

AL-MUHALLA

كِتَابُ الْبُيُوعِ

The Book of Sales

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

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The Book of Sales. Issue: The Sale is Divided into Two Categories.

١٤١١ - مَسْأَلَةٌ: - الْبَيْعُ قِسْمَانِ -: إمَّا بَيْعُ سِلْعَةٍ حَاضِرَةٍ مَرْئِيَّةٍ مُقَلَّبَةٍ بِسِلْعَةٍ كَذَلِكَ، أَوْ بِسِلْعَةٍ بِعَيْنِهَا غَائِبَةٍ مَعْرُوفَةٍ مَوْصُوفَةٍ، أَوْ بِدَنَانِيرَ، أَوْ بِدَرَاهِمَ -: كُلُّ ذَلِكَ حَاضِرٌ مَقْبُوضٌ، أَوْ إلَى أَجَلٍ مُسَمًّى، أَوْ حَالَّةٍ فِي الذِّمَّةِ وَإِنْ لَمْ يَقْبِضْ.

1411. Issue: Sale is of two types: either the exchange of a present, visible, and inspected commodity for another such commodity, or for a specific absent commodity that is known and described, or for dinars, or for dirhams—all of which are either present and received, deferred to a specified term, or due in the liability even if not physically received.

وَالْقِسْمُ الثَّانِي: بَيْعُ سِلْعَةٍ بِعَيْنِهَا غَائِبَةٍ مَعْرُوفَةٍ أَوْ مَوْصُوفَةٍ بِمِثْلِهَا، أَوْ بِدَنَانِيرَ، أَوْ بِدَرَاهِمَ -: كُلُّ ذَلِكَ حَاضِرٌ مَقْبُوضٌ، أَوْ إلَى أَجَلٍ مُسَمًّى، أَوْ حَالَّةٍ فِي الذِّمَّةِ وَإِنْ لَمْ يَقْبِضْ.

The second category: the sale of a specific absent commodity that is either known or described by its equivalent, or sold for dinars or dirhams. All such sales are either present and physically possessed, deferred to a specified term, or an existing obligation in the liability—even if the buyer has not taken possession.

أَمَّا بَيْعُ الْحَاضِرِ الْمَرْئِيِّ الْمُقَلَّبِ بِمِثْلِهِ أَوْ بِدَنَانِيرَ أَوْ دَرَاهِمَ حَاضِرَةٍ مَقْبُوضَةٍ أَوْ إلَى أَجَلٍ مُسَمًّى، أَوْ حَالَّةٍ فِي الذِّمَّةِ -: فَمُتَّفَقٌ عَلَى جَوَازِهِ.

As for the sale of a present, visible, and examined item for its equivalent, or for Dinars or Dirhams that are present and in hand, or for a specified term, or a deferred debt obligation—there is scholarly consensus on its permissibility.

وَأَمَّا بَيْعُ سِلْعَةٍ غَائِبَةٍ بِعَيْنِهَا مَرْئِيَّةٍ مَوْصُوفَةٍ مُعَيَّنَةٍ، فَفِيهِ خِلَافٌ فَأَحَدُ قَوْلَيْ الشَّافِعِيِّ: الْمَنْعُ مِنْ بَيْعِ الْغَائِبِ جُمْلَةً - وَقَالَ مَرَّةً: هُوَ جَائِزٌ وَلَهُ خِيَارُ الرُّؤْيَةِ، وَقَالَ مَرَّةً: مِثْلَ قَوْلِنَا فِي جَوَازِ بَيْعِ الْغَائِبِ وَجَوَازِ النَّقْدِ فِيهِ وَلُزُومِ الْبَيْعِ إذَا وُجِدَ عَلَى الصِّفَةِ الَّتِي وَقَعَ الْبَيْعُ عَلَيْهَا بِلَا خِيَارٍ فِي ذَلِكَ.

As for the sale of a specifically determined, visibly described absent commodity, there is disagreement. One of the two positions of al-Shāfiʿī prohibits selling absent commodities categorically. He once stated: "It is permissible but grants the buyer khiyar al-ru'yah (option of inspection)." On another occasion, he said: "This aligns with our view permitting the sale of absent commodities, the permissibility of immediate payment in such transactions, and the finality of the contract if the item conforms to the stipulated description without granting any rescission option in that case."

وَأَجَازَ مَالِكٌ بَيْعَ الْغَائِبَاتِ إلَّا أَنَّهُ لَمْ يُجِزْ النَّقْدَ فِيهَا جُمْلَةً فِي أَحَدِ قَوْلَيْهِ -: رَوَاهُ ابْنُ وَهْبٍ عَنْهُ - وَأَجَازَ ابْنُ الْقَاسِمِ عَنْهُ النَّقْدَ فِي الضِّيَاعِ وَالدُّورِ - قَرُبَتْ أَمْ بَعُدَتْ - وَأَمَّا الْعُرُوضُ فَإِنَّهُ أَجَازَ النَّقْدَ فِيهِ إنْ كَانَ قَرِيبًا وَلَا يَجُوزُ إنْ كَانَ بَعِيدًا.

Malik permitted the sale of unseen items, but he prohibited lump-sum cash payment in them in one of his two opinions—as narrated by Ibn Wahb from him. Ibn al-Qasim, applying Malik's position, permitted cash payment for farmlands and houses whether near or distant. As for merchandise, he permitted cash payment if it was nearby but prohibited it if distant.

وَقَالَ أَبُو حَنِيفَةَ: بَيْعُ الْغَائِبِ جَائِزٌ مَوْصُوفًا كَانَ أَوْ غَيْرَ مَوْصُوفٍ، وَالنَّقْدُ فِي ذَلِكَ جَائِزٌ. وَكَيْفَ

Abu Hanifah said: The sale of unseen items is permissible whether described or undescribed, and cash payment in such transactions is permissible. How-

ever, the option remains with the buyer when he inspects what he purchased. At that point, he may either annul the sale or ratify it, whether it conforms to the description or differs from it.

وَقَالَ أَبُو حَنِيفَةَ: بَيْعُ الْغَائِبَاتِ جَائِزٌ مَوْصُوفَةً وَغَيْرَ مَوْصُوفَةٍ، وَالنَّقْدُ فِي ذَلِكَ جَائِزٌ إِلَّا أَنَّ الْخِيَارَ لِلْمُشْتَرِي إِذَا رَأَى مَا اشْتَرَى، فَلَهُ حِينَئِذٍ أَنْ يَرُدَّ الْبَيْعَ، وَأَنْ يُمْضِيَهُ سَوَاءٌ وَجَدَهُ كَمَا وُصِفَ لَهُ، أَوْ وَجَدَهُ بِخِلَافِ مَا وُصِفَ لَهُ.

L21788–21789 He also has the option to annul the sale or confirm it before he sees what he has purchased.

وَلَهُ الْخِيَارُ أَيْضًا فِي فَسْخِ الْبَيْعِ أَوْ إِمْضَائِهِ قَبْلَ أَنْ يَرَى مَا اشْتَرَى.

L21790 Even if he were to formally attest against himself that he has waived his right of option and that he has finalized the sale and bound himself to it, none of that becomes binding upon him, and he retains the right of option as before. If he sees the face of the female slave he purchased while she is absent (i.e., without full access to inspect her) and does not examine the rest of her, the sale becomes binding, his right of option is forfeited, and he may not return her except due to a defect. The ruling applies equally and without distinction to a male slave.

وَلَوْ أَشْهَدَ عَلَى نَفْسِهِ أَنَّهُ قَدْ أَسْقَطَ مَالَهُ مِنَ الْخِيَارِ، وَأَنَّهُ قَدْ أَمْضَى الْبَيْعَ وَالْتَزَمَهُ: لَمْ يَلْزَمْهُ شَيْءٌ مِنْ ذَلِكَ وَهُوَ بِالْخِيَارِ كَمَا كَانَ - فَإِذَا رَأَى وَجْهَ الْجَارِيَةِ الَّتِي اشْتَرَى وَهِيَ غَائِبَةٌ وَلَمْ يُقَلِّبْ سَائِرَهَا فَقَدْ لَزِمَتْهُ وَسَقَطَ خِيَارُهُ، وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ - وَكَذَلِكَ الْقَوْلُ فِي الْعَبْدِ سَوَاءً سَوَاءً.

L21791 He said: If one purchases an unseen animal and subsequently sees its hindquarters, the sale becomes binding on him even if he does not see the remainder of it. He cannot rescind the sale except due to a defect. This ruling applies to all animals, excluding the children of Adam.

قَالَ: فَإِنْ اشْتَرَى دَابَّةً غَائِبَةً فَرَأَى عَجُزَهَا لَزِمَتْهُ وَإِنْ لَمْ يَرَ سَائِرَهَا وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ - وَكَذَلِكَ سَائِرُ الْحَيَوَانِ حَاشَا بَنِي آدَمَ.

L21792 He said: If someone purchases garments—whether absent or present in a folded state—and inspects their exterior surfaces and folded sections without unfolding them, the sale becomes binding, his right to rescind is nullified, and he may not return them except due to a defect.

قَالَ: فَإِنْ اشْتَرَى ثِيَابًا غَائِبَةً أَوْ حَاضِرَةً مَطْوِيَّةً فَرَأَى ظُهُورَهَا وَمَوَاضِعَ طَيِّهَا وَلَمْ يَنْشُرْهَا فَقَدْ لَزِمَتْهُ وَسَقَطَ خِيَارُهُ وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ.

L21793 He said: If one purchases Herati clothes in a bag, Zutti clothes in a bale, ghee in skin containers, oil likewise, wheat in a grain sack, goods not measured by volume or weight, or an animal—and has not seen any of these—they retain the right to inspect until they have seen all that was purchased.

قَالَ: فَإِنْ اشْتَرَى ثِيَابًا هَرَوِيَّةً فِي جِرَابٍ أَوْ ثِيَابًا زُطِّيَّةً فِي عِدْلٍ، أَوْ سَمْنًا، فِي زُقَاقٍ، أَوْ زَيْتًا كَذَلِكَ، أَوْ حِنْطَةً فِي غِرَارَةٍ، أَوْ عُرُوضًا مِمَّا لَا يُكَالُ وَلَا يُوزَنُ، أَوْ حَيَوَانًا وَلَمْ يَرَ شَيْئًا مِنْ ذَلِكَ: فَإِنَّ لَهُ خِيَارَ الرُّؤْيَةِ حَتَّى يَرَى كُلَّ مَا اشْتَرَى مِنْ ذَلِكَ.

L21794 If he has seen all the garments except one or all beasts of burden except one, he may rescind the sale if he wishes—regardless of whether what he found matched the description given to him or contradicted it. However, for clarified butter, oil, or wheat: if he saw part of these items and the unseen

وَلَوْ رَأَى جَمِيعَ الثِّيَابِ إِلَّا وَاحِدًا مِنْهَا أَوْ جَمِيعَ الدَّوَابِّ إِلَّا وَاحِدًا مِنْهَا فَلَهُ فَسْخُ الْبَيْعِ إِنْ شَاءَ، وَسَوَاءٌ وَجَدَ كُلَّ مَا رَأَى كَمَا وُصِفَ لَهُ بِخِلَافِ مَا وُصِفَ لَهُ، إِلَّا السَّمْنَ

portion was identical to what he observed, the sale becomes binding and his option is forfeited. The author stated: If one buys a house after viewing its exterior without inspecting the interior, the sale becomes binding, the option of inspection is forfeited, and he may only return it due to a defect. It is narrated from Zufar that the option remains valid unless the buyer inspects part of its land in addition.

وَالزَّيْتَ، وَالْحِنْطَةَ، فَإِنَّهُ إِنْ رَأَى بَعْضَ ذَلِكَ فَكَانَ مَا لَمْ يَرَ مِنْهُ مِثْلَ الَّذِي رَأَى: فَقَدْ لَزِمَهُ الْبَيْعُ وَسَقَطَ خِيَارُهُ. قَالَ: فَإِنْ ابْتَاعَ دَارًا فَرَآهَا مِنْ خَارِجِهَا وَلَمْ يَرَهَا مِنْ دَاخِلٍ: فَقَدْ لَزِمَتْهُ وَسَقَطَ خِيَارُ الرُّؤْيَةِ وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ - وَرُوِيَ عَنْ زُفَرَ: أَنَّهُ لَا يَسْقُطُ خِيَارُهُ إِلَّا حَتَّى يَرَى مَعَ ذَلِكَ شَيْئًا مِنْ أَرْضِهَا.

L21795 Abu Yusuf said: A blind person's physical inspection (by touch) of the door and walls of the house nullifies his right to rescind the sale, binds him to the transaction, and he cannot return it unless a defect is discovered.

وَقَالَ أَبُو يُوسُفَ: لَمْسُ الْأَعْمَى لِبَابِ الدَّارِ وَلِحَائِطِهَا: يُسْقِطُ خِيَارَهُ وَيَلْزَمُهُ الْبَيْعُ، وَلَا يَرُدُّهَا إِلَّا مِنْ عَيْبٍ.

L21796 Abu Hanifa and his companions stated: One may not rescind a sale after viewing the purchased item except in the seller's presence. If two people jointly purchase an unseen item through a single transaction, then inspect it, and one party rescinds the sale while the other approves it, the rescission is not permissible whatsoever unless both rescind it together.

قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: وَلَيْسَ لَهُ أَنْ يَرُدَّ الْبَيْعَ إِذَا رَأَى مَا ابْتَاعَ إِلَّا بِمَحْضَرِ الْبَائِعِ، فَلَوْ اشْتَرَى اثْنَانِ شِرَاءً وَاحِدً غَائِبًا فَرَأَيَاهُ فَرَدَّ أَحَدُهُمَا الْبَيْعَ وَأَجَازَهُ الْآخَرُ فَلَا يَجُوزُ الرَّدُّ إِلَّا أَنْ يَرُدَّاهُ مَعًا.

L21797–21798 They said: If he sends a messenger to receive what he purchased on his behalf, and the messenger sees the sold item and takes possession of it, the buyer retains his right of option. But if he appoints an agent, and the agent sees the sold item and takes possession of it, the buyer's right of option lapses according to Abū Ḥanīfah's view, whereas it does not lapse in the opinion of Abū Yūsuf and Muḥammad. Abū Ḥanīfah once stated—but later retracted—that the seller also has a right of option if he sells something unseen, just as the buyer does.

قَالُوا: فَإِنْ أَرْسَلَ رَسُولًا لِيَقْبِضَ لَهُ مَا اشْتَرَى فَرَأَى الرَّسُولُ الشَّيْءَ الْمَبِيعَ وَقَبَضَهُ فَالْمُشْتَرِي بَاقٍ عَلَى خِيَارِهِ، فَلَوْ وَكَّلَ وَكِيلًا فَرَأَى الْوَكِيلُ الشَّيْءَ الْمَبِيعَ وَقَبَضَهُ فَقَدْ سَقَطَ خِيَارُ الْمُشْتَرِي فِي قَوْلِ أَبِي حَنِيفَةَ، وَلَمْ يَسْقُطْ عِنْدَ أَبِي يُوسُفَ، وَمُحَمَّدٍ - وَقَالَ أَبُو حَنِيفَةَ مَرَّةً: الْخِيَارُ أَيْضًا لِلْبَائِعِ إِذَا بَاعَ مَا لَمْ يَرَ كَمَا لِلْمُشْتَرِي، ثُمَّ رَجَعَ عَنْ ذَلِكَ.

L21799 Abu Muhammad said: It has been narrated from the predecessors regarding this matter, and there is a narration concerning it. It states that 'Uthmān sold a plot of land in Kūfah to Ṭalḥah (may Allah be pleased with them both). 'Uthmān was told, "You have been defrauded." He replied, "The option is mine, for I sold what I had not seen." Ṭalḥah countered, "Rather, the option is mine, for I bought what I had not seen." Jubayr ibn Muṭ'im judged between them and ruled that the option belonged to Ṭalḥah, not to 'Uthmān. Ibn Shubrumah said: The option of inspection applies to both the seller and the buyer together, as was related from 'Uthmān.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ فِي ذَلِكَ عَنْ السَّلَفِ وَفِي ذَلِكَ أَثَرٌ، وَهُوَ أَنَّ عُثْمَانَ بَاعَ مِنْ طَلْحَةَ - رَضِيَ اللَّهُ عَنْهُمَا - أَرْضًا بِالْكُوفَةِ، فَقِيلَ لِعُثْمَانَ: إنَّك قَدْ غَبَنْت، فَقَالَ عُثْمَانُ: لِي الْخِيَارُ لِأَنِّي بِعْتُ مَا لَمْ أَرَ، وَقَالَ طَلْحَةُ: بَلْ لِي الْخِيَارُ لِأَنِّي اشْتَرَيْت مَا لَمْ أَرَ -: فَحَكَمَ بَيْنَهُمَا جُبَيْرُ بْنُ مُطْعِمٍ، فَقَضَى: أَنَّ الْخِيَارَ لِطَلْحَةَ لَا لِعُثْمَانَ - وَقَالَ ابْنُ شُبْرُمَةَ: بِخِيَارِ الرُّؤْيَةِ لِلْبَائِعِ وَلِلْمُشْتَرِي مَعًا كَمَا رُوِيَ عَنْ عُثْمَانَ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ إِسْمَاعِيلَ بْنِ سَالِمٍ، وَيُونُسَ بْنِ عُبَيْدٍ وَالْمُغِيرَةِ، قَالَ إِسْمَاعِيلُ: عَنْ الشَّعْبِيِّ، وَقَالَ يُونُسُ: عَنْ الْحَسَنِ، وَقَالَ الْمُغِيرَةُ: عَنْ إِبْرَاهِيمَ، ثُمَّ اتَّفَقُوا كُلُّهُمْ فِيمَنْ اشْتَرَى شَيْئًا لَمْ يَنْظُرْ إلَيْهِ كَائِنًا مَا كَانَ، قَالُوا: هُوَ بِالْخِيَارِ إنْ شَاءَ أَخَذَ وَإِنْ شَاءَ تَرَكَ، وَقَالَ إبْرَاهِيمُ: هُوَ بِالْخِيَارِ وَإِنْ وَجَدَهُ كَمَا شَرَطَ لَهُ، وَرُوِيَ أَيْضًا عَنْ مَكْحُولٍ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ - وَالنَّقْدُ عِنْدَهُمْ فِي كُلِّ ذَلِكَ جَائِزٌ.

L21800 From the narration of Ibn Abi Shaybah: Hushaym narrated to us from Ismail ibn Salim, Yunus ibn Ubayd, and al-Mughirah. Ismail reported from al-Sha'bi, Yunus reported from al-Hasan, and al-Mughirah reported from Ibrahim. They all agreed regarding one who purchases something without having inspected it, whatever it may be. They said: "He has the right of khiyar—if he wishes, he may take it, and if he wishes, he may leave it." Ibrahim said: "He retains the right of khiyar even if he finds it as stipulated." This ruling is also narrated from Makhul—and it is the position of al-Awzaʿi and Sufyan al-Thawri—and immediate payment is permissible in all such cases in their view.

وَخَالَفَهُمْ غَيْرُهُمْ، كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: إذَا ابْتَاعَ الرَّجُلُ الْبَيْعَ وَلَمْ يَرَهُ وَنُعِتَ لَهُ فَوَافَقَ النَّعْتَ وَجَبَ فِي عِتْقِهِ. قَالَ الْحَجَّاجُ: وَحَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ: إذَا ابْتَاعَ الْبَيْعَ وَلَمْ يَرَهُ فَوَصَفَهُ لَهُ الْبَائِعُ فَجَاءَ عَلَى الْوَصْفِ فَهُوَ لَهُ.

L21801 Others disagreed with them, as we have reported through the chain of Al-Ḥajjāj ibn Al-Minhāl from Ḥammād ibn Salamah from Ayyūb Al-Sikhtiyānī from Muḥammad ibn Sīrīn, who said: "If a man purchases the sold object without seeing it, and it is described to him, and it matches the description, the slave must be emancipated." Al-Ḥajjāj said: "And Ḥammād ibn Zayd narrated to us from Ayyūb from Ibn Sīrīn: 'If he purchases the sold object without seeing it, and the seller describes it to him, and it conforms to the description, then it is his.'"

وَقَالَ الْحَسَنُ: هُوَ بِالْخِيَارِ إذَا رَآهُ.

L21802 And Al-Ḥasan said: He has the option upon seeing it.

قَالَ أَيُّوبُ: وَلَا أَعْلَمُ رَجُلًا اشْتَرَى بَيْعًا لَمْ يَرَهُ فَوَصَفَهُ لَهُ الْبَائِعُ فَوَجَدَهُ عَلَى مَا وَصَفَهُ لَهُ فَرَدَّهُ عَلَيْهِ إلَّا هُوَ مِنْ الظَّالِمِينَ؟ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ الْحَارِثِ الْعُكْلِيِّ فِيمَنْ اشْتَرَى الْعِدْلَ مِنْ الْبُرِّ فَنَظَرَ بَعْضُ التُّجَّارِ إلَى بَعْضِهِ فَقَدْ وَجَبَ عَلَيْهِ إذَا لَمْ يَرَ عُوَارًا فِيمَا لَمْ يَنْظُرْ إلَيْهِ.

L21803–21805 Ayyūb said: I do not know of any man who purchased an item he had not seen, whereupon the seller described it to him and he found it exactly as described, yet he returned it to the seller except that such a man would be among the wrongdoers. Through the chain of Ibn Abī Shaybah: Jarīr narrated to us from al-Mughīrah from al-Ḥārith al-'Uklī concerning one who purchased. The just measure from wheat—then when some merchants examine a portion of it, liability becomes binding upon them if they fail to detect defects in what they did not inspect.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ، وَحَمَّادٍ فِيمَنْ اشْتَرَى عَبْدًا قَدْ رَآهُ بِالْأَمْسِ وَلَمْ يَرَهُ يَوْمَ اشْتَرَاهُ، قَالَا جَمِيعًا: لَا يَجُوزُ حَتَّى يَرَاهُ يَوْمَ اشْتَرَاهُ.

L21806 From the narration of Shu'bah via Al-Ḥakam and Ḥammād regarding one who purchased a slave he had inspected the previous day but did not inspect on the day of purchase, they both said: It is impermissible until the buyer inspects the slave on the day of purchase.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ مَا نَعْلَمُهُ عَنْ الْمُتَقَدِّمِينَ - فَأَمَّا أَقْوَالُ أَبِي حَنِيفَةَ الَّتِي ذَكَرْنَا فَأَقْوَالٌ فِي غَايَةِ الْفَسَادِ لَا تُؤْثَرُ عَنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُ - نَعْنِي الْفَرْقَ بَيْنَ مَا يُسْقِطُ الْخِيَارَ مِمَّا يَرَى مِنْ الرَّقِيقِ، وَمِمَّا يَرَى مِنْ الدَّوَابِّ، وَمِمَّا يَرَى مِنْ الثِّيَابِ الزُّطِّيَّةِ فِي الْوِعَاءِ، وَمَا يَرَى مِنْ الثِّيَابِ الَّتِي لَيْسَتْ فِي عِدْلٍ، وَمَا يَرَى مِنْ السَّمْنِ، وَالزَّيْتِ، وَالْحِنْطَةِ، وَالدُّورِ، وَكُلُّ ذَلِكَ وَسَاوِسُ لَا حَظَّ لَهَا فِي شَيْءٍ مِنْ الْعَقْلِ، وَلَا لَهَا مَجَازٌ عَلَى الْقُرْآنِ، وَلَا السُّنَنِ، وَلَا الرِّوَايَاتِ الْفَاسِدَةِ، وَلَا قَوْلِ أَحَدٍ مِنْ السَّلَفِ، وَلَا مِنْ قِيَاسٍ - لَا جَلِيٍّ وَلَا خَفِيٍّ - وَلَا مِنْ رَأْيٍ لَهُ حَظٌّ مِنْ السَّدَادِ، وَمَا كَانَ هَكَذَا فَلَا يَحِلُّ لِأَحَدٍ الْقَوْلُ بِهِ.

L21807 Abū Muḥammad said: All of this is what we know from the predecessors. As for the statements of Abū Ḥanīfah that we mentioned, they are rulings of extreme corruption, not transmitted from any individual among the people of Islam before him—referring to his distinction regarding what nullifies the option [to rescind] concerning slaves he deems, animals he deems, Zutti garments in bundles he deems, garments not in sealed containers he deems, butter, oil, wheat, and dwellings he deems. All of this comprises baseless notions with no share in reason, no basis in the Qur'ān, the Sunnah, corrupt narrations, the statement of any predecessor, nor any analogy—neither evident nor subtle—nor any opinion possessing a trace of correctness. Whatever is like this, it is impermissible for anyone to uphold it.

وَأَمَّا قَوْلَا مَالِك جَمِيعًا فَكَذَلِكَ أَيْضًا سَوَاءً سَوَاءً، وَلَا نَعْلَمُهُمَا عَنْ أَحَدٍ قَبْلَهُ، وَمَا لَهُمْ شُبْهَةٌ أَصْلًا، إلَّا أَنَّ بَعْضَهُمْ ادَّعَى الْعَمَلَ فِي ذَلِكَ، وَهَذَا بَاطِلٌ؛ لِأَنَّهُمَا عَنْهُ قَوْلَانِ كَمَا ذَكَرْنَا كَلَاهُمَا مُخَالِفٌ لِصَاحِبِهِ - فَإِنْ كَانَ الْعَمَلُ عَلَى أَحَدِهِمَا فَقَدْ خَالَفَ الْعَمَلَ فِي قَوْلِهِ الْآخَرِ، وَخِلَافُ الْمَرْءِ لِمَا يَرَاهُ حُجَّةً قَاطِعَةً فِي الدِّينِ عَظِيمٌ جِدًّا، وَلَيْسَ فِي الْمُمْكِنِ أَنْ يَكُونَ الْعَمَلُ عَلَى كِلَيْهِمَا.

L21808 As for Mālik's two opinions collectively, they are precisely equivalent, exactly alike. We do not know of both being transmitted from anyone before him, and there exists no legitimate basis for doubt whatsoever. However, some have claimed practical implementation regarding this matter, yet this is invalid, for both represent conflicting positions from him—as we indicated—each opposing the other. If practice were established upon one of them, it would contradict the practice based on his other opinion. A person's opposition to what he himself considers decisive religious evidence constitutes an extremely grave matter. It is fundamentally impossible for practice to be founded upon both opinions.

وَأَيْضًا: فَإِنَّ تَحْدِيدَهُ جَوَازَ النَّقْدِ - إنْ كَانَ الْمَبِيعُ قَرِيبًا - وَمَنْعَهُ مِنْ النَّقْدِ إنْ كَانَ الْمَبِيعُ بَعِيدًا - وَهُوَ لَمْ يَحُدَّ مِقْدَارَ الْبُعْدِ الَّذِي يُحَرَّمُ فِيهِ النَّقْدُ مِنْ الْقُرْبِ الَّذِي يَجُوزُ فِيهِ النَّقْدُ عَجَبٌ جِدًّا؟ وَأَيُّ عَجَبٍ أَعْجَبُ مِمَّنْ يُحَرِّمُ وَيُحَلِّلُ ثُمَّ لَا يُبَيِّنُ لِمَنْ يَتْبَعُهُ الْعَمَلَ الْمُحَرَّمَ لِيَجْتَنِبَهُ مِنْ الْمُحَلَّلِ لِيَأْتِيَهُ.

L21809 Moreover, his stipulation permitting cash payment if the sold item is nearby and prohibiting cash payment if it is distant—while failing to define the measure of distance that prohibits cash payment and the proximity that permits it—is this not a grave inconsistency? What greater contradiction is there than one who prohibits and permits, yet fails to clarify for his followers the prohibited action to avoid and the permitted action to perform?

L21810 Some of his adherents in taqlīd who prohibited cash payment in that mat-

ter—which is the opinion of al-Layth—argued, saying: If he pays cash for it and then finds it not as described, and thus revokes the sale, the seller would have benefited from the price during the interim period, rendering it a salaf loan (interest-free loan) entailing a benefit? Abu Muḥammad said: This argument is more flawed than the opinion it supports.

وَاحْتَجَّ بَعْضُ مُقَلِّدِيهِ فِي الْمَنْعِ مِنْ النَّقْدِ فِي ذَلِكَ - وَهُوَ قَوْلُ اللَّيْثِ - بِأَنْ قَالَ: إنْ نَقَدَ فِي ذَلِكَ ثُمَّ وَجَدَهُ عَلَى خِلَافِ مَا وُصِفَ لَهُ فَرَدَّ الْبَيْعَ كَانَ الْبَائِعُ قَدْ انْتَفَعَ بِالثَّمَنِ مُدَّةً فَصَارَ ذَلِكَ سَلَفًا جَرَّ مَنْفَعَةً؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا الِاحْتِجَاجُ أَفْسَدُ مِنْ الْقَوْلِ الَّذِي احْتَجَّ لَهُ.

L21811–21812 We say to them: Yes, so what? There has never been a loan that brought benefit—rather, it is a sale like all other sales with absolutely no distinction. Then where did you find the prohibition of a loan that brings benefit? In which book of Allah the Almighty did you find this? Or in which Sunnah of Allah's Messenger (peace be upon him)? Or in which saying of a Companion? The greatest wonder is that there exists no loan on earth except that it brings benefit to the borrower, for had he not benefited from it, he would not have sought it. Have we ever heard anything more absurd or baseless than this claim? Moreover, if their argument were valid, it would necessitate invalidating all sales entirely, for there is no sale in the world without this legal defect existing within it. Every sale inherently carries the possibility of being rightfully revoked or returned due to a defect. Why then do they not prohibit immediate payment in every sale for this reason? For if a sale is revoked, the seller returns the price to the buyer after having benefited from it, thereby making it a loan that brings benefit. How can any pious person deem it permissible to entangle Muslims in such a corrupt argument? We seek Allah's protection—thus this claim is entirely invalidated.

وَنَقُولُ لَهُمْ: نَعَمْ فَكَانَ مَاذَا؟ وَمَا صَارَ قَطُّ سَلَفًا جَرَّ مَنْفَعَةً بَلْ هُوَ بَيْعٌ كَسَائِرِ الْبُيُوعِ وَلَا فَرْقَ. ثُمَّ أَيْنَ وَجَدْتُمْ الْمَنْعَ مِنْ سَلَفٍ جَرَّ مَنْفَعَةً؟ فِي أَيِّ كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَجَدْتُمْ ذَلِكَ؟ أَمْ فِي أَيِّ سُنَّةٍ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ أَمْ فِي أَيِّ قَوْلِ صَاحِبٍ؟ ثُمَّ الْعَجَبُ كُلُّهُ أَنَّهُ لَيْسَ عَلَى ظَهْرِ الْأَرْضِ سَلَفٌ إلَّا وَهُوَ يَجُرُّ مَنْفَعَةً لِلْمُسْتَسْلِفِ، وَلَوْلَا أَنَّهُ يَنْتَفِعُ بِهِ مَا اسْتَسْلَفَهُ، فَمَا سَمِعْنَا بِأَبْرَدَ وَلَا بِأَغَثَّ مِنْ هَذَا الْقَوْلِ؟ ثُمَّ لَوْ كَانَ مَا ذَكَرُوا لَوَجَبَ بِذَلِكَ إبْطَالُ جَمِيعِ الْبُيُوعِ كُلِّهَا، لِأَنَّهُ لَا بَيْعَ فِي الْعَالَمِ إلَّا وَهَذِهِ الْعِلَّةُ مَوْجُودَةٌ فِيهِ، لِأَنَّهُ لَا بَيْعَ إلَّا وَمُمْكِنٌ أَنْ يُسْتَحَقَّ فَيُرَدَّ، أَوْ يُوجَدَ فِيهِ عَيْبٌ فَيُرَدَّ بِهِ، فَهَلَّا مَنَعُوا النَّقْدَ فِي كُلِّ بَيْعٍ مِنْ أَجْلِ ذَلِكَ؟ لِأَنَّهُ إذَا رَدَّ صَارَ الْبَائِعُ قَدْ رَدَّ إلَى الْمُشْتَرِي الثَّمَنَ بَعْدَ أَنْ انْتَفَعَ بِهِ فَيَصِيرُ سَلَفًا جَرَّ مَنْفَعَةً؟ وَمَا نَدْرِي كَيْفَ يَسْتَجِيزُ ذُو وَرَعٍ أَنْ يُغْرِ قَوْمًا مِنْ الْمُسْلِمِينَ بِمِثْلِ هَذَا الِاحْتِجَاجِ الْفَاسِدِ؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ - فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً.

L21813–21815 As for Al-Shafi'i's statement prohibiting the sale of absent goods, his followers argued using the Messenger of Allah's (peace be upon him) prohibition against sales involving uncertainty (gharar), touch-based transactions (mulamasa), and throw-based transactions (munabadha). We know no foundational evidence for their position beyond this, nor any valid proof within it. For when the sale of absent goods is described based on sight, expertise, and knowledge - with verified ownership of the purchased item - where then lies the uncertainty? Should they argue: "The commodity might perish before

وَأَمَّا قَوْلُ الشَّافِعِيِّ فِي الْمَنْعِ مِنْ بَيْعِ الْغَائِبِ فَإِنَّ أَصْحَابَهُ احْتَجُّوا لَهُ بِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ، وَعَنْ الْمُلَامَسَةِ، وَالْمُنَابَذَةِ، لَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا، وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ بَيْعَ الْغَائِبِ إذَا وُصِفَ عَنْ رُؤْيَةٍ، وَخِبْرَةٍ، وَمَعْرِفَةٍ، وَقَدْ صَحَّ مِلْكُهُ لِمَا اشْتَرَى، فَأَيْنَ الْغَرَرُ؟ فَإِنْ قَالُوا: قَدْ تَهْلَكُ السِّلْعَةُ قَبْلَ حِينِ الْبَيْعِ فَيَقَعُ

the time of the sale, rendering the transaction invalid," we respond: "Similarly, the commodity might be lawfully claimed, rendering the sale invalid - and there is no distinction." By this reasoning, if they invalidate all sales due to this type of uncertainty, they would nullify every transaction on earth. Yet no uncertainty exists here at all, except what exists in all other sales collectively - with no distinction.

الْبَيْعُ فَاسِدًا؟ قُلْنَا: وَقَدْ تُسْتَحَقُّ السِّلْعَةُ فَيَقَعُ الْبَيْعُ فَاسِدًا وَلَا فَرْقَ فَأَبْطَلُوا بِهَذَا النَّوْعِ مِنْ الْغَرَرِ كُلَّ بَيْعٍ فِي الْأَرْضِ، فَلَا غَرَرَ هَهُنَا أَصْلًا، إلَّا كَالْغَرَرِ فِي سَائِرِ الْبُيُوعِ كُلِّهَا وَلَا فَرْقَ. وَأَمَّا الْمُنَابَذَةُ، وَالْمُلَامَسَةُ - فَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ [قَالَ] سَمِعْت عُبَيْدَ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ خُبَيْبِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ حَفْصِ بْنِ عَاصِمٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّهُ نَهَى عَنْ بَيْعَتَيْنِ: الْمُنَابَذَةِ وَالْمُلَامَسَةِ» ، وَزَعَمَ أَنَّ الْمُلَامَسَةَ أَنْ يَقُولَ الرَّجُلُ لِلرَّجُلِ: أَبِيعُك ثَوْبِي بِثَوْبِك، وَلَا يَنْظُرُ وَاحِدٌ مِنْهُمَا إلَى ثَوْبِ الْآخَرِ وَلَكِنْ يَلْمِسُهُ لَمْسًا وَالْمُنَابَذَةُ أَنْ يَقُولَ: أَنْبِذُ مَا مَعِي وَتَنْبِذُ مَا مَعَك لِيَشْتَرِيَ أَحَدُهُمَا مِنْ الْآخَرِ، وَلَا يَدْرِي كُلُّ وَاحِدٍ مِنْهُمَا كَمْ مَعَ الْآخَرِ، وَنَحْوٌ مِنْ ذَا ".

Regarding munabadha (throw-based sales) and mulamasa (touch-based sales) - we have been narrated through Ahmad ibn Shu'ayb's chain: Muhammad ibn Abd al-A'la reported to us, al-Mu'tamir ibn Sulayman reported to us, saying: I heard Ubayd Allah (son of Umar) narrate from Khubayb ibn Abd al-Rahman, from Hafs ibn Asim, from Abu Hurayrah, that the Prophet (peace be upon him) said: "He prohibited two types of sales:" The "Munabadha" and "Mulamasa." He stated that Mulamasa occurs when a man says to another: "I sell my garment for your garment," with neither of them looking at the other's garment but merely touching it with a touch. Munabadha occurs when he says: "I cast forth what I have, and you cast forth what you have," so that one of them may buy from the other, while neither knows the quantity the other possesses, and the like of this.

L21816 From the path of Ahmad ibn Shu'ayb: He narrated from Abu Dawud al-Tayalisi, who narrated from Ya'qub ibn Ibrahim ibn Sa'd ibn Ibrahim ibn 'Abd al-Rahman ibn 'Awf, who narrated from his father, from Salih—who is Ibn Kaysan—from Ibn Shihab, that 'Amir ibn Sa'd ibn Abi Waqqas narrated to him that Abu Sa'id al-Khudri—may Allah be pleased with him—said: "The Messenger of Allah—peace and blessings of Allah be upon him—prohibited mulamasah (touch-based sale), and mulamasah is donning a garment without looking at it; and he prohibited munabadah (casting sale), and munabadah is when a man throws his garment to another before examining it by turning it over." Abu Muhammad said: "This is undeniably forbidden, and it is the interpretation of Abu Hurayrah and Abu Sa'id—may Allah be pleased with them both. They are the decisive authorities in Islamic law and the Arabic language, with no dissenting opinion regarding this interpretation. This is categorically not the sale of an absent item, but rather the sale of a

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ نا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي عَنْ صَالِحٍ - هُوَ ابْنُ كَيْسَانَ - عَنْ ابْنِ شِهَابٍ أَنَّ عَامِرَ بْنَ سَعْدِ بْنِ أَبِي وَقَّاصٍ أَخْبَرَهُ أَنَّ أَبَا سَعِيدٍ الْخُدْرِيِّ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُلَامَسَةِ، وَالْمُلَامَسَةُ لُبْسُ الثَّوْبِ لَا يَنْظُرُ إلَيْهِ - وَعَنْ الْمُنَابَذَةِ، وَالْمُنَابَذَةُ طَرْحُ الرَّجُلِ ثَوْبَهُ إلَى الرَّجُلِ قَبْلَ أَنْ يُقَلِّبَهُ» . قَالَ أَبُو مُحَمَّد: وَهَذَا حَرَامٌ بِلَا شَكٍّ، وَهَذَا تَفْسِيرُ أَبِي هُرَيْرَةَ، وَأَبِي سَعِيدٍ - رَضِيَ اللَّهُ عَنْهُمَا -، وَهُمَا الْحُجَّةُ فِي الشَّرِيعَةِ، وَاللُّغَةِ، وَلَا مُخَالِفَ لَهُمَا فِي هَذَا التَّفْسِيرِ، وَلَيْسَ هَذَا بَيْعَ غَائِبٍ أَلْبَتَّةَ، بَلْ هُوَ بَيْعُ حَاضِرٍ - فَظَهَرَ تَمْوِيهُ مَنْ احْتَجَّ مِنْهُمْ بِهَذَيْنِ الْخَبَرَيْنِ.

present item. Thus, the obfuscation of those who cited these two narrations as evidence has been exposed."

L21817 Ali said: However, these two reports serve as proof against Abū Ḥanīfah regarding his approval of selling absent and present items that are neither described nor seen.

قَالَ عَلِيٌّ: إِلَّا أَنَّ هَذَيْنِ الْخَبَرَيْنِ هُمَا حُجَّةٌ عَلَى أَبِي حَنِيفَةَ فِي إِجَازَتِهِ بَيْعَ الْغَائِبِ وَالْحَاضِرِ غَيْرَ مَوْصُوفَيْنِ وَلَا مَرْئِيَّيْنِ.

L21818 Ali said: Among what invalidates Al-Shafi'i's opinion is that Muslims have continuously exchanged estates by description, even those located in distant lands. Uthman sold his property in Khaybar to Ibn Umar – may Allah be pleased with them both – in exchange for Ibn Umar's property in Wadi al-Qura. This is a well-known matter.

قَالَ عَلِيٌّ: وَمِمَّا يُبْطِلُ قَوْلَ الشَّافِعِيِّ أَنَّهُ لَمْ يَزَلْ الْمُسْلِمُونَ يَتَبَايَعُونَ الضِّيَاعَ بِالصِّفَةِ، وَهِيَ فِي الْبِلَادِ الْبَعِيدَةِ، قَدْ بَايَعَ عُثْمَانُ ابْنَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ - مَالًا لِعُثْمَانَ بِخَيْبَرَ بِمَالٍ لِابْنِ عُمَرَ بِوَادِي الْقُرَى، وَهَذَا أَمْرٌ مَشْهُورٌ.

L21819 What if they cite the Prophet's prohibition—may the peace and blessings of Allah be upon him—against selling what is not in your possession?

فَإِنْ احْتَجُّوا بِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ مَا لَيْسَ عِنْدَكَ؟ .

L21820 We said: Yes, and the absent item is considered to be in the seller's possession, not from what is not in his possession. For there is no dispute in the Arabic language regarding the correctness of the speaker's claim when stating: "I have estates," "I have houses," "I have slaves and possessions"—whether absent or present—provided all such items are under his ownership. What is not considered to be in a person's possession is exclusively what he does not own, even if it is physically held by him.

قُلْنَا: نَعَمْ، وَالْغَائِبُ هُوَ عِنْدَ بَائِعِهِ لَا مِمَّا لَيْسَ عِنْدَهُ، لِأَنَّهُ لَا خِلَافَ فِي لُغَةِ الْعَرَبِ فِي صِدْقِ الْقَائِلِ: عِنْدِي ضِيَاعٌ، وَعِنْدِي دُورٌ، وَعِنْدِي رَقِيقٌ وَمَتَاعٌ - غَائِبٌ وَحَاضِرٌ - إذَا كَانَ كُلُّ ذَلِكَ فِي مِلْكِهِ، وَإِنَّمَا لَيْسَ عِنْدَ الْمَرْءِ مَا لَيْسَ فِي مِلْكِهِ فَقَطْ، وَإِنْ كَانَ فِي يَدِهِ.

L21821–21822 The proof of the invalidity of Al-Shāfiʿī's opinion is this: the statement of Allah, the Exalted: {Allah has permitted trade} [Al-Baqarah: 275], and His statement: {Do not consume your wealth among yourselves wrongfully, unless it is a transaction by mutual consent from you} [An-Nisā': 29].[1]

وَالْبُرْهَانُ عَلَى فَسَادِ قَوْلِ الشَّافِعِيِّ هَذَا هُوَ قَوْلُ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] . وقَوْله تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L21823 The sale of an unseen item is a sale included in what Allah the Exalted has permitted and within transactions mutually agreed upon by both parties. All of this is lawful except for a sale prohibited by Allah the Exalted on the tongue of His Messenger (peace and blessings of Allah be upon him) in the Qur'an and the established Sunnah.

فَبَيْعُ الْغَائِبِ بَيْعٌ دَاخِلٌ فِيمَا أَحَلَّهُ اللَّهُ تَعَالَى، وَفِي التِّجَارَةِ الَّتِي يَتَرَاضَى بِهَا الْمُتَبَايِعَانِ، فَكُلُّ ذَلِكَ حَلَالٌ إلَّا بَيْعًا حَرَّمَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقُرْآنِ، وَالسُّنَّةِ الثَّابِتَةِ.

[1] **Qur'an references (L21822):** Qur'an 2:275 (Al-Baqarah); Qur'an 4:29 (An-Nisa).

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونَ اللَّهُ تَعَالَى يُحَرِّمُ عَلَيْنَا بَيْعًا مِنْ الْبُيُوعِ فَيُجْمِلُ لَنَا إبَاحَةَ الْبَيْعِ جُمْلَةً وَلَا يُبَيِّنُهُ لَنَا عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورِ بِالْبَيَانِ، هَذَا أَمْرٌ قَدَّمْنَاهُ - وَلِلَّهِ تَعَالَى الْحَمْدُ - لِقَوْلِهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] . وَلَيْسَ فِي وُسْعِنَا أَنْ نَعْرِفَ مَا حَرَّمَ اللَّهُ عَلَيْنَا، وَمَا أَحَلَّهُ لَنَا، وَمَا أَوْجَبَهُ عَلَيْنَا، إلَّا بِوُرُودِ النَّصِّ بِذَلِكَ، وَمَا نَعْلَمُ لِلشَّافِعِيِّ فِي الْمَنْعِ مِنْ بَيْعِ الْغَائِبَاتِ الْمَوْصُوفَاتِ سَلَفًا.

L21824 Among the certainly false matters is that Allah the Exalted would forbid us a specific sale while permitting sales collectively without clarifying it through the tongue of His Prophet—peace be upon him—who was commanded to explain. This is a matter we have previously established—praise be to Allah the Exalted—due to His saying: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286]. It is not within our capacity to know what Allah has forbidden for us, permitted for us, or obligated upon us except through the arrival of a revealed text. We find no precedent from earlier scholars regarding Al-Shāfiʿī's stance on prohibiting the sale of unseen, pre-described items.[2]

فَإِنْ قِيلَ: فَأَيْنَ قَوْلُ الْحَكَمِ، وَحَمَّادٍ، الَّذِي رَوَيْتُمُوهُ آنِفًا؟ قُلْنَا: إنَّهُمَا لَمْ يَمْنَعَا مِنْ بَيْعِ الْغَائِبِ، وَإِنَّمَا مَنَعَا مِنْ بَيْعِ مَا لَمْ يَرَهُ الْمُشْتَرِي يَوْمَ الشِّرَاءِ - وَقَدْ يَرَاهُ فِي أَوَّلِ النَّهَارِ وَيَغِيبُ بَعْدَ ذَلِكَ - فَلَمْ يَشْتَرِطَا حُضُورَهُ فِي حِينِ عَقْدِ الْبَيْعِ، وَلَا يَحِلُّ أَنْ يَقُولَ أَحَدٌ مَا لَمْ يَقُلْ بِالظَّنِّ الْكَاذِبِ وَبِاَللَّهِ التَّوْفِيقُ.

L21825 If it is said: Then where is the statement of Al-Hakam and Hammad, which you narrated earlier? We say: They did not prohibit the sale of an absent item, but rather prohibited the sale of what the buyer did not see on the day of purchase—though he may see it at the beginning of the day and it becomes absent afterward. Thus, they did not stipulate its presence at the time of concluding the sale, nor is it permissible for anyone to assert what they did not say based on false presumption. And success is from Allah.

قَالَ عَلِيٌّ: فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا، وَبَقِيَ قَوْلُ مَنْ أَوْجَبَ خِيَارَ الرُّؤْيَةِ جُمْلَةً عَلَى مَا رُوِّينَا عَنْ إبْرَاهِيمَ، وَالْحَسَنِ، وَالشَّعْبِيِّ، وَمَكْحُولٍ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ، فَوَجَدْنَاهُمْ يَذْكُرُونَ أَثَرًا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ الْحَسَنِ بْنِ حَيٍّ عَنْ الْحَسَنِ الْبَصْرِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اشْتَرَى بَيْعًا فَهُوَ بِالْخِيَارِ حَتَّى يَنْظُرَ إلَيْهِ» .

L21826 Ali said: All these opinions were rejected, and the view of those who universally upheld the option of inspection remained—as we have reported from Ibrāhīm, al-Ḥasan, al-Shaʿbī, Makhūl, and one of the two positions of al-Shāfiʿī. We found them citing a tradition we reported through the chain of Wakīʿ, from al-Ḥasan ibn Ḥayyin, from al-Ḥasan al-Baṣrī: "The Messenger of Allah—peace and blessings of Allah be upon him—said: 'Whoever buys something retains the option until he sees it.'"

قَالَ أَبُو مُحَمَّد: وَهَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ لَهُ الْخِيَارَ إذَا وَجَدَهُ كَمَا وُصِفَ لَهُ، وَظَاهِرُهُ قَطْعُ الْخِيَارِ بِالنَّظَرِ، فَهُوَ مُخَالِفٌ لِقَوْلِ أَبِي حَنِيفَةَ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -.

L21827 Abū Muḥammad said: This is a mursal, and no valid proof exists in a mursal. Furthermore, even if it were authentic, it would not constitute evidence for their position, because it does not state that he has the option if he finds it as described. Its apparent meaning indicates the termination of the option upon inspection. Thus, it entirely contradicts the view of Abū Ḥanīfah—and success is from Allah, the Exalted.

[2] **Qur'an references (L21824):** Qur'an 2:286 (Al-Baqarah).

وَهَذَا مِمَّا تَرَكَهُ الْمَالِكِيُّونَ، وَهُمْ يَقُولُونَ بِالْمُرْسَلِ، لِأَنَّهُمْ لَا يَجْعَلُونَ لَهُمْ خِيَارًا قَبْلَ أَنْ يَرَاهُ أَصْلًا. وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي مَرْيَمَ عَنْ مَكْحُولٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اشْتَرَى شَيْئًا لَمْ يَرَهُ فَهُوَ بِالْخِيَارِ إِذَا رَآهُ، إِنْ شَاءَ أَخَذَهُ، وَإِنْ شَاءَ رَدَّهُ» . وَإِسْمَاعِيلُ ضَعِيفٌ، وَأَبُو بَكْرِ بْنُ مَرْيَمَ مَذْكُورٌ بِالْكَذِبِ، وَمُرْسَلٌ مَعَ ذَلِكَ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ يَحْتَمِلُ أَنْ يُرِيدَ لَهُ رَدَّهُ إِنْ وَجَدَهُ بِخِلَافِ مَا وُصِفَ لَهُ.

This is among what the Malikis have rejected, as they uphold the *mursal*—a hadith with an incomplete chain—since they do not grant the buyer an option before seeing the item as a fundamental principle. They cited what was narrated to us through the chain of Sa'īd ibn Manṣūr from Ismā'īl ibn 'Ayyāsh from Abū Bakr ibn 'Abd Allāh ibn Abī Maryam from Makhūl: "The Messenger of Allah, peace and blessings be upon him, said: 'Whoever buys something he has not seen has the option when he sees it: if he wishes, he may keep it or return it.'" Ismā'īl is weak (in narration), and Abū Bakr ibn 'Abd Allāh ibn Abī Maryam is noted for dishonesty, in addition to the hadith being *mursal*. Furthermore, even if it were authentic, it would not serve as proof for them, because it could be interpreted to mean that the buyer may return it if he finds it contrary to what was described to him.

[مَسْأَلَةٌ وَجَدَ مُشْتَرِي السِّلْعَةِ الْغَائِبَةِ مَا اشْتَرَى كَمَا وُصِفَ لَهُ]

A case: The buyer of the unseen commodity found the purchased item as it had been described to him.

١٤١٢ - مَسْأَلَةٌ: فَإِنْ وَجَدَ مُشْتَرِي السِّلْعَةِ الْغَائِبَةِ مَا اشْتَرَى كَمَا وُصِفَ لَهُ فَالْبَيْعُ لَهُ لَازِمٌ، وَإِنْ وَجَدَهُ بِخِلَافِ ذَلِكَ فَلَا بَيْعَ بَيْنَهُمَا إِلَّا بِتَجْدِيدِ صِفَةٍ أُخْرَى بِرِضَاهُمَا جَمِيعًا.

1412. Legal Case: If the buyer of an absent commodity discovers the purchased item matches its description, the sale remains legally binding. If he finds it contrary to the description, no sale exists between them unless they establish a new description by mutual consent.

بُرْهَانُ ذَلِكَ -: أَنَّهُ اشْتَرَى شِرَاءً صَحِيحًا إِذَا وَجَدَ الصِّفَةَ كَمَا اشْتَرَى كَمَا ذَكَرْنَا آنِفًا، فَإِنْ وَجَدَ الصِّفَةَ بِخِلَافِ مَا عُقِدَ الِابْتِيَاعُ عَلَيْهِ فَبِيَقِينٍ نَدْرِي أَنَّهُ لَمْ يَشْتَرِ تِلْكَ السِّلْعَةَ الَّتِي وَجَدَ، لِأَنَّهُ اشْتَرَى سِلْعَةً بِصِفَةِ كَذَا، لَا سِلْعَةً بِالصِّفَةِ الَّتِي وَجَدَ، فَالَّتِي وَجَدَ غَيْرُ الَّتِي اشْتَرَى بِلَا شَكٍّ مِنْ أَحَدٍ فَإِنْ لَمْ يَشْتَرِهَا فَلَيْسَتْ لَهُ.

The proof of this is that his purchase remains valid if he finds the commodity with the attributes as stipulated in the contract, as we previously mentioned. If he finds attributes contradicting those upon which the sale contract was established, we know with certainty - as agreed by all - that he did not purchase that commodity he encountered. For he purchased a commodity with specified attributes, not one possessing the attributes he discovered. Therefore, what he found is unquestionably distinct from what he purchased. If he did not purchase it, the commodity does not belong to him.

فَإِنْ قِيلَ: فَأَلْزِمُوا الْبَائِعَ إِحْضَارَ سِلْعَةٍ بِالصِّفَةِ الَّتِي بَاعَ؟ قُلْنَا: لَا يَحِلُّ هَذَا، لِأَنَّهُ إِنَّمَا بَاعَ عَيْنًا مُعَيَّنَةً لَا صِفَةً مَضْمُونَةً، فَلَا يَجُوزُ إِلْزَامُهُ إِحْضَارَ مَا لَمْ يَبِعْ - فَصَحَّ أَنَّ

If it is said: "[Objection:] Then obligate the seller to produce a commodity according to the description with which he sold it?" We respond: This is impermissible, for he sold only a specific entity, not a warranted attribute. Thus, it is invalid to compel him to produce what he did not sell. Hence, it is confirmed that his contract is invalid because it did not pertain to anything at

all. Success is from Allah, the Exalted. This is the opinion of Abū Sulaymān and others.

A ruling on the sale of something from absent items without a detailed description.

Issue 1413: If an item from unseen goods is sold without description - neither being something the seller has known through sight nor through a credible account from one who saw the sold item, nor being something the seller has made known to the buyer through sight or a credible description - then the sale is inherently void and perpetually annulled, with no validity to the contract whatsoever.

It is permissible for a person to purchase what the seller has described to him, whether he believed him or did not believe him.

It is permissible for a person to sell what the buyer has described to him—whether the seller confirms the description or not. If the sold item is found to match that description, the sale is binding. If it is found contrary to it, the sale is unequivocally invalid.

The Hanafis permitted the sale of an unknown, undescribed object, stipulating within it the option of inspection, as we mentioned. Our statement that it is impermissible unless knowledge of its description exists is the view of Malik in some cases of this matter, or the opinion of Abu Sulayman and others besides these two.

Abu Muhammad said: The Hanafis argued for their position by citing the established report from the Messenger of Allah—peace and blessings be upon him—that he "prohibited selling grain before it hardens." They stated: This implies the permissibility of selling it after it has hardened while still in its husks, though no one has seen it and its characteristics remain unknown.

Ali said: This is among the deceptions they contrived, creating the illusion of it being proof for their position - though it is not - for this narration contains only the prohibition of selling grain before hardening, without permitting its sale after hardening nor prohibiting it. Marvel at these people's

عَقْدَهُ فَاسِدٌ، لِأَنَّهُ لَمْ يَقَعْ عَلَى شَيْءٍ أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ وَغَيْرِهِ.

[مَسْأَلَةٌ بَيْعِ شَيْءٌ مِنْ الْغَائِبَاتِ بِغَيْرِ صِفَةٍ]

١٤١٣ - مَسْأَلَةٌ: فَإِنْ بِيعَ شَيْءٌ مِنْ الْغَائِبَاتِ بِغَيْرِ صِفَةٍ وَلَمْ يَكُنْ مِمَّا عَرَفَهُ الْبَائِعُ لَا بِرُؤْيَةٍ وَلَا بِصِفَةِ مَنْ يُصَدَّقُ مِمَّنْ رَأَى مَا بَاعَهُ وَلَا مِمَّا عَرَّفَهُ لِلْمُشْتَرِي بِرُؤْيَةٍ، أَوْ بِصِفَةِ مَنْ يُصَدَّقُ، فَالْبَيْعُ فَاسِدٌ مَفْسُوخٌ أَبَدًا، لَا خِيَارَ فِي جَوَازِهِ أَصْلًا.

وَيَجُوزُ ابْتِيَاعُ الْمَرْءِ مَا وَصَفَهُ لَهُ الْبَائِعُ صَدَّقَهُ - أَوْ لَمْ يُصَدِّقْهُ.

وَيَجُوزُ بَيْعُ الْمَرْءِ مَا وَصَفَهُ لَهُ الْمُشْتَرِي - صَدَّقَهُ أَوْ لَمْ يُصَدِّقْهُ - فَإِنْ وَجَدَ الْمَبِيعَ بِتِلْكَ الصِّفَةِ، فَالْمَبِيعُ لَازِمٌ، وَإِنْ وَجَدَ بِخِلَافِهَا، فَالْمَبِيعُ بَاطِلٌ وَلَا بُدَّ.

وَأَجَازَ الْحَنَفِيُّونَ بَيْعَ الْعَيْنِ الْمَجْهُولَةِ غَيْرِ الْمَوْصُوفَةِ، وَجَعَلُوا فِيهَا خِيَارَ الرُّؤْيَةِ، كَمَا ذَكَرْنَا - وَقَوْلُنَا فِي أَنَّهُ لَا يَجُوزُ إِلَّا بِمَعْرِفَةِ وَصْفِهِ: هُوَ قَوْلُ مَالِكٍ فِي بَعْضِ ذَلِكَ، أَوْ قَوْلُ أَبِي سُلَيْمَانَ، وَغَيْرِهِمَا.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ الْحَنَفِيُّونَ لِقَوْلِهِمْ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ «نَهَى عَنْ بَيْعِ الْحَبِّ قَبْلَ أَنْ يَشْتَدَّ» ، قَالُوا: فَفِي هَذَا إبَاحَةُ بَيْعِهِ بَعْدَ اشْتِدَادِهِ وَهُوَ فِي أَكْمَامِهِ بَعْدُ لَمْ يَرَهُ أَحَدٌ وَلَا تُدْرَى صِفَتُهُ.

قَالَ عَلِيٌّ: وَهَذَا مِمَّا مَوَّهُوا بِهِ وَأَوْهَمُوا أَنَّهُ حُجَّةٌ لَهُمْ، وَلَيْسَ كَذَلِكَ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ إِلَّا النَّهْيُ عَنْ بَيْعِهِ قَبْلَ اشْتِدَادِهِ فَقَطْ، وَلَيْسَ فِيهِ إبَاحَةُ بَيْعِهِ بَعْدَ اشْتِدَادِهِ، وَلَا

audacity against Allah Almighty through falsehood, as they cite this narration to support what it contains not a single trace of, while opposing its explicit text by permitting grain sales before hardening on the condition of immediate possession. How misguided this approach is!

Abu Muhammad said: Another wonder is their fabrication in this narration by inserting what contains neither explicit text nor trace regarding permitting grain sales after hardening. Not content with this grave error, they mandated through this narration what has no mention or allusion whatsoever: selling unseen items whose attributes are unknown to both seller and buyer, undescribed by anyone. Then they swiftly nullified this like the blink of an eye, prohibiting ram's meat before slaughter, date pits without dates before consumption, olive oil before pressing, and milk in udders - arguing these involve uncertainty in attributes. This constitutes deception and trifling with religion - we seek Allah's refuge from such.

Ali said: We permit the sale of grain after it has hardened as it is in its husks with its husks; the sale of a ram alive and slaughtered - the entirety of its meat with its skin; the sale of a sheep with the milk present in its udder; and the sale of The pits are with the dates because all of it is visibly apparent. It is not permissible to sell them without their spathes, as they are unknown—no one can ascertain their attributes. Similarly, it is not permissible to sell meat without the hide, pits without the dates, or milk without the sheep.

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Abu Muhammad said: The sale of all such [items] before their manifestation cannot occur without the production being stipulated either on the seller, the buyer, both of them, someone else, or no one. If the stipulation is on the seller or the buyer, this constitutes a sale with an unknown price or a hire contract with unknown compensation—and this is invalid. For sale is not permissible—by the explicit text of the Quran—except through mutual consent, and mutual consent, by necessary perception, is only possible with

L21845

الْمَنْعُ مِنْ ذَلِكَ؟ فَاعْجَبُوا لِجُرْأَةِ هَؤُلَاءِ الْقَوْمِ عَلَى اللَّهِ تَعَالَى بِالْبَاطِلِ، إذْ احْتَجُّوا بِهَذَا الْخَبَرِ مَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ، وَخَالَفُوهُ فِيمَا جَاءَ فِيهِ نَصٌّ، فَهُمْ يُجِيزُونَ بَيْعَ الْحَبِّ قَبْلَ أَنْ يَشْتَدَّ عَلَى شَرْطِ الْقَطْعِ، فَيَا لَضَلَالِ هَذِهِ الطَّرِيقَةُ قَالَ أَبُو مُحَمَّدٍ: وَعَجَبٌ آخَرُ -: أَنَّهُمْ كَذَبُوا فِي هَذَا الْخَبَرِ فَأَقْحَمُوا فِيهِ مَا لَيْسَ فِيهِ مِنْهُ نَصٌّ وَلَا أَثَرٌ مِنْ إبَاحَةِ بَيْعِ الْحَبِّ بَعْدَ أَنْ يَشْتَدَّ، ثُمَّ لَمْ يَقْنَعُوا بِهَذِهِ الطَّامَّةِ حَتَّى أَوْجَبُوا بِهَذَا الْخَبَرِ مَا لَيْسَ فِيهِ لَهُ ذِكْرٌ وَلَا إشَارَةٌ إلَيْهِ بِوَجْهٍ مِنْ الْوُجُوهِ: مِنْ بَيْعِ الْغَائِبَاتِ الَّتِي لَا تُعْرَفُ صِفَاتُهَا، وَلَا عَرَفَهَا الْبَائِعُ، وَلَا الْمُشْتَرِي، وَلَا وَصَفَهَا لَهُمَا أَحَدٌ، ثُمَّ لَمْ يَلْبَثُوا أَنْ نَقَضُوا ذَلِكَ كَكَرَّةِ الطَّرْفِ فَحَرَّمُوا بَيْعَ لَحْمِ الْكَبْشِ قَبْلَ ذَبْحِهِ، وَالنَّوَى دُونَ التَّمْرِ قَبْلَ أَكْلِهِ، وَبَيْعَ الزَّيْتِ فِي الزَّيْتُونِ قَبْلَ عَصْرِهِ، وَبَيْعَ الْأَلْبَانِ فِي الضُّرُوعِ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّهُ كُلُّهُ مَجْهُولٌ لَا تُدْرَى صِفَتُهُ، وَهَذَا مُوقٍ وَتَلَاعُبٍ بِالدِّينِ - وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِهِ.

قَالَ عَلِيٌّ: وَنَحْنُ نُجِيزُ بَيْعَ الْحَبِّ بَعْدَ اشْتِدَادِهِ كَمَا هُوَ فِي أَكْمَامِهِ بِأَكْمَامِهِ، وَبَيْعَ الْكَبْشِ حَيًّا وَمَذْبُوحًا كُلِّهِ لَحْمِهِ مَعَ جِلْدِهِ، وَبَيْعَ الشَّاةِ بِمَا فِي ضَرْعِهَا مِنْ اللَّبَنِ، وَبَيْعَ النَّوَى مَعَ التَّمْرِ، لِأَنَّهُ كُلَّهُ ظَاهِرٌ مَرْئِيٌّ - وَلَا يَحِلُّ بَيْعُهُ دُونَ أَكْمَامِهِ، لِأَنَّهُ مَجْهُولٌ لَا يَدْرِي أَحَدٌ صِفَتَهُ، وَلَا بَيْعُ اللَّحْمِ دُونَ الْجِلْدِ، وَلَا النَّوَى دُونَ التَّمْرِ، وَلَا اللَّبَنِ دُونَ الشَّاةِ كَذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَخْلُو بَيْعُ كُلِّ ذَلِكَ قَبْلَ ظُهُورِهِ مِنْ أَنْ يَكُونَ إخْرَاجُهُ مُشْتَرَطًا عَلَى الْبَائِعِ، أَوْ عَلَى الْمُشْتَرِي، أَوْ عَلَيْهِمَا، أَوْ عَلَى غَيْرِهِمَا، أَوْ لَا عَلَى أَحَدٍ، فَإِنْ كَانَ مُشْتَرَطًا عَلَى الْبَائِعِ، أَوْ عَلَى الْمُشْتَرِي: فَهُوَ بَيْعٌ بِثَمَنٍ مَجْهُولٍ وَإِجَارَةٌ بِثَمَنٍ مَجْهُولٍ - وَهَذَا بَاطِلٌ؛

what is known, not what is unknown. Similarly, the same applies if the stipulation is on both of them or on someone else.

L21846 Moreover, every condition not stipulated in the Book of Allah the Exalted is invalid. If a condition is not stipulated upon anyone, it constitutes wrongful appropriation of wealth in reality, because the purchaser does not obtain what he purchased. Ali said: "The proof for the invalidity of selling what is not known through visual inspection or description lies in the authenticity of the Prophet's prohibition (peace and blessings be upon him) against the sale of uncertainty (gharar)." This constitutes the essence of gharar, for one does not know what he has bought or sold.

L21847 The statement of Allah, the Most High: {Except when it is trade by mutual consent among you} [An-Nisa: 29]. It is fundamentally impossible for mutual consent to occur regarding something whose quantity or attributes are unknown. We distinguished between two matters: (1) the description given by the seller to the buyer or the buyer to the seller—whether one of them believes the other or not—in which case we permitted the sale based on that, and (2) the description given by someone other than these two parties, which we did not permit unless the one being described confirms it. This distinction exists because the sale is based on the description given by the seller to the buyer or the buyer to the seller, and through this description their mutual consent occurs. If the sold item is later found to match that description, we know the sale was concluded rightfully and according to what validates mutual consent; otherwise, it is not valid.[3]

L21848 If someone other than the two parties described the item to them, and the recipient of the description did not believe the describer, then the sale here did not occur based on any description whatsoever. Consequently, the contract was concluded on an unknown on the part of one of them or both - and this is forbidden and impermissible. But if the describer was someone whom the recipient believed, then this affirmation necessitates knowledge.

[3]**Qur'an references (L21847):** Qur'an 4:29 (An-Nisa).

لِأَنَّ الْبَيْعَ لَا يَحِلُّ - بِنَصِّ الْقُرْآنِ - إلَّا بِالتَّرَاضِي، وَالتَّرَاضِي بِضَرُورَةِ الْحِسِّ لَا يُمْكِنُ أَنْ يَكُونَ إلَّا بِمَعْلُومٍ لَا بِمَجْهُولٍ، فَكَذَلِكَ إنْ كَانَ مُشْتَرَطًا عَلَيْهِمَا، أَوْ عَلَى غَيْرِهِمَا.

وَأَيْضًا: فَإِنَّ كُلَّ ذَلِكَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، فَإِنْ لَمْ يَشْتَرِطْ عَلَى أَحَدٍ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ حَقًّا؛ لِأَنَّهُ لَا يَصِلُ إلَى أَخْذِ مَا اشْتَرَاهُ؟ قَالَ عَلِيٌّ: وَالْبُرْهَانُ عَلَى بُطْلَانِ بَيْعِ مَا لَمْ يُعْرَفْ بِرُؤْيَةٍ وَلَا بِصِفَةٍ: صِحَّةُ «نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» وَهَذَا عَيْنُ الْغَرَرِ، لِأَنَّهُ لَا يَدْرِي مَا اشْتَرَى أَوْ بَاعَ.

وَقَوْلُ اللَّهِ، تَعَالَى: {إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] . وَلَا يُمْكِنُ أَصْلًا وُقُوعُ التَّرَاضِي عَلَى مَا لَا يُدْرَى قَدْرُهُ وَلَا صِفَاتُهُ، وَإِنَّمَا فَرَّقْنَا بَيْنَ صِفَةِ الْبَائِعِ لِلْمُشْتَرِي، أَوْ الْمُشْتَرِي لِلْبَائِعِ - صَدَّقَ أَحَدُهُمَا الْآخَرَ أَوْ لَمْ يُصَدِّقْهُ - فَأَجَزْنَا الْبَيْعَ بِذَلِكَ وَبَيْنَ صِفَةِ غَيْرِهِمَا، فَلَمْ يُجِزْهُ إلَّا مِمَّنْ يُصَدِّقُهُ الْمَوْصُوفُ لَهُ، فَلِأَنَّ صِفَةَ الْبَائِعِ لِلْمُشْتَرِي، أَوْ صِفَةَ الْمُشْتَرِي لِلْبَائِعِ عَلَيْهَا وَقَعَ الْبَيْعُ، وَبِهَا تَرَاضَيَا، فَإِنْ وَجَدَ الْمَبِيعَ كَذَلِكَ عَلِمْنَا أَنَّ الْبَيْعَ وَقَعَ صَحِيحًا عَلَى حَقٍّ وَعَلَى مَا يَصِحُّ بِهِ التَّرَاضِي وَإِلَّا فَلَا.

وَأَمَّا إذَا وَصَفَهُ لَهُمَا غَيْرُهُمَا مِمَّنْ لَا يُصَدِّقُهُ الْمَوْصُوفُ لَهُ فَإِنَّ الْبَيْعَ هَهُنَا لَمْ يَقَعْ عَلَى صِفَةٍ أَصْلًا، فَوَقَعَ الْعَقْدُ عَلَى مَجْهُولٍ مِنْ أَحَدِهِمَا أَوْ مِنْ كِلَيْهِمَا - وَهَذَا حَرَامٌ لَا يَحِلُّ. فَإِنْ وَصَفَهُ مَنْ صَدَّقَهُ الْمَوْصُوفُ لَهُ، فَالتَّصْدِيقُ يُوجِبُ الْعِلْمَ، فَإِنَّمَا اشْتَرَى مَا عَلِمَ، أَوْ بَاعَ الْبَائِعُ مَا عَلِمَ، فَالْعَقْدُ صَحِيحٌ، وَالتَّرَاضِي صَحِيحٌ.

Thus, the buyer purchased what he knew, or the seller sold what he knew, making both the contract and the mutual consent valid.

فَإِنْ وَجَدَ الْمَبِيعَ كَذَلِكَ عَلِمَ أَنَّ الْبَيْعَ انْعَقَدَ عَلَى صِحَّةٍ، وَإِنْ وَجَدَ بِخِلَافِ ذَلِكَ عَلِمَ أَنَّ الْبَيْعَ لَمْ يَنْعَقِدْ عَلَى صِحَّةٍ، كَمَا لَوْ وَجَدَهُ قَدْ اسْتَحَالَ عَمَّا عَرَفَهُ عَلَيْهِ وَلَا فَرْقَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21849–21851 If he finds the subject matter of the sale as described, he knows the sale was validly concluded; but if he finds it contrary to that description, he knows the sale is invalid. He knew the sale had not been validly concluded, just as if he discovered it had become legally invalid contrary to what he had known, with no distinction between the two cases—and success comes from Allah, the Exalted.

[مَسْأَلَةُ بَيْعُ الثَّوْبِ الْوَاحِدِ الْمَطْوِيِّ]

L21852

Issue on the Sale of a Single Folded Garment

١٤١٤ - مَسْأَلَةٌ: وَجَائِزٌ بَيْعُ الثَّوْبِ الْوَاحِدِ الْمَطْوِيِّ، أَوْ فِي جِرَابِهِ، أَوْ الثِّيَابِ الْكَبِيرَةِ كَذَلِكَ، إذَا وَصَفَ كُلَّ ذَلِكَ، فَإِنْ وَجَدَ كُلَّ ذَلِكَ كَمَا وَصَفَ فَالْبَيْعُ لَازِمٌ، وَإِلَّا فَالْبَيْعُ بَاطِلٌ.

L21853 Issue 1414: It is permissible to sell a single folded garment, or one in its bag, or large garments in the same manner, provided it is described in all those aspects. If all those aspects are found as described, the sale is binding; otherwise, the sale is invalid.

قَالَ عَلِيٌّ: التَّفْرِيقُ بَيْنَ الْوَاحِدِ، وَالْكَثِيرِ، خَطَأٌ، وَلَيْسَ إلَّا حَرَامٌ، فَقَلِيلُهُ وَكَثِيرُهُ حَرَامٌ، أَوْ حَلَالٌ، فَقَلِيلُهُ وَكَثِيرُهُ حَلَالٌ - وَهَذَا بِعَيْنِهِ هَوَّلُوا وَشَنَّعُوا عَلَى الْحَنَفِيِّينَ فِي إبَاحَتِهِمْ قَلِيلَ الْمُسْكِرِ وَتَحْرِيمِهِمْ كَثِيرَهُ، وَلَا يُقْبَلُ مِثْلُ هَذَا إلَّا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَمَا نَعْلَمُ لَهُمْ شَيْئًا شَغَبُوا بِهِ إلَّا أَنَّهُمْ قَالُوا: أَمْرُ الثَّوْبِ الْوَاحِدِ يَسْهُلُ نَشْرُهُ وَتَقْلِيبُهُ وَطَيُّهُ، وَهَذَا يَصْعُبُ فِي الْكَثِيرِ؟ فَقُلْنَا لَهُمْ: وَأَيْنَ وَجَدْتُمْ هَذِهِ الشَّرِيعَةَ أَنْ تَكُونَ صُعُوبَةُ الْعَمَلِ تُبِيحُ الْمُحَرَّمَاتِ، وَالْبُيُوعَ الْمُحَرَّمَةَ؟ ثُمَّ نَقُولُ لَهُمْ: مَا تَقُولُونَ فِي ثَوْبَيْنِ مُدْرَجَيْنِ فِي جِرَابٍ أَوْ جِرَابَيْنِ؟ فَإِنْ أَبَاحُوا ذَلِكَ، سَأَلْنَاهُمْ عَنْ الثَّلَاثَةِ، ثُمَّ عَنْ الْأَرْبَعَةِ، ثُمَّ نَزِيدُهُمْ هَكَذَا، وَاحِدًا فَوَاحِدًا؟ فَإِنْ حَرَّمُوا سَأَلْنَاهُمْ عَنْ الدَّلِيلِ عَلَى تَحْلِيلِ مَا أَحَلُّوا مِنْ ذَلِكَ وَتَحْرِيمِ مَا حَرَّمُوا، وَعَنْ الدَّلِيلِ عَلَى صُعُوبَةِ مَا جَعَلُوهُ لِصُعُوبَتِهِ حَلَالًا، وَعَلَى سُهُولَةِ مَا جَعَلُوهُ لِسُهُولَتِهِ حَرَامًا وَهَذَا مَا لَا سَبِيلَ إلَيْهِ.

L21854 Ali said: Differentiating between the single and the multiple is erroneous, for there is only prohibition—so both its small and large quantities are prohibited—or permissibility—so both its small and large quantities are permissible. This precise issue is what they magnified and censured the Hanafis for, concerning their allowance of a small quantity of intoxicants while prohibiting their large quantity. Such differentiation cannot be accepted except from the Messenger of Allah—peace and blessings be upon him—alone. We know of no substantive objection they raised except their statement: "The matter of a single garment is easy to spread, turn over, and fold, whereas this becomes difficult with many garments." We responded: Where did you find this legal principle that difficulty in action permits prohibited matters and unlawful transactions? Then we ask them: What is your ruling on two garments rolled up in one sack or two sacks? If they permit this, we question them about three garments, then four, incrementally increasing the number. If they prohibit it, we demand evidence for the permissibility they granted, evidence for the prohibition they imposed, evidence for the difficulty they

cited to justify permissibility, and evidence for the ease they cited to justify prohibition. This is untenable.

L21855 Moreover, for many garments, spreading them out and folding them is easier than spreading and folding a single garment. This is a matter known by necessity, such as the Mervi fabric imported from Baghdad, which no one can refold after it has been spread out except one in a thousand. The legal ruling in this matter is based on validating mutual consent through knowledge of its attributes and the elimination of gharar (excessive uncertainty) in the sales contract solely from uncertainty. And success comes from Allah, the Exalted.

L21856 **The jurisprudential issue of deferred payment sale to a specified term.**

L21857 Issue 1415: It is obligatory for both parties in any sale transaction—whether minor or substantial—to have their exchange witnessed by two just men from among the just, or one just man and two just women from among the just. If they cannot find just witnesses, the obligation of testimony is nullified as we previously explained. If they fail to secure witnesses while being capable of doing so, both parties have disobeyed Allah the Almighty, though the sale remains legally valid.

L21858–21859 If the sale involves a price payable at a specified term, it is a farḍ (obligation) upon both parties - along with the stipulated witnessing - to document it. If they do not document it, they have indeed disobeyed Allah, the Exalted and Majestic, and the sale remains valid.

L21860 If they both are unable to find a scribe, the obligation of the written contract is waived from them both.

L21861 The evidence for this is the statement of Allah, the Most High: "O you who believe, when you contract a debt for a specified term, document it. Let a scribe write between you with justice. Let no scribe refuse to write as Allah has taught him; let him write, and let the one liable for the right dictate. Let him fear Allah, his Lord, and not diminish anything from it. If the liable party is immature, weak, or incapable of dictating, let his guardian dictate with justice. Appoint two witnesses from your men. If two men are not available, then one man and two women from those you approve

وَأَيْضًا: فَرُبَّ ثِيَابٍ يَكُونُ نَشْرُهَا وَطَيُّهَا أَسْهَلَ مِنْ نَشْرِ ثَوْبٍ وَاحِدٍ وَطَيِّهِ، هَذَا أَمْرٌ يُعْرَفُ ضَرُورَةً، كَالْمَرْوِيِّ الْمَجْلُوبِ مِنْ بَغْدَادَ الَّذِي لَا يَقْدِرُ عَلَى إِعَادَةِ طَيِّهِ بَعْدَ نَشْرِهِ إِلَّا وَاحِدٌ بَيْنَ أُلُوفٍ، وَإِنَّمَا الْحُكْمُ فِي ذَلِكَ كَوُجُوهِ صِحَّةِ التَّرَاضِي بِعِلْمِهَا بِالصِّفَةِ، وَارْتِفَاعِ الْغَرَرِ فِي عَقْدِ الْبَيْعِ عَنْ الْجَهَالَةِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمُدَايَنَةِ إلَى أَجَلٍ مُسَمًّى]

١٤١٥ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مُتَبَايِعَيْنِ - لِمَا قَلَّ أَوْ كَثُرَ - أَنْ يُشْهِدَا عَلَى تَبَايُعِهِمَا رَجُلَيْنِ، أَوْ رَجُلًا وَامْرَأَتَيْنِ مِنْ الْعُدُولِ، فَإِنْ لَمْ يَجِدَا عُدُولًا سَقَطَ فَرْضُ الْإِشْهَادِ كَمَا ذَكَرْنَا، فَإِنْ لَمْ يُشْهِدَا - وَهُمَا يَقْدِرَانِ عَلَى الْإِشْهَادِ - فَقَدْ عَصَيَا اللَّهَ عَزَّ وَجَلَّ، وَالْبَيْعُ تَامٌّ.

فَإِنْ كَانَ الْبَيْعُ بِثَمَنٍ - إلَى أَجَلٍ مُسَمًّى - فَفَرْضٌ عَلَيْهِمَا مَعَ الْإِشْهَادِ الْمَذْكُورِ أَنْ يَكْتُبَاهُ، فَإِنْ لَمْ يَكْتُبَاهُ، فَقَدْ عَصَيَا اللَّهَ عَزَّ وَجَلَّ وَالْبَيْعُ تَامٌّ.

فَإِنْ لَمْ يَقْدِرَا عَلَى كَاتِبٍ فَقَدْ سَقَطَ عَنْهُمَا فَرْضُ الْكِتَابِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ وَلْيَكْتُبْ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ وَاسْتَشْهِدُوا شَهِيدَيْنِ

as witnesses—so that if one of them errs, the other can remind her. Let the witnesses not refuse when summoned. Do not weary of writing it—whether small or large—to its term. This is more just with Allah, firmer for testimony, and closer to avoiding doubt, unless it is an immediate trade transaction you conduct among yourselves—then there is no blame upon you for not documenting it. Have witnesses present when you trade. Let no harm be caused to the scribe or the witness. If you do so, it is certainly disobedience by you. Fear Allah, and Allah teaches you. Allah knows all things. If you are traveling and find no scribe, then security deposits held. If one of you entrusts another, let the entrusted one fulfill his trust, and let him fear Allah, his Lord. Do not conceal testimony." [Al-Baqarah: 282-283][4]

مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الأُخْرَى وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا وَلا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَى أَلا تَرْتَابُوا إِلا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلا تَكْتُبُوهَا وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ وَلا يُضَارَّ كَاتِبٌ وَلا شَهِيدٌ وَإِنْ تَفْعَلُوا فَإِنَّهُ فُسُوقٌ بِكُمْ وَاتَّقُوا اللَّهَ وَيُعَلِّمُكُمُ اللَّهُ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ - وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي اؤْتُمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلا تَكْتُمُوا الشَّهَادَةَ} [البقرة: ٢٨٢ - ٢٨٣] .

L21862 Abu Muhammad said: These are emphatic, reiterated commands that admit no interpretation. He ordained documentation for deferred debts to specified terms, required witnessing in such recurrent trade transactions, and instructed witnesses not to reject any fair obligation. How then did these people come to consider one command obligatory while neglecting the other? The Almighty declared that if the scribe causes harm - and undoubtedly, refusal to document constitutes a harmful act, while the witness's refusal to testify when summoned is sinful disobedience - then He reinforced this with the strongest emphasis, forbidding us to grow weary of writing what He commanded to be recorded, be it minor or major.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ أَوَامِرُ مُغَلَّظَةٌ مُؤَكَّدَةٌ لَا تَحْتَمِلُ تَأْوِيلًا أَمَرَ بِالْكِتَابِ، فِي الْمُدَايَنَةِ إِلَى أَجَلٍ مُسَمًّى، وَبِالْإِشْهَادِ فِي ذَلِكَ فِي التِّجَارَةِ الْمُدَارَةِ، كَمَا أَمَرَ الشُّهَدَاءَ أَنْ لَا يَأْبَوْا أَمْرًا مُسْتَوِيًا، فَمِنْ أَيْنَ صَارَ عِنْدَ هَؤُلَاءِ الْقَوْمِ أَحَدُ الْأَوَامِرِ فَرْضًا وَالْآخَرُ هَمَلًا؟ وَأَخْبَرَ تَعَالَى أَنَّ الْكَاتِبَ إِنْ ضَارَّ - وَلَا شَكَّ فِي أَنَّ امْتِنَاعَهُ مِنَ الْكِتَابِ مُضَارَّةٌ، وَأَنَّ امْتِنَاعَ الشَّاهِدِ مِنَ الشَّهَادَةِ إِذْ دُعِيَ - فُسُوقٌ ثُمَّ أَكَّدَ تَعَالَى أَشَدَّ تَأْكِيدٍ وَنَهَانَا أَنْ نَسْأَمَ كِتَابَ مَا أَمَرَنَا بِكِتَابِهِ صَغِيرًا كَانَ أَوْ كَبِيرًا.

L21863 The Almighty has informed that this is more just in the sight of Allah, more upright for testimony, and closer to preventing doubt. He absolved from sin for omitting written contracts specifically without requiring witnesses in ongoing trade transactions, but He did not absolve from sin for omitting written contracts concerning debts with specified terms.

وَأَخْبَرَ تَعَالَى أَنَّ ذَلِكَ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَى مِنْ أَنْ لَا نَرْتَابَ، وَأَسْقَطَ الْجُنَاحَ فِي تَرْكِ الْكِتَابِ خَاصَّةً دُونَ الْإِشْهَادِ فِي التِّجَارَةِ الْمُدَارَةِ، وَلَمْ يُسْقِطِ الْجُنَاحَ فِي تَرْكِ الْكِتَابِ فِيمَا كَانَ دَيْنًا إِلَى أَجَلٍ مُسَمًّى.

L21864–21866 And in this, the Sunnah has come—as we were narrated through the chain of Jundar from Shu'bah from Firās al-Khārifī from al-Sha'bī from Abū Burdah

وَبِهَذَا جَاءَتِ السُّنَّةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ غُنْدَرٍ عَنْ شُعْبَةَ عَنْ فِرَاسٍ الْخَارِفِيِّ عَنِ الشَّعْبِيِّ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ قَالَ: ثَلَاثَةٌ يَدْعُونَ اللَّهَ تَعَالَى فَلَا

[4] **Qur'an references (L21861):** Qur'an 2:282 (Al-Baqarah); Qur'an 2:283 (Al-Baqarah).

ibn Abī Mūsā al-Ashʿarī from his father, who said: “Three [types of] people supplicate to Allah the Exalted, so He does not [respond]—[text cut off].” Their supplication is answered—and he mentioned among them a man who had a debt owed to him by another man but did not have it witnessed—and Muʿadh ibn al-Muthannā narrated it from his father, from Shuʿbah, from Firās, from al-Shaʿbī, from Abu Burdah, from his father, from the Prophet, peace and blessings be upon him.

يُسْتَجَابُ لَهُمْ - وَذَكَرَ فِيهِمْ: وَرَجُلٌ كَانَ لَهُ عَلَى رَجُلٍ دَيْنٌ فَلَمْ يُشْهِدْ عَلَيْهِ - وَقَدْ أَسْنَدَهُ مُعَاذُ بْنُ الْمُثَنَّى عَنْ أَبِيهِ عَنْ شُعْبَةَ عَنْ فِرَاسٍ عَنِ الشَّعْبِيِّ عَنْ أَبِي بُرْدَةَ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L21867 From the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: ʿAlī ibn ʿAbdullāh—who is Ibn al-Madīnī—narrated to us, from al-Muʾammal ibn Ismāʿīl, from Sufyān al-Thawrī, from Layth ibn Abī Sulaym, from Mujāhid regarding Allah’s statement: {And take witnesses when you engage in mutual trade} [al-Baqarah 2:282]. Mujāhid said: When Ibn ʿUmar sold for naqd [immediate payment], he would have a witness. When he sold for nasiʾah [deferred payment], he would document the transaction and have a witness.[5]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - أَخْبَرَنَا الْمُؤَمَّلُ بْنُ إِسْمَاعِيلَ نا سُفْيَانُ الثَّوْرِيُّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] قَالَ مُجَاهِدٌ: كَانَ ابْنُ عُمَرَ إِذَا بَاعَ بِنَقْدٍ أَشْهَدَ، وَإِذَا بَاعَ بِنَسِيئَةٍ كَتَبَ وَأَشْهَدَ.

L21868 From the chain of Ismail: Ali ibn Abdullah narrated from Hassan ibn Ibrahim al-Karmani, who narrated from Ibrahim—he is Ibn Maymun the Goldsmith—who narrated from Ata ibn Abi Rabah, who said: “You must call witnesses for everything you buy or sell, even if it is for a dirham, half a dirham, a quarter of a dirham, or less. For Allah the Exalted says: *’And take witnesses when you engage in trade’* [al-Baqarah 2:282].”[6]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا حَسَّانُ بْنُ إِبْرَاهِيمَ الْكَرْمَانِيُّ نا إِبْرَاهِيمُ - هُوَ ابْنُ مَيْمُونٍ الصَّائِغُ - عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: تُشْهِدُ عَلَى كُلِّ شَيْءٍ تَشْتَرِيهِ وَتَبِيعُهُ وَلَوْ كَانَ بِدِرْهَمٍ أَوْ بِنِصْفِ دِرْهَمٍ أَوْ بِرُبْعِ دِرْهَمٍ أَوْ أَقَلَّ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] .

L21869 Narrated by Abu Sa’id al-Fata, from Muhammad ibn Ali al-Idfawi, from Ahmad ibn Muhammad ibn Isma’il ibn al-Nahhas the grammarian, from Ja’far ibn Mujashi’, from Ibrahim ibn Ishaq, from Shuja’, from Hushaym, from al-Mughirah ibn Miqsam, from Ibrahim al-Nakha’i, who said: “Take witnesses when you sell and when you buy – even for a dustaja of herbs.” Ibn al-Nahhas said: Muhammad ibn Jarir al-Tabari stated: It is not permissible for a Muslim to sell or purchase without having witnesses, otherwise he would be opposing the Book of Allah Almighty. Likewise, if the transaction

نا أَبُو سَعِيدٍ الْفَتَى نا مُحَمَّدُ بْنُ عَلِيٍّ الإدفوي نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ بْنِ النَّحَّاسِ النَّحْوِيُّ نا جَعْفَرُ بْنُ مُجَاشِعٍ نا إِبْرَاهِيمُ بْنُ إِسْحَاقَ نا شُجَاعٌ نا هُشَيْمٌ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ " أَشْهِدْ إِذَا بِعْتَ وَإِذَا اشْتَرَيْتَ - وَلَوْ عَلَى دُسْتُجَةِ بَقْلٍ - قَالَ ابْنُ النَّحَّاسِ: وَقَالَ مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ: لَا يَحِلُّ لِمُسْلِمٍ إِذَا بَاعَ وَاشْتَرَى إِلَّا أَنْ يُشْهِدَ، وَإِلَّا كَانَ مُخَالِفًا لِكِتَابِ اللَّهِ عَزَّ وَجَلَّ - وَهَكَذَا إِنْ كَانَ إِلَى أَجَلٍ فَعَلَيْهِ أَنْ يَكْتُبَ وَيُشْهِدَ إِذَا وَجَدَ كَاتِبًا - وَهُوَ قَوْلُ جَابِرِ بْنِ زَيْدٍ، وَغَيْرِهِ.

[5] **Qur’an references (L21867):** Qur’an 2:282 (Al-Baqarah).
[6] **Qur’an references (L21868):** Qur’an 2:282 (Al-Baqarah).

is deferred, he must document it and take witnesses when he finds a scribe – this being the opinion of Jabir ibn Zayd and others.

L21870 From the chain of Ismāʿīl ibn Isḥāq: narrated to us Yaḥyā ibn Khalaf: narrated to us Abū ʿĀṣim—he is Al-Ḍaḥḥāk ibn Khalaf—from ʿĪsā via Ibn Abī Najīḥ, who narrated to us from Mujāhid regarding the statement of Allah the Exalted: {And let no scribe refuse} [Al-Baqarah: 282]. [Mujāhid] said: "He obligated the scribe to write." All of the above is the view of Abū Sulaymān and our colleagues.[7]

L21871 The Hanafis, Malikis, and Shafi'is maintained that neither the witnessing mentioned nor the written document prescribed are obligatory, nor is the scribe compelled to write. It has been narrated to us from Abu Sa'id al-Khudri that he recited this verse, and when he reached Allah's statement: *"But if one of you entrusts another, let the one entrusted fulfill their trust"* [Al-Baqarah 2:283], he said: "Has this verse abrogated what preceded it?"[8]

L21872–21873 Abu Muhammad said: The apparent meaning of Abu Sa'id's statement—may Allah be pleased with him—is that it abrogated the command regarding the pledge, for it was the one immediately preceding it and connected to it. It is not permissible to presume that Abu Sa'id meant it abrogated all that was written before it of the Quran, nor all that was revealed before it of the Quran. Since there is no doubt about this, it is impermissible to include in Abu Sa'id's statement the claim that it abrogated the command for testimony and written contracts—a far-fetched, invalid assertion without evidence. However, this has been reported from al-Hasan and al-Hakam.

L21874 It has been reported from Al-Shaʿbī that the ruling concerning all these matters is a recommendation—which is the view of Abū Qilābah, Ṣafwān ibn Muḥriz, and Ibn Sīrīn.

L21875 Abū Muḥammad said: A general claim of abrogation is impermissible except with definitive proof, for the speech of Allah the Exalted was revealed to be acted upon and obeyed through its implementation—not to be abandoned.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا يَحْيَى بْنُ خَلَفٍ نا أَبُو عَاصِمٍ - هُوَ الضَّحَّاكُ بْنُ خَلَفٍ - عَنْ عِيسَى نا ابْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا يَأْبَ كَاتِبٌ} [البقرة: ٢٨٢] قَالَ: وَأَوْجَبَ عَلَى الْكَاتِبِ أَنْ يَكْتُبَ - وَكُلُّ هَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

وَذَهَبَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ إِلَى أَنَّهُ لَيْسَ الْإِشْهَادُ الْمَذْكُورُ، وَلَا الْكِتَابُ الْمَذْكُورُ، الْمَأْمُورُ بِهِ: وَاجِبًا - وَلَا يَلْزَمُ الْكَاتِبُ أَنْ يَكْتُبَ -: رُوِّينَا عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّهُ قَرَأَ هَذِهِ الْآيَةَ فَلَمَّا بَلَغَ إِلَى قَوْلِ اللَّهِ تَعَالَى: {فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي اؤْتُمِنَ أَمَانَتَهُ} [البقرة: ٢٨٣] قَالَ: نَسَخَتْ هَذِهِ الْآيَةُ مَا قَبْلَهَا؟

قَالَ أَبُو مُحَمَّدٍ: الظَّاهِرُ مِنْ قَوْلِ أَبِي سَعِيدٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهَا نَسَخَتْ، الْأَمْرَ بِالرَّهْنِ، لِأَنَّهُ هُوَ الَّذِي قَبْلَهَا مُتَّصِلًا بِهَا، وَلَا يَجُوزُ أَنْ يُظَنَّ بِأَبِي سَعِيدٍ أَنَّهُ يَقُولُ: إِنَّهَا نَسَخَتْ كُلَّ مَا كُتِبَ قَبْلَهَا مِنْ الْقُرْآنِ، وَلَا كُلَّ مَا نَزَلَ قَبْلَهَا مِنْ الْقُرْآنِ، فَإِذْ لَا شَكَّ مِنْ هَذَا: فَلَا يَجُوزُ أَنْ يَدْخُلَ فِي قَوْلِ أَبِي سَعِيدٍ أَنَّهَا نَسَخَتْ الْأَمْرَ بِالْإِشْهَادِ وَالْكِتَابِ بِالدَّعْوَى الْبَعِيدَةِ الْفَاسِدَةِ بِلَا بُرْهَانٍ، إِلَّا أَنَّهُ قَدْ رُوِيَ هَذَا عَنْ الْحَسَنِ، وَالْحَكَمِ.

وَرُوِيَ عَنْ الشَّعْبِيِّ أَنَّ الْأَمْرَ بِكُلِّ ذَلِكَ: نَدْبٌ - وَهُوَ قَوْلُ أَبِي قِلَابَةَ، وَصَفْوَانَ بْنِ مُحْرِزٍ، وَابْنِ سِيرِينَ.

قَالَ أَبُو مُحَمَّدٍ: دَعْوَى النَّسْخِ جُمْلَةً لَا يَجُوزُ إِلَّا بِبُرْهَانٍ مُتَيَقَّنٍ، لِأَنَّ كَلَامَ اللَّهِ تَعَالَى إِنَّمَا وَرَدَ لِيُؤْتَمَرَ لَهُ وَيُطَاعَ بِالْعَمَلِ بِهِ، لَا لِتَرْكِهِ، وَالنَّسْخُ يُوجِبُ التَّرْكَ، فَلَا يَجُوزُ لِأَحَدٍ

[7] **Qur'an references (L21870):** Qur'an 2:282 (Al-Baqarah).
[8] **Qur'an references (L21871):** Qur'an 2:283 (Al-Baqarah).

Abrogation necessitates abandonment. Thus, it is impermissible for anyone to assert regarding any matter Allah the Exalted has commanded: "I am not bound to obey this," except through another text from Allah—the Almighty and Majestic—or His Messenger (peace be upon him) declaring its abrogation. Otherwise, such a claim is impermissible.

أَنْ يَقُولَ فِي شَيْءٍ أَمَرَهُ اللَّهُ تَعَالَى بِهِ: هَذَا لَا تَلْزَمُنِي طَاعَتُهُ إِلَّا بِنَصٍّ آخَرَ عَنْ اللَّهِ عَزَّ وَجَلَّ، أَوْ عَنْ رَسُولِهِ - عَلَيْهِ السَّلَامُ - بِأَنَّهُ قَدْ نُسِخَ، وَإِلَّا فَالْقَوْلُ بِذَلِكَ لَا يَجُوزُ.

L21876 Similarly, the claim of recommendation is also invalid unless supported by another piece of textual evidence. This is because the meaning of recommendation is "do it if you wish, or refrain if you wish." In the Arabic language, the imperative "do" followed by "do not do, if you wish" cannot be understood as conveying obligation unless evidence exists to make it obligatory. Thus, both claims are invalidated with unequivocal certainty, leaving no room for ambiguity.

وَكَذَلِكَ دَعْوَى النَّدْبِ بَاطِلٌ أَيْضًا إِلَّا بِبُرْهَانٍ آخَرَ مِنْ النَّصِّ كَذَلِكَ، لِأَنَّ مَعْنَى النَّدْبِ إنْ شِئْت فَافْعَلْ وَإِنْ شِئْت فَلَا تَفْعَلْ، وَلَا يُفْهَمُ فِي اللُّغَةِ الْعَرَبِيَّةِ فِي لَفْظَةِ افْعَلْ لَا تَفْعَلْ إنْ شِئْت إلَّا بِبُرْهَانٍ يُوجِبُ ذَلِكَ، فَبَطَلَتْ الدَّعْوَتَانِ مَعًا بِيَقِينٍ لَا إشْكَالَ فِيهِ.

L21877 I wish I knew what the distinction is between Allah's saying, exalted is He: "Hasten to the remembrance of Allah and abandon trade" [Al-Jumuʿah: 9], and His saying, exalted is He: "Do not disdain to write it—whether small or large—for its appointed term" [Al-Baqarah: 282]. The Malikis stated regarding that case: it is obligatory, yet they declared here: it is recommended—asserting this through arbitrary judgment without proof.[9]

وَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ قَوْلِ اللَّهِ تَعَالَى: {فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ} [الجمعة: ٩] وَبَيْنَ قَوْله تَعَالَى: {وَلا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ} [البقرة: ٢٨٢] وَقَدْ قَالَ الْمَالِكِيُّونَ فِي ذَلِكَ: هُوَ فَرْضٌ، وَقَالُوا هَهُنَا: هُوَ نَدْبٌ تَحَكُّمًا بِلَا بُرْهَانٍ.

L21878 And similarly, the Exalted's statement: "And give them from Allah's wealth which He has granted you" [24:33]. The Shafiʿī scholars affirmed this as obligatory, yet here they declare it merely recommended - an arbitrary ruling without textual basis.[10]

وَكَذَلِكَ قَوْله تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] وَقَدْ قَالَ الشَّافِعِيُّونَ: إنَّهُ فَرْضٌ، وَقَالُوا هَهُنَا: هُوَ نَدْبٌ تَحَكُّمًا بِلَا دَلِيلٍ.

L21879 Likewise, the statement of the Exalted: {The Station of Abraham, and whoever enters it is safe} [Āl ʿImrān: 97]. The Ḥanafīs said: "This is an obligation, and no ḥadd penalty is to be enforced in Makkah." Here they said: "It is a recommendation - an arbitrary ruling without proof."[11]

وَكَذَلِكَ قَوْله تَعَالَى: {مَقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] فَقَالَ الْحَنَفِيُّونَ: هَذَا فَرْضٌ وَلَا يُقَامُ بِمَكَّةَ حَدٌّ، وَقَالُوا هَهُنَا: هُوَ نَدْبٌ تَحَكُّمًا بِلَا حُجَّةٍ.

L21880 And what difference is there between His Exalted command regarding testimony and documentation, and His Exalted command concerning the expiation of oaths, the expiation of *ẓihār*, the ruling on *īlāʾ*, the ruling on

وَأَيُّ فَرْقٍ بَيْنَ أَمْرِهِ تَعَالَى بِالْإِشْهَادِ، وَالْكِتَابِ، وَبَيْنَ أَمْرِهِ تَعَالَى بِمَا أَمَرَ فِي كَفَّارَةِ الْأَيْمَانِ، وَكَفَّارَةِ الظِّهَارِ، وَحُكْمِ الْإِيلَاءِ، وَحُكْمِ اللِّعَانِ، وَسَائِرِ أَوَامِرِ الْقُرْآنِ؟ وَنَعُوذُ بِاَللَّهِ مِنْ أَنْ نَجْعَلَ {الْقُرْآنَ عِضِينَ} [الحجر: ٩١] فَنُوجِبُ بَعْضًا وَنُلْغِي بَعْضًا.

[9] **Qur'an references (L21877):** Qur'an 62:9 (Al-Jumu'ah); Qur'an 2:282 (Al-Baqarah).
[10] **Qur'an references (L21878):** Qur'an 24:33 (An-Nur).
[11] **Qur'an references (L21879):** Qur'an 3:97 (Ali 'Imran).

li'ān, and all other commands of the Quran? We seek refuge in Allah from making 'the Quran into parts' [Al-Hijr: 91], thereby enforcing some portions and nullifying others.[12]

L21881–21882 If they cite the words of Allah, the Exalted: {If one of you entrusts another, let the one entrusted fulfill his trust} [Al-Baqarah: 283], we say: This is refuted as pertaining to matters connected to collateral, and it is not permissible to interpret it as abrogating the obligation to require testimony and written contracts through a claim without evidence.[13]

L21883 Similarly, whoever states that "it is a communal obligation"—because all such claims are devoid of proof, and anything characterized thus is invalid and rejected. Allah, the Exalted, said: "Say, 'Produce your proof if you are truthful'" [Al-Baqarah: 111].[14]

L21884 Among the strangest matters is their haste to claim that some Quranic commands are recommended. When we said to them: "What is your proof for this claim?" they answered: "The words of Allah the Exalted: {When you have exited the state of *ihram*, then hunt} [Al-Ma'idah: 2]."[15]

L21885 "When the Friday prayer is concluded, disperse in the land" [Al-Jumu'ah 62:10].[16]

L21886 So we said to them: "This is truly astonishing! By what religion or reason have you concluded that if a single command of Allah the Exalted is established as abrogated or recommended (mustaḥabb), then all His Exalted commands must be presumed abrogated or recommended?" Never has a more astounding argument than this corrupt one been heard, for they sought through it to demolish the Quran without any proof.

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي اؤْتُمِنَ أَمَانَتَهُ} [البقرة: ٢٨٣] ؟ قُلْنَا: هَذَا مَرْدُودٌ عَلَى مَا يَتَّصِلُ بِهِ مِنْ الرَّهْنِ، وَلَا يَجُوزُ أَنْ يُحْمَلَ عَلَى إسْقَاطِ وُجُوبِ الْأَمْرِ بِالْإِشْهَادِ، وَالْكِتَابِ، بِالدَّعْوَى بِلَا بُرْهَانٍ.

وَكَذَلِكَ مَنْ قَالَ: هُوَ فَرْضٌ عَلَى الْكِفَايَةِ؛ لِأَنَّ كُلَّ ذَلِكَ دَعْوَى عَارِيَّةٌ مِنْ الْبُرْهَانِ، وَمَا كَانَ بِهَذِهِ الصِّفَةِ فَهُوَ بَاطِلٌ مُطْرَحٌ قَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

وَمِنْ أَطْرَفِ شَيْءٍ مُبَادَرَتُهُمْ إذَا ادَّعَوْا فِي شَيْءٍ مِنْ أَوَامِرِ الْقُرْآنِ أَنَّهُ نَدْبٌ؟ فَقُلْنَا لَهُمْ: مَا بُرْهَانُكُمْ عَلَى هَذِهِ الدَّعْوَى؟ قَالُوا: قَوْلُ اللَّهِ تَعَالَى: {وَإِذَا حَلَلْتُمْ فَاصْطَادُوا} [المائدة: ٢] .

{فَإِذَا قُضِيَتِ الصَّلاةُ فَانْتَشِرُوا فِي الأَرْضِ} [الجمعة: ١٠] .

فَقُلْنَا لَهُمْ: إنَّ هَذَا لَعَجَبٌ لَيْتَ شِعْرِي فِي أَيِّ دِينٍ وَجَدْتُمْ أَمْ فِي أَيِّ عَقْلٍ: أَنَّهُ إذَا صَحَّ فِي أَمْرٍ مِنْ أَوَامِرِ اللَّهِ تَعَالَى أَنَّهُ مَنْسُوخٌ، أَوْ أَنَّهُ نَدْبٌ وَجَبَ أَنْ تُحْمَلَ سَائِرُ أَوَامِرِهِ تَعَالَى عَلَى أَنَّهَا مَنْسُوخَةٌ، وَعَلَى أَنَّهَا نَدْبٌ؟ فَمَا سُمِعَ بِأَعْجَبَ مِنْ هَذَا الِاحْتِجَاجِ الْفَاسِدِ إذْ قَصَدُوا بِهِ هَدْمَ الْقُرْآنِ بِلَا بُرْهَانٍ.

وَلَا فَرْقَ بَيْنَ فِعْلِهِمْ هَذَا هَهُنَا وَبَيْنَ مَنْ قَصَدَ إلَى أَيِّ آيَةٍ شَاءَ مِنْ الْقُرْآنِ فَقَالَ: هِيَ مَنْسُوخَةٌ؟ فَإِذَا قِيلَ لَهُ: مَا بُرْهَانُك عَلَى ذَلِكَ؟ قَالَ: نَسْخُ اللَّهِ تَعَالَى الِاسْتِقْبَالَ إلَى بَيْتِ الْمَقْدِسِ، وَنَسْخُهُ لِإِعْدَادِ الْمُتَوَفَّى عَنْهَا سَنَةً.

[12] **Qur'an references (L21880):** Qur'an 15:91 (Al-Hijr).
[13] **Qur'an references (L21882):** Qur'an 2:283 (Al-Baqarah).
[14] **Qur'an references (L21883):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).
[15] **Qur'an references (L21884):** Qur'an 5:2 (Al-Ma'idah).
[16] **Qur'an references (L21885):** Qur'an 62:10 (Al-Jumu'ah).

L21887 There is no difference between their action in this matter and one who deliberately selects any verse he wishes from the Quran and declares: “This is abrogated.” When asked: “What is your proof for this?” he responds: “Allah’s naskh (abrogation) of the qibla (direction of prayer) toward Bayt al-Maqdis (Jerusalem), and His naskh of the year-long waiting period (ʿiddah) prescribed for widows.”

L21888 Abu Muhammad said: We do not deny the occurrence of abrogation in some commands, or their reduction to a recommendation or restriction in specificity—provided another text clarifies that. But as for [abrogation] based on mere claim, we do not accept it.

L21889–21891 If it is established in a matter from the Qur’an or Sunnah that it is abrogated, recommended, or specified by another text, should we affirm this ruling and refrain from extending it to cases lacking evidence that diverts it from its original subject and inherent requirement? ʿAlī said: They cited as evidence the transmitted report through al-Zuhrī from ʿUmārah ibn Khuzaymah ibn Thābit—that his uncle informed him: “The Messenger of Allah (ﷺ) purchased a horse from a Bedouin and asked him to accompany him so he could give him.” They disagreed about the price, so the Prophet (peace be upon him) hastened while the Bedouin delayed. Men kept haggling with the Bedouin over the horse, and the bid increased. The Bedouin called out to the Prophet: “If you are buying this horse, then buy it; otherwise I will sell it.” The Prophet replied: “Have I not already bought it from you?” The Bedouin said: “By Allah, I did not sell it to you! Bring a witness to testify that I sold it to you!” Khuzaymah said: “I testify that you sold it to him.” The Prophet asked: “On what basis do you testify?” He answered: “Based on my trust in your truthfulness.” Thereupon the Prophet established that Khuzaymah’s testimony would equal the testimony of two men.

L21892 And through the chain of Hammad ibn Salamah from Abu Ja’far from Umarah ibn Khuzaymah ibn Thabit, a similar narration is reported, with an addition: “The Messenger of Allah—peace and blessings be upon him—

قَالَ أَبُو مُحَمَّدٍ: وَنَحْنُ لَا نُنْكِرُ وُجُودَ النَّسْخِ فِي بَعْضِ الْأَوَامِرِ، أَوْ كَوْنَهُ عَلَى النَّدْبِ، أَوْ عَلَى الْخُصُوصِ: إِذَا جَاءَ نَصٌّ آخَرُ بِبَيَانِ ذَلِكَ وَأَمَّا بِالدَّعْوَى فَلَا.

فَإِذَا صَحَّ فِي أَمْرٍ مِنْ الْقُرْآنِ أَوْ السُّنَّةِ أَنَّهُ مَنْسُوخٌ، أَوْ مَنْدُوبٌ، أَوْ مَخْصُوصٌ، بِنَصٍّ آخَرَ؟ قُلْنَا بِذَلِكَ وَلَمْ نَتَعَدَّهُ بِهَذَا الْحُكْمِ إلَى مَا لَمْ يَأْتِ فِيهِ دَلِيلٌ يَصْرِفُهُ عَنْ مَوْضُوعِهِ وَمُقْتَضَاهُ؟ قَالَ عَلِيٌّ: وَاحْتَجُّوا بِالْخَبَرِ الْمَأْثُورِ مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ عُمَارَةَ بْنِ خُزَيْمَةَ بْنِ ثَابِتٍ: أَنَّ عَمَّهُ أَخْبَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْتَاعَ فَرَسًا مِنْ أَعْرَابِيٍّ فَاسْتَتْبَعَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُعْطِيَهُ الثَّمَنَ، فَأَسْرَعَ النَّبِيُّ وَأَبْطَأَ الْأَعْرَابِيُّ فَطَفِقَ رِجَالٌ يُسَاوِمُونَ الْأَعْرَابِيَّ بِالْفَرَسِ، وَزِيدَ عَلَى السَّوْمِ، فَنَادَى الْأَعْرَابِيُّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنْ كُنْتَ مُبْتَاعًا هَذَا الْفَرَسَ فَابْتَعْهُ وَإِلَّا بِعْتُهُ؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوَ لَيْسَ قَدْ ابْتَعْتُهُ مِنْكَ؟ قَالَ الْأَعْرَابِيُّ: وَاَللَّهِ مَا بِعْتُكَهُ هَلُمَّ شَهِيدًا يَشْهَدُ أَنِّي بَايَعْتُكَ؟ فَقَالَ خُزَيْمَةُ: أَنَا أَشْهَدُ أَنَّكَ بَايَعْتَهُ، فَأَقْبَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: بِمَ تَشْهَدُ؟ قَالَ: بِتَصْدِيقِكَ، فَجَعَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَهَادَةَ خُزَيْمَةَ شَهَادَةَ رَجُلَيْنِ» .

returned it and said: 'O Allah, if he has lied, do not bless the transaction for him.' The next morning, it became lame in its leg." They said: "So here is the Messenger of Allah—peace and blessings be upon him—who bought without having witnesses present."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي جَعْفَرٍ عَنْ عُمَارَةَ بْنِ خُزَيْمَةَ بْنِ ثَابِتٍ نَحْوُهُ وَزَادَ فِيهِ: «فَرَدَّهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: اللَّهُمَّ إنْ كَانَ كَذَبَ فَلَا تُبَارِكْ لَهُ فِيهَا فَأَصْبَحَتْ شَاصِيَةً بِرِجْلِهَا» فَقَالُوا: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ ابْتَاعَ وَلَمْ يُشْهِدْ.

L21893 Abu Muhammad said: This holds no validity as evidence for their stance due to several reasons. The first reason is that it constitutes an unreliable narration, as it is ascribed to Umāra ibn Khuzayma - and he is an unknown narrator.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهُ خَبَرٌ لَا يَصِحُّ لِأَنَّهُ رَاجِعٌ إلَى عُمَارَةَ بْنِ خُزَيْمَةَ - وَهُوَ مَجْهُولٌ.

L21894 The second is that even if it were valid, it would not serve as proof for them, because the narration does not indicate that the matter was delayed for a period allowing sufficient time for attestation by witnesses, and he (peace be upon him) did not have it witnessed. Rather, it states that the Messenger of Allah (peace be upon him) purchased a horse from a Bedouin, then took him along to hand over the payment. The Prophet (peace be upon him) hastened while the Bedouin lingered - and a sale is only concluded through bodily separation. Thus, the Prophet (peace be upon him) separated from him to finalize the sale, otherwise it had not been concluded yet. Attestation by witnesses is only required after the sale's valid completion and legal soundness, not before its conclusion.

وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ الْأَمْرَ تَأَخَّرَ مِقْدَارَ مُدَّةٍ يُمْكِنُ فِيهَا الْإِشْهَادُ، فَلَمْ يُشْهِدْ - عَلَيْهِ السَّلَامُ -، وَإِنَّمَا فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْتَاعَ مِنْهُ الْفَرَسَ ثُمَّ اسْتَتْبَعَهُ لِيُوَفِّيَهُ الثَّمَنَ فَأَسْرَعَ - عَلَيْهِ السَّلَامُ - وَأَبْطَأَ الْأَعْرَابِيُّ - وَالْبَيْعُ لَا يَتِمُّ إلَّا بِالتَّفَرُّقِ بِالْأَبْدَانِ - فَفَارَقَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيَتِمَّ الْبَيْعُ، وَإِلَّا فَلَمْ يَكُنْ تَمَّ بَعْدُ، وَإِنَّمَا يَجِبُ الْإِشْهَادُ بَعْدَ تَمَامِ الْبَيْعِ وَصِحَّتِهِ، لَا قَبْلَ أَنْ يَتِمَّ.

L21895 The third argument: Even if their report were sound—though it is not—and even if it were sound in stating that he (peace be upon him) omitted the attestation despite being capable of it after the completion of the sale—and this scenario never occurs—the report contains no indication that this happened after the revelation of the verse. We acknowledge that the obligation of attestation was established solely by the revelation of the verse, not prior to it. It is impermissible to abandon the certain ruling of Allah—the Almighty and Majestic—based on a false presumption that cannot be definitively affirmed. Thus, their entire reliance on this report is rendered completely invalid.

وَالثَّالِثُ: أَنَّهُ حَتَّى لَوْ صَحَّ لَهُمْ الْخَبَرُ - وَهُوَ لَا يَصِحُّ - ثُمَّ صَحَّ فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - تَرَكَ الْإِشْهَادَ وَهُوَ قَادِرٌ عَلَيْهِ بَعْدَ تَمَامِ الْبَيْعِ، وَهَذَا لَا يُوجَدُ أَبَدًا، فَلَيْسَ فِيهِ: أَنَّهُ كَانَ بَعْدَ نُزُولِ الْآيَةِ - وَنَحْنُ نُقِرُّ بِأَنَّ الْإِشْهَادَ إنَّمَا وَجَبَ بِنُزُولِ الْآيَةِ لَا قَبْلَ نُزُولِهَا - وَلَا يَجُوزُ تَرْكُ يَقِينِ حُكْمِ اللَّهِ عَزَّ وَجَلَّ بِظَنٍّ كَاذِبٍ لَا يَحِلُّ الْقَطْعُ بِهِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً.

L21896 Abu Muhammad said: Our experience with them is that they say contrary to this narration, for they all assert: A judge may not rule on his own case.

قَالَ أَبُو مُحَمَّدٍ: وَعَهْدُنَا بِهِمْ يَقُولُونَ بِخِلَافِ هَذَا الْخَبَرِ، لِأَنَّ جَمِيعَهُمْ يَقُولُ: لَا يَحْكُمُ الْحَاكِمُ لِنَفْسِهِ.

وَفِي الْمُسْنَدِ مِنْ طَرِيقَيْ هَذَا الْخَبَرِ أَنَّهُ حَكَمَ - عَلَيْهِ السَّلَامُ - لِنَفْسِهِ، فَمِنْ عَجَائِبِ الدُّنْيَا تَرْكُهُمْ الْحُكْمَ بِخَبَرٍ فِيمَا وَرَدَ فِيهِ وَاحْتِجَاجُهُمْ بِهِ فِي مَا لَيْسَ مِنْهُ فِيهِ أَثَرٌ، وَلَا نَصٌّ، وَلَا دَلِيلٌ.

L21897 In the *Musnad*, through both chains of this report, it is stated that he—peace be upon him—ruled for himself. Among the marvels of this world is their abandonment of rulings based on a report in matters where it is mentioned, while invoking it as evidence in matters where there is no trace, explicit text, or proof from it.

فَإِنْ قَالُوا: أَخَذْنَا بِالْمُرْسَلِ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - رَدَّهَا؟ قُلْنَا: وَمَا الَّذِي جَعَلَ الْمُرْسَلَ مِنْ هَذَا الْخَبَرِ أَقْوَى مِنْ الْمُسْنَدِ، ثُمَّ لَيْسَ فِي الْمُرْسَلِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - رَدَّهَا لِوُجُوبِ الْحُكْمِ بِرَدِّهَا، بَلْ قَدْ يَهَبُهَا - عَلَيْهِ السَّلَامُ - لَهُ كَمَا أَخْبَرَ عَنْ نَفْسِهِ الْمُقَدَّسَةِ أَنَّهُ لَا يَسْأَلُهُ أَحَدٌ مَا لَا تَطِيبُ بِهِ نَفْسُهُ فَيُعْطِيهِ إيَّاهُ إلَّا لَمْ يُبَارَكْ لَهُ فِيهِ - فَهَذَا حَسَنٌ وَإِعْطَاءٌ حَلَالٌ، وَالدُّعَاءُ عَلَيْهِ بِالْعُقُوبَةِ لِكَذِبِهِ، وَلَا يَجُوزُ غَيْرُ ذَلِكَ لَوْ صَحَّ الْخَبَرُ أَصْلًا لِأَنَّهُ لَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَطْلَقَ يَدَ الْفَاسِقِ عَلَى حَرَامٍ وَهُوَ يَعْلَمُهُ حَرَامًا إذْ كَانَ يَكُونُ مُعِينًا عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَعَلَى أَخْذِ الْحَرَامِ عَمْدًا وَظُلْمًا، وَاَللَّهُ تَعَالَى يَقُولُ: {وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَمَنْ نَسَبَ هَذَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ خَرَجَ عَنْ الْإِسْلَامِ.

L21898–21899 If they say: "We have relied on the *mursal* report that he—peace be upon him—rejected it," we reply: What makes the *mursal* report in this narration stronger than the *musnad*? Moreover, the *mursal* does not state that he—peace be upon him—rejected it due to an obligation to rule by its rejection. Rather, he—peace be upon him—might have gifted it to him, as he informed about his noble self that if someone asks him for something he is reluctant to give and he grants it, it will not be blessed for him. This is commendable and lawful giving, while supplicating for his punishment due to his falsehood. No other ruling is permissible even if the report were authentic in the first place, for it is unlawful for a Muslim to presume that the Messenger of Allah—peace and blessings of Allah be upon him—empowered a transgressor over forbidden matters while knowing them forbidden, as this would constitute aiding in sin and transgression, and in deliberately seizing the unlawful through injustice. Allah the Exalted says: *"And do not cooperate in sin and aggression"* (5:2). Whoever ascribes this to the Messenger of Allah—peace and blessings of Allah be upon him—has apostatized from Islam.[17]

وَعَهْدُنَا بِالْحَنَفِيِّينَ لَا يَسْتَحْيُونَ مِنْ مُخَالَفَةِ الْخَبَرِ الثَّابِتِ فِي أَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالْيَمِينِ مَعَ الشَّاهِدِ» ؛ لِأَنَّهُ بِزَعْمِهِمْ خِلَافُ مَا فِي الْقُرْآنِ، وَرَدُّوا الْخَبَرَ الثَّابِتَ فِي تَغْرِيبِ الزَّانِي سَنَةً؛ لِأَنَّهُ زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، وَقَالُوا: لَا نَأْخُذُ بِخَبَرِ الْوَاحِدِ إذَا كَانَ زَائِدًا عَلَى مَا فِي الْقُرْآنِ، وَفَعَلُوا هَذَا كُلُّهُمْ فِي جَلْدِ الْمُحْصَنِ مَعَ

L21900 Our position regarding the Hanafis is that they are not ashamed to contradict the established report that "Allah's Messenger (peace be upon him) ruled by an oath combined with a witness," because in their view it conflicts with the Quran. They rejected the established report concerning the banishment of a fornicator for one year because it constitutes an addition to what is in the Quran. They stated: "We do not accept single-narrator reports (āḥād) when

[17] **Qur'an references (L21899):** Qur'an 5:2 (Al-Ma'idah).

they add to what is in the Quran." Yet all of them applied this principle in the matter of flogging a married fornicator alongside stoning. Then here they show no concern about adopting a weak, unauthentic report—which they claim contradicts the Quran—though how could this be, when even if it were authentic, it would not conflict with the Quran as we have clarified? And with Allah, the Exalted, lies all success.

الرَّجْمِ، ثُمَّ لَا يُبَالُونَ هَهُنَا بِالْأَخْذِ بِخَبَرٍ ضَعِيفٍ لَا يَصِحُّ، مُخَالِفٍ - بِزَعْمِهِمْ - لِمَا فِي الْقُرْآنِ، فَكَيْفَ وَلَوْ صَحَّ لَمَا كَانَ فِيهِ خِلَافٌ لِلْقُرْآنِ عَلَى مَا بَيَّنَّاهُ؟ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L21901 Abū Muḥammad said: Some of them have indulged excessively in idle talk and mixing, bringing forth numerous authentic reports—such as his death—peace be upon him—with his armor pledged for thirty ṣāʿ of barley, his purchase of the virgin from ʿUmar, the camel from Jābir, the purchase of Barīrah, the purchase of Ṣafiyyah for seven heads, the exchange of one slave for two slaves, and a garment for two garments in gambling.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ زَادَ بَعْضُهُمْ فِي الْهَذْرِ وَالتَّخْلِيطِ فَأَتَوْا بِأَخْبَارٍ كَثِيرَةٍ صِحَاحٍ، كَمَوْتِهِ - عَلَيْهِ السَّلَامُ - وَدِرْعُهُ مَرْهُونَةٌ فِي ثَلَاثِينَ صَاعًا مِنْ شَعِيرٍ - وَكَابْتِيَاعِهِ الْبِكْرَ مِنْ عُمَرَ، وَالْجَمَلِ مِنْ جَابِرٍ، وَابْتِيَاعِ بَرِيرَةَ، وَابْتِيَاعِ صَفِيَّةَ بِسَبْعَةِ أَرْؤُسٍ، وَالْعَبْدِ بِالْعَبْدَيْنِ، وَالثَّوْبِ بِالثَّوْبَيْنِ إِلَى الْمَيْسَرَةِ.

L21902 Every narration that mentions him (peace be upon him) having sold or purchased something is met with their claim that these accounts contain no mention of witnessing. All of this provides them with no juristic basis, for none of these reports state that he (peace be upon him) did not involve witnesses or that he did involve witnesses.

وَكُلُّ خَبَرٍ ذُكِرَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - بَاعَ أَوْ ابْتَاعَ، قَالُوا: وَلَيْسَ فِيهَا ذِكْرُ الْإِشْهَادِ وَكُلُّ ذَلِكَ لَا مُتَعَلَّقَ لَهُمْ بِشَيْءٍ مِنْهُ؛ لِأَنَّ جَمِيعَهَا لَيْسَ فِي شَيْءٍ مِنْهَا: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُشْهِدْ، وَلَا أَنَّهُ أَشْهَدَ.

L21903–21905 We found that most of them contain no mention of a price, and this obligates them to permit sales without mentioning a price, since it is silent about it - just as it was silent about mentioning witnessing. The omission of mentioning all rulings in many narrations does not nullify them, just as the words of Allah the Exalted: "Eat and drink" (2:60) do not imply the permissibility of what He prohibited among foods. As for the methodologies—nay, all texts are interwoven together, taken according to what each contains even if not mentioned in others. What differs from this is corruption in the intellect, corruption of religion, and claims of ultimate falsehood.[18]

وَوَجَدْنَا أَكْثَرَهَا لَيْسَ فِيهَا ذِكْرُ ثَمَنٍ فَيَلْزَمُهُمْ عَلَى هَذَا أَنْ يُجِيزُوا الْبَيْعَ بِغَيْرِ ذِكْرِ ثَمَنٍ؛ لِأَنَّهُ مَسْكُوتٌ عَنْهُ كَمَا سَكَتَ عَنْ ذِكْرِ الْإِشْهَادِ، وَلَيْسَ تَرْكُ ذِكْرِ جَمِيعِ الْأَحْكَامِ فِي كَثِيرٍ مِنَ الْأَخْبَارِ بِمُسْقِطٍ لَهَا، كَمَا أَنَّ قَوْلَهُ تَعَالَى: {كُلُوا وَاشْرَبُوا} [البقرة: ٦٠] لَيْسَ فِيهِ إِبَاحَةُ مَا حَرَّمَ مِنَ الْمَآكِلِ، وَالْمَشَارِبِ، بَلِ النُّصُوصُ كُلُّهَا مَضْمُومٌ بَعْضُهَا إِلَى بَعْضٍ، مَأْخُوذٌ بِمَا فِي كُلِّ وَاحِدٍ مِنْهَا، وَإِنْ لَمْ تُذْكَرْ فِي غَيْرِ مِنْهَا - وَمَا عَدَا هَذَا فَفَسَادٌ فِي الْعَقْلِ، وَإِفْسَادٌ لِلدِّينِ، وَدَعَاوَى فِي غَايَةِ الْبُطْلَانِ.

L21906 Moreover, however much they may differ with us concerning the obligation of formal witnessing and documentation, they unanimously agree with us

وَأَيْضًا: فَإِنَّهُمْ مَهْمَا خَالَفُونَا فِي وُجُوبِ الْإِشْهَادِ، وَالْكِتَابِ، فَإِنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّهُمَا فِعْلٌ حَسَنٌ مَنْدُوبٌ إِلَيْهِ، فَإِنْ كَانَ السُّكُوتُ عَنْ ذِكْرِ الْإِشْهَادِ فِي هَذِهِ الْأَخْبَارِ دَلِيلًا

[18] **Qur'an references (L21903):** Qur'an 2:60 (Al-Baqarah).

that these are virtuous and recommended acts. If the silence regarding the mention of witnessing in these reports constitutes evidence for the cessation of its obligation, then it equally constitutes evidence for the cessation of its preferential status, since he—peace be upon him—does not abandon the superior in all his actions in favor of the inferior.

عَلَى سُقُوطِ وُجُوبِهِ فَهُوَ دَلِيلٌ عَلَى سُقُوطِ اخْتِيَارِهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَتْرُكُ الْأَفْضَلَ فِي جَمِيعِ أَعْمَالِهِ لِلْأَدْنَى.

L21907 Among their astonishing aspects (referring to the Ḥanafīs and Mālikīs) is their citation of this verse as evidence in their opposition to the Sunnah's stipulation that no sale is valid between the two parties to the transaction except after physical parting. They argued: "Allah the Exalted said: {And take witnesses when you conduct a sale} [Al-Baqarah: 282], yet He did not mention parting."[19]

وَمِنْ عَجَائِبِهِمْ احْتِجَاجُهُمْ بِهَذِهِ الْآيَةِ - يَعْنِي الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ - فِي مُخَالَفَتِهِمْ السُّنَّةَ أَنْ لَا بَيْعَ بَيْنَ الْمُتَبَايِعَيْنِ إلَّا بَعْدَ التَّفَرُّقِ فَقَالُوا: قَالَ اللَّهُ تَعَالَى: {وَأَشْهِدُوا إذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] وَلَمْ يَذْكُرْ التَّفَرُّقَ.

L21908 Then they invalidated the ruling of this verse through other narrations lacking any mention of the requirement for witnesses. This principle - if validated - would nullify the entire religion from its beginning to its end, for they will inevitably encounter other textual proofs omitting elements present in those hadiths, thereby annulling their rulings. This cycle would persist perpetually: whenever a text emerges omitting certain rulings, all unmentioned rulings must be invalidated. Subsequently, the ruling of that very text would itself be annulled, as it too would be omitted in another text. This is a path whereby whoever treads it merely confirms the corruption of their religion, their lack of modesty, and their intellectual deficiency - and we seek refuge in Allah from being forsaken.

ثُمَّ أَبْطَلُوا حُكْمَ هَذِهِ الْآيَةِ بِأَخْبَارٍ أُخَرَ لَيْسَ فِيهَا ذِكْرُ الْإِشْهَادِ، وَهَذَا بَابٌ يَبْطُلُ بِهِ - لَوْ صَحَّ - جَمِيعُ الدِّينِ أَوَّلِهِ عَنْ آخِرِهِ، لِأَنَّهُمْ لَا يَعْدَمُونَ نُصُوصًا أُخَرَ لَمْ يُذْكَرْ فِيهَا مَا فِي تِلْكَ الْأَحَادِيثِ فَيُبْطِلُونَ لِذَلِكَ أَحْكَامَهَا، وَهَكَذَا أَبَدًا كُلَّمَا وَرَدَ نَصٌّ لَمْ يُذْكَرْ فِيهِ سَائِرُ الْأَحْكَامِ وَجَبَ بُطْلَانُ مَا لَمْ يُذْكَرْ فِيهِ، ثُمَّ يَبْطُلُ حُكْمُ ذَلِكَ النَّصِّ أَيْضًا، لِأَنَّهُ لَمْ يُذْكَرْ أَيْضًا فِي نَصٍّ آخَرَ - وَهَذِهِ طَرِيقٌ مَنْ سَلَكَهَا فَلَمْ يَزْدَ عَلَى أَنْ أَثْبَتَ فَسَادَ دِينِهِ وَقِلَّةَ حَيَائِهِ وَضَعْفَ عَقْلِهِ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ - فَإِنْ قَالُوا: هَذَا مِمَّا تَعُمُّ بِهِ الْبَلْوَى فَلَوْ كَانَ وَاجِبًا مَا خَفِيَ عَلَى كَثِيرٍ مِنْ الْعُلَمَاءِ؟ قُلْنَا: هَبْكُمْ مَوَّهْتُمْ بِهَذَا فِي أَخْبَارِ الْآحَادِ أَتَرَوْنَ هَذَا يَسُوغُ لَكُمْ فِي الْقُرْآنِ الَّذِي لَمْ يَبْقَ مَنْ لَمْ يَعْلَمْهُ؟ وَهَلَّا قُلْتُمْ هَذَا لِأَنْفُسِكُمْ فِي قَوْلِ مَنْ قَالَ مِنْكُمْ: لَا يَتِمُّ الْبَيْعُ إلَّا بِالتَّسْلِيمِ لِلْمَبِيعِ وَهَذَا أَمْرٌ تَعُمُّ بِهِ الْبَلْوَى وَلَا يَعْرِفُهُ أَكْثَرُ النَّاسِ - وَفِي قَوْلِ مَنْ قَالَ مِنْكُمْ: لَا يَتِمُّ الْبَيْعُ إلَّا بِالتَّفَرُّقِ، وَهَذَا أَمْرٌ تَعُمُّ بِهِ الْبَلْوَى وَلَا يَعْرِفُهُ كَثِيرٌ مِنْ النَّاسِ، وَفِي قَوْلِ مَنْ قَالَ مِنْكُمْ بِعُهْدَةِ الرَّقِيقِ فِي السَّنَةِ

If they argue: "This concerns a matter of widespread practical relevance - had it been obligatory, how could it remain concealed from most scholars?" We counter: Suppose we concede your obfuscation regarding solitary narrations - do you deem this reasoning applicable to the Quran, which none remain ignorant of? Why do you not apply this logic to your own positions: to those among you claiming "A sale is invalid without physical transfer of the sold item" - a matter of frequent occurrence unknown to most people? Or to those asserting "A sale is invalid unless buyer and seller separate" - a widespread practice unrecognized by many? Or to those imposing warranty

[19] **Qur'an references (L21907):** Qur'an 2:282 (Al-Baqarah).

periods of one and three years for slaves, or calamities affecting crops - matters of common experience unknown except to your own adherents? Thus, the arbitrary imposition of falsehood in their assertions and proofs becomes evident. And with Allah alone lies success.

L21909–21910 We have stated that if one omits witnessing and the written contract, he has disobeyed God Almighty. However, the sale remains valid. The disobedience is due to opposing God's command in this matter. As for the permissibility of the sale, it is because witnessing and the written contract are two acts distinct from the sale itself. God Almighty ordained them only after the sale's completion and validity. Thus, once the sale is concluded, subsequent disobedience does not nullify it, for every act has its own ruling: *"So whoever does a speck's weight of good will see it"* (Quran 99:7), *"and whoever does a speck's weight of evil will see it"* (Quran 99:8).[20]

L21911 ## Issue: The Terms of Sale

L21912 Issue 1416: A sale is only valid when conducted using the term "sale," "purchase," "trade," or a term equivalent to "sale" in other languages. If the price consists of gold or silver not taken possession of but either immediately due or deferred to a specified term, it is also permissible to use the terms "debt" or "deferred payment." None of that is valid if conducted using the term "gift," "charity," or any term other than those we have mentioned at all.

L21913 The proof of this is Allah's statement, the Most High: "And Allah has permitted trade and forbidden interest" [Al-Baqarah: 275].[21]

L21914 The words of Allah, the Exalted: *"Do not consume your wealth among yourselves by false means unless it is trade by mutual consent among you"* [al-Nisāʾ 4:29]. And His words: *"When you transact a debt for a specified term, write it down"* [al-Baqarah 2:282].[22]

وَالثَّلَاثِ، وَبِالْجَوَائِحِ فِي الثِّمَارِ، وَهِيَ أُمُورٌ تَكْثُرُ بِهَا الْبَلْوَى وَلَا يَعْرِفُهَا غَيْرُ الْقَائِلِينَ بِذَلِكَ مِنْكُمْ فَظَهَرَ التَّحَكُّمُ بِالْبَاطِلِ فِي أَقْوَالِهِمْ وَاسْتِدْلَالِهِمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَإِنَّمَا قُلْنَا: إِنَّهُ إِنْ تَرَكَ الْإِشْهَادَ، وَالْكِتَابَ فَقَدْ عَصَى اللَّهَ تَعَالَى وَالْبَيْعُ تَامٌّ فَالْمَعْصِيَةُ لِخِلَافِهِ أَمْرَ اللَّهِ تَعَالَى بِذَلِكَ، وَأَمَّا جَوَازُ الْبَيْعِ فَلِأَنَّ الْإِشْهَادَ وَالْكِتَابَ عَمَلَانِ غَيْرَ الْبَيْعِ وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِهِمَا بَعْدَ تَمَامِ الْبَيْعِ وَصِحَّتِهِ فَإِذَا تَمَّ الْبَيْعُ لَمْ تُبْطِلْهُ مَعْصِيَةٌ حَدَثَتْ بَعْدَهُ وَلِكُلِّ عَمَلٍ حُكْمُهُ {فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ} [الزلزلة: ٧] {وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ} [الزلزلة: ٨]

[مَسْأَلَةٌ أَلْفَاظُ الْبَيْعِ]

١٤١٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْبَيْعُ إلَّا بِلَفْظِ الْبَيْعِ، أَوْ بِلَفْظِ الشِّرَاءِ، أَوْ بِلَفْظِ التِّجَارَةِ، أَوْ بِلَفْظٍ يُعَبَّرُ بِهِ فِي سَائِرِ اللُّغَاتِ عَنْ الْبَيْعِ، فَإِنْ كَانَ الثَّمَنُ ذَهَبًا أَوْ فِضَّةً غَيْرَ مَقْبُوضَيْنِ لَكِنْ حَالَّيْنِ، أَوْ إلَى أَجَلٍ مُسَمًّى: جَازَ أَيْضًا بِلَفْظِ الدَّيْنِ أَوْ الْمُدَايَنَةِ، وَلَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ بِلَفْظِ الْهِبَةِ، وَلَا بِلَفْظِ الصَّدَقَةِ، وَلَا بِشَيْءٍ غَيْرَ مَا ذَكَرْنَا أَصْلًا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] .

وَقَوْله تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] . وَقَوْله تَعَالَى: {إذَا تَدَايَنْتُمْ بِدَيْنٍ إلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] .

[20] **Qur'an references (L21910):** Qur'an 99:7 (Az-Zalzalah); Qur'an 99:8 (Az-Zalzalah).
[21] **Qur'an references (L21913):** Qur'an 2:275 (Al-Baqarah).
[22] **Qur'an references (L21914):** Qur'an 4:29 (An-Nisa); Qur'an 2:282 (Al-Baqarah).

فَصَحَّ أَنَّ مَا حَرَّمَ اللَّهُ تَعَالَى فَهُوَ حَرَامٌ، وَمَا أَحَلَّ فَهُوَ حَلَالٌ، فَمَتَى أُخِذَ مَالٌ بِغَيْرِ الِاسْمِ الَّذِي أَبَاحَ اللَّهُ تَعَالَى بِهِ أَخْذَهُ كَانَ بَاطِلًا بِنَصِّ الْقُرْآنِ.

L21915 Thus, it is established that whatever Allah, the Exalted, has forbidden is forbidden, and whatever He has permitted is lawful. So, whenever wealth is acquired through other than the name by which Allah, the Exalted, has permitted its taking, it is invalid by the explicit text of the Quran.

وَصِفَةُ الْبَيْعِ وَالرِّبَا وَاحِدَةٌ وَالْعَمَلُ فِيهِمَا وَاحِدٌ، وَإِنَّمَا فَرَّقَ بَيْنَهُمَا الِاسْمُ فَقَطْ، وَإِنَّمَا هُمَا مُعَاوَضَةُ مَالٍ بِمَالٍ: أَحَدُهُمَا حَلَالٌ طَيِّبٌ، وَالْآخَرُ حَرَامٌ خَبِيثٌ، كَبِيرَةٌ مِنْ الْكَبَائِرِ، قَالَ تَعَالَى {وَعَلَّمَ آدَمَ الأَسْمَاءَ كُلَّهَا ثُمَّ عَرَضَهُمْ عَلَى الْمَلائِكَةِ فَقَالَ أَنْبِئُونِي بِأَسْمَاءِ هَؤُلاءِ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ٣١] {قَالُوا سُبْحَانَكَ لا عِلْمَ لَنَا إِلا مَا عَلَّمْتَنَا} [البقرة: ٣٢].

L21916 The description of sale and riba is the same, and the transaction in both is identical. Only the name distinguishes between them. They are merely an exchange of one form of wealth for another: one is lawful and wholesome, while the other is forbidden and vile—a major sin among the major sins. Allah, the Exalted, said: And He taught Adam all the names, then presented those to the angels and said, “Inform Me of the names of these, if you are truthful.” [Al-Baqarah: 31] They replied, “Glory be to You! We have no knowledge except what You have taught us.” [Al-Baqarah: 32][23]

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

L21917 And He, the Exalted, said: “It is nothing but names that you and your forefathers have named, for which Allah has sent down no authority.” [An-Najm: 23][24]

فَصَحَّ أَنَّ الْأَسْمَاءَ كُلَّهَا تَوْقِيفٌ مِنْ اللَّهِ تَعَالَى، لَا سِيَّمَا أَسْمَاءُ أَحْكَامِ الشَّرِيعَةِ الَّتِي لَا يَجُوزُ فِيهَا الْإِحْدَاثُ، وَلَا تُعْلَمُ إلَّا بِالنُّصُوصِ، وَلَا خِلَافَ بَيْنَ الْحَاضِرِينَ مِنَّا وَمِنْ خُصُومِنَا فِي أَنَّ امْرَءًا لَوْ قَالَ لِلْآخَرِ: أَقْرِضْنِي هَذَا الدِّينَارَ وَأَقْضِيك دِينَارًا إلَى شَهْرِ كَذَا، وَلَمْ يَحُدَّ وَقْتًا فَإِنَّهُ حَسَنٌ، وَأَجْرٌ، وَبِرٌّ.

L21918–21920 Thus, it is established that all names are established by divine designation from Allah, the Most High, particularly the names of legal rulings in the Sharīʿah, in which innovation is not permissible. These names cannot be known except through textual sources, and there exists no disagreement among those present from us and... [text cut off]. Our opponents maintain that if a man were to say to another, “Lend me this dinar, and I will repay you a dinar by the month of such-and-such,” without specifying a precise time, then it is virtuous, divinely rewarded, and righteous.

وَعِنْدَنَا إنْ قَضَاهُ دِينَارَيْنِ أَوْ نِصْفَ دِينَارٍ فَقَطْ وَرَضِيَ كِلَاهُمَا فَحَسَنٌ.

L21921 In our view, if he settles the debt with only two dinars or half a dinar, and both consented to it, then it is valid.

وَلَوْ قَالَ لَهُ: بِعْنِي هَذَا الدِّينَارَ بِدِينَارٍ إلَى شَهْرٍ، وَلَمْ يُسَمِّ أَجَلًا، فَإِنَّهُ رِبًا، وَإِثْمٌ، وَحَرَامٌ، وَكَبِيرَةٌ مِنْ الْكَبَائِرِ - وَالْعَمَلُ وَاحِدٌ، وَإِنَّمَا فَرَّقَ بَيْنَهُمَا الِاسْمُ فَقَطْ.

L21922 If he said to him: “Sell me this dinar in exchange for a dinar deferred until a month [passes],” without specifying a maturity date, then it is usury—sinful, forbidden, and a grave sin among the gravest sins—because the transaction is one and the same, and the distinction between them is merely in name.

[23] **Qur’an references (L21916):** Qur’an 2:31 (Al-Baqarah); Qur’an 2:32 (Al-Baqarah).
[24] **Qur’an references (L21917):** Qur’an 53:23 (An-Najm).

L21923 Similarly, if a man were to say to a woman, “Permit me to have intercourse with you whenever I wish,” and she consents with her guardian’s approval, that act—if carried out—would constitute unlawful sexual intercourse, which incurs capital punishment in some jurisdictions according to certain legal schools.

وَكَذَلِكَ لَوْ قَالَ رَجُلٌ لِامْرَأَةٍ: أَبِيحِي لِي جِمَاعَك مَتَى شِئْت؟ فَفَعَلَتْ، وَرَضِيَ وَلِيُّهَا، لَكَانَ ذَلِكَ زِنًا - إنْ وَقَعَ - يُبِيحُ الدَّمَ فِي بَعْضِ الْمَوَاضِعِ.

L21924 If he said to her, “Marry me yourself,” and she did so, and her guardian consented, it would be lawful, proper, and righteous. Such is the case—in our school—in all matters.

وَلَوْ قَالَ لَهَا: أَنْكِحِينِي نَفْسَك؟ فَفَعَلَتْ، وَرَضِيَ وَلِيُّهَا لَكَانَ حَلَالًا، وَحَسَنًا، وَبِرًّا، وَهَكَذَا - عِنْدَنَا - فِي كُلِّ شَيْءٍ.

L21925 As for the term al-shirā (buying and selling), it is based on what we were transmitted through al-Bukhārī’s chain of transmission: via ʿAlī ibn ʿAyyāsh, from Abū Ghassān Muḥammad ibn Muṭarrif, who reported: Ibn al-Munkadir narrated to me from Jābir ibn ʿAbd Allāh that the Messenger of Allah (peace be upon him) said: “May Allah grant mercy to a person who is lenient when he sells, when he buys, and when he demands repayment.”

وَأَمَّا لَفْظُ الشِّرَى، فَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَيَّاشٍ نا أَبُو غَسَّانَ مُحَمَّدُ بْنُ مُطَرِّفٍ حَدَّثَنِي ابْنُ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «رَحِمَ اللَّهُ امْرَءًا سَمْحًا إذَا بَاعَ، وَإِذَا اشْتَرَى، وَإِذَا اقْتَضَى» .

A legal issue: Physical separation of the contracting parties by bodily departure that renders the sale binding.

[مَسْأَلَةُ التَّفَرُّقُ بِالْأَبْدَانِ الْمُوجِبُ لِلْبَيْعِ]

L21927 1417 - Issue: Any two parties engaged in a currency exchange (ṣarf) or other transaction — the sale between them is never valid, even if they have exchanged the commodity and the price, unless they bodily separate from the place where they concluded the contract. Each retains the right to invalidate that contract whether the other approves or objects — even if they remain in that state for their entire lifetime — unless one says to the other (it does not matter which of them is the speaker after completing the contract): “Choose to ratify the sale or invalidate it?” If he says: “I have ratified it,” the sale becomes binding — whether they separate or not — and neither party may rescind it except due to defect. So long as they do not bodily separate and neither offers the other this choice, the sold item remains the seller’s property as before, and the price remains the buyer’s property as before. The legal ruling pertaining to what each owns is enforced upon them respectively, not the ruling pertaining to the other’s property.

١٤١٧ - مَسْأَلَةٌ: وَكُلُّ مُتَبَايِعَيْنِ صَرْفًا أَوْ غَيْرَهُ فَلَا يَصِحُّ الْبَيْعُ بَيْنَهُمَا أَبَدًا وَإِنْ تَقَابَضَا السِّلْعَةَ وَالثَّمَنَ، مَا لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا مِنْ الْمَكَانِ الَّذِي تَعَاقَدَا فِيهِ الْبَيْعَ، وَلِكُلِّ وَاحِدٍ مِنْهُمَا إبْطَالُ ذَلِكَ الْعَقْدِ أَحَبَّ الْآخَرُ أَمْ كَرِهَ - وَلَوْ بَقِيَا كَذَلِكَ دَهْرَهُمَا - إلَّا أَنْ يَقُولَ أَحَدُهُمَا لِلْآخَرِ - لَا تُبَالِ أَيُّهُمَا كَانَ الْقَائِلُ بَعْدَ تَمَامِ التَّعَاقُدِ -: اخْتَرْ أَنْ تُمْضِيَ الْبَيْعَ، أَوْ أَنْ تُبْطِلَهُ؟ فَإِنْ قَالَ: قَدْ أَمْضَيْته فَقَدْ تَمَّ الْبَيْعُ بَيْنَهُمَا - تَفَرَّقَا أَوْ لَمْ يَتَفَرَّقَا - وَلَيْسَ لَهُمَا وَلَا لِأَحَدِهِمَا فَسْخُهُ إلَّا بِعَيْبٍ، وَمَتَى مَا لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا وَلَا خَيَّرَ أَحَدُهُمَا الْآخَرَ، فَالْمَبِيعُ بَاقٍ عَلَى مِلْكِ الْبَائِعِ كَمَا كَانَ، وَالثَّمَنُ بَاقٍ عَلَى مِلْكِ الْمُشْتَرِي كَمَا كَانَ، يَنْفُذُ فِي كُلِّ وَاحِدٍ مِنْهُمَا حُكْمُ الَّذِي هُوَ عَلَى مِلْكِهِ لَا حُكْمُ الْآخَرِ.

L21928–21930 The proof of that is the statement of the Prophet—peace and blessings of

Allah be upon him—which we have reported via the path of al-Bukhārī: Abū al-Nuʿmān (he is Muḥammad ibn al-Faḍl ʿĀrim) narrated to us, Ḥammād ibn Zayd narrated to us from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar. The Messenger of Allah - peace and blessings be upon him - said: "The buyer and seller have the option as long as they have not separated, or one says to his companion: Choose, and perhaps he said: 'or it be an option contract.'"

بُرْهَانُ ذَلِكَ -: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو النُّعْمَانِ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا أَوْ يَقُولُ أَحَدُهُمَا لِصَاحِبِهِ: اخْتَرْ وَرُبَّمَا قَالَ: أَوْ يَكُونُ بَيْعَ خِيَارٍ» .

L21931 From the transmission of Ahmad ibn Shuʿayb: Muḥammad ibn ʿAlī ibn Ḥarb narrated to us, Muḥriz ibn al-Waḍḍāḥ narrated to us from Ismāʿīl—he is Ibn Jaʿfar—from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "The two parties engaged in a sale retain the option [to rescind] as long as they have not separated, unless the sale was already based on a stipulated option. For if the sale was based on a stipulated option, then the sale becomes binding."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَلِيِّ بْنِ حَرْبٍ نا مُحْرِزُ بْنُ الْوَضَّاحِ عَنْ إِسْمَاعِيلَ - هُوَ ابْنُ جَعْفَرٍ - عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمُتَبَايِعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا إِلَّا أَنْ يَكُونَ الْبَيْعُ كَانَ عَنْ خِيَارٍ، فَإِنْ كَانَ الْبَيْعُ عَنْ خِيَارٍ فَقَدْ وَجَبَ الْبَيْعُ» .

L21932 Abu Muhammad said: This clarifies that the mentioned option refers solely to one party telling the other: "Choose," not a sale contracted with an option for a specified period. This is because the Prophet (peace be upon him) stated: "If the sale is with an option, the sale becomes binding"—and this differs from the ruling of a sale contract established with an option for a specified period according to those who hold this opinion.

قَالَ أَبُو مُحَمَّدٍ: هَذَا يُبَيِّنُ أَنَّ الْخِيَارَ الْمَذْكُورَ إِنَّمَا هُوَ قَوْلُ أَحَدِهِمَا لِلْآخَرِ: اخْتَرْ، لَا عَقَدَ الْبَيْعَ عَلَى خِيَارِ مُدَّةٍ مُسَمَّاةٍ، لِأَنَّهُ قَالَ - عَلَيْهِ السَّلَامُ -: إِنْ كَانَ الْبَيْعُ عَنْ خِيَارٍ، فَقَدْ وَجَبَ الْبَيْعُ - وَهَذَا خِلَافُ حُكْمِ الْبَيْعِ الْمَعْقُودِ عَلَى خِيَارِ مُدَّةٍ عِنْدَ الْقَائِلِينَ بِهِ.

