performed on behalf of a minor who kills game while in the state of iḥrām are obliged to perform expiation on his behalf if the minor violates the prohibitions of iḥrām. Otherwise, they would be contradicting themselves.

قَالَ عَلِيٌّ: وَالْحُجَّةُ فِي هَذَا -: هُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إسْمَاعِيلَ نا وُهَيْبٌ هُوَ ابْنُ خَالِدٍ - عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي الضُّحَى عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ: عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنْ الصَّبِيِّ حَتَّى يَحْتَلِمَ، وَعَنْ الْمَجْنُونِ حَتَّى يَعْقِلَ» .

L18281 Ali said: The proof regarding this is what we have narrated through the chain from Abu Dawud from Musa ibn Isma'il from Wuhaib, who is the son of Khalid, from Khalid al-Hadhdha' from Abu al-Duha from Ali ibn Abi Talib from the Prophet (peace and blessings be upon him), who said: "The pen is lifted from three: the sleeper until he awakens, the child until he reaches puberty, and the mentally incapacitated until he regains rationality."

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنْ الْمُبْتَلَى حَتَّى يَبْرَأَ، وَعَنْ الصَّبِيِّ حَتَّى يَكْبَرَ» .

L18282 Through the chain of Abu Dawud: Uthman ibn Abi Shaybah narrated to us, Yazid ibn Harun narrated to us, Hammad ibn Salamah narrated to us, from Hammad ibn Abi Sulayman, from Ibrahim al-Nakha'i, from al-Aswad ibn Yazid, from Aishah, the Mother of the Believers, that the Messenger of Allah (peace and blessings of Allah be upon him) said: "The pen is lifted for three types of people: from the sleeper until he awakens, from the afflicted until he recovers, and from the child until he matures."

قَالَ عَلِيٌّ: السَّكْرَانُ مُبْتَلًى بِلَا شَكٍّ فِي عَقْلِهِ.

L18283 Ali said: The drunkard is undoubtedly afflicted in his mind.

L18284 **An issue: He swore by Allah the Exalted while in a state**

of disbelief, then broke his oath.

1142 – Issue

And whoever swears by Allah the Exalted in disbelief then breaks it, whether during disbelief or after embracing Islam, he must perform expiation. This is because they are addressed by the obligation to obey the Messenger of Allah (peace be upon him), and the religion of Allah the Exalted is irrevocably incumbent upon them. Allah the Exalted said: “Fight them until there is no strife and religion is entirely for Allah” [Surah Al-Anfal 8:39].[48]

And He, the Exalted, said: “And judge between them by what Allah has revealed” [Al-Mā’idah: 49]. It is not sufficient for him to perform atonement while in his state of disbelief, because he has not carried out the atonement Allah the Exalted obligated upon him in the Quran while affirming that it is the religion of Allah the Exalted. Therefore, he must perform it.[49]

He, the Exalted, said: “They were only commanded to worship Allah, sincere in faith to Him, as upright hanifs.” [Al-Bayyinah: 5][50]

The Issue Concerning the Oath by al-Lāt

1143. Issue: And whoever swears by Al-Lāt and Al-‘Uzzā, his expiation is to say: “There is no deity but Allah alone, with no partner to Him. To Him belongs the dominion and the praise, and He is over all things all-powerful” – saying it once, or... He should say: “There is no god but Allah alone” three times, without fail.[51]

He blows lightly from his left three times, seeks refuge with Allah from Satan three times, and should not repeat. If he does repeat, he must return to what we have mentioned.

[مَسْأَلَةٌ حَلَفَ بِاللَّهِ تَعَالَى فِي كُفْرِهِ ثُمَّ حَنِثَ]

١١٤٢ - مَسْأَلَةٌ

وَمَنْ حَلَفَ بِاللَّهِ تَعَالَى فِي كُفْرِهِ ثُمَّ حَنِثَ فِي كُفْرِهِ، أَوْ بَعْدَ إسْلَامِهِ فَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُمْ مُخَاطَبُونَ بِطَاعَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَدِينُ اللَّهِ تَعَالَى لَازِمٌ لَهُمْ - قَالَ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] .

وَقَالَ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] وَلَا يَجْزِيهِ أَنْ يُكَفِّرَ فِي حَالِ كُفْرِهِ، لِأَنَّهُ لَمْ يَأْتِ بِالْكَفَّارَةِ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ فِي الْقُرْآنِ مُصَدِّقًا أَنَّهَا دِينُ اللَّهِ تَعَالَى فَعَلَيْهِ أَنْ يَأْتِيَ بِهَا.

قَالَ تَعَالَى: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ} [البينة: ٥] .

[مَسْأَلَةُ الْحَلِفِ بِاللَّاتِ]

١١٤٣ - مَسْأَلَةٌ وَمَنْ حَلَفَ: وَاللَّاتِ، وَالْعُزَّى، فَكَفَّارَتُهُ أَنْ يَقُولَ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ - يَقُولُهَا مَرَّةً؛ أَوْ يَقُولُ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ ثَلَاثَ مَرَّاتٍ وَلَا بُدَّ.

وَيَنْفُثُ عَنْ شِمَالِهِ ثَلَاثَ مَرَّاتٍ، وَيَتَعَوَّذُ بِاللَّهِ مِنْ الشَّيْطَانِ ثَلَاثَ مَرَّاتٍ ثُمَّ لَا يَعُدْ فَإِنْ عَادَ عَادَ لِمَا ذَكَرْنَا أَيْضًا.

[48] **Qur’an references (L18286):** Qur’an 8:39 (Al-Anfal).
[49] **Qur’an references (L18287):** Qur’an 5:49 (Al-Ma’idah).
[50] **Qur’an references (L18288):** Qur’an 98:5 (Al-Bayyinah).
[51] **Qur’an references (L18290):** Qur’an 64:1 (At-Taghabun).

L18294 Whoever says to another: “Come, let me gamble with you,” must give charity willingly, whether the amount is small or large—due to what has been narrated to us through the chain of Ahmad ibn Shu‘ayb: Narrated by Abd al-Hamid ibn Muhammad from Makhlad, from Yunus—who is Yunus ibn Abi Ishaq al-Sabi‘i—from his father, from Mus‘ab ibn Sa‘d from his father Sa‘d ibn Abi Waqqas, who said: “I swore by Al-Lat and Al-‘Uzza, so I came to the Messenger of Allah—peace and blessings be upon him—and mentioned that to him. He said: ’Say: There is no god but Allah alone, with no partner. To Him belongs the dominion and to Him belongs all praise, and He is over all things all-powerful. Blow lightly to your left three times, seek refuge with Allah from Satan, then do not do it again.’”[5253]

وَمَنْ قَالَ لِآخَرَ: تَعَالَ أُقَامِرْكَ؟ فَلْيَتَصَدَّقْ وَلَا بُدَّ بِمَا طَابَتْ بِهِ نَفْسُهُ قَلَّ أَمْ كَثُرَ -: لِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الْحَمِيدِ بْنُ مُحَمَّدٍ أَنَا مَخْلَدٌ نا يُونُسُ هُوَ ابْنُ أَبِي إِسْحَاقَ السَّبِيعِيِّ - عَنْ أَبِيهِ [قَالَ] حَدَّثَنِي مُصْعَبُ بْنُ سَعْدٍ عَنْ أَبِيهِ «سَعْدِ بْنِ أَبِي وَقَّاصٍ قَالَ: حَلَفْتُ بِاللَّاتِ وَالْعُزَّى فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرْتُ ذَلِكَ لَهُ؟ فَقَالَ: قُلْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ وَانْفُثْ عَنْ شِمَالِكَ ثَلَاثًا، وَتَعَوَّذْ بِاللَّهِ مِنْ الشَّيْطَانِ، ثُمَّ لَا تَعُدْ» .

L18295 From the path of Ahmad ibn Shu’ayb - Abu Dawud al-Harrani narrated to us - al-Hasan ibn Muhammad - he is Ibn A’yan, trustworthy - narrated to us - Zuhayr - he is Ibn Mu’awiyah - narrated to us - Abu Ishaq - he is al-Sabīʿī - from Mus’ab ibn Sa’d ibn Abi Waqqas, from his father, who said: “I swore by al-Lat and al-Uzza. The Companions of Allah’s Messenger - peace and blessings be upon him - said to me: ’How evil is what you have uttered! Go to Allah’s Messenger - peace and blessings be upon him - and inform him, for we consider you to have disbelieved.’ So I met him and informed him? He said to me: ’Say: There is no god but Allah alone, with no partner to Him - three times. Seek refuge with Allah from Satan - three times. Spit lightly to your left side - three times. And do not return to this act.’”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَبُو دَاوُد الْحَرَّانِيُّ نا الْحَسَنُ بْنُ مُحَمَّدٍ هُوَ ابْنُ أَعْيَنَ ثِقَةٌ - نا زُهَيْرٌ هُوَ ابْنُ مُعَاوِيَةَ - نا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيِّ عَنْ «مُصْعَبِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ قَالَ: حَلَفْتُ بِاللَّاتِ وَالْعُزَّى فَقَالَ لِي أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بِئْسَ مَا قُلْتَ ائْتِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبِرْهُ فَإِنَّا لَا نَرَاكَ إِلَّا قَدْ كَفَرْتَ فَلَقِيتُهُ فَأَخْبَرْتُهُ؟ فَقَالَ لِي: قُلْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ ثَلَاثَ مَرَّاتٍ وَتَعَوَّذْ بِاللَّهِ مِنْ الشَّيْطَانِ ثَلَاثَ مَرَّاتٍ وَانْفُثْ عَنْ شِمَالِكَ ثَلَاثَ مَرَّاتٍ وَلَا تَعُدْ لَهُ» .

L18296 Through the chain of Muslim: Isḥāq ibn Rāhwayh narrated to us – I, ʿAbd al-Razzāq, narrate from Maʿmar, from al-Zuhrī, who informed me from Ḥumayd ibn ʿAbd al-Raḥmān ibn ʿAwf: Abū Hurayrah said: The Messenger of Allah (peace and blessings be upon him) said: “Whoever among you swears and declares in his oath: ’By al-Lāt,’ let him say: ’There is no god but Allah.’

وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ أَخْبَرَنِي حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ أَبَا هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ حَلَفَ مِنْكُمْ فَقَالَ فِي حَلِفِهِ: بِاللَّاتِ، فَلْيَقُلْ لَا إِلَهَ إِلَّا اللَّهُ وَمَنْ قَالَ لِصَاحِبِهِ: تَعَالَ أُقَامِرْكَ فَلْيَتَصَدَّقْ» .

[52]**Hadith references (L18294):** Sahih Muslim 2723c; Sunan an-Nasai 1343; Sunan an-Nasai 2961.

[53]**Qur’an references (L18294):** Qur’an 64:1 (At-Taghabun).

And whoever says to his companion: 'Come, let me gamble with you,' let him give charity."[54]

L18297–18298 Ali said: This nullifies reliance on anyone's statement other than the Messenger of Allah's, for the Companions—may Allah be pleased with them—said to Sa'd: "We see nothing but that you have disbelieved," though he had not actually disbelieved.

L18299 **A legal issue: He swore multiple oaths on various matters, with a separate oath sworn for each individual thing.**

L18300 1144 – Question

L18301 Whoever swears multiple oaths—an oath for each thing among them—such as: "By Allah, I will not eat today," "By Allah, I will not speak to Zayd," "By Allah, I will not enter his house," or the like—these constitute multiple oaths. If he breaks any one of them, he is obligated to perform an expiation ritual.

L18302 If he violates another [oath], then another expiation is required. If he violates a third, then a third expiation is required - and so on for each additional instance, because they are distinct oaths, distinct actions, and distinct violations. Undoubtedly, violating one oath does not entail violating another. Thus, each oath carries its own ruling. Issue 1145.

L18303 If he swore in such a manner and then said at the end, "Insha'Allah," or stipulated any exception, some scholars have stated: If that exception was connected [to the oath], he is considered truthful in his intention. If he says, "I intended the exception to apply to all oaths," there is no breach of oath incumbent upon him regarding any of them.

L18304 And if he said, "I intended its end," then it is as he said—and success is from Allah, the Exalted.

L18305 And Abu Thawr said: The exception pertains to all oaths.

قَالَ عَلِيٌّ: فِي هَذَا إبْطَالُ التَّعَلُّقِ بِقَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ فَقَدْ قَالَ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - لِسَعْدٍ: مَا نَرَاك إلَّا قَدْ كَفَرْت، وَلَمْ يَكُنْ كَفَرَ.

[مَسْأَلَةٌ حَلَفَ أَيْمَانًا عَلَى أَشْيَاءَ كَثِيرَةٍ عَلَى كُلِّ شَيْءٍ مِنْهَا يَمِينٌ]

١١٤٤ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَيْمَانًا عَلَى أَشْيَاءَ كَثِيرَةٍ عَلَى كُلِّ شَيْءٍ مِنْهَا يَمِينٌ، مِثْلُ: وَاَللَّهِ لَا أَكَلْت الْيَوْمَ، وَوَاَللَّهِ لَا كَلَّمْت زَيْدًا، وَوَاَللَّهِ لَا دَخَلْت دَارِهِ أَوْ نَحْوَ هَذَا، فَهِيَ أَيْمَانٌ كَثِيرَةٌ إنْ حَنِثَ فِي شَيْءٍ مِنْهَا فَعَلَيْهِ كَفَّارَةٌ.

فَإِنْ عَمِلَ آخَرَ فَكَفَّارَةٌ أُخْرَى، فَإِنْ عَمِلَ ثَالِثًا فَكَفَّارَةٌ ثَالِثَةٌ - وَهَكَذَا مَا زَادَ، لِأَنَّهَا أَيْمَانٌ مُتَغَايِرَةٌ، وَأَفْعَالٌ مُتَغَايِرَةٌ، وَأَحْنَاثٌ مُتَغَايِرَةٌ، إنْ حَنِثَ فِي يَمِينٍ لَمْ يَحْنَثْ بِذَلِكَ فِي أُخْرَى بِلَا شَكٍّ، فَلِكُلِّ يَمِينٍ حُكْمُهَا. ١١٤٥ - مَسْأَلَةٌ

فَلَوْ حَلَفَ كَذَلِكَ ثُمَّ قَالَ فِي آخِرِهَا: إنْ شَاءَ اللَّهُ أَوْ اسْتَثْنَى بِشَيْءٍ مَا، فَإِنَّ قَوْمًا قَالُوا: إنْ كَانَ ذَلِكَ مَوْصُولًا فَهُوَ مُصَدَّقٌ فِيمَا نَوَى، فَإِنْ قَالَ أَرَدْت بِالِاسْتِثْنَاءِ جَمِيعَ الْأَيْمَانِ، فَلَا حِنْثَ عَلَيْهِ فِي شَيْءٍ مِنْهَا.

وَإِنْ قَالَ: نَوَيْت آخِرَهَا، فَهُوَ كَمَا قَالَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ أَبُو ثَوْرٍ: الِاسْتِثْنَاءُ رَاجِعٌ إلَى جَمِيعِ الْأَيْمَانِ.

[54] **Hadith references (L18296):** Sahih Muslim 1647a.

L18306 Abu Hanifa said: The exception does not apply except to the oath that follows it.

L18307 Abu Muhammad said: We adhere to this position because he formally bound the previous oaths without stipulating an exception within them, concluded the discourse about them, and commenced a different discourse. Consequently, the exception could no longer be connected to those oaths. Therefore, if he violates them, the violation is established, and expiation becomes obligatory. The exception applies solely to the oath to which it was attached, as we previously established. And success is by Allah, the Exalted.

L18308 **A jurisprudential case involving swearing a single oath regarding numerous matters.**

L18309 1146 - Question

L18310 If someone swears a single oath regarding multiple matters—such as one who says: "By Allah, I did not speak to Zaid or Khalid, nor entered Abdullah's house, nor gave you anything"—then it is considered a single oath. He does not break the oath by doing any single thing he swore upon, nor is he required to perform an expiation unless he does everything he swore upon.

L18311–18312 This is the doctrine of ʿAṭāʾ, al-Shāfiʿī, and some of our companions.

L18313 It was narrated to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: "'Aṭāʾ said regarding one who swears: 'By Allah, I will not do such a thing,' and 'By Allah, I will not do such a thing,' for various matters: 'It constitutes a single statement, but he assigned each [instance] to an oath. Two expiations are required.'"

L18314 And ʿAṭā was asked about one who swore, "By Allah, I will not do such-and-such things," combining two distinct matters in a single oath. He replied: "One expiation"—and we do not know of any earlier scholar who expressed a differing opinion on this.

L18315 The Mālikīs said: He is an oath-breaker for every such action he performs. This opinion entails that he must perform an expiation for each action. An-

وَقَالَ أَبُو حَنِيفَةَ: لَا يَكُونُ الِاسْتِثْنَاءُ إِلَّا لِلْيَمِينِ الَّتِي تَلِي الِاسْتِثْنَاءَ.

قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا نَأْخُذُ، لِأَنَّهُ قَدْ عَقَّدَ الْأَيْمَانَ السَّالِفَةَ وَلَمْ يَسْتَثْنِ فِيهَا وَقَطَعَ الْكَلَامَ فِيهَا، وَأَخَذَ فِي كَلَامٍ آخَرَ، فَبَطَلَ أَنْ يَتَّصِلَ الِاسْتِثْنَاءُ بِهَا، فَوَجَبَ الْحِنْثُ فِيهَا إِنْ حَنِثَ وَالْكَفَّارَةُ، وَكَانَ الِاسْتِثْنَاءُ فِي الْيَمِينِ الَّتِي اتَّصَلَ بِهَا كَمَا قَدَّمْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ يَمِينًا وَاحِدَةً عَلَى أَشْيَاءَ كَثِيرَةٍ]

١١٤٦ - مَسْأَلَةٌ

فَإِنْ حَلَفَ يَمِينًا وَاحِدَةً عَلَى أَشْيَاءَ كَثِيرَةٍ، كَمَنْ قَالَ: وَاَللَّهِ لَا كَلَّمْت زَيْدًا وَلَا خَالِدًا، وَلَا دَخَلْت دَارَ عَبْدِ اللَّهِ، وَلَا أَعْطَيْتُك شَيْئًا، فَهِيَ يَمِينٌ وَاحِدَةٌ، وَلَا يَحْنَثُ بِفِعْلِهِ شَيْئًا مِمَّا حَلَفَ عَلَيْهِ، وَلَا تَجِبُ عَلَيْهِ كَفَّارَةٌ حَتَّى يَفْعَلَ كُلَّ مَا حَلَفَ عَلَيْهِ.

وَهَذَا قَوْلُ عَطَاءٍ، وَالشَّافِعِيِّ، وَبَعْضِ أَصْحَابِنَا.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ فِيمَنْ قَالَ: وَاَللَّهِ لَا أَفْعَلُ كَذَا، وَاَللَّهِ لَا أَفْعَلُ كَذَا، لِأُمُورٍ شَتَّى - قَالَ: هُوَ قَوْلٌ وَاحِدٌ، وَلَكِنَّهُ خَصَّ كُلَّ وَاحِدٍ بِيَمِينٍ، قَالَ: كَفَّارَتَانِ.

وَقَالَ عَطَاءٌ فِيمَنْ قَالَ وَاَللَّهِ لَا أَفْعَلُ كَذَا، وَكَذَا لِأَمْرَيْنِ شَتَّى فَعَمَّهُمَا بِالْيَمِينِ؟ قَالَ: كَفَّارَةٌ وَاحِدَةٌ - وَلَا نَعْلَمُ لِمُتَقَدِّمٍ فِيهَا قَوْلًا آخَرَ.

other opinion states: He is obligated to perform an expiation for the first instance of breaking his oath, after which no expiation is required for the rest of those actions.

وَقَالَ الْمَالِكِيُّونَ: هُوَ حَانِثٌ بِكُلِّ مَا فَعَلَ مِنْ ذَلِكَ، ثُمَّ يُخَرَّجُ عَلَى هَذَا الْقَوْلِ أَنَّهُ يَجِبُ عَلَيْهِ لِكُلِّ فِعْلٍ كَفَّارَةٌ - وَقَوْلٌ آخَرُ: إنَّهُ يَلْزَمُهُ كَفَّارَةٌ بِأَوَّلِ مَا يَحْنَثُ، ثُمَّ لَا كَفَّارَةَ عَلَيْهِ فِي سَائِرِ ذَلِكَ.

L18316 Abū Muḥammad said: An oath is not established by intention without verbal utterance. Since he uttered only a single oath, he is not bound by more than one oath in any case, as neither the Quran nor the Sunnah obligates its binding upon him. Given that it is a single oath, it is impermissible for part of it to entail oath violation and part of it to entail fulfillment. Rather, he is either a violator or not a violator. No evidence outside this framework has been established by the Quran, the Sunnah, analogical reasoning, or any earlier scholarly opinion.

قَالَ أَبُو مُحَمَّدٍ: الْيَمِينُ لَا تَكُونُ بِالنِّيَّةِ دُونَ الْقَوْلِ وَهُوَ لَمْ يَلْفِظْ إلَّا بِيَمِينٍ وَاحِدَةٍ، فَلَا يَلْزَمُهُ أَكْثَرَ مِنْ يَمِينٍ أَصْلًا، إذْ لَمْ يُوجِبْ لُزُومَهَا إيَّاهُ قُرْآنٌ، وَلَا سُنَّةٌ، فَإِذْ هِيَ يَمِينٌ وَاحِدَةٌ فَلَا يَجُوزُ أَنْ يَكُونَ فِي بَعْضِهَا عَلَى حِنْثٍ، وَفِي بَعْضِهَا عَلَى بِرٍّ، إنَّمَا هُوَ حَانِثٌ، أَوْ غَيْرُ حَانِثٍ: وَلَمْ يَأْتِ بِغَيْرِ هَذَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا قَوْلٌ مُتَقَدِّمٌ.

L18317 Thus, it is established that one does not become an oath-breaker unless he does any of what he pledged not to do by that oath. Moreover, wealth is sacrosanct, and religious rulings are not binding by claims lacking textual evidence. And success is by Allah, the Exalted.

فَصَحَّ أَنَّهُ لَا يَكُونُ حَانِثًا إلَّا بِأَنْ يَفْعَلَ كُلَّ مَا عَقَّدَ بِتِلْكَ الْيَمِينِ أَنْ لَا يَفْعَلَهُ - وَأَيْضًا: فَالْأَمْوَالُ مَحْظُورَةٌ وَالشَّرَائِعُ لَا تَجِبُ بِدَعْوَى لَا نَصَّ مَعَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَيْمَانًا كَثِيرَةً عَلَى شَيْءٍ وَاحِدٍ]

[A legal case where someone swore multiple oaths concerning a single matter.]

L18318

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١١٤٧ - مَسْأَلَةٌ

L18320 If someone swears numerous oaths concerning a single matter—such as declaring: “By Allah, I did not speak to Zayd,” “By the Most Gracious, I did not speak to him,” “By the Most Merciful, I did not speak to him,” “By Allah, a second time, I did not speak to him,” “By Allah, a third time, I did not speak to him”—and continues this endlessly, whether in one sitting, or in separate sittings and over different days, then all these oaths count as a single oath—even if repeated a million times—entailing one violation; one expiation; and nothing more.

فَإِنْ حَلَفَ أَيْمَانًا كَثِيرَةً عَلَى شَيْءٍ وَاحِدٍ، مِثْلُ: أَنْ يَقُولَ: بِاَللَّهِ لَا كَلَّمْت زَيْدًا، وَالرَّحْمَنِ لَا كَلَّمْته، وَالرَّحِيمِ لَا كَلَّمْته، بِاَللَّهِ ثَانِيَةً لَا كَلَّمْته، بِاَللَّهِ ثَالِثَةً لَا كَلَّمْته - وَهَكَذَا أَبَدًا فِي مَجْلِسٍ وَاحِدٍ، أَوْ فِي مَجَالِسَ مُتَفَرِّقَةٍ، وَفِي أَيَّامٍ مُتَفَرِّقَةٍ: فَهِيَ كُلُّهَا يَمِينٌ وَاحِدَةٌ - وَلَوْ كَرَّرَهَا أَلْفَ أَلْفَ مَرَّةٍ - وَحِنْثٌ وَاحِدٌ، وَكَفَّارَةٌ وَاحِدَةٌ - وَلَا مَزِيدَ.

L18321 The Salaf differed regarding this matter: It was narrated to us via Hammad ibn Salama from Abān from Mujāhid, who said: Ibn ‘Umar married his male slave to one of his female slaves. When the slave intended to travel, Ibn ‘Umar

وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبَانَ عَنْ مُجَاهِدٍ قَالَ: زَوَّجَ ابْنُ عُمَرَ مَمْلُوكَهُ مِنْ جَارِيَةٍ لَهُ، فَأَرَادَ الْمَمْلُوكُ سَفَرًا فَقَالَ لَهُ ابْنُ عُمَرَ: طَلِّقْهَا؟

said to him, “Divorce her!” The slave swore, “By Allah, I will not divorce her!” Ibn ʻUmar then declared, “By Allah, you shall divorce her!” repeating this three times. Mujāhid asked Ibn ʻUmar, “What will you do?” He replied, “I will perform expiation for my oath.” Mujāhid said: I said to him, “But you swore repeatedly?” He responded, “One expiation is sufficient.”

فَقَالَ الْمَمْلُوكُ: وَاَللَّهِ لَا طَلَّقْتهَا فَقَالَ لَهُ ابْنُ عُمَرَ وَاَللَّهِ لَتُطَلِّقُنَّهَا كَرَّرَ ذَلِكَ ثَلَاثَ مَرَّاتٍ؟ قَالَ مُجَاهِدٌ لِابْنِ عُمَرَ: كَيْفَ تَصْنَعُ؟ قَالَ: أُكَفِّرُ عَنْ يَمِينِي، فَقُلْت لَهُ: قَدْ حَلَفْت مِرَارًا؟ قَالَ: كَفَّارَةٌ وَاحِدَةٌ.

L18322–18323 Narrated via the chain of ʻAbd al-Razzāq, from Sufyān al-Thawrī, from Mujāhid, from Ibn ʻUmar, who said: If you swear oaths repeatedly, only one expiation is required.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ: إذَا أَقْسَمْت مِرَارًا فَكَفَّارَةٌ وَاحِدَةٌ.

L18324 And according to the transmission of Ibrāhīm al-Nakhaʻī, if one reiterates oaths [in a single instance], it is regarded as a single oath.

وَمِنْ طَرِيقِ إبْرَاهِيمَ النَّخَعِيِّ إذَا رَدَّدَ الْأَيْمَانَ فَهِيَ يَمِينٌ وَاحِدَةٌ.

L18325 And from Hisham ibn Urwah that his father was asked about a man whose female slave was made available to him repeatedly—each time he would swear by Allah not to have intercourse with her, then he proceeded to do so. Urwah responded: “One expiation suffices.”

وَعَنْ هِشَامِ بْنِ عُرْوَةَ أَنَّ أَبَاهُ سُئِلَ مَنْ تَعَرَّضَتْ لَهُ جَارِيَةٌ لَهُ مِرَارًا كُلَّ مَرَّةٍ يَحْلِفُ بِاَللَّهِ أَنْ لَا يَطَأَهَا؟ ثُمَّ وَطِئَهَا؟ فَقَالَ لَهُ عُرْوَةُ: كَفَّارَةٌ وَاحِدَةٌ.

L18326 And from the chain of Ḥammād ibn Salamah, from Qays ibn Saʻd, from ʻAṭāʾ, who said: A single expiation suffices if one takes an oath in a single matter across different gatherings.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ قَالَ: كَفَّارَةٌ وَاحِدَةٌ إذَا حَلَفَ فِي أَمْرٍ وَاحِدٍ، فِي مَجَالِسَ شَتَّى.

L18327 Narrated by Abd al-Razzaq, from Ma’mar, from al-Zuhri, who said: If someone swears [oaths] in multiple gatherings, a single expiation suffices.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إذَا حَلَفَ فِي مَجَالِسَ شَتَّى قَالَ: كَفَّارَةٌ وَاحِدَةٌ.

L18328 He said: Who heard ʻIkrimah say something like this? And through the transmission of Hammad ibn Salamah from Humayd, and Qatadah from al-Ḥasan, he said: A single expiation is required if one swears regarding a single matter across multiple sessions—and this is the opinion of al-Awzāʻī, Mālik, and Aḥmad.

قَالَ: وَأَخْبَرَنِي مَنْ سَمِعَ عِكْرِمَةَ يَقُولُ مِثْلَ هَذَا؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ، وَقَتَادَةَ عَنْ الْحَسَنِ قَالَ: كَفَّارَةٌ وَاحِدَةٌ إذَا حَلَفَ فِي أَمْرٍ وَاحِدٍ فِي مَجَالِسَ شَتَّى - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَمَالِكٍ، وَأَحْمَدَ.

L18329 And Isḥāq, Abū Sulaymān, Abū ʻUbayd, and one of the two opinions of Sufyān al-Thawrī.

وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَبِي عُبَيْدٍ، وَأَحَدُ قَوْلَيْ سُفْيَانَ الثَّوْرِيِّ.

L18330 It has been reported to us from Ibn ʻUmar and Ibn ʻAbbās: When one violates the oath, he must free a believing slave.

وَرُوِّينَا عَنْ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ: إذَا أَكَّدَ الْيَمِينَ فَعِتْقُ رَقَبَةٍ.

L18331 A group said: If that takes place in a single session, then one expiation is required, and if it occurs in multiple sessions, then separate expiations are required.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ ذَلِكَ فِي مَجْلِسٍ وَاحِدٍ فَكَفَّارَةٌ وَاحِدَةٌ، وَإِنْ كَانَ فِي مَجَالِسَ شَتَّى فَكَفَّارَاتٌ شَتَّى.

L18332 That has been authentically reported from Qatādah, and ʿAmr ibn Dīnār said, "Some scholars say that."

صَحَّ ذَلِكَ عَنْ قَتَادَةَ، وَقَالَ عَمْرُو بْنُ دِينَارٍ: يَقُولُونَ ذَلِكَ.

L18333 Sufyan al-Thawri stated in one of his opinions: "If one intends another oath as a second oath, then two expiations are obligatory." Uthman al-Batti and Abu Thawr said: "If he intended repetition, it counts as a single oath, but if he intended to intensify it, an expiation is required for each instance."

وَقَالَ سُفْيَانُ الثَّوْرِيُّ فِي قَوْلٍ لَهُ: إِنْ نَوَى بِالْيَمِينِ الْأُخْرَى يَمِينًا ثَانِيَةً فَكَفَّارَتَانِ، وَقَالَ عُثْمَانُ الْبَتِّيُّ، وَأَبُو ثَوْرٍ: إِنْ أَرَادَ التَّكْرَارَ فَيَمِينٌ وَاحِدَةٌ وَإِنْ أَرَادَ التَّغْلِيظَ فَلِكُلِّ مَرَّةٍ كَفَّارَةٌ.

L18334 This is the opinion of Al-Shafi'i, except that he expressed it by stating: "If one intends repetition, then a single expiation suffices; otherwise, each instance requires an expiation." Thus, he did not exclude the obligation of an expiation for every instance except by intending repetition solely. Moreover, he did not stipulate the intention of aggravation.

وَهُوَ قَوْلُ الشَّافِعِيِّ إِلَّا أَنَّهُ عَبَّرَ عَنْهُ بِأَنْ قَالَ: إِنْ أَرَادَ التَّكْرَارَ فَكَفَّارَةٌ وَاحِدَةٌ، وَإِلَّا فَلِكُلِّ مَرَّةٍ كَفَّارَةٌ - فَلَمْ يُخْرِجْهُ عَنْ أَنْ يَكُونَ لِكُلِّ مَرَّةٍ كَفَّارَةٌ، إِلَّا بِأَنْ يَنْوِيَ التَّكْرَارَ فَقَطْ - ثُمَّ لَمْ يَشْتَرِطْ إِرَادَةَ التَّغْلِيظِ.

L18335 Abu Hanifa and his companions said: If he intended repetition, it counts as one oath. But if he had no such intention and intended to emphasize the oath, or if the oaths occurred in two or more gatherings, then each oath requires its own expiation.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إِنْ أَرَادَ التَّكْرَارَ فَيَمِينٌ وَاحِدَةٌ، وَإِنْ لَمْ تَكُنْ لَهُ نِيَّةٌ، وَأَرَادَ التَّغْلِيظَ، أَوْ كَانَ ذَلِكَ فِي مَجْلِسَيْنِ فَصَاعِدًا، فَلِكُلِّ يَمِينٍ كَفَّارَةٌ.

L18336–18337 Abu Muhammad said: We find no valid proof for those who claim that the confirmation of an oath necessitates freeing a slave alone, for when Allah—Exalted is He—specified [the expiation as] freeing a slave, feeding, and clothing, even though He knew that confirmed oaths existed there, He said: {And do not break your oaths after confirming them} [Al-Naḥl 16:91].[55]

قَالَ أَبُو مُحَمَّد: لَا نَعْلَمُ لِمَنْ رَأَى فِي تَأْكِيدِ الْيَمِينِ عِتْقَ رَقَبَةٍ - فَقَطْ - حُجَّةً، لِأَنَّ اللَّهَ تَعَالَى حِينَ بَيَّنَ الرَّقَبَةَ، وَالْإِطْعَامَ، وَالْكِسْوَةَ، وَقَدْ عَلِمَ أَنَّ هُنَالِكَ أَيْمَانًا مُؤَكَّدَةً، قَالَ تَعَالَى: {وَلا تَنْقُضُوا الأَيْمَانَ بَعْدَ تَوْكِيدِهَا} [النحل: ٩١] .

L18338 We do not know of any valid justification for those who distinguish between an oath being in one session and it being in two sessions or beyond, except the claim that it constitutes one oath in a session and another oath in the subsequent session.

وَلَا نَعْلَمُ لِمَنْ فَرَّقَ بَيْنَ أَنْ يَكُونَ ذَلِكَ فِي مَجْلِسٍ وَبَيْنَ أَنْ يَكُونَ فِي مَجْلِسَيْنِ فَصَاعِدًا حُجَّةً إِلَّا الدَّعْوَى أَنَّهَا يَمِينٌ وَاحِدَةٌ، فِي مَجْلِسٍ، وَيَمِينٌ ثَانِيَةٌ فِي الْمَجْلِسِ الثَّانِي.

L18339 And this is a claim unsubstantiated by evidence. Every utterance is undoubt-

[55] **Qur'an references (L18337):** Qur'an 16:91 (An-Nahl).

edly distinct from another, just as every session differs from the next—yet no valid distinction exists between them.

وَهَذِهِ دَعْوَى لَا يُصَحِّحُهَا بُرْهَانٌ، وَكُلُّ لَفْظٍ فَهُوَ بِلَا شَكٍّ غَيْرُ اللَّفْظِ الْآخَرِ، كَمَا أَنَّ كُلَّ مَجْلِسٍ غَيْرُ الْمَجْلِسِ الْآخَرِ وَلَا فَرْقَ.

L18340 Similarly, we do not know of any foundational proof whatsoever for those who differentiate between aggravation and non-aggravation except an unsubstantiated claim.

وَكَذَلِكَ لَا نَدْرِي لِمَنْ فَرَّقَ بَيْنَ التَّغْلِيظِ وَغَيْرِ التَّغْلِيظِ حُجَّةً أَصْلًا إِلَّا الدَّعْوَى بِلَا بُرْهَانٍ.

L18341 As for those who say: If one intends repetition, the oath constitutes a single instance; otherwise, the oaths are various—we know of no evidence for their position except their assertion that these are distinct expressions entailing separate rulings for each utterance, or their analogy of this matter to repeated pronouncements of divorce.

وَأَمَّا مَنْ قَالَ: إِنْ نَوَى التَّكْرَارَ فَهِيَ يَمِينٌ وَاحِدَةٌ، وَإِلَّا فَهِيَ أَيْمَانٌ شَتَّى، فَمَا نَعْلَمُ لَهُمْ حُجَّةً إِلَّا أَنَّهُمْ قَالُوا: هِيَ أَلْفَاظٌ شَتَّى، فَلِكُلِّ لَفْظٍ حُكْمٌ، أَوْ أَنْ يَقِيسُوا ذَلِكَ عَلَى تَكْرَارِ الطَّلَاقِ.

L18342 Abu Muhammad said: All analogy is invalid in its entirety. Furthermore, even if analogy were valid, this instance of it would still be invalid, because the Quranic text explicitly states that the ruling of the third divorce differs from that of the second and from that of the first, yet this has not been stipulated in the case of oaths.

قَالَ أَبُو مُحَمَّدٍ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ النَّصَّ جَاءَ فِي الْقُرْآنِ بِأَنَّ حُكْمَ الطَّلْقَةِ الثَّالِثَةِ غَيْرُ حُكْمِ الثَّانِيَةِ، وَغَيْرُ حُكْمِ الْأُولَى، وَلَمْ يَأْتِ ذَلِكَ فِي الْأَيْمَانِ.

L18343 As for their claim that these are various wordings, yes—except that expiation is obligatory for the breach of the oath, not for the oath itself, since oaths do not inherently obligate expiation at all. There is no disagreement on this. Expiation is only required by the breach. The breach in all such cases constitutes a single breach without doubt, and it is impermissible for a single breach to incur multiple expiations. Wealth is prohibited, and legal rulings are suspended unless textual evidence permits the wealth or establishes the legal ruling. Success comes solely from Allah, the Exalted.

وَأَمَّا قَوْلُهُمْ: إِنَّهَا أَلْفَاظٌ شَتَّى، فَنَعَمْ، إِلَّا أَنَّ الْحِنْثَ بِهِ تَجِبُ الْكَفَّارَةُ لَا بِنَفْسِ الْيَمِينِ فَإِنَّ الْأَيْمَانَ لَا تُوجِبُ الْكَفَّارَةَ أَصْلًا، وَلَا خِلَافَ فِي ذَلِكَ وَلَا يُوجِبُ الْكَفَّارَةَ إِلَّا الْحِنْثُ، فَالْحِنْثُ فِيهَا كُلِّهَا حِنْثٌ وَاحِدٌ بِلَا شَكٍّ وَلَا يَجُوزُ أَنْ يَكُونَ بِحِنْثٍ وَاحِدٍ كَفَّارَاتٌ شَتَّى، وَالْأَمْوَالُ مُحَرَّمَةٌ، وَالشَّرَائِعُ سَاقِطَةٌ، إِلَّا أَنْ يُبِيحَ الْمَالَ نَصٌّ، أَوْ يَأْتِيَ بِالشَّرْعِ نَصٌّ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18344 And this is among the matters in which the Ḥanafīs and Shāfiʿīs differed from Ibn ʿUmar and Ibn ʿAbbās, with no opposition to them being known from the Companions. Success is by Allah, the Exalted.

وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ، ابْنَ عُمَرَ وَابْنَ عَبَّاسٍ وَلَا يُعْرَفُ لَهُمَا مِنَ الصَّحَابَةِ مُخَالِفٌ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L18345 **Issue: He swore by Allah that he did not eat this loaf.**

[مَسْأَلَةٌ حَلَفَ بِاللَّهِ لَا أَكَلْت هَذَا الرَّغِيفَ]

١١٤٨ - مَسْأَلَةٌ

وَمَنْ حَلَفَ بِاَللَّهِ لَا أَكَلْت هَذَا الرَّغِيفَ، أَوْ قَالَ: لَا شَرِبْت مَاءَ هَذَا الْكُوزِ، فَلَا يَحْنَثُ بِأَكْلِ بَعْضِ الرَّغِيفِ، وَلَوْ لَمْ يَبْقَ مِنْهُ إلَّا فُتَاتُهُ، وَلَا بِشُرْبِ بَعْضِ مَا فِي الْكُوزِ.

وَكَذَلِكَ لَوْ حَلَفَ بِاَللَّهِ لَآكُلَنَّ هَذَا الرَّغِيفَ الْيَوْمَ، فَأَكَلَهُ كُلَّهُ إلَّا فُتَاتَهُ وَغَابَتْ الشَّمْسُ فَقَدْ حَنِثَ - وَهَكَذَا فِي الرُّمَّانَةِ، وَفِي كُلِّ شَيْءٍ فِي الْعَالَمِ لَا يَحْنَثُ بِبَعْضِ مَا حَلَفَ عَلَيْهِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

وَقَالَ الْمَالِكِيُّونَ: يَحْنَثُ بِأَكْلِ بَعْضِهِ وَشُرْبِ بَعْضِهِ.

قَالَ أَبُو مُحَمَّدٍ: نَسْأَلُهُمْ عَنْ رَجُلٍ أَكَلَ بَعْضَ رَغِيفٍ لِزَيْدٍ فَشَهِدَ عَلَيْهِ شَاهِدَانِ أَنَّهُ أَكَلَ رَغِيفَ زَيْدٍ؟ أَصَادِقَانِ هُمَا أَمْ كَاذِبَانِ؟ فَمِنْ قَوْلِهِمْ إنَّهُمَا كَاذِبَانِ مُبْطِلَانِ، فَأَقَرُّوا عَلَى أَنْفُسِهِمْ بِالْفُتْيَا بِالْكَذِبِ، وَبِالْبَاطِلِ، وَبِالْمُشَاهَدَةِ يُدْرَى فَسَادُ هَذَا الْقَوْلِ، لِأَنَّهُ إنَّمَا حَلَفَ أَنْ لَا يَأْكُلَهُ، لَمْ يَحْلِفْ أَنْ لَا يَأْكُلَ مِنْهُ شَيْئًا، وَهُوَ إذَا أَبْقَى مِنْهُ شَيْئًا فَلَمْ يَفْعَلْ مَا حَلَفَ عَلَيْهِ، وَالْأَمْوَالُ مَحْظُورَةٌ إلَّا بِنَصٍّ، وَلَا نَصَّ فِي صِحَّةِ قَوْلِهِمْ.

وَقَالَ قَائِلُهُمْ: الْحِنْثُ، وَالتَّحْرِيمُ، وَكِلَاهُمَا يَدْخُلُ بِأَرَقِّ الْأَسْبَابِ؟ فَقُلْنَا: هَذَا بَاطِلٌ مَا يَدْخُلُ الْحِنْثُ وَالتَّحْرِيمُ لَا بِأَرَقِّ الْأَسْبَابِ، وَلَا بِأَغْلَظِهَا، وَلَا يَدْخُلُ التَّحْلِيلُ أَيْضًا لَا بِأَرَقِّ الْأَسْبَابِ، وَلَا بِأَغْلَظِهَا - وَكُلُّ هَذَا بَاطِلٌ وَإِفْكٌ، وَلَا يَدْخُلُ الْحِنْثُ، وَالْبِرُّ، وَالتَّحْرِيمُ، وَالتَّحْلِيلُ؛ إلَّا حَيْثُ أَدْخَلَ اللَّهُ تَعَالَى مِنْهَا فِي كِتَابِهِ أَوْ عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

1148 – Issue

And whoever swears by Allah: I did not eat this loaf of bread; or says: I did not drink water, Regarding this jug, one does not break their oath by eating part of the bread—even if only crumbs remain—nor by drinking some of what is in the jug.

Similarly, if a man swears by Allah that he will indeed eat this entire loaf of bread today, then eats all of it except a crumb and the sun sets, he has broken his oath. This ruling applies similarly in the case of a pomegranate and to everything in the world: merely fulfilling part of what one swore to do does not suffice to avoid breaking the oath. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

The Malikis said: He violates his oath by eating some of it and drinking some of it.

Abu Muhammad said: We ask them about a man who ate part of a loaf belonging to Zayd, yet two witnesses testified against him that he ate Zayd's entire loaf. Are they truthful or liars? By their claim that the two are lying nullifiers, they admit against themselves issuing fatwas based on falsehood and invalidity. Through observation, the falsehood of this claim becomes evident, for he only swore not to eat the loaf - not to abstain from eating any portion of it. If he left part of it uneaten, he did not violate what he swore against. Properties remain inviolable unless established by textual evidence, and no text exists to validate their claim.

One of them said: "Does the breaking of an oath and the imposition of prohibition become subject to the slightest of causes?" We responded: "This is invalid. Neither the breaking of oaths nor prohibition is subject to the slightest of causes, nor the gravest. Likewise, rendering things permissible is not subject to the slightest or gravest causes. All of this is baseless falsehood. Breaking oaths, righteousness, prohibition, and rendering permissible only apply where Allah the Exalted has ordained them in His Book or through the tongue of His Messenger—peace be upon him."

The most astonishing thing is their claim that the prohibition of the father's

wife upon the son is effected through the weakest of causes—merely the marriage contract. We retorted: Have you forgotten your own principles? Was the sexual prohibition of this woman not equally binding upon the father as upon the son? Yet permissibility for the father is effected through the weakest of causes—merely the marriage contract. Where then is your claim that permissibility is only effected through the most stringent causes? How profound is this confusion involving baseless principles within the religion of God Almighty! They further argued: Permissibility regarding the thrice-divorced woman is not effected except through the most stringent causes—the marriage contract and intercourse. We replied: You have invalidated your own doctrine. Either adhere to Al-Ḥasan's opinion, lest you dismantle your entire framework, for he asserts: The thrice-divorced woman does not become permissible except through the marriage contract, intercourse, and ejaculation within her—otherwise, she remains prohibited. This constitutes the most stringent of causes, yet these people cling to nothingness—and we praise God for well-being.

وَأَطْرَفُ شَيْءٍ أَنَّهُمْ قَالُوا: تَحْرِيمُ زَوْجَةِ الْأَبِ عَلَى الِابْنِ يَدْخُلُ بِأَرَقِّ الْأَسْبَابِ - وَهُوَ الْعَقْدُ وَحْدَهُ؟ فَقُلْنَا لَهُمْ: نَسِيتُمْ أَنْفُسَكُمْ، أَوْ لَمْ يَكُنْ فَرْجُ هَذِهِ الْمَرْأَةِ حَرَامًا عَلَى الْأَبِ، كَمَا هِيَ عَلَى الِابْنِ، ثُمَّ دَخَلَ التَّحْلِيلُ لِلْأَبِ بِأَرَقِّ الْأَسْبَابِ - وَهُوَ الْعَقْدُ وَحْدَهُ - فَأَيْنَ قَوْلُكُمْ: إِنَّ التَّحْلِيلَ لَا يَدْخُلُ إِلَّا بِأَغْلَظِ الْأَسْبَابِ؟ وَكَمْ هَذَا التَّخْلِيطُ بِمَا لَا يُعْقَلُ فِي دِينِ اللَّهِ تَعَالَى؟ وَقَالُوا: وَالتَّحْلِيلُ لَا فِي الْمُطَلَّقَةِ ثَلَاثًا لَا يَدْخُلُ إِلَّا بِأَغْلَظِ الْأَسْبَابِ - وَهُوَ الْعَقْدُ، وَالْوَطْءُ؟ فَقُلْنَا: نَقَضْتُمْ قَوْلَكُمْ قَوْلُوا بِقَوْلِ الْحَسَنِ، وَإِلَّا فَقَدْ أَفْسَدْتُمْ بُنْيَانَكُمْ، لِأَنَّهُ يَقُولُ: لَا تَحِلُّ الْمُطَلَّقَةُ ثَلَاثًا إِلَّا بِالْعَقْدِ، وَالْوَطْءِ، وَالْإِنْزَالِ فِيهَا، وَإِلَّا فَلَا، وَهَذَا أَغْلَظُ الْأَسْبَابِ وَالْقَوْمُ فِي لَا شَيْءَ - وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

L18355–18356 The daughter of the wife is not prohibited upon her mother's husband by the weakest of causes, which is the marriage contract, but rather by consummation with the mother alongside the contract. Thus, this prohibition applies only through the most stringent of causes.

وَابْنَةُ الزَّوْجَةِ لَا تُحَرَّمُ عَلَى زَوْجِ أُمِّهَا بِأَرَقِّ الْأَسْبَابِ الَّذِي هُوَ الْعَقْدُ، لَكِنْ بِالدُّخُولِ بِالْأُمِّ مَعَ الْعَقْدِ، فَهَذَا تَحْرِيمٌ لَمْ يَدْخُلْ إِلَّا بِأَغْلَظِ الْأَسْبَابِ.

L18357 Furthermore, their contradiction here is quite remarkable, for according to their doctrine: if someone swears not to eat a loaf of bread and then eats half a loaf, he violates his oath, whereas if someone swears not to give Zayd ten dinars and gives him nine dinars, he does not violate his oath. What distinction exists in all of this if there were any God-consciousness here?

ثُمَّ تَنَاقُضُهُمْ هَهُنَا طَرِيفٌ جِدًّا، لِأَنَّ مِنْ قَوْلِهِمْ: إِنَّ مَنْ حَلَفَ أَنْ لَا يَأْكُلَ رَغِيفًا فَأَكَلَ نِصْفَ رَغِيفٍ يَحْنَثُ، وَمَنْ حَلَفَ أَنْ لَا يَهَبَ لِزَيْدٍ عَشْرَةَ دَنَانِيرَ فَوَهَبَ لَهُ تِسْعَةَ دَنَانِيرَ أَنَّهُ لَا يَحْنَثُ، فَأَيُّ فَرْقٍ بَيْنَ هَذَا كُلِّهِ لَوْ كَانَ هَهُنَا تَقْوَى؟

L18358 Some of them argued regarding that—by saying: "If someone swears not to enter Zayd's house and then enters any part of it, he breaks his oath." We responded to them: "Breaking the oath occurs only when one violates the specific terms sworn upon. Linguistically and logically, 'entering a house' is defined as entering part of it—not by occupying it entirely with his body—contrary to the case of eating a loaf of bread. If part of him entered the house without his entire body, he would not break his oath, because he did

وَاحْتَجَّ بَعْضُهُمْ فِي ذَلِكَ -: بِأَنَّ مَنْ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ زَيْدٍ فَدَخَلَ شَيْئًا مِنْهَا فَإِنَّهُ يَحْنَثُ، فَقُلْنَا لَهُمْ: إِنَّمَا يَكُونُ الْحِنْثُ بِمُخَالَفَةِ مَا حَلَفَ عَلَيْهِ، وَلَا يَكُونُ فِي اللُّغَةِ وَالْمَعْقُولُ دُخُولُ الدَّارِ إِلَّا بِدُخُولِ بَعْضِهَا، لَا بِأَنْ يَمْلَأَهَا بِجُثَّتِهِ، بِخِلَافِ أَكْلِ الرَّغِيفِ، وَلَوْ أَنَّهُ

not fully enter it." They unanimously agree with us that if someone swears not to demolish this wall and then removes a mud brick from it, he does not break his oath.

Issue: He swore an oath not to eat from this loaf.

1149 – Issue: If someone swears not to eat from this loaf or not to drink from the water of this vessel, he violates his oath by eating any part of it or drinking any portion of the water, because this contradicts what he swore upon – and success is from Allah, the Exalted.

Issue: He swore not to drink river water.

1150. Issue

If someone swears not to drink the water of a river, and he intends to drink any of it, he violates his oath by drinking any part of it, because he thereby declares the drinking of some of its water. If he had no such intention, there is no violation on him, as the Prophet—peace and blessings be upon him—said: "Actions are but by intentions, and every person will have what he intended."

An issue: He swore an oath that he would not enter the house of Zayd.

1151 - Question

If someone swears not to enter Zayd's house, and if it is among houses whose vestibules are permissible—such as the houses of notables—he does not break his oath by entering the vestibule until he enters a part of it where anyone present would deem him to have entered Zayd's house. But if it is among houses whose vestibules are not permissible, he breaks his oath by entering the vestibule.

And likewise in mosques, bathhouses, and all other places due to what we

دَخَلَ بَعْضُهُ الدَّارَ لَا كُلُّهُ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَدْخُلْهَا - وَهُمْ مُجْمِعُونَ مَعَنَا عَلَى: أَنَّ مَنْ حَلَفَ أَنْ لَا يَهْدِمَ هَذَا الْحَائِطَ فَهَدَمَ مِنْهُ مَدَرَةً أَنَّهُ لَا يَحْنَثُ

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ مِنْ هَذَا الرَّغِيفِ]

١١٤٩ - مَسْأَلَةٌ فَلَوْ حَلَفَ أَنْ لَا يَأْكُلَ مِنْ هَذَا الرَّغِيفِ، أَوْ أَنْ لَا يَشْرَبَ مِنْ مَاءِ هَذَا الْكُوزِ فَإِنَّهُ يَحْنَثُ بِأَكْلِ شَيْءٍ مِنْهُ وَشُرْبِ شَيْءٍ مِنْهُ، لِأَنَّهُ خِلَافُ مَا حَلَفَ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَشْرَبَ مَاءَ النَّهْرِ]

١١٥٠ - مَسْأَلَةٌ

فَلَوْ حَلَفَ أَنْ لَا يَشْرَبَ مَاءَ النَّهْرِ، فَإِنْ كَانَتْ لَهُ نِيَّةٌ فِي شُرْبِ شَيْءٍ مِنْهُ حَنِثَ [بِأَيِّ شَيْءٍ مِنْهُ] لِأَنَّهُ بِهَذَا يُخْبِرُ عَنْ شُرْبِ بَعْضِ مَائِهِ فَإِنْ لَمْ يَكُنْ لَهُ نِيَّةٌ فَلَا حِنْثَ عَلَيْهِ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى».

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ زَيْدٍ]

١١٥١ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ زَيْدٍ، فَإِنْ كَانَتْ مِنْ الدُّورِ الْمُبَاحَةِ الدَّهَالِيزَ كَدُورِ الرُّؤَسَاءِ لَمْ يَحْنَثْ بِدُخُولِ الدِّهْلِيزِ حَتَّى يَدْخُلَ مِنْهَا مَا يَقَعُ عَلَى مَنْ صَارَ هُنَالِكَ أَنَّهُ دَاخِلُ دَارِ زَيْدٍ وَإِنْ كَانَتْ مِنْ الدُّورِ الَّتِي لَا تُبَاحُ دَهَالِيزُهَا حَنِثَ بِدُخُولِ الدِّهْلِيزِ.

have mentioned: that consideration is given solely to the terms used by speakers of that language in their mutual communication.

L18368 Allah the Exalted has said: _“There is not one of you but will come to it; this is a decree your Lord is bound to execute”_ [19:71]. This constitutes a universal ruling, and it is impermissible to assert that Muhammad - peace be upon him - and the Prophets enter Hellfire.[56]

L18369–18370 Issue: If someone swears not to enter so-and-so’s house and walks on its roof.

L18371 Legal Question

L18372 Whoever swears not to enter so-and-so’s house or not to enter the bathhouse, then walks upon the roofs of each of those [places] or enters the bathhouse’s vestibule, has not broken his oath, for he neither entered the house nor the bathhouse, nor is entering the bathhouse’s vestibule regarded as entering the bathhouse itself.

L18373 Issue: He swore not to speak to a certain person, then bequeathed to him or wrote something.

L18374 Issue 1153: If someone swears not to speak to a certain person, then makes a testamentary will in his favor or writes to him, he does not break his oath, because neither writing nor a will is considered speech.

L18375 Similarly, when he [Zakariya] gestured to him, Allah, the Exalted and Glorious, said: “Your sign is that you will not speak to the people for three consecutive nights” [Maryam: 10]. “Then he emerged from the *miḥrāb* to his people and inspired them to glorify [Allah] morning and evening” [Maryam: 11].[57]

L18376 And He, the Exalted, said: {So if you see any human being, say, “I have

[56] **Qur’an references (L18368):** Qur’an 19:71 (Maryam).
[57] **Qur’an references (L18375):** Qur’an 19:10 (Maryam); Qur’an 19:11 (Maryam).

وَهَكَذَا فِي الْمَسَاجِدِ، وَالْحَمَّامَاتِ، وَسَائِرِ الْمَوَاضِعِ لِمَا ذَكَرْنَا: مِنْ أَنَّهُ إِنَّمَا يُرَاعَى مَا يَتَخَاطَبُ بِهِ أَهْلُ تِلْكَ اللُّغَةِ.

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَإِنْ مِنْكُمْ إِلا وَارِدُهَا كَانَ عَلَى رَبِّكَ حَتْمًا مَقْضِيًّا} [مريم: ٧١] فَهَذَا عُمُومٌ، وَلَا يَجُوزُ أَنْ يُقَالَ: إِنَّ مُحَمَّدًا - عَلَيْهِ السَّلَامُ -، وَالْأَنْبِيَاءَ يَدْخُلُونَ جَهَنَّمَ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ فُلَانٍ فَمَشَى عَلَى سَقْفِهَا]

مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ فُلَانٍ، أَوْ أَنْ لَا يَدْخُلَ الْحَمَّامَ فَمَشَى عَلَى سُقُوفِ كُلِّ ذَلِكَ، أَوْ دَخَلَ دِهْلِيزَ الْحَمَّامِ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَدْخُلْ الدَّارَ وَلَا الْحَمَّامَ وَلَا يُسَمَّى دُخُولُ دِهْلِيزِ الْحَمَّامِ دُخُولَ حَمَّامٍ

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يُكَلِّمَ فُلَانًا فَأَوْصَى إِلَيْهِ أَوْ كَتَبَ]

١١٥٣ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَنْ لَا يُكَلِّمَ فُلَانًا، فَأَوْصَى إِلَيْهِ أَوْ كَتَبَ لَمْ يَحْنَثْ، لِأَنَّهُ لَا يُسَمَّى الْكِتَابُ وَلَا الْوَصِيَّةُ: كَلَامًا.

وَكَذَلِكَ لَوْ أَشَارَ إِلَيْهِ قَالَ اللَّهُ عَزَّ وَجَلَّ: {آيَتُكَ أَلا تُكَلِّمَ النَّاسَ ثَلاثَ لَيَالٍ سَوِيًّا} [مريم: ١٠] {فَخَرَجَ عَلَى قَوْمِهِ مِنَ الْمِحْرَابِ فَأَوْحَى إِلَيْهِمْ أَنْ سَبِّحُوا بُكْرَةً وَعَشِيًّا} [مريم: ١١] .

وَقَالَ تَعَالَى: {فَإِمَّا تَرَيِنَّ مِنَ الْبَشَرِ أَحَدًا فَقُولِي إِنِّي نَذَرْتُ لِلرَّحْمَنِ صَوْمًا فَلَنْ أُكَلِّمَ الْيَوْمَ إِنْسِيًّا} [مريم: ٢٦] إِلَى قَوْلِهِ: {فَأَشَارَتْ إِلَيْهِ} [مريم: ٢٩] .

vowed a fast to the Most Merciful, so I will not speak to any human today"} [Maryam: 26] to His words: {Then she pointed to him} [Maryam: 29].[58]

L18377 Thus, it is established that gestures and nods are not speech.

فَصَحَّ أَنَّ الْإِشَارَةَ، وَالْإِيمَاءَ لَيْسَ كَلَامًا.

L18378 **A legal question regarding one who swore not to buy condiments.**

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَشْتَرِيَ إِدَامًا]

L18379 1154 – Issue –:

١١٥٤ - مَسْأَلَةٌ -:

L18380 If a man swears not to purchase a side dish, then buys whatever—whether meat or other things—from among those with which bread is eaten, intending to use it to eat bread, he breaks his oath—whether he eats with it or not—because he has purchased the side dish. But if he buys it to eat it without bread, he does not break his oath, as it is not considered a side dish in that case.

وَمَنْ حَلَفَ أَنْ لَا يَشْتَرِيَ إِدَامًا فَأَيُّ شَيْءٍ اشْتَرَاهُ مِنْ لَحْمٍ، أَوْ غَيْرِهِ أَيِّ شَيْءٍ كَانَ مِمَّا يُؤْكَلُ بِهِ الْخُبْزُ فَاشْتَرَاهُ لِيَأْكُلَ بِهِ الْخُبْزَ حَنِثَ - أَكَلَ بِهِ أَوْ لَمْ يَأْكُلْ - لِأَنَّهُ قَدْ اشْتَرَى الْإِدَامَ فَلَوْ اشْتَرَاهُ لِيَأْكُلَهُ بِلَا خُبْزٍ لَمْ يَحْنَثْ، لِأَنَّهُ لَيْسَ إِدَامًا حِينَئِذٍ.

L18381 Abu Hanifa said: If someone swears not to eat any condiment (idam) and then eats bread with roasted meat, he does not break his oath. However, if he eats the bread with salt, oil, or anything added to the bread's dough during preparation, he breaks his oath.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ حَلَفَ أَنْ لَا يَأْكُلَ إِدَامًا فَأَكَلَ خُبْزًا بِشِوَاءٍ لَمْ يَحْنَثْ، فَإِنْ أَكَلَهُ بِمِلْحٍ أَوْ بِزَيْتٍ أَوْ بِشَيْءٍ يُصْنَعُ فِيهِ الْخُبْزُ حَنِثَ.

L18382 Ali said: "This is utterly invalid speech, for there exists no evidence for it - neither from Islamic law nor linguistic usage—" Narrated by Ahmad ibn Umar ibn Anas from Ahmad ibn Muhammad al-Balawi (Ghundar) from Khalaf ibn al-Qasim from Abu al-Maymun from Abd al-Rahman ibn Abdullah ibn Umar ibn Rashid from Abu Zur'ah Abd al-Rahman ibn Amr al-Nasri from Umar ibn Hafs ibn Ghiyath from his father from Muhammad ibn Yahya, a trustworthy narrator, from Yazid al-A'war from Yusuf ibn Abdullah ibn Salam, who said: "I saw the Messenger of Allah (peace and blessings be upon him) take a morsel of barley bread, place a date upon it, and declare: 'This [date] is the relish for this bread.'"

قَالَ عَلِيٌّ: وَهَذَا كَلَامٌ فَاسِدٌ جِدًّا لِأَنَّهُ لَا دَلِيلَ عَلَيْهِ لَا مِنْ شَرِيعَةٍ وَلَا لُغَةٍ -: نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَحْمَدُ بْنُ مُحَمَّدٍ الْبَلَوِيُّ غُنْدَرٌ نا خَلَفُ بْنُ الْقَاسِمِ نا أَبُو الْمَيْمُونِ نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ رَاشِدٍ نا أَبُو زُرْعَةَ عَبْدُ الرَّحْمَنِ بْنُ عَمْرٍو النَّصْرِيُّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي عَنْ مُحَمَّدِ بْنِ يَحْيَى ثِقَةٌ عَنْ يَزِيدَ الْأَعْوَرِ عَنْ يُوسُفَ بْنِ عَبْدِ اللَّهِ بْنِ سَلَامٍ قَالَ: «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَذَ كِسْرَةَ خُبْزِ شَعِيرٍ وَوَضَعَ عَلَيْهَا تَمْرَةً وَقَالَ: هَذِهِ إِدَامُ هَذِهِ» .

L18383–18385 Ali said: "The origin of idām (condiment) lies in combining it with bread, for this is more deserving of harmonizing between the two." Thus, any-

قَالَ عَلِيٌّ: وَأَصْلُ الْإِدَامِ الْجَمْعُ بَيْنَهُ وَبَيْنَ الْخُبْزِ، فَذَلِكَ أَحْرَى أَنْ يُؤْدَمَ بَيْنَهُمَا فَكُلُّ شَيْءٍ جُمِعَ إِلَى الْخُبْزِ لِيَسْهُلَ أَكْلُهُ بِهِ فَهُوَ إِدَامٌ.

[58] **Qur'an references (L18376):** Qur'an 19:26 (Maryam); Qur'an 19:29 (Maryam).

thing gathered with bread to facilitate eating it by means of that is idam (an accompaniment to bread).

[مَسْأَلَةٌ حَلَفَ أَنْ يَضْرِبَ غُلَامَهُ عَدَدًا مِنْ الْجَلْدِ أَكْثَرَ مِنْ الْعَشْرِ]

L18386 **A case: He took an oath to strike his slave a number of lashes exceeding ten.**

١١٥٥ - مَسْأَلَةٌ

L18387 Issue 1155

وَمَنْ حَلَفَ أَنْ يَضْرِبَ غُلَامَهُ عَدَدًا مِنْ الْجَلْدِ أَكْثَرَ مِنْ الْعَشْرِ لَمْ يَحِلَّ لَهُ ذَلِكَ، وَيَبَرُّ فِي يَمِينِهِ بِأَنْ يَجْمَعَ ذَلِكَ الْعَدَدَ فَيَضْرِبُهُ ضَرْبَةً وَاحِدَةً -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَّهُ أَخْبَرَهُ عَبْدُ اللَّهِ بْنُ عُبَيْدِ بْنِ عُمَيْرٍ أَنَّهُ رَأَى أَبَاهُ يَتَحَلَّلُ يَمِينَهُ فِي ضَرْبِ نَذْرِهِ بِأَدْنَى ضَرْبٍ؟ فَقَالَ عَطَاءٌ: قَدْ نَزَلَ ذَلِكَ فِي كِتَابِ اللَّهِ تَعَالَى: {وَخُذْ بِيَدِكَ ضِغْثًا فَاضْرِبْ بِهِ وَلا تَحْنَثْ} [ص: ٤٤] .

L18388 And whoever swears to strike his slave a number of lashes exceeding ten, it is not permissible for him to do so. He fulfills his oath by collecting that number and striking him a single strike. It has been reported to us through the chain of Abd al-Razzaq from Ibn Jurayj that Abdullah ibn Ubayd ibn Umayr reported he saw his father expiating his oath concerning the striking he vowed by performing the most minimal striking. Ata said: "This matter is addressed in the Book of Allah, the Exalted: 'Take in your hand a bundle and strike with it, and do not break your oath' [Saad: 44]."[59]

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18389 It is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

وَقَالَ مُجَاهِدٌ، وَاللَّيْثُ، وَمَالِكٌ: لَا يَبَرُّ بِذَلِكَ - وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا.

L18390 Mujāhid, al-Layth, and Mālik said: "That does not count as dutifulness" – and we know of no argument whatsoever for them.

[مَسْأَلَةٌ مَنَّتْ امْرَأَتُهُ عَلَيْهِ فَحَلَفَ أَنْ لَا يَلْبَسَ مِنْ مَالِهَا ثَوْبًا]

L18391 **A jurisprudential issue: His wife reproached him by invoking a favor she had done for him, so he swore never to wear any garment belonging to her.**

١١٥٦ - مَسْأَلَةٌ

L18392 1156. Issue

وَلَا مَعْنَى لِلْبِسَاطِ فِي الْأَيْمَانِ وَلَا لِلْمَنِّ، وَلَوْ مَنَّتْ امْرَأَتُهُ عَلَيْهِ أَوْ غَيْرُهَا بِمَالِهَا فَحَلَفَ أَنْ لَا يَلْبَسَ مِنْ مَالِهَا ثَوْبًا لَمْ يَحْنَثْ إلَّا بِمَا سَمَّى فَقَطْ، وَيَأْكُلُ مِنْ مَالِهَا مَا شَاءَ، وَيَأْخُذُ مَا تُعْطِيهِ، وَلَا يَحْنَثُ بِذَلِكَ، وَيَشْتَرِي بِمَا تُعْطِيهِ مَا يَلْبَسُ وَلَا يَحْنَثُ بِذَلِكَ.

L18393 There is no validity to extravagance in oaths nor to reproachful reminders of favors. If his wife or someone else were to reproachfully remind him of her wealth, and he swore not to wear any clothing from her wealth, he would only break his oath by what he specifically mentioned. He may consume whatever he wishes from her wealth, take what she gives him, and he does not break his oath by doing so. He may purchase with what she gives him whatever he wears, and this too does not break his oath.

[59] **Qur'an references (L18388):** Qur'an 38:44 (Sad).

L18394 Similarly, one who grants another the milk of his sheep as a favor and swears not to drink any of it is permitted to eat the meat of that sheep, its cheese, butter, and curdled milk, for none of these constitutes drinking milk.

وَكَذَلِكَ مَنْ مَنَّ عَلَى آخَرَ بِلَبَنِ شَاتِهِ فَحَلَفَ أَنْ لَا يَشْرَبَ مِنْهُ شَيْئًا، فَلَهُ أَنْ يَأْكُلَ مِنْ لَحْمِ تِلْكَ الشَّاةِ، وَمِنْ جُبْنِهَا، وَمِنْ زُبْدِهَا، وَرَائِبِهَا، لِأَنَّهُ لَيْسَ شَيْءٌ مِنْ ذَلِكَ شُرْبَ لَبَنٍ.

L18395 If she sold that ewe and bought another, he may drink from its milk, and no atonement is required for that. He only breaks his oath by what he swore upon and specifically named.

فَإِنْ بَاعَتْ تِلْكَ الشَّاةَ وَاشْتَرَتْ أُخْرَى كَانَ لَهُ أَنْ يَشْرَبَ مِنْ لَبَنِهَا وَلَا كَفَّارَةَ فِي ذَلِكَ، إِنَّمَا يَحْنَثُ بِمَا حَلَفَ عَلَيْهِ وَسَمَّاهُ فَقَطْ.

L18396 And this is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18397 Malik said: He breaks his oath in all those cases. Then he contradicted himself by stating: If she gifted him a ewe and revoked it by reminding him of the favor, and he swore not to consume any of its milk, then he sold it and used the proceeds to buy a garment and wore it—he breaks his oath. However, he does not break his oath by retaining it in his possession, nor by selling it, nor by settling his debt using its price. This opinion is manifestly invalid, for it holds him accountable for breaking his oath regarding something other than what he swore upon.

وَقَالَ مَالِكٌ: يَحْنَثُ بِكُلِّ ذَلِكَ، ثُمَّ تَنَاقَضَ فَقَالَ: إِنْ وَهَبَتْ لَهُ شَاةً ثُمَّ مَنَّتْ بِهَا عَلَيْهِ فَحَلَفَ أَنْ لَا يَأْكُلَ مِنْ لَبَنِهَا شَيْئًا فَبَاعَهَا وَابْتَاعَ بِثَمَنِهَا ثَوْبًا لَبِسَهُ فَإِنَّهُ يَحْنَثُ - وَلَا يَحْنَثُ بِإِمْسَاكِهَا فِي مِلْكِهِ وَلَا بِبَيْعِهَا وَقَضَاءُ دَيْنِهِ مِنْ ثَمَنِهَا - وَهَذَا قَوْلٌ ظَاهِرُ الْفَسَادِ، لِأَنَّهُ أَحْنَثَهُ بِغَيْرِ مَا حَلَفَ عَلَيْهِ.

L18398–18400 Some of them fabricated by claiming that the mention of what was narrated by us through the chain of Ḥammād ibn Salamah from ʿAlī ibn Zayd ibn Judʿān from ʿAlī ibn al-Ḥusayn: “Abū Lubābah tied himself to a pillar and said: I will not untie myself [until God forgives me].” Until the Messenger of Allah (peace and blessings be upon him) dissolves my vow, or my repentance is accepted. Then Fāṭimah came to annul it, but he refused unless the Messenger of Allah (peace and blessings be upon him) dissolved it. He (peace be upon him) said: “Verily, Fāṭimah is a part of me.” This is invalid because it is a mursal narration. Then it is narrated from ʿAlī ibn Zayd (who is weak in reliability).

وَمَوَّهَ بَعْضُهُمْ بِأَنَّ ذِكْرَ مَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَلِيِّ بْنِ زَيْدِ بْنِ جُدْعَانَ عَنْ عَلِيِّ بْنِ الْحُسَيْنِ: «أَنَّ أَبَا لُبَابَةَ رَبَطَ نَفْسَهُ إِلَى سَارِيَةٍ وَقَالَ: لَا أَحُلُّ نَفْسِي حَتَّى يَحُلَّنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ تَنْزِلَ تَوْبَتِي، فَجَاءَتْ فَاطِمَةُ تَحُلُّهُ فَأَبَى إِلَّا أَنْ يَحُلَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: إِنَّ فَاطِمَةَ بِضْعَةٌ مِنِّي» فَهَذَا لَا يَصِحُّ، لِأَنَّهُ مُرْسَلٌ - ثُمَّ عَنْ عَلِيِّ بْنِ زَيْدٍ وَهُوَ ضَعِيفٌ.

L18401 Furthermore, if this were sound, they would be contradicting what is stated therein, because they unanimously agree that if someone swore to strike Zayd but struck Zayd’s son instead, he does not break his oath.

ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لِمَا فِيهِ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِيمَنْ حَلَفَ أَنْ يَضْرِبَ زَيْدًا فَضَرَبَ وَلَدَ زَيْدٍ أَنَّهُ لَا يَحْنَثُ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا حِينًا فَبَقِيَ طَرْفَةَ عَيْنٍ ثُمَّ فَعَلَهُ]

١١٥٧ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَفْعَلَ أَمْرًا كَذَا حِينًا أَوْ دَهْرًا أَوْ زَمَانًا أَوْ مُدَّةً أَوْ بُرْهَةً أَوْ وَقْتًا، أَوْ ذَكَرَ كُلَّ ذَلِكَ بِالْأَلِفِ وَاللَّامِ - أَوْ قَالَ مَلِيًّا، أَوْ قَالَ: عُمْرًا، أَوْ الْعُمْرَ، فَبَقِيَ مِقْدَارَ طَرْفَةِ عَيْنٍ لَمْ يَفْعَلْهُ، ثُمَّ فَعَلَهُ، فَلَا حِنْثَ عَلَيْهِ، لِأَنَّ كُلَّ جُزْءٍ مِنْ الزَّمَانِ زَمَانٌ، وَدَهْرٌ، وَحِينٌ، وَوَقْتٌ، وَبُرْهَةٌ، وَمُدَّةٌ.

وَقَدْ اخْتَلَفَ السَّلَفُ فِي الْحِينِ -: فَقَالَتْ طَائِفَةٌ: الْحِينُ سَنَةٌ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يَقُولُ: أَرَى الْحِينَ سَنَةً.

وَقَدْ رُوِيَ مِنْ طَرِيقِ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ: الْحِينُ سَنَةٌ.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، قَالَا جَمِيعًا: الْحِينُ سَنَةٌ - وَعَنْ عِكْرِمَةَ مِثْلُهُ.

وَهُوَ قَوْلُ مَالِكٍ، قَالَ: إلَّا أَنْ يَنْوِيَ غَيْرَ ذَلِكَ فَلَهُ مَا نَوَى.

وَذَهَبَتْ طَائِفَةٌ إلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ أَنَّهُ سُئِلَ فِي رَجُلٍ حَلَفَ عَلَى امْرَأَتِهِ: أَنْ لَا تَفْعَلَ فِعْلًا مَا إلَى حِينٍ؟ فَقَالَ: أَيُّ الْأَحْيَانِ أَرَدْت؟ فَإِنَّ الْأَحْيَانَ ثَلَاثَةٌ -: قَالَ اللَّهُ عَزَّ وَجَلَّ: {تُؤْتِي

[A case where one swore not to perform a specific act for a time, then did it when only a blink of an eye remained of that period.]

1157 – Issue

Whoever swears not to perform a specific matter for a period (ḥīn), an eternity (dahr), a time (zamān), a duration (muddah), a span (burhah), or a term (waqt)—or mentions all such terms with the definite article—or states "a full period" (maliyyan), "a lifetime" (ʿumran), or "the lifetime" (al-ʿumr), and remains not doing it for even the blink of an eye, then performs it, incurs no sin for oath-breaking. This is because every portion of time is considered a time (zamān), an eternity (dahr), a period (ḥīn), a term (waqt), a span (burhah), and a duration (muddah).

The Salaf differed regarding the term *al-ḥīn*—a group said: "*Al-ḥīn* is a year." We are narrated through the chain of Ibn Wahb from al-Layth ibn Saʿd that ʿAlī ibn Abī Ṭālib said: "I maintain *al-ḥīn* is a year."

It has been narrated through the chain of ʿAṭāʾ ibn al-Sāʾib, from Saʿīd ibn Jubayr, from Ibn ʿAbbās: "Al-Ḥīn is a year."

And from the narration of Shuʿbah from al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān, both of whom said together: "'*al-ḥīn* is a year,'" and the same is reported from ʿIkrimah.

This is the view of Mālik, who said: "Unless he intends otherwise, he has what he intended."

A group held the view based on what we narrated through the chain of Muḥammad ibn al-Muthannā from Muḥammad ibn ʿAbdullāh al-Anṣārī from Muḥammad ibn ʿAlī ibn al-Ḥusayn, who was asked about a man who swore an oath concerning his wife that she would not perform a specific action until a period. He replied: "Which of the periods did you intend? For periods are three." He said: Allāh the Exalted and Majestic states, *"'It yields its fruit every period by its Lord's permission'"* [Ibrāhīm 14:25] – this refers to

every six months. And His statement, *"He will surely imprison him until a period"* [Yūsuf 12:35] – that is thirteen years.[60]

L18410–18411 And you will surely come to know its news after a time [38:88]. That is until the Day of Resurrection.[61]

L18412 A group held the opinion based on what we narrated through the chain from Ismāʿīl ibn Isḥāq, from Muḥammad ibn ʿUbayd, from Muḥammad ibn Thawr, from Maʿmar, who said that al-Ḥasan al-Baṣrī stated regarding the verse, "It yields its fruit every season" [Ibrāhīm 14:25], that "season" refers to a period between six to nine months. Another group adhered to what we narrated through the chain of Muḥammad ibn al-Muthannā, narrated to us by al-Mughīrah ibn Salamah ibn Hishām al-Makhzūmī, narrated to us by Wuhaib ibn Khālid, narrated to us by Ibn Ḥarmalah: A man asked Saʿīd ibn al-Musayyib about his oath that his wife would not visit her family for a "season." Saʿīd replied, "A season is the period from when palm trees bloom until they produce ripe dates, as stated in 'It yields its fruit every season' [Ibrāhīm 14:25]."[62]

L18413 A group held the view of what was narrated to us through the chain of Ismāʿīl ibn Isḥāq on the authority of Muḥammad ibn ʿUbayd on the authority of Muḥammad ibn Thawr on the authority of Maʿmar on the authority of Qaṭādah regarding {It yields its produce every season} [Ibrahim 14:25]. He said: Its fruit is eaten in winter and summer.[63]

L18414 A group held the opinion reported through Yaḥyā ibn Saʿīd al-Qaṭṭān's transmission from Sufyān al-Thawrī, who said: "Ṭāriq ibn ʿAbd al-Raḥmān narrated to me from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who stated: '*Al-ḥīn* is six months.'" This is also the independently held view of Saʿīd ibn Jubayr and al-Shaʿbī.

أُكُلَهَا كُلَّ حِينٍ بِإِذْنِ رَبِّهَا} [إبراهيم: ٢٥] . كُلُّ سِتَّةِ أَشْهُرٍ. وقَوْله تَعَالَى: {لَيَسْجُنُنَّهُ حَتَّى حِينٍ} [يوسف: ٣٥] فَذَلِكَ ثَلَاثَةَ عَشَرَ عَامًا.

وقَوْله تَعَالَى: {وَلَتَعْلَمُنَّ نَبَأَهُ بَعْدَ حِينٍ} [ص: ٨٨] فَذَلِكَ إِلَى يَوْمِ الْقِيَامَةِ.

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ ثَوْرٍ عَنْ مَعْمَرٍ قَالَ الْحَسَنُ الْبَصْرِيُّ: {تُؤْتِي أُكُلَهَا كُلَّ حِينٍ} [إبراهيم: ٢٥] مَا بَيْنَ سِتَّةِ أَشْهُرٍ إِلَى تِسْعَةِ أَشْهُرٍ، وَذَهَبَ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا الْمُغِيرَةُ بْنُ سَلَمَةَ بْنِ هِشَامٍ الْمَخْزُومِيُّ نا وُهَيْبُ بْنُ خَالِدٍ نا ابْنُ حَرْمَلَةَ: أَنَّ رَجُلًا سَأَلَ سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ يَمِينِهِ أَنْ لَا تَدْخُلَ امْرَأَتُهُ عَلَى أَهْلِهَا حِينًا؟ فَقَالَ سَعِيدٌ، الْحِينُ مَا بَيْنَ أَنْ تَطْلُعَ النَّخْلُ إِلَى أَنْ تُرَطِّبَ {تُؤْتِي أُكُلَهَا كُلَّ حِينٍ} [إبراهيم: ٢٥]

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: {تُؤْتِي أُكُلَهَا كُلَّ حِينٍ} [إبراهيم: ٢٥] قَالَ: تُؤْكَلُ ثَمَرَتُهَا فِي الشِّتَاءِ وَالصَّيْفِ.

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ حَدَّثَنِي طَارِقُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ " الْحِينُ سِتَّةُ أَشْهُرٍ " وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ، وَالشَّعْبِيِّ.

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا يَزِيدُ بْنُ هَارُونَ أَنَا هِشَامٌ هُوَ ابْنُ حَسَّانٍ - عَنْ عِكْرِمَةَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ سَأَلَهُمْ عَمَّنْ قَالَ: لَا أَفْعَلُ أَمْرًا كَذَا

[60] **Qur'an references (L18409):** Qur'an 14:25 (Ibrahim); Qur'an 12:35 (Yusuf).
[61] **Qur'an references (L18411):** Qur'an 38:88 (Sad).
[62] **Qur'an references (L18412):** Qur'an 14:25 (Ibrahim).
[63] **Qur'an references (L18413):** Qur'an 14:25 (Ibrahim).

L18415 A group held the view transmitted to us through the chain of Muḥammad ibn al-Muthannā, who reported from Yazīd ibn Hārūn, who reported from Hishām—that is, Ibn Ḥassān—from ʿIkrimah, that ʿUmar ibn ʿAbd al-ʿAzīz—asked them about someone who declared, "I will not perform such-and-such an action for a period." ʿIkrimah responded: "Some periods are within reach, others are not. The unattainable [period] is as in His words, the Almighty: {And We granted them enjoyment for a period} [Yūnus: 98]. The attainable [period] is as in His words, the Exalted: {It yields its fruit every season} [Ibrāhīm: 25]." He explained it as the duration from when the tree bears fruit until its harvest—six months. ʿUmar ibn ʿAbd al-ʿAzīz found this convincing.[64]

حِينًا؟ فَقَالَ لَهُ عِكْرِمَةُ: إِنَّ مِنْ الْحِينِ مَا يُدْرَكُ وَمَا لَا يُدْرَكُ -: فَالَّذِي لَا يُدْرَكُ قَوْلُهُ عَزَّ وَجَلَّ: {وَمَتَّعْنَاهُمْ إِلَى حِينٍ} [يونس: ٩٨] . وَالَّذِي يُدْرَكُ قَوْله تَعَالَى: {تُؤْتِي أُكُلَهَا كُلَّ حِينٍ} [إبراهيم: ٢٥] فَأَرَاهُ مِنْ حِينِ تُثْمِرُ إلَى حِينِ تُصْرَمُ سِتَّةَ أَشْهُرٍ. فَأَعْجَبَ ذَلِكَ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ -.

L18416 And according to this view, Abu Hanifah, Al-Awza'i, and Abu ʿUbayd say.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ، وَأَبُو عُبَيْدٍ.

L18417 And Abū Ḥanīfah said: unless he intends any duration, then it is according to what he intended.

وَقَالَ أَبُو حَنِيفَةَ: إِلَّا أَنْ يَنْوِيَ مُدَّةً مَا فَلَهُ مَا نَوَى.

L18418 A group held the opinion—as narrated through the chain of Muḥammad ibn al-Muthannā, who narrated from Yazīd ibn Hārūn, from Muḥammad ibn Muslim al-Ṭā'ifī, from Ibrāhīm ibn Maysarah, from Saʿīd ibn al-Musayyab—who said: "The designated time is two months; the palm tree sprouts throughout the entire year except for two months."

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا يَزِيدُ بْنُ هَارُونَ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ الطَّائِفِيِّ عَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: الْحِينُ شَهْرَانِ، النَّخْلَةُ تَطْلُعُ السَّنَةَ كُلَّهَا إلَّا شَهْرَيْنِ.

L18419–18420 A group held the opinion as per what we have narrated through the chain of Muḥammad ibn al-Muthannā - who narrated by Abū Muʿāwiyah al-Ḍarīr, who narrated from al-Aʿmash, from Abī Ẓabyān, from Ibn ʿAbbās - who stated: "Al-ḥīn may indeed denote early morning and late afternoon." This is the view of al-Shāfiʿī and Abū Sulaymān (al-Khaṭṭābī).

وَذَهَبَتْ طَائِفَةٌ إِلَى مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا أَبُو مُعَاوِيَةَ الضَّرِيرُ نا الْأَعْمَشُ عَنْ أَبِي ظَبْيَانَ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْحِينُ قَدْ يَكُونُ غُدْوَةً وَعَشِيَّةً - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18421 It was reported to us via Waki''s chain of transmission from Abū Jaʿfar from Ṭāwūs, who said: The period is two months.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي جَعْفَرٍ عَنْ طَاوُوسٍ قَالَ: الزَّمَانُ شَهْرَانِ.

L18422 Abū Muḥammad said: The reference in matters of dispute is the speech of Allāh, the Exalted, and the speech of His Messenger—may Allāh's blessings and peace be upon him. We found that the Exalted has said: {Has there not come upon man a period of time when he was not a thing worth mentioning?}

قَالَ أَبُو مُحَمَّدٍ: الْمَرْجُوعُ إلَيْهِ عِنْدَ التَّنَازُعِ كَلَامُ اللَّهِ تَعَالَى: وَكَلَامُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدْنَاهُ تَعَالَى قَدْ قَالَ: {هَلْ أَتَى عَلَى الْإِنْسَانِ حِينٌ مِنَ الدَّهْرِ لَمْ يَكُنْ شَيْئًا

[64] **Qur'an references (L18415):** Qur'an 10:98 (Yunus); Qur'an 14:25 (Ibrahim).

[Al-Insān: 1]. This refers to the duration from when Allāh, the Mighty and Majestic, established the origin of creation until the creation of Adam, peace be upon him, and His breathing life into Adam's descendants, and until the time of the blowing of the soul into each one of us.[65]

L18423 And He, the Exalted, said: "And you will surely know its tidings in time" [38:88]. This is until the Day of Resurrection.[66]

L18424 And the Most High said: *"And We granted them enjoyment for an appointed term"* (10:98). Therefore, this refers to the human lifespan until death.[67]

L18425 And they said: "He will surely imprison him for a time." [Yusuf 35][68]

L18426 And He, the Exalted, said: {So he remained in prison for several years} [Surah Yusuf (12:42)]. The term "several" (بِضْع) specifically denotes a range between three and nine years.[69]

L18427 Allah the Exalted said: {So glorify Allah in the evening and in the morning} [Ar-Rum: 17] {And to Him is praise in the heavens and the earth, and in the late afternoon and at noon} [Ar-Rum: 18]. Thus, Allah the Exalted named the evening as a time, the morning as a time, and noon as a time.[70]

L18428 Thus, what we have mentioned stands confirmed, and invalid is the claim of whoever prescribes a punishment as a punishment less than the prescribed punishment.

L18429 We found their argument using the date palm to be against them, not in their favor, for we observe its spadix becoming moist, its unripe dates developing into spadix, its young dates turning unripe, and its blossoms forming into

مَذْكُورًا} [الإنسان: ١] فَهَذَا مُذْ خَلَقَ اللَّهُ عَزَّ وَجَلَّ مَبْدَأَ الْعَالَمِ إِلَى خَلْقِ آدَمَ - عَلَيْهِ السَّلَامُ -، وَنَسَمَ بَنِيهِ، وَإِلَى وَقْتِ نَفْخِ الرُّوحِ فِي كُلِّ وَاحِدٍ مِنَّا.

وَقَالَ تَعَالَى: {وَلَتَعْلَمُنَّ نَبَأَهُ بَعْدَ حِينٍ} [ص: ٨٨] فَهَذَا إِلَى يَوْمِ الْقِيَامَةِ.

وَقَالَ تَعَالَى: {وَمَتَّعْنَاهُمْ إِلَى حِينٍ} [يونس: ٩٨] فَهَذَا مُدَّةُ عُمْرِ الْإِنْسَانِ إِلَى أَنْ يَمُوتَ.

وَقَالَ تَعَالَى: {لَيَسْجُنُنَّهُ حَتَّى حِينٍ} [يوسف: ٣٥] .

وَقَالَ تَعَالَى: {فَلَبِثَ فِي السِّجْنِ بِضْعَ سِنِينَ} [يوسف: ٤٢] وَالْبِضْعُ مَا بَيْنَ الثَّلَاثِ إِلَى التِّسْعِ.

وَقَالَ اللَّهُ تَعَالَى: {فَسُبْحَانَ اللَّهِ حِينَ تُمْسُونَ وَحِينَ تُصْبِحُونَ} [الروم: ١٧] {وَلَهُ الْحَمْدُ فِي السَّمَاوَاتِ وَالْأَرْضِ وَعَشِيًّا وَحِينَ تُظْهِرُونَ} [الروم: ١٨] فَسَمَّى اللَّهُ تَعَالَى الْمَسَاءَ حِينًا، وَالْإِصْبَاحَ حِينًا، وَالظَّهِيرَةَ حِينًا.

فَصَحَّ بِذَلِكَ مَا ذَكَرْنَاهُ، وَبَطَلَ قَوْلُ مَنْ حَدَّ حَدًّا دُونَ حَدٍّ.

وَوَجَدْنَا احْتِجَاجَهُمْ بِالنَّخْلَةِ عَلَيْهِمْ لَا لَهُمْ، لِأَنَّنَا نُشَاهِدُهَا يَرْطُبُ مِنْهَا مَا كَانَ زَهْوًا، وَيُزْهِي مَا كَانَ بُسْرًا، وَيُبْسِرُ مِنْهَا مَا كَانَ بَلَحًا، وَيُبْلِحُ مِنْهَا مَا كَانَ طَلْعًا، فَفِي كُلِّ سَاعَةٍ تُؤْتِي أُكُلَهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[65] **Qur'an references (L18422):** Qur'an 76:1 (Al-Insan).
[66] **Qur'an references (L18423):** Qur'an 38:88 (Sad).
[67] **Qur'an references (L18424):** Qur'an 10:98 (Yunus).
[68] **Qur'an references (L18425):** Qur'an 12:35 (Yusuf).
[69] **Qur'an references (L18426):** Qur'an 12:42 (Yusuf).
[70] **Qur'an references (L18427):** Qur'an 30:17 (Ar-Rum); Qur'an 30:18 (Ar-Rum).

young dates. Thus, at every moment it produces its fruit—and with Allah, the Exalted, is all success.

L18430 And Abu Hanifah has grave errors here. Among these is his claim: Whoever swears not to speak to so-and-so for "a period," "the period," "a while," "the while," "a prolonged period," or "a long time," then the entire period [of the oath] is six months, unless he intends a specific duration—in which case his oath is based on what he intended. It is also narrated from him regarding his statement "a prolonged period" that it signifies one month.

L18431–18432 If someone swears not to speak to him for a *dahr* (a contested duration), Abū Ḥanīfa said, "I do not know what *dahr* means." Abū Yūsuf and Muḥammad said, "It is six months."

L18433 If he says, "I will not speak to him for a lifetime," Abū Yūsuf said: "This is binding for eternity."

L18434 Muḥammad ibn al-Ḥasan said: "Six months."

L18435 If he swears not to speak to him until a prolonged period, then that period is defined as more than a month.

L18436 Abu Yusuf said, "A month and a day. If one swears not to speak to him until a near term, then it is less than a month."

L18437 If someone swears not to speak to another for a lifetime [ʿumran, technically one year], Abū Yūsuf said: six months. And it is narrated from him that [the duration is] one [year], unless the swearer specifies a [different] period, in which case his specification applies.

L18438 **A juristic issue: He swore not to speak to him for days.**

L18439 1158: Legal Case

L18440 If he swears not to speak to someone for an extended period, this refers to what exceeds the minimum duration. If he swears not to speak to him for days, weeks, months, or years—or specifies any of these terms using the definite article "al-" (the)—then each is considered a minimum of three units.

وَلِأَبِي حَنِيفَةَ هُنَا تَخَالِيطُ عَظِيمَةٌ -: مِنْهَا - أَنَّهُ قَالَ: مَنْ حَلَفَ أَنْ لَا يُكَلِّمَ فُلَانًا زَمَانًا، أَوْ الزَّمَانَ، أَوْ حِينًا أَوْ الْحِينَ، أَوْ مَلِيًّا، أَوْ طَوِيلًا، فَهُوَ كُلُّهُ سِتَّةُ أَشْهُرٍ، إلَّا أَنْ يَنْوِيَ مُدَّةً مَا فَلَهُ مَا نَوَى - وَرُوِيَ عَنْهُ أَيْضًا فِي قَوْلِهِ مَلِيًّا: أَنَّهُ شَهْرٌ وَاحِدٌ.

فَإِنْ حَلَفَ لَا يُكَلِّمُهُ دَهْرًا؟ قَالَ أَبُو حَنِيفَةَ: لَا أَدْرِي مَا الدَّهْرُ؟ وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: هُوَ سِتَّةُ أَشْهُرٍ.

فَإِنْ قَالَ: لَا أُكَلِّمُهُ الدَّهْرَ؟ قَالَ أَبُو يُوسُفَ: هُوَ عَلَى الْأَبَدِ.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: سِتَّةُ أَشْهُرٍ.

فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ إلَى بَعِيدٍ - فَهُوَ أَكْثَرُ مِنْ شَهْرٍ.

قَالَ أَبُو يُوسُفَ شَهْرٌ وَيَوْمٌ: فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ إلَى قَرِيبٍ، فَهُوَ أَقَلُّ مِنْ شَهْرٍ.

فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ عُمْرًا فَإِنَّ أَبَا يُوسُفَ قَالَ: سِتَّةُ أَشْهُرٍ - وَرُوِيَ عَنْهُ أَنَّهُ وَاحِدٌ إلَّا أَنْ يَنْوِيَ مُدَّةً مَا فَلَهُ مَا نَوَى.

[مَسْأَلَةُ حَلَفَ أَنْ لَا يُكَلِّمَهُ أَيَّامًا]

١١٥٨ - مَسْأَلَةٌ

He does not violate his oath if the period exceeds three, because the plural form is used, and the minimum plural is three, which is anything beyond two.

فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ طَوِيلًا، فَهُوَ مَا زَادَ عَلَى أَقَلِّ الْمُدَدِ، فَإِنْ حَلَفَ أَنْ لَا يُكَلِّمَهُ أَيَّامًا أَوْ جُمَعًا أَوْ شُهُورًا أَوْ سِنِينَ، أَوْ ذَكَرَ - كُلَّ ذَلِكَ بِالْأَلِفِ وَاللَّامِ - فَكُلُّ ذَلِكَ عَلَى ثَلَاثَةٍ، وَلَا يَحْنَثُ فِيمَا زَادَ، لِأَنَّهُ الْجَمْعُ، وَأَقَلُّ الْجَمْعِ ثَلَاثَةٌ، وَهُوَ مَا زَادَ عَلَى التَّثْنِيَةِ.

L18441 He, the Exalted, said: "But if they are females, more than two" [Quran 4:11].[71]

قَالَ تَعَالَى: {فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ} [النساء: ١١] .

L18442 If he says regarding all of that—"numerous," then it amounts to four [categories], because "numerous" is only defined in relation to what is less than it. It is impermissible for anyone to break an oath except with certainty that leaves no room for doubt—and success is from Allah, the Exalted.

فَإِنْ قَالَ فِي كُلِّ ذَلِكَ -: كَثِيرَةٌ، فَهِيَ عَلَى أَرْبَعٍ، لِأَنَّهُ لَا " كَثِيرَ " إِلَّا بِالْإِضَافَةِ إِلَى مَا هُوَ أَقَلُّ مِنْهُ، وَلَا يَجُوزُ أَنْ يَحْنَثَ أَحَدٌ إِلَّا بِيَقِينٍ لَا مَجَالَ لِلشَّكِّ فِيهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَلَّا يُسَاكِنَ مَنْ كَانَ سَاكِنًا مَعَهُ]

Legal Issue: He swore not to co-reside with someone who had been living with him.

L18443

١١٥٩ - مَسْأَلَةٌ

L18444 1159 - Issue

وَمَنْ حَلَفَ أَلَّا يُسَاكِنَ مَنْ كَانَ سَاكِنًا مَعَهُ مِنْ امْرَأَتِهِ أَوْ قَرِيبِهِ أَوْ أَجْنَبِيٍّ فَلْيُفَارِقْ الَّتِي هُوَ فِيهَا إلَى غَيْرِهَا، وَلَا يَحْنَثُ.

L18445 Whoever swears not to reside with someone sharing his dwelling—whether that person is his wife, relative, or non-relative—must leave the dwelling he is in for another, and he does not break his oath.

فَإِنْ أَقَامَ مُدَّةً يُمْكِنُهُ فِيهَا أَنْ لَا يُسَاكِنَهُ فَلَمْ يُفَارِقْهُ حَنِثَ - فَإِنْ رَحَلَ كَمَا ذَكَرْنَا مُدَّةً - قَلَّتْ - أَوْ كَثُرَتْ ثُمَّ رَجَعَ لَمْ يَحْنَثْ.

L18446 If he resides for a period during which it is possible to avoid cohabiting with the other party, yet does not leave them, he breaks his oath. If he leaves, as we mentioned, for a period—whether short or long—and then returns, he does not break his oath.

وَتَفْسِيرُ ذَلِكَ -: إنْ كَانَا فِي بَيْتٍ وَاحِدٍ أَنْ يَرْحَلَ أَحَدُهُمَا إلَى بَيْتٍ آخَرَ مِنْ تِلْكَ الدَّارِ أَوْ غَيْرِهَا، وَإِنْ كَانَا فِي دَارٍ وَاحِدَةٍ رَحَلَ أَحَدُهُمَا إلَى أُخْرَى مُتَّصِلَةٍ بِهَا أَوْ مُتَنَابِذَةٍ أَوْ اقْتَسَمَا الدَّارَ - وَإِنْ كَانَا فِي مَحَلَّةٍ وَاحِدَةٍ رَحَلَ أَحَدُهُمَا إلَى أُخْرَى - وَإِنْ كَانَا فِي مَدِينَةٍ وَاحِدَةٍ أَوْ قَرْيَةٍ وَاحِدَةٍ خَرَجَ أَحَدُهُمَا عَنْ دُورِ الْقَرْيَةِ أَوْ دُورِ الْمَدِينَةِ لَمْ يَحْنَثْ، وَإِنْ

L18447–18449 The explanation of this is: If they are in one dwelling, and one of them moves to another dwelling within that compound or elsewhere; if they are in one compound, and one of them moves to another dwelling connected to it or separated from it, or they divide the compound; if they are in one neighborhood, and one of them moves to another; if they are in one city or village, and one of them departs beyond the bounds of the village or city – they do not break the oath. If one of them moves physically while leaving

[71] **Qur'an references (L18441):** Qur'an 4:11 (An-Nisa).

رَحَلَ أَحَدُهُمَا بِجِسْمِهِ وَتَرَكَ أَهْلَهُ وَمَالَهُ وَوَلَدَهُ لَمْ يَحْنَثْ، إِلَّا أَنْ يَكُونَ لَهُ نِيَّةٌ تُطَابِقُ قَوْلَهُ فَلَهُ مَا نَوَى. وَهَذَا كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

his family, wealth, and children behind, they do not break the oath, unless he holds an intention corresponding to his statement – then he has what... He intended, and all of this is the opinion of Abu Hanifah, Al-Shafi'i, and Abu Sulayman.

وَكُلُّ مَا ذَكَرْنَا مُسَاكَنَةً وَغَيْرُ مُسَاكَنَةٍ، فَإِنْ فَارَقَ تِلْكَ الْحَالَ فَقَدْ فَارَقَ مُسَاكَنَتَهُ وَقَدْ بَرَّ، وَلَا يَقْدِرُ أَحَدٌ عَلَى أَكْثَرَ، لِأَنَّ النَّاسَ مَسَاكِنُ بَعْضُهُمْ لِبَعْضٍ فِي سَاحَةِ الْأَرْضِ، وَفِي الْعَالَمِ، قَالَ تَعَالَى: {وَلَهُ مَا سَكَنَ فِي اللَّيْلِ وَالنَّهَارِ} [الأنعام: ١٣] .

L18450 Everything we have mentioned—whether cohabitation or its absence—if one abandons that condition, he has indeed abandoned cohabitation and fulfilled his obligation. None can achieve beyond this, for people coexist as dwellings for one another throughout the earth and the world. The Exalted said: *"To Him belongs whatever rests in the night and the day"* [Al-An'ām 6:13].[72]

وَقَدْ افْتَرَضَ اللَّهُ عَزَّ وَجَلَّ عَلَى الْمُهَاجِرِينَ الرِّحْلَةَ عَنْ مَكَّةَ وَدَارِ الْكُفْرِ إِلَى الْمَدِينَةِ فَكَانَ مَنْ خَرَجَ مِنْهُمْ بِنَفْسِهِ قَدْ أَدَّى مَا عَلَيْهِ وَفَارَقَ وَطَنَ الْكُفْرِ وَأَكْثَرُهُمْ تَرَكَ أَهْلَهُ، وَوَلَدَهُ وَمَالَهُ بِمَكَّةَ، وَفِي دَارِ قَوْمِهِ فَلَمْ يُخْرِجْهُمْ ذَلِكَ عَنْ الْهِجْرَةِ وَمُفَارَقَةِ الْكُفَّارِ.

L18451 Allah, the Mighty and Majestic, decreed as a duty upon the emigrants to journey from Mecca—the abode of disbelief—to Medina. Thus, whoever among them departed by themselves had fulfilled what was incumbent upon them and abandoned the homeland of disbelief. Most of them left their families, children, and wealth in Mecca and in the dwelling of their people. Yet this did not exempt them from the obligation of migration or severance from the disbelievers.

وَقَالَ مَالِكٌ: يَحْنَثُ حَتَّى يَرْحَلَ بِأَكْثَرِ رَحِيلِهِ - وَهَذَا خَطَأٌ لِمَا ذَكَرْنَا، وَلِأَنَّهُ قَوْلٌ بِلَا دَلِيلٍ.

L18452 Mālik said: He does not violate his oath until he departs with the majority of his departure. This is incorrect due to what we have mentioned, and because it is an opinion without textual evidence.

وَاحْتَجَّ بَعْضُ مُقَلِّدِيهِ بِمَا رُوِيَ: «الْمَرْءُ مَعَ رَحْلِهِ» وَهَذَا لَا يُسْنَدُ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُرْوَ أَنَّهُ قَالَ إِلَّا فِي رَحْلِ نَاقَتِهِ فَقَطْ لَا فِي رَحِيلِ مَنْزِلِهِ، بَلْ تَرَكَهُ بِمَكَّةَ بِلَا شَكٍّ، وَلَمْ يَخْرُجْ إِلَّا بِجِسْمِهِ.

L18453 Some of his followers cited as evidence the report: "A person remains with his mount." This lacks a reliable chain of transmission. Even if it were authentic, it would argue against their position, for the Prophet (peace and blessings of Allah be upon him) is only reported to have said this in reference to his she-camel's mount—not regarding the departure from his residence. Indeed, he undoubtedly left his mount in Mecca and departed only with his physical self.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ طَعَامًا اشْتَرَاهُ زَيْدٌ]

A jurisprudential case: He swore that he would not eat any food purchased by Zayd.

١١٦٠ - مَسْأَلَةٌ

L18454 1160 – Question

[72] **Qur'an references (L18450):** Qur'an 6:13 (Al-An'am).

Whoever swears not to eat food purchased by Zayd, then eats food purchased jointly by Zayd and another man, does not violate his oath.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ طَعَامًا اشْتَرَاهُ زَيْدٌ فَأَكَلَ طَعَامًا اشْتَرَاهُ زَيْدٌ وَآخَرُ مَعَهُ لَمْ يَحْنَثْ.

Similarly, if one swears not to enter Zayd's house and then enters a house occupied solely by Zayd, or a house co-owned by Zayd and another person, he does not violate his oath unless he intended to enter a house inhabited by Zayd—in which case he does violate it. This is because oaths depend on the linguistic conventions recognized by speakers of that language in their ordinary speech when swearing, and he swore only according to that understanding. Food jointly purchased by Zayd and Khalid is not ascribed to Zayd alone, nor is a jointly owned house ascribed to any of its owners.

وَكَذَلِكَ لَوْ حَلَفَ أَنْ لَا يَدْخُلَ دَارَ زَيْدٍ فَدَخَلَ دَارًا يُسْكِنُهَا زَيْدٌ بَكْرًا [وَكَذَلِكَ] دَارًا بَيْنَ زَيْدٍ وَغَيْرِهِ لَمْ يَحْنَثْ إِلَّا أَنْ يَنْوِيَ دَارًا يَسْكُنُهَا زَيْدٌ فَيَحْنَثَ، لِأَنَّ الْمَنْظُورَ إِلَيْهِ فِي الْأَيْمَانِ مَا تَعَارَفَهُ أَهْلُ تِلْكَ اللُّغَةِ فِي كَلَامِهِمْ الَّذِي بِهِ حَلَفَ، وَعَلَيْهِ حَلَفَ فَقَطْ - وَلَا يُطْلَقُ عَلَى طَعَامٍ اشْتَرَاهُ زَيْدٌ وَخَالِدٌ أَنَّهُ اشْتَرَاهُ زَيْدٌ، وَلَا عَلَى دَارٍ مُشْتَرَكَةٍ أَنَّهَا لِأَحَدِ مَنْ هِيَ لَهُ.

A legal issue: A man swore not to gift ten dinars to anyone, then he gifted someone more than that amount.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَهَبَ لِأَحَدٍ عَشْرَةَ دَنَانِيرَ فَوَهَبَ لَهُ أَكْثَرَ]

Issue 1161: If someone swears an oath not to give anyone ten dinars, but then gives him more, he breaks his oath. However, if he intends only the specific number he named, he does not break his oath.

١١٦١ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَنْ لَا يَهَبَ لِأَحَدٍ عَشْرَةَ دَنَانِيرَ فَوَهَبَ لَهُ أَكْثَرَ حَنِثَ، إِلَّا أَنْ يَنْوِيَ الْعَدَدَ الَّذِي سَمَّى فَقَطْ فَلَا يَحْنَثُ.

A case where he swore that he and so-and-so would not be under the same roof.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَجْمَعَهُ مَعَ فُلَانٍ سَقْفٌ]

1162 – Issue

١١٦٢ - مَسْأَلَةٌ

Whoever swears not to share a roof with someone, then enters a house and finds him there without having known upon entering that he was present, does not break the oath. However, he must leave immediately. If he does not, he breaks the oath—because of what we mentioned earlier—since the breaking of an oath only occurs when one intentionally seeks it and is aware of it.

وَمَنْ حَلَفَ أَنْ لَا يَجْمَعَهُ مَعَ فُلَانٍ سَقْفٌ فَدَخَلَ بَيْتًا فَوَجَدَهُ فِيهِ وَلَمْ يَكُنْ عَرَفَ إِذْ دَخَلَ أَنَّهُ فِيهِ لَمْ يَحْنَثْ، لَكِنْ لِيَخْرُجْ مِنْ وَقْتِهِ فَإِنْ لَمْ يَفْعَلْ حَنِثَ لِمَا ذَكَرْنَا قَبْلُ مِنْ أَنَّ الْحِنْثَ لَا يَلْحَقُ إِلَّا قَاصِدًا إِلَيْهِ، عَالِمًا بِهِ.

Case: If someone swears not to eat meat or purchase it, and then buys fat...

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا أَوْ أَنْ لَا يَشْتَرِيَهُ فَاشْتَرَى شَحْمًا]

1163 – Issue

١١٦٣ - مَسْأَلَةٌ

L18465–18467 Whoever swears not to eat meat or purchase it, then buys fat, or... If he swore off liver, hump, intestines, stuffing, head, shanks, fish, bird, or cured meat, he has not violated his oath [before Allah], because none of the aforementioned items are linguistically termed "meat" in the first place. Rather, every linguist and layperson would state about all these things: "They are not meat." The designation "meat" is not applied to fish or bird except in an annexed form.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا أَوْ أَنْ لَا يَشْتَرِيَهُ فَاشْتَرَى شَحْمًا، أَوْ كَبِدًا، أَوْ سَنَامًا، أَوْ مُصْرَانًا، أَوْ حَشْوَةً، أَوْ رَأْسًا، أَوْ أَكَارِعَ أَوْ سَمَكًا، أَوْ طَيْرًا، أَوْ قَدِيدًا: لَمْ يَحْنَثْ، لِأَنَّهُ لَا يَقَعُ عَلَى شَيْءٍ مِمَّا ذَكَرْنَا فِي اللُّغَةِ اسْمُ لَحْمٍ أَصْلًا، بَلْ كُلُّ لُغَوِيٍّ وَعَامِّيٍّ يَقُولُ فِي كُلِّ ذَلِكَ: لَيْسَ لَحْمًا وَلَا يُطْلَقُ عَلَى السَّمَكِ وَالطَّيْرِ اسْمُ لَحْمٍ إِلَّا بِالْإِضَافَةِ.

L18468 And Abū Ḥanīfa, Al-Shāfiʿī, and Abū Sulaymān said as we have stated.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ كَمَا قُلْنَا.

L18469 Malik said: He breaches his oath by all of that, and his adherents cited as evidence the words of Allah, the Exalted: "and the meat of birds from whatever they desire" [Al-Wāqiʿah 56:21], and "and from every [kind] you eat fresh meat" [Fāṭir 35:12].[73]

وَقَالَ مَالِكٌ: يَحْنَثُ بِكُلِّ ذَلِكَ - وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِقَوْلِ اللَّهِ تَعَالَى: {وَلَحْمِ طَيْرٍ مِمَّا يَشْتَهُونَ} [الواقعة: ٢١] ، {وَمِنْ كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا} [فاطر: ١٢] .

L18470 Abū Muḥammad said: We have stated that the term "meat" is not applied to that except with qualification, just as the term "water" is not applied to "rose water" except with qualification. They are logically required to affirm that if someone swears not to share a ceiling with another person, such a person inevitably breaks their oath, because Allah the Exalted said: "And We made the sky a well-protected ceiling" [Quran 21:32].[74]

قَالَ أَبُو مُحَمَّدٍ: قَدْ قُلْنَا: إِنَّهُ لَا يُطْلَقُ عَلَى ذَلِكَ اسْمُ لَحْمٍ إِلَّا بِالْإِضَافَةِ، كَمَا لَا يُطْلَقُ عَلَى " مَاءِ الْوَرْدِ " اسْمُ مَاءٍ إِلَّا بِالْإِضَافَةِ، وَيَلْزَمُهُمْ أَنْ يَقُولُوا فِيمَنْ حَلَفَ أَنْ لَا يَجْمَعَهُ مَعَ فُلَانٍ سَقْفٌ أَنْ يَحْنَثَ وَلَا بُدَّ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَجَعَلْنَا السَّمَاءَ سَقْفًا مَحْفُوظًا} [الأنبياء: ٣٢] .

L18471 He should rule that one who swore not to read by the light of a lamp and then read by sunlight has broken his oath, since the Quran refers to the sun as a *"blazing lamp"* [78:13], as Allah, the Exalted, said.[75]

وَأَنْ يَقُولَ فِيمَنْ حَلَفَ أَنْ لَا يَقْرَأَ بِضَوْءِ سِرَاجٍ، فَقَرَأَ بِضَوْءِ الشَّمْسِ: أَنْ يَحْنَثَ، لِأَنَّهُ تَعَالَى قَالَ: {وَجَعَلْنَا سِرَاجًا وَهَّاجًا} [النبأ: ١٣] .

L18472 And His saying, the Exalted, "He made the sun a lamp" [Surah Nuh 16].[76]

وقَوْله تَعَالَى: {وَجَعَلَ الشَّمْسَ سِرَاجًا} [نوح: ١٦] .

L18473 And to say regarding one who swore not to place his garments on a peg, then placed them on a mountain: that he has broken his oath, because Allah the Exalted says: {And the mountains as pegs} [An-Naba': 7], yet they do

وَأَنْ يَقُولُوا فِيمَنْ حَلَفَ أَنْ لَا يُلْقِيَ ثِيَابَهُ عَلَى وَتِدٍ فَأَلْقَاهَا عَلَى جَبَلٍ: أَنْ يَحْنَثَ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالْجِبَالَ أَوْتَادًا} [النبأ: ٧] وَهُمْ لَا يَقُولُونَ هَذَا؟ فَصَحَّ أَنَّ الْمُرَاعَى فِي ذَلِكَ مَا قُلْنَاهُ، وَلَا يُخَالِفُونَنَا فِيمَنْ قَالَ لِآخَرَ: ابْتَعْ لِي بِهَذَا الدِّرْهَمِ لَحْمًا؟ فَابْتَاعَ لَهُ

[73] **Qur'an references (L18469):** Qur'an 56:21 (Al-Waqi'ah); Qur'an 35:12 (Fatir).
[74] **Qur'an references (L18470):** Qur'an 21:32 (Al-Anbya).
[75] **Qur'an references (L18471):** Qur'an 78:13 (An-Naba).
[76] **Qur'an references (L18472):** Qur'an 71:16 (Nuh).

not say this? Thus, it is established that what is considered in this matter is what we have stated. They do not disagree with us concerning one who said to another: "Buy me meat with this dirham?" and he bought for him with it fish, or a chicken, or fat, or a head, or offal, or trotters: he is liable for the dirham because he contravened what he was commanded to do and transgressed his instructions—and success is from Allah, the Most High.[77]

Case: He swore that he would not eat fat.

1164. Issue

And whoever swears not to eat fat violates his oath by consuming the fat of the back, the belly, or anything conventionally termed "fat," but does not violate it by eating entirely pure meat. And this is the view of al-Shāfiʿī and Abū Sulaymān.

Abu Hanifah and his companions said: The oath is broken solely by the abdominal fat itself, and not by the dorsal fat.

Mālik said: "Whoever swears not to eat meat and then eats fat breaks his oath, and whoever swears not to eat fat and then eats meat breaks his oath." The companions of Abū Ḥanīfah cited as evidence Allah's statement: {And from cattle and sheep and goats We prohibited upon them their fats} [al-An'ām 6:146]. They said, "This applied specifically to abdominal fat."[78]

Abū Muḥammad said: This is a misplaced argument, for He did not specifically prohibit abdominal fat for them through this very wording, but rather through what follows in His statement, the Most High: {except what is carried by their backs, the entrails, or what is intermingled with bone} [Al-Anʿām: 146]. It is through this that He specified the prohibition of abdominal fat. Had it not been for that, all fats would have been forbidden. Thus, the verse is conclusive evidence against them.[79]

The Malikis argued: "Allah the Exalted prohibited pork and its fat, but He

[77] **Qur'an references (L18473):** Qur'an 78:7 (An-Naba).
[78] **Qur'an references (L18479):** Qur'an 6:146 (Al-An'am).
[79] **Qur'an references (L18480):** Qur'an 6:146 (Al-An'am).

بِهِ سَمَكًا، أَوْ دَجَاجَةً، أَوْ شَحْمًا، أَوْ رَأْسًا، أَوْ حَشْوَةً، أَوْ أَكَارِعَ: فَإِنَّهُ ضَامِنٌ لِلدِّرْهَمِ، وَإِنَّهُ قَدْ خَالَفَ مَا أُمِرَ بِهِ وَتَعَدَّى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ شَحْمًا]

١١٦٤ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ شَحْمًا حَنِثَ بِأَكْلِ شَحْمِ الظَّهْرِ وَالْبَطْنِ، وَكُلِّ مَا يُطْلَقُ عَلَيْهِ اسْمُ شَحْمٍ، وَلَمْ يَحْنَثْ بِأَكْلِ اللَّحْمِ الْمَحْضِ وَهَذَا قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يَحْنَثُ إلَّا بِشَحْمِ الْبَطْنِ وَحْدَهُ، وَلَا يَحْنَثُ بِشَحْمِ الظَّهْرِ.

وَقَالَ مَالِكٌ: مَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا فَأَكَلَ شَحْمًا حَنِثَ، وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ شَحْمًا فَأَكَلَ لَحْمًا يَحْنَثُ: وَاحْتَجَّ أَصْحَابُ أَبِي حَنِيفَةَ بِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا} [الأنعام: ١٤٦] قَالُوا: فَكَانَ ذَلِكَ عَلَى شَحْمِ الْبَطْنِ خَاصَّةً.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا احْتِجَاجٌ مُحَالٌ عَنْ مَوْضِعِهِ، لِأَنَّهُ لَمْ يَخُصَّ شَحْمَ الْبَطْنِ بِالتَّحْرِيمِ عَلَيْهِمْ بِنَفْسِ هَذَا اللَّفْظِ لَكِنْ بِمَا بَعْدَهُ مِنْ قَوْلِهِ تَعَالَى: {إلا مَا حَمَلَتْ ظُهُورُهُمَا أَوِ الْحَوَايَا أَوْ مَا اخْتَلَطَ بِعَظْمٍ} [الأنعام: ١٤٦] فَبِهَذَا خَصَّ شَحْمَ الْبَطْنِ بِالتَّحْرِيمِ وَلَوْلَا ذَلِكَ لَحُرِّمَتْ الشُّحُومُ كُلُّهَا فَالْآيَةُ حُجَّةٌ عَلَيْهِمْ.

وَاحْتَجَّ الْمَالِكِيُّونَ بِأَنْ قَالُوا: حَرَّمَ اللَّهُ تَعَالَى لَحْمَ الْخِنْزِيرِ فَحَرَّمَ شَحْمَهُ، وَحَرَّمَ عَلَى بَنِي إسْرَائِيلَ الشَّحْمَ فَلَمْ يُحَرِّمْ اللَّحْمَ.

imposed the prohibition of fat upon the Children of Israel while permitting their meat."

وَقَالُوا: الشَّحْمُ مُتَوَلِّدٌ مِنْ اللَّحْمِ وَلَيْسَ اللَّحْمُ مُتَوَلِّدًا مِنْ الشَّحْمِ.

L18482 And they said, "The fat is generated from the meat, and the meat is not generated from the fat."

قَالَ أَبُو مُحَمَّد: وَهَذَانِ الِاحْتِجَاجَانِ فِي غَايَةِ التَّمْوِيهِ بِالْبَاطِلِ، لِأَنَّ تَحْرِيمَ شَحْمِ الْخِنْزِيرِ لَمْ يُحَرَّمْ مِنْ أَجْلِ تَحْرِيمِ لَحْمِهِ، لَكِنْ بِبُرْهَانٍ آخَرَ قَدْ ذَكَرْنَاهُ فِي " بَابِ مَا يَحِلُّ أَكْلُهُ وَيُحَرَّمُ ".

L18483 Abū Muḥammad said: These two proofs epitomize the ultimate deceptive obfuscation with falsehood, for the prohibition of swine's fat was not due to the prohibition of its meat, but rather based on another proof we have mentioned in "The Chapter on What is Permissible to Eat and What is Prohibited."

وَلَوْ كَانَ تَحْرِيمُ شَحْمِ الْخِنْزِيرِ مِنْ أَجْلِ تَحْرِيمِ لَحْمِهِ دَلِيلًا عَلَى أَنَّ مَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا فَأَكَلَ شَحْمًا حَنِثَ - لَكَانَ تَحْرِيمُ لَبَنِ الْخِنْزِيرَةِ وَعَظْمِهَا عَلَى قَوْلِهِمْ مِنْ أَجْلِ تَحْرِيمِ لَحْمِهَا مُوجِبًا لِلْحِنْثِ عَلَى مَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَحْمًا فَشَرِبَ لَبَنًا وَلَا فَرْقَ، وَهُمْ لَا يَقُولُونَ هَذَا.

L18484 If the prohibition of swine's fat because of the prohibition of its meat were evidence that one who swears not to eat meat and then eats fat has broken their oath, then—according to their view—the prohibition of a sow's milk and bones on account of the prohibition of its meat would necessitate oath-breaking for one who swears not to eat meat and then drinks milk, and there is no distinction. But they do not hold this view.

وَأَمَّا قَوْلُهُمْ: إنَّ الشَّحْمَ تَوَلَّدَ مِنْ اللَّحْمِ، فَيُقَالُ لَهُمْ فَكَانَ مَاذَا؟ أَلَيْسَ اللَّحْمُ، وَاللَّبَنُ مُتَوَلِّدَيْنِ مِنْ الدَّمِ، وَالدَّمُ حَرَامٌ، وَهُمَا حَلَالَانِ؟ أَوَلَيْسَ الْخَمْرُ مُتَوَلِّدَةً مِنْ الْعَصِيرِ وَالْخَلُّ مُتَوَلِّدَةً مِنْ الْخَمْرِ وَهِيَ حَرَامٌ، وَمَا تَوَلَّدَتْ مِنْهُ حَلَالٌ، وَمَا تَوَلَّدَ مِنْهَا حَلَالٌ، فَبَطَلَ قَوْلُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18485 As for their assertion that fat is generated from meat, it is said to them: What then? Are not meat and milk generated from blood, while blood is prohibited, yet both are permissible? Is not wine generated from juice—which is permissible—and vinegar generated from wine—which is prohibited—yet what originates from the permissible is prohibited, and what originates from the prohibited is permissible? Thus, their argument is nullified, and success is from Allah, the Exalted.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ رَأْسًا]

Case: He swore that he would not eat a head [of an animal].

L18486

١١٦٥ - مَسْأَلَةٌ

1165 - Issue

L18487

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ رَأْسًا لَمْ يَحْنَثْ بِأَكْلِ رُءُوسِ الطَّيْرِ، وَلَا رُءُوسِ السَّمَكِ، وَلَا يَحْنَثُ إلَّا بِأَكْلِ رُءُوسِ الْغَنَمِ، وَالْمَاعِزِ، فَإِنْ كَانَ أَهْلُ مَوْضِعِهِ لَا يُطْلِقُونَ اسْمَ الرُّءُوسِ فِي الْبَيْعِ وَالْأَكْلِ عَلَى رُءُوسِ الْإِبِلِ، وَالْبَقَرِ لَمْ يَحْنَثْ بِأَكْلِهَا - وَإِنْ كَانُوا

L18488–18490 Whoever swears not to eat a head does not break his oath by eating the heads of birds or fish. He only breaks his oath by eating the heads of sheep and goats. If the people of his region do not apply the term "heads" to the heads of camels and cattle in the contexts of sale and eating, he does not break his oath. By [swearing not to] eat them—even if they refer to them in commercial transactions and eating as "heads"—he thereby violates his oath, due to our

earlier explanation that oaths depend solely on the swearer's language and the customary usage in his speech.

يُطْلِقُونَ عَلَيْهَا فِي الْبَيْعِ وَالْأَكْلِ اسْمَ الرُّءُوس حَنِثَ بِهَا، لِمَا ذَكَرْنَا مِنْ أَنَّ الْأَيْمَانَ إِنَّمَا هِيَ عَلَى لُغَةِ الْحَالِفِ، وَمَعْهُودِ اسْتِعْمَالِهِ فِي كَلَامِهِ.

L18491 This is the view of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18492 Do you not see that musk is solidified blood, but since it is not called "blood," it is permissible (ḥalāl) and not prohibited (ḥarām)?

أَلَا تَرَى: أَنَّ الْمِسْكَ دَمٌ جَامِدٌ، وَلَكِنْ لَمَّا لَمْ يُطْلَقْ عَلَيْهِ اسْمُ دَمٍ حَلَّ وَلَمْ يَحْرُمْ.

L18493 **Question: He swore an oath not to eat eggs.**

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ بِيضًا]

L18494 1166 – Issue

١١٦٦ - مَسْأَلَةٌ

L18495 Whoever swears not to eat eggs does not break his oath except by eating chicken eggs specifically. He does not break his oath by eating ostrich eggs, the eggs of other birds, or fish eggs, as we have mentioned. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ بِيضًا لَمْ يَحْنَثْ إِلَّا بِأَكْلِ بَيْضِ الدَّجَاجِ خَاصَّةً وَلَمْ يَحْنَثْ بِأَكْلِ بَيْضِ النَّعَامِ وَسَائِرِ الطَّيْرِ، وَلَا بِبِيضِ السَّمَكِ لِمَا ذَكَرْنَا؛ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18496 **A legal question: If someone swore not to eat grapes and then ate raisins or drank grape juice?**

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ عِنَبًا فَأَكَلَ زَبِيبًا أَوْ شَرِبَ عَصِيرًا]

L18497 ١١٦٧ - Question

١١٦٧ - مَسْأَلَةٌ

L18498 Whoever swears not to eat grapes, then eats raisins, drinks juice, consumes grape syrup, or uses vinegar, has not broken his oath.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ عِنَبًا فَأَكَلَ زَبِيبًا أَوْ شَرِبَ عَصِيرًا، أَوْ أَكَلَ رُبًّا أَوْ خَلًّا لَمْ يَحْنَثْ.

L18499 Similarly, one who swears not to eat raisins does not break his oath by eating grapes, nor by drinking raisin wine, nor by eating its vinegar.

وَكَذَلِكَ مَنْ حَلَفَ أَنْ لَا يَأْكُلَ زَبِيبًا لَمْ يَحْنَثْ بِأَكْلِ الْعِنَبِ وَلَا بِشُرْبِ نَبِيذِ الزَّبِيبِ وَأَكْلِ خَلِّهِ.

L18500 Similarly, the ruling applies to dates, fresh dates, early ripe dates (zahū), unripe dates (busr), tender dates (balah), the spathe, soft-dried dates (munakkīt), the fermented beverage (nabīdh) derived from any of these, their vinegar, substances with a trace [of impurity], and flowing palm sap; no oath violation is incurred.

وَكَذَلِكَ الْقَوْلُ فِي التَّمْرِ، وَالرُّطَبِ، وَالزَّهْوِ، وَالْبُسْرِ، وَالْبَلَحِ، وَالطَّلْعِ وَالْمُنَكَّتِ، وَنَبِيذِ كُلِّ ذَلِكَ وَخَلِّهِ، وَذُو شَائِبَةٍ، وَنَاطِفَةٍ: لَا يَحْنَثُ.

L18501 Whoever swears not to take anything from it breaks his oath by eating the remainder of it; he does not break it by drinking what is drunk from it. This is the opinion of Abu Hanifah, Al-Shafi'i, and Abu Suleiman, because the name of each of these acts does not apply to the other. The entire world is interconnected, with parts generating from one another, and we are created from dust and water.

وَمَنْ حَلَفَ أَنْ لَا يَأْخُذَ شَيْئًا مِنْهَا حَنِثَ بِأَكْلِ سَائِرِهَا - وَلَا يَحْنَثُ بِشُرْبِ مَا يَشْرَبُ مِنْهَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، لِأَنَّ اسْمَ كُلِّ وَاحِدٍ مِنْهَا لَا يُطْلَقُ عَلَى الْآخَرِ، وَالْعَالَمُ كُلُّهُ بَعْضُهُ مُتَوَلِّدٌ مِنْ بَعْضٍ وَنَحْنُ مَخْلُوقُونَ مِنْ تُرَابٍ وَمَاءٍ.

L18502 If a man were to swear not to bring any animal into his house and then brought in dirt and water, he has not broken his oath, without any disagreement from us or from others besides us.

فَلَوْ أَنَّ امْرَأً حَلَفَ أَنْ لَا يُدْخِلَ فِي دَارِهِ حَيَوَانًا فَأَدْخَلَ التُّرَابَ وَالْمَاءَ لَمْ يَحْنَثْ بِلَا خِلَافٍ مِنَّا وَمِنْ غَيْرِنَا.

L18503 Malik said: If someone swore not to eat grapes then ate raisins or drank grape juice, he broke his oath, but did not break it by eating vinegar. This was exceedingly strange, and their justification for this ruling was even more astonishing, for they said: "The status of vinegar is distant." If only I knew - what does "distant" mean? Would they say there are two intermediate stages between grapes and vinegar: juice and wine?

وَقَالَ مَالِكٌ: مَنْ حَلَفَ أَنْ لَا يَأْكُلَ عِنَبًا فَأَكَلَ زَبِيبًا أَوْ شَرِبَ عَصِيرًا حَنِثَ، وَلَا يَحْنَثُ بِأَكْلِ الْخَلِّ - فَكَانَ هَذَا عَجَبًا جِدًّا، وَكَانَ احْتِجَاجُهُمْ لِهَذِهِ الْقَوْلَةِ أَعْجَبَ مِنْهَا، لِأَنَّهُمْ قَالُوا: أَمْرُ الْخَلِّ بَعِيدٌ، وَلَيْتَ شِعْرِي مَا مَعْنَى " بَعِيدٍ "؟ فَإِنْ قَالُوا: إِنَّ بَيْنَ الْعِنَبِ وَبَيْنَ الْخَلِّ دَرَجَتَيْنِ: الْعَصِيرَ، وَالْخَمْرَ؟

L18504–18505 We said: What then? And who established the existence of two stages between vinegar and grapes as a legal cause for rendering it lawful? Far be it from Allah to endorse this corrupt ruling! They merely used their own assertion as evidence for that same assertion, thereby clearly contradicting themselves. Thus, they caused oath-breakers to emerge among those who ate dry cheese after swearing not to consume milk, when between dry cheese and milk lie two intermediate stages: curdled milk and fresh cheese.

قُلْنَا: فَكَانَ مَاذَا؟ وَمَنْ الَّذِي جَعَلَ كَوْنَ دَرَجَتَيْنِ بَيْنَ الْخَلِّ وَالْعِنَبِ عِلَّةً فِي التَّحْلِيلِ؟ وَحَاشَا لِلَّهِ مِنْ هَذَا الْحُكْمِ الْفَاسِدِ - فَمَا زَادُونَا عَلَى أَنْ جَعَلُوا دَعْوَاهُمْ حُجَّةً لِدَعْوَاهُمْ وَقَدْ تَنَاقَضُوا مِنْ قُرْبٍ، فَحَنَّثُوا مَنْ أَكَلَ جُبْنًا يَابِسًا وَقَدْ حَلَفَ أَنْ لَا يَأْكُلَ لَبَنًا وَبَيْنَ الْجُبْنِ الْيَابِسِ وَاللَّبَنِ دَرَجَتَانِ، وَهُمَا الْعَقِيدُ، وَالْجُبْنُ الرَّطْبُ.

L18506 If they say, "Is all of that a single substance?" We reply: "Vinegar, juice, and wine are the same substance, but their rulings vary due to differences in their attributes, and nothing more."

فَإِنْ قَالُوا: كُلُّ ذَلِكَ عَيْنٌ وَاحِدَةٌ؟ قُلْنَا: وَالْخَلُّ، وَالْعَصِيرُ، وَالْخَمْرُ: عَيْنٌ وَاحِدَةٌ، إِلَّا أَنَّ أَحْكَامَهَا اخْتَلَفَتْ بِاخْتِلَافِ صِفَاتِهَا وَلَا مَزِيدَ.

There are two stages between milk and clarified butter: first, curdled milk (*ra’ib*), then butter (*zubdah*). Similarly, grapes may be left in containers from their harvest time until spring, then pressed to produce pure vinegar?

وَكَذَلِكَ السَّمْنُ بَيْنَهُ وَبَيْنَ اللَّبَنِ دَرَجَتَانِ: الرَّائِبُ ثُمَّ الزُّبْدَةُ، وَقَدْ يُتْرَكُ الْعِنَبُ فِي الظُّرُوفِ مِنْ أَيَّامِهِ إِلَى أَيَّامِ الرَّبِيعِ ثُمَّ يُعْصَرُ خَلًّا مَحْضًا؟

A case where he swore that he would not eat milk.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ لَبَنًا]

Issue 1168: If someone swears not to drink milk, they do not violate their oath by consuming dried curds, hardened curds, soured milk, butter, ghee, buttermilk, whey, or cheese. The same ruling applies to butter, ghee, and the rest of the substances we mentioned, due to the distinct names of each.

١١٦٨ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَبَنًا لَمْ يَحْنَثْ بِأَكْلِ اللِّبَإِ وَلَا بِأَكْلِ الْعَقِيدِ، لَا الرَّائِبِ، وَلَا الزُّبْدِ، وَلَا السَّمْنِ، وَلَا الْمَخِيضِ، وَلَا الْمَيْسِ، وَلَا الْجُبْنِ - وَكَذَلِكَ الْقَوْلُ فِي الزُّبْدِ، وَالسَّمْنِ، وَسَائِرِ مَا ذَكَرْنَا لِاخْتِلَافِ أَسْمَاءِ كُلِّ ذَلِكَ.

Issue: He swore not to eat bread, but he ate cake.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَأْكُلَ خُبْزًا فَأَكَلَ كَعْكًا]

1169 – Issue.

١١٦٩ - مَسْأَلَةٌ

Whoever swears not to eat bread and then eats cake, *bushmāṭā*, *harīrah*, porridge, crumb broth, or crumbled bread does not break his oath.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ خُبْزًا فَأَكَلَ كَعْكًا أَوْ بشماطا أَوْ حَرِيرَةً، أَوْ عَصِيدَةً، أَوْ حَسْوَ فَتَاةٍ، أَوْ فَتِيتًا لَمْ يَحْنَثْ.

Whoever swears not to eat wheat: if he intended his oath to include bread, he breaks it; otherwise, he does not break his oath unless he consumes it pure. He does not break his oath by eating harisa (porridge), herbage, sawiq (parched flour), or fariik (green wheat), for the term “wheat” does not apply to any of these. Whoever swears not to eat figs breaks his oath by consuming them fresh or dried, for the term “fig” applies to both forms.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ قَمْحًا فَإِنْ كَانَتْ لَهُ نِيَّةٌ فِي خُبْزِهِ حَنِثَ وَإِلَّا لَمْ يَحْنَثْ إِلَّا بِأَكْلِهِ صِرْفًا - وَلَا يَحْنَثُ بِأَكْلِ هَرِيسَةٍ، وَلَا أَكْلِ حَشِيشٍ، وَلَا سَوِيقٍ وَلَا أَكْلِ فَرِيكٍ، لِأَنَّهُ لَا يُطْلَقُ عَلَى كُلِّ ذَلِكَ اسْمُ قَمْحٍ - وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ تِينًا حَنِثَ بِالْأَخْضَرِ وَالْيَابِسِ، لِأَنَّ اسْمَ التِّينِ يُطْلَقُ عَلَى كُلِّ ذَلِكَ.

Issue: He swore that he would not drink a beverage.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَشْرَبَ شَرَابًا]

1170 - Issue: And whoever swears not to drink a beverage - if they had a specific intention, their oath is judged accordingly. If they had no specific intention, they break their oath by drinking wine, all nabīdh, jallab, sakanjīn, and all other drinks, because the term “beverage” encompasses all such liquids.

١١٧٠ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَنْ لَا يَشْرَبَ شَرَابًا فَإِنْ كَانَتْ لَهُ نِيَّةٌ حَمَلَ عَلَيْهَا، وَإِنْ لَمْ تَكُنْ لَهُ نِيَّةٌ حَنِثَ بِالْخَمْرِ، وَبِجَمِيعِ الْأَنْبِذَةِ، وَبِالْجَلَّابِ، وَالسَّكَنْجَبِينِ، وَسَائِرِ الْأَشْرِبَةِ؛ لِأَنَّ اسْمَ شَرَابٍ يُطْلَقُ عَلَى كُلِّ ذَلِكَ.

L18516 He does not break his oath by drinking milk or by drinking water, because they are not classified as beverages in this context. If someone swears not to consume milk and then drinks it, he does not break his oath, because he did not eat it. If he swears not to drink it and then consumes it with bread, he does not break his oath, because he did not drink it.

وَلَا يَحْنَثُ بِشُرْبِ اللَّبَنِ، وَلَا بِشُرْبِ الْمَاءِ، لِأَنَّهُ لَا يُطْلَقُ عَلَيْهَا اسْمُ شَرَابٍ - وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ لَبَنًا فَشَرِبَهُ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَأْكُلْهُ - وَلَوْ حَلَفَ أَنْ لَا يَشْرَبَهُ فَأَكَلَهُ بِالْخُبْزِ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَشْرَبْهُ.

L18517–18518 Whoever swears not to drink water on this day of his and then eats bread moistened with water has not broken his oath. And whoever swears not to eat ghee or oil and then eats bread kneaded with them or with one of them has not broken his oath, because he did not eat oil or ghee.

وَمَنْ حَلَفَ أَنْ لَا يَشْرَبَ الْمَاءَ يَوْمَهُ هَذَا فَأَكَلَ خُبْزًا مَبْلُولًا بِالْمَاءِ لَمْ يَحْنَثْ - وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ سَمْنًا وَلَا زَيْتًا فَأَكَلَ خُبْزًا مَعْجُونًا بِهِمَا أَوْ بِأَحَدِهِمَا لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَأْكُلْ زَيْتًا وَلَا سَمْنًا.

L18519 If one were to break their oath in this case, then whoever swore not to drink water that day and ate bread would break their oath, because it was kneaded with water. And one does not break the oath by eating food cooked with both of them (water and the other ingredient) unless they remain visibly present in it, such that their original identity has not ceased to apply to them - only then would the oath be broken.

وَلَوْ حَنِثَ فِي هَذَا لَحَنِثَ مَنْ حَلَفَ أَنْ لَا يَشْرَبَ يَوْمَهُ هَذَا مَاءً فَأَكَلَ خُبْزًا، لِأَنَّهُ بِالْمَاءِ عُجِنَ، وَلَا يَحْنَثُ بِأَكْلِ طَعَامٍ طُبِخَ بِهِمَا إِلَّا أَنْ يَكُونَا ظَاهِرَيْنِ فِيهِ لَمْ يَزُلْ الِاسْمُ عَنْهُمَا فَيَحْنَثُ حِينَئِذٍ.

L18520 Whoever swears not to eat salt and then eats food cooked with salt or bread made from dough kneaded with salt has not violated his oath, for he did not eat salt itself. But if he scatters salt upon his food, he violates his oath, because the salt is visibly apparent on it.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ مِلْحًا فَأَكَلَ طَعَامًا مَعْمُولًا بِالْمِلْحِ، وَخُبْزًا مَعْجُونًا بِهِ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَأْكُلْ مِلْحًا، فَإِنْ كَانَ قَدْ ذَرَّ عَلَيْهِ الْمِلْحَ حَنِثَ، لِأَنَّهُ ظَاهِرٌ فِيهِ.

L18521 Whoever swears not to eat vinegar and then ate food in which the taste of vinegar is distinctly apparent has violated the oath, because vinegar is consumed in this way.

وَمَنْ حَلَفَ أَنْ لَا يَأْكُلَ خَلًّا فَأَكَلَ طَعَامًا يَظْهَرُ فِيهِ طَعْمُ الْخَلِّ مُتَمَيِّزًا حَنِثَ، لِأَنَّهُ هَكَذَا يُؤْكَلُ الْخَلُّ.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَبِيعَ هَذَا الشَّيْءَ بِدِينَارٍ]

L18522 **Issue: Someone swore that he will not sell this item for a dinar.**

L18523 1171 - Issue

١١٧١ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَبِيعَ هَذَا الشَّيْءَ بِدِينَارٍ فَبَاعَهُ بِدِينَارٍ غَيْرَ فَلْسٍ فَأَكْثَرَ، أَوْ بِدِينَارٍ وَفَلْسٍ فَصَاعِدًا لَمْ يَحْنَثْ، لِأَنَّهُ لَا يُسَمَّى فِي ذَلِكَ كُلِّهِ بَائِعًا لَهُ بِدِينَارٍ.

L18524 Whoever swears not to sell this item for a dinar, then sells it for a dinar excluding a fals, for a dinar and more than a fals, or for a dinar and a fals or more, does not break his oath, because in all these cases he is not regarded as having sold it for a dinar.

[مَسْأَلَةٌ حَلَفَ لَيَقْضِيَنَّ غَرِيمَهُ حَقَّهُ رَأْسَ الْهِلَالِ]

L18525 **A case: He swore that he would certainly repay his creditor what is owed by the beginning of the crescent [month].**

١١٧٢ - مَسْأَلَةٌ

وَمَنْ حَلَفَ لَيَقْضِيَنَّ غَرِيمَهُ حَقَّهُ رَأْسَ الْهِلَالِ فَإِنَّهُ إِنْ قَضَاهُ حَقَّهُ أَوَّلَ لَيْلَةٍ مِنَ الشَّهْرِ، أَوْ أَوَّلَ يَوْمٍ مِنْهُ مَا لَمْ تَغْرُبِ الشَّمْسُ لَمْ يَحْنَثْ، لِأَنَّ هَذَا هُوَ رَأْسُ الْهِلَالِ فِي اللُّغَةِ، فَإِنْ لَمْ يَقْضِهِ فِي اللَّيْلَةِ أَوِ الْيَوْمِ الْمَذْكُورَيْنِ وَهُوَ قَادِرٌ عَلَى قَضَائِهِ ذَاكِرًا حَنِثَ.

L18526 1172 – Question

L18527 Whoever swears to pay his creditor the due right by the beginning of the crescent moon's visibility: if he pays the right on the first night of the month or the first day of it as long as the sun has not set, he does not break his oath, because this is the literal meaning of "the beginning of the crescent moon" in Arabic. If he fails to pay it during the specified night or day despite being capable of payment and mindful of his oath, he breaks his oath.

[مَسْأَلَةٌ حَلَفَ لَا يُزَوِّجَ وَلِيَّتَهُ فَأَمَرَ مَنْ فَعَلَ ذَلِكَ]

L18528 **A case in which a man swore an oath not to marry off the female under his guardianship, then commanded the one who arranged the marriage.**

١١٧٣ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَشْتَرِيَ أَمْرَ كَذَا، أَوْ لَا يُزَوِّجَ وَلِيَّتَهُ، أَوْ أَنْ لَا يَضْرِبَ عَبْدَهُ، أَوْ أَنْ لَا يَبْنِيَ دَارِهِ، أَوْ مَا أَشْبَهَ هَذَا مِنْ كُلِّ شَيْءٍ، فَأَمَرَ مَنْ فَعَلَ لَهُ ذَلِكَ كُلَّهُ؟ فَإِنْ كَانَ مِمَّنْ يَتَوَلَّى الشِّرَاءَ بِنَفْسِهِ، وَالْبِنَاءَ، وَالضَّرْبَ، أَوْ فِعْلَ مَا حَلَفَ عَلَيْهِ لَمْ يَحْنَثْ، لِأَنَّهُ لَمْ يَفْعَلْهُ - وَإِنْ كَانَ مِمَّنْ لَا يُبَاشِرُ بِنَفْسِهِ ذَلِكَ حَنِثَ بِأَمْرِهِ مَنْ يَفْعَلُهُ، لِأَنَّهُ هَكَذَا يُطْلَقُ فِي اللُّغَةِ الْخَبَرُ عَنْ كُلِّ مَنْ ذَكَرْنَا وَلَا يَحْنَثُ فِي أَمْرِ غَيْرِهِ بِالزَّوَاجِ عَلَى كُلِّ حَالٍ، لِأَنَّ كُلَّ أَحَدٍ يُزَوِّجُ وَلِيَّتَهُ فَإِذَا لَمْ يُزَوِّجْهَا وَأَمَرَ غَيْرَهُ فَلَمْ يُزَوِّجْهَا هُوَ.

L18529 1173 – Issue

L18530 And whoever swears not to purchase a specific thing, not to marry off his female ward, not to strike his slave, not to build his house, or anything resembling this—if he then commands someone else to do all of that for him: if he belongs to those who personally handle purchasing, building, striking, or performing what he swore not to do, he does not break his oath, for he did not perform it himself. But if he belongs to those who do not personally engage in such acts, he breaks his oath by ordering another to perform it, as this aligns with common linguistic usage regarding all the cases mentioned. He does not break his oath by ordering another to arrange the marriage under any circumstance, because every guardian holds the authority to marry off his female ward. Thus, if he refrains from marrying her himself and orders

another who then fails to do so, he remains free from oath-breaking—since he himself did not perform the act.

L18531 **Issue: A man swore not to sell his slave, but sold him in a void sale.**

L18532 1174. Issue: And whoever swears not to sell his slave, then sells him through a void sale, gives him as a dowry, leases him, or has the slave sold against his will due to a rightful claim, he has not broken his oath, because none of the actions we mentioned constitutes a sale.

L18533–18534 The void sale is forbidden, and Allah the Exalted says: {And Allah has permitted sale} [Al-Baqarah: 275]. There is no doubt in the mind of anyone of sound intellect that the forbidden differs from the permissible. If he conducts a valid sale, he does not incur an oath violation as long as both parties do not separate from the place of contract. If they separate—while he is acting by free will and sound awareness—he incurs the oath violation at that moment, because he has then completed the sale, as we will clarify in *Kitāb al-Buyūʿ* if Allah the Exalted wills.[1]

L18535 **Legal Case: He swore not to speak that day, yet he recited the Quran.**

L18536 1175 – Issue

L18537 And whoever swears not to speak today, then recites the Quran in prayer or outside of prayer, or remembers Allah the Exalted, does not break the oath, based on the saying of the Messenger of Allah, peace be upon him: "Verily, this prayer is not befitting for any form of human speech; it is only tasbīḥ, takbīr (declaring 'Allāhu Akbar'), recitation of the Quran, or similar acts," and based on the saying of Allah the Exalted: {Then he turned away and was arrogant} [Al-Muddaththir: 23], {He said, "This is nothing but transmitted

[1] **Qur'an references (L18534):** Qur'an 2:275 (Al-Baqarah).

