

AL-MUHALLA

كِتَابُ الْحَجْرِ

The Book of Restrictions on Legal Capacity

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

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[كِتَابُ الْحَجْرِ] [مَسْأَلَةٌ لَا يَجُوزُ الْحَجْرُ عَلَى أَحَدٍ فِي مَالِهِ]

[Book of Restriction of Legal Capacity] [Issue: It is not permissible to impose restriction of legal capacity on anyone's property.]

١٣٩٤ - مَسْأَلَةٌ: لَا يَجُوزُ الْحَجْرُ عَلَى أَحَدٍ فِي مَالِهِ إلَّا عَلَى مَنْ لَمْ يَبْلُغْ أَوْ عَلَى مَجْنُونٍ فِي حَالِ جُنُونِهِ -: فَهَذَانِ خَاصَّةً لَا يَنْفُذُ لَهُمَا أَمْرٌ فِي مَالِهِمَا، فَإِذَا بَلَغَ الصَّغِيرُ، وَأَفَاقَ الْمَجْنُونُ جَازَ أَمْرُهُمَا فِي مَالِهِمَا كَغَيْرِهِمَا وَلَا فَرْقَ، سَوَاءٌ فِي ذَلِكَ كُلِّهِ الْحُرُّ، وَالْعَبْدُ، وَالذَّكَرُ، وَالْأُنْثَى، وَالْبِكْرُ ذَاتُ الْأَبِ وَغَيْرُ ذَاتِ الْأَبِ، وَذَاتُ الزَّوْجِ، وَالَّتِي لَا زَوْجَ لَهَا، فِعْلُ كُلِّ مَا ذَكَرْنَا فِي أَمْوَالِهِمْ مِنْ عِتْقٍ، أَوْ هِبَةٍ، أَوْ بَيْعٍ، أَوْ غَيْرِ ذَلِكَ: نَافِذٌ إذَا وَافَقَ الْحَقَّ مِنْ الْوَاجِبِ، أَوْ الْمُبَاحَ - وَمَرْدُودٌ فِعْلُ كُلِّ أَحَدٍ فِي مَالِهِ إذَا خَالَفَ الْمُبَاحَ، أَوْ الْوَاجِبَ، وَلَا فَرْقَ، وَلَا اعْتِرَاضَ لِأَبٍ، وَلَا لِزَوْجٍ، وَلَا لِحَاكِمٍ فِي شَيْءٍ مِنْ ذَلِكَ إلَّا مَا كَانَ مَعْصِيَةً لِلَّهِ تَعَالَى فَهُوَ بَاطِلٌ مَرْدُودٌ.

L21260–21261 **[Book of Restriction of Legal Capacity] [Issue: It is not permissible to impose restriction of legal capacity on anyone's property.]**

L21262 Issue 1394: It is impermissible to impose legal interdiction over anyone's property except a minor who has not reached puberty or an insane person during their state of insanity. Specifically, no action these two take concerning their property is valid. When the minor attains puberty and the insane person regains sanity, their authority over their property becomes permissible like others - with no distinction. This ruling applies equally to all: free persons and slaves, males and females, the unmarried woman (whether under paternal guardianship or not), the married woman, and the woman without a husband. Any action mentioned regarding their property - including manumission, gift-giving, sale, or other transactions - is valid if it conforms to what is right under divine law, whether obligatory or permissible. Conversely, any action by anyone concerning their property that contravenes what is permissible or obligatory under divine law is invalid and rejected, without exception. No father, husband, or judge may object to any of these matters unless the action constitutes disobedience to God Almighty, in which case it is null and void.

وَمِنْ مَعْصِيَةِ اللَّهِ تَعَالَى: الصَّدَقَةُ، وَالْعَطِيَّةُ، بِمَا لَا يَبْقَى بَعْدَهُ لِلْمُتَصَدِّقِ أَوْ الْوَاهِبِ غِنًى، فَإِنْ أَرَادَ السَّيِّدُ إبْطَالَ فِعْلِ الْعَبْدِ فِي مَالِهِ فَلْيُعْلِنْ بِانْتِزَاعِهِ مِنْهُ، وَلَا يَجُوزُ لِلْعَبْدِ حِينَئِذٍ تَصَرُّفٌ فِي شَيْءٍ مِنْهُ.

L21263 Among the acts that constitute disobedience to Allah the Exalted is giving charity or a gift in a manner that leaves the giver or donor without financial independence afterward. If the master intends to nullify the slave's disposal of their property, he must publicly announce the revocation of it from him, and the slave is thereafter prohibited from disposing of any part of it.

بُرْهَانُ ذَلِكَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ نا ابْنُ وَهْبٍ أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ عَنْ سُلَيْمَانَ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ وَهُوَ حُصَيْنُ بْنُ جُنْدَبٍ الْجَنْبِيُّ عَنْ ابْنِ عَبَّاسٍ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ لِعُمَرَ بْنِ الْخَطَّابِ: أَوَ مَا تَذْكُرُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنْ الْمَجْنُونِ الْمَغْلُوبِ

L21264–21266 The proof of this is what we have narrated through the chain of Abu Dawud: Ahmad ibn Amr ibn al-Sarh narrated to us, Ibn Wahb narrated to us, Jarir ibn Hazim informed me from Sulayman al-A'mash from Abu Zabiyan—who is Husayn ibn Jundab al-Janbi—from Ibn Abbas: that Ali ibn Abi Talib said to Umar ibn al-Khattab, "Do you not recall that the Messenger of Allah—peace and blessings be upon him—said, 'The pen is lifted from three: the insane person overcome by madness until he regains sanity, the sleeper until he awakens, and the child until he reaches puberty'?" And through the chain of

Abu Dawud: Musa ibn Isma'il narrated to us, Wuhaib (Ibn Khalid) narrated to us from Khalid al-Khadda'. From Abu al-Duha, from Ali ibn Abi Talib, from the Prophet—peace and blessings of Allah be upon him—something similar. Abu Ẓabyan is trustworthy; he met Ali ibn Abi Talib and heard from him and from Ibn Abbas. Also from another chain via Abu Dawud: Uthman ibn Abi Shaybah narrated to us, Yazid ibn Harun narrated to us, Hammad ibn Salama narrated to us, from Hammad ibn Abi Sulayman, from Ibrahim al-Nakha'i, from al-Aswad, from Aisha, the Mother of the Believers, that the Messenger of Allah—peace and blessings of Allah be upon him—said: "The pen is lifted from three: from the sleeper until they awaken, from the afflicted until they recover, and from the child until they grow up."[1]

عَلَى عَقْلِهِ حَتَّى يُفِيقَ وَعَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنْ الصَّبِيِّ حَتَّى يَحْتَلِمَ» ؟ وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا وُهَيْبٌ - هُوَ ابْنُ خَالِدٍ - عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي الضُّحَى عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَحْوُهُ، أَبُو ظَبْيَانَ ثِقَةٌ، لَقِيَ عَلِيَّ بْنَ أَبِي طَالِبٍ وَسَمِعَ مِنْهُ، وَمِنْ ابْنِ عَبَّاسٍ. وَمِنْ طَرِيقِ أَبِي دَاوُد أَيْضًا نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ: عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنْ الْمُبْتَلَى حَتَّى يَبْرَأَ، وَعَنْ الصَّبِيِّ حَتَّى يَكْبُرَ» .

L21267 Ali said: The meaning of three is three persons.

قَالَ عَلِيٌّ: مَعْنَى ثَلَاثٍ: ثَلَاثُ نُفُوسٍ.

L21268 And He, the Exalted, said: {You will never attain righteousness until you spend from what you love} [Āl ʿImrān: 92]. And He, the Exalted, said: {those men and women who give charity} [Al-Aḥzāb: 35]. And He, the Exalted, said: {And strive with your wealth and your lives in the cause of Allah} [Al-Tawbah: 41]. And He, the Exalted, said: {What has caused you to enter Saqar? They said, "We were not of those who prayed, nor did we feed the poor"} [Al-Muddaththir: 42-44]. And He urged people to free slaves.[2]

وَقَالَ تَعَالَى: {لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ} [آل عمران: ٩٢] . وَقَالَ تَعَالَى: {وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ} [الأحزاب: ٣٥] . وَقَالَ تَعَالَى: {وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ فِي سَبِيلِ اللَّهِ} [التوبة: ٤١] وَقَالَ تَعَالَى: {مَا سَلَكَكُمْ فِي سَقَرَ} [المدثر: ٤٢] {قَالُوا لَمْ نَكُ مِنَ الْمُصَلِّينَ} [المدثر: ٤٣] {وَلَمْ نَكُ نُطْعِمُ الْمِسْكِينَ} [المدثر: ٤٤] وَحَضَّ عَلَى الْعِتْقِ.

L21269 The Messenger of Allah (peace be upon him) said: "Guard yourselves against the Fire, even with half a date." And the Almighty said: "Marry from the women those lawful to you—two, three, or four." (An-Nisa 4:3)[3]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اتَّقُوا النَّارَ وَلَوْ بِشِقِّ تَمْرَةٍ» . وَقَالَ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ} [النساء: ٣]

[1] **Hadith references (L21264):** Sunan Abi Dawud 4401.

[2] **Qur'an references (L21268):** Qur'an 3:92 (Ali 'Imran); Qur'an 9:41 (At-Tawbah); Qur'an 74:42 (Al-Muddaththir); Qur'an 74:43 (Al-Muddaththir); Qur'an 74:44 (Al-Muddaththir); Qur'an 33:35 (Al-Ahzab).

[3] **Qur'an references (L21269):** Qur'an 4:3 (An-Nisa).

L21270 And He, the Exalted, said: {And give women their dowers as a gracious gift} [An-Nisa: 4]. Thus, it is established that everyone is religiously urged to perform good deeds, charity, freeing slaves, and spending in the paths of righteousness to shield themselves thereby from the Fire of Hell.[4]

وَقَالَ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَصَحَّ أَنَّ كُلَّ أَحَدٍ مَنْدُوبٌ إِلَى فِعْلِ الْخَيْرِ، وَالصَّدَقَةِ، وَالْعِتْقِ، وَالنَّفَقَةِ فِي وُجُوهِ الْبِرِّ لِيَقِيَ نَفْسَهُ بِذَلِكَ نَارَ جَهَنَّمَ.

L21271 There is no disagreement that all those we have mentioned—the slave, the woman with a father, the virgin, and the married woman—are commanded, prohibited, threatened with the Fire, encouraged, and promised Paradise. They are in need of rescuing themselves from it as others are, utterly equal, without any distinction. Thus, none are exempt from this ruling except those exempted by the text. The text exempts only the insane while they remain in their state of insanity and those who have not yet reached puberty. Yet those who distinguish between those we have mentioned—permitting some regarding charity, gift-giving, or marriage while forbidding others without any invalidating text—are prohibiting what Allah the Exalted has encouraged and obstructing acts of goodness.

وَلَا خِلَافَ فِي أَنَّ كُلَّ مَنْ ذَكَرْنَا مِنْ عَبْدٍ، وَذَاتِ أَبٍ، وَبِكْرٍ، وَذَاتِ زَوْجٍ، مَأْمُورُونَ، مَنْهِيُّونَ، مُتَوَعَّدُونَ بِالنَّارِ، مَنْدُوبُونَ مَوْعُودُونَ بِالْجَنَّةِ، فُقَرَاءُ إِلَى إِنْقَاذِ أَنْفُسِهِمْ مِنْهَا كَفَقْرِ غَيْرِهِمْ سَوَاءً سَوَاءً، وَلَا مَزِيَّةَ، فَلَا يَخْرُجُ مِنْ هَذَا الْحُكْمِ إِلَّا مَنْ أَخْرَجَهُ النَّصُّ، وَلَمْ يُخْرِجِ النَّصُّ إِلَّا الْمَجْنُونَ مَا دَامَ فِي حَالِ جُنُونِهِ - وَالَّذِي لَمْ يَبْلُغْ إِلَى أَنْ يَبْلُغَ فَقَطْ، فَكَانَ الْمُفَرِّقُ بَيْنَ مَنْ ذَكَرْنَا فَيُطْلِقُ بَعْضًا عَلَى الصَّدَقَةِ، وَالْهِبَةِ، وَالنِّكَاحِ، وَيَمْنَعُ بَعْضًا بِغَيْرِ نَصٍّ مُبْطِلٍ، مُحَرِّمًا مَا نَدَبَ اللَّهُ تَعَالَى إِلَيْهِ، مَانِعًا مِنْ فِعْلِ الْخَيْرِ.

L21272–21274 Ali said: It was reported to us from Muḥammad ibn Jaʿfar Ghundar, who narrated from Shuʿbah; al-Mughīrah; Ibrāhīm al-Nakhaʿī, who said: "No restriction [of legal capacity] may be imposed upon a free person." Aḥmad ibn ʿUmar al-ʿUdhri narrated to me through Abū Dharr al-Harawī, from ʿAbdullāh ibn Aḥmad ibn Ḥamawayh al-Sarakhsī, from Ibrāhīm ibn Khuzaym, from ʿAbdullāh ibn Ḥumayd, from Abū ʿĀṣim al-Ḍaḥḥāk ibn Makhled, from ʿAbdullāh ibn ʿAwn, from Muḥammad ibn Sīrīn that he deemed legal interdiction upon a free person utterly invalid—a view held by a group of the Companions—may Allah be pleased with them—and constituting the position of Mujāhid, ʿUbaydullāh ibn al-Ḥasan, and others.

قَالَ عَلِيٌّ: وَرُوِّينَا عَنْ مُحَمَّدِ بْنِ جَعْفَرٍ غُنْدَرٍ نا شُعْبَةُ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا يُحْجَرُ عَلَى حُرٍّ وَحَدَّثَنِي أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُزَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ لَا يَرَى الْحَجْرَ عَلَى الْحُرِّ شَيْئًا - وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَقَوْلُ مُجَاهِدٍ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ وَغَيْرِهِ.

L21275 Abu Hanifah said: A free person shall not be placed under interdiction—neither for extravagance, debt, bankruptcy, nor any other reason—nor does he consider a judge's interdiction over him to be binding. He maintains that the person's disposal of his property and his acknowledgment of claims regarding it—whether substantial or minor—after the judge's interdiction, and likewise before it, are equally valid. However, he added: Whoever reaches

وَقَالَ أَبُو حَنِيفَةَ: لَا يُحْجَرُ عَلَى حُرٍّ لَا لِتَبْذِيرٍ، وَلَا لِدَيْنٍ، وَلَا لِتَفْلِيسٍ، وَلَا لِغَيْرِهِ، وَلَا يَرَى حَجْرَ الْقَاضِي عَلَيْهِ لَازِمًا - وَيَرَى تَصَرُّفَهُ فِي مَالِهِ وَإِقْرَارَهُ بَعْدَ حَجْرِ الْقَاضِي عَلَيْهِ لَازِمًا [وَيَرَى تَصَرُّفَهُ فِي مَالِهِ وَإِقْرَارَهُ بَعْدَ حَجْرِ الْقَاضِي] وَقَبْلَهُ سَوَاءٌ، كُلُّ ذَلِكَ نَافِذٌ إِلَّا أَنَّهُ زَادَ فَقَالَ: مَنْ بَلَغَ وَلَمْ يُؤْنَسْ مِنْهُ رُشْدٌ حِيلَ بَيْنَهُ وَبَيْنَ مَالِهِ إِلَّا أَنَّهُ إِنْ بَاعَ

[4] **Qur'an references (L21270):** Qur'an 4:4 (An-Nisa).

puberty without evidence of sound judgment being found in him shall be barred from his property. Yet if he sells anything—whether substantial or minor—his sale remains valid, and if he acknowledges a claim regarding it—whether substantial or minor—his acknowledgment remains valid. When he reaches twenty-five years of age, his property is handed over to him—even if sound judgment is not evidenced in him. This addition is utterly corrupt. The first flaw is that we know of no one who held this view before him.

L21276 Moreover, this is a contradictory statement, for if selling it and his confession are permissible, what purpose remains in prohibiting him from his property? This is incoherence unparalleled.

L21277 Then his specification of it as twenty-five years stems from one of the wonders of the world, and we do not know by what religious justification one permits withholding wealth and releasing it through such opinions without a command from Allah the Exalted? The most astonishing thing is the argument of some whom Allah has forsaken for his blind imitation of them, for he said: "A child is born to a person at twelve and a half years of age, making him a father. Then a child is similarly born to his son, making him a grandfather, with no rank beyond grandfatherhood." Abu Muhammad said: "This is an utterly foolish statement"—to which it is said: "Suppose it is as you say—what then? When has Allah the Exalted differentiated between one who is a grandfather and one who is a father regarding legal rulings on their wealth? In what rational mind has this been accepted? Moreover: A child may be born to him at twelve years of age, and similarly to his son—this totals twenty-four years."

L21278–21280 Moreover, after the grandfather, the great-grandfather [inherits]. They extended this rule up to thirty-seven years or forty years. The age of forty years, in accordance with the statement of Allah, the Most High: {Until he attains his full maturity and reaches forty years} [Al-Ahqāf: 15]. Thus, the invalidity of this addition became entirely manifest—and with Allah, the Most High, lies all success.[5]

L21281 Others upheld the position of interdiction. Mālik said: Whoever is deceived

شَيْئًا - كَثُرَ أَوْ قَلَّ - نَفَذَ بَيْعُهُ، وَإِنْ أَقَرَّ فِيهِ - كَثُرَ أَوْ قَلَّ - نَفَذَ إِقْرَارُهُ، حَتَّى إِذَا تَمَّتْ لَهُ خَمْسٌ وَعِشْرُونَ سَنَةً دُفِعَ إِلَيْهِ مَالُهُ - وَإِنْ لَمْ يُؤْنَسْ مِنْهُ رُشْدٌ -: وَهَذِهِ الزِّيَادَةُ فِي غَايَةِ الْفَسَادِ -: أَوَّلُ ذَلِكَ: أَنَّهُ لَا نَعْلَمُ أَحَدًا قَالَ بِهَا قَبْلَهُ.

وَأَيْضًا: فَإِنَّهُ قَوْلٌ مُتَنَاقِضٌ، لِأَنَّهُ إِذَا جَازَ بَيْعُهُ وَإِقْرَارُهُ فَأَيُّ مَعْنًى لِلْمَنْعِ لَهُ مِنْ مَالِهِ - هَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ.

ثُمَّ تَحْدِيدُهُ بِخَمْسٍ وَعِشْرِينَ سَنَةً مِنْ إِحْدَى عَجَائِبِ الدُّنْيَا، وَمَا نَدْرِي بِأَيِّ وَجْهٍ يَسْتَحِلُّ فِي الدِّينِ مَنْعَ مَالٍ وَإِطْلَاقَهُ بِمِثْلِ هَذِهِ الْآرَاءِ بِغَيْرِ إِذْنٍ مِنَ اللَّهِ تَعَالَى؟ وَأَعْجَبُ شَيْءٍ احْتِجَاجُ بَعْضِ مَنْ خَذَلَهُ اللَّهُ تَعَالَى بِتَقْلِيدِهِ إِيَّاهُ فَقَالَ: يُولَدُ لِلْمَرْءِ مِنْ اثْنَيْ عَشَرَ عَامًا وَنِصْفٍ فَيَصِيرُ أَبًا، ثُمَّ يُولَدُ لِابْنِهِ كَذَلِكَ فَيَصِيرُ جَدًّا، وَلَيْسَ بَعْدَ الْجَدِّ مَنْزِلَةٌ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَلَامٌ أَحْمَقُ بَارِدٌ - وَيُقَالُ لَهُ: هَبْكَ أَنَّهُ كَمَا تَقُولُ فَكَانَ مَاذَا؟ وَمَتَى فَرَّقَ اللَّهُ تَعَالَى بَيْنَ مَنْ يَكُونُ جَدًّا وَبَيْنَ مَنْ يَكُونُ أَبًا فِي أَحْكَامِ مَالِهِمَا، وَفِي أَيِّ عَقْلٍ وُجِدَ تَمَّ هَذَا؟ وَأَيْضًا: فَقَدْ يُولَدُ لَهُ مِنْ اثْنَيْ عَشَرَ عَامًا، وَلِابْنِهِ كَذَلِكَ، فَهَذِهِ أَرْبَعَةٌ وَعِشْرُونَ عَامًا.

وَأَيْضًا: فَبَعْدَ الْجَدِّ أَبُو جَدٍّ، فَبَلَّغُوهُ هَكَذَا إِلَى سَبْعٍ وَثَلَاثِينَ سَنَةً، أَوْ إِلَى أَرْبَعِينَ سَنَةً لِقَوْلِ اللَّهِ تَعَالَى: {حَتَّى إِذَا بَلَغَ أَشُدَّهُ وَبَلَغَ أَرْبَعِينَ سَنَةً} [الأحقاف: ١٥] فَظَهَرَ فَسَادُ هَذِهِ الزِّيَادَةِ جُمْلَةً - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[5] **Qur'an references (L21278):** Qur'an 46:15 (Al-Ahqaf).

in transactions and fails to properly manage his wealth shall be placed under interdiction. Consequently, his acts of emancipation, charity, sale, gift, or marriage are not valid, nor may he act as his daughter's guardian in marriage. Any loan he obtains does not obligate repayment, nor can judgment be passed against him for it—even if he later regains legal competence. He stated: Whatever he did before the judge imposes interdiction upon him remains valid and irrevocable until the interdiction is formally enacted. He permitted the guardian to provide monthly upkeep or similar expenses.

وَذَهَبَ آخَرُونَ إِلَى الْحَجْرِ فَقَالَ مَالِكٌ: مَنْ كَانَ يُخْدَعُ فِي الْبُيُوعِ وَلَا يُحْسِنُ ضَبْطَ مَالِهِ: حُجِرَ عَلَيْهِ، فَلَمْ يَنْفُذْ لَهُ عِتْقٌ، وَلَا صَدَقَةٌ، وَلَا بَيْعٌ، وَلَا هِبَةٌ، وَلَا نِكَاحٌ، وَلَا يَكُونُ وَلِيًّا لِابْنَتِهِ فِي النِّكَاحِ وَكُلُّ مَا أَخَذَهُ قَرْضًا لَمْ يَلْزَمْهُ أَدَاؤُهُ وَلَا قُضِيَ عَلَيْهِ بِهِ - وَإِنْ رَشَدَ بَعْدَ ذَلِكَ. وَقَالَ: مَا فَعَلَ قَبْلَ أَنْ يَحْجُرَ الْقَاضِي عَلَيْهِ فَفِعْلُهُ نَافِذٌ غَيْرُ مَرْدُودٍ إِلَى أَنْ يَحْجُرَ الْقَاضِي عَلَيْهِ - وَأَجَازَ لِوَلِيِّهِ أَنْ يَدْفَعَ نَفَقَةَ شَهْرٍ وَنَحْوَ ذَلِكَ.

L21282 He said: If competence becomes apparent in him, the ruling was not thereby rendered effective until the judge lifts the legal interdiction from him. He permitted one who had not been placed under interdiction to give away all he owns—whether in a single act or repeatedly—and enforced it upon him. This is a manifest error and a severe contradiction in many respects.

قَالَ: فَإِنْ ظَهَرَ مِنْهُ الرُّشْدُ لَمْ يَكُنْ بِذَلِكَ نَافِذَ الْأَمْرِ حَتَّى يَفُكَّ الْقَاضِي عَنْهُ الْحَجْرَ، وَأَجَازَ لِمَنْ لَمْ يُحْجَرْ عَلَيْهِ إِعْطَاءَ كُلِّ مَا يَمْلِكُ فِي ضَرْبَةٍ وَفِي مَرَّاتٍ وَأَنْفَذَهُ عَلَيْهِ - وَهَذَا خَطَأٌ ظَاهِرٌ وَتَنَاقُضٌ شَدِيدٌ فِي وُجُوهٍ جَمَّةٍ -:

L21283 One of them, and the greatest, is nullifying righteous deeds which Allah the Exalted has exhorted towards and made as means of salvation from the Fire—such as manumission and charity—and nullifying trade which Allah the Exalted has permitted. This constitutes obstructing the path of Allah the Exalted and collaborating in sin and transgression, not in righteousness and piety, without any clear evidence—neither from the Qur'an nor the Sunnah.

أَحَدُهَا وَأَعْظَمُهَا - إِبْطَالُهُ أَعْمَالَ الْبِرِّ الَّتِي نَدَبَ اللَّهُ تَعَالَى إِلَيْهَا وَجَعَلَهَا مُنْقِذَاتٍ مِنْ النِّيرَانِ: كَالْعِتْقِ، وَالصَّدَقَةِ، وَإِبْطَالُهُ الْبَيْعَ الَّذِي أَبَاحَهُ اللَّهُ تَعَالَى - وَهَذَا صَدٌّ عَنْ سَبِيلِ اللَّهِ تَعَالَى، وَتَعَاوُنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ، لَا عَلَى الْبِرِّ وَالتَّقْوَى بِغَيْرِ بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ.

L21284–21286 The second aspect is invalidating the guardianship of one whom God Almighty has appointed as guardian **for her** in marriage. If in their view he holds the legal status of minors and the insane—**those two** who are not addressed by divine injunctions, not obligated to save themselves, and granted no legal authority—then let them exempt him from prayer and fasting. But if according to them he is legally accountable, addressed by divine commands, bound by obligations and prohibitions, encouraged toward recommended acts, entitled to reward, and liable to punishment, why do they obstruct him from what God Almighty has **directed him to** and placed within his authority through guardianship, as stated in His words: *"Marry the unmarried among you and the righteous among your male and female

وَثَانِيهَا - إِبْطَالُهُ الْوَلَايَةَ لِمَنْ جَعَلَهُ اللَّهُ تَعَالَى وَلِيًّا لَهَا فِي الْإِنْكَاحِ - فَإِنْ كَانَ عِنْدَهُمْ فِي حُكْمِ الصَّغِيرِ، وَالْمَجْنُونِ، اللَّذَيْنِ هُمَا غَيْرُ مُخَاطَبَيْنِ، وَلَا مُكَلَّفَيْنِ إِنْقَاذَ أَنْفُسِهِمَا مِنْ النَّارِ، وَلَا وَلَايَةَ لَهُمَا، فَلْيُسْقِطُوا عَنْهُ الصَّلَاةَ، وَالصَّوْمَ، وَإِنْ كَانَ عِنْدَهُمْ مُكَلَّفًا مُخَاطَبًا مَأْمُورًا مَنْهِيًّا مَنْدُوبًا مَوْعُودًا مُتَوَعَّدًا: فَمَا بَالُهُمْ يَحُولُونَ بَيْنَهُ وَبَيْنَ مَا نَدَبَهُ اللَّهُ تَعَالَى إِلَيْهِ، وَجَعَلَهُ فِي يَدَيْهِ مِنْ الْوَلَايَةِ بِقَوْلِهِ تَعَالَى: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] وَمَا الَّذِي أَسْقَطَ عَنْهُ هَذَا الْخِطَابَ وَأَوْقَعَ عَلَيْهِ

servants”* [24:32]? What nullifies this divine address for him, while the obligations of prayer, fasting, prohibitions, permissions, and enforcement of legal penalties still apply? We cannot comprehend this. Should they argue, “Had we known he intends this for God’s sake, we would not have prevented him,” we reply: **Your knowledge of this from him, or your ignorance of it from him, is no different from your knowledge and ignorance regarding others** whom you permit to fulfill all such obligations and validate their actions. Perhaps he is farther from God’s piety and lesser... Taking pride in religion—and even more transgressing than this is what you have interposed, through false assumptions, between him and the truth he acknowledges from his Lord, the Exalted.[6]

الْخِطَابُ الصَّلَاةَ، وَالصَّوْمَ، وَالتَّحْرِيمَ وَالتَّحْلِيلَ، وَإِقَامَةَ الْحُدُودِ؟ وَمَا نَدْرِي مَا هَذَا؟ فَإِنْ قَالُوا: لَوْ عَلِمْنَا أَنَّهُ يَقْصِدُ بِذَلِكَ اللَّهَ تَعَالَى، لَمْ نَمْنَعْهُ. قُلْنَا لَهُمْ: مَا عِلْمُكُمْ بِهَذَا مِنْهُ، وَلَا جَهْلُكُمْ بِهِ مِنْهُ، إِلَّا كَعِلْمِكُمْ بِهِ وَجَهْلِكُمْ مِنْ غَيْرِهِ، مِمَّنْ تُطْلِقُونَهُ عَلَى كُلِّ ذَلِكَ وَتُنَفِّذُونَهُ مِنْهُ، وَلَعَلَّهُ أَبْعَدُ مِنْ تَقْوَى اللَّهِ تَعَالَى، وَأَقَلُّ اهْتِبَالًا بِالدِّينِ، وَأَطْغَى مِنْ هَذَا الَّذِي حُلْتُمْ بَيْنَهُ وَبَيْنَ مَا يُقِرُّ بِهِ مِنْ رَبِّهِ تَعَالَى بِالظُّنُونِ الْكَاذِبَةِ.

L21287 The third is their invalidation of people’s wealth obtained through sale or loan—both of which Allah the Almighty has permitted—and this is a grave enormity among the gravest. How did they derive this ruling? We seek refuge in Allah from it. This constitutes wrongful appropriation of wealth, and Allah the Exalted has also forbidden this. If they absolve him of the people’s binding rights owed to him—namely the sale prices and repayment of loans stipulated by the explicit text of the Quran—then let them absolve him of retaliation for crimes against people’s wealth and lives. Otherwise, they have contradicted themselves in the most repugnant manner—and this is blatant collaboration in sin and transgression.

وَثَالِثُهَا - إِبْطَالُهُمْ أَمْوَالَ النَّاسِ الَّتِي يَأْخُذُهَا بِالْبَيْعِ أَوْ الْقَرْضِ اللَّذَيْنِ أَبَاحَهُمَا اللَّهُ عَزَّ وَجَلَّ - وَهَذِهِ عَظِيمَةٌ مِنْ الْعَظَائِمِ مَا نَدْرِي أَيْنَ وَجَدُوا هَذَا الْحُكْمَ؟ وَنَعُوذُ بِاَللَّهِ مِنْهُ، وَهَذَا إيكَالٌ لِلْمَالِ بِالْبَاطِلِ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى هَذَا أَيْضًا وَإِذَا أَسْقَطُوا عَنْهُ حُقُوقَ النَّاسِ اللَّازِمَةَ لَهُ مِنْ أَثْمَانِ الْبَيْعِ وَرَدِّ الْقَرْضِ بِنَصِّ الْقُرْآنِ، فَلْيُسْقِطُوا عَنْهُ قِصَاصَ الْجِنَايَاتِ فِي أَمْوَالِ النَّاسِ وَدِمَائِهِمْ، وَإِلَّا فَقَدْ تَنَاقَضُوا أَقْبَحَ تَنَاقُضٍ - وَهَذَا هُوَ التَّعَاوُنُ عَلَى الْإِثْمِ وَالْعُدْوَانِ جِهَارًا.

L21288 The fourth—and most flagrant in contradiction—is his enforcement of the squandering that is truly corruptive and fraudulent transactions prior to the judge’s interdiction upon him, alongside his rejection of the charitable acts and manumissions performed after the judge’s interdiction. Thus, the judge’s ruling becomes more effective than the ruling of Allah the Exalted, and no respect is accorded to the judge’s authority, whoever he may be. For Allah the Exalted has never made the judge’s ruling a means of legitimizing or prohibiting; the judge is merely an executor through his juridical authority against those who refuse compliance alone—he possesses no other attribute or purpose beyond this. Otherwise, let them bring us a verse or prophetic precedent contradicting this. Allah rejects such notions—and all of this, we

وَرَابِعُهَا - وَهُوَ أَفْحَشُهَا فِي التَّنَاقُضِ: إنْفَاذُهُ مَا فَعَلَ مِنْ التَّبْذِيرِ الْمُفْسِدِ حَقًّا، وَبُيُوعِ الْغَبْنِ قَبْلَ أَنْ يَحْجُرَ عَلَيْهِ الْقَاضِي، وَرَدِّهِ مَا فَعَلَ مِنْ الصَّدَقَةِ وَالْعِتْقِ بَعْدَ حَجْرِ الْقَاضِي عَلَيْهِ، فَكَانَ حُكْمُ الْقَاضِي أَنْفَذَ مِنْ حُكْمِ اللَّهِ تَعَالَى، وَلَا كَرَامَةَ لِوَجْهِ الْقَاضِي كَائِنًا مَنْ كَانَ، فَمَا جَعَلَ اللَّهُ تَعَالَى قَطُّ حُكْمَ الْقَاضِي مُحَلِّلًا وَلَا مُحَرِّمًا، إنَّمَا الْقَاضِي مُنَفِّذٌ بِسُلْطَانِهِ عَلَى مَنْ امْتَنَعَ فَقَطْ - لَا خَصْلَةَ لَهُ غَيْرُهَا وَلَا مَعْنًى سِوَى هَذَا - وَإِلَّا فَلْيَأْتُونَا بِآيَةٍ، أَوْ سُنَّةٍ، بِخِلَافِ هَذَا، وَيَأْبَى اللَّهُ مِنْ ذَلِكَ - وَهَذَا كُلُّهُ لَا نَدْرِي مِنْ أَيْنَ أَخَذُوهُ؟

[6] **Qur’an references (L21284):** Qur’an 24:32 (An-Nur).

know not from where they derived it. The fifth is his nullification of all the individual's actions, even if sound, unless the judge lifts the interdiction from him—this ruling is akin to the preceding one.

وَخَامِسُهَا - إِبْطَالُهُ جَمِيعَ أَفْعَالِهِ وَإِنْ كَانَتْ رُشْدًا مَا لَمْ يَفُكَّ الْقَاضِي عَنْهُ الْحَجْرَ - وَهَذِهِ كَالَّتِي قَبْلَهَا.

L21289 The sixth point is his permitting the guardian to provide a month's expenses while releasing his authority over it. Would that I knew from whence this strange categorization emerged! What difference exists between releasing authority over a month's expenses and releasing it over a year's expenses or two years' expenses? If they say: "A month's expenses are negligible," we respond: There may be cases where a month's expenses constitute a substantial amount, and cases where ten years' expenses constitute a trivial amount. The guardian's transfer of the ward's wealth cannot escape being either obligatory or forbidden. If obligatory, transferring all of it becomes obligatory. If forbidden, even a small portion of the forbidden remains forbidden. Is this not the identical argument they condemned the followers of Abū Ḥanīfah for - permitting minor intoxicants while prohibiting substantial ones?

وَسَادِسُهَا - إِجَازَتُهُ أَنْ يُعْطِيَهُ الْوَلِيُّ نَفَقَةَ شَهْرٍ يُطْلِقُ يَدَهُ عَلَيْهَا، فَلَيْتَ شَعْرِي مِنْ أَيْنَ خَرَجَ هَذَا التَّقْسِيمُ الْعَجِيبُ؟ وَمَا الْفَرْقُ بَيْنَ إِطْلَاقِ يَدِهِ عَلَى نَفَقَةِ شَهْرٍ وَبَيْنَ إِطْلَاقِهَا عَلَى نَفَقَةِ سَنَةٍ أَوْ نَفَقَةِ سَنَتَيْنِ؟ فَإِنْ قَالُوا: نَفَقَةُ شَهْرٍ قَلِيلَةٌ؟ قُلْنَا: قَدْ يَكُونُ مَالٌ تَكُونُ نَفَقَةُ شَهْرٍ فِيهِ كَثِيرًا وَيَكُونُ مَالٌ نَفَقَةُ عَشْرَةِ أَعْوَامٍ فِيهِ قَلِيلًا، وَلَا يَخْلُو دَفْعُ مَالِهِ إِلَيْهِ مِنْ أَنْ يَكُونَ وَاجِبًا، أَوْ حَرَامًا، فَإِنْ كَانَ وَاجِبًا فَدَفْعُهُ كُلُّهُ إِلَيْهِ وَاجِبٌ، وَإِنْ كَانَ حَرَامًا فَقَلِيلُ الْحَرَامِ حَرَامٌ - وَهَذَا بِعَيْنِهِ أَنْكَرُوا عَلَى أَصْحَابِ أَبِي حَنِيفَةَ فِي إِبَاحَتِهِمْ قَلِيلَ الْمُسْكِرِ وَتَحْرِيمِهِمْ كَثِيرَهُ؟

L21290–21292 And the seventh of them is their carrying out the actions of the immoral wrongdoers who transgress against Muslims through every evil deed—those who purchase intoxicants and profit from immorality when they amass wealth by any means possible. Through wrongdoing and other means, they permit their sales, purchases, and gifts—even if these predominantly and ostensibly serve other than Allah the Exalted—even if it consumes all they possess, leaving them afterward as impoverished beggars. Yet they enforce from it the squandering Allah the Exalted has prohibited and the extravagance that leaves one afterward blameworthy and exhausted, while prohibiting manumission and charity of a dirham—even if the donor has vast wealth and is among those deceived in sales—and they describe him as one who fails to safeguard his wealth. What contradiction is more glaring than claiming one's foundation is the preservation and protection of wealth, yet permitting a person to give away all his wealth until he and his dependents are left starving—enforcing this on him—while preventing another from manumitting a slave, giving a dirham in charity, or purchasing fruit to consume, though he retains sufficient wealth to sustain himself and his dependents? They then

وَسَابِعُهَا - إِنْفَاذُهُمْ أَفْعَالَ الْفُسَّاقِ الظَّلَمَةِ الْمُتَعَدِّينَ عَلَى الْمُسْلِمِينَ بِكُلِّ بَائِقَةٍ الْمُبْتَاعِينَ لِلْخُمُورِ الْمُنْهَمِكِينَ فِي أَجْرِ الْفِسْقِ إِذَا كَانُوا جَمَّاعِينَ لِلْمَالِ مِنْ أَيِّ وَجْهٍ أَمْكَنَ بِالظُّلْمِ وَغَيْرِهِ، فَيُجِيزُونَ بَيْعَهُمْ وَشِرَاءَهُمْ وَهِبَاتِهِمْ - وَإِنْ كَانَتْ فِي الْأَغْلَبِ وَالْأَظْهَرِ لِغَيْرِ اللَّهِ تَعَالَى - وَإِنْ أَتَى ذَلِكَ عَلَى كُلِّ مَا يَمْلِكُونَهُ وَبَقُوا بَعْدَهُ فُقَرَاءَ مُتَكَفِّفِينَ -: فَأَنْفَذُوا مِنْهُ التَّبْذِيرَ الَّذِي حَرَّمَ اللَّهُ تَعَالَى، وَالْبَسْطَ الَّذِي يَقْعُدُ عَلَيْهِ بَعْدَهُ مَلُومًا مَحْسُورًا، وَرَدَّهُمْ الْعِتْقَ، وَالصَّدَقَةَ بِدِرْهَمٍ، وَإِنْ كَانَ ذَا مَالٍ عَظِيمٍ مِمَّنْ يُخْدَعُ فِي الْبُيُوعِ وَيَصِفُونَهُ بِأَنَّهُ لَا يُحْسِنُ ضَبْطَ مَالِهِ - فَأَيُّ تَنَاقُضٍ أَفْحَشُ مِمَّنْ يُجْعَلُ أَصْلُهُ بِزَعْمِهِ ضَبْطَ الْمَالِ وَحِفْظَهُ؟ ثُمَّ يُجِيزُونَ مِنْ وَاحِدٍ إِعْطَاءَ مَالِهِ كُلِّهِ حَتَّى يَبْقَى هُوَ وَعِيَالُهُ جَاعَةً وَيُنْفِذُونَهُ عَلَيْهِ، وَيَمْنَعُونَ آخَرَ مِنْ عِتْقِ: عَبْدٍ، وَصَدَقَةِ بِدِرْهَمٍ، وَابْتِيَاعِ فَاكِهَةٍ يَأْكُلُهَا، وَوَرَاءَهُ مِنْ

assert his foundation is supposedly to shield him from deception regarding his wealth, while permitting blatant deception in others' vast wealth. What is this calamity? What is this negligence? To what extent does this contradiction reach? Issuing religious rulings based on such claims—without Quran, Sunnah, companion's opinion, valid analogy, or rationally acceptable view—we seek refuge in Allah from such affliction.

الْمَالِ مَا يَقُومُ بِأَمْثَالِهِ وَأَمْثَالِ عِيَالِهِ، ثُمَّ يَجْعَلُونَ أَصْلَهُ بِزَعْمِهِمْ دَفْعَ الْخَدِيعَةِ لَهُ عَنْ مَالِهِ. وَهُمْ يُجِيزُونَ الْخَدِيعَةَ الْمَكْشُوفَةَ فِي الْمَالِ الْعَظِيمِ لِغَيْرِهِ - فَمَا هَذَا الْبَلَاءُ، وَمَا هَذَا التَّخَاذُلُ، وَكَمْ هَذَا التَّنَاقُضُ؟ وَالْحُكْمُ فِي الدِّينِ بِمِثْلِ هَذِهِ الْأَقْوَالِ بِلَا قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ - وَنَعُوذُ بِاللَّهِ مِنْ الْبَلَاءِ.

L21293 Al-Shafi'i held the same position in all of this, except that he stated: If he is a spendthrift, all his actions are nullified—whether the judge has placed him under guardianship or not. If he attains sound judgment, all his actions are effective—whether the judge has lifted the guardianship restriction or not. Everything we have applied to Malik applies to him, except what pertains solely to these two scenarios.

وَقَالَ الشَّافِعِيُّ بِمِثْلِ هَذَا كُلِّهِ، إلَّا أَنَّهُ قَالَ: إنْ كَانَ مُفْسِدًا فَجَمِيعُ أَفْعَالِهِ مَرْدُودَةٌ - حَجَرَ عَلَيْهِ الْقَاضِي أَوْ لَمْ يَحْجُرْ، وَإِذَا رَشَدَ فَجَمِيعُ أَفْعَالِهِ نَافِذَةٌ - حَلَّ عَنْهُ الْقَاضِي الْحَجْرَ أَوْ لَمْ يَحِلَّ - وَكُلُّ مَا أَدْخَلْنَا عَلَى مَالِكٍ يَدْخُلُ عَلَيْهِ، حَاشَا مَا يَدْخُلُ فِي هَذَيْنِ الْوَجْهَيْنِ فَقَطْ.

L21294 Abu Muhammad said: The clear truth is what we have stated—that every adult is addressed by and obligated under the rulings of the Sharīʿa. Their rulings are entirely uniform: all are recommended to give charity and emancipate slaves, permitted to engage in selling, marriage, and buying, and prohibited from unjustly destroying or squandering wealth, or defrauding others concerning it, as well as giving charity in a way that does not leave them with sufficient means, as the Messenger of Allah (peace and blessings be upon him) said: "Charity is to be given from surplus wealth. Begin with those under your care."

قَالَ أَبُو مُحَمَّدٍ: وَالْحَقُّ الْوَاضِحُ هُوَ مَا قُلْنَاهُ، وَهُوَ أَنَّ كُلَّ بَالِغٍ مُخَاطَبٌ مُكَلَّفٌ أَحْكَامَ الشَّرِيعَةِ، فَحُكْمُهُمْ، كُلُّهُمْ سَوَاءٌ فِي أَنَّهُمْ مَنْدُوبُونَ إلَى الصَّدَقَةِ، وَالْعِتْقِ، مُبَاحٌ لَهُمْ الْبَيْعُ وَالنِّكَاحُ وَالشِّرَاءُ، مُحَرَّمٌ عَلَيْهِمْ إتْلَافُ الْمَالِ بِالْبَاطِلِ، وَإِضَاعَتُهُ وَالْخَدِيعَةُ عَنْهُ وَالصَّدَقَةُ بِمَا لَا يُبْقِي لَهُمْ غِنًى كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الصَّدَقَةُ عَنْ ظَهْرِ غِنًى وَابْدَأْ بِمَنْ تَعُولُ» .

L21295–21297 And as he - peace be upon him - said: "Religion is sincere counsel." They asked: "For whom, O Messenger of Allah?" He said: "For Allah, His Messenger, His Book, the leaders of the Muslims, and their common people." And as he - peace be upon him - said: "Whoever deceives us is not one of us." And as Allah the Exalted said: "They deceive Allah and those who believe, but they deceive none except themselves" [Al-Baqarah: 9]. And as He, the Exalted, said: "Do not squander" [Al-Isra: 26], and as He said: "Do

وَكَمَا قَالَ - عَلَيْهِ السَّلَامُ -: «الدِّينُ النَّصِيحَةُ؟ قِيلَ لِمَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: لِلَّهِ وَلِرَسُولِهِ وَلِكِتَابِهِ وَلِأَئِمَّةِ الْمُسْلِمِينَ وَعَامَّتِهِمْ» . وَكَمَا قَالَ - عَلَيْهِ السَّلَامُ -: «لَيْسَ مِنَّا مَنْ غَشَّنَا» . وَكَمَا قَالَ اللَّهُ تَعَالَى: {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩] وَكَمَا قَالَ تَعَالَى: {وَلا تُبَذِّرْ تَبْذِيرًا} [الإسراء: ٢٦] وَكَمَا قَالَ تَعَالَى: {وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ فَتَقْعُدَ مَلُومًا مَحْسُورًا} [الإسراء: ٢٩]

not withhold your hand nor stretch it out fully, lest you sit blameworthy and regretful" [Al-Isra: 29].[7]

وَكُلُّ مَنْ تَصَدَّقَ وَأَعْتَقَ، وَفَعَلَ الْخَيْرَ عَنْ ظَهْرِ غِنًى -: نَفَذَ، وَلَمْ يَحِلَّ رَدُّهُ وَكُلُّ مَنْ أَعْتَقَ وَتَصَدَّقَ عَنْ غَيْرِ ظَهْرِ غِنًى -: رَدَّ وَبَطَلَ؛ لِأَنَّهُ لَا طَاعَةَ إِلَّا مَا أَمَرَ اللَّهُ تَعَالَى بِهِ، وَلَا مَعْصِيَةَ إِلَّا مَا نَهَى اللَّهُ عَنْهُ، فَالصَّدَقَةُ بِمَا لَا يُبْقِي غِنًى مَعْصِيَةٌ، وَالصَّدَقَةُ بِمَا يُبْقِي غِنًى طَاعَةٌ.

L21298 Every person who gives charity, frees a slave, or performs good deeds from a manifestation of sufficiency—their action remains valid and may not be rejected. Conversely, every person who frees a slave or gives charity without a manifestation of sufficiency—their action is rejected and nullified. For there is no obedience except in what Allah the Exalted has commanded, and no sin except in what Allah has prohibited. Thus, charity that deprives one of sufficiency constitutes sin, while charity that preserves sufficiency constitutes obedience.

وَكُلُّ مَنْ بَاعَ أَوْ اشْتَرَى فَخُدِعَ أَوْ خَدَعَ -: فَمَرْدُودٌ؛ لِأَنَّ اللَّهَ تَعَالَى حَرَّمَ الْخَدِيعَةَ وَالْغِشَّ، وَكُلُّ مَنْ بَاعَ أَوْ اشْتَرَى فَلَمْ يَغْبِنْ وَلَا غَشَّ فَنَافِذٌ؛ لِأَنَّ اللَّهَ تَعَالَى أَبَاحَ الْبَيْعَ.

L21299 Every person who sells or buys and is either deceived or deceives others—the transaction is revocable, for Allah the Exalted has prohibited deception and fraud. And every person who sells or buys without being defrauded or committing fraud—it is valid, for Allah the Exalted has permitted sale.

وَكُلُّ مَنْ أَنْفَقَ فِي مَعْصِيَةٍ فَلْسًا فَمَا فَوْقَهُ - فَمَرْدُودٌ.

L21300 Anyone who spends a *fals* or more in disobedience, it is rejected.

وَكُلُّ مَنْ أَنْفَقَ كَمَا أُمِرَ قَلَّ أَوْ كَثُرَ -: فَنَافِذٌ لَازِمٌ، وَمَا أَبَاحَ اللَّهُ تَعَالَى قَطُّ إِبْطَالَ حَقٍّ وَلَا الْمَنْعَ مِنَ الطَّاعَةِ مِنْ أَجْلِ مَعْصِيَةٍ عَصَاهَا ذَلِكَ الْمَمْنُوعُ، أَوْ خِيفَ أَنْ يَعْصِيَهَا وَلَمْ يَعْصِ بَعْدُ كَمَا لَمْ يُبِحْ أَنْ تَنْفُذَ مَعْصِيَةٌ، وَأَنْ يَمْضِيَ بَاطِلٌ مِنْ أَجْلِ بَاطِلٍ عَمِلَ بِهِ ذَلِكَ الْمُخِلُّ وَمَعْصِيَتِهِ، بَلِ الْبَاطِلُ مُبْطَلٌ قَلَّ وُجُودُهُ مِنَ الْمَرْءِ أَوْ كَثُرَ، وَالْحَقُّ نَافِذٌ قَلَّ وُجُودُهُ مِنَ الْمَرْءِ أَوْ كَثُرَ -.

L21301 Every act of spending—whether small or large—performed as commanded is valid and binding. Allah the Exalted has never permitted the nullification of a right nor the prevention of obedience due to a sin committed by the one being restricted, nor out of fear that he might sin when no sin has yet occurred—just as He has not permitted a sin to be executed or falsehood to persist on account of falsehood enacted by the transgressor through his disobedience. Rather, falsehood is invalidated whether it occurs little or much in a person, and the right is executed whether it occurs little or much in a person.

هَذَا هُوَ الَّذِي جَاءَ بِهِ الْقُرْآنُ وَالسُّنَنُ وَشَهِدَتْ لَهُ الْعُقُولُ، وَمَا عَدَا هَذَا فَبَاطِلٌ لَا خَفَاءَ بِهِ، وَتَنَاقُضٌ لَا يَحِلُّ، وَقَوْلٌ مُخَالِفٌ لِلْقُرْآنِ، وَالسُّنَنِ، وَالْعُقُولِ.

L21302 This is what the Qur'an and the Sunnah have brought, and what the intellects have attested to. Whatever diverges from this is manifest falsehood, an irreconcilable contradiction, and a statement contrary to the Qur'an, the Sunnah, and the intellects.

[7] **Qur'an references (L21295):** Qur'an 2:9 (Al-Baqarah); Qur'an 17:26 (Al-Isra); Qur'an 17:29 (Al-Isra).

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: إِنْ أَعْتَقَ الْمَحْجُورُ نَفَذَ عِتْقُهُ، وَعَلَى الْعَبْدِ أَنْ يَسْعَى لَهُ فِي قِيمَتِهِ - فَكَانَتْ هَذِهِ طَرِيفَةً جِدًّا وَلَا نَدْرِي مِنْ أَيْنَ اسْتَحَلَّ إِلْزَامَ الْعَبْدِ السَّعْيَ هَهُنَا فِي هَذِهِ الْغَرَامَةِ؟ وَقَالَ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: مَنْ بَلَغَ مُبَذِّرًا فَهُوَ عَلَى الْحَجْرِ كَمَا كَانَ؛ لِأَنَّهُ مَحْجُورٌ عَلَيْهِ بِيَقِينٍ فَلَا يُفَكُّ عَنْهُ إِلَّا بِيَقِينٍ آخَرَ.

L21303 Muhammad ibn al-Hasan said: If a legally restricted person manumits a slave, his manumission takes effect, and the slave must labor for him to compensate for his [the slave's] value. This is an extremely peculiar ruling, and we do not know from what source he deemed it permissible to obligate the slave to labor here for this financial liability. Abu Sulayman and our colleagues stated: Whoever reaches maturity as a squanderer remains under interdiction as before, for he is judged with certainty to be a spendthrift. Thus he cannot be released from interdiction unless another certainty [of rectification] is established.

قَالُوا: فَإِنْ رَشَدَ ثُمَّ ظَهَرَ تَبْذِيرُهُ لَمْ يُحْجَرْ عَلَيْهِ، لَكِنْ يَنْفُذُ مِنْ أَفْعَالِهِ مَا وَافَقَ الْحَقَّ وَيُرَدُّ مِمَّا خَالَفَ الْحَقَّ كَغَيْرِهِ سَوَاءً.

L21304 They said: If he attains sound judgment but subsequently manifests squandering, he is not placed under interdiction. However, his actions that conform to the truth are upheld, and those that contravene it are rejected - equally as with others.

قَالَ عَلِيٌّ: أَمَّا قَوْلُهُمْ: قَدْ لَزِمَهُ الْحَجْرُ بِيَقِينٍ، فَلَا يَنْحَلُّ عَنْهُ إِلَّا بِيَقِينٍ آخَرَ -: فَقَوْلٌ صَحِيحٌ، وَالْيَقِينُ قَدْ وَرَدَ، وَهُوَ أَمْرُ اللَّهِ تَعَالَى لَهُ بِالصَّدَقَةِ، وَأَنْ يَتَّقِيَ النَّارَ بِالْعِتْقِ، بِإِطْلَاقِهِ عَلَى الْبَيْعِ إِذَا بَلَغَ، وَعَلَى النِّكَاحِ إِذَا كَانَ مُخَاطَبًا بِسَائِرِ الشَّرَائِعِ وَلَا فَرْقَ.

L21305–21306 Ali said: As for their statement, "The interdiction has been imposed upon him with certainty, so it can only be dissolved through another certainty"—this is a sound position. The certainty has indeed been established, which is the command of Allah, the Exalted, to him to give charity and to ward off the Fire through manumission, as His command extends to sale when he reaches maturity and to marriage when he becomes legally accountable for all religious obligations, with no distinction made.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ الْمُخَالِفُونَ بِأَشْيَاءَ يَجِبُ إِيرَادُهَا، وَبَيَانُ فَاسِدِ احْتِجَاجِهِمْ بِهَا، وَوَضْعِهِمْ النُّصُوصَ فِي غَيْرِ مَوَاضِعِهَا، وَبَيَانُ ذَلِكَ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

L21307 Abu Muhammad said: The opponents have argued using matters that we must present, clarify the invalidity of their arguments based on them, and expose their misapplication of texts to improper contexts—all by the might of Allah, the Exalted, and His power.

قَالَ أَبُو مُحَمَّدٍ: قَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَابْتَلُوا الْيَتَامَى حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ} [النساء: ٦] قَالُوا: فَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِأَنْ نَدْفَعَ إِلَيْهِمْ أَمْوَالَهُمْ مَعَ إِينَاسِ الرُّشْدِ مِنْهُمْ، لَا فِي غَيْرِ هَذِهِ الْحَالِ.

L21308 Abu Muhammad said: They said: Allah, the Mighty and Sublime, declared: {Test the orphans until they reach puberty; then, if you perceive sound judgment in them, hand over their wealth to them} [An-Nisa: 6]. They said: Allah the Exalted has commanded us to hand over their wealth to them only upon perceiving sound judgment in them, not in any other circumstance.[8]

L21309 And He, the Exalted, said: {And do not entrust the foolish with your wealth

[8] **Qur'an references (L21308):** Qur'an 4:6 (An-Nisa).

which Allah has made a means of sustenance for you. Provide for them from it, clothe them, and speak to them a kind word} [An-Nisa: 5]. Thus, Allah, the Almighty and Majestic, has prohibited giving wealth to the foolish, permitting only that they be provided food from it in eating, clothed, and addressed with kind words.[9]

L21310 And the Almighty has said: {If the one owing the debt is a spendthrift, weak, or unable to dictate himself, let his guardian dictate with fairness} [Al-Baqarah: 282]. Thus, He mandated guardianship over the spendthrift and the weak.[10]

L21311 And He, the Exalted, said: {Those who, when they spend, are neither extravagant nor stingy, but maintain a just balance between the two} [Al-Furqān: 67]. And He, the Exalted, said: {Do not be wasteful} [Al-Isrā': 26], {Indeed, the wasteful are brothers of the devils} [Al-Isrā': 27]. And He, the Exalted, said: {Do not exceed limits. He does not love the extravagant} [Al-An'ām: 141]. Therefore, Allah, the Exalted, has prohibited extravagance, stinginess, and wastefulness.[11]

L21312 And He, the Exalted, said: {Do not bind your hand to your neck, nor stretch it forth to the utmost, lest you end up blameworthy and destitute} [Al-Isrāʾ: 29]. This is all they have cited from the Quran, and all of it constitutes evidence against them and contradicts their statements—as we will clarify, if Allah the Exalted wills—We know of no evidence from the Quran at all other than this fundamentally.[12]

L21313–21315 They mentioned from the Sunnah the authentic report from Al-Mughīrah ibn Shu'bah: "The Messenger of Allah—peace and blessings be upon him—prohibited the waste of wealth." They also mentioned a report we have narrated through the chain of Abū 'Ubayd: 'Amr ibn Hārūn narrated to us from... Yahya ibn Muhammad ibn Abd al-Rahman ibn Abi Lubaybah reported

وَقَالَ تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلا مَعْرُوفًا} [النساء: ٥] فَنَهَى عَزَّ وَجَلَّ عَنْ إِيتَاءِ السُّفَهَاءِ الْمَالَ، وَلَمْ يَجْعَلْ لَهُمْ إِلَّا أَنْ يُرْزَقُوا مِنْهَا فِي الْأَكْلِ وَيُكْسَوْا، وَيُقَالَ لَهُمْ قَوْلٌ مَعْرُوفٌ.

وَقَالَ عَزَّ وَجَلَّ: {فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ} [البقرة: ٢٨٢] فَأَوْجَبَ الْوَلَايَةَ عَلَى السَّفِيهِ، وَالضَّعِيفِ.

وَقَالَ تَعَالَى: {وَالَّذِينَ إِذَا أَنْفَقُوا لَمْ يُسْرِفُوا وَلَمْ يَقْتُرُوا وَكَانَ بَيْنَ ذَلِكَ قَوَامًا} [الفرقان: ٦٧] وَقَالَ تَعَالَى: {وَلا تُبَذِّرْ تَبْذِيرًا} [الإسراء: ٢٦] {إِنَّ الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ} [الإسراء: ٢٧] وَقَالَ تَعَالَى: {وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ} [الأنعام: ١٤١] فَحَرَّمَ اللَّهُ تَعَالَى السَّرَفَ، وَالتَّقْتِيرَ، وَالتَّبْذِيرَ.

وَقَالَ تَعَالَى: {وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ فَتَقْعُدَ مَلُومًا مَحْسُورًا} [الإسراء: ٢٩] هَذَا كُلُّ مَا ذَكَرُوا مِنَ الْقُرْآنِ، وَكُلُّهُ حُجَّةٌ لَنَا عَلَيْهِمْ، وَمُخَالِفٌ لِأَقْوَالِهِمْ - عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى - مَا نَعْلَمُ مِنَ الْقُرْآنِ حُجَّةً غَيْرَ هَذَا أَصْلًا.

وَذَكَرُوا مِنَ السُّنَّةِ الْخَبَرَ الصَّحِيحَ عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ إِضَاعَةِ الْمَالِ» . وَذَكَرُوا خَبَرًا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَمْرُو بْنُ هَارُونَ عَنْ يَحْيَى بْنُ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَبِيبَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَيُّمَا رَجُلٍ كَانَ عِنْدَهُ يَتِيمٌ فَحَالَ بَيْنَهُ وَبَيْنَ أَنْ يَتَزَوَّجَ فَزَنَى فَالْإِثْمُ بَيْنَهُمَا» .

[9] **Qur'an references (L21309):** Qur'an 4:5 (An-Nisa).
[10] **Qur'an references (L21310):** Qur'an 2:282 (Al-Baqarah).
[11] **Qur'an references (L21311):** Qur'an 25:67 (Al-Furqan); Qur'an 17:26 (Al-Isra); Qur'an 17:27 (Al-Isra); Qur'an 6:141 (Al-An'am); Qur'an 7:31 (Al-A'raf).
[12] **Qur'an references (L21312):** Qur'an 17:29 (Al-Isra).

from his father that the Messenger of Allah (peace be upon him) said: “Any man who has an orphan in his care and prevents him from marrying, leading the orphan to commit adultery—the sin is shared between them.”

L21316 We do not know of any narration attributed to them besides these two, and both serve as an argument for us against them, opposing their assertions, as we will elucidate after this, if Allah, the Exalted, wills.

مَا نَعْلَمُ لَهُمْ خَبَرًا غَيْرَ هَذَيْنِ، وَكِلَاهُمَا حُجَّةٌ لَنَا عَلَيْهِمْ، وَمُخَالِفٌ لِأَقْوَالِهِمْ عَلَى مَا نُبَيِّنُ [بَعْدَ هَذَا] إِنْ شَاءَ اللَّهُ تَعَالَى.

L21317 They related from the Companions—may Allah be pleased with them—what was transmitted to us through Hishām ibn ʿUrwah from his father: ʿAlī ibn Abī Ṭālib approached ʿUthmān ibn ʿAffān and said, “Ibn Jaʿfar has purchased a sale for such and such—interdict him!” Al-Zubayr interjected, “I am his partner in this transaction.” ʿUthmān responded, “How can I interdict a man in a sale where al-Zubayr is his partner?” Through the chain of Abū ʿUbayd: ʿAffān ibn Muslim narrated to me from Ḥammād ibn Zayd from Hishām ibn Ḥassān from Ibn Sīrīn, who said: ʿUthmān said to ʿAlī, “Will you not interdict your nephew”—referring to ʿAbdullāh ibn Jaʿfar—“and interdict him? He bought a barren tract for sixty thousand. I would not desire it even if offered to me for the price of a sandal.”

وَذَكَرُوا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مَا رُوِّينَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَتَى عُثْمَانَ بْنَ عَفَّانَ فَقَالَ لَهُ: إنَّ ابْنَ جَعْفَرٍ اشْتَرَى بَيْعًا كَذَا وَكَذَا فَاحْجُرْ عَلَيْهِ؟ فَقَالَ الزُّبَيْرُ: أَنَا شَرِيكُهُ فِي الْبَيْعِ؟ فَقَالَ عُثْمَانُ: كَيْفَ أَحْجُرُ عَلَى رَجُلٍ فِي بَيْعٍ شَرِيكُهُ فِيهِ الزُّبَيْرُ؟ وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ حَدَّثَنِي عَفَّانُ بْنُ مُسْلِمٍ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ ابْنِ سِيرِينَ قَالَ: قَالَ عُثْمَانُ لِعَلِيٍّ: أَلَا تَأْخُذُ عَلَى يَدَيْ ابْنِ أَخِيك - يَعْنِي عَبْدَ اللَّهِ بْنَ جَعْفَرٍ - وَتَحْجُرُ عَلَيْهِ؟ اشْتَرَى سَبْخَةً بِسِتِّينَ أَلْفًا مَا يَسُرُّنِي أَنَّهَا لِي بِنَعْلِي.

L21318 And what we have narrated through the chain of Abu Ubayd: Muhammad ibn Kathir reported from al-Awza’i, from al-Zuhri, from al-Tufayl ibn al-Harith, who said: It reached Ibn al-Zubayr that Aisha, the Mother of the Believers, intended to sell her residential properties. He declared: “She must desist, or I shall most certainly impose interdiction upon her.” Through another chain of Abu Ubayd: Sa’id ibn al-Hakam ibn Abi Maryam reported from Abdullah ibn Lahi’ah, from Abu al-Aswad Muhammad ibn Abd al-Rahman ibn Nawfal, from Urwah ibn al-Zubayr, who said: Whenever a youth among us came of age, Abdullah ibn al-Zubayr would impose interdiction upon him.

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ الطُّفَيْلِ بْنِ الْحَارِثِ قَالَ: بَلَغَ ابْنَ الزُّبَيْرِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَرَادَتْ بَيْعَ رُبَاعِهَا: فَقَالَ: لَتَنْتَهِيَنَّ، أَوْ لَأَحْجُرَنَّ عَلَيْهَا؟ وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ الْحَكَمِ بْنِ أَبِي مَرْيَمَ عَنْ عَبْدِ اللَّهِ بْنِ لَهِيعَةَ عَنْ أَبِي الْأَسْوَدِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ إذَا نَشَأَ مِنَّا نَاشِئٌ حَجَرَ عَلَيْهِ.

L21319 From the narration of Al-Hajjaj ibn Artah, from Abdul Malik ibn Al-Mughirah Al-Taifi, from Ibn Abbas: He was asked about an elderly man whose mental capacity is deemed deficient—should he be placed under guardianship? He replied: Yes. From the narration of Yazid ibn Hurmuz,

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَبْدِ الْمَلِكِ بْنِ الْمُغِيرَةِ الطَّائِفِيِّ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ سُئِلَ عَنْ الشَّيْخِ الْكَبِيرِ يُنْكَرُ عَقْلُهُ أَيُحْجَرُ عَلَيْهِ؟ قَالَ: نَعَمْ. وَمِنْ طَرِيقِ يَزِيدَ بْنِ هُرْمُزَ

from Ibn Abbas: He wrote to Najdah ibn Uwaymir in response to his inquiry: “You asked me about when an orphan’s orphanhood ceases. By my life, a man may grow a beard yet remain weak in managing his own affairs and deficient in dispensing from his wealth. If he begins to undertake for himself the beneficial matters that people pursue for their interests, his orphanhood ends. However, orphanhood does not cease for the orphan until he reaches maturity and is perceived to have sound judgment. When he reaches puberty (marriageable age) and is perceived to have sound judgment, his wealth is entrusted to him—thus his orphanhood is terminated.”

عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَتَبَ إِلَى نَجْدَةَ بْنِ عُوَيْمِرٍ وَكَتَبْت تَسْأَلُنِي عَنْ الْيَتِيمِ مَتَى يَنْقَضِي يُتْمُهُ؟ فَلَعَمْرِي، إنَّ الرَّجُلَ لَتَنْبُتُ لِحْيَتُهُ، وَإِنَّهُ لَضَعِيفُ الْأَخْذِ لِنَفْسِهِ، ضَعِيفُ الْعَطَاءِ مِنْهَا، وَإِذَا أَخَذَ لِنَفْسِهِ مِنْ مَصَالِحِ مَا يَأْخُذُ النَّاسُ فَقَدْ ذَهَبَ عَنْهُ الْيُتْمُ، وَإِنَّهُ لَا يَنْقَطِعُ عَنْ الْيَتِيمِ الْيُتْمُ حَتَّى يَبْلُغَ وَيُؤْنَسَ مِنْهُ رُشْدٌ، وَإِذَا بَلَغَ النِّكَاحَ وَأُونِسَ مِنْهُ رُشْدٌ: دُفِعَ إلَيْهِ مَالُهُ، فَقَدْ انْقَضَى عَنْهُ يُتْمُهُ.

L21320–21321 Abu Muhammad said: We have gathered all these terms because they are part of what we transmitted through paths of transmission entirely traceable to Yazid ibn Hurmuz from Ibn Abbas. We restricted ourselves to mentioning only those through whom all of them were transmitted, and all of them have sound chains of transmission.

قَالَ أَبُو مُحَمَّد: جَمَعْنَا هَذِهِ الْأَلْفَاظَ كُلَّهَا، لِأَنَّهَا مِمَّا رُوِّينَاهُ مِنْ طُرُقٍ كُلِّهَا رَاجِعٌ إلَى يَزِيدَ بْنِ هُرْمُزَ عَنْ ابْنِ عَبَّاسٍ، فَاقْتَصَرْنَا عَلَى ذِكْرِ مَنْ رُوِيَ جَمِيعُهَا عَنْهُ فَقَطْ، وَكُلُّهَا صَحِيحُ السَّنَدِ.

L21322 Narrated through Sharik, from Simak, from Ikrimah, from Ibn Abbas regarding the verse {If you perceive in them sound judgment} [An-Nisa: 6]: The orphan is handed over his property when he attains puberty, intellect, and dignity. We know of no other opinion from the Companions (may Allah be pleased with them) besides this. This ruling entirely contradicts their view, stands as evidence against them, and mostly aligns with our position.[13]

وَمِنْ طَرِيقٍ فِيهَا شَرِيكٌ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ {فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا} [النساء: ٦] قَالَ: الْيَتِيمُ يُدْفَعُ إلَيْهِ مَالُهُ بِحُلُمٍ وَعَقْلٍ وَوَقَارٍ - مَا نَعْلَمُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - شَيْئًا غَيْرَ هَذَا، وَكُلُّهُ مُخَالِفٌ لِقَوْلِهِمْ، وَحُجَّةٌ عَلَيْهِمْ، وَأَكْثَرُهُ مُوَافِقٌ لِقَوْلِنَا.

L21323 From the *Tabi’in*, Al-Hasan Al-Basri commented on the verse, “If you perceive sound judgment in them, then deliver their property to them” [4:6], stating: “Integrity in his religious conduct and safeguarding of his wealth.” From Al-Sha‘bi: “A man might grow grey-haired without sound judgment being perceived in him.” It has been narrated to us that similar statements are attributed to Shuraih, Al-Qasim ibn Muḥammad, Rabi‘ah, and ‘Aṭā’. We have narrated from Al-Ḍaḥḥāk: “No wealth is to be delivered to him until integrity is perceived in him. However, no narration has come from Shuraih or Al-Qasim prohibiting him from manumission, charity, or sales that do

وَعَنْ التَّابِعِينَ عَنْ الْحَسَنِ الْبَصْرِيِّ {فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إلَيْهِمْ أَمْوَالَهُمْ} [النساء: ٦] قَالَ: صَلَاحٌ فِي دِينِهِ وَحِفْظٌ لِمَالِهِ. وَعَنْ الشَّعْبِيِّ: إنْ كَانَ الرَّجُلُ لَيَشْمَطُ وَمَا أُونِسَ مِنْهُ رُشْدٌ. وَرُوِّينَا مِثْلَ قَوْلِهِمْ عَنْ شُرَيْحٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَرَبِيعَةَ، وَعَطَاءٍ. وَرُوِّينَا عَنْ الضَّحَّاكِ: أَنَّهُ لَا يُدْفَعُ إلَيْهِ مَالٌ حَتَّى يُؤْنَسَ مِنْهُ صَلَاحٌ إلَّا أَنَّهُ لَمْ يَأْتِ، عَنْ شُرَيْحٍ، وَلَا عَنْ الْقَاسِمِ مَنْعُهُ مِنْ عِتْقٍ، وَصَدَقَةٍ، وَبَيْعٍ، لَا يَضُرُّ مَالَهُ، إنَّمَا جَاءَ ذَلِكَ عَنْ رَبِيعَةَ، وَعَطَاءٍ فَقَطْ.

[13] **Qur’an references (L21322):** Qur’an 4:6 (An-Nisa).

not harm his wealth. Such restrictions are only narrated from Rabi'ah and 'Aṭā'."[14]

L21324 Ali said: We do not know of anything from the Successors (Tabi'in) regarding them other than this, and part of it aligns with our opinion.

L21325 Abu Muhammad said: As for Allah's statement, Exalted is He: {Test the orphans until they reach the age of puberty. Then, if you discern sound judgment in them, deliver their wealth to them} [An-Nisa: 6], it is imperative to determine what constitutes the "sound judgment" that Allah commands to be recognized in them to justify transferring their wealth. We examined the Quran—which elucidates what Allah has obligated upon us—and found that "sound judgment" therein refers solely to adherence to faith and opposition to misguidance, not at all to knowledge of earning wealth. He said: {There is no compulsion in religion. Sound judgment has been clearly distinguished from misguidance. Whoever rejects idolatrous tyranny and believes in Allah has grasped the firmest handhold} [Al-Baqarah: 256]. He also said: {These are the people of sound judgment} [Al-Hujurat: 7], and: {Pharaoh's command was not sound} [Hud: 97].[15]

L21326–21328 It is established that whoever reaches the age of discernment distinguishing faith from disbelief has had the sound judgment - for which no other sound judgment exists whatsoever - recognized in him. Thus, it becomes obligatory to hand over his wealth to him. No believer or disbeliever doubts that Pharaoh and his companions were the most severe. He demonstrated greater care for wealth, managed it more meticulously, acquired it in greater abundance, and possessed deeper knowledge of the diverse avenues for accumulating it than Moses, peace be upon him. Indeed, Pharaoh was never defrauded in any matter pertaining to his wealth.

L21329 And indeed Moses—peace be upon him—and Khidr—peace be upon him—came to the people of a village and asked them for food, but they refused to

[14]**Qur'an references (L21323):** Qur'an 4:6 (An-Nisa).

[15]**Qur'an references (L21325):** Qur'an 4:6 (An-Nisa); Qur'an 2:256 (Al-Baqarah); Qur'an 49:7 (Al-Hujurat); Qur'an 11:97 (Hud).

قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُمْ عَنْ التَّابِعِينَ غَيْرَ هَذَا، وَبَعْضُهُ مُوَافِقٌ لِقَوْلِنَا.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ اللَّهِ تَعَالَى: {وَابْتَلُوا الْيَتَامَى حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ} [النساء: ٦] فَيَنْبَغِي أَنْ يُعْرَفَ مَا الرُّشْدُ الَّذِي أَمَرَ اللَّهُ تَعَالَى مَنْ أُونِسَ مِنْهُ بِدَفْعِ مَالِهِ إلَيْهِ؟ فَنَظَرْنَا فِي الْقُرْآنِ الَّذِي هُوَ الْمُبَيِّنُ لَنَا مَا أَلْزَمَنَا اللَّهُ تَعَالَى إيَّاهُ، فَوَجَدْنَاهُ كُلَّهُ لَيْسَ الرُّشْدُ فِيهِ إلَّا الدِّينَ، وَخِلَافَ الْغَيِّ فَقَطْ، لَا الْمَعْرِفَةَ بِكَسْبِ الْمَالِ أَصْلًا، قَالَ تَعَالَى: {لا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِنْ بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَى} [البقرة: ٢٥٦] وَقَالَ تَعَالَى: {أُولَئِكَ هُمُ الرَّاشِدُونَ} [الحجرات: ٧] وَقَالَ تَعَالَى: {وَمَا أَمْرُ فِرْعَوْنَ بِرَشِيدٍ} [هود: ٩٧].

فَصَحَّ أَنَّ مَنْ بَلَغَ مُمَيِّزًا لِلْإِيمَانِ مِنْ الْكُفْرِ فَقَدْ أُونِسَ مِنْهُ الرُّشْدُ الَّذِي لَا رُشْدَ سِوَاهُ أَصْلًا، فَوَجَبَ دَفْعُ مَالِهِ إلَيْهِ، وَمَا يَشُكُّ مُؤْمِنٌ وَلَا كَافِرٌ أَنَّ فِرْعَوْنَ وَأَصْحَابَهُ كَانُوا أَشَدَّ عِنَايَةً بِالْمَالِ، وَأَضْبَطَ لَهُ، وَأَكْثَرَ وَأَعْرَفَ بِوُجُوهِ جَمْعِهِ مِنْ مُوسَى - عَلَيْهِ السَّلَامُ -، وَأَنَّ فِرْعَوْنَ لَمْ يَكُنْ قَطُّ مَغْبُونًا فِي مَالِهِ.

وَلَقَدْ أَتَى مُوسَى - عَلَيْهِ السَّلَامُ -، وَالْخَضِرُ - عَلَيْهِ السَّلَامُ -، إلَى أَهْلِ قَرْيَةٍ فَاسْتَطْعَمَاهُمْ؟ فَأَبَوْا أَنْ يُضَيِّفُوهُمَا، فَبَاتَا لَيْلَتَهُمَا بِغَيْرِ قِرًى، وَمَا بَلَغَ فِرْعَوْنَ فِي مُلْكِهِ قَطُّ هَذَا الْمَبْلَغَ.

host them. So they spent the night without hospitality, and Pharaoh, in his kingdom, never reached this extent.

L21330 Similarly, there is no doubt that the affluent among Quraysh such as Abū Lahab, al-Walīd ibn al-Mughīrah, and Ibn Judʿan were more astute and swifter than the Messenger of Allah, peace and blessings of Allah be upon him, in acquiring wealth through any feasible means—whether by exploiting the labor of female slaves, usury, or other such practices.

L21331 We have been narrated through the chain of Imam Muslim: Abu Bakr ibn Abi Shaybah and ʻAmr al-Nāqid, both of whom said together: Aswad ibn ʻĀmir narrated to us from Ḥammād ibn Salamah, who narrated from Hishām ibn ʻUrwah and Thābit al-Bunānī. Hishām narrated from his father, from ʻĀ'ishah, the Mother of the Believers, while Thābit narrated from Anas. Then they concurred—Anas and the Mother of the Believers—in narrating the ḥadīth of date palm pollination, wherein the Messenger of Allah (peace and blessings be upon him) said: "You know best your worldly matters." Thus, it is confirmed that sound judgment is neither earning wealth nor withholding it from rightful dues and acts of righteousness, for that is prodigality. True sound judgment lies in obeying Allah the Exalted, earning wealth through means that neither harm religion nor tarnish one's honor, spending it on obligations and in ways that draw near to Allah the Exalted for deliverance from the Fire, preserving what sustains oneself and dependents through moderation and contentment. This is sound judgment.

L21332 And He, the Exalted, said: **"I will turn away from My signs those who act arrogantly on earth without right. If they see every sign, they will not believe in it. If they see the path of guidance, they will not take it as a path, and if they see the path of error, they will take it as a path"** [Al-A'raf: 146]. And likewise, every place in the Quran where guidance is mentioned.[16]

L21333 Similarly, we have not found in any part of the Arabic language that rushd refers to being astute in accumulating wealth and managing it. Thus, their interpretation of rushd based on the verse is invalidated, as is their transfer of wealth based on instilled confidence.

وَكَذَلِكَ لَا شَكَّ فِي أَنَّ الْمُقْتَطِرَ مِنْ قُرَيْشٍ كَأَبِي لَهَبٍ، وَالْوَلِيدِ بْنِ الْمُغِيرَةِ وَابْنِ جُدْعَانَ: كَانُوا أَبْصَرَ وَأَسْرَعَ إِلَى كَسْبِ الْمَالِ مِنْ أَيِّ وَجْهٍ أَمْكَنَ مِنْ مُسَاعَاةِ الْإِمَاءِ، وَالرِّبَا، وَغَيْرِ ذَلِكَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ قَالَا جَمِيعًا: حَدَّثَنَا أَسْوَدُ بْنُ عَامِرٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ: وَثَابِتٍ الْبُنَانِيِّ قَالَ هِشَامٌ: عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ وَقَالَ ثَابِتٌ: عَنْ أَنَسٍ، ثُمَّ اتَّفَقَ أَنَسٌ، وَأُمُّ الْمُؤْمِنِينَ فَذَكَرَا حَدِيثَ تَلْقِيحِ النَّخْلِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَنْتُمْ أَعْلَمُ بِأَمْرِ دُنْيَاكُمْ» . فَصَحَّ أَنَّ الرُّشْدَ لَيْسَ هُوَ كَسْبَ الْمَالِ، وَلَا مَنْعَهُ مِنْ الْحُقُوقِ، وَوُجُوهِ الْبِرِّ، بَلْ هَذَا هُوَ السَّفَهُ، وَإِنَّمَا الرُّشْدُ طَاعَةُ اللَّهِ تَعَالَى، وَكَسْبُ الْمَالِ مِنْ الْوُجُوهِ الَّتِي لَا تَثْلِمُ الدِّينَ، وَلَا تَخْلُقُ الْعِرْضَ، وَإِنْفَاقُهُ فِي الْوَاجِبَاتِ، وَفِيمَا يُتَقَرَّبُ بِهِ إلَى اللَّهِ تَعَالَى لِلنَّجَاةِ مِنْ النَّارِ، وَإِبْقَاءُ مَا يَقُومُ بِالنَّفْسِ، وَالْعِيَالِ، عَلَى التَّوَسُّطِ وَالْقَنَاعَةِ، فَهَذَا هُوَ الرُّشْدُ.

وَقَالَ تَعَالَى: {سَأَصْرِفُ عَنْ آيَاتِيَ الَّذِينَ يَتَكَبَّرُونَ فِي الأَرْضِ بِغَيْرِ الْحَقِّ وَإِنْ يَرَوْا كُلَّ آيَةٍ لا يُؤْمِنُوا بِهَا وَإِنْ يَرَوْا سَبِيلَ الرُّشْدِ لا يَتَّخِذُوهُ سَبِيلا وَإِنْ يَرَوْا سَبِيلَ الْغَيِّ يَتَّخِذُوهُ سَبِيلا} [الأعراف: ١٤٦] وَهَكَذَا كُلُّ مَكَانٍ فِي الْقُرْآنِ ذُكِرَ فِيهِ الرُّشْدُ.

وَكَذَلِكَ لَمْ نَجِدْ فِي شَيْءٍ مِنْ لُغَةِ الْعَرَبِ: أَنَّ الرُّشْدَ هُوَ الْكَيْسُ فِي جَمْعِ الْمَالِ وَضَبْطِهِ، فَبَطَلَ تَأْوِيلُهُمْ فِي الرُّشْدِ بِالْآيَةِ، وَفِي دَفْعِ الْمَالِ بِإِينَاسِهِ.

[16] **Qur'an references (L21332):** Qur'an 7:146 (Al-A'raf).

وَصَحَّ أَنَّهَا مُوَافِقَةٌ لِقَوْلِنَا، وَأَنَّ مُرَادَ اللَّهِ تَعَالَى يَقِينًا بِهَا: إنَّمَا هُوَ أَنَّ مَنْ بَلَغَ عَاقِلًا مُمَيِّزًا مُسْلِمًا وَجَبَ دَفْعُ مَالِهِ إلَيْهِ، وَجَازَ فِيهِ مِنْ جَمِيعِ أَفْعَالِهِ مَا يَجُوزُ مِنْ فِعْلِ سَائِرِ النَّاسِ كُلِّهِمْ، وَيُرَدُّ مِنْ أَفْعَالِهِ مَا يُرَدُّ مِنْ أَفْعَالِ سَائِرِ النَّاسِ كُلِّهِمْ، وَلَا فَرْقَ، وَأَنَّ مَنْ بَلَغَ غَيْرَ عَاقِلٍ، وَلَا مُمَيِّزٍ لِلدِّينِ، لَمْ يُدْفَعْ إلَيْهِ مَالُهُ.

L21334–21336 And it is established that this aligns with our position, and that Allah's intended meaning with certainty is that whoever reaches maturity as a sane, discerning Muslim, it becomes obligatory to hand over his wealth to him, and what is permissible from the actions of all people is permissible in all his actions. All of them, and his actions are rejected as are rejected the actions of all other people entirely, with no distinction. And whoever attains adulthood without mental capacity or discernment in religious matters, their wealth shall not be given to them.

وَلَوْ كَانَ الَّذِي قَالُوا فِي الرُّشْدِ، وَفِي السَّفَهِ قَوْلًا صَحِيحًا - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - لَكَانَ طَوَائِفُ مِنْ الْيَهُودِ، وَالنَّصَارَى، وَعُبَّادِ الْأَوْثَانِ ذَوِي رُشْدٍ، وَلَكَانَ طَوَائِفُ، مِنْ الْمُسْلِمِينَ سُفَهَاءَ، وَحَاشَ لِلَّهِ مِنْ هَذَا.

L21337 If what they asserted regarding sound judgment and recklessness were a valid statement—and God forbid such a thing—then factions among the Jews, Christians, and worshippers of idols would possess sound judgment, while factions among the Muslims would be reckless. God is far removed from this!

وَأَمَّا قَوْله تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] وقَوْله تَعَالَى: {فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا} [البقرة: ٢٨٢] فَإِنَّ السَّفَهَ فِي لُغَةِ الْعَرَبِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ، وَبِهَا خُوطِبْنَا، لَا يَقَعُ إلَّا عَلَى ثَلَاثَةِ مَعَانٍ لَا رَابِعَ لَهَا أَصْلًا -:

L21338 As for the statement of Allah the Exalted: {Do not entrust the foolish with your property} [An-Nisa: 5] and His statement: {If the party liable for the claim is foolish or weak} [Al-Baqarah: 282], the term "foolishness" (safah) in the Arabic tongue—the language in which the Quran was revealed and through which we are addressed—applies exclusively to three meanings, with no fourth meaning whatsoever.[17]

أَحَدُهَا - الْبَذَاءُ وَالسَّبُّ بِاللِّسَانِ، وَهُمْ لَا يَخْتَلِفُونَ أَنَّ مَنْ هَذِهِ صِفَتُهُ لَا يُحْجَرُ عَلَيْهِ فِي مَالِهِ - فَسَقَطَ الْكَلَامُ فِي هَذَا الْوَجْهِ.

L21339 One of these [cases] is vulgarity and verbal abuse. The scholars unanimously agree that someone characterized by these traits cannot have their legal capacity over their property restricted—hence, the discussion on this matter is dismissed.

وَالْوَجْهُ الثَّانِي - الْكُفْرُ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَإِذَا قِيلَ لَهُمْ آمِنُوا كَمَا آمَنَ النَّاسُ قَالُوا أَنُؤْمِنُ كَمَا آمَنَ السُّفَهَاءُ أَلا إِنَّهُمْ هُمُ السُّفَهَاءُ} [البقرة: ١٣] . وَقَالَ تَعَالَى حَاكِيًا عَنْ مُوسَى - عَلَيْهِ السَّلَامُ -: أَنَّهُ قَالَ لِلَّهِ تَعَالَى {أَتُهْلِكُنَا بِمَا فَعَلَ السُّفَهَاءُ مِنَّا} [الأعراف: ١٥٥] يَعْنِي كَفَرَةَ بَنِي إسْرَائِيلَ.

L21340 The second aspect—disbelief. Allah the Exalted said: {When it is said to them, "Believe as the people have believed," they say, "Should we believe as the foolish have believed?" Unquestionably, it is they who are the foolish, but they do not know} [Al-Baqarah: 13]. And the Almighty said, quoting Moses, peace be upon him, that he said to Allah the Exalted: {Will You destroy us for what the foolish among us have done?} [Al-A'rāf: 155], referring to the disbelievers of the Children of Israel.[18]

[17] **Qur'an references (L21338):** Qur'an 4:5 (An-Nisa); Qur'an 2:282 (Al-Baqarah).
[18] **Qur'an references (L21340):** Qur'an 2:13 (Al-Baqarah); Qur'an 7:155 (Al-A'raf).

L21341 And He, the Exalted, said: {The foolish will say, "What has diverted them from their qiblah which they used to face?"} [Al-Baqarah 142]. And He, the Exalted, said: {And who would turn away from the religion of Abraham except one who fools himself?} [Al-Baqarah 130].[19]

L21342 And He, the Exalted, said—narrating from the believing jinn whom He affirmed and was pleased with—their statement: "And that the foolish among us would utter outrageous falsehood about Allah" [Al-Jinn: 4]. This constitutes a second meaning. There is no disagreement from them nor from us that disbelievers are not to be deprived of their wealth, that all their transactions in buying, selling, and gifts—all such dealings—are permissible, and that His statement, the Exalted: "Do not entrust the foolish with your wealth" [An-Nisā': 5] and His statement: "If the one liable is foolish or weak" [Al-Baqarah: 282]—He, the Exalted, never intended by this the disbelievers, nor those given to obscenity in their speech.[20]

L21343–21345 The third meaning is the absence of a rational faculty that negates eligibility for legal accountability, such as the insane and young children alone. By consensus between us and them, these are the ones God the Exalted intended in the two verses. Those characterized by this attribute do not... They are granted their wealth, yet clothed from it, sustained, and spoken to gently. Their own acknowledgment is not accepted, but their appointed guardian acknowledges on their behalf. This is confirmed as valid with certainty.

L21346 Whoever claims that a person disadvantaged in transactions and incapable of properly safeguarding his wealth—even if he is mentally competent, religiously accountable, and discerning in matters of faith—falls under the designation of "financial imprudence" mentioned in the two verses has certainly spoken falsehood. He has ascribed to Allah—the Exalted—what he knows nothing about, blindly followed matters beyond his knowledge, and asserted claims without evidence. All of this is unlawful, and it is impermissible to endorse such an opinion.

وَقَالَ تَعَالَى: {سَيَقُولُ السُّفَهَاءُ مِنَ النَّاسِ مَا وَلاهُمْ عَنْ قِبْلَتِهِمُ الَّتِي كَانُوا عَلَيْهَا} [البقرة: ١٤٢] وَقَالَ تَعَالَى: {وَمَنْ يَرْغَبُ عَنْ مِلَّةِ إِبْرَاهِيمَ إِلا مَنْ سَفِهَ نَفْسَهُ} [البقرة: ١٣٠].

وَقَالَ تَعَالَى حَاكِيًا عَنْ مُؤْمِنِي الْجِنِّ الَّذِينَ صَدَّقَهُمْ وَرَضِيَ عَنْهُمْ قَوْلُهُمْ: {وَأَنَّهُ كَانَ يَقُولُ سَفِيهُنَا عَلَى اللَّهِ شَطَطًا} [الجن: ٤] فَهَذَا مَعْنًى ثَانٍ، وَلَا خِلَافَ مِنْهُمْ وَلَا مَنَّا فِي أَنَّ الْكُفَّارَ لَا يُمْنَعُونَ أَمْوَالَهُمْ، وَأَنَّ مُعَامَلَتَهُمْ فِي الْبَيْعِ وَالشِّرَاءِ وَهِبَاتِهِمْ جَائِزٌ كُلُّ ذَلِكَ، وَأَنَّ قَوْله تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] وقَوْله تَعَالَى: {فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا} [البقرة: ٢٨٢] لَمْ يُرِدْ بِهِ تَعَالَى قَطُّ الْكُفَّارَ، وَلَا ذَوِي الْبَذَاءِ فِي أَلْسِنَتِهِمْ.

وَالْمَعْنَى الثَّالِثُ - وَهُوَ عَدَمُ الْعَقْلِ الرَّافِعِ لِلْمُخَاطَبَةِ كَالْمَجَانِينِ وَالصِّبْيَانِ فَقَطْ، وَهَؤُلَاءِ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ هُمُ الَّذِينَ أَرَادَ اللَّهُ تَعَالَى فِي الْآيَتَيْنِ، وَأَنَّ أَهْلَ هَذِهِ الصِّفَةِ لَا يُؤْتَوْنَ أَمْوَالَهُمْ، لَكِنْ يُكْسَوْنَ فِيهَا، وَيُرْزَقُونَ، وَيُرْفَقُ بِهِمْ فِي الْكَلَامِ، وَلَا يُقْبَلُ إِقْرَارُهُمْ، لَكِنْ يُقِرُّ عَنْهُمْ وَلِيُّهُمُ النَّاظِرُ لَهُمْ، فَصَحَّ هَذَا بِيَقِينٍ.

فَمَنْ قَالَ: إِنَّ مَنْ يُغْبَنُ فِي الْبَيْعِ وَلَا يُحْسِنُ حِفْظَ مَالِهِ - وَإِنْ كَانَ عَاقِلًا مُخَاطَبًا بِالدِّينِ مُمَيِّزًا لَهُ -: دَاخِلٌ فِي " اسْمِ السَّفَهِ " الْمَذْكُورِ فِي الْآيَتَيْنِ، فَقَدْ قَالَ الْبَاطِلَ، وَقَالَ عَلَى اللَّهِ تَعَالَى مَا لَا عِلْمَ لَهُ بِهِ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَمَا لَا بُرْهَانَ لَهُ عَلَى صِحَّتِهِ - وَهَذَا كُلُّهُ حَرَامٌ لَا يَحِلُّ الْقَوْلُ بِهِ.

[19] **Qur'an references (L21341):** Qur'an 2:142 (Al-Baqarah); Qur'an 2:130 (Al-Baqarah).

[20] **Qur'an references (L21342):** Qur'an 72:4 (Al-Jinn); Qur'an 4:5 (An-Nisa); Qur'an 2:282 (Al-Baqarah).

قَالَ تَعَالَى: {وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] . وَقَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] فَإِذْ لَا بُرْهَانَ لَهُمْ فَلَيْسُوا صَادِقِينَ فِيهِ بِلَا شَكٍّ.

L21347 He, the Exalted, said: "And that you assert about Allah what you do not know" [Al-Baqarah: 169]. He also said: "Say, 'Bring forth your proof if you are truthful'" [Al-Baqarah: 111]. Since they have no proof, they are undoubtedly untruthful in it.[21]

فَصَحَّ أَنَّ الْآيَتَيْنِ مُوَافِقَتَانِ لِقَوْلِنَا مُخَالِفَتَانِ لِقَوْلِهِمْ، وَمَا سَمَّى اللَّهُ تَعَالَى قَطُّ فِي الْقُرْآنِ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا الْعَرَبِيُّ الْجَاهِلُ بِكَسْبِ مَالِهِ، أَوْ الْمَغْبُونُ فِي الْبَيْعِ: سَفِيهًا. " وَالسَّفِيهُ " الَّذِي ذُكِرَ فِي الْآيَةِ هُوَ الَّذِي لَا عَقْلَ لَهُ لِجُنُونِهِ، وَالضَّعِيفُ الَّذِي لَا قُوَّةَ لَهُ، قَالَ تَعَالَى: {ثُمَّ جَعَلَ مِنْ بَعْدِ قُوَّةٍ ضَعْفًا} [الروم: ٥٤] وَالَّذِي لَا يَسْتَطِيعُ أَنْ يُمِلَّ: هُوَ مَنْ بِهِ آفَةٌ فِي لِسَانِهِ تَمْنَعُهُ نُكَرَسٍ، أَوْ نَحْوِ ذَلِكَ.

L21348 Thus, it is established that the two verses align with our position and contradict their position. Neither Allah the Exalted in the Quran, nor His Messenger—may Allah bless him and grant him peace—nor the Arabs have ever referred to one who is inexperienced in managing his wealth or swindled in trade as *safih*. The *safih* mentioned in the verse is the one who lacks reason due to mental impairment, and the "weak" is the one who lacks strength. Allah the Exalted said: *Then He made, after strength, weakness* [Ar-Rum: 54]. The one who is unable to dictate is someone who has a defect in his tongue that prevents him, such as muteness or similar conditions.[22]

وَلَا يَجُوزُ أَنْ يُفَسَّرَ كَلَامُ اللَّهِ تَعَالَى إِلَّا بِكَلَامِهِ، أَوْ بِكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ بِلُغَةِ الْعَرَبِ الَّتِي أَخْبَرَ اللَّهُ تَعَالَى: أَنَّهُ أَنْزَلَ بِهَا الْقُرْآنَ، وَبِالْيَقِينِ الَّذِي لَا شَكَّ فِيهِ: أَنَّهُ مُرَادُ اللَّهِ تَعَالَى - فَهَذِهِ طَرِيقُ النَّجَاةِ، وَأَمَّا بِالظُّنُونِ، وَمَا لَا بُرْهَانَ عَلَيْهِ، فَمَعَاذَ اللَّهِ مِنْ هَذَا.

L21349 It is not permissible to interpret the words of Allah, the Exalted, except by His own words, or by the words of His Messenger—may the peace and blessings of Allah be upon him—or by the Arabic language in which Allah, the Exalted, has informed that He revealed the Quran in it, and with certainty that leaves no doubt that it is the intended meaning of Allah, the Exalted. This is the path of salvation. As for interpretations based on conjectures and that which has no proof upon it, Allah forbid such a thing.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ تَعَالَى: {فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا} [النساء: ٦] قَالَ: الْعَقْلُ، لَا يُدْفَعُ إلَى الْيَتِيمِ مَالُهُ - وَإِنْ شَمِطَ - حَتَّى يُؤْنَسَ مِنْهُ رُشْدٌ، وَهَذَا هُوَ الْحَقُّ الْمُتَيَقَّنُ.

L21350 It has been narrated to us through the chain of Saʿīd ibn Manṣūr—who narrated to us from Jarīr, from Manṣūr, from Mujāhid—regarding the statement of Allah the Exalted: *"If you perceive in them sound judgment"* [4:6]. He said: (This refers to) rational judgment. Do not hand over the orphan's wealth to him—even if he turns gray-haired—until sound judgment is perceived in him. This is the unequivocal truth.[23]

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا يُونُسُ عَنْ الْحَسَنِ فِي قَوْله تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] قَالَ: السُّفَهَاءُ: الصِّغَارُ، وَالنِّسَاءُ: مِنْ السُّفَهَاءِ.

L21351 From the chain of Saʿīd ibn Manṣūr: Yunus narrated to us from al-Ḥasan regarding the statement of the Exalted: "Do not give your wealth to those

[21] **Qur'an references (L21347):** Qur'an 2:169 (Al-Baqarah); Qur'an 7:33 (Al-A'raf); Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

[22] **Qur'an references (L21348):** Qur'an 30:54 (Ar-Rum); Qur'an 2:282 (Al-Baqarah).

[23] **Qur'an references (L21350):** Qur'an 4:6 (An-Nisa).

lacking judgment” [al-Nisāʾ 4:5]. He said, “Those lacking judgment are minors, and women are included among those lacking judgment.”[24]

L21352–21354 And through him to Sa’id ibn Mansur, Awn ibn Musa narrated to us: I heard Mu’awiyah ibn Qurrah saying: Accustom women to “no,” for she lacks judgment; if you obey her, she will destroy you. And through the chain of Ismāʿīl ibn Isḥāq from Yaḥyā ibn ʿAbd al-Ḥamīd al-Ḥimmānī, who narrated from his father, Ḥumayd al-Ruāsī, and ʿAbd Allāh ibn al-Mubārak. Al-Ruāsī reported: From al-Ḥasan ibn Ṣāliḥ, from al-Suddī - who attributed it to ʿAbd Allāh - concerning God’s verse “And do not give the foolish your wealth” [Quran 4:5], he stated: “Women and children.” Ibn al-Mubārak reported through Ismāʿīl from Abī Mālik: “Women and children.” He said: And my father reported from Salamah ibn Nubayṭ, from al-Ḍaḥḥāk, who said: “Women and children.”[25]

L21355 Through the same chain to Ismāʿīl: Naṣr ibn ʿAlī and Muḥammad ibn ʿAbd Allāh ibn Numayr narrated to us. Naṣr said: Abū Aḥmad narrated to us from Ibn Abī Ghaniyyah from al-Ḥakam ibn ʿUtaybah. Ibn Numayr said: My father narrated to us: al-Aʿmash narrated to us from Mujāhid. Then al-Ḥakam and Mujāhid concurred regarding Allah’s statement: {Do not give the foolish your wealth} [4:5]. Both said: “Women and children.”

Through the same chain to Ismāʿīl: Yaḥyā ibn Khalaf narrated to us: Abū ʿĀṣim narrated to us from ʿĪsā: Ibn Najīḥ narrated to us from Mujāhid concerning Allah’s statement: {Do not give the foolish your wealth which Allah has made a foundation for you} [4:5]. Mujāhid said: “Allah forbade men to give their wealth to women. The foolish are those who are wives, mothers, or daughters.”[26]

L21356 To Ismail: Yahya ibn Abd al-Hamid al-Himmani narrated to us through Shurayk, from Salim, from Saʿid—who is Ibn Jubayr—regarding the verse “And do not entrust those lacking in judgment with your wealth” [4:5]. He

وَبِهِ إِلَى سَعِيدِ بْنِ مَنْصُورٍ نا عَوْنُ بْنُ مُوسَى سَمِعْت مُعَاوِيَةَ بْنَ قُرَّةَ يَقُولُ: عَوِّدُوا النِّسَاءَ " لَا " فَإِنَّهَا سَفِيهَةٌ إنْ أَطَعْتهَا أَهْلَكَتْك وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ عَنْ يَحْيَى بْنِ عَبْدِ الْحَمِيدِ الْحِمَّانِيِّ نا أَبِي، وَحُمَيْدٌ الرُّؤَاسِيُّ، وَعَبْدُ اللَّهِ بْنُ الْمُبَارَكِ، قَالَ الرُّؤَاسِيُّ: عَنْ الْحَسَنِ بْنِ صَالِحٍ عَنْ السُّدِّيِّ - رَدَّهُ إلَى عَبْدِ اللَّهِ: - قَالَ فِي قَوْله تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] قَالَ: النِّسَاءُ، وَالصِّبْيَانُ. وَقَالَ ابْنُ الْمُبَارَكِ عَنْ إسْمَاعِيلَ عَنْ أَبِي مَالِكٍ: النِّسَاءُ، وَالصِّبْيَانُ، قَالَ: وَقَالَ أَبِي: عَنْ سَلَمَةَ بْنِ نُبَيْطٍ عَنْ الضَّحَّاكِ، قَالَ: النِّسَاءُ، وَالصِّبْيَانُ.

وَبِهِ إلَى إسْمَاعِيلَ نا نَصْرُ بْنُ عَلِيٍّ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، قَالَ نَصْرٌ: نا أَبُو أَحْمَدَ عَنْ ابْنِ أَبِي غَنِيَّةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَقَالَ ابْنُ نُمَيْرٍ: نَا أَبِي نَا الْأَعْمَشُ عَنْ مُجَاهِدٍ، ثُمَّ اتَّفَقَ الْحَكَمُ، وَمُجَاهِدٌ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] قَالَا جَمِيعًا: النِّسَاءُ، وَالصِّبْيَانُ. وَبِهِ إلَى إسْمَاعِيلَ نا يَحْيَى بْنُ خَلَفٍ نا أَبُو عَاصِمٍ عَنْ عِيسَى نا ابْنُ نَجِيحٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا} [النساء: ٥] قَالَ: نَهَى الرِّجَالَ أَنْ يُعْطُوا النِّسَاءَ أَمْوَالَهُمْ، وَالسُّفَهَاءُ: مَنْ كُنَّ أَزْوَاجًا، أَوْ أُمَّهَاتٍ، أَوْ بَنَاتٍ.

وَبِهِ إلَى إسْمَاعِيلَ نا يَحْيَى بْنُ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ نا شَرِيكٌ عَنْ سَالِمٍ عَنْ سَعِيدٍ هُوَ ابْنُ جُبَيْرٍ {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ} [النساء: ٥] قَالَ: النِّسَاءُ. قَالَ أَبُو مُحَمَّدٍ: فَاتَّفَقَ الْحَسَنُ، وَالْحَكَمُ، وَمُعَاوِيَةُ بْنُ قُرَّةَ، وَمُجَاهِدٌ، وَالضَّحَّاكُ وَسَعِيدُ بْنُ جُبَيْرٍ، وَأَبُو مَالِكٍ،

[24] **Qur’an references (L21351):** Qur’an 4:5 (An-Nisa).
[25] **Qur’an references (L21352):** Qur’an 4:5 (An-Nisa).
[26] **Qur’an references (L21355):** Qur’an 4:5 (An-Nisa).

said: “Women.” Abu Muhammad said: Al-Hasan, Al-Hakam, Mu‘awiyah ibn Qurrah, Mujahid, Al-Dahhak, Sa‘id ibn Jubayr, Abu Malik, and Abdullah—either Ibn Mas‘ud (the more evident) or Ibn Abbas—agreed that women are considered lacking in judgment and that they are among those intended in this verse.[27]

وَعَبْدُ اللَّهِ - إمَّا ابْنُ مَسْعُودٍ وَهُوَ الْأَظْهَرُ، وَإِمَّا ابْنُ عَبَّاسٍ - عَلَى أَنَّ النِّسَاءَ سُفَهَاءُ، وَأَنَّهُنَّ مِنْ الْمُرَادِ فِي هَذِهِ الْآيَةِ.

L21357 Mujahid unequivocally declared that they are the mothers, wives, and daughters. Where, then, are those who vilify [others] in opposition to the majority? All present dissenters who disagree with us on this issue reject this opinion.

وَصَرَّحَ مُجَاهِدٌ بِأَنَّهُنَّ الْأُمَّهَاتُ وَالزَّوْجَاتُ، وَالْبَنَاتُ، فَأَيْنَ الْمُشَنِّعُونَ بِخِلَافِ الْجُمْهُورِ؟ وَجَمِيعُ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ لَنَا فِي هَذِهِ الْمَسْأَلَةِ مُخَالِفُونَ لِهَذَا الْقَوْلِ.

L21358 Abū Muḥammad said: As for children, yes; but as for women, no—because neither Quranic verse nor Sunnah has stated that they are prodigal. Rather, Allah the Exalted has mentioned them alongside men in righteous deeds, as He said: *“And the men who give charity and the women who give charity…”* [al-Aḥzāb 35] and in all other righteous deeds. Thus, their reliance on this verse is invalidated—and praise be to Allah, Lord of the worlds.[28]

قَالَ أَبُو مُحَمَّد: أَمَّا الصِّبْيَانُ فَنَعَمْ، وَأَمَّا النِّسَاءُ فَلَا، لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ، بِأَنَّهُنَّ سُفَهَاءُ، بَلْ قَدْ ذَكَرَهُنَّ اللَّهُ تَعَالَى مَعَ الرِّجَالِ فِي أَعْمَالِ الْبِرِّ فَقَالَ: {وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ} [الأحزاب: ٣٥] وَفِي سَائِرِ أَعْمَالِ الْبِرِّ، فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L21359–21360 As for the prohibition by Him, Exalted is He, of squandering, extravagance, and excessive giving to the fullest extent—this is the truth and our doctrine, while they oppose all of this wrongfully. They permit one who is not deceived in trade to give away his entire wealth either as charity, as a gift to a poet, or as a dower for a woman. Indeed, they even permit him to incur a heavy debt for her after transferring all his wealth to her. This constitutes the prohibited squandering, the prohibited extravagance, and the prohibited excessive giving until he becomes blameworthy and depleted. We, however, forbid all of this, invalidate it, and reject it.

وَأَمَّا تَحْرِيمُهُ تَعَالَى التَّبْذِيرَ، وَالْإِسْرَافَ، وَبَسْطَ الْيَدِ كُلَّ الْبَسْطِ فَحَقٌّ، وَهُوَ قَوْلُنَا، وَهُمْ مُخَالِفُونَ لِكُلِّ ذَلِكَ جَهْلًا، فَيُجِيزُونَ مِنْ الَّذِي لَا يُخْدَعُ فِي الْبَيْعِ إعْطَاءَ مَالِهِ كُلِّهِ إمَّا صَدَقَةً وَإِمَّا هِبَةً لِشَاعِرٍ، أَوْ فِي صَدَاقِ امْرَأَةٍ، نَعَمْ، حَتَّى إنَّهُ لَيَكْتُبُ لَهَا عَلَى نَفْسِهِ بَعْدَ خُرُوجِهِ لَهَا عَنْ جَمِيعِ مَالِهِ الدَّيْنَ الثَّقِيلَ، وَهَذَا هُوَ التَّبْذِيرُ الْمُحَرَّمُ، وَالْإِسْرَافُ الْمُحَرَّمُ، وَبَسْطُ الْيَدِ كُلَّ الْبَسْطِ حَتَّى يَقْعُدَ مَلُومًا مَحْسُورًا، وَنَحْنُ نَمْنَعُ مِنْ هَذَا كُلِّهِ وَنُبْطِلُهُ وَنَرُدُّهُ.

L21361 Then they prevent others from giving charity of a dirham during his lifetime, and permit one who frees his slave even if he owns a hundred slaves. They enforce the execution of their wills even if they are extensive after their death, yet restrict charity and emancipation involving small or large amounts

ثُمَّ يَمْنَعُونَ آخَرِينَ مِنْ الصَّدَقَةِ بِدِرْهَمٍ فِي حَيَاتِهِ، وَمَنْ عَتَقَ عَبْدَهُ وَإِنْ كَانَ لَهُ مِائَةُ عَبْدٍ، وَيُنْفِذُونَ وَصِيَّتَهُمْ وَإِنْ عَظُمَتْ بَعْدَ مَوْتِهِمْ وَيَحْجُرُونَ الصَّدَقَةَ، وَالْعِتْقَ بِالْيَسِيرِ وَالْكَثِيرِ، عَلَى مَنْ يُخْدَعُ فِي الْبَيْعِ، وَلَا يَحْجُرُونَ عَلَى مَنْ يَبْتَاعُ الْخُمُورَ، وَيُعْطِي أَجْرَ الْفِسْقِ، وَيُنْفِقُ عَلَى النُّدْمَانِ، وَفِي الْقِمَارِ، وَإِنْ أَكْثَرَ ذَلِكَ إذَا كَانَ بَصِيرًا بِكَسْبِ

[27] **Qur’an references (L21356):** Qur’an 4:5 (An-Nisa).
[28] **Qur’an references (L21358):** Qur’an 37:182 (As-Saffat); Qur’an 33:35 (Al-Ahzab).

upon those deceived in transactions. They impose no restrictions on those who purchase intoxicants, pay wages for immorality, spend on companions, or engage in gambling—even if done extensively—provided they are fully aware of acquiring wealth through oppression or lawful means, controlling it through lawful and unlawful channels while withholding Zakāh and charity. These are contradictions of utmost absurdity, with evident error lacking any rational basis. At times, they freely allow the total reckless waste of wealth in falsehood; at others, they exercise excessive caution by rejecting charity of a dirham or the emancipation of a single soul, though neither causes harm to the estate.

الْمَالِ مِنْ ظُلْمٍ وَغَيْرِ ظُلْمٍ ضَابِطًا لَهُ مِنْ حَقٍّ وَغَيْرِ حَقٍّ، وَمَانِعًا مِنْ زَكَاةٍ وَصَدَقَةٍ، وَهَذِهِ تَنَاقُضَاتٌ فِي غَايَةِ السَّمَاجَةِ، وَظُهُورُ الْخَطَأِ بِغَيْرِ وَجْهٍ يُعْرَفُ، فَمَرَّةً يُطْلِقُونَ إتْلَافَ الْمَالِ جُمْلَةً فِي الْبَاطِلِ، وَمَرَّةً يَحْتَاطُونَ فَيَرُدُّونَ صَدَقَةَ دِرْهَمٍ، وَعِتْقَ رَقَبَةٍ لَا ضَرَرَ عَلَى الْمَالِ فِيهِمَا.

L21362 At times, they permit deception in sales of thousands and do not disapprove of it, saying, "A sale is deception." At other times, they invalidate a valid sale containing no deception out of fear that someone might be deceived again. This is a contradiction akin to the preceding one, and constitutes upholding what is irrational—neither attested by the Quran, nor the Sunnah, nor rational basis, nor sound opinion.

وَمَرَّةً يُجِيزُونَ الْخَدِيعَةَ فِي الْأُلُوفِ فِي الْبَيْعِ وَلَا يَكْرَهُونَهَا وَيَقُولُونَ: الْبَيْعُ خُدْعَةٌ، وَمَرَّةً يُبْطِلُونَ الْبَيْعَ الصَّحِيحَ الَّذِي لَا خَدِيعَةَ فِيهِ خَوْفَ أَنْ يُخْدَعَ مَرَّةً أُخْرَى، وَهَذَا فِي التَّنَاقُضِ كَالَّذِي قَبْلَهُ، وَفِي الْقَوْلِ بِمَا لَا يُعْقَلُ وَلَا يَشْهَدُ لَهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، وَلَا رَأْيٌ سَدِيدٌ.

L21363 As for us, we reject deception and fraud wherever they occur—whether rare or frequent—and from whomever they occur. We permit valid sales free of deception wherever found, and from whomever found. We reject every gift given for wrongful purposes—whether small or large—and validate every gift given rightfully—whether small or large. This is what the revealed texts have established, what sound intellects testify to, and what the correct opinions they adhere to confirm. By these principles, they judge according to the religion of Allah, the Exalted. All praise is to Allah, Lord of the worlds.

وَأَمَّا نَحْنُ فَنَرُدُّ الْخَدِيعَةَ وَالْغِشَّ حَيْثُ وُجِدَا، وَمِمَّنْ وُجِدَا - قَلَّا أَمْ كَثُرَا - وَنُجِيزُ الْبَيْعَ الصَّحِيحَ الَّذِي لَا خَدِيعَةَ فِيهِ حَيْثُ وُجِدَ، وَمِمَّنْ وُجِدَ، وَنَرُدُّ كُلَّ عَطِيَّةٍ فِي بَاطِلٍ - قَلَّتْ أَمْ كَثُرَتْ - وَنُمْضِي كُلَّ عَطِيَّةٍ فِي حَقٍّ - قَلَّتْ أَمْ كَثُرَتْ - وَبِهَذَا جَاءَتْ النُّصُوصُ، وَلَهُ شَهِدَتْ الْعُقُولُ، وَالْآرَاءُ الصِّحَاحُ الَّتِي إلَيْهِمَا يَنْتَمُونَ، وَبِهَا فِي دِينِ اللَّهِ تَعَالَى يَقْضُونَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L21364 Abu Muhammad said: With the help of Allah the Exalted, we interpret squandering, extravagance, and stretching one's hand to the utmost limit of excess—all that Allah the Exalted has forbidden and rebuked—unlike their interpretation, which they neither understand nor understand at all. There is no might nor power except with Allah, the Most High, the Almighty.

قَالَ أَبُو مُحَمَّد: وَنَحْنُ نُفَسِّرُ بِعَوْنِ اللَّهِ تَعَالَى التَّبْذِيرَ، وَالْإِسْرَافَ، وَبَسْطَ الْيَدِ كُلَّ الْبَسْطِ الَّتِي حَرَّمَ اللَّهُ تَعَالَى وَزَجَرَ عَنْهَا، لَا كَتَفْسِيرِهِمْ الَّذِي لَا يَفْهَمُونَهُ، وَلَا يَفْهَمُونَهُ أَصْلًا، وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ الْعَلِيِّ الْعَظِيمِ.

L21365–21367 Ali said: These prohibited actions—their entire meaning is one, and it en-

compasses that every expenditure Allah the Exalted has permitted and enjoined—whether abundant or modest—is neither wastefulness, nor squandering, nor complete extravagance in the fullest sense, because it... Exalted is He. He does not permit what He has prohibited at the same time. There is no doubt that what He permits is entirely distinct from what He forbids—and this is precisely our doctrine, and all praise is due to Allah.

قَالَ عَلِيٌّ: هَذِهِ الْأَعْمَالُ الْمُحَرَّمَةُ مَعْنَاهَا كُلُّهَا وَاحِدٌ وَيَجْمَعُهُ أَنَّ كُلَّ نَفَقَةٍ أَبَاحَهَا اللَّهُ تَعَالَى وَأَمَرَ بِهَا - كَثُرَتْ أَمْ قَلَّتْ - فَلَيْسَتْ إسْرَافًا وَلَا تَبْذِيرًا وَلَا بَسْطَ الْيَدِ كُلَّ الْبَسْطِ؛ لِأَنَّهُ تَعَالَى لَا يُحِلُّ مَا حَرَّمَ مَعًا، فَلَا شَكَّ فِي أَنَّ الَّذِي أَبَاحَ هُوَ غَيْرُ الَّذِي نَهَى عَنْهُ، وَهُوَ نَفْسُ قَوْلِنَا - وَلِلَّهِ الْحَمْدُ.

L21368 Every expenditure that Allah the Exalted has prohibited—whether small or large—is extravagance, squandering, and excessive spending in full measure. For there is no doubt that what Allah has explicitly prohibited in detail corresponds to what He prohibited in general terms. Praise be to Allah abundantly, and this is supported by authentic reports—it has been transmitted to us through the chain of Ismail ibn Ishaq, from Muhammad ibn Kathir, from Sulayman ibn Kathir, from Husayn, from Ikrimah, from Ibn Abbas, who said regarding the squanderer: "He is the one who spends unlawfully."

وَكُلُّ نَفَقَةٍ نَهَى اللَّهُ تَعَالَى عَنْهَا - قَلَّتْ أَمْ كَثُرَتْ - فَهِيَ الْإِسْرَافُ وَالتَّبْذِيرُ وَبَسْطُ الْيَدِ كُلَّ الْبَسْطِ، لِأَنَّهُ لَا شَكَّ فِي أَنَّ الَّذِي نَهَى اللَّهُ تَعَالَى عَنْهُ مُفَسَّرًا هُوَ الَّذِي نَهَى عَنْهُ مُجْمَلًا - وَلِلَّهِ الْحَمْدُ كَثِيرًا، وَبِهَذَا جَاءَتْ الْآثَارُ -: رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نا مُحَمَّدُ بْنُ كَثِيرٍ أَنَا سُلَيْمَانُ بْنُ كَثِيرٍ عَنْ حُصَيْنٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي الْمُبَذِّرِ: هُوَ الَّذِي يُنْفِقُ فِي غَيْرِ حَقٍّ.

L21369 And from the chain of Yahya ibn Sa'id al-Qattan, from Sufyan al-Thawri, from Abu'l-'Ubaydayn, from Ibn Mas'ud regarding the saying of Allah, the Exalted: {And do not squander extravagantly} [Al-Isra: 26], he said: Spending in ways contrary to its rightful purpose.[29]

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الْعُبَيْدَيْنِ عَنْ ابْنِ مَسْعُودٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تُبَذِّرْ تَبْذِيرًا} [الإسراء: ٢٦] قَالَ: الْإِنْفَاقُ فِي غَيْرِ حَقِّهِ.

L21370 And through the chain of Ibn Wahb, Khalid ibn Humayd reported to me from 'Uqayl ibn Khalid from al-Zuhri that he would comment on Allah's words: {Do not make your hand tied to your neck, nor stretch it out completely} [Al-Isra: 29], saying: Do not withhold it from a right, nor spend it in falsehood.[30]

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي خَالِدُ بْنُ حُمَيْدٍ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ الزُّهْرِيِّ أَنَّهُ كَانَ يَقُولُ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ} [الإسراء: ٢٩] قَالَ: لَا تَمْنَعْهُ مِنْ حَقٍّ وَلَا تُنْفِقْهُ فِي بَاطِلٍ.

L21371 Al-Zuhri said: Similarly, the words of Allah, the Most High – "And those who, when they spend, are neither extravagant nor miserly" [Al-Furqan: 67].[31]

قَالَ الزُّهْرِيُّ: وَكَذَلِكَ قَوْله تَعَالَى: {وَالَّذِينَ إِذَا أَنْفَقُوا لَمْ يُسْرِفُوا وَلَمْ يَقْتُرُوا} [الفرقان: ٦٧] .

L21372 Abu Muhammad said: It has been confirmed that these verses are the explicit

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ هَذِهِ الْآيَاتِ هِيَ نَصُّ قَوْلِنَا وَأَنَّهُمْ مُخَالِفُونَ لَهَا أَوْضَحَ خِلَافٍ.

[29] **Qur'an references (L21369):** Qur'an 17:26 (Al-Isra).
[30] **Qur'an references (L21370):** Qur'an 17:29 (Al-Isra).
[31] **Qur'an references (L21371):** Qur'an 25:67 (Al-Furqan).

text of our position, and that they contradict them in the clearest opposition.

L21373 Ali said: Every purchase for food, clothing, or a ride, every act of manumission, charity, or gift that preserves sufficiency is permissible—and the permissible is that which avoids wastefulness, extravagance, or excessive liberality.

L21374–21376 The lawful may not be rejected. Whatever does not maintain sufficiency from that which one cannot do without constitutes extravagance and squandering. Total lavish expenditure is entirely null and void for whoever commits it and must be rejected. Likewise, any spending on prohibited matters – such as alcohol, payment for immoral acts, gambling, or similar things, whether little or much – is null and void. And with Allah, the Exalted, lies all success. Thus, everything they clung to from the Quran is rendered void from them. As for the prohibition of the Messenger of Allah—peace and blessings be upon him—against squandering wealth, it is correct and our doctrine. Squandering wealth means pouring it onto the road or spending it on unlawful matters, as we stated regarding wastefulness, extravagance, and reckless open-handedness.

L21377 The proof of that is the statement of the Messenger of Allah (peace be upon him) which we previously mentioned concerning sharecropping: "Whoever owns land should cultivate it himself or let his brother cultivate it. If he refuses, then let him retain his land." The Prophet (peace be upon him) did not consider leaving the land unworked to be a squandering of wealth if its owner has no need for that.

L21378 We know of no disagreement that it is permissible for one who has sufficient provision for himself and his dependents to abandon seeking to increase wealth through acquisition, and that his turning at that time to deeds for the Hereafter is superior to his immersion in pursuing additional wealth—thus, the corruption of their argument is manifest in every aspect.

L21379 The most astonishing thing is their statement: "Indeed, whoever fails to make his wealth fruitful is financially incompetent," yet they permit one who wrongfully consumes people's wealth through usurpation, sale, or any feasible means. Then when claimants demand their rights and seize what is found

قَالَ عَلِيٌّ: كُلُّ شِرَاءٍ لِمَأْكُولٍ، أَوْ مَلْبُوسٍ، أَوْ مَرْكُوبٍ، وَكُلُّ عِتْقٍ، وَصَدَقَةٍ، وَهِبَةٍ، أَبْقَى غِنًى فَهُوَ حَلَالٌ -. وَالْحَلَالُ هُوَ غَيْرُ التَّبْذِيرِ، وَالْإِسْرَافِ، وَبَسْطِ الْيَدِ كُلَّ الْبَسْطِ.

وَالْحَلَالُ لَا يَجُوزُ رَدُّهُ وَكُلُّ مَا لَمْ يُبْقِ غِنًى مِنْ كُلِّ ذَلِكَ مِمَّا لَيْسَ بِالْمَرْءِ عَنْهُ غِنًى فَهُوَ الْإِسْرَافُ وَالتَّبْذِيرُ، وَبَسْطُ الْيَدِ كُلَّ الْبَسْطِ فَهُوَ كُلُّهُ بَاطِلٌ مِمَّنْ فَعَلَهُ مَرْدُودٌ، وَهَكَذَا كُلُّ نَفَقَةٍ فِي مُحَرَّمٍ كَالْخَمْرِ، وَأُجْرَةِ الْفِسْقِ، وَالْقِمَارِ، وَغَيْرِ ذَلِكَ - قَلَّ أَوْ كَثُرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. فَبَطَلَ عَنْهُمْ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ الْقُرْآنِ، وَأَمَّا نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ فَحَقٌّ وَهُوَ قَوْلُنَا، وَإِضَاعَتُهُ هُوَ صَبُّهُ فِي الطَّرِيقِ، أَوْ إنْفَاقُهُ فِي مُحَرَّمٍ كَمَا قُلْنَا فِي التَّبْذِيرِ، وَالْإِسْرَافِ، وَبَسْطِ الْيَدِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَاهُ آنِفًا فِي " الْمُزَارَعَةِ «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ فَلْيُزْرِعْهَا أَخَاهُ فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ» فَلَمْ يَجْعَلْ - عَلَيْهِ السَّلَامُ - تَرْكَ الْأَرْضِ لَا تَعْمُرُ إضَاعَةً لِلْمَالِ إذَا لَمْ يَحْتَجْ صَاحِبُهَا إلَى ذَلِكَ.

وَمَا نَعْلَمُ خِلَافًا فِي أَنَّ تَرْكَ التَّزَيُّدِ مِنْ كَسْبِ الْمَالِ لِمَنْ مَعَهُ الْكَفَافُ لَهُ وَلِعِيَالِهِ مُبَاحٌ، وَأَنَّ إقْبَالَهُ حِينَئِذٍ عَلَى الْعَمَلِ لِلْآخِرَةِ أَفْضَلُ مِنْ إكْبَابِهِ عَلَى طَلَبِ التَّزَيُّدِ مِنْ الْمَالِ - فَظَهَرَ فَسَادُ قَوْلِهِمْ مِنْ كُلِّ وَجْهٍ.

وَأَعْجَبُ شَيْءٍ قَوْلُهُمْ: إنَّ مَنْ لَمْ يُثَمِّرْ مَالَهُ فَهُوَ سَفِيهٌ، ثُمَّ أَبَاحُوا لِمَنْ تَعَدَّى فَأَكَلَ أَمْوَالَ النَّاسِ ظُلْمًا أَوْ غَصْبًا، وَبِالْبَيْعِ، وَبِأَيِّ وَجْهٍ أَمْكَنَهُ، فَلَمَّا طَلَبَ بِالْحُقُوقِ، وَأَخَذَ مَا

for him—or if nothing is found—he must refrain from earning anything to equitably fulfill the rights of those entitled before his own. This opposes realities: at times they forbid him from charity, manumission, or sale for lacking wealth management skills; at others, they permit him to leave his wealth unproductive even when harming those entitled to rights against him. What contradictions!

وُجِدَ لَهُ، أَوْ لَمْ يُوجَدْ لَهُ شَيْءٌ أَنْ يَقْعُدَ مَكَانَهُ فَلَا يَتَكَسَّبُ شَيْئًا يُنْصِفُ مِنْهُ أَهْلَ الْحُقُوقِ قَبْلَهُ - وَهَذِهِ ضِدُّ الْحَقَائِقِ، مَرَّةً يَمْنَعُونَهُ مِنْ الصَّدَقَةِ، وَالْعِتْقِ، وَالْبَيْعِ، لِأَنَّهُ لَا يُحْسِنُ تَثْمِيرَ مَالِهِ، وَمَرَّةً يُطْلِقُونَ لَهُ أَنْ لَا يُثَمِّرَ مَالَهُ وَإِنْ أَضَرَّ ذَلِكَ بِأَهْلِ الْحُقُوقِ قِبَلَهُ، فَوَاخِلَافَاهُ.

L21380 It was narrated to us through the chain of Muḥammad ibn al-Muthannā: from Yaʿlā ibn ʿUbayd al-Ṭanāfisī, from Muḥammad ibn Sūqah, from Ibn Saʿīd ibn Jubayr, who said: My father was asked about squandering wealth, and he replied: "It is when Allah the Exalted grants you wealth and you spend it on what He has prohibited for you."

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا يَعْلَى بْنُ عُبَيْدٍ الطَّنَافِسِيُّ نا مُحَمَّدُ بْنُ سُوقَةَ نا ابْنُ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: سُئِلَ أَبِي عَنْ إضَاعَةِ الْمَالِ؟ فَقَالَ: أَنْ يَرْزُقَك اللَّهُ تَعَالَى مَالًا فَتُنْفِقَهُ فِيمَا حُرِّمَ عَلَيْك.

L21381 Abu Muhammad said: The sons of Saʿīd ibn Jubayr are three: ʿAbdullāh, ʿAbd al-Malik, and Isḥāq. All of them are well-known, trustworthy narrators. Whichever one it was, he is trustworthy.

قَالَ أَبُو مُحَمَّدٍ: أَوْلَادُ سَعِيدِ بْنِ جُبَيْرٍ هُمْ ثَلَاثَةٌ، عَبْدُ اللَّهِ، وَعَبْدُ الْمَلِكِ، وَإِسْحَاقُ: كُلُّهُمْ ثِقَاتٌ مَشَاهِيرُ، فَأَيُّهُمْ كَانَ فَهُوَ ثِقَةٌ -.

L21382 It has been narrated to us from Mālik that wasteful spending is expenditure on acts of disobedience. Thus, it has become evident that this narration aligns with our opinion and contradicts theirs.

وَقَدْ رُوِّينَا عَنْ مَالِكٍ: أَنَّ الْإِسْرَافَ هُوَ النَّفَقَةُ فِي الْمَعَاصِي - فَظَهَرَ أَنَّ هَذَا الْخَبَرَ هُوَ قَوْلُنَا، وَأَنَّهُ مُخَالِفٌ لِقَوْلِهِمْ.

L21383 As for the other report: "Any man under whose care an orphan resides, who prevents the orphan from marrying, and the orphan commits adultery—the sin is shared between them."

وَأَمَّا الْخَبَرُ الْآخَرُ «أَيُّمَا رَجُلٍ كَانَ عِنْدَهُ يَتِيمٌ فَحَالَ بَيْنَهُ وَبَيْنَ أَنْ يَتَزَوَّجَ فَزَنَى فَالْإِثْمُ بَيْنَهُمَا» .

L21384–21386 If it were valid, it would constitute the greatest argument against them and the strongest opposition to their claim, for it contains nothing but a prohibition against the guardian interposing between the orphan and marriage under the severest threat. This is their view, because they... They command the guardian of the orphan to intervene between him and marriage, and they invalidate his marriage if he marries without his guardian's permission, so that the guardian becomes the one who gives him in marriage to whomever the guardian desires, not to whomever the one under guardianship desires.

فَلَوْ صَحَّ لَكَانَ أَعْظَمَ حُجَّةً عَلَيْهِمْ، وَأَشَدَّ خِلَافًا لِقَوْلِهِمْ؛ لِأَنَّهُ لَيْسَ فِيهِ إلَّا نَهْيُ الْوَلِيِّ عَنْ أَنْ يَحُولَ بَيْنَ الْيَتِيمِ وَبَيْنَ التَّزْوِيجِ بِأَشَدِّ الْوَعِيدِ، وَهَذَا هُوَ قَوْلُهُمْ؛ لِأَنَّهُمْ يَأْمُرُونَ وَلِيَّ الْيَتِيمِ بِأَنْ يَحُولَ بَيْنَهُ وَبَيْنَ التَّزْوِيجِ وَيَرُدُّونَ زَوَاجَهُ إنْ تَزَوَّجَ بِغَيْرِ إذْنِ وَلِيِّهِ حَتَّى يَكُونَ وَلِيُّهُ هُوَ الَّذِي يُزَوِّجُهُ مِمَّنْ أَرَادَ الْوَلِيُّ، لَا مِمَّنْ أَرَادَ الْمُولَى عَلَيْهِ.

L21387 What could be more astonishing than a people invoking as proof what stands

as a greater proof against them? Thus, it became invalid for them to have any attachment to anything from the Quran, anything from the Sunnahs, or any narration whatsoever. It became evident that the Quran and the Sunnahs contradict their assertions in this matter.

فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ احْتِجَاجِ قَوْمٍ بِمَا هُوَ أَعْظَمُ حُجَّةً عَلَيْهِمْ. فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ بِشَيْءٍ مِنْ الْقُرْآنِ، أَوْ بِشَيْءٍ مِنْ السُّنَنِ، أَوْ بِرِوَايَةٍ أَصْلًا وَلَاحَ أَنَّ الْقُرْآنَ، وَالسُّنَنَ مُخَالِفَانِ لِأَقْوَالِهِمْ هَهُنَا.

L21388 As for the narrations from the Companions—may Allah be pleased with them—none of them constitute valid evidence for their position; rather, these narrations undermine it. Regarding the report from Uthman in his statement to Ali: "Will you not impose legal restraint on your nephew and curb him? He purchased a salt flat belonging to the family of so-and-so for sixty thousand [units]—I wouldn't take it even for my sandal!" There is no doubt that Ibn Jafar was never placed under legal restraint. If legal restraint were obligatory, why did Uthman neglect to impose it, thereby treating it as a mere personal view? This confirms he did not consider legal restraint obligatory. Even if Ali or Uthman had viewed it as obligatory, they would not have been permitted to forgo its implementation. This is an incomplete narration we have transmitted in full through Hammad ibn Zayd's chain from Ayyub al-Sakhtiyani, from Muhammad ibn Sirin: Uthman said to Ali, "Curb your nephew. He purchased the salt flat of the family of so-and-so for sixty thousand [units]—I wouldn't take it even for my sandal!" then he retracted. Abdullah ibn Jafar divided it into eight shares, deployed laborers, and the land became productive. When Uthman passed by it, he asked, "To whom does this belong?" They replied, "Abdullah ibn Jafar." He said, "O nephew, grant me two shares." Abdullah responded, "No, by Allah—not until you bring those before whom you denounced me as imprudent to plead with me!" Uthman complied, whereupon Abdullah said, "By Allah, I will not sell you two shares for less than one hundred twenty thousand!" Uthman replied, "I have taken them."

وَأَمَّا الرِّوَايَاتُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكُلُّهَا لَا حُجَّةَ لَهُمْ فِيهَا، بَلْ هِيَ عَلَيْهِمْ -: أَمَّا الرِّوَايَةُ عَنْ عُثْمَانَ مِنْ قَوْلِهِ لِعَلِيٍّ: أَلَا تَحْجُرُ عَلَى ابْنِ أَخِيك وَتَأْخُذُ عَلَى يَدِهِ اشْتَرَى سَبَخَةً بِسِتِّينَ أَلْفًا مَا أُحِبُّ أَنَّهَا لِي بِنَعْلِي؟ فَلَا شَكَّ فِي أَنَّ ابْنَ جَعْفَرٍ لَمْ يُحْجَرْ عَلَيْهِ قَطُّ، فَإِنْ كَانَ الْحَجْرُ وَاجِبًا فَلِمَ تَرَكَهُ عُثْمَانُ وَلَمْ يَحْجُرْ عَلَيْهِ، حَتَّى يَخْرُجَ ذَلِكَ مَخْرَجَ الرَّأْيِ يَرَاهُ؟ فَصَحَّ أَنَّهُ لَمْ يَرَ الْحَجْرَ وَاجِبًا وَلَوْ رَآهُ عَلِيٌّ، أَوْ عُثْمَانُ وَاجِبًا، لَمَا حَلَّ لَهُمَا أَنْ لَا يُمْضِيَاهُ - وَهَذَا خَبَرٌ نَاقِصٌ رُوِّينَاهُ بِتَمَامِهِ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ عُثْمَانَ قَالَ لِعَلِيٍّ: خُذْ عَلَى يَدِ ابْنِ أَخِيك اشْتَرَى سَبَخَةَ آلِ فُلَانٍ بِسِتِّينَ أَلْفًا، مَا أُحِبُّ أَنَّهَا لِي بِنَعْلِي فَأَقَلَّ، قَالَ: فَجَزَّأَهَا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ ثَمَانِيَةَ أَجْزَاءٍ، وَأَلْقَى فِيهَا الْعُمَّالَ فَأَقْبَلَتْ الْأَرْضُ، فَمَرَّ بِهَا عُثْمَانُ فَقَالَ: لِمَنْ هَذِهِ؟ قَالُوا: لِعَبْدِ اللَّهِ بْنِ جَعْفَرٍ فَقَالَ: يَا ابْنَ أَخِي وَلِّنِي جُزْأَيْنِ مِنْهَا؟ فَقَالَ عَبْدُ اللَّهِ بْنُ جَعْفَرٍ: لَا وَاَللَّهِ حَتَّى تَأْتِيَنِي بِالَّذِينَ سَفَّهْتَنِي عِنْدَهُمْ فَيَطْلُبُونَ إلَيَّ؟ فَفَعَلَ، فَقَالَ: وَاَللَّهِ لَا أَنْقُصُك جُزْأَيْنِ مِنْهَا مِنْ مِائَةٍ وَعِشْرِينَ أَلْفًا؟ قَالَ عُثْمَانُ: قَدْ أَخَذْتُهُمَا -.

L21389 Thus, it became evident that this statement was an opinion of Uthman which he had recanted, because he did not restrict it at all from his prohibition of the purchase until the land yielded produce.

فَصَحَّ أَنَّ ذَلِكَ الْقَوْلَ كَانَ مِنْ عُثْمَانَ رَأْيٌ قَدْ رَجَعَ عَنْهُ؛ لِأَنَّهُ لَمْ يَحْجُرْ عَلَيْهِ أَصْلًا مَا بَيْنَ إنْكَارِهِ لِلشِّرَاءِ إلَى أَنْ أَقْبَلَتْ الْأَرْضُ.

L21390–21392 As for the other narration reported from Ali: he informed Uthman that

he was imposing interdiction on Abdullah ibn Ja'far regarding a sale he had made. Az-Zubayr then said to him: "I am his partner in this." This is a narration we vehemently reject because this sale must either necessitate interdiction over the one involved or not necessitate it. If it necessitates interdiction, then interdiction becomes obligatory on Az-Zubayr just as it is on Abdullah. If it does not necessitate interdiction over Az-Zubayr, then it does not necessitate interdiction over Abdullah or anyone else. Allah protected Uthman—may Allah be pleased with him—from neglecting any obligatory right [text incomplete]. Because Az-Zubayr was on the path, and Allah protected Az-Zubayr - may Allah be pleased with him - from intervening between the truth and its implementation, and Allah protected Ali - may Allah be pleased with him - from speaking about what was not clear to him.

وَأَمَّا الرِّوَايَةُ الْأُخْرَى عَنْ عَلِيٍّ: أَنَّهُ ذَكَرَ لِعُثْمَانَ أَنَّهُ يَحْجُرُ عَلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ فِي بَيْعٍ ابْتَاعَهُ فَقَالَ لَهُ الزُّبَيْرُ: أَنَا شَرِيكُهُ فِيهِ، فَرِوَايَةٌ نُنْكِرُهَا جِدًّا، وَلَا يَخْلُو ذَلِكَ الْبَيْعُ مِنْ أَنْ يَكُونَ يُوجِبُ الْحَجْرَ عَلَى صَاحِبِهِ أَوْ لَا يُوجِبُهُ، فَإِنْ كَانَ يُوجِبُ الْحَجْرَ، فَالْحَجْرُ وَاجِبٌ عَلَى الزُّبَيْرِ، كَمَا هُوَ عَلَى عَبْدِ اللَّهِ، وَإِنْ كَانَ لَا يُوجِبُ الْحَجْرَ عَلَى الزُّبَيْرِ فَمَا يُوجِبُهُ عَلَى عَبْدِ اللَّهِ وَلَا عَلَى غَيْرِهِ، وَقَدْ أَعَاذَ اللَّهُ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنْ يَكُونَ يَتْرُكُ حَقًّا وَاجِبًا مِنْ أَجْلِ أَنَّ الزُّبَيْرَ فِي الطَّرِيقِ، وَقَدْ أَعَاذَ اللَّهُ الزُّبَيْرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنْ يَحُولَ بَيْنَ الْحَقِّ وَبَيْنَ إنْفَاذِهِ، وَقَدْ أَعَاذَ اللَّهُ عَلِيًّا - رَضِيَ اللَّهُ عَنْهُ - فِي أَنْ يَتَكَلَّمَ فِيمَا لَمْ يَتَبَيَّنْ لَهُ.

L21393 If it is said: Uthman only refrained from imposing interdiction upon Abdullah because of Az-Zubayr, since he knew Az-Zubayr would not be deceived in the sale, thus he knew through Az-Zubayr's involvement that this was a sale where interdiction does not apply in such cases? We respond: Indeed, Ali proceeded in error when he sought to impose interdiction in a sale where interdiction is not permissible. All this confirms that this was an opinion from those among them who held it, yet Abdullah ibn Ja'far opposed them and did not deem interdiction upon himself applicable in that matter, though he was a Companion. Thus, their reliance on these two narrations is nullified.

فَإِنْ قِيلَ: إنَّمَا تَرَكَ عُثْمَانُ الْحَجْرَ عَلَى عَبْدِ اللَّهِ مِنْ أَجْلِ الزُّبَيْرِ، لِأَنَّهُ عَلِمَ أَنَّ الزُّبَيْرَ لَا يُخْدَعُ فِي الْبَيْعِ فَعَلِمَ بِدُخُولِ الزُّبَيْرِ فِيهِ أَنَّهُ بَيْعٌ لَا يَحْجُرُ فِي مِثْلِهِ؟ قُلْنَا: فَقَدْ مَشَى عَلِيٌّ فِي خَطَأٍ إذَا أَرَادَ الْحَجْرَ فِي بَيْعٍ لَا يَجُوزُ الْحَجْرُ فِيهِ، وَصَحَّ بِهَذَا كُلِّهِ أَنَّهُ رَأْيُ مَنْ رَآهُ مِنْهُمْ، وَقَدْ خَالَفَهُمْ عَبْدُ اللَّهِ بْنُ جَعْفَرٍ فَلَمْ يَرَ الْحَجْرَ عَلَى نَفْسِهِ فِي ذَلِكَ، وَهُوَ صَاحِبٌ مِنْ الصَّحَابَةِ. فَبَطَلَ تَعَلُّقُهُمْ بِهَذَيْنِ الْخَبَرَيْنِ.

L21394 As for the narration concerning Ibn al-Zubayr, it constitutes an enduring calamity. We do not comprehend how a Muslim could legitimize citing as proof a sin, oversight, or lapse committed by Ibn al-Zubayr—though Allah the Exalted forgives him—when someone like him, being among the youngest Companions, presumed to impose interdiction over the Mother of the Believers, whom Allah the Exalted extolled with the ultimate praise in the Quranic text, while he scarcely merits a share compared to her before Allah the Exalted. This is a report we transmitted through Abd al-Razzaq's chain from Ma'mar, from al-Zuhri, from Awf ibn al-Harith—nephew of Aisha, Mother of the Believers—through his mother (who was the sister of Aisha), that Aisha,

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ الزُّبَيْرِ فَطَامَّةُ الْأَبَدِ، لَا نَدْرِي كَيْفَ اسْتَحَلَّ مُسْلِمٌ أَنْ يَحْتَجَّ بِخَطِيئَةٍ، وَوَهْلَةٍ، وَزَلَّةٍ كَانَتْ مِنْ ابْنِ الزُّبَيْرِ وَاَللَّهُ تَعَالَى يَغْفِرُ لَهُ إذْ أَرَادَ مِثْلُهُ فِي كَوْنِهِ مِنْ أَصَاغِرِ الصَّحَابَةِ أَنْ يَحْجُرَ عَلَى مِثْلِ أُمِّ الْمُؤْمِنِينَ الَّتِي أَثْنَى اللَّهُ تَعَالَى عَلَيْهَا أَعْظَمَ الثَّنَاءِ فِي نَصِّ الْقُرْآنِ وَهُوَ لَا يَكَادُ يَتَجَزَّأُ مِنْهَا فِي الْفَضْلِ عِنْدَ اللَّهِ تَعَالَى. وَهَذَا خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عَوْفِ بْنِ الْحَارِثِ ابْنِ أَخِي

عَائِشَةَ أُمِّ الْمُؤْمِنِينَ لِأُمِّهَا أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ حَدَّثَتْ " أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ قَالَ فِي بَيْعٍ أَوْ عَطَاءٍ أَعْطَتْهُ: وَاللَّهِ لَتَنْتَهِيَنَّ عَائِشَةُ أَوْ لَأَحْجُرَنَّ عَلَيْهَا؟ فَقَالَتْ عَائِشَةُ: أَوْ قَالَ هَذَا؟ قَالُوا: نَعَمْ، فَقَالَتْ عَائِشَةُ: هُوَ لِلَّهِ عَلَيَّ نَذْرٌ أَنْ لَا أُكَلِّمَ ابْنَ الزُّبَيْرِ كَلِمَةً أَبَدًا - ثُمَّ ذَكَرَ الْحَدِيثَ بِطُولِهِ وَتَشَفُّعَهُ إِلَيْهَا، وَبُكَاهُ لِعَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ بْنِ عَبْدِ يَغُوثَ، وَالْمِسْوَرِ بْنِ مَخْرَمَةَ الزُّهْرِيَّيْنِ حَتَّى كَلَّمَتْهُ وَأَعْتَقَتْ فِي نَذْرِهَا أَنْ لَا تُكَلِّمَهُ أَرْبَعِينَ رَقَبَةً.

قَالَ أَبُو مُحَمَّد: قَدْ بَلَغَتْ بِهِ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - الْإِنْكَارَ حَيْثُ بَلَغَتْهُ فَلَا يَخْلُو الْأَمْرُ مِنْ أَنْ يَكُونَ ابْنُ الزُّبَيْرِ أَخْطَأَ وَأَصَابَتْ هِيَ، وَهُوَ كَذَلِكَ بِلَا شَكٍّ، فَلَا يُحْتَجُّ بِقَوْلٍ أَخْطَأَ فِيهِ صَاحِبُهُ - أَوْ يَكُونُ ابْنُ الزُّبَيْرِ أَصَابَ وَأَخْطَأَتْ هِيَ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، وَمِنْ أَنْ تَكُونَ أُمُّ الْمُؤْمِنِينَ تُوصَفُ بِسَفَهٍ وَتَسْتَحِقُّ أَنْ يُحْجَرَ عَلَيْهَا - نَعُوذُ بِاَللَّهِ مِنْ هَذَا الْقَوْلِ.

فَصَحَّ أَنَّ ابْنَ الزُّبَيْرِ أَخْطَأَ فِي قَوْلِهِ، وَعَلَى كُلِّ حَالٍ فَقَدْ اخْتَلَفَتْ الصَّحَابَةُ فِي ذَلِكَ، وَإِذَا اخْتَلَفُوا فَالْوَاجِبُ الرُّجُوعُ إلَى الْقُرْآنِ، وَالسُّنَّةِ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَفِي الْقُرْآنِ، وَالسُّنَّةِ: إبَاحَةُ الْبَيْعِ الَّذِي لَا خَدِيعَةَ فِيهِ وَلَا غِشَّ، وَالْحَضُّ عَلَى الصَّدَقَةِ، وَالْعِتْقِ: فِيمَا أَبْقَى غِنًى وَالْمَنْعُ مِمَّا عَدَا ذَلِكَ - فَوَاجِبٌ إمْضَاءُ ذَلِكَ كُلِّهِ مِنْ كُلِّ مَنْ فَعَلَهُ؛ لِأَنَّ الْكُلَّ مَنْدُوبٌ إلَى ذَلِكَ، مُبَاحٌ لَهُ ذَلِكَ، وَوَاجِبٌ رَدُّ كُلِّ بَيْعٍ فِيهِ خَدِيعَةٌ وَغِشٌّ، وَكُلِّ صَدَقَةٍ وَعَطِيَّةٍ لَمْ يَبْقَ بَعْدَهُمَا غِنًى مِنْ كُلِّ مَنْ فَعَلَهُ؛ لِأَنَّ الْكُلَّ مَنْهِيٌّ عَنْ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Mother of the Believers, recounted: "Abdullah ibn al-Zubayr declared regarding a sale or gift she had granted: 'By Allah, Aisha must desist, or I shall legally restrict her!' Aisha responded: 'Did he truly utter this?' They affirmed. Thereupon Aisha declared: 'I vow to Allah never to speak a single word to Ibn al-Zubayr ever.'" The narration then mentions the hadith in full, detailing his intercession to her and his weeping before Abd al-Rahman ibn al-Aswad ibn Abd Yaghuth and al-Miswar ibn Makhramah, the two Zuhris, until she conversed with him and emancipated forty slaves in fulfillment of her vow.

L21395 Abu Muhammad said: Aisha—may Allah be pleased with her—had brought him to the point of being censured. Thus, the matter can only be one of two scenarios: either Ibn al-Zubayr erred and she was correct—and this is undoubtedly so—in which case no argument can be made based on a statement in which its proponent erred; or Ibn al-Zubayr was correct and she erred. But Allah forbid this, and Allah forbid that the Mother of the Believers should be described with folly or deemed worthy of legal interdiction. We seek refuge in Allah from such a claim.

L21396–21398 Thus, it is correct that Ibn al-Zubayr erred in his statement. In any case, the Companions differed regarding that matter, and when they differ, it is obligatory to refer back to the Qur'an and the Sunnah as Allah the Exalted commanded. In the Qur'an and the Sunnah is the permissibility of a sale in which there is no deceit or fraud, and the encouragement toward charity. Manumission is obligatory if it preserves sufficiency, while prohibition applies to what is contrary to that. It is incumbent to enforce all these rulings upon every person who performs such acts, for they are collectively deemed recommended and permissible. Similarly, it is obligatory to nullify every transaction involving deception or fraud, and every act of charity or gift that leaves the giver without sufficiency afterwards, as all such acts are divinely prohibited. Ultimate success lies with Allah, the Most High.

L21399 As for the narrations from Ibn Abbas, there is no valid proof in any of them, for they only state that facial hair may grow on one who is weak in receiving

and giving, and that when a youth acquires for himself the sound of what people take, his orphanhood ceases—and this is our position: when sound judgment is ascertained in a youth and he acquires for himself the best of what people take, his orphanhood ends. They are seven, as we mentioned: Uthman, Ali, al-Zubayr, Ibn al-Zubayr, the Mother of the Believers, Abdullah ibn Ja'far, and Ibn Abbas.

وَأَمَّا الرِّوَايَاتُ عَنْ ابْنِ عَبَّاسٍ فَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا، لِأَنَّهُ لَيْسَ فِيهَا إِلَّا أَنَّهُ قَدْ تَنْبُتُ اللِّحْيَةُ لِمَنْ هُوَ ضَعِيفُ الْأَخْذِ وَالْإِعْطَاءِ، وَأَنَّهُ إِذَا أَخَذَ لِنَفْسِهِ مِنْ صَالِحِ مَا يَأْخُذُ النَّاسُ فَقَدْ انْقَضَى يُتْمُهُ - وَهَكَذَا نَقُولُ إِذَا عُقِلَ الرُّشْدُ مِنْ الْفَتَى فَقَدْ أَخَذَ لِنَفْسِهِ بِأَصْلَحَ مَا يَأْخُذُ النَّاسُ، فَإِنَّمَا هُمْ - كَمَا أَوْرَدْنَا - سَبْعَةٌ: عُثْمَانُ، وَعَلِيٌّ وَالزُّبَيْرُ، وَابْنُ الزُّبَيْرِ، وَأُمُّ الْمُؤْمِنِينَ، وَعَبْدُ اللَّهِ بْنُ جَعْفَرٍ، وَابْنُ عَبَّاسٍ

L21400 It has been narrated to us in this matter statements aligning with our view, which we will mention at the end of the chapter if God Almighty wills. Three of them - ʿUthmān, ʿAlī, and Ibn al-Zubayr - have reports attributed to them about indicating ḥajr without elaboration, clarification from them, or any of them: What defines this ḥajr? If it refers to rescinding a sale involving fraud, then this is our doctrine - not the opponents' position. In any case, it is not [valid] to rescind charity, manumission, marriage, or a sale through it - and there is no fraud in it. Three others among them - ʿĀ'ishah, Ibn Ja'far, and al-Zubayr - are reported to have rejected both the ḥajr itself and the opinion advocating it.

وَقَدْ رُوِّينَا أَيْضًا فِي ذَلِكَ كَلَامًا مُوَافِقًا لِقَوْلِنَا نَذْكُرُهُ فِي آخِرِ الْبَابِ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، ثَلَاثَةٌ مِنْهُمْ رُوِيَ عَنْهُمْ الْإِشَارَةُ بِالْحَجْرِ وَلَا مَزِيدَ، وَلَا بَيَانَ عَنْهُمْ، وَلَا عَنْ أَحَدٍ مِنْهُمْ: مَا صِفَةُ ذَلِكَ الْحَجْرِ؟ فَإِنْ كَانَ هُوَ رَدُّ الْبَيْعِ الَّذِي فِيهِ الْغَبْنُ فَهَكَذَا نَقُولُ - وَهَذَا هُوَ قَوْلُنَا لَا قَوْلُ الْمُخَالِفِينَ، وَهُمْ: عُثْمَانُ، وَعَلِيٌّ، وَابْنُ الزُّبَيْرِ، وَعَلَى كُلِّ حَالٍ فَلَيْسَ، فِيهِ رَدُّ صَدَقَةٍ، وَلَا عِتْقٍ، وَلَا نِكَاحٍ وَلَا بَيْعٍ، لَا غَبْنَ فِيهِ - وَثَلَاثَةٌ مِنْهُمْ جَاءَ عَنْهُمْ إنْكَارُ الْحَجْرِ، وَالْقَوْلِ بِهِ، وَهُمْ: عَائِشَةُ، وَابْنُ جَعْفَرٍ، وَالزُّبَيْرُ.

L21401 As for Ibn Abbas, there is nothing reported from him that aligns with those who oppose us. Rather, he only stated regarding an elderly person whose mental capacity is disputed that they should be placed under guardianship—and this is our very position concerning one whose mental state has altered. They disagree, as we have noted, but even if they were to agree, there is no one with proof except the Messenger of Allah—peace and blessings of Allah be upon him.

وَأَمَّا ابْنُ عَبَّاسٍ فَلَيْسَ عَنْهُ شَيْءٌ يُوَافِقُ الْمُخَالِفِينَ لَنَا، بَلْ إنَّمَا قَالَ فِي الشَّيْخِ الَّذِي يُنْكَرُ عَقْلُهُ أَنَّهُ يُحْجَرُ عَلَيْهِ - وَهَذَا قَوْلُنَا نَفْسُهُ فِيمَنْ تَغَيَّرَ عَقْلُهُ، فَهُمْ مُخْتَلِفُونَ كَمَا أَوْرَدْنَا، وَلَوْ اتَّفَقُوا فَمَا فِي أَحَدٍ حُجَّةٌ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21402 And how many instances are there where they opposed more Companions than these—may Allah be pleased with them—with none of the Companions opposing them? The closest example is this very issue, for it is definitively established that no report has come from any Companion supporting what they mentioned regarding the invalidation of manumission.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا أَكْثَرَ مِنْ هَؤُلَاءِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا مُخَالِفَ لَهُمْ مِنْهُمْ؟ وَأَقْرَبُ ذَلِكَ هَذِهِ الْمَسْأَلَةُ نَفْسُهَا، فَإِنَّهُ لَمْ يَأْتِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ قَطْعًا مَا ذَكَرُوهُ مِنْ إبْطَالِ الْعِتْقِ.

وَرَدِّ الصَّدَقَةِ فِي الْمَحْجُورِ - فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُوَافِقٌ مِنْ الصَّحَابَةِ فِي هَذِهِ الْمَسْأَلَةِ - وَقَدْ خَالَفُوا أَكْثَرَ مِنْ هَذَا الْعَدَدِ فِي الْمَسْحِ عَلَى الْجَوْرَبَيْنِ، وَنَحْوِ ذَلِكَ.

L21403 The invalidity of charity given by an interdicted person—since the possibility of their having any Companion's agreement on this matter is nullified—and they opposed more Companions than this number regarding wiping over khuffs and similar matters.

وَأَمَّا التَّابِعُونَ فَقَدْ اخْتَلَفُوا كَمَا ذَكَرْنَا، فَمَا الَّذِي جَعَلَ قَوْلَ عَطَاءٍ، وَالْقَاسِمِ، وَرَبِيعَةَ، وَشُرَيْحٍ: أَوْلَى مِنْ قَوْلِ إبْرَاهِيمَ، وَابْنِ سِيرِينَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ؟

L21404 As for the Successors, they differed as we mentioned. What then makes the view of Aṭā', al-Qāsim, Rabīʿah, and Shurayḥ more authoritative than the view of Ibrāhīm, Ibn Sīrīn, and ʿUmar ibn ʿAbd al-ʿAzīz?

هَذَا وَلَيْسَ عَنْ الْقَاسِمِ، وَشُرَيْحٍ إبْطَالُ صَدَقَةٍ، وَلَا عِتْقٍ، وَلَا بَيْعٍ، وَإِنَّمَا عَنْهُمَا إمْسَاكُ مَالٍ عَنْهُ فَقَطْ، وَإِنَّمَا جَاءَ إبْطَالُ الْبَيْعِ، وَالْعِتْقِ، وَالنِّكَاحِ عَنْ رَبِيعَةَ، وَعَطَاءٍ فَقَطْ.

L21405–21406 This—there is no annulment of charity, manumission, or sale attributed to al-Qāsim and Shurayḥ. Rather, only the withholding of property from him is attributed to them. The annulment of sale, manumission, and marriage is reported only from Rabīʿah and ʿAṭāʾ.

وَقَدْ جَاءَ كَمَا أَوْرَدْنَا عَنْ سَبْعَةٍ مِنْ التَّابِعِينَ، وَوَاحِدٍ مِنْ الصَّحَابَةِ: أَنَّ السُّفَهَاءَ هُمْ النِّسَاءُ، وَهُمْ: الْحَسَنُ، وَالْحَكَمُ، وَمُعَاوِيَةُ بْنُ قُرَّةَ، وَأَبُو مَالِكٍ، وَالضَّحَّاكُ، وَمُجَاهِدٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، فَخَالَفُوهُمْ كُلَّهُمْ - فَمَنْ جَعَلَ قَوْلَ اثْنَيْنِ مِنْ التَّابِعِينَ قَدْ خَالَفَهُمْ ثَلَاثَةٌ مِنْهُمْ حُجَّةً، وَلَمْ يَجْعَلْ قَوْلَ سَبْعَةٍ مِنْهُمْ حُجَّةً.

L21407 It has been reported, as we cited, from seven Followers and one Companion that "the foolish ones are women." These authorities are: al-Ḥasan, al-Ḥakam, Muʿāwiyah ibn Qurrah, Abū Mālik, al-Ḍaḥḥāk, Mujāhid, and Saʿīd ibn Jubayr from the Followers, along with one Companion. Yet they were all opposed. How can one consider the opinion of two Followers - though three from their own ranks contradicted them - as authoritative evidence, while not granting the same status to the opinion of seven Followers?

وَأَمَّا الْحَسَنُ، وَالشَّعْبِيُّ: فَلَيْسَ فِيمَا رُوِيَ عَنْهُمَا شَيْءٌ يُخَالِفُ قَوْلَنَا أَصْلًا؛ لِأَنَّ الْحَسَنَ قَالَ: الرُّشْدُ صَلَاحُ الدِّينِ، وَحِفْظُ الْمَالِ - وَكَذَلِكَ نَقُولُ، وَكُلُّ مُسْلِمٍ فَلَهُ حَظٌّ مِنْ الصَّلَاحِ، وَلَا يَسْتَوْعِبُ صَلَاحَ الدِّينِ أَحَدٌ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا بُدَّ مِنْ نَقْصٍ عَنْهُ، وَمَنْ لَمْ يُنْفِقْ مَالَهُ فِي مَعْصِيَةٍ فَقَدْ حَفِظَهُ.

L21408 As for Al-Ḥasan and Al-Shaʿbī, nothing reported from them contradicts our position in any way. This is because Al-Ḥasan said: "Right guidance consists of righteousness in religion and preservation of wealth"—and we hold the same view. Every Muslim has a share of righteousness, yet none after Allah's Messenger—peace and blessings be upon him—can fully attain righteousness in religion. There must inevitably be a shortcoming compared to his standard. Whoever does not expend his wealth in disobedience has indeed preserved it.

وَقَالَ الشَّعْبِيُّ: إنَّ الرَّجُلَ لَيَشْمَطُ وَمَا أُونِسَ مِنْهُ رُشْدٌ، وَصَدَقَ: قَدْ يَبْلُغُ الشَّيْخُ وَهُوَ مَجْنُونٌ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ أَصْلًا.

L21409 Al-Shaʿbi said: "A man may turn gray without any sign of maturity being perceived in him," and he spoke the truth: an old man may reach old age while remaining mentally incompetent. Thus, there remains no valid basis for their stance at all.

L21410 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar

from ʿAbd al-Karīm al-Jazarī, who said: "'Umar ibn ʿAbd al-ʿAzīz wrote to ʿAdī ibn ʿAdī al-Kindī: 'Whatever you limit the imprudent in, do not limit them in three matters: emancipation, divorce, and marriage.'"

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إِلَى عَدِيِّ بْنِ عَدِيٍّ الْكِنْدِيِّ: مَهْمَا أَقَلَّتَ السُّفَهَاءَ فِيهِ مِنْ شَيْءٍ فَلَا تُقِلْهُمْ فِي ثَلَاثٍ: عِتْقٍ، وَطَلَاقٍ، وَنِكَاحٍ.

L21411 Abu Muhammad said: We say to them: When do you impose interdiction upon a person? Is it when he is first disadvantaged in a sale, or after being repeatedly wronged in transactions? If they say: Upon the first instance, we say: Then according to you, there is no one on earth except that he deserves interdiction, since no one can engage in trade without being disadvantaged.

قَالَ أَبُو مُحَمَّدٍ: وَنَقُولُ لَهُمْ: مَتَى تَحْجُرُونَ عَلَى الْمَرْءِ؟ أَبِأَوَّلِ مَرَّةٍ يُغْبَنُ فِيهَا فِي الْبَيْعِ أَمْ بِأَنْ يُغْبَنَ مَرَّةً بَعْدَ مَرَّةٍ؟ فَإِنْ قَالُوا: بِأَوَّلِ مَرَّةٍ؟ قُلْنَا: فَمَا عَلَى الْأَرْضِ أَحَدٌ إِلَّا وَهُوَ عِنْدَكُمْ مُسْتَحِقٌّ لِلْحَجْرِ عَلَيْهِ، إِذْ لَا سَبِيلَ أَنْ يُوجَدَ أَحَدٌ يَبِيعُ وَيَشْتَرِي إِلَّا وَهُوَ يُغْبَنُ.

L21412 And if they say, "But for each instance after another?" We respond: Define for us the specific number which, when attained by he who reaches it, nullifies his prohibition from selling, invalidates his emancipation and marriage, and necessitates the return of his charity - these are grave matters not to be trivialized through recklessness nor leniency, for Hellfire lies at their extremity. Should they define it, they become obligated to furnish proof, thereby increasing their arbitrary enforcement of falsehood in the religion of Allah the Exalted. If they fail to establish a defined limit for this, they thereby admit their ignorance of when the ruling they apply becomes binding upon them or ceases to be so, acknowledging that they judge through acts of ignorance and blindness.

وَإِنْ قَالُوا بَلْ لِلْمَرَّةِ بَعْدَ الْمَرَّةِ؟ قُلْنَا: حُدُّوا لَنَا الْعَدَدَ الَّذِي مَنْ بَلَغَهُ فُسِخَ مَنْعُهُ مِنَ الْبَيْعِ، وَفُسِخَ عِتْقُهُ وَنِكَاحُهُ، وَرُدَّتْ صَدَقَتُهُ - فَهَذِهِ عَظَائِمُ لَا تُسْتَسْهَلُ مُطَارَفَةً، وَلَا مُسَامَحَةً، بَلْ النَّارُ فِي طَرَفِهَا - فَإِنْ حَدُّوهُ كُلِّفُوا الْبُرْهَانَ، وَكَانُوا قَدْ زَادُوا تَحَكُّمًا بِالْبَاطِلِ فِي دِينِ اللَّهِ تَعَالَى، وَإِنْ لَمْ يَحُدُّوا فِي ذَلِكَ حَدًّا كَانُوا قَدْ أَقَرُّوا بِأَنَّهُمْ لَا يَدْرُونَ مَتَى يَلْزَمُهُمْ الْحُكْمُ بِمَا بِهِ يَحْكُمُونَ وَلَا مَتَى لَا يَلْزَمُهُمْ، وَأَنَّهُمْ يَحْكُمُونَ بِالْجَهَالَاتِ وَالْعَمَى.

L21413–21414 Similarly, we ask them: When do they impose interdiction on him if he is defrauded by an amount exceeding what people tolerate as common practice in similar transactions, or when defrauded by a substantial amount? If they respond: "By what exceeds customary tolerance in comparable exchanges," we counter: In your view, there is no one on the face of the earth who would not warrant interdiction, for every person who buys and sells may be defrauded to this extent. If they say: "Only when it exceeds that?" they must then define the legal threshold at which such grave consequences become obligatory—invalidating his sales, exempting him from liability for what he consumed of others' wealth through purchases while withholding payment, revoking his charitable donations, annulling his emancipations and

وَكَذَلِكَ نَسْأَلُهُمْ: مَتَى يَحْجُرُونَ عَلَيْهِ إِذَا غُبِنَ بِمَا يَزِيدُ عَلَى مَا يَتَغَابَنُ النَّاسُ بِهِ بِمِثْلِهِ أَمْ إِذَا غُبِنَ بِالْكَثِيرِ؟ فَإِنْ قَالُوا: بَلْ بِمَا يَزِيدُ عَلَى مَا يَتَغَابَنُ النَّاسُ بِمِثْلِهِ؟ قُلْنَا: مَا عَلَى أَدِيمِ الْأَرْضِ أَحَدٌ إِلَّا وَهُوَ مُسْتَحِقٌّ لِلْحَجْرِ عِنْدَكُمْ، إِذْ لَيْسَ أَحَدٌ إِلَّا وَقَدْ يُغْبَنُ بِهَذَا الْقَدْرِ مِمَّنْ يَبِيعُ وَيَشْتَرِي، وَإِنْ قَالُوا: بَلْ بِأَكْثَرَ مِنْ ذَلِكَ؟ كُلِّفُوا أَنْ يُبَيِّنُوا الْحَدَّ الَّذِي عِنْدَهُ تَجِبُ هَذِهِ الْعَظَائِمُ مِنْ فَسْخِ بُيُوعِهِ، وَأَنْ لَا يُعْدَى عَلَيْهِ فِيمَا أَكَلَ مِنْ أَمْوَالِ النَّاسِ بِالشِّرَاءِ وَمَنْعِ الثَّمَنِ، وَأَنْ تُرَدَّ صَدَقَاتُهُ، وَعِتْقُهُ، وَنِكَاحُهُ، وَمَتَى لَا تَجِبُ؟ فَإِنْ حَدُّوا

marriages—and specify when these are not obligatory. Should they set a threshold, they compound their reprehensibility and rule falsely. If they refrain, they adjudicate by ignorance. This contains inherent issues.

زَادُوا شَنْعًا وَحُكْمًا بِالْبَاطِلِ، وَإِنْ لَمْ يَحُدُّوا كَانُوا حَاكِمِينَ بِمَا لَا يَدْرُونَ، وَفِي هَذَا مَا فِيهِ.

L21415 It suffices concerning this that they are unable—until the end of time—to produce a single known, non-fabricated narration at the time it was in the Prophet's era (peace and blessings be upon him), nor in the era of Abu Bakr, nor the era of Umar—truly, nor the era of Uthman, nor the era of Ali (may Allah be pleased with them)—[narrating] about any religiously knowledgeable Muslim who prevented through legal interdiction from [giving] charity, emancipation, or marriage—none of which would harm his wealth—nor from a sale free from fraud. This they will never find. Woe to every legal ruling devised after their time! And with Allah, the Most High, is success.

وَيَكْفِي مِنْ هَذَا أَنَّهُمْ لَا يَقْدِرُونَ - إِلَى مُنْتَهَى الْأَبَدِ - عَلَى أَنْ يَأْتُوا بِرِوَايَةٍ مَعْرُوفَةٍ غَيْرِ مَوْضُوعَةٍ فِي الْوَقْتِ عَلَى أَنَّهُ كَانَ فِي عَهْدِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فِي عَهْدِ أَبِي بَكْرٍ، وَلَا عَهْدِ عُمَرَ. نَعَمْ، وَلَا عَهْدِ عُثْمَانَ، وَلَا عَهْدِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمْ - إِنْسَانٌ مُسْلِمٌ يَفْهَمُ الدِّينَ يَمْنَعُ بِالْحَجْرِ مِنْ صَدَقَةٍ، وَعِتْقٍ، وَنِكَاحٍ، لَا يَضُرُّ شَيْءٌ مِنْ ذَلِكَ بِمَالِهِ، وَلَا مِنْ بَيْعٍ لَا غَبْنَ فِيهِ - هَذَا مَا لَا يَجِدُونَهُ أَبَدًا، فَأُفٍّ لِكُلِّ شَرِيعَةٍ تَفَطَّنَ لَهَا مَنْ بَعْدَهُمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21416 Among the grave evils and abominations of this worldly life is their assertion that a legally restricted person need not atone through emancipation for his *dhihār*, nor for his intercourse during Ramadan, nor for accidental killing, nor for his oaths—except by fasting—even if he owns wealth beyond enumeration except by Allah the Exalted. This contradicts the Quran and the Sunnah, yet they obligate him to pay *zakāh*, provide maintenance for relatives, and support his wife. Is there any distinction between these two matters? The obligation of emancipation in what we have mentioned is established in the Quran, just as *zakāh* is mandated—alike, alike. Would that I knew from where this corrupt categorization emerged! Verily, this is truly astounding!

وَمِنْ طَوَامِّ الدُّنْيَا وَشَنْعِهَا قَوْلُهُمْ: إِنَّ الْمَحْجُورَ عَلَيْهِ لَا يُكَفِّرُ فِي ظِهَارِهِ، وَلَا فِي وَطْئِهِ فِي رَمَضَانَ، وَلَا فِي قَتْلِهِ الْخَطَأَ، وَلَا فِي أَيْمَانِهِ إِلَّا بِالصِّيَامِ وَإِنْ كَانَ صَاحِبَ أَمْوَالٍ لَا يُحْصِيهَا إِلَّا اللَّهُ تَعَالَى، خِلَافًا لِلْقُرْآنِ، وَالسُّنَنِ، وَهُمْ يُلْزِمُونَهُ الزَّكَاةَ، وَالنَّفَقَاتِ عَلَى الْأَقَارِبِ، وَعَلَى الزَّوْجَةِ، فَهَلْ بَيْنَ الْأَمْرَيْنِ فَرْقٌ؟ وَقَدْ جَاءَ إِيجَابُ الْعِتْقِ فِيمَا ذَكَرْنَا فِي الْقُرْآنِ، كَمَا جَاءَتْ الزَّكَاةُ سَوَاءً سَوَاءً فَلَيْتَ، شِعْرِي مِنْ أَيْنَ خَرَجَ هَذَا التَّقْسِيمُ الْفَاسِدُ؟ إِنَّ هَذَا لَعَجَبٌ.

L21417–21419 Abu Muhammad said: An authentic narration from the Prophet—peace and blessings be upon him—confirming our view and invalidating their claim has been reported, as transmitted to us through the route of Ahmad ibn Shuʿayb: from Yūsuf ibn Ḥammād, from ʿAbd al-Aʿlā, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Anas: "A man suffered from weakness in his potency, and his family came to the Prophet and said: 'O...'" "O Prophet of Allah, should I forbid him?" The Messenger of Allah — peace and blessings be upon him — called him and prohibited him. He said: "O Prophet of Allah, I cannot

قَالَ أَبُو مُحَمَّد: وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُ قَوْلِنَا مِمَّا يُبْطِلُ قَوْلَهُمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا يُوسُفُ بْنُ حَمَّادٍ أَنَا عَبْدُ الْأَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ «أَنَّ رَجُلًا كَانَ فِي عُقْدَتِهِ ضَعْفٌ، وَأَنَّ أَهْلَهُ أَتَوْا النَّبِيَّ

refrain from deception in selling." The Prophet — peace and blessings be upon him — replied: "When you sell, say: 'There is no deception.'"

فَقَالُوا: يَا نَبِيَّ اللَّهِ اُحْجُرْ عَلَيْهِ؟ فَدَعَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَهَاهُ؟ فَقَالَ: يَا نَبِيَّ اللَّهِ إِنِّي لَا أَصْبِرُ عَلَى الْبَيْعِ فَقَالَ - عَلَيْهِ السَّلَامُ -: إِذَا بِعْتَ فَقُلْ: لَا خِلَابَةَ» .

L21420 Through the chain of Mālik ibn Anas from ʿAbdullāh ibn Dīnār from ʿAbdullāh ibn ʿUmar, who said: "A man mentioned to the Messenger of Allah (peace be upon him) that he was being deceived in transactions. The Messenger of Allah (peace be upon him) said to him: 'When you conduct a transaction, say: "There is no deception."' He said: "Thereafter, whenever the man engaged in a transaction, he would say: 'There is no deception.'"

وَمِنْ طَرِيقِ مَالِكِ بْنِ أَنَسٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «ذَكَرَ رَجُلٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ يُخْدَعُ فِي الْبَيْعِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِذَا بَايَعْتَ فَقُلْ: لَا خِلَابَةَ» ؟ قَالَ: فَكَانَ الرَّجُلُ إِذَا بَايَعَ يَقُولُ: لَا خِلَابَةَ ".

L21421 From the transmission of Qāsim ibn Aṣbagh, who narrated to us Muḥammad ibn Waḍḍāḥ, who narrated to us Ḥāmid ibn Yaḥyā al-Balkhī, who narrated to us Sufyān ibn ʿUyaynah, who narrated to us Muḥammad ibn Isḥāq on the authority of Nāfiʿ on the authority of Ibn ʿUmar, who said: "Munqidh was struck on his head with a cranial wound during the pre-Islamic era, causing impairment to his speech, which led to him being deceived in transactions. The Messenger of Allah (peace be upon him) said to him: 'Sell and say: "No deception," then you retain the option for three days from your sale."' Ibn ʿUmar said: "I heard him say whenever he conducted a transaction: 'No deception, no deception.'"

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا حَامِدُ بْنُ يَحْيَى الْبَلْخِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إِنَّ مُنْقِذًا سُقِعَ فِي رَأْسِهِ مَأْمُومَةً فِي الْجَاهِلِيَّةِ فَجُبِلَتْ لِسَانُهُ، فَكَانَ يُخْدَعُ فِي الْبَيْعِ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بِعْ، وَقُلْ: لَا خِلَابَةَ، ثُمَّ أَنْتَ بِالْخِيَارِ ثَلَاثًا مِنْ بَيْعِكَ» ، قَالَ ابْنُ عُمَرَ: فَسَمِعْته يَقُولُ إِذَا بَايَعَ: لَا خِلَابَةَ لَا خِلَابَةَ ".

L21422 Ali said: These two narrations are of the utmost authenticity. Whoever advocates after hearing them for imposing interdiction on those deceived in sales transactions, or for enforcing a sale involving deceit, is none other than someone heedless of the truth, emboldened to commit major sins. For the Messenger of Allah (peace and blessings be upon him) neither considered their statements "Impose interdiction on him" nor "There is no interdiction," nor prohibited him from selling. Rather, he granted him the right of option to annul his purchase for three days, and commanded him not to sell except with full disclosure to prevent deceit. This is our position - and all praise belongs to Allah.

قَالَ عَلِيٌّ: هَذَانِ أَثَرَانِ فِي غَايَةِ الصِّحَّةِ وَمَا يَقُولُ بَعْدَ سَمَاعِهِمَا بِالْحَجْرِ عَلَى مَنْ يُخْدَعُ فِي الْبُيُوعِ، أَوْ بِإِنْفَاذِ بَيْعٍ فِيهِ خَدِيعَةٌ إِلَّا ذَاهِلٌ عَنْ الْحَقِّ، مُقْدِمٌ عَلَى الْعَظَائِمِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَلْتَفِتْ إلَى قَوْلِهِمْ: اُحْجُرْ عَلَيْهِ، وَلَا حَجْرَ عَلَيْهِ، وَلَا مَنَعَهُ مِنْ الْبَيْعِ، بَلْ جَعَلَ لَهُ الْخِيَارَ فِيمَا اشْتَرَى ثَلَاثًا، وَأَمَرَهُ أَنْ لَا يُبَايِعَ إلَّا بِبَيَانٍ: أَنْ لَا خِلَابَةَ، وَهَكَذَا نَقُولُ - وَلِلَّهِ الْحَمْدُ.

L21423–21425 From the chain of Al-Bukhārī: Yaḥyā ibn Bukayr narrated to us, Al-Layth ibn Saʿd narrated to us from ʿUqayl ibn Khālid, who said: Ibn Shihāb reported: ʿUrwah ibn Al-Zubayr informed me that ʿĀ'ishah, the Mother of the

Believers, related in a lengthy ḥadīth about the Messenger of Allah (peace and blessings be upon him). She mentioned his arrival in Medina after emigrating from Mecca, then he—meaning the Messenger of Allah (peace and blessings be upon him)—mounted his she-camel and traveled until it knelt near his mosque (peace and blessings be upon him) in Medina. And he was praying there at that time, along with Muslim men. It had been a drying ground for dates belonging to Suhayl and Sahl, two orphan boys under the guardianship of... As'ad ibn Zurārah narrated: Then the Messenger of Allah (peace be upon him) summoned the two youths and haggled with them over the price of the Mirbad [a date-drying area] to build it into a mosque. They said, "Rather, we gift it to you, O Messenger of Allah!" But the Messenger of Allah (peace be upon him) refused to accept it from them as a gift until he purchased it from them. Then he built it as a mosque.

وَمِنْ طَرِيقِ الْبُخَارِيِّ: نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ عُقَيْلِ بْنِ خَالِدٍ قَالَ ابْنُ شِهَابٍ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ فِي حَدِيثٍ طَوِيلٍ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَكَرَتْ فِيهِ إتْيَانَهُ إلَى الْمَدِينَةِ إذْ هَاجَرَ مِنْ مَكَّةَ ثُمَّ رَكِبَ -. تَعْنِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاقَتَهُ فَسَارَ حَتَّى بَرَكَتْ عِنْدَ مَسْجِدِهِ - عَلَيْهِ السَّلَامُ - بِالْمَدِينَةِ وَهُوَ يُصَلِّي فِيهِ يَوْمَئِذٍ رِجَالٌ مِنْ الْمُسْلِمِينَ، وَكَانَ مِرْبَدًا لِلتَّمْرِ لِسُهَيْلٍ وَسَهْلٍ غُلَامَيْنِ يَتِيمَيْنِ فِي حِجْرِ أَسْعَدَ بْنِ زُرَارَةَ، ثُمَّ دَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْغُلَامَيْنِ فَسَاوَمَهَا بِالْمِرْبَدِ لِيَتَّخِذَهُ مَسْجِدًا، فَقَالَا: بَلْ نَهَبُهُ لَك يَا رَسُولَ اللَّهِ، فَأَبَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَقْبَلَهُ مِنْهُمَا هِبَةً حَتَّى ابْتَاعَهُ مِنْهُمَا، ثُمَّ بَنَاهُ مَسْجِدًا» .

L21426 So this Messenger of Allah—may Allah bless him and grant him peace—knew they were two orphans under another's guardianship. Yet he neither bargained with him, nor consulted him, nor bought from him. Rather, he bargained with them and validated their sale of it. He did not grant the one in whose care they were any authority in that matter.

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ عَلِمَ أَنَّهُمَا فِي حِجْرِ غَيْرِهِمَا يَتِيمَانِ فَلَمْ يُسَاوِمْهُ وَلَا شَاوَرَهُ، وَلَا ابْتَاعَهُ مِنْهُ، بَلْ سَاوَمَهُمَا وَأَنْفَذَ بَيْعَهُمَا فِيهِ، وَلَمْ يَجْعَلْ لِلَّذِي كَانَا فِي حِجْرِهِ فِي ذَلِكَ أَمْرًا.

L21427 If it is said: "Did he not accept their gift to him?" We reply: He had done the same with Abu Bakr about a month or less prior, when he (peace and blessings of Allah be upon him) intended to emigrate. Abu Bakr (may Allah be pleased with him) offered him one of his two she-camels, saying: "This is for you, O Messenger of Allah." But the Messenger of Allah (peace and blessings of Allah be upon him) refused to ride it unless he paid its price, so he purchased it. Thus, his (peace and blessings of Allah be upon him) rejection of the orphans' gift paralleled his rejection of Abu Bakr's gift—there being no distinction. This was not because such gifts were impermissible for them to offer.

فَإِنْ قِيلَ: لَمْ يَقْبَلْ هِبَتَهُمَا إيَّاهُ؟ قُلْنَا: قَدْ فَعَلَ مِثْلَ ذَلِكَ بِأَبِي بَكْرٍ قَبْلَ ذَلِكَ بِأَقَلَّ مِنْ شَهْرٍ، أَوْ شَهْرٍ، «إذْ أَرَادَ - عَلَيْهِ السَّلَامُ - الْهِجْرَةَ فَقَدَّمَ إلَيْهِ أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - إحْدَى نَاقَتَيْنِ لَهُ، وَقَالَ لَهُ: هِيَ لَكَ يَا رَسُولَ اللَّهِ، فَأَبَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَرْكَبَهَا إلَّا بِالثَّمَنِ فَابْتَاعَهَا مِنْهُ» فَرَدُّهُ - عَلَيْهِ السَّلَامُ - هِبَةَ الْيَتِيمَيْنِ كَرَدِّهِ هِبَةَ أَبِي بَكْرٍ وَلَا فَرْقَ - لَيْسَ؛ لِأَنَّ ذَلِكَ، لَا يَجُوزُ مِنْهُمْ.

L21428 The proof for this is his permission—upon him be peace—regarding their sale, with no disagreement among opposing schools that whoever is un-

restricted in selling remains unrestricted in gift-giving within this context. They differentiated between gift and sale solely in cases involving a sick person or a married woman, specifically regarding preferential treatment exceeding one-third. This is an authentic narration without flaw. ʻUqayl—one of al-Zuhrī's exclusive specialists, verified in his transmissions, and his constant companions—is reported thus, as is ʻUrwah's association with ʻĀ'ishah (may Allah be pleased with her).

وَبُرْهَانُ هَذَا إجَازَتُهُ - عَلَيْهِ السَّلَامُ - بَيْعَهُمَا، وَلَا خِلَافَ بَيْنَ الْمُخَالِفِينَ لَنَا فِي أَنَّ مَنْ لَمْ يُحْجَرْ عَلَيْهِ بَيْعُهُ لَمْ يُحْجَرْ عَلَيْهِ هِبَتُهُ فِي هَذَا الْمَكَانِ، وَإِنَّمَا فَرَّقُوا بَيْنَ الْهِبَةِ وَالْبَيْعِ فِي الْمَرِيضِ، وَالْمَرْأَةِ ذَاتِ الزَّوْجِ، فِي الْمُحَابَاةِ فِيمَا زَادَ عَلَى الثُّلُثِ خَاصَّةً - وَهَذَا أَثَرٌ صَحِيحٌ لَا مَغْمَزَ فِيهِ، وَعُقَيْلٌ أَحَدُ الْمُخْتَصِّينَ بِالزُّهْرِيِّ، الْمُتَحَقِّقِينَ بِهِ، الْمُلَازِمِينَ لَهُ - وَكَذَلِكَ عُرْوَةُ بِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -.

L21429 We have been narrated a report which—if others had obtained its like—they would have transgressed with it, just as we have been narrated through the chain of Abū Dāwūd: from Aḥmad ibn Ṣāliḥ, from Yaḥyā ibn Muḥammad al-Madanī, from ʿAbdullāh ibn Khālid ibn Saʿīd ibn Abī Maryam, from Saʿīd ibn ʿAbd al-Raḥmān ibn Ruqaysh, that he heard his elders from Banū ʿAmr ibn ʿAwf and his maternal uncle ʿAbdullāh ibn Abī Aḥmad say: ʿAlī ibn Abī Ṭālib said: I memorized from the Messenger of Allāh (peace and blessings be upon him): "There is no orphanhood after puberty."

وَقَدْ رُوِّينَا خَبَرًا لَوْ ظَفِرُوا بِمِثْلِهِ لَبَغَوْا، كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ صَالِحٍ نا يَحْيَى بْنُ مُحَمَّدٍ الْمَدِينِيُّ نا عَبْدُ اللَّهِ بْنُ خَالِدِ بْنِ سَعِيدِ بْنِ أَبِي مَرْيَمَ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ رُقَيْشٍ أَنَّهُ سَمِعَ شُيُوخَهُ مِنْ بَنِي عَمْرِو بْنِ عَوْفٍ وَمِنْ خَالِهِ عَبْدِ اللَّهِ بْنِ أَبِي أَحْمَدَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: حَفِظْت مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُتْمَ بَعْدَ احْتِلَامٍ».

L21430 Abu Muhammad said: At minimum, this narration constitutes a mawqūf report attributed to Ali ibn Abi Talib. This contradicts their reliance on his position regarding legal interdiction [al-hajr]—which lacks explicit textual basis—as being fully aligned with their opinion in any circumstance.

قَالَ أَبُو مُحَمَّدٍ: وَأَقَلُّ مَا فِي هَذَا الْأَثَرِ أَنْ يَكُونَ مَوْقُوفًا عَلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَهُوَ خِلَافٌ لِمَا تَعَلَّقُوا بِهِ عَنْهُ فِي الْحَجْرِ الَّذِي لَا بَيَانَ فِيهِ أَنَّهُ مُوَافِقٌ لِقَوْلِهِمْ عَلَى كُلِّ حَالٍ.

L21431–21432 I am Ahmad ibn Umar ibn Anas al-Udhri. Abu Dharr al-Harawi narrated to me. Ubayd Allah ibn Muhammad ibn Ishaq ibn Hubabah narrated to me in Baghdad. Abdullah ibn Muhammad ibn Abdul Aziz al-Baghawi narrated to me. Musʿab ibn Abdullah ibn Musʿab ibn Thabit ibn Abdullah ibn al-Zubayr ibn al-Awwam narrated to me. My father narrated to me from Rabiʿah ibn Uthman from Zayd ibn Aslam that he heard Umar ibn al-Khattab say to Suhayb: "O Suhayb, there is nothing in you I censure except three traits. Were it not for them, I would not have preferred anyone over you." Suhayb said to him: "What are they, for you are a fault-finder?" Umar said after a remark: "I see you squandering your wealth, adopting a kunya named after a prophet, and claiming Arab lineage while your tongue is non-Arab." Suhayb

وَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ إِسْحَاقَ بْنِ حُبَابَةَ بِبَغْدَادَ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَبْدِ الْعَزِيزِ الْبَغَوِيّ نا مُصْعَبُ بْنُ عَبْدِ اللَّهِ بْنِ مُصْعَبِ بْنِ ثَابِتِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ بْنِ الْعَوَّامِ نَا أَبِي عَنْ رَبِيعَةَ بْنِ عُثْمَانَ عَنْ زَيْدِ بْنِ أَسْلَمَ " أَنَّهُ سَمِعَ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ لِصُهَيْبٍ: يَا صُهَيْبُ مَا فِيك شَيْءٌ أَعِيبُهُ عَلَيْك إلَّا ثَلَاثَ خِصَالٍ، وَلَوْلَاهُنَّ مَا قَدَّمْت عَلَيْك أَحَدًا، فَقَالَ لَهُ صُهَيْبٌ: مَا هُنَّ فَإِنَّك طَعَّانٌ؟ فَقَالَ عُمَرُ بَعْدَ كَلَامٍ: أَرَاك تُبَذِّرُ مَالَك، وَتُكْتَنَى بِاسْمِ نَبِيٍّ، وَتَنْتَسِبُ

replied: “As for my spending, I expend wealth only in rightful causes. As for my kunya, the Messenger of Allah—may Allah bless him and grant him peace—named me Abu Yahya. Shall I discard it due to your objection? As for my Arab lineage, the Romans captured me as a child. I recall nothing of my kin—if a dung heap were to split open for me, I would claim lineage to it!” Thus, Umar deemed Suhayb’s conduct wasteful yet did not legally forbid him. This suffices as evidence. And success is by Allah, the Exalted, alone.

عَرَبِيًّا، وَلِسَانُك أَعْجَمِيٌّ، فَقَالَ لَهُ صُهَيْبٌ: أَمَّا تَبْذِيرِي مَالِي فَمَا أُنْفِقُهُ إلَّا فِي حَقِّهِ، وَأَمَّا اكْتِنَائِي فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَنَّانِي بِأَبِي يَحْيَى، أَفَأَتْرُكُهَا لِقَوْلِك؟ وَأَمَّا انْتِسَابِي إلَى الْعَرَبِ فَإِنَّ الرُّومَ سَبَتْنِي وَأَنَا صَغِيرٌ، فَإِنِّي لَا أَذْكُرُ أَهْلَ أَبَيَاتِي وَلَوْ انْفَلَقَتْ عَنِّي رَوْثَةٌ لَانْتَسَبْت إلَيْهَا - فَهَذَا عُمَرُ يَرَى فِعْلَ صُهَيْبٍ تَبْذِيرًا وَلَمْ يَحْجُرْ عَلَيْهِ، وَفِي هَذَا كِفَايَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The ill, the pregnant woman, the one detained for execution, and the captive in confinement are equal.

[مَسْأَلَةٌ الْمَرِيضُ وَالْحَامِلُ وَالْمَوْقُوفُ لِلْقَتْلِ وَالْأَسِيرُ فِي الْحَجْرِ سَوَاءٌ]

1395 - Question: A person afflicted with a terminal or curable illness, a pregnant woman from conception until childbirth or death, one sentenced to lawful execution for qisas, ḥadd, or unjustly, a captive held by those who kill prisoners or spare them, one facing imminent destruction, and a combatant engaged between two battle lines—all are equal. As for the rest of people, their wealth remains [subject to ordinary rulings], with no distinction in their charities, sales, emancipations, gifts, or the rest of their wealth.

١٣٩٥ - مَسْأَلَةٌ: وَالْمَرِيضُ مَرَضًا يَمُوتُ مِنْهُ أَوْ يَبْرَأُ مِنْهُ، وَالْحَامِلُ مُذْ تَحْمِلُ إلَى أَنْ تَضَعَ أَوْ تَمُوتَ، وَالْمَوْقُوفُ لِلْقَتْلِ بِحَقٍّ فِي قَوَدٍ أَوْ حَدٍّ أَوْ بِبَاطِلٍ، وَالْأَسِيرُ عِنْدَ مَنْ يَقْتُلُ الْأَسْرَى أَوْ مَنْ لَا يَقْتُلُهُمْ، وَالْمُشْرِفُ عَلَى الْعَطَبِ، وَالْمُقَاتِلُ بَيْنَ الصَّفَّيْنِ كُلُّهُمْ سَوَاءٌ، وَسَائِرُ النَّاسِ فِي أَمْوَالِهِمْ، وَلَا فَرْقَ فِي صَدَقَاتِهِمْ، وَبُيُوعِهِمْ، وَعِتْقِهِمْ وَهِبَاتِهِمْ وَسَائِرِ أَمْوَالِهِمْ.

A school of jurists ruled that legal restriction (ḥajr) must be imposed upon these individuals concerning any portion of their estate exceeding one-third.

وَقَالَ قَوْمٌ: بِالْحَجْرِ عَلَى هَؤُلَاءِ فِيمَا زَادَ عَلَى الثُّلُثِ.

Abu Sulayman said: Our companions hold the same opinion as ours except specifically and exclusively regarding manumission, for they stated that the manumission of a sick person exclusively—excluding the rest of those we mentioned—only takes effect within one-third of the estate, regardless of whether he recovers from his illness or dies during it, irrespective of the nature of the illness.

وَقَالَ أَبُو سُلَيْمَانَ: وَأَصْحَابُنَا كَقَوْلِنَا إلَّا فِي الْعِتْقِ خَاصَّةً فَقَطْ، فَإِنَّهُمْ قَالُوا: عِتْقُ الْمَرِيضِ خَاصَّةً دُونَ سَائِرِ مَنْ ذَكَرْنَا لَا يَنْفُذُ إلَّا مِنْ الثُّلُثِ، سَوَاءٌ أَفَاقَ مِنْ مَرَضِهِ، أَوْ مَاتَ مِنْهُ - أَيِّ مَرَضٍ كَانَ.

It has been narrated to us through the chain of Ibn Abī Shaybah: ʻAlī ibn Mushir narrated to us: Ismāʻīl ibn Abī Khālid narrated to us from al-Shaʻbī from Masrūq that he was asked about one who emancipated his slave during his illness while possessing no property besides him. Masrūq said: “I uphold

the emancipation in full - a thing God has decreed. I do not reject it." Shurayḥ said: "I uphold one-third of it and require the slave to work for the remaining two-thirds."

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ سُئِلَ عَمَّنْ أَعْتَقَ عَبْدًا لَهُ فِي مَرَضِهِ وَلَيْسَ لَهُ مَالٌ غَيْرُهُ؟ فَقَالَ مَسْرُوق: أُجِيزُهُ بِرُمَّتِهِ، شَيْءٌ جَعَلَهُ اللَّهُ لَا أَرُدُّهُ - وَقَالَ شُرَيْحٌ: أُجِيزُ ثُلُثَهُ وَأَسْتَسْعِيهِ فِي ثُلُثَيْهِ.

L21438 Al-Shaʿbī said: The legal view of Masrūq is most favored by me in issuing fatwas, the legal view of Shurayḥ is most favored by me in judicial verdicts - and the legal view of al-Nakhaʿī corresponds to that of Shurayḥ.

قَالَ الشَّعْبِيُّ: قَوْلُ مَسْرُوقٍ أَحَبُّ إلَيَّ فِي الْفُتْيَا، وَقَوْلُ شُرَيْحٍ أَحَبُّ إلَيَّ فِي الْقَضَاءِ - وَقَوْلُ النَّخَعِيِّ كَقَوْلِ شُرَيْحٍ.

L21439 Narrated via Qatadah, on the authority of Al-Ḥasan, on the authority of Ibn Masʿūd regarding a person who manumits his slave while on his own deathbed when the slave is his sole property: He said, "The emancipation is valid for one-third of his estate."

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ عَنْ ابْنِ مَسْعُودٍ فِيمَنْ أَعْتَقَ عَبْدًا لَهُ فِي مَرَضِهِ لَا مَالَ لَهُ غَيْرُهُ؟ قَالَ: اعْتِقْ ثُلُثَهُ.

L21440–21441 From the chain of Maʾmar via ʾAbd al-Rahman ibn ʾAbd Allah via al-Qasim ibn ʾAbd al-Rahman: A man purchased a slave girl during his illness and freed her at his death. Those who sold her came to collect her price but found no wealth belonging to him. Ibn Masʾud said: "Work to pay your price."

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا اشْتَرَى جَارِيَةً فِي مَرَضِهِ فَأَعْتَقَهَا عِنْدَ مَوْتِهِ فَجَاءَ الَّذِينَ بَاعُوهَا بِثَمَنِهَا فَلَمْ يَجِدُوا لَهُ مَالًا فَقَالَ ابْنُ مَسْعُودٍ: اسْعِي فِي ثَمَنِك.

L21442 From the chain of Al-Ḥajjāj ibn Arṭāʾah, from Qatādah, from Al-Ḥasan: ʿAlī was asked about someone who emancipated his slave at the time of his death while owning no property besides the slave and owing debts. He said: "The slave is emancipated but must work to settle the debt equivalent to his assessed value."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ سُئِلَ عَلِيٌّ عَمَّنْ أَعْتَقَ عَبْدًا لَهُ عِنْدَ مَوْتِهِ، وَلَيْسَ لَهُ مَالٌ غَيْرُهُ وَعَلَيْهِ دَيْنٌ؟ قَالَ: يَعْتِقُ وَيَسْعَى فِي الْقِيمَةِ

L21443 Al-Nakhaʿī ruled regarding one who emancipates a slave at the time of his death while possessing no property other than the slave and owing debt: the value of the slave is assessed and utilized to settle the debt. If any surplus remains, one-third is allocated to the emancipated slave as a grant from the estate, and two-thirds belong to the heirs.

وَقَالَ النَّخَعِيُّ فِيمَنْ أَعْتَقَ عَبْدًا عِنْدَ مَوْتِهِ لَا مَالَ لَهُ غَيْرُهُ وَعَلَيْهِ دَيْنٌ: أَنَّهُ يَسْعَى فِي قِيمَتِهِ فَيَقْضِي الدَّيْنَ، فَإِنْ فَضَلَ شَيْءٌ فَلَهُ ثُلُثُهُ وَلِلْوَرَثَةِ ثُلُثَاهُ.