L21933 From the path of Yaḥyā ibn Saʿīd al-Qaṭṭān, narrated by ʿUbayd ibn ʿUmar, reported by Nāfiʿ from Ibn ʿUmar from the Messenger of Allah (may Allah bless him and grant him peace) who said: "Every sale between two parties: there is no sale between them until they part ways or there is a *khiyar*."

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا عُبَيْدُ بْنُ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنِ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا أَوْ يَكُونَ خِيَارًا» .

L21934 Similarly, Hushaym reported via Yahya ibn Sa'id al-Ansari, via Nafi', via Ibn 'Umar, from the Prophet (peace be upon him) that there is absolutely no sale whatsoever between them.

وَهَكَذَا رَوَاهُ هُشَيْمٌ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَا بَيْعَ بَيْنَهُمَا.

L21935 And thus we have narrated it from Isma'il ibn Ja'far, Sufyan al-Thawri, and Shu'bah—all of them from Abdullah ibn Dinar from Ibn Umar from the

Messenger of Allah (peace be upon him): “There is no sale between them until they separate.”

وَهَكَذَا رُوِّينَاهُ عَنْ إِسْمَاعِيلَ بْنِ جَعْفَرٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَشُعْبَةَ، كُلُّهُمْ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا» .

L21936 From the narration of Muslim: Qutaybah ibn Sa’id narrated to us from Al-Layth ibn Sa’d, who narrated to him from Nāfiʿ from Ibn ʻUmar from the Messenger of Allah—peace and blessings be upon him—who said: “When two men conclude a sale, each of them retains the option as long as they have not separated and remain together, or until one of them grants the other the choice. If one grants the other the choice and they finalize the sale upon that condition, the sale becomes binding. If they separate after concluding the sale and neither has withdrawn from it, the sale becomes binding.”[25]

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ حَدَّثَهُ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا تَبَايَعَ الرَّجُلَانِ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا وَكَانَا جَمِيعًا أَوْ يُخَيِّرُ أَحَدُهُمَا الْآخَرَ، فَإِنْ خَيَّرَ أَحَدُهُمَا الْآخَرَ فَتَبَايَعَا عَلَى ذَلِكَ فَقَدْ وَجَبَ الْبَيْعُ، وَإِنْ تَفَرَّقَا بَعْدَ أَنْ تَبَايَعَا وَلَمْ يَتْرُكْ وَاحِدٌ مِنْهُمَا الْبَيْعَ فَقَدْ وَجَبَ الْبَيْعُ» .

L21937 Abu Muhammad said: This hadith resolves every difficulty, clarifies every ambiguity, and nullifies the fabricated interpretations that opponents have clamored with.

قَالَ أَبُو مُحَمَّدٍ: هَذَا الْحَدِيثُ يَرْفَعُ كُلَّ إِشْكَالٍ، وَيُبَيِّنُ كُلَّ إِجْمَالٍ، وَيُبْطِلُ التَّأْوِيلَاتِ الْمَكْذُوبَةَ الَّتِي شَغَبَ بِهَا الْمُخَالِفُونَ.

L21938–21939 From the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman: Muḥammad ibn Ismāʿīl al-Tirmidhī narrated to us, from al-Ḥumaydī, from Sufyān ibn ʿUyaynah, from Ibn Jurayj, who said: Nāfiʿ dictated to me on my tablets, saying: I heard ʿAbdullāh ibn ʿUmar say: The Messenger of Allah (peace be upon him) said: “When the buyer and seller conclude a sale, each of them has the option in their sale so long as they have not physically separated, or unless their sale is subject to a conditional option.”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا ابْنُ جُرَيْجٍ قَالَ: أَمْلَى عَلَيَّ نَافِعٌ فِي أَلْوَاحِي قَالَ: سَمِعْتُ عَبْدَ اللَّهِ بْنَ عُمَرَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا تَبَايَعَ الْمُتَبَايِعَانِ الْبَيْعَ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ مِنْ بَيْعِهِ مَا لَمْ يَتَفَرَّقَا أَوْ يَكُنْ بَيْعُهُمَا عَنْ خِيَارٍ» .

L21940 Nafiʿ said: Whenever Ibn ʻUmar made a purchase and wished for the sale to become binding upon him, he would walk a short distance and then return.

قَالَ نَافِعٌ: فَكَانَ ابْنُ عُمَرَ إِذَا ابْتَاعَ الْبَيْعَ فَأَرَادَ أَنْ يَجِبَ لَهُ: - مَشَى قَلِيلًا ثُمَّ رَجَعَ.

L21941 From the chain of Muslim: Muḥammad ibn al-Muthannā and ʿAmr ibn ʿAlī narrated to us. Ibn al-Muthannā said: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to us. ʿAmr ibn ʿAlī said: ʿAbd al-Raḥmān ibn Mahdī narrated to us. Then Yaḥyā and ʿAbd al-Raḥmān both narrate from Shuʿbah, from Qatādah, from

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى، وَعَمْرُو بْنُ عَلِيٍّ قَالَ ابْنُ الْمُثَنَّى: نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَقَالَ عَمْرُو بْنُ عَلِيٍّ: نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، ثُمَّ اتَّفَقَ يَحْيَى، وَعَبْدُ الرَّحْمَنِ، كِلَاهُمَا عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَبِي الْخَلِيلِ - هُوَ صَالِحُ بْنُ أَبِي مَرْيَمَ - عَنْ عَبْدِ اللَّهِ

[25] **Hadith references (L21936):** Sunan Ibn Majah 2181; Sahih Muslim 1531c.

Abī al-Khalīl—he is Ṣāliḥ ibn Abī Maryam—from ʿAbd Allāh ibn al-Ḥārith ibn Nawfal ibn al-Ḥārith ibn ʿAbd al-Muṭṭalib, from Ḥakīm ibn Ḥizām, from the Prophet (PBUH), who said: "The buyer and the seller have the option as long as they have not parted. If they are truthful and clarify, their transaction is blessed. But if they lie and conceal, the blessing of their transaction is nullified."

بْنِ الْحَارِثِ بْنِ نَوْفَلِ بْنِ الْحَارِثِ بْنِ عَبْدِ الْمُطَّلِبِ عَنْ حَكِيمِ بْنِ حِزَامٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَالَ «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا، فَإِنْ صَدَقَا وَبَيَّنَا بُورِكَ لَهُمَا فِي بَيْعِهِمَا، وَإِنْ كَذَبَا، وَكَتَمَا مُحِقَ بَرَكَةُ بَيْعِهِمَا» .

L21942 We have also narrated it through the chain of Hammam ibn Yahya and Sa'id ibn Abi 'Arubah, both of whom narrate from Qatadah with the chain (isnād).

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ هَمَّامِ بْنِ يَحْيَى - وَسَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ بِإِسْنَادِهِ.

L21943 And via the chain of Abū al-Tayyāḥ from ʿAbdullāh ibn al-Ḥārith, with his isnād.

وَمِنْ طَرِيقِ أَبِي التَّيَّاحِ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بِإِسْنَادِهِ.

L21944 These are mass-transmitted, manifestly consistent, and widespread chains of transmission that compel certain knowledge.

وَهَذِهِ أَسَانِيدُ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ مُنْتَشِرَةٌ تُوجِبُ الْعِلْمَ الضَّرُورِيَّ.

L21945 From the narration of Abū Dāwūd al-Sijistānī: Musaddad narrated to us, Ḥammād ibn Zayd narrated to us from Jamīl ibn Murrah from Abī al-Waḍīʾ, who said: We embarked on a military expedition and encamped at a site. One of our companions sold a horse to a young man, and they remained there for the remainder of their day and night. When dawn broke the next day and the time for departure arrived, he approached his horse to saddle it but regretted the sale. The buyer came to claim the horse through the transaction, but the seller refused to deliver it. The buyer said: "Let Abū Barzah, the Companion of the Messenger of Allah (ﷺ), arbitrate between us." They went to Abū Barzah at the outskirts of the camp and presented the case to him. He asked: "Do you both accept that I judge between you according to the ruling of the Messenger of Allah (ﷺ)?" The Messenger of Allah (ﷺ) said: **"The buyer and seller retain the option to rescind the transaction as long as they have not separated from one another."**

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا مُسَدَّدٌ نا حَمَّادُ بْنُ زَيْدٍ عَنْ جَمِيلِ بْنِ مُرَّةَ عَنْ أَبِي الْوَضِيءِ قَالَ: غَزَوْنَا غَزْوَةً لَنَا فَنَزَلْنَا مَنْزِلًا فَبَاعَ صَاحِبٌ لَنَا فَرَسًا لِغُلَامٍ، ثُمَّ أَقَامَا بَقِيَّةَ يَوْمِهِمَا وَلَيْلَتِهِمَا، فَلَمَّا أَصْبَحَا مِنْ الْغَدِ حَضَرَ الرَّحِيلُ قَامَ إلَى فَرَسِهِ لِيُسَرِّجَهُ فَنَدِمَ فَأَتَى الرَّجُلُ لِيَأْخُذَهُ بِالْبَيْعِ فَأَبَى أَنْ يَدْفَعَهُ إلَيْهِ، فَقَالَ لَهُ: بَيْنِي وَبَيْنَك أَبُو بَرْزَةَ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فَأَتَيَا أَبَا بَرْزَةَ فِي نَاحِيَةِ الْعَسْكَرِ فَقَالَا لَهُ: هَذِهِ الْقِصَّةَ فَقَالَ: أَتَرْضَيَانِ أَنْ أَقْضِيَ بَيْنَكُمَا بِقَضَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا» .

L21946 Hisham ibn Hassan said: Jamil ibn Murrah said: Abu Barzah said: I do not see you two having parted.

قَالَ هِشَامُ بْنُ حَسَّانَ: قَالَ جَمِيلُ بْنُ مُرَّةَ: قَالَ أَبُو بَرْزَةَ: مَا أَرَاكُمَا افْتَرَقْتُمَا.

L21947 Abū Muḥammad said: Abū al-Waḍīʾ—that is, ʿAbbād ibn Nuṣayb, a trustworthy Tabiʿī—heard ʿAlī ibn Abī Ṭālib, Abū Hurayrah, and Abū Barzah. These three Companions transmitted narrations received from the Messenger of

Allah—peace be upon him—and from them, the Imāms among the Tabiʿīn and subsequent generations transmitted narrations.

قَالَ أَبُو مُحَمَّدٍ: أَبُو الْوَضِيءِ - هُوَ عَبَّادُ بْنُ نَسِيبٍ تَابِعِيٌّ ثِقَةٌ - سَمِعَ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَأَبَا هُرَيْرَةَ، وَأَبَا بَرْزَةَ، فَهَؤُلَاءِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَلَاثَةٌ مِنْ الصَّحَابَةِ، وَعَنْهُمْ الْأَئِمَّةُ مِنْ التَّابِعِينَ وَمَنْ بَعْدَهُمْ.

L21948–21950 Muḥammad ibn Saʿīd ibn ʿAmr ibn Nabāt said: ʿAbd Allāh ibn Muḥammad ibn Qāsim al-Qalaʿī reported to us... Muhammad ibn Ahmad al-Sawwaf in Baghdad narrated: Bishr ibn Musa ibn Salih ibn Shaykh ibn Umayr al-Asadi narrated: Abdullah ibn al-Zubayr al-Humaydi narrated: Sufyan—he is Ibn Uyaynah—narrated: Bishr ibn Asim al-Thaqafi said: I heard Sa'id ibn al-Musayyab narrate from Ubayy ibn Ka'b, who said: Umar ibn al-Khattab and al-Abbas ibn Abd al-Muttalib brought their dispute to him regarding a house owned by al-Abbas adjacent to the mosque. Umar sought to acquire it to expand the mosque, but al-Abbas refused. Ubayy said to them: When Solomon was commanded to build the Holy Temple, its land belonged to a man. Solomon purchased it from him. Upon completing the purchase, the man asked: "Is what you took from me better, or what you gave me?" Solomon replied: "What I took from you is better." The man said: "Then I do not validate the sale," so Solomon withdrew the offer. He increased the price and approached him again, but the man refused. Solomon persisted—raising the offer and attempting to purchase it, inquiring each time—but the man kept rejecting the terms. This continued until Solomon bought it by his own judgment, stipulating that he would not ask him again, having resorted to extensive arbitration. The matter overwhelmed Solomon, whereupon Allah revealed to him: "If you give him from your own wealth, cease. But if you give him from Our provision, continue until he is satisfied." Thus, he ruled in favor of al-Abbas.

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ عَمْرِ بْنِ نَبَاتٍ قَالَ: نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ الْقَلَعِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ الصَّوَّافُ بِبَغْدَادَ نا بِشْرُ بْنُ مُوسَى بْنِ صَالِحِ بْنِ شَيْخِ بْنِ عُمَيْرٍ الْأَسَدِيُّ نا عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ الْحُمَيْدِيُّ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - نا بِشْرُ بْنُ عَاصِمٍ الثَّقَفِيُّ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يُحَدِّثُ عَنْ أُبَيِّ بْنِ كَعْبٍ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ، وَالْعَبَّاسَ بْنَ عَبْدِ الْمُطَّلِبِ تَحَاكَمَا إلَيْهِ فِي دَارٍ لِلْعَبَّاسِ إلَى جَانِبِ الْمَسْجِدِ أَرَادَ عُمَرُ أَخْذَهَا لِيَزِيدَهَا فِي الْمَسْجِدِ فَأَبَى الْعَبَّاسُ، فَقَالَ لَهُمَا أُبَيٌّ: لَمَّا أُمِرَ سُلَيْمَانُ بِبِنَاءِ بَيْتِ الْمَقْدِسِ كَانَتْ أَرْضُهُ لِرَجُلٍ فَاشْتَرَاهَا مِنْهُ سُلَيْمَانُ فَلَمَّا اشْتَرَاهَا قَالَ لَهُ الرَّجُلُ: الَّذِي أَخَذْت مِنِّي خَيْرٌ أَمْ الَّذِي أَعْطَيْتنِي؟ قَالَ سُلَيْمَانُ: بَلْ الَّذِي أَخَذْت مِنْك، قَالَ: فَإِنِّي لَا أُجِيزُ الْبَيْعَ، فَرَدَّهُ، فَزَادَهُ، ثُمَّ سَأَلَهُ فَأَخْبَرَهُ، فَأَبَى أَنْ يُجِيزَهُ، فَلَمْ يَزَلْ يَزِيدُهُ وَيَشْتَرِي مِنْهُ، فَيَسْأَلُهُ فَيُخَيِّرُهُ، فَلَا يُجِيزُ الْبَيْعَ، حَتَّى اشْتَرَاهَا مِنْهُ بِحُكْمِهِ عَلَى أَنْ لَا يَسْأَلَهُ، فَاحْتَكَمَ شَيْئًا كَثِيرًا، فَتَعَاظَمَهُ سُلَيْمَانُ، فَأَوْحَى اللَّهُ إلَيْهِ: إنْ كُنْت إنَّمَا تُعْطِيهِ مِنْ عِنْدِك فَلَا تُعْطِهِ، وَإِنْ كُنْت إنَّمَا تُعْطِيه مِنْ رِزْقِنَا فَأَعْطِهِ حَتَّى يَرْضَى بِهَا، فَقَضَى بِهَا لِلْعَبَّاسِ.

L21951 It has been narrated to us through the chain of Al-Bukhārī that Al-Layth ibn Sa'd said: 'Abd al-Raḥmān ibn Khālid ibn Musāfir related to me, from Ibn Shihāb, from Sālim ibn 'Abd Allāh ibn 'Umar, from his father, who said: "I sold property of mine in al-Wādī to the Commander of the Faithful 'Uthmān in exchange for his property in Khaybar. When we concluded the transaction, I immediately retraced my steps and left his house, fearing he might demand

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ قَالَ اللَّيْثُ هُوَ ابْنُ سَعْدٍ -: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ خَالِدِ بْنِ مُسَافِرٍ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: بِعْت مِنْ

I rescind the sale. The established Sunnah was that the two parties to the transaction retain the right of choice until they separate from one another."

أَمِيرِ الْمُؤْمِنِينَ عُثْمَانَ مَالًا بِالْوَادِي بِمَالٍ لَهُ بِخَيْبَرَ، فَلَمَّا تَبَايَعْنَا رَجَعْت عَلَى عَقِبَيَّ حَتَّى خَرَجْت مِنْ بَيْتِهِ خَشْيَةَ أَنْ يُرَادَّنِي الْبَيْعَ وَكَانَتْ السُّنَّةُ أَنَّ الْمُتَبَايِعَيْنِ بِالْخِيَارِ حَتَّى يَتَفَرَّقَا.

L21952 And via Al-Layth's narration as well: From Yunus ibn Yazid, from Ibn Shihāb, from Sālim ibn ʻAbdillāh ibn ʻUmar, who said: ʻAbdullāh ibn ʻUmar stated: "When we entered into transactions, each of us retained the option of khiyār so long as the two parties had not separated. I once sold ʻUthmān ibn ʻAffān my asset in the Valley in exchange for his asset in Khaybar. When I concluded the sale with him, I began backing away on my heels, fearing ʻUthmān might revoke the sale before I departed from him."

وَمِنْ طَرِيقِ اللَّيْثِ أَيْضًا: عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ: كُنَّا إذَا تَبَايَعْنَا كَانَ كُلُّ وَاحِدٍ مِنَّا بِالْخِيَارِ مَا لَمْ يَتَفَرَّقْ الْمُتَبَايِعَانِ فَتَبَايَعْت أَنَا وَعُثْمَانُ بْنُ عَفَّانَ فَبِعْته مَالًا لِي بِالْوَادِي بِمَالٍ لَهُ بِخَيْبَرَ، فَلَمَّا بَايَعْته طَفِقْت أَنْكُصُ عَلَى عَقِبَيَّ الْقَهْقَرَى خَشْيَةَ أَنْ يُرَادَّنِي عُثْمَانُ الْبَيْعَ قَبْلَ أَنْ أُفَارِقَهُ.

L21953 Thus, Ibn ʻUmar reports that this is the doctrine of the Companions, their practice, and the doctrine of ʻUthman ibn ʻAffān, because he feared that ʻUthman would revoke the sale before physical separation. Had this not been ʻUthman's doctrine, Ibn ʻUmar would not have feared such from him, and he reports that this is the Sunnah.

فَهَذَا ابْنُ عُمَرَ يُخْبِرُ بِأَنَّ هَذَا مَذْهَبُ الصَّحَابَةِ وَعَمَلُهُمْ، وَمَذْهَبُ عُثْمَانَ بْنِ عَفَّانَ؛ لِأَنَّهُ خَشِيَ أَنْ يُرَادَّهُ الْبَيْعَ قَبْلَ التَّفَرُّقِ بِالْأَبْدَانِ، فَلَوْ لَمْ يَكُنْ ذَلِكَ مَذْهَبَ عُثْمَانَ مَا خَافَ ابْنُ عُمَرَ ذَلِكَ مِنْهُ وَيُخْبِرُ بِأَنَّ ذَلِكَ هُوَ السُّنَّةُ.

L21954–21956 And that has also been narrated to us from Abū Hurayrah, Abū Zurʻah ibn ʻAmr ibn Jarīr, and Tāwus - as has been narrated to us. From ʻAbd al-Razzāq, who narrated to us: Sufyān al-Thawrī narrated from Abū ʻAttāb, from Abū Zurʻah: A man negotiated with him to purchase his horse. When he concluded the sale, he granted him three options to rescind, then said, "Choose." Each of them granted the other three options to rescind. Then Abū Zurʻah said: I heard Abū Hurayrah say, "This sale is by mutual consent." Moreover, ʻUmar and al-ʻAbbās both heard Ubayy ruling to ratify the rescission of the sale after its conclusion, and they did not disapprove of that. Thus, it is confirmed that they all (Umar and Abbas) held this opinion, alongside ʻUthmān, Abū Hurayrah, Abū Barzah, Ibn ʻUmar, and the Companions collectively—may Allah be pleased with them.

وَرُوِّينَا ذَلِكَ أَيْضًا: عَنْ أَبِي هُرَيْرَةَ، وَأَبِي زُرْعَةَ بْنِ عَمْرِو بْنِ جَرِيرٍ، وَطَاوُسٍ - كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي عَتَّابٍ عَنْ أَبِي زُرْعَةَ، أَنَّ رَجُلًا سَاوَمَهُ بِفَرَسٍ لَهُ فَلَمَّا بَايَعَهُ خَيَّرَهُ ثَلَاثًا، ثُمَّ قَالَ: اخْتَرْ؟ فَخَيَّرَ كُلُّ وَاحِدٍ مِنْهُمَا صَاحِبَهُ ثَلَاثًا، ثُمَّ قَالَ أَبُو زُرْعَةَ: سَمِعْت أَبَا هُرَيْرَةَ، يَقُولُ: هَذَا الْبَيْعُ عَنْ تَرَاضٍ -: فَهَذَا عُمَرُ، وَالْعَبَّاسُ، يَسْمَعَانِ أُبَيًّا يَقْضِي بِتَصْوِيبِ رَدِّ الْبَيْعِ بَعْدَ عَقْدِهِ فَلَا يُنْكِرَانِ ذَلِكَ - فَصَحَّ أَنَّهُمْ كُلَّهُمْ قَائِلُونَ بِذَلِكَ وَمَعَهُمْ عُثْمَانُ، وَأَبُو هُرَيْرَةَ وَأَبُو بَرْزَةَ، وَابْنُ عُمَرَ، وَالصَّحَابَةُ جُمْلَةً - رَضِيَ اللَّهُ عَنْهُمْ -.

L21957 Through the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from Su-

laymān al-Aḥwal: I heard Ṭāwus swear by Allah, “There is no option except after the sale.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ سُلَيْمَانَ الْأَحْوَلِ سَمِعْت: طَاوُسًا يَحْلِفُ بِاَللَّهِ: مَا التَّخْيِيرُ إلَّا بَعْدَ الْبَيْعِ.

L21958 And through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us: “I am Muḥammad ibn ʿAlī al-Sulamī. I heard Abū al-Ḍuḥā narrate that he witnessed Shurayḥ adjudicating a dispute between two men. One had purchased a house from the other for four thousand dirhams and concluded the contract. The buyer then reconsidered the transaction before departing from the seller, declaring: ’I no longer want it.’ The seller countered: ’I sold it to you and concluded the contract.’ We brought our dispute to Shurayḥ, who said: ’The buyer retains the right to rescind as long as they have not physically separated.’” Muḥammad ibn ʿAlī added: “I witnessed al-Shaʿbī issuing rulings according to this principle.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُحَمَّدُ بْنُ عَلِيٍّ السُّلَمِيُّ سَمِعْت أَبَا الضُّحَى يُحَدِّثُ أَنَّهُ شَهِدَ شُرَيْحًا اخْتَصَمَ إلَيْهِ رَجُلَانِ اشْتَرَى أَحَدُهُمَا دَارًا مِنْ الْآخَرِ بِأَرْبَعَةِ آلَافٍ، فَأَوْجَبَهَا لَهُ، ثُمَّ بَدَا لَهُ فِي بَيْعِهَا قَبْلَ أَنْ يُفَارِقَ صَاحِبَهُ فَقَالَ: لَا حَاجَةَ لِي فِيهَا، فَقَالَ الْبَائِعُ: قَدْ بِعْتُك وَأَوْجَبْت لَك، فَاخْتَصَمْنَا إلَى شُرَيْحٍ، فَقَالَ شُرَيْحٌ: هُوَ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا قَالَ مُحَمَّدُ بْنُ عَلِيٍّ: وَشَهِدْت الشَّعْبِيَّ يَقْضِي بِهَذَا.

L21959 Through the chain of Ibn Abi Shaybah: Jarir narrated to us from Mughirah from Al-Sha‘bi that a man bought an inferior horse and sought to return it before they separated. Al-Sha‘bi ruled that the sale was binding upon him. Then Abu Al-Duḥā bore witness before him that Shurayh had been approached with a similar case and returned it to the seller. Thereupon Al-Sha‘bi reverted to Shurayh’s ruling.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ مُغِيرَةَ عَنْ الشَّعْبِيِّ أَنَّ رَجُلًا اشْتَرَى بِرْذَوْنًا فَأَرَادَ أَنْ يَرُدَّهُ قَبْلَ أَنْ يَتَفَرَّقَا، فَقَضَى الشَّعْبِيُّ: أَنَّهُ قَدْ وَجَبَ عَلَيْهِ، فَشَهِدَ عِنْدَهُ أَبُو الضُّحَى: أَنَّ شُرَيْحًا أُتِيَ فِي مِثْلِ ذَلِكَ فَرَدَّهُ عَلَى الْبَائِعِ فَرَجَعَ الشَّعْبِيُّ إلَى قَوْلِ شُرَيْحٍ.

L21960 It has also been narrated to us through Ma’mar’s chain from Ayyub al-Sakhtiyani, from Muhammad ibn Sirin, that he witnessed Shurayh adjudicating between two disputants. One had purchased from the other through a sale transaction, whereupon the buyer declared, “I did not consent to this,” while the seller asserted, “You did indeed consent.” Shurayh ruled: “Either you both produce evidence that you mutually retracted consent after the sale, or [evidence of] the rescission option, or he must swear by Allah that you both neither mutually retracted consent after the transaction nor exercised the rescission option.” This position corresponds to the legal view of Hisham ibn Yusuf and his son Abd al-Rahman.

وَرُوِّينَا أَيْضًا: مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ شَهِدَ شُرَيْحًا يَقْضِي بَيْنَ الْمُخْتَصِمَيْنِ اشْتَرَى أَحَدُهُمَا مِنْ الْآخَرِ بَيْعًا فَقَالَ: إنِّي لَمْ أَرْضَهُ، وَقَالَ الْآخَرُ: بَلْ قَدْ رَضِيتَهُ فَقَالَ شُرَيْحٌ: بَيِّنَتُكُمَا أَنَّكُمَا تَصَادَرْتُمَا عَنْ رِضًا بَعْدَ الْبَيْعِ أَوْ خِيَارٍ أَوْ يَمِينُهُ بِاَللَّهِ مَا تَصَادَرْتُمَا عَنْ رِضًا بَعْدَ الْبَيْعِ وَلَا خِيَارٍ -: وَهُوَ قَوْلُ هِشَامِ بْنِ يُوسُفَ، وَابْنِهِ عَبْدِ الرَّحْمَنِ.

L21961 And Al-Bukhari said: It is the statement of ʿAṭāʾ Ibn Abī Rabāḥ and Ibn Abī Mulaykah.

وَقَالَ الْبُخَارِيُّ: هُوَ قَوْلُ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَابْنِ أَبِي مُلَيْكَةَ.

L21962–21964 This is the opinion of Al-Ḥasan, Saʿīd ibn al-Musayyib, Al-Zuhrī, Ibn Abī

Dhi'b, Sufyān al-Thawrī, Sufyān ibn ʿUyaynah, Al-Awzāʿī, Al-Layth, ʿUbayd Allāh ibn al-Ḥasan al-Qāḍī (the Judge), Al-Shāfiʿī, Abū Thawr, all his disciples, Isḥāq ibn Rāhūyah, Aḥmad ibn Ḥanbal, and Abū ʿUbayd. My father Sulaymān, Muḥammad ibn Naṣr al-Marwazī, Muḥammad ibn Jarīr al-Ṭabarī, the people of Ḥadīth, and the people of Madīnah.

وَهُوَ قَوْلُ الْحَسَنِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ، وَابْنِ أَبِي ذِئْبٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَالْأَوْزَاعِيِّ، وَاللَّيْثِ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْقَاضِي، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَجَمِيعِ أَصْحَابِهِ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي عُبَيْدٍ وَأَبِي سُلَيْمَانَ، وَمُحَمَّدِ بْنِ نَصْرٍ الْمَرْوَزِيِّ، وَمُحَمَّدِ بْنِ جَرِيرٍ الطَّبَرِيِّ، وَأَهْلِ الْحَدِيثِ، وَأَهْلِ الْمَدِينَةِ.

L21965 As we were informed through the chain of Ibn Ayman—Abdullah ibn Ahmad ibn Hanbal narrated—he said: My father told me: "It reached me that Ibn Abi Dhi'b had been informed of Malik ibn Anas's statement: 'The two parties to a sale do not have the option [to rescind]?'" Ibn Abi Dhi'b then commented: "This is a hadith trodden in Medina"—meaning it is well-known.

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: قَالَ لِي أَبِي: بَلَغَنِي عَنْ ابْنِ أَبِي ذِئْبٍ أَنَّهُ بَلَغَهُ قَوْلُ مَالِكِ بْنِ أَنَسٍ: لَيْسَ الْبَيِّعَانِ بِالْخِيَارِ؟ فَقَالَ ابْنُ أَبِي ذِئْبٍ: هَذَا حَدِيثٌ مَوْطُوءٌ بِالْمَدِينَةِ - يَعْنِي مَشْهُورًا -.

L21966 Abu Muhammad said: However, Al-Awzaʿī stated: In every sale, the buyer and seller retain the right to rescind the transaction until they physically separate, except in three cases: war booty; co-heirs mutually assessing the value of inherited assets; and trade partners assessing the value of their shared commerce.

قَالَ أَبُو مُحَمَّد: إِلَّا أَنَّ الْأَوْزَاعِيَّ قَالَ: كُلُّ بَيْعٍ فَالْمُتَبَايِعَانِ فِيهِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا، إِلَّا بُيُوعًا ثَلَاثَةً: الْمَغْنَمَ، وَالشُّرَكَاءَ فِي الْمِيرَاثِ يَتَقَاوَمُونَهُ، وَالشُّرَكَاءَ فِي التِّجَارَةِ يَتَقَاوَمُونَهَا.

L21967 Al-Awzaʿī said: The definition of separation is that each of them becomes absent from their companion until they no longer see each other. Aḥmad said: As we have stated, except that he does not acknowledge the *takhyīr* (option), and he recognizes no separation except solely through physical absence of the bodies.

قَالَ الْأَوْزَاعِيُّ: وَحَدُّ التَّفَرُّقِ أَنْ يَغِيبَ كُلُّ وَاحِدٍ مِنْهُمَا عَنْ صَاحِبِهِ حَتَّى لَا يَرَاهُ - وَقَالَ أَحْمَدُ: كَمَا قُلْنَا، إِلَّا أَنَّهُ لَا يَعْرِفُ التَّخْيِيرَ، وَلَا يَعْرِفُ إِلَّا التَّفَرُّقَ بِالْأَبْدَانِ فَقَطْ.

L21968 And this al-Shaʿbi had annulled his legal ruling afterward and returned to the truth. Abu Hanifah, Malik, and those who followed them deviated entirely from all this. The two said: The sale is concluded by verbal agreement even if the parties have not physically separated, and neither granted the other an option to rescind. They contradicted the established Sunnah and the Companions, and no opposing view is known at all from those we mentioned among them. We know of no predecessors for them among the Followers except Ibrahim alone—as we transmitted through the chain

وَهَذَا الشَّعْبِيُّ قَدْ فَسَخَ قَضَاءَهُ بَعْدَ ذَلِكَ وَرَجَعَ إِلَى الْحَقِّ، فَشَذَّ عَنْ هَذَا كُلِّهِ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَمَنْ قَلَّدَهُمَا، وَقَالَا: الْبَيْعُ يَتِمُّ بِالْكَلَامِ وَإِنْ لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا، وَلَا خَيَّرَ أَحَدُهُمَا الْآخَرَ، وَخَالَفُوا السُّنَنَ الثَّابِتَةَ، وَالصَّحَابَةَ، وَلَا يُعْرَفُ لِمَنْ ذَكَرْنَا مِنْهُمْ

of Sa'id ibn Mansur, who narrated to us from Hushaym, from al-Mughirah, from Ibrahim, who said: When the transaction becomes binding, there is no option.

L21969 From the path of Ibn Abi Shaybah: Wakiʿ reported to us: Sufyān reported to us from Mughīrah from Ibrāhīm, who said: "The sale is permissible even if the two parties have not physically parted ways"—and a fabricated, forged narration is transmitted from al-Ḥajjāj ibn Arṭāʾah (and his rejection as a narrator suffices) from al-Ḥakam from Shurayḥ, who said: "When a man concludes a sale verbally, the sale becomes binding upon him." The authentic report from Shurayḥ conforms to the truth—as we previously cited through the narration of Abū al-Ḍuḥā and Ibn Sīrīn from him.

L21970 By my life, Ibrahim's statement is indeed interpreted as referring to every transaction other than sale, such as leasing, marriage, and gifts, for this is plausible, since he did not mention sale at all, and thus they reached this conclusion without precedent.

L21971 His statement, "The sale is permissible even if the two parties do not physically separate," is valid. We did not declare it impermissible, nor did he assert it is binding; rather, he affirmed it is permissible.

L21972–21974 Abu Muhammad said: They obfuscated [the truth] with utterly devious sophistries - among them their assertion: "Is the meaning of 'separation' [merely] through speech?!" We responded: Had it been as they claim... It would align with our position and contradict yours, for when the two contracting parties state "I accept it for ten," and the other responds "No, rather for twenty," no person of sound judgment doubts that they have diverged through speech. But if one says "Fifteen," and the other responds "Yes, I have sold it to you for fifteen," they have now reached agreement without divergence. Does the right to rescind then become incumbent upon them since they did not part ways without agreement according to the explicit wording of the ḥadīth? Proceed as you wish - whoever opposes the truth is instantly disgraced and exposed.

L21975 Moreover, we say to them: Your assertion that "disunity through speech is a

مُخَالِفٌ أَصْلًا، وَمَا نَعْلَمُ لَهُمْ مِنْ التَّابِعِينَ سَلَفًا إِلَّا إبْرَاهِيمَ وَحْدَهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ قَالَ: إذَا وَجَبَتْ الصَّفْقَةُ فَلَا خِيَارَ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ مُغِيرَةَ عَنْ إبْرَاهِيمَ قَالَ: الْبَيْعُ جَائِزٌ وَإِنْ لَمْ يَتَفَرَّقَا - وَرِوَايَةٌ مَكْذُوبَةٌ مَوْضُوعَةٌ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ وَكَفَى بِهِ سُقُوطًا عَنْ الْحَكَمِ عَنْ شُرَيْحٍ قَالَ: " إذَا كَلَّمَ الرَّجُلُ بِالْبَيْعِ وَجَبَ عَلَيْهِ الْبَيْعُ، وَالصَّحِيحُ عَنْ شُرَيْحٍ هُوَ مُوَافَقَةُ الْحَقِّ -: كَمَا أَوْرَدْنَا قَبْلُ مِنْ رِوَايَةِ أَبِي الضُّحَى، وَابْنِ سِيرِينَ عَنْهُ.

وَلَعَمْرِي، إنَّ قَوْلَ إبْرَاهِيمَ لَيُخَرَّجُ عَلَى أَنَّهُ عَنَى كُلَّ صَفْقَةٍ غَيْرَ الْبَيْعِ، لَكِنْ الْإِجَارَةَ، وَالنِّكَاحَ، وَالْهِبَاتِ، فَهَذَا مُمْكِنٌ، لِأَنَّهُ لَمْ يَذْكُرْ الْبَيْعَ أَصْلًا فَخَصَلُوا بِلَا سَلَفٍ.

وَقَوْلُهُ: الْبَيْعُ جَائِزٌ وَإِنْ لَمْ يَتَفَرَّقَا: صَحِيحٌ - وَمَا قُلْنَا: إنَّهُ غَيْرُ جَائِزٍ، وَلَا قَالَ هُوَ: إنَّهُ لَازِمٌ، وَإِنَّمَا قَالَ: إنَّهُ جَائِزٌ.

قَالَ أَبُو مُحَمَّد: وَمَوَّهُوا بِتَمْوِيهَاتٍ فِي غَايَةِ الْفَسَادِ -: مِنْهَا: أَنَّهُمْ قَالُوا: مَعْنَى التَّفَرُّقِ أَيْ بِالْكَلَامِ؟ فَقُلْنَا: لَوْ كَانَ كَمَا يَقُولُونَ لَكَانَ مُوَافِقًا لِقَوْلِنَا وَمُخَالِفًا لِقَوْلِكُمْ، لِأَنَّ قَوْلَ الْمُتَبَايِعَيْنِ آخُذُهُ بِعَشَرَةٍ، فَيَقُولُ الْآخَرُ: لَا، وَلَكِنْ بِعِشْرِينَ لَا شَكَّ عِنْدَ كُلِّ ذِي حِسٍّ سَلِيمٍ أَنَّهُمَا مُتَفَرِّقَانِ بِالْكَلَامِ، فَإِذَا قَالَ أَحَدُهُمَا بِخَمْسَةَ عَشَرَ، وَقَالَ الْآخَرُ: نَعَمْ قَدْ بِعْتُكَهُ بِخَمْسَةَ عَشَرَ، فَالْآنَ اتَّفَقَا وَلَمْ يَتَفَرَّقَا فَالْآنَ وَجَبَ الْخِيَارُ لَهُمَا إذْ لَمْ يَتَفَرَّقَا بِنَصِّ الْحَدِيثِ؟ فَاذْهَبُوا كَيْفَ شِئْتُمْ مَنْ عَارَضَ الْحَقَّ بَلَحَ وَافْتَضَحَ.

lie" is itself false and an unproven claim. It is impermissible to uphold both these positions in matters of religion.

وَأَيْضًا: فَنَقُولُ لَهُمْ: قَوْلُكُمْ: التَّفَرُّقُ بِالْكَلَامِ كَذِبٌ، دَعْوَى بِلَا بُرْهَانٍ، لَا يَحِلُّ الْقَوْلُ بِهِمَا فِي الدِّينِ.

L21976 Additionally: the narration of al-Layth.

وَأَيْضًا: فَرِوَايَةُ اللَّيْثِ.

L21977 From Nāfiʿ, from Ibn ʿUmar: What we cited from Rāfiʿah for every dispute clarifies that it entails physical separation from the site with one's body, and this is necessary.

عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ الَّتِي أَوْرَدْنَا رَافِعَةٌ لِكُلِّ شَغَبٍ، وَمُبَيِّنَةٌ أَنَّهُ التَّفَرُّقُ عَنْ الْمَكَانِ بِالْأَبْدَانِ وَلَا بُدَّ.

L21978 Some of them said: The meaning of "the two transacting parties" here refers specifically to the buyer and seller engaged in negotiation, just as an animal intended for slaughter is termed "the slaughtered one" prior to the actual slaughter. They cited the Almighty's statement: *"So they have approached their prescribed waiting period..."* [Al-Baqarah: 231], meaning they have drawn near to the conclusion of their designated term.[26]

وَقَالَ بَعْضُهُمْ: مَعْنَى الْمُتَبَايِعَيْنِ هَهُنَا: إنَّمَا هُمَا الْمُتَسَاوِمَانِ، كَمَا سُمِّيَ الذَّبِيحُ وَلَمْ يُذْبَحْ - وَقَالَ: كَمَا قَالَ تَعَالَى: {فَبَلَغْنَ أَجَلَهُنَّ} [البقرة: ٢٣١] : إنَّمَا أَرَادَ تَقَارَبْنَ بُلُوغَ أَجَلِهِنَّ.

L21979 Others among them said: The intent of his statement—peace be upon him—"as long as they have not separated" is merely the period between one of them saying, "I have sold you this commodity of mine for a dinar?" In this scenario, the option persists until the other party says, "I have accepted that," and between one saying to the other party, "I have bought this commodity of yours for a dinar," where the option remains valid until the other says, "I have sold it to you as you stated."

وَقَالَ آخَرُونَ مِنْهُمْ: إنَّمَا أَرَادَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «مَا لَمْ يَتَفَرَّقَا» إنَّمَا هُوَ مَا بَيْنَ قَوْلِ أَحَدِهِمَا: قَدْ بِعْتُك سِلْعَتِي هَذِهِ بِدِينَارٍ؟ فَهُوَ بِالْخِيَارِ مَا لَمْ يَقُلْ لَهُ الْآخَرُ: قَدْ قَبِلْت ذَلِكَ، وَبَيْنَ قَوْلِهِ لِصَاحِبِهِ: قَدْ ابْتَعْت سِلْعَتَك هَذِهِ بِدِينَارٍ فَهُوَ بِالْخِيَارِ مَا لَمْ يَقُلْ لَهُ الْآخَرُ: قَدْ بِعْتُكَهَا بِمَا قُلْت.

L21980–21982 Others said: It refers solely to the period between the statement of the one who says, "Sell me your commodity for a dinar?" At that point, he has the option as long as... The other says: "I have done," and regarding the statement of one who says: "Buy this merchandise of mine for a dinar," he retains the option as long as the other has not said: "I have done." The response to all these claims is clear and concise: it must be stated that the speaker of this has lied, fabricated, and sinned. For he has distorted the words of Allah's Messenger—peace and blessings of Allah be upon him—from their proper contexts without any foundational proof, merely pursuing frivolity

وَقَالَ آخَرُونَ: إنَّمَا هُوَ مَا بَيْنَ قَوْلِ الْقَائِلِ: بِعْنِي سِلْعَتَك بِدِينَارٍ؟ فَهُوَ بِالْخِيَارِ مَا لَمْ يَقُلْ لَهُ الْآخَرُ: قَدْ فَعَلْت، وَبَيْنَ قَوْلِ الْقَائِلِ: اشْتَرِ مِنِّي سِلْعَتِي هَذِهِ بِدِينَارٍ، فَلَهُ الْخِيَارُ مَا لَمْ يَقُلْ لَهُ الْآخَرُ: قَدْ فَعَلْت؟ فَجَوَابُ هَذِهِ الْأَقْوَالِ كُلِّهَا وَاضِحٌ مُخْتَصَرٌ، وَهُوَ أَنْ يُقَالَ: كَذَبَ قَائِلُ هَذَا وَأَفَكَ وَأَثِمَ، لِأَنَّهُ حَرَّفَ كَلَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ مَوَاضِعِهِ بِلَا بُرْهَانٍ أَصْلًا، لَكِنْ مُطَارَفَةً وَمُجَاهَرَةً بِالدَّعْوَى الْبَاطِلِ، فَمِنْ أَيْنَ لَكُمْ هَذِهِ الْأَقْوَالُ؟ وَمَنْ أَخْبَرَكُمْ بِأَنَّ هَذَا هُوَ مُرَادُهُ - عَلَيْهِ السَّلَامُ -؟ وَأَمَّا قَوْلُكُمْ: كَمَا

[26] **Qur'an references (L21978):** Qur'an 2:231 (Al-Baqarah).

and openly proclaiming false claims. From where do you derive these assertions? Who informed you that this was his intended meaning—peace be upon him? As for your statement: "Like naming the slaughtered one without slaughtering him"—Allah the Exalted never named him "slaughtered," nor has this ever been authentically reported from Allah's Messenger—peace and blessings of Allah be upon him. Since this is the case, it is merely an absolute layman's statement devoid of proof. Those who employed this term did so either out of leniency or because the Close Friend—peace be upon him—placed the knife against his throat, an act described by its doer as "slaughter." We pay no heed to this labeling, for it has never been established by the Quran or Sunnah. Thus, it cannot constitute valid proof for anything whatsoever.

سُمِّيَ الذَّبِيحُ وَلَمْ يُذْبَحْ؟ فَمَا سَمَّاهُ اللَّهُ تَعَالَى قَطُّ ذَبِيحًا، وَلَا صَحَّ ذَلِكَ أَيْضًا قَطُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِذَا كَانَ هَكَذَا فَإِنَّمَا هُوَ قَوْلٌ مُطْلَقٌ عَامِّيٌّ لَا حُجَّةَ فِيهِ، وَإِنَّمَا أَطْلَقَ ذَلِكَ مَنْ أَطْلَقَ مُسَامَحَةً، أَوْ لِأَنَّهُ حَمَلَ الْخَلِيلُ - عَلَيْهِ السَّلَامُ - السِّكِّينَ عَلَى حَلْقِهِ، وَهَذَا فِعْلٌ يُسَمَّى مِنْ فَاعِلِهِ ذَبْحًا، وَمَا نُبَالِي عَنْ هَذِهِ التَّسْمِيَةِ؛ لِأَنَّهَا لَمْ يَأْتِ بِهَا قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ، فَلَا يَقُومُ بِهَا حُجَّةٌ فِي شَيْءٍ أَصْلًا.

L21983 As for Allah's statement, the Exalted: *"When they have reached their term"* [Quran 2:231], Allah has spoken the truth, and those who claim He intended *proximity to the end of the term* have lied—far be it from Allah! Had their assumption been valid, retaining [wives] or revoking the divorce would only be permissible near the term's completion—not before—yet this is undeniably false. The verse's interpretation conforms to its apparent meaning without falsehood or addition. Without doubt, He the Exalted intended divorced women to complete their waiting period by observing it from the moment the divorce occurs until its conclusion. Throughout this entire duration, the husband may withhold [from finalizing the divorce], revoke it without any disagreement among scholars, or persist in upholding the divorce.[27]

وَأَمَّا قَوْله تَعَالَى: {فَبَلَغْنَ أَجَلَهُنَّ} [البقرة: ٢٣١] فَصَدَقَ اللَّهُ تَعَالَى وَكَذَبَ مَنْ قَالَ: إنَّهُ تَعَالَى أَرَادَ الْمُقَارَبَةَ، حَاشَ لِلَّهِ مِنْ هَذَا - وَلَوْ كَانَ مَا ظَنُّوهُ لَكَانَ الْإِمْسَاكُ وَالرَّجْعَةُ لَا يَجُوزُ إلَّا فِي قُرْبِ بُلُوغِ الْأَجَلِ، لَا قَبْلَ ذَلِكَ، وَهَذَا بَاطِلٌ بِلَا خِلَافٍ - وَتَأْوِيلُ الْآيَةِ مُوَافِقٌ لِظَاهِرِهَا بِلَا كَذِبٍ وَلَا تَزِيُّدٍ، وَإِنَّمَا أَرَادَ تَعَالَى - بِلَا شَكٍّ - بُلُوغَ الْمُطَلَّقَاتِ أَجَلَ الْعِدَّةِ بِكَوْنِهِنَّ فِيهَا مِنْ دُخُولِهِنَّ إيَّاهَا إلَى إثْرِ الطَّلَاقِ إلَى خُرُوجِهِنَّ عَنْهَا، وَهَذِهِ الْمُدَّةُ كُلُّهَا لِلزَّوْجِ فِيهَا الرَّجْعَةُ وَالْإِمْسَاكُ بِلَا خِلَافٍ، أَوْ التَّمَادِي عَلَى حُكْمِ الطَّلَاقِ.

L21984 Even if what they have put forth of falsehood were valid for them, they would have no valid claim to it. For the fact that some speech is interpreted contrary to its apparent meaning due to evidence does not necessitate interpreting all speech contrary to its apparent meaning without evidence. In this lies the corruption of mutual understanding, rational principles, and the entire Sharia. How then [can this be], when the narration of Ubayd Allāh ibn 'Umar from Nāfi' from Ibn 'Umar from the Prophet—peace be upon him—who said, "Every two parties to a sale have no binding sale until they separate," completely debunks this falsehood and invalidates singling out some of

وَحَتَّى لَوْ صَحَّ لَهُمْ مَا أَطْلَقُوا فِيهِ الْبَاطِلَ لَكَانَ لَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّهُ لَيْسَ إذَا وُجِدَ كَلَامٌ قَدْ صُرِفَ عَنْ ظَاهِرِهِ بِدَلِيلٍ وَجَبَ أَنْ يُصْرَفَ كُلُّ كَلَامٍ عَنْ ظَاهِرِهِ بِلَا دَلِيلٍ، وَفِي هَذَا إفْسَادُ التَّفَاهُمِ، وَالْمَعْقُولِ، وَالشَّرِيعَةِ كُلِّهَا، فَكَيْفَ وَرِوَايَةُ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - قَالَ: «كُلُّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا» فَاضِحٌ لِهَذَا الْكَذِبِ كُلِّهِ، وَمُبْطِلٌ لِتَخْصِيصِ بَعْضِ مَنْ يَقَعُ عَلَيْهِ اسْمُ بَيِّعٍ مِنْ سَائِرِ مَنْ يَقَعُ عَلَيْهِ هَذَا الِاسْمُ.

[27] **Qur'an references (L21983):** Qur'an 2:231 (Al-Baqarah).

those to whom the term ‘sale’ applies from others who fall under the same designation.

L21985 They said: This separation mentioned in the Hadith is like the separation mentioned in Allah’s saying, the Exalted: “And if they separate, Allah will enrich both from His abundance.” [An-Nisā: 130].[28]

L21986–21987 We said: Yes, without doubt, and that separation mentioned in the verse is a separation through speech that necessarily entails physical separation. The separation mentioned in the ḥadīth is likewise a separation through speech that necessarily entails physical separation. Yet you claim that the separation considered in rulings invalidating or validating currency exchange is solely physical separation. Why then do you not say here—on this basis—that the separation mentioned in this ḥadīth is also physical separation, were it not for your baseless imposition driven by whims?

L21988 They disguised [their wrongdoing] with the statement of Allah, the Most High: {Unless it is a trade by mutual consent among you} [An-Nisa’ 4:29].[29]

L21989 So the Exalted permitted consumption after mutual consent. They said, “And this is evidence for the validity of ownership through contract.”

L21990 Abu Muhammad said: The one who brought us this verse is the one through whom we learn: What constitutes permissible trade for us, as distinct from what has been prohibited to us? And what defines mutual consent that transfers ownership as opposed to mutual consent that does not transfer ownership? Were it not for him, we would not have known anything of that.

L21991 He is the one who informed us that a contract is not a sale, nor is it a trade, nor is it mutual agreement, nor does it transfer ownership until it incorporates separation from their original agreement or the offering of choice. This is the sale, the trade, and the mutual agreement—not what the ignorant presume based on their opinions without proof, but through false claims.

وَقَالُوا: هَذَا التَّفْرِيقُ الْمَذْكُورُ فِي الْحَدِيثِ: هُوَ مِثْلُ التَّفْرِيقِ الْمَذْكُورِ فِي قَوْلِه تَعَالَى: {وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلا مِنْ سَعَتِهِ} [النساء: ١٣٠] .

فَقُلْنَا: نَعَمْ، بِلَا شَكٍّ، وَذَلِكَ التَّفَرُّقُ الْمَذْكُورُ فِي الْآيَةِ تَفَرُّقٌ بِالْقَوْلِ يَقْتَضِي التَّفَرُّقَ بِالْأَبْدَانِ وَلَا بُدَّ، وَالتَّفَرُّقُ الْمَذْكُورُ فِي الْحَدِيثِ كَذَلِكَ أَيْضًا تَفَرُّقٌ بِالْقَوْلِ يَقْتَضِي التَّفَرُّقَ بِالْأَبْدَانِ وَلَا بُدَّ، وَأَنْتُمْ تَقُولُونَ: إِنَّ التَّفَرُّقَ الْمُرَاعَى فِيمَا يَحْرُمُ بِهِ الصَّرْفُ أَوْ يَصِحُّ إِنَّمَا هُوَ تَفَرُّقُ الْأَبْدَانِ، فَهَلَّا قُلْتُمْ عَلَى هَذَا هَهُنَا: إِنَّ التَّفَرُّقَ الْمَذْكُورَ فِي هَذَا الْخَبَرِ هُوَ أَيْضًا تَفَرُّقُ الْأَبْدَانِ، لَوْلَا التَّحَكُّمُ الْبَارِدُ حَيْثُ تَهْوُونَ.

وَمَوَّهُوا بِقَوْلِ اللَّهِ تَعَالَى: {إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

فَأَبَاحَ تَعَالَى الْأَكْلَ بَعْدَ التَّرَاضِي، قَالُوا: وَهَذَا دَلِيلٌ عَلَى صِحَّةِ الْمِلْكِ بِالْعَقْدِ.

قَالَ أَبُو مُحَمَّد: الَّذِي أَتَانَا بِهَذِهِ الْآيَةِ هُوَ الَّذِي مِنْ عِنْدِهِ نَدْرِي: مَا هِيَ التِّجَارَةُ الْمُبَاحَةُ لَنَا مِمَّا حُرِّمَ عَلَيْنَا، وَمَا هُوَ التَّرَاضِي النَّاقِلُ لِلْمِلْكِ مِنْ التَّرَاضِي الَّذِي لَا يَنْقُلُ الْمِلْكَ؟ وَلَوْلَاهُ لَمْ نَعْرِفْ شَيْئًا مِنْ ذَلِكَ.

وَهُوَ الَّذِي أَخْبَرَنَا: أَنَّ الْعَقْدَ لَيْسَ بَيْعًا، وَلَا هُوَ تِجَارَةً، وَلَا هُوَ تَرَاضِيًا وَلَا يَنْقُلُ مِلْكًا إِلَّا حَتَّى يَسْتَضِيفَ إِلَيْهِ التَّفَرُّقَ عَنْ مَوْضِعِهِمَا، أَوْ التَّخْيِيرَ، فَهَذَا هُوَ الْبَيْعُ، وَالتِّجَارَةُ، وَالتَّرَاضِي، لَا مَا ظَنَّهُ أَهْلُ الْجَهْلِ بِآرَائِهِمْ بِلَا بُرْهَانٍ، لَكِنْ بِالدَّعْوَى الْفَاسِدَةِ.

[28] **Qur’an references (L21985):** Qur’an 4:130 (An-Nisa).
[29] **Qur’an references (L21988):** Qur’an 4:29 (An-Nisa).

L21992 They cited as evidence Allah's statement: "Fulfill [your] contracts" [Al-Mā'idah: 1], and this is true. However, the One who commanded us through His Prophet's words—He, the Exalted—ordered His Messenger (peace be upon him) to inform us that such a contractual agreement is neither valid nor perfected, nor does it constitute a contract unless the parties depart from their place [of agreement] or one grants the other an option [to annul it] after contracting. Otherwise, fulfilling that contract is not obligatory. They unanimously agree with us that no one is bound to fulfill every contract they make, for indeed fulfilling many contracts is forbidden—such as one who binds himself to commit adultery or drink wine.[30]

وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَهَذَا حَقٌّ إِلَّا أَنَّ الَّذِي أَمَرَنَا بِهَذَا عَلَى لِسَانِ نَبِيِّهِ هُوَ تَعَالَى الْآمِرُ لِرَسُولِهِ - عَلَيْهِ السَّلَامُ - أَنْ يُخْبِرَنَا أَنَّهُ لَا يَصِحُّ هَذَا التَّعَاقُدُ وَلَا يَتِمُّ، وَلَا يَكُونُ عَقْدًا إِلَّا بِالتَّفَرُّقِ عَنْ مَوْضِعِهِمَا أَوْ بِأَنْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ بَعْدَ التَّعَاقُدِ، وَإِلَّا فَلَا يَلْزَمُ الْوَفَاءُ بِذَلِكَ الْعَقْدِ، وَهُمْ مُجْمِعُونَ مَعَنَا عَلَى أَنَّهُ لَا يَلْزَمُ أَحَدًا الْوَفَاءُ بِكُلِّ عَقْدٍ عَقَدَهُ، بَلْ أَكْثَرُ الْعُقُودِ حَرَامٌ الْوَفَاءُ بِهَا، كَمَنْ عَقَدَ عَلَى نَفْسِهِ أَنْ يَزْنِيَ، أَوْ أَنْ يَشْرَبَ الْخَمْرَ.

L21993 Yes, and most contracts are not binding in their view or ours, such as contracts to buy, sell, sing, dance, or recite poetry.

نَعَمْ، وَأَكْثَرُ الْعُقُودِ لَا يَلْزَمُ الْوَفَاءُ بِهِ عِنْدَهُمْ وَعِنْدَنَا، كَمَنْ عَقَدَ أَنْ يَشْتَرِيَ، أَوْ أَنْ يَبِيعَ، أَوْ أَنْ يُغَنِّيَ، أَوْ أَنْ يَزْفِنَ أَوْ أَنْ يُنْشِدَ شِعْرًا.

L21994–21996 Thus, it was conclusively established that fulfilling a contractual obligation is not required in principle, except for a contract explicitly mandated by name in the scriptural text. The Ḥanafīs maintain that if two parties pledge mutual agreement over an absent item while expressly waiving the right to exercise the option of seeing, such a contract remains revocable.

فَصَحَّ يَقِينًا أَنَّهُ لَا يَلْزَمُ الْوَفَاءُ بِعَقْدٍ أَصْلًا، إِلَّا عَقْدًا أَتَى النَّصُّ بِالْوَفَاءِ بِهِ بِاسْمِهِ وَعَيْنِهِ، وَهُمْ يَقُولُونَ - يَعْنِي الْحَنَفِيِّينَ - أَنَّ مَنْ بَايَعَ آخَرَ شَيْئًا غَائِبًا وَتَعَاقَدَا إِسْقَاطَ خِيَارِ الرُّؤْيَةِ أَنَّهُ عَقْدٌ لَا يَلْزَمُ.

L21997 The Malikis state: Whoever purchases fruit while stipulating exemption from liability for catastrophic loss and enters such a condition binding himself, this constitutes a contract not binding upon him. How then can their argument hold based on Allah's injunction "Fulfill [your] contracts" [5:1]? Should they retort: "These are contracts for which evidences establish that fulfillment is not required," we counter: The sale contract itself is one for which valid proof confirms that fulfillment becomes binding only after physical separation or the conclusion of the option period - unlike the invalid proofs through which you have arbitrarily restricted certain contractual obligations you specified.[31]

وَالْمَالِكِيُّونَ يَقُولُونَ: مَنْ ابْتَاعَ ثَمَرَةً وَاشْتَرَطَ أَنْ لَا يَقُومَ بِجَائِحَةٍ، وَعَقَدَ ذَلِكَ عَلَى نَفْسِهِ، فَإِنَّهُ عَقْدٌ لَا يَلْزَمُهُ، فَأَيْنَ احْتِجَاجُهُمْ بِقَوْلِ اللَّهِ تَعَالَى {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . فَإِنْ قَالُوا: هَذِهِ عُقُودٌ قَامَتْ الْأَدِلَّةُ عَلَى أَنَّهُ لَا يَلْزَمُ الْوَفَاءُ بِهَا؟ قُلْنَا: وَعَقْدُ الْبَيْعِ عَقْدٌ قَدْ قَامَ الْبُرْهَانُ حَقًّا عَلَى أَنَّهُ لَا يَلْزَمُ الْوَفَاءُ بِهِ إِلَّا بَعْدَ التَّفَرُّقِ بِالْأَبْدَانِ، أَوْ بَعْدَ التَّخْيِيرِ، بِخِلَافِ الْأَدِلَّةِ الْفَاسِدَةِ الَّتِي خَصَّصْتُمْ بِهَا مَا خَصَّصْتُمْ مِنْ الْعُقُودِ الْمَذْكُورَةِ.

L21998 They also covered up by citing the words of Allah, the Exalted: {And take wit-

وَمَوَّهُوا أَيْضًا بِقَوْلِ اللَّهِ تَعَالَى: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] وَإِنَّ الْحَيَاءَ لَقَلِيلٌ فِي وَجْهِ مَنْ احْتَجَّ بِهَذِهِ الْآيَةِ فِي هَذَا الْمَكَانِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُمْ أَوَّلُ مُخَالِفٍ لِهَذِهِ

[30] **Qur'an references (L21992):** Qur'an 5:1 (Al-Ma'idah).
[31] **Qur'an references (L21997):** Qur'an 5:1 (Al-Ma'idah).

الْآيَةِ فِيمَا وَرَدَتْ فِيهِ مِنْ وُجُوبِ الْإِشْهَادِ فَكَيْفَ يَسْتَحِلُّونَ الِاحْتِجَاجَ بِأَنَّهُمْ قَدْ عَصَوْا اللَّهَ تَعَالَى فِيهَا وَخَالَفُوهَا، وَلَمْ يَرَوْهَا حُجَّةً فِي وُجُوبِ الْإِشْهَادِ فِي الْبَيْعِ؟ وَالثَّانِي - أَنَّهُ لَيْسَ فِي الْآيَةِ نَصٌّ وَلَا دَلِيلٌ عَلَى بُطْلَانِ التَّفَرُّقِ الْمَذْكُورِ فِي الْخَبَرِ وَلَا ذُكِرَ مِنْهُ أَصْلًا.

nesses when you contract} [Al-Baqarah: 282]. Little shame resides in those who cite this verse as evidence in this context, for several reasons: First—they are the foremost violators of this verse regarding what it addresses concerning the obligation of witnessing. How can they deem it permissible to cite it as evidence when they have disobeyed Allah the Exalted in it, opposed it, and not regarded it as authoritative evidence for the obligation of witnessing in sales? Second—the verse contains neither explicit text nor proof invalidating the dissolution mentioned in the hadith, nor does it even mention this matter at all.[32]

وَالثَّالِثُ: أَنَّ نَصَّ الْآيَةِ إِنَّمَا هُوَ إِيجَابُ الْإِشْهَادِ إِذَا تَبَايَعْنَا، وَالَّذِي جَاءَنَا بِهَذِهِ الْآيَةِ - وَلَوْلَاهُ لَمْ نَدْرِ مَا الْمَبِيعُ الْمُبَاحُ مِنَ الْمُحَرَّمِ أَلْبَتَّةَ - هُوَ الَّذِي أَخْبَرَنَا أَنَّهُ لَا بَيْعَ أَصْلًا إِلَّا بَعْدَ التَّفَرُّقِ عَنْ مَوْضِعِهِمَا أَوِ التَّخْيِيرِ. فَصَحَّ يَقِينًا أَنَّ قَوْلَ اللَّهِ تَعَالَى: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] إِنَّمَا هُوَ أَمْرٌ بِالْإِشْهَادِ بَعْدَ التَّفَرُّقِ، أَوِ التَّخْيِيرِ الَّذِي لَا بَيْعَ بَيْنَهُمَا أَصْلًا إِلَّا بَعْدَ أَحَدِهِمَا وَإِنْ رَغِمَتْ أُنُوفُ الْمُخَالِفِينَ؟ ثُمَّ مَوَّهُوا بِإِيرَادِ أَخْبَارٍ ثَابِتَةٍ وَغَيْرِ ثَابِتَةٍ، مِثْلِ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «إِذَا ابْتَعْتَ بَيْعًا فَلَا تَبِعْهُ حَتَّى تَقْبِضَهُ» وَالْقَوْلُ فِيهِ كَالْقَوْلِ فِي الْآيَةِ سَوَاءً سَوَاءً، لِأَنَّهُ لَا بَيْعَ بَيْنَهُمَا إِلَّا بَعْدَ التَّفَرُّقِ أَوِ التَّخْيِيرِ، وَإِلَّا فَلَمْ يَبْتَعِ الْمُبْتَاعُ أَصْلًا وَلَا بَاعَ الْبَائِعُ أَلْبَتَّةَ.

L21999–22001 The third point is that the verse's text specifically obligates witnessing when you engage in trade. The one who brought us this verse—and without whom we would not have known **entirely** what constitutes a permissible sold item versus a forbidden one—is the same who informed us that there is no valid sale **whatsoever** except after the parties physically separate from their place of transaction or after the granting of choice. Thus, it is **certainly** and firmly established that Allah's statement, {And take witnesses when you trade} [Al-Baqarah: 282], is exclusively a command to appoint witnesses **after** separation from the transaction's location or after the granting of choice—with no sale being valid **at all** unless one of these conditions is met, even if it displeases the dissenters. They then muddied the waters by citing narrations—some authenticated, others not—such as his saying, peace be upon him: "When you purchase something, do not…" "Accompany him until you take possession of it. The ruling here is exactly the same as that of the Quranic verse, because no sale is valid between them except after parting ways or exercising the option. Otherwise, the buyer has not purchased anything at all, and the seller has not sold anything whatsoever."[33]

[32] **Qur'an references (L21998):** Qur'an 2:282 (Al-Baqarah).

[33] **Qur'an references (L21999):** Qur'an 2:282 (Al-Baqarah).

L22002 Similarly, the case of one who sells a slave who owns property: his property belongs to the seller.

وَمِثْلِ مَنْ بَاعَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لِلْبَائِعِ.

L22003 Similarly, the case of one who sells palm trees that have been pollinated: their fruit belongs to the seller unless the buyer stipulates it as a condition.

وَمِثْلِ مَنْ بَاعَ نَخْلًا قَدْ أُبِرَتْ فَثَمَرَتُهَا لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَهَا الْمُبْتَاعُ.

L22004 Similarly, it is prohibited to sell food until the two sa's have been measured in it.

وَمِثْلِ النَّهْيِ عَنْ بَيْعِ الطَّعَامِ حَتَّى يَجْرِيَ فِيهِ الصَّاعَانِ.

L22005 If the buyer and seller disagree, the seller's statement shall prevail.

وَإِذَا اخْتَلَفَ الْمُتَبَايِعَانِ فَالْقَوْلُ مَا قَالَ الْبَائِعُ.

L22006 And there are numerous narrations mentioning the contract of sale. The ruling regarding all these narrations—as we stated earlier—is that all these rulings were mentioned concerning the contract of sale. The One who ordained the validity of these rulings is the same who declared, judged, and said: "Indeed, no sale exists between the two parties to the sale while they remain together without separation, or if one grants the other an option." Perdition to whoever disobeys Him.

وَأَخْبَارٌ كَثِيرَةٌ جَاءَ فِيهَا ذِكْرُ الْبَيْعِ، وَالْقَوْلُ فِيهَا كُلِّهَا - كَمَا قُلْنَا آنِفًا: أَنَّ كُلَّ هَذِهِ الْأَحْكَامِ إِنَّمَا وَرَدَتْ فِي الْبَيْعِ وَالَّذِي أَمَرَ بِمَا صَحَّ مِنْهَا هُوَ الَّذِي أَخْبَرَ وَحَكَمَ وَقَالَ: إِنَّهُ لَا بَيْعَ بَيْنَ الْمُتَبَايِعَيْنِ مَا كَانَا مَعًا وَلَمْ يَتَفَرَّقَا، أَوْ خَيَّرَ أَحَدُهُمَا الْآخَرَ، فَتبًّا لِمَنْ عَصَاهُ.

L22007 What is astonishing is that most of these reports are contradicted by the very people [responsible for them], who oppose what is in their texts. They were not content with this until they added to it the deception of those who assumed the best—misleading them into believing something of which there is absolutely no trace in these reports whatsoever.

وَالْعَجَبُ أَنَّ أَكْثَرَ هَذِهِ الْأَخْبَارِ هُمْ مُخَالِفُونَ لِمَا فِي نُصُوصِهَا، فَلَمْ يَقْنَعُوا بِذَلِكَ حَتَّى أَضَافُوا إِلَى ذَلِكَ غُرُورَ مَنْ أَحْسَنَ الظَّنَّ فِي أَنْ أَوْهَمُوهُمْ مَا لَيْسَ فِيهَا مِنْهُ شَيْءٌ أَصْلًا.

L22008 There is no distinction between those who cite all we have mentioned to invalidate the established Sunnah—such as the ruling that no sale is valid between transacting parties until bodily separation or the exercise of choice—and those who cite the Sunnah to permit every sale not mentioned in it, such as those involving usury, uncertainty (gharar), pebble-throwing (al-ḥaṣāh), touching (al-mulāmasah), hurling (al-munābadhah), and the like. Rather, all such practices constitute a single act, from which we seek refuge with Allah.

وَلَا فَرْقَ بَيْنَهُمْ فِي احْتِجَاجِهِمْ بِكُلِّ مَا ذَكَرْنَا فِي إِبْطَالِ السُّنَّةِ الثَّابِتَةِ مِنْ أَنْ لَا بَيْعَ بَيْنَ الْمُتَبَايِعَيْنِ إِلَّا بَعْدَ التَّفَرُّقِ بِالْأَبْدَانِ أَوْ التَّخْيِيرِ، وَبَيْنَ مَنْ احْتَجَّ بِهَا فِي إِبَاحَةِ كُلِّ بَيْعٍ لَمْ يُذْكَرْ فِيهَا مِنْ الرِّبَا، وَالْغَرَرِ، وَالْحَصَاةِ، وَالْمُلَامَسَةِ، وَالْمُنَابَذَةِ، وَغَيْرِ ذَلِكَ، بَلْ هُوَ كُلُّهُ عَمَلٌ وَاحِدٌ، نَعُوذُ بِاَللَّهِ مِنْهُ.

L22009 Among their marvels is their argument in this matter using the authentic hadith that "a child cannot fully repay a parent unless he finds him enslaved, purchases him, and frees him."

وَمِنْ عَجَائِبِهِمْ احْتِجَاجُهُمْ فِي هَذَا بِالْخَبَرِ الثَّابِتِ مِنْ أَنَّهُ «لَا يَجْزِي وَلَدٌ وَالِدًا إِلَّا أَنْ يَجِدَهُ مَمْلُوكًا فَيَشْتَرِيَهُ فَيُعْتِقَهُ» .

L22010 Abu Muhammad said: Were it not that these people indulge in much false-

hood and practice deception in the name of Islam for those deluded by them, this prolonged, meaningless discourse would not be deemed a danger to them.

قَالَ أَبُو مُحَمَّد: وَلَوْلَا أَنَّ الْقَوْمَ مُسْتَكْثِرُونَ مِنْ الْبَاطِلِ، وَالْخَدِيعَةِ فِي الْإِسْلَامِ لِمَنْ اغْتَرَّ بِهِمْ لَمْ يُخَفْ عَلَيْهِمْ هَذَا التَّطْوِيلُ بِلَا مَعْنًى.

L22011 Yes, the report is correct. One who does not physically separate from his seller, nor exercise his option after the contract, nor ever take ownership has not validly purchased his father as a slave. Rather, he remains in the ownership of his seller as before until the buyer either exercises his option or physically separates from him. At that point, the slave becomes manumitted at the buyer's obligation. Otherwise, he is not freed—by the explicit ruling of Allah Almighty as decreed through the words of the Messenger of Allah (peace be upon him).

وَنَعَمْ، الْخَبَرُ صَحِيحٌ وَمَا اشْتَرَى قَطُّ أَبَاهُ مَنْ لَمْ يُفَارِقْ بَائِعَهُ بِبَدَنِهِ وَلَا خَيَّرَهُ بَعْدَ الْعَقْدِ وَلَا مَلَّكَهُ قَطُّ، بَلْ هُوَ فِي مِلْكِ بَائِعِهِ كَمَا كَانَ حَتَّى يُخَيِّرَهُ الْمُبْتَاعُ أَوْ يُفَارِقَهُ بِبَدَنِهِ، فَحِينَئِذٍ يَعْتِقُ عَلَيْهِ، وَإِلَّا فَلَا بِنَصِّ حُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22012–22013 They also mentioned: "Muslims are bound by their stipulations." This is a fabricated narration, for it was only transmitted by Kathīr ibn Zayd - who is weak - and narrators weaker than him, or as a *mursal* report from 'Aṭā'.

وَذَكَرُوا أَيْضًا «: الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» وَهَذَا خَبَرٌ مَكْذُوبٌ؛ لِأَنَّهُ إنَّمَا رَوَاهُ كَثِيرُ بْنُ زَيْدٍ - وَهُوَ سَاقِطٌ - وَمَنْ هُوَ دُونَهُ، أَوْ مُرْسَلٌ عَنْ عَطَاءٍ.

L22014 Then, if it were valid, it would serve as evidence for us against them, because the conditions of Muslims are not all free from disagreement. Rather, they are only those conditions commanded [by Islamic law] or permitted by their explicit naming in the Quran and authentic Sunnah compilations.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ شُرُوطَ الْمُسْلِمِينَ لَيْسَتْ كُلَّ شَرْطٍ بِلَا خِلَافٍ، بَلْ إنَّمَا هِيَ الشُّرُوطُ الْمَأْمُورُ بِهَا، أَوْ الْمُبَاحَةُ بِأَسْمَائِهَا فِي الْقُرْآنِ وَصَحِيحِ السُّنَنِ.

L22015 If what they insinuated were true, then the conditions of adultery, procurement, consuming intoxicants, and usury would become binding obligations. Allah is far removed from such deviant notions.

وَلَوْ كَانَ مَا أَوْهَمُوا بِهِ لَكَانَ شَرْطُ الزِّنَى، وَالْقِيَادَةِ، وَشُرْبِ الْخَمْرِ، وَالرِّبَا: شُرُوطًا لَوَازِمَ، وَحَاشَ لِلَّهِ مِنْ هَذَا الضَّلَالِ.

L22016 It has been authentically reported from the Messenger of Allah: "Every condition not in the Book of Allah is void. The Book of Allah is more deserving, and Allah's stipulation is more binding." Allah's condition refers to either the physical separation of parties after concluding the sale contract or the stipulated option - otherwise, no condition there is fundamentally binding. The most astonishing matter is how some argue that when one conducts a sale as binding without the *khiyar*, the *khiyar* is thereby invalidated.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» فَشَرْطُ اللَّهِ تَعَالَى هُوَ التَّفَرُّقُ بِالْأَبْدَانِ بَعْدَ الْعَقْدِ لِلْبَيْعِ أَوْ التَّخْيِيرُ، وَإِلَّا فَلَا شَرْطَ هُنَالِكَ يَلْزَمُ أَصْلًا - وَأَعْجَبُ شَيْءٍ احْتِجَاجُ بَعْضِهِمْ بِأَنَّ مَنْ بَاعَ بَيْعًا عَلَى أَنَّهُ ثَابِتٌ بِلَا خِيَارٍ أَنَّ الْخِيَارَ سَاقِطٌ.

L22017 Abū Muḥammad said: I wish I knew who would agree with them in this madness? No, certainly not! Rather, if two contracting parties were to

conclude their sale upon nullifying the obligatory right of option granted to them before departing from the contractual session and before exercising the option, it would be a cursed condition, a voidable contract, and a ruling of misguidance - because they stipulated the nullification of what Allah the Exalted and His Messenger (peace be upon him) has established.

قَالَ أَبُو مُحَمَّدٍ: لَيْتَ شِعْرِي مَنْ وَافَقَهُمْ عَلَى هَذَا الْجُنُونِ؟ لَا، وَلَا كَرَامَةَ بَلْ لَوْ أَنَّ مُتَبَايِعَيْنِ عَقَدَا بَيْعَهُمَا عَلَى إسْقَاطِ الْخِيَارِ الْوَاجِبِ لَهُمَا قَبْلَ التَّفَرُّقِ بِأَبْدَانِهِمَا، وَقَبْلَ التَّخْيِيرِ لَكَانَ شَرْطًا مَلْعُونًا، وَعَقْدًا فَاسِدًا، وَحُكْمَ ضَلَالٍ لِأَنَّهُمَا اشْتَرَطَا إبْطَالَ مَا أَثْبَتَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22018 They further argued: Since the marriage contract; divorce contract; lease contract; khulʿ (wife-initiated divorce); manumission; and kitābah (manumission contract) are valid without requiring physical separation, the same principle applies to the sale contract.

وَمَوَّهُوا أَيْضًا بِأَنْ قَالُوا: لَمَّا كَانَ عَقْدُ النِّكَاحِ، وَعَقْدُ الطَّلَاقِ، وَعَقْدُ الْإِجَارَةِ، وَالْخُلْعُ، وَالْعِتْقُ، وَالْكِتَابَةُ تَصِحُّ، وَلَا يُرَاعَى فِيهَا التَّفَرُّقُ بِالْأَبْدَانِ وَجَبَ مِثْلُ ذَلِكَ فِي الْبَيْعِ.

L22019 Abu Muhammad said: This is analogy, and all analogy is invalid. Moreover, even if analogy were valid, this would be the epitome of invalidity, due to their consensus with us that every ruling among those they mentioned has distinct legal effects and applications, making it impermissible to combine them in such a ruling. For in a sale, ownership of the corpus of the sold item and its price is transferred – a principle absent in any of the rulings they cited. As for marriage, it permits access to intimacy that was formerly prohibited without ownership of the spouse's person, and it is impermissible at all to stipulate contractual options (such as rescission rights) or deferred terms within it.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِإِجْمَاعِهِمْ مَعَنَا عَلَى أَنَّ كُلَّ حُكْمٍ مِنْ هَذِهِ الَّتِي ذَكَرُوا لَهُ أَحْكَامٌ وَأَعْمَالٌ مُخَالِفَةٌ لِسَائِرِهَا، لَا يَجُوزُ أَنْ يُجْمَعَ بَيْنَهُمَا فِيهِ، فَالْبَيْعُ يَنْتَقِلُ فِيهِ مِلْكُ رَقَبَةِ الْمَبِيعِ وَثَمَنِهِ، وَلَيْسَ ذَلِكَ فِي شَيْءٍ مِنْ الْأَحْكَامِ الَّتِي ذَكَرُوا، وَالنِّكَاحُ فِيهِ إبَاحَةُ فَرْجٍ كَانَ مُحَرَّمًا بِغَيْرِ مِلْكِ رَقَبَتِهِ وَلَا يَجُوزُ فِيهِ اشْتِرَاطُ خِيَارٍ أَصْلًا وَلَا تَأْجِيلٌ.

L22020–22022 They permit the stipulated option to rescind in sales and deferred-payment transactions, and they do not deem it permissible to analogize one of them to the other in this matter. Divorce prohibits the [previously] lawful marital intimacy, either at its specified time or for a defined period, without transference. Ownership, and no stipulations may be made after its conclusion whatsoever, unlike sale. Leasing permits the use of benefits in exchange for compensation without transferring ownership of the corpus, unlike sale. It is permissible for a free person, unlike sale, and must be for a term—either determinate or indeterminate (if tied to a limited task)—unlike sale.

وَهُمْ يُجِيزُونَ الْخِيَارَ الْمُشْتَرَطَ فِي الْبَيْعِ وَالتَّأْجِيلِ، وَلَا يَرَوْنَ قِيَاسَ أَحَدِهِمَا عَلَى الْآخَرِ فِي ذَلِكَ جَائِزًا، وَالطَّلَاقُ تَحْرِيمُ فَرْجٍ مُحَلَّلٍ إمَّا فِي وَقْتِهِ وَإِمَّا إلَى مُدَّةٍ بِغَيْرِ نَقْلِ مِلْكٍ، وَلَا يَجُوزُ فِيهِ اشْتِرَاطُ بَعْدَ إيقَاعِهِ أَصْلًا، بِخِلَافِ الْبَيْعِ - وَالْإِجَارَةُ إبَاحَةُ مَنَافِعَ بِعِوَضٍ لَا تُمَلَّكُ بِهِ الرَّقَبَةُ، بِخِلَافِ الْبَيْعِ، وَيَجُوزُ فِي الْحُرِّ بِخِلَافِ الْبَيْعِ، وَهِيَ إلَى أَجَلٍ وَلَا بُدَّ، إمَّا مَعْلُومٍ وَإِمَّا مَجْهُولٍ إنْ كَانَ فِي عَمَلٍ مَحْدُودٍ، بِخِلَافِ الْبَيْعِ.

L22023 Khulʿ is a divorce entailing financial compensation in which—unlike in sales transactions—a conditional option cannot be stipulated according to their view. The same ruling applies to emancipation and the contractual manu-

mission (kitāba). This exposes the absurdity of their analogy, demonstrating it to be mere caprice and muddled reasoning.

وَالْخُلْعُ طَلَاقٌ بِمَالٍ لَا يَجُوزُ فِيهِ عِنْدَهُمْ خِيَارٌ مُشْتَرَطٌ، بِخِلَافِ الْبَيْعِ، وَالْعِتْقُ كَذَلِكَ، وَالْكِتَابَةُ - فَظَهَرَ سُخْفُ قِيَاسِهِمْ هَذَا وَأَنَّهُ هَوَسٌ وَتَخْلِيطٌ.

L22024 How many cases have they ruled on regarding the option in divorce, obligating the choice as long as the spouses remain in their gathering, yet nullified it upon their physical separation—where neither the Lord of the Worlds ever obligated it, nor His Messenger (peace be upon him), nor the statement of a Companion, nor any rational basis, nor any analogy falsely compared to it, but rather through corrupt opinions? Then they invalidated it where Allah the Exalted obligated it through the words of His Messenger (may Allah's blessings and peace be upon him). Thus we praise Allah the Exalted for preservation from what He has afflicted them with.

وَكَمْ قِصَّةٍ لَهُمْ فِي التَّخْيِيرِ فِي الطَّلَاقِ أَوْجَبُوا فِيهِ الْخِيَارَ مَا دَامَا فِي مَجْلِسِهِمَا وَقَطَعُوهُ بِالتَّفَرُّقِ بِأَبْدَانِهِمَا حَيْثُ لَمْ يُوجِبْهُ قَطُّ رَبُّ الْعَالَمِينَ، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَلَا قَوْلُ صَاحِبٍ، وَلَا مَعْقُولٌ، وَلَا قِيَاسٌ شُبِّهَ بِهِ، لَكِنْ بِالْآرَاءِ الْفَاسِدَةِ؟ ثُمَّ أَبْطَلُوهُ حَيْثُ أَوْجَبَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَحْمَدُ اللَّهَ تَعَالَى عَلَى السَّلَامَةِ مِمَّا ابْتَلَاهُمْ بِهِ.

[التَّفَرُّقُ بِالْأَبْدَانِ فِي الصَّرْفِ قَبْلَ الْقَبْضِ]

The physical separation of the parties in a currency exchange (ṣarf) before taking possession of the exchanged items.

L22025

وَقَالَ بَعْضُهُمْ: التَّفَرُّقُ بِالْأَبْدَانِ فِي الصَّرْفِ قَبْلَ الْقَبْضِ يُبْطِلُ الْعَقْدَ - فَمِنْ الْمُحَالِ أَنْ يَكُونَ مَا يُبْطِلُ الْعَقْدَ هُوَ الَّذِي يُثْبِتُهُ.

L22026 Some of them said: Physical separation in a ṣarf [currency exchange] transaction before taking possession invalidates the contract, for it is illogical that what nullifies the contract should simultaneously be what validates it.

قَالَ عَلِيٌّ: وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ، وَلَا نُنْكِرُ هَذَا إذَا جَاءَ بِهِ النَّصُّ فَقَدْ وَجَدْنَا النَّقْدَ وَتَرْكَ، الْأَجَلِ يُفْسِدُ السَّلَمَ عِنْدَهُمْ، وَيُصَحِّحُ الْبُيُوعَ الَّتِي يَقَعُ فِيهَا الرِّبَا حَتَّى لَا تَصِحَّ إلَّا بِهِ.

L22027 Ali said: This is an utterly corrupt statement, and we do not deny this when supported by textual evidence, for indeed we have found that immediate payment and abandoning the deferred payment period invalidates the salam contract according to their view, while validating sales involving riba such that they are not valid except through them.

فَكَيْفَ وَالْمَعْنَى فِيمَا رَامُوا الْفَرْقَ بَيْنَهُ وَاحِدٌ؟ وَهُوَ أَنَّ الْمُتَصَارِفَيْنِ لَمْ يَمْلِكَا شَيْئًا وَلَا تَبَايَعَا أَصْلًا قَبْلَ التَّقَابُضِ، وَكُلُّ مُتَبَايِعَيْنِ فَلَمْ يَتِمَّ بَيْنَهُمَا بَيْعٌ أَصْلًا قَبْلَ التَّفَرُّقِ أَوْ التَّخْيِيرِ - مُتَصَارِفَيْنِ كَانَا أَوْ غَيْرَ مُتَصَارِفَيْنِ - فَإِنْ تَفَرَّقَ كُلُّ مَنْ ذَكَرْنَا بِأَبْدَانِهِمْ قَبْلَ

L22028 How can this hold when the meaning they sought to differentiate is one? That is, the two parties to a ṣarf contract neither owned anything nor engaged in any sale prior to taking possession. For any two parties to a sale where the transaction was not finalized before departure [from the contractual session] or the option period (khiyār)—whether they were parties to a ṣarf contract or not—if those we have mentioned depart before the sale is finalized, then whoever concluded a valid contract sees it finalized upon de-

parture. Whoever did not conclude a valid contract has no transaction here that is finalized through departure.

مَا يَتِمُّ بِهِ الْبَيْعُ، فَمَنْ كَانَ قَدْ عَقَدَ عَقْدًا أُبِيحَ لَهُ تَمَّ لَهُ بِالتَّفَرُّقِ، وَمَنْ كَانَ لَمْ يَعْقِدْ عَقْدًا أُبِيحَ لَهُ فَلَيْسَ هَهُنَا شَيْءٌ يَتِمُّ لَهُ بِالتَّفَرُّقِ.

L22029–22031 They also said—interrogating the words of Allah's Messenger (peace be upon him) and rejecting his teaching—that the two parties in a transaction are only considered "transacting parties" while the contract is in effect, not afterward, like mutually fighting or mutually killing parties. How can they simultaneously be transacting parties and annulling parties? Abū Muḥammad said: This is the speech of one devoid of intellect, knowledge, religion, and shame—for it is feeble sophistry. Indeed, the two transacting parties are only considered as such at the moment of their contractual agreement. However... Their contract in that matter is invalid and is only finalized through separation or the exercise of an option after the contract, as commanded by the One who does not deem anyone's blood inviolable except through submission to Him, or by his payment of jizyah (if he is a Kitabi) while in a state of humiliation.

وَقَالُوا أَيْضًا: مُتَعَقِّبِينَ لِكَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَادِّينَ عَلَيْهِ: الْمُتَبَايِعَانِ إنَّمَا يَكُونَانِ مُتَبَايِعَيْنِ مَا دَامَا فِي حَالِ الْعَقْدِ لَا بَعْدَ ذَلِكَ، كَالْمُتَضَارِبِينَ وَالْمُتَقَاتِلَيْنِ فَمِنْ الْمُحَالِ أَنْ يَكُونَا مُتَبَايِعَيْنِ مُتَفَاسِخَيْنِ مَعًا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَلَامُ مَنْ لَا عَقْلَ لَهُ، وَلَا عِلْمَ، وَلَا دِينَ، وَلَا حَيَاءَ، لِأَنَّهُ سَفْسَطَةٌ بَارِدَةٌ، وَنَعَمْ، فَإِنَّ الْمُتَبَايِعَيْنِ لَا يَكُونَانِ مُتَبَايِعَيْنِ إلَّا فِي حِينِ تَعَاقُدِهِمَا لَكِنَّ عَقْدَهُمَا بِذَلِكَ لَيْسَ بِشَيْءٍ وَلَا يَتِمُّ إلَّا بِالتَّفَرُّقِ أَوْ التَّخْيِيرِ بَعْدَ الْعَقْدِ، كَمَا أَمَرَ مَنْ لَا يُحَرِّمُ دَمَ أَحَدٍ إلَّا بِاتِّبَاعِهِ، أَوْ بِجِزْيَةٍ يَغْرَمُهَا - إنْ كَانَ كِتَابِيًّا - وَهُوَ صَاغِرٌ.

L22032 Among the curious anecdotes of theirs is their argument in opposing this report with the ḥadīth of ʿAmr ibn Shuʿayb—on the authority of his father, on the authority of his grandfather—that the Prophet (peace be upon him) said: "The buyer and seller retain the option as long as they have not separated, unless it is a transaction involving an option. It is not permissible for one to separate fearing that he may seek rescission." They said: "Rescission cannot occur except after the completion of the sale and the valid transfer of ownership."

وَمِنْ طَرِيفِ نَوَادِرِهِمْ احْتِجَاجُهُمْ فِي مُعَارَضَةِ هَذَا الْخَبَرِ بِحَدِيثِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا إلَّا أَنْ تَكُونَ صَفْقَةَ خِيَارٍ، وَلَا يَحِلُّ لَهُ أَنْ يُفَارِقَهُ خَشْيَةَ أَنْ يَسْتَقِيلَهُ» . قَالُوا: فَالِاسْتِقَالَةُ لَا تَكُونُ إلَّا بَعْدَ تَمَامِ الْبَيْعِ وَصِحَّةِ انْتِقَالِ الْمِلْكِ.

L22033 Ali said: Before all else, this narration is unsound, and we are not among those who cite invalid evidence for themselves. Allah the Exalted has protected us from that. Even if it were sound, it would align with our position except regarding preventing separation to avoid rescission alone—this we do not hold, for the mentioned report is unsound. Had it been sound, we would have upheld its prohibition of separation with this intent. The rescission mentioned here is not what these ignorant ones presume, but rather the annulment by the regretful party in the sale—whether the other consents

قَالَ عَلِيٌّ: قَبْلَ كُلِّ شَيْءٍ فَهَذَا حَدِيثٌ لَا يَصِحُّ وَلَسْنَا مِمَّنْ يَحْتَجُّ لِنَفْسِهِ بِمَا لَا يَصِحُّ، وَقَدْ أَعَاذَنَا اللَّهُ تَعَالَى مِنْ ذَلِكَ، وَلَوْ صَحَّ لَكَانَ مُوَافِقًا لِقَوْلِنَا، إلَّا فِي الْمَنْعِ مِنْ الْمُفَارَقَةِ خَوْفَ الِاسْتِقَالَةِ فَقَطْ فَلَسْنَا نَقُولُ بِهِ، لِأَنَّ الْخَبَرَ الْمَذْكُورَ لَا يَصِحُّ، وَلَوْ صَحَّ لَقُلْنَا بِمَا فِيهِ مِنْ تَحْرِيمِ الْمُفَارَقَةِ عَلَى هَذِهِ النِّيَّةِ، وَلَيْسَتْ الِاسْتِقَالَةُ الْمَذْكُورَةُ فِي هَذَا الْخَبَرِ مَا ظَنَّ هَؤُلَاءِ الْجُهَّالُ، وَإِنَّمَا هِيَ فَسْخُ النَّادِمِ مِنْهُمَا لِلْبَيْعِ - رَضِيَ الْآخَرُ أَمْ كَرِهَ - لِأَنَّ الْعَرَبَ

or objects—for Arabs say: “I rescinded from my ailment” and “I rescinded what escaped me,” meaning to reclaim it. The decisive proof validating our position and invalidating their false interpretation is that physical separation does not prevent the rescission they attribute to the report. Rather, rescission remains perpetually possible even after decades. Thus, the report on this basis would lack meaning, reality, or benefit. This confirms that the rescission which separation undoubtedly prevents is physical separation that makes the sale binding and inevitably precludes its annulment. No alternative exists, nor can the report’s wording bear any other meaning. Thus, this report becomes a burden upon their burden, for they authenticated it yet contradicted its content—permitting separation whether fearing rescission or not. Ali said: This is all their obfuscation, wholly rebounding against them, exposing the frailty of their knowledge and paucity of understanding. We—Allah the Exalted willing—shall present what they deem their strongest argument and clarify its decisive refutation for any who might cling to it. And success is only from Allah, the Exalted.

تَقُولُ اسْتَقَلْت مِنْ عِلَّتِي، وَاسْتَقَلْت مَا فَاتَ عَنِّي: إذَا اسْتَدْرَكَهُ. وَالْبُرْهَانُ عَلَى صِحَّةِ قَوْلِنَا هَذَا وَعَلَى فَسَادِ تَأْوِيلِهِمْ وَكَذِبِهِ هُوَ أَنَّ الْمُفَارَقَةَ بِالْأَبْدَانِ لَا تَمْنَعُ مِنْ الِاسْتِقَالَةِ الَّتِي حَمَلُوا الْخَبَرَ عَلَيْهَا، بَلْ هِيَ مُمْكِنَةٌ أَبَدًا، وَلَوْ بَعْدَ عَشَرَاتِ أَعْوَامٍ، فَكَانَ الْخَبَرُ عَلَى هَذَا لَا مَعْنَى لَهُ وَلَا حَقِيقَةَ، وَلَا فَائِدَةَ. فَصَحَّ أَنَّهَا الِاسْتِقَالَةُ الَّتِي تَمْنَعُ مِنْهَا الْمُفَارَقَةُ بِلَا شَكٍّ، وَهِيَ التَّفَرُّقُ بِالْأَبْدَانِ الْمُوجِبُ لِلْبَيْعِ، الْمَانِعُ مِنْ فَسْخِهِ وَلَا بُدَّ، وَلَا يُمْكِنُ غَيْرُ هَذَا، وَلَا يَحْتَمِلُ لَفْظُ الْخَبَرِ مَعْنًى سِوَاهُ أَلْبَتَّةَ. فَصَارَ هَذَا الْخَبَرُ ثِقْلًا عَلَيْهِمْ عَلَى ثِقْلٍ، لِأَنَّهُمْ صَحَّحُوهُ وَخَالَفُوا مَا فِيهِ، وَأَبَاحُوا لَهُ مُفَارَقَتَهُ - خَشِيَ أَنْ يَسْتَقِيلَهُ أَوْ لَمْ يَخْشَ. قَالَ عَلِيٌّ: هَذَا كُلُّ مَا مَوَّهُوا بِهِ وَكُلُّهُ عَائِدٌ عَلَيْهِمْ وَمُبْدٍ تَخَاذُلَ عِلْمِهِمْ وَقِلَّةَ فَهْمِهِمْ وَنَحْنُ - إنْ شَاءَ اللَّهُ تَعَالَى - نَذْكُرُ مَا هُوَ أَقْوَى شُبْهَةً لَهُمْ، وَنُبَيِّنُ حَسْمَ التَّعَلُّقِ بِهِ لِمَنْ عَسَى أَنْ يَفْعَلَ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22034–22035 It was narrated to us through the chain of Al-Bukhari, who said: Al-Humaydi narrated from Sufyān ibn ‘Uyaynah, who narrated from ‘Amr, who informed us from Ibn ‘Umar—may Allah be pleased with them both—who said: “We were traveling with the Prophet—peace and blessings of Allah be upon him—and I was riding an unruly young camel belonging to ‘Umar. It would overpower me and advance ahead of the group. ‘Umar would rebuke it and bring it back, but it would advance again, and ‘Umar would rebuke it and bring it back. The Prophet—peace and blessings of Allah be upon him—said to ‘Umar: ‘Sell it to me.’ He replied: ‘It is yours, O Messenger of Allah.’ The Prophet repeated: ‘Sell it to me.’ So ‘Umar sold it to the Messenger of Allah—peace and blessings of Allah be upon him. The Prophet then said: ‘It is yours, O ‘Abdullāh ibn ‘Umar—do with it as you wish.’” They said: “This constitutes a valid sale without the parties separating, and it is a gift of that which the

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ قَالَ: وَقَالَ الْحُمَيْدِيُّ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ نا عَمْرٌو «عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: كُنَّا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَكُنْتُ عَلَى بَكْرٍ صَعْبٍ لِعُمَرَ فَكَانَ يَغْلِبُنِي فَيَتَقَدَّمُ أَمَامَ الْقَوْمِ فَيَزْجُرُهُ عُمَرُ وَيَرُدُّهُ ثُمَّ يَتَقَدَّمُ فَيَزْجُرُهُ عُمَرُ وَيَرُدُّهُ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعُمَرَ: بِعْنِيهِ؟ قَالَ: هُوَ لَكَ يَا رَسُولَ اللَّهِ، قَالَ: بِعْنِيهِ؟ فَبَاعَهُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ لَكَ يَا عَبْدَ اللَّهِ بْنَ عُمَرَ تَصْنَعُ بِهِ مَا شِئْتَ» قَالُوا فَهَذَا بَيْعٌ صَحِيحٌ لَا تَفَرُّقَ فِيهِ وَهِبَةٌ لِمَا ابْتَاعَ - عَلَيْهِ السَّلَامُ - قَبْلَ التَّفَرُّقِ بِلَا شَكٍّ.

Prophet—peace and blessings of Allah be upon him—had purchased before their separation, without any doubt."[1]

قَالَ أَبُو مُحَمَّد: هَذَا خَبَرٌ لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ وَإِنْ لَمْ يَكُنْ فِيهِ تَفَرُّقٌ

L22036 Abu Muhammad said: This report provides no valid proof for them for several reasons. The first is that even if the contract does not terminate, it inherently allows for the option [to choose] after its conclusion. Silence regarding this does not negate its validity, for the sale's validity necessarily requires it. Furthermore, no price was mentioned in this report either. Thus, they ought to permit sales without any mention of a price whatsoever, since no price was specified in it.

فِيهِ التَّخْيِيرُ بَعْدَ الْعَقْدِ، وَلَيْسَ السُّكُوتُ عَنْهُ بِمَانِعٍ مِنْ كَوْنِهِ؛ لِأَنَّ صِحَّةَ الْبَيْعِ تَقْتَضِيه وَلَا بُدَّ - وَلَمْ يُذْكَرْ فِي هَذَا الْخَبَرِ ثَمَنٌ أَيْضًا، فَيَنْبَغِي لَهُمْ أَنْ يُجِيزُوا الْبَيْعَ بِغَيْرِ ذِكْرِ ثَمَنٍ أَصْلًا؛ لِأَنَّهُ لَمْ يُذْكَرْ فِيهِ ثَمَنٌ.

L22037 If they say: "A price is indispensable without doubt, for a sale cannot be valid without it?" We reply: "Similarly, parting or the option is indispensable, for a sale cannot be considered a sale nor is it fundamentally valid except through one of them. There is no difference between their use of this narration to discard the ruling of what was not mentioned in it—the option after the contract—and one who cites it to justify sales involving religiously prohibited (haram) matters, since no price is mentioned in it whatsoever. This is deemed a gift for what was sold before taking possession, contrary to the Hanafi opinion, thus forming an argument against them. Likewise, the ruling regarding attestation is entirely equivalent."

فَإِنْ قَالُوا: لَا بُدَّ مِنْ الثَّمَنِ بِلَا شَكٍّ، لِأَنَّ الْبَيْعَ لَا يَصِحُّ إلَّا بِهِ؟ قُلْنَا: وَلَا بُدَّ مِنْ التَّفَرُّقِ أَوْ التَّخْيِيرِ، لِأَنَّ الْبَيْعَ لَا يَكُونُ بَيْعًا، وَلَا يَصِحُّ أَصْلًا إلَّا بِأَحَدِهِمَا، وَلَا فَرْقَ بَيْنَهُمْ فِي احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ فِي إسْقَاطِ حُكْمِ مَا لَمْ يُذْكَرْ فِيهِ مِنْ التَّخْيِيرِ بَعْدَ الْعَقْدِ، وَبَيْنَ مَنْ احْتَجَّ بِهِ فِي الْبَيْعِ بِالْمُحَرَّمَاتِ، لِأَنَّهُ لَمْ يُذْكَرْ فِيهِ ثَمَنٌ أَصْلًا، وَهَذِهِ هِبَةٌ لِمَا اُبْتِيعَ قَبْلَ الْقَبْضِ بِخِلَافِ رَأْيِ الْحَنَفِيِّينَ فَهُوَ حُجَّةٌ عَلَيْهِمْ، وَكَذَلِكَ الْقَوْلُ فِي الْإِشْهَادِ سَوَاءٌ سَوَاءٌ.

L22038 The second aspect is that even if it were valid for them [to claim] that there was neither choice nor any witnessing at all in this sale—and it is never valid—how can they assert that this incident occurred after the Messenger of Allah's statement (peace and blessings of Allah be upon him): "No sale is concluded between two parties until they separate or one grants the other the choice"? And after Allah the Exalted's command regarding witnessing? Whoever claims knowledge of this is a lying forger who will—if Allah the Exalted wills—occupy his seat in the Fire for lying against the Messenger of Allah (peace and blessings of Allah be upon him).

وَالْوَجْهُ الثَّانِي - أَنَّهُ حَتَّى لَوْ صَحَّ لَهُمْ أَنَّهُ لَمْ يَكُنْ فِي هَذَا الْبَيْعِ تَخْيِيرٌ وَلَا إشْهَادٌ أَصْلًا وَهُوَ لَا يَصِحُّ أَبَدًا - فَمَنْ لَهُمْ أَنَّ هَذِهِ الْقِصَّةَ كَانَتْ بَعْدَ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا أَوْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ» ؟ وَبَعْدَ أَمْرِ اللَّهِ تَعَالَى بِالْإِشْهَادِ، وَمَنْ ادَّعَى عِلْمَ ذَلِكَ فَهُوَ كَذَّابٌ أَفَّكٌ يَتَبَوَّأُ - إنْ شَاءَ اللَّهُ تَعَالَى - مَقْعَدَهُ مِنْ النَّارِ لِكَذِبِهِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22039–22041 If this narration predates all of that, then we say: The sale at that time would be concluded through the contract even if they did not separate and neither party granted the other an option, while attestation was not oblig-

فَإِنْ كَانَ هَذَا الْخَبَرُ قَبْلَ ذَلِكَ كُلِّهِ؟ فَنَحْنُ نَقُولُ: إنَّ الْبَيْعَ حِينَئِذٍ كَانَ يَتِمُّ بِالْعَقْدِ وَإِنْ لَمْ يَتَفَرَّقَا وَلَا خَيَّرَ أَحَدُهُمَا الْآخَرَ، وَإِنَّ الْإِشْهَادَ لَمْ يَكُنْ لَازِمًا وَإِنَّمَا وَجَبَ كُلُّ مَا

[1] **Hadith references (L22035):** Sahih al-Bukhari 2115.

atory. Rather, everything we have mentioned became incumbent. Only at the time of the command concerning it, not prior to that. As for us, we firmly assert that the Messenger of Allah—may Allah bless him and grant him peace—does not contradict the command of his Lord, the Most High, nor does he do what he has forbidden his nation to do. This is what is beyond doubt in our view, and whoever doubts this or permits its occurrence is a disbeliever. We draw near to Allah, the Most High, by dissociating from him.

ذَكَرْنَا حِينَ الْأَمْرِ بِهِ لَا قَبْلَ ذَلِكَ، وَأَمَّا نَحْنُ فَنَقْطَعُ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُخَالِفُ أَمْرَ رَبِّهِ تَعَالَى، وَلَا يَفْعَلُ مَا نَهَى عَنْهُ أُمَّتَهُ، هَذَا مَا لَا شَكَّ فِيهِ عِنْدَنَا، وَمَنْ شَكَّ فِي هَذَا أَوْ أَجَازَ كَوْنَهُ فَهُوَ كَافِرٌ، نَتَقَرَّبُ إلَى اللَّهِ تَعَالَى بِالْبَرَاءَةِ مِنْهُ.

L22042 Similarly, we definitively conclude that he (peace be upon him), had he abrogated any command given to us, would have made it clear so that no scholar well-versed in his Sunnah would doubt that he indeed abrogated what he abrogated and affirmed what he affirmed.

وَكَذَلِكَ نَقْطَعُ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَوْ نَسَخَ مَا أَمَرَنَا بِهِ لَبَيَّنَهُ حَتَّى لَا يَشُكَّ عَالِمٌ بِسُنَّتِهِ فِي أَنَّهُ قَدْ نَسَخَ مَا نَسَخَ وَأَثْبَتَ مَا أَثْبَتَ.

L22043 If it were permissible for other than this—and I seek refuge in Allah—then the religion of Islam would be corrupt, with no one knowing what is forbidden for him from what is permissible for him from what his Lord, the Exalted, has enjoined upon him. Far is Allah from this! Indeed, this is the clear misguidance that Allah, the Exalted, declares false, as He says: “the clarification for all things” [An-Nahl 16:89] and “so that you [O Prophet] may clarify to the people what has been sent down to them” [An-Nahl 16:44].[2]

وَلَوْ جَازَ غَيْرُ هَذَا - وَأَعُوذُ بِاَللَّهِ - لَكَانَ دِينُ الْإِسْلَامِ فَاسِدًا لَا يَدْرِي أَحَدٌ مَا يَحْرُمُ عَلَيْهِ مِمَّا يَحِلُّ لَهُ مِمَّا أَوْجَبَ رَبُّهُ تَعَالَى عَلَيْهِ حَاشَ لِلَّهِ مِنْ هَذَا، إنَّ هَذَا لَهُوَ الضَّلَالُ الْمُبِينُ الَّذِي يُكَذِّبُهُ اللَّهُ تَعَالَى إذْ يَقُولُ: {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] وَ {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

L22044 Guidance has become clear from misguidance, for the entire religion is guidance while opposition to every part of it constitutes misguidance. Had all this not become clear, Allah the Exalted would have been a liar, and the Messenger—peace be upon him—would not have clarified nor conveyed, and the religion would be perishing and corrupted. This is pure disbelief on the part of anyone who permits its existence.

وَقَدْ تَبَيَّنَ الرُّشْدُ مِنْ الْغَيِّ، وَالدِّينُ كُلُّهُ رُشْدٌ وَخِلَافُ كُلِّ شَيْءٍ مِنْهُ غَيٌّ، فَلَوْ لَمْ يَتَبَيَّنْ كُلُّ ذَلِكَ لَكَانَ اللَّهُ تَعَالَى كَذِبًا، وَالرَّسُولُ - عَلَيْهِ السَّلَامُ - لَمْ يُبَيِّنْ، وَلَمْ يُبَلِّغْ وَالدِّينُ ذَاهِبًا فَاسِدًا - وَهَذَا هُوَ الْكُفْرُ الْمَحْضُ مِمَّنْ أَجَازَ كَوْنَهُ.

L22045 The third aspect is that they argue: The narrator among the Companions is more knowledgeable about what he transmitted. Ibn Umar—the transmitter of this narration—maintained that a sale is not completed unless physical separation occurs between the parties. Therefore, according to their own principle, he would be the most knowledgeable about what was transmitted.

وَالْوَجْهُ الثَّالِثُ - أَنَّهُمْ يَقُولُونَ: إنَّ الرَّاوِيَ مِنْ الصَّحَابَةِ أَعْلَمُ بِمَا رَوَى وَابْنُ عُمَرَ هُوَ رَاوِي هَذَا الْخَبَرِ، وَهُوَ الَّذِي كَانَ لَا يَرَى الْبَيْعَ يَتِمُّ إلَّا بِالتَّفَرُّقِ بِالْأَبْدَانِ، فَهُوَ عَلَى أَصْلِهِمْ أَعْلَمُ بِمَا رُوِيَ.

وَسَقَطَ عَلَى أَصْلِهِمْ هَذَا تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[2] **Qur’an references (L22043):** Qur’an 16:89 (An-Nahl); Qur’an 16:44 (An-Nahl).

L22046 And their entire reliance on this report was grounded in their foundational basis—and all praise is due to Allah, Lord of the worlds.

وَقَالَ بَعْضُهُمْ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» ، وَمِنْ الْغَرَرِ أَنْ يَكُونَ لَهُمَا خِيَارٌ لَا يَدْرِيَانِ مَتَى يَنْقَطِعُ.

L22047 Some of them said, “The Messenger of Allah—peace and blessings be upon him—forbade sales involving uncertainty (gharar).” Among such uncertainties is when both parties retain an option (khiyar) without knowing when it will cease.[3]

قَالَ أَبُو مُحَمَّد: وَهَذَا كَلَامٌ فَاسِدٌ مِنْ وُجُوهٍ -: أَحَدُهَا - أَنَّ الْعَقْدَ قَبْلَ التَّفَرُّقِ بِالْأَبْدَانِ، أَوْ التَّخْيِيرِ: لَيْسَ بَيْعًا أَصْلًا لَا بَيْعَ غَرَرٍ وَلَا بَيْعَ سَلَامَةٍ، كَمَا قَالَ - عَلَيْهِ السَّلَامُ -: «إنَّهُ لَا بَيْعَ بَيْنَهُمَا مَا كَانَا مَعًا» فَهُوَ غَيْرُ دَاخِلٍ فِي بَيْعِ الْغَرَرِ الْمَنْهِيِّ عَنْهُ.

L22048 Abu Muhammad said: This is an invalid statement for several reasons. One of them is that a contract formed before physical separation or the option period is not a sale at all—neither a *gharar* sale nor a *salam* sale—as the Prophet, peace be upon him, said: “There is no sale between them as long as they remain together.” Thus, it does not fall under the prohibited *gharar* sale.

وَالْوَجْهُ الثَّانِي - أَنَّهُ لَيْسَ كَمَا قَالُوا: مِنْ أَنَّ لَهُمَا خِيَارًا لَا يَدْرِيَانِ مَتَى يَنْقَطِعُ، بَلْ أَيُّهُمَا شَاءَ قَطْعَهُ قَطَعَهُ فِي الْوَقْتِ، بِأَنْ يُخَيِّرَ صَاحِبَهُ فَإِمَّا يُمْضِيَهُ فَيَتِمُّ الْبَيْعُ وَيَنْقَطِعُ الْخِيَارُ، وَإِمَّا يَفْسَخُهُ فَيَبْطُلُ حُكْمُ الْعَقْدِ وَتَمَادِيهِ، أَوْ بِأَنْ يَقُومَ فَيُفَارِقَ صَاحِبَهُ كَمَا كَانَ يَفْعَلُ ابْنُ عُمَرَ فَظَهَرَ بِرَدِّ هَذَا الِاعْتِرَاضِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالرَّأْيِ السَّخِيفِ، وَالْعَقْلِ الْهَجِينِ.

L22049–22051 The second aspect is that it is not as they claimed - that both parties have an option whose termination timing they do not know. Rather, whichever of the two wishes to terminate it may do so immediately by offering their counterpart the choice: either to proceed with it, thereby completing the sale and causing the option to be terminated, or to annul it, thereby nullifying the contract’s validity and its continuation. Alternatively, they may stand up and leave their counterpart, as Ibn ’Umar used to do. Thus, the flaw in this objection against the Messenger of Allah (peace be upon him) was glaringly exposed through a rebuttal that relied on a frivolous opinion and a base intellect.

وَالْوَجْهُ الثَّالِثُ - أَنَّهُ لَا يَكُونُ غَرَرًا شَيْءٌ أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّهُ لَا يَأْمُرُ بِمَا نَهَى عَنْهُ مَعًا حَاشَ لَهُ مِنْ ذَلِكَ، وَإِنَّمَا الْغَرَرُ مَا أَجَازَهُ هَؤُلَاءِ بِآرَائِهِمْ الْفَاسِدَةِ مِنْ بَيْعِهِمْ اللَّبَنَ الَّذِي لَمْ يُخْلَقْ فِي ضُرُوعِ الْغَنَمِ شَهْرًا أَوْ شَهْرَيْنِ.

L22052 The third aspect is that anything the Messenger of Allah (peace be upon him) commanded cannot entail *gharar*, for he would never enjoin what he simultaneously forbade—far be it from him. Rather, *gharar* is what these people have permitted through their corrupt opinions, such as their practice of selling milk that has not yet formed in the udders of the sheep and goats for a month or two.

وَبَيْعِ الْجَزَرِ الْمُغَيَّبِ فِي الْأَرْضِ الَّذِي لَمْ يَرَهُ إنْسِيٌّ وَلَا عَرَفَ صِفَتَهُ، وَلَا أَهُوَ جَزَرٌ أَمْ هُوَ مَعْفُونٌ مُسَوَّسٌ لَا خَيْرَ فِيهِ؟ وَبَيْعِ أَحَدِ ثَوْبَيْنِ لَا يَدْرِي أَيُّهُمَا هُوَ الْمُشْتَرَى.

L22053 And the sale of unseen carrots still in the ground that no human has seen, known their attributes, or determined whether they are viable carrots or

[3] **Hadith references (L22047):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

rotten, worm-eaten things with no good in them. And the sale of one of two garments without knowing which one is the purchased item.

وَالْمَقَاثِي الَّتِي لَمْ تُخْلَقْ، وَالْغَائِبِ الَّذِي لَمْ يُوصَفْ وَلَا عُرِفَ - فَهَذَا هُوَ الْغَرَرُ الْمُحَرَّمُ الْمَفْسُوخُ الْبَاطِلُ حَقًّا.

L22054 And the growing crops that have not yet developed, and the absent item that is neither described nor known - this constitutes the prohibited uncertainty: invalidated, void, and truly null in reality.

فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ هَاشِمِ بْنِ الْقَاسِمِ عَنْ أَيُّوبَ بْنِ عُتْبَةَ الْيَمَامِيِّ عَنْ أَبِي كَثِيرٍ السُّحَيْمِيِّ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا مِنْ بَيْعِهِمَا أَوْ يَكُونُ بَيْعُهُمَا بِخِيَارٍ» .

L22055 If they mention what we have narrated through the chain of Ibn Abi Shaybah from Hashim ibn al-Qasim from Ayyub ibn ‘Utbah al-Yamami from Abu Kathir al-Suhaymi from Abu Hurayrah from the Prophet (peace be upon him): “The two parties to a sale retain the option as long as they have not parted ways from their transaction, or the sale is subject to an option.”

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا عَجَبٌ جِدًّا، لِأَنَّهُ عَلَيْهِمْ لَوْ صَحَّ، وَالتَّفَرُّقُ مِنْ الْبَيْعِ لَا يَكُونُ إلَّا بِأَحَدِ أَمْرَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا بِتَفَرُّقِ الْأَبْدَانِ فَيَتِمُّ الْبَيْعُ حِينَئِذٍ وَيَتَفَرَّقَانِ مِنْهُ حِينَئِذٍ، لَا قَبْلَ ذَلِكَ، وَإِمَّا أَنْ يَتَفَرَّقَا مِنْهُ بِفَسْخِهِ وَإِبْطَالِهِ -: لَا يُمْكِنُ غَيْرُ هَذَا؟ فَكَيْفَ وَأَيُّوبُ بْنُ عُتْبَةَ ضَعِيفٌ لَا نَرْضَى الِاحْتِجَاجَ بِرِوَايَتِهِ أَصْلًا وَإِنْ كَانَتْ لَنَا.

L22056 Abū Muḥammad said: This is exceedingly astonishing, for if it were valid upon them, separation from the sale could only occur through one of two matters with no third alternative: either through the separation of their bodies, at which point the sale is completed and they separate from it at that moment—not before—or through separation from it by its rescission and annulment. Is nothing else possible? How then [can this be] when Ayyūb ibn ‘Utbah is weak? We do not approve of using his narration as evidence at all, even if it were in our favor.

وَأَتَى بَعْضُهُمْ بِطَامَّةٍ تَدُلُّ عَلَى رِقَّةِ دِينِهِ وَضَعْفِ عَقْلِهِ، فَقَالَ: مَعْنَى مَا لَمْ يَفْتَرِقَا: إنَّمَا أَرَادَ مَا لَمْ يَتَّفِقَا، كَمَا يُقَالُ لِلْقَوْمِ: عَلَى مَاذَا افْتَرَقْتُمْ؟ أَيْ عَلَى مَاذَا اتَّفَقْتُمْ - فَأَرَادَ عَلَى مَاذَا افْتَرَقْتُمَا عَنْ كَلَامِكُمَا.

L22057 And one of them committed a grave error revealing weakness in his religion and deficiency in intellect, stating: “The meaning of ’what the two had not differed on’ is that he intended ’what the two had not agreed upon,’ just as people say to a group: ’On what did you part ways?’ meaning ’On what did you agree?’ Thus, he meant: ’On what did you two diverge from your statements?’”

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ مِنْ وُجُوهٍ -: أَوَّلُهَا: أَنَّ هَذِهِ دَعْوَى كَاذِبَةٌ بِلَا دَلِيلٍ، وَمَنْ لَكُمْ بِصَرْفِ هَذَا اللَّفْظِ إلَى هَذَا التَّأْوِيلِ؟ وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L22058 Abu Muhammad said: This is invalid for several reasons—the first being that this is a false claim without evidence. Who can divert this wording to such an interpretation? And anything that is like this is invalid.

وَالثَّانِي: أَنْ يُقَالَ: هَذَا هُوَ السَّفْسَطَةُ بِعَيْنِهِ، وَرَدُّ الْكَلَامِ إلَى ضِدِّهِ أَبَدًا، وَلَا يَصِحُّ مَعَ هَذَا حَقِيقَةٌ، وَلَا يَعْجِزُ أَحَدٌ عَنْ أَنْ يَقُولَ كَذَلِكَ فِي كُلِّ مَا جَاءَ عَنْ الْقُرْآنِ، وَالسُّنَنِ.

L22059 The second is to say: This is sophistry itself, and to perpetually reduce speech to its opposite. With this, no truth can hold valid, nor could anyone refrain from applying this logic to all that derives from the Quran and the Sunnahs.

وَهَذِهِ سَبِيلُ الرَّوَافِضِ، إِذْ يَقُولُونَ: إِنَّ الْجِبْتَ وَالطَّاغُوتَ إِنَّمَا هُمَا إِنْسَانَانِ بِعَيْنِهِمَا، وَأَنْ تَذْبَحُوا بَقَرَةً إِنَّمَا هِيَ فُلَانَةُ بِعَيْنِهَا.

L22060–22061 And this is the way of the Rawāfiḍ, for they claim that al-Jibt and al-Ṭāghūt are precisely two specific individuals, and that to slaughter a cow refers solely to a specific cow named Fulānah.

وَالثَّالِثُ: أَنْ نَقُولَ لَهُمْ: فَكَيْفَ، وَلَوْ جَازَ هَذَا التَّأْوِيلُ لَكَانَ مَا رَوَاهُ اللَّيْثُ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا تَبَايَعَ الرَّجُلَانِ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا وَكَانَا جَمِيعًا، أَوْ يُخَيِّرُ أَحَدُهُمَا الْآخَرَ فَإِنْ خَيَّرَ أَحَدُهُمَا الْآخَرَ فَتَبَايَعَا عَلَى ذَلِكَ وَجَبَ الْبَيْعُ وَإِنْ تَفَرَّقَا بَعْدَ أَنْ تَبَايَعَا وَلَمْ يَتْرُكْ وَاحِدٌ مِنْهُمَا الْبَيْعَ، فَقَدْ وَجَبَ الْبَيْعُ» مُكَذِّبًا لِهَذَا التَّأْوِيلِ الْكَاذِبِ الْمُدَّعَى بِلَا دَلِيلٍ، وَمُبَيِّنًا أَنَّ التَّفَرُّقَ الَّذِي بِهِ يَصِحُّ الْبَيْعُ لَا يَكُونُ أَلْبَتَّةَ عَلَى رَغْمِ أُنُوفِهِمْ، إِلَّا بَعْدَ التَّبَايُعِ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا كَمَا ظَنَّ أَهْلُ الْجَهْلِ مِنْ أَنَّهُ فِي حَالِ التَّبَايُعِ وَمَعَ آخِرِ كَلَامِهِمَا.

L22062 Thirdly: We say to them: How can this be? For if this interpretation were valid, then the hadith narrated by Al-Layth from Nāfiʿ from Ibn ʿUmar from the Prophet—peace and blessings of Allah be upon him—"When two men enter into a sale, each retains the right of rescission as long as they remain together without separating, or until one grants the other the choice. If one grants the choice and they complete the transaction accordingly, the sale becomes binding. If they separate after entering into the sale without revoking it, the sale becomes binding"—would decisively refute this false interpretation asserted without evidence. It demonstrates that the physical separation validating the sale cannot occur at all—despite their objections—except after the transaction is finalized, as the Messenger of Allah—peace and blessings of Allah be upon him—explicitly stated, contrary to the presumption of the ignorant who claim it occurs during the transaction or upon concluding their dialogue.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا خَالَفُوا فِيهِ طَائِفَةً مِنَ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ هَذَا - وَهَذَا مِمَّا خَالَفُوا فِيهِ جُمْهُورَ الْعُلَمَاءِ إِلَّا رِوَايَةً عَنْ إِبْرَاهِيمَ، ثُمَّ جَاءَ بَعْضُهُمْ بِعَجَبٍ وَهُوَ أَنَّهُمْ زَادُوا فِي الْكَذِبِ، فَأَتَوْا بِرِوَايَةٍ رُوِّينَاهَا مِنْ طَرِيقِ عَطَاءٍ: أَنَّ عُمَرَ قَالَ: الْبَيْعُ صَفْقَةٌ أَوْ خِيَارٌ - وَرُوِيَ أَيْضًا مِنْ طَرِيقِ الشَّعْبِيِّ أَنَّ عُمَرَ - وَعَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ أَنَّ عُمَرَ قَالَ: إِنَّمَا الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ، وَالْمُسْلِمُ عِنْدَ شَرْطِهِ. وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مُحَمَّدِ بْنِ خَالِدِ بْنِ الزُّبَيْرِ عَنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ أَنَّ عُمَرَ قَالَ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ، وَلِكُلِّ مُسْلِمٍ شَرْطُهُ.

L22063 Abu Muhammad said: This is among the matters wherein they opposed a group of the Companions—no dissenter is known among them—while they themselves hold this in high esteem. This is also among the matters wherein they opposed the majority of scholars, except for a narration from Ibrahim. Then some of them came with an astonishing matter: they increased in lying and brought forth a narration we have transmitted through ʿAṭāʾ's chain, stating that ʿUmar said, "A sale arises from a transaction or option." It is also narrated through al-Shaʿbī's chain, and through al-Ḥajjāj ibn Arṭāh's chain, that ʿUmar said, "A sale arises only from a transaction or option, and a Muslim is at his stipulation." Through al-Ḥajjāj ibn Arṭāh's chain, from Muḥammad ibn Khālid ibn al-Zubayr, from a shaykh of Banū Kinānah, it is narrated that ʿUmar said, "A sale arises from a transaction or option, and every Muslim is at his stipulation."

L22064 Abu Muhammad said: Among the wonders of this world and a manifest proof of complete detachment from modesty is the attempt to cite these narrations in opposition to the Sunnah—all of which have multiple flaws

against them. First: none of them are valid, for they are either mursal narrations or transmitted through Al-Ḥajjāj ibn Arṭā'ah—and he is Malik—from some shaykh of Banū Kinānah. Do you even realize what a "shaykh of Banū Kinānah" implies? I wish I knew—will they use this as proof when they stand in the court of judgment on the Day of Resurrection? O Allah, I seek refuge in You from trifling with religion.

قَالَ أَبُو مُحَمَّدٍ: مِنْ عَجَائِبِ الدُّنْيَا، وَمِنْ الْبُرْهَانِ عَلَى الْبَرَاءَةِ مِنْ الْحَيَاءِ: الِاحْتِجَاجُ بِهَذِهِ الرِّوَايَاتِ فِي مُعَارَضَةِ السُّنَنِ، وَكُلُّهَا عَلَيْهِمْ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ لَيْسَ شَيْءٌ مِنْهَا يَصِحُّ؛ لِأَنَّهَا مُرْسَلَاتٌ، أَوْ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ مَالِكٌ - عَنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ وَمَا أَدْرَاكَ مَا شَيْخٌ مِنْ بَنِي كِنَانَةَ؟ لَيْتَ شِعْرِي أَبِهَذَا يَحْتَجُّونَ إذَا وَقَفُوا فِي عَرْصَةِ الْقَضَاءِ يَوْمَ الْقِيَامَةِ؟ عِيَاذُك اللَّهُمَّ مِنْ التَّلَاعُبِ بِالدِّينِ.

L22065 Then, even if they were valid, they would have no valid foundation therein, because there is nothing within them that nullifies what Allah the Exalted decreed as articulated by His Messenger—peace and blessings of Allah be upon him—regarding "no sale being permissible except after physical separation or the right to rescind."

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ فِيهَا مُتَعَلَّقٌ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا إبْطَالُ مَا حَكَمَ بِهِ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَنَّهُ «لَا بَيْعَ إلَّا بَعْدَ التَّفَرُّقِ أَوْ التَّخْيِيرِ» .

L22066–22067 This statement of Umar—had we heard it from Umar himself—would not contradict our position, for a valid sale is one concluded upon separation, and a valid option is one established through granting choice, as the Prophet (peace be upon him) ruled: "There is no sale between the two parties to the sale unless they separate or one grants the other the option." How then could this be, when an explicit text matching our view is authentically reported from Umar? As transmitted to us through the chain of Muslim: Qutaybah reported to us: Layth—he is Ibn Sa'd—reported to us from Ibn Shihab from Malik ibn Aws ibn al-Hadathān, who said: I approached saying, "Who will exchange dirhams?" Talha ibn 'Ubayd Allah, who was with Umar ibn al-Khattab, said, "Show us your gold, then return when our attendant arrives, and we will give you your silver." Umar said to him, "Absolutely not, by Allah! You must either give him his silver now or return his dirham to him."

وَكَلَامُ عُمَرَ هَذَا لَوْ سَمِعْنَاهُ مِنْ عُمَرَ لَمَا كَانَ خِلَافًا لِقَوْلِنَا، لِأَنَّ الصَّفْقَةَ مَا صَحَّ مِنْ الْبَيْعِ بِالتَّفَرُّقِ، وَالْخِيَارَ مَا صَحَّ مِنْ الْبَيْعِ بِالتَّخْيِيرِ، كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، وَحَكَمَ أَنْ «لَا بَيْعَ بَيْنَ الْبَيِّعَيْنِ إلَّا بِأَنْ يَتَفَرَّقَا أَوْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ» فَكَيْفَ، وَقَدْ صَحَّ عَنْ عُمَرَ مِثْلُ قَوْلِنَا نَصًّا؟ كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ قَالَ: أَقْبَلْت أَقُولُ: مَنْ يَصْطَرِفُ الدَّرَاهِمَ؟ فَقَالَ طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ وَهُوَ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ أَرِنَا ذَهَبَك؟ ثُمَّ جِئْنَا إذَا جَاءَ خَادِمُنَا نُعْطِيك وَرِقَك؟ فَقَالَ لَهُ عُمَرُ: كَلَّا وَاَللَّهِ لَتُعْطِيَنَّهُ وَرِقَهُ أَوْ لَتَرُدَّنَّ إلَيْهِ دِرْهَمَهُ.

L22068 So this is 'Umar permitting him to return the gold after the completion of the contract and abandoning the transaction.

فَهَذَا عُمَرُ يُبِيحُ لَهُ رَدَّ الذَّهَبِ بَعْدَ تَمَامِ الْعَقْدِ وَتَرْكِ الصَّفْقَةِ.

L22069 If it is said: Was the sale between them not finalized? We respond: This is erroneous, for this is a report we have narrated through the chain of Mālik, from Ibn Shihāb, from Mālik ibn Aws ibn al-Ḥadathān al-Naṣrī, who

فَإِنْ قِيلَ: لَمْ يَكُنْ تَمَّ الْبَيْعُ بَيْنَهُمَا؟ قُلْنَا: هَذَا خَطَأٌ، لِأَنَّ هَذَا خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ النَّصْرِيِّ أَنَّهُ أَخْبَرَهُ أَنَّهُ الْتَمَسَ،

informed him that he sought to exchange currency for one hundred dinars. He said: Ṭalḥah ibn ʿUbayd Allāh summoned me, and we negotiated until he finalized the exchange with me and took the gold coins. He then turned them over in his hand and said: "Wait until my treasurer comes to me from the Ghābah [a known area]"—while ʿUmar listens. ʿUmar said: "By Allah, you will not leave him until you take them."

صَرْفًا بِمِائَةِ دِينَارٍ؟ قَالَ: فَدَعَانِي طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ فَتَرَاوَضْنَا حَتَّى اصْطَرَفَ مِنِّي وَأَخَذَ ذَهَبَهُ فَقَلَّبَهَا فِي يَدِهِ ثُمَّ قَالَ: حَتَّى يَأْتِيَنِي خَازِنِي مِنْ الْغَابَةِ وَعُمَرُ يَسْمَعُ؟ فَقَالَ عُمَرُ: وَاَللَّهِ لَا تُفَارِقُهُ حَتَّى تَأْخُذَهُ.

L22070 This clarifies that the currency exchange had indeed been concluded between them. Thus, it is established that ʿUmar, along with Ṭalḥah and the rest of the Companions present, hold the view that the sale is annulled before physical parting.

فَهَذَا بَيَانُ أَنَّ الصَّرْفَ قَدْ كَانَ قَدْ انْعَقَدَ بَيْنَهُمَا - فَصَحَّ أَنَّ عُمَرَ وَبِحَضْرَتِهِ طَلْحَةُ وَسَائِرُ الصَّحَابَةِ يَرَوْنَ فَسْخَ الْبَيْعِ قَبْلَ التَّفَرُّقِ بِالْأَبْدَانِ.

L22071 Moreover, even if what they attributed to Umar were authentic, his statement would neither constitute proof alongside the Messenger of Allah—peace and blessings be upon him—nor against him. How many incidents have they opposed Umar in, whether the Sunnah was with him or not? The first of these is this very report itself, for they narrated from Umar—as you see—"A Muslim is bound by his conditions," yet they invalidate a great many conditions.

ثُمَّ لَوْ صَحَّ عَنْ عُمَرَ مَا ادَّعَوْهُ مَا كَانَ فِي قَوْلِهِ حُجَّةٌ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَلَيْهِ، وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ وَمَعَهُ السُّنَّةُ أَوْ لَيْسَ مَعَهُ؟ أَوَّلُ ذَلِكَ هَذَا الْخَبَرُ نَفْسُهُ، فَإِنَّهُمْ رَوَوْا عَنْ عُمَرَ كَمَا تَرَى " وَالْمُسْلِمُ عِنْدَ شَرْطِهِ " وَهُمْ يُبْطِلُونَ شُرُوطًا كَثِيرَةً جِدًّا.

L22072 And they forgot their disagreement with ʿUmar concerning his statement: "Water cannot be made impure by anything."

وَنَسُوا خِلَافَهُمْ لِعُمَرَ فِي قَوْلِهِ: الْمَاءُ لَا يُنَجِّسُهُ شَيْءٌ.

L22073 And the taking of Zakat from enslaved persons is ten dirhams or a dinar per individual.

وَأَخْذِهِ الصَّدَقَةَ مِنْ الرَّقِيقِ مِنْ كُلِّ رَأْسٍ عَشَرَةَ دَرَاهِمَ أَوْ دِينَارًا.

L22074 And His imposition of Zakat on the growth of the orphan.

وَإِيجَابِهِ الزَّكَاةَ فِي نَاضِّ الْيَتِيمِ.

L22075–22076 His exclusion from zakat in the yield estimation of palm trees regarding what his family consumes—and wiping over the turban [during ablution]—with over a hundred rulings being added—hence, the false presumption in the fabricated narration ascribed to Umar served as a pretext for rejecting the Sunnah.

وَتَرْكِهِ فِي الْخَرْصِ فِي النَّخْلِ مَا يَأْكُلُ أَهْلُهُ - وَالْمَسْحِ عَلَى الْعِمَامَةِ، وَأَزِيدَ مِنْ مِائَةِ قَضِيَّةٍ - فَصَارَ هَهُنَا الظَّنُّ الْكَاذِبُ فِي الرِّوَايَةِ الْكَاذِبَةِ عَنْ عُمَرَ: حُجَّةً فِي رَدِّ السُّنَنِ.

L22077 How then, when this very narration has been transmitted to us through the chain of Ḥammād ibn Salamah from al-Ḥajjāj ibn Arṭāh from Khālid ibn Muḥammad ibn Khālid ibn al-Zubayr, that ʿUmar ibn al-Khaṭṭāb said: "There is no sale except through a transaction and an option"—as indicated by the

فَكَيْفَ وَقَدْ رُوِّينَا هَذِهِ الرِّوَايَةَ نَفْسَهَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ خَالِدِ بْنِ مُحَمَّدِ بْنِ خَالِدِ بْنِ الزُّبَيْرِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إنَّهُ لَيْسَ بَيْعٌ إلَّا عَنْ

conjunctive 'and'—and this contradicts their position, aligns with our view, and necessitates that ʿUmar considered a sale valid only when combining the contract and the option, while the option is separate from the contract. We have also previously cited this from ʿUmar through an authentic chain of transmission. Thus, the invalidity of the basis of their reliance becomes evident from every perspective.

صَفْقَةٍ وَتَخَايُرٍ - هَكَذَا بِوَاوِ الْعَطْفِ - وَهَذَا مُخَالِفٌ لِقَوْلِهِمْ، وَمُوَافِقٌ لِقَوْلِنَا، وَمُوجِبٌ أَنَّ عُمَرَ لَمْ يَرَ الْبَيْعَ إِلَّا مَا جَمَعَ الْعَقْدَ، وَالتَّخْيِيرُ سِوَى الْعَقْدِ، وَقَدْ ذَكَرْنَاهُ عَنْ عُمَرَ أَيْضًا قَبْلُ مِنْ طَرِيقٍ صَحِيحَةٍ، فَظَهَرَ فَسَادُ تَعَلُّقِهِمْ مِنْ كُلِّ جِهَةٍ.

L22078 Some of them mentioned the statement of Ibn ʿUmar that is firmly established as being narrated from him: "If you find the transaction intact and complete, it belongs to the buyer"—We narrated it through the chain of Ibn Wahb from Yunus ibn Yazīd from al-Zuhrī from Hamzah ibn ʿAbdillāh ibn ʿUmar from his father.

وَذَكَرَ بَعْضُهُمْ قَوْلَ ابْنِ عُمَرَ الثَّابِتِ عَنْهُ: مَا أَدْرَكْت الصَّفْقَةَ حَيًّا مَجْمُوعًا فَهُوَ مِنْ الْمُبْتَاعِ -: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ عَنْ حَمْزَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ.

L22079 Abū Muḥammad said: This is among their peculiarities, for they are the first to contradict this report—the Ḥanafīs say: Rather, it is upon the seller unless the buyer has seen it or the seller delivers it to him. The Mālikīs say: Rather, if it is in a state of extended absence, it is upon the seller.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِنْ عَجَائِبِهِمْ، لِأَنَّهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ -: فَالْحَنَفِيُّونَ يَقُولُونَ: بَلْ هُوَ مِنْ الْبَائِعِ مَا لَمْ يَرَهُ الْمُبْتَاعُ أَوْ يُسَلِّمْهُ إلَيْهِ الْبَائِعُ - وَالْمَالِكِيُّونَ يَقُولُونَ: بَلْ إنْ كَانَ غَائِبًا غِيبَةً بَعِيدَةً فَهُوَ مِنْ الْبَائِعِ.

L22080 Who is more perplexing than one who cites a narration that is against him, not for him, and boldly persists in such a claim? There is nothing in this statement of Ibn Umar that contradicts what has been authentically narrated from him—that a sale is not valid except by bodily separation.

فَمَنْ أَعْجَبُ مِمَّنْ يَحْتَجُّ بِخَبَرٍ هُوَ عَلَيْهِ لَا لَهُ، وَيُجَاهِرُ هَذِهِ الْمُجَاهَرَةَ؟ وَمَا فِي كَلَامِ ابْنِ عُمَرَ هَذَا شَيْءٌ يُخَالِفُ مَا صَحَّ عَنْهُ مِنْ أَنَّ الْبَيْعَ لَا يَصِحُّ إلَّا بِالتَّفَرُّقِ بِالْأَبْدَانِ.

L22081 And so his statement, "I did not finalize the transaction," was meant solely to indicate a complete and binding sale without any doubt.

فَقَوْلُهُ: مَا أَدْرَكْت الصَّفْقَةَ، إنَّمَا أَرَادَ الْبَيْعَ التَّامَّ بِلَا شَكٍّ.

L22082 And among his famous sayings is that no sale is entirely perfected unless through physical separation or by means of the option to choose after the binding agreement.

وَمِنْ قَوْلِهِ الْمَشْهُورِ عَنْهُ: إنَّهُ لَا بَيْعَ يَتِمُّ أَلْبَتَّةَ إلَّا بِالتَّفَرُّقِ بِالْأَبْدَانِ، أَوْ بِالتَّخْيِيرِ بَعْدَ الْعَقْدِ.

L22083 Ali said: The enormity of their outrageousness in this matter became manifest, and the magnitude of their contradiction within it, while they claim that the *mursal* (report with an incomplete chain) is treated as the *musnad* (report with a complete chain). Some of them say: "Rather, it is stronger than it," invoking it as evidence whenever it aligns with their position. We have been narrated through the chain of ʿAbd al-Razzāq from Maʿmar from

قَالَ عَلِيٌّ: فَظَهَرَ عَظِيمُ فُحْشِهِمْ فِي هَذِهِ الْمَسْأَلَةِ، وَعَظِيمُ تَنَاقُضِهِمْ فِيهَا، وَهُمْ يَقُولُونَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَبَعْضُهُمْ يَقُولُ: بَلْ أَقْوَى مِنْهُ، وَيَحْتَجُّونَ بِهِ إذَا وَافَقَهُمْ. وَقَدْ رُوِّينَا

Ibn Ṭāwūs from his father that "the Messenger of Allah—peace and blessings of Allah be upon him—established the option to retract after concluding the sale."

L22084 Abu Muhammad said: We have previously mentioned from Tawus that the option applies only after the sale, and they say: The narrator is most knowledgeable about what he narrates.

L22085–22086 And through the chain of Abū Bakr ibn Abī Shaybah, who reported to us from Wakīʿ, who reported to us from Qāsim al-Juʿfī, from his father, from Maymūn ibn Mihrān, the Messenger of Allah (peace and blessings be upon him) said: "A sale is [valid] by mutual consent, and the right of option [exists] after concluding the transaction. It is not lawful for a Muslim to cheat another Muslim."

L22087 These two are among the finest mursal reports, nullifying their vile claim that opposes the Sunnahs. Where do they stand concerning this? Yet they utter what they do not practice. Greatly detestable to Allah is that they say what they do not act upon—we seek refuge in Allah from His Hatred. Ali said: We have previously mentioned that some ignorant and frivolous people asserted: "This is a report transmitted through divergent wordings, rendering it disrupted."[4]

L22088 Ali said: He has indeed lied. Rather, all his words are firmly established, transmitted through mass transmission (tawātur) from the Messenger of Allah - peace and blessings be upon him. None of them is contradictory in essence. Rather, they are expressions that clarify one another, just as he - peace be upon him - was commanded to elucidate the revelation of his Lord, the Exalted.

L22089 An Issue Concerning the Right of Choice in Sale

L22090 Issue 1418: If it is asked, "Why have you not mandated the option (khiyar) in sales three times?" - due to what you narrated through the chain of Hisham al-Dastuwā'ī from Qatādah, from al-Ḥasan, from Samurah - that the

[4] **Qur'an references (L22087):** Qur'an 61:3 (As-Saf).

مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْخِيَارَ بَعْدَ الْبَيْعِ» .

قَالَ أَبُو مُحَمَّد: وَقَدْ ذَكَرْنَا عَنْ طَاوُسٍ أَنَّ التَّخْيِيرَ لَيْسَ إلَّا بَعْدَ الْبَيْعِ، وَهُمْ يَقُولُونَ: الرَّاوِي أَعْلَمُ بِمَا رَوَى.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا قَاسِمٌ الْجُعْفِيُّ عَنْ أَبِيهِ عَنْ مَيْمُونِ بْنِ مِهْرَانَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيْعُ عَنْ تَرَاضٍ وَالتَّخْيِيرُ بَعْدَ الصَّفْقَةِ، وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَغْبِنَ مُسْلِمًا» .

فَهَذَانِ مُرْسَلَانِ مِنْ أَحْسَنِ الْمَرَاسِيلِ، مُبْطِلَانِ لِقَوْلِهِمْ الْخَبِيثِ الْمُعَارِضِ لِلسُّنَنِ، فَأَيْنَ هُمْ عَنْهُ؟ لَكِنَّهُمْ يَقُولُونَ مَا لَا يَفْعَلُونَ كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ يَقُولُوا مَا لَا يَفْعَلُونَ - نَعُوذُ بِاَللَّهِ مِنْ مَقْتِهِ قَالَ عَلِيٌّ: وَقَدْ ذَكَرْنَا أَنَّ بَعْضَ أَهْلِ الْجَهْلِ وَالسُّخْفِ قَالَ: هَذَا خَبَرٌ جَاءَ بِأَلْفَاظٍ شَتَّى فَهُوَ مُضْطَرِبٌ.

قَالَ عَلِيٌّ: وَقَدْ كَذَبَ بَلْ أَلْفَاظُهُ كُلُّهَا ثَابِتَةٌ مَنْقُولَةٌ نَقْلَ التَّوَاتُرِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَ شَيْءٌ مِنْهَا مُخْتَلِفًا أَصْلًا، لَكِنَّهَا أَلْفَاظٌ يُبَيِّنُ بَعْضُهَا بَعْضًا، كَمَا أُمِرَ - عَلَيْهِ السَّلَامُ - بِبَيَانِ وَحْيِ رَبِّهِ تَعَالَى.

[مَسْأَلَةٌ التَّخْيِيرِ فِي الْبَيْعِ]

١٤١٨ - مَسْأَلَةٌ: فَإِنْ قِيلَ: فَهَلَّا أَوْجَبْتُمْ التَّخْيِيرَ فِي الْبَيْعِ ثَلَاثَ مَرَّاتٍ؟ لِمَا رَوَيْتُمُوهُ مِنْ طَرِيقِ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ

Messenger of Allah (peace and blessings be upon him) said: “The two parties to a sale retain their option until they separate, allowing each party to take what they passionately desire from the sale, or to mutually invoke the option three times.”

عَلَيْهِ وَسَلَّمَ - قَالَ: «الْبَيِّعَانِ بِالْخِيَارِ حَتَّى يَتَفَرَّقَا وَيَأْخُذَ كُلُّ وَاحِدٍ مِنْهُمَا مِنَ الْبَيْعِ مَا هَوِيَ أَوْ يَتَخَايَرَانِ ثَلَاثَ مِرَارٍ» .

L22091 And through the chain of Al-Bukhari: Ishaq reported to us, Hayyan reported to us, Hammam reported to us, Qatadah reported from Abi Al-Khalil from Abdullah ibn Al-Harith from Hakim ibn Hizam that the Messenger of Allah—peace and blessings be upon him—said: “The two parties to a sale retain the option until they separate.” Hammam said: I found in my book: “He may choose three times. If they are truthful and clarify, blessing is granted to their sale. But if they lie and conceal, perhaps they may gain profit yet erase the blessing of their sale.” We have also transmitted it thus through the chain of Affan from Hammam. We stated: Al-Hasan’s narration from Samurah is disconnected, for nothing was heard from him except the Aqiqah hadith alone.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا إِسْحَاقُ أَنَا حَيَّانُ نا هَمَّامٌ نا قَتَادَةُ عَنْ أَبِي الْخَلِيلِ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ عَنْ حَكِيمِ بْنِ حِزَامٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْبَيِّعَانِ بِالْخِيَارِ حَتَّى يَتَفَرَّقَا» قَالَ هَمَّامٌ: وَجَدْت فِي كِتَابِي «يَخْتَارُ ثَلَاثَ مِرَارٍ، فَإِنْ صَدَقَا وَبَيَّنَا بُورِكَ لَهُمَا فِي بَيْعِهِمَا وَإِنْ كَذَبَا وَكَتَمَا فَعَسَى أَنْ يَرْبَحَا رِبْحًا وَيَمْحَقَا بَرَكَةَ بَيْعِهِمَا» وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ عَفَّانَ عَنْ هَمَّامٍ أَيْضًا؟ قُلْنَا: رِوَايَةُ الْحَسَنِ عَنْ سَمُرَةَ مُرْسَلَةٌ لَمْ يُسْمَعْ مِنْهُ إِلَّا حَدِيثُ الْعَقِيقَةِ وَحْدَهُ.

L22092 As for Hammām’s narration, he did not transmit this wording; rather, he reported that he found it in his book. He neither committed to it, transmitted it, nor provided an *isnād* for it. Whatever is like this is impermissible to rely upon and cannot constitute valid evidence.

وَأَمَّا رِوَايَةُ هَمَّامٍ فَإِنَّهُ لَمْ يُحَدِّثْ بِهَذِهِ اللَّفْظَةِ، وَإِنَّمَا أَخْبَرَ أَنَّهُ وَجَدَهَا فِي كِتَابِهِ، وَلَمْ يَلْتَزِمْهَا وَلَا رَوَاهَا، وَلَا أَسْنَدَهَا، وَمَا كَانَ هَكَذَا فَلَا يَجُوزُ الْأَخْذُ بِهِ وَلَا تَقُومُ بِهِ حُجَّةٌ.

L22093–22094 Hammam has narrated this report from Abu al-Tayyah from Abdullah ibn al-Harith from Hakim, and he did not mention in it three times.

وَقَدْ رَوَى هَذَا الْخَبَرَ هَمَّامٌ عَنْ أَبِي التَّيَّاحِ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ عَنْ حَكِيمٍ فَلَمْ يَذْكُرْ فِيهِ: ثَلَاثَ مَرَّاتٍ.

L22095 It was narrated by Shu‘bah, Sa‘īd ibn Abī ‘Arūbah, and Ḥammād ibn Salamah—all of them from Qatādah with his isnād and wording—but none of them mentioned the phrase “three repetitions.”

وَرَوَاهُ شُعْبَةُ، وَسَعِيدُ بْنُ أَبِي عَرُوبَةَ، وَحَمَّادُ بْنُ سَلَمَةَ، كُلُّهُمْ عَنْ قَتَادَةَ بِإِسْنَادِهِ وَلَفْظِهِ، فَلَمْ يَذْكُرْ أَحَدٌ مِنْهُمْ: ثَلَاثَ مِرَارٍ.

L22096 Hisham ibn Sa‘id al-Khayr narrated to us: ‘Abd al-Jabbar ibn Ahmad al-Muqri narrated to us: al-Hasan ibn al-Husayn ibn ‘Abd Rabbihi al-Najirami narrated to us: Ja‘far ibn Muhammad al-Asbahani narrated to us: Yunus ibn Habib al-Zubayri narrated to us: Abu Dawud al-Tayalisi narrated to us: Shu‘bah and Hammam, both from Qatadah. Shu‘bah said in his narration: He heard Salih Abu al-Khalil narrating from ‘Abdullah ibn al-Harith from Hakim

وَقَدْ حَدَّثَنَا هِشَامُ بْنُ سَعِيدٍ الْخَيْرِ نا عَبْدُ الْجَبَّارِ بْنُ أَحْمَدَ الْمُقْرِي نا الْحَسَنُ بْنُ الْحُسَيْنِ بْنِ عَبْدِ رَبِّهِ النَّجِيرَمِيُّ نا جَعْفَرُ بْنُ مُحَمَّدٍ الْأَصْبَهَانِيُّ نا يُونُسُ بْنُ حَبِيبٍ الزُّبَيْرِيُّ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا شُعْبَةُ، وَهَمَّامٌ، كِلَاهُمَا عَنْ قَتَادَةَ، قَالَ شُعْبَةُ فِي حَدِيثِهِ: إِنَّهُ سَمِعَ

ibn Hizam, who said: The Messenger of Allah (peace be upon him) said: “The buyer and seller have the option [to cancel] as long as they have not separated. If they are truthful and clarify, they are blessed in their transaction. But if they lie and conceal, the blessing of their transaction is eradicated.”

صَالِحًا أَبَا الْخَلِيلِ يُحَدِّث عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ عَنْ حَكِيمِ بْنِ حِزَامٍ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا، فَإِنْ صَدَقَا وَبَيَّنَا بُورِكَ لَهُمَا فِي بَيْعِهِمَا، وَإِنْ كَذَبَا وَكَتَمَا مُحِقَ بَرَكَةُ بَيْعِهِمَا» .

L22097 Abu Dawud said: The hadith of Hammam is similar to this, so the ambiguity was lifted. Hammam remained steadfast in omitting this wording, and when he found it in his book, he did not state that it was from his narration. By Allah, had Hammam—or another trustworthy narrator—affirmed it in his narration, we would have accepted it, for it would have been an addition.

قَالَ أَبُو دَاوُد: وَحَدِيثُ هَمَّامٍ مِثْلُ هَذَا فَارْتَفَعَ الْإِشْكَالُ وَثَبَتَ هَمَّامٌ عَلَى تَرْكِ هَذِهِ اللَّفْظَةِ، وَلَمْ يَقُلْ إذْ وَجَدَهَا فِي كِتَابِهِ: إنَّهَا مِنْ رِوَايَتِهِ، وَوَاَللَّهِ لَوْ ثَبَتَ هَمَّامٌ عَلَيْهَا مِنْ رِوَايَتِهِ، أَوْ غَيْرُهُ - مِنْ الثِّقَاتِ - لَقُلْنَا بِهَا، لِأَنَّهَا كَانَتْ تَكُونُ زِيَادَةً.

L22098 **A case where two individuals mutually transacted a sale on the premises, then one of them exited it or entered his designated commercial space.**

[مَسْأَلَةٌ تَبَايَعَا فِي بَيْتٍ فَخَرَجَ أَحَدُهُمَا عَنْهُ أَوْ دَخَلَ حَنِيَّتِهِ]

L22099 Issue 1419: If two parties conclude a sale within a house and one exits from the house or enters a niche within it, they have parted ways and the sale is concluded. Or if they conclude a sale in a niche of one of them connected to the house, they have parted ways and the sale is concluded.

١٤١٩ - مَسْأَلَةٌ: فَإِنْ تَبَايَعَا فِي بَيْتٍ فَخَرَجَ أَحَدُهُمَا عَنْ الْبَيْتِ، أَوْ دَخَلَ حَنِيَّةً فِي الْبَيْتِ: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ، أَوْ تَبَايَعَا فِي حَنِيَّةِ أَحَدِهِمَا إلَى الْبَيْتِ: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ.

L22100 If two people agree to a sale in the courtyard of a house and one enters the house, they are considered to have separated, and the sale is finalized.

فَلَوْ تَبَايَعَا فِي صَحْنِ دَارٍ فَدَخَلَ أَحَدُهُمَا الْبَيْتَ: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ.

L22101 If they conclude a sale within a house or walled garden, and one of them exits to the road, or if they conclude a sale on a road and one of them enters a house or walled garden, they have parted ways conclusively, finalizing the sale. If they conclude a sale on a ship and one of them enters the hold, the storage compartment, proceeds to the inn, or ascends the mast, they have parted ways conclusively, finalizing the sale.

