

AL-MUHALLA

كِتَابُ الْمُدَايِنَاتِ وَالتَّفْلِيسِ

The Book of Debts and Insolvency

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[كِتَابُ الْمُدَايِنَاتِ وَالتَّفْلِيسِ] [مَسْأَلَةٌ مَنْ ثَبَتَ لِلنَّاسِ عَلَيْهِ حُقُوقٌ]

١٢٧٦ - مَسْأَلَةٌ:

وَمَنْ ثَبَتَ لِلنَّاسِ عَلَيْهِ حُقُوقٌ مِنْ مَالٍ أَوْ مِمَّا يُوجِبُ غُرْمَ مَالٍ بِبَيِّنَةِ عَدْلٍ، أَوْ بِإِقْرَارٍ مِنْهُ صَحِيحٍ: بِيعَ عَلَيْهِ كُلُّ مَا يُوجَدُ لَهُ، وَأُنْصِفَ الْغُرَمَاءَ، وَلَا يَحِلُّ أَنْ يُسْجَنَ أَصْلًا، إلَّا أَنْ يُوجَدَ لَهُ مِنْ نَوْعِ مَا عَلَيْهِ فَيُنْصَفُ النَّاسُ مِنْهُ بِغَيْرِ بَيْعٍ، كَمَنْ عَلَيْهِ دَرَاهِمُ وَوُجِدَتْ لَهُ دَرَاهِمُ، أَوْ عَلَيْهِ طَعَامٌ وَوُجِدَ لَهُ طَعَامٌ، وَهَكَذَا فِي كُلِّ شَيْءٍ لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] .

«وَلِتَصْوِيبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلَ سَلْمَانَ: أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ» ؛ وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَطْلُ الْغَنِيِّ ظُلْمٌ» .

فَسِجْنُهُ مَعَ الْقُدْرَةِ عَلَى إنْصَافِ غُرَمَائِهِ ظُلْمٌ لَهُ وَلَهُمْ مَعًا، وَحُكْمٌ بِمَا لَمْ يُوجِبْهُ اللَّهُ تَعَالَى قَطُّ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا كَانَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِجْنٌ قَطُّ -: رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ الْقَاسِمِ بْنِ سَلَامٍ نا أَحْمَدُ بْنُ خَالِدٍ الْوَهْبِيُّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: حَبْسُ الرَّجُلِ فِي السِّجْنِ بَعْدَ مَا يَعْرِفُ مَا عَلَيْهِ مِنْ الدَّيْنِ ظُلْمٌ.

وَقَالَ الْحَنَفِيُّونَ: لَا يُبَاعُ شَيْءٌ مِنْ مَالِهِ، لَكِنْ يُسْجَنُ - وَإِنْ كَانَ مَالُهُ حَاضِرًا - حَتَّى يَكُونَ هُوَ الَّذِي يُنْصِفُ مِنْ نَفْسِهِ.

[The Book of Debts and Insolvency] [Issue Regarding a Person Against Whom Others Have Established Valid Claims]

1276 - Issue:

Whoever is proven to owe people rights—whether monetary or entailing a monetary liability—through conclusive evidence from upright witnesses or a valid admission of his own: all that he possesses must be sold, and the creditors must be fairly compensated. Imprisonment is not permissible at all unless he is found to possess assets of the same type as his debt, in which case the people are equitably compensated from it without sale. For instance, if one owes dirhams and possesses dirhams, or owes food and possesses food, and so on in all matters, in accordance with Allah's command: "Be upholders of justice" (Quran 4:135).[1]

And for the Messenger of Allah's approval (peace be upon him) of Salman's statement: "Give every right holder his right," and for the statement of the Messenger of Allah (peace be upon him): "The delay in payment by a wealthy person is injustice."

Therefore, imprisoning him despite his ability to equitably settle with his creditors constitutes an injustice to both him and them, and a judgment based on what Allah the Exalted has never ordained, nor His Messenger (peace and blessings be upon him)—for the Messenger of Allah (peace and blessings be upon him) never had a prison at all. It has been narrated to us through the chain of Abū ʿUbayd al-Qāsim ibn Salām: Aḥmad ibn Khālid al-Wahbī narrated to us from Muḥammad ibn Isḥāq from Muḥammad ibn ʿAlī ibn al-Ḥusayn, who said: ʿAlī ibn Abī Ṭālib declared: "Detaining a man in prison after he acknowledges the debt he owes is an injustice."

The Hanafis held: None of his property may be sold, but he is imprisoned—even if his property is present—until he himself discharges the obligation justly from himself.

Then they contradicted themselves, stating: "Except if the debt is in dirhams

[1] **Qur'an references (L19979):** Qur'an 4:135 (An-Nisa).

(silver) and dinars (gold) are found for it, or the debt is in dinars (gold) and dirhams (silver) are found for it - in which case what is available from those is sold to settle the debt owed in the same type."

ثُمَّ تَنَاقَضُوا فَقَالُوا: إلَّا إنْ كَانَ الدَّيْنُ دَرَاهِمَ فَتُوجَدُ لَهُ دَنَانِيرُ، أَوْ يَكُونَ الدَّيْنُ دَنَانِيرَ فَتُوجَدُ لَهُ دَرَاهِمُ، فَإِنَّ الَّذِي يُوجَدُ مِنْ ذَلِكَ يُبَاعُ فِيمَا عَلَيْهِ مِنْهَا.

L19984–19985 Would that I knew what the difference is between selling dinars and buying dirhams, and between selling commodities and purchasing what is incumbent upon them? Verily, Allah, the Exalted, has obligated upon us and upon everyone to be fair to those entitled to their rights, whether they arise from ourselves or from others.

فَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ بَيْعِ الدَّنَانِيرِ وَابْتِيَاعِ دَرَاهِمَ، وَبَيْنَ بَيْعِ الْعُرُوضِ وَابْتِيَاعِ مَا عَلَيْهِ؟ وَإِنَّمَا أَوْجَبَ اللَّهُ تَعَالَى عَلَيْنَا، وَعَلَى كُلِّ أَحَدٍ إنْصَافَ ذِي الْحَقِّ مِنْ أَنْفُسِنَا، وَمِنْ غَيْرِنَا.

L19986 The Exalted restricted resorting to imprisonment by His saying: "Walk through its expanses and eat of His provision" [Surah Al-Mulk 67:15], and He prescribed attendance at Friday prayer and congregational prayers as obligatory.[2]

وَمَنَعَ تَعَالَى مِنْ السِّجْنِ بِقَوْلِهِ تَعَالَى: {فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِنْ رِزْقِهِ} [الملك: ١٥] وَافْتَرَضَ حُضُورَ الْجُمُعَةِ وَالْجَمَاعَاتِ.

L19987 They prevented the oppressed from attending congregational prayers, from attending the Jumuʿah prayer, and from walking freely across the earth. They prevented the rightful claimant from hastening the attainment of justice for him—despite being capable of that—thus wronging both parties.

فَمَنَعُوا الْمَدِينَ مِنْ حُضُورِ الصَّلَوَاتِ فِي الْجَمَاعَةِ، وَمِنْ حُضُورِ الْجُمُعَةِ، وَمِنْ الْمَشْيِ فِي مَنَاكِبِ الْأَرْضِ وَمَنَعُوا صَاحِبَ الْحَقِّ مِنْ تَعْجِيلِ إنْصَافِهِ - وَهُمْ قَادِرُونَ عَلَى ذَلِكَ - فَظَلَمُوا الْفَرِيقَيْنِ.

L19988 They cited weak narrations as evidence—among them is a report through the *isnād* of Abū Bakr ibn ʻAyyāsh from Anas: "That the Messenger of Allāh (peace and blessings be upon him) detained [someone] on the basis of an accusation."

وَاحْتَجُّوا بِآثَارٍ وَاهِيَةٍ -: مِنْهَا: رِوَايَةٌ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ عَيَّاشٍ عَنْ أَنَسٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَبَسَ فِي تُهْمَةٍ» .

L19989 Via the chain of Abd al-Razzaq, from Bahz ibn Hakim, from his father, from his grandfather: "The Messenger of Allah (peace and blessings be upon him) detained someone on suspicion."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَبَسَ فِي تُهْمَةٍ» .

L19990 From the narration of Abū Mijlaz: "Two men from Juhaynah co-owned a slave. One of them freed him, so the Messenger of Allah (peace be upon him) detained the slave until the other owner sold his share." From Al-Ḥasan: "A group of people fought, and a person was slain among them. The Messenger of Allah (peace be upon him) sent a message to them and imprisoned them."

وَمِنْ طَرِيقِ أَبِي مِجْلَزٍ: «أَنَّ غُلَامَيْنِ مِنْ جُهَيْنَةَ كَانَ بَيْنَهُمَا غُلَامٌ فَأَعْتَقَهُ أَحَدُهُمَا فَحَبَسَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى بَاعَ غَنِيمَتَهُ» وَعَنْ الْحَسَنِ: «أَنَّ قَوْمًا اقْتَتَلُوا فَقُتِلَ بَيْنَهُمْ قَتِيلٌ فَبَعَثَ إلَيْهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَحَبَسَهُمْ» .

[2] **Qur'an references (L19986):** Qur'an 67:15 (Al-Mulk).

قَالَ أَبُو مُحَمَّد: كُلُّ هَذَا بَاطِلٌ، أَمَّا حَدِيثُ أَنَسٍ فَفِيهِ أَبُو بَكْرِ بْنُ عَيَّاشٍ وَهُوَ ضَعِيفٌ وَانْفَرَدَ عَنْهُ أَيْضًا إبْرَاهِيمُ بْنُ زَكَرِيَّا الْوَاسِطِيُّ وَلَا يُدْرَى مَنْ هُوَ، وَحَدِيثُ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ ضَعِيفٌ.

L19991 Abu Muhammad said: All of this is baseless. As for the hadith of Anas, in its chain is Abu Bakr ibn Ayyash—who is weak—and Ibrahim ibn Zakariyya al-Wasiti—an unknown narrator (majhul)—is the only one who narrated it from him. The hadith of Bahz ibn Hakim from his father from his grandfather is weak.

وَمِنْ هَذِهِ الطَّرِيقِ بِعَيْنِهَا فِيمَنْ مَنَعَ الزَّكَاةَ: «إنَّا آخِذُوهَا وَشَطْرَ مَالِهِ عَزْمَةٌ مِنْ عَزَمَاتِ رَبِّنَا» فَإِنْ احْتَجُّوا بِهِ فِي الْحَبْسِ فِي التُّهَمَةِ فَلْيَأْخُذُوا بِرِوَايَتِهِ هَذِهِ وَإِلَّا فَالْقَوْمُ مُتَلَاعِبُونَ بِالدِّينِ.

L19992 From this very precedent regarding one who withholds zakāt: "We shall seize it and half his wealth as a binding command among the irrevocable decrees of our Lord." If they cite this as evidence for imprisonment based on mere suspicion, let them adhere to this narration of the Prophet; otherwise, these people are toying with the religion.

فَإِنْ قَالُوا: هَذَا مَنْسُوخٌ؟ قِيلَ لَهُمْ: أَتَرَوْنَ خَصْمَكُمْ يَعْجِزُ عَنْ أَنْ يَقُولَ لَكُمْ: وَالْحَبْسُ فِي التُّهَمَةِ مَنْسُوخٌ بِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» ؟ وَالْحَبْسُ فِي غَيْرِ التُّهَمَةِ مَنْسُوخٌ بِوُجُوبِ حُضُورِ الْجُمُعَةِ، وَالْجَمَاعَاتِ وَحَدِيثُ الْحَبْسِ حَتَّى بَاعَ غَنِيمَتَهُ مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

L19993–19994 If they say: "This is abrogated?" It is said to them: "Do you think your opponent is incapable of saying to you: 'Imprisonment based on suspicion is abrogated by the statement of the Prophet (may the peace and blessings of Allah be upon him), "Beware of suspicion, for suspicion is the most false of speech"?' And imprisonment not based on suspicion is abrogated by the obligation to attend Friday prayer and congregational prayers. The hadith stating that imprisonment continues until he sold his booty is *mursal*, and there is no authoritative evidence in a *mursal* hadith."

وَلَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ قَدْ يُخَافُ عَلَيْهِ الْهَرَبُ بِغَنِيمَتِهِ فَحُبِسَ لِيَبِيعَهَا، وَهَذَا حَقٌّ لَا نُنْكِرُهُ وَلَيْسَ فِيهِ الْحَبْسُ الَّذِي يَرَوْنَ هُمْ، وَلَا أَنَّهُ امْتَنَعَ مِنْ بَيْعِهَا. وَقَدْ يَكُونُ الضَّمِيرُ الَّذِي فِي بَاعَهَا رَاجِعًا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L19995 Even if it were valid, they would have no argument in it, because it is feared that he might flee with his plunder, so he was detained to compel him to sell it. This is a right we do not deny, and it does not involve the detention they assert, nor that he refused to sell it. The pronoun in "he sold it" may refer back to the Messenger of Allah—peace be upon him.

وَقَدْ يَكُونُ هَذَا الْحَبْسُ إمْسَاكًا فِي الْمَدِينَةِ.

L19996 This detention may constitute confinement within the city.

وَلَيْسَ فِيهِ أَصْلًا أَنَّهُ حُبِسَ فِي سِجْنٍ - فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، وَحَدِيثُ الْحَسَنِ مُرْسَلٌ.

L19997 And there is no basis in it at all that he was imprisoned in a prison—so they have no argument in it at all, and the narration of al-Ḥasan is mursal.

وَأَيْضًا: فَإِنَّمَا هُوَ حَبْسٌ فِي قَتِيلٍ، وَحَاشَا لِلَّهِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَحْبِسُ مَنْ لَمْ يَصِحَّ عَلَيْهِ قَتْلٌ بِسِجْنٍ فَيَسْجُنُ الْبَرِيءَ مَعَ النُّطَفِ، هَذَا فِعْلُ أَهْلِ الظُّلْمِ وَالْعُدْوَانِ،

L19998 Furthermore, it is merely imprisonment related to a slain person. Allah forbid that the Prophet—peace be upon him—would imprison someone for whom imprisonment for killing is not valid, thereby confining the innocent alongside the guilty. This is the practice of oppressors and enemies, not the conduct of the Prophet—peace be upon him. By Allah, ʿAbdullāh ibn

Sahl—may Allah be pleased with him—was killed while being among the most virtuous Companions—may Allah be pleased with them—amidst the worst of the community, the Jews—may Allah curse them. Yet the Prophet—peace be upon him—did not deem it permissible to imprison them. How then could he imprison a group of Muslims based on mere suspicion? This is sheer falsehood, beyond doubt.

L19999 Then, I wish I knew: How long will this detention under suspicion of blood-related crimes and other [accusations] besides it last? For whenever they enforce a punishment, they only increase their unjust control through falsehood.

لَا فِعْلُهُ - عَلَيْهِ السَّلَامُ -، وَاَللَّهِ لَقَدْ قُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ رِضْوَانُ اللَّهِ عَلَيْهِ وَهُوَ مِنْ أَفَاضِلِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِيمَا بَيْنَ أَظْهُرِ شَرِّ الْأُمَّةِ وَهُمْ الْيَهُودُ لَعَنَهُمْ اللَّهُ فَمَا اسْتَجَازَ - عَلَيْهِ السَّلَامُ - سِجْنَهُمْ، فَكَيْفَ أَنْ يَسْجُنَ فِي تُهْمَةٍ قَوْمًا مِنْ الْمُسْلِمِينَ؟ فَهَذَا الْبَاطِلُ الَّذِي لَا شَكَّ فِيهِ.

ثُمَّ لَيْتَ شِعْرِي إلَى مَتَى يَكُونُ هَذَا الْحَبْسُ فِي التُّهَمَةِ بِالدَّمِ وَغَيْرِهِ؟ فَإِنْ حَدُّوا حَدًّا زَادُوا فِي التَّحَكُّمِ بِالْبَاطِلِ.

وَإِنْ قَالُوا: إِلَى الْأَبَدِ، تَرَكُوا قَوْلَهُمْ، فَهُمْ أَبَدًا يَتَكَسَّعُونَ فِي ظُلْمَةِ الْخَطَأِ.

L20000 And if they say, “Forever,” they have contradicted their own claim, for they will forever stumble in the darkness of error.

وَاحْتَجُّوا أَيْضًا بِقَوْلِ اللَّهِ تَعَالَى: {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] هَذِهِ أَحْكَامٌ مَنْسُوخَةٌ.

L20001 They also cited as evidence the words of Allah, the Most High: “And those who commit adultery among your women—seek testimony from four witnesses among you against them. If they testify, then confine them to their houses until death takes them or Allah ordains a way for them.” [An-Nisa: 15] These are abrogated rulings.[1]

فَمَنْ أَضَلَّ مِمَّنْ يَسْتَشْهِدُ بِآيَةٍ قَدْ نُسِخَتْ، وَبَطَلَ حُكْمُهَا فِيمَا لَمْ يَنْزِلْ فِيهِ أَيْضًا، وَفِيمَا لَيْسَ فِيهَا مِنْهُ لَا نَصَّ وَلَا دَلِيلَ وَلَا أَثَرَ.

L20002 Who is more astray than one who cites as evidence a verse that has been abrogated - its ruling invalidated also concerning matters for which it was not revealed, and in matters where there is nothing from it [the verse], neither an explicit text, nor proof, nor trace?

وَالْحَقُّ فِي هَذَا هُوَ قَوْلُنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «أُصِيبَ رَجُلٌ فِي ثِمَارٍ ابْتَاعَهَا فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَثُرَ دَيْنُهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَصَدَّقُوا عَلَيْهِ؟ فَتَصَدَّقَ النَّاسُ عَلَيْهِ، فَلَمْ يَبْلُغْ ذَلِكَ وَفَاءَ دَيْنِهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِغُرَمَائِهِ خُذُوا مَا وَجَدْتُمْ وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ» .

L20003–20004 The correct ruling in this matter is our view, as we have been narrated through the transmission of Muslim ibn al-Ḥajjāj: Qutaybah ibn Saʿīd narrated to us, al-Layth (that is, Ibn Saʿd) narrated to us, from Bukayr ibn al-Ashajj, from ʿIyāḍ ibn ʿAbdullāh, from Abū Saʿīd al-Khudrī, who said: “A man incurred a loss on fruits he had purchased during the lifetime of the Messenger of Allah—peace and blessings be upon him—and his debt grew excessive. The Messenger of Allah—peace and blessings be upon him—said, ’Give charity to him.’ The people gave him charity, but this did not suffice to settle his debt. The Messenger of Allah—peace and blessings be upon him—then said to his creditors, ’Take what is available, for you have no right except to that.’”

فَهَذَا نَصٌّ جَلِيٌّ عَلَى أَنْ لَيْسَ لَهُمْ شَيْءٌ غَيْرَ مَا وَجَدُوا لَهُ، وَأَنَّهُ لَيْسَ لَهُمْ حَبْسُهُ، وَأَنَّ مَا وُجِدَ مِنْ مَالِهِ لِلْغُرَمَاءِ، وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَحِلُّ سِوَاهُ، فَإِنْ قِيلَ: رُوِيَ أَنَّهُ - عَلَيْهِ السَّلَامُ - بَاعَ لَهُمْ مَالَ مُعَاذٍ؟ قُلْنَا: هَكَذَا نَقُولُ - وَإِنْ لَمْ يَصِحَّ مِنْ طَرِيقِ السَّنَدِ، لِأَنَّهُ مُرْسَلٌ، لَكِنَّ الْحُكْمَ أَنَّهُ إِنَّمَا يَقْضِي لَهُمْ بِعَيْنِ مَالِهِ، ثُمَّ يُبَاعُ لَهُمْ وَيُقَسِّمُ عَلَيْهِمُ الْحِصَصُ؛ لِأَنَّهُ لَا سَبِيلَ إِلَى إِنْصَافِهِمْ بِغَيْرِ هَذَا.

L20005 This is a clear text stating they have no right to anything except what they found belonging to him, that they may not withhold it, and that any of his wealth found belongs to the creditors. This is the correct ruling, and no alternative is permissible. If it is said: “It is narrated that he (peace be upon him) sold Muʿādh’s property to them?” We reply: “This is our position (even if the narration is not validated through its chain, as it is *mursal*)—yet the legal ruling is that the judge must rule they are entitled to the specific property itself. It is then sold, and the shares are distributed among them, for there is no way to ensure their fair treatment otherwise.”

[1] **Qur’an references (L20001):** Qur’an 4:15 (An-Nisa).

L20006 If they deceive by citing what was narrated from ʿUmar, ʿAlī, Shurayḥ, and al-Shaʿbī, the narration about ʿUmar is only through Saʿīd ibn al-Musayyab: that ʿUmar detained the male agnates of a deceased person - the men, not the women - who covered his expenses, and that Nāfiʿ ibn ʿAbd al-Ḥārith bought a house for imprisonment from Ṣafwān ibn Umayyah for four thousand. If ʿUmar disapproved, then Ṣafwān would receive four hundred.

فَإِنْ مَوَّهُوا بِمَا رُوِيَ عَنْ عُمَرَ، وَعَلِيٍّ، وَشُرَيْحٍ، وَالشَّعْبِيِّ، فَإِنَّ الرِّوَايَةَ عَنْ عُمَرَ إِنَّمَا هِيَ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ حَبَسَ عَصَبَةَ مَنْفُوسٍ يُنْفِقُونَ عَلَيْهِ الرِّجَالُ دُونَ النِّسَاءِ - وَأَنَّ نَافِعَ بْنَ عَبْدِ الْحَارِثِ اشْتَرَى دَارًا لِلسِّجْنِ مِنْ صَفْوَانَ بْنِ أُمَيَّةَ بِأَرْبَعَةِ آلَافٍ فَإِنْ لَمْ يَرْضَ عُمَرُ فَلِصَفْوَانَ أَرْبَعُمِائَةٍ.

L20007 These two reports provide no valid proof for them, because ʿUmar's custodial restraint of the agnates for the child's maintenance is merely retention, a judicial decision, and limitation—not imprisonment, since their refusal is not recorded.

وَهَذَانِ خَبَرَانِ لَا حُجَّةَ لَهُمْ فِيهِمَا، لِأَنَّ حَبْسَ عُمَرَ لِلْعَصَبَةِ لِلنَّفَقَةِ عَلَى الصَّبِيِّ إِنَّمَا هُوَ إِمْسَاكٌ وَحُكْمٌ وَقَصْرٌ، لَا سِجْنٌ، لِأَنَّ مِنَ الْبَاطِلِ أَنْ يَسْجُنَهُمْ أَبَدًا وَلَمْ يُذْكَرْ عَنْهُمُ امْتِنَاعٌ.

L20008–20010 Then they do not affirm the obligation of financial maintenance upon the paternal male relatives, [for] they have indeed opposed ʿUmar. How can they cite him as evidence in a matter where they were the first to oppose him? As for the second narration: none of them consider it a valid sale, but rather a defective and annulled one. How can a Muslim legitimize invoking a ruling they deem invalid? What is reliably preserved from ʿUmar aligns with our position, in accordance with what we will clarify. After this (if Allah, the Exalted, wills), the narration transmitted from Ali states that he was imprisoned due to debt. This narration comes through Jabir al-Juʿfi, who is a liar.

ثُمَّ هُمْ لَا يَقُولُونَ بِإِيجَابِ النَّفَقَةِ عَلَى الْعَصَبَةِ، فَقَدْ خَالَفُوا عُمَرَ، فَكَيْفَ يَحْتَجُّونَ بِهِ فِي شَيْءٍ هُمْ أَوَّلُ مُخَالِفٍ لَهُ؟ وَأَمَّا الْخَبَرُ الثَّانِي: فَكُلُّهُمْ لَا يَرَاهُ بَيْعًا صَحِيحًا، بَلْ فَاسِدًا مَفْسُوخًا، فَكَيْفَ يَسْتَجِيزُ مُسْلِمٌ أَنْ يَحْتَجَّ بِحُكْمٍ يَرَاهُ بَاطِلًا؟ وَالْمَحْفُوظُ عَنْ عُمَرَ مِثْلُ قَوْلِنَا عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى، وَالرِّوَايَةُ عَنْ عَلِيٍّ أَنَّهُ حَبَسَ فِي دَيْنٍ: هِيَ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ وَهُوَ كَذَّابٌ.

L20011 And it has been narrated to us from ʿAlī a differing position regarding this matter, as we have mentioned and will mention.

وَقَدْ رُوِّينَا عَنْ عَلِيٍّ خِلَافَ هَذَا كَمَا ذَكَرْنَا وَنَذْكُرُ.

L20012 As for Shuraih and Al-Shaʿbī, we do not consider their legal rulings as authoritative evidence. The closest interpretation is that it is established from them that both the worker and the employer may annul the hire contract at will, even if the other party objects. Yet both of them contradict this ruling. Thus, Al-Shaʿbī and Shuraih are deemed authoritative when they wish, yet not authoritative when they wish—ugh! Such minds and religious stances! We previously cited ʿAlī's reported disapproval of imprisonment.

وَأَمَّا شُرَيْحٌ، وَالشَّعْبِيُّ، فَمَا عَلِمْنَا حُكْمَهُمَا حُجَّةً، وَأَقْرَبُ ذَلِكَ أَنَّهُمَا قَدْ ثَبَتَ عَنْهُمَا أَنَّ الْأَجِيرَ، وَالْمُسْتَأْجِرَ - كُلُّ وَاحِدٍ مِنْهُمَا يَفْسَخُ الْإِجَارَةَ إِذَا شَاءَ، وَإِنْ كَرِهَ الْآخَرُ، وَهُمْ كُلُّهُمْ مُخَالِفٌ لِهَذَا الْحُكْمِ، فَالشَّعْبِيُّ، وَشُرَيْحٌ حُجَّةٌ إِذَا اشْتَهَوْا، وَلَيْسَا حُجَّةً إِذَا اشْتَهَوْا، أُفٍّ لِهَذِهِ الْعُقُولِ، وَالْأَدْيَانِ، وَقَدْ ذَكَرْنَا قَبْلُ عَنْ عَلِيٍّ إِنْكَارَ السِّجْنِ.

L20013 It has been narrated to us from Umar ibn al-Khattab—as we have received it through the chain of Malik from Umar ibn Abd al-Rahman ibn Dilāf from his

وَقَدْ رُوِّينَا عَنْ عُمَرَ مَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ دِلَافٍ عَنْ أَبِيهِ أَنَّ رَجُلًا مِنْ جُهَيْنَةَ كَانَ يَشْتَرِي الرَّوَاحِلَ إِلَى أَجَلٍ فَيُغَالِي بِهَا فَأَفْلَسَ، فَرُفِعَ إِلَى عُمَرَ بْنِ الْخَطَّابِ؟ قَالَ: أَمَّا بَعْدُ أَيُّهَا النَّاسُ، فَإِنَّ الْأَسْفَعَ أَسْفَعَ بَنِي جُهَيْنَةَ رَضِيَ مِنْ دِينِهِ وَأَمَانَتِهِ بِأَنْ يُقَالَ: سَبَقَ الْحَاجُّ، وَأَنَّهُ ادَّانَ مُعْرِضًا، فَأَصْبَحَ قَدْ دِينَ بِهِ، فَمَنْ كَانَ لَهُ عَلَيْهِ شَيْءٌ فَلْيَغْدُ بِالْغَدَاةِ؟ فَإِنَّا قَاسِمُونَ مَالَهُ بِالْحِصَصِ - وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ.

From the path of Abū 'Ubayd, Ibn Abī Zā'ida reported to us from Ismā'īl ibn Ibrāhīm ibn Muhājir from 'Abd al-Malik ibn 'Umayr, who said: When a man would come to 'Alī ibn Abī Ṭālib with another man owing him a debt and say, "Imprison him?" 'Alī would ask, "Does he own property?" If the claimant said, "Yes, he has indeed hidden property," 'Alī would respond: "Produce clear evidence that he has hidden it. Otherwise, we will require him to swear by Allah that he did not hide it."

L20014

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا ابْنُ أَبِي زَائِدَةَ عَنْ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِذَا أَتَاهُ رَجُلٌ بِرَجُلٍ لَهُ عَلَيْهِ دَيْنٌ فَقَالَ: أَحْبِسْهُ؟ قَالَ لَهُ عَلِيٌّ: أَلَهُ مَالٌ؟ فَإِنْ قَالَ: نَعَمْ، قَدْ لَجَأَهُ مَالٌ؟ قَالَ: أَقِمْ الْبَيِّنَةَ عَلَى أَنَّهُ لَجَأَهُ وَإِلَّا أَحْلَفْنَاهُ بِاللَّهِ مَا لَجَأَهُ.

Via Abu 'Ubayd's chain of transmission: Ahmad ibn 'Uthman informed us from 'Abdullah ibn al-Mubarak, from Muhammad ibn Sulaym, from Ghalib al-Qattan, from Abu al-Muhazzim, from Abu Hurayrah: A man came to him with another and said, "I have a debt against this man." He asked the other, "What do you say?" He replied, "He has told the truth." He said, "Repay him." The man said, "I am unable to pay." He said to the other, "What do you want?" He said, "Imprison him?" Abu Hurayrah said, "No, but he should work to earn for you, himself, and his dependents." Ghalib al-Qattan said: I witnessed al-Hasan - while serving as a judge - issuing a ruling similar to that.

L20015

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَحْمَدُ بْنُ عُثْمَانَ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ مُحَمَّدِ بْنِ سُلَيْمٍ عَنْ غَالِبٍ الْقَطَّانِ عَنْ أَبِي الْمُهَزِّمِ عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَجُلًا أَتَاهُ بِآخَرَ فَقَالَ لَهُ إِنَّ لِي عَلَى هَذَا دَيْنًا؟ فَقَالَ لِلْآخَرِ: مَا تَقُولُ؟ قَالَ: صَدَقَ؟ قَالَ: فَاقْضِهِ قَالَ: إِنِّي مُعْسِرٌ، فَقَالَ لِلْآخَرِ: مَا تُرِيدُ؟ قَالَ: أَحْبِسُهُ؟ قَالَ أَبُو هُرَيْرَةَ: لَا، وَلَكِنْ يَطْلُبُ لَك وَلِنَفْسِهِ وَلِعِيَالِهِ - قَالَ غَالِبٌ الْقَطَّانُ: وَشَهِدْت الْحَسَنَ - وَهُوَ عَلَى الْقَضَاءِ - قَضَى بِمِثْلِ ذَلِكَ.

And from the narration of Ibn Abi Shaybah through Zayd ibn Hubab and Ubayd Allah—both transmitting from Abu Hilal, from Ghalib al-Qattan, from Abu al-Muhazzim, from Abu Hurayrah—who mentioned it as Ibn Abi Shaybah had cited it. Ibn Abi Shaybah added in his narration that Abu Hurayrah said to the creditor: "Do you know of any liquid assets belonging to him so

L20016–20018

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ زَيْدِ بْنِ حُبَابٍ، وَعُبَيْدِ اللَّهِ كِلَاهُمَا عَنْ أَبِي هِلَالٍ عَنْ غَالِبٍ الْقَطَّانِ عَنْ أَبِي الْمُهَزِّمِ عَنْ أَبِي هُرَيْرَةَ فَذَكَرَهُ كَمَا أَوْرَدْنَاهُ - وَزَادَ فِيهِ أَنَّ أَبَا

I may seize it for you?" The creditor replied: "No." He said: "Do you know of any immovable property he owns?" "Shall I break it?" He said: "No," then he mentioned his refusal to detain him as we have cited.

L20019 It is reported from 'Umar ibn 'Abd al-'Azīz that he ruled on the matter: the debtor's property should be distributed among the creditors, and he is then to be left until Allah provides for him.

L20020 Muhammad ibn Sa'eed ibn Nabat narrated to us, Ahmad ibn 'Abd al-Baseer narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn 'Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abu 'Amir al-'Aqadi narrated to us from 'Amr ibn Maymun ibn Mihran: that 'Umar ibn 'Abd al-'Aziz would rent out the insolvent person in the worst kind of craft.

L20021 Abu Muhammad said: Allah, the Exalted, has commanded upholding justice and prohibited delaying payment and imprisonment. Imprisonment constitutes delayed payment and injustice, and preventing the rightful claimant from expediting their right is delayed payment and injustice. Similarly, neglecting one whose bankruptcy has been verified and who refuses to work for wages to repay his creditors is delayed payment and injustice. None of this is permissible. It is obligatory upon him to treat his creditors equitably and grant them their due. If he refuses to do so despite being capable of working for wages, is he not to be compelled? - and success is from Allah, the Exalted.

L20022 From the chain of Abū 'Ubayd: Yaḥyā ibn Bukayr related to me from al-Layth ibn Sa'd from 'Ubayd Allāh ibn Abī Ja'far regarding the bankrupt person. He said: He should not be detained, but rather he should be released to work toward settling his debt.

L20023 And this is the opinion of al-Layth ibn Sa'd—and Abū Sulaymān and his companions also hold this opinion—and success is with Allah, the Most High.

L20024 **A legal case concerning the debtor if no assets are found in his possession.**

هُرَيْرَةَ قَالَ لِصَاحِبِ الدَّيْنِ: هَلْ تَعْلَمُ لَهُ عَيْنُ مَالٍ فَآخُذُهُ بِهِ؟ قَالَ: لَا، قَالَ: هَلْ تَعْلَمُ لَهُ عَقَارًا أَكْسِرُهُ؟ قَالَ: لَا، ثُمَّ ذَكَرَ امْتِنَاعَهُ مِنْ أَنْ يَحْبِسَهُ كَمَا أَوْرَدْنَاهُ.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ قَضَى فِي ذَلِكَ بِأَنْ يُقْسَمَ مَالُهُ بَيْنَ الْغُرَمَاءِ ثُمَّ يُتْرَكُ حَتَّى يَرْزُقَهُ اللَّهُ.

ونا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو عَامِرٍ الْعَقَدِيُّ عَنْ عَمْرِو بْنِ مَيْمُونِ بْنِ مِهْرَانَ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَانَ يُؤَاجِرُ الْمُفْلِسَ فِي شَرِّ صَنْعَةٍ.

قَالَ أَبُو مُحَمَّد: أَمَرَ اللَّهُ تَعَالَى بِالْقِيَامِ بِالْقِسْطِ، وَنَهَى عَنْ الْمَطْلِ وَالسِّجْنِ، فَالسِّجْنُ مَطْلٌ وَظُلْمٌ، وَمَنْعُ الَّذِي لَهُ الْحَقُّ مِنْ تَعْجِيلِ حَقِّهِ مَطْلٌ وَظُلْمٌ، ثُمَّ تَرْكُ مَنْ صَحَّ إفْلَاسُهُ لَا يُؤَاجِرُ لِغُرَمَائِهِ مَطْلٌ وَظُلْمٌ فَلَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ، وَهُوَ مُفْتَرَضٌ عَلَيْهِ إنْصَافُ غُرَمَائِهِ وَإِعْطَاؤُهُمْ حَقَّهُمْ، فَإِنْ امْتَنَعَ مِنْ ذَلِكَ وَهُوَ قَادِرٌ عَلَيْهِ بِالْإِجَارَةِ؟ أُجْبِرَ عَلَى ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ حَدَّثَنِي يَحْيَى بْنُ بُكَيْرٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ فِي الْمُفْلِسِ قَالَ: لَا يَحْبِسُهُ، وَلَكِنْ يُرْسِلُهُ يَسْعَى فِي دَيْنِهِ.

وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمدين إنْ لَمْ يُوجَدْ لَهُ مَالٌ]

L20025 Issue 1277: If no property is found for him, then if the claims are from a sale or loan, he shall be compelled to pay the debt and imprisoned until he proves insolvency. He shall not be barred from leaving to seek witnesses supporting this claim, nor shall his opponent be prevented from accompanying him wherever he goes, nor shall his agent be prohibited from accompanying him. If he proves insolvency, he shall be released after being compelled to swear an oath that he possesses no concealed assets. The opponent shall then be barred from accompanying him further, and the creditors shall be awarded compensation. Should any property subsequently become available to him, it shall be fairly taken from him to settle the debts.

١٢٧٧ - مَسْأَلَةٌ: فَإِنْ لَمْ يُوجَدْ لَهُ مَالٌ، فَإِنْ كَانَتْ الْحُقُوقُ مِنْ بَيْعٍ أَوْ قَرْضٍ؟ أُلْزِمَ الْغُرْمَ وَسُجِنَ حَتَّى يُثْبِتَ الْعَدَمَ، وَلَا يُمْنَعُ مِنْ الْخُرُوجِ فِي طَلَبِ شُهُودٍ لَهُ بِذَلِكَ، وَلَا يُمْنَعُ خَصْمُهُ مِنْ لُزُومِهِ وَالْمَشْيِ مَعَهُ حَيْثُ مَشَى، أَوْ وَكِيلُهُ عَلَى الْمَشْيِ مَعَهُ، فَإِنْ أَثْبَتَ عَدَمَهُ سُرِّحَ بَعْدَ أَنْ يُحَلِّفَهُ: مَا لَهُ مَالٌ بَاطِنٌ، وَمُنِعَ خَصْمُهُ مِنْ لُزُومِهِ، وَأُوجِرَ لِخُصُومِهِ، وَمَتَى ظَهَرَ لَهُ مَالٌ أُنْصِفَ مِنْهُ.

L20026 If the rights pertain to maintenance payments, dowry, guarantees, or blood money, his statement, accompanied by his oath, is upheld regarding his destitution, and no recourse is available until his opponent proves he possesses wealth. However, he is granted a delay, as mentioned earlier.

فَإِنْ كَانَتْ الْحُقُوقُ مِنْ نَفَقَاتٍ، أَوْ صَدَاقٍ، أَوْ ضَمَانٍ، أَوْ جِنَايَةٍ، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ فِي أَنَّهُ عَدِيمٌ، وَلَا سَبِيلَ إلَيْهِ، حَتَّى يُثْبِتَ خَصْمُهُ أَنَّ لَهُ مَالًا، لَكِنْ يُؤَاجَرُ كَمَا قَدَّمْنَا.

L20027 If it is confirmed that he has concealed wealth, he should be disciplined and beaten until he produces it or dies, in accordance with the statement of Allah, the Exalted: “Stand firmly for justice as witnesses for Allah” [Surah An-Nisa 4:135].[2]

وَإِنْ صَحَّ أَنَّ لَهُ مَالًا غَيَّبَهُ أُدِّبَ وَضُرِبَ حَتَّى يُحْضِرَهُ أَوْ يَمُوتَ، لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] .

L20028–20030 And based on what has been transmitted to us through Muslim’s chain: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Jaʿfar, Ghundar, narrated to us, Shuʿbah narrated to us. From Qays ibn Muslim, from Ṭāriq ibn Shihāb, who said: Abū Saʿīd al-Khudriyy reported: I heard the Messenger of Allah (peace be upon him) say: “Whoever among you witnesses a wrongful act, let him rectify it with his hand; if he cannot, then with his tongue; if he cannot, then with his heart—and that is the weakest level of faith.”[3]

وَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ قَالَ: قَالَ أَبُو سَعِيدٍ الْخُدْرِيِّ، سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ» .

L20031 Through the narration of Muslim: Ahmad ibn Isa narrated to us, Ibn Wahb narrated to us, Amr ibn al-Harith informed me from Bukayr ibn al-Ashajj that Sulayman ibn Yasar narrated to them, saying: Abd al-Rahman ibn Jabir ibn Abd Allah narrated to me from his father from Abu Burdah al-Ansari, who heard the Messenger of Allah (peace and blessings be upon him) say:

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ عِيسَى نا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّ سُلَيْمَانَ بْنَ يَسَارٍ حَدَّثَهُمْ قَالَ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ عَنْ أَبِي بُرْدَةَ الْأَنْصَارِيِّ: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشَرَةِ أَسْوَاطٍ إلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ» .

[2] **Qur’an references (L20027):** Qur’an 4:135 (An-Nisa).
[3] **Hadith references (L20028):** Sahih Muslim 49a; Riyad as-Salihin 184.

"No one is to be flogged more than ten lashes except in a hadd punishment from Allah's prescribed penalties."[4]

L20032 The Messenger of Allah—peace and blessings be upon him—commanded forbidding evil through direct action. Among evils is the willful delay in payment by the wealthy debtor. Whoever's wealth is confirmed yet withholds the debt from his adversary has indeed committed evil and oppression, for all oppression is evil. Thus, it is obligatory for the ruler to enforce its removal by hand. The Messenger of Allah—peace and blessings be upon him—prohibited lashing anyone beyond ten strikes for offenses not requiring prescribed punishments. Therefore, ten lashes must be administered. If he acts justly, no further action is warranted. But if he persists in delaying, he introduces new evil beyond the initial offense, so he is to be lashed another ten. This continues perpetually until he fulfills justice, abandons oppression, or the truth and Allah's command cause his demise.

L20033 As for distinguishing between the categories of rights: if the basis of the obligation arises from debt or sale, it is established that the person has lawfully acquired property. Whoever is confirmed to have acquired property must have fairness ensured in the disposal of that property until it is verified that such property has perished - and he is the claimant of its loss. The Messenger of Allah - peace and blessings of Allah be upon him - ruled that conclusive proof is required from the claimant.

L20034 For anyone upon whom the original right exists through liability, criminal offense, dowry, or maintenance, the indisputable certainty acknowledged universally is that every person is born naked, destitute, possessing nothing. Thus poverty stands as an established certainty for all people. They remain upon what is established from them until it becomes evident that they acquired wealth. The claim that they acquired wealth is asserted against the defendant, and the Messenger of Allah—peace be upon him—ruled that the oath is administered to the defendant. This is the opinion of Abu Sulayman, Muhammad ibn Shujaa al-Balkhi, and others.

L20035–20036 Some overly rigorous scholars dissented on this matter, arguing: Allah, the

فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَغْيِيرِ الْمُنْكَرِ بِالْيَدِ، وَمِنْ الْمُنْكَرِ مَطْلُ الْغَنِيِّ، فَمَنْ صَحَّ غِنَاهُ وَمَنَعَ خَصْمَهُ فَقَدْ أَتَى مُنْكَرًا وَظُلْمًا، وَكُلُّ ظُلْمٍ مُنْكَرٌ، فَوَاجِبٌ عَلَى الْحَاكِمِ تَغْيِيرُهُ بِالْيَدِ، وَمَنَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَنْ يُجْلَدَ أَحَدٌ فِي غَيْرِ حَدٍّ أَكْثَرَ مِنْ عَشَرَةِ أَسْوَاطٍ، فَوَاجِبٌ أَنْ يُضْرَبَ عَشَرَةً، فَإِنْ أَنْصَفَ فَلَا سَبِيلَ إلَيْهِ، وَإِنْ تَمَادَى عَلَى الْمَطْلِ فَقَدْ أَحْدَثَ مُنْكَرًا آخَرَ غَيْرَ الَّذِي ضُرِبَ عَلَيْهِ فَيُضْرَبُ أَيْضًا عَشَرَةً، وَهَكَذَا أَبَدًا حَتَّى يُنْصِفَ، وَيَتْرُكَ الظُّلْمَ، أَوْ يَقْتُلَهُ الْحَقُّ وَأَمْرُ اللَّهِ تَعَالَى.

وَأَمَّا التَّفْرِيقُ بَيْنَ وُجُوهِ الْحُقُوقِ: فَإِنَّ مَنْ كَانَ أَصْلُ الْحَقِّ عَلَيْهِ مِنْ دَيْنٍ أَوْ بَيْعٍ فَقَدْ صَحَّ أَنَّهُ قَدْ مَلَكَ مَالًا، وَمَنْ صَحَّ أَنَّهُ قَدْ مَلَكَ مَالًا فَوَاجِبٌ أَنْ يُنْصَفَ مِنْ ذَلِكَ الْمَالِ حَتَّى يَصِحَّ أَنَّ ذَلِكَ الْمَالَ قَدْ تَلِفَ - وَهُوَ فِي تَلَفِهِ مُدَّعِي - وَقَدْ قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَيِّنَةِ عَلَى الْمُدَّعِي.

وَمَنْ كَانَ أَصْلُ الْحَقِّ عَلَيْهِ مِنْ ضَمَانٍ، أَوْ جِنَايَةٍ، أَوْ صَدَاقٍ، أَوْ نَفَقَةٍ، فَالْيَقِينُ الَّذِي لَا شَكَّ فِيهِ عِنْدَ أَحَدٍ: هُوَ أَنَّ كُلَّ أَحَدٍ وُلِدَ عُرْيَانَ لَا شَيْءَ لَهُ، فَالنَّاسُ كُلُّهُمْ قَدْ صَحَّ لَهُمْ الْفَقْرُ، فَهُمْ عَلَى مَا صَحَّ مِنْهُمْ حَتَّى يَصِحَّ أَنَّهُمْ كَسَبُوا مَالًا وَهُوَ فِي أَنَّهُ قَدْ كَسَبَ مَالًا مُدَّعًى عَلَيْهِ، وَقَدْ قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَمُحَمَّدِ بْنِ شُجَاعٍ الْبَلْخِيِّ، وَغَيْرِهِمَا.

[4] **Hadith references (L20031):** Sahih Muslim 1708.

Exalted, said: *“He created you, then provided for you, then causes you to die, then revives you”* [30:40]. This confirms that Allah, the Exalted, provides sustenance to all.[5]

وَخَالَفَ فِي هَذَا بَعْضُ الْمُتَعَسِّفِينَ فَقَالَ: قَالَ اللَّهُ تَعَالَى: {خَلَقَكُمْ ثُمَّ رَزَقَكُمْ ثُمَّ يُمِيتُكُمْ ثُمَّ يُحْيِيكُمْ} [الروم: ٤٠] فَصَحَّ أَنَّ اللَّهَ تَعَالَى رَزَقَ الْجَمِيعَ.

L20037 Abū Muḥammad said: We did not differ with him concerning sustenance. Rather, sustenance is certain. The first sustenance is the milk of the one who nursed him. Were it not for the sustenance of God, the Exalted, no one would live a day or longer. Debtholders are not given their due from all sustenance. They are only given their due share from the surplus of sustenance—those which God, the Exalted, cannot validly grant to a person except through clear evidence.

قَالَ أَبُو مُحَمَّدٍ: لَمْ نُخَالِفْهُ فِي الرِّزْقِ، بَلْ الرِّزْقُ مُتَيَقَّنٌ، وَأَوَّلُهُ لَبَنُ الَّتِي أَرْضَعَتْهُ، فَلَوْلَا رِزْقُ اللَّهِ تَعَالَى مَا عَاشَ أَحَدٌ يَوْمًا فَمَا فَوْقَهُ، وَلَيْسَ مِنْ كُلِّ الرِّزْقِ يُنْصَفُ الْغُرَمَاءُ، وَإِنَّمَا يُنْصَفُونَ مِنْ فُضُولِ الرِّزْقِ وَهِيَ الَّتِي لَا يَصِحُّ أَنَّ اللَّهَ تَعَالَى آتَاهَا الْإِنْسَانَ إلَّا بِبَيِّنَةٍ.

L20038 As for the mu’ājarah (lease): it is due to what we mentioned before in the preceding issue related to this. Success is from Allah, the Exalted. 1278 – Issue:

وَأَمَّا الْمُؤَاجَرَةُ: فَلِمَا ذَكَرْنَا قَبْلُ فِي الْمَسْأَلَةِ الْمُتَقَدِّمَةِ لِهَذِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ١٢٧٨ - مَسْأَلَةٌ:

L20039 If it is asked: “Does Allah Almighty’s statement, ‘But if someone is in hardship, then deferment until a time of ease’ [Al-Baqarah: 280], prohibit compelling him to work?” We say: Rather, it necessitates compelling him to work, for ease comes about only through one of two means: either through effort or without effort. Allah Almighty has said, “And seek the bounty of Allah” [Al-Jumu‘ah: 10]. Therefore, we compel him to pursue the bounty of Allah Almighty, which He has commanded him to seek. Thus, we obligate him to earn a livelihood to treat his creditors fairly, provide for his dependents and himself, and we do not permit him to neglect himself, his dependents, or the obligation binding on him.[6]

فَإِنْ قِيلَ: إنَّ قَوْلَ اللَّهِ تَعَالَى: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] يَمْنَعُ مِنْ اسْتِئْجَارِهِ؟ قُلْنَا: بَلْ يُوجِبُ اسْتِئْجَارَهُ، لِأَنَّ الْمَيْسَرَةَ لَا تَكُونُ إلَّا بِأَحَدِ وَجْهَيْنِ -: إمَّا بِسَعْيٍ، وَإِمَّا بِلَا سَعْيٍ، وَقَدْ قَالَ تَعَالَى: {وَابْتَغُوا مِنْ فَضْلِ اللَّهِ} [الجمعة: ١٠] فَنَحْنُ نُجْبِرُهُ عَلَى ابْتِغَاءِ فَضْلِ اللَّهِ تَعَالَى الَّذِي أَمَرَهُ تَعَالَى بِابْتِغَائِهِ، فَنَأْمُرُهُ وَنُلْزِمُهُ التَّكَسُّبَ لِيُنْصِفَ غُرَمَاءَهُ وَيَقُومَ بِعِيَالِهِ وَنَفْسِهِ، وَلَا نَدَعُهُ يُضَيِّعُ نَفْسَهُ وَعِيَالَهُ وَالْحَقَّ اللَّازِمَ لَهُ.

Issue: If the debtor possesses sufficient means to fulfill his debt and has a surplus remaining for himself.

[مَسْأَلَةٌ الْمدين إذَا كَانَ لَهُ مَا يَفِي بِمَا عَلَيْهِ وَيَفْضُلُ لَهُ]

L20040 1279 – Question:

١٢٧٩ - مَسْأَلَةٌ:

L20041 The debtor must be in one of two situations: either he possesses property sufficient to fulfill his debt with a surplus remaining for himself—in which

وَلَا يَخْلُو الْمَطْلُوبُ بِالدَّيْنِ مِنْ أَنْ يَكُونَ يُوجَدُ لَهُ مَا يَفِي بِمَا عَلَيْهِ وَيَفْضُلُ لَهُ، فَهَذَا يُبَاعُ مِنْ مَالِهِ مَا يَفْضُلُ عَنْ حَاجَتِهِ فَيُنْصَفُ مِنْهُ غُرَمَاؤُهُ، وَمَا تَلِفَ مِنْ عَيْنِ الْمَالِ قَبْلَ

[5] **Qur’an references (L20036):** Qur’an 30:40 (Ar-Rum).

[6] **Qur’an references (L20039):** Qur’an 2:280 (Al-Baqarah); Qur’an 62:10 (Al-Jumu’ah).

أَنْ يُبَاعَ فَمِنْ مُصِيبَتِهِ لَا مِنْ مُصِيبَةِ الْغُرَمَاءِ، لِأَنَّ حُقُوقَهُمْ فِي ذِمَّتِهِ لَا فِي، شَيْءٍ بِعَيْنِهِ مِنْ مَالِهِ، أَوْ يَكُونَ كُلُّ مَا يُوجَدُ لَهُ يَفِي بِمَا عَلَيْهِ وَلَا يَفْضُلُ لَهُ شَيْءٌ، أَوْ لَا يَفِي بِمَا عَلَيْهِ -: فَهَذَانِ يَقْضِي بِمَا وُجِدَ لَهُمَا لِلْغُرَمَاءِ كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يُبَاعُ لَهُمْ إنْ اتَّفَقُوا عَلَى ذَلِكَ، فَمَا تَلِفَ بَعْدَ الْقَضَاءِ لَهُمْ بِمَالِهِ فَمِنْ مُصِيبَةِ الْغُرَمَاءِ وَيَسْقُطُ عَنْهُ مِنْ دَيْنِهِمْ بِقَدْرِ ذَلِكَ، لِأَنَّ عَيْنَ مَالِهِ قَدْ صَارَ لَهُمْ إنْ شَاءُوا اقْتَسَمُوهُ بِالْقِيمَةِ، وَإِنْ اتَّفَقُوا عَلَى، بَيْعِهِ بِيعَ لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

case, whatever exceeds his essential needs is sold from his wealth, and his creditors are given their fair share. Any loss to the physical assets before their sale is borne by him, not the creditors, for their rights pertain to his liability, not to specific items of his wealth. Alternatively, he may possess property that exactly fulfills his debt with no surplus, or his assets may be insufficient to cover his debt. In these two cases, it is ruled that creditors are repaid from whatever is found for both cases, as done by the Messenger of Allah—peace and blessings be upon him. Then, if they agree, his property is sold for them. Any loss occurring after the judgment is made in their favor regarding his property is borne by the creditors, and an equivalent portion of his debt to them is waived. This is because the physical assets have now become theirs—if they wish, they may divide it according to its appraised value, and if they agree to its sale, it is sold on their behalf. And with Allah, the Exalted, is success.

L20043

بُرْهَانُ ذَلِكَ -: أَنَّهُ إذَا وَفَّى بَعْضَ مَالِهِ بِمَا عَلَيْهِ فَلَيْسَ شَيْءٌ مِنْهُ أَوْلَى بِأَنْ يُبَاعَ فِي ذَلِكَ مِنْ شَيْءٍ آخَرَ غَيْرِهِ، فَيُنْظَرُ: أَيُّ مَالِهِ هُوَ عَنْهُ فِي غِنًى فَيُبَاعُ، وَمَا لَا غِنَى بِهِ عَنْهُ فَلَا يُبَاعُ، لِأَنَّ هَذَا هُوَ التَّعَاوُنُ عَلَى الْبِرِّ وَالتَّقْوَى وَتَرْكُ الْمُضَارَّةِ، فَإِنْ كَانَ كُلُّهُ لَا غِنَى بِهِ عَنْهُ أُقْرِعَ عَلَى أَجْزَاءِ الْمَالِ، فَأَيُّهَا خَرَجَتْ قُرْعَتُهُ بِيعَ فِيمَا أُلْزِمَهُ.

The proof for this is that if he fulfills part of his obligation using some of his wealth, no portion of it holds greater priority for sale than another. Thus, it is examined: which of his wealth he can spare—this is sold—while what he cannot do without is not sold, for this constitutes cooperating in goodness and piety and avoiding inflicting harm. If all his wealth is indispensable to him, lots are cast among its portions, and whichever portion is drawn by lot is sold to discharge the obligation imposed upon him.

[مَسْأَلَةٌ مَالُ الْمُفْلِسِ يُقَسَّمُ بَيْنَ الْغُرَمَاءِ]

L20044–20045

Issue: The insolvent's assets are to be distributed among the creditors.

مَسْأَلَةٌ: وَيُقَسَّمُ مَالُ الْمُفْلِسِ الَّذِي يُوجَدُ لَهُ بَيْنَ الْغُرَمَاءِ بِالْحِصَصِ بِالْقِيمَةِ كَمَا يُقَسَّمُ الْمِيرَاثُ عَلَى الْحَاضِرِينَ الطَّالِبِينَ الَّذِينَ حَلَّتْ آجَالُ حُقُوقِهِمْ فَقَطْ، وَلَا يَدْخُلُ فِيهِمْ حَاضِرٌ لَا يَطْلُبُ، وَلَا غَائِبٌ لَمْ يُوَكِّلْ، وَلَا حَاضِرٌ أَوْ غَائِبٌ لَمْ يَحِلَّ أَجَلُ حَقِّهِ - طَلَبَ أَوْ لَمْ يَطْلُبْ -؛ لِأَنَّ مَنْ لَمْ يَحِلَّ أَجَلُ حَقِّهِ فَلَا حَقَّ لَهُ بَعْدُ، وَمَنْ لَمْ يَطْلُبْ

L20046

Issue: The existing assets of a bankrupt individual are divided among the creditors in shares proportionate to their value, just as inheritance is divided exclusively among present claimants whose rights have reached their due dates. Excluded are: a present creditor who does not claim, an absent creditor who has not appointed a representative, and a present or absent creditor whose right has not yet matured—whether they claim or do not claim. This is because whoever's right has not matured has no valid claim, and it is not necessary to give to one who does not claim what he has not claimed. It is religiously obligatory to equitably apportion shares to the

present claimant; thus, it is impermissible to defer payment of his claim by even a *fals* (smallest coin) or more.

L20047 The Messenger of Allah, peace and blessings be upon him, said to the present creditors: "Take what you find." When they take it, they acquire rightful ownership. Thus, it is unlawful to reclaim anything they have acquired - this being the opinion of Abu Sulayman and Abu Hanifah.

L20048 As for the deceased who is bankrupt: his estate discharges the debt for every creditor—whether present or absent, whether they claimed it or not—and for every creditor whose debt was time-bound or immediately payable, because all terms become due upon the death of the one entitled to the right or the one obligated by it, as we mentioned in *The Book of Loans*.

L20049 As for those who do not claim, based on the words of Allah the Most High regarding inheritance: {after any bequest he may have made or debt} [Quran 4:11], there is no inheritance except after the bequest and the debt. It is obligatory to settle debts to their creditors and bequests to their legatees. Thereafter, the heirs are given their shares from what remains. And success comes only from Allah, the Most High.[7]

L20050 ## The Issue of a Bankrupt Person's Acknowledgment of Debt

L20051 1281 - Issue: The acknowledgment of debt by a bankrupt person is binding, valid, and the debt is added to the creditors' claims. This is because acknowledgment must be accepted, and no one may invalidate it without a Quranic text or Sunnah. If he acknowledges after his property has been adjudicated to the creditors, the debt becomes binding upon him personally. However, he does not share with the creditors in property that has already been adjudicated to them and acquired by them prior to his acknowledgment. And success comes only from Allah, the Exalted.

[7] **Qur'an references (L20049):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

فَلَا يَلْزَمُ أَنْ يُعْطَى مَا لَمْ يَطْلُبْ، وَقَدْ وَجَبَ فَرْضًا إنْصَافُ الْحَاضِرِ الطَّالِبِ فَلَا يَحِلُّ مَطْلُهُ بِفَلْسٍ فَمَا فَوْقَهُ.

وَقَدْ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْغُرَمَاءِ الْحَاضِرِينَ: خُذُوا مَا وَجَدْتُمْ» فَإِذَا أَخَذُوهُ فَقَدْ مَلَكُوهُ فَلَا يَحِلُّ أَخْذُ شَيْءٍ مِمَّا مَلَكُوهُ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ.

وَأَمَّا الْمَيِّتُ بِفَلَسْ: فَإِنَّهُ يَقْضِي لِكُلِّ مِنْ حَضَرَ أَوْ غَابَ - طَلَبَا أَوْ لَمْ يَطْلُبَا - وَلِكُلِّ ذِي دَيْنٍ كَانَ إلَى أَجَلٍ مُسَمًّى أَوْ حَالًّا؛ لِأَنَّ الْآجَالَ تَحِلُّ كُلُّهَا بِمَوْتِ الَّذِي لَهُ الْحَقُّ، أَوْ الَّذِي عَلَيْهِ الْحَقُّ لِمَا ذَكَرْنَاهُ فِي " كِتَابِ الْقَرْضِ ".

وَأَمَّا مَنْ لَمْ يَطْلُبْ فَلِقَوْلِ اللَّهِ تَعَالَى فِي الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَلَا مِيرَاثَ إلَّا بَعْدَ الْوَصِيَّةِ وَالدَّيْنِ، فَوَاجِبٌ إخْرَاجُ الدُّيُونِ إلَى أَرْبَابِهَا وَالْوَصَايَا إلَى أَصْحَابِهَا، ثُمَّ يُعْطَى الْوَرَثَةُ حُقُوقَهُمْ فِيمَا أَبْقَى، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ إقْرَارُ الْمُفْلِسِ بِالدَّيْنِ]

١٢٨١ - مَسْأَلَةٌ: وَإِقْرَارُ الْمُفْلِسِ بِالدَّيْنِ لَازِمٌ مَقْبُولٌ وَيَدْخُلُ مَعَ الْغُرَمَاءِ؛ لِأَنَّ الْإِقْرَارَ وَاجِبٌ قَبُولُهُ وَلَيْسَ لِأَحَدٍ إبْطَالُهُ بِغَيْرِ نَصِّ قُرْآنٍ، أَوْ سُنَّةٍ، فَإِنْ أَقَرَّ بَعْدَ أَنْ قُضِيَ بِمَالِهِ لِلْغُرَمَاءِ لَزِمَهُ فِي ذِمَّتِهِ، وَلَا يَدْخُلُ مَعَ الْغُرَمَاءِ فِي مَالٍ قَدْ قُضِيَ لَهُمْ بِهِ وَمَلَكُوهُ قَبْلَ إقْرَارِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ حُقُوقُ اللَّهِ تَعَالَى مُقَدَّمَةٌ عَلَى حُقُوقِ النَّاسِ]

A jurisprudential principle: The rights of Allah, the Exalted, take precedence over the rights of people.

١٢٨٢ - مَسْأَلَةٌ: وَحُقُوقُ اللَّهِ تَعَالَى مُقَدَّمَةٌ عَلَى حُقُوقِ النَّاسِ فَيَبْدَأُ بِمَا فَرَّطَ فِيهِ مِنْ زَكَاةٍ أَوْ كَفَّارَةٍ فِي الْحَيِّ، وَالْمَيِّتِ، وَبِالْحَجِّ فِي الْمَيِّتِ، فَإِنْ لَمْ يَعُمَّ: قَسَّمَ ذَلِكَ عَلَى كُلِّ هَذِهِ الْحُقُوقِ بِالْحِصَصِ لَا يُبَدَّى مِنْهَا شَيْءٌ عَلَى شَيْءٍ.

1282. Issue: The rights of Allah, the Exalted, take precedence over the rights of people. Therefore, one should begin by addressing neglected obligations pertaining to the living and the deceased - such as zakāh, expiations, and Hajj owed by the deceased. If the assets are insufficient to cover all these obligations, they are proportionally allocated among every due right, with no category being prioritized over another.

وَكَذَلِكَ دُيُونُ النَّاسِ إنْ لَمْ يَفِ مَالُهُ بِجَمِيعِهَا أَخَذَ كُلُّ وَاحِدٍ بِقَدْرِ مَالِهِ مِمَّا وُجِدَ لِمَا ذَكَرْنَا فِي " كِتَابِ الْحَجِّ " مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» ، «وَاقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ» ، «كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» .

Similarly, for debts owed to people—if his wealth is insufficient to cover all of them—each creditor receives a share proportionate to their debt from what is available. This is based on what we mentioned in the *Book of Hajj* regarding the statement of Allah's Messenger (peace be upon him): "Allah's right is most deserving of fulfillment," and "Fulfill what is due to Allah..." "He is more deserving of fulfillment; Allah's Book is more deserving, and Allah's covenant is more binding."

[مَسْأَلَةٌ فَلَّسَ فَوَجَدَ إنْسَانٌ سِلْعَتَهُ الَّتِي بَاعَهَا بِعَيْنِهَا عِنْدَهُ]

A legal issue: If a person became bankrupt and a person found the merchandise he had sold—the very same item—in the bankrupt's possession.

١٢٨٣ - مَسْأَلَةٌ:

وَمَنْ فَلَّسَ مِنْ حَيٍّ أَوْ مَيِّتٍ فَوَجَدَ إنْسَانٌ سِلْعَتَهُ الَّتِي بَاعَهَا بِعَيْنِهَا فَهُوَ أَوْلَى بِهَا مِنْ الْغُرَمَاءِ، وَلَهُ أَنْ يَأْخُذَهَا، فَإِنْ كَانَ قَبَضَ مِنْ ثَمَنِهَا شَيْئًا أَكْثَرَهُ أَوْ أَقَلَّهُ رَدَّهُ، وَإِنْ شَاءَ تَرَكَهَا وَكَانَ أُسْوَةَ الْغُرَمَاءِ.

1283 - Issue

If a person becomes insolvent, whether alive or dead, and a person finds his commodity that he sold in its exact form, he has priority over the creditors to reclaim it. He may take it back. If he received any part of its price—whether more of it or less of it—he must refund it. If he wishes, he may leave the item and be treated equally with the creditors.

فَإِنْ وَجَدَ بَعْضَهَا لَا كُلَّهَا فَسَوَاءٌ وَجَدَ أَكْثَرَهَا أَوْ أَقَلَّهَا لَا حَقَّ لَهُ فِيهَا وَهُوَ أُسْوَةُ الْغُرَمَاءِ.

If he obtains part of it but not all, then whether he obtains most or little of it, he has no right to it and is treated equally with the debt-claimants.

وَلَا يَكُونُ مُفْلِسًا مَنْ لَهُ مِنْ أَيْنَ يُنْصِفُ جَمِيعَ الْغُرَمَاءِ وَيَبْقَى لَهُ فَضْلٌ، إنَّمَا الْمُفْلِسُ مَنْ لَا يَبْقَى لَهُ شَيْءٌ بَعْدَ حَقِّ الْغُرَمَاءِ.

A person who possesses resources enabling them to equitably satisfy all creditors while retaining a surplus is not bankrupt. The bankrupt is solely one who retains nothing after fulfilling the creditors' claims.

L20062 As for one who finds his deposited property, what was wrongfully seized from him, what he sold through an invalid transaction, or what was taken from him without right, it remains his by necessity. He has no right of choice in other cases, for his ownership of this property has never ceased.

وَأَمَّا مَنْ وَجَدَ وَدِيعَتَهُ، أَوْ مَا غُصِبَ مِنْهُ، أَوْ مَا بَاعَهُ بَيْعًا فَاسِدًا، أَوْ أُخِذَ مِنْهُ بِغَيْرِ حَقٍّ فَهُوَ لَهُ ضَرُورَةً وَلَا خِيَارَ لَهُ فِي غَيْرِهِ؛ لِأَنَّ مِلْكَهُ لَمْ يَزُلْ قَطُّ عَنْ هَذَا.

L20063 As for the one who finds his commodity, which he sold in a valid sale or lent, he retains the option, as we have mentioned.

وَأَمَّا مَنْ وَجَدَ سِلْعَتَهُ الَّتِي بَاعَهَا بَيْعًا صَحِيحًا أَوْ أَقْرَضَهَا، فَمُخَيَّرٌ كَمَا ذَكَرْنَا.

L20064 The evidence for this is what we have narrated through the chains of transmission of Zuhayr ibn Muʿāwiyah, al-Layth ibn Saʿd, Mālik, Hushaym, Ḥammād ibn Zayd, Sufyān ibn ʿUyaynah, Yaḥyā ibn Saʿīd al-Qaṭṭān, and Ḥafṣ ibn Ghiyāth—all of them from Yaḥyā ibn Saʿīd al-Anṣārī, who said: Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm informed me that ʿUmar ibn ʿAbd al-ʿAzīz informed him that Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām informed him that he heard Abū Hurayrah say: The Messenger of Allah (may Allah bless him and grant him peace) said, "Whoever finds his property in its original form with a man or a person who has become insolvent has a stronger claim to it than others." The wording is from Zuhayr, and the phrasing of the rest of them is similar to it, differing in no aspect of meaning.[8]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ زُهَيْرِ بْنِ مُعَاوِيَةَ، وَاللَّيْثِ بْنِ سَعْدٍ، وَمَالِكٍ، وَهُشَيْمٍ، وَحَمَّادِ بْنِ زَيْدٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَيَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ وَحَفْصِ بْنِ غِيَاثٍ، كُلُّهُمْ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: أَخْبَرَنِي أَبُو بَكْرِ بْنُ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَخْبَرَهُ: أَنَّ أَبَا بَكْرِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ أَخْبَرَهُ: أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَدْرَكَ مَالَهُ بِعَيْنِهِ عِنْدَ رَجُلٍ أَوْ إِنْسَانٍ قَدْ أَفْلَسَ فَهُوَ أَحَقُّ بِهِ مِنْ غَيْرِهِ» اللَّفْظُ لِزُهَيْرٍ، وَلَفْظُ سَائِرِهِمْ نَحْوُهُ لَا يُخَالِفُهُ فِي شَيْءٍ مِنَ الْمَعْنَى.

L20065–20067 From the chain of Abu ʻUbayd: Hushaym narrated to us from Yahya ibn Saʻid al-Ansari, from Abu Bakr ibn Muhammad ibn ʻAmr ibn Hazm, from ʻUmar ibn ʻAbd al-ʻAziz, from Abu Bakr ibn ʻAbd al-Rahman ibn al-Harith ibn Hisham, from Abu Hurayrah. The Messenger of Allah (peace and blessings of Allah be upon him) said: "Whoever finds the actual item of their property in the possession of an insolvent person holds a prior claim to it over other creditors."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ وَجَدَ عَيْنَ مَتَاعِهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ فَهُوَ أَحَقُّ بِهِ مِمَّنْ سِوَاهُ مِنَ الْغُرَمَاءِ» .

L20068 And through the chain of Muslim: Ibn Abi ʻUmar narrated to us; Hisham ibn Sulaiman al-Makhzumi narrated to us from Ibn Jurayj. Ibn Abi Husayn narrated to me that Abu Bakr ibn Muhammad ibn ʻAmr ibn Hazm reported to him that ʻUmar ibn ʻAbd al-ʻAziz narrated to him from the narration of Abu Bakr ibn ʻAbd al-Rahman, from Abu Hurayrah, from the Prophet (peace and

وَمِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ أَبِي عُمَرَ نا هِشَامُ بْنُ سُلَيْمَانَ الْمَخْزُومِيُّ عَنِ ابْنِ جُرَيْجٍ حَدَّثَنِي ابْنُ أَبِي حُسَيْنٍ أَنَّ أَبَا بَكْرِ بْنَ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ أَخْبَرَهُ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ حَدَّثَهُ عَنْ حَدِيثِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ حَدِيثِ أَبِي هُرَيْرَةَ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ

[8] **Hadith references (L20064):** Sahih al-Bukhari 2402.

blessings be upon him) regarding the man executed as a legal punishment: “If the goods are found with him and he has not distributed them, they belong to their owner who sold them.”[9]

وَسَلَّمَ - فِي الرَّجُلِ الَّذِي يُعْدَمُ: إِذَا وُجِدَ عِنْدَهُ الْمَتَاعُ وَلَمْ يُفَرِّقْهُ أَنَّهُ لِصَاحِبِهِ الَّذِي بَاعَهُ» .

L20069 It was also narrated via the chain of Shu’bah, Hisham ad-Dastawā’ī, and Sa’id ibn Abi ’Arubah—all of them narrating from Qatadah, from an-Nadr ibn Anas, from Bashir ibn Nahik, from Abu Hurayrah, from the Prophet (peace and blessings of Allah be upon him).

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ، وَهِشَامٍ الدَّسْتُوَائِيِّ، وَسَعِيدِ بْنِ أَبِي عَرُوبَةَ كُلِّهِمْ عَنْ قَتَادَةَ عَنْ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20070 And through the chain of ʿIrāk ibn Mālik from Abū Hurayrah from the Prophet—may Allah’s peace and blessings be upon him—it is a mass-transmitted and comprehensive report that makes it impermissible for anyone to oppose it. This constitutes a universal principle applicable to one who dies or declares bankruptcy while alive, a clear statement that if anything from it is distributed, it constitutes equal treatment for the creditors, and a general applicability to those who have claimed part of the price or none of it.

وَمِنْ طَرِيقِ عِرَاكِ بْنِ مَالِكٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ نَقْلٌ تَوَاتَرَ وَكَافَّةٌ لَا يَسَعُ أَحَدًا خِلَافُهُ، وَهَذَا عُمُومٌ لِمَنْ مَاتَ أَوْ فَلَّسَ حَيًّا، وَبَيَانٌ جَلِيٌّ أَنَّهُ إنْ فُرِّقَ مِنْهُ شَيْءٌ فَهُوَ أُسْوَةُ الْغُرَمَاءِ، وَعُمُومٌ لِمَنْ تَقَاضَى مِنْ الثَّمَنِ شَيْئًا أَوْ لَمْ يَتَقَاضَ مِنْهُ شَيْئًا.

L20071 And with this, the majority of the Salaf held the same opinion. It was narrated to us by Abu Ubayd, from Ismail ibn Ja‘far, from Muhammad ibn Abi Harmalah, from Sa‘id ibn al-Musayyab, who said: A client of Umm Habibah went bankrupt, and a dispute concerning him was brought to Uthman—may Allah be pleased with him. He ruled that whoever had claimed what was owed to them before his bankruptcy became evident retains ownership, and whoever identified their property in its specific form, it is theirs.

وَبِهِ قَالَ جُمْهُورُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا إسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ أَبِي حَرْمَلَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: أَفْلَسَ مَوْلًى لِأُمِّ حَبِيبَةَ فَاخْتُصِمَ فِيهِ إلَى عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - فَقَضَى أَنَّ مَنْ كَانَ اقْتَضَى مِنْ حَقِّهِ شَيْئًا قَبْلَ أَنْ يَتَبَيَّنَ إفْلَاسُهُ فَهُوَ لَهُ، وَمَنْ عَرَفَ مَتَاعَهُ بِعَيْنِهِ فَهُوَ لَهُ.

L20072 From the chain of Abū Dāwūd: Muḥammad ibn Bashshār narrated to us; Abū Dāwūd (al-Ṭayālisī) narrated to us; Ibn Abī Dhi’b narrated to us from Abū al-Mu‘tamir from ‘Umar ibn Khaldah, who said: “We came to Abū Hurayrah regarding a companion of ours who had become bankrupt, and he said: ’I will adjudicate between you by the ruling of the Messenger of Allah (peace be upon him): If someone becomes bankrupt or dies, and another person finds his goods intact, he has the most rightful claim to them.”’

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ بَشَّارٍ نا أَبُو دَاوُد هُوَ الطَّيَالِسِيُّ - نا ابْنُ أَبِي ذِئْبٍ عَنْ أَبِي الْمُعْتَمِرِ عَنْ عُمَرَ بْنِ خَلْدَةَ قَالَ: «أَتَيْنَا أَبَا هُرَيْرَةَ فِي صَاحِبٍ لَنَا أَفْلَسَ فَقَالَ: لَأَقْضِيَنَّ بَيْنَكُمْ بِقَضَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَفْلَسَ أَوْ مَاتَ فَوَجَدَ رَجُلٌ مَتَاعَهُ بِعَيْنِهِ فَهُوَ أَحَقُّ بِهِ» .

L20073 Via the chain of ʿAbd al-Raḥmān ibn Mahdī, from Ḥammād ibn Salamah,

[9] **Hadith references (L20068):** Sahih Muslim 1559c.

from Hishām ibn ʿUrwah, from his father [ʿUrwah ibn al-Zubayr]: If a man becomes insolvent and [another] identifies his property intact and identifiable, the [original] owner has the rightful claim to it.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ: إذَا أَفْلَسَ الرَّجُلُ فَوَجَدَ الرَّجُلُ مَتَاعَهُ بِعَيْنِهِ فَهُوَ أَحَقُّ بِهِ.

L20074–20075 It has been authentically reported from ʿAṭāʾ: If you recover your property in kind, as it is, before any portion has been distributed, it is yours. But if some has been distributed, it is divided equally among the creditors.

وَصَحَّ عَنْ عَطَاءٍ: إذَا أَدْرَكْت مَالَك بِعَيْنِهِ كَمَا هُوَ قَبْلَ أَنْ يُفَرَّقَ مِنْهُ شَيْءٌ فَهُوَ لَك وَإِنْ فُرِّقَ بَعْضُهُ فَهُوَ بَيْنَ الْغُرَمَاءِ بِالسَّوِيَّةِ.

L20076 From the narration of Maʾmar, via Ibn Ṭāwūs, via his father: If the seller finds his commodity intact and in full, he has the strongest claim to it. But if the buyer has consumed any part of it—whether small or large—the seller is treated equally with the creditors. This was also narrated by Ibn Jurayj from ʿAṭāʾ.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ إنْ وَجَدَ سِلْعَتَهُ بِعَيْنِهَا وَافِرَةً فَهُوَ أَحَقُّ بِهَا وَإِنْ كَانَ الْمُشْتَرِي قَدْ اسْتَهْلَكَ مِنْهَا شَيْئًا قَلِيلًا أَوْ كَثِيرًا فَالْبَائِعُ أُسْوَةُ الْغُرَمَاءِ - وَقَالَهُ ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ.

L20077 Reported through the chain of Hammad ibn Salamah from Dawud ibn Abi Hind from al-Shaʾbi, who said: If the buyer is declared bankrupt, the seller has the prior claim to the merchandise.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: الْمُبْتَاعُ لَوْ أَفْلَسَ لَكَانَ الْبَائِعُ أَحَقَّ بِمَتَاعِهِ.

L20078 And from Al-Hasan: he is more entitled to it than the debt-creditors. There is a difference of opinion between Ash-Shaʾbi and Al-Hasan regarding this.

وَعَنْ الْحَسَنِ هُوَ أَحَقُّ بِهَا مِنْ الْغُرَمَاءِ - وَقَدْ اخْتَلَفَ فِي هَذَا عَنْ الشَّعْبِيِّ، وَالْحَسَنِ.

L20079 Abu Muhammad said: Our position on this matter aligns with the opinion of Al-Awzāʿī, Ubayd Allāh ibn al-Ḥasan, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, and Dāwūd.

قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ الْأَوْزَاعِيِّ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَدَاوُد.

L20080 A difference of opinion has been reported regarding this matter. It has been narrated to us through the chain of Wakiʿ, from Hishām al-Dastuwāʾī, from Qatādah, from Khilās ibn ʿAmr, from ʿAlī ibn Abī Ṭālib, who said: "If a man dies while owing a debt and possesses a specific remaining commodity belonging to another individual in its identifiable form, that commodity becomes subject to the creditors' claims." This is also the opinion of Ibrāhīm al-Nakhaʿī and al-Ḥasan: "If a person becomes bankrupt or dies and the buyer finds the specific commodity they sold in its original identifiable state, that commodity becomes subject to the creditors' claims."

وَقَدْ رُوِيَ فِي هَذَا خِلَافٌ -: فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: هُوَ فِيهَا أُسْوَةُ الْغُرَمَاءِ إذَا وَجَدَهَا بِعَيْنِهَا إذَا مَاتَ الرَّجُلُ وَعَلَيْهِ دَيْنٌ وَعِنْدَهُ سِلْعَةٌ قَائِمَةٌ لِرَجُلٍ بِعَيْنِهَا فَهُوَ فِيهَا أُسْوَةُ الْغُرَمَاءِ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ -: إنَّ مَنْ أَفْلَسَ أَوْ مَاتَ فَوَجَدَ إنْسَانٌ سِلْعَتَهُ الَّتِي بَاعَ بِعَيْنِهَا فَهُوَ فِيهَا أُسْوَةُ الْغُرَمَاءِ.

L20081 Al-Shaʿbi said regarding one who entrusted capital to a person as a *mu-

darabah*, who then died, and his bag was found intact: the investor and the creditors have equal claim to it.

وَقَالَ الشَّعْبِيُّ فِيمَنْ أَعْطَى إِنْسَانًا مَالًا مُضَارَبَةً فَمَاتَ فَوَجَدَ كِيسَهُ بِعَيْنِهِ: فَهُوَ وَالْغُرَمَاءُ فِيهِ سَوَاءٌ.

L20082 The view of Abū Ḥanīfah, Ibn Shubrumah, and Wakīʿ is the same as that of Ibrāhīm.

وَقَوْلُ أَبِي حَنِيفَةَ، وَابْنِ شُبْرُمَةَ، وَوَكِيعٍ كَقَوْلِ إِبْرَاهِيمَ.

L20083 It is authentically reported from Umar ibn Abd al-Aziz that whoever has taken a portion of the price of his goods and then becomes bankrupt is made equal to the creditors. This is the opinion of al-Zuhri. Qatadah said: Whoever finds some of his goods, whether little or much, has a greater right to it than the other creditors.

وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ مَنْ اقْتَضَى مِنْ ثَمَنِ سِلْعَتِهِ شَيْئًا ثُمَّ أَفْلَسَ فَهُوَ أُسْوَةُ الْغُرَمَاءِ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَقَالَ قَتَادَةَ: مَنْ وَجَدَ بَعْضَ سِلْعَتِهِ - قَلَّ أَوْ كَثُرَ - فَهُوَ أَحَقُّ بِهَا مِنْ سَائِرِ الْغُرَمَاءِ.

L20084 Malik's opinion is that he has the most right to it or whatever portion of it he has acquired, whether he received part of the price or not. He holds priority over the creditors in bankruptcy during his lifetime. However, after death, he shares the same status as the creditors in it.

وَقَوْلُ مَالِكٍ: هُوَ أَحَقُّ بِهَا أَوْ بِمَا وَجَدَ مِنْهَا قَبَضَ مِنْ الثَّمَنِ شَيْئًا أَوْ لَمْ يَقْبِضْ هُوَ أَحَقُّ مِنْ الْغُرَمَاءِ فِي التَّفْلِيسِ فِي الْحَيَاةِ وَأَمَّا بَعْدَ الْمَوْتِ فَهُوَ أُسْوَةُ الْغُرَمَاءِ فِيهَا.

L20085–20086 Al-Shafi'i said: If he recovers the item or any portion of it, he holds greater entitlement to it or to whatever portion he retrieves from the debtors, without distinguishing whether [the debtor] is alive or deceased. He added: If he received part of the payment, his entitlement extends only to what corresponds to the remaining debt owed to him.

وَقَالَ الشَّافِعِيُّ: إنْ وَجَدَهَا أَوْ بَعْضَهَا فَهُوَ أَحَقُّ بِهَا أَوْ بِالَّذِي وَجَدَ مِنْهَا مِنْ الْغُرَمَاءِ وَلَمْ يَخُصَّ حَيَاةً مِنْ مَوْتٍ، قَالَ: فَإِنْ كَانَ قَبَضَ مِنْ الثَّمَنِ شَيْئًا فَهُوَ أَحَقُّ بِمَا قَابَلَ مَا بَقِيَ لَهُ فَقَطْ.

L20087 Ahmad said: He is most entitled to it during his lifetime, and as for upon death, he is on par with the creditors.

وَقَالَ أَحْمَدُ: هُوَ أَحَقُّ بِهَا فِي الْحَيَاةِ، وَأَمَّا فِي الْمَوْتِ فَهُوَ أُسْوَةُ الْغُرَمَاءِ.

L20088 Abu Muhammad said: As for those who follow the opinion of Abu Hanifah, they have publicly proclaimed falsehood and said: The Messenger of Allah (peace be upon him) only spoke regarding one who finds his entrusted property or what was usurped from him.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ ذَهَبَ إلَى قَوْلِ أَبِي حَنِيفَةَ فَإِنَّهُمْ جَاهَرُوا بِالْبَاطِلِ، وَقَالُوا: إنَّمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ وَجَدَ وَدِيعَتَهُ أَوْ مَا غُصِبَ مِنْهُ.

L20089 Ali said: "This is a sheer lie falsely attributed to the Messenger of Allah, peace and blessings be upon him, for the explicit text has been established—as we have cited from the Prophet, peace and blessings be upon him—that it pertains to his companion who conducted the sale."

قَالَ عَلِيٌّ: وَهَذَا كَذِبٌ مُجَرَّدٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ قَدْ جَاءَ النَّصُّ كَمَا أَوْرَدْنَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لِصَاحِبِهِ الَّذِي بَاعَهُ.

L20090 And some of them added regarding the intentional falsehood against the Messenger of Allah—peace and blessings be upon him—with what testifies

to the insufficiency of his debt and the shamelessness of his countenance, stating: The Messenger of Allah—peace and blessings be upon him—only meant by affirming the seller's greater right to his goods over the buyer's taking possession of what was purchased without the seller's permission while the buyer is bankrupt, that the seller retains priority over his sold item until he is fairly compensated for the price or until it is sold for his benefit to the exclusion of the creditors.

وَزَادَ بَعْضُهُمْ فِي تَعَمُّدِ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا يَشْهَدُ بِرِقَّةِ دِينِهِ وَصَفَاقَةِ وَجْهِهِ فَقَالَ: إِنَّمَا أَرَادَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّهُ أَحَقُّ بِسِلْعَتِهِ مِنْ قَبْضِ الْمُشْتَرِي مَا اشْتَرَى بِغَيْرِ إِذْنِ بَائِعِهِ - وَهُوَ مُفْلِسٌ - فَيَكُونُ الْبَائِعُ أَحَقَّ بِمَا بَاعَ حَتَّى يُنْصَفَ مِنْ الثَّمَنِ أَوْ يُبَاعَ لَهُ دُونَ الْغُرَمَاءِ.

L20091 Whoever purchased a commodity during his illness with evidence and took possession of it, then admitted a debt and died, does the owner of the commodity have greater right to it than the acknowledged creditors? It is said to him: Perhaps he intended "Banī Tamīm" specifically or "the people of Jurjān" specifically.

وَمَنْ اشْتَرَى سِلْعَةً فِي مَرَضِهِ بِبَيِّنَةٍ وَقَبَضَهَا ثُمَّ أَقَرَّ بِدَيْنٍ ثُمَّ مَاتَ فَصَاحِبُ السِّلْعَةِ أَحَقُّ بِهَا مِنْ الْغُرَمَاءِ الْمُقَرِّ لَهُمْ؟ فَيُقَالُ لَهُ: لَعَلَّهُ أَرَادَ " بَنِي تَمِيمٍ " خَاصَّةً أَوْ " أَهْلَ جُرْجَانَ " خَاصَّةً.

L20092 Such confusion is not engaged in by a person of faith or intellect, nor can this obsession and falsehood put forward by this ignorant person be ascribed to the Prophet—peace be upon him—except by those whom Allah the Almighty has forsaken.

وَمِثْلُ هَذَا مِنْ التَّخْلِيطِ لَا يَأْتِي بِهِ ذُو دِينٍ، وَلَا ذُو عَقْلٍ، وَلَا يَنْسِبُ هَذَا الْهَوَسَ وَهَذَا الْبَاطِلَ الَّذِي أَتَى بِهِ هَذَا الْجَاهِلُ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا مَنْ خَذَلَهُ اللَّهُ تَعَالَى.

L20093 Some of them said, "Perhaps it is from the narrator's wording?" We responded, "Whoever permits opposing the Prophet (peace be upon him) does not refrain from saying regarding every hadith that arises: 'Perhaps it is from the narrator's wording,' thereby invalidating Islam through that."

وَقَالَ بَعْضُهُمْ: لَعَلَّهُ مِنْ لَفْظِ الرَّاوِي؟ فَقُلْنَا: مِنْ اسْتَجَازَ خِلَافَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَعْجِزْ فِي كُلِّ حَدِيثٍ يَأْتِي أَنْ يَقُولَ: لَعَلَّهُ مِنْ لَفْظِ الرَّاوِي، فَيُبْطِلُ الْإِسْلَامَ بِذَلِكَ.

L20094–20096 Some of them cited as evidence the words of Allah the Exalted, {And do not consume one another's wealth unjustly} [Al-Baqarah: 188], and the ruling of the Prophet (peace and blessings of Allah be upon him) that "the wealth of a Muslim is not lawful except with his consent." This evidence is used against them, for what the Prophet (peace and blessings of Allah be upon him) ruled is the truth—that which brings contentment to the believer's soul. But the falsehood and misguidance lie solely in their judicial ruling to transfer the wealth of a Muslim to the sinful usurper and the disbeliever. Those who deny [this ruling], when they say: "Permitting the usurper to rent out usurped houses, and even if disbelievers take [such] rent from Muslims' wealth, it is

وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِهِ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَبِحُكْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّهُ «لَا يَحِلُّ مَالُ مُسْلِمٍ إلَّا بِطِيبِ نَفْسِهِ» . فَهَذَا الِاحْتِجَاجُ عَلَيْهِمْ؛ لِأَنَّ مَا قَضَى بِهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ الْحَقُّ، وَهُوَ الَّذِي تَطِيبُ بِهِ نَفْسُ الْمُؤْمِنِ، وَإِنَّمَا الْبَاطِلُ وَالضَّلَالُ قَضَاؤُهُمْ بِمَالِ الْمُسْلِمِ لِلْغَاصِبِ الْفَاسِقِ وَلِلْكَافِرِ الْجَاحِدِ، إذْ يَقُولُونَ: إنَّ كِرَاءَ الدُّورِ الْمَغْصُوبَةِ لِلْغَاصِبِ وَإِنْ أَخَذَهُ الْكُفَّارُ مِنْ أَمْوَالِ الْمُسْلِمِينَ فَحَلَالٌ لَهُمْ، فَلَوْ اتَّقُوا اللَّهَ تَعَالَى لَكَانَ أَوْلَى بِهِمْ.

lawful for them [to keep]." Had they been mindful of Allah the Exalted, it would have been more appropriate for them.[10]

L20097 They cited as evidence two fabricated narrations. The first is reported by Abū ʿIṣmah Nūḥ ibn Abī Maryam, the judge of Marw, from al-Zuhrī, from Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "If the man becomes bankrupt and another finds his property, it is to be divided among his creditors." Abū ʿIṣmah is a notorious liar, widely known for fabricating ḥadīths attributed to the Messenger of Allah—peace and blessings be upon him.

وَاحْتَجُّوا بِخَبَرَيْنِ مَوْضُوعَيْنِ -: أَحَدُهُمَا: مِنْ رِوَايَةِ أَبِي عِصْمَةَ نُوحِ بْنِ أَبِي مَرْيَمَ قَاضِي مَرْوَ عَنْ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَفْلَسَ الرَّجُلُ وَوَجَدَ رَجُلٌ مَتَاعَهُ فَهُوَ بَيْنَ غُرَمَائِهِ» وَأَبُو عِصْمَةَ كَذَّابٌ مَشْهُورٌ بِوَضْعِ الْحَدِيثِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20098 The other [narration] is from the narration of Ṣadaqah ibn Khālid through ʻUmar ibn Qays Sandal, through Ibn Abī Mulaykah, through Abū Hurayrah, from the Prophet—peace and blessings of Allah be upon him: "Whoever sells a sale and later finds the item intact while the man [buyer] has become insolvent, it remains his property among his creditors." ʻUmar ibn Qays is very weak.

وَالْآخَرُ: مِنْ رِوَايَةِ صَدَقَةَ بْنِ خَالِدٍ عَنْ عُمَرَ بْنِ قَيْسٍ سَنْدَلٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ بَاعَ بَيْعًا فَوَجَدَهُ بِعَيْنِهِ وَقَدْ أَفْلَسَ الرَّجُلُ فَهُوَ مَالُهُ بَيْنَ غُرَمَائِهِ» وَعُمَرُ بْنُ قَيْسٍ ضَعِيفٌ جِدًّا.

L20099 Then, if they were valid—and may Allah the Exalted protect us from that—the established narration from Abu Hurairah would be an addition, and these two narrations would align with the well-established principle. Upholding the additional narration is the obligatory stance that admits no alternative.

ثُمَّ لَوْ صَحَّا - وَقَدْ أَعَاذَ اللَّهُ تَعَالَى مِنْ ذَلِكَ - لَكَانَ الثَّابِتُ عَنْ أَبِي هُرَيْرَةَ زَائِدًا وَكَانَ هَذَانِ مُوَافِقَيْنِ لِمَعْهُودِ الْأَصْلِ، وَالْأَخْذُ بِالزَّائِدِ هُوَ الْوَاجِبُ الَّذِي لَا يَجُوزُ غَيْرُهُ.

L20100 The astonishment at their base roots of corruption is that when a companion narrates a tradition then contradicts it, this indicates its falsehood—though it is authentically established that Abū Hurayrah contradicted these two fabricated and forged narrations. Why, then, do they not deem this a flaw in these narrations? But their affairs are inverted, for they reject the established prophetic practices—peace and blessings be upon him—such as "washing a vessel seven times after a dog drinks from it" and other such rulings, by citing fabricated narrations claiming the narrator later abandoned them. Yet they do not consider rejecting fabricated narrations based on the authenti-

وَالْعَجَبُ مِنْ أَصْلِهِمْ الْخَبِيثِ أَنَّ الصَّاحِبَ إذَا رَوَى رِوَايَةً ثُمَّ خَالَفَهَا دَلَّ ذَلِكَ عَلَى بُطْلَانِهَا - وَقَدْ صَحَّ عَنْ أَبِي هُرَيْرَةَ خِلَافُ هَذَيْنِ الْأَثَرَيْنِ الْمَكْذُوبَيْنِ الْمَوْضُوعَيْنِ: فَهَلَّا جَعَلُوا ذَلِكَ عِلَّةً فِيهِمَا، وَلَكِنَّ أُمُورَهُمْ مَعْكُوسَةٌ؛ لِأَنَّهُمْ يَرُدُّونَ السُّنَنَ الثَّابِتَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُ: «غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا» وَغَيْرُ ذَلِكَ بِالرِّوَايَاتِ الْمَكْذُوبَةِ فِي أَنَّ الرَّاوِيَ لَهَا تَرَكَهَا، ثُمَّ لَا يَرَوْنَ رَدَّ الرِّوَايَاتِ الْمَوْضُوعَةِ بِأَنَّ مَنْ أُضِيفَتْ إلَيْهِ صَحَّ عَنْهُ خِلَافُهَا، فَتَعَسًا لِهَذِهِ الْعُقُولِ، وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

[10] **Qur'an references (L20094):** Qur'an 2:188 (Al-Baqarah).

cated contradictions of those to whom they are falsely ascribed. Perish such minds! We praise Allah for deliverance.

L20101 They argued: The buyer is not free from either owning what he purchased or not owning it. If he did not own it, his purchase is invalid—yet you do not hold this position. If he did own it, the seller cannot have a right to revoke it, and it belongs to all creditors collectively like the rest of his property.

L20102–20103 Abu Muhammad said: They have raised this objection in pre-emption as well. The matter is equivalent, but O these people, such reasoning cannot oppose the Messenger of Allah—peace and blessings of Allah be upon him—about whom Allah the Exalted said: "It is not for a believing man or woman, when Allah and His Messenger have decreed a matter, to have any choice in their affair" (33:36), and about whom their Lord the Exalted said: "The Prophet is closer to the believers than their own selves" (33:6). Such opposition is only directed against those who speak falsehood through their corrupt opinions—such as one who deems a Muslim's purchase from a ḥarbī of what was seized from Muslims as a valid sale granting ownership, except when the original owner seeks to reclaim it by paying the price, in which case the owner has greater right. It should be asked: Did the purchaser from the ḥarbī acquire ownership of what he bought or not? If he purchased and acquired ownership, why would the one from whom it was seized have greater right—whether through payment or otherwise? If he did not acquire ownership, then this is our position, not yours.[11]

L20104 And who has permitted the giver to revoke his gift? He is asked: Did the recipient acquire ownership of what was gifted, or not? If he did not own it, why do they permit him to benefit from it, engage in intercourse, and sell it? If he did own it, then by what means can one whose ownership has been nullified revoke it? This matter deserved their attention more than objecting to the Messenger of Allah (peace be upon him) with their foul opinions that do not equal even a dog's excrement.

وَقَالُوا: لَا يَخْلُو الْمُشْتَرِي مِنْ أَنْ يَكُونَ مَلَكَ مَا اشْتَرَى أَوْ لَمْ يَمْلِكْهُ، فَإِنْ كَانَ لَمْ يَمْلِكْهُ فَشِرَاؤُهُ بَاطِلٌ، وَأَنْتُمْ لَا تَقُولُونَ هَذَا، وَإِنْ كَانَ قَدْ مَلَكَهُ فَلَا يَجُوزُ أَنْ يَكُونَ لِلْبَائِعِ فِيهِ رُجُوعٌ، وَهُوَ لِلْغُرَمَاءِ كُلِّهِمْ كَسَائِرِ مَالِهِ.

قَالَ أَبُو مُحَمَّدٍ: اعْتَرَضُوا بِهَذَا فِي الشُّفْعَةِ أَيْضًا: فَالْأَمْرُ سَوَاءٌ، لَكِنَّ يَا هَؤُلَاءِ مِثْلُ هَذَا لَا يُعَارَضُ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَالَ اللَّهُ تَعَالَى فِيهِ: {وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] وَالَّذِي يَقُولُ فِيهِ رَبُّهُ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦] إنَّمَا يُعَارَضُ بِهِ مَنْ قَالَ الْبَاطِلَ بِرَأْيِهِ الْفَاسِدِ فَجَعَلَ شِرَاءَ الْمُسْلِمِ مِنْ الْحَرْبِيِّ مَا غَنِمَهُ مِنْ الْمُسْلِمِينَ شِرَاءً صَحِيحًا يَمْلِكُهُ إلَّا أَنْ يُرِيدَ الْأَوَّلُ أَخْذَهُ بِالثَّمَنِ فَهُوَ أَحَقُّ بِهِ؟ فَيُقَالُ لَهُ: هَلْ مَلَكَ الْمُشْتَرِي مِنْ الْحَرْبِيِّ مَا اشْتَرَاهُ أَوْ لَمْ يَمْلِكْهُ؟ فَإِنْ كَانَ اشْتَرَاهُ وَمَلَكَهُ، فَلِمَ يَكُونُ الَّذِي غَنِمَ مِنْهُ أَحَقُّ بِهِ بِالثَّمَنِ أَوْ بِغَيْرِ الثَّمَنِ؟ وَإِنْ كَانَ لَمْ يَمْلِكْهُ فَهَذَا قَوْلُنَا لَا قَوْلُكُمْ.

وَمَنْ جَعَلَ لِلْوَاهِبِ أَنْ يَرْجِعَ فِيمَا وَهَبَ؟ فَيُقَالُ لَهُ: هَلْ مَلَكَ الْمَوْهُوبُ مَا وُهِبَ لَهُ، أَمْ لَمْ يَمْلِكْ؟ فَإِنْ كَانَ لَمْ يَمْلِكْهُ فَلِمَ يُحِلُّونَ لَهُ الِانْتِفَاعَ، وَالْوَطْءَ، وَالْبَيْعَ؟ وَإِنْ كَانَ مَلَكَهُ فَبِأَيِّ شَيْءٍ يَرْجِعُ فِيهِ مَنْ قَدْ بَطَلَ مِلْكُهُ عَنْهُ؟ فَهَذَا كَانَ أَوْلَى بِهِمْ مِنْ الِاعْتِرَاضِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِآرَائِهِمْ الْمُنْتِنَةِ الَّتِي لَا تُسَاوِي رَجِيعَ كَلْبٍ.

[11] **Qur'an references (L20103):** Qur'an 33:36 (Al-Ahzab); Qur'an 33:6 (Al-Ahzab).

L20105 And it has been narrated to us through the transmission route of Abu ʿUbayd that he debated Muhammad ibn al-Hasan concerning this matter, but he found nothing more with him than his saying: "This is from the ḥadīth of Abu Hurayrah."

وَرُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَّهُ نَاظَرَ فِي هَذِهِ الْمَسْأَلَةِ مُحَمَّدَ بْنَ الْحَسَنِ فَلَمْ يَجِدْ عِنْدَهُ أَكْثَرَ مِنْ أَنْ قَالَ: هَذَا مِنْ حَدِيثِ أَبِي هُرَيْرَةَ.

L20106 Ali said: Yes, by Allah, it is from the hadith of Abu Hurairah, the righteous, truthful one, not from the hadith of someone like Muhammad ibn al-Hasan. It was said to Abdullah ibn al-Mubarak: "Who is more knowledgeable in jurisprudence: Abu Yusuf or Muhammad ibn al-Hasan?" He replied: "Say: Which of them is the greater liar?"

قَالَ عَلِيٌّ: نَعَمْ، هُوَ وَاَللَّهِ مِنْ حَدِيثِ أَبِي هُرَيْرَةَ الْبَرِّ الصَّادِقِ لَا مِنْ حَدِيثِ مِثْلِ مُحَمَّدِ بْنِ الْحَسَنِ الَّذِي قِيلَ لِعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ: مَنْ أَفْقَهُ؟ أَبُو يُوسُفَ أَوْ مُحَمَّدُ بْنُ الْحَسَنِ؟ فَقَالَ: قُلْ: أَيُّهُمَا أَكْذَبُ.

L20107–20109 Abu Muhammad said: It is astonishing that they argue, "Whoever sells a commodity which the buyer does not take possession of before becoming bankrupt, the seller has a greater right to it"—yet this is precisely what they reject, for there is no distinction between one who has taken possession and one who has not. As for those who differentiate between death and life, or between paying part of the price and paying none of it, they have relied on mursal narrations. Among these are: a report via Mālik and Yūnus ibn ʿUbayd from al-Zuhrī from Abū Bakr ibn ʿAbd al-Raḥmān that the Messenger of Allah—peace and blessings of Allah be upon him—; a chain via Isrāʾīl from ʿAbd al-ʿAzīz ibn Rufayʿ from Ibn Abī Mulaykah that the Messenger of Allah—peace and blessings of Allah be upon him—; and a musnad via the chains of Ismāʿīl ibn ʿAyyāsh and Baqiyyah, both of whom narrated from al-Zubaydī. From al-Zuhri, from Abu Bakr ibn Abd al-Rahman, from Abu Hurairah, that the Messenger of Allah - peace be upon him - [narrated]. Baqiyyah and Ismaʿil are both deemed weak narrators.

قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: مَنْ بَاعَ سِلْعَةً فَلَمْ يَقْبِضْهَا الْمُشْتَرِي حَتَّى فَلَّسَ فَالْبَائِعُ أَحَقُّ بِهَا وَهَذَا هُوَ الَّذِي أَنْكَرُوا، وَلَا فَرْقَ بَيْنَ مَنْ قَبَضَ وَبَيْنَ مَنْ لَمْ يَقْبِضْ، وَأَمَّا مَنْ فَرَّقَ بَيْنَ الْمَوْتِ، وَالْحَيَاةِ، وَبَيْنَ أَنْ يَدْفَعَ مِنَ الثَّمَنِ شَيْئًا أَوْ لَا يَدْفَعَ مِنْهُ شَيْئًا فَإِنَّهُمْ احْتَجُّوا بِآثَارٍ مُرْسَلَةٍ -: مِنْهَا -: مِنْ طَرِيقِ مَالِكٍ، وَيُونُسَ بْنِ عُبَيْدٍ عَنِ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِسْرَائِيلَ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنِ ابْنِ أَبِي مُلَيْكَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُسْنَدٍ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ عَيَّاشٍ، وَبَقِيَّةَ، كِلَاهُمَا عَنِ الزُّبَيْدِيِّ عَنِ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، بَقِيَّةُ، وَإِسْمَاعِيلُ ضَعِيفَانِ.

L20110 Another – through the chain of Isḥāq ibn Ibrāhīm ibn Jūtā from ʿAbd al-Razzāq from Mālik from Ibn Shihāb from Abū Bakr ibn ʿAbd al-Raḥmān from Abū Hurayrah that the Messenger of Allah – peace and blessings be upon him – said: "If a man sells goods to a buyer, and the buyer becomes bankrupt without the seller having received any portion of the price, then if the seller finds his specific goods intact, he has the prior claim to them. If the buyer dies, the seller ranks equally with the creditors." Now, Isḥāq ibn Ibrāhīm ibn Jūtā is unknown—and this narration is not recognized among

وَآخَرُ - مِنْ طَرِيقِ إِسْحَاقَ بْنِ إِبْرَاهِيمَ بْنِ جُوتَى عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَالِكٍ عَنِ ابْنِ شِهَابٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَيُّمَا رَجُلٍ بَاعَ رَجُلًا مَتَاعًا فَأَفْلَسَ الْمُبْتَاعُ وَلَمْ يَقْبِضِ الَّذِي بَاعَ مِنَ الثَّمَنِ شَيْئًا فَإِنْ وَجَدَ الْبَائِعُ سِلْعَتَهُ بِعَيْنِهَا فَهُوَ أَحَقُّ بِهَا، وَإِنْ مَاتَ الْمُشْتَرِي فَهُوَ أُسْوَةُ الْغُرَمَاءِ»

the reports from Mālik. Another report – through the chain of ʿAbd al-Razzāq from Wakīʿ from Hishām al-Dastawā'ī from Qatādah from Bashīr ibn Nahīk from Abū Hurayrah from the Prophet – peace and blessings be upon him – similar to al-Zuhrī's ḥadīth in content, though like this, he did not mention its text or wording.

فَإِنَّ إِسْحَاقَ بْنَ إِبْرَاهِيمَ بْنِ جُوتَى مَجْهُولٌ - وَهَذَا غَيْرُ مَعْرُوفٍ مِنْ حَدِيثِ مَالِكٍ. وَخَبَرٌ آخَرُ - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُ حَدِيثِ الزُّهْرِيِّ هَكَذَا لَمْ يَذْكُرْ مَتْنَهُ وَلَا لَفْظَهُ.

L20111 Then the chain is disconnected because Qatādah did not hear it directly from Bashīr ibn Nahīk, but rather heard it through al-Naḍr ibn Anas reporting from Bashīr ibn Nahīk, who reported from Abū Hurayrah - as we have transmitted it through the chains of Shuʿbah, Saʿīd ibn Abī ʿArūbah, and al-Dasūtā'ī, all of whom narrated from Qatādah in accordance with our earlier citation - thereby nullifying every objection they attempted to raise.

ثُمَّ هُوَ مُنْقَطِعٌ؛ لِأَنَّ قَتَادَةَ لَمْ يَسْمَعْهُ مِنْ بَشِيرِ بْنِ نَهِيكٍ إنَّمَا سَمِعَهُ مِنْ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ - هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ، وَسَعِيدِ بْنِ أَبِي عَرُوبَةَ، والدستوائي، كُلُّهُمْ عَنْ قَتَادَةَ بِمِثْلِ قَوْلِنَا كَمَا أَوْرَدْنَاهُ قَبْلُ - فَسَقَطَ كُلُّ مَا شَغَبُوا بِهِ.

L20112 Then, if these narrations were authentic, all of them would contradict the opinions of Mālik and al-Shāfiʿī, because all of them distinguish between death and living state—whereas al-Shāfiʿī does not differentiate between the two—and all of them distinguish between whether any part of the consideration was received and whether none was received—whereas Mālik does not differentiate between the two. Thus, the opinions of both scholars are contradictory to all the narrations.

ثُمَّ لَوْ صَحَّتْ هَذِهِ الْآثَارُ لَكَانَتْ كُلُّهَا مُخَالِفَةً لِقَوْلِ مَالِكٍ، وَالشَّافِعِيِّ؛ لِأَنَّ فِي جَمِيعِهَا الْفَرْقَ بَيْنَ الْمَوْتِ، وَالْحَيَاةِ، وَالشَّافِعِيُّ، لَا يُفَرِّقُ بَيْنَهُمَا، وَفِي جَمِيعِهَا الْفَرْقُ بَيْنَ أَنْ يَكُونَ قُبِضَ مِنْ الثَّمَنِ شَيْئًا وَبَيْنَ أَنْ لَا يَكُونَ قُبِضَ، وَمَالِكٌ لَا يُفَرِّقُ بَيْنَهُمَا، فَصَحَّ قَوْلُهُمَا مُخَالِفًا لِكُلِّ الْآثَارِ.

L20113 They also argued by stating: "The legal responsibility of the deceased has ceased, while the legal responsibility of the living remains intact." We responded: "What does that entail? The Messenger of Allah (peace and blessings be upon him) did not differentiate between them; rather, he equalized between them, as we cited earlier."

وَاحْتَجُّوا أَيْضًا بِأَنْ قَالُوا: ذِمَّةُ الْمَيِّتِ قَدْ انْقَطَعَتْ، وَذِمَّةُ الْحَيِّ قَائِمَةٌ؟ قُلْنَا: فَكَانَ مَاذَا؟ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُفَرِّقْ بَيْنَهُمَا، بَلْ سَوَّى بَيْنَهُمَا، كَمَا أَوْرَدْنَا قَبْلُ.

L20114 Ali said: If one finds only part of their commodity and not in its actual form, the text applies only when they find it in its actual form and the buyer has not altered it, as we mentioned earlier: {Whoever transgresses Allah's limits has truly wronged himself} [At-Talāq: 1]. And with Allah, the Most High, is success.[12]

قَالَ عَلِيٌّ: وَأَمَّا إذَا لَمْ يَجِدْ إلَّا بَعْضَ سِلْعَتِهِ فَلَمْ يَجِدْهَا بِعَيْنِهَا وَإِنَّمَا جَاءَ النَّصُّ إذَا وَجَدَهَا بِعَيْنِهَا وَلَمْ يُفَرِّقْهَا الْمُشْتَرِي كَمَا أَوْرَدْنَا قَبْلُ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[12] **Qur'an references (L20114):** Qur'an 65:1 (At-Talaq).

[مَسْأَلَةٌ غَصَبَ آخَرَ مَالًا فَمَاتَ وَلَمْ يَشْهَدْ لَهُ بِهِ]

A jurisprudential scenario wherein someone seized another's property unlawfully, then died without any witness testifying to his claim.

١٢٨٤ - مَسْأَلَةٌ: وَمَنْ غَصَبَ آخَرَ مَالًا، أَوْ خَانَهُ فِيهِ، أَوْ أَقْرَضَهُ فَمَاتَ وَلَمْ يَشْهَدْ لَهُ بِهِ، وَلَا بَيِّنَةَ لَهُ، أَوْلَهُ بَيِّنَةٌ فَظَفَرَ لِلَّذِي حَقُّهُ قَبْلَهُ بِمَالٍ، أَوْ ائْتَمَنَهُ عَلَيْهِ سَوَاءٌ كَانَ مِنْ نَوْعِ مَالِهِ عِنْدَهُ، أَوْ مِنْ غَيْرِ نَوْعِهِ، وَكُلُّ ذَلِكَ سَوَاءٌ - وَفَرْضٌ عَلَيْهِ أَنْ يَأْخُذَهُ وَيَجْتَهِدَ فِي مَعْرِفَةِ ثَمَنِهِ، فَإِذَا عَرَفَ أَقْصَاهُ بَاعَ مِنْهُ بِقَدْرِ حَقِّهِ، فَإِنْ كَانَ فِي ذَلِكَ ضَرَرٌ: فَإِنْ شَاءَ بَاعَهُ وَإِنْ شَاءَ أَخَذَهُ لِنَفْسِهِ حَلَالًا.

L20115

L20116–20118

1284 - Issue: If someone unlawfully seizes another's property, breaches trust in it, or lends to him and dies without testifying to the loan while the claimant has no evidence, or if the claimant has evidence but the one whose right precedes his succeeds in obtaining the property, or entrusts him with it - regardless of its type - His property in his possession, or of a different kind—all being equivalent—and it is obligatory upon him to take it and strive to ascertain its value. Once he ascertains its maximum value, he must sell a portion of it proportionate to his entitlement. If harm arises from this: he may either sell it or take it for himself lawfully.

وَسَوَاءٌ كَانَ مَا ظَفَرَ لَهُ بِهِ جَارِيَةً، أَوْ عَبْدًا، أَوْ عَقَارًا، أَوْ غَيْرَ ذَلِكَ، فَإِنْ وَفَّى بِمَالِهِ قَبْلَهُ فَذَاكَ وَإِنْ لَمْ يَفِ بَقِيَ حَقُّهُ فِيمَا لَمْ يَنْتَصِفْ مِنْهُ، وَإِنْ فَضَلَ فَضْلٌ رَدَّهُ إِلَيْهِ أَوْ إِلَى وَرَثَتِهِ، فَإِنْ لَمْ يَفْعَلْ ذَلِكَ فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ إِلَّا أَنْ يُحَلِّلَهُ وَيُبْرِيَهُ فَهُوَ مَأْجُورٌ.

L20119

It is the same whether what he seized for him was a female slave, a male slave, real estate, or anything else. If he fulfills the debt with his own wealth before seizing it, that suffices. But if he does not fulfill it, his right remains valid for the portion from which he did not receive his fair share. If any surplus remains, he must return it to the creditor or to his heirs. If he fails to do this, he is disobedient to Allah Almighty unless the creditor releases him and absolves him of the debt, in which case the creditor is rewarded.

وَسَوَاءٌ كَانَ قَدْ خَاصَمَهُ أَوْ لَمْ يُخَاصِمْهُ، اسْتَحْلَفَهُ أَوْ لَمْ يَسْتَحْلِفْهُ فَإِنْ طُولِبَ بِذَلِكَ وَخَافَ إِنْ أَقَرَّ أَنْ يَغْرَمَ فَلْيُنْكِرْ وَلْيَحْلِفْ، وَهُوَ مَأْجُورٌ فِي ذَلِكَ.

L20120

Whether he had disputed him or not, or whether he had demanded an oath from him or not, if he is compelled regarding that [claim] and fears that admitting [to it] would make him incur a financial penalty, he should deny and swear an oath. He will be rewarded for doing so.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L20121

This represents the position of Al-Shafiʿī, Abū Sulaymān, and the companions of both of them.

وَكَذَلِكَ عِنْدَنَا كُلُّ مَنْ ظَفَرَ لِظَالِمٍ بِمَالٍ فَفَرْضٌ عَلَيْهِ أَخْذُهُ وَإِنْصَافُ الْمَظْلُومِ مِنْهُ.

L20122

Similarly, according to our school, whoever acquires property for an oppressor is obligated to take it and restore justice to the wronged party from it.

L20123

The proof of that is the statement of Allah, the Most High: "And if you retaliate, then retaliate with the equivalent of what you were afflicted with" [An-Nahl: 126], and His statement: "As for those who retaliate after being

wronged, then there is no blame against them" [Ash-Shura: 41]. "Indeed, the blame falls only on those who wrong people and act unjustly on earth without right" [Ash-Shura: 42].[13]

L20124 And those who, when oppression befalls them, defend themselves (42:39). The requital for an evil deed is its equivalent, but whoever pardons and reforms, his reward lies with Allah (42:40).[14]

L20125 And the statement of Allah the Exalted: "The sacred months entail lawful retribution." [Al-Baqarah: 194][15]

L20126 And the statement of Allah, the Most High: "So whoever transgresses against you, then transgress against him in the same manner as he transgressed against you." [Al-Baqarah: 194][16]

L20127 And His statement, the Most High, is: {Except those who believed, did righteous deeds, remembered Allah abundantly, and sought victory after they were wronged} [Ash-Shuʿarā': 227].[17]

L20128 On the authority of Abu Dawud: Ahmad ibn Yunus reported to us, Zuhayr ibn Muʿāwiyah reported to us, Hishām ibn ʿUrwah reported from his father from ʿĀ'ishah, the Mother of the Believers, that Hind - the mother of Muʿāwiyah - came to the Messenger of Allah (peace be upon him) and said: "Abu Sufyān is a stingy man who does not give me what suffices me and my children. Is there any sin upon me if I take something from his wealth?" He replied: "Take what suffices you and your children in a reasonable manner."

L20129–20130 We have mentioned the statement of Allah's Messenger—peace and blessings be upon him—to the creditors of the one who incurred loss regarding fruits

[13] **Qur'an references (L20123):** Qur'an 16:126 (An-Nahl); Qur'an 42:41 (Ash-Shuraa); Qur'an 42:42 (Ash-Shuraa).

[14] **Qur'an references (L20124):** Qur'an 42:39 (Ash-Shuraa); Qur'an 42:40 (Ash-Shuraa).

[15] **Qur'an references (L20125):** Qur'an 2:194 (Al-Baqarah).

[16] **Qur'an references (L20126):** Qur'an 2:194 (Al-Baqarah).

[17] **Qur'an references (L20127):** Qur'an 26:227 (Ash-Shu'ara).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] وقَوْله تَعَالَى: {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] .

وقَوْله تَعَالَى: {وَالَّذِينَ إِذَا أَصَابَهُمُ الْبَغْيُ هُمْ يَنْتَصِرُونَ} [الشورى: ٣٩] {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] .

وقَوْله تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] .

وقَوْله تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

وقَوْله تَعَالَى: {إِلا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَذَكَرُوا اللَّهَ كَثِيرًا وَانْتَصَرُوا مِنْ بَعْدِ مَا ظُلِمُوا} [الشعراء: ٢٢٧] .

وَمِنْ طَرِيق أَبِي دَاوُد نا أَحْمَدُ بْنُ يُونُسَ نا زُهَيْرُ بْنُ مُعَاوِيَةَ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ هِنْدًا أُمَّ مُعَاوِيَةَ جَاءَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ، وَإِنَّهُ لَا يُعْطِينِي مَا يَكْفِينِي وَبَنِي، فَهَلْ عَلَيَّ مِنْ جُنَاحٍ أَنْ آخُذَ مِنْ مَالِهِ شَيْئًا؟ قَالَ: خُذِي مَا يَكْفِيكِ وَوَلَدَكِ بِالْمَعْرُوفِ» .

وَقَدْ ذَكَرْنَا «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِغُرَمَاءِ الَّذِي أُصِيبَ فِي ثِمَارٍ ابْتَاعَهَا: خُذُوا مَا وَجَدْتُمْ وَلَيْسَ لَكُمْ إلَّا ذَلِكَ» وَهَذَا إطْلَاقٌ مِنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِصَاحِبِ الْحَقِّ عَلَى مَا وَجَدَ لِلَّذِي لَهُ عَلَيْهِ الْحَقُّ.

he had purchased: “Take what you find, for you have nothing beyond that.” This constitutes a general ruling from him—peace and blessings be upon him—empowering the rightful claimant with authority over whatever assets are found belonging to the obligated party.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - حَدَّثَنِي يَزِيدُ هُوَ ابْنُ أَبِي حَبِيبٍ - عَنْ أَبِي الْخَيْرِ هُوَ مَرْثَدُ بْنُ عَبْدِ اللَّهِ الْيَزَنِيِّ - عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ [قَالَ] : «قُلْنَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّكَ تَبْعَثُنَا فَنَنْزِلَ بِقَوْمٍ لَا يَقْرُونَنَا، فَمَا تَرَى فِيهِ؟ فَقَالَ لَنَا - عَلَيْهِ السَّلَامُ -: إنْ نَزَلْتُمْ بِقَوْمٍ فَأُمِرَ لَكُمْ بِمَا يَنْبَغِي لِلضَّيْفِ فَاقْبَلُوا، فَإِنْ لَمْ يَفْعَلُوا فَخُذُوا مِنْهُمْ حَقَّ الضَّيْفِ» وَهُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ سِيرِينَ. رُوِّينَا مِنْ طَرِيقِ خَالِدٍ الْحَذَّاءِ عَنْهُ أَنَّهُ قَالَ: إنْ أَخَذَ الرَّجُلُ مِنْك شَيْئًا فَخُذْ مِنْهُ مِثْلَهُ - وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إنْ أَخَذَ مِنْك شَيْئًا فَخُذْ مِنْهُ مِثْلَهُ.

L20131 From the path of Al-Bukhārī: ʿAbdullāh ibn Yūsuf narrated to us from Al-Layth—who is Ibn Saʿd—who narrated: Yazīd—who is Ibn Abī Ḥabīb—narrated to me from Abī Al-Khayr—who is Marthad ibn ʿAbdillāh Al-Yazanī—from ʿUqbah ibn ʿĀmir Al-Juhanī, who said: “We said to the Messenger of Allāh (peace and blessings be upon him): ’You send us, and we stay with people who do not offer us hospitality. What do you advise regarding this?’ He (peace be upon him) said to us: ’If you stay with people and they arrange for you what is due to a guest, accept it. If they do not, take from them the guest’s right.’” This is the opinion of ʿAlī ibn Abī Ṭālib and Ibn Sīrīn. It has been narrated to us via Khālid Al-Ḥadhdhā’ from Ibn Sīrīn that he said: “If a man takes something from you, take the equivalent from him.” And from the path of Sufyān Al-Thawrī, from Manṣūr, from Ibrāhīm Al-Nakhaʿī, who said: “If he takes something from you, take the equivalent from him.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ قَالَ: لَا تَخُنْ مَنْ خَانَك، فَإِنْ أَخَذْت مِنْهُ مِثْلَ مَا أَخَذَ مِنْك فَلَيْسَ عَلَيْك بَأْسٌ.

L20132 From the narration of ʿAbd al-Razzāq, via al-Muʿtamir ibn Sulaymān al-Taymī, from Dāwūd ibn Abī Hind, from al-Shaʿbī, who said: Do not betray one who has betrayed you. If you take from him the like of what he took from you, there is no blame upon you.

وَعَنْ عَطَاءٍ حَيْثُ وَجَدْت مَتَاعَك فَخُذْهُ.

L20133 From ‘Aṭā’: Take your property wherever you found it.

قَالَ أَبُو مُحَمَّد: وَأَمَّا قَوْلُنَا: إنْ لَمْ يَفْعَلْ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَمَنْ ظَفَرَ بِمِثْلِ مَا ظُلِمَ فِيهِ هُوَ، أَوْ مُسْلِمٌ، أَوْ ذِمِّيٌّ، فَلَمْ يُزِلْهُ عَنْ يَدِ الظَّالِمِ وَيَرُدَّ إلَى الْمَظْلُومِ حَقَّهُ

L20134 Abū Muḥammad said: As for our statement: If he does not do so, he is disobedient to God Almighty, this is based on the words of God, Mighty and Sublime: {Cooperate in righteousness and piety, and do not cooperate in sin and transgression} [Al-Mā’idah: 2]. Thus, whoever encounters a case similar to one in which he himself, a Muslim, or a dhimmī was wronged, yet fails to remove it from the oppressor’s grasp and restore the right to the wronged party, he is one of the oppressors. He has not assisted in righteousness and

piety but has instead assisted in sin and transgression. This is a matter known self-evidently.[18]

فَهُوَ أَحَدُ الظَّالِمِينَ، لَمْ يُعِنْ عَلَى الْبِرِّ وَالتَّقْوَى بَلْ أَعَانَ عَلَى الْإِثْمِ وَالْعُدْوَانِ، هَذَا أَمْرٌ يُعْلَمُ ضَرُورَةً.

L20135 Similarly, the command of the Messenger of Allah—peace and blessings of Allah be upon him—states: "Whoever among you sees an evil, let him change it with his hand if he is able." Thus, whoever is capable of restraining injustice, cutting it off, and giving every rightful person their due right but fails to do so has indeed had the capability to forbid the evil yet fails to act. Such a person has disobeyed Allah, the Almighty and Majestic, and opposed the command of the Messenger of Allah—peace and blessings of Allah be upon him—unless he relinquishes his own right, in which case he has undoubtedly done well without disagreement. The evidences for this are exceedingly numerous.

وَكَذَلِكَ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا أَنْ يُغَيِّرَهُ بِيَدِهِ إِنْ اسْتَطَاعَ» فَمَنْ قَدَرَ عَلَى كَفِّ الظُّلْمِ وَقَطْعِهِ وَإِعْطَاءِ كُلِّ ذِي حَقٍّ حَقَّهُ فَلَمْ يَفْعَلْ فَقَدْ قَدَرَ عَلَى إِنْكَارِ الْمُنْكَرِ فَلَمْ يَفْعَلْ فَقَدْ عَصَى اللَّهَ عَزَّ وَجَلَّ وَخَالَفَ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنْ يُحَلِّلَهُ مِنْ حَقِّ نَفْسِهِ فَقَدْ أَحْسَنَ بِلَا خِلَافٍ، وَالدَّلَائِلُ عَلَى هَذَا تَكْثُرُ جِدًّا.

L20136 A group opposed us in this matter—then a faction said: "One must not take anything from him."

وَخَالَفَنَا فِي هَذَا قَوْمٌ -: فَقَالَتْ طَائِفَةٌ: لَا يَأْخُذُ مِنْهُ شَيْئًا.

L20137 A group of scholars stated: If he recovers the exact property, he should take it; otherwise, he must not take anything else.

وَقَالَتْ طَائِفَةٌ: إِنْ ظَفَرَ بِعَيْنِ مَالِهِ فَلْيَأْخُذْهُ وَإِلَّا فَلَا يَأْخُذْ غَيْرَهُ.

L20138–20139 A group said: If he finds the same type as what was taken, he should take it; otherwise, he should not take anything other than its type. This group argued with what we narrated through the chain of Yūsuf ibn Māhak, who said: "I used to record expenses for a certain person who was their legal guardian—orphans whose funds they defrauded him of a thousand dirhams. He restored it to them, then obtained for them an equivalent amount from their own wealth. I said: 'Reclaim the thousand they took from you.' He replied: 'No. My father narrated to me that he heard Allah's Messenger (peace be upon him) say: "Deliver the trust to those who entrust you, and do not betray those who have betrayed you."'" A similar narration is reported from Ṭalq ibn Ghannām, from Sharīk and Qays—who is Ibn al-Rabīʿ—from Abū Ḥuṣayn, from Abū Ṣāliḥ, from Abū Hurayrah, from the Prophet (peace

وَقَالَتْ طَائِفَةٌ: إِنْ وَجَدَ مِنْ نَوْعِ مَا أُخِذَ مِنْهُ فَلْيَأْخُذْ وَإِلَّا فَلَا يَأْخُذْ غَيْرَ نَوْعِهِ. وَاحْتَجَّتْ هَذِهِ الطَّوَائِفُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ يُوسُفَ بْنِ مَاهَكَ قَالَ: كُنْتُ أَكْتُبُ لِفُلَانٍ نَفَقَةَ أَيْتَامٍ كَانَ وَلِيُّهُمْ فَغَالَطُوهُ بِأَلْفِ دِرْهَمٍ فَأَدَّاهَا إِلَيْهِمْ، فَأَدْرَكَتْ لَهُمْ مِنْ مَالِهِمْ مِثْلَهَا، قُلْتُ: اقْبِضْ الْأَلْفَ الَّذِي ذَهَبُوا بِهَا مِنْكَ، قَالَ: لَا، حَدَّثَنِي أَبِي أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «أَدِّ إِلَى مَنْ ائْتَمَنَكَ وَلَا تَخُنْ مَنْ خَانَكَ» وَنَحْوُهُ -: عَنْ طَلْقِ بْنِ غَنَّامٍ عَنْ شَرِيكٍ، وَقَيْسٍ هُوَ ابْنُ الرَّبِيعِ - عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَدِّ الْأَمَانَةَ إِلَى مَنْ ائْتَمَنَكَ وَلَا تَخُنْ مَنْ خَانَكَ» .

[18] **Qur'an references (L20134):** Qur'an 5:2 (Al-Ma'idah).

be upon him): “Deliver the trust to those who entrust you, and do not betray those who have betrayed you.”[19]

L20140 From the narration of ʿAbd ibn Ḥumayd, from Hāshim ibn al-Qāsim, from al-Mubārak ibn Faḍālah, from al-Ḥasan: A man said to the Prophet—peace and blessings of Allah be upon him—“I had a rightful claim against a man, and he denied me. Now he is owed a debt by me. Should I repudiate him?” He replied: “No. Fulfill the trust to those who entrust you, and do not betray one who betrayed you.”

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ عَنْ هَاشِمِ بْنِ الْقَاسِمِ عَنْ الْمُبَارَكِ بْنِ فَضَالَةَ عَنْ الْحَسَنِ «قَالَ رَجُلٌ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ لِي حَقٌّ عَلَى رَجُلٍ فَجَحَدَنِي فَدَانَ لَهُ عِنْدِي حَقٌّ أَفَأَجْحَدُهُ؟ قَالَ: لَا، أَدِّ الْأَمَانَةَ إلَى مَنْ ائْتَمَنَكَ وَلَا تَخُنْ مَنْ خَانَكَ» .

L20141 From the chain of Ḥammād ibn Zayd, from Ayyūb, from a man of Banū Sadūs named Daysam: We said to Bashīr ibn al-Khaṣāṣiyyah, “We have neighbors such that **there is no stray she-camel that comes to us but they take it**, and items from their property come into our possession. May we take them?” He replied, “No.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ عَنْ رَجُلٍ مِنْ بَنِي سَدُوسٍ يُقَالُ لَهُ: دَيْسَمٌ قُلْنَا لِبَشِيرِ بْنِ الْخَصَاصِيَةِ: لَنَا جِيرَانٌ مَا تَشِذُّ لَنَا قَاصِيَةٌ إلَّا ذَهَبُوا بِهَا وَإِنَّهُ يَمْضِي لَنَا مِنْ أَمْوَالِهِمْ أَشْيَاءُ فَنَذْهَبُ بِهَا؟ قَالَ: لَا.

L20142 Abu Muhammad said: We do not know any proof for them except what we have mentioned - and all of this amounts to nothing - as for the narration of so-and-so from his father: not to mention this chain of transmission! I wish I knew who so-and-so is? We disavow to Allah the Exalted every religion taken from so-and-so whose identity is unknown, nor his name, nor who his father is, nor his father’s name.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ مَا ذَكَرْنَا - وَكُلُّ هَذَا لَا شَيْءَ -: أَمَّا حَدِيثُ فُلَانٍ عَنْ أَبِيهِ نَاهِيكَ بِهَذَا السَّنَدِ، لَيْتَ شِعْرِي مِنْ فُلَانٍ؟ وَنَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ كُلِّ دِينٍ أُخِذَ عَنْ فُلَانٍ الَّذِي لَا يَدْرِي مَنْ هُوَ، وَلَا مَا اسْمُهُ، وَلَا مَنْ أَبُوهُ وَلَا اسْمُهُ.

L20143 And the other chain is Talq ibn Ghannam, narrated from Sharik and Qays ibn al-Rabi’, and all of them are weak narrators.

وَالْآخَرُ طَلْقُ بْنُ غَنَّامٍ عَنْ شَرِيكٍ، وَقَيْسِ بْنِ الرَّبِيعِ، وَكُلُّهُمْ ضَعِيفٌ.

L20144 The third is mursal, involving Al-Mubārak ibn Faḍāla in its chain—a narrator not considered strong.

وَالثَّالِثُ مُرْسَلٌ، وَفِيهِ الْمُبَارَكُ بْنُ فَضَالَةَ وَلَيْسَ بِالْقَوِيِّ.

L20145 The narration of Bashir from a man named Daisam is unknown.

وَحَدِيثُ بَشِيرٍ عَنْ رَجُلٍ يُسَمَّى دَيْسَمًا مَجْهُولٌ.

L20146 Furthermore, even if it were authentic, it would contain no valid proof, because its text states: “Do not betray one who betrayed you, and fulfill trusts to those who entrusted you.” A person’s pursuit of their rightful due is not betrayal; rather, it is an obligatory entitlement and the forbidding of evil. Betrayal only occurs when you wrongfully betray someone against

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ فِيهَا حُجَّةٌ؛ لِأَنَّ نَصَّهَا «لَا تَخُنْ مَنْ خَانَكَ، وَأَدِّ الْأَمَانَةَ إلَى مَنْ ائْتَمَنَكَ» وَلَيْسَ انْتِصَافُ الْمَرْءِ مِنْ حَقِّهِ خِيَانَةً، بَلْ هُوَ حَقٌّ وَاجِبٌ، وَإِنْكَارُ مُنْكَرٍ، وَإِنَّمَا الْخِيَانَةُ أَنْ تَخُونَ بِالظُّلْمِ وَالْبَاطِلِ مَنْ لَا حَقَّ لَك عِنْدَهُ، وَلَا مِنْ افْتَرَضَ اللَّهُ تَعَالَى

[19] **Hadith references (L20139):** Sunan Abi Dawud 3535; Sunan Abi Dawud 3534; Jami at-Tirmidhi 1264.

whom you have no legitimate claim, nor has Allah the Exalted obligated them to give you what constitutes your right, or its equivalent if your right is unavailable. Restoring usurped rights is not trust fulfillment; rather, it constitutes complicity in betrayal.