L21444 Al-Ḥasan and ʿAṭāʾ said: The manumission by a gravely ill person is drawn from the third of the estate - and this is the opinion of Qatādah, Saʿīd ibn al-Musayyib, Abān ibn ʿUthmān, Sulaymān ibn Mūsā, and Makhūl. They later disagreed: some invalidated what exceeded the third, while others enforced

the full manumission, obliging the enslaved person to work for the heirs regarding what exceeded the third.

وَقَالَ الْحَسَنُ، وَعَطَاءٌ: عِتْقُ الْمَرِيضِ مِنْ الثُّلُثِ - وَهُوَ قَوْلُ قَتَادَةَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبَانَ بْنِ عُثْمَانَ، وَسُلَيْمَانَ بْنِ مُوسَى، وَمَكْحُولٍ - ثُمَّ اخْتَلَفُوا، فَمِنْ مُرِقٍّ مِنْهُ مَا زَادَ عَلَى الثُّلُثِ، وَمِنْ مُعْتِقٍ بِجَمِيعِهِ وَيَسْتَسْعِيهِ فِيمَا زَادَ عَلَى الثُّلُثِ.

L21445 As for his selling and buying: It has been narrated through the chain of Sufyān al-Thawrī, from Jābir al-Juʿfī, from al-Shaʿbī regarding a sick person who engages in selling and buying. Al-Shaʿbi said: Such transactions are valid within the third of his estate, even if he remains alive for ten years.

وَأَمَّا بَيْعُهُ وَشِرَاؤُهُ: فَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ: فِي الْمَرِيضِ يَبِيعُ وَيَشْتَرِي، قَالَ: هُوَ فِي الثُّلُثِ وَإِنْ مَكَثَ عَشْرَ سِنِينَ.

L21446 As for the pregnant woman: It was narrated to us through Sufyan al-Thawri, via Jabir al-Juʿfi, al-Shaʿbi, and Shurayh, that he held the view that whatever the pregnant woman disposes of during her pregnancy is limited to the allowable third. Sufyan said: “We do not accept this position; rather, we maintain that whatever she disposes of is valid unless she is ill from a cause unrelated to pregnancy or her delivery is imminent” (meaning childbirth could harm her). ‘Ata’ said: “Is whatever the pregnant woman disposes of during her pregnancy considered a bequest?” I asked: “Is this your personal opinion?” He replied: “No, we received it through narration”—this being the view of Qatadah and ‘Ikrimah. Al-Hasan, al-Nakhaʿi, Makhūl, and al-Zuhri stated: “The gift of a pregnant woman holds the same legal weight as that of a legally competent person.”

وَأَمَّا الْحَامِلُ: فَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ أَنَّهُ كَانَ يَرَى مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا مِنْ الثُّلُثِ؟ قَالَ سُفْيَانُ: وَنَحْنُ لَا نَأْخُذُ بِهَذَا، بَلْ نَقُولُ: مَا صَنَعَتْ فَهُوَ جَائِزٌ، إلَّا أَنْ تَكُونَ مَرِيضَةً مِنْ غَيْرِ الْحَمْلِ، أَوْ يَدْنُو مَخَاضُهَا - يُرِيدُ أَنْ يَضُرَّ بِهَا الطَّلْقُ وَقَالَ عَطَاءٌ: مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا فَهُوَ وَصِيَّةٌ؟ قُلْتُ: أَرَأْيٌ؟ قَالَ: بَلْ سَمِعْنَاهُ - وَهُوَ قَوْلُ قَتَادَةَ: وَعِكْرِمَةَ - وَقَالَ الْحَسَنُ، وَالنَّخَعِيُّ، وَمَكْحُولٌ وَالزُّهْرِيِّ: عَطِيَّةُ الْحَامِلِ كَعَطِيَّةِ الصَّحِيحِ.

L21447 From the chain of narration of Ibn Wahb, from ʿAmr ibn al-Ḥārith, from Yaḥyā ibn Saʿīd al-Anṣārī, that he heard al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq say: “Whatever a pregnant woman gives to an heir or spouse must come from her principal wealth, unless she is terminally ill.” Rabīʿah said: “The ruling remains the same, except if her pregnancy reaches an advanced stage or she enters childbirth.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ سَمِعَ الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: مَا أَعْطَتْ الْحَامِلُ لِوَارِثٍ، أَوْ لِزَوْجٍ، فَمِنْ رَأْسِ مَالِهَا، إلَّا أَنْ تَكُونَ مَرِيضَةً - وَقَالَ رَبِيعَةُ: كَذَلِكَ، إلَّا أَنْ تَثْقُلَ، أَوْ يَحْضُرَهَا نِفَاسٌ.

L21448–21450 Ibn Wahb said, and I was also informed of this from Ibn al-Musayyib, Yahya ibn Saʿid, and Ibn Hujayrah al-Khawlani—and this is the opinion of Ahmad and Ishaq—. And al-Nakhaʿi, Makhul, and Yahya ibn Saʿid al-Ansari said. Al-Awzaʿī, ʿUbaydullāh ibn al-Ḥasan, and al-Shāfiʿī hold the same opinion as

قَالَ ابْنُ وَهْبٍ وَأَخْبَرَت بِهَذَا أَيْضًا عَنْ ابْنِ الْمُسَيِّبِ، وَيَحْيَى بْنِ سَعِيدٍ، وَابْنِ حُجَيْرَةَ الْخَوْلَانِيِّ - وَهُوَ قَوْلُ أَحْمَدَ، وَإِسْحَاقَ - وَقَالَ النَّخَعِيُّ، وَمَكْحُولٌ وَيَحْيَى بْنُ سَعِيدٍ

Sufyān al-Thawrī regarding the grant to a pregnant woman—this is also the opinion of Abū Ḥanīfah.

الْأَنْصَارِيُّ وَالْأَوْزَاعِيُّ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ فِي عَطِيَّةِ الْحَامِلِ كَقَوْلِ سُفْيَانَ الثَّوْرِيِّ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ.

L21451 It is narrated from Saʿīd ibn al-Musayyib: "The bequest for a warrior is to be taken from the third [of the estate]." Makḥūl said: "Rather, it is from the principal of his wealth, unless he is actively engaged in battle. The bequest for a maritime traveler is subject to the same ruling."

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: عَطِيَّةُ الْغَازِي مِنَ الثُّلُثِ - وَقَالَ مَكْحُولٌ: بَلْ مِنْ رَأْسِ مَالِهِ، إِلَّا أَنْ تَقَعَ الْمُسَايَفَةُ وَعَطِيَّةُ رَاكِبِ الْبَحْرِ كَذَلِكَ.

L21452 Al-Ḥasan said: He is like the healthy person, and similarly the seafarer, and whoever is in a land where a plague has occurred. Makḥūl said: Likewise in the case of the seafarer as long as the sea has not become turbulent.

وَقَالَ الْحَسَنُ: هُوَ كَالصَّحِيحِ، وَكَذَلِكَ رَاكِبُ الْبَحْرِ، وَمَنْ كَانَ فِي بَلَدٍ قَدْ وَقَعَ فِيهِ الطَّاعُونُ. وَقَالَ مَكْحُولٌ: كَذَلِكَ فِي رَاكِبِ الْبَحْرِ مَا لَمْ يَهِجِ الْبَحْرُ.

L21453 Al-Ḥasan said regarding Iyās ibn Muʿāwiyah when al-Ḥajjāj imprisoned him: "He is entitled to nothing of his wealth except a third." When Iyās learned of this statement, he remarked: "No one gains jurisprudential understanding without their opinion of people becoming poor."

وَقَالَ الْحَسَنُ فِي إِيَاسِ بْنِ مُعَاوِيَةَ لَمَّا حَبَسَهُ الْحَجَّاجُ: لَيْسَ لَهُ مِنْ مَالِهِ، إِلَّا الثُّلُثُ، فَقَالَ إِيَاسٌ إِذْ بَلَغَهُ قَوْلُهُ: مَا فَقِهَ أَحَدٌ إِلَّا سَاءَ ظَنُّهُ بِالنَّاسِ.

L21454 Al-Shaʿbī said: "What the traveler allocates is from the third, from where his saddle is fixed in the insertion." Al-Nakhaʿī said: "Rather, it is from the principal of the estate."

وَقَالَ الشَّعْبِيُّ: مَا صَنَعَ الْمُسَافِرُ فَمِنَ الثُّلُثِ مِنْ حَيْثُ يَقَعُ رَحْلُهُ فِي الْغَرْزِ - قَالَ النَّخَعِيُّ: بَلْ مِنْ رَأْسِ الْمَالِ.

L21455 And Az-Zuhri said: Whatever the captive commits is to be taken from the Third of the estate.

وَقَالَ الزُّهْرِيُّ: مَا صَنَعَ الْأَسِيرُ فَمِنَ الثُّلُثِ.

L21456 Abu Hanifah said: A sick person may not settle debts with some creditors without settling with others.

وَقَالَ أَبُو حَنِيفَةَ: لَيْسَ لِلْمَرِيضِ أَنْ يَقْضِيَ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ.

L21457 They held that his preferential pricing in sales, his gifts, his charitable donations, and his manumissions—all these acts are charged against the third of the estate if he dies from that illness. However, the manumission is fully executed, and the heirs are required to make up the portion exceeding the third. If he recovers from that illness, all these acts are fulfilled from his entire estate.

وَرَأَوْا مُحَابَاتَهُ فِي الْبَيْعِ، وَهِبَاتِهِ، وَصَدَقَاتِهِ، وَعِتْقِهِ، كُلُّ ذَلِكَ مِنَ الثُّلُثِ إِنْ مَاتَ مِنْ ذَلِكَ الْمَرَضِ، إِلَّا أَنَّ الْعِتْقَ يَنْفُذُ كُلُّهُ وَيُسْتَسْعَى فِيمَا لَا يَحْمِلُهُ الثُّلُثُ مِنْهُ، فَإِنْ أَفَاقَ مِنْ ذَلِكَ الْمَرَضِ نَفَذَ كُلُّ ذَلِكَ مِنْ رَأْسِ مَالِهِ.

L21458 As for one prevented from completing pilgrimage and one stationed in battle formation, their rulings are treated as those of a person in full legal capacity.

وَأَمَّا الْمَحْصُورُ، وَالْوَاقِفُ فِي صَفِّ الْحَرْبِ فَكَالصَّحِيحِ. وَأَمَّا الَّذِي يُقَدَّمُ لِلْقَتْلِ فِي قِصَاصٍ، أَوْ رَجْمٍ فَكَالْمَرِيضِ.

As for one designated for execution in cases of qisas (retaliation) or rajm (stoning), his ruling is equivalent to that of one with a valid legal excuse.

وَمَنْ اشْتَرَى ابْنَهُ فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ فَإِنْ خَرَجَ مِنْ ثُلُثِهِ عَتَقَ وَوَرِثَهُ، وَإِنْ لَمْ يَخْرُجْ مِنْ ثُلُثِهِ عَتَقَ وَلَمْ يَرِثْهُ، وَاسْتَسْعَى فِيمَا زَادَ عَلَى الثُّلُثِ كَسَائِرِ الْوَرَثَةِ، فَإِنْ أَقَرَّ بِوَلَدِ أَمَتِهِ فِي مَرَضِ مَوْتِهِ لَحِقَ بِهِ وَوَرِثَهُ، وَإِنْ وَطِئَ أَمَةً فِي مَرَضِ مَوْتِهِ فَحَمَلَتْ فَهِيَ أُمُّ وَلَدٍ مِنْ رَأْسِ مَالِهِ وَيَرِثُهُ وَلَدُهَا. وَوَافَقَهُ عَلَى ذَلِكَ كُلِّهِ أَبُو يُوسُفَ، وَمُحَمَّدٌ، إِلَّا أَنَّ الَّذِي يَشْتَرِي وَلَدَهُ فِي مَرَضِهِ وَلَا يَحْمِلُهُ الثُّلُثُ فَإِنَّهُمَا قَالَا: يَرِثُهُ عَلَى كُلِّ حَالٍ، وَيُسْتَسْعَى فِيمَا يَقَعُ مِنْ قِيمَتِهِ لِلْوَرَثَةِ فَيَأْخُذُونَهُ.

L21459 If a man purchases his son during his terminal illness and the emancipation falls within the third of his estate reserved for discretionary bequests, the son is emancipated and inherits from him. If it does not fall within the third, he is emancipated but does not inherit, and he is required to work to compensate for the excess over the third like the rest of the heirs. If he acknowledges a child born to his female slave during his terminal illness, the child is recognized as his and inherits from him. If he has intercourse with a female slave during his terminal illness and she conceives, she becomes an *umm walad* (mother of a child by her master) from the assets of his estate, and her child inherits from him. Abū Yūsuf and Muḥammad agreed with all of this except regarding the purchase of one's son during an illness when the third does not encompass the cost. They held that the son inherits in all cases, and he is required to work for the portion of his value that pertains to the heirs, which they claim.

وَقَالُوا كُلُّهُمْ: إِنَّمَا هَذَا فِي الْمَرَضِ الْمُخِيفِ كَالْحُمَّى الصَّالِبِ وَالْبِرْسَامِ، وَالْبَطْنِ، وَنَحْوِ ذَلِكَ، وَلَمْ يَرَوْا ذَلِكَ فِي الْجُذَامِ، وَلَا حُمَّى الرِّبْعِ، وَلَا السُّلِّ وَلَا مَنْ يَذْهَبُ وَيَجِيءُ فِي مَرَضِهِ.

L21460–21461 And all of them said: This applies only to a dreaded illness such as ardent fever, pleurisy, abdominal ailment, and the like, but they did not consider this applicable to leprosy, nor to quartan fever, nor to consumption, nor to those whose illness comes and goes.

وَقَالَ مَالِكٌ: كَقَوْلِ أَبِي حَنِيفَةَ فِي كُلِّ مَا ذَكَرْنَا إِلَّا فِي الْحَامِلِ فَإِنَّ أَفْعَالَهَا عِنْدَهُ كَالصَّحِيحِ إِلَى أَنْ تُتِمَّ سِتَّةَ أَشْهُرٍ، فَإِذَا أَتَمَّتْهَا فَأَفْعَالُهَا فِي مَالِهَا كَالْمَرِيضِ. حَتَّى أَنَّهُ مَنَعَهَا مِنْ مُرَاجَعَةِ زَوْجِهَا الَّذِي طَلَّقَهَا طَلَاقًا بَائِنًا وَاحِدَةً أَوْ اثْنَتَيْنِ وَإِلَّا الِاسْتِسْعَاءُ فَلَمْ يَرَهُ، بَلْ أَرَقَّ مَا لَمْ يَحْمِلْ الثُّلُثُ مِنْهُ، وَإِلَّا فِيمَنْ اشْتَرَى ابْنَهُ فِي مَرَضِهِ وَلَمْ يَحْمِلْهُ الثُّلُثُ فَإِنَّهُ أَعْتَقَ مِنْهُ مَا حَمَلَ الثُّلُثُ وَأَرَقَّ الْبَاقِيَ.

L21462 Malik said: His opinion aligns with Abu Hanifah's in all we have mentioned except regarding the pregnant woman, for her legal acts in his view remain valid like those of a healthy person until she completes six months of pregnancy. When she completes the six months, her financial acts are treated as those of an ill person. He even prohibited her from resuming the marriage with her husband who had divorced her with one or two irrevocable divorces, unless appointing arbitrators was sought – but he rejected this. Rather, he ordered the sale [of assets] provided the third [of the estate] was not exceeded, except in the case of one who ransomed his son [from slavery] during his illness without the third [of the estate] being exceeded. In that scenario, he emancipated the portion equivalent to a third and sold the remainder.

وَقَالَ الشَّافِعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ لِلْمَرِيضِ أَنْ يَقْضِيَ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ - وَقَالَ الشَّافِعِيُّ: فِعْلُ الْمَرِيضِ مَرَضًا مُخِيفًا مِنْ الثُّلُثِ، فَإِنْ أَفَاقَ فَمِنْ رَأْسِ مَالِهِ - وَاخْتَلَفَ قَوْلُهُ فِي الَّذِي يُقَدَّمُ لِلْقَتْلِ؟ فَمَرَّةً قَالَ: هُوَ كَالصَّحِيحِ وَمَرَّةً قَالَ: هُوَ كَالْمَرِيضِ.

L21463 Al-Shafi'i and Sufyan al-Thawri stated that a sick person may settle some creditors while excluding others. Al-Shafi'i said: Acts performed by a person afflicted with a serious illness are deducted from one-third of his estate. If he recovers, such acts are drawn from his personal wealth. His rulings differed regarding one sentenced to execution - sometimes stating he is considered like a healthy person, and other times like a sick person.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ: أَنَّهُ لَيْسَ لِلْمَرِيضِ أَنْ يَقْضِيَ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ -: فَخَطَأٌ فِي تَفْرِيقِهِمَا فِي ذَلِكَ بَيْنَ الصَّحِيحِ، وَالْمَرِيضِ، وَالْحَقُّ فِي ذَلِكَ هُوَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِأَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ، فَهُوَ فِي إنْصَافِهِ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ مُعْطِي ذَلِكَ الَّذِي أَنْصَفَ حَقَّهُ، وَمَنْ فَعَلَ مَا أَمَرَ بِهِ فَهُوَ مُحْسِنٌ، وَالْإِحْسَانُ لَا يُرَدُّ، فَإِنْ كَانَ الَّذِي لَمْ يُنْصِفْهُ حَاضِرًا طَالِبًا حَقَّهُ فَهُوَ عَاصٍ فِي أَنَّهُ لَمْ يُنْصِفْهُ، وَهُمَا قَضِيَّتَانِ أَصَابَ فِي إحْدَاهُمَا، وَظَلَمَ فِي الْأُخْرَى - وَالْحَقُّ لَا يُبْطِلُهُ ظُلْمُ فَاعِلِهِ فِي قِصَّةٍ أُخْرَى وَحَقُّ الْغَرِيمِ إنَّمَا هُوَ فِي ذِمَّةِ الْمَدِينِ لَا فِي عَيْنِ مَالِهِ مَا دَامَ حَيًّا لَمْ يُفْلِسْ، فَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ نَفَذَ الَّذِي أَعْطَى مَا أَعْطَاهُ بِحَقٍّ وَلَزِمَهُ أَنْ يُنْصِفَ مَنْ بَقِيَ إذْ حَقُّهُ فِي ذِمَّتِهِ لَا فِي عَيْنِ مَا أَعْطَى الْآخَرَ - وَلَمْ يَأْتِ نَصٌّ فِي الْفَرْقِ بَيْنَ صَحِيحٍ، وَمَرِيضٍ، وَمَا نَعْلَمُ لَهُمَا فِي قَوْلِهِمَا هَذَا سَلَفًا.

L21464–21466 Abu Muhammad said: As for the statement of Mālik and Abū Ḥanīfah that a sick person may not repay some creditors while excluding others - this is an error in their distinction between the rulings for the healthy and the sick in this matter. The truth regarding... That is to say that the Messenger of Allah—peace and blessings of Allah be upon him—commanded that every rightful claimant be given their due. Thus, in his equitable treatment of some creditors while excluding others, he granted what fulfilled the right of those he treated justly. Whoever acts according to this command performs benevolence, and benevolence is not rejected. If the creditor who was not given their due is present demanding their right, the debtor transgresses by withholding it. These are two cases: in one he was correct, in the other he committed injustice. The right itself is not nullified by the debtor's wrongdoing in another matter. The creditor's right resides solely in the debtor's personal obligation, not in specific property, as long as the debtor lives and remains solvent. Since this is so, what the debtor rightfully gave to one creditor remains validly discharged, while he remains obligated to fulfill the remaining creditors' rights—which persist in his personal obligation, not in the specific property given to others. No explicit text distinguishes between healthy and sick persons in this matter, and we know of no earlier predecessors for their opinion in this statement.

وَأَمَّا قَوْلُهُمَا فِيمَنْ اشْتَرَى وَلَدَهُ فِي مَرَضِهِ فَلَمْ يَحْمِلْهُ الثُّلُثُ أَنَّهُ لَا يَرِثُهُ، فَإِنْ حَمَلَهُ الثُّلُثُ عَتَقَ وَوَرِثَ -: فَقَوْلٌ فِي غَايَةِ الْفَسَادِ وَالْمُنَاقَضَةِ، وَلَا نَعْلَمُ لَهُمَا فِيهِ سَلَفًا مُتَقَدِّمًا، لِأَنَّهُ إنْ كَانَ وَصِيَّةً، فَالْوَصِيَّةُ لِلْوَارِثِ لَا تَجُوزُ - فَيَنْبَغِي عَلَى أَصْلِهِمْ أَنْ لَا يَنْفُذَ عِتْقُهُ أَصْلًا حَمَلَهُ الثُّلُثُ أَوْ لَمْ يَحْمِلْهُ - وَقَدْ قَالَ بِهَذَا بَعْضُ الشَّافِعِيِّينَ.

L21467 As for their statement regarding one who purchased his child during his illness, such that the third [of the estate] did not suffice for it—[asserting] that the child does not inherit him—but if the third sufficed, the child is emancipated and inherits—this is a statement at the peak of corruption and contradiction. We know of no predecessor among earlier scholars who upheld their view, for if this were considered a bequest, a bequest to an heir is invalid. By their own principles, the emancipation should not take effect

at all, whether the third suffices for it or not. Indeed, some Shāfiʿī scholars have held this view.

L21468 Others among them said: The purchase is invalid because it constitutes a bequest to an heir. Even if it is not considered a bequest, why would he not inherit when emancipated through his father's ownership of him? Their contradiction is evident in the case of a sick man who has intercourse with his female slave and impregnates her - thus she is freed at the expense of his estate, and her child inherits him. If they argue: "Her pregnancy is not his act?" We respond: But his intercourse with her is his act, his acknowledgment of the child's parentage is his act, while the child's manumission in any case is not his act. As for Mālik's ruling regarding the pregnant woman, it is an opinion for which we know no prior precedent. Some of his followers sought to justify it by citing Allah's statement: {When he had intercourse with her, she carried a light burden and went about with it. When she became heavy, they both supplicated to Allah, their Lord} [Al-Aʿrāf 7:189].[32]

L21469 Abu Muhammad said: This is their misleading implication to argue using what provides no valid proof for them whatsoever, for Allah the Exalted did not state that undue burden is restricted to the completion of six months. Thus their obfuscation by means of what they have no valid basis for is laid bare.

L21470 Then, if only I knew who among them would assert that burdens in their entirety are included under the ruling applicable to the sick—when indeed a carrier may bear a heavy burden, yet would not thereby fall under the ruling of the sick in their view.

L21471–21472 If they say: She can give birth after six months? We say: She may miscarry before that, and miscarriage is more dangerous than childbirth or similar to it. Thus, the invalidity of this statement is completely evident. And success is through Allah, the Most High.

L21473 Ali said: "Then we take by the power and strength of Allah the Exalted in the opinion of those who say that the actions of a sick person or one feared to be near death are taken from one-third?" Abu Muhammad said:

[32]**Qur'an references (L21468):** Qur'an 7:189 (Al-A'raf).

وَقَالَ آخَرُونَ مِنْهُمْ: الشِّرَاءُ فَاسِدٌ، لِأَنَّهُ وَصِيَّةٌ لِوَارِثٍ وَإِنْ كَانَ لَيْسَ وَصِيَّةً فَمَا بَالُهُ لَا يَرِثُ وَقَدْ صَارَ حُرًّا بِمِلْكِ أَبِيهِ لَهُ، ثُمَّ مُنَاقَضَتُهُمْ فِي الْمَرِيضِ يَطَأُ أَمَتَهُ فَتَحْمِلُ أَنَّهَا مِنْ رَأْسِ مَالِهِ حُرَّةٌ وَيَرِثُهُ وَلَدُهَا، فَإِنْ قَالُوا: حَمْلُهَا لَيْسَ مِنْ فِعْلِهِ؟ قُلْنَا: لَكِنَّ وَطْأَهُ لَهَا مِنْ فِعْلِهِ، وَإِقْرَارَهُ بِوَلَدِهَا مِنْ فِعْلِهِ، وَعِتْقَ الْوَلَدِ فِي كُلِّ حَالٍ لَيْسَ مِنْ فِعْلِهِ. وَأَمَّا قَوْلُ مَالِكٍ فِي الْحَامِلِ فَقَوْلٌ أَيْضًا لَا نَعْلَمُ لَهُ فِيهِ سَلَفًا، وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِقَوْلِ اللَّهِ تَعَالَى: {فَلَمَّا تَغَشَّاهَا حَمَلَتْ حَمْلا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلَتْ دَعَوَا اللَّهَ رَبَّهُمَا} [الأعراف: ١٨٩] .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا إيهَامٌ مِنْهُمْ لِلِاحْتِجَاجِ بِمَا لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ إنَّ الْإِثْقَالَ لَمْ تَكُنْ إلَّا بِتَمَامِ سِتَّةِ أَشْهُرٍ -: فَظَهَرَ تَمْوِيهُهُمْ بِمَا لَيْسَ لَهُمْ فِيهِ مُتَعَلَّقٌ.

ثُمَّ لَيْتَ شِعْرِي مَنْ لَهُمْ بِأَنَّ الْإِثْقَالَ جُمْلَةً يُدْخِلُهَا فِي حُكْمِ الْمَرِيضِ، وَقَدْ يَحْمِلُ الْحَمَّالُ حِمْلًا ثَقِيلًا فَلَا يَكُونُ بِذَلِكَ فِي حُكْمِ الْمَرِيضِ عِنْدَهُمْ.

فَإِنْ قَالُوا: قَدْ تَلِدُ لِسِتَّةِ أَشْهُرٍ؟ قُلْنَا، وَقَدْ تُسْقِطُ قَبْلَ ذَلِكَ، وَالْإِسْقَاطُ أَخْوَفُ مِنْ الْوِلَادَةِ أَوْ مِثْلُهَا - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ عَلِيٌّ: ثُمَّ نَأْخُذُ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ فِي قَوْلِ مَنْ قَالَ: بِأَنَّ أَفْعَالَ الْمَرِيضِ، وَمَنْ خِيفَ عَلَيْهِ الْمَوْتُ مِنْ الثُّلُثِ؟ قَالَ أَبُو مُحَمَّدٍ: احْتَجُّوا بِالْخَبَرِ الثَّابِتِ الْمَشْهُورِ مِنْ

"They cited as evidence the well-established, renowned report through Ibn Sirin and Abi Al-Muhallab, both narrating from Imran ibn Al-Husayn: 'A man freed six slaves he owned at his death, having no property other than them. The Messenger of Allah—may Allah bless him and grant him peace—summoned them, divided them into thirds, then drew lots among them. He freed two and enslaved four.'"

L21474 In some narrations, it is mentioned that he—peace be upon him—spoke firmly regarding it. According to the authentic, well-established report transmitted via the chains of Mālik, Ibn ʿUyaynah, and Ibrāhīm ibn Saʿd from al-Zuhrī, from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ, from his father, who said: "Allah's Messenger—may Allah's blessings and peace be upon him—came to visit me during an illness that had severely afflicted me. I said, 'O Messenger of Allah, the pain I endure is as severe as you witness, and I possess wealth, yet none will inherit me except a daughter. Should I donate two-thirds of my wealth?' He—peace be upon him—replied, 'No.' I asked, 'Then half?' He said, 'No.' Then he—peace be upon him—said, 'A third, and a third is a significant portion. Indeed, leaving your heirs wealthy is better than leaving them impoverished, reduced to begging from people.'" He then related the rest of the report.

L21475 They said: He (peace be upon him) did not permit him to allocate charitable bequests exceeding a third of his estate.

L21476–21478 And with a report we have narrated through the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman: narrated to us Yazīd ibn Muḥammad al-ʿUqaylī; narrated to us Ḥafṣ ibn ʿUmar ibn Maymūn, from Thawr ibn Yazīd, from Makhūl, from al-Ṣunābiḥī, from Abū Bakr al-Ṣiddīq. The Messenger of Allah—peace and blessings be upon him—said: "Indeed, Allah has bestowed upon you the charity of a third of your wealth to bequeath at the time of your death, as a mercy to you and an increase in your deeds and virtuous acts."

L21479 And through the chain of Sulaymān ibn Mūsā, I heard that the Messenger of Allah—may Allah's blessings and peace be upon him—said: "A third of your wealth has been ordained as an increase in your deeds."

طَرِيقِ ابْنِ سِيرِينَ، وَأَبِي الْمُهَلَّبِ، كِلَاهُمَا عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: «أَنَّ رَجُلًا أَعْتَقَ سِتَّةَ مَمْلُوكِينَ لَهُ عِنْدَ مَوْتِهِ لَمْ يَكُنْ لَهُ مَالٌ غَيْرَهُمْ فَدَعَاهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَزَّأَهُمْ أَثْلَاثًا، ثُمَّ أَقْرَعَ بَيْنَهُمْ فَأَعْتَقَ اثْنَيْنِ، وَأَرَقَّ أَرْبَعَةً» .

وَجَاءَ فِي بَعْضِ الرِّوَايَاتِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ فِيهِ قَوْلًا شَدِيدًا. وَبِالْخَبَرِ الصَّحِيحِ الثَّابِتِ مِنْ طَرِيقِ مَالِكٍ، وَابْنِ عُيَيْنَةَ، وَإِبْرَاهِيمَ بْنِ سَعْدٍ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ قَالَ: «جَاءَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعُودُنِي مِنْ وَجَعٍ اشْتَدَّ بِي فَقُلْتُ: يَا رَسُولَ اللَّهِ قَدْ بَلَغَنِي مِنْ الْوَجَعِ مَا تَرَى، وَأَنَا ذُو مَالٍ وَلَا يَرِثُنِي إلَّا ابْنَةٌ لِي. أَفَأَتَصَدَّقُ بِثُلُثَيْ مَالِي؟ قَالَ - عَلَيْهِ السَّلَامُ -: لَا، قُلْتُ: فَالشَّطْرُ؟ قَالَ: لَا، ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ، إنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ» وَذَكَرَ بَاقِيَ الْخَبَرِ

قَالُوا: فَلَمْ يَأْذَنْ لَهُ - عَلَيْهِ السَّلَامُ - بِالصَّدَقَةِ بِأَكْثَرَ مِنْ الثُّلُثِ.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا يَزِيدُ بْنُ مُحَمَّدٍ الْعُقَيْلِيُّ نا حَفْصُ بْنُ عُمَرَ بْنِ مَيْمُونٍ عَنْ ثَوْرِ بْنِ يَزِيدَ عَنْ مَكْحُولٍ عَنْ الصُّنَابِحِيِّ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ اللَّهَ قَدْ تَصَدَّقَ عَلَيْكُمْ بِثُلُثِ أَمْوَالِكُمْ عِنْدَ مَوْتِكُمْ رَحْمَةً لَكُمْ وَزِيَادَةً فِي أَعْمَالِكُمْ وَحَسَنَاتِكُمْ»

وَمِنْ طَرِيقِ سُلَيْمَانَ بْنِ مُوسَى سَمِعْت أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «جُعِلَ لَكُمْ ثُلُثُ أَمْوَالِكُمْ زِيَادَةً فِي أَعْمَالِكُمْ» .

L21480 And from the chain of Ma’mar from Ayyub from Abu Qilabah: The Prophet (peace and blessings of Allah be upon him) said in a narration from Allah the Exalted: “I have made a portion of your wealth existent at the time of your death by which I will have mercy on you.” And from the chain of Ma’mar from Qatadah, he said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “Redeem yourselves before your Lord, O people! Behold, nothing belongs to any person. Beware! Let it not be that I come to know of a man who withheld Allah’s rightful due until when death approaches him, he begins to scatter his wealth in every direction.”

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ «قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي خَبَرٍ عَنْ اللَّهِ تَعَالَى: أَنَّهُ قَالَ: جَعَلْتُ لَكَ طَائِفَةً مِنْ مَالِكَ عِنْدَ مَوْتِكَ أَرْحَمُكَ بِهِ» . وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ابْتَاعُوا أَنْفُسَكُمْ مِنْ رَبِّكُمْ أَيُّهَا النَّاسُ، أَلَا إنَّهُ لَيْسَ لِامْرِئٍ شَيْءٌ، أَلَا لَا أَعْرِفَنَّ امْرَأً بَخِلَ بِحَقِّ اللَّهِ حَتَّى إذَا حَضَرَهُ الْمَوْتُ أَخَذَ يُذَعْذِعُ مَالَهُ هَهُنَا هَهُنَا» .

L21481–21482 And from the chain of Wakīʿ, from Ṭalḥah—he is Ibn ʿAmr al-Makkī—from ʿAṭāʾ, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: “Verily Allah has given you a third of your wealth as charity (ṣadaqah) upon your death, as an increase for your deeds.” From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: Ḥajjāj from al-ʿAlāʾ ibn Badr, from Abū Yaḥyā al-Makkī: “A man manumitted his slave at his death when he owned no property other than the slave and owed debts. The Messenger of Allah—peace and blessings of Allah be upon him—commanded the man to have the slave work to pay his value.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ طَلْحَةَ - هُوَ ابْنُ عَمْرٍو الْمَكِّيُّ - عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ اللَّهَ تَصَدَّقَ عَلَيْكُمْ بِالثُّلُثِ مِنْ أَمْوَالِكُمْ عِنْدَ وَفَاتِكُمْ زِيَادَةً لَكُمْ فِي أَعْمَالِكُمْ» . وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا حَجَّاجٌ عَنْ الْعَلَاءِ بْنِ بَدْرٍ عَنْ أَبِي يَحْيَى الْمَكِّيِّ: «أَنَّ رَجُلًا أَعْتَقَ غُلَامًا لَهُ عِنْدَ مَوْتِهِ لَيْسَ لَهُ مَالٌ غَيْرَهُ، وَعَلَيْهِ دَيْنٌ، فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَسْعَى فِي قِيمَتِهِ» .

L21483 Via the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, saying, “I [heard] from Khālid, from Abī Qilābah, from a man of Banī ʻUdhrah: A man among them manumitted a slave at his death while owning no property besides him. This matter was presented to the Messenger of Allāh (peace be upon him), who manumitted one-third of the slave and obligated him to work for the remaining two-thirds.” They said: It is authentically established from Abū Bakr that he told ʻĀ’ishah (may Allāh be pleased with her) at his death: “I irrevocably gifted you twenty wasqs from my property. Had you taken possession and secured it, it would have been yours. But today, it belongs to the heir’s property.” They said: Abū Bakr declared this before the Companions, affirming that when one approaches death, his property becomes the heir’s property.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا خَالِدٌ عَنْ أَبِي قِلَابَةَ عَنْ رَجُلٍ مِنْ بَنِي عُذْرَةَ «أَنَّ رَجُلًا مِنْهُمْ أَعْتَقَ غُلَامًا عِنْدَ مَوْتِهِ وَلَمْ يَكُنْ لَهُ مَالٌ غَيْرَهُ، فَرَفَعَ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَعْتَقَ مِنْهُ الثُّلُثَ وَاسْتَسْعَى فِي الثُّلُثَيْنِ» : وَقَالُوا قَدْ صَحَّ عَنْ أَبِي بَكْرٍ أَنَّهُ قَالَ لِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - عِنْدَ مَوْتِهِ " إنِّي كُنْتُ نَحَلْتُكِ جَادَّ عِشْرِينَ وَسْقًا مِنْ مَالِي فَلَوْ كُنْتِ جَدَدْتِيهِ وَحُزْتِيهِ لَكَانَ لَكِ، وَإِنَّمَا هُوَ الْيَوْمَ مَالُ الْوَارِثِ " قَالُوا: فَأَخْبَرَ أَبُو بَكْرٍ بِحَضْرَةِ الصَّحَابَةِ أَنَّ مَنْ قَارَبَ الْمَوْتَ فَمَالُهُ مَالُ الْوَارِثِ.

L21484 They said: What we have cited from Ali and Ibn Mas’ud has indeed been established, and no dissenting opinion opposing them is known among the

Companions (may Allah be pleased with them) - thus it is consensus (ijmaʿ). They further said: We have analogically compared it to the testamentary will.

وَقَالُوا: قَدْ جَاءَ مَا أَوْرَدْنَا عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ، وَلَا مُخَالِفَ لَهُمَا يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَهُوَ إجْمَاعٌ، وَقَالُوا: قِسْنَاهُ عَلَى الْوَصِيَّةِ.

L21485 Abū Muḥammad said: This is all they have disputed, and none of it provides valid evidence for them. As for the narration of a man from Banū ʻUdhrah: it is a *mursal* report transmitted from an unknown narrator. Moreover, even if it were authentic, it would contradict the positions of Mālik and al-Shāfiʻī, for they do not recognize the validity of *istisʻā'*.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا حَدِيثُ رَجُلٍ مِنْ بَنِي عُذْرَةَ: فَمُرْسَلٌ، وَعَنْ مَجْهُولٍ، ثُمَّ لَوْ صَحَّ لَكَانَ مُخَالِفًا لِقَوْلِ مَالِكٍ، وَالشَّافِعِيِّ؛ لِأَنَّهُمَا لَا يَرَيَانِ الِاسْتِسْعَاءَ.

L21486 As for the report of Abū Yaḥyā al-Mālikī: it is invalid because it is _mursal_ (transmitted without a complete chain), and from Ḥajjāj—who is discarded. Moreover, even if it were authentic, it would contradict the doctrines of Mālik and al-Shāfiʻī.

وَأَمَّا خَبَرُ أَبِي يَحْيَى الْمَالِكِيِّ: فَهَالِكٌ، لِأَنَّهُ مُرْسَلٌ، وَعَنْ حَجَّاجٍ، وَهُوَ سَاقِطٌ، ثُمَّ لَوْ صَحَّ لَكَانَ مُخَالِفًا لِقَوْلِ مَالِكٍ وَالشَّافِعِيِّ.

L21487 As for the ḥadīth of Abū Hurayrah, its chain includes Ṭalḥah ibn ʻAmr al-Makkī - and he is a fabricator.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ: فَفِيهِ طَلْحَةُ بْنُ عَمْرٍو الْمَكِّيُّ وَهُوَ كَذَّابٌ.

L21488–21490 As for the ḥadīth of Qatādah: it is mursal. Furthermore, even if it were authentic, they would have no valid proof in it, because stinginess in a right... By Allah, the Exalted, we do not disagree with them that it is impermissible, and that profligate dispersal of wealth here and there is not permissible according to us; neither in a state of health nor sickness. Therefore, this report does not conflict with our view.

وَأَمَّا حَدِيثُ قَتَادَةَ: فَمُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ الْبُخْلَ بِحَقِّ اللَّهِ تَعَالَى لَا نُخَالِفُهُمْ أَنَّهُ لَا يَحِلُّ، وَأَنَّ ذَعْذَعَةَ الْمَالِ هَهُنَا وَهَهُنَا لَا تَجُوزُ عِنْدَنَا، لَا فِي صِحَّةٍ، وَلَا فِي مَرَضٍ، فَلَيْسَ ذَلِكَ الْخَبَرُ مُخَالِفًا لِقَوْلِنَا.

L21491 As for the ḥadīth of Abū Qilābah, it is *mursal*, and likewise the ḥadīth of Sulaymān ibn Mūsā is *mursal*.

وَأَمَّا حَدِيثُ أَبِي قِلَابَةَ: فَمُرْسَلٌ، وَكَذَلِكَ حَدِيثُ سُلَيْمَانَ بْنِ مُوسَى.

L21492 As for the narration of Abū Bakr, its chain of transmission is not widely recognized, and we do not know the status of Ḥafṣ ibn ʻUmar ibn Maymūn. Even if this narration and all the other traditions we mentioned were authentic, they would not constitute any valid proof whatsoever, because all of them merely indicate that Allah—Exalted and Glorified—bestows upon us as charity a third of our wealth at the time of our death. This corresponds to the bequest, which is indisputably valid after death. It is established in the linguistic convention by which the Messenger of Allah—peace and blessings be upon him—addressed us that Arabs say: "Such an affair occurred at the

وَأَمَّا حَدِيثُ أَبِي بَكْرٍ فَسَنَدُهُ غَيْرُ مَشْهُورٍ، وَلَا نَدْرِي حَالَ حَفْصِ بْنِ عُمَرَ بْنِ مَيْمُونٍ، ثُمَّ لَوْ صَحَّ هُوَ وَجَمِيعُ الْآثَارِ الَّتِي ذَكَرْنَا لَمْ يَكُنْ لَهُمْ فِي شَيْءٍ مِنْهَا حُجَّةٌ أَصْلًا؛ لِأَنَّهُ لَيْسَ فِيهَا كُلِّهَا إلَّا أَنَّ اللَّهَ عَزَّ وَجَلَّ تَصَدَّقَ عَلَيْنَا عِنْدَ مَوْتِنَا بِثُلُثِ أَمْوَالِنَا -: فَهَذَا يَخْرُجُ عَلَى أَنَّهُ الْوَصِيَّةُ الَّتِي هِيَ بِلَا خِلَافٍ نَافِذَةٌ بَعْدَ الْمَوْتِ، وَمَعْرُوفٌ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْعَرَبَ تَقُولُ: كَانَ أَمْرُ كَذَا عِنْدَ

time of so-and-so's death," as in "The Arabs apostatized at the time of the Messenger of Allah's death—peace and blessings be upon him—" and "'Umar was appointed leader at the time of Abū Bakr's death." This is a widely recognized and established matter. All these narrations conform perfectly to this interpretation and align with our actual position, excepting the narration of Al-ʿAlāʾ ibn Badr from Abū Yaḥyā al-Makkī, which cannot be reconciled with our view or the view of any of them. They have no right to cite a narration they themselves contradict, for Abū Ḥanīfa states: "If the debt does not exhaust the slave's entire value, he is required to work solely to repay the debt, then for two-thirds of the remaining value thereafter"—which coincides with our ruling when emancipation is bequeathed. We maintain: "If the debt exhausts his entire value, the manumission is invalid"—and this is the position of Mālik and Al-Shāfiʿī.

مَوْتِ فُلَانٍ، وَارْتَدَّتْ الْعَرَبُ عِنْدَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَوُلِّيَ عُمَرُ عِنْدَ مَوْتِ أَبِي بَكْرٍ - هَذَا أَمْرٌ مَعْرُوفٌ مَشْهُورٌ. فَجَمِيعُ هَذِهِ الْأَخْبَارِ خَارِجَةٌ عَلَى هَذَا أَحْسَنَ خُرُوجٍ، وَمُوَافِقَةٌ لِقَوْلِنَا عَلَى الْحَقِيقَةِ، حَاشَا خَبَرَ الْعَلَاءِ بْنِ بَدْرٍ عَنْ أَبِي يَحْيَى الْمَكِّيِّ، فَإِنَّهُ لَا يُخَرَّجُ لَا عَلَى قَوْلِنَا وَلَا عَلَى قَوْلِ أَحَدٍ مِنْهُمْ، فَلَيْسَ لَهُمْ أَنْ يَحْتَجُّوا بِخَبَرٍ يُخَالِفُونَهُ؛ لِأَنَّ أَبَا حَنِيفَةَ يَقُولُ: إنْ كَانَ الدَّيْنُ لَا يَسْتَغْرِقُ جَمِيعَ قِيمَةِ الْعَبْدِ فَإِنَّمَا يَسْعَى فِي الدَّيْنِ فَقَطْ، ثُمَّ فِي ثُلُثَيْ مَا يَبْقَى مِنْ قِيمَتِهِ بَعْدَ الدَّيْنِ فَقَطْ - وَهُوَ قَوْلُنَا إذَا أَوْصَى بِعِتْقِهِ، وَنَحْنُ نَقُولُ: إنْ كَانَ الدَّيْنُ يَسْتَغْرِقُ جَمِيعَ قِيمَتِهِ، فَالْعِتْقُ بَاطِلٌ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ.

L21493 Each group among them has contradicted that ḥadīth. Moreover, all of them oppose these narrations entirely, for there is nothing in them except the phrase "at the time of his death" and "at the time of your death," with no mention whatsoever of illness in any of them. Illness is an element they added through their personal opinions—no explicit text in any narration nor any evidence supports it. A healthy person may die suddenly or from a minor ailment, so from where did their restriction to illness originate? Why did they not adhere to what the narrations explicitly state—"at the time of his death"—and thus deem valid the act of whoever performed it "at the time of his death," whether healthy or as a sick person (bequeathing) from the third? Why did they not treat what people enact during health or illness—if death follows thereafter—as deriving from the capital of their wealth? Thus, it becomes evident that all these narrations contradict their opinion, and that they belong to the category of evidence they cite for their rulings, though none of these narrations pertains to what they argue for. This constitutes a repugnant ambiguity on their part and deception in matters of religion—thereby nullifying their reliance upon them.

فَكُلُّ طَائِفَةٍ مِنْهُمْ قَدْ خَالَفَتْ ذَلِكَ الْحَدِيثَ. ثُمَّ جَمِيعُهُمْ مُخَالِفٌ لِجَمِيعِ هَذِهِ الْآثَارِ؛ لِأَنَّهُ لَيْسَ فِيهَا إلَّا: " عِنْدَ مَوْتِهِ، وَعِنْدَ مَوْتِكُمْ " وَلَيْسَ فِي شَيْءٍ مِنْهَا ذِكْرٌ لِمَرَضٍ أَصْلًا، فَالْمَرَضُ شَيْءٌ زَادُوهُ بِآرَائِهِمْ لَيْسَ فِي شَيْءٍ مِنْ الْآثَارِ نَصٌّ مِنْهُ، وَلَا دَلِيلٌ عَلَيْهِ، وَقَدْ يَمُوتُ الصَّحِيحُ فَجْأَةً، وَمِنْ مَرَضٍ خَفِيفٍ، فَاقْتِصَارُهُمْ عَلَى الْمَرَضِ مِنْ أَيْنَ خَرَجَ؟ وَهَلَّا رَاعُوا مَا جَاءَتْ بِهِ الْآثَارُ مِنْ لَفْظِ " عِنْدَ مَوْتِهِ " فَجَعَلُوا مَنْ فَعَلَ ذَلِكَ " عِنْدَ مَوْتِهِ " صَحِيحًا فَعَلَهُ؟ أَوْ مَرِيضًا مِنْ الثُّلُثِ، وَجَعَلُوا مَا فَعَلُوا فِي صِحَّتِهِ أَوْ مَرَضِهِ مِمَّا تَأَخَّرَ عَنْهُ مَوْتُهُ مِنْ رَأْسِ مَالِهِ؟ فَظَهَرَ أَنَّ جَمِيعَ هَذِهِ الْآثَارِ مُخَالِفَةٌ لِقَوْلِهِمْ، وَأَنَّهَا مِنْ النَّوْعِ الَّذِي احْتَجُّوا بِهِ لِأَقْوَالٍ لَهُمْ، لَيْسَ مِنْهَا شَيْءٌ فِيمَا احْتَجُّوا لَهُ بِهِ، وَهَذَا إيهَامٌ مِنْهُمْ قَبِيحٌ، وَتَدْلِيسٌ فِي الدِّينِ - فَسَقَطَ تَعَلُّقُهُمْ بِهَا.

L21494–21495 As for the hadith of Sa'd, we have narrated it through the chain of Sufyan

al-Thawri from Sa’d ibn Ibrahim from ’Amir ibn Sa’d ibn Abi Waqqas from his father.

وَأَمَّا حَدِيثُ سَعْدٍ: فَإِنَّا رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L21496 And from the route of Maʿmar from al-Zuhri from ʿĀmir ibn Saʿd from his father. And from the route of Marwān ibn Muʿāwiyah al-Fazārī from Hāshim ibn Hāshim ibn ʿUtbah ibn Abī Waqqāṣ from ʿĀmir ibn Saʿd from his father.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ. وَمِنْ طَرِيقِ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ عَنْ هَاشِمِ بْنِ هَاشِمِ بْنِ عُتْبَةَ بْنِ أَبِي وَقَّاصٍ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ.

L21497 And via the chain of Abd al-Malik ibn Umayr, from Musʿab ibn Saʿd ibn Abi Waqqas, from his father.

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ مُصْعَبِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L21498 And via the chain of Ayyub al-Sikhtiyānī from ʿAmr ibn Saʿīd from Ḥumayd ibn ʿAbd al-Raḥmān from three from among the children of Saʿd, all of whom narrate from Saʿd.

وَمِنْ طَرِيقِ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ سَعِيدٍ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ ثَلَاثَةٍ مِنْ وَلَدِ سَعْدٍ، كُلُّهُمْ عَنْ سَعْدٍ

L21499 And via the chain of Qatadah, from Yunus ibn Jubayr, from Muhammad ibn Sa‘d ibn Abi Waqqas, from his father [Sa‘d ibn Abi Waqqas].

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L21500 And via the chain of ʿAṭāʾ ibn al-Sāʾib, from Abū ʿAbd al-Raḥmān al-Sulamī, from Saʿd ibn Abī Waqqāṣ.

وَمِنْ طَرِيقِ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ.

L21501 And through the chain of Wakīʿ from Hishām ibn ʿUrwah from his father from Saʿd and ʿĀʾishah, the Mother of the Believers—all of whom related in this report: "Shall I bequeath all my wealth, two-thirds of it, or half of it, O Messenger of God?"—this being a single report. Thus, it is confirmed that those who transmitted the wording "Shall I give in charity" from al-Zuhrī undoubtedly intended by it the bequest, not charity during one's lifetime, for it is entirely a single report concerning a single situation, from one man, regarding one ruling. Every bequest is charity, but not every charity is a bequest. Furthermore, this report has been transmitted to us through the chain of Abū Dāwūd: Abū al-Walīd al-Ṭayālisī narrated to us, saying: ʿAbd al-ʿAzīz ibn al-Mājishūn and Ibrāhīm ibn Saʿd both narrated from al-Zuhrī from ʿĀmir ibn Saʿd from his father, who said: "I fell severely ill and recovered. The Messenger of God—peace and blessings be upon him—visited me, and I said: 'O Messenger of God, I have abundant wealth, and only one daughter will inherit me. Shall I give all my wealth in charity?' He replied: 'No.' I asked: 'Shall I bequeath half?' He said: 'No.' I said: 'O Messenger of God, what then should I bequeath?' He answered: 'A third—and a third is ample. Indeed, leaving your heirs wealthy is better than leaving them dependent, begging from people.'"

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ سَعْدٍ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، كُلُّهُمْ قَالَ فِي هَذَا الْخَبَرِ: أَفَأُوصِي بِمَالِي أَوْ بِثُلُثَيْ مَالِي يَا رَسُولَ اللَّهِ؟ ثُمَّ بِنِصْفِهِ - وَهُوَ خَبَرٌ وَاحِدٌ. فَصَحَّ أَنَّ الَّذِينَ رَوَوْا لَفْظَ " أَفَأَتَصَدَّقُ " عَنْ الزُّهْرِيِّ إنَّمَا عَنَوْا بِهِ الْوَصِيَّةَ بِلَا شَكٍّ، لَا الصَّدَقَةَ فِي حَالِ الْحَيَاةِ، لِأَنَّهُ كُلَّهُ خَبَرٌ وَاحِدٌ، عَنْ مَقَامٍ وَاحِدٍ، عَنْ رَجُلٍ وَاحِدٍ، فِي حُكْمٍ وَاحِدٍ، وَكُلُّ وَصِيَّةٍ صَدَقَةٌ. وَلَيْسَ كُلُّ صَدَقَةٍ وَصِيَّةً. نَعَمْ: وَرُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ أَبِي دَاوُد نا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ قَالَ: نَا عَبْدُ الْعَزِيزِ بْنُ الْمَاجِشُونِ، وَإِبْرَاهِيمُ بْنُ سَعْدٍ، كِلَاهُمَا عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ قَالَ: «مَرِضْتُ مَرَضًا شَدِيدًا فَأُشْفِيتُ مِنْهُ فَدَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: يَا رَسُولَ اللَّهِ إنَّ لِي مَالًا كَثِيرًا وَإِنَّمَا تَرِثُنِي ابْنَةٌ لِي وَاحِدَةٌ، أَفَأَتَصَدَّقُ بِمَالِي كُلِّهِ؟ قَالَ: لَا، قُلْتُ: فَأُوصِي بِالشَّطْرِ، قَالَ: لَا قُلْتُ: يَا رَسُولَ اللَّهِ فَبِمَ أُوصِي؟ قَالَ: الثُّلُثَ وَالثُّلُثُ كَثِيرٌ، إنَّك أَنْ تَدَعَ وَرَثَتَك أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ»

L21502–21503 Malik narrated from al-Zuhri from ʿĀmir ibn Saʿd from his father: "Should I give charity?"; Ibn ʿUyaynah narrated from al-Zuhri from ʿĀmir ibn Saʿd from his father. Ibrāhīm ibn Saʿd narrated from al-Zuhri from ʿĀmir ibn Saʿd from his father in one version: "Should I give charity?" and in another: "Should I make a bequest?" Maʿmar and Saʿd ibn Ibrāhīm narrated from ʿĀmir ibn Saʿd from his father: "Should I make a bequest?" They are not inferior to Malik and Ibn ʿUyaynah in the chain.

فَرَوَى مَالِكٌ، وَابْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ أَفَأَتَصَدَّقُ؟ وَرَوَى إبْرَاهِيمُ بْنُ سَعْدٍ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ مُرَّةَ: أَفَأَتَصَدَّقُ، وَمَرَّةً: أَفَأُوصِي؟ وَرَوَى مَعْمَرٌ، وَسَعْدُ بْنُ إبْرَاهِيمَ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ أَفَأُوصِي؟ وَلَيْسَا دُونَ مَالِكٍ، وَابْنِ عُيَيْنَةَ.

L21504 All those we have mentioned agreed on the wording: "I bequeath," thereby entirely removing the difficulty.

وَاتَّفَقَ سَائِرُ مَنْ ذَكَرْنَا عَلَى لَفْظِ: " أُوصِي " فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً.

L21505 Moreover, there is no explicit text or evidence in this narration—in any manner—indicating that this ruling applies exclusively to illness to the exclusion of health. Therefore, whoever claims it is specific to illness has certainly lied and fabricated statements against the Messenger of Allah (peace and blessings be upon him) that he did not utter, and this is among the gravest major sins.

وَأَيْضًا: فَلَيْسَ فِي هَذَا الْخَبَرِ نَصٌّ وَلَا دَلِيلٌ بِوَجْهٍ مِنْ الْوُجُوهِ عَلَى أَنَّ ذَلِكَ الْحُكْمَ فِي الْمَرَضِ خَاصَّةً دُونَ الصِّحَّةِ، فَمَنْ قَالَ: إنَّهُ فِي الْمَرَضِ خَاصَّةً فَقَدْ كَذَبَ وَقَوَّلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ، وَهَذَا مِنْ أَكْبَرِ الْكَبَائِرِ.

L21506 Moreover, the Messenger of Allah (peace be upon him) knew that Sa'd would recover and leave significant contributions in Islam, thus it invalidated the ruling that this illness would be fatal. It was narrated to us through the chain of Abū Dāwūd: 'Uthmān ibn Muḥammad ibn Abī Shaybah narrated to us, from Jarīr, from Al-A'mash, from Abū Wā'il, from Ḥudhayfah, who said: The Messenger of Allah (peace be upon him) stood among us and left nothing related to what would occur in that position until the establishment of the Hour except that he informed us of it. Those who preserved it did so, and those who forgot it did so. These companions of mine know that when I convey something, I recognize it and mention it, just as a man remembers another's face in his absence, and he recognizes him upon seeing him.

وَأَيْضًا: فَقَدْ عَلِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ سَعْدًا سَيَبْرَأُ وَتَكُونُ لَهُ آثَارٌ فِي الْإِسْلَامِ، فَبَطَلَ أَنْ يَكُونَ ذَلِكَ حُكْمَ الْمَرَضِ الَّذِي يَمُوتُ الْمَرْءُ مِنْهُ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ مُحَمَّدِ بْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ عَنْ حُذَيْفَةَ قَالَ: قَامَ فِينَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَائِمًا فَمَا تَرَكَ شَيْئًا يَكُونُ فِي مَقَامِهِ ذَلِكَ إلَى قِيَامِ السَّاعَةِ إلَّا أَخْبَرَ بِهِ، حَفِظَهُ مَنْ حَفِظَهُ، وَنَسِيَهُ مَنْ نَسِيَهُ، قَدْ عَلِمَ أَصْحَابِي هَؤُلَاءِ أَنَّهُ لَيَكُونُ مِنِّي الشَّيْءُ فَأَعْرِفُهُ فَأَذْكُرُهُ كَمَا يَذْكُرُ الرَّجُلُ وَجْهَ الرَّجُلِ إذَا غَابَ عَنْهُ فَإِذَا رَآهُ عَرَفَهُ.

L21507 Abu Muhammad said: Sa'd achieved the greatest victory, deposed the Persian king from his throne, seized his palaces, homes, and cities, thereby invalidating any claim they had to this matter.

قَالَ أَبُو مُحَمَّد: وَسَعْدٌ قَدْ فَتَحَ أَعْظَمَ الْفُتُوحِ، وَأَنْزَلَ مَلِكَ الْفُرْسِ عَنْ سَرِيرِهِ، وَافْتَتَحَ قُصُورَهُ، وَدُورَهُ، وَمَدَائِنَهُ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ بِهَذَا الْخَبَرِ مُتَعَلَّقٌ أَصْلًا.

L21508–21510 As for the report of 'Imrān ibn al-Ḥuṣayn concerning the six slaves, the people least worthy of being cited as evidence are Abū Ḥanīfah and his companions who feel no shame in declaring: "Is this not gambling? Is it not a void action and a ruling of injustice?" May the face of whoever says such things about the judgment of Allah's Messenger—peace and blessings be upon him—be disgraced! The discussion regarding it thus persists with the Mālikīs, Shāfi'īs, and our companions who assert it. 'Alī said: We say—and success comes from Allah—that they have no valid proof whatsoever for three reasons. First: It concerns emancipation alone. Their insertion of all a sick person's actions alongside emancipation is erroneous, a transgression of Allah's boundaries, and an invalid analogy. Even if valid in principle, it

وَأَمَّا خَبَرُ عِمْرَانَ بْنِ الْحُصَيْنِ فِي السِّتَّةِ الْأَعْبُدِ، فَأَوْلَى النَّاسِ أَنْ لَا يُحْتَجَّ بِهِ: أَبُو حَنِيفَةَ، وَأَصْحَابُهُ الَّذِينَ لَا يَسْتَحْيُونَ مِنْ أَنْ يَقُولُوا: إنَّهُ قِمَارٌ، وَإِنَّهُ فِعْلٌ بَاطِلٌ، وَحُكْمُ جَوْرٍ؟ شَاهَ وَجْهُ مَنْ قَالَ ذَلِكَ فِي حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَقِيَ الْكَلَامُ فِيهِ مَعَ الْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، وَأَصْحَابِنَا الْقَائِلِينَ بِهِ -: قَالَ عَلِيٌّ: فَنَقُولُ - وَبِاَللَّهِ التَّوْفِيقُ -: إنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا لِوُجُوهٍ ثَلَاثَةٍ -: أَوَّلُهَا: أَنَّهُ لَيْسَ فِيهِ إلَّا الْعِتْقُ وَحْدَهُ، فَإِقْحَامُهُمْ مَعَ الْعِتْقِ جَمِيعَ أَفْعَالِ الْمَرِيضِ خَطَأٌ وَتَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَالْقِيَاسُ بَاطِلٌ، وَلَوْ كَانَ

would remain void here because they... They differentiate between the ruling of manumission and other judgments, obligating that if one frees their share of a slave, the remaining portion must be appraised against him to emancipate the slave entirely. Yet they do not deem it necessary—for one who donates half their slave, endows half their house, half their horse, donates half their garment, or half their agricultural estate—to appraise the remainder against him or validate his act over the entirety. From where, then, did they derive the obligation to analogize to manumission in this case, while exempting it in those? This is indeed a baseless presumption.

The second consideration: There exists no explicit wording, implication, or allusion in the sick person's act. The text merely states "he freed upon his death." Thus, their obligation should have been to apply this ruling exclusively to one who emancipated upon death—whether healthy or ill—and died immediately afterward, not to one who freed while sick or healthy but whose death was delayed. For the latter undeniably did not free at the point of death.

Herein lies their contradiction of the very textual evidence they cited as proof: they inserted into it what it does not contain and invoked it for matters entirely absent from it. These are grave, ruinous corruptions—we seek refuge in Allah from such.

L21511 The third point is that this narration serves as decisive evidence for us against them, for this individual retained absolutely nothing for himself. As the ḥadīth states, he owned no property besides them. According to our school, such an action is invalid whether the person was healthy or sick, and it is impermissible for anyone to perform voluntary manumission, voluntary charity, or an irrevocable donation from their wealth unless they retain sufficient means to remain self-sufficient, as the Prophet (peace be upon him) said: "Charity is given from what suffices you."

L21512 The Messenger of Allah—peace and blessings be upon him—nullified the emancipation of a healthy man owned by someone possessing no property other than the slave, as transmitted through the chains of Al-Bukhari and Ahmad ibn Shuʿayb al-Nasāʾī. Al-Bukhari stated: Narrated to us by ʿAsim ibn

حَقًّا لَكَانَ هَهُنَا بَاطِلًا؛ لِأَنَّهُمْ يُفَرِّقُونَ بَيْنَ حُكْمِ الْعِتْقِ وَسَائِرِ الْأَحْكَامِ، فَيُوجِبُونَ فِيمَنْ أَعْتَقَ شِقْصًا لَهُ مِنْ عَبْدٍ أَنْ يُقَوَّمَ عَلَيْهِ بَاقِيهِ فَيَعْتِقُهُ، وَلَا يَرَوْنَ فِيمَنْ تَصَدَّقَ بِنِصْفِ عَبْدِهِ أَوْ أَوْقَفَ نِصْفَ دَارِهِ، أَوْ نِصْفَ فَرَسِهِ، أَوْ تَصَدَّقَ بِنِصْفِ ثَوْبِهِ أَوْ بِنِصْفِ ضَيْعَتِهِ: أَنْ يُقَوَّمَ عَلَيْهِ بَاقِي ذَلِكَ، وَيَنْفُذَ فِعْلُهُ فِي جَمِيعِهِ -: فَمِنْ أَيْنَ وَجَبَ أَنْ يُقَاسَ عَلَى الْعِتْقِ هَهُنَا؟ وَلَمْ يَجِبْ أَنْ يُقَاسَ عَلَيْهِ هُنَالِكَ؟ إِنَّ هَذَا لَتَحَكُّمٌ فَاسِدٌ؟ وَالْوَجْهُ الثَّانِي: أَنَّهُ لَيْسَ فِيهِ: مِنْ فِعْلِ الْمَرِيضِ كَلِمَةٌ، وَلَا دَلَالَةٌ، وَلَا إِشَارَةٌ بِوَجْهٍ مِنْ الْوُجُوهِ: إِنَّمَا فِيهِ " أَعْتَقَ عِنْدَ مَوْتِهِ " فَكَانَ الْوَاجِبُ عَلَيْهِمْ: أَنْ يَجْعَلُوا هَذَا الْحُكْمَ فِيمَنْ أَعْتَقَ عِنْدَ مَوْتِهِ - صَحِيحًا أَوْ مَرِيضًا. فَمَاتَ إثْرَ ذَلِكَ، لَا فِيمَنْ أَعْتَقَ مَرِيضًا، أَوْ صَحِيحًا، ثُمَّ تَرَاخَى مَوْتُهُ، فَإِنَّ هَذَا لَمْ يَعْتِقْ عِنْدَ مَوْتِهِ بِلَا شَكٍّ - وَهَذَا مِمَّا خَالَفُوا فِيهِ الْخَبَرَ الَّذِي احْتَجُّوا بِهِ فِيمَا فِيهِ، وَأَقْحَمُوا فِيهِ مَا لَيْسَ فِيهِ وَاحْتَجُّوا بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ أَصْلًا، وَهَذِهِ قَبَائِحُ مُوبِقَةٌ - نَعُوذُ بِاَللَّهِ مِنْهَا.