[مَسْأَلَةٌ حَلَفَ أَلَّا يَبِيعَ عَبْدَهُ فَبَاعَهُ بَيْعًا فَاسِدًا]

١١٧٤ - مَسْأَلَةٌ وَمَنْ حَلَفَ أَلَّا يَبِيعَ عَبْدَهُ فَبَاعَهُ بَيْعًا فَاسِدًا، أَوْ أَصْدَقَهُ، أَوْ أَجَرَهُ، أَوْ بِيعَ عَلَيْهِ فِي حَقٍّ لَمْ يَحْنَثْ، لِأَنَّهُ لَيْسَ شَيْءٌ مِمَّا ذَكَرْنَا بَيْعًا.

وَالْبَيْعُ الْفَاسِدُ حَرَامٌ وَاَللَّهُ تَعَالَى يَقُولُ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَلَا شَكَّ عِنْدَ مَنْ دِمَاغُهُ صَحِيحٌ فِي أَنَّ الْحَرَامَ غَيْرُ الْحَلَالِ، فَإِنْ بَاعَهُ بَيْعًا صَحِيحًا لَمْ يَحْنَثْ مَا لَمْ يَتَفَرَّقَا عَنْ مَوْضِعِهِمَا، فَإِنْ تَفَرَّقَا - وَهُوَ مُخْتَارٌ ذَاكِرٌ -: حَنِثَ حِينَئِذٍ، لِأَنَّهُ حِينَئِذٍ بَاعَ، لِمَا نَذْكُرُ فِي " كِتَابِ الْبُيُوعِ " إِنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يَتَكَلَّمَ الْيَوْمَ فَقَرَأَ الْقُرْآنَ]

١١٧٥ - مَسْأَلَةٌ

وَمَنْ حَلَفَ أَنْ لَا يَتَكَلَّمَ الْيَوْمَ فَقَرَأَ الْقُرْآنَ فِي صَلَاةٍ، أَوْ غَيْرِ صَلَاةٍ، أَوْ ذَكَرَ اللَّهَ تَعَالَى لَمْ يَحْنَثْ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ هَذِهِ الصَّلَاةَ لَا يَصْلُحُ فِيهَا شَيْءٌ مِنْ كَلَامِ النَّاسِ، إِنَّمَا هُوَ التَّسْبِيحُ، وَالتَّكْبِيرُ، وَقِرَاءَةُ الْقُرْآنِ أَوْ نَحْوُ ذَلِكَ» وَلِقَوْلِ اللَّهِ تَعَالَى: {ثُمَّ أَدْبَرَ وَاسْتَكْبَرَ} [المدثر: ٢٣] {فَقَالَ إِنْ هَذَا إِلا سِحْرٌ يُؤْثَرُ} [المدثر: ٢٤] {إِنْ هَذَا إِلا قَوْلُ الْبَشَرِ} [المدثر: ٢٥] {سَأُصْلِيهِ سَقَرَ} [المدثر: ٢٦] .

magic"} [Al-Muddaththir: 24], {"This is nothing but the speech of a human"} [Al-Muddaththir: 25], {"I will cast him into Saqar"} [Al-Muddaththir: 26].[23]

L18538 Thus, it has been established that the Quran is not the speech of humans, and that whoever attributes this to it will burn in Saqar. Therefore, it has been established that neither in linguistic convention nor in the Sharīʿah is the name "Speech" applied to anything we have mentioned. And success is by Allah, the Exalted.

L18539 ## Atonements for Sworn Oaths

L18540 ## Issue: Breaking an oath by contravening what one swore to uphold.

L18541 The Expiations for Oaths - Issue 1176

L18542 Whoever breaks an oath by acting contrary to what they swore upon must perform expiation after breaking it; there is no disagreement among scholars about this.

L18543 ## Issue: Regarding One Who Intends to Violate an Oath

L18544 Issue 1177: Whoever intends to break an oath may offer the expiation beforehand. Which of the expiations becomes obligatory for him: freeing a slave, clothing, feeding, or fasting - this is the view of Mālik.

L18545 Abu Hanifa and Abu Sulayman said: This is not valid for him unless he breaks the oath.

L18546 Al-Shafi'i said: As for manumission [freeing a slave], clothing [the needy], or feeding [the needy], advancing these before the ḥinth (breach of oath) is valid. As for fasting, it is only valid if performed after the ḥinth.

L18547–18549 The argument of the Shāfiʿīs is that manumission, providing clothing, and feeding [the poor] are among the financial obligations, and wealth... Among

[2] **Hadith references (L18537):** Sahih Muslim 537a; Mishkat al-Masabih 978.

فَصَحَّ أَنَّ الْقُرْآنَ لَيْسَ قَوْلَ الْبَشَرِ، وَأَنَّ مَنْ أَطْلَقَ ذَلِكَ عَلَيْهِ سَيَصْلَى سَقَرَ - فَصَحَّ أَنَّهُ لَا يُطْلَقُ فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ عَلَى شَيْءٍ مِمَّا ذَكَرْنَا اسْمُ كَلَامٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[كَفَّارَاتُ الْأَيْمَانِ]

[مَسْأَلَةٌ حَنِثَ بِمُخَالَفَةِ مَا حَلَفَ عَلَيْهِ]

كَفَّارَاتُ الْأَيْمَانِ ١١٧٦ - مَسْأَلَةٌ

مَنْ حَنِثَ بِمُخَالَفَةِ مَا حَلَفَ عَلَيْهِ فَقَدْ وَجَبَتْ عَلَيْهِ الْكَفَّارَةُ بَعْدَ الْحِنْثِ لَا خِلَافَ فِي ذَلِكَ.

[مَسْأَلَةٌ مَنْ أَرَادَ أَنْ يَحْنَثَ]

١١٧٧ - مَسْأَلَةٌ وَمَنْ أَرَادَ أَنْ يَحْنَثَ فَلَهُ أَنْ يُقَدِّمَ الْكَفَّارَةَ قَبْلَ أَنْ يَحْنَثَ أَيَّ الْكَفَّارَاتِ لَزِمَتْهُ: مِنْ الْعِتْقِ، أَوْ الْكِسْوَةِ، أَوْ الْإِطْعَامِ، أَوْ الصِّيَامِ - وَهُوَ قَوْلُ مَالِكٍ.

وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ: لَا يُجْزِئُهُ ذَلِكَ إلَّا بَعْدَ الْحِنْثِ.

وَقَالَ الشَّافِعِيُّ: أَمَّا الْعِتْقُ، أَوْ الْكِسْوَةُ، أَوْ الْإِطْعَامُ، فَيُجْزِئُ تَقْدِيمُهُ قَبْلَ الْحِنْثِ - وَأَمَّا الصِّيَامُ فَلَا يُجْزِئُ إلَّا بَعْدَ الْحِنْثِ.

the rights owed to people are those which may be fulfilled in advance of their appointed deadlines. As for fasting, it is among the bodily obligations, and such obligations are not valid if performed before their designated times.

وَحُجَّةُ الشَّافِعِيِّينَ: أَنَّ الْعِتْقَ، وَالْكِسْوَةَ، وَالْإِطْعَامَ: مِنْ فَرَائِضِ الْأَمْوَالِ، وَالْأَمْوَالُ مِنْ حُقُوقِ النَّاسِ، وَحُقُوقُ النَّاسِ جَائِزٌ تَقْدِيمُهَا قَبْلَ آجَالِهَا - وَأَمَّا الصَّوْمُ فَمِنْ فَرَائِضِ الْأَبَدَانِ، وَفَرَائِضُ الْأَبَدَانِ لَا يُجْزِئُ تَقْدِيمُهَا قَبْلَ أَوْقَاتِهَا.

L18550 Abu Muhammad said: This is an invalid ruling, and they concur with us that expediting the payment of people's wealth only becomes obligatory through the mutual consent of both the right-holder and the obligor jointly, not through the consent of one without the other. They also agree that this obligation applies exclusively to rights specifically owed to a person, where the right-holder and his creditor agree to advance, delay, fully waive, or partially waive it.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ قَضِيَّةٌ فَاسِدَةٌ، وَهُمْ مُوَافِقُونَ لَنَا عَلَى أَنَّ تَعْجِيلَ أَمْوَالِ النَّاسِ إنَّمَا تَجِبُ بِرِضَا صَاحِبِ الْحَقِّ، وَالَّذِي عَلَيْهِ الْحَقُّ مَعًا، لَا بِرِضَا أَحَدِهِمَا دُونَ الْآخَرِ، وَأَنَّ هَذَا إنَّمَا يَجِبُ أَيْضًا فِيمَا هُوَ حَقٌّ لِلْإِنْسَانِ بِعَيْنِهِ فَتَرَاضَى هُوَ وَغَرِيمُهُ عَلَى تَقْدِيمِهِ أَوْ تَأْخِيرِهِ أَوْ إسْقَاطِهِ أَوْ إسْقَاطِ بَعْضِهِ.

L18551 As for all that is not designated to any specific person but constitutes a right due to Allah, the Exalted, its time is fixed, and no specific individual exists whose valid consent applies to advancing, delaying, waiving, or partially waiving it. Rather, it is a right due to Allah, the Exalted, in which nothing is permissible except what has been prescribed for Allah, the Exalted.

وَأَمَّا كُلُّ مَا لَيْسَ لِإِنْسَانٍ بِعَيْنِهِ وَإِنَّمَا هُوَ حَقٌّ لِلَّهِ تَعَالَى وَقْتُهُ بِوَقْتٍ مَحْدُودٍ، وَلَيْسَ هَهُنَا مَالِكٌ بِعَيْنِهِ يَصِحُّ رِضَاهُ فِي تَقْدِيمِهِ، لَا فِي تَأْخِيرِهِ، وَلَا فِي إسْقَاطِهِ، وَلَا فِي إسْقَاطِ بَعْضِهِ وَإِنَّمَا هُوَ حَقٌّ لِلَّهِ تَعَالَى لَا يَحِلُّ فِيهِ إلَّا مَا حَدَّ لِلَّهِ تَعَالَى.

L18552 Allah, the Most High, said: "And whoever transgresses the boundaries set by Allah has indeed wronged his own soul" [Surah At-Talaq 65:1].[4]

قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L18553 They are also told: "People's rights may be delayed or waived. But is it permissible to waive expiations or to delay them—whether to a specified term or indefinitely?" Thus, the invalidity of their entire statement is evident.

وَيُقَالُ لَهُمْ أَيْضًا: إنَّ حُقُوقَ النَّاسِ يَجُوزُ فِيهَا التَّأْخِيرُ وَالْإِسْقَاطُ، فَهَلْ يَجُوزُ فِي الْكَفَّارَاتِ الْإِسْقَاطُ، أَوْ التَّأْخِيرُ إلَى أَجَلٍ أَوْ إلَى غَيْرِ أَجَلٍ؟ فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً.

L18554 As for the Malikis: even if they were correct here, they were highly inconsistent because they permitted preponing the expiation immediately after the oath and before the violation.

وَأَمَّا الْمَالِكِيُّونَ: فَإِنَّهُمْ وَإِنْ كَانُوا أَصَابُوا هَهُنَا فَقَدْ تَنَاقَضُوا جِدًّا لِأَنَّهُمْ أَجَازُوا تَقْدِيمَ الْكَفَّارَةِ إثْرَ الْيَمِينِ، وَقَبْلَ الْحِنْثِ.

L18555 They did not permit advancing the payment of Zakat immediately after acquiring wealth, but a month or similar before the lunar year ends. Nor did

وَلَمْ يُجِيزُوا تَقْدِيمَ الزَّكَاةِ إثْرَ كَسْبِ الْمَالِ لَكِنْ قَبْلَ الْحَوْلِ بِشَهْرٍ وَنَحْوِهِ، وَلَا أَجَازُوا تَقْدِيمَ صَدَقَةِ الْفِطْرِ إثْرَ ابْتِدَاءِ الصَّوْمِ لَكِنْ قَبْلَ الْفِطْرِ بِيَوْمَيْنِ فَأَقَلَّ فَقَطْ.

[3] **Qur'an references (L18537):** Qur'an 74:23 (Al-Muddaththir); Qur'an 74:24 (Al-Muddaththir); Qur'an 74:25 (Al-Muddaththir); Qur'an 74:26 (Al-Muddaththir).

[4] **Qur'an references (L18552):** Qur'an 65:1 (At-Talaq).

they permit advancing the payment of Zakat al-Fitr immediately after the start of fasting, but only two days or fewer before Eid al-Fitr, and no more than that.

وَلَمْ يُجِيزُوا تَقْدِيمَ كَفَّارَةِ الظِّهَارِ أَصْلًا، وَلَا بِسَاعَةٍ قَبْلَ مَا يُوجِبُهَا عِنْدَهُمْ مِنْ إرَادَةِ الْوَطْءِ، وَلَا أَجَازُوا تَقْدِيمَ كَفَّارَةِ قَتْلِ الْخَطَإِ قَبْلَ مَا يُوجِبُهَا مِنْ مَوْتِ الْمَقْتُولِ وَلَا بِطَرْفَةِ عَيْنٍ، وَلَا كَفَّارَةِ قَتْلِ الصَّيْدِ فِي الْحَرَمِ قَبْلَ قَتْلِهِ.

L18556 They did not permit advancing the expiation of ẓihār at all—not even momentarily before what obligates it according to them: the intention of intercourse. Nor did they permit advancing the expiation for accidental killing before what obligates it: the death of the slain—not even for an instant—nor advancing the expiation for killing game within the sacred precinct before its actual killing.

وَأَجَازُوا إذْنَ الْوَرَثَةِ لِلْمُوصِي فِي أَكْثَرَ مِنْ الثُّلُثِ قَبْلَ أَنْ يَجِبَ لَهُمْ الْمَالُ بِمَوْتِهِ، فَظَهَرَ تَنَاقُضُ أَقْوَالِهِمْ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

L18557 They permitted the testator to make a bequest of more than a third with the heirs' consent before the estate becomes rightfully theirs upon his death, thus the contradiction in their opinions became evident—and to Allah, the Exalted, belongs all praise.

وَأَمَّا الْحَنَفِيُّونَ فَتَنَاقَضُوا أَقْبَحَ تَنَاقُضٍ، لِأَنَّهُمْ أَجَازُوا تَقْدِيمَ الزَّكَاةِ قَبْلَ الْحَوْلِ بِثَلَاثَةِ أَعْوَامٍ، وَتَقْدِيمَ زَكَاةِ الزَّرْعِ إثْرَ زَرْعِهِ فِي الْأَرْضِ، وَأَجَازُوا تَقْدِيمَ الْكَفَّارَةِ فِي جَزَاءِ الصَّيْدِ بَعْدَ جِرَاحِهِ وَقَبْلَ مَوْتِهِ - وَتَقْدِيمَ كَفَّارَةِ قَتْلِ الْخَطَإِ قَبْلَ مَوْتِ الْمَجْرُوحِ.

L18558–18559 As for the Ḥanafīs, they contradicted themselves in the worst manner, for they permitted prepaying zakah three years before the completion of the lunar year, prepaying crop zakah immediately after planting in the ground, permitted prepaying the penalty for hunting after wounding the animal but before its death, and prepaying the expiation for accidental killing before the death of the wounded party.

وَلَمْ يُجِيزُوا لِلْوَرَثَةِ الْإِذْنَ فِي الْوَصِيَّةِ بِأَكْثَرَ مِنْ الثُّلُثِ قَبْلَ وُجُوبِ الْمَالِ لَهُمْ بِالْمَوْتِ - وَلَا أَجَازُوا إسْقَاطَ الشَّفِيعِ حَقَّهُ مِنْ الشُّفْعَةِ بَعْدَ عَرْضِ شَرِيكِهِ أَخْذَ الشِّقْصِ عَلَيْهِ قَبْلَ وُجُوبِ أَخْذِهِ لَهُ بِالْبَيْعِ؛ فَظَهَرَ تَخْلِيطُهُمْ وَسُخْفُ أَقْوَالِهِمْ - وَبِاَللَّهِ تَعَالَى نَعُوذُ مِنْ الْخِذْلَانِ.

L18560 They did not permit the heirs to authorize a bequest exceeding one-third before the estate becomes due to them upon death—nor did they allow the pre-emptor to relinquish his right of pre-emption after his co-owner offers to take the share from the seller before the right to claim it becomes obligatory for him through the sale. Thus their muddled reasoning and the absurdity of their statements became manifest—and in Allah the Exalted we seek refuge from abandonment.

وَكُلُّهُمْ لَا يُجِيزُ الِاسْتِثْنَاءَ قَبْلَ الْيَمِينِ، وَلَا قَضَاءَ دَيْنٍ قَبْلَ أَخْذِهِ، وَلَا صَلَاةَ قَبْلَ وَقْتِهَا، فَلَمْ يَبْقَ إلَّا قَوْلُنَا، وَقَوْلُ أَصْحَابِنَا الْمَانِعِينَ مِنْ تَقْدِيمِ كُلِّ حَقٍّ لَهُ وَقْتٌ قَبْلَ وَقْتِهِ،

L18561 None of them permit making an exception before swearing the oath, repaying a debt before it is due, or performing prayer before its designated time. Thus, nothing remains except our position and the position of our fellow jurists who prohibit preponing any time-bound obligation before its due time. They hold that expiation only becomes obligatory through oath violation, being a mandated duty after the breach by textual injunction and consensus.

Therefore, preponing it before its obligation takes effect constitutes a voluntary act rather than a compulsory duty, and it is logically inconceivable for a voluntary act to suffice in place of a compulsory obligation.

L18562 They said, "Allah, the Exalted, said: 'And whoever transgresses the limits set by Allah has certainly wronged himself' [At-Talaq: 1], and the evidences here are exceedingly abundant."[5]

L18563 Abu Muhammad said: These are sound proofs. We agree with them that no aspect of the Shariah suffices before its designated time except in two instances: 1. The expiation for an oath - it is permissible to advance it before committing the violation, but only after forming the intention to violate it, and this is obligatory. 2. The second:

L18564 The pre-emptor's relinquishment of his right after being presented with the pre-emption option—to take or abandon before the sale—makes his waiver binding solely upon him at that point.

L18565 We only did this due to the texts that exclude these two Sharia rulings from the ruling that applies to the rest of the Sharia in that it is neither valid nor permissible to perform any part of these two rulings before the time specified by Allah, the Exalted.

L18566 Abu Muhammad said: Some of those who agreed with us here cited as proof to validate our position by invoking Allah's statement: "That is the expiation for your oaths when you swear" [Al-Ma'idah: 89].[6]

L18567 He said: Thus, the expiation is obligatory by virtue of the very oath itself.

L18568–18569 Ali said: "We have no proof in this matter, for the scriptural text and the definitively established consensus state that no expiation is required of one who does not break an oath. Thus, it is confirmed that the expiation is not obligated by the oath itself. Some of them argued that the verse contains

فَإِنَّهُمْ قَالُوا: الْكَفَّارَةُ لَا تَجِبُ إِلَّا بِالْحِنْثِ، وَهِيَ فَرْضٌ بَعْدَ الْحِنْثِ بِالنَّصِّ وَالْإِجْمَاعِ، فَتَقْدِيمُهَا قَبْلَ أَنْ تَجِبَ تَطَوُّعٌ لَا فَرْضٌ، وَمِنَ الْمُحَالِ أَنْ يُجْزِئَ التَّطَوُّعُ عَنِ الْفَرْضِ.

وَقَالُوا: قَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَالدَّلَائِلُ هَهُنَا تَكْثُرُ جِدًّا.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ أَدِلَّةٌ صِحَاحٌ، وَنَحْنُ مُوَافِقُونَ لَهُمْ فِي أَنَّهُ لَا يُجْزِئُ شَيْءٌ مِنَ الشَّرِيعَةِ قَبْلَ وَقْتِهِ إِلَّا فِي مَوْضِعَيْنِ -: أَحَدُهُمَا: كَفَّارَةُ الْيَمِينِ، فَجَائِزٌ تَقْدِيمُهَا قَبْلَ الْحِنْثِ، لَكِنْ بَعْدَ إِرَادَةِ الْحِنْثِ وَلَا بُدَّ. وَالثَّانِي:

إِسْقَاطُ الشَّفِيعِ حَقَّهُ بَعْدَ عَرْضِ الشَّفِيعِ عَلَيْهِ أَنْ يَأْخُذَ أَوْ يَتْرُكَ قَبْلَ الْبَيْعِ، فَإِسْقَاطُهُ حَقَّهُ حِينَئِذٍ لَازِمٌ لَهُ فَقَطْ.

وَإِنَّمَا فَعَلْنَا ذَلِكَ لِلنُّصُوصِ الْمُخْرِجَةِ لِهَذَيْنِ الشَّرْعَيْنِ عَنْ حُكْمِ سَائِرِ الشَّرِيعَةِ فِي أَنَّهُ لَا يُجْزِئُ وَلَا يَجُوزُ أَدَاءُ شَيْءٍ مِنْهَا قَبْلَ الْوَقْتِ الَّذِي حَدَّهُ اللَّهُ تَعَالَى لَهُ.

قَالَ أَبُو مُحَمَّد: وَقَدْ احْتَجَّ بَعْضُ مَنْ وَافَقَنَا هَهُنَا فِي تَصْحِيحِ قَوْلِنَا بِأَنْ قَالَ: قَالَ اللَّهُ تَعَالَى: {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ} [المائدة: ٨٩] .

قَالَ: فَالْكَفَّارَةُ وَاجِبَةٌ بِنَفْسِ الْيَمِينِ.

قَالَ عَلِيٌّ: وَلَا حُجَّةَ لَنَا فِي هَذَا، لِأَنَّهُ قَدْ جَاءَ النَّصُّ وَالْإِجْمَاعُ الْمُتَيَقَّنُ: عَلَى أَنَّ مَنْ لَمْ يَحْنَثْ فَلَا كَفَّارَةَ تَلْزَمُهُ، فَصَحَّ أَنَّهُ لَيْسَ بِنَفْسِ الْيَمِينِ تَجِبُ الْكَفَّارَةُ - وَاحْتَجَّ بَعْضُهُمْ بِأَنَّ فِي الْآيَةِ حَذْفًا بِلَا خِلَافٍ وَأَنَّهُ: فَأَرَدْتُمُ الْحِنْثَ، أَوْ حَنِثْتُمْ.

[5] **Qur'an references (L18562):** Qur'an 65:1 (At-Talaq).
[6] **Qur'an references (L18566):** Qur'an 5:89 (Al-Ma'idah).

an uncontested ellipsis, meaning: ’You intended to break [the oath] or you broke it.”’

L18570 Abu Muhammad said: This claim of theirs that the omitted phrase is “then you intended to violate [the oath]” cannot be accepted without evidence. It thus became obligatory to seek proof for this matter. We therefore investigated and discovered what we have narrated via the chain transmitted by Imam Muslim: Zuhayr ibn Harb narrated to us; Marwan ibn Muʿawiyah al-Fazari narrated to us; Yazid ibn Kaysan narrated from Abu Hazim, from Abu Hurayrah, that the Messenger of Allah—may Allah bless him and grant him peace—said: “Whoever swears an oath and then finds a better course of action, let him pursue it and expiate for his oath.”[7]

L18571 From the chain of Aḥmad ibn Shuʿayb: I, Aḥmad ibn Sulaymān, narrated to us from ʿAffān ibn Muslim. Jarīr ibn Ḥāzim said: I heard al-Ḥasan al-Baṣrī say: ʿAbd al-Raḥmān ibn Samura narrated to us, saying: The Messenger of Allāh—peace and blessings of Allāh be upon him—said to me, “When you swear an oath and then see a better alternative than it, expiate for your oath, then do what is better.”

L18572 And similarly, it was narrated by us through the chain of Sa’id ibn Abi ’Arubah from Qatadah from al-Hasan from ’Abd al-Rahman ibn Samura from the Prophet — peace be upon him.

L18573 And through the chain of Aḥmad ibn Shuʿayb: Isḥāq ibn Manṣūr narrated: ʿAbd al-Raḥmān ibn Mahdī related: Shuʿbah narrated to us from ʿAmr ibn Murrah, who said: I heard ʿAbd Allāh ibn ʿAmr, the freed slave of al-Ḥasan ibn ʿAlī, narrating from ʿAdī ibn Ḥātim, who said: The Messenger of Allāh (peace and blessings be upon him) said, “Whoever swears an oath and then sees a better alternative to his oath, let him do what is better and expiate for his oath.”[8]

L18574–18575 These hadiths comprehensively encompass all rulings regarding what they disagreed about—the permissibility of offering expiation before the breach of

قَالَ أَبُو مُحَمَّد: وَهَذِهِ دَعْوَى مِنْهُمْ فِي أَنَّ الْمَحْذُوفَ هُوَ " فَأَرَدْتُمْ الْحِنْثَ " لَا يُقْبَلُ إِلَّا بِبُرْهَانٍ، فَوَجَبَ طَلَبُ الْبُرْهَانِ فِي ذَلِكَ -: فَنَظَرْنَا فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا مَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيّ نا يَزِيدُ بْنُ كَيْسَانَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِهَا وَلْيُكَفِّرْ عَنْ يَمِينِهِ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ سُلَيْمَانَ نا عَفَّانُ هُوَ ابْنُ مُسْلِمٍ نا جَرِيرُ بْنُ حَازِمٍ قَالَ: سَمِعْت الْحَسَنَ هُوَ الْبَصْرِيُّ يَقُولُ: نا عَبْدُ الرَّحْمَنِ بْنُ سَمُرَةَ قَالَ: قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا حَلَفْتَ عَلَى يَمِينٍ فَرَأَيْتَ غَيْرَهَا خَيْرًا مِنْهَا فَكَفِّرْ عَنْ يَمِينِكَ ثُمَّ ائْتِ الَّذِي هُوَ خَيْرٌ» .

وَهَكَذَا رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ سَمِعْت عَبْدَ اللَّهِ بْنَ عَمْرٍو مَوْلَى الْحَسَنِ بْنِ عَلِيٍّ يُحَدِّثُ عَنْ عَدِيِّ بْنِ حَاتِمٍ قَالَ [قَالَ] رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ وَلْيُكَفِّرْ عَنْ يَمِينِهِ» .

فَهَذِهِ الْأَحَادِيثُ جَامِعَةٌ لِجَمِيعِ أَحْكَامِ مَا اخْتَلَفُوا فِيهِ مِنْ جَوَازِ تَقْدِيمِ الْكَفَّارَةِ قَبْلَ الْحِنْثِ، لِأَنَّ فِي حَدِيثِ أَبِي هُرَيْرَةَ تَقْدِيمَ الْحِنْثِ قَبْلَ الْكَفَّارَةِ.

[7] **Hadith references (L18570):** Sahih Muslim 1650a.

an oath—because Abu Hurairah's hadith establishes the breach as preceding the expiation.

L18576 And in the hadith of ʿAbd al-Raḥmān ibn Samura, the expiation is presented before breaking the oath.

L18577 In the hadith of ʿAdī ibn Ḥātim, the conjunction of breaking an oath and expiation by the conjunctive "wāw," which does not imply sequence—as transmitted through Abū Mūsā al-Ashʿarī—it is obligatory to use all of them, with neither being more deserving of obedience than the other, nor is it permissible to contradict one with the other. Thus that is permissible, and success is from Allah, the Most High.

L18578 Through this, it is affirmed that the omission in the verse pertains solely to when you intend to violate an oath or when you violate an oath, and the Messenger of Allah (peace be upon him) is the expounder of his Lord's commandments—the Almighty, the Majestic.

L18579 Some of them objected by saying: The statement of the Messenger of Allah—peace and blessings be upon him—"Let him perform expiation, then proceed to do what is best," is like the statement of Allah, the Exalted: {Then he became one of those who have faith} (Surah Al-Balad 90:17).[9]

L18580 And like the saying of the Most High: "Then We gave Moses the Scripture" [Al-Anʿām: 154].[10]

L18581 And as the saying of the Most High: "We have certainly created you, then formed you, then We said to the angels: 'Prostrate to Adam'" [Al-Aʿrāf 7:11].[11]

L18582 This speaker said: The word "thumma" in these verses does not denote sequence; rather, it refers to what precedes the word conjoined by "thumma".

وَفِي حَدِيثِ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ تَقْدِيمَ الْكَفَّارَةِ قَبْلَ الْحِنْثِ.

وَفِي حَدِيثِ عَدِيِّ بْنِ حَاتِمٍ الْجَمْعَ بَيْنَ الْحِنْثِ وَالْكَفَّارَةِ بِوَاوِ الْعَطْفِ الَّتِي لَا تُعْطِي رُتْبَةً - هَكَذَا جَاءَ مِنْ طَرِيقِ أَبِي مُوسَى الْأَشْعَرِيِّ فَوَجَبَ اسْتِعْمَالُ جَمِيعِهَا، وَلَمْ يَكُنْ بَعْضُهَا أَوْلَى بِالطَّاعَةِ مِنْ بَعْضٍ، وَلَا تَحِلُّ مُخَالَفَةُ بَعْضِهَا لِبَعْضٍ، فَكَانَ ذَلِكَ جَائِزًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَصَحَّ بِهَذَا أَنَّ الْحَذْفَ الَّذِي فِي الْآيَةِ إِنَّمَا هُوَ إِذَا أَرَدْتُمْ الْحِنْثَ أَوْ حَنِثْتُمْ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الْمُبَيِّنُ عَنْ رَبِّهِ عَزَّ وَجَلَّ.

وَاعْتَرَضَ بَعْضُهُمْ بِأَنْ قَالَ: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَلْيُكَفِّرْ ثُمَّ لِيَأْتِ الَّذِي هُوَ خَيْرٌ» هُوَ مِثْلُ قَوْلِ اللَّهِ تَعَالَى: {ثُمَّ كَانَ مِنَ الَّذِينَ آمَنُوا} [البلد: ١٧] .

وَكَقَوْلِهِ تَعَالَى: {ثُمَّ آتَيْنَا مُوسَى الْكِتَابَ} [الأنعام: ١٥٤] .

وَكَقَوْلِهِ تَعَالَى: {وَلَقَدْ خَلَقْنَاكُمْ ثُمَّ صَوَّرْنَاكُمْ ثُمَّ قُلْنَا لِلْمَلَائِكَةِ اسْجُدُوا لِآدَمَ} [الأعراف: ١١] .

قَالَ هَذَا الْقَائِلُ: وَلَفْظَةُ " ثُمَّ " فِي هَذِهِ الْآيَاتِ لَا تُوجِبُ تَعْقِيبًا، بَلْ هِيَ وَاقِعَةٌ عَلَى مَا كَانَ قَبْلَ مَا عَطَفَ اللَّفْظَ عَلَيْهِ " بِثُمَّ ".

[8] **Hadith references (L18573):** Sahih Muslim 1650c; Sunan Ibn Majah 2108; Sunan an-Nasai 3785.

[9] **Qur'an references (L18579):** Qur'an 90:17 (Al-Balad).

[10] **Qur'an references (L18580):** Qur'an 6:154 (Al-An'am).

[11] **Qur'an references (L18581):** Qur'an 7:11 (Al-A'raf).

L18583 Abu Muhammad said: It is not as they presumed—as for the statement of the Exalted: {Then he was among those who believed} [Al-Balad: 17], the text of the verses is the statement of the Exalted: {And what can make you know what is the steep pass?} [Al-Balad: 12] {It is freeing a slave} [Al-Balad: 13] {Or feeding on a day of severe hunger} [Al-Balad: 14] {An orphan of near relationship} [Al-Balad: 15] {Or a needy person in dire poverty} [Al-Balad: 16] {Then he was among those who believed and enjoined one another to patience and to mercy} [Al-Balad: 17].[12]

L18584 We have mentioned "the statement of the Messenger of Allah—peace and blessings be upon him—to Ḥakīm ibn Ḥizām: 'You embraced Islam **with** the good deeds you had previously performed,'" and **this verse clarifies** the immense favor of Allah the Exalted upon His servants in His acceptance of every righteous deed they performed during their **disbelief**, then embraced Islam. Thus, the verse is to be understood according to its outward meaning, and it **is in addition to the rest of what is in the Quran** regarding His acceptance of the deeds of those who believed and then performed righteous acts. And all praise is due to Allah, Lord of the worlds.

L18585–18586 As for the statement of the Exalted: {Then We gave Moses the Book} [6:154], it is not as they presumed, for the preceding verse is His declaration—Exalted and Majestic is He: {Indeed, this is My straight path, so follow it. Do not follow divergent ways, lest they scatter you from His path. This He has enjoined upon you that you may attain piety} [6:153]; followed by {Then We gave Moses the Book in completion for those who did good} [6:154].[13]

L18587 Allah, the Exalted, has said: "Abraham was neither a Jew nor a Christian, but he was a ḥanīf (upright monotheist) and Muslim" [Āl ʿImrān: 67]. And He said: "The creed of your father Abraham" [al-Ḥajj: 78].[14]

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ كَمَا ظَنُّوا -: أَمَّا قَوْله تَعَالَى: {ثُمَّ كَانَ مِنَ الَّذِينَ آمَنُوا} [البلد: ١٧] فَإِنَّ نَصَّ الْآيَاتِ هُوَ قَوْله تَعَالَى: {وَمَا أَدْرَاكَ مَا الْعَقَبَةُ} [البلد: ١٢] {فَكُّ رَقَبَةٍ} [البلد: ١٣] {أَوْ إِطْعَامٌ فِي يَوْمٍ ذِي مَسْغَبَةٍ} [البلد: ١٤] {يَتِيمًا ذَا مَقْرَبَةٍ} [البلد: ١٥] {أَوْ مِسْكِينًا ذَا مَتْرَبَةٍ} [البلد: ١٦] {ثُمَّ كَانَ مِنَ الَّذِينَ آمَنُوا وَتَوَاصَوْا بِالصَّبْرِ وَتَوَاصَوْا بِالْمَرْحَمَةِ} [البلد: ١٧] .

وَقَدْ ذَكَرْنَا «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِحَكِيمِ بْنِ حِزَامٍ أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ مِنْ الْخَيْرِ» فَصَحَّ بِهَذِهِ الْآيَةِ عَظِيمُ نِعْمَةِ اللَّهِ تَعَالَى عَلَى عِبَادِهِ فِي قَبُولِهِ كُلَّ عَمَلِ بِرٍّ عَمِلُوهُ فِي كُفْرِهِمْ ثُمَّ أَسْلَمُوا، فَالْآيَةُ عَلَى ظَاهِرِهَا وَهِيَ زَائِدَةٌ عَلَى سَائِرِ مَا فِي الْقُرْآنِ مِنْ قَبُولِهِ تَعَالَى أَعْمَالَ مَنْ آمَنَ ثُمَّ عَمِلَ الْخَيْرَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا قَوْله تَعَالَى: {ثُمَّ آتَيْنَا مُوسَى الْكِتَابَ} [الأنعام: ١٥٤] فَلَيْسَ كَمَا ظَنُّوا لِأَنَّ أَوَّلَ الْآيَةِ قَوْلُهُ عَزَّ وَجَلَّ: {وَأَنَّ هَذَا صِرَاطِي مُسْتَقِيمًا فَاتَّبِعُوهُ وَلا تَتَّبِعُوا السُّبُلَ فَتَفَرَّقَ بِكُمْ عَنْ سَبِيلِهِ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَتَّقُونَ} [الأنعام: ١٥٣] {ثُمَّ آتَيْنَا مُوسَى الْكِتَابَ تَمَامًا عَلَى الَّذِي أَحْسَنَ} [الأنعام: ١٥٤] .

وَقَدْ قَالَ تَعَالَى: {مَا كَانَ إِبْرَاهِيمُ يَهُودِيًّا وَلا نَصْرَانِيًّا وَلَكِنْ كَانَ حَنِيفًا مُسْلِمًا} [آل عمران: ٦٧] وَقَالَ تَعَالَى: {مِلَّةَ أَبِيكُمْ إِبْرَاهِيمَ} [الحج: ٧٨] .

[12] **Qur'an references (L18583):** Qur'an 90:17 (Al-Balad); Qur'an 90:12 (Al-Balad); Qur'an 90:13 (Al-Balad); Qur'an 90:14 (Al-Balad); Qur'an 90:15 (Al-Balad); Qur'an 90:16 (Al-Balad).

[13] **Qur'an references (L18586):** Qur'an 6:154 (Al-An'am); Qur'an 6:153 (Al-An'am).

[14] **Qur'an references (L18587):** Qur'an 3:67 (Ali 'Imran); Qur'an 22:78 (Al-Hajj).

L18588 It has been established that the path which Allah, the Exalted, has commanded us to follow and which Muhammad (peace and blessings be upon him) has brought to us is the path of Abraham (peace be upon him). It undoubtedly existed before Moses. Then Allah, the Exalted, gave Moses the Book. This is a subsequent action following a delay, without any doubt.

فَصَحَّ أَنَّ الصِّرَاطَ الَّذِي أَمَرَنَا اللَّهُ تَعَالَى بِاتِّبَاعِهِ وَأَتَانَا بِهِ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ صِرَاطُ إبْرَاهِيمَ - عَلَيْهِ السَّلَامُ -، وَقَدْ كَانَ قَبْلَ مُوسَى بِلَا شَكٍّ ثُمَّ آتَى اللَّهُ تَعَالَى مُوسَى الْكِتَابَ، فَهَذَا تَعْقِيبٌ بِمُهْلَةٍ لَا شَكَّ فِيهِ.

L18589 As for the statement of the Exalted: {We have indeed created you, then formed you, then said to the angels, "Prostrate before Adam"} [Al-A'raf: 11], this is to be understood according to its apparent meaning, for Allah the Exalted created our selves and formed them, and they are the selves upon whom Allah took the covenant: {Am I not your Lord? They said, "Yes"} [Al-A'raf: 172].[15]

فَأَمَّا قَوْله تَعَالَى: {وَلَقَدْ خَلَقْنَاكُمْ ثُمَّ صَوَّرْنَاكُمْ ثُمَّ قُلْنَا لِلْمَلَائِكَةِ اسْجُدُوا لِآدَمَ} [الأعراف: ١١] فَعَلَى ظَاهِرِهِ، لِأَنَّ اللَّهَ تَعَالَى خَلَقَ أَنْفُسَنَا وَصَوَّرَهَا، وَهِيَ الَّتِي أَخَذَ اللَّهُ عَلَيْهَا الْعَهْدَ: {أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى} [الأعراف: ١٧٢] .

L18590 Then after that, the angels were made to prostrate to Adam—peace be upon him—which nullified their connection to these verses. Even if "then" were to depart from its apparent meaning here or signify something other than sequential order, this would not necessitate that "then" must always denote non-sequential usage wherever it occurs. For when something deviates from its linguistic meaning in a specific context due to evidence, this does not permit its deviation from its linguistic meaning in other contexts. This is part of their corrupt obfuscation, which benefits them only in bewildering those who do not carefully examine the first things they suddenly confront them with. And success is from Allah, the Most High.

ثُمَّ بَعْدَ ذَلِكَ أَسْجَدَ الْمَلَائِكَةَ لِآدَمَ - عَلَيْهِ السَّلَامُ -، فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَاتِ - ثُمَّ حَتَّى لَوْ خَرَجَتْ عَنْ ظَاهِرِهَا، أَوْ كَانَتْ " ثُمَّ " لِغَيْرِ التَّعْقِيبِ فِيهَا لَمْ يَجِبْ لِذَلِكَ أَنْ تَكُونَ " ثُمَّ " لِغَيْرِ التَّعْقِيبِ حَيْثُمَا وُجِدَتْ، لِأَنَّ مَا خَرَجَ عَنْ مَوْضُوعِهِ فِي اللُّغَةِ بِدَلِيلٍ فِي مَوْضِعٍ مَا لَمْ يَجُزْ أَنْ يَخْرُجَ فِي غَيْرِ ذَلِكَ الْمَوْضِعِ عَنْ مَوْضُوعِهِ فِي اللُّغَةِ - وَهَذَا مِنْ تَمْوِيهِهِمْ الْفَاسِدِ الَّذِي لَا يَنْتَفِعُونَ بِهِ إلَّا فِي تَحْيِيرِ مَنْ لَمْ يُمْعِنْ النَّظَرَ فِي أَوَّلِ مَا يَفْجَئُونَهُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18591 Our view here is the opinion of ʿĀ'ishah, the Mother of the Believers –: via the chain of Ibn Abī Shaybah: al-Muʿtamir ibn Sulaymān al-Taymī narrated to us from ʿAbdullāh ibn ʿAwn, from Muḥammad ibn Sīrīn, that Maslamah ibn Makhlad and Salmān al-Fārisī would perform expiation before violating their oath.

وَقَوْلُنَا هَذَا هُوَ قَوْلُ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ -: وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ مَسْلَمَةَ بْنَ مَخْلَدٍ، وَسَلْمَانَ الْفَارِسِيَّ كَانَا يُكَفِّرَانِ قَبْلَ الْحِنْثِ.

L18592 And through him to Abū Bakr ibn Abī Shaybah: Ḥafṣ ibn Ghiyāth informed us from Ashʿath from Ibn Sīrīn that Abū al-Dardāʾ called his slave boy and emancipated him, then violated his oath, so he carried out what he had sworn against.

وَبِهِ إلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ عَنْ ابْنِ سِيرِينَ: أَنَّ أَبَا الدَّرْدَاءِ دَعَا غُلَامًا لَهُ فَأَعْتَقَهُ ثُمَّ حَنِثَ، فَصَنَعَ الَّذِي حَلَفَ عَلَيْهِ.

[15] **Qur'an references (L18589):** Qur'an 7:11 (Al-A'raf); Qur'an 7:172 (Al-A'raf).

وَبِهِ إِلَى ابْنِ أَبِي شَيْبَةَ نا أَزْهَرُ عَنِ ابْنِ عَوْنٍ أَنَّ مُحَمَّدَ بْنَ سِيرِينَ: كَانَ يُكَفِّرُ قَبْلَ الْحِنْثِ -: وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ أَيْضًا، وَالْحَسَنِ، وَرَبِيعَةَ، وَسُفْيَانَ، وَالْأَوْزَاعِيِّ، وَمَالِكٍ، وَاللَّيْثِ، وَعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَسُلَيْمَانَ بْنِ دَاوُد الْهَاشِمِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي خَيْثَمَةَ، وَغَيْرِهِمْ.

And via his chain to Ibn Abi Shaybah: Azhar reported to us on the authority of Ibn ʻAwn that Muhammad ibn Sirin would offer expiation before breaching the oath: this is also the view of Ibn Abbas, al-Hasan, Rabiʻah, Sufyan, and al-Awzaʻi, Malik, al-Layth, Abdullah ibn al-Mubarak, Ahmad ibn Hanbal, Ishaq ibn Rāhawayh, Sulayman ibn Dawud al-Hashimi, Abu Thawr, Abu Khaythamah, and others.

وَلَا يُعْلَمُ لِمَنْ ذَكَرْنَا مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إِلَّا أَنَّ مُمَوِّهًا مَوَّهَ بِرِوَايَةِ عَبْدِ الرَّزَّاقِ عَنِ الْأَسْلَمِيِّ هُوَ إِبْرَاهِيمُ بْنُ أَبِي يَحْيَى - عَنْ رَجُلٍ سَمَّاهُ عَنْ مُحَمَّدِ بْنِ زِيَادٍ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنِ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ لَا يُكَفِّرُ حَتَّى يَحْنَثَ - وَهَذَا بَاطِلٌ، لِأَنَّ ابْنَ أَبِي يَحْيَى مَذْكُورٌ بِالْكَذِبِ، ثُمَّ عَمَّنْ لَمْ يُسَمِّ.

No opposing view is known from the Companions—may Allah be pleased with them—regarding those we mentioned, except that a fabricator fabricated through the narration of ʿAbd al-Razzāq from al-Aslamī, who is Ibrāhīm ibn Abī Yaḥyā—from a man he named, from Muḥammad ibn Ziyād, from Maymūn ibn Mihrān, from Ibn ʿAbbās: "Ibn ʿAbbās would not declare someone an unbeliever until they broke an oath"—and this is invalid, for Ibn Abī Yaḥyā is notorious as a liar, then from someone unnamed.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّ ابْنَ عَبَّاسٍ لَمْ يُجِزِ الْكَفَّارَةَ قَبْلَ الْحِنْثِ، إِنَّمَا فِيهِ: أَنَّهُ كَانَ يُؤَخِّرُ الْكَفَّارَةَ بَعْدَ الْحِنْثِ فَقَطْ - وَنَحْنُ لَا نُنْكِرُ هَذَا.

Then, even if [the report] were valid, it would not constitute proof for them, because it does not state that Ibn Abbas disallowed expiation before the violation. Rather, it only states that he postponed the expiation until after the violation—and we do not dispute this.

[مَسْأَلَةٌ حَلَفَ أَنْ لَا يُعْتِقَ عَبْدَهُ فَأَعْتَقَهُ يَنْوِي كَفَّارَةَ تِلْكَ الْيَمِينِ]

Issue: He swore not to emancipate his slave, but then emancipated the slave, intending [this act] to be the expiation for that oath.

١١٧٨ - مَسْأَلَةٌ

1178. Issue

وَمَنْ حَلَفَ أَنْ لَا يُعْتِقَ عَبْدَهُ هَذَا، فَأَعْتَقَهُ يَنْوِي بِعِتْقِهِ ذَلِكَ كَفَّارَةَ تِلْكَ الْيَمِينِ لَمْ يُجْزِهِ.

Whoever swears not to manumit this slave of his, then manumits him intending for that act to serve as atonement *kafārah* for the oath, it does not suffice for him.

وَمَنْ حَلَفَ أَنْ يَتَصَدَّقَ عَلَى هَؤُلَاءِ الْعَشَرَةِ الْمَسَاكِينِ فَأَطْعَمَهُمْ يَنْوِي بِذَلِكَ كَفَّارَةَ يَمِينِهِ لَمْ يُجْزِهِ، وَلَا يَحْنَثُ بِأَنْ يَتَصَدَّقَ عَلَيْهِمْ بَعْدَ ذَلِكَ، وَكَذَلِكَ الْكِسْوَةُ، لَكِنْ عَلَيْهِ الْكَفَّارَةُ.

And whoever swears to give charity to these ten poor people, then feeds them with the intention of fulfilling the expiation for his oath, it does not validly fulfill it. He does not break his oath by giving charity to them afterward. The same ruling applies to clothing. However, the expiation remains obligatory for him.

وَمَنْ حَلَفَ أَنْ لَا يَصُومَ فِي هَذِهِ الْجُمُعَةِ وَلَا يَوْمًا، ثُمَّ صَامَ مِنْهَا ثَلَاثَةَ أَيَّامٍ يَنْوِي بِهَا كَفَّارَةَ يَمِينِهِ تِلْكَ - وَهُوَ مِنْ أَهْلِ الْكَفَّارَةِ بِالصِّيَامِ - لَمْ يُجْزِهِ، وَلَا يَحْنَثُ بِأَنْ يَصُومَ فِيهَا بَعْدَ ذَلِكَ، وَعَلَيْهِ الْكَفَّارَةُ لِأَنَّ مَعْنَى الْكَفَّارَةِ بِلَا شَكٍّ إِسْقَاطُ الْحِنْثِ، وَالْحِنْثُ قَدْ وَجَبَ بِالْعِتْقِ، وَالْإِطْعَامِ، وَالْكِسْوَةِ، فَلَا يَحْنَثُ بَعْدُ فِي يَمِينٍ قَدْ حَنِثَ فِيهَا، وَالْكَفَّارَةُ لَا تَكُونُ الْحِنْثَ بِلَا شَكٍّ، بَلْ هِيَ الْمُبْطِلَةُ لَهُ، وَالْحَقُّ لَا يُبْطِلُ نَفْسَهُ.

L18602 Whoever swears not to fast during this Friday nor any day, then fasts three days from them intending these as expiation for that oath of his—while being among those eligible to expiate by fasting—it did not suffice him, nor is his oath broken by fasting afterward. The expiation remains obligatory upon him, because the meaning of expiation is undoubtedly the removal of oath-breaking. Oath-breaking has already been established through manumission, feeding, and clothing. Thus he does not break his oath thereafter in an oath he already violated. Expiation is undoubtedly not the oath-breaking itself, but rather what nullifies it. The rightful ruling does not nullify itself.

[مَسْأَلَةٌ صِفَةُ الْكَفَّارَةِ]

L18603 ## Issue: The Manner of Expiation

١١٧٩ - مَسْأَلَةٌ

L18604 1179 – Issue

وَصِفَةُ الْكَفَّارَةِ: هِيَ أَنَّ مَنْ حَنِثَ، أَوْ أَرَادَ الْحِنْثَ وَإِنْ لَمْ يَحْنَثْ بَعْدُ، فَهُوَ مُخَيَّرٌ بَيْنَ مَا جَاءَ بِهِ النَّصُّ -: وَهُوَ إِمَّا أَنْ يُعْتِقَ رَقَبَةً، وَإِمَّا أَنْ يَكْسُوَ عَشْرَةَ مَسَاكِينَ، وَإِمَّا أَنْ يُطْعِمَهُمْ: أَيُّ ذَلِكَ فَعَلَ فَهُوَ فَرْضٌ، وَيَجْزِيهِ، فَإِنْ لَمْ يَقْدِرْ عَلَى شَيْءٍ مِنْ ذَلِكَ: فَفَرْضُهُ صِيَامُ ثَلَاثَةِ أَيَّامٍ، وَلَا يُجْزِئُهُ الصَّوْمُ مَا دَامَ يَقْدِرُ عَلَى مَا ذَكَرْنَا: مِنَ الْعِتْقِ، أَوِ الْكِسْوَةِ، أَوِ الْإِطْعَامِ.

L18605 The description of the expiation is as follows: whoever breaks an oath or intends to break it—even if he has not yet done so—may choose between the options stipulated in the sacred text: either freeing a slave, clothing ten poor people, or feeding them. Whichever of these he performs becomes obligatory and suffices for him. If he is incapable of any of these, his obligation is to fast three days. Fasting does not suffice as long as he remains capable of performing the aforementioned acts: emancipation, clothing, or feeding.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ} [المائدة: ٨٩] .

L18606 The proof of that is the statement of Allah, the Most High: *“The expiation for it is feeding ten poor people from the average of what you feed your families, or clothing them, or freeing a slave. But whoever cannot afford it must fast three days. That is the expiation for your oaths when you swear. And guard your oaths.”* (5:89)[16]

وَمَا نَعْلَمُ فِي هَذَا خِلَافًا، وَلَا نُبْعِدُهُ، لِأَنَّ مَنْ قَالَ فِي قَوْلِ اللَّهِ تَعَالَى: {فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسَاكِينَ

L18607–18608 We do not know of any disagreement regarding this matter, nor do we deem it implausible. For whoever holds that Allah’s statement—“The expiation shall be an offering equivalent to the livestock killed, as decreed by two just arbiters among you, to be delivered as a sacrificial offering reaching

[16] **Qur’an references (L18606):** Qur’an 5:89 (Al-Ma’idah).

the Kaaba, or the expiation of feeding the needy, or an equivalent measure thereof in fasting"—indicates a sequential obligation rather than optional alternatives, it is not far-fetched that such a scholar would also maintain that the expiation for broken oaths follows the same sequential order.[17]

L18609 And we ask Allah for success.

L18610 **A legal issue: The substitute for the expiation of an oath is not sufficient for him.**

L18611 1180 - Issue

L18612 Nor will it suffice as a substitute for what we have mentioned: charity, a sacrificial animal, monetary value, or anything else whatsoever, because Allah the Exalted has not obligated anything beyond what we have stated. Whoever mandates monetary value in this matter has transgressed the limits set by Allah: {And whoever transgresses the limits of Allah has certainly wronged himself} [al-Ṭalāq 1]. Such a person has legislated in the religion what Allah the Exalted has not permitted: {And your Lord is not forgetful} [Maryam 64].[18]

L18613 **A case in which one violated an oath while capable of the expiation, then became poor.**

L18614 1181 - Issue

L18615 And whoever breaks an oath while capable of providing food, clothing, or freeing a slave, then becomes impoverished and incapable of all that, fasting does not expiate for him at all. This is because, when the expiation became obligatory, one of these modes was definitively specified for him by the explicit text of the Quran. Therefore, what Allah the Exalted has conclusively obligated cannot be waived through a false claim. However, he is granted respite until he can afford it or cannot, for Allah alone oversees his reckon-

[17] **Qur'an references (L18608):** Qur'an 5:95 (Al-Ma'idah).

[18] **Qur'an references (L18612):** Qur'an 65:1 (At-Talaq); Qur'an 42:21 (Ash-Shuraa); Qur'an 19:64 (Maryam).

أَوْ عَدْلُ ذَلِكَ صِيَامًا} [المائدة: ٩٥] أَنَّ هَذَا عَلَى التَّرْتِيبِ، لَا عَلَى التَّخْيِيرِ - فَغَيْرُ مُسْتَبْعَدٍ مِنْهُ أَنْ يَقُولَ فِي كَفَّارَةِ الْأَيْمَانِ أَيْضًا: إِنَّهُ عَلَى التَّرْتِيبِ.

- وَنَسْأَلُ اللهَ التَّوْفِيقَ.

[مَسْأَلَةٌ لَا يُجْزِيهِ بَدَل كَفَّارَة الْيَمِين]

١١٨٠ - مَسْأَلَةٌ

وَلَا يُجْزِيهِ بَدَلَ مَا ذَكَرْنَا: صَدَقَةٌ، وَلَا هَدْيٌ، وَلَا قِيمَةٌ، وَلَا شَيْءٌ سِوَاهُ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ غَيْرَ مَا ذَكَرْنَا، فَمَنْ أَوْجَبَ فِي ذَلِكَ قِيمَةً فَقَدْ تَعَدَّى حُدُودَ اللَّهِ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَقَدْ شَرَعَ مِنْ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[مَسْأَلَةٌ حَنِثَ وَهُوَ قَادِرٌ عَلَى الْكَفَّارَة ثُمَّ افْتَقَرَ]

١١٨١ - مَسْأَلَةٌ

وَمَنْ حَنِثَ وَهُوَ قَادِرٌ عَلَى الْإِطْعَامِ، أَوْ الْكِسْوَةِ، أَوْ الْعِتْقِ، ثُمَّ افْتَقَرَ فَعَجَزَ عَنْ كُلِّ ذَلِكَ: لَمْ يُجْزِهِ الصَّوْمُ أَصْلًا، لِأَنَّهُ قَدْ تَعَيَّنَ عَلَيْهِ حِينَ وُجُوبِ الْكَفَّارَةِ أَحَدُ هَذِهِ الْوُجُوهِ بِنَصِّ الْقُرْآنِ، فَلَا يَجُوزُ سُقُوطُ مَا أَلْزَمَهُ اللَّهُ تَعَالَى يَقِينًا بِدَعْوَى كَاذِبَةٍ، لَكِنْ يُمْهَلُ حَتَّى يَجِدَ أَوْ لَا يَجِدَ، فَاَللَّهُ تَعَالَى وَلِيُّ حِسَابِهِ؛ وَأَمَّا مَا لَمْ يَحْنَثْ فَلَمْ يَتَعَيَّنْ عَلَيْهِ وُجُوبُ كَفَّارَةٍ بَعْدُ إلَّا أَنْ يُعَجِّلَهَا فَتُجْزِيهِ عَلَى مَا قَدَّمْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ing. As for one who has not broken the oath, no expiation is yet binding unless he hastens to perform it, in which case it will expiate for him as we previously established. And success comes from Allah, the Exalted.

L18616 **A jurisprudential issue pertaining to one who breaches an oath while he is incapable of performing the expiation.**

L18617 Question 1182 -

L18618 Whoever breaks an oath while being incapable of fulfilling any of those obligations—his obligation is fasting, whether he was capable of fasting at that time or not. Whenever he becomes capable, nothing but fasting suffices him. If he later attains means and becomes capable of manumission, feeding, or clothing, none of those [alternatives] suffice—only fasting does. If he dies without fasting, his guardian fasts on his behalf, or someone is hired from his estate to fast for him. This is because fasting's obligation was conclusively established upon him when he broke the oath, and its obligation became irrevocably binding. Thus, it is impermissible to nullify what Allah the Exalted has certainly and beyond doubt obligated upon him on the basis of a false claim.

L18619 Some of those who held this opinion stated: If he finds the means before he begins fasting or before completing the fast, his ruling shifts to the emancipation of a slave, feeding the poor, or providing clothing to the needy.

L18620–18622 Abu Muhammad said: This is a void claim. I wish I knew - what is the difference between being rendered insolvent after... If he becomes financially able, is it transferred to the permissibility or obligation of fasting regarding him? And between when he becomes financially able after having been unable—is it then transferred to the obligation of manumission, feeding, or clothing? If they argue: "Fasting was only imposed on him due to the necessity of its absence," we reply: Whoever claims this has lied and falsely attributed to Allah the Exalted, for we find Allah substituted fasting in place of manumission in the expiation for dhihār and accidental killing—not feeding. Then He replaced fasting with feeding for those incapable of fasting in dhihār's expiation, yet did not substitute feeding in place of fasting for the

[مَسْأَلَةٌ حَنِثَ وَهُوَ عَاجِزٌ عَنْ الْكَفَّارَةِ]

١١٨٢ - مَسْأَلَةٌ

وَمَنْ حَنِثَ وَهُوَ عَاجِزٌ عَنْ كُلِّ ذَلِكَ -: فَفَرْضُهُ الصَّوْمُ قَدَرَ عَلَيْهِ حِينَئِذٍ أَوْ لَمْ يَقْدِرْ، مَتَى قَدَرَ فَلَا يُجْزِيهِ إلَّا الصَّوْمُ، فَإِنْ أَيْسَرَ بَعْدَ ذَلِكَ وَقَدَرَ عَلَى الْعِتْقِ، وَالْإِطْعَامِ، وَالْكِسْوَةِ لَمْ يُجْزِهِ شَيْءٌ مِنْ ذَلِكَ إلَّا الصَّوْمَ، فَإِنْ مَاتَ وَلَمْ يَصُمْ صَامَ عَنْهُ وَلِيُّهُ، أَوْ اُسْتُؤْجِرَ عَنْهُ مِنْ رَأْسِ مَالِهِ مَنْ يَصُومُ عَنْهُ، لِأَنَّ الصَّوْمَ قَدْ تَعَيَّنَ عَلَيْهِ وُجُوبُهُ حِينَ حَنِثَ، وَصَحَّ لُزُومُهُ إيَّاهُ فَلَا يَجُوزُ سُقُوطُ مَا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْهِ يَقِينًا، لَا شَكَّ فِيهِ بِدَعْوَى كَاذِبَةٍ.

وَقَالَ بَعْضُ الْقَائِلِينَ: إنْ أَيْسَرَ قَبْلَ أَنْ يَصُومَ، أَوْ قَبْلَ أَنْ يُتِمَّ الصَّوْمَ: انْتَقَلَ حُكْمُهُ إلَى الْعِتْقِ، أَوْ الْإِطْعَامِ، أَوْ الْكِسْوَةِ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ دَعْوَى فَاسِدَةٌ، وَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ أَنْ يُعْسِرَ بَعْدَ أَنْ يُوسِرَ فَلَا يَنْقُلُونَهُ إلَى جَوَازِ الصِّيَامِ عَنْهُ، أَوْ وُجُوبِهِ عَلَيْهِ، وَبَيْنَ أَنْ يُوسِرَ بَعْدَ مَا يُعْسِرُ فَيَنْقُلُونَهُ إلَى وُجُوبِ الْعِتْقِ، أَوْ الْإِطْعَامِ، أَوْ الْكِسْوَةِ؟ فَإِنْ قَالُوا: إنَّمَا لَزِمَهُ الصِّيَامُ لِضَرُورَةِ عَدَمِهِ؟ قُلْنَا: كَذَبَ مَنْ قَالَ هَذَا، وَأَخْبَرَ عَنْ اللَّهِ تَعَالَى بِالْبَاطِلِ، وَقَدْ وَجَدْنَا اللَّهَ تَعَالَى عَوَّضَ مِنْ الْعِتْقِ فِي كَفَّارَةِ الظِّهَارِ، وَقَتْلِ الْخَطَإِ -: الصِّيَامَ لَا الْإِطْعَامَ، ثُمَّ عَوَّضَ مِنْ الصِّيَامِ مَنْ لَا يَقْدِرُ عَلَيْهِ فِي كَفَّارَةِ الظِّهَارِ الْإِطْعَامَ وَلَمْ يُعَوِّضْ مِنْهُ فِي كَفَّارَةِ الْقَتْلِ

expiation of killing. In atonement for hunting, He granted a choice between feeding, fasting, or offering a sacrificial animal. Allah the Exalted does what He wills—"He is not questioned about what He does" [21:23], and "He decrees with none can repeal His decree" [13:41]. It is impermissible to alter what Allah has obligated into something other than what He ordained.[19]

إِطْعَامًا، وَخَيَّرَ فِي جَزَاءِ الصَّيْدِ بَيْنَ الْإِطْعَامِ وَالصِّيَامِ، وَالْهَدْيِ، وَاللَّهُ تَعَالَى يَفْعَلُ مَا يَشَاءُ {لا يُسْأَلُ عَمَّا يَفْعَلُ} [الأنبياء: ٢٣] و {يَحْكُمُ لا مُعَقِّبَ لِحُكْمِهِ} [الرعد: ٤١] وَلَا يَجُوزُ تَغْيِيرُ مَا أَوْجَبَ اللَّهُ تَعَالَى عَنْ مَا أَوْجَبَهُ.

L18623 Those who differ from us have disagreed regarding this matter. Abū Ḥanīfa and his companions said: If one is able to provide food, clothing, or free a slave before completing all three days of fasting, the fast is nullified, and he becomes obligated to fulfill one of what he was capable of from that.

وَاخْتَلَفَ الْمُخَالِفُونَ لَنَا فِي هَذَا -: فَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إِنْ قَدَرَ عَلَى الْإِطْعَامِ، أَوْ الْكِسْوَةِ، أَوْ الْعِتْقِ، قَبْلَ أَنْ يُتِمَّ جَمِيعَ صِيَامِ الثَّلَاثَةِ الْأَيَّامِ: بَطَلَ حُكْمُ الصَّوْمِ، وَلَزِمَهُ أَحَدُ مَا قَدَرَ عَلَيْهِ مِنْ ذَلِكَ.

L18624 Al-Hakam ibn Utaybah, Ibrāhīm al-Nakhaʿī, and Sufyān al-Thawrī said: If one has fasted two complete days, they fast only the third day. But if they have not fasted the full two days, they are no longer bound by the ruling of fasting and must instead fulfill one of what they are capable of from those [options].

قَالَ الْحَكَمُ بْنُ عُتَيْبَةَ وَإِبْرَاهِيمُ النَّخَعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ: إِنْ كَانَ قَدْ أَتَمَّ صِيَامَ يَوْمَيْنِ صَامَ الْيَوْمَ الثَّالِثَ فَقَطْ، وَإِنْ كَانَ لَمْ يَصُمْ تَمَامَ الْيَوْمَيْنِ انْتَقَلَ عَنْ حُكْمِ الصَّوْمِ وَلَزِمَهُ أَحَدُ مَا قَدَرَ عَلَيْهِ مِنْ ذَلِكَ.

L18625 Others said: If he has completed a single day of fasting, he must proceed to fast the remaining two days, and it is valid for him. But if he has not completed a single day of fasting, he is no longer subject to the ruling of fasting and must undertake one of the obligations he is capable of from that. This is the opinion of Ahmad ibn Hanbal, Ishaq, and one of the two positions held by al-Shafiʿi.

وَقَالَ آخَرُونَ: إِنْ كَانَ قَدْ تَمَّ لَهُ صِيَامُ يَوْمٍ وَاحِدٍ تَمَادَى عَلَى صِيَامِ الْيَوْمَيْنِ الْبَاقِيَيْنِ وَأَجْزَأَهُ، وَإِنْ كَانَ لَمْ يَتِمَّ لَهُ صِيَامُ يَوْمٍ وَاحِدٍ انْتَقَلَ عَنْ حُكْمِ الصَّوْمِ وَلَزِمَهُ أَحَدُ مَا قَدَرَ عَلَيْهِ مِنْ ذَلِكَ - هُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L18626 Mālik said: If one has begun the fast and then becomes financially capable, they should continue their fast. But if they have not begun it, the obligation to fast is nullified, and they must instead free a slave, provide clothing, or feed—and this is the view of al-Ḥasan and ʿAṭāʾ.

وَقَالَ مَالِكٌ: إِنْ دَخَلَ فِي الصَّوْمِ ثُمَّ أَيْسَرَ فَلْيَتَمَادَ فِي صَوْمِهِ، وَإِنْ لَمْ يَدْخُلْ فِيهِ بَطَلَ حُكْمُ الصَّوْمِ وَانْتَقَلَ إِلَى الْعِتْقِ، أَوْ الْكِسْوَةِ، أَوْ الْإِطْعَامِ - وَهُوَ قَوْلُ الْحَسَنِ، وَعَطَاءٍ.

L18627 And Allah, the Most High, said: "If it had been from other than Allah, they would have found within it much inconsistency" [An-Nisa 82].[20]

وَقَالَ اللَّهُ تَعَالَى: {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢].

L18628–18630 And these are statements in which there is no Quranic text or *Sunnah*: thus it becomes evident that they are mere opinions, with no distinction

[19] **Qur'an references (L18620):** Qur'an 21:23 (Al-Anbya); Qur'an 13:41 (Ar-Ra'd).
[20] **Qur'an references (L18627):** Qur'an 4:82 (An-Nisa).

between them. The ruling applies between his left before he begins the fast and his left after he has begun it. The ruling applies solely to the state in which Allah the Exalted has obligated upon him what He has obligated.

وَهَذِهِ أَقْوَالٌ لَا نَصَّ قُرْآنٍ فِيهَا وَلَا سُنَّةٍ -: فَصَحَّ أَنَّهَا آرَاءٌ مُجَرَّدَةٌ، وَلَا فَرْقَ بَيْنَ يَسَارِهِ قَبْلَ أَنْ يَشْرَعَ فِي الصَّوْمِ، وَبَيْنَ يَسَارِهِ بَعْدَ أَنْ يَشْرَعَ فِيهِ، وَإِنَّمَا الْحُكْمُ لِلْحَالِ الَّتِي أَوْجَبَ اللَّهُ تَعَالَى فِيهَا عَلَيْهِ مَا أَوْجَبَ.

L18631 We ask all of them regarding one who breaks an oath while in hardship: Is there an expiation prescribed by Allah upon him, or is there no such expiation incumbent from Allah—with one of these two necessarily being the case? Among their doctrines is the assertion that Allah has indeed prescribed an expiation incumbent upon him—for to claim otherwise would contradict the Quran's explicit text without proof. Since the expiation remains binding upon him without exception, we ask them: What is it? If they say, "It is what Allah prescribed in the Quran," we respond: You have spoken truthfully. Having acknowledged this, how then do you deem it waived upon his subsequent solvency when this is not found in the Quran nor the Sunnah? Such a ruling is undoubtedly invalid.

وَنَسْأَلُهُمْ كُلَّهُمْ عَمَّنْ حَنِثَ وَهُوَ مُعْسِرٌ: هَلْ عَلَيْهِ لِلَّهِ تَعَالَى كَفَّارَةٌ مُفْتَرَضَةٌ؟ أَمْ لَيْسَ لِلَّهِ تَعَالَى عَلَيْهِ كَفَّارَةٌ مُفْتَرَضَةٌ، وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ فَمِنْ قَوْلِهِمْ: إِنَّ لِلَّهِ تَعَالَى عَلَيْهِ كَفَّارَةً مُفْتَرَضَةً - وَلَوْ قَالُوا: غَيْرَ هَذَا لَخَالَفُوا نَصَّ الْقُرْآنِ بِلَا بُرْهَانٍ، فَإِذْ الْكَفَّارَةُ عَلَيْهِ وَلَا بُدَّ، فَنَسْأَلُهُمْ مَا هِيَ؟ فَإِنْ قَالُوا: هِيَ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ فِي الْقُرْآنِ؟ قُلْنَا: صَدَقْتُمْ، فَإِذْ قَدْ أَقْرَرْتُمْ بِذَلِكَ فَمِنْ أَيْنَ سَقَطَتْ عِنْدَكُمْ بِيَسَارِهِ بَعْدَ ذَلِكَ، وَلَيْسَ هَذَا فِي الْقُرْآنِ وَلَا فِي السُّنَّةِ؟ وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِلَا شَكٍّ.

L18632 And if they say, "It is not the one which Allah the Exalted has obligated upon him," or they divide, they would be making baseless claims, and we have sufficed them in their burden—and all praise belongs to Allah the Exalted.

وَإِنْ قَالُوا: هِيَ غَيْرُ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ، أَوْ قَسَمُوا كَانُوا قَائِلِينَ بِلَا بُرْهَانٍ، وَكَفَوْنَا مُؤْنَتَهُمْ - وَلِلَّهِ تَعَالَى الْحَمْدُ -.

L18633 And this opinion of ours is the opinion of Abū Sulaymān and his companions.

وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِهِ.

L18634 **A question regarding what suffices in manumission in the expiation for an oath.**

[مَسْأَلَةٌ مَا يُجْزِئُ فِي الْعِتْقِ فِي كَفَّارَةِ الْيَمِينِ]

L18635 1183 – Issue

١١٨٣ - مَسْأَلَةٌ

L18636 The following are valid for manumission in all such cases: the disbeliever, the believer, the minor, the adult, the physically impaired, the unimpaired, the male, the female, the child of adultery, the domestic slave, the leased slave, the pawned slave, the umm walad (a slave mother who has borne her master's child), the female slave to be freed upon the master's death, the male slave to be freed upon the master's death, the one whose manumission is vowed, the one to be freed after a term, and the mukatab (a slave contracted to

وَيُجْزِئُ فِي الْعِتْقِ فِي كُلِّ ذَلِكَ: الْكَافِرُ، وَالْمُؤْمِنُ، وَالصَّغِيرُ، وَالْكَبِيرُ، وَالْمَعِيبُ، وَالسَّالِمُ، وَالذَّكَرُ، وَالْأُنْثَى، وَوَلَدُ الزِّنَى، وَالْمُخْدَمُ، وَالْمُؤَاجَرُ، وَالْمَرْهُونُ، وَأُمُّ الْوَلَدِ، وَالْمُدَبَّرَةُ، وَالْمُدَبَّرُ، وَالْمَنْذُورُ عِتْقُهُ، وَالْمُعْتَقُ إِلَى أَجَلٍ، وَالْمُكَاتَبُ مَا لَمْ يُؤَدِّ شَيْئًا، فَإِنْ

buy his freedom) who has not paid anything. If he has paid any part of his manumission contract, whether little or much, it is not valid for that purpose. Neither does the manumission of someone imposed on a person by a compulsory legal judgment suffice, nor does freeing half of two slaves.

كَانَ أَدَّى مِنْ كِتَابَتِهِ مَا قَلَّ أَوْ كَثُرَ لَمْ يُجْزِ فِي ذَلِكَ، وَلَا يُجْزِئُ مَنْ يُعْتَقُ عَلَى الْمَرْءِ بِحُكْمٍ وَاجِبٍ، وَلَا نِصْفَا رَقَبَتَيْنِ.

L18637 We have already mentioned all of that in "the book of fasting," so it suffices to preclude repeating it.

وَقَدْ ذَكَرْنَا كُلَّ ذَلِكَ فِي " كِتَابِ الصِّيَامِ " فَأَغْنَى عَنْ إِعَادَتِهِ.

L18638 The mainstay of the proof in this matter is the statement of Allah, the Exalted: "or the freeing of a slave" [Al-Ma'idah: 89]. He did not specify one slave over another, "and your Lord is not forgetful" [Maryam: 64].[21]

وَعُمْدَةُ الْبُرْهَانِ فِي ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {أَوْ تَحْرِيرُ رَقَبَةٍ} [المائدة: ٨٩] . فَلَمْ يَخُصَّ رَقَبَةً مِنْ رَقَبَةٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L18639 If they argue: "We have analogized the freeing of a slave in this matter to the freeing of a slave in [cases requiring] expiation for killing, where only a Muslim female slave suffices?" We respond: "Then apply the same analogy to substituting food provision for the poor within this ruling."

فَإِنْ قَالُوا: قِسْنَا الرَّقَبَةَ فِي هَذَا عَلَى رَقَبَةِ الْقَتْلِ لَا تُجْزِئُ إِلَّا مُؤْمِنَةٌ؟ قُلْنَا: فَقِيسُوهَا عَلَيْهَا فِي تَعْوِيضِ الْإِطْعَامِ مِنْهَا.

L18640–18642 If they say, "We will not do this, for we would be opposing the Quran and adding to its rulings," we respond: Your stipulation in the expiation for an oath—that it must be performed by a believer—inevitably constitutes opposition to the Quran and an addition beyond its text. As for what pertains to it, if analogy is permissible in one of the two rulings, it is permissible in the other; and if impermissible in one, it is impermissible in the other. If they cite as evidence the report wherein a man said to the Messenger of Allah (peace be upon him), "I slapped the face of my slave girl, and I am obligated to emancipate a slave—should I emancipate her?" The Messenger of Allah (peace be upon him) asked her, "Where is Allah?" She replied, "In heaven." He asked, "Who am I?" She answered, "The Messenger of Allah." Thereupon he (peace be upon him) said, "Emancipate her, for she is a believer." This provides no proof for them, since—by the explicit text of the report—it was neither an expiation for an oath, nor for intercourse during Ramaḍān, nor for *ẓihār*.

فَإِنْ قَالُوا: لَا نَفْعَلُ، لِأَنَّنَا نُخَالِفُ الْقُرْآنَ وَنَزِيدُ عَلَى مَا فِيهِ؟ قُلْنَا: وَزِيَادَتُكُمْ فِي كَفَّارَةِ الْيَمِينِ أَنْ تَكُونَ مُؤْمِنَةً وَلَا بُدَّ خِلَافٌ لِلْقُرْآنِ وَزِيَادَةٌ عَلَى مَا فِيهِ فَإِنْ كَانَ الْقِيَاسُ فِي أَحَدِ الْحُكْمَيْنِ جَائِزًا فَهُوَ فِي الْآخَرِ جَائِزٌ، وَإِنْ كَانَ فِي أَحَدِهِمَا غَيْرَ جَائِزٍ فَهُوَ فِي الْآخَرِ غَيْرُ جَائِزٍ. فَإِنْ احْتَجُّوا بِالْخَبَرِ الَّذِي فِيهِ: «إِنَّ الْقَائِلَ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّهُ لَطَمَ وَجْهَ جَارِيَةٍ لَهُ وَعَلَيَّ رَقَبَةٌ أَفَأُعْتِقُهَا؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيْنَ اللَّهُ؟ قَالَتْ: فِي السَّمَاءِ، قَالَ: مَنْ أَنَا؟ قَالَتْ: رَسُولُ اللَّهِ، فَقَالَ - عَلَيْهِ السَّلَامُ -: أَعْتِقْهَا فَإِنَّهَا مُؤْمِنَةٌ» فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهَا - بِنَصِّ الْخَبَرِ - لَمْ تَكُنْ كَفَّارَةَ يَمِينٍ، وَلَا وَطْءٍ فِي رَمَضَانَ، وَلَا عَنْ ظِهَارٍ.

L18643 They permit the use of a disbelieving female slave for the vowed slave that

وَهُمْ يُجِيزُونَ الْكَافِرَةَ فِي الرَّقَبَةِ الْمَنْذُورَةِ عَلَى الْإِنْسَانِ، فَقَدْ خَالَفُوا مَا فِي هَذَا الْخَبَرِ، وَاحْتَجُّوا بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ.

[21] **Qur'an references (L18638):** Qur'an 5:89 (Al-Ma'idah); Qur'an 19:64 (Maryam).

a person is obligated to free, thus contradicting the content of this ḥadīth, and they cite it as evidence for a matter that it does not address at all.

L18644 Moreover, it does not state that he—peace be upon him—said: "Only a believing woman is valid." Rather, it states: "Free her, for she is a believer." We do not reject the manumission of a believing woman, nor does it state that manumitting a disbelieving woman is prohibited. Therefore, we do not prohibit freeing a disbelieving woman.

L18645 If it is said: You have narrated this report through the chain of Hammad ibn Salamah from Muhammad ibn ʻAmr from Abu Salamah that Ash-Sharid said: "O Messenger of Allah, my mother instructed me to free a slave on her behalf, and I have a black female slave. Should I free her?" The Prophet (peace be upon him) said to him: "Bring her here." The Prophet (peace be upon him) then asked her: "Who is your Lord?" She replied: "Allah." He asked: "Who am I?" She replied: "The Messenger of Allah." He said: "Free her, for she is a believer." This constitutes evidence against their position, not in their favor, because they permit manumitting a disbelieving slave through a bequest. As for us, had the chain been sound, we would have ruled accordingly regarding the slave whose manumission is bequeathed, as it was reported.

L18646 Some of them said: Just as a disbeliever is not given from Zakat, similarly a disbeliever should not be freed in obligatory contexts? We replied: This is *qiyas*, and all *qiyas* is invalid. Moreover, this constitutes the epitome of falsehood, for it is a claim that can only be met with denial and rejection, since Allah the Exalted has not stated this, nor has His Messenger—peace be upon him—.

L18647–18648 It has been narrated to us via Ibn Abī Shaybah from Wakīʿ from Sufyān al-Thawrī from Ibn Abī Najīḥ from ʿAṭāʾ, who said: A Jew or a Christian suffices for the expiation of an oath.

L18649 And via the route of Jarīr, on the authority of al-Mughīrah, on the authority of Ibrāhīm: a similar narration is likewise reported.

L18650 And through the chain of Ibn Abi Shaybah from ʿAbd al-Raḥmān ibn Mahdī

وَأَيْضًا: فَإِنَّهُ لَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: لَا تُجْزِئُ إِلَّا مُؤْمِنَةٌ، وَإِنَّمَا فِيهِ: أَعْتِقْهَا فَإِنَّهَا مُؤْمِنَةٌ، وَنَحْنُ لَا نُنْكِرُ عِتْقَ الْمُؤْمِنَةِ، وَلَيْسَ فِيهِ أَنْ لَا يَجُوزَ عِتْقُ الْكَافِرَةِ، فَنَحْنُ لَا نَمْنَعُ مِنْ عِتْقِهَا.

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ هَذَا الْخَبَرَ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ «أَنَّ الشَّرِيدَ قَالَ: يَا رَسُولَ اللَّهِ إِنَّ أُمِّي أَمَرَتْنِي أَنْ أُعْتِقَ عَنْهَا رَقَبَةً، وَعِنْدِي أَمَةٌ سَوْدَاءُ أَفَأُعْتِقُهَا؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ادْعُ بِهَا؟ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ رَبُّكِ؟ قَالَتْ: اللَّهُ، قَالَ: فَمَنْ أَنَا؟ قَالَتْ: رَسُولُ اللَّهِ قَالَ: أَعْتِقْهَا فَإِنَّهَا مُؤْمِنَةٌ» فَهَذَا عَلَيْهِمْ لَا لَهُمْ لِأَنَّهُمْ يُجِيزُونَ فِي رَقَبَةِ الْوَصِيَّةِ كَافِرَةً، وَأَمَّا نَحْنُ فَلَوْ انْسَنَدَ لَقُلْنَا بِهِ فِي الْمُوصَى بِعِتْقِهَا كَمَا وَرَدَ.

وَقَالَ بَعْضُهُمْ: كَمَا لَا يُعْطَى مِنْ الزَّكَاةِ كَافِرٌ كَذَلِكَ لَا يُعْتَقُ فِي الْفَرْضِ كَافِرٌ؟ قُلْنَا: هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ، لِأَنَّهُ دَعْوَى لَا تُقَابَلُ إِلَّا بِالتَّكْذِيبِ وَالرَّدِّ فَقَطْ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ ذَلِكَ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ قَالَ: يُجْزِئُ الْيَهُودِيُّ، وَالنَّصْرَانِيُّ، فِي كَفَّارَةِ الْيَمِينِ.

وَمِنْ طَرِيقِ جَرِيرٍ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ مِثْلُهُ أَيْضًا.

from Sufyān from Jābir from al-Shaʿbī, who said: It is valid for a blind person to fulfill the *kaffārah*.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ قَالَ: يُجْزِئُ الْأَعْمَى فِي الْكَفَّارَةِ.

L18651 It is reported from Al-Ḥasan and Ṭāwūs that the *mudabbar* [a slave designated for posthumous freedom] suffices for expiation.

وَعَنْ الْحَسَنِ، وَطَاوُوسٍ: يُجْزِئُ الْمُدَبَّرُ فِي الْكَفَّارَةِ.

L18652 It is reported from al-Ḥasan, Ṭāwūs, and al-Nakhaʿī that the *umm al-walad* suffices for expiation.

وَعَنْ الْحَسَنِ، وَطَاوُوسٍ، وَالنَّخَعِيِّ: تُجْزِئُ أُمُّ الْوَلَدِ فِي الْكَفَّارَةِ.

L18653 As for the child of zina: It has been narrated to us through the chain of Yazīd ibn Abī Ziyād from Mujāhid from ʿĀʾishah, the Mother of the Believers, who said: "Is giving three dates in charity or providing a whip in the cause of Allah, the Exalted, not more beloved to me than freeing a child of zina?"

وَأَمَّا وَلَدُ الزِّنَى -: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ يَزِيدَ بْنِ أَبِي زِيَادٍ عَنْ مُجَاهِدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَأَنْ أَتَصَدَّقَ بِثَلَاثِ تَمَرَاتٍ، أَوْ أُمَتِّعَ بِسَوْطٍ فِي سَبِيلِ اللَّهِ تَعَالَى أَحَبُّ إلَيَّ مِنْ أَنْ أُعْتِقَ وَلَدَ زِنًى؟ .

L18654 Narrated via the chain of Abu Hurairah that he said to his slave: "Were it not that you are an illegitimate child, I would have freed you."

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: لِعَبْدٍ لَهُ: لَوْلَا أَنَّك وَلَدُ زِنًى لَأَعْتَقْتُك.

L18655 An-Nakhaʿī and Ash-Shaʿbī said: The child of zinā cannot fulfill a religiously obligated manumission.

وَقَالَ النَّخَعِيُّ، وَالشَّعْبِيُّ: لَا يُجْزِئُ وَلَدُ الزِّنَى فِي رَقَبَةٍ وَاجِبَةٍ.

L18656 It is narrated from Ibn ʿUmar that he manumitted an illegitimate child.

وَعَنْ ابْنِ عُمَرَ أَنَّهُ أَعْتَقَ وَلَدَ زِنًى.

L18657 Those who prohibited it cited as evidence a report we narrated through the chain of Ahmad ibn Shuʿayb: Al-ʿAbbas ibn Muhammad ad-Dawraqi narrated to us, Al-Fadl ibn Dukayn narrated to us, Isra'il narrated from Zayd ibn Jubayr from Abu Yazid ad-Dabbi from Maymunah, the freed female slave of the Messenger of Allah (peace and blessings be upon him), from the Prophet (peace be upon him): "He was asked about the illegitimate child, and he said: 'There is no good in him. Two sandals with which I wage jihad—or he said, "equip myself"—are dearer to me than freeing an illegitimate child.'"

وَاحْتَجَّ مَنْ مَنَعَ مِنْهُ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا الْعَبَّاسُ بْنُ مُحَمَّدٍ الدَّوْرَقِيُّ نا الْفَضْلُ بْنُ دُكَيْنٍ نا إسْرَائِيلُ عَنْ زَيْدِ بْنِ جُبَيْرٍ عَنْ أَبِي يَزِيدَ الضَّبِّيِّ عَنْ مَيْمُونَةَ مَوْلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -: أَنَّهُ سُئِلَ عَنْ وَلَدِ الزِّنَى فَقَالَ: لَا خَيْرَ فِيهِ، نَعْلَانِ أُجَاهِدُ أَوْ قَالَ أُجَهِّزُ بِهِمَا أَحَبُّ إلَيَّ مِنْ أَنْ أُعْتِقَ وَلَدَ الزِّنَى» .

L18658 Abu Muhammad said: Isra'il is weak, Abu Yazid is obscure as a narrator, and if it were authentic, we would have accepted it.

قَالَ أَبُو مُحَمَّدٍ: إسْرَائِيلُ ضَعِيفٌ، وَأَبُو يَزِيدَ مَجْهُولٌ، وَلَوْ صَحَّ لَقُلْنَا بِهِ.

L18659 It was narrated to us via Ibn Abī Shaybah's chain: he reported from Hushaym, who reported from al-Mughīrah, who reported from Ibrāhīm and

al-Shaʿbī. Both said together: “A child born of illicit intercourse does not suffice for fulfilling any obligatory [religious duty].”

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ، وَالشَّعْبِيِّ قَالَا جَمِيعًا: لَا يُجْزِئُ فِي شَيْءٍ مِنْ الْوَاجِبِ وَلَدُ زِنًى.

L18660 Abu Muhammad said: Tawus and Muhammad ibn Ali permitted it. Nor may two halves of two slaves be designated as one slave. And whoever emancipates a slave under a judicial ruling, but not for the purpose of expiation, such emancipation does not fulfill the expiation requirement.

قَالَ أَبُو مُحَمَّد: وَأَجَازَهُ طَاوُوسٌ، وَمُحَمَّدُ بْنُ عَلِيٍّ. وَلَا يُسَمَّى نِصْفَا رَقَبَتَيْنِ رَقَبَةً - وَمَنْ أَعْتَقَ بِحُكْمٍ فَلَمْ يُعْتِقْ عَنْ الْكَفَّارَةِ فَلَا يُجْزِئُ فِيهَا -.

L18661 And all divine success is from Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18662–18663 Issue: It is not valid for the atonement to feed a single poor person multiple times.

[مَسْأَلَة لَا يُجْزِئُ فِي الْكَفَّارَة إطْعَامُ مِسْكِينٍ وَاحِدٍ يُرْدَدُ عَلَيْهِ]

L18664 Legal Issue

مَسْأَلَةٌ

L18665 Feeding one needy person or fewer than ten by repeatedly giving to them is not valid, because Allah the Exalted has obligated ten needy people, and this contradicts Allah’s command.

وَلَا يُجْزِئُ إطْعَامُ مِسْكِينٍ وَاحِدٍ أَوْ مَا دُونَ الْعَشَرَةِ يُرْدَدُ عَلَيْهِمْ، لِأَنَّ اللَّهَ تَعَالَى افْتَرَضَ عَشَرَةَ مَسَاكِينَ، وَهُنَا خِلَافُ أَمْرِ اللَّهِ تَعَالَى.

L18666 Abu Hanifah said it is permissible, and it has been reported to us that a narration like the saying of Abu Hanifah [has been transmitted] from Al-Hasan. Al-Shaʿbi disagreed with him. Only the same type of food that a person feeds his family suffices. If he gives his family flour, he must give the poor flour; if he gives his family grain, he must give the poor grain; if he gives his family bread, he must give the poor bread. Whatever he feeds his family, he must feed the poor from the same. Anything else does not suffice at all, as it contradicts the text of the Quran. He must give from the same quality and moderate measure—neither the highest nor the lowest—as Allah, the Almighty and Majestic, has stated. People have differed regarding this: It is authentically reported from ʿUmar ibn Al-Khattab concerning the expiation for breaking an oath: “For every poor person: half a saʿ of wheat, or a saʿ of dates, or barley.” A similar statement is reported from ʿAli.

وَقَالَ أَبُو حَنِيفَةَ يَجُوزُ - وَرُوِّينَا مِثْلَ قَوْلِ أَبِي حَنِيفَةَ عَنْ الْحَسَنِ، وَخَالَفَهُ الشَّعْبِيُّ، وَلَا يُجْزِئُ إلَّا مِثْلُ مَا يُطْعِمُ الْإِنْسَانُ أَهْلَهُ، فَإِنْ كَانَ يُعْطِي أَهْلَهُ الدَّقِيقَ، فَلْيُعْطِ الْمَسَاكِينَ الدَّقِيقَ، وَإِنْ كَانَ يُعْطِي أَهْلَهُ الْحَبَّ فَلْيُعْطِ الْمَسَاكِينَ الْحَبَّ، وَإِنْ كَانَ يُعْطِي أَهْلَهُ الْخُبْزَ، فَلْيُعْطِ الْمَسَاكِينَ الْخُبْزَ، وَمِنْ أَيِّ شَيْءٍ أَطْعَمَ أَهْلَهُ فَمِنْهُ يُطْعِمُ الْمَسَاكِينَ، وَلَا يُجْزِئُهُ غَيْرُ ذَلِكَ أَصْلًا، لِأَنَّهُ خِلَافُ نَصِّ الْقُرْآنِ وَيُعْطِي مِنْ الصِّفَةِ، وَالْمِكْيَالِ الْوَسَطِ - لَا الْأَعْلَى وَلَا الْأَدْنَى - كَمَا قَالَ عَزَّ وَجَلَّ. وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَصَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي كَفَّارَةِ الْيَمِينِ: لِكُلِّ مِسْكِينٍ نِصْفُ صَاعِ حِنْطَةٍ، أَوْ صَاعُ تَمْرٍ، أَوْ شَعِيرٍ -. وَعَنْ عَلِيٍّ مِثْلُهُ.

L18667 And it was narrated to us from Ibn ʿUmar: “For every poor person, half a ṣāʿ of wheat.” The same was narrated from Zayd ibn Thābit.

وَرُوِّينَا عَنْ ابْنِ عُمَرَ: لِكُلِّ مِسْكِينٍ نِصْفُ صَاعِ حِنْطَةٍ. وَعَنْ زَيْدِ بْنِ ثَابِتٍ مِثْلُهُ.

L18668 From Aisha, the Mother of the Believers: For every poor person, half a *sa‘* of wheat or a *sa‘* of dates. This is the view of Ibrāhīm al-Nakha‘ī and Ibn Sīrīn. The latter added: or a cooked dish [prepared with fat/oil].

وَعَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: لِكُلِّ مِسْكِينٍ نِصْفُ صَاعِ بُرٍّ أَوْ صَاعُ تَمْرٍ - وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَابْنِ سِيرِينَ، وَقَالَ: أَوْ أَكْلَةٌ مَأْدُومَةٌ.

L18669 Al-Ḥasan said: A makkūk of wheat and a makkūk of dates for every needy person.

وَقَالَ الْحَسَنُ: مَكُّوكُ حِنْطَةٍ، وَمَكُّوكُ تَمْرٍ لِكُلِّ مِسْكِينٍ.

L18670 The *makkūk* is half a *ṣā‘*.

وَالْمَكُّوكُ نِصْفُ صَاعٍ.

L18671 Al-Hasan said: If he wishes, he may feed them a meal of bread and meat. If he cannot find [that], then bread, clarified butter, and milk. If he cannot find [that], then bread, vinegar, and olive oil. If he cannot find [anything], he must fast for three days.

قَالَ الْحَسَنُ: وَإِنْ شَاءَ أَطْعَمَهُمْ أَكْلَةً خُبْزًا، وَلَحْمًا، فَإِنْ لَمْ يَجِدْ فَخُبْزًا وَسَمْنًا وَلَبَنًا، فَإِنْ لَمْ يَجِدْ فَخُبْزًا وَخَلًّا وَزَيْتًا فَإِنْ لَمْ يَجِدْ صَامَ ثَلَاثَةَ أَيَّامٍ.

L18672 Qatādah also said: a *makkūk* of dates and a *makkūk* of wheat.

وَقَالَ قَتَادَةَ أَيْضًا: مَكُّوكُ تَمْرٍ، وَمَكُّوكُ حِنْطَةٍ.

L18673 From Ibrāhīm al-Nakha‘ī: a *mudd* of wheat and a *mudd* of dates—all of this pertains to the expiation for breaking an oath.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ مُدُّ بُرٍّ، وَمُدُّ تَمْرٍ - هَذَا كُلُّهُ فِي كَفَّارَةِ الْيَمِينِ.

L18674 ‘Aṭā’ and Mujāhid said: Ten mudd for ten poor people, and two mudd for firewood and seasoning.

وَقَالَ عَطَاءٌ، وَمُجَاهِدٌ: عَشْرَةُ أَمْدَادٍ لِعَشَرَةِ مَسَاكِينَ، وَمُدَّانِ لِلْحَطَبِ، وَالْإِدَامِ.

L18675 From Al-Ḥasan and Ibn Sīrīn: He gathers them and feeds them sufficiently once.

وَعَنْ الْحَسَنِ، وَابْنِ سِيرِينَ: يَجْمَعُهُمْ فَيُشْبِعُهُمْ مَرَّةً وَاحِدَةً.

L18676 It has also been authentically reported from Sa’id ibn al-Musayyib, al-Hasan, and Qatadah: a mudd (a standardized Islamic dry measure, approximately 0.5–1 kg) of dates and a mudd of wheat [is required] for each needy person.

وَصَحَّ أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَقَتَادَةَ: مُدُّ تَمْرٍ وَمُدُّ حِنْطَةٍ لِكُلِّ مِسْكِينٍ.

L18677–18678 It has been authentically reported from Ibn Abbas: For every needy person - a mudd of wheat.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ: لِكُلِّ مِسْكِينٍ مُدُّ حِنْطَةٍ.

L18679 And from Zayd ibn Thabit and Ibn Umar, there is also an authentic narration similar to it.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَنْ ابْنِ عُمَرَ صَحِيحٌ مِثْلُهُ أَيْضًا.

L18680 And from ‘Aṭā’—this is the opinion of Mālik and al-Shāfi‘ī.

وَعَنْ عَطَاءٍ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ.

L18681 And it has been narrated to us from Ibn Buraidah al-Aslamī: If it was dry bread, [then it is counted as] supper and midday meal.

وَرُوِّينَا عَنْ ابْنِ بُرَيْدَةَ الْأَسْلَمِيِّ إِنْ كَانَ خُبْزًا يَابِسًا: فَعَشَاءٌ وَغَدَاءٌ.

L18682 It is reported from Ali that he would serve them breakfast and dinner—

bread, oil, and ghee—but this is not authentically narrated from them both.

وَعَنْ عَلِيٍّ يُغَدِّيهِمْ، وَيُعَشِّيهِمْ: خُبْزًا، وَزَيْتًا، وَسَمْنًا - وَلَا يَصِحُّ عَنْهُمَا.

L18683 Reported from Al-Qāsim, Sālim, Al-Shaʿbī, Al-Nakhaʿī, and others: midday meal and evening meal.

وَعَنْ الْقَاسِمِ، وَسَالِمٍ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ، وَغَيْرِهِمْ: غَدَاءٌ، وَعَشَاءٌ.

L18684 Those who held this opinion cited as evidence what we have narrated through the chain of Ibn Abī Shaybah: from Yaḥyā ibn Yaʿlā, from Abū al-Muḥayyāh, from Layth ibn Abī Sulaym, who said: Ibn Buraidah said: The Messenger of Allah (peace and blessings be upon him) said: "If it is dry bread, then [it suffices as] lunch and dinner." This narration is mursal, and Layth is weak.

وَاحْتَجَّ مَنْ ذَهَبَ إلَى هَذَا -: بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ يَعْلَى نا أَبُو الْمُحَيَّاةِ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ قَالَ: قَالَ ابْنُ بُرَيْدَةَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنْ كَانَ خُبْزًا يَابِسًا فَغَدَاءٌ وَعَشَاءٌ» وَهَذَا مُرْسَلٌ وَلَيْثٌ ضَعِيفٌ.

L18685 Abu Hanifa said: half a *sa'* of wheat for each needy person, or a *sa'* of dates or barley. For wheat flour or its *sawiq*, half a *sa'* is given, and for barley flour and its *sawiq*, a *sa'*. If he feeds them, it must be a noon meal and an evening meal; two noon meals; two evening meals; a *suhoor* and a noon meal; or a *suhoor* and an evening meal.

وَقَالَ أَبُو حَنِيفَةَ: نِصْفُ صَاعِ بُرٍّ لِكُلِّ مِسْكِينٍ، أَوْ صَاعُ تَمْرٍ، أَوْ شَعِيرٍ، وَمِنْ دَقِيقِ الْبُرِّ وَسَوِيقِهِ نِصْفُ صَاعٍ، وَمِنْ دَقِيقِ الشَّعِيرِ وَسَوِيقِهِ صَاعٌ، فَإِنْ أَطْعَمَهُمْ: فَغَدَاءٌ، وَعَشَاءٌ - أَوْ غَدَاءٌ، وَغَدَاءٌ - أَوْ عَشَاءٌ وَعَشَاءٌ - أَوْ سَحُورٌ وَغَدَاءٌ - أَوْ سَحُورٌ وَعَشَاءٌ.

L18686 According to Mālik and al-Shāfiʿī, neither regular flour nor roasted barley/wheat meal (sawīq) suffices.

وَلَا يُجْزِئُ عِنْدَ مَالِكٍ، وَالشَّافِعِيِّ: دَقِيقٌ وَلَا سَوِيقٌ.

L18687 Abū Muḥammad said: These are differing opinions with no evidence from the Quran or Sunnah. Some of them attempted to justify their view by claiming the Messenger of Allah—peace and blessings be upon him—obligated giving half a ṣāʿ to be distributed among six destitute persons for shaving the head due to harm affecting the muḥrim. Yet this constitutes evidence against them, for the text of that report specifies half a ṣāʿ of dates for each destitute person—which contradicts their opinion.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَقْوَالٌ مُخْتَلِفَةٌ لَا حُجَّةَ بِشَيْءٍ مِنْهَا مِنْ قُرْآنٍ وَلَا سُنَّةٍ، وَمَوَّهَ بَعْضُهُمْ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ فِي حَلْقِ الرَّأْسِ لِلْأَذَى لِلْمُحْرِمِ نِصْفَ صَاعٍ بَيْنَ سِتَّةِ مَسَاكِينَ - وَهَذَا حُجَّةٌ عَلَيْهِمْ، لِأَنَّ نَصَّ ذَلِكَ الْخَبَرِ نِصْفُ صَاعِ تَمْرٍ لِكُلِّ مِسْكِينٍ - وَهُوَ خِلَافُ قَوْلِهِمْ.

L18688 They also cited a report we narrated through the chain of Abū Yaḥyā Zakariyyā ibn Yaḥyā al-Sājī: from Muḥammad ibn Mūsā al-Ḥarashī, from Ziyād ibn ʿAbd Allāh, from ʿUmar ibn ʿAbd Allāh al-Thaqafī, from al-Minhāl ibn ʿAmr, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "The Messenger of Allāh (may Allāh's peace and blessings be upon him) fulfilled the kaffārah with a ṣāʿ [a volumetric measure] of dates, and commanded the people to give. Whoever could not find was to give half a ṣāʿ."

وَمَوَّهُوا أَيْضًا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي يَحْيَى زَكَرِيَّا بْنِ يَحْيَى السَّاجِيِّ نا مُحَمَّدُ بْنُ مُوسَى الْحَرَشِيُّ نا زِيَادُ بْنُ عَبْدِ اللَّهِ نا عُمَرُ بْنُ عَبْدِ اللَّهِ الثَّقَفِيُّ نا الْمِنْهَالُ بْنُ عَمْرٍو عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ «كَفَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِصَاعٍ مِنْ تَمْرٍ، وَأَمَرَ النَّاسَ أَنْ يُعْطُوا، فَمَنْ لَمْ يَجِدْ فَنِصْفُ صَاعٍ» .

L18689 This is a discarded narration because Ziyad ibn Abdullah is deemed unre-

liable, and Umar ibn Abdullah—he is the son of Yaʿla ibn Murrah—is sometimes ascribed to his grandfather, and he too is unreliable.

وَهَذَا خَبَرٌ سَاقِطٌ، لِأَنَّ زِيَادَ بْنَ عَبْدِ اللَّهِ ضَعِيفٌ، وَعُمَرَ بْنَ عَبْدِ اللَّهِ هُوَ ابْنُ يَعْلَى بْنِ مُرَّةَ - وَقَدْ يُنْسَبُ إِلَى جَدِّهِ وَهُوَ ضَعِيفٌ.

L18690 And if it were valid, it would contradict their statement, because they do not permit even half a ṣāʿ of dates.

وَلَوْ صَحَّ لَكَانَ خِلَافًا لِقَوْلِهِمْ، لِأَنَّهُمْ لَا يُجِيزُونَ نِصْفَ صَاعِ تَمْرٍ أَلْبَتَّةَ.

L18691–18693 It was narrated to us through the route of Ibn Abī Shaybah: Muʿāwiyah al-Ḍarīr narrated to us from ʿĀṣim from Ibn Sīrīn from... Ibn Umar said, commenting on *"the median of what you feed your families"* [Al-Ma'idah: 89]: "Bread and milk, bread and oil, and bread and clarified butter (ghee) - and the highest of what you feed them is bread and meat."[22]

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُعَاوِيَةُ الضَّرِيرُ عَنْ عَاصِمٍ عَنْ ابْنِ سِيرِينَ عَنْ ابْنِ عُمَرَ قَالَ {مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ} [المائدة: ٨٩] قَالَ: الْخُبْزُ وَاللَّبَنُ، وَالْخُبْزُ وَالزَّيْتُ، وَالْخُبْزُ وَالسَّمْنُ - وَمِنْ أَعْلَى مَا يُطْعِمُهُمْ: الْخُبْزُ وَاللَّحْمُ.

L18694 Narrated from ʿAbd al-Razzāq, from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn: That Abū Mūsā al-Ashʿarī expiated for an oath by kneading dough and feeding them.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ كَفَّرَ عَنْ يَمِينٍ فَعَجَنَ فَأَطْعَمَهُمْ.

L18695 From the narration of Sufyan ibn ʾUyaynah, who said: Sulayman ibn Abi al-Mughirah—a trustworthy narrator—reported from Saʿid ibn Jubayr that Ibn ʿAbbas stated: A man would provide sustenance for his family—some people provided abundant amounts, others meager amounts, and others moderate amounts. Thus, it was stated: *"from the average of what you feed your families"* [5:89]. Ibn Sirin reported the same statement as Ibn ʿUmar.[23]

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ قَالَ: قَالَ سُلَيْمَانُ بْنُ أَبِي الْمُغِيرَةِ - وَكَانَ ثِقَةً - عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ ابْنُ عَبَّاسٍ: كَانَ الرَّجُلُ يُقَوِّتُ أَهْلَهُ قُوتًا فِيهِ سَعَةٌ، وَبَعْضُهُمْ قُوتًا دُونًا، وَبَعْضُهُمْ قُوتًا وَسَطًا، فَقِيلَ {مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ} [المائدة: ٨٩] وَعَنْ ابْنِ سِيرِينَ مِثْلُ قَوْلِ ابْنِ عُمَرَ.

L18696 And similar to this has been reported to us from Shurayḥ, al-Aswad ibn Yazīd, Saʿīd ibn Jubayr, and al-Shaʿbī—this being the opinion of Abū Sulaymān, which is also our opinion, and this is the explicit text of the Quran.

وَرُوِّينَا نَحْوَ هَذَا عَنْ شُرَيْحٍ، وَالْأَسْوَدِ بْنِ يَزِيدَ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالشَّعْبِيِّ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ - وَهُوَ قَوْلُنَا، وَهُوَ نَصُّ الْقُرْآنِ.

L18697 As for those who imposed any specific measure, those who prevented others from providing bread and flour, and those who made religiously obligatory the provision of two meals—these rulings have no authoritative evidence from the Qur'an, the Sunnah, analogical reasoning, nor even a statement by

وَأَمَّا مَنْ حَدَّ كَيْلًا مَا، وَمَنْ مَنَعَ مِنْ إطْعَامِ الْخُبْزِ، وَالدَّقِيقِ، وَمَنْ أَوْجَبَ أَكْلَتَيْنِ، فَأَقْوَالٌ لَا حُجَّةَ لَهَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ لَا مُخَالِفَ لَهُ مِنْهُمْ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[22] **Qur'an references (L18691):** Qur'an 5:89 (Al-Ma'idah).
[23] **Qur'an references (L18695):** Qur'an 5:89 (Al-Ma'idah).

a Companion that none of the others opposed. In Allah, the Exalted, we seek strength.

The question of providing clothing as a form of expiation.

1158 - Question

As for clothing, it includes anything termed clothing: a shirt, trousers, a hood, a cap, a cloak, a turban, a hooded cloak, or other such items, because Allah the Exalted made it general and did not specify.

If Allah, the Exalted and Transcendent, had willed one clothing requirement over another, He would have clarified that to us—*"And your Lord is not forgetful"* (19:64). Thus, it is impermissible to specify such a distinction.[24]

It has been narrated to us from Imrān ibn al-Ḥuṣayn that a man asked him about clothing in expiation. Imrān said to him: "What do you think if a delegation entered before their leader, and he gave each man among them a cap, would people say he has clothed them?" It has been narrated to us via Musaddad from ʿAbd al-Wārith al-Tannūrī from Muḥammad ibn al-Zubayr from his father; and via Wakīʿ from Sufyān al-Thawrī from Ashʿath from al-Ḥasan al-Baṣrī, who said: "A turban suffices as expiation for the oath."

And it is the opinion of Sufyān al-Thawrī, al-Awzāʿī, al-Shāfiʿī, and Abū Sulaymān al-Dārānī.

Malik said: Only what is permissible to wear in prayer suffices—and this has no basis, as it is an assertion without evidence. Differing opinions are narrated from Abū Ḥanīfah regarding whether trousers alone suffice, while in his view a turban alone does not suffice. They argued: "If someone wore only a turban, people would say: 'This person is uncovered.'" Abū Muḥammad said: This is without merit, for Allah Almighty did not command us:

[24]**Qur'an references (L18701):** Qur'an 19:64 (Maryam).

[مَسْأَلَةٌ الْكِسْوَة فِي الْكَفَّارَةِ]

١١٨٥ - مَسْأَلَةٌ

وَأَمَّا الْكِسْوَةُ - فَمَا وَقَعَ عَلَيْهِ اسْمُ كِسْوَةٍ: قَمِيصٌ، أَوْ سَرَاوِيلُ، أَوْ مُقَنِّعٌ، أَوْ قَلَنْسُوَةٌ، أَوْ رِدَاءٌ، أَوْ عِمَامَةٌ، أَوْ بُرْنُسٌ، أَوْ غَيْرُ ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى عَمَّ وَلَمْ يَخُصَّ.

وَلَوْ أَرَادَ اللَّهُ تَعَالَى كِسْوَةً دُونَ كِسْوَةٍ لَبَيَّنَ لَنَا ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَتَخْصِيصُ ذَلِكَ لَا يَجُوزُ.

وَرُوِّينَا عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: أَنَّ رَجُلًا سَأَلَهُ عَنْ الْكِسْوَةِ فِي الْكَفَّارَةِ؟ فَقَالَ لَهُ عِمْرَانُ: أَرَأَيْت لَوْ أَنَّ وَفْدًا دَخَلُوا عَلَى أَمِيرِهِمْ فَكَسَا كُلَّ رَجُلٍ مِنْهُمْ قَلَنْسُوَةً، قَالَ النَّاسُ: إنَّهُ قَدْ كَسَاهُمْ؟ رُوِّينَا مِنْ طَرِيقِ مُسَدَّدٍ عَنْ عَبْدِ الْوَارِثِ التَّنُّورِيِّ عَنْ مُحَمَّدِ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ -: وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: تُجْزِئُ الْعِمَامَةُ فِي كَفَّارَةِ الْيَمِينِ.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

وَقَالَ مَالِكٌ: لَا تُجْزِي إلَّا مَا تَجُوزُ فِيهِ الصَّلَاةُ - وَهَذَا لَا وَجْهَ لَهُ، لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ - وَاخْتَلَفَ عَنْ أَبِي حَنِيفَةَ فِي السَّرَاوِيلِ وَحْدَهَا، وَلَا يُجْزِئُ عِنْدَهُ عِمَامَةٌ فَقَطْ، وَقَالُوا: لَوْ أَنَّ إنْسَانًا لَمْ يَلْبَسْ إلَّا عِمَامَةً فَقَطْ، لَقَالَ النَّاسُ: هَذَا عُرْيَانٌ -: قَالَ أَبُو مُحَمَّدٍ: وَهَذَا

"Clothe them in whatever prevents people from calling them uncovered"—*"And your Lord is never forgetful"* (19:64).[25]

L18706 If a man were to wear a shirt and trousers in winter, people would say: "This is nakedness!" – the entire astonishment lies with Abū Ḥanīfah, for he prohibits considering the turban sufficient even though it is a garment, then asserts: "If he clothed them in a single garment equal to ten garments in value, or gave them a female mule or female donkey equivalent to ten garments, it would suffice." We then deliberated upon this matter and concluded necessarily that the garment in its absolute sense inherently negates nakedness, since it is impossible and inconceivable for one to be simultaneously clothed and naked in one respect. However, this may occur in two respects: either part of him is clothed while another part is naked, or he wears a garment that covers him generally without concealing his skin – as is authentically reported from Allah's Messenger (peace be upon him): "There are women who are clothed yet naked; they will not enter Paradise." Thus, it is firmly established that nakedness cannot coexist with a garment when considered absolutely. Allah the Exalted has mentioned it absolutely without qualification.

L18707 There is no doubt that one who has an ample garment covering him, yet his head is bare, or his back, private area, or any other part of his body is exposed, is not called *kāsiyan* (clothed) nor *muktasīyan* (dressed) except figuratively. It necessarily follows that the garment must comprehensively cover the entire body, shielding it from sight and protecting it from the cold. This is because it is necessarily known that a person covered only with a reed cloak during *Kānūn al-Awwal* (December-January) would not be described by anyone as clothed; rather, he is naked.

L18708 And divine success is with Allah, the Exalted.

L18709 **A juristic issue pertaining to providing clothing to the Peo-**

[25]**Qur'an references (L18705):** Qur'an 19:64 (Maryam).

لَيْسَ بِشَيْءٍ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ لَنَا: اُكْسُوهُمْ مَا لَا يَقَعُ عَلَيْهِمْ بِهِ اسْمُ عُرْيَانَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَلَوْ أَنَّ امْرَأً لَبِسَ قَمِيصًا، وَسَرَاوِيلَ فِي الشِّتَاءِ لَقَالَ النَّاسُ: هَذَا عُرْيَانُ - وَالْعَجَبُ كُلُّهُ مِنْ أَبِي حَنِيفَةَ إذْ يَمْنَعُ مِنْ أَنْ تُجْزِئَ الْعِمَامَةُ وَهِيَ كِسْوَةٌ ثُمَّ يَقُولُ: لَوْ كَسَاهُمْ ثَوْبًا وَاحِدًا يُسَاوِي عَشْرَةَ أَثْوَابٍ، أَوْ أَعْطَاهُمْ بَغْلَةً، أَوْ حِمَارَةً تُسَاوِي عَشْرَةَ أَثْوَابٍ أَجْزَأَهُ -: ثُمَّ تَدَبَّرْنَا هَذَا -: فَرَأَيْنَا ضَرُورَةَ أَنَّ الْكِسْوَةَ عَلَى الْإِطْلَاقِ مُنَافِيَةٌ لِلْعُرْيِ، إذْ مُمْتَنِعٌ مُحَالٌ أَنْ يَكُونَ كَاسِيًا عَارِيًّا مِنْ وَجْهٍ وَاحِدٍ، لَكِنْ يَكُونُ كَذَلِكَ مِنْ وَجْهَيْنِ: مِثْلُ أَنْ يَكُونَ بَعْضُهُ كَاسِيًا، وَبَعْضُهُ عَارِيًا أَوْ يَكُونُ عَلَيْهِ كِسْوَةٌ تَعُمُّهُ، وَلَا تَسْتُرُ بَشَرَتَهُ كَمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «نِسَاءٌ كَاسِيَاتٌ عَارِيَاتٌ لَا يَدْخُلْنَ الْجَنَّةَ» فَصَحَّ يَقِينًا أَنَّ الْكِسْوَةَ لَا يَكُونُ مَعَهَا عُرْيٌ إذَا كَانَتْ عَلَى الْإِطْلَاقِ، وَاَللَّهُ تَعَالَى قَدْ أَطْلَقَهَا، وَلَمْ يَذْكُرْهَا بِإِضَافَةٍ.

وَلَا شَكَّ فِي أَنَّ مَنْ عَلَيْهِ كِسْوَةٌ سَابِغَةٌ إلَّا أَنَّ رَأْسَهُ عَارٍ أَوْ ظَهْرَهُ أَوْ عَوْرَتَهُ، أَوْ غَيْرَ ذَلِكَ مِنْهُ، فَإِنَّهُ لَا يُسَمَّى كَاسِيًا، وَلَا مُكْتَسِيًا إلَّا بِإِضَافَةٍ، فَوَجَبَ ضَرُورَةً أَنْ لَا تَكُونَ الْكِسْوَةُ إلَّا عَامَّةً لِجَمِيعِ الْجِسْمِ، سَاتِرَةً لَهُ عَنْ الْعُيُونِ، مَانِعَةً مِنْ الْبَرْدِ، لِأَنَّهُ بِالضَّرُورَةِ يُعْلَمُ أَنَّ مَنْ كَانَ فِي " كَانُونَ الْأَوَّلِ " مُغَطًّى بِرِدَاءِ قَصَبٍ فَقَطْ: أَنَّهُ لَا يُسَمِّيهِ أَحَدٌ كَاسِيًا، بَلْ هُوَ عُرْيَانُ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كِسْوَةُ أَهْلِ الذِّمَّةِ وَإِطْعَامُهُمْ فِي كَفَّارَةِ الْيَمِينِ]

ple of the Covenant (Dhimmis) and feeding them as part of the expiation for breaking an oath.

1186. Issue

Providing clothing and food to Dhimmis suffices if they are poor, unlike zakāh, because no explicit text exists here restricting it to the believers.

The textual ruling on zakah states that it must be taken from the wealthy Muslims and distributed to their poor.

The Issue of Non-Consecutive Fasting in the Expiation of the Oath

1187 - Issue

Fasting for the three days non-consecutively suffices if one wishes, and that is the saying of Malik. And Al-Shafiʿi; Abu Hanifah said: "They are not valid unless performed consecutively." They argued by analogy to the expiation for dhihar and killing, citing Ibn Masʿud's Quranic recitation which states: "consecutive."

Abu Muhammad said: Among the wonders is that the Malikis analogize the requirement for a slave to be believing in oath expiation to the expiation of killing, while the Hanafis do not draw this analogy. Conversely, the Hanafis analogize fasting in oath expiation - regarding the obligation of consecutive days - to fasting in expiation for accidental killing and dhihar, while the Malikis reject this analogy. So how can one not marvel at these feeble analogies recklessly applied in religious rulings? As for Ibn Mas'ud's recitation, it is from the East to the West of the earth more famous than the sun through the transmissions of Asim, Hamzah, and Al-Kisa'i - none of which contains what they alleged. Yet they feel no shame in adding fabricated lies to the Quran to support their corrupt opinions, while refusing to accept exile for adultery because they deem it an addition to the Quran, even though it has been authentically established from the Prophet - peace and blessings of Allah be upon him.

١١٨٦ - مَسْأَلَةٌ

وَيُجْزِئُ كِسْوَةُ أَهْلِ الذِّمَّةِ وَإِطْعَامُهُمْ إذَا كَانُوا مَسَاكِينَ، بِخِلَافِ الزَّكَاةِ، لِأَنَّهُ لَمْ يَأْتِ هَهُنَا نَصٌّ بِتَخْصِيصِ الْمُؤْمِنِينَ.

وَقَدْ جَاءَ النَّصُّ فِي الزَّكَاةِ: أَنْ تُؤْخَذَ مِنْ أَغْنِيَاءِ الْمُسْلِمِينَ فَتُرَدُّ فِي فُقَرَائِهِمْ.

[مَسْأَلَةُ الصَّوْمِ الْمُتَفَرِّقُ فِي كَفَّارَةِ الْيَمِينِ]

١١٨٧ - مَسْأَلَةٌ

وَيُجْزِئُ الصَّوْمُ لِلثَّلَاثَةِ الْأَيَّامِ مُتَفَرِّقَةً إنْ شَاءَ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَقَالَ أَبُو حَنِيفَةَ: لَا تُجْزِي إلَّا مُتَتَابِعَةً - وَاحْتَجُّوا بِقِيَاسِهَا عَلَى كَفَّارَةِ الظِّهَارِ، وَالْقَتْلِ، وَقَالُوا فِي قِرَاءَةِ ابْنِ مَسْعُودٍ: " مُتَتَابِعَاتٍ ".

قَالَ أَبُو مُحَمَّدٍ: مِنْ الْعَجَائِبِ أَنْ يَقِيسَ الْمَالِكِيُّونَ: الرَّقَبَةَ فِي أَنْ تَكُونَ مُؤْمِنَةً فِي كَفَّارَةِ الْيَمِينِ عَلَى كَفَّارَةِ الْقَتْلِ، وَلَا يَقِيسُهَا الْحَنَفِيُّونَ عَلَيْهَا، وَيَقِيسُ الْحَنَفِيُّونَ الصَّوْمَ فِي كَفَّارَةِ الْيَمِينِ فِي وُجُوبِ كَوْنِهِ مُتَتَابِعًا عَلَى صَوْمِ كَفَّارَةِ قَتْلِ الْخَطَإِ، وَالظِّهَارِ، وَلَا يَقِيسُهُ الْمَالِكِيُّونَ عَلَيْهِ، فَاعْجَبُوا لِهَذِهِ الْمَقَايِيسِ الْمُتَخَاذِلَةِ الْمَحْكُومِ بِهَا فِي الدِّينِ مُجَازَفَةً؟ وَأَمَّا قِرَاءَةُ ابْنِ مَسْعُودٍ فَهِيَ مِنْ شَرْقِ الْأَرْضِ إلَى غَرْبِهَا أَشْهَرُ مِنْ الشَّمْسِ مِنْ طَرِيقِ عَاصِمٍ، وَحَمْزَةَ، وَالْكِسَائِيِّ لَيْسَ فِيهَا مَا ذَكَرُوا ثُمَّ لَا يَسْتَحْيُونَ مِنْ أَنْ يَزِيدُوا فِي الْقُرْآنِ

الْكَذِبَ الْمُفْتَرَى نَصْرًا لِأَقْوَالِهِمْ الْفَاسِدَةِ، وَهُمْ يَأْبَوْنَ مِنْ قَبُولِ التَّغْرِيبِ فِي الزِّنَى، لِأَنَّهُ عِنْدَهُمْ زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. ثُمَّ لَا يَسْتَحْيُونَ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ النَّاسِ فِي أَنْ يَزِيدُوا فِي الْقُرْآنِ مَا يَكُونُ مَنْ زَادَهُ فِيهِ كَافِرًا وَمَا إنْ قَرَأَ بِهِ فِي الْمِحْرَابِ اُسْتُتِيبَ وَإِنْ كَتَبَهُ فِي مُصْحَفٍ قُطِعَتْ الْوَرَقَةُ أَوْ بُشِّرَ نَصْرًا لِتَقْلِيدِهِمْ، فَإِذْ لَمْ يَخُصَّ اللَّهُ تَعَالَى تَتَابُعًا مِنْ تَفْرِيقٍ، فَكَيْفَمَا صَامَهُنَّ أَجْزَأَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18719 Then they feel no shame before Allah the Exalted nor before people in adding to the Quran that which would render whoever adds it a disbeliever. If one recites it in the prayer niche, repentance must be sought from him; if he writes it in a muṣḥaf, the page is to be torn, or he is given glad tidings of victory due to their imitation. Since Allah the Exalted has not distinguished continuity from separation, however he fasts them, it suffices him—and with Allah the Exalted is all success.

[مَسْأَلَةٌ كَانَ الحانث فِي الْيَمِينِ عِنْدَهُ مَا يُطْعِمُ مِنْهُ عَشَرَةَ مَسَاكِينَ]

L18720 **Case: If the one who breaks an oath possesses, from what he owns, enough to provide food for ten poor people.**

١١٨٨ - مَسْأَلَةٌ

وَمَنْ عِنْدَهُ فَضْلٌ عَنْ قُوتِ يَوْمِهِ وَقُوتِ أَهْلِهِ مَا يُطْعِمُ مِنْهُ عَشَرَةَ مَسَاكِينَ لَمْ يُجْزِهِ الصَّوْمُ أَصْلًا، لِأَنَّهُ وَاجِدٌ، وَلَا يُجْزِئُ الْوَاجِدُ بِنَصِّ الْقُرْآنِ إلَّا مَا وَجَدَ، وَلَا يُجْزِئُ الصَّوْمُ إلَّا مَنْ لَمْ يَجِدْ. وَالْعَبْدُ، وَالْحُرُّ، فِي كُلِّ ذَلِكَ سَوَاءٌ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَمَنْ حَدَّ بِأَكْثَرَ مِنْ هَذَا مِنْ قُوتِ جُمُعَةٍ، أَوْ أَشْهُرٍ، أَوْ سَنَةٍ؛ كُلِّفَ الدَّلِيلَ، وَلَا سَبِيلَ لَهُ إلَيْهِ؟

L18721 Question 1188

L18722 And whoever has surplus beyond his daily provisions and those of his household—enough to feed ten needy persons from it—fasting does not suffice for him at all, for he is one who has the means. By the explicit text of the Quran, the one who has means cannot fulfill his obligation except through what he possesses, and fasting suffices only for one who lacks means. The slave and the free are held to the same standard in all this. *"And your Lord is never forgetful"* [Maryam 19:64]. As for one who stipulates a requirement beyond this—such as provisions for a week, months, or a year—how can he be charged with providing proof when he has no means to do so?[26]

[مَسْأَلَةٌ لَا يُجْزِئُ فِي الْكَفَّارَةِ إطْعَامُ بَعْضِ الْعَشَرَةِ وَكِسْوَةُ بَعْضِهِمْ]

L18723 **A legal issue: Feeding some of the ten and clothing some of them does not suffice to fulfill the expiation.**

١١٨٩ - مَسْأَلَةٌ وَلَا يُجْزِئُ إطْعَامُ بَعْضِ الْعَشَرَةِ وَكِسْوَةُ بَعْضِهِمْ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ - وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ: يُجْزِئُ - وَهَذَا خِلَافُ الْقُرْآنِ وَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَ أَبِي حَنِيفَةَ.

L18724 1189 - Issue: It is not valid to feed some from among the ten and provide the clothing of others among them. This is the position of Mālik and al-Shāfiʿī. Abū Ḥanīfah and Sufyān al-Thawri said, "It suffices." This is contrary to the Quran, and we know of none who held this view before Abū Ḥanīfah.

[26] **Qur'an references (L18722):** Qur'an 19:64 (Maryam).

Case: Swearing an Oath Upon a Sin

1190: Issue

Whoever swears to commit a sin, it is made incumbent upon him to abstain from it and to expiate. If he swears to do what is not sinful, he is not bound by this obligation. Some of our companions said: It becomes incumbent upon him if he considers another action better than it [the oath], citing as evidence the statement of Allah's Messenger—peace and blessings be upon him: "Let him do what is better and expiate for his oath."

Abu Muhammad said: This would have been a valid argument were it not for what we have narrated in the Book of Prayer in the chapter on Witr from "the statement of the one who said to the Prophet—peace and blessings be upon him—when he mentioned to him the five prayers, so he asked: 'Is there anything else incumbent upon me besides them?' He replied: 'No, unless you perform voluntary prayers.'" And similarly regarding the fasting of Ramadan and Zakāh: "By Allah, I will neither add to them nor subtract from them?" The Prophet—peace be upon him—then said: "He has succeeded if he is truthful; he has entered Paradise if he is truthful."

There is no doubt that voluntary prayer after the obligatory prayer is better than abandoning it and preferable to doing so. The Prophet—peace be upon him—did not disapprove of that oath of his, nor did he command him to do what is better. Rather, he approved it for him.

Thus, it is established that the directive of the Prophet—may Allah bless him and grant him peace—in this regard is indeed a recommended act, and success comes from Allah, the Exalted.

[مَسْأَلَةٌ حَلَفَ عَلَى إثْمٍ]

١١٩٠ - مَسْأَلَةٌ

وَمَنْ حَلَفَ عَلَى إثْمٍ فَفُرِضَ عَلَيْهِ أَنْ لَا يَفْعَلَهُ وَيُكَفِّرَ، فَإِنْ حَلَفَ عَلَى مَا لَيْسَ إثْمًا فَلَا يَلْزَمُهُ ذَلِكَ - وَقَالَ بَعْضُ أَصْحَابِنَا: يَلْزَمُهُ ذَلِكَ إذَا رَأَى غَيْرَهَا خَيْرًا مِنْهَا وَاحْتَجُّوا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ وَلْيُكَفِّرْ عَنْ يَمِينِهِ» .

قَالَ أَبُو مُحَمَّد: كَانَ هَذَا احْتِجَاجًا صَحِيحًا لَوْلَا مَا رُوِّينَاهُ فِي " كِتَابِ الصَّلَاةِ فِي بَابِ الْوَتْرِ مِنْ «قَوْلِ الْقَائِلِ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ ذَكَرَ لَهُ الصَّلَوَاتِ الْخَمْسَ فَقَالَ: هَلْ عَلَيَّ غَيْرُهُنَّ؟ قَالَ: لَا إلَّا أَنْ تَطَوَّعَ - وَقَالَ فِي صَوْمِ رَمَضَانَ وَالزَّكَاةِ كَذَلِكَ، وَاَللَّهِ لَا أَزِيدُ عَلَيْهِنَّ وَلَا أَنْقُصُ مِنْهُنَّ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: أَفْلَحَ إنْ صَدَقَ، دَخَلَ الْجَنَّةَ إنْ صَدَقَ» .

وَلَا شَكَّ فِي أَنَّ التَّطَوُّعَ بَعْدَ الْفَرْضِ أَفْضَلُ مِنْ تَرْكِ التَّطَوُّعِ وَخَيْرٌ مِنْ تَرْكِهِ، فَلَمْ يُنْكِرْ النَّبِيُّ - عَلَيْهِ السَّلَامُ - يَمِينَهُ تِلْكَ، وَلَا أَمَرَهُ بِأَنْ يَأْتِيَ الَّذِي هُوَ خَيْرٌ، بَلْ حَسَّنَ لَهُ ذَلِكَ.

فَصَحَّ أَنَّ أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ إنَّمَا هُوَ نَدْبٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

كِتَابُ الْقَرْضِ

The Book of Loans

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

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[كِتَابُ الْقَرْضِ] [مَسْأَلَةٌ تَعْرِيف الْقَرْض]

وَهُوَ الدَّيْنُ ١١٩١ - مَسْأَلَةٌ:

الْقَرْضُ فِعْلُ خَيْرٍ، وَهُوَ أَنْ تُعْطِيَ إِنْسَانًا شَيْئًا بِعَيْنِهِ مِنْ مَالِك تَدْفَعُهُ إِلَيْهِ لِيَرُدَّ عَلَيْك مِثْلَهُ إِمَّا حَالًّا فِي ذِمَّتِهِ وَإِمَّا إلَى أَجَلٍ مُسَمًّى هَذَا مُجْمَعٌ عَلَيْهِ

وَقَالَ اللَّهُ تَعَالَى: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢]

[مَسْأَلَةٌ الْقَرْضُ جَائِزٌ فِي كُلِّ مَا يَحِلُّ تَمَلُّكُهُ وَتَمْلِيكُهُ]

١١٩٢ - مَسْأَلَةٌ:

وَالْقَرْضُ جَائِزٌ فِي كُلِّ مَا يَحِلُّ تَمَلُّكُهُ وَتَمْلِيكُهُ بِهِبَةٍ أَوْ غَيْرِهَا سَوَاءٌ جَازَ بَيْعَةُ أَوْ لَمْ يَجُزْ - لِأَنَّ الْقَرْضَ هُوَ غَيْرُ الْبَيْعِ، لِأَنَّ الْبَيْعَ لَا يَجُوزُ إلَّا بِثَمَنٍ، وَيَجُوزُ بِغَيْرِ نَوْعِ مَا بِعْت.

وَلَا يَجُوزُ فِي الْقَرْضِ إلَّا رَدُّ مِثْلِ مَا اُقْتُرِضَ لَا مِنْ سِوَى نَوْعِهِ أَصْلًا

[مَسْأَلَةٌ لَا يَشْتَرِطَ رَدًّا أَكْثَرَ مِمَّا اقترض وَلَا أَقَلَّ]

١١٩٣ - مَسْأَلَةٌ:

وَلَا يَحِلُّ أَنْ يَشْتَرِطَ رَدًّا أَكْثَرَ مِمَّا أَخَذَ وَلَا أَقَلَّ، وَهُوَ رِبًا مَفْسُوخٌ، وَلَا يَحِلُّ اشْتِرَاطُ رَدِّ أَفْضَلَ مِمَّا أَخَذَ وَلَا أَدْنَى وَهُوَ رِبًا، وَلَا يَجُوزُ اشْتِرَاطُ نَوْعٍ غَيْرِ النَّوْعِ الَّذِي أَخَذَ، وَلَا اشْتِرَاطُ أَنْ يَقْضِيَهُ فِي مَوْضِعِ كَذَا وَلَا اشْتِرَاطُ ضَامِنٍ. بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ

Book of the Loan Issue: Defining the Loan

And it is the debt — 1191. Issue:

A loan is an act of benevolence, whereby you give a specific item from your wealth to another person, delivering it to him so he may return its exact equivalent—either as an immediate obligation upon him or deferred to a stipulated term. This ruling is established by scholarly consensus (ijmaʿ).

And Allah, the Exalted, said: *"When you contract a debt among yourselves for a specified term, write it down"* [Al-Baqarah: 282].[1]

A legal issue: Loans are permissible in all cases where it is lawful to own and transfer ownership.

1192 - Question:

A gratuitous loan is permissible for anything that can lawfully be owned and have its ownership transferred through a gift or other means, whether the sale of such an item is permissible or not—because a loan differs from a sale. A sale is only valid with an agreed-upon price, whereas a loan is permissible without requiring the specification of the type of item involved in a sale.

In a loan, it is only permissible to return the equivalent of what was borrowed from its own type, and not from any other type whatsoever.

A matter where it is not permissible to stipulate repaying more than what was borrowed nor less than what was borrowed.

1193 – Issue:

It is not permissible to stipulate repayment of more or less than what was taken, as this is usurious and void. Nor is it permissible to stipulate the return of a better or lesser amount than what was taken—this being usury—nor to stipulate a different type than what was taken, nor to require repayment in

[1] **Qur'an references (L18736):** Qur'an 2:282 (Al-Baqarah).

a specific location, nor to demand a guarantor. The evidence for this is the statement of Allah's Messenger—peace and blessings be upon him: "Every condition not in Allah's Book is void. Why do people stipulate conditions not in Allah's Book? Whoever stipulates a condition not in Allah's Book, it is invalid for him even if he stipulates a hundred conditions. Allah's Book has greater authority, and Allah's condition is most binding."

L18744–18745 There is no disagreement regarding the nullity of these conditions that we have discussed in loan contracts.

L18746 And by Allah, the Most High, is the support.

L18747 A juristic issue wherein one voluntarily gives more than what he received while discharging his owed debt.

L18748 1194. Legal Question:

L18749 If he voluntarily exceeds in fulfilling his obligation—whether by giving more than he took, less than he took, better in quality than he took, or lower in quality than he took—all such actions are commendable and recommended.

L18750 The one who gives back more than what he borrowed and of better quality than what he borrowed is rewarded.

L18751 The one who accepts something inferior to or less than what he gave is rewarded by Allah.

L18752 And it is the same whether that is a customary practice or not, provided it is not stipulated. Similarly, if he repays it in a different locality—there is no difference—it remains acceptable as long as it is not stipulated. It has been narrated to us through the chains of Al-Bukhari and of Musa ibn Mu'awiyah. Al-Bukhari said: Khallad narrated to us, and Musa said: Waki' narrated to us. Then their chains converged: both Khallad and Waki' said: Mis'ar ibn Kidam narrated to us from Muharib ibn Dithar from Jabir ibn 'Abdullah, who said: "I had a debt owed by the Messenger of Allah—peace and blessings be upon him—and he repaid me and gave me extra."

L18753 From the narration of Waki', from 'Ali ibn Salih ibn Hayy, from Salamah ibn Kuhayl, from Abu Salamah, from Abu Hurayrah, who said: "The Messenger

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ مَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ وَإِنْ اشْتَرَطَ مِائَةَ شَرْطٍ، كِتَابُ اللَّهِ أَحَقُّ، وَشَرْطُ اللَّهِ أَوْثَقُ» .

وَلَا خِلَافَ فِي بُطْلَانِ هَذِهِ الشُّرُوطِ الَّتِي ذَكَرْنَا فِي الْقَرْضِ.

وَبِاَللَّهِ تَعَالَى التَّأْيِيدُ.

[مَسْأَلَةٌ تَطَوَّعَ عِنْدَ قَضَاءِ مَا عَلَيْهِ بِأَنْ يُعْطِيَ أَكْثَرَ مِمَّا أَخَذَ]

١١٩٤ - مَسْأَلَةٌ:

فَإِنْ تَطَوَّعَ عِنْدَ قَضَاءِ مَا عَلَيْهِ بِأَنْ يُعْطِيَ أَكْثَرَ مِمَّا أَخَذَ، أَوْ أَقَلَّ مِمَّا أَخَذَ، أَوْ أَجْوَدَ مِمَّا أَخَذَ، أَوْ أَدْنَى مِمَّا أَخَذَ، فَكُلُّ ذَلِكَ حَسَنٌ مُسْتَحَبٌّ.

وَمُعْطِي أَكْثَرَ مِمَّا اقْتَرَضَ وَأَجْوَدَ مِمَّا اقْتَرَضَ مَأْجُورٌ.

وَالَّذِي يَقْبَلُ أَدْنَى مِمَّا أَعْطَى، أَوْ أَقَلَّ مِمَّا أَعْطَى مَأْجُورٌ.

وَسَوَاءٌ كَانَ ذَلِكَ عَادَةً أَوْ لَمْ يَكُنْ، مَا لَمْ يَكُنْ عَنْ شَرْطٍ، وَكَذَلِكَ إنْ قَضَاهُ فِي بَلَدٍ آخَرَ، وَلَا فَرْقَ -: فَهُوَ حَسَنٌ مَا لَمْ يَكُنْ عَنْ شَرْطٍ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ، وَمُوسَى بْنِ مُعَاوِيَةَ، قَالَ الْبُخَارِيُّ: نا خَلَّادٌ، وَقَالَ مُوسَى: نا وَكِيعٌ، ثُمَّ اتَّفَقَ خَلَّادٌ وَوَكِيعٌ، قَالَا: نا مِسْعَرُ بْنُ كِدَامٍ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «كَانَ لِي عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَيْنٌ فَقَضَانِي وَزَادَنِي»

of Allah—peace and blessings of Allah be upon him—borrowed an age and repaid it with an age above his age, saying: 'The best among you are those most virtuous in fulfillment.'" This is the saying of the Salaf.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَلِيِّ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ «اسْتَقْرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِنًّا فَأَعْطَاهُ سِنًّا فَوْقَ سِنِّهِ وَقَالَ: خِيَارُكُمْ مَحَاسِنُكُمْ قَضَاءً» وَهُوَ قَوْلُ السَّلَفِ

L18754 It was narrated to us through the route of Sufyān ibn ʻUyaynah from Ismāʻīl ibn Abī Khālid from his father, who said: "Al-Ḥasan ibn ʻAlī ruled in my favor and granted me an additional sum roughly equivalent to eighty dirhams."

رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ أَبِيهِ قَالَ: قَضَانِي الْحَسَنُ بْنُ عَلِيِّ بْنِ أَبِي طَالِبٍ وَزَادَنِي نَحْوًا مِنْ ثَمَانِينَ دِرْهَمًا.

L18755 And through the chain of Wakīʻ from Ismāʻīl ibn Abī Khālid from his father, who said: I demanded payment from al-Ḥasan ibn ʻAlī for a debt he owed me. I found him having just exited the bathhouse, so he settled the debt with me without weighing the payment. When I weighed it, I discovered he had given me seventy dirhams beyond the owed amount.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ أَبِيهِ قَالَ: تَقَاضَيْت الْحَسَنَ بْنَ عَلِيٍّ دَيْنًا لِي عَلَيْهِ فَوَجَدْته قَدْ خَرَجَ مِنْ الْحَمَّامِ فَقَضَانِي وَلَمْ يَزِنْهُ، فَوَزَنْته فَوَجَدْته قَدْ زَادَنِي عَلَى حَقِّي سَبْعِينَ دِرْهَمًا.

L18756–18758 From the narration of Malik, who said: It reached me that a man said to Ibn Umar: "I advanced a loan to a man and stipulated repayment of more than the loaned amount." Ibn Umar responded: "That is usury." Then he [Malik] mentioned further words - and in it [the narration]: Ibn Umar said to him: "I advise you to tear up your contract. If he gives you the equivalent of what you lent him, accept it. But if he gives you less than what..." If you lend someone something and they accept it, you are rewarded. And if they give you more than what you lent them willingly, with a contented heart, then that is their gratitude to you, and it is the reward for granting them respite.

وَمِنْ طَرِيقِ مَالِك قَالَ: بَلَغَنِي أَنَّ رَجُلًا قَالَ لِابْنِ عُمَرَ: إنِّي أَسْلَفْت رَجُلًا سَلَفًا وَاشْتَرَطْت أَفْضَلَ مِمَّا أَسْلَفْته، فَقَالَ ابْنُ عُمَرَ: ذَلِكَ الرِّبَا، ثُمَّ ذَكَرَ كَلَامًا - وَفِيهِ: أَنَّ ابْنَ عُمَرَ قَالَ لَهُ: أَرَى أَنْ تَشُقَّ صَكَّك فَإِنْ أَعْطَاك مِثْلَ الَّذِي أَسْلَفْته قَبِلْته، وَإِنْ أَعْطَاك دُونَ مَا أَسْلَفْته فَأَخَذْته أُجِرْت، وَإِنْ أَفْضَلَ مِمَّا أَسْلَفْته طَيِّبَةً بِهِ نَفْسُهُ، فَذَلِكَ شُكْرٌ شَكَرَهُ لَك وَهُوَ أَجْرُ مَا أَنْظَرْته.

L18759 And through the chain of Ibn Abī Shaybah: Wakīʻ narrated to us, Hishām al-Dastuwā'ī narrated to us from al-Qāsim ibn Abī Bazza from ʻAṭāʾ ibn Yaʻqūb, who said: "Ibn ʻUmar borrowed a thousand dirhams from me and repaid me with dirhams superior to mine. He said to me: 'Whatever excess is in them constitutes a favor from me to you—will you accept it?' I replied: 'Yes.'" No opponent is known regarding these two cases among the Companions—may Allah be pleased with them—except for a narration from Ibn Masʻūd indicating his disapproval.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ الْقَاسِمِ بْنِ أَبِي بَزَّةَ عَنْ عَطَاءِ بْنِ يَعْقُوبَ قَالَ: اقْتَرَضَ مِنِّي ابْنُ عُمَرَ أَلْفَ دِرْهَمٍ فَقَضَانِي أَجْوَدَ مِنْ دَرَاهِمِي، وَقَالَ لِي: مَا كَانَ فِيهَا مِنْ فَضْلٍ فَهُوَ نَائِلٌ مِنِّي لَك أَتَقْبَلُهُ؟ قُلْت: نَعَمْ - وَلَا يُعْرَفُ لِهَذَيْنِ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا رِوَايَةً عَنْ ابْنِ مَسْعُودٍ أَنَّهُ كَرِهَ ذَلِكَ. وَمِنْ

طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: كَانَ ابْنُ الزُّبَيْرِ يَسْتَسْلِفُ مِنْ التُّجَّارِ أَمْوَالَهُمْ ثُمَّ يَكْتُبُ لَهُمْ إلَى الْعُمَّالِ، فَذَكَرْت ذَلِكَ لِابْنِ عَبَّاسٍ؟ فَقَالَ: لَا بَأْسَ بِهِ

Through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ, who said: "Ibn al-Zubayr would borrow wealth from merchants and then write to the officials on their behalf. When I mentioned this to Ibn ʿAbbās, he responded: 'There is no harm in it.'"

وَحَكَى شُعْبَةُ: أَنَّهُ سَأَلَ الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَمَّنْ اقْتَرَضَ دَرَاهِمَ فَرَدَّ عَلَيْهِ خَيْرًا مِنْهَا؟ فَقَالَا جَمِيعًا: إذَا كَانَ لَيْسَ مِنْ نِيَّتِهِ فَلَا بَأْسَ

L18760 Shuʿbah narrated that he asked al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān about someone who borrowed dirhams and repaid them with dirhams of greater value. They both said: "If it was not his intention, there is no harm."

وَصَحَّ عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، قَالَا جَمِيعًا: لَا بَأْسَ أَنْ تُقْرِضَ دَرَاهِمَ بِيضًا وَتَأْخُذَ سُودًا، أَوْ تُقْرِضَ سُودًا وَتَأْخُذَ بِيضًا.

L18761 It has been authentically reported from Qatadah, from Al-Ḥasan Al-Baṣrī and Saʿīd ibn Al-Musayyib, who both said: There is no harm in lending white dirhams and taking black ones, or lending black dirhams and taking white ones.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا قَطَرِيُّ بْنُ عَبْدِ اللَّهِ عَنْ الْأَشْعَثِ الْحُمْرَانِيِّ قَالَ: سَأَلْت الْحَسَنَ؟ فَقُلْت: يَا أَبَا سَعِيدٍ لِي جَارَاتٌ وَلَهُنَّ عَطَاءٌ فَيَقْتَرِضْنَ مِنِّي وَنِيَّتِي فِي فَضْلِ دَرَاهِمِ الْعَطَاءِ عَلَى دَرَاهِمِي؟ قَالَ: لَا بَأْسَ بِهِ.

L18762 And via the chain of Ibn Abī Shaybah: Qaṭarī ibn ʿAbd Allāh narrated to us from Al-Ashʿath Al-Ḥumrānī, who said: "I asked Al-Ḥasan: 'O Abā Saʿīd, I have female neighbors who receive stipends. They borrow from me, and my intention concerns the excess of the stipend's dirhams over my dirhams.' He replied: 'There is no harm in it.'"

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ إذَا أَسْلَفْت طَعَامًا فَأَعْطَاكَهُ بِأَرْضٍ أُخْرَى، فَإِنْ كَانَ عَنْ شَرْطٍ فَهُوَ مَكْرُوهٌ، وَإِنْ كَانَ عَلَى وَجْهِ الْمَعْرُوفِ فَلَا بَأْسَ بِهِ.

L18763 From the chain of Ma'mar from Ayyub from Ibn Sirin: If you advance food as a loan and he gives it to you in another location, then if it is based on a stipulated condition, it is disliked, but if it is done in accordance with customary practice, there is no harm in it.

وَهُوَ كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L18764 This is wholly the opinion of Abu Hanifa, al-Shafi'i, and Abu Sulayman.

وَأَجَازَ مَالِكٌ: أَنْ يَرُدَّ أَفْضَلَ مَا لَمْ يَكُنْ عَنْ عَادَةٍ، وَلَمْ يُجِزْ أَنْ يَرُدَّ أَكْثَرَ - وَهَذَا خَطَأٌ، لِأَنَّهُ خِلَافُ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أَوْرَدْنَا.

L18765 And Malik permitted exchanging a better quality item as long as it is not contrary to customary practice, but he did not permit exchanging a greater quantity—this is mistaken, as it contradicts the action of the Messenger of Allah (peace be upon him) that we have mentioned.

L18766 As for the distinction between customary practice and other matters—it is erroneous, for if it were permissible once, it would be permissible a thousand times with no difference. If it is good in a single instance, then increasing good is good. But if it is evil, then it is not permissible either once or repeatedly—and by Allah, the Exalted, is success.

وَأَمَّا فَرْقُهُ بَيْنَ الْعَادَةِ وَغَيْرِهَا -: فَخَطَأٌ، لِأَنَّهُ إنْ جَازَ مَرَّةً جَازَ أَلْفَ مَرَّةٍ وَلَا فَرْقَ، وَإِنْ كَانَ خَيْرًا فِي الْمَرَّةِ الْوَاحِدَةِ فَالْإِكْثَارُ مِنْ الْخَيْرِ خَيْرٌ، وَإِنْ كَانَ شَرًّا فَالشَّرُّ لَا يَجُوزُ لَا مَرَّةً وَلَا مِرَارًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18767 And we do not know of anyone before him who distinguished between the customary practice in that matter and an isolated instance.

وَلَا نَعْلَمُ أَحَدًا قَبْلَهُ فَرَّقَ بَيْنَ الْعَادَةِ فِي ذَلِكَ وَبَيْنَ الْمَرَّةِ الْوَاحِدَةِ.