فَلَوْ تَبَايَعَا فِي دَارٍ، أَوْ خُصٍّ فَخَرَجَ أَحَدُهُمَا إلَى الطَّرِيقِ، أَوْ تَبَايَعَا فِي طَرِيقٍ فَدَخَلَ أَحَدُهُمَا دَارًا، أَوْ خُصًّا: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ. فَإِنْ تَبَايَعَا فِي سَفِينَةٍ فَدَخَلَ أَحَدُهُمَا الْبَلِّيجَ، أَوْ الْخِزَانَةَ، أَوْ مَضَى إلَى الفندقوق، أَوْ صَعِدَ الصَّارِي: فَقَدْ تَفَرَّقَا وَتَمَّ الْبَيْعُ.

L22102–22104 Similarly, if the two parties entered into a sale in one of these locations and one of them left for the ship, the sale is deemed concluded. When the two parties part, if they conclude a sale in a shop and one moves to another shop or goes out into the street, the sale is concluded and they have parted ways.

وَكَذَلِكَ لَوْ تَبَايَعَا فِي أَحَدِ هَذِهِ الْمَوَاضِعِ فَخَرَجَ أَحَدُهُمَا إلَى السَّفِينَةِ: فَقَدْ تَمَّ الْبَيْعُ إذْ تَفَرَّقَا - فَإِنْ تَبَايَعَا فِي دُكَّانٍ فَزَالَ أَحَدُهُمَا إلَى دُكَّانٍ آخَرَ، أَوْ خَرَجَ إلَى الطَّرِيقِ فَقَدْ تَمَّ الْبَيْعُ وَتَفَرَّقَا.

L22105 If two parties contract a sale on the road and one of them enters a shop, the

sale is thereby finalized and they separate.

L22106 If they conclude a sale contract during travel or in an open space, the sale is not dissolved unless a barrier—linguistically termed *tafrīq* (separation)—arises between them, or one party disappears from the other's sight within the traveling group, behind a mound, a tree, or in a ditch—for only what is linguistically defined as *tafrīq* is taken into account. And success is by Allah, the Exalted.

L22107 **A case in which the buyer and seller are in dispute, and one of them said: "We have parted ways and the sale is finalized."**

L22108 Issue 1420: If the two parties to a sale dispute, where one says: "We separated and the sale was finalized," or states: "You granted me the option," or declares: "I granted you the option and you chose—or I chose—to finalize the sale," while the other contends: "No, we did not separate until I rescinded it, and you neither granted me the option nor did I grant you one," or acknowledges the option but asserts: "I did not exercise the option," or says: "You are the one who finalized the sale"—then if the sold item is established as belonging to the seller through conclusive evidence or the judge's judicial notice, we disregard at that point which party holds the item or possesses the price. If the item is not established except by being in his possession while the price remains with the buyer—then in all such cases, the statement of whichever party invalidates the sale—regardless of identity—is accepted alongside his oath. This is because he is the one claimed against regarding a sale contract he does not acknowledge, with no evidence established against him. Thus, nothing is required of him except the oath, in accordance with the ruling of Allah's Messenger—peace and blessings be upon him—that the oath rests upon the defendant.

L22109 If the commodity is in the possession of the buyer and is unknown to the seller, while the price is still with the seller, then the statement of whichever party affirms the validity of the sale is accepted, provided he swears an oath. This is because the claim pertains to transferring something from his posses-

وَلَوْ تَبَايَعَا فِي الطَّرِيقِ فَدَخَلَ أَحَدُهُمَا الدُّكَّانَ فَقَدْ تَمَّ الْبَيْعُ وَتَفَرَّقَا.

فَلَوْ تَبَايَعَا فِي سَفَرٍ أَوْ فِي فَضَاءٍ فَإِنَّهُمَا لَا يَفْتَرِقَانِ إِلَّا بِأَنْ يَصِيرَ بَيْنَهُمَا حَاجِزٌ يُسَمَّى تَفْرِيقًا فِي اللُّغَةِ، أَوْ بِأَنْ يَغِيبَ عَنْ بَصَرِهِ فِي الرُّفْقَةِ، أَوْ خَلْفَ رَبْوَةٍ، أَوْ خَلْفَ شَجَرَةٍ، أَوْ فِي حُفْرَةٍ - وَإِنَّمَا يُرَاعَى مَا يُسَمَّى فِي اللُّغَةِ تَفْرِيقًا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَنَازَعَ الْمُتَبَايِعَانِ فَقَالَ أَحَدُهُمَا تَفَرَّقْنَا وَتَمَّ الْبَيْعُ]

١٤٢٠ - مَسْأَلَةٌ: فَلَوْ تَنَازَعَ الْمُتَبَايِعَانِ فَقَالَ أَحَدُهُمَا: تَفَرَّقْنَا وَتَمَّ الْبَيْعُ، أَوْ قَالَ: خَيَّرْتَنِي، أَوْ قَالَ: خَيَّرْتُك فَاخْتَرْتَ أَوْ اخْتَرْتُ تَمَامَ الْبَيْعِ - وَقَالَ الْآخَرُ: بَلْ مَا تَفَرَّقْنَا حَتَّى فَسَخْتُ وَمَا خَيَّرْتَنِي وَلَا خَيَّرْتُك، أَوْ أَقَرَّ بِالتَّخْيِيرِ وَقَالَ: فَلَمْ أَخْتَرْ أَنَا، أَوْ قَالَ: أَنْتَ تَمَامُ الْبَيْعِ -: فَإِنْ كَانَتْ السِّلْعَةُ الْمَبِيعَةُ مَعْرُوفَةً لِلْبَائِعِ بِبَيِّنَةٍ، أَوْ بِعِلْمِ الْحَاكِمِ وَلَا نُبَالِي حِينَئِذٍ فِي يَدِ مَنْ كَانَتْ مِنْهُمَا وَلَا فِي يَدِ مَنْ كَانَ الثَّمَنُ مِنْهُمَا - أَوْ كَانَتْ غَيْرَ مَعْرُوفَةٍ إلَّا أَنَّهَا فِي يَدِهِ وَالثَّمَنُ عِنْدَ الْمُشْتَرِي - فَإِنَّ الْقَوْلَ فِي كُلِّ هَذَا قَوْلُ مُبْطِلِ الْبَيْعِ مِنْهُمَا - كَائِنًا مَنْ كَانَ - مَعَ يَمِينِهِ، لِأَنَّهُ مُدَّعًى عَلَيْهِ عَقْدُ بَيْعٍ لَا يُقِرُّ بِهِ، وَلَا بَيِّنَةَ عَلَيْهِ بِهِ، فَلَيْسَ عَلَيْهِ إلَّا الْيَمِينُ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ.

sion, and whoever has possession of something is legally presumed to own it. Therefore, he is only required to swear the oath.

فَإِنْ كَانَتْ السِّلْعَةُ فِي يَدِ الْمُشْتَرِي وَهِيَ غَيْرُ مَعْرُوفَةٍ لِلْبَائِعِ وَكَانَ الثَّمَنُ عِنْدَ الْبَائِعِ بَعْدُ: فَالْقَوْلُ قَوْلُ مُصَحِّحِ الْبَيْعِ مِنْهُمَا - كَائِنًا مَنْ كَانَ - مَعَ يَمِينِهِ؛ لِأَنَّهُ مُدَّعًى عَلَيْهِ نَقْلُ شَيْءٍ عَنْ يَدِهِ، وَمَنْ كَانَ فِي يَدِهِ شَيْءٌ فَهُوَ فِي الْحُكْمِ لَهُ: فَلَيْسَ عَلَيْهِ إلَّا الْيَمِينُ.

L22110 If both the commodity and the price are in the possession of one of the two parties, his statement stands alongside his oath, as he is the defendant. And success comes solely from Allah, the Exalted.

فَلَوْ كَانَتْ السِّلْعَةُ وَالثَّمَنُ مَعًا فِي يَدِ أَحَدِهِمَا فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ لِأَنَّهُ مُدَّعًى عَلَيْهِ كَمَا قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22111 The same ruling applies to all disputes between the two parties in a sale. For instance, if one says, "I purchased it for cash," while the other says, "Rather, it was on credit"; or one says, "For such and such," while the other says, "Rather, it was for more"; or one says, "In exchange for goods," while the other says, "In exchange for different goods," or "for a tangible asset."

وَهَكَذَا الْقَوْلُ فِي كُلِّ مَا اخْتَلَفَ فِيهِ الْمُتَبَايِعَانِ، مِثْلُ أَنْ يَقُولَ أَحَدُهُمَا: ابْتَعْته بِنَقْدٍ، وَيَقُولَ الْآخَرُ: بَلْ بِنَسِيئَةٍ، أَوْ قَالَ أَحَدُهُمَا: بِكَذَا أَوْ كَذَا، أَوْ قَالَ الْآخَرُ: بَلْ أَكْثَرُ - أَوْ قَالَ أَحَدُهُمَا: بِعَرَضٍ وَقَالَ الْآخَرُ: بِعَرَضٍ آخَرَ، أَوْ بِعَيْنٍ.

L22112 Or one of them says, "in dinars," and the other says, "in dirhams" - or one of them specifies a description such as such-and-such and mentions what invalidates the sale, while the other states [their terms].

أَوْ قَالَ أَحَدُهُمَا: بِدَنَانِيرَ، وَقَالَ الْآخَرُ بِدَرَاهِمَ - أَوْ قَالَ أَحَدُهُمَا بِصِفَةِ كَذَا وَذَكَرَ مَا يُبْطِلُ بِهِ الْبَيْعُ وَقَالَ الْآخَرُ.

L22113–22115 Rather, a valid sale. If there was in the statement of either party an admission directed at the other... By a valid supplemental acknowledgment, he is necessarily bound to what he has acknowledged. If the goods are in the seller's possession and the price in the buyer's possession, in such a case each of them is a defendant. The seller shall swear by Allah: "I did not sell it to him in the manner he claims nor for what he claims," and the buyer shall swear by Allah: "He did not sell it to me for what he claims nor in the manner he claims." Each of them is thereby released from liability toward the other's demand, and the sale they mentioned becomes invalidated.

بَلْ بَيْعًا صَحِيحًا -: فَإِنْ كَانَ فِي قَوْلِ أَحَدِهِمَا إقْرَارٌ لِلْآخَرِ بِزِيَادَةِ إقْرَارًا صَحِيحًا أُلْزِمَ مَا أَقَرَّ بِهِ وَلَا بُدَّ -: فَإِنْ كَانَتْ السِّلْعَةُ بِيَدِ الْبَائِعِ وَالثَّمَنُ بِيَدِ الْمُشْتَرِي، فَهُنَا هُوَ كُلُّ وَاحِدٍ مِنْهُمَا مُدَّعًى عَلَيْهِ فَيَحْلِفُ الْبَائِعُ بِاَللَّهِ مَا بِعْتُهَا مِنْهُ كَمَا يَذْكُرُ وَلَا بِمَا يَذْكُرُ، وَيَحْلِفُ الْمُشْتَرِي بِاَللَّهِ مَا بَاعَهَا مِنِّي بِمَا يَذْكُرُ وَلَا كَمَا يَذْكُرُ، وَيَبْرَأُ كُلُّ وَاحِدٍ مِنْهُمَا مِنْ طَلَبِ الْآخَرِ، وَيَبْطُلُ مَا ذَكَرَا مِنْ الْبَيْعِ.

L22116 A group held the opinion that if the two sellers disagreed, they mutually rescind the sale without oaths - this being the view of Ibn Mas'ūd, Al-Sha'bī, and Aḥmad ibn Ḥanbal.

وَذَهَبَ قَوْمٌ إلَى أَنَّ الْبَيِّعَيْنِ إذَا اخْتَلَفَا تَرَادَّا الْبَيْعَ دُونَ أَيْمَانٍ - وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ، وَالشَّعْبِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ.

L22117 As we were narrated through the chain of Abd al-Razzaq: Sufyan al-Thawri narrated from Ma'n ibn Abd al-Rahman, from al-Qasim ibn Abd al-Rahman

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَعْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّ ابْنَ مَسْعُودٍ بَاعَ مِنْ الْأَشْعَثِ بْنِ قَيْسٍ بَيْعًا فَاخْتَلَفَا فِي الثَّمَنِ، فَقَالَ ابْنُ مَسْعُودٍ: بِعِشْرِينَ، وَقَالَ الْأَشْعَثُ: بِعَشَرَةٍ، فَقَالَ لَهُ ابْنُ مَسْعُودٍ: اجْعَلْ بَيْنِي وَبَيْنَك رَجُلًا؟ فَقَالَ لَهُ الْأَشْعَثُ: أَنْتَ بَيْنِي وَبَيْنَ نَفْسِك، قَالَ ابْنُ مَسْعُودٍ: فَإِنِّي أَقُولُ بِمَا قَضَى بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا اخْتَلَفَ الْمُتَبَايِعَانِ فَالْقَوْلُ مَا قَالَ رَبُّ الْمَالِ، أَوْ يَتَرَادَّانِ الْبَيْعَ» .

ibn Abd Allah ibn Mas’ud, that Ibn Mas’ud conducted a sale with al-Ash’ath ibn Qays, but they disagreed over the price. Ibn Mas’ud said, “For twenty,” while al-Ash’ath said, “For ten.” Ibn Mas’ud then said to him, “Appoint a man between me and you.” Al-Ash’ath replied, “You may act as the judge between us.” Ibn Mas’ud said, “Then I say according to what the Messenger of Allah—peace and blessings of Allah be upon him—ruled: ’If the two parties in a sale disagree, the statement is what the owner of the property said, or they annul the sale mutually.”’

وَرُوِيَ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ قَالَ: يَحْلِفُ الْبَائِعُ فَإِنْ شَاءَ الْمُشْتَرِي أَخَذَ وَإِنْ شَاءَ تَرَكَ - وَلَمْ يَذْكُرْ عَلَيْهِ يَمِينًا.

L22118–22119 It has been reported from Abu Ubaydah ibn Abdullah ibn Mas‘ud that he said: “The seller takes an oath. Then, if the buyer wishes, he may take it, and if he wishes, he may leave it, and he did not mention an oath being incumbent upon him.”

وَقَالَ قَوْمٌ: إنْ كَانَتْ السِّلْعَةُ قَائِمَةً تَحَالَفَا وَفُسِخَ الْبَيْعُ، وَإِنْ كَانَتْ قَدْ هَلَكَتْ فَالْقَوْلُ قَوْلُ الْمُشْتَرِي مَعَ يَمِينِهِ، هَذَا إذَا لَمْ تَكُنْ هُنَالِكَ بَيِّنَةٌ - وَهُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ، وَمَالِكٍ - وَقَالَ إبْرَاهِيمُ، وَالثَّوْرِيُّ، وَالْأَوْزَاعِيُّ فِي الْمُسْتَهْلَكَةِ بِذَلِكَ.

L22120 A group said: If the commodity is present, the two parties swear oaths and the sale is annulled. If it has been destroyed, the buyer’s claim is upheld upon his oath—this applies when no evidence is available. This is the opinion of Ḥammād ibn Abī Sulaymān, Abū Ḥanīfa, Abū Yūsuf, and Mālik. Ibrāhīm, al-Thawrī, and al-Awzāʿī held the opinion concerning the destroyed goods in that case.

وَقَالَ قَوْمٌ: إذَا اخْتَلَفَ الْمُتَبَايِعَانِ حَلَفَا جَمِيعًا، فَإِنْ حَلَفَا أَوْ نَكَلَا فُسِخَ الْبَيْعُ - وَإِنْ حَلَفَ أَحَدُهُمَا وَنَكَلَ الْآخَرُ قُضِيَ بِقَوْلِ الَّذِي حَلَفَ سَوَاءٌ كَانَتْ قَائِمَةً أَوْ مُسْتَهْلَكَةً - وَهُوَ قَوْلُ شُرَيْحٍ، وَالشَّافِعِيِّ، وَمُحَمَّدِ بْنِ الْحَسَنِ، إلَّا أَنَّهُمَا قَالَا: يَتَرَادَّانِ ثَمَنَ الْمُسْتَهْلَكَةِ، وَقَالَ عَطَاءٌ يُرَدُّ الْبَيْعُ إلَّا أَنْ يَتَّفِقَا - وَقَالَ زُفَرُ بْنُ الْهُذَيْلِ فِي السِّلْعَةِ الْقَائِمَةِ: يَتَحَالَفَانِ وَيَتَرَادَّانِ، وَأَمَّا الْمُسْتَهْلَكَةُ فَإِنْ اتَّفَقَا عَلَى أَنَّ الثَّمَنَ كَانَ مِنْ جِنْسٍ وَاحِدٍ فَالْقَوْلُ قَوْلُ الْمُشْتَرِي، فَإِنْ اخْتَلَفَا فِي الْجِنْسِ تَحَالَفَا وَتَرَادَّا قِيمَةَ الْمَبِيعِ -.

L22121 A group of scholars held: If the two parties to a transaction disagree, both shall take oaths. If they swear or recant, the sale is annulled. If one swears while the other recants, judgment is rendered according to the oath-taker’s claim, whether the item remains extant or has been consumed. This is the position of Shuraih, Al-Shafi’i, and Muhammad ibn Al-Hasan, though the latter two specified: They mutually return the price of the consumed item. ’Ata maintained: The sale is revoked unless mutual agreement is reached. Zufar ibn Al-Hudhayl ruled concerning extant merchandise: Both swear oaths and mutually return it. As for consumed goods, if they concur the price belonged to a single category, the buyer’s assertion prevails. If they dispute the category, they swear oaths and mutually return the value of the sold item.

وَقَالَ أَبُو سُلَيْمَانَ، وَأَبُو ثَوْرٍ: الْقَوْلُ فِي ذَلِكَ - قَائِمَةً كَانَتْ السِّلْعَةُ أَوْ مُسْتَهْلَكَةً - قَوْلُ الْمُشْتَرِي مَعَ يَمِينِهِ.

L22122 Abu Sulayman and Abu Thawr said: The opinion concerning this matter—whether the commodity is existing or consumed—is the buyer's assertion, accompanied by his oath.

قَالَ أَبُو مُحَمَّدٍ: فَأَمَّا قَوْلُ ابْنِ مَسْعُودٍ، وَالشَّعْبِيِّ، وَأَحْمَدَ، فَإِنَّهُمْ احْتَجُّوا بِالْحَدِيثِ الَّذِي ذَكَرْنَا فِيهِ - وَرُوِّينَاهُ بِلَفْظٍ آخَرَ، وَهُوَ «إذَا اخْتَلَفَ الْمُتَبَايِعَانِ فَالْقَوْلُ مَا قَالَ الْبَائِعُ، وَالْمُبْتَاعُ بِالْخِيَارِ» فَاللَّفْظُ الْأَوَّلُ رُوِّينَاهُ كَمَا ذَكَرْنَاهُ.

L22123 Abu Muhammad said: As for the position of Ibn Mas'ud, Al-Sha'bi, and Ahmad, they cited as evidence the hadith in which we mentioned - and we transmitted it with another wording: "If the two parties to a sale disagree, the statement is what the seller said, and the buyer has the option." We transmitted the first wording exactly as we mentioned it.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ حَفْصِ بْنِ غِيَاثٍ عَنْ أَبِي عُمَيْسٍ أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ قَيْسِ بْنِ مُحَمَّدِ بْنِ الْأَشْعَثِ بْنِ قَيْسٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ ابْنُ مَسْعُودٍ - وَمِنْ طَرِيقِ أَبِي عُمَيْسٍ أَيْضًا عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُحَمَّدِ بْنِ الْأَشْعَثِ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ ابْنُ مَسْعُودٍ - مِنْ طَرِيقِ هُشَيْمٍ نا ابْنُ أَبِي لَيْلَى - هُوَ مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ الْقَاضِي - عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ: أَنَّ ابْنَ مَسْعُودٍ -: وَأَمَّا اللَّفْظُ الثَّانِي فَرُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عَجْلَانَ عَنْ عَوْنِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ: أَنَّ ابْنَ مَسْعُودٍ.

L22124 We have also transmitted it through the chain of Hafs ibn Ghiyath from Abu Umays, who reported: 'Abd al-Rahman ibn Muhammad ibn Qays ibn Muhammad ibn al-Ash'ath ibn Qays informed me, from his father, from his grandfather, that Ibn Mas'ud said...' Through another chain from Abu Umays as well: 'Abd al-Rahman ibn Muhammad ibn al-Ash'ath reported from his father, from his grandfather, that Ibn Mas'ud said...' Through the chain of Hushaym, who narrated to us from Ibn Abi Layla—who is Muhammad ibn 'Abd al-Rahman, the judge—from al-Qasim ibn 'Abd al-Rahman ibn 'Abd Allah ibn Mas'ud, from his father: that Ibn Mas'ud... As for the second wording, we have transmitted it through the chain of Ibn 'Ajlan from 'Awn ibn 'Abd Allah ibn 'Utbah ibn Mas'ud: that Ibn Mas'ud...

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كُلُّهُ لَا حُجَّةَ فِيهِ، وَلَا يَصِحُّ شَيْءٌ مِنْهُ؛ لِأَنَّهَا كُلَّهَا مُرْسَلَاتٌ - وَعَبْدُ الرَّحْمَنِ بْنُ مَسْعُودٍ كَانَ لَهُ - إذْ مَاتَ أَبُوهُ - رَضِيَ اللَّهُ عَنْهُ - سِتُّ سِنِينَ فَقَطْ، لَمْ يَحْفَظْ مِنْهُ كَلِمَةً، وَالرَّاوِي عَنْهُ أَيْضًا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنُ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ - وَعَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ الْأَشْعَثِ - ظَالِمٌ مِنْ ظَلَمَةِ الْحَجَّاجِ - لَا حُجَّةَ فِي رِوَايَتِهِ - وَأَيْضًا فَلَمْ يَسْمَعْ مِنْهُ أَبُو عُمَيْسٍ شَيْئًا لِتَأَخُّرِ سِنِّهِ عَنْ لِقَائِهِ - وَأَيْضًا فَهُوَ خَطَأٌ، وَإِنَّمَا

L22125–22127 Abū Muḥammad said: None of this contains any proof, nor is any of it valid, because they are all *mursal* reports— When ʿAbd al-Raḥmān ibn Masʿūd's father—may Allāh be pleased with him—died, ʿAbd al-Raḥmān was merely six years old and had retained no words from him. The narrator transmitting from him is Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Laylā—who was deficient in memory—and ʿAbd al-Raḥmān ibn Muḥammad ibn al-Ashʿath—a tyrant among al-Ḥajjāj's agents of oppression, from whose narration no valid proof can be established. Furthermore, Abū ʿUmayṣ heard nothing from him due to the disparity in their ages preventing any encounter. Moreover, this is erroneous; rather, he is ʿAbd al-Raḥmān ibn Muḥammad ibn Qays ibn Muḥammad ibn al-Ashʿath—an unknown [narrator], son of an unknown [narrator]. Additionally, Muḥammad ibn al-Ashʿath did not hear [any

narration] from Ibn Masʿūd. Thus, any attribution to him is entirely invalidated.

هُوَ عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ قَيْسِ بْنِ مُحَمَّدِ بْنِ الْأَشْعَثِ - وَهُوَ مَجْهُولُ ابْنُ مَجْهُولٍ - وَأَيْضًا مُحَمَّدُ بْنُ الْأَشْعَثِ لَمْ يَسْمَعْ مِنْ ابْنِ مَسْعُودٍ -: فَبَطَلَ التَّعَلُّقُ بِهِ جُمْلَةً.

L22128 As for the statement of Abū Ubaydah ibn ʿAbdullāh ibn Masʿūd, it is substantiated by what we were narrated through the chain of Aḥmad ibn Shuʿayb: Ibrāhīm ibn al-Ḥusayn reported to me, Ḥajjāj—who is Ibn Muḥammad—informed us. Ibn Jurayj said: Ismāʿīl ibn Umayyah informed me from ʿAbd al-Malik ibn ʿUbayd that he heard Abū Ubaydah ibn ʿAbdullāh ibn Masʿūd say: Ibn Masʿūd stated, "The Messenger of Allāh—peace and blessings be upon him—commanded concerning two parties engaged in a sale regarding a commodity, where one says, 'I took it for such-and-such,' and the other says, 'I sold it for such-and-such,' that the seller is put under oath, after which the buyer may choose: if he wishes, he takes it; otherwise, he abandons it."

وَأَمَّا قَوْلُ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فَإِنَّهُ يُحْتَجُّ لَهُ بِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ، أَخْبَرَنِي إِبْرَاهِيمُ بْنُ الْحُسَيْنِ نا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ أَنَّهُ سَمِعَ أَبَا عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ يَقُولُ: قَالَ ابْنُ مَسْعُودٍ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُتَبَايِعَيْنِ سِلْعَةً يَقُولُ أَحَدُهُمَا: أَخَذْتُهَا بِكَذَا وَكَذَا، وَقَالَ الْآخَرُ: بِعْتُهَا بِكَذَا وَكَذَا، بِأَنْ يُسْتَحْلَفَ الْبَائِعُ، ثُمَّ يُخَيَّرَ الْمُبْتَاعُ، فَإِنْ شَاءَ أَخَذَ وَإِنْ شَاءَ تَرَكَ» .

L22129 We have also narrated it through the chain of Ismāʿīl ibn Umayyah from ʿAbd al-Malik ibn ʿUbayd from a son of ʿAbdullāh ibn Masʿūd from his father from the Messenger of Allāh—peace and blessings be upon him. This is baseless, for when Abū ʿUbaydah ibn ʿAbdullāh ibn Masʿūd was asked, "Do you recall anything from your father?" he replied, "No." ʿAbdullāh—may Allāh be pleased with him—had no children except Abū ʿUbaydah (the eldest), ʿAbd al-Raḥmān (whom he left as a six-year-old son), ʿUtbah (the youngest), and ʿAbd al-Malik ibn ʿUbayd (the aforementioned narrator, who is unknown). Thus, this statement is dismissed. Abū Muḥammad said: As for the remaining opinions, they possess no evidence whatsoever—particularly those who distinguish between existing merchandise and consumable goods, and those who oblige the buyer to swear. This is entirely absent from all transmitted reports, except that they made rulings without restriction, showing leniency in their lack of scrupulous piety—referring to the Ḥanafīs and Mālikīs. They persistently assert in their writings: "The Messenger of Allāh—peace and blessings be upon him—said: 'When the two parties to the transaction disagree while the merchandise remains present, they must swear oaths and nullify the transaction.'" This is never found—neither in unanchored nor

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ عَنْ ابْنٍ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا شَيْءَ - لِأَنَّ أَبَا عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ سُئِلَ أَتَذْكُرُ مِنْ أَبِيكَ شَيْئًا؟ قَالَ: لَا - وَلَمْ يَكُنْ لِعَبْدِ اللَّهِ - رَضِيَ اللَّهُ عَنْهُ - مِنَ الْوَلَدِ إِلَّا أَبُو عُبَيْدَةَ - وَهُوَ أَكْبَرُهُمْ - وَعَبْدُ الرَّحْمَنِ تَرَكَهُ ابْنَ سِتِّ سِنِينَ، وَعُتْبَةُ - وَكَانَ أَصْغَرَهُمْ - وَعَبْدُ الْمَلِكِ بْنُ عُبَيْدٍ الْمَذْكُورُ مَجْهُولٌ -: فَسَقَطَ هَذَا الْقَوْلُ. قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا سَائِرُ الْأَقْوَالِ فَلَا حُجَّةَ لَهُمْ أَصْلًا، لَا سِيَّمَا مَنْ فَرَّقَ بَيْنَ السِّلْعَةِ الْقَائِمَةِ وَالْمُسْتَهْلَكَةِ، وَمَنْ حَلَّفَ الْمُشْتَرِيَ -: فَإِنَّهُ لَا يُوجَدُ ذَلِكَ فِي شَيْءٍ مِنَ الْآثَارِ أَصْلًا، إِلَّا أَنَّهُمْ أَطْلَقُوا إِطْلَاقًا سَامَحُوا فِيهِ قِلَّةَ الْوَرَعِ - يَعْنِي الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ - فَلَا يَزَالُونَ يَقُولُونَ فِي كُتُبِهِمْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -:

authenticated chains, neither in sound nor weak transmissions—unless fabricated on the spot.

«إِذَا اخْتَلَفَ الْمُتَبَايِعَانِ وَالسِّلْعَةُ قَائِمَةٌ فَإِنَّهُمَا يَتَحَالَفَانِ وَيَتَرَادَّانِ» . وَهَذَا لَا يُوجَدُ أَبَدًا لَا فِي مُرْسَلٍ وَلَا فِي مُسْنَدٍ، لَا فِي قَوِيٍّ وَلَا فِي ضَعِيفٍ، إِلَّا أَنْ يُوضَعَ لِلْوَقْتِ.

L22130–22131 Ali said: And this is among the matters in which they contradicted one another, for they opposed the cited *mursal* narration and opposed Ibn Masʿūd, and no opposing Companion is known to have disagreed with him – may Allah be pleased with them.

قَالَ عَلِيٌّ: وَهَذَا مِمَّا تَنَاقَضُوا فِيهِ، فَخَالَفُوا الْمُرْسَلَ الْمَذْكُورَ، وَخَالَفُوا ابْنَ مَسْعُودٍ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L22132 Some of them cited as proof for their opinion by saying: Since each is both a claimant and a defendant, the oath is jointly required of both. For the seller claims against the buyer either the sale price or a contract that the buyer does not acknowledge, while the buyer claims against the seller a contract that the seller does not acknowledge.

وَاحْتَجَّ بَعْضُهُمْ لِقَوْلِهِمْ فِي ذَلِكَ بِأَنْ قَالَ: لَمَّا كَانَ كِلَاهُمَا مُدَّعِيًا وَمُدَّعًى عَلَيْهِ وَجَبَ عَلَيْهِمَا الْيَمِينُ جَمِيعًا، فَإِنَّ الْبَائِعَ يَدَّعِي عَلَى الْمُشْتَرِي ثَمَنًا أَوْ عَقْدًا لَا يُقِرُّ بِهِ الْمُشْتَرِي، وَالْمُشْتَرِي يَدَّعِي عَلَى الْبَائِعِ عَقْدًا لَا يُقِرُّ بِهِ الْبَائِعُ.

L22133 Abū Muḥammad said: This does not apply universally as they claimed, for when someone possesses an item without acknowledging another's right to it, and a person says to him: "This is mine – I sold it to you for two mithqāls," while the possessor responds: "Rather, I bought it from you for one mithqāl and have treated you fairly," then the possessor is not making any claim against the other party whatsoever. The legal principle is that whatever is in a person's possession belongs to them. If a claimant asserts ownership, the possessor must swear an oath and is thereby absolved, provided he has never acknowledged the claimant's ownership through an absolute admission. Thus, the seller in this case is not the subject of any claim at all.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ هَذَا فِي كُلِّ مَكَانٍ كَمَا ذَكَرُوا، لِأَنَّ مَنْ كَانَ بِيَدِهِ شَيْءٌ لَا يَعْرِفُ لِغَيْرِهِ، وَقَالَ لَهُ إنْسَانٌ: هَذَا لِي بِعْته مِنْك بِمِثْقَالَيْنِ، وَقَالَ الَّذِي هُوَ فِي يَدِهِ: بَلْ ابْتَعْته مِنْك بِمِثْقَالٍ وَقَدْ أَنْصَفْتُك، فَإِنَّ الَّذِي الشَّيْءُ بِيَدِهِ لَيْسَ مُدَّعِيًا عَلَى الْآخَرِ بِشَيْءٍ أَصْلًا؛ لِأَنَّ الْحُكْمَ أَنَّ كُلَّ مَا بِيَدِ الْمَرْءِ فَهُوَ لَهُ، فَإِنْ ادَّعَى فِيهِ مُدَّعٍ: حَلَفَ الَّذِي هُوَ بِيَدِهِ وَبَرِئَ وَلَمْ يُقِرَّ لَهُ قَطُّ بِمِلْكِهِ إقْرَارًا مُطْلَقًا، فَلَيْسَ الْبَائِعُ هَهُنَا مُدَّعًى عَلَيْهِ أَصْلًا.

L22134 Their contradiction here has greatly increased, particularly their differentiation between durable goods and consumable goods. This is something not required by the Qur'an, nor the Sunnah, nor a weak narration, nor the opinion of a Companion, nor analogy, nor logical reasoning, nor any valid opinion.

وَقَدْ عَظُمَ تَنَاقُضُهُمْ هَهُنَا، لَا سِيَّمَا تَفْرِيقُهُمْ بَيْنَ السِّلْعَةِ الْقَائِمَةِ وَالْمُسْتَهْلَكَةِ فَهُوَ شَيْءٌ لَا يُوجِبُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ وَلَا قِيَاسٌ، وَلَا مَعْقُولٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L22135 They object by citing the evidence our companions and Abū Thawr advanced **in support of their view** that the legal presumption always favors the buyer **accompanied by his oath**, since both parties agreed upon the sale and the transfer of ownership to the buyer. Subsequently, the seller makes a claim against the buyer which the buyer refuses to acknowledge.

وَيُعَارِضُونَ بِمَا احْتَجَّ لَهُ أَصْحَابُنَا، وَأَبُو ثَوْرٍ، فِي قَوْلِهِمْ: إنَّ الْقَوْلَ قَوْلُ الْمُشْتَرِي عَلَى كُلِّ حَالٍ مَعَ يَمِينِهِ؛ لِأَنَّهُمَا جَمِيعًا قَدْ اتَّفَقَا عَلَى الْبَيْعِ، وَعَلَى انْتِقَالِ الْمِلْكِ إلَى الْمُشْتَرِي، ثُمَّ

This position is more akin to the foundational principles of the Ḥanafīs and Mālikīs **based on their statements** concerning legal acknowledgment.

L22136 Abu Muhammad said: This is also not valid, because the seller never agreed to the buyer's claim regarding the property. Rather, he merely acknowledged the transfer of ownership and the sale under terms to which the buyer did not consent. Therefore, it is impermissible to rule in favor of the buyer based on an acknowledgment that is false against him.

L22137 Thus, it is confirmed that the correct opinion is as we have stated: that whatever is in a person's actual possession belongs to them, unless evidence establishing another's ownership exists. This is the doctrine of Īyās ibn Muʿāwiyah, and the Sunnah affirms this.

L22138–22140 It is astonishing that the Hanafis, Malikis, and Shafiʿis maintain an ambiguous stance: they claim to uphold the mentioned ḥadīth while having entirely contradicted it, as we have cited—especially the Shafiʿis, for they assert that ruling by a *mursal* is impermissible, yet here they have adopted a *mursal*. If only they had been truthful in their adoption of it! Rather, [...] They opposed him, and all of them contradicted each other. Nevertheless, their legal opinions on the branches of this issue exhibit numerous contradictions—and success comes from Allah, the Exalted.

L22141 The most astonishing thing in this is the Malikis' practice of making the seller and buyer swear oaths: requiring the seller to swear, "By Allah, I sold it for such-and-such amount," and the buyer to swear, "By Allah, I bought it from you for such-and-such amount." Thus they combine two marvels in this practice: first, their swearing concerns their own claims rather than denying what each party alleges against the other; second, they make them swear in this manner yet do not grant them what they swore about. What purpose does making them swear in this way serve? For the defendant should only swear to deny the allegation made against him, thereby being absolved.

ادَّعَى الْبَائِعُ عَلَى الْمُشْتَرِي بِمَا لَا يُقِرُّ لَهُ بِهِ الْمُشْتَرِي، وَهَذَا أَشْبَهُ بِأُصُولِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ: مِنْ أَقْوَالِهِمْ فِي الْإِقْرَارِ.

قَالَ أَبُو مُحَمَّد: وَلَيْسَ هَذَا أَيْضًا صَحِيحًا، لِأَنَّ الْبَائِعَ لَمْ يُوَافِقْ الْمُشْتَرِيَ قَطُّ عَلَى مَا ادَّعَاهُ فِي مَالِهِ، وَإِنَّمَا أَقَرَّ لَهُ بِانْتِقَالِ الْمِلْكِ وَبِالْبَيْعِ عَلَى صِفَةٍ لَمْ يُصَدِّقْهُ الْمُشْتَرِي فِيهَا، فَلَا يَجُوزُ أَنْ يَقْضِيَ لِلْمُشْتَرِي بِإِقْرَارٍ هُوَ مَكْذُوبٌ لَهُ.

فَصَحَّ أَنَّ الْقَوْلَ مَا قُلْنَاهُ: مِنْ أَنَّ كُلَّ مَا كَانَ بِيَدِ إنْسَانٍ فَهُوَ لَهُ، إلَّا أَنْ تَقُومَ بِمِلْكِهِ بَيِّنَةٌ لِغَيْرِهِ - وَهُوَ قَوْلُ إيَاسِ بْنِ مُعَاوِيَةَ، وَبِهَذَا جَاءَتْ السُّنَّةُ.

وَالْعَجَبُ مِنْ إيهَامِ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: أَنَّهُمْ يَقُولُونَ بِالْحَدِيثِ الْمَذْكُورِ وَهُمْ قَدْ خَالَفُوهُ جُمْلَةً كَمَا أَوْرَدْنَا، لَا سِيَّمَا الشَّافِعِيِّينَ، فَإِنَّهُمْ يَقُولُونَ: لَا يَجُوزُ الْحُكْمُ بِالْمُرْسَلِ، ثُمَّ أَخَذُوا هَهُنَا بِمُرْسَلٍ، وَلَيْتَهُمْ صَدَقُوا فِي أَخْذِهِمْ بِهِ، بَلْ خَالَفُوهُ، وَتَنَاقَضُوا كُلُّهُمْ مَعَ ذَلِكَ فِي، فَتَاوِيهِمْ فِي فُرُوعِ هَذِهِ الْمَسْأَلَةِ تَنَاقُضًا كَثِيرًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَعْجَبُ شَيْءٍ فِي هَذَا تَحْلِيفُ الْمَالِكِيِّينَ لِلْبَائِعِ، وَالْمُشْتَرِي: بِأَنْ يَحْلِفَ الْبَائِعُ: بِاَللَّهِ لَقَدْ بِعْتُكَهَا بِكَذَا وَكَذَا، وَبِأَنْ يَحْلِفَ الْمُشْتَرِي: بِاَللَّهِ لَقَدْ اشْتَرَيْتهَا مِنْك بِكَذَا وَكَذَا، فَيَجْمَعُونَ فِي هَذَا أُعْجُوبَتَيْنِ: إحْدَاهُمَا - تَحْلِيفُهُمَا عَلَى مَا يَدَّعِيَانِهِ لَا عَلَى نَفْيِ مَا يَدَّعِي بِهِ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ، وَالْأُخْرَى أَنَّهُمْ يُحَلِّفُونَهُمَا كَذَلِكَ ثُمَّ لَا يُعْطُونَهُمَا مَا حَلَفَا عَلَيْهِ، فَأَيُّ مَعْنًى لِتَحْلِيفِهِمَا بِذَلِكَ؟ وَإِنَّمَا يَحْلِفُ الْمُدَّعَى عَلَيْهِ عَلَى نَفْيِ مَا يَدَّعِي بِهِ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ، وَالْأُخْرَى أَنَّهُمْ يُحَلِّفُونَهُمَا كَذَلِكَ ثُمَّ لَا يُعْطُونَهُمَا مَا

حَلَفَا عَلَيْهِ، فَأَيُّ مَعْنًى لِتَحْلِيفِهِمَا بِذَلِكَ؟ وَإِنَّمَا يَحْلِفُ الْمُدَّعَى عَلَيْهِ عَلَى نَفْيِ مَا ادُّعِيَ عَلَيْهِ بِهِ وَيَبْرَأُ.

L22142 As for them and those who hold the view of rebutting the oath: the defendant swears regarding what is claimed against him, and they rule in favor of the claimant based on it. Yet in this case, they have violated their own foundational principles in the most reprehensible and corrupting manner, without any evidence whatsoever.

وَأَمَّا هُمْ وَمَنْ يَرَى رَدَّ الْيَمِينِ: فَإِنَّهُ يَحْلِفُ الْمُدَّعِي عَلَى مَا ادَّعَى وَيَقْضُونَ لَهُ بِهِ، وَنَقَضُوا هَهُنَا أُصُولَهُمْ أَقْبَحَ نَقْضٍ وَأَفْسَدَهُ بِلَا دَلِيلٍ أَصْلًا.

L22143 If one of them claims the validity of the act while the other asserts its invalidity, the ruling favors the claimant of validity—though it is unknown from where this originated for them? And with Allah, the Exalted, is success.

وَقَالُوا أَيْضًا: إِنْ ادَّعَى أَحَدُهُمَا صِحَّةَ الْعَمَلِ، وَالْآخَرُ فَسَادَهُ: الْقَوْلُ قَوْلُ مُدَّعِي الصِّحَّةِ وَلَا يُدْرَى مِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا؟ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22144 The Issue of Cash in Sales with an Option

[مَسْأَلَةُ النَّقْدُ فِي بَيْعِ الْخِيَارِ]

L22145 1421 – Issue: Every sale concluded with a condition of option for the seller, the buyer, both together, or another party – whether the option is for an hour, a day, three days, longer, or shorter – is void, regardless of whether they choose to enforce it or not. If the buyer takes possession of the item with the seller's permission and it perishes in his custody without his own fault, he bears no liability. If he takes possession without the seller's permission – whether by judicial ruling or otherwise – he guarantees it with the liability of misappropriation. Similarly, if he causes damage to it, he guarantees it with the liability of transgression.

١٤٢١ - مَسْأَلَةٌ: وَكُلُّ بَيْعٍ وَقَعَ بِشَرْطِ خِيَارٍ لِلْبَائِعِ، أَوْ لِلْمُشْتَرِي، أَوْ لَهُمَا جَمِيعًا، أَوْ لِغَيْرِهِمَا: خِيَارَ سَاعَةٍ، أَوْ يَوْمٍ، أَوْ ثَلَاثَةِ أَيَّامٍ، أَوْ أَكْثَرَ أَوْ أَقَلَّ: فَهُوَ بَاطِلٌ - تَخَيَّرَا إِنْفَاذَهُ أَوْ لَمْ يَتَخَيَّرَا - فَإِنْ قَبَضَهُ الْمُشْتَرِي بِإِذْنِ بَائِعِهِ فَهَلَكَ فِي يَدِهِ بِغَيْرِ فِعْلِهِ فَلَا شَيْءَ عَلَيْهِ، فَإِنْ قَبَضَهُ بِغَيْرِ إِذْنِ صَاحِبِهِ - لَكِنْ بِحُكْمِ حَاكِمٍ، أَوْ بِغَيْرِ حُكْمِ حَاكِمٍ -: ضَمِنَهُ ضَمَانَ الْغَصْبِ. وَكَذَلِكَ إِنْ أَحْدَثَ فِيهِ حَدَثًا ضَمِنَهُ ضَمَانَ التَّعَدِّي.

L22146 Abu Hanifah said: A sale with an option is permissible for each of the two parties, for both together, and for a third party. If the party entitled to the option rejects the sale, it is annulled, and if they ratify it, it becomes binding. However, he does not permit the option period to exceed three days; rather, the option period must be three days or fewer. If they stipulate an option period longer than three days, the sale becomes invalid. If they conclude the sale with an option without specifying a duration, the option period is valid for up to three days.

وَقَالَ أَبُو حَنِيفَةَ: بَيْعُ الْخِيَارِ جَائِزٌ لِكُلِّ وَاحِدٍ مِنْهُمَا، وَلَهُمَا مَعًا، وَلِإِنْسَانٍ غَيْرِهِمَا، فَإِنْ رَدَّ الَّذِي لَهُ الْخِيَارُ الْبَيْعَ فَهُوَ مَرْدُودٌ، وَإِنْ أَمْضَاهُ فَهُوَ مَاضٍ، إِلَّا أَنَّهُ لَا يُجِيزُ مُدَّةَ الْخِيَارِ أَكْثَرَ مِنْ ثَلَاثَةِ أَيَّامٍ - لَكِنْ ثَلَاثَةَ أَيَّامٍ فَأَقَلَّ - فَإِنْ اشْتَرَطَ الْخِيَارَ أَكْثَرَ مِنْ ثَلَاثَةِ أَيَّامٍ بَطَلَ الْبَيْعُ، فَإِنْ تَبَايَعَا بِخِيَارٍ وَلَمْ يَذْكُرَا مُدَّةً فَهُوَ إِلَى ثَلَاثَةِ أَيَّامٍ.

L22147–22149 Abū Yūsuf and Muḥammad disagreed with him, stating that the option

(*khiyar*) is permissible until the time mutually agreed upon by the two parties, whether the period is long or short. They concurred on all other matters. In their view, cash payment is valid in a sale involving an option (*khiyar*) by mutual consent. The buyer is not bound by any condition originally. If they stipulate cash payment, the sale becomes void. If the party entitled to the option dies during the option period, the sale becomes binding on his estate. If the item is destroyed during the option period: If the option belongs to the buyer, the sale becomes binding on him for the agreed price. If the option belongs to the seller, the buyer is liable for its market value, not the agreed price. The party entitled to the option may affirm the contract without the other's presence, but they may not rescind the sale except in the presence of the other party. The obligation of Zakat al-Fitr rests upon the buyer if the sale is confirmed through consent, and upon the seller if the sale is revoked.

وَخَالَفَهُ أَبُو يُوسُفَ، وَمُحَمَّدٌ، فَقَالَا: الْخِيَارُ جَائِزٌ إِلَى مَا تَعَاقَدَاهُ طَالَتْ الْمُدَّةُ أَمْ قَصُرَتْ - وَاتَّفَقُوا فِي كُلِّ مَا عَدَا ذَلِكَ - وَالنَّقْدُ جَائِزٌ عِنْدَهُمْ فِي بَيْعِ الْخِيَارِ بِتَطَوُّعِ الْمُشْتَرِي لَا بِشَرْطٍ أَصْلًا - فَإِنْ تَشَارَطَا النَّقْدَ فَسَدَ الْبَيْعُ، فَإِنْ مَاتَ الَّذِي لَهُ الْخِيَارُ فِي مُدَّةِ الْخِيَارِ فَقَدْ لَزِمَهُ الْبَيْعُ، فَإِنْ تَلِفَ الشَّيْءُ فِي مُدَّةِ الْخِيَارِ -: فَإِنْ كَانَ الْخِيَارُ لِلْمُشْتَرِي فَقَدْ لَزِمَهُ الْبَيْعُ بِذَلِكَ الثَّمَنِ، وَإِنْ كَانَ الْخِيَارُ لِلْبَائِعِ فَعَلَى الْمُشْتَرِي قِيمَتُهُ لَا ثَمَنُهُ، وَلِلَّذِي لَهُ الْخِيَارُ مِنْهُمَا إنْفَاذُ الرِّضَا بِغَيْرِ مَحْضَرِ الْآخَرِ، وَلَيْسَ لَهُ أَنْ يَرُدَّ الْبَيْعَ إلَّا بِمَحْضَرِ الْآخَرِ - وَزَكَاةُ الْفِطْرِ إنْ تَمَّ الْبَيْعُ بِالرِّضَا عَلَى الْمُشْتَرِي، وَإِنْ لَمْ يَتِمَّ الْبَيْعُ بِالرَّدِّ عَلَى الْبَائِعِ.

L22150 Abū Muḥammad said: These are baseless insinuations, rulings with no established foundation, oaths and judgments not preserved from any predecessor. Mālik stated: "The sale with an option is permissible as Abū Ḥanīfah and his companions held, except that the option period differs in his view. Regarding garments, the option is only valid in his opinion for up to two days. Any duration exceeding this invalidates the option."

قَالَ أَبُو مُحَمَّد: وَهَذِهِ وَسَاوِسُ، وَأَحْكَامٌ لَا يُعْرَفُ لَهَا أَصْلٌ، وَأَقْسَامٌ وَأَحْكَامٌ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ - وَقَالَ مَالِكٌ: بَيْعُ الْخِيَارِ جَائِزٌ كَمَا قَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ، إلَّا أَنَّ مُدَّةَ الْخِيَارِ عِنْدَهُ تَخْتَلِفُ: أَمَّا فِي الثَّوْبِ فَلَا يَجُوزُ الْخِيَارُ عِنْدَهُ إلَّا يَوْمَيْنِ فَأَقَلَّ، فَمَا زَادَ فَلَا خَيْرَ فِيهِ.

L22151 As for the female slave, the option right is permissible in her case only for a week or less. Any period beyond that does not permit the option. One must examine her background, her physical condition, and her conduct.

وَأَمَّا الْجَارِيَةُ فَلَا يَجُوزُ الْخِيَارُ عِنْدَهُ فِيهَا إلَّا جُمُعَةً فَأَقَلَّ، فَمَا زَادَ فَلَا خَيْرَ فِيهِ -: يَنْظُرُ إلَى خَبَرِهَا، وَهَيْئَتِهَا، وَعَمَلِهَا.

L22152 As for the riding animal, a day or less, or the journey of a barid or less.

وَأَمَّا الدَّابَّةُ فَيَوْمٌ فَأَقَلُّ، أَوْ سَيْرُ الْبَرِيدِ فَأَقَلُّ.

L22153 As for the property, the minimum period is a month. The option remains with him solely to consult and examine the sale. Regarding extending the duration for the sake of the option, no option is permitted in such extension, as it constitutes gharar [prohibited uncertainty].

وَأَمَّا الدَّارُ فَالشَّهْرُ فَأَقَلُّ - وَإِنَّمَا الْخِيَارُ عِنْدَهُ لِيَسْتَشِيرَ وَيَخْتَبِرَ الْبَيْعَ وَأَمَّا مَا بَعُدَ مِنْ أَجْلِ الْخِيَارِ فَلَا خَيْرَ فِيهِ، لِأَنَّهُ غَرَرٌ.

L22154 According to his [Abū Ḥanīfah's] view, cash payment is impermissible in an option-based sale - whether stipulated or not. If the two parties mutually

وَلَا يَجُوزُ عِنْدَهُ النَّقْدُ فِي بَيْعِ الْخِيَارِ - لَا بِشَرْطٍ وَلَا بِغَيْرِ شَرْطٍ - فَإِنْ تَشَارَطَاهُ فَسَدَ الْبَيْعُ، فَإِنْ مَاتَ الَّذِي لَهُ الْخِيَارُ فَوَرَثَتُهُ يَقُومُونَ مَقَامَهُ.

stipulate it, the sale becomes invalid. If the one entitled to the option dies, his heirs assume his position [regarding it].

فَإِنْ تَلِفَ الْمَبِيعُ فِي يَدِ الْمُشْتَرِي مِنْ غَيْرِ فِعْلِهِ فِي مُدَّةِ الْخِيَارِ فَهُوَ مِنْ مُصِيبَةِ الْبَائِعِ وَلَا ضَمَانَ عَلَى الْمُشْتَرِي، سَوَاءٌ كَانَ الْخِيَارُ لِلْمُشْتَرِي أَوْ لِلْبَائِعِ أَوْ لَهُمَا أَوْ لِغَيْرِهِمَا، وَلِلَّذِي لَهُ الْخِيَارُ الرَّدُّ وَالرِّضَا بِغَيْرِ مَحْضَرِ الْآخَرِ وَبِمَحْضَرِهِ - وَزَكَاةُ الْفِطْرِ عَلَى الْبَائِعِ فِي كُلِّ ذَلِكَ.

L22155 If the sold item perishes in the buyer's possession without any action on their part during the option period, the loss falls upon the seller, and the buyer bears no liability. This applies whether the option right belongs to the buyer, the seller, both parties, or a third party. The option holder may unilaterally rescind or ratify the transaction, whether the other party is present or not. In all these cases, Zakat al-Fitr remains obligatory upon the seller.

قَالَ: فَإِنْ انْقَضَى أَمَدُ الْخِيَارِ وَلَمْ يَرُدَّ وَلَا رَضِيَ -: فَلَهُ الرَّدُّ بَعْدَ ذَلِكَ بِيَوْمٍ، فَإِنْ لَمْ يَرُدَّ فِي هَذَا الْقَدْرِ لَزِمَهُ الْبَيْعُ.

L22156 He said: If the option period has expired and he has neither revoked nor accepted, then he has the right to revoke for a day thereafter. If he does not revoke during this period, the sale becomes binding upon him.

وَهَذِهِ أَقْوَالٌ فِي الْفَسَادِ كَالَّتِي قَبْلَهَا، وَلَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ، وَتَحْدِيدَاتٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّ كُلَّ مَا ذَكَرْنَا مِنَ الْجَارِيَةِ، وَالثَّوْبِ، وَالدَّارِ، وَالدَّابَّةِ: قَدْ يُخْتَبَرُ، وَيُسْتَشَارُ فِيهِ فِي أَقَلَّ مِنَ الْمُدَدِ الَّتِي ذَكَرُوا، وَفِي أَقَلَّ مِنْ نِصْفِهَا - وَقَدْ يَخْفَى مِنْ عُيُوبِ كُلِّ ذَلِكَ أَشْيَاءُ فِي أَضْعَافِ تِلْكَ الْمُدَدِ، فَكُلُّ ذَلِكَ شَرْعٌ لَمْ يَأْذَنِ اللَّهُ تَعَالَى بِهِ، وَلَا أَوْجَبَتْهُ سُنَّةٌ، وَلَا رِوَايَةٌ ضَعِيفَةٌ، وَلَا قِيَاسٌ وَلَا قَوْلٌ مُتَقَدِّمٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L22157–22159 These are statements concerning defects similar to those preceding them, not transmitted from anyone before him, with determinations regarding the utmost degree of defect. This is because all that we mentioned—the female slave, the garment, the house, and the beast of burden—may be tested and consulted upon within periods shorter than those they stipulated, and in less than half their durations. Moreover, some of the flaws in all these items may remain concealed. Things within the prescribed multiples of those durations: all of that constitutes legislation which Allah the Exalted has not authorized, nor has the Sunnah established it as obligatory, nor does a weak narration support it, nor does analogy uphold it, nor does a prior scholarly opinion validate it, nor does an opinion with a sound basis justify it.

وَلَيْتَ شِعْرِي مَا قَوْلُهُمْ إِنْ كَانَ الْخِيَارُ لِأَجْنَبِيٍّ فَمَاتَ فِي أَمَدِ الْخِيَارِ: أَيَقُومُ وَرَثَتُهُ مَقَامَهُ فِي ذَلِكَ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، تَنَاقَضُوا، وَجَعَلُوا الْخِيَارَ مَرَّةً يُورَّثُ، وَمَرَّةً لَا يُورَّثُ وَإِنْ قَالُوا: نَعَمْ؟ قُلْنَا: فَلَعَلَّهُمْ صِغَارٌ، أَوْ سُفَهَاءُ، أَوْ غُيَّبٌ، أَوْ لَا وَارِثَ لَهُ فَيَكُونَ الْخِيَارُ لِلْإِمَامِ، أَوْ لِمَنْ شَاءَ اللَّهُ، إِنَّ هَذِهِ لَعَجَائِبُ؟ وَقَالَ الشَّافِعِيُّ: يَجُوزُ الْخِيَارُ لِأَحَدِهِمَا وَلَهُمَا

L22160 I wish I knew their position if the option belongs to a third party who dies during its term: Do his heirs take his place in that matter or not? If they say no, they contradict themselves, making the option inheritable at times and not inheritable at others. If they say yes, we respond: Perhaps the heirs are minors, prodigals, absentees, or there is no heir - thus the option would pass to the Imam or to whom Allah wills. Are these not contradictions? Al-Shāfiʿī stated: The option is permissible for either party or both together, and it may not exceed three days. His rulings differed regarding mutual sales where the

option is granted to a third party: At times he permitted it, and at others invalidated the sale unless under the concept of agency.

مَعًا، وَلَا يَجُوزُ أَكْثَرَ مِنْ ثَلَاثَةِ أَيَّامٍ - وَاخْتَلَفَ قَوْلُهُ فِي التَّبَايُعِ عَلَى أَنْ يَكُونَ الْخِيَارُ لِأَجْنَبِيٍّ؟ فَمَرَّةً أَجَازَهُ، وَمَرَّةً أَبْطَلَ الْبَيْعَ بِهِ، إلَّا عَلَى مَعْنَى الْوَكَالَةِ.

L22161 Cash payment is permissible in a sale with an option in his view. If the party entitled to the option dies, his heirs assume his position. If the item perishes in the buyer's possession during the option period: when the option belongs to the seller or to both parties jointly, the buyer is obligated to compensate its value. If the option belongs solely to the buyer, the sale becomes binding on him for the stipulated price. The party holding the option in his opinion may rescind the transaction and consent to it, whether the other party is present or absent.

وَالنَّقْدُ جَائِزٌ عِنْدَهُ فِي بَيْعِ الْخِيَارِ، فَإِنْ مَاتَ الَّذِي لَهُ الْخِيَارُ فَوَرَثَتُهُ يَقُومُونَ مَقَامَهُ، فَإِنْ تَلِفَ الشَّيْءُ فِي يَدِ الْمُشْتَرِي فِي مُدَّةِ الْخِيَارِ، فَإِنْ كَانَ الْخِيَارُ لِلْبَائِعِ أَوْ لَهُمَا مَعًا: فَعَلَى الْمُشْتَرِي ضَمَانُ الْقِيمَةِ، وَإِنْ كَانَ الْخِيَارُ لِلْمُشْتَرِي فَقَدْ لَزِمَهُ الْبَيْعُ بِالثَّمَنِ الَّذِي ذَكَرَا - وَلِلَّذِي لَهُ الْخِيَارُ عِنْدَهُ أَنْ يَرُدَّ وَأَنْ يَرْضَى بِغَيْرِ مَحْضَرِ الْآخَرِ وَبِمَحْضَرِهِ.

L22162 He and Abū Ḥanīfah argued that the option cannot exceed three based on the report concerning the sheep whose udder was tied to withhold milk and the report about the man who was deceived in sales, to whom the Prophet—peace and blessings of Allah be upon him—granted the option of three, instructing him to say when selling: "There is no deception."

وَاحْتَجَّ هُوَ، وَأَبُو حَنِيفَةَ: فِي أَنَّ الْخِيَارَ لَا يَكُونُ أَكْثَرَ مِنْ ثَلَاثٍ بِخَبَرِ الْمُصَرَّاةِ - وَبِخَبَرِ الَّذِي كَانَ يُخْدَعُ فِي الْبُيُوعِ فَجَعَلَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْخِيَارَ ثَلَاثًا، وَأَمَرَهُ أَنْ يَقُولَ إذَا بَاعَ: لَا خِلَابَةَ.

L22163 The Hanafis cited as evidence for this what we have narrated through the chain of al-Ḥudhāfī Muḥammad ibn Yūsuf, who said: Muḥammad ibn ʿAbd al-Raḥīm ibn Shurūs reported to me, Ḥafṣ ibn Sulaymān al-Kūfī reported to me, Abān reported to me from Anas: "A man purchased a camel and stipulated a legal option of four days, so the Prophet (peace and blessings be upon him) nullified the sale and said: 'The legal option is only three days.'" Al-Ḥudhāfī said: And ʿAbd al-Razzāq narrated to us from a man who heard Abān narrate from al-Ḥasan [al-Baṣrī]: "A man purchased and set the legal option as four days? The Messenger of God (peace and blessings be upon him) said: 'The sale is revoked, for the legal option is only three days.'"

وَاحْتَجَّ الْحَنَفِيُّونَ فِي ذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْحُذَافِيِّ مُحَمَّدِ بْنِ يُوسُفَ قَالَ: أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحِيمِ بْنِ شُرُوسٍ، أَخْبَرَنِي حَفْصُ بْنُ سُلَيْمَانَ الْكُوفِيُّ، أَخْبَرَنِي أَبَانُ عَنْ أَنَسٍ: «أَنَّ رَجُلًا اشْتَرَى بَعِيرًا وَاشْتَرَطَ الْخِيَارَ أَرْبَعَةَ أَيَّامٍ، فَأَبْطَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَيْعَ وَقَالَ: إنَّمَا الْخِيَارُ ثَلَاثَةُ أَيَّامٍ» قَالَ الْحُذَافِيُّ: وَحَدَّثَنَا عَبْدُ الرَّزَّاقِ نا رَجُلٌ سَمِعَ أَبَانًا يَقُولُ: عَنْ الْحَسَنِ «اشْتَرَى رَجُلٌ وَجَعَلَ الْخِيَارَ أَرْبَعَةَ أَيَّامٍ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْبَيْعُ مَرْدُودٌ وَإِنَّمَا الْخِيَارُ ثَلَاثَةُ أَيَّامٍ» .

L22164–22166 Abu Muhammad said: As for the argument of Abu Hanifah and al-Shafiʿi citing the hadith of Munqidh—that the Prophet (peace be upon him) granted him a three-day option regarding what he purchased?—this is a wonder, a truly astounding wonder, that they would be the first to oppose this very ruling. The ḥadīth, and their assertion that his sale is entirely invalid—if he

قَالَ أَبُو مُحَمَّدٍ: أَمَّا احْتِجَاجُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ: بِحَدِيثِ مُنْقِذٍ، وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لَهُ الْخِيَارَ ثَلَاثَةَ أَيَّامٍ فِيمَا اشْتَرَى؟ فَعَجَبٌ عَجِيبٌ جِدًّا أَنْ يَكُونَا

warrants guardianship and is deceived in transactions—or entirely permissible, only voidable due to defect—if he does not warrant guardianship—how can a person of piety deem it permissible to disobey the Messenger of Allāh—may Allāh's blessings and peace be upon him—in what he commanded, then attribute to him what he did not say? This report contains no sale enacted with an option for either buyer or seller or both—yet in this they were contested. Alas, my grief for them! As for Abū Ḥanīfah's argument using the ḥadīth of the animal with withheld milk: it is a calamity among the calamities of this age! He was the first to oppose, disparage, and attack it, rejecting all its contents. At times, the person of scrupulous piety among them claims it was abrogated by the prohibition of usury—they lie in this, for usury has no relevance here! At times, they deem it fabricated and malign Abū Hurayrah—may Allāh the Exalted recompense them in this world and the next—for they are the people of falsehood, not the virtuous and righteous Abū Hurayrah—may Allāh be pleased with him and all the Companions. May the slanderer of any among them be cast face-first!

أَوَّلَ مُخَالِفٍ لِهَذَا الْحَدِيثِ، وَقَوْلُهُمَا بِفَسَادِ بَيْعِهِ جُمْلَةً - إِنْ كَانَ يَسْتَحِقُّ الْحَجْرَ وَيُخْدَعُ فِي الْبُيُوعِ - أَوْ جَوَازِ بَيْعِهِ جُمْلَةً، وَلَا يَرُدُّهُ إِلَّا مِنْ عَيْبٍ - إِنْ كَانَ لَا يَسْتَحِقُّ الْحَجْرَ - فَكَيْفَ يَسْتَحِلُّ ذُو وَرَعٍ أَنْ يَعْصِيَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا أَمَرَ بِهِ ثُمَّ يُقَوِّلُهُ مَا لَمْ يَقُلْ ذَلِكَ؟ وَلَيْسَ فِي هَذَا الْخَبَرِ بَيْعٌ وَقَعَ بِخِيَارٍ مِنْ الْمُتَبَايِعَيْنِ لِأَحَدِهِمَا أَوْ لَهُمَا - وَفِي هَذَا نُوزِعُوا، فَوَا أَسَفَاهُ عَلَيْهِمْ؟ وَأَمَّا احْتِجَاجُ أَبِي حَنِيفَةَ بِحَدِيثِ الْمُصَرَّاةِ: فَطَامَّةٌ مِنْ طَوَامِّ الدَّهْرِ؟ وَهُوَ أَوَّلُ مُخَالِفٍ لَهُ، وَزَارٍ عَلَيْهِ وَطَاعِنٍ فِيهِ، مُخَالِفٍ كُلَّ مَا فِيهِ، فَمَرَّةً يَجْعَلُهُ ذُو التَّوَرُّعِ مِنْهُمْ: مَنْسُوخًا بِتَحْرِيمِ الرِّبَا، وَكَذَبُوا فِي ذَلِكَ مَا لِلرِّبَا هَهُنَا مَدْخَلٌ؟ وَمَرَّةً يَجْعَلُونَهُ كَذِبًا، وَيُعَرِّضُونَ بِأَبِي هُرَيْرَةَ - وَاَللَّهُ تَعَالَى يَجْزِيهِمْ بِذَلِكَ فِي الدُّنْيَا وَالْآخِرَةِ - وَهُمْ أَهْلُ الْكَذِبِ، لَا الْفَاضِلُ الْبَرُّ أَبُو هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - وَعَنْ جَمِيعِ الصَّحَابَةِ، وَكُبَّ الطَّاعِنُ عَلَى أَحَدٍ مِنْهُمْ لِوَجْهِهِ وَمَنْخَرَيْهِ.

L22167 Then, they do not feel ashamed to cite it as evidence for matters entirely unrelated to its content, for they merely seek to validate sales transactions stipulating an option clause for the seller, the buyer, both parties, or a third party. Yet in the narration concerning *al-muṣarrāh* there is no trace of this—no explicit text, no allusion, no implied meaning. What could be more astonishing than this? As for the two ḥadīths of al-Ḥudhāfī—the *musnad* (chained narration) and the *mursal* (disconnected narration)—both are transmitted through Abān ibn Yazīd al-Raqāshī, a discredited and discarded transmitter. The *musnad* comes via Ḥafṣ ibn Sulaymān al-Kūfī, likewise discredited and abandoned, while the *mursal* is narrated by an anonymous man. Both are scandalous and tainted by caprice; none would rely on them in religious matters except one deprived of divine guidance.

ثُمَّ لَا يَسْتَحْيُونَ مِنْ أَنْ يَحْتَجُّوا بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ؛ لِأَنَّهُمْ إِنَّمَا يُرِيدُونَ نَصْرَ تَصْحِيحِ بَيْعٍ وَقَعَ بِشَرْطِ خِيَارٍ لِلْبَائِعِ، أَوْ لِلْمُشْتَرِي، أَوْ لَهُمَا مَعًا أَوْ لِغَيْرِهِمَا، وَلَيْسَ مِنْ هَذَا كُلِّهِ فِي خَبَرِ الْمُصَرَّاةِ أَثَرٌ، وَلَا نَصٌّ، وَلَا إِشَارَةٌ، وَلَا مَعْنًى، فَأَيُّ عَجَبٍ أَكْثَرُ مِنْ هَذَا؟ وَأَمَّا حَدِيثَا: الْحُذَافِيِّ الْمُسْنَدُ، وَالْمُرْسَلُ -: فَهُمَا مِنْ طَرِيقِ أَبَانَ بْنِ يَزِيدَ الرَّقَاشِيِّ - وَهُوَ هَالِكٌ مُطَّرَحٌ - وَالْمُسْنَدُ مِنْ طَرِيقِ حَفْصِ بْنِ سُلَيْمَانَ الْكُوفِيِّ - وَهُوَ هَالِكٌ أَيْضًا مَتْرُوكٌ - وَأَمَّا الْمُرْسَلُ فَعَنْ رَجُلٍ لَمْ يُسَمَّ، فَهُمَا فَضِيحَةٌ وَشَهْوَةٌ، لَا يَأْخُذُ بِهِمَا فِي دِينِهِ إِلَّا مَحْرُومُ التَّوْفِيقِ.

L22168 By my life, the Malikis have indeed contradicted their principles here, for there is no burden upon them to adopt similar practices in matters of degra-

dation and baseness if it conforms to their juristic tradition. They also claimed: "Have we agreed on permitting a three-day option period but differed regarding any extension?" Abū Muḥammad said: "This is false—they never agreed on this. For Mālik permits the option for a garment only up to two days at most, and for a riding animal only up to one day at most." Thus, all they disguised with such specious arguments is nullified—and success comes solely from Allah, the Exalted.

وَلَعَمْرِي لَقَدْ خَالَفَ الْمَالِكِيُّونَ هَهُنَا أُصُولَهُمْ فَإِنَّهُ لَا مُؤْنَةَ عَلَيْهِمْ مِنْ الْأَخْذِ بِمِثْلِهَا فِي الدَّنَاءَةِ وَالرَّذَالَةِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَقَالُوا أَيْضًا: قَدْ اتَّفَقْنَا عَلَى جَوَازِ الْخِيَارِ ثَلَاثًا وَاخْتَلَفْنَا فِيمَا زَادَ؟ قَالَ أَبُو مُحَمَّدٍ وَهَذَا كَذِبٌ مَا وُفِّقُوا قَطُّ عَلَى ذَلِكَ: هَذَا مَالِكٌ لَا يُجِيزُ الْخِيَارَ فِي الثَّوْبِ إلَّا يَوْمَيْنِ فَأَقَلَّ، وَلَا فِي الدَّابَّةِ إلَّا الْيَوْمَ فَأَقَلَّ -: فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22169–22171 They are countered by the authentic hadith containing: "There is a prohibition against intercepting incoming traders (talaqqi al-rukban). Whoever intercepts anything through such practice, the seller has the option (khiyar) upon arriving at the market." This is an authentic hadith, and in it, the option remains valid until entry into the market. And perhaps he does not enter it except after a year or more - and we will mention it with its chain of transmission after this, if Allah the Exalted wills. Thus, the invalidity of their statements was wholly exposed as baseless, being mere contradictory opinions they innovated without any basis or precedent from earlier scholars in this matter.

وَيُعَارَضُونَ بِالْخَبَرِ الَّذِي فِيهِ: «النَّهْيُ عَنْ تَلَقِّي الرُّكْبَانِ، فَمَنْ تَلَقَّى شَيْئًا مِنْ ذَلِكَ فَصَاحِبُهُ بِالْخِيَارِ إذَا أَتَى السُّوقَ» ، هُوَ خَبَرٌ صَحِيحٌ، وَفِيهِ الْخِيَارُ إلَى دُخُولِ السُّوقِ - وَلَعَلَّهُ لَا يَدْخُلُهُ إلَّا بَعْدَ عَامٍ فَأَكْثَرَ - وَسَنَذْكُرُهُ بِإِسْنَادِهِ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى، فَظَهَرَ فَسَادُ أَقْوَالِ هَؤُلَاءِ جُمْلَةً وَأَنَّهَا آرَاءٌ أَحْدَثُوهَا مُتَخَاذِلَةٌ لَا أَصْلَ لَهَا وَلَا سَلَفَ لَهُمْ فِيهَا.

L22172 Ibn Abi Layla said: The stipulation of an option in a sale is permissible for both parties, or for one of them, or for a third party, and it is permissible for a distant or near term.

وَقَالَ ابْنُ أَبِي لَيْلَى: شَرْطُ الْخِيَارِ فِي الْبَيْعِ جَائِزٌ لَهُمَا، أَوْ لِأَحَدِهِمَا، أَوْ لِأَجْنَبِيٍّ، وَيَجُوزُ إلَى أَجَلٍ بَعِيدٍ أَوْ قَرِيبٍ.

L22173 Al-Layth said: The option is valid for three days or fewer.

وَقَالَ اللَّيْثُ: يَجُوزُ الْخِيَارُ إلَى ثَلَاثَةِ أَيَّامٍ فَأَقَلَّ.

L22174 Al-Ḥasan ibn Ḥayy said: It is permissible to stipulate an option in a sale. Even if both parties stipulate it indefinitely, it remains valid. I do not recognize any validity beyond the three [days] except for the buyer: if he sells what he purchased with the option, he has thereby approved it, and it becomes binding upon him. If the purchased item is a virgin slave girl and he has intercourse with her, he has accepted her, and she becomes binding upon him.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: يَجُوزُ شَرْطُ الْخِيَارِ فِي الْبَيْعِ، وَلَوْ شَرَطَاهُ أَبَدًا فَهُوَ كَذَلِكَ: لَا أَدْرِي مَا الثَّلَاثُ إلَّا الْمُشْتَرِي إنْ بَاعَ مَا اشْتَرَى بِخِيَارٍ فَقَدْ رَضِيَهُ وَلَزِمَهُ - وَإِنْ كَانَتْ جَارِيَةً بِكْرًا فَوَطِئَهَا فَقَدْ رَضِيَهَا وَلَزِمَتْهُ.

L22175 Ubaydullah ibn al-Hasan said: I disapprove of a lengthy option condition in

a sale unless the buyer retains the stipulated option with the seller's consent.

وَقَالَ عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: لَا يُعْجِبُنِي شَرْطُ الْخِيَارِ الطَّوِيلِ فِي الْبَيْعِ إِلَّا أَنَّ الْخِيَارَ لِلْمُشْتَرِي مَا رَضِيَ الْبَائِعُ.

L22176 Ibn Shubruma and Sufyan al-Thawri said: A sale is not permissible if the option to rescind is stipulated in favor of the seller or both parties. Sufyan said: The sale is void because of this. However, if the option to rescind is stipulated in favor of the buyer for ten days or more, it is permissible.

وَقَالَ ابْنُ شُبْرُمَةَ، وَسُفْيَانُ الثَّوْرِيُّ: لَا يَجُوزُ الْبَيْعُ إِذَا شُرِطَ فِيهِ الْخِيَارُ لِلْبَائِعِ أَوْ لَهُمَا - وَقَالَ سُفْيَانُ: الْبَيْعُ فَاسِدٌ بِذَلِكَ، فَإِنْ شَرَطَ الْخِيَارَ لِلْمُشْتَرِي عَشَرَةَ أَيَّامٍ أَوْ أَكْثَرَ جَازَ.

L22177 Narrations have been related to us regarding that matter from the predecessors, as has been transmitted to us through the chain of Waki'—Zakariyya, Ibn Abi Za'idah—from al-Sha'bi, who said: Umar purchased a horse with the stipulation that he would retain it if he approved it, otherwise no sale would be binding between them. Umar then had a man ride the horse, causing it to become injured. They appointed Shurayh as an arbitrator between them. Shurayh said to Umar: "Deliver what you purchased or return what you took." Umar responded: "You have judged with the bitter severity of truth."

وَرُوِّينَا فِي ذَلِكَ عَنْ الْمُتَقَدِّمِينَ آثَارًا كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ قَالَ: اشْتَرَى عُمَرُ فَرَسًا وَاشْتَرَطَ حَبْسَهُ إِنْ رَضِيَهُ وَإِلَّا فَلَا بَيْعَ بَيْنَهُمَا بَعْدُ، فَحَمَلَ عُمَرُ عَلَيْهِ رَجُلًا فَعَطِبَ الْفَرَسُ، فَجَعَلَا بَيْنَهُمَا شُرَيْحًا؟ فَقَالَ شُرَيْحٌ لِعُمَرَ: سَلِّمْ مَا ابْتَعْت أَوْ رُدَّ مَا أَخَذْت؟ فَقَالَ عُمَرُ: قَضَيْتَ بِمُرِّ الْحَقِّ.

L22178 It was narrated to us from Abd al-Razzaq from Sufyan al-Thawri from Amr ibn Dinar from Abd al-Rahman ibn Farrukh from his father, who said: Nafi ibn Abd al-Harith purchased from Safwan ibn Umayyah ibn Khalaf a house to be used as a prison for four thousand dirhams, stipulating: "If Umar approves, the sale is binding, and if he does not approve, Safwan receives four hundred dirhams." Umar then took the four hundred dirhams. Through the same chain to Sufyan al-Thawri from Abdullah ibn Dinar, who said: I heard Ibn Umar state: "I used to purchase contingent upon approval until Abdullah ibn Mutīʿ purchased a she-camel contingent upon approval. He remarked: 'A man may approve and then make a claim.' It was as though he awakened me, so thereafter he would purchase and say: 'Here, take it if you accept.'"

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ فَرُّوخَ عَنْ أَبِيهِ قَالَ: اشْتَرَى نَافِعُ بْنُ عَبْدِ الْحَارِثِ مِنْ صَفْوَانَ بْنِ أُمَيَّةَ بْنِ خَلَفٍ دَارًا لِلسِّجْنِ بِأَرْبَعَةِ آلَافٍ فَإِنْ رَضِيَ عُمَرُ فَالْبَيْعُ بَيْعُهُ، وَإِنْ لَمْ يَرْضَ فَلِصَفْوَانَ أَرْبَعُمِائَةِ دِرْهَمٍ فَأَخَذَهَا عُمَرُ. وَبِهِ إِلَى سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ قَالَ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: كُنْت أَبْتَاعُ إِنْ رَضِيت حَتَّى ابْتَاعَ عَبْدُ اللَّهِ بْنُ مُطِيعٍ نَجِيبَةً إِنْ رَضِيَهَا فَقَالَ: إِنَّ الرَّجُلَ لَيَرْضَى ثُمَّ يَدَّعِي -: فَكَأَنَّمَا أَيْقَظَنِي، فَكَانَ يَبْتَاعُ وَيَقُولُ: هَا إِنْ أَخَذْت.

L22179–22180 From the path of ʿAbd al-Razzāq, who narrated to us from Ibn Jurayj, who informed me that Sulaymān ibn al-Barṣāʾ said: "I concluded a sale contract with Ibn ʿUmar, and he said to me: 'If our payment reaches us within three nights, the sale stands confirmed. But if our payment does not reach us by then, no sale exists between us and you, and the goods are yours.'" Abū Muḥammad said: We know of nothing from the Companions—may Allah be

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ الْبَرْصَاءِ قَالَ: بَايَعْت ابْنَ عُمَرَ بَيْعًا فَقَالَ لِي: إِنْ جَاءَتْنَا نَفَقَتُنَا إِلَى ثَلَاثِ لَيَالٍ فَالْبَيْعُ بَيْعُنَا، وَإِنْ لَمْ تَأْتِنَا نَفَقَتُنَا إِلَى ذَلِكَ فَلَا بَيْعَ بَيْنَنَا وَبَيْنَك، وَلَك سِلْعَتُك؟ قَالَ أَبُو مُحَمَّدٍ: لَا نَعْلَمُ عَنْ الصَّحَابَةِ - رَضِيَ

pleased with them—regarding option-based sales except this, and it entirely opposes the opinions of Abū Ḥanīfah, Mālik, and al-Shāfiʿī. These [transactions] are deemed invalid and annulled according to them. So where is their exaggerated emphasis on the Companion for whom no opponent is known? Indeed, even if an opponent is acknowledged.

اللَّهُ عَنْهُمْ - فِي بَيْعِ الْخِيَارِ شَيْئًا غَيْرَ هَذَا، وَهُوَ كُلُّهُ خِلَافٌ لِأَقْوَالِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَهَذِهِ عِنْدَهُمْ بُيُوعٌ فَاسِدَةٌ مَفْسُوخَةٌ، فَأَيْنَ تَهْوِيلُهُمْ بِالصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ؟ نَعَمْ، وَإِنْ عُرِفَ لَهُ مُخَالِفٌ.

L22181 And where is their rejection of the established Sunnah that no sale is valid between either of the two parties until they separate or one grants the other an option after the sale, according to the narration of a shaykh belonging to Banū Kinānah from ʿUmar: "The sale is either a binding contract (ṣafqah) or an option (khiyār)"? There is no contradiction to the Sunnah in this, even if [the narration] were valid. Rather, authentic reports from ʿUmar and other Companions confirm alignment with the Sunnah in this matter, permitting the cancellation of the sale before granting the option or separation.

وَأَيْنَ رَدُّهُمْ السُّنَّةَ الثَّابِتَةَ فِي أَنْ لَا بَيْعَ بَيْنَ أَحَدٍ مِنْ الْمُتَبَايِعَيْنِ حَتَّى يَتَفَرَّقَا أَوْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ بَعْدَ الْبَيْعِ بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ؟ وَلَيْسَ فِي هَذَا لَوْ صَحَّ خِلَافٌ لِلسُّنَّةِ، بَلْ قَدْ صَحَّ عَنْ عُمَرَ وَغَيْرِ عُمَرَ مِنْ الصَّحَابَةِ مُوَافَقَةُ السُّنَّةِ فِي ذَلِكَ، وَإِجَازَةُ رَدِّ الْبَيْعِ قَبْلَ التَّخْيِيرِ وَالتَّفَرُّقِ.

L22182 Then, it became trivial here for them to differ with the practice of Umar ibn al-Khattab, Nafiʿ ibn al-Harith, and Safwan ibn Umayyah—all being Companions—the well-known practice that could not possibly have remained concealed in the presence of the Companions in Medina and Mecca. No opponent to their position is known in that matter, nor any denier from among those who fundamentally permit sales with an option clause—by the soundest method and most established [precedent] in the most famous incident: the purchase of a house to serve as a prison in Mecca, where no house had existed for a prison there at all prior to that.

ثُمَّ هَانَ عَلَيْهِمْ هَهُنَا خِلَافُ عَمَلِ عُمَرَ بْنِ الْخَطَّابِ، وَنَافِعِ بْنِ الْحَارِثِ، وَصَفْوَانَ بْنِ أُمَيَّةَ - وَكُلُّهُمْ صَحَابَةٌ -: الْعَمَلَ الْمَشْهُورَ الَّذِي لَا يُمْكِنُ أَنْ يَخْفَى بِحَضْرَةِ الصَّحَابَةِ بِالْمَدِينَةِ، وَمَكَّةَ، وَلَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ، وَلَا عَلَيْهِمْ مِنْهُمْ مُنْكِرٌ مِمَّنْ يُجِيزُ الْبَيْعَ بِشَرْطِ الْخِيَارِ أَصْلًا بِأَصَحِّ طَرِيقٍ وَأَثْبَتِهِ فِي أَشْهَرِ قِصَّةٍ، وَهِيَ ابْتِيَاعُ دَارٍ لِلسِّجْنِ بِمَكَّةَ، وَمَا كَانَ قَبْلَ ذَلِكَ بِهَا لِلسِّجْنِ دَارٌ أَصْلًا.

L22183 Then Ibn ʿUmar and Ibn Muṭīʿ—both being partners—engaged in buying as is evident with the option, if they entered into [the transaction] without a specified time limit. Likewise, ʿUmar before that, Ṣafwān, and Nāfiʿ conducted transactions by mutual consent without a specified time limit, with no known opposition from those who permit sales conditional on an option. So be astonished at the statements of these people? As for the Successors: It has been narrated to us via the chain of ʿAbd al-Razzāq—who narrated from Maʿmar—from Ibn Ṭāwūs—from his father—regarding a man who buys a commodity by mutual consent. He said: "The option belongs to both of them until they part ways with mutual consent."

ثُمَّ فَعَلَ ابْنُ عُمَرَ، وَابْنُ مُطِيعٍ - وَهُمَا صَاحِبَانِ - يَبْتَاعَانِ كَمَا تَرَى بِخِيَارٍ إنْ أَخَذَا إلَى غَيْرِ مُدَّةٍ مُسَمَّاةٍ - وَعُمَرُ قَبْلَ ذَلِكَ، وَصَفْوَانُ، وَنَافِعٌ يَتَبَايَعُونَ عَلَى الرِّضَا إلَى غَيْرِ مُدَّةٍ مُسَمَّاةٍ، لَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ مِمَّنْ يُجِيزُ الْبَيْعَ بِشَرْطِ خِيَارٍ، فَاعْجَبُوا لِأَقْوَالِ هَؤُلَاءِ الْقَوْمِ؟ وَأَمَّا التَّابِعُونَ: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ فِي الرَّجُلِ يَشْتَرِي السِّلْعَةَ عَلَى الرِّضَا؟ قَالَ: الْخِيَارُ لِكِلَيْهِمَا حَتَّى يَفْتَرِقَا عَنْ رِضًا.

وَبِهِ إِلَى مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ إِذَا بِعْت شَيْئًا عَلَى الرِّضَا فَلَا تَخْلِطْ الْوَرِقَ بِغَيْرِهَا حَتَّى تَنْظُرَ أَيَأْخُذُ أَمْ يَرُدُّ.

L22184 And through him to Maʿmar, from Ayyub, from Ibn Sirin: If you sell something with consent, do not mix silver coins with other items until you verify whether it will be accepted or rejected.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ عَنْ الْحَسَنِ قَالَ: إذَا أَخَذَ الرَّجُلُ مِنْ الرَّجُلِ الْبَيْعَ عَلَى أَنَّهُ فِيهِ بِالْخِيَارِ فَهَلَكَ مِنْهُ؟ فَإِنْ كَانَ سَمَّى الثَّمَنَ فَهُوَ لَهُ ضَامِنٌ، وَإِنْ لَمْ يُسَمِّهِ فَهُوَ أَمِينٌ وَلَا ضَمَانَ عَلَيْهِ.

L22185–22187 Through the route of Saʿīd ibn Manṣūr: Hushaym informed us: Yunus informed us, from al-Ḥasan, who said: When a man takes... If a seller makes a sale stipulating that he retains the option in the transaction, and the item perishes while in his possession, then if he specified the price, he is liable for it. But if he did not specify the price, he is deemed a trustee and bears no liability.

وَعَنْ شُرَيْحٍ مَا ذَكَرْنَا قَبْلُ مَا نَعْلَمُ فِي هَذَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ غَيْرَ مَا ذَكَرْنَا، وَكُلُّهُ مُخَالِفٌ لِقَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهُ ذِكْرُ مُدَّةٍ أَصْلًا.

L22188 From Shurayh is what we mentioned earlier. We are unaware of anything known in this regard from the Followers other than what we have mentioned. All of it contradicts the opinions of Abū Ḥanīfah, Mālik, and al-Shāfiʿī, for none of it mentions a specific timeframe at all.

وَفِي قَوْلِ الْحَسَنِ: جَوَازُ ذَلِكَ بِغَيْرِ ذِكْرِ ثَمَنٍ.

L22189 And in the statement of Al-Ḥasan: the validity of that without mentioning a price.

وَفِي قَوْلِ ابْنِ سِيرِينَ: جَوَازُ النَّقْدِ فِيهِ، وَلَمْ يَخُصَّ بِشَرْطٍ وَلَا بِغَيْرِ شَرْطٍ وَأَمَّا قَوْلُ طَاوُسٍ فَمُوَافِقٌ لِقَوْلِنَا؛ لِأَنَّهُ قَطَعَ بِأَنَّ كُلَّ بَيْعٍ يَكُونُ فِيهِ شَرْطُ خِيَارٍ فَإِنَّ الْخِيَارَ يَجِبُ فِيهِ لِلْبَائِعِ وَلِلْمُشْتَرِي حَتَّى يَتَّفِقَا، فَصَحَّ أَنَّهُ لَيْسَ هُوَ عِنْدَهُ بَيْعًا أَصْلًا، وَأَنَّهُ بَاقٍ عَلَى حُكْمِهِ كَمَا كَانَ - وَهَذَا قَوْلُنَا، فَصَحَّ يَقِينًا أَنَّ أَقْوَالَ مَنْ ذَكَرْنَا مُخَالِفَةٌ لِكُلِّ مَا رُوِيَ فِي ذَلِكَ عَنْ صَاحِبٍ أَوْ تَابِعٍ، وَأَنَّهُمَا لَا سَلَفَ لَهُمْ فِيهَا، وَتَفْرِيقُ سُفْيَانَ، وَابْنِ شُبْرُمَةَ مِنْ كَوْنِ الْخِيَارِ لِلْبَائِعِ أَوْ لَهُمَا، فَلَمْ يُجِيزَاهُ، وَبَيْنَ أَنْ يَكُونَ الْخِيَارُ لِلْمُشْتَرِي وَحْدَهُ؟ فَأَجَازَهُ سُفْيَانُ، لَا مَعْنَى لَهُ؛ لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلٌ مُتَقَدِّمٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ - وَلَيْسَ إلَّا جَوَازُ كُلِّ ذَلِكَ أَوْ بُطْلَانُ كُلِّ ذَلِكَ. وَقَدْ رُوِّينَا بُطْلَانَ ذَلِكَ عَنْ جَمَاعَةٍ مِنْ السَّلَفِ.

L22190 In the statement of Ibn Sīrīn: the permissibility of cash in it, without specifying whether with a condition or without a condition. As for the statement of Ṭāwūs, it aligns with our view because he decisively ruled that in every sale containing an option condition, the option must apply to both the seller and buyer until they agree. Thus, it becomes clear that this is not considered a sale at all in his view, but rather remains in its original legal status as before - and this is our position. Therefore, it is conclusively established that the opinions of those we mentioned contradict everything narrated on this matter from any Companion or Follower, and that they have no precedent from the early scholars (Salaf) in this matter. The distinction made by Sufyān and Ibn Shubrumah regarding whether the option belongs to the seller or both parties - they did not validate this distinction. As for when the option is exclusively for the buyer alone, Sufyān permitted this, but this differentiation lacks any basis, for no Quranic verse, Sunnah, weak narration, prior opinion, analogy, or rationally sound view distinguishes between these cases. The only possibilities are either the validity of all such transactions or

the invalidity of all such transactions. We have received reports about the invalidity of such transactions from a group of the early scholars (Salaf).

L22191 It has been narrated to us via Abd al-Razzaq - who narrated to us from Sufyan al-Thawri, from Asim ibn Ubayd Allah, from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq - that Aisha, the Mother of the Believers, disliked that an enslaved woman be sold with a stipulated condition.

L22192 From Abd al-Razzaq, who narrated to us: Ma'mar reported from al-Zuhri from Ubayd Allah ibn Abd Allah ibn Utbah ibn Mas'ud, who said: Ibn Mas'ud sought to purchase a female slave from his wife to take as a concubine. She said, "I will not sell her to you unless I stipulate that if my soul later desires her, I retain prior claim to the price." Ibn Mas'ud responded, "I must consult Umar first." When he asked him, Umar said, "Do not approach her while any stipulation favoring another party remains attached to her."

From Abd al-Razzaq's transmission: Ma'mar reported from Amr ibn Muslim, who said: I asked Ikrimah, the freedman of Ibn Abbas, about a man who took a garment from another, declaring, "I will take it with me; if it satisfies me, I will keep it." The taker then sold it before returning it to the garment's owner. Ikrimah ruled, "It is not permissible for him to retain the profit."

L22193–22194 And via the narration of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ stated, "Any sale that includes a stipulated condition is invalid." Ṭāwūs upheld the same ruling as we mentioned earlier.

L22195 Abu Muhammad said: All of this is, in the view of every person of sound judgment, clearer in invalidating sales contingent on options than their claim that Umar opposed the Sunnah in stating that no sale is binding between two parties until they separate - unsupported by any authentic report from him regarding his statement: "The sale is based on an agreement or an option." Similarly, their analogous claim concerning Ibn Umar regarding his statement: "If you find the transaction intact and in their original state, the responsibility lies with the seller," contains no indication of contradicting the aforementioned Sunnah. Rather, authentic reports from both of them indicate their compliance with the Sunnah in that matter.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَاصِمِ بْنِ عُبَيْدِ اللَّهِ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ كَرِهَتْ أَنْ تُبَاعَ الْأَمَةُ بِشَرْطٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: أَرَادَ ابْنُ مَسْعُودٍ أَنْ يَشْتَرِيَ جَارِيَةً يَتَسَرَّاهَا مِنْ امْرَأَتِهِ؟ فَقَالَتْ: لَا أَبِيعُكَهَا حَتَّى أَشْتَرِطَ عَلَيْك إنْ اتَّبَعَتْهَا نَفْسِي فَأَنَا أَوْلَى بِالثَّمَنِ؟ فَقَالَ ابْنُ مَسْعُودٍ: حَتَّى أَسْأَلَ عُمَرَ، فَسَأَلَهُ؟ فَقَالَ لَهُ عُمَرُ: لَا تَقْرَبْهَا وَفِيهَا شَرْطٌ لِأَحَدٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ مُسْلِمٍ قَالَ: سَأَلْت عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ عَنْ رَجُلٍ أَخَذَ مِنْ رَجُلٍ ثَوْبًا؟ فَقَالَ: أَذْهَبُ بِهِ فَإِنْ رَضِيتُهُ أَخَذْتُهُ، فَبَاعَهُ الْآخِذُ قَبْلَ أَنْ يَرْجِعَ إلَى صَاحِبِ الثَّوْبِ؟ فَقَالَ عِكْرِمَةُ: لَا يَحِلُّ لَهُ الرِّبْحُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ: كُلُّ بَيْعٍ فِيهِ شَرْطٌ فَلَيْسَ بَيْعًا - وَقَالَ طَاوُسٌ بِمَا ذَكَرْنَا قَبْلُ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ عِنْدَ كُلِّ ذِي حِسٍّ سَلِيمٍ أَوْضَحُ فِي إبْطَالِ الْبَيْعِ بِشَرْطِ الْخِيَارِ مِنْ دَعْوَاهُمْ أَنَّ عُمَرَ مُخَالِفٌ لِلسُّنَّةِ فِي أَنْ لَا بَيْعَ بَيْنَ الْمُتَبَايِعَيْنِ حَتَّى يَتَفَرَّقَا بِمَا لَمْ يَصِحَّ عَنْهُ مِنْ قَوْلِهِ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ، وَمِنْ دَعْوَاهُمْ مِثْلُ ذَلِكَ عَلَى ابْنِ عُمَرَ فِي قَوْلِهِ: مَا أَدْرَكْت الصَّفْقَةَ حَيًّا مَجْمُوعًا فَمِنْ الْبَائِعِ، وَلَيْسَ فِي هَذَا إشَارَةٌ إلَى خِلَافِ السُّنَّةِ الْمَذْكُورَةِ، بَلْ قَدْ صَحَّ عَنْهُمَا مُوَافَقَةُ السُّنَّةِ فِي ذَلِكَ.

قَالَ عَلِيٌّ: فَإِنْ كَانَ مَا رُوِيَ عَنْ الصَّحَابَةِ، وَالتَّابِعِينَ فِي ذَلِكَ إجْمَاعٌ فَقَدْ خَالَفُوهُ، فَهُمْ مُخَالِفُونَ لِلْإِجْمَاعِ كَمَا أَقَرُّوا عَلَى أَنْفُسِهِمْ، وَإِنْ لَمْ يَكُنْ إجْمَاعًا فَلَا حُجَّةَ فِي قَوْلٍ لَمْ يَأْتِ بِهِ نَصٌّ وَلَا إجْمَاعٌ.

L22196 Ali said: If the reports from the Companions and Followers concerning this matter constitute a consensus, then they have contradicted it, thereby opposing the consensus as they themselves have acknowledged. But if it is not a consensus, then there is no valid argument for an opinion not supported by a scriptural text or consensus.

فَإِنْ احْتَجُّوا فِي إبَاحَةِ بَيْعِ الْخِيَارِ بِمَا رُوِيَ «: الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَهَذَا لَا يَصِحُّ لِأَنَّهُ عَنْ كَثِيرِ بْنِ زَيْدٍ وَهُوَ مُطَّرَحٌ بِاتِّفَاقٍ، وَلَا يَحِلُّ الِاحْتِجَاجُ بِمَا رَوَى.

L22197 If they argue for the permissibility of sales involving options by citing the narration "Muslims are bound by their stipulations," this is invalid because it is transmitted from Kathīr ibn Zayd - who is unanimously deemed a discarded narrator - and it is impermissible to rely on his transmissions as proof.

وَمِنْ طَرِيقٍ أُخْرَى عَنْ كَذَّابٍ عَنْ مَجْهُولٍ عَنْ مَجْهُولٍ مُرْسَلٍ مَعَ ذَلِكَ وَعَنْ عَطَاءٍ مُرْسَلٌ، وَلَوْ صَحَّ مَعَ ذَلِكَ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ أَصْلًا؛ لِأَنَّ شُرُوطَ الْمُسْلِمِينَ لَيْسَ هِيَ كُلَّ مَا اشْتَرَطُوهُ، لَوْ كَانَ ذَلِكَ لَلَزِمَ شَرْطُ الزِّنَى، وَالسَّرِقَةِ، وَهُمْ قَدْ أَبْطَلُوا أَكْثَرَ مِنْ أَلْفِ شَرْطٍ أَبَاحَهَا غَيْرُهُمْ، وَإِنَّمَا شُرُوطُ الْمُسْلِمِينَ: الشُّرُوطُ الَّتِي جَاءَ الْقُرْآنُ، وَالسُّنَّةُ بِإِبَاحَتِهَا نَصًّا فَقَطْ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

L22198 And from another chain via a fabricator, from an unknown narrator, from an unknown narrator in a mursal chain, along with that and a mursal report from 'Aṭā'. Even if such reports were authenticated, they would have no basis for reliance whatsoever, for the conditions of Muslims are not every stipulation they formulated. Were that the case, it would necessitate the condition of adultery and theft, while they have invalidated over a thousand stipulations others deemed permissible. The conditions of Muslims are solely those explicitly permitted by the Quran and Sunnah through explicit text alone. The Messenger of Allah—peace and blessings be upon him—said, "Every condition not found in Allah's Book is void."[5]

قَالَ عَلِيٌّ: فَإِنْ احْتَجَّ مَنْ يُجِيزُ بَيْعَ الْخِيَارِ بِمَا قَدْ ذَكَرْنَاهُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا إلَّا بَيْعَ الْخِيَارِ» فَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَدْ بَيَّنَ ذَلِكَ الْخِيَارَ مَا هُوَ؟ وَأَنَّهُ قَوْلُ أَحَدِهِمَا لِلْآخَرِ: اخْتَرْ.

وَبَيَّنَهُ أَيْضًا اللَّيْثُ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ بِمِثْلِهِ.

L22199 Ali said: If those who permit the sale with the option argue using what we have mentioned from the statement of Allah's Messenger - peace and blessings be upon him - "No sale is concluded between two parties until they separate except the option sale," then this contains no proof for them. For Ayyub reported from Nafi', who reported from Ibn Umar, that he clarified what that option actually is: namely, that it is when one of them says to the other, "Choose."[6]

L22200 Al-Layth also explained it with a similar narration via Nāfiʿ, from Ibn ʿUmar.

[5] **Hadith references (L22198):** Sunan Ibn Majah 2521.

[6] **Hadith references (L22199):** Sahih al-Bukhari 2113; Sunan an-Nasai 4475; Sunan an-Nasai 4477.

وَأَوْضَحَهُ إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْمُتَبَايِعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا إِلَّا أَنْ يَكُونَ الْبَيْعُ عَنْ خِيَارٍ، فَإِنْ كَانَ الْبَيْعُ عَنْ خِيَارٍ فَقَدْ وَجَبَ الْبَيْعُ» .

L22201 Ismail ibn Ja'far narrated from Nafi' from Ibn 'Umar that the Prophet (peace and blessings of Allah be upon him) said: "The two parties in a sale retain the option as long as they have not separated, unless the sale is based on a stipulated option. If the sale is based on a stipulated option, the sale becomes binding."

فَصَحَّ ضَرُورَةً أَنَّ هَذَا الْخِيَارَ إنَّمَا هُوَ التَّخْيِيرُ مِنْ أَحَدِهِمَا لِلْآخَرِ فَقَطْ.

L22202 Thus, it is valid by necessity that this contractual option constitutes solely the right to choose granted exclusively by one party to the other.

وَذَكَرُوا أَيْضًا خَبَرَ " الْمُصَرَّاةِ " وَسَنَذْكُرُهُ فِي هَذَا الْكِتَابِ بِإِسْنَادِهِ إنْ شَاءَ اللَّهُ تَعَالَى، «وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْخِيَارَ لِوَاجِدِهَا ثَلَاثًا، فَإِنْ رَضِيَهَا أَمْسَكَهَا وَإِنْ كَرِهَهَا رَدَّهَا، وَرَدَّ مَعَهَا صَاعًا مِنْ تَمْرٍ» .

L22203–22204 They also mentioned the report of *al-Muṣarrāh*, and we will mention it in this book with its chain of transmission, Allah the Exalted willing. "The Messenger of Allah—peace and blessings be upon him—granted the discoverer of the defect an option of three days: if satisfied, they may keep it; if dissatisfied, they should return it and return along with it a *ṣā'* of dates."

وَخَبَرَ «مُنْقِذٍ إذْ أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يَقُولَ إذَا بَاعَ أَوْ ابْتَاعَ: لَا خِلَابَةَ، ثُمَّ جَعَلَ لَهُ الْخِيَارَ ثَلَاثًا» ، وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْحَجْرِ " مِنْ دِيوَانِنَا هَذَا.

L22205 And the report of Munqidh when the Messenger of Allah—may Allah bless him and grant him peace—commanded him to say when selling or purchasing: "No deception," then granted him the option for three [days]. We have mentioned this in "The Book of Legal Incapacity" within this compilation of ours.

وَخَبَرَ تَلَقِّي السِّلَعِ وَالنَّهْيِ عَنْهُ، وَأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لِلْبَائِعِ الْخِيَارَ إذَا دَخَلَ السُّوقَ، وَبِالْخِيَارِ فِي رَدِّ الْبَيْعِ يُوجَدُ فِيهِ الْعَيْبُ.

L22206 And the report concerning receiving goods before they reach the market and the prohibition thereof, and that the Prophet—peace and blessings of Allah be upon him—granted the seller the option to annul the sale if he enters the market after being intercepted, with the option to revoke the sale existing if a defect is found in the goods.

قَالَ أَبُو مُحَمَّد: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، وَاحْتِجَاجُهُمْ بِهِ فِي إبَاحَةِ بَيْعِ الْخِيَارِ إثْمٌ وَعَارٌ، لِأَنَّ خَبَرَ الْمُصَرَّاةِ إنَّمَا فِيهِ الْخِيَارُ لِلْمُشْتَرِي - أَحَبَّ الْبَائِعُ أَمْ كَرِهَ - لَا بِرِضًا مِنْهُ أَصْلًا وَلَا بِأَنْ يَشْتَرِطَ فِي حَالِ عَقْدِ الْبَيْعِ فَكَيْفَ يَسْتَجِيزُ ذُو فَهْمٍ أَنْ يَحْتَجَّ بِهَذَا الْخِيَارِ فِي إبَاحَةِ بَيْعٍ يَتَّفِقُ فِيهِ الْبَائِعُ وَالْمُشْتَرِي عَلَى الرِّضَا بِشَرْطِ خِيَارٍ لِأَحَدِهِمَا أَوْ لِكِلَيْهِمَا أَوْ لِغَيْرِهِمَا؟ وَأَمَّا خَبَرُ مُنْقِذٍ فَكَذَلِكَ أَيْضًا، لِأَنَّهُ إنَّمَا هُوَ خِيَارٌ يَجِبُ لِمَنْ قَالَ عِنْدَ التَّبَايُعِ: لَا خِلَابَةَ، بَائِعًا كَانَ أَوْ مُشْتَرِيًا سَوَاءٌ رَضِيَ بِذَلِكَ مُعَامَلَةً أَوْ لَمْ يَرْضَ

L22207 Abu Muhammad said: All of this provides no valid evidence for them in any matter. Their reliance on it to justify permitting conditional sales stipulating khiyar constitutes a moral transgression and reproach. For the narration regarding the withheld milk (al-muṣarrāh) merely establishes the buyer's right to annul the transaction—whether the seller consents or objects—without requiring the seller's initial approval or any stipulation during the contract's formation. How could any discerning person deem it permissible to cite this type of khiyar as evidence for validating sales where both parties mutually agree, through their consent, to stipulate an option for one party, both parties, or third parties? As for Munqidh's narration, it similarly establishes khiyar

لَمْ يَشْتَرِطْهُ الَّذِي جَعَلَ لَهُ فِي نَفْسِ الْعَقْدِ، فَأَيُّ شَبَهٍ بَيْنَ هَذَيْنِ الْحُكْمَيْنِ وَبَيْنَ خِيَارٍ يَتَّفِقَانِ بِرِضَاهُمَا عَلَى اشْتِرَاطِهِ لِأَحَدِهِمَا أَوْ لِغَيْرِهِمَا، وَكُلُّهُمْ لَا يَقُولُ بِهَذَا الْخَبَرِ أَصْلًا؟ وَأَمَّا خَبَرُ تَلَقِّي السِّلَعِ فَكَذَلِكَ أَيْضًا إِنَّمَا هُوَ خِيَارٌ جُعِلَ لِلْبَائِعِ - أَحَبَّ الْمُشْتَرِي أَمْ كَرِهَ - لَمْ يَشْتَرِطَاهُ فِي الْعَقْدِ -.

only for whoever declares at the moment of concluding the sale contract: "No deception"—whether acting as seller or buyer—regardless of the counterparty's acceptance. The party granted this right did not stipulate it during the contract's actual formation. What resemblance exists between these two rulings and a khiyar that both parties voluntarily stipulate for themselves or others, particularly when none of them actually uphold this narration? Regarding the narration about intercepting goods before market arrival, it likewise establishes khiyar solely for the seller—whether the buyer accepts or rejects—without either party having stipulated it in the contract.

وَهُوَ أَيْضًا خِيَارٌ إِلَى غَيْرِ مُدَّةٍ مَحْدُودَةٍ وَكُلُّهُمْ لَا يُجِيزُ هَذَا أَصْلًا.

L22208 It is also a contractual option with no fixed duration, and none of them permit this at all.

فَأَيُّ عَجَبٍ يَفُوقُ قَوْلَ قَوْمٍ يُبْطِلُونَ الْأَصْلَ وَلَا يُجِيزُونَ الْقَوْلَ بِهِ، وَيُصَحِّحُونَ الْقِيَاسَ عَلَيْهِ فِي مَا لَا يُشْبِهُهُ وَيُخَالِفُونَ السُّنَنَ فِيمَا جَاءَتْ فِيهِ، ثُمَّ يَحْتَجُّونَ بِهَا فِيمَا لَيْسَ فِيهَا مِنْهُ أَثَرٌ وَلَا دَلِيلٌ وَلَا مَعْنًى؟ فَخَالَفُوا الْحَقَائِقَ جُمْلَةً وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى مَا مَنَّ بِهِ مِنَ التَّوْفِيقِ.

L22209 What could be more astonishing than the claim of people who nullify the foundational principle while forbidding speech based on it, yet validate analogy rooted in it for matters bearing no resemblance to it—who oppose the Sunnah in matters it addresses, then cite it as evidence in cases where no trace, proof, or meaning from it (the Sunnah) exists? Thus they wholly contradict the truths, and we praise Allah the Exalted for the success He has bestowed through His favor.

فَإِنْ قَالُوا: لَمَّا جَازَ فِي هَذِهِ الْأَخْبَارِ فِي أَحَدِهَا الْخِيَارُ لِلْبَائِعِ، وَفِي الْآخَرِ الْخِيَارُ لِلْمُشْتَرِي، وَفِي الثَّالِثِ الْخِيَارُ لِلْمَرْءِ بَائِعًا كَانَ أَوْ مُشْتَرِيًا، وَكَانَ فِي الشُّفْعَةِ الْخِيَارُ لِغَيْرِ الْبَائِعِ وَالْمُشْتَرِي بِغَيْرِ أَنْ يُشْتَرَطَ فِي الْعَقْدِ شَيْءٌ مِنْ ذَلِكَ، مِنْ غَيْرِ أَنْ يَلْتَفِتَ رِضَا الْآخَرِ أَوْ رِضَا الْبَائِعِ وَالْمُشْتَرِي كَانَ إِذَا اشْتَرَطَاهُ بِتَرَاضِيهِمَا لِأَحَدِهِمَا أَوْ - لَهُمَا أَوْ لِغَيْرِهِمَا أَحْرَى أَنْ يَجُوزَ؟ قُلْنَا: هَذَا حُكْمُ الشَّيْطَانِ لَا حُكْمَ اللَّهِ عَزَّ وَجَلَّ، وَهَذَا هُوَ تَعَدِّي حُدُودِ اللَّهِ تَعَالَى الَّذِي قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَتِلْكَ دَعْوَى مِنْكُمْ لَا بُرْهَانَ عَلَى صِحَّتِهَا، بَلِ الْبُرْهَانُ قَائِمٌ عَلَى بُطْلَانِهَا بِقَوْلِهِ تَعَالَى: {شَرَعُوا لَهُمْ مِنَ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ} [الشورى: ٢١] .

L22210–22211 If they argue: Given that in these reports, one grants the option to the seller, another to the buyer, and the third to the individual—whether seller or buyer—while in preemption the option is assigned to someone other than the seller and buyer without any such condition in the contract, and without considering the consent of the other, the seller, or the buyer—then if they stipulate it by mutual consent for one of them, for both, or for another, would it not be more justified to deem it permissible? We respond: This is a ruling of Satan, not the ruling ordained by Allah Almighty. This constitutes transgressing the boundaries set by Allah the Exalted, as He stated: "Whoever transgresses Allah's boundaries has certainly wronged themselves" (65:1). This is a mere assertion of yours with no evidence to support it. Rather, evidence affirms its invalidity through the words of the Exalted: "They invented religious laws not authorized by Him" (42:21).[7]

[7] **Qur'an references (L22211):** Qur'an 65:1 (At-Talaq); Qur'an 42:21 (Ash-Shuraa).

L22212 Neither you nor anyone else knows from where you derived this claim of yours. Even if analogical reasoning (qiyas) were valid, this would be the very essence of falsehood from it, for according to those who uphold it, the comparison of the analogized case (farʿ) cannot be valid unless the original case (aṣl) is valid. Yet none of you validates the ruling of any of these narrations except the case of withheld milk (al-muṣarra) and pre-emption (al-shufʿa) alone. How then do you deem it permissible to rule by a judgment merely because it resembles a judgment that is impermissible to act upon? Has anything more foolish than this action ever been heard of? Those among you who validate the ruling of al-muṣarra do not disagree that it is permissible to analogize based on the returning of a ṣāʿ of dates along with the item the returner chooses to return. So how did you permit analogical reasoning based on some elements of that narration while prohibiting it based on others? Does this not perplex the minds of the rational? Similarly, pre-emption (al-shufʿa) in your view applies only to a partner or a neighbor in the sale of jointly owned real estate specifically. How then did it occur to you, O you people, to prohibit analogical reasoning in cases where jointly owned non-real estate is sold, also to the partner?

وَمَا تَدْرُونَ أَنْتُمْ وَلَا غَيْرُكُمْ مِنْ أَيْنَ قُلْتُمْ بِدَعْوَاكُمْ هَذِهِ؟ ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ لَا يَصِحُّ تَشْبِيهُ الْمُشَبَّهِ إِلَّا حَتَّى يَصِحَّ الْمُشَبَّهُ بِهِ، وَلَيْسَ مِنْكُمْ أَحَدٌ يُصَحِّحُ حُكْمَ شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ إِلَّا الْمُصَرَّاةَ، وَالشُّفْعَةَ فَقَطْ، فَكَيْفَ تَسْتَحِلُّونَ أَنْ تَحْكُمُوا بِحُكْمٍ لِأَنَّهُ يُشْبِهُ حُكْمًا لَا يَجُوزُ الْعَمَلُ بِهِ؟ وَهَلْ سُمِعَ بِأَحْمَقَ مِنْ هَذَا الْعَمَلِ؟ وَالَّذِينَ يُصَحِّحُونَ مِنْكُمْ حُكْمَ الْمُصَرَّاةِ لَا يَخْتَلِفُونَ فِي أَنَّهُ يَجُوزُ الْقِيَاسُ عَلَى مَا فِيهِ مِنْ رَدِّ صَاعِ تَمْرٍ مَعَ الشَّيْءِ الَّذِي يَخْتَارُ الرَّادُّ رَدَّهُ، فَمِنْ أَيْنَ جَازَ عِنْدَكُمْ الْقِيَاسُ عَلَى بَعْضِ مَا فِي ذَلِكَ الْخَبَرِ وَحُرِّمَ الْقِيَاسُ عَلَى بَعْضِ مَا فِيهِ؟ أَلَيْسَ هَذَا مِمَّا تَحْتَارُ فِيهِ أَوْهَامُ الْعُقَلَاءِ؟ وَكَذَلِكَ الشُّفْعَةُ إِنَّمَا هِيَ لِشَرِيكٍ عِنْدَكُمْ، أَوْ لِلْجَارِ فِيمَا بِيعَ مِنْ مُشَاعٍ فِي الْعَقَارِ خَاصَّةً، فَمِنْ أَيْنَ وَقَعَ بِكُمْ يَا هَؤُلَاءِ أَنْ تُحَرِّمُوا الْقِيَاسَ عَلَى ذَلِكَ مَا بِيعَ أَيْضًا مِنْ الْمُشَاعِ فِي غَيْرِ الْعَقَارِ لِلشَّرِيكِ أَيْضًا.

L22213 If there had ever existed a valid analogy throughout time, this would be the most evident and sound analogy, given their equivalence in legal cause and resemblance according to every observer. Yet you analogize matters fundamentally dissimilar to it—such as stipulating an option for the seller, buyer, both, or a third party—a ruling wholly opposed to the former. For that [case] applies to a partner while this [applies] to a non-partner; that pertains to jointly held property and this to non-jointly held property; that is stipulated while this is not stipulated; that [applies] without time restriction and this [applies] within a specified period. What is this confusion and arbitrariness?

وَلَوْ صَحَّ قِيَاسٌ فِي الدَّهْرِ كَانَ هَذَا أَوْضَحَ قِيَاسٍ وَأَصَحَّهُ لِتَسَاوِيهِمَا فِي الْعِلَّةِ وَالشَّبَهِ عِنْدَ كُلِّ نَاظِرٍ ثُمَّ تَقِيسُونَ عَلَيْهِ مَا لَا يُشْبِهُهُ أَصْلًا مِنْ اشْتِرَاطِ اخْتِيَارٍ لِلْبَائِعِ أَوْ لِلْمُشْتَرِي أَوْ لَهُمَا أَوْ لِأَجْنَبِيٍّ، وَهُوَ ضِدُّ ذَلِكَ الْحُكْمِ جُمْلَةً، فَذَلِكَ لِلشَّرِيكِ وَهَذَا لِغَيْرِ الشَّرِيكِ، وَذَلِكَ فِي الْمُشَاعِ وَهَذَا فِي غَيْرِ الْمُشَاعِ، وَذَلِكَ مُشْتَرَطٌ، وَهَذَا غَيْرُ مُشْتَرَطٍ، وَذَلِكَ إِلَى غَيْرِ مُدَّةٍ وَهَذَا إِلَى مُدَّةٍ، فَمَا هَذَا التَّخْلِيطُ، وَالْخَبْطُ؟

L22214–22215 As for the option to return the sold item, the ruling concerning it is exactly the same as the ruling on the right of preemption, in that there is no similarity whatsoever between it and stipulating a contractual option in the sale in any respect, due to what we previously stated. Thus, the invalidity of their argument as a whole based on narrations and analogy becomes evident.

وَأَمَّا الْخِيَارُ فِي رَدِّ الْمَبِيعِ فَالْقَوْلُ فِيهِ كَالْقَوْلِ فِي خِيَارِ الشُّفْعَةِ سَوَاءً سَوَاءً، مِنْ أَنَّهُ لَا شَبَهَ بَيْنَهُ وَبَيْنَ اشْتِرَاطِ الْخِيَارِ فِي الْبَيْعِ بِوَجْهٍ مِنْ الْوُجُوهِ لِمَا قُلْنَا آنِفًا، فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ جُمْلَةً بِالْأَخْبَارِ، وَبِالْقِيَاسِ -.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22216 And success is from Allah, the Exalted.

وَأَيُّ قَوْلٍ أَفْسَدَ مِنْ قَوْلِ مَنْ يُبْطِلُ الْخِيَارَ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْمُتَبَايِعَيْنِ قَبْلَ التَّفَرُّقِ بِأَبْدَانِهِمَا، وَقَبْلَ أَنْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ فَيَخْتَارَ إمْضَاءً أَوْ رَدًّا. وَالْخِيَارُ الْوَاجِبُ لِمَنْ قَالَ عِنْدَ الْبَيْعِ: لَا خِلَابَةَ.

L22217 And what statement is more corrupt than that of one who nullifies the obligatory option which Allah the Exalted has ordained through His Messenger (peace and blessings of Allah be upon him) for both parties to a sale before they separate with their bodies, and before either of them offers the other the choice, so that he may choose to confirm or reject. The obligatory option belongs to whoever declares during the sale: "No fraud [is intended]."

وَالْخِيَارُ لِمَنْ بَاعَ سِلْعَتَهُ مِمَّنْ تَلَقَّاهَا إذَا دَخَلَ السُّوقَ.

L22218 The option belongs to the seller against the buyer who received the goods once the buyer enters the marketplace.

وَالْخِيَارُ الْوَاجِبُ لِمَنْ ابْتَاعَ مُصَرَّاةً.

L22219 The obligatory option is granted to one who purchases a muṣarra'ah.

وَالْخِيَارُ الْوَاجِبُ لِمَنْ بَاعَ شِرْكًا مِنْ مَالٍ هُوَ فِيهِ شَرِيكٌ ثُمَّ أَوْجَبَ خِيَارًا لَمْ يُوجِبْهُ اللَّهُ تَعَالَى قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22220 The obligatory option applies to one who sells a share from a property in which he is a partner and then imposes an option that Allah, Exalted is He, and His Messenger (peace be upon him) have never legislated.

وَمِنْ الْبُرْهَانِ عَلَى بُطْلَانِ كُلِّ بَيْعٍ يُشْتَرَطُ فِيهِ خِيَارٌ لِلْبَائِعِ أَوْ لِلْمُشْتَرِي أَوْ لَهُمَا أَوْ لِغَيْرِهِمَا -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ اشْتَرَطَهُ مِائَةَ مَرَّةٍ وَإِنْ كَانَ مِائَةَ شَرْطٍ كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» .

L22221 Among the proofs for the invalidity of every sale stipulating an option for the seller, the buyer, both of them, or others besides them is the statement of Allah's Messenger - peace and blessings be upon him: «What is the matter with people who stipulate conditions not found in Allah's Book? Whoever stipulates a condition absent from Allah's Book, it is invalid even if he stipulates it a hundred times. Even if there are a hundred conditions, every condition absent from Allah's Book remains invalid. Allah's Book holds greater authority, and Allah's condition is more binding.»

وَكَانَ اشْتِرَاطُ الْخِيَارِ الْمَذْكُورِ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى وَلَا فِي شَيْءٍ مِنْ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَوْ كَانَ فِيهَا لَكَانَ فِي كِتَابِ اللَّهِ تَعَالَى؛ لِأَنَّ اللَّهَ تَعَالَى أَمَرَ فِي كِتَابِهِ بِطَاعَةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَبَ بُطْلَانُ الشَّرْطِ الْمَذْكُورِ يَقِينًا، وَإِذْ هُوَ بَاطِلٌ فَكُلُّ عَقْدٍ لَمْ يُصَحَّحْ إلَّا بِصِحَّةِ مَا لَمْ يَصِحَّ فَلَا صِحَّةَ لَهُ

L22222 The stipulation of the mentioned option (khiyar) was a condition not found in the Book of Allah the Exalted nor in anything from the Sunnah of Allah's Messenger (PBUH). Had it been present in the Sunnah, it would have been in the Book of Allah the Exalted, because Allah the Exalted commanded in His Book to obey His Messenger (PBUH). Therefore, it is certainly obligatory to nullify this mentioned condition. Since it is invalid, any contract whose validity depends on the validity of what is inherently invalid undoubtedly possesses no validity. Consequently, the sale contract established upon the

condition of khiyar must be nullified as we have mentioned. Allah the Exalted said: {Indeed, Allah does not rectify the deeds of those who spread corruption} [Yūnus: 81].[8]

بِلَا شَكٍّ، فَوَجَبَ بُطْلَانُ الْبَيْعِ الَّذِي عُقِدَ عَلَى شَرْطِ خِيَارٍ كَمَا ذَكَرْنَا، قَالَ اللَّهُ تَعَالَى: {إِنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١] .

L22223–22225 Abū Muḥammad said: Our covenant with them is that they take pride in following the Messenger and that it is like the *Musnad*. It has been narrated to us through the chain of Abū Bakr ibn Abī Shaybah, from Ismāʿīl ibn ʿUlayyah, from Ayyūb al-Sakhtiyānī, from Abū Qilābah, who said: The Messenger of Allah (peace and blessings be upon him) stated, "No two parties to a sale may separate except by mutual consent." This is among the finest juridical correspondence, so where do they stand regarding it? It contains the prohibition against retaining the option after the parties have parted. We ask them about the sale with an option: has the seller's ownership ceased over it, and has the buyer acquired ownership, or not, when the option is stipulated for the seller or both parties? If they say no, this is our position, and it is established that there is no sale at all in such a case, for a sale entails the transfer of the seller's ownership and the establishment of the buyer's ownership.

قَالَ أَبُو مُحَمَّد: وَعَهْدُنَا بِهِمْ يَفْتَخِرُونَ بِاتِّبَاعِ الْمُرْسَلِ وَأَنَّهُ كَالْمُسْنَدِ -: وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَتَفَرَّقُ بَيِّعَانِ إِلَّا عَنْ تَرَاضٍ» وَهَذَا مِنْ أَحْسَنِ الْمُرَاسِلِ، فَأَيْنَ هُمْ عَنْهُ؟ وَفِيهِ النَّهْيُ عَنْ بَقَاءٍ عَنْ الْخِيَارِ بَعْدَ التَّفَرُّقِ؟ وَنَسْأَلُهُمْ عَنْ بَيْعِ الْخِيَارِ هَلْ زَالَ مِلْكُ بَائِعِهِ عَنْهُ وَمَلَكَهُ الْمُشْتَرِي لَهُ أَمْ لَا، إذَا اُشْتُرِطَ الْخِيَارَ لِلْبَائِعِ أَوْ لَهُمَا؟ فَإِنْ قَالُوا: لَا، فَهُوَ قَوْلُنَا وَصَحَّ أَنَّهُ لَا بَيْعَ هُنَالِكَ أَصْلًا؛ لِأَنَّ الْبَيْعَ نَقْلُ مِلْكِ الْبَائِعِ وَإِيقَاعُ مِلْكِ الْمُشْتَرِي.

L22226 And if they say: Yes, we say: Then the option has no meaning, nor is it valid for something whose ownership has been validly established for him. Their statements, however, indicate the contrary of this.

وَإِنْ قَالُوا: نَعَمْ، قُلْنَا: فَالْخِيَارُ لَا مَعْنَى لَهُ، وَلَا يَصِحُّ فِي شَيْءٍ قَدْ صَحَّ مِلْكُهُ عَلَيْهِ - وَأَقْوَالُهُمْ تَدُلُّ عَلَى خِلَافِ هَذَا.

L22227 If they say, "The seller has sold, but the buyer has not yet purchased?" We reply: This is muddled reasoning and void, self-evident; for a sale cannot occur unless there is a seller, a buyer, and a transfer of ownership.

فَإِنْ قَالُوا قَدْ بَاعَ الْبَائِعُ وَلَمْ يَشْتَرِ الْمُشْتَرِي بَعْدُ؟ قُلْنَا: هَذَا تَخْلِيطٌ وَبَاطِلٌ لَا خَفَاءَ بِهِ؛ لِأَنَّهُ لَا يَكُونُ بَيْعٌ إلَّا وَهُنَالِكَ بَائِعٌ وَمُبْتَاعٌ وَانْتِقَالُ مِلْكٍ.

L22228 And likewise, if the option is granted solely to the seller, it is impossible for the sale to be binding on the buyer without also being binding on the seller.

وَهَكَذَا إنْ كَانَ الْخِيَارُ لِلْبَائِعِ فَقَطْ، فَمِنْ الْمُحَالِ أَنْ يَنْعَقِدَ بَيْعٌ عَلَى الْمُشْتَرِي وَلَمْ يَنْعَقِدْ ذَلِكَ الْبَيْعُ عَلَى الْبَائِعِ.

L22229 If the right of rescission is for both parties or a third party, this sale has not been concluded - neither for the seller nor for the buyer - thus it is invalid.

فَإِنْ كَانَ الْخِيَارُ لَهُمَا أَوْ لِأَجْنَبِيٍّ: فَهَذَا بَيْعٌ لَمْ يَنْعَقِدْ لَا عَلَى الْبَائِعِ وَلَا عَلَى الْمُبْتَاعِ فَهُوَ بَاطِلٌ - وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ.

[8] **Qur'an references (L22222):** Qur'an 10:81 (Yunus).

This is the position asserted by the proponents of analogy according to their claim.

L22230 They have unanimously agreed that a marriage contract stipulating an option is invalid. Why then did they not apply this analogy to sales and other transactions where they permit options—just as they used this very analogy to oppose the Sunnah when invalidating options after the sale but before the parties separate? Thus, they neither adhered to textual sources nor consistently applied analogy. The proofs invalidating sales with options are numerous, and their contradictions regarding it are manifold. Their statements on the matter are merely unsubstantiated claims—divergent and mutually conflicting—as we previously mentioned. And with Allah the Exalted lies all success.

L22231 **Issue: If a valid and perfected sale occurs, and the object of sale perishes immediately after its completion.**

L22232 Issue 1422: In every valid and completed sale, if the sold item perishes after the sale is finalized, the loss is borne by the buyer, and the buyer has no recourse against the seller.

L22233–22235 Similarly, every instance involving a sale or defect applies equally in all such cases, whether the sold item is absent or... If the item is present, or if the sold item was a male or female slave who became insane, developed leukoderma, or leprosy after the conclusion of the sale and thereafter, or if it was fruit that had ripened for sale, then all, most, or the lesser part of it was blighted—all such losses are borne by the buyer, and he has no legal recourse whatsoever against the seller. This is the opinion of Abī Sulaymān, al-Shāfiʿī, and their followers.

L22236 Abū Ḥanīfah said: The seller is obligated to deliver what he sold. If it perishes before delivery, its loss falls upon the seller. Mālik agreed with our opinion except specifically regarding slaves and crops. He said: Any harm that befalls a slave within three days after the sale of the principal item — such as fleeing, a defect, death, or other occurrences — is the seller's liability. Once this period ends, the seller is absolved except in cases of insanity, leprosy, or

وَقَدْ أَجْمَعُوا عَلَى أَنَّ النِّكَاحَ بِالْخِيَارِ لَا يَجُوزُ، فَهَلَّا قَاسُوا عَلَى ذَلِكَ الْبَيْعَ وَسَائِرَ مَا أَجَازُوا فِيهِ الْخِيَارَ، كَمَا فَعَلُوا فِي مُعَارَضَةِ السُّنَّةِ بِهَذَا الْقِيَاسِ نَفْسِهِ فِي إبْطَالِهِمْ الْخِيَارَ بَعْدَ الْبَيْعِ قَبْلَ التَّفَرُّقِ، فَلَا نُصُوصَ الْتَزَمُوا وَلَا الْقِيَاسَ طَرَدُوا، وَالدَّلَائِلُ عَلَى إبْطَالِ بَيْعِ الْخِيَارِ تَكْثُرُ، وَمُنَاقَضَاتُهُمْ فِيهِ جَمَّةٌ، وَإِنَّمَا أَقْوَالُهُمْ فِيهِ دَعَاوَى - بِلَا بُرْهَانٍ - مُخْتَلِفَةٌ مُتَدَافِعَةٌ كَمَا ذَكَرْنَاهَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعٍ صَحَّ وَتَمَّ فَهَلَكَ الْمَبِيعُ إثْرَ تَمَامِ الْبَيْعِ]

١٤٢٢ - مَسْأَلَةٌ: وَكُلُّ بَيْعٍ صَحَّ وَتَمَّ فَهَلَكَ الْمَبِيعُ إثْرَ تَمَامِ الْبَيْعِ فَمُصِيبَتُهُ مِنْ الْمُبْتَاعِ وَلَا رُجُوعَ لَهُ عَلَى الْبَائِعِ.

وَكَذَلِكَ كُلُّ مَا عُرِضَ فِيهِ مِنْ بَيْعٍ أَوْ نَقْصٍ سَوَاءٌ فِي كُلِّ ذَلِكَ كَانَ الْمَبِيعُ غَائِبًا أَوْ حَاضِرًا، أَوْ كَانَ عَبْدًا أَوْ أَمَةً فَجُنَّ أَوْ بَرِصَ أَوْ جُذِمَ إثْرَ تَمَامِ الْبَيْعِ فَمَا بَعْدَ ذَلِكَ، أَوْ كَانَ ثَمَرًا قَدْ حَلَّ بَيْعُهُ، فَأُجِيحَ كُلُّهُ أَوْ أَكْثَرُهُ أَوْ أَقَلُّهُ، فَكُلُّ ذَلِكَ مِنْ الْمُبْتَاعِ وَلَا رُجُوعَ لَهُ عَلَى الْبَائِعِ بِشَيْءٍ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا.

وَقَالَ أَبُو حَنِيفَةَ: عَلَى الْبَائِعِ تَسْلِيمُ مَا بَاعَ، فَإِنْ هَلَكَ قَبْلَ أَنْ يُسَلِّمَهُ فَمُصِيبَتُهُ مِنْ الْبَائِعِ - وَقَالَ مَالِكٌ بِقَوْلِنَا، إلَّا فِي الرَّقِيقِ وَالثِّمَارِ خَاصَّةً، فَإِنَّهُ قَالَ: مَا أَصَابَ الرَّقِيقَ فِي ثَلَاثَةِ أَيَّامٍ بَعْدَ بَيْعِ الرَّأْسِ مِنْ إبَاقٍ، أَوْ عَيْبٍ، أَوْ مَوْتٍ، أَوْ غَيْرِ ذَلِكَ، فَمِنْ مُصِيبَةِ الْبَائِعِ، فَإِذَا انْقَضَتْ بَرِئَ الْبَائِعُ، إلَّا مِنْ الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ: فَإِنَّ هَذِهِ الْأَدْوَاءَ

vitiligo. If any of these three ailments afflict the sold principal item before a full year has passed since the time of purchase, the buyer has the right to return him for that reason.

L22237 He said: Such rulings are only to be adjudicated in regions where the custom of their people has been established to rule based on such practices. As for regions where their people's custom has not been established in this regard, no ruling is imposed upon them in that matter.

L22238 He said: Whoever sells with exemption, the ruling of liability is voided concerning him. The authority completely nullifies it when selling to a creditor or from an orphan's property. He permits cash payment in a one-year liability but does not permit it in a three-year liability.

L22239 As for fruits, whoever sells a fruit after it becomes permissible to sell the fruit and standing crops, then if a third or more of it is lost, the buyer may seek recourse from the seller. If less than a third is lost—whether little or much—it is a loss borne by the buyer, and he has no recourse against the seller.

L22240 He said: If it is vegetables and damage affects them—whether slight or extensive—the buyer can seek recourse from the seller for it. He differed in his statements regarding bananas: sometimes saying they are considered equivalent to fruits in accounting for one-third, and sometimes saying they are considered equivalent to vegetables in allowing recourse for minor or major damage.

L22241 And on one occasion he said: One may not rescind due to a catastrophic loss that befell all, most, or less of it.

L22242 Abu Muhammad said: As for the obligation to transfer possession, we know the Hanafis have no evidence whatsoever for this—neither from the Quran, nor the Sunnah, nor a weak narration, nor a Companion's opinion, nor analogy, nor sound opinion. The seller is only required not to prevent the buyer from taking possession of what was sold. If he does so, he becomes sinful and is only liable in the manner of usurpation. It is unlawful to impose any ruling not established by the Quran or the Sunnah. Allah the Exalted

الثَّلَاثَةَ إِنْ أَصَابَ شَيْءٌ مِنْهَا الرَّأْسَ الْمَبِيعَ قَبْلَ انْقِضَاءِ عَامٍ مِنْ حِينِ ابْتِيَاعِهِ كَانَ لَهُ الرَّدُّ بِذَلِكَ.

قَالَ: وَلَا يَقْضِي بِذَلِكَ إِلَّا فِي الْبِلَادِ الَّتِي جَرَتْ عَادَةُ أَهْلِهَا بِالْحُكْمِ بِذَلِكَ فِيهَا - وَأَمَّا الْبِلَادُ الَّتِي لَمْ تَجْرِ عَادَةُ أَهْلِهَا بِالْحُكْمِ بِذَلِكَ فِيهَا: فَلَا حُكْمَ عَلَيْهِمْ بِذَلِكَ.

قَالَ: وَمَنْ بَاعَ بِالْبَرَاءَةِ بَطَلَ عَنْهُ حُكْمُ الْعُهْدَةِ، وَأَسْقَطَهَا جُمْلَةً فِيمَا بَاعَهُ السُّلْطَانُ لِغَرِيمٍ، أَوْ مِنْ مَالِ يَتِيمٍ - وَأَجَازَ النَّقْدَ فِي عُهْدَةِ السَّنَةِ، وَلَمْ يُجِزْهُ فِي عُهْدَةِ الثَّلَاثِ.

وَأَمَّا الثِّمَارُ فَمَنْ بَاعَ ثَمَرَةً كَانَتْ بَعْدَ أَنْ يَحِلَّ بَيْعُهَا وَالْمَقَاثِي، فَإِذَا أُجِيحَ مِنْ ذَلِكَ الثُّلُثُ فَصَاعِدًا رَجَعَ بِذَلِكَ عَلَى الْبَائِعِ، فَإِنْ أُجِيحَ مَا دُونَ الثُّلُثِ - بِمَا قَلَّ أَوْ كَثُرَ - فَهُوَ مِنْ مُصِيبَةِ الْمُشْتَرِي وَلَا رُجُوعَ لَهُ عَلَى الْبَائِعِ.

قَالَ: فَإِنْ كَانَ بَقْلًا فَأَصَابَتْهُ جَائِحَةٌ - قَلَّتْ أَوْ كَثُرَتْ - فَإِنَّهُ يَرْجِعُ بِذَلِكَ عَلَى الْبَائِعِ - وَاخْتَلَفَ قَوْلُهُ فِي الْمَوْزِ، فَمَرَّةً قَالَ: هُوَ بِمَنْزِلَةِ الثِّمَارِ فِي مُرَاعَاةِ الثُّلُثِ، وَمَرَّةً قَالَ: هُوَ بِمَنْزِلَةِ الْبَقْلِ فِي الرُّجُوعِ بِقَلِيلِ الْجَائِحَةِ وَكَثِيرِهَا.

وَمَرَّةً قَالَ: لَا يَرْجِعُ بِجَائِحَةٍ أَصَابَتْهُ كُلَّهُ أَوْ أَكْثَرَهُ أَوْ أَقَلَّهُ.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا إِيجَابُ التَّسْلِيمِ فَمَا نَعْلَمُ فِيهِ لِلْحَنَفِيِّينَ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ ضَعِيفَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ، وَإِنَّمَا عَلَى الْبَائِعِ أَنْ لَا يَحُولَ بَيْنَ الْمُشْتَرِي وَبَيْنَ قَبْضِ مَا بَاعَ مِنْهُ فَقَطْ، فَإِنْ فَعَلَ صَارَ عَاصِيًا وَضَمِنَ ضَمَانَ الْغَصْبِ فَقَطْ، وَلَا يَحِلُّ أَنْ يُلْزِمَ أَحَدٌ حُكْمًا لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ،

said: “They have legislated in religion what Allah has not authorized” [42:21]. Thus, this opinion is rendered void.[9]

قَالَ تَعَالَى: {شَرَعُوا لَهُمْ مِنَ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ} [الشورى: ٢١] فَسَقَطَ هَذَا الْقَوْلُ.

L22243–22244 As for Mālik’s statement concerning enslaved persons: his followers cite as evidence the narration we transmitted via the chain narrated by Abū Dāwūd—reported by Muslim ibn Ibrāhīm, reported by Abān (who is Ibn Yazīd al-ʻAṭṭār), reported by Qatādah, reported by al-Ḥasan al-Baṣrī, reported by ʻUqbah ibn ʻĀmir al-Juhanī—that the Messenger of Allah, peace be upon him, said: “The defect warranty period for enslaved persons is three days.”

وَأَمَّا قَوْلُ مَالِكٍ فِي الرَّقِيقِ: فَإِنَّ مُقَلِّدِيهِ يَحْتَجُّونَ لَهُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُسْلِمُ بْنُ إِبْرَاهِيمَ نا أَبَانُ - هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «عُهْدَةُ الرَّقِيقِ ثَلَاثَةُ أَيَّامٍ» .

L22245 From the transmission of Abu Bakr ibn Abi Shaybah, reported to us by Abdah and Muhammad ibn Bishr from Saʿid ibn Abi ʿArubah from Qatadah from al-Hasan from Samurah ibn Jundub, who said: The Messenger of Allah, peace and blessings be upon him, said, “The liability period for an enslaved person is three days.”

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدَةُ، وَمُحَمَّدُ بْنُ بِشْرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «عُهْدَةُ الرَّقِيقِ ثَلَاثٌ» .

L22246 They said: He ruled with the three-day liability period due to the quartan fever; because it does not manifest in less than three days.

وَقَالُوا: إنَّمَا قَضَى بِعُهْدَةِ الثَّلَاثِ لِأَجْلِ حُمَّى الرِّبْعِ، لِأَنَّهَا لَا تَظْهَرُ فِي أَقَلَّ مِنْ ثَلَاثَةِ أَيَّامٍ.

L22247 They mentioned what we have narrated through Malik’s transmission from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm, that he heard Aban ibn Uthman ibn Affan and Hisham ibn Isma‘il ibn Hisham mention in their two khutbahs the three-day warranty period for slaves from the time one purchases a male slave or female slave, and the one-year warranty period, and that the two of them command this.

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ أَنَّهُ سَمِعَ أَبَانَ بْنَ عُثْمَانَ بْنِ عَفَّانَ، وَهِشَامَ بْنَ إسْمَاعِيلَ بْنِ هِشَامٍ يَذْكُرَانِ فِي خُطْبَتِهِمَا عُهْدَةَ الرَّقِيقِ فِي الْأَيَّامِ الثَّلَاثَةِ مِنْ حِينِ يَشْتَرِي الْعَبْدَ أَوْ الْوَلِيدَةَ وَعُهْدَةَ السَّنَةِ، وَيَأْمُرَانِ بِذَلِكَ.

L22248 And via the transmission chain of Ibn Wahb from Abd al-Rahman ibn Abi al-Zinad from his father, who said: Umar ibn Abd al-Aziz ruled regarding a slave who was purchased and died within three days, placing the liability upon the seller.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ قَالَ: قَضَى عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي عَبْدٍ اُشْتُرِيَ فَمَاتَ فِي الثَّلَاثَةِ الْأَيَّامِ فَجَعَلَهُ عُمَرُ مِنْ الَّذِي بَاعَهُ.

[9] **Qur’an references (L22242):** Qur’an 42:21 (Ash-Shuraa).

قَالَ ابْنُ وَهْبٍ: وَحَدَّثَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ، قَالَ: الْقُضَاةُ مُنْذُ أَدْرَكْنَا يَقْضُونَ فِي الْجُنُونِ وَالْجُذَامِ، وَالْبَرَصِ: سَنَةً.

L22249 Ibn Wahb said: Yunus narrated to me from Ibn Shihab, who said: "Jurists, since we have known, have ruled in cases of insanity, leprosy, and vitiligo: a waiting period of one year."

قَالَ ابْنُ شِهَابٍ: وَسَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: الْعِدَّةُ مِنْ كُلِّ دَاءٍ عُضَالٍ نَحْوَ الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ: سَنَةٌ.

L22250 Ibn Shihab said: I heard Saʿīd ibn al-Musayyib say: The prescribed waiting period [for rulings related to] chronic diseases such as insanity, leprosy, and vitiligo is one year.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي ابْنُ سَمْعَانَ، قَالَ: سَمِعْت رِجَالًا مِنْ عُلَمَائِنَا مِنْهُمْ يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ يَقُولُونَ: لَمْ تَزَلْ الْوُلَاةُ بِالْمَدِينَةِ فِي الزَّمَانِ الْأَوَّلِ يَقْضُونَ فِي الرَّقِيقِ بِعُهْدَةِ السَّنَةِ مِنْ الْجُنُونِ وَالْجُذَامِ، وَالْبَرَصِ إنْ ظَهَرَ بِالْمَمْلُوكِ شَيْءٌ فِي ذَلِكَ قَبْلَ أَنْ يَحُولَ الْحَوْلُ عَلَيْهِ فَهُوَ رَدٌّ إلَى الْبَائِعِ، وَيَقْضُونَ فِي عُهْدَةِ الرَّقِيقِ بِثَلَاثِ لَيَالٍ فَإِنْ حَدَثَ فِي الرَّأْسِ فِي تِلْكَ الثَّلَاثِ حَدَثٌ - مِنْ مَوْتٍ أَوْ سَقَمٍ - فَهُوَ مِنْ الْأَوَّلِ، وَإِنَّمَا كَانَتْ عُهْدَةُ الثَّلَاثِ مِنْ الرُّبْعِ، وَلَا يَسْتَبِينُ الرُّبْعُ إلَّا فِي ثَلَاثِ لَيَالٍ.

L22251–22253 Ibn Wahb said: Ibn Sam'ān informed me, saying: I heard men from our scholars—among them Yaḥyā ibn Saʿīd al-Anṣārī—they were saying: The rulers in Medina never ceased during the earlier period to adjudicate cases involving slaves under a one-year warranty that covered insanity, leprosy, and vitiligo. If any such condition manifested in the slave before... If a full year passes over it, it must be returned to the seller. They rule that the warranty period for slaves comprises three nights. If an incident occurs at the beginning of those three nights—whether death or illness—it is attributed to the original owner. The three-night warranty is derived from the quarter (three months), and the three-month period is not discernible except within three nights.

هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَمَا نَعْلَمُ لَهُمْ فِي ذَلِكَ شَيْئًا غَيْرَ مَا أَوْرَدْنَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ -: أَمَّا الْحَدِيثَانِ فَسَاقِطَانِ، لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ عُقْبَةَ بْنِ عَامِرٍ شَيْئًا قَطُّ، وَلَا سَمِعَ مِنْ سَمُرَةَ إلَّا حَدِيثَ الْعَقِيقَةِ فَصَارَا مُنْقَطِعَيْنِ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ.

L22254 This is all they have objected to, and we know of nothing they have in that regard besides what we have presented. None of it provides any valid proof for them in any part of it. As for the two ḥadīths, they are discarded because Ḥasan never heard anything from 'Uqbah ibn 'Āmir whatsoever, nor did he hear from Samurah except the 'Aqabah ḥadīth, rendering both chains disconnected. There is no valid proof in a disconnected chain.

وَقَدْ رُوِّينَاهُمَا بِغَيْرِ اللَّفْظِ، لَكِنْ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مَسْلَمَةُ بْنُ عَلِيٍّ عَمَّنْ حَدَّثَهُ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «عُهْدَةُ الرَّقِيقِ أَرْبَعَةُ أَيَّامٍ وَثَلَاثَةٌ» .

L22255 We have transmitted both of them without the exact wording, but as we have transmitted it through the chain of Ibn Wahb: Maslamah ibn Ali informed me from someone who narrated to him from Uqbah ibn Amir al-Juhani, who said: The Messenger of Allah—peace and blessings be upon him—said, "The warranty period for a slave is four days and three."

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ الْجَهْمِ نا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَطَاءٍ الْخَفَّافُ - نا هِشَامٌ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: عُهْدَةُ الرَّقِيقِ أَرْبَعُ لَيَالٍ.

L22256 From the chain of Qāsim ibn Aṣbagh: Muḥammad ibn al-Jahm narrated to us, ʿAbd al-Wahhāb narrated to us (i.e., Ibn ʿAṭāʾ al-Khaffāf), from Hishām,

from Qatādah, from al-Ḥasan, from ʿUqbah ibn ʿĀmir, who said: The warranty period for enslaved people is four nights.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ عَنْ الْحَسَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا عُهْدَةَ إلَّا بَعْدَ أَرْبَعَةِ أَيَّامٍ» .

L22257 And through the chain of Ḥammād ibn Salamah from Ziyād al-Aʿlam from al-Ḥasan that the Messenger of Allah—may Allah bless him and grant him peace—said: "There is no liability period except [one lasting] four days."

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا نَقَضُوا فِيهِ أُصُولَهُمْ فَإِنَّ الْحَنَفِيِّينَ يَقُولُونَ: الْمُنْقَطِعُ، وَالْمُتَّصِلُ: سَوَاءٌ، وَقَدْ تَرَكُوا هَهُنَا هَذِهِ الْأَخْبَارَ، وَمَا عَابُوهَا إلَّا بِالِانْقِطَاعِ فَقَطْ.

L22258 Abu Muhammad said: This is among the matters wherein they contradicted their principles, for the Ḥanafīs say: "The interrupted and the continuous are equivalent." Yet here they have abandoned these narrations, criticizing them only for interruption.

وَالْمَالِكِيُّونَ تَرَكُوا هَهُنَا الْأَخْذَ بِالزِّيَادَةِ، فَهَلَّا جَعَلُوا الْعُهْدَةَ أَرْبَعَ لَيَالٍ بِالْآثَارِ الَّتِي أَوْرَدْنَا؟ فَظَهَرَ تَنَاقُضُهُمْ وَأَنَّهُمْ لَا يَثْبُتُونَ عَلَى أَصْلٍ.

L22259 The Malikis abandoned adopting the addition here. Why did they not establish the liability period as four nights in accordance with the textual evidences we cited? Thus their contradiction became evident, exposing their failure to adhere to any foundational principle.

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَنَقُولُ: إنَّ اللَّهَ تَعَالَى افْتَرَضَ عَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبَيِّنَ لَنَا مَا نُزِّلَ إلَيْنَا وَمَا أَلْزَمَنَا إيَّاهُ، وَلَمْ يَجْعَلْ عَلَيْنَا فِي الدِّينِ مِنْ حَرَجٍ، وَقَوْلُ الْقَائِلِ " عُهْدَةُ الرَّقِيقِ ثَلَاثٌ " كَلَامٌ لَا يُفْهَمُ، وَلَا تَدْرِي " الْعُهْدَةَ " مَا هِيَ فِي لُغَةِ الْعَرَبِ، وَمَا فَهِمَ قَطُّ أَحَدٌ مِنْ قَوْلِ قَائِلٍ " عُهْدَةُ الرَّقِيقِ ثَلَاثَةُ أَيَّامٍ " أَنَّ مَعْنَاهُ مَا أَصَابَ الرَّقِيقَ الْمَبِيعَ فِي ثَلَاثَةِ أَيَّامٍ، فَمِنْ مُصِيبَةِ الْبَائِعِ، وَلَا يَعْقِلُ أَحَدٌ هَذَا الْحُكْمَ مِنْ هَذَا اللَّفْظِ - فَصَحَّ يَقِينًا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْهُ قَطُّ، وَلَوْ قَالَهُ لَبَيَّنَ عَلَيْنَا مَا أَرَادَ بِهِ.

L22260–22262 Ali said: As for us, we say: Indeed, Allah the Exalted enjoined upon His Messenger—may Allah bless him and grant him peace—to clarify for us what has been revealed to us and what He has made incumbent upon us, while imposing no hardship upon us in matters of religion. The statement "The 'uhdah for slaves is three" constitutes incomprehensible speech. One does not understand what "'uhdah" signifies in the Arabic language. Never has anyone comprehended from the utterance "The 'uhdah for slaves is three days" that its meaning refers to what befalls the sold slave within three days. Hence, from... It is a misfortune for the seller, and no one can comprehend this ruling from this wording. Thus, it was established with certainty that the Messenger of Allah (peace be upon him) never uttered it at all, for had he said it, he would have clarified to us what he meant by it.

وَلَا يَفْرَحُ الْحَنَفِيُّونَ بِهَذَا الِاعْتِرَاضِ فَإِنَّهُ إنَّمَا يَسُوغُ وَيَصِحُّ عَلَى أُصُولِنَا لَا عَلَى أُصُولِهِمْ؛ لِأَنَّ الْحَنَفِيِّينَ إذْ رَزَقَهُمْ اللَّهُ تَعَالَى عُقُولًا كَهَّنُوا بِهَا مَا مَعْنَى الْكَذِبِ الْمُضَافِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى عَنْ " الْبُتَيْرَاءِ " حَتَّى فَهِمُوا أَنَّ الْبُتَيْرَاءَ:

L22263 The Hanafis do not rejoice at this objection, for it is only tenable and valid according to our principles, not theirs. This is because when Allah Almighty granted the Hanafis intellects, they employed them to engage in baseless speculation about the meaning of the lie attributed to the Messenger of Allah (peace and blessings be upon him)—that he prohibited the "Butayrā"—until they claimed to understand that the Butayrā refers to performing Witr with

one rakʿah instead of three. Yet no human or jinn could deduce this from the mere term "Butayrā." They did not hesitate to multiply lies against the Messenger of Allah (peace and blessings be upon him) by reporting from him what he never stated about himself. So what prevents them from similarly conjecturing here about the meaning of al-ʿuhdah? There is no difference between the two matters.

هِيَ أَنْ يُوتِرَ الْمَرْءُ بِرَكْعَةٍ وَاحِدَةٍ لَا بِثَلَاثٍ، عَلَى أَنَّ هَذَا لَا يَفْهَمُهُ إِنْسِيٌّ وَلَا جِنِّيٌّ مِنْ لَفْظَةِ " الْبُتَيْرَاءِ " وَلَمْ يُبَالُوا بِالتَّزَيُّدِ مِنَ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْإِخْبَارِ عَنْهُ بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ، فَمَا الْمَانِعُ لَهُمْ مِنْ أَنْ يُكَهِّنُوا أَيْضًا هَهُنَا مَعْنَى الْعُهْدَةِ؟ فَمَا بَيْنَ الْأَمْرَيْنِ فَرْقٌ.

L22264 As for us, we do not derive the exposition of any matter of the religion except from the exposition of the Prophet—peace and blessings of Allah be upon him—alone. For his exposition alone constitutes the conclusive evidence for the one standing tomorrow before Allah the Exalted, and nothing else.

وَأَمَّا نَحْنُ فَلَا نَأْخُذُ بِبَيَانِ شَيْءٍ مِنَ الدِّينِ إِلَّا مِنْ بَيَانِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، فَهُوَ الَّذِي تَقُومُ بِهِ حُجَّةُ الْوَاقِفِ غَدًا بَيْنَ يَدَيِ اللَّهِ تَعَالَى لَا بِمَا سِوَاهُ.