وَالثَّالِثُ: أَنَّ هَذَا الْخَبَرَ حُجَّةٌ لَنَا عَلَيْهِمْ قَاطِعَةٌ؛ لِأَنَّ هَذَا الْإِنْسَانَ لَمْ يُبْقِ لِنَفْسِهِ شَيْئًا أَصْلًا، هَكَذَا فِي الْحَدِيثِ أَنَّهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ، وَهَذَا عِنْدَنَا مَرْدُودُ الْفِعْلِ - صَحِيحًا كَانَ أَوْ مَرِيضًا - وَلَا يَجُوزُ لِأَحَدٍ فِي مَالِهِ عِتْقُ تَطَوُّعٍ، وَلَا صَدَقَةُ تَطَوُّعٍ، وَلَا هِبَةٌ يَبُتُّ بِهَا إلَّا فِيمَا أَبْقَى غِنًى، كَمَا قَالَ - عَلَيْهِ السَّلَامُ - «الصَّدَقَةُ عَنْ ظَهْرِ غِنًى» .

وَقَدْ أَبْطَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِتْقَ إنْسَانٍ صَحِيحٍ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ، وَأَحْمَدَ بْنِ شُعَيْبٍ، قَالَ الْبُخَارِيُّ: نا عَاصِمُ بْنُ عَلِيٍّ،

وَقَالَ أَحْمَدُ: أَنَا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ نا أَبِي وَعَمِّي - هُوَ يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ - ثُمَّ اتَّفَقَ عَاصِمٌ، وَسَعْدٌ، وَيَعْقُوبُ أَبْنَاءُ إِبْرَاهِيمَ، قَالُوا كُلُّهُمْ: نا ابْنُ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا أَعْتَقَ عَبْدًا لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ فَرَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَابْتَاعَهُ مِنْهُ نُعَيْمُ بْنُ النَّحَّامِ» قَالَ الزُّهْرِيُّونَ فِي رِوَايَتِهِمْ: فَرَدَّهُ - عَلَيْهِ السَّلَامُ -: فَهَذَا إِسْنَادٌ كَالشَّمْسِ لَا يَسَعُ أَحَدًا خِلَافُهُ.

'Ali. Ahmad said: Narrated to me by 'Ubaydullah ibn Sa'd ibn Ibrahim from my father and uncle—Ya'qub ibn Ibrahim ibn Sa'd. Then the chains of 'Asim, Sa'd, and Ya'qub—the sons of Ibrahim—converged. All said: Narrated to us by Ibn Abi Dhi'b from Muhammad ibn al-Munkadir from Jabir ibn 'Abdullah: "A man emancipated his slave while owning no property besides him. The Messenger of Allah—peace and blessings be upon him—reversed this, and Nu'aym ibn al-Naḥḥām purchased the slave from him." The narrators from al-Zuhri's school stated: "He nullified it—peace be upon him." This is a chain like the sun, leaving no room for anyone's opposition.

فَصَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا رَدَّ عِتْقَ أُولَئِكَ الْأَعْبُدِ؛ لِأَنَّ مُعْتِقَهُمْ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ، وَكَانَ عِتْقُهُ - عَلَيْهِ السَّلَامُ - لِثُلُثِهِمْ - وَاَللَّهُ أَعْلَمُ - كَمَا رُوِيَ فِي بَعْضِ الْأَخْبَارِ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لِكَعْبِ بْنِ مَالِكٍ إِذْ جَعَلَ عَلَى نَفْسِهِ إِذْ تَابَ اللَّهُ عَلَيْهِ: يُجْزِيكَ مِنْ ذَلِكَ الثُّلُثُ» وَإِنْ كَانَ هَذَا اللَّفْظُ لَا يَصِحُّ، لَكِنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لَهُ: «أَمْسِكْ عَلَيْكَ بَعْضَ مَالِكَ» ؛ فَأَمْسَكَ سَهْمَهُ بِخَيْبَرَ، فَقَدْ يَكُونُ ذَلِكَ الْمُعْتِقُ لَهُ فِي أَرْبَعَةٍ مِنْهُمْ غِنًى.

It is established that the Prophet—peace and blessings be upon him—rejected L21513–21515 the emancipation of those particular slaves solely because their emancipator had no property other than them. His emancipation—peace and blessings be upon him—pertained to a third of them—and Allah knows best—as narrated in certain reports: "When Allah had accepted his repentance, he—peace and blessings be upon him—said to Ka'b ibn Mālik after he had imposed an obligation upon himself: 'This will suffice you for that matter.'" "One-third," even if this wording is not authentic, he (peace be upon him) said to him: "Keep some of your wealth for yourself," so he retained his share in Khaybar. It may be that the emancipator attained sufficiency among four of them.

وَبُرْهَانُ هَذَا -: أَنَّ الرِّوَايَةَ الثَّانِيَةَ فِي ذَلِكَ الْخَبَرِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - إِنَّمَا أَعْتَقَ اثْنَيْنِ، وَأَرَقَّ أَرْبَعَةً وَلَمْ يَذْكُرْ قِيمَةً، وَالثُّلُثُ عِنْدَ الْمُحْتَجِّينَ بِهَذَا الْخَبَرِ لَا يَكُونُ هَكَذَا أَصْلًا، وَلَا يَكُونُ إِلَّا بِالْقِيمَةِ.

The proof of this is that the second narration in that report states he (peace L21516 be upon him) emancipated only two and kept four as slaves, without mentioning value. According to those who uphold this narration as proof, the third is not like this at all, nor can it apply except through valuation.

وَوَجْهٌ رَابِعٌ - وَهُوَ أَنَّنَا رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَابْنُ أَبِي عُمَرَ كِلَاهُمَا عَنِ الثَّقَفِيِّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: «أَنَّ رَجُلًا أَوْصَى عِنْدَ مَوْتِهِ فَأَعْتَقَ سِتَّةَ مَمْلُوكِينَ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ، فَدَعَا بِهِمْ رَسُولُ اللَّهِ -

A fourth perspective—and it is that we have transmitted this report through L21517 the chain of Muslim: Isḥāq ibn Ibrāhīm (he is Ibn Rāhwayh) and Ibn Abī 'Umar narrated to us, both from al-Thaqafī (he is 'Abd al-Wahhāb ibn 'Abd al-Majīd), from Ayyūb al-Sikhtiyānī, from Abī Qilābah, from Abī al-Muhallab, from 'Imrān ibn al-Ḥuṣayn: "A man, upon his death, emancipated six slaves whom he owned exclusively. The Messenger of Allah—peace and blessings of Allah be upon him—summoned them, divided them into thirds, then drew lots among them. He emancipated two and retained four in bondage, rebuk-

ing him harshly." Thus, it is confirmed that this emancipation constituted a bequest, with no dispute that the ruling applies equally to the healthy and the terminally ill, being permissible only within a third of the estate. If the two narrations are a single ḥadīth—which is the most evident interpretation, nearly impossible to disregard and impermissible to contradict—then the dispute is resolved, invalidating their reliance on it. If they are two distinct reports—a remote possibility—both nevertheless align with our position and oppose theirs. In any case, none of the texts mention illness, any action during illness whatsoever, or that the rejection stemmed from emancipation occurring during an illness—success is from Allah, the Exalted. Thus, all the embellished narrations they cited collapse, for they are the first to contradict them, and all these narrations have reverted as decisive proofs against them in our favor.

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَزَّأَهُمْ أَثْلَاثًا ثُمَّ أَقْرَعَ بَيْنَهُمْ فَأَعْتَقَ اثْنَيْنِ، وَأَرَقَّ أَرْبَعَةً، وَقَالَ لَهُ قَوْلًا شَدِيدًا» . فَصَحَّ أَنَّ ذَلِكَ الْعِتْقَ إنَّمَا كَانَ وَصِيَّةً، وَلَا خِلَافَ أَنَّهَا الصَّحِيحُ وَالْمَرِيضُ سَوَاءٌ، وَلَا تَجُوزُ إلَّا بِالثُّلُثِ، فَإِنْ كَانَتْ الرِّوَايَتَانِ حَدِيثًا وَاحِدًا - وَهُوَ الْأَظْهَرُ الَّذِي لَا يَكَادُ يُمْكِنُ وَلَا يَجُوزُ غَيْرُهُ - فَقَدْ ارْتَفَعَ الْكَلَامُ، وَبَطَلَ تَعَلُّقُهُمْ بِهِ، وَإِنْ كَانَا خَبَرَيْنِ - وَهَذَا مُمْكِنٌ بَعِيدٌ - فَكِلَاهُمَا لَنَا، وَمُوَافِقٌ لِقَوْلِنَا وَمُخَالِفٌ لِقَوْلِهِمْ، وَعَلَى كُلِّ حَالٍ فَلَيْسَ فِي شَيْءٍ مِنْهُ ذِكْرٌ لِمَرَضٍ وَلَا لِفِعْلٍ فِي مَرَضٍ أَصْلًا، وَلَا لِأَنَّ الرَّدَّ إنَّمَا كَانَ، لِأَنَّ الْعِتْقَ وَقَعَ فِي مَرَضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَبَطَلَ عَنْهُمْ كُلُّ مَا مَوَّهُوا بِهِ مِنْ الْآثَارِ الَّتِي هُمْ أَوَّلُ مُخَالِفٍ لَهَا، وَعَادَتْ كُلُّهَا لَنَا عَلَيْهِمْ حُجَّةً.

L21518–21520 As for what they reported concerning that from the Companions—may Allah be pleased with them—the matter is likewise. They are only three: Abu Bakr—may Allah be pleased with him—Ali—may Allah be pleased with him—and Ibn Mas'ud. Regarding Abu Bakr, they rely solely on his statement: "Indeed, it is now the heir's property." This provides them no valid basis whatsoever, for there is no disagreement between two parties—and they too concur with us—that he—may Allah be pleased with him—meant only that it becomes the heir's property after the ill person's death. He did not intend that the property of an ill person who dies from that illness belongs to the heir while any soul remains in the ill person. There is no dispute that if Asma' had died—when he said... Abu Bakr said this to her when her children—Abdullah, Urwah, and Al-Munthir—inherited from his wealth neither a mustard seed, nor its value, nor anything beyond that.

وَأَمَّا مَا رَوَوْا فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكَذَلِكَ أَيْضًا، وَإِنَّمَا هُمْ ثَلَاثَةٌ: أَبُو بَكْرٍ، وَعَلِيٌّ، وَابْنُ مَسْعُودٍ -: فَأَمَّا أَبُو بَكْرٍ فَإِنَّمَا تَعَلَّقُوا عَنْهُ بِقَوْلِهِ: وَإِنَّمَا هُوَ الْيَوْمَ مَالُ الْوَارِثِ وَهَذَا لَا مُتَعَلَّقَ لَهُمْ بِهِ أَصْلًا، لِأَنَّهُ لَا يَخْتَلِفُ اثْنَانِ - وَهُمْ مَعَنَا أَيْضًا - فِي أَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - إنَّمَا عَنَى أَنَّهُ مَالُ الْوَارِثِ بَعْدَ مَوْتِهِ، وَأَنَّهُ لَمْ يَعْنِ بِذَلِكَ أَنَّ مَالَ الْمَرِيضِ الَّذِي يَمُوتُ مِنْ ذَلِكَ الْمَرَضِ لِلْوَارِثِ مَا دَامَ شَيْءٌ مِنْ الرُّوحِ فِي الْمَرِيضِ، وَلَا خِلَافَ فِي أَنَّ أَسْمَاءَ لَوْ مَاتَتْ - إذْ قَالَ أَبُو بَكْرٍ هَذَا الْقَوْلَ لَهَا - لَمَا وَرِثَ عَبْدُ اللَّهِ، وَعُرْوَةُ، وَالْمُنْذِرُ، أَوْلَادُهَا مِنْ مَالِ أَبِي بَكْرٍ حَبَّةَ خَرْدَلٍ، وَلَا قِيمَتَهَا، فَمَا فَوْقَ ذَلِكَ.

L21521 If the sick person's property had become the heir's property during his illness, the heir's own heirs would inherit from him should he die during the sick person's lifetime. This is something no one asserts—neither a fool nor a sane person.

وَلَوْ كَانَ مَالُ الْمَرِيضِ. قَدْ صَارَ مَالًا لِلْوَارِثِ فِي مَرَضِهِ لَوَرِثَهُ عَنْهُ إنْ مَاتَ وَرِثَتُهُ فِي حَيَاةِ الْمَرِيضِ، وَهَذَا لَا يَقُولُهُ أَحَدٌ، وَلَا أَحْمَقُ، وَلَا عَاقِلٌ.

L21522 Furthermore, there is no disagreement—whether among us or among them—that if an heir were to have intercourse with the female slave of a

terminally ill person before his death, he would be deemed an adulterer liable to the ḥadd punishment, just as he would be punished had he done so while the man was healthy, with no distinction. Similarly, if he were to steal from the sick person's property before his death, amputation would be mandated in such a case—his hand would be severed just as it would be severed had he stolen from him while he was healthy. Thus, their obfuscation, fabrications, and deception in religion have been exposed through their implantation of falsehood in those deluded by them and their promotion of misguided confidence in their methodologies.

وَأَيْضًا فَلَا خِلَافَ - مِنَّا وَمِنْهُمْ - فِي أَنَّ الْوَارِثَ لَوْ وَطِئَ أَمَةَ الْمَرِيضِ قَبْلَ مَوْتِهِ لَكَانَ زَانِيًا يُحَدُّ حَيْثُ يُحَدُّ لَوْ وَطِئَهَا وَهُوَ صَحِيحٌ وَلَا فَرْقَ وَأَنَّهُ لَوْ سَرَقَ مِنْ مَالِهِ قَبْلَ مَوْتِهِ شَيْئًا فِي مِثْلِهِ الْقَطْعُ لَقُطِعَتْ يَدُهُ حَيْثُ تُقْطَعُ يَدُهُ لَوْ سَرَقَ مِنْهُ وَهُوَ صَحِيحٌ -: فَظَهَرَ تَمْوِيهُهُمْ وَبُرْدُهُمْ وَتَدْلِيسُهُمْ فِي الدِّينِ بِإِيهَامِهِمْ الْبَاطِلَ مَنْ اغْتَرَّ بِهِمْ، وَأَحْسَنَ الظَّنَّ بِطُرُقِهِمْ.

L21523 If they come to us seeking to divert the reports we previously mentioned from their apparent meaning with a proof like this, it becomes obligatory to submit to the truth. But if they bring us nothing but sheer falsehood, corrupt conjecture, and deceptive obscurity, then the disgrace thereof and its fire [of punishment] will have no end—neither for them nor for us—and success is by Allah, the Exalted. Thus, their reliance on the report of Abū Bakr—may Allah be pleased with him—is wholly invalidated.

فَإِنْ أَتَوْنَا فِي صَرْفِ الْأَخْبَارِ الَّتِي ذَكَرْنَا قَبْلُ عَنْ ظَاهِرِهَا بِبُرْهَانٍ مِثْلِ هَذَا وَجَبَ الِانْقِيَادُ لِلْحَقِّ، وَإِنْ لَمْ يَأْتُونَا إلَّا بِالْكَذِبِ الْبَحْتِ، وَبِالظَّنِّ الْفَاسِدِ، وَبِالتَّمْوِيهِ الْمُلْبِسِ، فَعَارُ ذَلِكَ وَنَارُهُ لَا زِمَانَ لَهُمْ، لَا لَنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَبَطَلَ تَعَلُّقُهُمْ بِخَبَرِ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - جُمْلَةً.

L21524 As for the report concerning Ibn Masʿūd, it is a narration with an interrupted chain since al-Ḥasan and al-Qāsim ibn ʿAbd al-Raḥmān did not meet him. Moreover, even if it were authentic, it would not serve as authoritative evidence for their position, for in one of the two narrations about him, it is mentioned that he purchased her during his illness, upheld the sale as valid, emancipated her at his death, and instructed her to work to earn her price for the creditor.

وَأَمَّا الْخَبَرُ عَنْ ابْنِ مَسْعُودٍ فَمُرْسَلٌ؛ لِأَنَّ الْحَسَنَ، وَالْقَاسِمَ بْنَ عَبْدِ الرَّحْمَنِ، لَمْ يُدْرِكَاهُ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ فِي إحْدَى الرِّوَايَتَيْنِ عَنْهُ: أَنَّهُ ابْتَاعَهَا فِي مَرَضِهِ، فَأَجَازَ بَيْعَهُ وَأَعْتَقَهَا عِنْدَ مَوْتِهِ، فَأَمَرَهَا بِأَنْ تَسْعَى فِي ثَمَنِهَا لِلْغَرِيمِ.

L21525 In the other case, a man freed his slave during his illness while owning no property other than him. Ibn Masʿud said: "He is freed [as] one-third." The opinion regarding this aligns with some of the earlier narrations, which indicate that this was invalidated because he owned no property besides the slave, thereby preserving his self-sufficiency.

وَفِي الْأُخْرَى أَعْتَقَ عَبْدَهُ فِي مَرَضِهِ لَا مَالَ لَهُ غَيْرُهُ، فَقَالَ ابْنُ مَسْعُودٍ: عَتَقَ، ثُلُثُهُ - وَالْقَوْلُ فِي هَذَا كَالْقَوْلِ فِي بَعْضِ الْأَخْبَارِ الْمُتَقَدِّمَةِ مِنْ أَنَّهُ إنَّمَا رَدَّ ذَلِكَ؛ لِأَنَّهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ، فَرَاعَى مَا أَبْقَى لَهُ غِنًى.

L21526 It has been narrated to us through the chain of Ibn Abī Shaybah, from Ḥafṣ—who is Ibn Ghiyāth—from Ḥajjāj, from al-Qāsim ibn ʿAbd al-Raḥmān, who said: A woman freed a slave girl she owned, though she had no property other than the slave girl. ʿAbdullāh ibn Masʿūd ruled: "She must labor to compensate for the slave girl's value." Thus, ʿAbdullāh deemed it obligatory

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ - هُوَ ابْنُ غِيَاثٍ - عَنْ حَجَّاجٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: أَعْتَقَتْ امْرَأَةٌ جَارِيَةً لَهَا لَيْسَ لَهَا مَالٌ غَيْرُهَا، فَقَالَ عَبْدُ اللَّهِ بْنُ

for her to labor in compensation for the slave girl's value since she owned no other property, and he did not mention at all that this occurred during an illness. Therefore, Ibn Masʿūd's ruling—if authentic—would itself constitute evidence against their position. How can this be, when no valid proof exists in the words or deeds of anyone apart from the Messenger of Allah—peace and blessings be upon him? Does this not invalidate their reliance on Ibn Masʿūd and expose their contradiction of him?

L21527–21528 As for the narration attributed to ʿAlī, it is disconnected because al-Ḥasan did not hear anything from ʿAlī. Even if it were authentic, they would have no valid basis for their argument whatsoever, because ʿAlī—may Allah be pleased with him—did not state that he acted thus solely due to emancipating the slave during his illness. Nor does that narration mention—neither by explicit text nor implicit indication—that this occurred during an illness. It merely states that he emancipated him at the time of his death. The most evident view is that ʿAlī obligated the istisʿāʾ in that case because he possessed no wealth other than the slave and had outstanding debts. This is the explicit content of the report, which conforms to our position, not all of their opinions. Similarly, we affirm the istisʿāʾ in such a scenario if the value of emancipation exceeds the debt—whether little or much. There is no contradiction between this ruling and that report. Thus, it is manifestly clear—and to Allah belongs abundant praise—that every textual evidence they cite, whether sound or weak, or attributed to a Companion, contains nothing whatsoever supporting their claim. Their invocation of such evidence constitutes obfuscation, insinuation of falsehood, and baseless conjecture. In truth, all or most of it substantiates our position and aligns with our doctrine. Praise be to Allah, Lord of the worlds.[1]

L21529 As for their argument citing the Followers and their claim of consensus in that matter, this is unsurprising given their trivialization of lying against all Muslims. We have already presented at the outset of this issue - through the most authentic chain of transmission from Masrūq - a contradiction of their view: that the manumission by a sick person from his capital remains valid even if he dies from that illness, and that Masrūq maintained this position

مَسْعُودٍ: تَسْعَى فِي قِيمَتِهَا - فَهَذَا عَبْدُ اللَّهِ قَدْ رَأَى السَّعْيَ فِي قِيمَتِهَا إِذْ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهَا، وَلَمْ يَذْكُرْ أَنَّ ذَلِكَ كَانَ فِي مَرَضٍ أَصْلًا، فَعَادَ فِعْلُ ابْنُ مَسْعُودٍ - لَوْ صَحَّ - حُجَّةً عَلَيْهِمْ، فَكَيْفَ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ وَلَا فِعْلِهِ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَبَطَلَ تَعَلُّقُهُمْ بِابْنِ مَسْعُودٍ وَلَاحَ خِلَافُهُمْ لَهُ؟

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَمُنْقَطِعَةٌ، لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ عَلِيٍّ شَيْئًا، ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ بِهَا مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ لَمْ يَقُلْ عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ إِنَّمَا فَعَلَ ذَلِكَ، لِأَنَّهُ أَعْتَقَهُ فِي مَرَضِهِ أَلْبَتَّةَ وَلَا فِي تِلْكَ الرِّوَايَةِ ذِكْرٌ: أَنَّ ذَلِكَ كَانَ فِي مَرَضٍ لَا بِنَصٍّ وَلَا بِدَلِيلٍ، وَإِنَّمَا فِيهِ: أَنَّهُ أَعْتَقَهُ عِنْدَ مَوْتِهِ فَقَطْ، وَالْأَظْهَرُ أَنَّ عَلِيًّا إِنَّمَا أَوْجَبَ الِاسْتِسْعَاءَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ وَعَلَيْهِ دَيْنٌ، فَهَذَا هُوَ نَصُّ الْخَبَرِ، وَهُوَ قَوْلُنَا لَا قَوْلُهُمْ كُلُّهُمْ، وَكَذَلِكَ نَقُولُ بِالِاسْتِسْعَاءِ فِي هَذَا إِذَا فَضَلَ مِنْ قِيمَةِ الْعِتْقِ عَنْ الدَّيْنِ شَيْءٌ قَلَّ أَوْ كَثُرَ، وَلَيْسَ فِي ذَلِكَ الْخَبَرِ خِلَافٌ لِهَذَا، فَلَاحَ وَلِلَّهِ الْحَمْدُ كَثِيرًا أَنَّ كُلَّ مَا احْتَجُّوا بِهِ مِنْ أَثَرٍ صَحِيحٍ أَوْ سَقِيمٍ، أَوْ عَنْ صَاحِبٍ فَلَيْسَ مِنْهُ شَيْءٌ أَصْلًا مُوَافِقًا لِقَوْلِهِمْ، وَأَنَّ إِيرَادَهُمْ لِكُلِّ ذَلِكَ تَمْوِيهٌ، وَإِيهَامٌ بِالْبَاطِلِ، وَالظَّنِّ الْكَاذِبِ، وَأَنَّ كُلَّهُ أَوْ أَكْثَرَهُ حُجَّةٌ لَنَا، وَمُوَافِقٌ لِقَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا احْتِجَاجُهُمْ بِالتَّابِعِينَ، وَدَعْوَاهُمْ الْإِجْمَاعَ فِي ذَلِكَ فَغَيْرُ مُنْكَرٍ مِنْ اسْتِهَالِهِمْ الْكَذِبَ عَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ - وَقَدْ أَوْرَدْنَا فِي صَدْرِ هَذِهِ الْمَسْأَلَةِ بِأَصَحِّ طَرِيقٍ عَنْ مَسْرُوقٍ خِلَافَ قَوْلِهِمْ، وَأَنَّ عِتْقَ الْمَرِيضِ مِنْ رَأْسِ مَالِهِ، وَإِنْ مَاتَ مِنْ مَرَضِهِ ذَلِكَ، وَأَنَّهُ إِنَّمَا قَالَ بِذَلِكَ، لِأَنَّهُ شَيْءٌ جَعَلَهُ لِلَّهِ تَعَالَى، فَلَا يُرَدُّ.

[1] **Qur'an references (L21528):** Qur'an 37:182 (As-Saffat).

because it constitutes an act consecrated to God Almighty, which cannot therefore be revoked.

L21530 It has been established that whatever a sick person does for Allah Almighty - whether he dies from his illness or survives - comes from his principal wealth according to Masrūq. Thus, their lie in the claim of consensus became evident. How could this be, when there have come narrations regarding this matter from only fourteen Successors: Shurayh; al-Shaʿbī; al-Nakhaʿī; Saʿīd ibn al-Musayyab; al-Qāsim; Sālim; al-Zuhrī; Rabīʿah; Yaḥyā ibn Saʿīd al-Anṣārī; ʿIkrimah; Makḥūl; ʿAṭāʾ; al-Ḥasan; and Qatādah? Most of these are not authentically attributed to them, as they come through Jābir al-Juʿfī and others like him.

فَصَحَّ أَنَّ كُلَّ مَا فَعَلَهُ الْمَرِيضُ لِلَّهِ تَعَالَى فَمَاتَ مِنْ مَرَضِهِ أَوْ عَاشَ، فَمِنْ رَأْسِ مَالِهِ عِنْدَ مَسْرُوقٍ، فَظَهَرَ كَذِبُهُمْ فِي دَعْوَى الْإِجْمَاعِ، فَكَيْفَ وَإِنَّمَا جَاءَتْ فِي ذَلِكَ آثَارٌ عَنْ أَرْبَعَةَ عَشَرَ مِنْ التَّابِعِينَ فَقَطْ؟ شُرَيْحٍ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْقَاسِمِ، وَسَالِمٍ، وَالزُّهْرِيِّ، وَرَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَعِكْرِمَةَ، وَمَكْحُولٍ، وَعَطَاءٍ، وَالْحَسَنِ، وَقَتَادَةَ، أَكْثَرُ ذَلِكَ لَا يَصِحُّ عَنْهُمْ؛ لِأَنَّهَا مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ وَمِثْلِهِ.

L21531–21533 Then they differ. Among them are those who hold that a traveler, from the moment he places his foot in the stirrup, cannot validly execute any testamentary decree concerning his wealth except from one-third of it. Among them are those who apply this ruling comprehensively to pregnant women. Among them are those who apply it universally to captives. The Malikis, Hanafis, and Shafi'is oppose all these positions. Their interpretation of terminal illnesses further contradicts all the aforementioned schools. If these schools are considered a consensus, they have effectively admitted their own contradiction of consensus. If it is not a consensus, they possess no valid proof against the opinion of those who— [text ends abruptly]. Other than the Companions when there was no consensus among them, how can this be valid when we have received narrations from Masruq and al-Sha'bi contradicting this matter?

ثُمَّ هُمْ مُخْتَلِفُونَ، فَمِنْهُمْ مَنْ رَأَى الْمُسَافِرَ مِنْ حِينِ يَضَعُ رِجْلَهُ فِي الْغَرْزِ لَا يَنْفُذُ لَهُ أَمْرٌ فِي مَالٍ إِلَّا مِنْ ثُلُثِهِ - وَمِنْهُمْ مَنْ يَرَى ذَلِكَ فِي الْحَامِلِ جُمْلَةً. وَمِنْهُمْ مَنْ يَرَى ذَلِكَ فِي الْأَسِيرِ جُمْلَةً، وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ: مُخَالِفُونَ لِكُلِّ هَذَا. ثُمَّ قَوْلُهُمْ فِي تَفْسِيرِ الْأَمْرَاضِ مُخَالِفٌ لِجَمِيعِهِمْ، فَإِنْ كَانَ هَؤُلَاءِ إجْمَاعًا فَقَدْ أَقَرُّوا عَلَى أَنْفُسِهِمْ بِخِلَافِ الْإِجْمَاعِ، وَإِنْ كَانَ لَيْسَ إجْمَاعًا فَلَا حُجَّةَ لَهُمْ فِي قَوْلِ مَنْ دُونَ الصَّحَابَةِ إذَا لَمْ يَكُنْ إجْمَاعًا عِنْدَهُمْ، فَكَيْفَ وَقَدْ رُوِّينَا عَنْ مَسْرُوقٍ، وَالشَّعْبِيِّ، خِلَافَ هَذَا.

L21534 It was narrated to us via Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Ibn Abī Laylā from al-Ḥakam ibn ʿUtaybah from Ibrāhīm al-Nakhaʿī, who said: "If a woman releases her husband from her dowry during her illness, this is permissible." Sufyān said: "It is not permissible." Thus, it was established that Ibrāhīm specifically meant her terminal illness from which she would die. He did not consider the one-third [limit], nor did he consider it a bequest.

وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا أَبْرَأَتْ الْمَرْأَةُ زَوْجَهَا مِنْ صَدَاقِهَا فِي مَرَضِهَا فَهُوَ جَائِزٌ، وَقَالَ سُفْيَانُ: لَا يَجُوزُ -: فَصَحَّ أَنَّ إبْرَاهِيمَ إنَّمَا عَنَى مَرَضَهَا الَّذِي تَمُوتُ مِنْهُ، وَلَمْ يُرَاعِ ثُلُثًا، وَلَا رَآهُ وَصِيَّةً.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الرَّجُلِ يَتَصَدَّقُ بِمَالِهِ كُلِّهِ؟ قَالَ: إذَا وَضَعَ مَالَهُ كُلَّهُ فِي حَقٍّ فَلَا أَحَدَ أَحَقُّ بِمَالِهِ مِنْهُ، وَإِذَا أَعْطَى بَعْضَ الْوَرَثَةِ دُونَ بَعْضٍ فَلَيْسَ لَهُ إلَّا الثُّلُثُ.

L21535 Through the chain of Abd al-Razzaq from Ma'mar, who said: Umar ibn Abd al-Aziz was asked about a man who donates all his wealth as charity. He replied: If he dedicates his entire wealth to a rightful cause, no one has a stronger claim to it than himself. But if he gives to some heirs while excluding others, he may not exceed one-third.

قَالَ أَبُو مُحَمَّدٍ: لَا يَخْلُو عُمَرُ بْنُ عَبْدِ الْعَزِيزِ مِنْ أَنْ يَكُونَ أَرَادَ الصَّحِيحَ، وَالْمَرِيضَ مَعًا، أَوْ الْمَرِيضَ وَحْدَهُ، أَوْ الصَّحِيحَ وَحْدَهُ -: فَإِنْ أَرَادَ الصَّحِيحَ فَقَطْ فَقَدْ رَدَّ فِعْلَهُ فِي صَدَقَتِهِ بِمَالِهِ كُلِّهِ، وَإِنْ كَانَ أَرَادَ الْمَرِيضَ -: فَقَدْ أَمْضَى فِعْلَهُ فِي مَالِهِ كُلِّهِ - فَهَذَا خِلَافٌ ظَاهِرٌ؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ كِلَاهُمَا عَنْ نَافِعٍ: أَنَّ رَجُلًا رَأَى فِيمَا يَرَى النَّائِمُ: أَنَّهُ يَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ فَطَلَّقَ نِسَاءَهُ طَلْقَةً طَلْقَةً، وَقَسَّمَ مَالَهُ؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ لَهُ: أَجَاءَك الشَّيْطَانُ فِي مَنَامِك فَأَخْبَرَك: أَنَّك تَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ فَطَلَّقْتَ نِسَاءَك وَقَسَّمْتَ مَالَك؟ رُدَّهُ وَلَوْ مِتَّ لَرَجَمْتُ قَبْرَك كَمَا يُرْجَمُ قَبْرُ أَبِي رِغَالٍ؟ فَرَدَّ مَالَهُ وَنِسَاءَهُ، وَقَالَ لَهُ عُمَرُ: مَا أَرَاك تَلْبَثُ إلَّا يَسِيرًا حَتَّى تَمُوتَ؟ وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا يُونُسُ بْنُ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ امْرَأَةً رَأَتْ فِيمَا يَرَى النَّائِمُ أَنَّهَا تَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ فَشَذَّبَتْ مَالَهَا وَهِيَ صَحِيحَةٌ، ثُمَّ مَاتَتْ فِي الْيَوْمِ الثَّالِثِ فَأَمْضَى أَبُو مُوسَى الْأَشْعَرِيُّ فِعْلَهَا.

L21536 Abu Muhammad said: Umar ibn Abd al-Aziz could only have intended either the healthy and the sick together, the sick alone, or the healthy alone. If he intended solely the healthy, he invalidated his own act of donating his entire wealth as charity. If he intended the sick, he validated his act concerning his entire wealth. Is this not a clear contradiction? Through the chain of Hammad ibn Salama from Ayyub al-Sikhtiyani and Ubayd Allah ibn Umar, both from Nafi': A man saw in a dream that he would die within three days, so he divorced each of his wives once and distributed his wealth. Umar ibn al-Khattab said to him: "Did Satan come to you in your sleep declaring you would die in three days, making you divorce your wives and dispose of your wealth? Reverse your actions! Even were you to die, I would stone your grave as Abu Righal's grave is stoned." The man revoked his wealth and [the divorces of] his wives. Umar told him: "I foresee you will not endure except briefly before death." Through the chain of Hammad ibn Salama: Yunus ibn Ubayd reported from Muhammad ibn Sirin: A woman saw in a dream that she would die within three days, so she disposed of part of her wealth while healthy, then died on the third day. Abu Musa al-Ash'ari upheld her action.

فَإِنْ كَانَ لِلْمُوقِنِ بِالْمَوْتِ حُكْمُ الْمَرِيضِ فِي مَالِهِ فَقَدْ أَمْضَاهُ أَبُو مُوسَى، فَهَذَا خِلَافُ قَوْلِهِمْ، وَإِنْ كَانَ لَهُ حُكْمُ الصَّحِيحِ فَقَدْ رَدَّهُ عُمَرُ، وَلَمْ يُمْضِ مِنْهُ ثُلُثًا وَلَا شَيْئًا، وَهَذَا خِلَافُ قَوْلِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ وَمَنْ أَقْبَحُ مُجَاهَرَةً مِمَّنْ يَجْعَلُ مِثْلَ مَنْ ذَكَرْنَا قَبْلُ إجْمَاعًا ثُمَّ لَا يُبَالِي بِمُخَالَفَةِ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَخَالِدِ بْنِ الْوَلِيدِ، وَأَبِي مُوسَى، وَابْنِ الزُّبَيْرِ، وَغَيْرِهِمْ، وَطَوَائِفَ مِنْ التَّابِعِينَ فِي الْقِصَاصِ مِنْ اللَّطْمَةِ، وَضَرْبَةِ السَّوْطِ،

L21537–21539 If the legal status of one certain of death concerning his wealth is that of a sick person, then Abû Mûsâ upheld this. This contradicts their opinion. But if his legal status is that of a healthy person, then 'Umar revoked it and did not authorize even a third or any portion of it. This too contradicts their opinion. Success is attained only through Allah, the Exalted. And who is more reprehensible in open defiance than one who treats the opinions of those we previously mentioned as consensus, then indifferently contradicts Abu Bakr, Umar, Uthman, Khalid ibn al-Walid, Abu Musa, Ibn al-Zubayr,

لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ، وَمِثْلُ هَذَا كَثِيرٌ جِدًّا قَدْ تَقَصَّيْنَا مِنْهُ جُزْءًا صَالِحًا فِي مَوْضِعٍ آخَرَ.

وَأَمَّا قَوْلُهُمْ: قِسْنَا ذَلِكَ عَلَى الْوَصِيَّةِ، فَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْوَصِيَّةَ إنَّمَا تَنْفُذُ بَعْدَ الْمَوْتِ - وَهِيَ مِنْ الْمَرِيضِ.

وَالصَّحِيحُ سَوَاءٌ - بِلَا خِلَافٍ - لَا تَجُوزُ إلَّا فِي الثُّلُثِ فَمَا دُونَهُ، فَإِذَا قِيسَ فِعْلُ الْمَرِيضِ عَلَيْهَا وَجَبَ أَنْ يَكُونَ فِي الْحَيَاةِ فِعْلُ الْمَرِيضِ كَفِعْلِ الصَّحِيحِ سَوَاءً سَوَاءً.

وَأَيْضًا: لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ لَا شَيْءَ أَشْبَهَ بِشَيْءٍ وَأَوْلَى بِأَنْ يُقَاسَ عَلَيْهِ مِنْ شَيْئَيْنِ شَبَّهَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمَا -: وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا قُتَيْبَةُ نا أَبُو الْأَحْوَصِ عَنْ أَبِي حَبِيبَةَ عَنْ أَبِي الدَّرْدَاءِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الَّذِي يَعْتِقُ عِنْدَ الْمَوْتِ كَالَّذِي يُهْدِي بَعْدَ مَا يَشْبَعُ» .

قَالَ عَلِيٌّ: وَلَا يَخْتَلِفُونَ فِي أَنَّ الَّذِي يُهْدِي بَعْدَ مَا يَشْبَعُ فَهَدِيَّتُهُ مِنْ رَأْسِ مَالِهِ، فَإِنْ كَانَ الْقِيَاسُ حَقًّا فَالْمُعْتِقُ عِنْدَ الْمَوْتِ مِثْلُهُ سَوَاءً سَوَاءً، فَوَاجِبٌ أَنْ يَكُونَ مِنْ رَأْسِ مَالِهِ، قَالَ تَعَالَى: {وَأَنْفِقُوا مِنْ مَا رَزَقْنَاكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَ أَحَدَكُمُ الْمَوْتُ فَيَقُولَ رَبِّ لَوْلَا أَخَّرْتَنِي إِلَى أَجَلٍ قَرِيبٍ فَأَصَّدَّقَ وَأَكُنْ مِنَ الصَّالِحِينَ - وَلَنْ يُؤَخِّرَ اللَّهُ نَفْسًا إِذَا جَاءَ أَجَلُهَا} [المنافقون: ١٠ - ١١]

others as well as groups among the Followers regarding retributive punishment for a slap or whip strike - when no dissenter from the Companions is known regarding their rulings? Such cases are extremely numerous, and we have already examined a sufficient portion of them elsewhere.

L21540 As for their statement, "We analogized that to the bequest," all analogy is invalid. Even if analogy were valid, this case would itself be the epitome of invalidity, because the bequest only takes effect after death - and it is from the sick person.

L21541 The sound opinion is unequivocal—without disagreement—that a bequest is only permissible within one-third or less of the estate. When the act of a sick person is analogized to it [the ruling on the third], it is necessary that during life, the sick person's act be exactly the same as the legally competent person's act in every respect.

L21542 Furthermore, if analogy were valid, nothing would be more similar between two things or more deserving of analogy than the two matters between which the Messenger of Allah—peace and blessings be upon him—established a comparison. We have been narrated through the chain of Aḥmad ibn Shuʿayb: from Qutaybah, from Abū al-Aḥwaṣ, from Abū Ḥabībah, from Abū al-Dardāʾ, that the Messenger of Allah—peace and blessings be upon him—said: "Freeing a slave on one's deathbed is like giving a gift after being satiated."

L21543 Ali said: They do not differ regarding the fact that he who gives a gift after being satiated, his gift is from his capital. If analogy is valid, then the one who manumits a slave at the approach of death is exactly the same. It is therefore obligatory that it be from his capital. He, the Exalted, said: *"And spend from what We have provided you before death comes to one of you, and then he will say, 'My Lord, if only You would delay me for a brief term so I might give charity and be among the righteous!' But never will Allah delay a soul when its time has come"* (al-Munāfiqūn 63:10–11).[2]

[2]**Qur'an references (L21543):** Qur'an 63:10 (Al-Munafiqun); Qur'an 63:11 (Al-Munafiqun).

وَهَذَا نَصٌّ جَلِيٌّ لَا يَحْتَمِلُ تَأْوِيلًا عَلَى جَوَازِ الصَّدَقَةِ لِلصَّحِيحِ وَالْمَرِيضِ مَا لَمْ يَأْتِهِ الْمَوْتُ وَيَجِئْ حُلُولُ أَجَلِهِ دُونَ تَأْخِيرٍ قَرِيبٍ أَوْ بَعِيدٍ، وَلَكِنَّهُمْ لَا النُّصُوصَ يَتَّبِعُونَ وَلَا الْقِيَاسَ يُحْسِنُونَ. وَأَيْضًا: فَلَا خِلَافَ بَيْنَهُمْ أَصْلًا فِي أَنَّ مَا اشْتَرَاهُ الْمَرِيضُ مِنْ فَاكِهَةٍ، وَلَحْمٍ، وَنَحْوِ ذَلِكَ مِمَّا هُوَ عَنْهُ فِي غِنًى، وَمَا تَصَدَّقَ بِهِ عَلَى سَائِلٍ بِالْبَابِ، فَإِنَّهُ مِنْ رَأْسِ مَالِهِ، فَلَوْ كَانَ فَعَلَهُ فِي مَرَضِهِ مِنَ الثُّلُثِ لَكَانَ هَذَا مِنَ الثُّلُثِ، بَلْ لَوْ لَمْ يَكُنْ لَهُ مِنْ مَالِهِ إِلَّا الثُّلُثُ، فِي مَرَضِهِ الَّذِي يَمُوتُ مِنْهُ لَمَا وَجَبَ أَنْ يُعَدَّ أَكْلُهُ وَنَفَقَتُهُ عَلَى نَفْسِهِ وَعِيَالِهِ إِلَّا مِنَ الثُّلُثِ؛ لِأَنَّ بَاقِيَ ذَلِكَ لَا حُكْمَ لَهُ فِيهِ وَهُمْ لَا يَقُولُونَ بِهَذَا - فَظَهَرَ مِنْ تَخَاذُلِهِمْ وَتَنَاقُضِهِمْ وَفَسَادِ أَقْوَالِهِمْ فِي هَذِهِ الْمَسْأَلَةِ مَا بَعْضُهُ يَكْفِي - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

This is an explicit text that does not admit interpretation regarding the permissibility of charity for the healthy and the sick before death approaches them and their appointed term arrives without delay, whether near or far. Yet they neither follow the scriptural texts nor apply analogy correctly. Moreover, there is absolutely no disagreement among them concerning what a sick person purchases, such as fruits, meat, or similar items. That is from what he has no obligation over, and whatever he gave in charity to a petitioner at the door is from his original estate. If he had done so during his illness, [the charity] would be from the third [of his estate]. Indeed, if he possessed nothing from his wealth except the third during his terminal illness from which he dies, his sustenance and expenses for himself and his dependents would not be counted except from the third, as the remainder has no legal validity for him—and they [the jurists] do not uphold this opinion. Thus, the extent of their negligence, contradiction, and the invalidity of their statements in this matter becomes evident—some of which suffices. And success is by Allah's grace, the Exalted.

[مَسْأَلَةٌ الْحَجْرُ عَلَى امْرَأَةٍ ذَاتِ زَوْجٍ]

Issue: Interdiction on a married woman.

١٣٩٦ - مَسْأَلَةٌ: وَكَذَلِكَ لَا يَجُوزُ الْحَجْرُ أَيْضًا عَلَى امْرَأَةٍ ذَاتِ زَوْجٍ، وَلَا بِكْرٍ ذَاتِ أَبٍ، وَلَا غَيْرِ ذَاتِ أَبٍ - وَصَدَقَتُهُمَا، وَهِبَتُهُمَا -: نَافِذٌ كُلُّ ذَلِكَ مِنْ رَأْسِ الْمَالِ إِذَا حَاضَتْ كَالرَّجُلِ سَوَاءً سَوَاءً - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

1396. Issue: Similarly, interdiction is also impermissible on a married woman, nor on a virgin, whether she has a father or not. Their sadaqah (charitable acts) and gift transactions are valid; all such transactions are valid directly from the principal wealth when she attains puberty (marked by menstruation), exactly equal to a man, without exception. This is the opinion of Sufyān al-Thawrī, Abū Ḥanīfa, al-Shāfiʿī, Abū Thawr, Abī Sulaymān, and their adherents.

وَقَالَ مَالِكٌ: لَيْسَ لِذَاتِ الزَّوْجِ إِلَّا الثُّلُثُ فَقَطْ تَهَبُهُ وَتَتَصَدَّقُ بِهِ - أَحَبَّ زَوْجُهَا أَمْ كَرِهَ - فَإِذَا مَضَتْ لَهَا مُدَّةٌ جَازَ لَهَا فِي ثُلُثِ مَا بَقِيَ أَيْضًا أَنْ تَفْعَلَ فِيهِ مَا شَاءَتْ - أَحَبَّ زَوْجُهَا أَمْ كَرِهَ - وَهَكَذَا أَبَدًا، فَإِنْ كَانَ ذَلِكَ قَرِيبًا مِنْ فِعْلِهَا فِي الْأَوَّلِ: فُسِخَ - فَإِنْ زَادَتْ عَلَى الثُّلُثِ رَدَّ الْكُلَّ أَوَّلَهُ عَنْ آخِرِهِ، بِخِلَافِ الْمَرِيضِ إِنْ شَاءَ زَوْجُهَا

Malik said: A wife has no entitlement except one-third only, which she may gift or donate—whether her husband approves or disapproves. When a period has elapsed for her, she becomes entitled to dispose of one-third of what remains also as she wills—whether her husband approves or disapproves—and this applies perpetually. If her subsequent transaction resembles her initial one, the subsequent transaction is annulled. If she exceeds one-third, the entire transaction is invalidated from beginning to end, unlike the case

of the sick person: if her husband wishes to reject it, he may do so, but if he ratifies it, it is upheld. Should this remain concealed from her husband until her death or his divorce of her, the entirety is upheld. Al-Mughīrah ibn ʿAbd al-Raḥmān, his companion, said: Rather, the husband may only reject what exceeds one-third, while the one-third remains valid for her—as with the sick person.

أَنْ يَرُدَّهُ، وَإِنْ أَنْفَذَهُ نَفَذَ، فَإِنْ خَفِيَ ذَلِكَ عَنْ زَوْجِهَا حَتَّى تَمُوتَ أَوْ يُطَلِّقَهَا نَفَذَ كُلُّهُ - قَالَ الْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ صَاحِبُهُ: بَلْ لَا يَرُدُّ الزَّوْجُ إِلَّا مَا زَادَ عَلَى الثُّلُثِ فَقَطْ، وَيَنْفُذُ لَهَا الثُّلُثُ كَالْمَرِيضِ.

L21550 Malik said: If she has gifted all her wealth to her husband, that is valid. As for her selling and purchasing, it is permissible—whether her husband likes it or not—provided there is no favoritism.

قَالَ مَالِكٌ: فَإِنْ وَهَبَتْ لِزَوْجِهَا. مَالَهَا كُلَّهُ نَفَذَ ذَلِكَ، وَأَمَّا بَيْعُهَا وَابْتِيَاعُهَا فَجَائِزٌ - أَحَبَّ زَوْجُهَا أَمْ كَرِهَ - إِذَا لَمْ يَكُنْ فِيهِ مُحَابَاةٌ.

L21551 He said: As for the never-married woman, she remains under guardianship in all circumstances—whether she has a father or not—and is prohibited from taking any action regarding her wealth or any portion thereof. She may not reduce any part of the dowry owed by her husband, even if she remains unmarried, until she enters her husband's home and her circumstances become known. If she gave a gift before marriage and later married, she has the right to reclaim what she gifted unless it was of nominal value. He said: As for the woman who was married and then became widowed, she holds the same legal capacity as a man regarding the validity of her financial dispositions over all her wealth.

قَالَ: وَأَمَّا الْبِكْرُ فَمَحْجُورَةٌ عَلَى كُلِّ حَالٍ - ذَاتَ أَبٍ كَانَتْ أَوْ غَيْرَ ذَاتِ أَبٍ - لَا يَجُوزُ لَهَا فِعْلٌ فِي مَالِهَا، وَلَا فِي شَيْءٍ مِنْهُ، وَلَا أَنْ تَضَعَ عَنْ زَوْجِهَا مِنْ الصَّدَاقِ وَإِنْ عَنَسَتْ حَتَّى تَدْخُلَ بَيْتَ زَوْجِهَا، وَيُعْرَفُ مِنْ حَالِهَا فَإِنْ وَهَبَتْ قَبْلَ أَنْ تَتَزَوَّجَ ثُمَّ تَزَوَّجَتْ: كَانَ لَهَا أَنْ تَرْجِعَ فِيمَا وَهَبَتْ إِلَّا إِنْ كَانَ يَسِيرًا، قَالَ: وَأَمَّا الَّتِي كَانَ لَهَا زَوْجٌ ثُمَّ تَأَيَّمَتْ فَكَالرَّجُلِ فِي نَفَاذِ حُكْمِهَا فِي مَالِهَا كُلِّهِ.

L21552–21554 As for the early scholars: narrations have been conveyed to us from them. It was transmitted to us through the chain of Ibn Abī Shaybah—Wakīʿ narrated from Ismāʿīl ibn Khālid and Zakariyyā ibn Abī Zāʾidah, both from al-Shaʿbī, from Shurayḥ, who said: "He entrusted to me..." Umar ibn al-Khattab would not validate the gift of a female slave until she gives birth to a child or completes a full year in her house.

وَأَمَّا الْمُتَقَدِّمُونَ: فَرُوِّينَا عَنْهُمْ أَقْوَالًا: رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ إِسْمَاعِيلِ بْنِ خَالِدٍ، وَزَكَرِيَّا بْنِ أَبِي زَائِدَةَ، كِلَاهُمَا عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: عَهِدَ إِلَيَّ عُمَرُ بْنُ الْخَطَّابِ أَنْ لَا أُجِيزَ عَطِيَّةَ جَارِيَةٍ حَتَّى تَلِدَ وَلَدًا، أَوْ تَحُولَ فِي بَيْتِهَا حَوْلًا.

L21555 From the narration of Saʿīd ibn Manṣūr: Ḥushaym reported to us, Ismāʿīl ibn Abī Khālid reported to us, al-Shaʿbī said: Shurayḥ said: ʿUmar ibn al-Khaṭṭāb commanded me not to approve a gift for an owned female slave until she has remained in her husband's household for a full year or gives birth to a child. I said to al-Shaʿbī: Did ʿUmar write this to him? He replied: Rather, he conveyed it to him verbally through direct speech.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ نا الشَّعْبِيُّ قَالَ: قَالَ شُرَيْحٌ: أَمَرَنِي عُمَرُ بْنُ الْخَطَّابِ أَنْ لَا أُجِيزَ لِجَارِيَةٍ مُلَكَّةٍ عَطِيَّةً حَتَّى تَحِيلَ فِي بَيْتِ زَوْجِهَا حَوْلًا أَوْ تَلِدَ وَلَدًا، قَالَ: فَقُلْت لِلشَّعْبِيِّ: كَتَبَ إِلَيْهِ عُمَرُ فَقَالَ: بَلْ شَافَهَهُ بِهِ مُشَافَهَةً.

L21556 On the authority of Ibn Abi Shaybah, from Ibn Abi Za'idah, from Mujalid, from Al-Sha'bi, who said: I read 'Umar's letter to Shuraih concerning this ruling. This occurred when a Qurashī girl - while being legally competent - was told by her brother: "Donate your inheritance from your father to me as an irrevocable charity (ṣadaqah)." She complied, but later demanded her inheritance back, and he restored it to her.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَرَأْت كِتَابَ عُمَرَ إلَى شُرَيْحٍ بِذَلِكَ، وَذَلِكَ أَنَّ جَارِيَةً مِنْ قُرَيْشٍ قَالَ لَهَا أَخُوهَا وَهِيَ مُمَلَّكَةٌ: تَصَدَّقِي عَلَيَّ بِمِيرَاثِك مِنْ أَبِيك؟ فَفَعَلَتْ، ثُمَّ طَلَبَتْ مِيرَاثَهَا فَرَدَّهُ عَلَيْهَا

L21557 We have also narrated it via the chain of Al-Ḥajjāj ibn Al-Minhal: Yazīd ibn Zuraiʿ narrated to us from Dāwūd ibn Abī Hind from Khilās ibn ʿAmr, who said: ʿUmar ibn Al-Khaṭṭāb wrote: "Do not approve the dower of a virgin woman until she completes a year in her husband's house or gives birth to a child."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ خِلَاسِ بْنِ عَمْرٍو قَالَ: وَكَتَبَ عُمَرُ بْنُ الْخَطَّابِ: لَا تُجِيزُوا نَحْلَ امْرَأَةٍ بِكْرٍ حَتَّى تَحِيلَ حَوْلًا فِي بَيْتِ زَوْجِهَا أَوْ تَلِدَ وَلَدًا.

L21558 Abū Muḥammad said: This is the opinion of Shuraīḥ, as narrated to us through the chain of Ḥammād ibn Salamah from Qatādah, Ayyūb al-Sikhtiyānī, and Hishām ibn Ḥassān—all of them from Muḥammad ibn Sīrīn—that Shuraīḥ said regarding a woman who donates from her wealth: Her donation is not valid until she gives birth to a child or reaches puberty, whichever occurs, and it is a sunnah.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ شُرَيْحٍ كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، وَهِشَامِ بْنِ حَسَّانَ كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ شُرَيْحًا قَالَ فِي الْمَرْأَةِ إذَا وَهَبَتْ مِنْ مَالِهَا: فَإِنَّهُ لَا تَجُوزُ لَهَا هِبَتُهَا حَتَّى تَلِدَ وَلَدًا، أَوْ تَبْلُغَ، أَنَّى ذَلِكَ وَهُوَ سُنَّةٌ.

L21559 And through the chain of Ibn Abi Shaybah from Abu Dawud al-Tayalisi from Sa'id ibn Abd al-Rahman from al-Hasan and Muhammad ibn Sirin: Muhammad said, "A woman's gift is not valid unless a full year has elapsed or she has given birth to a child." Then al-Hasan said, "Until she gives birth to a child or reaches maturity—on what basis is that?"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الْحَسَنِ، وَمُحَمَّدِ بْنِ سِيرِينَ، قَالَ مُحَمَّدٌ: لَا تَجُوزُ لِامْرَأَةٍ عَطِيَّةٌ حَتَّى تَحُولَ حَوْلًا أَوْ تَلِدَ وَلَدًا، فَقَالَ الْحَسَنُ: حَتَّى تَلِدَ وَلَدًا أَوْ تَبْلُغَ، أَنَّى ذَلِكَ.

L21560 From the chain of Ibn Abī Shaybah: ʿUbaydullāh ibn ʿUthmān ibn al-Aswad narrated to us from ʿAṭāʾ and Mujāhid, both of whom said together: "An orphan girl is subject to two restrictions: she is not permitted anything from her wealth until she bears a child or completes a year in her husband's house." This is the opinion of Qatādah and al-Shaʿbī, though a differing report is narrated from al-Shaʿbī if she reaches ʿAnis (spinsterhood) before that period. We were narrated via Wakīʿ's chain from Ismāʿīl ibn Abī Khālid, who said: "I asked al-Shaʿbī, 'What is your view if she reaches ʿAnis—is her [act of] gifting [wealth] permissible?' He replied, 'Yes.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عُبَيْدُ اللَّهِ بْنُ عُثْمَانَ بْنِ الْأَسْوَدِ عَنْ عَطَاءٍ وَمُجَاهِدٍ قَالَا جَمِيعًا: لِلْيَتِيمَةِ خِنَاقَانِ لَا يَجُوزُ لَهَا شَيْءٌ مِنْ مَالِهَا حَتَّى تَلِدَ وَلَدًا، أَوْ تَمْضِيَ عَلَيْهَا سَنَةٌ فِي بَيْتِ زَوْجِهَا - وَهُوَ قَوْلُ قَتَادَةَ، وَالشَّعْبِيِّ، إلَّا أَنَّهُ اخْتَلَفَ عَنْهُ إذَا عَنَسَتْ قَبْلَ ذَلِكَ - فَرُوِّينَا عَنْهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ قَالَ: قُلْت لِلشَّعْبِيِّ: أَرَأَيْت إنْ عَنَسَتْ أَيَجُوزُ - يَعْنِي هِبَتَهَا؟ قَالَ: نَعَمْ.

L21561–21563 And it has been narrated to us from him through the chain of Ibn Abī

وَرُوِّينَا عَنْهُ مِنْ طَرِيقِ ابْنِ أَبِي زَائِدَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ قُلْت لِلشَّعْبِيِّ: أَرَأَيْت إنْ عَنَسَتْ؟ قَالَ: لَا يَجُوزُ، كِلَاهُمَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ، وَابْنِ أَبِي زَائِدَةَ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ قَالَ: إذَا حَالَتْ فِي بَيْتِهَا حَوْلًا جَازَ لَهَا مَا صَنَعَتْ، قَالَ الْمُغِيرَةُ، وَقَالَ إبْرَاهِيمُ: إذَا وَلَدَتْ الْجَارِيَةُ أَوْ وَلَدَ مِثْلُهَا جَازَتْ هِبَتُهَا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

Zāʾidah from Ismāʿīl ibn Abī Khālid: I said to Al-Shaʿbī, "What is your view if she remains unmarried past the usual age?" He said, "It is not permissible." Both are transmitted through Ibn Abī Shaybah's chain—from Wakīʿ and Ibn Abī Zāʾidah, respectively. And through the chain of Ibn Abī Shaybah who narrated to us: Abū al-Aḥwaṣ reported from al-Mughīrah from al-Shaʿbī, who said: If she has completed a year in her home, what she has done becomes permissible. Al-Mughīrah said, and Ibrāhīm said: If the female slave gives birth, or one like her does, her gift is deemed permissible—and this is the view of al-Awzāʿī, Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhawayh.

وَقَوْلٌ آخَرُ رُوِيَ عَنْ أَنَسِ بْنِ مَالِكٍ، وَهُوَ أَنَّهُ لَا يَجُوزُ لِذَاتِ زَوْجٍ عَطِيَّةٌ فِي شَيْءٍ مِنْ مَالِهَا إلَّا بِإِذْنِ زَوْجِهَا. وَمِنْ طَرِيقِ الْعَرْزَمِيِّ عَبْدِ الْمَلِكِ عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: لَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ بَيْتِ زَوْجِهَا إلَّا بِإِذْنِهِ، وَأَنَّ صَفِيَّةَ بِنْتَ أَبِي عُبَيْدٍ كَانَتْ لَا تَعْتِقُ - وَلَهَا سِتُّونَ سَنَةً إلَّا بِإِذْنِ ابْنِ عُمَرَ.

L21564 Another opinion is narrated from Anas ibn Malik, stating that a married woman may not donate any portion of her wealth without her husband's permission. Through the chain of Al-ʻAzrami ʻAbd al-Malik, from ʻAta', from Abu Hurayrah, who said: "It is impermissible for a woman to give charity from her husband's property except with his permission." It is also reported that Safiyyah bint Abi ʻUbayd, who was sixty years old, would not emancipate without the permission of Ibn ʻUmar.

قَالَ أَبُو مُحَمَّد: هَذَا لَيْسَ فِيهِ دَلِيلٌ عَلَى أَنَّهُ لَا يَرَى لَهَا ذَلِكَ جَائِزًا دُونَ إذْنِهِ، لَكِنَّهُ عَلَى حُسْنِ الصُّحْبَةِ فَقَطْ.

L21565 Abu Muhammad said: This provides no evidence that he does not deem it permissible for her to do so without his permission; rather, it pertains solely to good companionship.

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَا تَجُوزُ لِامْرَأَةٍ عَطِيَّةٌ إلَّا بِإِذْنِ زَوْجِهَا - وَقَدْ رُوِيَ هَذَا عَنْ الْحَسَنِ، وَمُجَاهِدٍ وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، فَلَمْ يُجِزْ لِذَاتِ الزَّوْجِ عِتْقًا، وَلَا حُكْمًا فِي صَدَاقِهَا وَلَا غَيْرِهِ إلَّا بِإِذْنِ زَوْجِهَا - إلَّا الشَّيْءُ الْيَسِيرُ الَّذِي لَا بُدَّ لَهَا مِنْهُ فِي صِلَةِ رَحِمٍ أَوْ مَا يُتَقَرَّبُ بِهِ إلَى اللَّهِ عَزَّ وَجَلَّ.

L21566 It has been narrated to us through the chain of Sufyān ibn ʿUyaynah from ʿAbdullāh ibn Ṭāwūs from his father, who said: A woman's gift is not valid except with her husband's permission. This has been reported from al-Ḥasan and Mujāhid, and it is the opinion of al-Layth ibn Saʿd. He did not permit a married woman to emancipate a slave, exercise legal authority over her dowry, nor engage in any other such matter without her husband's permission. An exception is made for a trivial amount essential for maintaining kinship ties or what is used to draw closer to Allah, the Almighty.

وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عُبَيْدٍ الْغُبَرِيُّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ أَبِي مُلَيْكَةَ أَنَّ أَسْمَاءَ بِنْتَ أَبِي بَكْرٍ الصِّدِّيقِ قَالَتْ:

L21567–21569 Among those from whom a statement similar to ours has been narrated: As reported through the chain of Muslim, Muḥammad ibn ʻUbayd al-Ghabarī narrated to us, Ḥammād ibn Zayd narrated to us from Ayyūb al-Sakhtiyānī from Ibn Abī Mulaykah that Asmā' bint Abī Bakr al-Ṣiddīq said: "I used to

serve al-Zubayr with household chores, tend to his horse, gather fodder for it, and care for it. Nothing was more burdensome to me than tending to the horse. Then a captive was brought to the Prophet (peace be upon him), and he gave her a servant." She then mentioned a hadith in which she stated that she sold the servant. She said: "Al-Zubayr entered while he appraised her in my lap, and he said, 'Gift her to me.' I replied, 'How could I? I have already given her as charity.'" Thus, al-Zubayr and Asmā' bint al-Ṣiddīq: she donated the proceeds from her servant's sale as charity and her selling [the servant] without her husband's permission, perhaps because she owned nothing else, or it was most of what she had. As reported through the chain of Aḥmad ibn Shu'ayb — I, al-Ḥasan ibn Muḥammad (Ibn al-Ṣabbāḥ), from Ḥajjāj (Ibn Muḥammad al-A'war), from Ibn Jurayj, who informed me from Ibn Abī Mulaykah from 'Abbād ibn 'Abdullāh ibn al-Zubayr from Asmā' bint Abī Bakr that she came to the Prophet (peace be upon him) and said, "O Prophet..." "By Allah, I have nothing except what al-Zubayr provides me. Is there any blame on me if I give a portion of what he provides?" He said: "Give as much as you can, and do not withhold, lest it be withheld from you." Al-Zubayr did not reject that.

كُنْت أَخْدِمُ الزُّبَيْرَ خِدْمَةَ الْبَيْتِ، وَأَسُوسُ فَرَسَهُ، كُنْت أَحْتَشُّ لَهُ، وَأَقُومُ عَلَيْهِ، فَلَمْ يَكُنْ شَيْءٌ أَشَدَّ عَلَيَّ مِنْ سِيَاسَةِ الْفَرَسِ - ثُمَّ جَاءَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَبِيٌّ فَأَعْطَاهَا خَادِمًا، ثُمَّ ذَكَرَتْ حَدِيثًا وَفِيهِ أَنَّهَا بَاعَتْهَا، قَالَتْ: فَدَخَلَ الزُّبَيْرُ وَثَمَنُهَا فِي حِجْرِي فَقَالَ: هَبِيهَا إِلَيَّ؟ قَالَتْ: أَنِّي، لَكِنْ تَصَدَّقْت بِهَا - فَهَذَا الزُّبَيْرُ، وَأَسْمَاءُ بِنْتُ الصِّدِّيقِ، قَدْ أَنْفَذَتْ الصَّدَقَةَ بِثَمَنِ خَادِمِهَا، وَبَيْعَهَا بِغَيْرِ إِذْنِ زَوْجِهَا، وَلَعَلَّهَا لَمْ تَكُنْ تَمْلِكُ شَيْئًا غَيْرَهَا، أَوْ كَانَ أَكْثَرَ مَا مَعَهَا - كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا الْحَسَنُ بْنُ مُحَمَّدٍ - هُوَ ابْنُ الصَّبَّاحِ - عَنْ حَجَّاجٍ - هُوَ ابْنُ مُحَمَّدٍ الْأَعْوَرُ - عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ عَنْ عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ «عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ أَنَّهَا جَاءَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ يَا نَبِيَّ اللَّهِ لَيْسَ لِي شَيْءٌ إِلَّا مَا أَدْخَلَ عَلَيَّ الزُّبَيْرُ، فَهَلْ عَلَيَّ جُنَاحٌ فِي أَنْ أَرْضَخَ مِمَّا يُدْخِلُ عَلَيَّ؟ قَالَ: ارْضَخِي مَا اسْتَطَعْتُ وَلَا تُوكِي فَيُوكَى عَلَيْكَ» فَلَمْ يُنْكِرْ الزُّبَيْرُ ذَلِكَ.