وَأَمَّا مَنْعُهُ مِنْ رَدِّ أَكْثَرَ -: فَقَدْ رُوِّينَاهُ عَنْ الشَّعْبِيِّ، وَالزُّهْرِيِّ. وَالْعَجَبُ كُلُّهُ مِنْ إجَازَتِهِ الزِّيَادَةَ حَيْثُ هِيَ الرِّبَا الْمَكْشُوفُ الْمُحَرَّمُ، إذْ يُجِيزُ مُبَادَلَةَ دِينَارٍ نَاقِصٍ بِدِينَارٍ زَائِدٍ عَلَيْهِ فِي وَزْنِهِ بِمُشَارَطَةٍ فِي حِينِ الْمُبَادَلَةِ، وَكَذَلِكَ فِي الدِّرْهَمِ النَّاقِصِ بِالدِّرْهَمِ الزَّائِدِ عَلَيْهِ فِي وَزْنِهِ - وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّرْهَمُ بِالدِّرْهَمِ فَضْلُ مَا بَيْنَهُمَا رِبًا» ثُمَّ يَمْنَعُ مِنْ الزِّيَادَةِ غَيْرِ الْمُشْتَرَطَةِ فِي قَضَاءِ الْقَرْضِ وَقَدْ فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَضَّ عَلَيْهِ - وَحَسْبُنَا اللَّهُ [وَنِعْمَ الْوَكِيلُ] .

L18768–18769 As for his prohibition against returning more, we have transmitted this from Al-Sha'bi and Al-Zuhri. The entire astonishment lies in his permitting the increase—which constitutes manifestly prohibited usury—by allowing the exchange of an underweight dinar for a dinar exceeding it in weight through stipulation at the time of exchange, and similarly exchanging an underweight dirham for a dirham exceeding it in weight, despite the authentic report from the Prophet (peace be upon him): "Dirham for dirham; any excess between them is usury." Yet he prohibits the increase not stipulated in loan repayment, though the Messenger of Allah (peace be upon him) enacted it and urged it. Sufficient for us is Allah [and what an excellent Trustee].

[مَسْأَلَةٌ قَضَاهُ مِنْ غَيْرِ نَوْعِ مَا اسْتَقْرَضَ]

L18770 **A jurisprudential case: He repaid it with a different kind than what he had borrowed.**

١١٩٥ - مَسْأَلَةٌ:

L18771 1195 - Issue:

فَإِنْ قَضَاهُ مِنْ غَيْرِ نَوْعِ مَا اسْتَقْرَضَ لَمْ يَحِلَّ أَصْلًا - لَا بِشَرْطٍ وَلَا بِغَيْرِ شَرْطٍ - مِثْلُ: أَنْ يَكُونَ أَقْرَضَهُ ذَهَبًا فَيُرِدُّ عَلَيْهِ فِضَّةً، أَوْ غَيْرَ ذَلِكَ، وَهَكَذَا فِي كُلِّ شَيْءٍ، يَقُولُ اللَّهُ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَهُوَ إذَا رَدَّ غَيْرَ مَا كَانَ عَلَيْهِ فَقَدْ أَخَذَ غَيْرَ حَقِّهِ، وَمَنْ أَخَذَ غَيْرَ حَقِّهِ فَقَدْ أَكَلَ الْمَالَ بِالْبَاطِلِ.

L18772 If he repays it with a type other than what was borrowed, it is absolutely impermissible—neither by stipulation nor without stipulation—such as if gold was lent and the borrower repays with silver or other than that. This applies to everything. Allah the Exalted says: *"Do not consume your wealth among yourselves unjustly unless it is a trade by mutual consent"* (Quran 4:29). If he repays with something other than what was owed, he has taken what is not his rightful due. Whoever takes what is not their rightful due has wrongfully consumed the wealth.[2]

[2] **Qur'an references (L18772):** Qur'an 4:29 (An-Nisa).

فَإِنْ قَالُوا: إِنَّمَا هُوَ مِنْ بَابِ الْبَيْعِ كَأَنَّهُ بَاعَ مِنْهُ مَا كَانَ لَهُ عِنْدَهُ بِمَا أَخَذَ مِنْهُ؟ قُلْنَا: هَذَا حَرَامٌ لَا يَحِلُّ، لِأَنَّهُ لَيْسَ لَهُ عِنْدَهُ شَيْءٌ بِعَيْنِهِ، وَلَا يَحِلُّ الْبَيْعُ إِلَّا فِي شَيْءٍ بِعَيْنِهِ وَهُوَ بَيْعُ مَا لَيْسَ عِنْدَكَ، وَبَيْعُ مَا لَمْ يُقْبَضْ.

L18773 If they say: “It is a type of sale, as if he sold him what he had with him in exchange for what he took from him?” We say: This is forbidden (ḥarām) and invalid, because there is no specific item in his possession. Sale is only permissible for a specific item, and this constitutes selling what is not in your possession and selling what has not been physically received.

وَكُلُّ هَذَا قَدْ صَحَّ النَّهْيُ عَنْهُ عَلَى مَا نَذْكُرُ فِي الْبُيُوعِ إِنْ شَاءَ اللَّهُ تَعَالَى، وَهُوَ فِيمَا يَقَعُ فِيهِ الرِّبَا رِبًا مَحْضٌ عَلَى مَا نَذْكُرُ فِي " أَبْوَابِ الرِّبَا " إِنْ شَاءَ اللَّهُ تَعَالَى.

L18774 All of this has been authentically prohibited, as we will mention in the Book of Sales, God willing, and where usury occurs, it constitutes pure usury, as we will detail in the Chapters on Usury, God willing.

فَإِنْ احْتَجُّوا بِخَبَرِ ابْنِ عُمَرَ فِي ذَلِكَ فَهُوَ خَبَرٌ لَا يَصِحُّ عَلَى مَا نَذْكُرُ فِي الْبُيُوعِ إِنْ شَاءَ اللَّهُ تَعَالَى؛ لِأَنَّهُ مِنْ رِوَايَةِ سِمَاكِ بْنِ حَرْبٍ - ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لَهُ عَلَى مَا نَذْكُرُ هُنَالِكَ إِنْ شَاءَ اللَّهُ تَعَالَى.

L18775 If they argue using the report of Ibn Umar concerning that, it is an unsound report according to what we will mention regarding sales, God Almighty willing, because it is from the narration of Simak ibn Harb. Then, even if it were sound, they would be contradicting it according to what we will mention there, God Almighty willing.

[مَسْأَلَةٌ مَنْ اسْتَقْرَضَ شَيْئًا فَقَدْ مَلَكَهُ]

A legal issue: Whoever takes a loan (qard) of something has indeed acquired ownership of it.

١١٩٦ - مَسْأَلَةٌ:

وَمَنْ اسْتَقْرَضَ شَيْئًا فَقَدْ مَلَكَهُ، وَلَهُ بَيْعُهُ إِنْ شَاءَ، وَهِبَتُهُ، وَالتَّصَرُّفُ فِيهِ، كَسَائِرِ مِلْكِهِ - وَهَذَا لَا خِلَافَ فِيهِ - وَبِهِ جَاءَتْ النُّصُوصُ.

L18776 **A legal issue: Whoever takes a loan (qard) of something has indeed acquired ownership of it.**

L18777 1196 - Issue:

L18778 Whoever borrows something thereby owns it and may sell it, gift it (hibah), or dispose of it as with all his property—a matter with no disagreement—as affirmed by the juristic texts.

[مَسْأَلَةُ الدَّيْنُ لَوْ كَانَ حَالًّا]

Issue: If the Debt Were Demandable

١١٩٧ - مَسْأَلَةٌ:

فَإِنْ كَانَ الدَّيْنُ حَالًّا كَانَ لِلَّذِي أَقْرَضَ أَنْ يَأْخُذَ بِهِ الْمُسْتَقْرَضَ مَتَى أَحَبَّ - إِنْ شَاءَ إِثْرَ إِقْرَاضِهِ إِيَّاهُ، وَإِنْ شَاءَ أَنْظَرَهُ بِهِ إِلَى انْقِضَاءِ حَيَاتِهِ.

L18780 1197 - Question:

L18781 If the debt is immediately due, the lender may demand repayment from the borrower whenever he wishes - either immediately after lending it to him, or defer the debt for him until the end of the lender’s life.

L18782 Mālik said: He has no right to demand repayment from him except after a period during which the borrower benefits from what he borrowed. This is incorrect, as it constitutes an unsubstantiated claim.

وَقَالَ مَالِكٌ: لَيْسَ لَهُ مُطَالَبَتُهُ إيَّاهُ بِهِ إلَّا بَعْدَ مُدَّةٍ يَنْتَفِعُ فِيهَا الْمُسْتَقْرِضُ بِمَا اسْتَقْرَضَ - وَهَذَا خَطَأٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ.

Moreover, the proponent [of this view] has imposed here a term of unspecified duration—a measure Allah the Exalted has never decreed. Yet the one imposing it does not define its extent. What greater evidence is there for the falsity of this claim than its advocate imposing a measure whose nature neither he nor anyone else knows what it is? The Messenger of Allah—peace and blessings be upon him—commanded that every entitled person be granted their right. Whoever withholds this has opposed his command—peace and blessings be upon him.

وَأَيْضًا - فَإِنَّهُ أَوْجَبَ هَاهُنَا أَجَلًا مَجْهُولَ الْمِقْدَارِ لَمْ يُوجِبْهُ اللَّهُ تَعَالَى قَطُّ - ثُمَّ هُوَ الْمُوجِبُ لَهُ لَا يَحُدُّ مِقْدَارَهُ، فَأَيُّ دَلِيلٍ أَدَلُّ عَلَى فَسَادِ هَذَا الْقَوْلِ مِنْ أَنْ يَكُونَ قَائِلُهُ يُوجِبُ فِيهِ مِقْدَارًا [مَا] لَا يَدْرِي هُوَ وَلَا غَيْرُهُ مَا هُوَ؟ وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ، فَمَنْ مَنَعَ مِنْ هَذَا فَقَدْ خَالَفَ أَمْرَهُ - عَلَيْهِ السَّلَامُ -

[مَسْأَلَةٌ طَالَبَهُ بِدَيْنِهِ وَالشَّيْءُ الْمُسْتَقْرَضُ حَاضِرٌ عِنْدَ الْمُسْتَقْرِضِ]

Case: He demanded his debt from him, and the borrowed item is present with the borrower.

١١٩٨ - مَسْأَلَةٌ:

1198 – Legal Question:

فَإِنْ طَالَبَهُ صَاحِبُ الدَّيْنِ بِدَيْنِهِ وَالشَّيْءُ الْمُسْتَقْرَضُ حَاضِرٌ عِنْدَ الْمُسْتَقْرِضِ لَمْ يَجُزْ أَنْ يُجْبَرَ الْمُسْتَقْرِضُ عَلَى [شَيْءٍ مِنْ مَالِهِ إذْ لَمْ يُوجِبْ ذَلِكَ] أَنْ يَرُدَّ الَّذِي أَخَذَ بِعَيْنِهِ وَلَا بُدَّ، لَكِنْ يُجْبَرُ عَلَى رَدِّ مِثْلِهِ - إمَّا ذَلِكَ الشَّيْءُ وَإِمَّا غَيْرُهُ مِثْلُهُ مِنْ نَوْعِهِ - لِأَنَّهُ قَدْ مَلَكَ الَّذِي اسْتَقْرَضَ وَصَارَ كَسَائِرِ مَالِهِ وَلَا فَرْقَ.

If the creditor demands repayment of the loan while the borrowed item is present with the borrower, it is not permissible to compel the borrower—since there is no obligation to use his own wealth for this purpose—to return the exact item he took by utilizing anything from his possessions. However, he must be compelled to return its equivalent—either the specific item itself or another of the same kind from its category—for he has acquired ownership of what he borrowed, and it has become like the rest of his owned property, with no legal distinction.

وَلَا يَجُوزُ أَنْ يُجْبَرَ عَلَى إخْرَاجِ شَيْءٍ بِعَيْنِهِ مِنْ مَالِهِ، إذْ لَمْ يُوجِبْ عَلَيْهِ قُرْآنٌ وَلَا سُنَّةٌ، فَإِنْ لَمْ يُوجَدْ لَهُ غَيْرُهُ قُضِيَ عَلَيْهِ حِينَئِذٍ بِرَدِّهِ، لِأَنَّهُ مَأْمُورٌ بِتَعْجِيلِ إنْصَافِ غَرِيمِهِ، فَتَأْخِيرُهُ بِذَلِكَ - وَهُوَ قَادِرٌ عَلَى الْإِنْصَافِ - ظُلْمٌ.

It is not permissible to compel one to surrender a specific item from his property, as neither the Quran nor the Sunnah obligates this. If no property other than it is found for him, a ruling is then issued against him to surrender that item, for he is commanded to hasten fairness to his creditor. Delaying fairness—despite being capable of it—constitutes injustice.

وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» وَهَذَا غَنِيٌّ فَمَطْلُهُ ظُلْمٌ.

And he (peace be upon him) said: “Procrastination in payment by the wealthy

is an injustice." This person is wealthy; thus, their procrastination in payment is an act of injustice.

A case of a loan when it is for a term.

[مَسْأَلَةٌ الْقَرْضُ إِذَا كَانَ إِلَى أَجَلٍ]

1199 – Issue:

١١٩٩ - مَسْأَلَةٌ:

If the loan is for a specified term, they are obligated to document it and have it witnessed by two just men or more, or one man and two women - provided they are just individuals, two or more.

فَإِنْ كَانَ الْقَرْضُ إِلَى أَجَلٍ، فَفَرْضٌ عَلَيْهِمَا أَنْ يَكْتُبَاهُ وَأَنْ يُشْهِدَا عَلَيْهِ عَدْلَيْنِ فَصَاعِدًا أَوْ رَجُلًا وَامْرَأَتَيْنِ، عُدُولًا فَصَاعِدًا.

If that occurs during a journey and the two parties cannot find a scribe, then if the creditor wishes to take a pledge from the debtor, he may do so; and if the debtor wishes to offer a pledge, he may do so. The debtor is not liable for anything in that immediately due debt—neither while traveling nor while resident.

فَإِنْ كَانَ ذَلِكَ فِي سَفَرٍ وَلَمْ يَجِدَا كَاتِبًا فَإِنْ شَاءَ الَّذِي لَهُ الدَّيْنُ أَنْ يَرْتَهِنَ بِهِ رَهْنًا فَلَهُ ذَلِكَ، وَإِنْ شَاءَ أَنْ يَرْتَهِنَ فَلَهُ ذَلِكَ، وَلَيْسَ يَلْزَمُهُ شَيْءٌ مِنْ ذَلِكَ الدَّيْنِ الْحَالِّ - لَا فِي السَّفَرِ وَلَا فِي الْحَضَرِ -.

The proof of that is the statement of Allah, the Most High: {O you who have believed, when you contract a debt for a specified term, write it down} [Al-Baqarah: 282] up to His saying, the Most High: {And do not weary of writing it, whether small or large, until its term} [Al-Baqarah: 282] up to His saying, the Most High: {And take two witnesses from among your men. If there are not two men, then a man and two women from those you approve as witnesses} [Al-Baqarah: 282] up to His saying, the Most High: {If you are on a journey and do not find a scribe, then secured pledges. If one of you trusts the other, let the trusted one fulfill his trust} [Al-Baqarah: 283]. There is nothing in the command of Allah, the Most High, except obedience.[3]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] إِلَى قَوْلِهِ -: {وَلا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ} [البقرة: ٢٨٢] : إِلَى قَوْله تَعَالَى: {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ} [البقرة: ٢٨٢] إِلَى قَوْله تَعَالَى -: {وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي اؤْتُمِنَ أَمَانَتَهُ} [البقرة: ٢٨٣] وَلَيْسَ فِي أَمْرِ اللَّهِ تَعَالَى إِلَّا الطَّاعَةُ.

Whoever says it is recommended has uttered falsehood, and it is not permissible that Allah the Exalted would say, "Then write it" [Al-Baqarah: 282], and then someone says, "I will not write if you wish."[4]

وَمَنْ قَالَ: إِنَّهُ نَدْبٌ، فَقَدْ قَالَ: الْبَاطِلَ، وَلَا يَجُوزُ أَنْ يَقُولَ اللَّهُ تَعَالَى: {فَاكْتُبُوهُ} [البقرة: ٢٨٢] فَيَقُولُ قَائِلٌ: لَا أَكْتُبُ إِنْ شِئْتُ.

And Allah, the Exalted, says: "And take witnesses" [Al-Baqarah: 282]. Then

وَيَقُولُ اللَّهُ تَعَالَى: {وَاسْتَشْهِدُوا} [البقرة: ٢٨٢] فَيَقُولُ قَائِلٌ: لَا أُشْهِدُ - وَلَا يَجُوزُ نَقْلُ أَوَامِرِ اللَّهِ تَعَالَى عَنْ الْوُجُوبِ إِلَى النَّدْبِ إِلَّا بِنَصٍّ آخَرَ، أَوْ بِضَرُورَةِ حَسٍّ.

[3] **Qur'an references (L18794):** Qur'an 2:282 (Al-Baqarah); Qur'an 2:283 (Al-Baqarah).
[4] **Qur'an references (L18796):** Qur'an 2:282 (Al-Baqarah).

one might argue, “I will not summon a witness”—but it is impermissible to transfer the commands of Allah, the Exalted, from obligation to recommendation except through another textual evidence or by compelling necessity.[5]

L18798 All of this is the view of Abū Sulaymān, all of our associates, and a group from the Salaf (the early predecessors). We will investigate this thoroughly in *The Book of Sales*, if God, the Exalted, wills.

L18799 **A jurisprudential issue wherein a creditor encountered his debtor in a country, and the debt was either immediately due or its term had expired.**

L18800 1200 - Issue:

L18801 Whoever encounters their debtor in a distant or nearby land—and the debt is either payable on demand or has reached its maturity—may rightfully demand repayment and claim what is owed. The judge shall compel the debtor to fulfill the creditor’s rightful due, whether the debt involves trade goods, foodstuffs, livestock, dinars, or dirhams—the ruling applies equally to all these cases. It is impermissible to compel the creditor to relinquish their right to immediate settlement except in the specific location where the debt agreement was originally established.

L18802 The evidence for this: the statement of the Messenger of Allah—peace be upon him—“Delaying payment by a wealthy person is injustice.”

L18803 And his command—peace be upon him—is to give every possessor of a right his due.

L18804 Whoever claims that it is impermissible to compel someone to enforce equitable settlement except when there is mutual debt has uttered falsehood, for this is an assertion without evidence—neither from the Qur’an, nor Sunnah, nor unsound narration, nor a Companion’s opinion, nor analogy, nor sound opinion. Then it should be said to him: If the mutual debt occurred in Andalusia, then the debtor met the creditor in the heart of China while residing there—or both were there—do you consider the creditor’s right invalidated?

[5]**Qur’an references (L18797):** Qur’an 2:282 (Al-Baqarah).

وَكُلُّ هَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا، وَطَائِفَةٍ مِنْ السَّلَفِ، وَنَتَقَصَّى ذَلِكَ فِي " كِتَابِ الْبُيُوعِ " إنْ شَاءَ اللَّهُ تَعَالَى.

[مَسْأَلَةٌ لَقِيَ غَرِيمَهُ فِي بَلَدٍ وَكَانَ الدَّيْنُ حَالًّا أَوْ قَدْ بَلَغَ أَجَلَهُ]

١٢٠٠ - مَسْأَلَةٌ:

وَمَنْ لَقِيَ غَرِيمَهُ فِي بَلَدٍ بَعِيدٍ أَوْ قَرِيبٍ - وَكَانَ الدَّيْنُ حَالًّا أَوْ قَدْ بَلَغَ أَجَلَهُ - فَلَهُ مُطَالَبَتُهُ، وَأَخْذُهُ بِحَقِّهِ، وَيُجْبِرُهُ الْحَاكِمُ عَلَى إنْصَافِهِ - عَرَضًا كَانَ الدَّيْنُ، أَوْ طَعَامًا، أَوْ حَيَوَانًا، أَوْ دَنَانِيرَ، أَوْ دَرَاهِمَ - كُلُّ ذَلِكَ سَوَاءٌ، وَلَا يَحِلُّ أَنْ يُجْبَرَ صَاحِبُ الْحَقِّ عَلَى أَنْ لَا يَنْتَصِفَ إلَّا فِي الْمَوْضِعِ الَّذِي تَدَايَنَا فِيهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» .

وَأَمْرُهُ - عَلَيْهِ السَّلَامُ - أَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ.

وَمَنْ ادَّعَى أَنَّهُ لَا يَجُوزُ أَنْ يُجْبَرَ عَلَى إنْصَافِهِ إلَّا حَيْثُ تَدَايَنَا فَقَدْ قَالَ الْبَاطِلَ لِأَنَّهُ قَوْلٌ لَا دَلِيلَ عَلَيْهِ لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ، ثُمَّ يُقَالُ لَهُ: إنْ كَانَ التَّدَايُنُ بِالْأَنْدَلُسِ، ثُمَّ لَقِيَهُ بِصِينِ الصِّينِ سَاكِنًا

Or must both the debtor and creditor be compelled to travel to Andalusia to have the debtor settle the debt fairly with him there?

هُنَالِكَ، أَوْ كِلَاهُمَا، أَتَرَى حَقَّهُ قَدْ سَقَطَ أَوْ يُكَلَّفُ الَّذِي عَلَيْهِ الْحَقُّ هُوَ وَصَاحِبُ الْحَقِّ النُّهُوضَ إِلَى الْأَنْدَلُسِ لِيُنْصِفهُ هُنَالِكَ مِنْ مَدِينٍ.

L18805 If they were to pursue their argument consistently, it would obligate them not to permit equitable division except in the specific location where both parties were physically present during the transaction. Yet they do not assert this. Therefore, we add to them of the earth span by span until we lead them to reach the farthest extremities of the world.

ثُمَّ لَوْ طَرَدُوا قَوْلَهُمْ لَلَزِمَهُمْ أَنْ لَا يُجِيزُوا الْإِنْصَافَ إِلَّا فِي الْبُقْعَةِ الَّتِي كَانَا فِيهَا بِأَبْدَانِهِمَا حِينَ التَّدَايُنِ، وَهُمْ لَا يَقُولُونَ هَذَا، فَنَحْنُ نَزِيدُهُمْ مِنْ الْأَرْضِ شِبْرًا شِبْرًا حَتَّى نَبْلُغَهُمْ إِلَى أَقْصَى الْعَالَمِ.

L18806 If every person with a viewpoint were to verify their stance and hold themselves accountable by only speaking in matters of religion according to what the Quran or a Sunnah has brought forth, errors would become rare, and it would be safer for every speaker.

وَلَوْ حَقَّقَ كُلُّ ذِي قَوْلٍ قَوْلَهُ، وَحَاسَبَ نَفْسَهُ بِأَنْ لَا يَقُولَ فِي الدِّينِ إِلَّا مَا جَاءَ بِهِ قُرْآنٌ أَوْ سُنَّةٌ؛ لَقَلَّ الْخَطَأُ، وَلَكَانَ أَسْلَمَ لِكُلِّ قَائِلٍ.

L18807 Our attainment of righteousness is solely by Allah, the Almighty.

وَمَا تَوْفِيقُنَا إِلَّا بِاَللَّهِ الْعَظِيمِ.

L18808–18809 Issue: The debtor of a deferred debt intends to expedite its payment.

[مَسْأَلَةٌ أَرَادَ الَّذِي عَلَيْهِ الدَّيْنُ الْمُؤَجَّلُ أَنْ يُعَجِّلَهُ]

L18810 Issue:

مَسْأَلَةٌ:

L18811 If the debtor obligated to repay a deferred debt wishes to hasten its payment before its due date - whether partially or substantially earlier - the creditor cannot be compelled to accept it at all.

وَإِنْ أَرَادَ الَّذِي عَلَيْهِ الدَّيْنُ الْمُؤَجَّلُ أَنْ يُعَجِّلَهُ قَبْلَ أَجَلِهِ بِمَا قَلَّ أَوْ كَثُرَ لَمْ يُجْبَرْ الَّذِي لَهُ الْحَقُّ عَلَى قَبُولِهِ أَصْلًا

L18812 Similarly, if the one entitled to the right wishes to expedite receiving his due debt before its maturity date by a decrease or increase in the amount, it is not permissible to compel the obligated party to fulfill it. The same ruling applies to all that: dinars and dirhams, all food, all merchandise, and animals.

وَكَذَلِكَ لَوْ أَرَادَ الَّذِي لَهُ الْحَقُّ أَنْ يَتَعَجَّلَ قَبْضَ دَيْنِهِ قَبْلَ أَجَلِهِ بِمَا قَلَّ أَوْ كَثُرَ لَمْ يَجُزْ أَنْ يُجْبَرَ الَّذِي عَلَيْهِ الْحَقُّ عَلَى أَدَائِهِ -: سَوَاءٌ فِي كُلِّ ذَلِكَ الدَّنَانِيرُ وَالدَّرَاهِمُ، وَالطَّعَامُ كُلُّهُ، وَالْعُرُوضُ كُلُّهَا، وَالْحَيَوَانُ.

L18813 If they mutually agree to prepay the debt (or part of it) before its due date, or to defer it (or part of it) after its due date, all such arrangements are lawfully valid.

فَلَوْ تَرَاضَيَا عَلَى تَعْجِيلِ الدَّيْنِ أَوْ بَعْضِهِ قَبْلَ حُلُولِ أَجَلِهِ، أَوْ عَلَى تَأْخِيرِهِ بَعْدَ حُلُولِ أَجَلِهِ، أَوْ بَعْضِهِ: جَازَ كُلُّ ذَلِكَ -.

L18814 This is the opinion of Abū Sulaymān and the scholars of our school.

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L18815 The Malikis stated: If it is something that involves no cost to carry and transport, the claimant is obligated to take possession of it. But if it is something that involves cost to carry and transport, they are not obligated to take delivery before its due time.

وَقَالَ الْمَالِكِيُّونَ: إِنْ كَانَ مِمَّا لَا مُؤْنَةَ فِي حَمْلِهِ وَنَقْلِهِ أُجْبِرَ الَّذِي لَهُ الْحَقُّ عَلَى قَبْضِهِ، وَإِنْ كَانَ مِمَّا فِيهِ مُؤْنَةٌ فِي حَمْلِهِ وَنَقْلِهِ لَمْ يُجْبَرْ عَلَى قَبُولِهِ قَبْلَ مَحِلِّهِ.

L18816 Abu Muhammad said: This is an utterly corrupt opinion—First: that it is a position without proof, neither from the Qur'an, nor the Sunnah, nor consensus, nor a statement of a Companion with no opposition, nor analogy, nor sound opinion.

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ -: أَوَّلُ ذَلِكَ: أَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ لَا مُخَالِف لَهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ.

L18817 The second is that the stipulation of a term has been validated through the Quran and Sunnah; therefore, it is impermissible to nullify what Allah the Exalted has established as valid.

وَالثَّانِي: أَنَّ شَرْطَ الْأَجَلِ قَدْ صَحَّ بِالْقُرْآنِ وَالسُّنَّةِ، فَلَا يَجُوزُ إبْطَالُ مَا صَحَّحَهُ اللَّهُ تَعَالَى.

L18818 The third is that they invalidated this valid condition which Allah the Exalted has established in His Book, and permitted invalid conditions that Allah the Exalted has nullified in His Book, such as one who stipulates for his wife that any woman he marries besides her shall be divorced, and any concubine he takes in addition to her shall be freed, and that he shall not relocate her from her home; if he does so, she has the right to decide.

وَالثَّالِثُ: أَنَّهُمْ أَبْطَلُوا هَذَا الشَّرْطَ الصَّحِيحَ الَّذِي أَثْبَتَهُ اللَّهُ تَعَالَى فِي كِتَابِهِ. وَأَجَازُوا الشُّرُوطَ الْفَاسِدَةَ الَّتِي أَبْدَلَهَا اللَّهُ تَعَالَى فِي كِتَابِهِ، كَمَنْ اشْتَرَطَ لِامْرَأَتِهِ أَنَّ كُلَّ امْرَأَةٍ يَتَزَوَّجُهَا عَلَيْهَا فَهِيَ طَالِقٌ، وَكُلَّ سُرِّيَّةٍ يَتَّخِذُهَا عَلَيْهَا فَهِيَ حُرَّةٌ، وَأَنْ لَا يُرَحِّلَهَا عَنْ دَارِهَا، فَإِنْ فَعَلَ فَأَمْرُهَا بِيَدِهَا

L18819 And here they cite a fabricated narration—"Muslims are bound by their stipulations"—so why do they not cite it, given that they deem it authentic for implementing the deferment clause referred to as debt? Reflect on these matters, and you will see the irony.

وَاحْتَجُّوا هَاهُنَا بِرِوَايَةٍ مَكْذُوبَةٍ وَهِيَ " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ " فَهَلَّا احْتَجُّوا بِهَا إذْ هِيَ عِنْدَهُمْ صَحِيحَةٌ فِي إنْفَاذِ شَرْطِ التَّأْجِيلِ الْمُسَمَّى بِالدَّيْنِ، فَتَأَمَّلُوا هَذِهِ الْأُمُورَ تَرَوْا الْعَجَبَ

L18820 The fourth point: They cited as evidence in this matter Umar and Uthman through what was reported from them regarding the judicial ruling to accept teaching writing before its appointed time, and they erred in this matter in multiple aspects.

وَالرَّابِعُ: أَنَّهُمْ احْتَجُّوا فِي هَذَا بِعُمَرَ، وَعُثْمَانَ، فِيمَا رُوِيَ عَنْهُمَا فِي الْقَضَاءِ بِقَبُولِ تَعْلِيمِ الْكِتَابَةِ قَبْلَ أَجَلِهَا، وَقَدْ أَخْطَئُوا فِي هَذَا مِنْ وُجُوهٍ.

L18821–18822 The first is that there is no conclusive proof in anyone below the Messenger of Allah—peace be upon him.

أَوَّلُهَا: أَنَّهُ لَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L18823 The second is that this was only reported from ʿUmar and ʿUthmān specif-

ically concerning the manumission contract. They analogically extended its ruling to all other financial obligations, while affirming that the ruling of the manumission contract differs from the rulings governing financial obligations in matters like the permissibility of debt transfer and other aspects.

L18824 The third is that Anas opposed ʿUmar and ʿUthmān in that matter, as he did not consider expediting the writing before its term.

L18825 The fourth point is that they opposed ʿUmar and ʿUthmān in scores of legal cases.

L18826 Among them is Umar's compulsion of the slave masters to enter into their manumission contracts through beating if the slaves requested it, and there are many other instances like this. Thus, it is baseless to consider their opinion as proof in one instance and not as proof in another.

L18827 The fifth: that they have opposed ʿUmar and ʿUthmān in this very matter, for it is reported from them that the kitabah contract is to be deposited in the treasury, whereupon the master gives the enslaved person his due at every designated term. Thus, the corruption of this opinion has become evident—and success is from Allah, the Most High.

L18828 Some of them have embellished with the well-established report from the Messenger of Allah (peace and blessings be upon him): "Whatever of this wealth comes to you without you coveting it or asking for it, take it; but whatever does not come, do not let your soul pursue it."[6]

L18829 Abu Muhammad said: This is a distortion by them of the words from their proper contexts, for this report pertains only to the initial grant regarding which we are prohibited from asking—without necessity or divinely sanctioned authority—nor does it apply to the obligatory rights that necessitate obligatory inquiry about them and pursuit of them, or discharging from them for Allah, the Exalted.

L18830 Abu Muhammad said: I wonder—what distinction exists between (a) the obligor's desire to expedite fulfillment of his obligation before its due date, alongside the obligee's objection thereto, and (b) the obligee's desire to ex-

وَالثَّانِي أَنَّهُ إنَّمَا جَاءَ ذَلِكَ عَنْ عُمَرَ، وَعُثْمَانَ، فِي الْكِتَابَةِ خَاصَّةً، فَقَاسُوا عَلَيْهَا سَائِرَ الدُّيُونِ، وَهُمْ مُقِرُّونَ بِأَنَّ حُكْمَ الْكِتَابَةِ مُخَالِفٌ لِحُكْمِ الدُّيُونِ فِي جَوَازِ الْحَمَّالَةِ وَغَيْرِ ذَلِكَ.

وَالثَّالِثُ: أَنَّهُ قَدْ خَالَفَ عُمَرُ، وَعُثْمَانَ فِي ذَلِكَ أَنَسٍ فَلَمْ يَرَ تَعْجِيلَ الْكِتَابَةِ قَبْلَ أَجَلِهَا.

وَالرَّابِعُ: أَنَّهُمْ خَالَفُوا عُمَرَ، وَعُثْمَانَ، فِي مِئِينَ مِنْ الْقَضَايَا.

مِنْهَا - إجْبَارُ عُمَرَ سَادَاتِ الْعَبِيدِ عَلَى كِتَابَتِهِمْ بِالضَّرْبِ إذَا طَلَبَ الْعَبِيدُ ذَلِكَ، وَغَيْرُ هَذَا كَثِيرٌ، فَمِنْ الْبَاطِلِ أَنْ يَكُونَ قَوْلُهُمَا حُجَّةً فِي مَوْضِعٍ غَيْرَ حُجَّةٍ فِي آخَرَ.

وَالْخَامِسُ: أَنَّهُمْ قَدْ خَالَفُوا عُمَرَ، وَعُثْمَانَ، فِي هَذِهِ الْقَضِيَّةِ نَفْسِهَا، لِأَنَّهُ جَاءَ عَنْهُمَا وَضْعُ الْكِتَابَةِ فِي بَيْتِ الْمَالِ، ثُمَّ يُعْطِي السَّيِّدَ فِي كُلِّ نَجْمٍ حَقَّهُ، فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَدْ مَوَّهَ بَعْضُهُمْ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا جَاءَكَ مِنْ هَذَا الْمَالِ وَأَنْتَ غَيْرُ مُشْرِفٍ وَلَا سَائِلٍ فَخُذْهُ وَمَا لَا فَلَا تُتْبِعْهُ نَفْسَكَ»

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَحْرِيفٌ مِنْهُمْ لِلْكَلِمِ عَنْ مَوَاضِعِهِ، لِأَنَّ هَذَا الْخَبَرَ إنَّمَا هُوَ فِي الْعَطَاءِ الْمُبْتَدَأِ الَّذِي نُهِينَا عَنْ السُّؤَالِ فِيهِ - عَنْ غَيْرِ ضَرُورَةٍ أَوْ بِغَيْرِ سُلْطَانٍ - وَلَا فِي الْحُقُوقِ الْوَاجِبَةِ الْوَاجِبِ السُّؤَالِ عَنْهَا وَطَلَبُهَا أَوْ الْإِبْرَاءِ مِنْهَا لِلَّهِ تَعَالَى.

[6] **Hadith references (L18828):** Sunan an-Nasai 2606.

pedite attainment of his right before its due date, alongside the obligor's objection thereto? For they obligated the former yet prohibited the latter.

قَالَ أَبُو مُحَمَّدٍ: وَلَيْتَ شِعْرِي أَيُّ فَرْقٍ بَيْنَ إِرَادَةِ الَّذِي عَلَيْهِ الْحَقُّ تَعْجِيلَ مَا عَلَيْهِ قَبْلَ أَجَلِهِ مَعَ إِبَايَةِ الَّذِي لَهُ الْحَقُّ مِنْ ذَلِكَ وَبَيْنَ إِرَادَةِ الَّذِي لَهُ الْحَقُّ تَعْجِيلَ مَا لَهُ قَبْلَ أَجَلِهِ مَعَ إِبَايَةِ الَّذِي عَلَيْهِ الْحَقُّ مِنْ ذَلِكَ؟ إِذْ أَوْجَبُوا الْوَاحِدَ وَمَنَعُوا الْآخَرَ.

L18831 If they say, "Does the debtor seek to be absolved of the right [owed to the creditor]?" We say to them: "The creditor seeks to absolve the debtor of it."

فَإِنْ قَالُوا: إِنَّ الَّذِي عَلَيْهِ الْحَقُّ يُرِيدُ أَنْ يَبْرَأَ مِمَّا عَلَيْهِ؟ قُلْنَا لَهُمْ: وَالَّذِي لَهُ الْحَقُّ يُرِيدُ أَنْ يُبْرِئَ الَّذِي عَلَيْهِ الْحَقُّ مِمَّا عَلَيْهِ.

L18832 Then if they say: Does the one obligated by the right intend nothing but to defer until its term?

فَإِنْ قَالُوا: لَيْسَ يُرِيدُ ذَلِكَ الَّذِي عَلَيْهِ الْحَقُّ إِلَّا إِلَى أَجَلِهِ؟

L18833–18834 We said to them: Nor does the entitled party intend that [claim] except until its appointed term.

قُلْنَا لَهُمْ: وَلَا يُرِيدُ ذَلِكَ الَّذِي لَهُ الْحَقُّ إِلَّا إِلَى أَجَلِهِ.

[مَسْأَلَةٌ الْقَرْضُ فِي الْجَوَارِي وَالْعَبِيدِ وَالدَّوَابِّ وَالدُّورِ وَالْأَرْضِينَ]

A jurisprudential issue concerning interest-free loans involving the categories of female slaves, male slaves, animals, houses, and lands.

L18835

١٢٠٢ - مَسْأَلَةٌ:

L18836 1202: Issue

وَالْقَرْضُ جَائِزٌ فِي الْجَوَارِي، وَالْعَبِيدِ، وَالدَّوَابِّ، وَالدُّورِ، وَالْأَرْضِينَ، وَغَيْرِ ذَلِكَ لِعُمُومِ قَوْلِهِ تَعَالَى: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى} [البقرة: ٢٨٢] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ فَلَا يَجُوزُ التَّخْصِيصُ فِي ذَلِكَ بِالرَّأْيِ الْفَاسِدِ بِغَيْرِ قُرْآنٍ، وَلَا سُنَّةٍ.

L18837 The loan (qard) is permissible for female slaves, male slaves, beasts of burden, houses, lands, and other things due to the general applicability of Allah's statement: {When you contract a debt for a specified term} [Al-Baqarah 2:282]. Thus, He made it general without specification, so it is impermissible to specify restrictions in this matter through baseless opinion without relying on the Quran or Sunnah.[7]

وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ الْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ، وَمُحَمَّدِ بْنِ جَرِيرٍ، وَأَصْحَابِنَا.

L18838 Our statement regarding this is the opinion of Al-Muzani, Abu Sulayman, Muhammad ibn Jarir, and our companions.

وَمَنَعَ مِنْ ذَلِكَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، فِي الْجَوَارِي خَاصَّةً، وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا

L18839 Abu Hanifah, Malik, and al-Shafi'i prohibited this specifically concerning female slaves, and we are unaware of any valid evidence for their position—neither from the Quran, nor the Sunnah, nor a defective narration, nor a companion's statement, nor consensus, nor analogy, nor sound reasoning—

[7] **Qur'an references (L18837):** Qur'an 2:282 (Al-Baqarah).

except that some of them argued: “This is impermissible because he would cohabit with her, then return her to her owner, thereby rendering her private part a loaned object.”

L18840 Abū Muḥammad said: As for their claim—“He consummates the marriage then returns her to him”—they impose this very ruling in the case where he finds her to have a defect. If they claim consensus? — We say: You are lying. It has been authentically transmitted from ʿAlī and Shurayḥ: Prohibition of annulment due to a defect after consummation. Moreover, even if their claim of consensus were valid, it would obligate them—being proponents of qiyās—to analogize disputed matters to what they allege is agreed upon, for this is their foundational principle in qiyās. How then have they diverged from it? Then we say to them: If he consummates the marriage then annuls it, what becomes of this act? He consummated it lawfully according to the explicit Quranic text. The Exalted said: “And those who guard their chastity, except with their spouses or those their right hands possess—for then they are free from blame” (23:5-6). “But whoever seeks beyond that—it is they who are the transgressors” (23:7).[8]

L18841 Then, if he returns it, he does so by a rightful claim, for he has discharged what was incumbent upon him, thereby transferring the claim from one rightful claim to another.

L18842 As for their claim that it is a loaned private part—this is false and invalid, because the loaned item does not cease to be the property of the lender. Thus, it is forbidden for others to have intercourse with it, as it remains under the ownership of another.

L18843 As for the consumable loan (mustaqraḍah), it becomes the borrower’s lawful ownership, making it permissible for him; he may choose to return the same item, retain it, or return something else of equivalent value. This ruling does not apply to a loaned item for use (ʿāriyyah).

L18844 They said: “Is it utterly disgraceful and abominable?” We replied: “There is

مِنْ إجْمَاعٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ سَدِيدٍ، إلَّا أَنَّ بَعْضَهُمْ قَالَ: لَا يَجُوزُ ذَلِكَ، لِأَنَّهُ يَطَؤُهَا، ثُمَّ يَرُدُّهَا إلَيْهِ فَيَكُونُ فَرْجًا مُعَارًا.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُهُمْ: يَطَؤُهَا ثُمَّ يَرُدُّهَا عَلَيْهِ، فَهُمْ يُوجِبُونَ هَذَا نَفْسَهُ فِي الَّتِي يَجِدُ بِهَا عَيْبًا - فَإِنْ ادَّعَوْا إجْمَاعًا؟ - قُلْنَا: كَذَبْتُمْ، قَدْ صَحَّ عَنْ عَلِيّ وَشُرَيْحٍ: الْمَنْعُ مِنْ الرَّدِّ بِالْعَيْبِ بَعْدَ الْوَطْءِ - ثُمَّ لَوْ صَحَّ لَهُمْ أَنَّهُ إجْمَاعٌ لَلَزِمَهُمْ لِأَنَّهُمْ أَصْحَابُ قِيَاسٍ أَنْ يَقِيسُوا مَا اُخْتُلِفَ فِيهِ عَلَى مَا يَزْعُمُونَ أَنَّهُ اتُّفِقَ عَلَيْهِ فَهَذَا أَصْلُهُمْ فِي الْقِيَاسِ، فَأَنَّى بَدَا لَهُمْ عَنْهُ؟ ثُمَّ نَقُولُ لَهُمْ: فَإِذَا وَطِئَهَا ثُمَّ رَدَّهَا فَكَانَ مَاذَا؟ وَطِئَهَا بِحَقٍّ بِنَصِّ الْقُرْآنِ قَالَ تَعَالَى: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧]

ثُمَّ إنْ رَدَّهَا رَدَّهَا بِحَقٍّ، لِأَنَّهُ أَدَّى مَا عَلَيْهِ فَانْتَقَلَتْ مِنْ حَقٍّ إلَى حَقٍّ.

وَأَمَّا قَوْلُهُمْ: إنَّهُ فَرْجٌ مُعَارٌ -: فَكَذِبٌ وَبَاطِلٌ، لِأَنَّ الْعَارِيَةَ لَا يَزُولُ عَنْهَا مِلْكُ الْمُعِيرِ، فَحَرَامٌ عَلَى غَيْرِهِ وَطْؤُهَا، لِأَنَّهُ مِلْكُ يَمِينِ غَيْرِهِ.

وَأَمَّا الْمُسْتَقْرَضَةُ فَهِيَ مِلْكُ يَمِينِ الْمُسْتَقْرِضِ فَهِيَ لَهُ حَلَالٌ، وَهُوَ مُخَيَّرٌ بَيْنَ أَنْ يَرُدَّهَا، أَوْ يُمْسِكَهَا أَوْ يَرُدَّ غَيْرَهَا، وَلَيْسَتْ الْعَارِيَةُ كَذَلِكَ.

[8] **Qur’an references (L18840):** Qur’an 23:5 (Al-Mu’minun); Qur’an 70:29 (Al-Ma’arij); Qur’an 23:6 (Al-Mu’minun); Qur’an 70:30 (Al-Ma’arij); Qur’an 23:7 (Al-Mu’minun); Qur’an 70:31 (Al-Ma’arij).

وَقَالُوا: هُوَ بِشِيعَ شَنِيعٌ؟ قُلْنَا: لَا شُنْعَةَ، وَلَا بَشَاعَةَ فِي الْحَلَالِ، وَأَنْتُمْ لَا تَسْتَبْشِعُونَ مِثْلَهُ مِنْ أَنْ يَكُونَ إِنْسَانٌ يَبِيعُ جَارِيَةً مِنْ غَيْرِهِ فَيَطَؤُهَا، ثُمَّ يَبْتَاعُهَا الَّذِي بَاعَهَا فَيَسْتَبْرِئُهَا بِحَيْضَةٍ، ثُمَّ يَطَؤُهَا، ثُمَّ يَبْتَاعُهَا الَّذِي بَاعَهَا مِنْهُ - وَهَكَذَا أَبَدًا.

L18845–18846 وَمِنْ أَنْ يَكُونَ إِنْسَانٌ يَتَزَوَّجُ امْرَأَةً فَيَطَؤُهَا ثُمَّ يُطَلِّقُهَا، فَتَعْتَدُّ خَمْسَةً وَأَرْبَعِينَ يَوْمًا وَهِيَ مُصَدَّقَةٌ عِنْدَهُ، ثُمَّ يَتَزَوَّجُهَا جَارُهُ فَيَطَؤُهَا ثُمَّ يُطَلِّقُهَا، فَتَعْتَدُّ كَذَلِكَ، ثُمَّ يَتَزَوَّجُهَا الْأَوَّلُ فَيَطَؤُهَا ثُمَّ يُطَلِّقُهَا - وَهَكَذَا أَبَدًا.

L18847 فَأَيُّ فَرْقٍ بَيْنَ هَذَا وَبَيْنَ مَا مَنَعُوا مِنْهُ مِنْ قَرْضِ الْجَوَارِي؟

L18848 إِنَّمَا الشَّنِيعُ الْبَشِيعُ الْفَظِيعُ مِمَّا يَقُولُونَهُ: مِنْ أَنَّ رِجَالًا تَكُونُ بَيْنَهُمْ أَمَةٌ يَطَؤُهَا كُلُّ وَاحِدٍ مِنْهُمْ، فَلَا يَرَوْنَ فِي ذَلِكَ حَدًّا وَيُلْحِقُونَ الْوَلَدَ بِهَذَا الْوَطْءِ الْحَرَامِ الْخَبِيثِ.

L18849 وَمِنْ أَنْ يَطَأَ الْوَالِدُ أُمَّ وَلَدِ ابْنِهِ فَلَا يَرَوْنَ عَلَيْهِ حَدًّا وَيُلْحِقُونَ الْوَلَدَ فِي هَذَا الْوَطْءِ الْفَاحِشِ، لَا سِيَّمَا الْحَنَفِيِّينَ الَّذِينَ يَقُولُونَ: مَنْ عَشِقَ امْرَأَةَ جَارِهِ فَرَشَا شَاهِدَيْنِ فَشَهِدَا لَهُ بِأَنَّ زَوْجَهَا طَلَّقَهَا، وَأَنَّهَا اعْتَدَّتْ، وَأَنَّهَا تَزَوَّجَتْ هَذَا - وَهِيَ مُنْكِرَةٌ وَزَوْجُهَا مُنْكِرٌ - وَاللَّهُ تَعَالَى يَعْلَمُ أَنَّهُمَا كَاذِبَانِ، فَقَضَى الْقَاضِي بِذَلِكَ فَإِنَّهُ يَطَؤُهَا حَلَالًا طَيِّبًا - فَهَذِهِ هِيَ الشَّنَاعَةُ الْمُضَاهِيَةُ لِخِلَافِ الْإِسْلَامِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَرْض مَا يُمْكِنُ وَزْنُهُ أَوْ كَيْلُهُ أَوْ عَدَدُهُ أَوْ زَرْعُهُ]

١٢٠٣ - مَسْأَلَةٌ:

no disgrace or repugnance in what is lawful. Yet you do not deem it abhorrent for a man to sell a slave girl belonging to another, consummate relations with her, then have the seller repurchase her, wait for her to complete one menstrual cycle to ensure she is not pregnant, consummate relations with her again, then have the seller repurchase her from him—and so on perpetually."

L18845–18846 And that a man may marry a woman, consummate the marriage, then divorce her, so she observes a waiting period of forty-five days with her waiting period acknowledged by him. Then his neighbor marries her, consummates the marriage, divorces her, and she observes a waiting period of the same length. Then the first man marries her once more, consummates the marriage, divorces her—and so on indefinitely.

L18847 What difference is there between this practice and their prohibition of lending female slaves?

L18848 The truly abhorrent, grotesque, and outrageous claim they assert is that when there exists a female slave among men—with each of them copulating with her—they deem no Hadd punishment applicable to this act, yet they ascribe the child's paternity to this unlawful and abhorrent copulation, a sinful, depraved transgression.

L18849 And among [the rulings] is that if a father has intercourse with his daughter-in-law, they do not deem a ḥadd punishment applicable to him and attribute the child's lineage to this immoral act—particularly the Ḥanafīs, who state: "If a man becomes infatuated with his neighbor's wife, bribes two witnesses to falsely testify that her husband divorced her, that she completed her waiting period, and that she married him (while she and her husband deny it, and Allah knows they are lying), and the judge rules accordingly, he may lawfully and righteously have intercourse with her." This is the atrocity akin to what contradicts Islam. And success is from Allah, the Most High.

L18850 An issue regarding a loan of items that can be weighed, measured, counted, or planted.

L18851 1203 – Question:

L18852 Anything that can be weighed, measured, counted, or cultivated must not be lent indiscriminately, because the lender does not know the exact amount obligating them to repay it, thereby constituting wrongful consumption of wealth.

L18853 1204: Issue

L18854 Any loan borrowed in a known quantity of number, agricultural measure, volume, or weight - if the borrower repays it in bulk quantities, and it becomes clearly and certainly evident that the amount is less than what was borrowed while the lender has consented to this reduction; or if it becomes clearly and certainly evident that it exceeds what was borrowed while the borrower is content with this surplus - all such transactions are permissible and commendable, as we have previously established.

L18855 If he does not know whether it is equivalent to what he borrowed, less, or more, it is impermissible for him, because one may not take another's property except through the owner's voluntary goodwill and consent. Such consent and goodwill can only apply to what is definitively known—not to what is unknown—and with Allah alone is success, the Most High.

L18856 **A legal issue regarding the early payment of part of a deferred debt, on the condition that the creditor waives the remaining amount.**

L18857 1205 – Issue:

L18858–18860 It is not permissible to prepay part of a deferred debt on the condition that the creditor discharges the debtor from the remaining amount. If the condition is rejected and he refunds to the debtor what he had given, because it is a condition not stipulated in the Book of Allah the Exalted—and the Messenger of Allah (ﷺ) said, "Every condition not in the Book of Allah is void."[9]

L18861 If the debtor hastens to pay part of his debt without stipulation, then requests

[9] **Hadith references (L18858):** Sunan Ibn Majah 2521.

وَكُلُّ مَا يُمْكِنُ وَزْنُهُ أَوْ كَيْلُهُ أَوْ عَدَدُهُ أَوْ زَرْعُهُ لَمْ يَجُزْ أَنْ يُقْرَضَ جُزَافًا، لِأَنَّهُ لَا يَدْرِي مِقْدَارَ مَا يَلْزَمُهُ أَنْ يَرُدَّهُ، فَيَكُونُ أَكْلَ مَالٍ بِالْبَاطِلِ.

١٢٠٤ - مَسْأَلَةٌ:

وَكُلُّ مَا اقْتُرِضَ مِنْ ذَلِكَ مَعْلُومَ الْعَدَدِ أَوْ الزَّرْعِ أَوْ الْكَيْلِ أَوْ الْوَزْنِ، فَإِنْ رَدَّهُ جُزَافًا فَكَانَ ظَاهِرًا مُتَيَقَّنًا أَنَّهُ أَقَلُّ مِمَّا اقْتَرَضَ فَرَضِيَ ذَلِكَ الْمُقْرِضُ، أَوْ كَانَ ظَاهِرًا مُتَيَقَّنًا أَنَّهُ أَكْثَرُ مِمَّا اقْتَرَضَ وَطَابَتْ نَفْسُ الْمُقْتَرِضِ، وَكُلُّ ذَلِكَ جَائِزٌ حَسَنٌ، لِمَا قَدَّمْنَا.

فَإِنْ لَمْ يَدْرِ أَهُوَ مِثْلُ مَا اقْتَرَضَ أَمْ أَقَلُّ أَمْ أَكْثَرُ؟ لَمْ يَجُزْ لَهُ، لِأَنَّهُ لَا يَجُوزُ مَالُ أَحَدٍ إلَّا بِطِيبِ نَفْسٍ مِنْهُ وَرِضَاهُ، وَلَا يَكُونُ الرِّضَا وَطِيبُ النَّفْسِ إلَّا عَلَى مَعْلُومٍ وَلَا بُدَّ، عَلَى مَجْهُولٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعْجِيلُ بَعْضِ الدَّيْنِ الْمُؤَجَّلِ عَلَى أَنْ يُبْرِئَهُ مِنْ الْبَاقِي]

١٢٠٥ - مَسْأَلَةٌ:

وَلَا يَجُوزُ تَعْجِيلُ بَعْضِ الدَّيْنِ الْمُؤَجَّلِ عَلَى أَنْ يُبْرِئَهُ مِنْ الْبَاقِي، فَإِنْ وَقَعَ رَدَّ وَصَرَفَ إلَى الْغَرِيمِ مَا أَعْطَى، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ»

the creditor to remit the remaining amount or a portion thereof, and the creditor either complies with this request or remits the balance—or part of it—without being asked, all such actions are permissible and praiseworthy. Both parties are rewarded by Allah, for no conditional stipulation exists here. One hastened to do good by fulfilling part of his obligation, thereby doing good, while the other hastened to discharge the debtor from liability, thereby doing good. Allah the Almighty says: {And do good} [Al-Hajj:77]. All of this constitutes goodness. And success is by Allah's grace.[10]

فَلَوْ عَجَّلَ الَّذِي عَلَيْهِ الْحَقُّ بَعْضَ مَا عَلَيْهِ بِغَيْرِ شَرْطٍ ثُمَّ رَغِبَ إِلَى صَاحِبِ الْحَقِّ أَنْ يَضَعَ عَنْهُ - الْبَاقِيَ أَوْ بَعْضَهُ، فَأَجَابَهُ إِلَى ذَلِكَ أَوْ وَضَعَهُ عَنْهُ أَوْ بَعْضَهُ بِغَيْرِ رَغْبَةٍ فَكُلُّ ذَلِكَ جَائِزٌ حَسَنٌ وَكِلَاهُمَا مَأْجُورٌ لِأَنَّهُ لَيْسَ هَاهُنَا شَرْطٌ أَصْلًا لَكِنْ أَحَدُهُمَا سَارَعَ إِلَى الْخَيْرِ فِي أَدَاءِ بَعْضِ مَا عَلَيْهِ فَهُوَ مُحْسِنٌ وَالْآخَرُ سَارَعَ إِلَى الْإِبْرَاءِ مِنْ حَقِّهِ فَهُوَ مُحْسِنٌ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] . وَهَذَا كُلُّهُ خَيْرٌ [وَبِاللَّهِ تَعَالَى التَّوْفِيقُ] .

L18862 **A debtor had a debt that had fallen due. The debtor requested an extension, and the creditor granted it.**

[مَسْأَلَةٌ كَانَ لَهُ دَيْنٌ حَالٌّ فَرَغِبَ الْمدين فِي أَنْ يُنْظِرَهُ فَفَعَلَ]

L18863 1206: Issue

١٢٠٦ - مَسْأَلَةٌ:

L18864 If a person has an immediate or deferred debt that becomes due, and the debtor requests the creditor to defer it to a specified term—which the creditor accepts—or if the creditor grants such deferment without the debtor's request, whether witnessed or unwitnessed, nothing becomes binding upon the creditor from this arrangement. The debt remains due, which he may claim whenever he wishes. This is the opinion of Al-Shāfiʿī, and it is also the opinion of Zufar, Abū Sulaymān, and our companions.

وَمَنْ كَانَ لَهُ دَيْنٌ حَالٌّ أَوْ مُؤَجَّلٌ فَحَلَّ فَرَغِبَ إِلَيْهِ الَّذِي عَلَيْهِ الْحَقُّ فِي أَنْ يُنْظِرَهُ أَيْضًا إِلَى أَجَلٍ مُسَمًّى فَفَعَلَ، أَوْ أَنْظَرَهُ كَذَلِكَ بِغَيْرِ رَغْبَةٍ وَأَشْهَدَ أَوْ لَمْ يُشْهِدْ لَمْ يَلْزَمْهُ مِنْ ذَلِكَ شَيْءٌ وَالدَّيْنُ حَالٌّ يَأْخُذُهُ بِهِ مَتَى شَاءَ - وَهُوَ قَوْلُ الشَّافِعِيِّ - وَهُوَ أَيْضًا قَوْلُ زُفَرَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L18865 Similarly, if a man has a deferred debt and formally testifies against himself that he has waived the deferment and made the debt immediately due, this testimony is not binding upon him, and the debt remains deferred until its term as it was.

وَكَذَلِكَ لَوْ أَنَّ امْرَأً عَلَيْهِ دَيْنٌ مُؤَجَّلٌ فَأَشْهَدَ عَلَى نَفْسِهِ: أَنَّهُ قَدْ أَسْقَطَ الْأَجَلَ وَجَعَلَهُ حَالًّا، فَإِنَّهُ لَا يَلْزَمُهُ ذَلِكَ، وَالدَّيْنُ إِلَى أَجَلِهِ كَمَا كَانَ.

L18866 The proof of this is: Everything we have mentioned constitutes a condition not established in the Book of Allah the Exalted, thus it is null and void. None of these matters pertain to the contracts for which Allah the Exalted has prescribed the fulfillment, for the contracts enjoined to be fulfilled are those whose names are textually specified in the Quran.

بُرْهَانُ ذَلِكَ -: أَنَّ كُلَّ مَا ذَكَرْنَا فَإِنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ وَلَيْسَ شَيْءٌ مِنْ هَذَا مِنْ الْعُقُودِ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى الْوَفَاءَ بِهَا، لِأَنَّ الْعُقُودَ الْمَأْمُورَ بِالْوَفَاءِ بِهَا مَنْصُوصَةُ الْأَسْمَاءِ فِي الْقُرْآنِ.

[10] **Qur'an references (L18861):** Qur'an 22:77 (Al-Hajj).

وَلَا خِلَافَ فِي أَنَّ كُلَّ الْعُقُودِ لَا يَلْزَمُ الْوَفَاءُ بِهَا كَمَنْ عَقَدَ: أَنْ يُكَفِّرَ أَوْ أَنْ يَزْنِيَ.

L18867 There is no disagreement that all contracts are not binding, such as one who contracts to renounce faith or commit adultery.

وَكُلُّ عَقْدٍ صَحَّ مُؤَجَّلًا بِالْقُرْآنِ أَوْ السُّنَّةِ، فَلَا يَجُوزُ الْبَتَّةَ إبْطَالُ التَّأْجِيلِ إلَّا بِنَصٍّ آخَرَ.

L18868 Any contract that is valid when deferred according to the Qur'an or Sunnah is strictly prohibited from having its deferment nullified except by another textual evidence.

وَكُلُّ عَقْدٍ صَحَّ حَالًّا بِالْقُرْآنِ أَوْ السُّنَّةِ، فَلَا يَجُوزُ أَلْبَتَّةَ إبْطَالُ الْحُلُولِ إلَّا بِنَصٍّ آخَرَ وَلَا سَبِيلَ إلَى نَصٍّ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18869 Every contract valid in its immediate application under the Qur'an or Sunnah cannot be invalidated in its execution except by another explicit text, and there is no means for such a text in this matter—and success is from Allah, the Most High.

فَإِنْ قِيلَ: قَدْ قُلْتُمْ: إنَّهُ إنْ عَجَّلَ لَهُ مَا عَلَيْهِ قَبْلَ الْأَجَلِ إنَّ ذَلِكَ لَازِمٌ لَهُ لَا رُجُوعَ فِيهِ؟ قُلْنَا نَعَمْ، لِأَنَّهُ قَدْ خَرَجَ مِنْ حَقِّهِ وَصَيَّرَهُ إلَى غَيْرِهِ وَوَهَبَهُ، فَهَذَا جَائِزٌ، إذْ قَدْ أَمْضَاهُ، وَأَمَّا مَا لَمْ يُمْضِهِ فَإِنَّمَا هُوَ وَعْدٌ، وَقَدْ قَدَّمْنَا أَنَّ الْوَعْدَ لَا يَلْزَمُ إنْجَازُهُ فَرْضًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L18870 If it is said: "You have asserted that if one expedites payment of what is due before its term, this becomes binding upon him with no possibility of retraction?" We reply: Yes, for he has departed from his right, transferred it to another, and gifted it. This is permissible, as he has executed it. As for what he has not executed, it is merely a promise, and we have previously clarified that fulfilling a promise is not obligatory as a compulsory religious duty—and success comes only from Allah, the Exalted.

وَقَالَ مَالِكٌ: يَلْزَمُهُ التَّأْجِيلُ - وَقَالَ أَبُو حَنِيفَةَ: إنْ أَجَّلَهُ فِي قَرْضٍ لَمْ يَلْزَمْهُ وَكَانَ لَهُ الرُّجُوعُ، وَيَأْخُذُهُ حَالًّا، فَإِنْ أَجَّلَهُ فِي غَصْبٍ غَصَبَهُ إيَّاهُ أَوْ فِي سَائِرِ الْحُقُوقِ - مَا عَدَا الْقَرْضَ - لَزِمَهُ التَّأْجِيلُ.

L18871–18872 Malik said: The deferment becomes binding upon him. Abu Hanifah said: If he defers it in a loan, it does not become binding upon him, and he may retract and demand immediate repayment. However, if he defers it in usurped property taken from him or in other rights—excluding loans—the deferment becomes binding upon him.

وَهُوَ قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي يُوسُفَ، وَرُوِيَ عَنْ أَبِي يُوسُفَ: أَنَّهُ إنْ اسْتَهْلَكَ لَهُ مِمَّا يُكَالُ أَوْ يُوزَنُ ثُمَّ أَجَّلَهُ بِهِ فَلَهُ أَنْ يَرْجِعَ فِي ذَلِكَ، وَلَا يَلْزَمُهُ التَّأْجِيلُ، فَإِنْ اسْتَهْلَكَ لَهُ شَاةً أَوْ ثَوْبًا فَأَجَّلَهُ فِي قِيمَتِهِمَا لَزِمَهُ التَّأْجِيلُ.

L18873 This is the opinion of Muḥammad ibn al-Ḥasan and Abū Yūsuf. It is reported from Abū Yūsuf that if a person consumes for another something measurable by volume or weight and then defers payment with it, he may revoke the deferment, and it is not binding upon him. But if he consumes for another a sheep or garment and defers payment based on their value, the deferment becomes binding upon him.

قَالَ أَبُو مُحَمَّدٍ: فَهَلْ سُمِعَ بِأَسْخَفَ مِنْ هَذِهِ الْفُرُوقِ.

L18874 Abu Muhammad said: Has anything more absurd than these distinctions ever been heard?

L18875 Some of them argued that deferment of the principal in a loan is invalid

- thus this disputant exceeds in opposing Allah the Exalted in His decree: *When you contract a debt for a specified term* (Surah Al-Baqarah 2:282).[11]

L18876 Abu Muhammad said: The only proof is what we have mentioned, and by Allah, the Exalted, we are strengthened.

L18877 **Case: A person died leaving deferred debts owed to them by people.**

L18878 1207 – Question:

L18879 Anyone who dies while having deferred debts owed to people or owed by people to them—all such debts are treated equally. Every deferment period is nullified, every debt they owe becomes immediately due, and every debt owed to them becomes equally due. This ruling applies uniformly to all debts, including loans, sales, and other types. Mālik said: "As for deferred debts owed by the deceased, they become due immediately, but deferred debts owed to him remain subject to their original terms."

L18880 Abū Muḥammad said: This is an invalid distinction without proof—not from the Quran, nor the Sunnah, nor consensus, nor an infirm narration, nor analogy, nor the statement of a Companion, nor an opinion with a sound basis.

L18881–18883 The proof of our statement is: it is the saying of Allah the Exalted: {No soul bears the burden of another} [Al-An'ām: 164], and the saying of the Messenger of Allah—peace and blessings be upon him—"Your blood and your wealth are inviolable to you," and Allah the Exalted said in His ruling regarding inheritance. He then mentioned the ordained shares of inheritance and said: {after any bequest he bequeaths or debt} [An-Nisā': 11]. Thus, it is established that upon a person's death, his legal authority over his wealth ceases, and it transfers to the ownership of creditors, legatees, categories of bequests, and heirs. The creditors' binding agreement concerning the deferment of what is owed by them, or the deferment of what is owed by the deceased, was un-

[11] **Qur'an references (L18875):** Qur'an 2:282 (Al-Baqarah).

وَاحْتَجَّ بَعْضُهُمْ بِأَنْ قَالَ: إِنَّ التَّأْجِيلَ فِي أَصْلِ الْقَرْضِ لَا يَصِحُّ - فَمَا زَادَ هَذَا الْمُحْتَجُّ عَلَى خِلَافِ اللَّهِ تَعَالَى فِي قَوْلِهِ: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى} [البقرة: ٢٨٢]

قَالَ أَبُو مُحَمَّدٍ: وَإِنَّمَا الْحُجَّةُ مَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةٌ مَاتَ وَلَهُ دُيُونٌ عَلَى النَّاسِ مُؤَجَّلَةٌ]

١٢٠٧ - مَسْأَلَةٌ:

وَكُلُّ مَنْ مَاتَ وَلَهُ دُيُونٌ عَلَى النَّاسِ مُؤَجَّلَةٌ، أَوْ لِلنَّاسِ عَلَيْهِ دُيُونٌ مُؤَجَّلَةٌ فَكُلُّ ذَلِكَ سَوَاءٌ، وَقَدْ بَطَلَتْ الْآجَالُ كُلُّهَا، وَصَارَ كُلُّ مَا عَلَيْهِ مِنْ دَيْنٍ حَالًّا، وَكُلُّ مَا لَهُ مِنْ دَيْنٍ حَالًّا سَوَاءٌ فِي ذَلِكَ كُلُّهُ الْقَرْضُ، وَالْبَيْعُ، وَغَيْرُ ذَلِكَ - وَقَالَ مَالِكٌ: أَمَّا الدُّيُونُ الَّتِي عَلَيْهِ مُؤَجَّلَةٌ فَقَدْ حَلَّتْ، وَأَمَّا الَّتِي لَهُ عَلَى النَّاسِ فَإِلَى أَجَلِهَا.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فَرْقٌ فَاسِدٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

بُرْهَانُ قَوْلِنَا -: هُوَ قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَقَالَ تَعَالَى فِي حُكْمِهِ فِي الْمَوَارِيثِ فَذَكَرَ فَرَائِضَ الْمَوَارِيثِ وَقَالَ عَزَّ وَجَلَّ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَصَحَّ أَنَّ بِمَوْتِ الْإِنْسَانِ بَطَلَ حُكْمُهُ عَنْ مَالِهِ وَانْتَقَلَ إلَى مِلْكِ الْغُرَمَاءِ، وَالْمُوصَى لَهُمْ، وَوُجُوهِ الْوَصَايَا، وَالْوَرَثَةِ، وَعَقْدُ الْغُرَمَاءِ فِي تَأْجِيلِ مَا عَلَيْهِمْ، أَوْ تَأْجِيلِ مَا عَلَى الْمَيِّتِ إنَّمَا كَانَ بِلَا شَكٍّ بَيْنَهُمْ وَبَيْنَ الْمُتَوَفَّى إذْ كَانَ حَيًّا،

doubtedly established between them and the deceased when... He was alive, and the property has now been transferred from his ownership to that of another. Thus, it is impermissible to impose obligations on the deceased regarding matters over which his ownership has been nullified.[12]

L18884 It is not permissible for creditors to take anything from the wealth of the heirs and the legatees, nor is a bequest valid without the heirs' consent. Consequently, the ruling of deferment in such cases is nullified, and it becomes obligatory for the heirs and the legatees to receive their rights.

L18885 Similarly, it is not permissible for the heirs to withhold property owed to their deceased [by his debtor] except with the debtor's free consent, because the contractual obligation existed solely with the deceased during his lifetime. Thus, the deceased's property is not obligated to remain with heirs whom he never transacted with. Nor is it permissible for them to withhold the property of the creditor owed by the deceased, for Allah the Most High has granted neither the heirs nor [the execution of] the will any right except after justly settling the creditors' claims. And with Allah alone is success.

L18886 It was narrated to us through the chain of Abū ʻUbayd, who reported to us from Ismāʻīl ibn Ibrāhīm—known as Ibn ʻUlayyah—from Layth, from al-Shaʻbī and al-Nakhaʻī. Both said: Whoever has a debt with a fixed term, if he dies, it becomes due.

L18887 And through him to Abū ʻUbayd from Muʻādh ibn Muʻādh al-ʻAnbarī from Ashʻath from al-Ḥasan al-Baṣrī: that he held the view that the debt becomes immediately due if he dies while owing a debt.

L18888 From the path of Muḥammad ibn al-Muthannā: He narrated to me that ʻAbd al-Raḥmān ibn Mahdī reported from Sufyān al-Thawrī, from al-Mughīrah ibn Miqsam, from Ibrāhīm, who said: When the deceased dies, their debt becomes payable—and this is a general principle applicable to their liabilities and assets.

L18889 **A legal issue concerning the debtor's gift to the creditor.**

[12] **Qur'an references (L18881):** Qur'an 6:164 (Al-An'am); Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

وَقَدْ انْتَقَلَ الْآنَ الْمَالُ عَنْ مِلْكِهِ إِلَى مِلْكِ غَيْرِهِ، فَلَا يَجُوزُ كَسْبُ الْمَيِّتِ عَلَيْهِمْ فِيمَا قَدْ سَقَطَ مِلْكُهُ عَنْهُ.

وَلَا يَحِلُّ لِلْغُرَمَاءِ شَيْءٌ مِنْ مَالِ الْوَرَثَةِ وَالْمُوصَى لَهُمْ وَالْوَصِيَّةُ بِغَيْرِ طِيبِ أَنْفُسِهِمْ، فَبَطَلَ حُكْمُ التَّأْجِيلِ فِي ذَلِكَ، وَوَجَبَ لِلْوَرَثَةِ وَلِلْوَصِيَّةِ أَخْذُ حُقُوقِهِمْ.

وَكَذَلِكَ لَا يَحِلُّ لِلْوَرَثَةِ إِمْسَاكُ مَالِ غَرِيمِ مَيِّتِهِمْ إِلَّا بِطِيبِ نَفْسِهِ، لِأَنَّ عَقْدَهُ إِنَّمَا كَانَ مَعَ الْمُتَوَفَّى إِذْ كَانَ حَيًّا فَلَا يَلْزَمُهُ أَنْ يَبْقَى مَالُهُ بِأَيْدِي وَرَثَةٍ لَمْ يُعَامِلْهُمْ قَطُّ. وَلَا يَحِلُّ لَهُمْ إِمْسَاكُ مَالِ الَّذِي لَهُ الْحَقُّ عَنْهُ، وَاَللَّهُ تَعَالَى لَمْ يَجْعَلْ لَهُمْ حَقًّا، وَلَا لِلْوَصِيَّةِ إِلَّا بَعْدَ إِنْصَافِ أَصْحَابِ الدُّيُونِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - عَنْ لَيْثٍ عَنْ الشَّعْبِيِّ، وَالنَّخَعِيِّ، قَالَا جَمِيعًا: مَنْ كَانَ لَهُ دَيْنٌ إِلَى أَجَلٍ فَإِذَا مَاتَ فَقَدْ حَلَّ

وَبِهِ إِلَى أَبِي عُبَيْدٍ عَنْ مُعَاذِ بْنِ مُعَاذٍ الْعَنْبَرِيِّ عَنْ أَشْعَثَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ يَرَى الدَّيْنَ حَالًّا إذَا مَاتَ وَعَلَيْهِ دَيْنٌ.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ قَالَ: إذَا مَاتَ الْمَيِّتُ فَقَدْ حَلَّ دَيْنُهُ - وَهَذَا عُمُومٌ لِمَا عَلَيْهِ - وَلِمَا لَهُ.

[مَسْأَلَةٌ هَدِيَّةُ الْمَدِينِ إلَى الدَّائِنِ]

L18890 1208 – Issue:

L18891 The gift from the debtor to the creditor is halal, and likewise the debtor's hospitality extended to him, so long as none of that arises from a precondition.

L18892–18894 If something violates a stipulated condition, it is unlawful—as per the narration transmitted via the chain of Al-Layth ibn Saʿd from Saʿīd ibn Abī Saʿīd al-Maqburī from Abu Shurayḥ al-ʿAdawī, who heard the Messenger of Allah (peace and blessings be upon him) say: "Whoever believes in Allah and the Last Day, let him honor his guest. The hospitality due is a day and its night, and hospitality is three days. Whatever exceeds that is charity." He, peace be upon him, would eat the gift, and he, peace be upon him, said: "If the foreleg of an animal were offered to me, I would accept it."[13]

L18895 We have narrated it through the chain of Shuʿbah from Al-Aʿmash from Abū Ḥāzim from Abū Hurayrah from the Prophet—peace and blessings of Allah be upon him. This is a general ruling, and he—peace be upon him—did not specify any debtor to the exclusion of others in this matter.

L18896 A group said: It is not permissible to accept his gift, nor to reside with him, nor to eat his food. It is authentically reported from Ibn Abbas: "If you grant someone a loan, you must not accept from him a reciprocated gift, nor borrow a riding animal." A man sought his verdict, asking: "I lent a fisherman fifty dirhams, and he began sending me portions of his catch?" Ibn Abbas replied: "Settle accounts with him. If there is an excess, return it to him; if it is exactly equal, offset it against the loan."

L18897 It is authentically reported from Abdullah ibn Salam that he said: If you have money due from a man and he offers you a load of straw as a gift, do not accept it, for that is usury. Either return his gift to him or compensate him.

L18898 It is authentically reported that a questioner asked Ibn ʻUmar, saying: "I lent

[13] **Qur'an references (L18892):** Qur'an 65:2 (At-Talaq).

١٢٠٨ - مَسْأَلَةٌ:

وَهَدِيَّةُ الَّذِي عَلَيْهِ الدَّيْنُ إِلَى الَّذِي لَهُ عَلَيْهِ الدَّيْنُ حَلَالٌ - وَكَذَلِكَ ضِيَافَتُهُ إِيَّاهُ مَا لَمْ يَكُنْ شَيْءٌ مِنْ ذَلِكَ عَنْ شَرْطٍ.

فَإِنْ كَانَ شَيْءٌ عَنْ شَرْطٍ فَهُوَ حَرَامٌ -: لِمَا رُوِّينَا مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي شُرَيْحٍ الْعَدَوِيِّ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلْيُكْرِمْ ضَيْفَهُ، جَائِزَتُهُ: يَوْمُهُ وَلَيْلَتُهُ، وَالضِّيَافَةُ ثَلَاثَةُ أَيَّامٍ، فَمَا كَانَ وَرَاءَ ذَلِكَ فَهُوَ صَدَقَةٌ» وَكَانَ - عَلَيْهِ السَّلَامُ - يَأْكُلُ الْهَدِيَّةَ وَقَالَ - عَلَيْهِ السَّلَامُ -: «لَوْ أُهْدِيَ إِلَيَّ ذِرَاعٌ لَقَبِلْتُ» .

رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا عُمُومٌ لَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مِنْ ذَلِكَ غَرِيمًا مِنْ غَيْرِهِ.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ قَبُولُ هَدِيَّتِهِ، وَلَا النُّزُولُ عِنْدَهُ، وَلَا أَكْلُ طَعَامِهِ - صَحَّ عَنْ ابْنِ عَبَّاسٍ إِذَا أَسْلَفْت رَجُلًا سَلَفًا فَلَا تُقْبَلُ مِنْهُ هَدِيَّةٌ قِرَاعٍ وَلَا عَارِيَّةُ رُكُوبِ دَابَّةٍ وَأَنَّهُ اسْتَفْتَاهُ رَجُلٌ؟ فَقَالَ لَهُ: أَقْرَضْتُ سَمَّاكًا خَمْسِينَ دِرْهَمًا وَكَانَ يَبْعَثُ إِلَيَّ مِنْ سَمَكِهِ؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: حَاسِبْهُ، فَإِنْ كَانَ فَضْلًا فَرُدَّ عَلَيْهِ، وَإِنْ كَانَ كَفَافًا فَقَاصِصْهُ.

وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ سَلَامٍ أَنَّهُ قَالَ: إِذَا كَانَ لَك عَلَى رَجُلٍ مَالٌ فَأَهْدَى لَك حَمَلَةَ مِنْ تِبْنٍ فَلَا تَقْبَلْهَا فَإِنَّهَا رِبًا، اُرْدُدْ عَلَيْهِ هَدِيَّتَهُ أَوْ أَثِبْهُ.

وَصَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ سَأَلَهُ سَائِلٌ؟ فَقَالَ لَهُ: أَقْرَضْت رَجُلًا فَأَهْدَى لِي هَدِيَّةً فَقَالَ: أَثِبْهُ أَوْ احْسُبْهَا لَهُ مِمَّا عَلَيْهِ أَوْ اُرْدُدْهَا عَلَيْهِ.

to a man, and he gave me a gift." He replied: "Reward him, deduct it from what he owes, or return it to him."

L18899 And a similar report is related from ʿAlqamah.

L18900 They argued by saying: "It is a loan that entails a benefit." The prohibition of this is established from Ibn Sīrīn, Qatādah, and al-Nakhaʿī.

L18901–18903 Abu Muhammad said: As for these Companions—may Allah be pleased with them—no one other than the Messenger of Allah—peace and blessings of Allah be upon him—holds authority as a proof. They opposed Ibn Umar and Ibn Abbas in hundreds of legal rulings, and others' disagreement with them has also been reported—it has been narrated to us through the chain of Abd al-Razzaq from Sufyan al-Thawri from Yunus ibn Ubayd and Khalid al-Khadhdhā', both from Muhammad ibn Sirin, that Ubayy ibn Ka'b borrowed ten thousand from Umar ibn al-Khattab. Ubayy then sent him some of his fruit, which ripened early and was considered the finest fruit among the people of Medina. 'Umar returned it to him. Ubayy Ibn Ka'b said to him, "I have no need for what made you withhold the goodness of my fruit." 'Umar then accepted it and said, "Ribā applies only to those who seek increase through deferment."

L18904 And from him to Sufyan from Mansur ibn al-Mu'tamir from Ibrahim al-Nakha'i - and he mentioned: "Did Alqamah prohibit a person from eating at the home of someone who has a debt against him?" Ibrahim said: "Unless it be a customary practice the debtor and creditor had customarily observed."

L18905 Abu Muhammad said: The statement of Umar ibn al-Khattab is correct due to the Prophet's saying—peace be upon him—"Actions are but by intentions, and every man shall have what he intended."

L18906 If the debtor's gift and hospitality were forbidden or disliked, Allah, Exalted be He, would not have overlooked clarifying it through the tongue of His Messenger (peace be upon him), as stated: {And your Lord is never forgetful} [19:64]. Since He, Exalted, did not prohibit this, it is entirely permissible;

وَعَنْ عَلْقَمَةَ نَحْوُ هَذَا.

وَاحْتَجُّوا فَقَالُوا: هُوَ سَلَفٌ جَرَّ مَنْفَعَةً - وَصَحَّ النَّهْيُ عَنْ هَذَا عَنْ ابْنِ سِيرِينَ، وَقَتَادَةَ، وَالنَّخَعِيِّ

قَالَ أَبُو مُحَمَّد: أَمَّا هَؤُلَاءِ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَالَفُوا ابْنَ عُمَرَ، وَابْنَ عَبَّاسٍ فِي مِئِينَ مِنْ الْقَضَايَا، وَقَدْ جَاءَ خِلَافُهُمْ عَنْ غَيْرِهِمْ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ، وَخَالِدٍ الْحَذَّاءِ، كِلَاهُمَا عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ أُبَيَّ بْنَ كَعْبٍ تَسَلَّفَ مِنْ عُمَرَ بْنِ الْخَطَّابِ عَشَرَةَ آلَافٍ فَبَعَثَ إلَيْهِ أُبَيٌّ مِنْ ثَمَرِهِ وَكَانَتْ تُبَكِّرُ، وَكَانَ مِنْ أَطْيَبِ ثَمَرِ أَهْلِ الْمَدِينَةِ، فَرَدَّهَا عَلَيْهِ عُمَرُ؟ فَقَالَ لَهُ: أُبَيّ بْنُ كَعْبٍ: لَا حَاجَةَ لِي بِمَا مَنَعَك طِيبَ ثَمَرَتِي، فَقَبِلَهَا عُمَرُ، وَقَالَ: إنَّمَا الرِّبَا عَلَى مَنْ أَرَادَ أَنْ يُرْبِيَ وَيُنْسِئَ.

وَبِهِ إلَى سُفْيَانَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَذَكَرَ نَهَى عَلْقَمَةَ عَنْ أَكْلِ الْمَرْءِ عِنْدَ مَنْ لَهُ عَلَيْهِ دَيْنٌ؟ فَقَالَ إبْرَاهِيمُ: إلَّا أَنْ يَكُونَ مَعْرُوفًا كَانَ يَتَعَاطَيَانِهِ.

قَالَ أَبُو مُحَمَّد: قَوْلُ عُمَرَ بْنِ الْخَطَّابِ هُوَ الْحَقُّ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

وَلَوْ كَانَتْ هَدِيَّةُ الْغَرِيمِ وَالضِّيَافَةُ مِنْهُ حَرَامًا أَوْ مَكْرُوهًا لَمَا أَغْفَلَ اللَّهُ تَعَالَى بَيَانَهُ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَإِذَا لَمْ يَنْهَ تَعَالَى عَنْ ذَلِكَ فَهُوَ حَلَالٌ مَحْضٌ، وَإِلَّا مَا كَانَ عَنْ شَرْطٍ بَيْنَهُمَا.

otherwise, it would only be impermissible if a condition [prohibiting it] had been stipulated between them.[14]

L18907 وَأَمَّا قَوْلُهُمْ إنَّهُ سَلَفٌ جَرَّ مَنْفَعَةً، فَكَانَ مَاذَا؟ أَيْنَ وَجَدُوا النَّهْيَ عَنْ سَلَفٍ جَرَّ مَنْفَعَةً؟ فَلْيَعْلَمُوا الْآنَ أَنَّهُ لَيْسَ فِي الْعَالَمِ سَلَفٌ إلَّا وَهُوَ يَجُرُّ مَنْفَعَةً وَذَلِكَ انْتِفَاعُ الْمُسَلِّفِ بِتَضْمِينِ مَالِهِ، فَيَكُونُ مَضْمُونًا - تَلِفَ أَوْ لَمْ يَتْلَفْ - مَعَ شُكْرِ الْمُسْتَقْرِضِ إيَّاهُ، وَانْتِفَاعِ الْمُسْتَقْرِضِ بِمَالِ غَيْرِهِ مُدَّةَ مَا، فَعَلَى قَوْلِهِمْ كُلُّ سَلَفٍ فَهُوَ حَرَامٌ، وَفِي هَذَا مَا فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَتَمَّ " كِتَابُ الْقَرْضِ " وَالْحَمْدُ لِلَّهِ [وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ] .

As for their assertion that it is a loan (ṣalaf) entailing benefit, what then? Where have they found the prohibition against a ṣalaf that yields benefit? Let them now know there exists no loan in the world except that it entails benefit. This includes the lender's (muqriḍ) benefit in the guarantee of compensation for his wealth—secured (whether lost or not)—alongside the borrower's (mustaqriḍ) gratitude for it, and the borrower's benefit in utilizing another's wealth for a period. By their claim, every ṣalaf would thus be forbidden, and this contains inherent contradictions—and success is through Allah, the Exalted. The "Book of Loans" is concluded, and praise be to Allah [and may Allah bless Muhammad and his family].

[14] **Qur'an references (L18906):** Qur'an 19:64 (Maryam).



AL-MUHALLA

كِتَابُ الرَّهْنِ

The Book of Pledges

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

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[كِتَابُ الرَّهْنِ] [مَسْأَلَةٌ اشْتِرَاطُ الرَّهْنِ فِي الْبَيْعِ]

١٢٠٩ - مَسْأَلَةٌ:

لَا يَجُوزُ اشْتِرَاطُ الرَّهْنِ إلَّا فِي الْبَيْعِ إلَى أَجَلٍ مُسَمًّى فِي السَّفَرِ، أَوْ فِي السَّلَمِ إلَى أَجَلٍ مُسَمًّى فِي السَّفَرِ خَاصَّةً، أَوْ فِي الْقَرْضِ إلَى أَجَلٍ مُسَمًّى فِي السَّفَرِ خَاصَّةً، مَعَ عَدَمِ الْكَاتِبِ فِي كِلَا الْوَجْهَيْنِ.

بُرْهَانُ ذَلِكَ -: أَنَّ اشْتِرَاطَ الرَّهْنِ شَرْطٌ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ»

وَقَالَ عَزَّ وَجَلَّ: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] إلَى قَوْله تَعَالَى: {وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ} [البقرة: ٢٨٣] فَهَاهُنَا يَجُوزُ اشْتِرَاطُ الرَّهْنِ حَيْثُ أَجَازَهُ اللَّهُ تَعَالَى.

وَالدَّيْنُ إلَى أَجَلٍ مُسَمًّى لَا يَعْدُو أَنْ يَكُونَ بَيْعًا، أَوْ سَلَمًا، أَوْ قَرْضًا.

فَهَذِهِ الْوُجُوهُ يَجُوزُ فِيهَا اشْتِرَاطُ التَّأْجِيلِ لِوُرُودِ النُّصُوصِ بِوُجُوبِهِ فِي السَّلَمِ، وَجَوَازُهُ فِي الْقَرْضِ، وَالْبَيْعِ - وَلَا يَجُوزُ فِيمَا عَدَا ذَلِكَ أَصْلًا؛ لِأَنَّهُ لَمْ يَأْتِ فِي شَيْءٍ مِنْ الْمُعَامَلَاتِ سِوَى مَا ذَكَرْنَا نَصٌّ بِجَوَازِ اشْتِرَاطِ التَّأْجِيلِ، فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

وَصَحَّ عَنْ مُجَاهِدٍ أَنَّهُ لَا يَجُوزُ الرَّهْنُ إلَّا فِي السَّفَرِ.

Book of Pledge | On the Stipulation of the Pledge in the Sale

In 1209 – Issue:

It is impermissible to stipulate a pledge except in a sale with a fixed term during travel, a salam contract with a term specifically fixed during travel, or a loan with a term specifically fixed during travel, provided there is no written contract in both cases.

The proof of that is: the stipulation of a pledge constitutes a condition, and the Messenger of Allah—peace and blessings be upon him—said: "Every condition that is not in the Book of Allah is void, even if there are a hundred conditions. Whoever stipulates a condition not in the Book of Allah, it is not valid for him."

The Almighty said: {When you contract a debt for a specified term, write it down} [Al-Baqarah: 282] up to His saying, the Exalted: {And if you are traveling and cannot find a scribe, then pledged collaterals held} [Al-Baqarah: 283]. Therefore, in these circumstances, stipulating collateral is permissible where Allah, the Exalted, has permitted it.[1]

A debt with a specified term is limited to being a sale, a *salam*, or an interest-free loan.

These cases permit stipulating deferment due to scriptural texts establishing its obligation in salam contracts, along with its permissibility in loans and sales. It is absolutely impermissible in all other transactions, as no textual evidence exists in any contractual matters beyond those we have specified that permits stipulating deferment. Since such a condition is not found in the Book of Allah, the Almighty and Majestic, it is null and void.

It has been authentically established from Mujāhid that pledging is not per-

[1] **Qur'an references (L18913):** Qur'an 2:282 (Al-Baqarah); Qur'an 2:283 (Al-Baqarah).

missible except during travel.

L18917–18919 As for settled peoples—this is based on what we have transmitted through al-Bukhārī's chain: Musaddad narrated to us from ʿAbd al-Wāḥid, who narrated it to him (Musaddad). Al-A'mash narrated to us from Ibrāhīm, who narrated to us from Al-Aswad on the authority of 'Ā'ishah, the Mother of the Believers—may Allah be pleased with her—that the Prophet—peace and blessings of Allah be upon him—purchased food from a Jewish man on credit and pledged his armor as collateral.

وَأَمَّا الْحَضَرُ -: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا عَبْدُ الْوَاحِدِ - حَدَّثَهُ الْأَعْمَشُ نا إِبْرَاهِيمُ نا الْأَسْوَدُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اشْتَرَى مِنْ يَهُودِيٍّ طَعَامًا إلَى أَجَلٍ وَرَهَنَهُ دِرْعَهُ» .

L18920 And through the chain of Muḥammad ibn al-Muthannā: ʿUthmān ibn ʿUmar narrated to us, from Hishām ibn Ḥassān, from ʿIkrimah, from Ibn ʿAbbās, who said: "By Allah, the Messenger of Allah (may Allah's peace and blessings be upon him) died while his armor remained pledged with a Jewish man for twenty *ṣāʿ* of barley - which he [the Prophet] had taken as food for his family."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى حَدَّثَنِي عُثْمَانُ بْنُ عُمَرَ نا هِشَامُ بْنُ حَسَّانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: وَاَللَّهِ لَقَدْ مَاتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّ دِرْعَهُ لَمَرْهُونَةٌ عِنْدَ رَجُلٍ مِنْ الْيَهُودِ بِعِشْرِينَ صَاعًا مِنْ شَعِيرٍ أَخَذَهَا طَعَامًا لِأَهْلِهِ

L18921 If it is said: Anas reported that the Prophet—peace and blessings of Allah be upon him—took barley from a Jew in Medina and pledged his armor to him as collateral, yet there is no mention of a specified term? We respond: Nor is there a stipulation of the pledge in it, and we do not prohibit the pledge without stipulating it in the contract, for it was a voluntary act from the mortgagor at that time, and voluntary acts concerning what is not forbidden are commendable.

فَإِنْ قِيلَ: قَدْ رَوَى أَنَسٌ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَذَ شَعِيرًا مِنْ يَهُودِيٍّ بِالْمَدِينَةِ وَرَهَنَهُ دِرْعَهُ» ، وَلَيْسَ فِيهِ ذِكْرُ أَجَلٍ؟ قُلْنَا: وَلَا فِيهِ اشْتِرَاطُ الرَّهْنِ، وَنَحْنُ لَا نَمْنَعُ مِنْ الرَّهْنِ بِغَيْرِ أَنْ يُشْتَرَطَ فِي الْعَقْدِ، لِأَنَّهُ تَطَوُّعٌ مِنْ الرَّاهِنِ حِينَئِذٍ، وَالتَّطَوُّعُ بِمَا لَمْ يُنْهَ عَنْهُ حَسَنٌ.

L18922 If the hadith of Abu Rafi is mentioned—wherein the Prophet (may Allah bless him and grant him peace) sent him to a Jew to borrow food for a guest who had stayed with the Prophet—the Jew refused unless he provided collateral, so the Prophet pawned his armor as security.

فَإِنْ ذُكِرَ حَدِيثُ أَبِي رَافِعٍ فِي بَعْثَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إيَّاهُ إلَى يَهُودِيٍّ لِيُسَلِّفَهُ طَعَامًا لِضَيْفٍ نَزَلَ بِهِ فَأَبَى إلَّا بِرَهْنٍ فَرَهَنَهُ دِرْعَهُ.

L18923 This is a report exclusively narrated by Mūsā ibn ʿUbayd al-Rabadhī—a weak narrator—as he was criticized as weak by al-Qaṭṭān, Ibn Maʿīn, al-Bukhārī, and Ibn al-Madīnī. Aḥmad ibn Ḥanbal stated: "It is not admissible to transmit reports from him."

فَهَذَا خَبَرٌ انْفَرَدَ بِهِ مُوسَى بْنُ عُبَيْدٍ الرَّبَذِيُّ - وَهُوَ ضَعِيفٌ - ضَعَّفَهُ الْقَطَّانُ، وَابْنُ مَعِينٍ، وَالْبُخَارِيُّ، وَابْنُ الْمَدِينِيِّ - وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: لَا تَحِلُّ الرِّوَايَةُ عَنْهُ

L18924 **A juridical issue regarding the taking of possession in the pledge.**

[مَسْأَلَةُ الْقَبْضِ فِي الرَّهْنِ]

١٢١٠ - مَسْأَلَةٌ:

وَلَا يَجُوزُ الرَّهْنُ إلَّا مَقْبُوضًا فِي نَفْسِ الْعَقْدِ لِقَوْلِ اللَّهِ تَعَالَى: {فَرِهَانٌ مَقْبُوضَةٌ} [البقرة: ٢٨٣]

وَقَالَ قَوْمٌ: إنَّ شَرْطَهُ أَنْ يَجْعَلَ الرَّهْنَ عِنْدَ ثِقَةٍ فَهُوَ جَائِزٌ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَعَطَاءٍ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ: وَمَالِكٌ، وَالشَّافِعِيُّ.

وَقَالَ آخَرُونَ: لَا يَجُوزُ هَذَا وَلَيْسَ هُوَ قَبْضًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ الثَّوْرِيِّ قَالَ مَعْمَرٌ: عَنْ قَتَادَةَ.

وَقَالَ سُفْيَانُ: عَنْ أَشْعَثَ عَنْ الْحَكَمِ - ثُمَّ اتَّفَقَ قَتَادَةَ، وَالْحَكَمُ عَلَى أَنَّ الرَّهْنَ إذَا كَانَ عَلَى يَدَيْ عَدْلٍ فَلَيْسَ مَقْبُوضًا.

قَالَ سُفْيَانُ: وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا.

وَصَحَّ أَيْضًا عَنْ الْحَارِثِ الْعُكْلِيِّ مِنْ طَرِيقِ هُشَيْمٍ عَنْ الْمُغِيرَةِ عَنْهُ.

قَالَ أَبُو مُحَمَّدٍ: إنَّمَا ذَكَرَ اللَّهُ تَعَالَى الْقَبْضَ فِي الرَّهْنِ مَعَ ذِكْرِهِ الْمُتَدَايِنَيْنِ فِي السَّفَرِ إلَى أَجَلٍ عِنْدَ عَدَمِ الْكَاتِبِ وَإِنَّمَا أَقْبَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّرْعَ الَّذِي لَهُ الدَّيْنُ فَهُوَ الْقَبْضُ الصَّحِيحُ.

وَأَمَّا قَبْضُ غَيْرِ صَاحِبِ الدَّيْنِ فَلَمْ يَأْتِ بِهِ نَصٌّ وَلَا إجْمَاعٌ، وَاشْتِرَاطُ أَنْ يَقْبِضَهُ فُلَانٌ لَا صَاحِبُ الدَّيْنِ: شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ

[مَسْأَلَةٌ رَهْنُ الْمُشَاعِ]

1210 - Issue:

A pledge is not valid unless it is physically received at the time of the contract, as Allah, the Exalted, says: *"pledges taken into possession"* (Q. 2:283).[2]

A group of people said: Its condition is that the pledge should be placed with a trustworthy person, and this is permissible. This is the opinion of Ibrāhīm al-Nakhaʿī, al-Shaʿbī, and ʿAṭāʾ. This is also the position held by Abū Ḥanīfah, Mālik, and al-Shāfiʿī.

Others said: This is not permissible and does not constitute a valid taking of possession (*qabd*) - as we have narrated via ʿAbd al-Razzāq's transmission from both Maʿmar and Sufyān al-Thawrī. Maʿmar said, from Qatāda.

Sufyan said: From Ash'ath from Al-Hakam - then Qatadah and Al-Hakam concurred that when pledged property remains in the custody of a trustworthy guardian, it is not deemed physically seized.

Sufyān said: This is the opinion of Ibn Abī Laylā — and according to it say Abū Sulaymān and our companions.

And it has also been authenticated from al-Ḥārith al-ʻUklī via the chain of Hushaym, from al-Mughīrah, from him.

Abu Muhammad said: Allah the Exalted only mentioned the physical taking of the pledge in the context of His reference to the creditor and debtor during a journey; to a fixed term; and in the absence of a scribe. Indeed, the Messenger of Allah—peace and blessings of Allah be upon him—took physical custody of the armor pledged against the debt, and this is the valid taking of possession.

As for the receiving [of debt] by someone other than the creditor, there is no textual evidence or consensus that permits it. The stipulation requiring it to be received by a specific non-creditor is a condition not found in the Book of Allah Almighty, and therefore it is invalid.

[2]**Qur'an references (L18926):** Qur'an 2:283 (Al-Baqarah).

A legal issue: the pledge of undivided common property.

1211 – Question:

The pledge of a person's share in jointly owned property (mushāʿ), whether divisible or not, is permissible when held by a co-owner or others, for Allah the Exalted said: {then a pledge held} [Al-Baqarah: 283]. The Exalted did not distinguish between undivided and divided property in this ruling, {and your Lord is never forgetful} [Maryam: 64].[3]

And it is the opinion of ʿUthmān al-Battī, Ibn Abī Laylā, Mālik, ʿUbayd Allāh ibn al-Ḥasan, Sawwār ibn ʿAbd Allāh, al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and others.

Abu Hanifa and his companions said: It is not permissible to pledge undivided jointly-owned property—whether it was divisible or indivisible—neither with a co-owner thereof nor with others.

They permitted two individuals to pledge an undivided jointly owned land to a single creditor but prohibited a person from pledging his land to two creditors to whom he owes a single debt in one transaction. This is an utter muddle—firstly, because it is an opinion we know of no one who has held it before them.

The second [reason]: that it is an opinion without evidence – and the third: that they contradicted themselves regarding it, as we mentioned.

Moreover, they unanimously agree that the sale of undivided jointly owned property is permissible whether the property can be divided or not, and whether the sale is by a co-owner or others.

Abu Hanifah prohibited allowing joint ownership (mushāʿ) in what can be divided and what cannot be divided except from the sole co-owner thereof, wherein he permitted it for him.

These are confused notions and contradictions, unmistakably evident, and

[3] **Qur'an references (L18937):** Qur'an 19:64 (Maryam); Qur'an 2:283 (Al-Baqarah).

١٢١١ - مَسْأَلَةٌ:

وَرَهْنُ الْمَرْءِ حِصَّتَهُ مِنْ شَيْءٍ مُشَاعٍ مِمَّا يَنْقَسِمُ، أَوْ لَا يَنْقَسِمُ عِنْدَ الشَّرِيكِ فِيهِ وَعِنْدَ غَيْرِهِ جَائِزٌ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فَرِهَانٌ مَقْبُوضَةٌ} [البقرة: ٢٨٣] وَلَمْ يَخُصَّ تَعَالَى مَشَاعًا مِنْ مَقْسُومٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَابْنِ أَبِي لَيْلَى، وَمَالِكٍ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَسَوَّارِ بْنِ عَبْدِ اللَّهِ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: لَا يَجُوزُ رَهْنُ الْمُشَاعِ - كَانَ مِمَّا يَنْقَسِمُ أَوْ مِمَّا لَا يَنْقَسِمُ - لَا عِنْدَ الشَّرِيكِ فِيهِ وَلَا عِنْدَ غَيْرِهِ.

وَأَجَازُوا أَنْ يَرْهَنَ اثْنَانِ أَرْضًا مُشَاعَةً بَيْنَهُمَا عِنْدَ إِنْسَانٍ وَاحِدٍ، وَمَنَعُوا مِنْ أَنْ يَرْهَنَ الْمَرْءُ أَرْضَهُ عِنْدَ اثْنَيْنِ دَايَنَهُمَا دَيْنًا وَاحِدًا فِي صَفْقَةٍ وَاحِدَةٍ. وَهَذَا تَخْلِيطٌ نَاهِيكَ بِهِ -: أَوَّلُ ذَلِكَ - أَنَّهُ قَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُمْ.

وَالثَّانِي: أَنَّهُ قَوْلٌ بِلَا دَلِيلٍ - وَالثَّالِثُ: أَنَّهُمْ تَنَاقَضُوا فِيهِ كَمَا ذَكَرْنَا

وَأَيْضًا: فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ بَيْعَ الْمُشَاعِ جَائِزٌ فِيمَا يَنْقَسِمُ، وَمَا لَا يَنْقَسِمُ مِنْ الشَّرِيكِ وَغَيْرِهِ.

وَمَنَعَ أَبُو حَنِيفَةَ مِنْ إجَازَةِ الْمُشَاعِ فِيمَا يَنْقَسِمُ وَمَا لَا يَنْقَسِمُ إلَّا مِنْ الشَّرِيكِ فِيهِ وَحْدَهُ، فَأَجَازَهُ لَهُ.

we know they have disguised nothing except their claim that taking possession (al-qabḍ) is invalid in jointly owned property.

L18945–18947 And among their statements is: "Verily, the sale is not perfected except through possession," yet they have permitted the sale of jointly owned property—so possession... According to them, sale is permissible in joint ownership when they desire it, whereas pledge is not possible in joint ownership when they do not desire it, since delivery in such cases is impossible according to them. Allah suffices us, and He is the Best Disposer of Affairs.

L18948 It is said to them: Just as possession is taken in a sale, so too is it taken in a pledge, and there is no distinction.

L18949 **A legal question regarding the method of taking possession in a pledge (collateral).**

L18950 1212 – Issue:

L18951 The manner of taking possession in collateral and other items is that control is granted over them. For movable property, one transfers it to oneself. For immovable property such as houses and lands, control is granted to secure it, as done in sales. For jointly owned property, one's possession of it is equivalent to a co-owner taking possession of their own share in it alongside their partner, and there is no distinction.

L18952 If possession were invalid in jointly owned property, the two partners would not be holding possession of it. Were they not holding possession, it would remain neglected with no one exercising control over it. This assertion is disproven by debt and tangible assets: Regarding debt, their dealings with the property constitute an owner's exercise of ownership rights over his own property. As for tangible assets, it refers to the property being held by each partner for an agreed period, or entrusted to a mutually agreed custodian. Success comes from Allah, the Exalted.

L18953 **Issue: The pledge is valid for assets that may lawfully be**

وَهَذِهِ تَخَالِيطُ وَمُنَاقَضَاتٌ لَا خَفَاءَ بِهَا وَمَا نَعْلَمُ لَهُمْ شَيْئًا مَوَّهُوا بِهِ إِلَّا أَنَّهُمْ قَالُوا: لَا يَصِحُّ الْقَبْضُ فِي الْمُشَاعِ.

وَمِنْ قَوْلِهِمْ: إِنَّ الْبَيْعَ لَا يَتِمُّ إِلَّا بِالْقَبْضِ، وَقَدْ أَجَازُوا الْبَيْعَ فِي الْمُشَاعِ، فَالْقَبْضُ عِنْدَهُمْ مُمْكِنٌ فِي الْمُشَاعِ حَيْثُ اشْتَهَوْا، وَهُوَ الْبَيْعُ، وَالْقَبْضُ عِنْدَهُمْ غَيْرُ مُمْكِنٍ فِي الْمُشَاعِ حَيْثُ لَمْ يَشْتَهُوا، وَهُوَ الرَّهْنُ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

وَيُقَالُ لَهُمْ: كَمَا يُقْبَضُ فِي الْبَيْعِ كَذَلِكَ يُقْبَضُ فِي الرَّهْنِ وَلَا فَرْقَ

[مَسْأَلَةٌ صِفَةُ الْقَبْضِ فِي الرَّهْنِ]

١٢١٢ - مَسْأَلَةٌ:

وَصِفَةُ الْقَبْضِ فِي الرَّهْنِ وَغَيْرِهِ -: هُوَ أَنْ يُطْلِقَ يَدَهُ عَلَيْهِ، فَمَا كَانَ مِمَّا يُنْقَلُ نَقَلَهُ إِلَى نَفْسِهِ، وَمَا كَانَ مِمَّا لَا يُنْقَلُ كَالدُّورِ، وَالْأَرْضِينَ أُطْلِقَتْ يَدُهُ عَلَى ضَبْطِهِ، كَمَا يَفْعَلُ فِي الْبَيْعِ، وَمَا كَانَ مُشَاعًا كَانَ قَبْضُهُ لَهُ كَقَبْضِ صَاحِبِهِ لِحِصَّتِهِ مِنْهُ مَعَ شَرِيكِهِ، وَلَا فَرْقَ

وَلَوْ كَانَ الْقَبْضُ لَا يَصِحُّ فِي الْمُشَاعِ لَكَانَ الشَّرِيكَانِ فِيهِ غَيْرَ قَابِضَيْنِ لَهُ، وَلَوْ كَانَا غَيْرَ قَابِضَيْنِ لَهُ لَكَانَ مُهْمَلًا لَا يَدَ لِأَحَدٍ عَلَيْهِ، وَهَذَا أَمْرٌ يُكَذِّبُهُ الدَّيْنُ، وَالْعِيَانُ -: أَمَّا الدَّيْنُ: فَتَصَرُّفُهُمَا فِيهِ تَصَرُّفُ ذِي الْمِلْكِ فِي مِلْكِهِ - وَأَمَّا الْعِيَانُ: فَكَوْنُهُ عِنْدَ كُلِّ وَاحِدٍ مُدَّةً يَتَّفِقَانِ فِيهَا، أَوْ عِنْدَ مَنْ يَتَّفِقَانِ عَلَى كَوْنِهِ عِنْدَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الرَّهْنُ جَائِزٌ فِيمَا يَجُوزُ بَيْعُهُ]

sold.

L18954 1213 - Issue:

L18955 Collateral is permissible for any property whose sale is valid.

L18956 It is impermissible to take as collateral what is impermissible to sell, such as a free person, an umm al-walad (a slave woman who has borne her master's child), a cat, a dog, or water, because it serves as security for the creditor to obtain his due if the debtor defaults. The creditor cannot claim his due except from what is permissible to sell. And in Allah, the Exalted, we place our trust.

The Legal Question Pertaining to the Usufructs of a Pledge

L18957 L18958 Issue 1214:

L18959 All benefits of the pledged item in their entirety remain for its owner, the pledgor, as they were prior to the pledge, with no distinction - except for riding the pledged animal and the milk of the pledged livestock, for these belong to the pledgee as we mentioned, unless the pledgee neglects them, in which case he ceases to provide for their maintenance.

L18960 The pledgor bears all those expenses, and thereby becomes entitled to ride the animal and use the animal's milk in return for what he spent, without such expenses being deducted from the debt owed to him, whether that is much or little.

L18961 The proof of this is the statement of Allah, the Most High: "And do not consume one another's wealth unjustly among yourselves" [Surah al-Baqarah 2:188].[4]

L18962–18964 And the saying of the Messenger of Allah (may Allah's peace and blessings be upon him): "Your blood and your wealth are inviolable against one another." He—peace be upon him—ruled that a Muslim's property is not lawful except with his consent, and ownership of the pledged item remains with

[4]**Qur'an references (L18961):** Qur'an 2:188 (Al-Baqarah).

١٢١٣ - مَسْأَلَةٌ:

وَالرَّهْنُ جَائِزٌ فِي كُلِّ مَا يَجُوزُ بَيْعُهُ.

وَلَا يَجُوزُ فِيمَا لَا يَجُوزُ بَيْعُهُ: كَالْحُرِّ، وَأُمِّ الْوَلَدِ، وَالسِّنَّوْرِ، وَالْكَلْبِ، وَالْمَاءِ، لِأَنَّهُ وَثِيقَةٌ لِلْمُرْتَهِنِ لِيَنْتَصِفَ إِنْ مَطَلَ، وَلَا يُمْكِنُ الِانْتِصَافُ لِلْغَرِيمِ إِلَّا مِمَّا يَجُوزُ بَيْعُهُ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةُ مَنَافِعُ الرَّهْنِ]

١٢١٤ - مَسْأَلَةٌ:

وَمَنَافِعُ الرَّهْنِ كُلُّهَا لَا تَحَاشٍ مِنْهَا شَيْئًا لِصَاحِبِهِ الرَّاهِنِ لَهُ كَمَا كَانَتْ قَبْلَ الرَّهْنِ وَلَا فَرْقَ - حَاشَا رُكُوبِ الدَّابَّةِ الْمَرْهُونَةِ، وَحَاشَا لَبَنِ الْحَيَوَانِ الْمَرْهُونِ، فَإِنَّهُ لِصَاحِبِ الرَّهْنِ كَمَا ذَكَرْنَا إِلَّا أَنْ يُضَيِّعَهُمَا فَلَا يُنْفِقُ عَلَيْهِمَا.

وَيُنْفِقُ عَلَى كُلِّ ذَلِكَ الْمُرْتَهِنُ فَيَكُونُ لَهُ حِينَئِذٍ: رُكُوبُ الدَّابَّةِ، وَلَبَنُ الْحَيَوَانِ، بِمَا أَنْفَقَ لَا يُحَاسَبُ بِهِ مِنْ دَيْنِهِ كَثُرَ ذَلِكَ أَمْ قَلَّ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨]

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَحَكَمَ - عَلَيْهِ السَّلَامُ - بِأَنَّهُ لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطِيبِ نَفْسِهِ وَمِلْكُ الشَّيْءِ الْمُرْتَهَنِ بَاقٍ لِرَاهِنِهِ بِيَقِينٍ وَبِإِجْمَاعٍ لَا خِلَافَ فِيهِ، فَإِذْ هُوَ كَذَلِكَ، فَحَقُّ الرَّهْنِ

the pledger with certainty and through undisputed consensus. Since this is so, the pledge-related entitlement belongs to the pledgee, and the pledger's ownership of the pledged item has not been relinquished. This does not necessitate a ruling that prohibits one from benefiting from his property absent an explicit text. Thus, he retains the right to utilization, use, renting, sewing, consumption of newly grown fruit, benefit from newly born offspring, cultivation, construction, use of newly produced wool, residence, and all other rights an owner holds over his property—except that the pledge remains solely in the pledgee's possession by the right of possession established in the Quran, with no further claims.

الَّذِي حَدَثَ فِيهِ لِلْمُرْتَهِنِ، وَلَمْ يُنْقَلْ مِلْكُ الرَّاهِنِ عَنْ الشَّيْءِ الْمَرْهُونِ لَا يُوجِبُ حُدُوثَ حُكْمٍ فِي مَنْعِهِ مَا لِلْمَرْءِ أَنْ يَنْتَفِعَ بِهِ مِنْ مَالِهِ بِغَيْرِ نَصٍّ بِذَلِكَ، فَلَهُ الْوَطْءُ، وَالِاسْتِخْدَامُ، وَالْمُؤَاجَرَةُ، وَالْخِيَاطَةُ، وَأَكْلُ الثَّمَرَةِ الْحَادِثَةِ، وَالْوَلَدُ الْحَادِثُ، وَالزَّرْعُ، وَالْعِمَارَةُ، وَالْأَصْوَافُ الْحَادِثَةُ، وَالسُّكْنَى، وَسَائِرُ مَا لِلْمَرْءِ فِي مِلْكِهِ، إلَّا كَوْنَ الرَّهْنِ فِي يَدِ الْمُرْتَهِنِ فَقَطْ، بِحَقِّ الْقَبْضِ الَّذِي جَاءَ بِهِ الْقُرْآنُ، وَلَا مَزِيدَ.

L18965 As for riding and specifically milking (for one who covers the upkeep of the ridden or milked animal), this is based on what we were narrated through al-Bukhārī's chain: Muḥammad ibn Muqātil reported to us from ʿAbdullāh ibn al-Mubārak, from Zakariyyā ibn Abī Zāʾidah, from al-Shaʿbī, from Abū Hurayrah that the Messenger of Allah (peace and blessings be upon him) said: "A pledged riding animal may be ridden in return for its upkeep if it is pledged, and the milk of a pledged lactating animal may be drunk in return for its upkeep if it is pledged. The one who rides or drinks must bear the upkeep."[5]

وَأَمَّا الرُّكُوبُ، وَالِاحْتِلَابُ خَاصَّةً، لِمَنْ أَنْفَقَ عَلَى الْمَرْكُوبِ، وَالْمَحْلُوبِ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ مُقَاتِلٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَنَا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الظَّهْرُ يُرْكَبُ بِنَفَقَتِهِ إذَا كَانَ مَرْهُونًا، وَلَبَنُ الدَّرِّ يُشْرَبُ بِنَفَقَتِهِ إذَا كَانَ مَرْهُونًا، وَعَلَى الَّذِي يَرْكَبُ وَيَشْرَبُ: النَّفَقَةُ»

L18966 The text explicitly prohibits unlawful claims to property from those who have no rightful entitlement to it. Thus, the pledged property is unquestionably forbidden to all except the pledger, while the pledgee holds the right to the pledge. Consequently, the pledgee is encompassed by this general ruling, whereas others are excluded through another explicit text.

وَالنَّصُّ قَدْ وَرَدَ بِتَحْرِيمِ الْأَمْوَالِ عَلَى غَيْرِ مَنْ لَهُ فِيهَا حَقٌّ، فَالرَّهْنُ بِلَا شَكٍّ حَرَامٌ عَلَى كُلِّ مَنْ عَدَا الرَّاهِنِ، وَلِلْمُرْتَهِنِ فِيهِ حَقُّ الِارْتِهَانِ، فَدَخَلَ بِهِ فِي هَذَا الْعُمُومِ وَخَرَجَ مِنْهُ مَنْ عَدَاهُ بِالنَّصِّ الْآخَرِ.

L18967 Abu Muhammad said: Whoever opposes us in this matter indeed opposes the Quran, the Sunnah, and sound reason. As for the Quran and the Sunnah, they prevent the rightful owner from benefiting from his property. Allah the Exalted says: "And those who guard their private parts" [23:5], "except from their wives or those their right hands possess - for indeed they are not to be blamed" [23:6], "But whoever seeks beyond that, then those are the transgressors" [23:7]. Allah the Exalted has granted unrestricted permission

قَالَ أَبُو مُحَمَّدٍ: وَمَنْ خَالَفَنَا فِي هَذَا فَإِنَّهُ يُخَالِفُ الْقُرْآنَ، وَالسُّنَنَ، وَالْمَعْقُولَ -: أَمَّا الْقُرْآنُ، وَالسُّنَنُ فَمَنْعُهُ صَاحِبَ الْحَقِّ مِنْ مَنَافِعِ مَالِهِ - وَاَللَّهُ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] فَقَدْ أَطْلَقَهُ

[5] **Hadith references (L18965):** Mishkat al-Masabih 2886.

regarding intercourse with his female slave, making no distinction between a mortgaged slave and one who is not. "And your Lord is not forgetful" [19:64].[6]

اللَّهُ تَعَالَى عَلَى وَطْءِ أَمَتِهِ، وَلَمْ يَخُصَّ غَيْرَ مَرْهُونَةٍ مِنْ مَرْهُونَةٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L18968–18970 Allah, the Exalted, said: "Do not forbid the good things that Allah has made lawful to you, and do not transgress. Indeed, Allah does not love the transgressors." [Al-Ma'idah: 87] As for the contradiction of reason: we ask those who oppose us here concerning the pledged house—is it to be rented and kept in repair, or neglected and left to waste, causing the renter to depart from it? Concerning the pledged land—is it to be cultivated and planted, or neglected and left to ruin? Concerning the pledged animal—should upkeep be provided for it and it be utilized, or left to waste until it perishes? Concerning the pledged trees—to whom does its yield belong? If they say: "All of that is to be wasted," they would contradict the Ijmaʿ (consensus), and it would be said to them: "The Messenger of Allah—peace and blessings of Allah be upon him—has forbidden the squandering of wealth."[7]

وَقَالَ تَعَالَى: {لا تُحَرِّمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [المائدة: ٨٧] وَأَمَّا خِلَافُ الْمَعْقُولِ -: فَإِنَّنَا نَسْأَلُ مَنْ خَالَفَنَا هَاهُنَا عَنْ الدَّارِ الْمَرْهُونَةِ أَتُؤَاجَرُ وَيُصْلِحُ مَا هِيَ فِيهَا، أَمْ تُهْمَلُ وَتَضِيعُ وَيَخْرُجُ الْمُسْتَأْجِرُ لَهَا عَنْهَا؟ وَعَنْ الْأَرْضِ الْمَرْهُونَةِ، أَتُحْرَثُ وَتُزْرَعُ، أَمْ تُهْمَلُ وَتُضَاعُ؟ وَعَنْ الْحَيَوَانِ الْمَرْهُونِ أَيُنْفِقُ عَلَيْهِ وَيُسْتَغَلُّ، أَمْ يَضِيعُ حَتَّى يَهْلَكَ؟ وَعَنْ الْأَشْجَارِ الْمَرْهُونَةِ لِمَنْ تَكُونُ غَلَّتُهَا؟ فَإِنْ قَالُوا: إنَّ كُلَّ ذَلِكَ يَضِيعُ -: خَالَفُوا الْإِجْمَاعَ، وَقِيلَ لَهُمْ: قَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ» .

L18971 If they say: "It is not forfeited?" We respond: Then to whom do the aforementioned benefits — the lease, milk, offspring, wool, and fruit — belong? If they claim: "They are included in the collateral?" We say to them: From where do you derive including his property in a collateral agreement that the two parties never stipulated? Who authorized this? There is no obligation to listen, obey, or approve, for it contradicts the Prophet's statement — peace and blessings be upon him —: "Your blood and wealth are inviolable to you," whereas this prohibits his wealth for him and permits it for another — an undeniably invalid ruling.

وَإِنْ قَالُوا: لَا يَضِيعُ؟ قُلْنَا: فَالْمَنَافِعُ الْمَذْكُورَةُ مِنْ الْإِجَارَةِ وَاللَّبَنِ، وَالْوَلَدِ، وَالصُّوفِ، وَالثَّمَرَةِ لِمَنْ تَكُونُ؟ فَإِنْ قَالُوا: تَكُونُ دَاخِلًا فِي الرَّهْنِ؟ قُلْنَا لَهُمْ: وَمِنْ أَيْنَ لَكُمْ إدْخَالُ مَالٍ مِنْ مَالِهِ فِي رَهْنٍ لَمْ يَتَعَاقَدَا قَطُّ أَنْ يَكُونَ دَاخِلًا فِيهِ؟ وَمَنْ أَمَرَ بِهَذَا؟ فَلَا سَمْعَ لَهُ وَلَا طَاعَةَ وَلَا نَعْمَى عَيْنٍ، لِأَنَّهُ خِلَافُ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَهَذَا تَحْرِيمُ مَالِهِ عَلَيْهِ وَإِبَاحَتُهُ لِغَيْرِهِ - وَهَذَا بَاطِلٌ مُتَيَقَّنٌ.

L18972 If they say: "Rather, it belongs to the owner of the pledged item?" We respond: "Yes—and this is our position, all praise be to Allah—as authentically reported from Abū Hurayra (may Allah be pleased with him), whose

وَإِنْ قَالُوا: بَلْ هُوَ لِصَاحِبِ الْمِلْكِ؟ قُلْنَا: نَعَمْ، وَهَذَا قَوْلُنَا - وَلِلَّهِ الْحَمْدُ - وَصَحَّ عَنْ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ قَوْلِهِ مِثْلُ قَوْلِنَا -: وَهُوَ أَنَّهُ قَالَ: صَاحِبُ الرَّهْنِ يَرْكَبُهُ، وَصَاحِبُ الدَّرِّ يَحْلُبُهُ، وَعَلَيْهِمَا النَّفَقَةُ وَأَنَّهُ قَالَ: الرَّهْنُ مَرْكُوبٌ، وَمَحْلُوبٌ بِعَلَفِهِ.

[6] **Qur'an references (L18967):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij); Qur'an 19:64 (Maryam).

[7] **Qur'an references (L18968):** Qur'an 5:87 (Al-Ma'idah).

statement aligns with ours, which is that he said: 'The holder of the pawn may ride it, the owner of the milk-producing animal may milk it, and both are responsible for its upkeep.' He also said: 'The pawn may be ridden and milked with its fodder.'"

L18973 From the chain of Ḥammād ibn Salama, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī: Concerning one who takes a lactating sheep as collateral—he said: The pledgeholder may drink from its milk equivalent to the price of its fodder. If he takes surplus milk beyond the price of the fodder, this constitutes ribā.

L18974 Abū Muḥammad said: We do not accept this addition from Ibrāhīm, and the general applicability of the Prophet's statement (peace and blessings of Allāh be upon him) is dearer to us than Abū ʿImrān's interpretation (may Allāh have mercy on him) based on his opinion.

L18975 And we know of no one among the Companions here who opposed Abū Hurayrah.

L18976 Al-Shafi'i said: All benefits of the pledged property remain vested in the pledgor in their original state.

L18977–18979 Abū Thawr held the same position—and with our opinion regarding riding and milking—except he added beneficial use but did not... [text incomplete] We hold this opinion because the text did not mention it, and analogy cannot be used to render permissible what is prohibited from people's wealth: "And your Lord is not forgetful" [Maryam: 64].[8]

L18980 Ishaq and Ahmad ibn Hanbal said: The mortgagor may not benefit from the pledge except through its usufruct (such as milk) - and this is an assertion without proof. As for Mālik, he said: There is no objection to the mortgagee stipulating the benefit of the pledge for a specified period in houses and lands, but he disapproved of this regarding animals, garments, and merchandise - and this is an opinion without evidence for its validity, a flawed categorization, and a stipulation not found in the Book of Allah the Exalted,

[8] **Qur'an references (L18977):** Qur'an 19:64 (Maryam).

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: فِيمَنْ ارْتَهَنَ شَاةً ذَاتَ لَبَنٍ؟ قَالَ: يَشْرَبُ الْمُرْتَهِنُ مِنْ لَبَنِهَا بِقَدْرِ ثَمَنِ عَلَفِهَا، فَإِنْ اسْتَفْضَلَ مِنَ اللَّبَنِ بَعْدَ ثَمَنِ الْعَلَفِ فَهُوَ رِبًا.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الزِّيَادَةُ مِنْ إِبْرَاهِيمَ لَا نَقُولُ بِهَا، وَعُمُومُ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَبُّ إِلَيْنَا مِنْ تَفْسِيرِ أَبِي عِمْرَانَ - رَحِمَهُ اللَّهُ - بِرَأْيِهِ.

وَلَا مُخَالِفَ لِأَبِي هُرَيْرَةَ هَاهُنَا مِنَ الصَّحَابَةِ نَعْلَمُهُ.

وَقَالَ الشَّافِعِيُّ: جَمِيعُ مَنَافِعِ الرَّهْنِ لِلرَّاهِنِ كَمَا كَانَتْ.

وَقَالَ أَبُو ثَوْرٍ بِذَلِكَ - وَبِقَوْلِنَا فِي الرُّكُوبِ، وَالْحَلْبِ، إِلَّا أَنَّهُ زَادَ الِاسْتِخْدَامَ وَلَا نَقُولُ بِهَذَا لِأَنَّهُ لَمْ يَأْتِ بِهِ النَّصُّ، وَالْقِيَاسُ لَا يُسْتَحَلُّ بِهِ الْمُحَرَّمُ مِنْ أَمْوَالِ النَّاسِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَقَالَ إِسْحَاقُ، وَأَحْمَدُ بْنُ حَنْبَلٍ: لَا يَنْتَفِعُ الرَّاهِنُ مِنَ الرَّهْنِ إِلَّا بِالدِّرِّ - وَهَذَا قَوْلٌ بِلَا بُرْهَانٍ. وَأَمَّا مَالِكٌ فَإِنَّهُ قَالَ: لَا بَأْسَ أَنْ يَشْتَرِطَ الْمُرْتَهِنُ مَنْفَعَةَ الرَّهْنِ إِلَى أَجَلٍ فِي الدُّورِ، وَالْأَرَضِينَ، وَكَرِهَ ذَلِكَ فِي الْحَيَوَانِ، وَالثِّيَابِ وَالْعُرُوضِ - وَهَذَا قَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَتَقْسِيمٌ فَاسِدٌ، وَشَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَقَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ، وَمُنَاقَضَةٌ.

thus it is invalid. It is a view we know of no one who asserted it before him, and it is contradictory.

L18981 One of them presented an unusual view, asking: "Is a loan that yields benefit considered the same with goods (al-'urūḍ)?" He was told: "With real property (al-'aqār) it is treated identically - there is no distinction."

L18982 As for Abū Ḥanīfah and his companions, they prohibited leasing the pledge and deriving benefit from it by both the pledger and the pledgee. Yet they immediately contradicted themselves by permitting the pledger to borrow it from the pledgee and the pledgee to lend it to him, while not considering this act as removing it from the status of a pledge. This opinion is profoundly corrupt due to its lack of evidence and the absence of any predecessor who held it before him. Some of them objected, saying: "If the benefits remain with the pledger as they were, what purpose does the pledge serve?" We replied: "The greatest benefit lies, in the Hereafter, in acting upon what Allah the Exalted has commanded and in receiving the reward; and in this world, in enabling the pledgee to promptly recover his right by selling the pledge if the pledger unjustly delays repayment. What greater benefit do you seek than this?" We further say to them: "You agree with us that exchanging wheat for wheat is impermissible except in equal measure—what benefit is there in this? Similarly, gold for gold and silver for silver." These objections stem from ill assumptions about their proponent, whereas the matter is nothing but compliance with Allah and His Messenger—peace and blessings of Allah be upon him.

L18983 He, the Exalted, said: "It is not for a believing man or a believing woman - when Allah has decreed a matter along with His Messenger - to have any choice regarding their own affair." [Al-Ahzab: 36][9]

L18984 The Almighty and Majestic: "The Prophet is closer to the believers than themselves" [Al-Ahzab: 6].[10]

L18985–18987 Some of those who do not fear Allah the Exalted have objected to the *ha-

وَأَتَى بَعْضُهُمْ بِغَرِيبَةٍ وَهُوَ أَنَّهُ قَالَ: هُوَ فِي الْعُرُوضِ سَلَفٌ جَرَّ مَنْفَعَةً؟ فَقِيلَ لَهُ: وَهُوَ فِي الْعَقَارِ كَذَلِكَ وَلَا فَرْقَ

وَأَمَّا أَبُو حَنِيفَةَ وَأَصْحَابُهُ فَإِنَّهُمْ مَنَعُوا مِنْ مُؤَاجَرَةِ الرَّهْنِ، وَمِنْ أَنْ يَنْتَفِعَ بِهِ الرَّاهِنُ وَالْمُرْتَهِنُ - ثُمَّ تَنَاقَضُوا مِنْ قُرْبٍ فَأَبَاحُوا لِلرَّاهِنِ أَنْ يَسْتَعِيرَهُ مِنْ الْمُرْتَهِنِ، وَأَنْ يُعِيرَهُ إيَّاهُ الْمُرْتَهِنُ، وَلَمْ يَرَوْهُ بِذَلِكَ خَارِجًا مِنْ الرَّهْنِ - وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ لِتَعَرِّيهِ مِنْ الْبُرْهَانِ، وَلِأَنَّنَا لَا نَعْلَمُ أَحَدًا قَالَ بِهِ قَبْلَهُ. وَاعْتَرَضَ بَعْضُهُمْ بِأَنْ قَالَ: فَإِذَا كَانَتْ الْمَنَافِعُ لِلرَّاهِنِ كَمَا كَانَتْ فَأَيُّ فَائِدَةٍ لِلرَّهْنِ؟ قُلْنَا: أَعْظَمُ الْفَائِدَةِ -: أَمَّا فِي الْآخِرَةِ، فَالْعَمَلُ بِمَا أَمَرَ اللَّهُ تَعَالَى بِهِ وَالْأَجْرُ، وَأَمَّا فِي الدُّنْيَا، فَلِأَنَّ الرَّاهِنَ إنْ مَطَلَ بِالْإِنْصَافِ بِيعَ الرَّهْنُ وَتَعَجَّلَ الْمُرْتَهِنُ الِانْتِصَافَ مِنْ حَقِّهِ، فَأَيُّ فَائِدَةٍ تُرِيدُونَ أَكْثَرَ مِنْ هَذِهِ الْفَائِدَةِ؟ وَنَقُولُ لَهُمْ: أَنْتُمْ تُوَافِقُونَنَا عَلَى أَنَّهُ لَا يَحِلُّ الْقَمْحُ بِالْقَمْحِ إلَّا مِثْلًا بِمِثْلٍ، فَأَيُّ فَائِدَةٍ فِي هَذَا؟ وَكَذَلِكَ الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ - وَهَذِهِ اعْتِرَاضَاتٌ بِسُوءِ الظَّنِّ بِصَاحِبِهَا وَلَيْسَ إلَّا الِائْتِمَارُ لِلَّهِ وَلِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

قَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦]

وَقَالَ عَزَّ وَجَلَّ: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦]

وَاعْتَرَضَ بَعْضُ مَنْ لَا يَتَّقِي اللَّهَ تَعَالَى عَلَى حَدِيثِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أَوْرَدْنَا قَبْلُ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «الرَّهْنُ مَحْلُوبٌ وَمَرْكُوبٌ» فَقَالَ: هَذَا

[9] **Qur'an references (L18983):** Qur'an 33:36 (Al-Ahzab).
[10] **Qur'an references (L18984):** Qur'an 33:6 (Al-Ahzab).

dith* of the Prophet—peace and blessings be upon him—which we cited earlier from his statement. Peace be upon him—"The pledged beast of burden is to be milked and ridden." He said: This is a report narrated by Hushaym from Zakariyyā from Ash-Shaʿbī from Abū Hurayrah who mentioned that the Messenger of Allah—may Allah's peace and blessings be upon him—said: "When a beast is pledged, the pledgee must provide its fodder. The milk may be consumed to cover its maintenance costs, and it may be ridden." This ignorant prominent one said: Since this ruling concerns the pledgee, it is abrogated by the prohibition of ribā and the prohibition of a loan that entails benefit.

خَبَرٌ رَوَاهُ هُشَيْمٌ عَنْ زَكَرِيَّا عَنْ الشَّعْبِيِّ عَنْ أَبِي هُرَيْرَةَ وَذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا كَانَتْ الدَّابَّةُ مَرْهُونَةً فَعَلَى الْمُرْتَهِنِ عَلَفُهَا، وَلَبَنُ الدَّرِّ يُشْرَبُ بِنَفَقَتِهَا وَتُرْكَبُ» قَالَ هَذَا الْجَاهِلُ الْمُقَدَّمُ: فَإِذْ الْمُرَادُ بِذَلِكَ الْمُرْتَهِنُ فَهُوَ مَنْسُوخٌ بِتَحْرِيمِ الرِّبَا وَبِالنَّهْيِ عَنْ سَلَفٍ جَرَّ مَنْفَعَةً.

L18988 Abū Muḥammad said: This is a statement of ultimate defectiveness and presumption. First - this is a report lacking documentation, for it does not clarify that this wording originates from the speech of Allah's Messenger—peace and blessings be upon him. Moreover, it contains incoherent wording entirely incomprehensible, namely his statement: "The milk of the milch animal may be consumed [by the creditor], and the one who consumes it must bear its expenses. The animal may also be ridden." Far be it from Allah that this could originate from the speech of Allah's Messenger—peace and blessings be upon him—who was commanded to clarify matters for us. This narration comes solely through Ismāʿīl ibn Sālim the goldsmith, freed slave of Banū Hāshim, from Hushaym. The confusion arises from him, not from Hushaym or those above him in the chain, for we transmitted Hushaym's version of this ḥadīth through Saʿīd ibn Manṣūr—the most retentive memorizer of Hushaym's narrations and most precise in transmitting them. He stated: Hushaym narrated to us from al-Aʿmash, from Abū Ṣāliḥ, from Abū Hurayrah—who raised the ḥadīth to the Prophet in what he alleged—saying: Allah's Messenger—peace and blessings be upon him—said: "Collateral may be ridden and fed. If the milk of a pledged milch animal is consumed, the one who drinks it must bear its expenses and fodder."

قَالَ أَبُو مُحَمَّد: وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ وَالْجُرْأَةِ، أَوَّلُ ذَلِكَ -: إنَّ هَذَا خَبَرٌ لَيْسَ مُسْنَدًا، لِأَنَّهُ لَيْسَ فِيهِ بَيَانٌ بِأَنَّ هَذَا اللَّفْظَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَيْضًا: فَإِنَّ فِيهِ لَفْظًا مُخْتَلِفًا لَا يُفْهَمُ أَصْلًا، وَهُوَ قَوْلُهُ: «وَلَبَنُ الدَّرِّ يُشْرَبُ وَعَلَى الَّذِي يَشْرَبُ نَفَقَتُهَا وَتُرْكَبُ» ، وَحَاشَا اللَّهِ أَنْ يَكُونَ هَذَا مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورِ بِالْبَيَانِ لَنَا، وَهَذِهِ الرِّوَايَةُ إنَّمَا هِيَ مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ سَالِمٍ الصَّائِغِ مَوْلَى بَنِي هَاشِمٍ عَنْ هُشَيْمٍ، فَالتَّخْلِيطُ مِنْ قِبَلِهِ، لَا مِنْ قِبَلِ هُشَيْمٍ فَمَنْ فَوْقَهُ، لِأَنَّ حَدِيثَ هُشَيْمٍ هَذَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ الَّذِي هُوَ أَحْفَظُ النَّاسِ لِحَدِيثِ هُشَيْمٍ وَأَضْبَطُهُمْ لَهُ فَقَالَ: نا هُشَيْمٌ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ يَرْفَعُ الْحَدِيثَ فِيمَا زَعَمَ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الرَّهْنُ يُرْكَبُ وَيُعْلَفُ، وَلَبَنُ الدَّرِّ إذَا كَانَ مَرْهُونًا يُشْرَبُ وَعَلَى الَّذِي يَشْرَبُهُ النَّفَقَةُ وَالْعَلَفُ» .

L18989 As for the statement of this ignorant person: "Since that obligation lies with the pledgee, it is abrogated by the prohibition of usury and the prohibition of a loan that entails a benefit"—he has lied and uttered falsehood, for usury has no connection here whatsoever.

وَأَمَّا قَوْلُ هَذَا الْجَاهِلِ: فَإِذْ ذَلِكَ عَلَى الْمُرْتَهِنِ فَهُوَ مَنْسُوخٌ بِالنَّهْيِ عَنْ الرِّبَا وَبِالنَّهْيِ عَنْ سَلَفٍ جَرَّ مَنْفَعَةً -: فَقَدْ كَذَبَ، وَأَفِكَ، وَمَا لِلرِّبَا هَاهُنَا مَدْخَلٌ أَصْلًا

L18990 If they had observed the prohibition of riba, they would not have resorted to practicing it openly, since they permitted exchanging two dates for four - even though the four dates were greater in bulk and heavier in weight.

وَلَوْ أَنَّهُمْ اتَّقُوا الرِّبَا لَمَا أَقْدَمُوا عَلَيْهِ جِهَارًا إِذْ أَبَاحُوا التَّمْرَتَيْنِ بِالْأَرْبَعِ تَمَرَاتٍ، وَإِنْ كَانَتْ الْأَرْبَعُ أَكْبَرَ جِسْمًا، وَأَثْقَلَ وَزْنًا.

L18991 When some scholars permitted exchanging a dirham containing one and a half dirhams [of silver] for a dirham containing one dirham [of silver], this was not a valid sale price.

وَإِذْ أَبَاحَ بَعْضُهُمْ دِرْهَمًا فِيهِ دِرْهَمٌ وَنِصْفٌ بِدِرْهَمٍ فِيهِ دِرْهَمٌ غَيْرُ ثَمَنٍ.

L18992 And when they all allowed exchanging currencies of a thousand present dirhams for a hundred deferred dinars as a liability.

وَإِذْ أَبَاحُوا كُلُّهُمْ أَلْفَ دِرْهَمٍ حَاضِرَةٍ بِمِائَةِ دِينَارٍ غَائِبَةٍ فِي الذِّمَّةِ.

L18993–18995 So this is indeed the riba. The pawnor may not benefit from his property, nor may the pawnee benefit from the milk and riding—despite the explicit textual permission—due to the expenses he incurs for the upkeep of the ridden animals and milked animals.

فَهَذَا هُوَ الرِّبَا حَقًّا لَا انْتِفَاعُ الرَّاهِنِ بِمَالِهِ وَلَا انْتِفَاعُ الْمُرْتَهِنِ بِالدَّرِّ، وَالرُّكُوبِ الْمُبَاحَيْنِ لَهُ بِالنَّصِّ مِنْ أَجْلِ نَفَقَتِهِ عَلَى الْمَرْكُوبِ وَالْمَحْلُوبِ.

L18996 They also said: "It is authentically reported from Al-Sha'bi that he considered reprehensible (makrūḥ) for the pawner to derive any benefit from his pledged property." They said: "He is the narrator of the ḥadīth, so he only refrained from it due to profound knowledge he possessed."

وَقَالُوا أَيْضًا: قَدْ صَحَّ عَنْ الشَّعْبِيِّ أَنَّهُ كَرِهَ أَنْ يَنْتَفِعَ الرَّاهِنُ مِنْ رَهْنِهِ بِشَيْءٍ؟ قَالُوا: وَهُوَ رَاوِي الْحَدِيثِ، فَلَمْ يَتْرُكْهُ إِلَّا لِفَضْلِ عِلْمٍ عِنْدَهُ.

L18997 Abu Muhammad said: This is among the most preposterous things they contrive. We had assumed there was some justification for them in their lands when they justified their stance by citing a Companion's rejection of transmitted reports—until they came to us promoting the abandonment of the Sunnah on account of al-Sha'bī's rejection of it.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِنْ أَسْخَفِ مَا يَأْتُونَ بِهِ، وَلَقَدْ كُنَّا نَظُنُّ أَنَّ فِي بِلَادِهِمْ بَعْضَ الْعُذْرِ لَهُمْ، إِذْ يَحْتَجُّونَ بِتَرْكِ الصَّاحِبِ لِمَا رُوِيَ حَتَّى أَتَوْنَا بِتَرْكِ السُّنَّةِ مِنْ أَجَلِ تَرْكِ الشَّعْبِيِّ لَهَا.

L18998 We have cited Abū Hurayrah's adoption of what was narrated concerning that. If they were to act in this manner, then Mālik's rejection of adopting what was narrated would indeed constitute a decisive proof against the Ḥanafīs in their adherence to those reports, and Abū Ḥanīfah's rejection of the ḥadīth that reached him would equally constitute a decisive proof against the Mālikīs in their adherence to it. This would extend downward in succession until any individual's rejection of a ḥadīth from the Prophet—peace be upon him—upon it reaching him would stand as an irrefutable proof for its dismissal.

وَقَدْ أَوْرَدْنَا أَخْذَ أَبِي هُرَيْرَةَ بِمَا رُوِيَ مِنْ ذَلِكَ، فَلَئِنْ مَشَوْا هَكَذَا، لَيَكُونَنَّ تَرْكُ مَالِك لِلْأَخْذِ بِمَا رُوِيَ حُجَّةً عَلَى الْحَنَفِيِّينَ فِي أَخْذِهِمْ بِهِ، وَلَيَكُونَنَّ تَرْكُ أَبِي حَنِيفَةَ لِمَا بَلَغَهُ مِنْ الْحَدِيثِ حُجَّةً عَلَى الْمَالِكِيِّينَ فِي أَخْذِهِمْ بِهِ، وَهَكَذَا سُفْلًا حَتَّى يَكُونَ تَرْكُ كُلِّ أَحَدٍ لِلْحَدِيثِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا بَلَغَهُ حُجَّةً قَاطِعَةً فِي رَدِّهِ.

L18999 And this is the doctrine of Iblīs and those who follow him. No honor is

وَهَذَا مَذْهَبُ إِبْلِيسَ وَمَنْ اتَّبَعَهُ، وَلَا كَرَامَةَ لِأَحَد أَنْ يَكُونَ حُجَّةً عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ هُوَ - عَلَيْهِ السَّلَامُ - الْحُجَّةُ عَلَى الْجِنِّ وَالْإِنْسِ.

due to anyone who would be a proof against the Messenger of Allah—may Allah bless him and grant him peace—rather, he—peace be upon him—is the proof against the jinn and mankind.

وَأَسْلَمُ الْوُجُوهِ لِمَنْ خَالَفَ مَا رُوِيَ عَنْ صَاحِبٍ فَمَنْ دُونَهُ مِنْ الْأَئِمَّةِ خَاصَّةً أَنْ يُظَنَّ بِهِمْ النِّسْيَانُ أَوْ التَّأْوِيلُ الَّذِي أَخْطَئُوا فِيهِ قَاصِدِينَ لِلْخَيْرِ، فَيُؤْجَرُونَ مَرَّةً وَاحِدَةً، وَأَمَّا مَنْ أَقْدَمَ عَلَى مَا صَحَّ عِنْدَهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنْ اعْتَقَدَ جَوَازَ مُخَالَفَتِهِ - عَلَيْهِ السَّلَامُ - كَافِرٌ حَلَالُ الدَّمِ وَالْمَالِ، وَإِنْ لَمْ يَعْتَقِدْ ذَلِكَ فَهُوَ فَاسِقٌ قَالَ تَعَالَى: {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا} [النساء: ٦٥] قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِيَ عَنْ ابْنِ مَسْعُودٍ، وَابْنِ عُمَرَ، وَشُرَيْحٍ: أَنْ لَا يَنْتَفِعَ الْمُرْتَهِنُ بِشَيْءٍ مِنْ الرَّهْنِ - وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ، لِأَنَّهُ عَنْ ابْنِ مَسْعُودٍ مُنْقَطِعٌ - وَعَنْ ابْنِ عُمَرَ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ، وَعَنْ شُرَيْحٍ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ.

L19000 The safest of opinions regarding those who oppose what has been narrated from a Companion or those below him among the Imams—particularly when suspecting them of forgetfulness or erroneous interpretation while intending good—is that they receive a single reward. As for one who acts upon what he considers authentically established from the Prophet (peace be upon him), if he believes in the permissibility of opposing him (peace be upon him), he becomes an unbeliever whose blood and wealth are lawful. If he does not hold this belief, he is a transgressor. The Almighty said: "But no, by your Lord, they will not truly believe until they make you judge in matters of dispute between them, then find no discomfort in their hearts regarding your verdict and submit wholeheartedly" (4:65). Abū Muḥammad said: Narrations are reported from Ibn Masʿūd, Ibn ʿUmar, and Shurayḥ stating that the pledgeholder may not benefit from the pledged item—though none are authentically established. The narration from Ibn Masʿūd has an interrupted chain, that from Ibn ʿUmar comes via Ibn Lahīʿah's chain, and that from Shurayḥ through Jābir al-Juʿfī's chain.[1]

بَلْ قَدْ صَحَّ عَنْ ابْنِ سِيرِينَ، وَالشَّعْبِيِّ: لَا يَنْتَفِعُ مِنْ الرَّهْنِ بِشَيْءٍ - وَهَذَا صَحِيحٌ إنْ كَانُوا عَنَوْا الْمُرْتَهِنَ وَبِهِ نَقُولُ إلَّا الْحَلْبَ، وَالرُّكُوبَ إنْ أَنْفَقَ فَقَطْ، وَإِلَّا فَلَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19001 Indeed, it is authentically reported from Ibn Sīrīn and Al-Shaʿbī that one may not derive any benefit from the pledged item—and this is correct if they intended the pledgee. This is our position, except for milking and riding, provided he has spent on it; otherwise, he may not—and success is from Allah, the Most High.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ: نَفَقَةُ الرَّهْنِ عَلَى رَاهِنِهِ - وَهَذَا صَحِيحٌ، لِأَنَّهُ مَالُهُ، إلَّا أَنَّ الْحَنَفِيِّينَ قَالُوا: إنْ مَرِضَ الرَّقِيقُ الْمَرْهُونُ، أَوْ أَصَابَتْ الْعَبْدَ جِرَاحَةٌ، أَوْ دَبَرَتْ الدَّوَابُّ الْمَرْهُونَةُ، فَإِنْ كَانَ الدَّيْنُ، وَقِيمَةُ الرَّهْنِ سَوَاءً، فَالْعِلَاجُ كُلُّهُ عَلَى الْمُرْتَهِنِ، وَإِنْ كَانَ الدَّيْنُ أَقَلَّ مِنْ قِيمَةِ الرَّهْنِ فَالْعِلَاجُ عَلَى الرَّاهِنِ وَالْمُرْتَهِنِ بِحِسَابِ ذَلِكَ.

L19002–19003 Abu Hanifa, Malik, al-Shafiʿi, Ahmad, and Abu Sulayman have stated: The maintenance expenses of the pledged property are incumbent upon the pledger—and this is the valid opinion, as it is his property. However, the Hanafis said: If the pledged slave falls ill, the slave is injured, or the pledged livestock give birth, then if the debt and the value of the pledge are equivalent, the entire cost of treatment is borne by the pledgee. If the debt is less than the value of the pledge, the cost of treatment is shared between the pledger and the pledgee in proportion to their respective shares.