L22265 As for the Mālikīs, they are—by their own assertion—proponents of analogy. The ruling concerning pre-emption in sales was established by the Messenger of Allah—may Allah's peace and blessings be upon him—and they analogized based on it to apply pre-emption in dowry matters through their personal opinions.

وَأَمَّا الْمَالِكِيُّونَ فَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَقَدْ جَاءَ الْحُكْمُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي الْبَيْعِ، فَقَاسُوا عَلَيْهِ الشُّفْعَةَ فِي الصَّدَاقِ بِآرَائِهِمْ.

L22266 The text explicitly specified the prohibition of hand amputation for theft of less than a quarter of a dinar. They analogized this ruling to the bridal gift (mahr) but did not apply the analogy to usurpation, and it bears closer resemblance to theft than to marriage in the judgment of every possessor of a sound intellect.

وَجَاءَ النَّصُّ بِتَحْدِيدِ الْمَنْعِ مِنَ الْقَطْعِ فِي سَرِقَةٍ أَقَلَّ مِنْ رُبْعِ دِينَارٍ فَقَاسُوا عَلَيْهِ الصَّدَاقَ وَلَمْ يَقِيسُوا عَلَيْهِ الْغَصْبَ وَهُوَ أَشْبَهُ بِالسَّرِقَةِ مِنَ النِّكَاحِ عِنْدَ كُلِّ ذِي مَسْكَةِ عَقْلٍ.

L22267 The text explicitly mentions usury in the six categories, so they applied analogy to cumin and almonds based on these categories. Why did they not analogize here to the report regarding the guarantee in slaves and other animals? But they neither adhere to the texts nor apply analogy properly! Among their curiosities here is that they analogized the case of one who gives his wife a slave or fruit as dowry after its soundness becomes apparent, then the slave dies, flees, or becomes defective before three days elapse, or the fruit suffers disaster exceeding a third. The wife must bear the loss from the disaster, but she has no claim regarding the slave under the three-day guarantee. This was indeed exceedingly peculiar.

وَقَدْ جَاءَ النَّصُّ بِالرِّبَا فِي الْأَصْنَافِ السِّتَّةِ فَقَاسُوا عَلَيْهَا: الْكَمُّونَ، وَاللَّوْزَ، فَهَلَّا قَاسُوا هَهُنَا عَلَى خَبَرِ " الْعُهْدَةِ " فِي الرَّقِيقِ سَائِرَ الْحَيَوَانِ؟ وَلَكِنْ لَا النُّصُوصَ يَلْتَزِمُونَ وَلَا الْقِيَاسَ يُحْسِنُونَ؟ وَمِنْ طَرَائِفِهِمْ هَهُنَا: أَنَّهُمْ قَاسُوا مَنْ أَصْدَقَ امْرَأَتَهُ عَبْدًا أَوْ ثَمَرَةً بَعْدَ أَنْ بَدَا صَلَاحُهَا فَمَاتَ الْعَبْدُ أَوْ أَبَقَ أَوْ أَصَابَهُ عَيْبٌ قَبْلَ انْقِضَاءِ ثَلَاثَةِ أَيَّامٍ، وَأُجِيحَتْ الثَّمَرَةُ بِأَكْثَرَ مِنَ الثُّلُثِ؟ فَلِلْمَرْأَةِ الْقِيَامُ بِالْجَائِحَةِ، وَلَا قِيَامَ لَهَا فِي الْعَبْدِ بِعُهْدَةِ الثَّلَاثِ - فَكَانَ " هَذَا طَرِيفًا جِدًّا.

L22268–22270 And in both matters, they have relied upon a textual report and a practice,

without any distinction? As for their argument that "the three-day custodial period" was instituted solely due to quartan fever, this must be one of two cases: either this rationale is self-derived or attributed to the Messenger of Allah (peace be upon him)—it must necessarily be [...] If they attribute one of the two to the Messenger of Allah—peace and blessings be upon him—that would be sheer falsehood warranting the Fire, even if they originated it from themselves? We said to them: Why then do you extend this ruling to a slave's absconding, death, and all other defects they acknowledge as indisputably contingent, such as losing an eye from a thrown object and the like of this? This is truly astonishing! This is not a matter for analogy due to the absence of a shared legal cause.

وَكِلَا الْأَمْرَيْنِ تَعَلَّقُوا فِيهِ بِخَبَرٍ وَعَمَلٍ وَلَا فَرْقَ؟ وَأَمَّا احْتِجَاجُهُمْ بِأَنَّ " عُهْدَةَ الثَّلَاثِ " إنَّمَا جُعِلَتْ مِنْ أَجْلِ حُمَّى الرِّبْعِ، فَلَا يَخْلُو مِنْ أَنْ تَكُونَ هَذِهِ الْعِلَّةُ مُخْرَجَةً مِنْ عِنْدِ أَنْفُسِهِمْ، أَوْ مُضَافَةً إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا بُدَّ مِنْ أَحَدِهِمَا، فَإِنْ أَضَافُوهَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ ذَلِكَ كَذِبًا بَحْتًا مُوجِبًا لِلنَّارِ، وَإِنْ كَانُوا أَخْرَجُوهَا مِنْ عِنْدِ أَنْفُسِهِمْ؟ قُلْنَا لَهُمْ: فَلِمَ تَعَدَّيْتُمْ بِالْحُكْمِ بِذَلِكَ إلَى الْإِبَاقِ، وَالْمَوْتِ، وَسَائِرِ الْعُيُوبِ الَّتِي يُقِرُّونَ بِأَنَّهَا حَادِثَةٌ بِلَا شَكٍّ، كَذَهَابِ الْعَيْنِ مِنْ رَمْيَةٍ، وَنَحْوِ ذَلِكَ؟ فَهَذَا عَجَبٌ جِدًّا؟ وَلَيْسَ هَذَا مَوْضِعَ قِيَاسٍ لِافْتِرَاقِ الْعِلَّةِ.

L22271 Furthermore, if you have done this due to this legal cause, we observe that you have discarded the transmitted report concerning this matter and confined yourselves to a rationale of utmost corruption? As for the narrations they disputed through, they have no valid connection to any of them, for no binding proof exists in anyone apart from the Messenger of Allah—peace and blessings be upon him. Moreover, Hishām ibn Ismāʿīl is among those whose narrations we do not know to constitute binding proof—how then could his sermon be considered so? Regarding Abān ibn ʿUthmān's sermon on that matter—we find that they opposed Abān in his ruling that a single irrevocable divorce (al-battah) suffices, in his invalidation of the intoxicated person's divorce, and in other matters. Thus, Abān's ruling is sometimes considered authoritative and sometimes not—this constitutes severe confusion and an impermissible practice.

وَأَيْضًا: فَإِنْ كُنْتُمْ فَعَلْتُمْ ذَلِكَ لِهَذِهِ الْعِلَّةِ فَنَرَاكُمْ قَدْ اطَّرَحْتُمْ الْخَبَرَ الْوَارِدَ فِي ذَلِكَ وَاقْتَصَرْتُمْ عَلَى عِلَّةٍ فِي غَايَةِ الْفَسَادِ؟ ؟ وَأَمَّا الْآثَارُ الَّتِي شَغَبُوا بِهَا فَلَا مُتَعَلَّقَ لَهُمْ بِشَيْءٍ مِنْهَا، لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَيْضًا - فَإِنَّ هِشَامَ بْنَ إسْمَاعِيلَ مِمَّنْ لَا نَعْلَمُهُ تَجِبُ الْحُجَّةُ بِرِوَايَتِهِ فَكَيْفَ بِخُطْبَتِهِ؟ وَأَمَّا خُطْبَةُ أَبَانَ بْنِ عُثْمَانَ بِذَلِكَ - فَعَهْدُنَا بِهِمْ قَدْ خَالَفُوا أَبَانًا فِي قَوْلِهِ: إنَّ أَلْبَتَّةَ فِي الطَّلَاقِ وَاحِدَةٌ، وَفِي إبْطَالِهِ طَلَاقُ السَّكْرَانِ، وَغَيْرِ ذَلِكَ: فَمَرَّةً يَكُونُ حُكْمُ أَبَانَ حُجَّةً، وَمَرَّةً لَا يَكُونُ حُجَّةً - وَهَذَا تَخْلِيطٌ شَدِيدٌ وَعَمَلٌ لَا يَحِلُّ.

L22272 As for Umar ibn Abd al-Aziz, the narration from him regarding this matter is invalid because it comes through Ibn Abi al-Zinad—the first to weaken his transmissions was Malik (who is himself very weak). They discarded the rulings of Umar ibn Abd al-Aziz that were firmly established from him, while the Sunnah aligns with his public command for people to prostrate at "When the sky is split apart" and his very many other legal rulings. Now he has become a proof here, though he was not accepted as proof there. How reprehensible is this action in religion.

وَأَمَّا عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فَالرِّوَايَةُ عَنْهُ بِذَلِكَ سَاقِطَةٌ، لِأَنَّهَا مِنْ طَرِيقِ ابْنِ أَبِي الزِّنَادِ، وَأَوَّلُ مَنْ ضَعَّفَ رِوَايَتَهُ فَمَالِكٌ - وَهُوَ ضَعِيفٌ جِدًّا - وَهُمْ قَدْ اطَّرَحُوا حُكْمَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ الثَّابِتَ عَنْهُ، وَالسُّنَّةُ مَعَهُ فِي أَمْرِهِ النَّاسَ عَلَانِيَةً بِالسُّجُودِ فِي " إذَا السَّمَاءُ انْشَقَّتْ " وَغَيْرِ ذَلِكَ مِنْ أَحْكَامِهِ كَثِيرٌ جِدًّا، فَالْآنَ صَارَ حُجَّةً وَهُنَالِكَ لَيْسَ حُجَّةً، مَا أَقْبَحَ هَذَا الْعَمَلَ فِي الدِّيَانَةِ.

L22273 As for the statement of Yaḥyā ibn Saʿīd al-Anṣārī, it is from the narration of Ibn Samʿān, who is notorious for falsehood - it is impermissible to narrate from him. As for the statements of al-Zuhrī and Saʿīd ibn al-Musayyab: they are authentically transmitted from both, but there exists no valid proof in religious matters through anyone's opinion apart from the Messenger of Allah - peace and blessings of Allah be upon him. Saʿīd's opinion contradicts theirs, for he considered the one-year liability period applicable to every chronic disease without restricting it specifically to insanity, leprosy, or vitiligo. Every rational being knows that gangrene, mortal wounds, and swellings are among chronic diseases. Thus all their pretexts are invalidated, and we find no basis whatsoever in the one-year liability period regarding the mentioned diseases - neither any primary evidence, nor a Companion's ruling, nor analogical reasoning.

وَأَمَّا قَوْلُ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، فَمِنْ رِوَايَةِ ابْنِ سَمْعَانَ، وَهُوَ مَذْكُورٌ بِالْكَذِبِ لَا تَحِلُّ الرِّوَايَةُ عَنْهُ. وَأَمَّا قَوْلُ الزُّهْرِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ: فَصَحِيحٌ عَنْهُمَا، وَلَا حُجَّةَ فِي الدِّينِ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوْلُ سَعِيدٍ مُخَالِفٌ لَهُمْ؛ لِأَنَّهُ رَأَى عُهْدَةَ السَّنَةِ مِنْ كُلِّ دَاءٍ عُضَالٍ، وَلَمْ يَخُصَّ الْجُنُونَ، وَالْجُذَامَ، وَالْبَرَصَ فَقَطْ، وَقَدْ عَلِمَ كُلُّ ذِي حِسٍّ أَنَّ الْأَكَلَةَ، وَالْجِرْبَةَ، وَالْأَدْرَةَ: مِنْ الْأَدْوَاءِ الْعُضَالِ، فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ، وَمَا نَعْلَمُ لَهُمْ فِي عُهْدَةِ السَّنَةِ مِنْ الْأَدْوَاءِ الْمَذْكُورَةِ أَثَرًا أَصْلًا، وَلَا قَوْلَ صَاحِبٍ، وَلَا قِيَاسًا.

L22274–22275 And some of them said: These diseases do not manifest clearly except after a full year.

وَقَالَ بَعْضُهُمْ: هَذِهِ الْأَدْوَاءُ لَا تَظْهَرُ بِبَيَانٍ إلَّا بَعْدَ عَامٍ.

L22276 Abu Muhammad said: This is a false claim and a statement without proof. Whatever is as such, its ruling is that it must be discarded, and it is not permissible to act upon it. This has never been recognized - not in medicine, nor in the Arabic language, nor in Sharia.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ دَعْوَى كَاذِبَةٌ، وَقَوْلٌ بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَحُكْمُهُ الْإِطْرَاحُ، وَلَا يَحِلُّ الْأَخْذُ بِهِ، وَمَا عُلِمَ هَذَا قَطُّ، لَا فِي طِبٍّ، وَلَا فِي لُغَةٍ عَرَبِيَّةٍ، وَلَا فِي شَرِيعَةٍ.

L22277 Ali said: They also mentioned what we have narrated via the chain of Al-Ḥajjāj ibn Al-Minhāl, from Hammām, from Qatādah that he used to say: If one observes a defect within three nights, he must return the defective item without evidence. However, if he observes a defect after three nights, he must not return it except with evidence.

قَالَ عَلِيٌّ: وَذَكَرُوا أَيْضًا: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامٌ عَنْ قَتَادَةَ أَنَّهُ كَانَ يَقُولُ: إنْ رَأَى عَيْبًا فِي ثَلَاثِ لَيَالٍ رَدَّ بِغَيْرِ بَيِّنَةٍ، وَإِنْ رَأَى عَيْبًا بَعْدَ ثَلَاثٍ لَمْ يَرُدَّ إلَّا بِبَيِّنَةٍ.

L22278 From the narration of Ḥammād ibn Salamah, from Ḥumayd, from ʿAbd al-Malik ibn Yaʿlā regarding one who purchases a slave and finds him insane: He said, "If this [defect] becomes apparent within the year, the buyer may compel the seller to swear by Allah, 'I sold him while he was free from insanity.' If it emerges after the year, the seller's oath by Allah—based on his knowledge [at the time of sale]—suffices."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ عَبْدِ الْمَلِكِ بْنِ يَعْلَى فِيمَنْ ابْتَاعَ غُلَامًا فَوَجَدَهُ مَجْنُونًا؟ قَالَ: إنْ ظَهَرَ ذَلِكَ فِي السَّنَةِ فَإِنَّهُ يَسْتَحْلِفُ الْبَائِعَ لَقَدْ بَاعَهُ وَمَا بِهِ جُنُونٌ، وَإِنْ كَانَ بَعْدَ السَّنَةِ فَيَمِينُهُ بِاَللَّهِ عَلَى عِلْمِهِ.

L22279 Some of them mentioned that ʿUmar ibn al-Khaṭṭāb and Ibn al-Zubayr were asked about the option period (al-ʿuhdah), and they said: "We find no better

example than the hadith of Ḥibbān ibn Munqidh when he was deceived in sales. The Prophet (peace be upon him) granted him the option for three days: if he wishes, he may keep [the item], and if he wishes, he may rescind [the sale]."

وَذَكَرَ بَعْضُهُمْ أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَابْنَ الزُّبَيْرِ سُئِلَا عَنْ الْعُهْدَةِ فَقَالَا: لَا نَجِدُ أَمْثَلَ مِنْ حَدِيثِ «حِبَّانَ بْنِ مُنْقِذٍ إذْ كَانَ يُخْدَعُ فِي الْبُيُوعِ فَجَعَلَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْخِيَارَ ثَلَاثًا إنْ شَاءَ أَخَذَ وَإِنْ شَاءَ رَدَّ» .

L22280 And a report from ʿAlī ibn Abī Ṭālib that he deferred [the case of] the girl afflicted with leprosy and the [specific] disease for a year.

وَخَبَرٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَجَّلَ الْجَارِيَةَ بِهَا الْجُذَامُ، وَالدَّاءُ: سَنَةً.

L22281 Ali said: "None of this constitutes a valid argument for them. As for the report of ʿUmar and Ibn al-Zubayr, there is no indication that they endorse their stance at all. Rather, it demonstrates that it contradicts their opinion, since the two of them clarified it in accordance with the ḥadīth of Ḥabbān ibn Munqidh."

قَالَ عَلِيٌّ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا خَبَرُ عُمَرَ، وَابْنِ الزُّبَيْرِ، فَلَا بَيَانَ فِيهِ بِأَنَّهُمَا يَقُولَانِ بِقَوْلِهِمْ أَصْلًا، بَلْ فِيهِ أَنَّهُ خِلَافُ قَوْلِهِمْ " لِأَنَّهُمَا بَيَّنَاهُ عَلَى حَدِيثِ حِبَّانَ بْنِ مُنْقِذٍ ".

L22282 The Malikis contradict that report. The statements of ʿUmar and Ibn al-Zubayr constitute conclusive evidence against them, as there is absolutely no conformity in the report with their position whatsoever. This is because it mentions only the choice between returning and accepting, without any reference to the existence of a defect, nor does it restrict this ruling to slaves rather than other matters. Thus, it stands as conclusive evidence against them, not for them.

وَالْمَالِكِيُّونَ مُخَالِفُونَ لِذَلِكَ الْخَبَرِ، فَقَوْلُ عُمَرَ، وَابْنِ الزُّبَيْرِ: حُجَّةٌ عَلَيْهِمْ، وَلَا وِفَاقَ فِيهِ لِقَوْلِهِمْ أَصْلًا لِأَنَّهُ إنَّمَا فِيهِ الْخِيَارُ بَيْنَ الرَّدِّ وَالْأَخْذِ فَقَطْ، دُونَ ذِكْرِ وُجُودِ عَيْبٍ، وَلَا فِيهِ تَخْصِيصٌ لِلرَّقِيقِ دُونَ سَائِرِ ذَلِكَ، فَهُوَ حُجَّةٌ عَلَيْهِمْ لَا لَهُمْ.

L22283 And we uphold this position when the purchaser states what Munqidh was instructed to say.

وَنَحْنُ نَقُولُ بِهَذَا إذَا قَالَ الْمُشْتَرِي: مَا أُمِرَ مُنْقِذٌ أَنْ يَقُولَهُ.

L22284–22286 As for the narration of ʿAlī: there is even nothing in it that indicates agreement with their opinion, nor is there any mention of rejection whatsoever. They deceive by using a report containing wording resembling some expressions from their own positions, causing those who do not examine carefully to presume it aligns with their stance—though it does not. Rather, it predominantly opposes their position, or it may neither align nor conflict with it, as is also the case.

وَأَمَّا خَبَرُ عَلِيٍّ: فَلَيْسَ فِيهِ أَيْضًا شَيْءٌ يَدُلُّ عَلَى مُوَافَقَةِ قَوْلِهِمْ، وَلَا ذِكْرُ رَدٍّ أَصْلًا، وَإِنَّمَا يُمَوِّهُونَ بِالْخَبَرِ يَكُونُ فِيهِ لَفْظٌ كَبَعْضِ أَلْفَاظِ قَوْلِهِمْ، فَيَظُنُّ مَنْ لَا يُمْعِنُ النَّظَرَ أَنَّ ذَلِكَ الْخَبَرَ مُوَافِقٌ لِقَوْلِهِمْ، وَلَيْسَ هُوَ كَذَلِكَ، بَلْ هُوَ مُخَالِفٌ لِقَوْلِهِمْ فِي الْأَكْثَرِ، أَوْ لَا مُوَافِقٌ وَلَا مُخَالِفٌ كَذَلِكَ أَيْضًا.

L22287 Abu Muhammad said: Ibn Jurayj reported that he asked Al-Zuhri about the guarantee period of three [days/months] and a year. He replied, "I know of no established precedent regarding this matter."

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رَوَى ابْنُ جُرَيْجٍ أَنَّهُ سَأَلَ الزُّهْرِيَّ عَنْ عُهْدَةِ الثَّلَاثِ وَالسَّنَةِ؟ فَقَالَ: مَا عَلِمْت فِيهِ أَمْرًا سَالِفًا.

L22288 Ibn Jurayj said, “I asked ʿAṭāʾ about that matter.” He replied, “There was no prior liability concerning the land.” I inquired, “What is the ruling for three days?” He responded, “No obligation applies.”

L22289 Ali said: Allah, the Exalted, said: {No soul earns [sin] except against itself, and no bearer of burdens will bear the burden of another} [Al-An’am 6:164]. It is therefore null and void for a female slave to be owned by Zayd (for whom her sexual relations are lawful), while her legal responsibility rests upon Khālid. Far removed is Allah from this.[10]

L22290 It has been authentically reported from Ibn ‘Umar: “If I found the transaction alive and gathered, it belongs to the buyer”—with no opposing view to it known from the Companions (may Allah be pleased with them).

L22291 We have reported it through the chain of Ibn Wahb from Yunus ibn Yazid from al-Zuhri from Hamzah ibn Abdullah ibn Umar from his father (and this nullifies the three-day waiting period and the one-year period) - and with Allah alone is success, the Exalted.

L22292 Abu Muhammad said: Then we say to them: Inform us about the ruling concerning the trust of the three and the year—is it a Sunnah and an obligation, or is it neither a Sunnah nor an obligation, with one of the two necessarily unavoidable? If they say: “It is a Sunnah and an obligation,” we say: Then how did you deem it permissible to refrain from ruling by it in lands whose inhabitants have agreed to abandon ruling by it? When have you ever seen a Sunnah that is allowed to be neglected or opposed by people? Allah is exalted above such a thing.

L22293 If they say, “This is neither Sunnah nor a rightful claim,” we reply: On what basis have you legitimized seizing people’s forbidden wealth to forcibly transfer it to others? Perhaps the one judged against is a destitute and ruined individual, while the claimant is a wealthy arrogant man. The Messenger of Allah—peace and blessings be upon him—declared: “Your blood and wealth are inviolable upon you.” Yet you have annulled valid transactions through

قَالَ ابْنُ جُرَيْجٍ: وَسَأَلْت عَطَاءً عَنْ ذَلِكَ؟ فَقَالَ: لَمْ يَكُنْ فِيمَا مَضَى عُهْدَةٌ فِي الْأَرْضِ، قُلْت: فَمَا ثَلَاثَةُ أَيَّامٍ؟ قَالَ: لَا شَيْءَ.

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى: {وَلا تكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَمِنْ الْبَاطِلِ أَنْ تَكُونَ جَارِيَةٌ مِلْكُهَا لِزَيْدٍ وَفَرْجُهَا لَهُ حَلَالٌ وَيَكُونَ ضَمَانُهَا عَلَى خَالِدٍ، حَاشَ لِلَّهِ مِنْ هَذَا.

وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ: مَا أَدْرَكْت الصَّفْقَةَ حَيًّا مَجْمُوعًا فَهُوَ مِنْ الْمُبْتَاعِ - وَلَا يُعْلَمُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ عَنْ حَمْزَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ - وَهَذَا يُبْطِلُ عُهْدَةَ الثَّلَاثِ، وَالسَّنَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَقُولُ لَهُمْ: أَخْبِرُونَا عَنْ الْحُكْمِ بِعُهْدَةِ الثَّلَاثِ، وَالسَّنَةِ: أَسُنَّةٌ هُوَ وَحَقٌّ أَمْ لَيْسَ سُنَّةً وَلَا حَقًّا، وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ فَإِنْ قَالُوا: هُوَ سُنَّةٌ وَحَقٌّ؟ قُلْنَا: فَمِنْ أَيْنَ اسْتَحْلَلْتُمْ أَنْ لَا تَحْكُمُوا بِهَا فِي الْبِلَادِ الَّتِي اصْطَلَحَ أَهْلُهَا عَلَى تَرْكِ الْحُكْمِ بِهَا فِيهَا؟ وَمَتَى رَأَيْتُمْ سُنَّةً يُفْسَحُ لِلنَّاسِ فِي تَرْكِهَا وَمُخَالَفَتِهَا؟ حَاشَ لِلَّهِ مِنْ هَذَا.

وَإِنْ قَالُوا: لَيْسَتْ سُنَّةً وَلَا حَقًّا؟ قُلْنَا: بِأَيِّ وَجْهٍ اسْتَحْلَلْتُمْ أَنْ تَأْخُذُوا بِهَا أَمْوَالَ النَّاسِ الْمُحَرَّمَةَ فَتُعْطُوهَا غَيْرَهُمْ بِالْكُرْهِ مِنْهُمْ؟ وَلَعَلَّ الْمَحْكُومَ عَلَيْهِ فَقِيرٌ هَالِكٌ، وَالْمَحْكُومَ لَهُ غَنِيٌّ أَشِرٌ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ

[10] **Qur’an references (L22289):** Qur’an 6:164 (Al-An’am).

what is neither Sunnah nor truth, since you permitted abandoning judgment according to the Sunnah and rightful claim. There is no escape for you from either of them. This is as you see.

حَرَامٌ» فَفَسَخْتُمْ الْبُيُوعَ الصَّحِيحَةَ بِمَا لَيْسَ سُنَّةً وَلَا حَقًّا، إذْ أَبَحْتُمْ تَرْكَ الْحُكْمِ بِالسُّنَّةِ وَالْحَقِّ، وَلَا مُخَلِّصَ لَكُمْ مِنْ أَحَدِهِمَا، وَهَذَا كَمَا تَرَى.

L22294–22295 As for Mālik's ruling on crop blights: no precedent is known from any predecessor concerning the division he mentioned—between fruits and cucurbits, and between vegetables and bananas. His opinion on this matter finds no support in the Quran, the Sunnah, any unsound narration whatsoever, the view of any earlier scholar, analogical reasoning (qiyas), or any valid legal opinion.

وَأَمَّا قَوْلُ مَالِكٍ فِي الْجَوَائِحِ: فَإِنَّهُ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ مِمَّا ذَكَرْنَا عَنْهُ مِنْ التَّقْسِيمِ بَيْنَ الثِّمَارِ، وَالْمَقَاثِي، وَبَيْنَ الْبُقُولِ، وَالْمَوْزِ وَلَا يُعَضِّدُ قَوْلَهُ فِي ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ أَصْلًا، وَلَا قَوْلُ أَحَدٍ مِمَّنْ سَلَفَ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L22296 They have weak narrations regarding the allocation of the third, which we will also mention—if Allah, the Exalted, wills—and explain their weakness. Our position on this matter is the view of Abū Ḥanīfah, Sufyān al-Thawrī, Abī Sufyān, one of the two opinions of al-Shāfiʿī, and the opinion of the majority of the Salaf.

وَلَهُمْ فِي تَخْصِيصِ الثُّلُثِ آثَارٌ سَاقِطَةٌ نَذْكُرُهَا أَيْضًا إنْ شَاءَ اللَّهُ تَعَالَى وَنُبَيِّنُ وَهْيَهَا - وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُفْيَانَ - وَأَحَدِ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلِ جُمْهُورِ السَّلَفِ.

L22297 As has been narrated to us through the chain of Abu Ubaydah - Abdullah ibn Salih narrated from al-Layth ibn Sa'd - Abu Bakr ibn Sahl ibn Hunayf informed me that the members of his household would impose liability for calamities (al-jā'iḥah) upon the buyer. Al-Layth said: "It reached me that Uthman ibn Affan ruled that the calamity (al-jā'iḥah) is borne by the buyer."

كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدَةَ نا عَبْدُ اللَّهِ بْنُ صَالِحٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ أَخْبَرَنِي أَبُو بَكْرِ بْنُ سَهْلِ بْنِ حُنَيْفٍ أَنَّ أَهْلَ بَيْتِهِ كَانُوا يُلْزِمُونَ الْمُشْتَرِيَ الْجَائِحَةَ - قَالَ اللَّيْثُ: وَبَلَغَنِي عَنْ عُثْمَانَ بْنِ عَفَّانَ أَنَّهُ قَضَى بِالْجَائِحَةِ عَلَى الْمُشْتَرِي.

L22298 Abu Muhammad said: Ahmad ibn Hanbal, Abu Ubayd, and Al-Shafi'i—in the initial part of his statement—held the view that the remission of calamity affecting fruits from the buyer is mandated, whether minor or extensive. This opinion of his is supported by an authentic narration, which we shall mention, God willing, and elucidate its rationale and ruling by the power and strength of God Almighty.

قَالَ أَبُو مُحَمَّدٍ: وَذَهَبَ أَحْمَدُ بْنُ حَنْبَلٍ: وَأَبُو عُبَيْدٍ، وَالشَّافِعِيُّ، فِي أَوَّلِ قَوْلِهِ إلَى حَطِّ الْجَائِحَةِ فِي الثِّمَارِ عَنْ الْمُشْتَرِي - قَلَّتْ أَوْ كَثُرَتْ - وَهَذَا قَوْلٌ لَهُ مُتَعَلَّقٌ بِأَثَرٍ صَحِيحٍ، نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى وَنُبَيِّنُ وَجْهَهُ وَحُكْمَهُ بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

L22299 It has been narrated to us through the chain of Muslim ibn al-Ḥajjāj: Muḥammad ibn ʿAbbād reported to us; Abū Ḍamrah reported to us from Ibn Jurayj from Abū al-Zubayr that he heard Jābir ibn ʿAbd Allāh say: The Messenger of Allah (peace and blessings of Allah be upon him) said: "If you sell fruit **to** your brother and it is struck by **a destructive calamity**, it is not lawful for you to **demand payment from him**. By what right do you take your brother's property without legitimate claim?"

رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا مُحَمَّدُ بْنُ عَبَّادٍ نا أَبُو ضَمْرَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْ بِعْتَ مِنْ أَخِيكَ ثَمَرًا فَأَصَابَتْهُ جَائِحَةٌ فَلَا يَحِلُّ أَنْ تَأْخُذَ مِنْهُ شَيْئًا، بِمَ تَأْخُذُ مَالَ أَخِيكَ بِغَيْرِ حَقٍّ؟» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا بِشْرُ بْنُ الْحَكَمِ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ حُمَيْدٍ الْأَعْرَجِ عَنْ سُلَيْمَانَ بْنِ عَتِيقٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِوَضْعِ الْجَوَائِحِ» .

L22300 And through the transmission of Muslim: Bishr ibn al-Ḥakam reported to us, Sufyān—who is Ibn ʿUyaynah—reported to us, from Ḥumayd al-Aʿraj, from Sulaymān ibn ʿAtīq, from Jābir ibn ʿAbd Allāh: "That the Prophet—peace and blessings be upon him—commanded the waiver for crop disasters."

قَالَ عَلِيٌّ: وَهَذَانِ أَثَرَانِ صَحِيحَانِ.

L22301 Ali said, "These two are authentic narrations."

وَقَالُوا أَيْضًا: عَلَى بَائِعِ الثَّمَرَةِ إسْلَامُهَا إلَى الْمُشْتَرِي طَيِّبَةً كُلَّهَا فَإِذَا لَمْ يَفْعَلْ، سَقَطَ عَنْ الْمُشْتَرِي بِمِقْدَارِ مَا لَمْ يُسَلَّمْ إلَيْهِ كَمَا يَلْزَمُ.

L22302 They also said: The seller is obligated to formally deliver the entire fruit to the buyer in a wholly wholesome condition. If the seller fails to do so, the buyer is relieved of their obligation proportionally to the undelivered portion, as necessitated by the ruling.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ أَنَسِ بْنِ عِيَاضٍ أَنَّ أَبَا إِسْحَاقَ مُقَدَّمًا مَوْلَى أُمِّ الْحَكَمِ بِنْتِ عَبْدِ الْحَكَمِ حَدَّثَهُ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى بِوَضْعِ الْجَوَائِحِ.

L22303–22304 Via the chain of Ibn Wahb from Anas ibn Iyad: Abu Ishaq al-Muqaddam, the client of Umm al-Hakam bint Abd al-Hakam, narrated to him that Umar ibn Abd al-Aziz decreed the remission of tax obligations due to crop calamities.

وَبِهِ إلَى ابْنِ وَهْبٍ عَنْ عُثْمَانَ بْنِ الْحَكَمِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: الْجَوَائِحُ كُلُّ ظَاهِرٍ مُفْسِدٍ مِنْ مَطَرٍ أَوْ بَرَدٍ أَوْ رِيحٍ أَوْ حَرِيقٍ أَوْ جَرَادٍ.

L22305 Narrated by Ibn Wahb, from Uthman ibn al-Hakam, from Ibn Jurayj, from Ata, who said: "Agricultural disasters refer to every widespread ruinous event, such as excessive rain, hail, destructive winds, wildfires, or locusts."

قَالَ أَبُو مُحَمَّدٍ: إنْ لَمْ يَأْتِ مَا يُبَيِّنُ أَنَّ هَذَيْنِ الْخَبَرَيْنِ الْمَذْكُورَيْنِ عَلَى غَيْرِ ظَاهِرِهِمَا وَإِلَّا فَلَا يَحِلُّ خِلَافُ مَا فِيهِمَا، وَعَلَى كُلِّ حَالٍ فَلَا حُجَّةَ فِيهِمَا لِقَوْلِ مَالِكٍ، بَلْ هُمَا حُجَّةٌ عَلَيْهِ؛ لِأَنَّهُ لَيْسَ فِيهِمَا تَخْصِيصُ ثُلُثٍ مِنْ غَيْرِهِ.

L22306 Abū Muḥammad said: If no evidence emerges to clarify that these two mentioned narrations contradict their apparent meaning, then it is impermissible to contravene their rulings. In any case, they provide no proof for Mālik's opinion; rather, they constitute proof against him, as they do not specify a third distinct from the remainder.

فَنَظَرْنَا هَلْ جَاءَ فِي هَذَا الْحُكْمِ غَيْرُ هَذَيْنِ الْخَبَرَيْنِ؟ فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثُ بْنُ سَعْدٍ عَنْ بُكَيْرٍ - هُوَ ابْنُ الْأَشَجِّ - عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: «أُصِيبَ رَجُلٌ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ثِمَارٍ ابْتَاعَهَا، فَكَثُرَ دَيْنُهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: تَصَدَّقُوا عَلَيْهِ

L22307 We examined whether there were any reports besides these two narrations regarding this ruling. We found what we have narrated through Imam Muslim's chain: Qutaybah ibn Saʿīd narrated to us, Layth ibn Saʿd narrated to us, from Bukayr — who is Ibn al-Ashajj — from ʿIyāḍ ibn ʿAbd Allāh, from Abū Saʿīd al-Khudrī, who said: "A man during the time of the Messenger of Allāh — Peace and Blessings be upon Him — suffered a loss in fruits he had purchased, and his debts multiplied. The Messenger of Allāh — Peace and Blessings be upon Him — said: 'Give charity to him.' The people gave him

charity, but it did not suffice to settle his debt. The Messenger of Allāh — Peace and Blessings be upon Him — then said to his creditors: 'Take what you find, and you are entitled to nothing beyond that.'" Did the Messenger of Allāh — Peace and Blessings be upon Him — not take out from his own wealth for the creditors, without waiving anything from the debtor due to the agricultural calamity? We then examined this narration alongside the two preceding narrations of Jābir.[11]

فَتَصَدَّقَ النَّاسُ عَلَيْهِ فَلَمْ يَبْلُغْ ذَلِكَ وَفَاءَ دَيْنِهِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِغُرَمَائِهِ: خُذُوا مَا وَجَدْتُمْ وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ» فَأَخْرَجَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ مَالِهِ لِغُرَمَائِهِ، وَلَمْ يُسْقِطْ عَنْهُ لِأَجْلِ الْجَائِحَةِ شَيْئًا؟ فَنَظَرْنَا فِي هَذَا الْخَبَرِ مَعَ خَبَرَيْ جَابِرٍ الْمُتَقَدِّمَيْنِ.

L22308 We found two reports from the chains of Jābir and Anas that came with a clarification reconciling all these reports—by the praise of Allah, the Exalted.

فَوَجَدْنَا خَبَرَيْنِ مِنْ طَرِيقِ جَابِرٍ، وَأَنَسٍ، قَدْ وَرَدَا بِبَيَانٍ تَتَأَلَّفُ بِهِ هَذِهِ الْأَخْبَارُ كُلُّهَا - بِحَمْدِ اللَّهِ تَعَالَى.

L22309 As we were narrated through the chain of Muslim: Abu Tahir reported to me - I am Ibn Wahb - Malik informed me from Humaid at-Tawil from Anas that "Allah's Messenger - peace and blessings be upon him - prohibited selling fruit until it begins to show color." They asked: "What is 'showing color'?" He replied: "When it turns red. Do you not see - if Allah prevents the fruit from maturing, by what means do you claim lawful ownership of your brother's property?"

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي مَالِكٌ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الثَّمَرِ حَتَّى تُزْهِيَ قَالُوا: وَمَا تُزْهِي؟ قَالَ: تَحْمَرُّ، أَرَأَيْتَ إِذَا مَنَعَ اللَّهُ الثَّمَرَةَ بِمَ تَسْتَحِلُّ مَالَ أَخِيكَ؟» .

L22310–22312 And from the path of Ahmad ibn Shu'ayb: Qutaybah informed us: Sufyan—he is Ibn Uyaynah—informed us from Humaid al-A'raj. From Jābir, through Sulaymān ibn 'Atīq: "The Prophet—peace and blessings of Allah be upon him—forbade selling fruit for multiple years." These two narrations confirm that the crop failures the Messenger of Allah—peace and blessings of Allah be upon him—commanded to be waived are those affecting fruit sold for multiple years before it blooms. The calamity not waived—holding the buyer fully responsible for the loss and requiring him to bear it entirely—is that which strikes the sold fruit after its ripeness becomes evident and its sale becomes permissible. Success is attained only through Allah, the Exalted.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنَا قُتَيْبَةُ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ حُمَيْدٍ الْأَعْرَجِ عَنْ سُلَيْمَانَ بْنِ عَتِيقٍ عَنْ جَابِرٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الثَّمَرِ السِّنِينَ» . فَصَحَّ بِهَذَيْنِ الْخَبَرَيْنِ أَنَّ الْجَوَائِحَ الَّتِي أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِوَضْعِهَا هِيَ الَّتِي تُصِيبُ مَا بِيعَ مِنْ الثَّمَرِ سِنِينَ، وَقَبْلَ أَنْ يُزْهِيَ، وَأَنَّ الْجَائِحَةَ الَّتِي لَمْ يُسْقِطْهَا وَأَلْزَمَ الْمُشْتَرِيَ مُصِيبَتَهَا، وَأَخْرَجَهُ عَنْ جَمِيعِ مَالِهِ بِهَا -: هِيَ الَّتِي تُصِيبُ الثَّمَرَ الْمَبِيعَ بَعْدَ ظُهُورِ الطَّيِّبِ فِيهِ وَجَوَازِ بَيْعِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22313 Moreover, the Messenger of Allah - peace and blessings be upon him - said: "If you sell dates to your brother and a calamity befalls them, it is not lawful for you to take anything from him." He - peace be upon him - did not

وَأَيْضًا: فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَوْ بِعْتَ مِنْ أَخِيكَ تَمْرًا فَأَصَابَتْهُ جَائِحَةٌ فَلَا يَحِلُّ لَكَ أَنْ تَأْخُذَ مِنْهُ شَيْئًا» فَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - شَجَرًا فِي وَرِقِهِ

[11] **Hadith references (L22307):** Sahih Muslim 1556a; Jami at-Tirmidhi 655.

مِنْ ثَمَرٍ مَوْضُوعٍ الْأَرْضِ وَهُمْ يَخُصُّونَ ذَلِكَ بِآرَائِهِمْ، فَقَدْ صَحَّ خِلَافُهُمْ لِهَذَا الْخَبَرِ وَتَخْصِيصُهُمْ لَهُ، وَبَطَلَ احْتِجَاجُهُمْ بِهِ عَلَى عُمُومِهِ وَالْأَخْذُ فِيهِ.

distinguish between a tree in its foliage and harvested fruits deposited on the ground, yet they have specified this distinction through their opinions. Thus, their disagreement with this report and their specification of it have been confirmed, invalidating their argument against its general applicability and their juristic application thereof.

وَأَمَرَ بِوَضْعِ الْجَوَائِحِ وَلَمْ يَذْكُرْ فِي ثَمَرٍ وَلَا فِي غَيْرِهِ، وَلَا فِي أَيِّ جَائِحَةٍ هُوَ - فَصَحَّ أَنَّهُمْ مُخَالِفُونَ لَهُ أَيْضًا، وَبَطَلَ أَنْ يَحْتَجُّوا بِهِ عَلَى عُمُومِهِ، وَصَارَ قَوْلُهُمْ، وَقَوْلُنَا فِي هَذَيْنِ الْخَبَرَيْنِ سَوَاءً فِي تَخْصِيصِهِمْ، إِلَّا أَنَّهُمْ خَصُّوهُمَا بِلَا دَلِيلٍ؟ قَالَ أَبُو مُحَمَّد: وَالْخَسَارَةُ لِانْحِطَاطِ السِّعْرِ جَائِحَةٌ بِلَا شَكٍّ، وَهُمْ لَا يَضَعُونَ عَنْهُ شَيْئًا لِذَلِكَ - وَأَمَّا قَوْلُهُمْ عَلَى الْبَائِعِ أَنْ يُسَلِّمَهَا طَيِّبَةً إلَى الْمُشْتَرِي؟ فَبَاطِلٌ مَا عَلَيْهِ ذَلِكَ، إنَّمَا عَلَيْهِ أَنْ يُسَلِّمَ إلَيْهِ مَا بَاعَ بَيْعًا جَائِزًا فَقَطْ، إذْ لَمْ يُوجِبْ عَلَيْهِ غَيْرَ ذَلِكَ نَصٌّ وَلَا إجْمَاعٌ - وَهَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ الْقِيَاسَ، وَالْأُصُولَ، إذَا جَعَلُوا مَالًا رِبْحُهُ وَمِلْكُهُ لِزَيْدٍ، وَخَسَارَتُهُ عَلَى عَمْرٍو: الَّذِي لَا يَمْلِكُهُ.

He ordered the remission of debts for agricultural calamities but did not mention whether this applies to fruits or other produce, nor specify what type of calamity it pertains to. This establishes that they contradict him as well, nullifies their reliance on this as evidence for general applicability, and equates their stance with ours in particularizing these two reports—except that they particularized them without evidence. Abū Muḥammad said: Loss due to price decrease is undoubtedly a calamity, yet they remit nothing for it. As for their claim that the seller must deliver the goods in sound condition to the buyer, this is invalid. He is only obligated to deliver what was sold through a valid sale, as no scriptural text or consensus imposes more than this. Herein the Mālikīs opposed legal analogy (qiyās) and juristic principles (uṣūl) by attributing an asset's profit and ownership to Zayd while burdening its loss on ʻAmr—who does not own it.

قَالَ عَلِيٌّ: وَأَمَّا الْآثَارُ الْوَاهِيَةُ الَّتِي احْتَجَّ بِهَا مُقَلِّدُو مَالِكٍ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ نا مُطَرِّفٌ عَنْ أَبِي طُوَالَةَ عَنْ أَبِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أُصِيبَ ثُلُثُ الثَّمَرِ فَقَدْ وَجَبَ عَلَى الْبَائِعِ الْوَضِيعَةُ» .

Ali said: As for the weak narrations cited by the followers of Mālik as evidence - we have been narrated through the chain of ʻAbd al-Malik ibn Ḥabīb al-Andalusī, from Muṭarrif, from Abū Ṭuwālah, from his father: "The Messenger of Allah - peace and blessings be upon him - said: 'If a third of the fruit is afflicted, the seller becomes liable for bearing the loss.'"

قَالَ عَبْدُ الْمَلِكِ: وَحَدَّثَنِي أَصْبَغُ بْنُ الْفَرَجِ عَنْ السَّبِيعِيِّ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ رَبِيعَةَ الرَّأْيِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِوَضْعِ الْجَائِحَةِ إذَا بَلَغَتْ ثُلُثَ الثَّمَرِ فَصَاعِدًا» .

Abd al-Malik said: Asbagh ibn al-Faraj narrated to me from al-Sabīʻī ʻAbd al-Jabbār ibn ʻUmar from Rabīʻah al-Raʾy that the Messenger of Allah—peace and blessings be upon him—commanded that agricultural dues be waived for crop losses when the calamity reached one-third of the crops or more.

قَالَ عَبْدُ الْمَلِكِ: وَحَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ خَالِدِ بْنِ إيَاسٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ:

Abd al-Malik said: Ubayd Allah ibn Musa narrated to me from Khalid ibn Iyas from Yahya ibn Sa'id from Abu al-Zubayr from Jabir, who said:

قَالَ عَبْدُ الْمَلِكِ: وَحَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ خَالِدِ بْنِ إِيَاسٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «خَمْسٌ مِنَ الْجَوَائِحِ: الرِّيحُ، وَالْبَرَدُ، وَالْحَرِيقُ، وَالْجَرَادُ، وَالسَّيْلُ» .

The Messenger of Allah—peace be upon him—said: “Five are among the calamities [that destroy crops]: wind, hail, fire, locusts, and flood.”

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ كَذِبٌ: عَبْدُ الْمَلِكِ مَذْكُورٌ بِالْكَذِبِ.

L22319 Abu Muhammad said: All of this is falsehood: Abd al-Malik is mentioned as a liar.

وَالْأَوَّلُ مُرْسَلٌ مَعَ ذَلِكَ.

L22320 The first is nevertheless a *mursal*.

وَالسَّبِيعِيُّ مَجْهُولٌ لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ وَعَبْدُ الْجَبَّارِ بْنُ عُمَرَ ضَعِيفٌ وَهُوَ أَيْضًا مُرْسَلٌ - فَسَقَطَ كُلُّ ذَلِكَ، وَخَالِدُ بْنُ إِيَاسٍ سَاقِطٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ أَمْرٌ بِإِسْقَاطِ الْجَوَائِحِ أَصْلًا، لَا بِنَصٍّ، وَلَا بِدَلِيلٍ، إلَّا أَنَّ الْحَنَفِيِّينَ الَّذِينَ يَحْتَجُّونَ بِرِوَايَاتِ الْكَذَّابِينَ وَمُرْسَلَاتِهِمْ: كَمُبَشِّرِ بْنِ عُبَيْدٍ الْحَلَبِيِّ، وَجَابِرٍ الْجُعْفِيِّ، وَغَيْرِهِمَا: فَلَا عُذْرَ لَهُمْ فِي أَنْ لَا يَأْخُذُوا بِهَذِهِ الْمَرَاسِيلِ - وَهَذَا مِمَّا تَنَاقَضُوا فِيهِ.

L22321 Al-Sabiʿī is unknown—does anyone know who he is? ʿAbd al-Jabbār ibn ʿUmar is weak and his narration is mursal. Thus, all of that has been rejected, and Khālid ibn Iyās is rejected. Moreover, even if it were authentic, it would contain no directive whatsoever to waive compensation for crop disasters—neither through explicit text nor any evidence. Yet the Ḥanafīs, who rely on narrations from liars and their mursal reports like Mubashshir ibn ʿUbayd al-Ḥalabī, Jābir al-Juʿfī, and others, have no excuse for rejecting these mursal narrations. This is among the matters in which they have contradicted themselves.

وَذَكَرَ الْمَالِكِيُّونَ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ نا ابْنُ أَبِي أُوَيْسٍ عَنْ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ كَانَ يَقْضِي بِوَضْعِ الْجَائِحَةِ إذَا بَلَغَتْ ثُلُثَ الثَّمَرِ فَصَاعِدًا.

L22322 The Malikis cited from those other than the Messenger of Allah—peace and blessings of Allah be upon him—what we have transmitted through the chain of ʿAbd al-Malik ibn Ḥabīb, who narrated from Ibn Abī Uways, from al-Ḥusayn ibn ʿAbd Allāh ibn Ḍumayrah, from his father, from his grandfather, from ʿAlī ibn Abī Ṭālib: that he decreed the remission of obligations in cases of crop damage when it affected one-third of the fruit or more.

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ أَيْضًا حَدَّثَنِي الْحُذَافِيُّ عَنْ الْوَاقِدِيِّ عَنْ مُوسَى بْنِ إبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: بَاعَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ مِنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَيْنًا لَهُ فَأَصَابَهُ الْجَرَادُ فَأَذْهَبَهُ أَوْ أَكْثَرَهُ، فَاخْتَصَمَا إلَى عُثْمَانَ فَقَضَى عَلَى عَبْدِ الرَّحْمَنِ بِرَدِّ الثَّمَنِ إلَى سَعْدٍ.

L22323 And through the chain of Ibn Habib as well, Al-Hudhafi narrated to me from Al-Waqidi from Musa ibn Ibrahim al-Taymi from his father from Sulayman ibn Yasar, who said: Abd al-Rahman ibn Awf sold his tangible property to Sa’d ibn Abi Waqqas, and locusts afflicted it, destroying it or most of it. They disputed before Uthman, who ruled that Abd al-Rahman must return the price to Sa’d.

قَالَ الْوَاقِدِيُّ: وَكَانَ سَهْلُ بْنُ أَبِي حَثْمَةَ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَالْقَاسِمُ، وَسَالِمٌ، وَعَلِيُّ بْنُ الْحُسَيْنِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ -: يَرَوْنَ الْجَائِحَةَ مَوْضُوعَةً عَنْ الْمُشْتَرِي إذَا بَلَغَتْ الثُّلُثَ فَصَاعِدًا.

L22324 Al-Waqidi said: Sahl ibn Abi Hathma, Umar ibn Abd al-Aziz, al-Qasim, Salim, Ali ibn al-Husayn, Sulayman ibn Yasar, and Ataa ibn Abi Rabah held that the ja'ihah (natural disaster) is waived for the buyer if it reaches one-third or upwards.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ بَاطِلٌ، لِأَنَّهُ كُلُّهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ، ثُمَّ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ مُطْرَحٌ، مُتَّفَقٌ عَلَى أَنْ لَا يُحْتَجَّ بِرِوَايَتِهِ، وَأَبُوهُ مَجْهُولٌ، وَالْوَاقِدِيُّ مَذْكُورٌ بِالْكَذِبِ.

L22325 Abu Muhammad said: All of this is null and void, because it is entirely transmitted through ʿAbd al-Malik ibn Ḥabīb, then al-Ḥusayn ibn ʿAbd Allāh ibn Ḍumayrah—discarded, as there is consensus that his narration is not to be relied upon, and his father is unknown, while al-Wāqidī is cited for dishonesty.

ثُمَّ لَوْ صَحَّ حَدِيثُ عُثْمَانَ لَكَانَ فِيهِ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ لَمْ يَرَ رَدَّ الْجَائِحَةِ وَإِنْ أَتَتْ عَلَى الثَّمَرِ كُلِّهِ أَوْ أَكْثَرَ - وَإِذَا وَقَعَ الْخِلَافُ فَلَا حُجَّةَ فِي قَوْلِ بَعْضِهِمْ دُونَ بَعْضٍ، وَالثَّابِتُ فِي هَذَا عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ عَالِمُ أَهْلِ الْمَدِينَةِ فِي عَصْرِهِ - مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ مُحَمَّدٌ نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَبِيعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلَاحُهُ» ، فَقِيلَ لِابْنِ عُمَرَ: مَا صَلَاحُهُ؟ قَالَ: تَذْهَبُ عَاهَتُهُ ".

L22326–22327 Furthermore, if the hadith of Uthman were authentic, it would indicate that Abd al-Rahman ibn Awf did not recognize compensation for crop calamity even if it afflicted all or most of the fruit. When disagreement arises, there is no conclusive evidence in the opinion of one party over another. What is firmly established in this matter from Ibn Umar—may Allah be pleased with him, the preeminent scholar among the people of Medina in his time—is the narration transmitted to us through Abdullah ibn Yusuf via Ahmad ibn Fath, via Abd al-Wahhab Muhammad, via Ahmad ibn Muhammad, via Ahmad ibn Ali, via Muslim ibn al-Hajjaj, via Muhammad ibn al-Muthanna, via Muhammad ibn Ja'far, via Shu'bah, from Abdullah ibn Dinar, from Ibn Umar, who said: The Messenger of Allah—peace and blessings be upon him—stated, "Do not sell fruit until its ripeness becomes apparent." When asked, "What constitutes its ripeness?" Ibn Umar responded, "When its defects disappear."

قَالَ أَبُو مُحَمَّد: تَأَمَّلُوا هَذَا فَإِنَّ ابْنَ عُمَرَ رَوَى نَهْيَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرِ قَبْلَ، بُدُوِّ صَلَاحِهِ - وَفَسَّرَ ابْنُ عُمَرَ بِأَنَّ بُدُوَّ صَلَاحِ الثَّمَرِ: هُوَ ذَهَابُ عَاهَتِهِ.

L22328 Abu Muhammad said: Reflect on this, for Ibn ʿUmar reported the Prophet's prohibition—peace and blessings be upon him—against selling fruit before the onset of its ripeness, and Ibn ʿUmar explained that the onset of the fruit's ripeness is the disappearance of its defects.

L22329 Thus, it was certainly established that the calamity (al-ʿāha, i.e., al-jā'iḥa) according to Ibn ʿUmar occurs only before the fruit's readiness becomes apparent, and that there is no calamity (ʿāha) or disaster (jā'iḥa) after the fruit's readiness becomes evident. This is the explicit text of our position—praise be

to Allah, Lord of the Worlds—and no other contrary to this is authentically transmitted from any of the Companions—may Allah be pleased with them.

فَصَحَّ يَقِينًا أَنَّ الْعَاهَةَ وَهِيَ الْجَائِحَةُ لَا تَكُونُ عِنْدَ ابْنِ عُمَرَ إِلَّا قَبْلَ بُدُوِّ صَلَاحِ الثَّمَرِ، وَأَنَّهُ لَا عَاهَةَ، وَلَا جَائِحَةَ بَعْدَ بُدُوِّ صَلَاحِ الثَّمَرِ، وَهَذَا هُوَ نَصُّ قَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَلَا يَصِحُّ غَيْرُ هَذَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L22330 Among the inconsistencies of the Mālikīs in this matter is their statement regarding one who sells fruit that has ripened for consumption and reached its harvest time, but later all or part of it is destroyed: that nothing from the price is reduced due to this occurrence.

وَمِنْ تَنَاقُضِ الْمَالِكِيِّينَ فِي هَذَا أَنَّهُمْ يَقُولُونَ فِيمَنْ بَاعَ ثَمَرًا قَدْ طَابَ أَكْلُهُ وَحَضَرَ جِدَادُهُ فَأُجِيحَ كُلُّهُ أَوْ بَعْضُهُ -: لَمْ يَسْقُطْ عَنْهُ لِذَلِكَ شَيْءٌ مِنْ الثَّمَنِ -.

L22331 And this is wholly contrary to all the subjects we have previously mentioned.

وَهَذَا خِلَافُ كُلِّ مَا ذَكَرْنَا آنِفًا مِنْ الْمَوْضُوعَاتِ جُمْلَةً.

L22332 If they cite as evidence in that matter the saying of the Prophet—peace and blessings be upon him—"A third, and a third is much."

فَإِنْ احْتَجُّوا فِي ذَلِكَ بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الثُّلُثُ وَالثُّلُثُ كَثِيرٌ» .

L22333 We said: Yes, this applies to bequests, but from where do you derive that extensive crop losses are reduced below minor ones, to the extent of limiting this to one-third? You yourselves assert regarding a wealthy man possessing one hundred thousand dinars who buys produce for three dirhams, suffers loss in one-third of the crop, then sells the remainder for one dinar: that the crop loss is waived for him.

قُلْنَا: نَعَمْ هَذَا فِي الْوَصِيَّةِ، وَلَكِنْ مِنْ أَيْنَ لَكُمْ أَنَّ الْكَثِيرَ مِنْ الْجَوَائِحِ يُوضَعُ دُونَ الْقَلِيلِ حَتَّى تَحُدُّوا ذَلِكَ بِالثُّلُثِ؟ وَأَنْتُمْ تَقُولُونَ فِي غَنِيٍّ لَهُ مِائَةُ أَلْفِ دِينَارٍ ابْتَاعَ ثَمَرًا بِثَلَاثَةِ دَرَاهِمَ فَأُجِيحَ فِي ثُلُثِ الثَّمَرَةِ ثُمَّ بَاعَ الْبَاقِيَ بِدِينَارٍ -: أَنَّهُ تُوضَعُ عَنْهُ الْجَائِحَةُ.

L22334 And you say regarding a poor person who purchased a fruit for a dinar, then a quarter of it was lost, after which the fruits depreciated in value, so he sold the remainder for a dirham—that nothing is reduced from him, and "much" and "little" are merely by relation, as you observe, not absolute.

وَتَقُولُونَ فِي مِسْكِينٍ ابْتَاعَ ثَمَرَةً بِدِينَارٍ فَذَهَبَ رُبْعُهَا ثُمَّ رَخُصَ الثَّمَرُ فَبَاعَ الْبَاقِيَ بِدِرْهَمٍ -: أَنَّهُ لَا يُحَطُّ عَنْهُ شَيْءٌ، وَالْكَثِيرُ وَالْقَلِيلُ إنَّمَا هُمَا بِإِضَافَةٍ كَمَا تَرَى لَا عَلَى الْإِطْلَاقِ.

L22335–22336 Then they soon contradicted themselves through the most base, most despicable contradiction - one most removed from correctness: permitting a married woman to dispose of a third of her wealth for charity without her husband's consent, while prohibiting her from exceeding a third without his permission. Thus they deemed a third here to be small (equating it with amounts below a third), yet in cases of agricultural calamity treated a third as substantial, contrary to amounts less than a third.

ثُمَّ لَمْ يَلْبَثُوا أَنْ تَنَاقَضُوا أَسْمَجَ تَنَاقُضٍ وَأَغَثَّهُ وَأَبْعَدَهُ عَنْ الصَّوَابِ لِلْمَرْأَةِ ذَاتِ الزَّوْجِ أَنْ تَحْكُمَ فِي الصَّدَقَةِ بِالثُّلُثِ مِنْ مَالِهَا فَأَقَلَّ بِغَيْرِ رِضَا زَوْجِهَا، وَلَا يَجُوزُ لَهَا ذَلِكَ فِيمَا كَانَ أَكْثَرَ مِنْ الثُّلُثِ إلَّا بِإِذْنِ زَوْجِهَا، فَجَعَلُوا الثُّلُثَ هَهُنَا قَلِيلًا كَمَا هُوَ دُونَ الثُّلُثِ وَجَعَلُوهُ فِي الْجَائِحَةِ كَثِيرًا بِخِلَافِ مَا دُونَهُ.

L22337 If one stipulates the third or more as the endowed portion, the endowment is invalid. But if one stipulates less than a third, it is permissible and the

endowment is valid—thus they ruled that a third here is excessive, unlike amounts below it.

ثُمَّ قَالُوا: إنَّ اشْتَرَطَ الْمُحْبَسِ مِمَّا حَبَسَ الثُّلُثَ فَمَا زَادَ بَطَلَ الْحَبْسُ، فَإِنْ اشْتَرَطَ أَقَلَّ مِنْ الثُّلُثِ جَازَ وَصَحَّ الْحَبْسُ - فَجَعَلُوا الثُّلُثَ هَهُنَا كَثِيرًا بِخِلَافِ مَا دُونَهُ.

L22338 Then they said: Whoever sells a sword adorned with silver or a Quran similarly adorned with silver—if the silver on them amounts to a third of the total value of the entire item or less, this is considered minor, and it is permissible to sell them for silver. But if the silver on them constitutes more than a third of the total value of the entire item, it is entirely impermissible to sell them for silver. Thus, they deemed the third in this case to be minor, treating it under the ruling applicable to smaller proportions.

ثُمَّ قَالُوا: مَنْ بَاعَ سَيْفًا مُحَلًّى بِفِضَّةٍ أَوْ مُصْحَفًا كَذَلِكَ يَكُونُ مَا عَلَيْهِمَا مِنْ الْفِضَّةِ ثُلُثَ قِيمَةِ الْجَمِيعِ فَأَقَلَّ فَهَذَا قَلِيلٌ، وَيَجُوزُ بَيْعُهُ بِالْفِضَّةِ وَإِنْ كَانَ مَا عَلَيْهِمَا مِنْ الْفِضَّةِ أَكْثَرَ مِنْ الثُّلُثِ لَمْ يَجُزْ أَنْ يُبَاعَا بِفِضَّةٍ أَصْلًا - فَجَعَلُوا الثُّلُثَ هَهُنَا قَلِيلًا فِي حُكْمِ مَا دُونَهُ.

L22339 They permitted a person to reserve a portion of the fruit of his trees or crops of his land when selling it by measured volume, amounting to a third or less, and prohibited him from reserving anything exceeding a third. Therefore, they deemed a third to be a small amount, treated under the same legal ruling as amounts below it.

وَأَبَاحُوا أَنْ يَسْتَثْنِيَ الْمَرْءُ مِنْ ثَمَرِ شَجَرِهِ وَمِنْ زَرْعِ أَرْضِهِ إذَا بَاعَهَا مَكِيلَةً تَبْلُغُ الثُّلُثَ فَأَقَلَّ - وَمَنَعُوا مِنْ اسْتِثْنَاءِ مَا زَادَ عَلَى الثُّلُثِ - فَجَعَلُوا الثُّلُثَ هَهُنَا قَلِيلًا فِي حُكْمِ مَا دُونَهُ.

L22340 Then they prohibited anyone who sold a sheep while reserving portions of its meat (in *ratls*) for themselves from reserving an amount equivalent to a third or more of the total meat. They permitted reserving quantities less than a third (in *ratls*) - thereby considering a third here as excessive compared to smaller amounts below it.

ثُمَّ مَنَعُوا مَنْ بَاعَ شَاةً وَاسْتَثْنَى مِنْ لَحْمِهَا لِنَفْسِهِ أَرْطَالًا أَنْ يَسْتَثْنِيَ مِنْهَا مِقْدَارَ ثُلُثِهَا فَصَاعِدًا، وَأَبَاحُوا لَهُ أَنْ يَسْتَثْنِيَ مِنْهَا أَرْطَالًا أَقَلَّ مِنْ الثُّلُثِ - فَجَعَلُوا الثُّلُثَ هَهُنَا كَثِيرًا بِخِلَافِ مَا دُونَهُ.

L22341 They then permitted one who purchased a house containing trees with fruit not yet ready for use to include the fruit in the house's rent, provided a third of the total value derived from both the fruit and the house's rent. However, they prohibited this if the share amounted to a third or more. Thus, they treated a third here as insignificant, subjecting it to the ruling applicable to amounts below a third.

ثُمَّ أَبَاحُوا لِمَنْ اشْتَرَى دَارًا فِيهَا شَجَرٌ فِيهَا ثَمَرٌ لَمْ يَبْدُ صَلَاحُهُ أَنْ يُدْخِلَ الثَّمَرَ فِي كِرَاءِ الدَّارِ إنْ كَانَ الثُّلُثُ بِالْقِيمَةِ مِنْهُ وَمِنْ كِرَاءِ الدَّارِ - وَمَنَعُوا مِنْ ذَلِكَ إذَا كَانَ الثُّلُثَ فَأَكْثَرَ -: فَجَعَلُوا الثُّلُثَ هَهُنَا قَلِيلًا فِي حُكْمِ مَا دُونَهُ.

L22342 Then they considered a tenth [increase] as negligible and anything exceeding it as excessive. They ruled concerning one who instructed another to purchase a servant for thirty dinars - if the agent bought her for thirty-three dinars - that the mandator becomes liable because this [three-dinar] increase is negligible. They said: "If he bought her for more than a tenth extra, the mandator is not liable because that is excessive." This resembles arbitrari-

ثُمَّ جَعَلُوا الْعُشْرَ قَلِيلًا وَمَا زَادَ عَلَيْهِ كَثِيرًا فَقَالُوا فِيمَنْ أَمَرَ آخَرَ بِأَنْ يَشْتَرِيَ لَهُ خَادِمًا بِثَلَاثِينَ دِينَارًا فَاشْتَرَاهَا لَهُ بِثَلَاثَةٍ وَثَلَاثِينَ دِينَارًا: أَنَّهَا تَلْزَمُ الْآمِرَ؛ لِأَنَّ هَذَا قَلِيلٌ، قَالُوا: فَإِنْ اشْتَرَاهَا لَهُ بِأَكْثَرَ لَمْ يَلْزَمْ الْآمِرَ؛ لِأَنَّهُ كَثِيرٌ - وَهَذَا يُشْبِهُ اللَّعِبَ، فَيَا لَلنَّاسِ؟ أَبِهَذِهِ

ness. O people! Are these mere opinions the foundation for establishing divine laws, declaring prohibitions and permissions, permitting the sale of forbidden wealth, and opposing the Sunnah? Allah suffices us, and what an excellent Trustee!

L22343 It has been narrated to us through the chain of Ibn Wahb, from Uthman ibn al-Hakam, from Yahya ibn Sa'id al-Ansari, who said: No catastrophic loss [is recognized in Islamic law] for damages incurred below one-third of the principal capital.

L22344–22345 Through another chain from ʿAbd al-Razzāq, Maʿmar narrated to us, reporting from a narrator who heard al-Zuhrī state: I inquired, "What constitutes an agricultural calamity?" He replied, "Half."

L22346 Ali said: "So this al-Zuhrī does not deem a calamity (jā'iḥah) valid unless it amounts to half [the yield]."

L22347 And this is Yaḥyā ibn Saʿīd, the jurist of Madinah, who does not recognize the agricultural calamity except in one-eighth of the crop, not in the physical crop itself—and all of that is contrary to Mālik's opinion. And success is granted by Allāh, the Exalted.

L22348 ## A Legal Issue: The Sale of the Ābiq Runaway Slave

L22349 Issue 1423: The sale of an absconded slave—whether his location is known or unknown—is valid. Similarly, the sale of a stray camel—whether its location is known or unknown—is valid.

L22350 Similarly, a stray from all animals, or birds that have escaped or otherwise strayed, is permissible for sale only if legally established ownership over it existed beforehand; otherwise, its sale is impermissible.

L22351 As for anything not yet owned by anyone, no one has a greater claim to it than anyone else. Whoever sells it is selling what they have no right to, and this amounts to wrongful appropriation of wealth without rightful claim.

L22352 As for all that we have mentioned besides this, the ownership of its owner

الْآرَاءِ تُشَرَّعُ الشَّرَائِعُ وَتُحَرَّمُ وَتُحَلَّلُ، وَتُبَاعُ الْأَمْوَالُ الْمُحَرَّمَةُ وَتُعَارَضُ السُّنَنُ؟ حَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عُثْمَانَ بْنِ الْحَكَمِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: لَا جَائِحَةَ فِيمَا أُصِيبَ دُونَ ثُلُثِ رَأْسِ الْمَالِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ حَدَّثَنَا مَعْمَرٌ أَخْبَرَنِي مَنْ سَمِعَ الزُّهْرِيَّ قَالَ: قُلْت مَا الْجَائِحَةُ؟ قَالَ: النِّصْفُ.

قَالَ عَلِيٌّ: فَهَذَا الزُّهْرِيُّ لَا يَرَى الْجَائِحَةَ إلَّا النِّصْفَ.

وَهَذَا يَحْيَى بْنُ سَعِيدٍ فَقِيهُ الْمَدِينَةِ لَا يَرَى الْجَائِحَةَ إلَّا فِي الثُّمْنِ، لَا فِي عَيْنِ الثَّمَرَةِ - وَكُلُّ ذَلِكَ خِلَافُ قَوْلِ مَالِكٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ الْعَبْدِ الْآبِقِ]

١٤٢٣ - مَسْأَلَةٌ: وَبَيْعُ الْعَبْدِ الْآبِقِ - عُرِفَ مَكَانُهُ أَوْ لَمْ يُعْرَفْ - جَائِزٌ وَكَذَلِكَ بَيْعُ الْجَمَلِ الشَّارِدِ - عُرِفَ مَكَانُهُ أَوْ لَمْ يُعْرَفْ.

وَكَذَلِكَ الشَّارِدُ مِنْ سَائِرِ الْحَيَوَانِ، وَمِنْ الطَّيْرِ الْمُتَفَلِّتِ وَغَيْرِهِ، إذَا صَحَّ الْمِلْكُ عَلَيْهِ قَبْلَ ذَلِكَ، وَإِلَّا فَلَا يَحِلُّ بَيْعُهُ.

وَأَمَّا كُلُّ مَا لَمْ يَمْلِكْ أَحَدٌ بَعْدُ فَإِنَّهُ لَيْسَ أَحَدٌ أَوْلَى بِهِ مِنْ أَحَدٍ، فَمَنْ بَاعَهُ فَإِنَّمَا بَاعَ مَا لَيْسَ لَهُ فِيهِ حَقٌّ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

وَأَمَّا مَا عَدَا ذَلِكَ مِنْ كُلِّ مَا ذَكَرْنَا فَقَدْ صَحَّ مِلْكُ مَالِكِهِ لَهُ، وَكُلُّ مَا مَلَكَهُ الْمَرْءُ فَحُكْمُهُ فِيهِ نَافِذٌ بِالنَّصِّ -: إنْ شَاءَ وَهَبَهُ، وَإِنْ شَاءَ بَاعَهُ، وَإِنْ شَاءَ أَمْسَكَهُ، وَإِنْ مَاتَ فَهُوَ مَوْرُوثٌ عَنْهُ لَا خِلَافَ فِي أَنَّهُ مِلْكٌ وَمَوْرُوثٌ عَنْهُ، فَمَا الَّذِي حَرَّمَ بَيْعَهُ وَهِبَتَهُ؟ وَقَدْ أَبْطَلْنَا قَبْلُ قَوْلَ مَنْ فَرَّقَ بَيْنَ الصَّيْدِ يَتَوَحَّشُ، وَبَيْنَ الْإِبِلِ، وَالْغَنَمِ، وَالْبَقَرِ، وَالْخَيْلِ يَتَوَحَّشُ - وَكَذَلِكَ لَا فَرْقَ بَيْنَ الصَّيْدِ مِنْ السَّمَكِ، وَمِنْ الطَّيْرِ، وَمِنْ النَّحْلِ، وَمِنْ ذَوَاتِ الْأَرْبَعِ كُلُّ مَا مُلِكَ مِنْ ذَلِكَ -: فَهُوَ مَالٌ مِنْ مَالِ مَالِكِهِ بِلَا خِلَافٍ مِنْ أَحَدٍ.

over it is established, and whatever a person owns, the ruling concerning it is effective *by the divine text*: if he wishes to gift it, sell it, or keep it; and if he dies, it is inherited from him. There is no disagreement that it is owned and inherited from him. So what prohibits its sale and gifting? We have previously nullified the opinion of those who distinguished between game that becomes wild and camels, sheep, cattle, and horses that become wild. Similarly, there is no distinction between the hunting of fish, birds, bees, or four-legged animals—all that is owned from these is property of its owner without any dispute from anyone.

L22353 فَمَنْ ادَّعَى سُقُوطَ الْمِلْكِ عَنْهُ بِتَوَحُّشِهِ، أَوْ بِرُجُوعِهِ إلَى النَّهْرِ أَوْ الْبَحْرِ -: فَقَدْ قَالَ الْبَاطِلَ، وَأَحَلَّ حَرَامًا بِغَيْرِ دَلِيلٍ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ تَوَرُّعٍ، وَلَا مِنْ رَأْيٍ يُعْقَلُ؟ فَإِنْ قَالَ قَائِلٌ: فَإِنَّهُ لَا يَعْرِفُهُ أَبَدًا صَاحِبُهُ، وَلَا غَيْرُ صَاحِبِهِ؟ قُلْنَا: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ عِنْدَكُمْ سُقُوطُ مِلْكِ الْمُسْلِمِ عَنْ مَالِهِ بِجَهْلِهِ بِعَيْنِهِ؟ وَبِأَنَّهُ لَا يُمَيِّزُهُ، وَمَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ الْعَبْدِ يَأْبَقُ فَلَا تُمَيِّزُهُ صُورَتُهُ أَبَدًا، وَالْبَعِيرُ كَذَلِكَ، وَالْفَرَسُ كَذَلِكَ؟ أَفَتَرَوْنَ الْمِلْكَ يَسْقُطُ عَنْ كُلِّ ذَلِكَ مِنْ أَجْلِ أَنَّهُ لَا يُمَيِّزُهُ أَحَدٌ أَبَدًا، لَا صَاحِبُهُ وَلَا غَيْرُهُ؟

Whoever claims that ownership is nullified due to its becoming wild or returning to the river or sea has spoken falsehood and legalized the unlawful without evidence—neither from the Qur'an, nor the Sunnah, nor a weak narration, nor a Companion's opinion, nor analogy, nor scrupulous avoidance, nor sound rational opinion. If someone asks: "But neither its owner nor anyone else will ever recognize it?" We respond: So what? On what basis do you assert that a Muslim's ownership of their property is nullified merely by their ignorance of its specific identity or their inability to identify it? What distinguishes this from a runaway slave whose appearance is perpetually indistinguishable, or a camel or horse in similar circumstances? Do you deem ownership nullified in all such cases solely because no one—neither the owner nor others—can ever identify it?

L22354–22355 وَلَئِنْ كَانَ النَّاسُ لَا يَعْرِفُونَهُ وَلَا يُمَيِّزُونَهُ، فَإِنَّ اللَّهَ تَعَالَى يَعْرِفُهُ وَيُمَيِّزُهُ {لا يَضِلُّ رَبِّي وَلا يَنْسَى} [طه: ٥٢] بَلْ هُوَ عَزَّ وَجَلَّ عَارِفٌ بِهِ، وَبِتَقَلُّبِهِ وَمَثْوَاهُ، كَاتِبٌ لِصَاحِبِهِ أَجْرَ مَا نِيلَ مِنْهُ، وَمَا يَتَنَاسَلُ مِنْهُ فِي الْأَبَدِ.

Even if people neither recognize him nor discern him, Allah, the Exalted, recognizes and discerns him: *"My Lord neither errs nor forgets"* [20:52]. Rather, He, the Mighty and Majestic, is fully aware of him, his movements, and his abode, recording for the one associated with him the reward of what is obtained from him and what is multiplied from him eternally.[12]

L22356 What is the difference between this and land that becomes mixed so that it is neither demarcated nor distinguishable? Do you suppose ownership thereby

[12] **Qur'an references (L22355):** Qur'an 20:52 (Taha).

ceases for it? Allah is far removed from this! Rather, the unequivocal truth is that all of that remains under its owner's ownership until the Day of Resurrection.

مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ الْأَرْضِ تَخْتَلِطُ فَلَا تُحَازُ وَلَا تُمَيَّزُ؟ أَتَرَوْنَ الْمِلْكَ يَسْقُطُ عَنْهَا بِذَلِكَ؟ حَاشَ لِلَّهِ مِنْ هَذَا، بَلْ الْحَقُّ الْيَقِينُ أَنَّ كُلَّ ذَلِكَ بَاقٍ عَلَى مِلْكِ صَاحِبِهِ إلَى يَوْمِ الْبَعْثِ.

L22357 And we—even if we rule regarding property whose owner's identification is despaired of, through the apparent ruling, to be allocated for the interests of the Muslims, the poor and needy, or the one who first takes possession of it among the believers—this does not extinguish the owner's right. Should the owner come at any time and establish his rightful claim, we would restore it to him. Such property constitutes a found item among lost items, owned by the one awarded it through the explicit ruling of the Messenger of Allah—peace and blessings be upon him—until its owner comes, if he ever does.

وَنَحْنُ وَإِنْ حَكَمْنَا فِيمَا يُئِسَ مِنْ مَعْرِفَةِ صَاحِبِهِ بِالْحُكْمِ الظَّاهِرِ مِنْ أَنَّهُ فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ، أَوْ لِلْفُقَرَاءِ وَالْمَسَاكِينِ، أَوْ لِمَنْ سَبَقَ إلَيْهِ مِنْ الْمُؤْمِنِينَ -: فَإِنَّهُ لَا يَسْقُطُ بِذَلِكَ حَقُّ صَاحِبِهِ، وَلَوْ جَاءَ يَوْمًا وَثَبَتَ أَنَّهُ حَقُّهُ لَصَرَفْنَاهُ إلَيْهِ، وَهُوَ لُقَطَةٌ مِنْ اللُّقَطَاتِ يَمْلِكُهُ مَنْ قُضِيَ لَهُ بِنَصِّ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى يَأْتِيَ صَاحِبُهُ إنْ جَاءَ.

L22358 Some people prohibited the sale of all such things and said: "We only prohibited selling them due to their absence." Ali said: "We have nullified—by the assistance of Allah, the Most High—this opinion and established proof for the obligation of selling absent items. Others prohibited this, arguing that its delivery is impossible. This is baseless, for delivery is neither required nor mandated by the Quran, the Sunnah, or any evidence whatsoever. The only obligation is that the seller must not obstruct the buyer from accessing what he purchased. If he does so, he becomes sinful and unjust. Another group prohibited it, arguing that it involves gharar (uncertainty), as 'the Messenger of Allah—peace and blessings be upon him—forbade the sale of gharar.'" Abu Muhammad said: "This is not gharar, for it is the sale of something whose ownership by the seller is confirmed, with known attributes and quantity. Thus, it is sold, and the buyer validly acquires ownership of it. If he obtains it, then that is acceptable; if not, he has received a reward as compensation—a reward better than this world and all it contains—and his deal has been profitable."[13]

وَمَنَعَ قَوْمٌ مِنْ بَيْعِ كُلِّ ذَلِكَ؟ وَقَالُوا: إنَّمَا مَنَعْنَا مِنْ بَيْعِهِ لِمَغِيبِهِ؟ قَالَ عَلِيٌّ: وَقَدْ أَبْطَلْنَا - بِعَوْنِ اللَّهِ تَعَالَى -: هَذَا الْقَوْلَ وَأَتَيْنَا بِالْبُرْهَانِ عَلَى وُجُوبِ بَيْعِ الْغَائِبَاتِ، وَمَنَعَ قَوْمٌ مِنْ ذَلِكَ، وَاحْتَجُّوا بِأَنَّهُ لَا يُقْدَرُ عَلَى تَسْلِيمِهِ -: وَهَذَا لَا شَيْءَ؛ لِأَنَّ التَّسْلِيمَ لَا يَلْزَمُ وَلَا يُوجِبُهُ قُرْآنٌ، وَلَا سُنَّةٌ وَلَا دَلِيلٌ أَصْلًا، وَإِنَّمَا اللَّازِمُ أَنْ لَا يَحُولَ الْبَائِعُ بَيْنَ الْمُشْتَرِي وَبَيْنَ مَا اشْتَرَى مِنْهُ فَقَطْ فَيَكُونَ إنْ فَعَلَ ذَلِكَ عَاصِيًا ظَالِمًا، وَمَنَعَ آخَرُونَ مِنْ ذَلِكَ وَاحْتَجُّوا بِأَنَّهُ غَرَرٌ؛ وَقَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» ؟ قَالَ أَبُو مُحَمَّد: لَيْسَ هَذَا غَرَرًا لِأَنَّهُ بَيْعُ شَيْءٍ قَدْ صَحَّ مِلْكُ بَائِعِهِ عَلَيْهِ وَهُوَ مَعْلُومُ الصِّفَةِ وَالْقَدْرِ، فَعَلَى ذَلِكَ يُبَاعُ وَيَمْلِكُهُ الْمُشْتَرِي مِلْكًا صَحِيحًا، فَإِنْ وَجَدَهُ فَذَلِكَ، وَإِنْ لَمْ يَجِدْهُ فَقَدْ اسْتَعَاضَ الْأَجْرَ الَّذِي هُوَ خَيْرٌ مِنْ الدُّنْيَا وَمَا فِيهَا وَرَبِحَتْ صَفْقَتُهُ.

L22359 If this were considered uncertainty (gharar), then the sale of all animals—

وَلَوْ كَانَ هَذَا غَرَرًا لَكَانَ بَيْعُ الْحَيَوَانِ كُلِّهِ حَاضِرِهِ وَغَائِبِهِ غَرَرًا لَا يَحِلُّ وَلَا يَجُوزُ؛ لِأَنَّهُ لَا يَدْرِي مُشْتَرِيه أَيَعِيشُ سَاعَةً بَعْدَ ابْتِيَاعِهِ أَمْ يَمُوتُ، وَلَا يَدْرِي أَيَسْلَمُ أَمْ يَسْقَمُ

[13] **Hadith references (L22358):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

whether present or absent—would involve impermissible and invalid uncertainty, because the buyer does not know whether the animal will survive an hour after purchase or die, nor whether it will remain healthy or fall ill with a minor ailment that alters its condition, a severe ailment that ruins it, or most of it. However, what is anticipated in renewed agreements is not considered uncertainty, because divine decrees proceed according to what is unknown and beyond human power to repel, and because it pertains to the unseen. Allah Almighty says: "Say, 'None in the heavens and earth knows the unseen except Allah'" (27:65).[14]

L22360–22361 He, the Exalted, said: "It may well be that their appointed time has already drawn near." [Al-A'raf: 185][15]

L22362 Gharar refers to a transaction concluded based on ignorance of its quantity or characteristics at the time of contracting.

L22363 If they say: Suppose he was dead at the time of the contract, or his attributes had changed? We respond: He is deemed alive under the life status confirmed as valid until his death is verified, and his attributes remain as ascertained until their alteration is validly established. If his death is verified, the transaction is annulled, and if the alteration is confirmed, the same ruling applies.

L22364 And if you say, "This invalidates its sale," then invalidate the sale of every absent animal—even if it is behind a wall—for it might have died at the very moment the transaction was concluded, or changed due to a fracture, pain, or blindness in one eye.

L22365 Yes, and forbid the sale of eggs, walnuts, almonds, and anything with a shell, since they may be spoiled - is there no distinction between any of these? The gharar (prohibited uncertainty) lies in what you have permitted: selling unseen commodities that no one has ever observed - such as carrots, herbs, and radishes, which may be soiled or rotten; and what some of you have permitted by selling what has not yet been created, like the contents of

[14] **Qur'an references (L22359):** Qur'an 27:65 (An-Naml).

[15] **Qur'an references (L22361):** Qur'an 7:185 (Al-A'raf).

سَقَمًا قَلِيلًا يُحِيلُهُ أَوْ سَقَمًا كَثِيرًا يُفْسِدُهُ أَوْ أَكْثَرَهُ؟ وَلَيْسَ مَا يُتَوَقَّعُ فِي الْمُسْتَأْنَفِ غَرَرًا لِأَنَّ الْأَقْدَارَ تَجْرِي بِمَا لَا يُعْلَمُ وَلَا يُقْدَرُ عَلَى رَدِّهِ، وَلِأَنَّهُ غَيْبٌ، قَالَ اللَّهُ تَعَالَى: {قُلْ لَا يَعْلَمُ مَنْ فِي السَّمَاوَاتِ وَالأَرْضِ الْغَيْبَ إِلا اللَّهُ} [النمل: ٦٥] .

وَقَالَ تَعَالَى: {وَأَنْ عَسَى أَنْ يَكُونَ قَدِ اقْتَرَبَ أَجَلُهُمْ} [الأعراف: ١٨٥] .

وَإِنَّمَا الْغَرَرُ مَا عُقِدَ عَلَى جَهْلٍ بِمِقْدَارِهِ وَصِفَاتِهِ حِينَ الْعَقْدِ.

فَإِنْ قَالُوا: فَلَعَلَّهُ مَيِّتٌ حِينَ الْعَقْدِ، أَوْ قَدْ تَغَيَّرَتْ صِفَاتُهُ؟ قُلْنَا: هُوَ عَلَى الْحَيَاةِ الَّتِي قَدْ صَحَّتْ لَهُ حَتَّى يُوقَنَ مَوْتُهُ، وَعَلَى مَا تُيُقِّنَ مِنْ صِفَاتِهِ حَتَّى يَصِحَّ تَغْيِيرُهُ، فَإِنْ صَحَّ مَوْتُهُ رُدَّتْ الصَّفْقَةُ، وَإِنْ صَحَّ تَغَيُّرُهُ فَكَذَلِكَ أَيْضًا.

وَلَئِنْ قُلْتُمْ: إِنَّ هَذَا يَمْنَعُ مِنْ بَيْعِهِ فَامْنَعُوا مِنْ بَيْعِ كُلِّ غَائِبٍ مِنْ الْحَيَوَانِ - وَلَوْ أَنَّهُ خَلْفَ الْجِدَارِ - إِذْ لَعَلَّهُ قَدْ مَاتَ لِلْوَقْتِ حِينَ عَقَدَ الصَّفْقَةَ أَوْ تَغَيَّرَ بِكَسْرٍ، أَوْ وَجَعٍ، أَوْ عَوَرٍ.

نَعَمْ، وَامْنَعُوا مِنْ بَيْعِ الْبَيْضِ، وَالْجَوْزِ، وَاللَّوْزِ، وَكُلِّ ذِي قِشْرٍ، إِذْ لَعَلَّهُ فَاسِدٌ وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ؟ وَإِنَّمَا الْغَرَرُ مَا أَجَزْتُمُوهُ مِنْ بَيْعِ الْمُغَيَّبَاتِ الَّتِي لَمْ يَرَهَا أَحَدٌ قَطُّ: مِنْ الْجَزَرِ، وَالْبَقْلِ، وَالْفُجْلِ، وَلَعَلَّهَا مُسْتَاسَةٌ أَوْ مَعْفُونَةٌ، وَمَا أَجَازَهُ بَعْضُكُمْ مِنْ بَيْعِ مَا لَمْ يُخْلَقْ بَعْدُ مِنْ بُطُونِ الْمَقَاثِي الَّتِي لَعَلَّهَا لَا تُخْلَقُ أَبَدًا - وَمِنْ لَبَنِ الْغَنَمِ شَهْرَيْنِ أَوْ ثَلَاثَةً، وَلَعَلَّهَا تَمُوتُ، أَوْ تُحَارَدُ، فَلَا يَدُرُّ لَهَا شَخْبٌ.

gourds that may never exist at all, and selling sheep's milk for two or three months when the sheep might die, be stolen, or cease to flow milk entirely.

وَمِنْ بَيْعِ لَحْمِ شَاةٍ مَذْبُوحَةٍ لَمْ تُسْلَخْ بَعْدُ، فَلَا يَدْرِي أَحَدٌ مِنْ خَلْقِ اللَّهِ تَعَالَى مَا صِفَتُهُ - فَهَذَا وَأَشْبَاهُهُ هُوَ بَيْعُ الْغَرَرِ الْمُحَرَّمِ، وَقَدْ أَجَزْتُمُوهُ، لَا مَا صَحَّ مِلْكُهُ، وَعُرِفَتْ صِفَاتُهُ.

L22366 And from the sale of a slaughtered sheep's meat that has not yet been skinned - such that none of Allah's creation knows its characteristic - this and similar transactions constitute the prohibited sale of gharar, yet you have permitted it instead of what has valid ownership and whose characteristics are known.

وَقَالَ بَعْضُهُمْ: إِنَّمَا مَنَعْنَا مِنْ ذَلِكَ بِالنَّصِّ الْوَارِدِ فِيهِ؟ فَقُلْنَا: تِلْكَ آثَارٌ مَكْذُوبَةٌ لَا يَحِلُّ الِاحْتِجَاجُ بِهَا، وَلَوْ صَحَّتْ لَكُنَّا أَبْدَرَ إِلَى الْأَخْذِ بِهَا مِنْكُمْ.

L22367 Some of them said: "We only prohibited that based on the transmitted text concerning it." We replied: "These are fabricated traditions; it is impermissible to rely on them as proof. Had they been authentic, we would have been the first to adopt them before you."

وَهِيَ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَحْيَى بْنِ الْعَلَاءِ عَنْ جَهْضَمِ بْنِ عَبْدِ اللَّهِ عَنْ مُحَمَّدِ بْنِ زَيْدٍ الْعَبْدِيِّ عَنْ شَهْرِ بْنِ حَوْشَبٍ الْأَشْعَرِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْعَبْدِ وَهُوَ آبِقٌ، وَعَنْ أَنْ تُبَاعَ الْمَغَانِمُ قَبْلَ أَنْ تُقْسَمَ، وَعَنْ بَيْعِ الصَّدَقَاتِ قَبْلَ أَنْ تُقْبَضَ» .

L22368–22370 And it is as we have narrated through the chain of ʿAbd al-Razzāq from Yaḥyā ibn al-ʿAlāʾ from Jahḍam ibn ʿAbd Allāh from Muḥammad ibn Zayd al-ʿAbdī from Shahr ibn Ḥawshab al-Ashʿarī from Abū Saʿīd al-Khudrī: He prohibited The Messenger of Allah (peace be upon him) prohibited selling a runaway slave, selling war booty before it is distributed, and selling obligatory alms (Zakat) before they are received.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ جَهْضَمِ بْنِ عَبْدِ اللَّهِ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ الْبَاهِلِيِّ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ شَهْرِ بْنِ حَوْشَبٍ عَنْ أَبِي سَعِيدٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ شِرَاءِ مَا فِي بُطُونِ الْأَنْعَامِ حَتَّى تَضَعَ، وَعَنْ مَا فِي ضُرُوعِهَا إِلَّا بِكَيْلٍ، وَعَنْ شِرَاءِ الْعَبْدِ الْآبِقِ، وَعَنْ شِرَاءِ الْمَغَانِمِ حَتَّى تُقْسَمَ، وَعَنْ شِرَاءِ الصَّدَقَاتِ حَتَّى تُقْبَضَ، وَعَنْ ضَرْبَةِ الْغَائِصِ» .

L22371 From the transmission path of Abū Bakr ibn Abī Shaybah: Ḥātim ibn Ismāʿīl he narrated to us from Jahḍam ibn ʿAbd Allāh from Muḥammad ibn Ibrāhīm al-Bāhilī from Muḥammad ibn Zayd from Shahr ibn Ḥawshab from Abū Saʿīd: "The Messenger of Allāh (peace and blessings be upon him) prohibited the purchase of what is in the wombs of livestock until they give birth, the purchase of what is in their udders except by measure, the purchase of a runaway slave, the purchase of undistributed war spoils until they are divided, the purchase of alms until they are collected, and the sale of the diver's unrecovered catch."

قَالَ أَبُو مُحَمَّدٍ: جَهْضَمٌ، وَمُحَمَّدُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ زَيْدٍ الْعَبْدِيُّ: مَجْهُولُونَ، وَشَهْرٌ مَتْرُوكٌ - ثُمَّ لَوْ صَحَّحُوهُ فَهُوَ دَمَارٌ عَلَيْهِمْ؛ لِأَنَّهُمْ مُخَالِفُونَ لِمَا فِيهِ، وَكُلُّهُمْ - يَعْنِي الْحَاضِرِينَ مِنْ خُصُومِنَا - يُجِيزُونَ بَيْعَ الْأَجِنَّةِ فِي بُطُونِ الْأُمَّهَاتِ مَعَ الْأُمَّهَاتِ.

L22372 Abū Muḥammad said: Jahḍam, Muḥammad ibn Ibrāhīm, and Muḥammad ibn Zayd al-ʿAbdī are unknown, and Shahr is disregarded. Moreover, if they were to authenticate it, it would lead to their ruin, for they contradict its contents. All of them—meaning those present among our opponents—permit the sale of fetuses in their mothers' wombs along with the mothers.

L22373 The Malikis permit the sale of milk that has not yet been created or is still

in the udders without measurement, but two months or approximately that duration.

وَالْمَالِكِيُّونَ يُجِيزُونَ بَيْعَ اللَّبَنِ الَّذِي لَمْ يُخْلَقْ بَعْدُ وَالَّذِي فِي الضُّرُوعِ بِغَيْرِ كَيْلٍ لَكِنْ شَهْرَيْنِ أَوْ نَحْوَ ذَلِكَ.

L22374 They permit purchasing spoils before they are distributed—rather, it is considered obligatory and preferable according to them. The Hanafis allow taking monetary equivalents for obligatory zakah—this constitutes selling zakah before taking possession of it, and this is truly a sale of uncertainty (gharar), for one does not know what was sold, nor which item was sold, nor the value of what was taken [as substitute]—this is truly unlawful consumption of wealth, truly gharar, and truly prohibited.

وَيُجِيزُونَ شِرَاءَ الْمَغَانِمِ قَبْلَ أَنْ تُقْسَمَ بَلْ هُوَ الْوَاجِبُ عِنْدَهُمْ وَالْأَوْلَى؟ وَالْحَنَفِيُّونَ يُجِيزُونَ أَخْذَ الْقِيمَةِ عَنْ الصَّدَقَةِ الْوَاجِبَةِ - وَهَذَا هُوَ بَيْعُ الصَّدَقَةِ قَبْلَ أَنْ تُقْبَضَ، وَهَذَا بَيْعُ الْغَرَرِ حَقًّا؛ لِأَنَّهُ لَا يَدْرِي مَا بَاعَ وَلَا أَيَّهَا بَاعَ، وَلَا قِيمَةَ مَاذَا أَخَذَ -: فَهُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ حَقًّا، وَالْغَرَرُ حَقًّا، وَالْحَرَامُ حَقًّا.

L22375 They cited a report transmitted by Yazīd ibn Abī Ziyād—who is weak—containing a prohibition against selling fish in the water. Furthermore, even if it were authentic, it would not serve as proof for them, because it would only constitute a prohibition against selling them before they are caught—and this is our position, just as they interpreted their report regarding the prohibition against selling an absconding slave as applying while he is absconding: No, even if he is within one's control.

وَاحْتَجُّوا بِخَبَرٍ فِيهِ يَزِيدُ بْنُ أَبِي زِيَادٍ - وَهُوَ ضَعِيفٌ - فِيهِ النَّهْيُ عَنْ بَيْعِ السَّمَكِ فِي الْمَاءِ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ إنَّمَا يَكُونُ نَهْيًا عَنْ بَيْعِهِ قَبْلَ أَنْ يُصَادَ - وَهَكَذَا نَقُولُ، كَمَا حَمَلُوا خَبَرَهُمْ فِي النَّهْيِ عَنْ بَيْعِ الْآبِقِ عَلَى أَنَّهُ فِي حَالِ إبَاقِهِ: لَا، وَهُوَ مَقْدُورٌ عَلَيْهِ.

L22376 Among the wonders of the world is their use of their own narration as evidence while they are the first to oppose it, and they thereby prohibit what is not mentioned in it as part of the sale of a stray camel. If they say: "We analogized the stray camel to the runaway slave," we say: "All analogy is invalid." Then we say to the Hanafis: "How could you not analogize the stray camel in applying the stipulated reward for it to that of the runaway slave?"

وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُهُمْ بِخَبَرِهِمْ أَوَّلُ مُخَالِفٍ لَهُ، وَحَرَّمُوا بِهِ مَا لَيْسَ فِيهِ مِنْ بَيْعِ الْجَمَلِ الشَّارِدِ؟ فَإِنْ قَالُوا: قِسْنَا الْجَمَلَ الشَّارِدَ عَلَى الْعَبْدِ الْآبِقِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ نَقُولُ لِلْحَنَفِيِّينَ: هَلَّا قِسْتُمْ الْجَمَلَ الشَّارِدَ فِي إيجَابِ الْجُعْلِ فِيهِ عَلَى الْجُعْلِ فِي الْعَبْدِ الْآبِقِ؟

L22377–22378 If they say: "The narration does not mention the runaway slave?" We respond: "Does this rejected narration (also) not pertain specifically to the runaway slave?" Ali said: "It has been transmitted to us from Sinān ibn Salama and Ikrimah that they did not permit selling a runaway slave." Ikrimah added: "Nor a stray camel." Among those from whom reports have reached us, sharing our opinion, is what was transmitted through Ibn Abi Shaybah's chain: 'Abdah ibn Sulaymān narrated from 'Ubayd Allāh ibn 'Umar from Nāfi' from Ibn 'Umar that he purchased a camel while it was stray.

فَإِنْ قَالُوا: لَمْ يَأْتِ الْأَثَرُ فِي الْآبِقِ؟ قُلْنَا: وَلَا جَاءَ هَذَا الْأَثَرُ السَّاقِطُ - أَيْضًا - إلَّا فِي الْآبِقِ؟ قَالَ عَلِيٌّ: وَرُوِّينَا عَنْ سِنَانِ بْنِ سَلَمَةَ، وَعِكْرِمَةَ: أَنَّهُمَا لَمْ يُجِيزَا بَيْعَ الْعَبْدِ الْآبِقِ، قَالَ عِكْرِمَةُ: وَلَا الْجَمَلِ الشَّارِدِ - وَمِمَّنْ رُوِّينَا عَنْهُ مِثْلَ قَوْلِنَا -: مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ

أَبِي شَيْبَةَ نا عَبْدَةُ بْنُ سُلَيْمَانُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ: أَنَّهُ اشْتَرَى بَعِيرًا وَهُوَ شَارِدٌ.

L22379 قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُ مُخَالِفًا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ وَالثِّقَةِ، وَهُمْ يُعَظِّمُونَ خِلَافَ مِثْلِ هَذَا إِذَا وَافَقَهُمْ وَيَجْعَلُونَهُ إِجْمَاعًا، وَعَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَقُولُونَ: إِذَا رَوَى الصَّاحِبُ خَبَرًا وَخَالَفَهُ فَهُوَ أَعْلَمُ بِمَا رَوَى، وَهُوَ حُجَّةٌ فِي تَرْكِ الْخَبَرِ.

L22380 وَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ مُوسَى بْنِ عُبَيْدَةَ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنِ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» .

L22381 وَقَدْ صَحَّ عَنِ ابْنِ عُمَرَ: إِبَاحَةُ بَيْعِ الْجَمَلِ الشَّارِدِ - فَلَوْ كَانَ عِنْدَهُ غَرَرًا مَا خَالَفَ مَا

L22382 رَوَى، هَذَا لَازِمٌ لَهُمْ عَلَى أُصُولِهِمْ، وَإِلَّا فَالتَّنَاقُضُ حَاصِلٌ، وَهَذَا أَخَفُّ شَيْءٍ عَلَيْهِمْ.

L22383 وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنِ الْمُغِيرَةِ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ: أَنَّ رَجُلًا أَتَاهُ فَقَالَ: إِنَّ لِي عَبْدًا آبِقًا، وَإِنَّ رَجُلًا يُسَاوِمُنِي بِهِ، أَفَأَبِيعُهُ مِنْهُ؟ قَالَ: نَعَمْ، فَإِنَّكَ إِذَا رَأَيْتَهُ فَأَنْتَ بِالْخِيَارِ إِنْ شِئْتَ أَجَزْتَ الْبَيْعَ وَإِنْ شِئْتَ لَمْ تُجِزْهُ - قَالَ الشَّعْبِيُّ: إِذَا أَعْلَمَهُ مِنْهُ مَا كَانَ يَعْلَمُ مِنْهُ جَازَ بَيْعُهُ وَلَمْ يَكُنْ لَهُ خِيَارٌ.

L22384 From the narration of Hammad ibn Salamah: Ayyub al-Sikhtiyani reported from Muhammad ibn Sirin that a man's slave absconded. A man said to him,

[16] **Hadith references (L22380):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

"Sell me your slave," so he sold him. They then disputed and took their case to Shurayh. Shurayh said, "If he disclosed to him what he knew, the sale is valid."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ فَإِنَّ أَيُّوبَ السِّخْتِيَانِيَّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ رَجُلًا أَبَقَ غُلَامُهُ، فَقَالَ لَهُ رَجُلٌ: بِعْنِي غُلَامَكَ؟ فَبَاعَهُ مِنْهُ، ثُمَّ اخْتَصَمَا إِلَى شُرَيْحٍ: فَقَالَ شُرَيْحٌ: إِنْ كَانَ أَعْلَمَهُ مِثْلَ مَا عَلِمَ فَهُوَ جَائِزٌ.

L22385 From the narration of ʿAbd al-Razzāq: Maʿmar reported from Ayyūb al-Sikhtiyānī, who said: A man's slave absconded, and another man who knew his location purchased him from him. Later, the original owner brought a dispute against him to Shurayḥ. Ibn Sīrīn said: I heard Shurayḥ ask him, "Did you inform him of the slave's location and then buy him?" He nullified the sale because he had not informed him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، قَالَ: أَبَقَ غُلَامٌ لِرَجُلٍ فَعَلِمَ مَكَانَهُ رَجُلٌ آخَرُ فَاشْتَرَاهُ مِنْهُ، فَخَاصَمَهُ إِلَى شُرَيْحٍ بَعْدَ ذَلِكَ، قَالَ ابْنُ سِيرِينَ: فَسَمِعْتُ شُرَيْحًا يَقُولُ لَهُ: أَكُنْتَ أَعْلَمْتَهُ مَكَانَهُ ثُمَّ اشْتَرَيْتَهُ؟ فَرَدَّ الْبَيْعَ، لِأَنَّهُ لَمْ يَكُنْ أَعْلَمَهُ.

L22386–22387 Abu Muhammad said: This is correct, because concealing it is its proper place while he is aware of it—whichever of them knows it and conceals it, this constitutes deception and deceit, and due to both deception and deceit, the sale is invalidated.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا صَحِيحٌ، لِأَنَّ كِتْمَانَهُ مَكَانَهُ وَهُوَ يَعْلَمُهُ، أَيُّهُمَا عَلِمَهُ فَكَتَمَهُ غِشٌّ وَخَدِيعَةٌ، وَالْغِشُّ، وَالْخَدِيعَةُ يُرَدُّ مِنْهُمَا الْبَيْعُ.

L22388 From the chain of al-Ḥajjāj ibn al-Minhāl, narrated to us Ḥammād ibn Zayd from Ayyūb al-Sikhtiyānī: Muḥammad ibn Sīrīn saw no harm in purchasing the runaway slave when their knowledge about him was the same.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ: أَنَّ مُحَمَّدَ بْنَ سِيرِينَ كَانَ لَا يَرَى بَأْسًا بِشِرَاءِ الْعَبْدِ الْآبِقِ إِذَا كَانَ عِلْمُهُمَا فِيهِ وَاحِدًا.

L22389 From the transmission of Ibn Abi Shaybah: Abu Sa'd narrated to us from Ibn Jurayj from Ibn Ṭāwūs from his father that he saw no objection to a man purchasing an absent animal if he had previously seen it. He said: "If it is sound, then it belongs to me." He did not exclude any case except distinguishing one stray from another, and a stray is absent.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو سَعْدٍ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَشْتَرِيَ الرَّجُلُ الدَّابَّةَ الْغَائِبَةَ إِذَا كَانَ قَدْ رَآهَا، وَيَقُولُ إِنْ كَانَتْ صَحِيحَةً فَهِيَ لِي، وَلَمْ يَخُصَّ غَيْرَ شَارِدَةٍ مِنْ شَارِدَةٍ وَالشَّارِدَةُ غَائِبَةٌ.

L22390 Among those who permitted the sale of a stray camel and a habitually runaway slave are ʿUthmān al-Battī, Abū Bakr ibn Dāwūd, and our companions - and success comes only from Allah, the Exalted.

وَمِمَّنْ أَجَازَ بَيْعَ الْجَمَلِ الشَّارِدِ، وَالْعَبْدِ الْآبِقِ: عُثْمَانُ الْبَتِّيُّ وَأَبُو بَكْرِ بْنُ دَاوُد، وَأَصْحَابُنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22391 An issue concerning the sale of musk while still in its gland, along with the gland itself.

[مَسْأَلَةٌ بَيْعُ الْمِسْكِ فِي نَافِجَتِهِ مَعَ النَّافِجَةِ]

L22392 Issue 1424: The sale of musk within its gland along with the gland, date pits within dates along with the dates, the contents of an egg along with

the egg itself, carrots, almonds with their shell, pistachios, pine nuts, acorns, chestnuts, and every item with a covering—whether it has two coverings or one—along with its covering, honey with wax within its wax along with the wax, and a slaughtered sheep with its skin (still attached)—all of this is permissible.

١٤٢٤ - مَسْأَلَةٌ: وَبَيْعُ الْمِسْكِ فِي نَافِجَتِهِ مَعَ النَّافِجَةِ، وَالنَّوَى فِي التَّمْرِ مَعَ التَّمْرِ، وَمَا فِي دَاخِلِ الْبَيْضِ مَعَ الْبَيْضِ، وَالْجَزَرِ، وَاللَّوْزِ، وَالْفُسْتُقِ، وَالصَّنَوْبَرِ، وَالْبَلُّوطِ، وَالْقَسْطَلِ، وَكُلِّ ذِي قِشْرٍ مَعَ قِشْرِهِ - كَانَ عَلَيْهِ قِشْرَانِ أَوْ وَاحِدٌ - وَالْعَسَلِ مَعَ الشَّمْعِ فِي شَمْعِهِ، وَالشَّاةِ الْمَذْبُوحَةِ فِي جِلْدِهَا مَعَ جِلْدِهَا: جَائِزٌ كُلُّ ذَلِكَ.

L22393 And thus, everything Allah, Exalted is He, has created—as it inherently exists among creation—contains what is within it as an integral part of itself.

وَهَكَذَا كُلُّ مَا خَلَقَهُ اللَّهُ تَعَالَى كَمَا هُوَ مِمَّا يَكُونُ مَا فِي دَاخِلِهِ بَعْضًا لَهُ.

L22394 Likewise, the olive with the oil it contains, sesame with the oil it contains, female livestock with the milk in their udders, hulled wheat and sorghum in their husks with the husks, and in their ears of grain with the ears—all of this is permissible and valid.

وَكَذَلِكَ الزَّيْتُونُ بِمَا فِيهِ مِنْ الزَّيْتِ، وَالسِّمْسِمُ بِمَا فِيهِ مِنْ الدُّهْنِ، وَالْإِنَاثُ بِمَا فِي ضُرُوعِهَا مِنْ اللَّبَنِ، وَالْبُرُّ، وَالْعَلَسُ فِي أَكْمَامِهِ مَعَ الْأَكْمَامِ، وَفِي سُنْبُلِهِ مَعَ السُّنْبُلِ: كُلُّ ذَلِكَ جَائِزٌ حَسَنٌ.

L22395 It is impermissible to sell anything concealed within another item that people have hidden if it is among items that no one has seen—neither with its container nor without it. However, if it is among items that have been seen, selling it based on its description is permissible, such as honey, ghee in its container, milk likewise, wheat in its container, and all other similar items including carrots, onions, leeks, turnips, and radishes—all before they are uprooted.

وَلَا يَحِلُّ بَيْعُ شَيْءٍ مَغِيبٍ فِي غَيْرِهِ مِمَّا غَيَّبَهُ النَّاسُ إذَا كَانَ مِمَّا لَمْ يَرَهُ أَحَدٌ - لَا مَعَ وِعَائِهِ وَلَا دُونَهُ - فَإِنْ كَانَ مِمَّا قَدْ رُئِيَ: جَازَ بَيْعُهُ عَلَى الصِّفَةِ، كَالْعَسَلِ، وَالسَّمْنِ فِي ظَرْفِهِ، وَاللَّبَنِ كَذَلِكَ، وَالْبُرِّ فِي وِعَائِهِ، وَغَيْرِ ذَلِكَ كُلِّهِ الْجَزَرِ، وَالْبَصَلِ، وَالْكُرَّاثِ، وَالسَّلْجَمِ، وَالْفُجْلِ، قَبْلَ أَنْ يُقْلَعَ.

L22396 Al-Shafi'i said: If something has two husks, it is not permissible to sell it until the outer husk is removed.

وَقَالَ الشَّافِعِيُّ: مَا لَهُ قِشْرَانِ فَلَا يَجُوزُ بَيْعُهُ حَتَّى يُزَالَ الْقِشْرُ الْأَعْلَى.

L22397 Abū Muḥammad said: Every physical entity that Allah the Exalted created possesses length, width, and depth. Allah the Exalted stated: "Allah has made lawful selling" [Al-Baqarah: 275]. Therefore, the sale of everything we have mentioned is likewise permissible by the explicit textual ruling of the Quran.[17]

قَالَ أَبُو مُحَمَّدٍ: كُلُّ جِسْمٍ خَلَقَهُ اللَّهُ تَعَالَى فَلَهُ طُولٌ، وَعَرْضٌ، وَعُمْقٌ، قَالَ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَكُلُّ مَا ذَكَرْنَا فَكَذَلِكَ بَيْعُهُ بِنَصِّ الْقُرْآنِ جَائِزٌ.

L22398–22399 The scholars have unanimously agreed, and the established Sunnahs affirmed by consensus confirm the permissibility of selling dates, grapes, and raisins,

وَقَدْ أَجْمَعُوا وَصَحَّتْ السُّنَنُ الْمُجْمَعُ عَلَيْهَا عَلَى جَوَازِ بَيْعِ التَّمْرِ، وَالْعِنَبِ، وَالزَّبِيبِ، وَفِيهَا النَّوَى، وَأَنَّ النَّوَى دَاخِلٌ فِي الْبَيْعِ.

[17] **Qur'an references (L22397):** Qur'an 2:275 (Al-Baqarah).

and that the pits of dates and the seeds of grapes and raisins are included in the sale.

وَأَجْمَعُوا عَلَى جَوَازِ بَيْعِ الْبَيْضِ كَمَا هُوَ، وَإِنَّمَا الْغَرَضُ مِنْهُ مَا فِي دَاخِلِهِ، وَدَخَلَ الْقِشْرُ فِي الْبَيْعِ بِلَا خِلَافٍ مِنْ أَحَدٍ.

L22400 They unanimously agreed upon the permissibility of selling eggs in their natural state, for the purpose is solely their interior contents. The shell is included in the sale without any disagreement from anyone.

وَكَذَلِكَ الزَّيْتُونُ بِمَا فِيهِ مِنْ الزَّيْتِ، وَالسِّمْسِمُ بِمَا فِيهِ مِنْ الدُّهْنِ، وَالشَّاةُ الْمَذْبُوحَةُ كَمَا هِيَ - فَلَيْتَ شِعْرِي: مَا الْفَرْقُ بَيْنَ ذَلِكَ وَبَيْنَ مَا اخْتَلَفُوا فِيهِ، الْمِسْكُ فِي نَافِجَتِهِ مَعَ النَّافِجَةِ، وَالْعَسَلُ فِي شَمْعِهِ مَعَ الشَّمْعِ؟ وَلَا سَبِيلَ إلَى فَرْقٍ لَا فِي قُرْآنٍ، وَلَا فِي سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ وَلَا قِيَاسٍ، وَلَا مَعْقُولٍ، وَلَا رَأْيٍ يَصِحُّ، وَكُلُّ ذَلِكَ بَيْعٌ قَدْ أَبَاحَهُ اللَّهُ تَعَالَى وَلَمْ يَخُصَّ مِنْهُ شَيْئًا، وَقَدْ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] لَوْ كَانَ حَرَامًا لَفَصَّلَهُ اللَّهُ تَعَالَى لَنَا، فَإِذْ لَمْ يُفَصِّلْهُ فَهُوَ مَنْصُوصٌ عَلَى تَحْلِيلِهِ.

L22401 Similarly, the olive with its oil, the sesame with its oil, and the slaughtered ewe as it is—Oh, would that I knew: what distinguishes these from what they disputed, such as musk in its gland along with the gland, or honey in its comb along with the comb? There is no basis for distinction—neither in the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor a Follower, nor analogy, nor reason, nor any valid opinion. All these are transactions Allah the Exalted has permitted without singling out anything. He says: "And He has detailed for you what He has forbidden upon you" (6:119). Had it been forbidden, Allah would have specified it. Since He did not detail it, its permissibility is textually established.[18]

فَإِنْ قَالُوا: هُوَ غَرَرٌ؟ قُلْنَا: أَوَلَيْسَ عَلَى قَوْلِكُمْ هَذَا سَائِرُ مَا ذَكَرْنَا غَرَرًا أَيْضًا؟ وَإِلَّا فَمَا الْفَرْقُ، وَأَمَّا الْحَقُّ فَإِنَّهُ لَيْسَ شَيْءٌ مِنْهُ غَرَرًا، لِأَنَّهُ جِسْمٌ وَاحِدٌ خَلَقَهُ اللَّهُ عَزَّ وَجَلَّ كَمَا هُوَ وَكُلُّ مَا فِي دَاخِلِهِ بَعْضُ جُمْلَتِهِ.

L22402 If they say, "This is gharar," we respond: "By your own assertion, is not all that we have mentioned also gharar? Otherwise, what is the difference?" As for the correct ruling, none of it constitutes gharar, for it is a single entity created by Allah, the Almighty and Majestic, as it is, and everything within it is a part of its whole.

وَأَمَّا قَوْلُ الشَّافِعِيِّ فَظَاهِرُ الْفَسَادِ، لِأَنَّهُ لَا فَرْقَ فِي مُغَيَّبِ الْمَعْرِفَةِ بِصِفَةِ مَا فِي الْقِشْرِ - بَيْنَ كَوْنِهِ فِي قِشْرٍ وَاحِدٍ، وَبَيْنَ كَوْنِهِ فِي قِشْرَيْنِ، أَوْ أَكْثَرَ - وَهُوَ قَدْ أَجَازَ بَيْعَ الْبَيْضِ فِي غُلَافَيْنِ بِالْعِيَانِ، إحْدَاهُمَا: الْقِشْرُ الظَّاهِرُ، وَهُوَ الْقَيْضُ، وَالثَّانِي: الْغِرْقِئُ، وَلَا غَرَضَ لِلْمُشْتَرِي إلَّا فِيمَا فِيهِمَا، لَا فِيهِمَا - مَعَ أَنَّهُ قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

L22403 As for al-Shāfiʿī's statement, it is evidently invalid because there is no distinction in the concealed state of knowledge regarding the quality of what lies within the shell—whether it is in one shell, two shells, or more. Yet he permitted the sale of eggs with two coverings through visible inspection: one being the qayḍ (the outer shell), and the second being the ghirqīʾ (membrane). The buyer's interest is solely in what is within them, not in the coverings themselves; a position we do not know to have been held by anyone before him.

[18] **Qur'an references (L22401):** Qur'an 6:119 (Al-An'am).

If it is said: “We are able to remove whatever we can of gharar, are we obligated to remove it?” We respond: “Indeed, you are capable of removing the secondary layer—so you must remove it without fail, for it is gharar.”

If they say: “Is that not harmful to almonds, walnuts, chestnuts, and acorns?” We say: No, there is no harm to acorns, nor to chestnuts, nor to almonds—in most cases.

Furthermore, there is no harm in removing pits from dates.

Moreover, we do not know of any prohibition that is made permissible due to fear of harm to a fruit if harm is feared for it. If a man had fresh dates (rutab) that cannot dry and could find no buyer for them except in exchange for dried dates (tamr), it would not be lawful for him to sell them out of fear of harm.

Similarly, if a man fears an oppressive enemy [may harm] his fruit, and its readiness [for harvest] has not yet become evident, it is impermissible to sell it due to the fear of harm befalling it.

The Legal Question of Selling a Pregnant Animal Along with Its Fetus.

1425 – Issue

Among these rulings is the sale of a pregnant female along with her fetus if she was impregnated by someone other than her owner, because the fetus is created by Allah, the Exalted, from the man’s semen, the woman’s semen, and her blood. Thus, it is part of her organs and her contents as long as the soul has not been breathed into it. Allah, the Most High, says: “We created man from an extract of clay” [23:12], “then We made him a sperm-drop in a firm resting place” [23:13], “then We created the sperm-drop into a clinging clot, then We created the clot into a lump of flesh, then We created the lump into bones, then We clothed the bones with flesh, then We produced him as another creation. So blessed is Allah, the best of creators” [23:14]. Therefore,

فَإِنْ قِيلَ: إنَّ مَا قَدَرْنَا عَلَى إزَالَتِهِ مِنْ الْغَرَرِ فَعَلَيْنَا أَنْ نُزِيلَهُ؟ قُلْنَا: وَإِنَّكُمْ لَقَادِرُونَ عَلَى إزَالَةِ الْقِشْرِ الثَّانِي فَأَزِيلُوهُ وَلَا بُدَّ، لِأَنَّهُ غَرَرٌ -.

فَإِنْ قَالُوا: لَا ذَلِكَ ضَرَرٌ عَلَى اللَّوْزِ، وَالْجَوْزِ، وَالْقَسْطَلِ، وَالْبَلُّوطِ؟ قُلْنَا: لَا، مَا فِيهِ ضَرَرٌ عَلَى الْبَلُّوطِ، وَلَا عَلَى الْقَسْطَلِ، وَلَا عَلَى اللَّوْزِ - فِي الْأَكْثَرِ -.

وَأَيْضًا: فَلَا ضَرَرَ عَلَى التَّمْرِ فِي إزَالَةِ نَوَاهُ.

وَأَيْضًا: فَمَا عَلِمْنَا حَرَامًا يُحِلُّهُ خَوْفُ ضَرَرٍ عَلَى فَاكِهَةٍ لَوْ خِيفَ عَلَيْهَا، وَلَوْ أَنَّ امْرَءًا لَهُ رُطَبٌ لَا يَيْبَسُ وَلَمْ يَجِدْ مَنْ يَشْتَرِيهِ مِنْهُ إلَّا بِتَمْرٍ يَابِسٍ لَمَا حَلَّ لَهُ بَيْعُهُ خَوْفَ الضَّرَرِ.

وَكَذَلِكَ لَوْ أَنَّ امْرَءًا خَافَ عَدُوًّا ظَالِمًا عَلَى ثَمَرَتِهِ وَلَمْ يَكُنْ بَدَا صَلَاحُهَا لَمْ يَحِلَّ بَيْعُهَا خَوْفَ الضَّرَرِ عَلَيْهَا؟

[مَسْأَلَةُ بَيْعُ الْحَامِلِ بِحَمْلِهَا]

١٤٢٥ - مَسْأَلَةٌ

: وَمِنْ هَذَا بَيْعُ الْحَامِلِ بِحَمْلِهَا إذَا كَانَتْ حَامِلًا مِنْ غَيْرِ سَيِّدِهَا، لِأَنَّ الْحَمْلَ خَلَقَهُ اللَّهُ عَزَّ وَجَلَّ مِنْ مَنِيِّ الرَّجُلِ وَمَنِيِّ الْمَرْأَةِ وَدَمِهَا، فَهُوَ بَعْضُ أَعْضَائِهَا وَحَشْوَتِهَا، مَا لَمْ يُنْفَخْ فِيهِ الرُّوحُ، قَالَ تَعَالَى: {وَلَقَدْ خَلَقْنَا الإِنْسَانَ مِنْ سُلالَةٍ مِنْ طِينٍ} [المؤمنون: ١٢] {ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَكِينٍ} [المؤمنون: ١٣] {ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً فَخَلَقْنَا الْعَلَقَةَ مُضْغَةً فَخَلَقْنَا الْمُضْغَةَ عِظَامًا فَكَسَوْنَا الْعِظَامَ لَحْمًا ثُمَّ أَنْشَأْنَاهُ خَلْقًا آخَرَ فَتَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ} [المؤمنون: ١٤] فَبَيْعُهَا بِحَمْلِهَا كَمَا هِيَ جَائِزٌ، وَهِيَ وَحَمْلُهَا لِلْمُشْتَرِي.

selling her along with her fetus as she is, is permissible, and both she and her fetus belong to the buyer.[19]

فَإِذَا نُفِخَ فِيهِ الرُّوحُ، فَقَدْ اخْتَلَفَ أَهْلُ الْعِلْمِ؟ فَقَالَتْ طَائِفَةٌ: هُوَ بَعْدَ ذَلِكَ غَيْرُهَا، لِأَنَّهَا أُنْثَى، وَقَدْ يَكُونُ الْجَنِينُ ذَكَرًا وَهِيَ فَرْدَةٌ وَقَدْ يَكُونُ فِي بَطْنِهَا اثْنَانِ، وَقَدْ تَكُونُ هِيَ كَافِرَةً وَمَا فِي بَطْنِهَا مُؤْمِنًا، وَقَدْ يَمُوتُ أَحَدُهُمَا وَيَعِيشُ الْآخَرُ، وَيَكُونُ أَحَدُهُمَا مَعِيبًا وَالْآخَرُ صَحِيحًا، وَيَكُونُ أَحَدُهُمَا أَسْوَدَ وَالْآخَرُ أَبْيَضَ - وَلَوْ وَجَبَ عَلَيْهَا قَتْلٌ لَمْ تُقْتَلْ هِيَ حَتَّى تَلِدَ.

L22413 When the soul is breathed into it, the scholars have indeed differed. A faction of scholars said: The fetus is distinct from her after that, for she is female while the fetus may be male, though she is singular. There may be two in her womb; she might be a disbeliever while what is in her womb is a believer; one of them might die while the other survives; one might be defective while the other is sound; or one might be black while the other is white. Were she to be sentenced to death, she would not be executed until she delivers.

فَصَحَّ أَنَّهُ غَيْرُهَا، فَلَا يَجُوزُ دُخُولُهُ فِي بَيْعِهَا - وَهَكَذَا فِي إِنَاثِ سَائِرِ الْحَيَوَانِ - حَاشَ اخْتِلَافَ الدِّينِ فَقَطْ، أَوْ الْقَتْلَ فَقَطْ.

L22414 Thus, it is confirmed that it is other than her, so it is not permissible to include it in her sale (and similarly for females of other animals), except for difference in religion alone, or killing alone.

فَقَالَ آخَرُونَ: هُوَ كَذَلِكَ إِلَّا أَنَّهُ حَتَّى الْآنَ مِمَّا خَلَقَهُ اللَّهُ تَعَالَى فِيهَا وَوَلَدَهُ مِنْهَا، وَلَمْ يُزَايِلْهَا بَعْدُ، فَحُكْمُهُ فِي الْبَيْعِ كَمَا كَانَ حَتَّى يُزَايِلَهَا - وَلَيْسَ كَوْنُهُ غَيْرَهَا، وَكَوْنُ اسْمِهِ غَيْرَ اسْمِهَا، وَصِفَاتُهُ غَيْرَ صِفَاتِهَا -: بِمُخْرِجٍ لَهُ عَمَّا كَانَ لَهُ مِنْ الْحُكْمِ إِلَّا بِنَصٍّ وَارِدٍ فِي ذَلِكَ. وَهَذَا النَّوَى هُوَ بِلَا شَكٍّ غَيْرُ التَّمْرِ، وَإِنَّمَا يُقَالُ: نَوَى التَّمْرِ، وَصِفَاتُهُ غَيْرُ صِفَاتِ التَّمْرِ، وَاسْمُهُ غَيْرُ اسْمِ التَّمْرِ - وَكَذَلِكَ قِشْرُ الْبَيْضِ أَيْضًا.

L22415 Others said: It remains as such except that until now, it constitutes part of what Allah the Exalted created within the date and its offspring from it, since it has not yet separated. Thus, its ruling in sale persists as before until separation occurs. The fact that it is distinct from the date, its name differs from the date's name, and its attributes differ from the date's attributes does not remove it from its original legal ruling except through specific textual evidence. These pits are undoubtedly distinct from the date itself, though it is merely called "the date's pits," with attributes differing from the date's attributes and a name distinct from the date's name. Similarly, the eggshell is also [treated likewise].

وَكَذَلِكَ بَيْضُ ذَاتِ الْبَيْضِ قَبْلَ أَنْ تَبِيضَهُ، وَكُلُّ ذَلِكَ جَائِزٌ بَيْعُهُ كَمَا هُوَ لِأَنَّ اللَّهَ تَعَالَى خَلَقَ كُلَّ ذَلِكَ كَمَا هُوَ وَمَا زَالَ النَّاسُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِعِلْمِهِ يَبِيعُونَ التَّمْرَ، وَيَتَوَاهَبُونَهُ.

L22416–22418 Similarly, the eggs of a hen before they are laid, and all such items—their sale is permissible in their current state because Allah... Exalted is He, He created all of that as it is. During the time of the Messenger of Allah (peace and blessings be upon him), people continued, by His knowledge, to sell dates and give them as gifts to one another.

وَيَبِيعُونَ الْبَيْضَ وَيَتَهَادَوْنَهُ مِنْ بَيْضِ الدَّجَاجِ، وَالضِّبَابِ، وَالنَّعَامِ.

L22419 They sell eggs and exchange them as gifts, specifically eggs of chickens,

[19] **Qur'an references (L22412):** Qur'an 23:12 (Al-Mu'minun); Qur'an 23:13 (Al-Mu'minun); Qur'an 23:14 (Al-Mu'minun).

spiny-tailed lizards, and ostriches.

وَيَتَبَايَعُونَ الْعَسَلَ وَيَتَهَادَوْنَهُ، كَمَا يَشْتَرُونَهُ فِي شَمْعِهِ.

L22420 They trade honey and reciprocally exchange it, just as they purchase it still in the comb.

وَيَتَبَايَعُونَ إِنَاثَ الضَّأْنِ، وَالْبَقَرِ، وَالْخَيْلِ، وَالْمَعْزِ، وَالْإِبِلِ، وَالْإِمَاءِ وَالظِّبَاءِ - حَوَامِلَ وَغَيْرَ حَوَامِلَ - وَيَغْنَمُونَ كُلَّ ذَلِكَ وَيَقْتَسِمُونَهُنَّ، وَيَتَوَارَثُونَهُنَّ وَيَقْتَسِمُونَهُنَّ كَمَا هُنَّ، فَمَا جَاءَ قَطُّ نَصٌّ بِأَنَّ لِلْأَوْلَادِ حُكْمًا آخَرَ قَبْلَ الْوَضْعِ، فَبَيْعُ الْحَامِلِ بِحَمْلِهَا جَائِزٌ كَمَا هُوَ مَا لَمْ تَضَعْهُ.

L22421 They trade female sheep, female cows, female horses, female goats, female camels, female gazelles, and female slaves—whether pregnant or not—and seize all such as war spoils, divide them, inherit them, and distribute them as they are. No text has ever stipulated a different ruling for unborn offspring before birth. Therefore, selling a pregnant female along with her pregnancy is permissible as long as she has not delivered.

قَالَ عَلِيٌّ: وَهَذَا هُوَ الصَّوَابُ عِنْدَنَا وَبِهِ نَقُولُ؛ لِأَنَّهُ كُلُّهُ بَابٌ وَاحِدٌ، وَعَمَلٌ وَاحِدٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22422 Ali said: "This is the correct view according to us, and with this we assert; for it is entirely a single legal section and a unified action - and with Allah the Exalted is success."

[مَسْأَلَةٌ مَا تَوَلَّى الْمَرْءُ وَضْعَهُ فِي الشَّيْءِ كَالْبَذْرِ يُزْرَعُ]

An issue concerning what a person takes responsibility for placing in an object, like a seed that is sown.

١٤٢٦ - مَسْأَلَةٌ: وَلَيْسَ كَذَلِكَ مَا تَوَلَّى الْمَرْءُ وَضْعَهُ فِي الشَّيْءِ كَالْبَذْرِ يُزْرَعُ، وَالنَّوَى يُغْرَسُ، فَإِنَّ هَذَا شَيْءٌ أَوْدَعَهُ الْمَرْءُ فِي شَيْءٍ آخَرَ مُبَايِنٍ لَهُ، بَلْ هَذَا وَوَضْعُهُ الدَّرَاهِمَ وَالدَّنَانِيرَ فِي الْكِيسِ، وَالْبُرَّ فِي الْوِعَاءِ، وَالسَّمْنَ فِي الْإِنَاءِ سَوَاءٌ، وَلَا يَدْخُلُ حُكْمُ أَحَدِهِمَا فِي الْآخَرِ.

L22424 1426 - Issue: This is not the case with what a person undertakes to place within the thing, such as seeds sown or pits planted. For this involves depositing one entity into another distinct from it. Rather, this and placing dirhams and dinars in a purse, wheat in a container, or ghee in a vessel are equivalent. The legal ruling applicable to one does not extend to the other.

وَمَنْ بَاعَ مِنْ مَالِهِ شَيْئًا لَمْ يَلْزَمْهُ بَيْعُ شَيْءٍ آخَرَ غَيْرِهِ، وَإِنْ كَانَ مَقْرُونًا مَعَهُ، وَمُضَافًا إِلَيْهِ.

L22425 Whoever sells an item from their property is not obligated to sell another item separate from it, even if it is linked to it or added to it.

فَمَنْ بَاعَ أَرْضًا فِيهِ بَذْرٌ مَزْرُوعٌ وَنَوًى مَغْرُوسٌ - ظَهَرَا أَوْ لَمْ يَظْهَرَا - فَكُلُّ ذَلِكَ لِلْبَائِعِ وَلَا يَدْخُلُ فِي الْبَيْعِ لِمَا ذَكَرْنَا.

L22426 Whoever sells land containing sown seeds and planted date pits—whether they have emerged or not—all such [seeds and pits] belong to the seller and are excluded from the sale, for the reason we have stated.

L22427 Malik said: As for what has visibly sprouted from the crop, it is excluded

from the sale of the crop specifically, whereas what has not appeared remains included in the sale.

وَقَالَ مَالِكٌ: أَمَّا مَا يَظْهَرُ نَبَاتُهُ فَلَا يَدْخُلُ فِي الْبَيْعِ مِنْ الزَّرْعِ خَاصَّةً، وَأَمَّا مَا لَمْ يَظْهَرْ فَهُوَ فِي الْبَيْعِ.

L22428 Abu Muhammad said: This is an invalid distinction because there is no evidence for its validity—neither from the Qur'an, nor the Sunnah, nor a weak narration, nor analogy, nor the statement of any of the Salaf, nor precautionary measures, nor an opinion with a sound basis. Rather, the Qur'an invalidates this by the statement of the Exalted: "Do not consume one another's wealth wrongfully unless it be through trade by mutual consent" (Quran 4:28).[20]

قَالَ أَبُو مُحَمَّد: وَهَذَا فَرْقٌ فَاسِدٌ، لِأَنَّهُ لَا دَلِيلَ عَلَى صِحَّتِهِ لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلِ أَحَدٍ مِنْ السَّلَفِ، وَلَا مِنْ احْتِيَاطٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، بَلْ الْقُرْآنُ يُبْطِلُ هَذَا بِقَوْلِهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L22429–22430 We have established that seeds and date pits are unquestionably the seller's property. Thus, it is not lawful for anyone else to take them except through consent that grants ownership. And with Allah, the Most High, is success.

وَوَجَدْنَا الْبَذْرَ، وَالنَّوَى: مَالًا لِلْبَائِعِ بِلَا شَكٍّ، فَلَا يَحِلُّ لِغَيْرِهِ أَخْذُهُ إلَّا بِالرِّضَا الَّذِي مَلَّكَهُ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22431 Issue: The sale of musk without the musk sac prior to its removal from it.

[مَسْأَلَةٌ بَيْعُ الْمِسْكِ دُونَ النَّافِجَةِ قَبْلَ إخْرَاجِهِ مِنْهَا]

L22432 Issue 1427: It is impermissible to sell any of the aforementioned absent items, except for what is originally attached to them. Specifically, it is impermissible to sell date pits—of any kind—before they are extracted and made visible, except for what is attached to them.

١٤٢٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ مِنْ الْمُغَيَّبَاتِ الْمَذْكُورَةِ كُلِّهَا دُونَ مَا عَلَيْهَا أَصْلًا -: لَا يَحِلُّ بَيْعُ النَّوَى - أَيُّ نَوًى كَانَ - قَبْلَ إخْرَاجِهِ وَإِظْهَارِهِ دُونَ مَا عَلَيْهِ.

L22433 The sale of musk without the musk gland before extracting it from the musk gland is not permissible.

وَلَا بَيْعُ الْمِسْكِ دُونَ النَّافِجَةِ قَبْلَ إخْرَاجِهِ مِنْ النَّافِجَةِ.

L22434 The sale of eggs without their shells is invalid unless the shells have already been removed.

وَلَا بَيْعُ الْبَيْضِ دُونَ الْقِشْرِ قَبْلَ إخْرَاجِهِ عَنْهُ.

L22435 The sale of walnuts, almonds, pistachios, pine nuts, acorns, chestnuts, hazelnuts, or any item still encased within its outer shell is not permitted before extracting it from its shell.

وَلَا بَيْعُ حَبِّ الْجَوْزِ، وَاللَّوْزِ، وَالْفُسْتُقِ، وَالصَّنَوْبَرِ، وَالْبَلُّوطِ، وَالْقَسْطَلِ، وَالْجُلَّوْزِ، وَكُلِّ ذِي قِشْرَةٍ دُونَ قِشْرِهِ قَبْلَ إخْرَاجِهِ مِنْ قِشْرِهِ.

L22436 The sale of honey is invalid if sold without its wax before the honey has been separated from it.

وَلَا بَيْعُ الْعَسَلِ دُونَ شَمْعِهِ قَبْلَ إخْرَاجِهِ مِنْ شَمْعِهِ.

[20] **Qur'an references (L22428):** Qur'an 4:29 (An-Nisa).

وَلَا لَحْمِ شَاةٍ مَذْبُوحَةٍ دُونَ جِلْدِهَا قَبْلَ سَلْخِهَا.

L22437 Nor the meat of a slaughtered sheep taken without its skin before it is skinned.

وَلَا بَيْعُ زَيْتٍ دُونَ الزَّيْتُونِ قَبْلَ عَصْرِهِ.

L22438 Nor is it permissible to sell oil without the olives before they are pressed.

وَلَا بَيْعُ شَيْءٍ مِنْ الْأَدْهَانِ دُونَ مَا هُوَ فِيهِ قَبْلَ إخْرَاجِهِ مِنْهَا.

L22439 It is impermissible to sell any of the oils while still in their source before extracting them from it.

وَلَا بَيْعُ حَبِّ الْبُرِّ دُونَ أَكْمَامِهِ قَبْلَ إخْرَاجِهِ مِنْهَا.

L22440 It is invalid to sell wheat grains while they are still in their husks.

وَلَا بَيْعُ سَمْنٍ مِنْ لَبَنٍ قَبْلَ إخْرَاجِهِ، وَلَا بَيْعُ لَبَنٍ قَبْلَ حَلْبِهِ أَصْلًا.

L22441 Nor is the sale of clarified butter before its extraction from milk permissible, nor is the sale of milk before it is milked absolutely.

وَلَا بَيْعُ الْجَزَرِ، وَالْبَصَلِ، وَالْكُرَّاثِ، وَالْفُجْلِ قَبْلَ قَلْعِهِ - لَا مَعَ الْأَرْضِ وَلَا دُونَهَا - لِأَنَّ كُلَّ ذَلِكَ بَيْعُ غَرَرٍ، لَا يُدْرَى مِقْدَارُهُ وَلَا صِفَتُهُ وَلَا رَآهُ أَحَدٌ فَيَصِفُهُ.

L22442 The sale of carrots, onions, leeks, and radishes before its uprooting—neither with the land nor without it—is prohibited, for all such sales constitute gharar, as its quantity and quality cannot be known, and no one has seen it to describe it.

وَهُوَ أَيْضًا أَكْلُ مَالٍ بِالْبَاطِلِ، قَالَ اللَّهُ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L22443 And it is also wrongful consumption of wealth. Allah the Exalted said: “Do not consume your wealth among yourselves wrongfully, unless it be a trade conducted by mutual consent between you” [Quran 4:29].[21]

وَبِالضَّرُورَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّهُ لَا يُمْكِنُ أَلْبَتَّةَ وُجُودُ الرِّضَا عَلَى مَجْهُولٍ وَإِنَّمَا يَقَعُ التَّرَاضِي عَلَى مَا عُلِمَ وَعُرِفَ، فَإِذْ لَا سَبِيلَ إلَى مَعْرِفَةِ صِفَاتِ كُلِّ مَا ذَكَرْنَا وَلَا مِقْدَارِهِ فَلَا سَبِيلَ إلَى التَّرَاضِي بِهِ، وَإِذْ لَا سَبِيلَ إلَى التَّرَاضِي بِهِ فَلَا يَحِلُّ بَيْعُهُ، وَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L22444 By necessity, everyone knows that consent cannot possibly apply to anything unknown, for mutual consent can only pertain to what is known and established. Since there is no means to determine the attributes or measure of anything we have mentioned, mutual consent about it becomes impossible. When mutual consent is impossible, selling such things becomes unlawful, amounting to the unlawful consumption of wealth.

وَأَمَّا الْجَزَرُ، وَالْبَصَلُ، وَالْكُرَّاثُ، وَالْفُجْلُ، فَكُلُّ ذَلِكَ شَيْءٌ لَمْ يَرَهُ قَطُّ أَحَدٌ، وَلَا تُدْرَى صِفَتُهُ: فَهُوَ بَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ - إذَا بِيعَ وَحْدَهُ - وَأَمَّا بَيْعُهُ بِالْأَرْضِ مَعًا فَلَيْسَ مِمَّا ابْتَدَأَ اللَّهُ تَعَالَى خَلْقَهُ فِي الْأَرْضِ فَيُكَوِّنُ بَعْضَهَا، وَإِنَّمَا هُوَ شَيْءٌ مِنْ مَالِ الزَّارِعِ لَهَا، أَوْدَعَهُ فِي الْأَرْضِ كَمَا لَوْ أَوْدَعَ فِيهَا شَيْئًا مِنْ سَائِرِ مَالِهِ وَلَا فَرْقَ، فَمَا لَمْ

L22445–22447 As for carrots, onions, leeks, and radishes—all these are items no one has seen at all, and their attributes remain unknown. When sold alone, this constitutes a speculative sale (gharar) and wrongful consumption of property. However, selling them alongside the land is permissible. It is not among what Allah, the Exalted, first created in the earth such that it constitutes part of it. Rather, it is something from the farmer’s wealth allocated for the earth that

[21] **Qur’an references (L22443):** Qur’an 4:29 (An-Nisa).

he deposited in it, just as if he had deposited any part of his other wealth in it—there being no difference between this and that. As long as the seed has not detached from its original form, its sale is permissible with the land or without it, because it is a specified item of known quantity, and the seller or the one who described it has seen it. Therefore, its sale is permissible since mutual consent about it is feasible. However, if it transforms from its state, it ceases to be possible to know its condition or attributes. It is not part of the earth but something added to it, rendering its attributes wholly unknown. Selling something with unspecified attributes is impermissible in any manner, as it constitutes a sale involving uncertainty (gharar) until it is uprooted and inspected. And success comes only from Allah, the Exalted.

يَسْتَحِلَّ الْبَذْرُ عَنْ هَيْئَتِهِ فَبَيْعُهُ جَائِزٌ مَعَ الْأَرْضِ وَدُونَهَا لِأَنَّهُ شَيْءٌ مَوْصُوفٌ مَعْرُوفُ الْقَدْرِ، وَقَدْ رَآهُ بَائِعُهُ أَوْ مَنْ وَصَفَهُ لَهُ، فَبَيْعُهُ جَائِزٌ، لِأَنَّ التَّرَاضِيَ بِهِ مُمْكِنٌ وَأَمَّا إِذَا اسْتَحَالَ عَنْ حَالِهِ فَقَدْ بَطَلَ أَنْ يَعْرِفَ كَيْفَ هُوَ وَمَا صِفَتُهُ، وَلَيْسَ هُوَ مِنَ الْأَرْضِ، وَلَكِنَّهُ شَيْءٌ مُضَافٌ إِلَيْهَا، فَهُوَ مَجْهُولُ الصِّفَةِ جُمْلَةً، وَلَا يَحِلُّ بَيْعُ مَجْهُولِ الصِّفَةِ بِوَجْهٍ مِنَ الْوُجُوهِ، لِأَنَّهُ بَيْعُ غَرَرٍ حَتَّى يُقْلَعَ وَيُرَى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22448 Among those who invalidated the sale of these unseen items in the earth are Al-Shāfiʿī, Aḥmad ibn Ḥanbal, and Abū Sulaymān.

وَمِمَّنْ أَبْطَلَ بَيْعَ هَذِهِ الْمُغَيَّبَاتِ فِي الْأَرْضِ: الشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو سُلَيْمَانَ.

L22449 Our opponents present here have contradicted much of what we have mentioned: Abū Ḥanīfa permitted selling the meat of the slaughtered sheep before skinning and required the seller to perform the skinning.

وَقَدْ تَنَاقَضَ الْحَاضِرُونَ مِنْ مُخَالِفِينَا فِي كَثِيرٍ مِمَّا ذَكَرْنَا -: فَأَجَازَ أَبُو حَنِيفَةَ بَيْعَ لَحْمِ الشَّاةِ مَذْبُوحَةً قَبْلَ السَّلْخِ وَأَوْجَبَ السَّلْخَ عَلَى الْبَائِعِ.

L22450 He permitted the sale of wheat without the straw and chaff before threshing and winnowing, and placed the responsibility of threshing and winnowing on the seller.

وَأَجَازَ بَيْعَ الْبُرِّ دُونَ التِّبْنِ وَالْأَكْمَامِ قَبْلَ أَنْ يُدْرَسَ وَيُصَفَّى، وَجَعَلَ الدَّرْسَ وَالتَّصْفِيَةَ عَلَى الْبَائِعِ.

L22451 He permitted the sale of carrots, onions, and other similar crops concealed in the ground.

وَأَجَازَ بَيْعَ الْجَزَرِ، وَالْبَصَلِ، وَغَيْرِ ذَلِكَ مُغَيَّبًا فِي الْأَرْضِ.

L22452 He obligated the seller to remove a sample from it sufficient to show the buyer. If the buyer approves it, the obligation falls upon the buyer to remove the rest of it. If the buyer undertakes to remove a sample himself and does not approve it, the sale is not binding on him. If he removes more than a sample from it, the sale becomes binding on him whether he likes it or not.

وَأَوْجَبَ عَلَى الْبَائِعِ أَنْ يَقْلَعَ مِنْهُ أُنْمُوذَجًا قَدْرَ مَا يُرِيهِ الْمُشْتَرِيَ فَإِنْ رَضِيَهُ كَانَ عَلَى الْمُشْتَرِي قَلْعُ سَائِرِهِ - فَلَوْ أَنَّ الْمُشْتَرِيَ يَتَوَلَّى بِنَفْسِهِ قَلْعَ أُنْمُوذَجٍ مِنْهُ فَلَمْ يَرْضَهُ لَمْ يَلْزَمْهُ الْبَيْعُ - فَلَوْ قَلَعَ مِنْهُ أَكْثَرَ مِنْ أُنْمُوذَجٍ فَقَدْ لَزِمَهُ الْبَيْعُ أَحَبَّ أَمْ كَرِهَ.

L22453 And Abu Yusuf said: I do not permit the seller or the buyer to uproot anything from that. If they dispute, I invalidate the sale.

وَقَالَ أَبُو يُوسُفَ: لَا أُجِيزُ الْبَائِعَ وَلَا الْمُشْتَرِيَ عَلَى قَلْعِ شَيْءٍ مِنْ ذَلِكَ فَإِنْ تَشَاحَّا أَبْطَلْتُ الْبَيْعَ.

L22454 If the buyer removes from it the minimum measurable quantity in dry mea-

sures, he has the option to uphold or annul the sale. But if he removes more than that, he is obligated to complete the entire sale.

فَإِنْ قَلَعَ الْمُشْتَرِي مِنْهُ أَقَلَّ مَا يَقَعُ فِي الْمَكَايِيلِ فَلَهُ الْخِيَارُ فِي إمْضَاءٍ أَوْ فَسْخٍ، فَإِنْ قَلَعَ أَكْثَرَ مِنْ ذَلِكَ فَقَدْ لَزِمَهُ الْبَيْعُ كُلُّهُ.

L22455–22457 Abū Muḥammad said: There is indeed astonishment in this. I wish I knew from where it became obligatory that the seller should be compelled to thresh, winnow, and skin, yet is not compelled to uproot carrots, onions, leeks, and radishes? Has anything more foolish than this division ever been heard? And I wish I knew: What is this "unmūdhaj" that is not an Arabic word from the language in which the Quran was revealed and with which the Messenger of Allah—may Allah bless him and grant him peace—addressed us? Nor is there a legal term, then Abū Ḥanīfah came to enact through it the legal rulings - prohibiting and permitting. Thus, upon the model lie effacement and striking the nape, and upon every legal ruling enacted through the model.

قَالَ أَبُو مُحَمَّد: إنَّ فِي هَذَا لَعَجَبًا، لَيْتَ شِعْرِي مِنْ أَيْنَ وَجَبَ أَنْ يُجْبَرَ الْبَائِعَ عَلَى الدَّرْسِ، وَالتَّصْفِيَةِ، وَالسَّلْخِ، وَلَا يُجْبَرُ عَلَى قَلْعِ الْجَزَرِ، وَالْبَصَلِ وَالْكُرَّاثِ، وَالْفُجْلِ؟ وَهَلْ سُمِعَ بِأَسْخَفَ مِنْ هَذَا التَّقْسِيمِ؟ وَلَيْتَ شِعْرِي مَا هَذَا " الْأُنْمُوذَجُ " الَّذِي لَا هُوَ لَفْظَةٌ عَرَبِيَّةٌ مِنْ اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ وَخَاطَبَنَا بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا لَفْظَةٌ شَرْعِيَّةٌ، ثُمَّ صَارَ يُشَرِّعُ بِهَا أَبُو حَنِيفَةَ الشَّرَائِعَ فَيُحَرِّمُ وَيُحَلِّلُ، فَعَلَى " الْأُنْمُوذَجِ " الْعَفَاءُ، وَصَفْعُ الْقَفَاءِ، وَعَلَى كُلِّ شَرِيعَةٍ تُشَرَّعُ بِالْأُنْمُوذَجِ.

L22458 Then Abū Yūsuf's determination of that by the smallest customary measure—not measures—even though sellers may use extremely small measures. We have not known carrots or radishes [to be such that] they are sold by measurement, so from where did he derive this legal ruling with its corrupt criterion—and we praise Allah the Exalted for well-being? Would that I knew: From where did they derive the permissibility of selling these absent items apart from the land? They prohibited selling a fetus without its mother, yet both matters are equal, with no distinction between any part of them. Both involve uncertainty and the sale of an unknown.

ثُمَّ تَحْدِيدُ أَبِي يُوسُفَ ذَلِكَ بِأَقَلِّ مَا يَقَعُ لَا الْمَكَايِيلَ، وَقَدْ يَتَّخِذُ الْبَاعَةُ مَكَايِيلَ صِغَارًا جِدًّا، وَمَا عَهِدْنَا بِالْجَزَرِ، وَلَا الْفُجْلِ: يَقَعَانِ فِي الْكَيْلِ، فَمِنْ أَيْنَ خَرَجَ لَهُ تَحْدِيدُ هَذِهِ الشَّرِيعَةِ بِهَذَا الْحَدِّ الْفَاسِدِ - وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى السَّلَامَةِ؟ وَلَيْتَ شِعْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ جَوَازُ بَيْعِ هَذِهِ الْمُغَيَّبَاتِ دُونَ الْأَرْضِ؟ وَمَنَعُوا مِنْ بَيْعِ الْجَنِينِ دُونَ أُمِّهِ، وَكِلَا الْأَمْرَيْنِ سَوَاءٌ لَا فَرْقَ بَيْنَ شَيْءٍ مِنْهُمَا، وَكِلَاهُمَا غَرَرٌ وَبَيْعُ مَجْهُولٍ.

L22459 Furthermore, the most marginal of all these restrictions: their prohibition against selling wool still on sheep's backs, a measured cubit from this edge of this garment stretching from beginning to end, or a quantified cubit extending to the edge of a present piece of wood, and the ornamentation of this sword excluding its scabbard and blade - they falsely asserted this to constitute *gharar* and a conditional act invalidating the sale. Yet they did not consider threshing, winnowing, or flaying to involve *gharar* or conditional acts nullifying sales. Do the proponents of these contradictory opinions possess any legitimate claim to knowledge? Moreover, they permitted selling immature crops on stalks and fruits not yet visibly sound on the branch.

ثُمَّ أَطْرَفُ مِنْ هَذَا كُلِّهِ: مَنْعُهُمْ مِنْ بَيْعِ الصُّوفِ عَلَى ظُهُورِ الْغَنَمِ، وَذِرَاعٍ مَحْدُودَةٍ مِنْ هَذَا الطَّرْفِ مِنْ هَذَا الثَّوْبِ مِنْ أَوَّلِهِ إلَى آخِرِهِ، أَوْ ذِرَاعٍ مَحْدُودٍ إلَى طَرْفِهِ مِنْ خَشَبَةٍ حَاضِرَةٍ، وَحِلْيَةِ هَذَا السَّيْفِ دُونَ جَفْنِهِ وَنَصْلِهِ؟ وَرَأَوْا هَذَا غَرَرًا وَعَمَلًا مُشْتَرَطًا يُفْسِدُ الْبَيْعَ - وَكَذَبُوا فِي ذَلِكَ. وَلَمْ يَرَوْا الدَّرْسَ، وَالتَّصْفِيَةَ، وَالسَّلْخَ غَرَرًا، وَلَا عَمَلًا

مُشْتَرَطًا يُفْسِدُ الْبَيْعَ؟ فَهَلْ لِأَصْحَابِ هَذِهِ الْأَقْوَالِ الْمُتَخَاذِلَةِ حَظٌّ مِنَ الْعِلْمِ؟ ثُمَّ أَجَازُوا بَيْعَ الْقَصِيلِ عَلَى الْقَطْعِ وَالثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا عَلَى الْقَطْعِ.

L22460 They permitted the sale of a palm tree stump on the ground and did not consider its severance to involve gharar or a stipulated labor invalidating the sale. Would anyone possessing a modicum of intellect doubt that cutting a bordered hem of a garment with shears or prying off an ornament from a sword's scabbard - actions not arduous for an adolescent boy - are easier and lighter than threshing a thousand kurr (a dry measure), winnowing them, and skinning a she-camel? Yet this represents the scope of their legal reasoning and jurisprudence.