L20147–20148 Furthermore, there is no proof in these narrations except for one who entirely prohibits self-redress. As for one who differentiates and permits taking only the type of his property found, he contradicts these narrations and others—

L20149 And with Allah, the Exalted, is all success.

L20150 "The 'Book of Bankruptcy' has been completed, and praise be to Allah, Lord of the Worlds."

عَلَيْهِ أَنْ يُخْرِجَ إِلَيْك مِنْ حَقِّك، أَوْ مِنْ مِثْلِهِ إنْ عَدَمَ حَقَّك، وَلَيْسَ رَدُّ الْمَظْلَمَةِ أَدَاءَ أَمَانَةٍ، بَلْ هُوَ عَوْنٌ عَلَى الْخِيَانَةِ.

ثُمَّ لَا حُجَّةَ فِي هَذِهِ الْأَخْبَارِ إلَّا لِمَنْ مَنَعَ مِنْ الِانْتِصَافِ جُمْلَةً، وَأَمَّا مَنْ قَسَّمَ فَأَبَاحَ أَخْذَ مَا وَجَدَ مِنْ نَوْعِ مَالِهِ فَقَطْ فَمُخَالِفٌ لِهَذِهِ الْآثَارِ وَلِغَيْرِهَا -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّ " كِتَابُ التَّفْلِيسِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

AL-MUHALLA

كِتَابُ الْإِجَارَاتِ وَالْأُجَرَاءِ

The Book of Leases and Hired Workers

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

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[كِتَابُ الْإِجَارَاتِ وَالْأُجَرَاءِ] [مَسْأَلَةٌ الْإِجَارَةُ جَائِزَةٌ فِي كُلِّ شَيْءٍ لَهُ مَنْفَعَةٌ]

The Book of Lease Contracts and Contracted Workers: Legal Ruling: Leasing is permissible for all items that yield benefit.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْإِجَارَاتِ وَالْأُجَرَاءِ ١٢٨٥ - مَسْأَلَةٌ: الْإِجَارَةُ جَائِزَةٌ فِي كُلِّ شَيْءٍ لَهُ مَنْفَعَةٌ فَيُؤَاجِرُ لِيَنْتَفِعَ بِهِ وَلَا يَسْتَهْلِكَ عَيْنَهُ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا يَحْيَى بْنُ حَمَّادٍ نا أَبُو عَوَانَةَ عَنْ سُلَيْمَانَ الشَّيْبَانِيِّ - هُوَ أَبُو إِسْحَاقَ - عَنْ عَبْدِ اللَّهِ بْنِ السَّائِبِ أَنَّهُمْ سَمِعُوا عَبْدَ اللَّهِ بْنَ مَعْقِلٍ يَقُولُ: زَعَمَ ثَابِتٌ - هُوَ ابْنُ الضَّحَّاكِ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْمُزَارَعَةِ وَأَمَرَ بِالْمُؤَاجَرَةِ وَقَالَ: لَا بَأْسَ بِهَا» .

L20153 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Leases and Hiring. 1285 - Issue: Leasing is permissible for anything that has utility, so one may lease it to benefit from it without consuming the asset itself. We have reported through the chain in Ṣaḥīḥ Muslim: From Ishaq ibn Mansur, from Yahya ibn Hammad, from Abu ʻAwanah, from Sulayman al-Shaybani—who is Abu Ishaq—from ʻAbdullah ibn al-Sa'ib that they heard ʻAbdullah ibn Maʻqil say: Thabit—who is Ibn al-Dahhak—claimed that the Messenger of Allah, peace and blessings be upon him, prohibited sharecropping and enjoined hiring, saying, "There is no harm in it."[1]

قَالَ عَلِيٌّ: قَدْ صَحَّ سَمَاعُ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ مِنْ ثَابِتِ بْنِ الضَّحَّاكِ، وَقَدْ جَاءَتْ فِي الْإِجَارَاتِ آثَارٌ، وَبِإِبَاحَتِهَا يَقُولُ جُمْهُورُ الْعُلَمَاءِ إِلَّا أَنَّ إِبْرَاهِيمَ بْنَ عُلَيَّةَ قَالَ: لَا تَجُوزُ لِأَنَّهَا أَكْلُ مَالٍ بِالْبَاطِلِ.

L20154 Ali said: The hearing of ʿAbd Allāh ibn Maʿqil from Thābit ibn al-Ḍaḥḥāk has been authenticated, and there exist traditions pertaining to lease contracts. The majority of scholars hold the view that they are permissible, except Ibrāhīm ibn ʿUlayya, who said: They are not permissible, as they constitute wrongful consumption of wealth.

قَالَ عَلِيٌّ: هَذَا بَاطِلٌ مِنْ قَوْلِهِ وَقَدْ «اسْتَأْجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْنَ أُرَيْقِطٍ دَلِيلًا إلَى مَكَّةَ» .

L20155 Ali said: "This is baseless from his assertion, and verily the Messenger of Allah—may Allah bless him and grant him peace—hired Ibn Urayqiṭ as a guide to Mecca."

[مَسْأَلَةٌ الْإِجَارَةُ لَيْسَتْ بَيْعًا]

Issue: Leasing is not a sale.

١٢٨٦ - مَسْأَلَةٌ: وَالْإِجَارَةُ لَيْسَتْ بَيْعًا، وَهِيَ جَائِزَةٌ فِي كُلِّ مَا لَا يَحِلُّ بَيْعُهُ كَالْحُرِّ، وَالْكَلْبِ، وَالسِّنَّوْرِ، وَغَيْرِ ذَلِكَ.

L20157 1286 - Issue: Leasing is not a sale, and it is permissible for everything whose sale is unlawful, such as a free person, a dog, a cat, and other than that.

وَلَوْ كَانَتْ بَيْعًا لَمَا جَازَتْ إجَارَةُ الْحُرِّ، وَالْقَائِلُونَ إنَّهَا بَيْعٌ يُجِيزُونَ إجَارَةَ الْحُرِّ، فَتَنَاقَضُوا.

L20158 If it were a sale, the hiring of a free person would not be permissible, yet

[1] **Hadith references (L20153):** Sahih Muslim 1549b; Mishkat al-Masabih 2981.

those who assert it is a sale permit the hiring of a free person - thereby contradicting themselves.

L20159–20160 They do not differ in holding that a lease contract is solely the utilization of benefits from the leased object that has not yet been created, and it is impermissible to sell what has not yet been created. Thus, the invalidity of this assertion becomes evident.

L20161 **A legal issue: the lease of an item that is subject to destruction.**

L20162 1287. Issue: It is not permissible to lease items whose physical asset is fundamentally consumed by its very nature, such as wax for burning, food for eating, water for irrigation, and similar things, because this constitutes a sale, not a lease. A sale grants ownership of the asset, whereas a lease does not confer ownership of the asset.

L20163 **The issue of hire contracts where specifying the work contracted for is obligatory.**

L20164 1288. Issue: Among hire contracts, some require specifying only the work to be performed—such as tailoring, weaving, or riding an animal to a designated location—without mentioning duration. Others require specifying the duration—such as residing in a dwelling or riding an animal. A third category requires both stipulations together—such as service contracts—where both duration and work must be defined. This is because a hire contract lacking these stipulations becomes uncertain, and if uncertain, it is invalid and constitutes unlawful appropriation of wealth.

L20165 Entering into a contract for hire to teach the Quran and knowledge is permissible, as all such cases are included in the general ruling of the Prophet's (peace and blessings be upon him) directive on contractual hiring.

L20166 **Issue: He rented a slave from his master for service for a specified period.**

L20167 1289 - Issue: If someone hires a free person or a slave from the slave's master

وَلَا يَخْتَلِفُونَ فِي أَنَّ الْإِجَارَةَ إِنَّمَا هِيَ الِانْتِفَاعُ بِمَنَافِعِ الشَّيْءِ الْمُؤَاجَرِ الَّذِي لَمْ يُخْلَقْ بَعْدُ، وَلَا يَحِلُّ بَيْعُ مَا لَمْ يُخْلَقْ بَعْدُ، فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ.

[مَسْأَلَةُ إِجَارَةُ مَا تُتْلَفُ عَيْنُهُ]

١٢٨٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ إِجَارَةُ مَا تُتْلَفُ عَيْنُهُ أَصْلًا، مِثْلَ الشَّمْعِ لِلْوَقِيدِ، وَالطَّعَامِ لِلْأَكْلِ، وَالْمَاءِ لِلسَّقْيِ بِهِ، وَنَحْوِ ذَلِكَ، لِأَنَّ هَذَا بَيْعٌ لَا إِجَارَةٌ، وَالْبَيْعُ هُوَ تَمَلُّكُ الْعَيْنِ، وَالْإِجَارَةُ لَا تُمَلَّكُ بِهَا الْعَيْنُ.

[مَسْأَلَةُ الْإِجَارَاتِ الَّتِي لَا بُدَّ فِيهَا مِنْ ذِكْرِ الْعَمَلِ الَّذِي يُسْتَأْجَرُ عَلَيْهِ]

١٢٨٨ - مَسْأَلَةٌ: وَمِنْ الْإِجَارَاتِ مَا لَا بُدَّ فِيهِ مِنْ ذِكْرِ الْعَمَلِ الَّذِي يُسْتَأْجَرُ عَلَيْهِ فَقَطْ وَلَا يُذْكَرُ فِيهِ مُدَّةٌ كَالْخِيَاطَةِ وَالنَّسْجِ وَرُكُوبِ الدَّابَّةِ إلَى مَكَانٍ مُسَمًّى، وَنَحْوِ ذَلِكَ، وَمِنْهَا مَا لَا بُدَّ فِيهِ مِنْ ذِكْرِ الْمُدَّةِ كَسُكْنَى الدَّارِ وَرُكُوبِ الدَّابَّةِ وَنَحْوِ ذَلِكَ، وَمِنْهُ مَا لَا بُدَّ فِيهِ مِنْ الْأَمْرَيْنِ مَعًا كَالْخِدْمَةِ وَنَحْوِهَا فَلَا بُدَّ مِنْ ذِكْرِ الْمُدَّةِ وَالْعَمَلِ، لِأَنَّ الْإِجَارَةَ بِخِلَافِ مَا ذَكَرْنَا مَجْهُولَةٌ وَإِذَا كَانَتْ مَجْهُولَةً فَهِيَ أَكْلُ مَالٍ بِالْبَاطِلِ.

وَالْإِجَارَةُ عَلَى تَعْلِيمِ الْقُرْآنِ وَالْعِلْمِ جَائِزَةٌ، لِأَنَّ كُلَّ ذَلِكَ دَاخِلٌ فِي عُمُومِ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

[مَسْأَلَةُ اسْتَأْجَرَ عَبْدًا مِنْ سَيِّدِهِ لِلْخِدْمَةِ مُدَّةً مُسَمَّاةً]

for service for a specified period with a specified wage, that is permissible. He should employ them in tasks they are skilled at and capable of performing without causing them harm. We received narration through the chain of al-Bukhārī: Yaḥyā ibn Bukayr narrated to us, al-Layth ibn Saʿd narrated to us from ʿAqīl, who said: Ibn Shihāb said: ʿUrwah ibn al-Zubayr informed me that ʿĀ'ishah, the Mother of the Believers—may Allah be pleased with her—said: "Allah's Messenger—peace and blessings be upon him—and Abū Bakr hired a man from Banū al-Dīl as a skilled guide who was following the religion of the pagan Quraysh. They gave him their two riding camels and arranged to meet him at the cave of Thawr after three nights."

The Issue of Stipulating Immediate Wages

Issue 1290: It is impermissible to stipulate advance payment of the compensation or any part thereof, nor to stipulate deferment of the compensation to a specified period or deferment of any part thereof. The same ruling applies to both cases.

It is also impermissible to stipulate delaying the leased item or the work for which it is leased for the blink of an eye or more than that, because it is a condition not stipulated in the Book of Allah, the Exalted, and thus it is invalid.

This also includes renting a house already under lease, renting a contracted slave, renting an animal already under lease, hiring contracted labor, or other such arrangements before the completion of the rental term to which he is presently committed, because the contract stipulates delaying the taking of possession of the rented item or the labor hired for him.

Some people have permitted leasing what we mentioned two days prior to the expiration of its term, while the majority have prohibited it. This is corrupt arbitrariness and a false claim without proof. It must either be prohibited—in which case it is wholly prohibited—or permissible—in which case it is wholly permissible.

They said: "There is gharar in the prolonged period." We responded: "There

١٢٨٩ - مَسْأَلَةٌ: وَمَنْ اسْتَأْجَرَ حُرًّا أَوْ عَبْدًا مِنْ سَيِّدِهِ لِلْخِدْمَةِ مُدَّةً مُسَمَّاةً بِأُجْرَةٍ مُسَمَّاةٍ فَذَلِكَ جَائِزٌ، وليستعملهما فِيمَا يُحْسِنَانِهِ وَيُطِيقَانِهِ بِلَا إِضْرَارٍ بِهِمَا. رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ عَقِيلٍ قَالَ: قَالَ ابْنُ شِهَابٍ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ: «اسْتَأْجَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ رَجُلًا مِنْ بَنِي الدِّيلِ هَادِيًا خِرِّيتًا وَهُوَ عَلَى دِينِ كُفَّارِ قُرَيْشٍ وَدَفَعَا إِلَيْهِ رَاحِلَتَيْهِمَا وَوَاعَدَاهُ غَارَ ثَوْرٍ بَعْدَ ثَلَاثِ لَيَالٍ» .

[مَسْأَلَةٌ اشْتِرَاطُ تَعْجِيلِ الْأُجْرَةِ]

١٢٩٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ اشْتِرَاطُ تَعْجِيلِ الْأُجْرَةِ وَلَا تَعْجِيلِ شَيْءٍ مِنْهَا، وَلَا اشْتِرَاطُ تَأْخِيرِهَا إِلَى أَجَلٍ وَلَا تَأْخِيرِ شَيْءٍ مِنْهَا كَذَلِكَ.

وَلَا يَجُوزُ أَيْضًا اشْتِرَاطُ تَأْخِيرِ الشَّيْءِ الْمُسْتَأْجَرِ وَلَا تَأْخِيرِ الْعَمَلِ الْمُسْتَأْجَرِ لَهُ طَرْفَةَ عَيْنٍ فَمَا فَوْقَ ذَلِكَ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

وَمِنْ هَذَا اسْتِئْجَارُ دَارٍ مُكْتَرَاةٍ، أَوْ عَبْدٍ مُسْتَأْجَرٍ، أَوْ دَابَّةٍ مُسْتَأْجَرَةٍ، أَوْ عَمَلٍ مُسْتَأْجَرٍ، أَوْ غَيْرِ ذَلِكَ قَبْلَ تَمَامِ الْإِجَارَةِ الَّتِي هُوَ مَشْغُولٌ فِيهَا، لِأَنَّ فِي الْعَقْدِ اشْتِرَاطَ تَأْخِيرِ قَبْضَةِ الشَّيْءِ الْمُسْتَأْجَرِ، أَوْ الْعَمَلِ الْمُسْتَأْجَرِ لَهُ.

وَقَدْ أَجَازَ بَعْضُ النَّاسِ إِجَارَةَ مَا ذَكَرْنَا قَبْلَ انْقِضَاءِ مُدَّتِهِ بِالْيَوْمَيْنِ، وَمَنَعَ مِنْهُ أَكْثَرُ - وَهَذَا تَحَكُّمٌ فَاسِدٌ وَدَعْوَى بَاطِلٍ بِلَا بُرْهَانٍ، وَلَيْسَ إِلَّا حَرَامٌ فَيَحْرُمُ جُمْلَةً أَوْ حَلَالٌ فَيَحِلُّ جُمْلَةً.

is also gharar in a moment, and there is no distinction, for none knows what will occur after the blink of an eye except Allah, the Exalted."

وَقَالُوا: هُوَ فِي الْمُدَّةِ الطَّوِيلَةِ غَرَرٌ. فَقُلْنَا: وَهُوَ أَيْضًا فِي السَّاعَةِ غَرَرٌ وَلَا فَرْقَ، إذْ لَا يَدْرِي أَحَدٌ مَا يَحْدُثُ بَعْدَ طَرْفَةِ عَيْنٍ إلَّا اللَّهُ تَعَالَى.

L20175 Additionally, they are obligated to specify the duration that is free from uncertainty and the duration in which there is uncertainty, and to provide evidence for that; otherwise, they are making statements in matters of religion about which they have no knowledge. If that is delayed without stipulation, then there is no harm. And with Allah, the Most High, is success.

وَأَيْضًا: فَيُكَلَّفُونَ إلَى تَحْدِيدِ الْمُدَّةِ الَّتِي لَا غَرَرَ فِيهَا وَالْمُدَّةِ الَّتِي فِيهَا غَرَرٌ، وَأَنْ يَأْتُوا بِالْبُرْهَانِ عَلَى ذَلِكَ، وَإِلَّا فَهُمْ قَائِلُونَ فِي الدِّينِ مَا لَا عِلْمَ لَهُمْ بِهِ، فَإِنْ تَأَخَّرَ ذَلِكَ بِلَا شَرْطٍ فَلَا بَأْسَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20176 [Issue: The death of the employee or the employer, or the destruction of the subject of employment]

[مَسْأَلَةُ مَوْتُ الْأَجِيرِ أَوْ الْمُسْتَأْجِرِ أَوْ هَلَاكُ الْمُسْتَأْجَرِ]

L20177 Issue 1291: The death of the employee, the death of the lessee, the destruction of the leased item, the manumission of a leased slave, the sale of the leased item from the house, or the slave, or the animal, or other items, or its exit from the ownership of the lessor by any means through which it exits—all these invalidate the lease contract specifically for the remaining period, whether little or much. The manumission, sale, and exit from ownership through gift, dowry, or charity remain valid.

١٢٩١ - مَسْأَلَةٌ: وَمَوْتُ الْأَجِيرِ، أَوْ مَوْتُ الْمُسْتَأْجِرِ، أَوْ هَلَاكُ الشَّيْءِ الْمُسْتَأْجَرِ، أَوْ عِتْقُ الْعَبْدِ الْمُسْتَأْجَرِ، أَوْ بَيْعُ الشَّيْءِ الْمُسْتَأْجَرِ مِنْ الدَّارِ، أَوْ الْعَبْدِ، أَوْ الدَّابَّةِ، أَوْ غَيْرِ ذَلِكَ، أَوْ خُرُوجُهُ عَنْ مِلْكِ مُؤَاجِرِهِ بِأَيِّ وَجْهٍ خَرَجَ كُلُّ ذَلِكَ يُبْطِلُ عَقْدَ الْإِجَارَةِ فِيمَا بَقِيَ مِنْ الْمُدَّةِ خَاصَّةً - قَلَّ أَوْ كَثُرَ وَيَنْفُذُ الْعِتْقُ، وَالْبَيْعُ، وَالْإِخْرَاجُ عَنْ الْمِلْكِ بِالْهِبَةِ، وَالْإِصْدَاقِ، وَالصَّدَقَةِ.

L20178 The proof of this is the statement of Allah, the Exalted: **"No person bears a burden except against itself"** (Surah Al-An'am 6:164), and the statement of the Messenger of Allah (PBUH): **"Indeed, your lives and property are inviolable for you."**[2]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] . وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L20179 When the lessor dies, the ownership of the leased item becomes the property of his heirs or creditors. The lessee only leased the usufruct of that item, and usufruct arises incrementally over time. It is impermissible for him to benefit from usufruct newly arising under the ownership of one from whom he had never leased anything at all. This constitutes flagrantly unlawful appropriation of property.

وَإِذَا مَاتَ الْمُؤَاجِرُ فَقَدْ صَارَ مِلْكُ الشَّيْءِ الْمُسْتَأْجَرِ لِوَرَثَتِهِ أَوْ لِلْغُرَمَاءِ، وَإِنَّمَا اسْتَأْجَرَ الْمُسْتَأْجِرُ مَنَافِعَ ذَلِكَ الشَّيْءِ، وَالْمَنَافِعُ إنَّمَا تَحْدُثُ شَيْئًا بَعْدَ شَيْءٍ، فَلَا يَحِلُّ لَهُ الِانْتِفَاعُ بِمَنَافِعَ حَادِثَةٍ فِي مِلْكِ مَنْ لَمْ يَسْتَأْجِرْ مِنْهُ شَيْئًا قَطُّ، وَهَذَا هُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ جِهَارًا.

[2] **Qur'an references (L20178):** Qur'an 6:164 (Al-An'am).

L20180–20181 The heirs' property is not bound by a contract of the deceased whose ownership of that thing has been invalidated. Even if he had leased new usufructs in another's property, that would be void without disagreement—and this is precisely that itself.

وَلَا يَلْزَمُ الْوَرَثَةَ فِي أَمْوَالِهِمْ عَقْدُ مَيِّتٍ قَدْ بَطَلَ مِلْكُهُ عَنْ ذَلِكَ الشَّيْءِ، وَلَوْ أَنَّهُ آجَرَ مَنَافِعَ حَادِثَةً فِي مِلْكِ غَيْرِهِ لَكَانَ ذَلِكَ بَاطِلًا بِلَا خِلَافٍ وَهَذَا هُوَ ذَلِكَ بِعَيْنِهِ.

L20182 As for the death of the lessee: the contract of the property owner is with him personally, not with his heirs. Therefore, the lessor has no claim against the heirs, nor does any contractual obligation exist with them. The heirs do not inherit benefits that have yet to materialize, nor did their deceased ancestor ever acquire such benefits whatsoever - this is perfectly clear. Success comes solely from Allah, the Exalted.

وَأَمَّا مَوْتُ الْمُسْتَأْجِرِ: فَإِنَّمَا كَانَ عَقْدُ صَاحِبِ الشَّيْءِ مَعَهُ لَا مَعَ وَرَثَتِهِ فَلَا حَقَّ لَهُ عِنْدَ الْوَرَثَةِ، وَلَا عَقْدَ لَهُ مَعَهُمْ، وَلَا تَرِثُ الْوَرَثَةُ مَنَافِعَ لَهُمْ تُخْلَقُ بَعْدُ، وَلَا مَلَكَهَا مُوَرِّثُهُمْ قَطُّ - وَهَذَا فِي غَايَةِ الْبَيَانِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20183 This is the opinion of Al-Sha'bi, Sufyan al-Thawri, Al-Layth ibn Sa'd, Abu Hanifah, Abu Sulayman, and the companions of both.

وَهُوَ قَوْلُ الشَّعْبِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَأَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L20184 And through the chain of Ibn Abī Shaybah: ʿAbdullāh ibn Idrīs al-Awdī reported to us from Muṭarrif ibn Ṭarīf, from al-Shaʿbī, who said: A deceased person cannot stipulate conditions.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ قَالَ: لَيْسَ لِمَيِّتٍ شَرْطٌ.

L20185 From the chain of Ibn Abi Shaybah: Abd al-Samad—who is Ibn Abd al-Warith—narrated from Hammad ibn Salamah, from Humaid, from al-Hakam ibn Utaybah regarding someone who leased his house for ten years and died before that period. He said: "The lease is terminated." Makhul said: "Ibn Sirin and Iyas ibn Muawiyah said: 'The lease is not terminated.'" Uthman al-Batti, Malik, al-Shafi'i, and their followers said: "The lease is not terminated by the death of both parties nor by the death of either one of them."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الصَّمَدِ - هُوَ ابْنُ عَبْدِ الْوَارِثِ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ آجَرَ دَارِهِ عَشْرَ سِنِينَ فَمَاتَ قَبْلَ ذَلِكَ؟ قَالَ: تُنْتَقَضُ الْإِجَارَةِ. وَقَالَ مَكْحُولٌ: قَالَ ابْنُ سِيرِينَ، وَإِيَاسُ بْنُ مُعَاوِيَةَ: لَا تُنْتَقَضُ، وَقَالَ عُثْمَانُ الْبَتِّيُّ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا: لَا تُنْتَقَضُ الْإِجَارَةُ بِمَوْتِهِمَا، وَلَا بِمَوْتِ أَحَدِهِمَا.

L20186 The utmost argument they invoked was their claim: "The lease contract has been validly concluded, thus it cannot be nullified except by conclusive proof." We replied: "You have spoken truthfully, and we have come to you with that conclusive proof."

وَأَقْصَى مَا احْتَجُّوا بِهِ أَنْ قَالُوا: عَقْدُ الْإِجَارَةِ قَدْ صَحَّ، فَلَا يَجُوزُ أَنْ يُنْتَقَضَ إلَّا بِبُرْهَانٍ. قُلْنَا: صَدَقْتُمْ، وَقَدْ جِئْنَاكُمْ بِالْبُرْهَانِ.

L20187 They said: "How do you handle *waqfs*?" We replied: The corpus of the *waqf* property has no owner except God, and the beneficiaries of the

waqf have rights only to its usufruct. Therefore, the *ijarah* is not invalidated by the death of any beneficiary nor by the birth of someone entitled to a portion of the benefit. However, if the lessee dies, the *ijarah* is invalidated due to what we mentioned: that his contract becomes void upon his death and does not bind others, since the Quranic text has nullified this by the words of the Almighty: {No soul earns [blame] except against itself} [6:164].[3]

وَقَالُوا: فَكَيْفَ تَصْنَعُونَ فِي الْأَحْبَاسِ؟ قُلْنَا: رَقَبَةُ الشَّيْءِ الْمُحْبَسِ لَا مَالِكَ لَهَا إِلَّا اللَّهُ، وَإِنَّمَا لِلْمُحْبَسِ عَلَيْهِمْ الْمَنَافِعُ فَقَطْ، فَلَا تَنْتَقِضُ الْإِجَارَةُ بِمَوْتِ أَحَدِهِمْ، وَلَا بِوِلَادَةِ مَنْ يَسْتَحِقُّ بَعْضَ الْمَنْفَعَةِ، لَكِنْ إنْ مَاتَ الْمُسْتَأْجِرُ انْتَقَضَتْ الْإِجَارَةُ لِمَا ذَكَرْنَا مِنْ أَنَّ عَقْدَهُ قَدْ بَطَلَ بِمَوْتِهِ وَلَا يَلْزَمُ غَيْرَهُ، إذْ النَّصُّ مِنْ الْقُرْآنِ قَدْ أَبْطَلَ ذَلِكَ بِقَوْلِهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L20188 If they say, "Indeed, the Messenger of Allah—peace and blessings be upon him—conducted an irrigation-based sharecropping agreement with the Jews of Khaybar and granted its ownership to the Muslims," then, undoubtedly, some Muslims and Jews died, yet the irrigation-based sharecropping persisted.

فَإِنْ قَالُوا: قَدْ سَاقَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ الْيَهُودَ، وَمَلَّكَهَا لِلْمُسْلِمِينَ، بِلَا شَكٍّ فَقَدْ مَاتَ مِنْ الْمُسْلِمِينَ قَوْمٌ وَمِنْ الْيَهُودِ قَوْمٌ وَالْمُسَاقَاةُ بَاقِيَةٌ.

L20189–20190 We said: This narration is valid, and it contains no argument in their favor. Rather, it constitutes a proof for us against them for four reasons:

قُلْنَا: إنَّ هَذَا الْخَبَرَ حَقٌّ وَلَا حُجَّةَ لَهُمْ فِيهِ، بَلْ وَهُوَ حُجَّةٌ لَنَا عَلَيْهِمْ لِوُجُوهٍ أَرْبَعَةٍ:

L20191 The first is that the contract was not for a specified term but rather general, enabling them to evict the tenants whenever they wish and allow them to remain as long as they wish, as we will clarify in the chapter on *musāqāt* if Allah wills—and leasing does not follow this manner.

أَوَّلُهَا - أَنَّ ذَلِكَ الْعَقْدَ لَمْ يَكُنْ إلَى أَجَلٍ مَحْدُودٍ، بَلْ كَانَ مُجْمَلًا يُخْرِجُونَهُمْ إذَا شَاءُوا، وَيُقِرُّونَهُمْ مَا شَاءُوا، كَمَا نَذْكُرُهُ فِي " الْمُسَاقَاةِ " إنْ شَاءَ اللَّهُ تَعَالَى - وَلَيْسَتْ الْإِجَارَةُ هَكَذَا.

L20192 The second [point] is that if it has not been conveyed to us that he—peace be upon him—or his agent or overseer of those properties renewed the contract with the heirs of the deceased Jews and the heirs of the deceased Muslims, then it has not been reported either, nor has it been transmitted that he deemed the initial contract sufficient without requiring another renewal. Thus, there is no valid proof for them in this, nor for us. Rather, there is no doubt regarding the validity of renewing the contract in such a case.

وَالثَّانِي - أَنَّهُ إنْ كَانَ لَمْ يُنْقَلْ إلَيْنَا تَجْدِيدُ عَقْدِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ عَامِلِهِ النَّاظِرِ عَلَى تِلْكَ الْأَمْوَالِ مَعَ وَرَثَةِ مَنْ مَاتَ مِنْ الْيَهُودِ، وَوَرَثَةِ مَنْ مَاتَ مِنْ الْمُسْلِمِينَ، فَلَمْ يَأْتِ أَيْضًا، وَلَا نُقِلَ أَنَّهُ اكْتَفَى بِالْعَقْدِ الْأَوَّلِ عَنْ تَجْدِيدِ آخَرَ، فَلَا حُجَّةَ لَهُمْ فِيهِ، وَلَا لَنَا، بَلْ لَا شَكَّ فِي صِحَّةِ تَجْدِيدِ الْعَقْدِ فِي ذَلِكَ.

L20193 The third [point] is that they do not accept what is in this narration. It is invalid for a group that rejects a narration to invoke it against those who do accept it, for this is contradictory.

وَالثَّالِثُ - أَنَّهُمْ لَا يَقُولُونَ بِمَا فِي هَذَا الْخَبَرِ، وَمِنْ الْبَاطِلِ احْتِجَاجُ قَوْمٍ بِخَبَرٍ لَا يَقُولُونَ بِهِ عَلَى مَنْ يَقُولُ بِهِ، وَهَذَا مَعْكُوسٌ.

[3] **Qur'an references (L20187):** Qur'an 6:164 (Al-An'am).

وَالرَّابِعُ - أَنَّ هَذَا الْخَبَرَ إِنَّمَا هُوَ فِي " الْمُسَاقَاةِ وَالْمُزَارَعَةِ " وَكَلَامُنَا هَهُنَا فِي الْإِجَارَةِ وَهِيَ أَحْكَامٌ مُخْتَلِفَةٌ، وَأَوَّلُ مَنْ يُخَالِفُ بَيْنَهُمَا، فَالْمَالِكِيُّونَ وَالشَّافِعِيُّونَ الْمُخَالِفُونَ لَنَا فِي هَذَا الْمَكَانِ، فَلَا يُجِيزَانِ الْمُزَارَعَةَ أَصْلًا، قِيَاسًا عَلَى الْإِجَارَةِ، وَلَا يَرَيَانِ لِلْمُسَاقَاةِ حُكْمَ الْإِجَارَةِ، فَمِنْ الْمُحَالِ أَنْ لَا يَقِيسُوا الْإِجَارَةَ عَلَيْهِمَا وَهُمْ أَهْلُ الْقِيَاسِ ثُمَّ يُلْزِمُونَنَا أَنْ نَقِيسَهَا عَلَيْهِمَا وَنَحْنُ نُبْطِلُ الْقِيَاسَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20194 The fourth [point] is that this report pertains specifically to "musāqāh (tree sharecropping) and muzāraʿah (land sharecropping)," while our discussion here concerns ijārah (lease), and these are distinct legal categories. The first to differentiate between them are the Mālikīs and Shāfiʿīs—those who disagree with us on this issue—for they do not permit muzāraʿah at all, by analogy to ijārah, nor do they apply the ruling of ijārah to musāqāh. It is inconceivable that they—being proponents of analogy—would not analogize ijārah to these two contracts, yet compel us to analogize it to them even as we reject analogy in this context. And success is from Allah, the Exalted.

وَأَمَّا الْبَيْعُ، وَالْهِبَةُ، وَالْعِتْقُ، وَالْإِصْدَاقُ، وَغَيْرُ ذَلِكَ، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَيَقُولُ {الْمُصَّدِّقِينَ وَالْمُصَّدِّقَاتِ} [الحديد: ١٨] . وَيَقُولُ {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

L20195 As for sale, gift, manumission, dower, and other such matters, Allah the Exalted says: "And Allah has permitted sale" [Al-Baqarah 2:275], and He says: "Those who give charity, men and women" [Al-Hadid 57:18], and He says: "Give women their dowers as a free gift" [An-Nisa 4:4].[4]

وَحَضَّ عَلَى الْعِتْقِ، فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ، فَكُلُّ ذَلِكَ فِي كُلِّ مَا يَمْلِكُهُ الْمَرْءُ، فَإِذَا نَفَذَ كُلُّ ذَلِكَ فِيهِ فَقَدْ خَرَجَ عَنْ مِلْكِ مَالِكِهِ، فَإِذَا خَرَجَ عَنْ مِلْكِهِ فَقَدْ بَطَلَ عَقْدُهُ فِيهِ، إذْ لَا حُكْمَ لَهُ فِي مَالِ غَيْرِهِ.

L20196 He urged manumission, and the Exalted made it universal without restriction. All this applies to everything a person owns. When all these provisions are executed upon him, he is freed from his owner's ownership. When ownership over him ceases, the ownership contract concerning him becomes nullified, for the owner retains no legal claim over another's property.

وَلَا يَحِلُّ لِلْمُسْتَأْجِرِ مَنَافِعُ حَادِثَةٌ فِي مِلْكِ غَيْرِ مُؤَاجِرِهِ، وَخِدْمَةُ حُرٍّ لَمْ يُعَاقِدْهُ قَطُّ، لِأَنَّهَا حَرَامٌ عَلَيْهِ، لِأَنَّهَا بِغَيْرِ طِيبِ نَفْسِ مَالِكِهَا، وَبِغَيْرِ طِيبِ نَفْسِ الْحُرِّ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَهَذَا عَقْدٌ لَازِمٌ حَقًّا. قُلْنَا: نَعَمْ، هُوَ مَأْمُورٌ بِالْوَفَاءِ بِالْعَقْدِ فِي مَالِهِ لَا فِي مَالِ غَيْرِهِ، بَلْ هُوَ مُحَرَّمٌ عَلَيْهِ التَّصَرُّفُ فِي مَالِ غَيْرِهِ. فَإِنْ قَالُوا: إخْرَاجُهُ لِلشَّيْءِ الَّذِي آجَرَ مِنْ مِلْكِهِ إبْطَالٌ لِلْوَفَاءِ بِالْعَقْدِ الَّذِي هُوَ مَأْمُورٌ بِالْوَفَاءِ بِهِ. قُلْنَا: وَقَوْلُكُمْ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا أَصْلًا:

L20197–20199 It is not permissible for the lessee to utilize newly arising benefits occurring in property belonging to someone other than the lessor, nor the service of a free person with whom no contract exists, because these [acts] are forbidden for him, as they occur without the free consent of the property's owner and without the free consent of the free individual, thus constituting unlawful appropriation of property. If they falsely cite Allah's statement, "Fulfill the contracts" [Al-Māʾidah 5:1], and this is a binding and valid contract, we say: Yes, one is commanded to fulfill a contract concerning his own property, not another's property. Rather, disposing of another's property is forbidden. If they say: His removal of the leased item from his ownership nullifies the fulfillment of the contract he is commanded to uphold, we say: Your

[4] **Qur'an references (L20195):** Qur'an 2:275 (Al-Baqarah); Qur'an 4:4 (An-Nisa); Qur'an 57:18 (Al-Hadid).

statement is confined to one of two aspects—there is absolutely no third possibility.[5]

L20200 Either prevent him from removing it from his ownership through the means Allah the Exalted has permitted him to use for its removal, owing to the Ijārah contract.

L20201 Alternatively, you [all] must permit him to remove it from his ownership through the valid methods Allah the Exalted has permitted him to use for its removal—one of the two must necessarily occur.

L20202 If you prevent him from transferring it out of his ownership through the lawful channels which Allah, the Exalted, has permitted him to use for this purpose, you have contradicted Allah, the Mighty and Majestic, and declared forbidden what He has made lawful—and such a prohibition is invalid.

L20203 The Messenger of Allah, peace be upon him, said: "What is the matter with people who stipulate conditions that are not in the Book of Allah (the Almighty and Majestic)? Whoever stipulates a condition not in the Book of Allah, it is invalid—even if there are a hundred conditions. The Book of Allah takes precedence, and Allah's stipulation is more binding."

L20204 It is conclusively established with certainty that their stipulation in the lease contract does not preclude what is in the Book of Allah the Exalted regarding the permissibility of sale, gift, charity, and dowry, and that Allah the Exalted's condition in permitting all of that has greater right, is more binding, and takes precedence over their stipulation in the lease contract. Thus, their lease contract is founded upon the permissibility of what is in the Book of Allah the Exalted, not upon prohibiting it or contravening it.

L20205 "And if you say: 'Rather, we permit all of that for him, and the lease contract remains valid despite all such permissions.'"

L20206–20207 We said: You have contradicted the statement of Allah, the Most High: "No soul bears a burden except against itself" [Al-An'am: 164], thereby you have

إِمَّا أَنْ تَمْنَعُوهُ مِنْ إِخْرَاجِهِ عَنْ مِلْكِهِ بِالْوُجُوهِ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ إِخْرَاجَهُ بِهَا عَنْ مِلْكِهِ بِسَبَبِ عَقْدِ الْإِجَارَةِ.

وَإِمَّا أَنْ تُبِيحُوا لَهُ إِخْرَاجَهُ عَنْ مِلْكِهِ بِالْوُجُوهِ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ إِخْرَاجَهُ بِهَا عَنْ مِلْكِهِ - لَا بُدَّ مِنْ أَحَدِهِمَا.

فَإِنْ مَنَعْتُمُوهُ إِخْرَاجَهُ عَنْ مِلْكِهِ بِالْوُجُوهِ الَّتِي أَبَاحَ اللَّهُ تَعَالَى لَهُ إِخْرَاجَهُ بِهَا عَنْ مِلْكِهِ كُنْتُمْ قَدْ خَالَفْتُمْ اللَّهَ عَزَّ وَجَلَّ، وَحَرَّمْتُمْ مَا أَحَلَّ، وَهَذَا بَاطِلٌ.

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ - عَزَّ وَجَلَّ - مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ، كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» .

فَصَحَّ يَقِينًا أَنَّ شَرْطَهُمَا فِي عَقْدِ الْإِجَارَةِ لَا يَمْنَعُ مَا فِي كِتَابِ اللَّهِ تَعَالَى مِنْ إِبَاحَةِ الْبَيْعِ وَالْهِبَةِ وَالصَّدَقَةِ وَالْإِصْدَاقِ، وَأَنَّ شَرْطَ اللَّهِ تَعَالَى فِي إِبَاحَةِ كُلِّ ذَلِكَ أَحَقُّ مِنْ شَرْطِهِمَا فِي عَقْدِ الْإِجَارَةِ وَأَوْثَقُ، وَمُتَقَدِّمٌ لَهُ، فَإِنَّمَا يَكُونُ عَقْدُهُمَا الْإِجَارَةَ عَلَى جَوَازِ مَا فِي كِتَابِ اللَّهِ تَعَالَى، لَا عَلَى الْمَنْعِ مِنْهُ وَمُخَالَفَتِهِ.

وَإِنْ قُلْتُمْ: بَلْ نُجِيزُ لَهُ كُلَّ ذَلِكَ وَيَبْقَى عَقْدُ الْإِجَارَةِ مَعَ كُلِّ ذَلِكَ.

قُلْنَا: خَالَفْتُمْ قَوْلَ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَأَوْجَبْتُمْ أَنْ تَكْسِبَ عَلَى غَيْرِهِ، وَأَنْ يَنْفُذَ عَقْدُهُ فِي مَالِ غَيْرِهِ.

[5] **Qur'an references (L20197):** Qur'an 5:1 (Al-Ma'idah).

obligated that one's burden affects another and that a binding agreement is enforced in another's property.[6]

وَخَالَفْتُمْ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَأَبَحْتُمْ لِلْمُسْتَأْجَرِ مَالَ غَيْرِهِ، وَأَبَحْتُمْ لَهُ مَالَ مَنْ لَمْ يَعْقِدْ مَعَهُ قَطُّ فِيهِ عَقْدًا، وَمَنَعْتُمْ صَاحِبَ الْحَقِّ مِنْ حَقِّهِ وَهَذَا حَرَامٌ، وَأَوْجَبْتُمْ لِلْبَائِعِ أَنْ يَأْخُذَ إِجَارَةً عَلَى مَنَافِعَ حَادِثَةٍ فِي مَالِ غَيْرِهِ، وَعَنْ خِدْمَةِ حُرٍّ لَا مِلْكَ لَهُ عَلَيْهِ؛ وَهَذَا أَكْلُ مَالٍ بِالْبَاطِلِ وَأَكْلُ إِجَارَةِ مَالٍ حَرَامٍ عَلَيْهِ عَيْنُهُ وَالتَّصَرُّفُ فِيهِ - وَهَذَا كُلُّهُ ظُلْمٌ وَبَاطِلٌ بِلَا شَكٍّ وَقَوْلُنَا هَذَا هُوَ قَوْلُ الشَّعْبِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَغَيْرِهِمْ.

L20208 You have opposed the statement of Allah's Messenger—peace and blessings be upon him—"Your blood and wealth are inviolable to you," by permitting the hired party to appropriate another's property, allowing him the wealth of one with whom he never established any contractual agreement. You have barred the rightful claimant from his due—this is unlawful. You have obligated the seller to claim payment for newly arising benefits in another's property and for the service of a free person over whom he holds no ownership. This constitutes unlawful consumption of wealth, taking payment for property that is itself forbidden to him, and transacting with it—all of which is undeniably oppression and falsehood. Our position aligns with the view of Al-Sha'bi, Al-Hasan Al-Basri, Sufyan Al-Thawri, and others.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ فِيمَنْ دَفَعَ غُلَامَهُ إِلَى رَجُلٍ يُعَلِّمُهُ ثُمَّ أَخْرَجَهُ قَبْلَ انْقِضَاءِ شَرْطِهِ، قَالَ: يَرُدُّ عَلَى مُعَلِّمِهِ مَا أَنْفَقَ عَلَيْهِ.

L20209 Through the chain of Ibn Abi Shaybah: 'Abd al-Wahhāb al-Thaqafī reported to us from Khālid al-Hadhdhā' from Iyās ibn Mu'āwiyah regarding one who entrusts his servant to a man to teach him, then removes him before the expiration of the stipulated period. He said: He must repay his teacher what he spent on him.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا غُنْدَرٌ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ أَجَّرَ غُلَامَهُ سَنَةً فَأَرَادَ أَنْ يُخْرِجَهُ، قَالَ: لَهُ أَنْ يَأْخُذَهُ. قَالَ حَمَّادٌ: لَيْسَ لَهُ إِخْرَاجُهُ إِلَّا مِنْ مَضَرَّةٍ.

L20210 From the narration of Ibn Abī Shaybah: Ghundar reported to us from Shu'bah from al-Ḥakam ibn 'Utaybah regarding one who leased his slave for a year then sought to evict him. He [al-Ḥakam] said: "He may take him back." Ḥammād said: "He has no right to evict him except due to detriment."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: الْبَيْعُ يَقْطَعُ الْإِجَارَةَ. قَالَ أَيُّوبُ لَا يَقْطَعُهَا، قَالَ مَعْمَرٌ: وَسَأَلْت ابْنَ شُبْرُمَةَ عَنْ الْبَيْعِ أَيَقْطَعُ الْإِجَارَةَ؟ قَالَ نَعَمْ، قَالَ عَبْدُ الرَّزَّاقِ: وَقَالَ سُفْيَانُ الثَّوْرِيُّ: الْمَوْتُ وَالْبَيْعُ يَقْطَعَانِ الْإِجَارَةَ.

L20211 It was conveyed to us via the chain of 'Abd al-Razzāq, from Ma'mar, from Ayyūb, from al-Ḥasan al-Baṣrī, who said: "The sale terminates the lease." Ayyūb said: "It does not terminate it." Ma'mar said: "I asked Ibn Shubrumah about the sale: Does it terminate the lease?" He replied: "Yes." 'Abd al-Razzāq said: "Sufyān al-Thawrī stated: 'Death and sale terminate the lease.'"

L20212 Abu Muhammad said: Malik, Abu Yusuf, and Al-Shafi'i said: If the buyer is

[6] **Qur'an references (L20207):** Qur'an 6:164 (Al-An'am).

aware of the rental contract, the sale is valid, and he cannot take possession of the item he purchased except after the rental contract period is completed.

قَالَ أَبُو مُحَمَّد: وَقَالَ مَالِكٌ وَأَبُو يُوسُف، وَالشَّافِعِيُّ: إنْ عَلِمَ الْمُشْتَرِي بِالْإِجَارَةِ فَالْبَيْع صَحِيحٌ، وَلَا يَأْخُذُ الشَّيْءَ الَّذِي اشْتَرَى إلَّا بَعْدَ تَمَامِ مُدَّةِ الْإِجَارَةِ.

L20213 Similarly, emancipation and gifts are effectively executed, and the emancipator must maintain the service. The wage in each respective case belongs to the seller, the emancipator, or the donor. The scholars held: If the buyer was unaware of the sale, he may choose between validating the sale - whereby the lease compensation belongs to the seller - or annulling it, because he is not prevented from benefiting from what he purchased. This ruling is invalid due to what we previously presented.

وَكَذَلِكَ الْعِتْقُ نَافِذٌ وَالْهِبَةُ، وَعَلَى الْمُعْتِقِ إبْقَاءُ الْخِدْمَةِ، وَتَكُونُ الْأُجْرَةُ فِي كُلِّ ذَلِكَ لِلْبَائِعِ، وَالْمُعْتِقِ وَالْوَاهِبِ قَالُوا: فَإِنْ لَمْ يَعْلَمْ بِالْبَيْعِ، فَهُوَ مُخَيَّرٌ بَيْنَ إنْفَاذِ الْبَيْعِ وَتَكُونُ الْإِجَارَةُ لِلْبَائِعِ أَوْ رَدُّهُ، لِأَنَّهُ لَا يَمْتَنِعُ مِنْ الِانْتِفَاعِ بِمَا اشْتَرَى - وَهَذَا فَاسِدٌ بِمَا أَوْرَدْنَا آنِفًا.

L20214–20216 Abū Ḥanīfah held two positions: the first, that the lessee has the right to annul the sale; the second, that the lessee is given the choice. Between consent to the sale and non-consent to it; if he consents, his lease becomes void.

وَقَالَ أَبُو حَنِيفَةَ قَوْلَيْنِ - أَحَدُهُمَا: أَنَّ لِلْمُسْتَأْجِرِ نَقْضَ الْبَيْعِ. وَالْآخَرُ: أَنَّهُ مُخَيَّرٌ بَيْنَ الرِّضَا بِالْبَيْعِ وَبَيْنَ أَنْ لَا يَرْضَى بِهِ، فَإِنْ رَضِيَ بِهِ بَطَلَتْ إجَارَتُهُ.

L20217 And if he does not consent, the buyer may choose between upholding the sale while waiting until the lease period expires or rescinding the sale due to the impossibility of taking possession.

وَإِنْ لَمْ يَرْضَ بِهِ كَانَ الْمُشْتَرِي مُخَيَّرًا بَيْنَ إمْضَاءِ الْبَيْعِ وَالصَّبْرِ حَتَّى تَنْقَضِيَ مُدَّةُ الْإِجَارَةِ، وَبَيْنَ فَسْخِ الْبَيْعِ لِتَعَذُّرِ الْقَبْضِ.

L20218 Abu Muhammad said: These two statements are of the utmost corruption and confusion. They are not supported by the Quran, the Sunnah, any weak narration, the statement of anyone we know before Abu Hanifah, analogy, or sound opinion.

قَالَ أَبُو مُحَمَّد: هَذَانِ قَوْلَانِ فِي غَايَةِ الْفَسَادِ وَالتَّخْلِيطِ، لَا يَعْضُدُهُمَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ أَحَدٍ نَعْلَمُهُ قَبْلَ أَبِي حَنِيفَةَ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ.

L20219 I wonder—if they grant the lessee the option to annul the sale, do you think they would also grant him the choice to return the freed slave or confirm his emancipation? This is astonishing! Or would they contradict themselves in that? It is impermissible in any of the cases we mentioned—where the leased property exits the owner's possession through sale, emancipation, gift, charity, or dower—to impose a condition upon the freed slave or the new property owner requiring the lease's continuity. For this is a condition not ordained in the Book of Allah the Exalted, and thus invalid.

وَلَيْتَ شِعْرِي إذَا جَعَلَ لِلْمُسْتَأْجِرِ الْخِيَارَ فِي فَسْخِ الْبَيْعِ، أَتَرَوْنَهُمْ يَجْعَلُونَ لَهُ الْخِيَارَ أَيْضًا فِي رَدِّ الْمُعْتَقِ أَوْ إمْضَائِهِ؟ إنَّ هَذَا لَعَجَبٌ أَوَ يَتَنَاقَضُونَ فِي ذَلِكَ؟ وَلَا يَحِلُّ فِي شَيْءٍ مِمَّا ذَكَرْنَا مِنْ خُرُوجِ الشَّيْءِ الْمُسْتَأْجِرِ عَنْ مِلْكِ الْمُؤَاجِرِ بِبَيْعٍ، أَوْ عِتْقٍ، أَوْ هِبَةٍ، أَوْ صَدَقَةٍ، أَوْ إصْدَاقٍ أَنْ يَشْتَرِطَ عَلَى الْمُعْتَقِ، وَعَلَى مَنْ صَارَ إلَيْهِ الْمِلْكُ: بَقَاءَ الْإِجَارَةِ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ.

L20220 **Case: If either the lessee or the lessor is compelled to leave**

the city.

L20221 1292. Issue: Similarly, if the lessee is compelled to relocate from the locality, or the lessor is compelled to do so, the lease is annulled if its continuation would cause harm to either party, such as a debilitating illness, a paralyzing fear, or similar circumstances, in accordance with Allah's statement: "He has already detailed to you what He has forbidden you, except when compelled by necessity" (6:119).[7]

L20222 And the Exalted said: _He has not placed upon you in [observing] the religion any hardship_ [22:78].[8]

L20223 This is the opinion of Abū Ḥanīfah. It has been narrated to us through the chain of ʿAbd al-Razzāq: Sufyān al-Thawrī reported to us, stating: Al-Shaʿbī was asked about a man who rented an animal to a specific place but completed his journey before reaching that destination. He said: He owes a portion of the rental fee proportionate to the distance he actually traveled.

L20224 Through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah regarding one who rented an animal for travel to a specified destination but refused to depart. Qatādah said: If a circumstance occurs for which he is excused, he is not liable for the rent.

L20225 ## The Issue of the Destruction of the Leased Object

L20226 1293 - Issue: Similarly, if the leased object is destroyed, the lease is terminated. Abū Ḥanīfa, Mālik, and al-Shāfiʿī agreed with us on this.

L20227 Abu Thawr said: The lease (ijarah) is not invalidated by this either; rather, it remains valid until its term. The entire rent (ujrah) is obligatory for the lessee to pay to the lessor.

[مَسْأَلَةٌ اضْطَرَّ الْمُسْتَأْجِرُ أَوْ الْمُؤَاجِرُ إِلَى الرَّحِيلِ عَنْ الْبَلَدِ]

١٢٩٢ - مَسْأَلَةٌ: وَكَذَلِكَ إنْ اضْطَرَّ الْمُسْتَأْجِرُ إلَى الرَّحِيلِ عَنْ الْبَلَدِ، أَوْ اضْطَرَّ الْمُؤَاجِرُ إلَى ذَلِكَ، فَإِنَّ الْإِجَارَةَ تَنْفَسِخُ إذَا كَانَ فِي بَقَائِهَا ضَرَرٌ عَلَى أَحَدِهِمَا، كَمَرَضٍ مَانِعٍ، أَوْ خَوْفٍ مَانِعٍ، أَوْ غَيْرِ ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

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

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ. رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ قَالَ: سُئِلَ الشَّعْبِيُّ عَنْ رَجُلٍ اسْتَأْجَرَ دَابَّةً إلَى مَكَان فَقَضَى حَاجَتَهُ دُونَ ذَلِكَ الْمَكَانِ. قَالَ: لَهُ مِنْ الْأُجْرَةِ بِقَدْرِ الْمَكَانِ الَّذِي انْتَهَى إلَيْهِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِيمَنْ اكْتَرَى دَابَّةً إلَى أَرْضٍ مَعْلُومَةٍ فَأَبَى أَنْ يَخْرُجَ. قَالَ قَتَادَةَ: إذَا حَدَثَ نَازِلَةٌ يُعْذَرُ بِهَا لَمْ يَلْزَمْهُ الْكِرَاءُ.

[مَسْأَلَةٌ هَلَاكُ الشَّيْءِ الْمُسْتَأْجَرِ]

١٢٩٣ - مَسْأَلَةٌ: وَكَذَلِكَ إنْ هَلَكَ الشَّيْءُ الْمُسْتَأْجَرُ فَإِنَّ الْإِجَارَةَ تَنْفَسِخُ وَوَافَقَنَا عَلَى هَذَا أَبُو حَنِيفَةَ، وَمَالِكٌ وَالشَّافِعِيُّ.

وَقَالَ أَبُو ثَوْرٍ: لَا تَنْفَسِخُ الْإِجَارَةُ بِهَذَا أَيْضًا، بَلْ هِيَ بَاقِيَةٌ إلَى أَجَلِهَا، الْأُجْرَةُ كُلُّهَا وَاجِبَةٌ لِلْمُؤَاجِرِ عَلَى الْمُسْتَأْجِرِ.

[7] **Qur'an references (L20221):** Qur'an 6:119 (Al-An'am).
[8] **Qur'an references (L20222):** Qur'an 22:78 (Al-Hajj).

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّهُ أَكْلُ مَالٍ بِالْبَاطِلِ، وَقَاسَ أَبُو ثَوْرٍ ذَلِكَ عَلَى الْبَيْعِ وَلَقَدْ يَلْزَمُ مَنْ رَأَى الْإِجَارَةَ كَالْبَيْعِ أَنْ يَقُولَ بِهَذَا.

Abu Muhammad said: This is erroneous, for it constitutes wrongful usurpation of wealth. Abu Thawr analogized this matter to sale. Indeed, it is incumbent upon anyone who considers lease to be like sale to uphold this view.

وَلَا فَرْقَ بَيْنَ إبْقَاءِ مَالِك، وَالشَّافِعِيِّ، الْإِجَارَةَ بِمَوْتِ الْمُؤَاجِرِ، وَالْمُسْتَأْجِرِ، وَبَيْنَ إبْقَاءِ أَبِي ثَوْرٍ إيَّاهَا بِهَلَاكِ الشَّيْءِ الْمُسْتَأْجَرِ حَتَّى قَالَ مَالِكٌ: مَنْ اُسْتُؤْجِرَتْ دَابَّتُهُ إلَى بَلَدٍ بِعَيْنِهِ فَمَاتَ الْمُسْتَأْجِرُ بِالْفَلَاةِ: أَنَّ الْإِجَارَةَ بَاقِيَةٌ فِي مَالِهِ، وَأَنَّ مِنْ الْوَاجِبِ أَنْ يُؤْتَى الْمُؤَاجِرُ ثَمَنَ نَقْلِهِ، كَنَقْلِ الْمَيِّتِ يَنْقُلُهُ إلَى ذَلِكَ الْبَلَدِ، وَهَذَا عَجَبٌ مَا مِثْلُهُ عَجَبٌ لَا سِيَّمَا مَعَ إبْطَالِهِ بَعْضَ الْإِجَارَةِ بِجَائِحَةٍ تَنْزِلُ كَاسْتِعْذَارٍ، أَوْ قَحْطٍ، فَاحْتَاطَ فِي أَحَدِ الْوَجْهَيْنِ وَلَمْ يَحْتَطْ فِي الْآخَرِ وَلَا تَبْطُلُ إجَارَةٌ بِغَيْرِ مَا ذَكَرْنَا - وَقَدْ رُوِيَ عَنْ شُرَيْحٍ وَالشَّعْبِيِّ. وَصَحَّ عَنْهُمَا أَنَّ كُلَّ وَاحِدٍ مِنْ الْمُسْتَأْجِرِ وَالْمُؤَاجِرِ يَنْقُضُ الْإِجَارَةَ إذَا شَاءَ قَبْلَ تَمَامِ الْمُدَّةِ - وَإِنْ كَرِهَ الْآخَرُ - وَكَانَا يَقْضِيَانِ بِذَلِكَ

L20228–20229 Abu Muhammad said: This is erroneous, for it constitutes wrongful usurpation of wealth. Abu Thawr analogized this matter to sale. Indeed, it is incumbent upon anyone who considers lease to be like sale to uphold this view.

L20230 There is no distinction between Mālik and al-Shāfiʿī maintaining the lease contract upon the death of the lessor or lessee, and Abū Thawr maintaining it upon the destruction of the leased object. Mālik even stated: "If someone's animal is leased for travel to a specific town and the lessee dies in the wilderness, the lease remains binding on his estate. The lessor must be paid the cost of transporting the deceased lessee to that town, akin to transporting a deceased person." This is truly perplexing—nothing like it is perplexing—especially given his nullification of part of the lease due to a calamity such as an inability to fulfill the contract or drought. He applied precaution in one legal scenario but neglected it in the other. No lease is invalidated except for the reasons we have mentioned. It is authentically reported from Shurayḥ and al-Shaʿbī that either the lessee or lessor may annul the lease at will before the term's completion, even against the other's objection, and they both ruled accordingly.

L20231 We do not uphold this view because it is a contract the two parties have concluded regarding property owned by the lessor, and it is obligatory to uphold the contract. Likewise, the contracting parties remain bound so long as they are both alive, and so long as that property remains under the ownership of the one who leased it. And success is from Allah, the Most High.

- وَلَا نَقُولُ بِهَذَا، لِأَنَّهُ عَقْدٌ عَقَدَاهُ فِي مَالٍ يَمْلِكُهُ الْمُؤَاجِرُ فَهُوَ مَأْمُورٌ بِإِنْفَاذِهِ، وَكَذَلِكَ مُعَاقِدُهُ مَا دَامَا حَيَّيْنِ، وَمَا دَامَ ذَلِكَ الشَّيْءُ فِي مِلْكِ مَنْ أَجَّرَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اسْتِئْجَارُ الْعَبِيدِ وَالدُّورِ وَالدَّوَابِّ]

L20232 **Issue Regarding the Renting of Slaves, Houses, and Beasts of Burden.**

١٢٩٤ - مَسْأَلَةٌ: وَجَائِزٌ اسْتِئْجَارُ الْعَبِيدِ وَالدُّورِ وَالدَّوَابِّ، وَغَيْرِ ذَلِكَ، إلَى مُدَّةٍ قَصِيرَةٍ أَوْ طَوِيلَةٍ، إذَا كَانَتْ مِمَّا يُمْكِنُ بَقَاءُ الْمُؤَاجَرَةِ وَالْمُسْتَأْجِرِ وَالشَّيْءِ الْمُسْتَأْجَرِ إلَيْهَا، فَإِنْ كَانَ لَا يُمْكِنُ أَلْبَتَّةَ بَقَاءُ أَحَدِهِمْ إلَيْهَا، لَمْ يَجُزْ ذَلِكَ الْعَقْدُ، وَكَانَ مَفْسُوخًا أَبَدًا.

L20233 Issue 1294: It is permissible to lease slaves, houses, pack animals, and other items for a short or long period, provided the lease (ijārah), the lessee, and the leased item can remain validly existing until the duration of the term. If it is absolutely impossible for any of these to persist until the term's conclusion, the contract is invalid and null and void ab initio.

L20234 The proof of that is: specifying the duration is obligatory in rental agreements not tied to a specific task. Since this is the case, there is no distinction

between a particular duration and what is shorter or longer than it. Whoever differentiates between them is undoubtedly mistaken, for he has differentiated without Quran, Sunnah, weak narration, any statement of a Companion whatsoever, any statement of a Follower that we know of, analogical reasoning, or an opinion with a rationally conceivable basis. Risks are not mitigated in short periods, just as they are not mitigated in long ones.

بُرْهَانُ ذَلِكَ -: أَنَّ بَيَانَ الْمُدَّةِ وَاجِبٌ فِيمَا اُسْتُؤْجِرَ لَا لِعَمَلٍ مُعَيَّنٍ، فَإِذْ هُوَ كَذَلِكَ فَلَا فَرْقَ بَيْنَ مُدَّةٍ مَا وَبَيْنَ مَا أَقَلَّ مِنْهَا أَوْ أَكْثَرَ مِنْهَا؛ وَالْمُفَرِّقُ بَيْنَ ذَلِكَ مُخْطِئٌ بِلَا شَكٍّ، لِأَنَّهُ فَرَّقَ بِلَا قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ أَصْلًا، وَلَا قَوْلِ تَابِعٍ نَعْلَمُهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ، وَالْمَخَاوِفُ لَا تُؤْمَنُ فِي قَصِيرِ الْمُدَدِ كَمَا لَا تُؤْمَنُ فِي طَوِيلِهَا.

L20235 If the lease contract is established for a duration wherein one is certain that one of the two parties must inevitably die before its expiration, or that the leased object must inevitably perish beforehand, then this is a condition that is undoubtedly invalid without doubt. This is because such a contract is either an imposition of obligations by the two parties upon someone other than themselves — which is impermissible — or a contract concerning something non-existent at the time of the contract — and this too is impermissible. Success comes from Allah, the Most High.

وَأَمَّا إِنْ عُقِدَتْ الْإِجَارَةُ إِلَى مُدَّةٍ يُوقِنُ أَنَّهُ لَا بُدَّ مِنْ أَنْ يُخْتَرَمَ أَحَدُهُمَا دُونَهَا، أَوْ لَا بُدَّ مِنْ ذَهَابِ الشَّيْءِ الْمُؤَاجَرِ دُونَهَا، فَهُوَ شَرْطٌ مُتَيَقَّنُ الْفَسَادِ بِلَا شَكٍّ، لِأَنَّهُ إمَّا عَقْدٌ مِنْهُمَا عَلَى غَيْرِهِمَا، وَهَذَا لَا يَجُوزُ - وَإِمَّا عَقْدٌ فِي مَعْدُومٍ، وَذَلِكَ لَا يَجُوزُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20236–20237 Indeed, it would logically follow for those among the Malikis and Shafi'is who hold that a lease is not invalidated by the death of either party, or among those who follow the school of Abū Thawr in asserting it is not invalidated by the destruction of the leased object, to permit lease contracts for land and other properties up to a thousand, ten thousand years, or more. Yet this is among the matters wherein they contradicted themselves; and in Allah, the Exalted, we seek support.

وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَرَى الْإِجَارَةَ لَا تُنْتَقَضُ بِمَوْتِ أَحَدِهِمَا مِنْ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، أَوْ لَا تُنْتَقَضُ بِهَلَاكِ الشَّيْءِ الْمُسْتَأْجَرِ مِمَّنْ ذَهَبَ مَذْهَبَ أَبِي ثَوْرٍ، أَنْ يُجِيزَ عَقْدَ الْإِجَارَةِ فِي الْأَرْضِ وَغَيْرِهَا إلَى أَلْفِ عَامٍ، وَإِلَى عَشَرَةِ آلَافِ عَامٍ، وَأَكْثَرَ، وَلَكِنْ هَذَا مِمَّا تَنَاقَضُوا فِيهِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L20238 The scriptural text has established hiring for a specified term, as we have narrated through the chain of Al-Bukhari: Sulayman ibn Harb narrated to us, Hammad ibn Zayd from Ayyub al-Sikhtiyani from Nafi' from Ibn 'Umar, who said: The Messenger of Allah—peace and blessings be upon him—used to say: "Your likeness and the likeness of the People of the Book is like that of a man who hired laborers and said: 'Who will work for me from dawn until midday for a qirāṭ?' So the Jews worked until the Zuhr prayer. Then he said: 'Who will work for me from midday until the 'Asr prayer for a qirāṭ?'

وَقَدْ جَاءَ النَّصُّ بِالْإِجَارَةِ إلَى أَجَلٍ مُسَمًّى، كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَثَلُكُمْ وَمَثَلُ أَهْلِ الْكِتَابَيْنِ كَمَثَلِ رَجُلٍ اسْتَأْجَرَ أُجَرَاءَ فَقَالَ: مَنْ يَعْمَلُ لِي مِنْ غُدْوَةٍ إلَى نِصْفِ النَّهَارِ عَلَى قِيرَاطٍ؟ فَعَمِلَتْ الْيَهُودُ إلَى صَلَاةِ الظُّهْرِ، ثُمَّ قَالَ: مَنْ يَعْمَلُ لِي مِنْ نِصْفِ النَّهَارِ إلَى صَلَاةِ الْعَصْرِ عَلَى

So the Christians worked. Then he said: 'Who will work for me from 'Asr until sunset for two qirāṭs?' So you are they." And he mentioned the hadith.

A legal issue concerning the hiring of a lactating woman to breastfeed an infant for a specified period.

1295 - Issue: It is permissible to hire a lactating woman to breastfeed an infant for an agreed-upon duration.

The evidence for that is the statement of Allah, the Most High: "If they breastfeed for you, then give them their wages." (Surah At-Talaq 6)[9]

Issue: Leasing a sheep, cow, or camel for milking

Issue 1296: It is impermissible to lease a sheep, cow, camel, or similar animal (neither one nor more) for milking at all. This is because leasing applies exclusively to usufructuary benefits, not to ownership of physical entities. Here, the transaction entails acquiring ownership of the milk, which is a tangible, existing corporeal entity. Thus, it constitutes a sale, not a lease. Selling an item that has not been seen whatsoever, or whose specific properties are unknown, is invalid. This is the opinion of Abū Ḥanīfah and al-Shāfiʿī.

Malik did not permit leasing a sheep or two sheep for milking, but permitted leasing a herd of milk-producing animals for milking. He allowed leasing a cow for plowing and stipulating its milk. All of this is erroneous and contradictory, as he differentiated between small and large quantities without any foundational proof whatsoever.

Thereafter, he did not establish a clear boundary between what was forbidden and what was lawful, mingling the unlawful with the lawful without clarification. Do you not see this?

It is incumbent upon those who declare matters lawful or unlawful to elucidate to people what is forbidden to them from among what is permissible,

[9] **Qur'an references (L20241):** Qur'an 65:6 (At-Talaq).

قِيرَاطٍ؟ فَعَمِلَتْ النَّصَارَى، ثُمَّ قَالَ: مَنْ يَعْمَلُ لِي مِنْ الْعَصْرِ إلَى أَنْ تَغِيبَ الشَّمْسُ عَلَى قِيرَاطَيْنِ؟ فَأَنْتُمْ هُمْ» وَذَكَرَ الْحَدِيثَ.

[مَسْأَلَةٌ اسْتِئْجَارُ الْمَرْأَةِ ذَاتِ اللَّبَنِ لِإِرْضَاعِ الصَّغِيرِ مُدَّةً مُسَمَّاةً]

١٢٩٥ - مَسْأَلَةٌ: وَجَائِزٌ اسْتِئْجَارُ الْمَرْأَةِ ذَاتِ اللَّبَنِ لِإِرْضَاعِ الصَّغِيرِ مُدَّةً مُسَمَّاةً.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ} [الطلاق: ٦] .

[مَسْأَلَةٌ اسْتِئْجَارُ شَاةٍ أَوْ بَقَرَةٍ أَوْ نَاقَةٍ لِلْحَلْبِ]

١٢٩٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ اسْتِئْجَارُ شَاةٍ أَوْ بَقَرَةٍ أَوْ نَاقَةٍ أَوْ غَيْرِ ذَلِكَ - لَا وَاحِدَةٍ وَلَا أَكْثَرَ - لِلْحَلْبِ أَصْلًا؛ لِأَنَّ الْإِجَارَةَ إنَّمَا هِيَ فِي الْمَنَافِعِ خَاصَّةً، لَا فِي تَمَلُّكِ الْأَعْيَانِ، وَهَذَا تَمَلُّكُ اللَّبَنِ، وَهُوَ عَيْنٌ قَائِمَةٌ، فَهُوَ بَيْعٌ لَا إجَارَةٌ، وَبَيْعُ مَا لَمْ يُرَ قَطُّ، وَلَا تُعْرَفُ صِفَتُهُ بَاطِلٌ. - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

وَلَمْ يُجِزْ مَالِكٌ إجَارَةَ الشَّاةِ وَلَا الشَّاتَيْنِ لِلْحَلْبِ، وَأَجَازَ إجَارَةَ الْقَطِيعِ مِنْ ذَوَاتِ اللَّبَنِ لِلْحَلْبِ - وَأَجَازَ اسْتِئْجَارَ الْبَقَرَةِ لِلْحَرْثِ، وَاشْتِرَاطَ لَبَنِهَا - وَهَذَا كُلُّهُ خَطَأٌ وَتَنَاقُضٌ؛ لِأَنَّهُ فَرَّقَ بَيْنَ الْقَلِيلِ وَالْكَثِيرِ بِلَا بُرْهَانٍ أَصْلًا.

ثُمَّ لَمْ يَأْتِ بِحَدٍّ بَيْنَ مَا حُرِّمَ وَمَا حُلِّلَ، فَمَزَجَ الْحَرَامَ بِالْحَلَالِ بِغَيْرِ بَيَانٍ، وَهَذَا كَمَا تَرَى؟

وَفَرْضٌ عَلَى كُلِّ مَنْ حَلَّلَ وَحَرَّمَ أَنْ يُبَيِّنَ لِلنَّاسِ مَا يَحْرُمُ عَلَيْهِمْ مِمَّا يَحِلُّ لَهُمْ إنْ كَانَ يَعْرِفُ ذَلِكَ، فَإِنْ لَمْ يَعْرِفْهُ فَالسُّكُوتُ هُوَ الْوَاجِبُ الَّذِي لَا يَحِلُّ غَيْرُهُ.

provided they possess such knowledge. However, if they lack this knowledge, silence becomes the sole obligation, with no permissible alternative.

L20248 Then he permitted this per head of cow - and this is a glaring contradiction.

L20249 Similarly, he permitted leasing a tree or a palm tree with the exception of its fruit, even if there were no fruit on it at the time of leasing, provided the fruit's portion in the lease agreement constitutes less than a third of the rent; otherwise, it is not permissible. This division is not known from anyone before him, nor is there any evidence to validate any part of it. Even if much of what we have mentioned is lawful, then a small portion of the lawful remains lawful; and if it is unlawful, then a small portion of the unlawful remains unlawful.

L20250 And this very thing they criticized the Ḥanafīs for—permitting small quantities of what intoxicates when consumed in large quantity—despite their agreement with us that leasing food to be eaten is prohibited. What then distinguishes their prohibition of that from their permission to lease houses in exchange for fruit not yet grown therein to be eaten, and between leasing sheep for milking?

L20251 If they say: "We analogized that to hiring a wet nurse," we say: "All analogy is entirely invalid. Then even if analogy were valid, it would be invalid here, for the soundest analogy in this case would be to compare hiring a single sheep for milking to hiring a single wet nurse for breastfeeding - thus you prohibited that. Then you analogized where no similarity exists between them, such as [hiring] a cow for ritual purification or a numerous herd in count. The precluding cause they cite against leasing a single animal for milking equally applies to the wet nurse without distinction. We have never seen anyone more ignorant of analogy than one whose analogy is such - and with Allah, the Exalted, is success."

L20252 ## An Issue: The Leasing of the Land

L20253 1297 - Issue: It is impermissible to lease land at all—neither for cultivation on it, nor for planting on it, nor for building on it, nor for anything

ثُمَّ أَجَازَ ذَلِكَ فِي الرَّأْسِ الْوَاحِدِ مِنْ الْبَقَرِ - وَهَذَا تَنَاقُضٌ فَاحِشٌ.

وَكَذَلِكَ أَجَازَ كِرَاءً تَكُونُ فِيهَا الشَّجَرَةُ أَوْ النَّخْلَةُ وَاسْتِثْنَاءَ ثَمَرَتِهَا وَإِنْ لَمْ تَكُنْ فِيهَا حِينَ الْإِجَارَةِ ثَمَرَةٌ إذَا كَانَتْ الثَّمَرَةُ أَقَلَّ مِنْ ثُلُثِ الْكِرَاءِ وَإِلَّا فَلَا يَجُوزُ - وَلَا يُعْرَفُ هَذَا التَّقْسِيمُ عَنْ أَحَدٍ قَبْلَهُ وَلَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهُ، وَلَئِنْ كَانَ الْكَثِيرُ مِمَّا ذَكَرْنَا حَلَالًا فَالْقَلِيلُ مِنْ الْحَلَالِ حَلَالٌ، وَإِنْ كَانَ حَرَامًا فَالْقَلِيلُ مِنْ الْحَرَامِ حَرَامٌ.

وَهَذَا بِعَيْنِهِ أَنْكَرُوا عَلَى الْحَنِيفِيِّينَ إذَا أَبَاحُوا الْقَلِيلَ مِمَّا يُسْكِرُ كَثِيرُهُ وَقَدْ وَافَقُونَا عَلَى أَنَّهُ لَا يَحِلُّ كِرَاءُ الطَّعَامِ لِيُؤْكَلَ - فَمَا الْفَرْقُ بَيْنَ ذَلِكَ وَبَيْنَ مَا أَبَاحُوهُ مِنْ كِرَاءِ الدَّارِ بِالثَّمَرَةِ الَّتِي لَمْ تُخْلَقْ فِيهَا لِتُؤْكَلَ، وَبَيْنَ كِرَاءِ الْغَنَمِ لِتَحْلُبَ.

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى اسْتِئْجَارِ الظِّئْرِ. قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَهُنَا بَاطِلًا لِأَنَّ أَصَحَّ الْقِيَاسِ هَهُنَا -: أَنْ يُقَاسَ اسْتِئْجَارُ الشَّاةِ الْوَاحِدَةِ لِلْحَلْبِ عَلَى اسْتِئْجَارِ الظِّئْرِ الْوَاحِدَةِ لِلرَّضَاعِ فَحَرَّمْتُمْ ذَلِكَ، ثُمَّ قِسْتُمْ حَيْثُ لَا تَشَابُهَ بَيْنَهُمَا مِنْ الْبَقَرَةِ لِلْحَدَثِ وَمِنْ الْقَطِيعِ الْكَثِيرِ عَدَدُهُ، وَالْعِلَّةُ الْمَانِعَةُ عِنْدَهُمْ مِنْ إجَارَةِ الرَّأْسِ الْوَاحِدِ لِلْحَلْبِ مَوْجُودَةٌ فِي الظِّئْرِ وَلَا فَرْقَ، وَمَا رَأَيْنَا أَجْهَلَ بِالْقِيَاسِ مِمَّنْ هَذَا قِيَاسُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ إجَارَةُ الْأَرْضِ]

whatsoever at all, neither for a specified term whether short or long nor for an unspecified term, neither with dinars nor dirhams nor anything at all. Whenever annulment occurs, it is forever.

١٢٩٧ - مَسْأَلَةٌ: وَلَا تَجُوزُ إجَارَةُ الْأَرْضِ أَصْلًا، لَا لِلْحَرْثِ فِيهَا، وَلَا لِلْغَرْسِ فِيهَا، وَلَا لِلْبِنَاءِ فِيهَا، وَلَا لِشَيْءٍ مِنْ الْأَشْيَاءِ أَصْلًا، لَا لِمُدَّةٍ مُسَمَّاةٍ قَصِيرَةٍ وَلَا طَوِيلَةٍ، وَلَا لِغَيْرِ مُدَّةٍ مُسَمَّاةٍ، لَا بِدَنَانِيرَ وَلَا بِدَرَاهِمَ، وَلَا بِشَيْءٍ أَصْلًا - فَمَتَى وَقَعَ فَسْخٌ أَبَدًا.

L20254 The only permissible use of land is sharecropping (muzāraʿah) with a specified portion of its yield or a tree-planting contract (mughārasah) in the same manner. If there is a structure on the land, regardless of its size, leasing (ijārah) that structure is permissible, and the land becomes secondary to it without being included in the lease at all.

وَلَا يَجُوزُ فِي الْأَرْضِ إلَّا الْمُزَارَعَةُ بِجُزْءٍ مُسَمًّى مِمَّا يَخْرُجُ مِنْهَا، أَوْ الْمُغَارَسَةُ كَذَلِكَ فَقَطْ، فَإِنْ كَانَ فِيهَا بِنَاءٌ قَلَّ أَوْ كَثُرَ جَازَ اسْتِئْجَارُ ذَلِكَ الْبِنَاءِ وَتَكُونُ الْأَرْضُ تَبَعًا لِذَلِكَ الْبِنَاءِ غَيْرَ دَاخِلَةٍ فِي الْإِجَارَةِ أَصْلًا.

L20255–20256 The proof of that is what we have narrated through the chain of Muslim: Abdul Malik ibn Shuʿaib ibn al-Layth ibn Saʿd narrated to us, saying: My father narrated to me from my grandfather, thunni ʿUqayl ibn Khalid, from Ibn Shihab, who said: Salim ibn ʿAbdullah ibn ʿUmar informed me, saying: ʿAbdullah ibn ʿUmar met Rafiʿ ibn Khadij and asked him. Rafiʿ said to him: I heard my uncle—and both of them had witnessed Badr—narrating to the people of the household: "The Messenger of Allah—peace and blessings be upon him—prohibited the leasing of land." He mentioned the hadith, which states that Ibn ʿUmar abandoned the leasing of land.[10]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ الْمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ بْنِ سَعْدٍ حَدَّثَنِي أَبِي عَنْ جَدِّي ثَنِيّ عُقَيْلُ بْنُ خَالِدٍ عَنْ ابْنِ شِهَابٍ قَالَ: أَخْبَرَنِي سَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: لَقِيَ عَبْدُ اللَّهِ بْنُ عُمَرَ رَافِعَ بْنَ خَدِيجٍ فَسَأَلَهُ. فَقَالَ لَهُ رَافِعٌ: سَمِعْت عَمِّي - وَكَانَا قَدْ شَهِدَا بَدْرًا - يُحَدِّثَانِ [أَهْلَ الدَّارِ] : «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ كِرَاءِ الْأَرْضِ» فَذَكَرَ الْحَدِيثَ وَفِيهِ أَنَّ ابْنَ عُمَرَ تَرَكَ كِرَاءَ الْأَرْضِ.

L20257 Abū Muḥammad said: All the people of Badr are righteous. It was narrated to us through the chain of Ibn Abī Shaybah: Wakīʿ narrated to us from Sufyān al-Thawrī from Yaḥyā ibn Saʿīd from ʿAbāyah ibn Rifāʿah ibn Rāfiʿ ibn Khadīj from his grandfather Rāfiʿ ibn Khadīj, who said: "Gabriel, or an angel, came to the Messenger of Allāh - peace and blessings be upon him - and asked: 'How do you regard those who witnessed Badr among yourselves?' The Messenger of Allāh - peace and blessings be upon him - replied: 'The best of us.' He said: 'So too are they in our view.'"

قَالَ أَبُو مُحَمَّدٍ: أَهْلُ بَدْرٍ كُلُّهُمْ عُدُولٌ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ عَبَايَةَ بْنِ رِفَاعَةَ بْنِ رَافِعِ بْنِ خَدِيجٍ عَنْ جَدِّهِ رَافِعِ بْنِ خَدِيجٍ، قَالَ: «جَاءَ جِبْرِيلُ أَوْ مَلَكٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَا تَعُدُّونَ مَنْ شَهِدَ بَدْرًا فِيكُمْ؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: خِيَارُنَا قَالَ: كَذَلِكَ هُمْ عِنْدَنَا» .

L20258 Ali said: Among those from whom we have transmitted narrations prohibit-

قَالَ عَلِيٌّ: وَمِمَّنْ رُوِّينَا عَنْهُ الْمَنْعَ مِنْ كِرَاءِ الْأَرْضِ جُمْلَةً جَابِرِ بْنِ عَبْدِ اللَّهِ، وَرَافِعِ بْنِ خَدِيجٍ، وَابْنُ عُمَرَ، وَطَاوُسٌ، وَمُجَاهِدٌ، وَالْحَسَنُ.

[10] **Hadith references (L20256):** Sahih Muslim 1536k; Sunan an-Nasai 3888; Sunan an-Nasai 3916.

ing land leasing in general are Jabir ibn Abdullah, Rafiʿ ibn Khadīj, Ibn Umar, Tawus, Mujahid, and al-Hasan.

L20259 Ali said: "When we discuss *muzāraʿah* (sharecropping), God, the Exalted, willing, we shall thoroughly examine the arguments raised by those who permit renting land and refute them all by the power and might of God, the Exalted."

قَالَ عَلِيٌّ: وَعِنْدَ ذِكْرِنَا " لِلْمُزَارَعَةِ " إنْ شَاءَ اللَّهُ تَعَالَى نَتَقَصَّى مَا شَغَبَ بِهِ مَنْ أَبَاحَ كِرَاءَ الْأَرْضِ وَنَقَضَ كُلَّ ذَلِكَ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

L20260 **A jurisprudential ruling on renting a house, a slave, and a pack animal for a day that is not specified.**

[مَسْأَلَةٌ اسْتِئْجَارُ دَارٍ وَعَبْدٍ وَدَابَّةٍ لِيَوْمٍ غَيْرِ مُعَيَّنٍ]

L20261 1298 - Issue: It is not permissible to lease a house, a slave, an animal, or anything whatsoever for an unspecified day, nor for an unspecified month, nor for an unspecified year. This is because leasing cannot be valid for something in which the lessee does not know his right, for it is wrongful consumption of wealth and a void contract. And success comes from Allah, the Most High.

١٢٩٨ - مَسْأَلَةٌ: وَلَا يَجُوزُ اسْتِئْجَارُ دَارٍ وَلَا عَبْدٍ وَلَا دَابَّةٍ وَلَا شَيْءٍ أَصْلًا لِيَوْمٍ غَيْرِ مُعَيَّنٍ، وَلَا لِشَهْرٍ غَيْرِ مُعَيَّنٍ، وَغَلَا لِعَامٍ غَيْرِ مُعَيَّنٍ؛ لِأَنَّ الْكِرَاءَ لَمْ يَصِحَّ عَلَى شَيْءٍ لَمْ يَعْرِفْ فِيهِ الْمُسْتَأْجِرُ حَقَّهُ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَعَقْدٌ فَاسِدٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20262 **Issue: Whenever a hired worker performs any of the tasks he was contracted to do, he is entitled to a wage proportionate to the work he has performed.**

[مَسْأَلَةٌ كُلُّ مَا عَمِلَ الْأَجِيرُ شَيْئًا مِمَّا اُسْتُؤْجِرَ لِعَمَلِهِ اسْتَحَقَّ مِنْ الْأُجْرَةِ بِقَدْرِ مَا عَمِلَ]

L20263 1299. Issue: Whenever a worker performs any part of the work for which they were hired, they are entitled to a portion of the wage proportionate to the work performed. They have the right to demand and collect this amount immediately, or to defer it unconditionally until completing the entire work or a substantial aggregate of it. This is because the wage is based on the work itself - each portion of the work corresponds to a portion of the wage.

١٢٩٩ - مَسْأَلَةٌ: وَكُلُّ مَا عَمِلَ الْأَجِيرُ شَيْئًا مِمَّا اُسْتُؤْجِرَ لِعَمَلِهِ اسْتَحَقَّ مِنْ الْأُجْرَةِ بِقَدْرِ مَا عَمِلَ فَلَهُ طَلَبُ ذَلِكَ وَأَخْذُهُ وَلَهُ تَأْخِيرُهُ بِغَيْرِ شَرْطٍ حَتَّى يُتِمَّ عَمَلَهُ أَوْ يُتِمَّ مِنْهُ جُمْلَةً مَا؛ لِأَنَّ الْأُجْرَةَ إنَّمَا هِيَ عَلَى الْعَمَلِ فَلِكُلِّ جُزْءٍ مِنْ الْعَمَلِ جُزْءٌ مِنْ الْأُجْرَةِ.

L20264 Similarly, whenever the lessee uses the leased property, he owes a proportionate amount of the lease payment, as we explained based on the evidence we cited - and success comes from Allah, the Most High.

وَكَذَلِكَ كُلُّ مَا اسْتَغَلَّ الْمُسْتَأْجِرُ الشَّيْءَ الَّذِي اسْتَأْجَرَ فَعَلَيْهِ مِنْ الْإِجَارَةِ بِقَدْرِ ذَلِكَ أَيْضًا، وَكَمَا ذَكَرْنَا لِلدَّلِيلِ الَّذِي ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20265 **A Juristic Issue on Leasing That Which Has Lawful Ownership**

[مَسْأَلَةٌ الِاسْتِئْجَارُ بِمَا يَحِلُّ مِلْكُهُ]

L20266–20268 1300. Issue: It is permissible to rent anything that is lawful to own, even if

selling it is not permissible, such as a dog, a cat, water, fruit whose ripeness has not yet become evident, and ears of grain that have not dried. He leases the house with a specifically identified dog or a dog described as a liability, with fruit that has appeared but whose ripeness has not yet become evident, with water described as a liability or specifically identified secured water, or with a cat similarly described—for leasing is not sale. The prohibition applies solely to selling these items, and equating leasing to sale through analogy is invalid even if analogy were valid—how much more invalid is it when analogy itself is entirely baseless? This is because they agree with us regarding leasing a free person's own labor while prohibiting their sale, and because sale involves transferring ownership of physical entities from one proprietor to another, whereas leasing grants rights to benefits not yet realized—and success comes solely from Allah, the Exalted.

Issue: If an invalid lease is detected, it is annulled.

Issue 1301: A defective lease is annulled if detected, or the portion already executed. If the lease lapses or any part becomes irrecoverable, the lapsed portion is judged by equivalent value based on Allah's decree: "Violations of sacred limits warrant retribution" [Al-Baqarah: 194]. Thus, whoever exploits another's property without right has violated a sanctity and must retaliate with its equivalent from their wealth - and success comes only from Allah, the Exalted.[11]

A legal issue concerning hiring [someone] for prayer and the call to prayer.

1302 - Issue: It is not permissible to hire someone for prayer or for the call to prayer (adhan). However, the Imam may allocate funds from the Muslims' wealth to those who perform them as a means of sustenance. Alternatively, the mosque congregation may hire two individuals to be present with them exclusively at the onset of prayer times for a specified period. Once present,

[11] **Qur'an references (L20270):** Qur'an 2:194 (Al-Baqarah).

١٣٠٠ - مَسْأَلَةٌ: وَجَائِزٌ الِاسْتِئْجَارُ بِكُلِّ مَا يَحِلُّ مِلْكُهُ وَإِنْ لَمْ يَحِلَّ بَيْعُهُ كَالْكَلْبِ، وَالْهِرِّ، وَالْمَاءِ، وَالثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا، وَالسُّنْبُلِ الَّذِي لَمْ يَيْبَسْ - فَيَسْتَأْجِرُ الدَّارَ بِكَلْبٍ مُعَيَّنٍ أَوْ كَلْبٍ مَوْصُوفٍ فِي الذِّمَّةِ، وَبِثَمَرَةٍ قَدْ ظَهَرَتْ وَلَمْ يَبْدُ صَلَاحُهَا، وَبِمَاءٍ مَوْصُوفٍ فِي الذِّمَّةِ أَوْ مُعَيَّنٍ مُحَرَّزٍ، أَوْ بِهِرٍّ كَذَلِكَ؛ لِأَنَّ الْإِجَارَةَ لَيْسَتْ بَيْعًا، وَإِنَّمَا نُهِيَ فِي هَذِهِ الْأَشْيَاءِ عَنْ الْبَيْعِ - وَقِيَاسُ الْإِجَارَةِ عَلَى الْبَيْعِ بَاطِلٌ لَوْ كَانَ الْقِيَاسُ حَقًّا، فَكَيْفَ وَهُوَ كُلُّهُ بَاطِلٌ؟ لِأَنَّهُمْ مُوَافِقُونَ لَنَا عَلَى إجَارَةِ الْحُرِّ نَفْسَهُ، وَتَحْرِيمِهِمْ لِبَيْعِهِ، وَلِأَنَّ الْبَيْعَ تَمْلِيكٌ لِلْأَعْيَانِ بِالنَّقْلِ لَهَا عَنْ مِلْكٍ آخَرَ، وَالْإِجَارَةُ تَمْلِيكُ مَنَافِعَ لَمْ تَحْدُثْ بَعْدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ الْإِجَارَةُ الْفَاسِدَةُ إنْ أُدْرِكَتْ فُسِخَتْ]

١٣٠١ - مَسْأَلَةٌ: وَالْإِجَارَةُ الْفَاسِدَةُ إنْ أُدْرِكَتْ فُسِخَتْ، أَوْ مَا أُدْرِكَ مِنْهَا، فَإِنْ فَاتَتْ أَوْ فَاتَ شَيْءٌ مِنْهَا قُضِيَ فِيهَا أَوْ فِيمَا فَاتَ بِأَجْرِ الْمِثْلِ لِقَوْلِ اللَّهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَمَنْ اسْتَغَلَّ مَالَ غَيْرٍ بِغَيْرِ حَقٍّ فَهِيَ حُرْمَةٌ انْتَهَكَهَا فَعَلَيْهِ أَنْ يُقَاصَّ بِمِثْلِهِ مِنْ مَالِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْإِجَارَةُ عَلَى الصَّلَاةِ وَالْأَذَانِ]

١٣٠٢ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ عَلَى الصَّلَاةِ، وَلَا عَلَى الْأَذَانِ، لَكِنْ إمَّا أَنْ يُعْطِيَهُمَا الْإِمَامُ مِنْ أَمْوَالِ الْمُسْلِمِينَ عَلَى وَجْهِ الصِّلَةِ، وَإِمَّا أَنْ يَسْتَأْجِرَهُمَا أَهْلُ الْمَسْجِدِ عَلَى الْحُضُورِ مَعَهُمْ عِنْدَ حُلُولِ أَوْقَاتِ الصَّلَاةِ فَقَطْ مُدَّةً مُسَمَّاةً، فَإِذَا حَضَرَ تَعَيَّنَ الْأَذَانُ وَالْإِقَامَةُ عَلَى مَنْ يَقُومُ بِهِمَا.

the duty of performing the adhan and iqamah becomes binding upon the designated individual.

وَكَذَلِكَ لَا تَجُوزُ الْإِجَارَةُ عَلَى كُلِّ وَاجِبٍ تَعَيَّنَ عَلَى الْمَرْءِ مِنْ صَوْمٍ، أَوْ صَلَاةٍ، أَوْ حَجٍّ، أَوْ فَتْيًا، أَوْ غَيْرِ ذَلِكَ، وَلَا عَلَى مَعْصِيَةٍ أَصْلًا؛ لِأَنَّ كُلَّ ذَلِكَ أَكْلُ مَالٍ بِالْبَاطِلِ؛ لِأَنَّ الطَّاعَةَ الْمُفْتَرَضَةَ لَا بُدَّ لَهُ مِنْ عَمَلِهَا، وَالْمَعْصِيَةُ فَرْضٌ عَلَيْهِ اجْتِنَابُهَا فَأَخْذُ الْأُجْرَةِ عَلَى ذَلِكَ لَا وَجْهَ لَهُ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L20273 Similarly, it is impermissible to hire for any obligatory act incumbent upon a person—such as fasting, prayer, pilgrimage, issuing legal opinions (fatāwā), or other such obligations—nor for performing any sin whatsoever. This is because all such acts constitute wrongful consumption of wealth, for obligatory acts of obedience must necessarily be performed by the individual, and avoiding sins is an obligation upon them. Accepting payment for these matters has no valid justification, rendering it wrongful consumption of wealth.

وَكَذَلِكَ تَطَوُّعُ الْمَرْءِ عَنْ نَفْسِهِ لَا يَجُوزُ أَيْضًا اشْتِرَاطُ أَخْذِ مَالٍ عَلَيْهِ؛ لِأَنَّهُ يَكُونُ حِينَئِذٍ لِغَيْرِ اللَّهِ تَعَالَى.

L20274 Similarly, it is also impermissible to stipulate receiving payment for a person's voluntary devotional act, for this would render the act directed toward other than Allah the Exalted.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ - هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ - عَنْ الْحَسَنِ عَنْ عُثْمَانَ بْنِ أَبِي الْعَاصِ قَالَ: «كَانَ آخِرُ مَا عَهِدَ إلَيَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا أَتَّخِذَ مُؤَذِّنًا يَأْخُذُ عَلَى أَذَانِهِ أَجْرًا» .

L20275 It was narrated to us through the chain of transmission of Ibn Abī Shaybah: Ḥafṣ ibn Ghiyāth narrated to us from Ashʿath—Ibn ʿAbd al-Malik al-Ḥumrānī—from al-Ḥasan from ʿUthmān ibn Abī al-ʿĀṣ, who said: "The final injunction the Prophet (peace be upon him) entrusted to me was that I must never appoint a *muʾadhdhin* who takes wages for his *adhān*."

[مَسْأَلَةٌ لِلْمَرْءِ أَنْ يَأْخُذَ الْأُجْرَةَ عَلَى أَدَاءِ شَيْءٍ عَنْ غَيْرِهِ]

The issue of a person receiving a wage for performing an act on behalf of another.

١٣٠٣ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمَرْءِ أَنْ يَأْخُذَ الْأُجْرَةَ عَلَى فِعْلِ ذَلِكَ عَنْ غَيْرِهِ، مِثْلَ أَنْ يَحُجَّ عَنْهُ التَّطَوُّعَ، أَوْ يُصَلِّيَ عَنْهُ التَّطَوُّعَ، أَوْ يُؤَذِّنَ عَنْهُ التَّطَوُّعَ أَوْ يَصُومَ عَنْهُ التَّطَوُّعَ لِأَنَّ كُلَّ ذَلِكَ لَيْسَ وَاجِبًا عَلَى أَحَدِهِمَا وَلَا عَلَيْهِمَا، فَالْعَامِلُ يَعْمَلُهُ عَنْ غَيْرِهِ لَا عَنْ نَفْسِهِ فَلَمْ يُطِعْ وَلَا عَصَى، وَأَمَّا الْمُسْتَأْجِرُ فَأَنْفَقَ مَالَهُ فِي ذَلِكَ تَطَوُّعًا لِلَّهِ تَعَالَى، فَلَهُ أَجْرُ مَا اكْتَسَبَ بِمَالِهِ.

L20277–20279 1303 – Issue: It is permissible for a person to charge a fee for performing such an act on behalf of another, such as... One may perform supererogatory Hajj on his behalf, pray supererogatory prayers on his behalf, perform the call to prayer on his behalf voluntarily, or observe supererogatory fasting on his behalf, as none of these acts are obligatory upon either of them individually nor upon both collectively. The performer thereby acts for another rather than himself, thus neither fulfilling an obligation nor disobeying a command. As for the employer, he spends his wealth in this as a voluntary act for Allah the Exalted, thereby receiving the reward for what he sought through his wealth.

[مَسْأَلَةٌ الْإِجَارَةُ فِي أَدَاءِ فَرْضٍ]

The Jurisprudential Case of the Hire Contract Regarding

the Fulfillment of a Religious Obligation.

L20281 1304. Issue: It is not permissible to hire someone to perform an obligatory duty of that nature except on behalf of one who is incapable or deceased, due to the scriptural evidence we cited in the "Book of Hajj" and the "Book of Fasting" regarding this matter. It is permissible for a person to perform it on behalf of another. Therefore, hiring someone for that purpose is permissible because there is no prohibition against it, and it falls under the general command of the Prophet—peace be upon him—regarding hiring for compensation.

١٣٠٤ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ فِي أَدَاءِ فَرْضٍ مِنْ ذَلِكَ إلَّا عَنْ عَاجِزٍ، أَوْ مَيِّتٍ لِمَا ذَكَرْنَا فِي " كِتَابِ الْحَجِّ " " وَكِتَابِ الصِّيَامِ " مِنْ النُّصُوصِ فِي ذَلِكَ وَجَوَازِ أَنْ يَعْمَلَهُ الْمَرْءُ عَنْ غَيْرِهِ فَالِاسْتِئْجَارُ فِي ذَلِكَ جَائِزٌ لِأَنَّهُ لَمْ يَأْتِ عَنْهُ نَهْيٌ، فَهُوَ دَاخِلٌ فِي عُمُومِ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

L20282 As for the obligatory prayer forgotten unintentionally, the prayer of one who slept through it, and the vowed prayer – these remain binding upon a person until the time of his death. These prayers are performed on behalf of the deceased, and it is permissible to hire someone to perform them on his behalf. As for one who deliberately abandons a prayer, he is not obligated to perform it, being incapable of performing it since its time has elapsed. Therefore, it is impermissible to perform on his behalf that which he was not commanded to fulfill. And with Allah the Exalted lies all success.

وَأَمَّا الصَّلَاةُ الْمَنْسِيَّةُ، وَالْمَنُومُ عَنْهَا، وَالْمَنْذُورَةُ فَهِيَ لَازِمَةٌ لِلْمَرْءِ إلَى حِينِ مَوْتِهِ فَهَذِهِ تُؤَدَّى عَنْ الْمَيِّتِ، فَالْإِجَارَةُ فِي أَدَائِهَا عَنْهُ جَائِزَةٌ، وَأَمَّا الْمُتَعَمِّدُ تَرْكَهَا فَلَيْسَ عَلَيْهِ أَنْ يُصَلِّيَهَا، إذْ لَيْسَ قَادِرًا عَلَيْهَا، إذْ قَدْ فَاتَتْ، فَلَا يَجُوزُ أَنْ يُؤَدَّى عَنْهُ مَا لَيْسَ هُوَ مَأْمُورًا بِأَدَائِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue concerning the contractual hiring for wailing and soothsaying.

[مَسْأَلَةُ الْإِجَارَةُ عَلَى النَّوْحِ وَالْكِهَانَةِ]

L20284 1305. Issue: It is not permissible to contract someone for wailing or soothsaying, as both are divinely prohibited acts. It is unlawful to perform them or facilitate their performance. Therefore, contracting for such acts or providing compensation for them is sinful and constitutes cooperation in wrongdoing and aggression.

١٣٠٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ عَلَى النَّوْحِ، وَلَا عَلَى الْكِهَانَةِ، لِأَنَّهُمَا مَعْصِيَتَانِ مَنْهِيٌّ عَنْهُمَا لَا يَحِلُّ فِعْلُهُمَا وَلَا الْعَوْنُ عَلَيْهِمَا فَالْإِجَارَةُ عَلَى ذَلِكَ، أَوْ الْعَطَاءُ عَلَيْهِ مَعْصِيَةٌ، وَتَعَاوُنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ.

A legal issue concerning the lease for cupping.

[مَسْأَلَةُ الْإِجَارَةُ عَلَى الْحِجَامَةِ]

L20286 Issue: It is not permissible to hire someone for cupping. However, he may be given payment as voluntary compensation, and he may request it. If the payer consents, then it is acceptable; otherwise, his work is assessed after its completion—not before that—and he is given equivalent compensation.

١٣٠٦ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ عَلَى الْحِجَامَةِ، وَلَكِنْ يُعْطَى عَلَى سَبِيلِ طِيبِ النَّفْسِ وَلَهُ طَلَبُ ذَلِكَ، فَإِنْ رَضِيَ وَإِلَّا قُدِّرَ عَمَلُهُ بَعْدَ تَمَامِهِ لَا قَبْلَ ذَلِكَ وَأُعْطِيَ مَا يُسَاوِي.

L20287 Similarly, leasing a male animal for breeding is fundamentally impermissible,

whether for a single mating or a specified number of matings. If the contract is until the female conceives, this makes it even more prohibited, invalid, and tantamount to consuming ill-gotten wealth, due to what we have narrated through the chain of Shuʿbah from al-Mughīrah ibn Miqsam, who said: I heard Ibn Abī Nuʿm say: I heard Abū Hurayrah say: "The Messenger of Allah—peace and blessings be upon him—prohibited the cupper's fee, the selling price of a dog, and the semen of the male animal."

وَكَذَلِكَ لَا تَحِلُّ الْإِجَارَةُ عَلَى إِنْزَاءِ الْفَحْلِ أَصْلًا، لَا نَزْوَةً وَلَا نَزَوَاتٍ مَعْلُومَةً، فَإِنْ كَانَ الْعَقْدُ إِلَى أَنْ تَحْمِلَ الْأُنْثَى كَانَ ذَلِكَ أَبْلَغَ فِي الْحَرَامِ وَالْبَاطِلِ وَأَكْلِ السُّحْتِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ قَالَ: سَمِعْت ابْنَ أَبِي نُعْمٍ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كَسْبِ الْحَجَّامِ وَثَمَنِ الْكَلْبِ وَعَسْبِ الْفَحْلِ» .

L20288–20290 We have been narrated through many well-authenticated chains from the Messenger of Allah the prohibition concerning payment for animal breeding and the cupper's earnings. Abu Hanifah, al-Shafi'i, Ahmad, and Abu Sulayman maintained that it is impermissible to lease a stud animal for its mating service.

وَرُوِّينَا النَّهْيَ عَنْ عَسْبِ الْفَحْلِ، وَكَسْبِ الْحَجَّامِ مِنْ طُرُقٍ كَثِيرَةٍ ثَابِتَةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ: لَا تَجُوزُ الْإِجَارَةُ عَلَى ضِرَابِ الْفَحْلِ.

L20291 And it has been narrated to us through the chain of ʿAbd al-Raḥmān ibn Mahdī, who narrated to us from Sufyān al-Thawrī, from Shawdhab Abi Muʿādh, who said: Al-Barāʾ ibn ʿĀẓib said to me: "The stud fee is not lawful."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ شَوْذَبٍ أَبِي مُعَاذٍ قَالَ: قَالَ لِي الْبَرَاءُ بْنُ عَازِبٍ: لَا يَحِلُّ عَسْبُ الْفَحْلِ.

L20292 From the narration of al-A'mash through 'Ata ibn Abi Rabah, who said: Abu Hurairah stated, "Four things are unlawful earnings: the fee for leasing a stallion (for breeding), the price of a dog, the mahr of prostitution, and the earnings of a cupper."

وَمِنْ طَرِيقِ الْأَعْمَشِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: قَالَ أَبُو هُرَيْرَةَ «أَرْبَعٌ مِنْ السُّحْتِ، ضِرَابُ الْفَحْلِ، وَثَمَنُ الْكَلْبِ، وَمَهْرُ الْبَغِيِّ، وَكَسْبُ الْحَجَّامِ» .

L20293 'Aṭā' said: Do not compensate him for bringing the stud animal [to mate] unless you cannot find anyone to bring a stud animal to mate yours, and this is the view of Qatādah.

وَقَالَ عَطَاءٌ: لَا تُعْطِهِ عَلَى طِرَاقِ الْفَحْلِ أَجْرًا إلَّا أَنْ لَا تَجِدَ مَنْ يَطْرُقُك وَهُوَ قَوْلُ قَتَادَةَ.

L20294 Abu Muhammad said: Malik permitted charging a fee for the stud's mating for a specified number of matings—and we find no valid evidence in their favor whatsoever, neither textual nor inferential.

قَالَ أَبُو مُحَمَّدٍ وَأَبَاحَ مَالِكٌ الْأُجْرَةَ عَلَى ضِرَابِ الْفَحْلِ كُرَاتٍ مُسَمَّاةً - وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، لَا مِنْ نَصٍّ وَلَا مِنْ نَظَرٍ.

L20295 They narrated a corrupt, fabricated narration through the chain of Abd al-Malik ibn Habib—who is rejected—from Talq ibn al-Samh, and it is not known who he is. From Abd al-Jabbar ibn Umar—who is weak—that Rabi'ah

permitted that. And he mentioned it from Aqil ibn Abi Talib, that he had a male goat which he rented out for breeding purposes.

وَرَوَوْا رِوَايَةً فَاسِدَةً مَوْضُوعَةً مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ - وَهُوَ هَالِكٌ - عَنْ طَلْقِ بْنِ السَّمْحِ وَلَا يُدْرَى مَنْ هُوَ؟ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ - وَهُوَ ضَعِيفٌ -: أَنَّ رَبِيعَةَ أَبَاحَ ذَلِكَ - وَذَكَرَهُ عَنْ عَقِيلِ بْنِ أَبِي طَالِبٍ: أَنَّهُ كَانَ لَهُ تَيْسٌ يُنْزِيه بِالْأُجْرَةِ.

L20296 Abu Muhammad said: Allah has exalted the status of ʿAqīl in his lineage and the loftiness of his status from being a goatherd who takes wages for herding upon his goat-herding staff.

قَالَ أَبُو مُحَمَّدٍ: قَدْ أَجَلَّ اللَّهُ قَدْرَ عَقِيلٌ فِي نَسَبِهِ وَعُلُوِّ قَدْرِهِ عَنْ أَنْ يَكُونَ تَيَّاسًا يَأْخُذُ الْأُجْرَةَ عَلَى قَضِيبِ تَيْسِهِ.

L20297 As for the cupper's fee, we have mentioned the prohibition narrated from Abū Hurayrah—and it was also narrated from ʿUthmān, the Commander of the Believers—and from other Companions—may Allah be pleased with them.

وَأَمَّا أُجْرَةُ الْحَجَّامِ فَقَدْ ذَكَرْنَا عَنْ أَبِي هُرَيْرَةَ تَحْرِيمَهَا - وَرُوِيَ عَنْ عُثْمَانَ أَمِيرِ الْمُؤْمِنِينَ أَيْضًا - وَعَنْ غَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L20298–20299 It has been narrated to us from Ibn Abbas that his earning is permissible.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ إبَاحَةَ كَسْبِهِ.

L20300 Those who permitted it cited as evidence what we have reported through the chain of Shuʿbah from Ḥumayd al-Ṭawīl from Anas, who said: "The Prophet - peace and blessings be upon him - summoned a young boy and had him cupped. He then ordered that he be given a ṣāʿ or two, spoke on his behalf, and so his land tax (kharāj) was reduced."

وَاحْتَجَّ مَنْ أَبَاحَهُ بِمَا رُوِّينَا عَنْ طَرِيقِ شُعْبَةَ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ قَالَ: «دَعَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غُلَامًا فَحَجَمَهُ فَأَمَرَ لَهُ بِصَاعٍ أَوْ صَاعَيْنِ، وَكَلَّمَ فِيهِ فَخَفَّفَ مِنْ خَرَاجِهِ» .

L20301 Abu Muhammad said: The application of both narrations is obligatory. We found that the Prophet—peace and blessings of Allah be upon him—gave him without prior stipulation, thus stipulation is impermissible. Moreover, it is an unknown action, and there is no disagreement that that hadith is not to be taken according to its apparent meaning, for it contains a complete prohibition against a cupper's earnings. Yet he may earn from inheritance, a share of war spoils, an estate, trade, and all of that is unquestionably permissible for him.

قَالَ أَبُو مُحَمَّدٍ: فَاسْتِعْمَالُ الْخَبَرَيْنِ وَاجِبٌ فَوَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ عَنْ غَيْرِ مُشَارَطَةٍ فَكَانَتْ مُشَارَطَتُهُ لَا تَجُوزُ، وَلِأَنَّهُ أَيْضًا عَمَلٌ مَجْهُولٌ، وَلَا خِلَافَ فِي أَنَّ ذَلِكَ الْحَدِيثَ لَيْسَ عَلَى ظَاهِرِهِ، لِأَنَّ فِيهِ النَّهْيَ عَنْ كَسْبِ الْحَجَّامِ جُمْلَةً وَقَدْ يَكْسِبُ مِنْ مِيرَاثٍ، أَوْ مِنْ سَهْمٍ مِنْ الْمَغْنَمِ، وَمِنْ ضَيْعَةٍ، وَمِنْ تِجَارَةٍ، وَكُلُّ ذَلِكَ مُبَاحٌ لَهُ بِلَا شَكٍّ.

L20302 There is no disagreement whatsoever that cupping has never been prohibited. A person must necessarily have a means of livelihood to sustain himself, otherwise he would perish in destitution. Thus, it is established that his earn-

ing specifically through cupping is the forbidden act. Therefore, an exception must be made for the practice of Allah's Messenger—peace and blessings be upon him—from this ruling, thus rendering it lawful and virtuous, while all other instances remain forbidden. As we have been narrated through Ibn Abī Shaybah's chain: Waki' narrated to us, [who heard] from Ma'mar ibn Sālim, from Abū Ja'far (who is Ibn Muḥammad ibn 'Alī ibn al-Ḥusayn) who said: "There is no issue if a man undergoes cupping without charging a fee." This is the opinion of Abū Sulaymān and our companions.

وَلَمْ تَحْرُمُ الْحِجَامَةُ قَطُّ بِلَا خِلَافٍ وَلَا بُدَّ لَهُ مِنْ كَسْبٍ يَعِيشُ مِنْهُ، وَإِلَّا مَاتَ ضَيَاعًا، فَصَحَّ أَنَّ كَسْبَهُ بِالْحِجَامَةِ خَاصَّةً هُوَ الْمَنْهِيُّ عَنْهُ فَوَجَبَ أَنْ يُسْتَثْنَى مِنْ ذَلِكَ فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَكُونُ حَلَالًا حَسَنًا وَيَكُونُ مَا عَدَاهُ حَرَامًا - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا مَعْمَرُ بْنُ سَالِمٍ عَنْ أَبِي جَعْفَرٍ - هُوَ ابْنُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ - قَالَ: لَا بَأْسَ بِأَنْ يَحْتَجِمَ الرَّجُلُ وَلَا يُشَارِطَ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L20303 **Issue: Contracting for teaching the Quran and for teaching knowledge.**

[مَسْأَلَةٌ الْإِجَارَةُ عَلَى تَعْلِيمِ الْقُرْآنِ وَعَلَى تَعْلِيمِ الْعِلْمِ]

L20304 1307 - Issue: Hiring is permissible for teaching the Quran, teaching knowledge through monthly wages or lump sums, and all such arrangements are valid. This includes performing ruqya, copying Qurans, and copying books of knowledge, as no textual prohibition exists regarding these matters—rather, permissibility has been established. As transmitted through Bukhārī's chain: Abū Muḥammad Saydān ibn Muḍārib al-Bāhilī narrated to us: Abū Ma'shar al-Barā'—Yūsuf ibn Yazīd, who is trustworthy—reported to me: 'Ubaydullāh ibn al-Akhnas Abū Mālik narrated from Ibn Abī Mulaykah from Ibn 'Abbās: "A group of the companions of the Messenger of Allah (صلى الله عليه وسلم) passed by a watering place where there was a man who had been stung [by a scorpion] or [a man named] Salīm. A man from the locals approached them and asked, 'Is there among you a healer? There is a stung man or Salīm at the water.' One of them went and recited al-Fātiḥah in return for a sheep, and the man recovered. He brought the sheep to his companions, but they disapproved, saying, 'You took payment for reciting Allah's Book!' When they arrived in Medina, they asked, 'O Messenger of Allah, he took payment for Allah's Book!' The Messenger of Allah (صلى الله عليه وسلم) replied, 'The most deserving thing for which you may take payment is indeed the Book of Allah.'"

١٣٠٧ - مَسْأَلَةٌ: وَالْإِجَارَةُ جَائِزَةٌ عَلَى تَعْلِيمِ الْقُرْآنِ، وَعَلَى تَعْلِيمِ الْعِلْمِ مُشَاهَرَةً وَجُمْلَةً، وَكُلُّ ذَلِكَ جَائِزٌ - وَعَلَى الرُّقْيِ، وَعَلَى نَسْخِ الْمَصَاحِفِ، وَنَسْخِ كُتُبِ الْعِلْمِ؛ لِأَنَّهُ لَمْ يَأْتِ فِي النَّهْيِ عَنْ ذَلِكَ نَصٌّ، بَلْ قَدْ جَاءَتْ الْإِبَاحَةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو مُحَمَّدٍ سَيْدَانُ بْنُ مُضَارِبٍ الْبَاهِلِيُّ نا أَبُو مَعْشَرٍ الْبَرَاءُ هُوَ صَدُوقٌ يُوسُفُ بْنُ يَزِيدَ حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ الْأَخْنَسِ أَبُو مَالِكٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ نَفَرًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرُّوا بِمَاءٍ فِيهِمْ لَدِيغٌ أَوْ سَلِيمٌ فَعَرَضَ لَهُمْ رَجُلٌ مِنْ أَهْلِ الْمَاءِ فَقَالَ: هَلْ فِيكُمْ مِنْ رَاقٍ؟ إنَّ فِي الْمَاءِ رَجُلًا لَدِيغًا أَوْ سَلِيمًا فَانْطَلَقَ رَجُلٌ مِنْهُمْ فَقَرَأَ بِفَاتِحَةِ الْكِتَابِ عَلَى شَاءٍ فَبَرَأَ فَجَاءَ بِالشَّاءِ إلَى أَصْحَابِهِ فَكَرِهُوا ذَلِكَ وَقَالُوا: أَخَذْتَ عَلَى كِتَابِ اللَّهِ أَجْرًا حَتَّى قَدِمُوا الْمَدِينَةَ فَقَالُوا: يَا رَسُولَ اللَّهِ أَخَذَ عَلَى كِتَابِ اللَّهِ أَجْرًا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ أَحَقَّ مَا أَخَذْتُمْ عَلَيْهِ أَجْرًا كِتَابُ اللَّهِ» .

وَالْخَبَرُ الْمَشْهُورُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَ امْرَأَةً مِنْ رَجُلٍ بِمَا مَعَهُ مِنْ الْقُرْآنِ» أَيْ لِيُعَلِّمَهَا إيَّاهُ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L20305–20306 The widely transmitted report states that "the Messenger of Allah (peace and blessings be upon him) contracted the marriage of a woman to a man as a dowry for what he had of the Quran," meaning that he would teach it to her. This is the position of Mālik, al-Shāfiʿī, and Abū Sulaymān.

وَقَالَ أَبُو حَنِيفَةَ، وَالْحَسَنُ بْنُ حَيٍّ: لَا تَجُوزُ الْأُجْرَةُ عَلَى تَعْلِيمِ الْقُرْآنِ، وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا عَبْدُ اللَّهِ بْنُ رَوْحٍ نا شَبَابَةُ - هُوَ ابْنُ وَرْقَاءَ - نا أَبُو زَيْدٍ عَبْدُ اللَّهِ بْنُ الْعَلَاءِ الشَّامِيُّ نا بِشْرُ بْنُ عُبَيْدِ اللَّهِ عَنْ أَبِي إدْرِيسَ الْخَوْلَانِيِّ قَالَ: «كَانَ عِنْدَ أُبَيِّ بْنِ كَعْبٍ نَاسٌ يُقْرِئُهُمْ مِنْ أَهْلِ الْيَمَنِ فَأَعْطَاهُ أَحَدُهُمْ قَوْسًا يَتَسَلَّحُهَا فِي سَبِيلِ اللَّهِ تَعَالَى فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَتُحِبُّ أَنْ تَأْتِيَ بِهَا فِي عُنُقِكَ يَوْمَ الْقِيَامَةِ نَارًا» .

L20307 Abu Hanifah and al-Hasan ibn Ḥayy said: It is not permissible to receive payment for teaching the Quran. Their adherents cited a report we narrated via Qasim ibn Asbagh: 'Abdullah ibn Rawḥ reported from Shababah ibn Warqa', who reported from Abu Zayd 'Abdullah ibn al-'Ala' al-Shami, who reported from Bishr ibn 'Ubaydullah, from Abu Idris al-Khawlani, who said: "Some Yemeni men were with Ubayy ibn Ka'b learning the Quran. One of them gave him a bow to arm himself with in the cause of Allah Almighty. The Messenger of Allah—peace and blessings be upon him—said: 'Would you like to come on the Day of Resurrection with it around your neck as fire?'"

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ، وَحُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الرُّؤَاسِيِّ عَنْ الْمُغِيرَةِ بْنِ زِيَادٍ الْمَوْصِلِيِّ عَنْ عُبَادَةَ بْنِ نُسَيٍّ قَاضِي الْأُرْدُنِّ عَنْ الْأَسْوَدِ بْنِ ثَعْلَبَةَ عَنْ عُبَادَةَ بْنِ الصَّامِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قِصَّةُ الْقَوْسِ وَأَيْضًا مِنْ طَرِيقِ أَبِي دَاوُد عَنْ عَمْرِو بْنِ عُثْمَانَ نا بَقِيَّةُ نا بِشْرُ بْنُ عَبْدِ اللَّهِ بْنِ يَسَارٍ عَنْ عُبَادَةَ بْنِ نُسَيٍّ عَنْ جُنَادَةَ بْنِ أَبِي أُمَيَّةَ عَنْ عُبَادَةَ بْنِ الصَّامِتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ.

L20308 It was narrated to us also through the chain of Ibn Abi Shaybah from Wakiʿ, and through the chain of Humayd ibn ʿAbd al-Rahman al-Ruʾāsī from al-Mughirah ibn Ziyad al-Mawṣilī from ʿUbadah ibn Nusayy, judge of al-Urdun, from al-Aswad ibn Thaʿlabah from ʿUbadah ibn al-Ṣamit from the Messenger of Allah—may Allah's peace and blessings be upon him—regarding the story of the bow. Additionally, it was narrated through the chain of Abu Dawud from ʿAmr ibn ʿUthman, from Baqiyyah, from Bishr ibn ʿAbd Allah ibn Yasar, from ʿUbadah ibn Nusayy, from Junadah ibn Abi Umayyah, from ʿUbadah ibn al-Ṣamit, from the Prophet—may Allah's peace and blessings be upon him—with the same narration.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عَبْدِ رَبِّهِ بْنِ سُلَيْمَانَ بْنِ عُمَيْرِ بْنِ زَيْتُونٍ عَنْ الطُّفَيْلِ بْنِ عَمْرٍو عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ عَرَضَ لَهُ ذَلِكَ فِي الْقَوْسِ مَعَ أُبَيِّ بْنِ كَعْبٍ وَفِيهِ زِيَادَةٌ: «أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ إنَّا نَأْكُلُ

L20309 And through the narration of Sa'īd ibn Manṣūr from Ismāʿīl ibn ʿAyyāsh from ʿAbd Rabbihi ibn Sulaymān ibn ʿUmayr ibn Zaytūn from al-Ṭufayl ibn ʿAmr from the Messenger of Allah—peace and blessings of Allah be upon him—that this matter regarding the bow was presented to him along with Ubayy ibn Kaʿb, and it contains an addition: "He said: 'O Messenger of Allah, indeed we eat from their food.' He said: 'As for food prepared for someone other than you that you attend, there is no harm in eating it. But as for

what is prepared specifically for you, if you eat it, you are only consuming it against your own principles.”’

مِنْ طَعَامِهِمْ. قَالَ: أَمَّا طَعَامٌ صُنِعَ لِغَيْرِكَ فَحَضَرْتَهُ فَلَا بَأْسَ أَنْ تَأْكُلَهُ وَأَمَّا مَا صُنِعَ لَكَ فَإِنْ أَكَلْتَهُ فَإِنَّمَا تَأْكُلُهُ بِخِلَافِكَ» .

L20310 Through the chain of Ibn Abi Shaybah: Muhammad ibn Maysar Abu Sa‘d narrated to us from Musa ibn ‘Ali ibn Rabah from his father: “A man who used to teach Ubayy ibn Ka‘b the Quran hosted him for a meal. The Messenger of Allah, peace and blessings be upon him, said to him: ’If it is something he gifted you, there is no good in it. But if it is from his own food or his family’s food, there is no harm.”’

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ مَيْسَرٍ أَبُو سَعْدٍ عَنْ مُوسَى بْنِ عَلِيِّ بْنِ رَبَاحٍ عَنْ أَبِيهِ «أَنَّ أُبَيَّ بْنَ كَعْبٍ غَدَّاهُ رَجُلٌ كَانَ يُقْرِئُهُ الْقُرْآنَ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنْ كَانَ شَيْءٌ يُتْحِفُكَ بِهِ فَلَا خَيْرَ فِيهِ، وَإِنْ كَانَ مِنْ طَعَامِهِ وَطَعَامِ أَهْلِهِ فَلَا بَأْسَ» .

L20311–20312 Through the chain of Ibn Abi Shaybah: Affān ibn Muslim narrated to us, Abān ibn Yazīd al-ʿAṭṭār narrated to us, Yaḥyā ibn Abī Kathīr related to me from Zayd—who is the son of Abī Sallām—from Abī Sallām—who is Mamṭūr al-Ḥabashī—from Abī Rāshid al-Ḥubrānī from ʿAbd al-Raḥmān ibn Shibl: I heard the Messenger of Allah—peace and blessings be upon him—say: “Learn the Quran, do not be haughty over it, do not neglect it, do not use it as a means to gain wealth, do not grow arrogant by it, and do not seek abundance through it.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَفَّانُ بْنُ مُسْلِمٍ نا أَبَانُ بْنُ يَزِيدَ الْعَطَّارُ حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ زَيْدٍ - هُوَ ابْنُ أَبِي سَلَّامٍ - عَنْ أَبِي سَلَّامٍ - هُوَ مَمْطُورٌ الْحَبَشِيُّ - عَنْ أَبِي رَاشِدٍ الْحُبْرَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «تَعَلَّمُوا الْقُرْآنَ وَلَا تَعْلُوا عَنْهُ وَلَا تَجْفُوا فِيهِ وَلَا تَأْكُلُوا بِهِ وَلَا تَسْتَكْبِرُوا بِهِ وَلَا تَسْتَكْثِرُوا بِهِ» .

L20313 We have narrated it from ʿAwf ibn Mālik in a statement similar to this one, where he said regarding a bow gifted by someone to his Quran teacher: “Do you intend to hang a bow from fire?” It is authentically reported that when the commander gave ʿAbdullāh ibn Mughaffal money for leading people in Tarawih prayers during Ramadan, he refused and said: “We do not take payment for the Quran.”

وَرُوِّينَاهُ عَنْ عَوْفِ بْنِ مَالِكٍ مِنْ قَوْلِهِ مِثْلَ هَذَا أَنَّهُ قَالَ فِي قَوْسٍ أَهْدَاهَا إنْسَانٌ إلَى مَنْ كَانَ يُقْرِئُهُ أَتُرِيدُ أَنْ تُعَلِّقَ قَوْسًا مِنْ نَارٍ ". وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ أَنَّهُ أَعْطَاهُ الْأَمِيرُ مَالًا لِقِيَامِهِ بِالنَّاسِ فِي رَمَضَانَ فَأَبَى وَقَالَ: إنَّا لَا نَأْخُذُ لِلْقُرْآنِ أَجْرًا.

L20314 And through the chain of Sa‘īd ibn Manṣūr, narrated to us by Khālid ibn ‘Abdullāh—he is al-Ṭaḥḥān—from Sa‘īd ibn Iyās al-Jurayrī, from ‘Abdullāh ibn Shaqīq, who said: The Companions of the Messenger of Allah—peace and blessings be upon him—disliked selling copies of the Qur’an and teaching boys for payment, and they considered such acts gravely impermissible.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدُ بْنُ عَبْدِ اللَّهِ - هُوَ الطَّحَّانُ - عَنْ سَعِيدِ بْنِ إيَاسٍ الْجُرَيْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَكْرَهُونَ بَيْعَ الْمَصَاحِفِ وَتَعْلِيمِ الْغِلْمَانِ بِالْأَرْشِ وَيُعَظِّمُونَ ذَلِكَ.

L20315 It has been authentically reported from Ibrāhīm that he disliked the teacher stipulating a condition or accepting remuneration for teaching the Qur’ān.

وَصَحَّ عَنْ إبْرَاهِيمَ أَنَّهُ كَرِهَ أَنْ يَشْتَرِطَ الْمُعَلِّمُ وَأَنْ يَأْخُذَ أَجْرًا عَلَى تَعْلِيمِ الْقُرْآنِ.

L20316 From the transmission of Shuʿbah and Sufyān, both of whom narrated from Abū Isḥāq al-Shaybānī from Usayr ibn ʿAmr, Shuʿbah said in his narration: "'Ammār ibn Yāsir gave a stipend to a group who recited the Qur'ān in Ramadan. When this reached ʿUmar, he disapproved of it." Sufyān said in his narration: "Saʿd ibn Abī Waqqāṣ declared: 'Whoever recites the Qur'ān, I will grant him two thousand.' ʿUmar responded: 'Should monetary compensation be given for the Book of Allah?'"

وَمِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ، كِلَاهُمَا عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ أُسَيْرِ بْنِ عَمْرٍو قَالَ شُعْبَةُ فِي رِوَايَتِهِ: إِنَّ عَمَّارَ بْنَ يَاسِرٍ أَعْطَى قَوْمًا قَرَءُوا الْقُرْآنَ فِي رَمَضَانَ فَبَلَغَ ذَلِكَ عُمَرَ فَكَرِهَهُ - وَقَالَ سُفْيَانُ فِي رِوَايَتِهِ: إِنَّ سَعْدَ بْنَ أَبِي وَقَّاصٍ قَالَ: مَنْ قَرَأَ الْقُرْآنَ أَلْحَقْته عَلَى أَلْفَيْنِ. فَقَالَ عُمَرُ أَوَ يُعْطَى عَلَى كِتَابِ اللَّهِ ثَمَنًا؟ .

L20317 It is authentically established from Abdullah ibn Yazid and Shuraih: "Do not take a price for the Book of Allah."

وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ، وَشُرَيْحٍ: لَا تَأْخُذْ لِكِتَابِ اللَّهِ ثَمَنًا.

L20318 And through the chain of Hammad ibn Salamah from Abdullah ibn Uthman al-Qurashi from Bilal ibn Sa'd al-Dimashqi from al-Dahhak ibn Qays that he said to a mu'adhdhin who teaches the Book of Allah: "I hate you for Allah's sake because you use melody in your call to prayer and take payment for the Book of Allah."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ عُثْمَانَ الْقُرَشِيِّ عَنْ بِلَالِ بْنِ سَعْدٍ الدِّمَشْقِيِّ عَنْ الضَّحَّاكِ بْنِ قَيْسٍ أَنَّهُ قَالَ لِمُؤَذِّنٍ مُعَلِّمٍ كِتَابَ اللَّهِ: إنِّي لَأُبْغِضُك فِي اللَّهِ لِأَنَّك تَتَغَنَّى فِي أَذَانِك وَتَأْخُذُ لِكِتَابِ اللَّهِ أَجْرًا.

L20319 Ibn Sīrīn disliked charging fees for copying the Mushafs. It is reported that ʿAlqamah also disliked this.

وَكَرِهَ ابْنُ سِيرِينَ الْأُجْرَةَ عَلَى كِتَابَةِ الْمَصَاحِفِ. وَعَنْ عَلْقَمَةَ أَنَّهُ كَرِهَ ذَلِكَ أَيْضًا.

L20320 Abu Muhammad said: This is all that they cited as proof.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ.

L20321 We have now cited on the authority of Saʿd and ʿAmmār that they gave in exchange for the recitation of the Quran.

وَقَدْ ذَكَرْنَا عَنْ سَعْدٍ، وَعَمَّارٍ الْآنَ أَنَّهُمَا أَعْطَيَا عَلَى قِرَاءَةِ الْقُرْآنِ.

L20322–20323 It was narrated to us via the chain of Ibn Abi Shaybah, from Sadaqat al-Dimashqi, from al-Waḍīn ibn ʿAṭāʾ, who said: There were three teachers in Medina who taught children. ʿUmar ibn al-Khaṭṭāb would grant each of them fifteen [dirhams] every month.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ صَدَقَةَ الدِّمَشْقِيِّ عَنْ الْوَضِينِ بْنِ عَطَاءٍ قَالَ: كَانَ بِالْمَدِينَةِ ثَلَاثَةُ مُعَلِّمِينَ يُعَلِّمُونَ الصِّبْيَانَ، فَكَانَ عُمَرُ بْنُ الْخَطَّابِ يَرْزُقُ كُلَّ وَاحِدٍ مِنْهُمْ خَمْسَةَ عَشَرَ كُلَّ شَهْرٍ.

L20324 From the chain of Ibn Abi Shaybah: Waki' narrated to us; Mahdi ibn Maymun narrated to us from Ibn Sirin, who said: There was a teacher in Medina who instructed the sons of high-ranking nobles. They would honor his rightful dues during Nowruz and Mehregan.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا مَهْدِيُّ بْنُ مَيْمُونٍ عَنْ ابْنِ سِيرِينَ قَالَ: كَانَ بِالْمَدِينَةِ مُعَلِّمٌ عِنْدَهُ مِنْ أَبْنَاءِ أَوْلِيَاءِ الْفِخَامِ فَكَانُوا يَعْرِفُونَ حَقَّهُ فِي النَّيْرُوزِ وَالْمِهْرَجَانِ.

L20325 Abu Muhammad said: Muhammad ibn Sirin met the senior Companions

and learned from them, such as Ubayy ibn Kaʿb, Abu Qatadah, and those below them.

قَالَ أَبُو مُحَمَّد: مُحَمَّدُ بْنُ سِيرِينَ أَدْرَكَ أَكَابِرَ الصَّحَابَةِ، وَأَخَذَ عَنْهُمْ أُبَيّ بْنُ كَعْبٍ وَأَبُو قَتَادَةَ فَمَنْ دُونَهُمَا.

L20326 And through the chain of Ibn Abi Shaybah: Yazid ibn Harun narrated to us, Shuʿbah narrated to us from al-Hakam ibn ʿUtaybah, who said: "I know of no one who disapproved of the teacher's remuneration."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا شُعْبَةُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: مَا عَلِمْت أَحَدًا كَرِهَ أَجْرَ الْمُعَلِّمِ.

L20327 It has been authentically reported from ʿAṭāʾ and Abū Qilābah that it is permissible for a teacher to receive compensation for instructing in the Qurʾān.