L19004 This speech resembles delirium, yet it is worse in state than delirium, for

[1] **Qur'an references (L19000):** Qur'an 4:65 (An-Nisa).

it establishes rulings in religion through corrupt opinions—ones we do not know of anyone having stated before him—that have no connection by the Quran, nor by Sunnah, nor by a weak narration, nor by analogy, nor by sound judgment, nor by the statement of a predecessor.

The issue of the death of the pledge and its destruction.

1215 – Issue:

If the mortgaged item dies, is destroyed, escapes, becomes defective, or if an enslaved woman becomes pregnant by her master, or he frees her, or sells the mortgaged item, gifts it, donates it, or gives it as *mahr*—all such actions are valid, but the mortgage is invalidated, and the entire debt remains as it is. The mortgagor is not obligated to provide compensation for any of these occurrences, nor are the emancipated [slave] or the pregnant [enslaved woman] liable for *istisʿā'*, unless the mortgagor has no assets **other than it** from which to satisfy his creditor. In that case, his act of freeing her, donating **it**, or gifting **it** is invalidated—though his sale of it or giving it as *mahr* remains valid.

It was transmitted to us through the isnād of Ibn Abī Shaybah: Yaḥyā ibn Ādam narrated to us, from Isrā'īl, from al-Mughīrah ibn Miqsam al-Ḍabbī, from Ibrāhīm al-Nakhaʿī regarding one who pawned his slave and then manumitted him. He said: The manumission is valid, and the creditor has a claim against the debtor. Yaḥyā said: I heard al-Ḥasan ibn Ḥayy say concerning one who pawned a slave and then manumitted him: The manumission is valid, and he is not liable for the slave's labor/services.

The evidence for this is that the debt has been established, so nothing nullifies it except an explicit text from the Quran or the Sunnah; thus, there is no means for its nullification to exist except within these two sources.

It is not permissible to impose compensation or forced labor, because neither Allah the Exalted nor His Messenger—may Allah bless him and grant him

وَهَذَا كَلَامٌ يُشْبِهُ الْهَذَيَانَ إِلَّا أَنَّهُ أَسْوَأُ حَالًا مِنْ الْهَذَيَانِ، لِأَنَّهُ عَلَى حُكْمٍ فِي الدِّينِ بِالْآرَاءِ الْفَاسِدَةِ الَّتِي لَا نَعْلَمُ أَحَدًا قَالَهَا قَبْلَهُ، وَلَا مُتَعَلَّقَ لَهُمْ فِيهَا بِقُرْآنٍ، وَلَا سُنَّةٍ، وَلَا بِرِوَايَةٍ ضَعِيفَةٍ، وَلَا بِقِيَاسٍ، وَلَا بِرَأْيٍ سَدِيدٍ، وَلَا بِقَوْلِ مُتَقَدِّمٍ.

[مَسْأَلَةٌ مَوْت الرَّهْن وَتَلَفُهُ]

١٢١٥ - مَسْأَلَةٌ:

فَإِنْ مَاتَ الرَّهْنُ، أَوْ تَلِفَ، أَوْ أَبِقَ، أَوْ فَسَدَ، أَوْ كَانَتْ أَمَةٌ فَحَمَلَتْ مِنْ سَيِّدِهَا، أَوْ أَعْتَقَهَا، أَوْ بَاعَ الرَّهْنَ، أَوْ وَهَبَهُ، أَوْ تَصَدَّقَ بِهِ، أَوْ أَصْدَقَهُ -: فَكُلُّ ذَلِكَ نَافِذٌ، وَقَدْ بَطَلَ الرَّهْنُ وَبَقِيَ الدَّيْنُ كُلُّهُ بِحَسْبِهِ، وَلَا يُكَلَّفُ الرَّاهِنُ عِوَضًا مَكَانَ شَيْءٍ مِنْ ذَلِكَ، وَلَا يُكَلَّفُ الْمُعْتَقُ وَلَا الْحَامِلُ اسْتِسْعَاءً، إِلَّا أَنْ يَكُونَ الرَّاهِنُ لَا شَيْءَ لَهُ مِنْ أَيْنَ يُنْصِفُ غَرِيمَهُ غَيْرَهُ، فَيَبْطُلُ عِتْقُهُ، وَصَدَقَتُهُ، وَهِبَتُهُ - وَلَا يَبْطُلُ بَيْعُهُ وَلَا إصْدَاقُهُ.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ آدَمَ نا إسْرَائِيلُ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ الضَّبِّيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ رَهَنَ عَبْدَهُ ثُمَّ أَعْتَقَهُ؟ قَالَ: الْعِتْقُ جَائِزٌ، وَيَتْبَعُ الْمُرْتَهِنُ الرَّاهِنَ، قَالَ يَحْيَى: وَسَمِعْت الْحَسَنَ بْنَ حَيٍّ يَقُولُ فِيمَنْ رَهَنَ عَبْدًا ثُمَّ أَعْتَقَهُ: الْعِتْقُ جَائِزٌ، وَلَيْسَ عَلَيْهِ سِعَايَةٌ.

بُرْهَانُ ذَلِكَ -: أَنَّ الدَّيْنَ قَدْ ثَبَتَ فَلَا يُبْطِلُهُ شَيْءٌ إلَّا نَصُّ قُرْآنٍ، أَوْ سُنَّةٍ، فَلَا سَبِيلَ إلَى وُجُودِ إبْطَالِهِ فِيهِمَا.

peace—have commanded this. Obligations are invalid unless established by a text from the Qur'an or Sunnah.

وَلَا يَجُوزُ تَكْلِيفُ عِوَضٍ وَلَا اسْتِسْعَاءٍ، لِأَنَّهُ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالذِّمَمُ بَرِيئَةٌ إلَّا بِنَصِّ قُرْآنٍ، أَوْ سُنَّةٍ.

L19011 As for emancipation, sale, gift, dower, and charity, the pledged property belongs to the pledgor without dispute. All these transactions are permissible regarding one's property according to the explicit texts of the Quran, the Sunnah, and certain consensus, except for those possessing nothing beyond the pledged item, in accordance with the Prophet's saying—peace and blessings be upon him—"Every righteous act is charity," and his statement: "Charity should only be given from surplus wealth."

فَأَمَّا الْعِتْقُ، وَالْبَيْعُ، وَالْهِبَةُ، وَالْإِصْدَاقُ، وَالصَّدَقَةُ، فَإِنَّ الرَّهْنَ مَالُ الرَّاهِنِ بِلَا خِلَافٍ -: وَكُلُّ هَذِهِ الْوُجُوهِ مُبَاحَةٌ لِلْمَرْءِ فِي مَالِهِ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، وَالْإِجْمَاعِ الْمُتَيَقَّنِ، إلَّا مَنْ لَا شَيْءَ لَهُ غَيْرُ ذَلِكَ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ مَعْرُوفٍ صَدَقَةٌ» وَقَوْلِهِ: «الصَّدَقَةُ عَنْ ظَهْرِ غِنًى» .

L19012–19013 Whoever claims that the pledge prevents any part of that, his statement is null and his claim is invalid, for he has no recourse to the Quran or the Sunnah to validate his claim.

فَمَنْ ادَّعَى أَنَّ الِارْتِهَانَ يَمْنَعُ شَيْئًا مِنْ ذَلِكَ فَقَوْلُهُ بَاطِلٌ، وَدَعْوَاهُ فَاسِدَةٌ إذْ لَا سَبِيلَ لَهُ إلَى قُرْآنٍ وَلَا سُنَّةٍ، بِتَصْحِيحِ دَعْوَاهُ.

L19014 He, the Exalted, said: {Say, "Bring forth your proof if you are truthful."} [Al-Baqarah: 111].[2]

قَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

L19015 They differed regarding that—: ʿUthmān al-Battī, Abū Thawr, and Abū Sulaymān said: "The manumission is invalid in all cases" - this being the position of ʿAṭāʾ.

وَقَدْ اخْتَلَفُوا فِي ذَلِكَ -: فَقَالَ عُثْمَانُ الْبَتِّيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ: الْعِتْقُ بَاطِلٌ بِكُلِّ حَالٍ - وَهُوَ قَوْلُ عَطَاءٍ

L19016 Malik and Al-Shāfiʿī said: If he is solvent, his manumission is executed and he is obligated to provide its value as a pledged security in lieu of him. If he is insolvent, the manumission is null and void.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: إنْ كَانَ مُوسِرًا نَفَذَ عِتْقُهُ وَكُلِّفَ قِيمَةً يَجْعَلُهَا رَهْنًا مَكَانَهُ، وَإِنْ كَانَ مُعْسِرًا فَالْعِتْقُ بَاطِلٌ.

L19017 Ahmad ibn Hanbal said: Manumission is effective under all circumstances. If the master is wealthy, he is required to have its value held as collateral. If he is insolvent, he is not required to pay its value, nor is the slave required to undertake labor for self-ransom (istisʿāʾ), and the manumission is effected.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: الْعِتْقُ نَافِذٌ عَلَى كُلِّ حَالٍ، فَإِنْ كَانَ مُوسِرًا كُلِّفَ قِيمَتَهُ تَكُونُ رَهْنًا، وَإِنْ كَانَ مُعْسِرًا لَمْ يُكَلَّفْ قِيمَتَهُ، وَلَا كُلِّفَ الْعَبْدُ اسْتِسْعَاءً وَنَفَذَ الْعِتْقُ.

L19018 Abu Hanifah said: Manumission is effective in all circumstances. Then he divided it into categories as we mention after this.

وَقَالَ أَبُو حَنِيفَةَ: الْعِتْقُ نَافِذٌ بِكُلِّ حَالٍ، ثُمَّ قَسَّمَ كَمَا نَذْكُرُ بَعْدَ هَذَا.

[2] **Qur'an references (L19014):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

وَقَالَ الشَّافِعِيُّ: إنْ رَهَنَ أَمَةً لَهُ فَوَطِئَهَا فَحَمَلَتْ، فَإِنْ كَانَ مُوسِرًا خَرَجَتْ مِنْ الرَّهْنِ وَكُلِّفَ رَهْنًا آخَرَ مَكَانَهَا، وَإِنْ كَانَ مُعْسِرًا، فَمَرَّةً قَالَ: تَخْرُجُ مِنْ الرَّهْنِ وَلَا يُكَلَّفُ رَهْنًا مَكَانَهَا وَلَا تُكَلَّفُ هِيَ شَيْئًا - وَمَرَّةً قَالَ: تُبَاعُ إذَا وَضَعَتْ وَلَا يُبَاعُ الْوَلَدُ، وَتَكْلِيفُ رَهْنٍ آخَرَ -: وَالتَّفْرِيقُ هَاهُنَا بَيْنَ الْمُوسِرِ وَالْمُعْسِرِ، وَبَيْعِهَا بَعْدَ وَضْعِهَا دُونَ وَلَدِهَا - أَقْوَالٌ فَاسِدَةٌ بِلَا بُرْهَانٍ.

L19019 Al-Shāfiʿī said: If a man pledges his female slave and then has intercourse with her, resulting in pregnancy: if he is solvent, she is released from the pledge and he is obligated to provide another pledge in her place. If he is insolvent, in one opinion he stated: She is released from the pledge, **he** is not obligated to provide another pledge in her place, and **she** is not held legally responsible for anything. In another opinion, he said: She is sold after delivering the child (without selling the child), and **he** is obligated to provide another pledge. The distinction here between the solvent and insolvent [man], and the permissibility of selling her after delivery without selling her child, are invalid opinions lacking evidence.

وَقَالَ أَبُو ثَوْرٍ: هِيَ خَارِجَةٌ مِنْ الرَّهْنِ، وَلَا يُكَلَّفُ لَا هُوَ وَلَا هِيَ شَيْئًا سَوَاءٌ مُعْسِرًا كَانَ أَوْ مُوسِرًا.

L19020 Abu Thawr said: It is outside the scope of the collateral, and neither the pledger nor the pledgee is obligated to do anything, whether the pledger was insolvent or solvent.

وَرُوِّينَا عَنْ قَتَادَةَ: أَنَّهَا تُبَاعُ هِيَ، وَيُكَلَّفُ سَيِّدُهَا أَنْ يَفْتِكَ وَلَدَهُ مِنْهَا.

L19021 And it has been narrated to us from Qatādah that she is to be sold, and her master is obligated to ransom his child from her.

قَالَ أَبُو مُحَمَّد: افْتِكَاكُ الْوَلَدِ لَا نَدْرِي وَجْهَهُ، وَلَئِنْ كَانَ مَمْلُوكًا فَلِأَيِّ مَعْنًى يُكَلَّفُ وَالِدُهُ افْتِكَاكَهُ؟ وَإِنْ كَانَ حُرًّا فَلِمَ يُبَاعُ حَتَّى يَحْتَاجَ إلَى افْتِكَاكِهِ.

L19022 Abu Muhammad said: We do not know the reason for ransoming the child. If he is enslaved, why should his parent be obligated to ransom him? And if he is free, why would he be sold so that he needs to be ransomed?

وَرُوِّينَا عَنْ ابْنِ شُبْرُمَةَ: أَنَّهَا تُسْتَسْعَى - وَكَذَلِكَ الْعَبْدُ الْمَرْهُونُ إذَا أُعْتِقَ.

L19023 It was narrated to us from Ibn Shubrumah that she must be compelled to labor, and likewise the male slave given as collateral if he is manumitted.

قَالَ أَبُو مُحَمَّد: وَهَذَا عَجَبٌ: وَمَا نَدْرِي مِنْ أَيْنَ حَلَّ أَخْذُ مَالِهِمَا وَتَكْلِيفِهِمَا غَرَامَةً لَمْ يُكَلِّفْهُمَا اللَّهُ تَعَالَى قَطُّ إيَّاهَا، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا جَعَلَ اللَّهُ تَعَالَى فِيهِمَا شِرْكًا لِلْمُرْتَهِنِ فَيُسْتَسْعَى لَهُ؟

L19024 Abu Muhammad said: This is perplexing—we do not know from what basis arose the permissibility of seizing their wealth and imposing upon them a compensation that Allah the Exalted never ordained for them at all, nor His Messenger (peace be upon him). Nor has Allah the Exalted granted the mortgagee any partnership in their property, such that labor should be demanded for his benefit?

وَأَمَّا مَالِكٌ فَقَالَ: إنْ كَانَ مُوسِرًا كُلِّفَ أَنْ يَأْتِيَ بِقِيمَتِهَا فَتَكُونُ الْقِيمَةُ رَهْنًا وَتَخْرُجُ هِيَ مِنْ الرَّهْنِ، وَإِنْ كَانَ مُعْسِرًا فَإِنْ كَانَتْ تَخْرُجُ إلَيْهِ وَتَأْتِيه فَهِيَ خَارِجَةٌ مِنْ الرَّهْنِ،

L19025–19026 As for Malik, he said: If the debtor is wealthy, he must provide its equivalent value, which is then held as a pledge, and the original item is released from the pledge. If he is indigent, and the item is released and returned to him, it is removed from the pledge, no penalty is imposed, and he is not required to substitute another pledge. He remains liable solely for the debt owed. If he

unlawfully seizes it, the item is sold, and he is given its offspring from the proceeds.

وَلَا تُتْبَعُ بِغَرَامَةٍ وَلَا يُكَلَّفُ هُوَ رَهْنًا مَكَانَهَا، وَلَكِنْ يُتْبَعُ بِالدَّيْنِ الَّذِي عَلَيْهِ فَقَطْ، وَإِنْ كَانَ تَسَوَّرَ عَلَيْهَا بِيعَتْ هِيَ وَأُعْطِيَ هُوَ وَلَدَهُ مِنْهَا.

L19027 Abu Muhammad said: There are five errors in this statement—the first being his differentiation between the insolvent and the solvent in that matter, for the rightful claim is the same for both.

قَالَ أَبُو مُحَمَّدٍ: فِي هَذَا الْقَوْلِ خَمْسَةُ أَوْجُهٍ مِنْ الْخَطَإِ -: وَهِيَ: تَفْرِيقُهُ بَيْنَ الْمُعْسِرِ، وَالْمُوسِرِ، فِي ذَلِكَ وَالْحَقُّ عَلَيْهِمَا وَاحِدٌ.

L19028 Requiring him to bring a portion of his wealth to serve as a pledge, though he never established any pledge agreement concerning it.

وَتَكْلِيفُهُ إحْضَارَ قِطْعَةٍ مِنْ مَالِهِ لِتُرْهَنَ لَمْ يَعْقِدْ قَطُّ فِيهَا رَهْنًا.

L19029 And his distinguishing between her departure to her master and his scaling of her wall.

وَتَفْرِيقُهُ بَيْنَ خُرُوجِهَا إلَى سَيِّدِهَا وَبَيْنَ تَسَوُّرِهِ عَلَيْهَا.

L19030 It is secure in both aspects, yet it is pledged in both aspects—a matter of profound wonder.

وَهُمَا آمِنَةٌ فِي كِلَا الْوَجْهَيْنِ، وَهِيَ مَرْهُونَةٌ فِي كِلَا الْوَجْهَيْنِ، وَهَذَا عَجَبٌ جِدًّا.

L19031 His selling her while she is an umm walad (a slave mother who bore her master's child), and his removal of her child from the jurisdiction of the pledge without imposing compensation—unlike the mother, who remains subject to the pledge's rulings. In his view, neither may be pledged.

وَبَيْعِهِ إيَّاهَا وَهِيَ أُمُّ وَلَدٍ، وَإِخْرَاجِهِ وَلَدَهَا مِنْ حُكْمِ الرَّهْنِ بِلَا تَكْلِيفِ عِوَضٍ بِخِلَافِ الْأُمِّ، وَكِلَاهُمَا عِنْدَهُ لَا يَجُوزُ رَهْنُهُمَا.

L19032 All of these are egregiously erroneous arguments, having no connection to the Quran, the Sunnah, any weak narration, consensus, evidence, analogy, an opinion with a valid basis, the statement of a companion—no, not even the statement of anyone known before such a companion.

وَكُلُّ هَذِهِ أَوْجُهٌ فَاحِشَةُ الْخَطَإِ لَا مُتَعَلَّقَ لَهَا فِيهَا بِقُرْآنٍ وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا إجْمَاعٍ، وَلَا دَلِيلٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا قَوْلِ صَاحِبٍ - نَعَمْ، وَلَا قَوْلِ أَحَدٍ نَعْلَمُهُ قَبْلَهُ.

L19033 Abu Hanifa and his companions said: If she becomes pregnant and he acknowledges her pregnancy, then if the debtor is solvent, the pledged item is released from the pledge, and he is obligated to repay the debt immediately if it is due, or to provide a pledge equivalent to its value if the debt is deferred.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ إنْ حَمَلَتْ فَأَقَرَّ بِحَمْلِهَا، فَإِنْ كَانَ مُوسِرًا خَرَجَتْ مِنْ الرَّهْنِ وَكُلِّفَ قَضَاءَ الدَّيْنِ إنْ كَانَ حَالًّا، أَوْ كُلِّفَ رَهْنًا بِقِيمَتِهَا إنْ كَانَ إلَى أَجَلٍ.

L19034 If she is insolvent, she is compelled to work for the immediate debt regardless of its amount, and she cannot seek recourse against her master, nor is her child subjected to compulsory labor for the debt. If the debt is deferred, she is compelled to work equivalent to her assessed value alone, whereby she

فَإِنْ كَانَ مُعْسِرًا كُلِّفَتْ أَنْ تُسْتَسْعَى فِي الدَّيْنِ الْحَالِ بَالِغًا مَا بَلَغَ، وَلَا تَرْجِعُ بِهِ عَلَى سَيِّدِهَا، وَلَا يُكَلَّفُ وَلَدُهَا سِعَايَةً، فَإِنْ كَانَ الدَّيْنُ إلَى أَجَلٍ كُلِّفَتْ أَنْ تُسْتَسْعَى فِي

قِيمَتِهَا فَقَطْ، فَجُعِلَتْ رَهْنًا مَكَانَهَا، فَإِذَا حَلَّ أَجَلُ الدَّيْنِ كُلِّفَتْ مِنْ ذِي قَبْلِ أَنْ تُسْتَسْعَى فِي بَاقِي الدَّيْنِ إنْ كَانَ أَكْثَرَ مِنْ قِيمَتِهَا.

L19035 قَالُوا: فَإِنْ كَانَ السَّيِّدُ اسْتَلْحَقَ وَلَدَهَا بَعْدَ وَضْعِهَا لَهُ - وَهُوَ مُعْسِرٌ - قَسَّمَ الدَّيْنَ عَلَى قِيمَتِهَا يَوْمَ ارْتَهَنَهَا، وَعَلَى قِيمَةِ وَلَدِهَا يَوْمَ اُسْتُلْحِقَ، فَمَا أَصَابَ الْأُمَّ سَعَتْ فِيهِ بَالِغًا مَا بَلَغَ لِلْمُرْتَهِنِ، وَلَمْ تَرْجِعْ بِهِ عَلَى سَيِّدِهَا، وَمَا أَصَابَ الْوَلَدَ سَعَى فِي الْأَقَلِّ مِنْ الدَّيْنِ أَوْ قِيمَتِهِ وَرَجَعَ بِهِ عَلَى أَبِيهِ وَيَأْخُذُ الْمُرْتَهِنُ كُلَّ ذَلِكَ.

L19036 قَالُوا: فَلَوْ كَانَ الرَّهْنُ عَبْدًا فَأَعْتَقَهُ نَفَذَ فِيهِ الْعِتْقُ، وَخَرَجَ مِنْ الرَّهْنِ.

L19037–19038 فَإِنْ كَانَ الرَّاهِنُ مُوسِرًا وَالدَّيْنُ حَالًّا كُلِّفَ غُرْمَ الدَّيْنِ.

L19039 فَإِنْ كَانَ الدَّيْنُ إلَى أَجَلٍ كُلِّفَ السَّيِّدُ قِيمَةَ الْعَبْدِ تَكُونُ رَهْنًا مَكَانَهُ.

L19040 فَإِنْ كَانَ مُعْسِرًا اُسْتُسْعِيَ الْعَبْدُ فِي الْأَقَلِّ مِنْ قِيمَتِهِ أَوْ الدَّيْنِ، وَرَجَعَ بِهِ عَلَى سَيِّدِهِ، وَرَجَعَ الْمُرْتَهِنُ عَلَى الرَّاهِنِ بِبَاقِي دَيْنِهِ.

L19041 قَالَ أَبُو مُحَمَّدٍ: إنَّ فِي هَذِهِ الْأَقْوَالِ لَعِبْرَةً لِمَنْ اعْتَبَرَ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ - وَإِنَّ مِنْ الْعَجَبِ تَفْرِيقُهُ بَيْنَ مَا تُسْتَسْعَى فِيهِ الْأُمُّ وَبَيْنَ مَا يُسْتَسْعَى فِيهِ الْعَبْدُ الْمُعْتَقُ، وَبَيْنَ مَا يُسْتَسْعَى فِيهِ الْوَلَدُ - وَهُوَ عِنْدَهُ حُرٌّ لَاحِقُ النَّسَبِ - فَمَا بَالُ أَمَةٍ خَرَجَتْ أُمَّ وَلَدٍ مِنْ سَيِّدِهَا بِوَطْءٍ مُبَاحٍ.

L19042 وَمَا بَالُ إنْسَانٍ حُرٍّ ابْنِ حُرٍّ وُلِدَ عَلَى فِرَاشِ أَبِيهِ.

is pledged as collateral instead. When the debt matures, she is compelled beforehand to work for the remaining debt if it exceeds her value.

They said: If the master legally claims paternity of her child after she delivers it - while being insolvent - the debt is apportioned according to her market value on the day she was pledged and her child's value on the day of paternity acknowledgment. Whatever portion corresponds to the mother, she becomes responsible for working to pay it to the pledgee regardless of how much it amounts to, and she may not recover any of it from her master. Whatever portion corresponds to the child, he becomes liable for the lesser amount between the remaining debt or his own value, while retaining the right to seek reimbursement from his father. The pledgee is entitled to receive all such payments.

They said: If the pledge is a slave and [the pledgor] emancipates him, the emancipation takes effect upon him, and he is released from the pledge.

If the pledgor is solvent and the debt is due, he shall be charged with bearing the liability of the debt.

If the debt is payable at a specified term, the master is obligated to pledge the slave's value as collateral in lieu of the slave.

If he is insolvent, the slave is compelled to work for the lesser of the slave's value or the debt, and the pledgee may seek the resulting amount from the slave's master and claim the remainder of the debt from the pledgor.

Abu Muhammad said: Truly, in these statements lies a lesson for those who take heed—and we seek refuge in Allah from disgrace—and among the astonishing matters is his distinction between cases requiring the mother's labor, those requiring the labor of an emancipated slave, and those requiring the labor of a child—who is in his view free with established lineage. How then does a female slave become an *umm walad* (mother of a child) by her master through lawful intercourse?

What is the status of a free person, born to a free father and upon his father's bed?

وَمَا بَالُ عَبْدٍ عَتَقَ يُكَلَّفُونَ الْغَرَامَاتِ دُونَ جِنَايَةٍ جَنَوْهَا وَلَا ذَنْبٍ اقْتَرَفُوهُ فَتُسْتَبَاحُ أَمْوَالُهُمْ بِالْبَاطِلِ، وَيُكَلَّفُونَ مَا لَمْ يُكَلِّفْهُمْ اللَّهُ تَعَالَى بِهِ قَطُّ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَلَا أَحَدٌ مِنْ الْمُسْلِمِينَ قَبْلَ أَبِي حَنِيفَةَ ثُمَّ يُكَلِّفُونَهُمْ مَا ذَكَرْنَا، وَيُسَلِّمُونَ صَاحِبَ الْجِنَايَةِ عِنْدَهُمْ مِنْ الْغَرَامَةِ؟ مَا شَاءَ اللَّهُ كَانَ.

L19043 Why is it that a slave who has been emancipated is burdened with prescribed penalties without having committed any criminal offense or sinful act, so their wealth is unlawfully appropriated under false pretenses, and they are charged with what Allah the Exalted has never legislated as an obligation—nor His Messenger (peace be upon him), nor any Muslim before Abū Ḥanīfah? Yet they impose these obligations upon them while releasing the actual perpetrator among them from liability for the penalty? Allah's decree prevails.

وَكُلُّ مَا يَدْخُلُ عَلَى مَالِكٍ مِمَّا ذَكَرْنَا قَبْلُ فَإِنَّهُ يَدْخُلُ عَلَى أَبِي حَنِيفَةَ إلَّا فَرْقَ مَالِكٍ بَيْنَ خُرُوجِهَا إلَيْهِ وَبَيْنَ تَسَوُّرِهِ عَلَيْهَا.

L19044 And all that applies to Mālik from what we previously mentioned also applies to Abū Ḥanīfah, except for Mālik's distinction between [the wife's] departure to [the husband] and [the husband's] act of scaling into [her premises].

وَيَزِيدُ مِنْ التَّنَاقُضِ وَالْفَسَادِ فِي قَوْلِ أَبِي حَنِيفَةَ تَفْرِيقُهُ بَيْنَ الدَّيْنِ الْحَالِ وَالْمُؤَجَّلِ فِي ذَلِكَ - وَتَفْرِيقُهُ بَيْنَ مَا تُكَلَّفُهُ الْأُمُّ وَبَيْنَ مَا يُكَلَّفُهُ الْوَلَدُ.

L19045 A further element amplifying the contradiction and juristic invalidity in Abū Ḥanīfah's position is his distinction between immediate and deferred debts in this matter, along with his differentiation between the legal obligations imposed upon the mother and those assigned to the child.

وَتَفْرِيقُهُ بَيْنَ إقْرَارِهِ بِالْحَمْلِ وَبَيْنَ إقْرَارِهِ بِالْوَلَدِ بَعْدَ الْوَضْعِ فِيمَا يُكَلَّفُهُ مِنْ الِاسْتِسْعَاءِ فِي الْحَالَيْنِ.

L19046 Distinguishing between his acknowledgment of pregnancy and his acknowledgment of the child after childbirth regarding the obligation imposed on him to seek to provide maintenance in both cases.

وَتَفْرِيقُهُ بَيْنَ مَا تُكَلَّفُهُ أُمُّ الْوَلَدِ وَبَيْنَ مَا يُكَلَّفُهُ الْعَبْدُ بِعِتْقٍ.

L19047 His distinction between what the umm al-walad is obligated to undertake and between what the slave is obligated to undertake by manumission.

وَتَفْرِيقُهُ بَيْنَ الرُّجُوعِ مَرَّةً عَلَى السَّيِّدِ بِمَا غَرِمَ الْغَارِمُ مِنْهُمْ وَبَيْنَ مَنْعِهِمْ مِنْ الرُّجُوعِ عَلَيْهِ مَرَّةً بِذَلِكَ.

L19048 Distinguishing between permitting creditors to seek recourse against the master once for the debt owed by the indebted party among them and preventing them from seeking recourse against him even once for that debt.

وَأَغْرَبُ مِنْ ذَلِكَ كُلِّهِ قَوْلُهُ: إنَّ الْوَلَدَ يُسْتَسْعَى، فَلَيْتَ شِعْرِي إلَى مَتَى بَقِيَ هَذَا الدَّيْنُ الْمَسْخُوطُ حَتَّى وُلِدَ الْمَحْمُولُ بِهِ، وَحَتَّى فُطِمَ، وَكَبِرَ، وَبَلَغَ، وَتَصَرَّفَ؟ أَفَإِنْ مَاتَ قَبْلَ ذَلِكَ مَاذَا يَكُونُ؟ كُلُّ هَذَا بِلَا دَلِيلٍ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ مِنْ وَلَدِ آدَمَ قَبْلَهُمْ، وَلَا قِيَاسٍ أَصْلًا، وَلَا رَأْيٍ لَهُ وَجْهٌ مَا

L19049–19051 Stranger than all of this is his statement: "The child is to be compelled to work." If only I knew until when this reprehensible debt persists—until the child in the womb is born, until he is weaned, grows up, reaches maturity, and conducts his affairs? What if he dies before that—what then? All of this stands without any evidence at all—neither from the Qur'an, nor the Sunnah, nor even an unsound narration. Nor the statement of any of the children of Adam before them, nor any analogy whatsoever, nor any opinion with any valid basis - like minds that produced these statements cannot even safely

manage a burning seed, so how could they control matters of religion? Indeed, Allah the Exalted's blessings upon us are immense through His granting us success in following His Book and the Sunnah of His Messenger—may Allah bless him and grant him peace.

مِثْلُ عُقُولٍ أَنْتَجَتْ هَذِهِ الْأَقْوَالَ بِمَأْمُونَةٍ عَلَى تَدْبِيرِ نَوَاةٍ مُحْرِقَةٍ، فَكَيْفَ عَلَى التَّحَكُّمِ فِي الدِّينِ؟ وَإِنَّ نِعَمَ اللَّهِ تَعَالَى عَلَيْنَا لَعَظِيمَةٌ فِي تَوْفِيقِهِ لَنَا إِلَى اتِّبَاعِ كِتَابِهِ، وَسُنَنِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19052 Nor should they obfuscate by claiming this is analogized to the established ruling of working for self-manumission (istis'ā') transmitted from the Prophet—peace and blessings be upon him—regarding a jointly owned slave whose master manumits him while insolvent. For that ruling pertains to a slave owned by two or more co-owners in partnership, whereas here there is no owner besides the manumitter of his slave and the master who has fathered a child with his female slave (umm walad).

وَلَا يُمَوِّهُونَ بِأَنْ يَقُولَ: قِسْنَا ذَلِكَ عَلَى الِاسْتِسْعَاءِ الثَّابِتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْعَبْدِ الْمُشْتَرَكِ يَعْتِقُهُ سَيِّدُهُ وَهُوَ مُعْسِرٌ، فَإِنَّ ذَلِكَ الْحُكْمَ فِي عَبْدٍ يَمْلِكُهُ اثْنَانِ فَصَاعِدًا وَلَيْسَ هَاهُنَا مَالِكٌ غَيْرَ الْمُعْتِقِ عَبْدَهُ وَالْمُوَلِّدِ أَمَتَهُ.

L19053 If analogy were valid, this would represent the epitome of falsehood, for it constitutes applying a ruling to what bears no resemblance to it, neither in application nor in source. Abū Muḥammad said: Then we ask them: What distinguishes emancipating it, gifting it, selling it, and giving it as a dower, given that you permit sale without consensus yet prohibit the rest? Regarding the destruction of the pledged item without any action by the mortgagor or mortgagee, jurists hold five opinions: One group stated that they mutually relinquish the obligation—the explanation of this being that if the pledged item's value equals the debt, the debt is nullified for the obligor with no liability imposed on the pledged item.

وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُ قِيَاسُ حُكْمٍ عَلَى مَا لَا يُشْبِهُ، وَعَلَى مَا لَيْسَ مِنْهُ فِي وُرُودٍ وَلَا فِي صَدْرٍ؟ قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَسْأَلُهُمْ؟ مَا الْفَرْقُ بَيْنَ عِتْقِهِ وَهِبَتِهِ وَبَيْعِهِ وَإِصْدَاقِهِ، إِذْ أَجَزْتُمُ الْبَيْعَ بِغَيْرِ إِجْمَاعٍ، وَمَنَعْتُمْ مِنْ سَائِرِ ذَلِكَ؟ وَأَمَّا هَلَاكُ الرَّهْنِ بِغَيْرِ فِعْلِ الرَّاهِنِ وَلَا الْمُرْتَهِنِ، فَلِلنَّاسِ فِيهِ خَمْسَةُ أَقْوَالٍ -: قَالَتْ طَائِفَةٌ: يَتَرَادَّانِ الْفَضْلَ -: تَفْسِيرُ ذَلِكَ -: أَنَّ الرَّهْنَ إِنْ كَانَتْ قِيمَتُهُ وَقِيمَةُ الدَّيْنِ سَوَاءً، فَقَدْ سَقَطَ الدَّيْنُ عَنِ الَّذِي كَانَ عَلَيْهِ وَلَا ضَمَانَ عَلَيْهِ فِي الرَّهْنِ.

L19054 If the pledge's value is greater, the debt is discharged in full, and the pledgee is required to return to the pledgor the surplus amount by which the value of the pledge exceeds the debt.

فَإِنْ كَانَتْ قِيمَةُ الرَّهْنِ أَكْثَرَ سَقَطَ الدَّيْنُ بِمِقْدَارِهِ مِنَ الرَّهْنِ وَكُلِّفَ الْمُرْتَهِنُ أَنْ يُؤَدِّيَ إِلَى الرَّاهِنِ مِقْدَارَ مَا كَانَ تَزِيدُهُ قِيمَةُ الرَّهْنِ عَلَى قِيمَةِ الدَّيْنِ.

L19055 If the value of the pledge is less than the debt, the debt is reduced by the amount of the pledge's value, and the pledgor must pay the pledgee the excess of the debt over the pledge's value.

وَإِنْ كَانَتْ قِيمَةُ الرَّهْنِ أَقَلَّ سَقَطَ مِنَ الدَّيْنِ بِمِقْدَارِهِ وَأَدَّى الرَّاهِنُ إِلَى الْمُرْتَهِنِ فَضْلَ مَا زَادَ الدَّيْنُ عَلَى قِيمَةِ الرَّهْنِ.

L19056 It has been narrated to us through the chain of Al-Ḥakam and Qatādah that ʿAlī ibn Abī Ṭālib said: "The two parties return the surplus—meaning, in the case of collateral, the surplus perishes."

رُوِّينَا مِنْ طَرِيقِ الْحَكَمِ، وَقَتَادَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: يَتَرَاجَعَانِ الْفَضْلَ - يَعْنِي فِي الرَّهْنِ يَهْلَكُ.

L19057 It has also been reported from Ibn ʾUmar — and this is the opinion of ʾUbayd Allah ibn al-Hasan, Abu ʾUbayd, and Isḥāq ibn Rāhawayh.

وَرُوِيَ أَيْضًا عَنْ ابْنِ عُمَرَ - وَهُوَ قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَأَبِي عُبَيْدٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L19058–19060 A group maintained that if the collateral's value equals or exceeds the debt's value, the entire debt becomes void, and the pledgee incurs no liability for the collateral's excess value over the debt. If the collateral's value is less than the debt's value, the debt diminishes by the amount of the collateral's value, and the pledgor must pay the pledgee what... Remaining from his debt—: This has been reported to us through the chain of Matar al-Warraq, from ʻAta', from ʻUbayd ibn ʻUmayr, from ʻUmar ibn al-Khattab.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَتْ قِيمَةُ الرَّهْنِ أَكْثَرَ مِنْ قِيمَةِ الدَّيْنِ أَوْ مِثْلَهَا فَقَدْ بَطَلَ الدَّيْنُ كُلُّهُ، وَلَا غَرَامَةَ عَلَى الْمُرْتَهِنِ فِي زِيَادَةِ قِيمَةِ الرَّهْنِ عَلَى قِيمَةِ الدَّيْنِ، فَإِنْ كَانَتْ قِيمَةُ الرَّهْنِ أَقَلَّ مِنْ قِيمَةِ الدَّيْنِ سَقَطَ مِنَ الدَّيْنِ بِمِقْدَارِ قِيمَةِ الرَّهْنِ وَأَدَّى الرَّاهِنُ إِلَى الْمُرْتَهِنِ مَا بَقِيَ مِنْ دَيْنِهِ -: رُوِّينَا هَذَا مِنْ طَرِيقِ مَطَرٍ الْوَرَّاقِ عَنْ عَطَاءٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ

L19061 And via the chain of Wakīʿ from ʿAlī ibn Ṣāliḥ ibn Ḥayy from ʿAbd al-Aʿlā ibn ʿĀmir from Muḥammad ibn al-Ḥanafiyyah from ʿAlī ibn Abī Ṭālib; and via the chain of Qatādah from ʿAbd Rabbihi from Abī ʿIyāḍ from ʿAlī.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَلِيِّ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ عَبْدِ الْأَعْلَى بْنِ عَامِرٍ عَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ -: وَمِنْ طَرِيقِ قَتَادَةَ عَنْ عَبْدِ رَبِّهِ عَنْ أَبِي عِيَاضٍ عَنْ عَلِيٍّ

L19062 And through the chain of Wakiʿ from Idrīs al-Awdī from Ibrāhīm ibn ʿUmayr, who said: I heard Ibn ʿUmar say the same—this being the opinion of Ibrāhīm al-Nakhaʿī and Qatādah—and this is the position upheld by Abū Ḥanīfah and his companions.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِدْرِيسَ الْأَوْدِيِّ عَنْ إِبْرَاهِيمَ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: مِثْلَ ذَلِكَ - وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَتَادَةَ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

L19063 A group held that the pledge is forfeited in exchange for its value—whether equal to, less than, or greater than the debt. If the pledge is destroyed, the debt is extinguished and neither party compensates the other. This position is authentically reported from al-Ḥasan al-Baṣrī, Ibrāhīm al-Nakhaʿī, Shurayḥ, al-Shaʿbī, al-Zuhrī, and Qatādah. It is also authentically reported from Ṭāwus regarding pledging an animal. It has been narrated to us from al-Nakhaʿī and al-Shaʿbī concerning one who took a slave as a pledge that subsequently became one-eyed while in his custody: they ruled, "The debtor forfeits half of the debt."

وَقَالَتْ طَائِفَةٌ: ذَهَبَ الرَّهْنُ بِمَا فِيهِ سَوَاءٌ كَانَ كَقِيمَةِ الدَّيْنِ أَوْ أَقَلَّ أَوْ أَكْثَرَ إِذَا تَلِفَ سَقَطَ الدَّيْنُ وَلَا يَغْرَمُ أَحَدُهُمَا لِلْآخَرِ شَيْئًا - صَحَّ هَذَا عَنِ الْحَسَنِ الْبَصْرِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَشُرَيْحٍ، وَالشَّعْبِيِّ، وَالزُّهْرِيِّ، وَقَتَادَةَ - وَصَحَّ عَنْ طَاوُوسٍ فِي الْحَيَوَانِ يَرْتَهِنُ - وَرُوِّينَا عَنِ النَّخَعِيِّ، وَالشَّعْبِيِّ فِيمَنِ ارْتَهَنَ عَبْدًا فَأَعْوَرَ عِنْدَهُ قَالَا: ذَهَبَ بِنِصْفِ دَيْنِهِ.

L19064 A group said: If the pledge is of concealed items like garments or similar possessions, the pledgee bears liability for any loss incurred up to its full

value, while the debt remains adjusted accordingly until fully settled. If the pledge is visible property like real estate or livestock, the pledgee bears no liability, and the debt remains in full until completely repaid. This is the opinion of Mālik.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ الرَّهْنُ مِمَّا يَخْفَى كَالثِّيَابِ، وَنَحْوِهَا، فَضَمَانُ مَا تَلِفَ مِنْهَا عَلَى الْمُرْتَهِنِ بَالِغَةً مَا بَلَغَتْ وَيَبْقَى دَيْنُهُ بِحَسَبِهِ حَتَّى يُؤَدِّيَ إِلَيْهِ بِكَمَالِهِ، وَإِنْ كَانَ الرَّهْنُ مِمَّا يَظْهَرُ كَالْعَقَارِ، وَالْحَيَوَانِ، فَلَا ضَمَانَ فِيهِ عَلَى الْمُرْتَهِنِ وَدَيْنُهُ بَاقٍ بِكَمَالِهِ حَتَّى يُؤَدِّيَ إِلَيْهِ - وَهُوَ قَوْلُ مَالِكٍ.

L19065 A group said: Whether it is from what is concealed or from what is not concealed, there is no liability whatsoever on the pledgee, and the debt remains in its entirety until it is repaid to him. This is the opinion of Al-Shāfiʿī, Abū Thawr, Aḥmad ibn Ḥanbal, Abū Sulaymān, and their companions.

وَقَالَتْ طَائِفَةٌ: سَوَاءٌ كَانَ مِمَّا يَخْفَى أَوْ مِمَّا لَا يَخْفَى لَا ضَمَانَ فِيهِ عَلَى الْمُرْتَهِنِ أَصْلًا وَدَيْنُهُ بَاقٍ بِكَمَالِهِ حَتَّى يُؤَدِّيَ إِلَيْهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L19066 It was narrated to us via the chain of Al-Hajjaj ibn Al-Minhal: Hamam ibn Yahya reported to us from Qatadah, from Khilas, that Ali ibn Abi Talib said regarding collateral: “Both parties are to return the surplus. If a calamity befalls it, the debtor is released from liability.”

وَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى أَنَا قَتَادَةَ عَنْ خِلَاسٍ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الرَّهْنِ: يَتَرَادَّانِ الْفَضْلَ فَإِنْ أَصَابَتْهُ جَائِحَةٌ بَرِئَ

L19067 It has been established that Ali ibn Abi Talib did not consider excess liability due except for what was destroyed through the mortgagee’s culpable action, not for what was affected by a calamity. Rather, he maintained the mortgagor’s exemption from liability for what was struck by a calamity. It is authentically reported from Ata that he said: “The pledge serves as collateral. If it perishes, no liability falls upon the mortgagor - the creditor claims the entire debt owed to him.” From Az-Zuhri, it is reported regarding a perished pledge: “The creditor’s right remains valid. It perished while under the ownership of the pledge’s owner - his property remains his, and the liability rests upon him.”

فَصَحَّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ لَمْ يَرَ تُرَادَ الْفَضْلِ إِلَّا فِيمَا تَلِفَ بِجِنَايَةِ الْمُرْتَهِنِ لَا فِيمَا أَصَابَتْهُ جَائِحَةٌ، بَلْ رَأَى الْبَرَاءَةَ لَهُ مِمَّا أَصَابَتْهُ جَائِحَةٌ - وَصَحَّ عَنْ عَطَاءٍ أَنَّهُ قَالَ: الرَّهْنُ وَثِيقَةٌ إِنْ هَلَكَ فَلَيْسَ عَلَيْهِ غُرْمٌ يَأْخُذُ الدَّيْنَ الَّذِي لَهُ كُلَّهُ. وَعَنْ الزُّهْرِيِّ أَنَّهُ قَالَ فِي الرَّهْنِ يَهْلَكُ أَنَّهُ لَمْ يَذْهَبْ حَقُّ هَذَا إِنَّمَا هَلَكَ مِنْ رَبِّ الرَّهْنِ لَهُ غَنَمُهُ وَعَلَيْهِ غُرْمُهُ.

L19068–19069 Abū Muḥammad said: As for Mālik’s distinction between what is concealed and what is not concealed—this is a statement for which there is no proof of its validity, neither from the Qur’ān, nor the Sunnah, nor a weak narration, nor analogy, nor the opinion of anyone we know of before him—thus it is invalidated. They based it solely on suspicion; and suspicion is a false assumption for which the one who holds it commits a sin, and it is not

قَالَ أَبُو مُحَمَّدٍ: أَمَّا تَفْرِيقُ مَالِكٍ بَيْنَ مَا يَخْفَى وَبَيْنَ مَا لَا يَخْفَى -: فَقَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ أَحَدٍ

permissible to assert anything based on it. Suspicion is directed toward anyone and in every matter.

نَعْلَمُهُ قَبْلَهُ - فَسَقَطَ، وَإِنَّمَا بَنَوْهُ عَلَى التُّهْمَةِ، وَالتُّهْمَةُ ظَنٌّ كَاذِبٌ يَأْثَمُ صَاحِبُهُ وَلَا يَحِلُّ الْقَوْلُ بِهِ، وَالتُّهْمَةُ مُتَوَجِّهَةٌ إلَى أَحَدٍ وَفِي كُلِّ شَيْءٍ.

L19070 As for the statement of Abū Ḥanīfah, they argued using a mursal narration which we have narrated via the chain of Saʿīd ibn al-Musayyab that the Messenger of Allāh - peace be upon him - said: "The pledge is not seized from its owner: he retains its benefits and bears its liabilities. The pledge is not seized from the recipient: he retains its benefits and bears its liabilities."

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَإِنَّهُمْ احْتَجُّوا بِخَبَرٍ مُرْسَلٍ رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يُغْلَقُ الرَّهْنُ مِنْ صَاحِبِهِ لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ، لَا يُغْلَقُ الرَّهْنُ مِمَّنْ رُهِنَهُ لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ» .

L19071 And they said: The Companions have unanimously agreed on the pledgee's liability concerning the collateral, and the pledgee is a trustee for any surplus value of the collateral beyond the amount of the debt.

وَقَالُوا: قَدْ أَجْمَعَ الصَّحَابَةُ عَلَى تَضْمِينِ الرَّهْنِ، وَالْمُرْتَهِنُ أَمِينٌ فِيمَا زَادَ مِنْ قِيمَةِ الرَّهْنِ عَلَى قِيمَةِ دَيْنِهِ.

L19072 Abu Muhammad said: As for their assertion that the mortgagee is a custodian regarding the surplus value of the pledge exceeding his debt, this is a spurious claim and an arbitrary distinction. He is either wholly a custodian or not a custodian at all.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُهُمْ: إنَّ الْمُرْتَهِنَ أَمِينٌ فِيمَا فَضَلَ مِنْ قِيمَةِ الرَّهْنِ عَلَى قِيمَةِ دَيْنِهِ، فَدَعْوَى فَاسِدَةٌ، وَتَفْرِيقٌ بِلَا دَلِيلٍ، وَمَا هُوَ إلَّا أَمِينٌ فِي الْكُلِّ أَوْ غَيْرُ أَمِينٍ فِي الْكُلِّ.

L19073 As for their assertion that the Companions unanimously agreed on holding the pledgor liable, this is a claim they made by following their customary practice—lying casually about the Companions with effortless readiness on their tongues.

وَأَمَّا قَوْلُهُمْ: أَجْمَعَ الصَّحَابَةُ عَلَى تَضْمِينِ الرَّهْنِ، فَقَوْلٌ جَرَوْا فِيهِ عَلَى عَادَتِهِمْ الْخَفِيفَةِ عَلَى أَلْسِنَتِهِمْ مِنْ الْكَذِبِ عَلَى الصَّحَابَةِ بِلَا مُؤْنَةٍ.

L19074 And O Muslims! Has there been any statement concerning this matter from any of the Companions except ʿUmar, ʿAlī, and Ibn ʿUmar only?

وَيَا لِلْمُسْلِمِينَ هَلْ جَاءَ فِي هَذَا كَلِمَةٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إلَّا عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ عُمَرَ فَقَطْ.

L19075 As for ʿUmar, this is not authentically established from him because it is transmitted through the narration of ʿUbayd ibn ʿUmayr. ʿUbayd was either born after ʿUmar's death or met him as a young child who did not hear anything from him.

فَأَمَّا عُمَرُ فَلَمْ يَصِحَّ عَنْهُ ذَلِكَ، لِأَنَّهُ مِنْ رِوَايَةِ عُبَيْدِ بْنِ عُمَيْرٍ وَعُبَيْدٌ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ أَوْ أَدْرَكَهُ صَغِيرًا لَمْ يَسْمَعْ مِنْهُ شَيْئًا.

L19076–19077 As for Ibn Umar, it is not soundly attributed to him because it originates from the narration of Ibrahim ibn Umayr, a narrator of unknown status. And it has been reported that two individuals were competing in excellence of virtue.

وَأَمَّا ابْنُ عُمَرَ فَلَا يَصِحُّ عَنْهُ، لِأَنَّهُ مِنْ رِوَايَةِ إبْرَاهِيمَ بْنِ عُمَيْرٍ عَنْهُ وَهُوَ مَجْهُولٌ - وَقَدْ رُوِيَ عَنْهُ يَتَرَادَّانِ الْفَضْلَ.

L19078 As for Ali, there are differing opinions attributed to him regarding this matter. The most authentic narrations from him indicate the removal of liability for losses caused by calamitous disasters, as we have previously cited.

وَأَمَّا عَلِيٌّ فَمُخْتَلَفٌ عَنْهُ فِي ذَلِكَ، وَأَصَحُّ الرِّوَايَاتِ عَنْهُ إِسْقَاطُ التَّضْمِينِ فِيمَا أَصَابَتْهُ جَائِحَةٌ كَمَا أَوْرَدْنَا آنِفًا.

L19079 Then the most astonishing claim is their assertion that the Companions unanimously agreed on imposing liability for the pledge. If this were proven true, they would have contradicted the consensus, for they do not hold liable the portion of the pledge exceeding the debt's value. Thus, this ruling stands as a self-incriminating judgment against them.

ثُمَّ أَعْجَبُ شَيْءٍ دَعْوَاهُمْ أَنَّ الصَّحَابَةَ أَجْمَعُوا عَلَى تَضْمِينِ الرَّهْنِ، فَإِنْ صَحَّ ذَلِكَ فَهُمْ قَدْ خَالَفُوا الْإِجْمَاعَ، لِأَنَّهُمْ لَا يُضَمِّنُونَ بَعْضَ الرَّهْنِ وَهُوَ مَا زَادَ مِنْ قِيمَتِهِ عَلَى قِيمَةِ الدَّيْنِ فَهَذَا حُكْمُهُمْ عَلَى أَنْفُسِهِمْ.

L19080 As for the ḥadīth they mentioned, it is a *mursal* narration, and no valid proof exists in a *mursal* report. Even if it were authentic, it would not support their argument at all, for it provides no evidence for their claim or categorization. Its implication, if authentic, is solely that the statement "The pledge is not foreclosed [*lā yughlaqu al-rahn*]"—with a *ḍamma* on the *rā'* and *kasra* on the *hā'*—entitles the pledgor to its profits (*ghunm*) and makes him liable for losses incurred by it (*ghurm*). Therefore, the pledgee is necessarily responsible for guaranteeing the pledge's liability, contrary to their position.

وَأَمَّا الْحَدِيثُ الَّذِي ذَكَرُوا فَمُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا، لِأَنَّهُ لَا يَدُلُّ عَلَى شَيْءٍ مِنْ قَوْلِهِمْ وَلَا تَقْسِيمِهِمْ، وَإِنَّمَا مُقْتَضَاهُ لَوْ صَحَّ هُوَ أَنَّ قَوْلَ «لَا يُغْلَقُ الرَّهْنُ مِمَّنْ رَهَنَهُ» بِضَمِّ الرَّاءِ وَكَسْرِ الْهَاءِ، لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ، فَوَجَبَ ضَمَانُ الرَّهْنِ عَلَى الْمُرْتَهِنِ وَلَا بُدَّ بِخِلَافِ قَوْلِهِمْ.

L19081 His statement, "The pledge is not irrevocably forfeited by its owner; the profit belongs to him, and the loss is his liability"—if he intended by "its owner" the pledgor (the owner), which is the apparent meaning—this necessitates that the loss is borne by him, and the pledgee bears no liability for it. If he intended by "its owner" the pledgee, this necessitates the pledgee's liability to him in all cases. Thus, it constitutes decisive proof against them in every respect, thereby nullifying their argument. We say to them: In which foundational principles [of jurisprudence] have you found a single item pledged entirely for one debt, where part is guaranteed and part is held as a trust? You reject prophetic traditions that contradict your position by appealing to your claimed legal methodology (uṣūl), then brazenly contradict them without any textual evidence.

وَقَوْلَهُ «لَا يُغْلَقُ الرَّهْنُ مِنْ صَاحِبِهِ لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ» إِنْ كَانَ أَرَادَ بِصَاحِبِهِ مَالِكَهُ، وَهُوَ الْأَظْهَرُ، فَهُوَ يُوجِبُ أَنَّ خَسَارَتَهُ مِنْهُ، وَلَا يَضْمَنُهُ لَهُ الْمُرْتَهِنُ، وَإِنْ كَانَ أَرَادَ بِصَاحِبِهِ الْمُرْتَهِنَ فَهُوَ يُوجِبُ ضَمَانَهُ لَهُ بِكُلِّ حَالٍ، فَصَارَ حُجَّةً عَلَيْهِمْ بِكُلِّ وَجْهٍ، وَبَطَلَ قَوْلُهُمْ، وَنَقُولُ لَهُمْ: فِي أَيِّ الْأُصُولِ وَجَدْتُمْ شَيْئًا وَاحِدًا رَهْنًا كُلُّهُ عَنْ دَيْنٍ وَاحِدٍ بَعْضُهُ مَضْمُونٌ وَبَعْضُهُ أَمَانَةٌ؟ وَأَنْتُمْ تَرُدُّونَ السُّنَنَ بِخِلَافِهَا بِالْأُصُولِ بِزَعْمِكُمْ ثُمَّ تُخَالِفُونَهَا جِهَارًا بِلَا نَصٍّ.

L19082 As for those who say "they mutually relinquish the excess," we know of no valid argument for them whatsoever except that it is juristic preference (istihsan). The reasoning is that since the pledge substitutes the debt, they

وَأَمَّا مَنْ قَالَ " يَتَرَادَّانِ الْفَضْلَ " فَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا إِلَّا أَنَّهُ اسْتِحْسَانٌ وَكَأَنَّهُ لَمَّا كَانَ الرَّهْنُ مَكَانَ الدَّيْنِ تَقَاصَّا فِيهِ، وَهَذَا رَأْيٌ، وَالدِّينُ لَا يُؤْخَذُ بِالْآرَاءِ.

are offset through it. This is an opinion, and religious rulings are not to be based on mere opinions.

L19083 As for those who said, "The pledges are lost along with what is in them," they cited as evidence a report we transmitted through the chain of Muṣʿab ibn Thābit from ʿAṭāʾ: "A man pledged a horse, and it perished while in the pledgee's possession. The Messenger of Allah (peace be upon him) said: 'Your right has been forfeited.'"

وَأَمَّا مَنْ قَالَ " ذَهَبَتْ الرُّهُونُ بِمَا فِيهَا " فَإِنَّهُمْ احْتَجُّوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مُصْعَبِ بْنِ ثَابِتٍ عَنْ عَطَاءٍ «أَنَّ رَجُلًا رَهَنَ فَرَسًا فَهَلَكَ عِنْدَهُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ذَهَبَ حَقُّكَ» .

L19084 Abū Muḥammad said: This is a *mursal*, and Muṣʿab ibn Thābit is not strong.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ، وَمُصْعَبُ بْنُ ثَابِتٍ لَيْسَ بِالْقَوِيِّ.

L19085–19087 Abu Muhammad said: Now that it has been established that all they have embellished has been invalidated, it becomes obligatory to revert to the Qur'an. And the Sunnah, we have received what was narrated to us by Aḥmad ibn Qāsim, who reported from his father Qāsim ibn Muḥammad ibn Qāsim, who reported from his grandfather Qāsim ibn Aṣbagh, who said: Muḥammad ibn Ibrāhīm narrated to me, who reported from Yaḥyā ibn Abī Ṭālib al-Anṭākī along with a group of reliable narrators, via Naḍr ibn ʿĀṣim al-Anṭākī, who reported from Shabābah, from Warqāʾ, reported by Abū Dhiʾb, from al-Zuhrī, from Saʿīd ibn al-Musayyab and Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said: "Collateral is not forfeited. The collateral belongs to the one who offered it. Its profit is his responsibility, and its liability is his obligation."

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ بَطَلَ كُلُّ مَا مَوَّهُوا بِهِ، فَالْوَاجِبُ الرُّجُوعُ إِلَى الْقُرْآنِ، وَالسُّنَّةِ، فَوَجَدْنَا مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ حَدَّثَنِي مُحَمَّدُ بْنُ إِبْرَاهِيمَ حَدَّثَنِي يَحْيَى بْنُ أَبِي طَالِبٍ الْأَنْطَاكِيُّ وَجَمَاعَةٌ مِنْ أَهْلِ الثِّقَةِ نا نَضْرُ بْنُ عَاصِمٍ الْأَنْطَاكِيُّ نا شَبَابَةُ عَنْ وَرْقَاءَ نا أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُغْلَقُ الرَّهْنُ، الرَّهْنُ لِمَنْ رَهَنَهُ، لَهُ غُنْمُهُ، وَعَلَيْهِ غُرْمُهُ» .

L19088 This is a well-attributed narration among the finest reported in this chapter, and they claimed that Abū ʿUmar al-Muṭarriz, who was the servant of Thaʿlab, said, "Whoever asserted 'al-ghurm [financial liability] is destruction' erred."

فَهَذَا مُسْنَدٌ مِنْ أَحْسَنِ مَا رُوِيَ فِي هَذَا الْبَابِ، وَادَّعَوْا أَنَّ أَبَا عُمَرَ الْمُطَرِّزَ غُلَامَ ثَعْلَبٍ، قَالَ: أَخْطَأَ مَنْ قَالَ: إنَّ الْغُرْمَ الْهَلَاكُ.

L19089 Abu Muhammad said: It is confirmed in the Quran's condemnation of a people in His exalted statement: "And among the Bedouins are those who consider what they spend as a loss" [At-Tawbah: 98].[3]

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ صَحَّ فِي ذَمِّ قَوْمٍ فِي الْقُرْآنِ قَوْله تَعَالَى: {وَمِنَ الأَعْرَابِ مَنْ يَتَّخِذُ مَا يُنْفِقُ مَغْرَمًا} [التوبة: ٩٨] .

L19090 That is, he deems him doomed to perish pointlessly; the Quran is more

أَيْ يَرَاهُ هَالِكًا بِلَا مَنْفَعَةٍ، فَالْقُرْآنُ أَوْلَى مِنْ رَأْيِ الْمُطَرِّزِ

[3] **Qur'an references (L19089):** Qur'an 9:98 (At-Tawbah).

authoritative than the opinion of one who adds baseless embellishments.

L19091 Abu Muhammad said, “We found the Prophet, may Allah bless him and grant him peace, has said: ‘Indeed, your blood and your wealth are inviolable for you.’”

L19092 He did not permit anything to the creditor of the mortgagee, nor allow the mortgagee to bear liability for the collateral without an explicit stipulation regarding such liability, unless he oversteps his rights in handling it or neglects to safeguard it, thereby incurring liability due to his misconduct in both cases.

L19093 Similarly, the debt has been established as obligatory, so the disappearance of the collateral does not nullify it. Thus, it is conclusively affirmed by these two sound principles from the Quran, Ijmaʿ (consensus), and the Sunnah: that the destruction of the collateral is the responsibility of the pledgor, the pledgee bears no liability, and the debt owed to the pledgee remains binding upon the pledgor according to its terms. Success is from Allah, the Most High.

L19094 The generated offspring of the pledge.

L19095 As for what is produced from the pledge, we have received a narration through ʿAmr ibn Dīnār that Muʿādh ibn Jabal ruled concerning a person who pledged land that bore produce, stating that the produce is part of the pledge.

L19096 From the chain of Ṭāwūs: In the book of Muʿādh, it states: “Whoever takes land as collateral must credit its produce to the owner of the pledge.”

L19097 Abu Muhammad said: The two rulings are contradictory, and they are two opinions: the first is that the fruit belongs to the pledgor, and the second is that it constitutes part of the pledge.

L19098 Abu Hanifah said: The progeny, revenue, and usufruct are part of the collateral along with the principal assets.

قَالَ أَبُو مُحَمَّد: وَوَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَلَمْ يُحِلَّ لِغَرِيمِ الْمُرْتَهِنِ شَيْئًا، وَلَا أَنْ يَضْمَنَ الرَّهْنَ بِغَيْرِ نَصٍّ فِي تَضْمِينِهِ إِلَّا أَنْ يَتَعَدَّى فِيهِ، أَوْ بِأَنْ يُضَيِّعَهُ فَيَضْمَنَهُ حِينَئِذٍ بِاعْتِدَائِهِ فِي كِلَا الْوَجْهَيْنِ.

وَكَذَلِكَ الدَّيْنُ قَدْ وَجَبَ فَلَا يُسْقِطُهُ ذَهَابُ الرَّهْنِ، فَصَحَّ يَقِينًا مِنْ هَذَيْنِ الْأَصْلَيْنِ الصَّحِيحَيْنِ بِالْقُرْآنِ، وَالْإِجْمَاعِ، وَالسُّنَّةِ: أَنَّ هَلَاكَ الرَّهْنِ مِنْ الرَّاهِنِ، وَلَا ضَمَانَ عَلَى الْمُرْتَهِنِ، وَأَنَّ دَيْنَ الْمُرْتَهِنِ بَاقٍ بِحَسْبِهِ لَازِمٌ لِلرَّاهِنِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَا تَوَلَّدَ مِنْ الرَّهْنِ]

وَأَمَّا مَا تَوَلَّدَ مِنْ الرَّهْنِ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ عَمْرِو بْنِ دِينَارٍ: أَنَّ مُعَاذَ بْنَ جَبَلٍ قَضَى فِيمَنْ ارْتَهَنَ أَرْضًا فَأَثْمَرَتْ، فَإِنَّ الثَّمَرَةَ مِنْ الرَّهْنِ.

وَمِنْ طَرِيقِ طَاوُوسٍ: أَنَّ فِي كِتَابِ مُعَاذٍ " مَنْ ارْتَهَنَ أَرْضًا فَهُوَ يَحْتَسِبُ ثَمَرَهَا لِصَاحِبِ الرَّهْنِ ".

قَالَ أَبُو مُحَمَّد: الْحُكْمَانِ مُتَضَادَّانِ، وَهُمَا قَوْلَانِ -: أَحَدُهُمَا: أَنَّ الثَّمَرَةَ لِصَاحِبِ الرَّهْنِ - وَالْآخَرُ: أَنَّهَا مِنْ الرَّهْنِ.

وَقَالَ أَبُو حَنِيفَةَ: الْوَلَدُ، وَالْغَلَّةُ، وَالثَّمَرَةُ، رَهْنٌ مَعَ الْأُصُولِ.

L19099–19101 Then they contradicted themselves by stating: “If the child, the crops, or the fruit perish, it does not cease because of that from,” Debt is a thing, even if the principal, the original capital, and the growth perish: the debt is apportioned to these and to the growth. What is allocated to the principal is waived, and what is allocated to the growth remains. Abu Muhammad said: This is an egregious contradiction, for all of that constitutes collateral according to them, yet they imposed contradictory rulings among them without proof.

ثُمَّ تَنَاقَضُوا، فَقَالُوا: إنْ هَلَكَ الْوَلَدُ، وَالْغَلَّةُ، وَالثَّمَرَةُ: لَمْ يَسْقُطْ مِنْ أَجْلِ ذَلِكَ مِنْ، الدَّيْنِ شَيْءٌ، وَإِنْ هَلَكَ الْأَصْلُ، وَالْأُمُّ، وَالشَّجَرُ: قُسِّمَ الدَّيْنَ عَلَى ذَلِكَ، وَعَلَى النَّمَاءِ، فَمَا وَقَعَ لِلْأَصْلِ سَقَطَ، وَمَا وَقَعَ لِلنَّمَاءِ بَقِيَ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَنَاقُضٌ فَاحِشٌ، لِأَنَّ كُلَّ ذَلِكَ رَهْنٌ عِنْدَهُمْ، ثُمَّ خَالَفُوا بَيْنَ أَحْكَامِهَا بِلَا بُرْهَانٍ.

L19102 Malik said: As for the offspring, it is included in the pledge, but as for the yields and produce, they are excluded from the pledge. This constitutes a wholly invalid division without any proof.

وَقَالَ مَالِكٌ: أَمَّا الْوَلَدُ فَدَاخِلٌ فِي الرَّهْنِ، وَأَمَّا الْغَلَّةُ وَالثَّمَرَةُ، فَخَارِجَانِ مِنْ الرَّهْنِ - وَهَذَا تَقْسِيمٌ فَاسِدٌ جِدًّا بِلَا بُرْهَانٍ.

L19103 If they say, “The child is a part of the mother,” we reply, “Whoever said such a thing has lied.” How could he be a part of her, given that he could be male while she is female, or a Muslim while she is a disbeliever? Then it is said to them: “The fruit is also a part of the tree”—a claim as baseless as theirs.

فَإِنْ قَالُوا: إنَّ الْوَلَدَ بَعْضُ الْأُمِّ؟ قُلْنَا: كَذَبَ مَنْ قَالَ هَكَذَا؟ وَكَيْفَ يَكُونُ بَعْضَهَا، وَقَدْ يَكُونُ ذَكَرًا وَهِيَ أُنْثَى، وَيَكُونُ مُسْلِمًا، وَهِيَ كَافِرَةٌ؟ ثُمَّ يُقَالُ لَهُمْ: وَالثَّمَرَةُ أَيْضًا بَعْضُ الشَّجَرِ - دَعْوَى كَدَعْوَى.

L19104 Al-Shafi’i said: All of that belongs to the owner of the principal asset, and none of it enters into the collateral—and this is the correct view—because collateral is what the two parties contracted in the transaction, not what they did not contract in the transaction. Every thing we have mentioned is something they did not contract in the transaction. Thus, all of it is distinct from the principal asset, newly accruing to the ownership of the principal asset’s owner, and thus entirely his. And success comes only from Allah, the Exalted.

وَقَالَ الشَّافِعِيُّ: كُلُّ ذَلِكَ لِصَاحِبِ الْأَصْلِ، وَلَا يَدْخُلُ شَيْءٌ مِنْهُ فِي الرَّهْنِ وَهُوَ الْحَقُّ، لِأَنَّ الرَّهْنَ هُوَ مَا تَعَاقَدَا عَلَيْهِ الصَّفْقَةَ، لَا مَا لَمْ يَتَعَاقَدَاهَا عَلَيْهِ، وَكُلُّ مَا ذَكَرْنَا شَيْءٌ لَمْ يَتَعَاقَدَا الصَّفْقَةَ عَلَيْهِ، فَكُلُّهُ غَيْرُ الْأَصْلِ، وَكُلُّهُ حَادِثٌ فِي مِلْكِ صَاحِبِ الْأَصْلِ، فَكُلُّهُ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَوْت الرَّاهِن أَوْ الْمُرْتَهِن]

A legal issue arising from the death of the pawnor or the pawnee.

L19105 1216 - Issue:

١٢١٦ - مَسْأَلَةٌ:

L19106 If the pledgor or the pledgee dies, the pledge becomes void, and the pledged item must be returned to the pledgor or his heirs. The deferred debt is immediately payable, and the pledgee does not have priority over the pledge’s value compared to other creditors at that point. This is based on Allah’s

فَإِنْ مَاتَ الرَّاهِنُ أَوْ الْمُرْتَهِنُ بَطَلَ الرَّهْنُ وَوَجَبَ رَدُّ الرَّهْنِ إلَى الرَّاهِنِ أَوْ إلَى وَرَثَتِهِ، وَحُلَّ الدَّيْنُ الْمُؤَجَّلُ، وَلَا يَكُونُ الْمُرْتَهِنُ أَوْلَى بِثَمَنِ الرَّهْنِ مِنْ سَائِرِ الْغُرَمَاءِ حِينَئِذٍ،

statement: “No soul bears the burden of another” [al-An‘ām 6:164]. If the pledgee dies, the right to the pledge belongs solely to him—not to his heirs, creditors, or those entitled through his will. Only wealth is inherited, not non-monetary rights such as trusts, agencies, wills, and the like.[4]

وَذَلِكَ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَإِذَا مَا مَاتَ الْمُرْتَهِنُ فَإِنَّمَا كَانَ حَقُّ الرَّهْنِ لَهُ، لَا لِوَرَثَتِهِ وَلَا لِغُرَمَائِهِ، وَلَا لِأَهْلِ وَصِيَّتِهِ، وَإِنَّمَا تُورَثُ الْأَمْوَالُ لَا الْحُقُوقُ الَّتِي لَيْسَتْ أَمْوَالًا: كَالْأَمَانَاتِ، وَالْوَكَالَاتِ، وَالْوَصَايَا وَغَيْرِ ذَلِكَ.

L19108 If the right of the pledgeholder ceases due to his death, the pledged item must be returned to the pledgor. If the pledgor dies, the pledgeholder’s contract was exclusively with him, not with his heirs. The pledgor’s ownership over the pledge terminates upon his death, transferring to his heirs, his creditors—the pledgeholder being one of them—or his testamentary beneficiaries. The pledgeholder has no contractual relationship with them, nor can a deceased person’s contract bind others, thereby imposing obligations upon them. Therefore, their pledged item must be restored to them. This is based on the saying of Allah’s Messenger—peace and blessings be upon him: “Verily, your blood and your wealth are inviolable for you.”

فَإِذَا سَقَطَ حَقُّ الْمُرْتَهِنِ بِمَوْتِهِ وَجَبَ رَدُّ الرَّهْنِ إِلَى صَاحِبِهِ. وَإِذَا مَاتَ الرَّاهِنُ فَإِنَّمَا كَانَ عَقْدُ الْمُرْتَهِنِ مَعَهُ لَا مَعَ وَرَثَتِهِ، وَقَدْ سَقَطَ مِلْكُ الرَّاهِنِ عَنْ الرَّهْنِ بِمَوْتِهِ، وَانْتَقَلَ مِلْكُهُ إِلَى وَرَثَتِهِ أَوْ إِلَى غُرَمَائِهِ، وَهُوَ أَحَدُ غُرَمَائِهِ، أَوْ إِلَى أَهْلِ وَصِيَّتِهِ - وَلَا عَقْدَ لِلْمُرْتَهِنِ مَعَهُمْ، وَلَا يَجُوزُ عَقْدُ الْمَيِّتِ عَلَى غَيْرِهِ فَيَكُونُ كَاسِبًا عَلَيْهِمْ، فَالْوَاجِبُ رَدُّ مَتَاعِهِمْ إلَيْهِمْ، وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L19109–19110 We are unaware of any valid argument whatsoever for those who oppose this position. It has been narrated to us from Al-Sha‘bi concerning one who pledged collateral under the custody of a reliable guardian and then died, that the pledge belongs to him (meaning his heirs). Al-Hakam said: It belongs to the creditors.

وَمَا نَعْلَمُ لِمَنْ خَالَفَ هَذَا حُجَّةً أَصْلًا -: وَرُوِّينَا عَنْ الشَّعْبِيِّ فِيمَنْ رَهَنَ عَلَى يَدَيْ عَدْلٍ فَمَاتَ: أَنَّ الرَّهْنَ لَهُ - أَيْ لِوَرَثَتِهِ، قَالَ: الْحَكَمُ هُوَ لِلْغُرَمَاءِ.

L19111 Issue: If a person pawned an item and feared its corruption.

[مَسْأَلَةٌ ارْتَهَنَ شَيْئًا فَخَافَ فَسَادَهُ]

L19112 1217. Issue:

١٢١٧ - مَسْأَلَةٌ:

L19113 If someone takes something as a pledge and fears its spoilage – such as grape juice that may turn into wine – it becomes obligatory upon him to approach the judge to sell it, hold the proceeds for the owner if the owner is absent, give half of the proceeds to the creditor (pledgee) if the debt is due, or direct the proceeds to the owner if the debt is deferred. If the authority

وَمَنْ ارْتَهَنَ شَيْئًا فَخَافَ فَسَادَهُ كَعَصِيرٍ خِيفَ أَنْ يَصِيرَ خَمْرًا فَفَرْضٌ عَلَيْهِ أَنْ يَأْتِيَ الْحَاكِمَ فَيَبِيعَهُ وَيُوقِفَ الثَّمَنَ لِصَاحِبِهِ إنْ كَانَ غَائِبًا أَوْ يُنْصِفَ مِنْهُ الْغَرِيمَ الْمُرْتَهِنَ إنْ كَانَ الدَّيْنُ حَالًّا أَوْ يَصْرِفَ الثَّمَنَ إلَى صَاحِبِهِ إنْ كَانَ الدَّيْنُ مُؤَجَّلًا، فَإِنْ لَمْ يُمَكِّنْهُ السُّلْطَانُ فَلْيَفْعَلْ هُوَ مَا ذَكَرْنَا لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة:

[4] **Qur’an references (L19107):** Qur’an 6:164 (Al-An’am).

does not facilitate it for him, he must himself take the measures we have mentioned, based on Allah's command: "Cooperate in righteousness and piety" [Al-Māʾidah: 2], the Prophet's (peace be upon him) prohibition against wasting wealth, and the principle that the pledge's proceeds are distinct from the pledge itself. The contractual obligation applies to the pledge, not its proceeds, for its proceeds form part of the owner's wealth like all his other possessions, with no distinction – and success is from Allah, the Exalted.[5]

٢] وَلِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ، وَلِأَنَّ ثَمَنَ الرَّهْنِ هُوَ غَيْرُ الرَّهْنِ، وَإِنَّمَا عَقْدُهُ فِي الرَّهْنِ لَا فِي ثَمَنِهِ، وَإِنَّمَا ثَمَنُهُ مَالٌ مِنْ مَالِ مَالِكِهِ كَسَائِرِ مَالِهِ وَلَا فَرْقَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19114 **A jurisprudential issue: the sale of a commodity on the condition that it is pledged for its price.**

[مَسْأَلَةٌ بَيْعُ سِلْعَةٍ عَلَى أَنْ تَكُونَ رَهْنًا عَنْ ثَمَنِهَا]

L19115 1218 – Issue:

١٢١٨ - مَسْأَلَةٌ:

L19116 It is not permissible to sell a commodity on the condition that it serves as collateral against its price. If such a sale occurs, the sale is annulled. However, the seller may withhold the commodity until he secures half of its price if the price is due immediately; otherwise, he is not entitled to do so.

وَلَا يَجُوزُ بَيْعُ سِلْعَةٍ عَلَى أَنْ تَكُونَ رَهْنًا عَنْ ثَمَنِهَا، فَإِنْ وَقَعَ فَالْبَيْعُ مَفْسُوخٌ، وَلَكِنْ يَجُوزُ لِلْبَائِعِ إمْسَاكُ سِلْعَتِهِ حَتَّى يَنْتَصِفَ مِنْ ثَمَنِهَا إنْ كَانَ حَالًّا وَإِلَّا فَلَيْسَ لَهُ ذَلِكَ.

L19117 The evidence for that is that he stipulated preventing the buyer from taking possession of what he purchased for a specified period, and this is a condition that is not stipulated in the Book of Allah, the Almighty and Majestic; thus, it is null and void.

بُرْهَانُ ذَلِكَ -: أَنَّهُ اشْتَرَطَ مَنْعَ الْمُشْتَرِي مِنْ قَبْضِ مَا اشْتَرَى مُدَّةً مُسَمَّاةً وَهَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

L19118 Furthermore, the buyer does not acquire ownership of the purchased item except through the full completion of the sale contract between them. The sale is only finalized by what we will mention—if God Almighty wills—in the "Book of Sales": namely, by means of separation (al-tafarruq) or granting the option (al-takhyīr). Thus, in cases where the sale is not finalized, the sold item remains exclusively the property of the seller. In the aforementioned legal scenario, the two parties stipulated that part of the mortgagor-seller's property be held as collateral by the seller himself—an arrangement that is utterly invalid. This is the opinion of al-Shāfiʿī, Abū Sulaymān, and their respective followers.

وَأَيْضًا: فَإِنَّ الْمُشْتَرِيَ لَا يَمْلِكُ مَا اشْتَرَى إلَّا بِتَمَامِ عَقْدِ الْبَيْعِ بَيْنَهُمَا، وَالْبَيْعُ لَا يَتِمُّ إلَّا بِمَا نَذْكُرُهُ فِي " كِتَابِ الْبُيُوعِ " إنْ شَاءَ اللَّهُ تَعَالَى مِنْ التَّفَرُّقِ أَوْ التَّخْيِيرِ، فَهُوَ مَا لَمْ يَتِمّ الْبَيْعُ فَإِنَّمَا الشَّيْءُ الْمَبِيعُ مِلْكٌ لِلْبَائِعِ، فَإِنَّمَا اشْتَرَطَا فِي الْمَسْأَلَةِ الْمَذْكُورَةِ كَوْنَ شَيْءٍ مِنْ مَالِ الْبَائِعِ الْمُرْتَهِنِ رَهْنًا عِنْدَهُ نَفْسِهِ - وَهَذَا فِي غَايَةِ الْفَسَادِ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L19119 As for the seller retaining his merchandise until the midpoint [of the payment

[5] **Qur'an references (L19113):** Qur'an 5:2 (Al-Ma'idah).

term], his right is legally enforceable against the buyer's property. If the buyer delays a payment that has become due, he is an unjust transgressor, according to the Prophet's statement (peace and blessings be upon him): "Delaying payment by a solvent person is injustice." Since he is unjust, every unjust person is a transgressor.

L19120–19122 And the Exalted said: "So whoever commits aggression against you, retaliate against him in the same measure as he has aggressed against you." [Al-Baqarah: 194] As for the commodity purchased with funds from the buyer's wealth, the Quran's explicit text grants the wronged party the right to retaliate against the transgressor in kind. Therefore, he may retain the commodity until he is vindicated.[6]

L19123 It was narrated to us through the chain of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-Raḥmān ibn Mahdī narrated to us, Hushaym narrated to us, and Sufyān al-Thawrī. Sufyān al-Thawrī said: From Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, that ʿAmr ibn Ḥurayth ruled regarding a seller whose buyer paid part of the price, whereupon the seller stated, "I will not release the merchandise to you until you bring the remaining amount." ʿAmr ibn Ḥurayth therefore considered the merchandise a pledge for what remained of the payment.

L19124 Hushaym reported from Dawud ibn Abi Hind, from al-Sha'bi, that Urwah ibn al-Mughirah ibn Shu'bah also pledged the commodity as collateral for the remaining debt. Thus, this Amr is a Companion for whom no opposing [view] from the Companions is known regarding this matter.

L19125 **The jurisprudential question of the pledge within the same debt contract.**

L19126 1219 - Issue:

L19127 The ruling of the pledge applies exclusively to what is pledged within the actual contract of indebtedness. As for what is pledged after the contract's

[6]**Qur'an references (L19120):** Qur'an 2:194 (Al-Baqarah).

وَأَمَّا إِمْسَاكُ الْبَائِعِ سِلْعَتَهُ حَتَّى يَنْتَصِفَ فَإِنَّ حَقَّهُ وَاجِبٌ فِي مَالِ الْمُشْتَرِي فَإِنْ مَطَلَهُ بِحَقٍّ قَدْ وَجَبَ لَهُ عِنْدَهُ، فَهُوَ ظَالِمٌ مُعْتَدٍ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» ، وَإِذْ هُوَ ظَالِمٌ فَكُلُّ ظَالِمٍ مُعْتَدٍ.

وَقَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَالسِّلْعَةُ الَّتِي ابْتَاعَ مَالٌ مِنْ مَالِ الْمُشْتَرِي فَلِلْمُطَوَّلِ بِحَقِّهِ الْمُعْتَدَى عَلَيْهِ أَنْ يَعْتَدِيَ عَلَى الْمُعْتَدِي عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْهِ بِهِ نَصُّ الْقُرْآنِ، فَلَهُ إِمْسَاكُ السِّلْعَةِ حَتَّى يَنْتَصِفَ.

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا هُشَيْمٌ، وَسُفْيَانُ الثَّوْرِيُّ، قَالَ سُفْيَانُ الثَّوْرِيُّ: عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ أَنَّ عَمْرَو بْنَ حُرَيْثٍ قَالَ فِيمَنْ بَاعَ سِلْعَةً فَنَقَدَهُ الْمُشْتَرِي بَعْضَ الثَّمَنِ، فَقَالَ الْبَائِعُ: لَا أُعْطِيكَ السِّلْعَةَ حَتَّى تَجِيءَ بِالْبَقِيَّةِ، فَجَعَلَ عَمْرَو بْنَ حُرَيْثٍ السِّلْعَةَ رَهْنًا بِمَا بَقِيَ.

وَقَالَ هُشَيْمٌ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ: أَنَّ عُرْوَةَ بْنَ الْمُغِيرَةِ بْنِ شُعْبَةَ جَعَلَ فِي ذَلِكَ أَيْضًا السِّلْعَةَ رَهْنًا بِمَا بَقِيَ - فَهَذَا عَمْرٌو صَاحِبٌ لَا يُعْرَفُ لَهُ فِي هَذَا مُخَالِفٌ مِنْ الصَّحَابَةِ.

[مَسْأَلَةٌ الارتهان فِي نَفْسِ عَقْدِ التَّدَايُنِ]

١٢١٩ - مَسْأَلَةٌ:

وَلَا يَكُونُ حُكْمُ الرَّهْنِ إلَّا لِمَا ارْتَهَنَ فِي نَفْسِ عَقْدِ التَّدَايُنِ، وَأَمَّا مَا ارْتَهَنَ بَعْدَ تَمَامِ الْعَقْدِ فَلَيْسَ لَهُ حُكْمُ الرَّهْنِ، وَلِرَاهِنِهِ أَخْذُهُ مَتَى شَاءَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ الرَّهْنَ

completion, it does not carry the legal status of a pledge, and its mortgagor may reclaim it whenever desired. This is because Allah the Exalted has only instituted the pledge within the contract itself - as we have recited - and every condition stipulated thereafter, not being found in the Book of Allah the Exalted, is invalid.

L19128 1220 – Issue:

L19129 If whoever enters into a loan agreement establishes a valid pledge within the contract, then subsequently enters into another loan agreement and designates that same pledge as security for this second debt, the second contract is invalid and rejected. This is because the pledge was valid in the first contract, and transferring it to another contract is impermissible, as neither the Quran nor the Sunnah mandates this. Thus, it constitutes a ruling not found in the Book of Allah the Exalted and is therefore invalid. Every contract founded upon an invalid premise is itself invalid, since its validity depends on the validity of something inherently invalid, rendering it void. And success is through Allah, the Exalted.

L19130 A case in which he pledged collateral and then paid half from a portion of his debt.

L19131 1221 - Question:

L19132 Whoever pledges valid collateral and then repays part of his debt—whether a smaller or larger portion—and wishes to withdraw a portion of the collateral proportionate to what he has repaid is not permitted to do so. This is because the collateral attaches to the entirety of the debt. Therefore, the legal effect of the collateral does not cease for any portion of it due to the partial discharge of the debt, as neither the Quran nor the Sunnah has prescribed such a ruling.

L19133–19134 This is the opinion of Al-Shāfiʿī and our school's scholars. If it is asked: How do you prohibit the removal of the pledge except with the pledgee's consent, yet permit its sale, emancipation, and donation – which constitutes its withdrawal from the pledge without the pledgee's consent? We respond: Because the textual evidence validates the pledge, so the pledger cannot nullify what

إِلَّا فِي الْعَقْدِ - كَمَا تَلَوْنَا - وَكُلُّ مَا كَانَ بَعْدَ ذَلِكَ فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

١٢٢٠ - مَسْأَلَةٌ:

وَمَنْ تَدَايَنَ فَرَهَنَ فِي الْعَقْدِ رَهْنًا صَحِيحًا، ثُمَّ بَعْدَ ذَلِكَ تَدَايَنَا أَيْضًا وَجَعَلَا ذَلِكَ الرَّهْنَ رَهْنًا عَنْ هَذَا الدَّيْنِ الثَّانِي، فَالْعَقْدُ الثَّانِي بَاطِلٌ مَرْدُودٌ، لِأَنَّ ذَلِكَ الرَّهْنَ قَدْ صَحَّ فِي الْعَقْدِ الْأَوَّلِ، فَلَا يَجُوزُ نَقْلُهُ إلَى عَقْدٍ آخَرَ، إذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، فَهُوَ شَرْعٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَكُلُّ عَقْدٍ انْعَقَدَ عَلَى بَاطِلٍ فَهُوَ بَاطِلٌ، لِأَنَّهُ لَمْ تُعْقَدْ لَهُ صِحَّةٌ إلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ، فَلَا صِحَّةَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ رَهَنَ ثُمَّ أَنْصَفَ مِنْ بَعْضِ دَيْنِهِ]

١٢٢١ - مَسْأَلَةٌ:

وَمَنْ رَهَنَ رَهْنًا صَحِيحًا ثُمَّ أَنْصَفَ - مِنْ بَعْضِ دَيْنِهِ - أَقَلَّهُ أَوْ أَكْثَرَهُ - فَأَرَادَ أَنْ يَخْرُجَ عَنْ الرَّهْنِ بِقَدْرِ مَا أَدَّى، لَمْ يَكُنْ لَهُ ذَلِكَ، لِأَنَّ الرَّهْنَ وَقَعَ فِي جَمِيعِهِ بِجَمِيعِ الدَّيْنِ فَلَا يَسْقُطُ عَنْ بَعْضِ الرَّهْنِ حُكْمُ الرَّهْنِ مِنْ أَجْلِ سُقُوطِ بَعْضِ الدَّيْنِ، إذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ.

هُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِنَا. فَإِنْ قِيلَ: كَيْفَ تَمْنَعُونَ مِنْ إخْرَاجِ الرَّهْنِ إلَّا بِرِضَا الْمُرْتَهِنِ، وَتُجِيزُونَ بَيْعَهُ وَعِتْقَهُ وَالصَّدَقَةَ بِهِ، وَهُوَ إخْرَاجٌ لَهُ عَنْ الرَّهْنِ بِغَيْرِ إذْنِ الْمُرْتَهِنِ؟ قُلْنَا: لِأَنَّ النَّصَّ جَاءَ بِإِيجَابِ الرَّهْنِ فَلَيْسَ لَهُ إبْطَالُ مَا صَحَّحَهُ اللَّهُ تَعَالَى فَإِذَا أَخْرَجَهُ عَنْ

God has deemed valid. When he completely relinquishes ownership, God has never prohibited this – neither in the Quran nor the Sunnah. Once it transfers to another's ownership, the Almighty has stated: {No soul earns [guilt] except against itself} [6:164].[7]

L19135 The mortgagor's contract never existed alongside the party to whom ownership was transferred; thus, it is impermissible for him to mortgage his property for another.

L19136 We say to them: All of you—(meaning the Maliki, Hanafi, and Shafiʿi schools)—are unanimously agreed that whoever says to his slave, "You are free whenever my father arrives," has indeed established a contract in which it is impermissible for him to retract ever, and that the slave is free whenever his father arrives. There is no disagreement among you regarding the permissibility of selling him, using him as a dowry, or gifting him before his father arrives. What difference exists between the two matters if you are just to yourselves?

L19137 **A jurisprudential issue regarding pledging another's property as security for his own liability or for a liability related to his child's property.**

L19138 1222. Question:

L19139–19141 It is not permissible for anyone to pledge another's property on his own behalf, nor the property of his minor or adult child, nor the property of his orphan – whether minor or adult – nor his wife's property, except with the permission of the owner of the commodity to be pledged. The Ḥanafīs and Mālikīs stated: A man may pledge his minor son's property on his own behalf. The Mālikīs added: A guardian may pledge his orphan's property on his own behalf. They argued: If a third party authorizes another to pledge his property on the latter's own behalf, this becomes permissible. Their evidence was that since a father-guardian may deposit the son's or orphan's property, using it as collateral is more deserving of permissibility. Abū Muḥammad

[7] **Qur'an references (L19134):** Qur'an 6:164 (Al-An'am).

مِلْكِهِ جُمْلَةً، فَلَمْ يَمْنَعْهُ اللَّهُ تَعَالَى مِنْ ذَلِكَ قَطُّ، لَا فِي قُرْآنٍ، وَلَا سُنَّةٍ، فَإِذَا صَارَ فِي مِلْكِ غَيْرِهِ فَقَدْ قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

وَعَقْدُ الْمُرْتَهِنِ لَمْ يَكُنْ قَطُّ مَعَ الَّذِي انْتَقَلَ إِلَيْهِ الْمِلْكُ، فَلَا يَجُوزُ لَهُ ارْتِهَانُ مَالِهِ عَنْ غَيْرِهِ.

وَنَقُولُ لَهُمْ: إِنَّ جَمِيعَكُمْ - يَعْنِي الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ - مُجْمِعُونَ عَلَى أَنَّ مَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ إِذَا قَدِمَ أَبِي أَنَّهُ قَدْ عَقَدَ فِيهِ عَقْدًا لَا يَحِلُّ لَهُ الرُّجُوعُ فِيهِ أَبَدًا، وَأَنَّهُ حُرٌّ مَتَى قَدِمَ أَبُوهُ، ثُمَّ لَا خِلَافَ بَيْنَكُمْ فِي جَوَازِ بَيْعِهِ قَبْلَ أَنْ يَأْتِيَ أَبُوهُ وَإِصْدَاقِهِ، وَهِبَتِهِ، فَأَيُّ فَرْقٍ بَيْنَ الْأَمْرَيْنِ إِنْ أَنْصَفْتُمْ أَنْفُسَكُمْ؟

[مَسْأَلَةٌ رَهْنِ مَالِ غَيْرِهِ عَنْ نَفْسِهِ أَوْ مَالَ وَلَدِهِ]

١٢٢٢ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَرْهَنَ مَالَ غَيْرِهِ عَنْ نَفْسِهِ، وَلَا مَالَ وَلَدِهِ الصَّغِيرِ أَوْ الْكَبِيرِ، إِلَّا بِإِذْنِ صَاحِبِ السِّلْعَةِ الَّتِي يُرِيدُ رَهْنَهَا، وَلَا بِغَيْرِ إِذْنِهِ، وَلَا مَالَ يَتِيمِهِ الصَّغِيرِ أَوْ الْكَبِيرِ وَلَا مَالَ زَوْجَتِهِ. وَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: لَهُ أَنْ يَرْهَنَ عَنْ نَفْسِهِ مَالَ ابْنِهِ الصَّغِيرِ. قَالَ الْمَالِكِيُّونَ: وَلِلْوَصِيِّ أَنْ يَرْهَنَ مَالَ يَتِيمِهِ عَنْ نَفْسِهِ. وَقَالُوا: إِذَا أَذِنَ الْأَجْنَبِيُّ لِغَيْرِهِ أَنْ يَرْهَنَ مَالَهُ عَنْ نَفْسِهِ جَازَ. وَاحْتَجُّوا فِي ذَلِكَ أَنَّ لِلْأَبِ الْوَصِيِّ أَنْ يُودِعَ مَالَ الِابْنِ وَالْيَتِيمِ، فَإِدْخَالُهُ فِي الذِّمَّةِ أَحَقُّ بِالْجَوَازِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لِأَنَّهُ لَا يَجُوزُ لَهُمَا

refuted this: This is invalid, for neither may deposit nor lend such property except when acting with due care and protection for the minor. There is no consideration whatsoever for the minor in having his father or guardian pledge his property as collateral for themselves; this constitutes harm and must be rejected. Moreover, a person may deposit a trust left with him elsewhere if he fears its destruction while in his possession. He deemed security to lie in entrusting it, thereby obligating them through this ingenious inference that he has the right to pledge it in his own capacity.

إِيدَاعُهُ، وَلَا قَرْضُهُ، إِلَّا حَيْثُ يَكُونُ ذَلِكَ نَظَرًا وَحِيَاطَةً لِلصَّغِيرِ، وَلَا نَظَرَ لَهُ أَصْلًا فِي أَنْ يَرْهَنَهُ الْأَبُ وَالْوَصِيُّ عَنْ أَنْفُسِهِمَا، فَهُوَ ضَرَرٌ، فَهُوَ مَرْدُودٌ. وَأَيْضًا: فَإِنَّ لِلْإِنْسَانِ أَنْ يُودِعَ الْوَدِيعَةَ الَّتِي أُودِعَتْ عِنْدَهُ أَذَا خَشِيَ هَلَاكَهَا عِنْدَهُ، وَرَأَى السَّلَامَةَ فِي إِيدَاعِهَا -: فَيَلْزَمُهُمْ بِهَذَا الِاسْتِدْلَالِ الْبَدِيعُ أَنْ يَكُونَ لَهُ أَنْ يَرْهَنَهَا عَنْ نَفْسِهِ.

L19142 They argued for this using what was authentically narrated through the chain of Suwayd ibn Ghaflah from Umm al-Mu'minīn 'Ā'ishah, from the Prophet (may Allah bless him and grant him peace), that he said: "The purest food you eat comes from your lawful efforts, and your children are from your efforts." Another narration through the chain of al-Aswad ibn Yazīd from Umm al-Mu'minīn 'Ā'ishah, from the Prophet (may Allah bless him and grant him peace), states that he said: "The purest food a man eats is from the labor of his hands, and his child is from his efforts."[8]

وَاحْتَجُّوا فِي ذَلِكَ بِمَا صَحَّ مِنْ طَرِيقِ سُوَيْدِ بْنِ غَفَلَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ أَطْيَبَ مَا أَكَلْتُمْ مِنْ كَسْبِكُمْ، وَإِنَّ أَوْلَادَكُمْ مِنْ كَسْبِكُمْ» . وَمِنْ طَرِيقِ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ أَطْيَبَ مَا أَكَلَ الرَّجُلُ مِنْ كَسْبِ يَدِهِ وَوَلَدُهُ مِنْ كَسْبِهِ» .

L19143 We narrated them both via Qasim ibn Asbagh, who said: Bakr ibn Hammad and Ahmad ibn Zuhayr narrated to us. Bakr said: Musaddad narrated to us from Yahya ibn Sa'id al-Qattan, from Sufyan al-Thawri, who narrated to us from Ibrahim ibn Abd al-A'la, from Suwayd ibn Ghafala.

رُوِّينَاهُمَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ قَالَ: نا بَكْرُ بْنُ حَمَّادٍ، وَأَحْمَدُ بْنُ زُهَيْرٍ، قَالَ بَكْرٌ: نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سُفْيَانَ الثَّوْرِيِّ نا إِبْرَاهِيمُ بْنُ عَبْدِ الْأَعْلَى عَنْ سُوَيْدِ بْنِ غَفَلَةَ

L19144 Ahmad said: My father narrated to us, Abu Muʿāwiyah al-Ḍarīr narrated to us from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, from al-Aswad. Abū Muḥammad said: These two reports pertain solely to eating. This is our view: he may eat from it as much as he wishes from his household and outside his household. These two reports are not about selling, mortgaging, or gifting.

وَقَالَ أَحْمَدُ: نا أَبِي نا أَبُو مُعَاوِيَةَ الضَّرِيرُ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنِ الْأَسْوَدِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ الْخَبَرَانِ إِنَّمَا هُمَا فِي الْأَكْلِ، وَهَكَذَا نَقُولُ: يَأْكُلُ مِنْهُ مَا شَاءَ مِنْ بَيْتِهِ وَغَيْرِ بَيْتِهِ، وَلَيْسَا فِي الْبَيْعِ، وَلَا فِي الِارْتِهَانِ، وَلَا فِي الْهِبَةِ.

L19145–19147 Nor in taking and possessing. If they argue: "We have analogized this to eating," we reply: "All analogy is invalid. Even were it hypothetically valid, you would have contradicted yourselves most egregiously in two aspects. First: Allah the Exalted states {There is no blame upon you for eating in

وَلَا فِي الْأَخْذِ وَالتَّمَلُّكِ فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الْأَكْلِ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكُنْتُمْ قَدْ تَنَاقَضْتُمْ أَفْحَشَ تَنَاقُضٍ مِنْ وَجْهَيْنِ، أَحَدُهُمَا أَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلَا عَلَى أَنْفُسِكُمْ أَنْ تَأْكُلُوا مِنْ بُيُوتِكُمْ أَوْ بُيُوتِ آبَائِكُمْ أَوْ بُيُوتِ أُمَّهَاتِكُمْ} [النور: ٦١]

[8] **Hadith references (L19142):** Sunan Ibn Majah 2290; Jami at-Tirmidhi 1358; Mishkat al-Masabih 2770.

your own houses, the houses of your fathers, or the houses of your mothers} [24:61] through His words {or those whose keys you possess, or your friends. There is no blame upon you whether you eat together or separately} [24:61]. Thus Allah permitted eating from friends' houses, those whose keys we hold, brothers' and sisters' houses, and all remaining parties mentioned in the verse. If you permit taking pledges from them by analogy to eating without the owners' permission—while you yourselves refrain from this practice—you have nullified your analogy, abandoned it, and ruled it corrupt, as it is inherently corrupt in its entirety. Second: You prohibit selling from a minor son's property except for his benefit, nor permit taking possession of anything from him without urgent necessity—except pledging specifically. According to Malikis, one may only validate such transactions on his own behalf. What contradiction! What arbitrariness—imposing corrupt, conflicting opinions onto the religion!" They also cited as evidence what we narrated through Al-Bazzar's chain: Muhammad ibn Yahya ibn Abdul-Karim narrated from Abdullah ibn Dawud (Al-Khuraibi). From Hisham ibn Urwah from Muhammad ibn al-Munkadir from Jabir ibn Abdullah from the Messenger of Allah—peace be upon him—that he said: "You and your wealth belong to your father." Abu Muhammad said: They thereby permitted a man to pledge his minor son's wealth as collateral, waived the ḥadd punishment for him for engaging in intercourse with the slave girl of his minor and adult son, waived the ḥadd punishment for stealing from the wealth of his adult and minor son, and ruled that the father must guarantee its value and return it. The Mālikīs further permitted by this that he may give charity from his minor son's wealth from himself, manumit a slave of his minor son specifically, and be liable for its value in all such cases.[9]

L19148–19150 Abū Muḥammad said: There is no valid evidence for them in this narration; rather, it serves as decisive evidence against them, for they were the first to oppose it by restricting the father's entitlement to his son's wealth to only what we have mentioned. The ḥadīth is general in scope and does not specify these particular cases over others. Thus, it is impermissible for them to arbitrarily restrict its application through baseless assertions. Another point

إِلَى قَوْله تَعَالَى: {أَوْ مَا مَلَكْتُمْ مَفَاتِحَهُ أَوْ صَدِيقِكُمْ لَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَأْكُلُوا جَمِيعًا أَوْ أَشْتَاتًا} [النور: ٦١] فَأَبَاحَ اللَّهُ تَعَالَى الْأَكْلَ مِنْ بُيُوتِ الْأَصْدِقَاءِ وَالَّتِي مَفَاتِحُهَا بِأَيْدِينَا وَبُيُوتِ الْإِخْوَةِ وَالْأَخَوَاتِ وَسَائِرِ مَنْ ذُكِرَ فِي الْآيَةِ فَأَبِيحُوا الارْتِهَانَ مِنْهَا قِيَاسًا عَلَى الْأَكْلِ بِغَيْرِ إِذْنِ أَهْلِهَا وَأَنْتُمْ لَا تَفْعَلُونَ ذَلِكَ فَقَدْ نَقَضْتُمْ قِيَاسَكُمْ وَتَرَكْتُمُوهُ وَقَضَيْتُمْ بِفَسَادِهِ وَهُوَ أَهْلٌ لِلْفَسَادِ جُمْلَةً، وَالثَّانِي أَنَّكُمْ لَا تُجِيزُونَ أَنْ يُبَاعَ مِنْ مَالِ ابْنِهِ الصَّغِيرِ إِلَّا عَلَى وَجْهِ النَّظَرِ لَهُ وَلَا أَنْ يَتَمَلَّكَ مِنْهُ شَيْئًا أَصْلًا لِغَيْرِ الْحَاجَةِ الْمَاسَّةِ إِلَّا الارْتِهَانَ خَاصَّةً، وَعِنْدَ الْمَالِكِيِّينَ أَنْ يُصَدِّقَهُ عَنْ نَفْسِهِ خَاصَّةً فَكَمْ هَذَا التَّنَاقُضُ وَالتَّحَكُّمُ فِي الدِّينِ بِالْآرَاءِ الْفَاسِدَةِ الْمُضْطَرِبَةِ، وَاحْتَجُّوا أَيْضًا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ الْكَرِيمِ نا عَبْدُ اللَّهِ بْنُ دَاوُد هُوَ الْخُرَيْبِيُّ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «أَنْتَ وَمَالُكَ لِأَبِيكَ» قَالَ أَبُو مُحَمَّد: فَأَبَاحُوا بِهِ أَنْ يَرْهَنَ الرَّجُلُ مَالَ ابْنِهِ الصَّغِيرِ وَأَسْقَطُوا عَنْهُ الْحَدَّ فِي وَطْءِ أَمَةِ ابْنِهِ الصَّغِيرِ وَالْكَبِيرِ وَأَسْقَطُوا عَنْهُ الْحَدَّ فِيمَا سَرَقَ مِنْ مَالِ ابْنِهِ الْكَبِيرِ، وَالصَّغِيرِ، وَقَضَوْا عَلَى الْأَبِ بِضَمَانِهِ وَرَدِّهِ، وَأَبَاحَ الْمَالِكِيُّونَ بِهِ أَنْ يُصَدِّقَ مَالَ ابْنِهِ الصَّغِيرِ عَنْ نَفْسِهِ وَأَنْ يُعْتِقَ رَقَبَةَ ابْنِهِ الصَّغِيرِ خَاصَّةً وَيَضْمَنَ الْقِيمَةَ فِي ذَلِكَ كُلِّهِ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا حُجَّةَ لَهُمْ فِي هَذَا الْخَبَرِ بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ لِأَنَّهُمْ أَوَّلُ مَنْ خَالَفُوهُ فَلَمْ يُبِيحُوا لِلْأَبِ مِنْ مَالِ ابْنِهِ غَيْرَ مَا ذَكَرْنَا وَالْحَدِيثُ عَامٌّ لَمْ يَخُصَّ هَذِهِ الْوُجُوهَ مِنْ غَيْرِهَا فَلَا يَجُوزُ لَهُمْ تَخْصِيصُهَا بِدَعْوَى كَاذِبَةٍ. وَوَجْهٌ آخَرُ وَهُوَ أَنَّهُمْ لَمْ يُبِيحُوا الارْتِهَانَ وَالْإِصْدَاقَ إِلَّا مِنْ مَالِ الِابْنِ الصَّغِيرِ لَا مِنْ مَالِ الِابْنِ الْكَبِيرِ فَخَالَفُوا الْخَبَرَ وَتَحَكَّمُوا

[9] **Qur'an references (L19145):** Qur'an 24:61 (An-Nur).

of refutation is that they only permitted pawning and bridal payments from the wealth of a minor son—not an adult son—thereby contradicting the narration. They illegitimately imposed rulings on debt by declaring prohibitions or permissions through unsubstantiated claims devoid of proof. If they allege consensus, they have falsified, for we have reliably received through Ibn Abī Shaybah's chain: Wakīʿ narrated to us, from Hishām ibn ʿUrwah, from his father: "A man disposed of part of his wealth without his father's consent and asked the Prophet (peace be upon him)—or Abū Bakr or ʿUmar—who said: 'Restore it to him, for it is merely an arrow from your quiver.'" Similarly, what we received via Ibn al-Jahm's chain is authenticated: Abū Qilābah al-Raqāshī narrated to us, from Rūḥ—i.e., Ibn ʿUbādah—from Ibn Jurayj, who informed me that Abū al-Zubayr reported hearing Jābir ibn ʿAbd Allāh state: "A father and mother may appropriate from their child's wealth without permission, but a son or daughter may not appropriate from their parents' wealth without permission." An explicitly identical ruling is authenticated via ʿAbd ibn Ḥumayd's chain from ʿUbayd Allāh ibn Mūsā al-ʿAbsī, from Sufyān al-Thawrī, from Ibrāhīm ibn ʿAbd al-Aʿlā, from Suwayd—i.e., Ibn Ghafalah—from Umm al-Muʾminīn ʿĀ'ishah, in her own words. Through Ibn al-Jahm's chain: Bishr ibn Mūsā al-Asadī narrated to us, from Aḥmad ibn al-Walīd al-Azraqī, from al-Ḥubāb ibn Faḍālah ibn Hurmuz al-Ḥanafī, who said: "I asked Anas ibn Mālik: 'My father seized a slave girl of mine without...' [text incomplete]." My father's property is mixed with it. Anas said to me: "It is his. You and your property stem from his earning; you and your property are permissible for him, but his property is forbidden to you except what he willingly gives."

فِي الدَّيْنِ بِالتَّحْرِيمِ، وَالتَّحْلِيلِ بِالدَّعْوَى الْمُبْطِلَةِ بِلَا بُرْهَانٍ - فَإِنْ ادَّعَوْا إجْمَاعًا كَذَبُوا لِأَنَّهُ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ «أَنَّ رَجُلًا صَنَعَ شَيْئًا فِي مَالِهِ وَلَمْ يَسْتَأْذِنْ أَبَاهُ فَسَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ أَوْ أَبَا بَكْرٍ أَوْ عُمَرَ فَقَالَ: اُرْدُدْ عَلَيْهِ فَإِنَّمَا هُوَ سَهْمٌ مِنْ كِنَانَتِكَ» ، وَقَدْ صَحَّ مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَبُو قِلَابَةَ الرَّقَاشِيُّ نا رَوْحٌ هُوَ ابْنُ عُبَادَةَ - نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: يَأْخُذُ الْأَبُ، وَالْأُمُّ مِنْ مَالِ وَلَدِهِمَا بِغَيْرِ إذْنِهِ وَلَا يَأْخُذُ الِابْنُ وَالِابْنَةُ مِنْ مَالِ أَبَوَيْهِمَا بِغَيْرِ إذْنِهِمَا، وَصَحَّ مِثْلُهُ نَصًّا مِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ مُوسَى الْعَبْسِيِّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى عَنْ سُوَيْدٍ هُوَ ابْنُ غَفَلَةَ - عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ مِنْ قَوْلِهَا؛ وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا بِشْرُ بْنُ مُوسَى الْأَسَدِيُّ نا أَحْمَدُ بْنُ الْوَلِيدِ الْأَزْرَقِيُّ نا الْحُبَابُ بْنُ فَضَالَةَ بْنِ هُرْمُزَ الْحَنَفِيُّ قَالَ: قُلْت لِأَنَسِ بْنِ مَالِكٍ: جَارِيَةٌ لِي غَلَبَنِي عَلَيْهَا أَبِي لَمْ يَخْلِطْهَا مَالٌ لِأَبِي فَقَالَ لِي أَنَسٌ: هِيَ لَهُ، أَنْتَ وَمَالُك مِنْ كَسْبِهِ، أَنْتَ وَمَالُك لَهُ حَلَالٌ، وَمَالُهُ عَلَيْك حَرَامٌ إلَّا مَا طَابَتْ بِهِ نَفْسُهُ.

L19151 Through the chain of Ibn al-Jahm: Abu Qilabah informed us; Abu Dawud—he is al-Sijistani—informed us; Muhammad ibn Aban reported from Hammad, from Masʿud ibn Jubayr, from Ibn Abbas, who said: "Your children are Allah's gift to you, and your wealth is yours."

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَبُو قِلَابَةَ نا أَبُو دَاوُد هُوَ السِّجِسْتَانِيُّ - نا مُحَمَّدُ بْنُ أَبَانَ عَنْ حَمَّادٍ عَنْ مَسْعُودِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَوْلَادُكُمْ هِبَةُ اللَّهِ لَكُمْ وَأَمْوَالُكُمْ لَكُمْ.

L19152 ʿUmar took the son's hand and placed it in the father's hand, saying: "This and his wealth are from Allah's bounty to you."

رُوِّينَا مِنْ طَرِيقِ ابْنِ مَسْعُودٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ أَتَاهُ أَبٌ وَابْنٌ وَالِابْنُ يَطْلُبُ أَبَاهُ بِأَلْفِ دِرْهَمٍ أَقْرَضَهُ إِيَّاهَا وَالْأَبُ يَقُولُ: إِنَّهُ لَا يَقْدِرُ عَلَيْهَا فَأَخَذَ عُمَرُ بِيَدِ الِابْنِ فَوَضَعَهَا فِي يَدِ الْأَبِ فَقَالَ: هَذَا وَمَالُهُ مَنْ هِبَةِ اللَّهِ لَك.

L19153 A similar ruling is reported from Ali ibn Abi Talib, who decreed that a child's wealth belongs to the parent and permitted those who held a differing view.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ نَحْوُ هَذَا وَأَنَّهُ قَضَى بِمَالِ الْوَلَدِ لِلْوَالِدِ وَجَوَّزَ مَنْ قَالَ غَيْرَ هَذَا.

L19154 From the transmission of Ibn Abi Shaybah, who narrated to us from Ghundar, from Ibn Jurayj, that 'Aṭā' saw no harm in a man taking whatever he wants from his child's wealth without necessity.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا غُنْدَرٌ عَنْ ابْنِ جُرَيْجٍ كَانَ عَطَاءٌ لَا يَرَى بَأْسًا بِأَنْ يَأْخُذَ الرَّجُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ مِنْ غَيْرِ ضَرُورَةٍ.

L19155 From the chain of Ibn Abi Shaybah, from Isra'il, from Jabir, from al-Sha'bi, from Masruq, who said: "You are a gift from Allah to your father; you and your wealth are for your father."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إِسْرَائِيلَ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ قَالَ: أَنْتَ مِنْ هِبَةِ اللَّهِ لِأَبِيك، أَنْتَ وَمَالُك لِأَبِيك.

L19156 Ibn Abi Shaybah reported from Ubaydullah ibn Musa, from Al-Hasan ibn Ḥayy, from Layth, from Mujahid and Al-Hakam, both of whom said together: "A man may take from his son's wealth whatever he wishes, except the private parts."

نا ابْنُ أَبِي شَيْبَةَ نا عُبَيْدُ اللَّهِ هُوَ ابْنُ مُوسَى - نا الْحَسَنُ هُوَ ابْنُ حَيٍّ - عَنْ لَيْثٍ عَنْ مُجَاهِدٍ، وَالْحَكَمِ، قَالَا جَمِيعًا: يَأْخُذُ الرَّجُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ إلَّا الْفَرْجَ

L19157 A parent is permitted regarding their child's wealth, except the private parts.

نا ابْنُ أَبِي شَيْبَةَ نا مُعَاوِيَةُ بْنُ هِشَامٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حَمْزَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْوَالِدُ فِي حِلٍّ مِنْ مَالِ وَلَدِهِ إلَّا الْفَرْجَ.

L19158 Through the narration of Shu'bah from Abu Ishaq al-Sabi'i from Abdullah ibn Abi Burdah ibn Abi Musa al-Ash'ari: that he took his legal dispute with his father to al-Sha'bi regarding property that was his. Al-Sha'bi said to Abdullah, "I render you and your property to him" - meaning his son.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ أَنَّهُ خَاصَمَ أَبَاهُ إلَى الشَّعْبِيِّ فِي مَالٍ لَهُ فَقَالَ الشَّعْبِيُّ لِعَبْدِ اللَّهِ، أَجْعَلُك وَمَالَك لَهُ - يَعْنِي لِوَلَدِهِ.

L19159 From the chain of Abdullah ibn Humaid, Abu Nuʿaym al-Faḍl ibn Dukayn narrated to us from al-Ḥasan ibn Ṣāliḥ ibn Ḥayy, from his father, from al-Shaʿbī, who said: A man is permitted regarding his child's wealth.

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ عَنْ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ أَبِيهِ عَنْ الشَّعْبِيِّ قَالَ: الرَّجُلُ فِي حِلٍّ مِنْ مَالِ وَلَدِهِ.

L19160–19162 From the narration of ʿAlī ibn al-Madīnī: Muḥammad ibn Abī ʿAdīyy re-

ported to us, saying, “I am Ibn Jurayj,” from ʿAṭāʾ ibn Abī Rabāḥ: He saw no objection to a man taking whatever he wishes from his child’s wealth, provided he does not harm him. From the transmission of Abd ibn Humaid, who narrated to us from Yazeed ibn Haroon, who informed us from Dawood ibn Abi Hind, from Sa’eed ibn al-Musayyib, who said: “A father may consume from his child’s wealth as he wills, while a child may not consume from his father’s wealth without his permission.”

وَمِنْ طَرِيقِ عَلِيِّ بْنِ الْمَدِينِيِّ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ أَنَا ابْنُ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَأْخُذَ الرَّجُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ مَا لَمْ يُضَارَّهُ وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا يَزِيدُ بْنُ هَارُونَ أَنَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: الْوَالِدُ يَأْكُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ وَالْوَلَدُ لَا يَأْكُلُ مِنْ مَالِ وَالِدِهِ إِلَّا بِإِذْنِهِ.

L19163 From the path of ʿAbd ibn Ḥumayd, narrated to us Muḥammad ibn Bakr al-Bursānī from Hishām ibn Ḥassān from al-Ḥasan al-Baṣrī, who said: “The two parents may take from their child’s wealth whatever they wish.” From the path of ʿAbd ibn Ḥumayd, narrated to us Wahb ibn Jarīr ibn Ḥāzim from his father, who said: “I heard al-Ḥasan when a questioner asked him about a matter pertaining to his father. Al-Ḥasan replied to him: ’You and your wealth belong to your father. Do you not know that you are your father’s servant?’” From the path of ʿAbd ibn Ḥumayd: I am ʿAbd al-Razzāq, from Maʿmar from Qatādah from al-Ḥasan, who said: “A man may take from his child’s wealth whatever he wishes, even if the wealth includes a female slave he takes as a concubine.” Qatādah said: “I did not approve of what he said regarding the female slave.”

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا مُحَمَّدُ بْنُ بَكْرٍ الْبُرْسَانِيُّ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: يَأْخُذُ الْوَالِدَانِ مِنْ مَالِ وَلَدِهِمَا مَا شَاءَا وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا وَهْبِ بْنِ جَرِيرِ بْنِ حَازِمٍ عَنْ أَبِيهِ قَالَ: سَمِعْت الْحَسَنَ وَسَأَلَهُ سَائِلٌ عَنْ شَيْءٍ مِنْ أَمْرِ وَالِدِهِ؟ فَقَالَ لَهُ الْحَسَنُ: أَنْتَ وَمَالُك لِأَبِيك، أَمَا عَلِمْت أَنَّك عَبْدُ أَبِيك؟ وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ أَنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: يَأْخُذُ الرَّجُلُ مِنْ مَالِ وَلَدِهِ مَا شَاءَ وَإِنْ كَانَتْ جَارِيَةً تَسَرَّاهَا، قَالَ قَتَادَةَ: لَمْ يُعْجِبْنِي مَا قَالَ فِي الْجَارِيَةِ.

L19164 From the transmission of Laith, on the authority of Mujāhid, who said: A man may take from his child’s wealth except [matters pertaining to] chastity.

وَمِنْ طَرِيقِ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: يَأْخُذُ الرَّجُلُ مِنْ مَالِ وَلَدِهِ إِلَّا الْفَرْجَ.

L19165 And it has also been narrated to us from Al-Hasan that all body parts may be exposed except the private parts.

وَقَدْ رُوِّينَا عَنْ الْحَسَنِ أَيْضًا إِلَّا الْفَرْجَ.

L19166 Ibn Abi Layla said: The father is not liable for what he consumes from his child’s property, and he may sell from his major child’s property.

وَقَالَ ابْنُ أَبِي لَيْلَى: لَا يَغْرَمُ الْأَبُ مَا اسْتَهْلَكَ مِنْ مَالِ وَلَدِهِ، وَيَجُوزُ بَيْعُهُ لِمَالِ وَلَدِهِ الْكَبِيرِ.

L19167 Abū Muḥammad said: We know of no disagreement from the Companions against those we mentioned among them in this matter—namely ʿUmar, ʿAlī, Ibn Masʿūd, ʿĀishah the Mother of the Believers, Jābir ibn ʿAbd Allāh, Anas, and Ibn ʿAbbās—except for one authentic narration from Ibn ʿUmar and another from ʿAlī that was not authenticated. We also know of no dissent from those we mentioned among the Followers in this matter except Ibn Sīrīn,

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ خِلَافًا مِنْ الصَّحَابَةِ لِمَنْ ذَكَرْنَا مِنْهُمْ فِي هَذِهِ الْمَسْأَلَةِ وَهُمْ: عُمَرُ، وَعَلِيٌّ، وَابْنُ مَسْعُودٍ، وَعَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَجَابِرُ بْنُ عَبْدِ اللَّهِ، وَأَنَسٌ، وَابْنُ عَبَّاسٍ، إِلَّا رِوَايَةً صَحَّتْ عَنْ ابْنِ عُمَرَ، وَأُخْرَى عَنْ عَلِيٍّ لَمْ يَصِحَّ. وَلَا نَعْلَمُ لِمَنْ ذَكَرْنَا مِنْ

al-Nakhaʿī, and Mujāhid (with conflicting opinions reported from them) and al-Zuhrī. For they hold the same view as ours.

التَّابِعِينَ مُخَالِفًا فِي هَذِهِ الْمَسْأَلَةِ إِلَّا ابْنَ سِيرِينَ، وَالنَّخَعِيَّ، وَمُجَاهِدًا، بِاخْتِلَافٍ عَنْهُمْ وَالزُّهْرِيَّ، فَإِنَّهُمْ يَقُولُونَ كَقَوْلِنَا.

L19168–19169 It was narrated through the chain of Abdullah ibn Humaid, from al-Dahhak ibn Makhlad, from Abdullah ibn Awn, from Muhammad ibn Sirin, who said: "Each of them has a greater right to their own wealth"—referring to the parent and child.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: كُلُّ وَاحِدٍ مِنْهُمَا أَوْلَى بِمَالِهِ - يَعْنِي الْوَالِدَ وَالْوَلَدَ.

L19170 And through him to Abd: Jaʿfar ibn ʿAwn reported to me from Abu Hanifah, from Hammad ibn Abi Sulayman, from Ibrahim, who said: A father has no right to his son's property except what he needs in terms of food, drink, or clothing.

وَبِهِ إِلَى عَبْدٍ: أَخْبَرَنِي جَعْفَرُ بْنُ عَوْنٍ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ قَالَ: لَيْسَ لِلْأَبِ مِنْ مَالِ ابْنِهِ إِلَّا مَا احْتَاجَ إِلَيْهِ مِنْ طَعَامٍ، أَوْ شَرَابٍ، أَوْ لِبَاسٍ.

L19171 From the chain of Abd via Abd al-Razzaq via Maʿmar via al-Zuhri, who said: A man may not take anything from his child's wealth unless he is in need, in which case it is expended from it in a reasonable manner. The son provides for him as the father once provided for the son. However, if the father is wealthy, he has no right to take from his son's wealth to preserve his own wealth intact or allocate it to unlawful purposes. He said: If an orphan's mother is needy, he should spend on her from his wealth – her hand is with his hand. A wealthy mother, however, has no entitlement.

وَمِنْ طَرِيقِ عَبْدٍ عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: لَا يَأْخُذُ الرَّجُلُ مِنْ مَالِ وَلَدِهِ شَيْئًا إِلَّا أَنْ يَحْتَاجَ فَيُسْتَنْفَقَ بِالْمَعْرُوفِ، يَعُولُهُ ابْنُهُ، كَمَا كَانَ الْأَبُ يَعُولُهُ، فَأَمَّا إِذَا كَانَ الْأَبُ مُوسِرًا فَلَيْسَ لَهُ أَنْ يَأْخُذَ مِنْ مَالِ ابْنِهِ فَيَبْقَى بِهِ مَالُهُ، أَوْ يَضَعُهُ فِي مَا لَا يَحِلُّ - قَالَ: فَإِذَا كَانَتْ أُمُّ الْيَتِيمِ مُحْتَاجَةً أَنْفَقَ عَلَيْهَا مِنْ مَالِهِ، يَدُهَا مَعَ يَدِهِ، وَالْمُوسِرَةُ لَا شَيْءَ لَهَا.

L19172 From the chain of Ibn Abi Shaybah: Ubaydullah ibn Musa narrated to us from Uthman ibn al-Aswad from Mujahid, who said: "Take from your child's wealth what you have given, and do not take from it what you have not given." From the chain of Abu Bakr ibn Abi Shaybah: Sufyan ibn Uyaynah narrated to us from Amr ibn Dinar, who said: A man said to Jabir ibn Zayd: "My father is withholding his wealth from me." Jabir replied: "Take from your father's wealth in a proper manner." Ibn Abi Shaybah narrated to us: Yazid ibn Harun narrated to us from Jarir ibn Hazim from Yunus ibn Yazid from al-Zuhri from Salim ibn Abdullah that Hamzah ibn Abdullah ibn Umar slaughtered a camel. A beggar came and asked Ibn Umar [for something], so

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ عُثْمَانَ بْنِ الْأَسْوَدِ عَنْ مُجَاهِدٍ قَالَ: خُذْ مِنْ مَالِ وَلَدِكَ مَا أَعْطَيْتَه وَلَا تَأْخُذْ مِنْهُ مَا لَمْ تُعْطِه وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ رَجُلٌ لِجَابِرِ بْنِ زَيْدٍ: إِنَّ أَبِي يَحْرِمُنِي مَالَهُ؟ فَقَالَ لَهُ جَابِرٌ: كُلْ مِنْ مَالِ أَبِيكَ بِالْمَعْرُوفِ. نا ابْنُ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ أَنَّ

Ibn Umar said: “It is not mine.” Hamzah said to him: “O my father, you are absolved [of blame]; feed from it as you please.”

حَمْزَةَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ نَحَرَ جَزُورًا فَجَاءَ سَائِلٌ فَسَأَلَ ابْنَ عُمَرَ؟ فَقَالَ ابْنُ عُمَرَ: مَا هِيَ لِي؟ فَقَالَ لَهُ حَمْزَةُ: يَا أَبَتَاهُ فَأَنْتَ فِي حِلٍّ، أَطْعِمْ مِنْهَا مَا شِئْتَ.

L19173–19175 Ibn Abi Shaybah reported from Isra’il—a weak narrator—from Abd al-A’la from Muhammad ibn al-Hanafiyyah from Ali ibn Abi Talib, who said: “A man has the right to his child’s property while the child is young. But when the child grows up and secures his property, he has the right to it.”

نا ابْنُ أَبِي شَيْبَةَ عَنْ إِسْرَائِيلَ عَنْ عَبْدِ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الرَّجُلُ أَحَقُّ بِمَالِ وَلَدِهِ إِذَا كَانَ صَغِيرًا فَإِذَا كَبُرَ وَاحْتَازَ مَالَهُ فَهُوَ أَحَقُّ بِهِ - إِسْرَائِيلُ ضَعِيفٌ.

Abu Muhammad said: Ibn Sirin, al-Nakha’i, al-Zuhri, Mujahid, and Jabir ibn Zayd state: “We say in all matters except eating specifically. The father and mother may eat from the child’s property wherever they find it, whether at home or elsewhere, only that. Then they have nothing else, nor any legal authority over anything of his property whatsoever.” by emancipation, nor by dower, nor by collateral, unless they are both poor, in which case the poor parent may take from the child’s wealth what they need for clothing, food, housing, service, and only what they both require.

قَالَ أَبُو مُحَمَّدٍ: يَقُولُ ابْنُ سِيرِينَ، وَالنَّخَعِيُّ، وَالزُّهْرِيُّ، وَمُجَاهِدٌ، وَجَابِرُ بْنُ زَيْدٍ، نَقُولُ فِي كُلِّ شَيْءٍ إِلَّا فِي الْأَكْلِ خَاصَّةً فَإِنَّ لِلْأَبِ وَالْأُمِّ أَنْ يَأْكُلَا مِنْ مَالِ الْوَلَدِ حَيْثُ وَجَدَاهُ مِنْ بَيْتٍ أَوْ غَيْرِ بَيْتٍ فَقَطْ - ثُمَّ لَا شَيْءَ لَهُمَا، وَلَا حُكْمَ فِي شَيْءٍ مِنْ مَالِهِ، لَا بِعِتْقٍ، وَلَا بِإِصْدَاقٍ، وَلَا بِارْتِهَانٍ، إِلَّا إِنْ كَانَا فَقِيرَيْنِ، فَيَأْخُذُ الْفَقِيرُ مِنْهُمَا مَا احْتَاجَ مِنْ مَالِ وَلَدِهِ مِنْ كِسْوَةٍ، وَأَكْلٍ، وَسُكْنَى، وَخِدْمَةٍ، وَمَا احْتَاجَا إِلَيْهِ فَقَطْ.

L19176 As for the child, he may eat from his father’s house and his mother’s house as much as he wishes without their permission, but he may not eat anything from other households, as the revealed texts have stated. He must not transgress the limits set by Allah. If he is in need, he may also take, as we have stated regarding the parents, in accordance with the verse of Allah, the Exalted: “And do good to parents and to near relatives” (4:36).[10]

وَأَمَّا الْوَلَدُ فَيَأْكُلُ مِنْ بَيْتِ أَبِيهِ، وَبَيْتِ أُمِّهِ مَا شَاءَ بِغَيْرِ إِذْنِهِمَا، وَلَا يَأْكُلُ مِنْ غَيْرِ الْبَيْتِ شَيْئًا، كَمَا جَاءَتْ النُّصُوصُ، لَا يَتَعَدَّى حُدُودَ اللَّهِ، فَإِنْ احْتَاجَ أَخَذَ أَيْضًا كَمَا قُلْنَا فِي الْوَالِدَيْنِ لِقَوْلِ اللَّهِ تَعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى} [النساء: ٣٦]

L19177 Then, the prescribed penalties and legal rulings are incumbent upon the father concerning his son’s female slave and his son’s property, and incumbent upon the son concerning his father’s female slave, his mother’s female slave, and their property - the same as those between two strangers.

ثُمَّ الْحُدُودُ، وَالْأَحْكَامُ لَازِمَةٌ لِلْأَبِ فِي جَارِيَةِ وَلَدِهِ، وَفِي مَالِ وَلَدِهِ، وَلَازِمَةٌ لِلِابْنِ فِي جَارِيَةِ أَبِيهِ، وَأُمِّهِ، وَمَالِهِمَا، كَمَا هِيَ فِيمَا بَيْنَ الْأَجْنَبِيِّينَ سَوَاءً.

L19178 It is astonishing that the Ḥanafīs and Mālikīs vehemently condemn disagreement with the Companion when it aligns with their whims—despite no dissenter among their own scholars being known—yet falsely declare it

وَالْعَجَبُ أَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يُشَنِّعُونَ خِلَافَ الصَّاحِبِ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ إِذَا وَافَقَ شَهَوَاتِهِمْ، وَيَجْعَلُونَهُ إِجْمَاعًا وَيَكْذِبُونَ فِي ذَلِكَ. وَأَقْرَبُ ذَلِكَ: مَا ذَكَرْنَا مِنْ

[10] **Qur’an references (L19176):** Qur’an 4:36 (An-Nisa).

a consensus. The clearest example is their claim of the Companions' consensus on liability for pledged collateral, though only inauthentic narrations attributed solely to ʿUmar, his son, and ʿAlī exist.

L19179 A narration has been authentically established from ʿAlī regarding the waiver of compensation if a calamity occurs. However, they do not acknowledge [this ruling] here, despite what has been authentically established from ʿĀ'ishah, Anas, and Ibn ʿAbbās.

L19180 It has been narrated from Ali and Ibn Masʿud—with no dissenting opinion known from the Companions, may Allah be pleased with them—that their position is recognized as a foundational proof. They do not consider any [opposing opinion] except a narration from Umar. We have narrated it through the chain of Shuʿbah from Abu Bishr from Muhammad ibn Qudamah al-Hanafi from a man among their group: A man disputed with his father before Umar ibn al-Khattab regarding property his father had taken for him. Umar said, "As for what remains in his possession, he must return it. But as for what he has consumed, there is no obligation upon him."

L19181–19183 They have also contradicted this, though it is invalid, for it originates from an unknown narrator. Is this not the most astounding marvel? It is something the modest should dread and the devout should discern. If it is said: "You claim to uphold every authentic narration from the Prophet (peace be upon him), so why do you permit abandoning his established saying: 'You and your wealth are for your father'?" We reply: May Allah grant us refuge from abandoning any authentic narration from him (peace be upon him), even if we were besieged from between the two seas, unless its abrogation is established—and this narration is abrogated, without doubt—for Allah, the Almighty, has decreed [so]. By the inheritance of the parents, the husband, the wife, the sons, and the daughters from the child's estate upon death; and He permitted in the Quran for every owner of a female slave to have intercourse with her by his right hand's possession, and prohibited intercourse for those who do not own the slaves, as stated in His words, the Exalted: {Except with their spouses or those their right hands possess, for indeed, they are not to be blamed} [Al-Mu'minun: 6] {But whoever seeks beyond that, those are the

دَعْوَى الْحَنَفِيِّينَ إِجْمَاعُ الصَّحَابَةِ عَلَى تَضْمِينِ الرَّهْنِ، وَلَيْسَ مِنْهُ إِلَّا رِوَايَاتٌ لَا تَصِحُّ عَنْ عُمَرَ، وَابْنِهِ، وَعَلِيٍّ فَقَطْ.

وَقَدْ صَحَّتْ عَنْ عَلِيٍّ رِوَايَةٌ بِإِسْقَاطِ التَّضْمِينِ إِذَا أَصَابَتْهُ جَائِحَةٌ، ثُمَّ لَا يَرَوْنَ هَاهُنَا مَا قَدْ صَحَّ عَنْ عَائِشَةَ وَأَنَسٍ، وَابْنِ عَبَّاسٍ.

وَرُوِيَ عَنْ عَلِيٍّ وَابْنِ مَسْعُودٍ لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - حُجَّةٌ أَصْلًا، وَلَا يَلْتَفِتُونَ إِلَيْهِ، إِلَّا رِوَايَةً عَنْ عُمَرَ رُوِّينَاهَا مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي بِشْرٍ عَنْ مُحَمَّدِ بْنِ قُدَامَةَ الْحَنَفِيِّ عَنْ رَجُلٍ مِنْهُمْ: أَنَّ رَجُلًا خَاصَمَ أَبَاهُ إِلَى عُمَرَ بْنِ الْخَطَّابِ فِي مَالٍ أَخَذَهُ لَهُ أَبُوهُ؟ فَقَالَ عُمَرُ: أَمَّا مَا كَانَ فِي يَدِهِ فَإِنَّهُ يَرُدُّهُ، وَأَمَّا مَا اسْتَهْلَكَ فَلَيْسَ عَلَيْهِ شَيْءٌ.

وَهُمْ قَدْ خَالَفُوا هَذَا أَيْضًا، مَعَ أَنَّهَا لَا تَصِحُّ، لِأَنَّهَا عَمَّنْ لَا يَدْرِي مَنْ هُوَ أَلَيْسَ هَذَا مِنْ أَعْجَبِ الْعَجَبِ؟ وَمِمَّا يَنْبَغِي لِذِي الْحَيَاءِ أَنْ يَهَابَهُ، وَلِذِي الدِّينِ أَنْ يُفَرِّقَهُ. فَإِنْ قِيلَ: فَأَنْتُمُ الْقَائِلُونَ بِكُلِّ مَا صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلِمَ اسْتَحْلَلْتُمْ تَرْكَ الثَّابِتِ عَنْهُ مِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «أَنْتَ وَمَالُكَ لِأَبِيكَ» ؟ قُلْنَا: يُعِيذُنَا اللَّهُ مِنْ أَنْ نَتْرُكَ خَبَرًا صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ -، وَلَوْ أُجْلِبَ عَلَيْنَا مِنْ بَيْنِ الْبَحْرَيْنِ إِلَّا أَنْ يَصِحَّ نَسْخُهُ - وَهَذَا الْخَبَرُ مَنْسُوخٌ - لَا شَكَّ فِيهِ - لِأَنَّ اللَّهَ عَزَّ وَجَلَّ حَكَمَ بِمِيرَاثِ الْأَبَوَيْنِ، وَالزَّوْجِ، وَالزَّوْجَةِ، وَالْبَنِينَ، وَالْبَنَاتِ، مِنْ مَالِ الْوَلَدِ إِذَا مَاتَ، وَأَبَاحَ فِي الْقُرْآنِ لِكُلِّ مَالِكِ أَمَةٍ وَطْأَهَا بِمِلْكِ يَمِينِهِ، وَحَرَّمَهَا عَلَى مَنْ لَا يَمْلِكُهَا بِقَوْلِهِ تَعَالَى: {إِلا عَلَى أَزْوَاجِهِمْ أَوْ

transgressors} [Al-Mu'minun: 7]. Thus, this ruling encompasses those who have a father and those who do not.[11]

مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] فَدَخَلَ فِي هَذَا مَنْ لَهُ وَالِدٌ، وَمَنْ لَا وَالِدَ لَهُ.

L19184 It is established that the child's property belongs to him with certainty, not to his parents, and they have no right to it except what the text has specified as we have mentioned—such as sustenance or during necessity alone. If the child's property belonged to the parent, neither the child's wife, nor the daughter's husband, nor their children would inherit anything from it, since it would be the property of a living person. Nor would it ever be permissible for one who has a living father to have sexual relations with his female slave, for she would be considered his father's property.

فَصَحَّ أَنَّ مَالَ الْوَلَدِ لَهُ بِيَقِينٍ، لَا لِأَبَوَيْهِ، وَلَا حَقَّ لَهُمَا فِيهِ إِلَّا مَا جَاءَ بِهِ النَّصُّ مِمَّا ذَكَرْنَا: مِنَ الْأَكْلِ، أَوْ عِنْدَ الْحَاجَةِ فَقَطْ. وَلَوْ كَانَ مَالُ الْوَلَدِ لِلْوَالِدِ لَمَا وَرِثَتْ زَوْجَةُ الْوَلَدِ، وَلَا زَوْجُ الْبِنْتِ، وَلَا أَوْلَادُهُمَا مِنْ ذَلِكَ شَيْئًا، لِأَنَّهُ مَالٌ لِإِنْسَانٍ حَيٍّ، وَلَا كَانَ يَحِلُّ لِذِي وَالِدٍ أَنْ يَطَأَ جَارِيَتَهُ أَصْلًا، لِأَنَّهَا لِأَبِيهِ كَانَتْ تَكُونُ.

L19185 The continued validity of these two rulings until the Day of Judgment—established and unabrogated—confirms that this narration is abrogated. Likewise, it is definitively established by textual evidence and certain scholarly consensus that whoever owns both a female slave and a male slave who each have parents, the ownership of both belongs to their master, not to their fathers.

فَصَحَّ بِوُرُودِ هَذَيْنِ الْحُكْمَيْنِ وَبَقَائِهِمَا إِلَى يَوْمِ الْقِيَامَةِ ثَابِتَيْنِ غَيْرَ مَنْسُوخَيْنِ: أَنَّ ذَلِكَ الْخَبَرَ مَنْسُوخٌ، وَكَذَلِكَ أَيْضًا صَحَّ بِالنَّصِّ، وَالْإِجْمَاعِ الْمُتَيَقَّنِ: أَنَّ مَنْ مَلَكَ أَمَةً، أَوْ عَبْدًا لَهُمَا وَالِدٌ فَإِنَّ مِلْكَهُمَا لِمَالِكِهِمَا، لَا لِأَبِيهِمَا.

L19186 It has also been validated that his statement—Peace be upon him—"Indeed, it is for his father" is abrogated, and the difficulty has been resolved. Praise be to Allah—this is among what they used the narration as evidence, yet they contradicted the very same narration itself.

فَصَحَّ أَيْضًا: أَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «إِنَّهُ لِأَبِيهِ» مَنْسُوخٌ، وَارْتَفَعَ الْإِشْكَالُ وَالْحَمْدُ لِلَّهِ - وَهَذَا مِمَّا احْتَجُّوا بِهِ بِالْأَثَرِ وَخَالَفُوا ذَلِكَ الْأَثَرَ نَفْسَهُ.

L19187 As for when a person pledges an item belonging to another with its owner's permission, the pledged item cannot be released from its pawned status except through its exit from the pawner's ownership, its destruction, its substantial alteration until the legal status it held at the time of pledging is nullified, or by settling the debt for which it was pledged. Any obligation imposed on a third party toward the pawner concerning this pledged item—all of this constitutes a condition not found in the Book of Allah the Exalted, rendering it void. The pawner has the right to reclaim the item whenever he wishes, and the pledge is invalid because it lacks the legal rulings applicable

وَأَمَّا رَهْنُ الْمَرْءِ السِّلْعَةَ تَكُونُ لِغَيْرِهِ بِإِذْنِ صَاحِبِهَا فَإِنَّ الرَّهْنَ لَا يَجُوزُ إِخْرَاجُهُ عَنِ الِارْتِهَانِ إِلَّا بِخُرُوجِهِ عَنْ مِلْكِ الرَّاهِنِ، أَوْ بِهَلَاكِهِ، أَوْ بِاسْتِحَالَتِهِ، حَتَّى يَسْقُطَ عَنْهُ الِاسْمُ الَّذِي كَانَ عَلَيْهِ حِينَ رُهِنَ، أَوْ بِقَضَاءِ الْحَقِّ الَّذِي رُهِنَ عَنْهُ، فَالْتِزَامُ غَيْرِ الرَّاهِنِ لِلرَّاهِنِ - هَذَا كُلُّهُ فِي سِلْعَتِهِ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ، وَلَهُ أَخْذُ سِلْعَتِهِ مَتَى شَاءَ فَالرَّهْنُ بَاطِلٌ لِأَنَّهُ لَيْسَ لَهُ حُكْمُ الرُّهُونِ فِيمَا ذَكَرْنَا فَلَيْسَ رَهْنًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur'an references (L19181):** Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

to valid pledges in the circumstances we described—hence, it is not a valid pledge. Success comes solely from Allah the Exalted.

L19188–19189 **An issue concerning the pledge when it is rightfully claimed in whole or in part.**

L19190 Issue:

L19191 If the collateral, or part of it, is invalidated, the entire transaction becomes void, since they conditioned the transaction's validity on the collateral's validity. They never entered into that credit transaction except on the condition of the collateral's validity, and since this collateral has no validity, that credit transaction was never valid.

L19192 And with Allah, the Exalted, is success.

L19193 **A juridical question regarding a pledge involving a group held in the custody of a single individual.**

L19194 1224 - Issue:

L19195 If a group pledges collateral they own to a single individual, or a single individual pledges collateral to a group, then whichever member of the group settles the debt owed, their right over the collateral is released from the pledge. The shares of their co-owners remain as collateral proportionate to their respective shares.

L19196 Similarly, if one member of the group fulfills his right in part but not in full, the creditor's right to the collateral ceases, his share of the collateral reverts to the pledgor, and the shares of his partners remain pledged according to their respective obligations. This is based on the words of Allah, the Exalted: {No soul earns except against itself, and no bearer of burdens will bear the burden of another} [Al-An'ām 6:164]. Thus, it is correct that for each one of them—and success comes from Allah, the Exalted.[12]

[12]**Qur'an references (L19196):** Qur'an 6:164 (Al-An'am).

[مَسْأَلَةٌ الرَّهْنُ إِذَا اُسْتُحِقَّ كُلُّهُ أَوْ بَعْضُهُ]

مَسْأَلَةٌ:

وَإِذَا اُسْتُحِقَّ الرَّهْنُ، أَوْ بَعْضُهُ: بَطَلَتْ الصَّفْقَةُ كُلُّهَا، لِأَنَّهُمَا تَعَاقَدَا صِحَّتَهَا بِصِحَّةِ الرَّهْنِ، وَلَمْ يَتَعَاقَدَا قَطُّ تِلْكَ الْمُدَايَنَةَ إلَّا عَلَى صِحَّةِ الرَّهْنِ، وَذَلِكَ الرَّهْنُ لَا صِحَّةَ لَهُ، تِلْكَ الْمُدَايَنَةُ لَمْ تَصِحَّ قَطُّ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ رَهْن جَمَاعَة عِنْدَ وَاحِدٍ]

١٢٢٤ - مَسْأَلَةٌ:

وَإِذَا رَهَنَ جَمَاعَةٌ رَهْنًا هُوَ لَهُمْ عِنْدَ وَاحِدٍ، أَوْ رَهَنَ وَاحِدٌ عِنْدَ جَمَاعَةٍ، فَأَيُّ الْجَمَاعَةِ قَضَى مَا عَلَيْهِ خَرَجَ حَقُّهُ مِنْ ذَلِكَ الرَّهْنِ عَنْ الِارْتِهَانِ، وَبَقِيَ نَصِيبُ شُرَكَائِهِ رَهْنًا بِحِسَبِهِ.

وَكَذَلِكَ إنْ قَضَى الْوَاحِدُ بَعْضَ الْجَمَاعَةِ حَقَّهُ دُونَ بَعْضٍ فَقَدْ سَقَطَ حَقُّ الْمَقْضِيِّ فِي الِارْتِهَانِ، وَرَجَعَتْ حِصَّتُهُ مِنْ الرَّهْنِ إلَى الرَّاهِنِ، وَبَقِيَتْ حِصَصُ شُرَكَائِهِ رَهْنًا بِحِسَبِهَا، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَصَحَّ أَنَّ لِكُلِّ وَاحِدٍ مِنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا حَقَّ لِلْمُرْتَهِنِ فِي شَيْءٍ مِنْ رَقَبَةِ الرَّهْنِ]

Issue: The pledgee holds no right whatsoever to the principal asset of the pledge.

1225: Issue:

The pledgee has no right to any part of the pledged asset. If the pledged asset is a female slave and he has intercourse with her, he is an adulterer subject to the ḥadd punishment. That child is enslaved to the pledgor, based on the Prophet's statement—peace be upon him: "The child belongs to the marital bed, and for the fornicator is the stone." There is no disagreement that the female slave is not a lawful spouse for the pledgee, nor does he hold lawful ownership by right hand over her. Therefore, he is both a transgressor and a fornicator.

Chapter on collateral of dinars and dirhams

1226 - Issue:

The collateralization of dinars and dirhams is permissible, whether minted or unminted.

Mālik said: It is not permissible unless it is minted—a view we do not know to have been held by anyone before him. If there is fear of their being used, this is indeed a fear applicable to all pledged items without distinction, especially considering his statement that dinars and dirhams are not uniquely specified. For if a man were to seize a dirham or dinar, he would not be compelled to return those exact coins even if they remain in his possession—he need only repay their equivalent.

This is truly remarkable, given his statement about the natural disposition of both in the context of collateral. Success is through Allah, the Exalted. Completed is the Book of Collateral, and all praise is due to Allah, Lord of the worlds.[13]

[13] **Qur'an references (L19204):** Qur'an 37:182 (As-Saffat).

١٢٢٥ - مَسْأَلَةٌ:

وَلَا حَقَّ لِلْمُرْتَهِنِ فِي شَيْءٍ مِنْ رَقَبَةِ الرَّهْنِ، فَإِنْ كَانَتْ أَمَةً فَوَطِئَهَا فَهُوَ زَانٍ وَعَلَيْهِ الْحَدُّ، وَذَلِكَ الْوَلَدُ رَقِيقٌ لِلرَّاهِنِ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» فَالْأَمَةُ بِلَا خِلَافٍ لَيْسَتْ فِرَاشًا لِلْمُرْتَهِنِ، وَلَا مِلْكَ يَمِينٍ لَهُ، فَهُوَ مُعْتَدٍ عَاهِرٌ "

[مَسْأَلَةٌ رَهْنُ الدَّنَانِيرِ وَالدَّرَاهِمِ]

١٢٢٦ - مَسْأَلَةٌ:

وَرَهْنُ الدَّنَانِيرِ وَالدَّرَاهِمِ جَائِزٌ - طُبِعَتْ أَوْ لَمْ تُطْبَعْ.