وَأَجَازُوا بَيْعَ جِذْلِ نَخْلَةٍ عَلَى ظَهْرِ الْأَرْضِ، وَلَمْ يَرَوْا قَطْعَهُ غَرَرًا، وَلَا عَمَلًا مُشْتَرَطًا يُفْسِدُ الْبَيْعَ؟ وَهَلْ يَشُكُّ ذُو مُسْكَةٍ مِنْ عَقْلٍ فِي أَنَّ إِدْخَالَ الْجِلْمِ إِلَى حَاشِيَةٍ مَحْدُودَةٍ مِنْ ثَوْبٍ وَقَطْعَهُ، وَقَلْعَ حِلْيَةٍ عَلَى غِمْدِ سَيْفٍ لَا يَتَعَذَّرُ عَلَى غُلَامٍ مُرَاهِقٍ: أَسْهَلُ وَأَخَفُّ مِنْ دَرْسِ أَلْفِ كُرٍّ وَتَصْفِيَتِهَا وَمِنْ سَلْخِ نَاقَةٍ؟ وَلَكِنَّ هَذَا مِقْدَارُ نَظَرِهِمْ وَفِقْهِهِمْ.

L22461 "Some of them argued: 'Wool grows, and it is unclear where the cutting applies - to the wool itself or the garment?' We responded: 'The rootstock likewise grows, and it is unclear where the cutting applies to it - there is no juristic difference.'"

وَقَالَ بَعْضُهُمْ: الصُّوفُ يُنَمَّى وَلَا يُدْرَى أَيْنَ يَقَعُ الْقَطْعُ مِنْهُ وَمِنَ الثَّوْبِ؟ فَقُلْنَا: وَالْجِذْلُ يُنَمَّى وَلَا يُدْرَى أَيْنَ يَقَعُ الْقَطْعُ مِنْهُ وَلَا فَرْقَ.

L22462 If they say: "It has been authentically reported from Ibn Abbas the prohibition of selling wool on the sheep's backs, and no opposing view is known among the Companions - may Allah be pleased with them -"?

فَإِنْ قَالُوا: قَدْ صَحَّ عَنِ ابْنِ عَبَّاسٍ الْمَنْعُ مِنْ بَيْعِ الصُّوفِ عَلَى ظُهُورِ الْغَنَمِ وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟

L22463–22464 We said: It has been authentically reported from Ibn Umar regarding a sale involving an undefined portion - "The obligation falls upon the seller," with no known disagreement from the Companions, yet you oppose his ruling. What makes one of these two positions more valid than the other? They responded: If a land divided into plots of one hundred cubits by one hundred cubits, or a similarly measured house, were to have its owner sell ten cubits as an undivided share in the entire property, such a sale would be invalid.

قُلْنَا: وَقَدْ صَحَّ عَنِ ابْنِ عُمَرَ مَا أَدْرَكْتِ الصَّفْقَةَ مَجْمُوعًا حَيًّا فَمِنَ الْبَائِعِ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنَ الصَّحَابَةِ فَخَالَفْتُمُوهُ، فَمَا الَّذِي جَعَلَ أَحَدَهُمَا أَوْلَى مِنَ الْآخَرِ؟ وَقَالُوا: لَوْ أَنَّ أَرْضًا تَكْسِيرُهَا مَعْلُومٌ مِائَةُ ذِرَاعٍ فِي مِثْلِهَا، أَوْ دَارًا كَذَلِكَ: فَبَاعَ صَاحِبُهَا مِنْهَا عَشَرَةَ أَذْرُعٍ فِي مِثْلِهَا مُشَاعًا فِي جَمِيعِهَا لَمْ يَجُزْ ذَلِكَ.

L22465 If he sells ten shares from a total of one hundred shares as undivided shares across the entirety of the property, this is permissible.

فَلَوْ بَاعَ مِنْهَا عَشَرَةَ أَسْهُمٍ مِنْ مِائَةِ سَهْمٍ مُشَاعًا فِي جَمِيعِهَا جَازَ ذَلِكَ -.

L22466 This is utmost confusion—prohibiting something and permitting the very same thing; both matters are precisely the sale of a tenth share in undivided co-ownership.

وَهَذَا تَخْلِيطٌ نَاهِيكَ بِهِ، وَتَحْرِيمُ شَيْءٍ وَإِبَاحَتُهُ بِعَيْنِهِ، وَكِلَا الْأَمْرَيْنِ إِنَّمَا هُوَ بَيْعُ الْعُشْرِ مُشَاعًا.

L22467 They did not permit the sale of a sword's blade, its hilt, or half of its or-

namentation as undivided joint property, and they said: “This is harm” - If only I knew! What harm is there in this? As for the Mālikīs, they permitted the sale of wool still on the sheep and were justified in this ruling, except they stipulated: “provided it is taken at the time of its shearing; otherwise, it is not permitted.”

وَلَمْ يُجِيزُوا بَيْعَ نَصْلِ السَّيْفِ وَحَمَائِلِهِ وَنِصْفِ حِلْيَتِهِ مُشَاعًا، وَقَالُوا: هَذَا ضَرَرٌ - فَلَيْتَ شِعْرِي أَيُّ ضَرَرٍ فِي هَذَا؟ وَأَمَّا الْمَالِكِيُّونَ فَأَجَازُوا بَيْعَ الصُّوفِ عَلَى ظُهُورِ الْغَنَمِ، وَوَفَّقُوا فِي ذَلِكَ، إِلَّا أَنَّهُمْ قَالُوا: إِنْ أُخِذَ فِي جَزَازِهِ وَإِلَّا فَلَا.

L22468 And they permitted the sale of milk from numerous sheep that is two months old or less.

وَأَجَازُوا بَيْعَ لَبَنِ الْغَنَمِ الْكَثِيرَةِ شَهْرَيْنِ فَأَقَلَّ -.

L22469 This is a statement of evident invalidity: it involves the sale of something that has not been created and constitutes a sale of *gharar*.

وَهَذَا قَوْلٌ ظَاهِرُ الْفَسَادِ، أَنَّهُ بَيْعُ شَيْءٍ لَمْ يُخْلَقْ، وَبَيْعُ غَرَرٍ.

L22470 They prohibited the sale of all the milk from a single sheep, saying: “This is gharar (uncertainty), for the sheep may die.” We responded: “But even a large number (of sheep) may die, or some of them may die.”

وَمَنَعُوا مِنْ بَيْعِ لَبَنِ شَاةٍ وَاحِدَةٍ كُلِّهِ، وَقَالُوا: هَذَا غَرَرٌ وَقَدْ تَمُوتُ؟ فَقُلْنَا: وَقَدْ تَمُوتُ الْكَثِيرَةُ أَوْ يَمُوتُ بَعْضُهَا.

L22471 We ask them similarly about selling the milk of two ewes? If they prohibit that, we ask them about the milk of three ewes. We keep adding one at a time until they define what they prohibit from what they permit. Then we ask them about the distinction? This is something for which there is no justification.

وَنَسْأَلُهُمْ عَنْ بَيْعِ لَبَنِ شَاتَيْنِ كَذَلِكَ؟ فَإِنْ مَنَعُوا مِنْ ذَلِكَ سَأَلْنَاهُمْ عَنْ لَبَنِ ثَلَاثِ شِيَاهٍ؟ وَلَا نَزَالُ نَزِيدُهُمْ وَاحِدَةً فَوَاحِدَةً حَتَّى يَحُدُّوا مَا يُحَرِّمُونَ مِمَّا يُحَلِّلُونَ، ثُمَّ نَسْأَلُهُمْ عَنْ الْفَرْقِ؟ وَذَلِكَ مَا لَا سَبِيلَ إِلَيْهِ.

L22472 They permitted the sale of squash interiors, jasmine, and portions of young crops before Allah the Exalted had brought these things into existence, yet did not deem this gharar. But they considered the sale of a runaway slave, a stray camel, and usurped property to be gharar. Oh, such marvels!

وَأَجَازُوا بَيْعَ بُطُونِ الْمَقَاثِي، وَالْيَاسَمِينِ، وَجِزَّاتِ الْقَصِيلِ قَبْلَ أَنْ يَخْلُقَ اللَّهُ تَعَالَى ذَلِكَ كُلَّهُ، وَلَمْ يَرَوْهُ غَرَرًا، وَرَأَوْا بَيْعَ الْعَبْدِ الْآبِقِ، وَالْجَمَلِ الشَّارِدِ وَالْمَالِ الْمَغْصُوبِ: غَرَرًا، فَيَا لَهَذِهِ الْعَجَائِبِ.

L22473 They permitted the sale of the meat of a sheep while it is still alive, excluding its skin.

وَأَجَازُوا بَيْعَ لَحْمِ الشَّاةِ وَهِيَ حَيَّةٌ دُونَ جِلْدِهَا.

L22474 They permitted the seller to exclude a small number of *arṭāls* (a unit of weight) from its meat, amounting to a third or less.

وَأَجَازُوا اسْتِثْنَاءَ أَرْطَالٍ يَسِيرَةٍ مِنْ لَحْمِهَا لِلْبَائِعِ الثُّلُثَ فَأَقَلَّ.

L22475 They forbade excluding the majority—would that I knew from which of its constituent parts those arṭāls [units of weight] are derived, when they differ in attributes and values?

وَمَنَعُوا مِنْ اسْتِثْنَاءِ أَكْثَرَ - فَلَيْتَ شِعْرِي مِنْ أَيِّ أَعْضَائِهَا تَكُونُ تِلْكَ الْأَرْطَالُ وَهِيَ مُخْتَلِفَةُ الصِّفَاتِ وَالْقِيَمِ؟

L22476–22477 They said: If one excludes the thigh, liver, or abdomen, this is impermissible.

قَالُوا: فَإِنْ اسْتَثْنَى الْفَخْذَ، أَوْ الْكَبِدَ، أَوْ الْبَطْنَ لَمْ يَجُزْ.

L22478 If he excludes the head and shed parts? He replied: If he is a traveler, it is permissible, but if he is not a traveler, it is not permissible. Thus, these were peculiar oddities - we know of no such classification from any predecessor - and contradictory statements unsupported by the Quran, the Sunnah, the statements of predecessors, or qiyās (analogical reasoning).

فَإِنْ اسْتَثْنَى الرَّأْسَ وَالسَّوَاقِطَ؟ قَالَ: إِنْ كَانَ مُسَافِرًا جَازَ، وَإِنْ كَانَ غَيْرَ مُسَافِرٍ لَمْ يَجُزْ - فَكَانَتْ هَذِهِ أَعَاجِيبَ، لَا نَعْلَمُ تَقْسِيمَهَا عَنْ أَحَدٍ قَبْلَهُ، وَأَقْوَالًا مُتَنَاقِضَةً لَا يُعَضِّدُهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ مُتَقَدِّمٍ، وَلَا قِيَاسٌ.

L22479 They permitted the sale of carrots, onions, and radishes still in the ground. Abū Muḥammad said: Some of them argued against me regarding this by citing Allah's statement, the Exalted: *"They believe in the unseen"* [Al-Baqarah: 3]. I replied: Then by this verse, permit the sale of the fetus in its mother's womb separate from its mother—since that would constitute belief in the unseen. This is an argument (we seek Allah's protection from such) in distorting the speech of Allah, the Exalted, from its proper contexts to matters entirely unrelated to it? It was narrated to us through ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī, from ʿIkrimah, from Ibn ʿAbbās: *Do not purchase wool upon sheep's backs nor milk within their udders.*[22]

وَأَجَازُوا بَيْعَ الْجَزَرِ، وَالْبَصَلِ، وَالْفُجْلِ: الْمُغَيَّبَةِ فِي الْأَرْضِ؟ قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ بَعْضُهُمْ عَلَيَّ فِي ذَلِكَ بِقَوْلِ اللَّهِ تَعَالَى: {يُؤْمِنُونَ بِالْغَيْبِ} [البقرة: ٣] فَقُلْتُ: فَأَبِحْ بِهَذِهِ الْآيَةِ بَيْعَ الْجَنِينِ فِي بَطْنِ أُمِّهِ دُونَ أُمِّهِ، لِأَنَّهُ مِنْ الْإِيمَانِ بِالْغَيْبِ - وَهَذَا احْتِجَاجٌ نَسْأَلُ اللَّهَ السَّلَامَةَ مِنْ مِثْلِهِ فِي تَحْرِيفِ كَلَامِ اللَّهِ تَعَالَى عَنْ مَوَاضِعِهِ إلَى مَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ؟ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا تَشْتَرُوا الصُّوفَ عَلَى ظُهُورِ الْغَنَمِ وَلَا اللَّبَنَ فِي ضُرُوعِهَا.

L22480 Via al-Ḥajjāj ibn al-Minhāl → Mulāzim ibn ʿAmr → Zufar ibn Yazīd ibn ʿAbd al-Raḥmān → his father—who was among the companions of Abū Hurayrah—who said: "I asked Abū Hurayrah about selling milk in the udders of sheep and goats. He replied: 'There is no good in it.' I also asked him about exchanging a sheep for two sheep on deferred terms. He said: 'No, except hand to hand.'"

Via al-Ḥajjāj ibn al-Minhāl → Abū ʿAwānah → al-Mughīrah → Ibrāhīm al-Nakhaʿī, who said: "The early Muslims disapproved of purchasing milk in the udders of sheep." Mujāhid and Ṭāwūs likewise disapproved of it. A narration from Ṭāwūs states he permitted it only when sold by measure.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا مُلَازِمِ بْنِ عَمْرٍو نا زُفَرُ بْنُ يَزِيدَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ وَكَانَ مِنْ جُلَسَاءِ أَبِي هُرَيْرَةَ قَالَ: سَأَلْتُ أَبَا هُرَيْرَةَ عَنْ بَيْعِ اللَّبَنِ فِي ضُرُوعِ الْغَنَمِ؟ فَقَالَ لَا خَيْرَ فِيهِ - وَسَأَلْته عَنْ الشَّاةِ بِالشَّاتَيْنِ إلَى أَجَلٍ؟ فَقَالَ: لَا إلَّا يَدًا بِيَدٍ. وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا يَكْرَهُونَ أَنْ يُشْتَرَى اللَّبَنُ فِي ضُرُوعِ الشَّاةِ - وَكَرِهَهُ مُجَاهِدٌ، وَطَاوُسٌ - وَرُوِيَ عَنْ طَاوُسٍ أَنَّهُ أَجَازَهُ بِالْكَيْلِ فَقَطْ.

L22481 It is reported that Saʿīd ibn Jubayr permitted the sale of milk in the udder

[22] **Qur'an references (L22479):** Qur'an 2:3 (Al-Baqarah).

and wool on the backs of sheep. It is also reported from Al-Ḥasan that he permitted the sale of a ewe's milk as a total quantity to be delivered for several months. However, Abū Ḥanīfah, nor Al-Shāfiʿī, nor Aḥmad, nor Isḥāq, nor Abū Sulaymān permitted it. These two scholars have no opposition whatsoever from the Companions—may Allah be pleased with them—in origin. Ibrāhīm mentions this from those he encountered, and they both were among the senior Followers. They would hold such rulings in high esteem when they aligned with their own opinions.

وَرُوِيَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ إجَازَةُ بَيْعِ اللَّبَنِ فِي الضُّرُوعِ، وَالصُّوفِ عَلَى ظُهُورِ الْغَنَمِ - وَرُوِيَ عَنْ الْحَسَنِ أَنَّهُ أَجَازَ بَيْعَ لَبَنِ الشَّاةِ جُمْلَةً أَشْهُرًا. وَلَمْ يُجِزْهُ أَبُو حَنِيفَةَ، وَلَا الشَّافِعِيُّ، وَلَا أَحْمَدُ، وَلَا إسْحَاقُ، وَلَا أَبُو سُلَيْمَانَ - فَهَذَانِ صَاحِبَانِ لَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ أَصْلًا، وَإِبْرَاهِيمُ يَذْكُرُ ذَلِكَ عَمَّنْ أَدْرَكَ، وَهُمَا أَكَابِرُ التَّابِعِينَ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ آرَاءَهُمْ.

L22482 They cited as evidence in this matter the permissibility of a contract of hiring for a wet nurse's breastfeeding—is this valid?

وَاحْتَجُّوا فِي هَذَا بِجَوَازِ إجَارَةِ الظِّئْرِ لِلرَّضَاعِ؟

L22483–22484 So we said: Are we speaking with you regarding a lease or a sale? Lease differs from sale, for we lease the free woman for breastfeeding and did not buy her milk from her at all.

فَقُلْنَا: أَفِي إجَارَةٍ تَكَلَّمْنَا مَعَكُمْ أَمْ فِي بَيْعٍ؟ وَالْإِجَارَةُ غَيْرُ الْبَيْعِ، لِأَنَّا نُؤَاجِرُ الْحُرَّةَ لِلرَّضَاعِ وَلَمْ نَبْتَعْ مِنْهَا لَبَنَهَا أَصْلًا.

L22485 Then the strangest thing is their argument in this matter using what we mentioned about hiring a wet nurse, while they prohibit selling the milk of a single sheep, a single cow, or a single camel. This situation more closely resembles hiring a single wet nurse, yet they only permit that with numerous flocks of sheep and goats. Be astonished at the flimsiness of this analogy and the severity of its inconsistency, for they prohibited what resembles the very case they analogized to permit, while permitting through analogy to it what bears no resemblance.

ثُمَّ أَعْرَبُ شَيْءٍ احْتِجَاجُهُمْ فِي هَذَا بِمَا ذَكَرْنَا مِنْ إجَارَةِ الظِّئْرِ، وَهُمْ يُحَرِّمُونَ بَيْعَ لَبَنِ الشَّاةِ الْوَاحِدَةِ، وَالْبَقَرَةِ الْوَاحِدَةِ وَالنَّاقَةِ الْوَاحِدَةِ، وَهَذَا أَشْبَهُ بِإِجَارَةِ الظِّئْرِ الْوَاحِدَةِ، وَإِنَّمَا يُجِيزُونَ ذَلِكَ فِي الْغَنَمِ الْكَثِيرَةِ - فَاعْجَبُوا لِسَخَافَةِ هَذَا الْقِيَاسِ وَشِدَّةِ تَنَاقُضِهِ، إذْ حَرَّمُوا مَا يُشْبِهُ مَا قَاسُوا عَلَى إبَاحَتِهِ، وَأَبَاحُوا قِيَاسًا عَلَيْهِ مَا لَا يُشْبِهُهُ.

L22486 Abu Muhammad said: If the wool increases, the two parties are in dispute. The presumption lies with the seller contingent on his oath, provided the sheep are acknowledged as his or in his possession. If they are not acknowledged as his and are in the possession of the other party, the presumption shifts to the other party contingent on his oath.

قَالَ أَبُو مُحَمَّد: فَإِنْ زَادَ الصُّوفُ؟ فَهُمَا مُتَدَاعِيَانِ، وَالْقَوْلُ قَوْلُ الْبَائِعِ مَعَ يَمِينِهِ إنْ كَانَتْ الْغَنَمُ مَعْرُوفَةً لَهُ أَوْ فِي يَدِهِ، فَإِنْ لَمْ تَكُنْ مَعْرُوفَةً لَهُ وَكَانَتْ فِي يَدِ الْآخَرِ، فَالْقَوْلُ قَوْلُ الْآخَرِ مَعَ يَمِينِهِ.

L22487 If it is in the possession of both parties jointly or not, their ruling follows the ruling of two disputants regarding a matter that is in their possession or not, according to what we will clarify—if Allah the Exalted wills—in the section on litigation within legal cases. And success is from Allah, the Exalted.

فَإِنْ كَانَتْ فِي أَيْدِيهِمَا، أَوْ فِي غَيْرِ أَيْدِيهِمَا مَعًا، فَحُكْمُهُمَا حُكْمُ الْمُتَدَاعِيَيْنِ فِي الشَّيْءِ يَكُونُ بِأَيْدِيهِمَا، أَوْ بِغَيْرِ أَيْدِيهِمَا عَلَى مَا نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي التَّدَاعِي فِي الْأَقْضِيَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ بَيْعُ الظَّاهِرِ دُونَ الْمَغِيبِ]

١٤٢٨ - مَسْأَلَةٌ: وَأَمَّا بَيْعُ الظَّاهِرِ دُونَ الْمَغِيبِ فِيهَا فَحَلَالٌ، إلَّا أَنْ يَمْنَعَ مِنْ شَيْءٍ مِنْهُ نَصٌّ، فَجَائِزٌ بَيْعُ الثَّمَرَةِ وَاسْتِثْنَاءُ نَوَاهَا، وَبَيْعُ جِلْدِ النَّافِجَةِ دُونَ الْمِسْكِ الَّذِي فِيهَا، وَالْجِرَابِ، وَالظُّرُوفِ كُلِّهَا دُونَ مَا فِيهَا، وَقِشْرِ الْبَيْضِ، وَاللَّوْزِ، وَالْجَوْزِ، وَالْجُلَّوْزِ، وَالْفُسْتُقِ، وَالْبُلُّوطِ، وَالْقَسْطَلِ، وَكُلِّ قِشْرٍ لَا تُحَاشِي شَيْئًا دُونَ مَا تَحْتَهَا، وَبَيْعُ الشَّمْعِ دُونَ الْعَسَلِ الَّذِي فِيهِ، وَبَيْعُ التِّبْنِ دُونَ الْحَبِّ الَّذِي فِيهِ، وَجِلْدِ الْحَيَوَانِ الْمَذْبُوحِ أَوْ الْمَنْحُورِ دُونَ لَحْمِهِ، أَوْ دُونَ عُضْوٍ مُسَمًّى مِنْهَا، وَبَيْعُ الْأَرْضِ دُونَ مَا فِيهَا مِنْ بَذْرٍ، أَوْ خَضْرَاوَاتٍ مُغَيَّبَةٍ أَوْ ظَاهِرَةٍ، وَدُونَ الزَّرْعِ الَّذِي فِيهَا، وَدُونَ الشَّجَرِ الَّذِي فِيهَا، وَالْحَيَوَانِ اللَّبُونِ دُونَ لَبَنِهِ الَّذِي اجْتَمَعَ فِي ضُرُوعِهِ، وَلَا يَحِلُّ اسْتِثْنَاءُ لَبَنٍ لَمْ يَحْدُثْ بَعْدُ وَلَا اجْتَمَعَ فِي ضُرُوعِهِ.

وَيَجُوزُ بَيْعُ الْحَامِلِ دُونَ حَمْلِهَا سَوَاءٌ نُفِخَ فِيهِ الرُّوحُ أَوْ لَمْ يُنْفَخْ. وَلَا يَحِلُّ بَيْعُ حَيَوَانٍ حَيٍّ وَاسْتِثْنَاءُ عُضْوٍ مِنْهُ أَصْلًا.

وَيَجُوزُ بَيْعُ عُصَارَةِ الزَّيْتُونِ، وَالسِّمْسِمِ، دُونَ الدُّهْنِ قَبْلَ عَصْرِهِ.

وَلَا يَحِلُّ بَيْعُ جِلْدِ حَيَوَانٍ حَيٍّ دُونَ لَحْمِهِ، وَلَا دُونَ عُضْوٍ مُسَمًّى مِنْهُ أَصْلًا.

وَلَا يَجُوزُ بَيْعُ مَخِيضِ لَبَنٍ قَبْلَ أَنْ يُمْخَضَ، وَلَا الْمَيْشِ قَبْلَ أَنْ يَخْرُجَ.

بُرْهَانُ كُلِّ مَا ذَكَرْنَا -: قَوْلُ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

Issue: Selling the Visible Without the Unseen.

1428. Issue: Selling the apparent part excluding the unseen contents is lawful unless prohibited by explicit text. Permissible sales include: selling fruit while excluding its stone; selling the hide of a female musk deer excluding the musk within it; selling sacks and all containers excluding their contents; selling eggshell, almond shell, walnut shell, hazelnut shell, pistachio shell, acorn shell, chestnut shell, and any shell not adhering to what lies beneath it; selling wax excluding the honey within it; selling straw excluding the grain within it; selling the hide of a slaughtered animal or throat-slaughtered animal excluding its meat or any specifically named organ thereof; selling land excluding the seeds within it, or vegetables (whether unseen or visible), excluding the crops therein, and excluding the trees therein; and selling a milch animal excluding the milk accumulated in its udders. It is impermissible to exclude milk that has not yet been produced or collected in the udders.

It is permissible to sell a pregnant animal without its fetus, whether the fetus has been ensouled or not. It is impermissible in principle to sell a living animal while excluding a limb from it.

It is permissible to sell the extracted oil from olives and sesame, but not the oil prior to its extraction.

It is not permissible to sell the skin of a living animal without its meat, nor without a specified organ from it at all.

It is not permissible to sell buttermilk before it is churned, nor nascent butter before it emerges.

The evidence for all we have stated is the words of Allah, the Most High: “And Allah has permitted trade” [Al-Baqarah 275].[23]

[23] **Qur’an references (L22495):** Qur’an 2:275 (Al-Baqarah).

L22496 And His saying, the Most High: “And He has detailed for you what He has forbidden to you.” (Al-An’am 6:119)[24]

L22497 Every sale whose prohibition is not mentioned by name in detailed terms in the Quran or the Sunnah is permissible by the explicit wording of Allah the Exalted’s speech. Thus, all that we have mentioned constitutes the seller’s property, which he rightfully owns: he may sell whatever he wishes from it (for it is his property) and keep whatever he wishes (for it is his property). Whatever portion of his property becomes apparent and is seen, or is described by one who has seen it—its sale is permissible. He may retain what neither he nor others have seen, because the sale involving uncertainty is impermissible (as we previously stated) or because he does not wish to sell it—and that is his right—even if the item is visible and present or described but absent.

فَكُلُّ بَيْعٍ لَمْ يَأْتِ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ تَحْرِيمُهُ بِاسْمِهِ مُفَصَّلًا فَهُوَ حَلَالٌ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى - وَكُلُّ مَا ذَكَرْنَا فَمَالٌ لِلْبَائِعِ وَمِلْكٌ لَهُ يَبِيعُ مِنْهُ مَا شَاءَ فَهُوَ مِنْ مَالِهِ وَيُمْسِكُ مِنْهُ مَا شَاءَ فَهُوَ مِنْ مَالِهِ، فَمَا ظَهَرَ مِنْ مَالِهِ وَرُئِيَ، أَوْ وَصَفَهُ مَنْ رَآهُ: فَبَيْعُهُ جَائِزٌ - وَيُمْسِكُ مَا لَمْ يَرَهُ هُوَ وَلَا غَيْرُهُ، لِأَنَّهُ لَا يَحِلُّ بَيْعُ الْمَجْهُولِ - كَمَا قَدَّمْنَا - أَوْ لِأَنَّهُ لَا يُرِيدُ بَيْعَهُ فَذَلِكَ لَهُ، وَإِنْ كَانَ مَرْئِيًّا حَاضِرًا أَوْ مَوْصُوفًا غَائِبًا.

L22498 As for our statement: It is not permissible to make an exception for milk that has not yet come into existence, this is because it only comes into existence when Allah the Exalted creates it in another’s property. Therefore, it is impermissible to stipulate anything from another’s property unless the price is solely for what is sold, for such a condition is invalid as it is not in the Book of Allah the Exalted. Indeed, we have prohibited the sale of an animal unless the sale is of a specified part thereof.

وَأَمَّا قَوْلُنَا: لَا يَحِلُّ اسْتِثْنَاءُ لَبَنٍ لَمْ يَحْدُثْ بَعْدُ، فَلِأَنَّهُ إِنَّمَا يَحْدُثُ إِذَا أَحْدَثَهُ اللَّهُ تَعَالَى فِي مَالِ غَيْرِهِ فَلَا يَحِلُّ لَهُ أَنْ يَشْتَرِطَ مِنْ مَالِ غَيْرِهِ شَيْئًا إِلَّا أَنْ يَكُونَ الثَّمَنُ فِيمَا بَاعَ فَقَطْ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - وَإِنَّمَا مَنَعْنَا مِنْ بَيْعِ حَيَوَانٍ إِلَّا عُضْوًا مُسَمًّى مِنْهُ.

L22499 We permitted the sale of a pregnant living being without its fetus, for such a living being must either be human or from other animals. If it is from other animals, stipulating the exclusion of a specified organ constitutes unlawful appropriation of wealth, as no benefit is derived from it except through slaughter. In this sale, the seller of the organ is required to slaughter that living being, or the seller of the living being except for a specified organ is required to do so. Since this condition is not stipulated in the Book of Allah the Exalted, it is invalid. If the living being is human, the ruling remains the same, constituting a total waste of wealth. This is a matter wherein all our present adversaries in debate unanimously concur with us.

وَأَجَزْنَا بَيْعَ الْحَامِلِ دُونَ حَمْلِهَا، فَإِنَّ ذَلِكَ الْحَيَوَانَ لَا يَخْلُو مِنْ أَنْ يَكُونَ مِنْ بَنِي آدَمَ، أَوْ مِنْ سَائِرِ الْحَيَوَانِ، فَإِنْ كَانَ مِنْ سَائِرِ الْحَيَوَانِ فَاسْتِثْنَاءُ الْعُضْوِ الْمُعَيَّنِ مِنْهُ: أَكْلُ مَالٍ بِالْبَاطِلِ، لِأَنَّهُ لَا يُنْتَفَعُ بِهِ إِلَّا بِذَبْحِهِ، فَفِي هَذَا الْبَيْعِ اشْتِرَاطُ ذَبْحِ ذَلِكَ الْحَيَوَانِ عَلَى بَائِعِ الْعُضْوِ مِنْهُ، أَوْ عَلَى بَائِعِهِ إِلَّا عُضْوًا مِنْهُ، وَهَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَإِنْ كَانَ ذَلِكَ الْحَيَوَانُ مِنْ بَنِي آدَمَ فَكَذَلِكَ أَيْضًا، وَهُوَ إِضَاعَةٌ لِلْمَالِ جُمْلَةً، وَهَذَا مِمَّا يُوَافِقُنَا الْحَاضِرُونَ كُلُّهُمْ مِنْ خُصُومِنَا.

[24]**Qur’an references (L22496):** Qur’an 6:119 (Al-An’am).

وَأَمَّا الْحَمْلُ، وَالصُّوفُ، وَالْوَبَرُ، وَالشَّعْرُ، وَقَرْنُ الْإِبِلِ، وَكُلُّ مَا يُزَايِلُ الْحَيَوَانَ بِغَيْرِ مُثْلَةٍ وَلَا تَعْذِيبٍ، فَكَمَا قَدَّمْنَا أَنَّهُ مَالٌ لِبَائِعِهِ يَبِيعُ مِنْ مَالِهِ مَا شَاءَ وَيُمْسِكُ مَا شَاءَ إِلَّا أَنْ يَكُونَ فِي ذَلِكَ إِضَاعَةُ مَالٍ، أَوْ مُثْلَةٌ بِحَيَوَانٍ أَوْ إِضْرَارٌ بِهِ فَلَا يَحِلُّ لِصِحَّةِ النَّهْيِ عَنْ الْمُثْلَةِ، وَعَنْ تَعْذِيبِ الْحَيَوَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22500 As for the fetus, wool, camel undercoat, hair, the camel's hump, and anything that detaches from an animal without disfigurement or suffering—as we have previously established—these belong to the seller. He may sell from his possessions what he chooses and retain what he chooses, unless such action constitutes waste of resources, disfigurement of an animal, or harm to it. In such instances, it is unlawful due to the valid prohibition against disfigurement and against causing suffering to animals. And with Allah, the Exalted, is success.

وَأَمَّا مَنْعُنَا مِنْ بَيْعِ الْمَخِيضِ دُونَ السَّمْنِ قَبْلَ الْمَخْضِ، وَمِنْ بَيْعِ الْمَيْشِ دُونَ الْجُبْنِ قَبْلَ عَصْرِهِ، فَلِأَنَّهُ لَا يُرَى، وَلَا يَتَمَيَّزُ، وَلَا يُعْرَفُ مِقْدَارُهُ، فَقَدْ يَخْرُجُ الْمَخْضُ وَالْعَصِيرُ قَلِيلًا، وَقَدْ يَخْرُجُ كَثِيرًا - وَهَذَا بِخِلَافِ بَيْعِ عُصَارَةِ الزَّيْتُونِ، وَالسِّمْسِمِ، دُونَ الدُّهْنِ قَبْلَ الْعَصْرِ؛ لِأَنَّ الزَّيْتُونَ، وَالسِّمْسِمَ، وَاللَّوْزَ، وَالْجَوْزَ كُلُّ ذَلِكَ مَرْئِيٌّ مَعْرُوفٌ، وَإِنَّمَا الْخَافِي فَهُوَ الدُّهْنُ فَقَطْ، وَيَحِلُّ بَيْعُهُ قَبْلَ ظُهُورِهِ - وَيَجُوزُ اسْتِثْنَاؤُهُ؛ لِأَنَّهُ إبْقَاءٌ لَهُ فِي مِلْكِ مَالِكِهِ - وَهَذَا مُبَاحٌ حَسَنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22501–22503 As for our prohibition against selling buttermilk without ghee prior to churning, and selling partially coagulated milk without cheese before pressing, this is because its form cannot be discerned, it cannot be differentiated, nor can its quantity be ascertained—for the yield from churning or pressing may be little or much. This differs from selling the pressed juice of olives and sesame without oil prior to pressing, for olives, sesame, almonds, and walnuts: all these are visible, distinct, and quantifiable. The concealed [element] is none other than the oil exclusively. Its sale is permissible before it becomes manifest. Reserving it [from the sale] is allowed because it retains the item within the ownership of its owner—this is permissible and ethically sound. And success is from Allah, the Most High.

وَقَدْ جَاءَتْ فِي هَذَا آثَارٌ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حِبَّانُ بْنُ عَلِيٍّ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» .

L22504 There are narrations related to this matter: It was narrated to us through Sa'īd ibn Manṣūr → Ḥibbān ibn 'Alī narrated to us → Muḥammad ibn Isḥāq narrated to us from Nāfi' from Ibn 'Umar, who said: The Messenger of Allah ﷺ prohibited sales involving _gharar_.[1]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ إِدْرِيسَ - هُوَ عَبْدُ اللَّهِ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» .

L22505 And from the narration of Ibn Abi Shaybah, from Ibn Idris (who is Abdullah), from Ubaydullah ibn Umar, from Abu al-Zinad, from al-A'raj, from Abu Hurayrah: "The Messenger of Allah (may peace and blessings be upon him) prohibited sales of gharārāt (speculative risks)."[2]

[1] **Hadith references (L22504):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

[2] **Hadith references (L22505):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

وَقَدْ أَبَاحَهُ بَعْضُ السَّلَفِ - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِبَيْعِ الْغَرَرِ إِذَا كَانَ عِلْمُهُمَا فِيهِ سَوَاءً.

L22506 Some of the early predecessors permitted it, as reported to us through the chain of Ibn Abī Shaybah - from Abbād ibn al-Awwām, from Hishām - who is Ibn Hassan - from Ibn Sīrīn, from Shurayḥ, that he saw no harm in the sale involving *gharar* when both parties possessed equal knowledge of it.

وَكَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ - هُوَ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: لَا أَعْلَمُ بِبَيْعِ الْغَرَرِ بَأْسًا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حِبَّانُ بْنُ عَلِيٍّ نا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ قَالَ: مِنْ الْغَرَرِ مَا يَجُوزُ وَمِنْهُ مَا لَا يَجُوزُ، فَأَمَّا مَا يَجُوزُ فَشِرَاءُ السِّلْعَةِ الْمَرِيضَةِ، وَأَمَّا مَا لَا يَجُوزُ فَشِرَاءُ السَّمَكِ فِي الْمَاءِ.

L22507 And as has been reported to us through the chain of Ibn Abī Shaybah: Ibn ʿUlayyah narrated to us - who is Ismāʿīl ibn Ibrāhīm - from ʿAbdullāh ibn ʿAwn from Muḥammad ibn Sīrīn, who said: "I find no harm in sales involving *gharar*." And through the chain of Saʿīd ibn Manṣūr: Ḥibbān ibn ʿAlī narrated to us from al-Mughīrah from Ibrāhīm, who said: "Among *gharar*, some are permissible and some are not. As for what is permissible, it is purchasing a sick commodity. As for what is impermissible, it is purchasing uncaptured fish in the water."

وَقَدْ رُوِّينَا إِجَازَةَ بَيْعِ السَّمَكِ فِي الْمَاءِ قَبْلَ أَنْ يُتَصَيَّدَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَبِهِ يَقُولُ ابْنُ أَبِي لَيْلَى.

L22508 It has been narrated to us that the permissibility of selling fish while they are still in the water before being caught is transmitted from ʿUmar ibn ʿAbd al-ʿAzīz, and this is the opinion Ibn Abī Laylā holds.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالَّذِي ذَكَرَ إِبْرَاهِيمُ لَيْسَ شَيْءٌ مِنْهُ غَرَرًا، أَمَّا الْمَرِيضَةُ فَكُلُّ النَّاسِ يَمْرَضُ وَيَمُوتُ، وَقَدْ يَمُوتُ الصَّحِيحُ فَجْأَةً، وَيَبْرَأُ الْمَرِيضُ الْمُدْنَفُ، فَلَا غَرَرَ هَهُنَا أَصْلًا.

L22509 Abu Muhammad said: There is no valid proof in anyone apart from the Messenger of Allah (peace be upon him). As for what Ibrahim mentioned, none of it contains elements of Gharar. Regarding the sick person: all people fall ill and die, indeed a healthy person may die suddenly, while a debilitated sick person may recover. Thus there is no Gharar here whatsoever.

وَأَمَّا السَّمَكُ فِي الْمَاءِ فَإِنْ كَانَ قَدْ مُلِكَ قَبْلُ فَلَيْسَ بَيْعُهُ غَرَرًا بَلْ هُوَ بَيْعٌ صَحِيحٌ، وَقَدْ وَافَقَنَا الْحَاضِرُونَ مِنْ خُصُومِنَا عَلَى أَنَّ بِرْكَةً فِي دَارِ لِإِنْسَانٍ صَغِيرَةً صَادَ صَاحِبُهَا سَمَكَةً وَرَمَاهَا فِيهَا حَيَّةً، فَإِنَّ بَيْعَهَا فِيهَا جَائِزٌ، وَأَمَّا مَا لَمْ يُمْلَكْ مِنْ السَّمَكِ بَعْدُ فَلَمْ يَجُزْ بَيْعُهُ؛ لِأَنَّهُ غَرَرٌ، حَتَّى وَلَوْ كَانَتْ السَّمَكَةُ مَقْدُورًا عَلَيْهَا بِالضَّمَانِ مَا حَلَّ بَيْعُهَا، وَإِنَّمَا حُرِّمَ لِأَنَّهُ بَيْعُ مَا لَيْسَ لَهُ وَهَذَا أَكْلُ مَالٍ بِالْبَاطِلِ.

L22510 As for fish in water, if they have been previously owned, their sale is not invalid due to *gharar* but rather constitutes a valid transaction. Those present among our opponents concur with us that if a person owns a small pond within their property where they caught a fish and released it alive, selling it within that pond is permissible. However, fish not yet owned remain impermissible to sell due to *gharar*. Even if the fish is assuredly obtainable through guaranteed means, its sale remains unlawful, as it constitutes selling unowned property. This amounts to wrongful appropriation of wealth.

L22511–22512 It has been narrated to us through Ibn Abi Shaybah: Qurrah ibn Sulayman narrated to us from Muḥammad ibn Fuḍayl, from his father, from Ibn ʿUmar

regarding one who sells a female slave while excepting what is in her womb. He said: “His right is to retain the offspring.” This has also been authentically reported from Ibn ʿUmar in the context of manumission.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا قُرَّةُ بْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ فُضَيْلٍ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ فِيمَنْ بَاعَ أَمَةً وَاسْتَثْنَى مَا فِي بَطْنِهَا؟ قَالَ: لَهُ ثُنْيَاهُ - وَقَدْ صَحَّ هَذَا أَيْضًا عَنْ ابْنِ عُمَرَ فِي الْعِتْقِ.

L22513 It has been narrated to us through the chain of Ibn Abi Shaybah, who narrated to us from Hushaym, from al-Mughirah, from Ibrāhīm al-Nakhaʿī, who said: Whoever sells a pregnant woman or manumits her while excluding what is in her womb—does his exception hold regarding what has manifested its form? If its form has become apparent, his exception is valid. But if its form has not become apparent, he has no claim.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ بَاعَ حُبْلَى، أَوْ أَعْتَقَهَا وَاسْتَثْنَى مَا فِي بَطْنِهَا؟ فَلَهُ ثُنْيَاهُ فِيمَا قَدْ اسْتَبَانَ خَلْقُهُ، فَإِنْ لَمْ يَسْتَبِنْ خَلْقُهُ فَلَا شَيْءَ لَهُ.

L22514 Ali said: Whether its form becomes discernible or not, he has two options based on our earlier reasoning—since it is his property, he may exclude it if he wishes, either by not selling it or by including it in the sale of its mother. This is because it remains part of her before the soul is breathed into it and continues to be part of her after ensoulment. However, if one excludes the fetus of a pregnant animal sold—as we explained—then whatever she delivers (if human) within nine months less one hour belongs to him, unless he is certain that her pregnancy began after the sale, in which case he has no claim, as it occurred within another’s property. The same consideration applies to other animals: offspring born within the maximum period that animal bears belong to the excluding party, while those exceeding this duration do not—for the reason stated. Success comes solely from Allah, the Exalted.

قَالَ عَلِيٌّ: سَوَاءٌ اسْتَبَانَ خَلْقُهُ، أَوْ لَمْ يَسْتَبِنْ؟ لَهُ ثُنْيَاهُ لِمَا قَدْ ذَكَرْنَاهُ مِنْ أَنَّهُ مَالُهُ يَسْتَثْنِيه إنْ شَاءَ فَلَا يَبِيعُهُ، أَوْ يَدْخُلُ فِي صَفْقَةِ أُمِّهِ، لِأَنَّهُ بَعْضُهَا مَا لَمْ يُنْفَخْ فِيهِ الرُّوحُ، وَمِنْ جُمْلَتِهَا بَعْدَ نَفْخِ الرُّوحِ فِيهِ، وَلَكِنْ مَنْ اسْتَثْنَى حَمْلَ الْحَامِلِ الَّذِي بَاعَ كَمَا ذَكَرْنَا فَمَا وَلَدَتْ إنْ كَانَتْ مِنْ بَنِي آدَمَ إلَى تِسْعَةِ أَشْهُرٍ غَيْرَ سَاعَةٍ، فَهُوَ لَهُ إلَّا أَنْ يُوقِنَ أَنَّ حَمْلَهَا بِهِ كَانَ بَعْدَ الْبَيْعِ فَلَا شَيْءَ لَهُ، لِأَنَّهُ حَدَثَ فِي مَالِ غَيْرِهِ وَيُنْظَرُ فِي سَائِرِ الْحَيَوَانِ كَذَلِكَ، فَمَا وَلَدَتْ لِأَقْصَى مَا يَلِدُ لَهُ ذَلِكَ الْحَيَوَانُ فَهُوَ لِلَّذِي اسْتَثْنَاهُ، وَمَا وَلَدَتْ لِأَكْثَرَ فَلَيْسَ لَهُ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22515 From the transmission chain of Ibn Abī Shaybah: He narrated to us from Hushaym, from Yūnus, from al-Ḥasan al-Baṣrī that he deemed the conditional stipulation regarding pregnancy permissible in sales but impermissible in manumission. This is the position of Abū Sulaymān and Abū Thawr concerning both sales and manumission. This accords with what we have cited from a Companion for whom no opposing view is known from the Companions, and they hold such an opinion in high regard when it aligns with their practice of taqlīd.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ يُونُسَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ يُجِيزُ ثُنْيَا الْحَمْلِ فِي الْبَيْعِ، وَلَا يُجِيزُهُ فِي الْعِتْقِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَبِي ثَوْرٍ فِي الْبَيْعِ وَالْعِتْقِ، وَهُوَ كَمَا أَوْرَدْنَا قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L22516 It has been narrated to us via the route of Ibn Ayman: From Abdullah

ibn Ahmad ibn Hanbal, from Ubayy, from Abd al-Rahman ibn Mahdi, from Abbad ibn Habib ibn al-Muhallab—a trustworthy and reliable narrator—from Ubayd Allah ibn Umar, from Nafi', the freed slave of Ibn Umar, who said: "Ibn Umar emancipated his female slave but excluded what was in her womb." This is the opinion of Ubayd Allah ibn Umar.

وَرُوِّينَا: مِنْ طَرِيقِ ابْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أُبَيٌّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا عَبَّادُ بْنُ حَبِيبِ بْنِ الْمُهَلَّبِ - ثِقَةٌ مَأْمُونٌ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: أَعْتَقَ ابْنُ عُمَرَ أَمَةً لَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا - وَبِهِ يَقُولُ عُبَيْدُ اللَّهِ بْنُ عُمَرَ.

L22517–22519 And via the chain of Ibn Abi Shaybah: Yahya ibn Sa'id (al-Qattan) narrated to us from Hisham (Ibn Hassān) from Muhammad ibn Sirin concerning one who emancipated his female slave while excepting what was in her womb. He said: "His two exceptions are valid." And via the chain of Ibn Abi Shaybah: Yahya ibn Yaman narrated to us from Sufyan (al-Thawri) from Jabir, Mansur ibn al-Mu'tamir, and Ibn Jurayj. Jabir narrated from al-Sha'bi, and Mansur said: from... Ibrāhīm, and Ibn Jurayj reported from ʿAṭāʾ. Then al-Shaʿbī, Ibrāhīm al-Nakhaʿī, and ʿAṭāʾ all said: If he manumits her while excluding what is in her womb, his stipulation holds.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْقَطَّانُ - عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ فِيمَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا فَقَالَ: لَهُ - ثُنْيَاهُ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ يَمَانٍ عَنْ سُفْيَانَ - هُوَ الثَّوْرِيُّ - عَنْ جَابِرٍ، وَمَنْصُورِ بْنِ الْمُعْتَمِرِ، وَابْنِ جُرَيْجٍ، قَالَ جَابِرٌ: عَنْ الشَّعْبِيِّ، وَقَالَ مَنْصُورٌ: عَنْ إبْرَاهِيمَ، وَقَالَ ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ - ثُمَّ اتَّفَقَ الشَّعْبِيُّ وَإِبْرَاهِيمُ النَّخَعِيُّ، وَعَطَاءٌ، قَالُوا كُلُّهُمْ: إذَا أَعْتَقَهَا وَاسْتَثْنَى مَا فِي بَطْنِهَا: فَلَهُ ثُنْيَاهُ.

L22520 And through him to Ibn Abi Shaybah: Harami ibn 'Umarah ibn Abi Hafsah narrated to us from Shu'bah, who said: I asked al-Hakam and Hammad ibn Abi Sulayman about that - meaning one who manumits his female slave while excluding what is in her womb - and they both said unanimously: He retains that right.

وَبِهِ إلَى ابْنِ أَبِي شَيْبٍ نا حَرَمِيُّ بْنُ عُمَارَةَ بْنِ أَبِي حَفْصَةَ عَنْ شُعْبَةَ قَالَ: سَأَلْتُ الْحَكَمَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ ذَلِكَ - يَعْنِي مَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا - فَقَالَا جَمِيعًا: ذَلِكَ لَهُ.

L22521 Narrated by Humām from ʿAbdullāh ibn ʿAlī al-Bājī from Muḥammad ibn ʿAbd al-Malik ibn Ayman from Aḥmad ibn Muslim from Abū Thawr from Asbāṭ from Sufyān al-Thawrī from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī, who said: "Whoever enters into a kitābah contract with his female slave and excludes what is in her womb, there is no objection to that."

نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ عَلِيٍّ الْبَاجِيَّ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ مُسْلِمٍ نا أَبُو ثَوْرٍ نا أَسْبَاطٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ كَاتَبَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا فَلَا بَأْسَ بِذَلِكَ.

L22522 And in accordance with this, Abū Thawr and Aḥmad ibn Ḥanbal state regarding manumission and sale.

وَبِهِ يَقُولُ أَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ فِي الْعِتْقِ، وَالْبَيْعِ.

L22523 And according to it, Isḥāq and Abū Sulaymān also say.

وَبِهِ يَقُولُ أَيْضًا إسْحَاقُ، وَأَبُو سُلَيْمَانَ.

فَهَؤُلَاءِ جُمْهُورُ التَّابِعِينَ -: الْحَسَنُ، وَابْنُ سِيرِينَ، وَإِبْرَاهِيمُ، وَالشَّعْبِيُّ، وَعَطَاءٌ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ، بَعْضُهُمْ فِي الْبَيْعِ، وَبَعْضُهُمْ فِي الْعِتْقِ، وَبَعْضُهُمْ فِي الْأَمْرَيْنِ مَعًا - وَمَا نَعْلَمُ الْآنَ مُخَالِفًا لَهُمْ إِلَّا الزُّهْرِيَّ، وَقَالَ بِقَوْلِنَا هَذَا مِنَ الْفُقَهَاءِ كَمَا ذَكَرْنَا -: عُبَيْدُ اللَّهِ بْنُ عُمَرَ، وَأَحْمَدُ، وَأَبُو ثَوْرٍ، وَإِسْحَاقُ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ، وَلَيْتَ شِعْرِي أَيْنَ هُمْ عَنْ حُجَّتِهِمْ بِالْمُسْلِمِينَ عِنْدَ شُرُوطِهِمْ؟ وَأَمَّا اسْتِثْنَاءُ الْجِلْدِ، وَالسَّوَاقِطِ: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ نا أَصْبَغُ عَنِ ابْنِ وَهْبٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ عَنْ عُمَارَةَ بْنِ غَزِيَّةَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا خَرَجَ هُوَ وَأَبُو بَكْرٍ مُهَاجِرَيْنِ، إِلَى الْمَدِينَةِ اشْتَرَيَا مِنْ رَاعِي غَنَمٍ شَاةً وَشَرَطَا لَهُ إِهَابَهَا» .

L22524 These are the majority of the Successors: Al-Ḥasan, Ibn Sīrīn, Ibrāhīm, Al-Shaʿbī, ʿAṭāʾ, Al-Ḥakam ibn ʿUtaybah, and Ḥammād ibn Abī Sulaymān—some of them regarding sale, some regarding manumission, and some regarding both matters together. We do not know now of any opponent to them except Al-Zuhrī. Among the jurists who said this opinion of ours—as we mentioned—are ʿUbayd Allāh ibn ʿUmar, Aḥmad, Abū Thawr, Isḥāq, Abū Sulaymān, and others. If only I knew where they stand regarding their argument about the conditions set by Muslims! As for the exception of flogging and miscarried fetuses, we have been narrated through the chain of ʿAbd al-Malik ibn Ḥabīb al-Andalusī, from Aṣbagh, from Ibn Wahb, from Al-Layth ibn Saʿd, from ʿUmārah ibn Ghaziyyah, from ʿUrwah ibn al-Zubayr: "When the Messenger of Allah—peace and blessings be upon him—and Abū Bakr emigrated to Medina, they bought a sheep from a shepherd and stipulated its skin for him."

قَالَ أَبُو مُحَمَّد: هَذَا بَاطِلٌ - عَبْدُ الْمَلِكِ هَالِكٌ، وَعُمَارَةُ ضَعِيفٌ - ثُمَّ هُوَ مُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ مَنْسُوخًا، لِأَنَّهُ كَمَا تَرَى قَبْلَ الْهِجْرَةِ، وَقَدْ جَاءَ النَّهْيُ عَنْ بَيْعِ الْغَرَرِ بَعْدَ ذَلِكَ، وَبَيْعُ لَحْمِ شَاةٍ حَيَّةٍ غَرَرٌ؛ لِأَنَّهُ لَا يَدْرِي أَهَزِيلٌ أَمْ سَمِينٌ.

L22525 Abū Muḥammad said: This is invalid—ʿAbd al-Malik is discredited, and ʿUmārah is weak. Moreover, it is mursal. Furthermore, even if it were authentic, it would be abrogated, because, as evident, it predates the Hijrah, and the prohibition of uncertain transactions came afterward. Selling the meat of a live sheep is an uncertain transaction, because one cannot know whether it is lean or fat.

أَوْ ذُو عَاهَةٍ أَمْ سَالِمٌ، ثُمَّ مِنْ أَيْنَ لَهُمْ أَنَّ ذَلِكَ إِنَّمَا جَازَ لِأَجْلِ السَّفَرِ، فَإِنَّ هَذَا ظَنٌّ لَا يَصِحُّ.

L22526 Or one with an ailment or a healthy one? Then from where do they have that this was permitted because of travel? For this is an invalid assumption.

فَإِنْ قَالُوا: كَانَ فِي سَفَرٍ؟ قُلْنَا: وَكَانَ فِي طَرِيقِ الْمَدِينَةِ لَا تُجِيزُوهُ فِي غَيْرِهِ.

L22527 If they say, "He was on a journey," we reply, "He was on the path to Madinah. Do not permit it in other cases."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّ رَجُلًا بَاعَ بَقَرَةً وَاشْتَرَطَ رَأْسَهَا ثُمَّ بَدَا لَهُ فَأَمْسَكَهَا فَقَضَى لَهُ زَيْدٌ بِشَرْوَى رَأْسِهَا، قَالَ سُفْيَانُ: نَحْنُ نَقُولُ: الْبَيْعُ فَاسِدٌ.

L22528–22529 Through the chain of Abd al-Razzaq from Sufyan al-Thawri from Jabir al-Ju'fi from al-Sha'bi from Zayd ibn Thabit: A man sold a cow while stipulating that he retain ownership of its head, then reconsidered and withheld the cow. Zayd ruled in his favor for the value of its head. Sufyan said: "We maintain the sale is defective."

وَمِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ حَدَّثَنَا أُبَيٌّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ نُسَيْرِ بْنِ ذُعْلُوقٍ عَنْ عَمْرِو بْنِ رَاشِدٍ الْأَشْجَعِيِّ أَنَّ رَجُلًا بَاعَ بُخْتِيَّةً وَاشْتَرَطَ ثُنْيَاهَا فَبَرِئَتْ فَرَغِبَ فِيهَا فَاخْتَصَمَا إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَالَ: اذْهَبَا إلَى عَلِيٍّ، فَقَالَ عَلِيٌّ: اذْهَبْ بِهَا إلَى السُّوقِ فَإِذَا بَلَغَتْ أَفْضَلَ ثَمَنِهَا، فَأَعْطُوهُ حِسَابَ ثُنْيَاهَا مِنْ ثَمَنِهَا.

L22530 Abdullah ibn Ahmad ibn Hanbal reported to us through his chain: Ubayy narrated to us from Abdurrahman ibn Mahdi, from Sufyan ath-Thawri, from Nusayr ibn Dhu'lūq, from Amr ibn Rashid al-Ashja'i: A man sold a bukhtiyyah camel stipulating its two front incisors as a condition. When the camel was found lacking them, he disputed the condition. They brought their case to Umar ibn al-Khattab, who said: "Go to Ali." Ali ruled: "Take it to the market. When it reaches the highest market price, give him the value of its two front incisors from its price."

وَرَيْنَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ نُسَيْرِ بْنِ ذُعْلُوقٍ عَنْ عَمْرِو بْنِ رَاشِدٍ أَنَّ رَجُلًا بَاعَ بَعِيرًا مَرِيضًا وَاسْتَثْنَى جِلْدَهُ فَبَرَأَ الْبَعِيرُ؟ فَقَالَ عَلِيٌّ: يُقَوَّمُ الْبَعِيرُ فِي السُّوقِ، ثُمَّ يَكُونُ لَهُ شِرَاؤُهُ.

L22531 We found it narrated through the chain of Waki' from Sufyan al-Thawri, from Nusayr ibn Dhu'luq, from 'Amr ibn Rashid: A man sold a sick camel while reserving its skin, but the camel later recovered. So 'Ali said, "The camel must be valued in the market, then the purchase of it reverts to him."

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ حَدَّثَنِي أَصْبَغُ عَنْ ابْنِ وَهْبٍ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ اشْتَرَى رَجُلٌ رَأْسَ جَمَلٍ وَنَقَدَ ثَمَنَهُ وَاشْتَرَى آخَرُ بَقِيَّتَهُ وَنَقَدَ ثَمَنَهُ لِيَنْحَرَاهُ فَعَاشَ الْجَمَلُ وَصَلُحَ؟ فَقَالَ مُشْتَرِي الْجَمَلِ لِمُشْتَرِي الرَّأْسِ: إنَّمَا لَك ثَمَنُ الرَّأْسِ؟ فَاخْتَصَمَا إلَى شُرَيْحٍ، فَقَالَ شُرَيْحٌ: هُوَ شَرِيكُك فِيهِ بِحِصَّةِ مَا نَقَدَ وَبِحُكْمِ شُرَيْحٌ هَذَا يَأْخُذُ عُثْمَانُ الْبَتِّيُّ، وَأَحْمَدُ، وَإِسْحَاقُ.

L22532 Through the transmission chain of 'Abd al-Malik ibn Ḥabīb al-Andalusī: Aṣbagh narrated to me from Ibn Wahb from Ismā'īl ibn 'Ayyāsh: A man purchased a camel's head and paid its value upfront, while another purchased the remaining portion and paid its value upfront so they could slaughter it. But the camel recovered and became sound? The purchaser of the camel said to the purchaser of the head, "Are you only entitled to the value of the head?" They brought their dispute to Shurayḥ, who ruled, "He is your partner in it in proportion to the share he paid upfront." In accordance with this ruling of Shurayḥ, 'Uthmān al-Battī, Aḥmad, and Isḥāq adopt this opinion.

وَلَمْ يُجِزْ مَالِكٌ اسْتِثْنَاءَ الْجِلْدِ وَالرَّأْسِ إلَّا فِي السَّفَرِ، لَا فِي الْحَضَرِ، فَخَالَفَ كُلَّ مَنْ ذَكَرْنَا - وَلَمْ يُجِزْهُ أَبُو حَنِيفَةَ، وَلَا الشَّافِعِيُّ أَصْلًا.

L22533 Mālik did not permit the exception of the leather and the head except during travel, not while resident, thereby disagreeing with all those we have mentioned - and neither Abū Ḥanīfah nor al-Shāfi'ī permitted it at all.

وَأَجَازَ الْأَوْزَاعِيُّ اسْتِثْنَاءَ الْيَدِ أَوْ الرَّأْسِ أَوْ الْجِلْدِ عِنْدَ الذَّبْحِ خَاصَّةً، وَكَرِهَهُ إنْ تَأَخَّرَ الذَّبْحُ - وَالْحَنَفِيُّونَ - وَالْمَالِكِيُّونَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ - وَخَالَفُوا هَهُنَا: زَيْدَ بْنَ ثَابِتٍ، وَعُمَرَ بْنَ الْخَطَّابِ، وَلَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ. وَأَمَّا الْمَالِكِيُّونَ: فَإِنَّهُمْ رَأَوْا فِيمَنْ بَاعَ بَعِيرًا وَاسْتَثْنَى جِلْدَهُ، فَاسْتَحْيَاهُ الَّذِي

L22534–22536 Al-Awzā'ī permitted the exclusion of the hand, head, or skin specifically during slaughter but disliked it if the slaughter was delayed. The Ḥanafīs and Mālikīs give great weight to the contrary opinion of a Companion who has no known opponent among them. Here, however, they contradicted the rulings of Zayd ibn Thābit and 'Umar ibn al-Khaṭṭāb, though no opponent from the Companions is known for them. As for the Mālikīs: they held that if someone sold a camel while excluding its skin, and the buyer kept it alive,

the seller has a right to the proceeds from the skin's sale or its appraised value – this applies exclusively during journeys. This contradicts the ruling of ʿUmar, ʿAlī, and Zayd, for they ruled this absolutely without distinguishing between journey and residence. And it has been narrated to us similar to our statement from some of the early predecessors—as narrated to us via Ibn Abī Shaybah: Abū Al-Aḥwaṣ narrated to us from Abū Ḥamzah: I said to Ibrāhīm, "Can I sell a sheep while reserving part of it?" He replied, "No. Rather say: I sell you half of it." Ibn Abī Shaybah narrated: ʿAbd Al-Ṣamad ibn Abī Al-Jārūd narrated to us: I asked Jābir ibn Zayd about one who sells an item while reserving part of it. He said, "That is not valid."

L22537 **Case: If one sells an absent item, its sale is permissible with a description.**

L22538 1429. Issue: If a seller from those we mentioned sells the apparent excluding the concealed, or sells a concealed item, its sale is permissible through description—such as wool within a mattress, honey in a vessel, or a garment in a bag. If the place belongs to the seller, they must enable the buyer to take possession of the purchased item; otherwise, they become a usurper depriving of a right. The buyer must remove their property from another's place; otherwise, they become a usurper of the place, depriving of a right. If the place belongs to the buyer, the seller must remove their property from another's place; otherwise, they become an oppressor depriving of a right. If the place is jointly owned by both, whichever party wishes to expedite their use of their property must take it, and the other cannot be forced to take possession of their property sooner than they desire.

L22539 If the place belongs to someone other than the two of them, both are collectively required to remove their respective properties from another's place. Otherwise, each one is an oppressor withholding a right, according to the statement of the Messenger of Allah (peace be upon him): "Your blood and your wealth are inviolable for you."

L22540 "And due to the Prophet's narration (peace be upon him) of when Salman

اشْتَرَاهُ: أَنَّ لَهُ شَرْوَى جِلْدِهِ أَوْ قِيمَتَهُ - هَذَا فِي السَّفَرِ خَاصَّةً، وَهَذَا خِلَافُ حُكْمِ عُمَرَ، وَعَلِيٍّ، وَزَيْدٍ؛ لِأَنَّهُمْ حَكَمُوا بِذَلِكَ مُطْلَقًا، لَمْ يَخُصُّوا سَفَرًا مِنْ حَضَرٍ؛ وَرُوِّينَا مِثْلَ قَوْلِنَا عَنْ بَعْضِ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ عَنْ أَبِي حَمْزَةَ قُلْتُ لِإِبْرَاهِيمَ: أَبِيعُ الشَّاةَ وَأَسْتَثْنِي بَعْضَهَا؟ قَالَ: لَا، وَلَكِنْ قُلْ: أَبِيعُك نِصْفَهَا - قَالَ ابْنُ أَبِي شَيْبَةَ: نَا عَبْدُ الصَّمَدِ بْنُ أَبِي الْجَارُودِ سَأَلْت جَابِرَ بْنَ زَيْدٍ عَمَّنْ بَاعَ بَيْعًا وَاسْتَثْنَى بَعْضَهُ؟ قَالَ: لَا يَصِحُّ ذَلِكَ.

[مَسْأَلَةٌ بَاعَ مُغَيَّبًا يَجُوزُ بَيْعُهُ بِصِفَةٍ]

١٤٢٩ - مَسْأَلَةٌ: وَمَنْ بَاعَ مِمَّنْ ذَكَرْنَا الظَّاهِرَ دُونَ الْمُغَيَّبِ، أَوْ بَاعَ مُغَيَّبًا: يَجُوزُ بَيْعُهُ بِصِفَةٍ، كَالصُّوفِ فِي الْفِرَاشِ، وَالْعَسَلِ فِي الظَّرْفِ، وَالثَّوْبِ فِي الْجِرَابِ، فَإِنَّهُ إنْ كَانَ الْمَكَانُ لِلْبَائِعِ فَعَلَيْهِ تَمْكِينُ الْمُشْتَرِي مِنْ أَخْذِ مَا اشْتَرَى وَلَا بُدَّ، وَإِلَّا كَانَ غَاصِبًا مَانِعَ حَقٍّ، وَعَلَى الْمُشْتَرِي إزَالَةُ مَالِهِ عَنْ مَكَانِ غَيْرِهِ، وَإِلَّا كَانَ غَاصِبًا لِلْمَكَانِ مَانِعَ حَقٍّ، فَإِنْ كَانَ الْمَكَانُ لِلْمُشْتَرِي فَعَلَى الْبَائِعِ نَزْعُ مَالِهِ عَنْ مَكَانِ غَيْرِهِ، وَإِلَّا كَانَ ظَالِمًا مَانِعَ حَقٍّ، فَإِنْ كَانَ الْمَكَانُ لَهُمَا جَمِيعًا فَأَيُّهُمَا أَرَادَ تَعْجِيلَ انْتِفَاعِهِ بِمَتَاعِهِ فَعَلَيْهِ أَخْذُهُ، وَلَا يُجْبَرُ الْآخَرُ عَلَى مَا لَا يُرِيدُ تَعْجِيلَهُ مِنْ أَخْذِ مَتَاعِهِ.

فَإِنْ كَانَ الْمَكَانُ لِغَيْرِهِمَا فَعَلَيْهِمَا جَمِيعًا أَنْ يَنْزِعَ كُلُّ وَاحِدٍ مِنْهُمَا مَالَهُ مِنْ مَكَانِ غَيْرِهِ، وَإِلَّا فَهُوَ ظَالِمٌ مَانِعُ حَقٍّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

said to Abu al-Darda: 'Give every rightful claimant their due,' the Prophet affirmed his statement and endorsed it."

«وَلِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ قَالَ سَلْمَانُ لِأَبِي الدَّرْدَاءِ أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ، فَصَدَّقَهُ - عَلَيْهِ السَّلَامُ -، وَصَوَّبَ قَوْلَهُ» .

L22541 If someone sells dates without their pits, the responsibility of taking the dates and separating them from the pits falls on the buyer, as he is commanded to take his purchased goods, transport them, and leave the pits in their place—provided the place belongs to the seller. If the buyer refuses, he may be compelled, and someone may be hired at his expense to separate the dates from the pits. The seller is not obligated to do this unless he wishes, as he is not required to open another's fruit or perform any work on it.

فَمَنْ بَاعَ تَمْرًا دُونَ نَوَاهَا، فَأَخْذُ التَّمْرَةِ وَتَخْلِيصُهَا مِنْ النَّوَى عَلَى الْمُشْتَرِي لِأَنَّهُ مَأْمُورٌ بِأَخْذِ مَتَاعِهِ وَنَقْلِهِ وَتَرْكِ النَّوَى مَكَانَهُ - إنْ كَانَ الْمَكَانُ لِلْبَائِعِ - فَإِنْ أَبَى أُجْبِرَ، وَاسْتُؤْجِرَ عَلَيْهِ مَنْ يُزِيلُ التَّمْرَ عَنْ النَّوَى، وَلَا يُكَلَّفُ الْبَائِعُ ذَلِكَ إلَّا أَنْ يَشَاءَ؛ لِأَنَّهُ لَا يَلْزَمُهُ فَتْحُ ثَمَرَةِ غَيْرِهِ، وَلَا أَنْ يَعْمَلَ لَهُ فِيهِ عَمَلًا.

L22542 If the place belongs to the buyer, then if the buyer wishes to uproot his fruit, he has the right to do so, and he does not allow others to leave for him any undesired traces in it. If the buyer refuses this, the seller must remove their pits and relocate it in the gentlest manner possible, and he bears no responsibility. But if he transgresses, he is liable for the extent of his transgression in spoiling the fruit.

فَإِنْ كَانَ الْمَكَانُ لِلْمُشْتَرِي، فَإِنْ أَرَادَ الْمُشْتَرِي قَلْعَ ثَمَرَتِهِ فَلَهُ ذَلِكَ، وَلَا يَتْرُكُ غَيْرَهُ يُؤَثِّرُ لَهُ فِيهَا أَثَرًا لَا يُرِيدُهُ، فَإِنْ أَبَى الْمُشْتَرِي مِنْ ذَلِكَ فَعَلَى الْبَائِعِ إخْرَاجُ نَوَاهُ وَنَقْلُهُ عَلَى أَلْطَفِ مَا يُمْكِنُ، وَلَا شَيْءَ عَلَيْهِ فَإِنْ تَعَدَّى ضَمِنَ مِقْدَارَ تَعَدِّيهِ فِي إفْسَادِ الثَّمَرَةِ.

L22543–22544 If the place is jointly owned? Then as we stated: whichever of them wishes to expedite retrieving his belongings may do so. If the one entitled to the date pits wishes this, he may remove the date pits he owns in the gentlest manner possible, since this is unavoidable for him, and he incurs no liability, for he has performed a permissible action. But if he exceeds permissible limits, he is liable.

فَإِنْ كَانَ الْمَكَانُ لَهُمَا؟ فَكَمَا قُلْنَا: أَيُّهُمَا أَرَادَ تَعْجِيلَ أَخْذِ مَتَاعِهِ فَلَهُ أَخْذُهُ، فَإِنْ أَرَادَ ذَلِكَ الَّذِي لَهُ النَّوَى كَانَ لَهُ إخْرَاجُ نَوَاهُ بِأَلْطَفِ مَا يُمْكِنُ، إذْ لَا بُدَّ لَهُ مِنْ ذَلِكَ، وَلَا شَيْءَ عَلَيْهِ؛ لِأَنَّهُ فَعَلَ مُبَاحًا لَهُ، فَإِنْ تَعَدَّى ضَمِنَ.

L22545 If the place belongs to someone other than the two of them, they are both compelled to cooperate in recovering their respective properties.

فَإِنْ كَانَ الْمَكَانُ لِغَيْرِهِمَا أُجْبِرَا جَمِيعًا عَلَى الْعَمَلِ مَعًا فِي تَخْلِيصِ كُلِّ وَاحِدٍ مِنْهُمَا مَالَهُ.

L22546 The ruling similarly applies to the musk pod, containers excluding their contents, shells excluding their contents, wax excluding honey, straw excluding grain, the skin of an animal slaughtered by dhabh or nahr, the flesh of olives, sesame seeds, and all oil-bearing materials.

وَهَكَذَا الْقَوْلُ فِي نَافِجَةِ الْمِسْكِ، وَالظُّرُوفِ دُونَ مَا فِيهَا، وَالْقُشُورِ دُونَ مَا فِيهَا، وَالشَّمْعِ دُونَ الْعَسَلِ، وَالتِّبْنِ دُونَ الْحَبِّ، وَجِلْدِ الْحَيَوَانِ الْمَذْبُوحِ أَوْ الْمَنْحُورِ، وَلَحْمَةِ الزَّيْتُونِ، وَالسِّمْسِمِ، وَكُلِّ ذِي دُهْنٍ.

L22547 As for one who sells land without including the seed, crop, trees, or building, harvesting is incumbent on the crop's owner; uprooting on the tree's

owner; and removing the building and cutting [plants] likewise fall upon their respective owners—because each is obligated to remove his property from another's land.

وَأَمَّا مَنْ بَاعَ الْأَرْضَ دُونَ الْبَذْرِ، أَوْ دُونَ الزَّرْعِ، أَوْ دُونَ الشَّجَرِ، أَوْ دُونَ الْبِنَاءِ، فَالْحَصَادُ عَلَى الَّذِي لَهُ الزَّرْعُ، وَالْقَلْعُ عَلَى الَّذِي لَهُ الشَّجَرُ، وَالْبِنَاءُ وَالْقَطْعُ أَيْضًا عَلَيْهِ؛ لِأَنَّ فَرْضًا عَلَيْهِ إزَالَةُ مَالِهِ عَنْ أَرْضِ غَيْرِهِ.

L22548 Whoever sells an animal excluding [the rights to] its milk or pregnancy, the milking obligation falls upon the milk's owner. The payment for the milker is also incumbent upon him, because he is obligated to remove his milk from another's animal's udder. The animal's owner is only required to enable this milking process, not to assist in the actual milking itself.

وَمَنْ بَاعَ الْحَيَوَانَ دُونَ اللَّبَنِ، أَوْ دُونَ الْحَمْلِ، فَالْحَلْبُ عَلَى الَّذِي لَهُ اللَّبَنُ وَلَا بُدَّ - وَأُجْرَةُ الْقَابِلَةِ عَلَيْهِ أَيْضًا؛ لِأَنَّ وَاجِبًا عَلَيْهِ إزَالَةُ لَبَنِهِ عَنْ ضَرْعِ حَيَوَانِ غَيْرِهِ، وَلَيْسَ عَلَى صَاحِبِ الْحَيَوَانِ إلَّا إمْكَانُهُ مِنْ ذَلِكَ فَقَطْ، لَا خِدْمَتُهُ فِي حَلْبِ لَبَنِهِ.

L22549 Similarly, the one possessing ownership rights over the child is required to act in assisting the retrieval of his male or female slave from the womb of another person's female slave, using the means permitted to him in this regard.

وَكَذَلِكَ عَلَى الَّذِي لَهُ مِلْكُ الْوَلَدِ: الْعَمَلُ فِي الْعَوْنِ فِي أَخْذِ مَمْلُوكِهِ، أَوْ مَمْلُوكَتِهِ فِي بَطْنِ أَمَةِ غَيْرِهِ بِمَا أُبِيحَ لَهُ مِنْ ذَلِكَ.

L22550 Whoever sells a wooden or stone pillar within a building obligates the buyer to remove it using the gentlest methods possible, including reinforcing the structure surrounding the pillar and demolishing adjacent areas necessary for its removal. The buyer bears no responsibility in this matter, as they have the right to take their property as they are able.

وَمَنْ بَاعَ سَارِيَةَ خَشَبٍ، أَوْ حَجَرٍ فِي بِنَاءٍ فَعَلَى الْمُشْتَرِي قَلْعُ ذَلِكَ بِأَلْطَفِ مَا يَقْدِرُ عَلَيْهِ مِنْ التَّدْعِيمِ لِمَا حَوْلَ السَّارِيَةِ مِنْ الْبِنَاءِ، وَهَدْمُ مَا حَوَالَيْهَا مِمَّا لَا بُدَّ لَهُ مِنْ هَدْمِهِ، وَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ؛ لِأَنَّ لَهُ أَخْذَ مَتَاعِهِ كَمَا يَقْدِرُ.

L22551 And whoever is commanded to do something and acts within it, there is no liability upon him, because he is doing good in what he does of that. Allah the Exalted has said: **"No blame is upon the doers of good"** [9:91], and **"Blame lies only against those who wrong people and seek oppression in the land without right"** [42:42]. If he transgresses, he becomes liable for what we have mentioned.[3]

وَمَنْ هُوَ مَأْمُورٌ بِشَيْءٍ، وَيَعْمَلُ فِي شَيْءٍ فَلَا ضَمَانَ عَلَيْهِ؛ لِأَنَّهُ يَفْعَلُ مَا يَفْعَلُ مِنْ ذَلِكَ: مُحْسِنٌ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] ، {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] فَإِنْ تَعَدَّى ضَمِنَ لِمَا ذَكَرْنَا.

The sale of wool, camel hair, or hair on the animal.

L22552

[مَسْأَلَةٌ بَاعَ صُوفًا أَوْ وَبَرًا أَوْ شَعْرًا عَلَى الْحَيَوَانِ]

L22553–22555 1430. Issue: If someone sells wool, hair, or camel fur while still on the animal, the shearing falls upon the owner of these materials, because they

١٤٣٠ - مَسْأَلَةٌ: وَمَنْ بَاعَ صُوفًا، أَوْ وَبَرًا، أَوْ شَعْرًا عَلَى الْحَيَوَانِ فَالْجَزُّ عَلَى الَّذِي لَهُ الصُّوفُ، وَالشَّعْرُ، وَالْوَبَرُ؛ لِأَنَّ عَلَيْهِ إزَالَةَ مَالِهِ عَنْ مَالِ غَيْرِهِ، وَمَكَانِ الشَّعْرِ، وَالْوَبَرِ،

[3] **Qur'an references (L22551):** Qur'an 9:91 (At-Tawbah); Qur'an 42:42 (Ash-Shuraa).

must remove their property from another's property, given that the hair and camel fur remain attached to the animal. As for wool—and it is the skin of the animal—the one to whom all of that belongs must remove his wool and skin from another's place, while the owner of the place need only enable him to do so.

L22556 Similarly, whoever purchases a storage jar in a house must remove it. He may demolish whatever parts of the door of the house are necessary for removing the jar, and he incurs no liability for that, since there is no way for him to perform the task he is charged with except through that. And success is from Allah, the Most High.

L22557 ## The Issue of Selling Goldsmiths' Dust

L22558 Issue 1431: It is impermissible to sell goldsmiths' dust in any way whatsoever, because the buyer intends only the silver and gold particles within it - which are unknown and indeterminable - thus constituting uncertainty (gharar). The Messenger of Allah (peace and blessings be upon him) "prohibited transactions involving gharar."[4]

L22559 ## A question concerning the ruling on the sale of what has been sifted by dust-sifters from the dust.

L22560 Issue 1432: Whatever dust sifters extract from soil, clay washers separate from clay, or is retrieved from goldsmiths' dust constitutes lost property if identifiable - such as a gemstone, dinar, or dirham. As for additional items, they must be announced according to the procedure we outlined in the rulings on lost property. The finder may keep them but remains liable to the owner if they come forward. Items that can never be identified - like fragments or similar objects - are permissible for the finder according to the principles we detailed in the chapter on lost property. Success comes solely from Allah, the Exalted.

L22561 ## A question regarding the ruling on the sale of mineral dust.

[4] **Hadith references (L22558):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

وَالصُّوفِ - وَهُوَ جِلْدُ الْحَيَوَانِ - فَعَلَى الَّذِي لَهُ كُلُّ ذَلِكَ إزَالَةُ مَالِهِ عَنْ مَكَانِ غَيْرِهِ، وَعَلَى الَّذِي لَهُ الْمَكَانُ أَنْ يُمَكِّنَهُ مِنْ ذَلِكَ فَقَطْ.

وَكَذَلِكَ مَنْ اشْتَرَى خَابِيَةً فِي بَيْتٍ فَعَلَيْهِ إخْرَاجُهَا، وَلَهُ أَنْ يَهْدِمَ مِنْ بَابِ الْبَيْتِ مَا لَا بُدَّ لَهُ مِنْ هَدْمِهِ لِإِخْرَاجِ الْخَابِيَةِ - وَلَا ضَمَانَ عَلَيْهِ فِي ذَلِكَ، إذْ لَا سَبِيلَ لَهُ إلَى عَمَلِ مَا كُلِّفَ إلَّا بِذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ تُرَابِ الصَّاغَةِ]

١٤٣١ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ تُرَابِ الصَّاغَةِ أَصْلًا بِوَجْهٍ مِنْ الْوُجُوهِ لِأَنَّهُ إنَّمَا يَقْصِدُ الْمُشْتَرِي مَا فِيهِ مِنْ قَطْعِ الْفِضَّةِ وَالذَّهَبِ - وَهُوَ مَجْهُولٌ لَا يُعْرَفُ - فَهُوَ غَرَرٌ، وَقَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» .

[مَسْأَلَةٌ حُكْمُ بَيْعِ مَا نَخَلَهُ الْغَبَّارُونَ مِنْ التُّرَابِ]

١٤٣٢ - مَسْأَلَةٌ: وَكُلُّ مَا نَخَلَهُ الْغَبَّارُونَ مِنْ التُّرَابِ، أَوْ اسْتَخْرَجَهُ غَسَّالُوا الطِّينِ مِنْ الطِّينِ، أَوْ اُسْتُخْرِجَ مِنْ تُرَابِ الصَّاغَةِ، فَهُوَ لُقَطَةٌ مَا أَمْكَنَ أَنْ يُعَرَّفَ، كَالْفَصِّ، أَوْ الدِّينَارِ، أَوْ الدِّرْهَمِ، فَمَا زَادَ فَتَعْرِيفُهُ كَمَا ذَكَرْنَا فِي اللُّقَطَةِ ثُمَّ هُوَ لِلْمُلْتَقِطِ مَضْمُونًا لِصَاحِبِهِ إنْ جَاءَ - وَمَا كَانَ مِنْهُ لَا يُمْكِنُ أَنْ يُعْرَفَ صَاحِبُهُ أَبَدًا مِنْ قِطْعَةٍ أَوْ غَيْرِ ذَلِكَ: فَهُوَ حَلَالٌ لِوَاجِدِهِ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ اللُّقَطَةِ " وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ بَيْعِ تُرَابُ الْمَعَادِنِ]

L22562 Ruling 1433: As for soil from mines—any that is from a gold mine, it is absolutely impermissible to sell it in any way, for the gold within it is created within it, its quantity being indeterminable.

١٤٣٣ - مَسْأَلَةٌ: وَأَمَّا تُرَابُ الْمَعَادِنِ: فَمَا كَانَ مِنْهُ مَعْدِنَ ذَهَبٍ فَلَا يَحِلُّ بَيْعُهُ أَلْبَتَّةَ بِوَجْهٍ مِنْ الْوُجُوهِ، لِأَنَّ الذَّهَبَ فِيهِ مَخْلُوقٌ فِي خِلَالِهِ مَجْهُولُ الْمِقْدَارِ.

L22563 If the gold in which the visible portion is entirely encased is in such a state: its sale becomes permissible according to what makes the sale of gold permissible—as we will mention after this, if Allah, the Exalted, wills.

فَلَوْ كَانَ الذَّهَبُ الَّذِي فِيهِ مَرْئِيًّا كُلُّهُ مُحَاطًا بِهِ: جَازَ بَيْعُهُ بِمَا يَجُوزُ بِهِ بَيْعُ الذَّهَبِ - عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L22564 What is in the form of silver mine dust: its sale is permissible for dirhams and gold as cash, for deferred payment or without deferment, and in exchange for goods as cash. A salam transaction is permissible for it.

وَمَا كَانَ مِنْهُ تُرَابَ مَعْدِنِ فِضَّةٍ: جَازَ بَيْعُهُ بِدَرَاهِمَ وَبِذَهَبٍ نَقْدًا، وَإِلَى أَجَلٍ وَإِلَى غَيْرِ أَجَلٍ، وَبِالْعَرْضِ نَقْدًا، وَجَازَ السَّلَمُ فِيهِ.

L22565 Similarly, the soil of all mineral ores—since it contains no silver whatsoever in its original state, being merely pure soil—does not become silver except through processing and smelting. A portion of it then transforms into silver, just as water transforms into salty water, eggs transform into chicks, and seeds transform into trees. There is no difference.

وَكَذَلِكَ تُرَابُ سَائِرِ الْمَعَادِنِ؛ لِأَنَّهُ لَيْسَ فِيهِ شَيْءٌ مِنْ الْفِضَّةِ أَصْلًا، وَإِنَّمَا هُوَ تُرَابٌ مَحْضٌ، لَا يَصِيرُ فِضَّةً إلَّا بِمُعَانَاةٍ وَطَبْخٍ، فَيَسْتَحِيلُ بَعْضُهُ فِضَّةً كَمَا يَسْتَحِيلُ الْمَاءُ مِلْحًا، وَالْبَيْضُ فَرَارِيجَ، وَالنَّوَى شَجَرًا - وَلَا فَرْقَ.

[مَسْأَلَةُ حُكْمِ بَيْعِ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ]

[Issue: The ruling on the sale of young crops before they develop grain heads.]

L22566–22567

L22568 Issue: Selling young crops before they form ears is permissible. The seller may voluntarily allow the buyer to leave them as long as he wishes - whether until he grazes them, harvests them, or they dry - without stipulation. If the buyer neglects the crop until new offshoots emerge from its root that were not visibly present at the time of purchase, and they dispute ownership of these offshoots: whichever party establishes evidence regarding the quantity sold will receive the ruling in their favor. The buyer is entitled only to the amount purchased, while the additional offshoots belong to the seller. If the seller lacks evidence, both must swear oaths, and the disputed offshoots shall be divided between them.

مَسْأَلَةٌ: وَبَيْعُ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ: جَائِزٌ وَلِلْبَائِعِ أَنْ يَتَطَوَّعَ لِلْمُشْتَرِي بِتَرْكِهِ مَا شَاءَ إلَى أَنْ يَرْعَاهُ، أَوْ إلَى أَنْ يَحْصُدَهُ، أَوْ إلَى أَنْ - يَيْبَسَ بِغَيْرِ شَرْطٍ، فَإِنْ غَفَلَ عَنْهُ حَتَّى زَادَ فِيهِ أَوْلَادًا مِنْ أَصْلِهِ لَمْ تَكُنْ ظَاهِرَةً إذَا اشْتَرَاهُ فَاخْتَصَمَا فِيهَا: فَأَيُّهُمَا أَقَامَ الْبَيِّنَةَ بِمِقْدَارِ الْمَبِيعِ: قُضِيَ بِهَا، وَلَمْ يَكُنْ لِلْمُشْتَرِي إلَّا الْقَدْرُ الَّذِي اشْتَرَى، وَكَانَتْ الزِّيَادَةُ مِنْ الْأَوْلَادِ لِلْبَائِعِ، فَإِنْ لَمْ تَكُنْ لَهُ بَيِّنَةٌ: حَلَفَا، وَقُسِّمَتْ الزِّيَادَةُ الَّتِي يَتَدَاعَيَانِهَا بَيْنَهُمَا.

L22569 As for the ears of grain, carob, and seeds: they belong to the purchaser in all circumstances. Likewise, whatever increases in its length. When the crop forms ears, its sale is absolutely impermissible—neither when cut nor when left—until it matures. Once it matures, its sale becomes permissible then.

وَأَمَّا السُّنْبُلُ، وَالْحَرُّوبُ، وَالْحَبُّ: فَلِلْمُشْتَرِي عَلَى كُلِّ حَالٍ، وَكَذَلِكَ مَا زَادَ فِي طُولِهِ، فَإِذَا سَنْبَلَ الزَّرْعُ لَمْ يَحِلَّ بَيْعُهُ أَصْلًا - لَا عَلَى الْقَطْعِ وَلَا عَلَى التَّرْكِ - إلَّا حَتَّى يَشْتَدَّ، فَإِذَا اشْتَدَّ: حَلَّ بَيْعُهَا حِينَئِذٍ.

L22570 The evidence for the validity of selling tender crops before they form ears is the Statement of Allah, the Most High: "And Allah has made lawful trade" [Al-Baqarah (The Cow) 275].[5]

بُرْهَانُ صِحَّةِ بَيْعِ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ -: قَوْلُ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L22571 And His statement, the Exalted: "Do not consume your wealth among yourselves wrongfully unless it be through trade with mutual consent." [An-Nisa: 29] Thus, all sales are permissible except those prohibited by an explicit text of the Quran or the Sunnah. No explicit text whatsoever has been revealed prohibiting the sale of crops from the time they sprout until they form ears.[6]

وَقَوْله تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَالْبَيْعُ كُلُّهُ حَلَالٌ، إلَّا بَيْعًا مَنَعَ مِنْهُ نَصُّ قُرْآنٍ أَوْ سُنَّةٍ، وَلَمْ يَأْتِ فِي مَنْعِ بَيْعِ الزَّرْعِ مُذْ يَنْبُتُ إلَى أَنْ يُسَنْبِلَ: نَصٌّ أَصْلًا.

L22572 The evidence for the prohibition of selling grain when it forms ears until it hardens is what we have narrated in *Ṣaḥīḥ Muslim* via the chain from ʿAlī ibn Ḥajar and Zuhayr ibn Ḥarb, who both stated: "We were narrated by Ismāʿīl Ibn ʿUlayyah, from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar, who said: 'The Messenger of Allah (peace and blessings be upon him) prohibited selling dates until they bear fruit and selling ears of grain until they whiten and become secure from blight. He prohibited the seller and the buyer alike.'"[7]

وَبُرْهَانُ تَحْرِيمِ بَيْعِهِ إذَا سَنْبَلَ إلَى أَنْ يَشْتَدَّ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا عَلِيُّ بْنُ حُجْرٍ، وَزُهَيْرُ بْنُ حَرْبٍ، قَالَا جَمِيعًا: نا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ النَّخْلِ حَتَّى يَزْهُوَ وَعَنْ السُّنْبُلِ حَتَّى يَبْيَضَّ وَيَأْمَنَ الْعَاهَةَ - نَهَى الْبَائِعَ وَالْمُشْتَرِيَ» .

L22573 From the chain of narration of Abū Dāwūd, narrated by al-Ḥasan ibn ʿAlī, narrated by Abū al-Walīd—al-Ṭayālisī—narrated by Ḥammād ibn Salamah, narrated by Ḥumayd, narrated by Anas: "The Prophet, peace of Allah be upon him, prohibited selling grapes until they darken and selling grain until it ripens fully." No other narration is authentic at all.[8]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا الْحَسَنُ بْنُ عَلِيٍّ نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ أَنَسٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى عَنْ بَيْعِ الْعِنَبِ حَتَّى يَسْوَدَّ وَعَنْ بَيْعِ الْحَبِّ حَتَّى يَشْتَدَّ» وَلَا يَصِحُّ غَيْرُ هَذَا أَصْلًا.

L22574–22576 And likewise, it has been narrated to us from the majority of the Salaf: It

وَهَكَذَا رُوِّينَا عَنْ جُمْهُورِ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا إسْرَائِيلُ بْنُ يُونُسَ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ، قَالَا جَمِيعًا: لَا يُبَاعُ النَّخْلُ حَتَّى يَحْمَرَّ، وَلَا السُّنْبُلُ حَتَّى يَصْفَرَّ.

[5] **Qur'an references (L22570):** Qur'an 2:275 (Al-Baqarah).
[6] **Qur'an references (L22571):** Qur'an 4:29 (An-Nisa).
[7] **Hadith references (L22572):** Sunan Abi Dawud 3368; Sahih Muslim 1535.
[8] **Hadith references (L22573):** Sunan Abi Dawud 3371; Jami at-Tirmidhi 1228.

has been narrated to us via the chain of Waki‘ - he narrated to us: Isrā’īl ibn Yūnus reported from Jābir, from al-Sha‘bī, from Masrūq, from... Umar ibn al-Khattab and Abdullah ibn Masud both said: The date palm is not to be sold until it reddens, nor the ears of grain until they yellow.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ قَالَ: نَهْيِ عَنْ بَيْعِ الثَّمَرَةِ حَتَّى يَبْدُوَ صَلَاحُهَا، وَعَنْ السُّنْبُلِ حَتَّى يَبْيَضَّ.

L22577 Via the chain of Abd al-Razzaq from Ma‘mar, from Ayyub al-Sikhtiyani, from Ibn Sirin, who said: “It is prohibited to sell the fruit until its ripeness becomes evident, and to sell the ears of grain until they turn white.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ عَاصِمٍ عَنْ ابْنِ سِيرِينَ قَالَ: لَا يُشْتَرَى السُّنْبُلُ حَتَّى يَبْيَضَّ.

L22578 And via the chain of Ibn Abi Shaybah, he narrated to us: Jarir—he is Ibn Abd al-Hamid—from Asim from Ibn Sirin, who said: It is impermissible to purchase unripe ears of grain in the husk until they turn white.

وَمِنْ طَرِيقِ وَكِيعٍ نا الرَّبِيعُ - هُوَ ابْنُ صُبَيْحٍ - عَنْ الْحَسَنِ أَنَّهُ كَرِهَ بَيْعَ السُّنْبُلِ حَتَّى يَبْيَضَّ.

L22579 Through Waki’’s chain: Ar-Rabi‘—he is the son of Subayḥ—narrated to us from Al-Ḥasan that he deemed reprehensible the sale of unripe grain until it whitens.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، قَالَ: سَأَلْت عِكْرِمَةَ عَنْ بَيْعِ الْقَصِيلِ؟ فَقَالَ: لَا بَأْسَ، فَقُلْت: إنَّهُ يُسْنْبِلُ؟ فَكَرِهَهُ - وَهَذَا هُوَ نَفْسُ قَوْلِنَا، فَلَمْ يَسْتَثْنِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ مَنَعَ مِنْ بَيْعِ السُّنْبُلِ حَتَّى يَشْتَدَّ، أَوْ يَبْيَضَّ: جَوَازَ بَيْعِهِ عَلَى الْحَصَادِ {وَمَا يَنطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L22580 From the narration chain of Ibn Abi Shaybah: Ali ibn Mushir narrated to us from Abu Ishaq al-Shaybani, who said: I asked Ikrimah about selling green fodder. He replied: “There is no objection.” I said: “But it will develop ears?” He deemed it disliked. This corresponds precisely to our opinion, for the Messenger of Allah—peace and blessings be upon him—made no exception when prohibiting the sale of grain ears until they harden or whiten, having permitted its sale upon harvesting. {He does not speak from whim} [53:3], {it is but revelation inspired} [53:4], {and your Lord is never forgetful} [19:64].[9]

وَكَذَلِكَ عُمَرُ بْنُ الْخَطَّابِ، وَابْنُ مَسْعُودٍ، لَا مُخَالِفَ لَهُمَا نَعْلَمُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L22581 Likewise, in the case of ‘Umar ibn al-Khaṭṭāb and Ibn Mas‘ūd, there is no opponent to them that we know of from the Companions - may Allah be pleased with them.

قَالَ أَبُو مُحَمَّد: فَإِنَّ حَصَادَ السُّنْبُلِ رُطَبًا لَمْ يَجُزْ بَيْعُهُ أَيْضًا؛ لِأَنَّهُ سُنْبُلٌ يُمْكِنُ فِيهِ بَعْدَ أَنْ يَشْتَدَّ وَيَبْيَضَّ - وَكَذَلِكَ إنْ صُفِّيَ فَصَارَ حَبًّا وَلَا فَرْقَ، لِلنَّهْيِ عَنْ ذَلِكَ أَيْضًا.

L22582 Abu Muhammad said: Harvesting ears of grain while they are still moist is also impermissible to sell, because it is an ear of grain that may still undergo changes after hardening and whitening. Similarly, if it is winnowed and

[9] **Qur’an references (L22580):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 19:64 (Maryam).

becomes grain, there is no distinction in the ruling, due to the prohibition of that as well.

L22583 If it is such that, when left, it does not dry but spoils, its sale is permissible. This is because it no longer possesses the attribute that formed the basis for the prohibition against selling items characterized by it.

L22584 The term *sunbul* (ear of grain) is known in the Arabic language, and it applies to wheat, barley, rye, millet, naked barley, and all that is termed *sunbul* in the language.

L22585 **A juristic question on the ruling of selling green crops before they develop ears, upon being cut.**

L22586–22588 1435. Issue: As for selling young crops before they form ears, subject to cutting, it is permissible because it is incumbent upon everyone to remove their property from another's land and not occupy the land with it. This is an obligatory, prescribed condition. If the landowner voluntarily allows them to remain without stipulation, it is acceptable, because it is permissible for anyone to allow [it]. His land is for whomever he wills and for whatever purpose he wills, provided it is not prohibited. If there is surplus, the owner of the land may voluntarily give the excess, for it is his wealth; he may grant it to whomever he wishes unless prevented by the Qur'an or Sunnah. A gift is an act of goodness and grace. Allah, the Exalted, said: "And do good" [Al-Ḥajj: 77], and He, the Exalted, said: "And do not neglect grace among yourselves" [Al-Baqarah: 237].[10]

L22589 If he refuses, then evidence (bayyinah) is required. If there is no evidence, they are litigants over the surplus—which is jointly held by them—each claiming, "It is mine." They must both swear an oath (yamin), as each is a defendant against whom a claim is made. Thereafter, each retains what he holds, for his oath absolves him of his opponent's claim. And with Allah, the Exalted, lies all success.

L22590 Abu Hanifah, Malik, and al-Shafiʿi prohibited the sale of green crops until

فَإِنْ كَانَ إِنْ تُرِكَ لَمْ يَيْبَسْ، وَلَكِنْ يَفْسُدُ: جَازَ بَيْعُهُ؛ لِأَنَّهُ قَدْ خَرَجَ عَنْ الصِّفَةِ الَّتِي جَاءَ النَّهْيُ عَنْ بَيْعِ مَا هِيَ فِيهِ.

وَالسُّنْبُلُ فِي لُغَةِ الْعَرَبِ مَعْرُوفٌ وَهُوَ فِي الْقَمْحِ وَالشَّعِيرِ، وَالْعَلَسِ، وَالدُّخْنِ، وَالسَّلْتِ، وَسَائِرِ مَا يُسَمَّى فِي اللُّغَةِ " سُنْبُلًا "

[مَسْأَلَةٌ حُكْمُ بَيْعُ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ عَلَى الْقَطْعِ]

١٤٣٥ - مَسْأَلَةٌ: وَأَمَّا بَيْعُ الْقَصِيلِ قَبْلَ أَنْ يُسَنْبِلَ عَلَى الْقَطْعِ فَجَائِزٌ؛ لِأَنَّ فَرْضًا عَلَى كُلِّ أَحَدٍ أَنْ يُزِيلَ مَالَهُ عَنْ أَرْضِ غَيْرِهِ، وَأَنْ لَا يَشْغَلَهَا بِهِ، فَهَذَا شَرْطٌ وَاجِبٌ، مُفْتَرَضٌ، فَإِنْ تَطَوَّعَ لَهُ رَبُّ الْأَرْضِ بِالتَّرْكِ مِنْ غَيْرِ شَرْطٍ: فَحَسَنٌ؛ لِأَنَّ لِكُلِّ أَحَدٍ إبَاحَةُ أَرْضِهِ لِمَنْ شَاءَ، وَلِمَا شَاءَ، مِمَّا لَمْ يَنْهَ عَنْهُ، فَإِنْ زَادَ فَلِصَاحِبِ الْمَالِ أَنْ يَتَطَوَّعَ لَهُ بِالزِّيَادَةِ؛ لِأَنَّهُ مَالُهُ يَهَبُهُ لِمَنْ شَاءَ مَا لَمْ يَمْنَعْهُ قُرْآنٌ، أَوْ سُنَّةٌ، وَالْهِبَةُ فِعْلُ خَيْرٍ وَفَضْلٍ، قَالَ اللَّهُ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] ، وَقَالَ تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] .

فَإِنْ أَبَى فَالْبَيِّنَةُ، فَإِنْ لَمْ تَكُنْ بَيِّنَةٌ فَهُمَا مُتَدَاعِيَانِ فِي الزِّيَادَةِ - وَهِيَ بِأَيْدِيهِمَا مَعًا - فَكُلُّ وَاحِدٍ يَقُولُ: هِيَ لِي، فَيَحْلِفَانِ، لِأَنَّ كُلَّ وَاحِدٍ مِنْهُمَا مُدَّعًى عَلَيْهِ، ثُمَّ يَبْقَى لِكُلِّ أَحَدٍ مَا بِيَدِهِ لِبَرَاءَتِهِ مِنْ دَعْوَى خَصْمِهِ بِيَمِينِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[10] **Qur'an references (L22586):** Qur'an 2:237 (Al-Baqarah); Qur'an 22:77 (Al-Hajj).

وَمَنَعَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، مِنْ بَيْعِ الْقَصِيلِ حَتَّى يَصِيرَ حَبًّا يَابِسًا، وَلَمْ يَأْتِ بِهَذَا نَصٌّ أَصْلًا - ثُمَّ تَنَاقَضُوا، فَأَجَازُوا بَيْعَهُ عَلَى الْقَطْعِ -.

they become dry grain, and no scriptural text whatsoever supported this ruling. Then they contradicted their own ruling by permitting its sale once cut.

وَكُلُّ هَذَا بِلَا بُرْهَانٍ أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا دَلِيلَ لَهُمْ عَلَى مَا مَنَعُوا مِنْ ذَلِكَ، وَلَا عَلَى مَا أَبَاحُوا مِنْهُ.

L22591 All of this is without any proof at all—neither from the Quran, nor the Sunnah, nor the statement of a Companion, nor analogy, nor any opinion with a valid basis. Nor do they have proof for what they prohibited or permitted of it.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى: لَا يَجُوزُ بَيْعُ الْقَصِيلِ لَا عَلَى الْقَطْعِ وَلَا عَلَى التَّرْكِ - وَقَوْلُ هَؤُلَاءِ أَطْرَدُ وَأَصَحُّ فِي السُّنْبُلِ قَبْلَ أَنْ يَشْتَدَّ.

L22592 Sufyan al-Thawri and Ibn Abi Layla said: The sale of unripe standing crops is not permissible, whether contingent on cutting them or leaving them intact. The opinion of these scholars is more consistent with legal principles and more sound regarding ears of grain before they harden.

وَاخْتَلَفُوا إِنْ تُرِكَ الزَّرْعُ فَزَادَ؟ فَقَالَ مَالِكٌ: يَنْفَسِخُ الْبَيْعُ جُمْلَةً.

L22593 They differed if the crop was left and it increased. Mālik said: "The sale is completely nullified."

وَقَالَ أَبُو حَنِيفَةَ: لِلْمُشْتَرِي الْمِقْدَارُ الَّذِي اشْتَرَى وَيَتَصَدَّقُ بِالزِّيَادَةِ - وَيُرْوَى عَنْهُ أَنَّهُ رَجَعَ فَقَالَ: لِلْمُشْتَرِي الْمِقْدَارُ الَّذِي اشْتَرَى، وَأَمَّا الزِّيَادَةُ فَلِلْبَائِعِ.

L22594 Abu Hanifah said: The buyer is entitled to the quantity he purchased and must give the excess as charity. It is narrated that he retracted and said: The buyer is entitled to the quantity he purchased, and as for the excess, it belongs to the seller.

وَقَالَ الشَّافِعِيُّ: الْبَائِعُ مُخَيَّرٌ بَيْنَ أَنْ يَدَعَ لَهُ الزِّيَادَةَ فَيَجُوزُ الْبَيْعُ وَالْهِبَةُ مَعًا أَوْ يَفْسَخَ الْبَيْعَ - وَقَالَ أَبُو سُلَيْمَانَ: الزِّيَادَةُ لِلْمُشْتَرِي مَعَ مَا اشْتَرَى.

L22595 Al-Shāfiʿī said: The seller has the choice between leaving the additional amount to the buyer, in which case both the sale and gift are permissible, and rescinding the sale. Abū Sulaymān said: The additional amount belongs to the buyer along with what he purchased.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا فَسْخُ مَالِكٍ لِلْبَيْعِ فَقَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ أَصْلًا، وَلِأَيِّ مَعْنًى يَفْسَخُ بَيْعًا وَقَعَ عَلَى صِحَّةٍ بِإِقْرَارِهِ؟ هَذَا مَا لَا يَجُوزُ إِلَّا بِقُرْآنٍ، أَوْ سُنَّةٍ.

L22596 Abu Muhammad said: As for Malik's rescission of the sale, this is an opinion without any evidence for its validity at all. For what reason would he rescind a sale that was validly concluded by his own admission? This is impermissible except by [authority of] the Quran or the Sunnah.

وَأَمَّا أَوَّلُ قَوْلَيْ أَبِي حَنِيفَةَ خَطَأٌ، لِأَنَّ الزِّيَادَةَ إِذْ جَعَلَهَا لِلْمُشْتَرِي فَلِأَيِّ شَيْءٍ يَأْمُرُهُ بِالصَّدَقَةِ بِهَا دُونَ أَنْ يَأْمُرَهُ بِأَنْ يَتَصَدَّقَ بِالْقَدْرِ الَّذِي اشْتَرَى وَكِلَاهُمَا لَهُ - وَأَمَّا

L22597 As for the first of Abū Ḥanīfah's two opinions, it is incorrect because if he assigns the excess to the buyer, why would he instruct him to give it as charity instead of ordering him to donate the amount he purchased? Both are his. As for the opinion he ultimately adopted—that the excess belongs to the seller—it is valid when there is clear evidence establishing the excess and the quantity purchased.

الْقَوْلُ الَّذِي رَجَعَ إِلَيْهِ مِنْ أَنَّ الزِّيَادَةَ لِلْبَائِعِ: فَصَحِيحٌ، إِذَا قَامَتْ الْبَيِّنَةُ بِهَا وَبِمِقْدَارِ مَا اشْتَرَى.

L22598–22600 As for al-Shāfiʿī's statement, it is manifestly erroneous. For when he attributed the surplus to the seller, what justification is there for compelling him? Is it regarding her gift to the buyer or the rescission of the sale? By what proof did he prevent him from claiming his right, disputing over it, and persisting in it?

وَأَمَّا قَوْلُ الشَّافِعِيِّ فَظَاهِرُ الْخَطَأِ، لِأَنَّهُ إِذْ جَعَلَ الزِّيَادَةَ لِلْبَائِعِ، فَلِأَيِّ مَعْنًى أَجْبَرَهُ عَلَى هِبَتِهَا لِلْمُشْتَرِي أَوْ فَسْخِ الْبَيْعِ؟ وَلِأَيِّ دَلِيلٍ مَنَعَهُ مِنْ طَلَبِ حَقِّهِ وَالْخِصَامِ فِيهِ وَالْبَقَاءِ عَلَيْهِ؟

L22601 These are the views of the people, as you see, regarding the declaring of lawful and unlawful.

فَهَذِهِ آرَاءُ الْقَوْمِ كَمَا تَرَى فِي التَّحْلِيلِ وَالتَّحْرِيمِ.

L22602 As for Abū Sulaymān's assertion that the increase belongs to the buyer, it is mistaken. This is because the buyer purchased only a defined quantity, entitling him solely to what emerges from the specific asset he acquired. The seller owns the increase in what he retained for himself and did not sell to the buyer. Therefore, the growth in the stalk belongs to the seller for the reason we stated - since the buyer is entitled only to the produce of what he purchased, and the increase derives from the original root.

وَأَمَّا قَوْلُ أَبِي سُلَيْمَانَ: إِنَّ الزِّيَادَةَ لِلْمُشْتَرِي فَخَطَأٌ، لِأَنَّ الْمُشْتَرِيَ إِنَّمَا اشْتَرَى قَدْرًا مَعْلُومًا فَلَهُ مَا حَدَثَ فِي الْعَيْنِ الَّذِي اشْتَرَى، وَلِلْبَائِعِ مَا زَادَ فِيمَا اسْتَبْقَى لِنَفْسِهِ وَلَمْ يَبِعْهُ مِنْ الْمُشْتَرِي، فَالزِّيَادَةُ فِي طُولِ السَّاقِ لِلْبَائِعِ لِمَا ذَكَرْنَا لِأَنَّهُ لَيْسَ لِلْمُشْتَرِي إِلَّا زَرْعُ مَا اشْتَرَى فَقَطْ، وَإِنَّمَا تَأْتِي الزِّيَادَةُ مِنْ الْأَصْلِ.

L22603 As for the ears of grain, grains, blossoms, leaves, hay, and carob, they belong to the buyer because they arose within the specific property of the buyer. It has been reported regarding this from some of the *Tabi'un* (as narrated through the chain of ʿAbd al-Razzāq from Maʿmar from Yaḥyā ibn Abī Kuthayyir), who said: There is no harm in selling barley as fodder before its ripeness becomes apparent, provided it is harvested from where it grows. If he neglects it until it matures into consumable grain, there is no harm in it.

وَأَمَّا السُّنْبُلُ، وَالْحَبُّ، وَالنَّوْرُ، وَالْوَرَقُ، وَالتِّبْنُ، وَالْخَرُّوبُ فَلِلْمُشْتَرِي لِأَنَّهُ فِي عَيْنِ مَالِهِ حَدَثَ - وَقَدْ جَاءَ فِي هَذَا عَنْ بَعْضِ التَّابِعِينَ -: مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: لَا بَأْسَ بِبَيْعِ الشَّعِيرِ لِلْعَلَفِ قَبْلَ أَنْ يَبْدُوَ صَلَاحُهُ إِذَا كَانَ يَحْصُدُهُ مِنْ مَكَانِهِ، فَإِنْ غَفَلَ عَنْهُ حَتَّى يَصِيرَ طَعَامًا فَلَا بَأْسَ بِهِ.

A ruling on the sale of the visible yield from vine crops.

[مَسْأَلَةٌ بَيْعُ مَا ظَهَرَ مِنْ الْمَقَاثِي]

L22604

L22605 Issue 1436: It is permissible to sell what has emerged from trellised crops like cucumbers (al-maqāthī)—even if extremely small—because it is edible. However, it is not permissible to sell what has not yet emerged from such trellised crops, jasmine, citrus blossoms, or other similar plants, nor a second cutting of green fodder. This is because all such sales involve selling what

١٤٣٦ - مَسْأَلَةٌ: وَيَجُوزُ بَيْعُ مَا ظَهَرَ مِنْ الْمَقَاثِي - وَإِنْ كَانَ صَغِيرًا جِدًّا - لِأَنَّهُ يُؤْكَلُ - وَلَا يَحِلُّ بَيْعُ مَا لَمْ يَظْهَرْ بَعْدُ مِنْ الْمَقَاثِي، وَالْيَاسَمِينِ، وَالنَّوْرِ، وَغَيْرِ ذَلِكَ، وَلَا جَزَّةً ثَانِيَةً مِنْ الْقَصِيلِ، لِأَنَّ كُلَّ ذَلِكَ بَيْعُ مَا لَمْ يُخْلَقْ - وَلَعَلَّهُ لَا يُخْلَقُ - وَإِنْ خُلِقَ فَلَا

has not yet been created—and perhaps may never be created. Even if created, none except Allah the Exalted knows its quantity or attributes. Therefore, such a sale is entirely forbidden, as it constitutes a gharar (speculative uncertainty) transaction and unlawful appropriation of wealth.

يَدْرِي أَحَدٌ غَيْرُ اللَّهِ تَعَالَى مَا كَمِّيَّتُهُ، وَلَا مَا صِفَاتُهُ: فَهُوَ حَرَامٌ بِكُلِّ وَجْهٍ، وَبَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ.

L22606 Mālik permitted all of that, and we know of no predecessor for him in specifying these things, nor anyone before him who stated it, nor any evidence.

وَأَجَازَ مَالِكٌ كُلَّ ذَلِكَ وَمَا نَعْلَمُ لَهُ فِي تَخْصِيصِ هَذِهِ الْأَشْيَاءِ سَلَفًا، وَلَا أَحَدٌ قَالَهُ غَيْرُهُ قَبْلَهُ، وَلَا حُجَّةً.

L22607 Some of them argued by citing the hiring of a wet nurse - and this is a distortion of Allah's words, the Exalted, from its rightful place. For how does hiring equate to sale? Moreover, what relation does suckled milk have with cucumbers and jasmine? Yet they prohibit the sale of a sheep's milk before milking without drawing analogy to the wet nurse, then proceed to analogize based on it the sale of cucumbers, blossoms, and jasmine before they are created. It has been narrated to us through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us - Yūnus ibn ʿUbayd - al-Ḥasan, that he disliked selling fresh dates two portions at a time.

وَاحْتَجَّ بَعْضُهُمْ بِاسْتِئْجَارِ الظِّئْرِ - وَهَذَا تَحْرِيفٌ لِكَلَامِ اللَّهِ تَعَالَى عَنْ مَوْضِعِهِ وَأَيْنَ الِاسْتِئْجَارُ مِنَ الْبَيْعِ، ثُمَّ أَيْنَ اللَّبَنُ الْمُرْتَضَعُ مِنَ الْقِثَّاءِ، وَالْيَاسَمِينِ؟ وَهُمْ يُحَرِّمُونَ بَيْعَ لَبَنِ شَاةٍ قَبْلَ حَلْبِهِ، وَلَا يَقِيسُونَهُ عَلَى الظِّئْرِ ثُمَّ يَقِيسُونَ عَلَيْهِ بَيْعَ الْقِثَّاءِ، وَالنَّوْرِ، وَالْيَاسَمِينِ قَبْلَ أَنْ يُخْلَقَ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ أَنَّهُ كَرِهَ بَيْعَ الرِّطَابِ جِزَّتَيْنِ جِزَّتَيْنِ.

L22608–22609 And it has been narrated to us through the chain of Ibn Abī Shaybah: Shariq, from al-Mughīrah, from Ibrāhīm al-Nakhaʿī and al-Shaʿbī—both said: There is no harm in selling fresh dates by estimated measure.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا شَرِيكٌ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ وَالشَّعْبِيِّ، قَالَا جَمِيعًا: لَا بَأْسَ بِبَيْعِ الرِّطَابِ جِزَّةً جِزَّةً.

L22610 Through the narration of Waki' from Buraid ibn 'Abdullah ibn Abi Burdah, who said: "I asked 'Ata ibn Abi Rabah about selling fresh dates in two units." He replied: "It is only valid as one unit."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ بُرَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ قَالَ: سَأَلْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ عَنْ بَيْعِ الرَّطْبَةِ جِزَّتَيْنِ؟ فَقَالَ: لَا تَصْلُحُ إِلَّا جِزَّةً.

L22611 Through the chain of Waki' from Muḥammad ibn Muslim from Ibn Abī Najīḥ from Mujāhid that he disapproved of selling freshly cut green fodder and henna unless as bundles, and disapproved of selling cucumbers and muskmelons unless fully ripe.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ أَنَّهُ كَرِهَ بَيْعَ الْقَضْبِ، وَالْحِنَّاءِ، إِلَّا جِزَّةً - وَكَرِهَ بَيْعَ الْخِيَارِ وَالْخِرْبِزِ إِلَّا جَنِيَّةً.

L22612 And through the chain of Waki' from Israʾīl, from Jābir who narrates from Ibn Ashwaʿ, and from Al-Qasim: they both disliked the sale of fresh dates except by the heap - and this is the opinion of Abū Ḥanīfah, Al-Shāfiʿī, Aḥmad, Abū Sulaymān, and others.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْرَائِيلَ عَنْ جَابِرٍ عَنِ ابْنِ أَشْوَعَ، وَالْقَاسِمِ: أَنَّهُمَا كَرِهَا بَيْعَ الرِّطَابِ إِلَّا جِزَّةً - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

[مَسْأَلَةٌ بَاعَهُ الْمَقْثَأَةَ بِأُصُولِهَا وَالْمَوْزَ بِأُصُولِهِ]

١٤٣٧ - مَسْأَلَةٌ: فَلَوْ بَاعَهُ الْمَقْثَأَةَ بِأُصُولِهَا، وَالْمَوْزَ بِأُصُولِهِ، وَتَطَوَّعَ لَهُ إبْقَاءَ كُلِّ ذَلِكَ فِي أَرْضِهِ بِغَيْرِ شَرْطٍ جَازَ ذَلِكَ - فَإِذَا مَلَكَ مَا ابْتَاعَ كَانَ لَهُ كُلُّ مَا تَوَلَّدَ فِيهِ؛ لِأَنَّهُ تَوَلَّدَ فِي مَالِهِ، وَلَهُ أَخْذُهُ بِقَلْعِ كُلِّ ذَلِكَ مَتَى شَاءَ لِأَنَّهُ أُمْلَكُ بِمَالِهِ.

وَلَا يَحِلُّ لَهُ اشْتِرَاطُ إبْقَاءِ ذَلِكَ فِي أَرْضِهِ مُدَّةً مُسَمَّاةً أَوْ غَيْرَ مُسَمَّاةٍ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - فَإِنْ احْتَجُّوا ب " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ "، قُلْنَا: هَذَا لَا يَصِحُّ، وَأَنْتُمْ تُصَحِّحُونَهُ، فَأَيْنَ أَنْتُمْ عَنْهُ فِي مَنْعِكُمْ جَوَازَ بَيْعِ الْقَصِيلِ عَلَى شَرْطِ التَّرْكِ، وَإِبَاحَتِكُمْ بَيْعَهُ بِشَرْطِ الْقَطْعِ، وَكِلَاهُمَا شَرْطٌ مُجَرَّدٌ لَمْ يَأْتِ بِهِ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ أَصْلًا، فَفَرَّقْتُمْ بِلَا دَلِيلٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ الْأَمَةِ وَبَيَانُ أَنَّهَا حَامِلٌ مِنْ غَيْرِ سَيِّدِهَا]

١٤٣٨ - مَسْأَلَةٌ: وَبَيْعُ الْأَمَةِ، وَبَيَانُ أَنَّهَا حَامِلٌ مِنْ غَيْرِ سَيِّدِهَا، لَكِنْ مِنْ زَوْجٍ، أَوْ زِنًى، أَوْ إكْرَاهٍ -: بَيْعٌ صَحِيحٌ، سَوَاءٌ كَانَتْ رَائِعَةً أَوْ وَخْشًا كَانَ الْبَيْعُ فِي أَوَّلِ الْحَمْلِ أَوْ فِي وَسَطِهِ أَوْ فِي آخِرِهِ.

وَقَالَ مَالِكٌ: يَجُوزُ فِي الْوَخْشِ وَلَا يَجُوزُ فِي الرَّائِعَةِ - وَهَذَا قَوْلٌ لَا دَلِيلَ عَلَيْهِ صْلًا، وَمَا نَعْلَمُ أَحَدًا سَبَقَهُ إلَيْهِ أَصْلًا، وَقَالَ تَعَالَى {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَمَا

L22613 **A legal question: A man sold another cucumber plants with their roots and banana plants with their roots.**

L22614 1437 - Issue: If he sells to him the gourd plants with their roots and the banana plants with their roots, and voluntarily permits him to retain all of that in his land without stipulating a condition, this is permissible. When he acquires ownership of what he purchased, he is entitled to everything generated within it, as it is produced within his property. He also has the right to take possession by uprooting all of that whenever he wishes, for he has the greater entitlement regarding his property.

L22615 It is impermissible for him to stipulate retaining that on his land for a specified or unspecified period, as this is a condition not found in the Book of Allah, the Exalted, and is thus invalid. If they cite the principle, "Muslims are bound by their stipulations," we respond: This is invalid, yet you validate it. Where do you stand in prohibiting the permissibility of selling young crops on the condition of leaving them, while permitting their sale on the condition of cutting them? Both are baseless conditions unsupported by any Quranic text or Sunnah whatsoever, yet you differentiate between them without evidence. And success is only by Allah, the Exalted.

L22616 **A jurisprudential issue concerning the sale of a female slave and establishing that she is pregnant from someone other than her master.**

L22617 1438. Issue: The sale of a female slave is valid even when disclosing her pregnancy - whether conceived by her husband, through illicit intercourse, or coercion, rather than her owner - regardless of her being attractive or coarse in appearance, and whether the sale occurs at the pregnancy's beginning, middle, or end.

L22618–22620 Malik said: It is permissible in coarse goods but not permissible in superior goods — and this is an opinion without any evidence whatsoever, and we know of no one who held this opinion before him at all. The Most High said: *"And Allah has permitted sale"* [Al-Baqarah: 275]. He did not distinguish a pregnant animal from a barren one, nor a shepherdess from her flock, nor

a woman from the rest of female animals—"And your Lord is not forgetful" [Maryam 19:64].[11]

Issue: the sale of a sword without its sheath.

1439. Legal ruling: The sale of a sword sold separately from its scabbard is valid.

The sale of the scabbard without the blade is permissible.

The sale of ornaments other than gold and silver is permissible; selling half of it undivided, a third, a tenth, or a specified part of it—all of that is permissible, "And Allah has permitted sale" (Quran 2:275).[12]

Abu Hanifah prohibited some of that—and we do not know anyone who said it before him, nor do we know any evidence for it at all. And with Allah, the Exalted, is success.

Similarly, selling pieces cut from a cloth or from a specific and bounded piece of wood is lawfully valid, for "Allah has permitted sale" [Quran 2:275].[13]

Issue: The sale of the ring's band without the bezel.

Issue 1440: Selling the ring's band without the bezel is permissible, and removing the bezel in that case is the responsibility of the seller. Selling the bezel without the band is permissible, and removing the bezel in that case is the responsibility of the buyer. This is because the Messenger of Allah—peace and blessings be upon him—said: "Your blood and your wealth are inviolable to you." The bezel is in the band, and the band serves as a place for the bezel. Therefore, the owner of the bezel is obligated to remove it

خَصَّ حَامِلًا مِنْ حَائِلٍ، وَلَا رَائِعَةً مِنْ وَحْشٍ، وَلَا امْرَأَةً مِنْ سَائِرِ إِنَاثِ الْحَيَوَانِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[مَسْأَلَةُ بَيْعُ السَّيْفِ دُونَ غِمْدِهِ]

١٤٣٩ - مَسْأَلَةٌ: وَبَيْعُ السَّيْفِ دُونَ غِمْدِهِ جَائِزٌ.

وَبَيْعُ الْغِمْدِ دُونَ النَّصْلِ جَائِزٌ.

وَبَيْعُ الْحِلْيَةِ دُونَهُمَا جَائِزٌ - وَبَيْعُ نِصْفِهَا مُشَاعٌ، أَوْ ثُلُثِهَا، أَوْ عُشْرِهَا، أَوْ شَيْءٍ مِنْهَا بِعَيْنِهِ: كُلُّ ذَلِكَ جَائِزٌ {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَمَنَعَ أَبُو حَنِيفَةَ مِنْ بَعْضِ ذَلِكَ - وَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ، وَمَا نَعْلَمُ لَهُ دَلِيلًا أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَكَذَلِكَ بَيْعُ قِطَعٍ مِنْ ثَوْبٍ أَوْ مِنْ خَشَبَةٍ مُعَيَّنَةٍ مَحْدُودَةٍ: جَائِزٌ {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

[مَسْأَلَةُ بَيْعُ حَلْقَةِ الْخَاتَمِ دُونَ الْفَصِّ]

١٤٤٠ - مَسْأَلَةٌ: وَبَيْعُ حَلْقَةِ الْخَاتَمِ دُونَ الْفَصِّ جَائِزٌ، وَقَلْعُ الْفَصِّ حِينَئِذٍ عَلَى الْبَائِعِ، وَبَيْعُ الْفَصِّ دُونَ الْحَلْقَةِ جَائِزٌ، وَقَلْعُ الْفَصِّ حِينَئِذٍ عَلَى الْمُشْتَرِي؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالْفَصُّ فِي الْحَلْقَةِ فَهِيَ مَكَانٌ لِلْفَصِّ، فَفُرِضَ عَلَى الَّذِي لَهُ الْفَصُّ إِخْرَاجُ الْفَصِّ مِنْ مَالِ غَيْرِهِ وَلَيْسَ لَهُ

[11] **Qur'an references (L22618):** Qur'an 2:275 (Al-Baqarah); Qur'an 19:64 (Maryam).
[12] **Qur'an references (L22624):** Qur'an 2:275 (Al-Baqarah).
[13] **Qur'an references (L22626):** Qur'an 2:275 (Al-Baqarah).

from another's property, as he has no right to occupy another's property without permission. The band's owner is only required to enable him to do so and must not obstruct access to his property.

L22629 The one tasked with extracting the gemstone may widen the ring's band as necessary for retrieving his property, and he bears no liability, as he has performed what he was commanded to do. If he exceeds this, he becomes liable.

L22630 And such is the ruling concerning the tree trunk sold independently of the wall, the wall sold independently of it, the tree sold independently of the land, or the land sold independently of the tree: there is no distinction, and success is by Allah, the Most High.

L22631 **In a case where a person sold an item, the buyer stated: "I will not pay the price until I receive what I have purchased."**

L22632 1441. Issue: If someone sells an item and the buyer states, "I will not pay the price until I receive what I purchased," while the seller declares, "I will not deliver until I receive the payment," both must be compelled to exchange the sold item and the price simultaneously. This is because neither party has a greater right to fair treatment and redress than the other. Each holds a right belonging to the other, and it is incumbent upon each to fulfill the other's entitlement. Thus, it is impermissible to favor either party with precedence, as such action constitutes iniquity, wrongdoing, and oppression. This is the position of our scholarly companions and Ubayd-Allah ibn al-Hasan.

L22633–22634 **A case where the buyer refused to pay the price except after possession.**

L22635 Issue: If the buyer refuses to pay the price from his possession for what he purchased, saying: "I will not pay the price until I receive what I purchased," then the seller may withhold the sold item until he secures his right and ensures fairness jointly. If the item perishes in his custody without misconduct on his part, it is the buyer's liability, and he remains obliged to pay

أَنْ يَشْغَلَ مَالَ غَيْرِهِ بِغَيْرِ إِذْنِهِ، وَلَيْسَ عَلَى صَاحِبِ الْحَلْقَةِ إِلَّا إِمْكَانُهُ مِنْ ذَلِكَ فَقَطْ، وَأَنْ لَا يَحُولَ بَيْنَهُ وَبَيْنَ مَالِهِ.

وَلِمُتَوَلِّي إِخْرَاجِ الْفَصِّ تَوْسِيعُ الْحَلْقَةِ بِمَا لَا بُدَّ مِنْهُ فِي اسْتِخْرَاجِ مَتَاعِهِ، وَلَا ضَمَانَ عَلَيْهِ، لِأَنَّهُ فَعَلَ مَا هُوَ مَأْمُورٌ بِفِعْلِهِ، فَإِنْ تَعَدَّى ضَمِنَ.

وَهَكَذَا الْقَوْلُ فِي الْجِذْعِ يُبَاعُ دُونَ الْحَائِطِ، أَوْ الْحَائِطِ يُبَاعُ دُونَهُ وَالشَّجَرَةِ دُونَ الْأَرْضِ، أَوْ الْأَرْضِ دُونَ الشَّجَرَةِ وَلَا فَرْقَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَاعَ شَيْئًا فَقَالَ الْمُشْتَرِي لَا أَدْفَعُ الثَّمَنَ حَتَّى أَقْبِضَ مَا ابْتَعْت]

١٤٤١ - مَسْأَلَةٌ: وَمَنْ بَاعَ شَيْئًا فَقَالَ الْمُشْتَرِي: لَا أَدْفَعُ الثَّمَنَ حَتَّى أَقْبِضَ مَا ابْتَعْت؟ وَقَالَ الْبَائِعُ: لَا أَدْفَعُ حَتَّى أَقْبِضَ: أُجْبِرَا مَعًا عَلَى دَفْعِ الْمَبِيعِ وَالثَّمَنِ مَعًا، لِأَنَّهُ لَيْسَ أَحَدُهُمَا أَحَقَّ بِالْإِنْصَافِ وَالِانْتِصَافِ مِنْ الْآخَرِ وَبِيَدِ كُلِّ وَاحِدٍ مِنْهُمَا حَقٌّ لِلْآخَرِ، وَفَرْضٌ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا أَنْ يُعْطِيَ الْآخَرَ حَقَّهُ، فَلَا يَجُوزُ أَنْ يُخَصَّ أَحَدُهُمَا بِالتَّقَدُّمِ، وَفِعْلُ ذَلِكَ جَوْرٌ، وَحَيْفٌ، وَظُلْمٌ - وَهَذَا قَوْلُ أَصْحَابِنَا، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ.

[مَسْأَلَةٌ أَبَى الْمُشْتَرِي أَنْ يَدْفَعَ الثَّمَنَ إلَّا بَعْدَ الْقَبْضِ]

مَسْأَلَةٌ: فَإِنْ أَبَى الْمُشْتَرِي مِنْ أَنْ يَدْفَعَ الثَّمَنَ مِنْ قَبْضِهِ لِمَا اشْتَرَى وَقَالَ: لَا أَدْفَعُ الثَّمَنَ إلَّا بَعْدَ أَنْ أَقْبِضَ مَا اشْتَرَيْتُ؟ فَلِلْبَائِعِ أَنْ يَحْبِسَ مَا بَاعَ حَتَّى يَنْتَصِفَ وَيَنْصِفَ مَعًا، فَإِنْ تَلِفَ عِنْدَهُ مِنْ غَيْرِ تَعَدٍّ مِنْهُ فَهُوَ مِنْ مُصِيبَةِ الْمُشْتَرِي وَعَلَيْهِ دَفْعُ الثَّمَنِ، وَلَا ضَمَانَ

the price. The seller bears no responsibility for what perished in his custody without his transgression, as his withholding was legally justified. Allah the Exalted said: "So whoever transgresses against you, retaliate against him proportionally to his transgression" [Al-Baqarah: 194]. However, if part of the withheld item suffices to cover the price, the seller becomes liable for the excess beyond this amount, for he exceeded rightful retention in response to the buyer's initial refusal. This ruling applies if the item is divisible. If it cannot be divided without rendering it unusable or diminishing its value, then the seller bears no liability whatsoever.[14]

L22636 If the seller states, "I will not deliver except after receiving the payment," and the buyer invites him to accept payment and hand over the goods at the same time, but he refuses, then the seller is liable in this case because he is transgressing by withholding what he has withheld, as he was called to act fairly but refused. And success is from Allah, the Most High.

L22637 **A juridical question: It is stated that no deceptive practice is permissible when one engages in selling or buying.**

L22638 1443. Issue: If someone, when selling or purchasing, declares, "There are no defects," they retain the option to rescind the transaction for three consecutive nights and their intervening days. They may revoke it whether there is a defect or not, fraud or not, exploitation through unfair pricing or not. If they wish, they may retain it. Once the three nights elapse, their option becomes void, the sale becomes binding, and revocation is no longer permitted—except if a defect is discovered. The three-night period is calculated anew from the contract's conclusion. If the contract is concluded before sunset—even moments before, or as early as sunrise—the three-night period begins at that time. In such cases, the option to rescind also applies during that same daylight period.

L22639 If he concludes a sale after sunset, he has the right of option from that moment until the same time on the fourth night –:

عَلَى الْبَائِعِ فِيمَا هَلَكَ عِنْدَهُ مِنْ غَيْرِ تَعَدِّيهِ، لِأَنَّهُ احْتَبَسَ بِحَقٍّ؟ قَالَ اللَّهُ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] إِلَّا أَنْ يَكُونَ فِي بَعْضِ مَا حَبَسَ وَفَاءً بِالثَّمَنِ، فَإِنَّهُ يَضْمَنُ مَا زَادَ عَلَى هَذَا الْمِقْدَارِ، لِأَنَّهُ مُتَعَدٍّ بِاحْتِبَاسِهِ أَكْثَرَ مِمَّا تَعَدَّى عَلَيْهِ فِيهِ الْآخَرُ - هَذَا إِنْ كَانَ مِمَّا يُمْكِنُ أَنْ يَنْقَسِمَ، فَإِنْ كَانَ مِمَّا لَا يُمْكِنُ قِسْمَتُهُ إِلَّا بِفَسَادِهِ، أَوْ حَطِّ ثَمَنِهِ فَلَا ضَمَانَ عَلَيْهِ أَصْلًا.

فَلَوْ قَالَ الْبَائِعُ: لَا أَدْفَعُ إِلَّا بَعْدَ قَبْضِ الثَّمَنِ، وَدَعَاهُ الْمُشْتَرِي إِلَى أَنْ يَقْبِضَ وَيَدْفَعَ مَعًا فَأَبَى، فَهُوَ هَهُنَا ضَامِنٌ، لِأَنَّهُ مُتَعَدٍّ بِاحْتِبَاسِهِ مَا حَبَسَ، وَقَدْ دُعِيَ إِلَى الْإِنْصَافِ فَأَبَى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَالَ حِينَ يَبِيعُ أَوْ يَبْتَاعُ لَا خِلَابَةَ]

١٤٤٣ - مَسْأَلَةٌ: وَمَنْ قَالَ حِينَ يَبِيعُ أَوْ يَبْتَاعُ: لَا خِلَابَةَ؟ فَلَهُ الْخِيَارُ ثَلَاثَ لَيَالٍ بِمَا فِي خِلَالِهِنَّ مِنَ الْأَيَّامِ، إِنْ شَاءَ رَدَّ بِعَيْبٍ أَوْ بِغَيْرِ عَيْبٍ، أَوْ بِخَدِيعَةٍ أَوْ بِغَيْرِ خَدِيعَةٍ، وَبِغَبْنٍ أَوْ بِغَيْرِ غَبْنٍ، وَإِنْ شَاءَ أَمْسَكَ -: فَإِذَا انْقَضَتِ اللَّيَالِي الثَّلَاثُ بَطَلَ خِيَارُهُ وَلَزِمَهُ الْبَيْعُ، وَلَا رَدَّ لَهُ، إِلَّا مِنْ عَيْبٍ إِنْ وُجِدَ وَاللَّيَالِي الثَّلَاثُ مُسْتَأْنَفَةٌ مِنْ حِينِ الْعَقْدِ، فَإِنْ بَايَعَ قَبْلَ غُرُوبِ الشَّمْسِ - بِقَلِيلٍ أَوْ كَثِيرٍ وَلَوْ مِنْ حِينِ طُلُوعِهَا -: فَإِنَّهُ يَسْتَأْنِفُ الثَّلَاثَ مُبْتَدِئَةً وَلَهُ الْخِيَارُ أَيْضًا فِي يَوْمِهِ ذَلِكَ.

وَإِنْ بَايَعَ بَعْدَ غُرُوبِ الشَّمْسِ فَلَهُ الْخِيَارُ مِنْ حِينَئِذٍ إِلَى مِثْلِ ذَلِكَ الْوَقْتِ مِنَ اللَّيْلَةِ الرَّابِعَةِ -:

[14] **Qur'an references (L22635):** Qur'an 2:194 (Al-Baqarah).

L22640 Hammam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Muhammad ibn Isma'il al-Tirmidhi narrated to us: al-Humaydi narrated to us: Sufyan ibn Uyaynah narrated to us: Muhammad ibn Ishaq narrated from Nafi' from Ibn Umar, who said: "In pre-Islamic times, Munqidh was struck on his head, causing a cranial wound penetrating to the brain membrane that impaired his speech. Whenever he engaged in transactions, he was deceived in his transactions. The Messenger of Allah—peace and blessings be upon him—said to him: 'Sell and say: "No deception," then you retain the right to rescind.'"

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: «إِنَّ مُنْقِذًا سُفِعَ فِي رَأْسِهِ فِي الْجَاهِلِيَّةِ مَأْمُومَةً فَخَبَلَتْ لِسَانَهُ، فَكَانَ إِذَا بَايَعَ خُدِعَ فِي الْبَيْعِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بَايِعْ وَقُلْ: لَا خِلَابَةَ ثُمَّ أَنْتَ بِالْخِيَارِ» .

L22641–22644 I am Ahmad ibn Qasim, narrated from Abu Qasim ibn Muhammad ibn Qasim, narrated from my grandfather Qasim ibn Asbagh, narrated from Muhammad ibn Waddāḥ. Hāmid ibn Yaḥyā al-Balkhī narrated to us, Sufyān ibn ʿUyaynah narrated to us, Muḥammad ibn Isḥāq narrated to us from Nāfiʿ, the freed slave of Ibn ʿUmar, from Ibn ʿUmar, who said: "Munqidh was afflicted with a *ma'mūmah* (skull-penetrating wound) to his head in the pre-Islamic era, which impaired his speech and left him vulnerable to deception in transactions. The Messenger of Allah—peace and blessings be upon him—said to him: 'Sell and say, "There is no deception," then you retain the option to cancel the sale for three days after your sale.'"

نا أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبُو قَاسِمِ بْنِ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ وَضَّاحٍ نا حَامِدُ بْنُ يَحْيَى الْبَلْخِيّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنِ ابْنِ عُمَرَ قَالَ: «إِنَّ مُنْقِذًا سُفِعَ فِي رَأْسِهِ مَأْمُومَةً فِي الْجَاهِلِيَّةِ فَخَبَلَتْ لِسَانَهُ فَكَانَ يُخْدَعُ فِي الْبَيْعِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بِعْ، وَقُلْ: لَا خِلَابَةَ، ثُمَّ أَنْتَ بِالْخِيَارِ ثَلَاثًا مِنْ بَيْعِكَ» .

L22645 Ibn Umar said: I heard him say when making a pledge of allegiance: "No deceit, no deceit." 1444 AH –

قَالَ ابْنُ عُمَرَ: فَسَمِعْته يَقُولُ إِذَا بَايَعَ: لَا خِلَابَةَ لَا خِلَابَةَ. ١٤٤٤ -.

L22646 Issue: If one is unable to utter "There is no deception" due to a speech impediment or language barrier, they should say it to the best of their ability. If completely incapable, they may express the equivalent meaning in their own language. They retain the aforementioned choice [to annul the transaction], whether the seller consents or objects.

مَسْأَلَةٌ: فَإِنْ لَمْ يَقْدِرْ عَلَى أَنْ يَقُولَ " لَا خِلَابَةَ " قَالَهَا كَمَا يَقْدِرُ لِآفَةٍ بِلِسَانِهِ أَوْ لِعُجْمَةٍ، فَإِنْ عَجَزَ جُمْلَةً قَالَ بِلُغَتِهِ مَا يُوَافِقُ مَعْنَى " لَا خِلَابَةَ " وَلَهُ الْخِيَارُ الْمَذْكُورُ، أَحَبَّ الْبَائِعُ أَمْ كَرِهَ.

L22647 The proof of that is: "The Messenger of Allah—peace and blessings be upon him—commanded Munqidh to say it, and Allah knew he would say nothing but, 'There is no Khidhābah.'" And Allah, the Exalted, said: {Allah does not burden a soul beyond its capacity} [al-Baqarah 2:286].[15]

بُرْهَانُ ذَلِكَ -: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ مُنْقِذًا أَنْ يَقُولَهَا، وَقَدْ عَلِمَ أَنَّهُ لَا يَقُولُ إلَّا: لَا خِذَابَةَ» وَقَالَ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

[15] **Qur'an references (L22647):** Qur'an 2:286 (Al-Baqarah).

L22648 1445 AH. Issue: If he ratifies the sale within three days and relinquishes his option, the transaction becomes binding upon him. This is because the Messenger of Allah, peace be upon him, granted him the option period of three days. Were ratification within three days not binding, it would imply that the Messenger of Allah, peace be upon him, only granted him the option to revoke the sale - not to confirm it - which is invalid. For the Messenger of Allah, peace be upon him, comprehensively outlined this option as covering every choice the buyer may make, whether ratification or revocation.

١٤٤٥ - مَسْأَلَةٌ: فَإِنْ رَضِيَ فِي الثَّلَاثِ وَأَسْقَطَ خِيَارَهُ لَزِمَهُ الْبَيْعُ، وَذَلِكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لَهُ الْخِيَارَ ثَلَاثًا، فَلَوْ كَانَ لَا يَلْزَمُهُ الرِّضَا إنْ رَضِيَ فِي الثَّلَاثِ لَكَانَ إنَّمَا جَعَلَ لَهُ - عَلَيْهِ السَّلَامُ - الْخِيَارَ فِي الرَّدِّ فَقَطْ لَا فِي الرِّضَا - وَهَذَا بَاطِلٌ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَجْمَلَ لَهُ الْخِيَارَ فَكَانَ عُمُومًا لِكُلِّ مَا يَخْتَارُ مِنْ رِضًا أَوْ رَدٍّ.

L22649–22651 If the option were not terminated by relinquishing it and affirming consent, it would necessarily follow that his option would not terminate even if he rejects the sale until the three days expire—this is impossible. The apparent wording and meaning indicate he holds the option throughout the three days: if he wishes to reject, the sale becomes void with no valid consent after rejection; if he wishes to consent, the sale becomes binding with no valid rejection after consent. The directive of the Prophet (peace be upon him) cannot possibly bear any other interpretation. If he neither declares consent nor rejection, he cannot be compelled to either action, and his option remains until the three days expire—he may reject or retain it. If the three days expire without rejection, the sale becomes binding upon him because [...] A valid sale wherein the option period (*khiyār*) to return it was granted to him for three, no more. If he does not invalidate it within the three, he may no longer invalidate it afterward except due to a defect, as with all other sales. The sale remained valid and has not been invalidated. And success is from Allah, the Most High. 1446 -.

وَلَوْ كَانَ الْخِيَارُ لَا يَنْقَطِعُ بِإِسْقَاطِهِ إيَّاهُ وَإِقْرَارِهِ بِالرِّضَا لَوَجَبَ أَيْضًا ضَرُورَةَ أَنْ لَا يَنْقَطِعَ خِيَارُهُ وَإِنْ رَدَّ الْبَيْعَ حَتَّى يَنْقَضِيَ الثَّلَاثُ وَهَذَا مُحَالٌ -: فَظَاهِرُ اللَّفْظِ وَمَعْنَاهُ: أَنَّ لَهُ الْخِيَارَ مُدَّةَ الثَّلَاثِ إنْ شَاءَ رَدَّ فَيَبْطُلَ الْبَيْعُ وَلَا رِضَا لَهُ بَعْدَ الرَّدِّ، وَإِنْ شَاءَ رَضِيَ فَيَصِحَّ الْبَيْعُ وَلَا رَدَّ لَهُ بَعْدَ الرِّضَا -: لَا يَحْتَمِلُ أَمْرُهُ - عَلَيْهِ السَّلَامُ - غَيْرَ هَذَا أَصْلًا فَإِنْ لَمْ يَلْفِظْ بِالرِّضَا وَلَا بِالرَّدِّ: لَمْ يَجُزْ أَنْ يُجْبَرَ عَلَى شَيْءٍ مِنْ ذَلِكَ، وَبَقِيَ عَلَى خِيَارِهِ إلَى انْقِضَاءِ الثَّلَاثِ - إنْ شَاءَ رَدَّ وَإِنْ شَاءَ أَمْسَكَ - فَإِنْ انْقَضَتْ الثَّلَاثُ وَلَمْ يَرُدَّ فَقَدْ لَزِمَهُ الْبَيْعُ؛ لِأَنَّهُ بَيْعٌ صَحِيحٌ جُعِلَ لَهُ الْخِيَارُ فِي رَدِّهِ ثَلَاثًا، لَا أَكْثَرَ - فَإِنْ لَمْ يُبْطِلْهُ فَلَا إبْطَالَ لَهُ بَعْدَ الثَّلَاثِ، إلَّا مِنْ عَيْبٍ كَسَائِرِ الْبُيُوعِ، وَبَقِيَ الْبَيْعُ بِصِحَّتِهِ لَمْ يَبْطُلْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ١٤٤٦ -.

L22652 Issue: If one stipulates terms other than “no deception”—such as “no deceit,” “no fraud,” “no trickery,” “no inequity,” “no deception,” “no defect,” “no harm,” “on the basis of soundness,” “no disease,” “no hidden defect,” “no malice,” or similar—he does not acquire the option (khiyar) granted to one who stipulates “no deception.” However, if he finds anything the sale was conditioned against, the sale is void. If no such thing is found, the sale becomes binding upon him.

مَسْأَلَةٌ: فَإِنْ قَالَ لَفْظًا غَيْرَ " لَا خِلَابَةَ " لَكِنْ أَنْ يَقُولَ: لَا خَدِيعَةَ، أَوْ لَا غِشَّ، أَوْ لَا كَيْدَ، أَوْ لَا غَبْنَ، أَوْ لَا مَكْرَ، أَوْ لَا عَيْبَ، أَوْ لَا ضَرَرَ، أَوْ عَلَى السَّلَامَةِ، أَوْ لَا دَاءَ، وَلَا غَائِلَةَ، أَوْ لَا خُبْثَ، أَوْ نَحْوَ هَذَا -: لَمْ يَكُنْ لَهُ الْخِيَارُ الْمَجْعُولُ لِمَنْ قَالَ: لَا خِلَابَةَ، لَكِنْ إنْ وَجَدَ شَيْئًا مِمَّا بَايَعَ عَلَى أَنْ لَا يَعْقِدَ بَيْعُهُ عَلَيْهِ: بَطَلَ الْبَيْعُ، وَإِنْ لَمْ يَجِدْهُ لَزِمَهُ الْبَيْعُ.

L22653 The proof of this is: When the Messenger of Allah—peace and blessings of Allah be upon him—issues a religious command and stipulates it with a particular wording, it is impermissible to transgress that wording—whether it is in its meaning or not—as long as one is capable of adhering to that wording, except through another text demonstrating that it is allowed; for he—peace be upon him—has established a limit in this matter, so how could transgressing it be lawful? Allah the Exalted said: "And whoever disobeys Allah and His Messenger and transgresses His limits, He will make him enter Fire to abide therein forever" (4:14).[16]

L22654 The Exalted said, "Nor does he speak from his own inclination" [An-Najm 3], "It is not but a revelation revealed" [An-Najm 4].[17]

L22655 The Most High said: "Whoever transgresses the boundaries of Allah has truly wronged his own soul" [Surah At-Talaq 65:1].[18]

L22656 If it were permissible to do otherwise, the call to prayer would be valid by saying: "The Mighty, indeed. You are our Lord other than the Most Gracious. You are the son of Abdullah ibn Abdul-Muttalib, sent by the Most Gracious. Hasten to the noon prayer. Hasten to the everlasting. The Mighty is the Greatest. We have no Lord except the Most Merciful."

L22657 Abu Muhammad said: Whoever gives the call to prayer in this manner - should he not be called to repent? If he repents, [it is accepted]; otherwise, he is killed, for he is mocking the signs of Allah, the Mighty and Majestic, and transgressing the boundaries of Allah.

L22658 There is no distinction between what we have mentioned and what he—peace be upon him—commanded regarding the prescribed wording of prayer, the *adhān*, the *iqāmah*, the *talbiyah*, marriage, divorce, and the rest of the Sharia. The burden of proof lies upon whoever asserts a distinction—otherwise, his assertion is invalid.

L22659–22661 As for those who permit deviating from the precisely defined wording trans-

[16] **Qur'an references (L22653):** Qur'an 4:14 (An-Nisa).
[17] **Qur'an references (L22654):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[18] **Qur'an references (L22655):** Qur'an 65:1 (At-Talaq).

بُرْهَانُ ذَلِكَ -: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَمَرَ فِي الدِّيَانَةِ بِأَمْرٍ، وَنَصَّ فِيهِ بِلَفْظٍ مَا: لَمْ يَجُزْ تَعَدِّي ذَلِكَ اللَّفْظِ إلَى غَيْرِهِ - وَسَوَاءٌ كَانَ فِي مَعْنَاهُ أَوْ لَمْ يَكُنْ - مَا دَامَ قَادِرًا عَلَى ذَلِكَ اللَّفْظِ، إلَّا بِنَصٍّ آخَرَ يُبَيِّنُ أَنَّ لَهُ ذَلِكَ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ حَدَّ فِي ذَلِكَ حَدًّا فَلَا يَحِلُّ تَعَدِّيهِ؟ قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا} [النساء: ١٤] .

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

وَقَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

وَلَوْ جَازَ غَيْرُ هَذَا لَجَازَ الْأَذَانُ بِأَنْ يَقُولَ: الْعَزِيزُ أَجَلْ، أَنْتَ لَنَا رَبٌّ إلَّا الرَّحْمَنُ، أَنْتَ ابْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْمُطَّلِبِ مَبْعُوثٌ مِنْ الرَّحْمَنِ، هَلُمُّوا نَحْوِ الظُّهْرِ، هَلُمُّوا نَحْوَ الْبَقَاءِ، الْعَزِيزُ أَعْظَمُ، لَيْسَ لَنَا رَبٌّ إلَّا الرَّحِيمُ.

قَالَ أَبُو مُحَمَّد: مَنْ أَذَّنَ هَكَذَا فَحَقُّهُ أَنْ يُسْتَتَابَ؟ فَإِنْ تَابَ وَإِلَّا قُتِلَ، لِأَنَّهُ مُسْتَهْزِئٌ بِآيَاتِ اللَّهِ عَزَّ وَجَلَّ مُتَعَدٍّ لِحُدُودِ اللَّهِ.

وَلَا فَرْقَ بَيْنَ مَا ذَكَرْنَاهُ وَبَيْنَ مَا أَمَرَ بِهِ - عَلَيْهِ السَّلَامُ - فِي أَلْفَاظِ الصَّلَاةِ، وَالْأَذَانِ، وَالْإِقَامَةِ، وَالتَّلْبِيَةِ، وَالنِّكَاحِ، وَالطَّلَاقِ، وَسَائِرِ الشَّرِيعَةِ، وَعَلَى الْمُفَرِّقِ الدَّلِيلُ؟ وَإِلَّا فَهُوَ مُبْطِلٌ.

وَأَمَّا مَنْ أَجَازَ مُخَالَفَةَ الْأَلْفَاظِ الْمَحْدُودَةِ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَذَانِ وَالْإِقَامَةِ، وَأَجَازَ تَنْكِيسَهَا، وَقِرَاءَةَ الْقُرْآنِ فِي الصَّلَاةِ بِالْأَعْجَمِيَّةِ - وَهُوَ فَصِيحٌ

mitted from Allah's Messenger—peace and blessings be upon him—in the call to prayer (adhān) and its establishment (iqāmah), who allow inverting their prescribed order, and who sanction reciting the Quran during prayer in a non-Arabic language—despite the reciter's proficiency in the Quranic text—what would prevent them from logically arguing for the inversion of prayer itself? They would then begin it with the Taslim (concluding salutation), followed by the sitting position and Tashahhud, then proceed to prostration, and subsequently... In bowing, then in standing, then in saying the *takbīr*, reciting while sitting, reciting the *tashahhud* while standing, fasting at night during Ramadan and breaking the fast by day, postponing the Hajj, substituting Quranic words with others sharing their meaning, rearranging its words forward or backward provided the meaning remains intact, writing the *Mus'haf* in such manner, reciting it in prayer likewise, teaching people the Quran likewise, and altering religious laws — we declare our innocence before Allah, the Exalted, from all this and from transgressing any boundary set for us by Allah's Messenger — peace and blessings of Allah be upon him. We possess no knowledge except what He has taught us, and we abundantly praise Allah for this.