وَصَحَّ عَنْ عَطَاءٍ، وَأَبِي قِلَابَةَ إبَاحَةَ أَجْرِ الْمُعَلِّمِ عَلَى تَعْلِيمِ الْقُرْآنِ.

L20328 Al-Ḥasan and ʿAlqamah—each in one of his two opinions—permitted charging a fee for copying the Qurʾan. Abū Muḥammad said: As for the hadiths concerning that from the Messenger of Allah (peace be upon him), none of them are authentic.

وَأَجَازَ الْحَسَنُ، وَعَلْقَمَةُ فِي أَحَدِ قَوْلَيْهِ الْأُجْرَةَ عَلَى نَسْخِ الْمَصَاحِفِ قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْأَحَادِيثُ فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَصِحُّ مِنْهَا شَيْءٌ.

L20329 As for the hadith narrated by Abu Idris al-Fulani from Ubayy ibn Kaʿb, it is disconnected (munqatiʿ), since no direct audition of Abu Idris with Ubayy is known to exist.

أَمَّا حَدِيثُ أَبِي إدْرِيسَ الْفُلَانِيِّ أَنَّ أُبَيَّ بْنَ كَعْبٍ فَمُنْقَطِعٌ، لَا يُعْرَفُ لِأَبِي إدْرِيسَ سَمَاعٌ مَعَ أُبَيٍّ.

L20330 The other narration is also disconnected because ʿAlī ibn Rabāḥ did not meet Ubayy ibn Kaʿb.

وَالْآخَرُ أَيْضًا مُنْقَطِعٌ؛ لِأَنَّ عَلِيَّ بْنَ رَبَاحٍ لَمْ يُدْرِكْ أُبَيَّ بْنَ كَعْبٍ.

L20331 As for the ḥadīth of ʿUbādah ibn al-Ṣāmit, one of its chains is from al-Aswad ibn Thaʿlabah—he is unknown (majhūl), and his status is undetermined, as stated by ʿAlī ibn al-Madīnī and others. The second chain is through Baqiyyah, and he is weak. The third is through Ismāʿīl ibn ʿAyyāsh, and he is weak; moreover, this chain is also disconnected.

وَأَمَّا حَدِيثُ عُبَادَةَ بْنِ الصَّامِتِ فَأَحَدُ طُرُقِهِ عَنْ الْأَسْوَدِ بْنِ ثَعْلَبَةَ وَهُوَ مَجْهُولٌ لَا يُدْرَى قَالَهُ عَلِيُّ بْنُ الْمَدِينِيِّ، وَغَيْرُهُ: وَالْآخَرُ مِنْ طَرِيقِ بَقِيَّةَ وَهُوَ ضَعِيفٌ. وَالثَّالِثُ مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ عَيَّاشٍ وَهُوَ ضَعِيفٌ؛ ثُمَّ هُوَ مُنْقَطِعٌ أَيْضًا.

L20332 As for the ḥadīth of ʿAbd al-Raḥmān ibn Shibl, it includes Abū Rāshid al-Ḥubrānī—a narrator of unknown status. Even if it were authentic, Abū Ḥanīfah and his companions would have opposed all these rulings, since they pertain solely to what was granted without compensation or prior agreement. Yet they permit this position while camouflaging it by citing ḥadīths containing none of what they prohibited—despite contradicting their content—thereby invalidating everything on this issue. The Companions (may Allah be pleased with them) differed in their views, leaving the two authentic narra-

وَأَمَّا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ فَفِيهِ أَبُو رَاشِدٍ الْحُبْرَانِيُّ وَهُوَ مَجْهُولٌ. ثُمَّ لَوْ صَحَّتْ لَكَانَتْ كُلُّهَا قَدْ خَالَفَهَا أَبُو حَنِيفَةَ وَأَصْحَابُهُ؛ لِأَنَّهَا كُلَّهَا إنَّمَا جَاءَتْ فِيمَا أُعْطِيَ بِغَيْرِ أُجْرَةٍ وَلَا مُشَارَطَةٍ، وَهُمْ يُجِيزُونَ هَذَا الْوَجْهَ فَمَوَّهُوا بِإِيرَادِ أَحَادِيثَ لَيْسَ فِيهَا شَيْءٌ مِمَّا مَنَعُوا - وَهُمْ مُخَالِفُونَ لِمَا فِيهَا - فَبَطَلَ كُلُّ مَا فِي هَذَا الْبَابِ، وَالصَّحَابَةُ - رَضِيَ

tions from the Messenger of Allah (which we presented) without opposition. And success is from Allah, the Exalted.

L20333–20334 **An issue regarding a lease contract (Ijarah) for trade over a specified period on a specified asset.**

L20335 Issue: Ijarah (hire contracts) are permissible for trade involving specified property for a specified duration, or as a lump sum arrangement—such as for services or agency (wakālah). They are also valid for conveying the response of a litigant (whether claimant or respondent), procuring evidence and bringing them to the judge, administering oaths, pursuing rights, and summoning those whose presence is legally required. All these are specific tasks that fall under the directive of the Messenger of Allah (peace and blessings be upon him) concerning Ijarah.

L20336 **The jurisprudential issue regarding the leader's contractual appointment of a public adjudicator among the people.**

L20337 1309 - Issue: The Amir's contract of hire for one who judges between the people on a monthly basis is permissible for the reasons we have stated.

L20338 **A legal issue concerning a physician's stipulation upon cure.**

L20339 Issue 1310: It is absolutely impermissible to stipulate a guarantee of recovery with a physician in any way, for healing lies solely in Allah's hands, not in anyone's control. The physician is only one who treats and strengthens the bodily constitution by applying what counteracts the disease, and they cannot ascertain the measure of the medicine's potency compared to the disease's potency. Thus, no one can effect healing except Allah the Exalted.

L20340 **A jurisprudential ruling on hiring a physician to provide services for a specified number of days.**

L20341 Issue 1311: It is permissible to hire a physician for the service of specified days, as it is a defined task. If he is given something upon recovery without

اللَّهُ عَنْهُمْ - قَدْ اخْتَلَفُوا، فَبَقِيَ الْأَثَرَانِ الصَّحِيحَانِ عَنْ رَسُولِ اللَّهِ اللَّذَانِ أَوْرَدْنَا لَا مُعَارِضَ لَهُمَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْإِجَارَةُ عَلَى التِّجَارَةِ مُدَّةً مُسَمَّاةً فِي مَالٍ مُسَمًّى]

مَسْأَلَةٌ: وَالْإِجَارَةُ جَائِزَةٌ عَلَى التِّجَارَةِ مُدَّةً مُسَمَّاةً فِي مَالٍ مُسَمًّى، أَوْ هَكَذَا جُمْلَةً: كَالْخِدْمَةِ، وَالْوَكَالَةِ. وَعَلَى نَقْلِ جَوَابِ الْمُخَاصِمِ طَالِبًا كَانَ أَوْ مَطْلُوبًا، وَعَلَى جَلْبِ الْبَيِّنَةِ وَحَمْلِهِمْ إلَى الْحَاكِمِ، وَعَلَى تَقَاضِي الْيَمِينِ، وَعَلَى طَلَبِ الْحُقُوقِ، وَعَلَى الْمَجِيءِ بِمَنْ وَجَبَ إحْضَارُهُ، لِأَنَّ هَذِهِ كُلَّهَا أَعْمَالٌ مَحْدُودَةٌ دَاخِلَةٌ تَحْتَ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

[مَسْأَلَةٌ إجَارَةُ الْأَمِيرِ مَنْ يَقْضِي بَيْنَ النَّاسِ مُشَاهَرَةً]

١٣٠٩ - مَسْأَلَةٌ: وَإِجَارَةُ الْأَمِيرِ مَنْ يَقْضِي بَيْنَ النَّاسِ مُشَاهَرَةً جَائِزَةٌ لِمَا ذَكَرْنَا.

[مَسْأَلَةٌ مُشَارَطَةُ الطَّبِيبِ عَلَى الْبُرْءِ]

١٣١٠ - مَسْأَلَةٌ: وَلَا تَجُوزُ مُشَارَطَةُ الطَّبِيبِ عَلَى الْبُرْءِ أَصْلًا لِأَنَّهُ بِيَدِ اللَّهِ تَعَالَى لَا بِيَدِ أَحَدٍ، وَإِنَّمَا الطَّبِيبُ مُعَالِجٌ وَمُقَوٍّ لِلطَّبِيعَةِ بِمَا يُقَابِلُ الدَّاءَ، وَلَا يَعْرِفُ كَمِّيَّةَ قُوَّةِ الدَّوَاءِ مِنْ كَمِّيَّةِ قُوَّةِ الدَّاءِ، فَالْبُرْءُ لَا يَقْدِرُ عَلَيْهِ إلَّا اللَّهُ تَعَالَى.

[مَسْأَلَةٌ اسْتِئْجَار الطَّبِيب لِخِدْمَةِ أَيَّامٍ مَعْلُومَةٍ]

condition, it is lawful, in accordance with the Prophet's command (peace be upon him) to accept what is given to one without having requested it.

A juristic question on the contract of hire for digging a well.

Issue 1312: It is not permissible at all to contract a lease for digging a well, whether the land's nature is known in terms of its soil composition or not. This is because solid rock, friable soft soil, and hard soil may emerge within it. This involves uncertain work, as water may lie deep in one spot and be near in an adjacent area.

This is only permissible in hiring for daily wage labor, where the employer employs the worker in digging a well, as it is a limited and known task that he undertakes as much as he is capable of; and by Allah, the Exalted, is success.

Legal Issue: Hiring a Builder and His Equipment

1313 - Issue: It is not permissible to stipulate that the person hired for sewing must provide the threads, nor that the copyist must provide the ink, nor that the builder must provide the clay or stone, or the plasterer [to do likewise], and similarly in all matters.

This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān, since it constitutes both a lease and a sale wherein one is stipulated alongside the other. This is prohibited for two reasons: first, it is a condition not stipulated in the Book of Allah, the Exalted, and is therefore invalid.

The second [point] is that it is an unknown sale and an unknown lease, where it is unclear what pertains to the sale or what pertains to the lease.

١٣١١ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ يُسْتَأْجَرَ الطَّبِيبُ لِخِدْمَةِ أَيَّامٍ مَعْلُومَةٍ، لِأَنَّهُ عَمَلٌ مَحْدُودٌ فَإِنْ أُعْطِيَ شَيْئًا عِنْدَ الْبُرْءِ بِغَيْرِ شَرْطٍ فَحَلَالٌ، لِأَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَخْذِ مَا أُعْطِيَ الْمَرْءُ مِنْ غَيْرِ مَسْأَلَةٍ.

[مَسْأَلَةٌ الْإِجَارَةُ عَلَى حَفْرِ بِئْرٍ]

١٣١٢ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ عَلَى حَفْرِ بِئْرٍ أَلْبَتَّةَ، سَوَاءٌ كَانَتْ الْأَرْضُ مَعْرُوفَةً أَوْ لَمْ تَكُنْ، لِأَنَّهُ قَدْ يَخْرُجُ فِيهَا الصَّفَاةُ الصَّلْدَةُ، وَالْأَرْضُ الْمُنْحَلَّةُ الرَّخْوَةُ وَالصَّلِيبَةُ، وَهَذَا عَمَلٌ مَجْهُولٌ، وَقَدْ يَبْعُدُ الْمَاءُ فِي مَوْضِعٍ وَيَقْرُبُ فِيمَا هُوَ إلَى جَانِبِهِ.

وَإِنَّمَا يَجُوزُ ذَلِكَ فِي اسْتِئْجَارِ مُيَاوَمَةٍ ثُمَّ يَسْتَعْمِلُهُ فِيهَا فِي حَفْرِ الْبِئْرِ، لِأَنَّهُ عَمَلٌ مَحْدُودٌ مَعْلُومٌ يَتَوَلَّى مِنْهُ حَسَبَ مَا يَقْدِرُ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اسْتِئْجَارُ الْبَنَّاءِ وَآلَاتِهِ]

١٣١٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يَشْتَرِطَ عَلَى الْمُسْتَأْجَرِ لِلْخِيَاطَةِ إحْضَارَ الْخُيُوطِ، وَلَا عَلَى الْوَرَّاقِ الْقِيَامَ بِالْحِبْرِ، وَلَا عَلَى الْبَنَّاءِ الْقِيَامَ بِالطِّينِ أَوْ الصَّخْرِ، أَوْ الْجِيَارِ، وَهَكَذَا فِي كُلِّ شَيْءٍ.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، لِأَنَّهُ إجَارَةٌ وَبَيْعٌ مَعًا قَدْ اُشْتُرِطَ أَحَدُهُمَا مَعَ الْآخَرِ فَحُرِّمَ ذَلِكَ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

Thus, it constitutes wrongful consumption of wealth. However, if those we mentioned voluntarily procure what we mentioned without precondition, it is permissible, as it is an act of goodwill.

L20350 As for hiring a builder with his tools, a carpenter with his tools, a bookbinder with his pens, his scraper, his knife, his binding tool, his inkwell, a tailor with his needle and scraper—all of this is permissible and sound, for it constitutes a single contract. If any of these tools belong to another, it is not permissible, because it is unknown what may occur to the tool through such use or what may befall the worker, thus constituting wrongful consumption of wealth. And with Allah, the Exalted, is success.

L20351 As for the dyer, he is hired solely to immerse the cloth into the dye vat.

L20352 **A jurisprudential issue regarding a person who rented a house or something and then rented it out.**

L20353 1314. Issue: Whoever rents a house, a slave, a pack animal, or any item, then subleases it for a higher, lower, or equivalent rent, the transaction is lawful and permissible.

L20354 Similarly, the hired goldsmith commissioned to craft an item who then subcontracts another person to perform the work—whether for a lower, higher, or equal wage—all such arrangements are permissible, and the surplus is lawful for both parties. However, if the contract stipulates that the hired party must personally reside in the property, personally ride the animal, or personally perform the task, then it is impermissible to deviate from the terms stipulated in the contract. This is because there is no prohibition from the Prophet (peace be upon him) against such subcontracting, and it is subcontracting—indeed, he (peace be upon him) commanded subcontracting agreements. And success comes only from Allah, the Most High.

L20355 1315. Issue: Hire in exchange for hire is permissible—such as hiring the occupancy of a house in exchange for the occupancy of a house, or the service

وَالثَّانِي - أَنَّهُ بَيْعٌ مَجْهُولٌ، وَإِجَارَةُ مَجْهُولٍ لَا يَدْرِي مَا يَقَعُ مِنْ ذَلِكَ لِلْبَيْعِ وَلَا مَا يَقَعُ مِنْهُ لِلْإِجَارَةِ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، فَإِنْ تَطَوَّعَ كُلُّ مَنْ ذَكَرْنَا بِإِحْضَارِ مَا ذَكَرْنَا عَنْ غَيْرِ شَرْطٍ جَازَ ذَلِكَ؛ لِأَنَّهُ فِعْلُ خَيْرٍ.

وَأَمَّا اسْتِئْجَارُ الْبَنَّاءِ وَآلَاتِهِ، وَالنَّجَّارِ وَآلَاتِهِ، وَالْوَرَّاقِ وَأَقْلَامِهِ، وَجَلَمِهِ وَسِكِّينِهِ، وَمِلْزَمَتِهِ، وَمِحْبَرَتِهِ، وَالْخَيَّاطِ وَإِبْرَتِهِ وَجَلَمِهِ، فَكُلُّ ذَلِكَ جَائِزٌ حَسَنٌ؛ لِأَنَّهَا إِجَارَةٌ وَاحِدَةٌ كُلُّهَا. فَإِنْ كَانَ شَيْءٌ مِنْ ذَلِكَ لِغَيْرِهِ لَمْ يَجُزْ؛ لِأَنَّهُ لَا يَدْرِي مَا يَقَعُ مِنْ ذَلِكَ لِتِلْكَ الْآلَةِ، وَلَا مَا يَقَعُ لِلْعَامِلِ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الصَّبَّاغُ: فَإِنَّمَا اُسْتُؤْجِرَ لِإِدْخَالِ الثَّوْبِ فِي قِدْرِهِ فَقَطْ.

[مَسْأَلَةٌ اسْتَأْجَرَ دَارًا أَوْ شَيْئًا مَا ثُمَّ أَجَّرَهُ]

١٣١٤ - مَسْأَلَةٌ: وَمَنْ اسْتَأْجَرَ دَارًا أَوْ عَبْدًا أَوْ دَابَّةً أَوْ شَيْئًا مَا ثُمَّ أَجَّرَهُ بِأَكْثَرَ مِمَّا اسْتَأْجَرَهُ بِهِ أَوْ بِأَقَلَّ أَوْ بِمِثْلِهِ، فَهُوَ حَلَالٌ جَائِزٌ.

وَكَذَلِكَ الصَّائِغُ الْمُسْتَأْجَرُ لِعَمَلِ شَيْءٍ فَيَسْتَأْجِرُ هُوَ غَيْرَهُ لِيَعْمَلَهُ لَهُ بِأَقَلَّ أَوْ بِأَكْثَرَ أَوْ بِمِثْلِهِ فَكُلُّ ذَلِكَ حَلَالٌ، وَالْفَضْلُ جَائِزٌ لَهُمَا، إِلَّا أَنْ تَكُونَ الْمُعَاقَدَةُ وَقَعَتْ عَلَى أَنْ يَسْكُنَهَا بِنَفْسِهِ، أَوْ يَرْكَبَهَا بِنَفْسِهِ، أَوْ يَعْمَلَ الْعَمَلَ بِنَفْسِهِ، فَلَا يَجُوزُ غَيْرُ مَا وَقَعَتْ عَلَيْهِ الْإِجَارَةُ؛ لِأَنَّهُ لَمْ يَأْتِ نَهْيٌ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، وَهِيَ مُؤَاجَرَةٌ وَقَدْ أَمَرَ - عَلَيْهِ السَّلَامُ - بِالْمُؤَاجَرَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

of a slave in exchange for the service of a slave, or occupancy in exchange for the service of a slave or for sewing. All of this is permissible because there is no textual prohibition against it. This is the opinion of Mālik. Abū Ḥanīfa said: It is not permissible to lease a house in exchange for leasing a house; it is permissible in exchange for the service of a slave. This is an invalid categorization.

١٣١٥ - مَسْأَلَةٌ: وَالْإِجَارَةُ بِالْإِجَارَةِ جَائِزَةٌ -: كَمَنْ أَجَّرَ سُكْنَى دَارٍ بِسُكْنَى دَارٍ أَوْ خِدْمَةَ عَبْدٍ بِخِدْمَةِ عَبْدٍ، أَوْ سُكْنَى بِخِدْمَةِ عَبْدٍ أَوْ بِخِيَاطَةٍ، كُلُّ ذَلِكَ جَائِزٌ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِالنَّهْيِ عَنْ ذَلِكَ - وَهُوَ قَوْلُ مَالِكٍ وَقَالَ أَبُو حَنِيفَةَ: لَا يَجُوزُ كِرَاءُ دَارٍ بِكِرَاءِ دَارٍ - وَيَجُوزُ بِخِدْمَةِ عَبْدٍ - وَهَذَا تَقْسِيمٌ فَاسِدٌ.

L20356 The remainder of the discussion on the preceding issue: Ali said: It was narrated to us through Ibn Abi Shaybah's chain - Abbad ibn al-Awwam reported from Umar ibn Amir, from Qatadah, from Nafi', from Ibn Umar - that he said regarding one who hires a worker then leases him out for more than what he hired him for: Ibn Umar stated, "The excess belongs to the first [employer]."

بَقِيَّةُ الْكَلَامِ فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ عُمَرَ بْنِ عَامِرٍ عَنْ قَتَادَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ قَالَ فِيمَنْ اسْتَأْجَرَ أَجِيرًا فَأَجَّرَهُ بِأَكْثَرَ مِمَّا اسْتَأْجَرَهُ، قَالَ ابْنُ عُمَرَ: الْفَضْلُ لِلْأَوَّلِ.

L20357–20358 And via the narration of Waki': Shu'bah reported to us from Qatādah from Ibn 'Umar that he disapproved of it. It is authentically established from Ibrāhīm that he said, "The excess must be rejected; it constitutes usury." Mujāhid did not permit it, nor did Iyās ibn Mu'āwiyah, nor 'Ikrimah. Al-Zuhrī later disapproved of it after having previously permitted it.

وَمِنْ طَرِيقِ وَكِيعٍ نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ ابْنِ عُمَرَ أَنَّهُ كَرِهَهُ. وَصَحَّ عَنْ إبْرَاهِيمَ: أَنَّهُ قَالَ: يُرَدُّ الْفَضْلُ، هُوَ رِبًا، وَلَمْ يُجِزْهُ مُجَاهِدٌ، وَلَا إيَاسُ بْنُ مُعَاوِيَةَ، وَلَا عِكْرِمَةُ، وَكَرِهَهُ الزُّهْرِيُّ بَعْدَ أَنْ كَانَ يُبِيحُهُ.

L20359 Maymūn ibn Mihrān, Ibn Sīrīn, Sa'īd ibn al-Musayyib, Shurayḥ, Masrūq, Muḥammad ibn 'Alī, al-Sha'bī, and Abū Salamah ibn 'Abd al-Raḥmān disliked it.

وَكَرِهَهُ مَيْمُونُ بْنُ مِهْرَانَ، وَابْنُ سِيرِينَ وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَشُرَيْحٌ، وَمَسْرُوقٌ، وَمُحَمَّدُ بْنُ عَلِيٍّ، وَالشَّعْبِيُّ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ.

L20360 Sulaymān ibn Yasār, 'Urwah ibn al-Zubayr, al-Ḥasan, and 'Aṭā' deemed it permissible.

وَأَبَاحَهُ سُلَيْمَانُ بْنُ يَسَارٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَالْحَسَنُ، وَعَطَاءٌ.

L20361 Abu Muhammad said: Those who prohibit it argued that it is akin to usury - but this is invalid, but rather it is a valid lease. There is no difference between one who buys for a price and sells for more, and one who leases something and subleases it for more. The Malikis condemn those who oppose the Companion whose view has no known dissenter - yet this is one of the matters in which they contradicted themselves, for Ibn Umar did not permit it, and no dissent from the Companions (may Allah be pleased with them) is known regarding this matter.

وَقَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمَانِعُونَ مِنْ ذَلِكَ بِأَنَّهُ كَالرِّبَا - وَهَذَا بَاطِلٌ، بَلْ هِيَ إجَارَةٌ صَحِيحَةٌ، وَلَا فَرْقَ بَيْنَ مَنْ ابْتَاعَ بِثَمَنٍ وَبَاعَ بِأَكْثَرَ، وَبَيْنَ مَنْ اكْتَرَى بِشَيْءٍ وَأَكْرَى بِأَكْثَرَ. وَالْمَالِكِيُّونَ يُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ - وَهَذَا مِمَّا

تَنَاقَضُوا فِيهِ؛ لِأَنَّ ابْنَ عُمَرَ لَمْ يُجِزْهُ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَمِمَّنْ قَالَ بِقَوْلِ أَبِي حَنِيفَةَ فِي ذَلِكَ الشَّعْبِيُّ.

Al-Shaʿbī is among those who held the opinion of Abū Ḥanīfah regarding that.

قَالَ عَلِيٌّ: هَذَا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، وَالتَّقْلِيدُ لَا يَجُوزُ، وَالْعَجَبُ أَنَّهُمْ قَالُوا: يَتَصَدَّقُ بِالْفَضْلِ وَهَذَا بَاطِلٌ؛ لِأَنَّهُ إنْ كَانَ حَلَالًا فَلَا يَلْزَمُهُ أَنْ يَتَصَدَّقَ بِهِ إلَّا أَنْ يَشَاءَ، وَإِنْ كَانَ حَرَامًا عَلَيْهِ فَلَا يَحِلُّ لَهُ أَنْ يَتَصَدَّقَ بِمَا لَا يَمْلِكُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Ali said: This is a statement with no evidence for its validity, and blind imitation is impermissible. It is astonishing that they said: "He should give the excess in charity," and this is invalid. If it were lawful, he would not be obligated to give it in charity unless he voluntarily chooses. If it were unlawful for him, it would not be permissible to give in charity what he does not rightfully own - and with Allah alone, the Most High, is success.

[مَسْأَلَةٌ أُجْرَةُ تَنْقِيَةِ الْمِرْحَاضِ]

The Issue of Compensation for the Ritual Purification of the Toilet.

١٣١٦ - مَسْأَلَةٌ: وَتَنْقِيَةُ الْمِرْحَاضِ عَلَى الَّذِي مَلَأَهُ لَا عَلَى صَاحِبِ الدَّارِ، وَلَا يَجُوزُ اشْتِرَاطُهُ عَلَى صَاحِبِ الدَّارِ؛ لِأَنَّ عَلَى مَنْ وَضَعَ كُنَاسَةً أَوْ زِبْلًا أَوْ مَتَاعًا فِي أَرْضِ غَيْرِهِ الَّتِي هِيَ مَالُ غَيْرِهِ، لَمْ يَجُزْ لَهُ ذَلِكَ، وَعَلَيْهِ أَنْ يُزِيلَهُ عَنْ الْمَكَانِ الَّذِي لَا حَقَّ لَهُ فِيهِ، وَاشْتِرَاطُهُ عَلَى صَاحِبِ الدَّارِ بَاطِلٌ مِنْ وَجْهَيْنِ -:

1316 - Issue: The purification of the toilet falls upon the one who filled it, not upon the owner of the house. It is impermissible to stipulate this obligation upon the owner of the house, for if someone places dung, manure, or goods in another's land—which is another's property—he is not permitted to do so, and he must remove them from the place where he holds no rightful claim. Stipulating this upon the owner of the house is invalid for two reasons:

أَحَدُهُمَا - أَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ.

One of the two is that it is a condition not in the Book of Allah, so it is void.

وَالثَّانِي - أَنَّهُ مَجْهُولُ الْقَدْرِ فَهُوَ شَرْطٌ فَاسِدٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The second is that it is indeterminate in measure, rendering the condition invalid—and success comes only from Allah, the Most High.

١٣١٧ - مَسْأَلَةٌ: فَإِنْ كَانَ خَانًا يَبِيتُونَ فِيهِ لَيْلَةً ثُمَّ يَرْحَلُونَ، فَعَلَى صَاحِبِ الْخَانِ إحْضَارُ مَكَانٍ فَارِغٍ لِلْخَلَاءِ إنْ شَاءَ، وَإِلَّا يَتَبَرَّزُوا فِي الصُّعُدَاتِ إنْ أَبَى مِنْ ذَلِكَ.

Issue 1317: If travelers lodge in a caravanserai for one night then depart, the owner must provide an empty place for relieving himself if he so wishes. If he refuses to do so, they are permitted to relieve themselves in the alleys.

[مَسْأَلَةٌ الْأُجْرَةُ عَلَى كَنْسِ الْكُنُفِ]

The Legal Question of Wages for Sweeping Latrines

١٣١٨. مَسْأَلَةٌ: وَيَجُوزُ أَخْذُ الْأُجْرَةِ عَلَى كَنْسِ الْكُنُفِ. وَهُوَ

1318. Issue: It is permissible to receive wages for cleaning toilets. This is the

apparent [ruling] from the statements of Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Abū Sulaymān, due to the generality of the Messenger of Allah's command – peace be upon him – regarding employment.

١٣١٨ - مَسْأَلَةٌ: وَالْأُجْرَةُ عَلَى كَنْسِ الْكُنُفِ جَائِزَةٌ - وَهُوَ الظَّاهِرُ مِنْ أَقْوَالِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، لِعُمُومِ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ.

L20371–20372 It has been reported to us through the chain of Saʿīd ibn Manṣūr, from Abū ʿAwānah, from al-Fuḍayl ibn Ṭalḥah, that Ibn ʿUmar said to a man who cleaned excrement when he informed him that he married using proceeds from it, earned a living from it, and performed Hajj using proceeds from it: "You are wicked, what you earned is ill-gotten, and the marriage you contracted is tainted, until you depart from it as you entered into it."

عَلَى أَنَّنَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ الْفُضَيْلِ بْنِ طَلْحَةَ أَنَّ ابْنَ عُمَرَ قَالَ لِرَجُلٍ كَنَّاسٍ لِلْعَذِرَةِ أَخْبَرَهُ أَنَّهُ مِنْهُ تَزَوَّجَ وَمِنْهُ كَسَبَ وَمِنْهُ حَجَّ فَقَالَ لَهُ ابْنُ عُمَرَ: أَنْتَ خَبِيثٌ، وَمَا كَسَبْت خَبِيثٌ، وَمَا تَزَوَّجْت خَبِيثٌ، حَتَّى تَخْرُجَ مِنْهُ كَمَا دَخَلْت فِيهِ.

L20373 Sa'id ibn Mansur said: Mahdi ibn Maymun narrated to us from Wasil, the freed slave of Abu 'Uyaynah, from 'Amr ibn Harim, from 'Abd al-Hamid ibn Mahmud: He heard Ibn 'Abbas when a man said to him, "I was a latrine cleaner—I used to sweep these cesspits—and I acquired wealth from it, married using it, had children through it, and performed Hajj with it." Ibn 'Abbas replied, "You and your wealth are impure, and your children are impure. No disagreement is known among the Companions regarding this verdict." Where are the Hanafis and Malikis concerning this if they rigidly follow their rulings? There is no valid proof in anyone's statement apart from that of the Messenger of Allah—peace and blessings be upon him.

قَالَ سَعِيدُ بْنُ مَنْصُورٍ: نا مَهْدِيُّ بْنُ مَيْمُونٍ عَنْ وَاصِلٍ مَوْلَى أَبِي عُيَيْنَةَ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ عَبْدِ الْحَمِيدِ بْنِ مَحْمُودٍ: أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ وَقَدْ قَالَ لَهُ رَجُلٌ: إنِّي كُنْت رَجُلًا كَنَّاسًا أَكْسَحُ هَذِهِ الْحُشُوشَ فَأَصَبْت مَالًا فَتَزَوَّجْت مِنْهُ، وَوُلِدَ لِي فِيهِ، وَحَجَجْت فِيهِ. فَقَالَ لَهُ ابْنُ عَبَّاسٍ: أَنْتَ وَمَالُك خَبِيثٌ وَوَلَدُك خَبِيثٌ، وَلَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ - فَأَيْنَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ عَنْ هَذَا إنْ طَرَدُوا أَقْوَالَهُمْ؟ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20374 **Issue: Giving spun thread for weaving in exchange for a specified portion from it.**

[مَسْأَلَةُ إعْطَاءُ الْغَزْلِ لِلنَّسْجِ بِجُزْءٍ مُسَمًّى مِنْهُ]

L20375 1319 - Issue: It is permissible to give yarn for weaving in return for a specified portion of it, such as a quarter, a third, or the like. If the two parties mutually consent that the weaver will weave it together with the other party and they will both be partners in it, this is permissible. If either party refuses, they are not bound. In this case, the weaver is entitled to a wage from the portion of yarn designated for him, proportionate to the amount he weaves,

١٣١٩ - مَسْأَلَةٌ: وَجَائِزٌ إعْطَاءُ الْغَزْلِ لِلنَّسْجِ بِجُزْءٍ مُسَمًّى مِنْهُ كَرُبُعٍ، أَوْ ثُلُثٍ، أَوْ نَحْوِ ذَلِكَ، فَإِنْ تَرَاضَيَا عَلَى أَنْ يَنْسِجَهُ النَّسَّاجُ مَعًا وَيَكُونَا مَعًا شَرِيكَيْنِ فِيهِ: جَازَ ذَلِكَ - وَإِنْ أَبَى أَحَدُهُمَا لَمْ يَلْزَمْهُ، وَكَانَ لِلنَّسَّاجِ مِنْ الْغَزْلِ الَّذِي سُمِّيَ لَهُ أُجْرَةٌ بِمِقْدَارِ مَا يَنْسِجُ مِنْ الْأَجْرِ حَتَّى يُتِمَّ نَسْجَهُ وَيَسْتَحِقُّ جَمِيعَ مَا سُمِّيَ لَهُ.

until he completes the weaving and becomes entitled to the entire portion designated for him.

وَكَذَلِكَ يَجُوزُ إِعْطَاءُ الثَّوْبِ لِلْخَيَّاطِ بِجُزْءٍ مِنْهُ مُشَاعٍ أَوْ مُعَيَّنٍ، وَإِعْطَاءُ الطَّعَامِ لِلطَّحِينِ بِجُزْءٍ مِنْهُ كَذَلِكَ، وَإِعْطَاءُ الزَّيْتُونِ لِلْعَصِيرِ كَذَلِكَ، وَكَذَلِكَ الِاسْتِئْجَارُ لِجَمِيعِ هَذِهِ الزُّيُوتِ الْمَحْدُودَةِ بِجُزْءٍ مِنْهَا كَذَلِكَ، كُلُّ ذَلِكَ جَائِزٌ.

L20376 Similarly, it is permissible to give a garment to a tailor in exchange for an undivided or specified portion of it, to give food in exchange for a portion of its flour, to give olives in exchange for a portion of their juice, and to hire for all these limited oils in exchange for a portion of them. All of this is permissible.

وَكَذَلِكَ اسْتِئْجَارُ الرَّاعِي لِحِرَاسَةِ هَذِهِ الْغَنَمِ بِجُزْءٍ مِنْهَا مُسَمًّى كَذَلِكَ أَيْضًا، وَلَا يَجُوزُ بِجُزْءٍ مُسَمًّى مِنَ النَّسْلِ الَّذِي لَمْ يُولَدْ بَعْدُ، لِأَنَّ كُلَّ مَا ذَكَرْنَا قَبْلُ فَهِيَ إِجَارَةٌ مَحْدُودَةٌ فِي شَيْءٍ مَوْجُودٍ قَائِمٍ.

L20377 Similarly, leasing a shepherd to guard these sheep in exchange for a specified portion of them is also permissible. However, it is not permissible to stipulate a specified portion of the offspring that has not yet been born, because all that we previously mentioned is a limited lease contract pertaining to something existing and present.

وَلَا تَجُوزُ الْإِجَارَةُ بِمَا لَمْ يُخْلَقْ بَعْدُ، لِأَنَّهُ غَرَرٌ لَا يُدْرَى أَيَكُونُ أَمْ لَا؟ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنِ ابْنِ عَوْنٍ سَأَلْتُ مُحَمَّدَ بْنَ سِيرِينَ عَنْ دَفْعِ الثَّوْبِ إِلَى النَّسَّاجِ بِالثُّلُثِ وَدِرْهَمٍ، أَوْ بِالرُّبُعِ، أَوْ بِمَا تَرَاضَيَا عَلَيْهِ؟ قَالَ: لَا أَعْلَمُ بِهِ بَأْسًا: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ قَالَ: أَجَازَ الْحَكَمُ إِجَارَةَ الرَّاعِي لِلْغَنَمِ بِثُلُثِهَا أَوْ رُبُعِهَا - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَرُوِيَ عَنِ الْحَسَنِ أَيْضًا نا ابْنُ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ لَيْثٍ عَنْ عَطَاءٍ مِثْلَ قَوْلِ ابْنِ سِيرِينَ. نا ابْنُ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ مِثْلَ قَوْلِ ابْنِ سِيرِينَ وَعَطَاءٍ.

L20378–20380 It is not permissible to lease what has not yet been created, due to the uncertainty involved, as it is unknown whether it will exist or not. It was narrated to us through Ibn Abī Shaybah's chain: Muḥammad ibn Abī ʻAdiyy reported from Ibn ʻAwn, who said: "I asked Muḥammad ibn Sīrīn about giving a garment to a weaver in exchange for a third of the garment and a dirham, or a quarter, or whatever they mutually agree upon." He replied: "I do not know of any harm in it." Through ʻAbd al-Razzāq's chain from Sufyān, it was stated: Al-Ḥakam permitted leasing a shepherd's services for a third or a quarter of the flock. This is also the opinion of Ibn Abī Laylā, and a similar report has been transmitted from al-Ḥasan. Ibn Abi Shaybah narrated to us: Ibn ʻUlayyah narrated to us from Layth from ʻAta', in accordance with the view of Ibn Sirin. Ibn Abi Shaybah narrated to us: ʻAbd al-Aʻla narrated to us from Maʻmar from al-Zuhri, in accordance with the views of Ibn Sirin and ʻAta'.

وَلَا تَجُوزُ الْإِجَارَةُ إِلَّا بِمَا يَجُوزُ بِهِ الْبَيْعُ، لِأَنَّهُ عَقْدُ مُعَاوَضَةٍ، فَلَا يَجُوزُ إِلَّا بِمَا يَجُوزُ بِهِ الْبَيْعُ، وَلَا يَجُوزُ بِمَا ل

Qatadah, who said: There is no harm in a third or a quarter of the price being paid to the weaver.

نا ابْنُ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ أَبِي هِلَالٍ عَنْ قَتَادَةَ قَالَ: لَا بَأْسَ أَنْ يُدْفَعَ إِلَى النَّسَّاجِ بِالثُّلُثِ، وَالرُّبُعِ.

L20383 Ibn Abi Shaybah narrated to us from Abdah ibn Sulayman from Sa'id ibn Abi Arubah from Qatadah from Sa'id ibn al-Musayyib that he said: There is no harm in a man tending palm trees and overseeing them in exchange for a third or a quarter [of the yield], provided he incurs no personal expenses from it.

نا ابْنُ أَبِي شَيْبَةَ نا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: لَا بَأْسَ بِأَنْ يُعَالِجَ الرَّجُلُ النَّخْلَ وَيَقُومُ عَلَيْهِ بِالثُّلُثِ وَالرُّبُعِ، مَا لَمْ يُنْفِقْ هُوَ مِنْهُ شَيْئًا.

L20384 Narrated by Ibn Abī Shaybah from Ibn ʻUlayyah, from Ayyūb al-Sikhtiyānī, from al-Fuḍayl, from Sālim, who said: "Date palms are granted to those who cultivated them as a share thereof." This is the view of Ibn Abī Laylā, al-Awzāʻī, and al-Laythī.

نا ابْنُ أَبِي شَيْبَةَ نا ابْنِ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ الْفُضَيْلِ عَنْ سَالِمٍ قَالَ: النَّخْلُ يُعْطَى مَنْ عَمِلَ فِيهِ مِنْهُ. وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ.

L20385 And Ibrāhīm disliked all of that, as did Al-Ḥasan in one of his two opinions.

وَكَرِهَ كُلَّ ذَلِكَ إِبْرَاهِيمُ، وَالْحَسَنُ فِي أَحَدِ قَوْلَيْهِ.

L20386 Neither Abū Ḥanīfah, nor Mālik, nor al-Shāfiʻī permitted it.

وَلَمْ يُجِزْهُ أَبُو حَنِيفَةَ، وَلَا مَالِكٌ، وَلَا الشَّافِعِيُّ.

L20387 ## The Ruling on Hiring Ships

[مَسْأَلَةُ كِرَاءُ السُّفُنِ]

L20388 Issue 1320: It is permissible to hire ships, both large and small, for a specified share of what is carried in them, whether jointly shared by all or individually specified.

١٣٢٠ - مَسْأَلَةٌ: وَجَائِزٌ كِرَاءُ السُّفُنِ كِبَارِهَا وَصِغَارِهَا بِجُزْءٍ مُسَمًّى مِمَّا يُحْمَلُ فِيهَا مُشَاعٌ فِي الْجَمِيعِ أَوْ مُتَمَيِّزٌ.

L20389 Similarly, beasts of burden and oxen. The owner of the ship is entitled to a portion of the hire corresponding to the distance covered, whether the ship was damaged or remained intact, because it is a limited service.

وَكَذَلِكَ الدَّوَابُّ، وَالْعِجْلُ، وَيَسْتَحِقُّ صَاحِبُ السَّفِينَةِ مِنَ الْكِرَاءِ بِقَدْرِ مَا قَطَعَ مِنَ الطَّرِيقِ عَطِبَ أَوْ سَلِمَ؛ لِأَنَّهُ عَمَلٌ مَحْدُودٌ.

L20390 Mālik said: There is no rental agreement for him unless it reaches completion.

وَقَالَ مَالِكٌ: لَا كِرَاءَ لَهُ إِلَّا إِنْ بَلَغَ.

L20391 Ali said: This is an error and deeming the commandeering of a ship lawful without compensation and without the owner's willing consent.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ وَاسْتِحْلَالُ تَسْخِيرِ السَّفِينَةِ بِلَا أُجْرَةٍ، وَبِلَا طِيبِ نَفْسِ صَاحِبِهَا.

L20392 There is no distinction between the ship and the riding animal in this mat-

ter. His statement regarding this constitutes a position unsupported by the Quran, the Sunnah, a weak narration, any statement from predecessors that we know of, analogical reasoning, or an opinion with a sound basis.

وَلَا فَرْقَ بَيْنَ السَّفِينَةِ وَالدَّابَّةِ فِي ذَلِكَ - وَقَوْلُهُ فِي هَذَا قَوْلٌ لَا يَعْضُدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ أَحَدٍ قَبْلَهُ نَعْلَمُهُ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L20393 Similarly, hiring the service of a vessel is permissible, and they are entitled to wages according to the work they have performed - whether the vessel is damaged or remains safe - and with Allah, the Exalted, is success.

وَكَذَلِكَ اسْتِئْجَارُ خِدْمَةِ الْمَرْكَبِ جَائِزٌ، وَلَهُمْ مِنَ الْأُجْرَةِ بِقَدْرِ مَا عَمِلُوا - عَطِبَ الْمَرْكَبُ أَوْ سَلِمَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20394–20395 Issue: If the sea becomes turbulent and they fear destruction, they should lighten the heaviest then the heaviest. There is no liability upon the people of the vessel in this matter, for they are commanded to save themselves. Allah the Exalted has said: “And do not kill yourselves” [An-Nisa: 29].[12]

مَسْأَلَةٌ: فَإِنْ هَالَ الْبَحْرُ وَخَافُوا الْعَطَبَ فَلْيُخَفِّفُوا الْأَثْقَلَ فَالْأَثْقَلَ، وَلَا ضَمَانَ فِيهِ عَلَى أَهْلِ الْمَرْكَبِ لِأَنَّهُمْ مَأْمُورُونَ بِتَخْلِيصِ أَنْفُسِهِمْ. قَالَ اللَّهُ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

L20396 And He, the Exalted, said: “And do not throw yourselves with your hands into destruction” [Al-Baqarah: 195].[13]

وَقَالَ تَعَالَى: {وَلا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ} [البقرة: ١٩٥] .

L20397 So whoever does what he has been commanded to do is a doer of good. Allah, the Most High, says: “There is no blame against those who do good.” [At-Tawbah: 91][14]

فَمَنْ فَعَلَ مَا أُمِرَ بِهِ فَهُوَ مُحْسِنٌ، قَالَ اللَّهُ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

L20398 Malik said: One is financially liable for what is intended for trade, but not liable for what is destined for consumption or personal property. Nor is anyone who holds no ownership stake in the vessel liable for any such matters—all of this constitutes muddled reasoning utterly unsupported by evidence, a position we do not know anyone before him to have asserted. Success comes from Allah, the Exalted.

وَقَالَ مَالِكٌ: يَضْمَنُ مَا كَانَ لِلتِّجَارَةِ، وَلَا يَضْمَنُ مَا سِيقَ لِلْأَكْلِ، وَالْقُنْيَةِ، وَلَا يَضْمَنُ شَيْئًا مِنْ ذَلِكَ مَنْ لَا مَالَ لَهُ فِي الْمَرْكَبِ - وَهَذَا كُلُّهُ تَخْلِيطٌ لَا يَعْضُدُهُ دَلِيلٌ أَصْلًا، وَقَوْلٌ لَا نَعْلَمُ أَحَدًا تَقَدَّمَهُ قَبْلَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20399 If there is something lighter beneath the heaviest item, and if discarding the heaviest involves a difficulty that prolongs the task, risks the ship sinking, but salvation is hoped for through discarding the lighter item, then the lighter item should be discarded for the reason we have stated.

فَإِنْ كَانَ دُونَ الْأَثْقَلِ مَا هُوَ أَخَفُّ مِنْهُ، فَإِنْ كَانَ فِي رَمْيِ الْأَثْقَلِ كُلْفَةٌ يَطُولُ أَمْرُهَا، وَيُخَافُ غَرَقُ السَّفِينَةِ فِيهَا، وَيُرْجَى الْخَلَاصُ، بِرَمْيِ الْأَخَفِّ رُمِيَ الْأَخَفُّ حِينَئِذٍ لِمَا ذَكَرْنَا.

L20400 As for one who throws a lighter object while capable of throwing a heavier

[12] **Qur’an references (L20395):** Qur’an 4:29 (An-Nisa).
[13] **Qur’an references (L20396):** Qur’an 2:195 (Al-Baqarah).
[14] **Qur’an references (L20397):** Qur’an 9:91 (At-Tawbah).

one, he is liable for that which he threw; no one else is liable for it with him, based on the Prophet's statement (peace and blessings be upon him): "Your blood and your wealth are sacred to you."

وَأَمَّا مَنْ رَمَى الْأَخَفَّ وَهُوَ قَادِرٌ عَلَى رَمْيِ الْأَثْقَلِ فَهُوَ ضَامِنٌ لِمَا رَمَى مِنْ ذَلِكَ لَا يَضْمَنُهُ مَعَهُ غَيْرُهُ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L20401 An animal should not be thrown except in cases of necessity where one is certain **with that necessity** that deliverance will be achieved by throwing it. A human being must never be thrown under any circumstance—neither believer nor disbeliever—for it is impermissible to repel oppression from oneself by oppressing someone who has committed no wrong. Whoever prevents the disposal of his property **that is overloading the ship** is oppressing those aboard it. Thus, preventing their destruction by stopping him from oppressing them is an obligation.

وَلَا يُرْمَى حَيَوَانٌ إِلَّا لِضَرُورَةٍ يُوقِنُ مَعَهَا بِالنَّجَاةِ بِرَمْيِهِ، وَلَا يُلْقَى إِنْسَانٌ أَصْلًا لَا مُؤْمِنٌ وَلَا كَافِرٌ؛ لِأَنَّهُ لَا يَحِلُّ لِأَحَدٍ دَفْعُ ظُلْمٍ عَنْ نَفْسِهِ بِظُلْمِ مَنْ لَمْ يَظْلِمْهُ، وَالْمَانِعُ مِنْ إِلْقَاءِ مَالِهِ الْمُثْقِلِ لِلسَّفِينَةِ ظَالِمٌ لِمَنْ فِيهَا، فَدَفْعُ الْهَلَاكِ عَنْ أَنْفُسِهِمْ بِمَنْعِهِ مِنْ ظُلْمِهِمْ فَرْضٌ.

L20402 The Issue of Renting the Ḥammām

[مَسْأَلَةُ اسْتِئْجَارُ الْحَمَّامِ]

L20403 Issue 1322: Renting a bathhouse is permissible, with the well and water channel included as ancillary components. It is impermissible to contract a lease with one who enters it, though such a person may be granted access as a goodwill gesture. If the bathhouse owner rejects the offered compensation, he must be obligated, after the user exits, to accept payment equivalent only to the duration of his stay therein. This is because the period of his remaining before completing his use of it is uncertain, and establishing hire contracts based on uncertainty is invalid - as this constitutes unlawful consumption of wealth due to both parties' ignorance of the terms they mutually consented to. And with Allah, the Exalted, lies success.

١٣٢٢ - مَسْأَلَةٌ: وَاسْتِئْجَارُ الْحَمَّامِ جَائِزٌ، وَيَكُونُ الْبِئْرُ، وَالسَّاقِيَةُ تَبَعًا، وَلَا يَجُوزُ عَقْدُ إِجَارَةٍ مَعَ الدَّاخِلِ فِيهِ، لَكِنْ يُعْطَى مُكَارَمَةً، فَإِنْ لَمْ يَرْضَ صَاحِبُ الْحَمَّامِ بِمَا أُعْطِيَ أُلْزِمَ بَعْدَ الْخُرُوجِ مَا يُسَاوِي بَقَاؤُهُ فِيهِ فَقَطْ لِأَنَّ مُدَّةَ بَقَائِهِ قَبْلَ أَنْ يَسْتَوْفِيَهُ مَجْهُولَةٌ، وَلَا يَجُوزُ عَقْدُ الْكِرَاءِ عَلَى مَجْهُولٍ؛ لِأَنَّهُ أَكْلُ مَالٍ بِالْبَاطِلِ لِجَهْلِهِمَا، بِمَا يَتَرَاضَيَانِ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20404 Issue: He rented a house.

[مَسْأَلَةُ اسْتَأْجَرَ دَارًا]

L20405–20407 Issue 1323: If one rents a house containing a water wheel or a tree, these are not included in the rent at all - regardless of their significance (be it minor or major), whether the tree's fruit has become visible or not, or whether it is ripe or unripe. It becomes suitable—because prior to the fruit being produced and before attaining suitability, no contract is permissible regarding it whatsoever except musaqat (cultivation contract) alone. After the suitability becomes

١٣٢٣ - مَسْأَلَةٌ: وَمَنْ اسْتَأْجَرَ دَارًا فَإِنْ كَانَتْ فِيهَا دَالِيَةٌ، أَوْ شَجَرَةٌ، لَمْ يَجُزْ دُخُولُهَا فِي الْكِرَاءِ أَصْلًا - قَلَّ خَطَرُهَا أَمْ كَثُرَ، ظَهَرَ حَمْلُهَا أَوْ لَمْ يَظْهَرْ - طَابَ أَوْ لَمْ يَطِبْ -: لِأَنَّهَا قَبْلَ أَنْ تُخْلَقَ الثَّمَرَةُ، وَقَبْلَ أَنْ تَطِيبَ لَا يَحِلُّ فِيهَا عَقْدٌ أَصْلًا إِلَّا الْمُسَاقَاةُ فَقَطْ

evident, only sale is permissible concerning it, not leasing, because through leasing, ownership of the asset is not transferred nor is it consumed at all, whereas through sale, ownership of the asset and its full title are transferred. This constitutes a sale with an unknown price or a lease with unknown rent, both of which are forbidden in every respect. This is the position of Abū Ḥanīfa, al-Shāfiʿī, and Abū Sulaymān.

وَبَعْدَ ظُهُورِ الطِّيبِ لَا يَجُوزُ فِيهَا إِلَّا الْبَيْعُ، لَا الْإِجَارَةُ، لِأَنَّ الْإِجَارَةَ لَا تُمْلَكُ بِهَا الْعَيْنُ وَلَا تُسْتَهْلَكُ أَصْلًا، وَالْبَيْعُ تُمْلَكُ بِهِ الْعَيْنُ وَالرَّقَبَةُ، فَهُوَ بَيْعٌ بِثَمَنٍ مَجْهُولٍ، وَإِجَارَةٌ بِثَمَنٍ مَجْهُولٍ، فَهُوَ حَرَامٌ مِنْ كُلِّ جِهَةٍ؛ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

The Issue of Leasing Musḥāʿ.

[مَسْأَلَةُ إِجَارَةُ الْمُشَاعِ]

L20408

1324. Issue: The leasing of jointly owned property is permissible—whether the property is divisible or indivisible, whether from a co-owner or a non-co-owner, and whether with a co-owner or in the absence of the co-owner. This is the opinion of Mālik, al-Shāfiʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, Abū Sulaymān, and others.

١٣٢٤ - مَسْأَلَةٌ: وَإِجَارَةُ الْمُشَاعِ جَائِزَةٌ فِيمَا يَنْقَسِمُ، وَمَا لَا يَنْقَسِمُ مِنَ الشَّرِيكِ وَمِنْ غَيْرِ الشَّرِيكِ، وَمَعَ الشَّرِيكِ وَدُونَهُ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L20410

Abu Hanifa said: It is not permissible to lease co-owned undivided property—neither divisible nor indivisible—except by the co-owner alone. He also said: It is not permissible to pledge co-owned undivided property—whether divisible or indivisible—neither with a co-owner in it nor with anyone else. However, if two people jointly take a pledge from a single person, that is permissible. He further stated: It is not permissible to gift co-owned undivided property if it is divisible, such as houses or land, but it is permissible for indivisible items, such as a sword, a pearl, and similar things.

وَقَالَ أَبُو حَنِيفَةَ: لَا تَجُوزُ إِجَارَةُ الْمُشَاعِ - لَا مَا يَنْقَسِمُ وَلَا مَا لَا يَنْقَسِمُ إِلَّا مِنَ الشَّرِيكِ وَحْدَهُ، وَقَالَ: لَا يَجُوزُ رَهْنُ الْمُشَاعِ - كَانَ مِمَّا يَنْقَسِمُ أَوْ مِمَّا لَا يَنْقَسِمُ - لَا عِنْدَ الشَّرِيكِ فِيهِ وَلَا عِنْدَ غَيْرِهِ. فَإِنْ ارْتَهَنَ اثْنَانِ مَعًا رَهْنًا مِنْ وَاحِدٍ جَازَ ذَلِكَ، وَقَالَ: لَا تَجُوزُ هِبَةُ الْمُشَاعِ إِنْ كَانَ مِمَّا يَنْقَسِمُ كَالدُّورِ وَالْأَرَضِينَ، وَيَجُوزُ فِيمَا لَا يَنْقَسِمُ كَالسَّيْفِ، وَاللُّؤْلُؤَةِ، وَنَحْوِ ذَلِكَ.

L20411

He permitted the sale of jointly owned property—whether divisible or not—from a co-owner or a non-co-owner. However, Zufar did not permit the *ijārah* of jointly owned property—neither from a co-owner nor from a non-co-owner.

وَأَجَازَ بَيْعَ الْمُشَاعِ - مَا انْقَسَمَ وَمَا لَا يَنْقَسِمُ - مِنَ الشَّرِيكِ وَغَيْرِ الشَّرِيكِ وَلَمْ يُجِزْ زُفَرُ إِجَارَةَ الْمُشَاعِ - لَا مِنَ الشَّرِيكِ وَلَا مِنْ غَيْرِهِ.

L20412

These divisions are utterly corrupt, involve baseless claims, and entail contradictions without any evidence whatsoever. We know of no one before Abū Ḥanīfah who espoused these divisions, and they have no proof for this except their claim that benefiting from jointly owned property is impossible without mutual consent for shared benefit—and in that lies benefiting from a co-owner's share.

وَهَذِهِ تَقَاسِيمُ فِي غَايَةِ الْفَسَادِ وَالدَّعْوَى بِالْبَاطِلِ وَالتَّنَاقُضِ بِلَا دَلِيلٍ أَصْلًا، وَلَا نَعْلَمُهَا عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَلَا حُجَّةَ لَهُمْ فِي ذَلِكَ إِلَّا أَنْ قَالُوا: الِانْتِفَاعُ بِالْمُشَاعِ غَيْرُ مُمْكِنٍ إِلَّا بِالْمُهَايَأَةِ، وَفِي ذَلِكَ انْتِفَاعٌ بِحِصَّةِ شَرِيكِهِ.

L20413 Abū Muḥammad said: This applies to them in sale and ownership, with no difference. The Prophet - peace and blessings of Allah be upon him (ﷺ) - commanded leasing arrangements and did not specify undivided property from divided property. *"He does not speak from whim. It is nothing but revelation inspired"* [53:3-4]. *"Your Lord is never forgetful"* [19:64]. The religion has been perfected, and all praise belongs to Allah. We are in no need of the opinion of Abū Ḥanīfah and others - and success comes only from Allah, the Exalted.[15]

قَالَ أَبُو مُحَمَّد: وَهَذَا دَاخِلٌ عَلَيْهِمْ فِي الْبَيْعِ وَفِي التَّمَلُّكِ، وَلَا فَرْقَ، وَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُؤَاجَرَةِ، وَلَمْ يَخُصَّ مُشَاعًا مِنْ غَيْرِ مُشَاعٍ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] . وَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَقَدْ تَمَّ الدِّينُ وَلِلَّهِ الْحَمْدُ، وَنَحْنُ فِي غِنًى عَنْ رَأْيِ أَبِي حَنِيفَةَ وَغَيْرِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20414 **[Issue: There is no liability upon a hired worker, whether shared [among employers] or non-shared.]**

[مَسْأَلَةٌ لَا ضَمَانَ عَلَى أَجِيرٍ مُشْتَرَكٍ أَوْ غَيْرِ مُشْتَرَكٍ]

L20415–20417 Issue 1325: There is no liability upon a hired worker - whether a shared worker or an independent worker - nor upon a craftsman at all, nor for what is established to have been exceeded in his mandate or lost through his negligence. The ruling in all such cases - unless clear evidence is established against him - depends on his testimony alongside his oath. If clear evidence is established against him of exceeding authority or causing loss, he becomes liable, while he remains entitled to his wage in all those cases. As for what was proven he had done, if evidence is not established, the owner of the goods must swear that he does not know that he did what the claimant alleges he did. In that case, nothing is incumbent upon him.

١٣٢٥ - مَسْأَلَةٌ: وَلَا ضَمَانَ عَلَى أَجِيرٍ مُشْتَرَكٍ أَوْ غَيْرِ مُشْتَرَكٍ، وَلَا عَلَى صَانِعٍ أَصْلًا، وَلَا مَا ثَبَتَ أَنَّهُ تَعَدَّى فِيهِ أَوْ أَضَاعَهُ - وَالْقَوْلُ فِي كُلِّ ذَلِكَ - مَا لَمْ تَقُمْ عَلَيْهِ بَيِّنَةٌ - قَوْلُهُ مَعَ يَمِينِهِ، فَإِنْ قَامَتْ عَلَيْهِ بَيِّنَةٌ بِالتَّعَدِّي، أَوْ الْإِضَاعَةِ ضَمِنَ، وَلَهُ فِي كُلِّ ذَلِكَ الْأُجْرَةُ فِيمَا أَثْبَتَ أَنَّهُ كَانَ عَمِلَهُ، فَإِنْ لَمْ تَقُمْ بَيِّنَةٌ حَلَفَ صَاحِبُ الْمَتَاعِ أَنَّهُ مَا يَعْلَمُ أَنَّهُ عَمِلَ مَا يَدَّعِي أَنَّهُ عَمِلَهُ، وَلَا شَيْءَ عَلَيْهِ حِينَئِذٍ.

L20418 The proof of this is the statement of Allah the Exalted: {Do not consume your wealth among yourselves unjustly} [Surah An-Nisa 4:29]. Thus, the property of the craftsman and the hired worker is forbidden for others. If he transgresses or squanders, he is then obligated to be held liable equivalent to his transgression, for squandering what he is required to preserve constitutes a transgression. He is bound to safeguard what he has been entrusted to handle, whether for a wage or without payment, due to the prohibition of the Messenger of Allah—peace and blessings be upon him—against squandering wealth and his ruling—peace be upon him—that the burden of proof lies upon the claimant against the respondent if the latter denies. Whoever is

وَبُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [النساء: ٢٩] فَمَالُ الصَّانِعِ وَالْأَجِيرِ حَرَامٌ عَلَى غَيْرِهِ، فَإِنْ اعْتَدَى أَوْ أَضَاعَ لَزِمَهُ حِينَئِذٍ أَنْ يُعْتَدَى عَلَيْهِ بِمِثْلِ مَا اعْتَدَى، وَالْإِضَاعَةُ لِمَا يَلْزَمُهُ حِفْظُهُ تَعَدٍّ وَهُوَ مُلْزَمٌ حِفْظَ مَا اُسْتُعْمِلَ فِيهِ بِأَجْرٍ أَوْ بِغَيْرِ أَجْرٍ، لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ وَحُكْمِهِ - عَلَيْهِ السَّلَامُ - بِالْبَيِّنَةِ عَلَى مَنْ ادَّعَى عَلَى الْمَطْلُوبِ إذَا أَنْكَرَ، وَمَنْ طُلِبَ بِغَرَامَةِ مَالٍ أَوْ اُدُّعِيَ عَلَيْهِ مَا يُوجِبُ غَرَامَةً فَهُوَ الْمُدَّعَى عَلَيْهِ فَلَيْسَ عَلَيْهِ إلَّا الْيَمِينُ بِحُكْمِ اللَّهِ عَزَّ وَجَلَّ، وَالْبَيِّنَةُ عَلَى مَنْ يَدَّعِي لِنَفْسِهِ حَقًّا فِي مَالِ غَيْرِهِ.

[15] **Qur'an references (L20413):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

demanded to provide monetary compensation or is accused of an act necessitating liability becomes the defendant, and he is only required to swear an oath by the judgment of Allah the Almighty. The burden of proof lies upon the one who claims a right to another's property.[16]

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا -: رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا يَضْمَنُ الصَّائِغُ، وَلَا الْقَصَّارُ، أَوْ قَالَ الْخَيَّاطُ، وَأَشْبَاهُهُ.

L20419 People have differed regarding this. A group held the same opinion as us: It was reported to us through the chain of Shuʿbah from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī, who said: The jeweler is not liable, nor the fuller (or he said the tailor) and the like.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا جَبَلَةُ بْنُ عَطِيَّةَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ قَالَ فِي حَمَّالٍ اُسْتُؤْجِرَ لِحَمْلِ قُلَّةِ عَسَلٍ فَانْكَسَرَتْ قَالَ: لَا ضَمَانَ عَلَيْهِ.

L20420 From the transmission of Hammad ibn Salamah, who narrated to us: Jabalah ibn 'Atiyyah reported from Yazid ibn 'Abdullah ibn Mawhab, who stated regarding a porter contracted to transport a jar of honey - and it broke: "There is no liability upon him."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَزْهَرُ السَّمَّانُ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ لَا يَضْمَنُ الْأَجِيرُ إِلَّا مِنْ تَضْيِيعٍ.

L20421 Through the chain of Ibn Abī Shaybah, Azhar al-Sammān narrated to us from ʿAbdullāh ibn ʿAwn, from Muḥammad ibn Sīrīn, that he held the view that the hired worker is not liable except for negligence.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ إِسْمَاعِيلَ بْنِ سَالِمٍ عَنْ الشَّعْبِيِّ قَالَ: لَيْسَ عَلَى أَجِيرِ الْمُشَاهَرَةِ ضَمَانٌ.

L20422 And via the narration of Ibn Abī Shaybah from Ismāʿīl ibn Sālim from al-Shaʿbī, who said: "There is no financial liability upon a monthly-wage hired worker."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ الشَّعْبِيِّ قَالَ: لَا يَضْمَنُ الْقَصَّارُ إِلَّا مَا جَنَتْ يَدُهُ.

L20423 And through the chain of Ibn Abī Shaybah: Wakīʿ narrated to us: Sufyān al-Thawrī from Muṭarrif ibn Ṭarīf, who narrated from al-Shaʿbī, who said: The launderer is liable only for what his own hands have committed.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مُطَرِّفٍ عَنْ الشَّعْبِيِّ قَالَ: يَضْمَنُ الصَّانِعُ مَا أَعْنَتَ بِيَدِهِ، وَلَا يَضْمَنُ مَا سِوَى ذَلِكَ.

L20424 From the chain of ʿAbd al-Raḥmān ibn Mahdī: Sufyān al-Thawrī narrated from Muṭarrif, from al-Shaʿbī, who said: "The craftsman is liable for what he damages with his own hand, and he is not liable for anything beyond that."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ أَشْعَثَ عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ أَنَّهُ كَانَ لَا يَضْمَنُ الْمَلَّاحُ غَرَقًا وَلَا حَرَقًا.

L20425 And through the chain of Ibn Abi Shaybah from Hafs ibn Ghiyath from Ash'ath from Ibn Sirin from Shurayh: that he did not hold the ship captain liable for drowning or burning.

[16] **Qur'an references (L20418):** Qur'an 4:29 (An-Nisa).

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا أَفْسَدَ الْقَصَّارُ فَهُوَ ضَامِنٌ وَكَانَ لَا يُضَمِّنُهُ غَرَقًا وَلَا حَرَقًا وَلَا عَدُوًّا مُكَابِرًا.

L20426–20427 From the chain of Ibn Abī Shaybah: ʿAbd al-Aʿlā narrated from Yūnus ibn ʿUbayd from al-Ḥasan al-Baṣrī, who said: "If the cloth-bleacher causes damage, he is financially responsible; however, he does not hold him liable for flooding, fire, or a mighty enemy."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا نَصُّ قَوْلِنَا -: وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ مُسْلِمِ بْنِ خَالِدٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ طَاوُسٍ أَنَّهُ لَمْ يُضَمِّنْ الْقَصَّارَ.

L20428 Abu Muhammad said: This is the exact text of our statement—: transmitted via the chain of Sa'id ibn Mansur from Muslim ibn Khalid from Ibn Abi Najih from Tawus—that he did not hold the launderer liable.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ قَالَ: قَالَ ابْنُ شُبْرُمَةَ: لَا يَضْمَنُ الصَّانِعُ إلَّا مَا أَعْنَتَ بِيَدِهِ - وَقَالَ قَتَادَةُ: يَضْمَنُ إذَا ضَيَّعَ.

L20429 And via the chain of Abd al-Razzaq, who narrated to us from Maʿmar, Maʿmar said: Ibn Shubruma stated, "A craftsman is only liable for what he causes with his own hand." Qatadah said, "He is liable if he causes loss through negligence."

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ أَنَّ حَمَّادَ بْنَ أَبِي سُلَيْمَانَ كَانَ لَا يُضَمِّنُ أَحَدًا مِنْ الصُّنَّاعِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَزُفَرَ، وَأَبِي ثَوْرٍ وَأَحْمَدَ، وَإِسْحَاقَ، وَالْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ.

L20430 And through him [the preceding narrator], Abd al-Razzaq narrated to us from Sufyan al-Thawri, who reported that Hammad ibn Abi Sulayman would not hold craftsmen liable—this being the position of Abu Hanifah, al-Shafiʿi, Zufar, Abu Thawr, Ahmad, Ishaq, al-Muzani, and Abu Sulayman.

وَقَالَتْ طَائِفَةٌ: الصُّنَّاعُ كُلُّهُمْ ضَامِنُونَ مَا جَنَوْا وَمَا لَمْ يَجْنُوا.

L20431 A group of scholars maintained that all craftsmen are financially liable for what they have caused and what they have not caused.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ بَعْضِ أَصْحَابِهِ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ طَلْحَةَ بْنِ سَعِيدِ بْنِ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - ضَمَّنَ الصُّنَّاعَ - يَعْنِي: مَنْ عَمِلَ بِيَدِهِ.

L20432 It was reported to us through the chain of ʿAbd al-Razzāq from one of his associates from al-Layth ibn Saʿd from Ṭalḥah ibn Saʿīd ibn Bukayr ibn ʿAbd Allāh ibn al-Ashajj that ʿUmar ibn al-Khaṭṭāb—may Allāh be pleased with him—held craftsmen liable, meaning those who work with their hands.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يُضَمِّنُ الْأَجِيرَ.

L20433 Narrated through the chain of Hammad ibn Salamah, from Qatadah, from Khilas ibn ʿAmr, who said: "Ali ibn Abi Talib would hold the hired worker financially liable."

L20434 It is authentically reported through the chain of Ibn Abi Shaybah: Hatim ibn Ismaʿil narrated from Jaʿfar ibn Muhammad, from his father, that ʿAli would impose liability on cloth-washers and goldsmiths, stating: "People's affairs

are not set right except by this." It is also narrated that he held a carpenter liable.

وَصَحَّ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَاتِمُ بْنُ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيًّا كَانَ يُضَمِّنُ الْقَصَّارَ، وَالصَّوَّاغَ، وَقَالَ: لَا يُصْلِحُ النَّاسَ إلَّا ذَلِكَ - وَرُوِيَ عَنْهُ أَنَّهُ ضَمَّنَ نَجَّارًا.

L20435 It is established from Shuraih that the hired worker and launderer are liable for damages.

وَصَحَّ عَنْ شُرَيْحٍ تَضْمِينُ الْأَجِيرِ وَالْقَصَّارِ.

L20436–20438 Reported from Ibrahim is the ruling on the financial liability of craftsmen—and similarly from Abdullah ibn ʻUtbah ibn Masʻud— And from Makḥūl: He held every hired worker liable, even the innkeeper who safeguards people's animals - this being the opinion of Ibn Abī Laylā - to the extent of holding the shipowner liable if goods are damaged or perish within the vessel.

وَعَنْ إبْرَاهِيمَ أَيْضًا تَضْمِينُ الصُّنَّاعِ - وَكَذَلِكَ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ - وَعَنْ مَكْحُولٍ أَنَّهُ كَانَ يُضَمِّنُ كُلَّ أَجِيرٍ حَتَّى صَاحِبَ الْفُنْدُقِ الَّذِي يَحْبِسُ لِلنَّاسِ دَوَابَّهُمْ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى حَتَّى إنَّهُ يُضَمِّنُ صَاحِبَ السَّفِينَةِ إذَا عَطِبَتْ الْأَمْتِعَةُ الَّتِي تَلِفَتْ فِيهَا.

L20439 A group said: Everyone who takes a fee is liable - and this was narrated from Ali, Abd al-Rahman ibn Yazid, and others besides them.

وَقَالَتْ طَائِفَةٌ: يَضْمَنُ كُلُّ مَنْ أَخَذَ أَجْرًا - وَرُوِيَ ذَلِكَ عَنْ عَلِيٍّ وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ وَغَيْرِهِمَا.

L20440 A school of jurists held: The general hired worker (i.e., the one employed for various tasks) is liable, while the restricted hired worker (i.e., the one employed for a fixed duration) is not. This constitutes the opinion of Abū Yūsuf and Muḥammad ibn al-Ḥasan. It is reported from Ibrāhīm al-Nakhaʻī that the general worker is liable, though no statement exempting the restricted worker is attributed to him.

وَقَالَتْ طَائِفَةٌ: يَضْمَنُ الْأَجِيرُ الْمُشْتَرَكُ - وَهُوَ الْعَامُّ - وَهُوَ الَّذِي اُسْتُؤْجِرَ عَلَى الْأَعْمَالِ، وَلَا يَضْمَنُ الْخَاصُّ، وَهُوَ الَّذِي اُسْتُؤْجِرَ لِمُدَّةٍ مَا - وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ - رُوِيَ عَنْ إبْرَاهِيمَ يَضْمَنُ الْأَجِيرُ الْمُشْتَرَكُ، وَلَمْ يَأْتِ عَنْهُ لَا يَضْمَنُ الْخَاصُّ.

L20441 A group [of scholars] held: The craftsman is liable for what is not evident to him unless he provides clear proof that the item perished independently of his actions, in which case he is not liable. He bears no liability whatsoever for what is apparent unless clear proof is established against him demonstrating that he transgressed—this is the opinion of Mālik ibn Anas.

وَقَالَتْ طَائِفَةٌ: يَضْمَنُ الصَّانِعُ مَا غَابَ عَلَيْهِ إلَّا أَنْ يُقِيمَ بَيِّنَةً أَنَّهُ تَلِفَ بِعَيْنِهِ مِنْ غَيْرِ فِعْلِهِ فَلَا يَضْمَنُ، وَلَا يَضْمَنُ مَا ظَهَرَ أَصْلًا، إلَّا أَنْ تَقُومَ عَلَيْهِ بَيِّنَةٌ بِأَنَّهُ تَعَدَّى - وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ.

L20442 Abu Muhammad said: As for Mālik's opinion, we know of no valid proof for it whatsoever—neither from the Qur'an, nor the Sunnah, nor a weak narration, nor the statement of anyone before him, nor analogy. Since it lacks these [sources], it has no valid basis. We found no specious argument

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ قَبْلَهُ وَلَا مِنْ قِيَاسٍ، وَمَا كَانَ هَكَذَا فَلَا وَجْهَ لَهُ وَلَمْ نَجِدْ لَهُمْ

for their position except their claim: “We only did this as a precaution for the people.” We responded: “Then impose liability on custodians of deposits as a precaution for the people, for it is authentically established that ‘Umar ibn al-Khaṭṭāb held Anas ibn Mālk liable for them.”

L20443 Moreover, whoever considers those commissioning work more responsible for taking precaution toward them than the craftsmen—all being Muslims—then if someone were to reverse their argument against them, there would be no difference between him and them. This parallels one who states: “The more secure basis is the apparent unless evidence establishes that the item perished without his action or transgression, whereas the non-apparent matter is not more secure unless testimony of just witnesses proves it perished due to his transgression.” Indeed, this opinion is perhaps more cautious in legal reasoning. Similarly, this is the opinion of Abū Yūsuf and Muḥammad ibn al-Ḥasan.

L20444 And this, as you can see, is a matter wherein they opposed Umar and Ali ibn Abi Talib, while no one among the Companions—may Allah be pleased with them—is known to have opposed them both. Yet they revere such opposition when it aligns with their opinions, though they are—by their own (unjust) claim—proponents of analogy.

L20445–20447 Some proponents of analogical reasoning (qiyās) have stated: “We have found that what people pay to one another from their wealth divides into three categories—with no fourth—:” As for the category where the benefit is solely for the giver, not the recipient, we have agreed there is no financial liability in part of it, such as the deposit. Thus, it becomes obligatory to restore all matters outside of it to the deposit’s ruling.

L20448 A category from which both the giver and receiver benefit—we have agreed that there is no liability in some of its forms, such as the *qirad* (commenda partnership). Thus, anything outside [this category] must be restored to its original state. This includes pledged assets and what is entrusted to workers [for labor].

L20449 A third category is that which solely benefits the recipient. We have agreed

شُبْهَةً إِلَّا أَنَّهُمْ قَالُوا: إِنَّمَا فَعَلْنَا ذَلِكَ احْتِيَاطًا لِلنَّاسِ. فَقُلْنَا لَهُمْ: فَضَمِّنُوا الْوَدَائِعَ احْتِيَاطًا لِلنَّاسِ، فَقَدْ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ ضَمَّنَهَا أَنَسَ بْنَ مَالِكٍ.

وَأَيْضًا فَمَنْ جَعَلَ الْمُسْتَصْنِعِينَ أَوْلَى بِالِاحْتِيَاطِ لَهُمْ مِنَ الصُّنَّاعِ وَالْكُلُّ مُسْلِمُونَ، وَلَوْ عَكَسَ عَاكِسٌ عَلَيْهِمْ قَوْلَهُمْ لَمَا كَانَ بَيْنَهُ وَبَيْنَهُمْ فَضْلٌ كَمَنْ قَالَ: بَلْ أَضْمَنُ مَا ظَهَرَ إِلَّا أَنْ تَأْتِيَ بَيِّنَةٌ عَلَى أَنَّ الشَّيْءَ تَلِفَ مِنْ غَيْرِ فِعْلِهِ وَتَعَدِّيهِ، وَلَا أَضْمَنُ مَا بَطَنَ إِلَّا أَنْ تَقُومَ بَيِّنَةُ عَدْلٍ بِأَنَّهُ هَلَكَ مِنْ تَعَدِّيهِ، بَلْ لَعَلَّ هَذَا الْقَوْلَ أَحْوَطُ فِي النَّظَرِ. وَكَذَلِكَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ.

وَهَذَا كَمَا تَرَى خَالَفُوا فِيهِ عُمَرَ وَعَلِيَّ بْنَ أَبِي طَالِبٍ، وَلَا يُعْرَفُ لَهُمَا مِنَ الصَّحَابَةِ مُخَالِفٌ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إِذَا وَافَقَ آرَاءَهُمْ وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ.

وَقَدْ قَالَ بَعْضُهُمْ مِنْ أَصْحَابِ الْقِيَاسِ: وَجَدْنَا مَا يَدْفَعُهُ النَّاسُ بَعْضُهُمْ إِلَى بَعْضٍ مِنْ أَمْوَالِهِمْ يَنْقَسِمُ أَقْسَامًا ثَلَاثَةً لَا رَابِعَ لَهَا -: فَقِسْمٌ يَنْتَفِعُ بِهِ الدَّافِعُ وَحْدَهُ لَا الْمَدْفُوعُ إِلَيْهِ فَقَدْ اتَّفَقْنَا أَنَّهُ لَا ضَمَانَ فِي بَعْضِهِ كَالْوَدِيعَةِ، فَوَجَبَ رَدُّ كُلِّ مَا كَانَ مِنْ غَيْرِهَا إِلَيْهَا.

وَقِسْمٌ يَنْتَفِعُ بِهِ الدَّافِعُ وَالْمَدْفُوعُ إِلَيْهِ - فَقَدْ اتَّفَقْنَا عَلَى أَنَّهُ لَا ضَمَانَ فِي بَعْضِهِ كَالْقِرَاضِ، فَوَجَبَ رَدُّ مَا كَانَ مِنْ غَيْرِهِ إِلَيْهِ وَدَخَلَ فِي ذَلِكَ الرَّهْنُ، وَمَا دُفِعَ إِلَى الصُّنَّاعِ.

in some parts of it—such as a consumable loan (qarḍ)—that it is subject to liability. Therefore, it necessarily follows that the loan for use (ʿāriyyah) must likewise entail liability.

L20450 Abu Muhammad said: If any analogy in the world were valid, it would be this one. But they neither followed the traditions nor recognized analogy—and success is with Allah, the Exalted.

L20451 **A lease contract is not valid unless it entails a guaranteed, specified, and limited obligation as a liability.**

L20452 1326. Issue: A lease contract is not permissible except with either a specified, guaranteed item limited in liability or a distinct, identified asset with known boundaries and measure. This is the opinion of ʿUthmān, may Allah be pleased with him, and others.

L20453 Abu Muhammad said: Malik stated that it is permissible to hire a worker in exchange for his food. They adduced as proof a report from Abu Hurairah: "I was a hired worker for the daughter of Ghazwan in exchange for food for my stomach and the heel straps of my sandals."

L20454 Abū Muḥammad said: This may constitute mutual generosity without a binding contract. As for contracts that are concluded, they must only be based on a known quantity. Food varies: some is soft; some is coarse; and some is moderate. Relish also differs, and people's eating habits vary greatly. Thus, it is indeterminate and impermissible. Success is by Allah, the Most High.

L20455 "The lease" has been completed by the praise of Allah.

وَقِسْمٌ ثَالِثٌ يَنْتَفِعُ بِهِ الْمَدْفُوعُ إلَيْهِ وَحْدَهُ - فَقَدْ اتَّفَقْنَا فِي بَعْضِهِ عَلَى أَنَّهُ مَضْمُونٌ كَالْقَرْضِ، فَوَجَبَ أَنْ تَكُونَ الْعَارِيَّةُ مِثْلَهُ.

قَالَ أَبُو مُحَمَّدٍ: لَوْ صَحَّ قِيَاسٌ فِي الْعَالَمِ لَكَانَ هَذَا، وَلَكِنَّهُمْ لَا الْآثَارَ اتَّبَعُوا، وَلَا الْقِيَاسَ عَرَفُوا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا تَجُوزُ الْإِجَارَةُ إلَّا بِمَضْمُونٍ مُسَمًّى مَحْدُودٍ فِي الذِّمَّةِ]

١٣٢٦ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِجَارَةُ إلَّا بِمَضْمُونٍ مُسَمًّى مَحْدُودٍ فِي الذِّمَّةِ، أَوْ بِعَيْنٍ مُعَيَّنَةٍ مُتَمَيِّزَةٍ مَعْرُوفَةِ الْحَدِّ وَالْمِقْدَارِ - وَهُوَ قَوْلُ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرِهِ.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ مَالِكٌ: يَجُوزُ كِرَاءُ الْأَجِيرِ بِطَعَامِهِ - وَاحْتَجُّوا بِخَبَرٍ عَنْ أَبِي هُرَيْرَةَ: كُنْت أَجِيرًا لِابْنَةِ غَزْوَانَ بِطَعَامِ بَطْنِي، وَعُقْبَةِ رِجْلِي.

قَالَ أَبُو مُحَمَّدٍ: قَدْ يَكُونُ هَذَا تَكَارُمًا مِنْ غَيْرِ عَقْدٍ لَازِمٍ - وَأَمَّا الْعُقُودُ الْمَقْضِيُّ بِهَا فَلَا تَكُونُ إلَّا بِمَعْلُومٍ، وَالطَّعَامُ يَخْتَلِفُ: فَمِنْهُ اللَّيِّنُ، وَمِنْهُ الْخَشِنُ وَمِنْهُ الْمُتَوَسِّطُ - وَيَخْتَلِفُ الْأُدْمُ، وَتَخْتَلِفُ النَّاسُ فِي الْأَكْلِ اخْتِلَافًا مُتَفَاوِتًا فَهُوَ مَجْهُولٌ لَا يَجُوزُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّتْ " الْإِجَارَةُ " بِحَمْدِ اللَّهِ.



AL-MUHALLA

كِتَابُ الْجُعْلِ فِي الْآبِقِ وَغَيْرِهِ

The Book of Promised Rewards

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

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[كِتَابُ الْجُعْلِ فِي الْآبِقِ وَغَيْرِهِ] [مَسْأَلَةٌ لَا يَجُوزُ الْحُكْمُ بِالْجُعْلِ عَلَى أَحَدٍ]

[Book on the Promised Reward Concerning the Runaway Slave and Other Such Cases] [Issue: No legal ruling may be validly based on a promised reward.]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْجُعْلِ فِي الْآبِقِ وَغَيْرِهِ ١٣٢٧ - مَسْأَلَةٌ: لَا يَجُوزُ الْحُكْمُ بِالْجُعْلِ عَلَى أَحَدٍ، فَمَنْ قَالَ لِآخَرَ: إنْ جِئْتَنِي بِعَبْدِي الْآبِقِ فَلَكَ عَلَيَّ دِينَارٌ، أَوْ قَالَ: إنْ فَعَلْت كَذَا وَكَذَا فَلَكَ عَلَيَّ دِرْهَمٌ، أَوْ مَا أَشْبَهَ هَذَا فَجَاءَهُ بِذَلِكَ - أَوْ هتف وَأَشْهَدَ عَلَى نَفْسِهِ: مَنْ جَاءَنِي بِكَذَا فَلَهُ كَذَا، فَجَاءَهُ بِهِ لَمْ يُقْضَ عَلَيْهِ بِشَيْءٍ، وَيُسْتَحَبُّ لَوْ وَفَّى بِوَعْدِهِ.

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Juʿlah (Stipulated Reward) for the Fugitive Slave and Other Matters (1327). Issue: It is impermissible to legally enforce a stipulated reward upon anyone. If a person says to another, “If you bring me my fugitive slave, you are entitled to a dinar,” or says, “If you do such-and-such, you are entitled to a dirham,” or anything resembling this, and the other fulfills the condition—or if one publicly proclaims and binds himself: “Whoever brings me such-and-such shall receive such-and-such,” and someone fulfills it—no legal liability is incurred by the promisor. However, it is recommended that he honor his pledge.

وَكَذَلِكَ مَنْ جَاءَهُ بِآبِقٍ، فَلَا يُقْضَى لَهُ بِشَيْءٍ سَوَاءٌ عَرَفَ بِالْمَجِيءِ بِالْإِبَاقِ أَوْ لَمْ يُعْرَفْ بِذَلِكَ، إلَّا أَنْ يَسْتَأْجِرَهُ عَلَى طَلَبِهِ مُدَّةً مَعْرُوفَةً، أَوْ لِيَأْتِيَهُ بِهِ مِنْ مَكَانٍ مَعْرُوفٍ، فَيَجِبُ لَهُ مَا اسْتَأْجَرَهُ بِهِ.

Similarly, whoever brings a runaway slave to the owner is not entitled to anything—whether the owner knew the runaway slave had been brought or not—unless the owner hires him to search for the runaway for a specified period or to bring him from a known location. In that case, he is entitled to the agreed-upon remuneration.

وَأَوْجَبَ قَوْمٌ الْجُعْلَ وَأَلْزَمُوهُ الْجَاعِلَ - وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

Some scholars deemed the promised reward obligatory and bound the promisor to it, invoking as evidence the command of Allah the Exalted: “Fulfill contracts” [Al-Mā’idah: 1].[1]

وَبِقَوْلِ يُوسُفَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخَدَمَتُهُ عَنْهُ: {قَالُوا نَفْقِدُ صُوَاعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ} [يوسف: ٧٢] .

And by the saying of Yūsuf (peace be upon him) and his servants from him: “They said, ’We are missing the king’s measuring vessel. For whoever brings it, there is a camel’s load [of grain], and I am its guarantor.’” [Yūsuf 12:72][2]

وَبِحَدِيثِ الَّذِي رَقَى عَلَى قَطِيعٍ مِنْ الْغَنَمِ - وَقَدْ ذَكَرْنَاهُ فِي " الْإِجَارَاتِ " فَأَغْنَى عَنْ إعَادَتِهِ.

And by the hadith of the one who performed a healing incantation over a flock of sheep—which we have already discussed in *Al-Ijarat*—thereby rendering its repetition unnecessary.

وَأَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ:

Abū Muḥammad said: And all of this—there is no proof on their part in it:

[1] **Qur’an references (L20460):** Qur’an 5:1 (Al-Ma’idah).
[2] **Qur’an references (L20461):** Qur’an 12:72 (Yusuf).

As for the words of Allah, the Exalted: {Fulfill the covenants} [Al-Mā'idah: 1], the Messenger of Allah—peace and blessings of Allah be upon him—said: "Indeed, your blood, your wealth, your honor, and your physical integrity are sacred for you."[3]

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا قَوْلُ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] فَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L20466 And He, the Most High, said: {It is not for a believing man or a believing woman, when Allah and His Messenger have decreed a matter, that they should have any choice in their affair} [Al-Ahzab: 36]. Thus, it is established that no one has the right to enter into a contract concerning their blood, wealth, honor, or physical body, nor to be bound by any ruling in any of these matters, except what the text explicitly obligates by His name or permits by His name. Therefore, it is established that the contracts Allah, the Most High, has commanded to fulfill are only those stipulated by their names, and that every contract beyond these is forbidden to enact.[4]

وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] فَصَحَّ أَنَّهُ لَيْسَ لِأَحَدٍ أَنْ يَعْقِدَ فِي دَمِهِ، وَلَا فِي مَالِهِ، وَلَا فِي عِرْضِهِ، وَلَا فِي بَشَرَتِهِ عَقْدًا، وَلَا أَنْ يَلْتَزِمَ فِي شَيْءٍ مِنْ ذَلِكَ حُكْمًا، إِلَّا مَا جَاءَ النَّصُّ بِإِيجَابِهِ بِاسْمِهِ، أَوْ بِإِبَاحَتِهِ بِاسْمِهِ. فَصَحَّ أَنَّ الْعُقُودَ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهَا إِنَّمَا هِيَ الْعُقُودُ الْمَنْصُوصُ عَلَيْهَا بِأَسْمَائِهَا، وَأَنَّ كُلَّ مَا عَدَاهَا فَحَرَامٌ عَقْدُهُ.

L20467 Moreover, Allah the Exalted says: "And never say of anything, 'I will surely do this tomorrow,' without [adding], 'If Allah wills'" [Al-Kahf:23-24]. Thus, it is established that whoever binds himself to do something without saying "If Allah wills" has opposed the command of Allah the Exalted. When one opposes the command of Allah the Exalted, no contract made in defiance of his Lord, the Mighty and Majestic's command is binding upon him. Rather, it constitutes an act of disobedience for which he is obliged to seek forgiveness from Allah the Exalted.[5]

وَأَيْضًا: فَإِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {وَلا تَقُولَنَّ لِشَيْءٍ إِنِّي فَاعِلٌ ذَلِكَ غَدًا} [الكهف: ٢٣] {إِلا أَنْ يَشَاءَ اللَّهُ} [الكهف: ٢٤] . فَصَحَّ أَنَّ مَنْ الْتَزَمَ أَنْ يَفْعَلَ شَيْئًا وَلَمْ يَقُلْ: إِنْ شَاءَ اللَّهُ، فَقَدْ خَالَفَ أَمْرَ اللَّهِ تَعَالَى، وَإِذَا خَالَفَ أَمْرَ اللَّهِ تَعَالَى لَمْ يَلْزَمْهُ عَقْدٌ خَالَفَ فِيهِ أَمْرَ رَبِّهِ عَزَّ وَجَلَّ، بَلْ هُوَ مَعْصِيَةٌ يَلْزَمُهُ أَنْ يَسْتَغْفِرَ اللَّهَ عَزَّ وَجَلَّ مِنْهُ.

L20468 The Messenger of Allah (peace be upon him) said: "Whoever does a deed not aligned with our command, it is rejected." If one says, "Unless Allah wills," we know with certain necessary knowledge that since they established that agreement through Allah Almighty's will yet neither enacted it nor fulfilled it, then Allah the Exalted did not will it. For had Allah willed it, He would have enacted and perfected it. Thus, one does not depart from their obliga-

قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَإِنْ قَالَ: إِلَّا أَنْ يَشَاءَ اللَّهُ، فَقَدْ عَلِمْنَا يَقِينًا عِلْمَ ضَرُورَةٍ إِذْ قَدْ عَقَدَ ذَلِكَ الْعَقْدَ بِمَشِيئَةِ اللَّهِ عَزَّ وَجَلَّ ثُمَّ لَمْ يُنَفِّذْهُ وَلَا فَعَلَهُ، فَإِنَّ اللَّهَ تَعَالَى لَمْ يَشَأْهُ، إِذْ لَوْ شَاءَهُ اللَّهُ لَأَنْفَذَهُ وَأَتَمَّهُ، فَلَمْ يَخْرُجْ عَمَّا الْتَزَمَ مِنْ كَوْنِ ذَلِكَ الْعَقْدِ إِنْ شَاءَهُ اللَّهُ تَعَالَى أَنْفَذَهُ وَأَتَمَّهُ وَإِلَّا فَلَا.

[3] **Qur'an references (L20463):** Qur'an 5:1 (Al-Ma'idah).
[4] **Qur'an references (L20466):** Qur'an 33:36 (Al-Ahzab).
[5] **Qur'an references (L20467):** Qur'an 18:23 (Al-Kahf); Qur'an 18:24 (Al-Kahf).

tion: that if Allah the Exalted wills the agreement, He enacts and perfects it; otherwise, not.[6]

وَأَيْضًا: فَإِنَّ الْمُخَالِفِينَ لَنَا فِي هَذَا لَا يَرَوْنَ جَمِيعَ الْعُقُودِ لَازِمَةً، وَلَا يَأْخُذُونَ بِعُمُومِ الْآيَةِ الَّتِي احْتَجُّوا بِهَا، بَلْ يَقُولُونَ فِيمَنْ عَقَدَ عَلَى نَفْسِهِ أَنْ يَصْبُغَ ثَوْبَهُ أَصْفَرَ، أَوْ أَنْ يَمْشِيَ إِلَى السُّوقِ، أَوْ نَحْوَ هَذَا: أَنَّهُ لَا يَلْزَمُهُ، فَقَدْ نَقَضُوا احْتِجَاجَهُمْ بِعُمُومِهَا، وَلَزِمَهُمْ أَنْ يَأْتُوا بِالْحَدِّ الْمُفَرِّقِ بَيْنَ مَا يَلْزَمُونَهُ مِنَ الْعُقُودِ وَبَيْنَ مَا لَا يَلْزَمُونَهُ، وَبِالْبُرْهَانِ عَلَى صِحَّةِ ذَلِكَ الْحَدِّ، وَذَلِكَ الْفَرْقُ وَإِلَّا فَقَوْلُهُمْ مَرْدُودٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L20468

Moreover, those who oppose us in this matter do not consider all contracts to be binding, nor do they adhere to the general application of the Verse they themselves cited as evidence. Instead, they assert that if someone binds himself to dye his garment yellow, to walk to the market, or similar actions, it is not binding upon him. By this, they have nullified their own argument based on the Verse's generality, and they must establish the distinguishing criterion that differentiates between the contracts they deem binding and those they do not, along with evidence confirming the validity of this criterion and distinction. Otherwise, their claim is rejected, for it is an assertion without evidence, and anything of this sort is invalid.

قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

L20470

Allah, the Most High, said: "Say, 'Bring your proof, if you are truthful.'" [Al-Baqarah: 111][7]

وَالْعَجَبُ: أَنَّ الْمُخَالِفِينَ لَنَا يَقُولُونَ: إِنْ وَكَّدَ كُلَّ عَقْدٍ عَقَدَهُ بِيَمِينٍ لَمْ يَلْزَمْهُ الْوَفَاءُ بِهِ، وَإِنَّمَا فِيهِ الْكَفَّارَةُ إِنْ لَمْ يَفِ بِهِ فَقَطْ، ثُمَّ يُلْزِمُونَهُ إِيَّاهُ إِذَا لَمْ يُؤَكِّدْهُ، فَتَرَاهُمْ كُلَّمَا أَكَّدَ الْعَاقِدُ عَقْدَهُ انْحَلَّ عَنْهُ، وَإِذَا يُؤَكِّدُهُ لَزِمَهُ، وَهَذَا مَعْكُوسٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20471–20472

It is astonishing that those who oppose us assert: "If one confirms every contract he makes with an oath, he is not obligated to fulfill it - merely requiring expiation should he fail to fulfill it. Yet they obligate him to fulfill it if he does not confirm it with an oath." Thus you observe that whenever a contracting party confirms his contract with an oath, it becomes dissolved for him, but if he does not confirm it, he becomes bound by it. This is entirely inverted - and success comes solely from Allah, the Exalted.

وَأَمَّا قَوْلُ يُوسُفَ - عَلَيْهِ السَّلَامُ - فَلَا يَلْزَمُ لِوُجُوهٍ -:

L20473

As for the statement of Joseph (peace be upon him), it is not binding due to several reasons—

أَحَدُهَا: أَنَّ شَرِيعَةَ مَنْ قَبْلَنَا مِنَ الْأَنْبِيَاءِ - عَلَيْهِمُ السَّلَامُ - لَا تَلْزَمُنَا، قَالَ تَعَالَى: {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨] .

L20474

One of them is that the sharia of the prophets before us (peace be upon them) is not binding upon us. Allah, the Exalted, said: "For each [community] We have ordained a law and a clear path" [al-Mā'idah 5:48].[8]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فُضِّلْتُ عَلَى الْأَنْبِيَاءِ بِسِتٍّ، فَذَكَرَ - عَلَيْهِ السَّلَامُ - مِنْهَا: وَأُرْسِلْتُ إِلَى النَّاسِ كَافَّةً» .

L20475

The Messenger of Allah (peace be upon him) said, "I have been favored over

[6] **Hadith references (L20468):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[7] **Qur'an references (L20470):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

[8] **Qur'an references (L20474):** Qur'an 5:48 (Al-Ma'idah).

the prophets with six." Then he (peace be upon him) mentioned among them, "and I have been sent to all people."

L20476 And he (peace be upon him) also said: "I have been granted five favors never granted to anyone before me." Among these, he (peace be upon him) mentioned: "A prophet was sent exclusively to his own people, while I have been sent to all mankind." This was narrated to us through Jabir's chain of transmission, and the preceding report through Abu Hurayrah's chain.[9]

وَقَالَ - عَلَيْهِ السَّلَامُ - أَيْضًا: «أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ قَبْلِي» فَذَكَرَ - عَلَيْهِ السَّلَامُ - مِنْهَا: «وَكَانَ النَّبِيُّ يُبْعَثُ إلَى قَوْمِهِ خَاصَّةً وَبُعِثْتُ إلَى النَّاسِ عَامَّةً» رُوِّينَا هَذَا مِنْ طَرِيقِ جَابِرٍ، وَالَّذِي قَبْلَهُ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ.

L20477 Since this has been established, they were not sent to us. As they were not sent to us, we are not bound by a law we were not commanded to follow. Rather, we are obligated only to believe that they are the messengers of Allah the Exalted, and that what they brought is binding only on those to whom they were sent.

فَإِذْ قَدْ صَحَّ هَذَا فَلَمْ يُبْعَثُوا إلَيْنَا، وَإِذْ لَمْ يُبْعَثُوا إلَيْنَا فَلَا يَلْزَمُنَا شَرْعٌ لَمْ نُؤْمَرْ بِهِ، وَإِنَّمَا يَلْزَمُنَا الْإِيمَانُ بِأَنَّهُمْ رُسُلُ اللَّهِ تَعَالَى، وَأَنَّ مَا أَتَوْا بِهِ لَازِمٌ لِمَنْ بُعِثُوا إلَيْهِ فَقَطْ.

L20478 Moreover, those who cite this verse are the first to contradict it, for they do not obligate anyone who declares, "Whoever brings me such-and-such shall receive a camel's load," to fulfill his pledge. This is because the composition of this load remains undefined: is it pearls, gold, ashes, or dirt? Nor is it specified which of the camels are intended - among them are weak ones incapable of bearing twenty sa's, and strong, sound ones capable of bearing three hundred sa's. None is more flagrantly persistent in falsehood than those who cite something as evidence while being the foremost to violate it toward one who never upheld that foundational principle.

وَأَيْضًا: فَإِنَّ الْمُحْتَجِّينَ بِهَذِهِ الْآيَةِ أَوَّلُ مُخَالِفٍ لَهَا؛ لِأَنَّهُمْ لَا يُلْزِمُونَ مَنْ قَالَ: لِمَنْ جَاءَنِي بِكَذَا حِمْلُ بَعِيرٍ الْوَفَاءَ بِمَا قَالَ لِأَنَّ هَذَا الْحِمْلَ لَا يُدْرَى مِمَّ هُوَ؟ أَمِنْ اللُّؤْلُؤِ، أَوْ مِنْ ذَهَبٍ، أَوْ مِنْ رَمَادٍ، أَوْ مِنْ تُرَابٍ؟ وَلَا أَيُّ الْبُعْرَانِ هُوَ؟ وَمِنْ الْبُعْرَانِ الضَّعِيفُ الَّذِي لَا يَسْتَقِلُّ بِعِشْرِينَ صَاعًا، وَمِنْهُمْ الْقَوِيُّ وَالصَّحِيحُ الَّذِي يَسْتَقِلُّ بِثَلَاثِمِائَةِ صَاعٍ، وَلَا أَشَدَّ مُجَاهِرَةً بِالْبَاطِلِ مِمَّنْ يَحْتَجُّ بِشَيْءٍ هُوَ أَوَّلُ مُخَالِفٍ لَهُ عَلَى مَنْ لَمْ يَلْتَزِمْ قَطُّ ذَلِكَ الْأَصْلَ.

L20479–20481 Moreover, so even if it were present in our Sharia, it would not serve as binding proof against us, because that ruling is not in this verse. The obligation to enforce the judgment accordingly. However, in it [the ruling], this compensation was established solely, and this is not among the matters on which we disagreed with them. Thus, their reliance on both verses is invalidated, and all praise belongs to Allah, the Most High.

وَأَيْضًا: فَحَتَّى لَوْ كَانَ فِي شَرِيعَتِنَا لَمَا كَانَ حُجَّةً عَلَيْنَا؛ لِأَنَّهُ لَيْسَ فِي هَذِهِ الْآيَةِ إلْزَامُ الْقَضَاءِ بِذَلِكَ، وَإِنَّمَا فِيهَا: أَنَّهُ جُعِلَ ذَلِكَ الْجُعْلُ فَقَطْ، وَلَيْسَ هَذَا مِمَّا خَالَفْنَاهُمْ فِيهِ. فَبَطَلَ تَعَلُّقُهُمْ بِالْآيَتَيْنِ جَمِيعًا وَلِلَّهِ تَعَالَى الْحَمْدُ.

L20482 As for the Prophet's statement—may Allah bless him and grant him peace—in the hadith concerning the practitioner of *ruqyah*, it is authentic. However,

وَأَمَّا قَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ الرَّاقِي فَصَحِيحٌ، إلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ إلَّا إبَاحَةُ أَخْذِ مَا أَعْطَى الْجَاعِلَ عَلَى الرُّقْيَةِ فَقَطْ، وَهَكَذَا نَقُولُ، وَلَيْسَ

[9] **Hadith references (L20476):** Sahih al-Bukhari 335; Mishkat al-Masabih 5747.

فِيهِ الْقَضَاءُ عَلَى الْجَاعِلِ بِمَا جَعَلَ إِنْ أَبَى أَنْ يُعْطِيَهُ - فَسَقَطَ كُلُّ مَا احْتَجُّوا بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

it contains no proof for their position, for it only permits accepting what the promisor offers in exchange for the *ruqyah*. This is our view as well. It does not entail a judicial obligation requiring the promisor to fulfill his pledge if he willfully refuses to give it. Thus, all the arguments they advanced are invalidated. And success is from Allah, the Most High.

فَإِنْ قِيلَ: إِنَّهُ وَعْدٌ. قُلْنَا: قَدْ تَكَلَّمْنَا فِي الْوَعْدِ وَالْإِخْلَافِ فِي آخِرِ " كِتَابِ النُّذُورِ " بِمَا فِيهِ كِفَايَةٌ وَكَلَامُنَا هَهُنَا فِيهِ بَيَانُ أَنَّهُ لَيْسَ كُلُّ وَعْدٍ يَجِبُ الْوَفَاءُ بِهِ، وَإِنَّمَا يَجِبُ الْوَفَاءُ بِالْوَعْدِ بِالْوَاجِبِ الَّذِي افْتَرَضَهُ اللَّهُ تَعَالَى فَقَطْ، وَلَا يُلْزِمُ أَحَدًا مَا الْتَزَمَهُ، لَكِنْ مَا أَلْزَمَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ الَّذِي يَلْزَمُ - سَوَاءٌ الْتَزَمَهُ الْمَرْءُ أَوْ لَمْ يَلْتَزِمْهُ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L20483 If it is said: "It is a promise," we say: We have already discussed promises and their violation in the conclusion of the "Book of Vows" with sufficient detail. Our discourse here clarifies that not every promise requires obligatory fulfillment. Rather, fulfillment is only obligatory for promises involving duties Allah the Exalted has ordained. No one is bound by self-assumed commitments except what Allah the Exalted has made binding through the tongue of His Prophet—peace and blessings be upon him—regardless of whether a person has committed to it or not. In Allah the Exalted we seek strength.

وَمِنْ الْعَجَائِبِ أَنَّ الْمُلْزِمِينَ الْوَفَاءَ بِالْجُعْلِ يَقُولُونَ: إِنَّهُ لَا يَلْزَمُ الْمَجْعُولُ لَهُ أَنْ يَفْعَلَ مَا جُعِلَ لَهُ فِيهِ ذَلِكَ الْجُعْلُ، وَهُمْ بِزَعْمِهِمْ أَصْحَابُ أُصُولٍ يَرُدُّونَ إلَيْهَا فُرُوعَهُمْ فَفِي أَيِّ الْأُصُولِ وَجَدُوا عَقْدًا مُتَّفَقًا عَلَيْهِ، أَوْ مَنْصُوصًا عَلَيْهِ بَيْنَ اثْنَيْنِ يَلْزَمُ أَحَدُهُمَا وَلَا يَلْزَمُ الْآخَرُ.

L20484 Among the astonishing contradictions is that those who deem the fulfillment of the unilateral reward (ju'l) obligatory assert that the beneficiary is not bound to perform the act for which the reward was stipulated—while they claim to uphold foundational principles to which they subordinate their derivative rulings. Upon which juristic principle do they base a mutually agreed contract or textually stipulated agreement between two parties wherein one is bound while the other remains unbound?

وَقَالَ مَالِكٌ: مَا جَاءَ بِالْآبِقِ فَإِنْ كَانَ مِمَّنْ يُعْرَفُ بِطَلَبِ الْإِبَاقِ فَإِنَّهُ يُجْعَلُ لَهُ عَلَى قَدْرِ قُرْبِ الْمَوْضِعِ وَبُعْدِهِ، فَإِنْ لَمْ يَكُنْ ذَلِكَ شَأْنُهُ وَلَا عَمَلُهُ، فَلَا جُعْلَ لَهُ، لَكِنْ يُعْطَى مَا اُتُّفِقَ عَلَيْهِ فَقَطْ.

L20485 Malik said: Regarding one who brings back the runaway slave, if he is among those known for pursuing runaway slaves, he is entitled to a reward proportionate to the proximity or distance of the location. If this is not his customary role or occupation, there is no stipulated reward for him; he is only given what is mutually agreed upon.

وَقَالَ أَبُو حَنِيفَةَ: لَا يَجِبُ الْجُعْلُ فِي شَيْءٍ إلَّا فِي رَدِّ الْآبِقِ فَقَطْ - الْعَبْدُ وَالْأَمَةُ سَوَاءٌ - فَمَنْ رَدَّ آبِقًا، أَوْ آبِقَةً مِنْ مَسِيرَةِ ثَلَاثِ لَيَالٍ فَصَاعِدًا فَلَهُ عَلَى كُلِّ رَأْسٍ أَرْبَعُونَ دِرْهَمًا، فَإِنْ رَدَّهُمَا مَنْ أَقَلَّ مِنْ ثَلَاثٍ رُضِخَ لَهُ، وَلَا يَبْلُغُ بِذَلِكَ أَرْبَعِينَ دِرْهَمًا، فَإِنْ

L20486 Abu Hanifa said: Stipulated compensation is only obligatory for the return of a runaway slave—male and female slaves are equivalent in this ruling. Whoever returns a runaway male or female slave from a distance of three nights' journey or more is entitled to forty dirhams per individual. If someone returns them from less than three nights' journey, a trivial sum is granted, and by this compensation it must not amount to forty dirhams. If someone brings one of them from three nights' journey or more, and their value

equals forty dirhams or falls short by even one dirham, the compensation is reduced accordingly and does not attain forty dirhams.

جَاءَ بِأَحَدِهِمَا مِنْ مَسِيرَةِ ثَلَاثِ لَيَالٍ فَصَاعِدًا، وَهُوَ يُسَاوِي أَرْبَعِينَ دِرْهَمًا فَأَقَلَّ نَقْصٍ مِنْ قِيمَتِهِ دِرْهَمٌ وَاحِدٌ فَقَطْ.

L20487 Then Abū Yūsuf and Muḥammad ibn al-Ḥasan recanted this opinion. Muḥammad said: "Its value is reduced by ten dirhams." Abū Yūsuf said: "He receives forty dirhams even if the item was not worth more than a single dirham."

ثُمَّ رَجَعَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ عَنْ هَذَا الْقَوْلِ، فَقَالَ مُحَمَّدٌ: يَنْقُصُ مِنْ قِيمَتِهِ عَشَرَةُ دَرَاهِمَ، قَالَ أَبُو يُوسُفَ: لَهُ أَرْبَعُونَ دِرْهَمًا وَلَوْ لَمْ يُسَاوِ إِلَّا دِرْهَمًا وَاحِدًا.

L20488–20489 Abu Muhammad said: As for Mālik's statement, it is an error with absolutely no evidence supporting its validity whatsoever, for it distinguishes between matters that have no valid distinction without proof—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor qiyās, nor any opinion with a valid basis. We do not know of this view being reported from anyone before him.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ فَخَطَأٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ أَصْلًا؛ لِأَنَّهُ تَفْرِيقٌ بَيْنَ مَا لَا فَرْقَ بَيْنَهُ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَمَا نَعْلَمُ هَذَا الْقَوْلَ عَنْ أَحَدٍ قَبْلَهُ.

L20490 It is obligatory that if a builder encounters a leaning wall, repairs it, and reinforces it, he is entitled to a wage. But if he is not a builder and does so, he receives no payment.

وَيَلْزَمُ عَلَيْهِ أَنَّ مَنْ كَانَ بَنَّاءً فَمَرَّ عَلَى حَائِطٍ مَائِلٍ فَأَصْلَحَهُ وَبَنَاهُ: أَنَّ لَهُ أُجْرَةً عَلَيْهِ، فَإِنْ لَمْ يَكُنْ بَنَّاءً وَبَنَاهُ فَلَا أَجْرَ لَهُ.

L20491 Similarly, if someone weaves yarn for another without being instructed to do so, then if he is a weaver, he is entitled to the wage, but if he is not a weaver, he is not entitled to any wage. This matter opens up significantly here: either they overstep in wrongfully controlling people's wealth, or they contradict themselves—they must inevitably adopt one of the two.

وَكَذَلِكَ مَنْ نَسَجَ غَزْلًا لِآخَرَ لَمْ يَأْمُرْهُ بِهِ، فَإِنْ كَانَ نَسَّاجًا فَلَهُ الْأُجْرَةُ، وَإِنْ لَمْ يَكُنْ نَسَّاجًا فَلَا أُجْرَةَ لَهُ - وَالْبَابُ يَتَّسِعُ هَهُنَا جِدًّا، فَإِمَّا أَنْ يَتَزَيَّدُوا مِنَ التَّحَكُّمِ فِي أَمْوَالِ النَّاسِ بِالْبَاطِلِ، وَإِمَّا أَنْ يَتَنَاقَضُوا، لَا بُدَّ مِنْ أَحَدِهِمَا.

L20492 As for the statement of Abū Ḥanīfa and his companions, it represents the utmost degree of invalidity and confusion, for they established a ḥadd punishment not supported by the Qur'ān, the Sunnah, any weak narration, the opinion of a Companion, a Successor, any predecessor before them, analogical reasoning, or a rationally sound opinion.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ: فَفِي غَايَةِ الْفَسَادِ وَالتَّخْلِيطِ؛ لِأَنَّهُمْ حَدُّوا حَدًّا لَمْ يَأْتِ بِهِ قَطُّ قُرْآنٌ وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ وَلَا تَابِعٍ، وَلَا أَحَدٍ قَبْلَهُمْ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ يُعْقَلُ.

L20493 Then there is within it a contradiction that does not escape one of sound mind. They have ruled: Whoever kills a female slave valued at one hundred thousand dirhams or upwards, or down to five thousand dirhams, is liable for only five thousand dirhams minus five dirhams. And whoever kills a

ثُمَّ فِيهِ مِنَ التَّخَاذُلِ مَا لَا يَخْفَى عَلَى ذِي مُسْكَةِ عَقْلٍ، وَهُمْ قَدْ قَالُوا: مَنْ قَتَلَ جَارِيَةً تُسَاوِي مِائَةَ أَلْفِ دِرْهَمٍ فَصَاعِدًا، أَوْ أَقَلَّ إِلَى خَمْسَةِ آلَافِ دِرْهَمٍ لَمْ يَكُنْ عَلَيْهِ إِلَّا

male slave valued at twenty thousand dirhams or upwards, or down to ten thousand dirhams, is liable for only ten thousand dirhams minus ten dirhams.

خَمْسَةُ آلَافٍ غَيْرَ خَمْسَةِ دَرَاهِمَ - وَمَنْ قَتَلَ عَبْدًا يُسَاوِي عِشْرِينَ أَلْفَ دِرْهَمٍ فَصَاعِدًا، أَوْ أَقَلَّ إِلَى عَشَرَةِ آلَافِ دِرْهَمٍ لَمْ يَكُنْ عَلَيْهِ إِلَّا عَشَرَةُ آلَافِ دِرْهَمٍ غَيْرَ عَشَرَةِ دَرَاهِمَ.

L20494 Then they equalized the stipulated compensation for recovering a runaway slave between the woman and the man, and Abū Ḥanīfa deducted one dirham from its value if it did not amount to forty dirhams. Why did he not deduct ten dirhams from the male's price and five dirhams from the female's price, as he did regarding blood money? Or why did he not deduct a dirham there as he deducted here? I wish I knew from where they derived this dirham! Perhaps it is a hypothetical analogy as well, like the threshold he defined for impurities. Why did he not set it at half a dirham, a quarter dirham, or a fals? Then Abū Yūsuf's ruling to impose forty dirhams for the stipulated compensation even if its value was merely one dirham – By Allah! Oh Muslims! Who is more misguided in method, farther from truth, or less mindful of accountability than one who opposes the Messenger of Allah's ruling (peace be upon him) regarding the misrepresented livestock whose udder was tied – requiring its return along with a ṣāʿ of dates due to their folly and putrid opinions? They said: "What if he purchased it with half a ṣāʿ of dates?" Then he imposes such a ruling for the stipulated compensation wherein no Sunnah has ever been established.

ثُمَّ سَوَّوْا فِي جُعْلِ الْآبِقِ بَيْنَ الْمَرْأَةِ وَالرَّجُلِ، وَأَسْقَطَ أَبُو حَنِيفَةَ دِرْهَمًا مِنْ قِيمَتِهِ إِنْ لَمْ يُسَاوِ أَرْبَعِينَ دِرْهَمًا، فَهَلَّا أَسْقَطَ مِنْ ثَمَنِ الذَّكَرِ عَشَرَةَ دَرَاهِمَ وَمِنْ ثَمَنِ الْأَمَةِ خَمْسَةَ دَرَاهِمَ كَمَا فَعَلَ فِي الْقَتْلِ؟ أَوْ هَلَّا أَسْقَطَ هُنَالِكَ دِرْهَمًا كَمَا أَسْقَطَ هُنَا؟ وَلَيْتَ شِعْرِي مِنْ أَيْنَ قَصَدُوا إِلَى الدِّرْهَمِ؟ وَلَعَلَّهُ بَغْلِيٌّ أَيْضًا كَالَّذِي حَدَّ بِهِ النَّجَاسَاتِ، وَهَلَّا حَدَّ بِنِصْفِ دِرْهَمٍ أَوْ بِرُبُعِ دِرْهَمٍ أَوْ بِفَلْسٍ؟ ثُمَّ إِيجَابُ أَبِي يُوسُفَ أَرْبَعِينَ دِرْهَمًا فِي جُعْلِهِ وَإِنْ لَمْ يُسَاوِ إِلَّا دِرْهَمًا فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ مَنْ أَضَلُّ طَرِيقَةً، أَوْ أَبْعَدُ عَنْ الْحَقِيقَةِ، أَوْ أَقَلُّ مُرَاقَبَةً مِمَّنْ يُعَارِضُ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُصَرَّاةِ فِي أَنْ تُرَدَّ وَصَاعِ تَمْرٍ لِحَمَاقَتِهِمْ وَآرَائِهِمْ الْمُنْتِنَةِ فَقَالُوا: أَرَأَيْت إِنْ كَانَ اشْتَرَاهَا بِنِصْفِ صَاعِ تَمْرٍ؟ ثُمَّ يُوجِبُ مِثْلَ هَذَا فِي الْجُعْلِ الَّذِي لَمْ يَصِحَّ فِيهِ سُنَّةٌ قَطُّ.

L20495–20496 Why did they not exercise wisdom in their folly here? They ruled concerning the musarraah (an animal with tied udder): he must return it along with compensation equivalent to its value calculated from a sa' of dates if the quantity was less than a sa' (1 sa' = 4 mudds), except in cases of two dates, half a mudd, or similar quantities.

وَهَلَّا إِذْ حَمَّقُوا هَهُنَا؟ قَالُوا فِي الْمُصَرَّاةِ: يَرُدُّهَا وَقِيمَتَهَا مِنْ صَاعِ تَمْرٍ إِنْ كَانَتْ أَقَلَّ مِنْ صَاعٍ إِلَّا تَمْرَتَيْنِ، أَوْ إِلَّا نِصْفَ مُدٍّ أَوْ نَحْوَ ذَلِكَ.

L20497 Then they pretended to have followed in this matter a mursal narration and reports from the Companions—may Allah be pleased with them—but they lied in all of it. Rather, they contradicted the mursal narration itself and contradicted every report transmitted on this issue from a Companion or a Tābiʿī, as we will mention, if Allah, the Most High, wills.

ثُمَّ مَوَّهُوا بِأَنَّهُمْ اتَّبَعُوا فِي ذَلِكَ أَثَرًا مُرْسَلًا، وَرِوَايَاتٍ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَكَذَبُوا فِي ذَلِكَ كُلِّهِ، بَلْ خَالَفُوا الْأَثَرَ الْمُرْسَلَ فِي ذَلِكَ، وَخَالَفُوا كُلَّ رِوَايَةٍ رُوِيَتْ فِي ذَلِكَ عَنْ صَاحِبٍ أَوْ تَابِعٍ عَلَى مَا نَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى.

L20498 The most astonishing thing is their claim that Consensus has been established regarding that matter. If it were indeed Consensus, they have contradicted it - and whoever contradicts Consensus in their view has disbelieved: {So they will confess their sin, then away with the dwellers of the Blazing Fire!} [Al-Mulk: 11]. And if it is not Consensus, they have lied against the entire Ummah and against themselves: {See how they have lied against themselves} [Al-An'am: 24].[10]

L20499 It was narrated to us through the chain of Ibn Abī Shaybah: Ḥafṣ—that is, Ibn Ghiyāth—narrated from Ibn Jurayj, from ʿAṭāʾ or Ibn Abī Mulaykah, along with ʿAmr ibn Dīnār. Both said collectively: "We have continually heard that the Prophet—may Allah's peace and blessings be upon him—ruled concerning a runaway slave discovered outside the sanctuary: a dinar or ten dirhams."

وَأَعْجَبُ شَيْءٍ دَعْوَاهُمْ أَنَّ الْإِجْمَاعَ قَدْ صَحَّ فِي ذَلِكَ، فَإِنْ كَانَ إِجْمَاعًا فَقَدْ خَالَفُوهُ، وَمَنْ خَالَفَ الْإِجْمَاعَ عِنْدَهُمْ كَفَرَ {فَاعْتَرَفُوا بِذَنْبِهِمْ فَسُحْقًا لِأَصْحَابِ السَّعِيرِ} [الملك: ١١] وَإِنْ لَمْ يَكُنْ إِجْمَاعًا فَقَدْ كَذَبُوا عَلَى الْأُمَّةِ كُلِّهَا، وَعَلَى أَنْفُسِهِمْ {انْظُرْ كَيْفَ كَذَبُوا عَلَى أَنْفُسِهِمْ} [الأنعام: ٢٤] .

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ - هُوَ ابْنُ غِيَاثٍ - عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ - أَوْ ابْنِ أَبِي مُلَيْكَةَ، وَعَمْرِو بْنِ دِينَارٍ قَالَا جَمِيعًا: مَا زِلْنَا نَسْمَعُ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي الْعَبْدِ الْآبِقِ يُوجَدُ خَارِجًا مِنَ الْحَرَمِ دِينَارًا أَوْ عَشَرَةَ دَرَاهِمَ» .

[10] **Qur'an references (L20498):** Qur'an 67:11 (Al-Mulk); Qur'an 6:24 (Al-An'am).

L20500 And via the chain of Waki‘, who narrated from Ibn Jurayj, from Ibn Abi Mulaykah and Amr ibn Dinar, they both said together: “The Messenger of Allah (peace be upon him) ordained a dinar for the fugitive slave when he is brought outside the sanctuary.”

وَمِنْ طَرِيقِ وَكِيعٍ نا ابْنُ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ وَعَمْرِو بْنِ دِينَارٍ قَالَا جَمِيعًا: «جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْآبِقِ إِذَا جِيءَ بِهِ خَارِجَ الْحَرَمِ دِينَارًا» .

L20501 And through the chain of ʿAbd al-Razzāq, who narrated to us from Maʿmar, from ʿAmr ibn Dīnār, who said: “The Prophet—peace be upon him—ruled that a runaway found in the Sacred Precinct must pay ten dirhams.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ «قَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْآبِقِ يُوجَدُ فِي الْحَرَمِ عَشَرَةَ دَرَاهِمَ» .

L20502 This contradicts the position of the two groups despite their claim that the mursal report is equivalent to the musnad, for there is no mursal more authentic than this. This is because ʿAmr, ʿAṭāʾ, and Ibn Abī Mulaykah are trustworthy imams and luminaries. All of them encountered the Companions: ʿAṭāʾ met ʿĀʾishah, the Mother of the Believers, accompanied her and those beneath her in status. Ibn Abī Mulaykah encountered Ibn ʿAbbās, Ibn ʿUmar, Asmāʾ bint Abī Bakr, and Ibn al-Zubayr, heard from them, and sat with them.

وَهَذَا خِلَافُ قَوْلِ الطَّائِفَتَيْنِ مَعَ قَوْلِهِمَا أَنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَلَا مُرْسَلَ أَصَحُّ مِنْ هَذَا، لِأَنَّ عَمْرًا، وَعَطَاءً، وَابْنَ أَبِي مُلَيْكَةَ ثِقَاتٌ أَئِمَّةٌ نُجُومٌ، وَكُلُّهُمْ أَدْرَكَ الصَّحَابَةَ، فَعَطَاءٌ أَدْرَكَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ وَصَحِبَهَا فَمَنْ دُونَهَا وَابْنُ أَبِي مُلَيْكَةَ أَدْرَكَ ابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ، وَأَسْمَاءَ بِنْتَ أَبِي بَكْرٍ، وَابْنَ الزُّبَيْرِ، وَسَمِعَ مِنْهُمْ وَجَالَسَهُمْ.

L20503 Amr met Jabir and Ibn Abbas and accompanied them both, particularly given the statement of both—it matters not which—that they had persistently heard this.

وَعَمْرٌو أَدْرَكَ جَابِرًا، وَابْنَ عَبَّاسٍ وَصَحِبَهُمَا، لَا سِيَّمَا مَعَ قَوْلِ اثْنَيْنِ مِنْهُمَا - لَا نُبَالِي أَيَّهُمَا كَانَا -: أَنَّهُمَا مَا زَالَا يَسْمَعَانِ ذَلِكَ.

L20504 Thus, in the view of these individuals, opposing all of that became easy by imitating the errors of Abū Ḥanīfah and Mālik. They readily dismissed the established Sunnah by adhering to the narration of a sheikh from Banū Kinānah from ʿUmar: “A sale via clapping (ṣafqah) or an option (khiyār)”—along with all other weak mursal reports—whenever these aligned with the opinions of Abū Ḥanīfah and Mālik. Who is more astray than one whose approach to his religion is this? We seek refuge in Allah from being forsaken.

فَهَانَ عِنْدَ هَؤُلَاءِ مُخَالَفَةُ كُلِّ ذَلِكَ تَقْلِيدًا لِخَطَأِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَسَهُلَ عِنْدَهُمْ فِي رَدِّ السُّنَنِ الثَّابِتَةِ بِتَقْلِيدِ رِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ - وَسَائِرُ الْمُرْسَلَاتِ الْوَاهِيَةِ إِذَا وَافَقَتْ رَأْيَ أَبِي حَنِيفَةَ، وَمَالِكٍ، فَمَنْ أَضَلُّ مِمَّنْ هَذِهِ طَرِيقَتُهُ فِي دِينِهِ، وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ.

L20505–20506 From the narration of Ibn Abi Shaybah: Muhammad ibn Yazid narrated from Ayyub Abi al-ʿAlaʾ, from Qatadah and Abi Hashim, both of whom said: ʿUmar ibn al-Khattab ruled regarding the reward for apprehending a runaway slave - if he is captured outside his province, forty dirhams; but if he is captured within the province, twenty dirhams or ten dirhams.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ يَزِيدَ عَنْ أَيُّوبَ أَبِي الْعَلَاءِ عَنْ قَتَادَةَ وَأَبِي هَاشِمٍ، كِلَاهُمَا قَالَ: إِنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي جُعْلِ الْآبِقِ إِذَا أُصِيبَ فِي غَيْرِ مِصْرِهِ أَرْبَعِينَ دِرْهَمًا، فَإِنْ أُصِيبَ فِي الْمِصْرِ فَعِشْرِينَ دِرْهَمًا، أَوْ عَشَرَةَ دَرَاهِمَ.

L20507 And through the chain of Abdullah ibn Ahmad ibn Hanbal: My father narrated to us from Yazid ibn Harun, from Al-Hajjaj ibn Artah, from Amr ibn Shuʿayb, from Saʿid ibn al-Musayyib, from Umar ibn al-Khattab regarding the prescribed compensation for a runaway [slave] being one dinar or twelve dirhams. All of this contradicts the position of the Malikis and Hanafis.

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا يَزِيدُ بْنُ هَارُونَ نا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي جُعْلِ الْآبِقِ دِينَارٌ، أَوْ اثْنَا عَشَرَ دِرْهَمًا - وَهَذَا كُلُّهُ خِلَافُ قَوْلِ الْمَالِكِيِّينَ وَالْحَنَفِيِّينَ.

L20508 Through the transmission of Aḥmad ibn Ḥanbal and Ibn Abī Shaybah, both jointly stated: Reported to us Yazīd ibn Hārūn from al-Ḥajjāj ibn Arṭāʾa from al-Ḥuṣayn ibn ʿAbd al-Raḥmān from al-Shaʿbī from al-Ḥārith al-Aʿwar from ʿAlī ibn Abī Ṭālib, who said concerning the stipulated compensation for a runaway slave: "One dinar or twelve dirhams." Aḥmad added in his narration: "If the slave has left the town." This entire position opposes the view of the Mālikīs and Ḥanafīs.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ، وَابْنِ أَبِي شَيْبَةَ، قَالَا جَمِيعًا: نا يَزِيدُ بْنُ هَارُونَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْحُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ عَنْ الْحَارِثِ الْأَعْوَرِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي جُعْلِ الْآبِقِ دِينَارٌ، أَوْ اثْنَا عَشَرَ دِرْهَمًا - زَادَ أَحْمَدُ فِي رِوَايَتِهِ: إذَا كَانَ خَارِجًا مِنْ الْمِصْرِ - وَهَذَا كُلُّهُ خِلَافُ قَوْلِ الْمَالِكِيِّينَ وَالْحَنَفِيِّينَ.

L20509 And via the transmission of Ibn Abi Shaybah: narrated by Wakiʿ, narrated by Sufyan al-Thawri from Abu Ishaq, who said: "I was granted a Juʿalah of forty dirhams during Muʿāwiyah's time"—and this contradicts the opinion of the Hanafi and Maliki schools.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ قَالَ: أُعْطِيت الْجُعَلَ فِي زَمَنِ مُعَاوِيَةَ أَرْبَعِينَ دِرْهَمًا - وَهَذَا خِلَافُ قَوْلِ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ.

L20510 Then, there is nothing in it stating that Muawiya ruled by that, nor that he ruled against Abu Ishaq, nor in what matter he gave him. Its apparent meaning is that he volunteered this action, and it is not known in what matter. Thus, they have no basis for this claim whatsoever—perhaps he gave him a stipulated contractual payment which Ziyad unlawfully obligated him to pay.

ثُمَّ لَيْسَ فِيهِ: أَنَّ مُعَاوِيَةَ قَضَى بِذَلِكَ، وَلَا أَنَّهُ قَضَى بِذَلِكَ عَلَى أَبِي إِسْحَاقَ وَلَا فِي أَيِّ شَيْءٍ أَعْطَاهُ، وَظَاهِرُهُ: أَنَّهُ تَطَوَّعَ بِذَلِكَ، وَلَا يُدْرَى فِي أَيِّ شَيْءٍ، فَلَا مُتَعَلَّقَ لَهُمْ بِهَذَا أَصْلًا - وَلَعَلَّهُ أَعْطَاهُ فِي جُعْلٍ شَرْطِيٍّ وَكَّلَهُ عَلَيْهِ زِيَادٌ ظُلْمًا.

L20511 Through the chain of transmission of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā narrated to us, Abū ʿĀmir al-ʿAqadī narrated to us, from Sufyān al-Thawrī, from Ibn Rabāḥ (ʿAbdullāh ibn Rabāḥ), from Abū ʿAmr al-Shaybānī, who said: I approached ʿAbdullāh ibn Masʿūd regarding a runaway slave (or fugitive). He said: "The wage and the liability." I said: "This is the wage. Then what is the liability?" He replied: "Forty dirhams per runaway slave."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو عَامِرٍ الْعَقَدِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ رَبَاحٍ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ قَالَ: أَتَيْت عَبْدَ اللَّهِ بْنَ مَسْعُودٍ بِإِبَاقٍ، أَوْ بِآبِقٍ فَقَالَ: الْأَجْرُ وَالْغَنِيمَةُ قُلْت: هَذَا الْأَجْرُ، فَمَا الْغَنِيمَةُ؟ قَالَ: مِنْ كُلِّ رَأْسٍ أَرْبَعُونَ دِرْهَمًا.

L20512 Through the chain of Waki', who reported from Sufyan al-Thawri, from 'Abdullāh ibn Rabāḥ, from Abū 'Amr al-Shaybānī: A man apprehended a

fugitive slave (ābiq) at the source of dates and brought him forth, whereupon Ibn Mas‘ūd imposed forty dirhams upon him.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ: أَنَّ رَجُلًا أَصَابَ آبِقًا بِعَيْنِ التَّمْرِ فَجَاءَ بِهِ فَجَعَلَ فِيهِ ابْنُ مَسْعُودٍ أَرْبَعِينَ دِرْهَمًا.

L20513–20515 Through the chain of Al-Ḥajjāj ibn Al-Minhāl: Abū ‘Awanah reported to us, [and] an unnamed shaykh reported to us from Abū ‘Amr Al-Shaybānī that Ibn Mas‘ūd was asked about the stipulated compensation for a runaway slave. He said: “If he is outside Kufah, then forty dirhams, and if he is within Kufah, then ten dirhams.” This is all that has been narrated on this issue from the Companions—may Allah be pleased with them—and all of it contradicts Abū Ḥanīfah. As for Malik, neither Ibn Mas’ud nor anyone before him set a limit for a three-day journey requiring forty dirhams in provisions; then all of that is invalid.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ نا شَيْخٌ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ أَنَّ ابْنَ مَسْعُودٍ سُئِلَ عَنْ جُعْلِ الْآبِقِ؟ فَقَالَ: إِذَا كَانَ خَارِجًا مِنْ الْكُوفَةِ فَأَرْبَعِينَ، وَإِذَا كَانَ بِالْكُوفَةِ فَعَشَرَةً - هَذَا كُلُّ مَا رُوِيَ فِيهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَكُلُّهُ مُخَالِفٌ لِأَبِي حَنِيفَةَ وَمَالِكٌ، وَلَمْ يَحُدَّ ابْنُ مَسْعُودٍ، وَلَا أَحَدٌ قَبْلَهُ مَسِيرَةَ ثَلَاثٍ بِأَرْبَعِينَ دِرْهَمًا، ثُمَّ كُلُّ ذَلِكَ لَا يَصِحُّ.

L20516 As for the narration from ʿUmar, one of the two chains is interrupted, and the other [chain]. As for the narration from ʿAlī, both are transmitted through al-Ḥajjāj ibn Arṭāʾ, and he is rejected. As for the narration from Ibn Masʿūd, it is from an unknown *shaykh*. As for the narration from ʿAbdullāh ibn Rabāḥ al-Qurashī, he is not renowned for reliability.

أَمَّا عَنْ عُمَرَ فَأَحَدُ الطَّرِيقَيْنِ مُنْقَطِعٌ، وَالْأُخْرَى، وَالَّتِي عَنْ عَلِيٍّ، فَكِلَاهُمَا عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ وَهُوَ سَاقِطٌ - وَالَّتِي عَنْ ابْنِ مَسْعُودٍ عَنْ شَيْخٍ لَا يُدْرَى مَنْ هُوَ - وَعَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ الْقُرَشِيِّ وَهُوَ غَيْرُ مَشْهُورٍ بِالْعَدَالَةِ.