L21570 It has been narrated to us via Hammad ibn Salamah, who reported from Yunus ibn 'Ubayd, from Muhammad ibn Sirin, that a woman saw in her dream that she would die in three days. She devoted herself to memorizing the remaining portion of the Quran incumbent upon her, organized her wealth, and did this while in good health. On the third day, she visited her neighbors and proceeded to say repeatedly: "O so-and-so, I entrust you to God's care and bid you farewell with peace." They responded, "You will not die today, you will not die today—God willing." Yet she died. Her husband asked Abu Musa Al-Ash'ari about this, and Abu Musa said, "What kind of woman was your wife?" He replied, "I know no one more deserving of Paradise than her except a martyr. Yet she did all this while she was in good health?" Abu Musa said, "She is as you say. She did what she did while in good health," and Abu Musa did not challenge his statement.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا يُونُسُ بْنُ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ امْرَأَةً رَأَتْ فِيمَا يَرَى النَّائِمُ أَنَّهَا تَمُوتُ إِلَى ثَلَاثَةِ أَيَّامٍ فَأَقْبَلَتْ عَلَى مَا بَقِيَ مِنْ الْقُرْآنِ عَلَيْهَا فَتَعَلَّمَتْهُ، وَشَذَّبَتْ مَالَهَا، وَهِيَ صَحِيحَةٌ، فَلَمَّا كَانَ يَوْمُ الثَّالِثِ دَخَلَتْ عَلَى جَارَاتِهَا فَجَعَلَتْ تَقُولُ: يَا فُلَانَةُ أَسْتَوْدِعُك اللَّهَ، وَأَقْرَأُ عَلَيْك السَّلَامَ؟ فَجَعَلْنَ يَقُلْنَ لَهَا: لَا تَمُوتِينَ الْيَوْمَ، لَا تَمُوتِينَ الْيَوْمَ - إِنْ شَاءَ اللَّهُ - فَمَاتَتْ، فَسَأَلَ زَوْجُهَا أَبَا مُوسَى الْأَشْعَرِيَّ عَنْ ذَلِكَ؟ فَقَالَ لَهُ أَبُو مُوسَى: أَيُّ امْرَأَةٍ كَانَتْ امْرَأَتُك؟ فَقَالَ: مَا أَعْلَمُ أَحَدًا كَانَ أَحْرَى مِنْهَا أَنْ تَدْخُلَ الْجَنَّةَ إِلَّا الشَّهِيدَ، وَلَكِنَّهَا فَعَلَتْ مَا فَعَلَتْ، وَهِيَ صَحِيحَةٌ؟ فَقَالَ أَبُو مُوسَى: هِيَ كَمَا تَقُولُ فَعَلَتْ مَا فَعَلَتْ، وَهِيَ صَحِيحَةٌ فَلَمْ يَرُدَّهُ أَبُو مُوسَى.

L21571 From the narration of Ḥammād ibn Salamah, from ʿAdī ibn ʿAdī al-Kindī, who said: I wrote to ʿUmar ibn ʿAbd al-ʿAzīz inquiring about a woman giving from her wealth without her husband's permission. He responded: If she is either a spendthrift or acting harmfully, it is impermissible for her; but if she is neither a spendthrift nor acting harmfully, it is permissible.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَدِيِّ بْنِ عَدِيٍّ الْكِنْدِيِّ قَالَ: كَتَبْت إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَسْأَلُهُ عَنْ الْمَرْأَةِ تُعْطِي مِنْ مَالِهَا بِغَيْرِ إذْنِ زَوْجِهَا؟ فَكَتَبَ: إمَّا هِيَ سَفِيهَةٌ أَوْ مُضَارَّةٌ؟ فَلَا يَجُوزُ لَهَا، وَإِمَّا هِيَ غَيْرُ سَفِيهَةٍ وَلَا مُضَارَّةٍ فَيَجُوزُ.

L21572 From the narration of Abd al-Razzaq, from Ma'mar, from Simak ibn al-Fadl, who said: Umar ibn Abd al-Aziz wrote concerning a woman who gave from her wealth: If she is neither wasteful nor causing harm to herself, then validate her gift.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي امْرَأَةٍ أَعْطَتْ مِنْ مَالِهَا: إنْ كَانَتْ غَيْرَ سَفِيهَةٍ وَلَا مُضَارَّةٍ فَأَجِزْ عَطِيَّتَهَا.

L21573 A woman must not be prevented from exercising moderation in using her wealth to preserve a life, uphold kinship ties, or engage in recognized acts of kindness. If she is not permitted to give anything from her wealth, it is better for her not to marry, for she would then be akin to a bondwoman.

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ: لَا يُحَالُ بَيْنَ الْمَرْأَةِ وَبَيْنَ أَنْ تَأْتِيَ الْقَصْدَ فِي مَالِهَا فِي حِفْظِ رُوحٍ أَوْ صِلَةِ رَحِمٍ، أَوْ فِي مَوَاضِعِ الْمَعْرُوفِ، إذَا لَمْ يَجُزْ لِلْمَرْأَةِ أَنْ تُعْطِيَ مِنْ مَالِهَا شَيْئًا، كَانَ خَيْرًا لَهَا أَنْ لَا تُنْكَحَ، وَأَنَّهَا إذًا تَكُونُ بِمَنْزِلَةِ الْأَمَةِ.

L21574 And from the narration of Hammad ibn Salamah from Qays—who is Ibn Sa'd—that 'Ata' ibn Abi Rabah said: A woman's gift from her wealth is permissible.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسٍ - هُوَ ابْنُ سَعْدٍ - قَالَ: قَالَ عَطَاءُ بْنُ أَبِي رَبَاحٍ: تَجُوزُ عَطِيَّةُ الْمَرْأَةِ فِي مَالِهَا.

L21575–21576 Through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from Ibn Sīrīn, who said: If a married woman who has recently reached puberty gives a gift before the year, and does not retract it until she dies, then it is permissible.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ قَالَ: إذَا أَعْطَتْ الْمَرْأَةُ الْحَدِيثَةُ السِّنِّ ذَاتُ الزَّوْجِ قَبْلَ السَّنَةِ عَطِيَّةً، فَلَمْ تَرْجِعْ حَتَّى تَمُوتَ، فَهُوَ جَائِزٌ.

L21577 From the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: If a woman donates from her wealth in the absence of imprudence or harm, her gift is permissible, even if her husband dislikes it.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إذَا أَعْطَتْ الْمَرْأَةُ مِنْ مَالِهَا فِي غَيْرِ سَفَهٍ وَلَا ضِرَارٍ جَازَتْ عَطِيَّتُهَا، وَإِنْ كَرِهَ زَوْجُهَا.

L21578 Abu Muhammad said: As for Mālik's statement, we do not know of any basis for it—neither from the Quran, nor from the Sunnah, nor from a weak narration, nor from the opinion of a Companion, nor a Successor, nor anyone before him that we are aware of—except for a narration from ʿUmar ibn ʿAbd al-ʿAzīz, though authentic reports from him contradict that narration, as we

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ فَمَا نَعْلَمُ لَهُ مُتَعَلَّقًا، لَا مِنْ الْقُرْآنِ، وَلَا مِنْ السُّنَنِ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا أَحَدَ قَبْلَهُ نَعْلَمُهُ، إلَّا رِوَايَةً عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَدْ صَحَّ عَنْهُ خِلَافُهَا كَمَا ذَكَرْنَا آنِفًا، وَلَمْ يَأْتِ عَنْهُ أَيْضًا تَقْسِيمُهُمْ

mentioned earlier. Moreover, the aforementioned categorization of Malik and his school's does not originate from him, nor from anyone we know, nor from any analogical reasoning, nor from any sound opinion. Rather, what we have mentioned contradicts his statement here, as we will clarify, God, the Exalted, willing.

الْمَذْكُورُ وَلَا عَنْ أَحَدٍ نَعْلَمُهُ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، بَلْ كَانَ مَا ذَكَرْنَا مُخَالِفًا لِقَوْلِهِ هَهُنَا - عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى.

L21579 The narration from ʿUmar ibn ʿAbd al-ʿAzīz—reported via ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī—states: ʿUmar ibn ʿAbd al-ʿAzīz ruled for a woman who said, "I wish to uphold what Allah has commanded [of kinship ties]," while her husband objected, "She is causing me hardship." He thereby authorized her to allocate a third [of the property] during her lifetime.

وَالرِّوَايَةُ عَنْ عُمَرَ رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: جَعَلَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ لِلْمَرْأَةِ إِذَا قَالَتْ: أُرِيدُ أَنْ أَصِلَ مَا أَمَرَ اللَّهُ بِهِ؟ وَقَالَ زَوْجُهَا: هِيَ تُضَارُّنِي؟ فَأَجَازَ لَهَا الثُّلُثَ فِي حَيَاتِهَا.

L21580 They have opposed ʿUmar ibn ʿAbd al-ʿAzīz regarding his prostration at "When the sky is split apart" and in dozens of juridical matters—and here they have opposed ʿUmar ibn al-Khaṭṭāb, Anas ibn Mālik, Abū Hurayrah, Abū Mūsā al-Ashʿarī, al-Zubayr, Asmāʾ, all the Companions (as we shall mention, God willing, the Exalted), Shurayḥ, al-Shaʿbī, al-Nakhaʿī, ʿAṭāʾ, Ṭāwūs, Mujāhid, al-Ḥasan, Ibn Sīrīn, Qatādah, ʿUmar ibn ʿAbd al-ʿAzīz, and others.

وَهُمْ قَدْ خَالَفُوا عُمَرَ بْنَ عَبْدِ الْعَزِيزِ فِي سُجُودِهِ: إِذَا السَّمَاءُ انْشَقَّتْ وَفِي عَشَرَاتٍ مِنْ الْقَضَايَا - وَهُمْ قَدْ خَالَفُوا هَهُنَا: عُمَرَ بْنَ الْخَطَّابِ، وَأَنَسَ بْنَ مَالِكٍ، وَأَبَا هُرَيْرَةَ وَأَبَا مُوسَى الْأَشْعَرِيَّ، وَالزُّبَيْرَ، وَأَسْمَاءَ، وَجَمِيعَ الصَّحَابَةِ - عَلَى مَا نَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى - وَشُرَيْحًا، وَالشَّعْبِيَّ، وَالنَّخَعِيَّ، وَعَطَاءً وَطَاوُسًا، وَمُجَاهِدًا، وَالْحَسَنَ وَابْنَ سِيرِينَ، وَقَتَادَةَ، وَعُمَرَ بْنَ عَبْدِ الْعَزِيزِ، وَغَيْرَهُمْ.

L21581 It is astonishing that they imitate ʿUmar—may Allah be pleased with him—regarding the ruling on the wife of a missing man, the hadd punishment they ascribe to him for drinking wine as eighty lashes, his stipulation to delay the impotent man for a year, and his prohibition against a man who marries and consummates a marriage during the waiting period ever marrying her again—despite other Companions opposing him in all these matters and his own retraction of some rulings. Yet they do not imitate him here.

وَالْعَجَبُ مِنْ تَقْلِيدِهِمْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي امْرَأَةِ الْمَفْقُودِ، وَفِي مَا يَدَّعُونَهُ عَلَيْهِ مِنْ الْحَدِّ فِي الْخَمْرِ ثَمَانِينَ، وَمِنْ تَأْجِيلِ الْعِنِّينِ سَنَةً، وَمِنْ تَحْرِيمِهِ عَلَى مَنْ تَزَوَّجَ فِي الْعِدَّةِ وَدَخَلَ أَنْ يَتَزَوَّجَهَا فِي الْأَبَدِ - وَقَدْ خَالَفَهُ غَيْرُهُ مِنْ الصَّحَابَةِ فِي كُلِّ ذَلِكَ ورجع هُوَ عَنْ بَعْضِ ذَلِكَ، ثُمَّ لَمْ يُقَلِّدُوهُ هَهُنَا.

L21582 Why did they not say here: Such a matter is not determined by opinion, as they said regarding many of the matters we mentioned? For indeed, ʿUmar and those we mentioned with him invalidated the woman's act wholly before she gives birth or remains in her husband's house for a year. Later, he permitted it wholly and did not grant the husband any involvement in such

وَهَلَّا قَالُوا هَهُنَا: مِثْلَ هَذَا لَا يُقَالُ بِالرَّأْيِ، كَمَا قَالُوهُ فِي كَثِيرٍ مِمَّا ذَكَرْنَا فَإِنَّ عُمَرَ وَمَنْ ذَكَرْنَا مَعَهُ أَبْطَلُوا فِعْلَ الْمَرْأَةِ جُمْلَةً قَبْلَ أَنْ تَلِدَ، أَوْ تَبْقَى فِي بَيْتِ زَوْجِهَا سَنَةً، ثُمَّ أَجَازَ بَعْدَ ذَلِكَ جُمْلَةً وَلَمْ يَجْعَلْ لِلزَّوْجِ فِي شَيْءٍ مِنْ ذَلِكَ مَدْخَلًا، وَلَا حَدَّ ثُلُثًا مِنْ أَقَلَّ، وَلَا مِنْ أَكْثَرَ.

matters, nor did he set a limit of one-third, whether from a lesser or greater amount.

وَأَمَّا الْحَنَفِيُّونَ فَيَلْزَمُهُمْ مِثْلُ هَذَا سَوَاءً سَوَاءً؛ لِأَنَّهُمْ قَلَّدُوا عُمَرَ فِي حَدِّ الْخَمْرِ، وَفِي تَأْجِيلِ الْعِنِّينِ سَنَةً، وَفِيمَا ادَّعَوْا عَلَيْهِ مِنْ شُرْبِ النَّبِيذِ الْمُسْكِرِ - وَكَذَبُوا فِي ذَلِكَ، فَهَلَّا قَلَّدُوهُ هَهُنَا وَقَالُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، وَلَكِنَّ الْقَوْمَ فِي غَيْرِ حَقِيقَةٍ - وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى نِعَمِهِ.

L21583–21584 As for the Ḥanafīs, the same applies to them equally, for they followed ‘Umar’s precedent in the prescribed punishment (ḥadd) for wine, in granting a man unable to consummate marriage a year’s delay, and in their allegation that he drank intoxicating *nabīdh*—and they lied in that. So why did they not follow him here and say: “Such a matter is not established through opinion”? But these people are not upon the truth. And we praise Allāh, Exalted is He, for His blessings.

قَالَ أَبُو مُحَمَّدٍ: وَمَوَّهَ الْمَالِكِيُّونَ بِأَنْ قَالُوا: صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «تُنْكَحُ الْمَرْأَةُ لِمَالِهَا وَجَمَالِهَا وَحَسَبِهَا وَدِينِهَا» قَالُوا: فَإِذَا نَكَحَهَا لِمَالِهَا فَلَهُ فِي مَالِهَا مُتَعَلَّقٌ؛ وَقَالُوا: قِسْنَاهَا عَلَى الْمَرِيضِ وَالْمُوصِي.

L21585 Abu Muhammad said: The Malikis justified their stance by citing the authentic report from the Prophet (peace be upon him): “A woman is sought in marriage for her wealth, beauty, lineage, and religion.” They argued that if a man marries her for her wealth, he thereby acquires a right to her wealth. They added that they had analogized this ruling to the terminally ill person and the testator.

قَالَ عَلِيٌّ: وَهَذَا تَحْرِيفٌ لِلسُّنَّةِ عَنْ مَوَاضِعِهَا وَأَغَثُّ مَا يَكُونُ مِنَ الْقِيَاسِ وَأَشَدُّهُ بُطْلَانًا - أَمَّا الْخَبَرُ الْمَذْكُورُ فَلَا مَدْخَلَ فِيهِ لِشَيْءٍ مِنْ قَوْلِهِمْ فِي إِجَازَةِ الثُّلُثِ وَإِبْطَالِ مَا زَادَ، وَإِنَّمَا يُمْكِنُ أَنْ يَتَعَلَّقَ بِهِ مَنْ يَذْهَبُ إِلَى مَا رُوِيَ عَنْ أَبِي هُرَيْرَةَ، وَأَنَسٍ، وَطَاوُسٍ، وَاللَّيْثِ تَعَلُّقًا مُمَوَّهًا أَيْضًا عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى.

L21586 Ali said: “This is a distortion of the Sunnah from its proper contexts, the most baseless form of juristic analogy, and the most utterly void. As for the aforementioned report, it leaves no room for their assertions about permitting a third and invalidating anything beyond it. Only those who adhere to what has been reported from Abu Hurairah, Anas, Tawus, and Al-Layth could speciously rely on it - a specious reliance, as we shall clarify, God the Exalted willing.”

وَأَمَّا قِيَاسُهُمُ الْمَرْأَةَ عَلَى الْمَرِيضِ فَهُوَ قِيَاسٌ لِلْبَاطِلِ عَلَى الْبَاطِلِ، وَاحْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ، ثُمَّ لَوْ صَحَّ لَهُمْ فِي الْمَرِيضِ مَا ذَهَبُوا إِلَيْهِ لَكَانُوا قَدْ أَخْطَئُوا مِنْ وُجُوهٍ -: أَحَدُهَا - أَنَّ الْمَرْأَةَ صَحِيحَةٌ وَإِنَّمَا احْتَاطُوا بِزَعْمِهِمْ عَلَى الْمَرِيضِ لَا عَلَى الصَّحِيحِ، وَقِيَاسُ الصَّحِيحِ عَلَى الْمَرِيضِ بَاطِلٌ عِنْدَ كُلِّ مَنْ يَقُولُ بِالْقِيَاسِ لِأَنَّهُمْ إِنَّمَا يَقِيسُونَ الشَّيْءَ عَلَى مِثْلِهِ لَا عَلَى ضِدِّهِ.

L21587 As for their analogy of a woman to a sick person, it constitutes an analogy of falsehood upon falsehood and arguing error with error. Even if their position regarding the sick person were valid, they would still have erred in multiple aspects. The first of these is that the woman is healthy, whereas, by their claim, they only applied precaution to the sick person, not the healthy one. Analogizing the healthy to the sick is false according to all proponents of analogy. For they only analogize a thing to its equivalent, not its opposite.

L21588 The second [reason] is that there is no legal cause (‘illah) connecting the

ritually sound woman and the sick one, nor any analogical resemblance between them whatsoever. The legal cause, according to those who uphold it, either rests on a comprehensive legal cause bridging the two rulings or on an analogical resemblance between them.

وَالثَّانِي - أَنَّهُ لَا عِلَّةَ تَجْمَعُ بَيْنَ الْمَرْأَةِ الصَّحِيحَةِ وَبَيْنَ الْمَرِيضِ وَلَا شَبَهَ بَيْنَهُمَا أَصْلًا، وَالْعِلَّةُ عِنْدَ الْقَائِلِينَ بِهِ إمَّا عَلَى عِلَّةٍ جَامِعَةٍ بَيْنَ الْحُكْمَيْنِ، وَإِمَّا عَلَى شَبَهٍ بَيْنَهُمَا.

L21589 The third [point] is that they execute the acts of the sick person within the third and invalidate anything beyond it. Yet here, they invalidate both the third and what exceeds it—thereby invalidating their own analogy.

وَالثَّالِثُ - أَنَّهُمْ يُمْضُونَ فِعْلَ الْمَرِيضِ فِي الثُّلُثِ، وَيُبْطِلُونَ مَا زَادَ عَلَى الثُّلُثِ، وَهَهُنَا يُبْطِلُونَ الثُّلُثَ، وَمَا زَادَ عَلَى الثُّلُثِ - فَقَدْ أَبْطَلُوا قِيَاسَهُمْ.

L21590 The fourth is that they permit a woman to allot a third after a third, yet they do not permit this for a sick person. Thus, they have, in this matter, combined both a contradiction of Analogical Reasoning (Qiyās) and a nullification of their basis in safeguarding the husband's share, for she may keep allocating a third after a third until she depletes the entire estate except for a negligible portion—this constitutes a confusion without parallel.

وَالرَّابِعُ - أَنَّهُمْ يُجِيزُونَ لِلْمَرْأَةِ ثُلُثًا بَعْدَ ثُلُثٍ، وَلَا يُجِيزُونَ ذَلِكَ لِلْمَرِيضِ - فَجَمَعُوا فِي هَذَا الْوَجْهِ مُنَاقَضَةَ الْقِيَاسِ، وَإِبْطَالَ أَصْلِهِمْ فِي الْحِيَاطَةِ لِلزَّوْجِ؛ لِأَنَّهَا لَا تَزَالُ تُعْطِي ثُلُثًا بَعْدَ ثُلُثٍ حَتَّى تُذْهِبَ الْمَالَ إلَّا مَا لَا قَدْرَ لَهُ - وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ.

L21591–21592 If they say, "Did we analogize it to the testator?" we respond: The executor is not the same as the testator, and all that we introduced earlier in their analogy to the sick person also applies to them.

فَإِنْ قَالُوا: قِسْنَاهَا عَلَى الْمُوصِي؟ قُلْنَا: الْمُنَفِّذُ غَيْرُ الْمُوصِي وَدَخَلَ عَلَيْهِمْ كُلُّ مَا أَدْخَلْنَاهُ آنِفًا فِي قِيَاسِهِمْ عَلَى الْمَرِيضِ.

L21593 If they say: "Does the husband have a claim over her property since he married her with wealth?" We will—God, the Exalted, willing—subsequently present in our discourse against those who deny her authority over any part of her property what invalidates this assertion. For this argument in fact belongs to them, not the Malikis; rather, it counters their own stance. Were it valid, it would necessitate preventing her from even a small or large amount of her property. However, we ask them about the free woman married to an enslaved husband, the non-Muslim woman married to a Muslim man, and the woman who embraces Islam while married to a non-Muslim: Are these women prohibited from giving charity beyond a third of their property or not? If they say "No," they contradict themselves. If they say "Yes," they compound inconsistency.

فَإِنْ قَالُوا: إنَّ لِلزَّوْجِ طَرِيقًا فِي مَالِهَا إذْ قَدْ تَزَوَّجَ بِالْمَالِ؟ فَسَنَذْكُرُ مَا يَفْسُدُ بِهِ هَذَا الْقَوْلُ إنْ شَاءَ اللَّهُ تَعَالَى إثْرَ هَذَا فِي كَلَامِنَا عَلَى مَنْ يَمْنَعُهَا مِنْ الْحُكْمِ فِي شَيْءٍ مِنْ مَالِهَا؛ لِأَنَّ هَذَا الِاحْتِجَاجَ إنَّمَا هُوَ لَهُمْ، لَا لِلْمَالِكِيِّينَ، بَلْ هُوَ عَلَيْهِمْ؛ لِأَنَّهُ لَوْ صَحَّ لَكَانَ مُوجِبًا لِلْمَنْعِ مِنْ قَلِيلِ مَالِهَا وَكَثِيرِهِ. لَكِنْ نَسْأَلُهُمْ عَنْ الْحُرَّةِ لَهَا زَوْجٌ عَبْدٌ، وَالْكَافِرَةِ لَهَا زَوْجٌ مُسْلِمٌ، وَالَّتِي تُسْلِمُ تَحْتَ كَافِرٍ، هَلْ لِهَؤُلَاءِ مَنْعُهُنَّ مِنْ الصَّدَقَةِ بِأَكْثَرَ مِنْ الثُّلُثِ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، تَنَاقَضُوا، وَإِنْ قَالُوا: نَعَمْ، زَادُوا أُخْلُوقَةً.

L21594 If they say: She is in need of means to draw nearer to God Almighty, so it is impermissible to bar her from all her wealth—yet a third is deemed insufficient? We respond: This argument is invalid for several reasons: First:

فَإِنْ قَالُوا: هِيَ مُحْتَاجَةٌ إلَى مَا يُتَقَرَّبُ بِهِ إلَى اللَّهِ عَزَّ وَجَلَّ فَلَمْ يَجُزْ مَنْعُهَا مِنْ جَمِيعِ مَالِهَا، وَكَانَ الثُّلُثُ قَلِيلًا؟ قُلْنَا: هَذَا يَفْسُدُ مِنْ وُجُوهٍ: - أَحَدُهَا: أَنَّهَا إنْ كَانَتْ مُحْتَاجَةً

If she is in need of means to draw nearer to God Almighty, what justifies preventing her from drawing closer to Him through the excess over a third, as others are permitted, without distinction? Second: We say to them: By your own admission, the legally restricted spendthrift (سفيه) is obligated to acts that draw him nearer to God Almighty—just as you obligate him to prayer, fasting, zakāh, pilgrimage, and other religious obligations. By this very absurd rationale, you should likewise permit him the excess over a third of his wealth.

إِلَى مَا يُتَقَرَّبُ بِهِ إِلَى اللَّهِ تَعَالَى فَمَا الَّذِي أَوْجَبَ أَنْ تُمْنَعَ مِنْ التَّقَرُّبِ إِلَى اللَّهِ تَعَالَى بِالْكَثِيرِ الزَّائِدِ عَلَى الثُّلُثِ كَغَيْرِهَا، وَلَا فَرْقَ؟ وَثَانِيهَا: أَنْ نَقُولَ لَهُمْ: وَالْمَحْجُورُ السَّفِيهُ بِإِقْرَارِكُمْ إِلَى مَا يَتَقَرَّبُ إِلَى اللَّهِ تَعَالَى بِهِ كَمَا تُوجِبُونَ عَلَيْهِ الصَّلَاةَ. وَالصِّيَامَ، وَالزَّكَاةَ، وَالْحَجَّ، وَسَائِرَ الشَّرَائِعِ فَأَبِيحُوا لَهُ الثُّلُثَ أَيْضًا بِهَذَا الدَّلِيلِ السَّخِيفِ نَفْسِهِ.

L21595 If they say: A woman is not deemed prodigal in financial matters.

فَإِنْ قَالُوا: الْمَرْأَةُ لَيْسَتْ سَفِيهَةً.

L21596 We said: Let her keep her wealth and abandon this confusion—this irrationality! The third point is that the Prophet (peace be upon him) said: "A third—and a third is much." Yet you said: "It is little." Let this suffice you—we seek refuge in God from the like of this!

قُلْنَا: فَأَطْلِقُوهَا عَلَى مَالِهَا وَدَعُوا هَذَا التَّخْلِيطَ بِمَا لَا يُعْقَلُ؟ وَثَالِثُهَا: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الثُّلُثُ وَالثُّلُثُ كَثِيرٌ» فَقُلْتُمْ أَنْتُمْ: إنَّهُ قَلِيلٌ - وَحَسْبُكُمْ هَذَا الَّذِي نَسْتَعِيذُ اللَّهَ مِنْ مِثْلِهِ.

L21597–21599 The fourth objection is that according to your view, the third portion is sometimes deemed excessive—so you reject it as in cases of crop blight—and sometimes considered insufficient, so you implement it in situations like this and similar cases. How grave is this contradiction! How can one speak about Allah's religion using such arbitrary opinions? The fifth objection is that the husband's legal claim to her wealth equates to that of a child, parent, or sibling. Indeed, the inheritance shares of these heirs are greater, for when the husband exists alongside a child, he receives only a quarter while the child receives three-quarters. Like the husband, the parent and child cannot be excluded from inheritance under any circumstance. Therefore, you must bar her [from disposing of her wealth] along with the child... And the parent, from charity exceeding a third through this corrupt precaution—particularly since the parents' right in what is obligatory according to their school and ours outweighs the spouse's right. For if parents become impoverished, the jurists rule that she must provide their sustenance, clothing, housing, and care from her wealth, whether she likes or dislikes—while they do not rule for the spouse to receive anything from her wealth, even if he were to perish from hunger or cold. How then did they take precaution for the lesser

وَرَابِعُهَا: أَنَّ الثُّلُثَ عِنْدَكُمْ مَرَّةً كَثِيرٌ فَتَرُدُّونَهُ كَالْجَوَائِحِ، وَمَرَّةً قَلِيلٌ فَتُنْفِذُونَهُ مِثْلَ هَذَا الْمَوْضِعِ وَشِبْهِهُ - فَكَمْ هَذَا التَّنَاقُضُ وَالْقَوْلُ فِي دِينِ اللَّهِ تَعَالَى بِمِثْلِ هَذِهِ الْآرَاءِ؟ وَخَامِسُهَا: أَنَّ حُجَّةَ الزَّوْجِ فِي مَالِهَا كَحُجَّةِ الْوَلَدِ، أَوْ الْوَالِدِ، أَوْ الْأَخِ، بَلْ مِيرَاثُ هَؤُلَاءِ أَكْثَرُ؛ لِأَنَّ الزَّوْجَ مَعَ الْوَلَدِ لَيْسَ لَهُ إلَّا الرُّبُعُ، وَلِلْوَلَدِ ثَلَاثَةُ الْأَرْبَاعِ - وَالْوَالِدُ وَالْوَلَدُ كَالزَّوْجِ فِي أَنَّهُمْ لَا يَحْجُبُهُمْ أَحَدٌ عَنْ الْمِيرَاثِ أَصْلًا، فَامْنَعُوهَا مَعَ الْوَلَدِ، وَالْوَالِدِ، مِنْ الصَّدَقَةِ بِأَكْثَرَ مِنْ الثُّلُثِ بِهَذَا الِاحْتِيَاطِ الْفَاسِدِ، لَا سِيَّمَا وَحَقُّ الْأَبَوَيْنِ فِيمَا أُوجِبَ عِنْدَهُمْ وَعِنْدَنَا مِنْ حَقِّ الزَّوْجِ، لِأَنَّ الْأَبَوَيْنِ إنْ افْتَقَرَا قَضَوْا بِنَفَقَتِهِمَا وَكِسْوَتِهِمَا وَإِسْكَانِهِمَا وَخِدْمَتِهِمَا عَلَيْهَا فِي مَالِهَا أَحَبَّتْ أَمْ كَرِهَتْ - وَلَا يَقْضُونَ لِلزَّوْجِ فِي مَالِهَا بِشَيْءٍ - وَلَوْ مَاتَ جُوعًا وَبَرْدًا - فَكَيْفَ احْتَاطُوا لِلْأَقَلِّ حَقًّا وَلَمْ يَحْتَاطُوا لِلْأَكْثَرِ حَقًّا - فَلَاحَ فَسَادُ هَذَا الْقَوْلِ الَّذِي لَا نَدْرِي كَيْفَ يَنْشَرِحُ صَدْرُ مَنْ لَهُ أَدْنَى تَمْيِيزٍ لِتَقْلِيدِ

مَنْ أَخْطَأَ فِيهِ الْخَطَأَ الَّذِي لَا خَفَاءَ بِهِ، وَخَالَفَ فِيهِ كُلَّ مُتَقَدِّمٍ نَعْلَمُهُ، إِلَّا رِوَايَةً عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَدْ صَحَّ عَنْهُ خِلَافُهَا لَيْسَ أَيْضًا فِي تَقْسِيمِهِمْ ذَلِكَ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

right while neglecting the greater right? Thus, the corruption of this opinion becomes evident. We cannot fathom how the heart of anyone with the slightest discernment could find ease in blindly following one who erred in such an unmistakable error, opposing every predecessor we know—except for a narration from ʿUmar ibn ʿAbd al-ʿAzīz, which is authentically reported to contradict this view. Nor is there [any basis] in their apportionment of this matter. And success is from Allah, the Exalted.

وَأَمَّا مَنْ مَنَعَهَا مِنْ أَنْ تُنَفِّذَ فِي مَالِهَا شَيْئًا إِلَّا بِإِذْنِهِ فَإِنَّهُمْ احْتَجُّوا بِالْخَبَرِ الْمَذْكُورِ، وَبِقَوْلِهِ تَعَالَى: {الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ} [النساء: ٣٤] . وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ اللَّيْثِ عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ، «قِيلَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَيُّ النِّسَاءِ خَيْرٌ؟ قَالَ: الَّذِي تَسُرُّهُ إِذَا نَظَرَ، وَتُطِيعُهُ إِذَا أَمَرَ، وَلَا تُخَالِفُهُ فِي نَفْسِهَا وَمَالِهَا بِمَا يَكْرَهُ» .

L21600 As for those who prevent her from disposing of anything in her wealth without his permission, they have cited as evidence the aforementioned report, the words of Allah the Exalted: {Men are caretakers over women by what Allah has favored some with over others and by what they spend from their wealth} [An-Nisa': 34], and what we have narrated via Al-Layth ibn Sa'd from Ibn 'Ajlan from Sa'īd al-Maqburī from Abū Hurayrah: "It was said to the Messenger of Allah (peace and blessings be upon him), 'Which women are best?' He said: 'She who pleases him when he looks at her, obeys him when he commands, and does not oppose him regarding herself or her wealth in what he dislikes.'"[3]

وَبِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ نُوحٍ الْأَصْبَهَانِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ الْحَسَنِ الْمَدِينِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ نا الْحَسَنُ بْنُ عَبْدِ الْغَفَّارِ بْنِ دَاوُد نا مُوسَى بْنُ أَعْيَنَ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَبْدِ الْمَلِكِ - قَالَ الصَّائِغُ: لَيْسَ هُوَ الْعَرْزَمِيُّ - عَنْ عَطَاءٍ عَنِ ابْنِ عُمَرَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا حَقُّ الزَّوْجِ عَلَى زَوْجَتِهِ؟ قَالَ: لَا تَصَدَّقُ إِلَّا بِإِذْنِهِ، فَإِنْ فَعَلَتْ كَانَ لَهُ الْأَجْرُ. وَكَانَ عَلَيْهَا الْوِزْرُ» .

L21601 And according to what Ahmad ibn Umar narrated to us: Muhammad ibn Ahmad ibn Nuh al-Asbahani narrated to us: Abdullah ibn Muhammad ibn al-Hasan al-Madini narrated to us: Muhammad ibn Isma'il al-Sa'igh narrated to us: al-Hasan ibn Abd al-Ghaffar ibn Dawud narrated to us: Musa ibn A'yan narrated from Layth ibn Abi Sulaym from Abd al-Malik—al-Sa'igh said: He is not al-ʿArzami—from Ata' from Ibn Umar: "The Messenger of Allah (peace be upon him) was asked: What is the husband's right over his wife? He said: She must not give charity except with his permission. If she does so, the reward is his, and she bears the sin."

وَمِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ أَنَّ أَبَاهُ حَدَّثَهُ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا فَتَحَ مَكَّةَ خَطَبَ فَقَالَ: لَا تَجُوزُ لِامْرَأَةٍ عَطِيَّةٌ فِي مَالِهَا إِلَّا بِإِذْنِ زَوْجِهَا» . وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ وَعَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ قَالَ الرَّجُلُ: عَنْ عِكْرِمَةَ، وَقَالَ ابْنُ طَاوُسٍ: عَنْ أَبِيهِ، ثُمَّ اتَّفَقَا: أَنَّ

L21602–21604 And through the chain of ʿAmr ibn Shuʿayb that his father reported from ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ: "When the Messenger of Allāh—peace and blessings of Allāh be upon him—conquered Mecca, he delivered a sermon and said: 'A woman may not give a gift from her wealth except with her husband's permission.'" And through the chain of ʿAbd al-Razzāq from Maʿmar from an

[3] **Qur'an references (L21600):** Qur'an 4:34 (An-Nisa).

unnamed man and from ʿAbd Allāh ibn Ṭāwūs. The unnamed man reported from ʿIkrimah, and Ibn Ṭāwūs from his father. Then their chains meet: that the Messenger of Allāh—peace and blessings of Allāh be upon him—said: "It is not lawful..." "A woman has no right to dispose of anything in her property without her husband's permission"—this is the wording of Tawus, while the wording of Ikrimah is "anything in her property." We do not know of any other opinion from them besides this at all.

رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ لِامْرَأَةٍ شَيْءٌ فِي مَالِهَا إِلَّا بِإِذْنِ زَوْجِهَا» هَذَا لَفْظُ طَاوُسٍ، وَلَفْظُ عِكْرِمَةَ " فِي مَالِهَا شَيْءٌ " مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا أَصْلًا

L21605 All these texts—the verse and the reports, those authenticated and those unauthenticated—are both definitive proof against the Malikis and an invalidation of their opinion permitting the third and their prohibition of what exceeds it.

وَكُلُّ هَذِهِ النُّصُوصِ الْآيَةِ وَالْأَخْبَارِ مَا صَحَّ مِنْهَا وَمَا لَمْ يَصِحَّ حُجَّةٌ عَلَى الْمَالِكِيِّينَ، وَمُبْطِلٌ لِقَوْلِهِمْ فِي إِبَاحَةِ الثُّلُثِ وَمَنْعِهِمْ مِمَّا زَادَ.

L21606 As for the ḥadīth, "A woman is married for four [things]," there is no inducement to pride in that, nor encouragement toward it, nor its permissibility—let alone anything beyond that. Rather, it contains a reproof against marrying her for anything other than religion, due to his statement—peace be upon him—in this very ḥadīth: "So, seek a woman of religion," thereby restricting his command to a woman of religion. Thus, whoever marries for wealth is not praised in that intention of his.

فَأَمَّا الْخَبَرُ «تُنْكَحُ الْمَرْأَةُ لِأَرْبَعٍ» فَلَيْسَ فِيهِ التَّغْبِيطُ بِذَلِكَ، وَلَا الْحَضُّ عَلَيْهِ، وَلَا إِبَاحَتُهُ فَضْلًا عَنْ غَيْرِ ذَلِكَ، بَلْ فِيهِ الزَّجْرُ عَنْ أَنْ تُنْكَحَ لِغَيْرِ الدِّينِ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي هَذَا الْخَبَرِ نَفْسِهِ «فَاظْفَرْ بِذَاتِ الدِّينِ» فَقَصَرَ أَمْرَهُ عَلَى ذَاتِ الدِّينِ، فَصَارَ مَنْ نَكَحَ لِلْمَالِ غَيْرَ مَحْمُودٍ فِي نِيَّتِهِ تِلْكَ.

L21607 Then, suppose it is permissible and recommended? What evidence exists to prohibit her from her wealth merely because he is among those who greedily seek wealth that is unlawful for him—nothing being lawful for him from it except what would be lawful regarding his neighbor's wealth? For this is limited to what her own soul and the neighbor's soul willingly accept, with no excess.

ثُمَّ هَبْكَ أَنَّهُ مُبَاحٌ مُسْتَحَبٌّ؟ أَيُّ دَلِيلٍ فِيهِ عَلَى أَنَّهَا مَمْنُوعَةٌ مِنْ مَالِهَا بِكَوْنِهِ أَحَدَ الطَّمَّاعِينَ فِي مَالٍ لَا يَحِلُّ لَهُ مِنْهُ شَيْءٌ إِلَّا مَا يَحِلُّ مِنْ مَالِ جَارِهِ؟ وَهُوَ مَا طَابَتْ لَهُ بِهِ نَفْسُهَا وَنَفْسُ جَارِهِ وَلَا مَزِيدَ.

L21608 Moreover, Allah the Exalted has decreed in the Quran and the Sunnah—which the people of Islam have unanimously agreed upon with a conclusive and certain consensus—that husbands are obligated to provide for their wives' maintenance, clothing, housing, and dower (mahr). He has granted women inheritance from men just as He has granted men inheritance from them, with absolute parity. Thus, it is firmly established in the mind of every person of sound mind that a wife's right to her husband's wealth is an obligatory, binding, and lawful entitlement, daily, monthly, yearly, at every

وَأَيْضًا: فَإِنَّ اللَّهَ تَعَالَى افْتَرَضَ فِي الْقُرْآنِ وَالسُّنَّةِ الَّتِي أَجْمَعَ أَهْلُ الْإِسْلَامِ عَلَيْهِمَا إِجْمَاعًا مَقْطُوعًا بِهِ مُتَيَقَّنًا أَنَّ عَلَى الْأَزْوَاجِ نَفَقَاتِ الزَّوْجَاتِ، وَكِسْوَتَهُنَّ، وَإِسْكَانَهُنَّ، وَصَدُقَاتِهِنَّ، وَجَعَلَ لَهُنَّ الْمِيرَاثَ مِنَ الرِّجَالِ كَمَا جَعَلَهُ لِلرِّجَالِ مِنْهُنَّ سَوَاءً سَوَاءً - فَصَارَ بِيَقِينٍ مِنْ كُلِّ ذِي مَسْكَةِ عَقْلٍ حَقُّ الْمَرْأَةِ فِي مَالِ زَوْجِهَا وَاجِبًا لَازِمًا، حَلَالًا يَوْمًا بِيَوْمٍ، وَشَهْرًا بِشَهْرٍ، وَعَامًا بِعَامٍ، وَفِي كُلِّ سَاعَةٍ، وَكَرَّةِ الطَّرْفِ، لَا تَخْلُو ذِمَّتُهُ مِنْ

moment, and in the blink of an eye. His responsibility is never free of her rightful claim to his wealth. This contrasts starkly with his total exclusion from her wealth and the prohibition against him taking anything from it except what she willingly permits. Furthermore, she is entitled to inherit from him after his death, just as he is entitled to inherit from her, with no difference. If this necessitates a man's restriction of her access to her wealth, then it is even more incumbent for a woman to restrict his access to his wealth unless she permits it—for she has a legally mandated share in his wealth, whereas he has no claim to hers except total abstention and legal prohibition. How astonishing is the inversion of rulings!

حَقٍّ لَهَا فِي مَالِهِ. بِخِلَافِ مَنْعِهِ مِنْ مَالِهَا جُمْلَةً، وَتَحْرِيمِهِ عَلَيْهِ، إِلَّا مَا طَابَتْ لَهُ نَفْسُهَا بِهِ، ثُمَّ تَرْجُو مِنْ مِيرَاثِهِ بَعْدَ الْمَوْتِ كَمَا يَرْجُو الزَّوْجُ فِي مِيرَاثِهَا وَلَا فَرْقَ. فَإِنْ كَانَ ذَلِكَ مُوجِبًا لِلرَّجُلِ مَنْعَهَا مِنْ مَالِهَا فَهُوَ لِلْمَرْأَةِ أَوْجَبُ، وَأَحَقُّ فِي مَنْعِهِ مِنْ مَالِهِ إِلَّا بِإِذْنِهَا؛ لِأَنَّ لَهَا شِرْكًا وَاجِبًا فِي مَالِهِ، وَلَيْسَ لَهُ فِي مَالِهَا إِلَّا التَّبُّ وَالزَّجْرُ، فَيَا لَلْعَجَبِ فِي عَكْسِ الْأَحْكَامِ.

L21609 If her right is not absolute—such that his preventing her from his wealth due to fear he might become impoverished would nullify her inalienable right—then by Allah, it is far-fetched and invalid that such a scenario could justify his depriving her of wealth in which he has neither right nor share, any more than an elephant has a portion in flight.

فَإِنْ لَمْ يَكُنْ ذَلِكَ مُطْلَقًا لَهَا مَنْعَهُ مِنْ مَالِهِ خَوْفَ أَنْ يَفْتَقِرَ فَيَبْطُلُ حَقُّهَا اللَّازِمُ؟ فَأُبْعِدَ وَاللَّهِ وَأُبْطِلَ أَنْ يَكُونَ ذَلِكَ مُوجِبًا لَهُ مَنْعَهَا مِنْ مَالٍ لَا حَقَّ لَهُ فِيهِ، وَلَا حَظَّ إِلَّا حَظُّ الْفِيلِ مِنْ الطَّيَرَانِ.

L21610–21612 The utmost perplexity stems from their authorization for him to prohibit her wealth or any portion thereof... and he, if [text breaks off here]. He died of hunger, exhaustion, emaciation, or cold, yet they did not allocate to him from its wealth even a seed to eat nor an animal skin to cover himself with. How, then, did they deem this permissible? Verily, this is indeed astonishing! Thus, their reliance on this claim is entirely invalidated.

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ إِطْلَاقِهِمْ لَهُ الْمَنْعَ مِنْ مَالِهَا أَوْ مِنْ شَيْءٍ مِنْهُ - وَهُوَ لَوْ مَاتَ جُوعًا، أَوْ جَهْدًا، أَوْ هُزَالًا، أَوْ بَرْدًا، لَمْ يُقْضُوا لَهُ فِي مَالِهَا بِنَوَاةٍ يَزْدَرِدُهَا، وَلَا بِجِلْدٍ يَسْتَتِرُ بِهِ، فَكَيْفَ اسْتَجَازُوا هَذَا؟ إِنَّ هَذَا لَعَجَبٌ؟ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً.

L21613 As for Allah the Most High's statement: "Men are protectors and maintainers over women by virtue of what Allah has favored some of them over others, and by virtue of what they spend from their wealth" [An-Nisā': 34], Allah the Most High did not restrict this statement to a husband acting as a paternal or fraternal guardian.[4]

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى: {الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ} [النساء: ٣٤] فَإِنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ بِهَذَا الْكَلَامِ زَوْجًا مِنْ أَبٍ، وَلَا مِنْ أَخٍ.

L21614 Moreover, had there been an explicit text in it concerning husbands exclusively, there would have been no text or evidence in it indicating his right to prevent her from her wealth or any portion thereof. Rather, it would have stipulated that others should oversee the management of their wealth—since they categorically do not grant this authority to the husband. Indeed,

ثُمَّ لَوْ كَانَ فِيهَا نَصٌّ عَلَى الْأَزْوَاجِ دُونَ غَيْرِهِمْ لَمَا كَانَ فِيهَا نَصٌّ وَلَا دَلِيلٌ عَلَى أَنَّ لَهُ مَنْعَهَا مِنْ مَالِهَا، وَلَا مِنْ شَيْءٍ مِنْهُ، وَإِنَّمَا كَانَ يَكُونُ فِيهِ أَنْ يَقُومُوا بِالنَّظَرِ فِي أَمْوَالِهِنَّ - وَهُمْ لَا يَجْعَلُونَ هَذَا لِلزَّوْجِ أَصْلًا بَلْ لَهَا عِنْدَهُمْ أَنْ تُوَكِّلَ فِي النَّظَرِ فِي مَالِهَا مَنْ شَاءَتْ

[4] **Qur'an references (L21613):** Qur'an 4:34 (An-Nisa).

عَلَى رَغْمِ أَنْفِ زَوْجِهَا؟ وَلَا خِلَافَ فِي أَنَّهَا لَا يَنْفُذُ عَلَيْهَا بَيْعُ زَوْجِهَا لِشَيْءٍ مِنْ مَالِهَا - لَا مَا قَلَّ وَلَا مَا كَثُرَ - لَا لِنَظَرٍ وَلَا لِغَيْرِهِ، وَلَا ابْتِيَاعِهِ لَهَا أَصْلًا - فَصَارَتْ الْآيَةُ مُخَالِفَةً لَهُمْ فِيمَا يَتَأَوَّلُونَهُ فِيهَا. وَصَحَّ أَنَّ الْمُرَادَ بِقَوْلِهِ تَعَالَى: {الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ} [النساء: ٣٤] مَا لَا خِلَافَ فِيهِ مِنْ وُجُوبِ نَفَقَتِهِنَّ وَكِسْوَتِهِنَّ عَلَيْهِمْ، فَذَاتُ الزَّوْجِ عَلَى الزَّوْجِ، وَغَيْرُ ذَاتِ الزَّوْجِ إنْ احْتَاجَتْ عَلَى أَهْلِهَا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَصَارَتْ الْآيَةُ حُجَّةً عَلَيْهِمْ، وَكَاسِرَةً لِقَوْلِهِمْ.

according to them, she may delegate whomever she wishes to manage her wealth, even against her husband's objection. There is no dispute that her husband's sale of any part of her wealth—whether minor or substantial—is not binding on her, neither for oversight nor any other purpose, nor does his purchasing on her behalf hold any validity at all. Thus, the verse contradicts their interpretation of it. It is established that the intended meaning of Allah's statement, *Men are guardians and maintainers of women* [al-Nisāʾ 4:34], refers to what is undisputed: the obligation to provide for the women's maintenance and clothing. A wife's provision falls upon her husband, while an unmarried woman in need is solely the responsibility of her family—and success comes from Allah, the Most High. Thus, the verse stands as a decisive proof against them, shattering their claim.[5]

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ: فَإِنَّ يَحْيَى بْنَ بُكَيْرٍ رَوَاهُ عَنْ اللَّيْثِ - وَهُوَ أَوْثَقُ النَّاسِ فِيهِ - عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ: «وَلَا تُخَالِفُهُ فِي نَفْسِهَا وَمَالِهِ بِمَا يَكْرَهُ» .

L21615 As for the narration of Abu Hurairah: Yahya ibn Bukayr reported it from al-Layth—who is the most trustworthy in narrating from him—from Ibn ʿAjlan, from Saʿid al-Maqburi, from Abu Hurairah, from the Prophet (peace be upon him), who said: "She must not oppose him concerning herself or his wealth in anything he dislikes."

وَهَكَذَا رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ: أَنَا عَمْرُو بْنُ عَلِيٍّ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - نَا ابْنُ عَجْلَانَ نا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ: «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ خَيْرِ النِّسَاءِ؟ قَالَ: الَّتِي تُطِيعُ إذَا أَمَرَ، وَتَسُرُّ إذَا نَظَرَ، وَتَحْفَظُهُ فِي نَفْسِهَا وَمَالِهِ» ثُمَّ لَوْ صَحَّ - وَمَالَهَا دُونَ مُعَارِضٍ - لَمَا كَانَ لَهُمْ فِي تِلْكَ الرِّوَايَةِ مُتَعَلَّقٌ؛ لِأَنَّ هَذَا اللَّفْظَ إنَّمَا فِيهِ النَّدْبُ فَقَطْ لَا الْإِيجَابُ، وَإِنَّمَا الطَّاعَةُ فِي الطَّاعَةِ، وَالْمَنْعُ مِنْ الصَّدَقَةِ، وَفِعْلِ الْخَيْرِ لَيْسَ طَاعَةً، بَلْ هُوَ صَدٌّ عَنْ سَبِيلِ اللَّهِ تَعَالَى - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L21616–21618 And likewise, we have narrated it through the chain of Aḥmad ibn Shuʿayb: From ʿAmr ibn ʿAlī, from Yaḥyā—he being Ibn Saʿīd al-Qaṭṭān—from Ibn ʿAjlān, from Saʿīd ibn Abī Saʿīd al-Maqburī, from Abū Hurayrah: "The Messenger of Allah—peace and blessings be upon him—was asked about the best of women. He replied: 'She who obeys when commanded, delights him when he gazes [upon her], and safeguards his rights concerning herself and his wealth.'" Even if this were authentic—with her wealth being undisputed and uncontested—they would find no grounds in that narration, for this wording merely denotes a recommended act (mandūb), not an obligation. Obedience pertains solely to obeying Allah, and the prohibition pertains to [...] Charity and performing good deeds are not acts of obedience; rather, it is a deterrent from the path of Allah, the Exalted - thus their reliance upon this report is invalidated.

L21619 As for the report of Ibn Umar: it is rejected because it includes Musa ibn

[5]**Qur'an references (L21614):** Qur'an 4:34 (An-Nisa).

A'yan—who is unknown—and Layth ibn Abi Sulaym—who is not reliable. As for the hadith of Abdullah ibn Amr: it is a disconnected written record. Furthermore, even if it were authentic, it would be abrogated by the report of Ibn Abbas, which we will mention hereafter if God, the Exalted, wills.

وَأَمَّا خَبَرُ ابْنِ عُمَرَ: فَهَالِكٌ، لِأَنَّ فِيهِ مُوسَى بْنَ أَعْيَنَ - وَهُوَ مَجْهُولٌ - وَلَيْثَ بْنَ أَبِي سُلَيْمٍ - وَلَيْسَ بِالْقَوِيِّ - وَأَمَّا حَدِيثُ عَبْدِ اللَّهِ بْنِ عَمْرٍو: فَصَحِيفَةٌ مُنْقَطِعَةٌ - ثُمَّ لَوْ صَحَّ لَكَانَ مَنْسُوخًا بِخَبَرِ ابْنِ عَبَّاسٍ الَّذِي نَذْكُرُهُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L21620 As for the reports of Ṭāwūs and ʿIkrimah, they are mursal reports—thus, all that they argued with is invalidated. And success is from Allah, the Exalted. Abū Muḥammad said: Since these opinions have been refuted, the restriction transmitted from ʿUmar—may Allah be pleased with him—and those who followed him in the ruling that it is not permissible for her to grant a gift until after she gives birth or remains in her husband's house for a year, holds no authority. For there is no proof in the opinion of any person apart from the Messenger of Allah—peace and blessings of Allah be upon him. Indeed, Allah, the Exalted, has ordained recourse to the Quran and the Sunnah in case of disputes, not to the opinions of anyone apart from these two sources. And success is from Allah, the Exalted.

وَأَمَّا خَبَرُ طَاوُسٍ، وَعِكْرِمَةَ فَمُرْسَلَانِ - فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. قَالَ أَبُو مُحَمَّد: فَإِذْ قَدْ سَقَطَتْ هَذِهِ الْأَقْوَالُ فَالتَّحْدِيدُ الْوَارِدُ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَمَنْ اتَّبَعَهُ فِي أَنْ لَا يَجُوزَ لَهَا عَطِيَّةٌ إلَّا بَعْدَ أَنْ تَلِدَ. أَوْ تَبْقَى فِي بَيْتِ زَوْجِهَا سَنَةً، فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا افْتَرَضَ اللَّهُ تَعَالَى الرُّجُوعَ عِنْدَ التَّنَازُعِ إلَى الْقُرْآنِ، وَالسُّنَّةِ، لَا إلَى قَوْلِ أَحَدٍ دُونَ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21621 Ali said: All statements were rendered void except our statement; and all praise is due to Allah, the Exalted.

قَالَ عَلِيٌّ: فَبَطَلَتْ الْأَقْوَالُ كُلُّهَا إلَّا قَوْلَنَا وَلِلَّهِ تَعَالَى الْحَمْدُ.

L21622 Among the proofs for our position is Allah's statement: {It is not lawful for you to inherit women by coercion} [al-Nisā': 19]. This invalidates preventing her from accessing her wealth out of hope that the preventer - whether he be a father or husband - might inherit it. Allah also states: {The charitable men and charitable women} [al-Aḥzāb: 35], and says: {Spend from what We have provided you before death approaches any of you} [al-Munāfiqūn: 10]. The Almighty made no distinction between men and women in urging charity - neither between a virgin under her father's guardianship, nor a previously married woman without paternal guardianship, nor a married woman, nor a widow. Therefore, differentiating between these categories constitutes certain invalidity and manifest injustice from those who, after

وَمِنْ الْحُجَّةُ لِقَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا} [النساء: ١٩] فَبَطَلَ بِهَذَا مَنْعُهَا مِنْ مَالِهَا طَمَعًا فِي أَنْ يَحْصُلَ لِلْمَانِعِ بِالْمِيرَاثِ أَبًا كَانَ، أَوْ زَوْجًا. وَقَوْلُ اللَّهِ تَعَالَى: {وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ} [الأحزاب: ٣٥] وَقَالَ تَعَالَى: {وَأَنْفِقُوا مِنْ مَا رَزَقْنَاكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَ أَحَدَكُمُ الْمَوْتُ} [المنافقون: ١٠] فَلَمْ يُفَرِّقْ عَزَّ وَجَلَّ بَيْنَ الرِّجَالِ فِي الْحَضِّ عَلَى الصَّدَقَةِ وَبَيْنَ امْرَأَةٍ وَرَجُلٍ، وَلَا بَيْنَ ذَاتِ أَبٍ بِكْرٍ، أَوْ غَيْرِ ذَاتِ أَبٍ ثَيِّبٍ، وَلَا بَيْنَ ذَاتِ زَوْجٍ. وَلَا أَرْمَلَةٍ - فَكَانَ التَّفْرِيقُ بَيْنَ ذَلِكَ بَاطِلًا مُتَيَقَّنًا، وَظُلْمًا ظَاهِرًا مِمَّنْ قَامَتْ الْحُجَّةُ عَلَيْهِ فِي ذَلِكَ فَقَلَّدَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

facing established proofs, have blindly followed [such distinctions]. Success comes solely from Allah the Exalted.[6]

وَقَدْ ذَكَرْنَا فِي صَدْرِ هَذَا الْبَابِ «أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسْمَاءَ بِالصَّدَقَةِ وَلَمْ يَشْتَرِطْ عَلَيْهَا إِذْنَ الزُّبَيْرِ، وَلَا ثُلُثًا فَمَا دُونَ فَمَا فَوْقَ، بَلْ قَالَ لَهَا: ارْضَخِي مَا اسْتَطَعْتِ وَلَا تُوكِي فَيُوكَى عَلَيْكِ» .

L21623 We have mentioned at the beginning of this chapter that "the Messenger of Allah—may Allah bless him and grant him peace—commanded Asmā' to give charity without requiring her to seek al-Zubayr's permission, nor stipulating anything less or more than a third. Rather, he told her: 'Give what you can, and do not withhold—or it will be withheld from you.'"

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ سَمِعْت عَطَاءً قَالَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: «أَشْهَدُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَصَلَّى قَبْلَ الْخُطْبَةِ - ثُمَّ خَطَبَ فَرَأَى أَنَّهُ لَمْ يُسْمِعْ النِّسَاءَ فَأَتَاهُنَّ فَذَكَّرَهُنَّ وَوَعَظَهُنَّ وَأَمَرَهُنَّ بِالصَّدَقَةِ وَبِلَالٌ قَائِلٌ بِثَوْبِهِ، فَجَعَلَتْ الْمَرْأَةُ تُلْقِي: الْخَاتَمَ، وَالْخُرْصَ، وَالشَّيْءَ» .

L21624–21626 From the transmission of Sufyān ibn 'Uyaynah, Ayyūb al-Sikhtiyānī reported to us that he heard 'Aṭā' say: "I heard Ibn 'Abbās…" He said: "I testify concerning the Messenger of Allah (peace be upon him) that he prayed before the sermon, then delivered the sermon. When he realized he had not made the women hear, he went to them, reminded them, admonished them, and commanded them to give charity. Bilal was spreading out his garment, and the women began casting into it: rings, gold pieces, and other items."

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الرَّبِيعِ الزَّهْرَانِيُّ نا حَمَّادٌ - هُوَ ابْنُ زَيْدٍ - نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ «أَمَرَ أَنْ يَخْرُجَ فِي الْعِيدَيْنِ الْعَوَاتِقُ وَذَوَاتُ الْخُدُورِ» .

L21627 From the transmission of Muslim: Abu Rabīʿ al-Zahrānī reported to us: Ḥammād ibn Zayd reported to us: Ayyūb al-Sikhtiyānī reported to us from Muḥammad ibn Sīrīn from Umm ʿAṭiyyah from the Prophet—peace and blessings of Allah be upon him—that he "commanded mature girls and women observing modesty to attend the two Eids."

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ دَاوُد بْنِ قَيْسٍ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي سَرْحٍ الْعَامِرِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَخْرُجُ يَوْمَ الْأَضْحَى، وَيَوْمَ الْفِطْرِ، وَكَانَ يَقُولُ: تَصَدَّقُوا تَصَدَّقُوا، وَكَانَ أَكْثَرُ مَنْ يَتَصَدَّقُ النِّسَاءُ» فَهَذَا أَمْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النِّسَاءَ بِالصَّدَقَةِ عُمُومًا.

L21628 From the transmission of Muslim: Qutaybah narrated to us, Ismāʿīl ibn Jaʿfar narrated to us from Dāwūd ibn Qays from ʿIyāḍ ibn ʿAbdullāh ibn Abī Sarḥ al-ʿĀmirī from Abū Saʿīd al-Khudrī: "The Messenger of Allāh - peace and blessings be upon him - would go out on Eid al-Adha and Eid al-Fitr, and he would say: 'Give charity, give charity.' The majority of those who gave charity were women." This constitutes the Prophet's - peace and blessings be upon him - general command to women to give charity.

نَعَمْ، وَجَاءَ «وَلَوْ مِنْ حُلِيِّكُنَّ» ، وَفِيهِنَّ الْعَوَاتِقُ الْمُخَدَّرَاتُ ذَوَاتُ الْآبَاءِ وَذَوَاتُ الْأَزْوَاجِ " فَمَا خَصَّ مِنْهُنَّ بَعْضًا دُونَ بَعْضٍ، وَفِيهِنَّ الْمُقِلَّةُ، وَالْغَنِيَّةُ فَمَا خَصَّ مِقْدَارًا

L21629 Yes, and the injunction "even from your jewelry" (as per the Quranic directive) was revealed, encompassing secluded young women—those under

[6] **Qur'an references (L21622):** Qur'an 4:19 (An-Nisa); Qur'an 63:10 (Al-Munafiqun); Qur'an 33:35 (Al-Ahzab).

their fathers' guardianship and married women—with no distinction made between them. Among them are those with limited means and the affluent, yet no specific amount was stipulated. This was his final action (peace be upon him), performed before all the Companions, with authentic narrations firmly established—and all praise belongs to Allah, the Exalted.

A legal question regarding a woman giving charity from her husband's wealth.

L21631 Issue 1397: A woman has an additional right - she may give charity from her husband's wealth whether he likes it or dislikes it, and without his permission provided she does not cause harm. She is rewarded for this. He is absolutely forbidden to give any charity from her wealth unless she permits it. Allah the Exalted said: {No soul bears the burden of another} [6:164]. Thus, by this, any ruling of anyone over another's wealth is invalidated.[7]

L21632 It is therefore obligatory to single out from that which Allah, the Exalted, singled out through the words of His Messenger—peace be upon him—as we mentioned through the narration of Asmāʾ bint Abī Bakr al-Ṣiddīq in the previous chapter.

L21633 It was narrated to us via the narration of Muslim: Muhammad ibn Rafi' narrated to us, from Abd al-Razzaq, from Ma'mar, from Hammam ibn Munabbih, from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "A woman must not fast while her husband is [at home and] present except with his permission, and she must not..." [text cut off].

L21634–21635 She is not permitted in his house while he is present unless he consents. Whatever she spends from his earnings without his command, half the reward thereof is his.[8]

L21636 And from the chain of Aḥmad ibn Shuʿayb: Aḥmad ibn Ḥarb informed us

دُونَ مِقْدَارٍ، وَهَذَا آخِرُ فِعْلِهِ - عَلَيْهِ السَّلَامُ -، وَبِحَضْرَةِ جَمِيعِ الصَّحَابَةِ، وَآثَارٌ ثَابِتَةٌ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

[مَسْأَلَةٌ لِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ مَالِ زَوْجِهَا]

١٣٩٧ - مَسْأَلَةٌ: وَلِلْمَرْأَةِ حَقٌّ زَائِدٌ، وَهُوَ أَنَّ لَهَا أَنْ تَتَصَدَّقَ مِنْ مَالِ زَوْجِهَا أَحَبَّ أَمْ كَرِهَ، وَبِغَيْرِ إِذْنِهِ غَيْرَ مُفْسِدَةٍ، وَهِيَ مَأْجُورَةٌ بِذَلِكَ، وَلَا يَجُوزُ لَهُ أَنْ يَتَصَدَّقَ مِنْ مَالِهَا بِشَيْءٍ أَصْلًا إِلَّا بِإِذْنِهَا، قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَبَطَلَ بِهَذَا حُكْمُ أَحَدٍ فِي مَالِ غَيْرِهِ.

ثُمَّ وَجَبَ أَنْ يُخَصَّ مِنْ ذَلِكَ مَا خَصَّهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا ذَكَرْنَا مِنْ طَرِيقِ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ فِي الْبَابِ الَّذِي قَبْلَ هَذَا.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَصُمْ الْمَرْأَةُ وَبَعْلُهَا شَاهِدٌ إِلَّا بِإِذْنِهِ وَلَا.

تَأْذَنْ فِي بَيْتِهِ وَهُوَ شَاهِدٌ إِلَّا بِإِذْنِهِ، وَمَا أَنْفَقَتْ مِنْ كَسْبِهِ مِنْ غَيْرِ أَمْرِهِ فَإِنَّ نِصْفَ أَجْرِهِ لَهُ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي أَحْمَدُ بْنُ حَرْبٍ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ سُفْيَانَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ.

[7] **Qur'an references (L21631):** Qur'an 6:164 (Al-An'am).
[8] **Hadith references (L21633):** Sahih Muslim 1026.

from Abū Muʿāwiyah from al-Aʿmash from Sufyān from ʿĀ'ishah the Mother of the Believers.

قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَنْفَقَتْ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا غَيْرَ مُفْسِدَةٍ كَانَ لَهُ أَجْرُهُ بِمَا كَسَبَ، وَلَهَا مِثْلُهُ بِمَا أَنْفَقَتْ، وَلِلْخَازِنِ مِثْلُ ذَلِكَ مِنْ غَيْرِ أَنْ يَنْقُصَ مِنْ أُجُورِهِمْ شَيْءٌ» وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ: سَمِعْت أَبَا وَائِلٍ يُحَدِّثُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا تَصَدَّقَتْ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا كَانَ لَهَا أَجْرٌ وَلِلزَّوْجِ مِثْلُ ذَلِكَ، وَلِلْخَازِنِ مِثْلُ ذَلِكَ، وَلَا يَنْقُصُ كُلُّ وَاحِدٍ مِنْهُمَا مِنْ أَجْرِ صَاحِبِهِ شَيْئًا» .