بِالْقُرْآنِ -: فَمَا عَلَيْهِ أَنْ يَقُولَ بِتَنْكِيسِ الصَّلَاةِ؟ فَيَبْدَؤُهَا بِالتَّسْلِيمِ، ثُمَّ بِالْقُعُودِ، وَالتَّشَهُّدِ، ثُمَّ بِالسُّجُودِ، ثُمَّ بِالرُّكُوعِ، ثُمَّ بِالْقِيَامِ، ثُمَّ بِالتَّكْبِيرِ وَيَقْرَأُ فِي الْجُلُوسِ، وَيَتَشَهَّدُ فِي الْقِيَامِ، وَأَنْ يَصُومَ اللَّيْلَ فِي رَمَضَانَ، وَيُفْطِرَ النَّهَارَ، وَيُحِيلَ الْحَجَّ، وَيُبَدِّلَ أَلْفَاظَ الْقُرْآنِ بِغَيْرِهَا مِمَّا هُوَ فِي مَعْنَاهَا، وَيُقَدِّمَ أَلْفَاظَهُ وَيُؤَخِّرَهَا مَا لَمْ يَفْسُدْ الْمَعْنَى، وَيَكْتُبَ الْمُصْحَفَ كَذَلِكَ، وَيَقْرَأَ فِي الصَّلَاةِ كَذَلِكَ، وَيُقْرِئَ النَّاسَ كَذَلِكَ، وَيُبَدِّلَ الشَّرَائِعَ - وَنَحْنُ نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ ذَلِكَ، وَمِنْ أَنْ نَتَعَدَّى شَيْئًا مِمَّا حَدَّهُ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَيْنَا، لَا عِلْمَ لَنَا إلَّا مَا عَلَّمَنَا - وَنَحْمَدُ اللَّهَ كَثِيرًا عَلَى ذَلِكَ.

L22662 Many of our opponents have concurred with us that the term "sale" does not substitute for the term *salam*. This *Munqidh*—the one commanded to use the specified term—did not consider it appropriate to extend it to other terms, even if they shared its meaning. Rather, he stated it precisely as he was commanded, as was decreed, and as he was tasked.

وَقَدْ وَافَقَنَا كَثِيرٌ مِنْ مُخَالِفِينَا أَنَّ لَفْظَ " الْبَيْعِ " لَا يَنُوبُ عَنْ لَفْظِ " السَّلَمِ " وَهَذَا " مُنْقِذٌ " الْمَأْمُورُ بِاللَّفْظِ الْمَذْكُورِ لَمْ يَرَ أَنْ يَتَعَدَّاهُ إلَى غَيْرِهِ، وَإِنْ كَانَ فِي مَعْنَاهُ - بَلْ قَالَهُ كَمَا أَمَرَ، وَكَمَا قَدَّرَ، وَكَمَا كُلِّفَ.

L22663 We ask those who oppose us in this matter about the distinction between the wording stipulated in legal rulings, the times stipulated in legal rulings, the places stipulated in legal rulings, and the states and actions stipulated in legal rulings. They have no valid basis for any distinction whatsoever. If they equate all these categories in being obligatory, they are rightly guided—and this is our position. But if they equate all these in the permissibility of substitution, they have disbelieved—there is no disagreement on this—distorted the entirety of the religion, and utterly apostatized from it.

وَنَسْأَلُ الْمُخَالِفَ لَنَا فِي هَذَا عَنْ الْفَرْقِ بَيْنَ الْأَلْفَاظِ الْمَأْمُورِ بِهَا فِي الْأَحْكَامِ وَبَيْنَ الْأَوْقَاتِ الْمَأْمُورِ بِهَا فِي الْأَحْكَامِ، وَبَيْنَ الْمَوَاضِعِ الْمَأْمُورِ بِهَا فِي الْأَحْكَامِ، وَبَيْنَ الْأَحْوَالِ وَالْأَعْمَالِ الْمَأْمُورِ بِهَا فِي الْأَحْكَامِ، وَلَا سَبِيلَ لَهُ إلَى فَرْقٍ أَصْلًا، فَإِنْ سَوَّى بَيْنَ الْجَمِيعِ فِي الْإِيجَابِ وُفِّقَ - وَهُوَ قَوْلُنَا - وَإِنْ سَوَّى بَيْنَ الْجَمِيعِ فِي جَوَازِ التَّبْدِيلِ -: كَفَرَ، بِلَا خِلَافٍ، وَبَدَّلَ الدِّينَ كُلَّهُ، وَخَرَجَ عَنْهُ.

L22664 The Prophet—peace and blessings of Allah be upon him—taught Al-Barā'

ibn ʿĀẓib a supplication to recite, which included: “I have believed in Your Book which You have revealed, and Your Prophet whom You have sent.” Al-Barā’ began to commit it to memory and said: “And Your Messenger whom You have sent?” The Prophet—peace and blessings of Allah be upon him—responded: “And Your Prophet whom You have sent.” He did not permit him to replace the word he was instructed to use with another, though the meaning is the same.

وَقَدْ «عَلَّمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَرَاءَ بْنَ عَازِبٍ دُعَاءً يَقُولُهُ، وَفِيهِ آمَنْتُ بِكِتَابِكَ الَّذِي أَنْزَلْتَ، وَنَبِيِّكَ الَّذِي أَرْسَلْتَ فَذَهَبَ الْبَرَاءُ يَسْتَذْكِرُهُ فَقَالَ: وَبِرَسُولِكَ الَّذِي أَرْسَلْتَ؟ فَقَالَ لَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَبِيِّكَ الَّذِي أَرْسَلْتَ» فَلَمْ يَدَعْهُ أَنْ يُبَدِّلَ لَفْظَةً مَكَانَ الَّتِي أَمَرَهُ بِهَا، وَالْمَعْنَى وَاحِدٌ.

L22665 And who is more astonishing and misguided than one who permits altering an expression commanded by the Messenger of Allah—peace and blessings be upon him—then says: If the witness states, “I inform you” or “I notify you that I know this person has a dinar in the possession of that person,” it is not valid testimony, nor can judgment be based on it until he says, “I testify”—then marvel at how these people reverse the truths?

وَمَنْ أَعْجَبُ وَأَضَلُّ مِمَّنْ يُجِيزُ تَبْدِيلَ لَفْظٍ أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يَقُولُ: إنْ قَالَ الشَّاهِدُ: أُخْبِرُك أَوْ أُعْلِمُك بِأَنِّي أَعْلَمُ أَنَّ لِهَذَا عِنْدَ هَذَا دِينَارًا: أَنَّهَا لَيْسَتْ شَهَادَةً، وَلَا يَحْكُمُ بِهَا حَتَّى يَقُولَ: أَشْهَدُ، فَاعْجَبُوا لِعَكْسِ هَؤُلَاءِ الْقَوْمِ لِلْحَقَائِقِ؟

L22666 As for other terms, they are words with established meanings that were mutually agreed upon. Thus, the parties are entitled to what they pledged upon if it is verified as such, for this constitutes part of their mutual consent, as Allah the Exalted said: “except it be a trade by mutual consent” [An-Nisā’ 4:29].[19]

وَأَمَّا الْأَلْفَاظُ الْأُخَرُ فَهِيَ أَلْفَاظٌ مَعْرُوفَةُ الْمَعَانِي بَايَعَ عَلَيْهَا فَلَهُ مَا بَايَعَ عَلَيْهِ إنْ وَجَدَهُ كَذَلِكَ، لِأَنَّهُ مِمَّا تَرَاضَيَا عَلَيْهِ، كَمَا قَالَ اللَّهُ تَعَالَى: {إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

L22667–22669 If he finds other than what they mutually agreed upon in their sale, then he neither found what he sold nor what he purchased, and he has nothing else. Therefore, it is not permissible for him to take anything from another’s wealth unless he enters into a mutual agreement for it with the consent of both parties, and this is evident—and success is from Allah, the Exalted.

فَإِنْ وَجَدَ غَيْرَ مَا تَرَاضَيَا بِهِ فِي بَيْعِهِ، فَلَمْ يَجِدْ مَا بَاعَ وَلَا مَا ابْتَاعَ، وَلَيْسَ لَهُ غَيْرُ ذَلِكَ، فَلَا يَحِلُّ لَهُ مِنْ مَالِ غَيْرِهِ مَا لَمْ يُبَايِعْهُ فِيهِ عَنْ تَرَاضٍ مِنْهُمَا، وَهَذَا بَيِّنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. -

L22670 A legal issue: Every condition stipulated in a sale contract by both parties, or by one of them with the consent of the other.

[مَسْأَلَةٌ كُلُّ شَرْطٍ وَقَعَ فِي بَيْعٍ مِنْهُمَا أَوْ مِنْ أَحَدِهِمَا بِرِضَا الْآخَرِ]

L22671 Issue 1447: Any condition stipulated in a sale by either party—or by one party with the other’s consent—whether stipulated before the contract’s conclusion, after the sale’s completion through physical separation from the place of transaction or khiyār (right to rescind), or at either of the two times (mean-

١٤٤٧ - مَسْأَلَةٌ: وَكُلُّ شَرْطٍ وَقَعَ فِي بَيْعٍ مِنْهُمَا، أَوْ مِنْ أَحَدِهِمَا، بِرِضَا الْآخَرِ فَإِنَّهُمَا إنْ عَقَدَاهُ قَبْلَ عَقْدِ الْبَيْعِ أَوْ بَعْدَ تَمَامِ الْبَيْعِ بِالتَّفَرُّقِ بِالْأَبْدَانِ، أَوْ بِالتَّخْيِيرِ، أَوْ فِي أَحَدِ

[19] **Qur’an references (L22666):** Qur’an 4:29 (An-Nisa).

ing before or after the contract), provided it was not mentioned during the contract itself—renders the sale valid and complete, while the condition becomes religiously invalid and legally non-binding.

الْوَقْتَيْنِ - يَعْنِي قَبْلَ الْعَقْدِ أَوْ بَعْدَهُ - وَلَمْ يَذْكُرَاهُ فِي حِينِ عَقْدِ الْبَيْعِ، فَالْبَيْعُ صَحِيحٌ تَامٌّ، وَالشَّرْطُ بَاطِلٌ لَا يَلْزَمُ.

L22672 If both parties mention that condition at the time of concluding the sale, the sale is void and rescinded, and the condition is invalidated—no matter what the condition may be—except for seven conditions alone. These are binding, and the sale remains valid if stipulated in the sale. They are:

فَإِنْ ذَكَرَا ذَلِكَ الشَّرْطَ فِي حَالِ عَقْدِ الْبَيْعِ فَالْبَيْعُ بَاطِلٌ مَفْسُوخٌ، وَالشَّرْطُ بَاطِلٌ - أَيَّ شَرْطٍ كَانَ لَا تُحَاشِ شَيْئًا - إِلَّا سَبْعَةَ شُرُوطٍ فَقَطْ، فَإِنَّهَا لَازِمَةٌ، وَالْبَيْعُ صَحِيحٌ، إِنْ اُشْتُرِطَتْ فِي الْبَيْعِ - وَهِيَ:

L22673 The requirement of collateral in a mutually contracted transaction for a specified term.

اشْتِرَاطُ الرَّهْنِ فِيمَا تَبَايَعَاهُ إِلَى أَجَلٍ مُسَمًّى.

L22674 The stipulation to defer the price—if it is in dinars or dirhams—to a specified term.

وَاشْتِرَاطُ تَأْخِيرِ الثَّمَنِ إِنْ كَانَ دَنَانِيرَ أَوْ دَرَاهِمَ إِلَى أَجَلٍ مُسَمًّى.

L22675 Stipulating that the price be paid at the time of financial ease, even if the two parties do not stipulate a period.

وَاشْتِرَاطُ أَدَاءِ الثَّمَنِ إِلَى الْمَيْسَرَةِ - وَإِنْ لَمْ يَذْكُرَا أَجَلًا.

L22676 The stipulation of the attributes of the sold item that the two parties mutually agree upon and conclude the sale on the condition that the item possesses those attributes.

وَاشْتِرَاطُ صِفَاتِ الْمَبِيعِ الَّتِي يَتَرَاضَيَانِهَا مَعًا وَيَتَبَايَعَانِ ذَلِكَ الشَّيْءَ عَلَى أَنَّهُ بِتِلْكَ الصِّفَةِ.

L22677 And the stipulation that there is no deceit.

وَاشْتِرَاطُ أَنْ لَا خِلَابَةَ.

L22678 The sale of a male slave or female slave, wherein the buyer stipulates their entire property or a specifically named and designated portion thereof, or an apportioned undivided share in all of it — regardless of whether their property is entirely unknown, entirely known, partly known and partly unknown.

وَبَيْعُ الْعَبْدِ، أَوْ الْأَمَةِ، فَيَشْتَرِطُ الْمُشْتَرِي مَالَهُمَا أَوْ بَعْضَهُ مُسَمًّى مُعَيَّنًا، أَوْ جُزْءًا مَنْسُوبًا مُشَاعًا فِي جَمِيعِهِ، سَوَاءٌ كَانَ مَالُهُمَا مَجْهُولًا كُلُّهُ، أَوْ مَعْلُومًا كُلُّهُ، أَوْ مَعْلُومًا بَعْضُهُ، مَجْهُولًا بَعْضُهُ.

L22679 Or the sale of date palm roots/trunks containing fruit that was artificially pollinated before or after ripening, where the buyer stipulates exclusive ownership of the fruit for himself, a specific portion of it, or a designated undivided share of the entire fruit.

أَوْ بَيْعُ أُصُولِ نَخْلٍ فِيهَا ثَمَرَةٌ قَدْ أُبِرَتْ قَبْلَ الطِّيبِ أَوْ بَعْدَهُ، فَيَشْتَرِطُ الْمُشْتَرِي الثَّمَرَةَ لِنَفْسِهِ أَوْ جُزْءًا مُعَيَّنًا مِنْهَا أَوْ مُسَمًّى مُشَاعًا فِي جَمِيعِهَا.

L22680 This is valid and nothing more, and all other such transactions are void, as we have previously established: such as one who sells a slave on the condition of emancipation, or a female slave on the condition of her bearing a child, or

فَهَذِهِ وَلَا مَزِيدَ، وَسَائِرُهَا بَاطِلٌ كَمَا قَدَّمْنَا -: كَمَنْ بَاعَ مَمْلُوكًا بِشَرْطِ الْعِتْقِ، أَوْ أَمَةً بِشَرْطِ الْإِيلَادِ، أَوْ دَابَّةً وَاشْتَرَطَ رُكُوبَهَا مُدَّةً مُسَمَّاةً - قَلَّتْ أَوْ كَثُرَتْ - أَوْ إلَى مَكَانٍ مُسَمًّى قَرِيبٍ أَوْ بَعِيدٍ.

a beast of burden while stipulating riding it for a specified period—whether brief or extended—or to a specified place—whether near or far.

أَوْ دَارًا وَاشْتَرَطَ سُكْنَاهَا سَاعَةً فَمَا فَوْقَهَا، أَوْ غَيْرَ ذَلِكَ مِنْ الشُّرُوطِ كُلِّهَا.

L22681 or a house and stipulated occupancy of it for an hour or longer, or other than that from all the conditions.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ أَنَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ الْهَمْدَانِيُّ أَنَا أَبُو أُسَامَةَ - هُوَ حَمَّادُ بْنُ أُسَامَةَ - أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ قَالَ: أَخْبَرَتْنِي عَائِشَةُ أُمُّ الْمُؤْمِنِينَ فَذَكَرَتْ حَدِيثًا قَالَتْ فِيهِ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ النَّاسَ فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ بِمَا هُوَ أَهْلُهُ ثُمَّ قَالَ: أَمَّا بَعْدُ فَمَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ مَا كَانَ مِنْ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L22682–22684 The proof of that is—what we have reported through Muslim ibn al-Ḥajjāj: I am Abū Kurayb Muḥammad ibn al-ʿAlāʾ al-Hamadānī. I am Abu Usamah—he is Hammad ibn Usamah—I am Hisham ibn Urwah from his father, who said: Aisha, the Mother of the Believers, informed me and mentioned a hadith in which she said: "The Messenger of Allah (peace be upon him) addressed the people, praised Allah, and extolled Him as He deserves. Then he said: 'Now then: what is the matter with people who stipulate conditions not found in the Book of Allah, the Almighty and Majestic? Any condition not present in the Book of Allah, the Almighty and Majestic, is void, even if it be a hundred conditions. Allah's Book holds greater authority, and Allah's stipulation is more binding.'" He then recounted the remainder of the narrative.

وَمِنْ طَرِيقِ أَبِي دَاوُد حَدَّثَنَا الْقَعْنَبِيُّ، وَقُتَيْبَةُ بْنُ سَعِيدٍ قَالَا جَمِيعًا: نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: إنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَخْبَرَتْهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَامَ فَقَالَ: مَا بَالُ أُنَاسٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ وَإِنْ اشْتَرَطَ مِائَةَ مَرَّةٍ، شَرْطُ اللَّهِ أَحَقُّ وَأَوْثَقُ» .

L22685 And through the chain of Abī Dāwūd: Al-Qaʿnabī and Qutaybah ibn Saʿīd both said: Al-Layth ibn Saʿd narrated to them from Ibn Shihāb from ʿUrwah ibn Al-Zubayr, who said: ʿĀʾishah, the Mother of the Believers, informed ʿUrwah that the Messenger of Allah—peace and blessings be upon him—stood and said: "What is the matter with people who impose conditions not found in the Book of Allah? Whoever imposes a condition not in the Book of Allah has no right to it, even if he repeats it a hundred times. Allah's condition is more rightful and binding."

فَهَذَا الْأَثَرُ كَالشَّمْسِ صِحَّةً وَبَيَانًا يَرْفَعُ الْإِشْكَالَ كُلَّهُ.

L22686 This narration is like the sun in authenticity and clarity, dispelling all difficulties.

L22687 Since all conditions—except what we have mentioned—are invalid, every contract of sale or other type concluded upon an invalid condition is invalid, utterly invalid, and necessarily so. This is because the contract is concluded

on the premise that it cannot be valid except through the validity of its condition, while the condition has no validity. Thus, a contract contingent on a condition that lacks validity cannot possess validity, as it depends on the validity of that which is itself invalid.

فَلَمَّا كَانَتْ الشُّرُوطُ كُلُّهَا بَاطِلَةً - غَيْرَ مَا ذَكَرْنَا - كَانَ كُلُّ عَقْدٍ مِنْ بَيْعٍ أَوْ غَيْرِهِ: عُقِدَ عَلَى شَرْطٍ بَاطِلٍ بَاطِلًا وَلَا بُدَّ، لِأَنَّهُ عُقِدَ عَلَى أَنَّهُ لَا يَصِحُّ إلَّا بِصِحَّةِ الشَّرْطِ، وَالشَّرْطُ لَا صِحَّةَ لَهُ، فَلَا صِحَّةَ لِمَا عُقِدَ بِأَنْ لَا صِحَّةَ لَهُ إلَّا بِصِحَّةِ مَا لَا يَصِحُّ.

L22688 Abu Muhammad said: As for our validation of the seven conditions we mentioned, they are textually stipulated as valid. Whatever the Messenger of Allah - peace and blessings be upon him - stipulated is found in the Book of Allah the Almighty and Majestic. He Most High said: {We have sent down the Reminder to you so that you may clarify to the people what has been sent down to them} [An-Nahl 16:44].[20]

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا تَصْحِيحُنَا الشُّرُوطَ السَّبْعَةَ الَّتِي ذَكَرْنَا، فَإِنَّهَا مَنْصُوصٌ عَلَى صِحَّتِهَا، وَكُلُّ مَا نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ فَهُوَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ قَالَ تَعَالَى: {وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

L22689 And He, the Exalted, said: "He does not speak out of desire. It is nothing but a revelation being revealed." [An-Najm 53:3, 4].[21]

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

L22690 And He, the Exalted, said: "Whoever obeys the Messenger has indeed obeyed Allah" [An-Nisa: 80].[22]

وَقَالَ تَعَالَى: {مَنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ} [النساء: ٨٠] .

L22691 As for stipulating collateral in a sale with a deferred term, it is based on the statement of the Exalted: "But if you do not find a scribe, then a security deposit shall be taken." [Al-Baqarah: 283][23]

فَأَمَّا اشْتِرَاطُ الرَّهْنِ فِي الْبَيْعِ إلَى أَجَلٍ مُسَمًّى فَلِقَوْلِهِ تَعَالَى: {وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ} [البقرة: ٢٨٣] .

L22692 As for stipulating that the price be paid at a specified term, this is based on the statement of Allah the Exalted: "When you contract a debt for a specified term, put it in writing" [Al-Baqarah: 282].[24]

وَأَمَّا اشْتِرَاطُ الثَّمَنِ إلَى أَجَلٍ مُسَمًّى فَلِقَوْلِ اللَّهِ تَعَالَى: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] .

L22693–22694 As for the stipulation of "no deception," we have previously cited the relevant hadith on this matter approximately four issues earlier in this text.

وَأَمَّا اشْتِرَاطُ " أَنْ لَا خِلَابَةَ " فَقَدْ ذَكَرْنَا الْخَبَرَ فِي ذَلِكَ قَبْلَ هَذَا الْمَكَانِ بِنَحْوِ أَرْبَعِ مَسَائِلَ.

L22695 As for stipulating the attributes upon which the two parties mutually agree

وَأَمَّا اشْتِرَاطُ الصِّفَاتِ الَّتِي يَتَبَايَعَانِ عَلَيْهَا مِنْ السَّلَامَةِ، أَوْ مِنْ أَنْ لَا خَدِيعَةَ، وَمِنْ صِنَاعَةِ الْعَبْدِ، أَوْ الْأَمَةِ، أَوْ سَائِرِ صِفَاتِ الْمَبِيعِ، فَلِقَوْلِ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ

[20] **Qur'an references (L22688):** Qur'an 16:44 (An-Nahl).
[21] **Qur'an references (L22689):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[22] **Qur'an references (L22690):** Qur'an 4:80 (An-Nisa).
[23] **Qur'an references (L22691):** Qur'an 2:283 (Al-Baqarah).
[24] **Qur'an references (L22692):** Qur'an 2:282 (Al-Baqarah).

in a sale—such as integrity, absence of deceit, the skill or craft of a male or female slave, or the remaining attributes of the sold item—this is based on Allah the Exalted's decree: "Do not consume one another's wealth unjustly, but only through trade by mutual consent" (4:29). Thus, the Exalted has explicitly ordained mutual consent between them, and mutual consent can only be achieved by agreeing on the attributes of the sold item and the attributes of the price as a necessity.[25]

بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَنَصَّ تَعَالَى عَلَى التَّرَاضِي مِنْهُمَا وَالتَّرَاضِي لَا يَكُونُ إِلَّا عَلَى صِفَاتِ الْمَبِيعِ، وَصِفَاتِ الثَّمَنِ ضَرُورَةً.

L22696 As for stipulating deferment of the price until a time of financial ease, this is based on the statement of Allah, the Exalted: {And if one is in financial hardship, then deferment until a time of ease} [Al-Baqarah: 280].[26]

وَأَمَّا اشْتِرَاطُ الثَّمَنِ إِلَى الْمَيْسَرَةِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] .

L22697 It was narrated to us through the chain of Shu'bah: 'Umarah ibn Abi Hafsah narrated to me from 'Ikrimah from 'Ā'ishah, the Mother of the Believers, that the Messenger of Allah (ﷺ) sent to a Jew—to whom garments had come—saying: "Send me two garments on credit," and the remainder of the report was mentioned.

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ أَخْبَرَنِي عُمَارَةُ بْنُ أَبِي حَفْصَةَ عَنْ عِكْرِمَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ إِلَى يَهُودِيٍّ قَدِمَتْ عَلَيْهِ ثِيَابٌ: ابْعَثْ إِلَيَّ بِثَوْبَيْنِ إِلَى الْمَيْسَرَةِ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L22698 As for the wealth of a male slave or female slave and its stipulation, and the stipulation regarding the fruit of pollinated palm trees: This is based on what was transmitted to us through the chain of ʿAbd al-Razzāq—Maʿmar—al-Zuhrī—Sālim ibn ʿAbd Allāh ibn ʿUmar—his father, that the Messenger of Allāh—peace and blessings be upon him—said: "Whoever sells a slave who owns property, the property belongs to the seller unless the buyer stipulates it. And whoever sells palm trees that have been pollinated, its fruit belongs to the seller unless the buyer stipulates it."[27]

وَأَمَّا مَالُ الْعَبْدِ، أَوْ الْأَمَةِ وَاشْتِرَاطُهُ، وَاشْتِرَاطُ ثَمَرِ النَّخْلِ الْمُؤَبَّرِ -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ بَاعَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ» وَمَنْ بَاعَ نَخْلًا قَدْ أُبِّرَتْ فَثَمَرَتُهَا لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ.

L22699–22701 Abu Muhammad said: Had we found a valid and unabrogated report other than these conditions, we would have followed it without opposing it. We will mention – if Allah the Exalted wills – the ruling of these two conditions, since we have already mentioned others apart from them- All praise is due to Allah, Lord of the worlds, and we have mentioned the report of ʿAbd

قَالَ أَبُو مُحَمَّد: وَلَوْ وَجَدْنَا خَبَرًا يَصِحُّ فِي غَيْرِ هَذِهِ الشُّرُوطِ بَاقِيًا غَيْرَ مَنْسُوخٍ لَقُلْنَا بِهِ وَلَمْ نُخَالِفْهُ، وَسَنَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى حُكْمَ هَذَيْنِ الشَّرْطَيْنِ إِذْ قَدْ ذَكَرْنَا غَيْرَهُمَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَقَدْ ذَكَرْنَا رِوَايَةَ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: كُلُّ بَيْعٍ فِيهِ شَرْطٌ فَلَيْسَ بَيْعًا.

[25] **Qur'an references (L22695):** Qur'an 4:29 (An-Nisa).
[26] **Qur'an references (L22696):** Qur'an 2:280 (Al-Baqarah).
[27] **Hadith references (L22698):** Sunan Abi Dawud 3433.

al-Razzāq from Ibn Jurayj from ʿAṭāʾ, who said: Every sale containing a condition is not a sale.

L22702 Ali said: If an opposing interlocutor argues against us by citing the words of Allah, the Exalted: *"Fulfill the contracts"* [Al-Ma'idah: 1] and His command: *"And fulfill the covenant of Allah when you have made a covenant"* [An-Nahl: 91].[28]

L22703 And according to what has been narrated: "Muslims are bound by their conditions."

L22704 We said: As for Allah's command to fulfill contracts—no two people disagree that it is neither bound by its generality nor its apparent meaning. The Quran instructs us to avoid His prohibitions and acts of disobedience. Thus, whoever enters a contract for sinful purposes, fulfilling it is ḥarām. Since this is beyond doubt, it is established that every condition not in the Book of Allah is null and void, and what is null is prohibited. Therefore, fulfilling anything prohibited is impermissible.

L22705 And likewise, the statement of Allah the Exalted: {And fulfill the covenant of Allah when you make a covenant} [An-Nahl: 91]. Thus, the covenant of Allah can only be understood through an explicit textual source addressing it. We know that every covenant Allah has forbidden is not the covenant of Allah the Exalted; rather, it is the covenant of Satan, so fulfilling it is not permissible. The Messenger of Allah (peace and blessings be upon him) authoritatively declared that "Every condition not in the Book of Allah is invalid," and it is impermissible to fulfill what is invalid.[29][30]

L22706 As for the report concerning this—it has been related through Ibn Wahb: Sulayman ibn Bilal narrated to me from Kathir ibn Zayd, from al-Walid ibn Rabah, from Abu Hurayrah, who said: The Messenger of Allah, peace and blessings be upon him, said, "Muslims are bound by their stipulations."

قَالَ عَلِيٌّ: فَإِنْ احْتَجَّ مُعَارِضٌ لَنَا بِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وقَوْله تَعَالَى: {وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ} [النحل: ٩١] .

وَبِمَا رُوِيَ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

قُلْنَا: أَمَّا أَمْرُ اللَّهِ تَعَالَى بِالْوَفَاءِ بِالْعُقُودِ: لَا يَخْتَلِفُ اثْنَانِ فِي أَنَّهُ لَيْسَ عَلَى عُمُومِهِ وَلَا عَلَى ظَاهِرِهِ، وَقَدْ جَاءَ الْقُرْآنُ بِأَنْ نَجْتَنِبَ نَوَاهِيَ اللَّهِ تَعَالَى وَمَعَاصِيَهُ، فَمَنْ عَقَدَ عَلَى مَعْصِيَةٍ فَحَرَامٌ عَلَيْهِ الْوَفَاءُ بِهَا، فَإِذْ لَا شَكَّ فِي هَذَا فَقَدْ صَحَّ أَنَّ كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَالْبَاطِلُ مُحَرَّمٌ، فَكُلُّ مُحَرَّمٍ فَلَا يَحِلُّ الْوَفَاءُ بِهِ.

وَكَذَلِكَ قَوْله تَعَالَى: {وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ} [النحل: ٩١] فَلَا يُعْلَمُ مَا هُوَ عَهْدُ اللَّهِ إِلَّا بِنَصٍّ وَارِدٍ فِيهِ، وَقَدْ عَلِمْنَا أَنَّ كُلَّ عَهْدٍ نَهَى اللَّهُ عَنْهُ فَلَيْسَ هُوَ عَهْدَ اللَّهِ تَعَالَى، بَلْ هُوَ عَهْدُ الشَّيْطَانِ فَلَا يَحِلُّ الْوَفَاءُ بِهِ، وَقَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّ «كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» ، وَالْبَاطِلُ لَا يَحِلُّ الْوَفَاءُ بِهِ.

وَأَمَّا الْأَثَرُ فِي ذَلِكَ -: فَإِنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي سُلَيْمَانُ بْنُ بِلَالٍ أَنَا كَثِيرُ بْنُ زَيْدٍ عَنْ الْوَلِيدِ بْنِ رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

[28] **Qur'an references (L22702):** Qur'an 16:91 (An-Nahl); Qur'an 5:1 (Al-Ma'idah).
[29] **Hadith references (L22705):** Sunan Ibn Majah 2521.
[30] **Qur'an references (L22705):** Qur'an 16:91 (An-Nahl).

L22707 We have also transmitted it through the chain of Abd al-Malik ibn Habib al-Andalusi: al-Hizami narrated to me from Muhammad ibn Umar from Abd al-Rahman ibn Muhammad ibn Abi Bakr ibn Amr ibn Hazm from Umar ibn Abd al-Aziz, who reported that the Messenger of Allah, peace and blessings be upon him, said: "Muslims are bound by their conditions."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ حَدَّثَنِي الْحِزَامِيُّ عَنْ مُحَمَّدِ بْنِ عُمَرَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ» .

L22708 And from the chain of Ibn Abi Shaybah: Yahya ibn Abi Za'idah from Abd al-Malik, from Ata': It has been transmitted to us that the Prophet (peace be upon him) said: "Muslims are bound by their conditions."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا يَحْيَى بْنُ أَبِي زَائِدَةَ عَنْ عَبْدِ الْمَلِكِ عَنْ عَطَاءٍ: بَلَغَنَا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

L22709 And narrated by Abū Bakr ibn Abī Shaybah from al-Ḥajjāj ibn Arṭā'ah from Khālid ibn Muḥammad from a shaykh of the Banū Kinānah: I heard ʿUmar say: "A Muslim is bound by their conditions."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ خَالِدِ بْنِ مُحَمَّدٍ عَنْ شَيْخٍ مِنْ بَنِي كِنَانَةَ سَمِعْت عُمَرَ يَقُولُ: الْمُسْلِمُ عِنْد شَرْطِهِ.

L22710–22711 From the transmission of Ibn Abi Shaybah: Ibn ʿUyaynah narrated from Yazeed ibn Yazeed ibn Jabir, from Isma'eel ibn ʿUbaydullah, from ʿAbdur-Rahman ibn Ghanm, who reported that ʿUmar ibn al-Khattab said, "Verily, the cessation of rights is determined by conditions."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ عُيَيْنَةَ عَنْ يَزِيدَ بْنِ يَزِيدَ بْنِ جَابِرٍ عَنْ إسْمَاعِيلَ بْنِ عُبَيْدِ اللَّهِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنْمٍ قَالَ عُمَرُ بْنُ الْخَطَّابِ " إنَّ مَقَاطِعَ الْحُقُوقِ، عِنْدَ الشُّرُوطِ ".

L22712 And via the chain of Ibn Abī Shaybah: I [heard] from Hafs ibn Ghiyath, who narrated from Jaʿfar ibn Muḥammad, from his father, from ʿAlī, who said: "Muslims are bound by their conditions."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا حَفْصُ بْنُ غِيَاثٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَلِيٍّ قَالَ: " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ ".

L22713 Abū Muḥammad said: Kathīr ibn Zayd is Kathīr ibn ʿAbd Allāh ibn ʿAmr ibn Zayd - rejected and abandoned by consensus - al-Walīd ibn Rabāḥ - unknown - the other is ʿAbd al-Malik ibn Ḥabīb - rejected - Muḥammad ibn ʿUmar - he is al-Wāqidī, noted for lying - ʿAbd al-Raḥmān ibn Muḥammad - unknown, unrecognized - and also mursal; the third is likewise mursal. The narration through ʿUmar's chain contains al-Ḥajjāj ibn Arṭāh - he is rejected - Khālid ibn Muḥammad - unknown - a shaykh from Banū Kinānah - the other chain contains Ismāʿīl ibn ʿUbayd Allāh, whom I do not recognize.

قَالَ أَبُو مُحَمَّد: كَثِيرُ بْنُ زَيْدٍ هُوَ كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ زَيْدٍ - هَالِكٌ مَتْرُوكٌ بِاتِّفَاقٍ - وَالْوَلِيدُ بْنُ رَبَاحٍ - مَجْهُولٌ - وَالْآخَرُ عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ - هَالِكٌ - وَمُحَمَّدُ بْنُ عُمَرَ - هُوَ الْوَاقِدِيُّ مَذْكُورٌ بِالْكَذِبِ - وَعَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ - مَجْهُولٌ لَا يُعْرَفُ - وَمُرْسَلٌ أَيْضًا، وَالثَّالِثُ مُرْسَلٌ أَيْضًا، وَالَّذِي مِنْ طَرِيقِ عُمَرَ فِيهِ الْحَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ هَالِكٌ - وَخَالِدُ بْنُ مُحَمَّدٍ - مَجْهُولٌ - وَشَيْخٌ مِنْ بَنِي كِنَانَةَ - وَالْآخَرُ فِيهِ إسْمَاعِيلُ بْنُ عُبَيْدِ اللَّهِ وَلَا أَعْرِفُهُ.

L22714 The narration of ʿAlī is mursal (with a broken chain). Furthermore, even if all we mentioned were authentic, it would constitute evidence for us without contradicting our position, for the contractual stipulations upheld by Muslims are those Allah has permitted them—not those He prohibited. As for the stipulations they were forbidden from, these are not the stipulations of Muslims.

وَخَبَرُ عَلِيٍّ مُرْسَلٌ - ثُمَّ لَوْ صَحَّ كُلُّ مَا ذَكَرْنَا لَكَانَ حُجَّةً لَنَا وَغَيْرَ مُخَالِفٍ ، لِقَوْلِنَا، لِأَنَّ شُرُوطَ الْمُسْلِمِينَ هِيَ الشُّرُوطُ الَّتِي أَبَاحَهَا اللَّهُ لَهُمْ، لَا الَّتِي نَهَاهُمْ عَنْهَا، وَأَمَّا الَّتِي نُهُوا عَنْهَا فَلَيْسَتْ شُرُوطَ الْمُسْلِمِينَ.

L22715 The Messenger of Allah—peace and blessings be upon him—explicitly stated that “every condition not found in the Book of Allah the Exalted is void, even if it were a hundred conditions or stipulated a hundred times,” and that it is invalid for the one who stipulates it. Thus, it is established that every condition not in the Book of Allah the Exalted is void, and it does not belong to the stipulations of Muslims. Therefore, our statement is established with certainty.

وَقَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّ «كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَإِنْ كَانَتْ مِائَةَ شَرْطٍ، أَوْ اشْتَرَطَ مِائَةَ مَرَّةٍ» وَأَنَّهُ لَا يَصِحُّ لِمَنْ اشْتَرَطَهُ -: فَصَحَّ أَنَّ كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَبَاطِلٌ، فَلَيْسَ هُوَ مِنْ شُرُوطِ الْمُسْلِمِينَ، فَصَحَّ قَوْلُنَا بِيَقِينٍ.

L22716 Then, indeed, the Hanafi, Maliki, and Shafiʿi schools are the most inconsistent and contradictory in this matter. For they permit conditions and prohibit others—all of which are equally invalid because they are not in the Book of Allah Almighty and Exalted—and they permit conditions and prohibit others—all of which are equally valid because they are in the Book of Allah the Exalted.

ثُمَّ إِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، أَشَدُّ النَّاسِ اضْطِرَابًا وَتَنَاقُضًا فِي ذَلِكَ؛ لِأَنَّهُمْ يُجِيزُونَ شُرُوطًا وَيَمْنَعُونَ شُرُوطًا كُلُّهَا سَوَاءٌ فِي أَنَّهَا بَاطِلٌ لَيْسَتْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، وَيُجِيزُونَ شُرُوطًا وَيَمْنَعُونَ شُرُوطًا كُلُّهَا سَوَاءٌ فِي أَنَّهَا حَقٌّ؛ لِأَنَّهَا فِي كِتَابِ اللَّهِ تَعَالَى.

L22717 The Hanafis and the Shafi’is prohibit the buyer from stipulating the slave’s property and the fruit of the pre-pollinated palm tree, and they do not permit this under any circumstance except via a sale compliant with the rulings governing sales.

فَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ يَمْنَعُونَ اشْتِرَاطَ الْمُبْتَاعِ مَالَ الْعَبْدِ، وَثَمَرَةَ النَّخْلِ الْمُؤَبَّرِ، وَلَا يُجِيزُونَ لَهُ ذَلِكَ أَلْبَتَّةَ إِلَّا بِالشِّرَاءِ عَلَى حُكْمِ الْبُيُوعِ.

L22718–22720 The Malikis, Hanafis, and Shafi’is do not permit sales leading to gambling (al-maysarah), nor do they allow stipulations contingent on verbal statements. There is no fraud in sales, and both of them are established in the Book of Allah, the Mighty and Majestic, by the command of the Prophet (peace be upon him) regarding them both. Yet here they forget “Muslims are bound by their conditions.”

وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ: لَا يُجِيزُونَ الْبَيْعَ إِلَى الْمَيْسَرَةِ، وَلَا شَرْطَ قَوْلٍ: لَا خِلَابَةَ، عِنْدَ الْبَيْعِ، وَكِلَاهُمَا فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، لِأَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهِمَا، وَيَنْسَوْنَ هَهُنَا " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ ".

L22721 All of them permit the sale of fruit whose readiness has not yet become apparent, on the condition that it is plucked. This is a condition not found

in the Book of Allah the Exalted. Rather, the prohibition of this sale has been clearly established as a general principle, and similar cases are numerous.

وَكُلُّهُمْ يُجِيزُ بَيْعَ الثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا بِشَرْطِ الْقَطْعِ، وَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، بَلْ قَدْ صَحَّ النَّهْيُ عَنْ هَذَا الْبَيْعِ جُمْلَةً، وَمِثْلُ هَذَا كَثِيرٌ.

L22722 Abu Muhammad said: Every condition stipulated in a sale or other transaction must necessarily fall into one of three categories—there being no fourth.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَخْلُو كُلُّ شَرْطٍ اُشْتُرِطَ فِي بَيْعٍ أَوْ غَيْرِهِ مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ لَا رَابِعَ لَهَا -:

L22723 Either the permissibility of wealth not stipulated in the contract, or the obligation of an action, or the prohibition of an action—and actions involve bodily integrity or pertain solely to wealth. All of this is forbidden by explicit textual evidence. The Messenger of Allah (peace and blessings be upon him) said: "Your blood, your wealth, and your bodily integrity are sacred and forbidden upon you."

إمَّا إبَاحَةُ مَالٍ لَمْ يَجِبْ فِي الْعَقْدِ، وَإِمَّا إيجَابُ عَمَلٍ، وَإِمَّا الْمَنْعُ مِنْ عَمَلٍ، وَالْعَمَلُ يَكُونُ بِالْبَشَرَةِ، أَوْ بِالْمَالِ فَقَطْ - وَكُلُّ ذَلِكَ حَرَامٌ بِالنَّصِّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L22724 As for preventing deeds, Allah the Exalted says: {Why do you prohibit what Allah has made lawful for you} [At-Tahrim: 1].[31]

وَأَمَّا الْمَنْعُ مِنْ الْعَمَلِ فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ} [التحريم: ١] .

L22725 Thus, the invalidity of all conditions in their entirety is confirmed, except for a condition permitted by a text from the Quran or the Sunnah. Here, God willing, we shall mention relevant narrations and clarify them, so that no ignorant person or agitator may raise objections concerning them.

فَصَحَّ بُطْلَانُ كُلِّ شَرْطٍ جُمْلَةً إلَّا شَرْطًا جَاءَ النَّصُّ مِنْ الْقُرْآنِ أَوْ السُّنَّةِ بِإِبَاحَتِهِ - وَهَهُنَا أَخْبَارٌ نَذْكُرُهَا، وَنُبَيِّنُهَا - إنْ شَاءَ اللَّهُ تَعَالَى - لِئَلَّا يَعْتَرِضَ بِهَا جَاهِلٌ أَوْ مُشَغِّبٌ.

L22726 Muhammad ibn Ismāʿīl al-ʿUdhriyy, the judge of Zaragoza, narrated to me: Muhammad ibn ʿAlī al-Rāziyy al-Muṭṭawiʿī narrated to us; Muhammad ibn ʿAbd Allāh al-Ḥākim al-Naysābūriyy narrated to us; Jaʿfar ibn Muḥammad al-Khuldiyy narrated to us; ʿAbd Allāh ibn Ayyūb ibn Zādhān al-Ḍarīr narrated to us; Muḥammad ibn Sulaymān al-Dhuhliyy narrated to us: ʿAbd al-Wārith—he is Ibn Saʿīd al-Tannūriyy—said: I arrived in Makkah and found there Abū Ḥanīfah, Ibn Abī Laylā, and Ibn Shubrumah. I asked Abū Ḥanīfah about someone who conducts a sale with a stipulation. He said: "The sale is void, and the stipulation is void." Then I asked Ibn Abī Laylā about that, and he said: "The sale is valid, and the stipulation is void." Then I asked Ibn Shubrumah about that, and he said: "The sale is valid, and the stipulation is valid." I returned to Abū Ḥanīfah and informed him of what they said.

حَدَّثَنِي مُحَمَّدُ بْنُ إسْمَاعِيلَ الْعُذْرِيُّ الْقَاضِي بِسَرَقُسْطَةَ أَنَا مُحَمَّدُ بْنُ عَلِيٍّ الرَّازِيّ الْمُطَّوِّعِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْحَاكِمِ النَّيْسَابُورِيُّ أَنَا جَعْفَرُ بْنُ مُحَمَّدٍ الْخُلْدِيُّ أَنَا عَبْدُ اللَّهِ بْنُ أَيُّوبَ بْنِ زَاذَانَ الضَّرِيرُ أَنَا مُحَمَّدُ بْنُ سُلَيْمَانَ الذُّهْلِيُّ أَنَا عَبْدُ الْوَارِثِ - هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - قَدِمْت مَكَّةَ فَوَجَدْت بِهَا أَبَا حَنِيفَةَ، وَابْنَ أَبِي لَيْلَى، وَابْنَ شُبْرُمَةَ، فَسَأَلْتُ أَبَا حَنِيفَةَ عَمَّنْ بَاعَ بَيْعًا وَاشْتَرَطَ شَرْطًا؟ فَقَالَ: الْبَيْعُ بَاطِلٌ وَالشَّرْطُ بَاطِلٌ ثُمَّ سَأَلْتُ ابْنَ أَبِي لَيْلَى عَنْ ذَلِكَ؟ فَقَالَ الْبَيْعُ جَائِزٌ وَالشَّرْطُ بَاطِلٌ ثُمَّ سَأَلْتُ ابْنَ شُبْرُمَةَ عَنْ ذَلِكَ؟ فَقَالَ: الْبَيْعُ جَائِزٌ وَالشَّرْطُ جَائِزٌ؟ فَرَجَعْت إلَى أَبِي حَنِيفَةَ فَأَخْبَرْتُهُ بِمَا قَالَا؟ فَقَالَ: لَا أَدْرِي

[31] **Qur'an references (L22724):** Qur'an 66:1 (At-Tahrim).

He replied: “I do not know what they said.” ʿAmr ibn Shuʿayb narrated to us from his father, from his grandfather, that the Messenger of Allāh—peace and blessings be upon him—“forbade a sale with a stipulation.” The sale is void, and the stipulation is void.

مَا قَالَا - حَدَّثَنَا عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى عَنْ بَيْعٍ وَشَرْطٍ» الْبَيْعُ بَاطِلٌ وَالشَّرْطُ بَاطِلٌ؟

L22727–22728 She went to Ibn Abī Laylā and informed him of what they had said. He replied, “I do not know what they said.” Hishām ibn ʿUrwah narrated to us from his father, from ʿĀ’ishah, the Mother of the Believers, that the Messenger of Allāh—peace and blessings be upon him—said, “Purchase Barīrah and stipulate for them the clientage.” The sale is valid, and the stipulation is void. Then I went to Ibn Shubrumah and informed him of what they had said. He replied, “I do not know what they said.” I, Misʿar ibn Kidām, narrated from Muḥārib ibn Dithār, from Jābir ibn ʿAbdillāh, “that he sold a camel from the Messenger of Allāh—peace and blessings be upon him—and stipulated its back to Medina.” The sale is valid, and the stipulation is valid.

فَأَتَيْت ابْنَ أَبِي لَيْلَى فَأَخْبَرْته بِمَا قَالَا؟ فَقَالَ: لَا أَدْرِي مَا قَالَا - حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اشْتَرِي بَرِيرَةَ وَاشْتَرِطِي لَهُمْ الْوَلَاءَ» الْبَيْعُ جَائِزٌ وَالشَّرْطُ بَاطِلٌ فَأَتَيْت ابْنَ شُبْرُمَةَ فَأَخْبَرْته بِمَا قَالَا؟ فَقَالَ: لَا أَدْرِي مَا قَالَا؟ أَنَا مِسْعَرُ بْنُ كِدَامٍ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّهُ بَاعَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمَلًا وَاشْتَرَطَ ظَهْرَهُ إلَى الْمَدِينَةِ» الْبَيْعُ جَائِزٌ وَالشَّرْطُ جَائِزٌ.

L22729 Here is a fourth narration: We have transmitted it through the chain of Aḥmad ibn Shuʿayb—I am Ziyād ibn Ayyūb—I am Ibn ʿUlayyah—Ayyūb al-Sikhtiyānī narrated to us—I am ʿAmr ibn Shuʿayb—my father narrated to me from his father from his father—until he mentioned ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ, who said: The Messenger of Allah—peace and blessings be upon him—said, “A loan and a sale are not permissible, nor two conditions in a sale, nor profit from what is not guaranteed.”[32]

وَهَهُنَا خَبَرٌ رَابِعٌ -: رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا زِيَادُ بْنُ أَيُّوبَ أَنَا ابْنُ عُلَيَّةَ نا أَيُّوبُ السِّخْتِيَانِيُّ أَنَا عَمْرُو بْنُ شُعَيْبٍ حَدَّثَنِي أَبِي عَنْ أَبِيهِ عَنْ أَبِيهِ حَتَّى ذَكَرَ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ سَلَفٌ وَبَيْعٌ، وَلَا شَرْطَانِ فِي بَيْعٍ، وَلَا رِبْحُ مَا لَمْ يُضْمَنْ» .

L22730 Ahmad ibn Hanbal adopts this view, invalidating the sale if it contains two conditions while permitting it if it contains one condition. Abū Thawr held the view to follow all these ḥadīths, stating: If the seller stipulates retaining some usage rights of his property—such as residing in a house for a specified period, for his entire lifetime, the service of a slave, riding an animal, or wearing a garment—the sale and condition are valid, because the principal asset and its benefits belong to him. Thus, he may sell what he wishes and retain what he wishes. Any sale in which a condition pertains to something arising in the buyer’s ownership—such as walā’ (a legal patronage relation-

وَبِهِ يَأْخُذُ أَحْمَدُ بْنُ حَنْبَلٍ فَيُبْطِلُ الْبَيْعَ إذَا كَانَ فِيهِ شَرْطَانِ، وَيُجِيزُهُ إذَا كَانَ فِيهِ شَرْطٌ وَاحِدٌ - وَذَهَبَ أَبُو ثَوْرٍ إلَى الْأَخْذِ بِهَذِهِ الْأَحَادِيثِ كُلِّهَا فَقَالَ: إنْ اشْتَرَطَ الْبَائِعُ بَعْضَ مِلْكِهِ كَسُكْنَى الدَّارِ مُدَّةً مُسَمَّاةً، أَوْ دَهْرَهُ كُلَّهُ أَوْ خِدْمَةَ الْعَبْدِ كَذَلِكَ، أَوْ رُكُوبَ الدَّابَّةِ كَذَلِكَ، أَوْ لِبَاسَ الثَّوْبِ كَذَلِكَ: جَازَ الْبَيْعُ وَالشَّرْطُ؛ لِأَنَّ الْأَصْلَ لَهُ، وَالْمَنَافِعَ لَهُ، فَبَاعَ مَا شَاءَ وَأَمْسَكَ مَا شَاءَ، وَكُلُّ بَيْعٍ اُشْتُرِطَ فِيهِ مَا يَحْدُثُ فِي

[32] **Hadith references (L22729):** Sunan an-Nasai 4630; Jami at-Tirmidhi 1234; Mishkat al-Masabih 2870.

ship) or similar matters—the sale is valid, but the condition is void. Every sale in which a condition imposes an action or financial obligation on the seller or an action on the buyer renders both the sale and the condition invalid.

L22731–22733 Abū Muḥammad said: This is an error on Abū Thawr's part, for the usufruct of what the seller sold - whether a house, a slave, an animal, a garment, or anything else - belongs to him only as long as it remains under his ownership. Once it leaves his ownership, it becomes invalid and impossible for him to own what Allah the Exalted has not yet created from the usufruct of what he sold. If it is later brought into existence... Allah, the Exalted—for verily He created it within the ownership of another—thus it belongs to the one in whose ownership it was created. This nullifies the reasoning of Abū Thawr, as well as the rest of his categorization, for it is an assertion without proof.

L22734 As for Ahmad's statement, it is also erroneous: because the Messenger of Allah's (peace and blessings be upon him) prohibition of two conditions in one sale does not permit a single condition nor prohibit it. Rather, it is silent on the matter in this narration. Thus, it becomes obligatory to seek its ruling elsewhere, where we find his statement (peace and blessings be upon him): "Every condition not in the Book of Allah is void."[33]

L22735 Thus, the single stipulation is void, and anything not validly contracted except by fulfilling it. And with Allah, the Exalted, lies all divine enablement.

L22736 There remains the ḥadīth of Barirah and Jābir concerning the Battle of the Camel; thus, we conclude—and all success is from Allah, the Most High.

L22737–22739 We have narrated what Muḥammad ibn Saʿīd ibn Nabāt narrated to us, that Muḥammad ibn Aḥmad ibn Mufarrij informed us, that ʿAbdullāh ibn Jaʿfar ibn al-Ward informed us, that Yaḥyā ibn Ayyūb ibn Bādī al-ʿAllāf informed us, that Yaḥyā ibn Bukayr informed us, that al-Layth ibn Saʿd narrated from Hishām ibn ʿUrwah from ʿUrwah from ʿĀ'ishah, who said: Barīrah came to me and said, "I contracted with my owners for nine ounces - one ounce each

[33] **Hadith references (L22734):** Sunan Ibn Majah 2521.

مِلْكِ الْمُشْتَرِي فَالْبَيْعُ جَائِزٌ وَالشَّرْطُ بَاطِلٌ، كَالْوَلَاءِ وَنَحْوِهِ، وَكُلُّ بَيْعٍ اُشْتُرِطَ فِيهِ عَمَلٌ أَوْ مَالٌ عَلَى الْبَائِعِ أَوْ عَمَلُ الْمُشْتَرِي فَالْبَيْعُ وَالشَّرْطُ بَاطِلَانِ مَعًا.

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَطَأٌ مِنْ أَبِي ثَوْرٍ، لِأَنَّ مَنَافِعَ مَا بَاعَ الْبَائِعُ مِنْ دَارٍ، أَوْ عَبْدٍ، أَوْ دَابَّةٍ، أَوْ ثَوْبٍ، أَوْ غَيْرِ ذَلِكَ، فَإِنَّمَا هِيَ لَهُ مَا دَامَ كُلُّ ذَلِكَ فِي مِلْكِهِ، فَإِذَا خَرَجَ عَنْ مِلْكِهِ فَمِنَ الْبَاطِلِ وَالْمُحَالِ أَنْ يَمْلِكَ مَا لَمْ يَخْلُقْهُ اللَّهُ تَعَالَى بَعْدُ، مِنْ مَنَافِعِ مَا بَاعَ، فَإِذَا أَحْدَثَهَا اللَّهُ تَعَالَى، فَإِنَّمَا أَحْدَثَهَا اللَّهُ تَعَالَى فِي مِلْكِ غَيْرِهِ، فَهِيَ مِلْكٌ لِمَنْ حَدَثَتْ فِي مِلْكِهِ - فَبَطَلَ تَوْجِيهُ أَبِي ثَوْرٍ، وَكَذَلِكَ بَاقِي تَقْسِيمِهِ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ.

وَأَمَّا قَوْلُ أَحْمَدَ: فَخَطَأٌ أَيْضًا: لِأَنَّ تَحْرِيمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الشَّرْطَيْنِ فِي بَيْعٍ لَيْسَ مُبِيحًا لِشَرْطٍ وَاحِدٍ وَلَا مُحَرِّمًا لَهُ، لَكِنَّهُ مَسْكُوتٌ عَنْهُ فِي هَذَا الْخَبَرِ، فَوَجَبَ طَلَبُ حُكْمِهِ فِي غَيْرِهِ، فَوَجَدْنَا قَوْلَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

فَبَطَلَ الشَّرْطُ الْوَاحِدُ، وَكُلُّ مَا لَمْ يُعْقَدْ إِلَّا بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَبَقِيَ حَدِيثُ بَرِيرَةَ، وَجَابِرٍ فِي الْجَمَلِ، فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

إِنَّنَا رُوِّينَا مَا حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ أَنَا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ أَنَا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِيٍّ الْعَلَّافُ أَنَا يَحْيَى بْنُ بُكَيْرٍ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ عُرْوَةَ عَنْ «عَائِشَةَ قَالَتْ جَاءَتْنِي بَرِيرَةُ فَقَالَتْ: كَاتَبْتُ أَهْلِي عَلَى تِسْعِ أَوَاقٍ فِي كُلِّ عَامٍ أُوقِيَّةٌ فَأَعِينِينِي؟ فَقَالَتْ عَائِشَةُ: إِنْ أَحَبَّ أَهْلُكِ أَنْ

year. Will you assist me?" ʿĀʾishah replied, "If your owners agree that I pay them the entire sum at once, and that the right of patronage (walāʾ) over you belongs to me, I will do so." She presented this to them, but they refused unless the patronage (walāʾ) remained with them. When Allah's Messenger (peace and blessings be upon him) heard of this, he asked her, and she informed him. He said, "Take her and stipulate against them the patronage (walāʾ), for the patronage belongs only to the one who frees the slave." So she did. Later, Allah's Messenger (peace and blessings be upon him) stood before the people in the evening, praised Allah, the Mighty and Majestic, then said, "What is the matter with some men who impose conditions not ordained in Allah's Book? What..." Any condition not in the Book of Allah is void—even if there are a hundred conditions—for Allah's decree is more rightful, and His condition is firmer. He then narrated the remainder of the report.

أَعُدَّهَا لَهُمْ عِدَّةً وَاحِدَةً، وَيَكُونَ لِي وَلَاؤُكِ فَعَلْتُ؟ فَعَرَضَتْهَا عَلَيْهِمْ، فَأَبَوْا إِلَّا أَنْ يَكُونَ الْوَلَاءُ لَهُمْ فَسَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ، فَسَأَلَهَا، فَأَخْبَرَتْهُ، فَقَالَ: خُذِيهَا وَاشْتَرِطِي لَهُمُ الْوَلَاءَ، فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ فَفَعَلَتْ، فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَشِيَّةً فِي النَّاسِ، فَحَمِدَ اللَّهَ عَزَّ وَجَلَّ، ثُمَّ قَالَ: مَا بَالُ رِجَالٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، مَا كَانَ مِنْ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ - وَإِنْ كَانَ مِائَةَ شَرْطٍ - قَضَاءُ اللَّهِ أَحَقُّ، وَشَرْطُ اللَّهِ أَوْثَقُ» وَذَكَرَ بَاقِيَ الْخَبَرِ ".

L22740 From the transmission of Al-Bukhari: I am Abu Nu'aym, narrated by 'Abdul Wahid ibn Ayman, narrated by my father, who said: "I entered upon 'Aishah (may Allah be pleased with her), and she said: 'Barirah entered—while she was a mukātabah slave—and said: 'Purchase me and emancipate me¡' 'Aishah replied: 'Yes." Barirah then said: 'Do not sell me unless they stipulate my al-walā' (right of patronage)." 'Aishah responded: 'I have no need for that¿' The Messenger of Allah (peace be upon him) then told her: 'Purchase her, emancipate her, and allow them to stipulate whatever they wish." 'Aishah purchased her, emancipated her, and her owners stipulated the al-walā'. The Messenger of Allah (peace be upon him) declared: 'Al-walā' belongs to the emancipator, even if there are a hundred conditions.'"

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا أَبُو نُعَيْمٍ أَنَا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنَ أَنَا أَبِي قَالَ: «دَخَلْتُ عَلَى عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فَقَالَتْ: دَخَلَتْ بَرِيرَةُ - وَهِيَ مُكَاتَبَةٌ - وَقَالَتْ: اشْتَرِينِي وَأَعْتِقِينِي؟ قَالَتْ: نَعَمْ، قَالَتْ: لَا تَبِيعُونِي حَتَّى يَشْتَرِطُوا وَلَائِي؟ فَقَالَتْ عَائِشَةُ: لَا حَاجَةَ لِي بِذَلِكَ؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اشْتَرِيهَا وَأَعْتِقِيهَا وَدَعِيهِمْ يَشْتَرِطُوا مَا شَاءُوا؟ فَاشْتَرَتْهَا عَائِشَةُ فَأَعْتَقَتْهَا، وَاشْتَرَطَ أَهْلُهَا الْوَلَاءَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوَلَاءُ لِمَنْ أَعْتَقَ وَإِنْ كَانَ مِائَةَ شَرْطٍ» .

L22741 Abū Muḥammad said: The position concerning this report is to adhere to its apparent meaning without addition, nor false conjecture attributed to the Messenger of Allah—peace and blessings of Allah be upon him—nor distortion of the wording. If one stipulated the right of patronage over the buyer in a sale intended for manumission, this would not invalidate the sale in any way. The sale under such a condition would remain permissible, proper, and allowed, even though the right of patronage in such cases remains with the emancipator. The seller's stipulation of patronage for himself was permissi-

قَالَ أَبُو مُحَمَّد: فَالْقَوْلُ فِي هَذَا الْخَبَرِ هُوَ عَلَى ظَاهِرِهِ دُونَ تَزَيُّدٍ، وَلَا ظَنٍّ كَاذِبٍ، مُضَافٍ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا تَحْرِيفِ اللَّفْظِ، وَهُوَ إنْ اشْتَرَطَ الْوَلَاءَ عَلَى الْمُشْتَرِي فِي الْمَبِيعِ لِلْعِتْقِ كَانَ لَا يَضُرُّ الْبَيْعَ شَيْئًا، وَكَانَ الْبَيْعُ عَلَى هَذَا الشَّرْطِ جَائِزًا حَسَنًا مُبَاحًا، وَإِنْ كَانَ الْوَلَاءُ مَعَ ذَلِكَ لِلْمُعْتِقِ، وَكَانَ اشْتِرَاطُ الْبَائِعِ الْوَلَاءَ لِنَفْسِهِ مُبَاحًا غَيْرَ مَنْهِيٍّ عَنْهُ، ثُمَّ نَسَخَ اللَّهُ عَزَّ وَجَلَّ ذَلِكَ وَأَبْطَلَهُ، إذْ خَطَبَ رَسُولُ اللَّهِ

ble and not prohibited. Then Allah the Almighty abrogated and nullified this when the Messenger of Allah—peace and blessings of Allah be upon him—addressed the matter as we mentioned. At that point, He prohibited stipulating this condition or any other conditions in totality, except those stipulated in the Book of Allah—with no basis for such a prohibition existing prior to that at all. Allah the Exalted has said: {It is not for a believing man or woman, when Allah and His Messenger have decreed a matter, to have any choice in their affair} [Al-Aḥzāb 33:36].[34]

L22742 And He, the Exalted, said: {The Prophet has more right over the believers than their own selves} [Al-Ahzab: 6].[35]

L22743 The proof of this is that he (peace be upon him) permitted it, and he (peace be upon him) does not sanction what is unlawful, nor does he delude or deceive anyone. If it is asked: "Why do you [jurists] not permit the sale conditional upon emancipation in this narration?"

L22744 We said: There is no stipulation whatsoever requiring them to manumit her, and had such a stipulation existed, we would have upheld it. It is conceivable that they stipulated their right to her walā' (allegiance) if she were manumitted at any time, or if a female master manumitted her, since the ḥadīth explicitly states they stipulated her walā' exclusively for themselves. It is impermissible to add anything to the transmitted reports—neither in wording nor meaning—and whoever does so becomes a liar. However, we definitively assert that if sale conditional upon manumission were valid, the Messenger of Allah—peace and blessings of Allah be upon him—would have explicitly legislated it. Since he did not, this constitutes a condition absent from the Book of Allah and is therefore invalid. There is no distinction between sale conditional upon manumission, charity, gift, or tadbīr (deferred manumission)—all such conditions are impermissible.

L22745–22746 As for the narration of Jabir: We have transmitted it via al-Bukhari's chain: Abu Nu'aym → Zakariyyā → 'Āmir al-Sha'bī, who said: Jābir ibn 'Abdullāh

[34]**Qur'an references (L22741):** Qur'an 33:36 (Al-Ahzab).
[35]**Qur'an references (L22742):** Qur'an 33:6 (Al-Ahzab).

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ - كَمَا ذَكَرْنَا - فَحِينَئِذٍ حَرَّمَ أَنْ يُشْتَرَطَ هَذَا الشَّرْطُ أَوْ غَيْرُهُ جُمْلَةً، إلَّا شَرْطًا فِي كِتَابِ اللَّهِ تَعَالَى، لَا قَبْلَ ذَلِكَ أَصْلًا - وَقَدْ قَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

وَقَالَ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦]

بُرْهَانُ ذَلِكَ -: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ أَبَاحَ ذَلِكَ، وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يُبِيحُ الْبَاطِلَ، وَلَا يَغُرُّ أَحَدًا وَلَا يَخْدَعُهُ - فَإِنْ قِيلَ: فَهَلَّا أَجَزْتُمْ الْبَيْعَ بِشَرْطِ الْعِتْقِ فِي هَذَا الْحَدِيثِ؟

قُلْنَا: لَيْسَ فِيهِ اشْتِرَاطُهُمْ عِتْقَهَا أَصْلًا وَلَوْ كَانَ لَقُلْنَا بِهِ، وَقَدْ يُمْكِنُ أَنَّهُمْ اشْتَرَطُوا وَلَاءَهَا إنْ أُعْتِقَتْ يَوْمًا مَا، أَوْ إنْ أَعْتَقَتْهَا، إذْ إنَّمَا فِي الْحَدِيثِ أَنَّهُمْ اشْتَرَطُوا وَلَاءَهَا لِأَنْفُسِهِمْ فَقَطْ، وَلَا يَحِلُّ أَنْ يُزَادَ فِي الْأَخْبَارِ شَيْءٌ، لَا لَفْظًا وَلَا مَعْنًى، فَيَكُونُ مَنْ فَعَلَ ذَلِكَ كَاذِبًا، إلَّا أَنَّا نَقْطَعُ وَنَبُتُّ أَنَّ الْبَيْعَ بِشَرْطِ الْعِتْقِ لَوْ كَانَ جَائِزًا لَنَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ وَبَيَّنَهُ، فَإِذْ لَمْ يَفْعَلْ فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَلَا فَرْقَ بَيْنَ الْبَيْعِ بِشَرْطِ الْعِتْقِ وَبَيْنَ بَيْعِهِ بِشَرْطِ الصَّدَقَةِ، أَوْ بِشَرْطِ الْهِبَةِ، أَوْ بِشَرْطِ التَّدْبِيرِ - وَكُلُّ ذَلِكَ لَا يَجُوزُ.

وَأَمَّا حَدِيثُ جَابِرٍ: فَإِنَّنَا رُوِّينَاه مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا أَبُو نُعَيْمٍ أَنَا زَكَرِيَّا سَمِعْتُ عَامِرًا الشَّعْبِيَّ يَقُولُ: حَدَّثَنِي «جَابِرُ بْنُ عَبْدِ اللَّهِ أَنَّهُ كَانَ يَسِيرُ عَلَى جَمَلٍ لَهُ قَدْ أَعْيَا فَمَرَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَضَرَبَهُ، فَدَعَا لَهُ، فَسَارَ سَيْرًا لَيْسَ يَسِيرُ مِثْلَهُ، ثُمَّ قَالَ: بِعْنِيهِ

narrated to me that he was traveling on his camel which had grown weary. The Prophet—peace and blessings of Allah be upon him—passed by, struck it, and supplicated for it. The camel then moved in a manner unlike any movement before. He said, “Sell it to me for an uqiyyah?” I replied, “No.” He repeated, “Sell it to me for an uqiyyah?” So I sold it to him but stipulated retaining its use to transport my belongings to my family. When we arrived, I brought him the camel, and he paid me its price. As I departed, he sent someone after me and said, “I would not take your camel. Take your camel—it is your property.”

بِأُوقِيَّةٍ؟ قُلْتُ: لَا، ثُمَّ قَالَ: بِعْنِيهِ بِأُوقِيَّةٍ؟ فَبِعْتُهُ وَاسْتَثْنَيْتُ حُمْلَانَهُ إِلَى أَهْلِي - فَلَمَّا قَدِمْنَا أَتَيْتُهُ بِالْجَمَلِ وَنَقَدَنِي ثَمَنَهُ ثُمَّ انْصَرَفْتُ فَأَرْسَلَ عَلَى إِثْرِي، فَقَالَ: مَا كُنْتُ لِآخُذَ جَمَلَكَ، فَخُذْ جَمَلَكَ ذَلِكَ، فَهُوَ مَالُكَ» .

L22747 Via the chain of Muslim: I am Ibn Numayr, from my father, from Zakariyya—who is Ibn Abi Za’idah—from Amir al-Sha‘bi: Jabir ibn Abdullah narrated to me and mentioned this account, in which it states: “The Messenger of Allah—peace and blessings be upon him—said to me, ’Sell it to me.’ So I sold it to him for an *awqiyyah*, stipulating that he load it to my family. When I arrived, I brought him the camel, and he paid me its price. Then I returned, so he sent someone after me and said, ’Do you think I bargained with you to take your camel? Take your camel and your *dirhams*—it is yours.’”

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا ابْنُ نُمَيْرٍ أَنَا أَبِي أَنَا زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ عَامِرٍ الشَّعْبِيِّ حَدَّثَنِي جَابِرُ بْنُ عَبْدِ اللَّهِ فَذَكَرَ هَذَا الْخَبَرَ وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: بِعْنِيهِ؟ فَبِعْتُهُ بِأُوقِيَّةٍ، وَاسْتَثْنَيْتُ عَلَيْهِ حُمْلَانَهُ إِلَى أَهْلِي - فَلَمَّا بَلَغْتُ أَتَيْتُهُ بِالْجَمَلِ فَنَقَدَنِي ثَمَنَهُ، ثُمَّ رَجَعْتُ فَأَرْسَلَ فِي إِثْرِي، فَقَالَ: أَتَرَانِي مَاكَسْتُكَ لِآخُذَ جَمَلَكَ، خُذْ جَمَلَكَ وَدَرَاهِمَكَ، فَهُوَ لَكَ» .

L22748 From the narration chain of Ahmad ibn Shu’ayb: Muhammad ibn al-‘Ala’ narrated to us, Abu Mu‘awiyah narrated to us, from al-A‘mash, from Salim ibn Abi al-Ja‘d, from Jabir ibn ‘Abd Allah, who mentioned this narration. In it: “The Messenger of Allah (peace and blessings be upon him) said to him: ’What became of the camel? Sell it to me.’ I said: ’O Messenger of Allah, rather it is yours.’ He said: ’No, rather, sell it to me.’ I said: ’No, rather it is yours.’ He said: ’No, rather, sell it to me. I have acquired it for an ūqiyyah. Ride it, and when you reach Medina, bring it to us.’ When I arrived in Medina, I brought it to him. He said to Bilal: ’O Bilal, weigh for him an ūqiyyah and add a qīrāṭ to it.’”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْعَلَاءِ أَنَا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ فَذَكَرَ هَذَا الْخَبَرَ، وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: مَا فَعَلَ الْجَمَلُ بِعْنِيهِ؟ قُلْت: يَا رَسُولَ اللَّهِ بَلْ هُوَ لَكَ قَالَ: لَا، بَلْ بِعْنِيهِ؟ قُلْتُ: لَا، بَلْ هُوَ لَكَ؟ قَالَ لَا، بَلْ بِعْنِيهِ، قَدْ أَخَذْتُهُ بِأُوقِيَّةٍ، ارْكَبْهُ، فَإِذَا قَدِمْتَ الْمَدِينَةَ فَأْتِنَا بِهِ؟ فَلَمَّا قَدِمْتُ الْمَدِينَةَ جِئْتُهُ بِهِ، فَقَالَ لِبِلَالٍ يَا بِلَالُ زِنْ لَهُ أُوقِيَّةً وَزِدْهُ قِيرَاطًا» .

L22749 Thus, we have transmitted it through the *isnād* of ʿAṭāʾ ibn Jābir.

هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ عَطَاءِ بْنِ جَابِرٍ.

L22750 Abu Muhammad said: It is narrated that the riding of Jabir’s camel was a voluntary act by the Messenger of Allah—peace and blessings be upon him.

There is a discrepancy in the narrations transmitted through al-Sha'bi and Abu al-Zubayr. It is narrated from both of them, on the authority of Jabir, that it was a stipulation from Jabir. It is also narrated from them that it was a voluntary act by the Messenger of Allah.

قَالَ أَبُو مُحَمَّدٍ: رُوِيَ هَذَا أَنَّ رُكُوبَ جَابِرٍ الْجَمَلَ كَانَ تَطَوُّعًا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاخْتُلِفَ فِيهِ عَلَى الشَّعْبِيِّ، وَأَبِي الزُّبَيْرِ فَرُوِيَ عَنْهُمَا عَنْ جَابِرٍ، أَنَّهُ كَانَ شَرْطًا مِنْ جَابِرٍ - وَرُوِيَ عَنْهُمَا أَنَّهُ كَانَ تَطَوُّعًا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22751–22752 We concede to them that it was a condition, and then we say to them—and with Allah, the Exalted, is success—: Indeed, it has been soundly established that the Messenger of Allah—peace and blessings be upon him—said: "I took it for an Uqiyyah."

فَنَحْنُ نُسَلِّمُ لَهُمْ أَنَّهُ كَانَ شَرْطًا، ثُمَّ نَقُولُ لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «قَدْ أَخَذْتُهُ بِأُوقِيَّةٍ» .

L22753 It has been authentically reported from him (peace be upon him) that he said: "Do you think I haggled with you to take your camel? I would never take your camel. Take that camel of yours, for it is your property," as we mentioned earlier.

وَصَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ قَالَ: «أَتَرَانِي مَاكَسْتُكَ لِآخُذَ جَمَلَكَ؟ مَا كُنْتُ لِآخُذَ جَمَلَكَ فَخُذْ جَمَلَكَ ذَلِكَ، فَهُوَ مَالُكَ» كَمَا أَوْرَدْنَا آنِفًا.

L22754 It is established with certainty that there are two distinct acts of taking: one which the Messenger of Allah—peace and blessings be upon him—performed, and another he did not perform, but rather entirely disavowed. Whoever claims all of this constitutes a single act of taking has belied the Messenger of Allah—peace and blessings be upon him—in his statements, and this is pure disbelief. Therefore, it must necessarily be that there are two distinct acts of taking, for the act of taking he—peace and blessings be upon him—reported about himself is undoubtedly different from the act he wholly disavowed. There remains no alternative but to adhere to the apparent meaning of the narration: that he—peace and blessings be upon him—took possession and concluded the purchase, then exercised his choice before departing to relinquish taking it.

صَحَّ يَقِينًا أَنَّهُمَا أَخْذَانِ: أَحَدُهُمَا فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْآخَرُ لَمْ يَفْعَلْهُ، بَلْ انْتَفَى عَنْهُ، وَمَنْ جَعَلَ كُلَّ ذَلِكَ أَخْذًا وَاحِدًا فَقَدْ كَذَّبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كَلَامِهِ، وَهَذَا كُفْرٌ مَحْضٌ، فَإِذْ لَا بُدَّ مِنْ أَنَّهُمَا أَخْذَانِ، لِأَنَّ الْأَخْذَ الَّذِي أَخْبَرَ بِهِ - عَلَيْهِ السَّلَامُ - عَنْ نَفْسِهِ هُوَ بِلَا شَكٍّ غَيْرُ الْأَخْذِ الَّذِي انْتَفَى عَنْهُ أَلْبَتَّةَ، فَلَا سَبِيلَ إلَى غَيْرِ مَا يُحْمَلُ عَلَيْهِ ظَاهِرُ الْخَبَرِ، وَهُوَ إنَّهُ - عَلَيْهِ السَّلَامُ - أَخَذَهُ وَابْتَاعَهُ، ثُمَّ تَخَيَّرَ قَبْلَ التَّفَرُّقِ تَرْكَ أَخْذِهِ.

L22755 And it has been established that during the act of haggling, that [practice] also applied to the Prophet (peace be upon him) personally, for he informed him that he had not haggled with him in order to take his camel.

وَصَحَّ أَنَّ فِي حَالِ الْمُمَاكَسَةِ كَانَ ذَلِكَ أَيْضًا فِي نَفْسِهِ - عَلَيْهِ السَّلَامُ -؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَخْبَرَهُ أَنَّهُ لَمْ يُمَاكِسْهُ لِيَأْخُذَ جَمَلَهُ -.

L22756 Thus, it is confirmed that the sale was never finalized in it at all, for Jābir stipulated only the riding of his own camel. This is the implication of the texts of the reports when their phrases are gathered.

فَصَحَّ أَنَّ الْبَيْعَ لَمْ يَتِمَّ فِيهِ قَطُّ، فَإِنَّمَا اشْتَرَطَ جَابِرٌ رُكُوبَ جَمَلِ نَفْسِهِ فَقَطْ، وَهَذَا هُوَ مُقْتَضَى لَفْظِ الْأَخْبَارِ، إِذَا جُمِعَتْ أَلْفَاظُهَا.

L22757 Since it has been established that this sale was not completed, and there is no basis whatsoever in any wording of that report indicating the sale was completed with that condition, it is therefore invalid that there could be any valid argument in this report regarding the permissibility of selling an animal while excluding riding it whatsoever. And success is only from Allah, the Exalted.

فَإِذْ قَدْ صَحَّ أَنَّ ذَلِكَ الْبَيْعَ لَمْ يَتِمَّ وَلَمْ يُوجَدْ فِي شَيْءٍ مِنْ أَلْفَاظِ ذَلِكَ الْخَبَرِ أَصْلًا: أَنَّ الْبَيْعَ تَمَّ بِذَلِكَ الشَّرْطِ، فَقَدْ بَطَلَ أَنْ يَكُونَ فِي هَذَا الْخَبَرِ: حُجَّةٌ فِي جَوَازِ بَيْعِ الدَّابَّةِ وَاسْتِثْنَاءِ رُكُوبِهَا أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L22758 As for the Ḥanafī and Shāfiʿī schools, they do not permit this condition at all. The discussion regarding it exists solely between us and the Mālikī school. This text does not specify a day, nor does it distinguish a short distance from a long one. Whoever claims that has told a lie. How then did they derive the specification of one measure over another?

فَأَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ: فَلَا يَقُولُونَ بِجَوَازِ هَذَا الشَّرْطِ أَصْلًا، فَإِنَّمَا الْكَلَامُ بَيْنَنَا وَبَيْنَ الْمَالِكِيِّينَ فِيهِ فَقَطْ، وَلَيْسَ فِي هَذَا الْخَبَرِ تَحْدِيدُ يَوْمٍ، وَلَا مَسَافَةٍ قَلِيلَةٍ مِنْ كَثِيرَةٍ، وَمَنْ ادَّعَى ذَلِكَ فَقَدْ كَذَبَ، فَمِنْ أَيْنَ خَرَجَ لَهُمْ تَحْدِيدُ مِقْدَارٍ دُونَ مِقْدَارٍ؟

L22759 They are obligated because they did not permit the sale of an animal on the condition of riding it for a month - nor ten days - invalidated this condition, permitted its sale with the stipulation of riding it for a short distance, to define the measure that prohibits what they prohibited versus the measure they permitted. This is an obligation upon them; otherwise, they have abandoned those who follow them in the rashness of their eye's impulse and in matters they cannot know - perhaps they might commit what is unlawful or prevent what is lawful, and this is manifest error. If they define any specific measure for this, they would be asked to provide proof for it if they are truthful. Thus, the invalidity of this position becomes evident with undeniable certainty beyond doubt.

وَيَلْزَمُهُمْ إِذْ لَمْ يُجِيزُوا بَيْعَ الدَّابَّةِ عَلَى شَرْطِ رُكُوبِهَا شَهْرًا - وَلَا عَشَرَةَ أَيَّامٍ - وَأَبْطَلُوا هَذَا الشَّرْطَ، وَأَجَازُوا بَيْعَهَا، وَاشْتِرَاطَ رُكُوبِهَا مَسَافَةً يَسِيرَةً: أَنْ يَحُدُّوا الْمِقْدَارَ الَّذِي يُحَرَّمُ بِهِ مَا حَرَّمُوهُ مِنْ ذَلِكَ الْمِقْدَارِ الَّذِي حَلَّلُوهُ، هَذَا فَرْضٌ عَلَيْهِمْ، وَإِلَّا فَقَدْ تَرَكُوا مَنْ اتَّبَعَهُمْ فِي سُخْنَةِ عَيْنِهِ، وَفِي مَا لَا يَدْرِي لَعَلَّهُ يَأْتِي حَرَامًا أَوْ يَمْنَعُ حَلَالًا، وَهَذَا ضَلَالٌ مُبِينٌ، فَإِنْ حَدُّوا فِي ذَلِكَ مِقْدَارًا مَا، سُئِلُوا عَنِ الْبُرْهَانِ فِي ذَلِكَ إِنْ كَانُوا صَادِقِينَ؟ فَلَاحَ فَسَادُ هَذَا الْقَوْلِ بِيَقِينٍ لَا شَكَّ فِيهِ.

L22760–22761 Among the certain falsehoods is that Allah the Exalted would prohibit us from what He has not explicitly detailed for us from beginning to end for us to avoid it and engage in alternatives, if He were to impose upon us what is beyond our capability - such as knowing the unseen - when Allah the Exalted has already safeguarded us from that.

وَمِنَ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يُحَرِّمَ اللَّهُ تَعَالَى عَلَيْنَا مَا لَا يُفَصِّلُهُ لَنَا مِنْ أَوَّلِهِ لِآخِرِهِ لِنَجْتَنِبَهُ وَنَأْتِيَ مَا سِوَاهُ، إِذَا كَانَ تَعَالَى يُكَلِّفُنَا مَا لَيْسَ فِي وُسْعِنَا، مِنْ أَنْ نَعْلَمَ الْغَيْبَ وَقَدْ أَمَّنَّا اللَّهُ تَعَالَى مِنْ ذَلِكَ.

L22762 If they say, "Indeed, some wordings of the report indicate that this occurred when the two neared the city?"

فَإِنْ قَالُوا: إِنَّ فِي بَعْضِ أَلْفَاظِ الْخَبَرِ: أَنَّ ذَلِكَ كَانَ حِينَ دَنَوَا مِنَ الْمَدِينَةِ؟

قُلْنَا: الدُّنُوُّ يَخْتَلِفُ، وَلَا يَكُونُ إِلَّا بِالْإِضَافَةِ، فَمَنْ أَتَى مِنْ تَبُوكَ فَكَانَ مِنَ الْمَدِينَةِ عَلَى سِتِّ مَرَاحِلَ أَوْ خَمْسٍ فَقَدْ دَنَا مِنْهَا، وَيَكُونُ الدُّنُوُّ أَيْضًا عَلَى رُبْعِ مِيلٍ - وَأَقَلَّ أَوْ أَكْثَرَ - فَالسُّؤَالُ بَاقٍ عَلَيْكُمْ بِحَسَبِهِ.

We said: Proximity varies and exists only through relative measurement. For one who travels from Tabuk and is five or six stages distant from Medina is thereby near to it. Proximity may also be a quarter of a mile (or slightly less or more). Thus, the question remains for you to resolve according to this principle.

وَأَيْضًا: فَإِنَّ هَذِهِ اللَّفْظَةَ إِنَّمَا هِيَ فِي رِوَايَةِ سَالِمِ بْنِ أَبِي الْجَعْدِ، وَهُوَ إِنَّمَا رَوَى: أَنَّ رُكُوبَ جَابِرٍ كَانَ تَطَوُّعًا مِنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَشَرْطًا.

Moreover, this wording is only found in the narration of Salim ibn Abi al-Ja‘d, who narrated that Jabir’s riding was a voluntary act from the Prophet—may Allah bless him and grant him peace—and a condition.

وَفِي رِوَايَةِ الْمُغِيرَةِ عَنِ الشَّعْبِيِّ عَنْ جَابِرٍ دَلِيلٌ عَلَى أَنَّ ذَلِكَ كَانَ فِي مَسِيرِهِمْ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى غَزَاةٍ - وَأَيْضًا فَلَيْسَ فِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنَعَ مِنْ ذَلِكَ الشَّرْطِ إِلَّا فِي مِثْلِ تِلْكَ الْمَسَافَةِ، فَإِذْ لَمْ يَقِيسُوا عَلَى تِلْكَ الْمَسَافَةِ سَائِرَ الْمَسَافَاتِ فَلَا تَقِيسُوا عَلَى تِلْكَ الطَّرِيقِ سَائِرَ الطُّرُقِ وَلَا تَقِيسُوا عَلَى اشْتِرَاطِ ذَلِكَ فِي رُكُوبِ جَمَلٍ سَائِرَ الدَّوَابِّ، وَإِلَّا فَأَنْتُمْ مُتَنَاقِضُونَ مُتَحَكِّمُونَ بِالْبَاطِلِ.

In the narration of Al-Mughīrah from Al-Sha‘bī from Jābir, there is evidence that this occurred during their journey with the Prophet—may Allah’s blessings and peace be upon him—to a military campaign. Furthermore, it does not indicate that the Prophet—may Allah’s blessings and peace be upon him—prohibited that condition except in such a distance. Since they did not analogize from that specific distance to all other distances, do not apply analogy from that route to other routes, nor analogize the stipulation of that in riding a camel to all other beasts of burden. Otherwise, you are contradicting yourselves and imposing falsehood.

وَإِذْ قِسْتُمْ عَلَى تِلْكَ الطَّرِيقِ سَائِرَ الطُّرُقِ، وَعَلَى الْجَمَلِ سَائِرَ الدَّوَابِّ فَقِيسُوا عَلَى تِلْكَ الْمَسَافَةِ سَائِرَ الْمَسَافَاتِ؟ كَمَا فَعَلْتُمْ فِي صَلَاتِهِ - عَلَيْهِ السَّلَامُ - رَاكِبًا مُتَوَجِّهًا إِلَى خَيْبَرَ إِلَى غَيْرِ الْقِبْلَةِ: فَقِسْتُمْ عَلَى تِلْكَ الْمَسَافَةِ سَائِرَ الْمَسَافَاتِ: فَلَاحَ أَنَّهُمْ لَا مُتَعَلَّقَ لَهُمْ فِي هَذَا الْخَبَرِ أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

And when you applied qiyas to that path for all other paths, and to the camel for all riding animals, then apply qiyas to that distance for all other distances? Just as you did regarding the Prophet’s prayer—peace be upon him—while riding toward Khaybar without facing the qibla: you applied qiyas to that distance for all other distances. Thus it became evident that they have no valid basis in this report whatsoever—and success is from Allah, the Exalted.

وَقَدْ جَاءَتْ عَنِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - آثَارٌ فِي الشُّرُوطِ فِي الْبَيْعِ خَالَفُوهَا، فَمِنْ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ.

There have come from the Companions—may Allah be pleased with them—traditions regarding conditions in sales that they opposed. Among these is what we have narrated via the transmission of ʿAbd al-Razzāq from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyab, who said:

The Companions of the Messenger of Allah—peace and blessings be upon him and his family—said: “We wished that Uthman ibn Affan and Abd al-

قَالَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: وَدِدْنَا لَوْ أَنَّ عُثْمَانَ بْنَ عَفَّانَ، وَعَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ، قَدْ تَبَايَعَا حَتَّى نَنْظُرَ أَيُّهُمَا أَعْظَمُ جِدًّا فِي التِّجَارَةِ، فَاشْتَرَى عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ مِنْ عُثْمَانَ فَرَسًا بِأَرْضٍ أُخْرَى بِأَرْبَعِينَ أَلْفًا أَوْ نَحْوِهَا إِنْ أَدْرَكَتْهَا الصَّفْقَةُ وَهِيَ سَالِمَةٌ، ثُمَّ أَجَازَ قَلِيلًا، ثُمَّ رَجَعَ فَقَالَ: أَزِيدُكَ سِتَّةَ آلَافٍ إِنْ وَجَدَهَا رَسُولِي سَالِمَةً؟

Rahman ibn Awf had engaged in a transaction so we might observe which of them was more vigorous in commerce. Then Abd al-Rahman ibn Awf purchased a horse from Uthman in exchange for another plot of land and forty thousand—or around that amount—if the transaction is completed in time while the land remains intact. He then went a short way, then returned and said: 'I will add six thousand more to you if my messenger finds the land intact.'"

قَالَ نَعَمْ، فَوَجَدَهَا رَسُولُ عَبْدِ الرَّحْمَنِ قَدْ هَلَكَتْ، وَخَرَجَ مِنْهَا بِالشَّرْطِ الْآخَرِ.

L22769–22770 He said, "Yes," and the agent of ʿAbd al-Raḥmān found that she had perished, and he concluded with the other condition.

قِيلَ لِلزُّهْرِيِّ: فَإِنْ لَمْ يَشْتَرِطْ قَالَ: فَهِيَ مِنَ الْبَائِعِ.

L22771 Al-Zuhri was asked, "What if he did not stipulate?" He replied, "Then it falls upon the seller."

فَهَذَا عَمَلُ عُثْمَانَ، وَعَبْدِ الرَّحْمَنِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَعِلْمِهِمْ لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْهُمْ، وَلَمْ يُنْكِرْ ذَلِكَ سَعِيدٌ، وَصَوَّبَهُ الزُّهْرِيُّ.

L22772 This is the action of ʿUthmān and ʿAbd al-Raḥmān in the presence of the Companions (may Allah be pleased with them) and with their knowledge, with no dissenter known among them opposing them. Saʿīd did not reject this, and al-Zuhrī affirmed it.

فَخَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: كُلَّ هَذَا، وَقَالُوا: لَعَلَّ الرَّسُولَ يُخْطِئُ أَوْ يُبْطِئُ أَوْ يَعْرِضُهُ عَارِضٌ، فَلَا يَدْرِي مَتَى يَصِلُ، وَهُمْ يُشَنِّعُونَ مِثْلَ هَذَا إِذَا خَالَفَ تَقْلِيدَهُمْ.

L22773 The Hanafis, Malikis, and Shafi'is opposed all of this and said: "Perhaps the Messenger might err, delay, or encounter an obstacle, so he would not know when he would arrive." Yet they would condemn such a thing if it contradicted their taqlid.

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا مُحَمَّدُ بْنُ قَيْسٍ الْأَسَدِيُّ عَنْ عَوْنِ بْنِ عَبْدِ اللَّهِ عَنْ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: إِنَّ تَمِيمًا الدَّارِيَّ بَاعَ دَارِهِ وَاشْتَرَطَ سُكْنَاهَا حَيَاتَهُ وَقَالَ: إِنَّمَا مَثَلِي مَثَلُ أُمِّ مُوسَى رُدَّ عَلَيْهَا وَلَدُهَا، وَأُعْطِيَتْ أَجْرَ رَضَاعِهَا.

L22774 From Waki'ʿ's transmission: Muhammad ibn Qays al-Asadi narrated from ʻAwn ibn ʻAbdullah from ʻUtbah ibn Masʻud, who said: Tamim al-Dari sold his house but stipulated the right to reside in it during his lifetime. He remarked: "Indeed, my example is like that of the mother of Musa: her child was returned to her, and she was granted the reward for nursing him."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ مُرَّةَ بْنِ شَرَاحِيلَ قَالَ: بَاعَ صُهَيْبٌ دَارَه مِنْ عُثْمَانَ وَاشْتَرَطَ سُكْنَاهَا - وَبِهِ يَأْخُذُ أَبُو ثَوْرٍ، فَخَالَفُوهُ، وَلَا مُخَالِفَ لِذَلِكَ مِنَ الصَّحَابَةِ مِمَّنْ يُجِيزُ الشَّرْطَ فِي الْبَيْعِ.

L22775 From the narration of Waki' through Sufyan al-Thawri through Abu Ishaq al-Sabi'i through Murrah ibn Sharahil, who said: Suhayb sold his house to Uthman with the condition that he retain residency in it – and this is the position Abu Thawr adopts. Others opposed him, but none of the Companions who permit contractual conditions in sales objected to this ruling.

وَقَدْ ذَكَرْنَا قَبْلُ ابْتِيَاعَ نَافِعِ بْنِ عَبْدِ الْحَارِثِ دَارًا بِمَكَّةَ لِلسِّجْنِ مِنْ صَفْوَانَ بِأَرْبَعَةِ آلَافٍ عَلَى إِنْ رَضِيَ عُمَرُ فَالْبَيْعُ تَامٌّ، فَإِنْ لَمْ يَرْضَ فَلِصَفْوَانَ أَرْبَعُمِائَةٍ -: فَخَالَفُوهُمْ كُلُّهُمْ.

We mentioned earlier Nafi‘ ibn ‘Abd al-Harith’s purchase of a house in Makkah from Safwan for four thousand to use as a state prison, on the condition that if ‘Umar approves, the sale is valid; but if he does not approve, Safwan shall receive four hundred. However, they all rejected this ruling.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ: أَنَّهُ اشْتَرَى بَعِيرًا بِأَرْبَعَةِ أَبْعِرَةٍ عَلَى أَنْ يُوَفُّوهُ إِيَّاهَا بِالرَّبَذَةِ - وَلَيْسَ فِيهِ وَقْتُ ذِكْرِ الْإِيفَاءِ -: فَخَالَفُوهُ.

From the narration of Yahya ibn Sa’id al-Qattan, from ’Ubayd Allah ibn ’Umar, who reported to me from Nafi’, from Ibn ’Umar: He purchased a camel on credit for four camels, stipulating that they deliver them to him at al-Rabadhah – with no time for delivery specified in the contract – but they violated the agreement.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ النُّعْمَانِ بْنِ حُمَيْدٍ قَالَ: أَصَابَ عَمَّارُ بْنُ يَاسِرٍ مَغْنَمًا فَقَسَّمَ بَعْضَهُ وَكَتَبَ إلَى عُمَرَ يُشَاوِرُهُ؟ فَتَبَايَعَ النَّاسُ إلَى قُدُومِ الرَّاكِبِ - وَهَذَا عَمَلُ عَمَّارٍ وَالنَّاسُ بِحَضْرَتِهِ -: فَخَالَفُوهُ.

From the narration of Hammad ibn Salamah, from Simak ibn Harb, from al-Nu’man ibn Humaid, who said: Ammar ibn Yasir acquired spoils of war and distributed a portion of them, then wrote to Umar to consult him? The people pledged allegiance until the arrival of Umar’s messenger—and this was Ammar’s ruling while the people were in his presence—but they opposed him.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؛ وَحَكَمَ عَلِيٌّ بِشَرْطِ الْخَلَاصِ، وَلِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: تَنَاقُضٌ عَظِيمٌ فِيمَا أَجَازُوهُ مِنْ الشُّرُوطِ فِي الْبَيْعِ وَمَا مَنَعُوا مِنْهُ فِيهَا، قَدْ ذَكَرْنَا بَعْضَهُ وَنَذْكُرُ فِي مَكَانٍ آخَرَ - إنْ شَاءَ اللَّهُ تَعَالَى - مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ؛ لِأَنَّ الْأَمْرَ أَكْثَرُ مِنْ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

As for us, we accept no authoritative evidence for anyone besides the Messenger of Allah—may Allah bless him and grant him peace—and success comes only from Allah, the Most High. Ali ruled according to the condition of exemption, while the Hanafis, Malikis, and Shafi’is exhibit grave contradictions in the rulings they have permitted. Among the conditions in a sale—and what [jurists] have prohibited therein—we have mentioned some of them, and we will mention in another place, Allah the Exalted willing, what He has facilitated for explanation, for the matter is more extensive than that. And success is from Allah, the Exalted.

[مَسْأَلَةٌ بَاعَ بَيْعًا فَاسِدًا]

Issue: He concluded a defective sale.

١٤٤٨ - مَسْأَلَةٌ: وَكُلُّ مَنْ بَاعَ بَيْعًا فَاسِدًا فَهُوَ بَاطِلٌ، وَلَا يَمْلِكُهُ الْمُشْتَرِي، وَهُوَ بَاقٍ عَلَى مِلْكِ الْبَائِعِ، وَهُوَ مَضْمُونٌ عَلَى الْمُشْتَرِي إنْ قَبَضَهُ ضَمَانَ الْغَصْبِ سَوَاءٌ سَوَاءٌ،

Issue 1448: Every invalid sale is void. The buyer does not acquire ownership of the item; it remains the property of the seller. The buyer is liable for it as in cases of usurpation if they take possession, without any distinction whatsoever. The seller is likewise liable for the price if they receive it. The passage of time does not validate the sale, nor do changes in market prices,

deterioration of the goods, their loss, the death of both contracting parties, or any such factor at all.

وَالثَّمَنُ مَضْمُونٌ عَلَى الْبَائِعِ إنْ قَبَضَهُ -: وَلَا يُصَحِّحُهُ طُولُ الْأَزْمَانِ، وَلَا تَغَيُّرُ الْأَسْوَاقِ، وَلَا فَسَادُ السِّلْعَةِ، وَلَا ذَهَابُهَا، وَلَا مَوْتُ الْمُتَبَايِعَيْنِ أَصْلًا.

L22784 Abu Hanifah held the same opinion as we have mentioned regarding some of these matters, and regarding some of them he said: "Whoever concludes a defective sale which the buyer takes possession of, acquires ownership defectively, and he permitted the buyer to manumit the slave in such a case."

وَقَالَ أَبُو حَنِيفَةَ فِي بَعْضِ ذَلِكَ كَمَا قُلْنَا، وَقَالَ فِي بَعْضِ ذَلِكَ: مَنْ بَاعَ بَيْعًا فَاسِدًا فَقَبَضَهُ الْمُشْتَرِي فَقَدْ مَلَكَهُ مِلْكًا فَاسِدًا، وَأَجَازَ عِتْقَهُ فِيهِ.

L22785 Mālik said regarding some of these as we have previously stated, and regarding others he said: "Among the invalid sales are those that are to be rescinded unless a long time passes or market conditions change, in which case they then become valid."

وَقَالَ مَالِكٌ فِي بَعْضِ ذَلِكَ: كَمَا قُلْنَا، وَقَالَ فِي بَعْضِ ذَلِكَ: إنَّ مِنْ الْبُيُوعِ الْفَاسِدَةِ بُيُوعًا تُفْسَخُ إلَّا أَنْ يَطُولَ الْأَمْرُ، أَوْ تَتَغَيَّرَ الْأَسْوَاقُ: فَتَصِحُّ حِينَئِذٍ.

L22786 Abu Muhammad said: These are two opinions whose corruption is not hidden from anyone who reflects honestly upon themselves. As for Abu Hanifah's statement - that he held ownership which is defective - this constitutes an utterly corrupt assertion. No one has ever recognized in the religion of Allah the Exalted such a thing as defective ownership. If it constitutes ownership, then it is valid; if it does not constitute ownership, then it is invalid. Anything beyond this is inconceivable.

قَالَ أَبُو مُحَمَّد: وَهَذَانِ قَوْلَانِ لَا خَفَاءَ بِفَسَادِهِمَا عَلَى مَنْ نَصَحَ نَفْسَهُ، أَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَقَدْ مَلَكَهُ مِلْكًا فَاسِدًا - فَكَلَامٌ فِي غَايَةِ الْفَسَادِ، وَمَا عَلِمَ أَحَدٌ قَطُّ فِي دِينِ اللَّهِ تَعَالَى مِلْكًا فَاسِدًا، إنَّمَا هُوَ مِلْكٌ فَهُوَ صَحِيحٌ، أَوْ لَا مِلْكٌ فَلَيْسَ صَحِيحًا، وَمَا عَدَا هَذَا فَلَا يُعْقَلُ.

L22787 And when they acknowledged that sovereignty is corrupt, for indeed He, the Exalted, has said: "Allah does not love corruption" [Al-Baqarah: 205]. Therefore, it is not permissible for anyone to rule by enforcing what Allah, the Exalted and Majestic, does not love.[36]

وَإِذْ أَقَرُّوا أَنَّ الْمُلْكَ فَاسِدٌ فَقَدْ قَالَ تَعَالَى: {وَاللَّهُ لا يُحِبُّ الْفَسَادَ} [البقرة: ٢٠٥] فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَحْكُمَ بِإِنْفَاذِ مَا لَا يُحِبُّهُ اللَّهُ عَزَّ وَجَلَّ.

L22788 And He, the Exalted, said: "Indeed, Allah does not rectify the deeds of the corrupters" (10:81).[37]

وَقَالَ تَعَالَى: {إِنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١] .

L22789 Whoever thereby permits something that Allah the Exalted has explicitly stated does not rectify it has opposed Allah the Exalted in His judgment, and this is an immensely grave matter. Some of them have invoked the Hadith of Barirah as proof in this matter.

فَمَنْ أَجَازَ شَيْئًا نَصَّ اللَّهُ تَعَالَى عَلَى أَنَّهُ لَا يُصْلِحُهُ فَقَدْ عَارَضَ اللَّهَ تَعَالَى فِي حُكْمِهِ، وَهَذَا عَظِيمٌ جِدًّا، وَقَدْ احْتَجَّ بَعْضُهُمْ فِي هَذَا بِحَدِيثِ بَرِيرَةَ.

L22790 Abū Muḥammad said: This is the argument of one whose religion is corrupt,

[36] **Qur'an references (L22787):** Qur'an 2:205 (Al-Baqarah).
[37] **Qur'an references (L22788):** Qur'an 10:81 (Yunus).

and we disavow to Allah the Exalted anyone who ascribes to the Messenger of Allah—may Allah bless him and his family and grant him peace—that he enacted falsehood or sanctioned corruption. By Allah, no Muslim's soul could rest upon this.

قَالَ أَبُو مُحَمَّدٍ: هَذَا احْتِجَاجُ فَاسِدِ الدِّينِ، وَنَبْرَأُ إِلَى اللَّهِ تَعَالَى مِمَّنْ نَسَبَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ أَنْفَذَ الْبَاطِلَ، وَأَجَازَ الْفَاسِدَ - وَاَللَّهِ مَا تَقِرُّ عَلَى هَذَا نَفْسُ مُسْلِمٍ.

L22791 Some of them argued that the seller granted him authority over it.

وَاحْتَجَّ بَعْضُهُمْ بِأَنَّ الْبَائِعَ سَلَّطَهُ عَلَيْهِ.

L22792–22794 Abu Muhammad said: No one may authorize another to control any part of his wealth with what Allah, the Exalted, has not permitted. In this matter, they should permit him, on this basis, to exercise authority over intercourse with his *umm walad* (a slave woman who bore him a child) and his female slave. This is clear frivolity and misguidance.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ لِأَحَدٍ أَنْ يُسَلِّطَ غَيْرَهُ عَلَى شَيْءٍ مِنْ مَالِهِ بِمَا لَمْ يَأْذَنْ اللَّهُ تَعَالَى فِيهِ، فَلْيُجِيزُوا عَلَى هَذَا أَنْ يُسَلِّطَهُ عَلَى وَطْءِ أُمِّ وَلَدِهِ وَأَمَتِهِ، وَهَذِهِ مَلَاعِبُ وَضَلَالٌ لَا خَفَاءَ بِهِ.

L22795 As for Mālik's position, the first thing to say to his adherents is: Define for us the period after which a voidable sale becomes valid in your school by its passing; otherwise, you have surely strayed and misled others.

وَأَمَّا قَوْلُ مَالِكٍ: فَأَوَّلُ مَا يُقَالُ لِمَنْ قَلَّدَهُ: حُدُّوا لَنَا الْمُدَّةَ الَّتِي إِذَا مَضَتْ صَحَّ الْبَيْعُ الْفَاسِدُ عِنْدَكُمْ بِمُضِيِّهَا، وَإِلَّا فَقَدْ ضَلَلْتُمْ وَأَضْلَلْتُمْ.

L22796 Specify for us the parameters of market fluctuations by which you have permitted forbidden matters, for an increase or decrease of even half a dirham or a single grain is indisputably a market fluctuation.

وَحُدُّوا لَنَا تَغَيُّرَ الْأَسْوَاقِ الَّذِي أَبَحْتُمْ بِهِ الْمُحَرَّمَاتِ، فَإِنَّ زِيَادَةَ نِصْفِ دِرْهَمٍ وَحَبَّةٍ، وَنُقْصَانَ ذَلِكَ تَغَيُّرُ سُوقٍ بِلَا شَكٍّ.

L22797 If they permit the validity of the voidable transaction to this extent, then every voidable sale would be considered valid, for it is unavoidable that prices fluctuate to this extent or something similar every day.

فَإِنْ أَجَازُوا صِحَّةَ الْفَاسِدِ بِهَذَا الْمِقْدَارِ فَقَدْ صَحَّ كُلُّ بَيْعٍ فَاسِدٍ؛ لِأَنَّهُ لَا بُدَّ مِنْ تَقَلُّبِ الْقِيَمِ بِمِثْلِ هَذَا أَوْ شَبَهِهِ فِي كُلِّ يَوْمٍ.

L22798 Then we ask them for evidence to support what they have asserted. There is no valid basis for it—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of anyone acknowledged before him, nor analogy, nor any opinion with a sound rationale. Rather, it is permitting the wrongful consumption of wealth.

ثُمَّ نَسْأَلُهُمُ الدَّلِيلَ عَلَى مَا قَالُوهُ مِنْ ذَلِكَ؟ وَلَا سَبِيلَ إِلَيْهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ يُعْرَفُ قَبْلَهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، بَلْ هُوَ إِبَاحَةُ أَكْلِ الْمَالِ بِالْبَاطِلِ.

L22799 If they cite in that regard the ḥadīth of al-Nuʿmān ibn Bashīr from the Prophet—may the peace and blessings of Allah be upon him—"The lawful is clear, the unlawful is clear, and between them are ambiguous matters many

people do not recognize. Whoever avoids what is doubtful to him has thereby absolved himself from what is unlawful, and has preserved the integrity of his religion and honor," or words to this effect.

فَإِنْ ذَكَرُوا فِي ذَلِكَ حَدِيثَ النُّعْمَانِ بْنِ بَشِيرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْحَلَالُ بَيِّنٌ وَالْحَرَامُ بَيِّنٌ وَبَيْنَهُمَا مُشْتَبِهَاتٌ لَا يَعْلَمُهَا كَثِيرٌ مِنَ النَّاسِ، فَمَنْ تَرَكَ مَا اشْتَبَهَ عَلَيْهِ كَانَ لِمَا سِوَاهُ أَتْرَكُ، وَاسْتَبْرَأَ لِدِينِهِ وَعِرْضِهِ» أَوْ كَلَامًا هَذَا مَعْنَاهُ؟

L22800 We said: You are the foremost in contradicting this report. For if you say, "You merely issued these two rulings regarding matters where you confused prohibition with permissibility"—?

قُلْنَا: أَنْتُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ، لِأَنَّكُمْ إِنْ قُلْتُمْ: إِنَّكُمْ إِنَّمَا حَكَمْتُمْ بِهَذَيْنِ الْحُكْمَيْنِ فِيمَا اشْتَبَهَ عَلَيْكُمْ تَحْرِيمُهُ مِنْ تَحْلِيلِهِ؟

L22801 He said: Either you have lied, or you have spoken truthfully. If you have lied, then lying is forbidden, sinful, and wounding. If you have spoken truthfully, then you have failed to adhere to what is in the narration you cited as evidence—to abstain from speech and judgment regarding matters ambiguous to you. Rather, you dared to commit the most heinous transgression by transferring forbidden properties and declaring prohibited funds lawful, despite acknowledging with your tongues that its prohibition or permissibility remains unclear to you. Thus, you have wholly contradicted that narration.

قَالَ: إِمَّا كَذَبْتُمْ، وَإِمَّا صَدَقْتُمْ، فَإِنْ كُنْتُمْ كَذَبْتُمْ: فَالْكَذِبُ حَرَامٌ وَمَعْصِيَةٌ وَجُرْحَةٌ، وَإِنْ كُنْتُمْ صَدَقْتُمْ فَمَا أَخَذْتُمْ بِمَا فِي الْحَدِيثِ الَّذِي احْتَجَجْتُمْ بِهِ: مِنِ اجْتِنَابِ الْقَوْلِ وَالْحُكْمِ فِيمَا اشْتَبَهَ عَلَيْكُمْ، بَلْ جَسَرْتُمْ أَشْنَعَ الْجَسْرِ، فَنَقَلْتُمُ الْأَمْلَاكَ الْمُحَرَّمَةَ، وَأَبَحْتُمُ الْأَمْوَالَ الْمَحْظُورَةَ فِيمَا أَقْرَرْتُمْ بِأَلْسِنَتِكُمْ: أَنَّهُ لَمْ يَتَبَيَّنْ لَكُمْ تَحْرِيمُهُ مِنْ تَحْلِيلِهِ، فَخَالَفْتُمْ مَا فِي ذَلِكَ الْخَبَرَ جُمْلَةً.

L22802 And if you say, "We ruled by that in situations where we presumed it was forbidden, but were not certain of it?"

وَإِنْ قُلْتُمْ: حَكَمْنَا بِذَلِكَ حَيْثُ ظَنَنَّا أَنَّهُ حَرَامٌ وَلَمْ نَقْطَعْ بِذَلِكَ؟

L22803 We said: Allah, the Exalted, and His Messenger, peace and blessings be upon him, have forbidden this to you. He, the Exalted, said: "They follow nothing but conjecture, and indeed conjecture avails nothing against the truth" [An-Najm: 28].[38]

قُلْنَا: قَدْ حَرَّمَ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا عَلَيْكُمْ، قَالَ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

L22804–22805 And he condemned a people who judged based on what they assumed without being certain of it.

وَذَمَّ قَوْمًا حَكَمُوا فِيمَا ظَنُّوهُ وَلَمْ يَسْتَيْقِنُوهُ.

L22806 The Messenger of Allah—peace and blessings be upon him—said: "Avoid suspicion entirely, for suspicion is the falsest of speech." It is obligatory upon one who harbors suspicion without attaining certainty to withhold judgment: he should neither judge nor rush to act in matters where he lacks certainty. When he has attained certainty, he must then judge.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» وَالْفَرْضُ عَلَى مَنْ ظَنَّ وَلَمْ يَسْتَيْقِنْ أَنْ يُمْسِكَ: فَلَا يَحْكُمُ وَلَا يَتَسَرَّعُ فِيمَا لَا يَقِينَ عِنْدَهُ فِيهِ، فَإِذَا تَيَقَّنَ حَكَمَ حِينَئِذٍ.

[38] **Qur'an references (L22803):** Qur'an 53:28 (An-Najm).

وَقَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤]

L22807 And Abu Muhammad said: Allah, the Exalted, said, “So that you [Muhammad] may make clear to the people what has been sent down to them” [An-Nahl: 44].[39]

وَقَالَ تَعَالَى: {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩]

L22808 And He, the Most High, said: “As an exposition for all things” [Surah An-Nahl 16:89].[40]

وَقَالَ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣]

L22809 And He, the Most High, said: “Today I have perfected for you your religion” [Al-Ma’idah 3].[41]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L22810 The Messenger of Allah (peace and blessings of Allah be upon him) said: “Whoever does a deed not in accordance with our command, it is invalid.”[42]

وَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ قَالَ: لَا يَنْبَغِي لِقَاضٍ أَنْ يَقْضِيَ حَتَّى يَتَبَيَّنَ لَهُ الْحَقُّ كَمَا يَتَبَيَّنُ اللَّيْلُ مِنْ النَّهَارِ، فَبَلَغَ ذَلِكَ عُمَرَ بْنَ الْخَطَّابِ فَقَالَ: صَدَقَ أَبُو مُوسَى.

L22811 It was narrated to us through the chain of Abu Bakr ibn Abi Shaybah, who narrated to us: Yazid ibn Harun narrated to us; Hammad ibn Salamah narrated to us, from Qatadah, that Abu Musa al-Ash’ari said: “It is not permissible for a judge to issue a ruling until the matter becomes clear to him as distinctly as night is distinguished from day.” When this reached Umar ibn al-Khattab, he said: “Abu Musa has spoken truthfully.”

قَالَ عَلِيٌّ: الْمُفْتِي قَاضٍ، لِأَنَّهُ قَدْ قَضَى بِوُجُوبِ مَا أَوْجَبَ، وَتَحْرِيمِ مَا حَرَّمَ، أَوْ إبَاحَةِ مَا أَبَاحَ، فَمَنْ أَيْقَنَ تَحْرِيمَ شَيْءٍ بِنَصٍّ مِنْ الْقُرْآنِ أَوْ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتٍ فَلْيُحَرِّمْهُ وَلْيُبْطِلْهُ أَبَدًا.

L22812 Ali said: The mufti is a judge, for he has decreed the obligation of what he made obligatory, the prohibition of what he forbade, or the permissibility of what he permitted. Whoever is certain of the prohibition of something through a confirmed text from the Quran or from the Messenger of Allah (peace and blessings be upon him) (i.e., the Sunnah) must prohibit it and invalidate it perpetually.

وَمَنْ أَيْقَنَ بِإِبَاحَتِهِ بِنَصٍّ كَمَا ذَكَرْنَا فَلْيُبِحْهُ وَلْيَنْفُذْهُ أَبَدًا.

L22813 And whoever is certain of its permissibility through textual evidence, as we have mentioned, let him consider it permissible and implement it perpetually.

وَمَنْ أَيْقَنَ بِوُجُوبِ شَيْءٍ بِنَصٍّ كَمَا ذَكَرْنَا فَلْيُوجِبْهُ وَلْيَنْفُذْهُ أَبَدًا، وَلَيْسَ فِي الدِّينِ قِسْمٌ رَابِعٌ أَصْلًا، وَمَا لَمْ يَتَبَيَّنْ لَهُ حُكْمُهُ مِنْ النَّصِّ الْمَذْكُورِ فَلْيُمْسِكْ عَنْهُ وَلْيَقُلْ كَمَا قَالَتْ الْمَلَائِكَةُ: {لَا عِلْمَ لَنَا إلَّا مَا عَلَّمْتَنَا} [البقرة: ٣٢] وَمَا عَدَا هَذَا فَضَلَالٌ نَعُوذُ بِاَللَّهِ مِنْهُ.

L22814 Whoever is certain of the obligation of something through a text as we have mentioned, let him consider it obligatory and implement it perpetually. There is fundamentally no fourth category in religion at all. Whatever ruling remains unclear to him from the aforementioned text, let him abstain from

[39] **Qur’an references (L22807):** Qur’an 16:44 (An-Nahl).
[40] **Qur’an references (L22808):** Qur’an 16:89 (An-Nahl).
[41] **Qur’an references (L22809):** Qur’an 5:3 (Al-Ma’idah).
[42] **Hadith references (L22810):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

it and say as the angels said: “We have no knowledge except what You have taught us” [Al-Baqarah: 32]. Whatever lies beyond this is misguidance. We seek refuge in Allah from it.[43]

L22815 He, the Exalted, said: “So what is there after the truth except misguidance?” [Yunus: 32].[44]

L22816 **An issue: If someone purchased a male or female slave, both of whom have property...**

L22817 Issue 1449: If someone purchases a male or female slave each of whom has property, their property belongs to the seller unless the buyer stipulates the property as a condition, in which case the property belongs to him. The buyer has no share from the price - whether it increases or decreases - nor is he subject to the legal ruling of the sale whatsoever.

L22818 If there is a large or small amount of gold in the property of a male or female slave, and the slave is purchased with gold that is less than, equal to, or more than that gold—whether as cash payment, immediate debt, or deferred payment for a term—all such transactions are permissible. Similarly, if silver is present in the property, there is no difference.

L22819 If he becomes aware of a defect in the male slave or female slave, he may return them while retaining the price; he does not refund it.

L22820–22821 If he finds a defect in the property, he does not return the male slave or the female slave because of it.

L22822 If he sells half of his male slave, half of his female slave, or a specified undivided share derived from both of them, that is permissible. However, stipulating the price is entirely impermissible here.

L22823 Likewise, if he sells his share of a slave co-owned with another person, there is no distinction.

L22824 If two individuals jointly sell a slave, it is permissible for the buyer to stipulate property rights, for the Messenger of Allah—peace and blessings be

[43] **Qur’an references (L22814):** Qur’an 2:32 (Al-Baqarah).
[44] **Qur’an references (L22815):** Qur’an 10:32 (Yunus).

قَالَ تَعَالَى: {فَمَاذَا بَعْدَ الْحَقِّ إِلا الضَّلالُ} [يونس: ٣٢] .

[مَسْأَلَةٌ ابْتَاعَ عَبْدًا أَوْ أَمَةً لَهُمَا مَالٌ]

١٤٤٩ - مَسْأَلَةٌ: وَمَنْ ابْتَاعَ عَبْدًا أَوْ أَمَةً لَهُمَا مَالٌ فَمَالُهُمَا لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ فَيَكُونَ لَهُ، وَلَا حِصَّةَ لَهُ مِنْ الثَّمَنِ - كَثُرَ أَوْ قَلَّ - وَلَا لَهُ حُكْمُ الْبَيْعِ أَصْلًا.

فَإِنْ كَانَ فِي مَالِ الْعَبْدِ أَوْ الْأَمَةِ: ذَهَبٌ كَثِيرٌ أَوْ قَلِيلٌ، وَقَدْ ابْتَاعَ الْأَمَةَ أَوْ الْعَبْدَ بِذَهَبٍ أَقَلَّ مِنْ ذَلِكَ الذَّهَبِ أَوْ مِثْلِهِ أَوْ أَكْثَرَ: نَقْدًا أَوْ حَالًّا فِي الذِّمَّةِ، أَوْ إلَى أَجَلٍ -: جَازَ كُلُّ ذَلِكَ - وَكَذَلِكَ إنْ كَانَ فِيهِ فِضَّةٌ وَلَا فَرْقَ.

فَإِنْ اطَّلَعَ عَلَى عَيْبٍ فِي الْعَبْدِ أَوْ الْأَمَةِ: رَدَّهُ أَوْ رَدَّهَا وَالْمَالُ لَهُ لَا يَرُدُّهُ مَعَهُ.

فَإِنْ وَجَدَ بِالْمَالِ عَيْبًا: لَا يَرُدُّ الْعَبْدَ مِنْ أَجْلِ ذَلِكَ، وَلَا الْأَمَةَ.

فَإِنْ بَاعَ نِصْفَ عَبْدِهِ أَوْ نِصْفَ أَمَتِهِ أَوْ جُزْءًا مُسَمًّى مُشَاعًا فِيهِمَا مِنْهُمَا: جَازَ ذَلِكَ، وَلَا يَجُوزُ هُنَا اشْتِرَاطُ الْمَالِ أَصْلًا.

وَكَذَلِكَ لَوْ بَاعَ نَصِيبَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ آخَرَ وَلَا فَرْقَ.

فَلَوْ بَاعَ اثْنَانِ عَبْدًا بَيْنَهُمَا: جَازَ لِلْمُشْتَرِي اشْتِرَاطُ الْمَالِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ذَكَرَ ذَلِكَ بِلَفْظِ الِاشْتِرَاطِ كَمَا قَدَّمْنَا وَالِاشْتِرَاطُ غَيْرُ الْبَيْعِ فَلَيْسَ لَهُ

upon him and his family—explicitly mentioned this using the term "conditional clause" as we previously established. The conditional clause constitutes an extrinsic element to the sale contract and is therefore not governed by rulings specific to sales. The Prophet—peace and blessings be upon him—did not differentiate between known and unknown elements, one measure and another measure, nor one property and another property. Hence, no distinction may be made within these categories. The buyer rightfully owns the property through a valid conditional clause, and since this does not fall under revocable transactions, he is not obligated to return the slave due to a defect in the property stipulated or a defect in the sold item.

حُكْمُ الْبَيْعِ، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مَعْلُومًا مِنْ مَجْهُولٍ وَلَا مِقْدَارًا مِنْ مِقْدَارٍ، وَلَا مَالًا مِنْ مَالٍ: فَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ وَقَدْ مَلَكَ الْمَالَ بِالشَّرْطِ الصَّحِيحِ، وَلَيْسَ مِمَّا دَخَلَ فِي صَفْقَةِ الرَّدِّ فَلَيْسَ عَلَيْهِ رَدُّهُ بِعَيْبٍ فِيهِ وَلَا بِعَيْبٍ فِي الْمَبِيعِ.

L22825 Whoever sells half of a slave held in undivided joint ownership or half of his own slave, the buyer does not thereby acquire a slave. Rather, he—peace be upon him—established the monetary stipulation for one who purchases a slave. If someone purchases a slave from two [owners], he is considered to have acquired a slave and thus has the right to the monetary stipulation.

وَمَنْ بَاعَ نِصْفَ عَبْدٍ مُشَاعٍ أَوْ نِصْفَ عَبْدِهِ فَلَمْ يَشْتَرِ الْمُشْتَرِي عَبْدًا وَإِنَّمَا جَعَلَ - عَلَيْهِ السَّلَامُ - اشْتِرَاطَ الْمَالِ لِمَنْ اشْتَرَى عَبْدًا وَإِذَا اشْتَرَى عَبْدًا مِنْ اثْنَيْنِ فَقَدْ ابْتَاعَ عَبْدًا فَلَهُ اشْتِرَاطُ الْمَالِ.

L22826 All of this is the position of our companions. Mālik agreed with our position regarding stipulations involving gold and silver, ambiguity (gharar) in the subject matter, large quantities, and small quantities.

وَهَذَا كُلُّهُ قَوْلُ أَصْحَابِنَا، وَقَالَ مَالِكٌ كَقَوْلِنَا فِي اشْتِرَاطِ الذَّهَبِ، وَالْفِضَّةِ، وَالْمَجْهُولِ، وَالْكَثِيرِ، وَالْقَلِيلِ.

L22827 Abu Hanifah and al-Shafi'i said: This is impermissible except under the rules governing sales - a mere contradiction to the hadith. Thus, they repudiated what Allah the Exalted has permitted of conditions and sanctioned what He has nullified thereof.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: لَا يَجُوزُ ذَلِكَ إِلَّا بِحُكْمِ الْبُيُوعِ - وَهَذَا خِلَافٌ لِلْحَدِيثِ مُجَرَّدٌ، فَرَدُّوا مَا أَبَاحَ اللَّهُ تَعَالَى مِنْ الشُّرُوطِ، وَأَجَازُوا مَا أَبْطَلَ اللَّهُ تَعَالَى مِنْهَا.

L22828 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us, Ubayd Allāh ibn ʿUmar narrated from Nāfiʿ from Ibn ʿUmar from ʿUmar, who said: "Whoever sells a slave who owns property, the slave's property belongs to the seller unless the buyer stipulates."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ عُمَرَ أَنَّهُ قَالَ: مَنْ بَاعَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ.

L22829 From the chain of Saʿīd ibn Manṣūr: I [heard] from Abū al-Aḥwaṣ, from Ashʿath ibn Abī al-Shaʿthāʾ, who said: A man sold his slave, and neither party stipulated ownership of his property. When the slave's property was discovered, Shurayḥ awarded it to the seller.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو الْأَحْوَصِ أَنَا أَشْعَثُ بْنُ أَبِي الشَّعْثَاءِ قَالَ: بَاعَ رَجُلٌ غُلَامَهُ وَلَمْ يَشْتَرِطْ وَاحِدٌ مِنْهُمَا مَالَهُ، فَوُجِدَ لِلْغُلَامِ مَالٌ فَقَضَى بِهِ شُرَيْحٌ لِلْبَائِعِ.

L22830–22832 From the chain of Saʿīd ibn Manṣūr: I [Hushaym] narrate from Yūnus,

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ، وَمُغِيرَةُ، وَأَبُو إِسْحَاقَ الشَّيْبَانِيُّ، وَبَعْضُ أَصْحَابِنَا عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ، قَالَ يُونُسُ: عَنْ الْحَسَنِ، وَقَالَ مُغِيرَةُ: عَنْ إبْرَاهِيمَ، وَقَالَ الشَّيْبَانِيُّ: عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ، وَقَالَ بَعْضُ أَصْحَابِنَا: عَنْ الشَّعْبِيِّ، ثُمَّ اتَّفَقُوا كُلُّهُمْ: الْحَسَنُ، وَالنَّخَعِيُّ، وَشُرَيْحٌ، وَالشَّعْبِيُّ: عَلَى أَنَّ مَنْ بَاعَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لِلْمُشْتَرِي، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Mughīrah, Abū Isḥāq al-Shaybānī, and some of our colleagues, from al-Shaʿbī, from Shurayḥ. Yūnus said: From al-Ḥasan. Mughīrah said: From Ibrāhīm al-Nakhaʿī. Al-Shaybānī said: From al-Shaʿbī, from Shurayḥ. Some of our colleagues narrated via al-Shaʿbī. Thereafter, all of them concurred upon the position of al-Ḥasan, Ibrāhīm al-Nakhaʿī, Shurayḥ, and al-Shaʿbī that if someone sells a slave who owns property... So his property belongs to the buyer, and no one's proof holds validity alongside the Messenger of Allah (peace and blessings be upon him). Success is from Allah, the Most High. 1450-

١٤٥٠ -.

مَسْأَلَةٌ: وَلِلْمُبْتَاعِ أَنْ يَشْتَرِطَ شَيْئًا مُسَمًّى بِعَيْنِهِ مِنْ مَالِ الْعَبْدِ أَوْ الْأَمَةِ، وَلَهُ أَنْ يَشْتَرِطَ ثُلُثًا أَوْ رُبُعًا، أَوْ نَحْوَ ذَلِكَ - وَمَنَعَ مِنْ ذَلِكَ: مَالِكٌ، وَأَبُو سُلَيْمَانَ، وَقَالَا: لَا يَجُوزُ أَنْ يَشْتَرِطَ إلَّا الْجَمِيعَ أَوْ يَدَعَ.

L22833 Issue: The buyer may stipulate a specific item from the property of a male or female slave, or a portion such as a third or a quarter. Mālik and Abū Sulaymān prohibited this, stating: "It is not permissible to stipulate anything except the entirety or to abandon it."

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَقُلْ فَمَالُهُ لِلْبَائِعِ إلَّا أَنْ يَشْتَرِطَ كُلَّهُ الْمُبْتَاعُ - وَبَعْضُ الْمَالِ مَالٌ - فَهُوَ دَاخِلٌ فِي نَصِّ مُقْتَضَى لَفْظِهِ - عَلَيْهِ السَّلَامُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ١٤٥١ -.

L22834 Abu Muhammad said: This is an error, because the Messenger of Allah (peace and blessings be upon him and his family) did not say, "His property belongs to the seller unless the buyer stipulates all of it." Since some property is property, it falls under the explicit implication of his wording (peace be upon him). Success comes only from Allah, the Exalted. 1451.

مَسْأَلَةٌ: فَإِنْ قِيلَ: إنَّمَا جَاءَ النَّصُّ فِي الْعَبْدِ فَمِنْ أَيْنَ قُلْتُمْ بِذَلِكَ فِي الْأَمَةِ؟ قُلْنَا: لَفْظَةُ " الْعَبْدِ " تَقَعُ فِي اللُّغَةِ الْعَرَبِيَّةِ عَلَى جِنْسِ الْعَبِيدِ وَالْإِمَاءِ لِأَنَّ الْعَرَبَ تَقُولُ عَبْدٌ وَعِبْدَةٌ، وَ " الْعَبْدُ " اسْمُ جِنْسٍ كَمَا تَقُولُ: الْإِنْسَانُ وَالْفَرَسُ وَالْحِمَارُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22835 If it is asked: "The textual ruling specifically pertains to the male slave, so on what basis do you conclude this applies to the female slave?" We respond: The term "the slave" in the Arabic language applies to the category encompassing both male and female slaves, for the Arabs say "male slave" (ʿabd) and "female slave" (ʿibdah). "The slave" functions as a generic noun, just as one says: "the human being," "the horse," or "the donkey"—and success comes from God, the Exalted.

وَإِنَّ أَحَقَّ النَّاسِ بِأَنْ يُعْكَسَ عَلَيْهِ هَذَا الِاعْتِرَاضُ، وَيُلْزَمَ هَذَا السُّؤَالَ مَنْ فَرَّقَ بَيْنَ الْعَبْدِ، وَالْأَمَةِ فِي الْحُكْمِ فَرَأَى الزِّنَى فِي الْأَمَةِ عَيْبًا يَجِبُ بِهِ الرَّدُّ، وَلَمْ يَرَهُ فِي الْعَبْدِ الذَّكَرِ عَيْبًا يَجِبُ بِهِ الرَّدُّ مِنْ الْحَنَفِيِّينَ.

L22836 Indeed, those most deserving of having this objection reversed upon them and being compelled to address this question are the Ḥanafīs who differentiated between male slaves and female slaves in legal rulings, deeming fornication in a female slave a defect necessitating nullification, while not deeming it a defect necessitating nullification in a male slave.

وَمَنْ رَأَى أَنَّ لِلرَّجُلِ أَنْ يُجْبِرَ أَمَتَهُ عَلَى النِّكَاحِ وَلَا يُجْبِرُ الْعَبْدَ الذَّكَرَ عَلَى النِّكَاحِ مِنْ الْمَالِكِيِّينَ، فَإِنْ كَانَتْ الْأَمَةُ فِي اسْتِثْنَاءِ مَالِهَا فِي الْبَيْعِ إنَّمَا وَجَبَ قِيَاسًا عَلَى الْعَبْدِ، فَلْيَقِيسُوهَا عَلَيْهِ فِي الرَّدِّ بِالْعَيْبِ، وَفِي الْإِكْرَاهِ فِي النِّكَاحِ، وَإِلَّا فَقَدْ تُحَكَّمُوا.

Whoever holds the opinion—among the Mālikīs—that a man may compel his female slave to marry but does not compel a male slave to marry: if the female slave is excluded from ownership of her property in the sale, this ruling is only obligated by analogy to the male slave. They must analogically extend this ruling to her regarding rescission due to defects and to compulsion in marriage. Otherwise, they have been subjected to capricious ruling.

[مَسْأَلَةٌ بَاعَ نَخْلًا قَدْ أُبِرَتْ]

A legal case involving the sale of palm trees that had been pollinated [via *taleeq*].

١٤٥٢ - مَسْأَلَةٌ: وَمَنْ بَاعَ نَخْلًا قَدْ أُبِرَتْ فَثَمَرَتُهَا لِلْبَائِعِ إلَّا أَنْ يَشْتَرِطَهَا الْمُبْتَاعُ، وَالتَّأْبِيرُ فِي النَّخْلِ: هُوَ أَنْ يُشَقَّقَ الطَّلْعُ، وَيُذَرَّ فِيهِ دَقِيقُ الْفُحَّالِ وَأَمَّا قَبْلَ الْإِبَارِ فَالطَّلْعُ لِلْمُبْتَاعِ، وَلَا يَجُوزُ فِي ثَمَرَةِ النَّخْلِ إلَّا الِاشْتِرَاطُ فَقَطْ، وَأَمَّا الْبَيْعُ فَلَا حَتَّى يَصِيرَ زَهْوًا، فَإِذَا أَزْهَى جَازَ فِيهِ الِاشْتِرَاطُ مَعَ الْأُصُولِ، وَجَازَ فِيهَا الْبَيْعُ مَعَ الْأُصُولِ وَدُونَ الْأُصُولِ، وَلَيْسَ هَذَا الْحُكْمُ إلَّا فِي النَّخْلِ الْمَأْبُورِ وَحْدِهِ كَمَا جَاءَ النَّصُّ، وَلَوْ ظَهَرَتْ ثَمَرَةُ النَّخْلِ بِغَيْرِ إبَارٍ لَمْ يَحِلَّ اشْتِرَاطُهَا أَصْلًا؛ لِأَنَّهُ خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

Issue: If someone sells a palm tree that has been pollinated, its fruit belongs to the seller unless the buyer stipulates it. Pollination in palm trees involves splitting the spathe and placing pollen from the male palm tree within it. Before pollination, the spathe belongs to the buyer. Regarding palm fruit, only stipulation is permissible; sale is not allowed until it reaches the pollination stage. When pollination occurs, stipulation with the parent tree becomes permissible, and sale is permitted both with and without the parent tree. This ruling applies exclusively to pollinated palm trees as explicitly stated. If palm fruit appears without pollination, stipulation is entirely impermissible, for this is contrary to the instruction of the Messenger of Allah—peace and blessings be upon him.

وَأَمَّا سَائِرُ الثِّمَارِ فَإِنَّ مَنْ بَاعَ الْأُصُولَ وَفِيهَا ثَمَرَةٌ قَدْ ظَهَرَتْ أَوْ لَمْ يَبْدُ صَلَاحُهَا، فَالثَّمَرَةُ - ضَرُورَةً وَلَا بُدَّ - لِلْبَائِعِ، لَا يَحِلُّ بَيْعُهَا إلَّا مَعَ الْأُصُولِ وَلَا دُونَهَا، وَلَا اشْتِرَاطُهَا أَصْلًا.

As for other fruits, if one sells the plants while they bear a fruit that has already appeared or whose readiness is not yet evident... Thus, the fruit—necessarily and inevitably—belongs to the seller. It is impermissible to sell it except together with the parent trees, nor may it be sold without them, nor is it permissible to stipulate its sale at all.

وَلَا يَجُوزُ لِمُشْتَرِي الْأُصُولِ أَنْ يُلْزِمَ الْبَائِعَ قَلْعَ الثَّمَرَةِ أَصْلًا، إلَّا حَتَّى يَبْدُوَ صَلَاحُهَا، فَإِذَا بَدَا صَلَاحُهَا فَلَهُ أَنْ يُلْزِمَهُ أَخْذَ مَا يُمْكِنُ النَّفْعُ فِيهِ بِوَجْهٍ مَا مِنْ الْوُجُوهِ، وَلَا يُلْزِمُهُ أَخْذَ مَا لَا يُمْكِنُ الِانْتِفَاعُ بِهِ بِوَجْهٍ مِنْ الْوُجُوهِ.

It is not permissible for the purchaser of trees to compel the seller to uproot the fruit at all until its ripeness becomes evident. When its ripeness becomes evident, he may compel the seller to harvest what can provide benefit through any possible means, but he may not compel him to remove what cannot yield benefit in any manner.

As for specifying palm trees with what we mentioned, this is because the

textual evidence applies solely to them, despite the existence of wells. Analogy is invalid, and the justification based on the appearance of the fruit is invalid because it is a false claim without evidence.

وَأَمَّا تَخْصِيصُ النَّخْلِ بِمَا ذَكَرْنَا، فَلِأَنَّ النَّصَّ لَمْ يَرِدْ إِلَّا فِيهَا فَقَطْ، مَعَ وُجُودِ الْإِبَارِ وَالْقِيَاسُ بَاطِلٌ - وَالتَّعْلِيلُ بِظُهُورِ الثَّمَرَةِ بَاطِلٌ، لِأَنَّهُ دَعْوَى كَاذِبَةٌ بِلَا دَلِيلٍ.

L22845 As for our statement that only stipulation is permissible regarding palm fruits before they reach the *izhā* stage (begin to ripen), this is due to what we previously mentioned from "the prohibition of the Prophet (peace be upon him) against selling the fruit until it reaches the *izhā* stage and turns red." Therefore, selling them before they reach *izhā* is fundamentally impermissible. He (peace be upon him) permitted stipulating conditions regarding them, so what he permitted is permissible, and what he prohibited is forbidden: {He does not speak from whim; it is but revelation inspired} [53:3-4]. {And whoever transgresses the limits set by Allah has indeed wronged himself} [65:1].[45]

وَأَمَّا قَوْلُنَا: لَا يَجُوزُ فِي ثَمَرَةِ النَّخْلِ إِلَّا الِاشْتِرَاطُ فَقَطْ مَا لَمْ تُزْهِ، فَلِمَا ذَكَرْنَا قَبْلُ مِنْ «نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرَةِ حَتَّى تُزْهِيَ وَتَحْمَرَّ» ، فَلَا يَجُوزُ بَيْعُهَا قَبْلَ أَنْ تُزْهِيَ أَصْلًا، وَأَبَاحَ - عَلَيْهِ السَّلَامُ - اشْتِرَاطَهَا، فَيَجُوزُ مَا أَجَازَهُ - عَلَيْهِ السَّلَامُ - وَيَحْرُمُ مَا نَهَى عَنْهُ: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L22846 The Shafi'is and Malikis analogized all other fruits to palm trees, and they [Shafi'is/Malikis] along with the Hanafis permitted the sale of fruit before its ripeness becomes evident and before its readiness becomes manifest for harvesting either separately or with the trunk. This contradicts the prohibition of the Messenger of Allah—may Allah bless him and his family and grant him peace—and amounts to permitting what he prohibited. He—peace be upon him—never failed to specify except regarding harvesting separately or with the trunk, and whatever they claim is a law Allah the Exalted has not authorized.

وَقَاسَ الشَّافِعِيُّونَ، وَالْمَالِكِيُّونَ: سَائِرَ الثِّمَارِ عَلَى النَّخْلِ، وَأَجَازُوا هُمْ، وَالْحَنَفِيُّونَ: بَيْعَ الثَّمَرَةِ قَبْلَ بُدُوِّ صَلَاحِهَا، وَقَبْلَ أَنْ تُزْهِيَ عَلَى الْقَطْعِ أَوْ مَعَ الْأُصُولِ - وَهَذَا خِلَافُ نَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَإِبَاحَةُ مَا حَرَّمَ، وَمَا عَجَزَ - عَلَيْهِ السَّلَامُ - قَطُّ عَنْ أَنْ يَقُولَ إِلَّا عَلَى الْقَطْعِ، أَوْ مَعَ الْأُصُولِ، وَمَا قَالَهُ - عَلَيْهِ السَّلَامُ - قَطُّ، فَهُوَ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L22847 Among those who prohibited the absolute sale of fruit before the appearance of its ripeness - without stipulating harvesting or other conditions - are Sufyān al-Thawrī and Ibn Abī Laylā. It was narrated to us through the chain of Muslim: Yaḥyā ibn Yaḥyā reported from Mālik from Nāfi' from Ibn 'Umar, who said: "The Messenger of Allāh - peace and blessings of Allāh be upon him - forbade the sale of fruit until its ripeness begins to show, prohibiting both the seller and the buyer."

وَمِمَّنْ مَنَعَ بَيْعَ الثَّمَرَةِ قَبْلَ بُدُوِّ صَلَاحِهَا جُمْلَةً لَا بِشَرْطِ الْقَطْعِ وَلَا بِغَيْرِهِ: سُفْيَانُ الثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى عَنْ مَالِكٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الثَّمَرَةِ حَتَّى يَبْدُوَ صَلَاحُهَا، نَهَى الْبَائِعَ وَالْمُشْتَرِيَ» .

L22848 And it was also narrated by us through the chains of Ayyūb, 'Ubaydullāh ibn

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَيُّوبَ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، وَمُوسَى بْنِ عُقْبَةَ، وَيَحْيَى بْنِ سَعِيدٍ، كُلُّهُمْ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[45] **Qur'an references (L22845):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 65:1 (At-Talaq).

ʿUmar, Mūsā ibn ʿUqbah, and Yaḥyā ibn Saʿīd—all of them from Nāfiʿ, from Ibn ʿUmar, from the Messenger of Allāh (peace and blessings be upon him).

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ جَعْفَرٍ، وَشُعْبَةَ، كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَبِيعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلَاحُهُ».

L22849–22850 And we have also reported it through the chain of Ismāʿīl ibn Jaʿfar and Shuʿbah, both of whom narrated from ʿAbdullāh ibn Dīnār from Ibn ʿUmar from the Prophet (peace and blessings be upon him) who said: "Do not sell produce until its ripeness becomes evident."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ شِهَابٍ عَنْ سَالِمٍ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22851 We have also narrated it through the chain of Ibn Shihāb, from Sālim, from his father, from the Prophet (peace be upon him).

وَمِنْ طَرِيقِ أَبِي الزُّبَيْرِ، وَعَمْرِو بْنِ دِينَارٍ، كِلَاهُمَا عَنْ جَابِرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L22852 And through the chain of Abi al-Zubayr and Amr ibn Dinar, both of whom narrated from Jabir from the Prophet—may Allah's blessings and peace be upon him and his family.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَصَارَ نَقْلَ تَوَاتُرٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَمِنَ الصَّحَابَةِ، وَإِلَى التَّابِعِينَ، وَفِيمَنْ دُونَهُمْ.

L22853 Through the chain of Saʿīd ibn al-Musayyib and Abū Salama ibn ʿAbd al-Raḥmān—both narrating from Abū Hurayrah from the Prophet (peace be upon him and his family and grant him peace)—this became a mutawatir transmission from the Prophet (peace be upon him and his family and grant him peace), through the Companions, extending to the Successors and those below them.

فَإِنْ قُطِعَ شَيْءٌ مِنَ الثَّمَرَةِ، فَإِنْ كَانَ إِنْ تُرِكَ أَزْهَى إِنْ كَانَ بَلَحًا أَوْ بُسْرًا، أَوْ ظَهَرَ فِيهِ الطِّيبُ إِنْ كَانَ مِنْ سَائِرِ الثِّمَارِ -: لَمْ يَحِلَّ بَيْعُهُ حَتَّى يَصِيرَ فِي الْحَالِ الَّتِي أَبَاحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَيْعَهُ فِيهَا - فَإِنْ كَانَ إِنْ تُرِكَ لَمْ يَزْهُ أَبَدًا، وَلَا ظَهَرَ فِيهِ الطِّيبُ أَبَدًا -: حَلَّ بَيْعُهُ بَعْدَ الْقَطْعِ لَا قَبْلَهُ؛ لِأَنَّهُ حِينَئِذٍ قَدْ خَرَجَ عَنِ الصِّفَةِ الَّتِي أَحَلَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَوَازَ بَيْعِهِ إِلَيْهَا.

L22854 If a portion of the fruit is severed, then if leaving it would allow young dates (balah) to mature into rutab or unripe dates (busr) to ripen, or if fragrance manifests in it – when dealing with all other fruits – the sale is not permissible until it reaches the state in which the Messenger of Allah (peace be upon him and his family) permitted its sale. But if leaving it would never result in maturation for dates or manifestation of fragrance for other fruits, its sale becomes lawful after severing, not before, for it has then departed from the attribute to which the Messenger of Allah linked the permissibility of its sale.

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي فَهْمٍ وَتَمْيِيزٍ أَنَّ نَهْيَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ بَيْعِ ثَمَرَةِ النَّخْلِ حَتَّى تُزْهِيَ، وَعَنْ بَيْعِ الثِّمَارِ حَتَّى يَبْدُوَ صَلَاحُهَا: إِنَّمَا هُوَ بِلَا شَكٍّ فِيمَا إِنْ تُرِكَ أَزْهَى أَوْ ظَهَرَ صَلَاحُهُ لَا يُمْكِنُ غَيْرُ ذَلِكَ، وَأَمَّا مَا لَا يُمْكِنُ أَنْ يَصِيرَ

L22855 And with certainty, every person of understanding and discernment knows that the Messenger of Allah's prohibition—peace and blessings be upon him and his family—against selling date fruits until they flower and against selling fruits until their fitness for harvest becomes evident applies only—without doubt—to what, if left, would inevitably reach the stage of flowering or man-

ifest fitness for harvest. As for what can never attain flowering nor ever manifest fitness for harvest, it is not the subject prohibited by him—peace and blessings be upon him and his family—from being sold until it flowers or until its fitness appears. Since it is not the prohibited sale, Allah the Exalted has said: {And Allah has permitted trade} [al-Baqarah: 275].[46]

L22856 As for our statement that it is not permissible for the purchaser of the trees to demand the seller uproot the trees bearing his fruit before the purchaser can benefit from them, what is established from the Messenger of Allah—peace and blessings be upon him and his family—via al-Mughīrah ibn Shuʿbah's narration is that he prohibited "the waste of wealth." The seller has not transgressed by the presence of his fruit on their trees, thus he would be the one wasting his own wealth.

L22857–22859 Similarly, the ruling applies to one who sells land containing his seeds or date stones without selling the seeds or stones themselves. The buyer of the land may not uproot and take the crop until it has reached the initial phase at which benefit can be derived from it in a proper manner. Therefore, at that time, he has no right to usurp another's land or trees through his property without the permission of the owner of the source property. And success comes only from Allah, the Most High. 1453 –

L22860 Legal ruling: As for after the emergence of fragrance in date fruits, conditional stipulations are permissible if the parent trees are sold. It is also permissible to sell them either with or without the parent trees. The validity of stipulations is due to the establishment of the attribute upon them, as indicated by his statement—peace be upon him—"It has been pollinated"—meaning this fruit has undergone pollination. As for the permissibility of selling them with or without the parent trees, this derives from the Messenger of Allah's authorization—may Allah bless him and grant him peace—to sell them when their spathe emerges. Success comes through Allah, the Exalted.

L22861 **[Issue: He sold date palms containing fruit that had been pollinated.]**

إِلَى الْإِزْهَاءِ أَبَدًا، وَلَا أَنْ يَبْدُوَ صَلَاحُهُ أَبَدًا، فَلَيْسَ هُوَ الَّذِي نَهَى - عَلَيْهِ السَّلَامُ - عَنْ بَيْعِهِ حَتَّى يُزْهِيَ أَوْ حَتَّى يَبْدُوَ صَلَاحُهُ، فَإِذْ لَيْسَ هُوَ الْمَنْهِيُّ عَنْ بَيْعِهِ فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَأَمَّا قَوْلُنَا: لَا يَجُوزُ لِمُشْتَرِي الْأُصُولِ أَنْ يَأْخُذَ الْبَائِعَ بِقَلْعِ ثَمَرَتِهِ قَبْلَ أَنْ يُمْكِنَهُ الِانْتِفَاعُ بِهَا، فَالثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ الْمُغِيرَةِ بْنِ شُعْبَةَ أَنَّهُ - عَلَيْهِ السَّلَامُ -: «نَهَى عَنْ إِضَاعَةِ الْمَالِ» وَالْبَائِعُ لَمْ يَتَعَدَّ فِي كَوْنِ ثَمَرَتِهِ فِي أُصُولِهَا فَيَكُونُ هُوَ الْمُضَيِّعُ لِمَالِهِ.

وَكَذَلِكَ الْقَوْلُ فِيمَنْ بَاعَ أَرْضًا وَفِيهَا بَذْرٌ لَهُ وَنَوًى وَلَمْ يَبِعْ الْبَذْرَ وَلَا النَّوَى، فَلَيْسَ لِمُشْتَرِي الْأَرْضِ أَخْذُهُ بِقَلْعِ ذَلِكَ إِلَّا حَتَّى يَصِيرَ النَّبَاتُ فِي أَوَّلِ حُدُودِ الِانْتِفَاعِ بِهِ فِي وَجْهٍ مَا، فَلَيْسَ لَهُ حِينَئِذٍ أَنْ يَغُلَّ أَرْضَ غَيْرِهِ، وَلَا شَجَرَ غَيْرِهِ، بِمَتَاعِهِ بِغَيْرِ إِذْنِ صَاحِبِ الْأَصْلِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ١٤٥٣ -.

مَسْأَلَةٌ: وَأَمَّا بَعْدَ ظُهُورِ الطِّيبِ فِي ثَمَرَةِ النَّخْلِ فَإِنَّهُ يَجُوزُ فِيهَا الِاشْتِرَاطُ إِنْ بِيعَتْ الْأُصُولُ، وَيَجُوزُ فِيهَا الْبَيْعُ مَعَ الْأُصُولِ وَدُونَهَا - أَمَّا الِاشْتِرَاطُ فَلِوُقُوعِ الصِّفَةِ عَلَيْهَا وَهِيَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «قَدْ أُبِّرَتْ» فَهَذِهِ ثَمَرَةٌ قَدْ أُبِّرَتْ - وَأَمَّا جَوَازُ بَيْعِهَا مَعَ الْأُصُولِ وَدُونَهَا لِإِبَاحَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْعَهَا إِذَا أَزْهَتْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَاعَ أُصُولَ نَخْلٍ وَفِيهَا ثَمَرَةٌ قَدْ أُبِّرَتْ]

[46] **Qur'an references (L22855):** Qur'an 2:275 (Al-Baqarah).

L22862 1454 - Issue: If someone sells palm trees containing fruits that have been pollinated, the buyer may stipulate receiving all of them if he wishes, or half of them, a third of them, a specified undivided share in all of them, or a specific part thereof.

١٤٥٤ - مَسْأَلَةٌ: وَمَنْ بَاعَ أُصُولَ نَخْلٍ وَفِيهَا ثَمَرَةٌ قَدْ أُبِرَتْ فَلِلْمُشْتَرِي أَنْ يَشْتَرِطَ جَمِيعَهُمَا إنْ شَاءَ أَوْ نِصْفَهَا أَوْ ثُلُثَهَا أَوْ جُزْءًا كَذَلِكَ مُسَمًّى مُشَاعًا فِي جَمِيعِهَا، أَوْ شَيْئًا مِنْهَا مُعَيَّنًا.

L22863 If he finds a defect in the palm tree, he may return it without being obligated to return the fruit, because part of the fruit constitutes individual fruits. The Prophet's statement (peace be upon him)—"If it contains fruit that has been pollinated, its fruit belongs to the seller unless the buyer stipulates it"—applies to anything from it that is designated as fruit of the palm tree. Stipulations differ from the sale itself; thus, stipulated conditions are not voided by returning the purchased item due to rejecting what was bought, as no explicit Quranic text or Sunnah mandates this.

فَإِنْ وَجَدَ بِالنَّخْلِ عَيْبًا رَدَّهَا وَلَمْ يَلْزَمْهُ رَدُّ الثَّمَرَةِ؛ لِأَنَّ بَعْضَ الثَّمَرَةِ ثَمَرَةٌ، وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «وَفِيهَا ثَمَرَةٌ قَدْ أُبِّرَتْ فَثَمَرَتُهَا لِلْبَائِعِ إلَّا أَنْ يَشْتَرِطَهَا الْمُبْتَاعُ» يَقَعُ عَلَى كُلِّ مَا كَانَ مِنْهَا يُسَمَّى ثَمَرَةً لِلنَّخْلِ - وَالِاشْتِرَاطُ غَيْرُ الْبَيْعِ، فَلَا يَرُدُّ مَا اشْتَرَطَ مِنْ أَجْلِ رَدِّهِ لِمَا اشْتَرَى، إذْ لَمْ يُوجِبْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ.

L22864 If someone purchases date fruit after the appearance of ripeness, or purchases fruits of other trees, then discovers the appearance of ripeness, or finds a defect in the rootstock and returns it, or finds a defect in the fruit and returns it.

فَلَوْ اشْتَرَى ثَمَرَةَ النَّخْلِ بَعْدَ ظُهُورِ الطِّيبِ، أَوْ ثَمَرَ أَشْجَارٍ غَيْرِ النَّخْلِ، ثُمَّ وَجَدَ ظُهُورَ الطِّيبِ، أَوْ ثَمَرَ أَشْجَارٍ غَيْرِ النَّخْلِ، ثُمَّ وَجَدَ بِالْأُصُولِ عَيْبًا فَرَدَّهَا، أَوْ وَجَدَ بِالثَّمَرَةِ عَيْبًا فَرَدَّهَا.

L22865 If he purchased the fruit along with the rootstocks in a single transaction, he must either return all of them without exception or keep all of them without exception, because it is a single transaction.

فَإِنْ كَانَ اشْتَرَى الثَّمَرَةَ مَعَ الْأُصُولِ صَفْقَةً وَاحِدَةً رَدَّ الْجَمِيعَ وَلَا بُدَّ، أَوْ أَمْسَكَ الْجَمِيعَ وَلَا بُدَّ؛ لِأَنَّهَا صَفْقَةٌ وَاحِدَةٌ.