L20517 As for the Successors: it is authentically reported from Shurayḥ and Ziyād that if a runaway slave is found within the city, the finder’s reward is ten dirhams, and if found outside the city, the reward is forty dirhams. This is also narrated from al-Shaʿbī—and it is the opinion held by Isḥāq ibn Rāhwayh.

وَأَمَّا التَّابِعُونَ -: فَصَحَّ عَنْ شُرَيْحٍ، وَزِيَادٍ: أَنَّ الْآبِقَ إنْ وُجِدَ فِي الْمِصْرِ فَجُعْلُ وَاجِدِهِ عَشَرَةُ دَرَاهِمَ - وَإِنْ وُجِدَ خَارِجَ الْمِصْرِ فَأَرْبَعُونَ دِرْهَمًا. وَرُوِيَ هَذَا أَيْضًا عَنْ الشَّعْبِيِّ - وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ

L20518 - And this contradicts the view of Abū Ḥanīfah and Mālik.

- وَهَذَا خِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ.

L20519 It is authentically reported from Umar ibn Abd al-Aziz—via the chain of Ibn Abi Shaybah, al-Dahhak ibn Makhled, Ibn Jurayj, and Ibn Abi Mulaikah—that he ruled regarding the stipulated compensation for a runaway slave when captured after a journey of three days to be three dinars.

وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى فِي جُعْلِ الْآبِقِ إذْ أُخِذَ عَلَى مَسِيرَةِ ثَلَاثٍ ثَلَاثَةُ دَنَانِيرَ.

L20520 Via the chain of Abd al-Razzaq from Ma’mar: Umar ibn Abd al-Aziz ruled

regarding the runaway slave - for one day, a dinar; for two days, two dinars; for three days, three dinars. If the absence reaches four days or more, the owner is only entitled to four. This ruling is entirely contrary to the opinions of Abu Hanifah and Malik.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَضَى عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الْآبِقِ فِي يَوْمٍ دِينَارًا، وَفِي يَوْمَيْنِ دِينَارَيْنِ، وَفِي ثَلَاثَةِ أَيَّامٍ ثَلَاثَةَ دَنَانِيرَ، فَمَا زَادَ عَلَى أَرْبَعَةٍ فَلَيْسَ لَهُ إِلَّا أَرْبَعَةٌ - وَهَذَا كُلُّهُ خِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ.

L20521 From the chain of Ahmad ibn Hanbal, narrated to us Muhammad ibn Salamah from Abu Abd al-Rahim from Zayd ibn Abi Shaybah from Hammad ibn Abi Sulayman from Ibrahim al-Nakha'i, who said: The stipulated reward for a runaway slave had been assigned for him - and it was set at forty dirhams. This is a general ruling, opposing the view of Abu Hanifah and Malik. Yet a contrary opinion to this has been transmitted from Ibrahim al-Nakha'i, and it is consistent with our opinion.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ أَبِي عَبْدِ الرَّحِيمِ عَنْ زَيْدِ بْنِ أَبِي شَيْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: جُعْلُ الْآبِقِ قَدْ كَانَ يُجْعَلُ فِيهِ وَهُوَ الَّذِي يُعْمَلُ فِيهِ أَرْبَعُونَ دِرْهَمًا - فَهَذَا عُمُومٌ، وَخِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ - وَقَدْ جَاءَ عَنْ إِبْرَاهِيمَ خِلَافُ هَذَا، وَمِثْلُ قَوْلِنَا.

L20522 Ahmad ibn Hanbal said: If it is found within the city, there is nothing; but if it is found outside the city, then forty dirhams.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: إِنْ وُجِدَ فِي الْمِصْرِ فَلَا شَيْءَ، وَإِنْ وُجِدَ خَارِجَ الْمِصْرِ فَأَرْبَعُونَ دِرْهَمًا.

L20523–20525 Abu Muhammad said: They are three Companions, and no authentic report has ever been established from any of them at all. Moreover, they themselves held differing views. Similarly, they are five Successors who were also in disagreement. Despite this, the Hanafi jurists felt no shame in claiming consensus among the Companions regarding the legal ruling concerning the runaway slave, though no authentic report has ever been established from any of them except three alone, as we mentioned. Yet they contradicted the Companions despite this, and their consensus was not deemed valid among them: their consensus, based on certainty regarding... [text ends abruptly]. The irrigation contract in Khaybar without a fixed term was established by agreement without doubt during the era of the Prophet (peace and blessings be upon him), the era of Abu Bakr, and Umar (may Allah be pleased with them). They paid no heed to opposing more than twice the number of Companions (may Allah be pleased with them). It is authentically reported from them that legal retribution was applied for a slap, a whip strike, wiping over socks and turbans, and other such matters.

قَالَ أَبُو مُحَمَّدٍ: فَهُمْ ثَلَاثَةٌ مِنْ الصَّحَابَةِ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْهُمْ، وَهُمْ أَيْضًا مُخْتَلِفُونَ، وَهُمْ خَمْسَةٌ مِنْ التَّابِعِينَ مُخْتَلِفُونَ، فَلَمْ يَسْتَحِ الْحَنَفِيُّونَ مِنْ دَعْوَى الْإِجْمَاعِ مِنْ الصَّحَابَةِ عَلَى جُعْلِ الْآبِقِ، وَلَمْ يَصِحَّ عَنْ أَحَدٍ مِنْهُمْ قَطُّ وَلَا جَاءَ إِلَّا عَنْ ثَلَاثَةٍ فَقَطْ كَمَا ذَكَرْنَا، وَقَدْ خَالَفُوهُمْ مَعَ ذَلِكَ، ثُمَّ لَمْ يَكُنْ عِنْدَهُمْ إجْمَاعًا - إجْمَاعُهُمْ بِيَقِينٍ عَلَى الْمُسَاقَاةِ " فِي خَيْبَرَ إلَى غَيْرِ أَجَلٍ، وَقَدْ اتَّفَقُوا بِلَا شَكٍّ، عَلَى ذَلِكَ عَصْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَصْرُ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا بَالَوْا بِمُخَالَفَةِ أَكْثَرَ مِنْ ضِعْفِ هَذَا الْعَدَدِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: صَحَّ عَنْهُمْ الْقِصَاصُ مِنْ اللَّطْمَةِ، وَمِنْ ضَرْبَةٍ بِالسَّوْطِ، وَالْمَسْحُ عَلَى الْجَوْرَبَيْنِ، وَالْعِمَامَةِ، وَغَيْرُ ذَلِكَ.

L20526 Then, it has been reported to us contrary to all this from some of the

Companions and the followers.

ثُمَّ قَدْ رُوِّينَا خِلَافَ هَذَا كُلِّهِ عَنْ بَعْضِ الصَّحَابَةِ وَالتَّابِعِينَ.

L20527 As narrated through ʿAbd al-Razzāq from al-Ḥasan ibn ʿUmārah from al-Ḥakam ibn ʿUtaybah from ʿAbd al-Raḥmān ibn Abī Laylā from ʿAlī ibn Abī Ṭālib regarding the runaway slave, he said: “Muslims return them to one another.”

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحَسَنِ بْنِ عُمَارَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْإِبَاقِ قَالَ: الْمُسْلِمُونَ يَرُدُّ بَعْضُهُمْ عَلَى بَعْضٍ.

L20528 And through the chain of Ibn Abi Shaybah: Waki‘ narrated to us from Isra’il, from Ibrahim ibn Muhajir, from Ibrahim al-Nakha‘i, who said: “A Muslim must return [the slave] to a Muslim, meaning in the case of a runaway slave.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ إِسْرَائِيلَ عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْمُسْلِمُ يَرُدُّ عَلَى الْمُسْلِمِ -: يَعْنِي فِي الْآبِقِ.

L20529 From the chain of Waki‘, narrated to us by Sufyān from Jābir from al-Ḥakam ibn ‘Utaybah, who said regarding the runaway slave: “A Muslim returns to a Muslim.” This is the opinion of al-Shāfi‘ī, al-Awzā‘ī, al-Layth, al-Ḥasan ibn Ḥayy, and Abū Sulaymān—and one of the two views of Aḥmad ibn Ḥanbal. All of them state: “There is no promised reward for the runaway slave.”

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ جَابِرٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ فِي الْآبِقِ: الْمُسْلِمُ يَرُدُّ عَلَى الْمُسْلِمِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي سُلَيْمَانَ - وَأَحَدُ قَوْلَيْ أَحْمَدَ بْنِ حَنْبَلٍ كُلُّهُمْ يَقُولُ: لَا جُعْلَ فِي الْآبِقِ.

L20530 It was narrated to us by Waki‘, who reported from Mis‘ar ibn Kaddām, from ‘Abd al-Karīm, who said: I asked ‘Abdullāh ibn ‘Utbah: “Does the ruling apply to the runaway slave?” He answered: “Yes.” I asked: “What about a free person?” He replied: “No.”

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا مِسْعَرٌ - هُوَ ابْنُ كَدَّامٍ - عَنْ عَبْدِ الْكَرِيمِ قَالَ: قُلْت لِعَبْدِ اللَّهِ بْنِ عُتْبَةَ: أَيُجْتَعَلُ فِي الْآبِقِ؟ قَالَ: نَعَمْ، قُلْت: الْحُرُّ قَالَ: لَا.

L20531 From the chain of Waki‘, from Isra’il, from Jabir, from ʿAbd al-Rahman ibn al-Qasim ibn Muhammad ibn Abi Bakr, who said: If he does not pay him the fee, he must release him in the place where he took him.

وَمِنْ طَرِيقِ وَكِيعٍ نا إِسْرَائِيلُ عَنْ جَابِرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ قَالَ: إنْ لَمْ يُعْطِهِ جُعْلًا فَلْيُرْسِلْهُ فِي الْمَكَانِ الَّذِي أَخَذَهُ.

L20532 Abu Muhammad said: Allah the Exalted said: {Muhammad is the Messenger of Allah, and those with him are firm against the disbelievers and compassionate toward one another} [Al-Fath: 29]. And the Messenger of Allah - peace and blessings be upon him - prohibited the squandering of wealth.[1]

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {مُحَمَّدٌ رَسُولُ اللَّهِ وَالَّذِينَ مَعَهُ أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ} [الفتح: ٢٩] وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ.

L20533 Allah, the Exalted, said: **“And cooperate in righteousness and piety, and do not cooperate in sin and aggression”** [Al-Mā’idah: 2]. He thereby obligated every Muslim to safeguard his brother’s property when he finds it, and it is

وَقَالَ اللَّهُ تَعَالَى: {وتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَفَرَضَ عَلَى كُلِّ مُسْلِمٍ حِفْظَ مَالِ أَخِيهِ إذَا وَجَدَهُ، وَلَا يَحِلُّ لَهُ أَخْذُ مَالِهِ بِغَيْرِ

[1] **Qur’an references (L20532):** Qur’an 48:29 (Al-Fath).

impermissible for him to take his property without his willing consent. Thus, nothing is due to one who returns a runaway slave, because he has performed an obligation upon him, like prayer and fasting. And all success is from Allah, the Exalted.[2]

L20534 If he were to give it willingly, it would be praiseworthy; and if the Imam were to stipulate granting it to those who fulfill this act, it would likewise be praiseworthy—and success is by Allah, the Exalted.

L20535 The Book of al-Juʿl has been completed with the praise of Allah [and His assistance].

طِيبِ نَفْسِهِ فَلَا شَيْءَ لِمَنْ أَتَى بِآبِقٍ؛ لِأَنَّهُ فَعَلَ فِعْلًا هُوَ فَرْضٌ عَلَيْهِ، كَالصَّلَاةِ، وَالصِّيَامِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَوْ أَعْطَاهُ بِطِيبِ نَفْسِهِ لَكَانَ حَسَنًا، وَلَوْ أَنَّ الْإِمَامَ يُرَتِّبُ لِمَنْ فَعَلَ ذَلِكَ عَطَاهُ لَكَانَ حَسَنًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّ " كِتَابُ الْجُعْلِ " بِحَمْدِ اللَّهِ [وَعَوْنِهِ] .

[2] **Qur'an references (L20533):** Qur'an 5:2 (Al-Ma'idah).

AL-MUHALLA

كِتَابُ الْمُزَارَعَةِ وَالْمُغَارَسَةِ

The Book of Sharecropping and Orchard Partnerships

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

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[Book of Sharecropping and Orchard Partnerships] [Issue: Abundance in Cultivation and Planting]

Issue 1328: Abundant planting and cultivation are virtuous and merit reward, provided this does not distract from jihad - whether occurring in the land of the Arabs, the land whose inhabitants embraced Islam, land under peace treaty, conquered land distributed among its people, or endowed land willingly dedicated for Muslim welfare: It was narrated to us through Bukhārī's chain - Qutaybah ibn Saʿīd narrated from Abū ʿAwānah from Qatādah from Anas ibn Mālik, who said: The Messenger of Allah (peace and blessings be upon him) stated: "No Muslim plants a sapling or sows a crop from which a bird, human, or beast eats, except that it is counted as charity (ṣadaqah) for him."

It was also narrated to us through the chain of Al-Laith that he heard Abū Az-Zubair, who heard Jābir narrate from the Prophet (peace be upon him) with a similar narration. Thus he (peace be upon him) generalized and did not specify.

Malik disliked cultivating crops in the land of the Arabs—which is erroneous and an arbitrary distinction lacking evidence—and some of his followers cited as evidence the narration we transmitted via Al-Bukhari's chain of transmission: Abdullah ibn Yusuf → Abdullah ibn Salim Al-Himsi → Muhammad ibn Ziyad Al-Alhani → Abu Umamah Al-Bahili, who reported seeing a plow and certain implements. Regarding plowing, he said: "I heard the Messenger of Allah—peace be upon him—say: 'This [plowing] does not enter the house of a people unless humiliation enters it.'"

Abū Muḥammad said: All the Anṣār without exception, along with every person to whom the Prophet—may Allāh bless him and grant him peace—assigned land from the conquests of Banū Qurayẓah and those among the Emigrants to whom he allocated land, used to cultivate and plant crops during his lifetime—may Allāh bless him and grant him peace. Similarly, all who embraced Islam from the inhabitants of Bahrain, Oman, Yemen, and

[كِتَابُ الْمُزَارَعَةِ وَالْمُغَارَسَةِ] [مَسْأَلَةٌ الْإِكْثَارُ مِنْ الزَّرْعِ وَالْغَرْسِ]

١٣٢٨ - مَسْأَلَةٌ: الْإِكْثَارُ مِنْ الزَّرْعِ وَالْغَرْسِ حَسَنٌ وَأَجْرٌ، مَا لَمْ يُشْغِلْ ذَلِكَ عَنْ الْجِهَادِ - وَسَوَاءٌ كَانَ كُلُّ ذَلِكَ فِي أَرْضِ الْعَرَبِ، أَوْ الْأَرْضِ الَّتِي أَسْلَمَ أَهْلُهَا عَلَيْهَا، أَوْ أَرْضِ الصُّلْحِ، أَوْ أَرْضِ الْعَنْوَةِ الْمَقْسُومَةِ عَلَى أَهْلِهَا أَوْ الْمَوْقُوفَةِ بِطِيبِ الْأَنْفُسِ لِمَصَالِحِ الْمُسْلِمِينَ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا أَبُو عَوَانَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا مِنْ مُسْلِمٍ يَغْرِسُ غَرْسًا أَوْ يَزْرَعُ زَرْعًا فَيَأْكُلُ مِنْهُ طَائِرٌ أَوْ إنْسَانٌ أَوْ بَهِيمَةٌ إلَّا كَانَ لَهُ بِهِ صَدَقَةٌ» .

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ اللَّيْثِ أَنَّهُ سَمِعَ أَبَا الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرًا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ - فَعَمَّ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخُصَّ.

وَكَرِهَ مَالِكٌ الزَّرْعَ فِي أَرْضِ الْعَرَبِ - وَهَذَا خَطَأٌ، وَتَفْرِيقٌ بِلَا دَلِيلٍ - وَاحْتَجَّ لِهَذَا بَعْضُ مُقَلِّدِيهِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا عَبْدُ اللَّهِ بْنُ سَالِمٍ الْحِمْصِيُّ نا مُحَمَّدُ بْنُ زِيَادٍ الْأَلْهَانِيُّ «عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ: أَنَّهُ رَأَى سِكَّةً وَشَيْئًا مِنْ آلَةِ الْحَرْثِ فَقَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: لَا يَدْخُلُ هَذَا بَيْتَ قَوْمٍ إلَّا دَخَلَهُ الذُّلُّ» .

قَالَ أَبُو مُحَمَّدٍ: لَمْ تَزَلْ الْأَنْصَارُ كُلُّهُمْ، وَكُلُّ مَنْ قَسَمَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْضًا مِنْ فُتُوحِ بَنِي قُرَيْظَةَ، وَمَنْ أَقْطَعَهُ أَرْضًا مِنْ الْمُهَاجِرِينَ يَزْرَعُونَ وَيَغْرِسُونَ

Ṭā’if followed this practice. He—peace be upon him—never once encouraged abandoning it.

بِحَضْرَتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَذَلِكَ كُلُّ مَنْ أَسْلَمَ مِنْ أَهْلِ الْبَحْرَيْنِ، وَعُمَانَ، وَالْيَمَنِ، وَالطَّائِفِ، فَمَا حَضَّ - عَلَيْهِ السَّلَامُ - قَطُّ عَلَى تَرْكِهِ.

L20544 This narration is a general ruling, as you observe, and does not restrict it to anyone other than the people of the Arab lands—whether they are from among them or not. His speech (peace be upon him) is not contradictory.

وَهَذَا الْخَبَرُ عُمُومٌ كَمَا تَرَى لَمْ يَخُصَّ بِهِ غَيْرَ أَهْلِ بِلَادِ الْعَرَبِ مِنْ أَهْلِ بِلَادِ الْعَرَبِ، وَكَلَامُهُ - عَلَيْهِ السَّلَامُ - لَا يَتَنَاقَضُ.

L20545 It is established that the blameworthy cultivation—for which Allah the Exalted brings humiliation upon its practitioners—is that which one is distracted by from jihad. This differs from the cultivation for which its owner is granted reward by Allah. All of this, whether commendable or blameworthy, is the same regardless of occurring in Arab or non-Arab lands, as the rulings in this matter apply universally.

فَصَحَّ أَنَّ الزَّرْعَ الْمَذْمُومَ الَّذِي يُدْخِلُ اللَّهُ تَعَالَى عَلَى أَهْلِهِ الذُّلَّ هُوَ مَا تُشُوغِلَ بِهِ عَنْ الْجِهَادِ، وَهُوَ غَيْرُ الزَّرْعِ الَّذِي يُؤْجَرُ صَاحِبُهُ، وَكُلُّ ذَلِكَ حَسَنُهُ وَمَذْمُومُهُ سَوَاءٌ - كَانَ فِي أَرْضِ الْعَرَبِ أَوْ فِي أَرْضِ الْعَجَمِ - إذْ السُّنَنُ فِي ذَلِكَ عَلَى عُمُومِهَا.

L20546 They also cited as evidence what was narrated to us through the chain of Asad ibn Musa, from Muhammad ibn Rashid, from Makhul: that the Muslims cultivated crops in the Levant. When this reached Umar ibn al-Khattab, he ordered its burning after it had ripened, so it was burned. Mu’awiyah himself undertook its burning.

وَاحْتَجُّوا أَيْضًا بِمَا رُوِّينَا مِنْ طَرِيقِ أَسَدِ بْنِ مُوسَى عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ: أَنَّ الْمُسْلِمِينَ زَرَعُوا بِالشَّامِ، فَبَلَغَ عُمَرَ بْنَ الْخَطَّابِ، فَأَمَرَ بِإِحْرَاقِهِ وَقَدْ ابْيَضَّ، فَأُحْرِقَ، وَأَنَّ مُعَاوِيَةَ تَوَلَّى حَرْقَهُ.

L20547 Narrated by Asad ibn Musa on the authority of Shurahbil ibn Abd al-Rahman al-Muradi: That Umar ibn al-Khattab said to Qays ibn Abd Yaghuth al-Muradi: “I will not permit you to cultivate unless you acknowledge humiliation, and I erase your name from the state stipend register.” Umar also wrote to the people of Syria: “Whoever cultivates land, engages in plowing, and is content with that, I have imposed the jizyah upon him.”

وَمِنْ طَرِيقِ أَسَدِ بْنِ مُوسَى عَنْ شُرَحْبِيلَ بْنِ عَبْدِ الرَّحْمَنِ الْمُرَادِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ لِقَيْسِ بْنِ عَبْدِ يَغُوثَ الْمُرَادِيِّ: لَا آذَنُ لَك بِالزَّرْعِ إلَّا أَنْ تُقِرَّ بِالذُّلِّ، وَأَمْحُو اسْمَك مِنْ الْعَطَاءِ - وَأَنَّ عُمَرَ كَتَبَ إلَى أَهْلِ الشَّامِ مَنْ زَرَعَ وَاتَّبَعَ أَذْنَابَ الْبَقَرِ وَرَضِيَ بِذَلِكَ جَعَلْت عَلَيْهِ الْجِزْيَةَ.

L20548 Abu Muhammad said: This is a mursal narration, and Asad is weak. May Allah protect the Commander of the Faithful from burning the crops of Muslims, destroying their wealth, and from imposing the jizyah (a tax on non-Muslims) upon Muslims. How astonishing that someone would cite this as evidence, when they themselves are the first to contradict it!

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ، وَأَسَدٌ ضَعِيفٌ، وَيُعِيذُ اللَّهُ أَمِيرَ الْمُؤْمِنِينَ مِنْ أَنْ يُحْرِقَ زُرُوعَ الْمُسْلِمِينَ وَيُفْسِدَ أَمْوَالَهُمْ، وَمِنْ أَنْ يَضْرِبَ الْجِزْيَةَ عَلَى الْمُسْلِمِينَ، وَالْعَجَبُ مِمَّنْ يَحْتَجُّ بِهَذَا، وَهُوَ أَوَّلُ مُخَالِفٍ لَهُ

The Issue of Land Leasing

L20549

[مَسْأَلَةُ كِرَاءُ الْأَرْضِ]

L20550 Issue 1329: It is impermissible to lease land for anything at all—neither dinars, nor dirhams, nor movable property, nor specified type of food, nor for anything at all.

١٣٢٩ - مَسْأَلَةٌ: لَا يَجُوزُ كِرَاءُ الْأَرْضِ بِشَيْءٍ أَصْلًا لَا بِدَنَانِيرَ، وَلَا بِدَرَاهِمَ، وَلَا بِعَرْضٍ، وَلَا بِطَعَامٍ مُسَمًّى، وَلَا بِشَيْءٍ أَصْلًا.

L20551–20552 It is not lawful to cultivate the land except in one of three aspects:

وَلَا يَحِلُّ فِي زَرْعِ الْأَرْضِ إِلَّا أَحَدُ ثَلَاثَةِ أَوْجُهٍ -:

L20553 If one cultivates the land with his tools, laborers, seed, and beasts of burden.

إِمَّا أَنْ يَزْرَعَهَا الْمَرْءُ بِآلَتِهِ وَأَعْوَانِهِ وَبَذْرِهِ وَحَيَوَانِهِ.

L20554 Or that he permits someone else to cultivate it without taking anything from him. If they share the tools, animals, seeds, and helpers without taking rent from him for the land, then it is permissible.

وَإِمَّا أَنْ يُبِيحَ لِغَيْرِهِ زَرْعَهَا وَلَا يَأْخُذُ مِنْهُ شَيْئًا، فَإِنْ اشْتَرَكَا فِي الْآلَةِ وَالْحَيَوَانِ، وَالْبَذْرِ، وَالْأَعْوَانِ دُونَ أَنْ يَأْخُذَ مِنْهُ لِلْأَرْضِ كِرَاءً فَحَسَنٌ.

L20555 Or that he gives his land to someone to cultivate it with his seed, animals, laborers, and tools in exchange for a specified portion—whether half, a third, a quarter, or similar, more or less—of what Allah causes to be produced from it, with no obligation whatsoever imposed on the landowner to provide any of those things. The remainder belongs to the tenant farmer, whether he obtains little or much. If he obtains nothing, he receives nothing and owes nothing. These types of arrangements are permissible, and whoever refuses them may keep his land.

وَإِمَّا أَنْ يُعْطِيَ أَرْضَهُ لِمَنْ يَزْرَعُهَا بِبَذْرِهِ وَحَيَوَانِهِ وَأَعْوَانِهِ وَآلَتِهِ بِجُزْءٍ وَيَكُونُ لِصَاحِبِ الْأَرْضِ مِمَّا يُخْرِجُ اللَّهُ تَعَالَى مِنْهَا مُسَمًّى، إِمَّا نِصْفٌ، وَإِمَّا ثُلُثٌ، أَوْ رُبُعٌ، أَوْ نَحْوُ ذَلِكَ أَكْثَرُ أَوْ أَقَلُّ، وَلَا يُشْتَرَطُ عَلَى صَاحِبِ الْأَرْضِ أَلْبَتَّةَ شَيْءٌ مِنْ كُلِّ ذَلِكَ، وَيَكُونُ الْبَاقِي لِلزَّارِعِ قَلَّ مَا أَصَابَ أَوْ كَثُرَ فَإِنْ لَمْ يُصِبْ شَيْئًا فَلَا شَيْءَ لَهُ، وَلَا شَيْءَ عَلَيْهِ، فَهَذِهِ الْوُجُوهُ جَائِزَةٌ، فَمَنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ.

L20556 The evidence for that is that it has been narrated to us from al-Awzāʿī, from ʿAṭāʾ, from Jābir ibn ʿAbdullāh, that the Messenger of Allah (peace and blessings be upon him) said: «Whoever owns land, let him cultivate it or grant it. If he refuses, let him retain his land.»

بُرْهَانُ ذَلِكَ -: أَنَّنَا قَدْ رُوِّينَا عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيَمْنَحْهَا فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ» .

L20557 And through the narrational route of Rāfiʿ ibn Khadīj from his uncle Ẓuhayr ibn Rāfiʿ, from the Messenger of Allah, peace be upon him, the same is related.

وَمِنْ طَرِيقِ رَافِعِ بْنِ خَدِيجٍ عَنْ عَمِّهِ ظُهَيْرِ بْنِ رَافِعٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُهُ.

L20558 And through the chain of Rāfiʿ from his uncle, a Badrī (participant in the Battle of Badr), from the Prophet (peace be upon him), a similar report.

وَمِنْ طَرِيقِ رَافِعٍ عَنْ عَمٍّ لَهُ بَدْرِيٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُهُ.

L20559 Through the chain of Al-Bukhari: Sulayman ibn Harb narrated to us, Ham-

mad ibn Zayd narrated to us from Ayyub al-Sikhtiyani from Nafi‘ from Ibn Umar (may Allah be pleased with them both) that he used to lease his agricultural lands. He went to Rafi‘ ibn Khadīj, and I accompanied him. When he asked him, Rafi‘ replied: The Messenger of Allah (peace and blessings be upon him) prohibited renting land.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - «أَنَّهُ كَانَ يُكْرِي مَزَارِعَهُ قَالَ: فَذَهَبَ إِلَى رَافِعِ بْنِ خَدِيجٍ وَذَهَبْتُ مَعَهُ فَسَأَلَهُ فَقَالَ رَافِعٌ: نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ» .

L20560 Through the chain of Muslim: Muḥammad ibn Ḥātim narrated to us; Muʿallā ibn Manṣūr al-Rāzī narrated to us; Khālid—he is al-Khaddāʾ—narrated to us; al-Shaybānī—he is Abū Isḥāq—narrated to us from Bukayr ibn al-Akhnas, from ʿAṭāʾ, from Jābir ibn ʿAbd Allāh, who said: “The Messenger of Allāh—may Allāh’s peace and blessings be upon him—prohibited taking fixed rent or a share [of produce] for land.”[1]

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ حَاتِمٍ نا مُعَلَّى بْنُ مَنْصُورٍ الرَّازِيّ نا خَالِدٌ - وَهُوَ الْحَذَّاءُ - نا الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - عَنْ بُكَيْرِ بْنِ الْأَخْنَسِ عَنْ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُؤْخَذَ لِلْأَرْضِ أَجْرٌ أَوْ حَظٌّ» .

L20561–20563 From the chain of Muslim: Narrated to us Abū Tawbah—he is Rabīʿ ibn Nāfiʿ—narrated to us Muʿāwiyah—he is Ibn Sallām—from... Yahya ibn Abi Kathir reported from Abu Salama ibn Abd al-Rahman ibn Awf from Abu Hurairah that the Messenger of Allah (peace be upon him) said: “Whoever has land should cultivate it or grant it to his brother. If he refuses, then let him retain his land.”[2]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو تَوْبَةَ - هُوَ الرَّبِيعُ بْنُ نَافِعٍ - نا مُعَاوِيَةُ - هُوَ ابْنُ سَلَّامٍ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيَمْنَحْهَا أَخَاهُ، فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ» .

L20564 And through the chain of Ibn Wahb, narrated to us Malik ibn Anas from Dawud ibn al-Husayn that Abu Sufyan, the freed slave of Ibn Abi Ahmad, informed him that he heard Abu Sa’id al-Khudri say: “The Messenger of Allah, peace and blessings be upon him, prohibited muzabana and muhaqala.” He said: “Muhaqala is leasing the land.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ نا مَالِكُ بْنُ أَنَسٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ أَنَّ أَبَا سُفْيَانَ مَوْلَى ابْنِ أَبِي أَحْمَدَ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ الْمُزَابَنَةِ وَالْمُحَاقَلَةِ قَالَ: وَالْمُحَاقَلَةُ كِرَاءُ الْأَرْضِ» .

L20565 On the authority of Hammad ibn Salamah, who reported from Amr ibn Dinar, who said: I heard Abdullah ibn Umar ibn al-Khattab say, “The Messenger of Allah—peace and blessings be upon him—prohibited renting land.”[3]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا عَمْرُو بْنُ دِينَارٍ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عُمَرَ بْنِ الْخَطَّابِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ» .

[1] **Hadith references (L20560):** Sahih Muslim 1536n.

[2] **Hadith references (L20561):** Sahih al-Bukhari 2632; Sahih Muslim 1544; Sunan Ibn Majah 2452.

[3] **Hadith references (L20565):** Sahih Muslim 1536j; Sunan Abi Dawud 3393; Sahih Muslim 1547k.

فَهَؤُلَاءِ شَيْخَانِ بَدْرِيَّانِ، وَرَافِعُ بْنُ خَدِيجٍ، وَجَابِرٌ، وَأَبُو سَعِيدٍ، وَأَبُو هُرَيْرَةَ، وَابْنُ عُمَرَ كُلُّهُمْ يَرْوِي عَنِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - النَّهْيَ عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً، وَأَنَّهُ لَيْسَ إِلَّا أَنْ يَزْرَعَهَا صَاحِبُهَا أَوْ يَمْنَحَهَا غَيْرَهُ أَوْ يُمْسِكَ أَرْضَهُ فَقَطْ، فَهُوَ نَقْلُ تَوَاتُرٍ مُوجِبٍ لِلْعِلْمِ الْمُتَيَقَّنِ فَأَخَذَ بِهَذَا طَائِفَةٌ مِنَ السَّلَفِ.

L20566 These two Companions from the Battle of Badr, along with Rāfiʿ ibn Khadīj, Jābir, Abū Saʿīd, Abū Hurayrah, and Ibn ʿUmar—all of them narrate from the Prophet (peace be upon him) the complete prohibition against leasing land in any form, stating that there is no alternative except for the owner to cultivate it himself, grant its use to another, or simply keep his land without leasing it. This constitutes a mutawātir transmission necessitating definitive knowledge, and a group of the *Salaf* upheld this ruling.

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي عَمْرٌو - هُوَ ابْنُ الْحَارِثِ - أَنَّ بُكَيْرًا - هُوَ ابْنُ الْأَشَجِّ - حَدَّثَهُ قَالَ: حَدَّثَنِي نَافِعٌ مَوْلَى ابْنِ عُمَرَ أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ: كُنَّا نُكْرِي أَرْضَنَا، ثُمَّ تَرَكْنَا ذَلِكَ حِينَ سَمِعْنَا حَدِيثَ رَافِعِ بْنِ خَدِيجٍ.

L20567 As transmitted to us through the chain of Ibn Wahb: ʻAmr ibn al-Ḥārith (son of al-Ḥārith) informed me that Bukayr ibn al-Ashajj (son of al-Ashajj) narrated to him, saying: Nāfiʻ, the freed servant of Ibn ʻUmar, related to me that he heard Ibn ʻUmar state: "We would lease our land but ceased doing so upon hearing the ḥadīth of Rāfiʻ ibn Khadīj."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ عَطَاءٍ عَنْ جَابِرٍ أَنَّهُ كَرِهَ كِرَاءَ الْأَرْضِ.

L20568 Through the chain of Ibn Abi Shaybah, Wakiʻ narrated to us from Ikrimah ibn ʻAmmar, from ʻAta', from Jabir, that he held it disapproved (makrūh) to lease the land.

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ قَرَأْت عَلَى سَعِيدِ بْنِ يَعْقُوبَ الطَّالَقَانِيِّ قُلْت: أُحَدِّثُكُمْ عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ سَعِيدٍ أَبِي شُجَاعٍ حَدَّثَنِي عِيسَى بْنُ سَهْلِ بْنِ رَافِعٍ قَالَ: إنِّي يَتِيمٌ فِي حِجْرِ جَدِّي رَافِعِ بْنِ خَدِيجٍ، وَحَجَجْت مَعَهُ، فَجَاءَهُ أَخِي عِمْرَانُ بْنُ سَهْلٍ قَالَ: أَكْرَيْنَا أَرْضَنَا فُلَانَةَ بِمِائَتَيْ دِرْهَمٍ؟ فَقَالَ: دَعْهُ فَإِنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ كِرَاءِ الْأَرْضِ» وَعَنْ عَمِّي رَافِعٍ نَحْوُهُ.

L20569–20570 And through the path of Abū Dāwūd al-Sijistānī: I read to Saʿīd ibn Yaʿqūb al-Ṭālaqānī, and I said: "I narrate to you from ʿAbdullāh ibn al-Mubārak, from Saʿīd Abū Shujāʿ. ʿĪsā ibn Sahl ibn Rāfiʿ narrated to me: 'I was an orphan under my grandfather Rāfiʿ ibn Khadīj's guardianship. I performed Hajj with him, and my brother ʿImrān ibn Sahl came to him and asked: "Did we rent our land to so-and-so for two hundred dirhams¿' He replied: "Abandon this, for the Prophet (peace and blessings of Allah be upon him) prohibited renting land for a fixed sum."' A similar narration is reported from my uncle Rāfiʻ."[4]

وَمِنَ التَّابِعِينَ -: كَمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ قَالَ: لَا يَصْلُحُ مِنَ الزَّرْعِ إِلَّا أَرْضٌ تُمْلَكُ رَقَبَتُهَا، أَوْ أَرْضٌ يَمْنَحُكَهَا رَجُلٌ.

L20571 Cultivation is only permissible on land whose ownership is clearly established, or land granted to you by a man.

وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ بْنِ مَنْصُورٍ عَنْ مُجَاهِدٍ أَنَّهُ كَرِهَ إِجَارَةَ الْأَرْضِ.

L20572 Narrated by ʻAbd al-Raḥmān ibn Mahdī, via Sufyān ibn Manṣūr, via Mujāhid:

[4] **Hadith references (L20570):** Sunan an-Nasai 3919b; Sunan Abi Dawud 3401; Sunan an-Nasai 3915.

He disliked renting land (makrūh).

L20573 And through him to Waki‘ from Yazīd ibn Ibrāhīm, and Ismā‘īl ibn Muslim from al-Ḥasan: that he considered the leasing of land reprehensible.

وَبِهِ إِلَى وَكِيعٍ عَنْ يَزِيدَ بْنِ إِبْرَاهِيمَ، وَإِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ: أَنَّهُ كَرِهَ كِرَاءَ الْأَرْضِ.

L20574 Narrated by ʿAbd al-Razzāq, from Maʿmar, from Ibn Ṭāwūs, from his father, that he deemed it reprehensible (makrūh) to lease al-arḍ al-bayḍāʾ (uncultivated/public land).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَكْرَهُ كِرَاءَ الْأَرْضِ الْبَيْضَاءِ.

L20575 And via the chain of ʿAbd al-Razzāq from Maʿmar from ʿAbd al-Karīm al-Jazarī that ʿIkrimah, the client of Ibn ʿAbbās, said that it is not permissible to lease land.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ أَنَّ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: لَا يَصْلُحُ كِرَاءُ الْأَرْضِ.

L20576 Through the chain of Ahmad ibn Shuʿayb: From ʻAmr ibn ʻAli, from Abu ʻAsim, from ʻUthman ibn Murrah, who said: “I asked al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq about leasing land.” So Rafiʻ ibn Khadij said: “The Messenger of Allah (peace and blessings be upon him) prohibited leasing land.”[5]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا أَبُو عَاصِمٍ نا عُثْمَانُ بْنُ مُرَّةَ قَالَ: سَأَلْت الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ كِرَاءِ الْأَرْضِ؟ فَقَالَ رَافِعُ بْنُ خَدِيجٍ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ» .

L20577 Abu Muhammad said: He then issued a fatwa to those who sought his ruling with the prohibition of leasing land.

قَالَ أَبُو مُحَمَّدٍ: فَأَفْتَى مَنْ اسْتَفْتَاهُ بِالنَّهْيِ عَنْ كِرَاءِ الْأَرْضِ.

L20578 Through the chain of Ibn al-Jahm: Ibrāhīm al-Ḥarbī narrated to us from Khallād ibn Aslam, from al-Naḍr ibn Shumayl, from Hishām ibn Ḥassān, who said: Muḥammad ibn Sīrīn disliked leasing land in exchange for gold and silver.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إِبْرَاهِيمُ الْحَرْبِيُّ نا خَلَّادُ بْنُ أَسْلَمَ نا النَّضْرُ بْنُ شُمَيْلٍ عَنْ هِشَامِ بْنِ حَسَّانَ قَالَ: كَانَ مُحَمَّدُ بْنُ سِيرِينَ يَكْرَهُ كِرَاءَ الْأَرْضِ بِالذَّهَبِ وَالْفِضَّةِ.

L20579 And through him to Ibrāhīm al-Ḥarbī, from Dāwūd ibn Rashīd, from al-Walīd ibn Muslim, from al-Awzāʿī, who said: ʿAṭāʾ, Makhūl, Mujāhid, and al-Ḥasan al-Baṣrī held that barren land is not validly transacted using dirhams, dinars, or any transaction unless a man cultivates his land or leases it out.

وَبِهِ إِلَى إِبْرَاهِيمَ الْحَرْبِيِّ نا دَاوُد بْنُ رَشِيدٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا الْأَوْزَاعِيُّ قَالَ: كَانَ عَطَاءٌ، وَمَكْحُولٌ، وَمُجَاهِدٌ، وَالْحَسَنُ الْبَصْرِيُّ يَقُولُونَ: لَا تَصْلُحُ الْأَرْضُ الْبَيْضَاءُ بِالدَّرَاهِمِ وَلَا بِالدَّنَانِيرِ وَلَا مُعَامَلَةً إِلَّا أَنْ يَزْرَعَ الرَّجُلُ أَرْضَهُ أَوْ يَمْنَحَهَا.

L20580–20581 We received from Shuʿbah: Abū Isḥāq al-Sabīʿī reported from al-Shaʿbī from Masrūq that he disliked cultivation. Al-Shaʿbī said: “That is what prevented

[5] **Hadith references (L20576):** Sahih Muslim 1536j; Sunan Abi Dawud 3393; Sahih Muslim 1547k.

me—and indeed I was among the people of the Sawād with the largest estate—and this necessarily and inevitably entails that both of them disliked leasing land in its entirety."

وَمِنْ طَرِيقِ شُعْبَةَ نا أَبُو إِسْحَاقَ السَّبِيعِيُّ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ كَانَ يَكْرَهُ الزَّرْعَ. قَالَ الشَّعْبِيُّ: فَذَلِكَ الَّذِي مَنَعَنِي وَلَقَدْ كُنْت مِنْ أَكْثَرِ أَهْلِ السَّوَادِ ضَيْعَةً - وَهَذَا يَقْتَضِي - وَلَا بُدَّ - ضَرُورَةً أَنَّهُمَا كَانَا يَكْرَهَانِ إجَارَةَ الْأَرْضِ جُمْلَةً.

L20582 These scholars—ʿAṭāʾ, Mujāhid, Masrūq, Al-Shaʿbī, Ṭāwūs, Al-Ḥasan, Ibn Sīrīn, and Al-Qāsim ibn Muḥammad—all do not consider leasing land permissible at all, whether for dinars, dirhams, or anything else. Thus, the prohibition against leasing land is established comprehensively. Then, we found that what we narrated through Al-Bukhārī's chain is authentic: Ibrāhīm ibn al-Mundhir narrated to us from Anas ibn ʿIyāḍ from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar, who reported: "The Messenger of Allah—peace and blessings be upon him—entered into a sharecropping contract with the people of Khaybar for half of what came forth from it, whether crops or fruits."

فَهَؤُلَاءِ: عَطَاءٌ، وَمُجَاهِدٌ، وَمَسْرُوقٌ، وَالشَّعْبِيُّ، وَطَاوُسٌ، وَالْحَسَنُ، وَابْنُ سِيرِينَ وَالْقَاسِمُ بْنُ مُحَمَّدٍ، كُلُّهُمْ، لَا يَرَى كِرَاءَ الْأَرْضِ أَصْلًا لَا بِدَنَانِيرَ وَلَا بِدَرَاهِمَ، وَلَا بِغَيْرِ ذَلِكَ. فَصَحَّ النَّهْيُ عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً، ثُمَّ وَجَدْنَا قَدْ صَحَّ مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا إبْرَاهِيمُ بْنُ الْمُنْذِرِ نا أَنَسُ بْنُ عِيَاضٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَخْبَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَلَ أَهْلَ خَيْبَرَ بِشَطْرِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ ثَمَرٍ» .

L20583 From the narration of Al-Bukhari: Musa ibn Isma'il narrated to us, Juwayriyah - he is the son of Asma - narrated to us, from Nafi', from 'Abdullah ibn 'Umar, who said: "The Prophet (peace be upon him) granted Khaybar to the Jews on the condition that they cultivate and plant it, and they would receive half of its produce."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إسْمَاعِيلَ نا جُوَيْرِيَةُ - هُوَ ابْنُ أَسْمَاءَ - عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «أَعْطَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ الْيَهُودَ عَلَى أَنْ يَعْمَلُوهَا وَيَزْرَعُوهَا وَلَهُمْ شَطْرُ مَا يَخْرُجُ مِنْهَا» .

L20584 And through the transmission of Muslim: Ibn Rumḥ narrated to us, Al-Layth—who is Ibn Saʿd—narrated to us, from Muḥammad ibn ʿAbd al-Raḥmān, from Nāfiʿ, from Ibn ʿUmar, from the Prophet (peace and blessings of Allah be upon him), that he entrusted the palm trees of Khaybar and its land to the Jews of Khaybar on the condition that they cultivate it through their labor from their own funds, and the Messenger of Allah (peace and blessings of Allah be upon him) would receive half of its produce.

وَمِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ رُمْحٍ نا اللَّيْثُ - هُوَ ابْنُ سَعْدٍ - عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ دَفَعَ إلَى يَهُودِ خَيْبَرَ نَخْلَ خَيْبَرَ وَأَرْضَهَا عَلَى أَنْ يَعْتَمِلُوهَا مِنْ أَمْوَالِهِمْ وَلِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نِصْفُ ثَمَرِهَا» .

L20585 And through the chain of Muslim: Muḥammad ibn Rāfiʿ narrated to me: ʿAbd al-Razzāq narrated to us: Ibn Jurayj narrated to us: Mūsā ibn ʿUqbah narrated from Nāfiʿ from Ibn ʿUmar, who said: "When the Messenger of Allah—peace and blessings of Allah be upon him—conquered Khaybar, he

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ حَدَّثَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «لَمَّا ظَهَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى

resolved to expel the Jews from it. They requested him—peace and blessings of Allah be upon him—to allow them to remain there on the condition that they would work the land in return for half the harvest. The Messenger of Allah—peace and blessings of Allah be upon him—said to them: 'We shall let you remain there on this condition for as long as we wish.' Thus, they remained there under this arrangement until 'Umar later expelled them."

L20586–20587 This indicates that the final action of the Messenger of Allah—peace and blessings be upon him—until his death was granting the land in exchange for half of what it produced in crops, fruits, and trees. Upon this practice, Abu Bakr, Umar—may Allah be pleased with them both—and all the Companions—may Allah be pleased with them—proceeded together. Therefore, it became obligatory to exempt a portion of its produce from the general prohibition that had been authentically established against leasing land or taking compensation or a share for it. This later practice abrogated the earlier prohibition against granting land for a portion of its produce, since the prohibition had been firmly established. Were this not the case, we would have deemed it merely an exception to the general prohibition rather than abrogation. However, since it is confirmed that the Messenger of Allah—peace and blessings be upon him—died while adhering to this practice, we decisively affirm the abrogation. Thus, it stands as a valid and certain abrogation beyond doubt. The general prohibition against leasing remains intact, as nothing has abrogated or specified it except sheer falsehood or worthless speculation—neither of which may lawfully be invoked in matters of religion.

L20588 If it is said: Only the prohibition against taking rent or a share for land is authentically reported from the Prophet—peace and blessings be upon him—and against leasing it for a third or a quarter, while it is authentically reported that he leased it for half. Should we then permit leasing it exclusively for half and prohibit leasing it for less or more? We say: This is not permissible, for when he—peace and blessings be upon him—permitted leasing half to them and half to the Muslims and himself, then by necessary perception and observable reality, everyone knows that a third, a quarter, what is less than

خَيْبَرَ أَرَادَ إخْرَاجَ الْيَهُودِ عَنْهَا، فَسَأَلُوهُ - عَلَيْهِ السَّلَامُ - أَنْ يُقِرَّهُمْ بِهَا عَلَى أَنْ يَكْفُوا عَمَلَهَا وَلَهُمْ نِصْفُ الثَّمَرِ؟ فَقَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: نُقِرُّكُمْ بِهَا عَلَى ذَلِكَ مَا شِئْنَا فَقَرُّوا بِهَا حَتَّى أَجْلَاهُمْ عُمَرُ» .

فَفِي هَذَا أَنَّ آخِرَ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أَنْ مَاتَ كَانَ إعْطَاءَ الْأَرْضِ بِنِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ الزَّرْعِ وَمِنْ الثَّمَرِ وَمِنْ الشَّجَرِ، وَعَلَى هَذَا مَضَى أَبُو بَكْرٍ، وَعُمَرُ ج وَجَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مَعَهُمْ، فَوَجَبَ اسْتِثْنَاءُ الْأَرْضِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا مِنْ جُمْلَةِ مَا صَحَّ النَّهْيُ عَنْهُ مِنْ أَنْ تُكْرَى الْأَرْضُ أَوْ يُؤْخَذُ لَهَا أَجْرٌ أَوْ حَظٌّ، وَكَانَ هَذَا الْعَمَلُ الْمُتَأَخِّرُ نَاسِخًا لِلنَّهْيِ الْمُتَقَدِّمِ عَنْ إعْطَاءِ الْأَرْضِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا؛ لِأَنَّ النَّهْيَ عَنْ ذَلِكَ قَدْ صَحَّ، فَلَوْلَا أَنَّهُ قَدْ صَحَّ لَقُلْنَا: لَيْسَ نَسْخًا، لَكِنَّهُ اسْتِثْنَاءٌ مِنْ جُمْلَةِ النَّهْيِ، وَلَوْلَا أَنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَاتَ عَلَى هَذَا الْعَمَلِ لَمَا قَطَعْنَا بِالنَّسْخِ، لَكِنْ ثَبَتَ أَنَّهُ آخِرُ عَمَلِهِ - عَلَيْهِ السَّلَامُ -. فَصَحَّ أَنَّهُ نَسْخٌ صَحِيحٌ مُتَيَقَّنٌ لَا شَكَّ فِيهِ، وَبَقِيَ النَّهْيُ عَنْ الْإِجَارَةِ جُمْلَةً بِحَسَبِهِ، إذْ لَمْ يَأْتِ شَيْءٌ يَنْسَخُهُ وَلَا يُخَصِّصُهُ أَلْبَتَّةَ إلَّا بِالْكَذِبِ الْبَحْتِ، أَوْ الظَّنِّ السَّاقِطِ الَّذِي لَا يَحِلُّ اسْتِعْمَالُهُ فِي الدِّينِ.

فَإِنْ قِيلَ: إنَّمَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيُ عَنْ أَنْ يُؤْخَذَ لِلْأَرْضِ أَجْرٌ أَوْ حَظٌّ، وَعَنْ أَنْ تُكْرَى بِثُلُثٍ أَوْ بِرُبُعٍ، وَصَحَّ أَنَّهُ أَعْطَاهُ بِالنِّصْفِ فَأَجِيزُوا إعْطَاءَهَا بِالنِّصْفِ خَاصَّةً وَامْنَعُوا مِنْ إعْطَائِهَا بِأَقَلَّ أَوْ أَكْثَرَ؟ قُلْنَا: لَا يَجُوزُ هَذَا؛ لِأَنَّهُ إذَا أَبَاحَ - عَلَيْهِ السَّلَامُ - إعْطَاءَهَا بِالنِّصْفِ لَهُمْ وَالنِّصْفِ لِلْمُسْلِمِينَ وَلَهُ - عَلَيْهِ السَّلَامُ -، فَبِضَرُورَةِ

that, and what exceeds it among the portions less than half are included in the half. For he—peace and blessings be upon him—leased it for a quarter and more, and for a third and more. Thus, it is established that all of this is undoubtedly permissible—and with Allah lies all success.

الْحِسِّ، وَالْمُشَاهَدَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّ الثُّلُثَ، وَالرُّبُعَ، وَمَا دُونَ ذَلِكَ، وَفَوْقَ ذَلِكَ مِنْ الْأَجْزَاءِ مِمَّا دُونَ النِّصْفِ دَاخِلٌ فِي النِّصْفِ، فَقَدْ أَعْطَاهَا - عَلَيْهِ السَّلَامُ - بِالرُّبُعِ وَزِيَادَةٍ وَبِالثُّلُثِ وَزِيَادَةٍ، فَصَحَّ أَنَّ كُلَّ ذَلِكَ مُبَاحٌ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20589 قَالَ أَبُو مُحَمَّدٍ: وَمِمَّنْ أَجَازَ إعْطَاءَ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا يَخْرُجُ مِنْهَا -: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ زَائِدَةَ عَنْ حَجَّاجٍ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيٍّ قَالَ: «عَامَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَهْلَ خَيْبَرَ بِالشَّطْرِ ثُمَّ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ» .

L20590 وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ قَالَ: عَامَلَ عُمَرُ بْنُ الْخَطَّابِ النَّاسَ عَلَى إنْ جَاءَ عُمَرُ بِالْبَذْرِ مِنْ عِنْدِهِ فَلَهُ الشَّطْرُ وَإِنْ جَاءُوا بِالْبَذْرِ فَلَهُمْ كَذَا.

L20591–20592 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْحَارِثِ بْنِ حُصَيْرَةَ حَدَّثَنِي صَخْرُ بْنُ الْوَلِيدِ عَنْ عَمْرِو بْنِ صُلَيْعٍ أَنَّ رَجُلًا قَالَ لِعَلِيِّ بْنِ أَبِي طَالِبٍ: أَخَذْت أَرْضًا بِالنِّصْفِ أَكْرِي أَنْهَارَهَا وَأُصْلِحُهَا وَأَعْمُرُهَا؟ قَالَ عَلِيٌّ: لَا بَأْسَ بِهَا.

L20593 قَالَ عَبْدُ الرَّزَّاقِ: كِرَاءُ الْأَنْهَارِ هُوَ حَفْرُهَا.

L20594 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ خَالِدٍ الْحَذَّاءِ أَنَّهُ سَمِعَ طَاوُسًا يَقُولُ: قَدِمَ عَلَيْنَا مُعَاذُ بْنُ جَبَلٍ فَأَعْطَى الْأَرْضَ عَلَى الثُّلُثِ وَالرُّبُعِ، فَنَحْنُ نَعْمَلُهَا إلَى الْيَوْمِ.

L20595 قَالَ أَبُو مُحَمَّدٍ: مَاتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُعَاذٌ بِالْيَمَنِ عَلَى هَذَا الْعَمَلِ.
وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ قَالَ سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ قَالَ: كَانَ ابْنُ عُمَرَ يُعْطِي أَرْضَهُ بِالثُّلُثِ، وَهَذَا عَنْهُ فِي غَايَةِ الصِّحَّةِ.

L20589 Abu Muhammad said: Among those who permitted granting land for a specified portion of its produce - we have been narrated via the transmission of Ibn Abi Shaybah: Ibn Zā'idah narrated to us from Ḥajjāj from Abū Ja'far Muḥammad ibn 'Alī, who said: "The Messenger of Allah, peace and blessings be upon him, worked with the people of Khaybar for half [the produce], then Abu Bakr, Umar, Uthman, and Ali."

L20590 It was narrated to us through Al-Bukhari's chain that ʿUmar ibn al-Khaṭṭāb entered into a sharecropping agreement with the people, stipulating that if ʿUmar provided the seed from his own resources, he would receive half; and if they provided the seed, they would receive such-and-such.

L20591–20592 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from al-Ḥārith ibn Ḥuṣayrah: Ṣakhr ibn al-Walīd reported to me from ʿAmr ibn Ṣulayʿ that a man said to ʿAlī ibn Abī Ṭālib, "I have taken land on a half-share: do I lease its canals, repair it, and cultivate it?" ʿAlī replied, "There is no harm in that."

L20593 Abd al-Razzaq said: The leasing of rivers (kirāʾ al-anhār) is their excavation.

L20594 Through the narration of Ḥammād ibn Salamah from Khālid al-Ḥadhdhāʾ, who heard Ṭāwus say: Muʿādh ibn Jabal was appointed among us and levied upon the land one-third and one-fourth, and we have continued to follow this practice to this day.

L20595 Abu Muhammad said: The Messenger of Allah—may Allah bless him and grant him peace—died while Mu'adh was in Yemen holding this position. From the transmission of 'Abd al-Razzāq: Sufyān al-Thawrī narrated from Manṣūr ibn al-Mu'tamir from Mujāhid, who said: Ibn 'Umar would give his land for a third, and this narration from him is of the highest authenticity.

وَقَدْ ذَكَرْنَا عَنْهُ رُجُوعَهُ عَنْ إِبَاحَةِ كِرَاءِ الْأَرْضِ.

L20596 And we have mentioned from him his retraction from permitting the renting of land.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ كُلَيْبِ بْنِ وَائِلٍ قَالَ: سَأَلْت ابْنَ عُمَرَ؟ فَقُلْت: أَرْضٌ تَقَبَّلْتهَا لَيْسَ فِيهَا نَهْرٌ جَارٍ وَلَا نَبَاتٌ عَشْرَ سِنِينَ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ كُلَّ سَنَةٍ كَرَيْت أَنْهَارَهَا، وَعَمَّرْت فِيهَا قُرَاهَا، وَأَنْفَقْت فِيهَا نَفَقَةً كَثِيرَةً، وَزَرَعْتهَا لَمْ تَرُدَّ عَلَيَّ رَأْسَ مَالِي زَرَعْتهَا مِنْ الْعَامِ الْمُقْبِلِ فَأُضْعِفُ؟ قَالَ ابْنُ عُمَرَ: لَا يَصْلُحُ لَك إلَّا رَأْسُ مَالِكَ.

L20597 Through the narration of Al-Ḥajjāj ibn Al-Minhāl, who informed us: Abū ʿAwānah reported from Kulayb ibn Wā'il, who said: "I asked Ibn ʿUmar: 'A land I took on—with no flowing river or vegetation for ten years—for four thousand dirhams annually. Each year I maintained its canals, developed its villages, spent heavily on it, and cultivated it. Yet it did not return my capital. If I plant it next year, would I double [the yield]?' Ibn ʿUmar replied: 'Nothing beyond your capital is lawful for you.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ أَبِي زَائِدَةَ، وَأَبُو الْأَحْوَصِ، كِلَاهُمَا عَنْ كُلَيْبِ بْنِ وَائِلٍ قُلْت لِابْنِ عُمَرَ: رَجُلٌ لَهُ أَرْضٌ، وَمَاءٌ، لَيْسَ لَهُ بَذْرٌ، وَلَا بَقَرٌ، فَأَعْطَانِي أَرْضَهُ بِالنِّصْفِ، فَزَرَعْتهَا بِبَذْرِي وَبَقَرِي، ثُمَّ قَاسَمْته؟ قَالَ: حَسَنٌ.

L20598 From the chain of Ibn Abi Shaybah: Yahya ibn Abi Za'idah and Abu al-Ahwas reported from Kulayb ibn Wa'il: I said to Ibn Umar: "A man has land and water but no seeds or oxen. He gave me his land for half the produce, so I cultivated it with my seeds and oxen, then I divided the harvest with him." He said: "It is permissible."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو الْأَحْوَصِ، وَعُبَيْدُ اللَّهِ بْنُ إيَادِ بْنِ لَقِيطٍ كِلَاهُمَا عَنْ كُلَيْبِ بْنِ وَائِلٍ مِثْلُهُ أَيْضًا - فَهَذَانِ إسْنَادَانِ فِي غَايَةِ الصِّحَّةِ - عَنْ ابْنِ عُمَرَ أَنَّهُ سَأَلَهُ كُلَيْبُ بْنُ وَائِلٍ عَنْ كِرَاءِ الْأَرْضِ بِالدَّرَاهِمِ؟ فَلَمْ يُجِزْهُ وَلَا أَجَازَ مَا أَصَابَ فِيهَا زِيَادَةً عَلَى قَدْرِ مَا أَنْفَقَ، وَسَأَلَهُ عَنْ أَخْذِهَا بِالنِّصْفِ مِمَّا يَخْرُجُ فِيهَا، لَا يَجْعَلُ صَاحِبُهَا فِيهَا لَا بَذْرًا وَلَا عَمَلًا وَيَكُونُ الْعَمَلُ كُلُّهُ عَلَى الْعَامِلِ وَالْبَذْرُ؟ فَأَجَازَهُ - وَهَذَا هُوَ نَفْسُ قَوْلِنَا - وَلِلَّهِ الْحَمْدُ.

L20599 From the narration of Sa'īd ibn Manṣūr: Abū al-Aḥwaṣ and 'Ubayd Allāh ibn Iyād ibn Laqīṭ both narrated to us from Kulayb ibn Wā'il a similar report as well. These are two chains of transmission of the highest authenticity. It is reported from Ibn 'Umar that Kulayb ibn Wā'il asked him about leasing land for dirhams, and he did not permit it, nor did he permit taking anything acquired in excess of what was expended on it. He also asked him about taking half of what is produced from the land, where the owner neither provides seed nor labor, and the cultivator is responsible for all the work and the seed. He permitted this (and this is precisely our position), and all praise is due to Allah.

وَمِنْ طَرِيقِ سُفْيَانَ، وَأَبِي عَوَانَةَ وَأَبِي الْأَحْوَصِ وَغَيْرِهِمْ كُلُّهُمْ عَنْ إبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ مُوسَى بْنُ طَلْحَةَ بْنُ عُبَيْدِ اللَّهِ أَنَّهُ شَاهَدَ جَارَيْهِ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَعَبْدِ اللَّهِ بْنِ مَسْعُودٍ يُعْطِيَانِ أَرْضَهُمَا عَلَى الثُّلُثِ.

L20600–20602 And through the narration of Sufyān, Abī ʿAwānah, Abī al-Aḥwaṣ, and others besides them, all of them. Narrated from Ibrahim ibn Muhajir, on the authority of Musa ibn Talha ibn Ubaydillah, that he witnessed his two neighbors Sa'd ibn Abi Waqqas and Abdullah ibn Mas'ud leasing their land for a third share.

L20603 From the narration of Ḥammād ibn Salamah, from al-Ḥajjāj ibn Arṭāʾ, from ʿUthmān ibn ʿAbdillāh ibn Mawhab, from Mūsā ibn Ṭalḥah: That Khabbāb ibn al-Aratt, Ḥudhayfah ibn al-Yamān, and Ibn Masʿūd would assign their uncultivated land for cultivation, taking one-third or one-quarter of the yield.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عُثْمَانَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ عَنْ مُوسَى بْنِ طَلْحَةَ: أَنَّ خَبَّابَ بْنَ الْأَرَتِّ، وَحُذَيْفَةَ بْنَ الْيَمَانِ، وَابْنَ مَسْعُودٍ كَانُوا يُعْطُونَ أَرْضَهُمْ الْبَيَاضَ عَلَى الثُّلُثِ وَالرُّبُعِ.

L20604 So these are Abū Bakr, ʿUmar, ʿUthman, ʿAlī, Saʿd, Ibn Masʿūd, Khabbāb, Ḥudhayfah, and Muʿādh in the presence of all the Companions of the Prophet.

فَهَؤُلَاءِ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَسَعْدٌ، وَابْنُ مَسْعُودٍ، وَخَبَّابٌ، وَحُذَيْفَةُ، وَمُعَاذٌ بِحَضْرَةِ جَمِيعِ الصَّحَابَةِ.

L20605 And among the Followers: Through the chain of Abd al-Razzaq, who narrated to us: Maʿmar informed me that someone asked al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq about land given as payment for a third or quarter share. He replied: There is no objection to it.

وَمِنْ التَّابِعِينَ -: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ أَخْبَرَنِي مَنْ سَأَلَ الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ الْأَرْضِ تُعْطَى بِالثُّلُثِ، وَالرُّبُعِ؟ فَقَالَ: لَا بَأْسَ بِهِ.

L20606 We have previously mentioned the prohibition against leasing land, and this is the verbatim of our ruling.

وَقَدْ ذَكَرْنَا قَبْلُ نَهْيَهُ عَنْ كِرَاءِ الْأَرْضِ وَهَذَا نَصُّ قَوْلِنَا.

L20607 And through the chain of Ibn Abi Shaybah, who narrated to us from al-Fudayl ibn Iyad from Hisham—that is, Ibn Hassan—from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq and Ibn Sirin: They both did not deem it objectionable for one to give his land on the condition of granting the owner a third, a quarter, or a tenth of the yield, with no obligation upon the recipient to bear any expenses.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الْفُضَيْلُ بْنُ عِيَاضٍ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَابْنِ سِيرِينَ: أَنَّهُمَا كَانَا لَا يَرَيَانِ بَأْسًا أَنْ يُعْطِيَ أَرْضَهُ عَلَى أَنْ يُعْطِيَهُ الثُّلُثَ، أَوْ الرُّبُعَ، وَالْعُشْرَ، وَلَا يَكُونُ عَلَيْهِ مِنْ النَّفَقَةِ شَيْءٌ.

L20608 And through the chain of Aḥmad ibn Shuʿayb al-Nasāʾī: Muḥammad ibn ʿAbd Allāh ibn al-Mubārak reported to us; Zakariyyā ibn ʿAdiyy reported to us; Ḥammād ibn Zayd reported to us from ʿAmr ibn Dīnār, who said: Ṭāwūs disapproved of renting out his land for gold or silver, but he saw no harm in [receiving] a third and a quarter [of the crop]. This is the explicit statement of our doctrine.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ النَّسَائِيِّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنُ الْمُبَارَكِ نا زَكَرِيَّا بْنُ عَدِيٍّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: كَانَ طَاوُسٌ يَكْرَهُ أَنْ يُؤَاجِرَ أَرْضَهُ بِالذَّهَبِ وَالْفِضَّةِ، وَلَا يَرَى بِالثُّلُثِ وَالرُّبُعِ بَأْسًا وَهَذَا نَصُّ قَوْلِنَا.

L20609 And via the chain of Ḥammād ibn Salamah from Qatādah: Saʿīd ibn al-Musayyib and Ibn Sīrīn did not see any harm in leasing for a third or a quarter [of the produce] - referring to agricultural land.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ: أَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ، وَابْنَ سِيرِينَ كَانَا لَا يَرَيَانِ بَأْسًا بِالْإِجَارَةِ عَلَى الثُّلُثِ وَالرُّبُعِ - يَعْنِي فِي الْأَرْضِ -.

L20610 We have mentioned Ibn Sīrīn's prohibition against leasing land, and his

وَقَدْ ذَكَرْنَا نَهْيَ ابْنِ سِيرِينَ عَنْ كِرَاءِ الْأَرْضِ فَقَوْلُهُ هُوَ قَوْلُنَا.

opinion is our opinion.

L20611 From the narration of Ḥammād ibn Salamah, from Ḥumayd, from Iyās ibn Muʿāwiyah: ʿUmar ibn ʿAbd al-ʿAzīz wrote, "Grant the land on the basis of a quarter share, a third share, a fifth share, down to a tenth share, and do not leave the land desolate."

L20612–20614 We have also narrated it through the chain of Ibn Abi Shaybah, who said: Hafs ibn Ghiyath and Abd al-Wahhab al-Thaqafi narrated to us. Hafs said: from Yahya ibn Sa'id al-Ansari; and Abd al-Wahhab said: from Khalid al-Ḥadhā'. Then Yahya and Khalid concurred that Umar ibn Abd al-Aziz ordered the land to be granted at a third and a quarter (of its yield).

L20615 Through the chain of Waki' who reported to us from Sharik, from Abdullah ibn Isa, who said: Abd al-Rahman ibn Abi Layla owned land in al-Fawwarah which he would lease for a third and a quarter. He would send me to apportion the shares among them.

L20616 Via the narration of ʿAbd al-Razzāq from Maʿmar: "I asked al-Zuhrī about leasing land for a third or a quarter. He replied: 'There is no objection to that.'"

L20617 And through the narration of Abd al-Razzaq from Sufyan al-Thawri, Qays ibn Muslim narrated to me on the authority of Abu Ja'far Muhammad ibn Ali ibn al-Husayn ibn Ali ibn Abi Talib, who said: "There is not a single family of the Emigrants in Medina except that they lease their land [for cultivation] in exchange for one-third or one-fourth [of the produce]."

L20618 From the narration of Abd al-Razzaq, who reported to us from Waki', who informed me from Amr ibn Uthman ibn Mawhab, who said: I heard Abu Ja'far Muhammad ibn Ali ibn al-Husayn say: "The families of Abu Bakr, the families of Umar, and the families of Ali lease their land [to tenants] for a third or a quarter of the harvest."

L20619 And from the route of Ibn Abī Shaybah: Al-Faḍl ibn Dukayn narrated to us from Bukayr ibn ʿĀmir from ʿAbd al-Raḥmān ibn al-Aswad ibn Yazīd, who said: "I would practice sharecropping for a third or a quarter share and bring

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ: أَنْ أَعْطُوا الْأَرْضَ عَلَى الرُّبُعِ، وَالثُّلُثِ، وَالْخُمُسِ، إِلَى الْعُشْرِ، وَلَا تَدَعُوا الْأَرْضَ خَرَابًا.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ قَالَ: نا حَفْصُ بْنُ غِيَاثٍ، وَعَبْدُ الْوَهَّابِ الثَّقَفِيُّ قَالَ حَفْصٌ: عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَقَالَ عَبْدُ الْوَهَّابِ: عَنْ خَالِدٍ الْحَذَّاءِ ثُمَّ اتَّفَقَ يَحْيَى، وَخَالِدٌ عَلَى أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَمَرَ بِإِعْطَاءِ الْأَرْضِ بِالثُّلُثِ، وَالرُّبُعِ.

وَمِنْ طَرِيقِ وَكِيعٍ نا شَرِيكٌ عَنْ عَبْدِ اللَّهِ بْنِ عِيسَى قَالَ: كَانَ لِعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَرْضٌ بِالْفَوَّارَةِ فَكَانَ يَدْفَعُهَا بِالثُّلُثِ، وَالرُّبُعِ فَيُرْسِلُنِي فَأُقَاسِمُهُمْ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ سَأَلْت الزُّهْرِيَّ عَنْ إعْطَاءِ الْأَرْضِ بِالثُّلُثِ، وَالرُّبُعِ؟ فَقَالَ: لَا بَأْسَ بِذَلِكَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ أَخْبَرَنِي قَيْسُ بْنُ مُسْلِمٍ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَا بِالْمَدِينَةِ أَهْلُ بَيْتِ هِجْرَةٍ إلَّا وَهُمْ يُعْطُونَ أَرْضَهُمْ بِالثُّلُثِ وَالرُّبُعِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا وَكِيعٌ أَخْبَرَنِي عَمْرُو بْنُ عُثْمَانَ بْنِ مَوْهَبٍ قَالَ: سَمِعْت أَبَا جَعْفَرٍ مُحَمَّدَ بْنَ عَلِيِّ بْنِ الْحُسَيْنِ يَقُولُ: آلُ أَبِي بَكْرٍ، وَآلُ عُمَرَ، وَآلُ عَلِيٍّ يَدْفَعُونَ أَرْضَهُمْ بِالثُّلُثِ، أَوْ الرُّبُعِ.

the yield to ʿAlqamah and al-Aswad. If they had perceived any harm in it, they would have prohibited me from it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الْفَضْلُ بْنُ دُكَيْنٍ عَنْ بُكَيْرِ بْنِ عَامِرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ بْنِ يَزِيدَ قَالَ: كُنْت أُزَارِعُ بِالثُّلُثِ وَالرُّبُعِ وَأَحْمِلُهُ إلَى عَلْقَمَةَ، وَالْأَسْوَدِ، فَلَوْ رَأَيَا بِهِ بَأْسًا لَنَهَيَانِي عَنْهُ.

L20620 This was also narrated to us from Abd al-Rahman ibn Yazid and Musa ibn Talhah ibn Ubaydullah - and this is the position of Ibn Abi Layla, Sufyan al-Thawri, al-Awza'i, Abu Yusuf, Muhammad ibn al-Hasan, and Ibn al-Mundhir.

وَرُوِّينَا ذَلِكَ أَيْضًا عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ، وَمُوسَى بْنِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَابْنِ الْمُنْذِرِ.

L20621 Differing opinions were reported from Al-Layth concerning this. Ahmad and Isḥāq permitted it, except that they stipulated the seed must come from the landowner, while the cultivator is responsible for providing the oxen, tools, and labor. Some ḥadīth scholars permitted it and did not mind which of the two provided the seed.

وَاخْتُلِفَ فِيهَا عَنْ اللَّيْثِ، وَأَجَازَهَا أَحْمَدُ، وَإِسْحَاقُ إلَّا أَنَّهُمَا قَالَا: إنَّ الْبَذْرَ يَكُونُ مِنْ عِنْدِ صَاحِبِ الْأَرْضِ وَإِنَّمَا عَلَى الْعَامِلِ الْبَقَرُ، وَالْآلَةُ، وَالْعَمَلُ - وَأَجَازَهَا بَعْضُ أَصْحَابِ الْحَدِيثِ، وَلَمْ يُبَالِ مَنْ جَعَلَ الْبَذْرَ مِنْهُمَا.

L20622–20624 Abu Muhammad said: The stipulation of the Prophet (peace be upon him) upon the people of Khaybar to cultivate the land using their own wealth serves as a clarification that all seeds and expenses are entirely upon the cultivator. It is impermissible to stipulate any of that upon the landowner, because any condition not found in the Book of Allah the Exalted is invalid. However, if the landowner voluntarily offers to lend the cultivator the seed, part of it, the means to purchase cattle, tools, or resources needed for expansion, it is permissible. Without any stipulation in the contract, it is permissible because it is an act of goodness, and a loan is a means of divine reward and an act of righteousness. And success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: فِي اشْتِرَاطِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ خَيْبَرَ أَنْ يَعْمَلُوهَا بِأَمْوَالِهِمْ: بَيَانٌ أَنَّ الْبَذْرَ وَالنَّفَقَةَ كُلَّهَا عَلَى الْعَامِلِ، وَلَا يَجُوزُ أَنْ يُشْتَرَطَ شَيْءٌ مِنْ ذَلِكَ عَلَى صَاحِبِ الْأَرْضِ؛ لِأَنَّ كُلَّ ذَلِكَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، فَإِنْ تَطَوَّعَ صَاحِبُ الْأَرْضِ بِأَنْ يُقْرِضَ الْعَامِلَ الْبَذْرَ، أَوْ بَعْضَهُ أَوْ مَا يَبْتَاعُ بِهِ الْبَقَرَ، أَوْ الْآلَةَ، أَوْ مَا يَتَّسِعُ فِيهِ مِنْ غَيْرِ شَرْطٍ فِي الْعَقْدِ فَهُوَ جَائِزٌ؛ لِأَنَّهُ فِعْلُ خَيْرٍ، وَالْقَرْضُ أَجْرٌ وَبِرٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20625 Abu Hanifah, Malik, Al-Shafi'i, Abu Yusuf, Muhammad, Zufar, and Abu Sulayman agreed on the permissibility of leasing land, though they also differed both regarding this matter and regarding sharecropping. All those we mentioned—except Malik alone—permitted leasing land in exchange for gold, silver, food quantified by measurement and owed as a liability (provided it is not stipulated that the food must come from the land itself), and all types of goods.

وَاتَّفَقَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو يُوسُفَ، وَمُحَمَّدٌ، وَزُفَرُ، وَأَبُو سُلَيْمَانَ عَلَى جَوَازِ كِرَاءِ الْأَرْضِ، وَاخْتَلَفُوا فِيهِ أَيْضًا، وَفِي الْمُزَارَعَةِ فَأَجَازَ كُلُّ مَنْ ذَكَرْنَا - حَاشَا مَالِكًا وَحْدَهُ - كِرَاءَ الْأَرْضِ بِالذَّهَبِ، وَالْفِضَّةِ، وَبِالطَّعَامِ الْمُسَمَّى كَيْلُهُ فِي الذِّمَّةِ - مَا لَمْ يُشْتَرَطْ أَنْ يَكُونَ مِمَّا تُخْرِجُهُ تِلْكَ الْأَرْضُ - وَبِالْعُرُوضِ كُلِّهَا.

وَقَالَ مَالِكٌ بِمِثْلِ ذَلِكَ، إِلَّا أَنَّهُ لَمْ يُجِزْ كِرَاءَ الْأَرْضِ بِشَيْءٍ مِمَّا يَخْرُجُ مِنْهَا، وَلَا بِشَيْءٍ مِنْ الطَّعَامِ، وَإِنْ لَمْ يَخْرُجْ مِنْهَا: كَالْعَسَلِ، وَالْمِلْحِ، وَالْمُرِّيِّ، وَنَحْوِ ذَلِكَ، وَأَجَازَ كِرَاءَهَا بِالْخَشَبِ وَالْحَطَبِ وَإِنْ كَانَا يَخْرُجَانِ مِنْهَا - وَهَذَا تَقْسِيمٌ لَا نَعْرِفُهُ عَنْ أَحَدٍ قَبْلَهُ، وَتَنَاقُضٌ ظَاهِرٌ - وَمَا نَعْلَمُ لِقَوْلِهِ هَذَا مُتَعَلَّقًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ مُتَقَدِّمٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ - يَعْنِي اسْتِثْنَاءَهُ الْعَسَلَ، وَالْمِلْحَ، وَإِجَازَتَهُ الْخَشَبَ، وَالْحَطَبَ.

L20626 Malik held a similar opinion, except he did not permit leasing land in exchange for anything produced from it nor for any food item - even if not originating from the land itself, such as honey, salt, murri, or similar substances. He permitted leasing it for wood and firewood even when sourced from it. This is a classification unknown from any predecessor and an evident contradiction. We find no basis for this ruling in the Quran, nor authentic Sunnah, nor weak narration, nor a predecessor's opinion, nor analogical reasoning, nor any defensible rationale - meaning his exclusion of honey and salt while permitting wood and firewood.

وَمَنَعَ أَبُو حَنِيفَةَ وَزُفَرُ إِعْطَاءَ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا يُزْرَعُ فِيهَا بِوَجْهٍ مِنْ الْوُجُوهِ - وَقَالَ مَالِكٌ: لَا يَجُوزُ إِعْطَاءُ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا تُخْرِجُ الْأَرْضُ، إِلَّا أَنْ تَكُونَ أَرْضٌ وَشَجَرٌ، فَيَكُونُ مِقْدَارُ الْبَيَاضِ مِنْ الْأَرْضِ ثُلُثَ مِقْدَارِ الْجَمِيعِ، وَيَكُونُ السَّوَادُ مِقْدَارَ الثُّلُثَيْنِ مِنْ الْجَمِيعِ، فَيَجُوزُ حِينَئِذٍ أَنْ تُعْطَى بِالثُّلُثِ وَالرُّبُعِ وَالنِّصْفِ عَلَى مَا يُعْطَى بِهِ ذَلِكَ السَّوَادُ.

L20627 Abu Hanifah and Zufar prohibited leasing land for a specified share of what is cultivated in it in any form. Malik said: It is impermissible to lease land for a specified share of what the land produces, except when it is land and trees. In such a case, the fallow portion of the land must constitute one-third of the total area, and the cultivated portion must constitute two-thirds of the total area. It is then permissible to lease the land for a third, a quarter, or half of the yield, according to what is given for that cultivated portion.

وَقَالَ الشَّافِعِيُّ: لَا يَجُوزُ إِعْطَاءُ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا تُخْرِجُ إِلَّا أَنْ يَكُونَ فِي خِلَالِ الشَّجَرِ لَا يُمْكِنُ سَقْيُهَا وَلَا عَمَلُهَا إِلَّا بِعَمَلِ الشَّجَرِ وَحَفْرِهَا وَسَقْيِهَا، فَيَجُوزُ حِينَئِذٍ إِعْطَاؤُهَا بِثُلُثٍ، أَوْ رُبُعٍ أَوْ نِصْفٍ عَلَى مَا تُعْطَى بِهِ الشَّجَرُ.

L20628 Al-Shāfiʿī said: It is impermissible to grant land for a specified share of its produce unless it lies interspersed with trees, where irrigation and cultivation are only feasible through tending to the trees, digging the land, and irrigating it. In such a case, it becomes permissible to grant it for a third, quarter, or half [of the produce], according to the terms by which the trees are cultivated.

وَقَالَ أَبُو بَكْرِ بْنُ دَاوُد: لَا يَجُوزُ إِعْطَاءُ الْأَرْضِ بِجُزْءٍ مُسَمًّى مِمَّا يَخْرُجُ مِنْهَا إِلَّا أَنْ تُعْطَى هِيَ وَالشَّجَرُ فِي صَفْقَةٍ وَاحِدَةٍ فَيَجُوزُ ذَلِكَ حِينَئِذٍ.

L20629 Abu Bakr ibn Dawud said: It is impermissible to grant land for a specified share of its produce unless both the land and trees are given as part of a single transaction; only at that point is it permissible.

قَالَ أَبُو مُحَمَّدٍ: حُجَّةُ جَمِيعِهِمْ فِي الْمَنْعِ مِنْ ذَلِكَ «نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إِعْطَاءِ الْأَرْضِ بِالنِّصْفِ، وَالثُّلُثِ، وَالرُّبُعِ» ؟ قَالَ عَلِيٌّ: وَلَسْنَا نُخَارِجُهُمْ الْآنَ

L20630–20632 Abū Muḥammad said: "The proof for all of them in prohibiting that practice is the Messenger of Allah's prohibition—may Allah bless him and grant him peace—against granting land for a half, third, or quarter [share]." ʿAlī said: "We are not excluding them now regarding the wording of that re-

port. Rather, he says: Yes, it has been authenticated." It is reported from the Prophet—peace be upon him—that he prohibited taking rent or a share for land. He said: "Whoever owns land must cultivate it himself or let others cultivate it. If he refuses, let him keep his land." This is a prohibition against granting the land in exchange for a portion of its produce. However, his practice—peace be upon him—in Khaybar abrogates this ruling, in accordance with what we explained earlier.

فِي أَلْفَاظِ ذَلِكَ الْحَدِيثِ بَلْ يَقُولُ: نَعَمْ، قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى عَنْ أَنْ يُؤْخَذَ لِلْأَرْضِ أَجْرٌ أَوْ حَظٌّ، قَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيُزْرِعْهَا، فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ» وَهَذَا نَهْيٌ عَنْ إعْطَائِهَا بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا، لَكِنْ فِعْلُهُ - عَلَيْهِ السَّلَامُ - فِي خَيْبَرَ هُوَ النَّاسِخُ عَلَى مَا بَيَّنَّا قَبْلُ.

L20633 As for Abū Ḥanīfa, he opposed the abrogating ruling and adhered to the abrogated one.

فَأَمَّا أَبُو حَنِيفَةَ فَخَالَفَ النَّاسِخَ وَأَخَذَ بِالْمَنْسُوخِ.

L20634 As for Mālik, al-Shāfiʿī, and Abū Sulaymān, the Prophet's action—peace and blessings of Allah be upon him—in the land of Khaybar perplexed them. Thus, they extrapolated it according to what we have cited from them, and all those juridical opinions amount to arbitrary judgment.

وَأَمَّا مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: فَحَيَّرَهُمْ فِعْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَرْضِ خَيْبَرَ فَأَخْرَجُوهُ عَلَى مَا ذَكَرْنَا عَنْهُمْ وَكُلُّ تِلْكَ الْوُجُوهِ تَحَكُّمٌ.

L20635 To one who follows Malik's school, it is said: What is your basis for defining the whiteness [of dawn] as one-third? No report has ever specified a third, nor is there evidence for it. Such a practice in Islamic law is impermissible.

وَيُقَالُ لِمَنْ قَلَّدَ مَالِكًا: مِنْ أَيْنَ لَكُمْ تَحْدِيدُ الْبَيَاضِ بِالثُّلُثِ؟ وَلَمْ يَأْتِ قَطُّ فِي شَيْءٍ مِنْ الْأَخْبَارِ تَحْدِيدُ ثُلُثٍ، وَلَا دَلِيلَ عَلَيْهِ، وَمِثْلُ هَذَا فِي الدِّينِ لَا يَجُوزُ.

L20636 They are asked: "What do you mean by the third? A third of the area, a third of the yield, or a third of the value?" Whichever of these aspects they lean toward, they are told: "On what basis have you specified this aspect over others? The yield may decrease or increase, and the value likewise. As for the area, a small one may produce the highest yield or hold more value than multiples thereof."

وَيُقَالُ لَهُمْ: مَاذَا تُرِيدُونَ بِالثُّلُثِ؟ أَثُلُثَ الْمِسَاحَةِ أَوْ ثُلُثَ الْغَلَّةِ أَمْ ثُلُثَ الْقِيمَةِ؟ فَإِلَى أَيِّ وَجْهٍ مَالُوا مِنْ هَذِهِ الْوُجُوهِ قِيلَ لَهُمْ: وَمِنْ أَيْنَ خَصَّصْتُمْ هَذَا الْوَجْهَ دُونَ غَيْرِهِ؟ وَالْغَلَّةُ قَدْ تَقِلُّ وَتَكْثُرُ، وَالْقِيمَةُ كَذَلِكَ وَأَمَّا الْمِسَاحَةُ فَقَدْ تَكُونُ مِسَاحَةً قَلِيلَةً أَعْظَمَ غَلَّةً أَوْ أَكْثَرَ قِيمَةً مِنْ أَضْعَافِهَا.

L20637 Moreover, Khaybar was not a single walled enclosure, nor a single assembly point, nor a single village, nor a single fortress. Rather, it comprised numerous fortresses that still exist today, which have remained unchanged—including al-Waṭīḥ, al-Salālim, Nāʿim, al-Qumūṣ, al-Katībah, al-Shaqq, al-Naṭāh, and others. What can be inferred about a land where two hundred horsemen—and many times their number in men—took their shares, amassed wealth from it, and became estate owners? How then does Imam Malik justify restricting their portion to one-third? Within it were purely cultivated

وَأَيْضًا: فَإِنَّ خَيْبَرَ لَمْ تَكُنْ حَائِطًا وَاحِدًا، وَلَا مَحْشَرًا وَاحِدًا، وَلَا قَرْيَةً وَاحِدَةً، وَلَا حِصْنًا وَاحِدًا، بَلْ كَانَتْ حُصُونًا كَثِيرَةً بَاقِيَةً إلَى الْيَوْمِ لَمْ تَتَبَدَّلْ مِنْهَا الْوَطِيحُ، وَالسَّلَالِمُ، وَنَاعِمُ، وَالْقُمُوصُ، وَالْكَتِيبَةُ، وَالشَّقُّ، وَالنَّطَاةُ، وَغَيْرُهَا - وَمَا الظَّنُّ بِبَلَدٍ أَخَذَ فِيهِ الْقِسْمَةَ مِائَتَا فَارِسٍ وَأَضْعَافُهُمْ مِنْ الرِّجَالِ فَتَمَوَّلُوا مِنْهَا وَصَارُوا أَصْحَابَ ضِيَاعٍ

lands, purely uncultivated lands, and cultivated areas within uncultivated expanses. Yet no textual evidence has ever explicitly detailed the one-third allocation he prescribed.

فَمِنْ أَيْنَ لِمَالِكٍ تَحْدِيدُ الثُّلُثِ؟ وَقَدْ كَانَ فِيهَا بَيَاضٌ لَا سَوَادَ فِيهِ، وَسَوَادٌ لَا بَيَاضَ فِيهِ، وَبَيَاضُ سَوَادٍ، فَمَا جَاءَ قَطُّ فِي شَيْءٍ مِنْ الْآثَارِ تَخْصِيصُ مَا خَصَّهُ.

L20638 If he says: "It has been reported from the Prophet (peace and blessings of Allah be upon him) that a third, and a third is a lot."

فَإِنْ قَالَ: قَدْ جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ.

L20639 We said: Yes, and you have made the third small in this matter contrary to the transmitted precedent. Then it is said to them and to al-Shāfiʿī: From where do you derive that the Messenger of Allah—peace and blessings be upon him—granted the land of Khaybar half its produce solely because it was subordinate to the Sawad? Does anyone know this except one whom the Messenger of Allah—peace and blessings be upon him—informed them directly from himself? Otherwise, it is an oversight by those who asserted it and an insistence on conjecture. As for persisting in this after being alerted, it is nothing but sheer falsehood against him—peace and blessings be upon him.

قُلْنَا: نَعَمْ، وَأَنْتُمْ جَعَلْتُمْ فِي هَذِهِ الْمَسْأَلَةِ الثُّلُثَ قَلِيلًا بِخِلَافِ الْأَثَرِ - ثُمَّ يُقَالُ لَهُمْ وَلِلشَّافِعِيِّ: مِنْ أَيْنَ لَكُمْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَعْطَى أَرْضَ خَيْبَرَ بِنِصْفِ مَا يَخْرُجُ مِنْهَا، لِأَنَّهَا كَانَتْ تَبَعًا لِلسَّوَادِ؟ وَهَلْ يَعْلَمُ هَذَا أَحَدٌ إلَّا مَنْ أَخْبَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ عَنْ نَفْسِهِ، وَإِلَّا فَهُوَ غَفْلَةٌ مِمَّنْ قَالَهُ وَقَطْعٌ بِالظَّنِّ؟ وَأَمَّا بَعْدَ التَّنْبِيهِ عَلَيْهِ فَمَا هُوَ إلَّا الْكَذِبُ الْبَحْتُ عَلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20640–20642 However, the only clear ruling is that he—peace be upon him—assigned its land in exchange for half of its produce. He granted its crops, its palm trees, and its fruits in this manner. Thus, we say: This is a Sunnah and an eternal right. We do not add to it, and we know it abrogates what preceded it from matters that cannot be reconciled between them based on their two apparent meanings.

وَإِنَّمَا الْحَقُّ الْوَاضِحُ فَهُوَ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَعْطَى أَرْضَهَا بِنِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ وَأَعْطَى نَخْلَهَا وَثِمَارَهَا كَذَلِكَ، فَنَحْنُ نَقُولُ: هَذَا سُنَّةٌ، وَحَقٌّ أَبَدًا، وَلَا نَزِيدُ، وَنَعْلَمُ أَنَّهُ نَاسِخٌ لِمَا تَقَدَّمَهُ مِمَّا لَا يُمْكِنُ الْجَمْعُ بَيْنَهُمَا بِظَاهِرِهِمَا.

L20643 Similarly, it is also said to those who adhere to the opinion of Abu Bakr ibn Dawud: "like for like." What is astonishing is that some of them stated: "The sharecropping contract (mukhabara) is derived from Khaybar," thereby indicating that the term originated after the conquest of Khaybar.

وَكَذَلِكَ أَيْضًا يُقَالُ لِمَنْ قَالَ بِقَوْلِ أَبِي بَكْرِ بْنِ دَاوُد سَوَاءً بِسَوَاءٍ، وَالْعَجَبُ أَنَّ بَعْضَهُمْ قَالَ: الْمُخَابَرَةُ مُشْتَقَّةٌ مِنْ خَيْبَرَ، فَدَلَّ أَنَّهَا بَعْدَ خَيْبَرَ.

L20644 Abū Muḥammad said: Had this speaker known the reprehensible nature of what he committed, he would have sought forgiveness from Allah the Exalted and covered himself in shame. As for the ignorant one's claim that Khaybar bore this name before the birth of Allah's Messenger (peace be upon him), that sharecropping was similarly termed, and that the Messenger of Allah (peace be upon him) maintained an agreement to give Khaybar half of its agricultural or fruit yield until his death (peace be upon him)—with this arrangement

قَالَ أَبُو مُحَمَّد: وَلَوْ عَلِمَ هَذَا الْقَائِلُ قَبِيحَ مَا أَتَى بِهِ لَاسْتَغْفَرَ اللَّهَ تَعَالَى مِنْهُ، وَلَتَقَنَّعَ حَيَاءً مِنْهُ، أَمَّا عِلْمُ الْجَاهِلِ أَنَّ خَيْبَرَ كَانَ هَذَا اسْمَهَا قَبْلَ مَوْلِدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّ الْمُخَابَرَةَ كَانَتْ تُسَمَّى بِهَذَا الِاسْمِ كَذَلِكَ، وَأَنَّ إعْطَاءَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ بِنِصْفِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ ثَمَرٍ كَانَ إلَى يَوْمِ مَوْتِهِ - عَلَيْهِ

continuing after his death (peace be upon him)—how could any person of intellect or faith permit himself to assert that the Prophet's prohibition (peace be upon him) against sharecropping occurred afterward? Would one suppose his prohibition (peace be upon him) reached us from the afterlife after his death (peace be upon him)? This is sheer folly, corruption, and disgrace from one considered knowledgeable, who ventures into such madness. Thus, it is as certain as daylight that the prohibition of sharecropping and granting land for a portion of its yield undeniably preceded the Khaybar decree—and success is attained solely through Allah the Exalted.

السَّلَامُ -، وَاتَّصَلَ كَذَلِكَ بَعْدَ مَوْتِهِ - عَلَيْهِ السَّلَامُ -؟ فَكَيْف يَسُوغُ لِذِي عَقْلٍ أَوْ دِينٍ أَنْ يَقُولَ: إنَّ نَهْيَهُ - عَلَيْهِ السَّلَامُ - عَنْ الْمُخَابَرَةِ كَانَ بَعْدَ ذَلِكَ؟ أَتَرَى عَهْدَهُ - عَلَيْهِ السَّلَامُ - أَتَانَا مِنْ الْآخِرَةِ بَعْدَ مَوْتِهِ - عَلَيْهِ السَّلَامُ - بِالنَّهْيِ عَنْهَا؟ أَمَّا هَذَا مِنْ السُّخْفِ، وَالتَّلَوُّثِ، وَالْعَارِ مِمَّنْ يُنْسَبُ إلَى الْعِلْمِ، وَيَأْتِي بِمِثْلِ هَذَا الْجُنُونِ؟ فَصَحَّ يَقِينًا كَالشَّمْسِ أَنَّ النَّهْيَ عَنْ الْمُخَابَرَةِ وَعَنْ إعْطَاءِ الْأَرْضِ بِمَا يَخْرُجُ مِنْهَا كَانَ قَبْلَ أَمْرِ خَيْبَرَ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20645 Those who permit leasing cited the hadith of Thabit ibn al-Dahhak as evidence: "The Messenger of Allah, may Allah bless him and grant him peace, prohibited sharecropping and commanded leasing contracts, stating: 'There is no harm in them.'"[6]

وَاحْتَجَّ الْمُجِيزُونَ لِلْكِرَاءِ بِحَدِيثِ ثَابِتِ بْنِ الضَّحَّاكِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْمُزَارَعَةِ وَأَمَرَ بِالْمُؤَاجَرَةِ وَقَالَ: لَا بَأْسَ بِهَا» .

L20646 And with the report we have narrated through the chain of Muslim: Isḥāq—he is Ibn Rāhawayh—narrated to us; ʿĪsā ibn Yūnus narrated to us; Al-Awzāʿī narrated to us from Rabīʿah ibn Abī ʿAbd al-Raḥmān: Ḥanẓalah ibn Qays al-Zuraqī narrated to me, saying: I asked Rāfiʿ ibn Khadīj about leasing land in exchange for gold and silver. He said: "There is no objection to it. People during the time of Allah's Messenger—peace and blessings be upon him—used to lease land for shares of the Mādhīyānāt (a portion of irrigated land), the heads of the canals, and portions of crops. Then one [crop] would perish while the other remained intact, and vice versa. Thus people had no leasing arrangement except this type. For this reason it was emphatically prohibited. As for something clearly defined and guaranteed, there is no objection to it." These are two authentic narrations.

وَبِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ - هُوَ ابْنُ رَاهْوَيْهِ - نا عِيسَى بْنُ يُونُسَ نا الْأَوْزَاعِيُّ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ حَدَّثَنِي حَنْظَلَةُ بْنُ قَيْسٍ الزُّرَقِيُّ قَالَ: سَأَلْت رَافِعَ بْنَ خَدِيجٍ عَنْ كِرَاءِ الْأَرْضِ بِالذَّهَبِ وَالْفِضَّةِ؟ فَقَالَ: لَا بَأْسَ بِهِ إنَّمَا كَانَ النَّاسُ يُؤَاجِرُونَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمَاذِيَانَاتِ، وَأَقْبَالِ الْجَدَاوِلِ وَأَشْيَاءَ مِنْ الزَّرْعِ، فَيَهْلِكُ هَذَا وَيَسْلَمُ هَذَا وَيَسْلَمُ هَذَا وَيَهْلِكُ هَذَا فَلَمْ يَكُنْ لِلنَّاسِ كِرَاءٌ إلَّا هَذَا فَلِذَلِكَ زَجَرَ عَنْهُ فَأَمَّا شَيْءٌ مَعْلُومٌ مَضْمُونٌ فَلَا بَأْسَ بِهِ، وَهَذَانِ خَبَرَانِ صَحِيحَانِ.

L20647–20649 And by what was narrated to us through the isnād of al-Bukhārī: ʿAlī ibn ʿAbd Allāh—that is, Ibn al-Madīnī—and Sufyān—that is, Ibn ʿUyaynah—narrated to us. Amr—he is the son of Dinar—said: I said to Tawus, "If you were to abandon *mukhabara* (sharecropping), since the Prophet—peace be upon him—prohibited it, what do they assert?" Tawus replied to me, "The

وَبِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ قَالَ عَمْرٌو - هُوَ ابْنُ دِينَارٍ -: قُلْت لِطَاوُسٍ: لَوْ تُرِكَتْ الْمُخَابَرَةُ فَإِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْهَا فَمَا يَزْعُمُونَ؟ فَقَالَ لِي طَاوُسٌ: إنَّ أَعْلَمَهُمْ - يَعْنِي ابْنَ

[6] **Hadith references (L20645):** Sahih Muslim 1549b; Mishkat al-Masabih 2981.

most knowledgeable among them—meaning Ibn Abbas—informed me that the Prophet—peace be upon him—did not prohibit it, but rather said: *‘For one of you to grant his brother (land) is better for him than to take a known share for it.’*” This is also a sound narration. And with another narration we transmitted through the chain of Ibn Abi Shaybah: from Ibn ‘Ulayyah, from ‘Abd al-Rahman ibn Ishaq, from Abu ‘Ubaydah ibn ‘Ammar ibn Yasir, from Abu ‘Ubaydah ibn Muhammad ibn ‘Ammar ibn Yasir, from al-Walid ibn Abi al-Walid, from ‘Urwah ibn al-Zubayr, who said: Zayd ibn Thabit said, “May Allah forgive Rafi‘ ibn Khadij. By Allah, I am more knowledgeable about this Hadith than him. *‘Two men came to him (the Prophet) who had fought each other, so the Messenger of Allah—peace be upon him—said: If this is your situation, then do not lease out farmlands for sharecropping.’*”

L20650 Ali said: So we said to them: As for the narration of Zaid, it is not sound. However, we will make allowance for you in it and say: Granted, for your sake, that it were sound, no doubt can be established against Rafi‘ through such a thing. Rather, we say: Zaid spoke truthfully, and Rafi‘ spoke truthfully. Both of them are people of truthfulness and reliability. Since Zaid preserved at that time what Rafi‘ did not hear, Rafi‘ also heard on another occasion what Zaid did not hear. Zaid is not more deserving of being believed than Rafi‘, nor is Rafi‘ more deserving of being believed than Zaid. Rather, both of them are truthful.

L20651 Indeed, Jābir, Abū Hurayrah, Abū Saʿīd, and Ibn ʿUmar narrated the prohibition against leasing land as a whole - among them are those of higher status than Zayd.

L20652 Then we say to them: If you prioritize this narration over the hadith prohibiting renting, then prioritize it over the prohibition of mukhābara (labor-based sharecropping), and there is no distinction.

L20653 Such is the view regarding the hadith of Ibn Abbas, for he said: “The Prophet (peace be upon him) did not prohibit it.” And Jabir, Abu Hurairah, Abu Sa’id, and Ibn Umar said: “The Messenger of Allah (peace be upon him) prohibited it.” All are truthful, and each only reported what he knew.

عَبَّاسٍ - أَخْبَرَنِي أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَنْهَ عَنْهَا، وَلَكِنْ قَالَ: «لَأَنْ يَمْنَحَ أَحَدُكُمْ أَخَاهُ خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهَا خَرْجًا مَعْلُومًا» وَهَذَا أَيْضًا خَبَرٌ صَحِيحٌ. وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنِ عُلَيَّةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ إِسْحَاقَ، عَنْ أَبِي عُبَيْدَةَ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ الْوَلِيدِ بْنِ أَبِي الْوَلِيدِ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: قَالَ زَيْدُ بْنُ ثَابِتٍ: يَغْفِرُ اللَّهُ لِرَافِعِ بْنِ خَدِيجٍ، أَنَا وَاَللَّهُ أَعْلَمُ بِالْحَدِيثِ مِنْهُ، «إِنَّمَا أَتَاهُ رَجُلَانِ قَدْ اقْتَتَلَا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنْ كَانَ هَذَا شَأْنُكُمْ فَلَا تُكْرُوا الْمَزَارِعَ» .

قَالَ عَلِيٌّ: فَقُلْنَا لَهُمْ: أَمَّا حَدِيثُ زَيْدٍ فَلَا يَصِحُّ، وَلَكَّا نُسَامِحُكُمْ فِيهِ فَنَقُولُ: هَبْكُمْ أَنَّهُ قَدْ صَحَّ فَإِنَّ رَافِعًا لَا يَثْبُتُ عَلَيْهِ الْوَهْمُ بِمِثْلِ هَذَا، بَلْ نَقُولُ: صَدَقَ زَيْدٌ، وَصَدَقَ رَافِعٌ، وَكِلَاهُمَا أَهْلُ الصِّدْقِ وَالثِّقَةِ، وَإِذْ حَفِظَ زَيْدٌ فِي ذَلِكَ الْوَقْتِ مَا لَمْ يَسْمَعْهُ رَافِعٌ فَقَدْ سَمِعَ رَافِعٌ أَيْضًا مَرَّةً أُخْرَى مَا لَمْ يَسْمَعْهُ زَيْدٌ، وَلَيْسَ زَيْدٌ بِأَوْلَى بِالتَّصْدِيقِ مِنْ رَافِعٍ، وَلَا رَافِعٌ أَوْلَى بِالتَّصْدِيقِ مِنْ زَيْدٍ، بَلْ كِلَاهُمَا صَادِقٌ.

وَقَدْ رَوَى النَّهْيَ عَنْ الْكِرَاءِ جُمْلَةً لِلْأَرْضِ: جَابِرٌ، وَأَبُو هُرَيْرَةَ، وَأَبُو سَعِيدٍ، وَابْنُ عُمَرَ، وَفِيهِمْ مَنْ هُوَ أَجَلُّ مِنْ زَيْدٍ.

ثُمَّ نَقُولُ لَهُمْ: إِنْ غَلَّبْتُمْ هَذَا الْخَبَرَ عَلَى حَدِيثِ النَّهْيِ عَنْ الْكِرَاءِ فَغَلِّبُوهُ عَلَى النَّهْيِ عَنْ الْمُخَابَرَةِ، وَلَا فَرْقَ.

وَهَكَذَا الْقَوْلُ فِي حَدِيثِ ابْنِ عَبَّاسٍ، لِأَنَّهُ يَقُولُ: لَمْ يَنْهَ عَنْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيَقُولُ جَابِرٌ، وَأَبُو هُرَيْرَةَ، وَأَبُو سَعِيدٍ، وَابْنُ عُمَرَ: نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكُلٌّ صَادِقٌ، وَكُلٌّ إِنَّمَا أَخْبَرَ بِمَا عِنْدَهُ.

L20654–20655 Ibn Abbas did not hear the prohibition, whereas these individuals did. Therefore, the one who affirms is more deserving than the one who denies, and the one who states that he knows is more deserving than the one who says, "I do not know."

وَابْنُ عَبَّاسٍ لَمْ يَسْمَعِ النَّهْيَ، وَهَؤُلَاءِ سَمِعُوهُ، فَمَنْ أَثْبَتَ أَوْلَى مِمَّنْ نَفَى، وَمَنْ قَالَ: إِنَّهُ عَلِمَ أَوْلَى مِمَّنْ قَالَ: لَا أَعْلَمُ.

L20656 As for the report of Ḥanẓalah ibn Qays from Rāfiʿ, it merely contains Rāfiʿ's own words - referring to his statement: "But as for something guaranteed, then no?" There have been differing reports from Rāfiʿ regarding this matter, as we previously cited. Sulaymān ibn Yasār narrated from him the prohibition against renting the land for specified food - so why did you permit it? The narration of Ḥanẓalah from Rāfiʿ is highly inconsistent. In any case, the one possessing greater knowledge is more deserving.

وَأَمَّا خَبَرُ حَنْظَلَةَ بْنِ قَيْسٍ عَنْ رَافِعٍ، فَالَّذِي فِيهِ إِنَّمَا هُوَ مِنْ كَلَامِ رَافِعٍ - يَعْنِي قَوْلَهُ -: وَأَمَّا شَيْءٌ مَضْمُونٌ فَلَا؟ وَقَدْ اُخْتُلِفَ عَنْ رَافِعٍ فِي ذَلِكَ كَمَا أَوْرَدْنَا قَبْلُ، وَرَوَى عَنْهُ سُلَيْمَانُ بْنُ يَسَارٍ النَّهْيَ عَنْ كِرَائِهَا بِطَعَامٍ مُسَمًّى فَلِمَ أَجَزْتُمُوهُ؟ وَرِوَايَةُ حَنْظَلَةَ عَنْ رَافِعٍ شَدِيدَةُ الِاضْطِرَابِ وَعَلَى كُلِّ حَالٍ فَالزَّائِدُ عِلْمًا أَوْلَى.

L20657 Imran ibn Sahl ibn Rafi', Ibn Umar, Nafi', Sulayman ibn Yasar, Abu al-Najashi, and others narrated from Rafi' ibn Khadij that there is a complete prohibition on leasing land in general, contrary to what Hanzala narrated from him. All of them are more reliable than Hanzala, so the strengthened narration takes precedence.

وَقَدْ رَوَى عِمْرَانُ بْنُ سَهْلِ بْنِ رَافِعٍ، وَابْنُ عُمَرَ، وَنَافِعٌ، وَسُلَيْمَانُ بْنُ يَسَارٍ، وَأَبُو النَّجَاشِيِّ وَغَيْرُهُمْ: النَّهْيَ عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً عَنْ رَافِعِ بْنِ خَدِيجٍ خِلَافَ مَا رَوَى عَنْهُ حَنْظَلَةُ، وَكُلُّهُمْ أَوْثَقُ مِنْ حَنْظَلَةَ فَالزَّائِدُ أَوْلَى.

L20658 As for the ḥadīth commanding mu'ājarah (sharecropping), yes, it is authentic. The Prophet's prohibition—peace and blessings of Allāh be upon him—has been firmly established. The report permitting it aligns with the foundational legal principle, while the report prohibiting it constitutes additional evidence. The additional takes precedence. We hold absolute certainty that when the Prophet—peace and blessings of Allāh be upon him—prohibited kirā' (leasing), he undoubtedly outlawed what was previously permissible. It is impermissible to abandon certainty for conjecture. Whoever claims that the permissibility we have decisively invalidated has been reinstated is a falsifier, and the burden of proof lies upon him. Certainty cannot be discarded for false claims. The matter resolves solely to granting dominance to the

وَأَمَّا حَدِيثُ أَمَرَ بِالْمُؤَاجَرَةِ فَنَعَمْ، هُوَ صَحِيحٌ، وَقَدْ صَحَّ نَهْيُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخَبَرُ الْإِبَاحَةِ مُوَافِقٌ لِمَعْهُودِ الْأَصْلِ، وَخَبَرُ النَّهْيِ زَائِدٌ، فَالزَّائِدُ أَوْلَى، وَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ نَهَى عَنْ الْكِرَاءِ فَقَدْ حَرَّمَ مَا كَانَ مُبَاحًا مِنْ ذَلِكَ بِلَا شَكٍّ، وَلَا يَحِلُّ أَنْ يُتْرَكَ الْيَقِينُ لِلظَّنِّ، وَمَنْ ادَّعَى أَنَّ الْإِبَاحَةَ الَّتِي قَدْ تَيَقَّنَّا بُطْلَانَهَا قَدْ عَادَتْ فَهُوَ مُبْطِلٌ وَعَلَيْهِ الدَّلِيلُ، وَلَا يَجُوزُ تَرْكُ الْيَقِينِ بِالدَّعْوَى الْكَاذِبَةِ، وَلَيْسَ إِلَّا

prohibition—thereby nullifying kirā’ entirely and mukhābarah (sharecropping) entirely—or granting dominance to permissibility, thereby affirming kirā’ entirely and mukhābarah entirely, as stated by Abū Yūsuf, Muḥammad, and others.

تَغْلِيبُ النَّهْيِ، فَبَطَلَ الْكِرَاءُ جُمْلَةً، وَالْمُخَابَرَةُ جُمْلَةً، أَوْ تَغْلِيبُ الْإِبَاحَةِ، فَيَثْبُتُ الْكِرَاءُ جُمْلَةً، وَالْمُخَابَرَةُ جُمْلَةً، كَمَا يَقُولُ أَبُو يُوسُفَ، وَمُحَمَّدٌ، وَغَيْرُهُمَا.

L20659 As for arbitrarily favoring prohibition in one matter and prioritizing permissibility in another without proof, this is childish caprice and a statement that has no place in religion—and success comes only from Allah, the Exalted.

وَأَمَّا التَّحَكُّمُ فِي تَغْلِيبِ النَّهْيِ فِي جِهَةٍ، وَتَغْلِيبُ الْإِبَاحَةِ فِي أُخْرَى بِلَا بُرْهَانٍ فَتَحَكُّمُ الصِّبْيَانِ، وَقَوْلٌ لَا يَحِلُّ فِي الدِّينِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20660–20662 As for the statement of Mālik, his followers argued in its favor with the ḥadīth of ʿAbd al-Ḥamīd ibn Jaʿfar from his father from Rāfiʿ ibn Usayd ibn Ẓuhayr from his father, who said: “The Messenger of Allah—peace be upon him—prohibited leasing land.” We said: “O Messenger of Allah, should we then lease it for some grain?” He said: “No.” We said: “Should we lease it for straw?” He replied: “No.” He said: “And we used to lease it for a share of the irrigated spring [produce]?” He said, “No, cultivate it yourself, or grant it to your brother.”

وَأَمَّا قَوْلُ مَالِكٍ: فَإِنَّ مُقَلِّدِيهِ احْتَجُّوا لَهُ بِحَدِيثِ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ عَنْ أَبِيهِ عَنْ رَافِعِ بْنِ أُسَيْدَ بْنِ ظُهَيْرٍ عَنْ أَبِيهِ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ؟ قُلْنَا: يَا رَسُولَ اللَّهِ إِذًا نُكْرِيهَا بِشَيْءٍ مِنْ الْحَبِّ؟ قَالَ: لَا، قَالَ: نُكْرِيهَا بِالتِّبْنِ؟ فَقَالَ: لَا: قَالَ: وَكُنَّا نُكْرِيهَا عَلَى الرَّبِيعِ السَّاقِي؟ قَالَ: لَا، ازْرَعْهَا، أَوْ امْنَحْهَا أَخَاكَ» .

L20663 And in the narration of Mujāhid, Rāfi‘ said: “The Messenger of Allah (peace be upon him) forbade us from accepting land in exchange for a portion of its produce.”

وَبِحَدِيثِ مُجَاهِدٍ، قَالَ رَافِعٌ: «نَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَتَقَبَّلَ الْأَرْضَ بِبَعْضِ خَرْجِهَا» .

L20664 And by what we have narrated through a chain transmitted via Ya‘lā ibn Ḥakīm from Sulaymān ibn Yasār that Rāfi‘ ibn Khadīj said: Indeed, one of his uncles came to them and said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “Whoever owns land should cultivate it himself or let another person cultivate it, and he must not lease it for a share of the produce—neither a third nor a quarter—nor for a predetermined measure of food.”

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَنْ يَعْلَى بْنِ حَكِيمٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّ رَافِعَ بْنَ خَدِيجٍ قَالَ: إِنَّ بَعْضَ عُمُومَتِهِ أَتَاهُمْ فَقَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيُزْرِعْهَا أَخَاهُ وَلَا يُكَارِيهَا بِثُلُثٍ وَلَا بِرُبُعٍ وَلَا بِطَعَامٍ مُسَمًّى» .

L20665 And according to what we have narrated through the chain of Ahmad ibn Shu‘ayb: ‘Ubayd Allah ibn Sa‘d ibn Ibrahim narrated to us: my uncle narrated from my father, who narrated from Muhammad ibn ‘Ikrimah from Muhammad ibn ‘Abd al-Rahman ibn Labibah from Sa‘id ibn al-Musayyab from Sa‘d ibn Abi Waqqas, who said: “Owners of cultivated lands would lease their farms for a share of produce during the time of the Messenger of

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ نا عَمِّي قَالَ: نا أَبِي عَنْ مُحَمَّدِ بْنِ عِكْرِمَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ لَبِيبَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ قَالَ: «كَانَ أَصْحَابُ الْمَزَارِعِ يُكْرُونَ مَزَارِعَهُمْ فِي زَمَانِ رَسُولِ اللَّهِ

Allah (peace and blessings be upon him) based on what came from the water channels in terms of crops. They came to the Messenger of Allah (peace and blessings be upon him) disputing, so the Messenger of Allah (peace and blessings be upon him) forbade them from leasing in that manner and said: 'Lease them for gold and silver currency.'"

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِمَّا يَكُونُ عَلَى السَّوَاقِي مِنْ الزَّرْعِ فَجَاءُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْتَصِمُونَ، فَنَهَاهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُكْرُوا بِذَلِكَ وَقَالَ: أَكْرُوا بِالذَّهَبِ، وَالْفِضَّةِ» .

L20666 We have also narrated it through the chain of ʿAbd al-Malik ibn Ḥabīb from Ibn al-Mājishūn from Ibrāhīm ibn Saʿd ibn Ibrāhīm from his father from Saʿīd ibn al-Musayyib from Saʿd ibn Abī Waqqāṣ, who said: "The Messenger of Allāh - peace be upon him - permitted leasing land with gold and silver."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ ابْنِ الْمَاجِشُونِ عَنْ إبْرَاهِيمَ بْنِ سَعْدِ بْنِ إبْرَاهِيمَ عَنْ أَبِيهِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ قَالَ: «أَرْخَصَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كِرَاءِ الْأَرْضِ بِالذَّهَبِ، وَالْوَرِقِ» .

L20667 Through the chain of Sufyān ibn ʿUyaynah, from Yaḥyā ibn Saʿīd al-Anṣārī, from Ḥanẓalah ibn Qays al-Zuraqī, who heard Rāfiʿ ibn Khadīj say: "We would say to the one with whom we practiced *mukhābarah*: 'This plot is yours, and that plot is ours—we would cultivate them.' But sometimes one plot yielded produce while the other did not. The Messenger of Allah—peace and blessings be upon him—forbade us from that practice. As for [payment in] silver currency, he did not prohibit it."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ نا حَنْظَلَةُ بْنُ قَيْسٍ الزُّرَقِيُّ أَنَّهُ سَمِعَ رَافِعَ بْنَ خَدِيجٍ يَقُولُ: «كُنَّا نَقُولُ لِلَّذِي نُخَابِرُهُ: لَك هَذِهِ الْقِطْعَةُ وَلَنَا هَذِهِ الْقِطْعَةُ نَزْرَعُهَا فَرُبَّمَا أَخْرَجَتْ هَذِهِ وَلَمْ تُخْرِجْ هَذِهِ فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ، فَأَمَّا بِوَرِقٍ فَلَمْ يَنْهَ» .

L20668–20670 And through the chain of Ibn Abi Shaybah: Abu Al-Ahwas narrated from Tariq ibn Abd al-Rahman from Sa'id ibn al-Musayyib from Rafi' ibn Khadij from the Messenger of Allah—peace and blessings be upon him—who said: "Only three cultivate: a man who owns land..." He cultivates it; or a man granted land who cultivates it; or a man who leased land in exchange for gold or silver.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ رَافِعِ بْنِ خَدِيجٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّمَا يَزْرَعُ ثَلَاثَةٌ: رَجُلٌ لَهُ أَرْضٌ فَهُوَ يَزْرَعُهَا أَوْ رَجُلٌ مُنِحَ أَرْضًا فَهُوَ يَزْرَعُهَا أَوْ رَجُلٌ اسْتَكْرَى أَرْضًا بِذَهَبٍ أَوْ فِضَّةٍ» .

L20671 Abū Muḥammad said: As for the first ḥadīth—its chain of transmission is not sound. Furthermore, even if it were authentic, it would constitute evidence for us against them rather than evidence for them. For what it contains from the Prophet—peace and blessings of Allāh be upon him—is the comprehensive prohibition against leasing land altogether, and prohibiting cultivation by anyone other than its owner or the one who bestowed it. This contradicts their position.

قَالَ أَبُو مُحَمَّد: أَمَّا الْحَدِيثُ الْأَوَّلُ - فَسَنَدُهُ لَيْسَ بِالنَّيِّرِ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ لَا حُجَّةً لَهُمْ، لِأَنَّ الَّذِي فِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ النَّهْيُ عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً، وَالْمَنْعُ مِنْ غَيْرِ زَرِيعَتِهَا مِنْ قِبَلِ صَاحِبِهَا، أَوْ مِنْ قِبَلِ مَنْ مَنَحَهَا، وَهَذَا خِلَافُ قَوْلِهِمْ.

L20672 As for the ḥadīth of Mujāhid from Rāfiʿ—there is no disagreement that he

did not hear it from Rāfiʿ. Even if it were authentic, it would contain the prohibition against leasing land in exchange for some of what emerges from it, which contradicts their opinion. This is because they prohibit leasing it for honey and salt—neither of which originate from the land—while permitting its lease for firewood and timber, both being products of the land. Thus they have contradicted it in two aspects: adding what is not part of it and excluding what is part of it. Furthermore, gold and silver are among what emerges from the earth, yet they permit leasing land in exchange for them along with lead and copper—all of which are extracted from it.

وَأَمَّا حَدِيثُ مُجَاهِدٍ عَنْ رَافِعٍ - فَلَا خِلَافَ فِي أَنَّهُ لَمْ يَسْمَعْهُ مِنْ رَافِعٍ، ثُمَّ لَوْ صَحَّ لَكَانَ فِيهِ النَّهْيُ عَنْ كِرَاءِ الْأَرْضِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا، وَهُوَ خِلَافٌ لِقَوْلِهِمْ مِنْ قِبَلِ أَنَّهُمْ يَمْنَعُونَ مِنْ كِرَائِهَا بِالْعَسَلِ، وَالْمِلْحِ، وَلَيْسَا مِمَّا يَخْرُجَانِ مِنْهَا، وَيُجِيزُونَ كِرَاءَهَا بِالْحَطَبِ، وَالْخَشَبِ، وَهُمَا مِنْ بَعْضِ مَا يَخْرُجُ مِنْهَا، فَقَدْ خَالَفُوهُ مِنْ وَجْهَيْنِ فَزَادُوا فِيهِ مَا لَيْسَ فِيهِ وَأَخْرَجُوا مِنْهُ مَا فِيهِ وَأَيْضًا - فَإِنَّ الذَّهَبَ، وَالْفِضَّةَ مِنْ بَعْضِ مَا يَخْرُجُ مِنْ الْأَرْضِ، وَهُمْ يُجِيزُونَ الْكِرَاءَ بِهِمَا، وَبِالرَّصَاصِ وَالنُّحَاسِ - وَكُلُّ ذَلِكَ خَارِجٌ مِنْهَا.

L20673 If they say: The Prophet—peace be upon him—only prohibited leasing it due to what specifically emerges from that particular land, we say: Produce your evidence for this specification. Otherwise, the wording of the ḥadīth remains general in application, and thus their argument is wholly nullified by this ḥadīth.

فَإِنْ قَالُوا: إنَّمَا مَنَعَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - مِنْ كِرَائِهَا بِمَا يَخْرُجُ مِنْ تِلْكَ الْأَرْضِ بِعَيْنِهَا؟ قُلْنَا: هَاتُوا دَلِيلَكُمْ عَلَى هَذَا التَّخْصِيصِ، وَإِلَّا فَلَفْظُ الْخَبَرِ عَلَى عُمُومِهِ، فَسَقَطَ قَوْلُهُمْ جُمْلَةً فِي هَذَا الْخَبَرِ.

L20674 Moreover, we adhere to what is in it [the ruling], then we exclude from it what has been established as abrogated with certainty—specifically, our obligation to allocate a designated portion of the land's produce. We prohibit anything beyond that, and thus, it serves as evidence for us, not for them.

ثُمَّ أَيْضًا - فَنَحْنُ نَقُولُ بِمَا فِيهِ ثُمَّ نَسْتَثْنِي مِنْهُ مَا صَحَّ نَسْخُهُ بِيَقِينٍ مِنْ إعْطَائِنَا الْأَرْضَ بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا مُسَمًّى، وَنَمْنَعُ مِنْ غَيْرِ ذَلِكَ فَهُوَ حُجَّةٌ لَنَا لَا لَهُمْ.

L20675 As for the narration of Sulaymān ibn Yasār: the responsibility lies upon them, not in their favor, because it specifies that they may only cultivate the land themselves or have others cultivate it.

وَأَمَّا خَبَرُ سُلَيْمَانَ بْنِ يَسَارٍ: فَعَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّ فِيهِ أَنْ يَزْرَعَهَا أَوْ يُزْرِعَهَا فَقَطْ.

L20676–20678 And likewise, it was narrated to us through the chain of Ahmad ibn Shu'ayb, who informed me: Ziyad ibn Ayyub narrated to me, from Ibn 'Ulayyah, from Ayyub al-Sikhtiyani, from Ya'la ibn Hakim, from Sulayman ibn Yasar, from Rafi' ibn Khadij, that a man among his paternal uncles said to them: "The Messenger of Allah—peace and blessings be upon him—forbade us from sharecropping land or leasing it in exchange for a third (of the produce)." The quarter share and the food are specified; the landowner is commanded

وَهَكَذَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي زِيَادُ بْنُ أَيُّوبَ نا ابْنِ عُلَيَّةَ نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ يَعْلَى بْنِ حَكِيمٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ رَافِعِ بْنِ خَدِيجٍ أَنَّ رَجُلًا مِنْ عُمُومَتِهِ قَالَ لَهُمْ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نُحَاقِلَ بِالْأَرْضِ أَوْ نُكْرِيَهَا بِالثُّلُثِ وَالرُّبُعِ وَالطَّعَامُ مُسَمًّى، وَأَمَرَ رَبَّ الْأَرْضِ أَنْ يَزْرَعَهَا، أَوْ يُزْرِعَهَا، وَكَرِهَ كِرَاءَهَا، وَمَا سِوَى ذَلِكَ» .

to cultivate it himself or delegate its cultivation. Leasing is discouraged, and anything beyond that is prohibited.

L20679 As for the narration of Ḥanẓalah from Rāfiʿ—we have already mentioned that it originates from Rāfiʿ's own statement, specifically his remark: "As for silver coins, he did not prohibit them"—what we previously stated about it being Rāfiʿ's own utterance before the Prophet's (peace be upon him) prohibition has been authenticated. The Prophet (peace be upon him) indeed forbade that practice until he nullified the leasing of Banu Abīhi's land for dirhams. This narration holds greater validity due to several considerations:

L20680 One of them is that it is musnad to the Messenger of Allah—peace be upon him—whereas that one is mawqūf (attributed only to the companion Rāfiʿ).

L20681 The second [point] is that this [narration] is free from contradiction, whereas that [narration] is contradicted according to Rafiʿ.

L20682 And the third is that those who transmitted the general scope of the prohibition from Rāfiʿ—Ibn Umar, Uthman, Imran and Isa, the two sons of Sahl ibn Rāfiʿ, Sulayman ibn Yasar, and Abu al-Najashi, all of whom are more reliable than Hanzala ibn Qays—therefore, their connection to this report is invalidated.

L20683 As for the report of Saʿd ibn Abī Waqqāṣ, one of its two chains goes through ʿAbd al-Malik ibn Ḥabīb al-Andalusī (the Andalusian)—and he is abandoned—from ʿAbd al-Malik ibn al-Mājishūn, and he is weak.

L20684 And the other—via the chain of Muḥammad ibn ʿAbd al-Raḥmān ibn Labībah, an unknown narrator whose identity is undetermined—thus, the suspended narration through him is invalidated.

L20685 As for the report of Ṭāriq from Saʿīd from Rāfiʿ, Ibn Abī Shaybah narrated it as we cited from Abū al-Aḥwaṣ but erred in it. For we transmitted it through the chains of Qutaybah ibn Saʿīd, al-Faḍl ibn Dukayn, and Saʿīd ibn Manṣūr—all of them from Abū al-Aḥwaṣ from Ṭāriq ibn ʿAbd al-Raḥmān from Saʿīd ibn al-Musayyib from Rāfiʿ ibn Khadīj, who said: "The Messenger of Allāh—peace and blessings of Allāh be upon him—prohibited Muḥāqalah

وَأَمَّا خَبَرُ حَنْظَلَةَ عَنْ رَافِعٍ -: فَقَدْ ذَكَرْنَا أَنَّهُ مِنْ قَوْلِ رَافِعٍ - يَعْنِي قَوْلَهُ: فَأَمَّا بِوَرِقٍ فَلَمْ يَنْهَ - وَقَدْ صَحَّ عَنْ رَافِعٍ مَا ذَكَرْنَا أَنَّهُ مِنْ قَوْلِ رَافِعٍ قَبْلُ مِنْ نَهْيِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ حَتَّى أَبْطَلَ كِرَاءَ أَرْضِ بَنِي أَبِيهِ بِالدَّرَاهِمِ وَهَذِهِ الرِّوَايَةُ أَوْلَى لِوُجُوهٍ -:

أَحَدُهَا - أَنَّهَا مُسْنَدَةٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتِلْكَ مَوْقُوفَةٌ عَلَى رَافِعٍ.

وَالثَّانِي - أَنَّ هَذِهِ غَيْرُ مُضْطَرِبٍ فِيهَا، وَتِلْكَ مُضْطَرِبٌ فِيهَا عَلَى رَافِعٍ.

وَثَالِثُهَا - أَنَّ الَّذِينَ رَوَوْا عُمُومَ النَّهْيِ عَنْ رَافِعٍ: ابْنُ عُمَرَ، وَعُثْمَانُ، وَعِمْرَانُ، وَعِيسَى ابْنَا سَهْلِ بْنِ رَافِعٍ، وَسُلَيْمَانُ بْنُ يَسَارٍ، وَأَبُو النَّجَاشِيِّ، وَكُلُّهُمْ أَوْثَقُ مِنْ حَنْظَلَةَ بْنِ قَيْسٍ - فَسَقَطَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

وَأَمَّا خَبَرُ سَعْدِ بْنِ أَبِي وَقَّاصٍ فَأَحَدُ طَرِيقَيْهِ عَنْ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ - وَهُوَ هَالِكٌ - عَنْ عَبْدِ الْمَلِكِ بْنِ الْمَاجِشُونِ وَهُوَ ضَعِيفٌ.

وَالْأُخْرَى - مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ لَبِيبَةَ وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ - فَسَقَطَ التَّعْلِيقُ بِهِ.

وَأَمَّا خَبَرُ طَارِقٍ عَنْ سَعِيدٍ عَنْ رَافِعٍ فَإِنَّ ابْنَ أَبِي شَيْبَةَ رَوَاهُ كَمَا أَوْرَدْنَا عَنْ أَبِي الْأَحْوَصِ فَوَهَمَ فِيهِ، لِأَنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ قُتَيْبَةَ بْنِ سَعِيدٍ، وَالْفَضْلِ بْنِ دُكَيْنٍ، وَسَعِيدِ بْنِ مَنْصُورٍ، كُلُّهُمْ عَنْ أَبِي الْأَحْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ سَعِيدِ

and Muzābanah, and said: 'Only three may cultivate: a man who owns land and cultivates it, a man granted land who cultivates what he was granted, or a man who rents land with gold or silver.'" This statement was excluded from the speech of the Messenger of Allāh—peace and blessings of Allāh be upon him—but Ibn Abī Shaybah assumed it was among the entirety of the Prophet's speech, so he excluded it while retaining the chain.[7]

بْنِ الْمُسَيِّبِ عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُحَاقَلَةِ وَالْمُزَابَنَةِ، وَقَالَ: إنَّمَا يَزْرَعُ ثَلَاثَةٌ: رَجُلٌ لَهُ أَرْضٌ فَهُوَ يَزْرَعُهَا، أَوْ رَجُلٌ مُنِحَ أَرْضًا فَهُوَ يَزْرَعُ مَا مُنِحَ، أَوْ رَجُلٌ اسْتَكْرَى أَرْضًا بِذَهَبٍ أَوْ فِضَّةٍ» فَكَانَ هَذَا الْكَلَامُ مَخْزُولًا عَنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَظَنَّ ابْنُ أَبِي شَيْبَةَ أَنَّهُ مِنْ جُمْلَةِ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَزَلَهُ وَأَبْقَى السَّنَدَ.

L20686 This report has been conveyed through Tāriq via a chain comprising narrators more precise in memorization than Abū al-Aḥwaṣ, clarifying that it originates from the statement of Saʿīd ibn al-Musayyab – as transmitted to us through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn ʿAlī informed me, Muḥammad reported to us, Sufyān reported from Ṭāriq, who said: I heard Saʿīd ibn al-Musayyab state: "No form of agricultural lease is valid except three: land whose ownership you hold, a granted plot for use, or uncultivated land you lease with gold or silver."

وَقَدْ جَاءَ هَذَا الْخَبَرُ عَنْ طَارِقٍ مِنْ طَرِيقٍ مَنْ هُوَ أَحْفَظُ مِنْ أَبِي الْأَحْوَصِ مُبَيِّنًا أَنَّهُ مِنْ كَلَامِ سَعِيدِ بْنِ الْمُسَيِّبِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ عَلِيٍّ نا مُحَمَّدٌ نا سُفْيَانُ عَنْ طَارِقٍ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ لَا يَصْلُحُ مِنْ الزَّرْعِ غَيْرُ ثَلَاثٍ، أَرْضٌ تَمْلِكُ رَقَبَتَهَا، أَوْ مِنْحَةٌ، أَوْ أَرْضٌ بَيْضَاءُ تَسْتَأْجِرُهَا بِذَهَبٍ أَوْ فِضَّةٍ.

L20687–20688 Ali said: Furthermore, even if it were confirmed that this originated from the Prophet's speech—peace and blessings be upon him—they would still be opposing him, for it contains the prohibition against leasing land except with gold or silver. Yet you permit it with all worldly commodities save for food or what the land produces. Thus you have opposed this prohibition in its entirety.

قَالَ عَلِيٌّ: وَأَيْضًا - فَلَوْ صَحَّ أَنَّهُ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكَانُوا مُخَالِفِينَ لَهُ لِأَنَّ فِيهِ النَّهْيَ عَنْ كِرَاءِ الْأَرْضِ إلَّا بِذَهَبٍ، أَوْ فِضَّةٍ، وَأَنْتُمْ تُبِيحُونَهَا بِكُلِّ عَرْضٍ فِي الْعَالَمِ حَاشَا الطَّعَامَ، أَوْ مَا أَنْبَتَتْ الْأَرْضُ فَقَدْ خَالَفْتُمُوهَا كُلَّهَا.

L20689 If they assert here a consensus among those who permit leasing land for gold and silver, claiming that anything other than gold and silver is equivalent to them, then their audacity in advancing such a claim is unsurprising. The most blatant falsehood among their assertions is what we have transmitted through the chain of Saʿīd ibn Manṣūr: Abū al-Aḥwaṣ reported from ʿAbd al-Karīm al-Jazarī, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "Arable land may not be leased except for gold and silver." This is an authentic and sound chain of transmission.