قَالَ مَالِكٌ: لَا يَجُوزُ إلَّا أَنْ تُطْبَعَ - وَهَذَا قَوْلٌ لَا نَعْلَمُهُ لِأَحَدٍ قَبْلَهُ، وَلَئِنْ كَانَ يُخَافُ انْتِفَاعٌ بِهَا فَإِنَّ ذَلِكَ لَمَخُوفٌ عَلَى كُلِّ مَا يُرْهَنُ، وَلَا فَرْقَ وَلَا سِيَّمَا مَعَ قَوْلِهِ: إنَّ الدَّنَانِيرَ وَالدَّرَاهِمَ لَا تَتَعَيَّنُ، وَإِنَّ امْرَأً لَوْ غَصَبَ دِرْهَمًا أَوْ دِينَارًا لَمْ يُقْضَ عَلَيْهِ بِرَدِّهِمَا بِعَيْنِهِمَا، وَإِنْ كَانَا حَاضِرَيْنِ فِي يَدِهِ، وَإِنَّمَا عَلَيْهِ مِثْلُهُمَا.

وَهَذَا عَجَبٌ جِدًّا مَعَ قَوْلِهِ فِي طَبْعِهِمَا فِي الرَّهْنِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. تَمَّ " كِتَابُ الرَّهْنِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.



AL-MUHALLA

كِتَابُ الْحَوَالَةِ

The Book of Transfer of Debt (Hawalah)

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

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[Book of Hawala] [Legal Case: Hawala upon a Solvent]

[كِتَابُ الْحَوَالَةِ] [مَسْأَلَةٌ الْحَوَالَةُ عَلَى مَلِيءٍ]

1227 - Issue:

١٢٢٧ - مَسْأَلَةٌ:

It has been narrated to us through the chains of Al-Bukhārī and Muslim. Al-Bukhārī said: Narrated by ʿAbdullāh ibn Yūsuf, from Mālik, from Abū al-Zinād, from al-Aʿraj. Muslim said: Narrated by Ibn Rāfiʿ, from ʿAbd al-Razzāq, from Maʿmar, from Hammām ibn Munabbiḥ. Then the chains of al-Aʿraj and Hishām converge, both narrating from Abū Hurayrah, from the Messenger of Allah (peace be upon him), who said: "The delay of the wealthy is oppression. If one of you is pursued regarding a solvent party, then let him comply."[1]

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ، وَمُسْلِمٍ، قَالَ الْبُخَارِيُّ: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا مَالِكٌ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ، وَقَالَ مُسْلِمٌ: نا ابْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ - ثُمَّ اتَّفَقَ الْأَعْرَجُ، وَهِشَامٌ، وَكِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَطْلُ الْغَنِيِّ ظُلْمٌ وَإِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيءٍ فَلْيَتْبَعْ» .

It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—as we will mention, Allah willing, in the "Book of Sales" with its chain of narration, that he said: "When you purchase a commodity, do not sell it until you take possession of it." It is established from these two texts that anyone who holds a right against another party arising from a matter other than a sale—such as liability for usurpation or transgression in any form, a prepaid sale (*salam*) in which payment was made, a loan, a settlement, a lease (*ijārah*), dowry, a manumission contract (*kitābah*), or suretyship—and transfers this right—via one of the aforementioned means—to someone who holds a claim against them arising from a non-sale transaction, such as those enumerated here.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا سَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي " كِتَابِ الْبُيُوعِ " بِإِسْنَادِهِ أَنَّهُ قَالَ: «إذَا ابْتَعْتَ بَيْعًا فَلَا تَبِعْهُ حَتَّى تَقْبِضَهُ» . فَوَجَبَ مِنْ هَذَيْنِ النَّصَّيْنِ: أَنَّ كُلَّ مَنْ لَهُ عِنْدَ آخَرَ حَقٌّ مِنْ غَيْرِ الْبَيْعِ لَكِنْ مِنْ ضَمَانِ غَصْبٍ أَوْ تَعَدٍّ بِوَجْهِ مَا، أَوْ مِنْ سَلَمٍ سَلَّمَ فِيهِ، أَوْ مِنْ قَرْضٍ، أَوْ مِنْ صُلْحٍ، أَوْ إجَارَةٍ، أَوْ صَدَاقٍ، أَوْ مِنْ كِتَابَةٍ، أَوْ مِنْ ضَمَانٍ، فَأَحَالَهُ بِهِ عَلَى مَنْ لَهُ عِنْدَهُ حَقٌّ مِنْ غَيْرِ الْبَيْعِ، لَكِنْ بِأَحَدِ هَذِهِ الْوُجُوهِ الْمَذْكُورَةِ.

It is irrelevant whether the two rights arise from a single legal consideration or two distinct considerations, provided the obligated party fulfills the claim against him promptly without delay. Therefore, an obligation is incumbent upon the transferee to have the liability transferred to him, and he must be compelled to this effect, thereby absolving the transferor from what had been incumbent upon him.

وَلَا نُبَالِي مِنْ وَجْهٍ وَاحِدٍ كَانَ الْحَقَّانِ، أَوْ مِنْ وَجْهَيْنِ مُخْتَلِفَيْنِ، وَكَانَ الْمُحَالُ عَلَيْهِ يُوفِيهِ حَقَّهُ مِنْ وَقْتِهِ وَلَا يَمْطُلُهُ: فَفَرْضٌ عَلَى الَّذِي أُحِيلَ أَنْ يَسْتَحِيلَ عَلَيْهِ، وَيُجْبَرَ عَلَى ذَلِكَ، وَيَبْرَأَ الْمُحِيلُ مِمَّا كَانَ عَلَيْهِ.

The one who transferred the debt has no recourse to reclaim any portion of

وَلَا رُجُوعَ لِلَّذِي أُحِيلَ عَلَى الَّذِي أَحَالَهُ بِشَيْءٍ مِنْ ذَلِكَ الْحَقِّ - انْتَصَفَ، أَوْ لَمْ يَنْتَصِفْ - أَعْسَرَ الْمُحَالُ عَلَيْهِ إثْرَ الْإِحَالَةِ عَلَيْهِ أَمْ لَمْ يُعْسِرْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى

[1] **Hadith references (L19208):** Sunan Abi Dawud 3345; Sahih Muslim 1564a; Sunan an-Nasai 4691.

اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَهُ بِاتِّبَاعِ الْمُحَالِ عَلَيْهِ، وَلَا يَجُوزُ لَهُ اتِّبَاعُ غَيْرِهِ، فَإِنْ غَرَّهُ وَأَحَالَهُ عَلَى غَيْرِ مَلِيءٍ - وَالْمُحِيلُ يَدْرِي أَنَّهُ غَيْرُ مَلِيءٍ أَوْ لَا يَدْرِي -: فَهُوَ عَمَلٌ فَاسِدٌ، وَحَقُّهُ بَاقٍ عَلَى الْمُحِيلِ كَمَا كَانَ، لِأَنَّهُ لَمْ يُحِلْهُ عَلَى مَلِيءٍ، وَلَا تَجُوزُ الْحَوَالَةُ إِلَّا عَلَى مَلِيءٍ بِنَصِّ الْخَبَرِ.

that right from the party he transferred it to—whether half was received or not, and whether the transferee became insolvent following the transfer or not—because the Messenger of Allah (peace and blessings be upon him) commanded him to pursue the transferee exclusively, and he is not permitted to pursue anyone else. If the transferor deceived him by transferring the debt to an insolvent party—whether the transferor knew of the insolvency or not—the transaction is invalid, and the debt remains binding on the transferor as it originally was, since he did not transfer it to a solvent party. Debt transfer is impermissible except to a solvent debtor, as explicitly stated in the hadith.

L19212–19213 وَقَالَ الشَّافِعِيُّ: لَا يَرْجِعُ الْمُحِيلُ فِي كُلِّ ذَلِكَ - وَهَذَا خَطَأٌ لِمَا ذَكَرْنَاهُ وَقَالَ أَبُو حَنِيفَةَ: وَمَالِكٌ كَقَوْلِنَا، فَإِنْ كَانَ أَحَدُ الْحَقَّيْنِ مِنْ بَيْعٍ وَالْآخَرُ مِنْ غَيْرِ بَيْعٍ، نُظِرَ: فَإِنْ كَانَ الْحَقُّ عَلَى الْمُحِيلِ مِنْ غَيْرِ بَيْعٍ، وَكَانَ حَقُّ الْمُحِيلِ عَلَى الْمُحَالِ عَلَيْهِ مِنْ بَيْعٍ أَوْ غَيْرِ بَيْعٍ: جَازَتْ الْحَوَالَةُ.

Al-Shāfiʿī said: The transferor cannot revoke in any of these cases—but this is erroneous due to what we have previously established. Abū Ḥanīfah said: And Mālik holds the same position as us. If one of the two rights originates from a sale and the other from a non-sale, the matter is examined: If the right against the transferor arises from a non-sale, while the transferor's right against the transferee-debtor originates from a sale or non-sale, then the ḥawālah is valid.

L19214 فَإِنْ كَانَ الْحَقُّ عَلَى الْمُحِيلِ مِنْ بَيْعٍ لَمْ يَجُزْ إِلَّا بِوَجْهِ التَّوْكِيلِ فَيُوَكِّلُهُ عَلَى قَبْضِ حَقِّهِ قَبْلَهُ، فَإِنْ قَبَضَهُ لِلْمُوَكَّلِ لَهُ، فَحِينَ مَصِيرِهِ بِيَدِهِ صَارَ قَابِضًا ذَلِكَ الْحَقَّ لِنَفْسِهِ، وَبَرِئَ الْمُحِيلُ.

If the right against the transferor stems from a sale, it becomes valid solely through agency. The transferor therefore appoints an agent to collect his right prior to the transfer. If the agent collects it on behalf of the principal, then when the right comes into his possession, he effectively acquires it for himself, thereby discharging the transferor from liability.

L19215 وَإِنْ لَمْ يَقْدِرْ عَلَى قَبْضِهِ لِمَانِعٍ مَا، أَيُّ مَانِعٍ كَانَ؟ رَجَعَ الْمُحِيلُ بِحَقِّهِ، لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ مَا ابْتَعْت حَتَّى تَقْبِضَهُ.

If he is unable to take possession of it due to any obstacle—whatever the obstacle may be—the transferring party regains his right, based on the Prophet's prohibition (peace and blessings be upon him) against selling what you have bought until you take possession of it.

L19216 وَأَمَّا بَرَاءَةُ ذِمَّةِ الْمُوَكِّلِ إِذَا قَبَضَ الْوَكِيلُ الْحَقَّ فَلِأَنَّهُ مَأْمُورٌ بِأَنْ يَقْضِيَهُ لِنَفْسِهِ إِذَا صَارَ بِيَدِهِ، فَإِنْ فَعَلَ فَقَدْ اسْتَوْفَى حَقَّهُ، وَإِنْ لَمْ يَفْعَلْ فَقَدْ اعْتَدَى إِذْ ضَيَّعَ مَالَ مُوَكِّلٍ، فَلَزِمَهُ ضَمَانُهُ بِالتَّضْيِيعِ، [فَصَارَ ضَمَانُهُ بِالتَّضْيِيعِ] فَصَارَ مِثْلُهُ عَلَيْهِ لِمُوَكِّلِهِ فِي ذِمَّتِهِ.

As for the absolution of the principal's liability when the agent receives the due, this is because the agent is instructed to discharge it on his own behalf once it comes into his possession. If he does so, he has fully obtained his right. If he fails to do so, he has transgressed by negligently dissipating the principal's property, thereby becoming liable for its compensation due to negligence. Consequently, its monetary equivalent becomes a personal liability upon him toward his principal.

L19217 Abu Hanifa said: If the transferee denies the transfer, no evidence is established against him, and he swears an oath, the claimant to whom the debt was transferred may recover his right from the transferor. The same ruling applies if the transferee dies leaving no property. Abu Yusuf and Muhammad said: Similarly, if the transferee becomes insolvent – the judge adjudicating the transferee's case must also release him from prison.

وَقَالَ أَبُو حَنِيفَةَ: إنْ جَحَدَ الْمُحَالُ عَلَيْهِ الْحَوَالَةَ وَلَمْ تَقُمْ عَلَيْهِ بَيِّنَةٌ وَحَلَفَ: رَجَعَ الَّذِي أُحِيلَ عَلَى الْمُحِيلِ بِحَقِّهِ، وَكَذَلِكَ إنْ مَاتَ الْمُحَالُ عَلَيْهِ وَلَا مَالَ لَهُ، وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: وَكَذَلِكَ إذَا أَفْلَسَ - الْقَاضِي الْمُحَالَ عَلَيْهِ وَأَطْلَقَهُ مِنْ السِّجْنِ أَيْضًا.

L19218 Abu Muhammad said: This is a corrupt opinion because it contradicts the command of the Messenger of Allah—peace and blessings of Allah be upon him—and because they unanimously agree with us that when the transfer of debt is validly executed, the claim is dropped from the transferor. Since they have acknowledged its dropping, it is invalid to reinstate a claim that has been dropped without a scriptural text mandating its revival nor a consensus requiring its revival. If they say: It has been reported from Uthman or he said regarding transfers of debt: "There is no immediate liability on the wealth of a Muslim."

قَالَ أَبُو مُحَمَّدٍ: هَذَا قَوْلٌ فَاسِدٌ لِمُخَالَفَتِهِ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِأَنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّ الْحَوَالَةَ إذَا صَحَّ أَمْرُهَا فَقَدْ سَقَطَ الْحَقُّ عَنْ الْمُحِيلِ، وَإِذْ قَدْ أَقَرُّوا بِسُقُوطِهِ فَمِنْ الْبَاطِلِ رُجُوعُ حَقٍّ قَدْ سَقَطَ بِغَيْرِ نَصٍّ يُوجِبُ رُجُوعَهُ، وَلَا إجْمَاعَ يُوجِبُ رُجُوعَهُ - فَإِنْ قَالُوا: قَدْ رُوِيَ عَنْ عُثْمَانَ أَوْ قَالَ فِي الْحَوَالَاتِ: لَيْسَ عَلَى مَالِ مُسْلِمٍ تَوًّا.

L19219 And via the chain of ʿAbd al-Razzāq—from Maʿmar or another narrator [in the chain] from Qatāda—from ʿAlī ibn Abī Ṭālib, who said regarding the guaranteed party: The creditor may not seek recourse unless the debtor becomes bankrupt or dies. This is the opinion of Shurayḥ, al-Ḥasan, al-Nakhaʿī, and al-Shaʿbī. All of them stated: If the debtor fails to settle justly, the creditor may seek recourse against the guarantor.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ أَوْ غَيْرِهِ عَنْهُ عَنْ قَتَادَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي الَّذِي أُحِيلَ: لَا يَرْجِعُ صَاحِبُهُ إلَّا أَنْ يُفْلِسَ، أَوْ يَمُوتَ. وَهُوَ قَوْلُ شُرَيْحٍ، وَالْحَسَنِ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ، كُلُّهُمْ يَقُولُ: إنْ لَمْ يُنْصِفْهُ رَجَعَ عَلَى الْمُحِيلِ.

L19220 From Al-Hakam: There is no recourse against the transferor unless the transferee dies before the midpoint. Then does recourse revert to the transferor?

وَعَنْ الْحَكَمِ: لَا يَرْجِعُ عَلَى الْمُحِيلِ إلَّا أَنْ يَمُوتَ الْمُحَالُ عَلَيْهِ قَبْل أَنْ يَنْتَصِفَ، فَإِنَّهُ يَرْجِعُ إلَى الْمُحِيلِ؟

L19221–19222 We said: There is no valid proof for anyone apart from the Messenger of Allah - peace and blessings be upon him. How can this be, when we have received narrations through Ḥammād ibn Salamah's chain from Muḥammad ibn Isḥāq, from ʿAlī ibn ʿUbayd Allāh, from Saʿīd ibn al-Musayyab: Al-Musayyab's father had a debt of two thousand dirhams owed by a man, while another man held a debt of two thousand dirhams over ʿAlī ibn Abī Ṭālib. The debtor said to al-Musayyab: "I will assign my debt to you against ʿAlī, and you assign your debt to so-and-so against me." They proceeded, where-

قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَقَدْ رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ عَلِيِّ بْنِ عُبَيْدِ اللَّهِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّهُ كَانَ لِأَبِيهِ الْمُسَيِّبِ دَيْنٌ عَلَى إنْسَانٍ أَلْفَا دِرْهَمٍ، وَلِرَجُلٍ آخَرَ عَلَى عَلِيِّ بْنِ أَبِي طَالِبٍ أَلْفَا دِرْهَمٍ، فَقَالَ ذَلِكَ الرَّجُلُ لِلْمُسَيِّبِ: أَنَا أُحِيلُك عَلَى عَلِيٍّ وَأَحِلْنِي أَنْتَ عَلَى فُلَانٍ،

upon al-Musayyab took half from ʿAlī. Subsequently, the wealth of the debtor to whom al-Musayyab had assigned the claim perished. When al-Musayyab informed ʿAlī ibn Abī Ṭālib of this, ʿAlī responded: "May Allah distance him!" This contradicts the narration from ʿUthmān and what we mentioned from ʿAlī, yet this account aligns with our position.

فَفَعَلَا فَانْتَصَفَ الْمُسَيِّبُ مِنْ عَلِيٍّ وَتَلِفَ مَالُ الَّذِي أَحَالَهُ الْمُسَيِّبُ عَلَيْهِ فَأَخْبَرَ الْمُسَيِّبُ بِذَلِكَ عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ لَهُ عَلِيٌّ: أَبْعَدَهُ اللَّهُ - فَهَذَا خِلَافُ الرِّوَايَةِ عَنْ عُثْمَانَ، وَالَّذِي ذَكَرْنَا عَنْ عَلِيٍّ، وَهَذِهِ مُوَافِقَةٌ لِقَوْلِنَا.

L19223 When the early scholars (Salaf) differ, none of what is narrated from them holds greater validity than another, by your agreement with us on this matter. We do not deem permissible the assignment of a claim to one who has no right to it, for this constitutes misappropriation of wealth. Only actions like those of Ali and Al-Musayyab—may Allah be pleased with them—regarding guarantees are valid in our view. If each of the two creditors guarantees what is owed by the other without stipulation, this becomes permissible, binding, and the right owed by each is shifted to the other.

وَإِذَا اخْتَلَفَ السَّلَفُ فَلَيْسَ بَعْضُ مَا رُوِيَ عَنْهُمْ بِأَوْلَى مِنْ بَعْضٍ بِاتِّفَاقِكُمْ مَعَنَا فِي ذَلِكَ وَلَسْنَا نَرَى إحَالَةَ مَنْ لَا حَقَّ لِلْمُحَالِ عِنْدَهُ، لِأَنَّهُ أَكْلُ مَالٍ بِالْبَاطِلِ: وَإِنَّمَا يَجُوزُ عِنْدَنَا مِثْلُ فِعْلِ عَلِيٍّ، وَالْمُسَيِّبِ - رَضِيَ اللَّهُ عَنْهُمَا - عَلَى الضَّمَانِ، فَإِنَّهُ إذَا ضَمِنَ كُلُّ وَاحِدٍ مِنْ الْغَرِيمَيْنِ مَا عَلَى الْآخَرِ مِنْ غَيْرِ شَرْطٍ جَازَ ذَلِكَ، وَلَزِمَ، وَتَحَوَّلَ الْحَقُّ الَّذِي عَلَى كُلِّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ.

L19224 Abu Hanifah and Malik said: The designated debtor cannot be compelled to accept the transfer of debt. They argued for this by stating: If compelling him were obligatory, it would also become obligatory if the designated debtor transferred the debt to another party for that subsequent party to be compelled to accept the transfer. Then, if that party transfers it to another, the latter would likewise be compelled to accept it - and this process would perpetuate indefinitely.

وَقَالَ أَبُو حَنِيفَةَ: وَمَالِكٌ: لَا يُجْبَرُ الْمُحَالُ عَلَى قَبُولِ الْحَوَالَةِ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنْ قَالُوا: لَوْ وَجَبَ إجْبَارُهُ لَوَجَبَ أَيْضًا إذَا أَحَالَهُ الْمُحَالُ عَلَيْهِ عَلَى آخَرَ أَنْ يُجْبَرَ عَلَى اتِّبَاعِهِ، ثُمَّ إذَا أَحَالَهُ ذَلِكَ عَلَى آخَرَ أَنْ يُجْبَرَ أَيْضًا عَلَى اتِّبَاعِهِ، وَهَذَا أَبَدًا.

L19225 Abū Muḥammad said: This is an opposition to the command of the Messenger of Allah (peace and blessings be upon him), and this entails inherent issues. How, then, can their objection stand when it is itself invalid? For it is a delay by a wealthy debtor or a transfer of debt to an insolvent party. Delaying payment despite affluence is oppression, and transferring debt to an insolvent party was not commanded to be accepted. A transfer of debt applies only to one who expedites fair settlement through tangible action, not mere words; otherwise, it does not constitute a transfer according to the explicit wording of the Hadith.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ مُعَارَضَةٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي هَذَا مَا فِيهِ، فَكَيْفَ وَالَّذِي اعْتَرَضُوا بِهِ فَاسِدٌ؟ لِأَنَّهُ مَطْلٌ مِنْ غَنِيٍّ، أَوْ حَوَالَةٌ عَلَى غَيْرِ مَلِيءٍ، وَمَطْلُ الْغَنِيِّ ظُلْمٌ، وَالْحَوَالَةُ عَلَى غَيْرِ مَلِيءٍ لَمْ يُؤْمَرْ بِأَنْ يَقْبَلَهَا، وَإِنَّمَا الْحَوَالَةُ عَلَى مَنْ يُعَجِّلُ الْإِنْصَافَ بِفِعْلِهِ لَا بِقَوْلِهِ، وَإِلَّا فَلَيْسَتْ حَوَالَةً بِنَصِّ الْحَدِيثِ

L19226 **Issue: The right of the assignor when it is established**

[مَسْأَلَةٌ حَقُّ الْمُحِيلِ إذَا ثَبَتَ عَلَى الْمُحَالِ عَلَيْهِ]

against the assignee.

1228 - Issue:

١٢٢٨ - مَسْأَلَةٌ:

If the right of the transferor against the transferee is established through the transferee's admission or through the testimony of just witnesses—even if the transferee denies it—then it constitutes a valid Ḥawalah.

وَإِذَا ثَبَتَ حَقُّ الْمُحِيلِ عَلَى الْمُحَالِ عَلَيْهِ بِإِقْرَارِهِ أَوْ بِبَيِّنَةِ عَدْلٍ، وَإِنْ كَانَ جَاحِدًا فَهِيَ حَوَالَةٌ صَحِيحَةٌ.

Malik said: "It is only valid if he admits to the right itself"—but this is an unsubstantiated assertion. Those who followed him argued: "What if the evidence is discredited, thereby voiding the right?" We replied: "He might retract his admission of that right and establish evidence that he had fulfilled it, thus nullifying the right." It is invalid to specify what the Messenger of Allah—peace and blessings be upon him—did not specify, using baseless opinions. "He does not speak from [his own] inclination" (53:3). "It is but a revelation revealed" (53:4). "And your Lord is never forgetful" (19:64).[2]

وَقَالَ مَالِكٌ: لَا تَجُوزُ إِلَّا بِإِقْرَارِهِ بِالْحَقِّ فَقَطْ - وَهَذِهِ دَعْوَى بِلَا بُرْهَانٍ وَاحْتَجَّ لَهُ مَنْ قَلَّدَهُ بِأَنَّهُ قَدْ تُجْرَحُ الْبَيِّنَةُ فَيَبْطُلُ الْحَقُّ؟ قُلْنَا: وَقَدْ يَرْجِعُ عَنْ إقْرَارِهِ بِذَلِكَ الْحَقِّ، وَيُقِيمُ بَيِّنَةً بِأَنَّهُ قَدْ كَانَ أَدَّاهُ، فَيَبْطُلُ الْحَقُّ - وَلَا يَجُوزُ تَخْصِيصُ مَا لَمْ يَخُصَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْآرَاءِ الْفَاسِدَةِ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

A case concerning the transfer (Hawala) of a deferred debt to a deferred debt.

[مَسْأَلَةُ الْحَوَالَةُ بِالدَّيْنِ الْمُؤَجَّلِ عَلَى الدَّيْنِ الْمُؤَجَّلِ]

Question:

مَسْأَلَةٌ:

It is permissible to reassign a deferred debt to another deferred debt provided the new term matches the original duration precisely—neither extended nor shortened.

وَتَجُوزُ الْحَوَالَةُ بِالدَّيْنِ الْمُؤَجَّلِ عَلَى الدَّيْنِ الْمُؤَجَّلِ إلَى مِثْلِ أَجَلِهِ لَا إلَى أَبْعَدَ، وَلَا إلَى أَقْرَبَ

The transfer of debt is permissible when transferring a current debt onto another current debt. However, it is impermissible to transfer a current debt onto a term-deferred debt, a term-deferred debt onto a current debt, or a term-deferred debt onto another term-deferred debt with a differing stipulated term. This is because each such case necessitates deferring a current debt or enforcing the maturity of a term-deferred debt.

وَتَجُوزُ الْحَوَالَةُ بِالْحَالِ عَلَى الْحَالِ، وَلَا تَجُوزُ بِحَالِ عَلَى مُؤَجَّلٍ؛ وَلَا بِمُؤَجَّلِ عَلَى حَالٍ، وَلَا بِمُؤَجَّلِ عَلَى مُؤَجَّلٍ إلَى غَيْرِ أَجَلِهِ، لِأَنَّ فِي كُلِّ ذَلِكَ إيجَابُ تَأْجِيلِ حَالٍ أَوْ إيجَابِ حُلُولِ مُؤَجَّلٍ.

That is not permissible because neither a text nor Consensus obligated it.

وَلَا يَجُوزُ ذَلِكَ إذْ لَمْ يُوجِبْهُ نَصٌّ وَلَا إجْمَاعٌ.

[2] **Qur'an references (L19229):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

L19236 As for substituting a deferred obligation with another deferred one to its term, there is no scriptural text or consensus prohibiting it. Thus, it falls under the ruling of the Prophet - peace be upon him -: "Whoever is pursued [for payment] regarding a solvent person should be directed to pursue him."

L19237 "The Chapter on Ḥawālah" has been concluded, and praise be to Allah, Lord of the worlds.

وَأَمَّا الْمُؤَجَّلُ بِالْمُؤَجَّلِ إلَى أَجَلِهِ فَلَمْ يَمْنَعْ مِنْهُ نَصٌّ وَلَا إجْمَاعٌ، فَهُوَ دَاخِلٌ فِي أَمْرِهِ - عَلَيْهِ السَّلَامُ -: «مَنْ أُتْبِعَ عَلَى مَلِيءٍ أَنْ يَتْبَعَهُ» .

تَمَّ " كِتَابُ الْحَوَالَةِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ



AL-MUHALLA

كِتَابُ الْكَفَالَةِ

The Book of Suretyship

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

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Chapter on Suretyship Section: Definition of Suretyship

1230: Question

Al-Kafalah refers to surety (ḍamān), guarantee (zaʿāmah), contractual surety (qabālah), and assumption of liability (ḥamālah).

If someone holds a financial right against another—whether arising from sale, non-sale transaction, or any cause, immediate or deferred—regardless of the principal debtor being alive or deceased, and a person with no prior obligation to the debtor voluntarily guarantees this right with the free consent of both the guarantor and the claimant: the obligation is thereby lifted from the principal debtor and transferred to the guarantor, becoming irrevocably binding. The claimant may never demand repayment from the original debtor or their heirs—whether the debt is partially settled or not, under any circumstance. Likewise, the guarantor may never seek reimbursement from the original debtor or their heirs for anything at all he guaranteed—regardless of whether the debtor requested the guarantee—except in one scenario: if the debtor explicitly states, "Guarantee what this claimant holds against me, and when you discharge it on my behalf, it shall become a debt you hold against me." In this case, the guarantor may recover what he paid, as he has effectively borrowed from him what he paid on his behalf: thus, it becomes a valid loan.

As for our statement: Verily, the surety (al-kafālah) is the guarantee (al-ḍamān), the bearing of responsibility (al-ḥamālah), the assumption of liability (al-zaʿāmah), and the acceptance of obligation (al-qibālah). The guarantor (al-ḍāmin) is referred to as the assuming party (al-qabīl), the surety (al-kafīl), the liable party (al-zaʿīm), and the responsible bearer (al-ḥamīl). There is no disagreement in language and religious obligation regarding these terms.

As for the universal permissibility of surety in every right—whether arising

[كِتَابُ الْكَفَالَةِ] [مَسْأَلَةٌ تَعْرِيف الْكَفَالَة]

١٢٣٠ - مَسْأَلَةٌ:

الْكَفَالَةُ هِيَ الضَّمَانُ، وَهِيَ الزَّعَامَةُ، وَهِيَ الْقَبَالَةُ، وَهِيَ الْحَمَالَةُ.

فَمَنْ كَانَ لَهُ عَلَى آخَرَ حَقُّ مَالٍ مِنْ بَيْعٍ، أَوْ مِنْ غَيْرِ بَيْعٍ مِنْ أَيِّ وَجْهٍ كَانَ - حَالًّا أَوْ إلَى أَجَلٍ - سَوَاءٌ كَانَ الَّذِي عَلَيْهِ الْحَقُّ حَيًّا أَوْ مَيِّتًا فَضَمِنَ لَهُ ذَلِكَ الْحَقَّ إنْسَانٌ لَا شَيْءَ عَلَيْهِ لِلْمَضْمُونِ عَنْهُ بِطِيبِ نَفْسِهِ وَطِيبِ نَفْسِ الَّذِي لَهُ الْحَقُّ: فَقَدْ سَقَطَ ذَلِكَ الْحَقُّ عَنْ الَّذِي كَانَ عَلَيْهِ وَانْتَقَلَ إلَى الضَّامِنِ وَلَزِمَهُ بِكُلِّ حَالٍ - وَلَا يَجُوزُ لِلْمَضْمُونِ لَهُ أَنْ يَرْجِعَ عَلَى الْمَضْمُونِ عَنْهُ، وَلَا عَلَى وَرَثَتِهِ أَبَدًا بِشَيْءٍ مِنْ ذَلِكَ الْحَقِّ - انْتَصَفَ أَوْ لَمْ يَنْتَصِفْ - وَلَا بِحَالٍ مِنْ الْأَحْوَالِ - وَلَا يَرْجِعُ الضَّامِنُ عَلَى الْمَضْمُونِ عَنْهُ، وَلَا عَلَى وَرَثَتِهِ أَبَدًا بِشَيْءٍ مِمَّا ضَمِنَ عَنْهُ أَصْلًا - سَوَاءٌ رَغِبَ إلَيْهِ فِي أَنْ يَضْمَنَهُ عَنْهُ أَوْ لَمْ يَرْغَبْ إلَيْهِ فِي ذَلِكَ - إلَّا فِي وَجْهٍ وَاحِدٍ، وَهُوَ: أَنْ يَقُولَ الَّذِي عَلَيْهِ الْحَقُّ: اضْمَنْ عَنِّي مَا لِهَذَا عَلَيَّ فَإِذَا أَدَّيْت عَنِّي فَهُوَ دَيْنٌ لَك عَلَيَّ: فَهَاهُنَا يَرْجِعُ عَلَيْهِ بِمَا أَدَّى عَنْهُ لِأَنَّهُ اسْتَقْرَضَهُ مَا أَدَّى عَنْهُ: فَهُوَ قَرْضٌ صَحِيحٌ.

أَمَّا قَوْلُنَا: إنَّ الْكَفَالَةَ هِيَ الضَّمَانُ، وَالْحَمَالَةُ، وَالزَّعَامَةُ، وَالْقَبَالَةُ - وَالضَّامِنُ: هُوَ الْقَبِيلُ، وَالْكَفِيلُ، وَالزَّعِيمُ، وَالْحَمِيلُ، فَاللُّغَةُ، وَالدِّيَانَةُ لَا خِلَافَ فِيهِمَا فِي ذَلِكَ.

from a sale or otherwise—this is because it does not involve a sale at all, but is merely the transfer of a right.

وَأَمَّا عُمُومُ جَوَازِ الضَّمَانِ فِي كُلِّ حَقٍّ مِنْ بَيْعٍ أَوْ غَيْرِهِ، فَلِأَنَّهُ لَيْسَ فِيهِ بَيْعٌ أَصْلًا، وَإِنَّمَا هُوَ نَقْلُ حَقٍّ فَقَطْ.

L19245–19247 As for the permissibility of assuming liability without the consent of the party against whom liability is claimed, this is established by what has been transmitted to us through Abū Dāwūd's chain—Musaddad ibn Masarrat narrated to us, Yahyā ibn Saʿīd al-Qaṭṭān narrated to us, Ibn Abī Dhi'b said: Saʿīd ibn Abī Saʿīd al-Maqburī narrated to me. He said: I heard Abu Shuraih Al-Ka'bi say: The Messenger of Allah - peace and blessings be upon him - said: "O assembly of Khuza'ah, you have killed this slain man from Hudhayl, and I will assume responsibility as his ʿāqilah." He mentioned the rest of the report, and the Prophet - peace and blessings be upon him - guaranteed the blood money on their behalf without their consent in that matter.[1]

وَأَمَّا جَوَازُ الضَّمَانِ بِغَيْرِ رَغْبَةِ الْمَضْمُونِ عَنْهُ، فَلِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدُ بْنُ مَسَرَّةَ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا ابْنُ أَبِي ذِئْبٍ قَالَ: حَدَّثَنِي سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ قَالَ: سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّكُمْ يَا مَعْشَرَ خُزَاعَةَ قَتَلْتُمْ هَذَا الْقَتِيلَ مِنْ هُذَيْلٍ وَإِنِّي عَاقِلُهُ» وَذَكَرَ بَاقِيَ الْخَبَرِ، فَضَمِنَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُمْ الدِّيَةَ بِغَيْرِ رَغْبَتِهِمْ فِي ذَلِكَ.

L19248 Abu Hanifah said: Suretyship is not permissible except in the presence of the creditor, except in one instance—when a sick person declares to his heirs, "Which of you will guarantee on my behalf the debt of so-and-so owed by me?" and one of them guarantees it. Then, it is permissible without the creditor's presence.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَجُوزُ الضَّمَانُ إلَّا بِمَحْضَرِ الَّذِي لَهُ الْحَقُّ، إلَّا فِي مَوْضِعٍ وَاحِدٍ، وَهُوَ الْمَرِيضُ يَقُولُ لِوَرَثَتِهِ: أَيُّكُمْ يَضْمَنُ عَنِّي دَيْنَ فُلَانٍ عَلَيَّ فَيَضْمَنُهُ أَحَدُهُمْ - فَيَجُوزُ بِغَيْرِ مَحْضَرِ الطَّالِبِ.

L19249 This statement is utterly corrupt, for it is a claim entirely devoid of proof.

وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ أَصْلًا.

L19250 Some of those afflicted by their adherence to his legal authority argued for him that it is a contract like marriage and sale, requiring the presence of both parties for validity. Abū Muḥammad said: This constitutes analogical reasoning, and all such reasoning is invalid. Furthermore, even were it valid, this would itself represent the very essence of invalidity.

وَاحْتَجَّ لَهُ بَعْضُ الْمُبْتَلَيْنَ بِتَقْلِيدِهِ أَنَّهُ عَقْدٌ كَالنِّكَاحِ وَالْبَيْعِ، فَلَا يَصِحُّ إلَّا بِمَحْضَرِهِمَا جَمِيعًا. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ فَاسِدٌ - ثُمَّ إنَّهُ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْفَسَادِ.

L19251 The first aspect of this is that they invalidate matters recently, permitting the marriage of a minor girl without her presence and allowing guarantees for a sick person's debt in the absence of the rightful claimant.

أَوَّلُ ذَلِكَ -: أَنَّهُمْ يَنْتَقِضُونَ مِنْ قُرْبٍ فَيُجِيزُونَ نِكَاحَ الصَّغِيرَةِ بِغَيْرِ مَحْضَرِهَا، وَيُجِيزُونَ الضَّمَانَ لِدَيْنِ الْمَرِيضِ بِغَيْرِ مَحْضَرِ صَاحِبِ الْحَقِّ.

L19252 Furthermore, the guarantee is not a contract binding the beneficiary, but

[1] **Hadith references (L19245):** Sunan Abi Dawud 4504.

rather it is binding solely on the guarantor. The beneficiary is only entitled to a fair portion of his right. If fairness is achieved in such a case, then it stands; otherwise, it is not binding upon him unless he consents, while his right remains intact as it was. They sought to differentiate between the case of the sick person and others by stating that the debt is definitively attached to the sick person's property.

ثُمَّ إِنَّ الضَّمَانَ لَيْسَ عَقْدًا عَلَى الْمَضْمُونِ لَهُ، وَإِنَّمَا هُوَ عَلَى الضَّامِنِ وَحْدَهُ وَإِنَّمَا لِلْمَضْمُونِ لَهُ إِنْصَافُهُ مِنْ حَقِّهِ فَقَطْ، فَإِنْ أُنْصِفَ فِي مِثْلِ هَذَا، وَإِلَّا فَلَا يَلْزَمُهُ مَا لَمْ يَرْضَ بِهِ، وَهُوَ بَاقٍ عَلَى حَقِّهِ كَمَا كَانَ - وَرَامُوا الْفَرْقَ بَيْنَ مَسْأَلَةِ الْمَرِيضِ وَغَيْرِهَا بِأَنْ قَالُوا: إِنَّ الدَّيْنَ قَدْ تَعَيَّنَ فِي مَالِ الْمَرِيضِ.

L19253 Ali said: They have lied; nothing was ever legally established in his property except after his death. Abu Hanifah does not permit suretyship for a debt against the deceased unless he leaves enough to settle it—thus the fallacy of their position was exposed completely. They argued that the debt was irrecoverable, yet they permitted suretyship against the bankrupt's valid claim—despite the debt being irrecoverable—and this is a contradiction.

قَالَ عَلِيٌّ: وَقَدْ كَذَبُوا مَا تَعَيَّنَ قَطُّ فِي مَالِهِ إِلَّا بَعْدَ مَوْتِهِ، وَأَبُو حَنِيفَةَ لَا يُجِيزُ ضَمَانَ دَيْنٍ عَلَى الْمَيِّتِ إِلَّا بِأَنْ يَتْرُكَ وَفَاءً - فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً. وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ الدَّيْنَ قَدْ هَلَكَ - وَأَجَازُوا الضَّمَانَ عَلَى الْحَقِّ الْمُفْلِسِ - وَالدَّيْنُ قَدْ هَلَكَ - وَهَذَا تَنَاقُضٌ.

L19254 If they say, "Could a bankrupt person acquire wealth?" We reply, "Similarly, wealth belonging to the deceased may emerge that had not been known at the time of his death"—and this is a mere disagreement from them against the Messenger of Allah (peace be upon him).

فَإِنْ قَالُوا: قَدْ يَكْسِبُ الْمُفْلِسُ مَالًا؟ قُلْنَا: وَقَدْ يَطْرَأُ لِلْمَيِّتِ مَالٌ لَمْ يَكُنْ عُرِفَ حِينَ مَوْتِهِ - وَهَذَا مِنْهُمْ خِلَافٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُجَرَّدٌ.

L19255–19256 And those who share our opinion regarding the liability on behalf of the deceased who does not leave sufficient assets to fulfill obligations are: Mālik, Abū Yūsuf, Muḥammad ibn al-Ḥasan, al-Shāfiʿī, and Abū Sulaymān.

وَمَنْ قَالَ - بِقَوْلِنَا فِي الضَّمَانِ عَنْ الْمَيِّتِ الَّذِي لَا يَتْرُكُ وَفَاءً: مَالِكٌ، وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

L19257 It has been narrated to us via the transmission of al-Bukhari: Makkī ibn Ibrāhīm narrated to us, Yazīd ibn Abī 'Ubayd narrated to us from Salamah ibn al-Akwa' [may Allah be pleased with him], who said: "We were sitting with the Prophet (peace be upon him) when a funeral was brought. They asked, 'Will you pray over him?' He inquired, 'Did he leave anything?' They replied, 'No.' He asked, 'Does he owe any debt?' They said, 'Yes—three dinars.' He said, 'Pray over your companion.' Abū Qatādah then said, 'Pray over him, O Messenger of Allah, and I will assume liability for his debt.' So he prayed over him." This narration establishes the permissibility of guaranteeing the debt of a deceased person who left no means to settle it, contrary to Abū Ḥanīfah's view. It further indicates that the debt is entirely discharged through such guarantee, for had it not been lifted from the deceased and transferred to

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مَكِّيُّ بْنُ إِبْرَاهِيمَ نا يَزِيدُ بْنُ أَبِي عُبَيْدٍ عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ [- رَضِيَ اللَّهُ عَنْهُ -] قَالَ: «كُنَّا جُلُوسًا عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ أُتِيَ بِجِنَازَةٍ، فَقَالُوا: صَلِّ عَلَيْهَا؟ فَقَالَ: هَلْ تَرَكَ شَيْئًا؟ قَالُوا: لَا، قَالَ: فَهَلْ عَلَيْهِ دَيْنٌ؟ قَالُوا: نَعَمْ، ثَلَاثَةُ دَنَانِيرَ، قَالَ: صَلُّوا عَلَى صَاحِبِكُمْ، فَقَالَ أَبُو قَتَادَةَ: صَلِّ عَلَيْهِ يَا رَسُولَ اللَّهِ وَعَلَيَّ دَيْنُهُ؟ فَصَلَّى عَلَيْهِ» . فَفِي هَذَا الْخَبَرِ جَوَازُ ضَمَانِ دَيْنِ الْمَيِّتِ الَّذِي لَمْ يَتْرُكْ وَفَاءً بِدَيْنِهِ، بِخِلَافِ رَأْيِ أَبِي حَنِيفَةَ، وَفِيهِ: أَنَّ الدَّيْنَ يَسْقُطُ بِالضَّمَانِ جُمْلَةً، لِأَنَّهُ لَوْ لَمْ يَسْقُطْ عَنْ الْمَيِّتِ وَيَنْتَقِلْ إلَى ذِمَّةِ أَبِي قَتَادَةَ لَمَا كَانَتْ الْحَالُ إلَّا وَاحِدَةً، وَامْتِنَاعُهُ -

عَلَيْهِ السَّلَامُ - مِنْ الصَّلَاةِ عَلَيْهِ قَبْلَ ضَمَانِ أَبِي قَتَادَةَ لِدَيْنِهِ، ثُمَّ صَلَاتُهُ - عَلَيْهِ السَّلَامُ - عَلَيْهِ بَعْدَ ضَمَانِ أَبِي قَتَادَةَ: بُرْهَانٌ صَحِيحٌ عَلَى أَنَّ الْحَالَ الثَّانِيَةَ غَيْرُ الْأُولَى وَأَنَّ الدَّيْنَ الَّذِي لَا يُتْرَكُ بِهِ وَفَاءٌ قَدْ بَطَلَ وَسَقَطَ بِضَمَانِ الضَّامِنِ، وَلَزِمَ ذِمَّةَ الضَّامِنِ بِقَوْلِ أَبِي قَتَادَةَ الَّذِي أَقَرَّهُ عَلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى دَيْنِهِ. فَصَحَّ أَنَّ الدَّيْنَ عَلَى الضَّامِنِ بَعْدُ لَا عَلَى الْمَضْمُونِ عَنْهُ.

Abū Qatādah's liability, the circumstance would have remained unchanged. The Prophet's (peace be upon him) initial refusal to pray over him before Abū Qatādah guaranteed the debt, followed by his prayer afterward, constitutes valid proof that the second scenario differs from the first. The debt—for which no repayment was available—is thereby nullified and discharged through the guarantor's assumption, becoming binding upon the guarantor due to Abū Qatādah's declaration, which the Prophet (peace be upon him) affirmed. This confirms that the debt thereafter falls upon the guarantor, not the original debtor.

وَفِيهِ أَيْضًا: جَوَازُ الضَّمَانِ بِغَيْرِ مَحْضَرِ الطَّالِبِ الَّذِي لَهُ الْحَقُّ، وَإِذْ قَدْ سَقَطَ الدَّيْنُ بِالضَّمَانِ كَمَا ذَكَرْنَا فَلَا يَجُوزُ رُجُوعُهُ بَعْدَ سُقُوطِهِ بِالدَّعْوَى الْكَاذِبَةِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ.

L19258 It also states the permissibility of kafalah (suretyship) without the presence of the claimant who holds the right. Since the debt has been discharged by the suretyship as previously established, it is impermissible to reassert the debt after its discharge through a false legal claim without explicit textual evidence or scholarly consensus.

وَأَيْضًا: الْخَبَرُ الَّذِي رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى أَنَا حَمَّادُ بْنُ يَزِيدَ عَنْ هَارُونَ بْنِ رِئَابٍ حَدَّثَنِي كِنَانَةُ بْنُ نُعَيْمٍ الْعَدَوِيُّ عَنْ قَبِيصَةَ بْنِ الْمُخَارِقِ الْهِلَالِيِّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: يَا قَبِيصَةُ إنَّ الْمَسْأَلَةَ لَا تَحِلُّ إلَّا لِأَحَدِ ثَلَاثَةٍ رَجُلٍ تَحَمَّلَ حَمَالَةً فَحَلَّتْ لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَهَا ثُمَّ يُمْسِكُ» وَذَكَرَ بَاقِي الْخَبَرِ - فَعَمَّ - عَلَيْهِ السَّلَامُ - إبَاحَةَ تَحَمُّلِ الْحَمَالَةِ عُمُومًا بِكُلِّ حَالٍ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19259 Moreover, the report transmitted as recorded in Muslim's compilation—Yaḥyā ibn Yaḥyā narrated to us; Ḥammād ibn Yazīd reported from Hārūn ibn Ri'āb, who narrated: Kinānah ibn Nuʿaym al-ʿAdawī narrated from Qabīṣah ibn al-Mukhāriq al-Hilālī: "The Messenger of Allah—peace and blessings be upon him—said to him: 'O Qabīṣah, begging is impermissible except for one of three: a man who assumes a financial liability (ḥamālah), making begging lawful for him until he secures it, after which he must desist.'" The narrator mentioned the remainder of the report. Thus, the Prophet—peace and blessings be upon him—generalized the permissibility of assuming financial liabilities under all circumstances, and success is from Allah, the Exalted.

وَأَمَّا قَوْلُنَا: إنَّهُ إنْ لَمْ يَرْضَ الْمَضْمُونُ لَهُ بِالضَّمَانِ لَمْ يَلْزَمْهُ إلَّا بِأَنْ يُوَفِّيَهُ أَيْضًا مِنْ حَقِّهِ فَلَيْسَ لَهُ حِينَئِذٍ إلَّا أَخْذُهُ مِنْهُ أَوْ تَرْكُهُ جُمْلَةً، وَلَا طَلَبَ لَهُ عَلَى الْمَضْمُونِ عَنْهُ بَعْدَهَا، فَلِأَنَّهُ صَاحِبُ الْحَقِّ، وَلَمْ يَأْتِ نَصٌّ بِلُزُومِ تَرْكِ طَلَبِ غَرِيمِهِ، بَلْ الضَّمَانُ حِينَئِذٍ مَطْلٌ لَهُ، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» وَأَمَرَ - عَلَيْهِ السَّلَامُ -

L19260–19262 As for our statement: If the creditor does not accept the guarantee, it does not bind the guarantor unless he fulfills the obligation himself. At that point, the creditor has no option but to either claim it from him or abandon it entirely, and thereafter has no further claim against the guarantor. This is because the creditor holds the right, and there is no textual evidence requiring him to relinquish claims against his debtor. Rather, the guarantee at that point constitutes delay. To Him belongs [justice], and the Prophet (peace be upon him) said: "Unjust delay in payment by the wealthy is oppression," and he (peace be upon him) commanded that every right-holder be granted

his due. If justice is served, the right-holder's right has been fulfilled, and whoever is granted his right has no right beyond it.

أَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ، فَإِنْ أُنْصِفَ فَقَدْ أُعْطِيَ حَقُّهُ، وَمَنْ أُعْطِيَ حَقَّهُ فَلَا حَقَّ لَهُ سِوَاهُ.

L19263 If it is said: "You are the people who adhere to narrated precedents, so how do you permit praying over one who died while owing a debt that could not be repaid?" We respond: Exalted is Allah! Does his statement—peace be upon him—to them, "Pray over your companion," not clarify that this ruling applies specifically to him alone, excluding all other Muslims—neither the Imam nor anyone else? How could this be, when we have narrated through ʿAbd al-Razzāq, who narrated to us from Maʿmar, from al-Zuhrī, from Abū Salama ibn ʿAbd al-Raḥmān, from Jābir, who said: "The Prophet—peace and blessings of Allah be upon him—would not pray over a man who died indebted. A deceased person was brought to him, and he asked: 'Does he owe a debt?' They replied: 'Yes—two dinars.' Abū Qatāda al-Anṣārī said: 'They are my responsibility, O Messenger of Allah.' Thereupon the Prophet—peace and blessings of Allah be upon him—prayed over him. When Allah bestowed success upon His Messenger, he said: 'I have more right to every believer than he has to himself. Thus, whoever leaves a debt, its settlement is incumbent upon me.'" And he mentioned the report.

فَإِنْ قِيلَ: فَأَنْتُمْ أَصْحَابُ اتِّبَاعٍ لِلْآثَارِ فَمِنْ أَيْنَ أَجَزْتُمْ الصَّلَاةَ عَلَى مَنْ مَاتَ وَعَلَيْهِ دَيْنٌ لَا وَفَاءَ لَهُ بِهِ؟ قُلْنَا: سُبْحَانَ اللَّهِ أَوَ لَيْسَ فِي قَوْلِهِ - عَلَيْهِ السَّلَامُ - لَهُمْ: «صَلُّوا عَلَى صَاحِبِكُمْ» بَيَانٌ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - الْمَخْصُوصُ بِهَذَا الْحُكْمِ وَحْدَهُ، لَا أَحَدٌ مِنْ الْمُسْلِمِينَ سِوَاهُ، لَا الْإِمَامُ وَلَا غَيْرُهُ؟ فَكَيْفَ وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ جَابِرٍ قَالَ: «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُصَلِّي عَلَى رَجُلٍ مَاتَ وَعَلَيْهِ دَيْنٌ، فَأُتِيَ بِمَيِّتٍ، فَقَالَ: عَلَيْهِ دَيْنٌ؟ قَالُوا: نَعَمْ، دِينَارَانِ، فَقَالَ أَبُو قَتَادَةَ الْأَنْصَارِيُّ: هُمَا عَلَيَّ يَا رَسُولَ اللَّهِ، فَصَلَّى عَلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا فَتَحَ اللَّهُ عَلَى رَسُولِهِ قَالَ: أَنَا أَوْلَى بِكُلِّ مُؤْمِنٍ مِنْ نَفْسِهِ، فَمَنْ تَرَكَ دَيْنًا فَعَلَيَّ قَضَاؤُهُ» وَذَكَرَ الْخَبَرَ.

L19264 Among those who permitted surety for a deceased person who left insufficient assets to fulfill his obligations are Ibn Abī Laylā, Mālik, Abū Yūsuf, Muḥammad ibn al-Ḥasan, al-Shāfiʿī, and Abū Sulaymāna - and we know of no prior authority for Abū Ḥanīfah's opinion.

وَمِمَّنْ أَجَازَ الضَّمَانَ عَنْ الْمَيِّتِ الَّذِي لَمْ يَتْرُكْ وَفَاءً: ابْنُ أَبِي لَيْلَى، وَمَالِكٌ، وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ وَأَبُو سُلَيْمَانَ - وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ سَلَفًا فِي قَوْلِهِ.

L19265 Abu Hanifah, Sufyan al-Thawri, al-Awza'i, Abu Ubayd, Ishaq, Ahmad, al-Shafi'i, and Malik (in the first of his two opinions) stated that the beneficiary may claim their right if permitted by the guarantor or the principal debtor.

قَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ، وَأَبُو عُبَيْدٍ، وَإِسْحَاقُ، وَأَحْمَدُ، وَالشَّافِعِيُّ، وَمَالِكٌ فِي أَوَّلِ قَوْلَيْهِ: إنَّ لِلْمَضْمُونِ لَهُ أَنْ يَطْلُبَ بِحَقِّهِ إنْ شَاءَ الضَّامِنُ، وَإِنْ شَاءَ الْمَضْمُونُ.

L19266 Mālik said in the latter of his two opinions: If the principal debtor is financially capable of fulfilling the obligation, the claimant has no right to pursue the guarantor but must seek payment exclusively from the principal debtor. This applies unless there is a deficiency in the owed amount - in which case

وَقَالَ مَالِكٌ فِي آخِرِ قَوْلَيْهِ: إذَا كَانَ الْمَضْمُونُ عَنْهُ مَلِيًّا بِالْحَقِّ فَلَيْسَ لِطَالِبِ الْحَقِّ أَنْ يَطْلُبَ الضَّامِنَ، وَإِنَّمَا لَهُ طَلَبُ الْمَضْمُونِ عَنْهُ فَقَطْ، إلَّا أَنْ يَنْقُصَ مِنْ حَقِّهِ شَيْءٌ

فَيُؤْخَذُ مِنْ الضَّامِنِ حِينَئِذٍ، وَإِلَّا أَنْ يَكُونَ الْمَضْمُونُ عَنْهُ غَائِبًا، أَوْ يَكُونَ عَلَيْهِ دُيُونٌ لِلنَّاسِ فَيَخَافُ الْمَضْمُونُ لَهُ مُحَاصَّةَ الْغُرَمَاءِ فَلَهُ فِي هَذَيْنِ الْوَجْهَيْنِ أَنْ يَطْلُبَ الضَّامِنَ [أَيْضًا] حِينَئِذٍ.

the amount is taken from the guarantor - or unless the principal debtor is absent or owes debts to others, leading the claimant to fear encirclement by creditors. In these two scenarios, the claimant may then pursue the guarantor also.

L19267 قَالَ أَبُو مُحَمَّدٍ: أَمَّا هَذَا الْقَوْلُ الَّذِي رَجَعَ إلَيْهِ مَالِكٌ فَظَاهِرُ الْعَوَارِ، لِأَنَّهُ دَعَاوَى كُلُّهُ بِلَا بُرْهَانٍ، وَتَقْسِيمٌ بِلَا دَلِيلٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ نَعْلَمُهُ مِنْ صَاحِبٍ أَوْ تَابِعٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

Abū Muḥammad said: As for this statement which Mālik resorted to, it is manifestly deficient, for it consists entirely of claims without proof, and categorization without evidence—neither from the Qur'ān, nor the Sunnah, nor a weak narration, nor the saying of anyone we know from the Companions or the Followers, nor analogy, nor an opinion with a sound basis.

L19268–19269 وَقَالَ ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا، كَمَا قُلْنَا مِنْ أَنَّ الْحَقَّ قَدْ سَقَطَ جُمْلَةً عَنْ الْمَضْمُونِ عَنْهُ، وَلَا سَبِيلَ لِلْمَضْمُونِ لَهُ إلَيْهِ أَبَدًا، وَإِنَّمَا حَقُّهُ عِنْدَ الضَّامِنِ أَنْصَفَهُ أَوْ لَمْ يُنْصِفْهُ.

Ibn Abi Layla, Ibn Shubruma, Abu Thawr, Abu Sulayman, and all our companions held the view we have stated: that the right is entirely extinguished from the principal debtor, and the creditor has no recourse to him whatsoever. The creditor's right lies solely with the guarantor, whether the guarantor treats the creditor justly or not.

L19270 رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ، عَنْ الْحَسَنِ، وَمُحَمَّدِ بْنِ سِيرِينَ، قَالَا جَمِيعًا: الْكَفَالَةُ، وَالْحَوَالَةُ سَوَاءٌ - وَقَدْ ذَكَرْنَا بُرْهَانَ ذَلِكَ مِنْ السُّنَّةِ.

It has been narrated to us through the chain of Ibn Abī Shaybah: Ḥafṣ ibn Ghiyāth reported to us from Ashʿath (who is Ibn ʿAbd al-Malik al-Ḥumrānī) from al-Ḥasan and Muḥammad ibn Sīrīn. Both affirmed together: "Surety (kafālah) and transfer of debt (ḥawālah) are equal in ruling." We have already cited the evidence for this from the Sunnah.

L19271 وَأَيْضًا: فَإِنَّ مِنْ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَكُونَ مَالٌ وَاحِدٌ مَعْدُودٌ مَحْدُودٌ هُوَ كُلُّهُ عَلَى زَيْدٍ، وَهُوَ كُلُّهُ عَلَى عَمْرٍو، وَلَوْ كَانَ هَذَا لَكَانَ لِلَّذِي هُوَ لَهُ عَلَيْهِمَا أَنْ يَأْخُذَهُمَا جَمِيعًا بِجَمِيعِهِ فَيَحْصُلُ لَهُ الْعَدَدُ مُضَاعَفًا، وَلَمَا سَقَطَ عَنْ أَحَدِهِمَا حَقٌّ قَدْ لَزِمَهُ بِأَدَاءِ آخَرَ عَنْ نَفْسِهِ مَا لَزِمَهُ أَيْضًا - وَهُمْ لَا يَقُولُونَ بِهَذَا.

Furthermore, it is among the impossible and inconceivable that a single, countable, limited property could be entirely owed to Zayd and simultaneously entirely owed to ʿAmr. If this were the case, the creditor could claim the full amount from both Zayd and ʿAmr, thereby doubling the amount for himself. Moreover, no right that had become binding upon either of them—even through another's discharge of their obligation on their behalf of what is also incumbent upon them—would be waived, yet they do not hold this opinion.

L19272 فَظَهَرَ تَنَاقُضُهُمْ وَاخْتِلَاطُ قَوْلِهِمْ وَأَنَّهُ لَا يُعْقَلُ، وَلَا يَسْتَقِرُّ.

Thus, their contradiction became evident, along with the incoherence of their statements, and that it is neither rational nor firmly established.

L19273 فَإِنْ قَالُوا: إنَّمَا هُوَ حَقُّهُ عَلَى أَيِّهِمَا طَلَبَهُ

If they say, "It is only his right against whichever of the two he demands it

from?" We respond: This entrenches absurdity, for in this case, his right has not been settled upon a single one.

فَإِنْ قَالُوا: إِنَّمَا هُوَ لَهُ عَلَى أَيِّهِمَا طَلَبَهُ مِنْهُ؟ قُلْنَا: فَهَذَا أَدْخَلَ فِي الْمُحَالِ، لِأَنَّهُ عَلَى هَذَا لَمْ يَسْتَقِرَّ حَقُّهُ عَلَى وَاحِدٍ.

L19274 from both of them henceforth—neither from the guarantor nor from the debtor for whom guarantee is provided—once this condition is established, he retains no claim against either thereafter.

مِنْهُمَا بَعْدُ - لَا عَلَى الضَّامِنِ وَلَا عَلَى الْمَضْمُونِ عَنْهُ - فَإِذَا هُوَ كَذَلِكَ فَلَا حَقَّ لَهُ عَلَى وَاحِدٍ مِنْهُمَا بَعْدُ.

L19275–19277 If they say: Do you claim that when two heirs inherit two thousand dirhams from their deceased, each taking one thousand dirhams, then a creditor of the deceased appears claiming one thousand dirhams - that the creditor may recover it from whichever of the two he chooses? And do you state regarding one who sells an undivided share, where the purchaser then sells it to another, and the third buyer to a fourth, that the preemptor may exercise his right of preemption against whichever of them he chooses? And do you assert regarding one who unlawfully seizes property then gifts it to another, that the rightful owner may recover his property from whichever of the two he chooses? We replied: Yes. None of this constitutes what we rejected concerning a single property jointly owed by two individuals, where each bears full liability for the entire amount. As for the two heirs, they improperly divided what they had no right to divide, for the creditor's right attaches to the specific estate property itself, not to the heirs' possession. He recovers his due solely from the deceased's estate where... Once it is confirmed, the amount taken from the estate is restored to its claimant, then the two parties divide what remains after settling the creditor's due. The initial division is invalid because Allah the Exalted has granted the heirs their shares only after fulfilling bequests and debts.

فَإِنْ قَالُوا: فَإِنَّكُمْ تَقُولُونَ فِي وَارِثَيْنِ تَرَكَ مُوَرِّثُهُمَا أَلْفَيْ دِرْهَمٍ، فَأَخَذَ كُلُّ وَاحِدٍ مِنْهُمَا أَلْفَ دِرْهَمٍ، ثُمَّ ظَهَرَ غَرِيمٌ لَهُ عَلَى الْمَيِّتِ أَلْفُ دِرْهَمٍ: أَنَّهُ يَأْخُذُهَا مِنْ أَيِّهِمَا شَاءَ؟ وَتَقُولُونَ فِيمَنْ بَاعَ شِقْصًا مُشَاعًا، ثُمَّ بَاعَهُ الْمُبْتَاعُ مِنْ آخَرَ، وَالثَّالِثُ مِنْ رَابِعٍ: أَنَّ الشَّفِيعَ يَأْخُذُهُ بِالشُّفْعَةِ مِنْ أَيِّهِمْ شَاءَ؟ وَتَقُولُونَ فِيمَنْ غَصَبَ مَالًا ثُمَّ وَهَبَهُ لِآخَرَ: فَإِنَّ الْمَغْصُوبَ مِنْهُ يَأْخُذُ بِمَالِهِ أَيَّهُمَا شَاءَ؟ قُلْنَا: نَعَمْ، وَلَيْسَ شَيْءٌ مِنْ هَذَا مِمَّا أَنْكَرْنَاهُ مِنْ كَوْنِ مَالٍ وَاحِدٍ عَلَى اثْنَيْنِ هُوَ كُلُّهُ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا: أَمَّا الْوَارِثَانِ فَإِنَّهُمَا اقْتَسَمَا مَا لَا يَحِلُّ لَهُمَا اقْتِسَامُهُ، وَحَقُّ الْغَرِيمِ فِي ذَلِكَ الْمَالِ بِعَيْنِهِ، لَا عِنْدَ الْوَارِثَيْنِ أَصْلًا، فَإِنَّمَا يَأْخُذُ حَقَّهُ مِنْ مَالِ الْمَيِّتِ حَيْثُ وَجَدَهُ، ثُمَّ يَرْجِعُ الْمَأْخُوذُ مِنْهُ عَلَى صَاحِبِهِ فَيَقْتَسِمَانِ مَا بَقِيَ لِلْغَرِيمِ حِينَئِذٍ، وَالْقِسْمَةُ الْأُولَى فَاسِدَةٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ لِلْوَرَثَةِ إِلَّا بَعْدَ الْوَصِيَّةِ، وَالدَّيْنِ.

L19278 As for the usurper who gifts usurped property, the right of the dispossessed owner remains valid against the usurper, while the usurper retains the right to reclaim from the recipient what was improperly gifted. If the dispossessed owner pursues the usurper, he asserts his rightful claim against him. If he pursues the recipient, he does so by asserting the usurper's right to recover what was invalidly transferred. When the recipient returns it, the dispossessed owner becomes entitled to his property based on his rightful claim

وَأَمَّا الْغَاصِبُ يَهَبُ مَا غَصَبَ فَحَقُّ الْمَغْصُوبِ مِنْهُ عِنْدَ الْغَاصِبِ، وَحَقُّ الْغَاصِبِ أَنْ يَرْجِعَ بِمَا يُؤَدِّي عَلَى الَّذِي وَهَبَهُ إِيَّاهُ بِغَيْرِ حَقٍّ، فَالْمَغْصُوبُ مِنْهُ إِنْ طَلَبَ الْغَاصِبَ طَلَبَهُ بِحَقِّهِ عِنْدَهُ، وَإِنْ طَلَبَ الْمَوْهُوبَ لَهُ طَلَبَهُ بِحَقِّ الْغَاصِبِ عِنْدَهُ مِنْ رَدِّ مَا وَهَبَهُ

against the usurper. This principle applies universally whenever property is transferred without legal entitlement.

بِالْبَاطِلِ، فَإِذَا فَعَلَ اسْتَحَقَّ الْمَغْصُوبُ مِنْهُ بِحَقِّهِ عِنْدَ الْغَاصِبِ، وَهَكَذَا كُلُّ مَا انْتَقَلَ ذَلِكَ الْمَالُ بِغَيْرِ حَقٍّ.

L19279 As for the preemptor, he holds the choice to either confirm the sale or annul it. He may validate the sale of whichever party he chooses from among them and annul that of others through his right of pre-emption. Thus, the invalidity of their analogy has been demonstrated.

وَأَمَّا الشَّفِيعُ فَإِنَّهُ مُخَيَّرٌ إمْضَاءَ الْبَيْعِ أَوْ رَدِّهِ، فَهُوَ يُمْضِي بَيْعَ مَنْ شَاءَ مِنْهُمْ وَيَرُدُّ بَيْعَ مَنْ شَاءَ مِنْهُمْ بِحَقِّ الشُّفْعَةِ - فَظَهَرَ فَسَادُ تَنْظِيرِهِمْ.

L19280 We seek support through Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L19281 They cited against the narration of Abū Qatādah, which we mentioned, with another narration we reported through the chain of Ibn Abī Shaybah from Ḥusayn ibn ʿAlī al-Juʿfī from Zā'idah from ʿAbdullāh ibn Muḥammad ibn ʿAqīl from Jābir, who said: "A man died, and the Messenger of Allah (peace be upon him) asked: 'Does he owe any debt?' We said: 'Yes, two dīnārs.' He (peace be upon him) said: 'Pray over your companion.' So Abū Qatādah undertook to pay them. The Messenger of Allah (peace be upon him) said to him: 'Is the debt-claimant's right upon you, and is the deceased absolved of them?' He replied: 'Yes, O Messenger of Allah.' So he prayed over him. The next day, he (peace be upon him) asked Abū Qatādah: 'What have you done with the two dīnārs?' He said: 'O Messenger of Allah, we only buried him yesterday.' Later, he came to him again and asked: 'What have you done with the two dīnārs?' He replied: 'I have settled them, O Messenger of Allah.' He said: 'Now you have cooled his skin.'"

وَاحْتَجُّوا عَلَى خَبَرِ أَبِي قَتَادَةَ الَّذِي ذَكَرْنَا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حُسَيْنِ بْنِ عَلِيٍّ الْجُعْفِيِّ عَنْ زَائِدَةَ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ جَابِرٍ قَالَ: «مَاتَ رَجُلٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعَلَيْهِ دَيْنٌ؟ قُلْنَا: نَعَمْ، دِينَارَانِ، فَقَالَ - عَلَيْهِ السَّلَامُ -: صَلُّوا عَلَى صَاحِبِكُمْ، فَتَحَمَّلَهُمَا أَبُو قَتَادَةَ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَقُّ الْغَرِيمِ عَلَيْكَ، وَبَرِيءَ مِنْهُمَا الْمَيِّتُ؟ قَالَ: نَعَمْ يَا رَسُولَ اللَّهِ فَصَلَّى عَلَيْهِ، فَلَمَّا كَانَ مِنْ الْغَدِ قَالَ - عَلَيْهِ السَّلَامُ - لِأَبِي قَتَادَةَ: مَا فَعَلَ الدِّينَارَانِ؟ قَالَ: يَا رَسُولَ اللَّهِ إنَّمَا دَفَنَّاهُ أَمْسِ، ثُمَّ أَتَاهُ بَعْدُ فَقَالَ لَهُ: مَا فَعَلَ الدِّينَارَانِ؟ قَالَ: قَضَيْتُهُمَا يَا رَسُولَ اللَّهِ، قَالَ: الْآنَ بَرَّدْتَ عَلَيْهِ جِلْدَهُ» .

L19282 And two other narrations that are not authentic: one of them is: "The soul of the believer is suspended because of his debt until it is paid off on his behalf".

وَبِخَبَرَيْنِ آخَرَيْنِ لَا يَصِحَّانِ -: أَحَدُهُمَا: «نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ حَتَّى يُقْضَى عَنْهُ» .

L19283 The other [narration] states that he—peace be upon him—said to ʿAlī when he guaranteed the debt of the deceased: "Allāh has released your pledge just as you released the pledge of your brother." Abū Muḥammad said: It is astonishing that they cite narrations which constitute even greater proof against them. As for "Allāh has released your pledge just as you released the pledge of your brother," it contains neither evidence nor explicit text sup-

وَالْآخَرُ، فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لِعَلِيٍّ إذْ ضَمِنَ دَيْنَ الْمَيِّتِ: «فَكَّ اللَّهُ رِهَانَكَ كَمَا فَكَكْتَ رِهَانَ أَخِيكَ» . قَالَ أَبُو مُحَمَّد: وَهَذَا مِنْ الْعَجَبِ احْتِجَاجُهُمْ بِأَخْبَارٍ هِيَ أَعْظَمُ حُجَّةً عَلَيْهِمْ. أَمَّا: «فَكَّ اللَّهُ رِهَانَكَ كَمَا فَكَكْتَ رِهَانَ أَخِيكَ» فَلَيْسَ فِيهِ دَلِيلٌ

porting their claim that the debt remains binding upon the original debtor. We maintain: His pledge was released solely through his guarantee of the debt, for he transferred the debt to himself—whether the debtor [for whom liability was assumed] was alive or deceased.

L19284–19285 As for the statement, "The believer's soul is suspended by his debt until it is discharged on his behalf," this does not mean the ruling applies to the one on whose behalf the debt is guaranteed, nor does it apply to someone who has not delayed repayment after the creditor has demanded it from him.

L19286 We maintain: Indeed, being called to account for his debt in the Hereafter arises solely from unjust delay in repayment while being solvent, thereby becoming an oppressor. Thus, the sin of procrastination rests upon him—whether he becomes insolvent afterward or not—while the creditor's entitlement lies either in whatever wealth remains [with the debtor] or in the share allocated for indebted persons from Muslims' Zakat funds, if no wealth remains.

L19287 Allah the Exalted may forgive the sin of delaying debt repayment if it is settled from his remaining assets, from the share of *al-gharimīn* (the indebted), or if a guarantor settles it on his behalf. The hadiths concerning this mention the severity of the matter of debt.

L19288 As for one who has never delayed repayment, he has not wronged [the creditor], and if he has not wronged, there is no sin upon him nor liability. The creditor's right—if the debtor dies—is to be fulfilled from the remaining estate or the share allocated for debt settlement. The transgressor in such a case is whoever delays repayment after the debtor's death, whether from the heirs or the governing authority. There is absolutely no sin upon the deceased, in accordance with Allah's words: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286].[2]

L19289 And he did not delay [others' rights] in his life, so he did not wrong [others]. Since he did not wrong [others] in his life, he cannot fulfill obligations fairly after his death. Rather, he is only obligated to acknowledge them [the rights].

وَلَا نَصَّ عَلَى مَا يَدَّعُونَهُ مِنْ بَقَاءِ الدَّيْنِ عَلَى الْمَضْمُونِ عَنْهُ. وَنَحْنُ نَقُولُ: إِنَّهُ قَدْ فَكَّ رِهَانَهُ بِضَمَانِهِ دَيْنَهُ فَقَطْ، فَإِنَّهُ حَوَّلَ دَيْنَهُ عَلَى نَفْسِهِ حَيًّا كَانَ الْمَضْمُونُ عَنْهُ أَوْ مَيِّتًا.

وَأَمَّا «نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ حَتَّى يُقْضَى عَنْهُ» فَلَيْسَ فِيهِ أَنَّهُ حُكْمُ الْمَضْمُونِ عَنْهُ، وَلَا أَنَّهُ حُكْمُ مَنْ لَمْ يَمْطُلْ بِدَيْنِهِ بَعْدَ طَلَبِ صَاحِبِهِ إِيَّاهُ مِنْهُ.

وَنَحْنُ نَقُولُ: إِنَّ الْمُطَالَبَ بِدَيْنِهِ فِي الْآخِرَةِ إِنَّمَا هُوَ مِنْ مَطْلٍ بِهِ وَهُوَ غَنِيٌّ، فَصَارَ ظَالِمًا، فَعَلَيْهِ إِثْمُ الْمَطْلِ - أَعْسَرَ بَعْدَ ذَلِكَ أَوْ لَمْ يُعْسِرْ - وَإِنْ كَانَ حَقُّ الْغَرِيمِ فِيمَا يَتَخَلَّفُ مِنْ مَالٍ أَوْ فِي سَهْمِ الْغَارِمِينَ مِنْ زَكَوَاتِ الْمُسْلِمِينَ إِنْ لَمْ يَخْلُفْ مَالًا.

وَقَدْ يُمْكِنُ أَنْ يَعْفُوَ اللَّهُ تَعَالَى عَنْهُ ذَنْبَ الْمَطْلِ إِذَا قُضِيَ عَنْهُ مِمَّا يَخْلُفُ أَوْ مِنْ سَهْمِ الْغَارِمِينَ أَوْ قَضَاهُ عَنْهُ الضَّامِنُ فَفِي هَذَا جَاءَتْ الْأَحَادِيثُ فِي تَشْدِيدِ أَمْرِ الدَّيْنِ.

وَأَمَّا مَنْ لَمْ يَمْطُلْ قَطُّ بِهِ، فَلَمْ يَظْلِمْ، وَإِذَا لَمْ يَظْلِمْ فَلَا إِثْمَ عَلَيْهِ، وَلَا تَبِعَةَ، وَحَقُّ الْغَرِيمِ إِنْ مَاتَ الَّذِي عَلَيْهِ الدَّيْنُ فِيمَا يَتَخَلَّفُ، أَوْ فِي سَهْمِ الْغَارِمِينَ، وَالظَّالِمُ حِينَئِذٍ مَنْ مَطَلَهُ بَعْدَ مَوْتِ الَّذِي عَلَيْهِ الدَّيْنُ مِنْ وَرَثَةٍ أَوْ سُلْطَانٍ وَلَا إِثْمَ عَلَى الْمَيِّتِ أَصْلًا، لِقَوْلِ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَهُوَ لَمْ يَمْطُلْ فِي حَيَاتِهِ فَلَمْ يَظْلِمْ، وَإِذْ لَمْ يَظْلِمْ فِي حَيَاتِهِ فَلَيْسَ فِي وُسْعِهِ الْإِنْصَافُ بَعْدَ مَوْتِهِ، وَإِنَّمَا عَلَيْهِ الْإِقْرَارُ بِهِ فَقَطْ.

[2] **Qur'an references (L19288):** Qur'an 2:286 (Al-Baqarah).

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ [وَبِهِ نَتَأَيَّدُ] .

L19290 All divine success lies with Allah, the Most High [and by Him we are aided].

وَأَمَّا حَدِيثُ أَبِي قَتَادَةَ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ فَأَعْظَمُ حُجَّةً عَلَيْهِمْ لَوْ كَانَ لَهُمْ مَسْكَةُ إنْصَافٍ لِأَنَّ فِيهِ نَصًّا قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلضَّامِنِ عَنْ الْمَيِّتِ: «حَقُّ الْغَرِيمِ عَلَيْكَ وَبَرِيءَ مِنْهُمَا الْمَيِّتُ، قَالَ الضَّامِنُ: نَعَمْ» أَلَيْسَ فِي هَذَا كِفَايَةٌ لِمَنْ لَهُ مَسْكَةُ دِينٍ أَوْ أَقَلَّ تَمْيِيزٍ؟ وَلَكِنَّهُمْ قَوْمٌ مَفْتُونُونَ.

L19291 As for the ḥadīth of Abū Qatādah through the chain of ʿAbd Allāh ibn Muḥammad ibn ʿAqīl, it is the greatest argument against them, if they had a trace of fairness, because it contains the explicit statement of the Prophet—peace be upon him—to the guarantor of the deceased: “The creditor’s right is incumbent upon you, and the deceased is absolved from both.” The guarantor said: “Yes.” Does this not suffice for anyone with a trace of religious adherence or the slightest discernment? Yet they are a people misguided.

فَإِنْ قِيلَ: فَمَا مَعْنَى قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ قَضَاهُمَا: «الْآنَ بَرَّدْتَ عَلَيْهِ جِلْدَهُ» ؟ .

L19292 If it is asked: What is the meaning of the Prophet’s statement—peace be upon him—when he judged between the two of them: “Now you have cooled his anger”?

قُلْنَا: هَذَا لَا مُتَعَلَّقَ فِيهِ فِي بَقَاءِ الدَّيْنِ عَلَى الْمَيِّتِ، وَلَا فِي رُجُوعِهِ عَلَيْهِ لِأَنَّ نَصَّ الْخَبَرِ قَدْ وَرَدَ فِيهِ بِعَيْنِهِ: «أَنَّ الْمَيِّتَ قَدْ بَرِيءَ مِنْ الدَّيْنِ وَأَنَّ حَقَّ الْغَرِيمِ عَلَى الزَّعِيمِ» فَلَا مَعْنَى لِلزِّيَادَةِ فِي هَذَا. وَأَمَّا قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «الْآنَ بَرَّدْتَ عَلَيْهِ جِلْدَهُ» فَقَدْ أَصَابَ - عَلَيْهِ السَّلَامُ - مَا أَرَادَ، وَقَوْلُهُ الْحَقُّ لَا نَشُكُّ فِيهِ، لَكِنْ نَقُولُ: إنَّهُ قَدْ يَكُونُ تَبْرِيدٌ زَائِدٌ دَخَلَ عَلَيْهِ حِينَ الْقَضَاءِ عَنْهُ، وَإِنْ كَانَ لَمْ يَكُنْ قَبْلَ ذَلِكَ فِي حَرٍّ كَمَا تَقُولُ: لَقَدْ سَرَّنِي فِعْلُك، وَإِنْ لَمْ تَكُنْ قَبْلَ ذَلِكَ فِي هَمٍّ وَلَا حُزْنٍ.

L19293 We said: This has no bearing on the debt remaining upon the deceased nor on its reversion to him, for the explicit text of the report has been mentioned in this very context: “The deceased is absolved of the debt, and the right of the debt-claimant lies with the surety.” Thus, there is no need for elaboration here. As for his statement—peace be upon him—“Now you have cooled his skin,” he indeed achieved his intended purpose, and his truthful statement we do not doubt. However, we say: There may indeed be additional cooling that occurs when discharging the debt on his behalf, even if he was not previously in any state of heat, just as when someone says, “Your deed has pleased me,” even if you were not previously afflicted by worry or grief.

وَكَمَا لَوْ تَصَدَّقَ عَنْ الْمَيِّتِ بِصَدَقَةٍ لَكَانَ قَدْ دَخَلَ عَلَيْهِ بِهَا رَوْحٌ زَائِدٌ وَلَا بُدَّ، وَإِنْ لَمْ يَكُنْ قَبْلَ ذَلِكَ فِي كَرْبٍ وَلَا غَمٍّ.

L19294–19295 And just as when charity is given on behalf of the deceased, it would undoubtedly bring them additional comfort, even if they were not previously in distress or sorrow.

وَيُمْكِنُ أَنْ يَكُونَ قَدْ كَانَ مَطَلَ وَهُوَ غَنِيٌّ فَحَصَلَ لَهُ الظُّلْمُ ثُمَّ غَفَرَ اللَّهُ تَعَالَى لَهُ ذَلِكَ الظُّلْمَ بِالْقَضَاءِ وَاَللَّهُ أَعْلَمُ، إلَّا أَنَّهُ لَا مُتَعَلَّقَ لَهُمْ بِهَذَا أَصْلًا، وَإِنَّمَا هُوَ حُكْمٌ مِنْ أَحْكَامِ

L19296 It is possible that he delayed repayment while being wealthy, thus incurring injustice upon himself, then Allah the Exalted forgave him that injustice through His decree—and Allah knows best. However, they have no basis for this whatsoever, as it pertains solely to matters of the Hereafter. Indeed, we find that whoever establishes an evil practice in Islam will bear the sin of it and the sin of all who act upon it perpetually.

الْآخِرَةِ، وَنَحْنُ نَجِدُ مَنْ سَنَّ سُنَّةَ سُوءٍ فِي الْإِسْلَامِ كَانَ لَهُ إِثْمُ ذَلِكَ وَإِثْمُ مَنْ عَمِلَ بِهَا أَبَدًا.

وَنَجِدُ مَنْ سَنَّ سُنَّةَ خَيْرٍ فِي الْإِسْلَامِ كَانَ لَهُ أَجْرُ ذَلِكَ وَأَجْرُ مَنْ عَمِلَ بِهَا أَبَدًا، فَقَدْ يُؤْجَرُ الْإِنْسَانُ بِفِعْلِ غَيْرِهِ، وَيُعَاقَبُ بِفِعْلِ غَيْرِهِ إِذَا كَانَ لَهُ فِيهِمَا سَبَبٌ.

وَقَدْ يَدْخُلُ الرَّوْحُ عَلَى مَنْ تَرَكَ وَلَدًا صَالِحًا يَدْعُو لَهُ {وَيَفْعَلُ اللَّهُ مَا يَشَاءُ} [إبراهيم: ٢٧] ، {لا يُسْأَلُ عَمَّا يَفْعَلُ} [الأنبياء: ٢٣] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا قَوْلُنَا: لَا يَرْجِعُ الضَّامِنُ بِمَا أَدَّى سَوَاءً بِأَمْرِهِ ضَمِنَ عَنْهُ أَوْ بِغَيْرِ أَمْرِهِ إِلَّا أَنْ يَكُونَ الْمَضْمُونُ عَنْهُ اسْتَقْرَضَهُ، فَلِمَا ذَكَرْنَا مِنْ سُقُوطِ الْحَقِّ عَنْ الْمَضْمُونِ عَنْهُ وَبَرَاءَتِهِ مِنْهُ وَاسْتِقْرَارِهِ عَلَى الضَّامِنِ.

فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ وَالظُّلْمِ الْوَاضِحِ أَنْ يُطَالِبَ الضَّامِنُ مِنْ أَجْلِ أَدَائِهِ حَقًّا لَزِمَهُ وَصَارَ عَلَيْهِ وَاسْتَقَرَّ فِي ذِمَّتِهِ مَنْ لَا حَقَّ قِبَلَهُ لَهُ، وَلَا لِلَّذِي أَدَّاهُ عَنْهُ، وَهَذَا لَا خَفَاءَ بِهِ وَمَا نَدْرِي لِمَنْ قَالَ: إنَّهُ يَرْجِعُ الضَّامِنُ عَلَى الْمَضْمُونِ عَنْهُ بِمَا أَدَّى حُجَّةً أَصْلًا.

وَقَالَ مَالِكٌ: يَرْجِعُ الضَّامِنُ عَلَى الْمَضْمُونِ عَنْهُ بِمَا أَدَّى عَنْهُ سَوَاءٌ بِأَمْرِهِ ضَمِنَ عَنْهُ أَوْ بِغَيْرِ أَمْرِهِ.

L19297 We find that whoever establishes a good *sunnah* (practice) in Islam will receive the reward for it and the reward of those who act upon it perpetually. Indeed, a person may be rewarded or punished for the deeds of others if he is the cause in both cases.

L19298 Indeed, comfort may enter upon one who leaves behind a righteous child supplicating for him. “Allah does what He wills” [Ibrāhīm 14:27], “He is not questioned about what He does” [Al-Anbiyā’ 21:23]. And with Allah, the Most High, is all success.[3]

L19299 As for our statement that the guarantor cannot reclaim what he has paid, whether he guaranteed with the instruction of the one guaranteed against or without it, except if the one guaranteed against had borrowed it, this is due to what we have mentioned regarding the discharge of the right from the one guaranteed against, his absolution from it, and its definitive establishment upon the guarantor.

L19300 It is indisputably void and manifestly unjust for a guarantor to demand a right—due to fulfilling an obligation that became binding upon him, incumbent on him, and established within his moral liability—from one who holds no obligation toward him personally or toward the party on whose behalf he discharged it. This is unmistakably clear, and we do not know on what basis someone asserted that “the guarantor may reclaim from the principal debtor what he paid as a fundamental legal basis.”

L19301 Malik said: The guarantor may seek recourse against the principal for what he discharged on their behalf, whether he guaranteed the obligation by the principal’s instruction or without their instruction.

L19302 Abu Hanifah, al-Hasan ibn Ḥayyin, and al-Shāfiʿī said: If one guaranteed on another’s behalf by his instruction, he may seek recourse from him; but if he guaranteed on his behalf without his instruction, he may not seek recourse

[3] **Qur’an references (L19298):** Qur’an 14:27 (Ibrahim); Qur’an 21:23 (Al-Anbya).

from him. Both statements are invalid, as there is no evidence for them whatsoever, and this is an invalid division without proof.

وَقَالَ أَبُو حَنِيفَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ: إِنْ ضَمِنَ عَنْهُ بِأَمْرِهِ رَجَعَ عَلَيْهِ، وَإِنْ ضَمِنَ عَنْهُ بِغَيْرِ أَمْرِهِ لَمْ يَرْجِعْ عَلَيْهِ - وَكِلَا الْقَوْلَيْنِ فَاسِدٌ لَا دَلِيلَ عَلَيْهِ أَصْلًا، وَتَقْسِيمٌ فَاسِدٌ بِلَا بُرْهَانٍ.

L19303 Ibn Abī Laylā, Ibn Shubrumah, Abū Thawr, and Abū Sulaymān held an opinion similar to ours.

وَقَالَ ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ بِمِثْلِ قَوْلِنَا.

L19304–19306 Abu Muhammad said: Some of them deceptively cited a weak narration we narrated from the chain of Abu Dawud, from Al-Qaʿnabī, from Al-Darawardī, from ʿAmr ibn Abī ʿAmr, from Ikrimah, from Ibn ʿAbbās: "That a man insisted on pursuing his debtor." He said, "By Allah, I will not leave you until you repay me or bring me a guarantor." Thereupon, the Messenger of Allah (peace be upon him) acted as a guarantor for it. The Prophet (peace be upon him) came to him with the amount he had promised. The Prophet (peace be upon him) asked him, "Where did you obtain this gold?" He replied, "From a mine." He said, "We have no need for it—there is no good in it." Then the Messenger of Allah (peace be upon him) settled the debt for him.

قَالَ أَبُو مُحَمَّدٍ: وَمَوَّهَ بَعْضُهُمْ بِخَبَرٍ وَاهٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ الْقَعْنَبِيِّ عَنْ الدَّرَاوَرْدِيِّ عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا لَزِمَ غَرِيمًا لَهُ بِعَشْرَةِ دَنَانِيرَ فَقَالَ: وَاَللَّهِ لَا أُفَارِقُكَ حَتَّى تَقْضِيَنِي أَوْ تَأْتِيَنِي بِحَمِيلٍ؟ فَتَحَمَّلَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَتَاهُ بِقَدْرِ مَا وَعَدَهُ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيْنَ أَصَبْتَ هَذَا الذَّهَبَ؟ قَالَ: مِنْ مَعْدِنٍ، قَالَ: لَا حَاجَةَ لَنَا فِيهَا لَيْسَ فِيهَا خَيْرٌ فَقَضَاهَا عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L19307 Ali said: It is astonishing that they cite this report as evidence. The first issue with it is that it is from the narration of Amr ibn Abi Amr—who is weak—as Ibn Ma'in and others deemed him weak, and they rejected his narrations except in one instance. Among them is his narration from this very chain of transmission from the Prophet—peace be upon him—: "Whoever commits bestiality with a beast, kill him and kill it with him."

قَالَ عَلِيٌّ: فِي احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ عَجَبٌ أَوَّلُ ذَلِكَ: أَنَّهُ مِنْ رِوَايَةِ عَمْرِو بْنِ أَبِي عَمْرٍو - وَهُوَ ضَعِيفٌ - ضَعَّفَهُ ابْنُ مَعِينٍ وَغَيْرُهُ، وَقَدْ تَرَكُوا رِوَايَتَهُ فِي غَيْرِ قِصَّةٍ -: مِنْهَا - رِوَايَتُهُ مِنْ هَذِهِ الطَّرِيقِ نَفْسِهَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَتَى بَهِيمَةً فَاقْتُلُوهُ وَاقْتُلُوهَا مَعَهُ» .

L19308 Furthermore, even if it were valid, they would have no proof against it, because it states: "then he came to him with the measure he had promised him."

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ فِيهِ: «فَأَتَاهُ بِقَدْرِ مَا وَعَدَهُ» .

L19309 Thus, it is established that the guaranteed party pledged to the Prophet—peace be upon him—to bring what the guarantor had undertaken on his behalf. This is a matter we do not deny; rather, we affirm it when the

فَصَحَّ أَنَّ الْمَضْمُونَ عَنْهُ وَعَدَهُ - عَلَيْهِ السَّلَامُ - بِأَنْ يَأْتِيَهُ بِمَا تَحَمَّلَ عَنْهُ، وَهَذَا أَمْرٌ لَا نَأْبَاهُ، بَلْ بِهِ نَقُولُ إذَا قَالَ الْمَضْمُونُ لِلضَّامِنِ: أَنَا آتِيك بِمَا تَتَحَمَّلُ بِهِ عَنِّي.

guaranteed party says to the guarantor: “I will bring you what you undertake on my behalf.”

L19310 Next, the third paradox is their argumentation using this narration while being the first to oppose it, for it states: “Whatever is taken from a mine has no obligation in it”—yet they do not uphold this opinion. Who is more astonishing than one who cites a narration that lacks any basis for what they argue within it, then contradicts its explicit text? We ask Allah for well-being.

ثُمَّ الْعَجَبُ الثَّالِثُ - احْتِجَاجُهُمْ بِهَذَا الْخَبَرِ وَهُمْ أَوَّلُ مُخَالِفٍ لَهُ، لِأَنَّ فِيهِ " أَنَّ مَا أُخِذَ مِنْ مَعْدِنٍ فَلَا خَيْرَ فِيهِ " وَهُمْ لَا يَقُولُونَ بِهَذَا - فَمَنْ أَعْجَبُ مِمَّنْ يَحْتَجُّ بِخَبَرٍ لَيْسَ فِيهِ أَثَرٌ مِمَّا يَحْتَجُّ بِهِ فِيهِ، ثُمَّ هُوَ مُخَالِفٌ لِنَصِّ مَا فِيهِ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L19311 **In juristic matters, the slave and the free, the woman and the man, the unbeliever and the believer are equal in liability.**

[مَسْأَلَةٌ الْعَبْد وَالْحُرّ وَالْمَرْأَة وَالرَّجُل وَالْكَافِر وَالْمُؤْمِن فِي الضَّمَان سَوَاءٌ]

L19312 1231. Issue: The ruling for the slave, the free individual, the woman, the man, the disbeliever, and the believer (Muslim) is the same, due to the generality of the text we have cited regarding this matter. No textual evidence exists to distinguish between any of the aforementioned categories. And success is from Allah, the Exalted.

١٢٣١ - مَسْأَلَةٌ: وَحُكْمُ الْعَبْدِ، وَالْحُرِّ، وَالْمَرْأَةِ، وَالرَّجُلِ، وَالْكَافِرِ، وَالْمُؤْمِنِ: سَوَاءٌ، لِعُمُومِ النَّصِّ الَّذِي أَوْرَدْنَاهُ فِي ذَلِكَ، وَلَمْ يَأْتِ نَصٌّ بِالْفَرْقِ بَيْنَ شَيْءٍ مِمَّا ذَكَرْنَاهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19313 **An Issue Regarding the Guarantee for That the Extent of Which Is Unknown**

[مَسْأَلَةٌ ضَمَانُ مَا لَا يَدْرِي مِقْدَارُهُ]

L19314 1232 - Issue:

١٢٣٢ - مَسْأَلَةٌ:

L19315 It is not permissible to guarantee something whose amount is unknown, such as saying to someone: “I guarantee from you what is owed by so-and-so upon you,” due to Allah’s statement: “Do not consume your wealth among yourselves through falsehood except that it be trade by mutual consent” (Quran 4:29).[4]

وَلَا يَجُوزُ ضَمَانُ مَا لَا يَدْرِي مِقْدَارُهُ مِثْلَ أَنْ يَقُولَ لَهُ: أَنَا أَضْمَنُ عَنْك مَا لِفُلَانٍ عَلَيْك، لِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L19316 And due to the Prophet’s (peace be upon him) teaching that “it is not permissible to take a Muslim’s wealth except with his free consent and mutual agreement,” and free consent can only occur when the amount is clearly known—this is a matter understood through common sense and observable reality.

وَلِإِخْبَارِهِ - عَلَيْهِ السَّلَامُ -: أَنَّهُ «لَا يَحِلُّ مَالُ مُسْلِمٍ إلَّا بِطِيبِ نَفْسٍ مِنْهُ» وَالتَّرَاضِي، وَطِيبُ النَّفْسِ لَا يَكُونُ إلَّا عَلَى مَعْلُومِ الْقَدْرِ - هَذَا أَمْرٌ يُعْلَمُ بِالْحِسِّ وَالْمُشَاهَدَةِ.

[4] **Qur’an references (L19315):** Qur’an 4:29 (An-Nisa).

[مَسْأَلَةٌ ضَمَانُ مَالٍ لَمْ يَجِبْ بَعْدُ]

١٢٣٣ - مَسْأَلَةٌ:

وَلَا يَجُوزُ ضَمَانُ مَالٍ لَمْ يَجِبْ بَعْدُ، كَمَنْ قَالَ لِآخَرَ: أَنَا أَضْمَنُ لَك مَا تَسْتَقْرِضُهُ مِنْ فُلَانٍ، أَوْ قَالَ لَهُ: اقْتَرِضْ مِنْ فُلَانٍ دِينَارًا وَأَنَا أَضْمَنُهُ عَنْك، أَوْ قَالَ لَهُ: أَقْرِضْ فُلَانًا دِينَارًا وَأَنَا أَضْمَنُهُ لَك - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى وَمُحَمَّدِ بْنِ الْحَسَنِ، وَالشَّافِعِيُّ، وَأَبِي سُلَيْمَانَ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

وَلِأَنَّ الضَّمَانَ عَقْدٌ وَاجِبٌ، وَلَا يَجُوزُ الْوَاجِبُ فِي غَيْرِ وَاجِبٍ، وَهُوَ الْتِزَامُ مَا لَمْ يَلْزَمْ بَعْدُ، وَهَذَا مُحَالٌ وَقَوْلٌ مُتَفَاسِدٌ، وَكُلُّ عَقْدٍ لَمْ يَلْزَمْ حِينَ الْتِزَامِهِ فَلَا يَجُوزُ أَنْ يَلْزَمَ فِي ثَانٍ، وَفِي حِينٍ لَمْ يَلْتَزِمْ فِيهِ، وَقَدْ لَا يُقْرِضُهُ مَا قَالَ لَهُ.

وَقَدْ يَمُوتُ الْقَائِلُ لِذَلِكَ قَبْلَ أَنْ يُقْرِضَهُ مَا أَمَرَهُ بِإِقْرَاضِهِ. فَصَحَّ بِكُلِّ هَذَا أَنَّهُ لَا يَلْزَمُ ذَلِكَ الْقَوْلُ.

فَإِنْ قَالَ لَهُ: أَقْرِضْنِي كَذَا وَكَذَا وَادْفَعْهُ إلَى فُلَانٍ، أَوْ زِنْ عَنِّي لِفُلَانٍ كَذَا وَكَذَا، أَوْ أَنْفِقْ، عَنِّي فِي أَمْرِ كَذَا فَمَا أَنْفَقْت فَهُوَ عَلَيَّ، أَوْ ابْتَعْ لِي أَمْرَ كَذَا - فَهَذَا جَائِزٌ لَازِمٌ، لِأَنَّهَا وَكَالَةٌ وَكَّلَهُ بِمَا أَمَرَهُ بِهِ.

وَأَجَازَ مَا ذَكَرْنَا بُطْلَانَهُ: أَبُو حَنِيفَةَ، وَأَبُو يُوسُفَ، وَمَالِكٌ وَعُثْمَانُ الْبَتِّيُّ.

A Jurisprudential Issue Concerning Liability for Property Whose Obligation Has Not Yet Arisen.

1233 – Issue

It is not permissible to guarantee property that has not yet become obligatory, such as when someone says to another: "I will guarantee what you borrow from so-and-so," or if he says: "Borrow a dinar from so-and-so and I will guarantee it on your behalf," or if he says: "Lend so-and-so a dinar and I will guarantee it for you." This is the position of Ibn Abi Layla, Muhammad ibn al-Hasan, al-Shafi'i, and Abu Sulayman, because it is a condition not stipulated in the Book of Allah Almighty, and thus it is invalid.

Furthermore, since a guarantee is an obligatory contract, it is impermissible for an obligation to exist within what is inherently non-obligatory. This involves taking on a duty that is not yet binding—an impossibility and an incoherent proposition. Any contract not binding at the time of its inception cannot become binding later, nor at a time when no obligation was undertaken. Moreover, the lender may refuse to provide what he had [merely] stated to him.

It is possible that the one who makes such a statement dies before lending him what he was obligated to lend. Thus, all of this confirms that such an opinion is not obligatory.

If he says to him, "Lend me such and such and deliver it to so-and-so," or "Measure out such and such on my behalf for so-and-so," or "Spend on my behalf for such a matter—whatever you spend will be my responsibility," or "Purchase such a thing for me"—this is permissible and binding, as it is an agency contract wherein he authorized him to execute the specified actions.

Abu Hanifa, Abu Yusuf, Malik, and Uthman al-Batti permitted what we had mentioned as invalid.

Some of the Muʿtazilah argued in their favor by adhering to the precedent that the Messenger of Allah—may Allah bless him and grant him peace—appointed Zayd ibn Ḥārithah over the army of commanders, [saying]: "If he

وَاحْتَجَّ لَهُمْ بَعْضُ الْمُمْتَحَنِينَ بِتَقْلِيدِهِمْ «بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَّى زَيْدَ بْنَ حَارِثَةَ جَيْشَ الْأُمَرَاءِ، فَإِنْ مَاتَ، فَالْأَمِيرُ جَعْفَرُ بْنُ أَبِي طَالِبٍ، فَإِنْ مَاتَ، فَالْأَمِيرُ عَبْدُ اللَّهِ بْنُ رَوَاحَةَ» .

dies, the commander is Jaʿfar ibn Abī Ṭālib; if he dies, the commander is ʿAbdullāh ibn Rawāḥah."

قَالَ: فَكَمَا تَجُوزُ الْمُخَاطَرَةُ فِي الْوِلَايَاتِ فَهِيَ جَائِزَةٌ فِي الضَّمَانِ.

L19326 He said: Just as risk-taking is permissible in positions of authority, so too is it in financial guarantees.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ، لِأَنَّهُ لَا نِسْبَةَ بَيْنَ الْوِلَايَةِ وَبَيْنَ الضَّمَانِ، وَلَا نِسْبَةَ بَيْنَ الْوَكَالَةِ وَبَيْنَ الضَّمَانِ، لِأَنَّ الْوِلَايَةَ فَرْضٌ عَلَى الْمُسْلِمِينَ إلَى يَوْمِ الْقِيَامَةِ، وَلَيْسَ الضَّمَانُ فَرْضًا - وَأَمَّا الْوَكَالَةُ فَحُكْمٌ عَلَى حِيَالِهِ جَاءَ بِهِ النَّصُّ.

L19327 Abu Muhammad said: This is analogy, and all analogy is entirely void. Moreover, even if analogy were valid, this analogy would be the essence of invalidity, for there is no relation between guardianship and guarantee, nor any relation between agency and guarantee. Guardianship is an obligation upon Muslims until the Day of Resurrection, while guarantee is not an obligation. As for agency, it is an independent ruling established by the explicit text.

ثُمَّ نَسْأَلُهُمْ عَمَّنْ قَالَ: أَنَا أَضْمَنُ لَك مَا أَقْرَضْته زَيْدًا ثُمَّ مَاتَ فَأَقْرَضَ الْمَقُولُ لَهُ ذَلِكَ زَيْدًا مَا أَمَرَهُ بِهِ؟ أَيُلْزِمُونَهُ ذَلِكَ بَعْدَ مَوْتِهِ؟ فَهَذَا عَجَبٌ أَمْ لَا يُلْزِمُونَهُ؟ فَقَدْ تَرَكُوا قَوْلَهُمْ الْفَاسِدَ، وَرَجَعُوا إلَى الْحَقِّ، وَلَئِنْ لَزِمَهُ ضَمَانُ ذَلِكَ فِي ذِمَّتِهِ فِي حَيَاتِهِ، فَهُوَ لَازِمٌ لَهُ فِي مَالِهِ وَلَا بُدَّ بَعْدَ مَوْتِهِ مِنْ رَأْسِ مَالِهِ.

L19328 Then we ask them about one who said: "I guarantee for you what I lent to Zaid," then he died, so the addressee lent Zaid what he was instructed to lend. Do they hold him liable for that after his death? Is this astonishing, or do they not hold him liable? They have indeed abandoned their false doctrine and returned to the truth. If the guarantee of that was binding upon his liability during his lifetime, then it remains binding upon his estate, and it must necessarily be taken from the principal of his wealth after his death.

وَنَسْأَلُهُمْ عَمَّنْ ضَمِنَ كُلَّ مَا يَتَدَايَنُ بِهِ زَيْدٌ إلَى انْقِضَاءِ عُمْرِهِ؟ فَإِنْ أَلْزَمُوهُ ذَلِكَ كَانَ شُنْعَةً مِنْ الْقَوْلِ، وَإِنْ لَمْ يُلْزِمُوهُ تَنَاقَضُوا.

L19329 We ask them about one who guarantees everything Zaid engages in through reciprocal debt transactions until the end of his life. If they oblige him to that, it would amount to an abhorrent claim, and if they do not oblige him, they contradict themselves.

وَنَقُولُ لَهُمْ: كَمَا لَمْ يَجُزْ الْغَرَرُ وَالْمُخَاطَرَةُ فِي الْبُيُوعِ، وَلَا جَازَ إصْدَاقُ مَا لَمْ يُخْلَقْ بَعْدُ، فَكَذَلِكَ لَا يَجُوزُ ضَمَانُ مَا لَمْ يَلْزَمْ بَعْدُ.

L19330 And we say to them: Just as speculative risk (*gharar*) and hazardous uncertainty in sales transactions are impermissible, and it is not permissible to assign a dowry to what has not yet been created, so too is it impermissible to assume liability for what is not yet binding.

فَهَذَا أَصَحُّ مِنْ قِيَاسِهِمْ عَلَى الْإِمَارَةِ، وَالْوَكَالَةِ، وَالدَّلَائِلُ هَاهُنَا عَلَى بُطْلَانِ قَوْلِهِمْ تَكْثُرُ جِدًّا - وَفِيمَا ذَكَرْنَا كِفَايَةٌ.

L19331–19332 Thus, this is sounder than their analogy regarding leadership and agency. The evidences here refuting their claim are made exceedingly abundant—and what we have mentioned suffices.

A Legal Question Pertaining to What is Stipulated in the Guaranty of Two [Parties] on Behalf of One.

1234 – Issue:

It is not permissible to stipulate in a guarantee provided by two individuals for a single debtor that the creditor may claim from whichever he wishes the entire amount, nor for the guarantor to stipulate such a condition concerning himself and the debtor, nor to stipulate that the creditor may demand payment from the solvent one of the two instead of the insolvent party, or from the present guarantor instead of the absent one. This is the opinion of Ibn Shubruma and Abū Sulaymān.

And those who permitted this condition were Shurayḥ, Ibn Sīrīn, ʿAṭāʾ, ʿAmr ibn Dīnār, and Sulaymān ibn Mūsā. This is also the opinion of Sufyān al-Thawrī, Abū Ḥanīfah, and Mālik.

The proof for the validity of our statement is the Prophet's declaration—peace and blessings be upon him: "Every condition not in the Book of Allah is null and void." This is a condition for which no scriptural text permits it; thus, it is null and void.[5]

Moreover, this is a surety (ḍamān) that has not been definitively established upon either of them or upon either one specifically. Rather, it is a contingent surety dependent upon one of them without being definitively assigned to either, and it is unknown upon which of them it will be definitively established. Thus, it is invalid, because what is not validly binding upon a person at the time of contracting it cannot subsequently become valid upon them at a time when they neither contracted it nor undertook its obligation. This is evident, leaving no room for doubt. And with Allah, the Exalted, lies success.

A legal case in which two individuals guaranteed a debt owed by another person.

1235 – Issue:

[مَسْأَلَةٌ مَا يُشْتَرَط فِي ضَمَانِ اثْنَيْنِ عَنْ وَاحِدٍ]

١٢٣٤ - مَسْأَلَةٌ:

وَلَا يَجُوزُ أَنْ يُشْتَرَطَ فِي ضَمَانِ اثْنَيْنِ عَنْ وَاحِدٍ أَنْ يَأْخُذَ أَيَّهُمَا شَاءَ بِالْجَمِيعِ، وَلَا أَنْ يَشْتَرِطَ ذَلِكَ الضَّامِنُ فِي نَفْسِهِ وَفِي الْمَضْمُونِ عَنْهُ، وَلَا أَنْ يَشْتَرِطَ أَنْ يَأْخُذَ الْمَلِيءَ مِنْهُمَا عَنْ الْمُعْسِرِ، وَالْحَاضِرَ عَنْ الْغَائِبِ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَأَبِي سُلَيْمَانَ.

وَأَجَازَ هَذَا الشَّرْطَ شُرَيْحٌ، وَابْنُ سِيرِينَ، وَعَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ وَسُلَيْمَانُ بْنُ مُوسَى، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَمَالِكٍ.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَهَذَا شَرْطٌ لَمْ يَأْتِ بِإِبَاحَتِهِ نَصٌّ فَهُوَ بَاطِلٌ.

وَأَيْضًا: فَإِنَّهُ ضَمَانٌ لَمْ يَسْتَقِرَّ عَلَيْهِمَا، وَلَا عَلَى وَاحِدٍ مِنْهُمَا بِعَيْنِهِ، وَإِنَّمَا هُوَ ضَمَانٌ مُعَلَّقٌ عَلَى أَحَدِهِمَا بِغَيْرِ عَيْنِهِ لَا يَدْرِي عَلَى أَيِّهِمَا يَسْتَقِرُّ فَهُوَ بَاطِلٌ، لِأَنَّ مَا لَمْ يَصِحَّ عَلَى الْمَرْءِ بِعَيْنِهِ حِينَ عَقْدِهِ إيَّاهُ، فَمِنْ الْبَاطِلِ أَنْ يَصِحَّ عَلَيْهِ بَعْدَ ذَلِكَ فِي حِينِ لَمْ يَعْقِدْهُ وَلَا الْتَزَمَهُ - وَهَذَا وَاضِحٌ لَا خَفَاءَ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ ضَمِنَ اثْنَانِ حَقًّا عَلَى إنْسَانٍ]

١٢٣٥ - مَسْأَلَةٌ:

[5] **Hadith references (L19337):** Sunan Ibn Majah 2521.

فَإِنْ ضَمِنَ اثْنَانِ فَصَاعِدًا حَقًّا عَلَى إِنْسَانٍ فَهُوَ بَيْنَهُمْ بِالْحِصَصِ لِمَا ذَكَرْنَا، فَلَوْ ابْتَاعَ اثْنَانِ بَيْعًا أَوْ تَدَايَنَا دَيْنًا عَلَى أَنَّ كُلَّ وَاحِدٍ مِنْهُمْ ضَامِنٌ عَنْ الْآخَرِ، فَإِنَّ مَا كَانَ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا قَدْ انْتَقَلَ عَنْهُ وَاسْتَقَرَّ عَلَى الْآخَرِ لَا يَجُوزُ غَيْرُ هَذَا أَصْلًا لِمَا ذَكَرْنَا قَبْلُ.

L19341 If two or more persons guarantee a right against an individual, the right is divided among them in shares as we mentioned. If two jointly purchase a sale or mutually incur a debt on terms that each guarantees for the other, the obligation incumbent upon each of them is transferred from him and settled upon the other. No alternative to this ruling is fundamentally permissible due to what we mentioned previously.

وَلِأَنَّ مِنْ الْبَاطِلِ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَكُونَ مَالُ وَاحِدٍ عَلَى اثْنَيْنِ فَصَاعِدًا يَكُونُ كُلُّهُ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا، لِأَنَّهُ كَانَ يُصَيِّرُ الدِّرْهَمَ دِرْهَمَيْنِ وَلَا بُدَّ؛ أَوْ يَكُونَ غَيْرَ لَازِمٍ لِأَحَدِهِمَا بِعَيْنِهِ، وَلَا لَهُمَا جَمِيعًا، وَهَذَا هَوَسٌ لَا يُعْقَلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19342 And because it is among the falsehoods, the impossible, and the inconceivable that a single property could belong to two or more individuals in such a way that the entirety of it is assigned to each one of them—for this would necessarily render one dirham into two dirhams—or that it is not binding upon either of them individually nor upon both collectively. This is an inconceivable folly—and success is from Allah, the Most High.

[مَسْأَلَةٌ لَا يُشْتَرَطُ فِي بَيْعٍ وَلَا فِي سَلَمٍ وَلَا فِي مُدَايَنَةٍ إعْطَاءُ ضَامِنٍ]

L19343 **Legal ruling: A guarantor is not required in a sale, a Salam contract, or a credit sale.**

١٢٣٦ - مَسْأَلَةٌ:

L19344 1236 – Issue:

وَلَا يَجُوزُ أَنْ يُشْتَرَطَ فِي بَيْعٍ وَلَا فِي سَلَمٍ وَلَا فِي مُدَايَنَةٍ أَصْلًا إعْطَاءُ ضَامِنٍ.

L19345 It is fundamentally impermissible to stipulate the provision of a guarantor in any sale, salam (advance purchase contract), or mudayinah (deferred payment transaction) whatsoever.

وَلَا يَجُوزُ أَنْ يُكَلَّفَ أَحَدٌ فِي خُصُومَةٍ إعْطَاءَ ضَامِنٍ بِهِ لِئَلَّا يَهْرُبَ.

L19346 It is not permissible to compel anyone involved in a dispute to furnish a guarantor for him to prevent him from fleeing.

وَلَا يَجُوزُ أَنْ يُكَلَّفَ مَنْ وَجَبَ لَهُ حَقٌّ مِنْ مِيرَاثٍ أَوْ غَيْرِهِ ضَامِنًا. وَكُلُّ ذَلِكَ جَوْرٌ وَبَاطِلٌ لِأَنَّهُ كُلُّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

L19347–19348 It is impermissible to impose an obligation upon one entitled to a right—whether through inheritance or other means—to act as a guarantor. All such impositions constitute oppression and are null and void, for they are stipulations entirely absent from the Book of Allah, the Almighty, and thus invalid.

وَلِأَنَّهُ تَكْلِيفُ مَا لَمْ يَأْتِ قَطُّ نَصٌّ مِنْ اللَّهِ تَعَالَى وَلَا مِنْ رَسُولِهِ - عَلَيْهِ السَّلَامُ - بِإِيجَابِهِ، فَهُوَ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L19349 And because it imposes something for which neither Allah the Exalted nor His Messenger—peace be upon him—has ever provided a text mandating it as obligatory, it constitutes a divine law that Allah the Exalted has not permitted.

L19350 If those who permit that or part of it argue using the narration we trans-

mitted through the chain of Abdullah ibn Salih from al-Layth ibn Sa'd from Ja'far ibn Rabi'ah from Abd al-Rahman ibn Hurmuza from his father from Abu Hurayrah: "That the Messenger of Allah (peace and blessings of Allah be upon him and his family) mentioned a man from the Children of Israel who requested another Israelite to advance him a loan of a thousand dinars. He related some speech, and within it: He said: 'Bring me a guarantor?' He replied: 'Allah suffices as guarantor.' He said: 'You have spoken truthfully,' then handed them to him for a specified term. He departed by sea, fulfilled his need, then sought a vessel to return to him by the appointed term but found none. He took a log, hollowed it out, placed inside it a thousand dinars and a document addressed to his creditor, then sealed its opening. Then he brought it to the sea"—he related some speech, including: "He cast it into the sea"—and he mentioned the remainder of the narration. Al-Bukhari cited this narration as interrupted and disconnected. This narration is invalid because its chain includes Abdullah ibn Salih, who is graded as very weak.

فَإِنْ احْتَجَّ مَنْ يُجِيزُ ذَلِكَ أَوْ بَعْضُهُ بِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ صَالِحٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ هُرْمُزَ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ذَكَرَ رَجُلًا مِنْ بَنِي إسْرَائِيلَ سَأَلَ بَعْضَ بَنِي إسْرَائِيلَ أَنْ يُسَلِّفَهُ أَلْفَ دِينَارٍ، فَذَكَرَ كَلَامًا، وَفِيهِ فَقَالَ: ائْتِنِي بِالْكَفِيلِ؟ فَقَالَ: كَفَى بِاَللَّهِ كَفِيلًا، فَقَالَ: صَدَقْتَ فَدَفَعَهَا إلَيْهِ إلَى أَجَلٍ مُسَمًّى، فَخَرَجَ فِي الْبَحْرِ فَقَضَى حَاجَتَهُ ثُمَّ الْتَمَسَ مَرْكَبًا يَرْكَبُهَا يَقْدَمُ عَلَيْهِ لِلْأَجَلِ الَّذِي أَجَّلَهُ فَلَمْ يَجِدْ مَرْكَبًا فَأَخَذَ خَشَبَةً فَنَقَرَهَا ثُمَّ أَدْخَلَ فِيهَا أَلْفَ دِينَارٍ وَصَحِيفَةً مِنْهُ إلَى صَاحِبِهِ، ثُمَّ زَجَّجَ مَوْضِعَهَا، ثُمَّ أَتَى بِهَا إلَى الْبَحْرِ - فَذَكَرَ كَلَامًا، وَفِيهِ: فَرَمَى بِهَا إلَى الْبَحْرِ» وَذَكَرَ بَاقِي الْخَبَرِ، وَذَكَرَ الْبُخَارِيُّ هَذَا الْخَبَرَ مُنْقَطِعًا غَيْرَ مُتَّصِلٍ - فَإِنَّ هَذَا خَبَرٌ لَا يَصِحُّ لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ صَالِحٍ - وَهُوَ ضَعِيفٌ جِدًّا.

L19351 Moreover, even if it were valid, they would have no proof in this matter, because it is a Sharia other than our Sharia, and nothing other than the Sharia of our Prophet (peace and blessings be upon him) is binding upon us.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ شَرِيعَةٌ غَيْرُ شَرِيعَتِنَا وَلَا يَلْزَمُنَا غَيْرُ شَرِيعَةِ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19352 Allah the Exalted said: {To each of you We have appointed a law and a clear way} [Al-Mā'idah: 48]. It is astonishing that they are the first to violate it, for they do not permit anyone whatsoever to cast his wealth into the sea hoping it might reach his creditor. Rather, they judge whoever does this as guilty of prodigality, place him under legal guardianship, and discipline him. How then can someone with shame trivialize confronting his opponent with an argument he himself is the first to contravene? Sufficient is Allah for us, and what an excellent Trustee He is.[6]

قَالَ اللَّهُ تَعَالَى: {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨] وَالْعَجَبُ أَنَّهُمْ أَوَّلُ مُخَالِفٍ لَهُ، فَإِنَّهُمْ لَا يُجِيزُونَ أَلْبَتَّةَ لِأَحَدٍ أَنْ يَقْذِفَ مَالَهُ فِي الْبَحْرِ لَعَلَّهُ يَبْلُغُ إلَى غَرِيمِهِ، بَلْ يَقْضُونَ عَلَى مَنْ فَعَلَ هَذَا بِالسَّفَهِ وَيَحْجُرُونَ عَلَيْهِ وَيُؤَدِّبُونَهُ فَكَيْفَ يَسْتَسْهِلُ ذُو حَيَاءٍ أَنْ يَحْتَجَّ عَلَى خَصْمِهِ بِمَا هُوَ أَوَّلُ مُخَالِفٍ لَهُ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

The Issue of Liability Pertaining to the Face

[مَسْأَلَةُ ضَمَانُ الْوَجْهِ]

L19353

L19354 ١٢٣٧ - Issue:

١٢٣٧ - مَسْأَلَةٌ:

[6] **Qur'an references (L19352):** Qur'an 5:48 (Al-Ma'idah).

L19355 It is absolutely impermissible to enforce suretyship based on apparent aspects—whether pertaining to property, hadd punishments, or anything among all things—because it constitutes a condition absent from the Book of Allah the Exalted, thereby rendering it null and void.

وَلَا يَجُوزُ ضَمَانُ الْوَجْهِ أَصْلًا، لَا فِي مَالٍ وَلَا فِي حَدٍّ، وَلَا فِي شَيْءٍ مِنْ الْأَشْيَاءِ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

L19356–19358 Through juristic reasoning, we ask them: If one guarantees only a specific aspect, and the principal debtor becomes absent - what ruling applies to the guarantor bound to that aspect? Do you impose upon him a penalty equivalent to the principal debtor's obligation? This would be injustice and wrongful consumption of wealth through falsehood, because he... He has never undertaken it at all—or would you abandon him? For you have invalidated the guarantee through the very basis on which you contended with the opponents and ruled that it holds no meaning. Or do you burden him with seeking it? This constitutes imposing a burdensome obligation—something beyond his capacity, which Allah the Exalted has never required of him, nor does it yield any benefit. Perhaps he may depart from your stance without pursuing it further, but instead occupy himself with what rightfully concerns him.

وَمِنْ طَرِيقِ النَّظَرِ إنَّا نَسْأَلُهُمْ عَمَّنْ تَكَفَّلَ بِالْوَجْهِ فَقَطْ فَغَابَ الْمَكْفُولُ مَاذَا تَصْنَعُونَ بِالضَّامِنِ لِوَجْهِهِ؟ أَتُلْزِمُونَهُ غَرَامَةَ مَا عَلَى الْمَضْمُونِ - فَهَذَا جَوْرٌ وَأَكْلُ مَالٍ بِالْبَاطِلِ - لِأَنَّهُ لَمْ يَلْتَزِمْهُ قَطُّ، أَمْ تَتْرُكُونَهُ؟ فَقَدْ أَبْطَلْتُمْ الضَّمَانَ بِالْوَجْهِ الَّذِي جَاذَبْتُمْ فِيهِ الْخُصُومَ، وَحَكَمْتُمْ بِأَنَّهُ لَا مَعْنَى لَهُ، أَمْ تُكَلِّفُونَهُ طَلَبَهُ؟ فَهَذَا تَكْلِيفُ الْحَرَجِ، وَمَا لَا طَاقَةَ لَهُ بِهِ، وَمَا لَمْ يُكَلِّفْهُ اللَّهُ تَعَالَى إيَّاهُ قَطُّ، وَلَا مَنْفَعَةَ فِيهِ، وَلَعَلَّهُ يَزُولُ عَنْ مَوْضِعِكُمْ وَلَا يَطْلُبُهُ، وَلَكِنْ يَشْتَغِلُ بِمَا يَعْنِيهِ.

L19359 Our position here is one of the two opinions of al-Shāfiʿī and the opinion of Abū Sulaymān.

وَقَوْلُنَا هَذَا هُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلُ أَبِي سُلَيْمَانَ.

L19360 Abu Hanifah and Malik said: It is permissible to guarantee the face. However, Malik added: If one guarantees the face, they must pay compensation unless they say, "solely the face." This categorization is strangely novel, and no one recognizes any distinction between saying, "I guarantee his face," and saying, "I guarantee his face exclusively." Neither statement inherently obligates any financial penalty or guarantee whatsoever. How then can it be valid to impose a financial penalty for something one never guaranteed? Allah suffices us, and He is the Best Disposer of Affairs. We know of no precedent from earlier scholars for Malik in this categorization.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: يَجُوزُ ضَمَانُ الْوَجْهِ إلَّا أَنَّ مَالِكًا قَالَ: إنْ ضَمِنَ الْوَجْهَ غَرِمَ الْمَالَ، إلَّا أَنْ يَقُولَ الْوَجْهَ خَاصَّةً، فَكَانَ هَذَا التَّقْسِيمُ طَرِيفًا جِدًّا، وَمَا يَعْلَمُ أَحَدٌ فَرْقٌ بَيْنَ قَوْلِهِ: أَنَا أَضْمَنُ وَجْهَهُ، وَبَيْنَ قَوْلِهِ: أَنَا أَضْمَنُ وَجْهَهُ خَالِصَةً، وَكِلَا الْقَوْلَيْنِ لَمْ يَلْتَزِمْ فِيهِ غَرَامَةَ مَالٍ وَلَا ضَمَانَةً أَصْلًا، فَكَيْفَ يَجُوزُ أَنْ يَأْخُذَ بِغَرَامَةِ مَالٍ لَمْ يَضْمَنْهُ قَطُّ؟ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ - وَمَا نَعْلَمُ لِمَالِكٍ فِي هَذَا التَّقْسِيمِ سَلَفًا.

L19361 Those who permit personal guarantee argued with a narration we reported through the chain of Al-ʻUqaylī from Ibrāhīm ibn Al-Ḥasan Al-Hamadhānī from Muḥammad ibn Isḥāq Al-Balkhī from Ibrāhīm ibn Khuthaym ibn ʻIrāk ibn Mālik from his father Khuthaym from ʻIrāk from Abū Hurayrah: "That

وَاحْتَجَّ الْمُجِيزُونَ ضَمَانَ الْوَجْهِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ الْعُقَيْلِيِّ عَنْ إبْرَاهِيمَ بْنِ الْحَسَنِ الْهَمَذَانِيِّ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ الْبَلْخِيِّ عَنْ إبْرَاهِيمَ بْنِ خُثَيْمِ بْنِ عِرَاكِ بْنِ مَالِكٍ عَنْ أَبِيهِ

the Messenger of Allah—peace and blessings be upon him—stood as a guarantor in a case of accusation." They also cited what we reported through the chain of Ibn Wahb from ʻAbd Al-Raḥmān ibn Abī Al-Zināد from his father from Muḥammad ibn Ḥamzah ibn ʻAmr Al-Aslamī from his father: "That ʻUmar dispatched him as a tax collector to Banū Saʻd Hudhaym," and he mentioned the report, which included "that he found among them a man who had engaged in intercourse with his wife's slave girl, who bore him a child, so Ḥamzah took the man as a guarantor." This was because they informed him that ʻUmar had reviewed the case and did not deem stoning applicable to him, but instead lashed him one hundred times. When he came to ʻUmar, he informed him of the matter, and ʻUmar confirmed their account. It was said: "He averted the stoning from him only because he excused him due to ignorance."

خُثَيْمَ عَنْ عِرَاكٍ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَفَلَ فِي تُهْمَةٍ» . وَبِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ مُحَمَّدِ بْنِ حَمْزَةَ بْنِ عَمْرٍو الْأَسْلَمِيِّ عَنْ أَبِيهِ: أَنَّ عُمَرَ بَعَثَهُ مُصَدِّقًا عَلَى بَنِي سَعْدِ هُذَيْمٍ فَذَكَرَ الْخَبَرَ، وَفِيهِ " أَنَّهُ وَجَدَ فِيهِمْ رَجُلًا وَطِئَ أَمَةَ امْرَأَتِهِ فَوَلَدَتْ مِنْهُ فَأَخَذَ حَمْزَةُ بِالرَّجُلِ كَفِيلًا " لِأَنَّهُمْ ذَكَرُوا لَهُ: أَنَّ عُمَرَ قَدْ عَرَفَ خَبَرَهُ، وَأَنَّهُ لَمْ يَرَ عَلَيْهِ رَجْمًا، لَكِنْ جَلَدَهُ مِائَةً، فَلَمَّا أَتَى عُمَرَ أَخْبَرَهُ الْخَبَرَ، فَصَدَّقَهُمْ عُمَرُ، قَالَ: وَإِنَّمَا دَرَأَ عَنْهُ الرَّجْمَ لِأَنَّهُ عَذَرَهُ بِالْجَهَالَةِ.

L19362 And with a report we have narrated through the chain of Isra'il from Abu Ishaq from Harithah ibn Mudarrib: that Ibn Mas'ud was presented with people who acknowledged the prophethood of Musaylimah, among whom was Ibn al-Nawwahah. He demanded his repentance, but he refused? So he struck his neck. Then Ibn Mas'ud consulted the Companions of the Messenger of Allah (peace and blessings be upon him) concerning the remaining individuals. Adiyy ibn Hatim counseled him to execute them, while Al-Ash'ath ibn Qays and Jarir ibn Abdullah advised demanding their repentance and having their clans guarantee their conduct. He then demanded their repentance, entrusted their clans as guarantors, and exiled them to the Levant.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ إِسْرَائِيلَ عَنْ أَبِي إِسْحَاقَ عَنْ حَارِثَةَ بْنِ مُضَرِّبٍ: أَنَّ ابْنَ مَسْعُودٍ أُتِيَ بِقَوْمٍ يُقِرُّونَ بِنُبُوَّةِ مُسَيْلِمَةَ، وَفِيهِمْ ابْنُ النَّوَّاحَةِ فَاسْتَتَابَهُ فَأَبَى؟ فَضَرَبَ عُنُقَهُ، ثُمَّ إِنَّ ابْنَ مَسْعُودٍ اسْتَشَارَ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْبَاقِينَ؟ فَأَشَارَ عَلَيْهِ عَدِيُّ بْنُ حَاتِمٍ بِقَتْلِهِمْ، وَأَشَارَ عَلَيْهِ الْأَشْعَثُ بْنُ قَيْسٍ، وَجَرِيرُ بْنُ عَبْدِ اللَّهِ بِاسْتِتَابَتِهِمْ وَأَنْ يُكَفِّلَهُمْ عَشَائِرُهُمْ، فَاسْتَتَابَهُمْ، فَكَفَّلَهُمْ عَشَائِرُهُمْ، وَنَفَاهُمْ إِلَى الشَّامِ.

L19363 They mentioned that Shurayh stood surety in a blood money case and imprisoned the defendant, and that ʿUmar ibn ʿAbd al-ʿAzīz stood surety in a ḥadd penalty. They said this is a consensus of the Companions, as you see.

وَذَكَرُوا: أَنَّ شُرَيْحًا كَفَلَ فِي دَمٍ وَحَبَسَهُ فِي السِّجْنِ، وَأَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَفَلَ فِي حَدٍّ، قَالُوا: وَهَذَا إِجْمَاعٌ مِنْ الصَّحَابَةِ كَمَا تَرَى.

L19364–19365 Abu Muhammad said: In the argumentation of those who cite all of this as evidence lies proof of the weakness of the faith of the one advancing it—and nothing more—as well as his scant regard for immediate worldly disgrace and ultimate humiliation in the Hereafter before Allah, the Exalted. They have no valid proof at all except what we have mentioned, and all of that is baseless.

قَالَ أَبُو مُحَمَّدٍ: فِي احْتِجَاجِ مَنْ احْتَجَّ بِهَذَا كُلِّهِ دَلِيلٌ عَلَى رِقَّةِ دِينِ الْمُحْتَجِّ بِهِ وَلَا مَزِيدَ وَعَلَى قِلَّةِ مُبَالَاتِهِ بِالْفَضِيحَةِ الْعَاجِلَةِ وَالْخِزْيِ الْآجِلِ عِنْدَ اللَّهِ تَعَالَى وَمَا لَهُمْ حُجَّةٌ أَصْلًا غَيْرُ مَا ذَكَرْنَا، وَكُلُّ ذَلِكَ بَاطِلٌ.

L19366 As for the narration attributed to the Messenger of Allah—may Allah bless him and grant him peace—it is invalid, for it is transmitted through Ibrāhīm ibn Khuthaym ibn ʿIrāk, and both he and his father are deemed extremely weak in reliability; transmitting from them is impermissible. I seek refuge in Allah from the notion that the Messenger of Allah—may Allah bless him and grant him peace—would hold anyone accountable based on an accusation, given his declaration: "Avoid suspicion, for suspicion is the falsest of speech." And an accusation is suspicion.

أَمَّا الْخَبَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَاطِلٌ لِأَنَّهُ مِنْ رِوَايَةِ إبْرَاهِيمَ بْنِ خُثَيْمِ بْنِ عِرَاكٍ، وَهُوَ وَأَبُوهُ فِي غَايَةِ الضَّعْفِ، لَا تَجُوزُ الرِّوَايَةُ عَنْهُمَا، وَمَعَاذَ اللَّهُ مِنْ أَنْ يَأْخُذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحَدًا بِتُهْمَةٍ، وَهُوَ الْقَائِلُ: «إيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» وَالتُّهْمَةُ ظَنٌّ.

L19367 If it were permissible for a person to act as a guarantor based on an accusation, the obligation to act as a guarantor would fall upon every individual on Earth, for none after the earliest generations can be definitively proven innocent of accusations. This is chaos without parallel. Those who cite this report do not uphold the practice of taking guarantees in cases of accusation mentioned within it. Who is more misguided than one who cites a report attributed to the Messenger of Allah—peace and blessings be upon him—regarding a matter he never addressed, while he contradicts everything in that report and considers ruling by it an act of oppression and injustice? We utterly disassociate ourselves from such conduct before Allah, the Exalted.

وَلَوْ جَازَ أَنْ يَكْفُلَ إنْسَانٌ بِتُهْمَةٍ لَوَجَبَ الْكَفِيلُ عَلَى كُلِّ مَنْ عَلَى ظَهْرِ الْأَرْضِ، إذْ لَيْسَ أَحَدٌ بَعْدَ الصَّدْرِ الْأَوَّلِ يُقْطَعُ بِبَرَاءَتِهِ مِنْ التُّهَمَةِ - وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ، وَالْمُحْتَجُّونَ بِهَذَا الْخَبَرِ لَا يَقُولُونَ بِمَا فِيهِ مِنْ أَخْذِ الْكَفَالَةِ فِي التُّهَمَةِ، فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِخَبَرٍ يُطْلِقُهُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ، وَهُوَ يُخَالِفُ كُلَّ مَا فِي ذَلِكَ الْخَبَرِ، وَيَرَى الْحُكْمَ بِمَا فِيهِ جَوْرًا وَظُلْمًا؟ نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ مِثْلِ هَذَا.

L19368 As for the narration of Ḥamzah ibn ʿAmr al-Aslamī, it is invalid because it is transmitted through ʿAbd al-Raḥmān ibn Abī al-Zināḍ—a weak narrator. Moreover, those who cite it as evidence are themselves the first to contradict its contents. None among them advocates flogging an ignorant person one hundred lashes for intercourse with his wife's female slave, nor do they hold that stoning punishment should be averted from an ignorant person. How then can they consider it permissible to cite regarding ʿUmar—may Allah be pleased with him—a practice they themselves deem injustice and oppression? Is there not in this cause for amazement and a lesson? What Allah has willed shall occur.

وَأَمَّا خَبَرُ حَمْزَةَ بْنِ عَمْرٍو الْأَسْلَمِيِّ فَبَاطِلٌ لِأَنَّهُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ وَهُوَ ضَعِيفٌ - ثُمَّ الْمُحْتَجُّونَ بِهِ أَوَّلُ مُخَالِفٍ لِمَا فِيهِ، فَلَيْسَ مِنْهُمْ أَحَدٌ يَرَى أَنْ يُجْلَدَ الْجَاهِلُ فِي وَطْءِ أَمَةِ امْرَأَتِهِ مِائَةً، وَلَا أَنْ يُدْرَأَ الرَّجْمُ عَنْ الْجَاهِلِ فَكَيْف يَسْتَحِلُّونَ أَنْ يَحْتَجُّوا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِعَمَلٍ هُوَ عِنْدَهُمْ جَوْرٌ وَظُلْمٌ، أَمَا فِي هَذَا عَجَبٌ وَعِبْرَةٌ مَا شَاءَ اللَّهُ كَانَ.

L19369 Moreover, none of them permit surety in any of the Hudud punishments, yet this report contains surety in a Hudud punishment—so marvel at these wonders? As for the report of Ibn Mas'ud—we have narrated it via the narration of Yahya ibn Sa'id al-Qattan and Sufyan ibn 'Uyaynah, both of

وَأَيْضًا: فَكُلُّهُمْ لَا يُجِيزُ الْكَفَالَةَ فِي شَيْءٍ مِنْ الْحُدُودِ وَهَذَا الْخَبَرُ إنَّمَا فِيهِ الْكَفَالَةُ فِي حَدٍّ فَاعْجَبُوا لِهَذِهِ الْعَجَائِبِ؟ وَأَمَّا خَبَرُ ابْنِ مَسْعُودٍ - فَإِنَّا رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ

whom narrated from Isma'il ibn Abi Khalid from Qays ibn Abi Hazim from Ibn Mas'ud.

سَعِيدٍ الْقَطَّانِ، وَسُفْيَانُ بْنُ عُيَيْنَةَ، كِلَاهُمَا عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ ابْنِ مَسْعُودٍ.

L19370–19372 And through the chains of Al-A'mash, Shu'bah, and Sufyan Al-Thawri—all of whom narrated from Abu Ishaq from Harithah ibn Mudarrib from Ibn Mas'ud. These chains are the lights of guidance. None of them mentioned in their narration that he provided a guarantee for them, nor did any of them cite a guarantee except Isra'il alone—and he is weak. Even if he had been reliable, his narration would not harm those who contradicted it. From the reliable narrators, though he is weak. Even if it were authentic, all who cite it as evidence would be the first to oppose it, for none of them permit surety in apostasy – whether the apostate repents or not – nor do they endorse imposing exile on the apostate upon repentance. This is not a valid framework for them to assert abrogation; rather, these rulings are compiled as either correct and authoritative, or erroneous and non-authoritative. Examples include: surety in the case of prescribed punishments and apostasy, exile in apostasy, and flogging someone entirely unaware of the ruling for fornication with one hundred lashes without stoning. O Muslims!—how could one with even a remnant of modesty deem it permissible to cite as evidence against their opponent what they themselves first oppose? Similarly, the narration from Shurayh and 'Umar ibn 'Abd al-'Azīz merely states that they provided surety in a case involving a prescribed punishment and blood money, whereas they fundamentally reject surety in such matters. Moreover, the narration from Shurayh comes through Jābir al-Ju'fī – who is a fabricator.

وَمِنْ طَرِيقِ الْأَعْمَشِ، وَشُعْبَةَ، وَسُفْيَانَ الثَّوْرِيِّ، كُلُّهُمْ عَنْ أَبِي إِسْحَاقَ عَنْ حَارِثَةَ بْنِ مُضَرِّبٍ عَنِ ابْنِ مَسْعُودٍ، وَهَذِهِ الْأَسَانِيدُ هِيَ أَنْوَارُ الْهُدَى لَمْ يَذْكُرْ أَحَدٌ مِنْهُمْ فِي رِوَايَتِهِ أَنَّهُ كَفَلَ بِهِمْ، وَلَا ذَكَرَ مِنْهُمْ أَحَدٌ كَفَالَةً إِلَّا إِسْرَائِيلَ وَحْدَهُ - وَهُوَ ضَعِيفٌ - وَلَوْ كَانَ ثِقَةً مَا ضَرَّ رِوَايَتَهُ مَنْ خَالَفَهَا مِنَ الثِّقَاتِ، وَلَكِنَّهُ ضَعِيفٌ - ثُمَّ لَوْ صَحَّتْ لَكَانَ جَمِيعُ الْمُحْتَجِّينَ بِهَا أَوَّلَ مُخَالِفٍ لَهَا، لِأَنَّهُمْ كُلُّهُمْ لَا يُجِيزُونَ الْكَفَالَةَ فِي الرِّدَّةِ تَابَ أَوْ لَمْ يَتُبْ، وَلَا يَرَوْنَ التَّغْرِيبَ عَلَى الْمُرْتَدِّ إِذْ تَابَ، وَلَيْسَ هَذَا مَكَانًا يُمَكِّنُهُمْ فِيهِ دَعْوَى نَسْخٍ بَلْ هِيَ أَحْكَامٌ مَجْمُوعَةٌ: إِمَّا صَوَابٌ وَحُجَّةٌ، وَإِمَّا خَطَأٌ وَغَيْرُ حُجَّةٍ: الْكَفَالَةُ بِالْوَجْهِ فِي الْحُدُودِ وَفِي الرِّدَّةِ، وَالتَّغْرِيبُ فِي الرِّدَّةِ وَجَلْدُ الْجَاهِلِ الْمُحْصَنِ فِي الزِّنَى مِائَةَ جَلْدَةٍ، وَلَا يُرْجَمُ، فَيَا لِلْمُسْلِمِينَ كَيْفَ يَسْتَحِلُّ مَنْ لَهُ مُسْكَةُ حَيَاءٍ أَنْ يَحْتَجَّ عَلَى خَصْمِهِ بِمَا هُوَ أَوَّلُ مُخَالِفٍ لَهُ؟ . وَكَذَلِكَ الرِّوَايَةُ عَنْ شُرَيْحٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِنَّمَا هِيَ أَنَّهُمَا كَفَلَا فِي حَدٍّ وَدَمٍ، وَهُمْ لَا يَرَوْنَ الْكَفَالَةَ فِيهِمَا أَصْلًا، وَهِيَ بَعْدُ عَنْ شُرَيْحٍ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ - وَهُوَ كَذَّابٌ -.

L19373 This, too, is not known to be authentically reported from 'Umar ibn 'Abd al-'Azīz.

وَلَا يُعْرَفُ هَذَا أَيْضًا يَصِحُّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L19374 If what they cited of these falsehoods was consensus as they claimed, then they have admitted against themselves to opposing the consensus. May those who oppose the consensus be banished and cast far away! We say regarding them as the Exalted stated concerning those who confessed to misguidance:

فَإِنْ كَانَ مَا ذَكَرُوا مِنْ هَذِهِ التَّكَاذِيبِ إِجْمَاعًا كَمَا زَعَمُوا فَقَدْ أَقَرُّوا عَلَى أَنْفُسِهِمْ بِمُخَالَفَةِ الْإِجْمَاعِ، فَسُحْقًا وَبُعْدًا لِمَنْ خَالَفَ الْإِجْمَاعَ، نَقُولُ فِيهِمْ: كَمَا قَالَ تَعَالَى فِيمَنْ اعْتَرَفَ عَلَى نَفْسِهِ بِالضَّلَالِ: {فَاعْتَرَفُوا بِذَنْبِهِمْ فَسُحْقًا لِأَصْحَابِ السَّعِيرِ} [الملك: ١١]

"They acknowledged their sin, so away with the companions of the Blazing Fire!" (Al-Mulk: 11).[7]

وَشَهِدُوا عَلَى أَنْفُسِهِمْ إِلَّا إِنَّ أُولَئِكَ نَادِمُونَ، وَهَؤُلَاءِ مُصِرُّونَ.

L19375 They testified against themselves, except that those [people] are penitent, and these [others] persist defiantly.

وَأَمَّا نَحْنُ فَلَوْ صَحَّتْ هَذِهِ الرِّوَايَاتُ كُلُّهَا لَمَا كَانَ فِيهَا حُجَّةٌ، لِأَنَّهَا إِنَّمَا هِيَ عَنْ خَمْسَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَقَطْ، وَأَيْنَ هَذِهِ مِنْ صَلَاةِ مُعَاذٍ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ إمَامَتِهِ قَوْمَهُ فِي مَسْجِدِ بَنِي سَلِمَةَ فِي تِلْكَ الصَّلَاةِ وَخَلْفَهُ ثَلَاثَةٌ وَأَرْبَعُونَ بَدْرِيًّا مُسَمَّوْنَ بِأَسْمَائِهِمْ وَأَنْسَابِهِمْ سِوَى سَائِرِ أَصْحَابِ الْمَشَاهِدِ مِنْهُمْ، فَلَمْ يَرَوْا هَذَا إجْمَاعًا، بَلْ رَأَوْهَا صَلَاةً فَاسِدَةً، وَمَعَاذَ اللَّهِ مِنْ هَذَا، بَلْ هِيَ وَاَللَّهِ صَلَاةٌ مُقَدَّسَةٌ فَاضِلَةٌ، حَقٌّ، وَصَلَاةُ الْمُخَالِفِينَ لَهَا هِيَ الْفَاسِدَةُ حَقًّا.

L19376 As for us, even if all these narrations were authentic, they would not constitute proof, for they are merely from five Companions—may Allah be pleased with them—only. How do these [narrations] measure against Mu'adh's prayer with the Prophet—peace and blessings of Allah be upon him—then his leading his people in the mosque of Banī Salimah during that prayer, with forty-three veterans of Badr behind him—explicitly named with their names and lineages—besides other participants in significant events among them? They did not view this as consensus; rather, they considered it an invalid prayer. Allah forbid! By Allah, it is a sacred and virtuous prayer, true, while the prayer of those who oppose it is indeed the invalid one.

وَأَيْنَ هَذَا مِنْ إعْطَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَمِيعِ أَصْحَابِهِ أَرْضَ خَيْبَرَ عَلَى نِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ تَمْرٍ إلَى غَيْرِ أَجَلٍ مُسَمًّى، لَكِنْ يُقِرُّونَهُمْ [بِهَا] كَمَا شَاءُوا، وَيُخْرِجُونَهُمْ إذَا شَاءُوا؟ فَلَمْ يَرَوْا هَذَا إجْمَاعًا، بَلْ رَأَوْهُ مُعَامَلَةً فَاسِدَةً مَرْدُودَةً، وَحَاشَا لِلَّهِ مِنْ هَذَا، بَلْ هُوَ وَاَللَّهِ الْإِجْمَاعُ الْمُتَيَقَّنُ وَالْحَقُّ الْوَاضِحُ، وَأَقْوَالُ مَنْ خَالَفَ ذَلِكَ هِيَ الْفَاسِدَةُ الْمَرْدُودَةُ حَقًّا، وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى مَا مَنَّ بِهِ.

L19377–19379 How far is this from the Messenger of Allah—peace and blessings be upon him—and all his Companions giving the land of Khaybar in exchange for half of what came from it in crops or dates without any fixed term, while allowing them to remain there as long as they wished and expelling them whenever they wished? They did not regard this as Ijma, but rather deemed it an invalid and rejected transaction. Far removed is Allah from such a thing. Rather, by Allah, it is the firmly established consensus and the evident truth. The statements of those who oppose this are truly corrupt and invalid, and we praise Allah, Exalted is He, for the favor He has bestowed.

ثُمَّ اعْلَمُوا الْآنَ أَنَّهُ لَمْ يَصِحَّ قَطُّ إبَاحَةُ كَفَالَةِ الْوَجْهِ عَنْ صَاحِبٍ وَلَا تَابِعٍ فَهِيَ بَاطِلٌ مُتَيَقَّنٌ لَا تَجُوزُ الْبَتَّةَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19380 Now know that the permissibility of personal surety (kafālat al-wajh) for a principal debtor or subordinate guarantor has never been validly sanctioned. Thus, it is unequivocally invalid and categorically impermissible—and Allah, the Exalted, alone grants success.

تَمَّ " كِتَابُ الْكَفَالَةِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L19381 "The Book on Suretyship" has been completed, and all praise is due to Allah, Lord of all the worlds.

[7] **Qur'an references (L19374):** Qur'an 67:11 (Al-Mulk).



AL-MUHALLA

كِتَابُ الشَّرِكَةِ

The Book of Partnership

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

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[Book of Partnership] [Legal Case: Partnership of Labor]

[كِتَابُ الشَّرِكَةِ] [مَسْأَلَةٌ شَرِكَةُ الْأَبْدَانِ]

L19382–19383

L19384 Issue 1238: A partnership based on labor services is fundamentally invalid in all forms - whether in mediation, instruction, service, manual work, or any other matter. If such a partnership occurs, it is void and non-binding. Each individual among them retains what he has personally earned. If they divide their earnings, it must be judicially enforced that each claims his rightful share without exception, for this constitutes a condition not ordained in the Book of Allah Almighty and is therefore invalid, in accordance with Allah's decree: "No soul earns except against itself" (al-Anʿām 6:164).[1]

١٢٣٨ - مَسْأَلَةٌ: لَا تَجُوزُ الشَّرِكَةُ بِالْأَبْدَانِ أَصْلًا، لَا فِي دَلَالَةٍ، وَلَا فِي تَعْلِيمٍ، وَلَا فِي خِدْمَةٍ، وَلَا فِي عَمَلِ يَدٍ، وَلَا فِي شَيْءٍ مِنْ الْأَشْيَاءِ، فَإِنْ وَقَعَتْ فَهِيَ بَاطِلَةٌ لَا تَلْزَمُ، وَلِكُلِّ وَاحِدٍ مِنْهُمْ أَوْ مِنْهُمَا مَا كَسَبَ، فَإِنْ اقْتَسَمَاهُ وَجَبَ أَنْ يُقْضَى لَهُ بِأَخْذِهِ وَلَا بُدَّ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَلِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L19385 And He, the Exalted, said: "Allah does not burden a soul beyond its capacity. To its credit is the good it has earned, and against it is the evil it has incurred." [Al-Baqarah: 286][2]

وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ} [البقرة: ٢٨٦] .

L19386 All of this is general in this world and the Hereafter, because neither the Qur'an nor the Sunnah has provided any restriction regarding this matter. Whoever claims a restriction in this regard has ascribed to Allah, the Exalted, something without knowledge.