L22866 If the produce had been purchased in a separate transaction, he would not return it when returning the principal assets due to a defect, nor may he return the principal assets unless he returns the produce due to a defect.

فَلَوْ كَانَ اشْتَرَى الثَّمَرَةَ فِي صَفْقَةٍ أُخْرَى لَمْ يَرُدَّهَا - إنْ رَدَّ الْأُصُولَ بِعَيْبٍ - وَلَا يَرُدُّ الْأُصُولَ إلَّا إنْ رَدَّ الثَّمَرَةَ بِعَيْبٍ.

L22867–22869 If one purchased palm tree trunks and stipulated the fruit or part of it, then found the sale invalid—necessitating its return—the fruit must necessarily be returned. He remains liable for it if he destroyed it or if it perished, because the Messenger of Allah—peace and blessings be upon him and his family—only permitted stipulation for the buyer, and a buyer is none other than one whose sale is valid. As for one whose sale is invalid, he is not the one whom the Messenger of Allah—peace and blessings be upon him

فَلَوْ اشْتَرَى الْأُصُولَ مِنْ النَّخْلِ وَاشْتَرَطَ الثَّمَرَةَ أَوْ بَعْضَهَا فَوَجَدَ الْبَيْعَ فَاسِدًا فَوَجَبَ رَدُّهُ رَدَّ الثَّمَرَةَ وَلَا بُدَّ، وَضَمِنَهَا إنْ كَانَ أَتْلَفَهَا أَوْ تَلِفَتْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يُبِحْ الِاشْتِرَاطَ إلَّا لِلْمُبْتَاعِ، وَلَا يَكُونُ مُبْتَاعًا إلَّا مَنْ قَدْ صَحَّ بَيْعُهُ، وَأَمَّا مَنْ لَمْ يَصِحَّ بَيْعُهُ فَلَيْسَ هُوَ الَّذِي جَعَلَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

and his family—granted permission to stipulate the fruit. Since he does not qualify for this permission, what he stipulated becomes unlawful—in opposition to the command of the Messenger of Allah—peace and blessings be upon him and his family. And he is a transgressor. Allah, the Exalted, says: “So whoever transgresses against you, retaliate against him to the same extent as he transgressed against you” [Al-Baqarah: 194].[47]

A case where someone sold a date palm or two date palms with fruit that has been pollinated.

Issue 1455: If someone sells one or two date palms containing fruit that has begun to develop after pollination, the buyer is invalidated from claiming ownership of their fruit entirely. This ruling applies only when three palms and upwards are sold.

If someone sells their undivided share in palm trees, and if their share—were it to be divided—amounts to three palm trees or more, the buyer may stipulate the inclusion of the fruit. Otherwise, it is not permissible. In all cases we have mentioned, the fruit necessarily belongs to the seller, based on the statement of the Messenger of Allah—peace be upon him: “Whoever sells palm trees after they have been fertilized, their fruit belongs to the seller unless the buyer stipulates it.” The Prophet—peace be upon him—applied this ruling exclusively to palm trees.

The minimum number to which the term “nakhl” (date palms) applies is three or more. This is because the dual form denoting two is recognized in the language in which the Qur’an was revealed and in which the Messenger of Allah—peace and blessings be upon him—addressed us, whereas the initial plural form applies exclusively to three or more.

If they mention the words of Allah, the Most High: {Indeed, both your hearts have inclined} [At-Tahrim: 4].[48]

We said: It is well-known among the Arabs that any two things are referred to using the plural wording [instead of the dual], as the *rajaz* poet said:

اشْتِرَاطَ الثَّمَرِ، فَإِذْ لَيْسَ هُوَ ذَلِكَ فَحَرَامٌ عَلَيْهِ مَا اشْتَرَطَهُ بِخِلَافِ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهُوَ مُتَعَدٍّ، قَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤]

[مَسْأَلَةٌ بَاعَ نَخْلَةً أَوْ نَخْلَتَيْنِ وَفِيهَا ثَمَرٌ قَدْ أُبِرَ]

١٤٥٥ - مَسْأَلَةٌ: وَمَنْ بَاعَ نَخْلَةً أَوْ نَخْلَتَيْنِ وَفِيهَا ثَمَرٌ قَدْ أُبِرَ لَمْ يَجُزْ لِلْمُبْتَاعِ اشْتِرَاطُ ثَمَرَتِهَا أَصْلًا، وَلَا يَجُوزُ ذَلِكَ إلَّا فِي ثَلَاثَةٍ فَصَاعِدًا.

وَمَنْ بَاعَ حِصَّةً لَهُ مُشَاعَةً فِي نَخْلٍ، فَإِنْ كَانَ يَقَعُ لَهُ فِي حِصَّتِهِ مِنْهَا - لَوْ قُسِّمَتْ -: ثَلَاثُ نَخَلَاتٍ فَصَاعِدًا، جَازَ لِلْمُبْتَاعِ اشْتِرَاطُ الثَّمَرَةِ، وَإِلَّا فَلَا - وَالثَّمَرَةُ فِي كُلِّ مَا قُلْنَا لِلْبَائِعِ وَلَا بُدَّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ بَاعَ نَخْلًا قَدْ أُبِّرَتْ فَثَمَرَتُهَا لِلْبَائِعِ، إلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ» فَلَمْ يَحْكُمْ - عَلَيْهِ السَّلَامُ - بِذَلِكَ إلَّا فِي نَخْلٍ.

وَأَقَلُّ مَا يَقَعُ عَلَيْهِ اسْمُ " نَخْلٍ " ثَلَاثُ فَصَاعِدًا، لِأَنَّ لَفْظَ التَّثْنِيَةِ الْوَاقِعَ عَلَى اثْنَيْنِ مَعْرُوفٌ فِي اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ، وَخَاطَبَنَا بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَوَّلُ لَفْظِ الْجَمْعِ إنَّمَا يَقَعُ عَلَى الثَّلَاثِ فَصَاعِدًا.

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {فَقَدْ صَغَتْ قُلُوبُكُمَا} [التحريم: ٤] .

قُلْنَا: الْمَعْرُوفُ عِنْدَ الْعَرَبِ: أَنَّ كُلَّ اثْنَيْنِ مِنْ اثْنَيْنِ فَإِنَّهُ يُخْبَرُ عَنْهُ بِلَفْظِ الْجَمْعِ، وَقَدْ قَالَ الرَّاجِزُ:

[47] **Qur’an references (L22867):** Qur’an 2:194 (Al-Baqarah).
[48] **Qur’an references (L22874):** Qur’an 66:4 (At-Tahrim).

L22876 And two vast entities cast twice, their backs akin to the backs of two shields.

وَمِهْمَهَيْنِ قَذَفَيْنِ مَرَّتَيْنِ ... ظَهْرَاهُمَا مِثْلُ ظُهُورِ التُّرْسَيْنِ

L22877 If it is argued: "A plural is the addition of one thing to another," then does this mean the dual [form] is also considered a plural?

فَإِنْ قِيلَ: الْجَمْعُ ضَمُّ شَيْءٍ إِلَى شَيْءٍ فَالِاثْنَانِ جَمْعٌ؟

L22878 We said: This is invalid, for if it were as you claimed, it would be permissible to report about a singular entity using a plural expression, such as saying: "Zayd stood" and "The man killed," since a singular entity is also composed of parts, some of which are aggregated to others. And success is through Allah, the Most High.

قُلْنَا: هَذَا بَاطِلٌ، وَلَوْ كَانَ كَمَا قُلْتُمْ لَجَازَ أَنْ نُخْبِرَ عَنْ الْوَاحِدِ بِلَفْظِ الْجَمْعِ فَيُقَالُ: زَيْدٌ قَامُوا، وَالرَّجُلُ قَتَلُوا؛ لِأَنَّ الْوَاحِدَ أَيْضًا أَجْزَاءٌ مَجْمُوعٌ بَعْضُهَا إلَى بَعْضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22879 **A legal issue concerning the sale of goods with the stipulation that the price be settled in full in a specified location.**

[مَسْأَلَةُ بَيْعُ سِلْعَةٍ عَلَى أَنْ يُوَفِّيَهُ الثَّمَنَ فِي مَكَان مُسَمًّى]

L22880–22882 1456 – Issue: It is not permissible to sell a commodity on the condition that he fulfills the price in full in a specified place, nor on... That he delivers the commodity in full at a specified place, for this is a condition not stipulated in the Book of Allah the Almighty, and thus it is invalid. However, the seller may collect the price once it is paid in full wherever the two parties are located, or wherever he or his agent finds the buyer within the lands of Allah—provided the payment is immediate, in accordance with Allah the Exalted's command through His Messenger's decree (may Allah's peace and blessings be upon him and his family) to grant every rightful claimant their due. The seller is only required not to obstruct the buyer from accessing what he sold.

١٤٥٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ سِلْعَةٍ عَلَى أَنْ يُوَفِّيَهُ الثَّمَنَ فِي مَكَان مُسَمًّى وَلَا عَلَى أَنْ يُوَفِّيَهُ السِّلْعَةَ فِي مَكَان مُسَمًّى؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ، لَكِنْ يَأْخُذُهُ الْبَائِعُ بِإِيفَائِهِ الثَّمَنَ حَيْثُ هُمَا، أَوْ حَيْثُ وَجَدَهُ هُوَ أَوْ وَكِيلُهُ مِنْ بِلَادِ اللَّهِ تَعَالَى، إنْ كَانَ الثَّمَنُ حَالًّا لِأَمْرِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِإِعْطَاءِ كُلِّ ذِي حَقٍّ حَقَّهُ - وَلَيْسَ عَلَى الْبَائِعِ إلَّا أَنْ لَا يَحُولَ بَيْنَ الْمُشْتَرِي وَبَيْنَ مَا بَاعَ مِنْهُ فَقَطْ.

L22883 And success is by Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22884 **A legal case concerning the sale of a female slave on the condition that she be entrusted to the custody of a trustworthy person until she menstruates.**

[مَسْأَلَةُ بَيْعُ جَارِيَةٍ بِشَرْطِ أَنْ تُوضَعَ عَلَى يَدَيْ عَدْلٍ حَتَّى تَحِيضَ]

L22885 Issue 1457: It is impermissible to sell a female slave on the condition that she be placed under the custody of a morally upright custodian until she menstruates - whether she is sexually mature or not - and a sale with this stipulation is vitiated. If the stipulation is overridden, however, the sale

remains valid. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān.

١٤٥٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ جَارِيَةٍ بِشَرْطِ أَنْ تُوضَعَ عَلَى يَدَيْ عَدْلٍ حَتَّى تَحِيضَ - رَائِعَةً كَانَتْ أَوْ غَيْرَ رَائِعَةٍ - وَالْبَيْعُ بِهَذَا الشَّرْطِ فَاسِدٌ، فَإِنْ غَلَبَ عَلَى ذَلِكَ فَبَيْعُهُ تَامٌّ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L22886 وَأَوْجَبَهُ مَالِكٌ فِي الرَّائِعَةِ، وَلَمْ يُوجِبْهُ فِي غَيْرِ الرَّائِعَةِ -: وَهَذَا أَوَّلُ التَّنَاقُضِ، وَفَسَادُ الْقَوْلِ، لِأَنَّ غَيْرَ الرَّائِعَةِ تُوطَأُ كَمَا تُوطَأُ الرَّائِعَةُ، وَتَحْمِلُ كَمَا تَحْمِلُ الرَّائِعَةُ.

L22887 ثُمَّ أَعْظَمُ التَّنَاقُضِ قَوْلُهُمْ: إِنَّ الْحَيْضَ لَا يَكُونُ بَرَاءَةً مِنَ الْحَمْلِ، وَإِنَّ الْحَامِلَ قَدْ تَحِيضُ؟ فَقُلْنَا لَهُمْ: يَا هَؤُلَاءِ فَلِأَيِّ مَعْنًى أَوْجَبْتُمْ مَنْعَ الْمُشْتَرِي مِنْ جَارِيَتِهِ، وَأَوْجَبْتُمْ هَذَا الشَّرْطَ الْفَاسِدَ الَّذِي لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ فَاسِدَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا تَوَرُّعٌ، وَلَا رَأْيٌ يُعْقَلُ؟

L22888 وَأَنْتُمْ تَقُولُونَ: إِنَّهَا إِذَا حَاضَتْ أُسْلِمَتْ إِلَيْهِ، وَحَلَّ لَهُ التَّلَذُّذُ مِنْهَا فِيمَا فَوْقَ الْمِئْزَرِ، وَحَلَّ لَهُ وَطْؤُهَا بَعْدَ الطُّهْرِ، وَمُمْكِنٌ - عِنْدَكُمْ - أَنْ تَكُونَ حَامِلًا مِنَ الْبَائِعِ حِينَئِذٍ، فَأَيُّ فَرْقٍ بَيْنَ مَا أَبَحْتُمْ لَهُ الْآنَ، وَبَيْنَ مَا مَنَعْتُمُوهُ مِنْهُ قَبْلَ أَنْ تَحِيضَ، وَخَوْفُ الْحَمْلِ -: وَفَسَادُ الْمَبِيعِ مَوْجُودٌ فِي كِلْتَا الْحَالَتَيْنِ؟ فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ هَذَا

L22889 وَلَا خِلَافَ بَيْنَنَا وَبَيْنَكُمْ فِي أَنَّهُ إِنْ ظَهَرَ بِهَا حَمْلٌ بَعْدَ الْحَيْضِ، وَبَعْدَ إِبَاحَتِكُمْ لَهُ وَطْأَهَا، فَوَلَدَتْهُ لِأَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ -: فَإِنَّ الْبَيْعَ مَفْسُوخٌ، وَهِيَ مَرْدُودَةٌ إِلَى الْبَائِعِ وَوَلَدُهَا بِهِ لَاحِقٌ، إِنْ كَانَ قَدْ أَقَرَّ بِوَطْئِهَا وَلَمْ يَدَّعِ اسْتِبْرَاءً - فَأَيُّ مَنْفَعَةٍ لِلْمُوَاضَعَةِ، أَوْ أَيُّ مَعْنًى لَهَا؟

L22890–22891 If they say, “We merely followed the transmitted text: ’Do not have inter-

course with a woman in the waiting period (ʿiddah) until she has menstruated?"

فَإِنْ قَالُوا: إِنَّمَا اتَّبَعْنَا النَّصَّ الْوَارِدَ: «لَا تُوطَأُ حَائِلٌ حَتَّى تَحِيضَ» ؟

L22892 We said: Far from it! Rather, you have contradicted this very text itself, for you differentiated between the menstruating woman and the non-menstruating woman—a distinction absent in the textual evidence, nor stated by any known scholar before you. You also differentiated between the woman who has not had intercourse and others, though this too lacks basis in the textual evidence. You cannot claim consensus in this matter, for the Ḥanafīs assert: The woman who has not had intercourse and others are equivalent—neither may be lawfully engaged in intercourse with until she menstruates or undergoes the waiting period to confirm she is not pregnant, as required for those who do not menstruate. This narration is not validated; even if it were, we would adhere to it. However, we maintain: The seller must not sell her until he ensures she undergoes one menstrual cycle, nor may the purchaser have intercourse with her until he similarly confirms this, solely as a precaution against pregnancy. If we conclusively determine she is pregnant by the seller, the sale is unlawful if she is his umm walad (a concubine who bears her master's child). If the pregnancy is from another, the sale is permissible, but intercourse remains forbidden until she delivers and her postpartum bleeding ceases.

قُلْنَا: كَلَّا، بَلْ خَالَفْتُمْ هَذَا النَّصَّ بِعَيْنِهِ، لِأَنَّكُمْ فَرَّقْتُمْ بَيْنَ الرَّائِعَةِ وَغَيْرِ الرَّائِعَةِ، وَلَيْسَ هَذَا فِي الْخَبَرِ، وَلَا قَالَهُ أَحَدٌ نَعْلَمُهُ قَبْلَكُمْ، وَفَرَّقْتُمْ بَيْنَ الْبِكْرِ وَغَيْرِ الْبِكْرِ، وَلَيْسَ ذَلِكَ فِي الْخَبَرِ، وَلَيْسَ لَكُمْ أَنْ تَدَّعُوا هَهُنَا إِجْمَاعًا، فَإِنَّ الْحَنَفِيِّينَ يَقُولُونَ: إِنَّ الْبِكْرَ وَغَيْرَ الْبِكْرِ سَوَاءٌ، لَا تُوطَأُ وَاحِدَةٌ مِنْهُمَا حَتَّى تَحِيضَ، أَوْ حَتَّى تَسْتَبْرِئَ بِمَا تَسْتَبْرِئُ بِهِ الَّتِي لَا تَحِيضُ -: وَهَذَا خَبَرٌ لَمْ يَصِحَّ وَلَوْ صَحَّ لَقُلْنَا بِهِ - لَكِنَّا نَقُولُ: لَا يَبِيعُهَا حَتَّى يَسْتَبْرِئَهَا بِحَيْضَةٍ، وَلَا يَطَؤُهَا الْمُشْتَرِي حَتَّى يَسْتَبْرِئَهَا كَذَلِكَ احْتِيَاطًا خَوْفَ الْحَمْلِ فَقَطْ، فَإِنْ أَيْقَنَّا أَنَّ بِهَا حَمْلًا مِنَ الْبَائِعِ فَالْبَيْعُ حَرَامٌ إِنْ كَانَتْ أُمَّ وَلَدِهِ، وَإِنْ كَانَ الْحَمْلُ مِنْ غَيْرِهِ فَالْبَيْعُ حَلَالٌ، وَالْوَطْءُ حَرَامٌ حَتَّى تَضَعَ وَتَطْهُرَ.

L22893 He is entrusted with that just as he is entrusted with what is prohibited for him regarding intercourse with menstruating women and postpartum women, with no difference, since no textual source has indicated otherwise. There is no difference between his being entrusted over the one he purchased and your being entrusted over the one you place her with him for that purpose.

وَهُوَ مُؤْتَمَنٌ عَلَى ذَلِكَ كَائْتِمَانِهِ عَلَى مَا حُرِّمَ عَلَيْهِ مِنْ وَطْءِ الْحَائِضِ، وَالنُّفَسَاءِ وَلَا فَرْقَ، إِذْ لَمْ يَأْتِ نَصٌّ بِغَيْرِ ذَلِكَ، وَلَا فَرْقَ بَيْنَ ائْتِمَانِهِ عَلَى الَّتِي اشْتَرَى وَبَيْنَ ائْتِمَانِكُمْ مَنْ تَضَعُونَهَا عِنْدَهُ لِذَلِكَ.

L22894 You do not distinguish between the trustworthy and the non-trustworthy here, yet you distinguish between the excellent opinion and the non-excellent one—and this is confusion and contradiction.

وَأَنْتُمْ لَا تُفَرِّقُونَ بَيْنَ الثِّقَةِ وَبَيْنَ غَيْرِ الثِّقَةِ هَهُنَا، وَفَرَّقْتُمْ بَيْنَ الرَّائِعَةِ وَغَيْرِ الرَّائِعَةِ - وَهَذَا تَخْلِيطٌ وَتَنَاقُضٌ.

L22895 As for the ruling concerning her if pregnancy becomes apparent, we will mention it, God the Exalted willing, in the "Book of Istibrāʾ" with its proof.

وَأَمَّا الْحُكْمُ فِيهَا إِنْ ظَهَرَ بِهَا حَمْلٌ فَسَنَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى فِي " كِتَابِ الِاسْتِبْرَاءِ " بِبُرْهَانِهِ - وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ.

There is no power nor strength except with Allah, the Most High, the Almighty.

[مَسْأَلَةٌ بَيْعُ عَبْدٍ أَوْ أَمَةٍ عَلَى أَنْ يُعْطِيَهُمَا الْبَائِعُ كِسْوَةً]

L22896 **A legal issue: The sale of a male slave or a female slave on the condition that the seller provides him or her with a garment.**

١٤٥٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ عَبْدٍ أَوْ أَمَةٍ عَلَى أَنْ يُعْطِيَهُمَا الْبَائِعُ كِسْوَةً - قَلَّتْ أَوْ كَثُرَتْ - وَلَا بَيْعُ دَابَّةٍ عَلَى أَنْ يُعْطِيَهَا الْبَائِعُ إكَافَهَا، أَوْ رَسَنَهَا، أَوْ بُرْدَعَتَهَا، وَالْبَيْعُ بِهَذَا الشَّرْطِ بَاطِلٌ مَفْسُوخٌ لَا يَحِلُّ فَمَنْ قُضِيَ عَلَيْهِ بِذَلِكَ قَسْرًا فَهُوَ ظُلْمٌ لَحِقَهُ وَالْبَيْعُ جَائِزٌ.

L22897 1458. Issue: It is not permissible to sell a male slave or female slave on the condition that the seller provides the slave clothing—whether little or much—nor to sell a riding animal on the condition that the seller provides its saddle, bridle, or bit. A sale with such a condition is invalid, annulled, and impermissible. If a judgment is enforced upon someone compelling this forcibly, it constitutes an injustice against him, and the sale itself is permissible.

بُرْهَانُ ذَلِكَ: أَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ، وَقَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

L22898–22899 The evidence for this is that it is a condition not stipulated in the Book of Allah, the Almighty and Majestic, hence it is invalid. He, the Exalted, said: “Do not consume your wealth among yourselves wrongfully, except as trade through mutual consent among you” [An-Nisa: 29].[49]

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

L22900 The Messenger of Allah (peace be upon him) said, “Your blood and your wealth are inviolable for you.”

فَسَمَّى اللَّهُ تَعَالَى أَخْذَ الْمَرْءِ مَالَ غَيْرِهِ مِنْ غَيْرِ تَرَاضٍ بِالتِّجَارَةِ: بَاطِلًا، وَحَرَّمَهُ، إذْ نَهَى عَنْهُ، وَعَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - أَيْضًا.

L22901 Allah the Exalted has declared the act of seizing another’s property without mutual consent under the guise of trade to be null and void, prohibited it - as He has forbidden such acts - and affirmed this prohibition through the explicit pronouncements of His Messenger (peace be upon him).

وَالْكِسْوَةُ مَالُ الْبَائِعِ وَلَمْ يَبِعْهَا بِرِضًا مِنْهُ، فَلَا يَحِلُّ أَخْذُهَا مِنْهُ أَصْلًا - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L22902 The garment is the property of the seller, and he did not sell it with his consent. Therefore, it is absolutely impermissible to take it from him; this is the opinion of Abū Ḥanīfah, Al-Shāfiʿī, Abū Sulaymān, and their companions.

وَقَالَ مَالِكٌ يُجْبَرُ عَلَى كِسْوَةِ مِثْلِهَا لِلشِّتَاءِ إنْ بِيعَتْ فِي الشِّتَاءِ، وَعَلَى كِسْوَةِ مِثْلِهَا فِي الصَّيْفِ إنْ بِيعَتْ فِي الصَّيْفِ - كِسْوَةً تَجُوزُ الصَّلَاةُ فِي مِثْلِهَا - فَكَانَتْ هَذِهِ شَرِيعَةً لَمْ يَأْتِ بِهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ، وَلَا قَوْلُ

L22903 Mālik said: The buyer is compelled to provide winter clothing equivalent to hers if she is sold in winter, and summer clothing equivalent to hers if sold in summer – clothing of the type in which prayer is permissible to be performed. This constituted a Sharīʿah ruling not brought by the Qur’ān,

[49] **Qur’an references (L22899):** Qur’an 4:29 (An-Nisa).

nor the Sunnah, nor a weak report, nor analogy, nor sound personal judgment, nor any opinion we know of from anyone before him – we intend this categorization. It has been narrated from Ibn ʻUmar: "All jewelry and clothing on a female slave displayed on her at the time of sale are included in the sale" – yet Mālik and his companions do not uphold this position.

أَحَدٍ نَعْلَمُهُ قَبْلَهُ - نَعْنِي بِهَذَا التَّقْسِيمِ -. وَقَدْ رُوِيَ عَنْ ابْنِ عُمَرَ: كُلُّ حُلِيٍّ وَكِسْوَةٍ عَلَى الْأَمَةِ عُرِضَتْ فِيهَا لِلْبَيْعِ فَهِيَ دَاخِلَةٌ فِي الْبَيْعِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

L22904 If they say, "Her clothing is from her wealth?" We respond: You have contradicted yourselves here in two aspects. First—if it is from her wealth, then you have permitted stipulating some of her wealth, yet this is forbidden according to you. Second—we ask you: How can it be from her wealth when you compel the seller to provide it (willingly or unwillingly) from wherever the seller wishes?

فَإِنْ قَالُوا: كِسْوَتُهَا مِنْ مَالِهَا؟ قُلْنَا: تَنَاقَضْتُمْ هَهُنَا فِي مَوْضِعَيْنِ: أَحَدُهُمَا - أَنَّهَا إِنْ كَانَتْ مِنْ مَالِهَا فَقَدْ أَجَزْتُمْ اشْتِرَاطَ بَعْضِ مَالِهَا، وَهَذَا حَرَامٌ عِنْدَكُمْ، وَالثَّانِي - أَنْ نَقُولَ لَكُمْ: كَيْفَ هِيَ مِنْ مَالِهَا وَأَنْتُمْ تُجْبِرُونَ الْبَائِعَ عَلَى إِحْضَارِهَا - أَحَبَّ أَمْ كَرِهَ - مِنْ حَيْثُ شَاءَ؟

L22905 Then, suppose the garment is from the property of the female slave—do you consider the saddlecloth and halter as belonging to the donkey and mule, given your claim that "it cannot be sold unless accompanied by a saddlecloth and halter"? Then why did you not apply this reasoning to the saddle and bridle? These are strange absurdities and abominations: we do not know from where they emerged.

ثُمَّ هَبْكُمْ أَنَّ الْكِسْوَةَ مِنْ مَالِ الْأَمَةِ، أَتَرَوْنَ الْبَرْذَعَةَ وَالرَّسَنَ مِنْ مَالِ الْحِمَارِ وَالْبَغْلِ؟ إِذْ قُلْتُمْ: لَا يُبَاعُ إِلَّا وَمَعَهُ بَرْذَعَةٌ وَرَسَنٌ؟ ثُمَّ مِنْ أَيْنَ لَمْ تَقُولُوا بِهَذَا فِي السَّرْجِ، وَاللِّجَامِ؟ وَهَذِهِ أَعَاجِيبُ وَشُنَعٌ لَا نَدْرِي مِنْ أَيْنَ خَرَجَتْ؟

L22906 Why have you not obligated him to provide a month's or two months' maintenance to sustain her, just as you have obligated him to provide a year's or half a year's clothing? What is the difference between clothing and maintenance? Rather, maintenance is more essential, for she cannot live without it.

وَهَلَّا أَوْجَبْتُمْ عَلَيْهِ نَفَقَةَ شَهْرٍ أَوْ شَهْرَيْنِ تَصْحَبُهَا إِيَّاهَا كَمَا أَوْجَبْتُمْ عَلَيْهِ كِسْوَةَ عَامٍ أَوْ نِصْفَ عَامٍ؟ وَمَا الْفَرْقُ بَيْنَ الْكِسْوَةِ وَالنَّفَقَةِ، بَلْ النَّفَقَةُ أَوْكَدُ؛ لِأَنَّهَا لَا تَعِيشُ دُونَهَا.

L22907 Then if they say, "Does her buyer provide for her?"

فَإِنْ قَالُوا: مُشْتَرِيهَا يُنْفِقُ عَلَيْهَا؟

L22908–22909 We said: And her purchaser (husband) must also clothe her, just as he is obligated to clothe his wife, nor does it obligate her father or her brother who marries her off to provide her clothing from the time she gets married.

قُلْنَا: وَمُشْتَرِيهَا يَكْسُوهَا أَيْضًا، كَمَا يَلْزَمُهُ أَنْ يَكْسُوَ زَوْجَتَهُ، وَلَا يَلْزَمُ أَبَاهَا وَلَا أَخَاهَا الَّذِي يُزَوِّجُهَا كِسْوَتَهَا مُذْ تَتَزَوَّجُ.

L22910 If they say: "Does he sell it naked?" We reply: "Does he sell it hungry? Is there no distinction?"

فَإِنْ قَالُوا: أَيَبِيعُهَا عُرْيَانَةً؟ قُلْنَا: أَيَبِيعُهَا جَائِعَةً - وَلَا فَرْقَ؟

L22911 Some of them said: "Clothing is one of its pillars." We replied: "This

is simultaneously a lie and folly, for we know of no pillars established for humans wherein clothing forms a part of them."

L22912 If they were to claim the practice of the people of Medina, we said: The one who says this has lied. It is a certain falsehood that this Sharia would be with the people of Medina, and then Umar, Uthman, Ali, Muawiyah, Hasan, and Abdullah ibn Zubair—may Allah be pleased with them—would conceal it, such that none would know it except Malik and those who emulated him. And with Allah, the Exalted, is success.

L22913 **A juristic issue: the sale of a commodity for a price its owner determines for the buyer.**

L22914 Issue 1459: It is not permissible to sell an item to another party at a price set by its owner. Any amount exceeding that price belongs to the party conducting the sale.

L22915 It was narrated to us through the chain of Ibn Abi Shaybah: Hushaym reported from Amr ibn Dinar, from Ata', from Ibn Abbas, that he saw no harm in a man giving another man a garment and saying, "Sell it for such-and-such price; whatever profit you gain beyond that is yours." No opposing view from any of the Companions is known regarding this matter.

L22916 And it was permitted by Shurayḥ, al-Ḥakam, ash-Shaʿbī, az-Zuhrī, and ʿAṭāʾ.

L22917 It has been narrated to us through the chain of Muhammad ibn al-Muthanna, from Abd al-Rahman ibn Mahdi, from Hammad ibn Zayd, from Ayyub al-Sakhtiyani, from Muhammad ibn Sirin: that he saw no harm in a man giving another man a garment or an item while saying to him, "Whatever you add beyond such-and-such or its equivalent, it is yours."

L22918 And by him to ʿAbd al-Raḥmān ibn Mahdī from Shuʿbah and Sufyān al-Thawrī, both of them from al-Mughīrah ibn Miqsam from Ibrāhīm al-Nakhaʿī: that he disliked that, and al-Ḥasan disliked it, and Ṭāwūs.

وَقَالَ بَعْضُهُمْ: الْكِسْوَةُ رُكْنٌ مِنْ أَرْكَانِهَا؟ فَقُلْنَا: هَذَا كَذِبٌ وَحُمْقٌ مَعًا، وَمَا عَلِمْنَا لِلْإِنْسَانِ أَرْكَانًا تَكُونُ الْكِسْوَةُ بَعْضَهَا.

فَإِنْ ادَّعَوْا عَمَلَ أَهْلِ الْمَدِينَةِ؟ قُلْنَا: كَذَبَ مَنْ قَالَ هَذَا، وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ تَكُونَ هَذِهِ الشَّرِيعَةُ عِنْدَ أَهْلِ الْمَدِينَةِ ثُمَّ يَكْتُمُهَا عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، ومُعَاوِيَةُ، وَالْحَسَنُ، وَعَبْدُ اللَّهِ بْنُ الزُّبَيْرِ - رَضِيَ اللَّهُ عَنْهُمْ - حَتَّى لَا يَدْرِيَهَا أَحَدٌ إلَّا مَالِكٌ وَمَنْ قَلَّدَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ سِلْعَةٍ بِثَمَنٍ يَحُدُّهُ لَهُ صَاحِبُهَا]

١٤٥٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ سِلْعَةٍ لِآخَرَ بِثَمَنٍ يَحُدُّهُ لَهُ صَاحِبُهَا فَمَا اسْتَزَادَ عَلَى ذَلِكَ الثَّمَنِ فَلِمُتَوَلِّي الْبَيْعِ.

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا هُشَيْمٌ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يُعْطِيَ الرَّجُلُ الرَّجُلَ الثَّوْبَ فَيَقُولُ: بِعْهُ بِكَذَا فَمَا ازْدَدْت فَلَكَ، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ فِي ذَلِكَ مُخَالِفٌ.

وَأَجَازَهُ شُرَيْحٌ، وَالْحَكَمُ، وَالشَّعْبِيُّ، وَالزُّهْرِيُّ، وَعَطَاءٌ.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يُعْطِيَ الرَّجُلُ الرَّجُلَ الثَّوْبَ أَوْ الشَّيْءَ فَيَقُولُ لَهُ: مَا ازْدَدْتَ عَلَى كَذَا أَوْ كَذَا فَهُوَ لَك.

وَبِهِ إِلَى عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَرِهَ ذَلِكَ، وَكَرِهَهُ الْحَسَنُ، وَطَاوُسٌ.

L22919 Abu Muhammad said: This is a condition not stipulated in the Book of Allah the Exalted. If the appointed deputy sells it under this condition, the sale is invalid because it constitutes a defective agency. One may not sell anything except through the owner's personal execution or a valid authorization - otherwise, it becomes a voidable act.

قَالَ أَبُو مُحَمَّد: هَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَإِنْ بَاعَهُ الْمَأْمُورُ عَلَى هَذَا الشَّرْطِ فَالْبَيْعُ بَاطِلٌ لِأَنَّهَا وَكَالَةٌ فَاسِدَةٌ، وَلَا يَجُوزُ بَيْعُ شَيْءٍ إلَّا بِتَوَلِّي صَاحِبِهِ، أَوْ بِوَكَالَةٍ صَحِيحَةٍ - وَإِلَّا فَهُوَ عَمَلٌ فَاسِدٌ.

L22920–22922 If he says to him, "Sell it for such-and-such, and if you obtain more, it is yours," then this is not a valid condition, and the sale remains valid. It is valid as a non-binding and unenforceable condition, for it is impermissible to take property without the owner's consent, and consent is only valid with disclosed terms. One might sell it at an exorbitant markup that the owner of the goods would not willingly accept if aware of its extent—and success is from Allah, the Exalted.

فَلَوْ قَالَ لَهُ: بِعْهُ بِكَذَا وَكَذَا، فَإِنْ أَخَذْت أَكْثَرَ فَهُوَ لَك؟ فَلَيْسَ شَرْطًا وَالْبَيْعُ صَحِيحٌ، وَهِيَ عِدَّةٌ لَا تَلْزَمُ، وَلَا يُقْضَى بِهَا؛ لِأَنَّهُ لَا يَحِلُّ مَالُ أَحَدٍ بِغَيْرِ رِضَاهُ، وَالرِّضَا لَا يَكُونُ إلَّا بِمَعْلُومٍ، وَقَدْ يَبِيعُهُ بِزِيَادَةٍ كَثِيرَةٍ لَا تَطِيبُ بِهَا نَفْسُ صَاحِبِ السِّلْعَةِ إذَا عَلِمَ مِقْدَارَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22923 **Issue: The sale of a non-specified item from within an aggregated whole.**

[مَسْأَلَةٌ بَيْعُ شَيْءٍ غَيْرِ مُعَيَّنٍ مِنْ جُمْلَةٍ مُجْتَمِعَةٍ]

L22924 1460: Issue: It is not permissible to sell anything unspecified from an aggregated collection—neither by count, weight, nor volume measurement—such as selling a ritl, qafīz, ṣāʿ, mudd, or ūqiyya from this aggregated collection of dates, wheat, meat, flour, or any volumetrically measured item in the world, or similarly weighed commodity.

١٤٦٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ غَيْرِ مُعَيَّنٍ مِنْ جُمْلَةٍ مُجْتَمِعَةٍ، لَا بِعَدَدٍ، وَلَا بِوَزْنٍ، وَلَا بِكَيْلٍ - كَمَنْ بَاعَ رِطْلًا، أَوْ قَفِيزًا، أَوْ صَاعًا، أَوْ مُدًّا أَوْ أُوقِيَّةً مِنْ هَذِهِ الْجُمْلَةِ مِنْ التَّمْرِ، أَوْ الْبُرِّ، أَوْ اللَّحْمِ، أَوْ الدَّقِيقِ، أَوْ كُلِّ مَكِيلٍ فِي الْعَالَمِ، أَوْ مَوْزُونٍ كَذَلِكَ.

L22925 And like one who sells three of these items or four, or any number, or from all that is counted; or like one who sells a cubit or two cubits, or similar to that of all that is measured by cubits – whether all that is equal in its parts or not. Rather, bargaining must first take place. Then when they mutually consent, let them measure by capacity, weigh, measure by cubits, or count.

وَكَمَنْ بَاعَ ثَلَاثَةً مِنْ هَذِهِ الْبَيْضِ أَوْ أَرْبَعَةً، أَوْ أَيَّ عَدَدٍ كَانَ، أَوْ مِنْ كُلِّ مَا يُعَدُّ، أَوْ كَمَنْ بَاعَ ذِرَاعًا أَوْ ذِرَاعَيْنِ، أَوْ نَحْوَ ذَلِكَ مِنْ كُلِّ مَا يُذْرَعُ سَوَاءٌ اسْتَوَتْ أَبْعَاضُ كُلِّ ذَلِكَ أَوْ لَمْ تَسْتَوِ، وَإِنَّمَا تَجِبُ أَوَّلًا الْمُسَاوَمَةُ، فَإِذَا تَرَاضَيَا: كَالَ أَوْ وَزَنَ، أَوْ ذَرَعَ، أَوْ عَدَّ.

L22926 When that is completed, the sale contract is concluded upon that specific tan-

gible item—whether measured by volume, weighed, measured by length, or counted. Thereafter, the option remains for either party to ratify or rescind, or for both to separate by physical departure (through one withdrawing from the other), as we have previously mentioned.

فَإِذَا تَمَّ ذَلِكَ تَعَاقَدَ الْبَيْعُ حِينَئِذٍ عَلَى تِلْكَ الْعَيْنِ الْمَكِيلَةِ أَوْ الْمَوْزُونَةِ، أَوْ الْمَذْرُوعَةِ، أَوْ الْمَعْدُودَةِ، ثُمَّ بَقِيَ التَّخْيِيرُ مِنْ أَحَدِهِمَا لِلْآخَرِ فَيُمْضِي، أَوْ يَرُدُّ، أَوْ يَتَفَرَّقَا بِأَبْدَانِهِمَا - بِزَوَالِ أَحَدِهِمَا عَنْ الْآخَرِ - كَمَا قَدَّمْنَا قَبْلُ.

L22927 If they conclude the sale contract before the measurement by volume, weighing, counting, or surveying we mentioned, it is not a valid sale—and is null and void. The Malikis permit this for homogeneous items such as flour, meat, dates, raisins, and similar commodities, but they prohibit it for heterogeneous items such as watermelons, cucumbers, eggs, female slaves, fish, all animals, precious substances, and analogous items.

فَلَوْ تَعَاقَدَا الْبَيْعَ قَبْلَ مَا ذَكَرْنَا مِنْ الْكَيْلِ، أَوْ الْوَزْنِ، أَوْ الْعَدِّ، أَوْ الذَّرْعِ: لَمْ يَكُنْ بَيْعًا - وَلَيْسَ بِشَيْءٍ - وَأَجَازَهُ الْمَالِكِيُّونَ فِيمَا اسْتَوَتْ أَبْعَاضُهُ: كَالدَّقِيقِ وَاللَّحْمِ، وَالتَّمْرِ، وَالزَّبِيبِ، وَنَحْوِ ذَلِكَ، وَلَمْ يُجِيزُوهُ فِيمَا اخْتَلَفَتْ أَبْعَاضُهُ: كَالْبِطِّيخِ، وَالْقِثَّاءِ، وَالْبَيْضِ، وَالْجَوَارِي، وَالْحِيتَانِ، وَسَائِرِ الْحَيَوَانِ وَالْجَوْهَرِ، وَنَحْوِ ذَلِكَ.

L22928 Abu Hanifah permitted the sale of a garment without specifying its exact identity from two garments or from three garments—with the buyer choosing—but he did not permit it from four garments. This is confounding uncertainty—is this not sufficient to deter you?

وَأَجَازَ أَبُو حَنِيفَةَ بَيْعَ ثَوْبٍ بِغَيْرِ عَيْنِهِ مِنْ ثَوْبَيْنِ أَوْ مِنْ ثَلَاثَةٍ يَخْتَارُهُ الْمُشْتَرِي، وَلَمْ يُجِزْهُ مِنْ أَرْبَعَةِ أَثْوَابٍ - وَهَذَا تَخْلِيطٌ نَاهِيكَ بِهِ؟

L22929 The proof for the validity of our view is Allah's statement: "Do not consume your wealth among yourselves wrongfully, unless it is a trade by mutual consent among you" [An-Nisā': 29]. Thus, Allah the Exalted has prohibited a person from taking another's wealth without mutual consent from both parties, and He has termed it unlawful.[50]

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَحَرَّمَ اللَّهُ تَعَالَى أَخْذَ الْمَرْءِ مَالَ غَيْرِهِ بِغَيْرِ تَرَاضٍ مِنْهُمَا وَسَمَّاهُ بَاطِلًا.

L22930 By necessity of inherent perception, everyone knows that mutual consent is absolutely impossible except regarding a specified and distinct matter. How if the seller says, "I will provide you from this side," and the buyer says, "Rather from the other"—how can this be resolved? Whoever deems one party more entitled to impose coercion than the other regarding what they reject of that matter has committed an injustice that is in no way concealed.

وَبِضَرُورَةِ الْحِسِّ يَدْرِي كُلُّ أَحَدٍ أَنَّ التَّرَاضِيَ لَا يُمْكِنُ أَلْبَتَّةَ إلَّا فِي مَعْلُومٍ مُتَمَيِّزٍ، وَكَيْفَ إنْ قَالَ الْبَائِعُ: أُعْطِيك مِنْ هَذِهِ الْجِهَةِ، وَقَالَ الْمُشْتَرِي: بَلْ مِنْ هَذِهِ الْأُخْرَى كَيْفَ الْعَمَلُ؟ وَمَنْ جَعَلَ أَحَدَهُمَا بِالْإِجْبَارِ عَلَى مَا يَكْرَهُ مِنْ ذَلِكَ أَوْلَى مِنْ الْآخَرِ، وَهَذَا ظُلْمٌ لَا خَفَاءَ بِهِ.

L22931–22932 Another proof is "the prohibition by the Messenger of Allah—peace and blessings be upon him—against transactions involving gharar," and there is no gharar greater than that the seller does not know what thing it is that he

[50] **Qur'an references (L22929):** Qur'an 4:29 (An-Nisa).

sold, nor does the buyer know what thing it is that he purchased. This is forbidden without doubt.[51]

وَبُرْهَانٌ آخَرُ - وَهُوَ «نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» ، وَلَا غَرَرَ أَكْثَرُ مِنْ أَنْ لَا يَدْرِي الْبَائِعُ أَيَّ شَيْءٍ هُوَ الَّذِي بَاعَ وَلَا يَدْرِي الْمُشْتَرِي أَيَّ شَيْءٍ اشْتَرَى، وَهَذَا حَرَامٌ بِلَا شَكٍّ.

L22933 A third argument: They all unanimously agree with us that whoever enters into a sale contract with another party under this aspect or this other, or purchases from him—as for these aspects or these others—then such a sale is invalid, annulled, and impermissible. Yet this very same transaction is what they have permitted here. We do not say it is analogous; rather, we affirm it is precisely the same, necessarily so.

وَبُرْهَانٌ ثَالِثٌ -: وَهُوَ أَنَّهُمْ كُلَّهُمْ مُجْمِعُونَ مَعَنَا فِيمَنْ عَقَدَ مَعَ آخَرَ بَيْعًا عَلَى هَذِهِ الْجِهَةِ، أَوْ هَذِهِ الْأُخْرَى، أَوْ اشْتَرَى مِنْهُ أَمَّا هَذِهِ الْجِهَاتُ، أَوْ هَذِهِ الْأُخْرَى -: فَإِنَّهُ بَيْعٌ بَاطِلٌ مَفْسُوخٌ لَا يَحِلُّ، وَهَذَا نَفْسُهُ هُوَ الَّذِي أَجَازُوا هَهُنَا، لَا نَقُولُ: إنَّهُ تَشْبِيهٌ، بَلْ نَقُولُ: هُوَ نَفْسُهُ وَلَا بُدَّ.

L22934 Fourth Proof: It is that the salam contract, according to Abū Ḥanīfah and Mālik, is not permissible with immediate delivery. For them, the salam contract is valid only if concluded upon any specified measure, number, volume, or weight. It is not permissible according to them, nor according to the Shāfiʿīs, when applied to a specific heap of goods. This is precisely what they prohibited. Our position here is the view of Abū Sulaymān and our companions. We know of no argument at all from the opponents—neither from the Quran, nor the Sunnah, nor any weak narration. Nor do we mention now any precedent from earlier scholars, any analogy, or any precaution whatsoever.

وَبُرْهَانٌ رَابِعٌ -: وَهُوَ أَنَّ السَّلَمَ عِنْدَ أَبِي حَنِيفَةَ، وَمَالِكٍ لَا يَجُوزُ حَالًّا، وَالسَّلَمُ عِنْدَهُمْ إنَّمَا هُوَ يُعْقَدُ عَلَى ذَرْعٍ مَا، أَوْ عَدَدٍ مَا، أَوْ كَيْلٍ مَا، أَوْ وَزْنٍ مَا، وَلَا يَجُوزُ عِنْدَهُمْ، وَلَا عِنْدَ الشَّافِعِيِّينَ فِي بَعْضِ صُبْرَةٍ بِعَيْنِهَا، وَهَذَا هُوَ نَفْسُهُ الَّذِي مَنَعُوا مِنْهُ - وَقَوْلُنَا هَهُنَا: هُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَمَا نَعْلَمُ لِلْمُخَالِفِينَ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا نَذْكُرُهُ الْآنَ، مِنْ قَوْلِ مُتَقَدِّمٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ تَوَرُّعٍ أَصْلًا.

L22935 Among the wonders of the world is the Hanafis' permission of this sale while prohibiting the sale of a cubit from this cloth delimited in this aspect - whether in terms of a cubit, the cloth's width, or its length. Thus, they permitted uncertainty and the reprehensible but prohibited the recognized - and success comes only from Allah, the Most High.

وَمِنْ عَجَائِبِ الدُّنْيَا -: إجَازَةُ الْحَنَفِيِّينَ هَذَا الْبَيْعَ، وَمَنْعُهُمْ مِنْ بَيْعِ ذِرَاعٍ مِنْ هَذَا الثَّوْبِ، مَحْدُودٍ هَذِهِ الْجِهَةَ، إمَّا فِي ذِرَاعٍ، وَإِمَّا فِي عَرْضِ الثَّوْبِ، أَوْ فِي طُولِهِ: فَأَجَازُوا الْمَجْهُولَ، وَالْمُنْكَرَ، وَمَنَعُوا الْمَعْرُوفَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L22936 **A legal issue concerning the sale of something as a single aggregated entity.**

[مَسْأَلَةٌ بَيْعُ الْمَرْءِ جُمْلَةً مَجْمُوعَةً]

[51] **Hadith references (L22932):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

L22937 1461 - Issue: It is not permissible to sell goods in bulk except by a specified measure thereof, or except by a specified weight thereof, or except by a specified number thereof, whatever the commodity may be.

١٤٦١ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الْمَرْءِ جُمْلَةً مَجْمُوعَةً إلَّا كَيْلًا مُسَمًّى مِنْهَا، أَوْ إلَّا وَزْنًا مُسَمًّى مِنْهَا، أَوْ إلَّا عَدَدًا مُسَمًّى مِنْهَا، أَيَّ شَيْءٍ كَانَ.

L22938 Similarly, it is not permissible to sell this garment or this piece of wood unless it is by a clearly defined cubit measurement taken from it.

وَكَذَلِكَ لَا يَحِلُّ أَنْ يَبِيعَ هَذَا الثَّوْبَ أَوْ هَذِهِ الْخَشَبَةَ إلَّا ذَرْعًا مُسَمًّى مِنْهَا.

L22939 Similarly, it is impermissible to sell fruit after its ripening while making an exception for a designated measure specified from it, a designated weight specified from it, or a designated number specified from it in principle - whether that quantity is small or large.

وَكَذَلِكَ لَا يَحِلُّ بَيْعُ الثَّمَرَةِ بَعْدَ طِيبِهَا وَاسْتِثْنَاءُ مَكِيلَةٍ مُسَمَّاةٍ مِنْهَا، أَوْ وَزْنٍ مُسَمًّى مِنْهَا، أَوْ عَدَدٍ مُسَمًّى مِنْهَا أَصْلًا، قَلَّ ذَلِكَ أَوْ كَثُرَ.

L22940–22942 It is not permissible to sell palm trees from their roots or their fruit on the condition of excluding a palm tree from them without specifying it; rather, the buyer must select the excluded one. All such transactions are forbidden, permanently annulled, and whatever is taken from them in its entirety is treated as unlawfully seized property. The only lawful method in such cases is to exclude from the whole—whatever that whole may be, whether an animal or... half of all that as a joint share, two-thirds of all that, more, or less—a specified, apportioned share held jointly among all.

وَلَا يَحِلُّ بَيْعُ نَخْلٍ مِنْ أُصُولِهَا، أَوْ ثَمَرَتِهَا، عَلَى أَنْ يَسْتَثْنِيَ مِنْهَا نَخْلَةً بِغَيْرِ عَيْنِهَا، لَكِنْ يَخْتَارُهَا الْمُشْتَرِي - هَذَا كُلُّهُ حَرَامٌ مَفْسُوخٌ أَبَدًا، مَحْكُومٌ فِيمَا قَبَضَ مِنْهُ كُلِّهِ بِحُكْمِ الْغَصْبِ وَإِنَّمَا الْحَلَالُ فِي ذَلِكَ أَنْ يَسْتَثْنِيَ مِنْ الْجُمْلَةِ إنْ شَاءَ أَيَّ جُمْلَةٍ كَانَتْ: حَيَوَانًا، أَوْ غَيْرَهُ، أَوْ مِنْ الثَّمَرَةِ: نِصْفَ كُلِّ ذَلِكَ مُشَاعًا، أَوْ ثُلُثَيْ كُلِّ ذَلِكَ، أَوْ أَكْثَرَ، أَوْ أَقَلَّ؛ جُزْءًا مُسَمًّى مَنْسُوبًا مُشَاعًا فِي الْجَمِيعِ.

L22943 Or he sells a portion of the whole as an undivided share, or excludes from it a specific, possessed item - whether abundant or scarce - this is the correct position with no disagreement about its permissibility from anyone, except in one case we will mention, if Allah the Exalted wills.

أَوْ يَبِيعُ جُزْءًا كَذَلِكَ مِنْ الْجُمْلَةِ مُشَاعًا، أَوْ يَسْتَثْنِي مِنْهَا عَيْنًا مُعَيَّنَةً مَحُوزَةً - كَثُرَتْ أَوْ قَلَّتْ - فَهَذَا هُوَ الْحَقُّ الَّذِي لَا خِلَافَ مِنْ أَحَدٍ فِي جَوَازِهِ، إلَّا فِي مَكَانٍ وَاحِدٍ نَذْكُرُهُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L22944 Malik permitted the sale of one hundred date palms while excluding ten palms without specifying which ones, and similarly for sheep and goats, but prohibited such exclusion in large numbers. He allowed the sale of a fruit harvest while excluding a measured quantity of it amounting to a third or less. If one excludes more than a third, it is impermissible.

وَأَجَازَ مَالِكٌ بَيْعَ مِائَةِ نَخْلَةٍ يُسْتَثْنَى مِنْهَا عَشْرُ نَخَلَاتٍ بِغَيْرِ عَيْنِهَا، وَكَذَلِكَ مِنْ الْغَنَمِ، وَمَنَعَ مِنْ ذَلِكَ فِي الْكَثِيرِ - وَأَجَازَ بَيْعَ الثَّمَرَةِ وَاسْتِثْنَاءَ مَكِيلَةٍ مِنْهَا تَكُونُ الثُّلُثَ فَأَقَلَّ، فَإِنْ اسْتَثْنَى أَكْثَرَ مِنْ الثُّلُثِ لَمْ يَجُزْ.

L22945 Mālik said: If one buys the fruit of four palm trees from an orchard without specifying the trees themselves at the time of sale, but the buyer selects them afterward, the sale is invalid. However, if they are purchased in this manner

وَقَالَ مَالِكٌ: إنْ ابْتَاعَ ثَمَرَ أَرْبَعِ نَخَلَاتٍ مِنْ حَائِطٍ بِغَيْرِ عَيْنِهَا لَكِنْ يَخْتَارُهَا الْمُبْتَاعُ لَمْ يَجُزْ، فَلَوْ ابْتَاعَهَا كَذَلِكَ بِأُصُولِهَا جَازَ، إذَا لَمْ يَكُنْ فِيهَا ثَمَرٌ كَالْعُرُوضِ.

along with the trees themselves, it becomes permissible—provided there is no fruit on them, as with merchandise.

وَأَجَازَ لِلْبَائِعِ أَنْ يَبِيعَ ثَمَرَ حَائِطِهِ وَيَسْتَثْنِيَ مِنْهُ ثَمَرَ أَرْبَعِ نَخَلَاتٍ بِغَيْرِ عَيْنِهَا، لَكِنْ يَخْتَارُهَا الْبَائِعُ -: أَجَازَ هَذَا بَعْدَ أَنْ تَوَقَّفَ فِيهِ أَرْبَعِينَ لَيْلَةً، وَأَجَازَ ذَلِكَ فِي الْغَنَمِ - وَكَرِهَهُ ابْنُ الْقَاسِمِ فِي النَّخْلِ قَالَ: فَإِنْ وَقَعَ أَجَزْته لِقَوْلِ مَالِكٍ؟

L22946 He permitted the seller to sell the fruit of his orchard while excluding the fruit of four palm trees without specifying their exact identity, provided the seller selects them. He permitted this after deliberating on it for forty nights and also approved it for sheep. However, Ibn al-Qasim juristically disapproved of this practice regarding palm trees, stating: "If such a sale occurs, would I permit it in accordance with Malik's opinion?"

قَالَ أَبُو مُحَمَّدٍ: فِي هَذِهِ الْأَقْوَالِ عِبْرَةٌ لِمَنْ اعْتَبَرَ مِنْ التَّفْرِيقِ بَيْنَ الْبَائِعِ، وَالْمُشْتَرِي فِي اخْتِيَارِ الثَّمَرِ، وَمِنْ الْفَرْقِ بَيْنَ اخْتِيَارِ الْمُشْتَرِي لِثَمَرِ أَرْبَعِ نَخَلَاتٍ فَمَنَعَ مِنْهُ، وَبَيْنَ اخْتِيَارِ الْبَائِعِ لَهُ فَأَجَازَهُ.

L22947 Abū Muḥammad said: There is a lesson in these statements for whoever reflects from the distinction between the seller and the buyer regarding the choice of fruit, and from the difference between the buyer's choice of fruit from four palm trees, which was prohibited, and the seller's choice of it, which was permitted.

وَلَيْتَ شِعْرِي مَا قَوْلُهُ فِي سِتِّ نَخَلَاتٍ أَوْ سَبْعٍ، وَنَزِيدُهُ هَكَذَا وَاحِدَةً وَاحِدَةً، فَإِمَّا يَتَمَادَى عَلَى الْإِبَاحَةِ، وَإِمَّا يَمْنَعُ، فَيُكَلِّفُوا الْبُرْهَانَ عَلَى مَا حَرَّمُوا وَمَا حَلَّلُوا، أَوْ يَتَحَيَّرُوا فَلَا يَدْرُوا مَا يُحَلِّلُونَ وَمَا يُحَرِّمُونَ، وَلَا بُدَّ مِنْ أَحَدِ هَذِهِ الْوُجُوهِ ضَرُورَةً.

L22948 I wish I knew his ruling concerning six or seven palm trees, as we add to it one by one in this manner. Either he would persist in permissibility, or he would prohibit, thereby obliging them to provide proof for what they forbade and permitted, or they would become perplexed, not knowing what to permit or prohibit. They must necessarily adopt one of these options by necessity.

ثُمَّ نَسْأَلُهُمْ عَمَّا أَجَازُوا فِي الْأَرْبَعِ نَخَلَاتٍ، فَنَقُولُ: أَتُجِيزُونَ ذَلِكَ إنْ لَمْ يَكُنْ فِي الْحَائِطِ إلَّا خَمْسُ نَخَلَاتٍ؟ فَإِنْ أَجَازُوا، سَأَلْنَاهُمْ مِنْ أَيْنَ خَصُّوا الْأَرْبَعَ نَخَلَاتٍ بِالْإِجَازَةِ دُونَ مَا هُوَ أَكْثَرُ أَوْ أَقَلُّ؟ فَإِنْ مَنَعُوا زِدْنَاهُمْ فِي عَدَدِ نَخْلِ الْحَائِطِ نَخْلَةً نَخْلَةً - وَهَذِهِ تَخَالِيطُ لَا نَظِيرَ لَهَا؟

L22949 Then we ask them about what they permitted concerning the four date palms. We say: Do you permit this if there are only five date palms in the orchard? If they permit it, we ask them: Why did they specifically allow four date palms while excluding what is greater or fewer? If they forbid it, we add one palm at a time to the number of palms in the orchard. Are these not confusions without parallel?

وَهَذَا يُبْطِلُ دَعْوَاهُمْ فِي عَمَلِ أَهْلِ الْمَدِينَةِ، إذْ لَوْ كَانَ ذَلِكَ عَمَلًا ظَاهِرًا مَا احْتَاجَ إلَى أَنْ يَتَوَقَّفَ فِيهِ أَرْبَعِينَ لَيْلَةً، وَإِنَّ فِي إجَازَةِ ابْنِ الْقَاسِمِ الْعَمَلَ الَّذِي مَنَعَ مِنْهُ - إنْ وَقَعَ - مِنْ أَجْلِ إجَازَةِ مَالِكٍ لَهُ لَعَجَبًا.

L22950–22952 And this invalidates their claim regarding the practice of the people of Medina, since if that had been a manifest practice, there would have been no need. until he refrains from it for forty nights. How astonishing it is that Ibn al-Qasim would certify an action he himself had prohibited—if it occurred—merely because of Malik's certification to him!

وَنَحْمَدُ اللَّهَ عَلَى عَظِيمِ نِعْمَتِهِ عَلَيْنَا فِي تَيْسِيرِنَا لِطَاعَةِ كَلَامِهِ، وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَنْفِيرِنَا عَنْ تَقْلِيدِ مَا دُونَ ذَلِكَ حَمْدًا كَثِيرًا كَمَا هُوَ أَهْلُهُ.

L22953 We praise Allah for the immense favor He has bestowed upon us in facilitating our obedience to His speech and the speech of His Messenger - may Allah bless him and grant him peace - and in deterring us from blindly imitating anything inferior to that, with abundant praise as is His due.

وَأَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ، فَإِنَّهُمْ مَنَعُوا مِنْ هَذَا كُلِّهِ.

L22954 As for the Ḥanafīs and the Shāfiʿīs, they categorically prohibited all of this.

قَالَ أَبُو مُحَمَّد: وَتَنَاقَضُوا هَهُنَا أَقْبَحَ تَنَاقُضٍ؛ لِأَنَّهُ لَا فَرْقَ بَيْنَ مَا حَرَّمُوا هَهُنَا مِنْ بَيْعِ جُمْلَةٍ وَاسْتِثْنَاءِ مِقْدَارٍ مِنْهَا بِغَيْرِ عَيْنِهِ، وَبَيْنَ مَا أَجَازُوا فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ مِنْ بَيْعِ بَعْضِ جُمْلَةٍ بِكَيْلٍ أَوْ بِوَزْنٍ، أَوْ بِعَدَدٍ بِغَيْرِ عَيْنِهِ فَهُوَ ذَلِكَ نَفْسُهُ وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى السَّلَامَةِ، وَكِلَا الْأَمْرَيْنِ بَيْعُ بَعْضِ جُمْلَةٍ وَإِمْسَاكُ بَعْضِهَا، {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] ، {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L22955 Abū Muḥammad said: They contradicted themselves here in the most repugnant manner, for there is no distinction between what they prohibited here—selling an aggregate while excluding a quantified portion without specifying its identity—and what they permitted in the preceding issue: selling part of an aggregate by measure, weight, or number without specifying its identity. This is the very same thing! We praise Allah the Exalted for safety, as both cases involve selling part of an aggregate and retaining ownership of another part. “Allah has permitted trade” [Al-Baqarah: 275], and “He has detailed for you what He has forbidden upon you” [Al-Anʿām: 119].[52]

وَأَمَّا الْمَكَانُ الَّذِي اُخْتُلِفَ فِيهِ مِمَّا ذَكَرْنَا، فَإِنَّ الْمَالِكِيِّينَ مَنَعُوا مِنْ بَيْعِ جُمْلَةٍ إِلَّا ثُلُثَيْهَا، وَقَالُوا: لَا يَجُوزُ الِاسْتِثْنَاءُ إِلَّا فِي الْأَقَلِّ.

L22956 As for the specific point of disagreement among the matters we mentioned, the Mālikīs prohibited selling the whole unless two-thirds were excluded, asserting that exclusion applies only to the minority portion.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ؛ لِأَنَّهُ لَمْ يُوجِبْ مَا قَالُوهُ: لَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، وَلَا لُغَةٌ أَصْلًا.

L22957 Ali said: This is invalid, for their claim is not supported by the Quran, the Sunnah, a weak narration, a Companion’s statement, analogy, a substantiated opinion, nor any linguistic basis whatsoever.

وَأَيْضًا: فَإِنَّ اسْتِثْنَاءَ الْأَكْثَرِ أَوْ الْأَقَلِّ، إنَّمَا هُوَ مَنْعُ بَعْضِ الْجُمْلَةِ فَقَطْ دُونَ سَائِرِهَا، وَلَا خِلَافَ فِي جَوَازِ هَذَا، وَهُوَ الَّذِي مَنَعُوا مِنْهُ نَفْسُهُ بِعَيْنِهِ.

L22958 Furthermore, the exception of the majority or minority pertains solely to excluding a part of the whole without affecting the remainder. There is no disagreement about the validity of this, yet it is precisely this same act itself that they prohibited.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ سَأَلْت أَبَا بَكْرِ بْنَ أَبِي مُوسَى عَنْ الرَّجُلِ يَبِيعُ بَيْعًا وَيَسْتَثْنِي نِصْفَهُ؟ فَكَرِهَهُ - الْحَجَّاجُ هَالِكٌ -.

L22959 And it was narrated to us through the chain of Ḥammād ibn Salamah from al-Ḥajjāj ibn Arṭāh: I asked Abū Bakr ibn Abī Mūsā about a man who sells something but reserves half of it. He disliked it [al-Ḥajjāj is deemed unreliable].

[52] **Qur’an references (L22955):** Qur’an 2:275 (Al-Baqarah); Qur’an 6:119 (Al-An’am).

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُثْمَانَ الْبَتِّيِّ قَالَ: إذَا اسْتَثْنَى الْبَائِعُ نِصْفًا وَنَقَدَ الْمُشْتَرِي نِصْفًا، فَهُوَ بَيْنَهُمَا نِصْفَانِ.

L22960 On the authority of Ḥammād ibn Salamah, from ʿUthmān al-Battī, who said: If the seller excludes half [of the item] and the buyer pays half [the price] in cash, then [the transaction] is equally shared between them.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ، وَالْأَعْمَشِ، كِلَاهُمَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَبِيعَ السِّلْعَةَ وَيَسْتَثْنِيَ نِصْفَهَا.

L22961 And through the chain of Muḥammad ibn al-Muthannā: I received from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, who narrated from Manṣūr and al-Aʿmash, both of whom narrated from Ibrāhīm al-Nakhaʿī: That he saw no harm in selling an item while excepting half of it.

قَالَ أَبُو مُحَمَّد: بُرْهَانُ صِحَّةِ قَوْلِنَا هَهُنَا هِيَ الْبَرَاهِينُ الَّتِي أَوْرَدْنَا فِي الْمَسْأَلَةِ الَّتِي قَبْلَهَا سَوَاءً سَوَاءً، وَهَهُنَا بُرْهَانٌ زَائِدٌ -: وَهُوَ مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا زِيَادُ بْنُ أَيُّوبَ أَنَا عَبَّادُ بْنُ الْعَوَّامِ أَنَا سُفْيَانُ بْنُ حُسَيْنٍ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الثُّنْيَا حَتَّى تُعْلَمَ» .

L22962–22964 Abu Muhammad said: The proof validating our position here is the proofs we presented in the issue that... Before it, explicitly equal terms, and here is additional evidence: as narrated via the chain of Ahmad ibn Shu'ayb—Ziyad ibn Ayyub—'Abbad ibn al-'Awwam—Sufyan ibn Husayn—Yunus ibn 'Ubayd—'Ata' ibn Abi Rabah—Jabir ibn 'Abdullah: "The Messenger of Allah (peace be upon him) prohibited reserved conditional sales until the conditions are disclosed."

فَصَحَّ أَنَّ الِاسْتِثْنَاءَ لَا يَحِلُّ إلَّا مَعْلُومًا مِنْ مَعْلُومٍ.

L22965 Thus, it is established that the exception is permissible only as a specified entity derived from a specified entity.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي الزُّبَيْرِ، وَسَعِيدِ بْنِ مِينَاءَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ، وَالْمُحَاقَلَةِ، وَالْمُعَاوَمَةِ، وَالْمُخَابَرَةِ» .

L22966 If it is said: You have narrated through the chain of Ḥammād ibn Zayd from Ayyūb al-Sikhtiyānī from Abū al-Zubayr, and through the chain of Saʿīd ibn Mīnāʾ from Jābir ibn ʿAbdullāh, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) prohibited al-Muzābana, al-Muḥāqala, al-Muʿāwama, and al-Mukhābara."

قَالَ أَحَدُهُمَا: بَيْعُ السِّنِينَ، وَهِيَ الْمُعَاوَمَةُ، وَهِيَ الثُّنْيَا؟

L22967 One of them said: "The sale of years—which is muʿāwamah, also known as thunyā?"

قُلْنَا: هَذَا تَفْسِيرٌ لَا تَقُومُ بِهِ حُجَّةٌ لِأَنَّهُ مِنْ كَلَامِ أَبِي الزُّبَيْرِ وَرَأْيِهِ، أَوْ كَلَامِ سَعِيدِ بْنِ مِينَاءَ وَرَأْيِهِ، وَلَا حُجَّةَ فِي كَلَامِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L22968 We said: This interpretation cannot establish definitive proof, for it derives from the statements and opinions of either Abu al-Zubayr or Sa'id ibn Mina'. No definitive proof exists in the statements of anyone other than the Messenger of Allah (peace be upon him).

L22969 The *thunyā* (exception): a well-known Arabic expression. As He, the

وَالثُّنْيَا: لَفْظَةٌ مَعْرُوفَةٌ عَرَبِيَّةٌ، قَالَ تَعَالَى: {كَمَا بَلَوْنَا أَصْحَابَ الْجَنَّةِ إِذْ أَقْسَمُوا لَيَصْرِمُنَّهَا مُصْبِحِينَ} [القلم: ١٧] {وَلا يَسْتَثْنُونَ} [القلم: ١٨] وَإِنَّمَا الثُّنْيَا اسْتِثْنَاءُ شَيْءٍ مِنْ شَيْءٍ فَقَطْ.

Exalted, said: *"Just as We tested the companions of the garden when they vowed to pluck its fruits at dawn"* [Al-Qalam: 17], *"and they did not make an exception"* [Al-Qalam: 18]. Verily, the *thunyā* is solely the exception of one thing from another.[53]

وَمِنْ الْمُحَالِ الْبَاطِلِ الْمُتَيَقَّنِ: أَنْ يَكُونَ لِلثُّنْيَا مَعْنًى غَيْرُ هَذَا فَيَنْهَانَا عَنْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ لَا يُبَيِّنُهَا عَلَيْنَا، حَاشَ لِلَّهِ مِنْ هَذَا، وَهُوَ الَّذِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْهِ أَنْ يُبَيِّنَ لَنَا دِينَنَا.

L22970 Among the impossible, invalid, and definitively certain falsehoods is that the dual transaction (thunyā) could have any meaning other than this, whereupon the Messenger of Allah—may Allah bless him and grant him peace—would prohibit us from it then fail to clarify it to us. Far removed is Allah from such a thing! He is the one whom Allah the Exalted obligated to clarify our religion to us.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ جَاءَتْ فِي الثُّنْيَا آثَارٌ -:

L22971 Abu Muhammad said: Traditions have come regarding the thunyā:

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ، وَابْنُ أَبِي زَائِدَةَ، كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، قَالَ: مَا كُنَّا نَرَى بِالثُّنْيَا بَأْسًا لَوْلَا أَنَّ ابْنَ عُمَرَ كَرِهَهَا، وَكَانَ عِنْدَنَا مَرْضِيًّا - قَالَ ابْنُ عُلَيَّةَ: لَوْلَا ابْنُ عَوْنٍ: فَتَحَدَّثْنَا أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ: لَا أَبِيعُ هَذِهِ النَّخْلَةَ، وَلَا هَذِهِ النَّخْلَةَ.

L22972 It has been narrated to us through the chain of Ibn Abi Shaybah: "Ismail ibn Ulayyah and Ibn Abi Za'idah both narrated to us—each transmitting from Abdullah ibn Awn, from al-Qasim ibn Muhammad—who said: 'We saw no harm in the dual sale were it not that Ibn Umar disapproved of it, and he was regarded as a reliable authority among us.'" Ibn Ulayyah added: "Were it not for Ibn Awn, we would have related that Ibn Umar used to say: 'I will not sell this palm tree or that palm tree.'"

قَالَ عَلِيٌّ: سَمِعَ ابْنُ عَوْنٍ هَذَا الْخَبَرَ مِنْ الْقَاسِمِ بْنِ مُحَمَّدٍ.

L22973–22974 Ali said: Ibn Awn heard this report from al-Qasim b. Muhammad.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ يَعْقُوبَ بْنِ إِبْرَاهِيمَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: يُكْرَهُ أَنْ يَبِيعَ النَّخْلَ وَيَسْتَثْنِيَ مِنْهُ كَيْلًا مَعْلُومًا - قَالَ سُفْيَانُ: وَلَكِنْ يَسْتَثْنِي هَذِهِ النَّخْلَةَ، وَهَذِهِ النَّخْلَةَ.

L22975 And from the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Yahya ibn Sa'id al-Ansari, from Ya'qub ibn Ibrahim, from Sa'id ibn al-Musayyab, who said: It is disliked to sell palm trees while reserving a known measure of their dates. Sufyan said: Rather, one should reserve these specific palm trees.

L22976 From the path of al-Ḥajjāj ibn al-Minhāl: Ḥammād ibn Zayd reported that Ayyūb al-Sakhtiyānī narrated from ʿAmr ibn Shuʿayb that he asked Saʿīd ibn al-Musayyib about stipulated conditions. He disapproved of them unless

[53] **Qur'an references (L22969):** Qur'an 68:17 (Al-Qalam); Qur'an 68:18 (Al-Qalam).

one explicitly exempts specific, identifiable palm trees. ʿAmr added: Saʿīd prohibited me from renouncing responsibility for alms when concluding a sale.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ أَنَا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّهُ سَأَلَ سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ الثُّنْيَا فَكَرِهَهَا إِلَّا أَنْ يَسْتَثْنِيَ نَخَلَاتٍ مَعْلُومَاتٍ، قَالَ عَمْرٌو: وَنَهَانِي سَعِيدٌ أَنْ أَبْرَأَ مِنْ الصَّدَقَةِ إِذَا بَايَعْت.

L22977 And through the chain of Ibn Abi Shaybah: from Ibn ʿUlayyah, from Ayyub al-Sikhtiyani, from ʿAmr ibn Shuʿayb, who said: I asked Saʿid ibn al-Musayyab: "May I sell my land's produce while reserving a portion?" He replied: "Do not reserve except known trees, and do not exempt yourself from zakah." Ayyub said: I mentioned this to Muhammad ibn Sirin, and it was as though he evidently approved.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ: أَبِيعُ ثَمَرَةَ أَرْضِي وَأَسْتَثْنِي؟ قَالَ: لَا تَسْتَثْنِ إلَّا شَجَرًا مَعْلُومًا، وَلَا تَبْرَأَنَّ مِنْ الصَّدَقَةِ - قَالَ أَيُّوبُ فَذَكَرْته لِمُحَمَّدِ بْنِ سِيرِينَ فَكَأَنَّهُ أَعْجَبَهُ.

L22978 From the narration of Ibn Abi Shaybah: I am Abu al-Ahwas, reporting from Abu Hamzah that he said: "I asked Ibrahim: 'Can I sell the sheep while retaining a portion of it?' He replied: 'No, but say: "I sell to you half of it."'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو الْأَحْوَصِ عَنْ أَبِي حَمْزَةَ، قُلْت لِإِبْرَاهِيمَ: أَبِيعُ الشَّاةَ وَأَسْتَثْنِي بَعْضَهَا؟ قَالَ: لَا، وَلَكِنْ قُلْ: أَبِيعُك نِصْفَهَا.

L22979 From Ibn Abi Shaybah: From Abd al-Rahman ibn Mahdi, from Sufyan, from Mansur, from Ibrahim, who said: "There is no harm in selling a commodity while reserving half of it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ قَالَ: لَا بَأْسَ بِبَيْعِ السِّلْعَةِ وَيَسْتَثْنِي نِصْفَهَا.

L22980 Through the chain of Ibn Abi Shaybah: Abdul A'la reported from Yunus, from Al-Hasan regarding one who sells the produce of his land while excluding a *kurr* (volume measure). He said: He approved of marking palm trees.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ يُونُسَ عَنْ الْحَسَنِ فِيمَنْ بَاعَ ثَمَرَةَ أَرْضِهِ فَاسْتَثْنَى كُرًّا؟ قَالَ: كَانَ يُعْجِبُهُ أَنْ يَعْلَمَ نَخْلًا.

L22981 And through the chain of Ibn Abī Shaybah: Ibn Abī Zāʾidah from Yazīd - who is Ibn Ibrāhīm - from Ibn Sīrīn that he held the view there was no harm in selling his produce and reserving half, a third, a quarter of it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ أَبِي زَائِدَةَ عَنْ يَزِيدَ - هُوَ ابْنُ إبْرَاهِيمَ - عَنْ ابْنِ سِيرِينَ أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَبِيعَ ثَمَرَتَهُ وَيَسْتَثْنِيَ نِصْفَهَا، ثُلُثَهَا، رُبْعَهَا.

L22982 Abu Muhammad said: The Malikis cited as evidence the report we narrated through the chain of Abd al-Razzaq: Maʿmar narrated to us, "I heard al-Zubayr ibn Adiyy say: I heard Ibn Umar, while he was selling his produce, say: 'I sell it to you for four thousand and the food of the youths who work it.'"

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ الْمَالِكِيُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ حَدَّثَنَا مَعْمَرٌ سَمِعْت الزُّبَيْرَ بْنَ عَدِيٍّ سَمِعْت ابْنَ عُمَرَ وَهُوَ يَبِيعُ ثَمَرَةً لَهُ فَقَالَ: أَبِيعُكُمُوهَا بِأَرْبَعَةِ آلَافٍ وَطَعَامِ الْفِتْيَانِ الَّذِينَ يَعْمَلُونَهَا.

L22983 From the chain of Ibn Abi Shaybah: Waki' reported from Ibrāhīm, from

Ismāʿīl ibn Mujammiʿ, from Sālim ibn ʿAbdullāh ibn ʿUmar that he saw no harm in selling his fruit while reserving a specified measured quantity from it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ إِبْرَاهِيمَ عَنْ إِسْمَاعِيلَ بْنِ مُجَمِّعٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَبِيعَ ثَمَرَتَهُ وَيَسْتَثْنِيَ مِنْهَا مَكِيلَةً مَعْلُومَةً.

L22984–22986 And on the authority of Mālik, from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, that his grandfather narrated... Muhammad ibn ʿAmr sold the fruit of his palm grove, known as al-Afrāq, for four thousand dirhams, reserving from it eight hundred dirhams' worth of dates as part of the payment—and we know of no other precedent applicable to their case besides this.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ: أَنَّ جَدَّهُ مُحَمَّدَ بْنَ عَمْرٍو بَاعَ ثَمَرَ حَائِطٍ لَهُ يُقَالُ لَهُ: الْأَفْرَاقُ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ وَاسْتَثْنَى مِنْهُ بِثَمَانِمِائَةِ دِرْهَمٍ تَمْرًا - وَمَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا.

L22987 The narration from Ibn ʿUmar: they are the first to oppose this ruling, because if the servants' sustenance is excepted from the produce, it becomes unknown—what its type would be and what its quantity would be. If it is imposed on the buyer in addition to the price, the same uncertainty applies.

فَالرِّوَايَةُ عَنْ ابْنِ عُمَرَ: هُمْ أَوَّلُ مُخَالِفٍ لَهَا، لِأَنَّ طَعَامَ الْفِتْيَانِ إِنْ كَانَ مُسْتَثْنًى مِنْ الثَّمَرَةِ فَهُوَ مَجْهُولٌ، لَا يُدْرَى مَا يَكُونُ نَوْعُهُ، وَلَا مِقْدَارُ مَا يَكُونُ، فَإِنْ كَانَ مُضَافًا عَلَى الْمُشْتَرِي إلَى الثَّمَنِ فَكَذَلِكَ أَيْضًا -.

L22988 The Malikis do not permit either of these two aspects—indeed, they have opposed it—and the authentic report from Ibn ʿUmar is like our statement, as we have previously cited.

وَالْمَالِكِيُّونَ لَا يُجِيزُونَ شَيْئًا مِنْ هَذَيْنِ الْوَجْهَيْنِ - فَقَدْ خَالَفُوهُ، وَالصَّحِيحُ عَنْ ابْنِ عُمَرَ مِثْلُ قَوْلِنَا كَمَا أَوْرَدْنَا آنِفًا.

L22989 As for the ḥadīth of Sālim, it did not specify a third from a lesser amount nor from a greater amount.

وَأَمَّا حَدِيثُ سَالِمٍ فَلَمْ يَخُصَّ ثُلُثًا مِنْ أَقَلَّ، وَلَا أَكْثَرَ -.

L22990 The Malikis do not permit more than a third, since they have opposed it.

وَالْمَالِكِيُّونَ لَا يُجِيزُونَ أَكْثَرَ مِنْ الثُّلُثِ - فَقَدْ خَالَفُوهُ.

L22991 As for the narration of Muḥammad ibn ʿAmr ibn Ḥazm, he excepted from the produce he sold—four thousand dates in exchange for eight hundred dirhams, which constituted one-fifth. Thus, he reserved one-fifth of what he sold, and this is permissible and valid. It was thereby clear that there was absolutely no basis for a Salam contract in what they asserted.

وَأَمَّا حَدِيثُ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ فَإِنَّمَا اسْتَثْنَى مِنْ ثَمَرٍ بَاعَهُ بِأَرْبَعَةِ آلَافٍ تَمْرًا بِثَمَانِمِائَةِ دِرْهَمٍ، وَهُمْ الْخُمُسُ، فَإِنَّمَا اسْتَثْنَى خُمُسَ مَا بَاعَ، وَهَذَا جَائِزٌ حَسَنٌ - فَلَاحَ أَنَّهُ لَا سَلَفَ لَهُمْ أَصْلًا فِيمَا قَالُوهُ ذَلِكَ.

L22992 It has been transmitted to us that exceptions are entirely prohibited, as transmitted through the chain of Ibn Abi Shaybah: ʻAbd al-Ṣamad ibn Abī al-Jārūd said, "I asked Jābir ibn Zayd about one who sells something and excepted a part of it." He said, "That is not valid."

وَقَدْ رُوِّينَا الْمَنْعَ مِنْ الِاسْتِثْنَاءِ جُمْلَةً كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الصَّمَدِ بْنُ أَبِي الْجَارُودِ قَالَ: سَأَلْت جَابِرَ بْنَ زَيْدٍ عَمَّنْ بَاعَ شَيْئًا وَاسْتَثْنَى بَعْضًا؟ قَالَ: لَا يَصْلُحُ ذَلِكَ.

L22993 Abū Muḥammad said: If he intended an unknown, then it is correct. But if he intended the entirety of the exception, then it is erroneous, for "Allah's Messenger—peace and blessings of Allah be upon him—permitted the conditional exception when it is known," and no one's argument holds validity alongside his—peace be upon him.

قَالَ أَبُو مُحَمَّدٍ: إنْ كَانَ عَنَى مَجْهُولًا فَصَحِيحٌ وَإِنْ كَانَ عَنَى جُمْلَةَ الِاسْتِثْنَاءِ فَخَطَأٌ، لِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَاحَ الثُّنْيَا إذَا عُلِمَتْ» ، وَلَا حُجَّةَ فِي أَحَدٍ مَعَهُ - عَلَيْهِ السَّلَامُ -.

[مَسْأَلَةٌ بَيْعِ مَالِ غَيْرِهِ بِغَيْرِ إذْنِ صَاحِبِ الْمَالِ لَهُ فِي بَيْعِهِ]

L22994 **A Juridical Case: The Ruling on Selling Another's Property Without the Owner's Permission [and the Liability of the Seller].**

L22995 Issue 1462: It is impermissible for anyone to sell another's property without the owner's authorization for him to sell it. If such a sale occurs, it is annulled in perpetuity - whether the owner is present and witnesses this or absent. His silence does not constitute consent to the sale - whether the duration is lengthy or brief - even after a hundred years or longer. Rather, the owner and his heirs after him can take his property forever.

١٤٦٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَبِيعَ مَالَ غَيْرِهِ بِغَيْرِ إذْنِ صَاحِبِ الْمَالِ لَهُ فِي بَيْعِهِ، فَإِنْ وَقَعَ فُسِخَ أَبَدًا - سَوَاءٌ كَانَ صَاحِبُ الْمَالِ حَاضِرًا يَرَى ذَلِكَ أَوْ غَائِبًا - وَلَا يَكُونُ سُكُوتُهُ رِضًا بِالْبَيْعِ - طَالَتْ الْمُدَّةُ أَمْ قَصُرَتْ - وَلَوْ بَعْدَ مِائَةِ عَامٍ أَوْ أَكْثَرَ، بَلْ يَأْخُذُ مَالَهُ أَبَدًا هُوَ وَوَرَثَتُهُ بَعْدَهُ.

L22996 It is not permissible for the owner of the property to validate that sale whatsoever unless he and the buyer mutually consent to establish a sale contract pertaining to it. The one who takes possession is liable upon himself for the liability of usurpation.

وَلَا يَجُوزُ لِصَاحِبِ الْمَالِ أَنْ يُمْضِيَ ذَلِكَ الْبَيْعَ أَصْلًا إلَّا أَنْ يَتَرَاضَى هُوَ وَالْمُشْتَرِي عَلَى ابْتِدَاءِ عَقْدِ بَيْعٍ فِيهِ - وَهُوَ مَضْمُونٌ عَلَى مَنْ قَبَضَهُ ضَمَانَ الْغَصْبِ.

L22997–22999 Similarly, no one is obligated to have another purchase on their behalf, nor to instruct another to do so. If someone purchases on their behalf without authorization... The purchase belongs to the buyer and does not transfer to the one who purchased it for him—whether he intended ownership or not—except through initiating a purchase contract with the one who purchased it. Excepted is the absent person who is certain that something from his property is spoiling in a manner that would lead to its destruction before consultation—in such case, the judge or others may sell it for him. Similarly, purchasing what is indispensable for his dependents is permitted, or what is sold upon him as a binding obligatory right to allow a creditor to claim his due, or for the expenses of those he is obligated to provide for—this is binding upon him whether present or absent, consenting or refusing.

وَكَذَلِكَ لَا يُلْزِمُ أَحَدًا شِرَاءَ غَيْرِهِ لَهُ لَا أَنْ يَأْمُرَهُ بِذَلِكَ، فَإِنْ اشْتَرَى لَهُ دُونَ أَمْرِهِ فَالشِّرَاءُ لِلْمُشْتَرِي وَلَا يَكُونُ لِلَّذِي اشْتَرَاهُ لَهُ - أَرَادَ كَوْنَهُ لَهُ أَوْ لَمْ يُرِدْ - إلَّا بِابْتِدَاءِ عَقْدِ شِرَاءٍ مَعَ الَّذِي اشْتَرَاهُ، إلَّا الْغَائِبَ الَّذِي يُوقِنُ بِفَسَادِ شَيْءٍ مِنْ مَالِهِ فَسَادًا يَتْلَفُ بِهِ قَبْلَ أَنْ يُشَاوِرَ، فَإِنَّهُ يَبِيعُهُ لَهُ الْحَاكِمُ أَوْ غَيْرُهُ، وَنَحْوُ ذَلِكَ، وَيَشْتَرِي لِأَهْلِهِ مَا لَا بُدَّ لَهُمْ مِنْهُ - وَيَجُوزُ ذَلِكَ أَوْ مَا بِيعَ عَلَيْهِ بِحَقٍّ وَاجِبٍ لِيَنْتَصِفَ غَرِيمٌ مِنْهُ، أَوْ فِي نَفَقَةِ مَنْ تَلْزَمُهُ نَفَقَتُهُ، فَهَذَا لَازِمٌ لَهُ - حَاضِرًا كَانَ أَوْ غَائِبًا، رَضِيَ أَمْ سَخِطَ.

L23000 The proof of that is the statement of Allah, the Most High: “No soul bears except upon itself” [Al-An’am 6:164].[1]

L23001 And the statement of the Messenger of Allah—peace be upon him—: “Indeed, your blood, your wealth, your honor, and your bodies are inviolable for you.”

L23002 No one has the right to permit what Allah the Exalted has prohibited regarding his wealth, skin, or blood except through the manner sanctioned by the explicit text of the Quran or the Sunnah. Whoever does this, his action is invalidated according to the statement of Allah’s Messenger (peace be upon him): “Whoever performs a deed contrary to our teachings, it is rejected.” Silence does not signify consent except in relation to two matters exclusively.[2]

L23003 One of them is the Messenger of Allah—may Allah bless him and grant him peace—who was commanded to clarify, whom falsehood cannot approach from before him or behind him, who does not endorse falsehood, and regarding whom the divine text establishes that whatever he remained silent about constitutes something excused and permissible. Nothing is forbidden except what he explicitly prohibited for us, no obligation exists except what he commanded, and no prohibition except what he forbade. Thus, whatever he neither commanded nor prohibited is excluded from being obligatory or forbidden, inescapably remaining permissible. By logical necessity, his silence—which constitutes neither command nor prohibition—falls into this category of the permissible.[3]

L23004 The second case is that of a virgin in her marriage, applicable solely due to the textual evidence reported in that regard. As for all other cases beyond what we have mentioned, silence does not count as consent until one verbally affirms their consent and formally implements it.

L23005 The one who claims that the silence of those other than these two constitutes

[1] **Qur’an references (L23000):** Qur’an 6:164 (Al-An’am).

[2] **Hadith references (L23002):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[3] **Qur’an references (L23003):** Qur’an 41:42 (Fussilat).

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَلَيْسَ لِأَحَدٍ أَنْ يُحِلَّ مَا حَرَّمَ اللَّهُ تَعَالَى مِنْ مَالِهِ، وَلَا مِنْ بَشَرَتِهِ، وَلَا مِنْ دَمِهِ إِلَّا بِالْوَجْهِ الَّذِي أَبَاحَهُ بِهِ نَصُّ الْقُرْآنِ، أَوْ السُّنَّةِ، وَمَنْ فَعَلَ ذَلِكَ فَهُوَ مَرْدُودٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَالسُّكُوتُ لَيْسَ رِضًا إِلَّا مِنْ اثْنَيْنِ فَقَطْ -.

أَحَدُهُمَا: رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورُ بِالْبَيَانِ الَّذِي لَا يَأْتِيهِ الْبَاطِلُ مِنْ بَيْنِ يَدَيْهِ وَلَا مِنْ خَلْفِهِ، الَّذِي لَا يُقِرُّ عَلَى بَاطِلٍ، وَالَّذِي وَرَدَ النَّصُّ بِأَنَّ مَا سَكَتَ عَنْهُ فَهُوَ عَفْوٌ جَائِزٌ، وَالَّذِي لَا حَرَامَ إِلَّا مَا فَصَّلَ لَنَا تَحْرِيمَهُ، وَلَا وَاجِبَ إِلَّا مَا أَمَرَنَا بِهِ وَلَا نَهَانَا عَنْهُ فَقَدْ خَرَجَ عَنْ أَنْ يَكُونَ فَرْضًا أَوْ حَرَامًا، فَبَقِيَ أَنْ يَكُونَ مُبَاحًا وَلَا بُدَّ، فَدَخَلَ سُكُوتُهُ الَّذِي لَيْسَ أَمْرًا وَلَا نَهْيًا فِي هَذَا الْقِسْمِ ضَرُورَةً.

وَالثَّانِي: الْبِكْرُ فِي نِكَاحِهَا لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ فَقَطْ - وَأَمَّا كُلُّ مَنْ عَدَا مَا ذَكَرْنَا فَلَا يَكُونُ سُكُوتُهُ رِضًا حَتَّى يُقِرَّ بِلِسَانِهِ بِأَنَّهُ رَاضٍ بِهِ مُنَفِّذٌ.

وَيُسْأَلُ مَنْ قَالَ: إِنَّ سُكُوتَ مَنْ عَدَا هَذَيْنِ رِضًا: مَا الدَّلِيلُ عَلَى صِحَّةِ قَوْلِكُمْ: إِنَّ الرِّضَا يَكُونُ بِالسُّكُوتِ، وَإِنَّ الْإِنْكَارَ لَا يَكُونُ إِلَّا بِالْكَلَامِ؟ وَمِنْ أَيْنَ قُلْتُمْ ذَلِكَ؟

consent is to be asked: What evidence validates your assertion that consent indeed occurs through silence and that denial cannot occur except through speech? From where have you derived this?

فَإِنْ ادَّعَوْا نَصًّا، كَذَبُوا، وَإِنْ ادَّعَوْا عِلْمَ ضَرُورَةٍ، كَابَرُوا؛ لِأَنَّ جُمْهُورَ النَّاسِ مُخَالِفُونَ لَهُمْ فِي ذَلِكَ، وَهُمْ لَا يَعْرِفُونَ الضَّرُورَةَ الَّتِي يَدَّعُونَ، وَلَا فَرْقَ بَيْنَ دَعْوَاهُمْ عَلَى غَيْرِهِمْ عِلْمَ الضَّرُورَةِ هَهُنَا وَبَيْنَ دَعْوَى غَيْرِهِمْ عَلَيْهِمْ عِلْمَ الضَّرُورَةِ فِي بُطْلَانِ ذَلِكَ، وَفِي أَنَّ الْإِنْكَارَ يَكُونُ بِالسُّكُوتِ، وَأَنَّ الرِّضَا لَا يَكُونُ إِلَّا بِالْكَلَامِ؟

L23006 If they claim a textual basis, they have lied; and if they claim knowledge of necessity, they have acted arrogantly—for the majority oppose them in this, and they do not recognize the necessity they claim. There is no distinction between their claim against others concerning the knowledge of necessity here and others' claim against them concerning the knowledge of necessity in the invalidity of that position, nor in the principle that denial is expressed through silence and consent is only conveyed through speech.

فَبَطَلَتْ الدَّعْوَتَانِ لِتَعَارُضِهِمَا، وَلَمْ يَبْقَ إِلَّا أَنَّ السَّاكِتَ مُمْكِنٌ أَنْ يَكُونَ رَاضِيًا، وَمُمْكِنٌ أَنْ يَكُونَ غَيْرَ رَاضٍ، وَهَذَا هُوَ الَّذِي لَا شَكَّ فِيهِ، وَالرِّضَا يَكُونُ بِالسُّكُوتِ وَبِالْكَلَامِ، وَالْإِنْكَارُ يَكُونُ بِالسُّكُوتِ وَبِالْكَلَامِ.

L23007–23008 Thus, the two claims are invalidated due to their contradiction, leaving only the possibility that the silent party could be consenting or could be non-consenting. This is undoubtedly the case. Consent may be given by silence or speech, and denial may likewise be expressed by silence or speech.

فَإِذْ ذَلِكَ كَذَلِكَ فَإِنَّمَا هُوَ الظَّنُّ فَقَطْ، وَلَا تَحِلُّ الْأَمْوَالُ الْمُحَرَّمَةُ بِالظَّنِّ.

L23009 Since this is so, it is nothing but mere assumption, and forbidden wealth cannot be legitimized by assumption.

قَالَ تَعَالَى: {وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨]

L23010 The Exalted said: "Indeed, assumption avails nothing against the truth" [53:28][4]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

L23011 The Messenger of Allah, peace be upon him, said: "Avoid suspicion, for suspicion is the most false of speech."

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى نِكَاحِ الْبِكْرِ؟

L23012 If they say: "Have we drawn an analogy with the Messenger of Allah (peace and blessings be upon him) and the marriage of a virgin?"

قُلْنَا: الْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَهُنَا فِي غَايَةِ الْبَاطِلِ؛ لِأَنَّ مَنْ عَدَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْكُتُ تَقِيَّةً أَوْ تَدْبِيرًا فِي أَمْرِهِ وَتَرْوِيَةً، أَوْ لِأَنَّهُ يَرَى أَنَّ سُكُوتَهُ لَا يَلْزَمُهُ بِهِ شَيْءٌ، وَهَذَا هُوَ الْحَقُّ، رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَتَّقِي فِي اللَّهِ تَعَالَى أَحَدًا، وَلَا يَحْكُمُ فِي شَيْءٍ مِنَ الدِّينِ بِغَيْرِ الْوَحْيِ مِنْ رَبِّهِ تَعَالَى،

L23013 We said: Analogy is invalid. Moreover, even if it were valid, here it would represent the height of falsehood. For whoever besides the Messenger of Allah—peace be upon him—remains silent does so out of dissimulation, strategizing in his affairs, deliberation, or because he considers his silence non-binding. This is the truth: the Messenger of Allah—peace be upon him—fears none regarding Allah Almighty, judges no religious matter except by

[4] **Qur'an references (L23010):** Qur'an 53:28 (An-Najm).

وَلَا يَجُوزُ لَهُ السُّكُوتُ عَلَى الْبَاطِلِ فَلَا يُنْكِرُهُ، لِأَنَّهُ كَانَ يَكُونُ غَيْرَ مُبَيِّنٍ وَقَدْ أَمَرَهُ اللَّهُ تَعَالَى بِالْبَيَانِ وَالتَّبْلِيغِ وَالْأَمْرِ بِالْوَاجِبَاتِ، وَتَفْصِيلِ الْحَرَامِ، فَسُكُوتُهُ خَارِجٌ عَنْ هَذَيْنِ الْوَجْهَيْنِ، وَلَيْسَ غَيْرُهُ كَذَلِكَ، وَطُولُ الْمَدَدِ لَا يُعِيدُ الْبَاطِلَ حَقًّا أَبَدًا، وَلَا الْحَقَّ بَاطِلًا - وَيَلْزَمُ الْمُخَالِفَ لِهَذَا أَنَّ مَنْ قِيلَ لَهُ: يَا كَافِرُ فَسَكَتَ أَنَّهُ قَدْ لَزِمَهُ حُكْمُ الْكُفْرِ، وَمَنْ قِيلَ لَهُ: إِنَّك طَلَّقْت امْرَأَتَك فَسَكَتَ أَنْ يَلْزَمَهُ الطَّلَاقُ، وَأَنَّ مَنْ قُتِلَ وَلَدُهُ - وَهُوَ يَرَى - فَسَكَتَ أَنَّهُ قَدْ بَطَلَ طَلَبُهُ وَلَزِمَهُ الرِّضَا - وَهُمْ لَا يَقُولُونَ بِشَيْءٍ مِنْ هَذَا.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: مَنْ بَاعَ مَالَ آخَرَ بِغَيْرِ أَمْرِهِ فَلِصَاحِبِ الْمَالِ إجَازَةُ ذَلِكَ أَوْ رَدُّهُ - وَاحْتَجُّوا بِالْخَبَرِ الثَّابِتِ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي الَّذِي اسْتَأْجَرَ أَجِيرًا بِفَرَقٍ مِنْ ذُرَةٍ فَأَعْطَيْتُهُ فَأَبَى، فَعَمَدْتُ إلَى ذَلِكَ الْفَرَقِ فَزَرَعْتُهُ حَتَّى اشْتَرَيْتُ مِنْهُ بَقَرًا وَرَاعِيَهَا، ثُمَّ جَاءَ فَقَالَ: يَا عَبْدَ اللَّهِ أَعْطِنِي حَقِّي؟ فَقُلْتُ: انْطَلِقْ إلَى تِلْكَ الْبَقَرِ وَرَاعِيهَا؟ فَقَالَ: أَتَسْتَهْزِئُ بِي؟ قُلْتُ: مَا أَسْتَهْزِئُ بِك، وَلَكِنَّهَا لَك - فَذَكَرَ الْخَبَرَ، وَأَنَّ اللَّهَ فَرَّجَ عَنْهُمْ الصَّخْرَةَ الْمُطْبِقَةَ عَلَى فَمِ الْغَارِ» .

فَإِنَّ هَذَا خَبَرٌ لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ، بَلْ هُوَ حُجَّةٌ عَلَيْهِمْ، وَمُبْطِلٌ لِقَوْلِهِمْ -: فَأَوَّلُهَا: أَنَّ ذَلِكَ كَانَ فِيمَنْ قَبْلَنَا، وَلَا تَلْزَمُنَا شَرَائِعُهُمْ.

وَالثَّانِي: أَنَّهُ لَيْسَ فِيهِ أَنَّ الْإِجَارَةَ كَانَتْ بِفَرَقِ ذُرَةٍ بِعَيْنِهِ، بَلْ ظَاهِرُهُ أَنَّهُ كَانَ بِفَرَقِ ذُرَةٍ فِي الذِّمَّةِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَمْ يَبِعْ لَهُ شَيْئًا، بَلْ بَاعَ مَالَهُ ثُمَّ تَطَوَّعَ بِمَا أَعْطَاهُ - وَهَذَا حَسَنٌ، وَهُوَ قَوْلُنَا.

revelation from his Lord, and may never remain silent on falsehood without denouncing it. For this would mean failing to clarify, though Allah commanded him to elucidate, convey, enjoin obligations, and specify prohibitions. Thus his silence transcends these two considerations, whereas others differ. The passage of time never transforms falsehood into truth, nor truth into falsehood. Opponents of this position must concede that one addressed as “O disbeliever!” who remains silent incurs the ruling of disbelief; one told “You divorced your wife” without objection is bound by divorce; and one whose child is slain while he witnesses it yet remains silent forfeits legal redress and incurs compliance—yet they do not accept any of this.

L23014 Abu Hanifah and his companions said: Whoever sells another’s property without his authorization, the owner may ratify or rescind it. They substantiated this with the authenticated narration from Ibn Umar regarding the Prophet (peace be upon him): “Concerning a man who hired a laborer for a farq of corn. When I gave it to him, he refused. I took that farq and cultivated it until I bought from it cows and their herder. Later he came and said: ’O Abdullah, give me my right!’ I replied: ’Go to those cows and their herder.’ He asked: ’Are you mocking me?’ I said: ’I do not mock you - they are yours.’” He then recounted the full narration, including how Allah relieved them of the boulder that had sealed the cave’s mouth.

L23015–23017 For indeed this is a narration that provides no proof for them due to various reasons; rather, it constitutes evidence against them and invalidates their argument: The first of these is that that existed among previous communities, and their laws are not incumbent upon us.

L23018 The second is that there is no indication the lease was for a specific *farq* of grain. Rather, its apparent meaning is that it was for a *farq* of grain as an obligation. Given this, he did not sell him anything. Instead, he sold his property and then voluntarily gave what he provided him. This is commendable and is our position.

L23019 The third is that even if it stipulated a specific measure and occurred within Islam, they would have no valid claim regarding it. This is because he granted him more than his rightful due, so he accepted and absolved him of the spe-

cific right itself. Both parties are voluntarily giving this without stipulation—and this is permissible according to our school and is highly regarded.

وَالثَّالِثُ: أَنَّهُ حَتَّى لَوْ كَانَ فِيهِ أَنَّهُ كَانَ فَرَقًا بِعَيْنِهِ، وَأَنَّهُ كَانَ فِي الْإِسْلَامِ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ أَعْطَاهُ أَكْثَرَ مِنْ حَقِّهِ فَرَضِيَ وَأَبْرَأَهُ مِنْ عَيْنِ حَقِّهِ، وَكِلَاهُمَا مُتَبَرِّعٌ بِذَلِكَ مِنْ غَيْرِ شَرْطٍ - وَهَذَا جَائِزٌ عِنْدَنَا حَسَنٌ جِدًّا.

L23020 As for it being a proof against them, it lies in the fact that he presented his right to him, but he refused to take it, abandoned it, and departed. Thus, according to their foundational principle, his right has been invalidated since he remained silent about taking it, and he has no claim to it thereafter.

وَأَمَّا كَوْنُهُ حُجَّةً عَلَيْهِمْ فَإِنَّ فِيهِ: أَنَّهُ عَرَضَ عَلَيْهِ حَقَّهُ فَأَبَى مِنْ أَخْذِهِ وَتَرَكَهُ وَمَضَى فَعَلَى أَصْلِهِمْ قَدْ بَطَلَ حَقُّهُ، إذْ سَكَتَ عَنْ أَخْذِهِ، فَلَا طَلَبَ لَهُ فِيهِ بَعْدَ ذَلِكَ.

L23021 They cited as evidence what we have narrated through the chain of Ibn Abi Shaybah: Sufyan ibn Uyaynah narrated to us from Shu'ayb ibn Gharqadah from Urwah al-Bariqi that the Messenger of Allah (peace be upon him) gave him a dinar to buy a sheep. Urwah said: "I bought two sheep for him with it, then he sold one of them for a dinar. He came to the Prophet (peace be upon him) with a dinar and a sheep," whereupon the Prophet (peace be upon him) invoked blessings for him.

وَاحْتَجُّوا: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ شُعَيْبِ بْنِ غَرْقَدَةَ عَنْ عُرْوَةَ الْبَارِقِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ دِينَارًا يَشْتَرِي لَهُ بِهِ شَاةً قَالَ: فَاشْتَرَيْتُ لَهُ شَاتَيْنِ فَبَاعَ إحْدَاهُمَا بِدِينَارٍ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِدِينَارٍ وَشَاةٍ فَدَعَا لَهُ بِالْبَرَكَةِ» .

L23022 And it was narrated to us through the chain of Abū Dāwūd: al-Ḥasan ibn al-Ṣabbāḥ, from Abū al-Mundhir, from Saʿīd ibn Zayd, from al-Zubayr ibn al-Ḥārith, from Abī Labīd, from ʿUrwah al-Bāriqī—and he related it.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ أَبِي دَاوُد أَنَا الْحَسَنُ بْنُ الصَّبَّاحِ أَنَا أَبُو الْمُنْذِرِ أَنَا سَعِيدُ بْنُ زَيْدٍ أَنَا الزُّبَيْرُ بْنُ الْحَارِثِ عَنْ أَبِي لَبِيدٍ عَنْ عُرْوَةَ الْبَارِقِيِّ - فَذَكَرَهُ.

L23023 From the chain of Ibn Abi Shaybah, from Waki', from Sufyan, from Abu Husayn, from a man among the people of Medina, from Hakim ibn Hizam: "The Prophet—peace and blessings of Allah be upon him—sent him to purchase a sacrificial animal for one dinar. He bought it, then sold it for two dinars. He bought a sheep for one dinar and brought another dinar. The Messenger of Allah—peace and blessings of Allah be upon him—invoked blessings for him and commanded him to give the dinar in charity."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ سُفْيَانَ عَنْ أَبِي حُصَيْنٍ عَنْ رَجُلٍ مِنْ أَهْلِ الْمَدِينَةِ عَنْ حَكِيمِ بْنِ حِزَامٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَهُ لِيَشْتَرِيَ لَهُ أُضْحِيَّةً بِدِينَارٍ فَاشْتَرَاهَا ثُمَّ بَاعَهَا بِدِينَارَيْنِ فَاشْتَرَى شَاةً بِدِينَارٍ وَجَاءَ بِدِينَارٍ فَدَعَا لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَرَكَةِ وَأَمَرَهُ أَنْ يَتَصَدَّقَ بِالدِّينَارِ» .

L23024 This is all they have disguised with it, and all of it is nothing.

هَذَا كُلُّ مَا مَوَّهُوا بِهِ، وَكُلُّهُ لَا شَيْءَ.

L23025–23026 As for the ḥadīth of Ḥakīm: it is narrated from an unnamed man, and it is not known who he is among the people. Proof in the religion of Allah, the Exalted, cannot be established through the like of this.

أَمَّا حَدِيثُ حَكِيمٍ: فَعَنْ رَجُلٍ لَمْ يُسَمَّ، وَلَا يُدْرَى مَنْ هُوَ مِنْ النَّاسِ، وَالْحُجَّةُ فِي دِينِ اللَّهِ تَعَالَى لَا تَقُومُ بِمِثْلِ هَذَا.

L23027 As for the ḥadīth of ʿUrwah, one of its two chains is transmitted from Saʿīd ibn Zayd—brother of Ḥammād ibn Zayd—who is weak. It also includes Abū Labīd, who is Lumāzah ibn Zabbār, not recognized for his reliability. The other chain is defective despite its apparent soundness, this being because Shabīb ibn Gharqadah did not hear it from ʿUrwah.

وَأَمَّا حَدِيثُ عُرْوَةَ فَأَحَدُ طَرِيقَيْهِ عَنْ سَعِيدِ بْنِ زَيْدٍ أَخِي حَمَّادِ بْنِ زَيْدٍ وَهُوَ ضَعِيفٌ، وَفِيهِ أَيْضًا أَبُو لَبِيدٍ وَهُوَ لُمَازَةُ بْنُ زَبَّارٍ وَلَيْسَ بِمَعْرُوفِ الْعَدَالَةِ، وَالطَّرِيقُ الْأُخْرَى مُعْتَلَّةٌ وَإِنْ كَانَ ظَاهِرُهَا الصِّحَّةَ، وَهِيَ أَنَّ شَبِيبَ بْنَ غَرْقَدَةَ لَمْ يَسْمَعْهُ مِنْ عُرْوَةَ.

L23028 It was narrated to us through the chain of Abū Dāwūd al-Sijistānī: Musaddad narrated from Sufyān—Ibn ʿUyaynah—from Shabīb ibn Gharqadah, who said: Al-Ḥayy narrated to me from ʿUrwah—meaning Ibn al-Jaʿd al-Bāriqī—who said: "The Prophet—peace and blessings be upon him—gave him a dinar to buy a sacrificial animal or a sheep. He purchased two, sold one for a dinar, and brought the Prophet a sheep and a dinar. The Prophet then prayed for blessings upon him." However, the chain occurred as interrupted, thereby invalidating its use as evidence.

كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا مُسَدَّدٌ أَنَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ شَبِيبِ بْنِ غَرْقَدَةَ حَدَّثَنِي الْحَيُّ عَنْ عُرْوَةَ يَعْنِي ابْنَ الْجَعْدِ الْبَارِقِيَّ قَالَ «أَعْطَاهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دِينَارًا لِيَشْتَرِيَ لَهُ أُضْحِيَّةً أَوْ شَاةً فَاشْتَرَى اثْنَتَيْنِ فَبَاعَ إحْدَاهُمَا بِدِينَارٍ فَأَتَاهُ بِشَاةٍ وَدِينَارٍ فَدَعَا لَهُ بِالْبَرَكَةِ» فَحَصَلَ مُنْقَطِعًا فَبَطَلَ الِاحْتِجَاجُ بِهِ.

L23029 Then, even if the ḥadīth of Ḥakīm and ʿUrwah were authentic, they would hold no proof for their position. When the Prophet—peace and blessings be upon him—commanded him to purchase a sheep for him, yet he bought two sheep, the purchase unquestionably belonged to ʿUrwah without doubt, for he acted according to his own intent rather than complying with the Prophet's command—peace and blessings be upon him. Furthermore, the value of the Prophet's dinar constituted either a loan to be repaid or an act of transgression, thereby indisputably establishing the dinar as a liability upon him. He then sold his own sheep for a dinar, transferred it to the Prophet—peace and blessings be upon him—as obligated, and gifted him the sheep. All this reflects the apparent meaning of the report, which contains absolutely no basis—neither textual nor evidentiary—indicating that the Prophet—peace and blessings be upon him—permitted or upheld this purchase. Therefore, it is impermissible to assert a position unsupported by the narration.

ثُمَّ لَوْ صَحَّ حَدِيثُ حَكِيمٍ، وَعُرْوَةَ: لَمْ يَكُنْ لَهُمْ فِيهِمَا حُجَّةٌ؛ لِأَنَّهُ إذْ أَمَرَهُ - عَلَيْهِ السَّلَامُ - أَنْ يَشْتَرِيَ لَهُ شَاةً فَاشْتَرَى لَهُ شَاتَيْنِ، صَارَ الشِّرَاءُ لِعُرْوَةَ بِلَا شَكٍّ، لِأَنَّهُ إنَّمَا اشْتَرَى كَمَا أَرَادَ لَا كَمَا أَمَرَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ وَزْنُ دِينَارِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا مُسْتَقْرَضًا لَهُ لِيَرُدَّهُ، وَإِمَّا مُتَعَدِّيًا فَصَارَ الدِّينَارُ فِي ذِمَّتِهِ بِلَا شَكٍّ، ثُمَّ بَاعَ شَاةَ نَفْسِهِ بِدِينَارٍ فَصَرَفَهُ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا لَزِمَهُ وَأَهْدَى إلَيْهِ الشَّاةَ، فَهَذَا كُلُّهُ هُوَ ظَاهِرُ الْخَبَرِ، وَلَيْسَ فِيهِ أَصْلًا لَا بِنَصٍّ وَلَا بِدَلِيلٍ عَلَى أَنَّ الشِّرَاءَ جَوَّزَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْتَزَمَهُ، فَلَا يَجُوزُ الْقَوْلُ بِمَا لَيْسَ فِي الْخَبَرِ.

L23030 As for the report of Hakim, he transgressed in the sale of the sheep, thus incurring liability for it. He purchased it for a dinar as he commanded, and a dinar remained. The Prophet (peace be upon him) then ordered him to give it in charity, since its owner was unknown.

وَأَمَّا خَبَرُ حَكِيمٍ فَإِنَّهُ تَعَدَّى فِي بَيْعِ الشَّاةِ فَلَزِمَهُ ضَمَانُهَا، فَابْتَاعَهَا بِدِينَارٍ كَمَا أَمَرَ وَفَضَلَ دِينَارٌ، فَأَمَرَهُ - عَلَيْهِ السَّلَامُ - بِالصَّدَقَةِ إذْ لَمْ يُعْرَفْ صَاحِبُهُ.

L23031 Abu Muhammad said: Then we ask them about one who sold the property

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَسْأَلُهُمْ عَمَّنْ بَاعَ مَالَ غَيْرِهِ فَنَقُولُ -:

of another, so we say -:

L23032 Inform us whether, by that contract, the buyer acquires ownership of what he purchased and the owner of the sold item acquires ownership of the price, or not? It must necessarily be one of the two. If they say: No—and this is the truth, which is our position—then it is absurd that a contract would be invalid at its conclusion and later become valid after its stipulated time, unless this is commanded by the One who is not questioned about His actions. Thus we hear and obey Allah the Exalted. As for one who is questioned about his actions, such a claim is fundamentally unacceptable from him, since Allah the Exalted has not mandated the acceptance of this [contract] from him.

أَخْبِرُونَا هَلْ مَلَكَ الْمُشْتَرِي مَا اشْتَرَى وَمَلَكَ صَاحِبُ الشَّيْءِ الْمَبِيعِ الثَّمَنَ بِذَلِكَ الْعَقْدِ أَمْ لَا؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ فَإِنْ قَالُوا: لَا، وَهُوَ الْحَقُّ، وَهُوَ قَوْلُنَا، فَمِنْ الْبَاطِلِ أَنْ لَا يَصِحَّ عَقْدٌ حِينَ عَقْدِهِ ثُمَّ يَصِحُّ فِي غَيْرِ حِينِ عَقْدِهِ، إلَّا أَنْ يَأْمُرَ بِذَلِكَ الَّذِي لَا يُسْأَلُ عَمَّا يَفْعَلُ، فَنَسْمَعُ وَنُطِيعُ اللَّهَ تَعَالَى وَأَمَّا مَنْ يُسْأَلُ عَمَّا يَفْعَلُ فَلَا يُقْبَلُ مِنْهُ مِثْلُ هَذَا أَصْلًا إذْ لَمْ يُوجِبْ اللَّهُ تَعَالَى قَبُولَهُ مِنْهُ.

L23033–23034 If they say: "The buyer has acquired ownership of what he purchased, and the owner of the sold item has acquired ownership of the price?" We respond: "On what basis have you decreed for him the nullification of a contract that was validly concluded without any Quran or Sunnah being cited for it? This is unlawful, as it amounts to arbitrary judgment in the religion of Allah Almighty."

وَإِنْ قَالُوا: قَدْ مَلَكَ الْمُشْتَرِي مَا اشْتَرَى، وَمَلَكَ الَّذِي لَهُ الشَّيْءُ الْمَبِيعُ الثَّمَنَ؟ قُلْنَا: فَمِنْ أَيْنَ جَعَلْتُمْ لَهُ إبْطَالَ عَقْدٍ قَدْ صَحَّ بِغَيْرِ أَنْ يَأْتِيَ بِذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ؟ وَهَذَا لَا يَحِلُّ؛ لِأَنَّهُ تَحَكُّمٌ فِي دِينِ اللَّهِ تَعَالَى.

L23035 Our position in this matter is the opinion of Ahmad ibn Hanbal - it has been narrated to us from him that if someone's house is sold while he remains silent, such a sale is invalid until he consents, orders, or permits the sale of his house. This is also the view of Abu Sulayman, all our juridical companions, and the opinion of al-Shafi'i, except that a disagreement is reported from him regarding one whose property was sold and he became aware of it? It is narrated from him that the sale is void and necessarily so, while another narration states he may ratify it if he wishes. There is no disagreement reported from him that silence does not constitute consent in any form.

وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، رُوِّينَا عَنْهُ: أَنَّ مَنْ بِيعَتْ دَارُهُ وَهُوَ سَاكِتٌ فَإِنَّ ذَلِكَ لَا يَجُوزُ حَتَّى يَرْضَى أَوْ يَأْمُرَ أَوْ يَأْذَنَ فِي بَيْعِ دَارِهِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا، وَهُوَ قَوْلُ الشَّافِعِيِّ، إلَّا أَنَّهُ اخْتَلَفَ عَنْهُ فِيمَنْ بِيعَ مَالُهُ فَعَلِمَ بِذَلِكَ؟ فَرُوِيَ عَنْهُ أَنَّهُ بَاطِلٌ وَلَا بُدَّ وَرُوِيَ عَنْهُ أَنَّ لَهُ أَنْ يُجِيزَ ذَلِكَ إنْ شَاءَ، وَلَمْ يَخْتَلِفْ عَنْهُ فِي أَنَّ السُّكُوتَ لَيْسَ رِضًا أَصْلًا.

L23036 As for Abū Ḥanīfah, silence does not constitute an admission in his view except in five cases:

وَأَمَّا أَبُو حَنِيفَةَ: فَإِنَّ السُّكُوتَ عِنْدَهُ لَا يَكُونُ إقْرَارًا إلَّا فِي خَمْسَةِ مَوَاضِعَ -:

L23037 One of them: Whoever sees his slave buying and selling in the manner of an authorized agent in trade and remains silent; the slave indeed becomes authorized through that silence.

أَحَدُهَا: مَنْ رَأَى عَبْدَهُ يَبِيعُ وَيَشْتَرِي كَمَا يَفْعَلُ الْمَأْذُونُ لَهُ فِي التِّجَارَةِ فَيَسْكُتُ، فَإِنَّ الْعَبْدَ يَصِيرُ بِذَلِكَ مَأْذُونًا لَهُ.

L23038 The right of pre-emption: If the pre-emptor becomes aware of it and re-

mains silent without testifying that he is a claimant to it, his silence amounts to a waiver of his right to pursue the claim.

وَالشُّفْعَةُ: يَعْلَمُهَا الشَّفِيعُ فَيَسْكُتُ وَلَا يَشْهَدُ عَلَى أَنَّهُ طَالِبٌ لَهَا، فَسُكُوتُهُ إِسْقَاطٌ لِحَقِّهِ فِي الطَّلَبِ.

L23039 A person is sold while present and aware of the transaction. Then he is told: "Stand up with your master," so he stands. This constitutes his confession of enslavement, even if he did not verbally state it.

وَالْإِنْسَانُ يُبَاعُ وَهُوَ حَاضِرٌ عَالِمٌ بِذَلِكَ، ثُمَّ يُقَالُ لَهُ: قُمْ مَعَ مَوْلَاكَ فَيَقُومُ، فَهَذَا إِقْرَارٌ مِنْهُ بِالرِّقِّ وَإِنْ لَمْ يَتَكَلَّمْ بِهِ.

L23040 If a seller sells an item for an immediate price and the buyer takes possession of it while the seller remains silent, this constitutes permission from him for the possession—and the virgin woman in marriage.

وَالْبَائِعُ لِلشَّيْءِ بِثَمَنٍ حَالٍّ فَيَقْبِضُهُ الْمُشْتَرِي وَالْبَائِعُ سَاكِتٌ، فَهَذَا إِذْنٌ مِنْهُ فِي الْقَبْضِ - وَالْبِكْرُ فِي النِّكَاحِ.

L23041 Abu Muhammad said: These four are aspects: falsehood, muddled reasoning, a claim without proof—neither from the Quran, nor the Sunnah, nor a weak narration, nor the opinion of predecessors, nor analogy, nor sound reasoning that differentiates between them and others. Whatever is thus, it is impermissible to uphold such a view.

قَالَ أَبُو مُحَمَّد: هَذِهِ الْأَرْبَعَةُ وُجُوهٍ: بَاطِلٌ، وَتَخْلِيطٌ، وَدَعْوَى بِلَا دَلِيلٍ، وَلَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ مُتَقَدِّمٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ يُفَرِّقُ بَيْنَهَا وَبَيْنَ غَيْرِهَا، وَمَا كَانَ هَكَذَا فَإِنَّ الْقَوْلَ لَا يَحِلُّ بِهِ.

L23042 As for Mālik, he said, "Whoever saw his property being sold and remained silent, the sale has become binding upon him - whether the sold item was a slave woman, a slave, or anything else."

وَأَمَّا مَالِكٌ: فَإِنَّهُ قَالَ: " مَنْ رَأَى مَالَهُ يُبَاعُ فَسَكَتَ فَقَدْ لَزِمَهُ الْبَيْعُ - أَمَةً كَانَتْ الْمَبِيعَةُ أَوْ عَبْدًا أَوْ غَيْرَ ذَلِكَ -

L23043 If someone's property is usurped and the usurper dies, and the owner witnesses his property being divided and remains silent, his right to it is invalidated.

وَمَنْ غُصِبَ مَالُهُ فَمَاتَ الْغَاصِبُ فَرَأَى مَالَهُ يُقَسَّمُ فَسَكَتَ، فَإِنَّ حَقَّهُ قَدْ بَطَلَ.

L23044 Whoever remains silent when a debt is claimed against them is thereby liable for what has been claimed against them.

وَمَنْ أُدُّعِيَ عَلَيْهِ بِدَيْنٍ فَسَكَتَ، فَقَدْ لَزِمَهُ مَا أُدُّعِيَ بِهِ عَلَيْهِ.

L23045–23046 He did not consider silence from demanding the debt—even if he sees [the obligated party] taking an oath—as annulling his right to claim it. Nor did he view silence from demanding the right of pre-emption as consent to waive it unless a full year had passed. Thus, his silence after the year constitutes consent to waive it in his view.

وَلَمْ يَرَ السُّكُوتَ عَنْ طَلَبِ الدَّيْنِ - وَإِنْ رَآهُ يُقْسِمُ - مُسْقِطًا لِحَقِّهِ فِي الطَّلَبِ - وَلَا رَأَى السُّكُوتَ عَنْ طَلَبِ الشُّفْعَةِ رِضًا بِإِسْقَاطِهَا إِلَّا حَتَّى تَمْضِيَ لَهُ سَنَةٌ، فَسُكُوتُهُ بَعْدَ السَّنَةِ رِضًا بِإِسْقَاطِهَا عِنْدَهُ.

L23047–23049 He did not consider the silence of a man whose wife attempts to contract a marriage with another in his presence as constituting a divorce, nor that

she is thereby irrevocably separated from him - and this... Contradictions for which there is no evidence to validate any of them—neither from a textual source, nor from the statement of any predecessor, nor from a weak narration, nor from analogy, nor from an opinion possessing a sound basis.

وَلَمْ يَرَ سُكُوتَ مَنْ تَتَزَوَّجُ امْرَأَتُهُ بِحَضْرَتِهِ طَلَاقًا وَلَا أَنَّهَا بَانَتْ عَنْهُ بِذَلِكَ - وَهَذِهِ مُنَاقَضَاتٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، لَا مِنْ نَصٍّ، وَلَا مِنْ قَوْلِ أَحَدٍ تَقَدَّمَهُ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ.

L23050 The most astonishing aspect is that he deemed the silence of the virgin who has remained unmarried past the marriageable age as consent to marriage only if she explicitly voiced her agreement—and this openly contradicts the Text.

وَأَعْجَبُ ذَلِكَ: أَنَّهُ لَمْ يَرَ سُكُوتَ الْبِكْرِ الْعَانِسِ رِضًا بِالنِّكَاحِ إِلَّا حِينَ تَنْطِقُ بِالرِّضَا - وَهَذَا خِلَافُ النَّصِّ جِهَارًا.

L23051 According to those who hold the opinion that if a person's house is built and demolished, and a stranger manages it while he remains silent for ten years, the predominant view is that it has thereby exited his ownership. If he remained silent for less than seven years, they held that it has not exited his ownership. There are conflicting reports from him regarding his silence for seven, eight, or nine years, and it was narrated from him that all such periods terminate his right.

وَرَأَى عَلَى مَنْ رَأَى دَارِهِ تُبْنَى وَتُهْدَمُ وَيَتَصَرَّفُ فِيهَا أَجْنَبِيٌّ فَسَكَتَ عَشْرَ سِنِينَ فَأَكْثَرَ أَنَّهَا قَدْ خَرَجَتْ عَنْ مِلْكِهِ بِذَلِكَ - وَإِنْ سَكَتَ عَنْ ذَلِكَ أَقَلَّ مِنْ سَبْعِ سِنِينَ أَنَّهَا لَمْ تَخْرُجْ عَنْ مِلْكِهِ بِذَلِكَ - وَاخْتُلِفَ عَنْهُ فِي سُكُوتِهِ سَبْعَ سِنِينَ، أَوْ ثَمَانِي سِنِينَ، أَوْ تِسْعَ سِنِينَ، فَرُوِيَ عَنْهُ أَنَّ كُلَّ ذَلِكَ قَطْعٌ لِحَقِّهِ -.

L23052 It has been reported from him that this does not constitute annulment of his right, nor did he consider a person's silence regarding that matter for some of his relatives to annul his right except after seventy years had passed.

وَرُوِيَ عَنْهُ أَنَّهُ لَيْسَ ذَلِكَ قَطْعًا لِحَقِّهِ " وَلَمْ يَرَ سُكُوتَ، الْمَرْءِ عَنْ ذَلِكَ لِبَعْضِ أَقَارِبِهِ قَطْعًا لِحَقِّهِ إِلَّا بَعْدَ سَبْعِينَ سَنَةً -

L23053 And these are statements, as you see—we seek refuge with Allah from them—for they involve the reckless legalization of forbidden wealth. And with Allah alone is success, the Most High.

وَهَذِهِ أَقْوَالٌ كَمَا تَرَى نَعُوذُ بِاللَّهِ مِنْهَا، فَفِيهَا إِبَاحَةُ الْأَمْوَالِ الْمُحَرَّمَةِ جُزَافًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ بَيْعُ شَيْءٍ لَا يَدْرِي بَائِعُهُ مَا هُوَ]

A juristic question: The sale of an item whose seller does not know what it is.

L23055 1463 - Issue: It is not permissible to sell something whose seller does not know what it is even if the buyer knows it, nor something whose buyer does not know what it is even if the seller knows it, nor something unknown to both parties.

١٤٦٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ شَيْءٍ لَا يَدْرِي بَائِعُهُ مَا هُوَ وَإِنْ دَرَاهُ الْمُشْتَرِي، وَلَا مَا لَا يَدْرِي الْمُشْتَرِي مَا هُوَ وَإِنْ دَرَاهُ الْبَائِعُ، وَلَا مَا جَهِلَاهُ جَمِيعًا.

L23056–23058 The sale is not valid unless the seller and the buyer know what the item is and both see it together, or it is described to them from the description and knowledge of someone who has seen it. For example, if someone purchases

وَلَا يَجُوزُ الْبَيْعُ إِلَّا حَتَّى يَعْلَمَ الْبَائِعُ وَالْمُشْتَرِي مَا هُوَ، وَيَرَيَاهُ جَمِيعًا، أَوْ يُوصَفُ لَهُمَا عَنْ صِفَةِ مَنْ رَآهُ وَعِلْمِهِ كَمَنْ اشْتَرَى زُبْرَةً يَظُنُّهَا قَزْدِيرًا فَوَجَدَهَا فِضَّةً، أَوْ فَصًّا لَا يَدْرِي أَزُجَاجٌ هُوَ أَمْ يَاقُوتٌ؟ فَوَجَدَهُ يَاقُوتًا أَمْ زُمُرُّدًا أَوْ زُجَاجًا - وَهَكَذَا فِي كُلِّ شَيْءٍ - وَسَوَاءٌ وَجَدَهُ أَعْلَى مِمَّا ظَنَّ أَوْ أَدْنَى، أَوْ الَّذِي ظَنَّ -: كُلُّ ذَلِكَ بَاطِلٌ مَفْسُوخٌ أَبَدًا، لَا يَجُوزُ لَهُمَا تَصْحِيحُهُ بَعْدَ عِلْمِهِمَا بِهِ إِلَّا بِابْتِدَاءِ عَقْدِ رِضَاهُمَا مَعًا، وَإِلَّا فَلَا - وَهُوَ مَضْمُونٌ عَلَى مَنْ قَبَضَهُ ضَمَانَ الْغَصْبِ.

a lump they assume to be tin but find it to be silver, or a gemstone they are unsure whether it is glass or a ruby, and then discover it to be a ruby, an emerald, or glass—and similarly for all things—whether they find it to be of higher value, lower value, the same type as assumed, or a different type altogether, all such transactions are invalid and irrevocably annulled, not—It is permissible for both of them to correct it after they become aware of it, except by initiating a contract with their mutual consent; otherwise, it is not permissible. The one who took possession of it is liable for it under the liability of usurpation.

L23059 بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَلَا يُمْكِنُ بِبَدِيهَةِ الْعَقْلِ، وَضَرُورَةِ الْحِسِّ رِضًا بِمَا لَا يَعْرِفُ وَلَا يَكُونُ الرِّضَا إِلَّا بِمَعْلُومِ الْمَاهِيَّةِ وَلَا شَكَّ فِي أَنَّهُ إنْ قَالَ: رَضِيت: أَنَّهُ قَدْ لَا يَرْضَى إذَا عَلِمَ مَا هُوَ - وَإِنْ كَانَ دَيِّنًا جِدًّا - وَقَدْ سَمَّى اللَّهُ تَعَالَى مَا لَمْ يَكُنْ عَنْ تَرَاضٍ أَكْلَ مَالٍ بِالْبَاطِلِ.

L23059 The evidence for this is—Allah the Exalted's statement: "Do not consume your wealth among yourselves wrongfully unless it be a trade arising from mutual consent" [An-Nisā' 4:29]. By the self-evident nature of reason and the necessity of innate perception, consent cannot exist regarding something unknown. Consent only occurs regarding something whose essence is known. Undoubtedly, if one says "I consent," they might not consent when they learn what it truly is—even if they are very devout. Allah the Exalted has designated anything not arising from mutual consent as wrongful consumption of wealth.[5]

وَأَيْضًا: فَهُوَ بَيْعُ غَرَرٍ، لِأَنَّهُ لَا يَدْرِي مَا ابْتَاعَ وَلَا مَا بَاعَ، وَقَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ» ، وَهَذَا أَعْظَمُ الْغَرَرِ - وَهَذَا قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَقَدْ ذَكَرْنَا عَنْ مَالِكٍ إجَازَةَ هَذَا الْبَيْعِ - وَهُوَ قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ أَصْلًا.

L23060 Moreover, it is a sale of gharar because he does not know what he has bought nor what he has sold. The Messenger of Allah (peace be upon him) prohibited the sale of gharar, and this constitutes the greatest form of gharar. This is the opinion of Al-Shāfiʿī and Abū Sulaymān. We have previously cited Mālik's allowance of this sale, but this is an opinion for which there exists absolutely no evidence supporting its validity.[6]

وَمِنْ عَجَائِبِ الدُّنْيَا إجَازَتُهُ هَذَا الْبَيْعَ الْفَاسِدَ، وَمَنْعَهُ مِنْ بَيْعِ صُبْرَةٍ مَرْئِيَّةٍ مُحَاطٍ بِهَا عَلِمَ الْبَائِعُ مَكِيلَتَهَا وَلَمْ يَعْلَمْ الْمُشْتَرِي مَكِيلَتَهَا وَهَذَا عَجَبٌ لَا نَظِيرَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23061 Among the wonders of the world is the jurist's permission of this invalid sale and his prohibition of selling a visible, delimited heap where the seller knew its measurement but the buyer did not—an astonishing anomaly without parallel. With Allah, the Exalted, lies all success.

[مَسْأَلَةٌ بَيْعُ شَيْءٍ بِأَكْثَرَ مِمَّا يُسَاوِي]

[5] **Qur'an references (L23059):** Qur'an 4:29 (An-Nisa).

[6] **Hadith references (L23060):** Sunan Ibn Majah 2194; Sunan Ibn Majah 2195; Jami at-Tirmidhi 1230.

A legal question regarding the sale of an item for more than its actual worth.

Issue 1464: It is impermissible to sell anything for more or less than its equivalent value if the seller or buyer stipulates exoneration from liability, except with both the seller and buyer jointly knowing the extent of unfair pricing in that transaction and mutually consenting to it. If one party stipulates exoneration and the sale is concluded as described, and they do not know the extent of unfair pricing - or if the party not subjected to unfair pricing knows it while the aggrieved party does not - then the sale is invalid, rescinded, permanently annulled, and the recipient is liable as one who unlawfully seizes property. They may not retroactively validate it except through initiating a new contract.

١٤٦٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ بِأَكْثَرَ مِمَّا يُسَاوِي وَلَا بِأَقَلَّ مِمَّا يُسَاوِي إذَا اشْتَرَطَ الْبَائِعُ أَوْ الْمُشْتَرِي السَّلَامَةَ إلَّا بِمَعْرِفَةِ الْبَائِعِ وَالْمُشْتَرِي مَعًا بِمِقْدَارِ الْغَبْنِ فِي ذَلِكَ وَرِضَاهُمَا بِهِ، فَإِنْ اشْتَرَطَ أَحَدُهُمَا السَّلَامَةَ وَوَقَعَ الْبَيْعُ كَمَا ذَكَرْنَا، وَلَمْ يَعْلَمَا قَدْرَ الْغَبْنِ، أَوْ عَلِمَهُ، غَيْرُ الْمَغْبُونِ مِنْهُمَا وَلَمْ يَعْلَمْهُ الْمَغْبُونُ: فَهُوَ بَيْعٌ بَاطِلٌ، مَرْدُودٌ، مَفْسُوخٌ، أَبَدًا، مَضْمُونٌ عَلَى مَنْ قَبَضَهُ ضَمَانَ الْغَصْبِ وَلَيْسَ لَهُمَا إجَازَتُهُ إلَّا بِابْتِدَاءِ عَقْدٍ.

If they did not stipulate exemption from defects, nor did either of them do so, and a defect is subsequently found affecting one of them without prior knowledge, the defrauded party may enforce the sale or rescind it. If the sold item is lost, the defrauded party may recover from them the extent of the defect. This is the opinion of Abū Thawr. As for our companions, they said: Mutual consent to the detriment is not permissible at all.

فَإِنْ لَمْ يَشْتَرِطَا السَّلَامَةَ وَلَا أَحَدُهُمَا، ثُمَّ وُجِدَ غَبْنٌ عَلَى أَحَدِهِمَا وَلَمْ يَكُنْ عَلِمَ بِهِ، فَلِلْمَغْبُونِ إنْفَاذُ الْبَيْعِ أَوْ رَدُّهُ، فَإِنْ فَاتَ الشَّيْءُ الْمَبِيعُ رَجَعَ الْمَغْبُونُ مِنْهُمَا بِقَدْرِ الْغَبْنِ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَقَوْلُ أَصْحَابِنَا إلَّا أَنَّهُمْ قَالُوا: لَا يَجُوزُ رِضَاهُمَا بِالْغَبْنِ أَصْلًا.

Abū Ḥanīfah and Mālik said.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ.

Al-Shafi'i holds that neither the seller nor the buyer may rescind the sale due to price exploitation (ghabn), whether the disparity is large or small.

وَالشَّافِعِيُّ: لَا رُجُوعَ لِلْبَائِعِ وَلَا لِلْمُشْتَرِي بِالْغَبْنِ فِي الْبَيْعِ - كَثُرَ أَوْ قَلَّ.

Ibn al-Qaṣṣār reported from Mālik that if a sale involves fraudulent overpricing by one-third, it must be revoked.

وَذَكَرَ ابْنُ الْقَصَّارِ عَنْ مَالِكٍ: أَنَّ الْبَيْعَ إذَا كَانَ فِيهِ الْغَبْنُ مِقْدَارَ الثُّلُثِ فَإِنَّهُ يُرَدُّ.

The proof for the validity of our statement is the statement of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully, unless it be a trade by mutual consent among yourselves." [Surah An-Nisa 4:29][7]

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

Mutual consent is absolutely never valid unless the quantity is specified. There is no doubt that whoever is unaware of the exploitation and its extent cannot have consented to it. Thus, it is jurisprudentially established that such

[7] **Qur'an references (L23069):** Qur'an 4:29 (An-Nisa).

a sale constitutes wrongfully devouring wealth through falsehood. Allah's words, "They seek to deceive Allah and the believers, yet they deceive none but themselves" [Al-Baqarah: 9]. Thus, the Almighty, glorified and exalted, has prohibited fraudulent deception.[8]

وَلَا يَكُونُ التَّرَاضِي أَلْبَتَّةَ إِلَّا عَلَى مَعْلُومِ الْقَدْرِ، وَلَا شَكَّ فِي أَنَّ مَنْ لَمْ يَعْلَمْ بِالْغَبْنِ وَلَا بِقَدْرِهِ فَلَمْ يَرْضَ بِهِ - فَصَحَّ أَنَّ الْبَيْعَ بِذَلِكَ أَكْلُ مَالٍ بِالْبَاطِلِ. وقَوْله تَعَالَى {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩] فَحَرَّمَ عَزَّ وَجَلَّ الْخَدِيعَةَ.

L23071 None should doubt that a person selling something for more than its worth to someone unaware of that is deception against the buyer, and that a person selling something for less than its worth while unaware of that is deception against the seller. Deception is forbidden and invalid.

وَلَا يَمْتَرِي أَحَدٌ فِي أَنَّ بَيْعَ الْمَرْءِ بِأَكْثَرَ مَا يُسَاوِي مَا بَاعَ مِمَّنْ لَا يَدْرِي ذَلِكَ: خَدِيعَةٌ لِلْمُشْتَرِي، وَأَنَّ بَيْعَ الْمَرْءِ بِأَقَلَّ مِمَّا يُسَاوِي مَا بَاعَ، وَهُوَ لَا يَدْرِي ذَلِكَ: خَدِيعَةٌ لِلْبَائِعِ، وَالْخَدِيعَةُ حَرَامٌ لَا تَصِحُّ.

L23072 It has been narrated to us from Abu Dawud, from Ahmad ibn Hanbal, from Sufyan ibn Uyaynah, from al-Ala ibn Abd al-Rahman, from his father, from Abu Hurayrah: The Messenger of Allah (peace be upon him) passed by a man selling food and asked, "How do you sell?" When the man responded, Allah the Exalted inspired him [the Prophet] to put his hand into it. He inserted his hand and found it adulterated with moisture. The Messenger of Allah (peace be upon him) then said, "Whoever deceives is not of us."

وَمَا رُوِّينَا عَنْ أَبِي دَاوُد أَنَا أَحْمَدُ بْنُ حَنْبَلٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّ بِرَجُلٍ يَبِيعُ طَعَامًا فَسَأَلَهُ كَيْفَ تَبِيعُ؟ فَأَخْبَرَهُ، فَأَوْحَى اللَّهُ تَعَالَى إلَيْهِ أَنْ أَدْخِلْ يَدَكَ فِيهِ، فَأَدْخَلَ يَدَهُ فِيهِ فَإِذَا هُوَ مَبْلُولٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَ مِنَّا مَنْ غَشَّ» .

L23073 He (peace be upon him) said: "Indeed, your blood and your wealth are inviolable for you."

وَقَالَ - عَلَيْهِ السَّلَامُ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L23074 From the chain of Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Suhayl ibn Abi Salih, from Ata ibn Yazid al-Laythi, from Tamim al-Dari, who said: The Messenger of Allah—peace and blessings be upon him—said: "Religion is sincere counsel, religion is sincere counsel, religion is sincere counsel." We asked: "To whom, O Messenger of Allah?" He replied: "To Allah, to His Messenger, to His Book, to the Imams, and to the collective body of Muslims."

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ عَنْ تَمِيمٍ الدَّارِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ، الدِّينُ النَّصِيحَةُ، الدِّينُ النَّصِيحَةُ؟ قُلْنَا: لِمَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: لِلَّهِ وَلِرَسُولِهِ، وَلِكِتَابِهِ، وَلِلْأَئِمَّةِ، وَلِجَمَاعَةِ الْمُسْلِمِينَ» .

L23075–23076 The Prophet's prohibition—peace and blessings be upon him—against bid rigging in sales constitutes conclusive proof for our position here, for through this he prohibited deception and trickery in sales altogether. Undoubtedly,

«وَنَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ النَّجْشِ فِي الْبَيْعِ» : بُرْهَانٌ صَحِيحٌ عَلَى قَوْلِنَا هَهُنَا؛ لِأَنَّهُ نَهَى بِذَلِكَ عَنْ الْغُرُورِ - وَالْخَدِيعَةِ فِي الْبَيْعِ جُمْلَةً، بِلَا شَكٍّ يَدْرِي النَّاسُ

[8] **Qur'an references (L23070):** Qur'an 2:9 (Al-Baqarah).

all people know that whoever charges another more than the item's fair value in what he sells to him without the buyer's knowledge or consent, or pays another less than its fair value in what he buys from him without the seller's knowledge or consent, has deceived him and failed to offer him sincere counsel. And whoever deceives and fails to counsel sincerely has indeed committed a forbidden act.

كُلُّهُمْ: أَنَّ مَنْ أَخَذَ مِنْ آخَرَ فِيمَا يَبِيعُ مِنْهُ أَكْثَرَ مِمَّا يُسَاوِي بِغَيْرِ عِلْمِ الْمُشْتَرِي وَلَا رِضَاهُ، وَمَنْ أَعْطَاهُ آخَرُ فِيمَا يَشْتَرِي مِنْهُ أَقَلَّ مِمَّا يُسَاوِي بِغَيْرِ عِلْمِ الْبَائِعِ وَلَا رِضَاهُ فَقَدْ غَشَّهُ وَلَمْ يَنْصَحْهُ، وَمَنْ غَشَّ وَلَمْ يَنْصَحْ فَقَدْ أَتَى حَرَامًا.

L23077 The Messenger of Allah (peace be upon him) said: "Whoever does a deed that is not in accordance with our command, it is rejected."[9]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L23078 It has been established that this transaction is invalid and must be revoked by the explicit ruling of the Prophet—peace be upon him. This aligns with the position of the early scholars, as narrated through the chain of Hammād ibn Zayd: from Ayyūb and Hishām—who is Ibn Ḥassān—all of whom reported from Muḥammad ibn Sīrīn: A man arrived in Medina with slave girls and stayed with Ibn ʿUmar. He mentioned the ḥadīth, which states that the man sold a slave girl to Ibn Jaʿfar. Later, the man came to Ibn ʿUmar and said: "O Abū ʿAbd al-Raḥmān, I was defrauded in the price by seven hundred dirhams." Ibn ʿUmar then approached ʿAbd Allāh ibn Jaʿfar and said: "He suffered exploitation in the price amounting to seven hundred dirhams. You must either compensate him this amount or revoke the sale." Ibn Jaʿfar responded: "Rather, we shall compensate him." This demonstrates that Ibn Jaʿfar and Ibn ʿUmar both upheld voiding the sale due to exploitation in pricing.

فَصَحَّ أَنَّهُ بَاطِلٌ مَرْدُودٌ بِنَصِّ أَمْرِهِ - عَلَيْهِ السَّلَامُ -، وَهُوَ قَوْلُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ أَنَا أَيُّوبُ، وَهِشَامٌ - هُوَ ابْنُ حَسَّانٍ - كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ رَجُلًا قَدِمَ الْمَدِينَةَ بِجَوَارٍ فَنَزَلَ عَلَى ابْنِ عُمَرَ فَذَكَرَ الْحَدِيثَ - وَفِيهِ أَنَّهُ بَاعَ جَارِيَةً مِنْ ابْنِ جَعْفَرٍ، ثُمَّ جَاءَ الرَّجُلُ إلَى ابْنِ عُمَرَ فَقَالَ: يَا أَبَا عَبْدِ الرَّحْمَنِ غُبِنْت بِسَبْعمِائَةِ دِرْهَمٍ، فَأَتَى ابْنُ عُمَرَ إلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ فَقَالَ: إنَّهُ غُبِنَ بِسَبْعمِائَةِ دِرْهَمٍ فَإِمَّا أَنْ تُعْطِيَهَا إيَّاهُ وَإِمَّا أَنْ تَرُدَّ عَلَيْهِ بَيْعَهُ؟ فَقَالَ ابْنُ جَعْفَرٍ: بَلْ نُعْطِيهَا إيَّاهُ - فَهَذَا ابْنُ جَعْفَرٍ، وَابْنُ عُمَرَ: قَدْ رَأَيَا رَدَّ الْبَيْعِ مِنْ الْغَبْنِ فِي الْقِيمَةِ.

L23079 From the path of Abd al-Razzaq: Ma'mar narrated to us from Yunus ibn Ubayd from a man from Jarir ibn Abdullah al-Bajali: That he bargained with a man over a horse. The man offered him five hundred dirhams, repeating: "If you accept this?" Jarir replied: "Your horse is worth more than that. For you is six hundred," then increased it until the offer reached six hundred, then continued increasing until it reached eight hundred dirhams, while the man persisted each time: "If you accept this?" Jarir finally said: "Your horse is worth more than that, and I will not increase my offer." The man told him: "Take it!" Someone asked Jarir: "What prevented you from taking it for five

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ رَجُلٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ: أَنَّهُ سَاوَمَ رَجُلًا بِفَرَسٍ فَسَامَهُ، فَسَامَهُ الرَّجُلُ خَمْسَمِائَةِ دِرْهَمٍ إنْ رَأَيْت ذَلِكَ؟ فَقَالَ لَهُ جَرِيرٌ: فَرَسُك خَيْرٌ مِنْ ذَلِكَ، وَلَك سِتُّمِائَةٍ حَتَّى بَلَغَ ثَمَانَمِائَةٍ، وَهُوَ يَقُولُ: إنْ رَأَيْت ذَلِكَ؟ فَقَالَ جَرِيرٌ: فَرَسُك خَيْرٌ مِنْ ذَلِكَ، وَلَك سِتُّمِائَةٍ حَتَّى بَلَغَ سَبْعمِائَةٍ حَتَّى بَلَغَ ثَمَانَمِائَةٍ، وَهُوَ يَقُولُ: إنْ رَأَيْت ذَلِكَ؟ فَقَالَ جَرِيرٌ: فَرَسُك خَيْرٌ مِنْ ذَلِكَ، وَلَا أَزِيدُك؟ فَقَالَ لَهُ الرَّجُلُ: خُذْهَا؟ فَقِيلَ لَهُ: مَا مَنَعَك أَنْ تَأْخُذَهَا بِخَمْسِمِائَةٍ؟ فَقَالَ جَرِيرٌ: لِأَنَّا

[9] **Hadith references (L23077):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

hundred?" He answered: "Because we pledged to Allah's Messenger - peace and blessings be upon him - not to cheat anyone" (or he said: "a Muslim"). And from Ibn Umar: "I am free from deceit."

بَايَعْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنْ لَا نَغُشَّ أَحَدًا، أَوْ قَالَ: مُسْلِمًا - وَعَنْ ابْنِ عُمَرَ لَيْسَ لِي غِشٌّ.

L23080–23081 And through the chain of ʿAbd al-Raḥmān ibn Mahdī from Sufyān al-Thawrī from Zubayd al-Yāmī from Maysarah from Ibn ʿUmar, as we have previously mentioned in "The Chapter on That Without Which the Sale Is Not Valid, Pertaining to Separation."

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زُبَيْدٍ الْيَامِيِّ عَنْ مَيْسَرَةَ عَنْ ابْنِ عُمَرَ وَقَدْ ذَكَرْنَاهُ قَبْلُ فِي " بَابِ مَا لَا يَتِمُّ الْبَيْعُ إلَّا بِهِ مِنْ التَّفَرُّقِ ".

L23082 Through the narration of Sufyān ibn 'Uyaynah: Bishr ibn 'Āṣim al-Thaqafī reported: I heard Sa'īd ibn al-Musayyib narrate from Ubayy ibn Ka'b that 'Umar ibn al-Khaṭṭāb and al-'Abbās ibn 'Abd al-Muṭṭalib brought their dispute to him concerning a house owned by al-'Abbās adjacent to the mosque. 'Umar sought to acquire it to expand the mosque, but al-'Abbās refused. Ubayy ibn Ka'b said to them: "When Sulaymān commanded the construction of Bayt al-Maqdis, its land belonged to a man. Sulaymān purchased it from him. After completing the purchase, the man asked: 'Is what you have taken from me better, or what you have given me?' Sulaymān replied: 'No, what I took from you?' The man said: 'Then I do not ratify the sale.' Sulaymān therefore revoked it. He increased the offer, then asked him again, and the man informed him [of his refusal]. But he persisted in rejecting it"—and he [the narrator] recounted the ḥadīth.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ أَنَا بِشْرُ بْنُ عَاصِمٍ الثَّقَفِيُّ سَمِعَ سَعِيدَ بْنَ الْمُسَيِّبِ يُحَدِّثُ عَنْ أُبَيِّ بْنِ كَعْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَالْعَبَّاسَ بْنَ عَبْدِ الْمُطَّلِبِ تَحَاكَمَا إلَيْهِ فِي دَارٍ كَانَتْ لِلْعَبَّاسِ إلَى جَانِبِ الْمَسْجِدِ أَرَادَ عُمَرُ أَخْذَهَا لِيَزِيدَهَا فِي الْمَسْجِدِ، وَأَبَى الْعَبَّاسُ، فَقَالَ أُبَيُّ بْنُ كَعْبٍ لَهُمَا: لَمَّا أَمَرَ سُلَيْمَانُ بِبِنَاءِ بَيْتِ الْمَقْدِسِ كَانَتْ أَرْضُهُ لِرَجُلٍ فَاشْتَرَاهَا سُلَيْمَانُ مِنْهُ، فَلَمَّا اشْتَرَاهَا قَالَ لَهُ الرَّجُلُ: الَّذِي أَخَذْت مِنِّي خَيْرٌ أَمْ الَّذِي أَعْطَيْتنِي؟ قَالَ سُلَيْمَانُ: بَلْ الَّذِي أَخَذْت مِنْك؟ قَالَ: فَإِنِّي لَا أُجِيزُ الْبَيْعَ فَرَدَّهُ، فَزَادَهُ، ثُمَّ سَأَلَهُ؟ فَأَخْبَرَهُ، فَأَبَى أَنْ يُجِيزَهُ - وَذَكَرَ الْحَدِيثَ.

L23083 Here, Ubayy presents this matter as a legal ruling in the presence of Umar ibn al-Khattab and Al-Abbas—may Allah be pleased with them—and they correct his statement. Thus, these individuals—Umar, his son, Al-Abbas, Abdullah ibn Ja'far, Ubayy, and Jarīr—with no dissenting opinion among the Companions, may Allah be pleased with them, hold the view that invalidating the sale is warranted due to deception in the reduction of the price relative to the market value of the sold item.

فَهَذَا أُبَيٌّ يُورِدُ هَذَا عَلَى سَبِيلِ الْحُكْمِ بِهِ بِحَضْرَةِ عُمَرَ بْنِ الْخَطَّابِ، وَالْعَبَّاسِ - رَضِيَ اللَّهُ عَنْهُمْ - فَيُصَوِّبَانِ قَوْلَهُ - فَهَؤُلَاءِ عُمَرُ، وَابْنُهُ، وَالْعَبَّاسُ، وَعَبْدُ اللَّهِ بْنُ جَعْفَرٍ، وَأُبَيٌّ، وَجَرِيرٌ، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: يَرَوْنَ رَدَّ الْبَيْعِ مِنْ الْخَدِيعَةِ فِي نُقْصَانِ الثَّمَنِ عَنْ قِيمَةِ الْمَبِيعِ.