فَإِنْ ادَّعَوْا هَهُنَا إجْمَاعًا مِنْ الْقَائِلِينَ بِكِرَاءِ الْأَرْضِ بِالذَّهَبِ وَالْفِضَّةِ، عَلَى أَنَّ مَا عَدَا الذَّهَبَ وَالْفِضَّةَ كَالذَّهَبِ وَالْفِضَّةِ - فَمَا يَبْعُدُ عَنْهُمْ التَّجَاسُرُ وَالْهُجُومُ عَلَى مِثْلِ هَذَا: أَكْذَبُهُمْ مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو الْأَحْوَصِ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا تُكْرَى الْأَرْضُ الْبَيْضَاءُ إلَّا بِالذَّهَبِ وَالْوَرِقِ - وَهَذَا إسْنَادٌ صَحِيحٌ جَيِّدٌ.

[7] **Hadith references (L20685):** Sunan an-Nasai 3890.

فَإِنْ قَالُوا: قِسْنَا عَلَى الذَّهَبِ وَالْفِضَّةِ مَا عَدَاهُمَا؟ قُلْنَا: فَقِيسُوا إعْطَاءَهَا بِالثُّلُثِ وَالرُّبُعِ عَلَى الْمُضَارَبَةِ.

L20690 If they say: "We have analogized [the ruling] to gold and silver—what about other items?" We respond: "Then apply the analogy of giving them with a third and a quarter to mudarabah."

فَإِنْ قَالُوا: قَدْ صَحَّ النَّهْيُ عَنْ ذَلِكَ؟ قُلْنَا: فَقَدْ صَحَّ النَّهْيُ عَنْ أَنْ يُؤْخَذَ لِلْأَرْضِ أَجْرٌ أَوْ حَظٌّ، وَنَصَّ - عَلَيْهِ السَّلَامُ - عَلَى أَنْ لَيْسَ لَهُ إلَّا أَنْ يَزْرَعَهَا صَاحِبُهَا أَوْ يَمْنَحَهَا أَوْ يُمْسِكَ أَرْضَهُ فَقَطْ.

L20691 If they say: "Has the prohibition of that been established?" We reply: Indeed, the prohibition against taking rent or a share from the land has been established, and he (PBUH) explicitly stipulated that its owner may only cultivate it, gift it, or retain ownership of the land.

فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً، وَأَنَّهُمْ لَمْ يَتَعَلَّقُوا بِشَيْءٍ أَصْلًا، وَاعْلَمُوا أَنَّهُ لَمْ يَصِحَّ كِرَاءُ الْأَرْضِ بِذَهَبٍ أَوْ فِضَّةٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إلَّا عَنْ سَعْدٍ وَابْنِ عَبَّاسٍ - وَصَحَّ عَنْ رَافِعِ بْنِ خَدِيجٍ، وَابْنِ عُمَرَ، ثُمَّ صَحَّ رُجُوعُ ابْنِ عُمَرَ عَنْهُ، وَصَحَّ عَنْ رَافِعٍ الْمَنْعُ مِنْهُ أَيْضًا.

L20692 The invalidity of this statement has become entirely evident, and that they did not base their argument on anything at all. Know that leasing land for gold or silver has not been authentically reported from any of the Companions except Sa'd and Ibn 'Abbās. It was authentically reported from Rāfi' ibn Khadīj and Ibn 'Umar, then it was authentically reported that Ibn 'Umar retracted from it. It was also authentically reported that Rāfi' prohibited it.

قَالَ أَبُو مُحَمَّد: فَلَمْ يَبْقَ إلَّا تَغْلِيبُ الْإِبَاحَةِ فِي كِرَائِهَا بِكُلِّ عَرْضٍ وَكُلِّ شَيْءٍ مَضْمُونٍ مِنْ طَعَامٍ أَوْ غَيْرِهِ، وَالثُّلُثِ وَالرُّبُعِ كَمَا قَالَ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَأَبُو يُوسُفَ؛ وَمُحَمَّدُ بْنُ الْحَسَنِ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، وَغَيْرُهُمْ.

L20693 Abu Muhammad said: Nothing remains except the predominance of permissibility in its renting for all types of commodities and every secured item – whether food or otherwise – and the third and the quarter, as said by Sa'd ibn Abī Waqqāṣ; Abū Yūsuf, Muḥammad ibn al-Ḥasan, Aḥmad ibn Ḥanbal, Isḥāq, and others.

أَوْ تَغْلِيبُ الْمَنْعِ جُمْلَةً، كَمَا فَعَلَ رَافِعُ بْنُ خَدِيجٍ، وَعَطَاءٌ، وَمَكْحُولٌ، وَمُجَاهِدٌ، وَالْحَسَنُ الْبَصْرِيُّ، وَغَيْرُهُمْ.

L20694 Or the preponderance of prohibition in totality: as maintained by Rāfi' ibn Khadīj, 'Aṭā', Makhūl, Mujāhid, al-Ḥasan al-Baṣrī, and other scholars.

أَوْ أَنْ يُغَلَّبَ النَّهْيُ حَيْثُ لَمْ يُوقَنْ أَنَّهُ نُسِخَ وَيُؤْخَذُ بِالنَّاسِخِ إذَا تُيُقِّنَ، كَمَا فَعَلَ ابْنُ عُمَرَ، وَطَاوُسٌ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ، وَمُحَمَّدُ بْنُ سِيرِينَ، وَغَيْرُهُمْ.

L20695 Or that the prohibition takes precedence unless its abrogation is certain, and the abrogating ruling is followed once certainty is established, as practiced by Ibn Umar, Tawus, al-Qasim ibn Muhammad, Muhammad ibn Sirin, and others.

فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا مَنْ غَلَّبَ الْإِبَاحَةَ قَدْ أَخْطَأَ، لِأَنَّ مَعْهُودَ الْأَصْلِ فِي ذَلِكَ هُوَ الْإِبَاحَةُ عَلَى مَا رَوَى رَافِعٌ وَغَيْرُهُ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدِمَ عَلَيْهِمْ

L20696–20698 So we examined that matter and found those who gave preponderance to permissibility had erred, for the established principle regarding it is... Permissibility is based on what Rāfi' and others narrated: "The Prophet (peace

be upon him) came to them while they were leasing their agricultural lands." There is no doubt that agricultural lands were leased before Allah's Messenger (peace be upon him) and after his commissioning as a prophet. This matter cannot be doubted by any rational person. It was then authentically established through chains from Jābir, Abū Hurayrah, Abū Saʿīd, Rāfiʿ, Ẓuhayr al-Badrī (a Badr veteran), another of the Badr veterans, and Ibn ʿUmar that "Allah's Messenger (peace be upon him) prohibited leasing agricultural land wholly." Thus, permissibility was nullified with absolute certainty beyond doubt.

L20699 Whoever claims that the abrogated ruling has been reinstated, and that the certainty of abrogation has been invalidated, is a liar and a denier, speaking without knowledge. This is forbidden by the explicit text of the Quran unless he provides proof—a means he can never bring into existence ever, except in allocating a [specified] portion of what comes out of it. For it is authentically established that the Messenger of Allah, peace and blessings be upon him, did this in Khaybar years after the prohibition, and he remained upon that until his death, peace be upon him.

L20700 Thus, it is established with certainty that the prohibition of that is abrogated, and that the prohibition of what is beyond that remains in force with certainty. The Almighty said: *"To make clear to mankind what has been sent down to them"* [An-Nahl: 44]. It is inconceivable that a ruling which has been abrogated and nullified would not then be clarified by Allah the Almighty to us as having been invalidated, nor that the abrogated ruling would be returned. Otherwise, it would be as though the religion is left unexplained—and this is false. All success comes from Allah, the Exalted. Thus, the ambiguity is resolved, and abundant praise be to Allah.[8]

L20701 ## The juristic ruling on the straw in *muzāraʿah*.

L20702 Issue 1330: The straw in sharecropping is allocated between the landowner and the cultivator according to their mutual agreement, because it is part of what Allah, the Exalted, has brought forth from the land.

[8] **Qur'an references (L20700):** Qur'an 16:44 (An-Nahl).

وَهُمْ يُكْرُونَ مَزَارِعَهُمْ» وَقَدْ كَانَتْ الْمَزَارِعُ بِلَا شَكٍّ تُكْرَى قَبْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَعْدَ مَبْعَثِهِ، هَذَا أَمْرٌ لَا يُمْكِنُ أَنْ يَشُكَّ فِيهِ ذُو عَقْلٍ، ثُمَّ صَحَّ مِنْ طَرِيقِ جَابِرٍ، وَأَبِي هُرَيْرَةَ، وَأَبِي سَعِيدٍ، وَرَافِعٍ، وَظُهَيْرٍ الْبَدْرِيِّ وَآخَرَ مِنْ الْبَدْرِيِّينَ، وَابْنِ عُمَرَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ كِرَاءِ الْأَرْضِ جُمْلَةً» فَبَطَلَتْ الْإِبَاحَةُ بِيَقِينٍ لَا شَكَّ فِيهِ.

فَمَنْ ادَّعَى أَنَّ الْمَنْسُوخَ قَدْ رَجَعَ، وَأَنَّ يَقِينَ النَّسْخِ قَدْ بَطَلَ، فَهُوَ كَاذِبٌ مُكَذِّبٌ، قَائِلٌ مَا لَا عِلْمَ لَهُ بِهِ، وَهَذَا حَرَامٌ بِنَصِّ الْقُرْآنِ إلَّا أَنْ يَأْتِيَ عَلَى ذَلِكَ بِبُرْهَانٍ، وَلَا سَبِيلَ لَهُ إلَى وُجُودِهِ أَبَدًا، إلَّا فِي إعْطَائِهَا بِجُزْءٍ [مُسَمًّى] مِمَّا يَخْرُجُ مِنْهَا، فَإِنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَلَ ذَلِكَ بِخَيْبَرَ بَعْدَ النَّهْيِ بِأَعْوَامٍ، وَأَنَّهُ بَقِيَ عَلَى ذَلِكَ إلَى أَنْ مَاتَ - عَلَيْهِ السَّلَامُ -.

فَصَحَّ أَنَّ النَّهْيَ عَنْ ذَلِكَ مَنْسُوخٌ بِيَقِينٍ، وَأَنَّ النَّهْيَ عَمَّا عَدَا ذَلِكَ بَاقٍ بِيَقِينٍ، وَقَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَمِنْ الْمُحَالِ أَنْ يُنْسَخَ حُكْمٌ قَدْ بَطَلَ وَنُسِخَ ثُمَّ لَا يُبَيِّنُ اللَّهُ تَعَالَى عَلَيْنَا أَنَّهُ قَدْ بَطَلَ، وَأَنَّ الْمَنْسُوخَ قَدْ عَادَ، وَإِلَّا فَكَأَنَّ الدِّينَ غَيْرُ مُبَيَّنٍ - وَهَذَا بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. فَارْتَفَعَ الْإِشْكَالُ وَالْحَمْدُ لِلَّهِ كَثِيرًا.

[مَسْأَلَةٌ التِّبْنُ فِي الْمُزَارَعَةِ]

١٣٣٠ - مَسْأَلَةٌ: وَالتِّبْنُ فِي الْمُزَارَعَةِ بَيْنَ صَاحِبِ الْأَرْضِ وَبَيْنَ الْعَامِلِ عَلَى مَا تَعَامَلَا عَلَيْهِ، لِأَنَّهُ مِمَّا أَخْرَجَ اللَّهُ تَعَالَى مِنْهَا.

[مَسْأَلَةٌ تَطَوَّعَ صَاحِبُ الْأَرْضِ بِأَنْ يُسَلِّفَ الْعَامِلَ بَذْرًا]

١٣٣١ - مَسْأَلَةٌ: فَإِنْ تَطَوَّعَ صَاحِبُ الْأَرْضِ بِأَنْ يُسَلِّفَ الْعَامِلَ بَذْرًا أَوْ دَرَاهِمَ أَوْ يُعِينَهُ بِغَيْرِ شَرْطٍ جَازَ؛ لِأَنَّهُ فِعْلُ خَيْرٍ وَتَعَاوُنٌ عَلَى بِرٍّ وَتَقْوَى، فَإِنْ كَانَ شَيْءٌ مِنْ ذَلِكَ عَنْ شَرْطٍ فِي نَفْسِ الْعَقْدِ بَطَلَ الْعَقْدُ وَفُسِخَ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَعَقْدُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ الَّذِينَ دَفَعَ إلَيْهِمْ خَيْبَرُ إنَّمَا كَانَ كَمَا أَوْرَدْنَا قَبْلَ أَنْ يَعْمَلُوهَا بِأَمْوَالِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اتَّفَقَا تَطَوُّعًا عَلَى شَيْءٍ يُزْرَعُ فِي الْأَرْضِ]

١٣٣٢ - مَسْأَلَةٌ: فَإِنْ اتَّفَقَا تَطَوُّعًا عَلَى شَيْءٍ يُزْرَعُ فِي الْأَرْضِ فَحَسَنٌ، وَإِنْ لَمْ يَذْكُرَا شَيْئًا فَحَسَنٌ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَذْكُرْ لَهُمْ شَيْئًا مِنْ ذَلِكَ وَلَا نَهَى عَنْ ذِكْرِهِ، فَهُوَ مُبَاحٌ، وَلَا بُدَّ مِنْ أَنْ يُزْرَعَ فِيهَا شَيْءٌ مَا فَلَا بُدَّ مِنْ ذِكْرِهِ، إلَّا أَنَّهُ إنْ شُرِطَ شَيْءٌ مِنْ ذَلِكَ فِي الْعَقْدِ، فَهُوَ شَرْطٌ فَاسِدٌ وَعَقْدٌ فَاسِدٌ؛ لِأَنَّهُ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ إلَّا أَنْ يَشْتَرِطَ صَاحِبُ الْأَرْضِ أَنْ لَا يَزْرَعَ فِيهَا مَا يَضُرُّ بِأَرْضِهِ أَوْ شَجَرِهِ - إنْ كَانَ لَهُ فِيهَا شَجَرٌ - فَهَذَا وَاجِبٌ وَلَا بُدَّ، لِأَنَّ خِلَافَهُ فَسَادٌ وَإِهْلَاكٌ لِلْحَرْثِ.

قَالَ اللَّهُ تَعَالَى: {إِنَّ اللَّهَ لا يُحِبُّ الْمُفْسِدِينَ} [القصص: ٧٧] .

وَقَالَ تَعَالَى: {وَيُهْلِكَ الْحَرْثَ وَالنَّسْلَ وَاللَّهُ لا يُحِبُّ الْفَسَادَ} [البقرة: ٢٠٥] .

L20703 **A case where the landowner voluntarily offered to provide the cultivator with seeds as a loan.**

L20704 1331 - Issue: If the landowner voluntarily provides the worker with seeds as a loan, dirhams, or assistance without stipulating any condition, it is permissible, as it is an act of goodness and a cooperation in righteousness and piety. However, if any of this is contingent on a condition stipulated in the contract itself, the contract is invalid and rescinded, for it is a condition not found in the Book of Allah and thus invalid. The contract of the Messenger of Allah—peace and blessings be upon him—with those to whom he entrusted Khaybar was only as we previously mentioned, before they cultivated it using their own funds. And with Allah, the Exalted, is success.

L20705 **A legal issue in which the two parties voluntarily agreed to cultivate something in the land.**

L20706 1332 - Issue: If they voluntarily agree on something to be cultivated in the land, this is valid. If they do not mention anything, this is also valid, because the Messenger of Allah (peace and blessings be upon him) did not mention anything of that nature to them nor prohibit its mention; thus it remains permissible. However, it is essential to cultivate something in the land, necessitating mutual agreement on the matter. If any such condition is stipulated in the contract, it becomes an invalid condition and an invalid contract, as it is not established in the Book of Allah the Exalted—hence void—unless the landowner stipulates prohibiting cultivation of what harms his land or trees (if he owns trees therein). In this case, such stipulation becomes obligatory and indispensable, for contravening it constitutes corruption and destruction of the tilth.

L20707–20708 Allah, the Most High, said: "Indeed, Allah does not love those who spread corruption" [Al-Qasas: 77].[9]

L20709 And Allah, the Exalted, said: "He destroys crops and livestock, and Allah does not love corruption." [Al-Baqarah: 205][10]

[9] **Qur'an references (L20708):** Qur'an 28:77 (Al-Qasas).
[10] **Qur'an references (L20709):** Qur'an 2:205 (Al-Baqarah).

L20710 Destroying crops without rightful cause is not permissible. By Allah, the Exalted, we are supported. Thus, this is a stipulation in the Book of Allah, the Exalted; therefore, it is sound and binding.

فَإِهْلَاكُ الْحَرْثِ بِغَيْرِ الْحَقِّ لَا يَحِلُّ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ، فَهَذَا شَرْطٌ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ صَحِيحٌ لَازِمٌ.

[مَسْأَلَةٌ عَقْدُ الْمُزَارَعَةِ إلَى أَجَلٍ مُسَمًّى]

L20711 **Issue: A contract of muzāraʿah (crop-sharing) for a stipulated term.**

L20712 1333 – Ruling: It is impermissible to contract sharecropping for a specified term; rather [it must be] unrestricted, because the Messenger of Allah (peace be upon him) contracted it in this manner, and upon this all the Companions (may Allah be pleased with them) proceeded.

١٣٣٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ عَقْدُ الْمُزَارَعَةِ إلَى أَجَلٍ مُسَمًّى، لَكِنْ هَكَذَا مُطْلَقًا، لِأَنَّ هَكَذَا عَقَدَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى هَذَا مَضَى جَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L20713 Similarly, Umar—may Allah be pleased with him—expelled them when he wished at the end of his caliphate. Thus, stipulating a duration in that matter was a condition not found in the Book of Allah the Exalted—hence invalid—and contrary to the practice of the Prophet (peace be upon him). He (peace be upon him) said: "Whoever introduces into this matter of ours that which is not part of it, it is rejected." Opponents have indeed stated this in the context of mudarabah.

وَكَذَلِكَ أَخْرَجَهُمْ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - إذْ شَاءَ فِي آخِرِ خِلَافَتِهِ، فَكَانَ اشْتِرَاطُ مُدَّةٍ فِي ذَلِكَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى - فَهُوَ بَاطِلٌ - وَخِلَافٌ لِعَمَلِهِ - عَلَيْهِ السَّلَامُ -، وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» ؛ وَقَدْ قَالَ مُخَالِفُونَ بِذَلِكَ فِي الْمُضَارَبَةِ.

[مَسْأَلَةٌ أَقَرَّ وَارِثُ صَاحِبِ الْأَرْضِ الْعَامِلَ وَرَضِيَ الْعَامِلُ]

L20714 **A legal issue wherein the heir of the landowner formally recognized the cultivator's rights, and the cultivator consented.**

L20715 1334 - Issue: Whichever of them wishes to terminate the contract may do so as previously mentioned. If either of them dies, the transaction becomes void; because Allah the Exalted says: "No bearer of burdens will bear the burden of another" [Al-Anʿām 6:164].[11]

١٣٣٤ - مَسْأَلَةٌ: وَأَيُّهُمَا شَاءَ تَرْكَ الْعَمَلِ فَلَهُ ذَلِكَ لِمَا ذَكَرْنَا، وَأَيُّهُمَا مَاتَ بَطَلَتْ الْمُعَامَلَةُ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L20716 If the heir of the landowner acknowledges the worker and the worker consents, they are bound by their mutual agreement. Similarly, if the landowner acknowledges the worker's heirs with their consent, this is permissible according to the practice followed by the Messenger of Allah (peace and blessings be upon him) and those after him among the Companions (may Allah

فَإِنْ أَقَرَّ وَارِثُ صَاحِبِ الْأَرْضِ الْعَامِلَ وَرَضِيَ الْعَامِلُ، فَهُمَا عَلَى مَا تَرَاضَيَا عَلَيْهِ - وَكَذَلِكَ إنْ أَقَرَّ صَاحِبُ الْأَرْضِ وَرَثَةَ الْعَامِلِ بِرِضَاهُمْ فَذَلِكَ جَائِزٌ عَلَى مَا جَرَى عَلَيْهِ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْ بَعْدَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْهُمْ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur'an references (L20715):** Qur'an 6:164 (Al-An'am).

be pleased with them), without any disagreement from any of them. And success comes only from Allah, the Most High.

[مَسْأَلَةٌ أَرَادَ صَاحِبُ الْأَرْضِ إِخْرَاجَ الْعَامِلِ بَعْدَ أَنْ زَرَعَ]

١٣٣٥ - مَسْأَلَةٌ: وَإِذَا أَرَادَ صَاحِبُ الْأَرْضِ إِخْرَاجَ الْعَامِلِ بَعْدَ أَنْ زَرَعَ أَوْ أَرَادَ الْعَامِلُ الْخُرُوجَ بَعْدَ أَنْ زَرَعَ بِمَوْتِ أَحَدِهِمَا، أَوْ فِي حَيَاتِهِمَا فَذَلِكَ جَائِزٌ، وَعَلَى الْعَامِلِ خِدْمَةُ الزَّرْعِ كُلِّهِ وَلَا بُدَّ، وَعَلَى وَرَثَتِهِ حَتَّى يَبْلُغَ مَبْلَغَ الِانْتِفَاعِ بِهِ مِنْ كِلَيْهِمَا؛ لِأَنَّهُمَا عَلَى ذَلِكَ تَعَاقَدَا الْعَقْدَ الصَّحِيحَ فَهُوَ لَازِمٌ لِأَنَّهُ عَمِلَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ صَحِيحٌ لَازِمٌ، وَعَقْدٌ يَلْزَمُ الْوَفَاءُ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَمَا عَدَاهُ إِضَاعَةٌ لِلْمَالِ، وَإِفْسَادٌ لِلْحَرْثِ، وَقَدْ صَحَّ النَّهْيُ عَنْهُ.

[مَسْأَلَةٌ أَرَادَ أَحَدُهُمَا تَرْكَ الْعَمَلِ وَقَدْ حَرَثَ وَقَلَبَ وَزَبَلَ وَلَمْ يَزْرَعْ]

١٣٣٦ - مَسْأَلَةٌ: فَإِنْ أَرَادَ أَحَدُهُمَا تَرْكَ الْعَمَلِ وَقَدْ حَرَثَ، وَقَلَبَ، وَزَبَلَ، وَلَمْ يَزْرَعْ فَذَلِكَ جَائِزٌ، وَيُكَلَّفُ صَاحِبُ الْأَرْضِ لِلْعَامِلِ أَجْرَ مِثْلِهِ فِيمَا عَمِلَ، وَقِيمَةَ زِبْلِهِ إِنْ لَمْ يَجِدْ لَهُ زِبْلًا مِثْلَهُ، إِنْ أَرَادَ صَاحِبُ الْأَرْضِ إِخْرَاجَهُ، لِأَنَّهُ لَمْ تَتِمَّ بَيْنَهُمَا الْمُزَارَعَةُ الَّتِي يَكُونُ كُلُّ مَا ذَكَرْنَا مُلْغًى بِتَمَامِهَا، وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَعَمَلُهُ حُرْمَةٌ، فَلَا بُدَّ لَهُ مِنْ أَنْ يَقْتَصَّ بِمِثْلِهَا، وَالزِّبْلُ مَالُهُ فَلَا يُحْمَلُ إِلَّا بِطِيبِ نَفْسِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20717 **Issue: The landowner intended to evict the tenant farmer after the tenant farmer had planted.**

L20718 Issue 1335: If the landowner wishes to expel the worker after planting has occurred, or if the worker wishes to depart after planting - whether due to the death of either party or during their lifetimes - this is permissible. However, the worker remains fully obligated to tend to the entire crop without exception, and his heirs must continue this until the cultivation reaches the stage of benefit from both of them. This obligation exists because they mutually entered into a valid contract. It is binding as the Messenger of Allah (peace be upon him) practiced it, and it is in the Book of Allah the Exalted. It is therefore a valid binding contract that necessitates its fulfillment - and with Allah the Exalted lies all success.

L20719 Anything beyond that amounts to wasteful dissipation of wealth and corruption of crops, and the prohibition against it is firmly established.

L20720 **A case in which one of the two intended to cease cultivation after plowing, turning, and manuring, but had not yet sown.**

L20721–20723 1336 - Issue: If one of the two parties wishes to abandon work after having plowed, turned the soil, applied manure, but did not plant, this is permissible. The landowner must compensate the worker with a wage equivalent to the labor performed and the value of the manure if equivalent manure is unavailable, provided the landowner seeks to expel him. This is because the sharecropping arrangement between them was not concluded, which... Everything we have mentioned is rendered fully null and void. Allah the Exalted said: *"Violations of sacred ordinances warrant retaliation"* [Al-Baqarah 2:194]. Thus, his act violates a sanctity, necessitating equivalent

retaliation. As for his manure, it is his property and cannot be taken except with his willing consent. And success comes only from Allah, the Exalted.[12]

[مَسْأَلَةٌ كَانَ الْعَامِلُ هُوَ الْمَرِيدُ لِلْخُرُوجِ مِنْ الْأَرْض]

L20724 **A legal issue where the worker was the one who intended to leave the land.**

١٣٣٧ - مَسْأَلَةٌ: فَلَوْ كَانَ الْعَامِلُ هُوَ الْمَرِيدُ لِلْخُرُوجِ فَلَهُ ذَلِكَ وَلَا شَيْءَ لَهُ فِيمَا عَمِلَ، وَإِنْ أَمْكَنَهُ أَخْذُ زِبْلِهِ بِعَيْنِهِ أَخَذَهُ، وَإِلَّا فَلَا شَيْءَ لَهُ؛ لِأَنَّهُ مُخْتَارٌ لِلْخُرُوجِ وَلَمْ يَتَعَدَّ عَلَيْهِ صَاحِبُ الْأَرْضِ فِي شَيْءٍ، وَلَا مَنَعَهُ حَقًّا لَهُ فَهُوَ مُخَيَّرٌ بَيْنَ إتْمَامِ عَمَلِهِ وَتَمَامِ شَرْطِهِ وَالْخُرُوجِ بِاخْتِيَارِهِ، وَلَا شَيْءَ لَهُ؛ لِأَنَّهُ لَمْ يَتَعَدَّ عَلَيْهِ بِغَيْرِ طِيبِ نَفْسِهِ فِي شَيْءٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20725 1337 - Issue: If the worker is the one who chooses to leave, he may do so and has no entitlement for his labor. If he can take his manure itself, he may take it; otherwise, he has no claim. This is because he voluntarily elected to depart, and the landowner neither transgressed against him in any matter nor withheld any rightful due. He therefore has the choice either to complete his work in full and perfectly fulfill his contractual obligation, or to leave by his own decision - but he is entitled to nothing, as no action was taken against him without his free consent in any matter. And success is attained only through Allah, the Exalted.

[مَسْأَلَةٌ مَنْ أَصَابَ مِنْ صَاحِبِ الْأَرْضِ وَالْعَامِلِ مَا تَجِبُ فِيهِ الزَّكَاةُ فَعَلَيْهِ الزَّكَاةُ]

L20726 **Issue: If someone acquires assets subject to Zakat from the landowner and the Zakat collector, Zakat becomes obligatory on him.**

١٣٣٨ - مَسْأَلَةٌ: وَمَنْ أَصَابَ مِنْهُمَا مَا تَجِبُ فِيهِ الزَّكَاةُ فَعَلَيْهِ الزَّكَاةُ، وَمَنْ قَصُرَ نَصِيبُهُ عَنْ مَا فِيهِ الزَّكَاةُ فَلَا زَكَاةَ عَلَيْهِ.

L20727 1338: Issue: Whoever acquires from both of them an amount that obligates zakat is obligated to pay zakat. If someone's share falls short of the nisab obligating zakat, no zakat is due from him.

وَلَا يَحِلُّ اشْتِرَاطُ الزَّكَاةِ مِنْ أَحَدِهِمَا عَلَى الْآخَرِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] وَلِكُلِّ أَحَدٍ حُكْمُهُ.

L20728 It is unlawful for either party to stipulate Zakat from one upon the other, due to Allah's statement: "No soul bears a burden except for itself, nor does any bearer of burdens bear the burden of another" [Al-An'am 6:164]. Each person is accountable for their own obligation.[13]

وَاشْتِرَاطُ إسْقَاطِ الزَّكَاةِ عَنْ نَفْسِهِ وَوَضْعِهَا عَلَى غَيْرِهِ شَرْطٌ لِلشَّيْطَانِ وَمُخَالَفَةٌ لِلَّهِ تَعَالَى فَلَا يَحِلُّ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20729 Stipulating the exemption of oneself from zakat and transferring it to others is a stipulation of Satan and an act of defiance against Allah the Exalted; thus, it is absolutely impermissible. And success is from Allah alone.

L20730 They could have achieved what they desired without this condemned con-

[12] **Qur'an references (L20721):** Qur'an 2:194 (Al-Baqarah).
[13] **Qur'an references (L20728):** Qur'an 6:164 (Al-An'am).

dition by stipulating that one of them receive four-tenths of the crop or four-fifths of a third, or similar terms, and thus the contract would be valid.

وَقَدْ كَانَا قَادِرَيْنِ عَلَى الْوُصُولِ إِلَى مَا يُرِيدَانِ مِنْ ذَلِكَ بِغَيْرِ هَذَا الشَّرْطِ الْمَلْعُونِ، وَذَلِكَ بِأَنْ يَكُونَا يَتَعَاقَدَانِ عَلَى أَنَّ لِأَحَدِهِمَا أَرْبَعَةَ أَعْشَارِ الزَّرْعِ أَوْ أَرْبَعَةَ أَخْمَاسِ الثُّلُثِ، أَوْ نَحْوَ هَذَا فَيَصِحُّ الْعَقْدُ.

L20731 **Issue: When a sharecropping contract is rendered invalid.**

[مَسْأَلَةٌ إِذَا وَقَعَتْ الْمُعَامَلَةُ فِي الْمُزَارَعَةِ فَاسِدَةً]

L20732 1339. Issue: If the transaction is defective, the equivalent of that land must be returned to the cultivator involved concerning what was cultivated therein, whether it exceeds or falls short of the contracted terms.

١٣٣٩ - مَسْأَلَةٌ: وَإِذَا وَقَعَتْ الْمُعَامَلَةُ فَاسِدَةً، رَدَّ إلَى مُزَارِعِهِ مِثْلَ تِلْكَ الْأَرْضِ فِيمَا زَرَعَ فِيهَا سَوَاءٌ كَانَ أَكْثَرَ مِمَّا تَعَاقَدَ أَوْ أَقَلَّ.

L20733 The proof of this is that it is not permissible on earth to take a wage or share except through sharecropping with a specified joint portion of what Allah, the Exalted, brings forth from it. Since this is so, it constitutes the right of the land. Therefore, it is impermissible to permit the use of the land and its produce to the worker without the landowner's free consent, in accordance with Allah's decree: "Do not consume your wealth among yourselves wrongfully" (an-Nisāʾ 4:29). Likewise, it is impermissible to permit the use of the worker's seed and labor to the landowner without the worker's free consent. Thus, both must be restored to the equivalent of each party's rightful share from what Allah, the Exalted, has brought forth, in accordance with His decree: "For violations of sanctities, there is retaliation" (al-Baqarah 2:194).[14]

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَا يَحِلُّ فِي الْأَرْضِ أَخْذُ أَجْرٍ وَلَا حَظٍّ إلَّا الْمُزَارَعَةُ بِجُزْءٍ مُشَاعٍ مُسَمًّى بِمَا يُخْرِجُ اللَّهُ تَعَالَى مِنْهَا، فَإِذْ ذَلِكَ كَذَلِكَ فَهُوَ حَقُّ الْأَرْضِ فَلَا تَجُوزُ إبَاحَةُ الْأَرْضِ وَمَا أَخْرَجَتْ لِلْعَامِلِ بِغَيْرِ طِيبِ نَفْسِ صَاحِبِ الْأَرْضِ، لِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [النساء: ٢٩] وَلَا يَجُوزُ إبَاحَةُ بَذْرِ الْعَامِلِ وَعَمَلِهِ لِصَاحِبِ الْأَرْضِ بِغَيْرِ طِيبِ نَفْسِهِ ذَلِكَ أَيْضًا، فَيُرَدَّانِ إلَى مِثْلِ حَقِّ كُلِّ وَاحِدٍ مِنْهُمَا مِمَّا أَخْرَجَ اللَّهُ تَعَالَى مِنْهَا، لِقَوْلِ اللَّهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] .

L20734–20735 The land is inviolable and protected as part of its owner's wealth and bodily integrity; thus, it is his, and among his rights is to seek retribution equivalent to its rightful due within the bounds of what Allah the Exalted has permitted in dealings concerning it. The sower's seed and labor are inviolable and protected as part of his wealth and bodily integrity; thus, they are his, and among his rights is to seek retribution equivalent to their rightful due within the bounds of what Allah the Exalted has permitted in dealings. Therefore, what we have stated is obligatory and necessarily so—and success comes only from Allah the Exalted.

فَالْأَرْضُ - حُرْمَةٌ مُحَرَّمَةٌ مِنْ مَالِ صَاحِبِهَا، وَبَشَرَتِهِ، فَلَهُ وَمِنْ حَقِّهِ أَنْ يَقْتَصَّ بِمِثْلِ حَقِّ مِثْلِهَا مِمَّا أَبَاحَهُ اللَّهُ تَعَالَى فِي الْمُعَامَلَةِ فِيهَا - وَبَذْرُ الزَّارِعِ وَعَمَلُهُ حُرْمَةٌ مُحَرَّمَةٌ مِنْ مَالِهِ، وَبَشَرَتِهِ، فَلَهُ وَمِنْ حَقِّهِ أَنْ يَقْتَصَّ بِمِثْلِ حَقِّ مِثْلِ ذَلِكَ مِمَّا أَبَاحَهُ اللَّهُ تَعَالَى فِي الْمُعَامَلَةِ، فَوَجَبَ مَا قُلْنَا وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[14] **Qur'an references (L20733):** Qur'an 4:29 (An-Nisa); Qur'an 2:194 (Al-Baqarah).

Mughārasah (Tree Planting Partnership).

[الْمُغَارَسَةُ]

A legal case in which a person transferred his untilled land to a person to cultivate it for him.

[مَسْأَلَةٌ دَفَعَ أَرْضًا لَهُ بَيْضَاءَ إِلَى إِنْسَانٍ لِيَغْرِسَهَا لَهُ]

Issue 1340: If someone transfers his uncultivated land to another person to cultivate it for him, this is only permissible through one of two arrangements: Either the transplants, stakes, seeds, or cuttings belong exclusively to the landowner, who then hires the worker to plant them, maintain them, and oversee them for a specified duration - with something specified being obligatory; or through allocating either a specified, demarcated portion of that land or a quantitatively proportionate, undivided share of the entire land. In this case, the worker becomes entitled through his labor, for every portion of the specified period that elapses, to a corresponding portion from what was contracted as compensation. This constitutes a hire contract like all other hire contracts.

١٣٤٠ - مَسْأَلَةٌ: مَنْ دَفَعَ أَرْضًا لَهُ بَيْضَاءَ إِلَى إِنْسَانٍ لِيَغْرِسَهَا لَهُ لَمْ يَجُزْ ذَلِكَ إِلَّا بِأَحَدِ وَجْهَيْنِ -: إِمَّا بِأَنْ تَكُونَ النُّقُولُ أَوْ الْأَوْتَادُ أَوْ النَّوَى أَوْ الْقُضْبَانُ لِصَاحِبِ الْأَرْضِ فَقَطْ، فَيَسْتَأْجِرَ الْعَامِلَ لِغَرْسِهَا وَخِدْمَتِهَا وَالْقِيَامِ عَلَيْهَا مُدَّةً مُسَمَّاةً وَلَا بُدَّ بِشَيْءٍ مُسَمًّى، أَوْ بِقِطْعَةٍ مِنْ تِلْكَ الْأَرْضِ مُسَمَّاةً مَحُوزَةً، أَوْ مَنْسُوبَةَ الْقَدْرِ مُشَاعَةً فِي جَمِيعِهَا، فَيَسْتَحِقُّ الْعَامِلُ بِعَمَلِهِ فِي كُلِّ مَا يَمْضِي مِنْ تِلْكَ الْمُدَّةِ مَا يُقَابِلُهَا مِمَّا اُسْتُؤْجِرَ بِهِ، فَهَذِهِ إِجَارَةٌ كَسَائِرِ الْإِجَارَاتِ.

Or that the worker undertakes all we have mentioned - including planting, maintenance, and service - and receives from all of that a share mutually agreed upon, whether half, a third, a quarter, or a specified portion, while having no inherent right to the land whatsoever. This is permissible and proper, except that it is only permissible when absolute, not for any fixed duration at all. Its ruling in all we have previously mentioned is exactly the same in every way as the ruling of muzāraʿah (sharecropping), without excluding anything from it.

وَإِمَّا بِأَنْ يَقُومَ الْعَامِلُ بِكُلِّ مَا ذَكَرْنَا وَبِغَرْسِهِ وَبِخِدْمَتِهِ وَلَهُ مِنْ ذَلِكَ كُلِّهِ مَا تَعَامَلَا عَلَيْهِ مِنْ نِصْفٍ أَوْ ثُلُثٍ أَوْ رُبُعٍ أَوْ جُزْءٍ مُسَمًّى كَذَلِكَ، وَلَا حَقَّ لَهُ فِي الْأَرْضِ أَصْلًا - فَهَذَا جَائِزٌ حَسَنٌ، إِلَّا أَنَّهُ لَا يَجُوزُ إِلَّا مُطْلَقًا لَا إِلَى مُدَّةٍ أَصْلًا - وَحُكْمُهُ فِي كُلِّ مَا ذَكَرْنَا قَبْلُ حُكْمُ الْمُزَارَعَةِ سَوَاءً سَوَاءً فِي كُلِّ شَيْءٍ لَا تُحَشْ مِنْهَا شَيْئًا.

A legal issue: If the cultivator intended to depart before deriving any benefit from what he planted.

[مَسْأَلَةٌ أَرَادَ الْعَامِلُ الْخُرُوجَ قَبْلَ أَنْ يَنْتَفِعَ فِيمَا غَرَسَ بِشَيْءٍ]

1341 - Issue: If the laborer wishes to depart before deriving any benefit from what he has planted and before it has yielded any benefit for him, he has the right to depart and may reclaim all that he planted.

١٣٤١ - مَسْأَلَةٌ: فَإِنْ أَرَادَ الْعَامِلُ الْخُرُوجَ قَبْلَ أَنْ يَنْتَفِعَ فِيمَا غَرَسَ بِشَيْءٍ، وَقَبْلَ أَنْ تُثْمِرَ لَهُ فَلَهُ ذَلِكَ، وَيَأْخُذُ كُلَّ مَا غَرَسَ.

Similarly, if the landowner removes him because he derived no benefit, but if he does not leave until he benefits and the planted crops grow, he is entitled only to what they agreed upon. This is because he has benefited from the

land, so the land's due becomes incumbent upon him, and its due is exactly what they agreed upon.

وَكَذَلِكَ إنْ أَخْرَجَهُ صَاحِبُ الْأَرْضِ؛ لِأَنَّهُ لَمْ يَنْتَفِعْ بِشَيْءٍ، فَإِنْ لَمْ يَخْرُجْ حَتَّى انْتَفَعَ وَنَمَا مَا غَرَسَ فَلَيْسَ لَهُ إلَّا مَا تَعَاقَدَا عَلَيْهِ؛ لِأَنَّهُ قَدْ انْتَفَعَ بِالْأَرْضِ فَعَلَيْهِ حَقُّهَا، وَحَقُّهَا هُوَ مَا تَعَاقَدَا عَلَيْهِ.

L20743 The proof of this is what we mentioned at the outset of our discussion on sharecropping regarding the Messenger of Allah—peace be upon him—allowing the Jews to cultivate Khaybar with their own labor and resources, entitling them to half of its produce—whether crops or fruits—and half of what comes out of it, unconditionally, in this manner.

بُرْهَانُ ذَلِكَ -: هُوَ مَا ذَكَرْنَاهُ فِي أَوَّلِ كَلَامِنَا فِي " الْمُزَارَعَةِ " مِنْ إعْطَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ الْيَهُودَ عَلَى أَنْ يَعْمَلُوهَا بِأَنْفُسِهِمْ وَأَمْوَالِهِمْ وَلَهُمْ نِصْفُ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ أَوْ ثَمَرٍ وَنِصْفُ مَا يَخْرُجُ مِنْهَا، هَكَذَا مُطْلَقًا.

L20744–20745 Similarly, it was reported to us through the chain of Hammad ibn Salamah from 'Ubayd Allah ibn 'Umar from Nafi' from Ibn 'Umar, who said: "The Messenger of Allah, peace be upon him, granted Khaybar to the Jews on the condition that they would receive half of every crop, palm trees, and thing."

وَكَذَلِكَ رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «أَعْطَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ لِلْيَهُودِ عَلَى أَنَّ لَهُمْ الشَّطْرَ مِنْ كُلِّ زَرْعٍ وَنَخْلٍ وَشَيْءٍ» .

L20746 This is a general ruling applicable to all that emerges [from the land] through one's labor - whether trees, crops, or fruits. All of this falls under labor exerted through their persons and wealth, with no distinction between planting, sowing, or maintaining trees. And divine enablement is from Allah, the Most High.

وَهَذَا عُمُومٌ لِكُلِّ مَا خَرَجَ مِنْهَا بِعَمَلِهِ مِنْ شَجَرٍ أَوْ زَرْعٍ أَوْ ثَمَرٍ، وَكُلُّ ذَلِكَ دَاخِلٌ تَحْتَ الْعَمَلِ بِأَنْفُسِهِمْ وَأَمْوَالِهِمْ وَلَا فَرْقَ بَيْنَ غَرْسٍ أَوْ زَرْعٍ أَوْ عِمَارَةِ شَجَرٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L20747 By necessity, every discerning person knows that Khaybar—where there were around two thousand workers and where approximately eighty thousand wasq of dates were harvested—remained in their possession for over fifteen years, specifically sixteen and a half years: four years during the lifetime of the Prophet (peace be upon him), two and a half years under the caliphate of Abu Bakr, and ten years under the caliphate of Umar (may Allah be pleased with them), until he expelled them in the final year of his rule. Undoubtedly, some among them cultivated the land they held, and there was necessarily interaction between them and the original Muslim landowners without doubt.

وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي تَمْيِيزٍ أَنَّ خَيْبَرَ وَفِيهَا نَحْوُ أَلْفَيْ عَامِلٍ وَيُصَابُ فِيهَا نَحْوُ ثَمَانِينَ أَلْفَ وَسْقِ تَمْرٍ وَبَقِيَتْ بِأَيْدِيهِمْ أَزْيَدَ مِنْ خَمْسَةَ عَشَرَ عَامًا: أَرْبَعَةَ أَعْوَامٍ مِنْ حَيَاةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَامَيْنِ وَنِصْفِ عَامٍ مُدَّةَ أَبِي بَكْرٍ، وَعَشَرَةِ أَعْوَامٍ مِنْ خِلَافَةِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - حَتَّى أَجْلَاهُمْ فِي آخِرِ عَامٍ مِنْ خِلَافَتِهِ، فَلَا بُدَّ أَنَّ فِيهِمْ مَنْ غَرَسَ فِيمَا بِيَدِهِ مِنْ الْأَرْضِ فَكَانَ بَيْنَهُمْ وَبَيْنَ أَصْحَابِ الْأُصُولِ مِنْ الْمُسْلِمِينَ بِلَا شَكٍّ.

L20748 Malik said: Al-Mugharasah is granting uncultivated land to someone to

plant at his own expense, as he deems appropriate, until it reaches maturity. He is then entitled to the share mutually agreed upon from the ownership of the land and the ownership of what was planted.

L20749 Abū Muḥammad said: This is absolutely impermissible from the outset, for it constitutes an undefined lease whose terms remain unknown. It is unclear how much youthful development those saplings will attain—indeed, they may never reach it. Neither the type of plants nor their quantity is known. Most astonishing is his statement "until they attain some youthful stage," given that cultivated trees differ radically in their growth patterns—differences so extreme and divergent that they cannot be regulated whatsoever. Some plantings may develop while others fail to grow, and others still may be delayed in their maturation. This matter can never be confined to what is planted, particularly when perhaps only one or two trees are planted for him, yet he becomes obligated to claim half of a vast estate for that purpose. This constitutes a speculative sale (gharar) for an unknown price, combining both sale and lease, wrongful consumption of wealth, an undefined lease, and a condition not stipulated in the Book of Allah the Exalted—thus it is invalid. This opinion combines every form of calamity. We know of no one who espoused it before him, nor does this opinion possess any proof from the Quran, the Sunnah, a weak narration, the view of a Companion, a Successor (to our knowledge), analogical reasoning, or any opinion with a sound basis. Such a position cannot be validly upheld—and success comes from Allah the Exalted.

L20750 **An issue: The laborer planted crops, after which ownership of the land was transferred to someone other than the contracting parties.**

L20751–20753 1342 - Issue: If someone enters into a sharecropping agreement, a contractual agreement for trees, or a tree-planting contract, and the worker sows, cultivates the trees, and plants, then ownership of the land or trees transfers to someone other than the original contracting party through inheritance, gift, charity, dowry, or sale: As for the crop: whether it has appeared or not, it entirely belongs to the planter and to the one who owned the land based

وَقَالَ مَالِكٌ: الْمُغَارَسَةُ: هُوَ أَنْ يُعْطَى الْأَرْضَ الْبَيْضَاءَ لِيَغْرِسَهَا مِنْ مَالِهِ مَا رَأَى حَتَّى يَبْلُغَ شَبَابًا مَا، ثُمَّ لَهُ مَا تَعَاقَدَا مِنْ رَقَبَةِ الْأَرْضِ، وَمِنْ رِقَابِ مَا غَرَسَ.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا يَجُوزُ أَصْلًا؛ لِأَنَّهُ إجَارَةٌ مَجْهُولَةٌ لَا يُدْرَى فِي كَمْ يَبْلُغُ ذَلِكَ الشَّبَابَ، وَلَعَلَّهَا لَا تَبْلُغُهُ، وَلَا يُدْرَى مَا غَرَسَ وَلَا عَدَدُهُ، وَأَعْجَبُ شَيْءٍ قَوْلُهُ " حَتَّى يَبْلُغَ شَبَابًا مَا " وَالْغُرُوسُ تَخْتَلِفُ فِي ذَلِكَ اخْتِلَافًا شَدِيدًا مُتَبَايِنًا، لَا يَنْضَبِطُ أَلْبَتَّةَ، فَقَدْ يَشِبُّ بَعْضُ مَا غَرَسَ وَيَبْطُلُ الْبَعْضُ، وَيَتَأَخَّرُ شَبَابُ الْبَعْضِ، فَهَذَا أَمْرٌ لَا يَنْحَصِرُ أَبَدًا فِيمَا يَغْرِسُ، وَلَعَلَّهُ لَا يَغْرِسُ لَهُ إلَّا شَجَرَةً وَاحِدَةً أَوْ اثْنَتَيْنِ، فَيُكَلَّفُ لِذَلِكَ اسْتِحْقَاقَ نِصْفِ أَرْضٍ عَظِيمَةٍ فَهُوَ بَيْعُ غَرَرٍ بِثَمَنٍ مَجْهُولٍ، وَبَيْعٌ وَإِجَارَةٌ مَعًا، وَأَكْلُ مَالٍ بِالْبَاطِلِ، وَإِجَارَةٌ مَجْهُولَةٌ، وَشَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، فَهُوَ بَاطِلٌ قَدْ جَمَعَ هَذَا الْقَوْلُ كُلَّ بَلَاءٍ، وَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ، وَلَا لِهَذَا الْقَوْلِ حُجَّةً لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ نَعْلَمُهُ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، وَمَا كَانَ هَكَذَا لَمْ يَجُزْ الْقَوْلُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ زَرَعَ الْعَامِلُ ثُمَّ انْتَقَلَ مِلْكُ الْأَرْضِ إلَى غَيْرِ الْمُعَاقِدِ]

١٣٤٢ - مَسْأَلَةٌ: وَمَنْ عَقَدَ مُزَارَعَةً أَوْ مُعَامَلَةً فِي شَجَرٍ أَوْ مُغَارَسَةً، فَزَرَعَ الْعَامِلُ وَعَمِلَ فِي الشَّجَرِ وَغَرَسَ، ثُمَّ انْتَقَلَ مِلْكُ الْأَرْضِ أَوْ الشَّجَرِ إلَى غَيْرِ الْمُعَاقِدِ بِمِيرَاثٍ أَوْ بِهِبَةٍ أَوْ بِصَدَقَةٍ أَوْ بِإِصْدَاقٍ أَوْ بِبَيْعٍ -: فَأَمَّا الزَّرْعُ: ظَهَرَ أَوْ لَمْ يَظْهَرْ فَهُوَ كُلُّهُ لِلزَّارِعِ وَالَّذِي

كَانَتْ الْأَرْضُ لَهُ عَلَى شَرْطِهِمَا، وَلِلَّذِي انْتَقَلَ مِلْكُ الْأَرْضِ إِلَيْهِ أَخْذُهُمَا بِقَطْعِه أَوْ قَلْعِهِ فِي أَوَّلِ إِمْكَانِ الِانْتِفَاعِ بِهِ، لَا قَبْلَ ذَلِكَ؛ لِأَنَّهُ لَمْ يَزْرَعْ إِلَّا بِحَقٍّ، وَالزَّرْعُ بِلَا خِلَافٍ هُوَ غَيْرُ الْأَرْضِ الَّتِي انْتَقَلَ مِلْكُهَا إِلَى غَيْرِ مَالِكِهَا الْأَوَّلِ.

on their mutual condition. The party to whom land ownership has been transferred may take possession of the crop by cutting or uprooting it at the earliest possible opportunity to benefit from it, not before that, because the planter cultivated it only by lawful right. The crop – without scholarly disagreement – is distinct from the land whose ownership has been transferred to someone other than its first owner.

وَأَمَّا الْمُعَامَلَةُ فِي الشَّجَرِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا، فَهُوَ مَا لَمْ يَخْرُجْ غَيْرَ مُتَمَلَّكٍ لِأَحَدٍ، فَإِذَا خَرَجَ فَهُوَ لِمَنْ الشَّجَرُ لَهُ، فَإِنْ أَرَادَ إِبْقَاءَ الْعَامِلِ عَلَى مُعَامَلَتِهِ فَلَهُ ذَلِكَ، وَإِنْ أَرَادَ تَجْدِيدَ مُعَامَلَةٍ فَلَهُمَا ذَلِكَ، وَإِنْ أَرَادَ إِخْرَاجَهُ فَلَهُ ذَلِكَ وَلِلْعَامِلِ عَلَى الَّذِي كَانَ الْمِلْكُ لَهُ أُجْرَةُ مِثْلِ عَمَلِهِ؛ لِأَنَّهُ عَمِلَ فِي مِلْكِهِ بِأَمْرِهِ.

As for the contractual agreement regarding a tree in exchange for a portion of its produce, this applies when the yield has not yet emerged and remains unowned. Once it emerges, it belongs to the tree's owner. If the owner wishes to maintain the existing agreement with the worker, he may do so. If he wishes to renew the contract, both parties must mutually agree. If he wishes to dismiss the worker, he may do so, and the worker is entitled to a customary wage for his labor from the party who owned the property at the time, because he worked on owned property under the owner's authorization.

وَأَمَّا الْغَرْسُ: فَلِلَّذِي انْتَقَلَ الْمِلْكُ إِلَيْهِ إِقْرَارُهُ عَلَى تِلْكَ الْمُعَامَلَةِ، أَوْ أَنْ يَتَّفِقَا عَلَى تَجْدِيدِ أُخْرَى، فَإِنْ أَرَادَ إِخْرَاجَهُ فَلَهُ ذَلِكَ، وَلِلْغَارِسِ قَلْعُ حِصَّتِهِ مِمَّا غَرَسَ، كَمَا لَوْ أَخْرَجَهُ الَّذِي كَانَ عَامِلُهُ أَوَّلًا، عَلَى مَا ذَكَرْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

As for the plantings: the right belongs to the new owner to confirm the original transaction or for both parties to agree to renew another agreement. If the owner wishes to remove the planter, he may do so, and the planter may uproot his share of the plants he planted, just as if he had been removed by the original contracting party, as we previously explained. And success is from Allah, the Most High.

وَأَمَّا إِذَا انْتَقَلَ الْمِلْكُ بَعْدَ ظُهُورِ الثَّمَرَةِ، فَالثَّمَرَةُ بَيْنَ الْعَامِلِ وَبَيْنَ الَّذِي كَانَ الْمِلْكُ لَهُ عَلَى شَرْطِهِمَا، لَا شَيْءَ فِيهَا لِلَّذِي انْتَقَلَ الْمِلْكُ إِلَيْهِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

If ownership was transferred after the fruit appeared, the fruit is divided between the cultivator and the one to whom the ownership originally belonged according to their stipulation. The one to whom ownership was transferred has no share in the fruit. And success is from Allah, the Exalted.

[تَمَّ " كِتَابُ الْمُزَارَعَةِ، وَالْمُغَارَسَةِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ]

***The Book of Agriculture and Arboriculture* has been completed, and all praise is due to Allah, the Lord of the worlds.**

AL-MUHALLA

كِتَابُ الْمُعَامَلَةِ فِي الثِّمَارِ

The Book of Transactions Concerning Fruits

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

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The Book of Transactions Concerning Fruits *Issue: Transactions Concerning Fruits Are a Sunnah*

L20758–20759

[كِتَابُ الْمُعَامَلَةِ فِي الثِّمَارِ] [مَسْأَلَةٌ الْمُعَامَلَةِ فِي الثِّمَارِ سُنَّةٌ]

L20760 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Transactions Concerning Fruits 1343 - Issue: The Sunnah regarding fruit transactions entails that a person entrusts his trees—whether date palms, grapevines, fig trees, jasmine, banana plants, or any other type—without excluding any tree that stands on a trunk and yields edible produce annually. This is to one who will dig around them, fertilize them, irrigate them (if they require irrigation by waterwheel, noria, or canal), pollinate date palms, prune grapevines, plow where necessary, guard the fruit until fully ripened and harvested, dried (for drying varieties), pressed for oil (for oil-producing types), or until reaching marketable condition (for those sold in such states), in exchange for a specified share of the fruit—whether half, third, quarter, more, or less—exactly as outlined in sharecropping agreements. The proof lies in what we cited there regarding the practice of Allah's Messenger, peace and blessings be upon him, at Khaybar.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْمُعَامَلَةِ فِي الثِّمَارِ ١٣٤٣ - مَسْأَلَةٌ: الْمُعَامَلَةُ فِيهَا سُنَّةٌ، وَهِيَ أَنْ يَدْفَعَ الْمَرْءُ أَشْجَارَهُ أَيَّ شَجَرٍ كَانَ مِنْ نَخْلٍ، أَوْ عِنَبٍ، أَوْ تِينٍ، أَوْ يَاسَمِينٍ، أَوْ مَوْزٍ، أَوْ غَيْرِ ذَلِكَ، لَا تُحَاشِ شَيْئًا مِمَّا يَقُومُ عَلَى سَاقٍ وَيُطْعَمُ سَنَةً بَعْدَ سَنَةٍ لِمَنْ يَحْفِرُهَا وَيُزَبِّلُهَا وَيَسْقِيهَا - إِنْ كَانَتْ مِمَّا يُسْقَى بِسَانِيَةٍ، أَوْ نَاعُورَةٍ، أَوْ سَاقِيَةٍ، وَيُؤَبِّرُ النَّخْلَ، وَيُزَبِّرُ الدَّوَالِيَ، وَيَحْرُثُ مَا احْتَاجَ إِلَى حَرْثِهِ وَيَحْفَظُهُ حَتَّى يَتِمَّ وَيُجْمَعُ، أَوْ يَيْبَسُ إِنْ كَانَ مِمَّا يَيْبَسُ، أَوْ يُخْرِجُ دُهْنَهُ إِنْ كَانَ مِمَّا يُخْرَجُ دُهْنُهُ، أَوْ حَتَّى يَحِلَّ بَيْعُهُ إِنْ كَانَ مِمَّا يُبَاعُ كَذَلِكَ، عَلَى سَهْمٍ مُسَمًّى مِنْ ذَلِكَ الثَّمَرِ، أَوْ مِمَّا تَحْمِلُهُ الْأُصُولُ كَنِصْفٍ أَوْ ثُلُثٍ، أَوْ رُبُعٍ، أَوْ أَكْثَرَ، أَوْ أَقَلَّ، كَمَا قُلْنَا فِي " الْمُزَارَعَةِ " سَوَاءٌ سَوَاءٌ. بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ هُنَالِكَ مِنْ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخَيْبَرَ.

L20761 It was narrated to us via the chain of Abū Dāwūd: Aḥmad ibn Ḥanbal → Yaʿqūb ibn Ibrāhīm ibn Saʿd → his father Ibrāhīm ibn Saʿd → Muḥammad ibn Isḥāq → Nāfiʿ, client of Ibn ʿUmar → ʿAbdullāh ibn ʿUmar, who said: ʿUmar ibn al-Khaṭṭāb addressed the people, declaring: "O people, the Messenger of Allāh (peace be upon him) contracted with the Jews of Khaybar on terms permitting us to expel them at will. Let whoever owns property retain it, for I am expelling the Jews." Thus he expelled them.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ نا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ نا أَبِي عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ حَدَّثَنِي نَافِعٌ مَوْلَى ابْنِ عُمَرَ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ لِلنَّاسِ " أَيُّهَا النَّاسُ إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ عَامَلَ يَهُودَ خَيْبَرَ عَلَى أَنَّا نُخْرِجُهُمْ إِذَا شِئْنَا، فَمَنْ كَانَ لَهُ مَالٌ فَلْيَلْحَقْ بِهِ، فَإِنِّي مُخْرِجٌ يَهُودَ، فَأَخْرَجَهُمْ ".

L20762 Abū Muḥammad said: With this [opinion], the majority of people hold. However, it has been narrated to us from al-Ḥasan and Ibrāhīm that they expressed disapproval of it—and Abū Ḥanīfah did not validate it, nor did Zufar.

قَالَ أَبُو مُحَمَّد: وَبِهَذَا يَقُولُ جُمْهُورُ النَّاسِ، إِلَّا أَنَّنَا رُوِّينَا عَنْ الْحَسَنِ، وَإِبْرَاهِيمَ كَرَاهَةَ ذَلِكَ - وَلَمْ يُجِزْهُ أَبُو حَنِيفَةَ، وَلَا زُفَرُ.

L20763 Ibn Abī Laylā, Sufyān al-Thawrī, al-Awzāʿī, Abū Yūsuf, Muḥammad, al-Shāfiʿī, Mālik, Aḥmad, Abū Sulaymān, and others permitted it.

وَأَجَازَهُ ابْنُ أَبِي لَيْلَى، وَسُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ، وَأَبُو يُوسُفَ، وَمُحَمَّدٌ، وَالشَّافِعِيُّ، وَمَالِكٌ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ.

L20764–20765 Mālik permitted [the practice] for all trees with established roots, except those that regrow and are harvested repeatedly, such as bananas, sugarcane, and vegetables. He prohibited it for these crops and also disallowed it for vegetables except solely in matters of irrigation.

وَأَجَازَهُ مَالِكٌ فِي كُلِّ شَجَرٍ قَائِمِ الْأَصْلِ إِلَّا فِيمَا يُخْلَفُ وَيُجْنَى مَرَّةً بَعْدَ أُخْرَى كَالْمَوْزِ، وَالْقَصَبِ، وَالْبُقُولِ، فَلَمْ يُجِزْ فِيهَا، وَلَا أَجَازَ ذَلِكَ أَيْضًا فِي الْبُقُولِ إِلَّا فِي السَّقْيِ خَاصَّةً.

L20766 Al-Shāfiʿī did not permit it in the more well-known of his two opinions, except in the case of date palms and grapes only — and among Abū Sulaymān's companions, some did not permit that except regarding date palms only.

وَلَمْ يُجِزْهُ الشَّافِعِيُّ فِي أَشْهَرِ قَوْلَيْهِ، إِلَّا فِي النَّخْلِ، وَالْعِنَبِ فَقَطْ - وَمِنْ أَصْحَابِ أَبِي سُلَيْمَانَ مَنْ لَمْ يُجِزْ ذَلِكَ، إِلَّا فِي النَّخْلِ فَقَطْ.

L20767 Abu Muhammad said: Whoever forbids [others] from that except concerning palm trees alone, or palm trees and grapes, or in some cases while excluding others, or regarding irrigation while excluding rain-fed cultivation, has contradicted the ḥadīth of the Prophet—peace and blessings of Allāh be upon him—as we previously mentioned. Such a person thereby joins those who criticized Abū Ḥanīfah, and their statement carries no validity.

قَالَ أَبُو مُحَمَّد: مَنْ مَنَعَ مِنْ ذَلِكَ إِلَّا فِي النَّخْلِ وَحْدَهُ، أَوْ فِي النَّخْلِ وَالْعِنَبِ، أَوْ فِي بَعْضٍ دُونَ بَعْضٍ، أَوْ فِي سَقْيٍ دُونَ بَعْلٍ، فَقَدْ خَالَفَ الْحَدِيثَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا ذَكَرْنَا قَبْلُ وَدَخَلُوا فِي الَّذِينَ أَنْكَرُوا عَلَى أَبِي حَنِيفَةَ فَلَا مَعْنَى لِقَوْلِهِمْ.

L20768 Some of the followers adhering to Abū Ḥanīfah's school argued by stating that a hire contract is not permissible unless the compensation is specified.

وَاحْتَجَّ بَعْضُ الْمُقَلِّدِينَ لِأَبِي حَنِيفَةَ بِأَنْ قَالُوا: لَا تَجُوزُ الْإِجَارَةُ إِلَّا بِأُجْرَةٍ مَعْلُومَةٍ.

L20769 Abū Muḥammad said: Sharecropping and contracting trees for a portion of their yield are not classified as ijārah (lease contracts). The coining of religious terms is solely the prerogative of the Messenger of Allah—peace and blessings be upon him—as conveyed from his Lord, the Exalted. He, the Exalted, said: They are but names you have named—you and your forefathers—for which Allah has sent down no authority. [An-Najm 53:23][1]

قَالَ أَبُو مُحَمَّد: لَيْسَتْ الْمُزَارَعَةُ وَلَا إعْطَاءُ الشَّجَرِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا: إجَارَةً، وَالتَّسْمِيَةُ فِي الدِّينِ إنَّمَا هِيَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ رَبِّهِ تَعَالَى قَالَ تَعَالَى: {إِنْ هِيَ إِلا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ} [النجم: ٢٣] .

L20770 They are told: "Why do you not invalidate the muḍārabah contract by this very proof and declare it a lease contract with an unknown wage?" If they say: "Muḍārabah is established by consensus," we respond: "Leasing land for a portion of its produce and leasing trees for a portion of their yield are decisively established by the certain practice of Allah's Messenger (peace be upon him) and the actions of all his Companions (may Allah be pleased

وَيُقَالُ لَهُمْ: هَلَّا أَبْطَلْتُمْ بِهَذَا الدَّلِيلِ بِعَيْنِهِ الْمُضَارَبَةَ، وَقُلْتُمْ: إنَّهَا إجَارَةٌ بِأُجْرَةٍ مَجْهُولَةٍ؟ فَإِنْ قَالُوا: إنَّ الْمُضَارَبَةَ مُتَّفَقٌ عَلَيْهَا؟ قُلْنَا: وَدَفْعُ الْأَرْضِ بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا، وَدَفْعُ الشَّجَرِ مِمَّا يَخْرُجُ مِنْهَا: مُتَّفَقٌ عَلَيْهِ بِيَقِينٍ مِنْ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَمَلِ جَمِيعِ أَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا تُحَاشِ مِنْهُمْ أَحَدًا، فَمَا غَابَ مِنْهُمْ عَنْ

[1] **Qur'an references (L20769):** Qur'an 53:23 (An-Najm).

with them)—without excluding a single one of them except those excused by illness, weakness, or official duties. Moreover, every absentee for such reasons remained fully aware of Khaybar's affairs, with this matter persisting year after year until the end of ʿUmar's caliphate. This is the certain, decisive consensus—not their false claims and baseless assumptions regarding consensus on muḍārabah, which is only narrated from six Companions (may Allah be pleased with them)."

They object concerning Khaybar by arguing: "Its inhabitants must have been either slaves or free people. If slaves, it is permissible for one to enter into such a contractual arrangement with his slave. If free, what was taken from them would equate to the poll tax, since no reports indicate the Prophet (peace be upon him) ever collected poll tax or obligatory alms from them."

L20771–20772 Abu Muhammad said: This is among the matters wherein they have resorted to falsehood, slander, and brazen audacity. As for their claim that "the people of Khaybar cannot escape being slaves"—how could they utter this when they are the foremost opponents of this ruling? They do not dispute that people captured by force remain free, nor that if the Imam decides to reduce them to servitude, the fifth (khums) must first be taken from them, followed by the sale of their persons to distribute the proceeds.

L20773 Then how could they dare to claim, "Perhaps they were slaves," when it has been established that ʿUmar—contrary to the time of the Messenger of Allah (peace be upon him)—expelled them in the presence of the Companions (may Allah be pleased with them) through expelling the Jews from the Arabian Peninsula? How could ʿUmar possibly permit causing the loss of Muslims' slaves, in whom orphans and widows held a rightful share? Indeed, whoever ascribes this to ʿUmar is gravely misguided and misleading. Rather, [it should be attributed] to the Messenger of Allah (peace be upon him).

L20774 It has been authentically established that he (peace be upon him) intended to expel them, but they sought permission to remain, so he allowed them to stay on the condition that Muslims could expel them at any time. It is

خَيْبَرَ إِلَّا مَعْذُورٌ بِمَرَضٍ أَوْ ضَعْفٍ أَوْ وِلَايَةٍ تَشْغَلُهُ، وَمَعَ ذَلِكَ فَكُلُّ مَنْ غَابَ بِأَحَدِ هَذِهِ الْوُجُوهِ فَقَدْ عَرَفَ أَمْرَ خَيْبَرَ، وَاتَّصَلَ الْأَمْرُ فِيهَا عَامًا بَعْدَ عَامٍ إِلَى آخِرِ خِلَافَةِ عُمَرَ - فَهَذَا هُوَ الْإِجْمَاعُ الْمُتَيَقَّنُ الْمَقْطُوعُ عَلَيْهِ، لَا مَا يَدَّعُونَهُ مِنَ الْبَاطِلِ وَالظَّنِّ الْكَاذِبِ فِي الْإِجْمَاعِ عَلَى الْمُضَارَبَةِ الَّتِي لَا تُرْوَى إِلَّا عَنْ سِتَّةٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَاعْتَرَضُوا فِي أَمْرِ خَيْبَرَ بِأَنْ قَالُوا: لَا يَخْلُو أَهْلُ خَيْبَرَ مِنْ أَنْ يَكُونُوا عَبِيدًا أَوْ أَحْرَارًا، فَإِنْ كَانُوا عَبِيدًا فَمُعَامَلَةُ الْمَرْءِ لِعَبْدِهِ بِمِثْلِ هَذَا جَائِزٌ، وَإِنْ كَانُوا أَحْرَارًا فَيَكُونُ الَّذِي أُخِذَ مِنْهُمْ بِمَنْزِلَةِ الْجِزْيَةِ؛ لِأَنَّهُ لَمْ يَأْتِ فِي شَيْءٍ مِنَ الْأَخْبَارِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ أَخَذَ مِنْهُمْ جِزْيَةً وَلَا زَكَاةً.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِمَّا جَرَوْا فِيهِ عَلَى الْكَذِبِ وَالْبَهْتِ وَالتَّوَقُّحِ الْبَارِدِ -: أَمَّا قَوْلُهُمْ: لَا يَخْلُو أَهْلُ خَيْبَرَ مِنْ أَنْ يَكُونُوا عَبِيدًا، فَكَيْفَ انْطَلَقَتْ أَلْسِنَتُهُمْ بِهَذَا، وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْحُكْمِ؟ فَلَا يَخْتَلِفُونَ فِي أَنَّ أَهْلَ الْعَنْوَةِ أَحْرَارٌ، وَأَنَّهُ إِنْ رَأَى الْإِمَامُ إِرْقَاقَهُمْ فَلَا بُدَّ فِيهِمْ مِنَ التَّخْمِيسِ، وَالْبَيْعِ لِقِسْمَةِ أَثْمَانِهِمْ.

ثُمَّ كَيْفَ اسْتَجَازُوا أَنْ يَقُولُوا: لَعَلَّهُمْ كَانُوا عَبِيدًا وَقَدْ صَحَّ أَنَّ عُمَرَ أَجْلَاهُمْ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِخْرَاجِ الْيَهُودِ عَنْ جَزِيرَةِ الْعَرَبِ؟ فَكَيْفَ يُمْكِنُ أَنْ يَسْتَجِيزَ عُمَرُ تَفْوِيتَ عَبِيدِ الْمُسْلِمِينَ، وَفِيهِمْ حَظٌّ لِلْيَتَامَى وَالْأَرَامِلِ؟ إِنَّ مَنْ نَسَبَ هَذَا إِلَى عُمَرَ لَضَالٌّ مُضِلٌّ، بَلْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

impermissible to ascribe to him (peace be upon him) the squandering of the Muslims' slaves.

وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ إجْلَاءَهُمْ فَرَغِبُوا فِي إقْرَارِهِمْ فَأَقَرَّهُمْ عَلَى أَنْ يُخْرِجَهُمْ إذَا شَاءَ الْمُسْلِمُونَ، وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يَجُوزُ أَنْ يُنْسَبَ إلَيْهِ تَضْيِيعُ رَقِيقِ الْمُسْلِمِينَ.

L20775 It is inconceivable for them to be slaves exclusively to him (peace be upon him), for he (peace be upon him) had no share of the spoils except a fifth of the *khums*, and his portion was with the Muslims. Some have mentioned the *ṣafī*, but none among the people of Islam have ever stated that all those acquired by force are slaves to him (peace be upon him).

وَمِنْ الْمُحَالِ أَنْ يَكُونُوا عَبِيدًا لَهُ - عَلَيْهِ السَّلَامُ - خَاصَّةً؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَيْسَ لَهُ مِنْ الْمَغْنَمِ إلَّا خُمُسُ الْخُمُسِ وَسَهْمُهُ مَعَ الْمُسْلِمِينَ وَقَدْ قَالَ قَوْمٌ: وَالصَّفِيُّ، وَلَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ: إنَّ جَمِيعَ مَنْ مَلَكَ عَنْوَةً عَبِيدٌ لَهُ - عَلَيْهِ السَّلَامُ -.

L20776 Then, if the falsehood they alleged—to which they were enslaved—could have emancipated them, it would have freed them without doubt. As narrated through Bukhārī's chain: Ibrāhīm ibn al-Ḥārith narrated to us; Yaḥyā ibn Abī Bukayr narrated to us; Zuhayr ibn Muʿāwiyah al-Juʿfī narrated to us; Abū Isḥāq al-Sabīʿī narrated from ʿAmr ibn al-Ḥārith—the brother-in-law of Allah's Messenger and brother of Umm al-Mu'minīn Juwayriyah bint al-Ḥārith—who said: "When Allah's Messenger—peace be upon him—died, he left no dinar, dirham, male slave, female slave, or anything except his white mule, his weapons, and a piece of land he had made charity."[2]

ثُمَّ لَوْ أَمْكَنَ أَنْ يَكُونَ مَا زَعَمُوا مِنْ الْبَاطِلِ - وَكَانُوا لَهُ عَبِيدًا - لَكَانَ قَدْ أَعْتَقَهُمْ بِلَا شَكٍّ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا إبْرَاهِيمُ بْنُ الْحَارِثِ نا يَحْيَى بْنُ أَبِي بُكَيْرٍ نا زُهَيْرٌ - هُوَ ابْنُ مُعَاوِيَةَ الْجُعْفِيُّ - نا أَبُو إسْحَاقَ - هُوَ السَّبِيعِيّ - عَنْ عَمْرِو بْنِ الْحَارِثِ [خَتَنِ رَسُولِ اللَّهِ] وَأَخِي أُمِّ الْمُؤْمِنِينَ جُوَيْرِيَةَ بِنْتِ الْحَارِثِ قَالَ «مَا تَرَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَ مَوْتِهِ دِينَارًا وَلَا دِرْهَمًا وَلَا عَبْدًا وَلَا أَمَةً وَلَا شَيْئًا إلَّا بَغْلَتَهُ الْبَيْضَاءَ، وَسِلَاحَهُ، وَأَرْضًا جَعَلَهَا صَدَقَةً» .

L20777–20779 And he (peace be upon him) had apportioned those captured by force at Khaybar - as transmitted to us through the chain of Muslim: Zuhayr ibn Harb narrated from Ismāʿīl ibn ʿUlayyah, from ʿAbd al-ʿAzīz ibn Ṣuhayb, from Anas: "The Messenger of Allah (peace and blessings be upon him) raided Khaybar." He mentioned the ḥadīth containing: "We seized it by force. He gathered the captives, then Dihya came to him and said: 'O [...]'" O Messenger of Allah, grant me a female captive from the spoils. He said: Go and take a female captive. So he took Safiyyah bint Huyayy, and mentioned the Hadith.[3]

وَقَدْ قَسَمَ - عَلَيْهِ السَّلَامُ - مَنْ أُخِذَ عَنْوَةً بِخَيْبَرَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَزَا خَيْبَرَ» فَذَكَرَ الْحَدِيثَ وَفِيهِ: «قَالَ: فَأَصَبْنَاهَا عَنْوَةً، وَجُمِعَ السَّبْيُ فَجَاءَهُ دِحْيَةُ فَقَالَ: يَا رَسُولَ اللَّهِ أَعْطِنِي جَارِيَةً مِنْ السَّبْيِ؟ قَالَ: اذْهَبْ فَخُذْ جَارِيَةً، فَأَخَذَ صَفِيَّةَ بِنْتَ حُيَيٍّ» وَذَكَرَ الْحَدِيثَ.

[2] **Hadith references (L20776):** Mishkat al-Masabih 5974.

[3] **Hadith references (L20777):** Sunan Abi Dawud 3009; Sahih Muslim 1365g; Sunan an-Nasai 3380.

قَالَ أَبُو مُحَمَّد: وَكَانَتْ الْأَرْضُ كُلُّهَا عَنْوَةً، وَصَالَحَ أَهْلَ بَعْضِ الْحُصُونِ عَلَى الْأَمَانِ، فَنَزَلُوا ذِمَّةً أَحْرَارًا - وَقَدْ صَحَّ مِنْ حَدِيثِ عُمَرَ قَوْلُهُ كَمَا قَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْبَرَ، فَصَحَّ أَنَّ الْبَاقِينَ بِهَا أَحْرَارٌ.

L20780 Abu Muhammad said: The entire land was conquered by force, and the Muslims made peace with the inhabitants of some fortresses under terms of safe conduct. They entered into the dhimma covenant as free people. It is authentically reported from ʿUmar that he said: "As the Messenger of Allah—peace be upon him—divided Khaybar." Thus, it is confirmed that those remaining there are free people.

وَأَمَّا قَوْلُهُمْ: إنَّ ذَلِكَ الْمَأْخُوذَ مِنْهُمْ كَانَ مَكَانَ الْجِزْيَةِ، فَكَلَامُ مَنْ لَا يَتَّقِي اللَّهَ تَعَالَى، وَكَيْفَ يَجُوزُ أَنْ يَكُونَ ذَلِكَ النِّصْفُ مَكَانَ الْجِزْيَةِ؟

L20781 As for their claim that what was taken from them was in place of the jizyah, this is the speech of one who does not revere Allah Almighty. How can it be valid for that half to replace the jizyah?

وَإِنَّمَا كَانَ حُقُوقَ أَرْبَابِ الضِّيَاعِ الْمَقْسُومَةِ عَلَيْهِمْ الَّذِي عُومِلَ الْيَهُودُ عَلَى كِفَايَتِهِمْ الْعَمَلَ، وَالَّذِينَ خَطَبَهُمْ عُمَرُ كَمَا ذَكَرْنَا وَأَمَرَهُمْ أَنْ يَلْحَقُوا بِأَمْوَالِهِمْ فَلْيَنْظُرُوا فِيهَا إذَا أَرَادَ إجْلَاءَ الْيَهُودِ عَنْهَا.

L20782 The rights belonged to the owners of the apportioned agricultural estates—those managed by the Jews according to their labor capacity—and to those whom Umar addressed (as we mentioned), ordering them to reclaim their properties. They should inspect these estates when Umar resolved to expel the Jews from them.

وَالْآثَارُ بِهَذَا مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ كَالْمَالِ الَّذِي حَصَلَ لِعُمَرَ بِهَا فَجَعَلَهُ صَدَقَةً وَكَقَوْلِ ابْنِ عُمَرَ فِي سَبَبِ إجْلَاءِ الْيَهُودِ: خَرَجْنَا إلَى خَيْبَرَ فَتَفَرَّقْنَا فِي أَمْوَالِنَا وَكَانَ إعْطَاءُ أُمَّهَاتِ الْمُؤْمِنِينَ بَعْضَ الْأَرْضِ وَالْمَاءِ، وَبَعْضِهِنَّ الْأَوْسَاقَ، وَأَنَّ بَقَايَا أَبْنَاءِ الْمُهَاجِرِينَ إلَيْهَا إلَى الْيَوْمِ عَلَى مَوَارِيثِهِمْ، فَظَهَرَ هَذَيَانُ هَؤُلَاءِ النَّوْكَى.

L20783 The narrations regarding this are successively transmitted and evident, such as the wealth that came to ʿUmar through it, which he designated as charity, and like the statement of Ibn ʿUmar regarding the reason for the expulsion of the Jews: "We went to Khaybar and dispersed into our properties." The Mothers of the Believers were granted portions of land and water, while some of them received specific measures. The remaining descendants of the Emigrants to it remain to this day upon their inheritances. Thus, the delusions of these imbeciles have become apparent.

وَالْعَجَبُ أَنَّهُمْ قَالُوا: لَوْ كَانَ إجْمَاعًا لَكَفَرَ أَبُو حَنِيفَةَ، وَزُفَرُ فَقُلْنَا: عُذْرًا بِجَهْلِهِمَا كَمَا يُعْذَرُ مَنْ قَرَأَ الْقُرْآنَ فَأَخْطَأَ فِيهِ وَبَدَّلَهُ وَزَادَ وَنَقَصَ وَهُوَ يَظُنُّ أَنَّهُ عَلَى صَوَابٍ، وَأَمَّا مَنْ قَامَتْ الْحُجَّةُ عَلَيْهِ وَتَمَادَى مُعَانِدًا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ كَافِرٌ بِلَا شَكٍّ.

L20784 The wonder is that they said: "If it were a consensus, Abū Ḥanīfah and Zufar would have disbelieved." We responded: "An excuse due to their ignorance, just as one who recites the Quran and errs in it—altering, adding, and omitting while believing he is correct—is excused. As for one against whom the proof is established and who persists in defiantly opposing the Messenger of Allah—peace and blessings be upon him—he is undoubtedly a disbeliever without doubt."

L20785 The adherents of Al-Shafi'i objected, asserting: Since musāqāt (a contract for tending trees in exchange for a share of produce) is valid for palm trees, it must necessarily apply to grapevines as well, because zakāt is obligatory on

both of them, and zakāt is not obligatory on any other agricultural produce besides these two.

وَشَغَبَ أَصْحَابُ الشَّافِعِيِّ بِأَنْ قَالُوا: لَمَّا صَحَّتْ الْمُسَاقَاةُ فِي النَّخْلِ وَجَبَ أَنْ يَكُونَ أَيْضًا فِي الْعِنَبِ، لِأَنَّ كِلَيْهِمَا فِيهِ الزَّكَاةُ، وَلَا تَجِبُ الزَّكَاةُ فِي شَيْءٍ مِنْ الثِّمَارِ غَيْرِهِمَا.

L20786–20788 Abu Muhammad said: This is invalid and a weak analogy. They are told: "Since the fruit of the date palm has a pit..." It is obligatory to analogically extend [the ruling] to all fruits with pits. Since the date fruit is sweet, the analogy must apply to all sweet fruits; otherwise, what serves as the proof for obligating zakāh to be given as a portion of their fruits? He further stated: "The date fruit is quantifiable, as is the grape." 'Alī added: "Similarly, the fig, the pistachio, and others."

قَالَ أَبُو مُحَمَّد: وَهَذَا فَاسِدٌ وَقِيَاسٌ بَارِدٌ، وَيُقَالُ لَهُمْ: لَمَّا كَانَ ثَمَرُ النَّخْلِ ذَا نَوًى وَجَبَ أَنْ يُقَاسَ عَلَيْهِ كُلُّ ذِي نَوًى، أَوْ لَمَّا كَانَ ثَمَرُ النَّخْلِ حُلْوًا وَجَبَ أَنْ يُقَاسَ عَلَيْهِ كُلُّ حُلْوٍ، وَإِلَّا فَمَا الَّذِي جَعَلَ وُجُوبَ الزَّكَاةِ حُجَّةً فِي إعْطَائِهَا بِسَهْمٍ مِنْ ثِمَارِهَا؟ وَقَالَ أَيْضًا: إنَّ ثَمَرَ النَّخْلِ ظَاهِرٌ يُحَاطُ بِهِ وَكَذَلِكَ الْعِنَبُ؟ وَقَالَ عَلِيٌّ: وَكَذَلِكَ التِّينُ، وَالْفُسْتُقُ، وَغَيْرُ ذَلِكَ.

L20789 As for the Mālikīs' prohibition of that regarding bananas and herbs—it is an unsupported claim.

وَأَمَّا مَنْعُ الْمَالِكِيِّينَ مِنْ ذَلِكَ فِي الْمَوْزِ وَالْبَقْلِ - فَدَعْوَى بِلَا دَلِيلٍ.

L20790 If they say: The term "musāqāh" denotes irrigation? We respond: Who has named this practice "musāqāh" that you would use this term as evidence? We have not known it to be from the Messenger of Allah—peace and blessings of Allah be upon him—nor from any of the Companions—may Allah be pleased with them. We only say it with you as assistance—and success is only with Allah, the Exalted.

فَإِنْ قَالُوا: لَفْظُ " الْمُسَاقَاةِ " يَدُلُّ عَلَى السَّقْيِ؟ فَقُلْنَا: وَمَنْ سَمَّى هَذَا الْعَمَلَ " مُسَاقَاةً " حَتَّى تَجْعَلُوا هَذِهِ اللَّفْظَةَ حُجَّةً؟ مَا عَلِمْنَاهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَإِنَّمَا نَقُولُهَا مَعَكُمْ مُسَاعَدَةً فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20791 In Khaibar, without doubt, there were vegetables and all that grows in the land of the Arabs such as pomegranates, bananas, sugarcane, and legumes, so he (peace be upon him) contracted them on half of everything that comes out of it. And with Allah, the Most High, is success.

وَقَدْ كَانَ بِخَيْبَرَ بِلَا شَكٍّ بَقْلٌ وَكُلُّ مَا يَنْبُتُ فِي أَرْضِ الْعَرَبِ مِنْ الرُّمَّانِ، وَالْمَوْزِ، وَالْقَصَبِ، وَالْبُقُولِ، فَعَامَلَهُمْ - عَلَيْهِ السَّلَامُ - عَلَى نِصْفِ كُلِّ مَا يَخْرُجُ مِنْهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20792 The landowner is not required to provide a hired worker, a *qadus* [water wheel], or labor.

[مَسْأَلَةٌ لَا يُشْتَرَطُ عَلَى صَاحِبِ الْأَرْضِ أَجِيرٌ وَلَا قَادُوسٌ وَلَا عَمَلٌ]

L20793 1344: Issue: It is not permissible to stipulate as a condition imposed on the landowner in sharecropping, tree-planting contracts, or contracts for tending

tree fruits any of the following: a hired worker, a slave, a water wheel, an irrigation trough, a rope, a pail, labor, dung, or anything whatsoever.

١٣٤٤ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُشْتَرَطَ عَلَى صَاحِبِ الْأَرْضِ فِي " الْمُزَارَعَةِ " " وَالْمُغَارَسَةِ " " وَالْمُعَامَلَةِ فِي ثِمَارِ الشَّجَرِ " لَا أَجِيرٌ، وَلَا عَبْدٌ، وَلَا سَانِيَةٌ، وَلَا قَادُوسٌ، وَلَا حَبْلٌ، وَلَا دَلْوٌ، وَلَا عَمَلٌ، وَلَا زِبْلٌ، وَلَا شَيْءٌ أَصْلًا

L20794 All of that is incumbent upon the agent in accordance with the condition set by the Messenger of Allah—may Allah bless him and grant him peace—which imposes on them to fulfill it from their own wealth. Thus, the entire obligation rests upon the agent. If the owner of the wealth voluntarily contributes all or part of it, it is praiseworthy, as per the statement of Allah the Exalted: {Do not forget to show grace between yourselves} [Al-Baqarah: 237].[4]

وَكُلُّ ذَلِكَ عَلَى الْعَامِلِ لِشَرْطِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِمْ أَنْ يُعْمِلُوهَا مِنْ أَمْوَالِهِمْ فَوَجَبَ الْعَمَلُ كُلُّهُ عَلَى الْعَامِلِ، فَلَوْ تَطَوَّعَ صَاحِبُ الْأَصْلِ بِكُلِّ ذَلِكَ أَوْ بِبَعْضِهِ فَهُوَ حَسَنٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] .

L20795 Issue 1345: All that we have mentioned regarding sharecropping applies here as well. Do not omit any of those issues, making it unnecessary to repeat them - and success is by Allah, the Exalted.

١٣٤٥ - مَسْأَلَةٌ: وَكُلُّ مَا قُلْنَاهُ فِي " الْمُزَارَعَةِ " فَهُوَ كَذَلِكَ هَهُنَا لَا تُحَاشِ شَيْئًا مِنْ تِلْكَ الْمَسَائِلِ، فَأَغْنَى عَنْ تَكْرَارِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An issue concerning stipulations in sharecropping.

[مَسْأَلَةُ الشَّرْطِ فِي الْمُزَارَعَةِ]

L20796–20799 Issue 1346: It is not permissible to stipulate in muzara'ah contracts or in granting agricultural assets for a specified share of their produce—a shared portion of all yield borne by the worker—any of the following: building a wall, repairing a breach, digging a well or cleaning it, excavating a spring or cleaning it, digging a waterwheel or cleaning it, digging a canal or cleaning it, constructing a reservoir or repairing it, building a house or repairing it, constructing a dwelling or repairing it, providing a water-lifting device, a horizontal waterwheel (khattārah), or a vertical waterwheel (nā'ūrah). All such conditions are not found in the Book of Allah the Exalted, so it is... It is invalid. However, if one voluntarily offers any of that without stipulation, it is permissible, for the Sunnah has only prescribed that their condition is to perform it solely with their wealth and selves. None of this constitutes the work of the land or the work of trees in any way.

١٣٤٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُشْتَرَطَ فِي " الْمُزَارَعَةِ " وَإِعْطَاءِ الْأُصُولِ بِجُزْءٍ مُسَمًّى مِمَّا يَخْرُجُ مِنْهَا مُشَاعٌ فِي جَمِيعِهَا عَلَى الْعَامِلِ: بِنَاءُ حَائِطٍ، وَلَا سَدُّ ثُلْمَةٍ، وَلَا حَفْرُ بِئْرٍ وَلَا تَنْقِيَتُهَا، وَلَا حَفْرُ عَيْنٍ وَلَا تَنْقِيَتُهَا، وَلَا حَفْرُ سَانِيَةٍ وَلَا تَنْقِيَتُهَا، وَلَا حَفْرُ نَهْرٍ وَلَا تَنْقِيَتُهُ، وَلَا عَمَلُ صِهْرِيجٍ وَلَا إصْلَاحُهُ، وَلَا بِنَاءُ دَارٍ وَلَا إصْلَاحُهَا، وَلَا بِنَاءُ بَيْتٍ وَلَا إصْلَاحُهُ، وَلَا آلَةٌ سَانِيَةٌ، وَلَا خَطَّارَةٌ، وَلَا نَاعُورَةٌ؛ لِأَنَّ كُلَّ ذَلِكَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - فَإِنْ تَطَوَّعَ بِشَيْءٍ مِنْ ذَلِكَ بِغَيْرِ شَرْطٍ جَازَ؛ لِأَنَّ السُّنَّةَ إنَّمَا وَرَدَتْ بِأَنَّ الشَّرْطَ عَلَيْهِمْ أَنَّ يَعْتَمِلُوهَا بِأَمْوَالِهِمْ، وَبِأَنْفُسِهِمْ فَقَطْ -: وَكُلُّ هَذَا لَيْسَ مِنْ عَمَلِ الْأَرْضِ، وَلَا مِنْ عَمَلِ الشَّجَرِ فِي شَيْءٍ.

[4] **Qur'an references (L20794):** Qur'an 2:237 (Al-Baqarah).

L20800 As for all tools of plowing and digging, all tools of irrigation, tools of pruning, tools of manuring, beasts of burden, and hired workers—all these necessarily fall upon the tenant farmer, for the duty incumbent on them cannot be fulfilled without these provisions. Thus, providing these falls upon them. And success is from Allah, the Most High.

L20801 "The Book on Transactions Pertaining to Fruit Crops has been completed, and all praise is due to Allah, the Lord of the worlds."

وَأَمَّا آلَةُ الْحَرْثِ، وَالْحَفْرِ كُلُّهَا وَآلَةُ السَّقْيِ كُلُّهَا، وَآلَةُ التَّقْلِيمِ، وَآلَةُ التَّزْبِيلِ، وَالدَّوَابِّ، وَالْأُجَرَاءِ فَكُلُّ ذَلِكَ عَلَى الْعَامِلِ وَلَا بُدَّ؛ لِأَنَّهُ لَا يَكُونُ الْعَمَلُ الْوَاجِبُ عَلَيْهِمْ إِلَّا بِذَلِكَ، فَهُوَ عَلَيْهِمْ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[تَمَّ " كِتَابُ الْمُعَامَلَةِ فِي الثِّمَارِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ] .

AL-MUHALLA

كِتَابُ إِحْيَاءِ الْمَوَاتِ وَالْإِقْطَاعِ وَالْحِمَى وَالصَّيْدِ يَتَوَحَّشُ

The Book of Reviving Unowned Land, Land Grants and Protected Land

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

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كِتَابُ إِحْيَاءِ الْمَوَاتِ

L20804 The Book of the Revival of the Dead Land

وَالْإِقْطَاعِ، وَالْحِمَى، وَالصَّيْدِ يَتَوَحَّشُ

L20805 And [the rulings on] land grants, protected sanctuaries, and the hunting of untamed game.

وَمَنْ تَرَكَ مَالَهُ بِمَضْيَعَةٍ، أَوْ عَطِبَ مَالُهُ فِي الْبَحْرِ

L20806 Whoever leaves his property in a place where it will perish, or if his property perishes at sea...

١٣٤٧ - مَسْأَلَةٌ: كُلُّ أَرْضٍ لَا مَالِكَ لَهَا وَلَا يُعْرَفُ أَنَّهَا عُمِّرَتْ فِي الْإِسْلَامِ فَهِيَ لِمَنْ سَبَقَ إِلَيْهَا وَأَحْيَاهَا - سَوَاءٌ بِإِذْنِ الْإِمَامِ فَعَلَ ذَلِكَ أَوْ بِغَيْرِ إِذْنِهِ - لَا إِذْنَ فِي ذَلِكَ لِلْإِمَامِ وَلَا لِلْأَمِيرِ - وَلَوْ أَنَّهُ بَيْنَ الدُّورِ فِي الْأَمْصَارِ - وَلَا لِأَحَدٍ أَنْ يَحْمِيَ شَيْئًا مِنَ الْأَرْضِ عَمَّنْ سَبَقَ إِلَيْهَا بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L20807 Issue 1347: Any land that has no owner and is not known to have been developed during Islam belongs to whoever first reaches it and revives it, whether they do so with the Imam's permission or without it. There is no permission in this matter for the Imam or the ruler - even if the land lies between houses in cities. No one may monopolize any part of the land against someone who reaches it after the Messenger of Allah (peace be upon him).

فَلَوْ أَنَّ الْإِمَامَ أَقْطَعَ إِنْسَانًا شَيْئًا لَمْ يَضُرَّهُ ذَلِكَ، وَلَمْ يَكُنْ لَهُ أَنْ يَحْمِيَهُ مِمَّنْ سَبَقَ إِلَيْهِ؛ فَإِنْ كَانَ إِحْيَاؤُهُ لِذَلِكَ مُضِرًّا بِأَهْلِ الْقَرْيَةِ ضَرَرًا ظَاهِرًا لَمْ يَكُنْ لِأَحَدٍ أَنْ يَنْفَرِدَ بِهِ لَا بِإِقْطَاعِ الْإِمَامِ وَلَا بِغَيْرِهِ، كَالْمِلْحِ الظَّاهِرِ، وَالْمَاءِ الظَّاهِرِ، وَالْمَرَاحِ وَرَحْبَةِ السُّوقِ وَالطَّرِيقِ، وَالْمُصَلَّى، وَنَحْوِ ذَلِكَ.

L20808 If the Imam were to grant someone a portion of land, this would not harm **the grantee**, nor may the grantee **exclude others from it** if someone **arrived there first**. However, if cultivating that land would cause apparent harm to the villagers, then no one may monopolize it—neither by the Imam's grant nor by any other means—such as surface salt deposits, open water sources, pastures, market squares, roads, prayer grounds, or **similar public resources**.

وَأَمَّا مَا مُلِكَ يَوْمًا مَا بِإِحْيَاءٍ أَوْ بِغَيْرِهِ ثُمَّ دَثَرَ وَأُشْغِرَ حَتَّى عَادَ كَأَوَّلِ حَالِهِ فَهُوَ مِلْكٌ لِمَنْ كَانَ لَهُ، لَا يَجُوزُ لِأَحَدٍ تَمَلُّكُهُ بِالْإِحْيَاءِ أَبَدًا، فَإِنْ جُهِلَ أَصْحَابُهُ فَالنَّظَرُ فِيهِ إِلَى الْإِمَامِ، وَلَا يُمْلَكُ إِلَّا بِإِذْنِهِ.

L20809 As for that which was owned at any time through revival or other means, then deteriorated and became desolate until it reverted to its original state, it remains the property of whoever it belonged to. It is never permissible for anyone to claim ownership of it through revival. If its owners are unknown, the Imam holds authority over its disposition, and it cannot be owned except with his permission.

L20810 People have differed regarding this: Abu Hanifah said, "The land does not

belong to the one who revives it unless the ruler grants him permission in that matter."

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَ أَبُو حَنِيفَةَ: لَا تَكُونُ الْأَرْضُ لِمَنْ أَحْيَاهَا إِلَّا بِإِذْنِ الْإِمَامِ لَهُ فِي ذَلِكَ.

L20811–20813 Mālik said: As for what people dispute over among lands near developed areas, it does not belong to anyone except By the decree of the Imam, as for protected areas in deserts and non-cultivated lands, they belong to whoever revives them. If the reviver abandons it for even a single day until it fully reverts to its original state, it becomes available to whoever revives it thereafter, and his ownership is nullified. This ruling similarly applies to game animals that were owned but returned to the wild: they belong to whoever captures them. If there remains an ear notch or similar mark in the animal's ear, the ear notch retains its original owner's claim while the game itself belongs to whoever captures it.

وَقَالَ مَالِكٌ: أَمَّا مَا يَتَشَاحُّ النَّاسُ فِيهِ مِمَّا يَقْرُبُ مِنْ الْعُمْرَانِ فَإِنَّهُ لَا يَكُونُ لِأَحَدٍ إِلَّا بِقَطِيعَةِ الْإِمَامِ، وَأَمَّا حِمَى مَا كَانَ فِي الصَّحَارِي وَغَيْرِ الْعُمْرَانِ فَهُوَ لِمَنْ أَحْيَاهُ فَإِنْ تَرَكَهُ يَوْمًا مَا حَتَّى عَادَ كَمَا كَانَ، فَقَدْ صَارَ أَيْضًا لِمَنْ أَحْيَاهُ وَسَقَطَ عَنْهُ مِلْكُهُ وَهَكَذَا قَالَ فِي الصَّيْدِ يُتَمَلَّكُ ثُمَّ يَتَوَحَّشُ فَإِنَّهُ لِمَنْ أَخَذَهُ، فَإِنْ كَانَ فِي أُذُنِهِ شَنْفٌ أَوْ نَحْوُ ذَلِكَ فَالشَّنْفُ الَّذِي كَانَ لَهُ وَالصَّيْدُ لِمَنْ أَخَذَهُ.

L20814 Al-Hasan ibn Ḥayy said: Dead land exists only in the land of the Arabs.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: لَيْسَ الْمَوَاتُ إِلَّا فِي أَرْضِ الْعَرَبِ فَقَطْ.

L20815 Abu Yusuf said: "Whoever revives dead land, it belongs to him, and the Imam's permission holds no significance. However, the criterion for 'dead land' according to him is [defined as] when a person stands in the closest settlement to it and calls out, but no sound is heard from it. As for land where the sound is heard, it cannot be revived except with the Imam's permission."

وَقَالَ أَبُو يُوسُفَ: مَنْ أَحْيَا الْمَوَاتَ فَهُوَ لَهُ، وَلَا مَعْنَى لِإِذْنِ الْإِمَامِ، إِلَّا أَنَّ حَدَّ الْمَوَاتِ عِنْدَهُ مَا إِذَا وَقَفَ الْمَرْءُ فِي أَدْنَى الْمِصْرِ إِلَيْهِ ثُمَّ صَاحَ لَمْ يُسْمَعْ فِيهِ، فَمَا سُمِعَ فِيهِ الصَّوْتُ لَا يَكُونُ إِلَّا بِإِذْنِ الْإِمَامِ.

L20816 Abdullah ibn al-Hasan, Muhammad ibn al-Hasan, Imam al-Shafi'i, Abu Thawr, Abu Sulayman, and his companions held the same view as we do.

وَقَالَ عَبْدُ اللَّهِ بْنُ الْحَسَنِ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ وَأَصْحَابُهُ: كَقَوْلِنَا.

L20817 As for those who adhere to the school of Abū Ḥanīfah, they cited as evidence a report transmitted through ʿAmr ibn Wāqid from Mūsā ibn Yasār from Makhūl from Junādah ibn Abī Umayyah, who said: We encamped at Dābiq under the command of Abū ʿUbaydah ibn al-Jarrāḥ. Ḥabīb ibn Maslamah killed a man from the Romans, whereupon Abū ʿUbaydah sought to allocate one-fifth of his spoils. Ḥabīb said to him: "The Messenger of Allah—peace be upon him—assigned the spoils to the killer." Muʿādh ibn Jabal then said to him: "Hold, O Ḥabīb! I heard the Messenger of Allah—peace be upon him—say: 'A person only retains what their leader's soul is content with.'" They

فَأَمَّا مَنْ ذَهَبَ مَذْهَبَ أَبِي حَنِيفَةَ فَاحْتَجُّوا بِخَبَرٍ مِنْ طَرِيقِ عَمْرِو بْنِ وَاقِدٍ عَنْ مُوسَى بْنِ يَسَارٍ عَنْ مَكْحُولٍ عَنْ جُنَادَةَ بْنِ أَبِي أُمَيَّةَ قَالَ: نَزَلْنَا دَابِقَ وَعَلَيْنَا أَبُو عُبَيْدَةَ بْنُ الْجَرَّاحِ فَقَتَلَ حَبِيبُ بْنُ مَسْلَمَةَ قَتِيلًا مِنْ الرُّومِ فَأَرَادَ أَبُو عُبَيْدَةَ أَنْ يُخَمِّسَ سَلَبَهُ فَقَالَ لَهُ حَبِيبٌ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ السَّلَبَ لِلْقَاتِلِ؟ فَقَالَ لَهُ مُعَاذُ بْنُ جَبَلٍ: مَهْ يَا حَبِيبُ إِنِّي سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّمَا

لِلْمَرْءِ مَا طَابَتْ بِهِ نَفْسُ إِمَامِهِ» وَقَالُوا: لَمَّا كَانَ الْمَوَاتُ لَيْسَ أَحَدٌ أَوْلَى بِهِ مِنْ أَحَدٍ أَشْبَهَ مَا فِي بَيْتِ الْمَالِ، مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ هَذَا.

قَالَ عَلِيٌّ: أَمَّا الْأَثَرُ فَمَوْضُوعٌ؛ لِأَنَّهُ مِنْ طَرِيقِ عَمْرِو بْنِ وَاقِدٍ وَهُوَ مَتْرُوكٌ بِاتِّفَاقٍ مِنْ أَهْلِ الْعِلْمِ بِالْآثَارِ - ثُمَّ هُوَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّهُمْ أَوَّلُ مَنْ خَالَفَهُ فَأَبَاحُوا الصَّيْدَ لِمَنْ أَخَذَهُ بِغَيْرِ إِذْنِ الْإِمَامِ، فَإِنْ ادَّعَوْا إِجْمَاعًا كَذَبُوا لِأَنَّ فِي التَّابِعِينَ مَنْ مَنَعَ مِنَ الصَّيْدِ فِي دَارِ الْحَرْبِ وَجَعَلَهُ مِنَ الْمَغْنَمِ - وَلَا يُعَارَضُ بِمِثْلِ هَذَا الْأَثَرِ الْكَاذِبِ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالسَّلَبِ لِلْقَاتِلِ، وَبِالْأَرْضِ لِمَنْ أَحْيَاهَا.

وَأَمَّا تَشْبِيهُهُمْ ذَلِكَ بِمَا فِي بَيْتِ الْمَالِ فَهُوَ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؛ لِأَنَّ مَا فِي بَيْتِ الْمَالِ أَمْوَالٌ مَمْلُوكَةٌ، أُخِذَتْ بِجِزْيَةٍ أَوْ بِصَدَقَةٍ أَوْ مِنْ بَيْتِ مَالٍ كَانَ لَهُ رَبٌّ فَلَمْ يُعْرَفْ - وَلَا يَجُوزُ أَنْ يُشَبَّهَ مَا لَمْ يُعْرَفْ أَكَانَ لَهُ رَبٌّ أَمْ لَمْ يَكُنْ لَهُ رَبٌّ بِمَا يُوقَنُ أَنَّهُ كَانَ لَهُ رَبٌّ.

لَوْ كَانَ الْأَمْرُ بِالْقِيَاسِ حَقًّا لَكَانَ قِيَاسُ الْأَرْضِ الْمَوَاتِ الَّتِي لَمْ يَكُنْ لَهَا رَبٌّ بِالصَّيْدِ وَالْحَطَبُ أَوْلَى وَأَشْبَهُ، وَلَكِنْ لَا النُّصُوصَ يَتَّبِعُونَ، وَلَا الْقِيَاسَ يُحْسِنُونَ.

ثُمَّ لَوْ صَحَّ هَذَا الْخَبَرُ الْمَوْضُوعُ لَكَانَ حُجَّةً لَنَا، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَضَى بِالْمَوَاتِ لِمَنْ أَحْيَاهُ، وَهُوَ - عَلَيْهِ السَّلَامُ - الْإِمَامُ الَّذِي لَا إِمَامَةَ لِمَنْ لَمْ يَأْتَمَّ بِهِ، وَهُوَ الَّذِي قَالَ فِيهِ تَعَالَى: {يَوْمَ نَدْعُوا كُلَّ أُنَاسٍ بِإِمَامِهِمْ} [الإسراء: ٧١] فَهُوَ إِمَامُنَا نُشْهِدُ اللَّهَ تَعَالَى عَلَى ذَلِكَ وَجَمِيعَ عِبَادِهِ، لَا إِمَامَ لَنَا دُونَهُ، وَنَسْأَلُ اللَّهَ أَنْ لَا يَدْعُونَا

further argued: Since ownerless land has no specific claimant with greater entitlement than another, it bears resemblance to what is held in the public treasury. We know of no other basis they presented beyond this.

L20818 Ali said: As for the narration, it is fabricated because it comes through the chain of ʿAmr ibn Wāqid, who is unanimously rejected by scholars of narrations. Furthermore, this narration constitutes an authoritative proof against them, for they were the first to oppose it by permitting hunting for those who take game without the Imam's permission. If they claim consensus, they lie, for among the Successors are those who prohibited hunting in enemy territory and considered it part of the spoils. Such a fabricated narration cannot challenge the ruling of Allah's Messenger—may Allah bless him and grant him peace—that the slain's possessions belong to the killer, and that land belongs to whoever revives it.

L20819 As for their likening of that to what is in the public treasury, this constitutes analogy (qiyās), and all analogy is invalid. For what is in the public treasury consists of owned wealth collected through jizyah, through charity, or sourced from a public treasury that had an owner whose identity became unknown. It is impermissible to equate something whose status remains uncertain - whether it ever had an owner or not - with something established beyond doubt to have had an owner.

L20820–20822 If the ruling were truly based on analogy, the analogy of barren land that had no owner would apply to hunting. The foundational case is more deserving and most analogous to this ruling, but they neither adhere to the textual sources nor apply *qiyas* properly.

L20823 Moreover, if this fabricated report were authentic, it would serve as evidence for our position, for the Prophet—peace and blessings of Allah be upon him—had ruled that dead land belongs to whoever revives it. He—peace be upon him—is the Imam whose leadership none can claim without following him. It is he about whom Allah the Exalted said: "On the Day We call every people with their Imam" (17:71). He is our Imam; we call Allah the Exalted and all His servants to witness this. We have no Imam other than him, and we implore Allah not to summon us with an Imam besides him. Whoever adopts

an Imam other than him—peace be upon him—favoring the judgment of that [Imam] over his judgment will be rejected and exposed, and we disavow him before Allah.[1]

L20824 As for the statement of Mālik: it is manifestly invalid because he made a division unknown to anyone before him, unsupported by the Qur'an, the Sunnah, a weak narration, or analogical reasoning.

L20825 The most astonishing aspect is that he did not grant ownership of nearby dead land—which never had an owner—to whoever revives it, despite Allah the Exalted having established this through the words of His Messenger (peace be upon him). Then he made owned property—which Allah declared inviolable in the Quran and on the tongue of His Messenger (peace be upon him) when he declared, "Your blood and your wealth are sacred to you"—into property for whoever seizes it, akin to his earlier view on dead land: that it is revived then parceled out, or like game that becomes wild again. He deemed the lapse of ownership obligatory due to inaccessibility or reversion to wildness, even though this has no basis in the Quran, the Sunnah, a weak narration, analogical reasoning, or any opinion with a valid basis.

L20826 Moreover, land adjacent to populated regions or subject to public dispute must either entail harm to the inhabitants of the village or populated region or not. If it entails harm, the Imam has no right to grant it as a concession to anyone nor to cause them harm. If it does not entail harm to them, what distinction exists between it and land distant from populated regions? Thus, it is confirmed that the Imam holds no authority in this matter whatsoever. Similarly, the ruling of Abū Yūsuf and al-Ḥasan ibn Ḥayy is also invalid, as it constitutes an assertion without proof and is therefore null and void.

L20827 Abu Muhammad said: The proof for the validity of our opinion is what we have transmitted through the chain of Ahmad ibn Shuʿayb al-Nasaʾi, who reported to us: Yunus ibn ʿAbd al-Aʿla → Yahya (Ibn Bukayr) → al-Layth (Ibn Saʿd) → ʿUbayd Allah ibn Abi Jaʿfar → Muhammad ibn ʿAbd al-Rahman ibn

[1] **Qur'an references (L20823):** Qur'an 17:71 (Al-Isra).

مَعَ إِمَامٍ غَيْرِهِ فَمَنْ اتَّخَذَ إِمَامًا دُونَهُ - عَلَيْهِ السَّلَامُ - يُغَلِّبُ - حُكْمَهُ عَلَى حُكْمِهِ - عَلَيْهِ السَّلَامُ - فَسَيُرَدُّ وَيُعْلَمُ - وَنَحْنُ إِلَى اللَّهِ مِنْهُ بُرَآءُ.

وَأَمَّا قَوْلُ مَالِكٍ - فَظَاهِرُ الْفَسَادِ، لِأَنَّهُ قَسَّمَ تَقْسِيمًا لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا جَاءَ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ.

وَأَعْجَبُ شَيْءٍ فِيهِ أَنَّهُ لَمْ يَجْعَلْ الْمَوَاتَ الْقَرِيبَ الَّذِي لَمْ يَكُنْ لَهُ قَطُّ مَالِكٌ لِمَنْ أَحْيَاهُ، وَقَدْ جَعَلَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ جَعَلَ الْمَالَ الْمُتَمَلَّكَ الَّذِي حَرَّمَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ، وَعَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ يَقُولُ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَجَعَلَهَا مِلْكًا لِمَنْ أَخَذَهَا كَالْقَوْلِ الَّذِي ذَكَرْنَا عَنْهُ فِي الْمَوَاتِ يُعَمَّرُ ثُمَّ يُتَشَعَّرُ، وَمِثْلُ الصَّيْدِ يَتَوَحَّشُ، وَمَا وَجَبَ سُقُوطُ الْمِلْكِ بِالتَّوَعُّرِ وَالتَّوَحُّشِ لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا بِرِوَايَةٍ سَقِيمَةٍ، وَلَا بِقِيَاسٍ، وَلَا بِرَأْيٍ لَهُ وَجْهٌ.

وَأَيْضًا فَلَا يَخْلُو مَا قَرُبَ مِنْ الْعُمْرَانِ أَوْ تَشَاحَّ فِيهِ النَّاسُ مِنْ أَنْ يَكُونَ فِيهِ ضَرَرٌ عَلَى أَهْلِ الْقَرْيَةِ وَالْمِصْرِ، أَوْ لَا ضَرَرَ فِيهِ عَلَيْهِمْ، فَإِنْ كَانَ فِيهِ ضَرَرٌ فَمَا لِلْإِمَامِ أَنْ يَقْطَعَهُ أَحَدًا، وَلَا أَنْ يَضُرَّ بِهِمْ، وَإِنْ كَانَ لَا ضَرَرَ فِيهِ عَلَيْهِمْ، فَأَيُّ فَرْقٍ بَيْنَهُ وَبَيْنَ الْبَعِيدِ عَنْ الْعُمْرَانِ؟ فَصَحَّ أَنْ لَا مَعْنَى لِلْإِمَامِ فِي ذَلِكَ أَصْلًا: وَكَذَلِكَ تَقْسِيمُ أَبِي يُوسُفَ، وَالْحَسَنِ بْنِ حَيٍّ فَفَاسِدٌ أَيْضًا، لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ، فَهُوَ سَاقِطٌ.

قَالَ أَبُو مُحَمَّد: وَبُرْهَانُ صِحَّةِ قَوْلِنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ النَّسَائِيِّ نا يُونُسُ بْنُ عَبْدِ الْأَعْلَى نا يَحْيَى - هُوَ ابْنُ بُكَيْرٍ - عَنْ اللَّيْثِ - هُوَ ابْنُ سَعْدٍ - عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ - هُوَ أَبُو الْأَسْوَدِ - عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ

Nawfal (Abu al-Aswad) → ʿUrwah ibn al-Zubayr → ʿA’ishah, the Mother of the Believers → the Messenger of Allah (peace and blessings be upon him), that he said: “Whoever revives a dead land belonging to no one has a greater right to it.”

عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً لَيْسَتْ لِأَحَدٍ فَهُوَ أَحَقُّ بِهَا» .

L20828–20829 Through Al-Bukhārī’s chain: Yaḥyā ibn Bukayr narrated to us, Al-Layth narrated to us from ʿUbayd Allāh ibn Abī Jaʿfar from Muḥammad ibn ʿAbd al-Raḥmān ibn ʿUrwah from ʿĀ’ishah from the Prophet—peace be upon him—who said: “Whoever revives a land that belongs to no one has the strongest claim to it.”

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عُرْوَةَ عَنْ عَائِشَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ عَمَّرَ أَرْضًا لَيْسَتْ لِأَحَدٍ فَهُوَ أَحَقُّ بِهَا»

L20830 Urwah said: “Umar ibn al-Khattab issued a ruling on it.”

قَالَ عُرْوَةُ: وَقَضَى بِهِ عُمَرُ بْنُ الْخَطَّابِ.

L20831 Abu Muhammad said: This report constitutes the precise textual affirmation of our doctrine. It conclusively invalidates the position of those who restrict such authorization to permissions granted by authorities other than the Prophet - peace and blessings of Allah be upon him - whether as a general rule or restricted to specific locations, and it also refutes the view of those who assert: “Whoever develops land that was previously developed then left vacant, it rightfully belongs to the last person who developed it.” Allah the Exalted declared: {It is not for any believing man or believing woman, when Allah and His Messenger have decided a matter, to have any choice in their affair} [Al-Ahzab: 36].[2]

قَالَ أَبُو مُحَمَّدٍ: هَذَا الْخَبَرُ هُوَ نَصُّ قَوْلِنَا، وَهُوَ الْمُبْطِلُ لِقَوْلِ مَنْ لَمْ يَجْعَلْ ذَلِكَ إلَّا بِإِذْنِ غَيْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا عُمُومًا وَإِمَّا فِي مَكَان دُونَ مَكَان، وَلِقَوْلِ مَنْ قَالَ: مَنْ عَمَّرَ أَرْضًا قَدْ عُمِّرَتْ ثُمَّ أُشْغِرَتْ فَهِيَ لِلَّذِي عَمَّرَهَا آخِرًا قَالَ اللَّهُ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

L20832 Thus, it is established that every ruling decreed by the Messenger of Allah—peace and blessings be upon him—and every grant he bestowed—peace be upon him—no one after him, whether a leader or otherwise, may object to these rulings or introduce a new legal judgment into them. As you see, it has been established through continuity that ʿUmar ruled in accordance with that, and no opponent to him is known among the Companions—may Allah be pleased with them.

فَصَحَّ أَنَّ كُلَّ قَضِيَّةٍ قَضَاهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكُلَّ عَطِيَّةٍ أَعْطَاهَا - عَلَيْهِ السَّلَامُ - فَلَيْسَ لِأَحَدٍ يَأْتِي بَعْدَهُ لَا إمَامٍ وَلَا غَيْرِهِ أَنْ يَعْتَرِضَ فِيهَا وَلَا أَنْ يُدْخِلَ فِيهَا حُكْمًا - وَقَدْ اتَّصَلَ - كَمَا تَرَى - أَنَّ عُمَرَ قَضَى بِذَلِكَ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L20833 And through the chain of Abū Dāwūd: Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-Wahhāb (who is Ibn ʿAbd al-Majīd al-Thaqafī) narrated to us, Ayyūb (who is al-Sikhtiyānī) narrated from Hishām ibn ʿUrwah from his

وَمِنْ طَرِيقِ أَبِي دَاوُد 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

[2] **Qur’an references (L20831):** Qur’an 33:36 (Al-Ahzab).

father from Saʿīd ibn Zayd ibn ʿAmr ibn Nufayl from the Prophet—peace and blessings of Allāh be upon him—who said: “Whoever revives a dead land, it belongs to him, and no right is due to an unjust root.”[3]

بْنِ نُفَيْلٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» .

L20834 And through the chain of Ahmad ibn Shuʿayb: From Yunus ibn ʿAbd al-Aʿlā, from Ibn Wahb, who informed us through Haywah ibn Shuraīḥ, from Muḥammad ibn ʿAbd al-Raḥmān ibn Nawfal, from ʿUrwah ibn al-Zubayr, that he said: The wrongful cultivation refers to a man who revives the ruined land belonging to people who were incapable of maintaining it, so they abandoned it until it became ruined.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا يُونُسُ بْنُ عَبْدِ الْأَعْلَى نا ابْنُ وَهْبٍ أَخْبَرَنِي حَيْوَةُ بْنُ شُرَيْحٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّهُ قَالَ: الْعِرْقُ الظَّالِمُ هُوَ الرَّجُلُ يَعْمُرُ الْأَرْضَ الْخَرِبَةَ وَهِيَ لِلنَّاسِ قَدْ عَجَزُوا عَنْهَا فَتَرَكُوهَا حَتَّى خَرِبَتْ.

L20835–20837 And from the chain of Aḥmad ibn Shuʿayb, narrated to us Yūnus ibn ʿAbd al-Aʿlā, narrated to us Ibn Wahb; Ḥaywah ibn Shurayḥ informed me. From Muhammad ibn Abd al-Rahman ibn Nawfal, on the authority of Urwah ibn al-Zubayr, who said: The unjust claimant is one who revives desolate land that belonged to people who had become unable to maintain it, so they abandoned it, leaving it ruined.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا يُونُسُ بْنُ عَبْدِ الْأَعْلَى نا ابْنُ وَهْبٍ أَخْبَرَنِي حَيْوَةُ بْنُ شُرَيْحٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّهُ قَالَ: الْعِرْقُ الظَّالِمُ هُوَ الرَّجُلُ يَعْمُرُ الْأَرْضَ الْخَرِبَةَ وَهِيَ لِلنَّاسِ قَدْ عَجَزُوا عَنْهَا فَتَرَكُوهَا حَتَّى خَرِبَتْ.

L20838 Abu Muhammad said: Urwah named this description an ’unjust vein,’ and Urwah spoke truthfully, for this is what the Maliki jurists permitted.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا عُرْوَةُ سَمَّى هَذِهِ الصِّفَةَ عِرْقَ ظَالِمٍ، وَصَدَقَ عُرْوَةُ وَهَذَا [هُوَ] الَّذِي أَبَاحَهُ الْمَالِكِيُّونَ.

L20839 We were narrated through the chain of Ahmad ibn Shuʿayb: Muhammad ibn Yahya ibn Ayyub and ʿAli ibn Muslim narrated. Muhammad ibn Yahya narrated: ʿAbd al-Wahhab—he is Ibn ʿAbd al-Majid al-Thaqafi—narrated to us from Ayyub—he is al-Sikhtiyani. ʿAli ibn Muslim narrated: ʿAbbad ibn ʿAbbad al-Muhallabi narrated to us. Then the chains of Ayyub and ʿAbbad converged, both narrating from Hisham ibn ʿUrwah from Wahb ibn Kaysan from Jabir ibn ʿAbd Allah that the Messenger of Allah—peace be upon him—said: “Whoever revives a dead land will have reward for it, and whatever wild creatures consume from it shall be an act of charity for him.”

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ يَحْيَى بْنُ أَيُّوبَ، وَعَلِيُّ بْنُ مُسْلِمٍ، قَالَ مُحَمَّدُ بْنُ يَحْيَى: نا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ - نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - وَقَالَ عَلِيُّ بْنُ مُسْلِمٍ: نا عَبَّادُ بْنُ عَبَّادٍ الْمُهَلَّبِيُّ، ثُمَّ اتَّفَقَ أَيُّوبُ، وَعَبَّادٌ كِلَاهُمَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ وَهْبِ بْنِ كَيْسَانَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَلَهُ فِيهَا أَجْرٌ، وَمَا أَكَلَتْ الْعَوَافِي مِنْهَا فَهُوَ لَهُ صَدَقَةٌ» .

L20840 Ali said: It is meaningless to seek the Imam’s opinion regarding charity or

[3] **Hadith references (L20833):** Sunan Abi Dawud 3073.

anything that entails divine reward. If he were to prohibit such matters, he would be disobedient to Allah, the Exalted.

قَالَ عَلِيٌّ: لَا مَعْنَى لِأَخْذِ رَأْيِ الْإِمَامِ فِي الصَّدَقَةِ، وَلَا مَا فِيهِ أَجْرٌ، وَلَوْ أَرَادَ الْمَنْعَ مِنْ ذَلِكَ لَكَانَ عَاصِيًا لِلَّهِ تَعَالَى.

L20841 And from the chain of Abū Dāwūd: Aḥmad ibn ʿAbdah al-Āmilī narrated to us, ʿAbdullāh ibn ʿUthmān narrated to us, ʿAbdullāh ibn al-Mubārak narrated to us, from Nāfiʿ ibn ʿUmar al-Jumaḥī, from Ibn Abī Mulaykah, from ʿUrwah ibn al-Zubayr, who said: "I bear witness that the Messenger of Allah (peace and blessings of Allah be upon him) ruled that the land belongs to Allah, the servants are Allah's servants, and whoever revives dead land becomes most entitled to it? This [ruling] was conveyed to us from the Prophet (peace be upon him) by those who transmitted the prayers from him."[4]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ عَبْدَةَ الْآمِلِيُّ نا عَبْدُ اللَّهِ بْنُ عُثْمَانَ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَنَا نَافِعُ بْنُ عُمَرَ الْجُمَحِيُّ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ «أَشْهَدُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى أَنَّ الْأَرْضَ أَرْضُ اللَّهِ، وَالْعِبَادَ عِبَادُ اللَّهِ، وَمَنْ أَحْيَا مَوَاتًا فَهُوَ أَحَقُّ بِهِ؟ جَاءَنَا بِهَذَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِينَ جَاءُوا بِالصَّلَوَاتِ عَنْهُ» .

L20842 On the authority of Abī Dāwūd al-Sarḥ, Ibn Wahb reported to us: Yūnus (i.e., Ibn Yazīd) informed me from Ibn Shihāb from ʻUbayd Allāh ibn ʻAbd Allāh ibn ʻUtbah from Ibn ʻAbbās from Ṣaʻb ibn Jaththāmah al-Laythī that the Messenger of Allāh (peace and blessings be upon him) said: «There is no reserve except for Allāh and His Messenger.»

وَمِنْ طَرِيقِ أَبِي دَاوُد السَّرْحِ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنِ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنِ ابْنِ عَبَّاسٍ عَنِ الصَّعْبِ بْنِ جَثَّامَةَ اللَّيْثِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا حِمَى إِلَّا لِلَّهِ وَلِرَسُولِهِ» .

L20843–20844 Thus, it is established that the ruler is not permitted to protect any part of the land from reviving.

فَصَحَّ أَنْ لَيْسَ لِلْإِمَامِ أَنْ يَحْمِيَ شَيْئًا مِنَ الْأَرْضِ عَنْ أَنْ تَحْيَا.

L20845 And through the chain of Abū Dāwūd: Aḥmad ibn Saʿīd al-Dārimī reported to us: Wahb ibn Jarīr ibn Ḥāzim reported to us, from his father, from Ibn Isḥāq, from Yaḥyā ibn ʿUrwah ibn al-Zubayr, from his father: "A man planted palm trees in another's land, so the Messenger of Allah (peace be upon him) ruled that the land belongs to its owner and ordered the owner of the palm trees to remove them from it."

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ سَعِيدٍ الدَّارِمِيُّ نا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ عَنْ أَبِيهِ عَنِ ابْنِ إِسْحَاقَ عَنْ يَحْيَى بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ «أَنَّ رَجُلًا غَرَسَ نَخْلًا فِي أَرْضِ غَيْرِهِ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِصَاحِبِ الْأَرْضِ بِأَرْضِهِ وَأَمَرَ صَاحِبَ النَّخْلِ أَنْ يُخْرِجَ نَخْلَهُ مِنْهَا» .

L20846 Urwah said: A man from the Companions of the Messenger of Allah (peace be upon him) told me—and I most suspect he was Abu Saʻid al-Khudri—and so I saw the man striking the bases of the palm trees.

قَالَ عُرْوَةُ: حَدَّثَنِي رَجُلٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَكْبَرُ ظَنِّي أَنَّهُ أَبُو سَعِيدٍ الْخُدْرِيُّ، فَأَنَا رَأَيْتُ الرَّجُلَ يَضْرِبُ فِي أُصُولِ النَّخْلِ.

[4] **Hadith references (L20841):** Sunan Abi Dawud 3076.

قَالَ أَبُو مُحَمَّد: هَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ غَيْرُهُ، وَعُرْوَةُ لَا يَخْفَى عَلَيْهِ مَنْ صَحَّتْ صُحْبَتُهُ مِمَّنْ لَمْ تَصِحَّ، وَقَدْ اعْتَمَرَ مِنْ مَكَّةَ إِلَى الْمَدِينَةِ مَعَ عُمَرَ بْنِ الْخَطَّابِ، وَأَدْرَكَهُ فَمَنْ دُونَهُ، لَا قَوْلَ مَالِك: إِنَّهُ إِنْ لَمْ يَنْتَفِعْ بِالشَّجَرِ إِنْ قُلِعَتْ كَانَ لِغَارِسِهَا قِيمَتُهَا مَقْلُوعَةً أَحَبَّ أَمْ كَرِهَ، وَتُرِكَتْ لِصَاحِبِ الْأَرْضِ أَحَبَّ أَمْ كَرِهَ، وَمَا يَزَالُونَ يَقْضُونَ لِلنَّاسِ بِأَمْوَالِ النَّاسِ الْمُحَرَّمَةِ عَلَيْهِمْ بِغَيْرِ بُرْهَانٍ، وَالْمُتَعَدِّي وَإِنْ ظَلَمَ فَظُلْمُهُ لَا يَحِلُّ أَنْ يَظْلِمَ فَيُؤْخَذَ مِنْ مَالِهِ مَا لَمْ يُوجِبْ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْذَهُ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

L20847 Abu Muhammad said: This is the undeniable truth that permits no alternative. Urwah cannot fail to distinguish between those whose companionship is valid and those invalid. He performed umrah from Mecca to Medina with ʻUmar ibn al-Khaṭṭāb, encountering him and those below him in rank. Mālik's opinion is invalid when he states: "If the landowner derives no benefit from the tree when uprooted, the planter is entitled to its value when uprooted – whether he consents or objects – and leaving it for the landowner applies whether he consents or objects." They persistently issue rulings unlawfully transferring people's forbidden wealth to others, without evidence. As for the transgressor, even if he commits wrongdoing, his injustice does not justify wronging him [in return] by seizing from his wealth what neither Allah the Exalted nor His Messenger – peace and blessings be upon him – have mandated: *"Whoever transgresses the bounds of Allah has indeed wronged himself"* [65:1].[5]

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ حَدَّثَنِي أَحْمَدُ بْنُ خَالِدٍ الْحِمْصِيُّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ يَخْطُبُ عَلَى هَذَا الْمِنْبَرِ يَقُولُ: يَا أَيُّهَا النَّاسُ مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ، وَجَاءَ أَيْضًا عَنْ عَلِيٍّ - فَهَذَا بِحَضْرَةِ الصَّحَابَةِ عَلَانِيَةً لَا يُنْكِرُهُ أَحَدٌ مِنْهُمْ.

L20848 And through the chain of Abū ʻUbayd, Aḥmad ibn Khālid al-Ḥimṣī narrated to me from Muḥammad ibn Isḥāq from al-Zuhrī from Sālim ibn ʻAbdullāh ibn ʻUmar from his father, who said: ʻUmar ibn al-Khaṭṭāb would deliver sermons upon this minbar, proclaiming: "O people, whoever revives a dead land, it belongs to him." It is also narrated from ʻAlī. This occurred openly in the presence of the Companions, and none of them denied it.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَحْمَدُ بْنُ عُثْمَانَ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ حَكِيمِ بْنِ زُرَيْقٍ قَالَ: قَرَأْت كِتَابَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إلَى أَبِي: مَنْ أَحْيَا أَرْضًا مَيْتَةً بِبُنْيَانٍ أَوْ حَرْثٍ مَا لَمْ تَكُنْ مِنْ أَمْوَالِ قَوْمٍ ابْتَاعُوهَا أَوْ أَحْيَوْا بَعْضًا وَتَرَكُوا بَعْضًا فَأَجَازَ لِلْقَوْمِ إحْيَاءَهُمْ وَأَمَّا مَا كَانَ مَكْشُوفًا فَلِجَمِيعِ الْمُسْلِمِينَ يَأْخُذُونَ مِنْهُ الْمَاءَ أَوْ الْمِلْحَ، أَوْ يُرِيحُونَ فِيهِ دَوَابَّهُمْ، فَلِأَنَّهُمْ قَدْ مَلَكُوهُ فَلَيْسَ لِأَحَدٍ أَنْ يَنْفَرِدَ بِهِ.

L20849 Through the transmission of Abu Ubayd, Ahmad ibn Uthman narrated to us from Abdullah ibn al-Mubarak, who narrated from Hakim ibn Zurayq, who said: I read the letter of Umar ibn Abd al-Aziz to my father: "Whoever revives a dead land through construction or cultivation—provided it is not from the property of a community that purchased it or revived part of it and left the rest—he permitted them to revive it. As for open communal land, it belongs to all Muslims: they may take water or salt from it, graze their livestock in it, or rest their animals there. Since this land is collectively owned, no one may appropriate it exclusively."

L20850–20852 We were narrated through Sufyān ibn ʻUyaynah on the authority of ʻAmr

[5] **Qur'an references (L20847):** Qur'an 65:1 (At-Talaq).

ibn Yaḥyā ibn Qays al-Māzinī, who narrated from his father. From Abyaḍ ibn Ḥamāl—he is al-Māzinī—who said: "I asked the Messenger of Allah—may Allah bless him and grant him peace—'May I be granted the salt mine in Ma'rib?' He allocated it to me. Someone then said to him: 'It is like perennial water.' He responded: 'In that case, do not do so.'"

L20853 Abū Muḥammad said: If it is asked, "The Messenger of Allāh—peace and blessings of Allāh be upon him—granted land allocations, as did Abū Bakr, ʿUmar, ʿUthmān, and Muʿāwiyah. What is the meaning of their allocations?" We reply: As for the Messenger of Allāh—peace and blessings of Allāh be upon him—he alone held the authority to designate reserved lands (ḥimā) and grant allocations. He is the one who, if he were to assign ownership of a free person's neck, it would become his slave. As for those after him—peace be upon him—they may grant such rights solely to cut off disputes and conflicts, and no proof can be derived from anyone after him—peace and blessings of Allāh be upon him.

L20854 Abū Muḥammad said: Pastureland is not owned property. Rather, whoever revives it owns it. Those with livestock are instructed: "Disperse and go far afield in pursuit of pasture," for ownership is established solely through revival - and success is from Allah, the Most High. Grazing does not constitute revival, for if it were considered revival, whoever grazed the land would own it. This is unequivocally void in both linguistic usage and Sharīʿah.

L20855 Some Malikis argued for their position on wild game with the most absurd counterargument ever heard. They said: "If game becomes wild, it is like someone who takes water from an owned well in his container, then spills it back into the well. Would he thereby become a co-owner of the water in the well?" Abu Muhammad responded: "The well and taking water from it must be either unowned or owned. If it is unowned, he may take from it many times the amount he spilled from his container if he wishes, or refrain if he chooses - just as people abandon possessions they consider worthless and permit others to take them, like date pits, straw, manure, and similar things."