L21637 She said: The Messenger of Allah (peace be upon him) said, "When a woman spends from her husband's household without causing corruption, he receives his reward for what he earned, she receives an equal reward for what she spent, and the treasurer receives the same as well - none of their rewards being diminished." We have also narrated it through the chain of Muhammad ibn Jaʿfar who informed us: Shuʿbah reported from ʿAmr ibn Murrah, who said: I heard Abu Wa'il narrating from ʿAishah, the Mother of the Believers, from the Prophet (peace be upon him), who said, "When a woman gives in charity from her husband's household, she receives a reward, the husband receives an equal reward, and the treasurer receives the same. None of the two [the woman and husband] has their reward diminished by the other's share."[9]

قَالَ أَبُو مُحَمَّدٍ: أَبُو وَائِلٍ أَدْرَكَ الْجَاهِلِيَّةَ، وَأَدْرَكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَغَيْرُ مُنْكَرٍ أَنْ يَسْمَعَهُ مِنْ أُمِّ الْمُؤْمِنِينَ وَمِنْ مَسْرُوقٍ عَنْهَا أَيْضًا.

L21638 Abu Muhammad said: Abu Wa'il lived through the pre-Islamic era and met the Messenger of Allah, may Allah bless him and grant him peace. It is not denied that he heard the narration from the Mother of the Believers and from Masruq, who narrated it from her as well.

قَالَ عَلِيٌّ: وَاعْتَرَضَ بَعْضُ الْجُهَّالِ فِي هَذِهِ الْآثَارِ الْقَوِيَّةِ بِرِوَايَةٍ تُشْبِهُهُ مِنْ طَرِيقِ الْعَرْزَمِيِّ عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ " لَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ بَيْتِ زَوْجِهَا بِغَيْرِ إذْنِهِ " وَهَذَا جَهْلٌ شَدِيدٌ، لِأَنَّهُ لَا يَصِحُّ عَنْ أَبِي هُرَيْرَةَ لِضَعْفِ الْعَرْزَمِيِّ.

L21639 Ali said: Some ignorant people have objected to these strong narrations by citing a narration resembling them through the chain (*isnād*) of al-ʿArzamī from ʿAṭā' from Abū Hurayrah: "It is not permissible for a woman to give charity from her husband's household without his permission." This is profound ignorance, for the narration is not authentically ascribed to Abū Hurayrah due to al-ʿArzamī's weakness as a transmitter.

ثُمَّ لَوْ صَحَّ فَلَا يُعَارِضُ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَأْيِ مَنْ دُونَهُ إلَّا فَاسِقٌ - فَإِنْ قَالُوا: أَبُو هُرَيْرَةَ رَوَى هَذَا وَهُوَ تَرَكَهُ؟ قُلْنَا: قَدْ مَضَى الْجَوَابُ، وَإِنَّمَا افْتُرِضَ عَلَيْنَا الِانْقِيَادُ لِمَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا لِلْبَاطِلِ الَّذِي لَمْ يَصِحَّ عَمَّنْ دُونَهُ، نَعَمْ، وَلَا لِمَا صَحَّ عَمَّنْ دُونَهُ، وَالْحُجَّةُ فِي رِوَايَةِ أَبِي هُرَيْرَةَ لَا فِي رَأْيِهِ، وَقَدْ أَفْرَدْنَا لَمَّا تَنَاقَضُوا فِي هَذَا الْمَكَانِ بَابًا ضَخْمًا فَكَيْفَ وَقَدْ صَحَّ عَنْ غَيْرِ أَبِي هُرَيْرَةَ الْقَوْلُ بِهَذَا؟

L21640–21642 Then, even if it were authentic, the statement of Allah's Messenger - peace and blessings of Allah be upon him - cannot be opposed by the opinion of anyone beneath him except a transgressor. If they say: "Abu Hurairah narrated this and then abandoned it?" We respond: "The answer has already been given. We are only obligated to submit to what is authentically established from the Prophet - peace and blessings of Allah be upon him - not to baseless claims that remain unauthenticated from those beneath him. In-

[9] **Hadith references (L21637):** Sunan an-Nasai 2539.

deed, not even to what is authentically reported from others beneath him. The decisive proof lies in Abu Hurairah's transmission, not in his personal opinion. We have devoted an extensive chapter to their contradictions in this matter. How could this be, when the same position has been authentically transmitted from others besides Abu Hurairah?" As reported to us through Abd al-Razzaq's chain from Sufyan ibn Uyaynah, from Ismail ibn Abi Khalid. From Qays ibn Abī Ḥāzim's wife: She was with ʿĀ'ishah, the Mother of the Believers, when a woman asked, "May a woman give charity from her husband's household?" ʿĀ'ishah replied, "Yes, provided she does not substitute her own share with his wealth."

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ امْرَأَتِهِ: أَنَّهَا كَانَتْ عِنْدَ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَسَأَلَتْهَا امْرَأَةٌ هَلْ تَتَصَدَّقُ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا؟ فَقَالَتْ عَائِشَةُ: نَعَمْ، مَا لَمْ تَتِ مَالَهَا بِمَالِهِ.

L21643 If they mention what was narrated to us through the transmission path of ʿAbd al-Razzāq from Ismāʿīl ibn ʿAyyāsh from Shuraḥbīl ibn Muslim al-Khawlānī from Abū Umāmah al-Bāhilī: "I heard the Messenger of Allah—peace and blessings be upon him—say: 'A woman must not spend anything from her husband's household except with her husband's permission.' It was said: 'O Messenger of Allah, not even the food?' He replied: 'That is the most precious of our possessions.'"

فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ شُرَحْبِيلَ بْنِ مُسْلِمٍ الْخَوْلَانِيِّ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ " سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا تُنْفِقُ الْمَرْأَةُ شَيْئًا مِنْ بَيْتِ زَوْجِهَا إلَّا بِإِذْنِ زَوْجِهَا، قِيلَ: يَا رَسُولَ اللَّهِ وَلَا الطَّعَامَ؟ قَالَ: ذَلِكَ أَفْضَلُ أَمْوَالِنَا» .

L21644 And what has been narrated to us through the chain of Ḥammād ibn Salmah from Qatādah from Muwarriq al-'Ijli: "A woman asked the Messenger of Allah (peace and blessings be upon him), 'What is permissible from their husbands' wealth?' He replied, 'Fresh dates—you may eat them and give them as gifts.'"

وَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ مُوَرِّقٍ الْعِجْلِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَتْهُ امْرَأَةٌ مَا يَحِلُّ مِنْ أَمْوَالِ أَزْوَاجِهِنَّ؟ قَالَ: الرُّطَبُ تَأْكُلِينَهُ وَتُهْدِينَهُ» .

L21645 And through the chain of Ḥammād ibn Salamah from Yūnus ibn ʿUbayd from Ziyād from the Prophet—peace and blessings be upon him—a similar narration is reported, except that he said "al-raṭbu" with the ra' with a fatha (opening) and the ṭā' with a sukun (resting), whereas in the first narration, the ra' with a ḍammah (rounding) and the ṭā' with a fatha (opening).

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ زِيَادٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُهُ: إلَّا أَنَّهُ قَالَ " الرَّطْبُ " بِفَتْحِ الرَّاءِ وَإِسْكَانِ الطَّاءِ - وَفِي الْأَوَّلِ بِضَمِّ الرَّاءِ وَفَتْحِ الطَّاءِ.

L21646–21648 Abū Muḥammad said: All of this is baseless. The ḥadīth of 'Abd al-Razzāq from Ismāʿīl ibn 'Ayyāsh—who is weak—from Shuraḥbīl ibn Muslim, who is unknown, cannot counter the established reports mass-transmitted through the chains of Asmā', 'Ā'ishah, and Abū Hurayrah: via Ibn Abī Mulaykah, 'Abbād ibn 'Ubayd Allāh ibn al-Zubayr, Fāṭimah bint al-Mundhir from Asmā';

قَالَ أَبُو مُحَمَّد: فَهَذَا كُلُّهُ لَا شَيْءَ، حَدِيثُ عَبْدِ الرَّزَّاقِ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ - وَهُوَ ضَعِيفٌ - عَنْ شُرَحْبِيلَ بْنِ مُسْلِمٍ وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ، لَا يُعَارَضُ بِمِثْلِهِ الثَّابِتِ مِنْ طَرِيقِ أَسْمَاءَ، وَعَائِشَةَ، وَأَبِي هُرَيْرَةَ، الْمُتَوَاتِرِ عَنْهُمْ مِنْ طَرِيقِ ابْنِ أَبِي مُلَيْكَةَ،

وَعَبَّادِ بْنِ عُبَيْدِ اللَّهِ بْنِ الزُّبَيْرِ، وَفَاطِمَةَ بِنْتِ الْمُنْذِرِ عَنْ أَسْمَاءَ، وَمَسْرُوقٍ، وَشَقِيقٍ عَنْ عَائِشَةَ، وَالْأَعْرَجِ، وَهَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ، هَذَا نَقْلُ تَوَاتُرٍ يُوجِبُ الْعِلْمَ فِي أَعْلَامٍ مَشَاهِيرَ بِمِثْلِ هَذَا السُّقُوطِ وَالضَّعْفِ الَّذِي لَوْ انْفَرَدَ عَنْ مُعَارِضٍ لَمْ يَحِلَّ الْأَخْذُ بِهِ. وَالْآخَرَانِ مُرْسَلَانِ، عَلَى أَنَّ فِيهِمَا خِلَافًا لِقَوْلِ الْمُخَالِفِ، لِأَنَّ فِيهِ إِبَاحَةَ الرُّطَبِ جُمْلَةً، وَقَدْ تَعْظُمُ قِيمَتُهُ، وَقَدْ رُوِيَتْ مَرَاسِيلُ أَحْسَنُ مِنْ هَذَا بِخِلَافِ قَوْلِهِمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا يَزِيدُ بْنُ زُرَيْعٍ نا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ «قَالَ رَجُلٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: صَاحِبَتِي تَتَصَدَّقُ مِنْ مَالِي، وَتُطْعِمُ مِنْ طَعَامِي؟ قَالَ: أَنْتُمَا شَرِيكَانِ قَالَ: أَرَأَيْتَ إِنْ نَهَيْتَهَا عَنْ ذَلِكَ؟ قَالَ: لَهَا مَا نَوَتْ وَلَكَ مَا بَخِلْتَ» .

Masrūq and Shaqīq from ʻĀ'ishah; al-Aʻraj; and Hammām ibn Munabbih from Abū Hurayrah. This constitutes a mass-transmitted (tawātur) report that yields certainty, conveyed through eminent and renowned figures, unlike this narration whose unreliability and weakness are such that even if it were solitary without opposing reports, it would not be permissible to rely upon it. The other two reports are disconnected (mursal), though they contain elements contradicting the opponent's position, as they include the permissibility of consuming fresh dates. In sum, its value may be significant, and *mursal* narrations superior to this have been reported, contrary to their claim - as we have transmitted through the chain of al-Ḥajjāj ibn al-Minhal, narrated by Yazīd ibn Zuraiʿ, narrated by Yūnus ibn ʿUbayd from al-Ḥasan: "A man said to the Messenger of Allah (peace be upon him), 'My wife gives charity from my wealth and feeds from my food?' He replied, 'You are both partners.' The man said, 'What if I forbid her from that?' He said, 'She gets what she intended, and you get what you withheld due to stinginess.'"

L21649 وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ أَنَّ امْرَأَةً قَالَتْ لَهُ آخُذُ مِنْ مَالِ زَوْجِي فَأَتَصَدَّقُ بِهِ؟ قَالَ: الْخُبْزُ وَالتَّمْرُ، قَالَتْ: فَدَرَاهِمُهُ؟ قَالَ: أَتُحِبِّينَ أَنْ يَتَصَدَّقَ عَلَيْكِ؟ قَالَتْ: لَا، قَالَ: فَلَا تَأْخُذِي دَرَاهِمَهُ إِلَّا بِإِذْنِهِ - أَوْ نَحْوُ هَذَا.

Through the chain of narration of Ibn Abbas, a woman asked him: "May I take from my husband's wealth and give it in charity?" He replied: "Bread and dates." She asked: "What about his dirhams?" He said: "Would you like him to give charity to you?" She said: "No." He said: "Then do not take his dirhams except with his permission—or something similar."

L21650 قَالَ عَلِيٌّ: يَكْفِي مِنْ هَذَا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " غَيْرَ مُفْسِدَةٍ " فَهَذَا يَجْمَعُ الْبَيَانَ كُلَّهُ.

Ali said: "This suffices from the statement of Allah's Messenger (peace and blessings be upon him): 'Without corruption,' for this encompasses all clarification entirely."

L21651 وَقَالَ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦] . وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] فَمَنْ خَالَفَ هَذَا لَمْ يُلْتَفَتْ إِلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

And He, the Most High, said: {The Prophet has more right over the believers than their own selves} [Al-Ahzab: 6]. He also said: {It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, to have any choice in their affair} [Al-Ahzab: 36]. Thus, whoever contradicts this, he is not to be heeded. And with Allah, the Most High, is success.[10]

[10]**Qur'an references (L21651):** Qur'an 33:6 (Al-Ahzab); Qur'an 33:36 (Al-Ahzab).

[مَسْأَلَةٌ الْعَبْدُ فِي جَوَازِ صَدَقَتِهِ وَهِبَتِهِ وَبَيْعِهِ وَشِرَائِهِ كَالْحُرِّ]

L21652 **In legal terms, a slave's capacity regarding charity (ṣadaqah), gifts, selling, and purchasing holds the same legal status as a free person.**

L21653 1398. Issue: The male slave, regarding the permissibility of his charity, gift, selling, and buying, is equivalent to a free man, and the female slave is equivalent to a free woman, provided their master does not seize their property.

L21654 The proof of that is:— what we have previously mentioned regarding Allah the Exalted's command to give charity, and His Messenger's—peace and blessings of Allah be upon him—command concerning it. And His words the Exalted: "O you who believe! Let not your wealth nor your children divert you from Allah's remembrance. For whoever does this—it is they who are the losers. And spend from what We have bestowed upon you before death approaches any of you, whereupon he will plead: 'My Lord, if only You would grant me respite for a short term, that I might give charity and be among the righteous!'" [Al-Munāfiqūn: 9–10][11]

L21655 And His statement, the Exalted: "Allah has permitted trade and forbidden usury." [Al-Baqarah: 275][12]

L21656–21658 There is no disagreement that the male slave and the female slave are addressed by Islam and its laws, and are obligated to purify, Their two selves and drawing near to Allah the Exalted through righteous deeds are both promised Paradise and both threatened with Hellfire like free people, with no distinction. Thus, differentiating between them is erroneous except where the text establishes a distinction between them? Ali said: As for the Malikis, their grave contradiction here lies in permitting concubinage with his master's permission, while Allah the Exalted states: "And those who guard their private parts except from their spouses or those whom their right hands pos-

[11] **Qur'an references (L21654):** Qur'an 63:9 (Al-Munafiqun); Qur'an 63:10 (Al-Munafiqun).

[12] **Qur'an references (L21655):** Qur'an 2:275 (Al-Baqarah).

١٣٩٨ - مَسْأَلَةٌ: وَالْعَبْدُ فِي جَوَازِ صَدَقَتِهِ، وَهِبَتِهِ، وَبَيْعِهِ، وَشِرَائِهِ كَالْحُرِّ، وَالْأَمَةِ كَالْحُرَّةِ مَا لَمْ يَنْتَزِعْ سَيِّدُهُمَا مَالَهُمَا.

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ قَبْلُ مِنْ أَمْرِ اللَّهِ تَعَالَى بِالصَّدَقَةِ، وَأَمْرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَا. وقَوْله تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تُلْهِكُمْ أَمْوَالُكُمْ وَلا أَوْلادُكُمْ عَنْ ذِكْرِ اللَّهِ وَمَنْ يَفْعَلْ ذَلِكَ فَأُولَئِكَ هُمُ الْخَاسِرُونَ - وَأَنْفِقُوا مِنْ مَا رَزَقْنَاكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَ أَحَدَكُمُ الْمَوْتُ فَيَقُولَ رَبِّ لَوْلا أَخَّرْتَنِي إِلَى أَجَلٍ قَرِيبٍ فَأَصَّدَّقَ وَأَكُنْ مِنَ الصَّالِحِينَ} [المنافقون: ٩ - ١٠]

وقَوْله تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥]

وَلَا خِلَافَ فِي أَنَّ الْعَبْدَ، وَالْأَمَةَ مُخَاطَبَانِ بِالْإِسْلَامِ وَشَرَائِعِهِ، مُلْزَمَانِ بِتَخْلِيصِ أَنْفُسِهِمَا، وَالتَّقَرُّبِ إلَى اللَّهِ تَعَالَى بِصَالِحِ الْأَعْمَالِ، مُوعَدَانِ بِالْجَنَّةِ، مُتَوَعَّدَانِ بِالنَّارِ كَالْأَحْرَارِ وَلَا فَرْقَ، فَالتَّفْرِيقُ بَيْنَهُمَا خَطَأٌ إلَّا حَيْثُ جَاءَ النَّصُّ بِالْفَرْقِ بَيْنَهُمَا؟ قَالَ عَلِيٌّ: أَمَّا الْمَالِكِيُّونَ فَفُحْشُ اضْطِرَابِهِمْ هَهُنَا وَذَلِكَ أَنَّهُمْ أَبَاحُوا التَّسَرِّي بِإِذْنِ مَوْلَاهُ، وَاَللَّهُ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧]

sess - for indeed, they are not to be blamed. But whoever seeks beyond that, it is they who are the transgressors" (23:5-7).[13]

L21659 There is no disagreement among anyone that if a slave has intercourse with his master's female slave, is he not an adulterer? Thus, it is said to the Mālikīs: This concubine whose private part you have permitted to the slave must either be lawfully owned by him—and this is our position, for his ownership of her as his property is valid, thereby exposing their contradiction—or she is not lawfully owned by him but rather lawfully owned by his master, making him a transgressing adulterer. There is no escape from this. If he owns her, he undoubtedly owns both the price for which he purchased her and the price for which he may sell her.

L21660 And He, the Exalted, said: {And whoever among you cannot afford to marry free believing women, then [let him marry] from the believing female slaves whom your right hands possess. Allah knows best about your faith—you are [all] from one another. So marry them with the permission of their masters, and give them their bridal gifts in fairness.} [An-Nisa: 25]. Thus, the Exalted commanded that the female slave be given her bridal gift (mahr), declaring it her property and right. For Allah, the Exalted, does not command anyone to give away the wealth of another. Therefore, it is established that they are proprietors just as free women are, and there is no distinction.[14]

L21661 As for the Ḥanafīs and Shāfiʿīs, they stated: A slave fundamentally does not own anything, and they did not permit him to take a concubine. However, the Shāfiʿīs contradicted themselves, for they obligated him to provide his wife's maintenance and clothing. For were it not that he owns, it would not be valid to hold him financially responsible for the expenses of maintaining and clothing one who is not permitted to own, nor one who lacks the capacity to own.

L21662 As for the Ḥanafīs, they did not impose any maintenance obligation upon him whatsoever. Rather, they deemed him—through his marriage—a per-

وَلَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّ الْعَبْدَ إِنْ وَطِئَ أَمَةَ سَيِّدِهِ فَإِنَّهُ زَانٍ؟ فَيُقَالُ لِلْمَالِكِيِّينَ: لَا تَخْلُو هَذِهِ السُّرِّيَّةُ الَّتِي أَبَحْتُمْ فَرْجَهَا لِلْعَبْدِ مِنْ أَنْ تَكُونَ مِلْكَ يَمِينِهِ، فَهَذَا قَوْلُنَا، فَقَدْ صَحَّ مِلْكُهُ لِمَالِهِ، وَظَهَرَ تَنَاقُضُهُمْ أَوْ تَكُونَ لَيْسَتْ مِلْكَ يَمِينِهِ وَإِنَّمَا هِيَ مِلْكُ يَمِينِ سَيِّدِهِ، فَهُوَ زَانٍ عَادٍ، وَهَذَا مَا لَا مَخْرَجَ مِنْهُ، وَإِذَا مَلَكَهَا فَقَدْ مَلَكَ - بِلَا شَكٍّ - ثَمَنَهَا الَّذِي اشْتَرَاهَا بِهِ، وَالَّذِي يَبِيعُهَا بِهِ.

وَقَالَ تَعَالَى: {وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ بِالْمَعْرُوفِ} [النساء: ٢٥] فَأَمَرَ تَعَالَى بِإِعْطَاءِ الْأَمَةِ صَدَاقَهَا، وَجَعَلَهُ مِلْكًا لَهَا، وَحَقًّا لَهَا، وَاَللَّهُ تَعَالَى لَا يَأْمُرُ بِأَنْ يُعْطِيَ أَحَدٌ مَالَ غَيْرِهِ، فَصَحَّ أَنَّهُنَّ مَالِكَاتٌ كَسَائِرِ النِّسَاءِ الْحَرَائِرِ وَلَا فَرْقَ

وَأَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ، فَقَالُوا: لَا يَمْلِكُ الْعَبْدُ أَصْلًا، وَلَمْ يُبِيحُوا لَهُ التَّسَرِّيَ، إِلَّا أَنَّ الشَّافِعِيِّينَ تَنَاقَضُوا أَيْضًا؛ لِأَنَّهُمْ أَوْجَبُوا عَلَيْهِ نَفَقَةَ زَوْجِهِ وَكِسْوَتَهَا، فَلَوْلَا أَنَّهُ يَمْلِكُ لَمَا جَازَ أَنْ يَلْزَمَ غَرَامَةَ نَفَقَةٍ وَكِسْوَةِ مَنْ لَا يَجُوزُ أَنْ يَمْلِكَ، وَلَا مَنْ لَا يُمْكِنُ أَنْ يَمْلِكَ.

وَأَمَّا الْحَنَفِيُّونَ فَلَمْ يُوجِبُوا عَلَيْهِ نَفَقَةً أَصْلًا، لَكِنْ جَعَلُوهُ بِزَوَاجِهِ جَانِيًا جِنَايَةً تُوجِبُ أَنْ يُقْضَى بِرَقَبَتِهِ لِزَوْجَتِهِ فَيَنْفَسِخُ النِّكَاحُ إِذَا مَلَكَتْهُ؟ فَهَلْ سُمِعَ بِأَبْرَدَ مِنْ هَذِهِ الْوَسَاوِسِ الْمُضَادَّةِ لِأَحْكَامِ الْقُرْآنِ، وَالسُّنَنِ، وَالْمَعْقُولِ بِلَا دَلِيلٍ أَصْلًا؟ وَاحْتَجَّ الْمَانِعُونَ مِنْ

[13] **Qur'an references (L21656):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

[14] **Qur'an references (L21660):** Qur'an 4:25 (An-Nisa).

petrator of a criminal offense necessitating the surrender of his person to his wife, whereby the marriage becomes annulled if she gains ownership over him. Has anything more preposterous than these baseless notions—contradicting the rulings of the Qur'an, the Sunnah, and rational principles without any evidence whatsoever—ever been heard? Those who prohibit owning slaves argued by citing Allah's statement: {Allah sets forth the example of an owned slave who has no power over anything, and one whom We have granted good provision from Us, so he spends from it} [16:75].[15]

L21663–21664 Abu Muhammad said: They argued that a slave neither inherits nor is inherited from, so is it valid that he owns nothing? They argued: A slave is a commodity among commodities. We know of no foundational basis for their position other than this—(the entirety of their claim lacks proof). As for Allah's statement, "Allah presents the example of an owned slave who has no power over anything" [16:75], this contains no evidence for them for several reasons. First, Allah did not state this as a universal description of all owned slaves, but rather mentioned among slaves one possessing this attribute. Similarly, He said, "Allah presents the example of two men: one mute, powerless over anything, a dependent burden on his master—wherever he directs him, he brings no good" [16:76]. Would it then follow from this that such a description applies to every mute person, or that a mute person owns nothing? This is something they would never say, and there is no distinction between the two verses.[16]

L21665 We do not deny that among the free and the enslaved there may be those who possess nothing of justice, are incapable of anything - and are not all of them like that? The second point is that this verse contains no explicit text, evidence, or allusion to the mention of ownership or wealth. Rather, it negates only capability and power, whether due to weakness, illness, or similar causes.

L21666 The third [point] is that if they invalidate his ownership through this verse,

[15] **Qur'an references (L21662):** Qur'an 16:75 (An-Nahl).

[16] **Qur'an references (L21664):** Qur'an 16:75 (An-Nahl); Qur'an 16:76 (An-Nahl).

مِلْكِ الْعَبْدِ بِأَنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {ضَرَبَ اللَّهُ مَثَلا عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ وَمَنْ رَزَقْنَاهُ مِنَّا رِزْقًا حَسَنًا فَهُوَ يُنْفِقُ مِنْهُ} [النحل: ٧٥] .

قَالَ أَبُو مُحَمَّدٍ: وَقَالُوا: الْعَبْدُ لَا يَرِثُ وَلَا يُورَّثُ، فَصَحَّ أَنَّهُ لَا يَمْلِكُ؟ وَقَالُوا: الْعَبْدُ سِلْعَةٌ مِنْ السِّلَعِ، مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا أَصْلًا - كُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا قَوْلُ اللَّهِ تَعَالَى: {ضَرَبَ اللَّهُ مَثَلا عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٥] فَلَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ لَمْ يَقُلْ اللَّهُ تَعَالَى: إنَّ هَذِهِ صِفَةُ كُلِّ عَبْدٍ مَمْلُوكٍ، وَإِنَّمَا ذَكَرَ مِنْ الْمَمَالِيكِ مَنْ هَذِهِ صِفَتُهُ، وَقَدْ قَالَ تَعَالَى: {وَضَرَبَ اللَّهُ مَثَلا رَجُلَيْنِ أَحَدُهُمَا أَبْكَمُ لا يَقْدِرُ عَلَى شَيْءٍ وَهُوَ كَلٌّ عَلَى مَوْلاهُ أَيْنَمَا يُوَجِّهْهُ لا يَأْتِ بِخَيْرٍ} [النحل: ٧٦] فَهَلْ يَجِبُ مِنْ هَذَا أَنْ تَكُونَ، هَذِهِ صِفَةَ كُلِّ أَبْكَمَ، أَوْ أَنْ يَكُونَ الْأَبْكَمُ لَا يَمْلِكُ شَيْئًا؟ هَذَا مَا لَا يَقُولُونَهُ، وَلَا فَرْقَ بَيْنَ وُرُودِ الْآيَتَيْنِ.

وَنَحْنُ لَا نُنْكِرُ أَنْ يَكُونَ فِي الْأَحْرَارِ، وَفِي الْعَبِيدِ مَنْ لَا يَمْلِكُ شَيْئًا الْعِدْلَ، وَلَا يَقْدِرُ عَلَى شَيْءٍ، وَلَيْسَ كُلُّهُمْ كَذَلِكَ؟ وَالثَّانِي - هُوَ أَنَّ هَذِهِ الْآيَةَ لَيْسَ فِيهَا نَصٌّ، وَلَا دَلِيلَ، وَلَا إشَارَةَ عَلَى ذِكْرِ مِلْكٍ، وَلَا مَالٍ، وَإِنَّمَا فِيهَا: أَنَّهُ لَا يَقْدِرُ عَلَى شَيْءٍ، فَإِنَّمَا فِيهَا نَفْيُ الْقُدْرَةِ وَالْقُوَّةِ فَقَطْ، إمَّا بِضَعْفٍ وَإِمَّا بِمَرَضٍ أَوْ نَحْوِ ذَلِكَ.

وَالثَّالِثُ - أَنَّهُمْ إذَا أَسْقَطُوا مِلْكَهُ بِهَذِهِ الْآيَةِ فَأَحْرَى بِهِمْ أَنْ يُسْقِطُوا عَنْهُ بِهَا الصَّلَاةَ وَالصَّوْمَ؛ لِأَنَّهُمَا شَيْئَانِ - وَفِيهَا أَنَّهُ لَا يَقْدِرُ عَلَى شَيْءٍ فَوَضَحَ فَسَادُ تَعَلُّقِهِمْ بِهَا جُمْلَةً.

then it is more incumbent upon them to exempt him from prayer and fasting based on it—because they are two things—as the verse [itself] states his incapacity to perform anything. Thus, the invalidity of their entire reliance on it becomes evident.

L21667 As for their statement that a slave neither inherits nor can be inherited from - indeed, this is correct, as the Sunnah has established it. Yet this does not serve as evidence that he cannot own property. The paternal aunt does not inherit, but this does not indicate that she cannot own property. Allah the Exalted singles out for inheritance whom He wills, as He says: "Allah instructs you concerning your children: for the male a share equivalent to that of two females" [An-Nisa: 11].[17]

L21668 And He, the Exalted, said: {And the wives of your sons who are from your loins} [An-Nisa: 23]. Thus, the sons of daughters are included in this ruling and excluded from the former category, yet there was no evidence in that to indicate they are not our children. As for their statement that a slave is a commodity—yes, what then? If they claim that because he is a commodity, they render him unable to own—so as to exempt him from prayer, ritual purity, fasting, and prescribed penalties—since commodities are not bound by any of these obligations.[18]

L21669–21670 Abū Muḥammad said: Sufficient regarding this is Allāh the Exalted's statement: "And marry those unmarried (including widowed or divorced) among you and the righteous among your male slaves and female slaves. If they should be poor, Allāh will enrich them from His bounty" [24:32]. For Allāh the Exalted has promised them enrichment, and He has informed that poverty and wealth may apply to male and female slaves. It is not permissible to describe someone as poor except one who owns property and thus experiences destitution at one time and enrichment at another. As for one who owns nothing at all, it is not permissible to describe them as poor or wealthy, like camels, cattle, predators, and inanimate objects. This is evident. The Qur'an and Sunnah, in most of their contexts, attest to all of this, affirm-

[17] **Qur'an references (L21667):** Qur'an 4:11 (An-Nisa).
[18] **Qur'an references (L21668):** Qur'an 4:23 (An-Nisa).

وَأَمَّا قَوْلُهُمْ: إِنَّ الْعَبْدَ لَا يَرِثُ وَلَا يُوَرَّثُ، فَنَعَمْ؛ لِأَنَّ السُّنَّةَ وَرَدَتْ بِذَلِكَ، وَلَيْسَ فِي هَذَا دَلِيلٌ عَلَى أَنَّهُ لَا يَمْلِكُ - وَالْعَمَّةُ لَا تَرِثُ، وَلَيْسَ ذَلِكَ دَلِيلًا عَلَى أَنَّهَا لَا تَمْلِكُ وَيَخُصُّ اللَّهُ تَعَالَى بِالْمِيرَاثِ مَنْ شَاءَ كَمَا قَالَ تَعَالَى: {يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ} [النساء: ١١] .

وَقَالَ تَعَالَى: {وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ} [النساء: ٢٣] فَدَخَلَ فِي هَذَا بَنُو الْبَنَاتِ وَخَرَجُوا مِنْ الْأُولَى، لَمْ يَكُنْ فِي ذَلِكَ دَلِيلٌ عَلَى أَنَّهُمْ لَيْسُوا لَنَا أَوْلَادًا. وَأَمَّا قَوْلُهُمْ: الْعَبْدُ سِلْعَةٌ، فَنَعَمْ، فَكَانَ مَاذَا؟ إنْ كَانُوا مِنْ أَجْلِ أَنَّهُ سِلْعَةٌ جَعَلُوهُ لَا يَمْلِكُ؟ لِيُسْقِطُوا عَنْهُ الصَّلَاةَ، وَالطَّهَارَةَ، وَالصَّوْمَ، وَالْحُدُودَ؛ لِأَنَّ السِّلَعَ لَا يَلْزَمُهَا شَيْءٌ مِنْ ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: يَكْفِي مِنْ هَذَا قَوْلُ اللَّهِ تَعَالَى: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] فَقَدْ وَعَدَهُمْ اللَّهُ تَعَالَى بِالْغِنَى، وَأَخْبَرَ أَنَّ الْفَقْرَ وَالْغِنَى جَائِزَانِ عَلَى الْعَبِيدِ وَالْإِمَاءِ. وَلَا يَجُوزُ أَنْ يُوصَفَ بِالْفَقْرِ إلَّا مَنْ يَمْلِكُ فَيَعْدَمُ مَرَّةً وَيَسْتَغْنِي أُخْرَى، وَأَمَّا مَنْ لَا يَمْلِكُ أَصْلًا فَلَا يَجُوزُ أَنْ يُوصَفَ بِفَقْرٍ وَلَا بِغِنًى، كَالْإِبِلِ، وَالْبَقَرِ، وَالسِّبَاعِ، وَالْجَمَادَاتِ، وَهَذَا وَاضِحٌ - وَالْقُرْآنُ، وَالسُّنَنُ فِي أَكْثَرِ عُهُودِهِمَا شَاهِدُ كُلِّ ذَلِكَ بِصِحَّةِ قَوْلِنَا هَهُنَا، إذْ لَمْ يَأْتِ فَرْقٌ فِي شَيْءٍ مِنْ الْأَوَامِرِ بِالْفَرْقِ فِي الْأَمْوَالِ بَيْنَ حُرٍّ وَعَبْدٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ing the correctness of our view here, since no command has been revealed that differentiates between free persons and slaves in matters of wealth. And success is from Allāh, the Exalted.[19]

L21671 It has been authentically established that the Messenger of Allah (peace be upon him) would accept the invitation of a slave. Had he not owned his property, he (peace be upon him) would not have accepted his invitation. He (peace be upon him) accepted the gift of Salman while he was a slave and ate it. As informed to us by Ahmad ibn Muhammad al-Talamanki: Ibn Mufarrij narrated to us; Ibrahim ibn Ahmad ibn Farras narrated to us; Ahmad ibn Muhammad ibn Salim al-Naysaburi narrated to us; Ishaq ibn Rahawayh informed us: Yahya ibn Adam narrated to us; Ibn Idris (who is Abdullah) narrated to us; Muhammad ibn Ishaq narrated from Asim ibn Umar ibn Qatadah from Mahmud ibn Labid from Ibn Abbas: "Salman al-Farisi narrated to me directly, saying: 'I was among the people of Isfahan and strove earnestly in Zoroastrianism'—then he mentioned the hadith at length—'and that I contracted with a caravan from the tribe of Kalb to carry me to their land. They wronged me and sold me as a slave to a Jewish man, who then sold me to a Jew from the tribe of Banu Qurayzah.' He then mentioned the Prophet's arrival (peace be upon him) in Medina: 'When evening came, I gathered what I had and went to the Messenger of Allah (peace be upon him) at Qiba, where he was with a group of his companions. I said: "I had something set aside for charity and considered you the most deserving of it, so I brought it to you." He (peace be upon him) said: "Eat," but he himself refrained. Then he (peace be upon him) moved to Medina. I gathered another offering, came to him, greeted him, and said: "I noticed you do not eat from charity. I have something I wish to honor you with as a gift." He and his companions ate it. I then embraced Islam, but enslavement preoccupied me until I missed the Battle of Badr. Later, the Messenger of Allah (peace be upon him) said to me: "Write your contract of manumission,"' then he mentioned the hadith. Thus, he (peace be upon him) permitted the charity and gift of a slave, leaving no valid argument for anyone against this. Success comes solely from Allah, the Most High."

وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُجِيبُ دَعْوَةَ الْمَمْلُوكِ، فَلَوْ لَمْ يَكُنْ مَالِكًا لِمَالِهِ لَمْ يُجِبْ - عَلَيْهِ السَّلَامُ - دَعْوَتَهُ، وَقَدْ قَبِلَ هَدِيَّةَ سَلْمَانَ وَهُوَ مَمْلُوكٌ وَأَكَلَهَا - عَلَيْهِ السَّلَامُ -: كَمَا أَخْبَرَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فَرَّاسٍ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ نا إِسْحَاقُ بْنُ رَاهْوَيْهِ أَنَا يَحْيَى بْنُ آدَمَ نا ابْنُ إدْرِيسَ - هُوَ عَبْدُ اللَّهِ - نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ عَاصِمِ بْنِ عُمَرَ بْنِ قَتَادَةَ عَنْ مَحْمُودِ بْنِ لَبِيدٍ عَنْ ابْنِ عَبَّاسٍ «حَدَّثَنِي سَلْمَانُ الْفَارِسِيُّ مِنْ فِيهِ قَالَ: كُنْت مِنْ أَهْلِ أَصْبَهَانَ وَاجْتَهَدْت فِي الْمَجُوسِيَّةِ - ثُمَّ ذَكَرَ الْحَدِيثَ بِطُولِهِ - وَأَنَّهُ عَامَلَ رَكْبًا مِنْ كَلْبٍ عَلَى أَنْ يَحْمِلُوهُ إلَى أَرْضِهِمْ، قَالَ: فَظَلَمُونِي فَبَاعُونِي عَبْدًا مِنْ رَجُلٍ يَهُودِيٍّ، ثُمَّ بَاعَهُ ذَلِكَ الْيَهُودِيُّ مِنْ يَهُودِيٍّ مِنْ بَنِي قُرَيْظَةَ، ثُمَّ ذَكَرَ قُدُومَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ، قَالَ: فَلَمَّا أَمْسَيْتُ جَمَعْتُ مَا كَانَ عِنْدِي ثُمَّ خَرَجْتُ حَتَّى جِئْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِقُبَا وَمَعَهُ نَفَرٌ مِنْ أَصْحَابِهِ، فَقُلْتُ: كَانَ عِنْدِي شَيْءٌ وَضَعْتُهُ لِلصَّدَقَةِ، رَأَيْتُكُمْ أَحَقَّ النَّاسِ بِهِ فَجِئْتُكُمْ بِهِ، فَقَالَ - عَلَيْهِ السَّلَامُ -: كُلُوا، وَأَمْسَكَ هُوَ - ثُمَّ تَحَوَّلَ - عَلَيْهِ السَّلَامُ - إلَى الْمَدِينَةِ، فَجَمَعْتُ شَيْئًا، ثُمَّ جِئْتُ فَسَلَّمْتُ عَلَيْهِ، فَقُلْتُ: رَأَيْتُكَ لَا تَأْكُلُ الصَّدَقَةَ، وَكَانَ عِنْدِي شَيْءٌ أُحِبُّ أَنْ أُكْرِمَكَ بِهِ هَدِيَّةً؟ فَأَكَلَ هُوَ وَأَصْحَابُهُ، ثُمَّ أَسْلَمْتُ ثُمَّ شَغَلَنِي الرِّقُّ حَتَّى فَاتَتْنِي بَدْرٌ، ثُمَّ قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَاتِبْ» ، وَذَكَرَ الْحَدِيثَ -: فَقَدْ أَجَازَ - عَلَيْهِ السَّلَامُ - صَدَقَةَ الْعَبْدِ، وَهَدِيَّتَهُ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[19] **Qur'an references (L21670):** Qur'an 24:32 (An-Nur).

L21672–21673 Yes, those present among his Companions (peace be upon him) concurred with him in permitting it, and there was absolutely no dissenter among them whatsoever.

L21674 Some of them cited as evidence the words of Allah, the Most High: “He sets forth a parable for you from yourselves: Do you have among those whom your right hands possess any partners in what We have provided you, so that you share equally in it?” [Ar-Rum: 28][20]

L21675 Abu Muhammad said: There is no valid proof for them in this matter, because we do not disagree with them regarding the fact that our slaves neither own our wealth nor share partnership with us in it. Our disagreement with them lies solely in whether they own their own wealth and earnings or not. Abu Muhammad said: As for the master’s appropriation of his slave’s property, this is permissible. The Sunnah has affirmed this in the case of the enslaved boy who performed cupping for the Messenger of Allah (peace and blessings of Allah be upon him). The boy asked the Messenger of Allah (peace be upon him) about his share, and when he was informed of it, the Prophet (peace be upon him) commanded that his required portion be reduced.

L21676 It is valid that the master may claim the earnings of his slave. If the master states, “I have confiscated your earnings,” the slave’s ownership over them is nullified, and they become the master’s property. And success is from Allah, the Exalted.

L21677 **The issue of guardianship imposed on one who has not attained legal maturity.**

L21678 1399 - Issue: As for those who have not reached puberty, those who attained puberty while lacking discernment or mental capacity, or those whose discernment ceased after reaching puberty despite having attained it as a discerning person - these are not subject to legal obligations, and none of their financial decisions are valid. This ruling is based on the statement of the Messenger of Allah, peace and blessings be upon him: “The pen is lifted

[20] **Qur’an references (L21674):** Qur’an 30:28 (Ar-Rum).

نَعَمْ، وَأَجَازَهَا مَعَهُ - عَلَيْهِ السَّلَامُ - الْحَاضِرُونَ مِنْ أَصْحَابِهِ وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ أَصْلًا.

وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {ضَرَبَ لَكُمْ مَثَلا مِنْ أَنْفُسِكُمْ هَلْ لَكُمْ مِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ شُرَكَاءَ فِي مَا رَزَقْنَاكُمْ فَأَنْتُمْ فِيهِ سَوَاءٌ} [الروم: ٢٨]

قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ لَهُمْ فِيهَا، لِأَنَّا لَمْ نُخَالِفْهُمْ فِي أَنَّ عَبِيدَنَا لَا يَمْلِكُونَ أَمْوَالَنَا، وَلَا هُمْ شُرَكَاءُ لَنَا فِيهَا، وَإِنَّمَا خَالَفْنَاهُمْ: هَلْ يَمْلِكُونَ أَمْوَالَهُمْ وَكَسْبَهُمْ أَمْ لَا؟ قَالَ أَبُو مُحَمَّد: وَأَمَّا انْتِزَاعُ السَّيِّدِ مَالَ عَبْدِهِ فَمُبَاحٌ، قَدْ جَاءَتْ السُّنَّةُ بِذَلِكَ فِي «الْغُلَامِ الَّذِي حَجَمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ خَرَاجِهِ؟ فَأُخْبِرَ، فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِأَنْ يُخَفَّفَ عَنْهُ» .

فَصَحَّ أَنَّ لِلسَّيِّدِ أَخْذَ كَسْبِ عَبْدِهِ، فَإِذَا قَالَ السَّيِّدُ: قَدْ انْتَزَعْت كَسْبَك؟ فَقَدْ سَقَطَ مِلْكُ الْعَبْدِ عَنْهُ وَصَارَ لِلسَّيِّدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْحَجْرِ عَلَى مَنْ لَمْ يَبْلُغْ]

١٣٩٩ - مَسْأَلَةٌ: وَأَمَّا مَنْ لَمْ يَبْلُغْ، أَوْ بَلَغَ وَهُوَ لَا يُمَيِّزُ وَلَا يَعْقِلُ أَوْ ذَهَبَ تَمْيِيزُهُ بَعْدَ أَنْ بَلَغَ مُمَيِّزًا -: فَهَؤُلَاءِ غَيْرُ مُخَاطَبِينَ وَلَا يَنْفُذُ لَهُمْ أَمْرٌ فِي شَيْءٍ مِنْ مَالِهِمْ لِمَا ذَكَرْنَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ، فَذَكَرَ الصَّبِيَّ حَتَّى يَبْلُغَ، وَالْمَجْنُونَ حَتَّى يَبْرَأَ» .

from three: the child until they reach puberty, and the insane until they recover their sanity."

فَإِنْ كَانَ الْمَجْنُونُ يُفِيقُ تَارَةً وَيَعْقِلُ، وَيُجَنُّ أُخْرَى -: جَازَ فِعْلُهُ فِي السَّاعَاتِ الَّتِي يُفِيقُ فِيهَا، وَبَطَلَ فِعْلُهُ فِي السَّاعَاتِ الَّتِي يُجَنُّ فِيهَا لِمَا ذَكَرْنَا آنِفًا وَلِأَنَّهُ مُخَاطَبٌ فِي سَاعَاتِ عَقْلِهِ غَيْرُ مُخَاطَبٍ فِي سَاعَاتِ جُنُونِهِ.

L21679 If the insane person regains consciousness at times and is rational, and becomes insane at others, his actions are valid during the hours when he is conscious, and his actions are invalid during the hours when he becomes insane, for the reasons we previously mentioned and because he is legally accountable during his hours of sanity but not during his hours of insanity.

قَالَ عَلِيٌّ: وَمَنْ حُجِرَ عَلَيْهِ مَالُهُ لِصِغَرٍ أَوْ جُنُونٍ، فَسَوَاءٌ كَانَ عَلَيْهِ وَصِيٌّ مِنْ أَبٍ أَوْ مِنْ قَاضٍ كُلُّ مَنْ نَظَرَ لَهُ نَظَرًا حَسَنًا فِي بَيْعٍ أَوْ ابْتِيَاعٍ، أَوْ عَمَلٍ مَا -: فَهُوَ نَافِذٌ لَازِمٌ لَا يُرَدُّ، وَإِنْ أَنْفَذَ عَلَيْهِ الْوَصِيُّ مَا لَيْسَ نَظَرًا لَمْ يَجُزْ، لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥]- رَحِمَهُمُ اللَّهُ -: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلَا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L21680 Ali said: It is the same for one whose property is restricted due to minority or insanity—whether appointed a guardian by a father or a judge—any sale, purchase, or action conducted with the guardian's sound judgment remains valid, binding, and irreversible. If the guardian implements what lacks proper judgment, it becomes impermissible, based on Allah's words—"Be upholders of justice, witnesses for Allah" [4:135]—may Allah have mercy on them—and "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [5:2].[21]

لِقَوْلِ اللَّهِ تَعَالَى: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ} [الحجرات: ١٠] .

L21681–21682 Allah, the Exalted, says: "The believers are only brothers, so reconcile between your two brothers" [Surah Al-Hujurat 49:10].[22]

وقَوْله تَعَالَى: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» .

L21683 And the statement of Allah the Exalted: {The believing men and believing women are allies of one another} [At-Tawbah: 71], and the statement of the Messenger of Allah—peace and blessings be upon him—: "The Muslim is the brother of the Muslim; he does not wrong him nor forsake him."[23]

فَصَحَّ أَنَّ كُلَّ مُسْلِمٍ فَهُوَ وَلِيٌّ لِكُلِّ مُسْلِمٍ، وَأَنَّهُ مَأْمُورٌ بِالنَّظَرِ لَهُ بِالْأَحْوَطِ وَبِالْقِيَامِ لَهُ بِالْقِسْطِ، وَبِالتَّعَاوُنِ عَلَى الْبِرِّ وَالتَّقْوَى؛ فَكُلُّ بِرٍّ وَتَقْوَى أَنْفَذَهُ الْمُسْلِمُ لِلصَّغِيرِ، وَالَّذِي لَا يَعْقِلُ فَهُوَ نَافِذٌ بِنَصِّ الْقُرْآنِ، وَلَمْ يَأْتِ قَطُّ نَصٌّ بِإِفْرَادِ الْوَصِيِّ بِذَلِكَ وَرَدَ مَا سِوَاهُ.

L21684 Thus, it is established that every Muslim is a guardian to every other Muslim, and that he is commanded to consider the most precautionary approach for him, to establish justice for him, and to cooperate in righteousness and piety. Every act of righteousness and piety that a Muslim implements for a minor or for one lacking legal capacity is valid by the explicit text of the Quran. No text has ever specified the guardian exclusively for that while excluding others.

[21] **Qur'an references (L21680):** Qur'an 4:135 (An-Nisa); Qur'an 5:2 (Al-Ma'idah).
[22] **Qur'an references (L21682):** Qur'an 49:10 (Al-Hujurat).
[23] **Qur'an references (L21683):** Qur'an 9:71 (At-Tawbah).

L21685 If it is said: “Then permit this for a minor who has a father?” We say: “Yes, thus we hold, and even if his father were to mishandle his oversight, he would be prevented from doing so.”

L21686 If they say: “Then permit this among the Muslims—some having authority over others on this very night?” We respond: We are prevented from this by Allah’s statement, the Exalted: {No soul earns [anything] except against itself} (6:164). Thus, the legally accountable person addressed by the law who owns his property—none may impose upon him what another has earned. As for one who is neither addressed by the law, nor legally accountable, nor entrusted with his property, there is no doubt that another is commanded to manage his property. Whoever hastens to fulfill this obligation has the right to do so. Similarly, in the case of an absent person who neglects his property, whoever first undertakes proper oversight of it may implement that, except in prohibited matters if carried out, where there is no harm in abstaining from implementation. In such cases, none may implement it upon him, for the reason we have mentioned. And success is from Allah, the Exalted.[24]

L21687 **An issue: It is impermissible to give anything to one who has not attained any portion of his wealth.**

L21688 Issue 1400: It is impermissible to hand over anything from the minor’s wealth—nor even the daily expense, let alone anything beyond that—except what is consumed at its proper time and what he wears to ward off heat and cold, such as clothing suitable for his peers. He is to be amply provided for in all such matters.

L21689 1401. Issue: If someone sells what must be sold for a minor, a non-discerning person under guardianship, a bankrupt individual, or an absent party with a rightful claim; or purchases for them what must be purchased; or sells in executing a deceased’s will; or transacts with himself on their behalf (whether selling his own property to the ward, minor, creditors of the bankrupt, or absent party, or purchasing from himself for them) – this is equivalent to purchasing for them from others or selling to them from oth-

[24]**Qur’an references (L21686):** Qur’an 6:164 (Al-An’am).

فَإِنْ قِيلَ: فَأَجِيزُوا هَذَا فِي الصَّغِيرِ الَّذِي لَهُ أَبٌ؟ قُلْنَا: نَعَمْ، هَكَذَا نَقُولُ، وَلَوْ أَنَّ أَبَاهُ يُسِيءُ لَهُ النَّظَرَ لَمُنِعَ مِنْ ذَلِكَ.

فَإِنْ قَالُوا: فَأَجِيزُوا هَذَا مِنْ الْمُسْلِمِينَ بَعْضِهِمْ عَلَى بَعْضٍ بِهَذَا اللَّيْلِ نَفْسِهِ؟ قُلْنَا: مَنَعَنَا مِنْ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَالْمُخَاطَبُ الْمُكَلَّفُ الْمُتَمَلِّكُ مَالَهُ لَا يَجُوزُ لِأَحَدٍ أَنْ يَكْسِبَ عَلَيْهِ غَيْرُهُ، وَأَمَّا مَنْ لَيْسَ مُخَاطَبًا وَلَا مُكَلَّفًا وَلَا مُمَلَّكًا مَالَهُ فَلَا شَكَّ فِي أَنَّ غَيْرَهُ هُوَ الْمَأْمُورُ بِإِصْلَاحِ مَالِهِ، فَمَنْ سَارَعَ إلَى مَا أُمِرَ بِهِ مِنْ ذَلِكَ فَهُوَ حَقُّهُ، وَكَذَلِكَ الْغَائِبُ الَّذِي يُضَيِّعُ مَالَهُ، فَكُلُّ مَنْ سَبَقَ إلَى حُسْنِ النَّظَرِ فِيهِ نَفَذَ ذَلِكَ، إلَّا فِيمَا يُمْنَعُ مِنْهُ إذَا قُدِّمَ وَكَانَ لَا ضَرَرَ فِي تَرْكِ إنْفَاذِهِ فَهَذَا لَيْسَ لِأَحَدٍ إنْفَاذُهُ عَلَيْهِ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يُدْفَعَ إلَى مَنْ لَمْ يَبْلُغْ شَيْءٌ مِنْ مَالِهِ]

١٤٠٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُدْفَعَ إلَى مَنْ لَمْ يَبْلُغْ شَيْءٌ مِنْ مَالِهِ، وَلَا نَفَقَةُ يَوْمٍ - فَضْلًا عَنْ ذَلِكَ - إلَّا مَا يَأْكُلُ فِي وَقْتِهِ، وَمَا يَلْبَسُ لِطَرْدِ الْحَرِّ وَالْبَرْدِ مِنْ لِبَاسِ مِثْلِهِ، وَيُوَسَّعُ عَلَيْهِ فِي كُلِّ ذَلِكَ.

١٤٠١ - مَسْأَلَةٌ: وَمَنْ بَاعَ مَا وَجَبَ بَيْعُهُ لِصَغِيرٍ، أَوْ لِمَحْجُورٍ غَيْرِ مُمَيِّزٍ، أَوْ لِمُفْلِسٍ، أَوْ لِغَائِبٍ بِحَقٍّ، أَوْ ابْتَاعَ لَهُمْ مَا وَجَبَ ابْتِيَاعُهُ، أَوْ بَاعَ فِي وَصِيَّةِ الْمَيِّتِ، أَوْ ابْتَاعَ مِنْ نَفْسِهِ لِلْمَحْجُورِ، أَوْ لِلصَّغِيرِ، أَوْ لِغُرَمَاءِ الْمُفْلِسِ أَوْ لِلْغَائِبِ، أَوْ بَاعَ لَهُمْ مِنْ نَفْسِهِ فَهُوَ سَوَاءٌ، كَمَا لَوْ ابْتَاعَ لَهُمْ مِنْ غَيْرِهِ، أَوْ بَاعَ لَهُمْ مِنْ غَيْرِهِ وَلَا فَرْقَ، إنْ لَمْ يُحَابِ نَفْسَهُ فِي كُلِّ ذَلِكَ، وَلَا غَيْرَهُ -: جَازَ، وَإِنْ حَابَى نَفْسَهُ، أَوْ غَيْرَهُ: بَطَلَ؛ لِأَنَّهُ مَأْمُورٌ بِالْقِيَامِ

ers. There is no distinction, provided he does not favor himself or others in any of these matters. If he refrains from favoritism, it is valid. But if he favors himself or others, it becomes void, for he is commanded to uphold justice and cooperate in acts of goodness. When he fulfills his duty, he is doing good, and "there is no blame upon those who do good" (Quran 9:91). Moreover, has any Quranic text or Sunnah ever prohibited a guardian from purchasing his own property for those under his care or buying from himself on their behalf?[25]

بِالْقِسْطِ، وَالتَّعَاوُنِ عَلَى الْبِرِّ، فَإِذَا فَعَلَ مَا أُمِرَ بِهِ فَهُوَ مُحْسِنٌ، وَإِذْ هُوَ مُحْسِنٌ، فَ {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] وَلَمْ يَأْتِ قَطُّ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ بِالْمَنْعِ مِنْ ابْتِيَاعٍ مِمَّنْ يَنْظُرُ لَهُ لِنَفْسِهِ أَوْ يَشْتَرِي لَهُ مِنْ نَفْسِهِ؟

L21690–21691 If it is said: Indeed, Ibn Mas'ud prohibited that—as we have related through the chain of 'Abd al-Razzaq from Sufyan from Abu Ishaq from Silah ibn Zufar, who said: A man came to Ibn Mas'ud on a horse and said: My uncle bequeathed his estate to me, and this horse is part of [the estate]. May I buy it [from the estate]? He said: No, and do not borrow anything from their wealth. We said: We have indeed related what Ibn Mas'ud narrated to us. Abu Sa'id al-Ja'fari said: Abu Bakr Muhammad ibn 'Ali al-Muqri narrated to us; Ahmad ibn Muhammad ibn Isma'il al-Nahwi narrated to us from al-Hasan ibn Ghulayb ibn Sa'id; Yusuf ibn 'Adi narrated to us; Abu al-Ahwas narrated to us; Abu Ishaq narrated to us from Yarfa', the freed slave of 'Umar ibn al-Khattab, who said: I placed the wealth of Allah the Exalted in my possession at the status of an orphan's wealth. If I needed it, I took from it, and when I was able, I repaid. This shows that 'Umar does not disapprove of borrowing from the orphan's wealth.

فَإِنْ قِيلَ: إِنَّ ابْنَ مَسْعُودٍ قَدْ مَنَعَ مِنْ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ عَنْ أَبِي إِسْحَاقَ عَنْ صِلَةَ بْنِ زُفَرَ، قَالَ: جَاءَ رَجُلٌ إِلَى ابْنِ مَسْعُودٍ عَلَى فَرَسٍ، فَقَالَ: إِنَّ عَمِّي أَوْصَى إِلَيَّ بِتَرِكَتِهِ وَهَذَا مِنْهَا أَفَأَشْتَرِيهِ؟ قَالَ: لَا، وَلَا تَسْتَقْرِضْ مِنْ أَمْوَالِهِمْ شَيْئًا قُلْنَا: قَدْ رُوِّينَا مَا حَدَّثْنَاهُ. أَبُو سَعِيدٍ الْجَعْفَرِيُّ قَالَ: نا أَبُو بَكْرٍ مُحَمَّدُ بْنُ عَلِيٍّ الْمُقْرِي نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ النَّحْوِيُّ عَنْ الْحَسَنِ بْنِ غُلَيْبِ بْنِ سَعِيدٍ عَنْ يُوسُفَ بْنِ عَدِيٍّ نا أَبُو الْأَحْوَصِ نا أَبُو إِسْحَاقَ عَنْ يَرْفَا مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: أَنْزَلْت مَالَ اللَّهِ تَعَالَى مِنِّي بِمَنْزِلَةِ مَالِ الْيَتِيمِ، إِنْ احْتَجْت إلَيْهِ أَخَذْت مِنْهُ، فَإِذَا أَيْسَرْتُ قَضَيْت. فَهَذَا عُمَرُ لَا يُنْكِرُ الِاسْتِقْرَاضَ مِنْ مَالِ الْيَتِيمِ.

L21692 Similarly, it has been authentically reported from Ibn 'Umar. There is no distinction between taking the orphan's wealth as a loan and returning its equivalent afterward, and purchasing it for its equivalent price or value and giving its equivalent in cash.

وَكَذَلِكَ صَحَّ عَنْ ابْنِ عُمَرَ أَيْضًا. وَلَا فَرْقَ بَيْنَ أَخْذِ مَالِ الْيَتِيمِ قَرْضًا وَرَدِّ مِثْلِهِ بَعْدَ ذَلِكَ وَبَيْنَ ابْتِيَاعِهِ بِمِثْلِ ثَمَنِهِ وَقِيمَتِهِ وَإِعْطَاءِ مِثْلِهِ نَقْدًا.

L21693 If they say, "Is he suspected in that?" We reply, "He is also suspected of deceiving in what he purchases for the ward from others or sells to the ward from others, thereby misappropriating and breaching the trust in both scenarios. There is no distinction between one who deems the specific bequest permissible and one in guardianship who buys from himself for the ward

فَإِنْ قَالُوا: يُتَّهَمُ فِي ذَلِكَ؟ قُلْنَا: وَيُتَّهَمُ أَيْضًا أَنَّهُ يُدَلِّسُ أَيْضًا فِيمَا يَبْتَاعُ لَهُ مِنْ غَيْرِهِ، أَوْ يَبِيعُهُ لَهُ مِنْ غَيْرِهِ، فَيَأْكُلُ وَيَخُونُ فِي الْأَمْرَيْنِ، وَلَا فَرْقَ بَيْنَ مَنْ اسْتَجَازَ عَيْنَ الْوَصِيَّةِ وَمَنْ فِي وِلَايَتِهِ فِيمَا يَبْتَاعُ لَهُ مِنْ نَفْسِهِ، أَوْ مَا يَشْتَرِي مِنْهُ لِنَفْسِهِ، وَبَيْنَ أَنْ يَسْتَجِيزَ

[25] **Qur'an references (L21689):** Qur'an 9:91 (At-Tawbah).

ذَلِكَ فِيمَا يَبْتَاعُ لَهُ مِنْ غَيْرِهِ، أَوْ يَبِيعُ لَهُ مِنْ غَيْرِهِ - وَمَا جَعَلَ اللَّهُ قَطُّ بَيْنَ الْأَمْرَيْنِ فَرْقًا يُعْقَلُ.

or purchases from the ward for himself, and one who deems it permissible to engage in such acts when acquiring for the ward from others or selling to the ward from others. Allah has never at all established any discernible distinction between these two matters."

وَقَالَ أَبُو حَنِيفَةَ: لَا يَبْتَاعُ لِنَفْسِهِ مِنْ مَالِ يَتِيمِهِ شَيْئًا - وَرُوِيَ هَذَا عَنْ الشَّافِعِيِّ، وَقَالَ أَبُو حَنِيفَةَ مَرَّةً أُخْرَى: إنْ ابْتَاعَ مِنْهُ بِأَكْثَرَ مِنْ الْقِيمَةِ جَازَ وَأَمَّا بِالْقِيمَةِ فَأَقَلَّ فَلَا - وَقَالَ مَالِكٌ يُحْمَلُ إلَى السُّوقِ فَإِنْ بَلَغَ أَكْثَرَ بَطَلَ عَقْدُهُ، وَإِلَّا فَهُوَ لَهُ لَازِمٌ.

L21694 Abu Hanifa said: He may not purchase anything for himself from his orphan's property. This has been reported from Al-Shafi'i. Abu Hanifa also stated in another ruling: If he buys from it for more than its value, it is permissible; but if at the value or less, it is not. Malik said: It must be taken to the market. If its value reaches more, his contract is invalidated; otherwise, it remains binding upon him.

وَالْعَجَبُ أَنَّهُمْ مَنَعُوا مِنْ هَذَا وَأَجَازُوا أَنْ يَرْهَنَ عَنْ نَفْسِهِ مَالَ يَتِيمِهِ، وَأَبَاحَ الْمَالِكِيُّونَ أَنْ يُعْتِقَ عَبْدَ يَتِيمِهِ - وَهَذَا تَنَاقُضٌ وَعَكْسٌ لِلْحَقَائِقِ.

L21695 It is astonishing that they prohibited this yet permitted pledging the orphan's property for himself, while the Malikis permitted manumitting the orphan's own slave - this constitutes a contradiction and an inversion of fundamental truths.

وَقَالَ بِقَوْلِنَا أَبُو يُوسُفَ، وَأَبُو سُلَيْمَانَ، وَسُفْيَانُ الثَّوْرِيُّ فِي أَحَدِ قَوْلَيْهِ فَعَلَى، كُلِّ حَالٍ قَدْ خَالَفُوا ابْنَ مَسْعُودٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L21696 Abu Yusuf, Abu Sulayman, and Sufyan al-Thawri in one of his two opinions adopted our view. In any case, they have opposed Ibn Mas'ūd—and success is from Allah, the Exalted.

[مَسْأَلَةٌ الْوَصِيّ لَا يَأْكُل مِنْ مَالِ مَنْ إلَى نَظَرِهِ مُطَارَفَةً]

A legal ruling: The trustee must not consume the wealth of those under his guardianship through extravagance.

١٤٠٢ - مَسْأَلَةٌ: مُسْتَدْرَكَةٌ -: وَلَا يَحِلُّ لِلْوَصِيِّ أَنْ يَأْكُلَ مِنْ مَالِ مَنْ إلَى نَظَرِهِ مُطَارَفَةً، لَكِنْ إنْ احْتَاجَ اسْتَأْجَرَهُ لَهُ الْحَاكِمُ بِأُجْرَةِ مِثْلِ عَمَلِهِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَقْرَبُوا مَالَ الْيَتِيمِ إِلا بِالَّتِي هِيَ أَحْسَنُ} [الأنعام: ١٥٢]

L21698–21700 Issue 1402: Addendum – It is impermissible for an executor to consume from the wealth of those under his supervision. Prohibition of squandering. However, if the guardian requires it, the judge must hire someone for him with a wage equivalent to the required work, in accordance with the words of Allah, the Exalted: "And do not approach the wealth of the orphan except in the best manner" (6:152).[26]

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ} [النساء: ٦] قُلْنَا: قَدْ قَالَ بَعْضُ السَّلَفِ: إنَّ هَذَا الْأَكْلَ الْمَأْمُورَ بِهِ إنَّمَا هُوَ فِي مَالِ نَفْسِهِ، لَا فِي مَالِ الْيَتِيمِ - وَهُوَ الْأَظْهَرُ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا إِنَّمَا يَأْكُلُونَ

L21701 If they mention Allah's statement: {And whoever is poor, let him eat according to what is customary} [4:6], we respond: Some predecessors affirmed that this commanded consumption applies solely to one's own wealth, not to an orphan's property—and this is the most apparent view, for Allah says: {Those who unjustly consume orphans' wealth merely consume fire into their bellies,

[26] **Qur'an references (L21698):** Qur'an 6:152 (Al-An'am); Qur'an 17:34 (Al-Isra).

and they will blaze in a Scorching Flame} [4:10]. Thus, it is utterly forbidden except through fair compensation or lawful sale permitted by Allah. And with Allah, the Exalted, lies all success.[27]

فِي بُطُونِهِمْ نَارًا وَسَيَصْلَوْنَ سَعِيرًا} [النساء: ١٠] فَهِيَ حَرَامٌ أَشَدُّ التَّحْرِيمِ إِلَّا عَلَى سَبِيلِ الْأُجْرَةِ أَوْ الْبَيْعِ اللَّذَيْنِ أَبَاحَهُمَا اللَّهُ تَعَالَى - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[27] **Qur'an references (L21701):** Qur'an 4:6 (An-Nisa); Qur'an 4:10 (An-Nisa).



AL-MUHALLA

كِتَابُ الْإِكْرَاهِ

The Book of Coercion

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

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[كِتَابُ الْإِكْرَاهِ] [مَسْأَلَةٌ الْإِكْرَاهُ يَنْقَسِمُ قِسْمَيْنِ]

Book of Coercion: Issue – Coercion is divided into two categories.