وَهَذَا كُلُّهُ عُمُومٌ فِي الدُّنْيَا وَالْآخِرَةِ، لِأَنَّهُ لَمْ يَأْتِ بِتَخْصِيصِ شَيْءٍ مِنْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، فَمَنْ ادَّعَى فِي ذَلِكَ تَخْصِيصًا فَقَدْ قَالَ عَلَى اللَّهِ تَعَالَى مَا لَا يَعْلَمُ.

L19387 As for us, we have stated that we do not know, for if Allah the Exalted had intended to specify any part of that, He would not have neglected it in order to mislead us, and His Messenger (peace and blessings be upon him), who was commanded to clarify what was revealed to him, would have elucidated it for us. Since neither Allah the Exalted nor His Messenger (peace be upon him) informed us of specifying any part of that, we stand with decisive and irrevocable certainty that He the Exalted intended the general applicability entailed by His words.

وَأَمَّا نَحْنُ فَقَدْ قُلْنَا: مَا نَعْلَمُ، لِأَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ تَخْصِيصَ شَيْءٍ مِنْ ذَلِكَ لَمَا أَهْمَلَهُ لِيُضِلَّنَا وَلَبَيَّنَهُ لَنَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورُ بِبَيَانِ مَا أُنْزِلَ عَلَيْهِ فَإِذْ لَمْ يُخْبِرْنَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - بِتَخْصِيصِ شَيْءٍ مِنْ ذَلِكَ فَنَحْنُ عَلَى يَقِينٍ قَاطِعٍ بَاتٍّ عَلَى أَنَّهُ تَعَالَى أَرَادَ عُمُومَ مَا اقْتَضَاهُ كَلَامُهُ.

L19388–19389 And due to the statement of the Messenger of Allah—peace and blessings be upon him—"Indeed, your blood and wealth are inviolable to you," it is impermissible to rule that the wealth of a Muslim or a dhimmi be transferred to another except by a text of the Qur'an or Sunnah, otherwise, it is injustice.

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ أَنْ يُقْضَى بِمَالِ مُسْلِمٍ أَوْ ذِمِّيٍّ لِغَيْرِهِ إلَّا بِنَصِّ قُرْآنٍ، أَوْ سُنَّةٍ، وَإِلَّا فَهُوَ جَوْرٌ.

[1] **Qur'an references (L19384):** Qur'an 6:164 (Al-An'am).
[2] **Qur'an references (L19385):** Qur'an 2:286 (Al-Baqarah).

L19390 And due to the statement of Allah the Exalted: {Do not consume your wealth among yourselves unjustly, unless it is through trade by mutual consent} [An-Nisa: 29]. This is not trade at all; thus, it constitutes unjust consumption of wealth.[3]

L19391 **A case involving indivisible labor where its owner hired both parties for a single payment.**

L19392 ١٢٣٩ - Issue:

L19393 If the work is indivisible and their employer hires both for a single wage, the wage is divided between them in proportion to the work each performed—such as fulling a garment, building a wall, sewing a garment, or similar situations. Likewise, if they set up a trap together, the game is shared between them. If they send out two trained hunting animals that catch a single game, it is shared between them; otherwise, each takes what his hunting animal catches.

L19394 Abu Hanifah said: Labor partnerships are permissible in crafts - whether their craft is identical or different - working in a single location or two locations. If one partner is absent or falls ill, whatever the present and healthy partner earns shall be shared between them. Such partnerships are permissible neither in hunting nor in gathering firewood.

L19395 Abu Muhammad said: This is an invalid categorization without proof. It has been reported from him that bodily partnerships are only permissible in matters where agency is valid – yet this too is deeply flawed, for according to him, agency is permissible in marriage. Thus, it would necessitate that partnership also be permissible in marriage under their principles.

L19396 Malik stated that a partnership based on physical labor is valid for gathering firewood and seeking ambergris, provided all such activities are carried out in a single location.

L19397 Similarly, if the two partner in hunting with dogs and goshawks—each pos-

وَلِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَهَذِهِ لَيْسَتْ تِجَارَةً أَصْلًا فَهِيَ أَكْلُ مَالٍ بِالْبَاطِلِ.

[مَسْأَلَةٌ كَانَ الْعَمَلُ لَا يَنْقَسِمُ وَاسْتَأْجَرَهُمَا صَاحِبُهُ بِأُجْرَةٍ وَاحِدَةٍ]

١٢٣٩ - مَسْأَلَةٌ:

فَإِنْ كَانَ الْعَمَلُ لَا يَنْقَسِمُ وَاسْتَأْجَرَهُمَا صَاحِبُهُ بِأُجْرَةٍ وَاحِدَةٍ فَالْأُجْرَةُ بَيْنَهُمَا عَلَى قَدْرِ عَمَلِ كُلِّ وَاحِدٍ كَكَمْدِ ثَوْبٍ وَاحِدٍ، أَوْ بِنَاءِ حَائِطٍ وَاحِدٍ، أَوْ خِيَاطَةِ ثَوْبٍ وَاحِدٍ، وَمَا أَشْبَهَ هَذَا؟ وَكَذَلِكَ إِنْ نَصَبَا حِبَالَةً مَعًا فَالصَّيْدُ بَيْنَهُمَا، أَوْ أَرْسَلَا جَارِحَيْنِ فَأَخَذَا صَيْدًا وَاحِدًا فَهُوَ بَيْنَهُمَا، وَإِلَّا فَلِكُلِّ وَاحِدٍ مَا صَادَ جَارِحُهُ.

وَقَالَ أَبُو حَنِيفَةَ: شَرِكَةُ الْأَبْدَانِ جَائِزَةٌ فِي الصِّنَاعَاتِ اتَّفَقَتْ صِنَاعَتُهُمَا أَوْ اخْتَلَفَتْ عَمَلًا فِي مَوْضِعٍ وَاحِدٍ أَوْ فِي مَوْضِعَيْنِ، فَإِنْ غَابَ أَحَدُهُمَا أَوْ مَرِضَ فَمَا أَصَابَ الصَّحِيحُ الْحَاضِرُ فَبَيْنَهُمَا - وَلَا تَجُوزُ فِي التَّصَيُّدِ، وَلَا فِي الِاحْتِطَابِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَقْسِيمٌ فَاسِدٌ بِلَا بُرْهَانٍ، وَرُوِيَ عَنْهُ: أَنَّ شَرِكَةَ الْأَبْدَانِ لَا تَجُوزُ إِلَّا فِيمَا تَجُوزُ فِيهِ الْوَكَالَةُ - وَهَذَا فِي غَايَةِ الْفَسَادِ أَيْضًا، لِأَنَّ الْوَكَالَةَ عِنْدَهُ جَائِزَةٌ فِي النِّكَاحِ فَتَجِبُ أَنْ تَجُوزَ الشَّرِكَةُ عِنْدَهُمْ فِي النِّكَاحِ.

وَقَالَ مَالِكٌ شَرِكَةُ الْأَبْدَانِ جَائِزَةٌ فِي الِاحْتِطَابِ وَطَلَبِ الْعَنْبَرِ، إِذَا كَانَ كُلُّ ذَلِكَ فِي مَوْضِعٍ وَاحِدٍ.

[3] **Qur'an references (L19390):** Qur'an 4:29 (An-Nisa).

sessing a goshawk and a dog—and the two goshawks or two dogs cooperate in hunting a single prey, partnership is valid in his view based on training in a single location. If they are in two locations, there is no harm in it.

وَكَذَلِكَ إِذَا اشْتَرَكَا فِي صَيْدِ الْكِلَابِ وَالْبُزَاةِ إِذَا كَانَ لِكُلِّ وَاحِدٍ مِنْهُمَا بَازٍ وَكَلْبٌ، يَتَعَاوَنُ الْبَازَانِ أَوْ الْكَلْبَانِ عَلَى صَيْدٍ وَاحِدٍ - وَتَجُوزُ الشَّرِكَةُ عِنْدَهُ عَلَى التَّعْلِيمِ فِي مَكَانٍ وَاحِدٍ، فَإِنْ كَانَا فِي مَجْلِسَيْنِ فَلَا ضَيْرَ فِيهِ.

L19398–19400 He permitted partnerships based on physical labor in crafts when both partners work in a single shop, such as cloth-bleachers and similar occupations, provided they are engaged in one craft. If either partner falls ill, the earnings are divided between them. The same ruling applies if one is absent or if one works one day while the other works two days. In his view, partnerships formed by porters or animal-mounted transporters are invalid. He also entirely prohibited partnerships combining two distinct crafts, such as a blacksmith and a cloth-bleacher, as this constitutes arbitrariness. Without proof, and an opinion for which we know of no prior authorities, and our opinion is the opinion of Al-Layth, Abu Sulayman, Al-Shafi'i, and Abu Thawr.

وَأَجَازَ شَرِكَةَ الْأَبْدَانِ فِي الصِّنَاعَاتِ إِذَا كَانَا فِي دُكَّانٍ وَاحِدٍ، كَالْقَصَّارِ وَنَحْوِهِ إِذَا كَانَ ذَلِكَ فِي صِنَاعَةٍ وَاحِدَةٍ، فَإِنْ مَرِضَ أَحَدُهُمَا فَالْأُجْرَةُ بَيْنَهُمَا وَكَذَلِكَ إِنْ غَابَ أَحَدُهُمَا أَوْ عَمِلَ أَحَدُهُمَا يَوْمًا وَالْآخَرُ يَوْمَيْنِ. وَلَا يَجُوزُ عِنْدَهُ اشْتِرَاكُ الْحَمَّالِينَ أَوْ النَّقَّالِينَ عَلَى الدَّوَابِّ. وَلَا يَجُوزُ عِنْدَهُ الِاشْتِرَاكُ فِي صِنَاعَتَيْنِ أَصْلًا كَحَدَّادٍ وَقَصَّارٍ وَنَحْوِ ذَلِكَ وَهَذَا تَحَكُّمٌ بِلَا بُرْهَانٍ وَقَوْلٌ لَا نَعْلَمُ لَهُمْ سَلَفًا - وَقَوْلُنَا هُوَ قَوْلُ اللَّيْثِ وَأَبِي سُلَيْمَانَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ

L19401 Those who permitted bodily partnerships argued with what we have narrated through the chain of Abū Dāwūd: from ʿUbayd Allāh ibn Muʿādh al-ʿAnbarī, from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī, from Abū ʿUbaydah ibn ʿAbd Allāh ibn Masʿūd, from his father, who said: "I entered into a partnership with ʿAmmār ibn Yāsir and Saʿd ibn Abī Waqqāṣ regarding what we would obtain on the day of Badr. Saʿd came with two captives, while neither I nor ʿAmmār brought anything."

وَاحْتَجَّ مَنْ أَجَازَ شَرِكَةَ الْأَبْدَانِ بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد عَنْ عُبَيْدِ اللَّهِ بْنِ مُعَاذٍ الْعَنْبَرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: اشْتَرَكْت أَنَا وَعَمَّارُ بْنُ يَاسِرٍ، وَسَعْدُ بْنُ أَبِي وَقَّاصٍ فِيمَا نُصِيبُ يَوْمَ بَدْرٍ فَجَاءَ سَعْدٌ بِأَسِيرَيْنِ، وَلَمْ أَجِئْ أَنَا وَعَمَّارٌ بِشَيْءٍ.

L19402 Abu Muhammad said: This is an astonishing wonder, and we do not know upon what basis the actions of these people are justified. We ask Allah for protection from the obfuscation with falsehood in His religion, Exalted is He.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَجَبٌ عَجِيبٌ، وَمَا نَدْرِي عَلَى مَاذَا يُحْمَلُ عَلَيْهِ أَمْرُ هَؤُلَاءِ الْقَوْمِ؟ وَنَسْأَلُ اللَّهَ السَّلَامَةَ مِنْ التَّمْوِيهِ فِي دِينِهِ تَعَالَى بِالْبَاطِلِ.

L19403 The first [issue] is that this is a disconnected report because Abu 'Ubaydah does not mention anything from his father. It was narrated to us through the chain of Waki' from Shu'bah from 'Amr ibn Murrah. He [Amr] said: I asked Abu 'Ubaydah: "Do you recall anything from Abdullah?" He replied: "No."

أَوَّلُ ذَلِكَ -: أَنَّ هَذَا خَبَرٌ مُنْقَطِعٌ لِأَنَّ أَبَا عُبَيْدَةَ لَا يَذْكُرُ مِنْ أَبِيهِ شَيْئًا: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ: قُلْت لِأَبِي عُبَيْدَةَ: أَتَذْكُرُ مِنْ عَبْدِ اللَّهِ شَيْئًا؟ قَالَ: لَا.

L19404 The second is that if it were valid, it would form the greatest proof against them, for they - along with us and the rest of Muslims - are the foremost to assert that this partnership is invalid, and that no member of the army may exclusively claim what they acquire apart from the entire military force, save for the matter we dispute concerning the killer's entitlement to personal spoils (al-salb). They maintain that whoever does so commits ghulul (embezzlement of spoils), which is one of the gravest sins.

وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَكَانَ أَعْظَمَ حُجَّةً عَلَيْهِمْ، لِأَنَّهُمْ أَوَّلُ قَائِلٍ مَعَنَا وَمَعَ سَائِرِ الْمُسْلِمِينَ: أَنَّ هَذِهِ شَرِكَةٌ لَا تَجُوزُ، وَأَنَّهُ لَا يَنْفَرِدُ أَحَدٌ مِنْ أَهْلِ الْعَسْكَرِ بِمَا يُصِيبُ دُونَ جَمِيعِ أَهْلِ الْعَسْكَرِ حَاشَا مَا اخْتَلَفْنَا فِيهِ مِنْ كَوْنِ السَّلَبِ لِلْقَاتِلِ، وَأَنَّهُ إِنْ فَعَلَ فَهُوَ غُلُولٌ مِنْ كَبَائِرِ الذُّنُوبِ.

L19405 The third point is that this partnership did not materialize, and neither Sa'd, nor 'Ammār, nor Ibn Mas'ūd obtained anything from those two captives except what was acquired by Ṭalḥah ibn 'Ubayd Allāh who was in Syria, and 'Uthmān ibn 'Affān who was in Medina. Thereupon, Allah the Exalted revealed concerning this: *"The spoils (al-Anfāl) belong to Allah and the Messenger. So be mindful of Allah and settle your differences"* [8:1]. How then can one who recognizes disgrace as disgraceful deem it lawful to cite a partnership that Allah the Exalted nullified and did not sanction?[4]

وَالثَّالِثُ: أَنَّ هَذِهِ شَرِكَةٌ لَمْ تَتِمَّ، وَلَا حَصَلَ لِسَعْدٍ وَلَا لِعَمَّارٍ، وَلَا لِابْنِ مَسْعُودٍ مِنْ ذَيْنِكَ الْأَسِيرَيْنِ إِلَّا مَا حَصَلَ لِطَلْحَةَ بْنِ عُبَيْدِ اللَّهِ الَّذِي كَانَ بِالشَّامِ، وَلِعُثْمَانَ بْنِ عَفَّانَ الَّذِي كَانَ بِالْمَدِينَةِ فَأَنْزَلَ اللَّهُ تَعَالَى فِي ذَلِكَ: {قُلِ الْأَنْفَالُ لِلَّهِ وَالرَّسُولِ فَاتَّقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ} [الأنفال: ١] فَكَيْفَ يَسْتَحِلُّ مَنْ يَرَى الْعَارَ عَارًا أَنْ يَحْتَجَّ بِشَرِكَةٍ أَبْطَلَهَا اللَّهُ تَعَالَى وَلَمْ يُمْضِهَا؟ .

L19406 The fourth is that they—the Ḥanafī school—do not permit partnership in hunting, nor does the Mālikī school permit partnership in joint labor across two locations. Thus, this partnership mentioned in the ḥadīth is impermissible according to their principles. What could be more astonishing than one who seeks to validate his position by citing a narration his own school deems impermissible? All praise is to Allah, Lord of the worlds, for His enabling grace bestowed upon us.[5]

وَالرَّابِعُ: أَنَّهُمْ - يَعْنِي الْحَنَفِيِّينَ - لَا يُجِيزُونَ الشَّرِكَةَ فِي الِاصْطِيَادِ، وَلَا يُجِيزُهَا الْمَالِكِيُّونَ فِي الْعَمَلِ فِي مَكَانَيْنِ، فَهَذِهِ الشَّرِكَةُ الْمَذْكُورَةُ فِي الْحَدِيثِ لَا تَجُوزُ عِنْدَهُمْ، فَمَنْ أَعْجَبُ مِمَّنْ يَحْتَجُّ فِي تَصْحِيحِ قَوْلِهِ بِرِوَايَةٍ لَا تَجُوزُ عِنْدَهُ؟ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ عَلَى تَوْفِيقِهِ لَنَا.

L19407 **Issue: Partnership is not permissible except in tangible assets.**

[مَسْأَلَةٌ لَا تَجُوزُ الشَّرِكَةُ إِلَّا فِي أَعْيَانِ الْأَمْوَالِ]

L19408 1240: Issue

١٢٤٠ - مَسْأَلَةٌ:

L19409–19411 Partnership is permissible only in tangible assets; therefore, it is allowed in commercial transactions. This requires each partner to contribute money: one a sum and the other a sum of the same kind—whether equal to, less than, or exceeding it—and necessitates the thorough mixing of both funds until

وَلَا تَجُوزُ الشَّرِكَةُ إِلَّا فِي أَعْيَانِ الْأَمْوَالِ، فَتَجُوزُ فِي التِّجَارَةِ، بِأَنْ يُخْرِجَ أَحَدُهُمَا مَالًا وَالْآخَرُ مَالًا مِثْلُهُ مِنْ نَوْعِهِ أَوْ أَقَلَّ مِنْهُ أَوْ أَكْثَرَ مِنْهُ، فَيَخْلِطَا الْمَالَيْنِ وَلَا بُدَّ، حَتَّى لَا يُمَيِّزَ أَحَدُهُمَا مَالَهُ مِنْ الْآخَرِ، ثُمَّ يَكُونُ مَا ابْتَاعَا بِذَلِكَ الْمَالِ بَيْنَهُمَا عَلَى قَدْرِ حِصَصِهِمَا

[4] **Qur'an references (L19405):** Qur'an 8:1 (Al-Anfal).
[5] **Qur'an references (L19406):** Qur'an 37:182 (As-Saffat).

neither can distinguish their own property from the other's. Whatever they acquire with this capital shall be jointly owned according to their respective shares. Profits shall be divided proportionally between them, and losses allocated between them proportionally. If they fail to merge the funds, each partner retains exclusive ownership of what they themselves purchased, and their partner retains ownership of what the partner purchased. The entire profit therefrom belongs to him alone, and the entire loss falls upon him alone.

فِيهِ وَالرِّبْحُ بَيْنَهُمَا كَذَلِكَ، وَالْخَسَارَةُ عَلَيْهِمَا كَذَلِكَ - فَإِنْ لَمْ يَخْلِطَا الْمَالَيْنِ فَلِكُلِّ وَاحِدٍ مِنْهُمَا مَا ابْتَاعَهُ هُوَ أَوْ شَرِيكُهُ، بِهِ رِبْحُهُ كُلُّهُ لَهُ وَحْدُهُ، وَخَسَارَتُهُ كُلُّهَا عَلَيْهِ وَحْدَهُ.

L19412 The proof of this is: when the two partners combine the two funds, the combined sum becomes jointly owned between them. Whatever they purchase with it is jointly owned between them. Since that is the case, the principal is the original amount, the profit is jointly owned between them, and the loss is jointly owned between them.

بُرْهَانُ ذَلِكَ -: أَنَّهُمَا إِذَا خَلَطَا الْمَالَيْنِ فَقَدْ صَارَتْ تِلْكَ الْجُمْلَةُ مُشَاعَةً بَيْنَهُمَا، فَمَا ابْتَاعَا بِهَا فَمُشَاعٌ بَيْنَهُمَا، وَإِذَا هُوَ كَذَلِكَ فَثَمَنُهُ أَصْلُهُ، وَرِبْحُهُ مُشَاعٌ بَيْنَهُمَا - وَالْخَسَارَةُ مُشَاعَةٌ بَيْنَهُمَا.

L19413 As for if the two do not mix the two properties, it is invalid for Zaid to have what is purchased with ʿAmr's property, any profit accrued in another person's property, or any loss incurred in another person's property, based on what we previously mentioned from Allah's statement: "And no soul earns except against itself" [al-Anʿām 6:164].[6]

وَأَمَّا إِذَا لَمْ يَخْلِطَا الْمَالَيْنِ فَمِنَ الْبَاطِلِ أَنْ يَكُونَ لِزَيْدٍ مَا ابْتِيعَ بِمَالِ عَمْرٍو، أَوْ مَا رَبِحَ فِي مَالِ غَيْرِهِ، أَوْ مَا خَسِرَ فِي مَالِ غَيْرِهِ، لِمَا ذَكَرْنَا آنِفًا مِنْ قَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L19414 [مَسْأَلَةُ ابْتَاعَ اثْنَانِ سِلْعَةً بَيْنَهُمَا عَلَى السَّوَاءِ]

A legal case in which two individuals purchased a commodity on equal terms between them.

L19415 1241 – Issue:

١٢٤١ - مَسْأَلَةٌ:

L19416 If two or more individuals purchase a commodity jointly with equal shares, or if one buys more than half of it while the other takes less than half, this sale is permissible. They are liable for the price according to their respective shares. Whatever profit they earn or loss they suffer shall be distributed between them in proportion to their shares, because the price represents the substitute for the commodity.

فَإِنْ ابْتَاعَ اثْنَانِ فَصَاعِدًا سِلْعَةً بَيْنَهُمَا عَلَى السَّوَاءِ، أَوْ ابْتَاعَ أَحَدُهُمَا مِنْهَا أَكْثَرَ مِنَ النِّصْفِ، وَالْآخَرُ أَقَلَّ مِنَ النِّصْفِ، فَهَذَا بَيْعٌ جَائِزٌ، وَالثَّمَنُ عَلَيْهِمَا عَلَى قَدْرِ حِصَصِهِمَا، فَمَا رَبِحَا أَوْ خَسِرَا فَبَيْنَهُمَا عَلَى قَدْرِ حِصَصِهِمَا، لِأَنَّ الثَّمَنَ بَدَلُ السِّلْعَةِ.

L19417 Similarly, if the two parties inherited a commodity, or it was gifted to both of them, or they acquired it by whatever means they obtained ownership,

وَهَكَذَا لَوْ وَرِثَا سِلْعَةً، أَوْ وُهِبَتْ لَهُمَا، أَوْ مَلَكَاهَا بِأَيِّ وَجْهٍ مَلَكَاهَا بِهِ - فَلَوْ تَعَاقَدَا أَنْ يَبْتَاعَا هَكَذَا لَمْ يَلْزَمْ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ

[6] **Qur'an references (L19413):** Qur'an 6:164 (Al-An'am).

then if they contracted to purchase it in such a manner, the contract is not valid. This is because it constitutes a condition not stipulated in the Book of Allah the Exalted, and thus it is void.

A legal issue concerning the stipulation by both partners for an increase in profit for one of them.

1242. Issue:

It is not permissible for two partners or more to stipulate that one of them receives a portion of the profit exceeding the proportion of his capital in their transactions, nor that one of them bears a share of the loss, nor to stipulate that one of them works without the other. If any such stipulation occurs, it is entirely invalid and nullified. In such a case, he is only entitled to a portion of the profit corresponding to his capital's share, and he bears a share of the loss proportionate to that, because all of this constitutes a condition not established in the Book of Allāh, the Exalted, and thus it is invalid.

If one of them works more than the other, or works alone voluntarily without stipulation, this is permissible. Should he refuse to volunteer for such work, he is entitled only to a wage equivalent to his work in such labor—whether they profit or incur a loss—for he is not obligated to work for others. Taking advantage of his labor without his consent constitutes a transgression, and the transgressor is liable to pay an equivalent amount. That wherein he transgressed, due to the statement of Allah, the Most High: {So whoever transgresses against you, retaliate against him in the same measure as he transgressed against you} [Al-Baqarah: 194].[7]

A legal case in which one of the two partners produced gold and the other silver.

1243 – Question:

If one of them produces gold and the other produces silver, merchandise, or

[7] **Qur'an references (L19421):** Qur'an 2:194 (Al-Baqarah).

[مَسْأَلَةٌ اشْتِرَاط الشَّرِيكَيْنِ زِيَادَة فِي الرِّبْح لِأَحَدِهِمَا]

١٢٤٢ - مَسْأَلَةٌ:

وَلَا يَحِلُّ لِلشَّرِيكَيْنِ فَصَاعِدًا أَنْ يَشْتَرِطَا أَنْ يَكُونَ لِأَحَدِهِمَا مِنْ الرِّبْحِ زِيَادَةٌ عَلَى مِقْدَارِ مَالِهِ فِيمَا يَبِيعُ، وَلَا أَنْ يَكُونَ عَلَيْهِ خَسَارَةٌ، وَلَا أَنْ يَشْتَرِطَا أَنْ يَعْمَلَ أَحَدُهُمَا دُونَ الْآخَرِ، فَإِنْ وَقَعَ شَيْءٌ مِنْ هَذَا فَهُوَ كُلُّهُ بَاطِلٌ مَرْدُودٌ، وَلَيْسَ لَهُ مِنْ الرِّبْحِ إلَّا مَا يُقَابِلُ مَالَهُ مِنْ الْمَالِ وَعَلَيْهِ مِنْ الْخَسَارَةِ بِقَدْرِ ذَلِكَ، لِأَنَّهُ كُلُّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ.

فَإِنْ عَمِلَ أَحَدُهُمَا أَكْثَرَ مِنْ الْآخَرِ، أَوْ عَمِلَ وَحْدَهُ تَطَوُّعًا بِغَيْرِ شَرْطٍ فَذَلِكَ جَائِزٌ، فَإِنْ أَبَى مِنْ أَنْ يَتَطَوَّعَ بِذَلِكَ فَلَيْسَ لَهُ إلَّا أَجْرُ مِثْلِهِ فِي مِثْلِ ذَلِكَ الْعَمَلِ رَبِحَا أَوْ خَسِرَا، لِأَنَّهُ لَيْسَ عَلَيْهِ أَنْ يَعْمَلَ لِغَيْرِهِ، فَاغْتِنَامُ عَمَلِهِ بِغَيْرِ طِيبِ نَفْسِهِ اعْتِدَاءٌ، وَعَلَى الْمُعْتَدِي مِثْلُ مَا اعْتَدَى فِيهِ لِقَوْلِ اللَّهِ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

[مَسْأَلَةٌ أَخْرَجَ أَحَدُ الشَّرِيكَيْنِ ذَهَبًا وَالْآخَرُ فِضَّةً]

١٢٤٣ - مَسْأَلَةٌ:

similar items, the transaction is fundamentally invalid unless one party (or both) sells their merchandise until the price is exclusively gold or silver. They must then convert the price into a single form as we previously detailed, and adherence to what we mentioned earlier is essential.

L19427 Or one of them sells to the other from what they have contributed an amount equivalent to what they intend to invest jointly, so that the capital becomes mixed and indistinguishable. This is necessary for what we have mentioned. And success is from Allah, the Most High.

A Juridical Question on the Muslim's Partnership with a Dhimmi

L19428

L19429 Issue 1244:

L19430 The partnership of a Muslim with a Dhimmi is permissible. A Dhimmi is only permitted to engage in sales or transactions that are lawful for a Muslim, because no Quranic verse or Sunnah has come to prohibit this.

L19431 The Messenger of Allah—peace and blessings be upon him—dealt with the people of Khaybar, who were Jews, stipulating half of what the land produced in exchange for their cultivating it with their wealth and labor. Thus, this constituted a partnership in the share of the price, crops, and planted produce.

L19432 The Messenger of Allah—peace and blessings be upon him—purchased food from a Jew in Medina and pledged his armor to him as collateral. He—peace and blessings be upon him—passed away while it remained pledged with the Jew. We have mentioned this with its chain of transmission in the "Book of Pledges" within this diwan of ours. Thus, trading with Jews is permissible, and transactions with them are permissible. Whoever opposes this has no proof.

L19433 It has been narrated to us from Iyas ibn Mu'āwiyah: There is no objection to a Muslim partnering with a Dhimmi provided the dirhams remain in the Muslim's possession and he undertakes the management for them—this being

فَإِنْ أَخْرَجَ أَحَدُهُمَا ذَهَبًا وَالْآخَرُ فِضَّةً أَوْ عَرَضًا أَوْ مَا أَشْبَهَ ذَلِكَ لَمْ يَجُزْ أَصْلًا، إِلَّا بِأَنْ يَبِيعَ أَحَدُهُمَا عَرَضَهُ أَوْ كِلَاهُمَا حَتَّى يَصِيرَ الثَّمَنُ ذَهَبًا فَقَطْ، أَوْ فِضَّةً فَقَطْ، ثُمَّ يَخْلِطَا الثَّمَنَ كَمَا قَدَّمْنَا وَلَا بُدَّ لِمَا ذَكَرْنَا قَبْلُ.

أَوْ يَبِيعَ أَحَدُهُمَا مِنْ الْآخَرِ مِمَّا أَخْرَجَ بِمِقْدَارِ مَا يُرِيدُ أَنْ يُشَارِكَهُ بِهِ حَتَّى يَكُونَ رَأْسُ الْمَالِ بَيْنَهُمَا مَخْلُوطًا لَا يَتَمَيَّزُ وَلَا بُدَّ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ مُشَارَكَةُ الْمُسْلِمِ لِلذِّمِّيِّ]

١٢٤٤ - مَسْأَلَةٌ:

وَمُشَارَكَةُ الْمُسْلِمِ لِلذِّمِّيِّ جَائِزَةٌ، وَلَا يَحِلُّ لِلذِّمِّيِّ مِنْ الْبَيْعِ وَالتَّصَرُّفِ إلَّا مَا يَحِلُّ لِلْمُسْلِمِ، لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ بِالْمَنْعِ مِنْ ذَلِكَ.

وَقَدْ عَامَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَهْلَ خَيْبَرَ - وَهُمْ يَهُودُ - بِنِصْفِ مَا يَخْرُجُ مِنْهَا عَلَى أَنْ يَعْمَلُوهَا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ - فَهَذِهِ شَرِكَةٌ فِي الثَّمَنِ، وَالزَّرْعِ، وَالْغَرْسِ.

وَقَدْ «ابْتَاعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا مِنْ يَهُودِيٍّ بِالْمَدِينَةِ وَرَهَنَهُ دِرْعَهُ فَمَاتَ - عَلَيْهِ السَّلَامُ - وَهِيَ رَهْنٌ عِنْدَهُ» وَذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الرَّهْنِ " مِنْ دِيوَانِنَا هَذَا فَهَذِهِ تِجَارَةُ الْيَهُودِ جَائِزَةٌ وَمُعَامَلَتُهُمْ جَائِزَةٌ وَمَنْ خَالَفَ هَذَا فَلَا بُرْهَانَ لَهُ.

وَرُوِّينَا عَنْ إيَاسِ بْنِ مُعَاوِيَةَ: لَا بَأْسَ بِمُشَارَكَةِ الْمُسْلِمِ لِلذِّمِّيِّ إذَا كَانَتْ الدَّرَاهِمُ عِنْدَ الْمُسْلِمِ وَتَوَلَّى الْعَمَلَ لَهَا - وَهُوَ قَوْلُ مَالِكٍ - وَكَرِهَ ذَلِكَ أَصْحَابُ أَبِي حَنِيفَةَ جُمْلَةً.

the opinion of Mālik. The followers of Abū Ḥanīfah, however, completely disapproved of this.

L19434 Abū Muḥammad said: Among the wonders of the world is the permission given by Abū Ḥanīfa and Mālik for transactions with Jews and Christians even when they give him dirhams of wine and usury, yet they deem it reprehensible for him to enter into partnership with them in cases where he is uncertain whether they are acting upon what is impermissible—and this is utterly astonishing.

قَالَ أَبُو مُحَمَّد: مِنْ عَجَائِبِ الدُّنْيَا تَجْوِيزُ أَبِي حَنِيفَةَ، وَمَالِك: مُعَامَلَةَ الْيَهُودِ وَالنَّصَارَى وَإِنْ أَعْطَوْهُ دَرَاهِمَ الْخَمْرِ وَالرِّبَا ثُمَّ يَكْرَهُونَ مُشَارَكَتَهُ حَيْثُ لَا يُوقِنُ بِأَنَّهُمْ يَعْمَلُونَ بِمَا لَا يَحِلُّ، وَهَذَا عَجَبٌ جِدًّا.

L19435 As for us, we know they deem forbidden matters permissible, just as there are among Muslims those who show no concern for the source of their wealth. Nevertheless, dealings with all remain permissible unless one attains certainty of its prohibition. When we become certain it is forbidden, taking it becomes unlawful—whether from a disbeliever or a Muslim.

وَأَمَّا نَحْنُ فَإِنَّا نَدْرِي أَنَّهُمْ يَسْتَحِلُّونَ الْحَرَامَ، كَمَا أَنَّ فِي الْمُسْلِمِينَ مَنْ لَا يُبَالِي مِنْ أَيْنَ أَخَذَ الْمَالَ؟ إِلَّا أَنَّ مُعَامَلَةَ الْجَمِيعِ جَائِزَةٌ مَا لَمْ يُوقِنْ حَرَامًا، فَإِذَا أَيْقَنَاهُ حَرُمَ أَخْذُهُ مِنْ كَافِرٍ أَوْ مُسْلِمٍ.

L19436 It was narrated to us through Waki‘, from Sufyān al-Thawrī, from Abū Ḥuṣayn, who said: ʿAlī ibn Abī Ṭālib told me regarding the *mudārib* and the two partners: “The profit is based on what the two parties mutually agree upon.”

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حُصَيْنٍ قَالَ: قَالَ لِي عَلِيُّ بْنُ أَبِي طَالِبٍ فِي الْمُضَارِبِ وَفِي الشَّرِيكَيْنِ: الرِّبْحُ عَلَى مَا اصْطَلَحَا عَلَيْهِ.

L19437–19438 From the path of Waki‘, from Sufyan al-Thawri: from Hisham Abu Kulayb, Asim al-Ahwal, and Isma‘il al-Asadi. Isma‘il said: from al-Sha‘bi; Asim said: from Jabir ibn Zayd; Hisham said: from Ibrahim al-Nakha‘i. They all stated regarding two partners where one partner invested one hundred and the other two hundred: the profit is according to what they mutually agreed upon, and the loss is borne by the principal capital.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ هِشَامٍ أَبِي كُلَيْبٍ، وَعَاصِمٍ الْأَحْوَلِ، وَإِسْمَاعِيلَ الْأَسَدِيِّ قَالَ إِسْمَاعِيلُ: عَنْ الشَّعْبِيِّ، وَقَالَ عَاصِمٌ: عَنْ جَابِرِ بْنِ زَيْدٍ وَقَالَ هِشَامٌ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالُوا كُلُّهُمْ فِي شَرِيكَيْنِ أَخْرَجَ أَحَدُهُمَا مِائَةً، وَالْآخَرُ مِائَتَيْنِ: إنَّ الرِّبْحَ عَلَى مَا اصْطَلَحَا عَلَيْهِ، وَالْوَضِيعَةَ عَلَى رَأْسِ الْمَالِ.

L19439 Ali said: “This is a Companion for whom no opponent from the Companions is known, and indeed the Ḥanafīs and Mālikīs opposed him, while they - along with those we mentioned from the Successors - jointly opposed him.”

قَالَ عَلِيٌّ: هَذَا صَاحِبٌ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ وَقَدْ خَالَفَهُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَخَالَفُوا مَعَهُ مَنْ ذَكَرْنَا مِنْ التَّابِعِينَ.

L19440 A legal issue where one of the two partners took something from the wealth.

[مَسْأَلَةٌ أَخَذَ أَحَدُ الشَّرِيكَيْنِ شَيْئًا مِنْ الْمَالِ]

L19441 1245. Issue:

١٢٤٥ - مَسْأَلَةٌ:

L19442 If one of the two partners takes a portion from the joint capital, accounts it as his liability, and reduces his own capital by the exact amount he took, he shall have no share of the profit except in proportion to what remains of his capital.

L19443 Neither is it permissible for either of them to spend except from their respective share of the profit, nor is there any increase beyond what we have stated, because wealth is forbidden to those other than its owners. If they show mutual generosity in this matter, whatever is fully expended with willing consent becomes permissible, but it does not become binding in the newly initiated agreement if there is no willing consent.

L19444 **Case: Someone hired a worker to assist him for half of the revenue or a specified portion of it.**

L19445 1246. Issue:

L19446 Whoever hires a worker to assist him in sewing, weaving, or similar tasks for half the proceeds or a specified portion thereof—this contract is void and voidable. The worker must be compensated proportionally for the work performed. If both parties mutually consent out of generosity without stipulating any condition, it is permissible provided this arrangement persists solely through their willing agreement.

L19447 As Allah, the Exalted, says: "And do not forget [to maintain] grace between you" (Surah Al-Baqarah 2:237).[8]

L19448 And the Messenger of Allah (peace and blessings of Allah be upon him) said: "Every condition not in the Book of Allah is void."[9]

L19449 **An issue wherein the beast of burden was jointly owned by both parties.**

L19450 1247 – Legal Question:

فَإِنْ أَخَذَ أَحَدُ الشَّرِيكَيْنِ شَيْئًا مِنْ الْمَالِ حَسَبَهُ عَلَى نَفْسِهِ وَنَقَصَ بِهِ مِنْ رَأْسِ مَالِهِ ذَلِكَ الْقَدْرَ الَّذِي أَخَذَهُ، وَلَمْ يَكُنْ لَهُ مِنْ الرِّبْحِ إلَّا بِقَدْرِ مَا بَقِيَ لَهُ.

وَلَا يَحِلُّ لِأَحَدٍ مِنْهُمَا أَنْ يُنْفِقَ إلَّا مِنْ حِصَّتِهِ مِنْ الرِّبْحِ وَلَا مَزِيدَ لِمَا ذَكَرْنَا مِنْ أَنَّ الْأَمْوَالَ مُحَرَّمَةٌ عَلَى غَيْرِ أَرْبَابِهَا، فَإِنْ تَكَارَمَا فِي ذَلِكَ جَازَ مَا نَفِدَ بِطِيبِ نَفْسٍ، وَلَمْ يَلْزَمْ فِي الْمُسْتَأْنَفِ إنْ لَمْ تَطِبْ بِهِ النَّفْسُ.

[مَسْأَلَةٌ اسْتَأْجَرَ أَجِيرًا يُعَاوِنُهُ بِنِصْفِ مَا يَرِدُ أَوْ بِجُزْءٍ مُسَمًّى مِنْهُ]

١٢٤٦ - مَسْأَلَةٌ:

وَمَنْ اسْتَأْجَرَ أَجِيرًا يُعَاوِنُهُ فِي خِيَاطَةٍ أَوْ نَسْجٍ أَوْ غَيْرِ ذَلِكَ بِنِصْفِ مَا يَرِدُ أَوْ بِجُزْءٍ مُسَمًّى مِنْهُ -: فَهُوَ بَاطِلٌ وَعَقْدٌ فَاسِدٌ، وَلَهُ بِقَدْرِ مَا يَعْمَلُ وَلَا بُدَّ، فَإِنْ تَكَارَمَا بِذَلِكَ عَنْ غَيْرِ شَرْطٍ فَهُوَ جَائِزٌ مَا دَامَ بِطِيبِ نُفُوسِهِمَا بِذَلِكَ فَقَطْ.

لِقَوْلِهِ تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ».

[مَسْأَلَةٌ كَانَتْ بَيْنَهُمَا الدَّابَّةُ مُشْتَرَكَةً]

١٢٤٧ - مَسْأَلَةٌ:

[8] **Qur'an references (L19447):** Qur'an 2:237 (Al-Baqarah).
[9] **Hadith references (L19448):** Sunan Ibn Majah 2521.

If two parties jointly own a beast of burden, it is impermissible for them to stipulate alternating days for its use, as this constitutes a condition not ordained in the Book of Allah and is therefore void. One might use it more than the other. Wealth is forbidden to non-owners except with the owners' willing consent. If they mutually show generosity in this matter, it is permissible as long as their voluntary agreement persists, based on what we have explained: every person may dispose of their wealth as they wish through their consent, provided no scriptural prohibition exists against it.

وَمَنْ كَانَتْ بَيْنَهُمَا الدَّابَّةُ مُشْتَرَكَةً لَمْ يَجُزْ أَنْ يَتَشَارَطَا اسْتِعْمَالَهَا بِالْأَيَّامِ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَقَدْ يَسْتَعْمِلُهَا أَحَدُهُمَا أَكْثَرَ مِمَّا يَسْتَعْمِلُهَا الْآخَرُ، وَالْأَمْوَالُ مُحَرَّمَةٌ عَلَى غَيْرِ أَرْبَابِهَا إِلَّا بِطِيبِ أَنْفُسِهِمْ، فَإِنْ تَكَارَمَا فِي ذَلِكَ جَازَ مَا دَامَ بِطِيبِ أَنْفُسِهِمْ بِذَلِكَ لِمَا ذَكَرْنَا مِنْ أَنَّ لِكُلِّ أَحَدٍ أَنْ يُطَيِّبَ نَفْسَهُ مِنْ مَالِهِ بِمَا شَاءَ مَا لَمْ يَمْنَعْهُ مِنْ ذَلِكَ نَصٌّ.

L19451

The same ruling applies to the slave, the millstone, and other such items.

وَكَذَلِكَ الْقَوْلُ فِي الْعَبْدِ، وَالرَّحَى، وَغَيْرِ ذَلِكَ.

L19452

If they contest each other's claims, each party is entitled to claim from the other half the rent for the use in the shared property, or an amount equivalent to their share of its rent. If one of them rents it out, that is acceptable, and the rent is divided between them according to the proportion of their shares in that property.

فَإِنْ تَشَاحَّا فَلِكُلِّ أَحَدٍ مِنْهُمَا عَلَى الْآخَرِ نِصْفُ أُجْرَةِ مَا اسْتَعْمَلَ فِيهِ ذَلِكَ الشَّيْءَ الْمُشْتَرَكَ، أَوْ مِقْدَارَ حِصَّتِهِ مِنْ أُجْرَتِهَا، فَإِنْ آجَرَهَا فَحَسَنٌ، وَالْأُجْرَةُ بَيْنَهُمَا عَلَى قَدْرِ حِصَصِهِمَا فِي تِلْكَ السِّلْعَةِ.

L19453

An issue between them concerning goods that the two of them purchased for resale, then one of them wanted to sell.

[مَسْأَلَةٌ بَيْنَهُمَا سِلَعٌ ابْتَاعَاهَا لِلْبَيْعِ فَأَرَادَ أَحَدُهُمَا الْبَيْعَ]

L19454–19455

Issue:

مَسْأَلَةٌ:

L19456

If two partners have jointly acquired goods for sale and one of them wishes to sell, he must compel his partner to sell, because they entered into the partnership for that purpose. If the goods were not for sale, the unwilling partner cannot be compelled to sell, as no scriptural text establishes this obligation.

وَمَنْ كَانَتْ بَيْنَهُمَا سِلَعٌ مُشْتَرَكَةٌ ابْتَاعَاهَا لِلْبَيْعِ فَأَرَادَ أَحَدُهُمَا الْبَيْعَ أَجْبَرَ شَرِيكَهُ عَلَى الْبَيْعِ، لِأَنَّهُمَا عَلَى ذَلِكَ تَعَاقَدَا الشَّرِكَةَ، فَإِنْ لَمْ تَكُنْ لِلْبَيْعِ لَمْ يُجْبَرْ عَلَى الْبَيْعِ مَنْ لَا يُرِيدُهُ، لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ نَصٌّ.

L19457

If there exists between them a beast of burden, a slave, or animals, both are compelled to provide for the maintenance of such entities and for whatever ensures the well-being of all such entities.

وَمَنْ كَانَتْ بَيْنَهُمَا دَابَّةٌ، أَوْ عَبْدٌ، أَوْ حَيَوَانٌ، أُجْبِرَا عَلَى النَّفَقَةِ، وَعَلَى مَا فِيهِ صَلَاحُ كُلِّ ذَلِكَ.

L19458

If there is land between two individuals, the one unwilling to develop it is not compelled to do so. Rather, they must divide it, and whoever wishes may develop his share, in accordance with the Prophet's (peace be upon him)

L19459

saying: “Whoever owns land should cultivate it, let his brother cultivate it, or retain ownership of it.”

وَمَنْ كَانَتْ بَيْنَهُمَا أَرْضٌ لَمْ يُجْبَرْ مَنْ لَا يُرِيدُ عِمَارَتَهَا عَلَى عِمَارَتِهَا، لَكِنْ يَقْتَسِمَانِهَا وَيَعْمُرُ مَنْ شَاءَ حِصَّتَهُ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيُزْرِعْهَا أَخَاهُ أَوْ لِيُمْسِكْ أَرْضَهُ» .

L19460 Whoever has between them a house, a mill, or an indivisible property, the two are compelled to reconcile due to the Prophet’s prohibition—peace and blessings of Allah be upon him—against wasting wealth. Each of his commands holds its rightful portion of obedience, and it is not permissible to oppose some with others.

وَمَنْ كَانَتْ بَيْنَهُمَا دَارٌ، أَوْ رَحَى، أَوْ مَا لَا يَنْقَسِمُ، أُجْبِرَا عَلَى الْإِصْلَاحِ لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ، وَلِكُلِّ أَوَامِرِهِ حَقُّهَا مِنْ الطَّاعَةِ لَا يَحِلُّ ضَرْبُ بَعْضِهَا بِبَعْضٍ.

L19461 The sale by a partner in what they have jointly acquired for sale is binding upon his partner, and his purchase is likewise valid, for they mutually contracted to this arrangement. Each is the agent of the other. If either exceeds the instructions given to him by selling at a loss, selling on credit, or purchasing a defective item, he bears liability for all such acts, as he was not authorized for any of them. Thus, he may not act concerning another’s property except within what was permitted to him.

وَبَيْعُ الشَّرِيكِ فِيمَا اشْتَرَكَا فِيهِ لِلْبَيْعِ جَائِزٌ عَلَى شَرِيكِهِ وَابْتِيَاعُهُ كَذَلِكَ، لِأَنَّهُمَا عَلَى ذَلِكَ تَعَاقَدَا فَكُلُّ وَاحِدٍ مِنْهُمَا وَكِيلٌ لِلْآخَرِ، فَإِنْ تَعَدَّى مَا أَمَرَهُ بِهِ فَبَاعَ بِوَضِيعَةٍ، أَوْ إلَى أَجَلٍ، أَوْ اشْتَرَى عَيْبًا فَعَلَيْهِ ضَمَانُ كُلِّ ذَلِكَ، لِأَنَّهُ لَمْ يُوَكِّلْهُ بِشَيْءٍ مِنْ ذَلِكَ، فَلَا يَجُوزُ لَهُ فِي مَالِ غَيْرِهِ إلَّا مَا أَبَاحَهُ لَهُ.

L19462 It is impermissible for either of them to impose a confirmation on the other beyond what he was authorized to do in matters of sale or purchase, based on the statement of Allah the Exalted: *“And no bearer of burdens will bear the burden of another”* (al-Anʿām 6:164).[10]

وَلَا يَجُوزُ إقْرَارُ أَحَدِهِمَا عَلَى الْآخَرِ فِي غَيْرِ مَا وَكَّلَهُ بِهِ مِنْ بَيْعٍ أَوْ ابْتِيَاعٍ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] .

L19463 Each of the two has the right to separation if he wishes.

وَكُلُّ وَاحِدٍ مِنْهُمَا إذَا أَرَادَ الِانْفِصَالَ فَلَهُ ذَلِكَ.

L19464 A partnership for a specified term is impermissible, as it is a condition not found in the Book of Allah, the Exalted, and is therefore invalid. And with Allah, the Exalted, is success.

وَلَا تَحِلُّ الشَّرِكَةُ إلَى أَجَلٍ مُسَمًّى، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19465 “The Book of Partnership” has been completed, and all praise is due to Allah, Lord of the Worlds.

تَمَّ “ كِتَابُ الشَّرِكَةِ ” وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ “

[10] **Qur’an references (L19462):** Qur’an 6:164 (Al-An’am).

AL-MUHALLA

كِتَابُ الْقِسْمَةِ

The Book of Division of Shared Property

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

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[كِتَابُ الْقِسْمَةِ] [مَسْأَلَةٌ الْقِسْمَةُ جَائِزَةٌ فِي كُلِّ حَقٍّ مُشْتَرَكٍ إِذَا أَمْكَنَ]

١٢٤٩ - مَسْأَلَةٌ:

الْقِسْمَةُ جَائِزَةٌ فِي كُلِّ حَقٍّ مُشْتَرَكٍ إِذَا أَمْكَنَ، وَعَلَى حَسْبِ مَا يُمْكِنُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] .

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادٌ - هُوَ ابْنُ سَلَمَةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْخَطْمِيِّ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْسِمُ فَيَعْدِلُ فَيَقُولُ: اللَّهُمَّ هَذِهِ قِسْمَتِي فِيمَا أَمْلِكُ فَلَا تَلُمْنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ» [يَعْنِي الْقَلْبَ] .

فَهَذَانِ نَصَّانِ عُمُومٌ لِكُلِّ قِسْمَةٍ، وَلَيْسَ لِأَحَدٍ أَنْ يَخُصَّهُمَا فِي مِيرَاثٍ أَوْ بَيْنَ النِّسَاءِ بِرَأْيِهِ، وَأُمِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ -: بُرْهَانٌ قَاطِعٌ فِي وُجُوبِ الْقِسْمَةِ إِذَا طَلَبَ ذُو الْحَقِّ حَقَّهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ ١٢٥٠ - مَسْأَلَةٌ:

وَيُجْبَرُ الْمُمْتَنِعُ مِنْهُمَا عَلَيْهَا، وَيُوَكَّلُ الصَّغِيرُ، وَالْمَجْنُونُ، وَالْغَائِبُ مَنْ يَعْزِلُ لَهُ حَقَّهُ، لِمَا ذَكَرْنَا مِنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ فَوَجَبَ أَنْ يَنْفُذَ ذَلِكَ وَيَقْضِيَ بِهِ لِكُلِّ مَنْ طَلَبَ حَقَّهُ، وَأَمَّا التَّقْدِيمُ لِمَنْ ذَكَرْنَا فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] وَهَذَا مِنْ الْقِسْطِ.

The Book of the Division Issue: Division is permissible in every shared right, provided it is feasible.

1249 – Issue:

Division is permissible in every shared right when feasible, and to the extent possible.

The evidence for this is the statement of Allah, the Most High: {And when relatives, orphans, and the needy are present at the division of inheritance, give them a share from it} [*al-Nisāʾ* 4:8].[1]

From the chain of Abi Dawud, Musa ibn Isma'il narrated to us: Hammad—that is, Ibn Salamah—narrated to us from Ayyub al-Sikhtiyani from Abu Qilabah from Abdullah ibn Yazid al-Khitmi from Aisha, the Mother of the Believers, who said: "The Messenger of Allah—peace and blessings be upon him—would distribute and act justly, then say: 'O Allah, this is my distribution in what I possess, so do not blame me in what You possess and I do not possess' *meaning the heart*."

These are two texts of general applicability to every division, and it is not permissible for anyone to make exceptions to them regarding inheritance or divisions between women based on personal opinion. The Messenger of Allah - peace and blessings of Allah be upon him - was commanded to give every entitled person their due right - a decisive proof establishing the obligation of division when the right-holder claims their right. Success comes only from Allah, the Most High. 1250 - Legal case:

The refuser among them is compelled to fulfill the obligation. A representative is appointed for the minor, the insane, and the absent to secure their right, based on what we mentioned regarding the command of the Messenger of Allah (peace be upon him) that every right-holder must be granted his right. It is therefore obligatory to implement this and adjudicate it for everyone who claims their right. As for prioritizing those we mentioned,

[1] **Qur'an references (L19470):** Qur'an 4:8 (An-Nisa).

this is due to Allah's statement: "Be steadfast maintainers of justice" [4:135], and this is part of justice.[2]

L19474–19475 **It is a ruling that one who takes his share of the apportioned amount must give from it to those who attended the division.**

L19476 Issue:

L19477 It is obligatory for everyone who receives his share of the divided portion to give—from it and to the extent his soul is content—to close relatives or two poor people present at the division. The guardian must give this on behalf of the minor, the mentally incapacitated, and the absent person, in accordance with Allah the Exalted's decree: {When close relatives, orphans, and the poor are present at the division, provide for them from it} [An-Nisa' 4:8].[3]

L19478 The command of Allah, the Exalted, constitutes an obligation unless an authentically established text emerges stating it is not obligatory. Otherwise, the assertion of whoever claims, "Implementing Allah's command is not binding due to an alleged specificity, a supposed abrogation, or a recommendation declared through personal conjecture," becomes a baseless, rejected, corrupt, and reprehensible statement - except if the Messenger of Allah (peace and blessings be upon him) informs us of any such matter, in which case we hear and obey, for he is the transmitter of Allah's rulings. As for anyone besides him, this does not apply.

L19479 It was collectively narrated to us through the chain of Sa'īd ibn Manṣūr: Hushaym reported from Yūnus (he is Ibn 'Ubayd), Manṣūr ibn al-Muʿtamir, and al-Mughīrah ibn Miqsam. Yūnus and Manṣūr narrated from al-Ḥasan, while al-Mughīrah narrated from Ibrāhīm. Subsequently, al-Ḥasan and Ibrāhīm concurred, both affirming regarding Allah's verse {When relatives, orphans, and the needy are present at the division [of inheritance], give them

[2]**Qur'an references (L19473):** Qur'an 4:135 (An-Nisa).

[3]**Qur'an references (L19477):** Qur'an 4:8 (An-Nisa).

[مَسْأَلَةٌ عَلَى آخِذِ حَظَّهُ مِنْ الْمَقْسُومِ أَنْ يُعْطِيَ مِنْهُ مِنْ حَضَرَ الْقِسْمَةَ]

مَسْأَلَةٌ:

وَفَرْضٌ عَلَى كُلِّ آخِذٍ حَظَّهُ مِنْ الْمَقْسُومِ أَنْ يُعْطِيَ مِنْهُ مِنْ حَضَرَ الْقِسْمَةَ مِنْ ذَوِي قُرْبَى أَوْ مِسْكَيْنٍ مَا طَابَتْ بِهِ نَفْسُهُ، وَيُعْطِيهِ الْوَلِيُّ عَنْ الصَّغِيرِ، وَالْمَجْنُونِ، وَالْغَائِبِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] .

وَأَمْرُ اللَّهِ تَعَالَى فَرْضٌ حَتَّى يَأْتِيَ نَصٌّ ثَابِتٌ بِأَنَّهُ لَيْسَ فَرْضًا وَإِلَّا فَقَوْلُ مَنْ قَالَ: لَا يَلْزَمُ إنْفَاذُ أَمْرِ اللَّهِ تَعَالَى لِخُصُوصٍ ادَّعَاهُ، أَوْ نَسْخٍ زَعَمَهُ، أَوْ لِنَدْبٍ أَطْلَقَهُ بِظَنِّهِ قَوْلٌ سَاقِطٌ مَرْدُودٌ فَاسِدٌ فَاحِشٌ، إلَّا أَنْ يُخْبِرَنَا بِشَيْءٍ مِنْ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَمْعًا وَطَاعَةً، لِأَنَّهُ الْمُبَلِّغُ عَنْ اللَّهِ تَعَالَى أَحْكَامَهُ، وَأَمَّا مَنْ دُونَهُ فَلَا.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ عَنْ يُونُسَ - هُوَ ابْنُ عُبَيْدٍ - وَمَنْصُورُ بْنُ الْمُعْتَمِرِ، وَالْمُغِيرَةُ بْنُ مِقْسَمٍ قَالَ يُونُسُ، وَمَنْصُورٌ عَنْ الْحَسَنِ، وَقَالَ الْمُغِيرَةُ: عَنْ إبْرَاهِيمَ، ثُمَّ اتَّفَقَ الْحَسَنُ وَإِبْرَاهِيمُ، قَالَا جَمِيعًا فِي قَوْلِ اللَّهِ تَعَالَى: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] هِيَ مُحْكَمَةٌ وَلَيْسَتْ بِمَنْسُوخَةٍ.

something from it} [4:8]: “This ruling is definitive and has not been abrogated.”[4]

L19480–19482 And with him to Hushaym, from Awf—Ibn Abī Jamīlah—from Ibn Sīrīn, who said: They were... They allocate them a small portion when one of them attends the division of inheritance, and Ibn Sirin met the Companions (may Allah be pleased with them).

L19483 Via the chain of transmission of Aḥmad ibn Muḥammad ibn Ismāʿīl al-Ṣaffār the Grammarian: narrated to us by Jaʿfar ibn Mujāshiʿ ← Ibrāhīm ibn Isḥāq ← ʿAbdullāh ← ʿAbd al-Raḥmān ibn Mahdī ← Sufyān—that is, al-Thawrī—from Ibn Abī Najīḥ from Mujāhid concerning the verse, *“And when relatives, orphans, and the needy are present at the division [of inheritance], provide for them from it”* [al-Nisāʾ: 8]. He said: It is an obligation during the division of the inheritance to allocate to them from it a reasonable portion, whatever is agreeable to them.[5]

L19484 And from the chain of transmission of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī regarding this verse, he said: It is definitive (muḥkamah) in what their souls are content with among the heirs. If it is said: “It has been reported from al-Ḍaḥḥāk, Ibn al-Musayyib, and Ibn ʿAbbās that it is abrogated, while some said it is recommended (nadb),” we respond: As for citing the statements of Ibn al-Musayyib and al-Ḍaḥḥāk, their view is such that one need not trouble to refute it beyond mentioning it. How can that be when al-Ḥasan, Ibn Sīrīn, al-Nakhaʿī, al-Zuhrī, Mujāhid, and others opposed them? As for Ibn ʿAbbās, no individual’s opinion constitutes binding proof after the Messenger of Allāh—peace and blessings be upon him—how then can this be when a contradictory report is transmitted from Ibn ʿAbbās? As narrated through the chain of Aḥmad ibn Muḥammad ibn Ismāʿīl al-Ṣaffār al-Najawī: Bakr ibn Sahl narrated to us: Abū Ṣāliḥ narrated to us: Muʿāwiyah ibn Ṣāliḥ narrated from ʿAlī ibn Abī Ṭalḥah from Ibn ʿAbbās concerning {When relatives, orphans, and the needy are present at the division [of an estate], provide for them from it} [4:8]. He said: Allāh—Exalted and Majestic—commanded that when dividing their inheritances, they should sustain their relatives, or-

وَبِهِ إِلَى هُشَيْمٍ عَنْ عَوْفٍ - هُوَ ابْنُ أَبِي جَمِيلَةَ - عَنِ ابْنِ سِيرِينَ قَالَ: كَانُوا يَرْضَخُونَ لَهُمْ إِذَا حَضَرَ أَحَدُهُمُ الْقِسْمَةَ، وَابْنُ سِيرِينَ أَدْرَكَ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ مُحَمَّدِ بْنِ إِسْمَاعِيلَ الصَّفَّارِ النَّحْوِيِّ نا جَعْفَرُ بْنُ مُجَاشِعٍ نا إِبْرَاهِيمُ بْنُ إِسْحَاقَ نا عَبْدُ اللَّهِ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] قَالَ: هِيَ وَاجِبَةٌ عِنْدَ قِسْمَةِ الْمِيرَاثِ مَا طَابَتْ بِهِ أَنْفُسُهُمْ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي هَذِهِ الْآيَةِ قَالَ: هِيَ مُحْكَمَةٌ مَا طَابَتْ بِهِ أَنْفُسُهُمْ عِنْدَ أَهْلِ الْمِيرَاثِ، فَإِنْ قِيلَ: قَدْ رُوِيَ عَنِ الضَّحَّاكِ وَابْنِ الْمُسَيِّبِ، وَابْنِ عَبَّاسٍ أَنَّهَا مَنْسُوخَةٌ، وَقَالَ قَوْمٌ: إِنَّهَا نَدْبٌ؟ قُلْنَا: أَمَّا الِاحْتِجَاجُ بِقَوْلِ ابْنِ الْمُسَيِّبِ، وَالضَّحَّاكِ فَقَوْلٌ يُسْتَغْنَى عَنْ تُكَلُّفِ الرَّدِّ عَلَيْهِ بِأَكْثَرَ مِنْ إِيرَادِهِ فَكَيْفَ وَقَدْ خَالَفَهُمَا: الْحَسَنُ، وَابْنُ سِيرِينَ، وَالنَّخَعِيُّ، وَالزُّهْرِيُّ، وَمُجَاهِدٌ، وَغَيْرُهُمْ؟ وَأَمَّا ابْنُ عَبَّاسٍ فَمَا قَوْلُ أَحَدٍ حُجَّةٌ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَقَدْ جَاءَ عَنِ ابْنِ عَبَّاسٍ خِلَافُ هَذَا؟ كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ مُحَمَّدِ بْنِ إِسْمَاعِيلَ الصَّفَّارِ النَّجَوِيِّ نا بَكْرُ بْنُ سَهْلٍ نا أَبُو صَالِحٍ نا مُعَاوِيَةُ بْنُ صَالِحٍ عَنْ عَلِيِّ بْنِ أَبِي طَلْحَةَ عَنِ ابْنِ عَبَّاسٍ {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] قَالَ: أَمَرَ اللَّهُ عَزَّ وَجَلَّ عِنْدَ قِسْمَةِ مَوَارِيثِهِمْ أَنْ يَصِلُوا أَرْحَامَهُمْ وَيَتَامَاهُمْ وَمَسَاكِينَهُمْ مِنَ الْوَصِيَّةِ، فَإِنْ

[4] **Qur’an references (L19479):** Qur’an 4:8 (An-Nisa).
[5] **Qur’an references (L19483):** Qur’an 4:8 (An-Nisa).

phans, and the needy through the will. If there is no will, they should provide for them from the inheritance. This verse was invoked in the ruling on the inheritance of ʿAbd al-Raḥmān ibn Abī Bakr with the knowledge of ʿĀ'ishah, the Mother of the Believers, and she did not object to it.[6]

L19485 There is no greater marvel than one who relies on what has been soundly transmitted from Ibn Abbas - that Allah's decree *"If they come to you, judge between them or turn away from them"* [5:42] is abrogated by His words *"Judge between them by what Allah has revealed"* [5:49] - yet pays no heed to this position. This is an opinion whose proof has been soundly validated through Allah's rejection of pre-Islamic judgments.[7]

L19486–19488 Every ruling that contradicts the religion of Islam is a ruling of Jāhiliyyah, whether fabricated by its adherents or originating from Allah the Exalted and subsequently abrogated by means of another ruling—such as praying toward Jerusalem, the waiting period of a woman whose husband has died for a full year, adherence to the Sabbath, and similar rulings. Then, someone may cite a statement reported from Ibn Abbas regarding this verse, saying: "Indeed..." There has come differing from him, and this is following caprice and imposing falsehood in the religion of Allah, the Mighty and Majestic. If Ibn Abbas's statement—about which there is disagreement from him here—is authoritative evidence, then it is more deserving to be authoritative evidence where there is no disagreement from him. And if his statement there is not authoritative evidence, then it is not authoritative evidence here either.

L19489 Then, indeed, the statement of one who says, "This verse is abrogated or not obligatory," is a statement that one is not permitted to follow, because it is a claim without proof—either a prohibition against following the command of Allah, the Exalted, and the command of His Messenger (peace be upon him) without proof, or a permission to oppose them as such. All of that is definitively invalid except through an authentically established text from the Qur'an, or the Sunnah—and with Allah, the Exalted, is success.

[6] **Qur'an references (L19484):** Qur'an 4:8 (An-Nisa).
[7] **Qur'an references (L19485):** Qur'an 5:42 (Al-Ma'idah); Qur'an 5:49 (Al-Ma'idah).

لَمْ تَكُنْ وَصِيَّةٌ وَصَلَ لَهُمْ مِنْ الْمِيرَاثِ، وَقَدْ حَكَمَ بِهَذِهِ الْآيَةِ فِي مِيرَاثِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ بِعِلْمِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَلَمْ تُنْكِرْ ذَلِكَ.

وَلَا عَجَبَ أَعْجَبُ مِمَّنْ يَأْتِي إِلَى مَا قَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ مِنْ أَنَّ قَوْلَ اللَّهِ تَعَالَى: {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ} [المائدة: ٤٢] مَنْسُوخٌ بِقَوْلِهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] فَلَا يُلْتَفَتُ إِلَيْهِ - وَهُوَ قَوْلٌ قَدْ صَحَّ بُرْهَانُهُ بِإِنْكَارِ اللَّهِ تَعَالَى حُكْمَ الْجَاهِلِيَّةِ.

وَكُلُّ مَا خَالَفَ دِينَ الْإِسْلَامِ فَهُوَ حُكْمُ جَاهِلِيَّةٍ سَوَاءٌ كَانَ مُفْتَرًى مِنْ أَهْلِهِ أَوْ كَانَ مِنْ عِنْدِ اللَّهِ تَعَالَى ثُمَّ نَسَخَهُ بِغَيْرِهِ، كَالصَّلَاةِ إِلَى بَيْتِ الْمَقْدِسِ، وَتَرَبُّصِ الْمُتَوَفَّى عَنْهَا حَوْلًا، وَالْتِزَامِ السَّبْتِ، وَغَيْرِ ذَلِكَ، ثُمَّ يَأْتِي فَيَحْتَجُّ بِقَوْلٍ جَاءَ عَنْ ابْنِ عَبَّاسٍ فِي هَذِهِ الْآيَةِ قَدْ جَاءَ عَنْهُ خِلَافُهُ، وَهَذَا هُوَ اتِّبَاعُ الْهَوَى وَالتَّحَكُّمُ بِالْبَاطِلِ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ؛ وَلَئِنْ كَانَ قَوْلُ ابْنِ عَبَّاسٍ الْمُخْتَلَفِ عَنْهُ فِيهِ هَاهُنَا حُجَّةً فَأَحْرَى أَنْ يَكُونَ حُجَّةً حَيْثُ لَمْ يَخْتَلِفْ عَنْهُ، وَإِنْ كَانَ لَيْسَ قَوْلُهُ هُنَالِكَ حُجَّةً فَلَيْسَ هَاهُنَا حُجَّةً.

ثُمَّ إِنَّ قَوْلَ الْقَائِلِ: هَذِهِ الْآيَةُ مَنْسُوخَةٌ أَوْ غَيْرُ وَاجِبَةٍ قَوْلٌ لَا يَحِلُّ اتِّبَاعُهُ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ وَنَهْيٌ عَنْ اتِّبَاعِ أَمْرِ اللَّهِ تَعَالَى وَأَمْرِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - بِلَا بُرْهَانٍ أَوْ إِبَاحَةٍ لِمُخَالَفَتِهِمَا كَذَلِكَ، وَكُلُّ ذَلِكَ بَاطِلٌ مُتَيَقَّنٌ إِلَّا بِنَصٍّ ثَابِتٍ مِنْ قُرْآنٍ، أَوْ سُنَّةٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يُجْبَرُ أَحَدٌ مِنْ الشُّرَكَاءِ عَلَى بَيْعِ حِصَّتِهِ]

It is a jurisprudential ruling that no partner can be compelled to sell his share.

1252 – Question:

It is not permissible for any of the partners to be compelled to sell their share together with their partner or partners, nor to undergo mutual valuation of the jointly owned property—whether originally divisible or among indivisible assets like animals. However, partners may be compelled to divide the property if one of the two partners (in a dual partnership) or one of them (in a plural partnership) demands division. If division is impossible, the benefits are divided between them. When a partner demands sale, they are told: "Sell your share if you wish, or retain it—your partner has the same choice." This applies unless doing so would squander the property without benefit, in which case it must be sold to one partner, two partners, or more. However, if the partnership was formed for commercial purposes, the unwilling partner is specifically compelled to sell in this case.

The evidence for that is the statement of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully unless it be through trade by mutual consent among you." [An-Nisa: 29][8]

The Messenger of Allah—peace and blessings be upon him—said: "Indeed, your lives and your wealth are inviolable to you."

Thus, it is confirmed thereby that it is impermissible to transfer anyone's property from their ownership without mutual consent. Compelling a sale constitutes transferring property from its owner to one who is prohibited from acquiring it under the definitive texts of the Quran and Sunnah. This is undeniably an injustice.

If it is said: "Verily, one of them abstaining from selling is a harm due to the decrease in the value of the other's share," we say: There is no harm in that. Rather, all harm lies in compelling a person to relinquish ownership of

[8] **Qur'an references (L19493):** Qur'an 4:29 (An-Nisa).

١٢٥٢ - مَسْأَلَةٌ:

وَلَا يَجُوزُ أَنْ يُجْبَرَ أَحَدٌ مِنْ الشُّرَكَاءِ عَلَى بَيْعِ حِصَّتِهِ مَعَ شَرِيكِهِ أَوْ شُرَكَائِهِ وَلَا عَلَى تَقَاوُمِهِمَا الشَّيْءَ الَّذِي هُمَا فِيهِ شَرِيكَانِ أَصْلًا كَانَ مِمَّا يَنْقَسِمُ أَوْ مِمَّا لَا يَنْقَسِمُ مِنْ الْحَيَوَانِ، لَكِنْ يُجْبَرَانِ عَلَى الْقِسْمَةِ إنْ دَعَا إلَيْهَا أَحَدُهُمَا، أَوْ أَحَدُهُمْ، أَوْ تُقْسَمُ الْمَنَافِعُ بَيْنَهُمَا إنْ كَانَ لَا تُمْكِنُ الْقِسْمَةُ وَمَنْ دَعَا إلَى الْبَيْعِ قِيلَ لَهُ: إنْ شِئْت فَبِعْ حِصَّتَك وَإِنْ شِئْت فَأَمْسِكْ، وَكَذَلِكَ شَرِيكُك إلَّا أَنْ يَكُونَ فِي ذَلِكَ إضَاعَةٌ لِلْمَالِ بِلَا شَيْءٍ مِنْ النَّفْعِ فَيُبَاعُ حِينَئِذٍ لِوَاحِدٍ - كَانَ أَوْ لِشَرِيكَيْنِ - فَصَاعِدًا إلَّا أَنْ يَكُونَ اشْتَرَكَا لِتِجَارَةٍ فَيُجْبَرُ عَلَى الْبَيْعِ هَاهُنَا خَاصَّةً مَنْ أَبَاهُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

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

فَصَحَّ بِهَذَا أَنَّهُ لَا يَحِلُّ أَنْ يُخْرِجَ مَالَ أَحَدٍ عَنْ مِلْكِهِ بِغَيْرِ تَرَاضٍ مِنْهُ، وَالْإِجْبَارُ عَلَى الْبَيْعِ إخْرَاجٌ لِلْمَالِ عَنْ صَاحِبِهِ إلَى مَنْ هُوَ حَرَامٌ عَلَيْهِ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، وَهَذَا ظُلْمٌ لَا شَكَّ فِيهِ.

فَإِنْ قِيلَ: إنَّ تَرْكَ أَحَدِهِمَا الْبَيْعَ ضَرَرًا بِانْتِقَاصِ قِيمَةِ حِصَّةِ الْآخَرِ؟ قُلْنَا: لَا ضَرَرَ فِي ذَلِكَ، بَلْ الضَّرَرُ كُلُّهُ هُوَ أَنْ يُجْبَرَ الْمَرْءُ عَلَى إخْرَاجِ مِلْكِهِ عَنْ يَدِهِ، فَهَذَا الضَّرَرُ هُوَ الْمُحَرَّمُ، لَا ضَرَرُ إنْسَانٍ بِأَنْ لَا يُنَفَّذَ لَهُ هَوَاهُ فِي مَالِ شَرِيكِهِ.

their property. This is the prohibited harm, not the harm of a person whose caprice remains unfulfilled regarding his partner's property.

L19497–19499 The opponents have agreed with us here that if someone owns a piece of land or a small dwelling adjacent to another's land or dwelling, selling them together would double the value for both, whereas selling them separately would reduce it. That no one can be compelled to do so if he refuses. How, then, did this ruling come to be applied for them regarding jointly owned properties to the exclusion of individually partitioned ones? Their statement here is devoid of all evidence and is an unmistakable injustice.

وَقَدْ وَافَقَنَا الْمُخَالِفُونَ هَاهُنَا عَلَى أَنَّ مَنْ لَهُ قِطْعَةُ أَرْضٍ أَوْ دَارٌ صَغِيرَةٌ إِلَى جَنْبِ أَرْضٍ أَوْ دَارٍ لِغَيْرِهِ لَوْ بِيعَتَا مَعًا لَتَضَاعَفَتْ الْقِيمَةُ لَهُمَا، وَإِنْ بِيعَتَا مُتَفَرِّقَتَيْنِ نَقَصَتْ الْقِيمَةُ: أَنَّهُ لَا يُجْبَرُ أَحَدٌ عَلَى ذَلِكَ إنْ أَبَاهُ، فَمِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا الْحُكْمُ فِي الْمُشْتَرَكِ مِنْ الْأَمْوَالِ دُونَ الْمَقْسُومِ مِنْهَا؟ وَقَوْلُهُمْ هَاهُنَا عَارٍ مِنْ الْأَدِلَّةِ كُلِّهَا وَظُلْمٌ لَا خَفَاءَ بِهِ.

As for that which is purchased for commerce and sale, it is a stipulation permitted by the Qur'an and the Sunnah. Thus, it is impermissible to annul it except by consent of both parties together. And with Allah, the Most High, is success.

وَأَمَّا مَا ابْتِيعَ لِلتِّجَارَةِ وَالْبَيْعِ فَهُوَ شَرْطٌ قَدْ أَبَاحَهُ الْقُرْآنُ وَالسُّنَّةُ، فَلَا يَجُوزُ إِبْطَالُهُ إِلَّا بِرِضَا مِنْهُمَا جَمِيعًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Among the strange rulings is that those who compel a partner to sell jointly with their co-owner or enforce mutual appraisal until one acquires full ownership do not uphold the right of pre-emption in such matters except for land and structures. Thus they imposed compulsory sale in situations where neither Allah the Exalted nor His Messenger—may Allah's peace and blessings be upon him—legislated it, while nullifying it where Allah the Exalted and His Messenger—may Allah's peace and blessings be upon him—did legislate it, even though both are instances of sale.

وَمِنْ عَجَائِبِ الْأَقْوَالِ: أَنَّ الَّذِينَ يُجْبِرُونَ الشَّرِيكَ عَلَى الْبَيْعِ مَعَ شَرِيكِهِ أَوْ عَلَى تَقَاوُمِهِ حَتَّى يَحْصُلَ لِأَحَدِهِمَا كُلُّهُ لَا يَرَوْنَ الشُّفْعَةَ فِي ذَلِكَ فِيمَا عَدَا الْأَرْضِ وَالْبِنَاءِ، فَأَوْجَبُوا الْبَيْعَ حَيْثُ لَمْ يُوجِبْهُ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبْطَلُوهُ حَيْثُ أَوْجَبَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمَا بَيْعٌ وَبَيْعٌ.

Issue: Is everything divisible?

[مَسْأَلَةٌ كُلُّ شَيْءٍ يُقْسَمُ]

1253 - Issue:

١٢٥٣ - مَسْأَلَةٌ:

Every item is to be divided equally—whether land, a small or large house, a bathhouse, a garment, a sword, a pearl, or other such items—provided there is no shared property between them besides it. Excepted from this are a single animal and the written Quranic codex (Muṣḥaf), which must not be divided under any circumstances. Instead, they may lease the Muṣḥaf and divide its rental proceeds, while the animal is shared by them on specified days.

وَيُقْسَمُ كُلُّ شَيْءٍ سَوَاءٌ أَرْضًا كَانَ، أَوْ دَارًا صَغِيرَةً، أَوْ كَبِيرَةً، أَوْ حَمَّامًا، أَوْ ثَوْبًا، أَوْ سَيْفًا، أَوْ لُؤْلُؤَةً، أَوْ غَيْرَ ذَلِكَ، إِذَا لَمْ يَكُنْ بَيْنَهُمَا مَالٌ مُشْتَرَكٌ سِوَاهُ حَاشَا الرَّأْسَ الْوَاحِدَ مِنْ الْحَيَوَانِ، وَالْمُصْحَفَ فَلَا يُقْسَمُ أَصْلًا، لَكِنْ يَكُونُ بَيْنَهُمْ يُؤَاجِرُونَهُ وَيَقْتَسِمُونَ أُجْرَتَهُ، أَوْ يَخْدُمُهُمْ أَيَّامًا مَعْلُومَةً.

The proof of that is—the statement of Allah, the Most High: "For men there is a share of what the two parents and close relatives have left" [An-Nisa: 7] up to His words: "from what little or much there is—a prescribed share" [An-Nisa: 7].[1]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالأَقْرَبُونَ} [النساء: ٧] إلَى قَوْله تَعَالَى: {مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَفْرُوضًا} [النساء: ٧] .

Some scholars held: If one of the partners does not benefit from what pertains to him while the rest benefit, partition should not occur. Others maintained: If one of them benefits from what falls to him, they are compelled to divide even if the other partners do not benefit. A third opinion

وَقَالَ قَوْمٌ: إنْ لَمْ يَنْتَفِعْ وَاحِدٌ مِنْ الشُّرَكَاءِ بِمَا يَقَعُ لَهُ وَانْتَفَعَ سَائِرُهُمْ: لَمْ يَقْسِمْ - وَقَالَ آخَرُونَ: إنْ انْتَفَعَ بِمَا يَقَعُ لَهُ وَاحِدٌ مِنْهُمْ أُجْبِرُوا عَلَى الْقِسْمَةِ وَإِنْ لَمْ يَنْتَفِعْ الْآخَرُونَ - وَقَالَ قَوْمٌ: إنْ اسْتَضَرَّ أَحَدُهُمْ بِالْقِسْمَةِ فِي انْحِطَاطِ قِيمَةِ نَصِيبِهِ لَمْ يُقْسَمْ.

[1] **Qur'an references (L19505):** Qur'an 4:7 (An-Nisa).

argued: If any partner is harmed due to the decline in his share's value caused by partition, division must not take place.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ أَقْوَالٌ فَاسِدَةٌ مُتَنَاقِضَةٌ، لَا يَدُلُّ عَلَى صِحَّةِ شَيْءٍ مِنْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ -: أَمَّا مَنْ مَنَعَ مِنْ الْقِسْمَةِ إنْ كَانَ فِيهِمْ وَاحِدٌ لَا يَنْتَفِعُ بِمَا يَقَعُ لَهُ فَقَدْ عَجَّلَ الضَّرَرَ لِغَيْرِهِ مِنْهُمْ بِمَنْعِهِ مِنْ أَخْذِ حَقِّهِ وَالتَّصَرُّفِ فِيهِ بِمَا يَشَاءُ، فَمَا الَّذِي جَعَلَ ضَرَرَ زَيْدٍ مُبَاحًا خَوْفَ أَنْ يَسْتَضِرَّ عَمْرٌو؟ وَكَذَلِكَ يُقَالُ لِمَنْ رَاعَى انْحِطَاطَ قِيمَةِ حِصَّةِ أَحَدِهِمْ بِالْقِسْمَةِ.

L19507 Abū Muḥammad said: These are corrupt and contradictory statements—neither the Quran, nor the Sunnah, nor analogical reasoning, nor sound judgment provides evidence for the validity of any of them. As for those who prohibit division if one among them does not benefit from what falls to him, they hasten harm upon others by denying him his right to take his due and dispose of it as he wishes. What justifies permitting harm to Zayd out of fear that ʿAmr might suffer harm? The same applies to those who consider the diminution in value of one's share due to division.

وَأَمَّا تَنَاقُضُهُمْ فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِي قِسْمَةِ الْأَرْضِ الْوَاسِعَةِ - وَإِنْ انْحَطَّتْ قِيمَةُ بَعْضِ الْحِصَصِ انْحِطَاطًا ظَاهِرًا - فَظَهَرَ تَنَاقُضُهُمْ.

L19508–19509 As for their contradiction, they do not disagree on dividing the vast land—even though some shares have suffered an apparent decline—thus their contradiction becomes evident.

وَفِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ زِيَادَةُ فِي بَيَانِ فَسَادِ أَقْوَالِهِمْ غَنِينَا عَنْ تَكْرَارِهِمَا وَلَا فَرْقَ بَيْنَ قِسْمَةِ السَّيْفِ، وَاللُّؤْلُؤَةِ، وَالثَّوْبِ، وَالسَّفِينَةِ، وَبَيْنَ قِسْمَةِ الدَّارِ، وَالْحَمَّامِ، وَالْأَرْضِ، وَقَدْ يَنْتَفِعُ الْمَرْءُ بِكُلِّ مَا يَقَعُ لَهُ مِنْ ذَلِكَ، وَقَدْ يَحُطُّ النَّصِيبُ مِنْ الْأَرْضِ، وَالدَّارِ، مِنْ قِيمَتِهِ الْمِئِينَ مِنْ الدَّنَانِيرِ أَضْعَافَ مَا يَحُطُّ النَّصِيبُ مِنْ السَّيْفِ، وَالثَّوْبِ، وَاللُّؤْلُؤَةِ.

L19510 In the preceding issue, there is an additional explanation of the invalidity of their arguments, rendering us free from needing to repeat both of them. There is no distinction between dividing a sword, a pearl, a garment, and a ship, and dividing a house, a bath, and land. A person may benefit from whatever falls to him of these items. Yet the share of the land and the house may depreciate from their value by hundreds of dinars - many times more than the depreciation of a share in the sword, the garment, and the pearl.

وَمَالِكٌ، وَالشَّافِعِيُّ: يُبِيحَانِ قِسْمَةَ الْحَمَّامِ إذَا دَعَا إلَى ذَلِكَ أَحَدُهُمَا وَإِنْ لَمْ يَنْتَفِعْ شَرِيكُهُ بِمَا يَقَعُ لَهُ مِنْ ذَلِكَ - وَأَبُو حَنِيفَةَ: يَرَى ذَلِكَ إذَا اتَّفَقَا عَلَيْهِ.

L19511 Mālik and al-Shāfiʿī permit the partitioning of a bathhouse if one co-owner requests it, even if the other co-owner derives no benefit from what he receives. Abū Ḥanīfah holds that such partitioning is permissible when both parties agree.

وَقَدْ يَسْقُطُ فِي هَذَا مِنْ الْقِيمَةِ، وَيَبْطُلُ مِنْ الْمَنْفَعَةِ مَا لَا يَسْقُطُ مِنْ اللُّؤْلُؤَةِ إذَا قُسِمَتْ، وَالسَّيْفِ إذَا قُسِمَ، وَلَا سَبِيلَ إلَى وُجُودِ قَوْلِ صَاحِبٍ بِخِلَافِ هَذَا، فَكَيْفَ دَعْوَى الْإِجْمَاعِ بِالْبَاطِلِ؟ فَظَهَرَ فَسَادُ نَظَرِهِمْ وَبَطَلَ احْتِيَاطُهُمْ بِإِبَاحَتِهِمْ فِي مَوْضِعٍ مَا مَنَعُوا مِنْهُ فِي آخَرَ.

L19512 In this case, some value may diminish and certain benefits become invalid—losses that do not occur when a pearl is divided or a sword is divided. There is no possibility of finding a Companion's statement opposing this. How then can there be a claim of invalid consensus? Thus, the invalidity of their reasoning becomes evident, and their precaution is invalidated by their permitting in one instance what they prohibited in another.

وَأَمَّا الرَّأْسُ الْوَاحِدُ مِنْ الْحَيَوَانِ: فَإِنْ كَانَ إنْسَانًا فَتَفْصِيلُ أَعْضَائِهِ حَرَامٌ، وَإِنْ كَانَ مِمَّا لَا يُؤْكَلُ لَحْمُهُ كَالْحِمَارِ، وَالْكَلْبِ، وَالسِّنَّوْرِ، فَقَتْلُهُ حَرَامٌ، وَذَبْحُهُ لَا يَكُونُ ذَكَاةً، فَهُوَ إضَاعَةٌ لِلْمَالِ، وَمَعْصِيَةٌ مُجَرَّدَةٌ، وَإِنْ كَانَ مِمَّا يُؤْكَلُ لَحْمُهُ لَمْ يَحِلَّ ذَبْحُهُ بِغَيْرِ إذْنِ كُلِّ مَنْ لَهُ فِيهِ مِلْكٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ لِأَحَدٍ ذَبْحُ حِصَّةِ شَرِيكِهِ بِغَيْرِ إذْنِهِ إلَّا أَنْ يُرَى بِهِ مَوْتٌ فَيُبَادِرَ بِذَبْحِهِ، لِأَنَّ تَرْكَهُ مَيْتَةً إضَاعَةٌ لِلْمَالِ، وَقَدْ نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ.

As for a single head of livestock: if the subject is a human, dismembering its limbs is forbidden. If it is among those animals whose meat is not consumed, such as donkeys, dogs, or cats, killing it is forbidden, and slaughtering it does not constitute proper slaughter. This is considered a waste of wealth and an unmitigated act of disobedience. If it is among those animals whose meat is consumed, slaughtering it is impermissible without the consent of every owner with shared rights, in accordance with the saying of Allah's Messenger—peace and blessings be upon him: "Your blood and your wealth are inviolable to you." Thus, no one may slaughter their partner's share without permission unless it is evident that the animal is dying, so he hastens to slaughter it. Allowing it to become carrion would waste wealth, and Allah's Messenger—peace and blessings be upon him—prohibited the waste of wealth.

وَأَمَّا الْمُصْحَفُ: فَلَا يَحِلُّ تَقْطِيعُهُ وَلَا تَفْرِيقُ أَوْرَاقِهِ، لِأَنَّ رُتْبَةَ كِتَابِ اللَّهِ مُنَزَّلَةٌ مِنْ عِنْدِهِ فَلَا تُحَالُ - وَقَدْ رُوِّينَا عَنْ مُجَاهِدٍ: لَا يُقْسَمُ الْمُصْحَفُ.

As for the Mushaf: it is not permissible to cut it or separate its pages, because the divinely ordained order of Allah's Book is sent down from Him and must not be altered. It has been narrated from Mujahid that the Mushaf should not be divided.

وَاحْتَجَّ الْمَانِعُونَ مِنْ هَذَا بِخَبَرٍ فِيهِ «لَا تَعْضِيَةَ عَلَى أَهْلِ الْمِيرَاثِ إلَّا فِيمَا احْتَمَلَ الْقَسْمَ» وَهَذَا خَبَرٌ مُرْسَلٌ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ جُرَيْجٍ عَنْ صِدِّيقِ بْنِ مُوسَى عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدٍ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ.

Those who prohibit argued against this with a report stating: "There is no obligation to force division upon heirs except in what admits of equitable partition." This is a mursal report which we have transmitted via the chain of Ibn Wahb, from Ibn Jurayj, from Siddīq ibn Musa. From Muḥammad ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from his father.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا لِأَنَّ " التَّعْضِيَةَ " مَأْخُوذَةٌ مِنْ قِسْمَةِ الْأَعْضَاءِ وَإِنَّمَا الْأَعْضَاءُ لِلْحَيَوَانِ فَقَطْ.

Then, if it were valid, it would serve as an argument for us because "limb division" is derived from the division of limbs, and limbs belong exclusively to animals.

[مَسْأَلَةٌ كَانَ الْمَقْسُومُ متفرقا فَأَرَادَ أَحَدُ الْمُقْتَسِمِينَ أَخْذَ نَصِيبِهِ بِالْقُرْعَةِ]

A case where the divided property was scattered, and one of the co-partitioners sought to claim his allocated portion by lot.

١٢٥٤ - مَسْأَلَةٌ:

1254: Issue

If the partitioned property consists of disparate items, and one co-owner

formally demands the allocation of his entire share through lot-casting—whether designating a specific item among the property's components or a particular category among its types—judgment shall be granted in his favor, regardless of his partners' approval or disapproval.

فَإِنْ كَانَ الْمَالُ الْمَقْسُومُ أَشْيَاءَ مُتَفَرِّقَةً فَدَعَا أَحَدُ الْمُقْتَسِمِينَ إِلَى إِخْرَاجِ نَصِيبِهِ كُلِّهِ بِالْقُرْعَةِ فِي شَخْصٍ مِنْ أَشْخَاصِ الْمَالِ، أَوْ فِي نَوْعٍ مِنْ أَنْوَاعِهِ: قُضِيَ لَهُ بِذَلِكَ، أَحَبَّ شُرَكَاؤُهُ أَمْ كَرِهُوا.

L19522 It is not permissible to divide each type among all of them, nor each house among all of them, nor each estate among all of them, except by the agreement of all of them.

وَلَا يَجُوزُ أَنْ يُقْسَمَ كُلُّ نَوْعٍ بَيْنَ جَمِيعِهِمْ، وَلَا كُلُّ دَارٍ بَيْنَ جَمِيعِهِمْ، وَلَا كُلُّ ضَيْعَةٍ بَيْنَ جَمِيعِهِمْ، إِلَّا بِاتِّفَاقِ جَمِيعِهِمْ عَلَى ذَلِكَ.

L19523 Slaves, animals, copies of the Quran, and other similar property are divided. If someone's share includes a slave and another part, he remains a co-owner in that which his portion has fallen into.

وَيُقْسَمُ الرَّقِيقُ، وَالْحَيَوَانُ، وَالْمَصَاحِفُ، وَغَيْرُ ذَلِكَ، فَمَنْ وَقَعَ فِي سَهْمِهِ عَبْدٌ وَبَعْضُ آخَرَ بَقِيَ شَرِيكًا فِي الَّذِي وَقَعَ حَظُّهُ فِيهِ.

L19524 The proof of that is: whoever holds a view contrary to ours must inevitably abandon his position and revert to our doctrine, or nullify division in its entirety and impose what cannot be borne. This is because it would be said to him: "What distinguishes your position when you state: 'Every house must be divided among them, every estate divided among them, every flock divided among them, every herd divided among them, every slave divided among them, and every garment divided between them and others'?" He would reply: "Rather, every house must be divided among them, and every portion of each faddān of land must be divided among them. For if you assign each heir a share in every single thing the deceased left behind, you are bound by what we have imposed upon you, with no alternative."

بُرْهَانُ ذَلِكَ -: أَنَّ مَنْ قَالَ غَيْرَ قَوْلِنَا لَمْ يَكُنْ لَهُ بُدٌّ مِنْ تَرْكِ قَوْلِهِ هَذَا وَالرُّجُوعِ إِلَى قَوْلِنَا، أَوْ إِبْطَالِ الْقِسْمَةِ جُمْلَةً، وَتَكْلِيفُ مَا لَا يُطَاقُ، وَذَلِكَ أَنَّهُ يُقَالُ لَهُ: مَا الْفَرْقُ بَيْنَكَ فِي قَوْلِكَ: تُقْسَمُ كُلُّ دَارٍ بَيْنَهُمْ، وَكُلُّ ضَيْعَةٍ بَيْنَهُمْ، وَكُلُّ غَنَمٍ بَيْنَهُمْ، وَكُلُّ بَقَرٍ بَيْنَهُمْ، وَكُلُّ رَقِيقٍ بَيْنَهُمْ، وَكُلُّ ثِيَابٍ بَيْنَهُمْ وَبَيْنَ آخَرَ؟ قَالَ: بَلْ يُقْسَمُ كُلُّ بَيْتٍ بَيْنَهُمْ، وَكُلُّ رُكْنٍ مِنْ كُلِّ فَدَّانٍ بَيْنَهُمْ، لِأَنَّهُ إِذَا جَعَلْتَ لِكُلِّ وَاحِدٍ مِنْهُمْ حِصَّةً فِي كُلِّ شَيْءٍ تَرَكَهُ الْمَيِّتُ لَزِمَكَ هَذَا الَّذِي أَلْزَمْنَاكَ وَلَا بُدَّ.

L19525 If he says: Indeed, Allah, the Exalted, says: "An obligatory prescribed share from whatever there is of it, whether little or much" [An-Nisa: 7].[2]

فَإِنْ قَالَ: إِنَّ اللَّهَ تَعَالَى يَقُولُ: {مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَفْرُوضًا} [النساء: ٧] .

L19526 We said: Yes, this is the truth, and this verse constitutes our proof against you. For if you interpret it according to your claim, our position necessarily follows without alternative. The verse mandates our view, since Allah the Exalted only requires from us what He has placed within our capacity. He, the Exalted, intended solely from what the deceased left behind—be it small or large in quantity—and never required anything from every individual portion

قُلْنَا: نَعَمْ هَذَا الْحَقُّ، وَهَذِهِ الْآيَةُ حُجَّتُنَا عَلَيْكَ لِأَنَّكَ إِذَا حَمَلْتَهَا عَلَى مَا قُلْتَ لَزِمَكَ مَا قُلْنَا وَلَا بُدَّ، وَالْآيَةُ مُوجِبَةٌ لِقَوْلِنَا، لِأَنَّ اللَّهَ تَعَالَى إِنَّمَا أَرَادَ مِنَّا مَا قَدْ جَعَلَهُ فِي وُسْعِنَا، فَإِنَّمَا أَرَادَ تَعَالَى مِمَّا قَلَّ مِمَّا تَرَكَهُ الْمَيِّتُ أَوْ كَثُرَ فَقَطْ، وَلَمْ يُرِدْ تَعَالَى قَطُّ مِنْ كُلِّ جُزْءٍ مِنْ

[2] **Qur'an references (L19525):** Qur'an 4:7 (An-Nisa).

of the apportioned estate. Had He required this, He would have burdened us with what lies beyond human capability: dividing every portion of it, even to the measure of the smallest conceivable unit. Thus, the invalidity of their assertion becomes manifest.

L19527–19529 Also, the authenticated report we transmitted through the chain of al-Bukhārī from ʿAlī ibn al-Ḥakam al-Anṣārī, who narrated to us from Abū ʿAwānah, from Saʿīd ibn Masrūq, from ʿAbāyah ibn Rifāʿah ibn Rāfiʿ ibn Khadīj, from... His grandfather Rafiʿ ibn Khadij reported: "The Messenger of Allah (peace and blessings of Allah be upon him) divided the spoils of war by equating ten sheep to a camel" in a hadith. This is the explicit text of our position, for he (peace and blessings of Allah be upon him) gave some of them sheep and others camels. This reflects the practice of the Companions with the Messenger of Allah (peace and blessings of Allah be upon him), with none among them opposing them. It represents the view of Abu Thawr and others.

L19530 **A legal issue: What is impermissible to sell is distributed when its ownership becomes legally valid.**

L19531 1255 - Legal Question:

L19532 Every item whose sale is impermissible—when ownership becomes permissible—such as dogs, cats, fruit before its ripeness becomes evident, water, and other such items, all these are divided through equality and equivalence. This is because division entails distinguishing each individual's right and isolating it, and it is not a sale. If it were a sale, it would not be permissible for the daughter to receive one dinar while the son receives two dinars.

L19533 Similarly, the division of distant agricultural estates in scattered regions necessitates that some of the heirs travel to one town and others to another due to the reason we have stated. Any opinion contradicting this constitutes arbitrary judgment without proof, leading to contradiction and a return to our opinion while abandoning theirs, for it becomes unavoidable to discard some and adopt others. Abu Hanifa said: "An animal is not divided un-

الْمَقْسُومِ، إِذْ لَوْ أَرَادَ تَعَالَى ذَلِكَ لَكَانَ تَعَالَى قَدْ كَلَّفَنَا مَا لَيْسَ فِي الْوُسْعِ مِنْ قِسْمَةِ كُلِّ جُزْءٍ مِنْهُ وَلَوْ عَلَى قَدْرِ الصُّؤَابَةِ، فَظَهَرَ فَسَادُ قَوْلِهِمْ.

وَأَيْضًا: فَإِنَّ الْخَبَرَ الثَّابِتَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ عَلِيِّ بْنِ الْحَكَمِ الْأَنْصَارِيِّ نا أَبُو عَوَانَةَ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ رَافِعِ بْنِ خَدِيجٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَسَمَ الْغَنِيمَةَ فَعَدَلَ عَشَرَةً مِنْ الْغَنَمِ بِبَعِيرٍ» فِي حَدِيثٍ - فَهَذَا نَصُّ قَوْلِنَا لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَعْطَى بَعْضَهُمْ غَنَمًا، وَبَعْضَهُمْ إبِلًا، فَهَذَا عَمَلُ الصَّحَابَةِ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا مُخَالِفَ لَهُمْ مِنْهُمْ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ وَغَيْرِهِ.

[مَسْأَلَةٌ مَا لَا يَحِلُّ بَيْعُهُ يُقْسَمُ إذَا حَلَّ مِلْكُهُ]

١٢٥٥ - مَسْأَلَةٌ:

وَيُقْسَمُ كُلُّ مَا لَا يَحِلُّ بَيْعُهُ - إذَا حَلَّ مِلْكُهُ -: كَالْكِلَابِ، وَالسَّنَانِيرِ، وَالثَّمَرِ قَبْلَ أَنْ يَبْدُوَ صَلَاحُهُ، وَالْمَاءِ، وَغَيْرِ ذَلِكَ، كُلُّ ذَلِكَ بِالْمُسَاوَاةِ وَالْمُمَاثَلَةِ، لِأَنَّ الْقِسْمَةَ تَمْيِيزُ حَقِّ كُلِّ وَاحِدٍ وَتَخْلِيصُهُ، وَلَيْسَتْ بَيْعًا - وَلَوْ كَانَتْ بَيْعًا لَمَا جَازَ أَنْ تَأْخُذَ الْبِنْتُ دِينَارًا وَالِابْنُ دِينَارَيْنِ.

وَكَذَلِكَ: تَقْسِيمُ الضِّيَاعِ الْمُتَبَاعِدَةِ فِي الْبِلَادِ الْمُتَفَرِّقَةِ، فَيَخْرُجُ بَعْضُهُمْ إلَى بَلْدَةٍ، وَالْآخَرُ إلَى أُخْرَى لِمَا ذَكَرْنَا - وَكُلُّ قَوْلٍ خَالَفَ هَذَا فَهُوَ تَحَكُّمٌ بِلَا بُرْهَانٍ يَئُولُ إلَى التَّنَاقُضِ، وَإِلَى الرُّجُوعِ إلَى قَوْلِنَا، وَتَرْكِ قَوْلِهِمْ، إذْ لَا بُدَّ مِنْ تَرْكِ بَعْضٍ وَأَخْذِ بَعْضٍ - وَقَالَ

less accompanied by others"—a ruling unknown from any predecessor. And success is from Allah, the Exalted.

أَبُو حَنِيفَةَ: لَا يُقْسَمُ الْحَيَوَانُ إِلَّا إِذَا كَانَ مَعَهُ غَيْرُهُ، وَلَا يُعْرَفُ هَذَا عَنْ أَحَدٍ قَبْلَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَقَعَ فِي الْقِسْمَةِ لِأَحَدِ الْمُقْتَسِمِينَ عُلْو بِنَاءٍ وَالْآخَرِ سُفْلُهُ]

L19534 **A juristic issue that division is invalid if one co-owner is allocated the upper part of a building and the other its lower part.**

L19535 Issue 1256:

١٢٥٦ - مَسْأَلَةٌ:

L19536 It is not permissible in a division of jointly owned property for one of the parties to the division to be allocated the upper part of a building while another is allocated its lower part, and such a division is perpetually void if it occurs.

وَلَا يَجُوزُ أَنْ يَقَعَ فِي الْقِسْمَةِ لِأَحَدِ الْمُقْتَسِمِينَ عُلْوُ بِنَاءٍ وَالْآخَرِ سُفْلُهُ، وَهَذَا مَفْسُوخٌ أَبَدًا إِنْ وَقَعَ.

L19537 The proof of this is that the air above the earth cannot be owned, and ownership in it is fundamentally impossible for two reasons: First, no one can establish a permanent presence in the air, as this is inherently unattainable. Second, it is fluctuating—neither stable nor fixed. Therefore, whoever acquires upper space owns it only on the condition that they build upon the lower owner's supporting walls and roof, and on the condition that the lower owner does not demolish their walls or roof, nor raise, nor shorten, nor dome, nor thin any part of them, nor create arches within them.

بُرْهَانُ ذَلِكَ -: أَنَّ الْهَوَاءَ دُونَ الْأَرْضِ لَا يُتَمَلَّكُ، وَلَا يُمْكِنُ ذَلِكَ فِيهِ أَصْلًا لِوَجْهَيْنِ -: أَحَدُهُمَا: أَنَّهُ لَا سَبِيلَ لِأَحَدٍ إِلَى أَنْ يَسْتَقِرَّ فِي الْهَوَاءِ، وَهَذَا مُمْتَنِعٌ. وَالثَّانِي: أَنَّهُ مُتَمَوِّجٌ غَيْرُ مُسْتَقِرٍّ وَلَا مَضْبُوطٍ، فَمَنْ وَقَعَ لَهُ الْعُلْوُ فَإِنَّمَا يَمْلِكُهُ بِشَرْطِ أَنْ يَبْنِيَ عَلَى جُدُرَاتِ صَاحِبِهِ وَسَطْحِهِ، وَبِشَرْطِ أَنْ لَا يَهْدِمَ صَاحِبُ السُّفْلِ جُدُرَاتِهِ، وَلَا سَطْحَهُ، وَلَا أَنْ يُعْلِيَ شَيْئًا مِنْ ذَلِكَ، وَلَا أَنْ يُقَصِّرَهُ: وَلَا أَنْ يُقَبِّبَ سَطْحَهُ، وَلَا أَنْ يُرَقِّقَ جُدُرَاتِهِ، وَلَا أَنْ يَفْتَحَ فِيهَا أَقْوَاسًا.

L19538 None of these conditions are in the Book of Allāh, the Exalted.

وَكُلُّ هَذِهِ شُرُوطٌ لَيْسَتْ فِي كِتَابِ اللَّهِ تَعَالَى.

L19539–19540 The Messenger of Allah (may Allah bless him and grant him peace) said: "Every stipulation not in the Book of Allah is void, even if it were a hundred stipulations. The Book of Allah is more deserving, and Allah's stipulation is more binding."[3]

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَإِنْ كَانَ مِائَةَ شَرْطٍ، كِتَابُ اللَّهِ أَحَقُّ، وَشَرْطُ اللَّهِ أَوْثَقُ» .

L19541 We know that whoever holds a right is made the owner of it and may dispose of it as he wishes, provided neither the Quran nor the Sunnah prohibits it.

وَقَدْ عَلِمْنَا أَنَّ كُلَّ مَنْ لَهُ حَقٌّ فَهُوَ مُمَلَّكٌ إِيَّاهُ يَتَصَرَّفُ فِيهِ كَيْفَ شَاءَ، مَا لَمْ يَمْنَعْهُ قُرْآنٌ، أَوْ سُنَّةٌ - فَبَطَلَتْ هَذِهِ الْقِسْمَةُ بِيَقِينٍ لَا إِشْكَالَ فِيهِ - وَصَحَّ أَنَّ ابْتِيَاعَ الْعُلُوِّ عَلَى

[3] **Hadith references (L19540):** Sunan Ibn Majah 2521.

إِقْرَارِهِ حَيْثُ هُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَإِنَّمَا يَجُوزُ بَيْعُ أَنْقَاضِهِ فَقَطْ، فَإِذَا ابْتَاعَهَا فَلَيْسَ لَهُ إِمْسَاكُهَا عَلَى جُدْرَاتِ غَيْرِهِ، إِلَّا مَا دَامَ تَطِيبُ نَفْسُهُ بِذَلِكَ، ثُمَّ لَهُ أَنْ يَأْخُذَهُ بِإِزَالَتِهَا عَنْ حَقِّهِ مَتَى شَاءَ.

Thus, this partition is invalidated with certainty, without ambiguity. It is confirmed that purchasing rights to the elevated structure while affirming its current state constitutes misappropriation of wealth. Only the sale of its debris is permissible. If he purchases it, he may not keep it on another's walls as long as the owner's soul is content with that. Thereafter, he may reclaim it by removing it from his property whenever he wishes.

وَقَدْ مَنَعَ الشَّافِعِيُّ مِنْ اقْتِسَامِ سُفْلٍ لِوَاحِدٍ وَعُلُوٍّ لِآخَرَ

L19542 And indeed, Al-Shafi'i prohibited dividing by assigning the lower portion to one party and the upper portion to another.

[مَسْأَلَةٌ لَا يَحِلُّ للشريك إِنْفَاذُ شَيْءٍ مِنْ الْحُكْمِ فِي جُزْءٍ مِنْ الشَّرِكَةِ]

Issue: It is not permissible for a partner to implement any part of the legal ruling within a portion of the partnership.

١٢٥٧ - مَسْأَلَةٌ:

L19544 1257 - Question:

وَلَا يَحِلُّ لِأَحَدٍ مِنْ الشُّرَكَاءِ إِنْفَاذُ شَيْءٍ مِنْ الْحُكْمِ فِي جُزْءٍ مُعَيَّنٍ مِمَّا لَهُ فِيهِ شَرِيكٌ، وَلَا فِي كُلِّهِ - سَوَاءٌ قَلَّ ذَلِكَ الْجُزْءُ أَوْ كَثُرَ - لَا بَيْعٌ، وَلَا صَدَقَةٌ، وَلَا هِبَةٌ، وَلَا إصْدَاقٌ، وَلَا إقْرَارٌ فِيهِ لِأَحَدٍ، وَلَا تَحْبِيسٌ، وَلَا غَيْرُ ذَلِكَ، كَمَنْ بَاعَ رُبُعَ هَذَا الْبَيْتِ، أَوْ ثُلُثَ هَذِهِ الدَّارِ، أَوْ مَا أَشْبَهَ ذَلِكَ، أَوْ كَانَ شَرِيكُهُ حَاضِرًا، أَوْ مُقَاسَمَتُهُ لَهُ مُمْكِنَةٌ، لِأَنَّ كُلَّ مَا ذَكَرْنَا كَسْبٌ عَلَى غَيْرِهِ، لِأَنَّهُ لَا يَدْرِي أَيَقَعُ لَهُ عِنْدَ الْقِسْمَةِ ذَلِكَ الْجُزْءُ أَمْ لَا؟ وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L19545 It is not permissible for any co-owner to enforce any judgment regarding a specified portion of jointly owned property—whether the portion is small or large, nor regarding its entirety. This prohibition includes sale, charity, gift, bridal gift, admission of another's claim to it, endowment, or any other transaction. For instance, selling a quarter of this house, a third of this house, or similar transactions—even if the co-owner is present or partition is feasible—remains impermissible. This is because all such actions burden others unjustly, as one cannot know whether that specific portion will be allotted to them during division. Allah the Exalted said: "No soul earns [anything] except against itself, nor does any bearer bear another's burden" (Quran 6:164).[4]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L19546 And due to the saying of the Messenger of Allah (peace be upon him): "Indeed, your blood and your wealth are forbidden upon you." 1258 - Issue:

١٢٥٨ - مَسْأَلَةٌ:

فَإِنْ وَقَعَ شَيْءٌ مِمَّا ذَكَرْنَا فُسِخَ أَبَدًا - سَوَاءٌ وَقَعَ ذَلِكَ الشَّيْءُ بِعَيْنِهِ بَعْدَ ذَلِكَ فِي حِصَّتِهِ أَوْ لَمْ يَقَعْ -: لَا يَنْفُذُ شَيْءٌ مِمَّا ذَكَرْنَا أَصْلًا لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -:

L19547 If any of the matters we mentioned occurs, it is permanently invalidated—whether that specific matter occurs afterward in his portion or not—for none of what we mentioned takes effect whatsoever, due to the statement of Al-

[4] **Qur'an references (L19545):** Qur'an 6:164 (Al-An'am).

lah's Messenger (peace be upon him): "Every action not aligned with our command is rejected." Every matter we have mentioned constitutes an action contrary to the command of Allah the Exalted and the command of His Messenger (peace be upon him), so it is rejected.

«كُلُّ عَمَلٍ لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَكُلُّ مَا ذَكَرْنَا فَإِنَّهُ عَمَلٌ وَقَعَ بِخِلَافِ أَمْرِ اللَّهِ تَعَالَى وَأَمْرِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - فَهُوَ رَدٌّ.

L19548–19550 Moreover, every contract that is impermissible at the time of its conclusion—but rather must be invalidated—is among the inherently void and prohibited [acts], such that it cannot later become valid at a time when it was not concluded. Likewise, every statement not authenticated when uttered is among the invalid and inadmissible [declarations]. that [the ruling] is to be accepted even if not explicitly stated, unless it imposes an obligation derived from these principles—such as the Qur'an or Sunnah—in any context; then it is to be listened to and obeyed.

وَأَيْضًا: فَكُلُّ عَقْدٍ لَمْ يَجُزْ حِينَ عَقْدِهِ بَلْ وَجَبَ إبْطَالُهُ، فَمِنْ الْمُحَالِ الْبَاطِلِ أَنْ يَجُوزَ فِي وَقْتٍ آخَرَ لَمْ يَعْقِدْ فِيهِ، وَكُلُّ قَوْلٍ لَمْ يُصَدَّقْ حِينَ النُّطْقِ بِهِ فَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يُصَدَّقَ حِينَ لَمْ يَنْطِقْ بِهِ، إلَّا أَنْ يُوجِبَ شَيْئًا مِنْ ذَلِكَ فِي مَكَان مِنْ الْأَمْكِنَةِ: قُرْآنٌ، أَوْ سُنَّةٌ، فَيُسْمَعُ لَهُ وَيُطَاعُ.

L19551 And success is from Allah, the Most High.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19552 If a person shares ownership with another of land, livestock, or movable property and sells, donates, gives as charity, or assigns as mahr any portion thereof—while their partner is absent and does not consent to division, present but unable to proceed with the division, or refuses to consent—then they may expedite claiming their rightful share, enforce division, and ensure justice in it. For there is no distinction between a division by a judge acting justly and a division by a partner acting justly, since neither the Quran, the Sunnah, nor sound reason mandates such a distinction. To deny them their rightful share is oppression, and every rightful claimant is foremost entitled to their right. It is then examined whether they have implemented what we described regarding the measure of their rightful share in value with absolute justice—without overstepping or the slightest self-favoritism. If so, it constitutes a rightful division. Whatever is implemented in this manner is permissible and legally effective, whether the partner consents or objects.

وَمَنْ كَانَ بَيْنَهُ وَبَيْنَ غَيْرِهِ أَرْضٌ، أَوْ حَيَوَانٌ، أَوْ عَرَضٌ، فَبَاعَ شَيْئًا مِنْ ذَلِكَ، أَوْ وَهَبَهُ، أَوْ تَصَدَّقَ بِهِ، أَوْ أَصْدَقَهُ، فَإِنْ كَانَ شَرِيكُهُ غَائِبًا، وَلَمْ يُجِبْ إلَى الْقِسْمَةِ، أَوْ حَاضِرًا يَتَعَذَّرُ عَلَيْهِ أَنْ يَضُمَّهُ إلَى الْقِسْمَةِ، أَوْ لَمْ يُجِبْهُ إلَى الْقِسْمَةِ: فَلَهُ تَعْجِيلُ أَخْذِ حَقِّهِ، وَالْقِسْمَةِ وَالْعَدْلِ فِيهَا، لِأَنَّهُ لَا فَرْقَ بَيْنَ قِسْمَةِ الْحَاكِمِ إذَا عَدَلَ، وَبَيْنَ قِسْمَةِ الشَّرِيكِ إذَا عَدَلَ، إذْ لَمْ يُوجِبْ الْفَرْقُ بَيْنَ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، وَمَنْعُهُ مِنْ أَخْذِ حَقِّهِ جَوْرٌ، وَكُلُّ ذِي حَقٍّ أَوْلَى بِحَقِّهِ - فَيُنْظَرُ حِينَئِذٍ؟ فَإِنْ كَانَ أَنْفَذَ مَا ذَكَرْنَا فِي مِقْدَارِ حَقِّهِ فِي الْقِيمَةِ بِالْعَدْلِ غَيْرَ مُتَزَيِّدٍ، وَلَا مُحَابٍ لِنَفْسِهِ بِشَيْءٍ أَصْلًا: فَهِيَ قِسْمَةُ حَقٍّ، وَكُلُّ مَا أَنْفَذَ مِنْ ذَلِكَ جَائِزٌ نَافِذٌ: أَحَبَّ شَرِيكُهُ أَمْ كَرِهَ.

L19553 If he acted in self-interest, the entire transaction was annulled, as it was a deal combining ḥarām and ḥalāl and thus could not be validly contracted.

فَإِنْ كَانَ حَابَى نَفْسَهُ، فُسِخَ كُلُّ ذَلِكَ، لِأَنَّهَا صَفْقَةٌ جَمَعَتْ حَرَامًا وَحَلَالًا فَلَمْ تَنْعَقِدْ صَحِيحَةً.

L19554 If he plants, builds, or develops: all such acts are valid to the extent of

his right, and the excess is decreed to belong to the co-owner. He has no entitlement to the building, development, or planting, except to remove the physical property itself—as in cases of usurpation—with no difference [in ruling].

L19555 If it was food and he ate some of it, he is liable for the excess beyond his entitlement.

L19556 If he was a slave and emancipated: he became liable for his co-owner's share. And with Allah, the Exalted, is success.

L19557 *The Book of Division* has been completed, and all praise is due to Allah, Lord of the Worlds.

فَلَوْ غَرَسَ وَبَنَى وَعَمَّرَ: نَفَذَ كُلُّ ذَلِكَ فِي مِقْدَارِ حَقِّهِ وَقَضَى بِمَا زَادَ لِلَّذِي يُشْرِكُهُ، وَلَا حَقَّ لَهُ فِي بِنَائِهِ وَعِمَارَتِهِ، وَغَرْسِهِ، إِلَّا قَلْعَ عَيْنِ مَالٍ، كَالْغَصْبِ وَلَا فَرْقَ.

فَلَوْ كَانَ طَعَامًا فَأَكَلَ مِنْهُ: ضَمِنَ مَا زَادَ عَلَى مِقْدَارِ حَقِّهِ.

فَإِنْ كَانَ مَمْلُوكًا فَأَعْتَقَ: ضَمِنَ حِصَّةَ شَرِيكِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّ " كِتَابُ الْقِسْمَةِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

AL-MUHALLA

كِتَابُ الِاسْتِحْقَاقِ وَالْغَصْبِ وَالْجِنَايَاتِ عَلَى الْأَمْوَالِ

The Book of Entitlement, Usurpation and Offences against Property

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

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[كِتَابُ الِاسْتِحْقَاقِ وَالْغَصْبِ وَالْجِنَايَاتِ عَلَى الْأَمْوَالِ] [مَسْأَلَةٌ لَا يَحِلُّ مَالُ مُسْلِمٍ وَلَا مَالُ ذِمِّيٍّ إِلَّا بِمَا أَبَاحَ اللَّهُ]

١٢٥٩ - مَسْأَلَةٌ:

لَا يَحِلُّ لِأَحَدٍ مَالُ مُسْلِمٍ، وَلَا مَالُ ذِمِّيٍّ، إِلَّا بِمَا أَبَاحَ اللَّهُ عَزَّ وَجَلَّ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقُرْآنِ، أَوْ السُّنَّةِ نَقْلُ مَالِهِ إِلَى غَيْرِهِ، أَوْ بِالْوَجْهِ الَّذِي أَوْجَبَ اللَّهُ تَعَالَى بِهِ أَيْضًا، وَكَذَلِكَ نَقْلُهُ عَنْهُ إِلَى غَيْرِهِ كَالْهِبَاتِ الْجَائِزَةِ، وَالتِّجَارَةِ الْجَائِزَةِ، أَوْ الْقَضَاءِ الْوَاجِبِ بِالدِّيَاتِ، وَالتَّقَاصِّ، وَغَيْرِ ذَلِكَ، مِمَّا هُوَ مَنْصُوصٌ.

فَمَنْ أَخَذَ شَيْئًا مِنْ مَالِ غَيْرِهِ أَوْ صَارَ إلَيْهِ بِغَيْرِ مَا ذَكَرْنَا، فَإِنْ كَانَ عَامِدًا عَالِمًا بَالِغًا مُمَيِّزًا فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ، وَإِنْ كَانَ غَيْرَ عَالِمٍ، أَوْ غَيْرَ عَامِدٍ، أَوْ غَيْرَ مُخَاطَبٍ، فَلَا إثْمَ عَلَيْهِ، إلَّا أَنَّهُمَا سَوَاءٌ فِي الْحُكْمِ فِي وُجُوبِ رَدِّ ذَلِكَ إلَى صَاحِبِهِ، أَوْ فِي وُجُوبِ ضَمَانِ مِثْلِهِ إنْ كَانَ مَا صَارَ إلَيْهِ مِنْ مَالِ غَيْرِهِ قَدْ تَلِفَتْ عَيْنُهُ أَوْ لَمْ يَقْدِرْ عَلَيْهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L19558–19559 **The Book of Entitlement, Usurpation, and Crimes Against Property: A ruling—The property of a Muslim or a dhimmi is not permissible [to take] except by what Allah has permitted.**

L19560 1259 - Question:

L19561 It is not lawful for anyone to take the property of a Muslim or a protected non-Muslim except through what Allah—the Mighty and Majestic—has permitted as conveyed by His Messenger (may Allah bless him and grant him peace) in the Qur'an or the Sunnah, or through the manner which Allah the Exalted has mandated. This applies to transferring one's property to another, or transferring it from him to another through permissible means such as allowable gifts, lawful trade, compulsory obligations like blood-money payments, mutual deduction (taqāṣṣ), and other such matters that are explicitly stated.

L19562 So whoever takes something from another's property or acquires it through other than what we have mentioned, if he does so intentionally, knowing, having reached puberty and possessing discernment, he is a sinner against Allah, the Almighty and Majestic. But if he is unaware, unintentional, or not legally responsible, there is no sin upon him. However, both are equal in the ruling regarding the obligation to restore it to its owner or the obligation to compensate with its equivalent if the property of another that came into his possession has had its essence perish or he is unable to return it.

L19563 The evidence for that is the statement of Allah, the Almighty and Majestic: "Do not consume your wealth among yourselves unjustly unless it is a trade by mutual agreement among yourselves." [al-Nisāʾ 4:29][1]

L19564 And the statement of the Messenger of Allah (peace and blessings be upon him): "Indeed, your blood and your wealth are sacred to you."

L19565 This has been transmitted to us through various chains, among them: Through al-Bukhari's chain - Musaddad narrated to us, from Yahya (he is

[1] **Qur'an references (L19563):** Qur'an 4:29 (An-Nisa).

Ibn Sa'īd al-Qaṭṭān), from Qurrah ibn Khālid, from Muḥammad ibn Sīrīn who narrated to me, from 'Abd al-Raḥmān ibn Abī Bakrah, from his father, from the Messenger of Allah, may Allah bless him and grant him peace.

رُوِّينَا هَذَا مِنْ طُرُقٍ، مِنْهَا: عَنْ الْبُخَارِيِّ نا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانِ - نا قُرَّةُ بْنُ خَالِدٍ حَدَّثَنِي مُحَمَّدُ بْنُ سِيرِينَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19566–19567 And the saying of Allah, the Mighty and Majestic: "If you punish, then punish in the same manner as you were punished" [An-Nahl 126].[2]

وَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] .

L19568 The statement of the Messenger of Allah—peace be upon him—"Whoever performs a deed not in accordance with our command, it is invalid," and he did not differentiate between a scholar and a non-scholar, a legally responsible person and a non-responsible one, or whether the act was done intentionally or unintentionally.[3]

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَلَمْ يَسْتَثْنِ - عَلَيْهِ السَّلَامُ - عَالِمًا مِنْ غَيْرِ عَالِمٍ، وَلَا مُكَلَّفًا مِنْ غَيْرِ مُكَلَّفٍ، وَلَا عَامِدًا مِنْ غَيْرِ عَامِدٍ.

L19569 **A jurisprudential issue concerning the usurpation of a thing while he believes it is his.**

[مَسْأَلَةٌ غَصَبَ شَيْئًا وَهُوَ يَظُنُّ أَنَّهُ لَهُ]

L19570 1260 - Question:

١٢٦٠ - مَسْأَلَةٌ:

L19571 Whoever usurps something or takes it without rightful claim—whether through a prohibited sale, a prohibited gift, an invalid contract, or under the belief of ownership—is obligated to return it if it is present. If some of it is destroyed—whether minor or major—they must return what remains and replace the destroyed portion with its equivalent. They must either return it and replace the diminished attributes with their equivalent or replace it entirely if its original entity is lost. They must also return all that was usurped from it and everything generated from it—as we have stated—uniformly. This ruling applies uniformly to animals, homes, trees, land, slaves, and all other categories we have mentioned.

فَمَنْ غَصَبَ شَيْئًا، أَوْ أَخَذَهُ بِغَيْرِ حَقٍّ، لَكِنْ بِبَيْعٍ مُحَرَّمٍ، أَوْ هِبَةٍ مُحَرَّمَةٍ، أَوْ بِعَقْدٍ فَاسِدٍ، أَوْ وَهُوَ يَظُنُّ أَنَّهُ لَهُ: فَفَرْضٌ عَلَيْهِ أَنْ يَرُدَّهُ إنْ كَانَ حَاضِرًا، أَوْ مَا بَقِيَ مِنْهُ إنْ تَلِفَ بَعْضُهُ - أَقَلُّهُ أَوْ أَكْثَرُهُ - وَمِثْلُ مَا تَلِفَ مِنْهُ، أَوْ يَرُدَّهُ وَمِثْلَ مَا نَقَصَ مِنْ صِفَاتِهِ، أَوْ مِثْلَهُ إنْ فَاتَتْ عَيْنُهُ - وَأَنْ يَرُدَّ كُلَّ مَا اُغْتُلَّ مِنْهُ، وَكُلَّ مَا تَوَلَّدَ مِنْهُ، كَمَا قُلْنَا سَوَاءٌ سَوَاءٌ: الْحَيَوَانُ، وَالدُّورُ، وَالشَّجَرُ، وَالْأَرْضُ، وَالرَّقِيقُ، وَغَيْرُ ذَلِكَ سَوَاءٌ فِي كُلِّ مَا قُلْنَا.

L19572 He must return everything wrongfully taken—from trees, from livestock (milk, wool, or offspring), and from immovable property (rent).

فَيَرُدَّ كُلَّ مَا اُغْتُلَّ مِنْ الشَّجَرِ، وَمِنْ الْمَاشِيَةِ: مِنْ لَبَنٍ، أَوْ صُوفٍ، أَوْ نِتَاجٍ، وَمِنْ الْعَقَارِ: الْكِرَاءِ.

[2] **Qur'an references (L19567):** Qur'an 16:126 (An-Nahl).

[3] **Hadith references (L19568):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

وَإِنْ كَانَتْ أَمَةً فَأَوْلَدَهَا، فَإِنْ كَانَ عَالِمًا فَعَلَيْهِ الْحَدُّ حَدُّ الزِّنَى وَيَرُدُّهَا وَأَوْلَادَهَا وَمَا نَقَصَهَا وَطْؤُهُ، وَإِنْ كَانَ جَاهِلًا فَلَا شَيْءَ عَلَيْهِ مِنْ حَدٍّ، وَلَا إِثْمَ، لَكِنْ يَرُدُّهَا، وَيَرُدُّ أَوْلَادَهُ مِنْهَا رَقِيقًا لِسَيِّدِهَا، وَيَرُدُّ مَا نَقَصَهَا وَطْؤُهُ - وَلَا شَيْءَ لِكُلِّ مَنْ ذَكَرْنَا عَلَى الْمُسْتَحِقِّ فِيمَا أَنْفَقَ كَثُرَ أَمْ قَلَّ.

L19573 If she is a slave woman and he impregnates her, then if he was aware, he is subject to the ḥadd punishment for zinā, and he must return her to her master along with her children, and compensate for any diminution in her value caused by his intercourse. If he was ignorant, he bears no ḥadd punishment or sin, but he must return her to her master, return his children by her as slaves to her master, and compensate for any diminution in her value caused by his intercourse. None of the aforementioned individuals may seek reimbursement from the rightful claimant for expenditures incurred, whether substantial or negligible.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَا آنِفًا مِنْ الْقُرْآنِ، وَكُلُّ مَا تَوَلَّدَ مِنْ مَالِ الْمَرْءِ فَهُوَ لَهُ بِاتِّفَاقٍ مِنْ خُصُومِنَا مَعَنَا، فَمَنْ خَالَفَ مَا قُلْنَا: فَقَدْ أَبَاحَ أَكْلَ الْمَالِ بِالْبَاطِلِ، وَأَبَاحَ الْمَالَ الْحَرَامَ، وَخَالَفَ الْقُرْآنَ، وَالسُّنَنَ، بِلَا دَلِيلٍ أَصْلًا -: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ، وَاللَّيْثِ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، وَأَيُّوبَ السِّخْتِيَانِيِّ وَإِسْمَاعِيلَ بْنِ أُمَيَّةَ، وَمُوسَى بْنِ عُقْبَةَ، كُلُّهُمْ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَلَا لَا يَحْلُبَنَّ أَحَدٌ مَاشِيَةَ أَحَدٍ إلَّا بِإِذْنِهِ، أَيُحِبُّ أَحَدُكُمْ أَنْ تُؤْتَى مَشْرُبَتُهُ فَتُكْسَرَ خِزَانَتُهُ فَيُنْتَقَلَ طَعَامُهُ، فَإِنَّمَا تَخْزُنُ لَهُمْ ضُرُوعُ مَوَاشِيهِمْ أَطْعِمَتَهُمْ» وَهَذَا نَصُّ قَوْلِنَا وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L19574 The proof of this -: what we previously mentioned from the Qur'an, and all wealth generated from a person's property belongs to them by agreement from our opponents alongside us. Whoever opposes our view has permitted consuming wealth wrongfully, legalized unlawful wealth, and opposed the Qur'an and Sunnah without any evidence whatsoever -: We have been narrated through the chains of Malik; al-Layth; Ubayd Allah ibn Umar; Ayyub al-Sikhtiyani; Isma'il ibn Umayyah; and Musa ibn Uqbah—all transmitting from Nafi', from Ibn Umar, who said: The Messenger of Allah—peace be upon him—declared: "Let no one milk another's livestock without permission. Would any of you wish for his storeroom to be accessed, its storage broken into, and his food taken? Verily, the udders of their livestock store their sustenance." This is the explicit text of our position, and all praise is to Allah, Lord of the worlds.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَ بَعْضُ التَّابِعِينَ وَبَعْضُ الْمُتَأَخِّرِينَ: كُلُّ ذَلِكَ لِلْغَاصِبِ وَلِلْمُسْتَحَقِّ عَلَيْهِ بِضَمَانِهِ.

L19575–19576 People have differed regarding this matter. Some of the Followers and later jurists said: All of that remains with the usurper but is owed to the rightful claimant due to the usurper's liability.

وَقَالَ آخَرُونَ: مَا تَوَلَّدَ مِنْ لَبَنٍ، أَوْ صُوفٍ، أَوْ إجَارَةٍ فَهُوَ لِلْغَاصِبِ وَالْمُسْتَحَقِّ عَلَيْهِ، وَأَمَّا الْوَلَدُ فَلِلْمُسْتَحَقِّ - وَفَرَّقَ آخَرُونَ فِي ذَلِكَ بَيْنَ الْمُسْتَحَقِّ عَلَيْهِ وَبَيْنَ الْغَاصِبِ: فَجَعَلُوا كُلَّ ذَلِكَ لِلْمُسْتَحَقِّ عَلَيْهِ، وَلَمْ يَجْعَلُوهُ لِلْغَاصِبِ - وَفَرَّقَ آخَرُونَ بَيْنَ مَا وُجِدَ مِنْ ذَلِكَ قَائِمًا وَبَيْنَ مَا هَلَكَ مِنْهُ فَلَمْ يُضَمِّنُوهُ مَا هَلَكَ.

L19577 Others held: Proceeds derived from milk, wool, or rental income belong to the wrongful possessor and the entitled claimant, while offspring belong solely to the entitled party. Another group distinguished between the entitled claimant and the wrongful possessor, assigning all such proceeds to the claimant and none to the possessor. Yet others differentiated between proceeds that survived and those that perished, ruling that the wrongful possessor is not liable for what perished.

L19578 Abū Muḥammad said: All these are corrupt and contradictory opinions. Their sole argument is the inauthentic ḥadīth, uniquely reported by Makhlad ibn Khaffāf and Muslim ibn Khālid al-Zinjī: “The land tax is tied to the guarantee.”

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ كُلُّهَا أَرَاءٌ فَاسِدَةٌ مُتَخَاذِلَةٌ، وَحُجَّةُ جَمِيعِهِمْ إنَّمَا هِيَ الْحَدِيثُ الَّذِي لَا يَصِحُّ، الَّذِي انْفَرَدَ بِهِ مَخْلَدُ بْنُ خَفَّافٍ، وَمُسْلِمُ بْنُ خَالِدٍ الزِّنْجِيُّ " أَنَّ الْخَرَاجَ بِالضَّمَانِ ".

L19579 Then, even if it were valid, they would have no proof in it, for it only concerns one who purchased a slave, derived benefit from him, then found a defect in him and returned him - so his earnings would belong to him. This is what we say, because he acquired him through valid ownership and thus utilized his own property, not another’s. It is false to analogize the forbidden to the permissible. Then even if analogy were valid, how could that be when it is entirely invalid? Or to rule for falsehood by the ruling of truth, and for the wrongdoer by the judgment of one who did not wrong - this is injustice and transgression against the boundaries set by Allah Almighty.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ إنَّمَا جَاءَ فِيمَنْ اشْتَرَى عَبْدًا فَاسْتَغَلَّهُ، ثُمَّ وَجَدَ بِهِ عَيْبًا فَرَدَّهُ، فَكَانَ خَرَاجُهُ لَهُ - وَهَكَذَا نَقُولُ نَحْنُ، لِأَنَّهُ قَدْ مَلَكَهُ مِلْكًا صَحِيحًا فَاسْتَغَلَّ مَالَهُ لَا مَالَ غَيْرِهِ، وَمِنْ الْبَاطِلِ أَنْ يُقَاسَ الْحَرَامُ عَلَى الْحَلَالِ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا فَكَيْفَ وَهُوَ بَاطِلٌ كُلُّهُ؟ أَوْ أَنْ يَحْكُمَ لِلْبَاطِلِ بِحُكْمِ الْحَقِّ، وَلِلظَّالِمِ بِحُكْمِ مَنْ لَمْ يَظْلِمْ، فَهَذَا الْجَوْرُ وَالتَّعَدِّي لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

L19580 Then, if this report were valid in its generality, the categorization made by those who differentiate between the usurper and the party upon whom a right is due, between the child and the produce, between existing property and reconciled property, would be definitively invalid and refuted. For they derived their position neither from this report nor from the textual precedents we previously cited. Rather, they contradicted all of that. The remaining discourse lies between us and those who deem the produce and the child to belong to the usurper and the obligated party solely through compensation. Thus, the texts we cited necessitate what we have affirmed. Furthermore, the narration transmitted via Abū Dāwūd states: Muḥammad ibn al-Muthannā narrated to us: ʿAbd al-Wahhāb (Ibn ʿAbd al-Majīd al-Thaqafī) narrated to us: Ayyūb (al-Sakhtiyānī) narrated to us from Hishām ibn ʿUrwah from his father from Saʿīd ibn Zayd ibn ʿAmr ibn Nufayl that the Messenger of Allah—peace and blessings be upon him—said: “Whoever revives a dead land, it belongs to him, and no right is due to an unjust claimant.”[4]

ثُمَّ لَوْ صَحَّ هَذَا الْخَبَرُ عَلَى عُمُومِهِ لَكَانَ تَقْسِيمُ مَنْ فَرَّقَ بَيْنَ الْغَاصِبِ وَبَيْنَ الْمُسْتَحَقِّ عَلَيْهِ، وَبَيْنَ الْوَلَدِ وَبَيْنَ الْغَلَّةِ، وَبَيْنَ الْمَوْجُودِ وَالتَّأَلُّفِ بَاطِلًا مَقْطُوعًا بِهِ، لِأَنَّهُ لَا بِهَذَا الْخَبَرِ أَخَذَ، وَلَا بِالنُّصُوصِ الَّتِي قَدَّمْنَا أَخَذَ، بَلْ خَالَفَ كُلَّ ذَلِكَ، فَإِنَّمَا بَقِيَ الْكَلَامُ بَيْنَنَا وَبَيْنَ مَنْ رَأَى الْغَلَّةَ وَالْوَلَدَ لِلْغَاصِبِ وَلِلْمُسْتَحَقِّ عَلَيْهِ بِالضَّمَانِ فَقَطْ، فَالنُّصُوصُ الَّتِي ذَكَرْنَا تُوجِبُ مَا قُلْنَا. وَأَيْضًا: فَإِنَّ الرِّوَايَةَ مِنْ طَرِيقِ أَبِي دَاوُد قَالَ: نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ لِعِرْقِ ظَالِمٍ حَقٌّ» .

L19581–19582 We ask them about one to whom another’s wealth is transferred without right: is this rooted in an unjust origin or not? If they say no, they contradict the Quran and the Sunnah, abandon their own stance and that of the

فَنَسْأَلُهُمْ عَمَّنْ صَارَ إلَيْهِ مَالُ أَحَدٍ بِغَيْرِ حَقٍّ؟ أَعِرْقُ ظَالِمٍ هُوَ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، خَالَفُوا الْقُرْآنَ، وَالسُّنَنَ، وَتَرَكُوا قَوْلَهُمْ، وَقَوْلَ أَهْلِ الْإِسْلَامِ، وَلَزِمَهُمْ أَنْ لَا يَرُدُّوا عَلَى

[4] **Hadith references (L19580):** Sunan Abi Dawud 3073.

Muslims, and are bound to deny restitution to the rightful claimant—since the property is neither in the possession of the liable party nor the usurper. The oppressor operates by an unjust origin; if it is not an unjust origin, then it is a rightful origin, as no intermediary exists between the two.

L19583 Allah the Exalted said: "What is there after truth except misguidance?" [Yūnus: 32] They do not assert this—and were they to say, "Rather, by an unjust lineage that is in his possession," it would necessitate that he has no right to anything this lineage has extended into.[5]

L19584 And this is in the utmost clarity—and success is from Allah, the Exalted.

L19585 As for those who distinguish between the child and the rest of the proceeds, their argument is utterly absurd and corrupt. If their own reasoning were reversed against them, they could not escape its consequences.

L19586 As for those who distinguish between living children—holding that they should be returned—and deceased children—holding that they should not—it is said to them: "Is it obligatory to return everything the mothers produced at the time of birth to their master and the master of their mother, or not?" If they say no, they are obligated not to rule for their return at all, whether they were found alive or dead.

L19587 And if they say: Yes, we reply: The lapse of the obligation to return them due to their death is a baseless statement—its falsehood is plain.

L19588 They have three opinions concerning the children of the woman entitled against the party from whom her entitlement was established: At one time they said: "He takes her and takes the value of her child." At another time they said: "He takes her only, with nothing due to him regarding the child - neither its value nor anything else." At another time they said: "He takes her value and the value of her child."

L19589–19591 Abū Muḥammad said: These statements are profoundly corrupt. We ask them concerning these children: Was the ownership of their mother's master ever established over them at the inception of their creation or at their birth,

الْمُسْتَحَقِّ شَيْئًا، لِأَنَّهُ لَيْسَ بِيَدِ الْمُسْتَحَقِّ عَلَيْهِ، وَلَا بِيَدِ الْغَاصِبِ، وَالظَّالِمُ بِعِرْقِ ظَالِمٍ، وَإِذَا لَمْ يَكُنْ عِرْقُ ظَالِمٍ فَهُوَ عِرْقُ حَقٍّ، إِذْ لَا وَاسِطَةَ بَيْنَهُمَا.

قَالَ تَعَالَى: {فَمَاذَا بَعْدَ الْحَقِّ إِلا الضَّلالُ} [يونس: ٣٢] وَهُمْ لَا يَقُولُونَ بِهَذَا - وَإِنْ قَالُوا: بَلْ بِعِرْقِ ظَالِمٍ هُوَ بِيَدِهِ، لَزِمَهُمْ أَنْ لَا حَقَّ لَهُ فِي شَيْءٍ مِمَّا سَرَى فِيهِ ذَلِكَ الْعِرْقُ.

وَهَذَا فِي غَايَةِ الْوُضُوحِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ فَرَّقَ بَيْنَ الْوَلَدِ وَبَيْنَ سَائِرِ الْغَلَّةِ: فَكَلَامٌ فِي غَايَةِ السُّخْفِ وَالْفَسَادِ، وَلَوْ عُكِسَ عَلَيْهِمْ قَوْلُهُمْ مَا انْفَصَلُوا مِنْهُ.

وَأَمَّا مَنْ فَرَّقَ بَيْنَ الْأَوْلَادِ الْأَحْيَاءِ فَرَأَى رَدَّهُمْ، وَبَيْنَ الْمَوْتَى فَلَمْ يَرَ رَدَّهُمْ فَيُقَالُ لَهُمْ هَلْ وَجَبَ عَلَيْهِ رَدُّ كُلِّ مَا نَتَجَتْ الْأُمَّهَاتُ حِينَ الْوِلَادَةِ إِلَى سَيِّدِهِمْ وَسَيِّدِ أُمِّهِمْ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، لَزِمَهُمْ أَنْ لَا يَقْضُوا بِرَدِّهِمْ أَصْلًا أَحْيَاءً وُجِدُوا أَمْ أَمْوَاتًا.

وَإِنْ قَالُوا: نَعَمْ، قُلْنَا: فَسُقُوطُ وُجُوبِ رَدِّهِمْ بِمَوْتِهِمْ كَلَامٌ بَاطِلٌ لَا خَفَاءَ بِهِ.

وَلَهُمْ فِي أَوْلَادِ الْمُسْتَحَقَّةِ مِمَّنْ اُسْتُحِقَّتْ عَلَيْهِ أَقْوَالٌ ثَلَاثَةٌ -: فَمَرَّةً قَالُوا: يَأْخُذُهَا وَيَأْخُذُ قِيمَةَ وَلَدِهَا، وَمَرَّةً قَالُوا: يَأْخُذُهَا فَقَطْ، وَلَا شَيْءَ لَهُ فِي الْوَلَدِ - لَا قِيمَةَ وَلَا غَيْرِهَا - وَمَرَّةً قَالُوا: يَأْخُذُ قِيمَتَهَا وَقِيمَةَ وَلَدِهَا.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ، وَنَسْأَلُهُمْ عَنْ هَؤُلَاءِ الْأَوْلَادِ هَلْ وَقَعَ عَلَيْهِمْ قَطُّ فِي أَوَّلِ خَلْقِهِمْ، أَوْ حِينَ وِلَادَتِهِمْ: مَلَكَ سَيِّدُ أُمِّهِمْ أَمْ لَمْ يَقَعْ لَهُ قَطُّ عَلَيْهِمْ مِلْكٌ؟

[5] **Qur'an references (L19583):** Qur'an 10:32 (Yunus).

وَلَا ثَالِثَ لِهَذَيْنِ الْقَوْلَيْنِ؟ فَإِنْ قَالُوا: بَلْ قَدْ وَقَعَ عَلَيْهِمْ مِلْكُهُ؟ قُلْنَا: فَفِي أَيِّ دِينِ اللَّهِ عَزَّ وَجَلَّ وَجَدْتُمْ أَنْ تُجْبِرُوهُ عَلَى بَيْعِ عَبْدِهِ أَوْ أَمَتِهِ بِلَا ضَرَرٍ كَانَ مِنْهُ إِلَيْهِمْ؟ وَمَا الْفَرْقُ بَيْنَ هَؤُلَاءِ وَبَيْنَ مَنْ تَزَوَّجَ أَمَةً فَاسْتُرِقَّ وَلَدُهُ مِنْهَا؟ فَهَلَّا أَجْبَرْتُمْ سَيِّدَهَا عَلَى قَبُولِ فِدَائِهِمْ فَإِنْ قَالُوا: عَلَى هَذَا دَخَلَ النَّاكِحُ لَمْ يَنْوِ الْمُسْتَحَقَّ عَلَيْهِ عَلَى ذَلِكَ؟ قُلْنَا: فَكَانَ مَاذَا، وَمَا حُرِّمَتْ أَمْوَالُ النَّاسِ عَلَيْهِمْ بِنِيَّاتِ غَيْرِهِمْ فِيهَا، أَوْ أَيْنَ وَجَدْتُمْ هَذَا الْحُكْمَ؟ وَهَذَا مَا لَا سَبِيلَ إِلَى وُجُودِهِ، وَإِذْ هُمْ فِي مِلْكِهِ فَهُمْ لَهُ بِلَا شَكٍّ.

or has it never applied to them at all? Is there no third possibility beyond these two assertions? If they respond: Indeed, his ownership was established over them, we say: In which law of Allah (the Mighty and Majestic) did you find it permissible to compel him to sell his male slave or female slave without harm? What was his relation to them? What difference exists between these cases and one who married a slave woman and whose child born to her was enslaved? Why did you not compel her owner to accept their ransom? If they say: "The husband entered the marriage on these terms without intending the obligation required of him in this matter," we counter: What of it? People's wealth is not forbidden to them because of others' intentions toward it. Or where did you find this ruling? This has no basis, for since they are his property, they unquestionably belong to him.

وَإِنْ قَالُوا: لَمْ يَقَعْ مِلْكُهُ قَطُّ عَلَيْهِمْ؟ قُلْنَا: فَبِأَيِّ وَجْهٍ تَقْضُونَ لَهُ بِقِيمَتِهِمْ؟ وَهَذَا ظُلْمٌ لِأَبِيهِمْ بَيِّنٌ، وَإِيكَالٌ لِمَا لَهُ بِالْبَاطِلِ، وَإِبَاحَةٌ لِثَمَنِ الْحُرِّ الَّذِي حَرَّمَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ -.

L19592 If they say: "His ownership over them has never been established," we respond: "Then on what basis do you rule to award him their value? This is a clear injustice against their father, wrongfully imposing on him what he falsely claims, and permitting the compensation for a free person which Allah the Exalted and His Messenger—peace be upon him—have forbidden."

وَيُقَالُ لِمَنْ قَالَ: يَأْخُذُ قِيمَةَ الْأُمِّ فَقَطْ، أَوْ يَأْخُذُهَا فَقَطْ: لِأَيِّ شَيْءٍ يَأْخُذُهَا، أَوْ قِيمَتَهَا؟ فَإِنْ قَالُوا: لِأَنَّهَا أَمَتُهُ؟ قُلْنَا: فَأَوْلَادُ أَمَتِهِ عَبِيدُهُ بِلَا شَكٍّ، فَلِمَ أَعْطَيْتُمُوهُ بَعْضَ مَا مَلَكَتْ يَمِينُهُ وَتَمْنَعُونَهُ الْبَعْضَ؟ أَوْ لِمَ تُجْبِرُونَهُ عَلَى بَيْعِهَا وَهُوَ لَا يُرِيدُ بَيْعَهَا -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ أَنَّ رَجُلًا بَاعَ جَارِيَةً لِأَبِيهِ فَتَسَرَّاهَا الْمُشْتَرِي فَوَلَدَتْ لَهُ أَوْلَادًا فَجَاءَ أَبُوهُ فَخَاصَمَهُ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَرَدَّهَا وَوَلَدَهَا إِلَيْهِ، فَقَالَ الْمُشْتَرِي: دَعْ لِي وَلَدِي، فَقَالَ لَهُ: دَعْ لَهُ وَلَدَهُ. قَالَ عَلِيٌّ: هَذِهِ شَفَاعَةٌ مِنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَرَغْبَةٌ وَلَيْسَ فَسْخًا لِقَضَائِهِ بِهَا وَبِوَلَدِهَا لِسَيِّدِهَا -: وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ خِلَاسٍ: أَنَّ أَمَةً أَتَتْ طَيِّئًا فَزَعَمَتْ أَنَّهَا حُرَّةٌ، فَتَزَوَّجَهَا رَجُلٌ مِنْهُمْ فَوَلَدَتْ لَهُ أَوْلَادًا ثُمَّ إِنَّ سَيِّدَهَا ظَهَرَ عَلَيْهَا

It is said to those who claim he takes only the female slave's value or takes her alone: "For what reason does he take her or her value?" If they reply: "Because she is his slave," we respond: "Then the children of his female slave are unquestionably his slaves. Why then do you grant him partial ownership over those whom his right hand possesses while denying him the remainder? Why compel him to sell her against his will?"

It has been narrated to us through the chain of Hammad ibn Salama from Humayd: A man sold a slave girl belonging to his father. The purchaser took her as a concubine, and she bore him children. When the father brought the case to Umar ibn al-Khattab, he restored her and her children to him. The purchaser pleaded: "Let me keep my child," but Umar replied: "Let him keep his child." Ali remarked: "This was Umar's intercession—may Allah be pleased with him—motivated by goodwill, not a reversal of his judgment that she and her offspring belong to her master."