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ يَحْيَى بْنِ قَيْسٍ الْمَازِنِيِّ عَنْ أَبِيهِ عَنْ أَبْيَضَ بْنِ حَمَالٍ - هُوَ الْمَازِنِيُّ - قَالَ «اسْتَقْطَعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعْدِنَ الْمِلْحِ الَّذِي بِمَأْرِبَ؟ فَأَقْطَعَنِيهِ، فَقِيلَ لَهُ: إنَّهُ بِمَنْزِلَةِ الْمَاءِ الْعِدِّ قَالَ: فَلَا إذًا» .

قَالَ أَبُو مُحَمَّد: فَإِنْ قِيلَ: فَقَدْ أَقْطَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَقْطَعَ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَمُعَاوِيَةُ فَمَا مَعْنَى إقْطَاعِهِمْ؟ قُلْنَا: أَمَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ الَّذِي لَهُ الْحِمَى وَالْإِقْطَاعُ، وَالَّذِي لَوْ مَلَّكَ إنْسَانًا رَقَبَةَ حُرٍّ لَكَانَ لَهُ عَبْدًا - وَأَمَّا مَنْ دُونَهُ - عَلَيْهِ السَّلَامُ - فَقَدْ يَفْعَلُونَ ذَلِكَ قَطْعًا لِلتَّشَاجِّ وَالتَّنَازُعِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - عَلَيْهِ السَّلَامُ -.

قَالَ أَبُو مُحَمَّد: وَلَيْسَ الْمَرْعَى مُتَمَلَّكًا، بَلْ مَنْ أَحْيَا فِيهِ فَهُوَ لَهُ، وَيُقَالُ لِأَهْلِ الْمَاشِيَةِ: أَعْزِبُوا وَأَبْعِدُوا فِي طَلَبِ الْمَرْعَى، وَإِنَّمَا التَّمَلُّكُ بِالْإِحْيَاءِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَالرَّعْيُ لَيْسَ إحْيَاءً، وَلَوْ كَانَ إحْيَاءً لَمَلَكَ الْمَكَانَ مَنْ رَعَاهُ، وَهَذَا بَاطِلٌ مُتَيَقَّنٌ فِي اللُّغَةِ وَفِي الشَّرِيعَةِ.

وَاحْتَجَّ بَعْضُ الْمَالِكِيِّينَ لِقَوْلِهِمْ فِي الصَّيْدِ الْمُتَوَحِّشِ بِأَسْخَفِ مُعَارَضَةٍ سُمِعَتْ، وَهُوَ أَنَّهُ قَالَ: الصَّيْدُ إذَا تَوَحَّشَ بِمَنْزِلَةِ مَنْ أَخَذَ مَاءً مِنْ بِئْرٍ مُتَمَلَّكَةٍ فِي وِعَائِهِ فَانْهَرَقَ الْمَاءُ فِي الْبِئْرِ، أَيَكُونُ شَرِيكًا بِذَلِكَ فِي الْمَاءِ الَّذِي فِي الْبِئْرِ؟ قَالَ أَبُو مُحَمَّد: الْبِئْرُ وَأَخْذُ الْمَاءِ مِنْهَا لَا يَخْلُو أَنْ تَكُونَ مُبَاحَةً أَوْ مُتَمَلَّكَةً، فَإِنْ كَانَتْ مُبَاحَةً فَلَهُ أَنْ يَأْخُذَ مِنْهَا أَضْعَافَ مَا انْهَرَقَ لَهُ إنْ شَاءَ، وَلَهُ أَنْ يَتْرُكَ إنْ شَاءَ، كَمَا يَتْرُكُ النَّاسُ مَا لَا قِيمَةَ لَهُ عِنْدَهُمْ مِنْ أَمْوَالِهِمْ وَيُبِيحُونَهُ لِمَنْ أَخَذَهُ، كَالنَّوَى، وَالتِّبْنِ، وَالزِّبْلِ، وَنَحْوِ ذَلِكَ.

L20856 If the owner of any such thing had neither relinquished it nor permitted anyone to take it, it would rightfully remain his, and it would not be lawful for anyone to take it. Thus, no one's property—whether little or much—is permissible to take except with his explicit consent, or in cases where the religion ordained by Allah the Exalted has sanctioned it.

L20857–20859 The Messenger of Allah—peace and blessings be upon him—explicitly stated: "Whoever seizes unjustly with his right hand the right of a Muslim, Allah has decreed Hell for him, even if it were a twig of an arak tree." Yet whichever is greater in their estimation—they who claim to be proponents of qiyas (legal analogy)—a twig of an arak tree [is treated thus]. Or an ibex, or a wild donkey—each equivalent in value to wealth—or land equaling wealth. If the well is privately owned, the one taking water from it is either in need of what they take or not. If they are in need, they may take from it an amount equivalent to what has spilled (or more, even multiples of it) as required. If they are not in need, it is impermissible for them to take any of its water—neither the slightest amount nor the greatest—thus exposing the absurdity and confused arguments of this ignorant individual.

An Issue on the Definition of the Revival

L20860

L20861 1348 - Issue: Reviving dead land entails removing the grass, trees, or vegetation therein with the specific intention of revival—not merely intending to collect grass or firewood—or channeling water to it from a river, spring, or by digging a well within it for irrigation; or plowing it, planting it, fertilizing it, or actions equivalent to fertilization, such as transporting earth or ash to it, removing stones, or stripping salty soil from its surface to enable plowing or planting; or marking it with a walled enclosure for construction. All these acts constitute "revival" in the Arabic language—the language through which Allah, Exalted is He, addressed us by the tongue of His Prophet, peace and blessings be upon him. Thus, the reviver thereby attains the water in its gushing surge and abundance across all directions of the well, spring, river, or irrigation channel. He rightfully owns it because he revived it.

وَلَوْ أَنَّ صَاحِبَ كُلِّ ذَلِكَ لَمْ يُطْلِقْهُ، وَلَا أَبَاحَ أَخْذَهُ لِأَحَدٍ، لَكَانَ ذَلِكَ لَهُ، وَلَمَا حَلَّ لِأَحَدٍ أَخْذُهُ، فَلَا يَحِلُّ مَالُ أَحَدٍ - قَلَّ أَوْ كَثُرَ - إِلَّا بِإِبَاحَتِهِ لَهُ، أَوْ حَيْثُ أَبَاحَتْهُ الدِّيَانَةُ عَنْ اللَّهِ تَعَالَى.

وَقَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّ «مَنْ اقْتَطَعَ بِيَمِينِهِ حَقَّ مُسْلِمٍ أَوْجَبَ اللَّهُ لَهُ النَّارَ وَلَوْ كَانَ قَضِيبًا مِنْ أَرَاكٍ» ، فَأَيُّمَا أَكْثَرُ عِنْدَهُمْ - وَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ - قَضِيبُ أَرَاكٍ، أَوْ أُيَّلٌ، أَوْ حِمَارُ وَحْشٍ، يُسَاوِي كُلُّ وَاحِدٍ مِنْهَا مَالًا، أَوْ أَرْضٌ تُسَاوِي الْأَمْوَالَ، وَإِنْ كَانَتْ الْبِئْرُ مُتَمَلَّكَةً، فَلَا يَخْلُو آخِذُ الْمَاءِ مِنْهَا مِنْ أَنْ يَكُونَ مُحْتَاجًا إلَى مَا أَخَذَ أَوْ غَيْرَ مُحْتَاجٍ، فَإِنْ كَانَ مُحْتَاجًا فَلَهُ أَنْ يَأْخُذَ مِنْهَا مِثْلَ مَا انْهَرَقَ لَهُ - أَوْ أَكْثَرَ أَوْ أَضْعَافَهُ - إذَا احْتَاجَ إلَيْهِ، وَإِنْ كَانَ غَيْرَ مُحْتَاجٍ لَمْ يَجُزْ لَهُ أَخْذُ شَيْءٍ مِنْ مَائِهَا - لَا مَا قَلَّ وَلَا مَا كَثُرَ - فَظَهَرَ هَذَرُ هَذَا الْجَاهِلِ وَتَخْلِيطُهُ.

[مَسْأَلَةٌ تَعْرِيف الْإِحْيَاءُ]

١٣٤٨ - مَسْأَلَةٌ: وَالْإِحْيَاءُ هُوَ قَلْعُ مَا فِيهَا مِنْ عُشْبٍ، أَوْ شَجَرٍ، أَوْ نَبَاتٍ، بِنِيَّةِ الْإِحْيَاءِ، لَا بِنِيَّةِ أَخْذِ الْعُشْبِ وَالِاحْتِطَابِ فَقَطْ، أَوْ جَلْبِ مَاءٍ إلَيْهَا مِنْ نَهْرٍ، أَوْ مِنْ عَيْنٍ، أَوْ حَفْرِ بِئْرٍ فِيهَا لِسَقْيِهَا مِنْهُ، أَوْ حَرْثِهَا، أَوْ غَرْسِهَا، أَوْ تَزْبِيلِهَا، أَوْ مَا يَقُومُ مَقَامَ التَّزْبِيلِ مِنْ نَقْلِ تُرَابٍ إلَيْهَا، أَوْ رَمَادٍ، أَوْ قَلْعِ حِجَارَةٍ، أَوْ جَرْدِ تُرَابِ مِلْحٍ عَنْ وَجْهِهَا حَتَّى يُمْكِنَ بِذَلِكَ حَرْثُهَا، أَوْ غَرْسُهَا، أَوْ أَنْ يُخْتَطَّ عَلَيْهَا بِحَظِيرٍ لِلْبِنَاءِ - فَهَذَا كُلُّهُ إحْيَاءٌ فِي لُغَةِ الْعَرَبِ الَّتِي بِهَا خَاطَبَنَا اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَكُونُ

لَهُ بِذَلِكَ مَا أَدْرَكَ الْمَاءَ فِي فَوْرِهِ وَكَثْرَتِهِ فِي جَمِيعِ جِهَاتِ الْبِئْرِ، أَوْ الْعَيْنِ، أَوْ النَّهْرِ، أَوْ السَّاقِيَةِ، قَدْ مَلَكَهُ وَاسْتَحَقَّهُ؛ لِأَنَّهُ أَحْيَاهُ

وَلَا خِلَافَ فِي ضَرُورَةِ الْحِسِّ وَاللُّغَةِ أَنَّ الِاحْتِطَابَ وَأَخْذَ الْعُشْبِ لِلرَّعْيِ لَيْسَ إحْيَاءً وَمَا تَوَلَّى الْمَرْءُ مِنْ ذَلِكَ بِأُجَرَائِهِ وَأَعْوَانِهِ، فَهُوَ لَهُ، لَا لَهُمْ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» .

L20862 There is no dispute—by sensory and linguistic necessity—that gathering firewood and cutting grass for grazing does not constitute reviving dead land. Whatever a person accomplishes of such acts through his hired workers and assistants belongs to him, not to them, according to the statement of the Messenger of Allah (peace and blessings be upon him): “Deeds are judged by intentions, and each person will have only what he intended.”[6]

[مَسْأَلَةٌ خَرَجَ فِي أَرْضِهِ مَعْدِنُ فِضَّةٍ]

L20863 **A jurisprudential case: A silver mine emerged in his land.**

١٣٤٩ - مَسْأَلَةٌ:

L20864 1349: Question:

وَمَنْ خَرَجَ فِي أَرْضِهِ مَعْدِنُ فِضَّةٍ، أَوْ ذَهَبٍ، أَوْ نُحَاسٍ أَوْ حَدِيدٍ، أَوْ رَصَاصٍ، أَوْ قَزْدِيرٍ، أَوْ زِئْبَقٍ، أَوْ مِلْحٍ، أَوْ شَبٍّ، أَوْ زِرْنِيخٍ، أَوْ كُحْلٍ، أَوْ يَاقُوتٍ، أَوْ زُمُرُّدٍ، أَوْ بَجَادِيٍّ، أَوْ رهوبي، أَوْ بِلَّوْرٍ، أَوْ كَذَّانٍ، أَوْ أَيِّ شَيْءٍ كَانَ فَهُوَ لَهُ، وَيُورَثُ عَنْهُ، وَلَهُ بَيْعُهُ، وَلَا حَقَّ لِلْإِمَامِ مَعَهُ فِيهِ، وَلَا لِغَيْرِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L20865 And whoever discovers in their land a mine of silver, gold, copper, iron, lead, tin, mercury, salt, alum, arsenic, kohl, ruby, emerald, bezoar, rahūbī, crystal, kadhdhan, or any substance whatsoever, it belongs to them, may be inherited by their heirs, and they may sell it. Neither the Imam nor others have any right to it. This is the opinion of Abu Hanifah, Al-Shafi’i, and Abu Sulayman.

وَقَالَ مَالِكٌ: تَصِيرُ الْأَرْضُ لِلسُّلْطَانِ.

L20866 Malik said: The land becomes the property of the governing authority.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ لِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [النساء: ٢٩]

L20867–20868 Abu Muhammad said: This is invalid due to the statement of Allah, the Exalted: “Do not consume one another’s wealth between yourselves wrongfully” [Surah An-Nisa’ 4:29].[7]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلِعَقِبِهِ» .

L20869 And based on the statement of the Messenger of Allah (peace and blessings be upon him): “Whoever revives a dead land, it belongs to him and his offspring.”

[6] **Hadith references (L20862):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

[7] **Qur’an references (L20868):** Qur’an 4:29 (An-Nisa).

L20870 And due to the statement of the Prophet (peace be upon him): “Whoever wrongfully seizes a handspan of land will have a collar from the seven earths placed around his neck on the Day of Resurrection.”

L20871 And because of his saying—peace be upon him—: “Verily, your blood and your wealth are inviolable to you.” If only I knew by what pretext his land—which he rightfully owned through inheritance, or which he revived through his own labor due to mineral deposits therein—could be seized! We find no basis for this claim in the Quran, nor the Sunnah, nor an unsound narration, nor any statement from those before him that we know of, nor analogical reasoning, nor sound opinion. We ask him: If a mineral deposit were discovered in a mosque, or in the Sacred Mosque, or in the Mosque of Allah’s Messenger—peace and blessings be upon him—or in a Muslim cemetery, would the ruler then seize the Sacred Mosque, seize the Mosque of Allah’s Messenger—peace and blessings be upon him—and the cemetery, thereby barring people from all these places and granting them to whomever he wishes? Fie! Fie upon this opinion and what leads to it!

A legal case concerning one who constructs an irrigation channel or excavates a well.

L20872

L20873 1350. Legal Question:

L20874 Whoever constructs an irrigation channel, digs a well, or digs a spring has the right to what he has channeled, as we have previously discussed.

L20875 No one may dig in a manner that harms that spring, that well, that irrigation channel, or that river, or in a way that merely diverts any of its water away from it. There is absolutely no inviolable zone for that except what we have mentioned, because when one owns that land, they own the water within it, and it is impermissible to take their property without a legitimate right.

L20876 It was narrated to us through the chain of Ismāʿīl ibn ʿUlayya, from a man, from Saʿīd ibn al-Musayyib.

L20877 Through the chain of Muhammad ibn Muslim al-Ta’ifi from Yahya ibn Sa’id

وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «مَنْ غَصَبَ شِبْرًا مِنْ الْأَرْضِ طَوَّقَهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرَضِينَ»

وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ.» فَلَيْتَ شِعْرِي بِأَيِّ وَجْهٍ تَخْرُجُ أَرْضُهُ الَّتِي مَلَكَ بِإِرْثٍ، أَوْ الَّتِي أَحْيَا عَنْ يَدِهِ مِنْ أَجْلِ وُجُودِ الْمَعْدِنِ فِيهَا؟ وَمَا عَلِمْنَا لِهَذَا الْقَوْلِ مُتَعَلَّقًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ أَحَدٍ قَبْلَهُ نَعْلَمُهُ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ سَدِيدٍ، وَنَسْأَلُهُ عَنْ مَسْجِدٍ ظَهَرَ فِيهِ مَعْدِنٌ، أَوْ لَوْ ظَهَرَ مَعْدِنٌ فِي الْمَسْجِدِ الْحَرَامِ، أَوْ فِي مَسْجِدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ فِي مَقْبَرَةٍ لِلْمُسْلِمِينَ؟ أَيَكُونُ لِلْإِمَامِ أَخْذُ الْمَسْجِدِ الْحَرَامِ، وَأَخْذُ مَسْجِدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْمَقْبَرَةِ فَيَمْنَعُ النَّاسَ مِنْ كُلِّ ذَلِكَ وَيُقْطِعُهَا مَنْ أَرَادَ؟ أُفٍّ أُفٍّ لِهَذَا الْقَوْلِ وَمَا قَادَ إلَيْهِ.

[مَسْأَلَةٌ سَاقَ سَاقِيَةً أَوْ حَفَرَ بِئْرًا]

١٣٥٠ - مَسْأَلَةٌ:

وَمَنْ سَاقَ سَاقِيَةً، أَوْ حَفَرَ بِئْرًا، أَوْ عَيْنًا فَلَهُ مَا سَقَى كَمَا قَدَّمْنَا.

وَلَا يَحْفِرُ أَحَدٌ بِحَيْثُ يَضُرُّ بِتِلْكَ الْعَيْنِ، أَوْ بِتِلْكَ الْبِئْرِ، أَوْ بِتِلْكَ السَّاقِيَةِ، أَوْ ذَلِكَ النَّهْرِ، أَوْ بِحَيْثُ يَجْلِبُ شَيْئًا مِنْ مَائِهَا عَنْهَا فَقَطْ، لَا حَرِيمَ لِذَلِكَ أَصْلًا غَيْرَ مَا ذَكَرْنَا؛ لِأَنَّهُ إذَا مَلَكَ تِلْكَ الْأَرْضَ فَقَدْ مَلَكَ مَا فِيهَا مِنْ الْمَاءِ فَلَا يَجُوزُ أَخْذُ مَالِهِ بِغَيْرِ حَقٍّ.

وَرُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ ابْنِ عُلَيَّةَ عَنْ رَجُلٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ.

al-Ansari from Sa'id ibn al-Musayyab, that the Messenger of Allah (peace be upon him) said: "The protected area of a newly dug well is twenty-five cubits, and the protected area of an old well is fifty cubits."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ مُسْلِمٍ الطَّائِفِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «حَرِيمُ الْبِئْرِ الْمُحْدَثَةِ خَمْسٌ وَعِشْرُونَ ذِرَاعًا، وَحَرِيمُ الْبِئْرِ الْعَادِيَةِ خَمْسُونَ ذِرَاعًا» .

L20878–20879 From Sa'id ibn al-Musayyib and Yahya ibn Sa'id al-Ansari, from their statements, likewise. From Abu Hurairah, al-Sha'bi, and al-Hasan: The protected area of the well is forty cubits for the resting places of camels and sheep. From Ibn al-Musayyib: The protected area of an agricultural well is three hundred cubits.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ مِنْ قَوْلِهِمَا مِثْلُ ذَلِكَ. وَعَنْ أَبِي هُرَيْرَةَ، وَالشَّعْبِيِّ، وَالْحَسَنِ: حَرِيمُ الْبِئْرِ أَرْبَعُونَ ذِرَاعًا لِأَعْطَانِ الْإِبِلِ، وَالْغَنَمِ. وَعَنْ ابْنِ الْمُسَيِّبِ: حَرِيمُ بِئْرِ الزَّرْعِ ثَلَاثُمِائَةِ ذِرَاعٍ.

L20880 Al-Zuhri said: "I heard people say: The protected zone of a spring is five hundred cubits." It is reported from Ikrimah: "The protected zone between two water sources is two hundred cubits"—but there is no stipulated measurement in Malik's opinion on this matter.

قَالَ الزُّهْرِيُّ: سَمِعْت النَّاسَ يَقُولُونَ: حَرِيمُ الْعَيْنِ خَمْسُمِائَةِ ذِرَاعٍ. وَعَنْ عِكْرِمَةَ: حَرِيمُ مَا بَيْنَ الْعَيْنَيْنِ مِائَتَا ذِرَاعٍ - وَلَيْسَ عِنْدَ مَالِكٍ فِي ذَلِكَ حَدٌّ.

L20881 Abu Hanifah said: The inviolable area of a well at a camel resting place is forty cubits, the inviolable area of a pulley-drawn well is sixty cubits on every side unless the ropes of both are longer, and the inviolable area of a spring is five hundred cubits.

وَقَالَ أَبُو حَنِيفَةَ: حَرِيمُ بِئْرِ الْعَطَنِ أَرْبَعُونَ ذِرَاعًا، وَحَرِيمُ بِئْرِ النَّاضِحِ سِتُّونَ ذِرَاعًا مِنْ كُلِّ جِهَةٍ إلَّا أَنْ يَكُونَ حَبْلُهُمَا أَطْوَلَ، وَحَرِيمُ الْعَيْنِ خَمْسُمِائَةِ ذِرَاعٍ.

L20882 No predecessor of Abū Ḥanīfah is known to have held an opinion regarding the well of the water-drawing camel, and he contradicted the mursal in this ruling.

وَلَا يُعْلَمُ لِأَبِي حَنِيفَةَ سَلَفًا فِي قَوْلٍ فِي بِئْرِ النَّاضِحِ، وَقَدْ خَالَفَ الْمُرْسَلَ فِي هَذَا الْحُكْمِ.

L20883 Yahya ibn Sa'id said regarding his aforementioned statement: "It is the Sunnah." The Mālikīs cite, concerning a woman's fingers, the statement of Sa'id ibn al-Musayyib: "It is the Sunnah"—so why do they not cite here the statement of Yahya ibn Sa'id: "It is the Sunnah"?

وَقَالَ يَحْيَى بْنُ سَعِيدٍ فِي قَوْلِهِ الْمَذْكُورِ: هُوَ السُّنَّةُ، وَالْمَالِكِيُّونَ يَحْتَجُّونَ فِي أَصَابِعِ الْمَرْأَةِ بِقَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ: هِيَ السُّنَّةُ - فَهَلَّا احْتَجُّوا هَهُنَا بِقَوْلِ يَحْيَى بْنِ سَعِيدٍ: هِيَ السُّنَّةُ؟

L20884 **A legal case pertaining to drinking from a river that is not privately owned.**

[مَسْأَلَةُ الشُّرْبِ مِنْ نَهْرٍ غَيْرِ مُتَمَلَّكٍ]

L20885–20887 Issue 1351: Regarding drawing water from a non-owned river, the ruling is that irrigation priority belongs to the highest land first, then the next

highest, with the lower lands following afterward until the highest fulfills its need. The proper method requires spreading water over the land's surface so that the soil does not absorb it, then redirecting it back to the wall or fence. Thereafter, the water must be released without further retention. This applies equally whether the highest land's ownership or reviving dead land (iḥyā' al-mawāt) is newer than the lower, equal to it, or older. Ownership of water from a non-owned river is fundamentally invalid, as are claims to floodwater. Established water distribution cycles and allocations - even if long practiced - become void unless a people... They dug a canal and constructed it, so they have the right to divide its water according to their respective shares in it. The proof for this is what we have transmitted through the chain of Abū Dāwūd - who narrated to us from Abū al-Walīd (al-Ṭayālisī) - who reported from al-Layth ibn Saʿd - from al-Zuhrī - from ʿUrwah ibn al-Zubayr - from ʿAbdullāh ibn al-Zubayr, who said: "Al-Zubayr disputed with a man regarding the irrigation channels of al-Ḥarrah used for watering. The Anṣārī said to al-Zubayr: 'Let the water flow!' But al-Zubayr refused. The Messenger of Allah—peace be upon him—then said to al-Zubayr: 'Irrigate, O Zubayr, then release the water to your neighbor.' The Anṣārī became angry and said: 'O Messenger of Allah - is he the son of your aunt?' At this, the face of the Messenger of Allah—peace be upon him—changed color, and he said: 'Irrigate, then hold back the water until it returns to the wall.'"

١٣٥١ - مَسْأَلَةٌ: وَأَمَّا الشُّرْبُ مِنْ نَهْرٍ غَيْرِ مُتَمَلَّكٍ، فَالْحُكْمُ أَنَّ السَّقْيَ لِلْأَعْلَى فَالْأَعْلَى لَاحِقٌ لِلْأَسْفَلِ حَتَّى يَسْتَوْفِيَ الْأَعْلَى حَاجَتَهُ، وَحَقُّ ذَلِكَ أَنْ يُغَطِّيَ وَجْهَ الْأَرْضِ حَتَّى لَا تَشْرَبَهُ وَيَرْجِعُ لِلْجِدَارِ أَوْ السِّيَاجِ، ثُمَّ يُطْلِقُهُ وَلَا يُمْسِكُهُ أَكْثَرَ، وَسَوَاءٌ كَانَ الْأَعْلَى أَحْدَثَ مِلْكًا أَوْ إحْيَاءً مِنْ الْأَسْفَلِ، أَوْ مُسَاوِيًا لَهُ، أَوْ أَقْدَمَ مِنْهُ، وَلَا يُتَمَلَّكُ شِرْبُ نَهْرٍ غَيْرِ مُتَمَلَّكٍ أَصْلًا، وَلَا شِرْبُ سَيْلٍ، وَتَبْطُلُ الدُّوَلُ وَالْقِسْمَةُ فِيهَا - وَإِنْ تَقَدَّمَتْ - إلَّا أَنْ يَكُونَ قَوْمٌ حَفَرُوا سَاقِيَةً وَبَنَوْهَا، فَلَهُمْ أَنْ يَقْتَسِمُوا مَاءَهَا بِقَدْرِ حِصَصِهِمْ فِيهَا. بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - أَنَا اللَّيْثُ - هُوَ ابْنُ سَعْدٍ - عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ قَالَ «خَاصَمَ الزُّبَيْرُ رَجُلًا فِي شِرَاجِ الْحَرَّةِ الَّتِي يَسْقُونَ بِهَا، فَقَالَ الْأَنْصَارِيُّ لِلزُّبَيْرِ: سَرِّحْ الْمَاءَ يَمُرُّ؟ فَأَبَى عَلَيْهِ الزُّبَيْرُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلزُّبَيْرِ: اسْقِ يَا زُبَيْرُ ثُمَّ أَرْسِلْ إلَى جَارِكَ؟ فَغَضِبَ الْأَنْصَارِيُّ وَقَالَ: يَا رَسُولَ اللَّهِ إنْ كَانَ ابْنُ عَمَّتِكَ؟ فَتَلَوَّنَ وَجْهُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ قَالَ: اسْقِ ثُمَّ احْتَبِسْ الْمَاءَ حَتَّى يَرْجِعَ إلَى الْجَدْرِ.»

Case: If a man planted trees in dead land.

[مَسْأَلَةٌ غَرَسَ أَشْجَارًا فِي أَرْضِ مَوَات]

Issue 1352: Whoever plants trees has the right to the area shaded by their branches upon their full maturity. If their branches scatter onto another's land, he is obligated to cut away what has scattered there. It has been narrated to us via the chain of Abu Dawud: Mahmud ibn Khalid reported that Muhammad ibn Uthman narrated to them, saying: Abdul Aziz ibn Muhammad—he is Ad-Dārawardī—narrated to us from Amr ibn Yahya al-Mazini, from his father, from Abu Sa'id al-Khudri, who said: "Two men brought a dispute to Allah's Messenger—peace be upon him—regarding the protected

١٣٥٢ - مَسْأَلَةٌ: وَمَنْ غَرَسَ أَشْجَارًا فَلَهُ مَا أَظَلَّتْ أَغْصَانُهَا عِنْدَ تَمَامِهَا، فَإِنْ انْتَثَرَتْ عَلَى أَرْضِ غَيْرِهِ أَخَذَ بِقَطْعِ مَا انْتَثَرَ مِنْهَا عَلَى أَرْضِ غَيْرِهِ. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مَحْمُودُ بْنُ خَالِدٍ أَنَّ مُحَمَّدَ بْنَ عُثْمَانَ حَدَّثَهُمْ قَالَ: نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ الدَّرَاوَرْدِيُّ - عَنْ عَمْرِو بْنِ يَحْيَى الْمَازِنِيِّ عَنْ أَبِيهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «اخْتَصَمَ إلَى رَسُولِ

zone of a palm tree. He—peace be upon him—ordered a palm frond from its branches to be measured with a forearm's length, then ruled according to its extent." As for the scattering of branches onto another's land, this derives from Allah's Messenger's statement—peace be upon him—: "Your blood and your wealth are inviolable to you." Therefore, it is impermissible for anyone to benefit from another's property unless the owner willingly consents to it. Success comes solely from Allah, the Exalted.

L20890 **A juristic issue: A man left his animal in a desert, then someone took it, cared for it, and it became sound.**

L20891–20893 Issue 1353: If someone abandons his riding animal in a wilderness, leaving it lost, and another person takes it and tends to it so that it becomes sound; or if his belongings are damaged in a sea or river and the sea washes ashore his belongings which someone then takes, or if a person dives for them and retrieves them, then all such cases... That is for its original owner, and no right therein belongs to whoever takes anything from it, based on the statement of Allah's Messenger—peace and blessings of Allah be upon him: "Your blood and your wealth are inviolable to you." Differing opinions have been reported regarding this matter. As transmitted to us through the chain of Saʿīd ibn Manṣūr: Narrated to us Hushaym: Narrated to us Manṣūr—he is Ibn al-Muʿtamir—from ʿUbayd Allāh ibn Ḥumayd al-Ḥimyarī, who said: I heard al-Shaʿbī say: "Whoever's mount becomes incapacitated and he abandons it, it belongs to whoever revives it." I asked him: "From whom, O Abū ʿAmr?" He replied: "If you wish, I can enumerate for you such-and-such Companions of Allah's Messenger—peace and blessings of Allah be upon him." Through another chain: Saʿīd ibn Manṣūr: Narrated to us Khālid—he is Ibn ʿAbd Allāh al-Ṭaḥḥān al-Wāsiṭī—Narrated to us Muṭarrif—he is Ibn Ṭarīf—from al-Shaʿbī regarding a man who released his mount and another took it and rehabilitated it. Al-Shaʿbī said: "A ruling has been established for this case: If he released it in a pasture with security and water, its owner has the right to it. But if he released it in a hazardous place or wilderness, the one who took it has the right to it." Through the chain of Ibn Abī Shaybah: Narrated to us Abū Usāmah from ʿUthmān ibn Ghiyāth, who said: Al-Ḥasan was asked about a man who left his mount in barren land and another took

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلاَنِ فِي حَرِيمِ نَخْلَةٍ فَأَمَرَ - عَلَيْهِ السَّلاَمُ - بِجَرِيدَةٍ مِنْ جَرِيدِهَا فَذُرِعَتْ فَقَضَى بِذَلِكَ» يَعْنِي بِمَبْلَغِهَا. وَأَمَّا انْتِثَارُهَا عَلَى أَرْضِ غَيْرِهِ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلاَ يَحِلُّ لِأَحَدٍ الاِنْتِفَاعُ بِمَالِ غَيْرِهِ إِلَّا مَا دَامَتْ نَفْسُهُ لَهُ طَيِّبَةً بِذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَرَكَ دَابَّتَهُ بِفَلَاةٍ فَأَخَذَهَا إِنْسَانٌ فَقَامَ عَلَيْهَا فَصَلَحَتْ]

١٣٥٣ - مَسْأَلَةٌ: وَمَنْ تَرَكَ دَابَّتَهُ بِفَلَاةٍ ضَائِعَةً فَأَخَذَهَا إِنْسَانٌ فَقَامَ عَلَيْهَا فَصَلَحَتْ، أَوْ عَطِبَ فِي بَحْرٍ أَوْ نَهْرٍ فَرَمَى الْبَحْرُ مَتَاعَهُ فَأَخَذَهُ إِنْسَانٌ أَوْ غَاصَ عَلَيْهِ إِنْسَانٌ فَأَخَذَهُ، فَكُلُّ ذَلِكَ لِصَاحِبِهِ الْأَوَّلِ وَلَا حَقَّ فِيهِ لِمَنْ أَخَذَ شَيْئًا مِنْهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» . وَقَدْ جَاءَ فِي ذَلِكَ خِلَافٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مَنْصُورٌ - هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ عُبَيْدِ اللَّهِ بْنِ حُمَيْدٍ الْحِمْيَرِيِّ قَالَ: سَمِعْت الشَّعْبِيَّ يَقُولُ: مَنْ قَامَتْ عَلَيْهِ دَابَّتُهُ فَتَرَكَهَا فَهِيَ لِمَنْ أَحْيَاهَا: فَقُلْت لَهُ: عَمَّنْ يَا أَبَا عَمْرٍو؟ قَالَ: إنْ شِئْت عَدَّدْت لَك كَذَا وَكَذَا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدٌ - هُوَ ابْنُ عَبْدِ اللَّهِ الطَّحَّانُ الْوَاسِطِيُّ - أَنَا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - عَنْ الشَّعْبِيِّ فِي رَجُلٍ سَيَّبَ دَابَّتَهُ فَأَخَذَهَا رَجُلٌ فَأَصْلَحَهَا؟ فَقَالَ الشَّعْبِيُّ: هَذَا قَدْ قَضَى فِيهِ إنْ كَانَ سَيَّبَهَا فِي كَلَأٍ، وَأَمْنٍ، وَمَاءٍ، فَصَاحِبُهَا أَحَقُّ بِهَا، وَإِنْ كَانَ سَيَّبَهَا فِي مَخَافَةٍ أَوْ مَفَازَةٍ فَالَّذِي أَخَذَهَا أَحَقُّ بِهَا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو أُسَامَةَ عَنْ عُثْمَانَ بْنِ غِيَاثٍ قَالَ: سُئِلَ الْحَسَنُ عَمَّنْ تَرَكَ دَابَّتَهُ بِأَرْضِ قَفْرٍ فَأَخَذَهَا رَجُلٌ فَقَامَ عَلَيْهَا حَتَّى

it and maintained it until it recovered. He replied: “It belongs to whoever revived it.” He added: Al-Ḥasan was also asked about a ship sinking at sea containing merchandise belonging to various parties. He said: “What the sea casts upon its shore, and whoever retrieves something by diving owns it.” Abū Muḥammad said: This is the opinion of al-Layth. Indeed, anyone who disparages an opinion attributed to a Companion—when no opposing view to it is known—must adopt the opinion of al-Shaʿbī and al-Ḥasan, as it is transmitted from a group of Companions with no known opposition among them.

L20894 **An issue: One who finds his property is not obligated to reimburse what was spent on it.**

L20895 1354. Issue: If someone retrieves their lost property, they are not required to reimburse the person who possessed it for any expenses incurred, as the spender acted without authorization and thus voluntarily. We have been narrated through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, from Dāwūd ibn Abī Hind, from al-Shaʿbī, that a man lost a young camel. Another man took it, spent on its care until it became healthy and fattened. The owner discovered it in his possession and disputed the matter before ʿUmar ibn ʿAbd al-ʿAzīz, who ruled that the finder must be reimbursed for the expenses and must return the camel to its owner. Al-Shaʿbī said: “As for me, I maintain that one reclaims their property as they find it—whether fattened or emaciated—and owes nothing.”

L20896 **the elbows (in ablution)**

L20897 **It is a juristic principle that anyone may create whatever opening they wish in their own boundary wall.**

L20898–20900 Section 1355 – Issue: Anyone may open in their wall what they wish – such as a window, a door, or... He may demolish it if he wishes in his neighbor’s property, in a dead-end alley, or a passable alley. It is said to his neighbor: “Build within your right what will conceal yourself!” except that he is only prevented from intrusive viewing. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān. Mālik said: “He is prevented

صَلَحَتْ؟ قَالَ: هِيَ لِمَنْ أَحْيَاهَا. قَالَ: وَسُئِلَ الْحَسَنُ عَنْ السَّفِينَةِ تَغْرَقُ فِي الْبَحْرِ فِيهَا مَتَاعٌ لِقَوْمٍ شَتَّى؟ فَقَالَ: مَا أَلْقَى الْبَحْرُ عَلَى سَاحِلِهِ، وَمَنْ غَاصَ عَلَى شَيْءٍ فَاسْتَخْرَجَهُ فَهُوَ لَهُ. قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ اللَّيْثِ وَلَقَدْ كَانَ يَلْزَمُ مَنْ شَنَّعَ بِقَوْلِ الصَّاحِبِ لَا يُعْرَفُ لَهُ مُخَالِفٌ أَنْ يَقُولَ بِقَوْلِ الشَّعْبِيِّ، وَالْحَسَنِ؛ لِأَنَّهُ عَنْ جَمَاعَةٍ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ.

[مَسْأَلَةٌ لَا يَلْزَمُ مَنْ وَجَدَ مَتَاعَهُ أَنْ يُؤَدِّيَ مَا أُنْفِقَ عَلَيْهِ]

١٣٥٤ - مَسْأَلَةٌ: وَلَا يَلْزَمُ مَنْ وَجَدَ مَتَاعَهُ إذَا أَخَذَهُ أَنْ يُؤَدِّيَ إلَى الَّذِي وَجَدَهُ عِنْدَهُ مَا أَنْفَقَ عَلَيْهِ، لِأَنَّهُ لَمْ يَأْمُرْهُ بِذَلِكَ، فَهُوَ مُتَطَوِّعٌ بِمَا أَنْفَقَ. وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ أَنَّ رَجُلًا أَضَلَّ بَعِيرًا لَهُ نِضْوًا فَأَخَذَهُ رَجُلٌ فَأَنْفَقَ عَلَيْهِ حَتَّى صَلَحَ وَسَمِنَ، فَوَجَدَهُ صَاحِبُهُ عِنْدَهُ فَخَاصَمَهُ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ؟ فَقَضَى لَهُ بِالنَّفَقَةِ وَرَدِّ الدَّابَّةِ إلَى صَاحِبِهَا - قَالَ الشَّعْبِيُّ: أَمَّا أَنَا فَأَقُولُ: يَأْخُذُ مَالَهُ حَيْثُ وَجَدَهُ سَمِينًا أَوْ مَهْزُولًا، وَلَا شَيْءَ عَلَيْهِ.

[الْمَرْفِقُ]

[مَسْأَلَةٌ لِكُلِّ أَحَدٍ أَنْ يَفْتَحَ مَا شَاءَ فِي حَائِطِهِ]

الْمَرْفِقُ ١٣٥٥ - مَسْأَلَةٌ: وَلِكُلِّ أَحَدٍ أَنْ يَفْتَحَ مَا شَاءَ فِي حَائِطِهِ مِنْ كُوَّةٍ أَوْ بَابٍ، أَوْ أَنْ يَهْدِمَهُ إنْ شَاءَ فِي دَارِ جَارِهِ، أَوْ فِي دَرْبٍ غَيْرِ نَافِذٍ أَوْ نَافِذٍ، وَيُقَالُ لِجَارِهِ: ابْنِ فِي حَقِّك مَا تَسْتُرُ بِهِ عَلَى نَفْسِك؟ إلَّا أَنَّهُ يُمْنَعُ مِنْ الِاطِّلَاعِ فَقَطْ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ،

from all that." Abū Muḥammad said: "This is erroneous, for every one entitled to a right has precedence in exercising it. It is impermissible for a neighbor to benefit from his neighbor's wall except where the Text explicitly permits. There is no distinction between demolishing his own wall (without being obligated to rebuild it) while telling his neighbor, 'Conceal yourself if you wish,' and demolishing his own wall entirely. No difference exists between a roof permitting intrusive viewing and a house's courtyard permitting such viewing. No distinction lies between opening a window for light and opening it for other purposes, as both enable intrusive viewing. No Qur'an, Sunnah, weakly transmitted report, or statement of a Companion has ever prohibited a person from creating openings within their right and their wall as they desire. If they cite the report, 'No harm or reciprocated harm,' this is an unsound report—it is transmitted discontinuously or through a chain containing Zuhayr ibn Thābit, who is weak—though its meaning is valid. No greater harm exists than preventing a person from managing their own property to accommodate another's benefit; this constitutes true harm. As for intrusive viewing, its prohibition is obligatory, based on what we transmitted through al-Bukhārī's chain: ʿAlī ibn ʿAbdillāh ibn al-Madīnī reported to us, from Sufyān ibn ʿUyaynah, from Abū al-Zināد, from al-Aʿraj, from Abū Hurayrah, who said: Abū al-Qāsim—may Allah's peace and blessings be upon him—said: 'If someone spies on you without permission and you strike him with a stick, blinding his eye, you bear no blame.' We also transmitted it through another chain with 'a pebble,' which is more authentic."

وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ. وَقَالَ مَالِكٌ: يُمْنَعُ مِنْ كُلِّ ذَلِكَ. قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّ كُلَّ ذِي حَقٍّ أَوْلَى بِحَقِّهِ. وَلَا يَحِلُّ لِلْجَارِ أَنْ يَنْتَفِعَ بِحَائِطِ جَارِهِ إِلَّا حَيْثُ جَاءَ النَّصُّ بِذَلِكَ. وَلَا فَرْقَ بَيْنَ أَنْ يَهْدِمَ حَائِطَهُ فَلَا يُكَلَّفُ بُنْيَانَهُ وَيَقُولُ لِجَارِهِ: اُسْتُرْ عَلَى نَفْسِكَ إِنْ شِئْتَ، وَبَيْنَ أَنْ يَهْدِمَ هُوَ حَائِطَ نَفْسِهِ. وَلَا فَرْقَ بَيْنَ السَّقْفِ وَالِاطِّلَاعِ مِنْهُ وَبَيْنَ قَاعِ الدَّارِ وَالِاطِّلَاعِ مِنْهُ - وَلَا فَرْقَ بَيْنَ فَتْحِ كُوَّةٍ لِلضَّوْءِ وَبَيْنَ فَتْحِهَا هَكَذَا وَكِلَا الْأَمْرَيْنِ، يُمْكِنُ الِاطِّلَاعُ مِنْهُ، وَلَمْ يَأْتِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ يَمْنَعُ الْمَرْءَ مِنْ أَنْ يَفْتَحَ فِي حَقِّهِ وَفِي حَائِطِهِ مَا شَاءَ. فَإِنْ احْتَجُّوا بِالْخَبَرِ «لَا ضَرَرَ وَلَا ضِرَارَ» هَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ إِنَّمَا جَاءَ مُرْسَلًا، أَوْ مِنْ طَرِيقٍ فِيهَا زُهَيْرُ بْنُ ثَابِتٍ - وَهُوَ ضَعِيفٌ - إِلَّا أَنَّ مَعْنَاهُ صَحِيحٌ. وَلَا ضَرَرَ أَعْظَمَ مِنْ أَنْ يُمْنَعَ الْمَرْءُ مِنْ التَّصَرُّفِ فِي مَالِ نَفْسِهِ مُرَاعَاةً لِنَفْعِ غَيْرِهِ فَهَذَا هُوَ الضَّرَرُ حَقًّا. وَأَمَّا الِاطِّلَاعُ فَمَنْعُهُ وَاجِبٌ -: لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْمَدِينِيِّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا أَبُو الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ أَبُو الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ أَنَّ امْرَأً اطَّلَعَ عَلَيْكَ بِغَيْرِ إِذْنٍ فَحَذَفْتَهُ بِعَصًا فَفَقَأْتَ عَيْنَهُ لَمْ يَكُنْ عَلَيْكَ جُنَاحٌ» وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقٍ أُخْرَى «بِحَصَاةٍ» هُوَ أَصَحُّ.

A legal issue: No one may divert water from their roof or property onto their neighbor's property.

L20901–20902

L20903 Issue: It is not permissible for anyone to channel water from his roof or house onto his neighbor's land at all. If the neighbor permits this, he retains the right to revoke his permission whenever he wishes, based on the statement of Allah's Messenger—peace and blessings be upon him: "Your blood and your wealth are inviolable to you." Channeling water from his house

[مَسْأَلَةٌ لَيْسَ لِأَحَدٍ أَنْ يُرْسِلَ مَاءَ سَقْفِهِ أَوْ دَارِهِ عَلَى أَرْضِ جَارِهِ]

مَسْأَلَةٌ: وَلَيْسَ لِأَحَدٍ أَنْ يُرْسِلَ مَاءَ سَقْفِهِ أَوْ دَارِهِ عَلَى أَرْضِ جَارِهِ أَصْلًا، فَإِنْ أَذِنَ لَهُ كَانَ لَهُ الرُّجُوعُ مَتَى شَاءَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَإِطْلَاقُهُ مَاءَ دَارِهِ عَلَى أَرْضِ جَارِهِ تَصَرُّفٌ مِنْهُ فِي مَالِ غَيْرِهِ

onto his neighbor's land constitutes interference with another's property—and this is forbidden upon him—and such permission is valid only as long as it remains permission, for it does not transfer ownership. Permission for something today is not equivalent to permission for it tomorrow, without doubt. And with Allah lies success.

L20904 **A jurisprudential matter: It is not permissible for anyone to smoke in a way that harms their neighbor.**

L20905 Issue 1357: It is not permissible for anyone to smoke in a manner that harms his neighbor, as this constitutes injury, and Allah the Exalted has prohibited harming a Muslim. Every person may raise the height of their building as they wish - even if it blocks the neighbor's access to breeze and sunlight - because it does not involve obstruction through impermissible means. Every person may construct on their property whatever they desire, whether a bathhouse, oven, mill, vault, or other structures, since no explicit textual prohibition exists against any of these matters.

L20906 **Issue: One may not prevent their neighbor from inserting wood into his wall.**

L20907 Issue 1358: It is not permissible for anyone to prevent his neighbor from inserting wood into his [the preventer's] wall, and the one preventing must be compelled to allow it—whether he likes it or dislikes it—even without his permission. If the owner of the wall wishes to demolish it, he may do so, provided he informs his neighbor: "Support your wood or remove it, for I am demolishing my wall." The owner of the wood is then compelled to comply. This ruling derives from the narration transmitted through Mālik's chain from Ibn Shihāb, from al-Aʿraj, from Abū Hurayrah, that the Messenger of Allah—peace and blessings be upon him—said: "None of you should prevent his neighbor from driving a wooden beam into his wall." Abū Hurayrah then declared: "Why do I see you turning away from this? By Allah, I will cast it between your shoulders!" This is the statement of Abū Hurayrah, with no

- وَهُوَ عَلَيْهِ حَرَامٌ - وَالْإِذْنُ فِي ذَلِكَ إِنَّمَا هُوَ مَا دَامَ إِذْنًا، لِأَنَّهُ لَمْ يُمَلِّكْهُ الرَّقَبَةَ، وَالْإِذْنُ فِي شَيْءٍ مَا الْيَوْمَ غَيْرُ مَا لَمْ يُؤْذَنْ لَهُ فِيهِ غَدًا بِلَا شَكٍّ - وَبِاللَّهِ التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَجُوزُ لِأَحَدٍ أَنْ يُدَخِّنَ عَلَى جَارِهِ]

١٣٥٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِأَحَدٍ أَنْ يُدَخِّنَ عَلَى جَارِهِ، لِأَنَّهُ أَذًى، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى أَذَى الْمُسْلِمِ. وَلِكُلِّ أَحَدٍ أَنْ يُعَلِّيَ بُنْيَانَهُ مَا شَاءَ - وَإِنْ مَنَعَ جَارَهُ الرِّيحَ وَالشَّمْسَ - لِأَنَّهُ لَمْ يُبَاشِرْ مَنْعَهُ بِغَيْرِ مَا أُبِيحَ لَهُ. وَلِكُلِّ أَحَدٍ أَنْ يَبْنِيَ فِي حَقِّهِ مَا شَاءَ مِنْ حَمَّامٍ، أَوْ فُرْنٍ، أَوْ رَحًى، أَوْ كَمَرٍ أَوْ غَيْرِ ذَلِكَ، إِذْ لَمْ يَأْتِ نَصٌّ بِالْمَنْعِ مِنْ شَيْءٍ مِنْ ذَلِكَ.

[مَسْأَلَةٌ لَا يَمْنَعُ جَارَهُ مِنْ أَنْ يُدْخِلَ خَشَبًا فِي جِدَارِهِ]

١٣٥٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَمْنَعَ جَارَهُ مِنْ أَنْ يُدْخِلَ خَشَبًا فِي جِدَارِهِ وَيُجْبَرَ عَلَى ذَلِكَ - أَحَبَّ أَمْ كَرِهَ - إِنْ لَمْ يَأْذَنْ لَهُ، فَإِنْ أَرَادَ صَاحِبُ الْحَائِطِ هَدْمَ حَائِطِهِ كَانَ لَهُ ذَلِكَ، وَعَلَيْهِ أَنْ يَقُولَ لِجَارِهِ: دَعِّمْ خَشَبَكَ أَوْ انْزَعْهُ فَإِنِّي أَهْدِمُ حَائِطِي، وَيُجْبَرُ صَاحِبُ الْخَشَبِ عَلَى ذَلِكَ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَمْنَعُ أَحَدُكُمْ جَارَهُ أَنْ يَغْرِزَ خَشَبَةً فِي جِدَارِهِ» ثُمَّ يَقُولُ أَبُو هُرَيْرَةَ: مَالِي أَرَاكُمْ عَنْهَا مُعْرِضِينَ وَاَللَّهِ لَأَرْمِيَنَّ بِهَا بَيْنَ أَكْتَافِكُمْ فَهَذَا قَوْلُ أَبِي هُرَيْرَةَ وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُوَ قَوْلُ أَصْحَابِنَا.

known opposition from the Companions—may Allah be pleased with them. It is also the doctrine of our companions.[8]

L20908–20909 Abu Hanifah and Malik said: He has no right to place his wood in his neighbor's wall. Abu Muhammad said: This is mere opposition to the narration, and we know of no valid proof from them whatsoever, except that some of them cited the statement of Allah's Messenger—peace and blessings be upon him—: "Your blood and your wealth are inviolable to you."

L20910 Ali said: He who said this is the same as He who said that, and all His speech is truth from Allah the Exalted. All of it obligates us to hear and obey, with no part opposing another. Allah the Exalted said: *"It is not for any believing man or believing woman, when Allah and His Messenger have decreed a matter, to have any choice in their affair"* [Quran 33:36]. He who decreed preemption, the nullification of ownership after its completion, the invalidation of a sale after its validity, the ruling of collective liability (al-ʿāqilah), the obligation to pay compensation for acts they did not commit, and the permissibility of using their wealth for this—whether they like or dislike—is the same who decreed that a neighbor may insert his wooden beam into his neighbor's wall and forbade preventing him from doing so. Had they applied this ruling when permitting the fruit of palm trees and renting usurped properties—allowing such benefits to those who illegitimately purchased from usurpers—it would have been more appropriate. It is obligatory to apply all the Sunnahs. Thus we declare: Our wealth is forbidden to others except where permitted by He who forbade it. Some said: "This narration mentions *'a beam'* in the accusative case as singular." We replied: Yet you do not permit him even one beam or more—what relief does this narration bring you? Every beam in the world is simply a beam. A neighbor has no right to prevent another from placing it in his wall. The ruling is the same in both narrations—and divine success is from Allah the Exalted.[9]

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: لَيْسَ لَهُ أَنْ يَضَعَ خَشَبَهُ فِي جِدَارِ جَارِهِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خِلَافٌ مُجَرَّدٌ لِلْخَبَرِ وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، إِلَّا أَنَّ بَعْضَهُمْ ذَكَرَ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

قَالَ عَلِيٌّ: الَّذِي قَالَ هَذَا هُوَ الَّذِي قَالَ ذَلِكَ، وَقَوْلُهُ كُلُّهُ حَقٌّ وَعَنْ اللَّهِ تَعَالَى، وَكُلُّهُ وَاجِبٌ عَلَيْنَا السَّمْعُ لَهُ وَالطَّاعَةُ، وَلَيْسَ بَعْضُهُ مُعَارِضًا لِبَعْضٍ قَالَ اللَّهُ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] وَالَّذِي قَضَى بِالشُّفْعَةِ وَإِسْقَاطِ الْمِلْكِ بَعْدَ تَمَامِهِ، وَإِبْطَالِ الشِّرَاءِ بَعْدَ صِحَّتِهِ وَقَضَى بِالْعَاقِلَةِ، وَأَنْ يَغْرَمُوا مَا لَمْ يَجْنُوا، وَأَبَاحَ أَمْوَالَهُمْ فِي ذَلِكَ - أَحَبُّوا أَمْ كَرِهُوا - هُوَ الَّذِي قَضَى بِأَنْ يَغْرِزَ الْجَارُ خَشَبَهُ فِي جِدَارِ جَارِهِ، وَنَهَى عَنْ مَنْعِهِ مِنْ ذَلِكَ. وَلَوْ أَنَّهُمْ اسْتَعْمَلُوا هَذَا الْحُكْمَ حَيْثُ أَبَاحُوا ثَمَرَ النَّخْلِ، وَكِرَاءِ الدَّارِ الْمَغْصُوبَةِ -: كُلُّ ذَلِكَ لِمَنْ اشْتَرَاهُ مِنْ الْغَاصِبِ بِالْبَاطِلِ لَكَانَ أَوْلَى بِهِمْ، وَالْوَاجِبُ اسْتِعْمَالُ جَمِيعِ السُّنَنِ. فَنَقُولُ: أَمْوَالُنَا حَرَامٌ عَلَى غَيْرِنَا، إِلَّا حَيْثُ أَبَاحَهَا الَّذِي حَرَّمَهَا. وَقَالَ بَعْضُهُمْ: قَدْ رُوِيَ هَذَا الْخَبَرُ «خَشَبَةً» بِالنَّصْبِ عَلَى أَنَّهَا وَاحِدَةٌ؟ فَقُلْنَا: فَأَنْتُمْ لَا تُجِيزُونَ لَهُ لَا وَاحِدَةً وَلَا أَكْثَرَ مِنْ وَاحِدَةٍ، فَأَيُّ رَاحَةٍ لَكُمْ فِي هَذِهِ الرِّوَايَةِ؟ وَكُلُّ خَشَبَةٍ فِي الْعَالَمِ فَهِيَ خَشَبَةٌ، وَلَيْسَ لِلْجَارِ مَنْعُ جَارِهِ مِنْ أَنْ يَضَعَهَا فِي جِدَارِهِ، فَالْحُكْمُ وَاحِدٌ فِي كِلْتَا الرِّوَايَتَيْنِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[8] **Hadith references (L20907):** Sahih Muslim 1609a; Sunan Ibn Majah 2336.

[9] **Qur'an references (L20910):** Qur'an 33:36 (Al-Ahzab).

[مَسْأَلَةٌ مَلَكَ مَاءً فِي نَهْرٍ حَفَرَهُ أَوْ سَاقِيَةٍ حَفَرَهَا]

١٣٥٩ - مَسْأَلَةٌ: وَكُلُّ مَنْ مَلَكَ مَاءً فِي نَهْرٍ حَفَرَهُ، أَوْ سَاقِيَةٍ حَفَرَهَا، أَوْ عَيْنٍ اسْتَخْرَجَهَا، أَوْ بِئْرٍ اسْتَنْبَطَهَا - فَهُوَ أَحَقُّ بِمَاءِ كُلِّ ذَلِكَ مَا دَامَ مُحْتَاجًا إلَيْهِ، وَلَا يَحِلُّ لَهُ مَنْعُ الْفَضْلِ، بَلْ يُجْبَرُ عَلَى بَذْلِهِ لِمَنْ يَحْتَاجُ إلَيْهِ، وَلَا يَحِلُّ لَهُ أَخْذُ عِوَضٍ عَنْهُ، لَا بِبَيْعٍ وَلَا غَيْرِهِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ جَرِيرٍ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُمْنَعُ فَضْلُ الْمَاءِ لِيُمْنَعَ بِهِ الْكَلَأُ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد، نا النُّفَيْلِيُّ نا دَاوُد بْنُ عَبْدِ الرَّحْمَنِ الْعَطَّارِ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الْمِنْهَالِ عَنْ إيَاسِ بْنِ عَبْدٍ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ فَضْلِ الْمَاءِ»

[مَسْأَلَةٌ مَا غَلَبَ عَلَيْهِ الْمَاءُ مِنْ نَهْرٍ، أَوْ نَشْعٍ أَوْ سَيْلٍ فَاسْتَغَارَ]

١٣٦٠ - مَسْأَلَةٌ: وَمَا غَلَبَ عَلَيْهِ الْمَاءُ مِنْ نَهْرٍ، أَوْ نَشْعٍ، أَوْ سَيْلٍ، فَاسْتَغَارَ فَهُوَ لِصَاحِبِهِ كَمَا كَانَ، فَإِنْ انْتَقَلَ عَنْهُ يَوْمًا مَا - وَلَوْ بَعْدَ أَلْفِ عَامٍ - فَهُوَ لَهُ وَلِوَرَثَتِهِ، وَمَا رَمَى النَّهْرُ مِنْ أَحَدِ عَدْوَتَيْهِ إلَى أُخْرَى فَهُوَ بَاقٍ بِحَسْبِهِ كَمَا كَانَ لِمَنْ كَانَ لَهُ.

وَقَالَ الْمَالِكِيُّونَ: بِخِلَافِ ذَلِكَ - وَهَذَا بَاطِلٌ لِأَنَّ تَبَدُّلَ مَجْرَى الْمَاءِ لَا يُسْقِطُ مِلْكًا عَنْ مَالِكِهِ، وَلَا يُحِلُّ مَالًا مُحَرَّمًا لِمَنْ حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهِ، وَهَذَا حُكْمٌ فِي الدِّينِ بِلَا

L20911 **An issue: one who owned water in a river he excavated or a canal he dug.**

L20912 Issue 1359: Every person who owns water in a channel they dug, an irrigation channel they excavated, a spring they developed, or a well they excavated has the foremost right to all such water for as long as they require it. It is impermissible for them to withhold the surplus; rather, they must be compelled to provide it to those in need. It is also impermissible for them to accept compensation for it, whether through sale or otherwise. This is based on what has been narrated to us through the chain of Jarīr from Al-Aʿmash from Abī Ṣāliḥ from Abī Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—stated, "Excess water must not be withheld to prevent access to pastureland."

L20913–20914 From the chain of Abū Dāwūd: Al-Nufaylī narrated to us, from Dāwūd ibn ʿAbd al-Raḥmān al-ʿAṭṭār, from ʿAmr ibn Dīnār, from Abī al-Minhāl, from Iyās ibn ʿAbd, who said: "The Messenger of Allah (peace be upon him) prohibited the sale of surplus water."[10]

L20915 **A legal case concerning water that has predominated over [an area] from a river, seasonal rivulet, or flood, and then spread abundantly.**

L20916 Issue 1360: If water from a river, rivulet, or flood engulfs a piece of land, it remains the property of its owner as originally established. Should the water recede from it at any time—even after a thousand years—the land remains his and his heirs'. Whatever the river deposits from one of its banks to the other remains in its original state, belonging to whoever owned it previously.

L20917 The Malikis held a contrary opinion. This is invalid because altering a watercourse does not strip ownership from its owner, nor does it render forbidden wealth lawful for those upon whom Allah the Exalted has prohib-

[10] **Hadith references (L20914):** Sunan Ibn Majah 2477; Sahih Muslim 1565a.

ited it. This constitutes a religious ruling without evidence. The Messenger of Allah (PBUH) said: “Your blood and wealth are inviolable to you.”

L20918 **Issue: Land does not become [legally valid] through revival (إحياء) except by a Muslim.**

L20919 1361 – Jurisprudential Issue:

L20920 The land does not become [property] through revival except for a Muslim, and as for the *dhimmi*, it does not, due to the statement of Allah, the Most High: “Indeed, the earth belongs to Allah; He bequeaths it to whom He wills of His servants” [Al-A‘rāf 7:128].[11]

L20921 And His statement, the Exalted: {Indeed, the earth is inherited by My righteous servants} [Al-Anbiya: 105], and we are those ones—not the disbelievers—for we are the ones whom Allah, the Exalted, has made inherit the earth. Much praise be to Him.[12]

[11] **Qur’an references (L20920):** Qur’an 7:128 (Al-A’raf).
[12] **Qur’an references (L20921):** Qur’an 21:105 (Al-Anbya).

بُرْهَانٍ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ».

[مَسْأَلَةٌ لَا تَكُونُ الْأَرْضُ بِالْإِحْيَاءِ إِلَّا لِمُسْلِمٍ]

١٣٦١ - مَسْأَلَةٌ:

وَلَا تَكُونُ الْأَرْضُ بِالْإِحْيَاءِ إِلَّا لِمُسْلِمٍ، وَأَمَّا الذِّمِّيُّ فَلَا، لِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ الأَرْضَ لِلَّهِ يُورِثُهَا مَنْ يَشَاءُ مِنْ عِبَادِهِ} [الأعراف: ١٢٨]

وقَوْله تَعَالَى: {أَنَّ الأَرْضَ يَرِثُهَا عِبَادِيَ الصَّالِحُونَ} [الأنبياء: ١٠٥] وَنَحْنُ أُولَئِكَ لَا الْكُفَّارُ، فَنَحْنُ الَّذِينَ أَوْرَثَنَا اللَّهُ تَعَالَى الْأَرْضَ - فَلَهُ الْحَمْدُ كَثِيرًا.



AL-MUHALLA

كِتَابُ الْوَكَالَةِ

The Book of Agency (Wakalah)

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

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The Book of Wakālah (Delegation) Issue: Wakālah is permissible.

L20922–20923

L20924 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Agency [1362] – Chapter: Agency is permissible for administering properties, performing ritual slaughter, claiming rights and transferring them, seeking retribution for homicide or lesser harms, solemnizing marriage, selling, purchasing, leasing as a lessor, and renting as a lessee. These permissions apply equally to those present or absent, and to the sick or healthy. Pursuing all rights is obligatory without appointing an agent, unless the right-holder relinquishes their right.

L20925–20927 The proof of this is: “The Messenger of Allah (may Allah’s blessings and peace be upon him) sent governors to establish Hudud, enforce rights over people, collect Zakat, and distribute it.” Bilal was in charge of the expenditures of the Messenger of Allah (may Allah’s blessings and peace be upon him), and he had overseers managing his lands in Khaybar and Fadak. It has been reported to us in the Book of Sacrificial Rites through the chain of Al-Layth from Yazīd ibn Abī Ḥabīb from Abū al-Khayr from ʻUqbah ibn ʻĀmir al-Juhanī: “From the Messenger of Allah (may Allah’s blessings and peace be upon him) that he granted him sheep to distribute among his companions.” We mentioned in the Book of Hajj through the chain of Sufyān ibn ʻUyaynah from Ibn Abī Najīḥ from Mujāhid from ʻAbd al-Raḥmān ibn Abī Laylā from ʻAlī, who said: “The Messenger of Allah (may Allah’s blessings and peace be upon him) commanded me to oversee his sacrificial camels and distribute their hides and trappings.” Through the chain of Abū Dāwūd: ʻUbayd Allāh ibn Saʻd ibn Ibrāhīm ibn Saʻd reported to us from [his uncle—he is Yaʻqūb ibn Ibrāhīm] from his father Ibrāhīm ibn Saʻd from Muḥammad ibn Isḥāq from Abū Nuʻaym Wahb ibn Kaysān: “I heard Jābir ibn ʻAbd Allāh say: ʻI resolved to depart to...’” At Khaybar, the Messenger of Allah—peace and blessings be upon him—said to me: “When you come to my agent in Khaybar, take fifteen wasqs from him. If he seeks a sign from you, place your hand on his collarbone.” This narration confirms the Messenger’s validation of truthfulness when the governor recognizes his truthfulness without requiring evidence.

[كِتَابُ الْوَكَالَةِ] [مَسْأَلَةٌ الْوَكَالَةُ جَائِزَةٌ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْوَكَالَةِ ١٣٦٢ - مَسْأَلَةٌ: الْوَكَالَةُ جَائِزَةٌ فِي الْقِيَامِ عَلَى الْأَمْوَالِ، وَالتَّذْكِيَةِ، وَطَلَبِ الْحُقُوقِ وَإِعْطَائِهَا، وَأَخْذِ الْقِصَاصِ فِي النَّفْسِ فَمَا دُونَهَا، وَتَبْلِيغِ الْإِنْكَاحِ، وَالْبَيْعِ، وَالشِّرَاءِ، وَالْإِجَارَةِ، وَالِاسْتِئْجَارِ -: كُلُّ ذَلِكَ مِنْ الْحَاضِرِ، وَالْغَائِبِ سَوَاءٌ، وَمِنْ الْمَرِيضِ وَالصَّحِيحِ سَوَاءٌ، وَطَلَبُ الْحَقِّ كُلُّهُ وَاجِبٌ بِغَيْرِ تَوْكِيلٍ، إلَّا أَنْ يُبْرِئَ صَاحِبَ الْحَقِّ مِنْ حَقِّهِ.

بُرْهَانُ ذَلِكَ -: «بِعْثَةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوُلَاةَ لِإِقَامَةِ الْحُدُودِ، وَالْحُقُوقِ عَلَى النَّاسِ، وَلِأَخْذِ الصَّدَقَاتِ وَتَفْرِيقِهَا» . وَقَدْ كَانَ بِلَالٌ عَلَى نَفَقَاتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ كَانَ لَهُ نُظَّارٌ عَلَى أَرْضِهِ بِخَيْبَرَ، وَفَدَكَ، وَقَدْ رُوِّينَا فِي " كِتَابِ الْأَضَاحِيِّ " مِنْ طَرِيقِ اللَّيْثِ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَعْطَاهُ غَنَمًا يَقْسِمُهَا بَيْنَ أَصْحَابِهِ» . وَذَكَرْنَا فِي " الْحَجِّ " مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ عَلِيٍّ قَالَ: أَمَرَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ أَقُومَ عَلَى بُدْنِهِ وَأَنْ أُقَسِّمَ جُلُودَهَا وَجِلَالَهَا وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ سَعْدٍ نا [عَمِّي - هُوَ يَعْقُوبُ بْنُ إبْرَاهِيمَ] نا أَبِي - هُوَ إبْرَاهِيمُ بْنُ سَعْدٍ - عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ أَبِي نُعَيْمٍ وَهْبِ بْنِ كَيْسَانَ: سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: أَرَدْت الْخُرُوجَ إلَى خَيْبَرَ فَقَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا أَتَيْت وَكِيلِي بِخَيْبَرَ فَخُذْ مِنْهُ خَمْسَةَ عَشَرَ وَسْقًا فَإِنْ ابْتَغَى مِنْك آيَةً فَضَعْ يَدَك عَلَى تَرْقُوَتِهِ» . وَفِي هَذَا الْخَبَرِ تَصْدِيقُ الرَّسُولِ إذَا عَلِمَ الْوَالِي بِصِدْقِهِ بِغَيْرِ بَيِّنَةٍ.

L20928 And through the chain of Muslim: Salama ibn Shabib narrated to us, Al-Ḥasan ibn Aʿyan narrated to us, Maʿqil narrated to us via Abī Qazaʿah al-Bāhilī via Abī Naḍrah via Abī Saʿīd al-Khudrī, who mentioned the ḥadīth regarding dates, in which the Messenger of Allah (peace be upon him) said: "Sell their dates and buy for us from this."

وَمِنْ طَرِيقِ مُسْلِمٍ نا سَلَمَةُ بْنُ شَبِيبٍ نا الْحَسَنُ بْنُ أَعْيَنَ نا مَعْقِلٌ عَنْ أَبِي قَزَعَةَ الْبَاهِلِيِّ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ فَذَكَرَ حَدِيثَ التَّمْرِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «بِيعُوا تَمْرَهَا وَاشْتَرُوا لَنَا مِنْ هَذَا» .

L20929 From the path of Abu Dawud, who narrated to us: Hajjaj ibn Abi Yaʿqub al-Thaqafi narrated to us, Muʿalla ibn Mansur narrated to us, Abdullah ibn al-Mubarak narrated to us, Maʿmar narrated to us from al-Zuhri from Urwah ibn al-Zubayr from Umm Habibah, the Mother of the Believers, that she was married to Ubayd Allah ibn Jahsh, who died in the land of Abyssinia. The Negus married her to the Prophet (peace be upon him), gave her a dowry of four thousand on his behalf, and sent her to the Messenger of Allah (peace be upon him) with Shurahbil ibn Hasanah. This is a report transmitted through mass transmission.

وَمِنْ طَرِيقِ أَبِي دَاوُد نا حَجَّاجُ بْنُ أَبِي يَعْقُوبَ الثَّقَفِيُّ حَدَّثَنَا مُعَلَّى بْنُ مَنْصُورٍ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ حَدَّثَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أُمِّ حَبِيبَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ تَحْتَ عُبَيْدِ اللَّهِ بْنِ جَحْشٍ فَمَاتَ بِأَرْضِ الْحَبَشَةِ فَزَوَّجَهَا النَّجَاشِيُّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمْهَرَهَا عَنْهُ أَرْبَعَةَ آلَافٍ وَبَعَثَ بِهَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ شُرَحْبِيلَ بْنِ حَسَنَةَ - وَهَذَا خَبَرٌ مَنْقُولٌ نَقْلَ الْكَافَّةِ.

L20930 And he (peace be upon him) commanded retaliation for murder, stoning, flogging, and amputation [of the hand].

«وَأَمَرَ - عَلَيْهِ السَّلَامُ - بِأَخْذِ الْقَوَدِ، وَبِالرَّجْمِ، وَالْجَلْدِ، وَبِالْقَطْعِ» .

L20931 From the chain of Abu Dawud: Ubaydullah ibn Umar ibn Maysarah reported to us, from Hammad ibn Zayd, from Yahya ibn Saʿid al-Ansari, from Bashir ibn Yasar, from Sahl ibn Abi Hathma and Rafiʿ ibn Khadij: "Muhayyisa ibn Masʿud and Abdullah ibn Sahl set out for Khaybar and parted ways among the palm groves. Abdullah ibn Sahl was killed, and they accused the Jews. His brother Abd al-Rahman ibn Sahl and his cousins Huwayyisa and Muhayyisa came to the Messenger of Allah (peace and blessings be upon him). Abd al-Rahman spoke about his brother's matter though he was the youngest among them. The Messenger of Allah (peace and blessings be upon him) said: 'The elder, the elder!' or he said: 'Let the eldest begin.' So the two of them spoke about their companion's matter."

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُبَيْدُ اللَّهِ بْنِ عُمَرَ بْنِ مَيْسَرَةَ نا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعِ بْنِ خَدِيجٍ «أَنَّ مُحَيِّصَةَ بْنَ مَسْعُودٍ، وَعَبْدَ اللَّهِ بْنَ سَهْلٍ انْطَلَقَا إلَى خَيْبَرَ فَتَفَرَّقَا فِي النَّخْلِ فَقُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ فَاتَّهَمُوا الْيَهُودَ فَجَاءَ أَخُوهُ عَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ وَابْنَا عَمِّهِ حُوَيِّصَةُ وَمُحَيِّصَةُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَكَلَّمَ عَبْدُ الرَّحْمَنِ فِي أَمْرِ أَخِيهِ وَهُوَ أَصْغَرُهُمْ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْكُبْرَ الْكُبْرَ أَوْ قَالَ: لِيَبْدَأْ الْأَكْبَرُ؟ فَتَكَلَّمَا فِي أَمْرِ صَاحِبِهِمَا» .

L20932–20934 Abu Hanifah said: I do not accept the agency of a person who is present, nor of one who is absent for less than the travel distance that permits shortening prayers. There are three exceptions: unless the present individual or the aforementioned is ill, or unless the litigant consents. This contradicts the

Sunnah, imposes a restriction without evidence, and asserts a claim no one has expressed before.

وَقَالَ أَبُو حَنِيفَةَ: لَا أَقْبَلُ تَوْكِيلَ حَاضِرٍ، وَلَا مَنْ كَانَ غَائِبًا عَلَى أَقَلَّ مِنْ مَسِيرَةِ ثَلَاثٍ، إِلَّا أَنْ يَكُونَ الْحَاضِرُ، أَوْ مَنْ ذَكَرْنَا مَرِيضًا، إِلَّا بِرِضَى الْخَصْمِ - وَهَذَا خِلَافُ السُّنَّةِ وَتَحْدِيدٌ بِلَا بُرْهَانٍ وَقَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَ قَبْلَهُ.

L20935 The Mālikīs said: "We do not speak regarding rights except with the authorization of their owner"—but this is invalid due to what we have mentioned—and due to Allah's statement: {Be upholders of justice, witnesses for Allah} [4:135], and His saying: {Cooperate in righteousness and piety, and do not cooperate in sin and aggression} [5:2]. Therefore, rejecting oppression and demanding rights for present and absent parties is obligatory based on what we have mentioned, provided the present [party] has not relinquished his right—whether through authorization or without it. Asserting rights is obligatory, and the statement of one who says: 'Perhaps the owner does not wish to demand it' cannot prevent this obligation. It is said to him: "Allah the Exalted has commanded its pursuit; thus, this certainty cannot be nullified by mere speculative expectation."[1]

وَقَالَ الْمَالِكِيُّونَ: لَا نَتَكَلَّمُ فِي الْحُقُوقِ إِلَّا بِتَوْكِيلِ صَاحِبِهَا - وَهَذَا بَاطِلٌ لِمَا ذَكَرْنَا - وَلِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] . وقَوْله تَعَالَى: {وتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَوَاجِبٌ بِمَا ذَكَرْنَا إنْكَارُ الظُّلْمِ، وَطَلَبُ الْحَقِّ لِحَاضِرٍ وَغَائِبٍ، مَا لَمْ يَتْرُكْ حَقَّهُ الْحَاضِرَ - سَوَاءٌ بِتَوْكِيلٍ أَوْ بِغَيْرِ تَوْكِيلٍ. وَطَلَبُ الْحَقِّ قَدْ وَجَبَ، وَلَا يَمْنَعُ مِنْ طَلَبِهِ قَوْلُ الْقَائِلِ: لَعَلَّ صَاحِبَهُ لَا يُرِيدُ طَلَبَهُ، وَيُقَالُ لَهُ: قَدْ أَمَرَ اللَّهُ تَعَالَى بِطَلَبِهِ، فَلَا يُسْقِطُ هَذَا الْيَقِينَ مَا يَتَوَقَّعُهُ بِالظَّنِّ.

A Jurisprudential Case Concerning Proxy Authorization for Divorce.

[مَسْأَلَةُ الْوَكَالَةِ عَلَى طَلَاقٍ]

L20937 Issue: It is not permissible to appoint a proxy for divorce, for manumission, for conditional manumission, for revocation, for embracing Islam, for repentance, for admission, for denial, for contracting a gift, for pardoning, for discharge of debt, for contracting a suretyship, for apostasy, for false accusation of adultery, for reconciliation, or for contracting a valid marriage without identifying the bride and groom. This is because all such acts involve imposing a ruling that was never binding, dissolving an existing contract, or transferring ownership through mere words.

١٣٦٣ - مَسْأَلَةٌ: وَلَا تَجُوزُ وَكَالَةٌ عَلَى طَلَاقٍ، وَلَا عَلَى عِتْقٍ، وَلَا عَلَى تَدْبِيرٍ، وَلَا عَلَى رَجْعَةٍ، وَلَا عَلَى إسْلَامٍ، وَلَا عَلَى تَوْبَةٍ، وَلَا عَلَى إقْرَارٍ، وَلَا عَلَى إنْكَارٍ، وَلَا عَلَى عَقْدِ الْهِبَةِ، وَلَا عَلَى الْعَفْوِ، وَلَا عَلَى الْإِبْرَاءِ، وَلَا عَلَى عَقْدِ ضَمَانٍ، وَلَا عَلَى رِدَّةٍ، وَلَا عَلَى قَذْفٍ، وَلَا عَلَى صُلْحٍ، وَلَا عَلَى إنْكَاحِ مُطَاقٍ بِغَيْرِ تَسْمِيَةِ الْمُنْكَحَةِ وَالنَّاكِحِ؛ لِأَنَّ كُلَّ ذَلِكَ إلْزَامُ حُكْمٍ لَمْ يَلْزَمْ قَطُّ، وَحَلُّ عَقْدٍ ثَابِتٍ، وَنَقْلُ مِلْكٍ بِلَفْظٍ.

L20938 It is not permissible for anyone to speak on behalf of another unless a textual evidence obligates it. Nor is there any textual evidence explicitly permitting agency in any of these cases.

فَلَا يَجُوزُ أَنْ يَتَكَلَّمَ أَحَدٌ عَنْ أَحَدٍ إلَّا حَيْثُ أَوْجَبَ ذَلِكَ نَصٌّ، وَلَا نَصَّ عَلَى جَوَازِ الْوَكَالَةِ فِي شَيْءٍ مِنْ هَذِهِ الْوُجُوهِ.

[1] **Qur'an references (L20935):** Qur'an 4:135 (An-Nisa); Qur'an 5:2 (Al-Ma'idah).

L20939 The fundamental principle is that it is impermissible for anyone to make a claim against another or pass judgment upon another, as per the statement of Allah, the Exalted: {No soul bears a burden except against itself, nor does any laden soul bear another's burden} [Al-An'ām 6:164]. All that we have mentioned constitutes imposing a burden on another and enforcing a false judgment that one executes upon another. And success is from Allah, the Exalted.[2]

وَالْأَصْلُ أَنْ لَا يَجُوزَ قَوْلُ أَحَدٍ عَلَى غَيْرِهِ، وَلَا حُكْمُهُ عَلَى غَيْرِهِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] وَكُلُّ مَا ذَكَرْنَا كَسْبٌ عَلَى غَيْرِهِ وَحُكْمٌ بِالْبَاطِلِ يُمْضِيهِ أَحَدٌ عَلَى أَحَدٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L20940 **A ruling: It is impermissible for an agent to exceed the instructions of his principal.**

[مَسْأَلَةٌ لَا يَحِلُّ لِلْوَكِيلِ تَعَدِّي مَا أَمَرَهُ بِهِ مُوَكِّلُهُ]

L20941–20943 1364. Issue: It is not permissible for an agent to exceed the limits of what his principal has authorized him to do. If he does so, his action is invalid. If it results in a loss, he is liable for compensation, based on Allah's statement—the Exalted: {And do not transgress. Indeed, Allah does not love transgressors} [Al-Baqarah: 190], and Allah, the Exalted, says: {So whoever has transgressed against you, then transgress against him in the same manner as he transgressed against you} [Al-Baqarah: 194]. It is therefore established that if a principal instructs his agent to purchase something on his behalf at a specified price or to sell it on his behalf, the agent must adhere strictly to those terms. If [the agent acts] for a specified price, then sells or buys it for more or less—even by a fals—the deviation is not binding on the principal. The sale is not valid for the principal at all, nor does the sale take effect, because the agent was not authorized to do so.[3]

١٣٦٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْوَكِيلِ تَعَدِّي مَا أَمَرَهُ بِهِ مُوَكِّلُهُ فَإِنْ فَعَلَ لَمْ يَنْفُذْ فِعْلُهُ فَإِنْ فَاتَ ضَمِنَ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [البقرة: ١٩٠] وَلِقَوْلِهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَوَجَبَ مِنْ هَذَا أَنَّ مَنْ أَمَرَهُ مُوَكِّلُهُ بِأَنْ يَبْتَاعَ لَهُ شَيْئًا بِثَمَنٍ مُسَمًّى، أَوْ يَبِيعَهُ لَهُ بِثَمَنٍ مُسَمًّى، فَبَاعَهُ أَوْ ابْتَاعَهُ بِأَكْثَرَ أَوْ بِأَقَلَّ - وَلَوْ بِفَلْسٍ - فَمَا زَادَ لَمْ يَلْزَمْ الْمُوَكِّلَ، وَلَمْ يَكُنْ الْبَيْعُ لَهُ أَصْلًا، وَلَمْ يَنْفُذْ الْبَيْعُ؛ لِأَنَّهُ لَمْ يُؤْمَرْ بِذَلِكَ.

L20944 If he appoints him as an agent to sell or purchase on his behalf, then if he purchases for him at an equivalent value or sells at that value, it is binding. Otherwise, it is rejected. Similarly, if someone purchases for another or sells for him without being commanded to do so, the sale is not binding at all, and the other party may not ratify it, as such ratification is invalid and impermissible. The purchase remains binding upon the agent. Any opinion contrary to this is a claim without proof and a ruling based on falsehood.

فَلَوْ وَكَّلَهُ عَلَى أَنْ يَبِيعَ لَهُ أَوْ يَبْتَاعَ لَهُ، فَإِنْ ابْتَاعَ لَهُ بِمَا يُسَاوِي، أَوْ بَاعَ بِذَلِكَ لَزِمَ، وَإِلَّا فَهُوَ مَرْدُودٌ - وَكَذَلِكَ مَنْ ابْتَاعَ لِآخَرَ، أَوْ بَاعَ لَهُ بِغَيْرِ أَنْ يَأْمُرَهُ لَمْ يَلْزَمْ فِي الْبَيْعِ أَصْلًا، وَلَا جَازَ لِلْآخَرِ إمْضَاؤُهُ؛ لِأَنَّهُ إمْضَاءٌ بَاطِلٌ لَا يَجُوزُ، وَكَانَ الشِّرَاءُ لَازِمًا لِلْوَكِيلِ - وَمَا عَدَا هَذَا فَقَوْلٌ بِلَا بُرْهَانٍ، وَحُكْمٌ بِالْبَاطِلِ.

[2] **Qur'an references (L20939):** Qur'an 6:164 (Al-An'am).

[3] **Qur'an references (L20941):** Qur'an 2:190 (Al-Baqarah); Qur'an 5:87 (Al-Ma'idah); Qur'an 2:194 (Al-Baqarah).

L20945 A group argued for the permissibility of that by citing the hadiths of Urwah al-Bāriqī and Ḥakīm ibn Ḥizām: "The Messenger of Allah (peace be upon him) commanded each of them to purchase a sheep for him with a dinar. Each purchased two sheep, sold one of them for a dinar, and brought the dinar to the Prophet (peace be upon him) along with the sheep." These are two disconnected (broken-chain) reports that are not valid.

A Jurisprudential Ruling on the Acts of the Agent

L20946–20947

L20948 Issue: The agent's action is valid in matters the principal has authorized and remains binding on the principal unless the agent validly ascertains that his appointment has been revoked. Once this is confirmed, the legal effect of his actions ceases from that moment, and what he performed is annulled.

L20949 As for all actions the agent performed as instructed by the principal from the time of his dismissal until he received notification of it, they are valid regardless of whether the period between those two events was long or short.

L20950–20951 The same ruling applies to the Imam's dismissal of a commander, governor, or judge, and to the dismissal by these authorities of those whose appointment was delegated to them. There is no legal distinction – for he dismissed him without notifying him after having appointed him and granted him unrestricted authority over selling, purchasing, slaughtering, legal retribution, and marriage to a specifically named woman or man. This constitutes deception and cheating. Allah the Exalted said: "They deceive Allah and those who believe, but they deceive none except themselves" [Al-Baqarah: 9].[4]

L20952 The Messenger of Allah (peace be upon him) said: "Whoever deceives us is not one of us." Therefore, the dismissal of his agent by the principal is invalid unless he declares verbally, writes to him, or instructs someone to inform him: "When my messenger reaches you, I have dismissed you." This is valid because the principal has the right to manage his own rights as he wills. Once the notice reaches the agent, the dismissal becomes legally effective. The opposing litigant has no right to prevent the principal from

[4]**Qur'an references (L20951):** Qur'an 2:9 (Al-Baqarah).

وَاحْتَجَّ قَوْمٌ فِي إِجَازَةِ ذَلِكَ بِحَدِيثِ عُرْوَةَ الْبَارِقِيِّ، وَحَكِيمِ بْنِ حِزَامٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ كُلَّ وَاحِدٍ مِنْهُمَا بِأَنْ يَبْتَاعَ لَهُ شَاةً بِدِينَارٍ فَابْتَاعَ شَاتَيْنِ فَبَاعَ أَحَدَهُمَا بِدِينَارٍ وَأَتَى بِهِ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِالشَّاةِ» وَهُمَا خَبَرَانِ مُنْقَطِعَانِ لَا يَصِحَّانِ.

[مَسْأَلَةُ فِعْلُ الْوَكِيلِ]

مَسْأَلَةٌ: وَفِعْلُ الْوَكِيلِ نَافِذٌ فِيمَا أَمَرَ بِهِ الْمُوَكِّلُ لَازِمٌ لِلْمُوَكِّلِ مَا لَمْ يَصِحَّ عِنْدَهُ أَنَّ مُوَكِّلَهُ قَدْ عَزَلَهُ، فَإِذَا صَحَّ ذَلِكَ عِنْدَهُ لَمْ يَنْفُذْ حُكْمُهُ مِنْ حِينَئِذٍ وَيَفْسَخُ مَا فَعَلَ.

وَأَمَّا كُلُّ مَا فَعَلَ مِمَّا أَمَرَهُ بِهِ الْمُوَكِّلُ مِنْ حِينِ عَزْلِهِ إِلَى حِينِ بُلُوغِ الْخَبَرِ إِلَيْهِ فَهُوَ نَافِذٌ طَالَتْ الْمُدَّةُ بَيْنَ ذَلِكَ أَوْ قَصُرَتْ.

وَهَكَذَا الْقَوْلُ فِي عَزْلِ الْإِمَامِ لِلْأَمِيرِ، وَلِلْوَالِي، وَلِلْقَاضِي، وَفِي عَزْلِ هَؤُلَاءِ لِمَنْ جُعِلَ إلَيْهِمْ أَنْ يُوَلُّوهُ وَلَا فَرْقَ - لِأَنَّهُ عَزَلَهُ بِغَيْرِ أَنْ يُعْلِمَهُ بَعْدَ أَنْ وَلَّاهُ وَأَطْلَقَهُ عَلَى الْبَيْعِ، وَعَلَى الِابْتِيَاعِ، وَعَلَى التَّذْكِيَةِ، وَالْقِصَاصِ، وَالْإِنْكَاحِ لِمُسَمَّاةٍ وَمُسَمًّى -: خَدِيعَةٌ وَغِشٌّ، قَالَ اللَّهُ تَعَالَى: {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ غَشَّنَا فَلَيْسَ مِنَّا» فَعَزْلُهُ لَهُ بَاطِلٌ إلَّا أَنْ يَقُولَ، أَوْ يَكْتُبَ إلَيْهِ أَوْ يُوصِي إلَيْهِ: إذَا بَلَغَك رَسُولِي فَقَدْ عَزَلْتُك - فَهَذَا صَحِيحٌ؛ لِأَنَّ لَهُ أَنْ يَتَصَرَّفَ فِي حُقُوقِ نَفْسِهِ كَمَا يَشَاءُ، فَإِذَا بَلَغَهُ فَقَدْ صَحَّ عَزْلُهُ، وَلَيْسَ لِلْخَصْمِ

dismissing his agent and appointing another, for the agency appointment in such matters is valid. There is no proof that the opposing litigant may obstruct the principal from dismissing whoever he chooses or appointing whoever he wishes.

L20953 If it is said: "There is harm upon the litigant in this?" We respond: There is absolutely no harm to the litigant in this whatsoever. Rather, all harm lies in preventing a person from pursuing their rights without a Quranic proof that necessitates such prevention or a Sunnah—for this is the divine law that Allah the Exalted has not permitted.

L20954 **Issue: The agency becomes void upon the death of the principal.**

L20955 1366 – Issue:

L20956–20958 The agency is nullified by the death of the appointing party, whether this reaches the agent or not—unlike the death of the Imam. If he dies, all rulers' rulings remain in effect until the succeeding Imam dismisses them. This is based on Allah's statement: {No soul bears the burden of another} [Al-An'am 6:164]. The wealth transfers to the heirs upon the appointing party's death, so no ruling by someone they did not appoint is permissible over their wealth. This does not apply to the Imam, for Muslims must have someone to manage their affairs, "and indeed, the commanders of the Messenger of Allah—peace and blessings be upon him—were killed…" He was pleased with all of them at Mu'tah. Then Khālid ibn al-Walīd took charge of the matter without having been appointed by the Messenger of Allah (peace and blessings of Allah be upon him) until he returned with the Muslims, and he (peace be upon him) approved of that. He (peace be upon him) had died while his governors were in Yemen, Makkah, Bahrain, and other regions, and their judgments were implemented before news of his death (peace be upon him) reached them. None of the Companions disagreed on that (may Allah be pleased with them), and with Allah, the Exalted, lies all success.[5]

أَنْ يَمْنَعَ مَنْ يُخَاصِمُهُ مِنْ عَزْلِ وَكِيلِهِ وَتَوْلِيَةِ آخَرَ؛ لِأَنَّ التَّوْكِيلَ فِي ذَلِكَ قَدْ صَحَّ، وَلَا بُرْهَانَ عَلَى أَنَّ لِلْخَصْمِ مَنْعَهُ مِنْ عَزْلِ مَنْ شَاءَ وَتَوْلِيَةِ مَنْ شَاءَ.

فَإِنْ قِيلَ: إِنَّ فِي ذَلِكَ ضَرَرًا عَلَى الْخَصْمِ؟ قُلْنَا: لَا ضَرَرَ عَلَيْهِ فِي ذَلِكَ أَصْلًا، بَلْ الضَّرَرُ كُلُّهُ هُوَ الْمَنْعُ مِنْ تَصَرُّفِ الْمَرْءِ فِي طَلَبِ حُقُوقِهِ بِغَيْرِ قُرْآنٍ أَوْجَبَ ذَلِكَ، وَلَا سُنَّةٍ - وَهَذَا هُوَ الشَّرْعُ الَّذِي لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ.

[مَسْأَلَةٌ الْوَكَالَةُ تَبْطُلُ بِمَوْتِ الْمُوَكِّلِ]

١٣٦٦ - مَسْأَلَةٌ:

وَالْوَكَالَةُ تَبْطُلُ بِمَوْتِ الْمُوَكِّلِ بَلَغَ ذَلِكَ إلَى الْوَكِيلِ، أَوْ لَمْ يَبْلُغْ بِخِلَافِ مَوْتِ الْإِمَامِ، فَإِنَّهُ إنْ مَاتَ فَالْوُلَاةُ كُلُّهُمْ نَافِذَةٌ أَحْكَامُهُمْ حَتَّى يَعْزِلَهُمْ الْإِمَامُ الْوَالِي، وَذَلِكَ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَالْمَالُ قَدْ انْتَقَلَ بِمَوْتِ الْمُوَكِّلِ إلَى وَرَثَتِهِ، فَلَا يَجُوزُ فِي مَالِهِمْ حُكْمُ مَنْ لَمْ يُوَكِّلُوهُ، وَلَيْسَ كَذَلِكَ الْإِمَامُ؛ لِأَنَّ الْمُسْلِمِينَ لَا بُدَّ لَهُمْ مِمَّنْ يَقُومُ بِأَمْرِهِمْ، «وَقَدْ قُتِلَ أُمَرَاءُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَضِيَ عَنْهُمْ بِمُؤْتَةَ كُلُّهُمْ فَتَوَلَّى الْأَمْرَ خَالِدُ بْنُ الْوَلِيدِ مِنْ غَيْرِ أَنْ يُؤَمِّرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى رَجَعَ بِالْمُسْلِمِينَ وَصَوَّبَ - عَلَيْهِ السَّلَامُ - ذَلِكَ» وَقَدْ مَاتَ - عَلَيْهِ السَّلَامُ - وَوُلَاتُهُ بِالْيَمَنِ، وَمَكَّةَ، وَالْبَحْرَيْنِ، وَغَيْرِهَا، فَنَفَذَتْ أَحْكَامُهُمْ قَبْلَ أَنْ يَبْلُغَهُمْ مَوْتُهُ - عَلَيْهِ السَّلَامُ - وَلَمْ يَخْتَلِفْ فِي ذَلِكَ أَحَدٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[5] **Qur'an references (L20956):** Qur'an 6:164 (Al-An'am).



AL-MUHALLA

كِتَابُ الْمُضَارَبَةِ وَهِيَ الْقِرَاضُ

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

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[كِتَابُ الْمُضَارَبَةِ وَهِيَ الْقِرَاضُ] [مَسْأَلَةٌ الْقِرَاضُ كَانَ فِي الْجَاهِلِيَّةِ]

١٣٦٧ - مَسْأَلَةٌ: الْقِرَاضُ كَانَ فِي الْجَاهِلِيَّةِ، وَكَانَتْ قُرَيْشٌ أَهْلَ تِجَارَةٍ لَا مَعَاشَ لَهُمْ مِنْ غَيْرِهَا وَفِيهِمْ الشَّيْخُ الْكَبِيرُ الَّذِي لَا يُطِيقُ السَّفَرَ، وَالْمَرْأَةُ وَالصَّغِيرُ، وَالْيَتِيمُ، فَكَانُوا وَذَوُو الشُّغْلِ وَالْمَرَضِ يُعْطُونَ الْمَالَ مُضَارَبَةً لِمَنْ يَتَّجِرُ بِهِ بِجُزْءٍ مُسَمًّى مِنْ الرِّبْحِ فَأَقَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ فِي الْإِسْلَامِ وَعَمِلَ بِهِ الْمُسْلِمُونَ عَمَلًا مُتَيَقَّنًا لَا خِلَافَ فِيهِ، وَلَوْ وُجِدَ فِيهِ خِلَافٌ مَا الْتَفَتَ إلَيْهِ؛ لِأَنَّهُ نَقْلُ كَافَّةٍ بَعْدَ كَافَّةٍ إلَى زَمَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعِلْمِهِ بِذَلِكَ.

«وَقَدْ خَرَجَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قِرَاضٍ بِمَالِ خَدِيجَةَ - رَضِيَ اللَّهُ عَنْهَا -» .

[مَسْأَلَةٌ الْقِرَاضُ بِالدَّنَانِيرِ وَالدَّرَاهِمِ]

١٣٦٨ - مَسْأَلَةٌ: وَالْقِرَاضُ إنَّمَا هُوَ بِالدَّنَانِيرِ وَالدَّرَاهِمِ - وَلَا يَجُوزُ بِغَيْرِ ذَلِكَ، إلَّا بِأَنْ يُعْطِيَهُ الْعَرَضَ فَيَأْمُرُهُ بِبَيْعِهِ بِثَمَنٍ مَحْدُودٍ، وَبِأَنْ يَأْخُذَ الثَّمَنَ فَيَعْمَلُ بِهِ قِرَاضًا، لِأَنَّ هَذَا مُجْمَعٌ عَلَيْهِ، وَمَا عَدَاهُ مُخْتَلَفٌ فِيهِ وَلَا نَصَّ بِإِيجَابِهِ، وَلَا حُكْمَ لِأَحَدٍ فِي مَالِهِ إلَّا بِمَا أَبَاحَهُ لَهُ النَّصُّ.

وَمِمَّنْ مَنَعَ مِنْ الْقِرَاضِ بِغَيْرِ الدَّنَانِيرِ، وَالدَّرَاهِمِ: الشَّافِعِيُّ، وَمَالِكٌ، وَأَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ.

[مَسْأَلَةٌ الْقِرَاضُ إلَى أَجَلٍ مُسَمًّى]

L20959–20960 **Book on Mudarabah (Qirad) Issue: Qirad was practiced during the pre-Islamic era.**

L20961 Issue 1367: The qirāḍ (commenda partnership, also known as muḍāraba) existed during the pre-Islamic era. The Quraysh were a trading people who had no livelihood apart from commerce. Among them were the elderly man too frail to travel, women, minors, orphans, those preoccupied with responsibilities, and the infirm. They would entrust their wealth through a muḍāraba arrangement to those who traded with it, in exchange for a specified share of the profits. The Messenger of Allah (peace be upon him) ratified this practice in Islam, and Muslims upheld it with certainty. Had there been any disagreement about it, no heed would have been given to such dissent, for its validity was transmitted through successive generations up to the time of the Messenger of Allah (peace be upon him) and his explicit acknowledgment of it.

L20962 He (peace be upon him) ventured into a qiraḍ partnership using Khadijah's wealth (may Allah be pleased with her).

L20963 **[A question regarding Mudarabah with Dinars and Dirhams]**

L20964 Issue 1368: The commenda partnership (qirad) is valid exclusively with dinars and dirhams. It is impermissible with other forms except when one gives merchandise to another and instructs him to sell it for a fixed price, or when one takes the price and invests it in a qirad. This is because such practice is unanimously agreed upon, while alternatives remain disputed. No text requires it, nor does anyone have authority over his own property except what the text has permitted.

L20965 Al-Shāfiʿī, Mālik, Abū Ḥanīfah, Abū Sulaymān, and others prohibited conducting qirāḍ (commenda partnership) with anything other than the dinars and dirhams.

L20966 **Issue: *Qirad* Contract for a Fixed Term**

L20967 1369 – Issue: It is fundamentally impermissible to establish a commenda partnership (qirāḍ) for a specified term, except that which is established by a textual source or consensus (ijmāʿ).

١٣٦٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْقِرَاضُ إلَى أَجَلٍ مُسَمًّى أَصْلًا إلَّا مَا جَاءَ بِهِ نَصٌّ، أَوْ إجْمَاعٌ.

L20968 It is impermissible to stipulate [the inclusion of] a slave or hired worker who labors alongside him, or a share of profits for so-and-so, for this is a condition not in the Book of Allah, the Exalted and Majestic, and is therefore invalid.

وَلَا يَجُوزُ أَنْ يَشْتَرِطَ عَبْدًا يَعْمَلُ مَعَهُ، أَوْ أَجِيرًا يَعْمَلُ مَعَهُ، أَوْ جُزْءًا مِنْ الرِّبْحِ لِفُلَانٍ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

L20969–20970 As for the Mālikīs and Shāfiʿīs, they contradicted each other here: they held the same view as we do regarding *qirāḍ* (commenda partnership), but asserted that *musāqāt* (orchard-sharing contract) is not permissible at all except with a specified term.

وَأَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: فَتَنَاقَضُوا هَهُنَا فَقَالُوا فِي الْقِرَاضِ كَمَا قُلْنَا، وَقَالُوا فِي " الْمُسَاقَاةِ " لَا تَجُوزُ أَلْبَتَّةَ إلَّا إلَى أَجَلٍ مُسَمًّى.

L20971 Similarly, they stated regarding "sharecropping" in the context where they permitted it - there being no distinction between any aspect of this - alongside their disagreement over "sharecropping" and "orchard partnership" concerning the Sunnah pertaining to that, and their abandonment of analogy as well. And success comes solely from Allah, the Exalted.

وَكَذَلِكَ قَالُوا فِي " الْمُزَارَعَةِ " فِي الْمَوْضِعِ الَّذِي أَجَازُوهَا فِيهِ - وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ مَعَ خِلَافِهِمْ فِي " الْمُزَارَعَةِ " و " الْمُسَاقَاةِ " السُّنَّةَ الْوَارِدَةَ فِي ذَلِكَ، وَتَرَكُوا الْقِيَاسَ أَيْضًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20972 **An issue concerning the designation of the profit share that the two parties mutually stipulate.**

[مَسْأَلَةٌ تَسْمِيَةَ السَّهْمِ الَّذِي يَتَقَارَضَانِ عَلَيْهِ مِنْ الرِّبْحِ]

L20973 1370 - Issue: A *qirad* contract is only valid if both parties specify the share from the profit they mutually agree upon—such as a sixth, quarter, third, half, or similar—and specify the portion each of them receives from the profit. If this condition is not met, the contract is neither a valid *qirad* nor a customary practice that the worker follows, and thus it is void. Success is by Allah, the Most High.

١٣٧٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْقِرَاضُ إلَّا بِأَنْ يُسَمِّيَا السَّهْمَ الَّذِي يَتَقَارَضَانِ عَلَيْهِ مِنْ الرِّبْحِ، كَسُدُسٍ، أَوْ رُبُعٍ، أَوْ ثُلُثٍ، أَوْ نِصْفٍ، أَوْ نَحْوِ ذَلِكَ، وَيُبَيِّنَا مَا لِكُلِّ وَاحِدٍ مِنْهُمَا مِنْ الرِّبْحِ؛ لِأَنَّهُ إنْ لَمْ يَكُنْ هَكَذَا لَمْ يَكُنْ قِرَاضًا وَلَا عُرْفًا مَا يَعْمَلُ الْعَامِلُ عَلَيْهِ فَهُوَ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L20974 **A legal issue: It is not permissible for the agent of a commenda to take anything from the capital.**

[مَسْأَلَةٌ لَا يَحِلُّ لِعَامِلِ الْقِرَاضِ أَنْ يَأْكُلَ مِنْ الْمَالِ شَيْئًا]

L20975 Issue 1371: It is impermissible for a public official to consume or wear anything from public wealth, whether during travel or at home.

١٣٧١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْعَامِلِ أَنْ يَأْكُلَ مِنْ الْمَالِ شَيْئًا وَلَا أَنْ يَلْبَسَ مِنْهُ شَيْئًا، لَا فِي سَفَرٍ وَلَا فِي حَضَرٍ.

L20976 It has been reported to us through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Hishām ibn Ḥassān, from Ibn Sīrīn, who said: Whatever the *mudārib* (working partner) eats is a debt upon him.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ ابْنِ سِيرِينَ قَالَ: مَا أَكَلَ الْمُضَارِبُ فَهُوَ دَيْنٌ عَلَيْهِ.

L20977 It is soundly established from Ibrāhīm and al-Ḥasan: his maintenance must be provided from the entirety of the estate. Ibrāhīm said, "His clothing is likewise from it." Ibn Sīrīn said, "This is not the case."

وَصَحَّ عَنْ إِبْرَاهِيمَ، وَالْحَسَنِ: أَنَّ نَفَقَتَهُ مِنْ جَمِيعِ الْمَالِ - قَالَ إِبْرَاهِيمُ: وَكِسْوَتُهُ كَذَلِكَ قَالَ ابْنُ سِيرِينَ لَيْسَ كَذَلِكَ.

L20978 Our opinion here is the opinion of Al-Shāfiʿī, Aḥmad, and Abī Sulaymān.

وَقَوْلُنَا هَهُنَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ.

L20979 Abu Hanifa and Malik said: As for while in residence, it is as we have stated, but during travel, he may eat from it, clothe himself from it, and ride from it in a customary manner—if the property is abundant—otherwise, he may not. However, Malik said: He may use small coins from it to sustain himself while in residence.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: أَمَّا فِي الْحَضَرِ فَكَمَا قُلْنَا، وَأَمَّا فِي السَّفَرِ فَيَأْكُلُ مِنْهُ وَيَكْتَسِي مِنْهُ وَيَرْكَبُ مِنْهُ بِالْمَعْرُوفِ - إِذَا كَانَ الْمَالُ كَثِيرًا - وَإِلَّا فَلَا، إِلَّا أَنَّ مَالِكًا قَالَ: لَهُ فِي الْحَضَرِ أَنْ يَتَغَذَّى مِنْهُ بِالْأَفْلُسِ.

L20980 This is an utterly invalid categorization because it lacks any proof. I wish I knew—what is the measure of the large amount of wealth for which they permitted this, and what is the measure of the small amount for which they prohibited it? All of this is invalid because it is a condition not found in the Book of Allah Almighty, so stipulating such a condition is impermissible. If no such condition is stipulated, then it constitutes wrongful consumption of wealth.

وَهَذَا تَقْسِيمٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ بِلَا دَلِيلٍ، وَلَيْتَ شِعْرِي مَا مِقْدَارُ الْمَالِ الْكَثِيرِ الَّذِي أَبَاحُوا هَذَا فِيهِ؟ وَمَا مِقْدَارُ الْقَلِيلِ الَّذِي مَنَعُوهُ فِيهِ؟ وَهَذَا كُلُّهُ بَاطِلٌ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَلَا يَجُوزُ اشْتِرَاطُهُ - فَإِنْ لَمْ يُشْتَرَطْ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L20981 Moreover, the wealth becomes uncertain, so one cannot discern what is spent from it or what remains. A small amount of what is ḥarām (unlawful) remains ḥarām—even if it is as insignificant as a speck—and a large amount of what is ḥalāl (lawful) remains ḥalāl—even if it encompasses the entire world and all that it contains.

ثُمَّ أَيْضًا يَعُودُ الْمَالُ إِلَى الْجَهَالَةِ فَلَا يَدْرِي مَا يَخْرُجُ مِنْهُ؟ وَلَا مَا يَبْقَى مِنْهُ؟ وَقَلِيلُ الْحَرَامِ حَرَامٌ - وَلَوْ أَنَّهُ مِقْدَارُ ذَرَّةٍ، وَكَثِيرُ الْحَلَالِ حَلَالٌ - وَلَوْ أَنَّهُ الدُّنْيَا وَمَا فِيهَا.

L20982 What if they say he is striving for the benefit of the wealth?

فَإِنْ قَالُوا هُوَ سَاعٍ فِي مَصْلَحَةِ الْمَالِ؟

L20983–20984 We said: Yes, so what ensued? He is merely striving for a gain he hopes to attain, as he acts only for his own interest.

قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَإِنَّمَا هُوَ سَاعٍ لِرِبْحٍ يَرْجُوهُ، فَإِنَّمَا يَسْعَى فِي حَظِّ نَفْسِهِ.

L20985 **A scenario where the capital owner and the working partner shared the profit.**

[مَسْأَلَةُ صَاحِبِ الْمَالِ وَالْعَامِلِ اقْتَسَمَا الرِّبْحَ]

L20986 1372 - Issue: Every profit they acquire may be divided between them. If they do not divide it and leave the matter as is, then a loss occurs in the capital, the active partner is entitled to no profit. If they divide the profit, each of them owns their respective share, and their ownership is not forfeited, since their transaction was predicated on each partner being entitled to a share of the profit. If they divide it, this constitutes their contract mutually agreed upon as permissible. If they do not divide it, they have waived their right to it, and this is permissible.

١٣٧٢ - مَسْأَلَةٌ: وَكُلُّ رِبْحٍ رَبِحَاهُ فَلَهُمَا أَنْ يَتَقَاسَمَاهُ، فَإِنْ لَمْ يَفْعَلَا وَتَرَكَا الْأَمْرَ بِحَسَبِهِ ثُمَّ خَسِرَ فِي الْمَالِ فَلَا رِبْحَ لِلْعَامِلِ، وَأَمَّا إذَا اقْتَسَمَا الرِّبْحَ فَقَدْ مَلَكَ كُلُّ وَاحِدٍ مِنْهُمَا مَا صَارَ لَهُ، فَلَا يَسْقُطُ مِلْكُهُ عَنْهُ؛ لِأَنَّهُمَا عَلَى هَذَا تَعَامَلَا، وَعَلَى أَنْ يَكُونَ لِكُلِّ وَاحِدٍ مِنْهُمَا حَظٌّ مِنْ الرِّبْحِ، فَإِذَا اقْتَسَمَاهُ فَهُوَ عَقْدُهُمَا الْمُتَّفَقُ عَلَى جَوَازِهِ، فَإِنْ لَمْ يَقْتَسِمَاهُ فَقَدْ تَطَوَّعَا بِتَرْكِ حَقِّهِمَا وَذَلِكَ مُبَاحٌ.

[مَسْأَلَةٌ لَا ضَمَانَ عَلَى الْعَامِلِ فِيمَا تَلِفَ مِنْ الْمَالِ]

L20987 **Issue: There is no liability upon the custodian for property that perished.**

L20988 Issue 1373: The worker bears no liability for property that is lost - even if all of it is lost - nor for losses incurred in its management. They have no claim against the property owner unless they exceed their authority or neglect [their duty], in which case they become liable. This is based on the statement of Allah's Messenger - peace and blessings be upon him: "Your blood and your wealth are sacred to you."

١٣٧٣ - مَسْأَلَةٌ: وَلَا ضَمَانَ عَلَى الْعَامِلِ فِيمَا تَلِفَ مِنْ الْمَالِ - وَلَوْ تَلِفَ كُلُّهُ - وَلَا فِيمَا خَسِرَ فِيهِ، وَلَا شَيْءَ لَهُ عَلَى رَبِّ الْمَالِ، إلَّا أَنْ يَتَعَدَّى أَوْ يُضَيِّعَ فَيَضْمَنُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

[مَسْأَلَةٌ رَبّ الْمَال وَعَامِل الْقِرَاض أَيُّهُمَا أَرَادَ تَرْكَ الْعَمَلِ فَلَهُ ذَلِكَ]

L20989 **A legal question: If the capital owner or the working partner in a *qirad* wishes to withdraw from the partnership, whichever of the two seeks to do so has that right.**

١٣٧٤ - مَسْأَلَةٌ:

L20990 1374: Issue

وَأَيُّهُمَا أَرَادَ تَرْكَ الْعَمَلِ فَلَهُ ذَلِكَ وَيُجْبَرُ الْعَامِلُ عَلَى بَيْعِ السِّلَعِ مُعَجِّلًا - خَسِرَ أَوْ رَبِحَ - لِأَنَّهُ لَا مُدَّةَ فِي الْقِرَاضِ، فَإِذْ لَيْسَ فِيهِ مُدَّةٌ فَلَا يَجُوزُ أَنْ يُجْبَرَ الْآبِي مِنْهُمَا عَلَى التَّمَادِي فِي عَمَلٍ لَا يُرِيدُهُ أَحَدُهُمَا فِي مَالِهِ، وَلَا يُرِيدُهُ الْآخَرُ فِي عَمَلِهِ، وَلَا يَجُوزُ التَّأْخِيرُ فِي ذَلِكَ؛ لِأَنَّهُ لَا يَدْرِي كَمْ يَكُونُ التَّأْخِيرُ؟ وَقَدْ تَسْمُو قِيمَةُ السِّلَعِ، وَقَدْ تَنْحَطُّ، فَإِيجَابُ التَّأْخِيرِ فِي ذَلِكَ خَطَأٌ، وَلَا يَلْزَمُ أَحَدًا أَنْ يُبِيحَ مَالَهُ لِغَيْرِهِ لِيُمَوِّلَهُ بِهِ. وَالْعَجَبُ مِمَّنْ

L20991 Whichever of them wishes to terminate the transaction may do so, and the agent is compelled to sell the goods immediately—whether at a loss or profit—because the *qirad* has no stipulated duration. Since no duration is specified, neither of the two parties may be compelled to persist in a transaction that one rejects for their capital or the other for their labor. Postponement in this matter is impermissible, for how long the delay might be is unknown. The value of the goods may rise or fall, and thus imposing postponement here is erroneous. No one is obligated to permit another to utilize their wealth for financing. It is perplexing that some enforce compelling the capital owner to wait until the goods find a market—thereby financing the

agent with another's wealth—while they do not deem it obligatory to compel one to assist relatives or others facing starvation by providing sustenance. This is contrary to established realities—and success is attained only through Allah, the Exalted.

A case where the mudarib in the mudarabah overstepped his authority and thereby profited.

Question 1375:

If the agent transgresses and thereby profits, and if he purchased on his own liability by drawing funds from the commenda capital, his legal status is that of a usurper. He becomes liable for the entire capital if it perishes or for what is lost from it due to his transgression, and the profit belongs to him because he undertook the purchase.

If he purchased something using the qirad (commenda) capital itself, the transaction is null and void. If the investor (owner of the capital) cannot be identified from it, the profit is allocated to the needy, as it is wealth with no identifiable owner.

This is the opinion of Al-Nakha'i, Al-Sha'bi, Hammad ibn Abi Sulayman, Ibn Shubrumah, and Abu Sulayman. And by Allah, the Exalted, is success.

A legal case involving the death of both the capital owner and the qirāḍ agent.

Issue: Moreover, if either of them dies, the *qirad* contract becomes void. As for the death of the capital provider, this is because the capital has passed to the heirs. The Messenger of Allah (peace be upon him) said: "Your blood and your wealth are sacred for you."

أَلْزَمَ هَهُنَا إِجْبَارَ صَاحِبِ الْمَالِ عَلَى الصَّبْرِ حَتَّى يَكُونَ لِلسِّلَعِ سُوقٌ لِيُمَوِّلَ بِذَلِكَ الْعَامِلَ مِنْ مَالِ غَيْرِهِ، وَهُوَ لَا يَرَى إِجْبَارَهُ عَلَى تَدَارُكِ مَنْ يَمُوتُ جُوعًا مِنْ ذَوِي رَحِمِهِ، أَوْ غَيْرِهِمْ، بِمَا يُقِيمُ رَمَقَهُ، وَهَذَا عَكْسُ الْحَقَائِقِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعَدَّى عَامِلُ الْمُضَارَبَةِ فَرَبِحَ]

١٣٧٥ - مَسْأَلَةٌ:

وَإِنْ تَعَدَّى الْعَامِلُ فَرَبِحَ، فَإِنْ كَانَ اشْتَرَى فِي ذِمَّتِهِ وَوَزَنَ مِنْ مَالِ الْقِرَاضِ فَحُكْمُهُ حُكْمُ الْغَاصِبِ - وَقَدْ صَارَ ضَامِنًا لِلْمَالِ إنْ تَلِفَ أَوْ لِمَا تَلِفَ مِنْهُ بِالتَّعَدِّي، وَيَكُونُ الرِّبْحُ لَهُ، لِأَنَّ الشِّرَى لَهُ.

وَإِنْ كَانَ اشْتَرَى بِمَالِ الْقِرَاضِ نَفْسِهِ فَالشِّرَى فَاسِدٌ مَفْسُوخٌ، فَإِنْ لَمْ يُوجَدْ صَاحِبُهُ الْبَائِعُ مِنْهُ فَالرِّبْحُ لِلْمَسَاكِينِ، لِأَنَّهُ مَالٌ لَا يُعْرَفُ لَهُ صَاحِبٌ.

وَهَذَا قَوْلُ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَابْنِ شُبْرُمَةَ، وَأَبِي سُلَيْمَانَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَاتَ رَبُّ الْمَالِ وَعَامِلِ الْقِرَاضِ]

مَسْأَلَةٌ: وَأَيُّهُمَا مَاتَ بَطَلَ الْقِرَاضُ -: أَمَّا فِي مَوْتِ صَاحِبِ الْمَالِ فَلِأَنَّ الْمَالَ قَدْ صَارَ لِلْوَرَثَةِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L21000 As for the death of the agent, it is based on the statement of Allah the Exalted: {No soul earns [a burden] except against itself} [Surah Al-An'am 6:164]. The contract of the owner of the wealth was solely with the deceased, not with his heir. However, the agent's action after the death of the owner of the wealth is not considered a transgression, and the heir's action after the agent's death is considered rectification of the wealth.[1]

أَمَّا فِي مَوْتِ الْعَامِلِ، فَلِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَعَقْدُ الَّذِي لَهُ الْمَالُ إِنَّمَا كَانَ مَعَ الْمَيِّتِ لَا مَعَ وَارِثِهِ، إِلَّا أَنَّ عَمَلَ الْعَامِلِ بَعْدَ مَوْتِ صَاحِبِ الْمَالِ لَيْسَ تَعَدِّيًا، وَعَمَلَ الْوَارِثِ بَعْدَ مَوْتِ الْعَامِلِ إِصْلَاحٌ لِلْمَالِ.

L21001 Allah the Most High has said: *"And cooperate in righteousness and piety"* [Al-Mā'idah: 2]. Thus, there is no liability upon the agent or his heir if the property is destroyed without transgression. The entire profit belongs to the owner of the capital or his heir, while the agent here—or his heirs—is entitled only to a wage equivalent to his labor. This is based on His statement, the Most High: *"For sacred things, there is just equivalence"* [Al-Baqarah: 194]. Therefore, the sanctity of his labor entitles him to equivalent compensation, for he is a benefactor assisting in righteousness. And with Allah the Most High lies all success.[2]

وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] فَلَا ضَمَانَ عَلَى الْعَامِلِ، وَلَا عَلَى وَارِثِهِ إِنْ تَلِفَ الْمَالُ بِغَيْرِ تَعَدٍّ، وَيَكُونُ الرِّبْحُ كُلُّهُ لِصَاحِبِ الْمَالِ، أَوْ لِوَارِثِهِ، وَيَكُونُ لِلْعَامِلِ هَهُنَا أَوْ لِوَرَثَتِهِ أَجْرُ مِثْلِ عَمَلِهِ فَقَطْ، لِقَوْلِهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَحُرْمَةُ عَمَلِهِ يَجِبُ لَهُ أَنْ يُقَاصَّ بِمِثْلِهَا؛ لِأَنَّهُ مُحْسِنٌ مُعِينٌ عَلَى بِرٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اشْتَرَى عَامِلُ الْقِرَاضِ مِنْ مَالِ الْقِرَاضِ جَارِيَةً فَوَطِئَهَا]

L21002 **Issue: The commenda agent purchased a slave girl from the commenda's capital and had sexual intercourse with her.**

١٣٧٧ - مَسْأَلَةٌ: وَإِنْ اشْتَرَى الْعَامِلُ مِنْ مَالِ الْقِرَاضِ جَارِيَةً فَوَطِئَهَا فَهُوَ زَانٍ عَلَيْهِ حَدُّ الزِّنَا؛ لِأَنَّ أَصْلَ الْمِلْكِ لِغَيْرِهِ، وَوَلَدُهُ مِنْهَا رَقِيقٌ لِصَاحِبِ الْمَالِ.

L21003 1377 – Issue: If the working partner in the commenda (qirāḍ) purchases an enslaved girl from the commenda capital and has intercourse with her, he is guilty of zinā (unlawful intercourse), and the ḥadd punishment for zinā applies to him, because the fundamental ownership [of her] belongs to another. His child from her becomes an enslaved person belonging to the capital owner.

وَكَذَلِكَ وَلَدُ الْمَاشِيَةِ، وَمَمَرُّ الشَّجَرِ، وَكِرَى الدُّورِ؛ لِأَنَّهُ شَيْءٌ حَدَثَ فِي مَالِهِ، وَإِنَّمَا لِلْعَامِلِ حَظُّهُ مِنَ الرِّبْحِ فَقَطْ، وَلَا يُسَمَّى رِبْحًا إِلَّا مَا نَمَا بِالْبَيْعِ فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21004 Likewise, the offspring of livestock, the passage between trees, and the rent of dwellings are subject to the ruling, because they are something that occurred within his property. The laborer is entitled solely to his share of the profit, and profit is only what grows through sale alone. Success comes only from Allah, the Most High.

[1] **Qur'an references (L21000):** Qur'an 6:164 (Al-An'am).
[2] **Qur'an references (L21001):** Qur'an 5:2 (Al-Ma'idah); Qur'an 2:194 (Al-Baqarah).



AL-MUHALLA

كِتَابُ الْإِقْرَارِ

The Book of Acknowledgement

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

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[كِتَابُ الْإِقْرَارِ] [مَسْأَلَةٌ أَقَرَّ لِآخَرَ أَوْ لِلَّهِ تَعَالَى بِحَقٍّ فِي مَالٍ]

١٣٧٨ - مَسْأَلَةٌ: مَنْ أَقَرَّ لِآخَرَ، أَوْ لِلَّهِ تَعَالَى بِحَقٍّ فِي مَالٍ، أَوْ دَمٍ، أَوْ بَشَرَةٍ - وَكَانَ الْمُقِرُّ عَاقِلًا بَالِغًا غَيْرَ مُكْرَهٍ - وَأَقَرَّ إِقْرَارًا تَامًّا، وَلَمْ يَصِلْهُ بِمَا يُفْسِدُهُ -: فَقَدْ لَزِمَهُ، وَلَا رُجُوعَ لَهُ بَعْدَ ذَلِكَ، فَإِنْ رَجَعَ لَمْ يَنْتَفِعْ بِرُجُوعِهِ وَقَدْ لَزِمَهُ مَا أَقَرَّ بِهِ عَلَى نَفْسِهِ مِنْ دَمٍ، أَوْ حَدٍّ، أَوْ مَالٍ.

فَإِنْ وَصَلَ الْإِقْرَارُ بِمَا يُفْسِدُهُ بَطَلَ كُلُّهُ وَلَمْ يَلْزَمْهُ شَيْءٌ، لَا مِنْ مَالٍ، وَلَا قَوَدٍ، وَلَا حَدٍّ -: مِثْلَ أَنْ يَقُولَ: لِفُلَانٍ عَلَيَّ مِائَةُ دِينَارٍ، أَوْ يَقُولُ: قَذَفْت فُلَانًا بِالزِّنَى، أَوْ يَقُولُ زَنَيْت، أَوْ يَقُولُ: قَتَلْت فُلَانًا، أَوْ نَحْوَ ذَلِكَ -: فَقَدْ لَزِمَهُ، فَإِنْ رَجَعَ عَنْ ذَلِكَ لَمْ يَلْتَفِتْ.

فَإِنْ قَالَ: كَانَ لِفُلَانٍ عَلَيَّ مِائَةُ دِينَارٍ وَقَدْ قَضَيْته إيَّاهَا، أَوْ قَالَ: قَذَفْت فُلَانًا وَأَنَا فِي غَيْرِ عَقْلِي، أَوْ قَتَلْت فُلَانًا؛ لِأَنَّهُ أَرَادَ قَتْلِي وَلَمْ أَقْدِرْ عَلَى دَفْعِهِ عَنْ نَفْسِي، أَوْ قَالَ: زَنَيْت وَأَنَا فِي غَيْرِ عَقْلِي، أَوْ نَحْوَ هَذَا، فَإِنَّ هَذَا كُلَّهُ يَسْقُطُ وَلَا يَلْزَمُهُ شَيْءٌ، وَالْحُرُّ، وَالْعَبْدُ، وَالذَّكَرُ، وَالْأُنْثَى - ذَاتُ الزَّوْجِ، وَالْبِكْرُ ذَاتُ الْأَبِ، وَالْيَتِيمَةُ فِيمَا ذَكَرْنَا سَوَاءٌ - وَإِنَّمَا هَذَا كُلُّهُ إذَا لَمْ تَكُنْ بَيِّنَةٌ فَإِذَا كَانَتْ الْبَيِّنَةُ فَلَا مَعْنَى لِلْإِنْكَارِ، وَلَا لِلْإِقْرَارِ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - نا قَتَادَةُ عَنْ أَنَسٍ: «أَنَّ جَارِيَةً وُجِدَ رَأْسُهَا قَدْ رُضَّ بَيْنَ حَجَرَيْنِ، فَسَأَلُوهَا مَنْ صَنَعَ هَذَا بِكِ؟ فُلَانٌ؟

L21005–21006 **The Book of Acknowledgement | Issue: Acknowledging a Right in Property for Another Person or for Allah, the Most High**

L21007 Issue 1378: If a person acknowledges to another or to Allah the Exalted a right concerning property, blood money, or bodily injury - provided the acknowledger is sane, adult, uncoerced, makes a complete acknowledgment, and does not associate it with anything that invalidates it - the acknowledgment is binding upon him with no retraction permitted afterward. If he retracts, his retraction is of no effect, and what he acknowledged against himself - whether blood money, *ḥadd* punishment, or property - remains binding.

L21008 If a confession is coupled with what invalidates it, the entire confession is nullified, and nothing becomes binding upon him—neither property, retaliatory punishment, nor prescribed punishment. For example, if he states: "I owe so-and-so one hundred dinars," "I accused so-and-so of adultery," "I committed adultery," "I killed so-and-so," or similar—it becomes binding. If he retracts afterward, no heed is given to his retraction.

L21009 If he says: "I owed so-and-so a hundred dinars and have repaid him," or says: "I accused so-and-so of adultery while not in my right mind," or "I killed so-and-so because he intended to kill me when I could not defend myself," or says: "I committed adultery while not in my right mind," or anything similar—all such statements are invalidated, and nothing becomes binding upon him. Free individuals, slaves, males, and females (whether a married woman, a virgin under her father's guardianship, or a female orphan) are equivalent in the rulings we have mentioned. This applies only in the absence of conclusive evidence. When evidence exists, neither denial nor confession holds significance.

We have been narrated through Muslim's chain: Haddāb ibn Khālid reported to us, Hammām—that is, ibn Yaḥyā—reported to us, Qatādah reported from Anas: "A girl was found with her head crushed between two stones. They questioned her: 'Who did this to you? Was it so-and-so? So-and-so?' until

فُلَانٌ؟ حَتَّى ذَكَرُوا يَهُودِيًّا فَأَوْمَأَتْ بِرَأْسِهَا، فَأُخِذَ الْيَهُودِيُّ فَأَقَرَّ فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرَضَّ رَأْسُهُ بِالْحِجَارَةِ» .

they named a Jew. She nodded her head affirmatively. The Jew was apprehended, confessed, and the Messenger of Allah—peace and blessings be upon him—ordered his head to be crushed with stones."

L21010–21012 وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ - هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ، فَذَكَرَ الْحَدِيثَ، وَفِيهِ قَوْلُ الْقَائِلِ: «إِنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا فَزَنَى بِامْرَأَتِهِ، وَإِنِّي أُخْبِرْتُ أَنَّ عَلَى ابْنِي الرَّجْمَ، فَافْتَدَيْتُ مِنْهُ بِمِائَةِ شَاةٍ وَوَلِيدَةٍ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَالَّذِي نَفْسِي بِيَدِهِ لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ: الْوَلِيدَةُ وَالْغَنَمُ رَدٌّ، وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، اُغْدُ يَا أُنَيْسُ عَلَى امْرَأَةِ هَذَا، فَإِنْ اعْتَرَفَتْ فَارْجُمْهَا، فَغَدَا عَلَيْهَا فَاعْتَرَفَتْ، فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرُجِمَتْ» فَقُتِلَ - عَلَيْهِ السَّلَامُ - بِالْإِقْرَارِ وَرُجِمَ بِهِ، وَرُدَّ بِهِ الْمَالُ مِمَّنْ كَانَ بِيَدِهِ إلَى غَيْرِهِ.

And from the chain of Muslim: Muhammad ibn Rumh narrated to us, al-Layth - who is Ibn Sa'd - narrated to us, from Ibn Shihab, from 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah ibn Mas'ud, from Abu Hurayrah and Zayd ibn Khalid al-Juhani, and he mentioned. The narration includes the statement of the speaker: "My son was a hired worker for this man and committed adultery with his wife. I was informed that my son is subject to stoning, so I ransomed him with a hundred sheep and a slave girl." The Messenger of Allah—peace and blessings be upon him—said: "By the One in Whose Hand is my soul, I will judge between you by Allah's decree: the slave girl and the sheep must be returned, and your son shall receive a hundred lashes and exile for one year. Go early in the morning, O Unais, to the wife of this man. If she confesses, stone her." Unais went to her at dawn, and she confessed. The Messenger of Allah—peace and blessings be upon him—then ordered her execution by stoning. Thus, she was put to death through her confession and stoning was carried out. The payment was thereby returned from its possessor to another.

L21013 وَأَمَّا إذَا وَصَلَ بِهِ مَا يُفْسِدُهُ فَلَمْ يُقِرَّ بِشَيْءٍ، وَلَا يَجُوزُ أَنْ يُلْزَمَ بَعْضَ إقْرَارِهِ وَلَا يُلْزَمَ سَائِرَهُ؛ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ.

As for when something that invalidates the act is connected to him while he has not acknowledged anything, it is not permissible to compel him to acknowledge part of it nor the rest of it: because this has not been obligated by the Quran, the Sunnah, or Ijma.

L21014 وَقَدْ تَنَاقَضَ هَهُنَا الْمُخَالِفُونَ فَقَالُوا: إنْ قَالَ: لَهُ عَلَيَّ دِينَارٌ إلَّا رُبْعَ دِينَارٍ فَهُوَ كَمَا قَالَ - وَإِنْ قَالَ: ابْتَعْت مِنْهُ دَارِهِ بِمِائَةِ دِينَارٍ، فَأَنْكَرَ الْآخَرُ الْبَيْعَ وَقَالَ: قَدْ أَقَرَّ لِي بِمِائَةِ دِينَارٍ وَادَّعَى ابْتِيَاعَ دَارِي، فَإِنَّهُمْ لَا يَقُصُّونَ عَلَيْهِ بِشَيْءٍ أَصْلًا - وَهَذَا تَنَاقُضٌ ظَاهِرٌ.

Here the opponents have contradicted themselves. They said: If one says, "I owe him a dinar **minus a quarter dinar**," it is as he stated. But if he says, "I purchased **his** house from him for a hundred dinars," and the other party denies the sale and says, "He has admitted to owing me a hundred dinars and claims to have purchased my house," they do not **enforce any claim** against him whatsoever. This is an evident contradiction.

L21015 وَقَالَ مَالِكٌ: مَنْ قَالَ: أَحْسَنَ اللَّهُ جَزَاءَ فُلَانٍ فَإِنَّهُ أَسْلَفَنِي مِائَتَيْ دِينَارٍ، وَأَمْهَلَنِي حَتَّى أَدَّيْتهَا كُلَّهَا إلَيْهِ، فَإِنَّهُ لَا يَقْضِي لِذَلِكَ الْفُلَانِ عَلَيْهِ بِشَيْءٍ إنْ طَلَبَهُ بِهَذَا الْإِقْرَارِ.

Mālik said: Whoever says, "May Allāh reward so-and-so well as a non-binding expression of gratitude, for he advanced me two hundred dinars and allowed me time until I repaid them all to him," the judge shall not rule

in favor of that so-and-so against him if he demands repayment based on this legal admission.

وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ: قَتَلْتُ رَجُلًا مُسْلِمًا الْآنَ أَمَامَكُمْ، أَوْ قَالَ: أَخَذْت مِنْ هَذَا

L21016–21018 They do not differ regarding one who says, "I have killed a Muslim man now before you," or says, "I have taken a hundred dinars from this person now in your presence," for no ruling is imposed on him—and they did not say, "If he confesses, then regrets," nor did they accept parts of a statement while rejecting others, and this is a manifest contradiction. It has been narrated to us through the chain of ʻAbd al-Razzāq from Maʻmar from al-Zuhrī from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq: A man sought hospitality from some people of Hudhayl. They sent a servant girl to gather firewood. The guest became infatuated with her, followed her, and attempted to assault her. She resisted, so he grappled with her. She broke free and threw a stone at him, rupturing his liver and killing him. She returned to her people and informed them. They went to ʻUmar ibn al-Khaṭṭāb and relayed the matter. ʻUmar declared, "By Allah, Allah's slain shall never be compensated!" And through the chain of Ḥammād ibn Salamah from Thābit al-Bunānī, Ḥumayd, and Muṭarrif—all of them from ʻAbdullāh ibn ʻUbayd ibn ʻUmayr—it is related: A man went to battle, and a Jewish man committed adultery with his wife. A Muslim man passed by him at dawn prayer time while he was saying: Disheveled, Islam's allure from me captivated him... I illuminated his wedding on the night of the full moon.