١٤٠٣ - مَسْأَلَةٌ: الْإِكْرَاهُ يَنْقَسِمُ قِسْمَيْنِ: إكْرَاهٌ عَلَى كَلَامٍ، وَإِكْرَاهٌ عَلَى فِعْلٍ -: فَالْإِكْرَاهُ عَلَى الْكَلَامِ لَا يَجِبُ بِهِ شَيْءٌ، وَإِنْ قَالَهُ الْمُكْرَهُ، كَالْكُفْرِ، وَالْقَذْفِ، وَالْإِقْرَارِ، وَالنِّكَاحِ، وَالْإِنْكَاحِ، وَالرَّجْعَةِ، وَالطَّلَاقِ، وَالْبَيْعِ، وَالِابْتِيَاعِ، وَالنَّذْرِ، وَالْإِيمَانِ، وَالْعِتْقِ، وَالْهِبَةِ، وَإِكْرَاهِ الذِّمِّيِّ الْكِتَابِيِّ عَلَى الْإِيمَانِ، وَغَيْرِ ذَلِكَ؛ لِأَنَّهُ فِي قَوْلِهِ مَا أُكْرِهَ عَلَيْهِ إنَّمَا هُوَ حَاكٍ لِلَّفْظِ الَّذِي أُمِرَ أَنْ يَقُولَهُ، وَلَا شَيْءَ عَلَى الْحَاكِي بِلَا خِلَافٍ وَمَنْ فَرَّقَ بَيْنَ الْأَمْرَيْنِ فَقَدْ تَنَاقَضَ قَوْلُهُ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» فَصَحَّ أَنَّ كُلَّ مَنْ أُكْرِهَ عَلَى قَوْلٍ وَلَمْ يَنْوِهِ مُخْتَارًا لَهُ فَإِنَّهُ لَا يَلْزَمُهُ.

Issue 1403: Coercion is divided into two categories: coercion to speak and coercion to act. Coercion to speak does not obligate anything, even if the coerced person speaks it, such as disbelief, slander, confession, marriage, contracting a marriage, revocation of divorce, divorce, sale, purchase, vow, declarations of faith, manumission, gift, coercing a dhimmi from the People of the Book to embrace faith, and other such matters. This is because, in his statement of what he was coerced to do, he is merely reproducing the words he was compelled to utter, and there is no obligation upon the one who reproduces them—this is agreed upon without disagreement. Whoever differentiates between the two matters has contradicted his own statement. The Messenger of Allah—peace and blessings be upon him—said: "Actions are only by intentions, and every person will have what they intended." Thus, it is established that anyone who is coerced to make a statement and did not willingly intend it is not bound by it.

وَالْإِكْرَاهُ عَلَى الْفِعْلِ يَنْقَسِمُ قِسْمَيْنِ -: أَحَدُهُمَا - كُلُّ مَا تُبِيحُهُ الضَّرُورَةُ، كَالْأَكْلِ وَالشُّرْبِ فَهَذَا يُبِيحُهُ الْإِكْرَاهُ؛ لِأَنَّ الْإِكْرَاهَ ضَرُورَةٌ، فَمَنْ أُكْرِهَ عَلَى شَيْءٍ مِنْ هَذَا فَلَا شَيْءَ عَلَيْهِ؛ لِأَنَّهُ أَتَى مُبَاحًا لَهُ إتْيَانُهُ.

Coercion regarding an action is divided into two categories: one of them includes all matters permitted by necessity, such as eating and drinking. Coercion renders such acts permissible because it constitutes a necessity. Therefore, whoever is coerced into any of these actions incurs no sin or liability, as he has performed an act that was permissible for him to do.

وَالثَّانِي - مَا لَا تُبِيحُهُ الضَّرُورَةُ، كَالْقَتْلِ، وَالْجِرَاحِ، وَالضَّرْبِ، وَإِفْسَادِ الْمَالِ، فَهَذَا لَا يُبِيحُهُ الْإِكْرَاهُ، فَمَنْ أُكْرِهَ عَلَى شَيْءٍ مِنْ ذَلِكَ لَزِمَهُ الْقَوَدُ وَالضَّمَانُ؛ لِأَنَّهُ أَتَى مُحَرَّمًا عَلَيْهِ إتْيَانُهُ.

The second category comprises acts that necessity does not permit, such as killing, wounding, striking, or destroying property. Coercion does not sanction these acts. Whoever is compelled to commit any such act becomes liable to retaliation (qiṣās) and compensatory liability (ḍamān), for he has committed an act that is strictly forbidden for him to commit.

وَالْإِكْرَاهُ: هُوَ كُلُّ مَا سُمِّيَ فِي اللُّغَةِ إكْرَاهًا، وَعُرِفَ بِالْحِسِّ أَنَّهُ إكْرَاهٌ كَالْوَعِيدِ بِالْقَتْلِ مِمَّنْ لَا يُؤْمَنُ مِنْهُ إنْفَاذُ مَا تَوَعَّدَ بِهِ، وَالْوَعِيدُ بِالضَّرْبِ كَذَلِكَ أَوْ الْوَعِيدُ بِالسَّجْنِ كَذَلِكَ، أَوْ الْوَعِيدُ بِإِفْسَادِ الْمَالِ كَذَلِكَ، أَوْ الْوَعِيدُ فِي مُسَلَّمٍ غَيْرِهِ بِقَتْلٍ، أَوْ ضَرْبٍ،

Coercion (ikrāh) refers to anything linguistically designated as coercion and recognized through sensory perception as such. This includes threats of killing by someone from whom there is no assurance they will refrain from executing what they threatened, threats of beating similarly, threats of imprisonment similarly, threats of property damage similarly, or threats against

another Muslim involving killing, beating, or... Imprisonment, or corruption of property, based on the saying of the Messenger of Allah (peace and blessings of Allah be upon him), “A Muslim is the brother of another Muslim; he neither wrongs him nor betrays him.”

L21710 **A jurisprudential issue concerning one who is compelled to drink wine or eat pork.**

L21711 Issue 1404: If a person is compelled to drink alcohol, eat pork, carrion, blood, some other prohibited things, or unlawfully consume the property of a Muslim or a dhimmi - it becomes permissible for them to eat or drink, and they bear no responsibility toward anyone nor any liability. This is based on the words of Allah, may He be exalted: “He has made clear to you what He has forbidden you, except what you are compelled to [consume]” (Quran 6:119); His statement, the Most High: “But whoever is compelled, neither intending sin nor transgressing, bears no sin” (Quran 2:173); and His words, the Most High: “But whoever is compelled by severe hunger, without inclination to sin” (Quran 5:3).[1]

L21712 If the one compelled to consume a Muslim’s property possesses available wealth, he must pay the value of what he consumed, for this is the ruling applicable to one compelled by necessity. If he possesses no available wealth, he is not liable for what he consumed, due to what we have previously mentioned—and success is by Allah, the Exalted.

L21713 If it is said: “Why do you not permit for the one under duress [to commit] killing a soul, unlawful sexual intercourse, wounding, striking, and destruction of property based on this line of reasoning?” We answer: Because the revealed texts never permit one to repel injustice against himself by committing injustice against others who have not transgressed against him. Rather, what is obligatory is to repel the oppressor or fight him, in accordance with Allah’s saying: *“Cooperate in righteousness and piety, and do not cooperate in sin and aggression”* [al-Mā’idah 5:2], and the Messenger of Allah—peace

[1] **Qur’an references (L21711):** Qur’an 6:119 (Al-An’am); Qur’an 2:173 (Al-Baqarah); Qur’an 5:3 (Al-Ma’idah).

أَوْ سَجْنٍ، أَوْ إفْسَادِ مَالٍ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» .

[مَسْأَلَةٌ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ أَوْ أَكْلِ الْخِنْزِيرِ]

١٤٠٤ - مَسْأَلَةٌ: فَمَنْ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ، أَوْ أَكْلِ الْخِنْزِيرِ، أَوْ الْمَيْتَةِ، أَوْ الدَّمِ، أَوْ بَعْضِ الْمُحَرَّمَاتِ، أَوْ أَكْلِ مَالِ مُسْلِمٍ، أَوْ ذِمِّيٍّ -: فَمُبَاحٌ لَهُ أَنْ يَأْكُلَ، وَيَشْرَبَ، وَلَا شَيْءَ عَلَيْهِ لِأَحَدٍ، وَلَا ضَمَانَ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] . وقَوْله تَعَالَى: {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ فَلا إِثْمَ عَلَيْهِ} [البقرة: ١٧٣] . وَلِقَوْلِهِ تَعَالَى: {فَمَنِ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ} [المائدة: ٣] .

فَإِنْ كَانَ الْمُكْرَهُ عَلَى أَكْلِ مَالِ مُسْلِمٍ لَهُ مَالٌ حَاضِرٌ فَعَلَيْهِ قِيمَةُ مَا أَكَلَ؛ لِأَنَّ هَكَذَا هُوَ حُكْمُ الْمُضْطَرِّ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ حَاضِرٌ فَلَا شَيْءَ عَلَيْهِ فِيمَا أَكَلَ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قِيلَ: فَهَلَّا أَبَحْتُمْ قَتْلَ النَّفْسِ لِلْمُكْرَهِ، وَالزِّنَى، وَالْجِرَاحِ، وَالضَّرْبِ، وَإِفْسَادَ الْمَالِ بِهَذَا الِاسْتِدْلَالِ؟ قُلْنَا: لِأَنَّ النَّصَّ لَمْ يُبِحْ لَهُ قَطُّ أَنْ يَدْفَعَ عَنْ نَفْسِهِ ظُلْمًا بِظُلْمٍ غَيْرِهِ مِمَّنْ لَمْ يَتَعَدَّ عَلَيْهِ، وَإِنَّمَا الْوَاجِبُ عَلَيْهِ دَفْعُ الظَّالِمِ أَوْ قِتَالُهُ لِقَوْلِهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ

and blessings be upon him—saying: *"Whoever among you sees an evil, let him change it with his hand if he is able; if he cannot, then with his tongue; and if he cannot, then with his heart—that being the weakest degree of faith. Beyond that, there is no faith whatsoever."*[2]

L21714 Thus, it is established that He never permitted him to assist in oppression - neither due to necessity nor otherwise - but merely allowed him (if incapable) not to change it through his hand or tongue. It remains obligatory upon him to change it with his heart - and this is unavoidable - and to patiently endure solely the decree of Allah the Most High. By the Quran's explicit text, eating and drinking are permitted in cases of severe starvation, and in necessity. And success is from Allah, the Most High.

L21715 **A legal case: A woman was detained until he committed fornication with her.**

L21716–21718 1405 – Issue: If a woman is restrained until someone commits zina with her, or if a man is restrained so that his penis is inserted into a woman's vagina, there is no liability upon him or her: whether there was an erection or not, or ejaculation occurred or not. Whether she emitted or did not emit; because they did not perform any action whatsoever, as the spreading and emission are natural functions created by Allah the Exalted inherent in a person—whether one likes it or dislikes it—with no choice existing for him in that matter.

L21719 **A jurisprudential issue where someone is engaged in an act of disobedience and finds nothing to eat except carrion.**

L21720 1406. Issue: If someone is on a course of disobedience, such as an unlawful journey or illegitimate fighting, and finds nothing to eat except carrion, blood, swine, the flesh of wild beasts, or some of what is prohibited to him, it is not permissible for him to eat unless he repents. If he repents, let him eat lawful food. If he does not repent, then eating constitutes consuming what is forbidden, while abstaining still leaves him disobedient to Allah the Exalted

[2] **Qur'an references (L21713):** Qur'an 5:2 (Al-Ma'idah).

فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ، لَيْسَ وَرَاءَ ذَلِكَ مِنْ الْإِيمَانِ شَيْءٌ» .

فَصَحَّ أَنَّهُ لَمْ يُبِحْ لَهُ قَطُّ الْعَوْنَ عَلَى الظُّلْمِ - لَا لِضَرُورَةٍ وَلَا لِغَيْرِهَا - وَإِنَّمَا فَسَّحَ لَهُ - إنْ عَجَزَ - فِي أَنْ لَا يُغَيِّرَهُ بِيَدِهِ وَلَا بِلِسَانِهِ، وَبَقِيَ عَلَيْهِ التَّغْيِيرُ بِقَلْبِهِ وَلَا بُدَّ، وَالصَّبْرُ لِقَضَاءِ اللَّهِ تَعَالَى فَقَطْ، وَأُبِيحَ لَهُ فِي الْمَخْمَصَةِ بِنَصِّ الْقُرْآنِ -: الْأَكْلُ، وَالشُّرْبُ، وَعِنْدَ الضَّرُورَةِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أُمْسِكَتْ امْرَأَةٌ حَتَّى زَنَى بِهَا]

١٤٠٥ - مَسْأَلَةٌ: فَلَوْ أُمْسِكَتْ امْرَأَةٌ حَتَّى زَنَى بِهَا، أَوْ أُمْسِكَ رَجُلٌ فَأُدْخِلَ إحْلِيلُهُ فِي فَرْجِ امْرَأَةٍ، فَلَا شَيْءَ عَلَيْهِ وَلَا عَلَيْهَا، سَوَاءٌ انْتَشَرَ أَوْ لَمْ يَنْتَشِرْ، أَمْنَى أَوْ لَمْ يُمْنِ، أَنْزَلَتْ هِيَ أَوْ لَمْ تُنْزِلْ، لِأَنَّهُمَا لَمْ يَفْعَلَا شَيْئًا أَصْلًا وَالِانْتِشَارُ وَالْإِمْنَاءُ فِعْلُ الطَّبِيعَةِ الَّذِي خَلَقَهُ اللَّهُ تَعَالَى فِي الْمَرْءِ - أَحَبَّ أَمْ كَرِهَ - لَا اخْتِيَارَ لَهُ فِي ذَلِكَ.

[مَسْأَلَةٌ كَانَ فِي سَبِيلِ مَعْصِيَةٍ فَلَمْ يَجِدْ شَيْئًا يَأْكُلُ إلَّا الْمَيْتَةَ]

١٤٠٦ - مَسْأَلَةٌ: وَمَنْ كَانَ فِي سَبِيلِ مَعْصِيَةٍ كَسَفَرٍ لَا يَحِلُّ، أَوْ قِتَالٍ لَا يَحِلُّ، فَلَمْ يَجِدْ شَيْئًا يَأْكُلُ إلَّا الْمَيْتَةَ، أَوْ الدَّمَ، أَوْ خِنْزِيرًا، أَوْ لَحْمَ سَبُعٍ أَوْ بَعْضَ مَا حُرِّمَ عَلَيْهِ -: لَمْ يَحِلَّ لَهُ أَكْلُهُ إلَّا حَتَّى يَتُوبَ، فَإِنْ تَابَ فَلْيَأْكُلْ حَلَالًا، وَإِنْ لَمْ يَتُبْ فَإِنْ أَكَلَ أَكَلَ حَرَامًا، وَإِنْ لَمْ يَأْكُلْ، فَهُوَ عَاصٍ لِلَّهِ تَعَالَى بِكُلِّ حَالٍ. وَهَذَا قَوْلُ الشَّافِعِيِّ وَأَبِي سُلَيْمَانَ - وَقَالَ مَالِكٌ: يَأْكُلُ.

in all cases. This is the opinion of al-Shāfiʿī and Abū Sulaymān. Mālik said: He should eat.

L21721 Abu Muhammad said: This contradicts the Quran without any burden, for Allah the Exalted only permitted him this in a state where he would neither deviate toward sin, act oppressively, nor commit aggression. His consumption of this strengthens him to commit sin and transgression, empowers him to engage in highway robbery, corrupt the rightful way, and kill Muslims. This is an exceedingly grave matter.

L21722 They said the meaning of Allah's words, {غَيْرَ بَاغٍ وَلا عَادٍ} (not transgressing nor aggressing) [Al-Baqarah 2:173], is: "That is, not transgressing in eating nor aggressing in it?" We replied: This is false, and it is attributing to Allah, the Exalted, an addition in the Quran without evidence—which is not permissible at all, as it constitutes distorting the words from their proper positions.[3]

L21723 If they say, "God Almighty has said, 'Do not kill yourselves' [Quran 4:29]—is he not killing himself if he does not eat?" We respond: God's word is true. We have never commanded him to kill himself. Rather, we tell him: "Fulfill what God has obligated upon you—repentance. Abandon what He has forbidden you—striving to spread corruption and oppression on earth. Eat lawful, wholesome food at the proper time." If you add to your opposition the Quran's permission for him to avoid repentance and its command to persist in spreading corruption on earth, then what we sought from you was less than this. The Ḥanafī scholars said: "Compulsion is not valid in enforcing sales, purchases, confessions, gifts, or charitable donations. None of these are permissible under compulsion."[4]

L21724–21726 They said: If he is coerced into marriage, divorce, retraction of divorce, manumission, a vow, or... The oath: all of that became binding upon him and was established through it. That marriage was valid, that divorce was

قَالَ أَبُو مُحَمَّد: وَهَذَا خِلَافٌ لِلْقُرْآنِ بِلَا كُلْفَةٍ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُبِحْ لَهُ ذَلِكَ إِلَّا فِي حَالٍ يَكُونُ فِيهَا غَيْرَ مُتَجَانِفٍ لِإِثْمٍ، وَلَا بَاغِيًا، وَلَا عَادِيًا، وَأَكْلُهُ ذَلِكَ عَوْنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَقُوَّةٌ لَهُ عَلَى قَطْعِ الطَّرِيقِ وَفَسَادِ السَّبِيلِ، وَقَتْلِ الْمُسْلِمِينَ، وَهَذَا عَظِيمٌ جِدًّا.

فَقَالُوا مَعْنَى قَوْلِهِ تَعَالَى: {غَيْرَ بَاغٍ وَلا عَادٍ} [البقرة: ١٧٣] أَيْ غَيْرَ بَاغٍ فِي الْأَكْلِ وَلَا عَادٍ فِيهِ؟ فَقُلْنَا: هَذَا الْبَاطِلُ، وَالْقَوْلُ عَلَى اللَّهِ تَعَالَى بِزِيَادَةٍ فِي الْقُرْآنِ بِلَا بُرْهَانٍ، وَهَذَا لَا يَحِلُّ، أَصْلًا لِأَنَّهُ تَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ.

فَإِنْ قَالُوا قَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] فَهُوَ إِنْ لَمْ يَأْكُلْ قَاتِلٌ نَفْسَهُ؟ فَقُلْنَا: قَوْلُ اللَّهِ حَقٌّ، وَمَا أَمَرْنَاهُ قَطُّ بِقَتْلِ نَفْسِهِ بَلْ قُلْنَا لَهُ: افْعَلْ مَا افْتَرَضَ اللَّهُ عَلَيْكَ مِنَ التَّوْبَةِ، وَاتْرُكْ مَا حَرَّمَ عَلَيْكَ مِنَ السَّعْيِ فِي الْأَرْضِ بِالْفَسَادِ، وَالْبَغْيِ، وَكُلْ فِي الْوَقْتِ حَلَالًا طَيِّبًا، فَإِنْ أَضَفْتُمْ إِلَى خِلَافِكُمْ الْقُرْآنَ الْإِبَاحَةَ لَهُ أَنْ لَا يَتُوبَ، وَأَمْرَهُ بِأَنْ يُصِرَّ عَلَى الْفَسَادِ فِي الْأَرْضِ، فَمَا أَرَدْنَا مِنْكُمْ إِلَّا أَقَلَّ مِنْ هَذَا؟ وَقَالَ الْحَنَفِيُّونَ: لَا يَلْزَمُ الْإِكْرَاهُ عَلَى الْبَيْعِ، وَلَا عَلَى الشِّرَاءِ، وَلَا عَلَى الْإِقْرَارِ، وَلَا عَلَى الْهِبَةِ، وَلَا عَلَى الصَّدَقَةِ وَلَا يَجُوزُ عَلَيْهِ شَيْءٌ مِنْ ذَلِكَ.

قَالُوا: فَإِنْ أُكْرِهَ عَلَى النِّكَاحِ أَوْ الطَّلَاقِ، أَوْ الرَّجْعَةِ، أَوْ الْعِتْقِ، أَوْ النَّذْرِ، أَوْ الْيَمِينِ -: لَزِمَهُ كُلُّ ذَلِكَ، وَقُضِيَ عَلَيْهِ بِهِ، وَصَحَّ ذَلِكَ النِّكَاحُ، وَذَلِكَ الطَّلَاقُ، وَذَلِكَ الْعِتْقُ، وَتِلْكَ الرَّجْعَةُ، وَلَزِمَهُ ذَلِكَ النَّذْرُ، وَتِلْكَ الْيَمِينُ.

[3] **Qur'an references (L21722):** Qur'an 2:173 (Al-Baqarah); Qur'an 6:145 (Al-An'am); Qur'an 16:115 (An-Nahl).

[4] **Qur'an references (L21723):** Qur'an 4:29 (An-Nisa).

valid, that manumission was valid, and that revocation was valid. That vow became binding upon him, including the oath itself.

L21727 It was narrated to us through the chain of Ḥammād ibn Salamah, from ʿAbd al-Malik ibn Qudāmah al-Jumaḥī, who reported from his father: A man lowered himself on a rope to collect honey, and his wife swore an oath to him: "By Allah, either you cut the rope or you must divorce me three times!" So he pronounced three divorces at once. When he emerged, he went to ʿUmar ibn al-Khaṭṭāb and informed him. ʿUmar said to him: "Return to your wife, for this does not count as a valid divorce."

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا عَبْدُ الْمَلِكِ بْنُ قُدَامَةَ الْجُمَحِيُّ حَدَّثَنِي أَبِي: أَنَّ رَجُلًا تَدَلَّى بِحَبْلٍ لِيَشْتَارَ عَسَلًا فَحَلَفَتْ لَهُ امْرَأَتُهُ لَتَقْطَعَنَّ الْحَبْلَ أَوْ لَيُطَلِّقَنَّهَا ثَلَاثًا؟ فَطَلَّقَهَا ثَلَاثًا، فَلَمَّا خَرَجَ أَتَى عُمَرَ بْنَ الْخَطَّابِ فَأَخْبَرَهُ، فَقَالَ لَهُ عُمَرُ: ارْجِعْ إلَى امْرَأَتِك، فَإِنَّ هَذَا لَيْسَ طَلَاقًا.

L21728 Narrated through the chain of Hammad ibn Salamah, from Humaid, from al-Ḥasan: that Ali ibn Abi Talib said, "There is no divorce for one who is coerced."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَيْسَ لِمُسْتَكْرَهٍ طَلَاقٌ.

L21729 Al-Hasan said: A man's wife's family detained him and forced him to divorce her if he failed to send her maintenance by the end of a month. When the deadline passed and he sent nothing, they sued him before Ali. He said: "You oppressed him until he declared her divorced," and he restored her to him.

قَالَ الْحَسَنُ: وَأَخَذَ رَجُلًا أَهْلُ امْرَأَتِهِ فَطَلَّقَهَا إنْ لَمْ يَبْعَثْ بِنَفَقَتِهَا إلَى شَهْرٍ، فَجَاءَ الْأَجَلُ وَلَمْ يَبْعَثْ شَيْئًا، فَخَاصَمُوهُ إلَى عَلِيٍّ، فَقَالَ: اضْطَهَدْتُمُوهُ حَتَّى جَعَلَهَا طَالِقًا فَرَدَّهَا عَلَيْهِ.

L21730 Through the chain of Al-Ḥajjāj ibn al-Minhāl from Hushaym from ʿAbdullāh ibn Ṭalḥah al-Khuzaʿī from Abū Yazīd al-Madanī from Ibn ʿAbbās, who said: "No divorce [is valid] for a coerced person."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ نا عَبْدُ اللَّهِ بْنُ طَلْحَةَ الْخُزَاعِيُّ نا أَبُو يَزِيدَ الْمَدَنِيُّ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ قَالَ: لَيْسَ لِمُكْرَهٍ طَلَاقٌ.

L21731 It has also been authentically established through multiple chains from Ibn ʿUmar that he deemed a coerced divorce invalid. Thābit al-Aʿraj narrated: "I asked every jurist in Medina about a coerced divorce, and they replied, 'It is null and void.' Then I approached Ibn al-Zubayr and Ibn ʿUmar, and they restored my wife to me, as I had been forced to divorce her three times."

وَصَحَّ أَيْضًا: عَنْ ابْنِ عُمَرَ مِنْ طُرُقٍ أَنَّهُ لَمْ يُجِزْ طَلَاقَ الْمُكْرَهِ. وَمِنْ طَرِيقِ ثَابِتٍ الْأَعْرَجِ قَالَ: سَأَلْت كُلَّ فَقِيهٍ بِالْمَدِينَةِ عَنْ طَلَاقِ الْمُكْرَهِ؟ فَقَالُوا: لَيْسَ بِشَيْءٍ، ثُمَّ أَتَيْت ابْنَ الزُّبَيْرِ، وَابْنَ عُمَرَ، فَرَدَّا عَلَيَّ امْرَأَتِي، وَكَانَ قَدْ أُكْرِهَ عَلَى طَلَاقِهَا ثَلَاثًا.

L21732 This has also been authenticated as reported by Jābir ibn Zayd, al-Ḥasan, ʿAṭāʾ, Ṭāwūs, Shurayḥ, and ʿUmar ibn ʿAbd al-ʿAzīz - and it constitutes the opinion of Mālik, al-Awzāʿī, al-Shāfiʿī, Aḥmad, Abū Sulaymān, and all their companions. The permissibility of coerced divorce has likewise been authenticated as reported by Ibn ʿUmar.

وَصَحَّ هَذَا أَيْضًا: عَنْ جَابِرِ بْنِ زَيْدٍ، وَالْحَسَنِ، وَعَطَاءٍ، وَطَاوُسٍ، وَشُرَيْحٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَهُوَ قَوْلُ مَالِكٍ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ. وَصَحَّ إجَازَةُ طَلَاقِ الْمُكْرَهِ أَيْضًا: عَنْ ابْنِ عُمَرَ.

وَرُوِيَ عَنْ عُمَرَ، وَعَلِيٍّ، وَلَمْ يَصِحَّ عَنْهُمَا -. وَصَحَّ عَنْ الزُّهْرِيِّ، وَقَتَادَةَ، وَالنَّخَعِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ.

L21733 It has been reported from ʻUmar and ʻAli—though not authenticated from them. It is authenticated from Az-Zuhrī, Qatādah, An-Nakhaʿī, and Saʿīd ibn Jubayr.

وَاحْتَجَّ الْمُجِيزُونَ لِذَلِكَ بِعُمُومِ قَوْلِهِ تَعَالَى: {فَإِنْ طَلَّقَهَا فَلا تَحِلُّ لَهُ مِنْ بَعْدُ} [البقرة: ٢٣٠] قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَمْوِيهٌ مِنْهُمْ، لِأَنَّ اللَّهَ تَعَالَى الَّذِي قَالَ هَذَا هُوَ الَّذِي قَالَ: {وَلَكِنْ يُؤَاخِذُكُمْ بِمَا كَسَبَتْ قُلُوبُكُمْ} [البقرة: ٢٢٥] وَالْمُكْرَهُ لَمْ يُطَلِّقْ قَطُّ، إنَّمَا قِيلَ لَهُ: قُلْ: هِيَ طَالِقٌ ثَلَاثًا؟ فَحَكَى قَوْلَ الْمُكْرِهِ لَهُ فَقَطْ.

L21734–21736 Proponents of its permissibility cited the generality of the wording of the Most High: {If he divorces her, she is not lawful to him thereafter} [Al-Baqarah: 230]. Abū Muḥammad said: This is obfuscation on their part, for Allah the Exalted—who said this—is the One who said: *But He will hold you accountable for what your hearts have earned* [Al-Baqarah: 225]. The coerced person has not divorced at all; rather, he was told: “Say: She is divorced three times.” Thus, he only narrated the statement of the coercer.[5]

وَالْعَجَبُ مِنْ تَخْلِيطِهِمْ، وَقِلَّةِ حَيَائِهِمْ يَحْتَجُّونَ بِعُمُومِ هَذِهِ الْآيَةِ فِي إجَازَةِ طَلَاقِ الْمُكْرَهِ، ثُمَّ لَا يُجِيزُونَ بَيْعَ الْمُكْرَهِ، وَاَللَّهُ تَعَالَى يَقُولُ: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] فَإِنْ قَالُوا: الْبَيْعُ لَا يَكُونُ إلَّا عَنْ تَرَاضٍ؟ قُلْنَا: وَالطَّلَاقُ لَا يَكُونُ إلَّا عَنْ رِضًا مِنْ الْمُطَلِّقِ وَنِيَّةٍ لَهُ بِالنُّصُوصِ الَّتِي قَدَّمْنَا.

L21737 It is astonishing how they confuse matters and lack shame by invoking the generality of this verse to justify permitting a coerced person to divorce, yet they do not validate the sale conducted under coercion—even though Allah the Exalted states: {Allah has permitted trade and forbidden usury} [Al-Baqarah: 275]. If they retort: “A sale is only valid through mutual consent,” we counter: “Divorce is only valid if there is consent from the divorcer and intention on their part,” in accordance with the textual evidences we have already established.[6]

ثُمَّ قَدْ خَالَفُوا هَذَا الْعُمُومَ وَلَمْ يُجِيزُوا طَلَاقَ الصَّبِيِّ، وَلَا طَلَاقَ النَّائِمِ، فَإِنْ قَالُوا: لَيْسَ هَذَانِ مُطَلِّقَيْنِ؟ قُلْنَا: وَلَا الْمُكْرَهُ مُطَلِّقًا.

L21738–21739 Moreover, they have contradicted this general principle by not permitting the divorce pronounced by a minor or a sleeping person. If they argue: “Are these two not excluded from those who pronounce divorce?” We respond: “Nor is the coerced person considered one who pronounces divorce.”

وَأَطْرَفُ شَيْءٍ أَنَّهُمْ احْتَجُّوا هَهُنَا فَقَالُوا: الْبَيْعُ يُرَدُّ بِالْغَيْبِ؟ فَقُلْنَا: نَعَمْ، وَلَكِنْ بَعْدَ صِحَّةٍ، فَأَخْبِرُونَا هَلْ وَقَعَ بَيْعُ الْمُكْرَهِ صَحِيحًا أَمْ لَا؟ فَإِنْ قُلْتُمْ: وَقَعَ صَحِيحًا، فَلَا سَبِيلَ إلَى رَدِّهِ إلَّا بِرِضَاهُمَا، أَوْ بِنَصٍّ فِي ذَلِكَ، وَإِنْ قُلْتُمْ: لَمْ يَقَعْ صَحِيحًا وَهُوَ قَوْلُهُمْ؟ قُلْنَا: فَقِيَاسُكُمْ مَا لَمْ يَصِحَّ عَلَى مَا صَحَّ بَاطِلٌ فِي الْقِيَاسِ، لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ، وَعَلَى مَا لَا يُشْبِهُهُ. وَقُلْنَا لَهُمْ أَيْضًا: وَكَذَلِكَ الطَّلَاقُ مِنْ الْمُكْرَهِ وَقَعَ بَاطِلًا، وَاحْتَجُّوا

L21740 The most astonishing aspect is that they presented an argument here, asking: “Can a sale be revoked due to non-disclosure?” We responded: “Yes, but only after its validity is confirmed. Inform us: Was the coerced sale validly executed or not?” If you say: “It was validly executed,” then revocation is only permissible by mutual consent or through an explicit text on the matter. If you say: “It was not validly executed”—which is their position—we reply: “Your analogy comparing invalid transactions to valid ones is flawed in juristic terms, for it analogizes a thing to its opposite and what bears no

[5] **Qur’an references (L21734):** Qur’an 2:230 (Al-Baqarah); Qur’an 2:225 (Al-Baqarah).
[6] **Qur’an references (L21737):** Qur’an 2:275 (Al-Baqarah).

بِأَخْبَارٍ فَاسِدَةٍ -: مِنْهَا: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا إِسْمَاعِيلُ بْنُ عَيَّاشٍ حَدَّثَنِي الْغَازِي بْنُ جَبَلَةَ الْجُبْلَانِيُّ عَنْ صَفْوَانَ بْنِ عِمْرَانَ الطَّائِيِّ «أَنَّ رَجُلًا جَعَلَتْ امْرَأَتُهُ سِكِّينًا عَلَى حَلْقِهِ وَقَالَتْ: طَلِّقْنِي ثَلَاثًا أَوْ لَأَذْبَحَنَّكَ فَنَاشَدَهَا اللَّهَ تَعَالَى، فَأَبَتْ، فَطَلَّقَهَا ثَلَاثًا، فَذُكِرَ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَا قَيْلُولَةَ فِي الطَّلَاقِ» .

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ نُعَيْمِ بْنِ حَمَّادٍ عَنْ بَقِيَّةَ عَنْ الْغَازِي بْنِ جَبَلَةَ عَنْ صَفْوَانَ الطَّائِيِّ عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَهَذَا كُلُّهُ لَا شَيْءَ؛ لِأَنَّ إسْمَاعِيلَ بْنَ عَيَّاشٍ، وَبَقِيَّةَ: ضَعِيفَانِ، وَالْغَازِي بْنَ جَبَلَةَ مَجْهُولٌ، وَصَفْوَانَ ضَعِيفٌ، ثُمَّ هُوَ مُرْسَلٌ.

وَذَكَرُوا حَدِيثًا مِنْ طَرِيقِ مُطَيَّنٍ عَنْ حُسَيْنِ بْنِ يُوسُفَ التَّمِيمِيِّ - وَهُوَ مَجْهُولٌ - عَنْ مُحَمَّدِ بْنِ مَرْوَانَ - وَهُوَ مَجْهُولٌ - عَنْ عَطَاءِ بْنِ عَجْلَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ الطَّلَاقِ جَائِزٌ إلَّا طَلَاقَ الْمَعْتُوهِ الْمَغْلُوبِ عَلَى عَقْلِهِ» . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قِلَّةُ حَيَاءٍ مِنْهُمْ أَنْ يَحْتَجُّوا بِرِوَايَةِ عَطَاءِ بْنِ عَجْلَانَ وَهُوَ مَذْكُورٌ بِالْكَذِبِ، ثُمَّ هُمْ يَقُولُونَ: إنَّ الصَّاحِبَ إذَا رَوَى خَبَرًا وَخَالَفَهُ فَذَلِكَ دَلِيلٌ، عَلَى سُقُوطِ ذَلِكَ الْخَبَرِ، وَإِنَّمَا رُوِيَ هَذَا مِنْ طَرِيقِ ابْنِ عَبَّاسٍ

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: إنَّ ابْنَ عَبَّاسٍ لَمْ يَرَ طَلَاقَ الْمُكْرَهِ، فَيَلْزَمُهُمْ عَلَى أَصْلِهِمْ الْفَاسِدِ أَنْ يُسْقِطُوا كُلَّ هَذِهِ الْأَخْبَارِ؛ لِأَنَّ ابْنَ عَبَّاسٍ رَوَى بَعْضَهَا، وَخَالَفَهُ كَمَا فَعَلُوا فِيمَا كَذَبُوا فِيهِ عَلَى أَبِي هُرَيْرَةَ مِنْ تَرْكِهِ مَا رَوَى هُوَ وَغَيْرُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مِنْ

resemblance to it." We also told them: "Likewise, a divorce issued by the coerced is invalid." They cited unreliable narrations as evidence—including one we have narrated through Abū ʿUbayd: Ismāʿīl ibn ʿAyyāsh reported to us, from al-Ghāzī ibn Jabalah al-Jublānī, from Ṣafwān ibn ʿImrān al-Ṭāʾī: "A man's wife held a knife to his throat and said: 'Divorce me three times, or I will slaughter you!' He implored her by Allah Almighty, but she refused. He then divorced her three times. When this was mentioned to the Messenger of Allah (peace be upon him), he said: 'The divorce is invalid.'"

L21741 We have also narrated it through another chain: from Nuʿaym ibn Ḥammād to Baqiyyah to al-Ghāzī ibn Jabalah to Ṣafwān al-Ṭāʾī to a man among the Companions of the Messenger of Allah (peace and blessings be upon him) to the Prophet (peace and blessings be upon him). All of this is baseless, for Ismāʿīl ibn ʿAyyāsh and Baqiyyah are weak narrators, al-Ghāzī ibn Jabalah is undocumented, Ṣafwān is deemed weak, and the narration is mursal (with a broken chain).

L21742–21744 And they mentioned a narration through the chain of Muṭayyin from Ḥusayn ibn Yūsuf al-Tamīmī—and he is unverified—from Muhammad ibn Marwan—who is unknown—narrated from Ata ibn Ajlan from Ikrimah from Ibn Abbas from the Messenger of Allah (peace and blessings be upon him): "All forms of divorce are permissible except the divorce of a mentally deficient person who is mentally incapacitated." Abu Muhammad said: This demonstrates their impudence—that they would cite the narration of Ata ibn Ajlan, who is known for lying. Yet they themselves assert: "When a companion narrates a report and others contradict him, this indicates the invalidity of that report." However, this narration is only transmitted through the chain of Ibn Abbas.

L21745 It has been narrated to us through the chain of ʿAbd al-Razzāq from ʿAbdullāh ibn al-Mubārak from al-Awzāʿī from Yaḥyā ibn Abī Kathīr, who said: Verily, Ibn ʿAbbās did not consider the divorce of a coerced person valid. Thus, their corrupt foundational principle obliges them to invalidate all these narrations, since Ibn ʿAbbās narrated some of them, yet they opposed him—just as they did when they fabricated lies against Abū Hurayrah concerning his rejection of what he and other Companions—may Allah be pleased with

them—narrated regarding washing a vessel licked by a dog seven times. But they are a people who lack understanding. Moreover, they are the foremost in opposing this narration, for they do not validate the divorce of a sleeping person who utters divorce in his sleep, nor the divorce of a minor—neither of these two is insane nor those who have lost control of their faculties.

غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا، وَلَكِنَّهُمْ قَوْمٌ لَا يَعْقِلُونَ. وَأَيْضًا: فَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ، لِأَنَّهُمْ لَا يُجِيزُونَ طَلَاقَ النَّائِمِ يَتَكَلَّمُ فِي نَوْمِهِ بِالطَّلَاقِ، وَلَا طَلَاقَ الصَّبِيِّ، وَلَيْسَا مَعْتُوهَيْنِ، وَلَا مَغْلُوبَيْنِ عَلَى عُقُولِهِمَا.

L21746 They say regarding one who says to his wife in anger: "You are released," "You are finally divorced," "You are absolved," "You are forbidden," or "The decision is yours"—if he intended a single divorce, then it is binding; if he intended three divorces, it remains binding as one; and if he intended two instances, one becomes binding while the other is not legally enforced.

وَيَقُولُونَ فِيمَنْ قَالَ لِامْرَأَتِهِ فِي غَضَبٍ: أَنْتِ خَلِيَّةٌ، أَوْ بَائِنٌ، أَوْ بَرِيَّةٌ، أَوْ حَرَامٌ، أَوْ أَمْرُكِ بِيَدِكِ - وَنَوَى طَلْقَةً وَاحِدَةً فَهِيَ لَازِمَةٌ - وَإِنْ نَوَى ثَلَاثًا فَهِيَ لَازِمَةٌ - وَإِنْ نَوَى اثْنَتَيْنِ لَزِمَتْ وَاحِدَةٌ وَلَمْ تَلْزَمْ الْأُخْرَى.

L21747 Who is more lax in faith than one who cites a narration he himself first contradicts, against someone who does not consider it valid evidence at all? They cited the transmitted narrations: "Three matters: their earnestness is earnest, and their jest is earnest." Abū Muḥammad said: All these narrations are weak - none are sound. Even if they were sound, they would contain no valid evidence for the claimants whatsoever, for the coerced person is neither earnest nor jesting in his divorce pronouncement. Thus, it necessarily follows that no ruling applies to them in this matter.

فَمَنْ أَرَقُّ دِينًا مِمَّنْ يَحْتَجُّ بِخَبَرٍ هُوَ أَوَّلُ مُخَالِفٍ لَهُ عَلَى مَنْ لَا يَرَاهُ حُجَّةً أَصْلًا، وَاحْتَجُّوا بِالْآثَارِ الْوَارِدَةِ «ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ.» قَالَ أَبُو مُحَمَّدٍ: وَهِيَ آثَارٌ وَاهِيَةٌ كُلُّهَا لَا يَصِحُّ مِنْهَا شَيْءٌ، ثُمَّ لَوْ صَحَّتْ لَمْ يَكُنْ لَهُمْ فِيهَا حُجَّةٌ أَصْلًا، لِأَنَّ الْمُكْرَهَ لَيْسَ مُجِدًّا فِي طَلَاقِهِ، وَلَا هَازِلًا، فَخَرَجَ أَنْ يَكُونَ لَهُمْ حُكْمٌ فِي ذَلِكَ.

L21748–21749 Ali said: "What is more astonishing than one who relies on these fabrications - which are either narrated by a liar, an unknown figure, a weak transmitter, or constitute a mursal report - then objects to what we have transmitted through the chain of al-Rabiʿ ibn Sulaymān the Muezzin, from Bishr ibn Bakr, from al-Awzāʿī, from ʿAṭāʾ, from Ibn ʿAbbās, from the Prophet - peace be upon him -: 'My nation is pardoned for errors, forgetfulness, and what they are coerced into.'"

قَالَ عَلِيٌّ: وَأَيُّ عَجَبٍ أَكْثَرُ مِمَّنْ يَحْتَجُّ بِهَذِهِ الْأُكْذُوبَاتِ الَّتِي هِيَ إمَّا مِنْ رِوَايَةِ كَذَّابٍ، أَوْ مَجْهُولٍ، أَوْ ضَعِيفٍ، أَوْ مُرْسَلَةٌ، ثُمَّ يَعْتَرِضُ عَلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ الرَّبِيعِ بْنِ سُلَيْمَانَ الْمُؤَذِّنِ عَنْ بِشْرِ بْنِ بَكْرٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «عُفِيَ لِأُمَّتِي عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ.»

L21750 If he said, "Did ʿAbdullāh ibn Aḥmad ibn Ḥanbal ask his father about this ḥadīth?" his father replied: "Indeed, a Shaykh narrated it from al-Walīd ibn Muslim, who narrated from al-Awzāʿī and Mālik."

فَإِنْ قَالَ: سَأَلَ عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَبَاهُ عَنْ هَذَا الْحَدِيثِ؟ فَقَالَ لَهُ: إنَّهُ رَوَاهُ شَيْخٌ عَنْ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ، وَمَالِكٌ.

L21751 Mālik said: From Nāfiʿ, from Ibn ʿUmar, from the Prophet (ṣallā Allāhu ʿalayhi wa-sallam).

قَالَ مَالِكٌ: عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21752 Al-Awzāʿī said: On the authority of ʿAṭāʾ, on the authority of Ibn ʿAbbās, on the authority of the Prophet (peace be upon him).

وَقَالَ الْأَوْزَاعِيّ: عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21753 Ahmad said: This is a lie and falsehood. It is not narrated except through Al-Hasan from the Prophet (peace and blessings of Allah be upon him) - so marvel at this astonishment! Indeed, Ahmad (may Allah have mercy on him) rejected the authenticity of those who narrated this report via Malik from Nafiʿ from Ibn ʿUmar, and via Al-Walid ibn Muslim from Al-Awzaʿi from ʿAta' from Ibn ʿAbbas. Ahmad spoke truthfully in this matter - for this [claim] never occurred through Malik from Nafiʿ from Ibn ʿUmar, nor through Al-Walid ibn Muslim from Al-Awzaʿi from ʿAta' from Ibn ʿAbbas. It only came through Bishr ibn Bakr from Al-Awzaʿi from ʿAta' from Ibn ʿAbbas from the Prophet, peace and blessings of Allah be upon him. Whoever alters the chains of transmission has erred or lied if he did so intentionally.

فَقَالَ أَحْمَدُ: هَذَا كَذِبٌ، وَبَاطِلٌ، لَيْسَ يُرْوَى إلَّا الْحَسَنُ عَنْ النَّبِيِّ - فَاعْجَبُوا لِلْعَجَبِ إنَّمَا كَذَّبَ أَحْمَدُ - رَحِمَهُ اللَّهُ - مَنْ رَوَى هَذَا الْخَبَرَ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ - وَمِنْ طَرِيقِ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ وَصَدَقَ أَحْمَدُ فِي ذَلِكَ -: فَهَذَا لَمْ يَأْتِ قَطُّ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ وَلَا مِنْ طَرِيقِ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ، إنَّمَا جَاءَ مِنْ طَرِيقِ بِشْرِ بْنِ بَكْرٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْ بَدَّلَ الْأَسَانِيدَ فَقَدْ أَخْطَأَ، أَوْ كَذَبَ إنْ تَعَمَّدَ ذَلِكَ.

L21754 Then, all wonder is directed at them concerning this report—which is a mursal narration transmitted through al-Ḥasan's chain—while they themselves cite as evidence in this very issue the weakest of mursal narrations. Is this not astonishing in itself? Then they said: How can people be absolved of what they were compelled to do when they have already committed it? This constitutes an objection against the Messenger of Allah (peace and blessings of Allah be upon him).

ثُمَّ الْعَجَبُ كُلُّهُ عَلَيْهِمْ هَذَا الْخَبَرُ بِأَنَّهُ مُرْسَلٌ مِنْ طَرِيقِ الْحَسَنِ، وَهُمْ يَحْتَجُّونَ فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا بِأَنْتَنَ مَا يَكُونُ مِنْ الْمَرَاسِيلِ، أَمَا هَذَا عَجَبٌ؟ ثُمَّ قَالُوا: كَيْفَ يُرْفَعُ عَنْ النَّاسِ مَا اُسْتُكْرِهُوا عَلَيْهِ وَقَدْ وَقَعَ مِنْهُمْ؟ وَهَذَا اعْتِرَاضٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21755 Then their lack of religious adherence and absence of shame led them to this objection which inherently rebounds upon them, just as their lifting of the legal ruling on coercion in sales, purchases, acknowledgments or confessions, and charity rebounds. Moreover, this constitutes frivolous speech on their part, for the Prophet (peace be upon him) never stated that a coerced person did not utter what he was compelled to say or did not perform what he was coerced to do. Rather, he (peace be upon him) informed that accountability for the legal ruling concerning all such matters is lifted from him - just as the praying person is exempted from accountability for his action due to forgetfulness in the Taslim or speech, the fasting person is exempted for

ثُمَّ حَمَلَهُمْ قِلَّةُ الدِّينِ وَعَدَمُ الْحَيَاءِ عَلَى مِثْلِ هَذَا الِاعْتِرَاضِ الَّذِي هُوَ عَائِدٌ عَلَيْهِمْ بِذَاتِهِ كَمَا هُوَ عَائِدٌ فِي رَفْعِهِمْ الْإِكْرَاهَ فِي الْبَيْعِ، وَالشِّرَاءِ، وَالْإِقْرَارِ، وَالصَّدَقَةِ. ثُمَّ هُوَ كَلَامٌ سَخِيفٌ مِنْهُمْ؛ لِأَنَّهُ لَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - قَطُّ: إنَّ الْمُكْرَهَ لَمْ يَقُلْ مَا أُكْرِهَ عَلَى أَنْ يَقُولَهُ، وَلَا أَنَّهُ لَمْ يَفْعَلْ مَا أُكْرِهَ عَلَى فِعْلِهِ، لَكِنَّهُ أَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ رُفِعَ عَنْهُ حُكْمُ كُلِّ ذَلِكَ، كَمَا رُفِعَ عَنْ الْمُصَلِّي فِعْلُهُ بِالسَّهْوِ فِي السَّلَامِ، وَالْكَلَامِ، وَعَنْ الصَّائِمِ أَكْلُهُ، وَشُرْبُهُ، وَجِمَاعُهُ سَهْوًا، وَعَنْ الْبَائِعِ مُكْرَهًا بَيْعُهُ - وَبِاَللَّهِ التَّوْفِيقُ.

unintentional eating, drinking, or intercourse, and the seller is exempted for a coerced sale - and success is with Allah.

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ مَا مَوَّهُوا بِهِ فِي هَذَا فَهُوَ مُبْطِلٌ لِقَوْلِهِمْ فِي إبْطَالِ بَيْعِ الْمُكْرَهِ وَابْتِيَاعِهِ، وَإِقْرَارِهِ، وَهِبَتِهِ، وَصَدَقَتِهِ، مِثْلُ قَوْلِهِمْ: إنَّنَا وَجَدْنَا الْمُكْرَهَةَ عَلَى إرْضَاعِ الصَّبِيِّ خَمْسَ رَضَعَاتٍ يُحَرِّمْنَ عَلَيْهِ وَيُحَرِّمُ عَلَيْهِ مِمَّا يُحَرَّمُ عَلَيْهِ مِنْ جِهَتِهَا لَوْ أَرْضَعَتْهُ طَائِعَةً.

L21756–21758 Abu Muhammad said: All the arguments they have deceptively framed in this matter invalidate their own assertions in nullifying the coerced party's sale, purchase, acknowledgment, gift, and charitable act – as in their statement: "Indeed, we hold the coerced party [to be compelled] in breastfeeding..." Five breastfeedings establish prohibition for the boy, forbidding him the same relationships that would be prohibited through her lineage, provided she breastfed him willingly.

قَالَ عَلِيٌّ: وَهَذَا عَلَيْهِمْ فِي الْإِكْرَاهِ عَلَى الْبَيْعِ، وَالِابْتِيَاعِ، وَالصَّدَقَةِ، وَالْإِقْرَارِ - ثُمَّ نَقُولُ لَهُمْ: إنَّ الرَّضَاعَ لَا يُرَاعَى فِيهِ نِيَّةٌ، بَلْ رَضَاعُ الْمَجْنُونَةِ، وَالنَّائِمَةِ، كَرَضَاعِ الْعَاقِلَةِ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يُحَرِّمُ مِنْ الرَّضَاعِ مَا يُحَرِّمُ مِنْ النَّسَبِ» فَلَا مَدْخَلَ لِلْإِرَادَةِ فِي الرَّضَاعِ، وَلَا هُوَ عَمَلٌ أُمِرَتْ بِهِ فَيُرَاعَى فِيهِ نِيَّتُهَا -.

L21759 Ali said: This ruling applies to them regarding coercion in selling, purchasing, charitable giving, and legal acknowledgment. Then we say to them: No intention is considered in breastfeeding - rather, the breastfeeding by a mentally incapacitated or sleeping woman equals that of a sane woman, according to the Prophet's statement (peace be upon him): "What is prohibited through lineage is prohibited through breastfeeding." Thus, there is no role for will in breastfeeding, nor is it a commanded act requiring consideration of her intention.

وَقَالُوا: وَجَدْنَا مَنْ أُكْرِهَ عَلَى وَطْءِ امْرَأَةِ ابْنِهِ يُحَرِّمُهَا عَلَى الِابْنِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَلَيْهِمْ فِي الْبَيْعِ، وَالصَّدَقَةِ، وَالْإِقْرَارِ -.

L21760 They said: We found that someone compelled to have intercourse with his son's wife renders her forbidden to the son. Abu Muhammad said: And this is upon them in sale, charity, and confession –

وَجَوَابُنَا نَحْنُ أَنَّهُ إنْ أُخِذَ فَرْجُهُ فَأُدْخِلَ فِي فَرْجِهَا لَمْ يُحَرِّمْ شَيْئًا؛ لِأَنَّهُ لَمْ يَنْكِحْهَا - وَأَمَّا إنْ تُهُدِّدَ، أَوْ ضُرِبَ حَتَّى جَامَعَهَا بِنَفْسِهِ قَاصِدًا -: فَهُوَ زَانٍ مُخْتَارٌ قَاصِدٌ، وَعَلَيْهِ الْحَدُّ، وَتُحَرَّمُ؛ لِأَنَّهُ لَا حُكْمَ لِلْإِكْرَاهِ هَهُنَا.

L21761 Our answer is that if his penis is seized and inserted into her vagina, it does not make her unlawful, because he did not engage with her willingly. As for the case where he is threatened or beaten until he deliberately engages in intercourse with her intentionally, then he is a willing and intentional adulterer. The ḥadd punishment applies to him, and she becomes forbidden to him, for coercion holds no legal weight here.

قَالَ عَلِيٌّ: وَنَقُولُ لَهُمْ: هَبْكُمْ أَنَّكُمْ وَجَدْتُمْ فِي الطَّلَاقِ، وَالْعِتْقِ: هَذِهِ الْآثَارَ الْمَكْذُوبَةَ، فَأَيُّ شَيْءٍ وَجَدْتُمْ فِي النِّكَاحِ؟ وَبِأَيِّ شَيْءٍ أَلْزَمْتُمُوهُ؟ وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إبْطَالُهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ

L21762 Ali said: And we say to them: Suppose you have found these spurious traditions concerning divorce and manumission—what then have you found regarding marriage? By what principle have you obligated him to it? Yet it has been authentically reported from the Prophet—peace and blessings of Allah be upon him—that he invalidated such practices, as transmitted through the chain of Malik, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from

his father, from ʿAbd al-Raḥmān and Mujammiʿ—the two sons of Yazīd ibn Jāriyah al-Anṣārī—from Khaṅsāʾ bint Khidhām al-Anṣāriyyah: that her father married her off while she was a thayyib, but she disliked it. She came to the Prophet—peace and blessings of Allah be upon him—and he annulled the marriage contract.

عَنْ أَبِيهِ عَنْ عَبْدِ الرَّحْمَنِ، وَمُجَمِّعٍ، ابْنَيْ يَزِيدَ بْنِ جَارِيَةَ الْأَنْصَارِيِّ «عَنْ خَنْسَاءَ بِنْتِ خِذَامٍ الْأَنْصَارِيَّةِ أَنَّ أَبَاهَا زَوَّجَهَا وَهِيَ ثَيِّبٌ، فَكَرِهَتْ ذَلِكَ، فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَدَّ نِكَاحَهُ» .

L21763 From the path of Ahmad ibn Shu'ayb: Muhammad ibn Dawud al-Miṣṣīṣī narrated to us; al-Husayn ibn Muhammad narrated to us; Jarir ibn Hazim narrated to us from Ayyub al-Sikhtiyānī from Ikrimah from Ibn Abbas: "A virgin came to the Prophet (peace be upon him) and said: 'My father has married me off'—and she was unwilling—so the Prophet (peace be upon him) invalidated her marriage."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ دَاوُد الْمِصِّيصِيُّ نا الْحُسَيْنُ بْنُ مُحَمَّدٍ نا جَرِيرُ بْنُ حَازِمٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ جَارِيَةً بِكْرًا أَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إنَّ أَبِي زَوَّجَنِي - وَهِيَ كَارِهَةٌ - فَرَدَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نِكَاحَهَا» .

L21764–21766 These two chains are of the utmost validity, with no opposing [ruling] to them. Abū Muḥammad said: Whoever rules to uphold the marriage of a coerced person, the divorce of a coerced person, or the manumission of a coerced person... The ruling is perpetually invalid. If he marries the divorced or emancipated woman, intercourse in such a marriage, after such a divorce, or after such emancipation constitutes adultery. The adulterer shall be lashed and executed by stoning if he is a married person, or lashed one hundred times and exiled for a year if he is unmarried.

وَهَذَانِ سَنَدَانِ فِي غَايَةِ الصِّحَّةِ لَا مُعَارِضَ لَهُمَا. قَالَ أَبُو مُحَمَّدٍ: فَمَنْ حَكَمَ بِإِمْضَاءِ نِكَاحِ مُكْرَهٍ، أَوْ طَلَاقِ مُكْرَهٍ، أَوْ عِتْقِ مُكْرَهٍ، فَحُكْمُهُ مَرْدُودٌ أَبَدًا، الْوَطْءُ فِي ذَلِكَ النِّكَاحِ، وَبَعْدَ ذَلِكَ الطَّلَاقِ، وَبَعْدَ ذَلِكَ الْعِتْقِ - إنْ تَزَوَّجَ الْمُطَلَّقَةَ وَالْمُعْتَقَةَ -: زِنًا يُجْلَدُ، وَيُرْجَمُ إنْ كَانَ مُحْصَنًا، وَيُجْلَدُ مِائَةً وَيُغَرَّبُ عَامًا إنْ كَانَ غَيْرَ مُحْصَنٍ.

L21767 It is astonishing that they do not consider coercion into apostasy as effecting the wife's divorce, while apostasy according to them causes her divorce—and this constitutes a contradiction in their endorsement of divorce through compulsion.

وَالْعَجَبُ أَنَّهُمْ لَا يَرَوْنَ الْإِكْرَاهَ عَلَى الرِّدَّةِ تُبِينُ الزَّوْجَةَ، وَالرِّدَّةُ عِنْدَهُمْ تُبِينُهَا - وَهَذَا تَنَاقُضٌ مِنْهُمْ فِي إجَازَتِهِمْ الطَّلَاقَ بِالْكُرْهِ.

L21768 1407 - Issue: If someone is compelled to prostrate before an idol or a cross, let him prostrate to Allah, the Most High, promptly. Let him not concern himself with any direction in which the idol or cross may be. Allah, the Most High, said: "So wherever you turn, there is the Face of Allah" [2:115].[7]

١٤٠٧ - مَسْأَلَةٌ: وَمَنْ أُكْرِهَ عَلَى سُجُودٍ لِصَنَمٍ، أَوْ لِصَلِيبٍ، فَلْيَسْجُدْ لِلَّهِ تَعَالَى مُبَادِرًا إلَى ذَلِكَ، وَلَا يُبَالِي فِي أَيِّ جِهَةٍ كَانَ ذَلِكَ الصَّنَمُ، وَالصَّلِيبُ، قَالَ اللَّهُ تَعَالَى: {فَأَيْنَمَا تُوَلُّوا فَثَمَّ وَجْهُ اللَّهِ} [البقرة: ١١٥]

[مَسْأَلَةٌ لَا فَرْقَ بَيْنَ إكْرَاهِ السُّلْطَانِ أَوْ اللُّصُوصِ]

L21769 **Issue: There is no difference between coercion whether**

[7] **Qur'an references (L21768):** Qur'an 2:115 (Al-Baqarah).

from a ruler or bandits.

L21770 Issue 1408: There is no distinction between coercion by a ruler, thieves, or someone without authority. All of that is equal in everything we have mentioned, because Allah the Exalted did not differentiate between any of these matters, nor did His Messenger (peace be upon him).

L21771 **An issue: coercion by striking with a whip.**

L21772 1409 – Issue: The Hanafis stated that duress by striking a single whip, two whip strikes, or imprisonment for a day does not constitute duress.

L21773 Abū Muḥammad said: This is a flawed categorization, for it is not supported by the Quran, the Sunnah, or rational reasoning. All flogging constitutes lash after lash up to a hundred thousand or more. Yet they censure the statement of the Companion - with no known opposition to him - while we have been narrated through Shu'bah's chain: Abū Ḥayyān Yaḥyā ibn Sa'd al-Taymī reported to us from his father, who said: Al-Ḥārith ibn Suwayd told me: I heard 'Abdullāh ibn Mas'ūd say: "There is no authority holder who seeks to compel me to speak words that would ward off one or two lashes from me except that I would speak them." No opposition to him is known from the Companions (may Allah be pleased with them).

L21774 **The Issue of the Binding Nature of Vows and Oaths Made Under Compulsion.**

L21775 Issue 1410: They argued for the obligation of vows and oaths made under compulsion using an unsound hadith transmitted through Ḥudhayfah: "The polytheists seized him at Badr while he was intending to reach the Messenger of Allah, peace be upon him, and made him swear not to approach the Prophet, peace be upon him. He came to the Prophet, peace be upon him, and informed him. The Prophet said: 'Fulfill their covenant in accordance with them, and we seek Allah's help against them.'"

١٤٠٨ - مَسْأَلَةٌ: وَلَا فَرْقَ بَيْنَ إكْرَاهِ السُّلْطَانِ، أَوْ اللُّصُوصِ، أَوْ مَنْ لَيْسَ سُلْطَانًا، كُلُّ ذَلِكَ سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُفَرِّقْ بَيْنَ شَيْءٍ مِنْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةٌ الْإِكْرَاهُ بِضَرْبِ سَوْطٍ]

١٤٠٩ - مَسْأَلَةٌ: وَقَالَ الْحَنَفِيُّونَ: الْإِكْرَاهُ بِضَرْبِ سَوْطٍ أَوْ سَوْطَيْنِ أَوْ حَبْسِ يَوْمٍ -: لَيْسَ إكْرَاهًا.

قَالَ أَبُو مُحَمَّد: وَهَذَا تَقْسِيمٌ فَاسِدٌ؛ لِأَنَّهُ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، وَالضَّرْبُ كُلُّهُ سَوْطٌ ثُمَّ سَوْطٌ إلَى مِائَةِ أَلْفٍ أَوْ أَكْثَرَ. وَهُمْ يُشَنِّعُونَ بِقَوْلِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ -: وَقَدْ رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، قَالَ: نا أَبُو حَيَّانَ يَحْيَى بْنُ سَعْدٍ التَّيْمِيُّ عَنْ أَبِيهِ، قَالَ: قَالَ لِي الْحَارِثُ بْنُ سُوَيْدٌ: سَمِعْت عَبْدَ اللَّهِ بْنَ مَسْعُودٍ يَقُولُ: مَا مِنْ ذِي سُلْطَانٍ يُرِيدُ أَنْ يُكَلِّفَنِي كَلَامًا يَدْرَأُ عَنِّي سَوْطًا أَوْ سَوْطَيْنِ إلَّا كُنْت مُتَكَلِّمًا بِهِ - وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ.

[مَسْأَلَةٌ إلْزَامِ النَّذْرِ وَالْيَمِينِ بِالْكُرْهِ]

١٤١٠ - مَسْأَلَةٌ: وَاحْتَجُّوا فِي إلْزَامِ النَّذْرِ، وَالْيَمِينِ بِالْكُرْهِ: بِحَدِيثٍ فَاسِدٍ مِنْ طَرِيقِ حُذَيْفَةَ «أَنَّ الْمُشْرِكِينَ أَخَذُوهُ - وَهُوَ يُرِيدُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِبَدْرٍ فَأَحْلَفُوهُ أَنْ لَا يَأْتِيَ مُحَمَّدًا، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ، فَقَالَ: نَفِي لَهُمْ بِعَهْدِهِمْ، وَنَسْتَعِينُ اللَّهَ عَلَيْهِمْ» .

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ حَدِيثٌ مَكْذُوبٌ وَمَا كَانَ الْمُشْرِكُونَ الْمَانِعُونَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ فِي طَرِيقِ بَدْرٍ، وَحُذَيْفَةُ لَمْ يَكُنْ مِنْ أَهْلِ مَكَّةَ، إنَّمَا هُوَ مِنْ أَهْلِ الْمَدِينَةِ حَلِيفٌ لِلْأَنْصَارِ وَنَصُّ الْقُرْآنِ. يُخْبِرُ بِأَنَّهُمْ لَمْ يَجْتَمِعُوا بِبَدْرٍ عَنْ وَعْدٍ، وَلَا عِلْمِ بَعْضِهِمْ بِبَعْضٍ، حَتَّى قَرُبَ الْعَسْكَرَانِ، وَلَمْ يَكُنْ بَيْنَهُمْ إلَّا كَثِيبُ رَمْلٍ فَقَطْ - وَمِثْلُهُمْ احْتَجَّ بِمِثْلِ هَذَا، وَحَاشَ لِلَّهِ أَنْ يَأْمُرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِنْفَاذِ عَهْدٍ بِمَعْصِيَةٍ.

L21776–21778 Abu Muhammad said: This is a fabricated hadith, for the polytheists never prevented the Prophet (may God's blessings and peace be upon him) from proceeding on the route to Badr. Hudhayfah was not among the people of Mecca; rather, he was a confederate among the people of Medina by pact. For the Ansar and the explicit text of the Quran. It informs that they did not assemble at Badr due to any prior promise, nor did some of them know of others until the two armies drew near, with nothing between them but a sand dune. Those akin to them have argued using such reasoning, and far removed is Allah that the Messenger of Allah—may Allah's blessings and peace be upon him—would command the fulfillment of a covenant through disobedience.

لَيْتَ شِعْرِي لَوْ عَاهَدُوا إنْسَانًا عَلَى أَنْ لَا يُصَلِّيَ، أَوْ أَنْ يَأْتِيَ أُمَّهُ، أَكَانَ يَلْزَمُهُمْ هَذَا عِنْدَهُمْ؟ إنَّ هَذَا لَعَجَبٌ؟ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L21779 I wish I knew: if they were to bind a person by a covenant not to pray, or to commit incest with his mother, would this be deemed binding upon them in their view? Truly, this is indeed astonishing! And we seek refuge in Allah from abandonment.