فَقَضَى بِهَا عُثْمَانُ بْنُ عَفَّانَ: أَنَّهَا وَأَوْلَادَهَا لِسَيِّدِهَا، وَأَنَّ لِزَوْجِهَا مَا أَدْرَكَ مِنْ مَتَاعِهِ، وَجَعَلَ فِيهِمْ الْمِلَّةَ وَالسُّنَّةَ كُلُّ رَأْسٍ رَأْسَيْنِ.

Another narration through Muhammad ibn al-Muthanna, from Abd al-A'la, from Sa'id ibn Abi Arubah, from Qatadah, from Khilas: A slave woman came to the tribe of Tayy claiming she was free. A man married her, and she bore him children. When her master later proved ownership, Uthman ibn Affan ruled that she and her children belonged to her master, entitling the husband only to recover his possessions. He applied Islamic law and the Sunnah among them, ruling that each individual's liability is doubled.

L19594 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ مَنْصُورٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ امْرَأَةً وَابْنًا لَهَا بَاعَا جَارِيَةً لِزَوْجِهَا - وَهُوَ أَبُو الْوَلَدِ - فَوَلَدَتْ الْجَارِيَةُ لِلَّذِي ابْتَاعَهَا ثُمَّ جَاءَ زَوْجُهَا فَخَاصَمَ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ؟ فَقَالَ: لَمْ أَبِعْ وَلَمْ أَهَبْ؟ فَقَالَ لَهُ عَلِيٌّ: قَدْ بَاعَ ابْنُك وَبَاعَتْ امْرَأَتُك؟ قَالَ: إنْ كُنْت تَرَى لِي حَقًّا فَأَعْطِنِي؟ قَالَ: فَخُذْ جَارِيَتَك وَابْنَهَا، ثُمَّ سَجَنَ الْمَرْأَةَ وَابْنَهَا حَتَّى تَخَلَّصَا لَهُ، فَلَمَّا رَأَى الزَّوْجُ ذَلِكَ أَنْفَذَ الْبَيْعَ.

L19598 And through the chain of Ibn Abi Shaybah from Abu Bakr ibn 'Ayyash from Mutarrif from Al-Sha'bi from 'Ali regarding a man who bought a female slave who bore him a child, then another claimant established rightful ownership of her through conclusive proof. 'Ali said: "She is returned to the claimant, her child's value is assessed, and the seller must compensate [the buyer] according to his value, whether high or low."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ عَنْ مُطَرِّفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ فِي رَجُلٍ اشْتَرَى جَارِيَةً فَوَلَدَتْ لَهُ ثُمَّ اسْتَحَقَّهَا آخَرُ بِبَيِّنَةٍ؟ قَالَ عَلِيٌّ: تَرُدُّ عَلَيْهِ، وَيُقَوَّمُ وَلَدُهَا فَيَغْرَمُ الَّذِي بَاعَهُ بِمَا عَزَّ وَهَانَ.

L19599 It was narrated to us through the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us—Muṭarrif (son of Ṭarīf) and al-Mughīrah. Muṭarrif reported from al-Shaʿbī, while al-Mughīrah reported from Ibrāhīm. Al-Shaʿbī and

L19595–19597 Thus, this Ali recognized the legal truth that she and her child belonged to their master, ruled in accordance with this truth, and imprisoned the woman. And her child—and both of them are entitled to this—due to their transgression; accepting a ransom may be intended as the return of the price, and this is a right.

فَهَذَا عَلِيٌّ قَدْ رَأَى الْحَقَّ أَنَّهَا وَوَلَدَهَا لِسَيِّدِهَا وَقَضَى بِذَلِكَ، وَسَجَنَ الْمَرْأَةَ وَوَلَدَهَا - وَهُمَا أَهْلٌ لِذَلِكَ - لِتَعَدِّيهِمَا، وَالْأَخْذُ بِالْخَلَاصِ قَدْ يَكُونُ الْمُرَادُ بِهِ رَدَّ الثَّمَنِ وَهَذَا حَقٌّ.

Ibrāhīm both agreed regarding the children of al-Ghārah: their father is obligated to ransom them with what is precious or trivial.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - وَالْمُغِيرَةُ، قَالَ مُطَرِّفٌ: عَنْ الشَّعْبِيِّ، وَقَالَ مُغِيرَةُ: عَنْ إبْرَاهِيمَ، ثُمَّ اتَّفَقَ الشَّعْبِيُّ، وَإِبْرَاهِيمُ فِي وَلَدِ الْغَارَّةِ أَنَّ عَلَى أَبِيهِمْ أَنْ يَفْدِيَهُمْ بِمَا عَزَّ وَهَانَ.

L19600 And from Al-Hasan: They are to be redeemed with a slave for each slave.

وَعَنْ الْحَسَنِ: يُفْدَوْنَ بِعَبْدٍ عَبْدٍ.

L19601 It has been narrated to us through the chain of Saʿīd ibn Manṣūr from Sufyān ibn ʿUyaynah from Ayyūb ibn Mūsā from Ibn Qusayṭ from Sulaymān ibn Yasār, who said: "'Umar ruled that the value of the children born to the deceiving female slave be paid as a ghurrah (legal compensation)." We have also narrated it through the chain of Ibn Abī Shaybah: from Sufyān from Ayyūb ibn Mūsā from Ibn Qusayṭ from Sulaymān ibn Yasār, who said: "A slave woman deceived people by claiming she was free, then married among them and bore children. When they discovered she was enslaved, ʿUmar ruled that the value of her children be paid as a ghurrah (fixed compensation) for each instance of deception."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ ابْنِ قُسَيْطٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: قَضَى عُمَرُ فِي أَوْلَادِ الْغَارَّةِ بِالْقِيمَةِ. وَرُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا سُفْيَانُ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ ابْنِ قُسَيْطٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: غَرَّتْ أَمَةٌ قَوْمًا وَزَعَمَتْ أَنَّهَا حُرَّةٌ فَتَزَوَّجَتْ فِيهِمْ فَوَلَدَتْ أَوْلَادًا فَوَجَدُوهَا أَمَةً فَقَضَى عُمَرُ بِقِيمَةِ أَوْلَادِهَا فِي كُلِّ مَغْرُورٍ غُرَّةً.

L19602 Al-Shaʿbi and Ibn al-Musayyib ruled with a ghurrah (fixed compensation for fetal loss) regarding the child of the deceived.

وَقَضَى الشَّعْبِيُّ، وَابْنُ الْمُسَيِّبِ فِي وَلَدِ الْمَغْرُورِ بِغُرَّةٍ.

L19603 This is also the opinion of Abū Maysarah and al-Ḥasan: For each individual, a *ghurrah* (fixed compensation for fetal loss) is due.

وَهُوَ أَيْضًا قَوْلُ أَبِي مَيْسَرَةَ، وَالْحَسَنِ: مَكَانَ كُلِّ وَاحِدٍ غُرَّةٌ.

L19604 And Ibrahim said: Their value is upon their father, and a portion of the value is deducted from him.

وَقَالَ إبْرَاهِيمُ: عَلَى أَبِيهِمْ قِيمَتُهُمْ وَيُهْضَمُ عَنْهُ مِنْ الْقِيمَةِ شَيْءٌ.

L19605 This is our opinion: it is the opinion of Abū Thawr, Abū Sulaymān, our associates, and the opinion of al-Shāfiʿī – except concerning the child of the legally responsible father attributed through her alone, for al-Shāfiʿī contradicted his own position in that matter.

وَهَذَا قَوْلُنَا: وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَقَوْلُ الشَّافِعِيِّ، إلَّا فِي وَلَدِ الْمُسْتَحَقِّ عَلَيْهِ مِنْهَا فَقَطْ، فَإِنَّهُ نَاقَضَ فِي ذَلِكَ.

L19606 We were narrated through the chain of Ibn Abī Shaybah: Ismāʿīl ibn ʿUlayyah reported from ʿAbdullāh ibn ʿAwn that a man purchased a slave and utilized his labor. Another man then came forward claiming ownership and brought the dispute before Iyās ibn Muʿāwiyah. When the claimant established his

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ أَنَّ رَجُلًا اشْتَرَى عَبْدًا فَاسْتَغَلَّهُ، ثُمَّ جَاءَ رَجُلٌ فَادَّعَاهُ فَخَاصَمَ إلَى إيَاسِ بْنِ مُعَاوِيَةَ فِيهِ فَاسْتَحَقَّهُ

right, Iyās ruled to grant him both the slave and his usufruct. He further ruled that the purchaser should receive from his seller a slave of equivalent value and equivalent usufruct. Ibn ʿAwn said: "I mentioned this to Muḥammad ibn Sīrīn, who remarked: 'That is sound judgment.' Thus, both Iyās ibn Muʿāwiyah and Muḥammad ibn Sīrīn adhere to our opinion regarding the restitution of usufruct in cases of established ownership claims."

فَقَضَى لَهُ بِالْعَبْدِ وَبِغَلَّتِهِ، وَقَضَى لِلرَّجُلِ عَلَى صَاحِبِهِ الَّذِي اشْتَرَاهُ مِنْهُ بِمِثْلِ الْعَبْدِ، وَبِمِثْلِ غَلَّتِهِ، قَالَ ابْنُ عَوْنٍ: فَذَكَرْت ذَلِكَ لِمُحَمَّدِ بْنِ سِيرِينَ فَقَالَ: هُوَ فَهْمٌ - فَهَذَانِ إيَاسُ بْنُ مُعَاوِيَةَ، وَمُحَمَّدُ بْنُ سِيرِينَ، يَقُولَانِ بِقَوْلِنَا فِي رَدِّ الْغَلَّةِ فِي الِاسْتِحْقَاقِ.

L19607–19609 And through the chain of Abd al-Razzaq, from Sufyan al-Thawri, who said: "If you purchased sheep and they multiplied, then [someone] came…" He must return her and her offspring; if the female slave gives birth, likewise.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: إذَا اشْتَرَيْت غَنَمًا فَنَمَتْ ثُمَّ جَاءَ أَمْرٌ بِرَدِّ الْبَيْعِ فِيهِ قَالَ: يَرُدُّهَا وَنَمَاءَهَا، وَالْجَارِيَةُ إذَا وَلَدَتْ كَذَلِكَ.

L19610 If they say: "Why do you differentiate between the usurper and the rightful parent, attributing the child to the rightful parent but not to the usurper?" We reply: Indeed, because no two people—whether believer or disbeliever—have ever disagreed that when the Messenger of Allah (peace be upon him) was sent, people embraced Islam, among whom were children of women married through invalid marriages or women unlawfully possessed. Both the possessor and the one who contracted the marriage presumed those acts of ownership or marriage to be valid. Thus, he [the Prophet] attributed them to their fathers, but the child of a usurper or adulterer was never attributed to the one who placed him in his mother's womb. Rather, the Prophet (peace be upon him) said: "For the fornicator is the stone." The usurper and the one knowingly entering invalid contracts—whether in ownership or marriage—are equivalent to fornicators and thus have no right to the child. And success is from Allah, the Exalted.

فَإِنْ قَالُوا: فَلِمَ فَرَّقْتُمْ أَنْتُمْ بَيْنَ الْغَاصِبِ وَالْمُسْتَحِقِّ فَأَلْحَقْتُمْ الْوَلَدَ بِالْمُسْتَحَقِّ عَلَيْهِ وَلَمْ تُلْحِقُوهُ بِالْغَاصِبِ؟ قُلْنَا: نَعَمْ، لِأَنَّهُ لَمْ يَخْتَلِفْ اثْنَانِ مِنْ مُؤْمِنٍ وَكَافِرٍ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بُعِثَ فَأَسْلَمَ النَّاسُ وَفِيهِمْ أَوْلَادُ الْمَنْكُوحَاتِ النِّكَاحَ الْفَاسِدَ وَالْمُتَمَلَّكَاتِ بِغَيْرِ حَقٍّ، وَالْمُتَمَلِّكُ، وَالنَّاكِحُ يَظُنَّانِ أَنَّ ذَلِكَ النِّكَاحَ وَالْمِلْكَ حَقٌّ، فَأَلْحَقَهُمْ بِآبَائِهِمْ، وَلَمْ يُلْحِقْ قَطُّ وَلَدَ غَاصِبٍ، أَوْ زَانٍ بِمَنْ وَضَعَهُ فِي بَطْنِ أُمِّهِ، بَلْ قَالَ - عَلَيْهِ السَّلَامُ -: «وَلِلْعَاهِرِ الْحَجَرُ» وَالْغَاصِبُ وَالْعَالِمُ بِفَسَادِ عَقْدِهِ - مِلْكًا كَانَ أَوْ زَوَاجًا - عَاهِرَانِ فَلَا حَقَّ لَهُمَا فِي الْوَلَدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19611 This is an issue wherein they opposed ʿUmar, ʿUthmān, and ʿAlī. No opposing opinion from the Companions—may Allah be pleased with them—is known regarding this except a narration reported by Abū Bakr ibn ʿAyyāsh from Muṭarrif ibn Ṭarīf from al-Shaʿbī: A man purchased a slave girl who bore him a child. Another man then presented evidence that she belonged to him. ʿAlī ruled: "She is to be returned to him, the child's value is assessed against him, and the seller is liable for its value, whether high or low." They claimed to rely on this, but they lied, for they do not compel the seller to pay the ransom for his child—except the disconnected narration we previously

وَهَذَا مَكَانٌ خَالَفُوا فِيهِ عُمَرَ، وَعُثْمَانَ، وَعَلِيًّا، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ مُخَالِفٌ إلَّا رِوَايَةً عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ أَنَّ رَجُلًا اشْتَرَى جَارِيَةً فَوَلَدَتْ لَهُ فَأَقَامَ رَجُلٌ الْبَيِّنَةَ أَنَّهَا لَهُ، فَقَالَ عَلِيٌّ: تُرَدُّ إلَيْهِ وَيُقَوَّمُ عَلَيْهِ الْوَلَدُ فَيَغْرَمُ الَّذِي بَاعَ بِمَا عَزَّ وَهَانَ، فَادَّعَوْا أَنَّهُمْ تَعَلَّقُوا بِهَذِهِ، وَقَدْ كَذَبُوا لِأَنَّهُمْ لَا يُغَرِّمُونَ الْبَائِعَ مَا يَفْدِي بِهِ وَلَدَهُ، إلَّا الرِّوَايَةَ الْمُنْقَطِعَةَ الَّتِي ذَكَرْنَا قَبْلُ

عَنْ عُمَرَ أَنَّهُ قَضَى فِي أَوْلَادِ الْغَارَّةِ بِقِيمَتِهِمْ وَالْقِيمَةُ قَدْ صَحَّتْ عَنْ عُمَرَ فِي ذَلِكَ أَنَّهَا عَبْدٌ مَكَانَ عَبْدٍ أَوْ عَبْدَانِ مَكَانَ عَبْدٍ، فَقَدْ خَالَفُوا هَذَا أَيْضًا.

mentioned from ʿUmar, who ruled regarding children born from raids that their value should be paid. The value has been authentically reported from ʿUmar in this matter as "a slave in place of a slave" or "two slaves in place of a slave." Yet they opposed this as well.

وَخَالَفُوا كُلَّ مَنْ ذَكَرْنَا، وَالْحَسَنُ، وَقَتَادَةَ، وَالشَّعْبِيُّ، وَهُمْ جُمْهُورُ مَنْ رَوَى عَنْهُ فِي هَذِهِ الْمَسْأَلَةِ قَوْلٌ فِي فِدَاءِ وَلَدِ الْغَارَّةِ الْمُسْتَحَقَّةِ بِعَبْدٍ.

L19612 They differed with all those we have mentioned—including al-Ḥasan, Qatādah, and al-Shaʿbī, who constitute the majority of narrators from him on this issue—regarding the opinion on redeeming the child of the rightful raid by means of a slave.

وَأَمَّا قَوْلُنَا: إِنَّهُ يَضْمَنُ كُلَّ مَا مَاتَ مِنْ الْوَلَدِ وَالنِّتَاجِ، وَمَا تَلِفَ مِنْ الْغَلَّةِ وَيَضْمَنُ الزِّيَادَةَ فِي الْجِسْمِ وَالْقِيمَةِ، لِأَنَّ كُلَّ ذَلِكَ مَالُ الْمَغْصُوبِ مِنْهُ وَكَانَ فَرْضًا عَلَيْهِ أَنْ يَرُدَّ كُلَّ ذَلِكَ فَهُوَ مُعْتَدٍ بِإِمْسَاكِهِ مَالَ غَيْرِهِ، فَعَلَيْهِ أَنْ يَعْتَدِيَ عَلَيْهِ بِمِثْلِ مَا اعْتَدَى.

L19613 As for our statement that he is liable for every offspring and livestock progeny that dies, whatever perishes of the produce, and the increase in physical growth and value—this is because all such matters constitute the property of the wronged party, and it was obligatory upon him to restore it entirely. By withholding another's property, he commits a wrongful act, and thus he must compensate with the equivalent of the harm caused by his transgression.

فَإِنْ قَالُوا: لَيْسَ مُعْتَدِيًا، لِأَنَّهُ لَمْ يُبَاشِرْ غَصْبَ الْوَلَدِ وَإِنَّمَا هُوَ بِمَنْزِلَةِ رِيحٍ أَلْقَتْ ثَوْبًا فِي مَنْزِلِ الْإِنْسَانِ؟ قُلْنَا: هَذَا بَاطِلٌ، لِأَنَّ الَّذِي رَمَتْ الرِّيحُ الثَّوْبَ فِي مَنْزِلِهِ لَيْسَ مُتَمَلِّكًا لَهُ وَلَوْ تَمَلَّكَهُ لَلَزِمَهُ ضَمَانُهُ، وَهَذَا الْمُشْتَرِي أَوْ الْغَاصِبُ مُتَمَلِّكٌ لِكُلِّ مَا تَوَلَّدَ مِنْ غَلَّةٍ، أَوْ زِيَادَةٍ، أَوْ نِتَاجٍ، أَوْ ثَمَرَةٍ، حَائِلٌ بَيْنَهُ وَبَيْنَ صَاحِبِهِ الَّذِي افْتَرَضَ اللَّهُ تَعَالَى رَدَّهُ إلَيْهِ، وَحَرَّمَ عَلَيْهِ إمْسَاكَهُ عَنْهُ، فَهُوَ مُعْتَدٍ بِذَلِكَ يَقِينًا فَعَلَيْهِ أَنْ يَعْتَدِيَ عَلَيْهِ بِمِثْلِ مَا اعْتَدَى.

L19614–19616 If they say: He is not considered an aggressor because he did not directly usurp the child, but is merely like wind that cast a garment into someone's dwelling - we respond: This is invalid. For the one into whose home the wind threw the garment does not own it. Had he claimed ownership, he would be liable for it. Yet the buyer or the usurper owns everything generated from usufruct, increase, or... If there is an offspring or produce interposing a barrier between him and its rightful owner—to whom Allah the Exalted has ordained its return and prohibited him from withholding it from him—then he is undoubtedly transgressing thereby, so he must be transgressed against in the same manner he transgressed.

وَأَمَّا الزِّيَادَةُ فِي الثَّمَنِ، فَإِنَّهُ حِينَ زَادَ ثَمَنُهُ كَانَ فَرْضًا عَلَيْهِ رَدُّهُ إلَى صَاحِبِهِ بِجَمِيعِ صِفَاتِهِ، فَكَانَ لَازِمًا لَهُ أَنْ يَرُدَّهُ إلَيْهِ وَهُوَ يُسَاوِي تِلْكَ الْقِيمَةَ، فَإِذَا لَزِمَهُ ذَلِكَ ثُمَّ نَقَصَتْ قِيمَتُهُ فَإِنَّهُ لَا يَسْقُطُ رَدُّ مَا لَزِمَهُ رَدُّهُ.

L19617 As for the increase in price: when its value rises, it becomes obligatory to return it to its owner with all its attributes. He is therefore bound to return it equal to that value. Once this obligation takes effect, even if its value subsequently decreases, the requirement to return what he is obligated to restore does not cease.

L19618 As for rent: If one prevents the owner from accessing the tangible asset of his property, thereby depriving him of its benefits, they become liable

for those benefits. They are obligated to pay what they withheld from his rightful due, in accordance with the command of Allah's Messenger—peace and blessings be upon him—that every entitled party must be granted their rightful claim. The rent of his property is unquestionably part of his rightful claim, making it obligatory upon the withholder to grant him his due right.

وَأَمَّا الْكِرَاءُ: فَإِنَّهُ إِذْ حَالَ بَيْنَ صَاحِبِهِ وَبَيْنَ عَيْنِ مَالِهِ حَالَ بَيْنَهُ وَبَيْنَ مَنَافِعِه فَضَمِنَهَا، وَلَزِمَهُ أَدَاءُ مَا مَنَعَهُ مِنْ حَقِّهِ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ، وَكِرَاءُ مَتَاعِهِ مِنْ حَقِّهِ بِلَا شَكٍّ، فَفَرْضٌ عَلَى مَانِعِهِ إعْطَاؤُهُ حَقَّهُ.

L19619 Among the wonders of the world is the claim of the Hanafis that the rent belongs to the usurper along with the produce, while he incurs no liability for their offspring that die. Yet they assert that if someone hunts a deer within the sacred precinct, captures it without killing it, and it later bears offspring in his possession—if those offspring die without him slaughtering them—he must offer expiation for the deer and its offspring. Had they reversed their position, they would have been correct. For Allah the Exalted has not imposed liability on the hunter of the deer—whether it lives or dies—unless he intentionally kills it; otherwise, there is no liability. Yet they persistently distort the words of Allah the Exalted from their proper contexts.

وَمِنْ عَجَائِبِ الدُّنْيَا -: قَوْلُ الْحَنَفِيِّينَ إنَّ الْكِرَاءَ لِلْغَاصِبِ وَالْغَلَّةَ، وَلَا يَضْمَنُ وَلَدَهَا الْمَوْتَى، ثُمَّ يَقُولُونَ فِيمَنْ صَادَ ظَبْيَةً فِي الْحَرَمِ فَأَمْسَكَهَا وَلَمْ يَقْتُلْهَا، حَتَّى إذَا وَلَدَتْ عِنْدَهُ أَوْلَادًا فَمَاتُوا وَلَمْ يَذْبَحْهُمْ: أَنَّهُ يَجْزِيهَا وَيَجْزِي أَوْلَادَهَا - فَلَوْ عَكَسُوا لَأَصَابُوا وَمَا أَلْزَمَ اللَّهُ تَعَالَى صَائِدَ الظَّبْيَةِ ضَمَانَهَا - عَاشَتْ أَوْ مَاتَتْ - إلَّا أَنْ يَقْتُلَهَا عَامِدًا، وَإِلَّا فَلَا، فَهُمْ أَبَدًا يُحَرِّفُونَ كَلَامَ اللَّهِ تَعَالَى عَنْ مَوَاضِعِهِ.

L19620 The most astonishing thing is how some of their leading figures argue from ignorance by saying: "What sin has the child committed to warrant enslavement?" We responded: "We know of no sin that necessitates enslavement. Apostasy, intentional killing of a believer, abandonment of prayer, and adultery by a married person are the gravest sins – yet none of these necessitate the enslavement of the perpetrator. Meanwhile, the children of disbelievers are enslaved despite having committed no sin. Therefore, none would raise such delusion-filled objections except one devoid of intellect and religion."

وَأَعْجَبُ شَيْءٍ احْتِجَاجُ بَعْضِ مُتَصَدِّرِيهِمْ بِالْجَهْلِ بِأَنْ قَالَ: وَأَيُّ ذَنْبٍ لِلْوَلَدِ حَتَّى يُسْتَرَقَّ؟ فَقُلْنَا: مَا عَلِمْنَا ذَنْبًا يُوجِبُ الِاسْتِرْقَاقَ، وَالرِّدَّةَ، وَقَتْلَ الْمُؤْمِنِ عَمْدًا، وَتَرْكَ الصَّلَاةِ، وَزِنَى الْمُحْصَنِ أَعْظَمُ الذُّنُوبِ، وَلَيْسَ شَيْءٌ مِنْ ذَلِكَ يُوجِبُ اسْتِرْقَاقَ فَاعِلِهِ وَأَوْلَادُ الْكُفَّارِ يُسْتَرَقُّونَ وَلَا ذَنْبَ لَهُمْ فَلَيْسَ يَعْتَرِضُ بِمِثْلِ هَذَا الْهَوَسِ إلَّا مَنْ لَا عَقْلَ لَهُ وَلَا دِينَ.

L19621 As for our position that the mahr is waived in cases of intercourse by a usurper or the party against whom a claim is made, this is because neither the Qur'an nor the Sunnah mandates it. The property of the usurper and the party against whom a claim is made is prohibited, except what is explicitly required by the scriptural text. No mahr is owed except in a valid marriage or solely for the woman married without her guardian's consent—as stipulated by the scriptural text. He is only liable to compensate the diminution in her value caused by his intercourse with her, whether due to the usurper's fornication or solely the mistake of the party against whom a claim is made,

وَأَمَّا إسْقَاطُنَا الْمَهْرَ فِي وَطْءِ الْغَاصِبِ، وَالْمُسْتَحَقِّ، فَلِأَنَّهُ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ، وَمَالُ الْغَاصِبِ وَالْمُسْتَحَقِّ عَلَيْهِ: حَرَامٌ، إلَّا مَا أَوْجَبَهُ النَّصُّ وَلَا مَهْرَ إلَّا فِي نِكَاحٍ صَحِيحٍ، أَوْ لِلَّتِي نُكِحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا فَقَطْ - عَلَى مَا جَاءَ بِهِ النَّصُّ - وَإِنَّمَا عَلَيْهِ ضَمَانُ مَا نَقَصَهُ وَطْؤُهُ إيَّاهَا بِزِنَى الْغَاصِبِ أَوْ بِجَهْلِ الْمُسْتَحَقِّ عَلَيْهِ فَقَطْ، لِأَنَّهُ اسْتَهْلَكَ بِذَلِكَ بَعْضَ قِيمَةِ أَمَةِ غَيْرِهِ فَقَطْ.

for he has thereby appropriated a portion of the value of another's slave woman.

وَأَمَّا الْقَضَاءُ بِالْمِثْلِ: فَإِنَّ الْمُتَأَخِّرِينَ اخْتَلَفُوا، فَقَالَ بَعْضُهُمْ: لَا يُعْطَى إِلَّا الْقِيمَةَ فِي كُلِّ شَيْءٍ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ فِيمَنْ اسْتَهْلَكَ حِنْطَةً أَنَّ لَهُ طَعَامًا مِثْلَ طَعَامِهِ، قَالَ سُفْيَانُ، وَقَالَ غَيْرُهُ مِنْ فُقَهَائِنَا: لَهُ الْقِيمَةُ.

L19622–19624 As for equivalent recompense (qāḍā' bi-l-mithl), later jurists disagreed. Some said: "Nothing but the monetary value is to be given in all things." This has been narrated to us through the transmission of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Abū Isḥāq al-Shaybānī. Regarding one who wrongfully consumes wheat, some jurists ruled that he must provide food equivalent to what he consumed. Sufyān and other jurists from our school said: he must pay its value.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: أَمَّا مَا يُكَالُ أَوْ يُوزَنُ فَعَلَيْهِ مِثْلُهُ مِنْ نَوْعِهِ، وَأَمَّا مَا عَدَا ذَلِكَ مِنْ الْعُرُوضِ، وَالْحَيَوَانِ فَالْقِيمَةُ.

L19625 Abu Hanifah and Malik said: Regarding what is measured by volume or weighed, one must replace it with its equivalent in kind. As for other categories such as trade goods and animals, the market value is due.

وَقَالَ أَصْحَابُنَا: الْمِثْلُ فِي كُلِّ ذَلِكَ وَلَا بُدَّ، فَإِنْ عُدِمَ الْمِثْلُ فَالْمَضْمُونُ لَهُ مُخَيَّرٌ بَيْنَ أَنْ يُمْهِلَهُ حَتَّى يُوجَدَ الْمِثْلُ، وَبَيْنَ أَنْ يَأْخُذَ الْقِيمَةَ.

L19626 Our companions held that the equivalent is obligatory in all such cases. If the equivalent is unavailable, the obligee may choose between granting respite until the equivalent becomes available or accepting its monetary value.

قَالَ أَبُو مُحَمَّد: وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ خِلَافُهُ، وَمَا نَعْلَمُ لِمَنْ قَضَى بِالْقِيمَةِ حُجَّةً أَصْلًا إلَّا أَنَّ بَعْضَهُمْ أَتَى بِطَامَّةٍ، فَقَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى عَلَى مَنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ بِأَنْ يُقَوَّمَ عَلَيْهِ بَاقِيهِ لِشَرِيكِهِ، قَالُوا: فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَنْ اسْتَهْلَكَ حِصَّةَ غَيْرِهِ مِنْ الْعَبْدِ بِالْقِيمَةِ» .

L19627 Abu Muhammad said: This is the correct ruling that admits no contradiction, and we know of no valid argument whatsoever for those who ruled based on valuation except that some of them committed a grave error. He said: "The Messenger of Allah - peace and blessings of Allah be upon him - ruled against one who freed his partnership share in a slave, requiring that the remaining portion's value be assessed against him for his co-owner." They said: "The Messenger of Allah - peace and blessings of Allah be upon him - ruled against one who appropriated another's share in the slave to compensate based on valuation."

قَالَ عَلِيٌّ: وَهَذَا مِنْ عَجَائِبِهِمْ فَإِنَّهُمْ أَفْحَشُوا الْخَطَأَ فِي هَذَا الِاحْتِجَاجِ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا - احْتِجَاجُهُمْ بِهِ فِيمَنْ اسْتَهْلَكَ، وَالْمُعْتِقُ نَصِيبَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ آخَرَ لَمْ يَسْتَهْلِكْ شَيْئًا، وَلَا غَصَبَ شَيْئًا، وَلَا تَعَدَّى أَصْلًا، بَلْ أَعْتَقَ حِصَّتَهُ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ عِتْقَهَا، وَإِنَّمَا هُوَ حُكْمٌ مِنْ اللَّهِ تَعَالَى أَنْفَذَهُ لَا لِتَعَدٍّ مِنْ الْمُعْتِقِ أَصْلًا.

L19628 Ali said: This exemplifies their egregious errors, for they have gravely erred in this argument in two respects: The first is their application of this reasoning to one who has misappropriated [property], whereas the person emancipating their share of a slave jointly owned with another has neither misappropriated anything, nor usurped anything, nor fundamentally transgressed. Rather, they have emancipated their share - which Allah the Exalted has permitted them to emancipate. This is purely a divine decree ordained by

Allah the Exalted to be implemented, not stemming from any fundamental transgression by the emancipator whatsoever.

L19629–19631 The second point is the magnitude of their contradiction, for it necessarily follows that if the mentioned emancipator is deemed to have consumed his co-owner's share—thereby obliging him to compensate its value whether insolvent or solvent, as they rule in all cases of consumption—yet they do not apply this here. How can one who knows that Allah the Exalted will question him about his statements concerning religion, and that Allah's servants scrutinize his speech, deem it permissible to engage in such ugly, corrupt brazenness: diverting the Sunnah from its rightful positions and striving to suppress the truth through this? They cannot claim consensus here, for Ibn Abī Laylā and Zufar ibn al-Hudhayl hold him liable whether insolvent or solvent. We disregard the dismissal of these two—their error is rooted in opposing the ruling of Allah's Messenger (peace be upon him), who (peace be upon him) imposed no liability on the insolvent but merely ordained in that matter to compel the emancipator to work alone. It has been narrated to us through the chain of Al-Layth ibn Saʿd from Jarīr ibn Ḥāzim from Ḥumayd al-Ṭawīl, who said: I heard Anas ibn Mālik relate that Zaynab bint Jaḥsh sent a platter of ḥays (date paste mixed with clarified butter) as a gift to the Messenger of Allāh—peace and blessings be upon him—while he was in ʿĀ'ishah's house during her allocated day (her turn). ʿĀ'ishah stood up, seized the platter, smashed it on the ground, and broke it. The Messenger of Allāh—peace and blessings be upon him—rose, took one of her platters, gave it to Zaynab's messenger, and said: "This replaces her platter." He then told ʿĀ'ishah: "Yours is the one you broke." This constitutes a ruling of equivalent replacement, not compensation through dirhams or monetary value.

L19632 It has been reported from ʿUthmān and Ibn Masʿūd that they ruled against anyone who consumed two items, requiring them to replace these with two equivalent ones.

L19633 From Zayd ibn Thābit and ʿAlī: that they both ruled by equivalent compensation for one who sold a camel but excluded its hide, head, and droppings.

وَالثَّانِي - عَظِيمٌ تَنَاقُضُهُمْ، لِأَنَّهُ يَلْزَمُهُمْ إِنْ كَانَ الْمُعْتِقُ الْمَذْكُورُ مُسْتَهْلِكًا حِصَّةَ شَرِيكِهِ، وَلِذَلِكَ يَضْمَنُ الْقِيمَةَ بِأَنْ يُوجِبُوا ذَلِكَ عَلَيْهِ مُعْسِرًا كَانَ أَوْ مُوسِرًا كَمَا يَفْعَلُونَ فِي كُلِّ مُسْتَهْلِكٍ وَهُمْ لَا يَفْعَلُونَ هَذَا فَكَيْفَ يَسْتَحِلُّ مَنْ يَدْرِي أَنَّ اللَّهَ تَعَالَى سَائِلُهُ عَنْ كَلَامِهِ فِي الدِّينِ، وَأَنَّ عِبَادَ اللَّهِ تَعَالَى يَتَعَقَّبُونَ كَلَامَهُ عَلَى هَذِهِ الْمُجَاهَرَةِ الْقَبِيحَةِ الْفَاسِدَةِ مِنْ إحَالَةِ السُّنَنِ عَنْ مَوَاضِعِهَا وَسَعْيِهِمْ فِي إدْحَاضِ الْحَقِّ بِذَلِكَ؟ وَلَيْسَ لَهُمْ أَنْ يَدَّعُوا هَاهُنَا إجْمَاعًا، لِأَنَّ ابْنَ أَبِي لَيْلَى، وَزُفَرَ بْنَ الْهُذَيْلِ يُضَمِّنُونَهُ مُعْسِرًا أَوْ مُوسِرًا، وَمَا نُبَالِي بِطَرْدِ هَذَيْنِ أَصْلُهُمَا فِي الْخَطَأِ، لِأَنَّهُمَا فِي ذَلِكَ مُخَالِفَانِ لِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُضَمِّنْ الْمُعْسِرَ شَيْئًا، وَإِنَّمَا أَمَرَ فِي ذَلِكَ بِالِاسْتِسْعَاءِ لِلْمُعْتَقِ فَقَطْ -: رُوِّينَا مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ حُمَيْدٍ الطَّوِيلِ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ يُحَدِّثُ «أَنَّ زَيْنَبَ بِنْتَ جَحْشٍ أَهْدَتْ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي بَيْتِ عَائِشَةَ وَيَوْمِهَا: جَفْنَةً مِنْ حَيْسٍ، فَقَامَتْ عَائِشَةُ فَأَخَذَتْ الْقَصْعَةَ فَضَرَبَتْ بِهَا الْأَرْضَ فَكَسَرَتْهَا، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى قَصْعَةٍ لَهَا فَدَفَعَهَا إلَى رَسُولِ زَيْنَبَ، فَقَالَ: هَذِهِ مَكَانُ صَحْفَتِهَا - وَقَالَ لِعَائِشَةَ: لَكِ الَّتِي كَسَرْتِ» فَهَذَا قَضَاءٌ بِالْمِثْلِ لَا بِالدَّرَاهِمِ بِالْقِيمَةِ.

وَقَدْ رُوِيَ عَنْ عُثْمَانَ، وَابْنِ مَسْعُودٍ: أَنَّهُمَا قَضَيَا عَلَى مَنْ اسْتَهْلَكَ فُصْلَانًا بِفُصْلَانٍ مِثْلِهَا.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَلِيٍّ: أَنَّهُمَا قَضَيَا بِالْمِثْلِ فِيمَنْ بَاعَ بَعِيرًا وَاسْتَثْنَى جِلْدَهُ، وَرَأْسَهُ، وَسَوَاقِطَهُ.

وَعَنْ عُمَرَ، وَعُثْمَانَ، وَالْحَسَنِ، وَالشَّعْبِيِّ، وَقَتَادَةَ، فِي فِدَاءِ وَلَدِ الْغَارَّةِ بِعَبِيدٍ لَا بِالْقِيمَةِ.

L19634 From Umar, Uthman, al-Hasan, al-Sha'bi, and Qatadah regarding the ransom for the child of a slave woman consisting of slaves, not monetary value.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ: أَنَّهُ قَضَى فِي قَصَّارٍ شَقَّ ثَوْبًا أَنَّ الثَّوْبَ لَهُ، وَعَلَيْهِ مِثْلُهُ؟ فَقَالَ رَجُلٌ: أَوْ ثَمَنُهُ؟ فَقَالَ شُرَيْحٌ: إنَّهُ كَانَ أَحَبَّ إلَيْهِ مِنْ ثَمَنِهِ، قَالَ: إنَّهُ لَا يَجِدُ، قَالَ: لَا وَجَدَ.

L19635 And through the chain of Abd al-Razzaq from Ma'mar from Ayyub from Ibn Sirin from Shuraih: He ruled regarding a launderer who tore a garment that the garment belongs to its owner, and he must provide its equivalent? A man asked: "Or its price?" Shuraih replied: "The garment itself was more cherished by him than its price." The man said: "He cannot find it." Shuraih said: "No, he must find it."

وَعَنْ قَتَادَةَ: أَنَّهُ قَضَى فِي ثَوْبٍ اُسْتُهْلِكَ بِالْمِثْلِ.

L19636 And from Qatadah: He ruled that a garment which had been used up should be replaced with its equivalent.

قَالَ أَبُو مُحَمَّدٍ: لَمْ نُورِدْ قَوْلَ أَحَدٍ مِمَّنْ أَوْرَدْنَا احْتِجَاجًا بِهِ، وَإِنَّمَا أَوْرَدْنَاهُ لِئَلَّا يَهْجُمُوا بِدَعْوَى الْإِجْمَاعِ جُرْأَةً عَلَى الْبَاطِلِ، فَإِنْ قَالُوا: فَإِنَّكُمْ لَا تَقْضُونَ بِالْمَكْسُورِ لِلْكَاسِرِ، فَقَدْ خَالَفْتُمْ الْحَدِيثَ؟ قُلْنَا: حَاشَا لِلَّهِ مِنْ ذَلِكَ لَكِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L19637 Abū Muḥammad said: We did not invoke the statements of those we mentioned as evidentiary proofs, but rather we mentioned them to prevent them from rashly asserting a false claim of consensus through audacity in falsehood. If they say: "Then you do not rule that the broken item belongs to the one who broke it—so have you indeed contradicted the ḥadīth?" We say: Far be it from Allah that we do so! Rather, the Prophet (peace and blessings of Allah be upon him) said: "Your blood and your wealth are inviolable to you."

فَعَلِمْنَا أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يُعْطِي أَحَدًا غَيْرَ حَقِّهِ، وَلَا أَكْثَرَ مِنْ حَقِّهِ، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنَّهَا لَك مِنْ أَجْلِ كَسْرِك إيَّاهَا فَقَدْ كَذَبَ عَلَيْهِ مَنْ نَسَبَ إلَيْهِ هَذَا الْحُكْمَ مِنْ غَيْرِ أَنْ يَقُولَهُ - عَلَيْهِ السَّلَامُ -.

L19638 Thus, we knew that he—peace be upon him—does not grant anyone less than their due nor more than their due, and he—peace be upon him—did not say: "It is yours because you broke it." Therefore, whoever ascribed this ruling to him without him—peace be upon him—having said it has indeed lied against him.

فَصَحَّ بِذَلِكَ يَقِينًا أَنَّ تِلْكَ الْكِسَارَةَ الَّتِي أَعْطَى لِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - لَا تَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنَّهَا لَمْ تَصْلُحْ لِشَيْءٍ فَأَبْقَاهَا كَمَا يَحِلُّ لِكُلِّ إنْسَانٍ مِنَّا مَا فَسَدَ جُمْلَةً مِنْ مَتَاعِ غَيْرِهِ وَلَمْ يَنْتَفِعْ مِنْهُ شَيْءٌ.

L19639 Thus, it was firmly established with certainty that that broken piece which he gave to 'Aisha—may Allah be pleased with her—could not escape one of two aspects, with no third alternative: either it had become wholly unfit for any purpose, so he retained it, just as it is permissible for any individual among us to retain what has entirely spoiled of another's property from which no benefit can be derived.

وَإِمَّا أَنَّ قَصْعَةَ عَائِشَةَ الَّتِي أَعْطَى كَانَتْ خَيْرًا مِنْ الَّتِي كَانَتْ لِزَيْنَبَ - رَضِيَ اللَّهُ عَنْهَا - فَجَبَرَ - عَلَيْهِ السَّلَامُ - تِلْكَ الزِّيَادَةَ بِتِلْكَ الْكِسَارَةِ، وَإِلَّا فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ -

L19640–19641 Alternatively, the bowl of 'Aisha—may Allah be pleased with her—which the Prophet ﷺ gave was superior in value to that which belonged to Zainab—may Allah be pleased with her—so he ﷺ compensated for this excess with

those broken pieces. Otherwise, we are certain he ﷺ would never give anyone else's property without a rightful claim. The aggrieved party's entitlement lies solely in the actual property itself, not in other assets. As long as the property or any portion of it exists, they have no claim to anything beyond it. If it is entirely lost, only then is a ruling made to replace it with its equivalent.

عَلَيْهِ السَّلَامُ - لَا يُعْطِي أَحَدًا مَالَ غَيْرِهِ بِغَيْرِ حَقٍّ، وَإِنَّمَا حَقُّ الْمَجْنِيِّ عَلَيْهِ فِي عَيْنِ مَالِهِ لَا فِي غَيْرِهِ، فَمَا دَامَتْ الْعَيْنُ أَوْ شَيْءٌ مِنْهَا مَوْجُودَيْنِ فَلَا حَقَّ لَهُ فِي غَيْرِ ذَلِكَ، فَإِنْ عَدِمَ جُمْلَةً فَحِينَئِذٍ يَقْضِي لَهُ بِالْمِثْلِ.

L19642 Ali said: If no equivalent of its kind exists, then anything that counteracts and equals it is also considered its equivalent in this category—except that it is the lesser of its two equivalents according to its kind. Thus, we rule by this in the absence of an absolute equivalent. And success is from Allah, the Exalted.

قَالَ عَلِيٌّ: فَإِذَا عَدِمَ الْمِثْلَ مِنْ نَوْعِهِ فَكُلُّ مَا قَاوَمَهُ وَسَاوَاهُ فَهُوَ أَيْضًا مِثْلٌ لَهُ مِنْ هَذَا الْبَابِ، إلَّا أَنَّهُ أَقَلُّ مِثْلَيْهِ مِمَّا هُوَ عَلَيْهِ مِنْ نَوْعِهِ، فَلِذَلِكَ قَضَيْنَا بِهِ عِنْدَ عَدَمِ الْمِثْلِ الْمُطْلَقِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19643 **An issue where one person has destroyed something belonging to another.**

[مَسْأَلَةٌ أَتْلَفَ لِآخَرَ شَيْئًا]

L19644 1261 – Issue:

١٢٦١ - مَسْأَلَةٌ:

L19645 Whoever breaks something belonging to another, wounds his slave, wounds his animal, or tears his garment must have each item appraised in its intact state based on the damage caused, then appraised in its current condition. The offender is unequivocally required to pay the owner the difference between the two valuations. It is impermissible to give the damaged item to the offender for the reason previously mentioned. Rather, he must compensate by an equivalent measure of what he damaged. Whether the offense is minor or major, this is not permissible.

وَمَنْ كَسَرَ لِآخَرَ شَيْئًا، أَوْ جَرَحَ لَهُ عَبْدًا، أَوْ حَيَوَانًا، أَوْ خَرَقَ لَهُ ثَوْبًا، قُوِّمَ كُلُّ ذَلِكَ صَحِيحًا مِمَّا جَنَى عَلَيْهِ، ثُمَّ قُوِّمَ كَمَا هُوَ السَّاعَةُ، وَكُلِّفَ الْجَانِي أَنْ يُعْطِيَ صَاحِبَ الشَّيْءِ مَا بَيْنَ الْقِيمَتَيْنِ وَلَا بُدَّ، وَلَا يَجُوزُ أَنْ يُعْطِيَ الشَّيْءَ الْمَجْنِيَّ عَلَيْهِ لِلْجَانِي لِمَا ذَكَرْنَا آنِفًا وَإِنَّمَا عَلَيْهِ أَنْ يَعْتَدِيَ عَلَيْهِ بِمِثْلِ مَا اعْتَدَى فَقَطْ، وَسَوَاءٌ كَانَتْ الْجِنَايَةُ صَغِيرَةً أَوْ كَبِيرَةً لَا يَحِلُّ هَذَا.

L19646 The Hanafis demonstrate conflicting opinions and conceptual confusion here, such as their statement: If someone seizes a garment unlawfully, he must return it to its owner. If the garment is found in a state where the usurper has cut it, the owner may choose between taking it in its altered condition while bearing the value lost due to the cutting, or transferring it to the usurper while holding him liable for the value of the garment. If the garment is only found after the usurper has tailored it into a shirt, it becomes the property of the usurper, leaving the owner no choice, and the usurper remains liable only for the value of the garment.

وَلِلْحَنَفِيِّينَ هَاهُنَا اضْطِرَابٌ وَتَخْلِيطٌ كَثِيرٌ، كَقَوْلِهِمْ: مَنْ غَصَبَ ثَوْبًا فَإِنَّهُ يَرُدُّ إلَى صَاحِبِهِ فَإِنْ وُجِدَ وَقَدْ قَطَعَهُ الْغَاصِبُ فَصَاحِبُ الثَّوْبِ مُخَيَّرٌ بَيْنَ أَخْذِهِ كَمَا هُوَ وَمَا نَقَصَهُ الْقَطْعُ وَبَيْنَ أَنْ يُعْطِيَهُ لِلْغَاصِبِ وَيُضَمِّنَهُ قِيمَةَ الثَّوْبِ، فَإِنْ لَمْ يُوجَدْ إلَّا وَقَدْ خَاطَهُ قَمِيصًا: فَهُوَ لِلْغَاصِبِ بِلَا تَخْيِيرٍ، وَلَيْسَ عَلَيْهِ إلَّا قِيمَةُ الثَّوْبِ.

وَكَذَلِكَ قَوْلُهُمْ فِي الْحِنْطَةِ تُغْصَبُ فَتُطْحَنُ، وَالدَّقِيقُ يُغْصَبُ فَيُعْجَنُ، وَاللَّحْمُ يُغْصَبُ فَيُطْبَخُ، أَوْ يُشْوَى.

L19647 Similarly, their ruling concerning usurped wheat that is ground into flour, usurped flour that is kneaded into dough, and usurped meat that is cooked or roasted.

قَالَ أَبُو مُحَمَّد: مَا فِي الْمُجَاهَرَةِ بِكَيْدِ الدِّينِ أَكْثَرُ مِنْ هَذَا، وَلَا فِي تَعْلِيمِ الظَّلَمَةِ أَكْلَ أَمْوَالِ النَّاسِ أَكْثَرُ مِنْ هَذَا، فَيُقَالُ لِكُلِّ فَاسِقٍ: إذَا أَرَدْت أَخْذَ قَمْحِ يَتِيمٍ، أَوْ جَارِك، وَأَكْلَ غَنَمِهِ، وَاسْتِحْلَالَ ثِيَابِهِ، وَقَدْ امْتَنَعَ مِنْ أَنْ يَبِيعَك شَيْئًا مِنْ ذَلِكَ فَاغْصِبْهَا، وَاقْطَعْهَا ثِيَابًا عَلَى رَغْمِهِ، وَاذْبَحْ غَنَمَهُ وَأَطْبُخْهَا، وَاغْصِبْهُ حِنْطَتَهُ وَاطْحَنْهَا، وَكُلْ كُلَّ ذَلِكَ حَلَالًا طَيِّبًا، وَلَيْسَ عَلَيْك إلَّا قِيمَةُ مَا أَخَذْت، وَهَذَا خِلَافُ الْقُرْآنِ فِي نَهْيِهِ تَعَالَى أَنْ نَأْكُلَ أَمْوَالَنَا بِالْبَاطِلِ، وَخِلَافُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قَوْلِهِ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» و «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L19648 Abu Muhammad said: There is no greater instance of openly undermining the religion than this, nor any greater instruction in teaching oppressors to devour people's wealth than this. For it is said to every transgressor: If you wish to take an orphan's wheat, your neighbor's wheat, consume his sheep, or wrongfully claim his garments as lawful—when he refuses to sell you any of these things—then seize them by force, fashion them into garments against his will, slaughter his sheep and cook them, seize his wheat by force and grind it, and consume all of that as lawful and pure. You are only required to pay the value of what you took. This contradicts the Quran in Allah's prohibition against consuming wealth unjustly, and contradicts the Messenger of Allah—peace and blessings be upon him—in his saying: "Your blood and your wealth are inviolable to you," and "Whoever introduces into this matter of ours [Islam] something not part of it, it is rejected."[6]

وَمَا يَشُكُّ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ كُلَّ ثَوْبٍ قُطِعَ مِنْ شُقَّةٍ فَإِنَّهُ لِصَاحِبِ الشُّقَّةِ، وَكُلَّ دَقِيقٍ طُحِنَ مِنْ حِنْطَةِ إنْسَانٍ فَهُوَ لِصَاحِبِ الْحِنْطَةِ، وَكُلَّ لَحْمٍ شُوِيَ فَهُوَ لِصَاحِبِ اللَّحْمِ - وَهُمْ يُقِرُّونَ بِهَذَا ثُمَّ لَا يُبَالُونَ بِأَنْ يَقُولُوا: الْغَصْبُ، وَالظُّلْمُ، وَالتَّعَدِّي يُحِلُّ أَمْوَالَ الْمُسْلِمِينَ لِلْغُصَّابِ.

L19649–19650 No one among the people of Islam doubts that every garment cut from a bolt of cloth belongs to the owner of the bolt, all flour ground from an individual's wheat belongs to the owner of the wheat, and all meat that is roasted belongs to the owner of the meat. Yet they acknowledge this and do not hesitate to declare: "Usurpation, oppression, and transgression render the wealth of Muslims lawful for those who commit these acts."

وَاحْتَجُّوا فِي ذَلِكَ بِأَمْرِ الْقَصْعَةِ الْمَكْسُورَةِ الَّتِي ذَكَرْنَا قَبْلُ وَهُمْ أَوَّلُ مُخَالِفٍ لِذَلِكَ الْخَبَرِ فَخَالَفُوهُ فِيمَا فِيهِ، وَاحْتَجُّوا لَهُ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ.

L19651 They argued in this matter by citing the case of the broken bowl we previously mentioned, though they were the first to oppose that narration—contradicting it in what it contains while invoking it as evidence for matters it includes nothing about.

وَاحْتَجُّوا أَيْضًا بِخَبَرِ «الْمَرْأَةِ الَّتِي دَعَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى طَعَامٍ فَأَخْبَرَتْهُ أَنَّهَا أَرَادَتْ ابْتِيَاعَ شَاةٍ فَلَمْ تَجِدْهَا فَأَرْسَلَتْ إلَى جَارَةٍ لَهَا: ابْعَثِي إلَيَّ الشَّاةَ الَّتِي لِزَوْجِكِ فَبَعَثَتْ بِهَا إلَيْهَا فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشَّاةِ أَنْ تُطْعَمَ

L19652 They also cited the report of "the woman who invited the Messenger of Allah (peace be upon him) to a meal and informed him that she had intended to buy a sheep but could not find one. She then sent to a neighbor of hers:

[6] **Hadith references (L19648):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

'Send me the sheep belonging to your husband,' and the neighbor sent it to her. The Messenger of Allah (peace be upon him) then ordered that the sheep be cooked to feed the captives." This ignorant fabricator claimed: "This indicates that the right of the sheep's owner has been waived from her, as it was roasted."

الْأَسَارَى» قَالَ هَذَا الْجَاهِلُ الْمُفْتَرِي: فَهَذَا يَدُلُّ عَلَى أَنَّ حَقَّ صَاحِبِ الشَّاةِ قَدْ سَقَطَ عَنْهَا إِذْ شُوِيَتْ.

L19653 Abu Muhammad said: This report is not valid. If it were valid, it would be the greatest argument against them, for it opposes their claim. This is because the report contains that the Prophet—peace be upon him—did not leave that meat in the possession of the woman who took it without its owner's permission, while they assert that it is lawful for the usurper. This report contains that he did not seek her opinion in the matter, thus confirming that it did not belong to her. Therefore, it is an argument against them.

قَالَ أَبُو مُحَمَّد: وَهَذَا الْخَبَرُ لَا يَصِحُّ، لَوْ صَحَّ لَكَانَ أَعْظَمَ حُجَّةٍ عَلَيْهِمْ، لِأَنَّهُ خِلَافٌ لِقَوْلِهِمْ، إِذْ فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُبْقِ ذَلِكَ اللَّحْمَ فِي مِلْكِ الَّتِي أَخَذَتْهَا بِغَيْرِ إِذْنِ رَبِّهَا، وَهُمْ يَقُولُونَ: إِنَّهُ لِلْغَاصِبِ حَلَالٌ - وَهَذَا الْخَبَرُ فِيهِ: أَنَّهُ لَمْ يَأْخُذْ رَأْيَهَا فِي ذَلِكَ - فَصَحَّ أَنَّهُ لَيْسَ لَهَا، فَهُوَ حُجَّةٌ عَلَيْهِمْ.

L19654 Ali said: What is preserved from the Companions—may Allah be pleased with them—contradicts this. As narrated through the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Muḥammad ibn Sīrīn: The Companions of the Messenger of Allah—peace and blessings be upon him—once camped with the inhabitants of a water source, among whom was Abū Bakr al-Ṣiddīq. Al-Nuʿmān went out and began telling them, "Such and such will happen"—while they were bringing him food and milk, which he then sent to his companions. When Abū Bakr was informed of this, he said, "I see that I have eaten food obtained through al-Nuʿmān's soothsaying since the day began." Then he inserted his hand into his throat and induced vomiting.

قَالَ عَلِيٌّ: وَالْمَحْفُوظُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَزَلُوا بِأَهْلِ مَاءٍ وَفِيهِمْ أَبُو بَكْرٍ الصِّدِّيقُ، فَانْطَلَقَ النُّعْمَانُ فَجَعَلَ يَقُولُ لَهُمْ: يَكُونُ كَذَا وَكَذَا - وَهُمْ يَأْتُونَهُ بِالطَّعَامِ وَاللَّبَنِ، وَيُرْسِلُ هُوَ بِذَلِكَ إِلَى أَصْحَابِهِ - فَأَخْبَرَ أَبُو بَكْرٍ بِذَلِكَ فَقَالَ: أَرَانِي آكِلُ كِهَانَةَ النُّعْمَانِ مُنْذُ الْيَوْمِ، ثُمَّ أَدْخَلَ يَده فِي حَلْقِهِ فَاسْتَقَاءَهُ.

L19655 From the narration of Muḥammad ibn Isḥāq in his *Maghāzī* through Yazīd ibn Abī Ḥabīb, from ʿAwf ibn Mālik al-Ashjaʿī, who said: I was in the expedition of Dhāt al-Salāsil. He mentioned his division of the camel among the people and that they gave him a share of it. He brought it to his companions, who cooked and ate it. Then Abū Bakr and ʿUmar questioned him about it, and he informed them. They both said to him: "By Allah, you did not do well to feed us this!" Then they both stood up and began vomiting what was in their stomachs.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاق فِي مَغَازِيهِ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيِّ قَالَ: كُنْت فِي غَزْوَةِ ذَاتِ السَّلَاسِلِ فَذَكَرَ قِسْمَتُهُ الْجَزُورَ بَيْنَ الْقَوْمِ وَأَنَّهُمْ أَعْطَوْهُ مِنْهَا، فَأَتَى بِهِ إلَى أَصْحَابِهِ فَطَبَخُوهُ فَأَكَلُوهُ، ثُمَّ سَأَلَهُ أَبُو بَكْرٍ، وَعُمَرُ عَنْهُ؟ فَأَخْبَرَهُمَا، فَقَالَا لَهُ: وَاَللَّهِ مَا أَحْسَنْت حِينَ أَطْعَمْتنَا هَذَا ثُمَّ قَامَا يَتَقَيَّآنِ مَا فِي بُطُونِهِمَا.

L19656 Through the chain of Mālik from Zayd ibn Aslam, who said: ʿUmar ibn al-Khaṭṭāb drank some milk and it pleased him. He inquired about it and was

informed that it had been milked for him from the charity camels. ʿUmar then inserted his finger and vomited it.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ زَيْدِ بْنِ أَسْلَمَ قَالَ: شَرِبَ عُمَرُ بْنُ الْخَطَّابِ لَبَنًا فَأَعْجَبَهُ فَسَأَلَ عَنْهُ فَأُخْبِرَ أَنَّهُ حُلِبَ لَهُ مِنْ نَعَمِ الصَّدَقَةِ فَأَدْخَلَ عُمَرُ أُصْبُعَهُ فَاسْتَقَاءَهُ.

L19657–19658 And through the chain of Saʿīd ibn Manṣūr, Al-Muʿtamir ibn Sulaymān al-Taymī narrated to us from his father that the people of Kufa said to him: "Did ʿAlī drink *nabīdh* of the jar?" Sulaymān said: "So I said to them: This is Abū Isḥāq al-Hamdānī narrating that ʿAlī ibn Abī Ṭālib reported that he vomited it, the *nabīdh* of the jar."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِيهِ أَنَّ أَهْلَ الْكُوفَةِ قَالُوا لَهُ: قَدْ شَرِبَ عَلِيٌّ نَبِيذَ الْجَرِّ؟ قَالَ سُلَيْمَانُ: فَقُلْت لَهُمْ: هَذَا أَبُو إِسْحَاقَ الْهَمْدَانِيُّ يُحَدِّثُ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَخْبَرَ أَنَّهُ نَبِيذَ جَرٍّ تَقَيَّأَهُ.

L19659 Aḥmad ibn ʿUmar ibn Anas al-ʿUdhri reported from ʿUbayd Allāh ibn Muḥammad al-Saqaṭī, who reported from Muḥammad ibn Aḥmad ibn Yaʿqūb ibn Shaybah, who reported from Aḥmad ibn Shuwayh, who said: I heard ʿAbd al-Razzāq say: Maʿmar entered upon his family, and there was fruit with her, so he ate some. Then he asked about it, and she told him: "So-and-so the professional mourner gifted it to us." Maʿmar stood up and vomited what he had eaten.

نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدٍ السَّقَطِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ يَعْقُوبَ بْنِ شَيْبَةَ نا أَحْمَدُ بْنُ شُوَيْهٍ قَالَ: سَمِعْت عَبْدَ الرَّزَّاقِ يَقُولُ: دَخَلَ مَعْمَرٌ عَلَى أَهْلِهِ فَإِذَا عِنْدَهَا فَاكِهَةٌ فَأَكَلَ مِنْهَا، ثُمَّ سَأَلَ عَنْهَا فَقَالَتْ لَهُ: أَهْدَتْهَا إلَيْنَا فُلَانَةُ النَّائِحَةُ، فَقَامَ مَعْمَرٌ فَتَقَيَّأَ مَا أَكَلَ.

L19660 Abu Muhammad said: Abu Bakr, Umar, and Ali—in the presence of the Companions and with their awareness, with none among them opposing them in that—did not consider food taken without right as belonging to the one who seized it, even if he ate it. Rather, they held that he must expel it and not retain it in his body as long as he is capable of doing so, even after consuming it entirely. By what pretext do these people cling to openly permitting what is forbidden? Abu Muhammad said: This is our position. As long as a person is able to vomit it, it is obligatory upon him to do so. It is impermissible to retain unlawful substances at all. If he is unable, then Allah does not burden a soul beyond its capacity. This is one of the matters in which they have opposed the Quran and the Sunnah with their corrupt opinions, emulating some Successors (Tabi'een) in an error the Successors committed—and success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا أَبُو بَكْرٍ، وَعُمَرُ وَعَلِيٌّ بِحَضْرَةِ الصَّحَابَةِ وَعِلْمِهِمْ لَا مُخَالِفَ لَهُمْ مِنْهُمْ فِي ذَلِكَ لَا يَرَوْنَ الطَّعَامَ الْمَأْخُوذَ بِغَيْرِ حَقٍّ مِلْكًا لِآخِذِهِ، وَإِنْ أَكَلَهُ، بَلْ يَرَوْنَ عَلَيْهِ إخْرَاجَهُ، وَأَنْ لَا يُبْقِيَهُ فِي جِسْمِهِ مَا دَامَ يَقْدِرُ عَلَى ذَلِكَ، وَإِنْ اسْتَهْلَكَهُ، فَبِأَيِّ شَيْءٍ تَعَلَّقَ هَؤُلَاءِ الْقَوْمُ فِي إبَاحَةِ الْحَرَامِ جِهَارًا؟ قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا نَقُولُ، فَمَا دَامَ الْمَرْءُ يَقْدِرُ عَلَى أَنْ يَتَقَيَّأَهُ، فَفَرْضٌ عَلَيْهِ ذَلِكَ، وَلَا يَحِلُّ إمْسَاكُ الْحَرَامِ أَصْلًا فَإِنْ عَجَزَ عَنْ ذَلِكَ فَلَا يُكَلِّفُ اللَّهُ نَفْسًا إلَّا وُسْعَهَا، وَهَذَا مِمَّا خَالَفُوا فِيهِ الْقُرْآنَ، وَالسُّنَنَ بِآرَائِهِمْ الْفَاسِدَةِ، وَتَقْلِيدًا لِبَعْضِ التَّابِعِينَ فِي خَطَأٍ أَخْطَأَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19661 They also said: We applied qiyas to this by comparing it to a slave who dies, so his value must be guaranteed.

وَقَالُوا أَيْضًا: قِسْنَا هَذَا عَلَى الْعَبْدِ يَمُوتُ فَتُضْمَنَ قِيمَتُهُ.

L19662 Ali said: "This is a liability upon them, not a right for them, because the

deceased cannot be owned by the usurper."

قَالَ عَلِيٌّ: وَهَذَا عَلَيْهِمْ، لَا لَهُمْ، لِأَنَّ الْمَيِّتَ لَا يَتَمَلَّكُهُ الْغَاصِبُ.

A legal case: He wrongfully seized a house, so it collapsed.

[مَسْأَلَةٌ غَصَبَ دَارًا فَتَهَدَّمَتْ]

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١٢٦٢ - مَسْأَلَةٌ:

Whoever usurps a house and it collapses must restore its structure as it was without exception, based on Allah's decree: {Whoever commits aggression against you, retaliate against them in the same manner as they aggressed against you} [Al-Baqarah: 194]. For he has committed aggression against the constructed building by intervening between it and its owner. By the consensus of their jurists along with ours, and the consensus of the Muslim community, he is commanded to return it to its owner at all times. Thus, his obligation cannot be waived due to the building's destruction.[7]

وَمَنْ غَصَبَ دَارًا فَتَهَدَّمَتْ كُلِّفَ رَدَّ بِنَائِهَا كَمَا كَانَ وَلَا بُدَّ، لِقَوْلِ اللَّهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَهُوَ قَدْ اعْتَدَى عَلَى الْبِنَاءِ الْمُؤَلَّفِ فَحَالَ بَيْنَهُ وَبَيْنَ صَاحِبِهِ، وَهُوَ بِإِجْمَاعِهِمْ مَعَنَا وَإِجْمَاعِ أَهْلِ الْإِسْلَامِ مَأْمُورٌ بِرَدِّهَا فِي كُلِّ وَقْتٍ إِلَى صَاحِبِهَا، فَلَا يَجُوزُ أَنْ يَسْقُطَ عَنْهُ بِهَدْمِهَا مَا لَزِمَهُ.

If only I knew: what difference is there between a collapsing house and a slave's death? Their companion's argument was that houses and lands are not unlawfully seized—and this was utterly astonishing.

وَلَيْتَ شِعْرِي أَيُّ فَرْقٍ بَيْنَ دَارٍ تَتَهَدَّمُ وَبَيْنَ عَبْدٍ يَمُوتُ؟ فَكَانَ احْتِجَاجُ صَاحِبِهِمْ: أَنَّ الدُّورَ وَالْأَرَضِينَ لَا تُغْصَبُ، فَكَانَ هَذَا عَجَبًا جِدًّا.

We do not know of a greater advocate for Satan in Islam than one who unleashes tyrants upon the usurpation of people's homes. And their lands—then he permits them to lease it and benefit from its produce, and does not hold them responsible for any loss that occurs to it. We seek refuge in Allah from the like of this.

وَمَا نَعْلَمُ لِإِبْلِيسَ دَاعِيَةً فِي الْإِسْلَامِ أَكْثَرَ مِمَّنْ يُطْلِقُ الظَّلَمَةَ عَلَى غَصْبِ دُورِ النَّاسِ وَأَرَاضِيهِمْ ثُمَّ يُبِيحُ لَهُمْ كِرَاءَهَا وَغَلَّتَهَا، وَلَا يَرَى عَلَيْهِمْ ضَمَانَ مَا تَلِفَ مِنْهَا - نَعُوذُ بِاللَّهِ مِنْ مِثْلِ هَذَا.

A legal question concerning someone who usurped land, whether he cultivated it or did not cultivate it.

[مَسْأَلَةٌ مِنْ غَصَبَ أَرْضًا فَزَرَعَهَا أَوْ لَمْ يَزْرَعْهَا]

1263 - Issue:

١٢٦٣ - مَسْأَلَةٌ:

And whoever unlawfully seizes land—whether cultivating it or not—must restore it and compensate for any damage to it. His sharecropping [liability] is equivalent to [the land's benefit], due to what we stated earlier: he obstructed the owner from benefiting from the land. The land provides no benefit except

وَمَنْ غَصَبَ أَرْضًا فَزَرَعَهَا، أَوْ لَمْ يَزْرَعْهَا فَعَلَيْهِ رَدُّهَا وَمَا نَقَصَ مِنْهَا، وَمُزَارَعَتُهُ مِثْلُهَا لِمَا ذَكَرْنَا مِنْ أَنَّهُ حَالَ بَيْنَ صَاحِبِهَا وَبَيْنَ مَنْفَعَةِ أَرْضِهِ، وَلَا مَنْفَعَةَ لِلْأَرْضِ إِلَّا الزَّرْعُ وَالْمُزَارِعَةُ عَلَى مَا نَذْكُرُ فِي " الْمُزَارَعَةِ " إِنْ شَاءَ اللَّهُ تَعَالَى.

[7] **Qur'an references (L19665):** Qur'an 2:194 (Al-Baqarah).

through cultivation or sharecropping, as per what we will elaborate in the chapter on sharecropping, God willing, Exalted is He.

L19673 The Hanafis claimed: "Land cannot be usurped," but this is a lie on their part, for usurpation means unjustly taking something without right. We have received through Al-Bukhari's transmission: Muslim ibn Ibrāhīm narrated to us from ʿAbdullāh ibn al-Mubārak, from Mūsā ibn ʿUqbah, from Sālim ibn ʿAbdillāh ibn ʿUmar, from his father, who said: The Messenger of Allah (peace be upon him) stated, "Whoever seizes a handspan of land without right will be plunged with it on the Day of Resurrection into the seven earths."

وَقَالَ الْحَنَفِيُّونَ: الْأَرْضُ لَا تُغْصَبُ، وَهَذَا كَذِبٌ مِنْهُمْ، لِأَنَّ الْغَصْبَ هُوَ أَخْذُ الشَّيْءِ بِغَيْرِ حَقِّهِ ظُلْمًا - وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسْلِمُ بْنُ إِبْرَاهِيمَ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ نا مُوسَى بْنُ عُقْبَةَ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَخَذَ مِنَ الْأَرْضِ شِبْرًا بِغَيْرِ حَقِّهِ خُسِفَ بِهِ يَوْمَ الْقِيَامَةِ إِلَى سَبْعِ أَرَضِينَ» .

L19674 Thus, it is established that the land is taken without right, and therefore wrongfully seized.

فَصَحَّ أَنَّ الْأَرْضَ تُؤْخَذُ بِغَيْرِ حَقٍّ، فَصَحَّ أَنَّهَا تُغْصَبُ.

L19675 **Issue: If someone wrongfully seizes cultivated land and cultivates it, or seizes seeds and plants them.**

[مَسْأَلَةٌ غَصَبَ زُرَيْعَةً فَزَرَعَهَا أَوْ نَوًى فَغَرَسَهُ]

L19676 1264. Legal Question:

١٢٦٤ - مَسْأَلَةٌ:

L19677 Whoever unlawfully seizes a seedling and plants it, a pit and sows it, or cuttings and plants them—all produce generated from the crop belongs to the owner of the seedling, and the planter must compensate him for it. Whatever grows from the pits and cuttings belongs to their rightful owner. All fruit yielded by those resulting trees in perpetuity belongs to him; the usurper has no right to any of this, as per the statement of Allah's Messenger—peace and blessings be upon him: "No right is due to the wrongdoing of a transgressor."

وَمَنْ غَصَبَ زُرَيْعَةً فَزَرَعَهَا، أَوْ نَوًى فَغَرَسَهُ، أَوْ مَلُوخًا فَغَرَسَهَا، فَكُلُّ مَا تَوَلَّدَ مِنَ الزَّرْعِ فَلِصَاحِبِ الزَّرِيعَةِ يَضْمَنُهُ لَهُ الزَّارِعُ - وَكُلُّ مَا نَبَتَ مِنَ النَّوَى، وَالْمَلُوخِ فَلِصَاحِبِهَا - وَكُلُّ مَا أَثْمَرَتْ تِلْكَ الشَّجَرُ فِي الْأَبَدِ فَلَهُ، لَا حَقَّ لِلْغَاصِبِ فِي شَيْءٍ مِنْ ذَلِكَ لِمَا ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَلَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» .

L19678 And because all that originates from a person's wealth belongs to him. What becomes permissible for others is only that which the owner deems insignificant, thereby renouncing it, discarding it, and permitting its taking—such as date seeds and similar items exclusively—not what he has not permitted. And success comes only from Allah, the Exalted.

وَلِأَنَّ كُلَّ مَا تَوَلَّدَ مِنْ مَالِ الْمَرْءِ فَلَهُ، وَإِنَّمَا يَحِلُّ لِلنَّاسِ مِنْ ذَلِكَ مَا لَا خَطْبَ لَهُ بِهِ مِمَّا يَتَبَرَّأُ مِنْهُ صَاحِبُهُ فَيَطْرَحُهُ مُبِيحًا لَهُ، مِنْ أَخْذِهِ مِنَ النَّوَى وَنَحْوِ ذَلِكَ فَقَطْ، لَا مَا لَمْ يُبِحْهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L19679 **A jurisprudential issue where an animal aggressed against him and he could not repel it except by killing the animal.**

[مَسْأَلَةٌ عَدَا عَلَيْهِ حَيَوَانٌ فَلَمْ يَقْدِرْ عَلَى دَفْعِهِ إِلَّا بِقَتْلِهِ]

L19680 1265: Issue

١٢٦٥ - مَسْأَلَةٌ:

L19681–19683 And anyone harmed by a trespassing domesticated animal - whether it is a camel, horse, mule, or... In the case of an elephant or other such animals, if one cannot repel it except by killing it and does so, there is no financial liability upon him for it—this is the opinion of Mālik, al-Shāfiʿī, and Abū Sulaymān.

وَكُلُّ مَنْ عَدَا عَلَيْهِ حَيَوَانٌ مُتَمَلَّكٌ مِنْ بَعِيرٍ، أَوْ فَرَسٍ أَوْ بَغْلٍ، أَوْ فِيلٍ، أَوْ غَيْرِ ذَلِكَ، فَلَمْ يَقْدِرْ عَلَى دَفْعِهِ عَنْ نَفْسِهِ إِلَّا بِقَتْلِهِ فَقَتَلَهُ فَلَا ضَمَانَ عَلَيْهِ فِيهِ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L19684 The Hanafis maintained: He is liable for it, and they cited as evidence the well-established report from the Prophet—peace and blessings of Allah be upon him—"The injury caused by a domesticated animal is without liability (jubār)," along with the narration we transmitted through the chain of ʿAbd al-Karīm: "A stallion attacked a person to kill him, so he struck it with a sword and killed it. Abū Bakr imposed a fine on him for it, stating: It is an animal devoid of reason."

وَقَالَ الْحَنَفِيُّونَ: يَضْمَنُهُ، وَاحْتَجُّوا بِالْخَبَرِ الثَّابِتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَجْمَاءُ جَرْحُهَا جُبَارٌ» . وَبِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْكَرِيمِ " إِنَّ إِنْسَانًا عَدَا عَلَيْهِ فَحْلٌ لِيَقْتُلَهُ فَضَرَبَهُ بِالسَّيْفِ فَقَتَلَهُ فَأَغْرَمَهُ أَبُو بَكْرٍ إِيَّاهُ، وَقَالَ: بَهِيمَةٌ لَا تَعْقِلُ ".

L19685 And on the authority of Ali ibn Abi Talib, a similar narration is reported.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ نَحْوُهُ.

L19686 On the authority of ʿAbd al-Razzāq, from Maʿmar, from Hammām ibn Munabbih, from Abū Hurayrah, who said: "Whoever injures a stray animal is liable to pay compensation."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ " مَنْ أَصَابَ الْعَجْمَاءَ غُرِّمَ ".

L19687 And through the narration of Sufyān al-Thawrī from al-Aswad ibn Qays from their elders: A boy entered the compound of Zayd ibn Ṣūḥān, and a camel belonging to Zayd struck him, killing him. The boy's guardians then slaughtered the camel. ʿUmar ibn al-Khaṭṭāb invalidated the blood claim for the boy and obligated the boy's father to pay the price of the camel.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنِ الْأَسْوَدِ بْنِ قَيْسٍ عَنْ أَشْيَاخٍ لَهُمْ: أَنَّ غُلَامًا دَخَلَ دَارَ زَيْدِ بْنِ صُوحَانَ فَضَرَبَتْهُ نَاقَةٌ لِزَيْدٍ فَقَتَلَتْهُ فَعَمَدَ أَوْلِيَاءُ الْغُلَامِ فَعَقَرُوهَا فَأَبْطَلَ عُمَرُ بْنُ الْخَطَّابِ دَمَ الْغُلَامِ وَأَغْرَمَ وَالِدَ الْغُلَامِ ثَمَنَ النَّاقَةِ.

L19688 A similar report is narrated from Shurayh.

وَعَنْ شُرَيْحٍ مِثْلُ هَذَا.

L19689 Ali said: As for the ḥadīth "The injury caused by a non-human animal is non-compensable," it is of the utmost authenticity, and this is the position we uphold. They have no valid argument against this, for we do not disagree with them regarding the principle that no compensation is due for injuries caused by such animals. The ḥadīth's ruling pertains solely to this principle. Rather, it constitutes an argument against their stance of holding liable the

قَالَ عَلِيٌّ: أَمَّا الْحَدِيثُ «جَرْحُ الْعَجْمَاءِ جُبَارٌ» فَفِي غَايَةِ الصِّحَّةِ، وَبِهِ نَقُولُ وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّنَا لَمْ نُخَالِفْهُمْ فِي أَنَّ مَا جَرَحَتْهُ الْعَجْمَاءُ لَا يَغْرَمُ وَلَيْسَ فِيهِ إِلَّا هَذَا بَلْ هُوَ

rider, the driver, or the handler—when they did not provoke the animal—for harm caused by it. Thus, they are the ones opposing this established narration.

L19690–19692 As for the narration of ʿUmar ibn al-Khaṭṭāb and Shurayḥ, we say: Whoever's legal guardian is killed by an animal and dies... If he kills a person after their wrongful act, he is liable for them because they bear no guilt. As for the statement of Abū Hurayrah, it is correct. Whoever intentionally harms an animal without necessity is obligated to compensate.

L19693 As for the narration from Abū Bakr and ʿAlī, it is disconnected, and there is no valid proof in a disconnected chain—even if it were from the Messenger of Allah (peace and blessings of Allah be upon him)—so how about from those below him? Even if it were authentic, it would not constitute proof for them. How many instances have they opposed Abū Bakr and others where opposition is impermissible? The clearest example is what we cited from Abū Bakr, ʿUmar, and ʿAlī (may Allah be pleased with them) regarding their vomiting what they ate or drank from unlawful sources, yet they opposed. They are only considered proof in their view when their positions align with Abū Ḥanīfa, not when they contradict him. This is toying with religion. It is astonishing that they claim lions and predatory beasts are forbidden to kill within the sacred precinct, and the killer incurs retribution—unless the pilgrim initiates harm against it, in which case he may kill it without liability. What contradiction, demolition, and building is this? The Mālikīs—who condemn others for adhering to a companion's opinion when it aligns with theirs and assert that disconnected and connected narrations are equivalent—ought logically to adopt this stance. Yet this is among their contradictions.

L19694 Ali said: A person upon whom an animal transgresses—fearing it may kill him, wound him, break his limb, or ruin his garments—cannot escape one of two scenarios: either he is commanded to permit the beast [to harm him] while being prohibited from refraining [from allowing it] or repelling it (this is a position they do not uphold, and if they did, it would only compound their misguidance, for Allah Most High states: "Do not cast yourselves into destruction" [Al-Baqarah:195], and this [verse] applies in its general sense);

حُجَّةٌ عَلَيْهِمْ فِي تَضْمِينِهِمْ الرَّاكِبَ، وَالسَّائِقَ، وَالْقَائِدَ، مَا أَصَابَ الْعَجْمَاءُ مِمَّا لَمْ يَحْمِلْهَا عَلَيْهِ فَهُمْ الْمُخَالِفُونَ لِهَذَا الْأَثَرِ.

وَأَمَّا حَدِيثُ عُمَرَ بْنِ الْخَطَّابِ، وَشُرَيْحٍ، فِيهِ نَقُولُ: مَنْ قَتَلَتْ بَهِيمَةٌ وَلِيَّهُ فَمَضَى بَعْدَ جِنَايَتِهَا فَقَتَلَهَا فَهُوَ ضَامِنٌ لَهَا، لِأَنَّهَا لَا ذَنْبَ لَهَا - وَأَمَّا قَوْلُ أَبِي هُرَيْرَةَ فَصَحِيحٌ، وَمَنْ أَصَابَ الْعَجْمَاءَ قَاصِدًا لَهَا غَيْرَ مُضْطَرٍّ فَهُوَ غَارِمٌ.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعَلِيٍّ، فَمُنْقَطِعَةٌ وَلَا حُجَّةَ فِي مُنْقَطِعٍ لَوْ كَانَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ عَمَّنْ دُونَهُ؟ ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا أَبَا بَكْرٍ وَغَيْرَهُ حَيْثُ لَا يَجُوزُ خِلَافُهُ، أَقْرَبُ ذَلِكَ مَا أَوْرَدْنَا عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمْ - مِنْ تَقَيُّئِهِمْ مَا أَكَلُوا أَوْ شَرِبُوا مِمَّا لَا يَحِلُّ فَخَالَفُوا، فَإِنَّمَا هُمْ حُجَّةٌ عِنْدَهُمْ، حَيْثُ وَافَقُوا أَبَا حَنِيفَةَ لَا حَيْثُ خَالَفُوهُ، وَهَذَا تَلَاعُبٌ بِالدِّينِ. وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: إنَّ الْأَسَدَ، وَالسَّبُعَ، حَرَامٌ قَتْلُهُ فِي الْحَرَمِ وَعَلَى قَاتِلِهِ الْجَزَاءُ، إلَّا أَنْ يَبْتَدِئَ الْمُحْرِمُ بِأَذًى فَلَهُ قَتْلُهُ وَلَا يَجْزِيه - فَكَمْ هَذَا التَّنَاقُضُ، وَالْهَدْمُ، وَالْبِنَاءُ؟ وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْمُشَنِّعِينَ بِقَوْلِ الصَّاحِبِ إذَا وَافَقَهُمْ وَالْقَائِلِينَ بِأَنَّ الْمُرْسَلَ وَالْمُسْنَدَ سَوَاءٌ أَنْ يَقُولُوا بِهَذَا، وَلَكِنَّهُ مِمَّا تَنَاقَضُوا فِيهِ.

قَالَ عَلِيٌّ: لَا يَخْلُو مَنْ عَدَتْ الْبَهِيمَةُ عَلَيْهِ فَخَشِيَ أَنْ تَقْتُلَهُ أَوْ أَنْ تَجْرَحَهُ، أَوْ أَنْ تَكْسِرَ لَهُ عُضْوًا أَوْ أَنْ تُفْسِدَ ثِيَابَهُ مِنْ أَنْ يَكُونَ مَأْمُورًا بِإِبَاحَةِ ذَلِكَ لَهَا، مَنْهِيًّا عَنْ الِامْتِنَاعِ مِنْهَا وَدَفْعِهَا، وَهَذَا مِمَّا لَا يَقُولُونَهُ، وَلَوْ قَالُوهُ لَكَانَ زَائِدًا فِي ضَلَالِهِمْ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ} [البقرة: ١٩٥] وَهَذَا عَلَى عُمُومِهِ، أَوْ يَكُونُ مَأْمُورًا

or he is commanded to repel it from himself while being prohibited from enabling it to reach his life, body, property, or Muslim brother. This latter is the truthful stance, due to what we have clarified.[8]

بِدَفْعِهَا عَنْ نَفْسِهِ مَنْهِيًّا عَنْ إِمْكَانِهَا مِنْ رُوحِهِ، أَوْ جِسْمِهِ، أَوْ مَالِهِ، أَوْ أَخِيهِ الْمُسْلِمِ، وَهَذَا هُوَ الْحَقُّ لِمَا ذَكَرْنَا.

L19695 If he is commanded to do that and cannot save himself from her except by killing her, then he is commanded to kill her, because killing her constitutes the act of defense he was commanded to carry out. [And whoever does what he is commanded], he is one who does good. [And since he is one who does good], God, Exalted is He, has said: "There is no blame upon those who do good" [At-Tawbah: 91].[9]

فَإِذَا هُوَ مَأْمُورٌ بِذَلِكَ وَلَمْ يَقْدِرْ عَلَى النَّجَاةِ مِنْهَا إِلَّا بِقَتْلِهَا فَهُوَ مَأْمُورٌ بِقَتْلِهَا، لِأَنَّ قَتْلَهَا هُوَ الدَّفْعُ الَّذِي أُمِرَ بِهِ [وَمَنْ فَعَلَ مَا أُمِرَ بِهِ] فَهُوَ مُحْسِنٌ [وَإِذْ هُوَ مُحْسِنٌ] فَقَدْ قَالَ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١]

[مَسْأَلَةٌ لَا ضَمَانَ عَلَى صَاحِبِ الْبَهِيمَةِ فِيمَا جَنَتْهُ]

The ruling is that the owner of livestock incurs no liability for harm committed by it.

L19697 Question 1266:

١٢٦٦ - مَسْأَلَةٌ:

L19698–19700 There is no liability upon the owner of a beast for property damage or bloodshed it causes by night or day. However, the owner is commanded to restrain it. If he restrains it, then that is sufficient. But if it repeats the act and he fails to restrain it, it is to be sold against him, according to the statement of Allah's Messenger—peace and blessings be upon him: "The injury caused by an animal is irreparable harm exempt from compensation (jubār)." This is the opinion of Abū Ḥanīfah and Abū Sulaymān. Mālik and al-Shāfiʿī said: One is liable for whatever damage [an animal] causes at night but not liable for what it causes during the day, and this is the judgment of Shurayḥ and the legal ruling of al-Shaʿbī.

وَلَا ضَمَانَ عَلَى صَاحِبِ الْبَهِيمَةِ فِيمَا جَنَتْهُ فِي مَالٍ أَوْ دَمٍ لَيْلًا أَوْ نَهَارًا لَكِنْ يُؤْمَرُ صَاحِبُهُ بِضَبْطِهِ، فَإِنْ ضَبَطَهُ فَذَاكَ، وَإِنْ عَادَ وَلَمْ يَضْبِطْهُ بِيعَ عَلَيْهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْعَجْمَاءُ جَرْحُهَا جُبَارٌ» وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يَضْمَنُ مَا جَنَتْهُ لَيْلًا وَلَا يَضْمَنُ مَا جَنَتْهُ نَهَارًا وَهُوَ قَضَاءُ شُرَيْحٍ، وَحُكْمُ الشَّعْبِيِّ.

L19701 They argued this by citing the hadith of Al-Bara's she-camel: "The Messenger of Allah—peace and blessings be upon him—ruled that the owners of walled gardens are responsible for safeguarding them during the day, while the owners of livestock bear responsibility for any damage they inflict at night."

وَاحْتَجُّوا فِي ذَلِكَ «بِحَدِيثِ نَاقَةِ الْبَرَاءِ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى أَنَّ عَلَى أَهْلِ الْحَوَائِطِ حِفْظَهَا بِالنَّهَارِ، وَعَلَى أَهْلِ الْمَاشِيَةِ مَا أَصَابَتْ بِاللَّيْلِ» .

L19702 Ali said: If this were authentic, they would not have preceded us in asserting

قَالَ عَلِيٌّ: لَوْ صَحَّ هَذَا لَمَا سَبَقُونَا إِلَى الْقَوْلِ بِهِ، وَلَكِنَّهُ خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ إِنَّمَا رَوَاهُ الزُّهْرِيُّ عَنْ حَرَامِ بْنِ مُحَيِّصَةَ عَنْ أَبِيهِ - وَرَوَاهُ الزُّهْرِيُّ أَيْضًا عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ

[8] **Qur'an references (L19694):** Qur'an 2:195 (Al-Baqarah).
[9] **Qur'an references (L19695):** Qur'an 9:91 (At-Tawbah).

it, but it is an unreliable report because it was only narrated by al-Zuhrī from Ḥaram ibn Muḥayyiṣah from his father. Al-Zuhrī also narrated it from Abū Umāmah ibn Sahl ibn Ḥunayf regarding a she-camel of al-Barā'. Thus, it became clear that the report is mursal, for Ḥaram is not the direct son of Muḥayyiṣah but rather the son of Saʿd ibn Muḥayyiṣah. Saʿd did not hear from al-Barā', nor did Abū Umāmah, nor is there proof in an interrupted chain. It would have been incumbent upon the Ḥanafīs—who claim that the mursal and musnad are equivalent—to assert it, but this is among the matters in which they contradicted themselves.

بْنِ حُنَيْفٍ أَنَّ نَاقَةً لِلْبَرَاءِ، فَصَحَّ أَنَّهُ مُرْسَلٌ لِأَنَّ حَرَامًا لَيْسَ هُوَ ابْنُ مُحَيِّصَةُ لِصُلْبِهِ إِنَّمَا هُوَ ابْنُ سَعْدِ بْنِ مُحَيِّصَةُ، وَسَعْدٌ لَمْ يَسْمَعْ مِنْ الْبَرَاءِ وَلَا أَبُو أُمَامَةَ وَلَا حُجَّةَ فِي مُنْقَطِعٍ - وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْقَائِلِينَ: إنَّ الْمُرْسَلَ وَالْمُسْنَدَ سَوَاءٌ أَنْ يَقُولُوا بِهِ، وَلَكِنَّ هَذَا مِمَّا تَنَاقَضُوا فِيهِ.

L19703 They also cited as evidence something even more peculiar than all of this: what was narrated to us through the chains of Ubayd ibn Umayr, al-Zuhri, Masruq, and Mujahid regarding Allah's statement—Exalted is He—"And [mention] David and Solomon, when they judged concerning the cultivated land when the sheep of the people trespassed and grazed in it, and We were witness to their judgment" (21:78), and "So We enabled Solomon to understand it, and to each We gave judgment and knowledge" (21:79). It is related that Solomon—peace be upon him—ruled regarding sheep that had ruined people's cultivated land by ordering the sheep to be given to the cultivators—for them is their wool and milk—until the grapevines or cultivated land returned to their former state.[10]

وَاحْتَجُّوا أَيْضًا بِأَغْرَبَ مِنْ هَذَا كُلِّهِ -: وَهُوَ مَا رُوِّينَا مِنْ طَرِيقِ عُبَيْدِ بْنِ عُمَيْرٍ، وَالزُّهْرِيِّ، وَمَسْرُوقٍ، وَمُجَاهِدٍ، فِي قَوْلِ اللَّهِ تَعَالَى: {وَدَاوُدَ وَسُلَيْمَانَ إِذْ يَحْكُمَانِ فِي الْحَرْثِ إِذْ نَفَشَتْ فِيهِ غَنَمُ الْقَوْمِ وَكُنَّا لِحُكْمِهِمْ شَاهِدِينَ} [الأنبياء: ٧٨] {فَفَهَّمْنَاهَا سُلَيْمَانَ وَكُلا آتَيْنَا حُكْمًا وَعِلْمًا} [الأنبياء: ٧٩] وَأَنَّ سُلَيْمَانَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي ذَلِكَ فِي غَنَمٍ أَفْسَدَتْ حَرْثَ قَوْمٍ بِأَنْ دَفَعَ الْغَنَمَ إلَى أَهْلِ الْحَرْثِ، لَهُمْ صُوفُهَا وَأَلْبَانُهَا حَتَّى يَعُودَ الْعِنَبُ أَوْ الْحَرْثُ كَمَا كَانَ.

L19704 Abu Muhammad said: This is among the marvels of the world—and by the One in whom there is no doubt, between these mentioned individuals and Sulaiman (peace be upon him) lies a distance as vast as the winds and expansive deserts. Even if they had transmitted this to us from the Messenger of Allah (peace and blessings of Allah be upon him), it would not constitute valid proof, for it is a mursal (hadith with a disconnected chain of transmission).

قَالَ أَبُو مُحَمَّد: وَهَذَا عَجَبٌ مِنْ عَجَائِبِ الدُّنْيَا وَالَّذِي لَا نَشُكُّ فِيهِ أَنَّ بَيْنَ هَؤُلَاءِ الْمَذْكُورِينَ وَبَيْنَ سُلَيْمَانَ - عَلَيْهِ السَّلَامُ - مَا فِي رِيَاحٍ وَمَهَامِهَ فَيْحَاءَ، وَلَوْ رَوَوْا لَنَا ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا قَامَتْ بِهِ حُجَّةٌ لِأَنَّهُ مُرْسَلٌ.

L19705 Then, if it were valid, those who cite it as evidence would be the first of those opposing it, for they do not rule by this ruling. So, by Allah, how can a Muslim's tongue utter arguing against his opponent in religion using a ruling he considers impermissible to act upon? Allah is sufficient for us.

ثُمَّ لَوْ صَحَّ لَكَانَ الْمُحْتَجُّونَ بِهِ أَوَّلَ مُخَالِفِينَ لَهُ، لِأَنَّهُمْ لَا يَحْكُمُونَ بِهَذَا الْحُكْمِ، فَيَا لِلَّهِ كَيْفَ يَنْطِقُ لِسَانُ مُسْلِمٍ بِأَنْ يَحْتَجَّ عَلَى خَصْمِهِ فِي الدِّينِ بِحُكْمٍ لَا يَحِلُّ عِنْدَهُ أَنْ يُؤْخَذَ بِهِ؟ وَحَسْبُنَا اللَّهُ.

[10] **Qur'an references (L19703):** Qur'an 21:78 (Al-Anbya); Qur'an 21:79 (Al-Anbya).

L19706 Another point of astonishment regarding Al-Shāfiʿī is that he rejects acting upon mursal narrations, then here he permits financial rulings based on a mursal that is fundamentally invalid.

وَعَجَبٌ آخَرُ مِنْ الشَّافِعِيِّ: وَهُوَ أَنَّهُ لَا يَرَى الْقَوْلَ بِالْمُرْسَلِ ثُمَّ أَبَاحَ هَاهُنَا الْأَمْوَالَ بِمُرْسَلٍ لَا يَصِحُّ أَصْلًا.

L19707–19709 As for the sale of livestock that have strayed and caused damage, this is based on Allah's command: "Cooperate in righteousness and piety" [Al-Mā'idah: 2]. Among righteousness and piety is the preservation of crops and fruits, which are people's property. Thus, no assistance should be given in facilitating such sales. Its corruption. Thus, removing what corrupts it is obligatory, and there is no means to achieve that except through a lawful sale. There exist narrations from the Companions—may Allah be pleased with them—which they contradicted.[11]

وَأَمَّا بَيْعُ مَا تَعَدَّى مِنْ الْعَجْمَاءِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَمِنْ الْبِرِّ وَالتَّقْوَى حِفْظُ الزُّرُوعِ، وَالثِّمَارِ الَّتِي هِيَ أَمْوَالُ النَّاسِ فَلَا يُعَانُ عَلَى فَسَادِهَا، فَإِبْعَادُ مَا يُفْسِدُهَا فَرْضٌ وَلَا سَبِيلَ إلَى ذَلِكَ إلَّا بِالْبَيْعِ الْمُبَاحِ، وَهَا هُنَا آثَارٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَدْ خَالَفُوهَا.

L19710 It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj, who informed me that Abd al-Karim informed me that Umar ibn al-Khattab used to say: "By returning the camel, cow, donkey, and grazing livestock to their owners three times after the enclosure is constructed, then they are to be destroyed."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْكَرِيمِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَقُولُ: بِرَدِّ الْبَعِيرِ، وَالْبَقَرَةِ، وَالْحِمَارِ، وَالضَّوَارِي، إلَى أَهْلِهِنَّ ثَلَاثًا إذَا حُظِرَ الْحَائِطُ ثُمَّ يُعْقَرْنَ.

L19711 Ibn Jurayj said: I heard ʿAbd al-ʿAzīz ibn ʿAbdullāh relate that ʿUmar ibn al-Khaṭṭāb would order a walled enclosure to be constructed, the barrier sealed against the habitually aggressive predator. Then the animal was returned to its owner three times, after which it would be hamstrung.

قَالَ ابْنُ جُرَيْجٍ: وَسَمِعْت عَبْدَ الْعَزِيزِ بْنَ عَبْدِ اللَّهِ يَذْكُرُ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ كَانَ يَأْمُرُ بِالْحَائِطِ أَنْ يُحْظَرَ وَيُسَدَّ الْحَظْرُ مِنْ الضَّارِي الْمُدِلِّ ثُمَّ يُرَدُّ إلَى أَهْلِهِ ثَلَاثَ مَرَّاتٍ ثُمَّ يُعْقَرُ.

L19712 From the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, narrated by Abū Ḥayyān Yaḥyā ibn Saʿīd al-Taymī, who said: A mukātab of Banū Asad informed me that he brought coins from the Sawād to Kufa. When he reached Kufa's bridge, a client of Bakr ibn Wā'il came and sorted through the coins on the bridge. A coin slipped out from them, causing the man to slip into the Euphrates and drown. I seized it. His patrons then came to my patrons. My patrons offered them a settlement of two thousand dirhams on condition they would not raise the matter to ʿAlī, but they refused. We went to ʿAlī ibn Abī Ṭālib,

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا أَبُو حَيَّانَ يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ قَالَ: أَخْبَرَنِي مُكَاتَبٌ لِبَنِي أَسَدٍ أَنَّهُ أَتَى بِنَقَدٍ مِنْ السَّوَادِ إلَى الْكُوفَةِ فَلَمَّا انْتَهَى إلَى جِسْرِ الْكُوفَةِ جَاءَ مَوْلًى لِبَكْرِ بْنِ وَائِلٍ فَتَخَلَّلَ النَّقَدَ عَلَى الْجِسْرِ فَنَفَرَتْ مِنْهَا نَقْدَةٌ فَقَطَرَتْ الرَّجُلَ فِي الْفُرَاتِ فَغَرِقَ فَأَخَذْت فَجَاءَ مَوَالِيهِ إلَى مَوَالِيَّ فَعَرَضَ مَوَالِيَّ عَلَيْهِمْ صُلْحًا أَلْفَيْ دِرْهَمٍ وَلَا يَرْفَعُونَ إلَى عَلِيٍّ فَأَبَوْا فَأَتَيْنَا عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ لَهُمْ: إنْ عَرَفْتُمْ النَّقْدَةَ بِعَيْنِهَا فَخُذُوهَا، وَإِنْ اخْتَلَطَتْ عَلَيْكُمْ فَشَرْوَاهَا.

[11] **Qur'an references (L19707):** Qur'an 5:2 (Al-Ma'idah).

who told them: “If you recognize the specific coin, take it. But if it has become indistinguishable, assess its market value.”

L19713 Abu Muhammad said: There is indeed astonishment concerning the Hanafis and Malikis, as they argue—in invalidating the established Sunnahs that no sale is concluded between the two parties until they separate—by citing a narration from a sheikh from Banu Kinanah that Umar said: “The sale depends on a transaction or an option.” Then they go on to reject this very narration from Umar ibn al-Khattab and the other one from Ali. Why do they not declare: “Such a matter cannot be based on juristic opinion?” But this is the ruling of these people in their religion. Let the adherents of the Sunnahs praise Allah for the immense favor He has granted them.

قَالَ أَبُو مُحَمَّد: إِنَّ فِي الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، الْعَجَبَ إِذْ يَحْتَجُّونَ فِي إِبْطَالِ السُّنَنِ الثَّابِتَةِ فِي أَنَّ الْبَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ أَنَّ عُمَرَ قَالَ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ - ثُمَّ يَرُدُّونَ هَذِهِ الرِّوَايَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ وَهَذِهِ الْأُخْرَى عَنْ عَلِيٍّ فَهَلَّا قَالُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ؟ وَلَكِنْ هَذَا حُكْمُ الْقَوْمِ فِي دِينِهِمْ - فَلْيَحْمَدْ اللَّهَ أَهْلُ السُّنَنِ عَلَى عَظِيمِ نِعْمَتِهِ عِنْدَهُمْ.

A legal issue regarding one who broke a silver or gold vessel.

[مَسْأَلَةٌ كَسَرَ إِنَاءَ فِضَّةٍ أَوْ ذَهَبٍ]

L19714

L19715 1267 - Issue:

١٢٦٧ - مَسْأَلَةٌ:

L19716 If someone breaks a silver vessel or a gold vessel, there is no liability upon them, as they have acted rightly by adhering to the Messenger of Allah’s prohibition (Peace be upon him) against that, which we have mentioned in the chapters on “Ablution,” “Foods,” and “Drinks.” Similarly, there is no liability for one who breaks a cross or spills wine—whether belonging to a Muslim or a protected non-Muslim.

وَمَنْ كَسَرَ إِنَاءَ فِضَّةٍ أَوْ إِنَاءَ ذَهَبٍ فَلَا شَيْءَ عَلَيْهِ، وَقَدْ أَحْسَنَ لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، وَقَدْ ذَكَرْنَاهُ فِي " الْوُضُوءِ " " وَالْأَطْعِمَةِ " " وَالْأَشْرِبَةِ " وَكَذَلِكَ مَنْ كَسَرَ صَلِيبًا أَوْ أَهْرَقَ خَمْرًا لِمُسْلِمٍ، أَوْ لِذِمِّيٍّ.

L19717 The Hanafi scholars said: If a Muslim spills wine belonging to a dhimmi, he is obligated to pay its value, and if a dhimmi spills it, he must replace it in kind.

وَقَالَ الْحَنَفِيُّونَ: إِنْ أَهْرَقَ خَمْرًا لِذِمِّيٍّ مُسْلِمٌ فَعَلَيْهِ قِيمَتُهَا، وَإِنْ أَهْرَقَهَا ذِمِّيٌّ فَعَلَيْهِ مِثْلُهَا.

L19718–19720 Abu Muhammad said: This is void, and wine has no value. The Messenger of Allah, may Allah bless him and grant him peace, prohibited its sale and commanded. Due to its prohibition, whatever cannot be lawfully sold or owned entails no liability for it. If they say: “Is this not the property of the Dhimmis?” We reply: “You are mistaken, for Allah the Exalted has not designated it as lawful property for anyone since the time He prohibited it. Rather, inform us: Is this permissible or forbidden for the Dhimmis?” If they say: “It is permissible for them,” they have disbelieved, for Allah the

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، وَلَا قِيمَةَ لِلْخَمْرِ، وَقَدْ حَرَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْعَهَا وَأَمَرَ بِهَرْقِهَا، فَمَا لَا يَحِلُّ بَيْعُهُ وَلَا مِلْكُهُ فَلَا ضَمَانَ فِيهِ، فَإِنْ قَالُوا: هِيَ أَمْوَالُ أَهْلِ الذِّمَّةِ؟ قُلْنَا: كَذَبْتُمْ وَمَا جَعَلَهَا اللَّهُ تَعَالَى مُذْ حَرَّمَهَا مَالًا لِأَحَدٍ، وَلَكِنْ أَخْبِرُونَا: أَهِيَ حَلَالٌ لِأَهْلِ الذِّمَّةِ أَمْ هِيَ حَرَامٌ عَلَيْهِمْ؟ فَإِنْ قَالُوا: هِيَ لَهُمْ حَلَالٌ كَفَرُوا، لِأَنَّ

Exalted states in His reproach against them: {They do not forbid what Allah and His Messenger have forbidden, nor do they uphold the religion of truth} [At-Tawbah: 29].[12]

L19721 No two Muslims disagree that the religion of Islam binds disbelievers as it binds Muslims, that God's Messenger—may God's blessings and peace be upon him—was sent to them just as he was sent to us, and that obeying him is obligatory upon them as it is upon us. If they say, "Rather, it is forbidden for them," we reply: You have spoken the truth. Therefore, whoever destroys property whose ownership is impermissible has done well and bears no liability. They cited as evidence a narration we transmitted through Sufyan al-Thawri's chain from Ibrahim ibn Abd al-A'la al-Ju'fi, from Suwayd ibn Ghaflah: Umar ibn al-Khattab was asked, "Do your agents collect wine and pigs as land tax?" Bilal said to him, "Do they indeed do this?" Umar responded, "Do not do so. Hand them over to them—let them sell it."

L19722 Via the chain of Abī 'Ubayd from Kidām al-Anṣārī from Isrā'īl from Ibrāhīm ibn 'Abd al-A'lā from Suwayd ibn Ghaflah: Bilāl said to 'Umar ibn al-Khaṭṭāb: "Do your agents accept wine and pigs as payment for the *kharaj*?" He replied: "Do not take these from them. Rather, instruct them to sell the items themselves, then take from the proceeds."

L19723 Abu Muhammad said: There is no proof in this, because the ḥadīth of Sufyān—and it is the Ṣaḥīḥ one—contains nothing of Isrā'īl's addition. Rather, it states: "Appoint them as agents over its sale."

L19724 This is like the saying of Allah, the Most High: "We will turn him over to what he has chosen" [An-Nisa 4:115], and Israel (Jacob) is weak.[13]

L19725 Then, if it were valid, there is no authoritative proof in anyone other than the Messenger of Allah—peace be upon him—.

L19726 It is truly astonishing that they oppose 'Umar—may Allah be pleased with

اللَّهَ تَعَالَى قَدْ أَخْبَرَ فِيمَا نَعَاهُ عَلَيْهِمْ أَنَّهُمْ {وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ} [التوبة: ٢٩] .

وَلَا يَخْتَلِفُ مُسْلِمَانِ فِي أَنَّ دِينَ الْإِسْلَامِ لَازِمٌ لِلْكُفَّارِ لُزُومَهُ لِلْمُسْلِمِينَ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَبْعُوثٌ إلَيْهِمْ كَمَا بُعِثَ إلَيْنَا، وَأَنَّ طَاعَتَهُ فَرْضٌ عَلَيْهِمْ كَمَا هِيَ عَلَيْنَا؟ فَإِنْ قَالُوا: بَلْ هِيَ عَلَيْهِمْ حَرَامٌ؟ قُلْنَا: صَدَقْتُمْ فَمَنْ أَتْلَفَ مَالًا لَا يَحِلُّ تَمَلُّكُهُ فَقَدْ أَحْسَنَ وَلَا شَيْءَ عَلَيْهِ، وَاحْتَجُّوا بِرِوَايَةٍ رُوِّينَاهَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى الْجُعْفِيِّ عَنْ سُوَيْدِ بْنِ غَفَلَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قِيلَ لَهُ: عُمَّالُك يَأْخُذُونَ الْخَمْرَ، وَالْخَنَازِيرَ فِي الْخَرَاجِ؟ فَقَالَ لَهُ بِلَالٌ: إنَّهُمْ لَيَفْعَلُونَ؟ فَقَالَ عُمَرُ: لَا تَفْعَلُوا وَلُّوهُمْ هُمْ بَيْعَهَا.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ كِدَامٍ الْأَنْصَارِيِّ عَنْ إسْرَائِيلَ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى عَنْ سُوَيْدِ بْنِ غَفَلَةَ أَنَّ بِلَالًا قَالَ لِعُمَرَ بْنِ الْخَطَّابِ: إنَّ عُمَّالَك يَأْخُذُونَ الْخَمْرَ وَالْخَنَازِيرَ فِي الْخَرَاجِ؟ فَقَالَ: لَا تَأْخُذُوهَا مِنْهُمْ، وَلَكِنْ وَلُّوهُمْ أَنْتُمْ بَيْعَهَا وَخُذُوا أَنْتُمْ مِنْ الثَّمَنِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ حَدِيثَ سُفْيَانَ - وَهُوَ الصَّحِيحُ - لَيْسَ فِيهِ مَا زَادَ إسْرَائِيلُ وَإِنَّمَا فِيهِ " وَلُّوهُمْ بَيْعَهَا ".

وَهَذَا كَقَوْلِ اللَّهِ تَعَالَى: {نُوَلِّهِ مَا تَوَلَّى} [النساء: ١١٥] وَإِسْرَائِيلُ ضَعِيفٌ.

ثُمَّ لَوْ صَحَّ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[12] **Qur'an references (L19718):** Qur'an 9:29 (At-Tawbah).

him—in his legal distinction between Magians bound by mahram relations and his prohibition of their al-Zamzamah (ritual wailing), yet here they uncritically adopt a weak narration contradicting the Qur'an and the Sunnah. If wine is considered part of their wealth, then crosses and idols are more esteemed in their view than wine. These people must require compensation from anyone who breaks their cross or idol until it is restored fully intact and undamaged; otherwise, would they not contradict themselves?

وَإِنَّ مِنْ الْعَجَبِ أَنْ يُخَالِفُوا عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي تَفْرِيقِهِ بَيْنَ ذَوِي الْمَحَارِمِ مِنْ الْمَجُوسِ وَنَهْيِهِ لَهُمْ عَنْ الزَّمْزَمَةِ ثُمَّ يُقَلِّدُونَ هَاهُنَا رِوَايَةً سَاقِطَةً مُخَالِفَةً لِلْقُرْآنِ، وَالسُّنَنِ وَإِنْ كَانَتْ الْخَمْرُ مِنْ أَمْوَالِهِمْ فَإِنَّ الصَّلِيبَ وَالْأَصْنَامَ عِنْدَهُمْ أَجَلُّ مِنْ الْخَمْرِ، فَيَجِبُ عَلَى هَؤُلَاءِ الْقَوْمِ أَنْ يُضَمِّنُوا مَنْ كَسَرَ لَهُمْ صَلِيبًا أَوْ صَنَمًا حَتَّى يُعِيدَهُ سَالِمًا صَحِيحًا وَإِلَّا فَقَدْ تَنَاقَضُوا؟

L19727–19728 It has been narrated to us through the chain of Abū Dāwūd—he informed us—Qutaybah ibn Saʿīd informed us—al-Layth, that is Ibn Saʿd—from Yazīd ibn Abī Ḥabīb—from ʿAṭāʾ ibn Abī Rabāḥ—from Jābir ibn ʿAbdullāh that he heard Allah's Messenger—peace and blessings be upon him—say in the Year of the Conquest while in Mecca: "Allah has prohibited the sale of wine, dead animals, and swine." How I wish I knew—how could a Muslim deem it lawful to permit the price of a sale Allah the Exalted has forbidden? Or how could a Muslim deem it lawful to say: 'It is property belonging to the wealth of covenant-protected people that is guaranteed to them'? Far be it from Allah! How could this be?

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نَا قُتَيْبَةُ بْنُ سَعِيدٍ نَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ «عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ عَامَ الْفَتْحِ وَهُوَ بِمَكَّةَ: إنَّ اللَّهَ حَرَّمَ بَيْعَ الْخَمْرِ، وَالْمَيْتَةِ، وَالْخَنَازِيرِ» ، فَيَا لَيْتَ شِعْرِي كَيْفَ يَسْتَحِلُّ مُسْلِمٌ أَنْ يُبِيحَ ثَمَنَ بَيْعٍ حَرَّمَهُ اللَّهُ تَعَالَى؟ أَمْ كَيْفَ يَسْتَحِلُّ مُسْلِمٌ أَنْ يَقُولَ: إنَّهَا مَالٌ مِنْ أَمْوَالِ أَهْلِ الذِّمَّةِ تُضْمَنُ لَهُمْ؟ حَاشَا لِلَّهِ مِنْ هَذَا

A legal question: If a person breaks a silver ornament in a saddle or sword.

[مَسْأَلَةٌ كَسَرَ حِلْيَةَ فِضَّةٍ فِي سَرْجٍ أَوْ سَيْفٍ]

L19729 L19730 1268. Issue: If someone breaks a silver ornament on a saddle, bridle, spurs, sword, crown, or similar items, or breaks gold ornaments belonging to a woman or a man who prepares them for his household or for sale, he is obligated to restore them to their original, sound condition for the reasons we previously stated. If both parties mutually agree that he compensates for the difference in value between the intact and broken states, this is permissible, as it is equivalent to what he transgressed. It is permissible for them to agree in such cases on gold for gold ornaments and silver for silver ornaments. He may delay compensation for as long as he wishes, as this is not a sale but

١٢٦٨ - مَسْأَلَةٌ: وَمَنْ كَسَرَ حِلْيَةَ فِضَّةٍ فِي سَرْجٍ، أَوْ لِجَامٍ، أَوْ مَهَامِيزَ، أَوْ سَيْفٍ، أَوْ تَاجٍ، أَوْ غَيْرِ ذَلِكَ، أَوْ حُلِيَّ ذَهَبٍ لِامْرَأَةٍ، أَوْ لِرَجُلٍ يُعِدُّهُ لِأَهْلِهِ، أَوْ لِلْبَيْعِ -: كُلِّفَ إعَادَتَهُ صَحِيحًا كَمَا كَانَ لِمَا ذَكَرْنَا قَبْلُ، فَإِنْ تَرَاضَيَا جَمِيعًا عَلَى أَنْ يَضْمَنَ لَهُ مَا بَيْنَ قِيمَتِهِ صَحِيحًا وَمَكْسُورًا: جَازَ ذَلِكَ؛ لِأَنَّهُ مِثْلُ مَا اعْتَدَى بِهِ، وَجَائِزٌ أَنْ يَتَّفِقَا مِنْ ذَلِكَ فِي حُلِيِّ الذَّهَبِ عَلَى ذَهَبٍ، وَفِي حُلِيِّ الْفِضَّةِ عَلَى فِضَّةٍ، وَلَهُ أَنْ يُؤَخِّرَهُ بِهِ مَا شَاءَ؛ لِأَنَّهُ لَيْسَ هُوَ بَيْعًا وَإِنَّمَا هُوَ اعْتِدَاءٌ بِمِثْلِ مَا اعْتَدَى بِهِ عَلَيْهِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[13] **Qur'an references (L19724):** Qur'an 4:115 (An-Nisa).

merely an infringement equivalent to the harm he caused. And success is from Allah, the Exalted.

Issue: Harm Inflicted Upon a Male Slave or Female Slave

[مَسْأَلَةٌ جَنَى عَلَى عَبْدٍ أَوْ أَمَةٍ]

Issue 1269: Any harm caused to a male slave, female slave, camel, horse, mule, donkey, permissible-to-own dog, cat, sheep, cow, camels, gazelle, or any owned living being entails compensation for the reduction in its value regardless of extent. For male and female slaves specifically, this applies to accidental harm, while for all other mentioned entities it applies to both accidental and intentional harm.

١٢٦٩ - مَسْأَلَةٌ: وَكُلُّ مَا جَنَى عَلَى عَبْدٍ، أَوْ أَمَةٍ، أَوْ بَعِيرٍ، أَوْ فَرَسٍ، أَوْ بَغْلٍ، أَوْ حِمَارٍ، أَوْ كَلْبٍ يَحِلُّ تَمَلُّكُهُ، أَوْ سِنَّوْرٍ، أَوْ شَاةٍ، أَوْ بَقَرَةٍ، أَوْ إبِلٍ، أَوْ ظَبْيٍ، أَوْ كُلِّ حَيَوَانٍ مُتَمَلَّكٍ فَإِنَّ فِي الْخَطَأِ فِي الْعَبْدِ وَفِي الْأَمَةِ [خَاصَّةً] وَفِي سَائِرِ مَا ذَكَرْنَا خَطَأً أَوْ عَمْدًا مَا نَقَصَ مِنْ قِيمَتِهِ بَالِغًا مَا بَلَغَ.

As for the male slave and the female slave, in cases of intentional harm against them, retaliation in kind (qawad) applies along with compensation for the decrease in their value. The right to retaliation in kind belongs to the victim, while the diminished value is due to the master for what was transgressed against of his property.

وَأَمَّا الْعَبْدُ وَالْأَمَةُ فَفِيمَا جَنَى عَلَيْهِمَا عَمْدًا الْقَوَدُ وَمَا نَقَصَ مِنْ قِيمَتِهِمَا. أَمَّا الْقَوَدُ فَلِلْمَجْنِيِّ عَلَيْهِ - وَأَمَّا مَا نَقَصَ مِنْ الْقِيمَةِ فَلِلسَّيِّدِ فِيمَا اُعْتُدِيَ عَلَيْهِ مِنْ مَالِهِ.

Likewise, if a man rapes a female slave and kills her, he must pay financial compensation to her master and receive the hadd punishment for committing unlawful sexual intercourse with her, for one right does not negate another. The Messenger of Allah—peace and blessings be upon him—commanded that every right holder be given their due right.

وَكَذَلِكَ لَوْ أَنَّ امْرَأً اسْتَكْرَهَ أَمَةً فَقَتَلَهَا لَكَانَ عَلَيْهِ الْغَرَامَةُ لِسَيِّدِهَا وَالْحَدُّ فِي زِنَائِهِ بِهَا وَلَا يُبْطِلُ حَقٌّ حَقًّا، وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ.

As for qisas between the free person and the slave, we shall address this—if Allah, the Exalted, wills—in the Book of Qisas.

وَأَمَّا الْقَوَدُ بَيْنَ الْحُرِّ، وَالْعَبْدِ فَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي " كِتَابِ الْقِصَاصِ ".

As for what diminishes it, the scholars hold differing opinions here, and similarly regarding animals—our position regarding animals is the opinion of Abū Sulaymān, Mālik, and al-Shāfiʿī.

وَأَمَّا مَا نَقَصَهُ فَلِلنَّاسِ هَاهُنَا اخْتِلَافٌ، وَكَذَلِكَ فِي الْحَيَوَانِ - وَقَوْلُنَا فِي الْحَيَوَانِ - هُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

Abu Hanifah said: Similarly, except specifically regarding camels, cows, mules, donkeys, and horses—and specifically their eyes—for he ruled that a quarter of the market price is owed for the eye of any of these animals.

وَقَالَ أَبُو حَنِيفَةَ: كَذَلِكَ إلَّا فِي الْإِبِلِ، وَالْبَقَرِ، وَالْبِغَالِ، وَالْحَمِيرِ، وَالْخَيْلِ خَاصَّةً فِي عُيُونِهَا خَاصَّةً، فَإِنَّهُ قَالَ فِي عَيْنِ كُلِّ مَا ذَكَرْنَا رُبْعُ ثَمَنِهِ.

Abu Muhammad said: They cited as proof a narration we transmitted

through the chain of Qasim ibn Asbagh—from Zakariyya ibn Yahya al-Naqid, from Sa‘id ibn Sulayman, from Abu Umayyah ibn Ya‘la, from Abu al-Zinad, from ‘Amr ibn Wahb, from his father, from Zayd ibn Thabit—that the Prophet (peace and blessings of Allah be upon him) did not mandate compensation for head injuries except in three cases: the displaced fracture (al-munaqqilah), the exposed fracture (al-muwaddihah), and the penetrating fracture (al-āmmah), and for a horse’s eye injury, a quarter of its price.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجُّوا فِي ذَلِكَ بِأَثَرٍ رُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا زَكَرِيَّا بْنُ يَحْيَى النَّاقِدُ نا سَعِيدُ بْنُ سُلَيْمَانَ عَنْ أَبِي أُمَيَّةَ بْنِ يَعْلَى نا أَبُو الزِّنَادِ عَنْ عَمْرِو بْنِ وَهْبٍ عَنْ أَبِيهِ عَنْ زَيْدِ بْنِ ثَابِتٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْضِ فِي الرَّأْسِ إلَّا فِي ثَلَاثٍ: الْمُنَقِّلَةِ، وَالْمُوضِحَةِ، وَالْآمَّةِ وَفِي عَيْنِ الْفَرَسِ بِرُبْعِ ثَمَنِهِ» .

L19740 In a narration from ‘Umar ibn al-Khaṭṭāb via the chains of Sufyān, ‘Amr ibn Dīnār, and Ma‘mar: Sufyān reported from Jābir al-Ju‘fī from al-Sha‘bī from Shurayḥ from ‘Umar. ‘Amr ibn Dīnār stated that a man informed him Shurayḥ said, “‘Umar told me...” Ma‘mar said, “It reached me that ‘Umar ibn al-Khaṭṭāb...” Then they concurred that he judged regarding the eye of an animal to entail compensation amounting to a quarter of its value.

وَبِرِوَايَةٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ مِنْ طَرِيقِ سُفْيَانَ وَعَمْرِو بْنِ دِينَارٍ، وَمَعْمَرٍ قَالَ سُفْيَانُ: عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ عَنْ عُمَرَ، وَقَالَ عَمْرُو بْنُ دِينَارٍ: أَخْبَرَنِي رَجُلٌ أَنَّ شُرَيْحًا قَالَ لَهُ: قَالَ لِي عُمَرُ، وَقَالَ مَعْمَرٌ: بَلَغَنِي أَنَّ عُمَرَ بْنَ الْخَطَّابِ، ثُمَّ اتَّفَقُوا: أَنَّهُ قَضَى فِي عَيْنِ الدَّابَّةِ بِرُبْعِ ثَمَنِهَا.

L19741 And from the transmission of Ibn Abī Shaybah: Jarīr narrated to us from al-Mughīrah from Ibrāhīm from Shurayḥ, who said: ‘Urwah al-Bāriqī came to me conveying a ruling from ‘Umar that in the eye of the animal is a quarter of its price.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ عَنْ شُرَيْحٍ قَالَ: أَتَانِي عُرْوَةُ الْبَارِقِيُّ مِنْ عِنْدِ عُمَرَ بِأَنَّ فِي عَيْنِ الدَّابَّةِ رُبْعَ ثَمَنِهَا.

L19742 Through the chain of Abū Qilābah, on the authority of Abī al-Muhallab, on the authority of ʿUmar concerning the eye of an animal: a quarter of its value.

وَمِنْ طَرِيقِ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عُمَرَ فِي عَيْنِ الدَّابَّةِ رُبْعُ ثَمَنِهَا.

L19743 And via the transmission chain of Ibn Jurayj from ʿAbd al-Karīm: that ʿAlī ibn Abī Ṭālib ruled regarding an animal’s eye [to entail liability of] one-fourth of its value.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَضَى فِي عَيْنِ الدَّابَّةِ بِرُبْعِ ثَمَنِهَا.

L19744 Ali said: The narration from the Prophet—peace and blessings of Allah be upon him—is not authentic, as it is transmitted through Ismāʿīl ibn Yaʿlā al-Thaqafī—a weak narrator—from ʿAmr ibn Wahb via his father, both of whom are unknown [majhūl].

قَالَ عَلِيٌّ: الرِّوَايَةُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَصِحُّ؛ لِأَنَّهَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ يَعْلَى الثَّقَفِيِّ - وَهُوَ ضَعِيفٌ - عَنْ عَمْرِو بْنِ وَهْبٍ عَنْ أَبِيهِ، وَهُمَا مَجْهُولَانِ.

L19745 Then, there is nothing in it except the horse. Thus, they neither specified it exclusively as it had been specified, nor did they apply analogy from it to all four-legged animals.

ثُمَّ لَيْسَ فِيهِ إلَّا الْفَرَسُ فَلَا هُمْ خَصُّوهُ كَمَا جَاءَ مَخْصُوصًا، وَلَا هُمْ قَاسُوا عَلَيْهِ جَمِيعَ ذَوَاتِ الْأَرْبَعِ.

وَأَمَّا عَنْ عَلِيٍّ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - فَمَرَاسِيلُ كُلُّهَا، ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ فِيهَا حُجَّةٌ لِوُجُوهٍ: أَوَّلُهَا: أَنَّهُ لَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19746 As for what is reported from ʿAlī and ʿUmar—may Allah be pleased with them—all of their narrations are mursal. Furthermore, even if they were authentic, they would not constitute proof for several reasons. The first reason is that there is no proof in anyone other than the Messenger of Allah—may Allah bless him and grant him peace.

وَالثَّانِي: أَنَّهُ لَا مُؤْنَةَ عَلَيْهِمْ فِي خِلَافِ عُمَرَ، وَعَلِيٍّ إذَا خَالَفَا أَبَا حَنِيفَةَ كَمَا ذَكَرْنَا عَنْهُمَا آنِفًا مِنْ أَنَّهُمَا تَقَيَّآ مَا شَرِبَا إذْ عَلِمَا أَنَّهُ لَا يَحِلُّ.

L19747 The second is that no blame falls upon them for disagreeing with Umar and Ali in cases where they opposed Abu Hanifa, as we previously mentioned regarding them both - that they refrained out of piety from what they drank, knowing it was unlawful.

ثُمَّ فِي هَذِهِ الْقِصَّةِ نَفْسِهَا كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَتَبَ عُمَرُ مَعَ عُرْوَةَ الْبَارِقِيِّ إلَى شُرَيْحٍ فِي عَيْنِ الدَّابَّةِ رُبْعُ ثَمَنِهَا وَأَحَقُّ مَا صَدَقَ بِهِ الرَّجُلُ عِنْدَ مَوْتِهِ أَنْ يَنْتَفِيَ مِنْ وَلَدِهِ أَوْ يَدَّعِيهِ.

L19748–19750 Then, in this very report, as transmitted through the chain of Shuʿbah from al-Mughīrah ibn Miqsam from Ibrāhīm al-Nakhaʿī said: ʿUmar wrote via Urwah al-Bāriqī to Shurayḥ regarding the compensation for an animal's eye being set at a quarter of its value. The most valid statement a man can truthfully affirm at death is to deny paternity of a child or assert paternity over one.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَمَّنْ حَدَّثَهُ عَنْ مُحَمَّدِ بْنِ جَابِرٍ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ: أَنَّ عَلِيًّا قَضَى فِي الْفَرَسِ تُصَابُ عَيْنُهُ بِنِصْفِ ثَمَنِهِ.

L19751 From the narration of ʿAbd al-Razzāq, from someone who narrated to him, from Muḥammad ibn Jābir, from Jābir, from al-Shaʿbī: that ʿAlī ruled concerning a horse whose eye was injured, obligating compensation of half its value.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي عَيْنِ جَمَلٍ أُصِيبَ بِنِصْفِ ثَمَنِهِ ثُمَّ نَظَرَ إلَيْهِ بَعْدُ فَقَالَ: مَا أَرَاهُ نَقَصَ مِنْ قُوَتِهِ وَلَا هِدَايَتِهِ فَقَضَى فِيهِ بِرُبْعِ ثَمَنِهِ.

L19752 From the narration of Sufyān ibn ʿUyaynah through Mujālid from al-Shaʿbī that ʿUmar ibn al-Khaṭṭāb ruled regarding a camel's eye that was injured, assessing it at half its value. He later examined it again and said: "I observe no reduction in its strength or its ability to be guided," and thus ruled compensation for it as a quarter of its value.

فَلَيْتَ شِعْرِي مَا الَّذِي جَعَلَ إحْدَى قَضِيَّتَيْ عُمَرَ، وَعَلِيٍّ، أَوْلَى مِنْ الْأُخْرَى؟ وَهَلَّا أَخَذُوا بِهَذِهِ الْقَضِيَّةِ قِيَاسًا عَلَى قَوْلِهِمْ: إنَّ فِي عَيْنِ الْأَنْسَانِ نِصْفَ ثَمَنِهِ، وَقَدْ أَضْعَفَ عُمَرُ عَلَى حَاطِبٍ قِيمَةَ النَّاقَةِ الَّتِي انْتَحَرَهَا عَبِيدُهُ، وَجَاءَ بِذَلِكَ أَثَرٌ -: كَمَا رُوِّينَا عَنْ ابْنِ وَهْبٍ أَنَا عَمْرُو بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرٍو

L19753 If only I knew what made one of the two rulings of Umar and Ali more valid than the other? Why did they not apply this case as an analogy based on their principle that "the eye's value equals half a person's blood money"? Umar doubled the compensation value of the she-camel imposed on Hatib for his servants' slaughter of it, as evidenced by the report transmitted through Ibn Wahb, from Amr ibn al-Harith, from Amr ibn Shuʿayb, from his father, from his grandfather Abdullah ibn Amr ibn al-As: "A man from Muzaynah asked the Messenger of Allah (peace and blessings be upon him), 'What is your

ruling regarding game in the mountain preserve?' He replied: 'Its equivalent and exemplary punishment.'"

L19754 This narration is more authentic than their narration concerning the horse's eye: a quarter of its price.

L19755 There is a report more authentic than theirs from Umar, thus the invalidity of their opinion became evident in every respect.

L19756 It was incumbent upon the Mālikīs who maintain the position of following the Companion and that the mursal is equivalent to the musnad to affirm these narrations; otherwise, they have contradicted themselves.

L19757 ## Wrongful Injury Against a Slave in Cases Less Than Death.

L19758 As for non-fatal injuries inflicted upon a male slave or similarly upon a female slave, some scholars said: As we have stated, the master is entitled only to the reduction in his or her price caused by the injury, and this is the view of al-Ḥasan.

L19759 A group of scholars said: Injuries to a male slave are calculated from his price, just as injuries to a free person are calculated from his blood money, the price of the male and female slave being whatever it may reach. Thus, for the eye of a male slave, half of his price is taken - even if his price were two thousand dinars - and for the eye of a female slave, half of her price is taken - even if it reached ten thousand dinars. This ruling applies similarly to all other limbs.

L19760–19762 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Saʿīd ibn al-Musayyab, who said, "The injuries..." The adjustment to the prices of slaves for injuries corresponds proportionally to the diyat (blood money) established for similar injuries of free persons – this is the opinion of Shurayḥ, al-Shaʿbī, al-Nakhaʿī, ʿUmar ibn ʿAbd al-ʿAzīz, Muḥammad ibn Sīrīn, al-Shāfiʿī, Sufyān al-Thawrī, and al-Ḥasan ibn Ḥayy. However, al-Ḥasan stipulated: If the compensation reaches the slave's full

بْنِ الْعَاصِ «أَنَّ رَجُلًا مِنْ مُزَيْنَةَ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَيْفَ تَرَى فِي حَرِيسَةِ الْجَبَلِ؟ قَالَ: هِيَ وَمِثْلُهَا وَالنَّكَالُ» .

فَهَذَا خَبَرٌ أَصَحُّ مِنْ خَبَرِهِمْ فِي عَيْنِ الْفَرَسِ رُبْعُ ثَمَنِهِ.

وَأَصَحُّ مِنْ خَبَرِهِمْ عَنْ عُمَرَ، فَظَهَرَ فَسَادُ قَوْلِهِمْ مِنْ كُلِّ جِهَةٍ.

وَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْقَائِلِينَ بِتَقْلِيدِ الصَّاحِبِ، وَأَنَّ الْمُرْسَلَ كَالْمُسْنَدِ أَنْ يَقُولُوا بِهَذِهِ الْآثَارِ، وَإِلَّا فَقَدْ تَنَاقَضُوا.

[الْجِنَايَةَ عَلَى الْعَبْدِ فِيمَا دُونَ النَّفْسِ]

وَأَمَّا مَا جُنِيَ عَلَى عَبْدٍ فِيمَا دُونَ النَّفْسِ، أَوْ عَلَى أَمَةٍ كَذَلِكَ، فَقَالَ قَوْمٌ: كَمَا قُلْنَا: إنَّمَا فِيهِ لِلسَّيِّدِ مَا نَقَصَ مِنْ ثَمَنِهِ فَقَطْ - وَهُوَ قَوْلُ الْحَسَنِ.

وَقَالَ قَوْمٌ: جِرَاحُ الْعَبْدِ مِنْ ثَمَنِهِ كَجِرَاحِ الْحُرِّ مِنْ دِيَتِهِ، بَالِغًا ثَمَنُ الْعَبْدِ وَالْأَمَةِ مَا بَلَغَ، فَفِي عَيْنِ الْعَبْدِ نِصْفُ ثَمَنِهِ، وَلَوْ أَنَّ ثَمَنَهُ أَلْفَا دِينَارٍ وَفِي عَيْنِ الْأَمَةِ نِصْفُ ثَمَنِهَا وَلَوْ بَلَغَ عَشَرَةَ آلَافِ دِينَارٍ، وَهَكَذَا فِي سَائِرِ الْأَعْضَاءِ.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: جِرَاحَاتُ الْعَبِيدِ فِي أَثْمَانِهِمْ بِقَدْرِ جِرَاحَاتِ الْأَحْرَارِ فِي دِيَاتِهِمْ - وَهُوَ قَوْلُ شُرَيْحٍ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَالشَّافِعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ - إلَّا أَنَّ الْحَسَنَ قَالَ: إنْ بَلَغَ جَمِيعَ الْقِيمَةِ لَمْ يَكُنْ لَهُ إلَّا أَنْ يُسَلِّمَهُ، وَيَأْخُذَ قِيمَتَهُ، أَوْ يَأْخُذَ مَا نَقَصَ.

value, the owner must either surrender the slave and receive his full value or retain the slave and accept the diminished compensation.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: وَعَقْلُ الْعَبْدِ فِي ثَمَنِهِ كَعَقْلِ الْحُرِّ فِي دِيَتِهِ.

L19763 It has also been narrated to us through the chain of Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, from his father, that Umar ibn al-Khattab said: The blood money for a slave is based on his price, just as the blood money for a free person is based on the *diya*.

وَرُوِيَ أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إنَّ رِجَالًا مِنْ الْعُلَمَاءِ لَيَقُولُونَ: الْعَبِيدُ وَالْإِمَاءُ سِلَعٌ، فَيَنْظُرُ مَا نَقَصَ ذَلِكَ مِنْ أَثْمَانِهِمْ.

L19764 It has also been reported from Ali ibn Abī Ṭālib - through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī - that he said: “Certain scholars assert that male slaves and female slaves are chattel, so one examines what reduction this causes in their market values.”

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلُنَا - وَقَالَتْ طَائِفَةٌ: فِيهِ مَا نَقَصَ إلَّا أَنْ تَكُونَ الْجِنَايَةُ اسْتِهْلَاكًا كَقَطْعِ الْيَدَيْنِ، أَوْ الرِّجْلَيْنِ، أَوْ فَقْءِ الْعَيْنَيْنِ، فَصَاحِبُهُ مُخَيَّرٌ بَيْنَ أَنْ يَأْخُذَ مَا نَقَصَ مِنْ ذَلِكَ مِنْ قِيمَتِهِ، أَوْ يُسَلِّمُهُ إلَى الْجَانِي وَيَأْخُذَ مِنْهُ قِيمَتَهُ صَحِيحًا - وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ.

L19765 Abu Muhammad said: “This is our position.” Another group maintained: “There is a deficiency [in compensation] unless the injury constitutes total destruction, such as severing both hands, both feet, or rupturing both eyes. In such cases, the victim may choose between taking the deficiency in its value or transferring the injured part to the offender and receiving compensation equivalent to its value in an intact state.” This is the opinion of Abu Yusuf and Muhammad ibn al-Hasan.

وَطَائِفَةٌ قَالَتْ: جِرَاحُ الْعَبْدِ فِي ثَمَنِهِ كَجِرَاحِ الْحُرِّ فِي دِيَتِهِ، فَإِنْ كَانَتْ الْجِنَايَةُ مِمَّا لَوْ كَانَتْ عَلَى حُرٍّ لَكَانَتْ فِيهِ الدِّيَةُ كُلُّهَا أَسْلَمَهُ إلَى الْجَانِي وَلَا بُدَّ، وَأَلْزَمَهُ قِيمَتَهُ صَحِيحًا - وَهُوَ قَوْلُ النَّخَعِيِّ، وَالشَّعْبِيِّ.

L19766 A group said: The wounds of a slave are assessed against his market value like the wounds of a free person are assessed against his diya. If the injury is of a type that would entail full diya had it been inflicted on a free person, the owner must necessarily surrender the slave to the offender and obligate him to pay the slave’s sound market value. This is the opinion of Al-Nakhaʿī and Al-Shaʿbī.

وَطَائِفَةٌ قَالَتْ: يُدْفَعُ إلَى الْجَانِي وَتَلْزَمُهُ قِيمَتُهُ صَحِيحًا - وَهُوَ قَوْلُ إيَاسِ بْنِ مُعَاوِيَةَ، وَقَتَادَةَ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ إيَاسِ بْنِ مُعَاوِيَةَ فِي رَجُلٍ قَطَعَ يَدَ عَبْدٍ؟ قَالَ: هُوَ لَهُ وَعَلَيْهِ مِثْلُهُ.

L19767 And a group said: The slave is given to the offender, obligating him to pay his value in a sound state - this being the opinion of Iyas ibn Muʿawiyah and Qatadah. It has been narrated via Hammad ibn Salamah’s chain from Iyas ibn Muʿawiyah concerning a man who severed a slave’s hand. He said: “The slave remains his possession, and he must pay the equivalent value.”

L19768 From the report of Abd al-Razzaq via Ma’mar via Qatadah regarding one who cuts off a slave’s ear or nose, or maims his hand: compensation is paid to the owner, and the perpetrator is fined the equivalent value for him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِيمَنْ جَدَعَ أُذُنَ عَبْدٍ، أَوْ أَنْفَهُ، أَوْ أَشَلَّ يَدَهُ: أَنَّهُ يُدْفَعُ إِلَيْهِ وَيَغْرَمُ لِصَاحِبِهِ مِثْلَهُ.

L19769 Through the chain of Abd al-Razzaq from Ibn Jurayj from Ata, he said: If someone inflicts a head wound exposing the bone on a slave or gouges out his eye, the compensation is equivalent to the reduction in his value. He also held that for a wound exposing the bone, the compensation is one-twentieth of his value.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إِنْ شَجَّ عَبْدًا، أَوْ فَقَأَ عَيْنَهُ، فَقِيمَتُهُ كَمَا أَفْسَدَهُ -: وَرَأَى فِي مُوضِحَتِهِ نِصْفَ عُشْرِ قِيمَتِهِ.

L19770–19771 The statement of Abū Ḥanīfah and Muḥammad: If one unintentionally kills a male slave, the compensation for his value is borne by the ʿāqilah provided it does not reach ten thousand dirhams or more. If it reaches or exceeds ten thousand dirhams, only ten thousand dirhams excluding ten dirhams are owed by the ʿāqilah. In the case of a female slave, her value is similarly borne by the ʿāqilah provided it does not reach five thousand dirhams or more. If it reaches or exceeds five thousand dirhams, only five thousand dirhams excluding five dirhams are owed by the ʿāqilah.

قَوْلُ أَبِي حَنِيفَةَ وَمُحَمَّدٍ: مَنْ قَتَلَ عَبْدًا خَطَأً فَقِيمَتُهُ عَلَى الْعَاقِلَةِ مَا لَمْ تَبْلُغْ قِيمَتُهُ عَشَرَةَ آلَافِ دِرْهَمٍ فَأَكْثَرَ، فَلَيْسَ فِيهِ إِلَّا عَشَرَةُ آلَافِ دِرْهَمٍ غَيْرَ عَشَرَةِ دَرَاهِمَ، وَفِي الْأَمَةِ قِيمَتُهَا كَذَلِكَ مَا لَمْ تَبْلُغْ خَمْسَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا، فَإِنْ بَلَغَتْهَا فَلَيْسَ فِيهَا إِلَّا خَمْسَةُ آلَافِ دِرْهَمٍ غَيْرَ خَمْسَةِ دَرَاهِمَ عَلَى الْعَاقِلَةِ.

L19772 Abu Hanifah alone said: As for injuries less than homicide, the compensation is based on their value as in homicide, and it is incumbent upon the free person to pay from his diya. When the arsh for such an injury from the free person reaches, ten dirhams or five dirhams are deducted from its value. This is the sum total.

قَالَ أَبُو حَنِيفَةَ وَحْدَهُ: وَأَمَّا مَا دُونَ النَّفْسِ فَمِنْ قِيمَتِهَا مِثْلُ مَا فِي الْجِنَايَةِ، وَعَلَى الْحُرِّ مِنْ دِيَتِهِ، فَإِذَا بَلَغَ أَرْشُ ذَلِكَ مِنَ الْحُرِّ، أَنْقَصَ مِنْ قِيمَتِهِ عَشَرَةَ دَرَاهِمَ أَوْ خَمْسَةَ دَرَاهِمَ هَكَذَا جُمْلَةً.

L19773 Then he retracted his ruling concerning the ear and eyebrow specifically, stating: “Compensation applies only for their diminution. If the injury results in total destruction, the victim may either retain it as it is – receiving nothing – or surrender his right to *qisas* and receive the *diya* prescribed for accidental killing.”

ثُمَّ رَجَعَ عَنِ الْأُذُنِ وَالْحَاجِبِ خَاصَّةً فَقَالَ: فِيهِمَا مَا نَقَصُهُمَا فَقَطْ، فَإِنْ كَانَتِ الْجِنَايَةُ مُسْتَهْلِكَةً فَلَيْسَ لَهُ إِلَّا إِمْسَاكُهُ، كَمَا هُوَ، وَلَا شَيْءَ لَهُ، أَوْ إِسْلَامُهُ وَأَخَذَ مَا كَانَ يَأْخُذُ لَوْ قُتِلَ خَطَأً.

L19774 Abu Yusuf ruled concerning the accidental killing of a slave and a criminal offense: the perpetrator must pay the slave’s full value whatever it may be, even if it exceeds blood money amounts. Muhammad concurred with him regarding injuries not resulting in death.

وَقَالَ أَبُو يُوسُفَ فِي قَتْلِ الْعَبْدِ خَطَأً وَالْجِنَايَةِ: عَلَيْهِ قِيمَتُهُ مَا بَلَغَتْ وَلَوْ تَجَاوَزَتْ دِيَاتٍ - وَوَافَقَهُ مُحَمَّدٌ فِيمَا دُونَ النَّفْسِ.

L19775 All of them unanimously agreed on Abu Hanifah’s opinion regarding the

irretrievable loss crime as we have mentioned.

وَاتَّفَقُوا كُلُّهُمْ فِي الْجِنَايَةِ الْمُسْتَهْلَكَةِ عَلَى قَوْلِ أَبِي حَنِيفَةَ الَّذِي ذَكَرْنَا.

L19776 It has been reported from both of them that if he retains it, he must pay the value of the diminution caused by the expended wrongful act.

وَقَدْ رُوِيَ عَنْهُمَا أَنَّهُ إنْ أَمْسَكَهُ أَخَذَ قِيمَةَ مَا نَقَصَتْه الْجِنَايَةُ الْمُسْتَهْلَكَةُ.

L19777 It has been reported from Abū Yūsuf regarding non-fatal injuries specifically - a view similar to Abū Ḥanīfah's position. The same ruling applies to the eyebrow, the ear, and other such parts. This has been mentioned in *Disagreements of the Jurists*.

وَقَدْ رُوِيَ عَنْ أَبِي يُوسُفَ فِيمَا دُونَ النَّفْسِ خَاصَّةً مِثْلُ قَوْلِ أَبِي حَنِيفَةَ وَسَوَاءٌ فِي ذَلِكَ الْحَاجِبُ، وَالْأُذُنُ وَغَيْرُ ذَلِكَ، وَذُكِرَ ذَلِكَ فِي اخْتِلَافِ الْفُقَهَاءِ.

L19778 It has been reported that Zufar, concerning non-capital offenses, at times adopted Abū Ḥanīfa's later opinion and at other times his earlier one, while he agreed with Abū Ḥanīfa's opinion in capital cases.

وَرُوِيَ عَنْ زُفَرَ فِيمَا دُونَ النَّفْسِ مَرَّةً مِثْلُ قَوْلِ أَبِي حَنِيفَةَ الْآخِرِ، وَمَرَّةً مِثْلُ قَوْلِهِ الْأَوَّلِ، وَوَافَقَ أَبَا حَنِيفَةَ فِي قَوْلِهِ فِي النَّفْسِ.

L19779 A group has stated that the injuries of a male slave are assessed relative to his market value, just as injuries to a free person are assessed relative to their blood money (diyah), except when the male slave's value reaches ten thousand dirhams or more, or the female slave's value reaches five thousand dirhams or more. In such cases, the injury compensation (arsh) for those wounds does not reach the amount equivalent to their share from the diyah of a free man or free woman. Instead, it is calculated as a proportion of ten dirhams for the male slave and five dirhams for the female slave, unless the injury involves a severed ear that heals, or plucked eyebrow that heals but fails to regrow. In these cases, he is only responsible for the reduction in the slave's value. This is the opinion of Abū Ḥanīfah.

وَقَالَتْ طَائِفَةٌ جِرَاحُ الْعَبْدِ فِي قِيمَتِهِ كَجِرَاحِ الْحُرِّ فِي دِيَتِهِ إلَّا أَنْ تَبْلُغَ قِيمَةُ الْعَبْدِ عَشَرَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا أَوْ تَبْلُغَ قِيمَةُ الْأَمَةِ خَمْسَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا فَلَا تَبْلُغُ بِأَرْشِ تِلْكَ الْجِرَاحَةِ مِقْدَارَهَا مِنْ دِيَةِ الْحُرِّ، أَوْ الْحُرَّةِ، لَكِنْ يُحَطُّ مِنْ ذَلِكَ حِصَّتَهَا مِنْ عَشَرَةِ دَرَاهِمَ فِي الْعَبْدِ، وَحِصَّتَهَا مِنْ خَمْسَةِ دَرَاهِمَ فِي الْأَمَةِ، إلَّا أَنْ يَكُونَ قَطْعَ أُذُنٍ فَبَرِئَ، أَوْ نَتْفَ حَاجِبٍ فَبَرِئَ، وَلَمْ يَنْبُتْ فَلَيْسَ عَلَيْهِ إلَّا مَا نَقَصَهُ - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ.

L19780–19782 If the injury inflicted upon the slave reaches the degree that would require full blood money if committed against a free person, the owner must either retain the slave as he is, receiving nothing, or surrender him to the offender and take all his value, provided it does not reach ten. For thousands of dirhams or more, he is entitled to only ten thousand dirhams minus ten, and for the female slave, half of that amount.

فَإِنْ بَلَغَ مِنْ الْجِنَايَةِ عَلَى الْعَبْدِ مَا لَوْ جَنَى عَلَى حُرٍّ لَوَجَبَتْ فِيهِ الدِّيَةُ كُلُّهَا فَلَيْسَ لَهُ إلَّا إمْسَاكُهُ كَمَا هُوَ، وَلَا شَيْءَ لَهُ أَوْ إسْلَامُهُ إلَى الْجَانِي وَأَخْذُ جَمِيعِ قِيمَتِهِ مَا لَمْ يَبْلُغْ عَشَرَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا فَلَيْسَ لَهُ إلَّا عَشَرَةُ آلَافٍ غَيْرَ عَشَرَةِ دَرَاهِمَ، وَفِي الْأَمَةِ نِصْفُ ذَلِكَ.

L19783 And its explanation is that if he gouges out the eye of a female slave valued at five thousand dirhams or more than that, up to a hundred thousand

وَتَفْسِيرُهُ -: أَنَّهُ إنْ فَقَأَ عَيْنَ أَمَةٍ تُسَاوِي خَمْسَةَ آلَافِ دِرْهَمٍ فَمَا فَوْقَ ذَلِكَ إلَى مِائَةِ أَلْفٍ فَأَكْثَرَ، فَلَيْسَ عَلَيْهِ إلَّا أَلْفَا دِرْهَمٍ وَخَمْسمِائَةِ دِرْهَمٍ غَيْرَ دِرْهَمَيْنِ وَنِصْفٍ.

or beyond, he is only required to pay two thousand five hundred dirhams, excluding two-and-a-half dirhams.