مِائَةَ دِينَارٍ الْآنَ بِحَضْرَتِكُمْ، فَإِنَّهُ لَا يَقْضِي عَلَيْهِ بِشَيْءٍ - وَلَمْ يَقُولُوا: إنْ أَقَرَّ، ثُمَّ نَدِمَ، وَلَا أَخَذُوا بِبَعْضِ قَوْلٍ دُونَ بَعْضٍ، وَهَذَا تَنَاقُضٌ ظَاهِرٌ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ، أَبِي بَكْرٍ الصِّدِّيقِ أَنَّ رَجُلًا اسْتَضَافَ نَاسًا مِنْ هُذَيْلٍ فَأَرْسَلُوا جَارِيَةً تَحْتَطِبُ فَأَعْجَبَتْ الضَّيْفَ فَتَبِعَهَا فَأَرَادَهَا فَامْتَنَعَتْ، فَعَارَكَهَا فَانْفَلَتَتْ فَرَمَتْهُ بِحَجَرٍ فَفَضَّتْ كَبِدَهُ فَمَاتَ، فَأَتَتْ أَهْلَهَا فَأَخْبَرَتْهُمْ، فَأَتَوْا عُمَرَ بْنَ الْخَطَّابِ فَأَخْبَرُوهُ؟ فَقَالَ عُمَرُ: قَتِيلُ اللَّهِ لَا يُودَى وَاَللَّهِ أَبَدًا؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ، وَحُمَيْدٍ، وَمُطَرِّفٍ، كُلِّهِمْ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عُمَيْرٍ قَالَ: غَزَا رَجُلٌ فَخَلَّفَ عَلَى امْرَأَتِهِ رَجُلٌ مِنْ يَهُودَ، فَمَرَّ بِهِ رَجُلٌ مِنْ الْمُسْلِمِينَ عِنْدَ صَلَاةِ الْفَجْرِ وَهُوَ يَقُولُ: وَأَشْعَثَ غَرَّهُ الْإِسْلَامُ مِنِّي ... جَلَوْت بِعُرْسِهِ لَيْلَ التَّمَامِ

L21019 I spend the night upon her collarbones, and evening falls upon a sleek mare clinging to the fastened girth.

أَبِيت عَلَى تَرَائِبِهَا وَيُمْسِي ... عَلَى جَرْدَاءَ لَاحِقَةِ الْحِزَامِ

L21020 As though the clusters of their patched garments were a throng, standing and rising to join the bands.

كَأَنَّ مَجَامِعَ الرَّبَلَاتِ مِنْهَا ... قِيَامٌ يَنْهَضُونَ إلَى قِيَامِ

L21021 He entered upon him and struck him with his sword until he killed him. The Jews came seeking compensation for his blood. The man then came and informed him of the matter, whereupon Umar ibn al-Khattab dismissed the blood claim.

فَدَخَلَ عَلَيْهِ فَضَرَبَهُ بِسَيْفِهِ حَتَّى قَتَلَهُ فَجَاءَتْ الْيَهُودُ يَطْلُبُونَ دَمَهُ فَجَاءَ الرَّجُلُ فَأَخْبَرَهُ بِالْأَمْرِ، فَأَبْطَلَ عُمَرُ بْنُ الْخَطَّابِ دَمَهُ.

L21022 From the path of Muhammad ibn al-Muthanna, narrated by Abdullah ibn Idris al-Awdi, from Asim ibn Kulayb, from his father, from Abu Musa al-Ash'ari, who said: A woman was brought to me while I was in Yemen, and

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ نا عَاصِمُ بْنُ كُلَيْبٍ عَنْ أَبِيهِ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ أُتِيتُ وَأَنَا بِالْيَمَنِ بِامْرَأَةٍ فَسَأَلْتهَا؟ فَقَالَتْ: مَا تَسْأَلُ

عَنْ امْرَأَةٍ حُبْلَى ثَيِّبٍ مِنْ غَيْرِ بَعْلٍ، أَمَا وَاللَّهِ مَا خَالَلْت خَلِيلًا وَلَا خَادَنْتُ خِدْنًا، مُذْ أَسْلَمْت، وَلَكِنِّي بَيْنَمَا أَنَا نَائِمَةٌ بِفِنَاءِ بَيْتِي، فَوَاَللَّهِ مَا أَيْقَظَنِي إلَّا الرَّجُلُ حِينَ رَكِبَنِي وَأَلْقَى فِي بَطْنِي مِثْلَ الشِّهَابِ؟ فَقَالَ: فَكَتَبْت فِيهَا إلَى عُمَرَ بْنِ الْخَطَّابِ فَكَتَبَ إلَيَّ: أَنْ وَافِنِي بِهَا وَبِنَاسٍ مِنْ قَوْمِهَا؟ فَوَافَيْته بِهَا فِي الْمَوْسِمِ، فَسَأَلَ عَنْهَا قَوْمَهَا؟ فَأَثْنَوْا خَيْرًا، وَسَأَلَهَا؟ فَأَخْبَرَتْهُ كَمَا أَخْبَرَتْنِي، فَقَالَ عُمَرُ: شَابَّةٌ تِهَامِيَّةٌ تَنَوَّمَتْ قَدْ كَانَ ذَلِكَ يُفْعَلُ، فَمَارَّهَا عُمَرُ وَكَسَاهَا، وَأَوْصَى بِهَا قَوْمَهَا خَيْرًا - هَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ.

I questioned her. She said: "Why do you question a pregnant non-virgin woman without a husband? By Allah, I have not had any intimate companion nor secret male companion since I embraced Islam. But while I was sleeping in the courtyard of my house, by Allah, nothing awakened me except a man when he had intercourse with me and placed in my womb something like a shooting star." He said: So I wrote to Umar ibn al-Khattab about her, and he wrote back to me: "Meet me with her and some people from her tribe." I met him with her during the pilgrimage season. He inquired about her among her people, and they praised her well. He questioned her, and she informed him as she had informed me. Umar said: "A young woman from Tihamah who fell asleep—such things have been done before." Then Umar compensated her, clothed her, and instructed her people to treat her well. This is a narration of the highest authenticity.

L21023 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَامِرِ بْنِ أَبِي الْحَكَمِ عَنْ الْحَسَنِ: أَنَّ رَجُلًا رَأَى مَعَ امْرَأَتِهِ رَجُلًا فَقَتَلَهُ، فَارْتَفَعُوا إلَى عُثْمَانَ بْنِ عَفَانِ فَأَبْطَلَ دَمَهُ.

Through the chain of Hammad ibn Salamah, from Amir ibn Abi al-Hakam, from al-Hasan: A man found another man in a compromising situation with his wife and killed him. The case was referred to Uthman ibn Affan, who invalidated the killer's immunity, deeming his blood permissible for retaliation.

L21024 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، قَالَا جَمِيعًا: إنَّ رَجُلًا أَتَى امْرَأَةً لَيْلًا فَجَعَلَتْ تَسْتَصْرِخُ فَلَمْ يُصْرِخْهَا أَحَدٌ، فَلَمَّا رَأَتْ ذَلِكَ قَالَتْ: رُوَيْدَك حَتَّى أَسْتَعِدَّ وَأَتَهَيَّأَ، فَأَخَذَتْ فِهْرًا فَقَامَتْ خَلْفَ الْبَابِ، فَلَمَّا دَخَلَ ثَلَغَتْ بِهِ رَأْسَهُ فَارْتَفَعُوا إلَى الضَّحَّاكِ بْنِ قَيْسٍ، فَأَبْطَلَ دَمَهُ.

From the narration of Hammad ibn Salamah from Yahya ibn Sa'id al-Ansari from Sa'id ibn al-Musayyab and Sulayman ibn Yasar, both of whom said: A man came to a woman at night, and she began screaming for help, but no one responded to her cries. When she saw this, she said, "Wait until I prepare and get ready." She then took a stone pestle and stood behind the door. When he entered, she struck his head with it. They referred the case to al-Dahhak ibn Qays, who nullified the liability for his blood.

L21025–21027 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنَا أَبُو عُقْبَةَ أَنَّ رَجُلًا ادَّعَى عَلَى رَجُلٍ أَلْفَ دِرْهَمٍ وَلَمْ تَكُنْ لَهُ بَيِّنَةٌ فَاخْتَصَمَا إلَى عَبْدِ الْمَلِكِ بْنِ يَعْلَى فَقَالَ: قَدْ كَانَتْ لَهُ عِنْدِي أَلْفُ دِرْهَمٍ فَقَضَيْته فَقَالَ: أَصْلَحَك اللَّهُ قَدْ أَقَرَّ؟ فَقَالَ لَهُ عَبْدُ الْمَلِكِ بْنُ يَعْلَى: إنْ شِئْت أَخَذْت

From the narration of Ḥammād ibn Salamah, Abū ʿUqbah informed us that a man filed a claim against another man for one thousand dirhams without evidence. They took their dispute before ʿAbd al-Malik ibn Yaʿlā, who stated: "He did indeed have one thousand dirhams with me." So I judged it, and he said: "May Allah set you right—has he confessed?" Then Abd al-Malik ibn Ya'la said to him: "If you wish, you may accept his statement in full; if you prefer, you may nullify it in full"—Abd al-Malik ibn Ya'la was among the Successors—. He was appointed to the judgeship of Basra.

بِقَوْلِهِ أَجْمَعَ، وَإِنْ شِئْت أَبْطَلْته أَجْمَعَ - عَبْدُ الْمَلِكِ بْنُ يَعْلَى مِنْ التَّابِعِينَ - وَلِيَ قَضَاءَ الْبَصْرَةِ.

L21028 And narrated by Abd al-Razzaq from Ma’mar, from Abdullah ibn Tawus, from his father, who said: “Whoever admits to a claim regarding something in his possession, his statement shall prevail.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: مَنْ أَقَرَّ بِشَيْءٍ فِي يَدِهِ فَالْقَوْلُ قَوْلُهُ.

L21029 Through the chain of Hammad ibn Salamah, from Iyas ibn Muʿāwiyah, who said: “Whoever possesses something, the claim regarding it is his claim.” Our opinion on this matter aligns with the view of Uthman al-Batti, Abu Sulayman, and one of the two opinions of al-Shafiʿi.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ إيَاسِ بْنِ مُعَاوِيَةَ قَالَ: كُلُّ مَنْ كَانَ فِي يَدِهِ شَيْءٌ فَالْقَوْلُ فِيهِ قَوْلُهُ - وَقَوْلُنَا فِيمَا ذَكَرْنَا هُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَأَبِي سُلَيْمَانَ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L21030 As for retracting a confession: all agree with our position except regarding retracting a confession that entails a ḥadd punishment. The Ḥanafīs and Mālikīs said: If he retracts, nothing is imposed upon him—but this is invalid. Though these groups profess adherence to qiyās *as they claim*, why did they not apply analogy to confessions entailing ḥadd punishments as they do to those entailing rights *uniformly*? Moreover, the ḥadd punishment becomes binding through his confession. Anyone who claims it is dropped due to his retraction makes an assertion without evidence. They supported their position with two arguments:

وَأَمَّا - الرُّجُوعُ عَنْ الْإِقْرَارِ: فَكُلُّهُمْ مُتَّفِقٌ عَلَى مَا قُلْنَا، إلَّا فِي الرُّجُوعِ عَنْ الْإِقْرَارِ بِمَا يُوجِبُ الْحَدَّ، فَإِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، قَالُوا: إنْ رَجَعَ لَمْ يَكُنْ عَلَيْهِ شَيْءٌ - وَهَذَا بَاطِلٌ، وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا الْإِقْرَارَ بِالْحَدِّ عَلَى الْإِقْرَارِ بِالْحُقُوقِ سَوَاءً؟ وَأَيْضًا - فَإِنَّ الْحَدَّ قَدْ لَزِمَهُ بِإِقْرَارِهِ، فَمَنْ ادَّعَى سُقُوطَهُ بِرُجُوعِهِ فَقَدْ ادَّعَى مَا لَا بُرْهَانَ لَهُ بِهِ، وَاحْتَجُّوا بِشَيْئَيْنِ:

L21031 One of the two [cases] is the Hadith of Ma’iz.

أَحَدُهُمَا: حَدِيثُ مَاعِزٍ.

L21032 The second is that they said: “Prescribed punishments are averted due to doubts.”

وَالثَّانِي: أَنْ قَالُوا: إنَّ الْحُدُودَ تُدْرَأُ بِالشُّبُهَاتِ.

L21033–21035 Ali said: As for the ḥadīth of Māʿiz—there is no proof for them in it whatsoever, because it contains nothing indicating that Māʿiz ever retracted his confession entirely—neither by explicit text nor by evidence. Nor does it state that the Messenger of Allāh—peace and blessings be upon him—said: “If he retracted his confession before he even retracted completely”—so how can a Muslim justify misleading the heedless with a report that contains none of what he [the claimant] alleges? What has been narrated is merely from some Companions who said: “We used to discuss that if Māʿiz and

قَالَ عَلِيٌّ: أَمَّا حَدِيثُ مَاعِزٍ - فَلَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ مَاعِزًا رَجَعَ عَنْ الْإِقْرَارِ أَلْبَتَّةَ، لَا بِنَصٍّ، وَلَا بِدَلِيلٍ - وَلَا فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: إنْ رَجَعَ عَنْ إقْرَارِهِ قَبْلَ رُجُوعِهِ أَيْضًا أَلْبَتَّةَ، فَكَيْفَ يَسْتَحِلُّ مُسْلِمٌ أَنْ يُمَوِّهَ عَلَى أَهْلِ الْغَفْلَةِ بِخَبَرٍ لَيْسَ فِيهِ شَيْءٌ مِمَّا يَزْعُمُ؟ وَإِنَّمَا رُوِيَ عَنْ بَعْضِ الصَّحَابَةِ

the Ghāmidiyyah had retracted after their confessions, or had not retracted after their confessions, he would not have pursued them"—this is how we narrated it through the chain of Abū Aḥmad al-Zubayrī from Bashīr ibn al-Muhājir from Ibn Buraidah from his father, who made this statement. Yet this is conjecture, and conjecture cannot form the basis of definitive rulings. The claim that "if so-and-so had done such, the Messenger of Allāh—peace and blessings be upon him—would have done such"—is baseless, since that individual never performed that act, nor did anyone else ever do so, nor did the Prophet—peace and blessings be upon him—ever enact it. Jābir stated: "I am the most knowledgeable regarding Māʿiz's case. The Messenger of Allāh—peace and blessings be upon him—merely said: 'Why did you not leave him and bring him to me?'"—so that he might ascertain the truth from him. As for abandoning the prescribed punishment—no. This is the definitive text. The statement of Jābir—for he is more knowledgeable about that matter—and Māʿiz never retracted his confession. He only said: "Take me back to the Messenger of Allāh (peace and blessings of Allāh be upon him), for my people have killed me, misled me about myself, and told me that the Messenger of Allāh (peace and blessings of Allāh be upon him) would not execute me." This is how we have transmitted all that we mentioned through the chain of Abū Dāwūd: from ʿUbaydullāh ibn ʿUmar ibn Maysarah, who narrated from Yazīd ibn Zurayʿ, who narrated from Muḥammad ibn Isḥāq, that ʿĀṣim ibn ʿUmar ibn Qatādah said: Ḥasan ibn Muḥammad ibn ʿAlī ibn Abī Ṭālib narrated to me, that Jābir ibn ʿAbdullāh said to him: "All we have mentioned is verbatim"—thus their obfuscation through the ḥadīth of Māʿiz is invalidated.

L21036 As for the statement "Avert the prescribed punishments due to doubts," it has never been transmitted from the Prophet (peace be upon him) through any chain containing sound narrators. Nor do we know of it having been transmitted from him (peace be upon him) also—neither with a complete chain nor a disconnected one. Rather, it is a statement reported only from Ibn Masʿud and ʿUmar. Even if it were authentic, the Hanafis and Malikis would have been the first to oppose it, for we know of none stricter than them in applying prescribed punishments despite doubts.

أَنَّهُ قَالَ: كُنَّا نَتَحَدَّثُ أَنَّ مَاعِزًا، وَالْغَامِدِيَّةَ لَوْ رَجَعَا بَعْدَ اعْتِرَافِهِمَا، أَوْ لَمْ يَرْجِعَا بَعْدَ اعْتِرَافِهِمَا لَمْ يَطْلُبْهُمَا -: هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي أَحْمَدَ الزُّبَيْرِيِّ عَنْ بَشِيرِ بْنِ الْمُهَاجِرِ عَنْ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ أَنَّهُ قَالَ هَذَا الْقَوْلَ - وَهَذَا ظَنٌّ، وَالظَّنُّ لَا يَجُوزُ الْقَطْعُ بِهِ، وَقَوْلُ الْقَائِلِ: لَوْ فَعَلَ فُلَانٌ كَذَا لَفَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْرًا كَذَا -: لَيْسَ بِشَيْءٍ، إذْ لَمْ يَفْعَلْ ذَلِكَ الْفُلَانُ، وَلَا غَيْرُهُ ذَلِكَ الْفِعْلَ قَطُّ وَلَا فَعَلَهُ - عَلَيْهِ السَّلَامُ - قَطُّ، وَقَدْ قَالَ جَابِرٌ: أَنَا أَعْلَمُ النَّاسِ بِأَمْرِ مَاعِزٍ إنَّمَا «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هَلَّا تَرَكْتُمُوهُ وَجِئْتُمُونِي بِهِ» ؟ لِيَسْتَثْبِتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُ، فَأَمَّا لِتَرْكِ حَدٍّ فَلَا -: هَذَا نَصُّ كَلَامِ جَابِرٍ، فَهُوَ أَعْلَمُ بِذَلِكَ، وَلَمْ يَرْجِعْ مَاعِزٌ قَطُّ عَنْ إقْرَارِهِ، وَإِنَّمَا قَالَ: رُدُّونِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّ قَوْمِي قَتَلُونِي وَغَرُّونِي مِنْ نَفْسِي، وَأَخْبَرُونِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرُ قَاتِلِي - هَكَذَا رُوِّينَا كُلَّ مَا ذَكَرْنَا مِنْ طَرِيقِ أَبِي دَاوُد نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ نا يَزِيدُ بْنُ زُرَيْعٍ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ: أَنَّ عَاصِمَ بْنَ عُمَرَ بْنِ قَتَادَةَ قَالَ: حَدَّثَنِي حَسَنُ بْنُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ لَهُ: كُلُّ مَا ذَكَرْنَا عَلَى نَصِّهِ - فَبَطَلَ تَمْوِيهُهُمْ بِحَدِيثِ مَاعِزٍ.

وَأَمَّا " ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ " فَمَا جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ مِنْ طَرِيقٍ فِيهَا خَيْرٌ، وَلَا نَعْلَمُهُ أَيْضًا جَاءَ عَنْهُ - عَلَيْهِ السَّلَامُ - أَيْضًا، لَا مُسْنَدًا، وَلَا مُرْسَلًا وَإِنَّمَا هُوَ قَوْلٌ رُوِيَ عَنْ ابْنِ مَسْعُودٍ، وَعُمَرَ، فَقَطْ - وَلَوْ صَحَّ لَكَانُوا أَوَّلَ مُخَالِفٍ لَهُ؛ لِأَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ لَا نَعْلَمُ أَحَدًا أَشَدَّ إقَامَةً لِلْحُدُودِ بِالشُّبُهَاتِ مِنْهُمْ.

فَالْمَالِكِيُّونَ يَحُدُّونَ فِي الزِّنَى بِالرَّجْمِ وَالْجَلْدِ بِالْحَبَلِ فَقَطْ - وَهِيَ مُنْكِرَةٌ - وَقَدْ تُسْتَكْرَهُ وَتُوطَأُ بِنِكَاحٍ صَحِيحٍ لَمْ يَشْتَهِرْ، أَوْ وَهِيَ فِي غَيْرِ عَقْلِهَا، وَيَقْتُلُونَ بِدَعْوَى الْمَرِيضِ: أَنَّ فُلَانًا قَتَلَهُ، وَفُلَانٌ مُنْكِرٌ وَلَا بَيِّنَةَ عَلَيْهِ.

L21037 The Malikis impose stoning and flogging for adultery solely in cases of pregnancy - a rejected position - where she is forcibly compelled and subjected to intercourse through a valid marriage that was not publicly known, or if she is mentally incapacitated. They kill based on the claim of a sick person that "so-and-so killed him," while the accused denies it and no evidence exists against him.

وَيَحُدُّونَ فِي الْخَمْرِ بِالرَّائِحَةِ، وَقَدْ تَكُونُ رَائِحَةَ تُفَّاحٍ، أَوْ كُمَّثْرَى شَتْوِيٍّ.

L21038 They apply the *hadd* punishment for wine based on its scent, which may be the scent of apples or winter pears.

وَيَقْطَعُونَ فِي السَّرِقَةِ مَنْ يَقُولُ: صَاحِبُ الْمَنْزِلِ بَعَثَنِي فِي هَذَا الشَّيْءِ - وَصَاحِبُ الْمَنْزِلِ مُقِرٌّ لَهُ بِذَلِكَ.

L21039 They amputate the hand of the one who commits theft while claiming "The owner of the house sent me to take this property" - even though the owner of the house formally admits this claim.

وَيَحُدُّونَ فِي الْقَذْفِ بِالتَّعْرِيضِ - وَهَذَا كُلُّهُ هُوَ إقَامَةُ - الْحُدُودِ بِالشُّبُهَاتِ.

L21040 They impose the *hadd* punishment for slander by insinuation—and all of this is the enforcement of the *hadd* punishments based on ambiguities.

وَأَمَّا الْحَنَفِيُّونَ فَإِنَّهُمْ يَقْطَعُونَ مَنْ دَخَلَ مَعَ آخَرَ فِي مَنْزِلِ إنْسَانٍ لِلسَّرِقَةِ فَلَمْ يَتَوَلَّ أَخْذَ شَيْءٍ وَلَا إخْرَاجَهُ، وَإِنَّمَا سَرَقَ الَّذِي دَخَلَ فِيهِ فَقَطْ، فَيَقْطَعُونَهُمَا جَمِيعًا - فِي كَثِيرٍ لَهُمْ مِنْ مِثْلِ هَذَا قَدْ تَقَصَّيْنَاهُ فِي غَيْرِ هَذَا الْمَكَانِ.

L21041 As for the Ḥanafīs, they amputate the hand of anyone who enters with another into a person's home for theft, even if he did not actually take anything or remove it, for only the one who entered the home itself actually stole. So they amputate both of them. In many of their similar cases, we have already detailed this elsewhere.

فَمَنْ أَعْجَبُ شَأْنًا مِمَّنْ يَحْتَجُّ بِقَوْلِ قَائِلٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ هُوَ أَوَّلُ مُخَالِفٍ لِمَا احْتَجَّ بِهِ مِنْ ذَلِكَ، وَأَمَّا تَسْوِيَتُنَا بَيْنَ الْحُرِّ، وَالْعَبْدِ، وَالذَّكَرِ، وَالْأُنْثَى ذَاتِ الْأَبِ الْبِكْرِ، وَغَيْرِ الْبِكْرِ، وَالْيَتِيمَةِ، وَذَاتِ الزَّوْجِ فَلِأَنَّ الدِّينَ وَاحِدٌ عَلَى الْجَمِيعِ، وَالْحُكْمَ وَاحِدٌ عَلَى الْجَمِيعِ، إلَّا أَنْ يَأْتِيَ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ: قُرْآنٌ أَوْ سُنَّةٌ - وَلَا قُرْآنَ، وَلَا سُنَّةَ، وَلَا قِيَاسَ، وَلَا إجْمَاعَ عَلَى الْفَرْقِ بَيْنَ شَيْءٍ مِمَّا ذَكَرْنَا وَبِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْأَرْضِ مِنْ الْمُسْلِمِينَ فِي أَنَّ اللَّهَ تَعَالَى خَاطَبَ كُلَّ مَنْ ذَكَرْنَا خِطَابًا

L21042–21044 Who is more astonishing in circumstance than one who cites the statement of a speaker instead of the Messenger of Allah—peace and blessings be upon him—then becomes the first to oppose the very evidence he cited from that? As for our equalizing between the free and the enslaved, the male and the female, the virgin who has a father and the non-virgin, the orphaned female, and the one with a husband, it is because the religion is one for all, and the ruling applies equally to all—unless a distinction is established between any of these through the Quran or Sunnah. Yet there exists no Quranic verse, no Prophetic precedent, no analogical reasoning, nor scholarly consensus establishing any distinction between what we have mentioned, nor any disagreement from any of the people of... The land of the Muslims in that Allah the Exalted addressed everyone we have mentioned with an address intended for each individual among them within their own selves, as

He says: “Be steadfast maintainers of justice, witnesses for Allah, even if it be against yourselves or your parents and relatives.” [An-Nisa: 135][1]

L21045 Therefore, everyone we have mentioned is commanded to acknowledge the truth concerning himself, and it is a definitive invalidity to impose upon them what cannot be accepted from them.

L21046 Some scholars have opined: A slave’s confession to an act entailing a hadd punishment is not binding, because he is property; for he is merely confessing as part of his master’s property. And Allah, the Exalted, says: “No soul bears [sin] except against itself” [al-Anʿām 6:164].[2]

L21047 Ali said: Even if he is property, he is a human being bound by religious rulings. This verse is our proof for that, because he is accountable for himself through his own admission.

L21048 They concur with our position: if a hired worker confesses to a ḥadd offense against himself, the punishment becomes obligatory. Such a confession invalidates his employment contract if he admits to an act inherently necessitating execution or amputation - provided he is not exploiting this confession to gain advantage over others. Success is granted by Allah, the Exalted.

L21049 ## Acknowledgment of the Hired Worker

L21050 1379 - Question:

L21051 By a single confession, all the aforementioned penalties—whether ḥadd (prescribed punishment), execution, or monetary compensation—become obligatory. The Ḥanafīs hold that the ḥadd penalty for zinā (unlawful sexual intercourse) is not imposed except after four confessions.

L21052 Abu Yusuf said: Liability for theft is only established through two separate confessions, and they equated this to testimony. Malik, al-Shāfiʿī, and Abū

[1] **Qur’an references (L21042):** Qur’an 4:135 (An-Nisa).
[2] **Qur’an references (L21046):** Qur’an 6:164 (Al-An’am).

قَصَدَ بِهِ إِلَى كُلِّ وَاحِدٍ مِنْهُمْ فِي ذَاتِ نَفْسِهِ بِقَوْلِهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥]

فَكُلُّ مَنْ ذَكَرْنَا مَأْمُورٌ بِالْإِقْرَارِ بِالْحَقِّ عَلَى نَفْسِهِ، وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يُفْتَرَضَ عَلَيْهِمْ مَا لَا يُقْبَلُ مِنْهُمْ.

وَقَدْ قَالَ قَوْمٌ: إقْرَارُ الْعَبْدِ بِمَا يُوجِبُ الْحَدَّ لَا يَلْزَمُ؛ لِأَنَّهُ مَالٌ فَإِنَّمَا هُوَ مُقِرٌّ فِي مَالِ سَيِّدِهِ، وَاَللَّهُ تَعَالَى يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

قَالَ عَلِيٌّ: هُوَ وَإِنْ كَانَ مَالًا فَهُوَ إنْسَانٌ تَلْزَمُهُ أَحْكَامُ الدِّيَانَةِ، وَهَذِهِ الْآيَةُ حُجَّتُنَا فِي ذَلِكَ؛ لِأَنَّهُ كَاسِبٌ عَلَى نَفْسِهِ بِإِقْرَارِهِ.

وَقَدْ وَافَقُونَا: لَوْ أَنَّ أَجِيرًا أَقَرَّ عَلَى نَفْسِهِ بِحَدٍّ لَلَزِمَهُ، وَفِي إقْرَارِهِ بِذَلِكَ إبْطَالُ إجَارَتِهِ إنْ أَقَرَّ بِمَا يُوجِبُ قَتْلًا أَوْ قَطْعًا وَلَيْسَ بِذَلِكَ كَاسِبًا عَلَى غَيْرِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[إقْرَار الْأَجِير]

١٣٧٩ - مَسْأَلَةٌ:

وَبِإِقْرَارِهِ مَرَّةً يَلْزَمُ كُلُّ مَا ذَكَرْنَا مِنْ حَدٍّ، أَوْ قَتْلٍ، أَوْ مَالٍ - وَقَالَ الْحَنَفِيُّونَ: لَا يَلْزَمُ الْحَدُّ فِي الزِّنَى إلَّا بِإِقْرَارِ أَرْبَعِ مَرَّاتٍ.

Sulaymān held the same opinion as ours. The Ḥanafīs adduced as evidence that the Messenger of Allah (peace be upon him) sent back Māʿiz four times.

وَقَالَ أَبُو يُوسُفَ: لَا يَلْزَمُ فِي السَّرِقَةِ إِلَّا بِإِقْرَارٍ مَرَّتَيْنِ، وَأَقَامُوا ذَلِكَ مَقَامَ الشَّهَادَةِ - وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ كَقَوْلِنَا وَاحْتَجَّ الْحَنَفِيُّونَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رَدَّ مَاعِزًا أَرْبَعَ مَرَّاتٍ» .

L21053–21055 Ali (peace be upon him) said: This has been authenticated. It is reported that the Prophet (peace be upon him) rejected the confession due to its lesser validity, while other narrations mention its rejection despite greater validity. He (peace be upon him) dismissed it solely because he questioned the confessor's mental capacity and doubted his understanding of what constitutes zinā. This is explicitly stated in the ḥadīth text where he (peace be upon him) said: "Examine him - has he drunk wine?" or similar wording. It is further narrated that he (peace be upon him) sent messengers to the man's tribe to inquire about his mental state, and that he (peace be upon him) asked him: "Do you comprehend what zinā means? Perhaps you merely touched someone improperly or kissed them?" Since all these accounts are authenticated, and no narration - whether sound or weak - has ever stated that the Prophet (peace be upon him) said: "The punishment shall not be implemented until four confessions are made," it becomes impermissible to impose this condition when executing Allah's ordained punishments. Those who claim adherence to analogical reasoning are bound by their own principle: if they accept confession as equivalent to evidence in some cases, they must apply this equivalency universally. Thus, they should not rule against anyone confessing to financial claims until he confesses four times, just as they require for ḥudūd. Twice—and they do not do this—the Messenger of Allah (peace and blessings be upon him) killed the Jew who killed the girl based on a confession without hesitation. Killing is the most severe of the hudud (prescribed punishments), and success is from Allah, the Most High.

قَالَ عَلِيٌّ: قَدْ صَحَّ هَذَا وَجَاءَ أَنَّهُ رَدَّهُ أَقَلَّ، وَرُوِيَ أَكْثَرَ - إِنَّمَا رَدَّهُ - عَلَيْهِ السَّلَامُ - لِأَنَّهُ اتَّهَمَ عَقْلَهُ، وَاتَّهَمَهُ أَنَّهُ لَا يَدْرِي مَا الزِّنَى؟ هَكَذَا فِي نَصِّ الْحَدِيثِ أَنَّهُ قَالَ: اسْتَنْكِهُوهُ هَلْ شَرِبَ خَمْرًا؟ أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -؟ «وَأَنَّهُ - عَلَيْهِ السَّلَامُ - بَعَثَ إلَى قَوْمِهِ يَسْأَلُهُمْ عَنْ عَقْلِهِ» ؟ وَأَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُ: «أَتَدْرِي مَا الزِّنَى؟ لَعَلَّكَ غَمَزْتَ أَوْ قَبَّلْتَ» ؟ فَإِذْ قَدْ صَحَّ هَذَا كُلُّهُ، وَلَمْ يَأْتِ قَطُّ فِي رِوَايَةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: لَا يُحَدُّ حَتَّى يُقِرَّ أَرْبَعَ مَرَّاتٍ، فَلَا يَجُوزُ أَنْ يُزَادَ هَذَا الشَّرْطُ فِيمَا تُقَامُ بِهِ حُدُودُ اللَّهِ تَعَالَى، وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَيَلْزَمُهُمْ إذْ أَقَامُوا الْإِقْرَارَ مَقَامَ الْبَيِّنَةِ فِي بَعْضِ الْمَوَاضِعِ أَنْ يُقِيمُوهُ مَقَامَهَا فِي كُلِّ مَوْضِعٍ، فَلَا يَقْضُوا عَلَى أَحَدٍ أَقَرَّ بِمَالٍ حَتَّى يُقِرَّ مَرَّتَيْنِ - وَهُمْ لَا يَفْعَلُونَ هَذَا، وَقَدْ «قَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْيَهُودِيَّ الَّذِي قَتَلَ الْجَارِيَةَ» بِإِقْرَارٍ غَيْرِ مُرَدَّدٍ، وَالْقَتْلُ أَعْظَمُ الْحُدُودِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An Issue Regarding the Acknowledgment of the Sick Person

[مَسْأَلَةٌ إقْرَارُ الْمَرِيضِ]

L21056

L21057 1380 – Issue: A sick person's acknowledgment during a terminal illness or an illness from which they recovered – whether to an heir or non-heir – is

executable against the estate's capital, akin to the acknowledgment of a sane and healthy person. No distinction is made.

١٣٨٠ - مَسْأَلَةٌ: وَإِقْرَارُ الْمَرِيضِ فِي مَرَضِ مَوْتِهِ، وَفِي مَرَضٍ أَفَاقَ مِنْهُ لِوَارِثٍ وَلِغَيْرِ وَارِثٍ - نَافِذٌ مِنْ رَأْسِ الْمَالِ كَإِقْرَارِ الصَّحِيحِ وَلَا فَرْقَ.

L21058 It has been narrated to us through ʿAbd al-Razzāq, who reported from some of our companions, from al-Layth ibn Saʿd, from Nāfiʿ, the freed slave of Ibn ʿUmar, from Ibn ʿUmar, who said: "If a sick person acknowledges a debt owed to someone during his illness, it is permissible." Ibn ʿUmar generalized this ruling and did not specify any exceptions.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا بَعْضُ أَصْحَابِنَا عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ ابْنِ عُمَرَ قَالَ: إذَا أَقَرَّ الْمَرِيضُ فِي مَرَضِهِ بِدَيْنٍ لِرَجُلٍ فَإِنَّهُ جَائِزٌ - فَعَمَّ ابْنُ عُمَرَ وَلَمْ يَخُصَّ.

L21059 From the chain of Ibn Abī Shaybah: He narrated to us from Ibn Ulayyah, from Layth, from Ṭāwūs, who said: If one acknowledges a debt owed to an heir, it is valid - meaning during illness.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ لَيْثٍ عَنْ طَاوُسٍ قَالَ: إذَا أَقَرَّ لِوَارِثٍ بِدَيْنٍ جَازَ - يَعْنِي فِي الْمَرَضِ -.

L21060 And through him to Ibn ʿUlayyah from ʿĀmir al-Aḥwal, who said: Al-Ḥasan was asked about it, and he replied: "I hold him liable for it, but I do not bear liability for it on his behalf."

وَبِهِ إلَى ابْنِ عُلَيَّةَ عَنْ عَامِرٍ الْأَحْوَلِ قَالَ: سُئِلَ الْحَسَنُ عَنْهُ؟ فَقَالَ: أُحَمِّلُهَا إيَّاهُ وَلَا أَتَحَمَّلُهَا عَنْهُ.

L21061 Via Ibn Abi Shaybah: Zayd ibn al-Hubab narrated to us, Hammad ibn Salamah narrated to us, from Qays ibn Saʿd, from 'Ata' regarding one who acknowledges a debt in favor of an heir. He said: It is permissible.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ فِيمَنْ أَقَرَّ لِوَارِثٍ بِدَيْنٍ، قَالَ: جَائِزٌ.

L21062 From the transmission of Ibn Abī Shaybah: ʿUmar ibn Ayyūb al-Mawṣilī narrated to us [from Jaʿfar—meaning Ibn Burqān—from Maymūn—meaning Ibn Mihrān]: If one acknowledges a debt during terminal illness, I maintain that it is permissible for it to stand against him, for if he had acknowledged it while in sound health, it would be valid. The most credible acknowledgment is that made at the time of death. This is the position of al-Shāfiʿī, Abū Sulaymān, and their respective disciples.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عُمَرُ بْنُ أَيُّوبَ الْمَوْصِلِيُّ عَنْ جَعْفَرٍ - هُوَ ابْنُ بُرْقَانَ - عَنْ مَيْمُونٍ هُوَ ابْنُ مِهْرَانَ - إذَا أَقَرَّ بِدَيْنٍ فِي مَرَضِهِ، فَأَرَى أَنْ يَجُوزَ عَلَيْهِ؛ لِأَنَّهُ لَوْ أَقَرَّ بِهِ - وَهُوَ صَحِيحٌ - جَازَ وَأَصْدَقُ مَا يَكُونُ عِنْدَ مَوْتِهِ - وَهَذَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L21063 A group said: It is fundamentally impermissible for a sick person to acknowledge debt, as we have reported via Ibn Abi Shaybah from Wakīʿ, from Sufyān, from Ibn Jurayj, from ʿAṭāʾ, who said: "A sick person's acknowledgment of debt is not valid." This is also the view of Yāsīn al-Zayyāt, except that he said: "It is to be taken from the third of the estate." Another group made a distinction—as we have reported from Shurayḥ, who deemed a sick

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ إقْرَارُ الْمَرِيضِ أَصْلًا، كَمَا رُوِّينَا عَنْ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَا يَجُوزُ إقْرَارُ الْمَرِيضِ بِالدَّيْنِ، وَهُوَ قَوْلُ يَاسِينَ الزَّيَّاتِ إلَّا أَنَّهُ قَالَ: هُوَ مِنْ الثُّلُثِ. وَقَسَّمَتْ طَائِفَةٌ -: كَمَا رُوِّينَا عَنْ شُرَيْحٍ أَنَّهُ كَانَ

person's acknowledgment of debt to someone other than an heir valid when made near death, but did not accept it for an heir unless supported by testimonial evidence. This is the opinion of Ibrāhīm and Ibn Udhaynah, and it is reliably transmitted from them. We have also reported it from al-Ḥakam and al-Shaʿbī—and it is the view of Abū Ḥanīfah, except that, according to him, debts contracted during health take precedence over debts incurred during terminal illness.

يُجِيزُ اعْتِرَافَ الْمَرِيضِ عِنْدَ مَوْتِهِ بِالدَّيْنِ لِغَيْرِ الْوَارِثِ، وَلَا يُجِيزُهُ لِلْوَارِثِ إِلَّا بِبَيِّنَةٍ - وَهُوَ قَوْلُ إِبْرَاهِيمَ، وَابْنِ أُذَيْنَةَ - صَحَّ ذَلِكَ عَنْهُمَا. وَرُوِّينَاهُ أَيْضًا عَنِ الْحَكَمِ، وَالشَّعْبِيِّ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - إِلَّا أَنَّ دَيْنَ الصِّحَّةِ عِنْدَهُ مُقَدَّمٌ عَلَى دَيْنِ الْمَرَضِ.

L21064–21065 They unanimously agreed that the acknowledgment by a legally competent person of a debt in favor of an heir or non-heir is permissible from the principal of the wealth, regardless of whether the debtor had a child or not.

وَاتَّفَقُوا عَلَى أَنَّ إِقْرَارَ الصَّحِيحِ لِلْوَارِثِ وَلِغَيْرِ الْوَارِثِ بِالدَّيْنِ جَائِزٌ مِنْ رَأْسِ الْمَالِ - كَانَ لَهُ وَلَدٌ أَوْ لَمْ يَكُنْ -.

L21066 Mālik and Abū Ḥanīfa said: If a sick person acknowledges [something] to an heir and then recovers from his illness, this acknowledgment is binding upon him, payable from his principal wealth.

وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ: إِنْ أَقَرَّ الْمَرِيضُ لِوَارِثٍ فَأَفَاقَ مِنْ مَرَضِهِ فَهُوَ لَازِمٌ لَهُ مِنْ رَأْسِ مَالِهِ.

L21067 There are differing reports from Mālik regarding the case if he dies from that illness. The report transmitted by Ibn al-Qāsim from him states that such an acknowledgment is not permissible. Abū Qurrah narrated from Mālik that it is impermissible except in trivial matters which he deems unaffected by it due to their insignificance.

وَاخْتَلَفَ عَنْ مَالِكٍ فِي ذَلِكَ إِنْ مَاتَ مِنْ ذَلِكَ الْمَرَضِ فَرِوَايَةُ ابْنِ الْقَاسِمِ عَنْهُ: أَنَّهُ لَا يَجُوزُ ذَلِكَ الْإِقْرَارُ - وَرَوَى أَبُو قُرَّةَ عَنْ مَالِكٍ: لَا يَجُوزُ إِلَّا فِي الشَّيْءِ الْيَسِيرِ الَّذِي يَرَى أَنَّهُ لَا يُؤَثِّرُ بِهِ لِتَفَاهَتِهِ.

L21068 It has also been narrated from Mālik that if a person acknowledges a debt or right to an heir, his acknowledgment to that heir is invalid. However, if he acknowledges a debt or right to an estranged heir, his acknowledgment is valid for him, as it would be for a non-relative.

وَرُوِيَ عَنْ مَالِكٍ أَيْضًا: أَنَّهُ إِنْ أَقَرَّ لِوَارِثٍ بِإِرْبِهِ لَمْ يَجُزْ إِقْرَارُهُ لَهُ، فَإِنْ أَقَرَّ لِوَارِثٍ عَاقٍّ جَازَ إِقْرَارُهُ لَهُ كَالْأَجْنَبِيِّ.

L21069 If it is the case that a man acknowledges to his wife a debt or dower (mahr): If he has a child from another woman and there is no known cessation of his obligations toward the wife nor bias in her favor, his acknowledgment to her is permissible from his capital. However, if he is known to show bias toward her—and there exists escalating conflict between him and his child from another woman—his acknowledgment to her is not permissible.

وَقَالَ فِي إِقْرَارِهِ لِزَوْجَتِهِ بِدَيْنٍ أَوْ مَهْرٍ: فَإِنَّهُ إِنْ كَانَ لَهُ وَلَدٌ مِنْ غَيْرِهَا وَلَمْ يُعْرَفْ لَهُ انْقِطَاعٌ إِلَى الزَّوْجَةِ، وَلَا مَيْلٌ إِلَيْهَا فَإِقْرَارُهُ لَهَا جَائِزٌ مِنْ رَأْسِ الْمَالِ، فَإِنْ عُرِفَ لَهُ مَيْلٌ إِلَيْهَا - وَكَانَ بَيْنَهُ وَبَيْنَ وَلَدِهِ مِنْ غَيْرِهَا تَفَاقُمٌ - لَمْ يَجُزْ إِقْرَارُهُ لَهَا.

L21070 He said: The rest of the heirs are not equivalent to the wife in this matter, for he is not suspected regarding the wife—if he has no affection for her—of diverting his wealth from his children to her. He said: If he is inherited by

قَالَ: وَلَيْسَ سَائِرُ الْوَرَثَةِ فِي ذَلِكَ كَالزَّوْجَةِ، لِأَنَّهُ لَا يُتَّهَمُ فِي الزَّوْجَةِ إِذَا لَمْ يَكُنْ لَهُ إِلَيْهَا مَيْلٌ أَنْ يَصْرِفَ مَالَهُ عَنْ وَلَدِهِ إِلَيْهَا، قَالَ: فَإِنْ وَرِثَهُ بَنُونَ أَوْ إِخْوَةٌ لَمْ يَجُزْ إِقْرَارُهُ

sons or brothers, his acknowledgment to some of them to the exclusion of others during his illness is invalid. If he leaves only a daughter and agnates, and he acknowledges a right for some agnates, this is permissible.

L21071 He said: It is impermissible for him to make a legal acknowledgment in favor of his close associate if his parents or agnatic relatives inherit from him. But if a child or a child's child inherits from him, his acknowledgment to him is permissible.

L21072 Abū Muḥammad said: These are statements founded—without difference of opinion—upon misguided conjectures and corrupt accusations. The Messenger of Allāh—peace and blessings be upon him—said: "Beware of suspicion, for suspicion is the most false of speech."

L21073 And Allah, the Exalted, said: "They follow nothing but assumption, and indeed assumption avails nothing against the truth." [An-Najm: 28][3]

L21074 None of these opinions are preserved from anyone prior to him.

L21075–21077 In their view, if they suspect him in this matter, his acknowledgment cannot escape being classified by them as either a gift or a bequest. If it is a gift, then according to their school, granting a gift to some heirs to the exclusion of others is permissible from the capital, and no distinction has ever been made between the gift of a sick person and that of a healthy one.

L21078 If it is a bequest, the bequest of a healthy person and a sick person are equal; it is only permissible from one-third of the estate. Thus, it is evident that distinguishing between them is invalid.

L21079 If they cite the narration concerning the emancipation of the six slaves and the Prophet's (peace be upon him) casting lots among them—freeing two and retaining four in servitude—this bears no relation to acknowledgment whatsoever. For acknowledgment is solely a declaration of a right he has

لِبَعْضِهِمْ دُونَ بَعْضٍ فِي مَرَضِهِ، فَإِنْ لَمْ يَتْرُكْ إِلَّا ابْنَةً، وَعَصَبَةً، فَأَقَرَّ لِبَعْضِ الْعَصَبَةِ جَازَ ذَلِكَ.

وَقَالَ: وَلَا يَجُوزُ إِقْرَارُهُ لِصَدِيقِهِ الْمُلَاطِفِ إِذَا وَرِثَهُ أَبَوَاهُ أَوْ عَصَبَتُهُ، فَإِنْ وَرِثَهُ وَلَدٌ أَوْ وَلَدُ وَلَدٍ: جَازَ إِقْرَارُهُ لَهُ.

قَالَ أَبُو مُحَمَّد: هَذِهِ أَقْوَالٌ مَبْنِيَّةٌ - بِلَا خِلَافٍ - عَلَى الظُّنُونِ الزَّائِغَةِ وَعَلَى التُّهَمَةِ الْفَاسِدَةِ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

وَقَالَ اللَّهُ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

وَكُلُّ هَذِهِ الْأَقْوَالِ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ.

وَلَا يَخْلُو إِقْرَارُ الْمَرِيضِ عِنْدَهُمْ إِذَا اتَّهَمُوهُ فِيهِ مِنْ أَنْ يَكُونَ عِنْدَهُمْ هِبَةً أَوْ يَكُونَ وَصِيَّةً -: فَإِنْ كَانَ هِبَةً، فَالْهِبَةُ عِنْدَهُمْ لِبَعْضِ الْوَرَثَةِ دُونَ بَعْضٍ جَائِزَةٌ مِنْ رَأْسِ الْمَالِ وَمَا جَاءَ قَطُّ فَرْقٌ بَيْنَ هِبَةِ مَرِيضٍ وَلَا هِبَةِ صَحِيحٍ.

وَإِنْ كَانَ وَصِيَّةً: فَوَصِيَّةُ الصَّحِيحِ، وَالْمَرِيضِ، سَوَاءٌ لَا تَجُوزُ إِلَّا مِنْ الثُّلُثِ - فَظَهَرَ أَنَّ تَفْرِيقَهُمْ فَاسِدٌ.

فَإِنْ ذَكَرُوا حَدِيثَ عِتْقِ السِّتَّةِ الْأَعْبُدِ، وَإِقْرَاعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ، فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً، فَلَيْسَ هَذَا مِنْ الْإِقْرَارِ فِي شَيْءٍ أَصْلًا - وَالْإِقْرَارُ إِنَّمَا هُوَ

[3] **Qur'an references (L21073):** Qur'an 53:28 (An-Najm).

acknowledged, not a gift or bequest in any form. We shall mention the narration of the six slaves, God, the Exalted, willing, in "Emancipation," with its chain of transmission clarified. And success is from God, the Exalted.

L21080 **An issue: He said, "This thing belonged to so-and-so, and he gifted it to me."**

L21081 1381 - Issue:

L21082 Whoever says, "This thing"—referring to something in his possession—"belonged to so-and-so, and he gifted it to me," or says, "He sold it to me," is truthful, and no judgment is passed against him, due to the reasons previously mentioned and because wealth and ownership rights, without doubt, transfer from one hand to another. This is a matter we know for certain.

L21083 If judgment were passed against him based on part of his admission here without considering the rest, it would necessitate confiscating all people's property from their possession—or most of it—for you undoubtedly know that houses, lands, imported garments, slaves, and beasts of burden were owned by others before coming into the hands of their current possessors without doubt. Even if it is possible for some of that to be established through lineage, the mother and the maternal grandmother—without doubt—were owned by someone else.

L21084 Similarly, crops cultivated from what one owns and grows—thus, the invalidity of this view has become wholly evident.

L21085 If evidence is presented regarding something in his possession—whether he admitted to it or not—that it belonged to another, the ruling is issued in favor of that party at that time. The transfer of what the evidence has proven to belong to a specific person is not validated at all unless corroborated by evidence—and this is unanimously agreed upon. "The Messenger of Allah, peace and blessings be upon him, judged and ruled in favor of the claimant based on evidence."

L21086 **An issue: He said to a certain person, "I owe one hundred**

إِخْبَارٌ بِحَقٍّ ذَكَرَهُ - وَلَيْسَ عَطِيَّةً أَصْلًا، وَلَا وَصِيَّةً - وَحَدِيثُ السِّتَّةِ الْأَعْبُدِ سَنَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى فِي " الْعِتْقِ " بِإِسْنَادِهِ مُبَيَّنًا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَالَ هَذَا الشَّيْءُ كَانَ لِفُلَانٍ وَوَهَبَهُ لِي]

١٣٨١ - مَسْأَلَةٌ:

وَمَنْ قَالَ: هَذَا الشَّيْءُ - لِشَيْءٍ فِي يَدِهِ - كَانَ لِفُلَانٍ، وَوَهَبَهُ لِي، أَوْ قَالَ: بَاعَهُ مِنِّي -: صَدَقَ، وَلَمْ يُقْضَ عَلَيْهِ بِشَيْءٍ، لِمَا ذَكَرْنَا قَبْلُ، وَلِأَنَّ الْأَمْوَالَ، وَالْأَمْلَاكَ بِلَا شَكٍّ مُنْتَقِلَةٌ مِنْ يَدٍ إلَى يَدٍ: هَذَا أَمْرٌ نَعْلَمُهُ يَقِينًا.

فَلَوْ قُضِيَ عَلَيْهِ بِبَعْضِ إقْرَارِهِ هُنَا دُونَ سَائِرِهِ لَوَجَبَ إخْرَاجُ جَمِيعِ أَمْلَاكِ النَّاسِ عَنْ أَيْدِيهِمْ، أَوْ أَكْثَرِهَا؛ لِأَنَّك لَا تَشُكُّ فِي الدُّورِ، وَالْأَرَضِينَ، وَالثِّيَابِ الْمَجْلُوبَةِ وَالْعَبِيدِ، وَالدَّوَابِّ: أَنَّهَا كَانَتْ قَبْلُ مَنْ هِيَ بِيَدِهِ لِغَيْرِهِ بِلَا شَكٍّ، وَإِنْ أَمْكَنَ فِي بَعْضِ ذَلِكَ أَنْ يُنْتِجَهُ فَإِنَّ الْأُمَّ وَأُمَّ الْأُمِّ - بِلَا شَكٍّ - كَانَتْ لِغَيْرِهِ.

وَكَذَلِكَ الزَّرِيعَةُ مِمَّا بِيَدِهِ مِمَّا يَنْبُتُ - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً.

فَإِنْ قَامَتْ بَيِّنَةٌ فِي شَيْءٍ مِمَّا بِيَدِهِ مِمَّا أَقَرَّ بِهِ، أَوْ مِمَّا لَمْ يُقِرَّ بِهِ: أَنَّهُ كَانَ لِغَيْرِهِ قَضَى بِهِ لِذَلِكَ الْغَيْرِ حِينَئِذٍ، وَلَمْ يُصَدَّقْ عَلَى انْتِقَالِ مَا قَامَتْ بِهِ الْبَيِّنَةُ لِإِنْسَانٍ بِعَيْنِهِ أَلْبَتَّةَ إلَّا بِبَيِّنَةٍ - وَهَذَا مُتَّفَقٌ عَلَيْهِ، «وَقَدْ حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَضَى بِالْبَيِّنَةِ لِلْمُدَّعِي»

[مَسْأَلَةٌ قَالَ لِفُلَانٍ عِنْدِي مِائَةُ دِينَارٍ دَيْنٌ وَلِي عِنْدَهُ مِائَةُ قَفِيزِ قَمْحٍ]

dinars as a debt, and he holds one hundred qafīz of wheat belonging to me."

L21087 1382 – Legal Issue:

L21088 If someone states: "So-and-so has a debt of one hundred dinars with me, while I have one hundred qafīz of wheat with him," or says: "except one hundred qafīz of dates," or similar stipulations, or "except a female slave"—and no clear proof exists for either party—the wheat he claims shall be appraised. If it equals the value of the one hundred dinars he acknowledged, or exceeds it, he bears no liability. If it equals less than that value, only the difference is adjudicated in favor of the party to whom he made the acknowledgment.

L21089 The proof of this is that he never made a complete confession for himself; rather, he coupled it with a condition that invalidated his initial declaration. Thus, nothing was ever established against himself based on his own admission.

L21090–21091 If it were permissible to take part of someone's statement while ignoring another part, it would necessarily follow that whoever says, "There is no god but Allah," should be put to death. This is because half of his statement—when isolated—constitutes genuine disbelief: namely, his saying "There is no god." It would then be said to him: "You disbelieved, then repented"—and this is an utterly invalid statement.

L21092 It would also necessarily entail the nullification of the entire exception in such a case, because it nullifies what was established in the initial statement prior to making the exception that was stipulated.

L21093 A group of scholars have stated: An exception is valid only if it pertains to the same type as what precedes it, not to a different type.

L21094 Abu Muhammad said: This is false, for Allah, the Exalted, says: "Indeed, the messengers do not fear in My presence [An-Naml 27:10], except those who have wronged [An-Naml 27:11]."[4]

١٣٨٢ - مَسْأَلَةٌ:

وَمَنْ قَالَ: لِفُلَانٍ عِنْدِي مِائَةُ دِينَارٍ دَيْنٌ وَلِي عِنْدَهُ مِائَةُ قَفِيزِ قَمْحٍ، أَوْ قَالَ: إلَّا مِائَةَ قَفِيزِ تَمْرٍ، أَوْ نَحْوَ ذَلِكَ، أَوْ إلَّا جَارِيَةً - وَلَا بَيِّنَةَ عَلَيْهِ بِشَيْءٍ وَلَا لَهُ - قُوِّمَ الْقَمْحُ الَّذِي ادَّعَاهُ، فَإِنْ سَاوَى الْمِائَةَ الدِّينَارَ الَّتِي أَقَرَّ بِهَا، أَوْ سَاوَى أَكْثَرَ: فَلَا شَيْءَ عَلَيْهِ - وَإِنْ سَاوَى أَقَلَّ: قُضِيَ بِالْفَضْلِ فَقَطْ لِلَّذِي أَقَرَّ لَهُ.

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَمْ يُقِرَّ لَهُ قَطُّ إقْرَارًا تَامًّا، بَلْ وَصَلَهُ بِمَا أَبْطَلَ بِهِ أَوَّلَ كَلَامِهِ، فَلَمْ يَثْبُتْ لَهُ قَطُّ عَلَى نَفْسِهِ شَيْئًا.

وَلَوْ جَازَ أَنْ يُؤْخَذَ بِبَعْضِ كَلَامِهِ دُونَ بَعْضٍ لَوَجَبَ أَنْ يُقْتَلَ مَنْ قَالَ: لَا إلَهَ إلَّا اللَّهُ؛ لِأَنَّ نِصْفَ كَلَامِهِ إذَا انْفَرَدَ -: كُفْرٌ صَحِيحٌ - وَهُوَ قَوْلُهُ " لَا إلَهَ " فَيُقَالُ لَهُ: كَفَرْت، ثُمَّ نَدِمْت - وَهُوَ قَوْلٌ فَاسِدٌ جِدًّا

وَلَوَجَبَ أَيْضًا أَنْ يَبْطُلَ الِاسْتِثْنَاءُ كُلُّهُ بِمِثْلِ هَذَا، لِأَنَّهُ إبْطَالٌ لِمَا أَثْبَتَهُ بِأَوَّلِ كَلَامِهِ قَبْلَ أَنْ يَسْتَثْنِيَ مَا اسْتَثْنَى.

وَقَدْ قَالَ قَوْمٌ: إنَّمَا يَجُوزُ الِاسْتِثْنَاءُ مِنْ نَوْعِ مَا قَبْلَهُ لَا مِنْ نَوْعٍ غَيْرِهِ

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {إِنِّي لا يَخَافُ لَدَيَّ الْمُرْسَلُونَ} [النمل: ١٠] {إِلا مَنْ ظَلَمَ} [النمل: ١١] .

[4] **Qur'an references (L21094):** Qur'an 27:10 (An-Naml); Qur'an 4:148 (An-Nisa); Qur'an 27:11 (An-Naml).

L21095 And He, the Most High, said: {So the angels prostrated, all of them together} [Al-Hijr: 30] {Except Iblīs} [Al-Hijr: 31]. Thus He excluded Iblīs from the angels—and he was not of them, but rather of the jinn who procreate, whereas the angels do not procreate. The Most High excluded {whoever wrongs} [An-Naml: 11] (and then repents) from the messengers, for they were not of their kind. And the poet said:[5]

وَقَالَ تَعَالَى: {فَسَجَدَ الْمَلَائِكَةُ كُلُّهُمْ أَجْمَعُونَ} [الحجر: ٣٠] {إِلا إِبْلِيسَ} [الحجر: ٣١] فَاسْتَثْنَى إِبْلِيسَ مِنْ الْمَلَائِكَةِ وَلَيْسَ مِنْهُمْ، بَلْ مِنْ الْجِنِّ الَّذِينَ يَنْسِلُونَ، وَالْمَلَائِكَةُ لَا تَنْسِلُ، وَاسْتَثْنَى تَعَالَى: {مَنْ ظَلَمَ} [النمل: ١١] مِنْ الْمُرْسَلِينَ، وَلَيْسُوا مِنْ أَهْلِ صِفَتِهِمْ، وَقَالَ الشَّاعِرُ:

L21096 A land with no inhabitants—except swallows flitting, and except pale camels pacing.

وَبَلْدَةٌ لَيْسَ بِهَا أَنِيسُ ... إِلَّا الْيَعَافِيرُ وَإِلَّا الْعِيسُ

L21097 Neither the gazelles nor the camels with white legs are considered part of the tame livestock, and the eloquent Arab poet exempted them.

وَلَيْسَ " الْيَعَافِيرُ " وَ " الْعِيسُ " مِنْ " الْأَنِيسِ " وَقَدْ اسْتَثْنَاهُمْ الشَّاعِرُ الْعَرَبِيُّ الْفَصِيحُ.

[5]**Qur'an references (L21095):** Qur'an 15:30 (Al-Hijr); Qur'an 38:73 (Sad); Qur'an 15:31 (Al-Hijr); Qur'an 27:11 (An-Naml).

AL-MUHALLA

كِتَابُ اللُّقَطَةِ وَالضَّالَّةِ وَالْآبِقِ

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[كِتَابُ اللُّقَطَةِ وَالضَّالَّةِ وَالْآبِقِ] [مَسْأَلَةٌ وَجَدَ مَالًا فِي قَرْيَةٍ أَوْ مَدِينَةٍ]

١٣٨٣ - مَسْأَلَةٌ: مَنْ وَجَدَ مَالًا فِي قَرْيَةٍ - أَوْ مَدِينَةٍ، أَوْ صَحْرَاءَ فِي أَرْضِ الْعَجَمِ، أَوْ أَرْضِ الْعَرَبِ الْعَنْوَةِ أَوْ الصُّلْحِ مَدْفُونًا أَوْ غَيْرَ مَدْفُونٍ إلَّا أَنَّ عَلَيْهِ عَلَامَةً أَنَّهُ مِنْ ضَرْبِ مُدَّةِ الْإِسْلَامِ - أَوْ وَجَدَ مَالًا - قَدْ سَقَطَ - أَيَّ مَالٍ كَانَ -: فَهُوَ لُقَطَةٌ، وَفُرِضَ عَلَيْهِ أَخْذُهُ، وَأَنْ يُشْهِدَ عَلَيْهِ عَدْلًا وَاحِدًا فَأَكْثَرَ، ثُمَّ يُعَرِّفُهُ وَلَا يَأْتِي بِعَلَامَتِهِ، لَكِنَّ تَعْرِيفَهُ هُوَ أَنْ يَقُولَ فِي الْمَجَامِعِ الَّذِي يَرْجُو وُجُودَ صَاحِبِهِ فِيهَا أَوْ لَا يَرْجُو: مَنْ ضَاعَ لَهُ مَالٌ فَلْيُخْبِرْ بِعَلَامَتِهِ، فَلَا يَزَالُ كَذَلِكَ سَنَةً قَمَرِيَّةً، فَإِنْ جَاءَ مَنْ يُقِيمُ عَلَيْهِ بَيِّنَةً، أَوْ مَنْ يَصِفُ عِفَاصَهُ وَيُصَدَّقُ فِي صِفَتِهِ، وَيَصِفُ وِعَاءَهُ وَيُصَدَّقُ فِيهِ، وَيَصِفُ رِبَاطَهُ وَيُصَدَّقُ فِيهِ، وَيَعْرِفُ عَدَدَهُ وَيُصَدَّقُ فِيهِ، أَوْ يَعْرِفُ مَا كَانَ لَهُ مِنْ هَذَا.

أَمَّا الْعَدَدُ، وَالْوِعَاءُ، إنْ كَانَ لَا عِفَاصَ لَهُ وَلَا وِكَاءَ، أَوْ الْعَدَدُ إنْ كَانَ مَنْثُورًا فِي غَيْرِ وِعَاءٍ -: دَفَعَهَا إلَيْهِ - كَانَتْ لَهُ بَيِّنَةٌ أَوْ لَمْ تَكُنْ.

وَيُجْبَرُ الْوَاجِدُ عَلَى دَفْعِهِ إلَيْهِ وَلَا ضَمَانَ عَلَيْهِ بَعْدَ ذَلِكَ.

وَلَوْ جَاءَ مَنْ يُثْبِتُهُ بِبَيِّنَةٍ فَإِنْ لَمْ يَأْتِ أَحَدٌ يَصْدُقُ فِي صِفَتِهِ بِمَا ذَكَرْنَا وَلَا بَيِّنَةَ فَهُوَ عِنْدَ تَمَامِ السَّنَةِ مَالٌ مِنْ مَالِ الْوَاجِدِ - غَنِيًّا كَانَ أَوْ فَقِيرًا يَفْعَلُ فِيهِ مَا شَاءَ، وَيُورَثُ عَنْهُ، إلَّا أَنَّهُ مَتَى قَدِمَ مَنْ يُقِيمُ فِيهِ بَيِّنَةً أَوْ يَصِفُ شَيْئًا مِمَّا ذَكَرْنَا فَيَصْدُقُ ضَمِنَهُ لَهُ - إنْ كَانَ حَيًّا، أَوْ ضَمِنَهُ لَهُ الْوَرَثَةُ - إنْ كَانَ الْوَاجِدُ لَهُ مَيِّتًا.

[Book of Lost Property, Stray Animals, and Fugitive Slaves]
[Issue: Finding Lost Property in a Village or City]

Issue 1383: If someone finds money in a village, city, desert, in the land of non-Arabs, or in Arab land acquired by conquest or treaty—whether buried or unburied but bearing markings indicating it was struck during the Islamic period—or finds any fallen property regardless of type: this constitutes lost property. The finder must take possession, secure testimony from one or more upright witnesses, then publicly announce it without describing its identifiers. The announcement shall be made in public assemblies—whether the finder hopes for the owner's presence there or not—by declaring: "Whoever lost property should report its distinguishing marks." The finder shall persist in this manner for a full lunar year. If someone appears who either produces evidence, accurately describes the container's stopper and is believed, describes its container and is believed, describes its closure and is believed, states its exact quantity and is believed, or knows any of these distinguishing aspects that belong to him—the property shall be restored to him.

As for the counted items and the container—if the container has no lid or closure, or the counted items are scattered outside a container—he must deliver them to him, whether he has evidence or not.

The finder is compelled to return it to him, and there is no liability upon him after that.

If someone comes forward to establish it with evidence, then if no one comes who truthfully describes its attributes as we mentioned nor provides evidence, upon completing the year, it becomes property from the possessions of the finder—whether wealthy or poor, he may do with it as he wishes, and it is inherited from him. However, whenever someone comes who produces evidence for it or describes any of the attributes we mentioned truthfully, the finder—if alive—must guarantee it to him, or the heirs must guarantee it—if the finder is deceased.

If what is found is a single item—such as one dinar, one dirham, a single pearl, a single garment, or any similar item that has no binding, container, or

pouch—it belongs to the one who finds it from the moment it is found, and he must announce it perpetually throughout his lifetime. If someone ever comes forward who establishes conclusive proof against him (the finder), the finder must guarantee the item's return to its owner. The exclusive right belongs solely to him—or his heirs after him. If this right is not exercised, ownership remains with him or his heirs. He may dispose of it as he wishes through sale or other transactions, and his heirs after him hold the same authority. Any actions they execute regarding it are irrevocable.

فَإِنْ كَانَ مَا وَجَدَ شَيْئًا وَاحِدًا كَدِينَارٍ وَاحِدٍ، أَوْ دِرْهَمٍ وَاحِدٍ، أَوْ لُؤْلُؤَةٍ وَاحِدَةٍ، أَوْ ثَوْبٍ وَاحِدٍ، أَوْ أَيِّ شَيْءٍ كَانَ كَذَلِكَ لَا رِبَاطَ لَهُ، وَلَا وِعَاءَ، وَلَا عِفَاصَ -: فَهُوَ لِلَّذِي يَجِدُهُ مِنْ حِينِ يَجِدُهُ وَيُعَرِّفُهُ أَبَدًا طُولَ حَيَاتِهِ، فَإِنْ جَاءَ مَنْ يُقِيمُ عَلَيْهِ بَيِّنَةً قَطُّ: ضَمِنَهُ لَهُ فَقَطْ - هُوَ أَوْ وَرَثَتُهُ بَعْدَهُ - وَإِلَّا فَهُوَ لَهُ، أَوْ لِوَرَثَتِهِ يَفْعَلُ فِيهِ مَا شَاءَ مِنْ بَيْعٍ أَوْ غَيْرِهِ، وَكَذَلِكَ وَرَثَتُهُ بَعْدَهُ وَلَا يُرَدُّ مَا أَنْفَذُوا فِيهِ.

L21107 If this occurs within the sacred precinct of Mecca—may Allah the Exalted protect it—or among a group of people traveling with the intent to perform ʿUmrah or Ḥajj, he must declare it perpetually, and it is not permissible for him to claim ownership of it. Rather, it must be placed in waqf (endowment). If he conclusively loses hope of identifying its owner, it is to be allocated for the general welfare of the Muslim community.

فَإِنْ كَانَ ذَلِكَ فِي حَرَمِ مَكَّةَ حَرَسَهَا اللَّهُ تَعَالَى، أَوْ فِي رُفْقَةِ قَوْمٍ نَاهِضِينَ إِلَى الْعُمْرَةِ أَوْ الْحَجِّ: عَرَّفَ أَبَدًا، وَلَمْ يَحِلَّ لَهُ تَمَلُّكُهُ، بَلْ يَكُونُ مَوْقُوفًا - فَإِنْ يَئِسَ بِيَقِينٍ عَنْ مَعْرِفَةِ صَاحِبِهِ فَهُوَ فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ.

L21108 The evidence for this is what we have narrated through the chain of Muslim: Isḥāq ibn Manṣūr narrated to us, ʿUbaydullāh ibn Mūsā al-ʿAbsī narrated to us from Shaybān from Yaḥyā—he is Ibn Abī Kathīr—who informed me: Abū Salama—he is the son of ʿAbd al-Raḥmān ibn ʿAwf—reported to me: Abū Hurayrah said, "The Messenger of Allah—peace and blessings be upon him—delivered a sermon during the year of the conquest of Mecca and said: 'Verily, Allah restrained the Elephant from Mecca and granted authority over it to His Prophet and the believers. Know that it was not lawful for anyone before me, nor will it be lawful for anyone after me. Know that it was made lawful for me for an hour of the day. Know that it is now inviolable during this hour of mine: its thorns shall not be shaken, its trees shall not be felled, and its lost property shall not be picked up except by one who announces it publicly.'"

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى الْعَبْسِيُّ عَنْ شَيْبَانَ عَنْ يَحْيَى - هُوَ ابْنُ أَبِي كَثِيرٍ - أَخْبَرَنِي أَبُو سَلَمَةَ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - أَخْبَرَنِي أَبُو هُرَيْرَةَ قَالَ: «خَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ فَتْحِ مَكَّةَ فَقَالَ: إِنَّ اللَّهَ حَبَسَ عَنْ مَكَّةَ الْفِيلَ، وَسَلَّطَ عَلَيْهَا نَبِيَّهُ وَالْمُؤْمِنِينَ، أَلَا وَإِنَّهَا لَمْ تَحِلَّ لِأَحَدٍ قَبْلِي، وَلَا تَحِلُّ لِأَحَدٍ بَعْدِي، أَلَا وَإِنَّهَا أُحِلَّتْ لِي سَاعَةً مِنْ النَّهَارِ، أَلَا وَإِنَّهَا سَاعَتِي هَذِهِ حَرَامٌ، لَا يُخْبَطُ شَوْكُهَا، وَلَا يُعْضَدُ شَجَرُهَا وَلَا يَلْتَقِطُ سَاقِطَتَهَا إِلَّا مُنْشِدٌ» .

L21109 Abū Muḥammad said: Mecca itself constitutes the entire Haram exclusively, being the possessor of the mentioned sanctity - excluding what lies beyond the Haram, without differing.

قَالَ أَبُو مُحَمَّدٍ: مَكَّةُ هِيَ الْحَرَمُ كُلُّهُ فَقَطْ، وَهِيَ ذَاتُ الْحُرْمَةِ الْمَذْكُورَةِ، لَا مَا عَدَا الْحَرَمَ بِلَا خِلَافٍ -.

L21110 We have also narrated it from Ibn Abbas, from the Prophet (peace and

وَرُوِّينَاهُ أَيْضًا عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيْضًا.

blessings of Allah be upon him) also.

L21111 And via the chain of Muslim: Abu al-Tahir narrated to us; Ibn Wahb informed me, reporting from 'Amr ibn al-Harith from Bukayr ibn 'Abdullah ibn al-Ashajj from Yahya ibn 'Abd al-Rahman ibn Hatib from 'Abd al-Rahman ibn 'Uthman al-Taymi: that the Messenger of Allah (peace and blessings of Allah be upon him) "prohibited taking the lost property of pilgrims."

وَمِنْ طَرِيقِ مُسْلِمٍ نِي أَبُو الطَّاهِرِ نا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ التَّيْمِيِّ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى عَنْ لُقَطَةِ الْحَاجِّ»

L21112 Abu Muhammad said: Linguistically, Ḥajj refers to intention. From this meaning, the path (al-maḥajjah) is termed maḥajjah. Therefore, one who departs from his home intending Ḥajj or ʿUmrah is fulfilling the intention that constitutes Ḥajj, until he completes all the rites of his Ḥajj or ʿUmrah. This is based on the statement of the Messenger of Allah (peace and blessings of Allah be upon him): "'Umrah is incorporated into Ḥajj until the Day of Resurrection." Once completed, he is no longer called a pilgrim, though he was a pilgrim and has performed Ḥajj. Success comes solely from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: الْحَجُّ فِي اللُّغَةِ هُوَ الْقَصْدُ، وَمِنْهُ سُمِّيَتْ الْمَحَجَّةُ مَحَجَّةً، فَالْقَاصِدُ مِنْ بَيْتِهِ إلَى الْحَجِّ أَوْ الْعُمْرَةِ هُوَ فَاعِلٌ لِلْقَصْدِ الَّذِي هُوَ الْحَجُّ إلَى أَنْ يُتِمَّ جَمِيعَ أَعْمَالِ حَجِّهِ أَوْ عُمْرَتِهِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَخَلَتْ الْعُمْرَةُ فِي الْحَجِّ إلَى يَوْمِ الْقِيَامَةِ» فَإِذَا تَمَّتْ فَلَيْسَ حَاجًّا، لَكِنَّهُ كَانَ حَاجًّا، وَقَدْ حَجَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L21113–21114 This has been narrated to us from ʿUmar ibn al-Khaṭṭāb and Sa'id ibn al-Musayyib.

وَرُوِّينَا هَذَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ الْمُسَيِّبِ.

L21115 It was narrated to us through the chain of Al-Ḥajjāj ibn al-Minhāl: Al-Aswad ibn Shaybān reported from Abū Nawfal—who is Ibn Abī ʿAqrab—from his father that he found a stray she-camel during the pilgrimage season in the era of ʿUmar ibn al-Khaṭṭāb. He announced it publicly, but no one recognized it. He brought it to ʿUmar among the people and said: "I have announced it, so relieve me of it." ʿUmar replied: "I will not do that." The man said: "O Commander of the Believers, what do you instruct me?" ʿUmar said: "Keep it until you present it at next year's pilgrimage season." He did so, announced it again, but no one recognized it. He brought it to ʿUmar and informed him he had fulfilled the command by presenting it as instructed, yet no claimant emerged. He repeated: "Relieve me of it." ʿUmar replied: "I will not do so, but if you wish, I will show you its lawful resolution: You may give it in charity. If its owner later comes, offer him the choice between the property and the reward. If he chooses the property, return it to him, and the reward will be yours. If he prefers the reward, it will be yours based

رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الْأَسْوَدُ بْنُ شَيْبَانَ عَنْ أَبِي نَوْفَلٍ - هُوَ ابْنُ أَبِي عَقْرَبٍ - عَنْ أَبِيهِ أَنَّهُ أَصَابَ بَدْرَةً بِالْمَوْسِمِ عَلَى عَهْدِ عُمَرَ بْنِ الْخَطَّابِ فَعَرَّفَهَا فَلَمْ يَعْرِفْهَا أَحَدٌ فَأَتَى بِهَا عُمَرُ عِنْدَ النَّفَرِ وَقَالَ لَهُ: قَدْ عَرَّفْتُهَا فَأَغْنِهَا عَنِّي قَالَ: مَا أَنَا بِفَاعِلٍ قَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ فَمَا تَأْمُرُنِي؟ قَالَ: أَمْسِكْهَا حَتَّى تُوَافِيَ بِهَا الْمَوْسِمَ قَابِلًا فَفَعَلَ، فَعَرَّفَهَا فَلَمْ يَعْرِفْهَا أَحَدٌ، فَأَتَى بِهَا عُمَرُ فَأَخْبَرَهُ: أَنَّهُ قَدْ وَافَاهُ بِهَا كَمَا أَمَرَهُ، وَعَرَّفَهَا فَلَمْ يَعْرِفْهَا أَحَدٌ، وَقَالَ لَهُ: أَغْنِهَا عَنِّي؟ قَالَ لَهُ عُمَرُ: مَا أَنَا بِفَاعِلٍ، وَلَكِنْ إنْ شِئْت أَخْبَرْتُك بِالْمَخْرَجِ مِنْهَا، أَوْ سَبِيلِهَا: إنْ شِئْت تَصَدَّقْت بِهَا، فَإِنْ جَاءَ صَاحِبُهَا خَيَّرْتَهُ، فَإِنْ اخْتَارَ الْمَالَ رَدَدْت عَلَيْهِ الْمَالَ، وَكَانَ الْأَجْرُ لَك، وَإِنْ اخْتَارَ الْأَجْرَ كَانَ لَك نِيَّتُك فَهَذَا فِعْلُ عُمَرَ فِي لُقَطَةِ الْمَوْسِمِ.

on your intention." This was ʿUmar's practice regarding lost property during the pilgrimage season.

وَفَعَلَ فِي لُقَطَةِ غَيْرِ الْمَوْسِمِ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ أَنَّ مُعَاوِيَةَ بْنَ عَبْدِ اللَّهِ بْنِ بَدْرٍ الْجُهَنِيَّ أَخْبَرَهُ، أَنَّ أَبَاهُ عَبْدَ اللَّهِ - قَالَ إِسْمَاعِيلُ: وَقَدْ سَمِعْت أَنَّ لَهُ صُحْبَةً - أَقْبَلَ مِنْ الشَّامِ فَوَجَدَ صُرَّةً فِيهَا ذَهَبٌ مِائَةٌ فَأَخَذَهَا، فَجَاءَ بِهَا إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَالَ لَهُ عُمَرُ: اُنْشُدْهَا الْآنَ عَلَى بَابِ الْمَسْجِدِ ثَلَاثَةَ أَيَّامٍ، ثُمَّ عَرِّفْهَا سَنَةً، فَإِنْ اعْتَرَفَتْ، وَإِلَّا فَهِيَ لَك، قَالَ: فَعَلْت فَلَمْ تُعْرَفْ، فَقَسَّمْتهَا بَيْنَ امْرَأَتَيْنِ لِي.

L21116 He acted concerning a lost item found outside the pilgrimage season as we have transmitted via Abd al-Razzaq from Ibn Jurayj, who informed me that Ismail ibn Umayyah reported: Muawiyah ibn Abdullah ibn Badr al-Juhani informed him that his father Abdullah—Ismail said, "I have heard he was a Companion (of the Prophet)"—returned from Syria and found a purse containing one hundred gold dinars. He took it and brought it to Umar ibn al-Khattab. Umar instructed him: "Announce this at the mosque's entrance for three days, then publicize it for a year. If someone claims it, give it to them; otherwise, it becomes yours." He said: "I did so, but no claimant came forward. I then divided it between my two wives."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ قَتَادَةَ قَالَ: كُنْت أَطُوفُ بِالْبَيْتِ فَوَطِئْت عَلَى ذَهَبٍ، أَوْ فِضَّةٍ، فَلَمْ آخُذْهُ، فَذَكَرْت ذَلِكَ لِسَعِيدِ بْنِ الْمُسَيِّبِ؟ فَقَالَ: بِئْسَ مَا صَنَعْت، كَانَ يَنْبَغِي لَك أَنْ تَأْخُذَهُ تُعَرِّفَهُ سَنَةً، فَإِنْ جَاءَ صَاحِبُهُ رَدَدْتَهُ إلَيْهِ، وَإِلَّا تَصَدَّقْت بِهِ عَلَى ذِي فَاقَةٍ مِمَّنْ لَا تَعُولُ.

L21117 From the chain of Al-Ḥajjāj ibn al-Minhāl, Abū ʿAwānah reported to us from Qatādah, who said: While performing circumambulation around the House, I stepped upon gold or silver but did not take it. When I mentioned this to Saʿīd ibn al-Musayyib, he said: What a terrible thing you did! You should have taken it and made it known for a year. If its owner comes, return it to him; otherwise, give it in charity to a needy person whom you do not support.

وَقَالَ فِي لُقَطَةِ غَيْرِ الْحَرَمِ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ: أَنَّ زَيْدَ بْنَ الْأَخْنَسِ الْخُزَاعِيَّ أَخْبَرَهُ أَنَّهُ قَالَ لِسَعِيدِ بْنِ الْمُسَيِّبِ: وَجَدْت لُقَطَةً أَفَأَتَصَدَّقُ بِهَا؟ قَالَ: لَا تُؤْجَرُ أَنْتَ وَلَا صَاحِبُهَا، قُلْت: أَفَأَدْفَعُهَا إلَى الْأُمَرَاءِ؟ قَالَ: إذًا يَأْكُلُونَهَا أَكْلًا سَرِيعًا قُلْت: وَكَيْفَ تَأْمُرُنِي؟ قَالَ: عَرِّفْهَا سَنَةً، فَإِنْ اعْتَرَفَتْ وَإِلَّا فَهِيَ لَك كَمَالِك فَهَذَا سَعِيدُ بْنُ الْمُسَيِّبِ يَقُولُ: بِإِيجَابِ أَخْذِ اللُّقَطَةِ وَلَا بُدَّ، وَيَرَاهَا بَعْدَ الْحَوْلِ قَدْ صَارَتْ مِنْ مَالِ الْمُلْتَقِطِ، إلَّا لُقَطَةَ مَكَّةَ.

L21118 Regarding lost property outside the Sacred Precinct, he said—as we have narrated through the chain of Abd al-Razzaq from Ibn Jurayj, who informed me that Isma'il ibn Umayyah reported: Zayd ibn al-Akhnaṣ al-Khuza'i informed him that he asked Sa'id ibn al-Musayyib: "I found a lost item—should I give it in charity?" He replied: "Neither you nor its owner will be rewarded." I said: "Should I hand it over to the authorities?" He said: "Then they will consume it swiftly." I asked: "What do you instruct me to do?" He said: "Announce it for a lunar year. If it is claimed, return it; otherwise, it becomes yours as its owner." Thus, Sa'id ibn al-Musayyib affirms the obligation to take charge of lost property, considering it necessary, and deems it to transfer to the finder's possession after the lunar year—except for lost property within Mecca.

L21119–21120 Our opinion regarding the found property of Mecca corresponds to the

opinion of ʿAbd al-Raḥmān ibn Mahdī and Abū ʿUbayd. Aḥmad ibn Muḥammad ibn al-Jasūr reported this to us, stating: Muḥammad ibn ʿĪsā ibn Rifāʿah narrated to us, ʿAlī ibn ʿAbd al-ʿAzīz narrated to us from Abū ʿUbayd, who narrated from ʿAbd al-Raḥmān ibn Mahdī to this effect. And from Abū ʿUbayd's own statement.

وَقَوْلُنَا فِي لُقَطَةِ مَكَّةَ هُوَ قَوْلُ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَأَبِي عُبَيْدٍ، نَا بِذَلِكَ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ قَالَ: نا مُحَمَّدُ بْنُ عِيسَى بْنُ رِفَاعَةَ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ بِذَلِكَ - وَعَنْ أَبِي عُبَيْدٍ مِنْ قَوْلِهِ.

L21121 As for lost items other than those of the Haram and the pilgrim, this is based on what was reported to us through the chain of Abu Dawud—Musaddad reported to us: Khalid al-Hadhdha' reported to us: Abu al-'Ala' (Yazid ibn 'Abdullah ibn al-Shikhkhir) reported from Mutarrif (ibn 'Abdullah ibn al-Shikhkhir), from 'Iyad ibn Himar al-Mujashi'i, who said: The Messenger of Allah (peace and blessings be upon him) said, "Whoever finds a lost item must have one upright witness or two upright witnesses, and must neither conceal nor misappropriate it. If he finds its owner, he must return it to him; otherwise, it becomes the property of Allah, the Exalted and Majestic—He grants it to whom He wills."

وَأَمَّا مَا عَدَا لُقَطَةَ الْحَرَمِ، وَالْحَاجِّ، فَلِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ أَبِي الْعَلَاءِ - هُوَ يَزِيدُ بْنُ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ - عَنْ مُطَرِّفٍ - هُوَ ابْنُ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ - عَنْ عِيَاضِ بْنِ حِمَارٍ الْمُجَاشِعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَخَذَ لُقَطَةً فَلْيُشْهِدْ ذَا عَدْلٍ، أَوْ ذَوِي عَدْلٍ، وَلَا يَكْتُمْ، وَلَا يَغِيبُ، فَإِنْ وَجَدَ صَاحِبَهَا فَلْيَرُدَّهَا عَلَيْهِ، وَإِلَّا فَهُوَ مَالُ اللَّهِ عَزَّ وَجَلَّ يُؤْتِيهِ مَنْ شَاءَ» .

L21122 We have narrated it through Hushaym from Khalid al-Ḥadhā' with his *isnād*. He said: "Let him have two just witnesses testify."

وَرُوِّينَاهُ مِنْ طَرِيقِ هُشَيْمٍ عَنْ خَالِدٍ الْحَذَّاءِ بِإِسْنَادِهِ فَقَالَ: «فَلْيُشْهِدْ ذَوَيْ عَدْلٍ» .

L21123 Abu Muhammad said: Musaddad added as we mentioned, and it is not a doubt. It is not permissible to interpret anything reported from the Prophet—peace and blessings of Allah be upon him—as being doubt unless there is certainty that it is doubt. Otherwise, the outward aspect is the _isnad_.

قَالَ أَبُو مُحَمَّدٍ: وَزَادَ مُسَدَّدٌ كَمَا ذَكَرْنَا وَلَيْسَ شَكًّا، وَلَا يَجُوزُ أَنْ يُحْمَلَ شَيْءٌ مِمَّا رُوِيَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّهُ شَكٌّ إلَّا بِيَقِينِ أَنَّهُ شَكٌّ، وَإِلَّا فَظَاهِرُهُ الْإِسْنَادُ.

L21124–21126 And through the chain of Hammad from Rabi'ah from Yazid, the freed slave of al-Munbaʿith, from Zayd ibn Khalid al-Juhani, that the Messenger of Allah—peace and blessings of Allah be upon him—was asked about a lost item. He said: "Identify its seal, its count, and its container. If its owner comes and recognizes it, then hand it over to him; otherwise, it is yours." And from Muslim's transmission: Abu Tahir Ahmad ibn Amr ibn al-Sarh narrated to me; Ibn Wahb narrated to us. Al-Dahhak ibn Uthman narrated from Abu al-Nadr—he was the freed slave of Umar ibn Ubayd Allah—from Busr ibn Sa'id from Zayd ibn Khalid al-Juhani, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) was asked about found property. He said: 'Announce it publicly for a year. If it is not claimed, then

وَمِنْ طَرِيقِ حَمَّادٍ عَنْ رَبِيعَةَ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «سُئِلَ عَنْ اللُّقَطَةِ فَقَالَ: اعْرِفْ عِفَاصَهَا وَعِدَّتَهَا وَوِعَاءَهَا، فَإِنْ جَاءَ صَاحِبُهَا فَعَرَفَهَا فَادْفَعْهَا إلَيْهِ وَإِلَّا فَهِيَ لَكَ» . وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ نا ابْنُ وَهْبٍ نا الضَّحَّاكُ بْنُ عُثْمَانَ عَنْ أَبِي النَّضْرِ - هُوَ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ - عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ

note its pouch and fastening, then preserve it intact. If its owner comes, return it to him.'"

L21127 From the path of Hammad ibn Salamah: Salamah ibn Kuhayl narrated to us from Suwayd ibn Ghufalah that Ubayy ibn Kaʿb said to him that he had asked the Prophet—peace be upon him—about a lost item. The Messenger of Allah said to him: "Recognize its number, its binding string, and its container, then you may use it. If its owner comes and recognizes its number, its binding string, and its container, give it to him; otherwise, it is yours."

L21128 As for a single item that has neither a stopper, a bag, nor a receptacle, this is because the Messenger of Allah—peace and blessings be upon him—commanded announcing lost items for a year only in cases where they possess countable items, a bag, a stopper, or similar attributes. However, what lacks a bag, receptacle, stopper, or countable items falls outside the scope of this narration. Its ruling is derived from the hadith of ʿIyāḍ ibn Ḥimār, which stipulates that such items must be proclaimed indefinitely, based on the Prophet's statement—peace be upon him—"One must not conceal nor hide [lost property]," and his saying—peace be upon him—"It is Allah's property, which He grants to whom He wills." Thus, Allah has bestowed it upon its finder.

It was narrated to us through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Rāfiʿ narrated to us; Ḥujayn ibn al-Muthannā narrated to us; ʿAbd al-ʿAzīz—that is, Ibn Abī Salamah al-Mājishūn—narrated from ʿAbdullāh ibn al-Faḍl, from Salamah ibn Kuhayl, who said: Suwayd ibn Ghafalah, Zayd ibn Ṣuḥān, and a third companion were traveling when one of them—undoubtedly Suwayd—found a whip and took it. His two companions urged him, "Abandon it!" He replied, "I will make use of it. If its owner comes, I will return it—it is better to use it and return it to its owner than to leave it for wild animals to destroy." Later, he met Ubayy ibn Kaʿb and related the incident. Ubayy said, "You were correct, and they erred." This indicates that Ubayy ibn Kaʿb upheld the obligation to take possession of lost property.

قَالَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللُّقَطَةِ؟ فَقَالَ: عَرِّفْهَا سَنَةً فَإِنْ لَمْ تُعْتَرَفْ فَاعْرِفْ عِفَاصَهَا وَوِكَاءَهَا، ثُمَّ كَمِّلْهَا فَإِنْ جَاءَ صَاحِبُهَا فَأَدِّهَا إلَيْهِ» .

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا سَلَمَةُ بْنُ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ أَنَّ أُبَيَّ بْنَ كَعْبٍ قَالَ لَهُ: أَنَّهُ سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللُّقَطَةِ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اعْرِفْ عَدَدَهَا، وَوِكَاءَهَا، وَوِعَاءَهَا، ثُمَّ اسْتَمْتِعْ بِهَا، فَإِنْ جَاءَ صَاحِبُهَا فَعَرَفَ عَدَدَهَا وَوِكَاءَهَا وَوِعَاءَهَا فَأَعْطِهَا إيَّاهُ وَإِلَّا فَهِيَ لَكَ»

وَأَمَّا الشَّيْءُ الْوَاحِدُ الَّذِي لَا وِكَاءَ لَهُ، وَلَا عِفَاصَ، وَلَا وِعَاءَ فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَمَرَ بِتَعْرِيفِ السَّنَةِ فِيمَا لَهُ عَدَدٌ، وَعِفَاصٌ، وَوِكَاءٌ، أَوْ بَعْضُ هَذِهِ - فَأَمَّا مَا لَا عِفَاصَ لَهُ، وَلَا وِعَاءَ، وَلَا وِكَاءَ، وَلَا عَدَدَ: فَهُوَ خَارِجٌ مِنْ هَذَا الْخَبَرِ، وَحُكْمُهُ فِي حَدِيثِ عِيَاضِ بْنِ حِمَارٍ: فَحُكْمُهُ أَنْ يُنْشَدَ ذَلِكَ أَبَدًا لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «لَا يَكْتُمُ وَلَا يُغَيِّبُ» وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «هُوَ مَالُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ» فَقَدْ آتَاهُ اللَّهُ وَاجِدَهُ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا حُجَيْنُ بْنُ الْمُثَنَّى نا عَبْدُ الْعَزِيزِ - هُوَ ابْنُ أَبِي سَلَمَةَ - الْمَاجِشُونِ عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ قَالَ: كَانَ سُوَيْدُ بْنُ غَفَلَةَ، وَزَيْدُ بْنُ صُوحَانَ وَثَالِثٌ مَعَهُمَا فِي سَفَرٍ فَوَجَدَ أَحَدُهُمْ - هُوَ سُوَيْدٌ بِلَا شَكٍّ - سَوْطًا فَأَخَذَهُ، فَقَالَ لَهُ صَاحِبَاهُ: أَلْقِهِ فَقَالَ: أَسْتَمْتِعُ بِهِ فَإِنْ جَاءَ صَاحِبُهُ أَدَّيْته إلَيْهِ خَيْرٌ مِنْ أَنْ تَأْكُلَهُ السِّبَاعُ - فَلَقِيَ أُبَيَّ بْنَ كَعْبٍ فَذَكَرَ ذَلِكَ لَهُ فَقَالَ: أَصَبْت وَأَخْطَآ - فَفِي هَذَا أَنَّ أُبَيَّ بْنَ كَعْبٍ رَأَى وُجُوبَ أَخْذِ اللُّقَطَةِ.

L21129 Abu Muhammad said: There is disagreement regarding what we have mentioned. Among this is that some said: "The luqṭah (found property) should not be taken at all," while others said: "Taking it is permissible, and leaving it is permissible." As for those who forbade taking it, this was due to what we just mentioned.

قَالَ أَبُو مُحَمَّد: فِيمَا ذَكَرْنَا اخْتِلَافٌ، فَمِنْ ذَلِكَ أَنَّ قَوْمًا قَالُوا: لَا تُؤْخَذُ اللُّقَطَةُ أَصْلًا، وَقَالَ آخَرُونَ: مُبَاحٌ أَخْذُهَا وَتَرْكُهَا مُبَاحٌ، فَأَمَّا مَنْ نَهَى عَنْ أَخْذِهَا فَلِمَا ذَكَرْنَا آنِفًا.

L21130 It was narrated to us from Ibn Wahb from ʿAmr ibn al-Ḥārith from Jaʿfar ibn Rabīʿah that al-Walīd ibn Saʿd narrated to him, saying: "I was with Ibn ʿUmar when I saw a dinar. I moved to take it, but Ibn ʿUmar struck my hand and said: 'What is it to you? Leave it.'" And through the narration of Qābūs ibn Abī Ẓabyān from his father from Ibn ʿAbbās: "Do not lift lost property; you have no part in it. Leaving it is better than taking it."

وَكَمَا رُوِّينَا عَنْ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ أَنَّ الْوَلِيدَ بْنَ سَعْدٍ حَدَّثَهُ قَالَ: كُنْت مَعَ ابْنِ عُمَرَ فَرَأَيْت دِينَارًا فَذَهَبْت لِآخُذَهُ فَضَرَبَ ابْنُ عُمَرَ يَدِي وَقَالَ: مَا لَك وَلَهُ اُتْرُكْهُ. وَمِنْ طَرِيقِ قَابُوسِ بْنِ أَبِي ظَبْيَانَ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ لَا تَرْفَعْ اللُّقَطَةَ لَسْت مِنْهَا فِي شَيْءٍ، تَرْكُهَا خَيْرٌ مِنْ أَخْذِهَا.

L21131–21132 Through the chain of Sufyan al-Thawri from Ibrahim ibn Abd al-A'la: Saʿid ibn Jubayr was asked about fruit found on the road. He replied, "It may not be eaten without the permission of its owner." Al-Rabiʿ ibn Khaytham is reported to have disapproved of taking lost property, and Shurayh is reported to have passed by a dirham and left it.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى سُئِلَ سَعِيدُ بْنُ جُبَيْرٍ عَنْ الْفَاكِهَةِ تُوجَدُ فِي الطَّرِيقِ؟ قَالَ: لَا تُؤْكَلُ إلَّا بِإِذْنِ رَبِّهَا. وَعَنْ الرَّبِيعِ بْنِ خَيْثَمٍ أَنَّهُ كَرِهَ أَخْذَ اللُّقَطَةِ. وَعَنْ شُرَيْحٍ أَنَّهُ مَرَّ بِدِرْهَمٍ فَتَرَكَهُ.

L21133 Abu Hanifah and Malik said: Both matters are permissible, but the superior course is to take them. Al-Shafiʿi once stated: Taking them is superior. On another occasion, he said: Piety is abandoning them.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: كِلَا الْأَمْرَيْنِ مُبَاحٌ، وَالْأَفْضَلُ أَخْذُهَا. وَقَالَ الشَّافِعِيُّ مَرَّةً: أَخْذُهَا أَفْضَلُ - وَمَرَّةً قَالَ: الْوَرَعُ تَرْكُهَا.

L21134 Abu Muhammad said: As for the one who permitted both matters, we do not know of any proof for him at all. If they interpret his command (peace be upon him) to accept it as a recommendation, it is said to them: Then interpret his command to define it as a recommendation, for there is no difference.

قَالَ أَبُو مُحَمَّد: أَمَّا مَنْ أَبَاحَ كِلَا الْأَمْرَيْنِ فَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا، فَإِنْ حَمَلُوا أَمْرَهُ - عَلَيْهِ السَّلَامُ - بِأَخْذِهَا عَلَى النَّدْبِ؟ قِيلَ لَهُمْ: فَاحْمِلُوا أَمْرَهُ بِتَعْرِيفِهَا عَلَى النَّدْبِ وَلَا فَرْقَ.

L21135 If they say: "People's wealth is forbidden?" We reply: "Squandering it is forbidden—there is no distinction." As for those who prohibit taking it, they cite the Messenger of Allah's (peace and blessings be upon him) statement: 'Your blood and your wealth are inviolable to you.' We respond: "Indeed, but we never commanded him to deem it lawful in the first place. Rather, we commanded him to fulfill his obligation to preserve it and avoid its unlawful

فَإِنْ قَالُوا: أَمْوَالُ النَّاسِ مُحَرَّمَةٌ؟ قُلْنَا: وَإِضَاعَتُهَا مُحَرَّمَةٌ وَلَا فَرْقَ. وَأَمَّا مَنْ مَنَعَ مِنْ أَخْذِهَا؟ فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَقُلْنَا لَهُمْ: نَعَمْ، وَمَا أَمَرْنَاهُ بِاسْتِحْلَالِهَا أَصْلًا، لَكِنْ أَمَرْنَاهُ بِالْمُفْتَرَضِ عَلَيْهِ مِنْ حِفْظِهَا وَتَرْكِ إضَاعَتِهَا الْمُحَرَّمَةِ عَلَيْهِ، ثُمَّ جَعَلْنَاهَا لَهُ حَيْثُ جَعَلَهَا

waste. We then entrust it to him as Allah—Who forbade our wealth to us except through what He permitted—has decreed. It is impermissible to abandon any of the Prophet's commands, for he has a greater claim over us than our own selves. Whoever harbors reluctance in his heart against what the Prophet has decreed has disbelieved."

L21136 They also cited as evidence the ḥadīth of al-Mundhir ibn Jarīr from his father from the Prophet, peace be upon him: "No one takes in a stray animal except a misguided person," and the ḥadīth of Abū Muslim al-Jarmī—or al-Ḥaramī—from al-Jārūd from the Prophet, peace be upon him, who said: "A Muslim's stray animal is the burning of the Fire."

L21137–21138 These two reports are unsound because Al-Mundhir ibn Jarīr and Abū Muslim Al-Jarmī or Al-Ḥaramī are unknown. However, "The lost property of a Muslim is fuel for the Fire" has been authenticated through another chain—a general statement elaborated by other narrations. It is a report we narrated via Ḥammād ibn Salamah from Ḥumayd from Al-Ḥasan from Muṭarrif ibn ʿAbdullāh ibn Ash-Shikhkhīr from his father, who asked the Messenger of Allah—peace and blessings be upon him—about stray camels. He—peace be upon him—responded: "The lost property of a Muslim is fuel for the Fire." They were the first to dissent, yet they instructed to take stray camels. Even if these two reports were sound, they would hold no legal weight, for sheltering lost property contravenes the Prophet's command—peace and blessings be upon him—regarding "fuel for the Fire," and is undoubtedly misguidance. We have never unconditionally commanded its sheltering, only its public announcement and perpetual liability. A stronger narration than theirs exists, as transmitted through Ibn Wahb: ʿAmr ibn Al-Ḥārith narrated to me from Bakr ibn Sawādah from Abū Sālim Al-Jayshānī from Zayd ibn Khālid Al-Juhanī that the Messenger of Allah—peace and blessings be upon him—said: "Whoever takes lost property remains astray until he announces it."

L21139 **The duration for announcing the found item.**

لَهُ الَّذِي حَرَّمَ أَمْوَالَنَا عَلَيْنَا إِلَّا بِمَا أَبَاحَهَا لَنَا، لَا يَجُوزُ تَرْكُ شَيْءٍ مِنْ أَوَامِرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ أَوْلَى بِنَا مِنْ أَنْفُسِنَا، وَقَدْ كَفَرَ مَنْ وَجَدَ فِي نَفْسِهِ حَرَجًا مِمَّا قَضَى.

وَاحْتَجُّوا أَيْضًا بِحَدِيثِ الْمُنْذِرِ بْنِ جَرِيرٍ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَأْوِي الضَّالَّةَ إِلَّا ضَالٌّ» وَبِحَدِيثِ أَبِي مُسْلِمٍ الْجَرْمِيِّ - أَوْ الْحَرَمِيِّ - عَنْ الْجَارُودِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «ضَالَّةُ الْمُسْلِمِ حَرْقُ النَّارِ» .

وَهَذَانِ خَبَرَانِ لَا يَصِحَّانِ، لِأَنَّ الْمُنْذِرَ بْنَ جَرِيرٍ، وَأَبَا مُسْلِمٍ الْجَرْمِيَّ أَوْ الْحَرَمِيَّ - غَيْرُ مَعْرُوفَيْنِ، لَكِنْ «ضَالَّةُ الْمُسْلِمِ حَرْقُ النَّارِ» قَدْ صَحَّ مِنْ طَرِيقٍ أُخْرَى وَهَذَا لَفْظٌ مُجْمَلٌ فَسَّرَهُ سَائِرُ الْآثَارِ - وَهُوَ خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ أَبِيهِ أَنَّهُ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ضَوَالِّ الْإِبِلِ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: «ضَالَّةُ الْمُسْلِمِ حَرْقُ النَّارِ» وَهُمْ أَوَّلُ مُخَالِفٍ، فَأَمَرُوا بِأَخْذِ ضَوَالِّ الْإِبِلِ، ثُمَّ لَوْ صَحَّا لَمَا كَانَ لَهُمْ فِيهِمَا حُجَّةٌ، لِأَنَّ إِيوَاءَ الضَّالَّةِ بِخِلَافِ مَا أَمَرَ بِهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَرْقُ النَّارِ، وَضَلَالٌ بِلَا شَكٍّ، وَمَا أَمَرْنَاهُ قَطُّ بِإِيوَائِهَا مُطْلَقًا، لَكِنْ بِتَعْرِيفِهَا وَضَمَانِهَا فِي الْأَبَدِ، وَقَدْ جَاءَ بِهَذَا حَدِيثٌ أَحْسَنُ مِنْ حَدِيثِهِمْ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بَكْرِ بْنِ سَوَادَةَ عَنْ أَبِي سَالِمٍ الْجَيْشَانِيِّ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - [أَنَّهُ قَالَ] : «مَنْ أَخَذَ لُقَطَةً فَهُوَ ضَالٌّ مَا لَمْ يُعَرِّفْهَا» .

[مُدَّةُ تَعْرِيفِ اللُّقَطَةِ]

L21140 Among them is the duration for announcing [lost property]. It has been narrated to us from ‘Umar (may Allah be pleased with him) that the announcement period is three days at the mosque’s entrance, then one year – and this is the opinion of al-Layth ibn Sa‘d.

وَمِنْهَا مُدَّةُ التَّعْرِيفِ، وَقَدْ رُوِّينَا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - التَّعْرِيفَ ثَلَاثَةَ أَيَّامٍ عَلَى بَابِ الْمَسْجِدِ، ثُمَّ سَنَةً - وَبِهِ يَقُولُ اللَّيْثُ بْنُ سَعْدٍ.

L21141–21143 This opinion is substantiated by what we have transmitted through the chain of Ahmad ibn Shu’ayb, who narrated from Yazid ibn Muhammad ibn ’Abd al-Samad, from ’Ali ibn ’Ayyash, from al-Layth, meaning Ibn Sa’d, who stated: It was conveyed to me by a reliable authority from Isma’il ibn Umayyah, from Rabi’ah ibn Abi ’Abd al-Rahman, from ’Abdullah ibn Yazid, the freed slave of al-Munba’ith, from a man among the Companions of the Messenger of Allah—peace and blessings be upon him—who reported that the Prophet—peace and blessings be upon him—said when asked about a lost item: “Recognize its bag and fastening, then publicly make it known for three days at the mosque’s entrance. If its owner comes, deliver it to him. If not, make it known for a full year. If its owner comes, give it to him; otherwise, you may dispose of it.” This is a weak hadith, for al-Layth did not name the one from whom he received it, and a virtuous narrator may deem reliable someone whom others do not. He approves. This is Sufyan al-Thawri saying: “I have not seen anyone more truthful than Jabir al-Juʿfi”—yet Jabir is notorious for lying.

وَيُحْتَجُّ لِهَذَا الْقَوْلِ بِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا يَزِيدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ الصَّمَدِ نا عَلِيُّ بْنُ عَيَّاشٍ نا اللَّيْثُ - هُوَ ابْنُ سَعْدٍ - حَدَّثَنِي مَنْ أَرْضَى عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ - وَقَدْ سُئِلَ عَنِ الضَّالَّةِ -: «اعْرِفْ عِفَاصَهَا وَوِكَاءَهَا، ثُمَّ عَرِّفْهَا ثَلَاثَةَ أَيَّامٍ عَلَى بَابِ الْمَسْجِدِ، فَإِنْ جَاءَ صَاحِبُهَا فَادْفَعْهَا إِلَيْهِ، وَإِنْ لَمْ يَأْتِ فَعَرِّفْهَا سَنَةً، فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا فَشَأْنُكَ بِهَا» . وَهَذَا حَدِيثٌ هَالِكٌ، لِأَنَّ اللَّيْثَ لَمْ يُسَمِّ مَنْ أَخَذَ عَنْهُ وَقَدْ يَرْضَى الْفَاضِلُ مَنْ لَا يَرْضَى، هَذَا سُفْيَانُ الثَّوْرِيُّ يَقُولُ: لَمْ أَرَ أَصْدَقَ مِنْ جَابِرٍ الْجُعْفِيِّ - وَجَابِرٌ مَشْهُورٌ بِالْكَذِبِ.

L21144 Moreover, it is a mistake because he attributed to it: “From ʿAbdullāh ibn Yazīd,” when in fact it is from Yazīd (a different narrator), not from ʿAbdullāh ibn Yazīd.

ثُمَّ هُوَ خَطَأٌ، لِأَنَّهُ قَالَ فِيهِ: عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ وَإِنَّمَا هُوَ عَنْ يَزِيدَ لَا عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ.

L21145 Another perspective: As narrated to us through the chain of Ḥammād ibn Salamah, from Yaḥyā ibn Saʿīd al-Anṣārī, from Muʿāwiyah ibn ʿAbdillāh ibn Badr, who said: My father found one hundred dinars in a camel’s resting place and asked ʿUmar ibn al-Khaṭṭāb about it. ʿUmar said to him: “Announce them for one year.” He announced them for a year but found no claimant for them. ʿUmar then said to him: “Announce them for three years.” He did so but still found no claimant for them. ʿUmar then said to him: “They are yours.”

وَوَجْهٌ آخَرُ كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - عَنْ مُعَاوِيَةَ بْنِ عَبْدِ اللَّهِ بْنِ بَدْرٍ قَالَ: وَجَدَ أَبِي فِي مَبْرَكِ بَعِيرٍ مِائَةَ دِينَارٍ فَسَأَلَ عُمَرَ بْنَ الْخَطَّابِ عَنْ ذَلِكَ؟ فَقَالَ لَهُ: عَرِّفْهَا عَامًا، فَعَرَّفَهَا عَامًا فَلَمْ يَجِدْ لَهَا عَارِفًا؟ فَقَالَ لَهُ عُمَرُ: عَرِّفْهَا ثَلَاثَةَ أَعْوَامٍ، فَلَمْ يَجِدْ لَهَا عَارِفًا، فَقَالَ لَهُ عُمَرُ: هِيَ لَكَ.

L21146 The evidence for this is what we have narrated through the chain of Ahmad

ibn Shu'ayb: Muhammad ibn Qudamah narrated to us, Jarir narrated to us from al-A'mash from Salama ibn Kuhayl from Suwayd ibn Ghafala, who said: Ubayy ibn Ka'b said to me: "I found a purse containing one hundred dinars, so I brought it to the Messenger of Allah, peace be upon him. He said: 'Announce it for a lunar year.' I announced it for a lunar year. Then I said: 'O Messenger of Allah, I have announced it for a lunar year.' He said: 'Announce it for another year.' So I announced it for another year. Then I said: 'O Messenger of Allah, I have announced it for a year.' He said: 'Announce it for another year.' I announced it for another year. Then I informed him, peace be upon him, of this, and he said: 'Use it for yourself, but note its binding, its cloth, and keep track of its amount. Then, if its owner comes...'" Jarir said: "I did not memorize what follows this."

وَيُحْتَجُّ لِهَذَا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ قُدَامَةَ نا جَرِيرٌ عَنْ الْأَعْمَشِ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ قَالَ: قَالَ لِي أُبَيّ بْنُ كَعْبٍ: «الْتَقَطْتُ صُرَّةً فِيهَا مِائَةُ دِينَارٍ فَأَتَيْتُ بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: عَرِّفْهَا حَوْلًا فَعَرَّفْتُهَا حَوْلًا، فَقُلْتُ: يَا رَسُولَ اللَّهِ قَدْ عَرَّفْتُهَا حَوْلًا فَقَالَ: عَرِّفْهَا سَنَةً أُخْرَى فَعَرَّفْتُهَا سَنَةً أُخْرَى ثُمَّ قُلْتُ: يَا رَسُولَ اللَّهِ عَرَّفْتُهَا سَنَةً فَقَالَ: عَرِّفْهَا سَنَةً أُخْرَى فَعَرَّفْتُهَا سَنَةً أُخْرَى ثُمَّ أَخْبَرْتُهُ - عَلَيْهِ السَّلَامُ - بِذَلِكَ، فَقَالَ: انْتَفِعْ بِهَا وَاعْرِفْ وِكَاءَهَا وَخِرْقَتَهَا وَاحْصِ عَدَدَهَا فَإِنْ جَاءَ صَاحِبُهَا» قَالَ جَرِيرٌ: لَمْ أَحْفَظْ مَا بَعْدَ هَذَا.

L21147 And likewise, we have narrated it through the chain of Zayd ibn Abi Unaysah and Ubayd Allah ibn Umar—both al-Raqqiyyayn (from Raqqa)—both narrating from Salamah ibn Kuhayl, from Suwayd ibn Ghafalah, from Ubayy ibn Ka'b, from the Prophet (peace and blessings of Allah be upon him).

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ زَيْدِ بْنِ أَبِي أُنَيْسَةَ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ الرَّقِّيِّينِ كِلَاهُمَا عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21148 Abu Muhammad said: This is a hadith whose outward appearance suggests the soundness of its chain, except that Salamah ibn Kuhayl undoubtedly erred in it; for we have narrated it via the chain of Hammad ibn Salamah, from Salamah ibn Kuhayl, from Suwayd ibn Ghafalah, from Ubayy ibn Ka'b, from the Prophet—peace be upon him—in which he said: "I did not find an expert for her for two or three years."

قَالَ أَبُو مُحَمَّد: هَذَا حَدِيثٌ ظَاهِرُهُ صِحَّةُ السَّنَدِ، إلَّا أَنَّ سَلَمَةَ بْنَ كُهَيْلٍ أَخْطَأَ فِيهِ بِلَا شَكٍّ، لِأَنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ: فَلَمْ أَجِدْ لَهَا عَارِفًا عَامَيْنِ أَوْ ثَلَاثَةً.

L21149–21151 We were narrated through the route of ʿAbd al-ʿAzīz ibn Abī Salamah al-Mājishūn, from ʿAbd Allāh ibn al-Faḍl, from Salamah ibn Kuhayl, from Suwayd ibn Ghafala, from Ubayy ibn Ka'b, from the Prophet—peace be upon him—who said regarding it, "Make her known." He said, "I publicized her [as lost property], but she was not claimed. I returned [to the authority], and he said, 'Publicize her for a year, repeating this twice or thrice.'" This is a doubt expressed by Salamah ibn Kuhayl.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ الْمَاجِشُونِ عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ: «عَرِّفْهَا عَامًا» قَالَ: فَعَرَّفْتُهَا، فَلَمْ تُعْتَرَفْ، فَرَجَعْت فَقَالَ: «عَرِّفْهَا عَامًا مَرَّتَيْنِ أَوْ ثَلَاثًا» فَهَذَا شَكٌّ مِنْ سَلَمَةَ بْنِ كُهَيْلٍ.

L21152 Then we narrated it via the route of Muslim ibn al-Ḥajjāj, who said: Abu

Bakr ibn Nāfiʿ reported to me → Ghundar reported to us → Shuʿbah reported to us → from Salamah ibn Kuhayl, who said: “I heard Suwayd ibn Ghaflah say: ’I met Ubayy ibn Kaʿb, and he mentioned [it].’”

ثُمَّ رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ قَالَ: حَدَّثَنِي أَبُو بَكْرِ بْنُ نَافِعٍ نا غُنْدَرٌ نا شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ قَالَ: سَمِعْت سُوَيْدُ بْنَ غَفَلَةَ قَالَ: لَقِيت أُبَيَّ بْنَ كَعْبٍ فَذَكَرَ.

L21153 The narration states that the Messenger of Allah—peace be upon him—said to him: “Announce her for a year.” So I announced her but found no one to recognize her. Then I came to him, and he said: “Announce her for a year.” So I announced her but found no one to recognize her. Then I came to him, and he said: “Announce her for a year.” So I announced her but found no one to recognize her.“ He mentioned the rest of the narration: Shuʿbah said: ”I met him afterward in Makkah, and he said: ’I do not know whether it was three years or one year.’“

الْحَدِيثَ وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «عَرِّفْهَا حَوْلًا، فَعَرَّفْتُهَا فَلَمْ أَجِدْ مَنْ يَعْرِفُهَا، ثُمَّ أَتَيْتُهُ فَقَالَ: عَرِّفْهَا حَوْلًا، فَلَمْ أَجِدْ مَنْ يَعْرِفُهَا ثُمَّ أَتَيْتُهُ فَقَالَ: عَرِّفْهَا حَوْلًا فَلَمْ أَجِدْ مَنْ يَعْرِفُهَا» ، وَذَكَرَ بَاقِي الْحَدِيثِ: قَالَ شُعْبَةُ: فَلَقِيتُهُ بَعْدَ ذَلِكَ بِمَكَّةَ فَقَالَ: لَا أَدْرِي ثَلَاثَةُ أَحْوَالٍ أَوْ حَوْلٌ وَاحِدٌ

L21154 Thus, this is an explicit declaration from Salamah ibn Kuhayl with doubt, and the Sharia is not accepted on the basis of doubt.

فَهَذَا تَصْرِيحٌ مِنْ سَلَمَةَ بْنِ كُهَيْلٍ بِالشَّكِّ، وَالشَّرِيعَةُ لَا تُؤْخَذُ بِالشَّكِّ.

L21155 We also narrated it through the path of Muslim: ʿAbd al-Raḥmān ibn Bishr al-ʿAbdī narrated to me; Bahz—he is Ibn Asad—informed us; Shuʿbah informed us; Salamah ibn Kuhayl informed us, said: I heard Suwayd ibn Ghaflah narrate the ḥadīth in detail. Shuʿbah said: Then, after ten years, I heard him say: “Make it known for one year.”

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ بِشْرٍ الْعَبْدِيُّ نا بَهْزٌ - هُوَ ابْنُ أَسَدٍ - نا شُعْبَةُ نا سَلَمَةُ بْنُ كُهَيْلٍ قَالَ: سَمِعْت سُوَيْدُ بْنَ غَفَلَةَ فَاقْتَصَّ الْحَدِيثَ - قَالَ شُعْبَةُ: فَسَمِعْتُهُ بَعْدَ عَشْرِ سِنِينَ يَقُولُ: عَرِّفْهَا عَامًا وَاحِدًا.

L21156 It became evident that Salamah ibn Kuhayl ascertained [the matter] and actively recalled [it], then became certain of a single year after experiencing doubt—thereby establishing that it had been an erroneous assumption. He then sought to recall again, which led him to doubt, but upon further recollection attained certainty. It was conclusively established that specifying the year is obligatory, while specifying any period beyond it was rendered invalid—and all praise belongs to Allah, Lord of the worlds.

فَصَحَّ أَنَّ سَلَمَةَ بْنَ كُهَيْلٍ تَثَبَّتَ وَاسْتَذْكَرَ، فَثَبَتَ عَلَى عَامٍ وَاحِدٍ، بَعْدَ أَنْ شَكَّ، فَصَحَّ أَنَّهُ وَهْمٌ ثُمَّ اسْتَذْكَرَ، فَشَكَّ ثُمَّ اسْتَذْكَرَ فَتَيَقَّنَ، وَثَبَتَ وُجُوبُ تَعْرِيفِ الْعَامِ وَبَطَلَ تَعْرِيفُ مَا زَادَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L21157 Abu Muhammad said: Here are two other reports. One of them: We related it through the chain of Abd al-Razzaq from Abu Bakr—he is Ibn Abi Maysarah—from Sharik ibn Abd Allah from Ata ibn Yasar from Abu Sa’id al-Khudri: “Ali came to the Messenger of Allah—peace and blessings be upon him—with a dinar he found in the market. The Prophet—peace and blessings be upon him—said: ’Publicize it for three days.’ He did so but found

قَالَ أَبُو مُحَمَّد: وَهَهُنَا أَثَرَانِ آخَرَانِ - أَحَدُهُمَا: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرٍ - هُوَ ابْنُ أَبِي مَيْسَرَةَ - عَنْ شَرِيكِ بْنِ عَبْدِ اللَّهِ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ عَلِيًّا جَاءَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِدِينَارٍ وَجَدَهُ فِي السُّوقِ

no one acknowledging it. The Prophet—peace and blessings be upon him—then told him: 'Consume it.'" The entire hadith was mentioned, and at its end: "He established the waiting period for a dinar and its equivalent value as three days." Regarding this hadith, Abu Muhammad said: We do not know from whose words this addition originates. This is an unsound report because it comes through Ibn Abi Sabrah—who is notorious for forging hadiths and lying—from Sharik, a narrator who practices *tadlis* by concealing flaws through transmitting discredited narrations from weak authorities to trustworthy ones.

فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرِّفْهُ ثَلَاثًا فَفَعَلَ فَلَمْ يَجِدْ أَحَدًا يَعْتَرِفُهُ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: كُلْهُ فَذَكَرَ الْحَدِيثَ كُلَّهُ - وَفِي آخِرِهِ فَجَعَلَ أَجَلَ الدِّينَارِ وَشَبَهِهُ ثَلَاثَةَ أَيَّامٍ» لِهَذَا الْحَدِيثِ قَالَ أَبُو مُحَمَّدٍ: لَا نَدْرِي مِنْ كَلَامِ مَنْ هَذِهِ الزِّيَادَةُ، وَهَذَا خَبَرُ سُوءٍ لِأَنَّهُ مِنْ طَرِيقِ ابْنِ أَبِي سَبْرَةَ وَهُوَ مَشْهُورٌ بِوَضْعِ الْحَدِيثِ وَالْكَذِبِ، عَنْ شَرِيكٍ وَهُوَ مُدَلِّسٌ يُدَلِّسُ الْمُنْكَرَاتِ عَنْ الضُّعَفَاءِ إلَى الثِّقَاتِ.

L21158–21159 It has been narrated through the chain of Isra'il from 'Umar ibn 'Abd Allāh ibn Ya'lā from his grandmother Hakīmah from her father that the Messenger of Allāh — peace and blessings be upon him — said: "Whoever finds a lost item of insignificant value, such as a dirham, a rope, or the like, let him announce it for three days. If it exceeds that, let him announce it for six days." This is baseless! Isra'il is weak, 'Umar ibn 'Abd Allāh is unknown, and Hakīmah's narration from her father is utterly rejected. These are layers of darkness, one upon another.

وَرُوِيَ مِنْ طَرِيقِ إسْرَائِيلَ عَنْ عُمَرَ بْنِ عَبْدِ اللَّهِ بْنِ يَعْلَى عَنْ جَدَّتِهِ حَكِيمَةَ عَنْ أَبِيهَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ الْتَقَطَ لُقَطَةً يَسِيرَةً دِرْهَمًا أَوْ حَبْلًا أَوْ شِبْهَ ذَلِكَ فَلْيُعَرِّفْهُ ثَلَاثَةَ أَيَّامٍ، فَإِنْ كَانَ فَوْقَ ذَلِكَ فَلْيُعَرِّفْهُ سِتَّةَ أَيَّامٍ» وَهَذَا لَا شَيْءَ: إسْرَائِيلُ ضَعِيفٌ، وَعُمَرُ بْنُ عَبْدِ اللَّهِ مَجْهُولٌ، وَحَكِيمَةُ عَنْ أَبِيهَا أَنْكَرُ وَأَنْكَرُ، ظُلُمَاتٌ بَعْضُهَا فَوْقَ بَعْضٍ.

L21160 Abū Muḥammad said: It has been reported to us from Mālik, al-Shāfiʿī, Abū Sulaymān, and al-Awzāʿī that publicizing the found item (luqṭah) lasts one year – this being the well-known position attributed to Abū Ḥanīfah, though a contradictory report is also narrated from him. A report from ʿUmar ibn al-Khaṭṭāb states: "Publicizing the found item lasts three months." Another report from him – through the chain of Sharīk from Abū Yaʿqūb al-ʿAbdī from Abū Shaykh al-ʿAbdī from Zayd ibn Ṣuḥḥān al-ʿAbdī – relates that ʿUmar ordered a found necklace to be publicized for four months. If someone came forward to identify it, otherwise, it was deposited in the public treasury. These are five opinions from ʿUmar – may Allah be pleased with him. Abū Nuʿaym reported from Sufyān al-Thawrī: "Whoever finds a dirham must publicize it for four days." Al-Ḥasan ibn Ḥayy and Abū Ḥanīfah – in the narration of Hishām ibn ʿUbayd Allāh al-Rāzī from Muḥammad ibn al-Ḥasan from him, i.e., Abū Ḥanīfah – held that items worth ten dirhams or more require publicizing for one year. They differed regarding items of lesser value: al-Ḥasan ibn Ḥayy ruled they must be publicized for three days.

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا عَنْ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَالْأَوْزَاعِيِّ تَعْرِيفَ اللُّقَطَةِ سَنَةً - وَهُوَ الْقَوْلُ الظَّاهِرُ عَنْ أَبِي حَنِيفَةَ، وَقَدْ رُوِيَ عَنْهُ خِلَافُهُ. وَرُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَيْضًا: تَعْرِيفُ اللُّقَطَةِ ثَلَاثَةَ أَشْهُرٍ. وَرُوِيَ أَيْضًا عَنْهُ مِنْ طَرِيقِ شَرِيكٍ عَنْ أَبِي يَعْقُوبَ الْعَبْدِيِّ عَنْ أَبِي شَيْخٍ الْعَبْدِيِّ عَنْ زَيْدِ بْنِ صُوحَانَ الْعَبْدِيِّ أَنَّ عُمَرَ أَمَرَ أَنْ يُعَرَّفَ قِلَادَةً الْتَقَطَهَا أَرْبَعَةَ أَشْهُرٍ، فَإِنْ جَاءَ مَنْ يَعْرِفُهَا وَإِلَّا وَضَعَهَا فِي بَيْتِ الْمَالِ - فَهَذِهِ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - خَمْسَةُ أَقْوَالٍ. وَرَوَى أَبُو نُعَيْمٍ عَنْ سُفْيَانَ الثَّوْرِيِّ مَنْ الْتَقَطَ دِرْهَمًا فَإِنَّهُ يُعَرِّفُهُ أَرْبَعَةَ أَيَّامٍ وَقَالَ الْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ فِي رِوَايَةِ هِشَامِ بْنِ عُبَيْدِ اللَّهِ الرَّازِيِّ عَنْ مُحَمَّدِ بْنِ الْحَسَنِ عَنْهُ: أَنَّ مَا بَلَغَ عَشَرَةَ دَرَاهِمَ فَصَاعِدًا فَإِنَّهُ يُعَرَّفُ سَنَةً. وَاخْتَلَفَا فِيمَا كَانَ أَقَلَّ فَقَالَ الْحَسَنُ بْنُ حَيٍّ: يُعَرَّفُ ثَلَاثَةَ أَيَّامٍ.

وَقَالَ أَبُو حَنِيفَةَ: يُعَرَّفُ عَلَى قَدْرِ مَا يَرَى الْمُلْتَقِطُ - وَهَذِهِ آرَاءٌ فَاسِدَةٌ كَمَا تَرَى، وَمِنْهَا: دَفْعُ اللُّقَطَةِ إلَى مَنْ عَرَفَ الْعِفَاصَ، وَالْوِكَاءَ، وَالْعَدَدَ، وَالْوِعَاءَ فَقَالَ مَالِكٌ، وَأَبُو سُلَيْمَانَ كَمَا قُلْنَا.

L21161 Abu Hanifah said: The lost item must be announced for a duration the finder deems sufficient. These are invalid opinions, as is evident, such as handing over the lost item to someone who recognizes the pouch, fastener, number of items, or container. Malik and Abu Sulaiman stated the same as we have stated.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: لَا يَدْفَعُهَا إلَيْهِ بِذَلِكَ، فَإِنْ فَعَلَ ضَمِنَهَا؛ لِأَنَّهُ قَدْ يَسْمَعُ صَاحِبَهَا يَصِفُهَا فَيَعْرِفُ صِفَتَهَا فَيَأْتِي بِهَا -. وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ الْبَيِّنَةَ عَلَى الْمُدَّعِي وَالْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ، وَنَهَى عَنْ أَنْ يُعْطَى أَحَدٌ بِدَعْوَاهُ. وَقَالَ - عَلَيْهِ السَّلَامُ -: «شَاهِدَاكَ أَوْ يَمِينُهُ لَيْسَ لَكَ غَيْرُ ذَلِكَ» .

L21162 Abu Hanifa and Al-Shafi'i said: The defendant must not deliver it to him based on that claim, for if he does so, he becomes liable for it—because he might hear its owner describe it, recognize the description, and then present it. They substantiated this by citing that the Messenger of Allah—peace be upon him—mandated evidence for the claimant and an oath for the defendant, and prohibited granting anyone anything based on his mere claim. He—peace be upon him—said: "Your two witnesses or his oath—you have nothing beyond that."

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ حَقٌّ، وَالَّذِي قَالَهُ هُوَ الَّذِي أَمَرَ بِأَنْ تُعْطَى اللُّقَطَةُ مَنْ عَرَفَ الْعِفَاصَ، وَالْوِكَاءَ، وَالْعَدَدَ، وَالْوِعَاءَ، وَلَيْسَ كَلَامُهُ مُتَعَارِضًا، وَلَا حُكْمُهُ مُتَنَاقِضًا، وَلَا يَحِلُّ ضَرْبُ بَعْضِهِ بِبَعْضٍ، وَلَا تَرْكُ بَعْضِهِ وَأَخْذُ بَعْضٍ، فَكُلُّهُ حَقٌّ، وَكُلُّهُ وَحْيٌ مِنْ عِنْدِ اللَّهِ عَزَّ وَجَلَّ، وَهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّ الْمُدَّعَى عَلَيْهِ إنْ أَقَرَّ قُضِيَ عَلَيْهِ بِغَيْرِ بَيِّنَةٍ، فَقَدْ جَعَلُوا لِلْمُدَّعِي شَيْئًا غَيْرَ الشَّاهِدَيْنِ أَوْ يَمِينَ الْمُدَّعَى عَلَيْهِ. فَإِنْ قَالُوا: قَدْ صَحَّ الْحُكْمُ بِالْإِقْرَارِ؟ قُلْنَا: وَقَدْ صَحَّ دَفْعُ اللُّقَطَةِ بِأَنْ يَصِفَ الْمُدَّعِي وِكَاءَهَا، وَعَدَدَهَا، وَعِفَاصَهَا وَوِعَاءَهَا، وَلَا فَرْقَ، وَلَيْسَ كُلُّ الْأَحْكَامِ تُوجَدُ فِي خَبَرٍ وَاحِدٍ، وَلَا تُؤْخَذُ مِنْ خَبَرٍ وَاحِدٍ، وَلَكِنْ تُضَمُّ السُّنَنُ بَعْضُهَا إلَى بَعْضٍ وَيُؤْخَذُ بِهَا كُلُّهَا، وَلَوْ أَنَّ الْحَنَفِيِّينَ اعْتَرَضُوا أَنْفُسَهُمْ بِهَذِهِ الِاعْتِرَاضَاتِ فِي قَبُولِهِمْ امْرَأَةً وَاحِدَةً فِي عُيُوبِ النِّسَاءِ، وَالْوِلَادَةِ، وَلَوْ عَارَضُوا أَنْفُسَهُمْ بِهَذَا فِي حُكْمِهِمْ لِلزَّوْجَيْنِ يَخْتَلِفَانِ فِي مَتَاعِ الْبَيْتِ أَنَّ مَا أَشْبَهَ أَنْ يَكُونَ لِلرِّجَالِ كَانَ لِلرَّجُلِ مَعَ يَمِينِهِ، وَمَا أَشْبَهَ أَنْ يَكُونَ لِلنِّسَاءِ كَانَ لِلْمَرْأَةِ بِيَمِينِهَا بِغَيْرِ

L21163–21164 Abū Muḥammad said: All of this is true, and what he stated is the directive that lost property be given to one who recognizes its container, binding, count, and receptacle. His statements are not contradictory, nor are his rulings inconsistent. It is unlawful to invalidate some parts by others or abandon certain rulings while accepting others. All of it is truth, and all of it is revelation from Allah—Exalted is He. They unanimously agree with us that if a defendant confesses, judgment is passed against him without requiring evidence. Thus, they have granted the claimant an alternative to two witnesses or the oath of the accused. If they argue, "The ruling based on confession is valid," we respond, "Equally valid is the restitution of lost property when the claimant describes its binding, count, container, and receptacle. There is no distinction." Not all rulings are found in a single report nor derived from one; rather, the prophetic precedents are combined together and all are upheld. If the Ḥanafīs were to apply these objections to their own rulings—such as accepting a single woman's testimony in matters of female flaws or childbirth, or their judgment that disputed household items conventionally associated with men be granted to the husband with his oath, and those associated with women to the wife with her oath without evidence—they would not apply this to a brother and sister disputing shared household items. Were they to confront themselves with this critique regarding their stance that a foundling

بَيِّنَةً، وَلَا يَحْكُمُونَ بِذَلِكَ فِي الْأُخْتِ وَالْأَخِ يَخْتَلِفَانِ فِي مَتَاعِ الْبَيْتِ الَّذِي هُمَا فِيهِ، وَلَوْ عَارَضُوا أَنْفُسَهُمْ بِهَذَا الِاعْتِرَاضِ فِي قَوْلِهِمْ: إنَّ مَنْ ادَّعَى لَقِيطًا هُوَ وَغَيْرُهُ فَأَتَى بِعَلَامَاتٍ فِي جَسَدِهِ قُضِيَ لَهُ بِهِ، وَلَا يَقْضُونَ بِذَلِكَ فِيمَنْ ادَّعَى مَعَ آخَرَ عَبْدًا فَأَتَى أَحَدُهُمَا بِعَلَامَاتٍ فِي جَسَدِهِ؟ وَفِي قَوْلِهِمْ: لَوْ أَنَّ مُسْتَأْجِرَ الدَّارِ تَدَاعَى مَعَ صَاحِبِ الدَّارِ فِي جُذُوعٍ مَوْضُوعَةٍ فِي الدَّارِ وَأَحَدِ مِصْرَاعَيْنِ فِي الدَّارِ: أَنَّ تِلْكَ الْجُذُوعَ إنْ كَانَتْ تُشْبِهُ الْجُذُوعَ الَّتِي فِي الْبِنَاءِ وَالْمِصْرَاعِ الْقَائِمِ كَانَ كُلُّ ذَلِكَ لِصَاحِبِ الدَّارِ بِلَا بَيِّنَةٍ - وَسَائِرُ تِلْكَ التَّخَالِيطِ الَّتِي لَا تُعْقَلُ، ثُمَّ لَا يُبَالُونَ بِمُعَارَضَةِ أَوَامِرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِآرَائِهِمْ الْفَاسِدَةِ.

is awarded to a claimant who provides distinctive bodily marks—yet they do not rule likewise when two parties claim a slave and one presents identifying traits—or concerning their view that disputed beams in a house resembling construction materials or a door panel matching the existing one are granted to the homeowner without evidence—along with the rest of those illogical inconsistencies—they carelessly oppose the commands of Allah's Messenger (ﷺ) with their corrupt opinions.