وَإِنْ فَقَأَ عَيْنَ عَبْدٍ يُسَاوِي عَشَرَةَ آلَافٍ فَمَا زَادَ فَلَيْسَ عَلَيْهِ إِلَّا خَمْسَةُ آلَافِ دِرْهَمٍ، غَيْرَ خَمْسَةِ دَرَاهِمَ، وَهَكَذَا فِي سَائِرِ الْجِرَاحَاتِ.

L19784 If he gouges out the eye of a slave valued at ten thousand dirhams, he is liable only for five thousand dirhams excluding five dirhams, and this ruling applies equally to all other injuries.

فَلَوْ سَاوَتْ الْأَمَةُ مِائَتَيْ دِرْهَمٍ، وَالْعَبْدُ مِائَةَ دِرْهَمٍ، لَمْ يَلْزَمْهُ فِي عَيْنِ الْعَبْدِ إِلَّا خَمْسُونَ دِرْهَمًا فَقَطْ، وَفِي عَيْنِ الْأَمَةِ مِائَةُ دِرْهَمٍ فَقَطْ، وَهَكَذَا الْعَمَلُ فِي سَائِرِ الْقِيَمِ.

L19785 If a female slave is valued at two hundred dirhams and a male slave at one hundred dirhams, only fifty dirhams are due for the male slave's value and one hundred dirhams for the female slave's value. This procedure applies to all other valuations.

وَطَائِفَةٌ قَالَتْ: إِنَّ مُنَقِّلَةَ الْعَبْدِ، وَمَأْمُومَتَهُ، وَجَائِفَتَهُ، وَمُوضِحَتَهُ مِنْ ثَمَنِهِ، بَالِغًا مَا بَلَغَ فَهِيَ مِنْ الْحُرِّ فِي دِيَتِهِ -: فَفِي مُوضِحَةِ الْعَبْدِ نِصْفُ عُشْرِ ثَمَنِهِ - وَلَوْ أَنَّهُ أَلْفُ أَلْفِ دِرْهَمٍ.

L19786 A group maintained that compensation for a slave's displaced fracture, skull fracture reaching the brain membrane, penetrating wound, and bone-exposing injury is taken from his price—regardless of its amount—whereas for a free person, these are compensated from his blood money. Thus, for a bone-exposing injury in a slave, half of one-tenth [i.e., one-twentieth] of his price is owed—even if it amounts to a million dirhams.

وَفِي مُنَقِّلَتِهِ عُشْرُ قِيمَتِهِ كَذَلِكَ وَنِصْفُ عُشْرِ قِيمَتِهِ كَذَلِكَ.

L19787 For one's movable property, a tenth of its value is due, and likewise, half of a tenth of its value is due.

وَفِي جَائِفَتِهِ، وَمَأْمُومَتِهِ ثُلُثُ ثَمَنِهِ بَالِـغٌ مَا بَلَغَ.

L19788 For his deep abdominal wound and his skull-penetrating injury, one-third of its price is owed, reaching whatever amount it reaches.

وَأَمَّا سَائِرُ الْجِرَاحَاتِ، وَقَطْعُ الْأَعْضَاءِ فَإِنَّمَا فِيهِ مَا نَقَصَهُ فَقَطْ، وَهُوَ قَوْلُ مَالِكٍ - وَقَدْ رُوِيَ عَنْ مَالِكٍ أَيْضًا أَنَّهُ إذَا قَطَعَ يَدَيْ عَبْدٍ أَوْ فَقَأَ عَيْنَيْهِ أُعْتِقَ عَلَيْهِ وَغَرِمَ قِيمَتَهُ كَامِلَةً لِسَيِّدِهِ.

L19789 As for other injuries and the severing of limbs, only the reduction in their value applies. This is the opinion of Mālik. It has also been narrated from Mālik that if someone severs both hands of a slave or gouges out both his eyes, the slave is emancipated at the perpetrator's expense, and he is liable to pay the slave's full value to his master.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: مَنْ خَصَى عَبْدَ غَيْرِهِ فَعَلَيْهِ قِيمَتُهُ كُلُّهَا لِسَيِّدِهِ، وَيَبْقَى الْعَبْدُ لِسَيِّدِهِ - سَوَاءٌ زَادَ ذَلِكَ فِي قِيمَتِهِ أَوْ نَقَصَ.

L19790 And Layth ibn Saʿd said: Whoever castrates another's slave must pay his full value to the master, and the slave remains the master's property—regardless of whether that act increased or decreased his value.

L19791 Abu Muhammad said: As for those who say that the injuries of a slave are in his value like the injuries of a free person are in his blood money—this is a statement with no proof of its validity, neither from the Quran, nor

the Sunnah, nor a corrupt narration. Rather, they analogized it to the free person because he is a human being like him.

قَالَ أَبُو مُحَمَّد: أَمَّا مَنْ قَالَ: جِرَاحُ الْعَبْدِ فِي قِيمَتِهِ كَجِرَاحِ الْحُرِّ فِي دِيَتِهِ -: فَقَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ فَاسِدَةٍ، لَكِنَّهُمْ قَاسُوهُ عَلَى الْحُرِّ؛ لِأَنَّهُ إِنْسَانٌ مِثْلُهُ.

L19792 Ali said: If analogy were valid, this would be the very essence of falsehood in it, for many of the blood money amounts for the limbs of a free person are fixed, with neither increase nor decrease.

قَالَ عَلِيٌّ: وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ؛ لِأَنَّ كَثِيرًا مِنْ دِيَاتِ أَعْضَاءِ الْحُرِّ مُؤَقَّتٌ لَا زِيَادَةَ فِيهَا وَلَا نَقْصَ.

L19793 We have agreed with those who opposed us here that the diyah for a slave's limbs is not fixed. This is undisputed, as a slave may be valued at ten dinars, and thus the compensation for his eye according to them would amount to ten dinars.

وَقَدْ وَافَقْنَا مَنْ خَالَفَنَا هَاهُنَا عَلَى أَنَّ دِيَةَ أَعْضَاءِ الْعَبْدِ غَيْرُ مُؤَقَّتَةٍ لَا خِلَافَ فِي ذَلِكَ، إِذْ قَدْ يُسَاوِي الْعَبْدُ عَشَرَةَ دَنَانِيرَ فَتَكُونُ دِيَةُ عَيْنِهِ عِنْدَهُمْ عَشَرَ دَنَانِيرَ.

L19794–19795 The female slave is equivalent to five thousand dirhams, so the blood money for her eye would be two thousand five hundred dirhams excluding two and a half dirhams (or, according to some scholars, ten thousand dinars). They reached a consensus that blood monies in such cases are unlimited and that it is permissible to set a higher blood money for a woman's body part compared to a man's, contrary to the case with free men and women. The fundamental flaw in their analogical reasoning has become evident through these proofs and others as well - thus this opinion is conclusively invalidated.

وَتُسَاوِي الْأَمَةُ خَمْسَةَ آلَافِ دِرْهَمٍ فَتَكُونُ دِيَةُ عَيْنِهَا أَلْفَيْ دِرْهَمٍ وَخَمْسمِائَةِ دِرْهَمٍ غَيْرَ دِرْهَمَيْنِ وَنِصْفٍ - أَوْ تَكُونُ دِيَةُ عَيْنِهَا عِنْدَ بَعْضِهِمْ عَشَرَةَ آلَافِ دِينَارٍ، فَقَدْ أَصْفَقُوا عَلَى أَنَّ الدِّيَاتِ فِي ذَلِكَ غَيْرُ مَحْدُودَةٍ وَعَلَى جَوَازِ تَفْضِيلِ دِيَةِ عُضْوِ الْمَرْأَةِ عَلَى دِيَةِ عُضْوِ الرَّجُلِ، بِخِلَافِ الْأَحْرَارِ وَالْحَرَائِرِ - فَقَدْ ظَهَرَ فَسَادُ قِيَاسِهِمْ جُمْلَةً بِهَذِهِ الدَّلَائِلِ وَبِغَيْرِهَا أَيْضًا - فَسَقَطَ هَذَا الْقَوْلُ بِيَقِينٍ.

L19796 Then we examined the statement of those who say: "He should surrender it and take its value," and we found this also to be incorrect. For it is impermissible to remove property from the possession of its owner and transfer it to another without mutual consent from both parties unless there exists a textual evidence. In this case, no such text exists at all, and thus the opinion is dismissed in its entirety.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: يُسَلِّمُهُ وَيَأْخُذُ قِيمَتَهُ، فَوَجَدْنَاهُ أَيْضًا غَيْرَ صَحِيحٍ؛ لِأَنَّهُ لَا يَحِلُّ إِخْرَاجُ مَالٍ عَنْ يَدِ صَاحِبِهِ إِلَى غَيْرِهِ بِغَيْرِ تَرَاضٍ مِنْهُمَا إِلَّا أَنْ يَأْتِيَ بِذَلِكَ نَصٌّ، وَلَمْ يَأْتِ بِهَذَا هَاهُنَا نَصٌّ أَصْلًا، فَسَقَطَ أَيْضًا جُمْلَةً.

L19797 Then we examined the statements of Mālik and Abū Ḥanīfah and found them to be the most corrupt of views, for neither brought anything from it: neither Quran, nor Sunnah, nor an infirm narration, nor any statement of a Companion whatsoever, nor analogical reasoning, nor an opinion with a

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ، وَأَبِي حَنِيفَةَ، فَوَجَدْنَاهُمَا أَشَدَّ الْأَقْوَالِ فَسَادًا؛ لِأَنَّهُ لَمْ يَأْتِ بِشَيْءٍ مِنْهُ: قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ أَصْلًا، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، بَلْ مَا نَعْرِفُ هَذَيْنِ عَنْ أَحَدٍ مِنَ الْأَئِمَّةِ قَبْلَ هَذَيْنِ الرَّجُلَيْنِ.

valid basis. Rather, we do not recognize these two [views] from any imam before these two men.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَظُلْمٌ بَيِّنٌ لَا خَفَاءَ بِهِ أَنْ يَكُونَ يُقْطَعُ يَدَ جَارِيَةٍ تُسَاوِي عَشَرَةَ آلَافِ دِينَارٍ فَلَا يُقْضِي لِصَاحِبِهَا إِلَّا بِمِائَتَيْ دِينَارٍ وَخَمْسِينَ دِينَارًا غَيْرَ مَا تُسَاوِي مِنْ الذَّهَبِ دِرْهَمَيْنِ وَنِصْفًا وَيَكُونُ تُغْصَبُ لَهُ خَادِمٌ أُخْرَى قِيمَتُهَا أَلْفُ دِينَارٍ فَتَمُوتُ عِنْدَ الْغَاصِبِ فَيَغْرَمُ لَهُ أَلْفَ دِينَارٍ كَامِلَةً، عَلَى هَذَا الْحُكْمِ الدِّثَارُ وَالدَّمَارُ - وَنَحْنُ نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْهُ فِي الدُّنْيَا، وَيَوْمَ يَقُومُ الْأَشْهَادُ.

L19798 As for the statement of Abu Hanifah: It constitutes manifest injustice beyond concealment that one could cut off the hand of a female slave valued at ten thousand dinars, yet her owner would only be awarded two hundred and fifty dinars - excluding the equivalent in gold of two and a half dirhams - while if another female slave of his worth one thousand dinars were seized by force and died under the usurper's possession, he would be liable to pay the full thousand dinars. Such rulings bring about calamity and destruction - we dissociate ourselves to Allah the Exalted from this in this worldly life and on the day when witnesses shall stand forth.

وَأَمَّا قَوْلُ مَالِكٍ: فَتَقْسِيمٌ فِي غَايَةِ الْفَسَادِ، وَلَوْ عُكِسَ عَلَيْهِمْ قَوْلُهُمْ مَا تَخَلَّصُوا مِنْهُ لَوْ قِيلَ لَهُمْ: بَلْ فِي الْمُنَقِّلَةِ، وَالْجَائِفَةِ، وَالْمَأْمُومَةِ -: مَا نَقَصَهُ فَقَطْ، وَأَمَّا سَائِرُ الْجِرَاحَاتِ فَمِنْ ثَمَنِهِ بِقَدْرِهَا مِنْ الْحُرِّ فِي دِيَتِهِ، وَمِثْلُ هَذَا لَا يَشْتَغِلُ بِهِ إِلَّا مَحْرُومٌ.

L19799 As for Mālik's statement: this division is utterly invalid. If their own argument were turned back on them, they could not escape its implications. If they were told regarding the displaced bone, the piercing wound, and the ma'mūmah (the skull-penetrating wound): "Only the diminished part [is compensated]," while all other injuries are compensated from the blood money of a free person, proportionally to their severity—then none would engage with such reasoning except one deprived [of reason].

وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِأَنْ قَالَ: هَذِهِ جِرَاحَاتٌ يُشْفَقُ عَلَيْهِ مِنْهَا، فَيُمْكِنُ أَنْ يَتْلَفَ، وَيُمْكِنُ أَنْ يَبْرَأَ، وَلَا يَبْقَى لَهَا أَثَرٌ وَلَا ضَرَرٌ؟ فَقُلْنَا: نَعَمْ، فَاجْعَلُوا هَذَا دَلِيلَكُمْ فِي أَنْ لَا يَكُونَ فِيهَا إِلَّا مَا نَقَصَ فَقَطْ.

L19800 Some of his emulating followers argued in his favor, saying: "These are injuries for which there is fear for him—he might either suffer lasting damage or recover fully, leaving no trace or harm." We replied: "Yes. Take this as your proof that nothing applies to them except what has been reduced."

قَالَ أَبُو مُحَمَّد: وَالْحُكْمُ عَلَى الْجَانِي بِمَا نَقَصَ فِيمَا جَنَاهُ عَلَى الْعَبْدِ مِنْ خِصَاءٍ، أَوْ مَأْمُومَةٍ، أَوْ جَائِفَةٍ، أَوْ قَطْعِ عُضْوٍ، أَوْ غَيْرِ ذَلِكَ، مِمَّا قَلَّ أَوْ كَثُرَ مِنْ الْجِنَايَاتِ إِنَّمَا يَكُونُ بِأَنْ يُقَوَّمَ صَحِيحًا، ثُمَّ يُقَوَّمَ فِي أَصْعَبِ مَا انْتَهَتْ إِلَيْهِ حَالُهُ مِنْ تِلْكَ الْجِنَايَةِ وَأَشَدِّ مَا كَانَ مِنْهَا مَرَضًا وَضَعْفًا وَخَوْفًا عَلَيْهِ، وَيَغْرَمُ مَا بَيْنَ الْقِيمَتَيْنِ، وَلَا يُنْتَظَرُ بِهِ صِحَّةٌ، وَلَا تَخَفُّفٌ أَصْلًا؛ لِأَنَّهُ فِي كُلِّ حَالٍ مِنْ أَحْوَالِهِ فِي تَأْثِيرِ تِلْكَ الْجِنَايَةِ فَهُوَ الْجَانِي عَلَيْهِ فِي كُلِّ تِلْكَ

L19801–19803 Abū Muḥammad said: The judgment against the perpetrator for the diminution in value caused by his injury to the slave—whether through castration, a head wound reaching the brain, a penetrating wound into the body cavity, amputation of a limb, or other such offenses, whether few or extensive—is determined solely by first assessing the slave's value while healthy, then assessing his value in the most severe condition his state has reached from that injury and the most severe state it had attained. Among these are illness, weakness, and fear for him. He is liable to pay the difference between the two values, and no recovery is expected, nor any reduction whatsoever. This

is because in every circumstance of his condition impacting that offense, he remains the liable party against his master in all those situations. Thus, he is responsible in every such circumstance for whatever decrease his master's wealth has suffered due to his offense, undoubtedly – in accordance with Allah's decree: "If you punish, then punish with the equivalent of what you were afflicted with" (16:126), and His decree: "Whoever transgresses against you, then retaliate against him to the extent of his transgression" (2:194).[14]

L19804 If the male slave or female slave recovers and regains health, and those offenses—such as castration of the male slave, the amputation of a super-numerary finger, or similar acts—increase their market value, this is part of Allah's provision to the master. The offender has no recourse to reclaim anything he was obligated to pay for those acts.

L19805 Similarly, if he did not pay any compensation prior to the victim's recovery, he must necessarily pay compensation as previously stated, for he remains obligated to provide the equivalent of what he transgressed against. Thus, it is not absolved from him due to the victim's recovery from the injury caused by the offense.

L19806 Similarly, whoever cuts down a tree belonging to another person is liable for its value, whether it subsequently grows back and thrives or does not grow back or thrive, due to what we have mentioned - and success is from Allah, the Exalted.

L19807 **A person killed a male slave belonging to another or a female slave.**

L19808 If a person kills another's male slave or female slave - whether intentionally or by mistake - their full market value must inevitably be paid in full to their owner, as we have mentioned, though people have differed regarding this matter. It has been reported to us from Hammad ibn Salama, from Dawud ibn Abi Hind, from al-Sha'bi, that a slave was killed by mistake whose purchase price was ten thousand dirhams, so Sa'id ibn al-'As assigned his blood money as four thousand dirhams.

الْأَحْوَالِ، فَعَلَيْهِ فِي كُلِّ حَالٍ مِنْهَا مَا نَقَصَ بِجِنَايَتِهِ مِنْ مَالِ سَيِّدِهِ بِلَا شَكٍّ، لِقَوْلِ اللَّهِ تَعَالَى: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] . وَلِقَوْلِهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

فَإِنْ بَرِئَ الْعَبْدُ، أَوْ الْأَمَةُ وَصَحَّا، وَزَادَتْ تِلْكَ الْجِنَايَاتُ فِي أَثْمَانِهِمَا، كَالْخِصَاءِ فِي الْعَبْدِ، أَوْ قَطْعِ إصْبَعٍ زَائِدَةٍ، أَوْ مَا أَشْبَهَ ذَلِكَ، فَمِنْ رِزْقِ اللَّهِ تَعَالَى لِلسَّيِّدِ، وَلَا رُجُوعَ لِلْجَانِي مِنْ أَجْلِ ذَلِكَ بِشَيْءٍ مِمَّا غَرِمَ.

وَكَذَلِكَ لَوْ لَمْ يَغْرَمْ شَيْئًا حَتَّى صَحَّ الْمَجْنِيُّ عَلَيْهِ فَإِنَّهُ يَغْرَمُ كَمَا ذَكَرْنَا وَلَا بُدَّ، لِأَنَّهُ قَدْ لَزِمَهُ أَدَاءُ مِثْلِ مَا اعْتَدَى فِيهِ، فَلَا يَسْقُطُ عَنْهُ بِبُرْءِ الْجِنَايَةِ.

وَكَذَلِكَ مَنْ قَطَعَ شَجَرَةً لِإِنْسَانٍ، فَإِنَّهُ يَضْمَنُ قِيمَتَهَا سَوَاءٌ نَبَتَتْ بَعْدَ ذَلِكَ وَنَمَتْ أَوْ لَمْ تَنْبُتْ وَلَا نَمَتْ، لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[قَتَلَ الْمَرْءُ عَبْدًا لِغَيْرِهِ أَوْ أَمَةً]

وَأَمَّا إنْ قَتَلَ الْمَرْءُ عَبْدًا لِغَيْرِهِ، أَوْ أَمَةً عَمْدًا أَوْ خَطَأً، فَقِيمَتُهُمَا وَلَا بُدَّ لِسَيِّدِهِمَا بَالِغَةً مَا بَلَغَتْ لِمَا ذَكَرْنَا - وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ أَنَّ عَبْدًا قُتِلَ خَطَأً وَكَانَ ثَمَنُهُ عَشَرَةَ آلَافِ دِرْهَمٍ فَجَعَلَ سَعِيدُ بْنُ الْعَاصِ دِيَتَهُ أَرْبَعَةَ آلَافٍ.

[14] **Qur'an references (L19801):** Qur'an 16:126 (An-Nahl); Qur'an 2:194 (Al-Baqarah).

L19809 It is authentically reported from An-Nakha'i and Ash-Sha'bi that they both said: The blood money for a slave does not reach the blood money of a free person.

وَصَحَّ عَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ، قَالَا جَمِيعًا: لَا يَبْلُغُ بِدِيَةِ الْعَبْدِ دِيَةَ الْحُرِّ.

L19810 We have also narrated it from 'Aṭā', al-Ḥakam ibn 'Utaybah, and Ḥammād ibn Abī Sulaymān.

وَرُوِّينَاهُ أَيْضًا عَنْ عَطَاءٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ.

L19811 Sufyan al-Thawri also said: "He subtracts a dirham or the like therefrom." 'Aṭā' said: "The subtracted amount should not exceed the diyah of a free person." This was also authentically reported from Ḥammād ibn Abī Sulaymān.

وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، قَالَ: يَنْقُصُ مِنْهَا الدِّرْهَمُ وَنَحْوُهُ، وَقَالَ عَطَاءٌ: لَا يَتَجَاوَزُ بِهِ دِيَةَ الْحُرِّ، وَصَحَّ أَيْضًا عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ.

L19812 Abu Hanifa, Zufar, and Muhammad said: If he is a slave, his value is assessed provided it does not reach ten thousand dirhams. If it reaches or exceeds that amount, regardless of the excess, his killer is liable only for ten thousand dirhams, excluding ten dirhams.

وَقَالَ أَبُو حَنِيفَةَ، وَزُفَرُ، وَمُحَمَّدٌ: إنْ كَانَ عَبْدًا فَقِيمَتُهُ مَا لَمْ يَبْلُغْ عَشَرَةَ آلَافِ دِرْهَمٍ، فَإِنْ بَلَغَهَا أَوْ تَجَاوَزَهَا بِمَا قَلَّ أَوْ كَثُرَ لَمْ يَغْرَمْ قَاتِلُهُ إلَّا عَشَرَةَ آلَافِ دِرْهَمٍ، غَيْرَ عَشَرَةِ دَرَاهِمَ.

L19813–19814 If she is a female slave, her value is paid provided it does not reach five thousand dirhams. If it reaches or exceeds that amount by any margin, her killer is liable only for five thousand dirhams less five dirhams. A group has stated: He must pay the value, however much it reaches.

وَإِنْ كَانَتْ أَمَةً فَقِيمَتُهَا مَا لَمْ تَبْلُغْ خَمْسَةَ آلَافِ دِرْهَمٍ، فَإِنْ بَلَغَتْهَا أَوْ تَجَاوَزَتْهَا بِمَا قَلَّ أَوْ كَثُرَ لَمْ يَغْرَمْ قَاتِلُهَا إلَّا خَمْسَةَ آلَافِ دِرْهَمٍ غَيْرَ خَمْسَةِ دَرَاهِمَ - وَقَالَتْ طَائِفَةٌ: يَغْرَمُ الْقِيمَةَ بَالِغَةً مَا بَلَغَتْ.

L19815 It has been narrated to us through the chain of Ibn Abi Shaybah: Muhammad ibn Bakr reported to us from Ibn Jurayj from Abd al-Karim from Ali ibn Abi Talib, Ibn Masud, and Shurayh, who said: "Its price, even if it differs from the diyah of a free person." This ruling has also been established as valid by Said ibn al-Musayyab, al-Hasan, Ibn Sirin, Ibrahim al-Nakha'i also, Yahya ibn Said al-Ansari, and al-Zuhri.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: وَابْنِ مَسْعُودٍ، وَشُرَيْحٍ، قَالُوا: ثَمَنُهُ، وَإِنْ خَالَفَ دِيَةَ الْحُرِّ - وَصَحَّ هَذَا أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَابْنِ سِيرِينَ، وَإِبْرَاهِيمَ النَّخَعِيِّ أَيْضًا، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَالزُّهْرِيِّ.

L19816 And it has also been narrated to us from ʿUmar ibn ʿAbd al-ʿAzīz, Iyās ibn Muʿāwiyah, ʿAṭā', and Makhūl. This is the opinion of Mālik, Abū Yūsuf, al-Shāfiʿī, Aḥmad ibn Ḥanbal, Isḥāq, Abū Sulaymān, others.

وَرُوِّينَاهُ أَيْضًا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِيَاسِ بْنِ مُعَاوِيَةَ، وَعَطَاءٍ، وَمَكْحُولٍ، وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي يُوسُفَ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L19817 Abu Muhammad said: As for Abu Hanifa's statement, it is utterly baseless,

for he restricted what is invalidated thereof by a criterion not transmitted from any predecessor. Rather, it stems solely from his own corrupt opinion.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ السُّقُوطِ، لِأَنَّهُ حَدَّ مَا يَسْقُطُ مِنْ ذَلِكَ بِحَدٍّ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ، وَإِنَّمَا هُوَ مِنْ رَأْيِهِ الْفَاسِدِ.

L19818 His adherents said: "Should that amount be reduced by the amount **for which** the hand is amputated?" We replied: "**What is your source for this?** Moreover, you have contradicted yourselves by deducting five dirhams from a woman's blood money, even though, **by your own position, hand amputation does not apply to her case**. Thus, you have invalidated **the threshold** you established."

وَقَالَ مُقَلِّدُوهُ: يَنْقُصُ مِنْ ذَلِكَ مَا تُقْطَعُ فِيهِ الْيَدُ؟ قُلْنَا: وَمِنْ أَيْنَ لَكُمْ هَذَا؟ ثُمَّ قَدْ تَنَاقَضْتُمْ فَأَسْقَطْتُمْ مِنْ دِيَةِ الْمَرْأَةِ خَمْسَةَ دَرَاهِمَ، وَلَيْسَ تُقْطَعُ فِيهَا الْيَدُ فِي قَوْلِكُمْ، فَقَدْ أَبْطَلْتُمْ مَا أَصَّلْتُمْ مِنْ كَثَبٍ.

L19819 Then we say to them: Why did you not deduct from the blood money the same amount you subtracted from the forty dirhams in the stipulation regarding the runaway slave when he was equivalent to it? Why did you not deduct from the blood money what is subject to zakah? Is this not but a spurious and baseless opinion? Every statement wholly unsupported by any evidence whatsoever, having no precedent, is the most deserving of rejection.

ثُمَّ نَقُولُ لَهُمْ: وَهَلَّا نَقَصْتُمْ مِنْ الدِّيَةِ مَا نَقَصْتُمْ مِنْ الْأَرْبَعِينَ دِرْهَمًا فِي جَعْلِ الْآبِقِ إذَا كَانَ يُسَاوِيهَا؟ وَهَلَّا نَقَصْتُمْ مِنْ الدِّيَةِ مَا تَجِبُ فِيهِ الزَّكَاةُ؟ وَهَلْ هَذَا إلَّا رَأْيٌ زَائِفٌ مُجَرَّدٌ؟ وَكُلُّ قَوْلٍ لَمْ يَقُمْ عَلَيْهِ دَلِيلٌ أَصْلًا، وَلَا كَانَ لَهُ سَلَفٌ فَأَوْلَى قَوْلٍ بِالِاطِّرَاحِ.

L19820 Then we examined the statement of those who claim that a slave's blood money does not reach that of a free person, and we found it to be a corrupt opinion with no evidence. Moreover, they contradict themselves by ruling that one who kills a dog worth two thousand dinars must pay two thousand dinars, and one who maims a dhimmi's pig worth one thousand dinars must pay one thousand dinars. Yet if he kills a Christian who ascribes a son and the mother of the son to God Almighty, they rule that he must pay the blood money of a Muslim. O Muslims! How can the blood money for a dog, a pig, or one worse than a dog and a pig (i.e., the Christian) reach that of a Muslim, while Bilāl—if killed before emancipation—would not reach the blood money of a Muslim? Indeed, he would not even reach the blood money of an unbeliever who worships the cross—though such a person is deemed better than every Muslim on earth today in the sight of God Almighty and according to the people of Islam!

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لَا يَبْلُغُ بِدِيَةِ الْعَبْدِ دِيَةَ الْحُرِّ -: فَوَجَدْنَاهُ قَوْلًا فَاسِدًا لَا دَلِيلَ عَلَيْهِ، ثُمَّ هُمْ يَتَنَاقَضُونَ، فَيَقُولُونَ: فِيمَنْ قَتَلَ كَلْبًا يُسَاوِي أَلْفَيْ دِينَارٍ: أَنَّهُ يُعْطِي أَلْفَيْ دِينَارٍ، وَإِنْ عَقَرَ خِنْزِيرًا لِذِمِّيٍّ يُسَاوِي أَلْفَ دِينَارٍ أَدَّى إلَيْهِ أَلْفَ دِينَارٍ، وَإِنْ قَتَلَ نَصْرَانِيًّا يَجْعَلُ لِلَّهِ تَعَالَى الْوَلَدَ وَأُمَّ الْوَلَدِ: أَنَّهُ يُعْطِي فِيهِ دِيَةَ الْمُسْلِمِ؟ فَيَا لِلْمُسْلِمِينَ أَيَبْلُغُ كَلْبٌ، وَخِنْزِيرٌ، وَمَنْ هُوَ شَرٌّ مِنْ الْكَلْبِ، وَالْخِنْزِيرِ: دِيَةَ الْمُسْلِمِ، وَلَا يَبْلُغُ بِلَالٌ لَوْ قُتِلَ قَبْلَ أَنْ يُعْتَقَ دِيَةَ مُسْلِمٍ؟ نَعَمْ، وَلَا دِيَةَ كَافِرٍ يَعْبُدُ الصَّلِيبَ، وَهُوَ خَيْرٌ مِنْ كُلِّ مُسْلِمٍ عَلَى ظَهْرِ الْأَرْضِ الْيَوْمَ عِنْدَ اللَّهِ تَعَالَى، وَعِنْدَ أَهْلِ الْإِسْلَامِ.

L19821–19822 Then they contradicted themselves by stating: "If someone unlawfully seizes a slave who dies in their custody while his value is ten thousand dinars, they must pay ten thousand dinars." Has any contradiction more absurd than

ثُمَّ قَدْ تَنَاقَضُوا فَقَالُوا: مَنْ غَصَبَ عَبْدًا فَمَاتَ عِنْدَهُ وَقِيمَتُهُ عَشَرَةُ آلَافِ دِينَارٍ أَدَّى عَشَرَةَ آلَافِ دِينَارٍ فَهَلْ سُمِعَ بِأَسْخَفَ مِنْ هَذَا التَّنَاقُضِ؟ ثُمَّ قَدْ جَعَلُوا دِيَةَ الْعَبْدِ

this ever been heard? Furthermore, they established the diyah for a slave as ten thousand dirhams—excluding one dirham or ten dirhams—thereby exceeding the diyah of a free Muslim woman. These are specious arguments whose mere mention dispenses with the need for elaborate refutation.

L19823 What we have mentioned has been reported from Ibn Mas'ud and 'Ali, and we know of no dissenter among the Companions - may Allah be pleased with them - regarding that matter. So they opposed them both.

L19824 Some of them dared to say: "Consensus has been reached on the amount we mentioned, and disagreement exists regarding what exceeds it?" We responded: "You have lied and slandered! This is Sa'īd ibn al-'Āṣ - governor of Kufa under 'Uthmān (may Allah be pleased with him) and governor of Medina and Mecca under Mu'āwiyah - the blood money for a slave does not exceed four thousand dirhams."

L19825 Abu Muhammad said: The male slave and the female slave are property, so the one who destroys them is liable to compensate the equivalent of what he wrongfully destroyed, up to its full extent—and success comes from Allah, the Exalted.

L19826 **The criminal liability of an enslaved person for harm to another's property.**

L19827 As for the criminal liability of a slave against another's property: it is charged against the slave's own wealth if he possesses any. If he has no wealth, it becomes a personal obligation; the liability remains enforceable against him until he acquires wealth while enslaved or after emancipation. His master bears no obligation to ransom him - neither for a small nor large amount - nor to surrender him [to the victim] due to his offense, nor to sell him because of it.

L19828 Similarly, the criminal liability of a slave designated for eventual freedom (mudabbar), a contracted slave (mukatab), and the mother of the master's child (umm walad) – whether permitted or not permitted – is equal. Debt and criminal liability in all such cases are the same, as stated by Allah, the Exalted:

عَشَرَةَ آلَافِ دِرْهَمٍ غَيْرَ دِرْهَمٍ أَوْ غَيْرَ عَشَرَةِ دَرَاهِمَ فَتَجَاوَزُوا بِهَا دِيَةَ الْحُرَّةِ الْمُسْلِمَةِ - وَهَذِهِ وَسَاوِسُ يُغْنِي ذِكْرُهَا عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهَا.

وَقَدْ رُوِيَ مَا ذَكَرْنَا عَنْ ابْنِ مَسْعُودٍ، وَعَلِيٍّ، وَمَا نَعْلَمُ لَهُمْ مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ فَخَالَفُوهُمَا.

وَقَدْ جَسَرَ بَعْضُهُمْ فَقَالَ: قَدْ أُجْمِعَ عَلَى الْمِقْدَارِ الَّذِي ذَكَرْنَا وَاخْتُلِفَ فِيمَا زَادَ؟ فَقُلْنَا: كَذَبْت وَأَفَكْت هَذَا سَعِيدُ بْنُ الْعَاصِ أَمِيرُ الْكُوفَةِ لِعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَأَمِيرُ الْمَدِينَةِ، وَمَكَّةَ لِمُعَاوِيَةَ، لَا يَتَجَاوَزُ بِدِيَةِ الْعَبْدِ أَرْبَعَةُ آلَافِ دِرْهَمٍ.

قَالَ أَبُو مُحَمَّدٍ: وَالْعَبْدُ، وَالْأَمَةُ مَالٌ، فَعَلَى مُتْلِفِهِمَا مِثْلُ مَا تَعَدَّى فِيهِ بَالِغًا مَا بَلَغَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[جِنَايَةُ الْعَبْدِ عَلَى مَالِ غَيْرِهِ]

وَأَمَّا جِنَايَةُ الْعَبْدِ عَلَى مَالِ غَيْرِهِ فَفِي مَالِ الْعَبْدِ إنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَفِي ذِمَّتِهِ يُتْبَعُ بِهِ حَتَّى يَكُونَ لَهُ مَالٌ فِي رِقِّهِ أَوْ بَعْدَ عِتْقِهِ، وَلَيْسَ عَلَى سَيِّدِهِ فِدَاؤُهُ، وَلَا بِمَا قَلَّ وَلَا بِمَا كَثُرَ وَلَا إسْلَامُهُ فِي جِنَايَتِهِ وَلَا بَيْعُهُ فِيهَا.

وَكَذَلِكَ جِنَايَةُ الْمُدَبَّرِ، وَالْمُكَاتَبِ، وَأُمِّ الْوَلَدِ الْمَأْذُونِ، وَغَيْرِ الْمَأْذُونِ - سَوَاءٌ، الدَّيْنُ وَالْجِنَايَةُ فِي كُلِّ ذَلِكَ سَوَاءٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

"No soul bears the burden of another, nor does any bearer of burdens bear another's burden" [al-Anʿām 6:164].[15]

L19829 It is not permissible for anyone to be punished for the crime of another. The Messenger of Allah (peace be upon him) said: "Verily, your blood and your wealth are sacred and inviolable among you."

L19830 And He, the Exalted, said: "Do not consume one another's wealth wrongfully, unless it is trade by mutual consent among yourselves." [Qur'an 4:29][16]

L19831–19833 The slave is property from his master's property, as is his price, and likewise the rest of the master's property. We ask those who oppose us here: By which Book of Allah, or by which tradition of the Messenger of Allah—peace and blessings be upon him—have you deemed it lawful to make the master's property permissible for others? And he did not commit any offense? Perhaps he was a minor, or insane, or absent in a distant land, or asleep, or in prayer—is this not an astounding marvel? Abu Muhammad said: The opponents cited as evidence a report we narrated through the chain of Marwan al-Fazari from Dahtham ibn Qurran al-Yamami from Nimran ibn Jariyah ibn Dhafar from his father: "A slave cut off a man's hand, then encountered another man and struck him, wounding his head. They brought their dispute to the Messenger of Allah (peace and blessings be upon him). The Messenger of Allah handed the slave over to the man whose hand was severed. Then he took him back and transferred him to the man with the head wound, so ownership of the slave passed to him. The slave's owner and the man whose hand was cut off both departed empty-handed."

L19834 Abu Muhammad said: This is invalid because Dahtham ibn Qurran is weak, and there is agreement among transmitters regarding his weakness. Nimran is unknown, so it is impermissible to hold this opinion. Even if it were authentic, they would not have been the first to adopt it. Some who show no concern for lying against the Muslims have claimed consensus that a slave's liability rests upon his own neck. This ignorant one has lied and fabricated.

وَلَا يَحِلُّ أَنْ يُؤْخَذَ أَحَدٌ بِجَرِيرَةِ أَحَدٍ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَقَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَالْعَبْدُ مَالٌ مِنْ مَالِ سَيِّدِهِ، وَكَذَلِكَ ثَمَنُهُ، وَكَذَلِكَ سَائِرُ مَالِ السَّيِّدِ، فَنَسْأَلُ مَنْ خَالَفَنَا هَاهُنَا؟ بِأَيِّ كِتَابِ اللَّهِ، أَمْ بِأَيِّ سُنَّةٍ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَحْلَلْتُمْ إِبَاحَةَ مَالِ السَّيِّدِ لِغَيْرِهِ وَلَمْ يَجْنِ شَيْئًا؟ وَلَعَلَّهُ صَغِيرٌ، أَوْ مَجْنُونٌ، أَوْ غَائِبٌ فِي أَرْضٍ بَعِيدَةٍ، أَوْ نَائِمٌ، أَوْ فِي صَلَاةٍ، إِنَّ هَذَا لَعَجَبٌ عَجِيبٌ؟ قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ الْمُخَالِفُونَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مَرْوَانَ الْفَزَارِيِّ عَنْ دَهْثَمِ بْنِ قُرَّانَ الْيَمَامِيِّ عَنْ نِمْرَانَ بْنِ جَارِيَةَ بْنِ ظَفَرٍ عَنْ أَبِيهِ «أَنَّ مَمْلُوكًا قَطَعَ يَدَ رَجُلٍ ثُمَّ لَقِيَ آخَرَ فَشَجَّهُ فَاخْتَصَمَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَفَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعَبْدَ إِلَى الْمَقْطُوعِ يَدُهُ، ثُمَّ أَخَذَهُ مِنْهُ فَدَفَعَهُ إِلَى الْمَشْجُوجِ، فَصَارَ لَهُ وَرَجَعَ سَيِّدُ الْعَبْدِ وَالْمَقْطُوعُ يَدُهُ بِلَا شَيْءٍ» .

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا يَصِحُّ، لِأَنَّ دَهْثَمَ بْنَ قُرَّانَ ضَعِيفٌ مُتَّفَقٌ مِنْ أَهْلِ النَّقْلِ عَلَى ضَعْفِهِ - وَنِمْرَانُ مَجْهُولٌ، فَلَمْ يَجُزِ الْقَوْلُ بِهِ، وَلَوْ صَحَّ لَمَا سَبَقُونَا إِلَى الْأَخْذِ بِهِ، وَقَدْ ادَّعَى بَعْضُ مَنْ لَا يُبَالِي بِالْكَذِبِ عَلَى أَهْلِ الْإِسْلَامِ الْإِجْمَاعَ عَلَى أَنَّ جِنَايَةَ الْعَبْدِ فِي رَقَبَتِهِ، وَقَدْ كَذَبَ هَذَا الْجَاهِلُ وَأَفِكَ، مَا جَاءَ فِي هَذَا [الْخَبَرِ] عَنْ أَحَدٍ مِنَ الصَّحَابَةِ

[15] **Qur'an references (L19828):** Qur'an 6:164 (Al-An'am).
[16] **Qur'an references (L19830):** Qur'an 4:29 (An-Nisa).

- رَضِيَ اللَّهُ عَنْهُمْ - فِي عِلْمِنَا إِلَّا مَا نَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى، وَمَا فَاتَنَا - بِحَوْلِ اللَّهِ تَعَالَى - فِي ذَلِكَ شَيْءٌ ثَابِتٌ أَصْلًا، وَلَعَلَّهُ لَمْ يَفُتْنَا أَيْضًا مَعْلُولٌ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ هُوَ ابْنُ غِيَاثٍ - عَنْ حَجَّاجٍ هُوَ ابْنُ أَرْطَاةَ - عَنْ حُصَيْنٍ الْحَارِثِيِّ عَنْ الشَّعْبِيِّ عَنْ الْحَارِثِ هُوَ الْأَعْوَرُ - عَنْ عَلِيٍّ قَالَ: مَا جَنَى الْعَبْدُ فَفِي رَقَبَتِهِ، وَيَتَخَيَّرُ مَوْلَاهُ إِنْ شَاءَ فَدَاهُ وَإِنْ شَاءَ دَفَعَهُ. وَهَذِهِ فَضِيحَةُ الْحَجَّاجِ، وَالْحَارِثِ الْأَعْوَرِ، أَحَدُهُمَا كَانَ يَكْفِي.

To our knowledge, no report in this [text] from any Companion—may Allah be pleased with them—exists except what we shall mention, Allah willing. By the power of Allah the Exalted, we have not missed anything established in that regard fundamentally, and perhaps we have not even overlooked a defective report.

It was narrated to us via Ibn Abi Shaybah's chain: Hafs (Ibn Ghiyath) from Hajjaj (Ibn Arta'ah) from Husayn al-Hārithī, from al-Sha'bī, from al-Hārith (al-A'war) from Ali, who said: "Whatever offense a slave commits rests upon his own neck. His master may choose: if he wishes, he pays compensation, or if he wishes, he surrenders him." This exposes the disgrace of Hajjaj and al-Hārith al-A'war—either one of them would have sufficed.

وَقَدْ خَالَفُوا عَلِيَّ بْنَ أَبِي طَالِبٍ فِي إسْلَامِهِ الشَّاةَ إلَى أَوْلِيَاءِ الَّتِي نُطِحَتْ فَغَرِقَتْ فِي الْفُرَاتِ، فَمَا الَّذِي جَعَلَ حُكْمَهُ هُنَالِكَ أَوْلَى مِنْ حُكْمِهِ هَاهُنَا لَوْ صَحَّ عَنْهُ فَكَيْفَ وَهُوَ بَاطِلٌ؟ نَعَمْ، وَقَدْ خَالَفُوا عَلِيًّا فِي هَذِهِ الْقَضِيَّةِ نَفْسِهَا فَأَبُو حَنِيفَةَ يَقُولُ: مَا جَنَى الْعَبْدُ مِنْ دَمٍ عَمْدًا فَلَيْسَ فِي رَقَبَتِهِ، وَلَا يَفْدِيهِ سَيِّدُهُ، وَلَا يَدْفَعُهُ، إنَّمَا هُوَ الْقَوَدُ، أَوْ الْعَفْوُ، أَوْ مَا تَصَالَحُوا عَلَيْهِ. وَمَالِكٌ يَقُولُ: جِنَايَةُ الْعَبْدِ فِي مَالِهِ إنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَحِينَئِذٍ يَرْجِعُ إلَى سَيِّدِهِ - وَالشَّافِعِيُّ يَقُولُ: لَا يَلْزَمُ السَّيِّدُ أَنْ يَفْدِيَ عَبْدَهُ، وَلَا أَنْ يُسَلِّمَهُ، لَكِنْ يُبَاعُ فِي جِنَايَتِهِ فَقَطْ.

And they opposed Ali ibn Abi Talib regarding his delivery of the sheep - which had been gored and drowned - to the heirs. The Euphrates—so what makes the ruling there more appropriate than the ruling here, even if it were authentically reported from him [ʿAlī]? How can that be, given its invalidity? Yes, indeed, they opposed ʿAlī himself in this very matter. Abū Ḥanīfa states: "Any intentional homicide committed by a slave does not obligate his person. His master neither ransoms him nor surrenders him; it is only *qisas*, pardon, or mutually agreed compensation." Mālik states: "The slave's liability for his offense is from his wealth if he possesses wealth. If he has no wealth, it then reverts to his master." And al-Shāfiʿī states: "The master is not obligated to ransom his slave or surrender him, but the slave is sold to cover his offense."

L19835–19837

وَحَدِيثُ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ أَنَّ رَقِيقًا لِحَاطِبٍ سَرَقُوا نَاقَةً لِرَجُلٍ مِنْ مُزَيْنَةَ فَنَحَرُوهَا فَبَلَغَ ذَلِكَ عُمَرَ بْنَ الْخَطَّابِ فَأَمَرَ كَثِيرَ بْنَ الصَّلْتِ فَقَطَعَ أَيْدِيَهُمْ، ثُمَّ قَالَ عُمَرُ لِحَاطِبٍ: إنِّي أَرَاك تُجِيعُهُمْ لَأُغَرِّمَنَّكَ غُرْمًا يَشُقُّ عَلَيْك، ثُمَّ قَالَ لِلْمُزَنِيِّ: كَمْ ثَمَنُ نَاقَتِك؟ قَالَ: أَرْبَعُمِائَةِ دِرْهَمٍ قَالَ: فَأَعْطِهِ ثَمَانِمِائَةِ دِرْهَمٍ.

The narration of Malik from Hisham ibn Urwah from his father from Yahya ibn Abd al-Rahman ibn Hatib states that some slaves of Hatib stole a camel belonging to a man from Muzaynah and slaughtered it. When Umar ibn al-Khattab learned of this, he ordered Kathir ibn al-Salt to cut off their hands. Then Umar said to Hatib, "I see that you are depriving them of food; I will certainly impose a fine on you that will cause you severe hardship." He then said to the Muzayni man, "How much is your camel worth?" The man replied, "Four hundred dirhams." Umar said, "Give him eight hundred dirhams."

L19838

L19839 They oppose Umar in this.

وَهُمْ يُخَالِفُونَ عُمَرَ فِي هَذَا.

L19840 Oh, if only I knew what caused some portions of His ruling in a single case to be valid while others in that very same case are invalid! Truly, this is indeed the manifest deviation.

فَلَيْتَ شِعْرِي مَا الَّذِي جَعَلَ بَعْضَ حُكْمِهِ فِي قَضِيَّةٍ وَاحِدَةٍ حَقًّا وَبَعْضُهُ فِي تِلْكَ الْقَضِيَّةِ نَفْسِهَا بَاطِلًا، إنَّ هَذَا لَهُوَ الضَّلَالُ الْمُبِينُ.

L19841 A narration through the chain of Wakiʿ: Ibn Abī Dhi'b narrated to us from Muḥammad ibn Ibrāhīm al-Taymī, from his father, from al-Salūlī al-Aʿwar (the one-eyed), from Muʿādh ibn Jabal, from Abū ʿUbaydah, who said: "The diya (blood money) of a mudabbar (a slave granted deferred emancipation) falls upon his master." This is baseless, for al-Salūlī al-Aʿwar is unknown: it is not known who he is among Allah's creation, Exalted is He.

وَرِوَايَةٌ مِنْ طَرِيقِ وَكِيعٍ نا ابْنُ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ السَّلُولِيِّ الْأَعْوَرِ عَنْ مُعَاذِ بْنِ جَبَلٍ عَنْ أَبِي عُبَيْدَةَ قَالَ: جِنَايَةُ الْمُدَبَّرِ عَلَى مَوْلَاهُ - وَهَذَا بَاطِلٌ؛ لِأَنَّ السَّلُولِيَّ الْأَعْوَرَ لَا يُدْرَى مَنْ هُوَ فِي خَلْقِ اللَّهِ تَعَالَى؟ .

L19842 Then they contradicted this narration, for Mālik states: The master is not held liable for the offenses committed by his enslaved person, nor is he obligated to pay restitution. The ruling is that the enslaved person must labor solely to atone for their own offense.

ثُمَّ قَدْ خَالَفُوا هَذِهِ الرِّوَايَةَ فَمَالِكٌ يَقُولُ: لَا يَغْرَمُ عَنْهُ سَيِّدُهُ مَا جَنَى، وَلَا يَدْفَعُهُ، وَإِنَّمَا الْحُكْمُ أَنْ يُسْتَخْدَمَ فِي جِنَايَتِهِ فَقَطْ.

L19843–19845 Similarly, Abū Ḥanīfah also states regarding liability concerning property: If this were considered *ijma*, they would be the first to oppose the *ijma*. Who is more shameless than one who deems such a matter as *ijma* yet denies its correctness? How then could this be *Sunnah*? How could it be *ijma*? All of them surrendered their wealth in Khaybar for half the produce (crops or dates) without a fixed term. They permitted them to remain as long as Allah permitted them and expelled them whenever they wished during their lifetime. During the period of the Prophet—peace be upon him—then the period of Abu Bakr, then the period of Umar—may Allah be pleased with them both—no one differs regarding this. What wonder is more wondrous than this?

وَكَذَلِكَ يَقُولُ أَبُو حَنِيفَةَ أَيْضًا فِيمَا جَنَى فِي الْأَمْوَالِ فَإِنْ كَانَ ذَلِكَ إجْمَاعًا، فَهُمْ أَوَّلُ مَنْ خَالَفَ الْإِجْمَاعَ، فَمَنْ أَقَلُّ حَيَاءً مِمَّنْ يَجْعَلُ مِثْلَ هَذَا إجْمَاعًا ثُمَّ لَا يَرَى صَوَابًا فَكَيْفَ سُنَّةً؟ فَكَيْفَ إجْمَاعًا؟ دَفْعَهُمْ كُلُّهُمْ أَمْوَالَهُمْ بِخَيْبَرَ عَلَى نِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ ثَمَرٍ إلَى غَيْرِ أَجَلٍ، لَكِنْ يُقِرُّونَهُمْ مَا أَقَرَّهُمْ اللَّهُ، وَيُخْرِجُونَهُمْ إذَا شَاءُوا مُدَّةَ حَيَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ مُدَّةَ أَبِي بَكْرٍ ثُمَّ مُدَّةَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - لَا أَحَدَ يُخَالِفُ فِي ذَلِكَ، فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ هَذَا؟

L19846 Nor is the last prayer—performed by the Messenger of Allah (may Allah bless him and grant him peace) in the presence of all his attending companions (may Allah be pleased with them) after Abu Bakr had begun leading them in prayer—considered correct, a normative practice (Sunnah), or a matter of consensus. Nor was this concealed from those who were absent from it.

وَلَا يَرَى أَيْضًا آخِرَ صَلَاةٍ صَلَّاهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِجَمِيعِ الْحَاضِرِينَ مِنْ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَمْ يَخْفَ ذَلِكَ عَمَّنْ غَابَ مِنْهُ بَعْدَ أَنْ بَدَأَ أَبُو بَكْرٍ بِالصَّلَاةِ بِهِمْ صَوَابًا وَلَا سُنَّةً وَلَا إجْمَاعًا.

L19847 Abu Muhammad said: Then they differed. A group said: The one authorized

to engage in trade is not to be sold in lieu of his diyah, nor surrendered, nor does his master ransom him. As for the unauthorized, he is the one to be sold, surrendered, or ransomed by his master.

قَالَ أَبُو مُحَمَّد: ثُمَّ هُمْ مُخْتَلِفُونَ، فَقَالَتْ طَائِفَةٌ: لَا يُبَاعُ الْمَأْذُونُ لَهُ فِي التِّجَارَةِ فِي دِيَتِهِ، وَلَا يُسَلَّمُ، وَلَا يَفْدِيهِ سَيِّدُهُ، وَأَمَّا غَيْرُ الْمَأْذُونِ فَهُوَ الَّذِي يُبَاعُ، أَوْ يُسَلَّمُ، أَوْ يُفْدَى.

L19848 A group held: Neither the authorized slave nor the unauthorized slave may be sold to settle a debt, nor handed over [as compensation] nor ransomed [through payment]. However, if they commit a criminal offense, they may be sold for that offense, handed over, or ransomed.

وَقَالَتْ طَائِفَةٌ: لَا يُبَاعُ الْمَأْذُونُ، وَلَا غَيْرُ الْمَأْذُونِ فِي دَيْنٍ، وَلَا يُسَلَّمُ وَلَا يُفْدَى، وَأَمَّا جِنَايَتُهُمَا فَيُبَاعَانِ فِيهِمَا، أَوْ يُسَلَّمَانِ أَوْ يُفْدَيَانِ.

L19849 A group held: The authorized one and the unauthorized one are equal, and debt and criminal liability are equal. Both of them may be sold in all of that, or his master must either surrender him or pay his ransom.

وَقَالَتْ طَائِفَةٌ: الْمَأْذُونُ وَغَيْرُ الْمَأْذُونِ سَوَاءٌ، وَالدَّيْنُ وَالْجِنَايَةُ سَوَاءٌ، كِلَاهُمَا يُبَاعُ فِي كُلِّ ذَلِكَ، أَوْ يُسَلِّمُهُ سَيِّدُهُ أَوْ يَفْدِيهِ.

L19850 Thus, these are claims—as you see them. We need only to cite them to refute them, for every sect deems the others erroneous and invalidates their statements, yet all of them are invalid.

فَهَذِهِ أَقْوَالٌ كَمَا تَرَوْنَهَا مَا نَحْتَاجُ فِي رَدِّهَا إِلَى أَكْثَرَ مِنْ إِيرَادِهَا، لِأَنَّ كُلَّ طَائِفَةٍ تُخَطِّئُ الْأُخْرَى، وَتُبْطِلُ قَوْلَهَا وَكُلُّهَا بَاطِلٌ.

L19851 Abu Hanifa and his companions said: If a slave kills a free person, there is nothing but retaliation (qisas) or pardon. He remains the property of his master as before, provided the master pardons him. The same ruling applies to a slave contracted for eventual freedom (mudabbar) and a mother of the child (umm al-walad).

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إِنْ قَتَلَ الْعَبْدُ حُرًّا فَلَيْسَ إِلَّا الْقَوَدُ أَوْ الْعَفْوُ، وَهُوَ لِسَيِّدِهِ كَمَا كَانَ، إِنْ عَفَا عَنْهُ - وَكَذَلِكَ الْمُدَبَّرُ وَأُمُّ الْوَلَدِ.

L19852 They said: If a slave kills a free person or a slave unintentionally, or intentionally or unintentionally causes harm short of death to a free person or a slave—whether the injury is minor or major—his master is obligated to surrender him to the injured party or their guardian—regardless of the number of victims—or to redeem him by paying the full indemnities prescribed for all offenses.

قَالُوا: فَإِنْ قَتَلَ الْعَبْدُ حُرًّا أَوْ عَبْدًا خَطَأً، أَوْ جَنَى عَلَى مَا دُونَ النَّفْسِ مِنْ حُرٍّ أَوْ عَبْدٍ عَمْدًا أَوْ خَطَأً - قَلَّتْ الْجِنَايَةُ أَوْ كَثُرَتْ - كُلِّفَ سَيِّدُهُ أَنْ يَدْفَعَهُ إِلَى الْمَجْنِيِّ عَلَيْهِ، أَوْ إِلَى وَلِيِّهِ - كَثُرَ الْمَجْنِيُّ عَلَيْهِمْ أَمْ قَلُّوا - أَوْ يَفْدِيهِ بِجَمِيعِ أُرُوشِ الْجِنَايَاتِ.

L19853 They said: If he commits an offense against property, neither he nor the master is liable unless the slave is sold for his offense. If his sale price covers the offenses, that suffices. If it does not cover them, neither the master nor the slave is liable. Any surplus belongs to the master.

قَالُوا: فَإِنْ جَنَى فِي مَالٍ فَلَيْسَ عَلَيْهِ وَلَا عَلَى السَّيِّدِ إِلَّا أَنْ يُبَاعَ فِي جِنَايَتِهِ فَإِنْ وَفَّى ثَمَنُهُ بِالْجِنَايَاتِ فَذَلِكَ، وَإِنْ لَمْ يَفِ بِهَا فَلَا شَيْءَ عَلَى السَّيِّدِ، وَلَا عَلَى الْعَبْدِ، وَإِنْ فَضَلَ فَضْلٌ كَانَ لِلسَّيِّدِ.

L19854–19856 They said: If the mudabbar (a slave designated for eventual emancipation) ac-

cidentally causes death or commits an offense less than homicide, the liability falls upon his master for the lesser of his market value, the arsh (compensation) for the offense, or the diyah (blood money). He bears no responsibility beyond that, unless the valuation of the offense amounts to ten. If the amount is thousands of dirhams or more, the master is only liable for ten thousand dirhams excluding ten dirhams. If he accidentally kills another person, there is no liability upon the master. However, everyone who subsequently has a claim may seek recourse against the initially injured party, and thus share with him in what was taken, and this continues perpetually.

قَالُوا: فَإِنْ جَنَى الْمُدَبَّرُ فَقَتَلَ خَطَأً، أَوْ جَنَى فِيمَا دُونَ النَّفْسِ، فَعَلَى سَيِّدِهِ الْأَقَلُّ مِنْ قِيمَتِهِ أَوْ أَرْشِ الْجِنَايَةِ، أَوْ الدِّيَةِ لَيْسَ عَلَيْهِ غَيْرُ ذَلِكَ، إِلَّا أَنْ تَكُونَ قِيمَةُ الْجِنَايَةِ عَشَرَةَ آلَافِ دِرْهَمٍ فَصَاعِدًا، فَلَا يَلْزَمُ السَّيِّدَ إِلَّا عَشَرَةُ آلَافٍ غَيْرَ عَشَرَةِ دَرَاهِمَ، فَإِنْ قَتَلَ آخَرَ خَطَأً فَلَا شَيْءَ عَلَى السَّيِّدِ، لَكِنْ يَرْجِعُ كُلُّ مَنْ جَنَى عَلَيْهِ بَعْدَ ذَلِكَ عَلَى الْمَجْنِيِّ عَلَيْهِ أَوَّلًا فَيُشَارِكُهُ فِيمَا أَخَذَ، وَهَكَذَا أَبَدًا.

L19857 Similarly, the *umm al-walad* (a slave mother who bears her master's child) in her liability applies to accidental killing and lesser harms than death.

وَهَكَذَا أُمُّ الْوَلَدِ فِي جِنَايَتِهَا فِي قَتْلِ الْخَطَأِ وَمَا دُونَ النَّفْسِ.

L19858 Abu Hanifah said: If the mudabbar (a slave designated for emancipation upon the master's death) or the umm al-walad (a slave woman who bore her master's child) cause damage to property, they must strive through their labor to compensate for the value of what they damaged. No liability is imposed on the master of the umm al-walad.

وَقَالَ أَبُو حَنِيفَةَ: فَإِنْ جَنَى الْمُدَبَّرُ، وَأُمُّ الْوَلَدِ عَلَى مَالٍ فَعَلَيْهِمَا السَّعْيُ فِي قِيمَةِ مَا جَنَيَا وَلَا شَيْءَ عَلَى سَيِّدِ أُمِّ الْوَلَدِ.

L19859 Abu Muhammad said: This ruling aligns with our view, and likewise all their penal acts—and those of slaves—should be treated without distinction. These distinctions are not recorded from any authority before Abu Hanifah. If someone were to assert that these inconsistencies contradict consensus, such a claim would not be far from the truth.

قَالَ أَبُو مُحَمَّد: هَذَا الْفَصْلُ مُوَافِقٌ لِقَوْلِنَا، وَكَذَلِكَ يَنْبَغِي أَنْ تَكُونَ سَائِرُ جِنَايَاتِهِمَا، وَجِنَايَاتِ الْعَبِيدِ وَلَا فَرْقَ، وَهَذِهِ تَفَارِيقُ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَلَوْ ادَّعَى مُدَّعٍ فِي هَذِهِ التَّخَالِيطِ خِلَافَ الْإِجْمَاعِ لَمَا بَعُدَ عَنْ الصِّدْقِ.

L19860 They said: If a slave under a manumission contract (mukatab) commits an offense and accidentally kills or causes non-fatal injury, he must work to pay the lesser of his own value or the prescribed compensation (arsh) for the crime, and nothing beyond that is incumbent upon him. If he commits an offense involving property, he must work to pay its full value, no matter how substantial.

وَقَالُوا: إِنْ جَنَى الْمُكَاتَبُ فَقَتَلَ خَطَأً، أَوْ فِيمَا دُونَ النَّفْسِ، فَعَلَيْهِ أَنْ يَسْعَى فِي الْأَقَلِّ مِنْ قِيمَتِهِ أَوْ مِنْ أَرْشِ الْجِنَايَةِ، وَلَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ فَإِنْ جَنَى فِي مَالٍ: سَعَى فِي قِيمَتِهِ بَالِغَةً مَا بَلَغَتْ.

L19861 Malik said: The liability of a slave for bloodshed and property offenses is equivalent. If the slave owns wealth, all such liabilities are covered by his wealth. If he possesses no wealth, his master may choose between redeeming him by paying the compensation for the offense or the equivalent value of the slave, or surrendering him to the victim as compensation. If a mudabbar

وَقَالَ مَالِكٌ: جِنَايَةُ الْعَبْدِ فِي الدِّمَاءِ وَالْأَمْوَالِ سَوَاءٌ، فَإِنْ كَانَ لِلْعَبْدِ مَالٌ فَكُلُّ ذَلِكَ فِي مَالِهِ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَسَيِّدُهُ مُخَيَّرٌ بَيْنَ أَنْ يَفْدِيَهُ بِأَرْشِ الْجِنَايَةِ أَوْ بِقَدْرِ الْمَالِ أَوْ يَدْفَعَهُ، فَإِنْ جَنَى الْمُدَبَّرُ كَذَلِكَ فَفِي مَالِهِ، فَإِنْ لَمْ يَفِ اُسْتُخْدِمَ فِي الْبَاقِي، فَإِنْ جَنَتْ

(a slave promised freedom upon the master's death) commits an offense, the liability is covered by his wealth. If he cannot fulfill it, he is compelled to work to settle the remaining debt. If an umm al-walad (a slave mother of her master's child) commits an offense, her master must redeem her by paying the lesser of her value or the compensation for the offense, whichever is lower. Each subsequent offense she commits obligates him to redeem her in the same manner. If a mukatab (a slave under a manumission contract) commits an offense, he is required to pay the compensation for his offense. If he proves unable or refuses, he is re-enslaved and reverts to the legal status of ordinary slaves.

أُمُّ الْوَلَدِ فَعَلَى سَيِّدِهَا أَنْ يَفْدِيَهَا بِالْأَقَلِّ مِنْ قِيمَتِهَا أَوْ مِنْ أَرْشِ الْجِنَايَةِ فَقَطْ، ثُمَّ كُلَّمَا جَنَتْ كَانَ عَلَيْهِ أَنْ يَفْدِيَهَا كَذَلِكَ، فَإِنْ جَنَى الْمُكَاتَبُ كَذَلِكَ كُلِّفَ أَنْ يُؤَدِّيَ أَرْشَ مَا جَنَى، فَإِنْ عَجَزَ أَوْ أَبَى رُقَّ وَعَادَ إِلَى حُكْمِ الْعَبِيدِ.

L19862 This is a set of distinctions that are also not preserved from any individual among people before him. If someone were to claim a position contrary to the consensus regarding them, his statement would not be far from the truth—except his assertion that criminal liabilities are borne by the property of the slave and the *mudabbar*, for this would have been valid had he not followed it with what we have mentioned.

وَهَذِهِ تَفَارِيقُ لَا تُحْفَظُ أَيْضًا عَنْ أَحَدٍ مِنَ النَّاسِ قَبْلَهُ، وَلَوِ ادَّعَى مُدَّعٍ خِلَافَ الْإِجْمَاعِ عَلَيْهَا لَمَا بَعُدَ عَنِ الصِّدْقِ إِلَّا قَوْلُهُ: إِنَّ الْجِنَايَاتِ فِي مَالِ الْعَبْدِ وَالْمُدَبَّرِ، فَهُوَ صَحِيحٌ لَوْ لَمْ يَتْبَعْهُ بِمَا ذَكَرْنَا.

L19863 Al-Shafi'i said: Regarding any criminal act committed by a mudabbar slave or a regular slave—whether involving bloodshed, property damage, or injuries short of death—the master is only required to sell the slave to cover the liability. If the proceeds suffice, that is sufficient. Any surplus belongs to the master, but if they do not suffice, neither the master nor the slave is liable for anything beyond this. The master is not required to surrender the slave nor to ransom him.

وَقَالَ الشَّافِعِيُّ: كُلُّ مَا جَنَى الْمُدَبَّرُ، وَالْعَبْدُ مِنْ دَمٍ، أَوْ فِي مَالٍ أَوْ مَا دُونَ النَّفْسِ فَإِنَّمَا يَلْزَمُ السَّيِّدَ بَيْعُهُ فِيهَا فَقَطْ، فَإِنْ وَفَّى فَذَلِكَ فَإِنْ فَضَلَ فَضْلٌ فَلِلسَّيِّدِ، وَإِنْ لَمْ يَفِ فَلَا شَيْءَ عَلَيْهِ وَلَا عَلَى الْعَبْدِ غَيْرُ ذَلِكَ، وَلَيْسَ عَلَيْهِ أَنْ يُسَلِّمَهُ وَلَا أَنْ يَفْدِيَهُ.

L19864–19865 If an umm al-walad (a slave woman who bore her master's child) causes harm, her master must compensate by paying the lesser of her value or the compensation for the injury. If she causes harm a second time, there are two opinions: the first is that he must compensate again, and this continues indefinitely.

فَإِنْ جَنَتْ أُمُّ الْوَلَدِ فَدَاهَا سَيِّدُهَا بِالْأَقَلِّ مِنْ قِيمَتِهَا وَمِنْ أَرْشِ الْجِنَايَةِ - فَإِنْ جَنَتْ ثَانِيَةً فَقَوْلَانِ -: أَحَدُهُمَا: يَفْدِيهَا أَيْضًا، وَهَكَذَا أَبَدًا.

L19866 The second: the other party seeks restitution from the preceding party, thus sharing with him in what he took – with nothing incumbent upon the master. This is also an opinion not preserved from any authority prior to him.

وَالثَّانِي: يَرْجِعُ الْآخَرُ عَلَى الَّذِي قَبْلَهُ فَيُشَارِكُهُ فِيمَا أَخَذَ وَلَا شَيْءَ عَلَى السَّيِّدِ - وَهَذَا أَيْضًا قَوْلٌ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ.

وَكُلُّ هَذِهِ الْأَقْوَالِ لَيْسَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا دَلِيلٌ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ فَاسِدَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، وَمَا كَانَ هَكَذَا فَلَا يَجُوزُ الْقَوْلُ بِهِ.

L19867 All of these opinions lack any evidence for their validity—neither from the Quran, nor the Sunnah, nor a defective narration, nor the statement of a Companion, nor analogy, nor an opinion with sound juristic reasoning. Given this, it is impermissible to adopt such opinions.

فَإِنْ مَوَّهُوا بِأَنَّ الْعَبْدَ لَا مَالَ لَهُ، وَلَا يَمْلِكُ شَيْئًا؟ قُلْنَا: هَذَا بَاطِلٌ، بَلْ يَمْلِكُ كَمَا يَمْلِكُ الْحُرُّ، وَلَكِنْ هَبْكُمْ الْآنَ أَنَّهُ لَا يَمْلِكُ كَمَا تَدَّعُونَ عُدُّوهُ فَقِيرًا، وَأَتْبِعُوهُ بِهِ إِذَا مَلَكَ يَوْمًا مَا كَمَا يُتْبَعُ الْفَقِيرُ سَوَاءً بِسَوَاءٍ، وَلَا فَرْقَ.

L19868 If they deceptively argue that a slave has no property and owns nothing, we say: This is false. Rather, he owns just as a free person owns. But suppose now—as you claim—that he owns nothing: deem him poor, then follow him with it if he ever acquires property, as you follow the poor—equal in every respect, with no distinction.

وَاَللَّهُ تَعَالَى يَقُولُ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] فَقَدْ وَعَدَهُمْ اللَّهُ أَوْ مَنْ شَاءَ مِنْهُمْ بِالْغِنَى، فَانْتَظَرُوا بِهِمْ ذَلِكَ الْغِنَى، فَكَيْفَ وَالْبَرَاهِينُ عَلَى صِحَّةِ مِلْكِ الْعَبْدِ ظَاهِرَةٌ؟ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: وَيُقَادُ لِلْمَمْلُوكِ مِنْ الْمَمْلُوكِ فِي كُلِّ عَمْدٍ يَبْلُغُ نَفْسَهُ فَمَا دُونَ ذَلِكَ مِنْ الْجِرَاحِ، فَإِنْ اصْطَلَحُوا عَلَى الْعَقْلِ فَقِيمَةُ الْمَقْتُولِ عَلَى مَالِ الْقَاتِلِ أَوْ الْجَارِحِ.

L19869 Allah the Exalted says: {Marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty} [An-Nur: 32]. Thus Allah has promised them enrichment, or whom He wills among them, so wait for them to attain that enrichment. How can this be the case when the clear proofs affirming the validity of owning slaves are evident? It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj from Abd al-Aziz ibn Umar ibn Abd al-Aziz from his father that Umar ibn al-Khattab said: Retaliation is applicable for a slave against another slave in every intentional act causing death or injuries less severe than death. If they mutually agree to blood money [diya], the value of the killed person shall be taken from the wealth of the killer or injurer.[17]

قَالَ أَبُو مُحَمَّدٍ: هَذَا قَوْلُنَا وَلِلَّهِ تَعَالَى الْحَمْدُ، وَبَيَانُ [هَذَا] أَنَّ عُمَرَ بْنَ الْخَطَّابِ يَرَى الْعَبْدَ مَالِكًا.

L19870 Abū Muḥammad said: This is our position, and all praise is due to Allah the Exalted. The clarification of this is that ʿUmar ibn al-Khaṭṭāb holds the view that the slave is an owner.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ أُخِذَ عَبْدٌ أَسْوَدُ آبِقٌ قَدْ عَدَا عَلَى رَجُلٍ فَشَجَّهُ لِيَذْهَبَ بِرَقَبَتِهِ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَلَمْ يَرَ لَهُ شَيْئًا.

L19871 From the narration of Hammad ibn Zayd, from Yahya ibn Sa'id al-Ansari, who said: A black slave who had fled was captured after transgressing against a man and striking him in the head to take his life. The matter was raised to Umar ibn Abd al-Aziz, and he deemed no legal consequence applicable to him.

[17] **Qur'an references (L19869):** Qur'an 24:32 (An-Nur).

وَهَذَا قَوْلُنَا: وَقَدْ جَاءَ هَذَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ حَدَّثَنِي أَبِي عَنْ قَتَادَةَ عَنْ أَبِي نَضْرَةَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ غُلَامًا لِأُنَاسٍ فُقَرَاءَ قَطَعَ أُذُنَ غُلَامٍ لِأُنَاسٍ أَغْنِيَاءَ فَأَتَى أَهْلُهُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: يَا رَسُولَ اللَّهِ إنَّا أُنَاسٌ فُقَرَاءُ؟ فَلَمْ يَجْعَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ شَيْئًا.» ؟ قَالَ أَبُو مُحَمَّد: لَمْ يُسَلِّمْهُ وَلَا بَاعَهُ وَلَا أَلْزَمَهُ مَالًا يَمْلِكُهُ وَلَا أَلْزَمَ سَادَاتِهِ فِدَاءَهُ - وَهَذَا قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L19872–19874 This is our position: It has been narrated from the Prophet (peace and blessings of Allah be upon him), as transmitted to us through the chain of Abū Dāwūd; Aḥmad ibn Ḥanbal narrated to us, Muʿādh ibn Hishām al-Dastawā'ī narrated to us, my father narrated to me from Qatādah, from Abū Naḍrah, from ʿImrān ibn al-Ḥuṣayn. A boy belonging to poor people cut off the ear of a boy belonging to wealthy people. His family came to the Messenger of Allah (peace be upon him) and said, "O Messenger of Allah, we are poor people." So the Messenger of Allah (peace be upon him) did not impose anything upon them. Abu Muhammad said: He did not hand him over, nor sell him, nor oblige him to pay any wealth he possessed, nor oblige his masters to ransom him—and this is our opinion—and all praise is due to Allah, Lord of the worlds.

تَمَّ " كِتَابُ الْغَصْبِ وَالِاسْتِحْقَاقِ وَالْجِنَايَاتِ عَلَى الْأَمْوَالِ ".

L19875 The Book of Usurpation, Entitlement, and Criminal Offenses Against Property has been completed.

AL-MUHALLA

كِتَابُ الصُّلْحِ

The Book of Settlement

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

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Chapter on Reconciliation Issue: Types of Reconciliation

1270 - Legal Question:

It is not permissible at all to conclude a settlement based on denial, nor on silence where there is neither acknowledgment nor denial, nor on waiving an oath that has become obligatory, nor on a person acknowledging [a claim] against another while the party from whom the settlement is sought denies [it]. Settlement is permissible only upon acknowledgment of liability - this is the opinion of Ibn Abi Layla, though he permitted settlement based on silence where there is neither acknowledgment nor denial.

This is the opinion of al-Shāfiʿī—except he permitted settlement through waiving the oath and allowing a person to admit liability on another's behalf and settle without authorization—which contradicts his foundational principle. It is also the opinion of Abū Sulaymān—except he permitted settlement through waiving the oath—which contradicts his foundational principle. It has been narrated to us through Ḥammād ibn Zayd's transmission from Ayyūb al-Sakhtiyānī from Muḥammad ibn Sīrīn, who said: "A man held a rightful claim against another, settled it with him, then retracted and brought the case to Shurayḥ. Shurayḥ told him: 'Produce two just witnesses that he abandoned the claim, and if he had wished, you would have fulfilled it to him.'"

Thus, Shurayh did not permit settlement (ṣulḥ) unless the claimant possessed the capacity to enforce his right by compelling the defendant to fulfill the obligation of delivering the right owed to him, and [required] its rescission if this condition was lacking - which is our position.

Via the chain of Ibn Abī Shaybah: Ibn Abī Zā'ida narrated from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, from Shurayḥ, who said: "If a woman has been settled with regarding her dower without clarifying what her husband left behind, then all that doubt remains entirely."

And this also clarifies that a settlement is only valid if based on acknowledgment of a clearly specified matter.

[كِتَابُ الصُّلْحِ] [مَسْأَلَةٌ أَنْوَاعِ الصُّلْحِ]

١٢٧٠ - مَسْأَلَةٌ:

لَا يَحِلُّ الصُّلْحُ أَلْبَتَّةَ عَلَى الْإِنْكَارِ، وَلَا عَلَى السُّكُوتِ الَّذِي لَا إنْكَارَ مَعَهُ، وَلَا إقْرَارَ، وَلَا عَلَى إسْقَاطِ يَمِينٍ قَدْ وَجَبَتْ، وَلَا عَلَى أَنْ يُصَالِحَ مُقِرٌّ عَلَى غَيْرِهِ وَذَلِكَ الَّذِي صُولِحَ عَنْهُ مُنْكِرٌ، وَإِنَّمَا يَجُوزُ الصُّلْحُ مَعَ الْإِقْرَارِ بِالْحَقِّ فَقَطْ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى إلَّا أَنَّهُ جَوَّزَ الصُّلْحَ عَلَى السُّكُوتِ الَّذِي لَا إقْرَارَ مَعَهُ وَلَا إنْكَارَ.

وَهُوَ قَوْلُ الشَّافِعِيِّ إلَّا أَنَّهُ جَوَّزَ الصُّلْحَ عَلَى إسْقَاطِ الْيَمِينِ، وَأَنْ يُقِرَّ إنْسَانٌ عَنْ غَيْرِهِ وَيُصَالِحَ عَنْهُ بِغَيْرِ أَمْرِهِ - وَهَذَا نَقْضٌ لِأَصْلِهِ - وَهُوَ أَيْضًا قَوْلُ أَبِي سُلَيْمَانَ، إلَّا أَنَّهُ جَوَّزَ الصُّلْحَ عَلَى إسْقَاطِ الْيَمِينِ - وَهَذَا نَقْضٌ لِأَصْلِهِ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: كَانَ لِرَجُلٍ عَلَى رَجُلٍ حَقٌّ فَصَالَحَهُ عَنْهُ ثُمَّ رَجَعَ فِيهِ فَخَاصَمَهُ إلَى شُرَيْحٍ، فَقَالَ لَهُ شُرَيْحٌ: شَاهِدَانِ ذَوَا عَدْلٍ: أَنَّهُ تَرَكَهُ وَلَوْ شَاءَ أَدَّيْتُهُ إلَيْهِ.

فَهَذَا شُرَيْحٌ لَمْ يُجِزْ الصُّلْحَ إلَّا مَعَ قُدْرَةِ صَاحِبِ الْحَقِّ عَلَى أَخْذِ حَقِّهِ بِأَدَاءِ الَّذِي عَلَيْهِ الْحَقُّ إلَيْهِ حَقَّهُ، وَفَسْخِهِ إنْ يَكُنْ كَذَلِكَ - وَهُوَ قَوْلُنَا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: أَيُّمَا امْرَأَةٍ صُولِحَتْ عَنْ ثَمَنِهَا وَلَمْ يُبَيَّنْ لَهَا مَا تَرَكَ زَوْجُهَا، فَتِلْكَ الرِّيبَةُ كُلُّهَا.

وَهَذَا أَيْضًا بَيَانُ أَنَّهُ لَمْ يَجُزْ الصُّلْحُ إلَّا عَلَى إقْرَارٍ بِمَعْلُومٍ.

L19884 Abu Hanifa and Malik said: Sulh is permissible in cases of denial or silence that is accompanied by neither admission nor denial.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: الصُّلْحُ عَلَى الْإِنْكَارِ، وَعَلَى السُّكُوتِ الَّذِي لَا إقْرَارَ مَعَهُ وَلَا إنْكَارَ جَائِزٌ.

L19885–19886 Abu Muhammad said: The proof for the validity of our position is the verse of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully unless it is a transaction by mutual consent among you" [An-Nisā' 4:29].[1]

قَالَ أَبُو مُحَمَّد: بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L19887 The statement of the Messenger of Allah—peace and blessings be upon him—"Indeed, your blood and your wealth are inviolable upon you," establishes that all wealth is forbidden to anyone other than its rightful owner. The owner is also forbidden from making it permissible for others to possess except in cases where the Quran and the Sunnah sanction its obligatory transfer or mandate its disbursement.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَصَحَّ أَنَّ كُلَّ مَالٍ حَرَامٌ عَلَى غَيْرِ صَاحِبِهِ وَيَحْرُمُ عَلَى صَاحِبِهِ أَنْ يُبِيحَهُ لِغَيْرِهِ إلَّا حَيْثُ أَبَاحَ الْقُرْآنُ، وَالسُّنَّةُ إخْرَاجَهُ، أَوْ أَوْجَبَا إخْرَاجَهُ.

L19888 There is no textual evidence permitting settlement concerning any of the matters we have mentioned.

وَلَمْ يَأْتِ نَصٌّ بِجَوَازِ الصُّلْحِ عَلَى شَيْءٍ مِمَّا ذَكَرْنَا.

L19889 The well-known ḥadīth transmitted through Al-Zuhrī from 'Ubayd Allāh ibn 'Abd Allāh ibn 'Utbah from Abū Hurayrah and Zayd ibn Khālid al-Juhanī states: A Bedouin came to the Messenger of Allāh—peace and blessings of Allāh be upon him—and said: "O Messenger of Allāh, judge between us by the Book of Allāh." One of the two litigants said: "My son was a hired worker for this man and committed adultery with his wife. They said to me: 'Your son must be stoned,' so I ransomed my son with a hundred sheep and a slave girl. Then I asked the people of knowledge, and they said: 'Your son only deserves a hundred lashes and exile for one year, while stoning applies to his wife [as a married adulteress].'" The Messenger of Allāh—peace and blessings of Allāh be upon him—said: "I shall indeed judge between you by the Book of Allāh. As for the slave girl and sheep, they are to be returned to you. Your son shall receive a hundred lashes and exile for one year." The narrator then mentioned the rest of the report—whereupon the Messenger of Allāh—peace and blessings of Allāh be upon him—invalidated the aforementioned settlement and annulled it.

وَالْحَدِيثُ الْمَشْهُورُ مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ قَالَ: «جَاءَ أَعْرَابِيٌّ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ اقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ، قَالَ أَحَدُ الْخَصْمَيْنِ: إنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا فَزَنَى بِامْرَأَتِهِ، فَقَالُوا لِي: عَلَى ابْنِكَ الرَّجْمُ فَفَدَيْتُ ابْنِي بِمِائَةٍ مِنْ الْغَنَمِ وَوَلِيدَةٍ، ثُمَّ سَأَلْتُ أَهْلَ الْعِلْمِ فَقَالُوا: إنَّمَا عَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَإِنَّمَا الرَّجْمُ عَلَى امْرَأَتِهِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ، أَمَّا الْوَلِيدَةُ، وَالْغَنَمُ فَرَدٌّ عَلَيْكَ وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ» وَذَكَرَ بَاقِيَ الْخَبَرِ - فَأَبْطَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصُّلْحَ الْمَذْكُورَ وَفَسَخَهُ.

[1] **Qur'an references (L19886):** Qur'an 4:29 (An-Nisa).

L19890 Abū Muḥammad said: The later jurists who permitted reconciliation in cases of denial and all that we have mentioned cited as evidence the words of Allah, the Exalted: “Reconciliation is best” [al-Nisāʾ 128], and His statement: “Fulfill [your] contracts” [al-Māʾidah 1].[2]

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمُتَأَخِّرُونَ الْمُجِيزُونَ لِلصُّلْحِ عَلَى الْإِنْكَارِ وَعَلَى سَائِرِ مَا ذَكَرْنَا بِقَوْلِ اللَّهِ تَعَالَى: {وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨] . وَبِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

L19891 And according to what has been reported to us through the chain of Kathīr ibn ʿAbd Allāh (who is Kathīr ibn Zayd) from his father, from his grandfather, and from Al-Walīd ibn Rabāḥ from Abū Hurayrah - both of them narrate that the Messenger of Allāh, may the peace and blessings of Allāh be upon him, said: “A settlement is permissible among Muslim parties except one that permits what is forbidden or forbids what is lawful. Muslims are bound by their stipulations.”

وَبِمَا رُوِّينَا مِنْ طَرِيقِ كَثِيرِ بْنِ عَبْدِ اللَّهِ وَهُوَ كَثِيرُ بْنُ زَيْدٍ - عَنْ أَبِيهِ عَنْ جَدِّهِ، وَعَنْ الْوَلِيدِ بْنِ رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ، كِلَاهُمَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إلَّا صُلْحًا أَحَلَّ حَرَامًا أَوْ حَرَّمَ حَلَالًا وَالْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

L19892–19894 And by what Ahmad ibn Umar ibn Anas narrated to us, Abu Dharr al-Harawi narrated to us, Khalil ibn Ahmad narrated to us, Abu Dawud al-Sijistani narrated to us, Yahya ibn Muhammad ibn Ṣāʿid narrated to us, Yusuf ibn Musa al-Qattan narrated to us, Ubayd Allah ibn Musa narrated to us. On the authority of ʿAbd al-Malik ibn al-Walīd ibn Maʿdān, from his father, who said: ʿUmar ibn al-Khaṭṭāb wrote to Abū Mūsā al-Ashʿarī: “Reconciliation is permissible among Muslims, except one that has prohibited what is lawful or permitted what is forbidden.”

وَبِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا الْخَلِيلُ بْنُ أَحْمَدَ نا أَبُو دَاوُد السِّجِسْتَانِيُّ نا يَحْيَى بْنُ مُحَمَّدِ بْنِ صَاعِدٍ نا يُوسُفُ بْنُ مُوسَى الْقَطَّانُ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى نا عَبْدُ الْمَلِكِ بْنُ الْوَلِيدِ بْنِ مَعْدَانَ عَنْ أَبِيهِ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إلَى أَبِي مُوسَى الْأَشْعَرِيِّ: وَالصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا.

L19895 And according to what has been narrated to us through numerous chains—among them Sufyān ibn ʿUyaynah, Wakīʿ, Hushaym, and Ibn Abī Zāʾidah, all of whom reported from Ismāʿīl ibn Abī Khālid, who reported from al-Shaʿbī—he said: ʿAlī ibn Abī Ṭālib was asked about a matter, and he said: “This is injustice. Had it not been a reconciliation settlement, I would have rejected it.”

وَبِمَا رُوِّينَا مِنْ طُرُقٍ كَثِيرَةٍ مِنْهَا عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ، وَوَكِيعٍ، وَهُشَيْمٍ، وَابْنِ أَبِي زَائِدَةَ، كُلُّهُمْ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي شَيْءٍ فَقَالَ: إنَّهُ لَجَوْرٌ، وَلَوْلَا أَنَّهُ صُلْحٌ لَرَدَدْته.

L19896 They also argued by citing Allah the Exalted’s words: {except it being a trade by mutual consent among you} [An-Nisa: 29]. They said: “Is not a settlement on disputed claims a trade by mutual consent between them?” Abu Muhammad responded: “This constitutes all their evidence, none of which contains valid proof for them—rather, all of it serves as evidence

وَاحْتَجُّوا أَيْضًا بِقَوْلِ اللَّهِ تَعَالَى: {إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] قَالُوا: وَالصُّلْحُ عَلَى الْإِنْكَارِ تِجَارَةٌ عَنْ تَرَاضٍ مِنْهُمَا؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ بَلْ كُلُّهُ حُجَّةٌ عَلَيْهِمْ عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى -: أَمَّا قَوْله تَعَالَى: {وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨] ، {أَوْفُوا بِالْعُقُودِ} [المائدة: ١]

[2] **Qur’an references (L19890):** Qur’an 4:128 (An-Nisa); Qur’an 5:1 (Al-Ma’idah).

against them, as we shall clarify if Allah the Exalted wills. Regarding His statements: {Reconciliation is best} [An-Nisa: 128] and {Fulfill the contracts} [Al-Ma'idah: 1], our opponents in this matter—alongside all Muslims—agree with us that these two verses are not absolute in their generality. Allah the Exalted never intended every settlement or every contract. If a man were to settle on permitting illicit sexual relations for himself or his wife, or on consuming pork, wine, abandoning prayer, enslaving a free person, or contractually bind himself to such matters, this settlement would be invalid and impermissible, constituting a corrupt and rejected contract. Since this is indisputable, no settlement or contract may be lawfully upheld except those attested by the Quran and Sunnah as permissible."[3]

فَالْمُخَالِفُونَ لَنَا فِي هَذِهِ الْمَسْأَلَةِ وَجَمِيعُ أَهْلِ الْإِسْلَامِ مُوَافِقُونَ لَنَا عَلَى أَنَّ كِلْتَا هَاتَيْنِ الْآيَتَيْنِ لَيْسَتَا عَلَى عُمُومِهِمَا، وَأَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ كُلَّ صُلْحٍ، وَلَا كُلَّ عَقْدٍ، وَأَنَّ امْرَأً لَوْ صَالَحَ عَلَى إبَاحَةِ فَرْجِهِ، أَوْ فَرْجِ امْرَأَتِهِ، أَوْ عَلَى خِنْزِيرٍ، أَوْ عَلَى خَمْرٍ، أَوْ عَلَى تَرْكِ صَلَاةٍ، أَوْ عَلَى إرْقَاقِ حُرٍّ، أَوْ عَقَدَ عَلَى نَفْسِهِ كُلَّ هَذَا لَكَانَ هَذَا صُلْحًا بَاطِلًا لَا يَحِلُّ، وَعَقْدًا فَاسِدًا مَرْدُودًا، فَإِذْ لَا شَكَّ فِي هَذَا فَلَا يَكُونُ صُلْحٌ، وَلَا عَقْدٌ يَجُوزُ إمْضَاؤُهُمَا، إلَّا صُلْحٌ، أَوْ عَقْدٌ: شَهِدَ الْقُرْآنُ وَالسُّنَّةُ بِجَوَازِهِمَا.

L19897 If they say: Yes, but every reconciliation and every contract are binding except a reconciliation or a contract that the Qur'an or the Sunnah has declared invalid? We say: Yes, and this is our position. The Qur'an has commanded obedience to the Messenger of Allah (peace be upon him).

فَإِنْ قَالُوا: نَعَمْ، لَكِنْ كُلُّ صُلْحٍ وَكُلُّ عَقْدٍ فَلَازِمَانِ إلَّا صُلْحًا أَوْ عَقْدًا جَاءَ الْقُرْآنُ أَوْ السُّنَّةُ بِإِبْطَالِهِمَا؟ قُلْنَا: نَعَمْ، وَهُوَ قَوْلُنَا، وَقَدْ جَاءَ الْقُرْآنُ بِالطَّاعَةِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19898 And he (peace be upon him) said: "Every condition that is not in the Book of Allah is null and void."

وَقَالَ - عَلَيْهِ السَّلَامُ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

L19899–19901 Thus, it is established that the ruling regarding every condition is invalidation, except a condition that the Qur'an or the Sunnah has permitted. Every contract and every settlement is, without doubt, a condition; therefore, the ruling regarding them is perpetual invalidation until the Qur'an or Sunnah validate them. There is nothing in the Qur'an or the Sunnah that legitimizes a settlement in cases of denial or silence. Nor is it valid to waive an oath, nor a settlement made by someone on behalf of a person who did not authorize them, nor a legal acknowledgment imposed upon another - thus all such matters are invalidated with certainty.

فَصَحَّ أَنَّ كُلَّ شَرْطٍ فَحُكْمُهُ الْإِبْطَالُ، إلَّا شَرْطًا جَاءَ بِإِبَاحَتِهِ الْقُرْآنُ أَوْ السُّنَّةُ، وَكُلُّ عَقْدٍ، وَكُلُّ صُلْحٍ فَهُوَ بِلَا شَكٍّ شَرْطٌ، فَحُكْمُهُمَا الْإِبْطَالُ أَبَدًا حَتَّى يُصَحِّحَهُمَا قُرْآنٌ أَوْ سُنَّةٌ، وَلَيْسَ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ تَصْحِيحُ الصُّلْحِ عَلَى الْإِنْكَارِ، وَلَا عَلَى السُّكُوتِ، وَلَا عَلَى إسْقَاطِ الْيَمِينِ، وَلَا صُلْحِ إنْسَانٍ عَنْ مَنْ لَمْ يَأْمُرْهُ، وَلَا إقْرَارِهِ عَلَى غَيْرِهِ، فَبَطَلَ كُلُّ ذَلِكَ بِيَقِينٍ.

L19902 As for the hadith stating "reconciliation is permissible among Muslims" and the statement of Umar - may Allah be pleased with him - it is impermissible to base legal rulings on either of them. The narration attributed to the Prophet

وَأَمَّا حَدِيثُ الصُّلْحِ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، وَكَلَامُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَكِلَاهُمَا لَا يَجُوزُ الْحُكْمُ بِهِ - أَمَّا الرِّوَايَةُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَاقِطَةٌ؛ لِأَنَّهُ انْفَرَدَ بِهَا

[3] **Qur'an references (L19896):** Qur'an 4:29 (An-Nisa); Qur'an 4:128 (An-Nisa); Qur'an 5:1 (Al-Ma'idah).

- peace and blessings be upon him - is invalid, as it is uniquely transmitted by Kathir ibn Abdullah ibn Zayd ibn Umar - who is discarded - with consensus on rejecting him, and narrating from him is not permissible.

كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ زَيْدِ بْنِ عُمَرَ - وَهُوَ سَاقِطٌ - مُتَّفَقٌ عَلَى اطِّرَاحِهِ، وَأَنَّ الرِّوَايَةَ عَنْهُ لَا تَحِلُّ.

L19903 As for the narration transmitted from ‘Umar, it was solely reported by ‘Abd al-Malik ibn al-Walīd ibn Ma‘dān from his father—both of whom are of no account. Even if their reports were authentic, they would have been evidence in our favor, for a settlement based on denial or silence must necessarily involve one of two scenarios: either the claimant seeks a legitimate right while the respondent denies or delays a right, or the claimant pursues an invalid claim—with one of these two situations being unavoidable.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ فَانْفَرَدَ بِهَا عَبْدُ الْمَلِكِ بْنُ الْوَلِيدِ بْنِ مَعْدَانَ عَنْ أَبِيهِ وَكِلَاهُمَا لَا شَيْءَ، ثُمَّ لَوْ صَحَّا لَكَانَا حُجَّةً لَنَا؛ لِأَنَّ الصُّلْحَ عَلَى الْإِنْكَارِ وَعَلَى السُّكُوتِ، لَا يَخْلُو ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ -: إمَّا أَنْ يَكُونَ الطَّالِبُ طَالِبَ حَقٍّ، وَالْمَطْلُوبُ مَانِعُ حَقٍّ أَوْ مُمَاطِلًا لِحَقٍّ - أَوْ يَكُونَ الطَّالِبُ طَالِبَ بَاطِلٍ - وَلَا بُدَّ مِنْ أَحَدِهِمَا.

L19904 If the claimant is in the right, then it is unequivocally forbidden—with no dissent from any Muslim—for the defendant to withhold his right or delay him despite being capable of fulfilling his obligation, thereby compelling him to relinquish part of his entitlement or take what is not lawfully his. In such circumstances, the defendant has unlawfully seized the claimant’s wealth through falsehood, oppression, withholding dues, and deceit—an act explicitly forbidden by the Qur’an’s decree.

فَإِنْ كَانَ الطَّالِبُ مُحِقًّا، فَحَرَامٌ عَلَى الْمَطْلُوبِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ أَنْ يَمْنَعَهُ حَقَّهُ، أَوْ أَنْ يُمْطِلَهُ - وَهُوَ قَادِرٌ عَلَى إنْصَافِهِ - حَتَّى يَضْطَرَّهُ إلَى إسْقَاطِهِ بَعْضَ حَقِّهِ، أَوْ أَخْذِ غَيْرِ حَقِّهِ، فَالْمَطْلُوبُ فِي هَذِهِ الْجِهَةِ أَكَلَ مَالَ الطَّالِبِ بِالْبَاطِلِ وَبِالظُّلْمِ، وَالْمَطْلِ، وَالْكَذِبِ، وَهُوَ حَرَامٌ بِنَصِّ الْقُرْآنِ.

L19905 If the claimant’s claim is invalid, it is impermissible for him to pursue a false claim or take anything from the respondent’s wealth without rightful entitlement, as there is no disagreement among Muslims and in accordance with the explicit texts of the Quran and Sunnah. In this context, the claimant unlawfully consumes the respondent’s wealth through falsehood, oppression, and deceit, and this is explicitly forbidden by the Quran.

وَإِنْ كَانَ الطَّالِبُ مُبْطِلًا فَحَرَامٌ عَلَيْهِ الطَّلَبُ بِالْبَاطِلِ، وَأَخْذُ شَيْءٍ مِنْ مَالِ الْمَطْلُوبِ بِغَيْرِ حَقٍّ، بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ وَبِنَصِّ الْقُرْآنِ، وَالسُّنَّةِ، فَالطَّالِبُ فِي هَذِهِ الْجِهَةِ: أَكَلَ مَالَ الْمَطْلُوبِ بِالْبَاطِلِ، وَالظُّلْمِ، وَالْكَذِبِ، وَهَذَا حَرَامٌ بِنَصِّ الْقُرْآنِ.

L19906 By my life, indeed, our astonishment is prolonged at how this matter—more evident than the sun—remains hidden from those who permit settlements without admission. For it necessarily entails the unlawful consumption of forbidden wealth by one of the two reconciling parties in both cases.

وَلَعَمْرِي، إنَّنَا لَيَطُولُ عَجَبُنَا كَيْفَ خَفِيَ هَذَا الَّذِي هُوَ أَشْهَرُ مِنْ الشَّمْسِ عَلَى مَنْ أَجَازَ الصُّلْحَ بِغَيْرِ الْإِقْرَارِ؟ إذْ لَا بُدَّ فِيهِ ضَرُورَةً مِنْ أَكْلِ مَالٍ مُحَرَّمٍ بِالْبَاطِلِ لِأَحَدِ الْمُتَصَالِحَيْنِ فِي كِلَا الْوَجْهَيْنِ.

L19907 As for reconciliation based on abandoning the oath, the oath by which the

وَأَمَّا الصُّلْحُ عَلَى تَرْكِ الْيَمِينِ فَلَا تَخْلُو تِلْكَ الْيَمِينُ الَّتِي يُطْلَبُ بِهَا الْمُنْكِرُ مِنْ أَنْ تَكُونَ صَادِقَةً إِنْ حَلَفَ بِهَا، أَوْ تَكُونَ كَاذِبَةً إِنْ حَلَفَ بِهَا وَلَا سَبِيلَ إِلَى ثَالِثٍ.

فَإِنْ كَانَ الْمَطْلُوبُ كَاذِبًا إِنْ حَلَفَ: فَقَدْ قَدَّمْنَا أَنَّهُ آكِلٌ مَالَ خَصْمِهِ بِالْبَاطِلِ، وَالظُّلْمِ وَالْكَذِبِ، وَلَا يَحِلُّ لَهُ ذَلِكَ.

وَإِنْ كَانَ الْمَطْلُوبُ صَادِقًا إِنْ حَلَفَ حَرَامٌ عَلَى الطَّالِبِ أَنْ يَأْخُذَ مِنْهُ فَلْسًا فَمَا فَوْقَهُ بِالْبَاطِلِ، وَهَذَا لَا خَفَاءَ بِهِ عَلَى أَحَدٍ يَتَأَمَّلُهُ وَيَسْمَعُهُ.

وَأَمَّا مُصَالَحَةُ الْمَرْءِ عَلَى غَيْرِهِ وَإِقْرَارُهُ عَلَى غَيْرِهِ فَهَذَا أَبْطَلُ الْبَاطِلِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَإِقْرَارُ الْمَرْءِ عَلَى غَيْرِهِ كَسْبٌ عَلَى غَيْرِ نَفْسِهِ، فَهُوَ بَاطِلٌ، وَمُصَالَحَتُهُ عَنْ غَيْرِهِ لَا تَخْلُو أَيْضًا مِمَّا قَدَّمْنَا إِمَّا أَنْ يَكُونَ الَّذِي صُولِحَ عَنْهُ مَطْلُوبًا بِبَاطِلٍ، أَوْ مَطْلُوبًا بِحَقٍّ، وَلَا بُدَّ مِنْ أَحَدِهِمَا.

فَإِنْ كَانَ مَطْلُوبًا بِبَاطِلٍ حَرَامٌ عَلَى الطَّالِبِ أَنْ يَأْخُذَ فَلْسًا فَمَا فَوْقَهُ أَوْ شَيْئًا أَصْلًا بِطَلَبٍ بَاطِلٍ فَيَكُونُ أَكْلَ مَالٍ بِالْبَاطِلِ.

وَإِنْ كَانَ الَّذِي صُولِحَ عَنْهُ مَطْلُوبًا بِحَقٍّ، فَإِنْ كَانَ الْمُتَبَرِّعُ بِالصُّلْحِ عَنْهُ ضَامِنًا لِمَا عَلَى الْمَطْلُوبِ فَهَذَا جَائِزٌ، وَالْحَقُّ قَدْ تَحَوَّلَ حِينَئِذٍ عَلَى الْمُقِرِّ، فَإِنَّمَا صَالَحَ حِينَئِذٍ عَنْ نَفْسِهِ لَا عَنْ غَيْرِهِ، وَعَنْ حَقٍّ يَأْخُذُهُ بِهِ الطَّالِبُ كُلَّهُ إِنْ شَاءَ، وَهَذَا جَائِزٌ حَسَنٌ لَا نَمْنَعُ مِنْهُ.

denier is sought must necessarily be either truthful if he swears by it or false if he swears by it; there is no third possibility.

L19908 If the claimant is lying when he swears an oath, we have previously explained that he is consuming his opponent's property by falsehood, oppression, and lying, and this is impermissible for him.

L19909–19910 If the respondent is truthful when he takes the oath, it is forbidden for the claimant to wrongfully take from him even a single coin or anything beyond that. This is obvious to anyone who reflects upon it or hears of it.

L19911 As for a person's settlement on behalf of another or their admission concerning another's liability, this is the most invalid of invalidities due to Allah's statement: "No soul bears [sin] except against itself, nor does any burdened soul bear another's burden" [Al-An'ām 6:164]. A person's admission concerning another constitutes incurring liability for someone other than themselves, thus it is void. Similarly, their settlement on another's behalf is not free from what we have previously established: either the party subject to settlement is claimed against wrongfully or claimed against rightfully, and it must necessarily be one of the two.[4]

L19912 If a wrongful claim is made against someone, it is forbidden for the claimant to take even a single _fils_, anything beyond that, or anything at all by means of such a claim, as this constitutes consuming wealth unlawfully.

L19913 If the person on whose behalf the settlement is made is being pursued for a rightful claim, and the volunteer in the settlement on his behalf is a guarantor for what is owed by the pursued party, then this is permissible. The right is thereby transferred to the admitting party, for he is now settling on his own behalf, not on behalf of another, concerning a claim that the claimant may take all of it, if he so wishes. This is permissible and proper; we do not disallow it.

[4]**Qur'an references (L19911):** Qur'an 6:164 (Al-An'am).

L19914 Likewise, if he guarantees on his behalf part of what is owed by him, there is no distinction.

وَكَذَلِكَ إِنْ ضَمِنَ عَنْهُ بَعْضَ مَا عَلَيْهِ وَلَا فَرْقَ.

L19915 We only prohibit from settling on another's behalf without guaranteeing the obligation incumbent upon him (and this is of utmost clarity), and success is granted by Allah, the Most High.

وَإِنَّمَا نَمْنَعُ مِنْ أَنْ يُصَالِحَ عَنْ غَيْرِهِ دُونَ أَنْ يَضْمَنَ عَنْهُ الْحَقَّ الَّذِي عَلَيْهِ - وَهَذَا فِي غَايَةِ الْبَيَانِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L19916 Through this, it has been established that every reconciliation agreement made without acknowledgment [of rights] is one that makes lawful what is forbidden and makes unlawful what is lawful. If those two narrations had been authentic, they would have constituted decisive proof in our favor against them.

فَقَدْ صَحَّ بِهَذَا أَنَّ كُلَّ صُلْحٍ عَلَى غَيْرِ الْإِقْرَارِ فَهُوَ مُحِلٌّ حَرَامًا وَمُحَرِّمٌ حَلَالًا، ذَانِكَ الْأَثَرَانِ لَوْ صَحَّا لَكَانَا حُجَّةً لَنَا عَلَيْهِمْ قَاطِعَةً.

L19917 As for Muslims concerning their conditions, the conditions of Muslims are those which the Quran and the Sunnah have explicitly prescribed as obligatory or permissible. As for any condition not endorsed by the scriptural text as permissible or obligatory, it does not belong to the conditions of Muslims; rather, it is among the conditions of disbelievers or transgressors, as per the saying of the Messenger of Allah—peace and blessings be upon him: "Every condition not in the Book of Allah is void." Undoubtedly, invalid conditions are not among the conditions of the Muslims.[5]

وَأَمَّا الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ، فَإِنْ شُرُوطَ الْمُسْلِمِينَ هِيَ الشُّرُوطُ الَّتِي جَاءَ الْقُرْآنُ وَجَاءَتْ السُّنَّةُ بِإِيجَابِهَا وَإِبَاحَتِهَا، وَأَمَّا كُلُّ شَرْطٍ لَمْ يَأْتِ النَّصُّ بِإِبَاحَتِهِ أَوْ إِيجَابِهِ فَلَيْسَ مِنْ شُرُوطِ الْمُسْلِمِينَ، بَلْ هُوَ مِنْ شُرُوطِ الْكَافِرِينَ أَوْ الْفَاسِقِينَ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَلَيْسَ الْبَاطِلُ مِنْ شُرُوطِ الْمُسْلِمِينَ بِلَا شَكٍّ.

L19918 As for the report concerning Ali, it is an evil report—may Allah protect Ali in his precedence, virtue, and Imamah from enacting injustice while he acknowledges that it is injustice.

وَأَمَّا خَبَرُ عَلِيٍّ فَهُوَ خَبَرُ سُوءٍ، يُعِيذُ اللَّهُ عَلِيًّا فِي سَابِقَتِهِ، وَفَضْلِهِ، وَإِمَامَتِهِ مِنْ أَنْ يُنْفِذَ الْجَوْرَ وَهُوَ يُقِرُّ أَنَّهُ جَوْرٌ.

L19919–19921 Glory be to Allah! Is it permissible for a Muslim to enact oppression? If this were valid, usury would surely be practiced. Adultery and plundering people's wealth; because all of them are injustice.

وَيَا سُبْحَانَ اللَّهِ هَلْ يَجُوزُ لِمُسْلِمٍ أَنْ يُنْفِذَ جَوْرًا؟ لَئِنْ صَحَّ هَذَا لَيُنْفِذَنَّ الرِّبَا، وَالزِّنَى وَالْغَارَةُ عَلَى أَمْوَالِ النَّاسِ؛ لِأَنَّهُ كُلَّهُ جَوْرٌ.

L19922 The flaw in this narration and the calamity stem from its being mursal, for al-Sha'bi never heard a single word from 'Ali. Rather, he undoubtedly took this narration from al-Harith and his counterparts. This constitutes the defect inherent to the mursal.

وَالْآفَةُ فِي هَذَا الْخَبَرِ وَالْبَلِيَّةُ مِنْ قِبَلِ الْإِرْسَالِ؛ لِأَنَّ الشَّعْبِيَّ لَمْ يَسْمَعْ قَطُّ مِنْ عَلِيٍّ كَلِمَةً وَإِنَّمَا أَخَذَ هَذَا الْخَبَرَ بِلَا شَكٍّ، مِنْ قِبَلِ الْحَارِثِ وَأَشْبَاهِهِ، وَهَذَا عَيْبُ الْمُرْسَلِ.

[5] **Hadith references (L19917):** Sunan Ibn Majah 2521.

ثُمَّ الْعَجَبُ مِنْ احْتِجَاجِهِمْ بِهَذِهِ الْبَلِيَّةِ، وَهُمْ أَوَّلُ مُخَالِفٍ لَهَا فَلَا يَرَوْنَ إِنْفَاذَ الْجَوْرِ، لَا فِي صُلْحٍ وَلَا غَيْرِهِ، وَهَذَا تَلَاعُبٌ بِالدِّيَانَةِ، وَضَلَالٌ، وَإِضْلَالٌ.

L19923 Then, the astonishment lies in their citing of this affliction as proof, even though they are the first to oppose it, as they do not recognize the enforcement of injustice—neither in truce nor in other circumstances. This constitutes tampering with religion, misguidance, and leading others astray.

فَإِنْ قَالُوا: قَدْ جَاءَ عَنْ عُمَرَ أَنَّهُ قَالَ: رَدِّدُوا الْخُصُومَ حَتَّى يَصْطَلِحُوا فَإِنَّ فَصْلَ الْقَضَاءِ يُورِّثُ بَيْنَ الْقَوْمِ الضَّغَائِنَ؟ قُلْنَا: هَذَا لَا يَصِحُّ عَنْ عُمَرَ أَصْلًا، لِأَنَّنَا إِنَّمَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَارِبِ بْنِ دِثَارٍ عَنْ عُمَرَ، وَعُمَرُ لَمْ يُدْرِكْهُ مُحَارِبٌ، وَمُحَارِبٌ ثِقَةٌ، فَهُوَ مُرْسَلٌ.

L19924 If they say: "It is reported that 'Umar said: 'Keep sending the disputants back repeatedly until they reconcile, for adjudicating disputes bequeaths grudges among the people,'" we replied: This cannot be authentically attributed to 'Umar at all, for we only narrate it through Muharib ibn Dithar's chain attributed to 'Umar, and Muharib never met 'Umar. Though Muharib is trustworthy, this is a *mursal* narration (with a missing link in the chain).

وَيُعِيذُ اللَّهُ عُمَرَ مِنْ أَنْ يَقُولَ هَذَا الْقَوْلَ فَيَأْمُرُ بِتَرْدِيدِ ذِي الْحَقِّ وَلَا يَقْضِي لَهُ بِحَقِّهِ، هَذَا الظُّلْمُ وَالْجَوْرُ اللَّذَانِ نَزَّهَ اللَّهُ تَعَالَى عُمَرَ فِي إِمَامَتِهِ وَدِينِهِ وَصَرَامَتِهِ فِي الْحَقِّ مِنْ أَنْ يَفُوهَ بِهِ.

L19925 And Allah protects Umar from making such a statement that would oblige the repetition of the claimant's plea without granting them their due right. This is the injustice and tyranny from which Allah the Exalted has declared Umar free—in his leadership, his religion, and his uncompromising adherence to truth—absolving him of ever uttering such words.

ثُمَّ لَيْتَ شِعْرِي أَيُّهَا الْمُحْتَجُّونَ بِهَذَا الْقَوْلِ الَّذِي لَمْ يَصِحَّ قَطُّ عَرِّفُونَا مَا حَدُّ هَذَا التَّرْدِيدِ الَّذِي تُضِيفُونَهُ إِلَى أَمِيرِ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُ - وَتَحْتَجُّونَ بِهِ وَتَأْمُرُونَ بِهِ؟ أَتَرْدِيدُ سَاعَةٍ فَإِنَّهُ تَرْدِيدٌ فِي اللُّغَةِ بِلَا شَكٍّ، أَمْ تَرْدِيدُ يَوْمٍ، أَمْ تَرْدِيدُ جُمُعَةٍ، أَمْ تَرْدِيدُ شَهْرٍ، أَوْ تَرْدِيدُ سَنَةٍ، أَمْ تَرْدِيدُ بَاقِي الْعُمْرِ؟ فَكُلُّ ذَلِكَ تَرْدِيدٌ، وَلَيْسَ بَعْضُ ذَلِكَ بِاسْمِ التَّرْدِيدِ بِأَوْلَى مِنْ بَعْضٍ، وَكُلُّ مَنْ حَدَّ فِي هَذَا التَّرْدِيدِ حَدًّا فَهُوَ كَذَّابٌ، قَائِلٌ بِالْبَاطِلِ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ.

L19926 Then I wish I knew—O you who cite this baseless statement as evidence—explain to us the definition of this "repetition" you ascribe to the Commander of the Faithful (may Allah be pleased with him), which you invoke and command others to follow! Is it a repetition lasting an hour? For that is undeniably repetition in linguistic terms. Or is it a repetition of a day? A week? A month? A year? Or the remainder of one's life? All these are forms of repetition, yet no specific instance is more deserving of being named "repetition" than another. Whoever defines a fixed duration for this repetition is a liar, falsely asserting claims about the religion of Allah—the Exalted and Glorious.

وَأَيْضًا: فَإِنَّ تَرْكَ الْحُكْمِ بَيْنَهُمْ حَتَّى يَنْزِلَ الْمُحِقُّ عَلَى حُكْمِ الْبَاطِلِ، أَوْ يَتْرُكَ الطَّلَبَ، أَوْ يَمَلَّ مِنْ طَلَبِ الْمُبْطِلِ فَيُعْطِيَهُ مَالَهُ بِالْبَاطِلِ أَشَدُّ تَوْرِيثًا لِلضَّغَائِنِ بَيْنَ الْقَوْمِ مِنْ فَصْلِ الْقَضَاءِ بِلَا شَكٍّ.

L19927 Moreover, refraining from adjudicating between them until the rightful party submits to a false judgment, relinquishes their claim, or wearies of the unjust claimant's persistence and thus surrenders his property unjustly, undeniably breeds lasting enmity among the people far more than a judicial ruling ever would.

L19928 All praise is due to Allah, Who made the chain of transmission (*isnād*) in

our religion a decisive criterion that distinguishes truth from falsehood.

L19929–19931 If a narrator mentions the authentic report from the Prophet (peace and blessings be upon him) via the chain of transmission in Al-Bukhārī - from Ādam ibn Abī Iyās, from Ibn Abī Dhi'b, from Saʿīd al-Maqburī, from Abū Hurayrah - that the Messenger of Allah (peace and blessings be upon him) said: "Whoever..." If someone has wronged his brother in honor or any matter, let him seek absolution from him today before a time comes when there is no dinar or dirham. If he has righteous deeds, they will be taken from him proportionate to his wrongdoing. If he has no good deeds, the sins of his companion will be taken and loaded upon him.

L19932 Indeed, this report stands as one of the strongest proofs in this chapter, for it necessitates seeking release from every injustice. Such release is a necessity that cannot be achieved by denying the rightful claim entirely, as this constitutes persistence in injustice. Rather, release is attained solely through acknowledgment, repentance, remorse, and seeking to be absolved—which is our opinion. There is no inherent permissibility of an amicable settlement here whatsoever. The text instead refers to moving toward absolution, which only occurs by abandoning injustice. Whoever owes property must either restore it equitably or seek release from liability. Whoever has slandered another's honor must seek absolution. Whoever is subject to retribution must either submit to it or seek resolution through the victim's pardon—with nothing beyond this. And success is from Allah, the Most High.

L19933 **Issue: Acknowledgment through reconciliation when valid.**

L19934 ١٢٧١ (1271): Legal Question:

L19935 When the validity of the settlement is confirmed regarding property matters, it is only permissible through one of two methods with no third alternative: either the debtor gives the creditor a portion of what is owed to him, and the creditor willingly absolves him of the remaining debt. Had the creditor wished to claim what he relinquished, he could have done so. This is an

وَالْحَمْدُ لِلَّهِ الَّذِي جَعَلَ الْإِسْنَادَ فِي دِينِنَا فَصْلًا بَيْنَ الْحَقِّ وَالْكَذِبِ.

فَإِنْ ذَكَرَ ذَاكِرٌ الْخَبَرَ الصَّحِيحَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ آدَمَ بْنِ أَبِي إيَاسٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ مَظْلَمَةٌ لِأَخِيهِ مِنْ عِرْضِهِ أَوْ شَيْءٍ فَلْيَتَحَلَّلْهُ مِنْهُ الْيَوْمَ قَبْلَ أَنْ لَا يَكُونَ دِينَارٌ وَلَا دِرْهَمٌ، وَإِنْ كَانَ لَهُ عَمَلٌ صَالِحٌ أُخِذَ مِنْهُ بِقَدْرِ مَظْلِمَتِهِ، وَإِنْ لَمْ تَكُنْ لَهُ حَسَنَاتٌ أُخِذَ مِنْ سَيِّئَاتِ صَاحِبِهِ فَحُمِلَ عَلَيْهِ» .

فَإِنْ هَذَا الْخَبَرَ مِنْ أَعْظَمِ حُجَّةٍ فِي هَذَا الْبَابِ، فَإِنَّ فِيهِ إيجَابَ التَّحَلُّلِ مِنْ كُلِّ مَظْلَمَةٍ، وَالتَّحَلُّلُ ضَرُورَةً لَا يَكُونُ بِإِنْكَارِ الْحَقِّ أَصْلًا، بَلْ هَذَا إصْرَارٌ عَلَى الظُّلْمِ، وَإِنَّمَا التَّحَلُّلُ بِالِاعْتِرَافِ، وَالتَّوْبَةِ، وَالنَّدَمِ، وَطَلَبِ أَنْ يُجْعَلَ فِي حِلٍّ فَقَطْ - وَهُوَ قَوْلُنَا، وَلَيْسَ فِيهِ إبَاحَةُ صُلْحٍ أَصْلًا، وَإِنَّمَا فِيهِ الْخُرُوجُ إلَى الْحِلِّ، وَلَا يَكُونُ ذَلِكَ إلَّا بِالْخُرُوجِ عَنْ الظُّلْمِ، فَمَنْ كَانَ قِبَلَهُ مَالٌ أُنْصِفَ مِنْهُ أَوْ تَحَلَّلَ مِنْهُ، وَمَنْ كَانَ قِبَلَهُ سَبُّ عِرْضٍ طَلَبَ التَّحَلُّلَ، وَمَنْ كَانَ قِبَلَهُ قِصَاصٌ اقْتَصَّ مِنْ نَفْسِهِ أَوْ تَحَلَّلَ مِنْهُ بِالْعَفْوِ - وَلَا مَزِيدَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْإِقْرَارُ بِالصُّلْحِ إذَا صَحَّ]

١٢٧١ - مَسْأَلَةٌ:

فَإِذَا صَحَّ الْإِقْرَارُ بِالصُّلْحِ، فَإِمَّا أَنْ يَكُونَ فِي الْمَالِ فَلَا يَجُوزُ إلَّا بِأَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنْ يُعْطِيَهُ بَعْضَ مَا لَهُ عَلَيْهِ وَيُبْرِئَهُ الَّذِي لَهُ الْحَقُّ مِنْ بَاقِيهِ بِاخْتِيَارِهِ، وَلَوْ شَاءَ أَنْ يَأْخُذَ مَا أَبْرَأَهُ مِنْهُ لَفَعَلَ -: فَهَذَا حَسَنٌ جَائِزٌ بِلَا خِلَافٍ، وَهُوَ فِعْلُ خَيْرٍ.

excellent and unanimously permissible arrangement, constituting a virtuous act.

L19936 Or if the established right is a specific tangible asset—whether present or absent—and the two parties mutually agree that he sells it to him, then this is a valid sale. The rulings of permissibility and prohibition applicable to sales apply here without exception. Alternatively, it may be through leasing where leasing is permissible, due to the command of the Messenger of Allah (peace be upon him) concerning leasing.

L19937 Allah, the Most High, said: "Allah has made trade lawful and made usury unlawful" [Surah Al-Baqarah 2:275].[6]

L19938 It has been reported to us through the chain of al-Layth ibn Saʿd from Jaʿfar ibn Rabīʿah from al-Aʿraj: "'Abdullāh ibn Kaʿb ibn Mālik related to me from his father that he was owed money by ʿAbdullāh ibn Abī Ḥadrad. The Messenger of Allah (peace be upon him) passed by them and said: 'O Kaʿb!' He gestured with his hand as if to say, 'Half.' So he took half of what was due and left the remaining half."

L19939–19940 **Issue: It is not permissible in a settlement that includes a discharge to stipulate a condition of deferment.**

L19941 Issue:

L19942 It is impermissible in a settlement involving partial discharge [of debt] to stipulate deferment in principle, as this constitutes a condition not ordained in the Book of Allah and is therefore void. However, the debt becomes immediately due as an obligation on the debtor, and the creditor may discretionarily grant respite as he wishes without stipulation, for this constitutes an act of goodness.

L19943 **A Legal Question: Settlement Concerning Unspecified Property**

L19944 1273. Issue: It is not permissible to settle a dispute over property of un-

وَإِمَّا أَنْ يَكُونَ الْحَقُّ الْمُقَرُّ بِهِ عَيْنًا مُعَيَّنَةً حَاضِرَةً أَوْ غَائِبَةً فَتَرَاضَيَا عَلَى أَنْ يَبِيعَهَا مِنْهُ، فَهَذَا بَيْعٌ صَحِيحٌ يَجُوزُ فِيهِ مَا يَجُوزُ فِي الْبَيْعِ، وَيَحْرُمُ فِيهِ مَا يَحْرُمُ فِي الْبَيْعِ وَلَا مَزِيدَ، أَوْ بِالْإِجَارَةِ حَيْثُ تَجُوزُ الْإِجَارَةُ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] .

وَرُوِّينَا مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ الْأَعْرَجِ: حَدَّثَنِي «عَبْدُ اللَّهِ بْنُ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ أَنَّهُ كَانَ لَهُ عَلَى عَبْدِ اللَّهِ بْنِ أَبِي حَدْرَدٍ مَالٌ فَمَرَّ بِهِمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَيَا كَعْبُ فَأَشَارَ بِيَدِهِ كَأَنَّهُ يَقُولُ: النِّصْفَ، فَأَخَذَ نِصْفَ مَا عَلَيْهِ وَتَرَكَ نِصْفَهُ» .

[مَسْأَلَةٌ لَا يَجُوزُ فِي الصُّلْحِ الَّذِي يَكُونُ فِيهِ إبْرَاءٌ شَرْطُ تَأْجِيلٍ]

مَسْأَلَةٌ:

وَلَا يَجُوزُ فِي الصُّلْحِ الَّذِي يَكُونُ فِيهِ إبْرَاءٌ مِنْ الْبَعْضِ شَرْطُ تَأْجِيلٍ أَصْلًا، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ، فَهُوَ بَاطِلٌ، لَكِنَّهُ يَكُونُ حَالًّا فِي الذِّمَّةِ يُنْظِرُهُ بِهِ مَا شَاءَ بِلَا شَرْطٍ، لِأَنَّهُ فِعْلُ خَيْرٍ.

[مَسْأَلَةُ الصُّلْحِ عَلَى مَالٍ مَجْهُولٍ]

[6] **Qur'an references (L19937):** Qur'an 2:275 (Al-Baqarah).

known value, based on the statement of Allah the Exalted: “Do not consume one another’s wealth unjustly, but only through trade by consent” (Quran 4:29). Consent cannot exist in what is fundamentally unknown, for a person might presume their right to be small and thus feel content with it. If they learn it is large, their contentment would cease. However, settlement is permissible regarding matters where the value is known. What remains unknown is deferred until the Day of Reckoning.[7]

١٢٧٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ الصُّلْحُ عَلَى مَالٍ مَجْهُولِ الْقَدْرِ، لِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَالرِّضَا لَا يَكُونُ فِي مَجْهُولٍ أَصْلًا، إِذْ قَدْ يَظُنُّ الْمَرْءُ أَنَّ حَقَّهُ قَلِيلٌ فَتَطِيبُ نَفْسُهُ بِهِ، فَإِذَا عَلِمَ أَنَّهُ كَثِيرٌ لَمْ تَطِبْ نَفْسُهُ بِهِ وَلَكِنْ مَا عُرِفَ قَدْرُهُ جَازَ الصُّلْحُ فِيهِ، وَمَا جُهِلَ فَهُوَ مُؤَخَّرٌ إِلَى يَوْمِ الْحِسَابِ.

L19945 Those who permitted that cited as evidence what we narrated through the chain of Muhammad ibn Ishaq in his *Maghazi* (Military Campaigns) from Hakim ibn Hakim ibn ‘Abbad ibn Hunayf, from Abu Ja‘far Muhammad ibn ‘Ali: “The Messenger of Allah—peace be upon him—sent ‘Ali to Banu Jadhimah after Khalid had inflicted harm upon them. He dispatched him—peace be upon him—with wealth to pay blood money and property compensation, even compensating them for something as minor as a dog’s bowl. When no bloodshed or property loss remained unsettled—all having been duly paid—some wealth remained with him. He asked them: ’Does any bloodshed or property remain uncompensated?’ They replied: ’No.’ He said: ’I give you this remaining wealth as a precaution on behalf of the Messenger of Allah—peace be upon him—to cover anything he might have been unaware of or you might have overlooked.’ He did so, then returned to the Messenger of Allah—peace be upon him—and informed him. The Prophet said: ’You judged rightly and acted excellently.’”

وَقَدْ احْتَجَّ مَنْ أَجَازَ ذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ فِي مَغَازِيهِ عَنْ حَكِيمِ بْنِ حَكِيمِ بْنِ عَبَّادِ بْنِ حُنَيْفٍ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيٍّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ عَلِيًّا إِلَى بَنِي جَذِيمَةَ إِذَا أَوْقَعَ بِهِمْ خَالِدٌ فَبَعَثَهُ - عَلَيْهِ السَّلَامُ - بِمَالٍ فَوَدَى لَهُمْ الدِّمَاءَ وَالْأَمْوَالَ حَتَّى إِنَّهُ لَيَدِيَ لَهُمْ مِيلَغَةَ الْكَلْبِ، حَتَّى إِذَا لَمْ يَبْقَ شَيْءٌ مِنْ مَالٍ وَلَا دَمٍ حَتَّى أَدَّاهُ وَبَقِيَتْ مَعَهُ بَقِيَّةٌ مِنْ الْمَالِ فَقَالَ لَهُمْ: هَلْ بَقِيَ لَكُمْ دَمٌ أَوْ مَالٌ؟ قَالُوا: لَا، قَالَ: فَإِنِّي أُعْطِيكُمْ هَذِهِ الْبَقِيَّةَ مِنْ الْمَالِ احْتِيَاطًا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّا لَمْ يَعْلَمْ وَلَا تَعْلَمُونَ، فَفَعَلَ، فَرَجَعَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ فَقَالَ لَهُ: أَصَبْتَ وَأَحْسَنْتَ» .

L19946 Abu Muhammad said: This is not valid because it is a Mursal narration. Furthermore, it is from Hakim ibn Hakim—who is weak. Even if it were authentic, they would have no proof in it whatsoever, for it does not mention a stipulated settlement conditioned upon seeking an unknown right—and this is what we have rejected. Rather, it refers to a voluntary concession to people who assert no claim at all, acknowledging that no claim remains for them whatsoever. We do not reject voluntary concessions from those against

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا يَصِحُّ؛ لِأَنَّهُ مُرْسَلٌ، ثُمَّ هُوَ عَنْ حَكِيمِ بْنِ حَكِيمٍ وَهُوَ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهِ صُلْحٌ مُشْتَرَطٌ عَلَى طَلَبِ حَقٍّ مَجْهُولٍ - وَهَذَا هُوَ الَّذِي أَنْكَرْنَا، وَإِنَّمَا هُوَ تَطَوُّعٌ لِقَوْمٍ لَا يَدَّعُونَ حَقًّا أَصْلًا، بَلْ هُمْ مُقِرُّونَ بِأَنَّهُمْ لَمْ يَبْقَ لَهُمْ طَلَبٌ أَصْلًا، وَنَحْنُ لَا نُنْكِرُ التَّطَوُّعَ مِمَّنْ لَا يُطْلَبُ بِحَقٍّ، بَلْ هُوَ فِعْلُ خَيْرٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[7] **Qur’an references (L19944):** Qur’an 4:29 (An-Nisa).

whom no right is claimed, for this is indeed an act of goodness. And success is from Allah, the Exalted, alone.

A juristic ruling on intentionally breaking a tooth.

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Settlement is not permissible regarding financial obligations other than those we have mentioned—those established through acknowledgment and evidence—except in four cases only: in khulʿ (we will mention it, God willing, in the Book of Marriage). Allah, the Exalted, said: "And if a woman fears from her husband aversion or neglect, there is no sin upon them if they arrange a settlement between them, for settlement is best" [Quran 4:128].[8]

Or in the intentional breaking of a tooth, the offender may reconcile by dropping retaliation. "Or [as compensation] for intentional injury in lieu of qisas (retaliation), or for killing a person in lieu of qisas—whether settled for less than the diya (blood money), more than it, or involving obligations outside the scope of diya requirements."

The evidence for this is what we mentioned before from the words of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully, except that it be trade by mutual consent among you" [An-Nisa: 29].[9]

The statement of the Messenger of Allah—peace and blessings be upon him—"Your blood and wealth are inviolable to you," therefore, it is impermissible to dispose of wealth except where the scriptural evidence permits or obligates it.

"By the statement of the Prophet — may the peace and blessings of Allah be upon him —: *'Every condition not in the Book of Allah is void,'* and since a

[8] **Qur'an references (L19949):** Qur'an 4:128 (An-Nisa).
[9] **Qur'an references (L19953):** Qur'an 4:29 (An-Nisa).

[مَسْأَلَةٌ كَسْر سِنٍّ عَمْدًا]

١٢٧٤ - مَسْأَلَةٌ:

وَلَا يَجُوزُ الصُّلْحُ فِي غَيْرِ مَا ذَكَرْنَا مِنْ الْأَمْوَالِ الْوَاجِبَةِ الْمَعْلُومَةِ بِالْإِقْرَارِ وَالْبَيِّنَةِ، إلَّا فِي أَرْبَعَةِ أَوْجُهٍ فَقَطْ -: فِي الْخُلْعِ وَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي: (كِتَابِ النِّكَاحِ) قَالَ اللَّهُ تَعَالَى: {وَإِنِ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨] .

أَوْ فِي كَسْرِ سِنٍّ عَمْدًا، فَيُصَالِحُ الْكَاسِرُ فِي إسْقَاطِ الْقَوَدِ أَوْ فِي جِرَاحَةٍ عَمْدًا عِوَضًا مِنْ الْقَوَدِ أَوْ فِي قَتْلِ نَفْسٍ عِوَضًا مِنْ الْقَوَدِ بِأَقَلَّ مِنْ الدِّيَةِ، أَوْ بِأَكْثَرَ، وَبِغَيْرِ مَا يَجِبُ فِي الدِّيَةِ.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَا قَبْلُ مِنْ قَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ إعْطَاءُ مَالٍ إلَّا حَيْثُ جَاءَ النَّصُّ بِإِبَاحَةِ ذَلِكَ أَوْ إيجَابِهِ.

وَلِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَالصُّلْحُ شَرْطٌ فَهُوَ بَاطِلٌ إلَّا حَيْثُ أَبَاحَهُ نَصٌّ وَلَا مَزِيدَ، وَلَمْ يُبِحْ النَّصُّ إلَّا حَيْثُ ذَكَرْنَا فَقَطْ.

settlement is a condition, it is void unless a textual evidence permits it, with no additions. The text permits it only in the cases we have mentioned."[10]

L19956 It was narrated to us through Abu Dawud, from Musaddad, from Al-Muʿtamir ibn Sulayman At-Taymi, from Humaid At-Tawil, from Anas ibn Malik, who said: "Ar-Rubayyiʿ, the sister of Anas ibn An-Nadr, broke the front tooth of a woman. They came to the Prophet—peace be upon him—and he ruled by the Book of Allah: retaliation. Ibn An-Nadr said: 'By Him who sent you with the truth, her tooth shall not be broken today!' The Prophet said: 'O Anas, the Book of Allah is retaliation.' They then accepted prescribed compensation (Arsh) and took it."

رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «كَسَرَتْ الرُّبَيِّعُ أُخْتُ أَنَسِ بْنِ النَّضْرِ ثَنِيَّةَ امْرَأَةٍ فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَضَى بِكِتَابِ اللَّهِ الْقِصَاصَ فَقَالَ ابْنُ النَّضْرِ: وَالَّذِي بَعَثَك بِالْحَقِّ لَا تُكْسَرُ ثَنِيَّتُهَا الْيَوْمَ، قَالَ: يَا أَنَسُ كِتَابُ اللَّهِ الْقِصَاصُ، فَرَضُوا بِأَرْشٍ أَخَذُوه»

L19957 If it is objected, "You have narrated this report via the chain of Ḥammād ibn Salamah from Thābit al-Bunānī from Anas," then Anas mentioned that it was a wound and that they received the diyah.

فَإِنْ قِيلَ: فَإِنَّ هَذَا الْخَبَرَ رَوَيْتُمُوهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسٍ فَذَكَرَ أَنَّهَا كَانَتْ جِرَاحَةً، وَأَنَّهُمْ أَخَذُوا الدِّيَةَ.

L19958 It was narrated by you all via the chains of Bishr ibn al-Mufaḍḍal and Khālid al-Ḥadhdhā', both of whom reported from Ḥumayd al-Ṭawīl from Anas. Anas mentioned that they pardoned without referring to blood money (diyah) or compensatory injury payment ('arsh).

وَرَوَيْتُمُوهُ مِنْ طَرِيقِ بِشْرِ بْنِ الْمُفَضَّلِ، وَخَالِدٍ الْحَذَّاءِ، وَكِلَاهُمَا عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ، فَذَكَرَ أَنَّهُمْ عَفَوْا وَلَمْ يَذْكُرْ دِيَةً وَلَا أَرْشًا.

L19959–19961 You narrated it through the chain of Abū Khālid al-Aḥmar and Muḥammad ibn ʿAbd Allāh al-Anṣārī - both of whom reported from Ḥumayd al-Ṭawīl from Anās - and he mentioned the Prophet's command (peace and blessings be upon him) regarding retaliation exclusively. We replied: Yes. All of this is supremely authentic, with no contradiction between any part of it. This is because Sulaymān, Thābit, Bishr, and Khālid all supplemented the narrations of Abū Khālid and al-Anṣārī by mentioning the pardon from retaliation, whereas al-Anṣārī and Abū Khālid neither mentioned pardon nor stated their refusal to pardon. The addition by a just narrator is acceptable. Sulaymān and Thābit further added beyond what al-Anṣārī, Abū Khālid, and Bishr narrated - the mention of accepting land [as compensation]. These scholars did not mention any disagreement on the matter, and the addition of a just person is accepted. Thabit ruled it to be *diyah* (blood money), while Sulayman ruled it to be *arsh* (injury compensation).

وَرَوَيْتُمُوهُ مِنْ طَرِيقِ أَبِي خَالِدٍ الْأَحْمَرِ، وَمُحَمَّدِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ، كِلَاهُمَا عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ فَذَكَرَ أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقِصَاصِ فَقَطْ؟ قُلْنَا: نَعَمْ، وَكُلُّ ذَلِكَ فِي غَايَةِ الصِّحَّةِ وَلَيْسَ شَيْءٌ مِنْهَا مُخَالِفًا لِسَائِرِ ذَلِكَ؛ لِأَنَّ سُلَيْمَانَ، وَثَابِتًا، وَبِشْرًا، وَخَالِدًا، زَادُوا كُلُّهُمْ عَلَى أَبِي خَالِدٍ، وَالْأَنْصَارِيِّ: الْعَفْوَ عَنْ الْقِصَاصِ، وَلَمْ يَذْكُرْ الْأَنْصَارِيُّ وَلَا أَبُو خَالِدٍ عَفْوًا، وَلَا أَنَّهُمْ لَمْ يَعْفُوا، وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ، وَزَادَ سُلَيْمَانُ، وَثَابِتٌ عَلَى الْأَنْصَارِيِّ، وَأَبِي خَالِدٍ، وَبِشْرٍ، ذِكْرَ قَبُولِ الْأَرْضِ وَلَمْ يَذْكُرْ هَؤُلَاءِ خِلَافَ ذَلِكَ، وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ، وَقَالَ ثَابِتٌ: دِيَةٌ، وَقَالَ سُلَيْمَانُ: أَرْشٌ.

[10] **Hadith references (L19955):** Sunan Ibn Majah 2521.

وَهَذَا لَيْسَ اخْتِلَافًا، لِأَنَّ كُلَّ دِيَةِ أَرْشٌ وَكُلَّ أَرْشٍ دِيَةٌ، إِلَّا أَنَّ مِنْ ذَلِكَ مَا يَكُونُ مُؤَقَّتًا مَحْدُودًا، وَمِنْهُ مَا يَكُونُ غَيْرَ مُؤَقَّتٍ وَلَا مَحْدُودٍ، وَالتَّوْقِيتُ لَا يُؤْخَذُ إِلَّا بِنَصٍّ وَارِدٍ بِهِ، فَوَجَبَ حَمْلُ مَا رُوِّينَاهُ عَلَى عُمُومِهِ، وَجَوَازُ مَا تَرَاضَوْا عَلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L19962 This is not a contradiction, for every diyah is arsh and every arsh is diyah, except that some compensations are fixed and limited while others are neither fixed nor limited. Fixing [amounts] is only determined through an explicit textual ruling. Therefore, it is obligatory to interpret what we have narrated according to its general applicability and to uphold the permissibility of what is mutually agreed upon. And success is from Allah, the Most High.

وَأَمَّا اخْتِلَافُ ثَابِتٍ، وَسُلَيْمَانَ، فَقَالَ أَحَدُهُمَا - وَهُوَ ثَابِتٌ -: جِرَاحَةٌ وَأَنَّ أُمَّ الرُّبَيِّعِ الَّتِي أَقْسَمَتْ أَنْ لَا يُقْتَصَّ مِنْهَا، وَقَالَ سُلَيْمَانُ: كَسْرُ سِنٍّ، وَأَنَّ أَنَسَ بْنَ النَّضْرِ أَقْسَمَ أَنْ لَا يُقْتَصَّ مِنْهَا - فَيُمْكِنُ أَنْ يَكُونَا حَدِيثَيْنِ فِي قَضِيَّتَيْنِ، وَيُمْكِنُ أَنْ يَكُونَ حَدِيثٌ وَاحِدٌ فِي قَضِيَّةٍ وَاحِدَةٍ، لِأَنَّ كَسْرَ السِّنِّ جِرَاحَةٌ، لِأَنَّهُ يُدْمِي وَيُؤَثِّرُ فِي اللِّثَةِ فَهِيَ جِرَاحَةٌ، فَزَادَ سُلَيْمَانُ بَيَانًا إِذْ بَيَّنَ أَنَّهُ كَسْرُ سِنٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L19963 As for the disagreement between Thābit and Sulaymān: one of them—Thābit—said, "It is an injury," referring to Umm al-Rubayyiʿ, who had sworn that retaliation would not be sought from her. Sulaymān said, "It is a broken tooth," referencing Anas ibn al-Naḍr's oath that retaliation would not be sought from her. These could be two ḥadīths pertaining to two distinct cases or a single ḥadīth in one case, for a broken tooth constitutes an injury—as it causes bleeding and affects the gums, thereby being an injury. Sulaymān provided further clarification by specifying it was a broken tooth. And success is from Allah, the Most High.

وَأَمَّا الْجِرَاحَةُ: فَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ دَاوُد بْنِ سُفْيَانَ عَنْ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ أَبَا جَهْمِ بْنَ حُذَيْفَةَ مُصَدِّقًا فَلَاجَّهُ رَجُلٌ فِي صَدَقَتِهِ، فَضَرَبَهُ أَبُو جَهْمٍ فَشَجَّهُ فَأَتَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: الْقَوَدَ يَا رَسُولَ اللَّهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكُمْ كَذَا وَكَذَا؟ فَلَمْ يَرْضَوْا، فَقَالَ: لَكُمْ كَذَا وَكَذَا؟ فَلَمْ يَرْضَوْا، فَقَالَ: لَكُمْ كَذَا وَكَذَا، فَرَضُوا» .

L19964 As for injury: It was narrated to us through the chain of Muhammad ibn Dawud ibn Sufyan from Abd al-Razzaq, who informed us from Ma'mar, from al-Zuhri, from Urwah, from Aishah, the Mother of the Believers, that the Messenger of Allah (peace and blessings be upon him) sent Abu Jahm ibn Hudhayfah as a Zakat collector. A man disputed with him regarding the charity due from him, so Abu Jahm struck him, causing a head wound. They came to the Messenger of Allah (peace and blessings be upon him) and said: "Retaliation, O Messenger of Allah?" The Messenger of Allah (peace and blessings be upon him) said: "You may have such and such." But they were not satisfied. He said: "You may have such and such." Still, they were not satisfied. He then said: "You may have such and such," and they accepted.

فَهَذَا الصُّلْحُ عَلَى الشَّجَّةِ بِمَا يَتَرَاضَى بِهِ الْفَرِيقَانِ.

L19965 Thus, this settlement regarding the head wound is established by what the two parties agree upon.

فَإِنْ قِيلَ: فَإِنَّ هَذَا خَبَرٌ رَوَيْتُمُوهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ رَافِعٍ عَنْ عَبْدِ الرَّزَّاقِ بِالْإِسْنَادِ الْمَذْكُورِ فِيهِ، وَفِيهِ: «فَضَرَبَهُ أَبُو جَهْمٍ» وَلَمْ يَذْكُرْ شَجَّهُ؟ قُلْنَا: هَذِهِ بِلَا شَكٍّ قِصَّةٌ وَاحِدَةٌ،

L19966 If it is said: "But this is a report you have narrated through the chain of Muḥammad ibn Rāfiʿ from ʿAbd al-Razzāq with the chain mentioned therein, and in it is: 'Abū Jahm struck him,' without mentioning that he gashed his

head?" We respond: "This is undoubtedly a single incident and a single report. Muḥammad ibn Dāwūd added clarification by mentioning the gash to his head, while Muḥammad ibn Rāfiʿ did not mention it. The addition by a reliable narrator is acceptable."

وَخَبَرٌ وَاحِدٌ، وَزَادَ مُحَمَّدُ بْنُ دَاوُد بَيَانَ ذِكْرِ شَجَّهِ، وَلَمْ يَذْكُرْهَا مُحَمَّدُ بْنُ رَافِعٍ، وَزِيَادَةُ الْعَدْلِ مَقْبُولَةٌ.

L19967–19969 As for reconciliation concerning homicide: It has been narrated to us through the chain of transmission in Ṣaḥīḥ Muslim: Zuhayr ibn Ḥarb narrated to us, al-Walīd ibn Muslim narrated to us, al-Awzāʿī narrated to us, Yaḥyā ibn Abī Kathīr narrated to us, Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf narrated to us... Abu Hurairah narrated to me: "The Messenger of Allah—may Allah bless him and grant him peace—said after the conquest of Mecca: 'For anyone for whom a person is killed, he has the best of two options: either to accept blood money or to retaliate.'"

وَأَمَّا الصُّلْحُ فِي النَّفْسِ: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ قَالَ: نا زُهَيْرُ بْنُ حَرْبٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا الْأَوْزَاعِيُّ نا يَحْيَى بْنُ أَبِي كَثِيرٍ نا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ حَدَّثَنِي أَبُو هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ بَعْدَ فَتْحِ مَكَّةَ: وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إمَّا أَنْ يَفْدِيَ، وَإِمَّا أَنْ يَقْتُلَ» .

L19970 If it is said: But you have narrated a report through the chain of Abū Shurayh al-Kaʿbī that the Messenger of God—peace and blessings be upon him—said: "For whom someone is killed after this statement of mine, his family has two preferable choices: either to take the blood money or to kill the killer"?

فَإِنْ قِيلَ: فَهَذَا خَبَرٌ رَوَيْتُمُوهُ مِنْ طَرِيقِ أَبِي شُرَيْحٍ الْكَعْبِيِّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ: بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ، وَبَيْنَ أَنْ يَقْتُلُوهُ» ؟ .

L19971 We said: Yes, both are valid, true, and permissible. It is permissible for the guardian of the slain to obligate the killer to pay blood money, and it is permissible for the killer to reconcile with the guardian at that very time by offering terms that satisfy him. Thus, both narrations are valid—and with Allah alone, the Exalted, is success.

قُلْنَا: نَعَمْ، كِلَاهُمَا صَحِيحٌ وَحَقٌّ وَجَائِزٌ أَنْ يُلْزِمَ وَلِيُّ الْقَتِيلِ الْقَاتِلَ الدِّيَةَ وَجَائِزٌ أَنْ يُصَالِحَهُ حِينَئِذٍ الْقَاتِلُ بِمَا يُرْضِيهِ بِهِ، فَكِلَا الْخَبَرَيْنِ صَحِيحٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19972 A jurisprudential issue involving the settlement of blood or a specified item in exchange for a specified item.

[مَسْأَلَةٌ صَالَحَ عَنْ دَمٍ أَوْ عَنْ شَيْءٍ مُعَيَّنٍ بِشَيْءٍ مُعَيَّنٍ]

L19973 1275 - Issue: If someone settles a blood claim, a broken tooth, a wound, or a specified thing in exchange for another specified thing, this is permissible. However, if he is entitled to part or all of that compensation, the settlement becomes invalid and his right to qisas (retribution) and other claims is restored. This is because he relinquished his right in exchange for something that was not valid for him; otherwise, he would retain his right. Thus, if that thing was not valid for him, he did not relinquish his right.

١٢٧٥ - مَسْأَلَةٌ: وَمَنْ صَالَحَ عَنْ دَمٍ، أَوْ كَسْرِ سِنٍّ، أَوْ جِرَاحَةٍ، أَوْ عَنْ شَيْءٍ مُعَيَّنٍ بِشَيْءٍ مُعَيَّنٍ، فَذَلِكَ جَائِزٌ، فَإِنْ اسْتَحَقَّ بَعْضَهُ، أَوْ كُلَّهُ بَطَلَتْ الْمُصَالَحَةُ وَعَادَ عَلَى حَقِّهِ فِي الْقَوَدِ وَغَيْرِهِ، لِأَنَّهُ إنَّمَا تَرَكَ حَقَّهُ بِشَيْءٍ لَمْ يَصِحَّ لَهُ وَإِلَّا فَهُوَ عَلَى حَقِّهِ، فَإِذَا لَمْ يَصِحَّ لَهُ ذَلِكَ الشَّيْءُ فَلَمْ يَتْرُكْ حَقَّهُ.

وَكَذَلِكَ لَوْ صَالَحَ مِنْ سِلْعَةٍ بِعَيْنِهَا بِسُكْنَى دَارٍ، أَوْ خِدْمَةِ عَبْدٍ فَمَاتَ الْعَبْدُ، وَانْهَدَمَتْ الدَّارُ، أَوْ اسْتَحَقَّا بَطَلَ الصُّلْحُ وَعَادَ عَلَى حَقِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L19974 Similarly, if a settlement is made for part of a specific commodity in exchange for the occupancy of a house or the service of a slave, and the slave dies, the house collapses, or they are rightfully claimed, the settlement is invalidated, and the right reverts to the original claimant—and success comes only from Allah, the Exalted.

تَمَّ " كِتَابُ الصُّلْحِ " بِحَمْدِ اللَّهِ وَعَوْنِهِ.

L19975 *The Book of Ṣulḥ (Reconciliation)* has been completed with the praise of Allah and His assistance.