وَأَمَّا الشَّافِعِيُّ فَإِنَّهُ قَضَى فِي الْقَتِيلِ يُوجَدُ فِي مَحَلَّةِ أَقْوَامٍ أَعْدَاءٌ لَهُ أَنَّ الْمُدَّعِينَ بِقَتْلِهِ عَلَيْهِ يَحْلِفُونَ خَمْسِينَ يَمِينًا ثُمَّ يُقْضَى لَهُمْ بِالدِّيَةِ فَأَعْطَاهُمْ بِدَعْوَاهُمْ.

L21165 As for Al-Shafi'i, he ruled regarding a slain person found in an enemy's neighborhood that the claimants asserting his murder must swear fifty oaths to substantiate their case, after which the diya would be awarded to them. Thus, he granted them the blood money based on their claim.

فَإِنْ قَالُوا: إنَّ السُّنَّةَ جَاءَتْ بِهَذَا؟ قُلْنَا لَهُمْ: وَالسُّنَّةُ جَاءَتْ بِدَفْعِ اللُّقَطَةِ إلَى مَنْ عَرَفَ عِفَاصَهَا، وَوِكَاءَهَا، وَعَدَدَهَا، وَوِعَاءَهَا - وَلَا فَرْقَ. وَقَالُوا: قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَإِنْ جَاءَ صَاحِبُهَا فَأَدِّهَا إلَيْهِ» قُلْنَا: نَعَمْ، وَصَاحِبُهَا هُوَ الَّذِي أَمَرَ - عَلَيْهِ السَّلَامُ - بِدَفْعِهَا إلَيْهِ إذَا وَصَفَ مَا ذَكَرْنَا. وَأَمَّا قَوْلُهُمْ: قَدْ يَسْمَعُهَا مُتَحَيِّلٌ؟ فَيُقَالُ لَهُمْ: وَقَدْ تَكْذِبُ الشُّهُودُ وَلَا فَرْقَ. وَقَالُوا: قَدْ قَالَ أَبُو دَاوُد السِّجِسْتَانِيُّ: هَذِهِ الزِّيَادَةُ - فَإِنْ عَرَفَ عِفَاصَهَا وَوِكَاءَهَا، وَعَدَدَهَا، فَادْفَعْهَا إلَيْهِ -: غَيْرُ مَحْفُوظَةٍ. قَالَ أَبُو مُحَمَّد: وَهَذَا لَا شَيْءَ، وَلَا يَجُوزُ أَنْ يُقَالَ فِيمَا رَوَاهُ الثِّقَاتُ مُسْنَدًا: هَذَا غَيْرُ مَحْفُوظٍ - وَلَا يَعْجِزُ أَحَدٌ عَنْ هَذِهِ الدَّعْوَى فِيمَا شَاءَ مِنْ السُّنَنِ الثَّوَابِتِ. وَقَدْ أَخَذَ الْحَنَفِيُّونَ

L21166–21168 If they say: "Has the Sunnah addressed this?" We reply to them: "The Sunnah has stipulated returning the lost item to whoever identifies its container, its tying cord, its count, and its wrapper—and no distinction is made between them." They said: "The Messenger of Allah—peace and blessings be upon him—indeed said: 'If its owner comes, then hand it over to him.'" We said: Yes, and its owner is the one whom he — peace be upon him — commanded to deliver it to if he specified what we mentioned. As for their statement: "Might one who employs legal stratagems hear it?" It is responded to them: "Witnesses might also lie, and there is no difference." They said: Abū Dāwūd al-Sijistānī stated: "This addition — 'If he recognizes its bag, its tie, and its count, then deliver it to him' — is not reliably transmitted." Abū Muḥammad said: "This is baseless. It is impermissible to declare regarding what trustworthy narrators transmitted with a connected chain: 'This is not reliably transmitted.' No one is barred from making such claims about whichever authentic Sunnahs they wish. The Ḥanafīs adopted an addition in the ḥadīth

of Ḥammād ibn Salamah concerning zakāh — though it is rejected and not reliably transmitted. Had its chain been authentic, we would not have labeled it 'not reliably transmitted.' They also adopted the narration on istisʿāʾ (seeking expanded testimony), though one greater than Abū Dāwūd stated: 'Istisʿāʾ is not reliably transmitted; it merely originates from the speech of Ibn Abī ʿArūbah.' They further adopted the narration: 'Whoever possesses a mahram relative, he is free,' while the majority of ḥadīth scholars assert it is not reliably transmitted."

بِزِيَادَةٍ جَاءَتْ فِي حَدِيثِ حَمَّادِ بْنِ سَلَمَةَ فِي الزَّكَاةِ - وَهِيَ سَاقِطَةٌ غَيْرُ مَحْفُوظَةٍ - وَلَوْ صَحَّ إِسْنَادُهَا مَا قُلْنَا فِيهِ: غَيْرُ مَحْفُوظٍ. وَأَخَذُوا بِخَبَرِ الِاسْتِسْعَاءِ، وَقَدْ قَالَ مَنْ هُوَ أَجَلُّ مِنْ أَبِي دَاوُد: وَلَيْسَ الِاسْتِسْعَاءُ مَحْفُوظًا وَإِنَّمَا هُوَ مِنْ كَلَامِ ابْنِ أَبِي عَرُوبَةَ. وَأَخَذُوا بِالْخَبَرِ «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» وَجُمْهُورُ أَصْحَابِ الْحَدِيثِ يَقُولُونَ: إِنَّهُ غَيْرُ مَحْفُوظٍ.

L21169 Al-Shāfiʿī adopted for Zakāt al-Fiṭr the wording reported by one whose opinion is not relied upon—"from those you maintain"—and this is unquestionably a rejected narration, not preserved. Even if its chain of transmission were authentic, we would not permit ourselves to classify it as "unpreserved."

وَأَخَذَ الشَّافِعِيُّ فِي زَكَاةِ الْفِطْرِ بِاللَّفْظَةِ الَّتِي ذَكَرَهَا مَنْ لَا يُعْتَدُّ بِهِ «مِمَّنْ تَعُولُونَ» وَهِيَ بِلَا شَكٍّ سَاقِطَةٌ غَيْرُ مَحْفُوظَةٍ - وَلَوْ صَحَّتْ مِنْ طَرِيقِ الْإِسْنَادِ مَا اسْتَحْلَلْنَا أَنْ نَقُولَ فِيهَا: غَيْرُ مَحْفُوظَةٍ.

L21170 Then we say: Abu Dawud erred in his statement that it is not preserved—rather, it is preserved. For even if only Hammad ibn Salamah alone had narrated it, that would suffice due to his trustworthiness and authority as an imam. How could it not be when Sufyan al-Thawri corroborated it through his narration from Rabiʿah from Yazid, the client of al-Munbaʾith, from Zayd ibn Khalid al-Juhani from the Prophet (peace be upon him)? Sufyan also narrated it from Salamah ibn Kuhayl from Suwayd ibn Ghafalah from Ubayy ibn Kaʿb from the Prophet (peace be upon him). Thus, the claim of those who said it is not preserved is invalidated. Rather, it is widely attested and preserved.

ثُمَّ نَقُولُ: أَخْطَأَ أَبُو دَاوُد فِي قَوْلِهِ: هِيَ غَيْرُ مَحْفُوظَةٍ - بَلْ هِيَ مَحْفُوظَةٌ، لِأَنَّهَا لَوْ لَمْ يَرْوِهَا إِلَّا حَمَّادُ بْنُ سَلَمَةَ وَحْدَهُ لَكَفَى، لِثِقَتِهِ وَإِمَامَتِهِ - وَكَيْفَ وَقَدْ وَافَقَهُ عَلَيْهَا سُفْيَانُ الثَّوْرِيُّ عَنْ رَبِيعَةَ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَسُفْيَانُ أَيْضًا عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ قَوْلُ مَنْ قَالَ: هِيَ غَيْرُ مَحْفُوظَةٍ، بَلْ هِيَ مَشْهُورَةٌ مَحْفُوظَةٌ.

L21171–21173 Among them is the ownership of the lost property after a lunar year: Our ruling has been narrated to us from ʿUmar ibn al-Khaṭṭāb and others, as has been narrated to us via the chain of Aḥmad ibn Shuʿayb—Abū ʿUbaydah ibn Abī al-Safar reported to us, from Abū Usāmah, from al-Walīd ibn Kathīr, from ʿAmr ibn Shuʿayb, from ʿAmr and ʿĀṣim, the two sons of Sufyān ibn ʿAbdullāh, from their father: that he... A man picked up a bag and brought it to Umar ibn al-Khattab, who ordered him to publicly announce it for a

وَمِنْهَا تَمَلُّكُ اللُّقَطَةِ بَعْدَ الْحَوْلِ -: رُوِّينَا قَوْلَنَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَغَيْرِهِ، كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَبُو عُبَيْدَةَ بْنُ أَبِي السَّفَرِ نا أَبُو أُسَامَةَ عَنِ الْوَلِيدِ بْنِ كَثِيرٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ عَمْرٍو، وَعَاصِمٍ: ابْنَيْ سُفْيَانَ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِمَا: أَنَّهُ الْتَقَطَ عَيْبَةً فَأَتَى بِهَا عُمَرُ بْنُ الْخَطَّابِ فَأَمَرَهُ أَنْ يُعَرِّفَهَا حَوْلًا، فَفَعَلَ، ثُمَّ أَخْبَرَهُ فَقَالَ: هِيَ

year. He did so, then informed him, and Umar said: “It is yours, for the Messenger of Allah—peace and blessings be upon him—commanded us to do this.” The man replied: “I have no need for it,” so Umar ordered it to be placed in the treasury. It is authentically reported from Umar through numerous channels, and from a group of the Companions of the Messenger of Allah—peace and blessings be upon him. Among the narrations from Ibn Umar is that he saw a date lying on the road, took it, and ate it. From Ali ibn Abi Talib: he picked up a pomegranate seed and ate it. From Ibn Abbas: “Whoever finds a lost item from dropped goods—such as a whip, a pair of sandals, a stick, or a small amount of goods—let him use it and announce it. If it is rendered fat, let him use it as a condiment and announce it. If it is provisions, let him consume them and announce them. If the owner comes, he must compensate him.”

L21174 This is an opinion also reported from Ṭāwūs, Ibn al-Musayyib, Jābir ibn Zayd, and ʿAṭāʾ in one of his two opinions, as well as al-Shāfiʿī, Abū Sulaymān, and others. A group said: one should give it in charity; if the owner comes forward, **the owner** is given the choice between the reward and liability. This was also reported from ʿUmar, ʿAlī, Ibn Masʿūd, Ibn ʿAbbās, and Ibn ʿUmar, who said: “I do not command you to consume it”—and from Ṭāwūs and ʿIkrimah as well. This is the opinion of Abū Ḥanīfah, al-Ḥasan ibn Ḥayy, and Sufyān. They cited as evidence the narration reported through al-Bazzār’s chain: Khālid ibn Yūsuf reported to us from his father, who reported to us from Ziyād ibn Saʿd, who reported to us from Sumayy, from Abū Ṣāliḥ, from Abū Hurayrah, who said: “The Messenger of Allah—peace and blessings be upon him—was asked about lost property. He said: ’It is impermissible to retain lost property. Whoever finds something must publicly announce it for a year. If its owner comes, he must return it. If no one comes, he should give it in charity. If the owner later appears, he must offer him the choice between the reward and his rightful claim.’”

L21175 Abū Muḥammad said: This is baseless, because Yūsuf ibn Khālid and his father are unknown. Moreover, even if it were authentic, it would not constitute authoritative evidence for them, because the statement “The lost item is not permissible to keep” is true, and it is not permissible before announc-

لَك، إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَنَا بِذَلِكَ، قُلْت: لَا حَاجَةَ لِي بِهَا، وَأَمَرَ بِهَا فَأُلْقِيَتْ فِي بَيْتِ الْمَالِ. وَقَدْ صَحَّ عَنْ عُمَرَ مِنْ طُرُقٍ جَمَّةٍ، وَعَنْ جَمَاعَةٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ طَرِيقِ ابْنِ عُمَرَ: أَنَّهُ رَأَى تَمْرَةً مَطْرُوحَةً فِي السِّكَّةِ فَأَخَذَهَا فَأَكَلَهَا. وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ الْتَقَطَ حَبَّ رُمَّانٍ فَأَكَلَهُ. وَعَنْ ابْنِ عَبَّاسٍ مَنْ وَجَدَ لُقَطَةً مِنْ سَقْطِ الْمَتَاعِ: سَوْطًا، أَوْ نَعْلَيْنِ، أَوْ عَصًا، أَوْ يَسِيرًا مِنْ الْمَتَاعِ، فَلْيَسْتَمْتِعْ بِهِ وَلْيُنْشِدْهُ، فَإِنْ كَانَ وَدَكًا فَلْيَأْتَدِمْ بِهِ وَلْيُنْشِدْهُ، وَإِنْ كَانَ زَادًا فَلْيَأْكُلْهُ وَلْيُنْشِدْهُ، فَإِنْ جَاءَ صَاحِبُهُ فَلْيَغْرَمْ لَهُ.

وَهُوَ قَوْلٌ رُوِيَ أَيْضًا عَنْ طَاوُسٍ، وَابْنِ الْمُسَيِّبِ، وَجَابِرِ بْنِ زَيْدٍ وَعَطَاءٍ فِي أَحَدِ قَوْلَيْهِ، وَالشَّافِعِيُّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ - وَقَالَتْ طَائِفَةٌ: يَتَصَدَّقُ بِهَا، فَإِنْ عُرِّفَتْ خُيِّرَ صَاحِبُهَا بَيْنَ الْأَجْرِ وَالضَّمَانِ. رُوِّينَا ذَلِكَ أَيْضًا: عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، قَالَ: لَا آمُرُك أَنْ تَأْكُلَهَا - وَعَنْ طَاوُسٍ أَيْضًا، وَعِكْرِمَةَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَسُفْيَانَ وَاحْتَجَّ هَؤُلَاءِ بِمَا رُوِيَ مِنْ طَرِيقِ الْبَزَّارِ نا خَالِدُ بْنُ يُوسُفَ نا أَبِي نا زِيَادُ بْنُ سَعْدٍ نا سُمَيٌّ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللُّقَطَةِ؟ فَقَالَ: لَا تَحِلُّ اللُّقَطَةُ، فَمَنْ الْتَقَطَ شَيْئًا فَلْيُعَرِّفْهُ سَنَةً، فَإِنْ جَاءَ صَاحِبُهُ فَلْيَرُدَّهُ إلَيْهِ، وَإِنْ لَمْ يَأْتِ فَلْيَتَصَدَّقْ بِهِ، فَإِنْ جَاءَ فَلْيُخَيِّرْهُ بَيْنَ الْأَجْرِ وَبَيْنَ الَّذِي لَهُ» .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا شَيْءَ؛ لِأَنَّ يُوسُفَ بْنَ خَالِدٍ، وَأَبَاهُ، مَجْهُولَانِ - ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ قَوْلَ لَا تَحِلُّ اللُّقَطَةُ حَقٌّ، وَلَا تَحِلُّ قَبْلَ التَّعْرِيفِ، وَأَمْرُهُ

ing it publicly [to find the owner]. His instruction to give it in charity is tied to his command—peace be upon him—to spend/utilize it and treat it as part of one's wealth. Had this been valid, some of his commands—peace be upon him—would have been deemed more worthy of obedience than others, yet it is impermissible to contravene any of his commands—peace be upon him—in favor of another. Rather, all are true and obligatory to implement. We do not forbid the finder from giving it in charity if he so wishes, so how could this be used as an argument against us? Thus, their reliance on this report becomes void even if it were authentic—so how could it be valid when it is not authentic?

L21176–21181 If they claim consensus regarding giving it as charity, they are proven false by what we have narrated through ʿAbd al-Razzāq's chain from Ibn Jurayj: that Zayd ibn al-Akhnas al-Khuzāʿī informed him he asked Saʿīd ibn al-Musayyib, "I found a lost item—should I give it as charity?" He replied, "You will not be rewarded, nor will its owner." I said, "Should I hand it over to the rulers?" He said, "Then they would consume it quickly." I asked, "What do you instruct me to do?" He said, "Publicize it for a year. If the owner comes forward, return it; otherwise, it is yours." How astonishing that some cite their erroneous opinion here as evidence by Allah's words: {Do not consume your wealth among yourselves unlawfully} [4:29]. ʿAlī said: "This ignorant person's use of this verse here demonstrates the frailty of his faith, for he deems what Allah's Messenger—peace be upon him—commanded as invalid. Had he possessed faith, he would not have opposed the ruling of Allah's Messenger—peace be upon him." If only he had directed this refutation against their accursed claim that a usurper of Muslims' homes and farms may occupy and lease them, considering the rent lawful for himself, and their cultivation permissible without liability—or their claim that whoever acquires something through an invalid sale owns it through unlawful means, permitting him to dispose of unlawfully acquired wealth through marital relations, manumission, and other corrupt assertions—then he would have been correct. Most astounding is their injunction to give it as charity, for if the owner appears, they obligate the poor to compensate it if they are found. By their own principle, this too constitutes unlawful consumption of wealth. What dif-

بِالصَّدَقَةِ بِهَا مَضْمُومٌ إِلَى أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِاسْتِنْفَاقِهَا وَبِكَوْنِهَا مِنْ جُمْلَةِ مَالِهِ، إِذْ لَوْ صَحَّ هَذَا لَكَانَ بَعْضُ أَمْرِهِ - عَلَيْهِ السَّلَامُ - أَوْلَى بِالطَّاعَةِ مِنْ بَعْضٍ، وَلَا يَحِلُّ مُخَالَفَةُ شَيْءٍ مِنْ أَوَامِرِهِ - عَلَيْهِ السَّلَامُ - لِآخَرَ مِنْهَا، بَلْ كُلُّهَا حَقٌّ وَاجِبٌ اسْتِعْمَالُهُ، وَنَحْنُ لَمْ نَمْنَعْ وَاجِدَهَا مِنَ الصَّدَقَةِ بِهَا إِنْ أَرَادَ فَيُحْتَجُّ عَلَيْنَا بِهَذَا؟ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ لَوْ صَحَّ، فَكَيْفَ وَهُوَ لَا يَصِحُّ؟

فَإِنْ ادَّعُوا إِجْمَاعًا عَلَى الصَّدَقَةِ بِهَا كُذِّبُوا، لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَنَّ زَيْدَ بْنَ الْأَخْنَسِ الْخُزَاعِيَّ أَخْبَرَهُ أَنَّهُ قَالَ لِسَعِيدِ بْنِ الْمُسَيِّبِ: وَجَدْتُ لُقَطَةً أَفَأَتَصَدَّقُ بِهَا؟ قَالَ: لَا تُؤْجَرُ أَنْتَ وَلَا صَاحِبُهَا؟ قُلْتُ: أَفَأَدْفَعُهَا إِلَى الْأُمَرَاءِ؟ قَالَ: إِذًا يَأْكُلُونَهَا أَكْلًا سَرِيعًا، قُلْتُ: فَكَيْفَ تَأْمُرُنِي؟ قَالَ: عَرِّفْهَا سَنَةً فَإِنْ اعْتَرَفَتْ، وَإِلَّا فَهِيَ لَكَ. وَالْعَجَبُ أَنَّ بَعْضَهُمُ احْتَجَّ لِمَذْهَبِهِ الْخَطَأِ فِي هَذَا بِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [النساء: ٢٩] . قَالَ عَلِيٌّ: احْتِجَاجُ هَذَا الْجَاهِلِ بِهَذِهِ الْآيَةِ فِي هَذَا الْمَكَانِ دَلِيلٌ عَلَى رِقَّةِ دِينِهِ، إِذْ جَعَلَ مَا أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاطِلًا، وَلَوْ كَانَ لَهُ دِينٌ لَمَا عَارَضَ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَلَوْ أَنَّهُ جَعَلَ هَذِهِ الْمُعَارَضَةَ لِقَوْلِهِمُ الْمَلْعُونِ: أَنَّ الْغَاصِبَ لِدُورِ الْمُسْلِمِينَ وَضِيَاعِهِمْ يَسْكُنُهَا وَيُكْرِيهَا، فَالْكِرَاءُ لَهُ حَلَالٌ، وَاحْتِرَاثُ ضِيَاعِهِمْ لَهُ حَلَالٌ لَا يَلْزَمُهُ فِي ذَلِكَ شَيْءٌ. وَقَوْلُهُمْ: مَنِ اشْتَرَى شَيْئًا شِرَاءً فَاسِدًا فَقَدْ مَلَكَهُ مِلْكًا فَاسِدًا وَأَبَاحُوا لَهُ التَّصَرُّفَ فِيمَا اشْتَرَى بِالْبَاطِلِ بِالْوَطْءِ، وَالْعِتْقِ، وَسَائِرِ أَقْوَالِهِمُ الْخَبِيثَةِ لَكَانُوا قَدْ وَافَقُوا. ثُمَّ أَعْجَبُ شَيْءٍ أَمْرُهُمْ بِالصَّدَقَةِ بِهَا، فَإِنْ جَاءَ صَاحِبُهَا ضَمَّنُوا الْمَسَاكِينَ إِنْ

وَجَدُوهُمْ، فَعَلَى أَصْلِهِمْ هُوَ أَيْضًا أَكْلُ مَالٍ بِالْبَاطِلِ. وَأَيُّ فَرْقٍ بَيْنَ أَنْ يَأْكُلَهَا الْوَاجِدُ وَضَمَانُهَا عَلَيْهِ، وَبَيْنَ أَنْ يَأْكُلُوهَا الْمَسَاكِينُ وَضَمَانُهَا عَلَيْهِمْ؟ فَإِنْ لَمْ يُوجَدُوا فَعَلَيْهِ، وَلَئِنْ كَانَ أَحَدُ الْوَجْهَيْنِ أَكْلَ مَالٍ بِالْبَاطِلِ فَإِنَّ الْآخَرَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَلَا فَرْقَ، وَلَئِنْ كَانَ أَحَدُهُمَا أَكْلَ مَالٍ بِحَقٍّ، فَإِنَّ الْآخَرَ أَكْلُ مَالٍ بِالْحَقِّ، وَلَا فَرْقَ، إِذْ الضَّمَانُ فِي الْعَاقِبَةِ فِي كِلَا الْوَجْهَيْنِ، وَلَكِنَّهُمْ قَوْمٌ لَا يَعْقِلُونَ. وَاحْتَجُّوا بِمَا ذَكَرْنَا قَبْلُ: أَنَّهُ لَا يَصِحُّ مِنْ ضَالَّةِ الْمُسْلِمِ حَرْقُ النَّارِ، وَلَا يَأْوِي الضَّالَّةَ إِلَّا ضَالٌّ، وَلَوْ صَحَّا لَكَانَا عَلَيْهِمْ أَعْظَمَ حُجَّةً؛ لِأَنَّهُمْ يُبِيحُونَ أَخْذَ ضَوَالِّ الْإِبِلِ الَّتِي فِيهَا وَرَدَ النَّصُّ الْمَذْكُورُ، فَاعْجَبُوا لِهَذِهِ الْعُقُولِ وَأَعْجَبُ شَيْءٍ احْتِجَاجُهُمْ هَهُنَا بِرِوَايَةٍ خَبِيثَةٍ رَوَاهَا أَبُو يُوسُفَ عَنْ عَبْدِ الْمَلِكِ بْنِ الْعَرْزَمِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ: أَنَّ أُبَيَّ بْنَ كَعْبٍ، ثُمَّ ذَكَرَ بَاقِي الْحَدِيثِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: «فَإِنَّكَ ذُو حَاجَةٍ إِلَيْهَا» . قَالَ أَبُو مُحَمَّدٍ: هَذَا مُنْقَطِعٌ لِأَنَّ سَلَمَةَ لَمْ يُدْرِكْ أُبَيًّا، ثُمَّ الْعَرْزَمِيُّ ضَعِيفٌ جِدًّا، وَأَبُو يُوسُفَ لَا يَبْعُدُ عَنْهُ، فَمَنْ أَضَلُّ مِمَّنْ يَرُدُّ مَا رَوَاهُ سُفْيَانُ الثَّوْرِيُّ، وَحَمَّادُ بْنُ سَلَمَةَ، كِلَاهُمَا عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ عَنْ أُبَيِّ بْنِ كَعْبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيَأْخُذُ بِمَا رَوَاهُ أَبُو يُوسُفَ الْمَغْمُوزُ عَنْ الْعَرْزَمِيِّ الضَّعِيفِ عَنْ سَلَمَةَ عَنْ أُبَيٍّ وَهُوَ لَمْ يَلْقَ أُبَيًّا قَطُّ، فَفِي مِثْلِ هَذَا فَلْيَعْتَبِرْ أُولُو الْأَبْصَارِ. ثُمَّ لَوْ صَحَّتْ لَهُمْ هَذِهِ الزِّيَادَةُ الَّتِي لَا تَصِحُّ لَمَا كَانَ لَهُمْ فِيهَا حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهَا إِلَّا إبَاحَةُ اللُّقَطَةِ لِلْمُحْتَاجِ وَلَسْنَا نُنْكِرُ هَذَا، بَلْ هُوَ قَوْلُنَا، وَلَيْسَ فِيهَا مَنْعُ الْغَنِيِّ مِنْهَا لَا بِنَصٍّ وَلَا بِدَلِيلٍ. ثُمَّ الْعَجَبُ كُلُّهُ رَدُّهُمْ كُلُّهُمْ فِي هَذَا الْمَكَانِ نَفْسِهِ حَدِيثَ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْتِقَاطِهِ الدِّينَارَ وَإِبَاحَةِ

ference exists between the finder consuming it with liability upon him, and the poor consuming it with liability upon them? If the poor are untraceable, liability reverts to him. If one case is consumption of wealth unlawfully, the other is equally so—no distinction. If one is consumption by right, the other is consumption by right—no difference, since liability ultimately applies in both cases. But they are a people devoid of understanding. They cite as evidence what we previously mentioned: that burning a Muslim's lost property is invalid, and none shelters lost property except the misguided. Were these proofs valid, they would stand as the greatest argument against them, for they permit seizing stray camels mentioned in the explicit textual ruling. Marvel, then, at these intellects! The most astonishing aspect is their reliance here on a corrupt narration reported by Abū Yūsuf from ʿAbd al-Malik ibn al-ʿArzamī. From Salama ibn Kuhayl: that Ubayy ibn Kaʿb—then he mentioned the remainder of the hadith—and that the Messenger of Allah (peace be upon him) said to him, "Indeed, you have a need for it." Abu Muhammad said: This chain is interrupted because Salama did not meet Ubayy. Al-ʿArzami is extremely weak, and Abu Yusuf is not far from him. Who is more misguided than one who rejects what Sufyan al-Thawri and Hammad ibn Salama both narrated—each from Salama ibn Kuhayl from Suwayd ibn Ghaflah from Ubayy ibn Kaʿb from the Prophet (peace be upon him)—yet accepts what Abu Yusuf the criticized narrated from al-ʿArzami, the utmost in weakness, from Salama from Ubayy, though Salama never met Ubayy? In such matters, let those of insight reflect. Even if this unsound addition were valid for them, it would not constitute proof, for it only permits taking lost property for the needy—a position we do not deny, as it aligns with our view. It contains no explicit or implicit prohibition against the wealthy taking it. The height of astonishment is their rejection of Ali ibn Abi Talib's hadith concerning his finding a dinar and the Messenger of Allah (peace be upon him) permitting him to spend it, dismissing it as mursal (a hadith with a missing link). Yet they cite the version narrated by Sharik—a weak narrator—so a mursal narrated by a weak transmitter is deemed inadmissible if it contradicts Abu Hanifah's opinion, while a mursal narrated by al-ʿArzami—the utmost in weakness—is not abandoned if it supports Abu Hanifah's view. By Allah, those who follow this path in religion will endure prolonged regret

on a day when remorse avails nothing. This is not the way of those who believe in the Day of Reckoning—it is misguidance and leading astray. We seek refuge with Allah from abandonment. They have lied. The hadith of Ali has been narrated through chains other than Sharik's and is fully traced via Abu Dawud's chain: Jaʿfar ibn Musafir al-Tinnisi narrated to us from Ibn Abi Fudayk from Musa ibn Yaʿqub al-Zamʿi—he is Musa ibn Yaʿqub ibn ʿAbdullah ibn Wahb ibn Zamʿah—from Abu Hazim from Sahl ibn Saʿd, who reported: "Ali ibn Abi Talib found al-Husayn and al-Hasan crying from hunger. He went out and found a dinar in the market, brought it to Fatimah, and informed her. She said, 'Go to so-and-so the Jew and get us flour.' He went to the Jew and purchased flour. The Jew asked, 'Are you the son-in-law of the one who claims to be the Messenger of Allah (peace be upon him)?' He replied, 'Yes.' The Jew said, 'Take your dinar, and the flour is yours.' Ali returned to Fatimah and informed her. She said, 'Go to so-and-so the butcher and get us a dirham's worth of meat.' He went and pawned the dinar for a dirham's meat. He brought it, and she kneaded dough, let it rise, baked it, then sent for the Prophet (peace be upon him). When he came, she said, 'O Messenger of Allah, I will tell you. If you deem it lawful for us, we will eat, and you will eat with us.'" They said, "What about such-and-such?" He—peace be upon him—responded: "Eat in Allah's name," so they ate. While they remained seated, suddenly a youth appeared invoking Allah the Exalted and Islam to claim a dinar. The Messenger of Allah—may Allah bless him and his family and grant him peace—ordered him to be summoned. The Messenger of Allah questioned him, and he said: "I lost it in the marketplace." The Messenger of Allah—may Allah bless him and his family and grant him peace—then said: "O Ali, go to the butcher and tell him: The Messenger of Allah—may Allah bless him and his family and grant him peace—says to you: 'Send me the dinar, and I will repay you your dirham.'" The butcher sent it, and the Messenger of Allah—may Allah bless him and his family and grant him peace—returned it without proof.[1]

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُ اسْتِنْفَاقَهُ بِأَنْ قَالُوا هُوَ مُرْسَلٌ، وَرَوَاهُ شَرِيكٌ - وَهُوَ ضَعِيفٌ - فَالْمُرْسَلُ الَّذِي يَرْوِيهِ الضَّعِيفُ لَا يَجُوزُ الْأَخْذُ بِهِ إِذَا خَالَفَ رَأْيَ أَبِي حَنِيفَةَ، وَالْمُرْسَلُ الَّذِي رَوَاهُ الْعَرْزَمِيُّ - وَهُوَ الْغَايَةُ فِي الضَّعْفِ - لَا يَجُوزُ تَرْكُهُ إِذَا وَافَقَ رَأْيَ أَبِي حَنِيفَةَ، وَاَللَّهِ لَتَطُولُنَّ نَدَامَةُ مَنْ هَذَا سَبِيلُهُ فِي دِينِهِ يَوْمَ لَا يُغْنِي النَّدَمُ عَنْهُ شَيْئًا، وَمَا هَذِهِ طَرِيقُ مَنْ يَدِينُ بِيَوْمِ الْحِسَابِ، لَكِنَّهُ الضَّلَالُ وَالْإِضْلَالُ - نَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ. ثُمَّ قَدْ كَذَبُوا، بَلْ قَدْ رُوِيَ حَدِيثُ عَلِيٍّ مِنْ غَيْرِ طَرِيقِ شَرِيكٍ، وَأُسْنِدَ مِنْ طَرِيقِ أَبِي دَاوُد نا جَعْفَرُ بْنُ مُسَافِرٍ التِّنِّيسِيُّ نا ابْنُ أَبِي فُدَيْكٍ نا مُوسَى بْنُ يَعْقُوبَ الزَّمْعِيُّ - هُوَ مُوسَى بْنُ يَعْقُوبَ بْنِ عَبْدِ اللَّهِ بْنِ وَهْبِ بْنِ زَمْعَةَ - عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ أَخْبَرَهُ: «أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ وَجَدَ الْحُسَيْنَ وَالْحَسَنَ يَبْكِيَانِ مِنْ الْجُوعِ، فَخَرَجَ فَوَجَدَ دِينَارًا بِالسُّوقِ، فَجَاءَ بِهِ إلَى فَاطِمَةَ فَأَخْبَرَهَا؟ فَقَالَتْ لَهُ: اذْهَبْ إلَى فُلَانٍ الْيَهُودِيِّ فَخُذْ لَنَا دَقِيقًا؟ فَذَهَبَ إلَى الْيَهُودِيِّ فَاشْتَرَى بِهِ دَقِيقًا؟ فَقَالَ الْيَهُودِيُّ: أَنْتَ خَتَنُ هَذَا الَّذِي يَزْعُمُ أَنَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ: نَعَمْ قَالَ: فَخُذْ دِينَارَكَ وَلَكَ الدَّقِيقُ، فَخَرَجَ عَلِيٌّ حَتَّى جَاءَ بِهِ فَاطِمَةَ، فَأَخْبَرَهَا فَقَالَتْ لَهُ اذْهَبْ إلَى فُلَانٍ الْجَزَّارِ فَخُذْ لَنَا بِدِرْهَمٍ لَحْمًا فَذَهَبَ فَرَهَنَ الدِّينَارَ بِدِرْهَمِ لَحْمٍ، فَجَاءَ بِهِ فَعَجَنَتْ وَنَصَبَتْ وَخَبَزَتْ، وَأَرْسَلَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَاءَهُمْ؟ فَقَالَتْ لَهُ: يَا رَسُولَ اللَّهِ أَذْكُرُ لَك، فَإِنْ رَأَيْتَهُ لَنَا حَلَالًا أَكَلْنَا وَأَكَلْتَ مَعَنَا مِنْ شَأْنِه كَذَا وَكَذَا؟ فَقَالَ - عَلَيْهِ السَّلَامُ - كُلُوا بِاسْمِ اللَّهِ، فَأَكَلُوا، فَبَيْنَمَا هُمْ مَكَانَهُمْ إذَا غُلَامٌ يَنْشُدُ اللَّهَ تَعَالَى وَالْإِسْلَامَ الدِّينَارَ، فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَدُعِيَ لَهُ فَسَأَلَهُ فَقَالَ: سَقَطَ مِنِّي فِي السُّوقِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[1] **Qur'an references (L21177):** Qur'an 4:29 (An-Nisa).

-: يَا عَلِيُّ اذْهَبْ إِلَى الْجَزَّارِ فَقُلْ لَهُ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ لَكَ: أَرْسِلْ إِلَيَّ بِالدِّينَارِ، وَدِرْهَمُكَ عَلَيَّ، فَأَرْسَلَ بِهِ، فَدَفَعَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَا بَيِّنَةٍ» .

L21182 Abu Muhammad said: This narration is superior to theirs. As for him [the Prophet] (peace be upon him), along with Ali, Fatimah, Hasan, and Husayn (may Allah be pleased with them), charity is not permissible for them, whether they were wealthy or poor. This narration has permitted purchasing flour with a dinar, for he took it solely through purchase. Then the Jew presented the dinar to him as a gift, and similarly he pledged the dinar as collateral for the meat. The authentic narration suffices for all this.

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ خَيْرٌ مِنْ خَبَرِهِمْ، وَهُوَ - عَلَيْهِ السَّلَامُ -، وَعَلِيٌّ، وَفَاطِمَةُ، وَالْحَسَنُ، وَالْحُسَيْنُ - رَضِيَ اللَّهُ عَنْهُمْ -: لَا تَحِلُّ لَهُمْ الصَّدَقَةُ أَغْنِيَاءَ كَانُوا أَوْ فُقَرَاءَ. وَقَدْ أَبَاحَ فِي هَذَا الْخَبَرِ شِرَاءَ الدَّقِيقِ بِالدِّينَارِ، فَإِنَّمَا أَخَذَهُ ابْتِيَاعًا، ثُمَّ أَهْدَى إلَيْهِ الْيَهُودِيُّ الدِّينَارَ، وَكَذَلِكَ رَهَنَ الدِّينَارَ فِي اللَّحْمِ، وَالْخَبَرُ الصَّحِيحُ يَكْفِي مِنْ كُلِّ هَذَا.

L21183–21185 It was narrated to us through al-Bukhari's chain: Muhammad ibn Yusuf narrated to us, Sufyan narrated to us from Mansur ibn al-Mu'tamir from Talhah ibn Musarrif from Anas ibn Malik who said: "Allah's Messenger (peace be upon him) passed by a discarded date on the road and said: 'Were it not that I fear it might be from charity, I would have eaten it.'" This is Allah's Messenger (peace be upon him) - wealthy, not poor, by Allah Almighty's testimony when He says: {And He found you in need and enriched you} [Ad-Duha 93:8]. He considers it lawful to consume lost property, yet merely feared it might be from charity. Some of them said: "This confirms its actual status as charity since it was lost property" - this being the speech of one devoid of intellect, shame, and religion, for it constitutes irrational speech contradicting the understood meaning of Allah's Messenger's words (peace be upon him), being blatant lies - insipid and baseless. Most astonishing is the claim by some: "Consensus has been established that no one other than him would give it to a wealthy person, thus he acted accordingly." Abu Muhammad said: "Nothing is easier for these people than blatant lies. Their falsehoods are against Allah Almighty, against His Messenger (peace be upon him), against all Muslims, against intellects, and against senses. I wonder when I ever agreed with them on this, or who agreed with them on this matter - the remnants..." The pebbles, the gravel—and where did they find this consensus? Rather, they lied in that matter. If the lost item enters his

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ يُوسُفَ نا سُفْيَانُ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَمْرَةٍ مَطْرُوحَةٍ فِي الطَّرِيقِ فَقَالَ: لَوْلَا أَنِّي أَخَافُ أَنْ تَكُونَ مِنْ الصَّدَقَةِ لَأَكَلْتُهَا» فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَنِيٌّ لَا فَقِيرٌ بِشَهَادَةِ اللَّهِ تَعَالَى لَهُ إذْ يَقُولُ: {وَوَجَدَكَ عَائِلا فَأَغْنَى} [الضحى: ٨] يَسْتَحِلُّ أَكْلَ اللُّقَطَةِ، وَإِنَّمَا تَوَقَّعَ أَنْ تَكُونَ مِنْ الصَّدَقَةِ. فَقَالَ بَعْضُهُمْ: هَذَا عَلَى تَحْقِيقِ الصِّفَةِ أَنَّهَا مِنْ الصَّدَقَةِ لِأَنَّهَا لُقَطَةٌ - وَهَذَا كَلَامُ إنْسَانٍ عَدِيمِ عَقْلٍ وَحَيَاءٍ وَدِينٍ، لِأَنَّهُ كَلَامٌ لَا يُعْقَلُ، وَخِلَافٌ لِمَفْهُومِ لَفْظِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَذِبٌ مُجَاهَرٌ بِهِ، بَارِدٌ غَثٌّ - وَأَعْجَبُ شَيْءٍ قَوْلُ بَعْضِهِمْ: قَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّهُ لَا يُعْطِيهَا غَنِيًّا غَيْرُهُ، فَكَانَ هُوَ كَذَلِكَ. قَالَ أَبُو مُحَمَّدٍ: لَا شَيْءَ أَسْهَلُ مِنْ الْكَذِبِ الْمَفْضُوحِ عِنْدَ هَؤُلَاءِ الْقَوْمِ، ثُمَّ كَذِبُهُمْ إنَّمَا هُوَ عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ وَعَلَى الْعُقُولِ، وَالْحَوَاسِّ،

ownership after completing the year during which he announced it, then if he gives it to a wealthy person, the wealthy, Qarun (if he found him alive), or Solomon, or the Messenger of Allah—peace and blessings be upon him and his family—if the finder lived in his time, this would be permissible with no element of reprehensibility. They said: Yaḥyā ibn Saʿīd expressed doubt regarding the ruling of the finder spending the lost item—is it from the statement of Yazīd, freed slave of al-Munbaʿith, or from the statement of the Messenger of Allah—peace and blessings be upon him and his family? He later decisively affirmed it was from Yazīd's statement. We replied: Yaḥyā also narrated it with a chain—all of this is valid, for he once heard it as an authenticated report and heard Yazīd say: "From two of his youths as well."[2]

لَيْتَ شِعْرِي مَتَى أُجْمِعُ مَعَهُمْ عَلَى هَذَا، وَمَنْ أَجْمَعَ مَعَهُمْ عَلَى هَذَا، أَبْقِيَةِ الْجَنْدَلِ، وَالْكَنْكَثِ وَأَيْنَ وَجَدُوا هَذَا الإِجْمَاعَ؟ بَلْ كَذَبُوا فِي ذَلِكَ وَإِذَا أُدْخِلَتْ اللُّقَطَةُ فِي مِلْكِهِ بِانْقِضَاءِ الْحَوْلِ الَّذِي عَرَّفَهَا فِيهِ، فَإِنْ أَعْطَاهَا غَنِيًّا، أَوْ أَغْنِيَاءَ، أَوْ قَارُونُ - لَوْ وَجَدَهُ حَيًّا - أَوْ سُلَيْمَانُ - رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ كَانَ فِي عَصْرِهِ لَكَانَ ذَلِكَ مُبَاحًا لَا شَيْءَ مِنْ الْكَرَاهِيَةِ فِيهِ. وَقَالُوا: قَدْ شَكَّ يَحْيَى بْنُ سَعِيدٍ فِي أَمْرِ الْمُلْتَقِطِ بِأَنْ يَسْتَنْفِقَهَا، أَهُوَ مِنْ قَوْلِ يَزِيدَ مَوْلَى الْمُنْبَعِثِ؟ أَوْ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ وَقَطَعَ مَرَّةً أُخْرَى عَلَى أَنَّهُ مِنْ قَوْلِ يَزِيدَ قُلْنَا: وَقَدْ أَسْنَدَهُ يَحْيَى أَيْضًا - وَهَذَا كُلُّهُ صَحِيحٌ فِيهِ؛ لِأَنَّهُ سَمِعَهُ مَرَّةً مُسْنَدًا، وَسَمِعَ يَزِيدَ يَقُولُ: مِنْ فَتَيَاهُ أَيْضًا.

L21186–21188 Then he states: However, Rabi'ah did not doubt that it was the statement of Allah's Messenger—peace be upon him—and likewise Busr ibn Sa'id did not doubt that it was the statement of the Messenger of Allah—peace be upon him—transmitting from Zayd ibn Khālid al-Juhanī. Mālik and Sufyān al-Thawrī narrated from Rabi'ah from Yazīd, the freed slave of al-Munba'ith, from Zayd ibn Khālid from the Prophet—peace be upon him: "If its owner comes, otherwise it is your responsibility." Hammād ibn Salamah narrated from Rabi'ah from Yazīd ibn Khālid from the Prophet—peace be upon him: "If its owner comes, otherwise it is your responsibility." Hammād ibn Salamah also narrated from Rabi'ah from Yazīd from Zayd ibn Khālid from the Prophet—peace be upon him: "If its owner comes and recognizes it, then deliver it to him; otherwise, it is yours." Sufyān ibn 'Uyaynah narrated that Rabi'ah informed him that Yazīd, the freed slave of al-Munba'ith, reported to him from Zayd ibn Khālid "from the Prophet—peace be upon him—that he was asked about lost property. He said: 'Publicize it for a year. If it is recognized, return it; otherwise, incorporate it into your wealth.'" We have transmitted this through the chain of Sa'īd ibn Manṣūr, narrated to us by 'Abd al-'Azīz ibn Muhammad—al-Darāwardī. I heard Rabi'ah nar-

ثُمَّ يَقُولُ: لَكِنَّ رَبِيعَةَ لَمْ يَشُكَّ فِي أَنَّهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَكَذَلِكَ أَيْضًا لَمْ يَشُكَّ بُسْرُ بْنُ سَعِيدٍ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. رَوَى مَالِكٌ، وَسُفْيَانُ الثَّوْرِيُّ عَنْ رَبِيعَةَ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا فَشَأْنُكَ بِهَا» . وَرَوَى حَمَّادُ بْنُ سَلَمَةَ عَنْ رَبِيعَةَ عَنْ يَزِيدَ بْنِ خَالِدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا فَشَأْنُكَ بِهَا» . وَرَوَى حَمَّادُ بْنُ سَلَمَةَ عَنْ رَبِيعَةَ عَنْ يَزِيدَ عَنْ زَيْدِ بْنِ خَالِدٍ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ -: «فَإِنْ جَاءَ صَاحِبُهَا فَعَرَفَهَا فَادْفَعْهَا إلَيْهِ وَإِلَّا فَهِيَ لَكَ» . وَرَوَى سُفْيَانُ بْنُ عُيَيْنَةَ: أَنَّ رَبِيعَةَ أَخْبَرَهُ أَنَّ يَزِيدَ مَوْلَى الْمُنْبَعِثِ حَدَّثَهُ عَنْ زَيْدِ بْنِ خَالِدٍ «عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - أَنَّهُ سُئِلَ عَنْ اللُّقَطَةِ؟ فَقَالَ: عَرِّفْهَا سَنَةً، فَإِنْ اعْتَرَفَتْ وَإِلَّا فَاخْلِطْهَا بِمَالِكَ.» وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ الدَّرَاوَرْدِيُّ - سَمِعْت رَبِيعَةَ يُحَدِّثُ عَنْ يَزِيدَ مَوْلَى

[2] **Qur'an references (L21183):** Qur'an 93:8 (Ad-Duhaa).

rate from Yazid, the freed slave of al-Munba'ith, from Zayd ibn Khalid from the Messenger of Allah—peace and blessings of Allah be upon him—as he mentioned the hadith, concluding with: "If its owner comes, deliver it to him; otherwise, utilize it as you would your own property." Abu al-Nadr, the freed slave of Amr ibn Ubaidullah, narrated it from Busr ibn Sa'id from Zayd ibn Khalid al-Juhani from the Messenger of Allah—peace and blessings of Allah be upon him and his family—regarding the lost item, stating: "Announce it for a year. If it remains unrecognized, identify its bag and binding cord, then utilize it. If its owner comes, deliver it to him." Hammad ibn Salamah narrated from Salamah ibn Kuhayl from Suwayd ibn Ghaflah that Ubayy ibn Ka'b said: "The Messenger of Allah—peace and blessings of Allah be upon him—instructed him concerning the lost item: 'If its owner comes, have him identify its quantity, binding cord, and container, then give it to him; otherwise, it belongs to you.'"

الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ، وَفِي آخِرِهِ: «فَإِنْ جَاءَ صَاحِبُهَا فَأَدِّهَا إِلَيْهِ وَإِلَّا فَاصْنَعْ بِهَا مَا تَصْنَعُ بِمَالِكَ» . وَرَوَاهُ أَبُو النَّضْرِ مَوْلَى عُمَرَ بْنِ عُبَيْدِ اللَّهِ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي اللُّقَطَةِ قَالَ: «عَرِّفْهَا سَنَةً فَإِنْ لَمْ تَعْتَرِفْ فَاعْرِفْ عِفَاصَهَا، وَوِكَاءَهَا، ثُمَّ كُلْهَا فَإِنْ جَاءَ صَاحِبُهَا فَأَدِّهَا إِلَيْهِ» . وَرَوَاهُ حَمَّادُ بْنُ سَلَمَةَ نا سَلَمَةُ بْنُ كُهَيْلٍ عَنْ سُوَيْدِ بْنِ غَفَلَةَ: أَنَّ أُبَيَّ بْنَ كَعْبٍ قَالَ لَهُ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُ فِي اللُّقَطَةِ: فَإِنْ جَاءَ صَاحِبُهَا فَعَرِّفْ عَدَدَهَا، وَوِكَاءَهَا، وَوِعَاءَهَا فَأَعْطِهَا إِيَّاهُ، وَإِلَّا فَهِيَ لَكَ» .

"This is supported by the hadith of Iyad ibn Himar and Abu Hurairah—unlike those fabricated composites of *mursal*, unknown narrators, or those of no merit. And with Allah, the Exalted, lies all success. A report has come through a chain that opponents persistently cite when it suits them: We have been narrated through the chain of Ibn Wahb: Amr ibn al-Harith informed me from Amr ibn Shu'ayb, from his father, from his grandfather: "A man came to the Prophet (peace and blessings of Allah be upon him) and said, 'What do you say about what is found on a frequently used road or in an inhabited village?' He said, 'Announce it for a year. If its claimant comes, hand it over to him; otherwise, it is yours to keep. If its seeker comes one day in the future, return it to him. As for what is found on a road that is not frequently used or in a village that is uninhabited: the ruling applies to it, and for treasure troves, one-fifth is due.'"

L21189

وَعَلَى هَذَا دَلَّ حَدِيثُ عِيَاضِ بْنِ حِمَارٍ، وَأَبِي هُرَيْرَةَ، لَا مِثْلَ تِلْكَ الْمُلَفَّقَاتِ الْمَكْذُوبَةِ مِنْ مُرْسَلٍ، وَمَجْهُولٍ، وَمَنْ لَا خَيْرَ فِيهِ -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَقَدْ جَاءَ خَبَرٌ مِنْ طَرِيقٍ لَا يَزَالُ الْمُخَالِفُونَ يَحْتَجُّونَ بِهَا إذَا وَافَقَتْهُمْ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ: أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: كَيْفَ تَرَى مَا وُجِدَ فِي الطَّرِيقِ الْمِيتَاءِ، أَوْ فِي الْقَرْيَةِ الْمَسْكُونَةِ؟ قَالَ: عَرِّفْ سَنَةً، فَإِنْ جَاءَ بَاغِيهِ فَادْفَعْهُ إِلَيْهِ وَإِلَّا فَشَأْنَكَ بِهِ، فَإِنْ جَاءَ طَالِبُهَا يَوْمًا مِنْ الدَّهْرِ فَأَدِّهَا إِلَيْهِ، وَمَا كَانَ فِي الطَّرِيقِ غَيْرِ الْمِيتَاءِ، وَفِي الْقَرْيَةِ غَيْرِ الْمَسْكُونَةِ: فَفِيهِ، وَفِي الرِّكَازِ: الْخُمُسُ» .

L21190

وَأَمَّا نَحْنُ فَهَذِهِ صَحِيفَةٌ لَا نَأْخُذُ بِهَا، فَهَذَا حُكْمُ اللُّقَطَةِ مِنْ غَيْرِ الْحَيَوَانِ. وَأَمَّا الضَّوَالُّ مِنْ الْحَيَوَانِ فَلَهَا ثَلَاثَةُ أَحْكَامٍ -: أَمَّا الضَّأْنُ وَالْمَعْزُ فَقَطْ - بِكِبَارِهَا وَصِغَارِهَا - تُوجَدُ بِحَيْثُ يُخَافُ عَلَيْهَا الذِّئْبَ، أَوْ مَنْ يَأْخُذُهَا مِنْ النَّاسِ، وَلَا حَافِظَ لَهَا، وَلَا هِيَ بِقُرْبِ

As for us, this is a text we do not follow. This is the ruling concerning lost property other than animals. As for stray animals, they have three rulings: First, regarding sheep and goats specifically—both adults and young—if found in a place where they are feared to be preyed upon by wolves or seized by people, with no guardian present, and not near any water belonging to them,

they are permissible for whoever takes them. This applies whether the owner comes or does not come, and whether they are found alive, slaughtered, cooked, or eaten—the owner has no claim over them.

L21191–21195 As for camels capable of grazing and reaching water sources, it is not permissible for anyone to take them. The ruling concerning them is that they must be left without exception. Whoever takes them is liable for them if they perish in his possession in any manner whatsoever. Except if there is any among the things we mentioned—lost property or stray animals whose owner is identifiable—the ruling for all such cases is that they must be returned to their owner without public announcement. As for all other things we mentioned: camels incapable of reaching water and pasture, all cattle, horses, mules, donkeys, all owned game animals, runaway male and female slaves, those among them whose owners have lost them, sheep that stray where they are not feared for wolves or humans, and all other similar cases—the obligation is to take them, retain them, and announce them indefinitely. If the owner's identity becomes impossible to ascertain, the ruler or the finder must allocate them for the general welfare of the Muslims. Success is from Allah alone. This applies equally whether what we mentioned was neglected by its owner due to necessity, fear, emaciation, or straying—there is no distinction. The proof for this is what we narrate via al-Bukhārī: Qutaybah ibn Saʿīd reported to us, Ismāʿīl ibn Jaʿfar reported to us from Rabīʿah ibn Abī ʿAbd al-Raḥmān from Yazīd, the freed slave of al-Munbaʿith, from Zayd ibn Khālid al-Juhanī: "The Messenger of Allah (peace and blessings be upon him and his family) was asked about lost property. He said: 'Announce it for a year, then note its fastener and container, and use it. If its owner comes, return it to him.' The questioner asked: 'O Messenger of Allah, what about stray sheep?' He replied: 'Take them, for they are yours to keep, your brother's, or the wolf.' The man asked: 'O Messenger of Allah, what about stray camels?' The Prophet (peace and blessings be upon him and his family) grew angry until his cheeks reddened or his face reddened and said: 'What concern is it of yours? They have their hooves and water-bearing capacity until their owner finds them.'" Another narration via al-Bukhārī: Ismāʿīl ibn ʿAbd Allāh ibn Abī Uways reported to us, Sulaymān ibn Bilāl reported to us from Yaḥyā

مَاءٍ مِنْهَا: فَهِيَ حَلَالٌ لِمَنْ أَخَذَهَا سَوَاءٌ جَاءَ صَاحِبُهَا، أَوْ لَمْ يَجِئْ، وَجَدَهَا حَيَّةً، أَوْ مَذْبُوحَةً، أَوْ مَطْبُوخَةً، أَوْ مَأْكُولَةً - لَا سَبِيلَ لَهُ عَلَيْهَا.

وَأَمَّا الْإِبِلُ الْقَوِيَّةُ عَلَى الرَّعْيِ، وَوُرُودِ الْمَاءِ: فَلَا يَحِلُّ لِأَحَدٍ أَخْذُهَا، وَإِنَّمَا حُكْمُهَا: أَنْ تُتْرَكَ وَلَا بُدَّ، فَمَنْ أَخَذَهَا ضَمِنَهَا - إِنْ تَلِفَتْ عِنْدَهُ بِأَيِّ وَجْهٍ تَلِفَتْ - وَكَانَ عَاصِيًا بِذَلِكَ، إِلَّا أَنْ يَكُونَ شَيْءٌ مِنْ كُلِّ مَا ذَكَرْنَا مِنْ لُقَطَةٍ، أَوْ ضَالَّةٍ، يُعَرِّفُ صَاحِبَهَا، فَحُكْمُ كُلِّ ذَلِكَ أَنْ تُرَدَّ إِلَيْهِ وَلَا تُعَرَّفُ فِي ذَلِكَ. وَأَمَّا كُلُّ مَا عَدَا مَا ذَكَرْنَا مِنْ إِبِلٍ لَا قُوَّةَ بِهَا عَلَى وُرُودِ الْمَاءِ وَالرَّعْيِ وَسَائِرُ الْبَقَرِ، وَالْخَيْلِ، وَالْبِغَالِ، وَالْحَمِيرِ، وَالصُّيُودِ كُلِّهَا، الْمُتَمَلَّكَةِ، وَالْأُبَّاقِ مِنَ الْعَبِيدِ وَالْإِمَاءِ، وَمَا أَضَلَّ صَاحِبُهُ مِنْهَا، وَالْغَنَمِ الَّتِي تَكُونُ ضَوَالَّ بِحَيْثُ لَا يُخَافُ عَلَيْهَا الذِّئْبَ، وَلَا إِنْسَانٌ، وَغَيْرُ ذَلِكَ - كُلِّهِ - فَفَرْضٌ أَخْذُهُ وَضَمُّهُ وَتَعْرِيفُهُ أَبَدًا، فَإِنْ يَئِسَ مِنْ مَعْرِفَةِ صَاحِبِهَا أَدْخَلَهَا الْحَاكِمُ أَوْ وَاجِدُهَا فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. سَوَاءٌ كَانَ كُلُّ مَا ذَكَرْنَا مِمَّا أَهْمَلَهُ صَاحِبُهُ لِضَرُورَةٍ، أَوْ لِخَوْفٍ، أَوْ لِهُزَالٍ أَوْ مِمَّا ضَلَّ وَلَا فَرْقَ. بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سُئِلَ عَنْ اللُّقَطَةِ؟ فَقَالَ: عَرِّفْهَا سَنَةً ثُمَّ اعْرِفْ وِكَاءَهَا وَعِفَاصَهَا ثُمَّ اسْتَنْفِقْ بِهَا، فَإِنْ جَاءَ رَبُّهَا فَأَدِّهَا إِلَيْهِ؟ فَقَالَ: يَا رَسُولَ اللَّهِ فَضَالَّةُ الْغَنَمِ؟ قَالَ: خُذْهَا فَإِنَّمَا هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذِّئْبِ، قَالَ: يَا رَسُولَ اللَّهِ فَضَالَّةُ الْإِبِلِ؟ فَغَضِبَ - عَلَيْهِ السَّلَامُ - حَتَّى احْمَرَّتْ وَجْنَتَاهُ أَوْ احْمَرَّ وَجْهُهُ وَقَالَ: مَا لَكَ وَلَهَا مَعَهَا حِذَاؤُهَا وَسِقَاؤُهَا حَتَّى يَلْقَاهَا رَبُّهَا» . وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا إِسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي أُوَيْسٍ نا سُلَيْمَانُ

ibn Saʿīd al-Anṣārī from Yazīd, the freed slave of al-Munbaʿith, who heard Zayd ibn Khālid al-Juhanī say: "The Messenger of Allah (peace and blessings be upon him and his family) was asked about stray sheep. The Prophet (peace and blessings be upon him and his family) said: 'Take them, for they are yours to keep, your brother's, or the wolf.' He was then asked: 'What about stray camels?' He replied: 'Leave them, for they have their hooves and water-bearing capacity. They will drink water and graze until their owner finds them.'" Thus, the Prophet (peace and blessings be upon him and his family) commanded taking stray sheep feared for wolves or humans but leaving camels that can drink water and graze until their owner reclaims them. He singled out these specific cases among all found items and stray livestock, excluding others. Thus, it is impermissible for anyone to act contrary to this ruling. Abu Muhammad said: Regarding what has a recognized owner, it is not considered stray livestock, for it has not entirely gone astray. Rather, it remains identifiable. Stray livestock refers exclusively to what has completely gone astray - where its owner cannot locate it, and its finder cannot identify its owner. This is what the Prophet (peace be upon him) commanded to be publicly proclaimed in gatherings.[3]

L21196 The ruling concerning all animals remains contingent upon the statement of Allah, the Exalted: *"And cooperate in righteousness and piety"* [Al-Mā'idah: 2]—except what we have mentioned. Preserving the property of a Muslim or a Dhimmi is part of righteousness and piety. The Messenger of Allah (peace be upon him) said: *"Your blood and your wealth are inviolable to you."* Thus, it is unlawful for anyone to take from another's wealth except what Allah, the Exalted, and His Messenger (peace be upon him) have permitted.[4]

L21197 It was narrated to us through the chain of Abd al-Razzaq from Ma'mar from al-Zuhri from Sa'id ibn al-Musayyib, who said: Umar ibn al-Khattab wrote to his governors, "Do not gather stray camels. Camels used to multiply as ownerless herds, coming to water sources without anyone interfering with them until someone who recognized them would come and take them. But

بْنُ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ يَزِيدَ مَوْلَى الْمُنْبَعِثِ أَنَّهُ سَمِعَ زَيْدَ بْنَ خَالِدٍ الْجُهَنِيَّ يَقُولُ: «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَيْفَ تَرَى فِي ضَالَّةِ الْغَنَمِ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: خُذْهَا فَإِنَّمَا هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذِّئْبِ فَقَالَ: كَيْفَ تَرَى فِي ضَالَّةِ الْإِبِلِ؟ قَالَ: دَعْهَا، فَإِنَّ مَعَهَا حِذَاءَهَا وَسِقَاءَهَا تَرِدُ الْمَاءَ وَتَأْكُلُ الشَّجَرَ حَتَّى يَجِدَهَا رَبُّهَا» فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِأَخْذِ ضَالَّةِ الْغَنَمِ الَّتِي يَخَافُ عَلَيْهَا الذِّئْبَ أَوْ الْعَادِي وَيَتْرُكُ الْإِبِلَ الَّتِي تَرِدُ الْمَاءَ وَتَأْكُلُ الشَّجَرَ، وَخَصَّهَا بِذَلِكَ دُونَ سَائِرِ اللُّقَطَاتِ وَالضَّوَالِّ فَلَا يَحِلُّ لِأَحَدٍ خِلَافُ ذَلِكَ. قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَا عَرَفَ رَبُّهُ فَلَيْسَ ضَالَّةً؛ لِأَنَّهَا لَمْ تَضِلَّ جُمْلَةً، بَلْ هِيَ مَعْرُوفَةٌ وَإِنَّمَا الضَّالَّةُ مَا ضَلَّتْ جُمْلَةً فَلَمْ يَعْرِفْهَا صَاحِبُهَا أَيْنَ هِيَ؟ وَلَا عَرَفَ وَاجِدُهَا لِمَنْ هِيَ، وَهِيَ الَّتِي أَمَرَ - عَلَيْهِ السَّلَامُ - بِنَشْدِهَا.

وَبَقِيَ حُكْمُ الْحَيَوَانِ كُلِّهِ حَاشَا مَا ذَكَرْنَا مَوْقُوفًا عَلَى قَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَمِنْ الْبِرِّ وَالتَّقْوَى إحْرَازُ مَالِ الْمُسْلِمِ أَوْ الذِّمِّيِّ. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ لِأَحَدٍ مِنْ مَالِ أَحَدٍ إلَّا مَا أَحَلَّهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إلَى عُمَّالِهِ لَا تَضُمُّوا الضَّوَالَّ فَلَقَدْ كَانَتْ الْإِبِلُ تُنَاتَجُ هَمَلًا وَتَرِدُ الْمِيَاهَ لَا يَعْرِضُ لَهَا أَحَدٌ حَتَّى يَأْتِيَ مَنْ يَعْتَرِفُهَا فَيَأْخُذُهَا، حَتَّى إذَا كَانَ عُثْمَانُ كَتَبَ: أَنْ ضُمُّوهَا وَعَرِّفُوهَا؟ فَإِنْ جَاءَ مَنْ يَعْرِفُهَا وَإِلَّا فَبِيعُوهَا وَضَعُوا أَثْمَانَهَا فِي بَيْتِ الْمَالِ، فَإِنْ

[3] **Hadith references (L21191):** Sunan Abi Dawud 1704; Sahih Muslim 1722b; Mishkat al-Masabih 3033.

[4] **Qur'an references (L21196):** Qur'an 5:2 (Al-Ma'idah).

when Uthman became caliph, he wrote: 'Gather them and announce them. If someone who recognizes them comes, give them to him; otherwise, sell them and deposit their prices in the public treasury. If someone who recognizes them comes later, give the prices to her.'"

Through another chain from Ibn Wahb, Anas ibn Iyad narrated to me from Salamah ibn Wardan: I asked Salim ibn Abd Allah ibn Umar about a sheep found in uninhabited land. He replied, "Announce her to those near you. If she is recognized, give her to the one who recognizes her; otherwise, it is your sheep and the wolf's sheep—consume her."

جَاءَ مَنْ يَعْتَرِفُهَا فَادْفَعُوا إِلَيْهَا الْأَثْمَانَ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي أَنَسُ بْنُ عِيَاضٍ عَنْ سَلَمَةَ بْنِ وَرْدَانَ سَأَلْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ الشَّاةِ تُوجَدُ بِالْأَرْضِ الَّتِي لَيْسَ بِهَا أَحَدٌ، فَقَالَ لِي: عَرِّفْهَا مَنْ دَنَا لَك، فَإِنْ عُرِفَتْ فَادْفَعْهَا إلَى مَنْ عَرَفَهَا وَإِلَّا فَشَاتُك وَشَاةُ الذِّئْبِ فَكُلْهَا.

L21198 And through the narration of Wakīʿ, Salama ibn Wardān narrated to us, saying: I asked Sālim ibn ʿAbd Allāh ibn ʿUmar about stray camels. He said: "They have their water-skins and footgear with them—leave them unless you identify their owner, in which case return them to him."

وَمِنْ طَرِيقِ وَكِيعٍ حَدَّثَنَا سَلَمَةُ بْنُ وَرْدَانَ قَالَ: سَأَلْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ ضَالَّةِ الْإِبِلِ؟ فَقَالَ: مَعَهَا سِقَاؤُهَا وَحِذَاؤُهَا دَعْهَا إلَّا أَنْ تَعْرِفَ صَاحِبَهَا فَتَدْفَعُهَا إلَيْهِ.

L21199 It has been narrated to us through the chain of Abd al-Razzaq from Ma'mar and Sufyan al-Thawri—both transmitting from Abu Ishaq al-Sabi'i from his wife, who reported: A woman came to Aisha, the Mother of the Believers, and said, "I found a ewe." Aisha replied, "Feed it, milk it, and declare its ownership." When the woman returned to her three times, Aisha said, "Do you wish me to order you to slaughter it?" Through another chain from Ibn Abi Shaybah: Abu al-Ahwas narrated to us from Zayd ibn Jubayr that he heard Ibn Umar say to a man who asked him about a lost animal he had found. Ibn Umar instructed him, "Maintain it properly and announce [its discovery]." The man asked, "Is there any obligation on me if I drank from its milk?" He replied, "I see no obligation upon you for that."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ: وَسُفْيَانَ الثَّوْرِيِّ كِلَاهُمَا عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ امْرَأَتِهِ قَالَ: جَاءَتْ امْرَأَةٌ إلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَقَالَتْ: إنِّي وَجَدْت شَاةً؟ فَقَالَتْ: اعْلِفِي وَاحْلِبِي وَعَرِّفِي، ثُمَّ عَادَتْ إلَيْهَا ثَلَاثَ مَرَّاتٍ، فَقَالَتْ: تُرِيدِينَ أَنْ آمُرُك بِذَبْحِهَا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ زَيْدِ بْنِ جُبَيْرٍ: أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ لِرَجُلٍ سَأَلَهُ عَنْ ضَالَّةٍ وَجَدَهَا؟ فَقَالَ لَهُ ابْنُ عُمَرَ: أَصْلِحْ إلَيْهَا وَانْشُدْ، قَالَ: فَهَلْ عَلَيَّ إنْ شَرِبْت مِنْ لَبَنِهَا؟ قَالَ: مَا أَرَى عَلَيْك فِي ذَلِكَ.

L21200–21201 Abu Hanifa and his companions said: Lost camels are to be taken in the same manner as other lost animals.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: تُؤْخَذُ ضَالَّةُ الْإِبِلِ كَمَا تُؤْخَذُ غَيْرُهَا.

L21202 Al-Shafi'i said: Horses, cows, and mules that are strong enough to reach water and graze are not subject to zakāh by analogy to camels. Those among them and other animals that do not resist being taken are liable.

وَقَالَ الشَّافِعِيُّ: مَا كَانَ مِنْ الْخَيْلِ، وَالْبَقَرِ، وَالْبِغَالِ، قَوِيًّا يَرِدُ الْمَاءَ، وَيَرْعَى لَمْ يُؤْخَذْ قِيَاسًا عَلَى الْإِبِلِ، وَمَا كَانَ مِنْهَا وَمِنْ سَائِرِ الْحَيَوَانِ لَا يَمْتَنِعُ أُخِذَ.

L21203 Abu Hanifah and Al-Shafi'i stated: Whoever takes a stray sheep is liable for it if he consumes it. Malik said: Regarding stray sheep near settlements,

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: مَنْ أَخَذَ ضَالَّةً مِنْ الْغَنَمِ فَعَلَيْهِ ضَمَانُهَا إنْ أَكَلَهَا - وَقَالَ مَالِكٌ: أَمَّا ضَالَّةُ الْغَنَمِ فَمَا كَانَ بِقُرْبِ الْقُرَى فَلَا يَأْكُلُهَا، وَلَكِنْ يَضْمَنُهَا إلَى أَقْرَبِ الْقُرَى، فَيُعَرِّفُهَا هُنَالِكَ، وَأَمَّا مَا كَانَ فِي الْفَلَوَاتِ وَالْمَهَامِهِ، فَإِنَّهُ يَأْكُلُهَا أَوْ يَأْخُذُهَا، فَإِنْ جَاءَ صَاحِبُهَا فَوَجَدَهَا حَيَّةً فَهُوَ أَحَقُّ بِهَا، وَإِنْ وَجَدَهَا مَأْكُولَةً فَلَا شَيْءَ لَهُ، وَلَا يَضْمَنُهَا لَهُ وَاجِدُهَا الَّذِي أَكَلَهَا. وَاخْتَلَفَ أَصْحَابُهُ فِيهَا إنْ وَجَدَهَا مَذْبُوحَةً لَمْ تُؤْكَلْ بَعْدُ. قَالَ: وَأَمَّا الْبَقَرُ فَإِنْ خِيفَ عَلَيْهَا السَّبُعَ فَحُكْمُهَا حُكْمُ الْغَنَمِ، وَإِنْ لَمْ يُخَفْ عَلَيْهَا السَّبُعَ فَحُكْمُهَا حُكْمُ الْإِبِلِ يُتْرَكُ كُلُّ ذَلِكَ وَلَا يُعْتَرَضُ لَهُ وَلَا يُؤْخَذُ. وَأَمَّا الْخَيْلُ، وَالْبِغَالُ، وَالْحَمِيرُ، فَلْتُعَرَّفْ ثُمَّ يُتَصَدَّقُ بِهَا. قَالَ أَبُو مُحَمَّد: أَمَّا تَقْسِيمُ مَالِكٍ فَخَطَأٌ، لِأَنَّهُ لَمْ يَتْبَعْ النَّصَّ، إذْ فَرَّقَ بَيْنَ أَحْوَالِ وُجُودِ ضَالَّةِ الْغَنَمِ، وَلَيْسَ فِي النَّصِّ شَيْءٌ مِنْ ذَلِكَ، وَكَذَلِكَ تَفْرِيقُهُ بَيْنَ وُجُودِ الشَّاةِ صَاحِبُهَا حَيَّةً أَوْ مَأْكُولَةً، فَلَيْسَ فِي الْخَبَرِ شَيْءٌ مِنْ ذَلِكَ أَصْلًا - لَا بِنَصٍّ وَلَا بِدَلِيلٍ وَلَا الْقِيَاسَ طَرَدَ - وَلَا قَوْلٍ مُتَقَدِّمٍ الْتَزَمَ؛ لِأَنَّ الْقِيَاسَ أَنْ لَا يُبِيحَ الشَّاةَ لِوَاجِدِهَا أَصْلًا، كَمَا لَا يُبِيحُ سَائِرَ اللُّقَطَاتِ، إلَّا إنْ كَانَ فَقِيرًا بَعْدَ تَعْرِيفِ عَامٍ - وَلَا نَعْلَمُ فُرُوقَهُ هَذِهِ عَنْ أَحَدٍ قَبْلَهُ، وَلَا نَعْلَمُ لِقَوْلِهِ حُجَّةً أَصْلًا.

وَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ خَالَفَ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّهُ جِهَارًا فَمَنَعَ مِنْ الشَّاةِ جُمْلَةً، وَأَمَرَ بِأَخْذِ ضَالَّةِ الْإِبِلِ - وَقَدْ غَضِبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ ذَلِكَ غَضَبًا احْمَرَّ لَهُ وَجْهُهُ - وَنَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ، فَأَمَّا هُوَ - يَعْنِي أَبَا حَنِيفَةَ - فَيُعْذَرُ لِجَهْلِهِ بِالْآثَارِ، وَأَمَّا هَؤُلَاءِ الْخَاسِرُونَ فَوَاَللَّهِ مَا لَهُمْ عُذْرٌ، بَلْ هُمْ قَدْ أَقْدَمُوا عَلَى مَا أَغْضَبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَانِيَةً، فَخَصَلُوا فِي

one must not eat them but rather return them to the nearest settlement and announce them there. As for those found in deserts or remote wastelands, one may consume or take them. If the owner arrives and finds the animal alive, he retains priority. If he finds it consumed, he has no claim, nor is the finder who ate it liable. Malik's companions disagreed on the ruling if a slaughtered sheep was found uneaten. He said: Concerning cattle - if predator threat exists, their ruling follows the same as that for sheep. If no predator threat exists, their ruling follows camels: they are left undisturbed and not taken. As for horses, mules, and donkeys, they must be announced then held in trust for charitable use if unclaimed. Abu Muhammad remarked: Malik's classification is erroneous, for he neither followed textual precedent - having differentiated between contexts of finding stray sheep absent any textual basis - nor consistently distinguished between finding sheep alive or consumed, this distinction being entirely absent in narrations with no basis in explicit text, evidence, analogy, or established precedent. By analogy, sheep should not be permitted to the finder at all, just as all other lost property is prohibited unless the finder is impoverished after a year's announcement. We know of no predecessor endorsing these distinctions, nor any valid proof supporting his view.

L21204 As for Abū Ḥanīfah, he openly opposed the entire command of Allah's Messenger—peace and blessings of Allah be upon him—by prohibiting **the sheep entirely** and mandating the seizure of stray camels, **though Allah's Messenger—peace and blessings of Allah be upon him—had become so angered by this that his face reddened**—we seek refuge in Allah from such matters. As for him—meaning Abū Ḥanīfah—he is excused due to his ignorance of **the narrations**. But concerning **these losers**—**by Allah, indeed!**—they have no excuse. Rather, they have **boldly committed** what angered Allah's Messenger—peace and blessings of Allah be upon him and his family—openly, thereby joining those about whom Allah the Exalted

said: *“That is because they followed what aroused Allah’s wrath and spurned His pleasure”* [Muḥammad 47:28]. **How fearful we are for them concerning the entirety of this verse**, for the decisive proof has been established against them.[5]

L21205–21206 If they say: “Wealth is unlawful for those not entitled to it, and it is obligatory to preserve it, so we do not adopt a contrary position based on a solitary report?” We respond to them: “You have relied on that very report in what you yourselves rejected, commanding its disposal through charity after a year of publicizing. Thus, at one time, the report becomes a proof in your view, and at another time, it becomes invalid, though it is the very same report. What is this sheer misguidance?” We have narrated for them from the Mother of the Believers and Ibn Umar the permissibility of drinking the milk of lost livestock, yet they do not accept this. As for Al-Shāfiʿī, he contradicted his own principle by not permitting the taking of the sheep and introduced into the ruling of the report what is not stated in it. He extended to camels what was not mentioned in the text, making access to water and grazing on trees a basis for analogy, though he has no evidence for the validity of this. Indeed, a sheep may drink from water and graze on what it reaches from trees, just as camels do, and is prevented from what it cannot reach, just as camels are prevented from what they cannot reach. A wolf devours a camel just as it devours a sheep, and the camel has no defense against it. Only cattle can resist it—this is a matter known through observation.

L21207 They said: The statement of the Prophet—peace and blessings of Allah be upon him—“It is for you, or your brother, or the wolf” does not constitute granting ownership to the wolf; thus, likewise, it does not constitute granting ownership to the finder? We replied: This assertion of yours is invalid, for the wolf cannot own while the finder can own. The finder is subject to legal obligations, whereas the wolf is not addressed by the law. The finder has been commanded to take it, so your addition is false and rejected against you—and with Allah alone is success. Thus, the invalidity of all these claims is conclusively evident, as each of them selectively adopted part of the narration as proof while discarding another part and disregarding its authority. They

جُمْلَةِ مَنْ قَالَ اللَّهُ تَعَالَى فِيهِمْ: {ذَلِكَ بِأَنَّهُمُ اتَّبَعُوا مَا أَسْخَطَ اللَّهَ وَكَرِهُوا رِضْوَانَهُ} [محمد: ٢٨] فَمَا أَخْوَفُنَا عَلَيْهِمْ مِنْ تَمَامِ الْآيَةِ لِأَنَّ الْحُجَّةَ قَدْ قَامَتْ عَلَيْهِمْ.

فَإِنْ قَالُوا: إِنَّ الْأَمْوَالَ حَرَامٌ عَلَى غَيْرِ أَهْلِهَا، وَوَاجِبٌ حِفْظُهَا، فَلَا نَأْخُذُ بِخِلَافِ ذَلِكَ بِخَبَرٍ وَاحِدٍ؟ قُلْنَا لَهُمْ: قَدْ أَخَذْتُمْ بِذَلِكَ الْخَبَرِ بِعَيْنِهِ فِيمَا أَنْكَرْتُمُوهُ نَفْسَهُ فَأَمَرْتُمْ بِإِتْلَافِهَا بِالصَّدَقَةِ بِهَا بَعْدَ تَعْرِيفِ سَنَةً، فَمَرَّةً صَارَ عِنْدَكُمُ الْخَبَرُ حُجَّةً، وَمَرَّةً صَارَ عِنْدَكُمْ بَاطِلًا، وَهُوَ ذَلِكَ الْخَبَرُ بِعَيْنِهِ فَمَا هَذَا الضَّلَالُ؟ وَقَدْ رُوِّينَا لَهُمْ عَنْ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ: إِبَاحَةَ شُرْبِ لَبَنِ الضَّالَّةِ، وَهُمْ لَا يَقُولُونَ بِذَلِكَ. وَأَمَّا الشَّافِعِيُّ فَنَقَضَ أَصْلَهُ وَلَمْ يَرَ أَخْذَ الشَّاةِ، وَأَقْحَمَ فِي حُكْمِ الْخَبَرِ مَا لَيْسَ فِيهِ، فَأَلْحَقَ بِالْإِبِلِ مَا لَمْ يُذْكَرْ فِي النَّصِّ، وَجَعَلَ وُرُودَ الْمَاءِ، وَرَعْيَ الشَّجَرِ عِلَّةً قَاسَ عَلَيْهَا، وَلَا دَلِيلَ لَهُ عَلَى صِحَّةِ ذَلِكَ، وَإِنَّ الشَّاةَ لَتَرِدُ الْمَاءَ، وَتَرْعَى مَا أَدْرَكَتْ مِنَ الشَّجَرِ، كَمَا تَفْعَلُ الْإِبِلُ، وَيَمْتَنِعُ مِنْهَا مَا لَمْ تُدْرِكْهُ، كَمَا يَمْتَنِعُ عَلَى الْإِبِلِ مَا لَا تُدْرِكُهُ، وَإِنَّ الذِّئْبَ لَيَأْكُلُ الْبَعِيرَ كَمَا يَأْكُلُ الشَّاةَ، وَلَا مَنَعَةَ عِنْدَ الْبَعِيرِ مِنْهُ، وَإِنَّمَا يَمْتَنِعُ مِنْهُ الْبَقَرُ فَقَطْ - هَذَا أَمْرٌ مَعْلُومٌ بِالْمُشَاهَدَةِ.

وَقَالُوا: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذِّئْبِ» لَيْسَ تَمْلِيكًا لِلذِّئْبِ، فَكَذَلِكَ لَيْسَ تَمْلِيكًا لِلْوَاجِدِ؟ فَقُلْنَا: هَذَا بَاطِلٌ مِنْ قَوْلِكُمْ، لِأَنَّ الذِّئْبَ لَا يَمْلِكُ وَالْوَاجِدُ يَمْلِكُ، وَالْوَاجِدُ مُخَاطَبٌ، وَالذِّئْبُ لَيْسَ مُخَاطَبًا، وَقَدْ أُمِرَ الْوَاجِدُ بِأَخْذِهَا، فَزِيَادَتُكُمْ كَاذِبَةٌ مَرْدُودَةٌ عَلَيْكُمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. فَظَهَرَ سُقُوطُ هَذِهِ الْأَقْوَالِ كُلِّهَا بِتَيَقُّنٍ، وَأَنَّ كُلَّ وَاحِدٍ مِنْهُمْ أَخَذَ بِبَعْضِ الْخَبَرِ وَجَعَلَهُ حُجَّةً وَتَرَكَ بَعْضَهُ وَلَمْ يَرَهُ حُجَّةً. وَاخْتَلَفُوا فِي ذَلِكَ: فَأَخَذَ هَذَا مَا تَرَكَ هَذَا، وَتَرَكَ هَذَا مَا أَخَذَ الْآخَرُ،

[5] **Qur’an references (L21204):** Qur’an 47:28 (Muhammad).

وَهَذَا مَا لَا طَرِيقَ لِلصَّوَابِ إلَيْهِ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَلَئِنْ كَانَ الْخَبَرُ حُجَّةً فِي مَوْضِعٍ فَإِنَّهُ لَحُجَّةٌ فِي كُلِّ مَا فِيهِ، إلَّا أَنْ تَأْتِيَ مُخَالَفَةٌ لَهُ بِنَاسِخٍ مُتَيَقَّنٍ، وَإِنْ كَانَ لَيْسَ حُجَّةً فِي شَيْءٍ مِنْهُ فَكُلُّهُ لَيْسَ حُجَّةً، وَالتَّحَكُّمُ فِي أَوَامِرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَجُوزُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

diverged in this: one accepted what another rejected, and another rejected what the first accepted. This is a position wholly lacking validity—and with Allah alone is success. If the narration is authoritative in one instance, it is authoritative in everything it contains, unless contradicted by a certainly established abrogation. If it lacks authority in any part, then none of it holds authority. Arbitrary interference with the commands of the Messenger of Allah—peace and blessings of Allah be upon him—is impermissible—and with Allah alone is success.



AL-MUHALLA

كِتَابُ اللَّقِيطِ

The Book of Foundlings

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

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[The Chapter on the Foundling] [A Legal Question Concerning the Discovery of a Young Cast-Off Child]

Issue: If an abandoned infant is found, it is obligatory upon whoever is present to care for the child without fail, due to Allah's statement: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" (Al-Mā'idah 5:2), and His statement: "Whoever saves a life, it is as though they have saved all humankind" (Al-Mā'idah 5:32). There is no greater sin than neglecting a child born into Islam - a young, innocent being who has committed no sin - until the child dies of hunger and cold or is devoured by dogs. Such a person is without doubt an intentional killer of a soul. It has been authentically reported from the Messenger of Allah - peace and blessings be upon him: "Whoever does not show mercy to people, Allah will not show mercy to them."[1]

Issue: The foundling is free, and no allegiance is owed by him to anyone.

1385. Issue: The foundling is free, and no one has a claim of clientage over him, for all people are the children of Adam and his wife Eve—peace be upon them—both of whom were free. The children of a free woman are free without any dissent, thus everyone is free unless a Quranic text or Sunnah necessitates reducing someone to servitude. There exists no text in either mandating the reduction of a foundling to servitude. Since no servitude applies to him, no one holds clientage over him, for clientage only arises after valid servitude of a person or of a close or distant father from whom he traces his lineage. The Messenger of Allah (peace and blessings be upon him) said: "Clientage belongs solely to the emancipator." This is the view of Abu Hanifa, Malik, al-Shafi'i, and Dawood.

It has been authentically reported from Umar ibn al-Khattab—may Allah be pleased with him—as we narrated through the chain of Malik from Ibn Shihab from Sinin Abu Jamila that he found an abandoned child and brought

[1] **Qur'an references (L21210):** Qur'an 5:2 (Al-Ma'idah); Qur'an 5:32 (Al-Ma'idah).

[كِتَابُ اللَّقِيطِ] [مَسْأَلَةٌ وَجَدَ صَغِيرًا مَنْبُوذًا]

١٣٨٤ - مَسْأَلَةٌ: إنْ وُجِدَ صَغِيرٌ مَنْبُوذٌ فَفَرْضٌ عَلَى مَنْ بِحَضْرَتِهِ أَنْ يَقُومَ بِهِ وَلَا بُدَّ، لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] . وَلِقَوْلِ اللَّهِ تَعَالَى: {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] . وَلَا إثْمَ أَعْظَمَ مِنْ إثْمِ مَنْ أَضَاعَ نَسَمَةً مَوْلُودَةً عَلَى الْإِسْلَامِ - صَغِيرَةً لَا ذَنْبَ لَهَا - حَتَّى تَمُوتَ جُوعًا وَبَرْدًا أَوْ تَأْكُلَهُ الْكِلَابُ هُوَ قَاتِلُ نَفْسٍ عَمْدًا بِلَا شَكٍّ. وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ لَا يَرْحَمُ النَّاسَ لَا يَرْحَمُهُ اللَّهُ»

[مَسْأَلَةٌ اللَّقِيطُ حُرٌّ وَلَا وَلَاءَ عَلَيْهِ لِأَحَدٍ]

١٣٨٥ - مَسْأَلَةٌ: وَاللَّقِيطُ حُرٌّ وَلَا وَلَاءَ عَلَيْهِ لِأَحَدٍ لِأَنَّ النَّاسَ كُلَّهُمْ أَوْلَادُ آدَمَ وَزَوْجِهِ حَوَّاءَ - عَلَيْهِمَا السَّلَامُ - وَهُمَا حُرَّانِ وَأَوْلَادُ الْحُرَّةِ أَحْرَارٌ بِلَا خِلَافٍ مِنْ أَحَدٍ فَكُلُّ أَحَدٍ فَهُوَ حُرٌّ إلَّا أَنْ يُوجِبَ نَصُّ قُرْآنٍ، أَوْ سُنَّةٍ وَلَا نَصَّ فِيهِمَا يُوجِبُ إرْقَاقَ اللَّقِيطِ، وَإِذْ لَا رِقَّ عَلَيْهِ فَلَا وَلَاءَ لِأَحَدٍ عَلَيْهِ؛ لِأَنَّهُ لَا وَلَاءَ إلَّا بَعْدَ صِحَّةِ رِقٍّ عَلَى الْمَرْءِ، أَوْ عَلَى أَبٍ لَهُ قَرِيبٍ أَوْ بَعِيدٍ يَرْجِعُ إلَيْهِ بِنَسَبِهِ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَدَاوُد.

وَقَدْ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ سِنِينَ أَبِي جَمِيلَةَ أَنَّهُ وَجَدَ مَنْبُوذًا فَأَتَى بِهِ إلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَ لَهُ عُمَرُ: هُوَ حُرٌّ، وَوَلَاؤُهُ لَك، وَنَفَقَتُهُ مِنْ بَيْتِ الْمَالِ.

him to Umar ibn al-Khattab. Umar said to him: “He is free, his guardianship is assigned to you, and his maintenance is from the Bayt al-Mal.”

وَرُوِّينَا أَيْضًا هَذَا عَنْ شُرَيْحٍ أَنَّهُ جَعَلَ وَلَاءَ اللَّقِيطِ لِمَنْ الْتَقَطَهُ وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ نا شُعْبَةُ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: اللَّقِيطُ عَبْدٌ. وَقَدْ رُوِّينَا هَذَا عَنْ عُمَرَ بْنِ الْخَطَّابِ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ سُلَيْمَانَ - هُوَ أَبُو إِسْحَاقَ الشَّيْبَانِيِّ - عَنْ حَوْطٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عُمَرُ: هُمْ مَمْلُوكُونَ - يَعْنِي اللُّقَطَاءَ -. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ الزُّهْرِيِّ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ قَالَ: إنَّ عُمَرَ أَعْتَقَ لَقِيطًا.

L21214–21215 It has also been narrated to us from Shuraih that he assigned the patronage of the foundling to whoever found him. It is authentically established from Ibrahim al-Nakha’i - as narrated to us through the chain of Muhammad ibn Ja’far: Shu’bah narrated to us from Mansur ibn al-Mu’tamir from Ibrahim al-Nakha’i - who said: “The foundling is a slave.” This has similarly been narrated to us from Umar ibn al-Khattab, as narrated through Ibn Abi Shaybah’s chain: Waki‘ narrated to us, Sufyan narrated to us from Sulayman - Abu Ishaq al-Shaybani - from Hawt from Ibrahim al-Nakha’i, who said: “Umar declared: ’They are owned slaves’ - meaning the foundlings.” Through another chain of Ibn Abi Shaybah: Sufyan - Ibn Uyaynah - narrated to us from Amr ibn Dinar from al-Zuhri from a man of the Ansar, who stated: “Amr emancipated a foundling.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْأَعْمَشُ عَنْ زُهَيْرٍ الْعَنْسِيِّ أَنَّ رَجُلًا الْتَقَطَ لَقِيطًا فَأَتَى بِهِ عَلِيَّ بْنَ أَبِي طَالِبٍ فَأَعْتَقَهُ. قَالَ أَبُو مُحَمَّدٍ: لَا يَعْتِقُ إلَّا مَمْلُوكٌ. قَالَ عَلِيٌّ: فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا شُعْبَةُ قَالَ: سَأَلْت حَمَّادَ بْنَ أَبِي سُلَيْمَانَ، وَالْحَكَمَ عَنْ اللَّقِيطِ؟ فَقَالَا جَمِيعًا: هُوَ حُرٌّ فَقُلْت: عَمَّنْ؟ فَقَالَ الْحَكَمُ: عَنْ الْحَسَنِ عَنْ عَلِيٍّ.

L21216 From the chain of Ibn Abī Shaybah: Waki‘ narrated to us, al-A‘mash narrated to us from Zuhayr al-‘Ansī that a man found a foundling and brought him to ‘Alī ibn Abī Ṭālib, who manumitted him. Abū Muḥammad said: “Only a slave can be manumitted.” ‘Alī said: “If it is said: ‘You have narrated through Ibn Abī Shaybah’s chain: Waki‘ narrated to us, Shu‘bah narrated to us. He said: I asked Ḥammād ibn Abī Sulaymān and al-Ḥakam about the foundling,’ they both said: ‘He is free.’ I asked: ‘From whom?’ Al-Ḥakam replied: ‘From al-Ḥasan, from ‘Alī.’”“

وَرَوَيْتُمْ عَنْ وَكِيعٍ عَنْ سُفْيَانَ عَنْ زُهَيْرِ بْنِ أَبِي ثَابِتٍ، وَمُوسَى الْجُهَنِيِّ قَالَ مُوسَى: رَأَيْت وَلَدَ زِنًا أَلْحَقَهُ عَلِيٌّ فِي مَائِهِ.

L21217 And you narrated from Waki‘ from Sufyan from Zuhayr ibn Abi Thabit and Musa al-Juhani. Musa said: I saw an illegitimate child whom ‘Ali legally ascribed to himself as his own offspring through his semen.

وَقَالَ زُهَيْرٌ عَنْ ذُهْلِ بْنِ أَوْسٍ عَنْ تَمِيمِ بْنِ مَسِيحٍ قَالَ: وَجَدْت لَقِيطًا فَأَتَيْت بِهِ عَلِيَّ بْنَ أَبِي طَالِبٍ فَأَلْحَقَهُ فِي مَائِهِ؟ قُلْنَا: لَيْسَ فِي هَذَا خِلَافٌ لِمَا ذَكَرْنَا قَبْلُ، لِأَنَّ قَوْلَ عُمَرَ هُوَ حُرٌّ، وَقَوْلَ الْحَسَنِ عَنْ عَلِيٍّ هُوَ حُرٌّ، إذَا ضُمَّ إلَى مَا رُوِيَ عَنْهُمَا مِنْ أَنَّ كُلَّ وَاحِدٍ

L21218 Zuhayr reported from Duhl ibn Aws, from Tamim ibn Masih, who said: “I found a foundling and brought him to Ali ibn Abi Talib, so he affiliated him to his lineage.” We said: There is no disagreement here regarding what we previously mentioned, for Umar’s statement—“He is free”—and Al-Hasan’s report from Ali—“He is free”—when combined with the narrations from

both that each manumitted the foundling, alongside Umar's report that such foundlings are enslaved and his allegiance belongs to the finder, collectively agree that their declaration, may Allah be pleased with them, "He is free" constitutes their manumission of him at that time.

مِنْهُمَا أَعْتَقَ اللَّقِيطَ، مَعَ مَا رُوِيَ عَنْ عُمَرَ مِنْ أَنَّهُمْ مَمْلُوكُونَ، وَأَنَّ وَلَاءَهُ لِمَنْ وَجَدَهُ، اتَّفَقَ كُلُّ ذَلِكَ عَلَى أَنَّ قَوْلَهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - هُوَ حُرٌّ -: أَنَّهُ إِعْتَاقٌ مِنْهُمَا لَهُ فِي ذَلِكَ الْوَقْتِ.

L21219–21221 It is truly astonishing that one would abandon the definitively established Sunnah due to a narration attributed to ʿUmar ibn al-Khaṭṭāb via a narrator from Banū Kināna, who reported him as saying: "A sale is [based on] a transaction or option." Had we heard this from ʿUmar, it would not have contradicted the Sunnah's ruling that "there is no [valid] sale between them in two sales until they separate or one grants the other an option," but rather it would have been consistent with it. As for the Sunnah, the transaction is separation, and the option is choice. What Sunayn—who was a Companion—narrated from ʿUmar (may Allah be pleased with him) is not considered authoritative evidence, whereas what Ibrāhīm al-Nakhaʿī narrated constitutes authoritative evidence from ʿUmar. By Allah, he is more distinguished and clearer than a sheikh from Banū Kināna. No opinion is recorded from ʿUmar on this matter, and ʿAlī (may Allah be pleased with him) held a differing opinion among the Companions—may Allah be pleased with them all—especially since a narration indicates they would consistently adhere to weaker evidence than this. This refers to what we reported through the chain of Muḥammad ibn al-Jahm, from ʿAbd al-Karīm ibn al-Haytham, from Yazīd ibn ʿAbd Rabbihi, from Muḥammad ibn Ḥarb al-Khawlānī, from ʿUmar ibn Ruʾbah, who said: I heard ʿAbd al-Wāḥid al-Naṣrī say: I heard Wāthilah ibn al-Asqaʿ say: The Prophet—peace and blessings of Allah be upon him—said, "A woman acquires three inheritances: her foundling, her freed slave, and her child for whom there is no disgrace upon her."

وَإِنَّ الْعَجَبَ لَيَطُولُ مِمَّنْ تَرَكَ السُّنَّةَ الثَّابِتَةَ لِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ " الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ " وَلَوْ سَمِعْنَا هَذَا مِنْ عُمَرَ لَمَا كَانَ خِلَافًا لِلسُّنَّةِ فِي أَنَّ الْبَيْعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا، أَوْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ، بَلْ كَانَ يَكُونُ مُوَافِقًا لِلسُّنَّةِ، فَالصَّفْقَةُ التَّفَرُّقُ، وَالْخِيَارُ التَّخْيِيرُ، ثُمَّ لَا يَجْعَلُ مَا رَوَى سُنَيْنٌ - وَلَهُ صُحْبَةٌ - عَنْ عُمَرَ حُجَّةً، وَمَا رَوَاهُ إِبْرَاهِيمُ النَّخَعِيُّ حُجَّةً عَنْ عُمَرَ، وَهُوَ وَاللَّهِ أَجَلُّ وَأَوْضَحُ مِنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ، وَلَا يُعْرَفُ لِعُمَرَ، وَعَلِيٍّ هَهُنَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، لَا سِيَّمَا وَقَدْ جَاءَ أَثَرٌ هُمْ أَبَدًا يَأْخُذُونَ بِمَا دُونَهُ -: وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ نا عَبْدُ الْكَرِيمِ بْنُ الْهَيْثَمِ نا يَزِيدُ بْنُ عَبْدِ رَبِّهِ نا مُحَمَّدُ بْنُ حَرْبٍ الْخَوْلَانِيُّ نا عُمَرُ بْنُ رُؤْبَةَ قَالَ: سَمِعْت عَبْدَ الْوَاحِدِ النَّصْرِيَّ يَقُولُ: سَمِعْت وَاثِلَةَ بْنَ الْأَسْقَعِ يَقُولُ: إنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «تُحْرِزُ الْمَرْأَةُ ثَلَاثَةَ مَوَارِيثَ، لَقِيطَهَا، وَعَتِيقَهَا، وَوَلَدَهَا الَّذِي لَا عَنَتْ عَلَيْهِ» .

L21222 Abu Muhammad said: Umar ibn Ru'bah and Abd al-Wahid al-Nasri are unknown [narrators]. Had their reports been sound, we would have accepted them. As for them, they disregard this. Yet every one of them is more recognized and renowned than a shaykh from Banu Kinanah, and still, they have abandoned the established Sunnah in favor of that shaykh's narration.

قَالَ أَبُو مُحَمَّدٍ: عُمَرُ بْنُ رُؤْبَةَ وَعَبْدُ الْوَاحِدِ النَّصْرِيُّ مَجْهُولَانِ، وَلَوْ صَحَّ لَقُلْنَا بِهِ، وَأَمَّا هُمْ فَلَا يُبَالُونَ بِهَذَا، وَلَا أَحَدٌ إلَّا وَهُوَ أَعْرَفُ وَأَشْهَرُ مِنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ، وَقَدْ تَرَكُوا السُّنَّةَ الثَّابِتَةَ لِرِوَايَتِهِ.

L21223 If they say: "And on what basis does he become enslaved when his origin

is freedom?" We say: "Glory be to God, O you people: How swiftly you forget your own stance! Are you not those who assert: 'If a Qurayshi man were to defect to the abode of war as an apostate—he and his Qurayshi wife likewise—and she were to bear children there, then their children would indeed be slaves who are owned and can be sold?'"

فَإِنْ قَالُوا: وَبِأَيِّ وَجْهٍ يَرِقُّ وَأَصْلُهُ الْحُرِّيَّةُ؟ قُلْنَا: يَا سُبْحَانَ اللَّهِ يَا هَؤُلَاءِ: مَا أَسْرَعَ مَا نَسِيتُمْ أَنْفُسَكُمْ، أَوَ لَسْتُمُ الْقَائِلِينَ: إِنَّ رَجُلًا قُرَشِيًّا لَوْ لَحِقَ بِدَارِ الْحَرْبِ مُرْتَدًّا هُوَ وَامْرَأَتُهُ الْقُرَشِيَّةُ مُرْتَدَّةً، فَوَلَدَتْ هُنَالِكَ أَوْلَادًا، فَإِنَّ أَوْلَادَهُمْ أَرِقَّاءُ مَمْلُوكُونَ يُبَاعُونَ؟ .

L21224–21226 The Hanafis said: A Qurayshite woman may be sold and owned. Alternatively, is the narration from Ibn al-Qāsim not derived either directly from Mālik or based on the established principle of Mālik - that if the people of the Abode of War were to become dhimmis dwelling among us, or if they held in their possession free Muslim men and women whom they had captured (while these captives persisted in Islam during their bondage), then such Muslims would become enslaved to the dhimmis among Jews and Christians who trade them whenever they wish? This ruling is explicitly stated by Ibn al-Qāsim in al-Mustakhraja. Which is more abhorrent and outrageous: all of this, or enslaving a foundling whose mother's status as freewoman or slave is unknown? Indeed, Muḥammad ibn ʿAbdullāh al-Bakrī al-Tadmīrī - the most exemplary I knew among them, and I would not accept reports from any senior scholar of theirs - informed me that he used to issue legal verdicts: that a merchant [text breaks off here]. Or the Messenger, when he enters the abode of war and they gift him prisoners from among the free Muslim men and women as a grant, they become his male and female slaves; he may lawfully have sexual relations with them and sell them as with the rest of his possessions. How can this mufti and those who follow him face this ruling? Abu Muhammad said: Another opinion has been reported to us from Ibrahim, as transmitted through Ibn Abi Shaybah who narrated to us by Wakiʿ, from Sufyan al-Thawri, from Mansur, from Ibrahim al-Nakhaʿī concerning the foundling. He said: His status depends on his intention. If he intended to be free, he is free, and if he intended to be a slave, he is a slave.

وَقَالَ الْحَنَفِيُّونَ: إِنَّ تِلْكَ الْقُرَشِيَّةَ تُبَاعُ وَتُمْلَكُ، أَوْ لَيْسَ الرِّوَايَةُ عَنِ ابْنِ الْقَاسِمِ إِمَّا عَنْ مَالِكٍ وَإِمَّا عَلَى مَا عُرِفَ مِنْ أَصْلِ مَالِكٍ أَنَّ أَهْلَ دَارِ الْحَرْبِ لَوْ صَارُوا ذِمَّةً سُكَّانًا بَيْنَنَا، أَوْ بِأَيْدِيهِمْ رِجَالٌ وَنِسَاءٌ مِنَ الْمُسْلِمِينَ أَحْرَارٌ وَحَرَائِرُ، أَسَرُوهُمْ وَبَقُوا عَلَى الْإِسْلَامِ فِي حَالِ أَسْرِهِمْ، فَإِنَّهُمْ مَمْلُوكُونَ لِأَهْلِ الذِّمَّةِ مِنَ الْيَهُودِ وَالنَّصَارَى يَتَبَايَعُونَهُمْ مَتَى شَاءُوا، وَهَذَا مَنْصُوصٌ عَنْهُ فِي الْمُسْتَخْرَجَةِ، فَأَيُّهُمَا أَشْنَعُ وَأَفْظَعُ، هَذَا كُلُّهُ، أَوْ إِرْقَاقُ لَقِيطٍ لَا يَدْرِي عَنْ أُمِّهِ أَحُرَّةٌ أَمْ أَمَةٌ؟ حَتَّى لَقَدْ أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْبَكْرِيُّ التَّدْمِيرِيُّ وَمَا عَلِمْتُ فِيهِمْ أَفْضَلَ مِنْهُ، وَلَا أُصَدِّقُ عَنْ شَيْخٍ مِنْ كِبَارِهِمْ: أَنَّهُ كَانَ يُفْتِي: أَنَّ التَّاجِرَ، أَوِ الرَّسُولَ، إِذَا دَخَلَ دَارَ الْحَرْبِ فَأَعْطَوْهُ أُسَرَاءَ مِنْ أَحْرَارِ الْمُسْلِمِينَ وَحَرَائِرِهِمْ عَطِيَّةً، فَهُمْ عَبِيدٌ وَإِمَاءٌ لَهُ يَطَأُ وَيَبِيعُ كَسَائِرِ مَا يَمْلِكُ، شَاهَ وَجْهُ هَذَا الْمُفْتِي وَمَنِ اتَّبَعَهُ عَلَى هَذَا؟ قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا عَنْ إِبْرَاهِيمَ قَوْلًا آخَرَ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي اللَّقِيطِ، قَالَ: لَهُ نِيَّتُهُ إِنْ نَوَى أَنْ يَكُونَ حُرًّا فَهُوَ حُرٌّ، وَإِنْ نَوَى أَنْ يَكُونَ عَبْدًا فَهُوَ عَبْدٌ.

L21227 Our assertion that no enslavement applies to him - this is the position of ʿUmar ibn ʿAbd al-ʿAzīz, ʿAṭāʾ, al-Shaʿbī, al-Ḥakam, and Ḥammād. It has also been narrated from Ibrāhīm. We have known them to say regarding what contradicts legal principles and analogical reasoning when it aligns with their

views: “Such a matter is not decided by personal opinion.” Why then did they not say the same here? Success comes from Allah, the Exalted.

A legal issue concerning what property was found with a foundling.

Issue 1386: Any property found with a foundling belongs to him, since a minor possesses ownership rights. Moreover, whatever is in the possession of one who owns is rightfully theirs, and the guardian must expend from that property for their maintenance.

A legal issue: He claimed that the foundling is his son.

1387: Issue: Any Muslim, whether free or a slave, who claims that that foundling is his son shall be believed if it is possible for his claim to be true. But if his falsehood is conclusively established, his claim is not considered.

The proof of this is that births are not established except through the statements of fathers and mothers, and thus the lineages of all people [are determined], unless lying is confirmed.

We said to the Muslims, based on what is authentically established from the Messenger of Allah—peace and blessings of Allah be upon him—in his statement: “Every newborn is born upon the innate disposition and upon the natural creed,” and his statement—peace and blessings of Allah be upon him—relaying from his Lord, the Exalted, in the hadith of ʿIyāḍ ibn Ḥimār al-Mujāshiʿī: “I created My servants upright in innate monotheism, all of them,” and in light of the Exalted’s words: {When your Lord took from the loins of the children of Adam their descendants and made them testify against themselves, “Am I not your Lord?” They said, “Yes, we testify”—lest you

وَقَوْلُنَا: بِأَنَّهُ لَا رِقَّ عَلَيْهِ -: هُوَ قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَطَاءٍ، وَالشَّعْبِيِّ، وَالْحَكَمِ، وَحَمَّادٍ - وَرُوِّيناهُ أَيْضًا عَنْ إبْرَاهِيمَ، وَعَهِدنَا بِهِمْ يَقُولُونَ فِيمَا خَالَفَ الْأُصُولَ، وَالْقِيَاسَ إذَا وَافَقَ آرَاءَهُمْ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَهَلَّا قَالُوا هَهُنَا هَذَا؟ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ مَا وُجِدَ مَعَ اللَّقِيطِ مِنْ مَالٍ]

١٣٨٦ - مَسْأَلَةٌ: وَكُلُّ مَا وُجِدَ مَعَ اللَّقِيطِ مِنْ مَالٍ فَهُوَ لَهُ؛ لِأَنَّ الصَّغِيرَ يَمْلِكُ، وَكُلُّ مَنْ يَمْلِكُ فَكُلُّ مَا كَانَ بِيَدِهِ فَهُوَ لَهُ، وَيُنْفَقُ عَلَيْهِ مِنْهُ

[مَسْأَلَةٌ ادَّعَى أَنَّ اللَّقِيطَ ابْنُهُ]

١٣٨٧ - مَسْأَلَةٌ: وَكُلُّ مَنْ ادَّعَى أَنَّ ذَلِكَ اللَّقِيطَ ابْنُهُ مِنْ الْمُسْلِمِينَ حُرًّا كَانَ، أَوْ عَبْدًا: صُدِّقَ، إنْ أَمْكَنَ أَنْ يَكُونَ مَا قَالَ حَقًّا، فَإِنْ تُيُقِّنَ كَذِبُهُ لَمْ يُلْتَفَتْ.

بُرْهَانُ ذَلِكَ -: أَنَّ الْوِلَادَاتِ لَا تُعْرَفُ إلَّا بِقَوْلِ الْآبَاءِ وَالْأُمَّهَاتِ، وَهَكَذَا أَنْسَابُ النَّاسِ كُلِّهِمْ، مَا لَمْ يُتَيَقَّنْ الْكَذِبُ.

وَإِنَّمَا قُلْنَا - لِلْمُسْلِمِينَ - لِلثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ: «كُلُّ مَوْلُودٍ يُولَدُ عَلَى الْفِطْرَةِ وَعَلَى الْمِلَّةِ» وَقَوْلِهِ - عَلَيْهِ السَّلَامُ - عَنْ رَبِّهِ تَعَالَى فِي حَدِيثِ عِيَاضِ بْنِ حِمَارٍ الْمُجَاشِعِيِّ: «خَلَقْتُ عِبَادِي حُنَفَاءَ كُلَّهُمْ» . وَلِقَوْلِهِ تَعَالَى: {وَإِذْ أَخَذَ رَبُّكَ مِنْ بَنِي آدَمَ مِنْ ظُهُورِهِمْ ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَى أَنْفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى شَهِدْنَا أَنْ تَقُولُوا يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ} [الأعراف: ١٧٢] .

should say on the Day of Resurrection, “We were heedless of this”} [Al-Aʿrāf: 172].[2]

L21234–21236 If a non-Muslim claims it, he is not to be believed, for affirming his claim would remove him from the valid Islam that has been established for him. This is impermissible except where permitted by the textual evidence—specifically regarding one born on the marital bed of a non-Muslim [father] from a non-Muslim woman exclusively. There is no distinction between a free person and a slave in the rulings we have mentioned. The Hanafis said: The slave’s testimony is not accepted, because accepting it would result in the enslavement of the child—but they lied in this matter, for the child of a slave and a free woman is free, particularly according to their own established doctrine that a slave has no right to take a concubine.

L21237 As for us, we have stated: People are presumed to be free, and the wife of a slave is only deemed free, so his child is free until it is proven that his status has deviated from his origin—and with Allah alone is success, the Most High.

فَإِنْ ادَّعَاهُ كَافِرٌ لَمْ يُصَدَّقْ، لِأَنَّ فِي تَصْدِيقِهِ إِخْرَاجَهُ عَنْ مَا قَدْ صَحَّ لَهُ مِنْ الْإِسْلَامِ، وَلَا يَجُوزُ ذَلِكَ إلَّا حَيْثُ أَجَازَهُ النَّصُّ مِمَّنْ وُلِدَ عَلَى فِرَاشِ كَافِرٍ مِنْ كَافِرَةٍ فَقَطْ، وَلَا فَرْقَ بَيْنَ حُرٍّ وَعَبْدٍ فِيمَا ذَكَرْنَا وَقَالَ الْحَنَفِيُّونَ: لَا يُصَدَّقُ الْعَبْدُ، لِأَنَّ فِي تَصْدِيقِهِ إرْقَاقَ الْوَلَدِ - وَكَذَبُوا فِي هَذَا وَلَدُ الْعَبْدِ مِنْ الْحُرَّةِ حُرٌّ، لَا سِيَّمَا عَلَى أَصْلِهِمْ فِي أَنَّ الْعَبْدَ لَا يَتَسَرَّى

وَأَمَّا نَحْنُ فَقَدْ قُلْنَا: إنَّ النَّاسَ عَلَى الْحُرِّيَّةِ، وَلَا تَحِلُّ امْرَأَةُ الْعَبْدِ إلَّا عَلَى أَنَّهَا حُرَّةٌ فَوَلَدُهُ حُرٌّ، حَتَّى يَثْبُتَ انْتِقَالُهُ عَنْ أَصْلِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[2] **Qur’an references (L21233):** Qur’an 7:172 (Al-A’raf).



AL-MUHALLA

كِتَابُ الْوَدِيعَةِ

The Book of Deposits

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

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[كِتَابُ الْوَدِيعَةِ] [مَسْأَلَةٌ مَنْ أَوْدَعْت عِنْدَهُ وَدِيعَةً]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْوَدِيعَةِ ١٣٨٨ - مَسْأَلَةٌ: فَرْضٌ عَلَى مَنْ أَوْدَعْت عِنْدَهُ وَدِيعَةً حِفْظُهَا وَرَدُّهَا إلَى صَاحِبِهَا إذَا طَلَبَهَا مِنْهُ لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَلِقَوْلِهِ تَعَالَى: {إنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إلَى أَهْلِهَا} [النساء: ٥٨] وَمِنْ الْبِرِّ حِفْظُ مَالِ الْمُسْلِمِ أَوْ الذِّمِّيِّ، وَقَدْ صَحَّ «نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ» ، وَهَذَا عُمُومٌ لِمَالِ الْمَرْءِ وَمَالِ غَيْرِهِ.

[مَسْأَلَةٌ تَلَف الْوَدِيعَة مِنْ غَيْرِ تَعَدٍّ]

١٣٨٩ - مَسْأَلَةٌ: فَإِنْ تَلِفَتْ مِنْ غَيْرِ تَعَدٍّ مِنْهُ وَلَا تَضْيِيعٍ لَهَا فَلَا ضَمَانَ عَلَيْهِ فِيهَا، لِأَنَّهُ إذَا حَفِظَهَا وَلَمْ يَتَعَدَّ وَلَا ضَيَّعَ فَقَدْ أَحْسَنَ، وَاَللَّهُ تَعَالَى يَقُولُ: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَمَالُ هَذَا الْمُودِعِ حَرَامٌ عَلَى غَيْرِهِ مَا لَمْ يُوجِبْ أَخْذَهُ مِنْهُ نَصٌّ - وَقَدْ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ تَضْمِينُ الْوَدِيعَةِ - وَرُوِيَ عَنْهُ وَعَنْ غَيْرِهِ أَنْ لَا تُضَمَّنَ.

[مَسْأَلَةٌ صِفَةُ حِفْظِ الْوَدِيعَة]

١٣٩٠ - مَسْأَلَةٌ: وَصِفَةُ حِفْظِهَا هُوَ أَنْ يَفْعَلَ فِيهَا مِنْ الْحِفْظِ مَا يَفْعَلُ بِمَالِهِ، وَأَنْ لَا يُخَالِفَ فِيهَا مَا حَدَّ لَهُ صَاحِبُهَا إلَّا أَنْ يَكُونَ فِيمَا حَدَّ لَهُ يَقِينُ هَلَاكِهَا: فَعَلَيْهِ حِفْظُهَا؛

[The Book of the Deposit] [A legal question pertaining to one with whom a deposit has been placed]

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Deposits (1388) – A Question: It is obligatory upon the person with whom you deposited a trust to safeguard it and return it to its owner when demanded, based on Allah's statement: "And cooperate in righteousness and piety" [Al-Mā'idah: 2], and His statement: "Indeed, Allah commands you to return trusts to their rightful owners" [An-Nisā': 58]. Among acts of righteousness is safeguarding the wealth of a Muslim or a Dhimmi, and it is authentically established that the Messenger of Allah—peace and blessings be upon him—forbade the squandering of wealth. This applies generally to one's own wealth and the wealth of others.[1]

Legal ruling on the destruction of a deposit without misconduct [by the custodian].

Issue 1389: If it perishes without any wrongful act on his part or neglect of it, there is no liability upon him for it, for if he safeguards it and neither commits a wrongful act nor neglects it, he has done good. Allah the Exalted says: "There is no cause against the doers of good" [At-Tawbah: 91].[2]

Due to the statement of the Messenger of Allah - peace and blessings of Allah be upon him -: "Indeed, your blood and your wealth are sacred to you," the property of this depositor is forbidden upon others unless a textual evidence mandates taking it from him. It has been authentically reported from Umar ibn al-Khattab that the custodian is financially liable for the deposit, and it has been narrated from him and others that no liability applies.

A legal issue on the method of safeguarding a deposit.

Issue 1390: The manner of preserving it is to do in its preservation what he would do for his own wealth, and that he must not contradict what its

[1] **Qur'an references (L21240):** Qur'an 5:2 (Al-Ma'idah); Qur'an 4:58 (An-Nisa).
[2] **Qur'an references (L21242):** Qur'an 9:91 (At-Tawbah).

owner stipulated unless the stipulation entails certainty of its destruction. In that case, he is obligated to preserve it, for this constitutes proper preservation. Anything beyond that is considered transgression according to linguistic norms and common understanding. And success is from Allah, the Exalted.

L21246 **A legal issue wherein the bailee overstepped their custodial duties regarding the deposit, resulting in its destruction.**

L21247 Issue 1391: If the depositary breaches his duty in safeguarding the deposit or negligently mishandles it, resulting in its damage or loss, he becomes liable to compensate for it. Even if he breaches his duty regarding a portion of it rather than another, he is liable solely for that specific portion in which he transgressed. This is because mishandling, too, constitutes a breach of the obligations he was commanded to uphold.

L21248–21249 Transgression is exceeding limits in the language in which the Quran was revealed and in which the Messenger of Allah (peace be upon him) addressed us. Allah the Exalted says: {So whoever transgresses against you, then transgress against him in the same manner as he has transgressed against you} [Al-Baqarah: 194]. Thus, the transgressor is liable like the usurper in all that we have mentioned regarding the rulings of usurpation—and with Allah, the Exalted, lies success.[3]

L21250 **Issue: The ruling on the destruction of the deposit or its return to the depositor.**

L21251 Issue 1392: The ruling concerning the loss of a deposit, its return to its owner, or its delivery to someone the owner has instructed: The testimony of the custodian, accompanied by his oath, is accepted whether the deposit was entrusted to him with evidence or without evidence. This is because his property is inviolable, as we have mentioned. He is the defendant in a claim requiring him to compensate for damages, for "the Messenger of Allah—peace and blessings be upon him—ruled that the oath rests upon the

[3] **Qur'an references (L21249):** Qur'an 2:194 (Al-Baqarah).

لِأَنَّ هَذَا هُوَ صِفَةُ الْحِفْظِ وَمَا عَدَاهُ هُوَ التَّعَدِّي فِي اللُّغَةِ وَمَعْرِفَةُ النَّاسِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعَدَّى الْمُودَعُ فِي الْوَدِيعَةِ فَتَلِفَتْ]

١٣٩١ - مَسْأَلَةٌ: فَإِنْ تَعَدَّى الْمُودَعُ فِي الْوَدِيعَةِ أَوْ أَضَاعَهَا فَتَلِفَتْ لَزِمَهُ ضَمَانُهَا، وَلَوْ تَعَدَّى عَلَى بَعْضِهَا دُونَ بَعْضٍ لَزِمَهُ ضَمَانُ ذَلِكَ الْبَعْضِ الَّذِي تَعَدَّى فِيهِ فَقَطْ؛ لِأَنَّهُ فِي الْإِضَاعَةِ أَيْضًا مُتَعَدٍّ لِمَا أُمِرَ بِهِ.

وَالتَّعَدِّي هُوَ التَّجَاوُزُ فِي اللُّغَةِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ، وَبِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاَللَّهُ تَعَالَى يَقُولُ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَيُضَمَّنُ ضَمَانَ الْغَاصِبِ فِي كُلِّ مَا ذَكَرْنَا فِي حُكْمِ الْغَصْبِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْقَوْلُ فِي هَلَاكِ الْوَدِيعَةِ أَوْ فِي رَدِّهَا إلَى صَاحِبِهَا]

١٣٩٢ - مَسْأَلَةٌ: وَالْقَوْلُ فِي هَلَاكِ الْوَدِيعَةِ أَوْ فِي رَدِّهَا إلَى صَاحِبِهَا، أَوْ فِي دَفْعِهَا إلَى مَنْ أَمَرَهُ صَاحِبُهَا بِدَفْعِهَا إلَيْهِ: قَوْلُ الَّذِي أُودِعَتْ عِنْدَهُ مَعَ يَمِينِهِ، سَوَاءٌ دُفِعَتْ إلَيْهِ بِبَيِّنَةٍ أَوْ بِغَيْرِ بَيِّنَةٍ؛ لِأَنَّ مَالَهُ مُحَرَّمٌ كَمَا ذَكَرْنَا فَهُوَ مُدَّعًى عَلَيْهِ وُجُوبُ غَرَامَةٍ، وَقَدْ «حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ الْيَمِينَ عَلَى مَنْ أُدُّعِيَ عَلَيْهِ» . وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

one against whom the claim is made." This is the opinion of Abu Hanifah, al-Shafi'i, and Abu Sulaiman.

وَهَهُنَا خِلَافٌ فِي مَوَاضِعَ -: مِنْهَا أَنَّ مَالِكًا فَرَّقَ بَيْنَ الثِّقَةِ وَغَيْرِ الثِّقَةِ، فَرَأَى أَنْ لَا يَمِينَ عَلَى الثِّقَةِ، وَهَذَا خَطَأٌ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ أَوْجَبَ الْيَمِينَ عَلَى مَنْ ادُّعِيَ عَلَيْهِ لَمْ يُفَرِّقْ بَيْنَ ثِقَةٍ وَغَيْرِ ثِقَةٍ، وَالْمَالِكِيُّونَ مُوَافِقُونَ لَنَا فِي أَنَّ نَصْرَانِيًّا، أَوْ يَهُودِيًّا، أَوْ فَاسِقًا مِنْ الْمُسْلِمِينَ - مُعْلِنًا لِلْفِسْقِ - يَدَّعِي دَيْنًا عَلَى صَاحِبٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا بَيِّنَةَ لَهُ: وَجَبَتْ الْيَمِينُ عَلَى الصَّاحِبِ، وَلَا فَرْقَ بَيْنَ دَعْوَى جَحْدِ الدَّيْنِ، وَبَيْنَ دَعْوَى جَحْدِ الْوَدِيعَةِ أَوْ تَضْيِيعِهَا، وَالْمُقْرَضُ مُؤْتَمَنٌ عَلَى مَا أُقْرِضَ، وَعَلَى مَا عُومِلَ فِيهِ، كَمَا أَنَّ الْمُودَعَ مُؤْتَمَنٌ وَلَا فَرْقَ، وَفَرْقٌ أَيْضًا بَيْنَ الْوَدِيعَةِ تُدْفَعُ بِبَيِّنَةٍ وَبَيْنَهَا إذَا دُفِعَتْ بِغَيْرِ بَيِّنَةٍ، فَرَأَى إيجَابَ الضَّمَانِ فِيهَا إذَا دُفِعَتْ بِبَيِّنَةٍ - وَهَذَا لَا مَعْنَى لَهُ، لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ ذَلِكَ: قُرْآنٌ، وَلَا سُنَّةٌ، وَالْأَيْمَانُ لَا تَسْقُطُ، وَالْغَرَامَةُ لَا تَجِبُ، إلَّا حَيْثُ أَوْجَبَهَا اللَّهُ تَعَالَى أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَوْ حَيْثُ أَسْقَطَهَا اللَّهُ تَعَالَى، أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَفَرَّقَ قَوْمٌ بَيْنَ قَوْلِ الْمُودَعِ: هَلَكَتْ الْوَدِيعَةُ، فَصَدَّقُوهُ: إمَّا بِبَيِّنَةٍ وَإِمَّا بِغَيْرِ بَيِّنَةٍ، وَبَيْنَ قَوْلِهِ: قَدْ صَرَفْتهَا إلَيْك -: فَأَلْزَمُوهُ الضَّمَانَ، وَكَذَلِكَ فِي قَوْلِهِ: أَمَرْتنِي بِدَفْعِهَا إلَى فُلَانٍ - فَضَمِنُوهُ.

L21252 Here, there is disagreement in certain matters: One of them is that Mālik differentiated between a trustworthy person and an untrustworthy person, holding that an oath should not be imposed on a trustworthy person. This is erroneous, because when the Messenger of Allah—peace and blessings be upon him—obligated the oath on the defendant, he did not distinguish between a trustworthy and an untrustworthy person. The Mālikīs agree with us that if a Christian, a Jew, or a sinful Muslim—openly sinful—claims a debt against a Companion of the Prophet—may Allah be pleased with them—without evidence, the oath is obligated upon the Companion. There is no difference between a claim denying a debt and a claim denying a deposit or causing its loss. The borrower is entrusted with both the loan and its use, just as the depositary is entrusted, and there is no distinction. There is also a difference between a deposit handed over with evidence and one handed over without evidence. Mālik held that financial liability is imposed in the former case—but this is meaningless, because he provided no distinction between the two based on neither the Quran nor the Sunnah, nor the principle that oaths are not waived and financial liability is not imposed except where Allah the Exalted or His Messenger—peace and blessings be upon him—obligated them, or where Allah the Exalted or His Messenger—peace and blessings be upon him—waived them. Some scholars differentiated between a depositary's statement, "The deposit was destroyed," which they validated either with or without evidence, and his statement, "I transferred it to you," in which case they imposed liability on him. Similarly, if he said, "You ordered me to hand it over to so-and-so," they held him liable.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ ذَلِكَ: قُرْآنٌ، وَلَا سُنَّةٌ - وَالْوَجْهُ فِي هَذَا هُوَ أَنَّ كُلَّ مَا قَالَهُ الْمُودَعُ، مِمَّا يُسْقِطُ بِهِ عَنْ نَفْسِهِ الْغَرَامَةَ، وَلَا تَخْرُجُ عَيْنُ الْوَدِيعَةِ عَنْ مِلْكِ الْمُودِعِ: فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ، لِأَنَّ مَالَهُ مُحَرَّمٌ، إلَّا بِقُرْآنٍ أَوْ سُنَّةٍ،

L21253–21255 Abu Muhammad said: This is erroneous, because he did not provide the distinction between that being Quran or Sunnah. The correct legal reasoning here is that any statement made by the depository—through which he seeks to waive liability from himself while the deposited property remains within the depositor's ownership—his statement is upheld upon his oath, because his property is inviolable except by Quran or Sunnah. This applies uniformly. The deposit was recognized for the depositor through evidence or judicial

knowledge, whether known or not. There is no distinction between any of the things they differentiated through their invalid opinions.

سَوَاءٌ كَانَتْ الْوَدِيعَةُ مَعْرُوفَةً لِلْمُودِعِ بِبَيِّنَةٍ، أَوْ بِعِلْمِ الْحَاكِمِ أَوْ لَمْ تَكُنْ، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِمَّا فَرَّقُوا بَيْنَهُ بِآرَائِهِمْ الْفَاسِدَةِ.

L21256 As for when the depositary makes a claim that transfers the deposit from the depositor's ownership to another's ownership, the matter is examined. If the deposit's ownership by the depositor is only established through the depositary's statement, then the depositary's statement - along with his oath - is accepted regarding everything he asserts about being instructed to sell it, donate it as charity, gift it, or the claim that it was gifted to him, and all other cases without differentiation. This applies because the depositary has not acknowledged anything pertaining to the depositor's property or liability - neither a debt nor a transgression - nor has any evidence been established by the claimant against him concerning a rightful claim or wrongdoing, for the depositor's property is forbidden to others.

وَأَمَّا إذَا ادَّعَى الْمُودَعُ شَيْئًا يَنْقُلُ بِهِ الْوَدِيعَةَ عَنْ مِلْكِ الْمُودِعِ إلَى مِلْكِ غَيْرِهِ فَإِنَّهُ يَنْظُرُ، فَإِنْ كَانَتْ الْوَدِيعَةُ لَا تُعْرَفُ لِلْمُودِعِ إلَّا بِقَوْلِ الْمُودَعِ، فَالْقَوْلُ أَيْضًا قَوْلُ الْمُودَعِ مَعَ يَمِينِهِ فِي كُلِّ مَا ذَكَرَ لَهُ مِنْ أَمْرِهِ إيَّاهُ بِبَيْعِهَا، أَوْ الصَّدَقَةِ بِهَا، أَوْ بِهِبَتِهَا، أَوْ أَنَّهُ وَهَبَهَا لَهُ وَسَائِرِ الْوُجُوهِ وَلَا فَرْقَ؛ لِأَنَّهُ لَمْ يُقِرَّ لَهُ بِشَيْءٍ فِي مَالِهِ، وَلَا بِشَيْءٍ فِي ذِمَّتِهِ، لَا بِدَيْنٍ وَلَا بِتَعَدٍّ، وَلَا قَامَتْ لَهُ عَلَيْهِ بَيِّنَةٌ بِحَقٍّ وَلَا بِتَعَدٍّ، وَمَالُهُ مُحَرَّمٌ عَلَى غَيْرِهِ.

L21257 If the deposited item is specifically identifiable to the depositor through conclusive proof or the judge's personal knowledge, then the custodian is claiming the transfer of the depositor's ownership thereof. He is not believed except through conclusive proof. At that time, he has acknowledged regarding another's property what God Almighty has forbidden, as He states: {No soul earns except against itself} [al-An'am 6:164]. Thus, he is liable, and success is from God Almighty.[4]

وَأَمَّا إنْ كَانَتْ الْوَدِيعَةُ مَعْرُوفَةَ الْعَيْنِ لِلْمُودِعِ بِبَيِّنَةٍ، أَوْ بِعِلْمِ الْحَاكِمِ فَإِنَّ الْمُودَعَ مُدَّعٍ نَقْلَ مِلْكِ الْمُودِعِ عَنْهَا، فَلَا يُصَدَّقُ إلَّا بِبَيِّنَةٍ، وَقَدْ أَقَرَّ حِينَئِذٍ فِي مَالِ غَيْرِهِ بِمَا قَدْ مَنَعَ اللَّهُ تَعَالَى مِنْهُ إذْ يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَهُوَ ضَامِنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

Issue: The depositor encountered the bailee in a location different from where the deposit was originally entrusted.

[مَسْأَلَةٌ لَقِيَ الْمُودِعُ مَنْ أَوْدَعَهُ فِي غَيْرِ الْمَوْضِعِ الَّذِي أَوْدَعَهُ فِيهِ]

L21258

L21259 Issue: If the depositor encounters the depositee in a location other than the designated deposit site, he has no right to demand the deposit. Transporting and returning the deposit falls upon the depositor, not the depositee. The depositee's sole obligation is not to prevent it from its owner, as both his person and property are inviolable. This differs from the usurper or one who transgresses regarding a deposit or other matters. Taking property without rightful claim necessitates its return upon the transgressor and usurper.

١٣٩٣ - مَسْأَلَةٌ: وَإِنْ لَقِيَ الْمُودِعُ مَنْ أَوْدَعَهُ فِي غَيْرِ الْمَوْضِعِ الَّذِي أَوْدَعَهُ فِيهِ مَا أَوْدَعَهُ، فَلَيْسَ لَهُ مُطَالَبَتُهُ الْوَدِيعَةَ، وَنَقْلُ الْوَدِيعَةِ بِالْحَمْلِ، وَالرَّدِّ عَلَى الْمُودِعِ لَا عَلَى الْمُودَعِ، وَإِنَّمَا عَلَى الْمُودَعِ أَنْ لَا يَمْنَعَهَا مِنْ صَاحِبِهَا فَقَطْ؛ لِأَنَّ بَشَرَتَهُ وَمَالَهُ مُحَرَّمَانِ، وَهَذَا بِخِلَافِ الْغَاصِبِ، وَالْمُتَعَدِّي فِي الْوَدِيعَةِ، أَوْ غَيْرِهَا، وَأَخْذُ الْمَالِ بِغَيْرِ حَقٍّ فَرْدُّهُ

[4] **Qur'an references (L21257):** Qur'an 6:164 (Al-An'am).

Taking it without rightful claim to its owner applies wherever encountered within the lands of Allah, the Exalted, for it is obligatory to desist from injustice and delay perpetually in every time and place - success comes solely through Allah, the Exalted.

عَلَى الْمُتَعَدِّي وَالْغَاصِبِ، وَأَخْذُهُ بِغَيْرِ حَقٍّ إِلَى صَاحِبِهِ حَيْثُ لَقِيَهُ مِنْ بِلَادِ اللَّهِ تَعَالَى؛ لِأَنَّ فَرْضًا عَلَيْهِ الْخُرُوجُ مِنْ الظُّلْمِ وَالْمَطْلِ فِي كُلِّ أَوَانٍ وَمَكَانٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.