L23084 And through the chain of transmission of Wakīʿ from Isrāʾīl from Jābir from al-Qāsim ibn ʿAbd al-Raḥmān: he rescinded the sale due to a mistake, but al-Shaʿbī did not rescind it and said: "The sale is a form of bargaining."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْرَائِيلَ عَنْ جَابِرٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّهُ رَدَّ الْبَيْعَ مِنْ الْغَلَطِ، وَلَمْ يَرُدَّهُ الشَّعْبِيُّ وَقَالَ: الْبَيْعُ خُدْعَةٌ.

L23085 Abu Muhammad said: The height of astonishment lies in the statements

of our present opponents. They annul a sale on account of a defect that reduces the price when discovered, deeming it deceitful in their view. Yet they permit a sale even though the gravest deceit has occurred in it, and [the seller] takes from the buyer more than the item's actual value. This is utterly baffling and a crude contradiction.

قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ كُلُّهُ مِنْ أَقْوَالِ الْحَاضِرِينَ مِنْ خُصُومِنَا فَإِنَّهُمْ يَرُدُّونَ الْبَيْعَ مِنْ الْعَيْبِ يَحُطُّ مِنْ الثَّمَنِ يُوجَدُ فِيهِ؛ لِأَنَّهُ عِنْدَهُمْ غِشٌّ، ثُمَّ يُجِيزُونَ الْبَيْعَ وَقَدْ غَشَّ فِيهِ بِأَعْظَمِ الْغِشِّ، وَأَخَذَ فِيهِ مِنْهُ، أَكْثَرَ مِنْ ثَمَنِهِ، هَذَا عَجَبٌ جِدًّا وَتَنَاقُضٌ سَمْجٌ.

L23086 Another wonder: They allow annulling the sale due to a defect found in the item, even if the buyer acquired it at its explicitly determined price, yet they do not permit annulling the sale when the seller suffers gross undervaluation. We do not comprehend from where did this concern for the buyer arise, and this animosity toward the seller. Is this not an unparalleled wonder?

وَعَجَبٌ آخَرُ: وَهُوَ أَنَّهُمْ يَرُدُّونَ الْبَيْعَ مِنْ الْعَيْبِ يُوجَدُ فِيهِ، وَإِنْ كَانَ قَدْ أَخَذَهُ الْمُشْتَرِي بِقِيمَتِهِ مُعَيَّنًا، وَلَا يَرُدُّونَ الْبَيْعَ إذَا غُبِنَ الْبَائِعُ فِيهِ الْغَبْنَ الْعَظِيمَ، فَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ هَذِهِ الْعِنَايَةُ بِالْمُشْتَرِي؟ وَهَذَا الْحَنَقُ عَلَى الْبَائِعِ، إنَّ هَذَا لَعَجَبٌ لَا نَظِيرَ لَهُ؟

L23087–23089 A third point of astonishment: They—we refer to the Mālikīs and Shāfiʿīs—impose restrictions on those who practice deception in sales to the point of preventing them from manumitting slaves, giving charity, or engaging in valid sales that involve no fraudulent loss, and they invalidate all such acts. Yet they simultaneously enforce those sales transactions involving fraudulent loss without invalidating them. Truly, if... Those sales in which he was deceived were indeed valid and permissible. For what reason did they impose restrictions on him because of them when they are valid and sound?

وَعَجَبٌ ثَالِثٌ: وَهُوَ أَنَّهُمْ - نَعْنِي الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ - يَحْجُرُونَ عَلَى الَّذِي يَخْدَعُ فِي الْبُيُوعِ حَتَّى يَمْنَعُوهُ مِنْ الْعِتْقِ، وَالصَّدَقَةِ، وَمِنْ الْبَيْعِ الصَّحِيحِ الَّذِي لَا غَبْنَ فِيهِ وَيَرُدُّونَ كُلَّ ذَلِكَ، وَهُمْ يُنَفِّذُونَ مَعَ ذَلِكَ تِلْكَ الْبُيُوعَ الَّتِي غُبِنَ فِيهَا وَلَا يَرُدُّونَهَا، فَلَئِنْ كَانَتْ تِلْكَ الْبُيُوعُ الَّتِي خُدِعَ فِيهَا حَقًّا وَجَائِزَةً فَلِأَيِّ مَعْنًى حَجَرُوا عَلَيْهِ مِنْ أَجْلِهَا وَهِيَ حَقٌّ وَصَحِيحَةٌ؟

L23090 And if those sales in which deception occurred are null and void and impermissible, then for what reason do they permit them? Indeed, these are shameful calamities, crude confusion, and sheer opposition to all that the Messenger of Allah—peace be upon him—ruled. For it was mentioned to him that someone was being rescued and that he was being deceived in sales, yet he did not impose a restriction on him. Rather, he commanded him to say, "No fraud!" at the time of sale and granted him a three-day right of option to ratify or revoke the sale. Thus, he—peace be upon him—nullified fraud but upheld his sound sales and those he chose to finalize after becoming aware of them, and did not prohibit it—this is contrary to all they rule. Sufficient for us is Allah, and what an excellent Trustee He is!

وَلَئِنْ كَانَتْ تِلْكَ الْبُيُوعُ الَّتِي خُدِعَ فِيهَا بَاطِلًا وَغَيْرَ جَائِزَةٍ فَلِأَيِّ مَعْنًى يُجِيزُونَهَا، إنَّ هَذِهِ لَطَوَامُّ فَاحِشَةٌ، وَتَخْلِيطٌ سَمْجٌ، وَخِلَافٌ مُجَرَّدٌ لِكُلِّ مَا حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّهُ ذُكِرَ لَهُ مُنْقِذٌ، وَأَنَّهُ يُخْدَعُ فِي الْبُيُوعِ فَلَمْ يَحْجُرْ عَلَيْهِ، لَكِنْ أَمَرَهُ أَنْ يَقُولَ: " لَا خِلَابَةَ " عِنْدَ الْبَيْعِ، وَجَعَلَ لَهُ الْخِيَارَ ثَلَاثًا فِي إنْفَاذِ الْبَيْعِ أَوْ رَدِّهِ، فَأَبْطَلَ - عَلَيْهِ السَّلَامُ -: " الْخِلَابَةَ " وَأَنْفَذَ بُيُوعَهُ الصِّحَاحَ وَالَّتِي يَخْتَارُ إنْفَاذَهَا بَعْدَ الْمَعْرِفَةِ بِهَا، وَلَمْ يَحْجُرْ عَلَيْهِ - وَهَذَا عَكْسُ كُلِّ مَا يَحْكُمُونَ بِهِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

An issue of exploitation in a sale where freedom from defects was stipulated.

[مَسْأَلَةٌ غَبَنَ فِي بَيْعٍ اُشْتُرِطَ فِيهِ السَّلَامَةُ]

1465: Issue: If someone defrauds in a sale where defect-free condition was stipulated, the sale is nullified. This is because a sale involving definite deceit fundamentally differs from a defect-free sale involving no deceit—a matter known through direct observation. Thus, the sale contractually established between them in essence is not the one the stipulator of defect-free condition agreed upon. It is religiously invalid to impose obligations beyond what was mutually contracted, nor may the defrauder insist on terms not stipulated in the sale they mutually consented to. For the other party's property remains religiously forbidden to him except through mutual agreement, just as his property is likewise forbidden to the other party.

١٤٦٥ - مَسْأَلَةٌ: فَمَنْ غَبَنَ فِي بَيْعٍ اُشْتُرِطَ فِيهِ السَّلَامَةُ فَهُوَ بَيْعٌ مَفْسُوخٌ؛ لِأَنَّ بَيْعَ الْغِشِّ بِيَقِينٍ هُوَ غَيْرُ بَيْعِ السَّلَامَةِ الَّذِي لَا غِشَّ فِيهِ، هَذَا أَمْرٌ يُعْلَمُ بِالْمُشَاهَدَةِ، فَإِذَا هُوَ كَذَلِكَ فَالْبَيْعُ الْمُنْعَقِدُ بَيْنَهُمَا فِي الْبَاطِنِ لَيْسَ هُوَ الَّذِي عَقَدَ عَلَيْهِ مُشْتَرِطُ السَّلَامَةِ وَلَا يَحِلُّ أَنْ يُلْزَمَ غَيْرَ مَا عَقَدَ عَلَيْهِ، وَلَا يَحِلُّ لَهُ أَنْ يَتَمَسَّكَ بِمَا لَمْ يَعْقِدْ عَلَيْهِ بَيْعَهُ الَّذِي تَرَاضَى بِهِ، لِأَنَّ مَالَ الْآخَرِ حَرَامٌ عَلَيْهِ إِلَّا مَا تَرَاضَى مَعَهُ، وَكَذَلِكَ مَالُهُ عَلَى الْآخَرِ أَيْضًا.

If both parties knew the extent of the exploitation and mutually agreed to it, then it is a valid contract, a consensual transaction, and a sale free from defects.

وَأَمَّا إِذَا عَلِمَ بِقَدْرِ الْغَبْنِ كِلَاهُمَا، وَتَرَاضَيَا جَمِيعًا بِهِ، فَهُوَ عَقْدٌ صَحِيحٌ، وَتِجَارَةٌ عَنْ تَرَاضٍ، وَبَيْعٌ لَا دَاخِلَةَ فِيهِ.

If neither party knows, or one of them does not know the extent of the fraud, and neither has stipulated a warranty of soundness, the buyer retains the right of option to return [the item] or retain it upon discovery. This is because the sale was legally sound in its general framework, and thus it remains a legally sound sale.

وَأَمَّا إِذَا لَمْ يَعْلَمَا أَوْ أَحَدُهُمَا بِقَدْرِ الْغَبْنِ، وَلَمْ يَشْتَرِطَا السَّلَامَةَ وَلَا أَحَدُهُمَا فَلَهُ الْخِيَارُ إِذَا عَرَفَ فِي رَدٍّ أَوْ إِمْسَاكٍ؛ لِأَنَّ الْبَيْعَ وَقَعَ سَالِمًا عَلَى الْجُمْلَةِ، فَهُوَ بَيْعٌ صَحِيحٌ.

Then we found that the Prophet (peace and blessings of Allah be upon him) had granted the right to rescind to the one who declared, "No fraud! No fraud! No fraud!" If he wishes, he may retain it, and if he wishes, he may rescind it. Thus, it became obligatory that any excess obtained by the defrauder from the defrauded is impermissible except with the defrauded's awareness and willing consent. If he agrees to relinquish his right, that is his right. But if he refuses, it is unlawful for him to take what he purchased without the seller's consent. He may return it.

ثُمَّ وَجَدْنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ جَعَلَ الْخِيَارَ لِمَنْ قَالَ: " لَا خِلَابَةَ ثَلَاثًا " إِنْ شَاءَ أَمْسَكَ وَإِنْ شَاءَ رَدَّ فَوَجَبَ أَنْ لَا يَحِلَّ مَا تَزَيَّدَ فِيهِ الْخَادِعُ عَلَى الْمَخْدُوعِ إِلَّا بِعِلْمِ الْمَخْدُوعِ وَطِيبِ نَفْسِهِ، فَإِنْ رَضِيَ بِتَرْكِ حَقِّهِ فَذَلِكَ لَهُ، وَإِنْ أَبَى لَمْ يَجُزْ لَهُ أَخْذُ مَا ابْتَاعَ بِغَيْرِ رِضَى الْبَائِعِ، فَلَهُ أَنْ يَرُدَّهُ.

It is conclusively established by authentic consensus that he holds the right of revocation...

وَقَدْ صَحَّ الْإِجْمَاعُ الْمَقْطُوعُ بِهِ عَلَى أَنَّ لَهُ الرَّدَّ -

People have differed: does he have the right to withhold or not? And Allah

the Most High has said: “except when it is a trade by mutual consent among you” [An-Nisa’ 4:29].[10]

وَاخْتَلَفَ النَّاسُ: هَلْ لَهُ الْإِمْسَاكُ أَمْ لَا؟ وَقَدْ قَالَ اللَّهُ تَعَالَى {إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

L23098 Thus, it is established that when he is satisfied with what he has purchased, then that suffices—and with Allah, the Exalted, lies divine facilitation.

فَصَحَّ أَنَّهُ إِذَا رَضِيَ مَا ابْتَاعَ فَذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23099–23100 Ali said: There are two prices agreed upon by all people of Islam, past and present. Merchants during the time of the Messenger of Allah (peace and blessings be upon him) would sell what they bought in pursuit of profit; this is an established fact. One price is that at which merchants purchase goods—they do not exceed it except for a valid legal cause—and another price is that at which merchants sell goods—they neither reduce nor exceed it except for a valid legal cause. These two prices are observed, each considered according to its specific circumstance.

قَالَ عَلِيٌّ: وَالْقِيمَةُ قِيمَتَانِ بِاتِّفَاقِ جَمِيعِ أَهْلِ الْإِسْلَامِ - قَدِيمًا وَحَدِيثًا - فَقَدْ كَانَ التُّجَّارُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَبِيعُونَ مَا يَشْتَرُونَ طَلَبَ الرِّبْحِ، هَذَا أَمْرٌ مُتَيَقَّنٌ، فَقِيمَةٌ يَبْتَاعُ بِهَا التُّجَّارُ السِّلَعَ لَا يَتَجَاوَزُونَهَا إِلَّا لِعِلَّةٍ، وَقِيمَةٌ يَبِيعُ بِهَا التُّجَّارُ السِّلَعَ لَا يَحُطُّونَ عَنْهَا وَلَا يَتَجَاوَزُونَهَا إِلَّا لِعِلَّةٍ، فَهَاتَانِ الْقِيمَتَانِ تُرَاعَيَانِ لِكُلِّ قِيمَةٍ فِي حَالِهَا.

L23101 Abu Muhammad said: Our companions argued in invalidating the sale for more than its equivalent value—even if both parties knew this and mutually consented to it—by stating: “Allah’s Messenger, peace and blessings be upon him, prohibited the squandering of wealth.” They said: “The buyer purchasing an item for more than its value and the seller selling it for less than its value—both of them are squandering their wealth.”

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ أَصْحَابُنَا فِي إِبْطَالِهِمْ الْبَيْعَ بِأَكْثَرَ مِمَّا يُسَاوِي - وَإِنْ عَلِمَا جَمِيعًا بِذَلِكَ وَتَرَاضَيَا بِهِ بِأَنْ قَالُوا: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ» ، قَالُوا: وَالْمُشْتَرِي الشَّيْءَ، بِأَكْثَرَ مِنْ قِيمَتِهِ وَالْبَائِعُ لَهُ بِأَقَلَّ مِنْ قِيمَتِهِ كِلَاهُمَا مُضَيِّعٌ لِمَالِهِ.

L23102 They said: It is impermissible to divest property of ownership except either in exchange for a reward from Allah the Exalted - for that is the best form of compensation - or in exchange for worldly compensations, such as labor in a lease, merchandise in trade, ownership of sexual rights in marriage, the dissolution of his ownership in khulʿ, and the like thereof, as stipulated by textual sources.

قَالُوا: وَلَا يَجُوزُ إخْرَاجُ الْمَالِ عَنْ الْمِلْكِ إلَّا بِعِوَضِ أَجْرٍ مِنْ اللَّهِ تَعَالَى فَهُوَ أَفْضَلُ عِوَضٍ، وَإِمَّا بِعِوَضٍ مِنْ أَعْرَاضِ الدُّنْيَا كَعَمَلٍ فِي الْإِجَارَةِ، أَوْ عَرَضٍ فِي التِّجَارَةِ، أَوْ مِلْكِ بُضْعٍ فِي النِّكَاحِ، أَوْ انْحِلَالِ مِلْكِهِ فِي الْخُلْعِ، وَنَحْوِ ذَلِكَ مِمَّا جَاءَتْ بِهِ النُّصُوصُ.

L23103 They said: “Whoever sells a fruit for a thousand dinars or a gem for a fals, this is indeed squandering, extravagance, extravagant spending in full measure, and wrongful consumption of wealth.” Abū Muḥammad said: “They have no proof beyond what we have mentioned. We say to them—and by Al-

قَالُوا: وَمَنْ بَاعَ ثَمَرَةً بِأَلْفِ دِينَارٍ، أَوْ يَاقُوتَةً بِفَلْسٍ، فَإِنَّ هَذَا هُوَ التَّبْذِيرُ، وَالسَّرَفُ، وَبَسْطُ الْيَدِ كُلَّ الْبَسْطِ، وَأَكْلُ الْمَالِ بِالْبَاطِلِ - قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ غَيْرَ مَا ذَكَرْنَا. قَالَ أَبُو مُحَمَّدٍ: فَنَقُولُ لَهُمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ الَّذِي قُلْتُمْ إنَّمَا هُوَ فِيمَا لَا يَعْلَمُ

[10] **Qur’an references (L23097):** Qur’an 4:29 (An-Nisa).

lah's grace alone is success attained—what you have described applies only to matters where the value is unknown. However, when one knows the extent of the fraudulent disparity in value and consents to it willingly, this constitutes a righteous act carried out through a transaction with full contentment, and he is rewarded for it. For he has done good, shown kindness to another person, ceded wealth to him, or granted him property. True squandering, extravagance, wasting wealth, and wrongful consumption are only what Allah, the Mighty and Majestic, has prohibited, as we detailed in the 'Book of Interdiction' within this compendium of ours. As for trade conducted by mutual consent, Allah the Exalted has never forbidden it; rather, He has permitted it."

بِقَدْرِهِ، وَأَمَّا إِذَا عَلِمَ بِقَدْرِ الْغَبْنِ وَطَابَتْ بِهِ نَفْسُهُ فَهُوَ بِرٌّ بِرَّ بِهِ مُعَامَلَةً بِطِيبِ نَفْسِهِ، فَهُوَ مَأْجُورٌ، لِأَنَّهُ فَعَلَ خَيْرًا، وَأَحْسَنَ إِلَى إِنْسَانٍ، وَتَرَكَ لَهُ مَالًا، أَوْ أَعْطَاهُ مَالًا، وَلَيْسَ التَّبْذِيرُ، وَالسَّرَفُ، وَإِضَاعَةُ الْمَالِ، وَأَكْلُهُ بِالْبَاطِلِ إِلَّا مَا حَرَّمَهُ اللَّهُ عَزَّ وَجَلَّ عَلَى مَا بَيَّنَّا فِي: " كِتَابِ الْحَجْرِ " مِنْ دِيوَانِنَا هَذَا وَأَمَّا التِّجَارَةُ عَنْ تَرَاضٍ فَمَا حَرَّمَهَا اللَّهُ تَعَالَى قَطُّ، بَلْ أَبَاحَهَا.

L23104 Abu Muhammad said: The only permissible supererogatory act of increasing in purchase is that which preserves sufficiency, for this constitutes a recognized good in trade. The Messenger of Allah (peace and blessings be upon him) said: "Every act of goodness is charity," and he (peace and blessings be upon him) said: "Charity is given from surplus beyond sufficiency."

قَالَ أَبُو مُحَمَّدٍ: وَإِنَّمَا يَجُوزُ مِنَ التَّطَوُّعِ بِالزِّيَادَةِ فِي الشِّرَاءِ مَا أَبْقَى غِنًى، لِأَنَّهُ مَعْرُوفٌ مِنَ الْبَيْعِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» وَقَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الصَّدَقَةُ عَنْ ظَهْرِ غِنًى» .

L23105 As for actions that fail to dispel need, they are rejected and impermissible, according to the statement of the Messenger of Allah (peace and blessings be upon him): "Whoever introduces into our practice something not part of it, it is rejected."[11]

وَأَمَّا مَا لَمْ يُبْقِ غِنًى فَمَرْدُودٌ لَا يَحِلُّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L23106–23108 Ali said: Among what clarifies the soundness of our position is what we have narrated through Muslim's chain: I am Abu Kamil—he is Fuḍayl ibn Ḥusayn al-Jaḥdarī. ʿAbd al-Wāḥid ibn Ziyād said: I heard from al-Jurayrī, who heard from Abū Naḍrah, who heard from Jābir ibn ʿAbd Allāh, who said: "We were with the Messenger of Allāh (ṣallallāhu ʿalayhi wa-sallam) on a journey when my watering camel lagged behind." He mentioned the ḥadīth, and in it: "He kept increasing for me [reward] and saying: 'By Allāh, He forgives you.'"

قَالَ عَلِيٌّ: وَمِمَّا يُبَيِّنُ صِحَّةَ قَوْلِنَا: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو كَامِلٍ - هُوَ فُضَيْلُ بْنُ حُسَيْنٍ الْجَحْدَرِيُّ أَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ أَنَا الْجُرَيْرِيُّ عَنْ أَبِي نَضْرَةَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي سَفَرٍ فَتَخَلَّفَ نَاضِحِي؛ فَذَكَرَ الْحَدِيثَ وَفِيهِ فَمَا زَالَ يَزِيدُنِي وَيَقُولُ: وَاَللَّهُ يَغْفِرُ لَكَ» .

L23109 Abu Muhammad said: The first payment the Messenger of Allah—peace and blessings be upon him—gave regarding the camel cannot escape being either equal to the camel's value, less than its value, or greater than its value.

قَالَ أَبُو مُحَمَّدٍ: فَلَا يَخْلُو أَوَّلُ عَطَاءٍ أَعْطَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَمَلِ مِنْ أَنْ يَكُونَ هُوَ قِيمَةَ الْجَمَلِ أَوْ أَقَلَّ مِنْ قِيمَتِهِ أَوْ أَكْثَرَ مِنْ قِيمَتِهِ فَإِنْ كَانَ قِيمَتَهُ فَقَدْ زَادَهُ بَعْدَ ذَلِكَ، وَفِي هَذَا جَوَازُ الْبَيْعِ بِالزِّيَادَةِ عَلَى الْقِيمَةِ عَنْ رِضَاهُمَا مَعًا - وَإِنْ كَانَ

[11] **Hadith references (L23105):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

أَعْطَاهُ أَوَّلًا أَقَلَّ مِنْ الْقِيمَةِ أَوْ أَكْثَرَ - فَهَذَا هُوَ قَوْلُنَا وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يَسُومُ بِمَا لَا يَحِلُّ وَلَا يَخْدَعُ وَلَا يَغُرُّ وَلَا يَغُشُّ - فَهَذَا نَفْسُ قَوْلِنَا وَلِلَّهِ الْحَمْدُ.

If it was equal to the value, he later increased it, and this demonstrates the permissibility of selling above the value by mutual consent—whether he initially gave less or more than the value. This is our doctrine, and he—peace be upon him—would not insist on what is unlawful, nor deceive, mislead, nor defraud. This precisely aligns with our position, and all praise belongs to Allah.

وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ -: «لَا يَسُمْ أَحَدُكُمْ عَلَى سَوْمِ أَخِيهِ» فِيهِ إبَاحَةُ الْمُسَاوِمَةِ، وَهِيَ عِنْدَ كُلِّ مَنْ يَدْرِي اللُّغَةَ الْعَرَبِيَّةَ مَعْرُوفَةٌ، وَهِيَ أَنْ يَسْأَلَ أَحَدُهُمَا ثَمَنًا يُعْطِيهِ الْآخَرُ أَقَلَّ - فَلَوْ كَانَ إعْطَاءُ أَقَلَّ مِنْ الْقِيمَةِ أَوْ طَلَبُ أَكْثَرَ مِنْهَا طَلَبًا بَاطِلًا لَمَا أَبَاحَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ.

L23110 Similarly, his statement – peace be upon him – "None of you should interfere with his brother's bargaining" affirms the permissibility of bargaining. This is known to anyone familiar with the Arabic language, as it refers to one party asking for a price and the other offering less. If giving less than the value or asking for more than it were unlawful acts, Allah the Exalted would not have permitted it through His Messenger.

فَصَحَّ أَنَّ كُلَّ ذَلِكَ جَائِزٌ إذَا عَرَفَاهُ وَعَرَفَا مِقْدَارَهُ وَتَرَاضَيَا مَعًا بِهِ، وَلَمْ يَكُنْ خَدِيعَةً وَلَا غِشًّا.

L23111 Thus, it is established that all of that is permissible if they both know it and its extent, mutually agree upon it together, and that there is no deceit or fraud.

وَكَذَلِكَ مَا جَعَلَ - عَلَيْهِ السَّلَامُ - لِمُنْقِذٍ مِنْ الْخِيَارِ فِي رَدِّ الْبَيْعِ أَوْ إمْضَائِهِ وَكَانَ يُخْدَعُ فِي الْبُيُوعِ فِيهِ إجَازَةُ الْبَيْعِ الَّذِي فِيهِ الْخَدِيعَةِ إذَا رَضِيَهَا الْمَخْدُوعُ وَعَرَفَهَا.

L23112 Similarly, what the Prophet (peace be upon him) established for the party granted the option (khiyār) to annul or uphold a sale - and they were deceived in transactions - is the permissibility of a sale involving deceit when the deceived party consents to it and acknowledges it.

وَكَذَلِكَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ الْأَمَةِ إذَا زَنَتْ؟ فَقَالَ: إذَا زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَبِيعُوهَا، وَلَوْ بِضَفِيرٍ أَوْ بِحَبْلٍ مِنْ شَعْرٍ» فَأَبَاحَ - عَلَيْهِ السَّلَامُ - بَيْعَهَا بِحَبْلٍ مِنْ شَعْرٍ إذَا رَضِيَ بَائِعُهَا بِذَلِكَ.

L23113 Similarly, what we have narrated through the chain of Malik from Ibn Shihab from 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah ibn Mas'ud from Abu Hurairah and Zayd ibn Khalid al-Juhani: "The Messenger of Allah - peace be upon him - was asked about a female slave who commits illicit sexual intercourse. He said: 'If she commits it, flog her; then if she commits it again, flog her; then if she commits it again, flog her; then if she commits it again, sell her, even if it is for a plaited rope or a hair cord.'" Thus, he - peace be upon him - permitted selling her for a hair cord if the seller consents to that.

وَقَدْ أَجَازَ أَصْحَابُنَا الَّذِي أَنْكَرُوا هَهُنَا فِي حَسِّ مَسٍّ إذْ أَجَازُوا بَيْعَ عَبْدٍ بِعَشَرَةِ دَنَانِيرَ، وَاشْتِرَاطَ مَالٍ وَهُوَ أَنَّهُ عَشَرَةُ آلَافِ دِينَارٍ، وَلَمْ يُنْكِرُوهُ أَصْلًا، وَكَيْفَ يُنْكِرُونَهُ وَرَسُولُ

L23114–23115 Our companions—those who rejected ḥass-mass (uncertain barter) in this context—permitted selling a slave for ten dinars and stipulating a fixed sum of ten thousand dinars, without objecting to it at all. How could they reject

it when the Messenger of Allah (peace be upon him and his family) has permitted it in general terms? Such transactions constitute acquiring property without charitable intent or reciprocal consideration.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ أَبَاحَهُ جُمْلَةً؟ وَهَذَا أَخْذُ مَالٍ بِغَيْرِ صَدَقَةٍ وَلَا عِوَضٍ.

L23116 Abu Muhammad said: There is nothing in any of these reports to support those who permit a sale involving prohibited deceit and fraud arising from unfair pricing that the defrauded party is unaware of.

قَالَ أَبُو مُحَمَّد: وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ مُتَعَلَّقٌ لِمَنْ أَجَازَ الْبَيْعَ الَّذِي فِيهِ الْخَدِيعَةُ الْمُحَرَّمَةُ وَالْغِشُّ الْمُحَرَّمُ مِنْ الْغَبْنِ الَّذِي لَا يَدْرِيهِ الْمَغْبُونُ.

L23117 For it contains no evidence for any of that; rather, it only indicates the permissibility when the consenting party in his sale knows it exclusively. Consent to the unknown is fundamentally invalid, being contrary to human nature and inherently unfeasible. A person might declare, "I consent, I agree!" regarding matters whose extent he ignores, yet when confronted with reality, he utterly rejects them. This constitutes a perceptible fact observable in every individual and all circumstances.

لِأَنَّهُ لَيْسَ فِيهَا دَلِيلٌ عَلَى شَيْءٍ مِنْ ذَلِكَ، إنَّمَا فِيهَا جَوَازُ ذَلِكَ إذَا عَلِمَهُ الرَّاضِي بِهِ فِي بَيْعِهِ فَقَطْ، وَلَا يَجُوزُ الرِّضَا بِمَجْهُولٍ أَصْلًا؛ لِأَنَّهُ مُمْتَنِعٌ فِي الْجِبِلَّةِ، مُحَالٌ فِي الْخِلْقَةِ، وَقَدْ يَقُولُ الْمَرْءُ: رَضِيت رَضِيت، فِيمَا لَا يَعْلَمُ قَدْرَهُ، فَإِذَا وَقَفَ عَلَيْهِ لَمْ يَرْضَهُ أَصْلًا، هَذَا أَمْرٌ مَحْسُوسٌ فِي كُلِّ أَحَدٍ، وَفِي كُلِّ شَيْءٍ.

L23118 Ali said: The aforementioned cited as evidence what was transmitted to us through the isnād of ʿAbd al-Malik ibn Ḥabīb al-Andalusī, who said: "It was reported to me from Ibn ʿUmar that he would say when dispatching someone to purchase a commodity for him: 'Hold him accountable.'"

قَالَ عَلِيٌّ: وَاحْتَجَّ الْمَذْكُورُونَ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ قَالَ: بَلَغَنِي عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ إذَا بَعَثَ مَنْ يَبْتَاعُ لَهُ سِلْعَةً: ارْثِمْ أَنْفَهُ.

L23119 From the chain of Ibn Ḥabīb: ʿAbd al-ʿAzīz al-Uwaysī and ʿAbd al-Malik ibn Maslamah narrated to me from Ismāʿīl ibn ʿAyyāsh from ʿAmr ibn al-Muhājir from ʿUmar ibn ʿAbd al-ʿAzīz that he said: "I wish I neither sold nor bought anything unless I openly clarified matters with the other party."

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ حَدَّثَنِي عَبْدُ الْعَزِيزِ الْأُوَيْسِيُّ، وَعَبْدُ الْمَلِكِ بْنِ مَسْلَمَةَ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عَمْرِو بْنِ الْمُهَاجِرِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ قَالَ: وَدِدْت أَنِّي لَا أَبِيعُ شَيْئًا وَلَا أَبْتَاعُهُ إلَّا بَطَحْت بِصَاحِبِهِ.

L23120 Is the statement "Sale is prudent dealing" what we have cited from al-Shaʿbī?

وَبِمَا ذَكَرْنَا عَنْ الشَّعْبِيِّ مِنْ قَوْلِهِ: الْبَيْعُ خُدْعَةٌ؟

L23121 Abu Muhammad said: All of this is invalid, and Ibn Habib is abandoned. Moreover, it is a false unattributed report ascribed to Ibn Umar. Even if it were authentic, no one would infer from it the permissibility of fraudulent overpricing or deceit. The meaning of "break his nose" is to take the finest of what he possesses—and this is lawful if both parties consent to it willingly, and the seller gives it with full approval.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ بَاطِلٌ، وَابْنُ حَبِيبٍ مَتْرُوكٌ، ثُمَّ هُوَ عَنْ ابْنِ عُمَرَ بَلَاغٌ كَاذِبٌ، ثُمَّ لَوْ صَحَّ لَمَا فَهِمَ مِنْهُ أَحَدٌ إبَاحَةَ غَبْنٍ، وَلَا خَدِيعَةٍ، إنَّمَا مَعْنَى " ارْثِمْ أَنْفَهُ " خُذْ أَفْضَلَ مَا عِنْدَهُ - وَهَذَا مُبَاحٌ إذَا تَرَاضَيَا بِذَلِكَ، وَأَعْطَاهُ إيَّاهُ بِطِيبِ نَفْسِهِ.

L23122–23124 As for the narration of Umar ibn Abd al-Aziz, Ismāʿīl ibn ʿAyyāsh is deemed weak. How many incidents are there where they contradicted Umar ibn Abd al-Aziz? Such as his prostration during the recitation of *When the sky is split asunder* [Al-Inshiqaq: 1] and his permitting of it. Selling fish in water before they are caught and numerous cases—it is invalid to hold that what is authentically established from the Prophet is not authoritative proof while what is unauthenticated is regarded as proof. And success is by Allah, the Most High.[12]

وَأَمَّا حَدِيثُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَإِسْمَاعِيلُ بْنُ عَيَّاشٍ لَا شَيْءَ - وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرُ بْنُ عَبْدِ الْعَزِيزِ؟ كَسُجُودِهِ فِي {إِذَا السَّمَاءُ انْشَقَّتْ} [الانشقاق: ١] وَإِبَاحَتِهِ بَيْعَ السَّمَكِ فِي الْمَاءِ قَبْلَ أَنْ يُصَادَ، وَعَشَرَاتٍ مِنْ الْقَضَايَا، فَمِنْ الْبَاطِلِ أَنْ يَكُونَ مَا صَحَّ عَنْهُ لَيْسَ حُجَّةً وَمَا لَمْ يَصِحَّ عَنْهُ حُجَّةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23125 And the narration that came through Al-Sha'bi's chain originates from Jabir Al-Ju'fi's chain. Al-Qasim and others differed from Jabir Al-Ju'fi, and no proof exists in anyone apart from the Messenger of Allah (peace and blessings be upon him).

وَالَّذِي جَاءَ مِنْ طَرِيقِ الشَّعْبِيِّ هُوَ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ، وَقَدْ خَالَفَهُ الْقَاسِمُ، وَغَيْرُهُ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23126 ## Issue: The Sale with an Undetermined Price

[مَسْأَلَةٌ الْبَيْعُ بِثَمَنٍ مَجْهُولٍ]

L23127 1466. Issue: It is not permissible to sell for an unknown price or to an unknown term, such as harvest, threshing, stipend, cultivation, juice, or similar matters. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān. This is because all that we have mentioned can be advanced or delayed in days. For example, harvest and threshing may be delayed by days if the rain is continuous, or advanced by hot weather and lack of rain. Similarly, juice varies in timing. As for cultivation, it may be delayed by two months or more due to lack of rain. As for the stipend, it may be entirely discontinued.

١٤٦٦ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْبَيْعُ بِثَمَنٍ مَجْهُولٍ، وَلَا إلَى أَجَلٍ مَجْهُولٍ كَالْحَصَادِ، وَالْجِدَادِ، وَالْعَطَاءِ، وَالزَّرِيعَةِ، وَالْعَصِيرِ، وَمَا أَشْبَهَ هَذَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ؛ لِأَنَّ كُلَّ مَا ذَكَرْنَا يَتَقَدَّمُ بِالْأَيَّامِ وَيَتَأَخَّرُ فَالْحَصَادُ، وَالْجِدَادُ، يَتَأَخَّرَانِ أَيَّامًا إنْ كَانَ الْمَطَرُ مُتَوَاتِرًا، وَيَتَقَدَّمَانِ بِحَرِّ الْهَوَاءِ وَعَدَمِ الْمَطَرِ، وَكَذَلِكَ الْعَصِيرُ، وَأَمَّا الزَّرِيعَةُ فَتَتَأَخَّرُ شَهْرَيْنِ وَأَكْثَرَ لِعَدَمِ الْمَطَرِ - وَأَمَّا الْعَطَاءُ فَقَدْ يَنْقَطِعُ جُمْلَةً.

L23128 Furthermore, any condition not in the Book of Allah is invalid. The permissibility of setting a term applies only to what does not delay or advance by even an hour—such as Arab or non-Arab months, the rising or setting of the sun, the rising or setting of the moon, or the rising or setting of a named star. All these have precisely defined timings among those who know them. Allah the Exalted said: "They ask you about the crescent moons. Say, 'They are appointed times for people and for pilgrimage'" (Quran 2:189). Except for the sale linked to gambling that we mentioned, it is valid due to the explicit

وَأَيْضًا: فَكُلُّ ذَلِكَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَإِنَّمَا يَجُوزُ الْأَجَلُ إلَى مَا لَا يَتَأَخَّرُ سَاعَةً وَلَا يَتَقَدَّمُ، كَالشُّهُورِ الْعَرَبِيَّةِ وَالْعَجَمِيَّةِ؛ أَوْ كَطُلُوعِ الشَّمْسِ أَوْ غُرُوبِهَا، أَوْ طُلُوعِ الْقَمَرِ أَوْ غُرُوبِهِ، أَوْ طُلُوعِ كَوْكَبٍ مُسَمًّى أَوْ غُرُوبِهِ، فَكُلُّ هَذَا مَحْدُودُ الْوَقْتِ عِنْدَ مَنْ يَعْرِفُهَا، قَالَ اللَّهُ تَعَالَى {يَسْأَلُونَكَ عَنِ الأَهِلَّةِ قُلْ هِيَ مَوَاقِيتُ لِلنَّاسِ

[12] **Qur'an references (L23122):** Qur'an 84:1 (Al-Inshiqaq).

textual evidence on this matter and because it is Allah's ruling for everyone who cannot repay their debt.[13]

L23129 It is not permissible to set a term extending to the fasting of Christians or Jews, or their breaking of the fast, nor to any of their festivals, for these are part of their religious adornments. Perhaps it will become apparent to them in these two practices, and this is possible.

L23130 Al-Shafi'i said: "A designated period is only valid when determined by the sighting of the new moons," and he cited this verse in which Allah, the Mighty and Majestic, states: {Indeed, the number of months with Allah is twelve months in His Book, on the day He created the heavens and the earth. Among them are four sacred...} [9:36].[14]

L23131 Abu Muhammad said: Allah the Exalted stated: {When you contract a debt for a specified term, write it down} [Al-Baqarah: 282]. Thus, He the Most High generalized all specified terms without restriction. This verse is an addition to those two verses, and it is impermissible to disregard such an addition. Neither of those two verses prohibits setting terms based on other than lunar months nor does it permit it. It is therefore obligatory to seek the ruling on this matter from other sources. If evidence permitting it is found, it is affirmed; otherwise, it is not. This is the opinion of Al-Ḥasan ibn Ḥayy, Abu Sulayman, and our companions.[15]

L23132–23133 Malik permitted sales to a stipend in excluded cases. He said: As for today, it is not, because it is not customary now, and it was customary before that time.

L23134 He permitted the sale until harvest, reaping, and pressing for juice.

L23135 He said: Consideration is given to the magnitude and abundance of that, neither to its beginning nor to its end.

وَالْحَجِّ} [البقرة: ١٨٩] حَاشَا مَا ذَكَرْنَا مِنْ الْمَبِيعِ إلَى الْمَيْسَرَةِ فَهُوَ حَقٌّ لِلنَّصِّ فِي ذَلِكَ، وَلِأَنَّهُ حُكْمُ اللَّهِ تَعَالَى فِي كُلِّ مَنْ لَا يَجِدُ أَدَاءَ دَيْنِهِ.

وَلَا يَجُوزُ الْأَجَلُ إلَى صَوْمِ النَّصَارَى أَوْ الْيَهُودِ أَوْ فِطْرِهِمْ، وَلَا إلَى عِيدٍ مِنْ أَعْيَادِهِمْ؛ لِأَنَّهَا مِنْ زِينَتِهِمْ وَلَعَلَّهُمْ سَيَبْدُو لَهُمْ فِيهِمَا، فَهَذَا مُمْكِنٌ.

وَقَالَ الشَّافِعِيُّ: لَا يَجُوزُ الْأَجَلُ إلَّا بِالْأَهِلَّةِ فَقَطْ وَذَكَرَ هَذِهِ الْآيَةَ، وَقَوْلَ اللَّهِ عَزَّ وَجَلَّ: {إنَّ عِدَّةَ الشُّهُورِ عِنْدَ اللَّهِ اثْنَا عَشَرَ شَهْرًا فِي كِتَابِ اللَّهِ يَوْمَ خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ مِنْهَا أَرْبَعَةٌ حُرُمٌ} [التوبة: ٣٦]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ عَزَّ وَجَلَّ: {إذَا تَدَايَنْتُمْ بِدَيْنٍ إلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] فَعَمَّ تَعَالَى كُلَّ أَجَلٍ مُسَمًّى وَلَمْ يَخُصَّ، فَكَانَتْ هَذِهِ الْآيَةُ زَائِدَةً عَلَى تِلْكَ الْآيَتَيْنِ، وَالزِّيَادَةُ لَا يَحِلُّ تَرْكُهَا، وَلَيْسَ فِي تِلْكَ الْآيَتَيْنِ مَنْعٌ مِنْ عَقْدِ الْآجَالِ إلَى غَيْرِ الْأَهِلَّةِ وَلَا إبَاحَةٌ، فَوَاجِبٌ طَلَبُ حُكْمِ ذَلِكَ مِنْ غَيْرِهِمَا، فَإِنْ وُجِدَ مَا يَدُلُّ عَلَى جَوَازِهِ قِيلَ بِهِ، وَإِلَّا فَلَا - وَهَذَا قَوْلُ الْحَسَنِ بْنِ حَيٍّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

وَأَبَاحَ مَالِكٌ الْبَيْعَ إلَى الْعَطَاءِ فِيمَا خَلَا، قَالَ: وَأَمَّا الْيَوْمَ فَلَا، لِأَنَّهُ لَيْسَ الْآنَ مَعْرُوفًا، وَكَانَ مَعْرُوفًا قَبْلَ ذَلِكَ -

وَأَجَازَ الْبَيْعَ إلَى الْحَصَادِ، وَالْجِدَادِ، وَالْعَصِيرِ.

قَالَ: وَيُنْظَرُ إلَى عِظَمِ ذَلِكَ وَكَثْرَتِهِ، لَا إلَى أَوَّلِهِ وَلَا إلَى آخِرِهِ.

[13] **Qur'an references (L23128):** Qur'an 2:189 (Al-Baqarah).
[14] **Qur'an references (L23130):** Qur'an 9:36 (At-Tawbah).
[15] **Qur'an references (L23131):** Qur'an 2:282 (Al-Baqarah).

L23136 Abu Muhammad said: We know of no greater ignorance than this restriction, nor any gharar more immense than it.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ فِي الْجَهَالَةِ أَكْثَرَ مِنْ هَذَا التَّحْدِيدِ وَلَا غَرَرَ أَعْظَمَ مِنْهُ.

L23137 Ali said: The people pledged allegiance in the presence of ʿAmmār and those Companions with him (may Allah be pleased with them) contingent upon the arrival of the rider. Yet the Ḥanafīs and Mālikīs opposed this, though they vehemently censure even minor issues compared to this when such matters align with their adherence [to a school]. In this context, they neglected their own reliance on the transmitted tradition: "Muslims are bound by their stipulated conditions."

قَالَ عَلِيٌّ: وَقَدْ تَبَايَعَ النَّاسُ بِحَضْرَةِ عَمَّارٍ وَمَنْ مَعَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَى قُدُومِ الرَّاكِبِ - فَخَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ ذَلِكَ، وَهُمْ يُشَنِّعُونَ بِأَقَلَّ مِنْ هَذَا، إذَا وَافَقَ تَقْلِيدَهُمْ، وَنَسَوْا فِي هَذَا الْبَابِ احْتِجَاجَهُمْ بِالْأَثَرِ الْوَارِدِ، «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

L23138 Among the oddities in their arguments is that both groups cited the report we narrated through Ibn Wahb's chain from Jarīr ibn Ḥāzim from Abū Isḥāq al-Sabīʿī from Umm Yunus: that ʿĀ'ishah, Mother of the Believers, was addressed by Umm Maḥabbah - the umm walad of Zayd ibn Arqam - who said: "O Mother of the Believers, I sold a slave to Zayd ibn Arqam on credit for eight hundred dirhams. When he needed the payment, I repurchased it from him before maturity for six hundred dirhams." ʿĀ'ishah responded: "Evil is your selling on credit and evil is your buying! Inform Zayd that his jihad with Allah's Messenger - peace and blessings be upon him - is invalidated unless he repents." The woman asked: "What if I relinquish and take the six hundred dirhams?" She answered: "Yes, {Whoever heeds his Lord's admonition and desists, he shall have what is past} [Al-Baqarah 2:275]."[16]

وَمِنْ غَرَائِبِ احْتِجَاجِهِمْ أَنَّ كِلْتَا الطَّائِفَتَيْنِ ذَكَرَتْ الْخَبَرَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أُمِّ يُونُسَ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ لَهَا أُمُّ مَحَبَّةَ أُمُّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ: يَا أُمَّ الْمُؤْمِنِينَ، إنِّي بِعْت زَيْدَ بْنَ أَرْقَمَ عَبْدًا إلَى الْعَطَاءِ بِثَمَانِمَائَةِ دِرْهَمٍ فَاحْتَاجَ إلَى الثَّمَنِ فَاشْتَرَيْته مِنْهُ قَبْلَ مَحِلِّ الْأَجَلِ بِسِتِّمَائَةٍ، فَقَالَتْ عَائِشَةُ: بِئْسَ مَا أَشَرَيْت وَبِئْسَ مَا اشْتَرَيْت، أَبْلِغِي زَيْدًا أَنَّهُ قَدْ بَطَلَ جِهَادُهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنْ لَمْ يَتُبْ فَقَالَتْ: أَرَأَيْت إنْ تَرَكْت وَأَخَذْت السِّتَّمِائَةِ؟ قَالَتْ: نَعَمْ: {فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ} [البقرة: ٢٧٥] .

L23139 The Hanafis and Malikis ruled that the aforementioned sale is prohibited by emulating Aisha, the Mother of the Believers (may Allah be pleased with her), and did not adopt Zayd ibn Arqam's position permitting it. They argued that such a statement from the Mother of the Believers could only originate from explicit instruction by the Messenger of Allah (peace and blessings be upon him). Yet they did not assert that Zayd's action necessarily derived from such instruction, for when a ruling is based on explicit prophetic guidance, Aisha is not more authoritative in this matter than Zayd ibn Arqam.

فَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: بِتَحْرِيمِ الْبَيْعِ الْمَذْكُورِ تَقْلِيدًا لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَلَمْ يُقَلِّدُوا زَيْدَ بْنَ أَرْقَمَ فِي جَوَازِهِ، وَقَالُوا: مِثْلُ هَذَا الْقَوْلِ عَنْ أُمِّ الْمُؤْمِنِينَ لَا يَكُونُ إلَّا عَنْ تَوْقِيفٍ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَقُولُوا: إنَّ فِعْلَ زَيْدٍ لَا يَكُونُ إلَّا عَنْ تَوْقِيفٍ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّ مَا كَانَ طَرِيقُهُ التَّوْقِيفَ فَلَيْسَتْ هِيَ أَوْلَى بِالْقَوْلِ مِنْ زَيْدِ بْنِ أَرْقَمَ.

[16] **Qur'an references (L23138):** Qur'an 2:275 (Al-Baqarah).

وَالْتَزَمَ الْحَنَفِيُّونَ هَذَا الِاحْتِجَاجَ فِي الْبَيْعِ إِلَى الْعَطَاءِ، وَلَمْ يَرْضَهُ الْمَالِكِيُّونَ فِيهِ؟ فَقُلْنَا لَهُمْ: يَا هَؤُلَاءِ أَيْنَ أَنْتُمْ عَنْ هَذَا الِاحْتِجَاجِ الْكَاذِبِ فِي كُلِّ مَا تَرَكْتُمْ فِيهِ التَّوْقِيفَ الصَّرِيحَ: مِنْ أَنَّ كُلَّ بَيِّعَيْنِ لَا بَيْعَ بَيْنَهُمَا مَا لَمْ يَتَفَرَّقَا إِلَّا أَنْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ.

L23140 The Hanafis upheld this argument concerning gift-giving in sales, but why did the Malikis not accept it? We said to them: "O you, how can you overlook this deceitful argument regarding every matter where you abandoned the explicit textual injunction: that between any two contracting parties, no sale exists until they separate, except when one grants the other the option to choose."

وَالنَّهْيُ عَنْ بَيْعِ الثَّمَرِ قَبْلَ أَنْ يَبْدُوَ صَلَاحُهُ فَأَبَحْتُمُوهُ عَلَى الْقَطْعِ.

L23141 The prohibition against selling fruit before its ripeness becomes evident, so you have permitted it once harvested.

وَالنَّهْيُ عَنْ بَيْعِ الْمَاءِ فَأَبَحْتُمُوهُ وَسَائِرَ التَّوْقِيفَاتِ الثَّابِتَةِ؟ فَهَانَ عَلَيْكُمْ تَرْكُهَا لِآرَائِكُمْ الْمُجَرَّدَةِ، وَتَأْوِيلَاتِكُمْ الْفَاسِدَةِ، ثُمَّ الْتَزَمْتُمْ الْقَوْلَ بِظَنٍّ كَاذِبٍ لَا يَحِلُّ الْقَوْلُ بِهِ أَنَّ هَهُنَا تَوْقِيفًا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَمَتْهُ أُمُّ الْمُؤْمِنِينَ وَلَمْ تُبَلِّغْهُ، وَهَذَا هُوَ الْكَذِبُ، عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَكْشُوفُ وَقَبِيحُ الْوَصْفِ لِأُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -.

L23142–23144 And the textual prohibition against selling water—so you permitted it and all other firmly established scripturally ordained rulings? Thus, you trivialized abandoning them. You have clung to your baseless opinions and corrupt interpretations, then persisted in asserting a false presumption that is impermissible to voice—claiming there exists in this matter a divinely stipulated injunction from the Messenger of Allah (peace and blessings be upon him) that the Mother of the Believers (may Allah be pleased with her) concealed it and failed to convey it. This is the manifest falsehood against the Messenger of Allah (peace and blessings be upon him) and the vile characterization of the Mother of the Believers (may Allah be pleased with her).

فَإِنْ قَالُوا: تَرَكْنَا دَلِيلَ النُّصُوصِ لِتَأْوِيلٍ تَأَوَّلْنَاهُ وَاجْتِهَادٍ رَأَيْنَاهُ؟

L23145 If they say, "We abandoned the evidence of textual sources due to an interpretation we adopted and an *ijtihād* we considered," [would that be valid]?

فَقُلْنَا: وَمَنْ أَبَاحَ لَكُمْ ذَلِكَ وَحَظَرَهُ عَلَى زَيْدِ بْنِ أَرْقَمَ - وَقُلَامَةُ ظُفُرِهِ وَاَللَّهِ قَبْلَ أَنْ تُفَارِقَهُ - خَيْرٌ مِنْ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَكُلِّ مَنْ اتَّبَعَهُمَا؟ وَهُوَ الَّذِي صَدَّقَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ، وَحَتَّى لَوْ كَانَ هَهُنَا نَصٌّ ثَابِتٌ بِخِلَافِ قَوْلِهِ، فَمَنْ أَحَقُّ بِالتَّأْوِيلِ مِنْهُ فِي أَنْ يُعْذَرَ فِي ذَلِكَ لَوْ أَخْطَأَ مُجْتَهِدًا فِي خِلَافِ الْقُرْآنِ؟

L23146 So we said: Is the one who permitted this for you and forbade it to Zayd ibn Arqam—and, by Allah, even the clipping of his fingernail before it separated from him—not superior to Abu Hanifah, Malik, and all who followed them? He is the one whom Allah the Exalted has attested to in the Quran. Even if there were an authentic text here contradicting his statement, who is more entitled to interpretive discretion than him, to be excused in that if he erred while exercising independent judgment contrary to the Quran?

كَمَا تَأَوَّلَ ابْنُ مَسْعُودٍ أَنْ لَا يَتَيَمَّمَ الْجُنُبُ وَلَا يُصَلِّيَ وَلَوْ لَمْ يَجِدَ الْمَاءَ شَهْرًا.

L23147 Just as Ibn Mas'ud ruled that a person in a state of major impurity must neither perform dry ablution nor pray, even if he cannot find water for an entire month.

L23148 And just as Umar interpreted when he delivered a sermon and prohibited increasing the dowry above five hundred dirhams, and when he declared that

the Messenger of Allah—peace and blessings be upon him—did not die, nor will he die, until he is the last of us.

وَكَمَا تَأَوَّلَ عُمَرُ إِذْ خَطَبَ فَمَنَعَ الزِّيَادَةَ فِي الصَّدَاقِ عَلَى خَمْسمِائَةِ دِرْهَمٍ، وَإِذْ أَعْلَنَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَمُتْ وَلَا يَمُوتُ حَتَّى يَكُونَ آخِرَنَا.

L23149 The Mother of the Believers—may Allah be pleased with her—would only have made this statement if she had indeed said it at all. Yet no one whose narration constitutes conclusive proof has reported it from her.

وَأُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - إِنَّمَا قَالَتْ هَذَا الْقَوْلَ إِنْ كَانَتْ قَالَتْهُ أَيْضًا فَلَمْ يَرْوِ ذَلِكَ عَنْهَا مَنْ يَقُومُ بِنَقْلِهِ حُجَّةٌ.

L23150 It is truly astonishing that one would reject the narration of Fāṭimah bint Qays—the emigrant who pledged allegiance to the Prophet (peace and blessings of Allah be upon him)—yet oblige people to accept as evidence the narrations of Umm Yūnus and Umm Muḥibbah. For there are no narrators more numerous than Umm Yūnus and Umm Muḥibbah [to warrant such preference], yet they rely on them due to an opinion held by the Mother of the Believers, which Zayd ibn Arqam opposed her on.

وَإِنَّ الْعَجَبَ لَيَطُولُ مِمَّنْ رَدَّ رِوَايَةَ فَاطِمَةَ بِنْتِ قَيْسٍ الْمُهَاجِرَةِ الْمُبَايِعَةِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يُلْزِمُ النَّاسَ الْحُجَّةَ بِرِوَايَةِ أُمِّ يُونُسَ، وَأُمِّ مُحَبَّةَ، فَلَا أَكْثَرَ مِنْ أُمِّ يُونُسَ، وَأُمِّ مُحَبَّةَ، لِرَأْيٍ رَأَتْهُ أُمُّ الْمُؤْمِنِينَ خَالَفَهَا فِيهِ زَيْدُ بْنُ أَرْقَمَ.

L23151 Abu Muhammad said: Those who permitted deferred payment sales until the stipend cited as evidence what we have narrated through al-Ḥajjāj ibn Arṭā'ah's transmission from ʿAṭāʾ, and [another report] from Jaʿfar ibn ʿAmr ibn Ḥurayth. ʿAṭāʾ said: "Ibn ʿUmar used to purchase on credit against the stipend." Jaʿfar reported from his father: "A Persian landowner sent a gold-thread woven brocade garment to ʿAlī ibn Abī Ṭālib, and ʿAmr ibn Ḥurayth bought it from him on deferred payment until the stipend for four thousand dirhams." Al-Ḥajjāj said: "The Mothers of the Believers used to engage in mutual transactions on credit against the stipend distribution."

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ أَبَاحَ الْبَيْعَ إِلَى الْعَطَاءِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَطَاءٍ، وَجَعْفَرِ بْنِ عَمْرِو بْنِ حُرَيْثٍ، قَالَ عَطَاءٌ: كَانَ ابْنُ عُمَرَ يَشْتَرِي إِلَى الْعَطَاءِ، وَقَالَ جَعْفَرٌ عَنْ أَبِيهِ: إِنَّ دِهْقَانًا بَعَثَ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ ثَوْبَ دِيبَاجٍ مَنْسُوجٍ بِالذَّهَبِ فَابْتَاعَهُ مِنْهُ عَمْرُو بْنُ حُرَيْثٍ إِلَى الْعَطَاءِ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ، قَالَ حَجَّاجٌ: وَكَانَ أُمَّهَاتُ الْمُؤْمِنِينَ يَتَبَايَعْنَ إِلَى الْعَطَاءِ.

L23152 And via the chain of Isra'il from Jabir al-Ju'fi from al-Sha'bi: There is no harm in selling until the stipend. – And from Ibn Abi Shaybah: I am Abu Bakr al-Hanafi, from Nuh ibn Abi Bilal: 'Ali ibn al-Husayn purchased food from me until his stipend.

وَمِنْ طَرِيقِ إِسْرَائِيلَ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ: لَا بَأْسَ بِالْبَيْعِ إِلَى الْعَطَاءِ - وَعَنْ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو بَكْرٍ الْحَنَفِيُّ عَنْ نُوحِ بْنِ أَبِي بِلَالٍ: اشْتَرَى مِنِّي عَلِيُّ بْنُ الْحُسَيْنِ طَعَامًا إِلَى عَطَائِهِ.

L23153–23155 Ali said: All of this is from Ḥajjāj ibn Arṭāʾah—and how glaring his weakness is!—and from Jābir, who is even weaker than him. Ḥajjāj ibn Daraj, and I do not know who Nuḥ ibn Abī Hilāl is. It was incumbent upon the Ḥanafīs, who argue using the narration of Ḥajjāj ibn Arṭāʾa that 'Umrah is

قَالَ عَلِيٌّ: كُلُّ هَذَا عَنْ حَجَّاجِ بْنِ أَرْطَاةَ وَنَاهِيكَ بِهِ ضَعْفًا، وَعَنْ جَابِرٍ وَهُوَ دُونَ حَجَّاجٍ بِدَرَجٍ، وَلَا أَدْرِي نُوحَ بْنَ أَبِي هِلَالٍ مَنْ هُوَ؟ وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُحْتَجِّينَ

voluntary, to cite his narration here. Since they emulated the Mother of the Believers in matters where Zayd ibn Arqam disagreed with her, they should have emulated her here too – alongside her companions: the Mothers of the Believers, ʿAlī, ʿAmr ibn Ḥurayth, ʿAmmār ibn Yāsir, and others. But these people are frivolous.

بِرِوَايَةِ حَجَّاجِ بْنِ أَرْطَاةَ فِي أَنَّ الْعُمْرَةَ تَطَوُّعٌ أَنْ يَحْتَجُّوا هَهُنَا بِرِوَايَتِهِ، وَلَقَدْ كَانَ يَلْزَمُهُمْ إِذْ قَلَّدُوا أُمَّ الْمُؤْمِنِينَ فِيمَا خَالَفَهَا فِيهِ زَيْدُ بْنُ أَرْقَمَ أَنْ يُقَلِّدُوهَا هَهُنَا وَمَعَهَا صَوَاحِبُهَا أُمَّهَاتُ الْمُؤْمِنِينَ، وَعَلِيٌّ، وَعَمْرُو بْنُ حُرَيْثٍ، وَأَيْضًا عَمَّارُ بْنُ يَاسِرٍ وَغَيْرُهُ، وَلَكِنَّ الْقَوْمَ مُتَلَاعِبُونَ.

L23156 Ali said: It has been reported to us through the chain of Sufyān ibn ʿUyaynah, from ʿAbd al-Karīm al-Jazari, from ʿIkrimah, from Ibn ʿAbbās: "Do not conclude a salam contract for grape juice, nor for standing crops, nor for al-andar" [meaning the threshing floor].

قَالَ عَلِيٌّ: وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ لَا يُسْلِمُ إِلَى عَصِيرٍ، وَلَا إِلَى الْعَطَاءِ، وَلَا إِلَى الْأَنْدَرِ - يَعْنِي الْبَيْدَرَ.

L23157 Do not sell [contingent] on the harvest, nor on date harvesting, nor on threshing; rather, name a month.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ بُكَيْرِ بْنِ عَتِيقٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ لَا تَبِعْ إِلَى الْحَصَادِ، وَلَا إِلَى الْجِدَادِ، وَلَا إِلَى الدِّرَاسِ وَلَكِنْ سَمِّ شَهْرًا.

L23158 And from the chain of Ibn Abi Shaybah: I am Muhammad ibn Abi ʿAdi, from ʿAbdullah ibn ʿAwn. Muhammad ibn Sirin was asked about selling [deferred] until the ʿaṭā' [stipend/payment]. He said: "I do not know; what is it?"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ سُئِلَ مُحَمَّدُ بْنُ سِيرِينَ عَنِ الْبَيْعِ إِلَى الْعَطَاءِ؟ قَالَ: لَا أَدْرِي مَا هُوَ؟

L23159 And via the route of Ibn Abi Shaybah: I, Jarir, reported from Mansur from Ibrahim that he disliked purchasing tied to the grant or the harvest, but he would specify a month.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ: أَنَّهُ كَرِهَ الشِّرَاءَ إِلَى الْعَطَاءِ، وَالْحَصَادِ، وَلَكِنْ يُسَمِّي شَهْرًا.

L23160 Through the chain of Ibn Abi Shaybah: From Humaid ibn Abd al-Rahman, from al-Hasan ibn Salih ibn Ḥayy, from al-Mughirah, from al-Hakam: that he disliked the sale linked to the public grant—and this is the opinion of Salim ibn Abdullah ibn Umar and ʿAṭāʾ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنِ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنِ الْمُغِيرَةِ عَنِ الْحَكَمِ: أَنَّهُ كَرِهَ الْبَيْعَ إِلَى الْعَطَاءِ - وَهُوَ قَوْلُ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَعَطَاءٍ.

L23161 A legal ruling: It is prohibited to outbid another's negotiation or sell over another's sale.

[مَسْأَلَةٌ لَا يَسُومُ عَلَى سَوْمِ آخَرَ وَلَا يَبِيعُ عَلَى بَيْعِهِ]

L23162 Issue 1467: It is not permissible for anyone to outbid another's bid or to sell over another's sale (Muslims and Dhimmis are treated equally). If someone does so, the sale becomes void. If a seller withholds their goods

to seek a higher price, or if a buyer intends to purchase from the seller without focusing on a specific individual but merely acting cautiously, then competitive bidding becomes permissible at that point - provided no prior bid was made. If a buyer begins bargaining with a specific seller, offers less than the fair value, and insists on that [low price], others may then increase the bid to match the fair value or exceed it.

١٤٦٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَسُومَ عَلَى سَوْمِ آخَرَ، وَلَا أَنْ يَبِيعَ عَلَى بَيْعِهِ - الْمُسْلِمُ، وَالذِّمِّيُّ سَوَاءٌ - فَإِنْ فَعَلَ فَالْبَيْعُ مَفْسُوخٌ، فَإِنْ وَقَفَ سِلْعَتَهُ لِطَلَبِ الزِّيَادَةِ، أَوْ قَصَدَ الشِّرَاءَ مِمَّنْ بَاعَهُ لَا مِنْ إنْسَانٍ بِعَيْنِهِ، لَكِنْ مُحْتَاطًا لِنَفْسِهِ جَازَتْ الْمُزَايَدَةُ حِينَئِذٍ هَذَا إذَا لَمْ يَبْتَدِ بِسَوْمٍ آخَرَ فَقَطْ، فَإِنْ بَدَأَ بِمُسَاوِمَةِ إنْسَانٍ بِعَيْنِهِ فَلَمْ يَزِدْهُ الْمُشْتَرِي عَلَى أَقَلَّ مِنْ الْقِيمَةِ وَوَقَفَ عَلَى ذَلِكَ فَلِغَيْرِهِ أَنْ يُبَلِّغَهُ إلَى الْقِيمَةِ وَأَكْثَرَ حِينَئِذٍ.

L23163 Similarly, if the seller demands more than the market value and refuses to accept it at all, it is then permissible for others to offer their goods to the buyer at the market value or lower.

وَكَذَلِكَ لَوْ طَلَبَ الْبَائِعُ أَكْثَرَ مِنْ الْقِيمَةِ وَلَمْ يُجَبْ إلَى الْقِيمَةِ أَصْلًا فَلِغَيْرِهِ حِينَئِذٍ أَنْ يَعْرِضَ عَلَى الْمُشْتَرِي سِلْعَتَهُ بِقِيمَتِهَا وَبِأَقَلَّ.

L23164–23166 The proof of that is: what we have narrated through Malik's chain from Nafi'. Abu Zinad—Abu Zinad said— From al-A'raj on the authority of Abū Hurayrah, and Nāfi' reported from Ibn 'Umar. Then Abū Hurayrah and Ibn 'Umar concurred, both narrating from the Messenger of Allah (peace be upon him) that he said: "Do not outbid one another."

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ، وَأَبِي الزِّنَادِ، قَالَ أَبُو الزِّنَادِ، عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ، وَقَالَ نَافِعٌ: عَنْ ابْنِ عُمَرَ، ثُمَّ اتَّفَقَ أَبُو هُرَيْرَةَ، وَابْنُ عُمَرَ، كِلَاهُمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا يَبِعْ بَعْضُكُمْ عَلَى بَيْعِ بَعْضٍ» .

L23167 From the narration of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Sa'id ibn al-Musayyib, from Abu Hurayrah, the Prophet (peace be upon him) said: "Do not sell over your brother's sale."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا يَبِعْ أَحَدُكُمْ عَلَى بَيْعِ أَخِيهِ» .

L23168 Ali said: This is a report whose meaning is a command, for if its meaning were a report, it would be false due to its contradiction. Lying is conclusively far removed from the Prophet—peace and blessings of Allah be upon him—and none but a disbeliever, whose blood is lawful, would permit it to be ascribed to him.

قَالَ عَلِيٌّ: هَذَا خَبَرٌ مَعْنَاهُ الْأَمْرُ؛ لِأَنَّهُ لَوْ كَانَ مَعْنَاهُ الْخَبَرَ لَكَانَ كَذِبًا لِوُجُودِ خِلَافِهِ، وَالْكَذِبُ مَقْطُوعٌ بِبُعْدِهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يُجِيزُهُ عَلَيْهِ إلَّا كَافِرٌ حَلَالٌ دَمُهُ.

L23169 From the chain of Shu'bah from al-A'mash from Abu Salih—he is al-Sammān, the oil seller—from Abu Hurayrah: "The Messenger of Allah (ﷺ) said: 'A Muslim must not outbid another Muslim's bargaining.'"

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ - هُوَ السَّمَّانُ - عَنْ أَبِي هُرَيْرَةَ: " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَسُمْ الْمُسْلِمُ عَلَى سَوْمِ الْمُسْلِمِ» .

L23170 Ali said: This is part of what is contained in the hadith of Abu Hurairah and Ibn Umar, because a sale contingent on another sale necessarily includes price negotiation. For a sale cannot occur at all except after price negotiation, and price negotiation cannot exist at all except for the purpose of a sale - otherwise, it is not price negotiation. Therefore, if the sale is forbidden, price negotiation pertaining to it becomes forbidden. And if price negotiation is forbidden, the sale becomes forbidden by necessity.

قَالَ عَلِيٌّ: هَذَا بَعْضُ مَا فِي حَدِيثِ أَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ؛ لِأَنَّ الْبَيْعَ عَلَى الْبَيْعِ يَدْخُلُ فِيهِ السَّوْمُ ضَرُورَةً؛ لِأَنَّهُ لَا يُمْكِنُ الْبَيْعُ أَلْبَتَّةَ إلَّا بَعْدَ سَوْمٍ، وَلَا يَكُونُ السَّوْمُ أَلْبَتَّةَ إلَّا لِلْبَيْعِ، وَإِلَّا فَلَيْسَ سَوْمًا، فَإِذَا حَرُمَ الْبَيْعُ حَرُمَ السَّوْمُ عَلَيْهِ، وَإِذَا حَرُمَ السَّوْمُ حَرُمَ الْبَيْعُ ضَرُورَةً.

L23171 It is not permissible to engage in bargaining for what cannot be lawfully sold, such as the sale of a free person and bargaining over it, nor is bargaining permissible in usury - as stated by some Companions (may Allah be pleased with them).

وَلَا يَجُوزُ السَّوْمُ بِمَا لَا يَجُوزُ بَيْعُهُ كَبَيْعِ الْحُرِّ وَالسَّوْمِ فِيهِ، وَفِي الرِّبَا - وَبِهَذَا قَالَ بَعْضُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L23172–23173 Abu Muhammad said: Malik stated, “This applies only when they have settled and come to terms”—this is an interpretation not supported by the explicit wording of the ḥadīth. As for one who displays his merchandise to solicit a higher price or seeks a buyer who will offer a lower price, he is not haggling with a specific individual; thus, this prohibition does not apply to him. However, if one observes a haggler or seller who does not intend to revert to the fair value but seeks to cheat his counterpart without their knowledge, it becomes obligatory upon him to offer sincere counsel to the Muslim. This case is also excluded from the prohibition based on the saying of the Messenger of Allah—peace and blessings be upon him: ’Religion is sincere counsel.‘“

قَالَ أَبُو مُحَمَّد: وَقَالَ مَالِكٌ: إنَّمَا هَذَا إذَا رَكَنَا وَتَقَارَبَا - وَهَذَا تَفْسِيرٌ لَا يَدُلُّ عَلَيْهِ لَفْظُ الْحَدِيثِ، فَأَمَّا مَنْ أَوْقَفَ سِلْعَتَهُ طَلَبَ الزِّيَادَةِ فِيهِ أَوْ طَلَبَ بَيْعٍ يَسْتَرْخِصُهُ فَلَيْسَ مُسَاوِمًا لِإِنْسَانٍ بِعَيْنِهِ، فَلَا يَلْزَمُهُ هَذَا النَّهْيُ، وَأَمَّا مَنْ رَأَى الْمُسَاوِمَ أَوْ الْمُبَايِعَ لَا يُرِيدُ الرُّجُوعَ إلَى الْقِيمَةِ، لَكِنْ يُرِيدُ غَبْنَ صَاحِبِهِ بِغَيْرِ عِلْمِهِ فَهَذَا فَرْضٌ عَلَيْهِ نَصِيحَةُ الْمُسْلِمِ، فَقَدْ خَرَجَ عَنْ هَذَا النَّهْيِ أَيْضًا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ» .

L23174 It has been narrated to us through the chain of Waki‘, from Hizam ibn Hisham al-Khuza‘i, from his father: “I witnessed Umar ibn al-Khattab selling camels from the alms (zakat) collection to the highest bidder.”

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ حِزَامِ بْنِ هِشَامٍ الْخُزَاعِيِّ عَنْ أَبِيهِ شَهِدْت عُمَرَ بْنَ الْخَطَّابِ بَاعَ إبِلًا مِنْ إبِلِ الصَّدَقَةِ فِيمَنْ يَزِيدُ.

L23175 From the chain of Hammad ibn Salamah from Abu Ja‘far al-Khitmi from al-Mughirah ibn Shu‘bah: that he sold the spoils by auction. And from the chain of Ibn Abi Shaybah—I [narrate] from Mu‘tamir ibn Sulayman from al-Akhdar ibn ‘Ajlan from Abu Bakr al-Hanafi from Anas ibn Malik from a man from the Ansar: that the Messenger of Allah (peace and blessings of Allah be upon him) sold a saddle blanket and a cup by auction.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي جَعْفَرٍ الْخِطْمِيِّ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ: أَنَّهُ بَاعَ الْمَغَانِمَ فِيمَنْ يَزِيدُ - وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ الْأَخْضَرِ بْنِ عَجْلَانَ عَنْ أَبِي بَكْرٍ الْحَنَفِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ عَنْ رَجُلٍ مِنْ الْأَنْصَارِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاعَ حِلْسًا وَقَدَحًا فِيمَنْ يَزِيدُ» .

The Issue of Sale by Najsh.

Issue 1468: Najsh (fraudulent bidding) is impermissible. It occurs when one intending to sell appoints a person to increase the bidding during the sale, though this person does not intend to purchase but rather to deceive others into raising their bids. If such a sale is concluded at a price exceeding the item's fair value, the buyer has the option to annul it. The sinner and the one prohibited is solely the practitioner of Najsh. Similarly, if the seller consents to it, the sale itself remains distinct from both Najsh and consenting to Najsh. Since the sale is separate from these two matters, it is impermissible to annul a valid sale due to the corruption of something else. No prohibition has ever been issued against a sale in which the practitioner of Najsh engages in Najsh, for Allah the Exalted said: "And Allah has permitted sale" (Surah Al-Baqarah 2:275).[17]

It has been reported to us through Mālik's chain from Nāfiʿ, from Ibn ʿUmar, who said: «The Messenger of Allah, peace and blessings be upon him, prohibited price manipulation (*al-najsh*).»[18]

And from the chain of ʿAbd al-Razzāq through Ismāʿīl ibn ʿAyyāsh through ʿUbayd ibn Muhājir, who said: "'Umar ibn ʿAbd al-ʿAzīz dispatched ʿUbayd ibn Muslim to sell the captives. When ʿUbayd ibn Muslim completed the task, he came to ʿUmar. ʿUmar said to him: 'The sale was...'" "It would have remained unsold had I not raised the bids and spent on it?" Umar said to him, "You were increasing the bids, yet you had no intention to purchase?" He replied, "Yes." Umar then declared, "This is _najsh_ (fraudulent bidding), and _najsh_ is unlawful. Dispatch an announcer to proclaim: 'The transaction is void, and _najsh_ is prohibited.'"

An Issue on Accepting Transported Goods

Issue 1469: It is impermissible for anyone to intercept incoming goods -

[17] **Qur'an references (L23177):** Qur'an 2:275 (Al-Baqarah).
[18] **Hadith references (L23178):** Sahih Muslim 1516.

[مَسْأَلَةُ بَيْعُ النَّجْش]

١٤٦٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ النَّجْشُ وَهُوَ أَنْ يُرِيدَ الْبَيْعَ فَيَنْتَدِبُ إِنْسَانًا لِلزِّيَادَةِ فِي الْبَيْعِ، وَهُوَ لَا يُرِيدُ الشِّرَاءَ لَكِنْ لِيَغْتَرَّ غَيْرُهُ فَيَزِيدُ بِزِيَادَتِهِ - فَهَذَا بَيْعٌ إِذَا وَقَعَ بِزِيَادَةٍ عَلَى الْقِيمَةِ فَلِلْمُشْتَرِي الْخِيَارُ، وَإِنَّمَا الْعَاصِي وَالْمَنْهِيُّ هُوَ النَّاجِشُ، وَكَذَلِكَ رِضَا الْبَائِعِ إِنْ رَضِيَ بِذَلِكَ، وَالْبَيْعُ غَيْرُ النَّجْشِ وَغَيْرُ الرِّضَا بِالنَّجْشِ، وَإِذْ هُوَ غَيْرُهُمَا فَلَا يَجُوزُ أَنْ يُفْسَخَ بَيْعٌ صَحَّ بِفَسَادِ شَيْءٍ غَيْرِهِ، وَلَمْ يَأْتِ نَهْيٌ قَطُّ عَنْ الْبَيْعِ الَّذِي يَنْجُشُ فِيهِ النَّاجِشُ، بَلْ قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ النَّجْشِ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عُبَيْدِ بْنِ مُهَاجِرٍ قَالَ: بَعَثَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ عُبَيْدَ بْنَ مُسْلِمٍ يَبِيعُ السَّبْيَ فَلَمَّا فَرَغَ أَتَى عُمَرَ فَقَالَ لَهُ: إنَّ الْبَيْعَ كَانَ كَاسِدًا لَوْلَا أَنِّي كُنْت أَزِيدُ عَلَيْهِمْ وَأُنْفِقُهُ؟ فَقَالَ لَهُ عُمَرُ: كُنْت تَزِيدُ عَلَيْهِمْ، وَلَا تُرِيدُ أَنْ تَشْتَرِيَ؟ قَالَ: نَعَمْ فَقَالَ عُمَرُ: هَذَا نَجْشٌ، وَالنَّجْشُ لَا يَحِلُّ، ابْعَثْ مُنَادِيًا يُنَادِي: أَنَّ الْبَيْعَ مَرْدُودٌ، وَأَنَّ النَّجْشَ لَا يَحِلُّ.

[مَسْأَلَةُ تَلَقِّي الْجَلَبِ]

whether one travels for that purpose or resides along the transporters' route, and whether the place of interception is distant or near (even if occurring in the marketplace at a cubit's distance or farther). This prohibition applies neither for a sacrificial animal, nor for sustenance, nor for any other purpose whatsoever, irrespective of whether it harms people or not.

L23185 Whoever receives transported goods—of any kind—and purchases them, the transporter retains the option right to confirm or rescind the sale whenever he enters the market, even after many years. If he rescinds it, the ruling applies as in sales returned due to defects—not as recovery of unlawfully seized property. The transporter's consent is valid only through explicit verbal declaration; silence—whether aware or unaware—does not suffice. If the buyer dies, the seller's option right remains effective. If the seller dies before rescinding or confirming [the sale], the sale becomes binding.

L23186 The proof of this is what has been narrated to us through Muslim—Ibn Numayr (Muhammad ibn ʿAbdullāh ibn Numayr) reported—from Ubayy, on the authority of ʿUbaydullāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar, who said: "The Messenger of Allāh—peace and blessings be upon him—forbade intercepting goods before they reach the markets."[19]

L23187 And through the chain of Abu Bakr ibn Abi Shaybah: From Abdullah ibn al-Mubarak, from al-Taymi—he is Sulayman—from Abu Uthman al-Nahdi, from Abdullah ibn Mas'ud, from the Prophet—peace be upon him—: "He forbade intercepting sales."

L23188–23189 And a similar narration was transmitted to us as a musnad ḥadīth with an authentic chain through the chain of Ibn Abbas.

L23190 And also from the chain of transmission of Ali.

L23191 Through the chain of Muslim: Ibn Abi Umar narrated to us, saying: I am

[19] **Hadith references (L23186):** Sahih Muslim 1517a.

١٤٦٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ تَلَقِّي الْجَلَبِ -: سَوَاءٌ خَرَجَ لِذَلِكَ أَوْ كَانَ سَاكِنًا عَلَى طَرِيقِ الْجَلَّابِ، وَسَوَاءٌ بَعُدَ مَوْضِعُ تَلَقِّيهِ أَمْ قَرُبَ - وَلَوْ أَنَّهُ عَلَى السُّوقِ عَلَى ذِرَاعٍ فَصَاعِدًا، لَا لِأُضْحِيَّةٍ، وَلَا لِقُوتٍ، وَلَا لِغَيْرِ ذَلِكَ، أَضَرَّ ذَلِكَ بِالنَّاسِ أَوْ لَمْ يَضُرَّ.

فَمَنْ تَلَقَّى جَلَبًا - أَيَّ شَيْءٍ كَانَ - فَاشْتَرَاهُ فَإِنَّ الْجَالِبَ بِالْخِيَارِ إِذَا دَخَلَ السُّوقَ مَتَى مَا دَخَلَهُ وَلَوْ بَعْدَ أَعْوَامٍ فِي إِمْضَاءِ الْبَيْعِ، أَوْ رَدِّهِ، فَإِنْ رَدَّهُ حُكِمَ فِيهِ بِالْحُكْمِ فِي الْبَيْعِ بِرَدِّ الْعَيْبِ لَا فِي الْمَأْخُوذِ بِغَيْرِ حَقٍّ، وَلَا يَكُونُ رِضَا الْجَالِبِ إِلَّا بِأَنْ يَلْفِظَ بِالرِّضَا، لَا بِأَنْ يَسْكُتَ - عَلِمَ أَوْ لَمْ يَعْلَمْ - فَإِنْ مَاتَ الْمُشْتَرِي فَالْخِيَارُ لِلْبَائِعِ بَاقٍ، فَإِنْ مَاتَ الْبَائِعُ قَبْلَ أَنْ يَرُدَّ أَوْ يُمْضِيَ فَالْبَيْعُ تَامٌّ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا ابْنُ نُمَيْرٍ - هُوَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ - أَنَا أُبَيٌّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ تُتَلَقَّى السِّلَعُ حَتَّى تَبْلُغَ الْأَسْوَاقَ» .

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ التَّيْمِيِّ - هُوَ سُلَيْمَانُ - عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ نَهَى عَنْ تَلَقِّي الْبُيُوعِ» .

وَرُوِّينَا نَحْوَهُ مُسْنَدًا صَحِيحًا مِنْ طَرِيقِ ابْنِ عَبَّاسٍ.

وَمِنْ طَرِيقِ عَلِيٍّ أَيْضًا.

Hisham ibn Sulaiman, from Ibn Jurayj, who informed me through Hisham al-Qurdusi (Ibn Hassan) from Ibn Sirin, who said: I heard Abu Hurayrah state: "The Messenger of Allah (peace be upon him) said: 'Do not intercept incoming goods. Whoever intercepts them and purchases from them, then when its owner reaches the market, he has the option.'"[20]

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا ابْنُ أَبِي عُمَرَ: أَنَا هِشَامُ بْنُ سُلَيْمَانَ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي هِشَامٌ الْقُرْدُوسِيُّ - هُوَ ابْنُ حَسَّانٍ - عَنْ ابْنِ سِيرِينَ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ " إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَلَقَّوا الْجَلَبَ فَمَنْ تَلَقَّاهُ فَاشْتَرَى مِنْهُ فَإِذَا أَتَى سَيِّدُهُ السُّوقَ فَهُوَ بِالْخِيَارِ» .

L23192 Narrated through Abu Dawud: Ar-Rabi' ibn Nafi' Abu Tawbah narrated from 'Ubaydullah ibn 'Amr Ar-Raqqi, from Ayyub As-Sikhtiyani, from Muhammad ibn Sirin, from Abu Hurairah: "The Prophet (peace and blessings be upon him and his family) prohibited intercepting incoming merchandise. If an interceptor acquires it, the owner of the goods retains the right of choice when the merchandise reaches the market."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا الرَّبِيعُ بْنُ نَافِعٍ أَبِي تَوْبَةَ حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيّ عَنْ أَيُّوبَ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَهَى عَنْ تَلَقِّي الْجَلَبِ فَإِنْ تَلَقَّاهُ مُتَلَقٍّ فَاشْتَرَاهُ فَصَاحِبُ السِّلْعَةِ بِالْخِيَارِ إذَا وَرَدَتْ السُّوقَ» .

L23193 Abū Muḥammad said: This is a narration of tawātur: it was narrated by five Companions, and narrated by others from them—and this is what the Salaf said.

قَالَ أَبُو مُحَمَّدٍ: هَذَا نَقْلُ تَوَاتُرٍ، رَوَاهُ خَمْسَةٌ مِنْ الصَّحَابَةِ، وَرَوَاهُ عَنْهُمْ النَّاسُ - وَبِهَذَا قَالَ السَّلَفُ -:

L23194 It has been narrated to us through the chain of 'Abd al-Razzāq: I, Ma'mar, from Ayyūb al-Sikhtiyānī, from Muḥammad ibn Sīrīn, from Abū Hurayrah that he prohibited intercepting incoming goods. If someone intercepts incoming goods and purchases from them, the seller has the option when the market is established—and this is the explicit wording of our statement, with no disagreement known from the Companions, may Allah be pleased with them, especially this chain of transmission, which is as clear as the sun.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ نَهَى عَنْ تَلَقِّي الْجَلَبِ فَمَنْ تَلَقَّى جَلَبًا فَاشْتَرَى مِنْهُ فَالْبَائِعُ بِالْخِيَارِ إذَا وَقَعَ السُّوقَ - وَهَذَا نَصُّ قَوْلِنَا، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، لَا سِيَّمَا هَذِهِ الطَّرِيقُ الَّتِي كَأَنَّهَا الشَّمْسُ.

L23195–23196 From the chain of al-Ḥajjāj ibn al-Minhāl: Abū Hilāl reported from Muḥammad ibn Sīrīn, who said: He disliked that imported goods be received outside of the town. If the goods are received outside of the town, the owner of the goods has the choice upon arrival—if he wishes, he may sell, and if he wishes, he may withhold. This is also the explicit text of our position.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو هِلَالٍ أَنَا مُحَمَّدُ بْنُ سِيرِينَ قَالَ: كَانَ يَكْرَهُ أَنْ يُتَلَقَّى الْجَلَبُ خَارِجَ الْبَلَدِ فَإِذَا تُلُقِّيَ الْجَلَبُ خَارِجًا مِنْ الْبَلَدِ فَرَبُّ الْجَلَبِ بِالْخِيَارِ إذَا قَدِمَ إنْ شَاءَ بَاعَ وَإِنْ شَاءَ أَمْسَكَ، وَهَذَا أَيْضًا نَصُّ قَوْلِنَا.

[20] **Hadith references (L23191):** Sahih Muslim 1519b; Sunan an-Nasai 4501; Mishkat al-Masabih 2848.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ الْمُبَارَكِ عَنْ أَبِي جَعْفَرٍ الرَّازِيِّ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عُمَرَ قَالَ: لَا تَلَقَّوُا الْبُيُوعَ بِأَفْوَاهِ السِّكَكِ.

L23197 And via the chain of Ibn Abi Shaybah: He said, “Ibn al-Mubarak narrated to us from Abu Ja’far al-Razi from Layth from Mujahid from Ibn ’Umar, who said: Do not intercept sales at the mouths of the roads.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ عَنْ إيَاسِ بْنِ دَغْفَلٍ: قُرِئَ عَلَيْنَا كِتَابُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ -: لَا تَلَقَّوُا الرُّكْبَانَ.

L23198 Through the narration chain of Ibn Abi Shaybah: I, Abū Dāwūd al-Ṭayālisī, report from Iyās ibn Daghfal: “The letter of ʿUmar ibn ʿAbd al-ʿAzīz was recited to us: ’Do not intercept riders.’”

وَمِمَّنْ نَهَى عَنْ تَلَقِّي الرُّكْبَانِ الْجَالِبِينَ جُمْلَةً: اللَّيْثُ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L23199 And among those who prohibited intercepting incoming traders bringing goods in bulk are: Al-Layth, Al-Ḥasan ibn Ḥayy, Ahmad ibn Hanbal, Ishaq, Al-Shafi’i, Abu Sulayman, and their followers.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: بِإِيجَابِ الْخِيَارِ لِلْبَائِعِ إذَا قَدِمَ السُّوقَ - وَنَهَى عَنْهُ الْأَوْزَاعِيُّ إنْ كَانَ بِالنَّاسِ إلَيْهِ حَاجَةٌ.

L23200 Al-Shafi‘i and Abu Sulayman held that the right of option is obligatory for the seller when arriving at the marketplace, while Al-Awza‘i prohibited this practice if there was a need for it among the people.

وَأَبَاحَهُ أَبُو حَنِيفَةَ جُمْلَةً، إلَّا أَنَّهُ كَرِهَهُ إنْ أَضَرَّ ذَلِكَ بِأَهْلِ الْبَلَدِ دُونَ أَنْ يَحْظُرَهُ، وَأَجَازَهُ بِكُلِّ حَالٍ - وَهَذَا خِلَافٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23201 Abu Hanifah permitted it in general but disliked it if it harmed the towns-people, though he refrained from prohibiting it, and he allowed it in all circumstances. This contradicts the ruling of the Messenger of Allah, peace be upon him.

وَخِلَافُ صَاحِبَيْنِ لَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L23202 The disagreement of two Companions—when no opposing Companion is known among the Companions—is venerated by the scholars of a legal school if it conforms to their practice of taqlīd.

وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ فِي هَذَا الْقَوْلِ أَحَدًا قَالَهُ قَبْلَهُ.

L23203 We do not know of anyone in this opinion attributed to Abū Ḥanīfah who stated it before him.

وَقَالَ مَالِكٌ: لَا يَجُوزُ ذَلِكَ لِلتِّجَارَةِ خَاصَّةً، وَيُؤَدَّبُ مَنْ فَعَلَ ذَلِكَ فِي نَوَاحِي الْمِصْرِ فَقَطْ - وَلَا بَأْسَ بِالتَّلَقِّي لِابْتِيَاعِ الْقُوتِ مِنْ الطَّعَامِ وَالْأُضْحِيَّةِ.

L23204 Mālik said: This is impermissible if done purely for trade, and whoever does so is to be disciplined, but only in the vicinity of the city. However, there is no harm in meeting [sellers] to procure necessities such as food or a sacrificial animal.

وَهَذِهِ تَقَاسِيمُ مُخَالِفَةٌ لِلسُّنَّةِ الْوَارِدَةِ فِي ذَلِكَ، وَلَا نَعْلَمُهَا عَنْ أَحَدٍ قَبْلَ مَالِكٍ أَصْلًا.

L23205 These divisions contradict the transmitted Sunnah pertaining to that matter, and we are not aware of anyone before Mālik who held them at all.

L23206 Abu Muhammad said: The ruling of the Messenger of Allah — may Allah’s

blessings and peace be upon him — regarding the seller's option is a clarification of the sale's validity, except that the seller retains the choice to annul or uphold it. The option does not exist at all nor is it permissible except for those to whom the Messenger of Allah (ﷺ) assigned it. Whoever considers it inheritable has transgressed the limit established by the Messenger of Allah (ﷺ), for the option is not inheritable property. Were it inheritable, the beneficiaries of the will would receive their allotted share of it.

قَالَ أَبُو مُحَمَّد: وَحُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْخِيَارِ لِلْبَائِعِ بَيَانٌ بِصِحَّةِ الْبَيْعِ إِلَّا أَنَّ لِلْبَائِعِ خِيَارًا فِي رَدِّهِ أَوْ إِمْضَائِهِ، وَالْخِيَارُ لَا يَكُونُ أَلْبَتَّةَ وَلَا يَجُوزُ إِلَّا لِمَنْ جَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُ، وَمَنْ جَعَلَهُ يُورَثُ فَقَدْ تَعَدَّى مَا حَدَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ الْخِيَارُ مَالًا يُورَثُ، وَلَوْ وُرِثَ لَكَانَ لِأَهْلِ الْوَصِيَّةِ مِنْهُ نَصِيبُهُمْ.

L23207–23208 Sufyan al-Thawri said: Intercepting goods is prohibited if done at a distance where prayer shortening to that location is not required. If intercepted at the distance where prayer shortening becomes obligatory or beyond, there is no harm in it.

قَالَ سُفْيَانُ الثَّوْرِيُّ: تَلَقِّي السِّلَعِ مَنْهِيٌّ عَنْهُ مَنْ تَلَقَّاهَا بِحَيْثُ لَا تُقْصَرُ الصَّلَاةُ إِلَيْهِ، فَإِنْ تَلَقَّاهَا بِحَيْثُ تُقْصَرُ الصَّلَاةُ فَصَاعِدًا فَلَا بَأْسَ بِذَلِكَ.

L23209 Ali said: Therefore, this is an invalid division because it is an assertion without proof.

قَالَ عَلِيٌّ: فَهَذَا تَقْسِيمٌ فَاسِدٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ.

L23210 Al-Layth said: The item is taken from the buyer and returned to the seller. If the buyer dies, the item is taken from him, sold in the market, and its price is given to the seller.

وَقَالَ اللَّيْثُ: يُنْزَعُ مِنْ الْمُشْتَرِي وَيُرَدُّ إِلَى الْبَائِعِ، فَإِنْ مَاتَ نُزِعَتْ مِنْ الْمُشْتَرِي وَبِيعَتْ فِي السُّوقِ وَدُفِعَ ثَمَنُهَا إِلَى الْبَائِعِ.

L23211 Abu Muhammad said: Those who permitted meeting incoming caravans cited as evidence the narration we reported via al-Bukhari's chain from Musa ibn Isma'il from Juwayriyya from Nafi' from Ibn Umar (may Allah be pleased with them), who said: "We used to meet incoming caravans and buy food from them, but the Prophet (peace and blessings be upon him) forbade us from selling it until it reaches the food market."

قَالَ أَبُو مُحَمَّد: احْتَجَّ مَنْ أَجَازَ تَلَقِّي الرُّكْبَانِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُوسَى بْنِ إِسْمَاعِيلَ عَنْ جُوَيْرِيَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: «كُنَّا نَتَلَقَّى الرُّكْبَانَ فَنَشْتَرِي مِنْهُمْ الطَّعَامَ فَنَهَانَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَبِيعَهُ حَتَّى يُبْلَغَ بِهِ سُوقَ الطَّعَامِ» .

L23212 From the narration of al-Bukhārī: I, Ibrāhīm ibn al-Mundhir, [narrate] from Abū Ḍamrah—he is Anas ibn ʿIyāḍ—from Mūsā ibn ʿUqbah, from Nāfiʿ, from Ibn ʿUmar: "During the time of the Messenger of Allah—may Allah's peace and blessings be upon him—they used to purchase food from traveling riders. He would send someone to prevent them from selling it where they had purchased it until they move it to the marketplace."

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ أَنَا أَبُو ضَمْرَةَ - هُوَ أَنَسُ بْنُ عِيَاضٍ - أَنَا مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «أَنَّهُمْ كَانُوا يَشْتَرُونَ الطَّعَامَ مِنْ الرُّكْبَانِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَبْعَثُ عَلَيْهِ مَنْ يَمْنَعُهُمْ أَنْ يَبِيعُوهُ حَيْثُ اشْتَرَوْهُ حَتَّى يَنْقُلُوهُ حَيْثُ يُبَاعُ الطَّعَامُ» .

L23213 From the chain of Ibn Ayman: I am Hisham, I am Abu Salih. Al-Laith ibn Sa'd narrated to me: Ibn Ghanj narrated to me, from Nafi', from Ibn Umar, that he narrated: "They used to purchase food during the time of Allah's Messenger (peace and blessings be upon him) from caravan riders. The Prophet (peace and blessings be upon him) forbade them to sell it in the very spot where they bought it until they transported it to the food market."

وَمِنْ طَرِيقِ ابْنِ أَيْمَنَ أَنَا هِشَامٌ أَنَا أَبُو صَالِحٍ حَدَّثَنِي اللَّيْثُ بْنُ سَعْدٍ حَدَّثَنِي ابْنُ غَنْجٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ حَدَّثَهُ: «أَنَّهُمْ كَانُوا يَشْتَرُونَ الطَّعَامَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ الرُّكْبَانِ فَنَهَاهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعُوهُ فِي مَكَانِهِمْ الَّذِي ابْتَاعُوهُ فِيهِ حَتَّى يَنْقُلُوهُ إلَى سُوقِ الطَّعَامِ» .

L23214 Abū Muḥammad said: This does not constitute a valid proof for them, due to six aspects:

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِسِتَّةِ وُجُوهٍ -:

L23215 One of them is that those who cite this as evidence are the ones who assert that when a Companion narrates a report from the Prophet—peace and blessings be upon him—then contradicts it or interprets it in a specific way, he is more knowledgeable regarding what he has interpreted, and his statement serves as authoritative evidence to reject the narration. Ibn Umar is the transmitter of this report, and it has been authentically established that he issued a legal ruling prohibiting the pre-emptive purchase of goods, as mentioned earlier, and upholding the transmitted prohibition against it.

أَحَدُهَا - أَنَّ الْمُحْتَجِّينَ بِهَذَا هُمْ الْقَائِلُونَ بِأَنَّ الصَّاحِبَ إذَا رَوَى خَبَرًا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ خَالَفَهُ أَوْ حَمَلَهُ عَلَى تَفْسِيرِ مَا فَهُوَ أَعْلَمُ بِمَا فَسَّرَ، وَقَوْلُهُ حُجَّةٌ فِي رَدِّ الْخَبَرِ، وَابْنُ عُمَرَ هُوَ رَاوِي هَذَا الْخَبَرِ، وَقَدْ صَحَّ عَنْهُ الْفُتْيَا بِتَرْكِ التَّلَقِّي كَمَا وَرَدَ آنِفًا، وَالْأَخْذُ بِمَا رُوِيَ مِنْ النَّهْيِ عَنْ التَّلَقِّي.

L23216–23218 And the second [point] is that these two are narrations, and they are the first opponent to disagree with us concerning them. Thus, there is no dislike in their view regarding the sale of... The food is valid from where he acquired it, and no method is worse than that of one who cites a proof he is the first to nullify and contradict what it necessitates.

وَثَانِيهَا - أَنَّ هَذَيْنِ خَبَرَانِ هُمْ أَوَّلُ مُخَالِفٍ لَنَا فِيهِمَا، فَلَا كَرَاهَةَ عِنْدَهُمْ فِي بَيْعِ الطَّعَامِ حَيْثُ ابْتَاعَهُ، وَلَا أَسْوَأَ طَرِيقَةً مِمَّنْ يَحْتَجُّ بِحُجَّةٍ هُوَ أَوَّلُ مُبْطِلٍ لَهَا، وَمُخَالِفٍ لِمُوجِبِهَا.

L23219 The third is that both align with our view, because the meaning of the Messenger of Allah's prohibition—peace and blessings be upon him—against them selling it until they bring it to the food market is a prohibition upon the seller to sell it and upon the buyer to purchase it until he brings it to the market. It is well-known and uncontested in the Arabic language that "I sold" can mean "I bought," and the narration of Musa ibn 'Uqbah is explained according to this as well—that the Prophet—peace and blessings be upon him—prohibited the sellers from selling it in the same location where the buyers bought it from them. This is a sound meaning with no impermissibility in it.

وَالثَّالِثُ - أَنَّهُمَا مُوَافِقَانِ لِقَوْلِنَا، لِأَنَّ مَعْنَى نَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعُوهُ حَتَّى يَبْلُغُوا بِهِ سُوقَ الطَّعَامِ هُوَ نَهْيٌ لِلْبَائِعِ أَنْ يَبِيعَهُ وَلِلْمُشْتَرِي أَنْ يَبْتَاعَهُ حَتَّى يَبْلُغَ بِهِ السُّوقَ، وَمَشْهُورٌ غَيْرُ مَنْكُورٍ فِي لُغَةِ الْعَرَبِ " بِعْت بِمَعْنَى ابْتَعْت " وَيُخَرَّجُ خَبَرُ مُوسَى بْنِ عُقْبَةَ عَلَى هَذَا أَيْضًا، وَأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى الْبَائِعِينَ أَنْ يَبِيعُوهُ فِي مَكَانِهِمْ الَّذِي ابْتَاعَهُ الْمُشْتَرُونَ مِنْهُمْ - وَهَذَا مَعْنًى صَحِيحٌ لَا دَاخِلَةَ فِيهِ.

وَالرَّابِعُ - أَنَّهُ حَتَّى لَوْ كَانَ فِيهِمَا نَصٌّ عَلَى جَوَازِ تَلَقِّي الرُّكْبَانِ وَلَيْسَ ذَلِكَ فِيهِمَا لَكَانَ النَّهْيُ نَاسِخًا وَلَا بُدَّ بِيَقِينٍ لَا شَكَّ فِيهِ، لِأَنَّ التَّلَقِّي كَانَ مُبَاحًا بِلَا شَكٍّ قَبْلَ النَّهْيِ، فَكَانَ هَذَانِ الْخَبَرَانِ مُوَافِقَيْنِ لِلْحَالِ الْمُتَقَدِّمَةِ بِلَا شَكٍّ، وَبِالْيَقِينِ يَدْرِي كُلُّ ذِي فَهْمٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ نَهَى عَنْ التَّلَقِّي فَقَدْ بَطَلَتْ الْإِبَاحَةُ بِلَا شَكٍّ، فَقَدْ بَطَلَ حُكْمُ هَذَيْنِ الْخَبَرَيْنِ وَنُسِخَ لَوْ صَحَّ فِيهِمَا إبَاحَةُ التَّلَقِّي، فَكَيْفَ وَلَيْسَ ذَلِكَ فِيهِمَا؟ وَهَذَا بُرْهَانٌ قَاطِعٌ لَا مَحِيدَ عَنْهُ، وَمَنْ ادَّعَى عَوْدَ حُكْمٍ قَدْ نُسِخَ فَقَدْ كَذَبَ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَادَّعَى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَمْ يُبَيِّنْ كَمَا أُمِرَ، وَأَنَّ الدِّينَ مُخْتَلِطٌ لَا يَدْرِي أَحَدٌ حَرَامَهُ مِنْ حَلَالِهِ مِنْ وَاجِبِهِ، وَحَاشَ لِلَّهِ مِنْ هَذَا.

L23220 The fourth point is that even if there were explicit texts in both sources stating the permissibility of receiving riders—and such texts are not present within them—the prohibition would necessarily be the abrogating factor with absolute certainty, beyond doubt. For receiving riders was undoubtedly permissible before the prohibition. These two narrations undoubtedly conformed to the earlier state of affairs. With certainty, every person of understanding knows that when the Messenger of Allah—peace and blessings be upon him—prohibited receiving riders, the permissibility was undoubtedly nullified. Thus, the rulings of these two narrations would have been invalidated and abrogated, even if they had established the permissibility of receiving riders. How then, when they contain no such [permissibility]? This is a decisive proof from which there is no escape. Whoever claims the return of a ruling that has been abrogated has lied, followed what he has no knowledge of, and claimed against the Messenger of Allah—peace and blessings be upon him—that he did not clarify as he was commanded, and that the religion is disordered, with no one distinguishing its prohibitions from its permissions from its obligations. Allah is far removed from such a thing.

وَخَامِسُهَا - أَنْ يُضَمَّ هَذَانِ الْخَبَرَانِ إلَى أَخْبَارِ النَّهْيِ، فَيَكُونُ الْبَائِعُونَ تَخَيَّرُوا إمْضَاءَ الْبَيْعِ فَأُمِرَ الْمُبْتَاعُونَ بِنَقْلِهِ حِينَئِذٍ إلَى السُّوقِ، فَتَتَّفِقُ الْأَخْبَارُ كُلُّهَا وَلَا تُحْمَلُ عَلَى التَّضَادِّ.

L23221 The fifth point is that these two narrations be combined with the narrations of prohibition, such that the sellers have chosen to finalize the sale, after which the buyers are commanded to transfer it to the marketplace. This harmonizes all the narrations without them being interpreted as contradictory.

وَسَادِسُهَا - أَنَّنَا رُوِّينَا هَذَا الْخَبَرَ بِبَيَانٍ صَحِيحٍ رَافِعٍ لِلْإِشْكَالِ مِنْ طَرِيقِ مَنْ هُوَ أَحْفَظُ وَأَضْبَطُ مِنْ جُوَيْرِيَةَ - كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا مُسَدَّدٌ أَنَا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ - هُوَ ابْنُ عُمَرَ - حَدَّثَهُ نَافِعٌ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «كَانُوا يَبْتَاعُونَ الطَّعَامَ فِي أَعْلَى السُّوقِ وَيَبِيعُونَهُ فِي مَكَانِهِ فَنَهَاهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعُوهُ فِي مَكَانِهِ حَتَّى يَنْقُلُوهُ» .

L23222 The sixth point is that we have been narrated this report with a sound clarification resolving the ambiguity via narrators more precise in memorization and accurate than Juwayriyah's chain—as we have been narrated through al-Bukhārī's transmission: from Musaddad, from Yaḥyā—he is Ibn Saʿīd al-Qaṭṭān—from ʿUbayd Allāh—he is Ibn ʿUmar—to whom Nāfiʿ reported, from ʿAbd Allāh ibn ʿUmar, who said: "They used to purchase food in the upper market area and sell it in the same spot. The Prophet—peace and blessings of Allah be upon him—forbade them from selling it in its place until they transport it."

L23223–23224 From the chain of Muslim: Abu Bakr ibn Abi Shaybah and Muhammad ibn Abdullah ibn Numayr narrated. Ibn Abi Shaybah said: I [narrate] from Ali

ibn Mushir, while Abu Bakr said: I am Ubayy. Then Ali ibn Mushir and Muhammad ibn Abdullah ibn Numayr's chains merged, both narrating from Ubaydullah ibn Umar, from Nafi', from Ibn Umar, who said: "We used to purchase food from caravan traders without measuring, so the Messenger of Allah (peace be upon him) forbade us from selling it until we had moved it from its place."[21]

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ قَالَ ابْنُ أَبِي شَيْبَةَ: أَنَا عَلِيُّ بْنُ مُسْهِرٍ، وَقَالَ أَبُو بَكْرٍ: أَنَا أَبِي، ثُمَّ اتَّفَقَ عَلِيُّ بْنُ مُسْهِرٍ، وَعَبْدُ اللَّهِ بْنُ نُمَيْرٍ، كِلَاهُمَا عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «كُنَّا نَشْتَرِي الطَّعَامَ مِنْ الرُّكْبَانِ جُزَافًا فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَبِيعَهُ حَتَّى نَنْقُلَهُ مِنْ مَكَانِهِ» .

L23225 This clarifies that the sale occurred in the marketplace - though specifically in its upper section - and particularly in juzāf sales, where buyers were prohibited from such practices. Some of them also cited as evidence a rather unusual point, mentioning a narration from Hisham al-Qurdusi from Ibn Sirin from Abu Hurayrah, which states: "Whoever purchases it has the option to rescind," adding: "This wording also entitles the buyer to the option."

فَهَذَا يُبَيِّنُ أَنَّ الْبَيْعَ كَانَ فِي السُّوقِ إلَّا أَنَّهُ فِي أَعْلَاهُ، وَفِي الْجُزَافِ خَاصَّةً فَنُهِيَ الْمُشْتَرُونَ عَنْ ذَلِكَ - وَاحْتَجَّ أَيْضًا بَعْضُهُمْ بِشَيْءٍ طَرِيفٍ جِدًّا، وَهُوَ أَنَّهُ ذَكَرَ رِوَايَةً عَنْ هِشَامٍ الْقُرْدُوسِيِّ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ، وَفِيهِ: فَمَنْ اشْتَرَاهُ فَهُوَ بِالْخِيَارِ، وَقَالَ: إنَّ هَذَا اللَّفْظَ يُوجِبُ الْخِيَارَ لِلْمُشْتَرِي أَيْضًا.

L23226 Abu Muhammad said: This is among the things they have pursued according to their vile habit of insinuation and obfuscation—that they present arguments while bringing forth nothing—because what this speaker has said is invalid. If he had brought this wording, it would have been general, but the narration of Ayyub from Ibn Sirin from Abu Hurairah explains this very report, and that the option belongs solely to the seller. And thus said Abu Hurairah and Ibn Sirin in their fatwas.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا جَرَوْا بِهِ عَلَى عَادَتِهِمْ الْخَبِيثَةِ فِي الْإِيهَامِ وَالتَّمْوِيهِ بِأَنَّهُمْ يَحْتَجُّونَ - وَهُمْ لَا يَأْتُونَ بِشَيْءٍ - لِأَنَّ هَذَا الَّذِي قَالَهُ هَذَا الْقَائِلُ بَاطِلٌ، وَلَوْ جَاءَ بِهَذَا اللَّفْظِ لَكَانَ مُجْمَلًا تُفَسِّرُهُ رِوَايَةُ أَيُّوبَ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ لِهَذَا الْخَبَرِ نَفْسِهِ، وَأَنَّ الْخِيَارَ إنَّمَا هُوَ لِلْبَائِعِ، وَهَكَذَا قَالَ أَبُو هُرَيْرَةَ، وَابْنُ سِيرِينَ فِي فُتْيَاهُمَا.

L23227 Then, imagine if another option were valid for the buyer—what benefit would they have in this? Yet they do not uphold this. If there were any modesty or piety here, it would have restrained them from such obfuscation—all of which is wholly attributable to them.

ثُمَّ هَبْكَ لَوْ صَحَّ خِيَارٌ آخَرُ لِلْمُشْتَرِي فَأَيُّ مَنْفَعَةٍ لَهُمْ فِي هَذَا؟ وَهُمْ لَا يَقُولُونَ بِهَذَا، فَلَوْ كَانَ هَهُنَا حَيَاءٌ، أَوْ وَرَعٌ لَرَدَعَ عَنْ التَّمْوِيهِ بِمِثْلِ هَذَا مِمَّا هُوَ كُلُّهُ عَلَيْهِمْ.

L23228 Abu Muhammad reported that some people held the view: "He (peace be upon him) commanded this purely as a precautionary measure for caravanners, not for settled residents."

قَالَ أَبُو مُحَمَّد: وَقَالَ بَعْضُ النَّاسِ: إنَّمَا أَمَرَ - عَلَيْهِ السَّلَامُ - بِهَذَا حِيَاطَةً لِلْجُلَّابِ دُونَ أَهْلِ الْحَضَرِ -

L23229 Ali said, "Some of them said, 'Rather, protection for the urban residents,

قَالَ عَلِيٌّ: وَقَالَ بَعْضُهُمْ: بَلْ حِيَاطَةً عَلَى أَهْلِ الْحَضَرِ دُونَ الْجُلَّابِ.

[21] **Hadith references (L23224):** Sunan Ibn Majah 2229.

excluding the merchants.'"

قَالَ أَبُو مُحَمَّد: وَكِلَا الْقَوْلَيْنِ فَاسِدٌ، وَمَا حِيَاطَةُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَهْلِ الْحَضَرِ إِلَّا كَحِيَاطَتِهِ لِلْجُلَّابِ سَوَاءٌ سَوَاءٌ، قَالَ اللَّهُ تَعَالَى: {لَقَدْ جَاءَكُمْ رَسُولٌ مِنْ أَنْفُسِكُمْ عَزِيزٌ عَلَيْهِ مَا عَنِتُّمْ حَرِيصٌ عَلَيْكُمْ بِالْمُؤْمِنِينَ رَءُوفٌ رَحِيمٌ} [التوبة: ١٢٨] .

L23230 Abu Muhammad said: Both statements are invalid, and the Prophet's protective care for urban dwellers—(peace be upon him)—is no different from his care for the traveling merchants; they are exactly the same without distinction. Allah the Exalted said: "There has certainly come to you a messenger from among yourselves. Grievous to him is what distresses you; he is eager for your guidance, compassionate and merciful to the believers" [At-Tawbah 9:128].[22]

فَهُوَ - عَلَيْهِ السَّلَامُ - ذُو رَأْفَةٍ وَرَحْمَةٍ بِالْمُؤْمِنِينَ كَمَا وَصَفَهُ رَبُّهُ تَعَالَى، وَلَمْ يُفَرِّقْ بَيْنَ الْمُؤْمِنِينَ مِنْ أَهْلِ الْحَضَرِ وَالْمُؤْمِنِينَ مِنَ الْجَالِبِينَ، وَكُلُّهُمْ مُؤْمِنُونَ فَكُلُّهُمْ فِي رَأْفَتِهِ وَرَحْمَتِهِ سَوَاءٌ، وَلَكِنَّهَا الشَّرَائِعُ يُوحِيهَا إِلَيْهِ بَاعِثُهُ عَزَّ وَجَلَّ فَيُؤَدِّيهَا كَمَا أُمِرَ، لَا يُبَدِّلُهَا مِنْ تِلْقَاءِ نَفْسِهِ، وَلَا يَنْطِقُ عَنِ الْهَوَى، وَلَا عِلَّةَ لِشَيْءٍ مِنْ أَحْكَامِ الشَّرِيعَةِ إِلَّا مَا قَالَهُ اللَّهُ عَزَّ وَجَلَّ: {لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا} [هود: ٧] وَ {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣] ، {لا مُعَقِّبَ لِحُكْمِهِ} [الرعد: ٤١] ، وَمَا عَدَا هَذَا فَبَاطِلٌ وَإِفْكٌ مُفْتَرًى.

L23231–23233 He—peace be upon him—is endowed with compassion and mercy toward the believers, as his Lord, the Exalted, has described him. He did not distinguish between believers from settled communities and believers from distant lands, for all are believers, and all are equal in his compassion and mercy. However, the Sharia ordinances are revealed to him by the One who sent him, the Almighty and Majestic, and he implements them as he was commanded. He does not alter them of his own accord, nor does he speak from personal inclination. There is no cause for anything in the rulings of the Sharia except what Allah, the Almighty and Majestic, has said. And He, the Exalted: "To test which of you is best in deed" [Hūd 11:7], "He is not questioned about what He does, but they are questioned" [Al-Anbiyā' 21:23], "None can reverse His decree" [Ar-Ra'd 13:41]. Whatever opposes this is falsehood and invented lies.[23]

فَإِنْ قَالَ قَائِلٌ: فَمَا يَقُولُونَ: فِي خَبَرِ ابْنِ عُمَرَ الْمَذْكُورِ - وَهُوَ صَحِيحٌ - وَأَنْتُمْ الْمُنْتَسِبُونَ إِلَى الْقَوْلِ بِالسُّنَنِ؟

L23234 If someone were to say: What do they say about the aforementioned report of Ibn Umar—and it is authentic—while you yourselves ascribe to the position of following the Sunnah?

قُلْنَا: نَعَمْ، وَلِلَّهِ الْحَمْدُ كَثِيرًا، وَسَنَذْكُرُ الْحُكْمَ الَّذِي فِي هَذَا الْخَبَرِ مِنْ نَقْلِ الطَّعَامِ عَنْ مَوْضِعِ ابْتِيَاعِهِ وَأَنَّهُ فِي الْجُزَافِ خَاصَّةً بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ تَعَالَى - مِنْ خَبَرٍ آخَرَ.

L23235 We said: Yes, and to Allah belongs abundant praise. We will mention the ruling in this narration concerning the transfer of food from its place of purchase—specifically pertaining to approximation sales (juzaf)—and after this—Allah the Exalted willing—from another narration.

وَأَمَّا هَذَا الْخَبَرُ الَّذِي ذَكَرْنَا هَهُنَا فَهُوَ كَمَا ذَكَرْنَا وَلَا بُدَّ -: إِمَّا أَمْرٌ لِلْبَائِعِينَ وَهُمُ الرُّكْبَانُ الْجَالِبُونَ لَهُ، بِأَنْ نُهُوا عَنْ ذَلِكَ الْبَيْعِ هُنَالِكَ، وَنُهِيَ الْمُشْتَرُونَ عَنِ التَّلَقِّي - وَإِمَّا أَنَّهُ

L23236 As for this report we have mentioned here, it is as we have stated, and it

[22] **Qur'an references (L23230):** Qur'an 9:128 (At-Tawbah).

[23] **Qur'an references (L23231):** Qur'an 11:7 (Hud); Qur'an 67:2 (Al-Mulk); Qur'an 21:23 (Al-Anbya); Qur'an 13:41 (Ar-Ra'd).

مَفْسُوخٌ بِالنَّهْيِ عَنْ التَّلَقِّي أَوْ فِي الْجُزَافِ خَاصَّةً، كَمَا فِي خَبَرِ عُبَيْدِ اللَّهِ، لَا بُدَّ مِنْ أَحَدِ هَذِهِ الْأُمُورِ لِمَا ذَكَرْنَا، وَلَا يَحْتَمِلُ غَيْرَ هَذَيْنِ الْوَجْهَيْنِ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

necessarily entails one of the following: either it is a command directed at the sellers—who are the traveling merchants bringing the goods—wherein they are prohibited from engaging in that sale there, and the buyers are prohibited from intercepting; or it is that the sale is invalidated due to the prohibition against intercepting, or specifically in the case of bulk sales without precise measurement, as in the narration of ʻUbayd Allāh. It must necessarily be one of these matters for the reason we have mentioned, and it does not admit any other interpretations at all beyond these two. And success is from Allah, the Most High.

[مَسْأَلَةٌ لَا يَتَوَلَّى الْبَيْعَ سَاكِنُ مِصْرٍ أَوْ قَرْيَةٍ]

An issue: A resident of a town or village may not act as an agent for the sale.

١٤٧٠ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يَتَوَلَّى الْبَيْعَ سَاكِنُ مِصْرٍ، أَوْ قَرْيَةٍ، أَوْ مِحْشَرٍ لِخَصَّاصٍ لَا فِي الْبَدْوِ وَلَا فِي شَيْءٍ مِمَّا يَجْلِبُهُ الْخَصَّاصُ إلَى الْأَسْوَاقِ، وَالْمُدُنِ، وَالْقُرَى، أَصْلًا وَلَا أَنْ يَبْتَاعَ لَهُ شَيْئًا لَا فِي حَضَرٍ وَلَا فِي بَدْوٍ، فَإِنْ فَعَلَ فُسِخَ الْبَيْعُ وَالشِّرَاءُ أَبَدًا، وَحُكِمَ فِيهِ بِحُكْمِ الْغَصْبِ، وَلَا خِيَارَ لِأَحَدٍ فِي إمْضَائِهِ، وَلَكِنْ يَدَعُهُ يَبِيعُ لِنَفْسِهِ، أَوْ يَشْتَرِي لِنَفْسِهِ، أَوْ يَبِيعُ لَهُ خَصَّاصٌ مِثْلُهُ، وَيَشْتَرِي لَهُ كَذَلِكَ، لَكِنْ يَلْزَمُ السَّاكِنَ فِي الْمَدِينَةِ، أَوْ الْقَرْيَةِ، أَوْ الْمِحْشَرِ: أَنْ يَنْصَحَ لِلْخَصَّاصِ فِي شِرَائِهِ وَبَيْعِهِ، وَيَدُلَّهُ عَلَى السُّوقِ، وَيُعَرِّفَهُ بِالْأَسْعَارِ، وَيُعِينَهُ عَلَى رَفْعِ سِلْعَتِهِ إنْ لَمْ يُرِدْ بَيْعَهَا وَعَلَى رَفْعِ مَا يَشْتَرِي.

L23237

L23238 Issue 1470: It is impermissible for a resident of a city, village, or marketplace to conduct sales on behalf of a supplier - neither in desert areas nor in anything the supplier brings to markets, cities, or villages fundamentally. Nor may he purchase anything for the supplier in urban or rural regions. If he does so, the sale and purchase are permanently annulled and judged as usurpation. No party has the right to enforce it. Instead, the resident must let the supplier sell for himself, purchase for himself, or have another supplier of the same status conduct sales and purchases for him. However, the resident in the city, village, or marketplace is obligated to counsel the supplier in his transactions, direct him to the marketplace, inform him of prices, assist him in removing his merchandise if he does not wish to sell it, and help carry what he purchases.

وَجَائِزٌ لِلْخَصَّاصِ أَنْ يَتَوَلَّى الْبَيْعَ، وَالشِّرَاءَ لِسَاكِنِ الْمِصْرِ، وَالْقَرْيَةِ، وَالْمِحْشَرِ - وَجَائِزٌ لِسَاكِنِ الْمِصْرِ، وَالْقَرْيَةِ، وَالْمِحْشَرِ أَنْ يَبِيعَ وَيَشْتَرِيَ لِمَنْ هُوَ سَاكِنٌ فِي شَيْءٍ مِنْهَا.

L23239 It is permissible for an agent to conduct buying and selling on behalf of residents of the city, village, or assembly area. It is likewise permissible for residents of the city, village, or assembly area to buy and sell for those residing in any of these areas.

L23240–23241 The proof of that is what we have related through the chain of Muslim: Zuhayr ibn Harb on the authority of Sufyan ibn ʾUyaynah on the authority of al-Zuhri on the authority of Sa'id ibn al-Musayyib on the authority of Abu Hurayrah that the Prophet (peace and blessings of Allah be upon him) forbade a city dweller to sell for a desert dweller.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا زُهَيْرُ بْنُ حَرْبٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّهُ نَهَى أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ» .

L23242 Through the narration of Muslim: Yahya ibn Yahya narrated from Hushaym, from Yunus ibn ʻUbayd, from Ibn Sirin, from Anas ibn Malik, who said: We were forbidden that a townsman sell on behalf of a nomad, even if he was his brother or father.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى أَنَا هُشَيْمٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ ابْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ: نُهِينَا أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ، وَإِنْ كَانَ أَخَاهُ أَوْ أَبَاهُ.

L23243 And through the chain of Muslim: I, Ishaq ibn Ibrahim (he is Ibn Rāhawayh), from Abd al-Razzaq, from Maʻmar, from Ibn Tawus, from his father, from Ibn Abbas, who said: “The Messenger of Allah (peace be upon him) prohibited intercepting merchants on their way to the market and an urban resident selling on behalf of a rural dweller.”[24]

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُتَلَقَّى الرُّكْبَانُ وَأَنْ يَبِيعَ حَاضِرٌ لِبَادٍ» .

L23244 Tawus said: “I asked Ibn Abbas, ’What does he mean by his statement ”a settled person acting on behalf of a Bedouin“?”’

قَالَ طَاوُسٍ: فَقُلْت لِابْنِ عَبَّاسٍ: مَا قَوْلُهُ حَاضِرٌ لِبَادٍ؟

L23245 He said: He must not be a broker for him.

قَالَ: لَا يَكُونُ لَهُ سِمْسَارًا.

L23246 From the chain of narration of Ahmad ibn Shuʻayb, from Ibrāhīm ibn al-Ḥasan, from Ḥajjāj ibn Muḥammad, who said: Ibn Jurayj said: Abū al-Zubayr narrated to me that he heard Jābir ibn ʻAbd Allāh say: The Messenger of Allah—peace and blessings be upon him—said: “A townsman must not sell on behalf of a bedouin. Leave the people alone, for Allah provides sustenance to some of them through others.”[25]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِبْرَاهِيمُ بْنُ الْحَسَنِ أَنَا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - قَالَ: قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَبِعْ حَاضِرٌ لِبَادٍ، دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ» .

L23247 From the transmission path of Ibn Abi Shaybah: I am Shababah, from Ibn Abi Dhi’b – Muslim the tailor narrated to me – from Ibn Umar, who said: “The Messenger of Allah, peace and blessings of Allah be upon him, prohibited a city dweller from acting as an intermediary in selling for a Bedouin.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا شَبَابَةُ عَنْ ابْنِ أَبِي ذِئْبٍ حَدَّثَنِي مُسْلِمٌ الْخَيَّاطُ عَنْ ابْنِ عُمَرَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ حَاضِرٍ لِبَادٍ» .

L23248 This is the transmission of five Companions through authentic chains,

فَهَذَا نَقْلُ خَمْسَةٍ مِنْ الصَّحَابَةِ بِالطُّرُقِ الثَّابِتَةِ، فَهُوَ نَقْلُ تَوَاتُرٍ، وَبِهِ تَأْخُذُ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -: كَمَا رُوِّينَا آنِفًا ابْنُ عَبَّاسٍ مُفَسِّرًا مُبَيِّنًا.

[24] **Hadith references (L23243):** Sahih Muslim 1521.
[25] **Hadith references (L23246):** Sahih Muslim 1522a; Mishkat al-Masabih 2852.

thereby constituting a mutawatir transmission (a transmission with an uninterrupted chain). The Companions – may Allah be pleased with them – adhere to this, as was narrated to us earlier: Ibn ʿAbbās, the interpreter and clarifier.

L23249–23251 Through the chain of Ibn Abi Shaybah: Waki‘ narrated from Sufyan al-Thawri, from Abu Musa, from al-Sha‘bi: The early Muslim Emigrants used to disapprove of a townsman acting as an intermediary in the sale for a desert-dweller. Al-Sha‘bī said: “And indeed, I most certainly do it.”

L23252 Abū Muḥammad said: It is preferable that the statement of al-Shaʿbī—“And indeed I do it,” meaning “I dislike it as they disliked it”—be applied to this ruling. Through the transmission of Saʿīd ibn Manṣūr: I am Sufyān ibn ʿUyaynah, narrating from Muslim the cloth merchant, that he heard Abū Hurayrah prohibiting an urban resident from selling on behalf of a Bedouin.

L23253 Ibn Abī Shaybah reported via Ibn ʿUyaynah, from Muslim al-Khayyāṭ, that he heard Abū Hurayrah say: “It was prohibited for a settled person to sell on behalf of a Bedouin.” And ʿUmar was heard saying: “A settled person must not sell on behalf of a Bedouin.”

L23254 Through the narration of Waki‘ from Sufyān al-Thawrī from Abū Ḥamzah from Ibrāhīm al-Nakhaʿī, who reported that ʿUmar ibn al-Khaṭṭāb said: “Guide them to the market, guide them to the way, and inform them of the price.”

L23255 Through the narration chain of Abu Dawud, I heard Hafs ibn Umar say: I am Abu Hilal; I am Muhammad ibn Sirin—narrating from Anas ibn Malik, who said: It was said, “Let no urban dweller sell on behalf of a Bedouin”—a comprehensive phrase meaning he must neither sell anything for them nor purchase anything for them.

L23256 From the chain of Ibn Abi Shaybah: I narrate from Abu Usamah, from Abdullah ibn Awn, from Ibn Sirin, from Anas, who said: An urban resident must not sell for a rural dweller.

L23257 From the chain of Abū Dāwūd: I am Mūsā ibn Ismāʿīl, from Ḥammād

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي مُوسَى عَنْ الشَّعْبِيِّ: كَانَ الْمُهَاجِرُونَ يَكْرَهُونَ بَيْعَ حَاضِرٍ لِبَادٍ قَالَ الشَّعْبِيُّ: وَإِنِّي لَأَفْعَلُهُ.

قَالَ أَبُو مُحَمَّد: الْأَوْلَى أَنْ يُحْمَلَ عَلَيْهِ قَوْلُ الشَّعْبِيِّ، " وَإِنِّي لَأَفْعَلُهُ " أَيْ إنِّي أَكْرَهُهُ كَمَا كَرِهُوهُ -: وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ مُسْلِمٍ الْخَيَّاطِ: أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَنْهَى أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ عُيَيْنَةَ عَنْ مُسْلِمٍ الْخَيَّاطِ: أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: نُهِيَ أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ - وَسُمِعَ عُمَرُ يَقُولُ: لَا يَبِيعُ حَاضِرٌ لِبَادٍ.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حَمْزَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: دُلُّوهُمْ عَلَى السُّوقِ، دُلُّوهُمْ عَلَى الطَّرِيقِ، وَأَخْبِرُوهُمْ بِالسِّعْرِ.

وَمِنْ طَرِيقِ أَبِي دَاوُد سَمِعْت حَفْصَ بْنَ عُمَرَ يَقُولُ: أَنَا أَبُو هِلَالٍ أَنَا مُحَمَّدُ بْنُ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَ يُقَالُ: لَا يَبِعْ حَاضِرٌ لِبَادٍ - وَهِيَ كَلِمَةٌ جَامِعَةٌ لَا يَبِيعُ لَهُ شَيْئًا وَلَا يَبْتَاعُ لَهُ شَيْئًا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو أُسَامَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ ابْنِ سِيرِينَ عَنْ أَنَسٍ قَالَ: لَا يَبِعْ حَاضِرٌ لِبَادٍ.

ibn Salamah, from Muḥammad ibn Isḥāq, from Sālim al-Mālikī: A Bedouin informed him that he came with his desert trade goods during the lifetime of the Messenger of Allah—peace be upon him—and stayed with Ṭalḥah ibn ʿAbdullāh. Ṭalḥah said to him: "The Prophet—peace be upon him—has forbidden a city dweller from selling for a Bedouin. But go to the market, observe who negotiates a deal with you, then consult me so I may command you or forbid you."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُوسَى بْنُ إِسْمَاعِيلَ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ سَالِمٍ الْمَالِكِيِّ: أَنَّ «أَعْرَابِيًّا حَدَّثَهُ أَنَّهُ قَدِمَ بِجَلُوبَةٍ لَهُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَزَلَ عَلَى طَلْحَةَ بْنِ عَبْدِ اللَّهِ، فَقَالَ لَهُ طَلْحَةُ: إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ، وَلَكِنْ اذْهَبْ إِلَى السُّوقِ فَانْظُرْ مَنْ بَايَعَكَ فَشَاوِرْنِي حَتَّى آمُرَكَ أَوْ أَنْهَاكَ» .

L23258 These Muhajirun as a group—Umar ibn al-Khattab, Anas, Ibn Abbas, Abu Hurairah, and Talhah—with no known dissenter among the Companions opposing them, may Allah be pleased with them, and this is the view of Aṭāʾ and Umar ibn Abd al-Aziz.

فَهَؤُلَاءِ الْمُهَاجِرُونَ جُمْلَةً، وَعُمَرُ بْنُ الْخَطَّابِ، وَأَنَسٌ، وَابْنُ عَبَّاسٍ، وَأَبُو هُرَيْرَةَ، وَطَلْحَةُ، لَا مُخَالِفَ لَهُمْ يُعْرَفُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُوَ قَوْلُ عَطَاءٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L23259 And it has been narrated to us from some of the Tābiʿūn his differing.

وَرُوِّينَا عَنْ بَعْضِ التَّابِعِينَ خِلَافُهُ.

L23260 It has been narrated to us from al-Ḥasan that he saw no harm in purchasing from a Bedouin for another Bedouin. When asked: "Then can it be purchased from him for the Muhājir [emigrant]?" he replied: "No."

رُوِّينَا عَنْ الْحَسَنِ أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَشْتَرِيَ مِنْ الْأَعْرَابِيِّ لِلْأَعْرَابِيِّ، قِيلَ لَهُ: فَيُشْتَرَى مِنْهُ لِلْمُهَاجِرِ؟ قَالَ لَا.

L23261–23262 From the narration of Saʿīd ibn Manṣūr: Hushaym Abū Ḥurrah said: I heard al-Ḥasan say: "Buy on behalf of the Bedouin, but do not sell on his behalf." From the narration of Ibn Abī Shaybah: Abū Dāwūd al-Ṭayālisī narrated from Iyās ibn Daghfal: "The letter of ʿUmar ibn ʿAbd al-ʿAzīz was recited to us, stating: 'A settled person must not sell on behalf of a desert dweller.'" From the narration of Saʿīd ibn Manṣūr: Sufyān narrated from Ibn Abī Najīḥ from Mujāhid, who said: "The Messenger of Allah—peace and blessings be upon him—prohibited a settled person from selling on behalf of a desert dweller because he sought to prevent Muslims from taking advantage of their naivety. As for today, there is no harm." ʿAṭāʾ said: "It is not suitable today." From the narration of Wakīʿ from Ibn Khuthaym: I asked ʿAṭāʾ: "A group of Bedouins come to us—should we purchase goods for them?" He replied: "There is no harm." From the narration of Wakīʿ from Sufyān al-Thawrī from al-Mughīrah from Ibrāhīm, who said: "They favored acquiring

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَبُو حُرَّةَ سَمِعْت الْحَسَنَ يَقُولُ: اشْتَرِ لِلْبَدْوِيِّ وَلَا تَبِعْ لَهُ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - عَنْ إيَاسِ بْنِ دَغْفَلٍ: قُرِئَ عَلَيْنَا كِتَابُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: لَا يَبِعْ حَاضِرٌ لِبَادٍ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: إنَّمَا نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ، لِأَنَّهُ أَرَادَ أَنْ يُصِيبَ الْمُسْلِمُونَ مَنْ غِرَّتِهِمْ، فَأَمَّا الْيَوْمَ فَلَا بَأْسَ - وَقَالَ عَطَاءٌ: لَا يَصْلُحُ الْيَوْمَ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ خُثَيْمٍ قُلْت لِعَطَاءٍ: قَوْمٌ مِنْ الْأَعْرَابِ يَقْدَمُونَ عَلَيْنَا أَفَنَشْتَرِي لَهُمْ؟ قَالَ: لَا بَأْسَ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ

goods at lower prices from the Bedouins." This is the opinion of al-Awzāʿī, Sufyān al-Thawrī, Aḥmad, Isḥāq, al-Shāfiʿī, Abū Sulaymān, Mālik, and al-Layth. Al-Awzāʿī said: "One must not sell on their behalf, but may advise them, for advice does not constitute a sale." However, al-Shāfiʿī stated: "If the sale is concluded, it is not invalidated."

L23263–23265 Al-Layth and Malik said: One should not offer advice to him. Malik said: The urban dweller must not sell to villagers either, and there is no harm in an urban dweller purchasing on behalf of a rural dweller—the prohibition applies solely to selling on his behalf. He then said: A city resident must not sell to an Egyptian resident, nor an Egyptian resident to a city resident, but each may advise the other and inform him of the prevailing rate. Abū Ḥanīfa said: The urban dweller may sell to the rural dweller; there is no harm in that. Abū Muḥammad said: As for our invalidating the sale, it is a forbidden transaction performed by one prohibited from such sales, for the Messenger of God—peace and blessings be upon him—said: "Whoever acts contrary to our instruction, his deed is rejected." Al-Shāfiʿī contradicted himself here by not voiding this sale while nullifying other prohibited transactions without distinguishing evidence. As for those who claim the prohibition aims to protect the Bedouin from deception and to favor urban residents, Thus, this is invalid—how could it ever apply to the Messenger of Allah (may Allah bless him and his family and grant him peace)—for he is the one about whom his Lord, the Exalted, said: "Kind and merciful to the believers" [Al-Tawbah: 128]. The Bedouins are believers like urban dwellers, so his care and guardianship (peace be upon him) are equally extended to all. This corrupt interpretation is invalidated through sound reasoning: if such consideration were specific to urban dwellers, it would permit a city resident to broker sales between Bedouins or purchase from them for himself—yet both acts remain impermissible. Thus, it becomes clear that this is a corrupt effec-

الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ، قَالَ: كَانَ يُعْجِبُهُمْ أَنْ يُصِيبُوا مِنْ الْأَعْرَابِ رُخْصَةً - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَمَالِك، وَاللَّيْثِ. قَالَ الْأَوْزَاعِيُّ: لَا يَبِيعُ لَهُ، وَلَكِنْ يُشِيرُ عَلَيْهِ، وَلَيْسَتْ الْإِشَارَةُ بَيْعًا إلَّا أَنَّ الشَّافِعِيَّ قَالَ: إنْ وَقَعَ الْبَيْعُ لَمْ يُفْسَخْ.

وَقَالَ اللَّيْثُ، وَمَالِكٌ: لَا يُشِيرُ عَلَيْهِ. وَقَالَ مَالِكٌ: لَا يَبِيعُ الْحَاضِرُ أَيْضًا لِأَهْلِ الْقُرَى، وَلَا بَأْسَ بِأَنْ يَشْتَرِيَ الْحَاضِرُ لِلْبَادِي إنَّمَا مَنَعَ مِنْ الْبَيْعِ لَهُ فَقَطْ، ثُمَّ قَالَ: لَا يَبِعْ مَدَنِيٌّ لِمِصْرِيٍّ، وَلَا مِصْرِيٌّ لِمَدَنِيٍّ، وَلَكِنْ يُشِيرُ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ وَيُخْبِرُهُ بِالسِّعْرِ. وَقَالَ أَبُو حَنِيفَةَ: يَبِيعُ الْحَاضِرُ لِلْبَادِي، لَا بَأْسَ بِذَلِكَ. قَالَ أَبُو مُحَمَّد: أَمَّا فَسْخُنَا لِلْبَيْعِ فَإِنَّهُ بَيْعٌ مُحَرَّمٌ مِنْ إنْسَانٍ مَنْهِيٍّ عَنْ ذَلِكَ الْبَيْعِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» . وَنَاقَضَ الشَّافِعِيُّ هَهُنَا، إذْ لَمْ يُبْطِلْ هَذَا الْبَيْعَ، وَأَبْطَلَ سَائِرَ الْبُيُوعِ الْمَنْهِيِّ عَنْهَا بِلَا دَلِيلٍ مُفَرِّقٍ. وَأَمَّا مَنْ قَالَ: إنَّ النَّهْيَ عَنْ ذَلِكَ لِيُصَابَ غُرَّةٌ مِنْ الْبَدْرِيِّ، وَأَنَّهُ نَظَرٌ لِلْحَاضِرَةِ، فَبَاطِلٌ - وَحَاشَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ هَذَا، وَهُوَ الَّذِي قَالَ فِيهِ رَبُّهُ تَعَالَى: {بِالْمُؤْمِنِينَ رَءُوفٌ رَحِيمٌ} [التوبة: ١٢٨] وَأَهْلُ الْبَدْوِ مُؤْمِنُونَ كَأَهْلِ الْحَضَرِ، فَنَظَرُهُ وَحِيَاطَتُهُ - عَلَيْهِ السَّلَامُ - لِلْجَمِيعِ سَوَاءٌ، وَيَبْطُلُ هَذَا التَّأْوِيلُ الْفَاسِدُ مِنْ النَّظَرِ الصَّحِيحِ: أَنَّ ذَلِكَ لَوْ كَانَ نَظَرًا لِأَهْلِ الْحَضَرِ لَجَازَ لِلْحَاضِرِ أَنْ يَبِيعَ لِلْبَادِي مِنْ الْبَادِي، وَأَنْ يَشْتَرِيَ مِنْهُ لِنَفْسِهِ، وَكِلَا الْأَمْرَيْنِ لَا يَجُوزُ -: فَصَحَّ أَنَّ هَذِهِ عِلَّةٌ فَاسِدَةٌ، وَأَنَّهُ لَا عِلَّةَ لِذَلِكَ أَصْلًا إلَّا الِانْقِيَادُ لِأَمْرِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

tive cause, and that no legal rationale exists for this ruling except submission to Allah's command as conveyed by His Messenger (SAW).[26][27]

وَأَمَّا قَوْلُ مَالِكٍ فَخَطَأٌ مِنْ جِهَاتٍ -: أَمَّا تَفْرِيقُهُ بَيْنَ الْبَيْعِ لِلْبَادِي فَمَنَعَ مِنْهُ، وَبَيْنَ الشِّرَاءِ لَهُ فَأَبَاحَهُ -: فَخَطَأٌ ظَاهِرٌ، لِأَنَّ لَفْظَهُ " لَا يَبِعْ " يَقْتَضِي أَنْ لَا يَشْتَرِيَ لَهُ أَيْضًا، كَمَا قَالَ أَنَسُ بْنُ مَالِكٍ - وَهُوَ حُجَّةٌ فِي اللُّغَةِ وَفِي الدِّينِ - وَالْعَرَبُ تَقُولُ: بِعْت بِمَعْنَى اشْتَرَيْت، قَوْلًا مُطْلَقًا، وَإِذَا اشْتَرَى لَهُ مِنْ غَيْرِهِ فَقَدْ بَاعَ مِنْ ذَلِكَ الْغَيْرِ لَهُ يَقِينًا بِلَا تَكَلُّفٍ ضَرُورَةً، وَقَدْ قَالَ تَعَالَى: {فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ} [الجمعة: ٩] . فَحَرَّمُوا الشِّرَاءَ كَمَا حَرَّمُوا الْبَيْعَ وَأَحَلُّوا هَهُنَا الشِّرَاءَ لَهُ وَحَرَّمُوا الْبَيْعَ لَهُ. وَأَمَّا قَوْلُ مَالِكٍ " لَا يَبِعْ لِأَهْلِ الْقُرَى " فَخَطَأٌ، لِأَنَّ اسْمَ " الْبَادِي " لَا يَقَعُ عِنْدَ الْعَرَبِ عَلَى سَاكِنٍ فِي الْمُدُنِ أَلْبَتَّةَ، وَإِنَّمَا يَقَعُ عَلَى أَهْلِ الْأَخْبِيَةِ، وَالْخُصُوصِ، الْمُنْتَجِعِينَ مَوَاقِعَ الْقَطْرِ لِلرَّعْيِ فَقَطْ.

L23266 As for Mālik's statement, it is erroneous in several respects. Regarding his distinction between selling to the Bedouin—which he prohibited—and purchasing on their behalf—which he permitted—this is a manifest error. The wording "he should not sell" inherently requires that he should not purchase for them either, as stated by Anas ibn Mālik—who is an authority in both language and religion. The Arabs use "I sold" in the absolute sense of "I bought." If someone purchases for them from a third party, they have certainly sold from that third party to them without compulsion or necessity. The Exalted said: "Hasten to the remembrance of Allah and abandon trade" [62:9]. Thus, purchasing was prohibited just as selling was prohibited, yet here purchasing for them is permitted while selling to them is forbidden. As for Mālik's statement "he should not sell to settled dwellers," it is erroneous because the term "Bedouin" is never applied by the Arabs to urban inhabitants whatsoever. It specifically denotes tent-dwellers and distinct nomadic groups who migrate to rainfall-dependent areas solely for grazing.[28]

وَأَمَّا تَفْرِيقُهُ بَيْنَ مَنْ كَانَ مِنْ أَهْلِ الدِّينِ بِمَنْزِلَةِ أَهْلِ الْمُدُنِ وَبَيْنَ سَائِرِ أَهْلِ الْقُرَى، فَخَطَأٌ ثَالِثٌ بِلَا دَلِيلٍ أَصْلًا. وَأَمَّا قَوْلُهُ " لَا يَبِعْ مَدَنِيٌّ لِمِصْرِيٍّ وَلَا مِصْرِيٌّ لِمَدَنِيٍّ " فَخَطَأٌ رَابِعٌ لَا دَلِيلَ عَلَيْهِ أَلْبَتَّةَ، وَلَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ.

L23267 As for his differentiation between those among the people of religion equivalent to city dwellers and the rest of the villagers, this constitutes a third error without any evidence whatsoever. As for his statement "A city dweller must not sell to an urban resident, nor an urban resident to a city dweller," this is a fourth error with absolutely no evidence to support it, nor do we know of anyone who has asserted this before him.

وَإِنَّمَا تَفْرِيقُهُ بَيْنَ الْمَدَنِيِّ، وَالْمِصْرِيِّ، فَرَأَى أَنْ يُشِيرَ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى الْآخَرِ وَلَا يَبِيعَ لَهُ، وَلَمْ يَرَ أَنْ يُشِيرَ حَاضِرٌ عَلَى أَعْرَابِيٍّ وَلَا يَبِيعَ لَهُ -: فَخَطَأٌ خَامِسٌ بِلَا دَلِيلٍ؟ فَهَذِهِ وُجُوهٌ خَمْسَةٌ مُخَالِفَةٌ لِلْخَبَرِ الْمَذْكُورِ، لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ، وَلَا

L23268–23270 His differentiation between the urban dweller and the metropolitan resident—where he held that each should advise the other while not selling to him, yet deemed it impermissible for a settled resident to advise a Bedouin or sell to him—does this not constitute a fifth error without proof? These

[26] **Hadith references (L23263):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[27] **Qur'an references (L23263):** Qur'an 9:128 (At-Tawbah).

[28] **Qur'an references (L23266):** Qur'an 62:9 (Al-Jumu'ah).

are five positions contradicting the mentioned narration, with no evidence supporting any of them—neither from the Quran, nor the Sunnah, nor an unsound narration, nor analogy, nor a substantiated opinion, nor any precedent from predecessors whether among the Companions or the Followers. As for his statement "A settled resident does not advise a Bedouin," those who adopt this position cite what is narrated in... Some of these narrations are from the saying of Allah's Messenger—peace and blessings be upon him and his family—: "Let the people be: Allah provides sustenance to some of them through others." Abu Muhammad said: This contains no evidence for their position whatsoever, nor does this wording imply the bias toward rural dwellers they imagined—neither explicit text, nor transmitted precedent, nor any semblance of argument in any respect. For he—peace be upon him—did not say: "Let the urban dwellers be; Allah will provide them sustenance through rural people." Rather, he said: "Let the people be: Allah provides sustenance to some of them through others." Rural people are part of "the people" just as urban people are—fully equal, without distinction. Thus, this wording encompasses Allah the Exalted's provision to the rural from the urban, to the rural from the rural, to the urban from the rural, and to the urban from the urban—with equal inclusion, granting no superiority to any of these over another. Therefore, that false presumption is invalidated, and only what is permissible in urban-to-urban transactions is permitted in transactions between rural and urban dwellers—with no difference. If they argue: "He merely prohibited selling on their behalf, so we analogize this prohibition to not advising them," we respond: All analogical reasoning is invalid. Even if it were valid, this would be the very essence of falsehood—for you refrained from prohibiting purchasing on their behalf by analogy to selling on their behalf, even though purchasing is akin to selling. Moreover, you analogized offering recommendations regarding a sale to the sale itself, though they share no connection in origin or outcome.

مِنْ قَوْلِ أَحَدٍ قَبْلَهُ لَا صَاحِبٍ، وَلَا تَابِعٍ. وَأَمَّا قَوْلُهُ " لَا يُشِيرُ الْحَاضِرُ عَلَى الْبَادِي " فَإِنَّ مَنْ قَالَ بِهَذَا احْتَجَّ بِمَا رُوِيَ فِي بَعْضِ هَذِهِ الْأَخْبَارِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ» ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، وَلَا فِي هَذَا اللَّفْظِ مَا تَوَهَّمُوهُ مِنْ الْمَيْلِ عَلَى أَهْلِ الْبَادِيَةِ، لَا نَصَّ، وَلَا أَثَرَ، وَلَا شُبْهَةَ بِوَجْهٍ مِنْ الْوُجُوهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقُلْ: دَعُوا الْحَاضِرِينَ يَرْزُقُهُمْ اللَّهُ مِنْ أَهْلِ الْبَادِيَةِ، إنَّمَا قَالَ: «دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ» وَأَهْلُ الْبَدْوِ مِنْ النَّاسِ كَمَا أَهْلُ الْحَضَرِ سَوَاءٌ سَوَاءٌ وَلَا فَرْقَ، فَيَدْخُلُ فِي هَذَا اللَّفْظِ رِزْقُ اللَّهِ تَعَالَى لِلْبَادِي مِنْ الْحَاضِرِ، وَلِلْبَادِي مِنْ الْبَادِي، وَلِلْحَاضِرِ مِنْ الْبَادِي، وَلِلْحَاضِرِ مِنْ الْحَاضِرِ: دُخُولًا مُسْتَوِيًا، لَا مَزِيَّةَ لِشَيْءٍ مِنْ ذَلِكَ عَلَى شَيْءٍ آخَرَ مِنْهُ -: فَبَطَلَ ذَلِكَ الظَّنُّ الْكَاذِبُ، وَلَا يَحِلُّ مِنْ بَيْعِ الْبَادِي وَالْحَاضِرِ إلَّا مَا يَحِلُّ مِنْ بَيْعِ الْحَاضِرِ لِلْحَاضِرِ، وَلَا فَرْقَ. فَإِنْ قَالُوا: إنَّمَا نَهَى عَنْ أَنْ يَبِيعَ لَهُ، قِسْنَا عَلَى ذَلِكَ أَنْ لَا يُشِيرَ عَلَيْهِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّكُمْ تَرَكْتُمْ أَنْ تَمْنَعُوا مِنْ الشِّرَاءِ لَهُ قِيَاسًا عَلَى الْبَيْعِ لَهُ، وَهُوَ بَيْعٌ مِثْلُهُ، وَقِسْتُمْ الْإِشَارَةَ عَلَى الْبَيْعِ وَلَيْسَتْ مِنْهُ فِي وِرْدٍ وَلَا صَدَرٍ.

L23271–23273 They do not differ regarding the fact that if a man consults another after the call to Friday concerning a sale and the latter advises him, he does not commit a restriction nor does he perform a disliked act. But if he were to sell or buy, he would be disobeying Allah the Exalted. Similarly, if someone

وَلَا يَخْتَلِفُونَ فِي أَنَّ امْرَأً لَوْ شَاوَرَ آخَرَ بَعْدَ النِّدَاءِ لِلْجُمُعَةِ فِي بَيْعٍ فَأَشَارَ عَلَيْهِ لَمْ يُحْرَجْ وَلَا أَتَى مَكْرُوهًا، وَلَوْ بَاعَ أَوْ اشْتَرَى لَعَصَى اللَّهَ تَعَالَى، وَأَنَّ مَنْ حَلَفَ أَنْ لَا يَبِيعَ

swears not to sell and then advises in a matter of sale, he does not break his oath. The Messenger of Allah—peace and blessings of Allah be upon him and his progeny—said: "Religion is sincere advice to Allah, His Messenger, His Book, the leaders, and the general body of Muslims." As for the initiator among Muslims, sincere advice to him is an obligation. Had Allah the Exalted willed to prohibit advising him, He would have explicitly stated that, just as He explicitly stated the ruling on selling through the tongue of His Messenger—peace and blessings of Allah be upon him and his progeny. We previously mentioned the obligation of sincere advice to the initiator through the reports of Umar ibn al-Khattab and Talhah ibn Ubaydullah, with no dissenting opinion from among the Companions regarding this. There is also a narration concerning this matter: As we have reported through the chain of Sa'īd ibn Manṣūr: Ḥammād ibn Zayd narrated to us from 'Aṭā' ibn al-Sā'ib from Ḥakīm ibn Abī Yazīd from his father, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said, "Leave the people alone; Allah provides sustenance to some through others. When a man seeks sincere counsel from his brother, let him advise him sincerely." As for Abū Ḥanīfah, he did not require prolonged elaboration but opposed the Messenger of Allah (peace and blessings of Allah be upon him) regarding his prohibition against a city dweller selling on behalf of a desert dweller, based on the transmission of mutawatir reports.

فَأَشَارَ فِي أَمْرِ بَيْعٍ لَمْ يَحْنَثْ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ لِلَّهِ وَلِرَسُولِهِ وَلِكِتَابِهِ وَلِلْأَئِمَّةِ وَجَمَاعَةِ الْمُسْلِمِينَ» وَالْبَادِي مِنْ الْمُسْلِمِينَ فَالنُّصْحِيَّةُ لَهُ فَرْضٌ - وَلَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ لَا يُشَارَ عَلَيْهِ لَنَصَّ عَلَى ذَلِكَ كَمَا نَصَّ عَلَى الْبَيْعِ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. وَقَدْ ذَكَرْنَا النَّصِيحَةَ لِلْبَادِي آنِفًا مِنْ طَرِيقِ عُمَرَ بْنِ الْخَطَّابِ، وَطَلْحَةَ بْنِ عُبَيْدِ اللَّهِ وَلَا مُخَالِفَ لَهُمَا فِي ذَلِكَ مِنْ الصَّحَابَةِ، وَقَدْ جَاءَ فِي ذَلِكَ أَثَرٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ حَكِيمِ بْنِ أَبِي يَزِيدَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ فَإِذَا اسْتَنْصَحَ الرَّجُلُ أَخَاهُ فَلْيَنْصَحْ لَهُ» . وَأَمَّا أَبُو حَنِيفَةَ فَلَمْ يَحْتَجْ إلَى تَطْوِيلٍ لَكِنْ خَالَفَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نَهْيِهِ عَنْ أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ بِنَقْلِ التَّوَاتُرِ.

L23274 And he contradicted what came from the Companions - may Allah be pleased with them - without any known dissenter among them, though they would reproach even lesser than this. Who is more astonishing than one who rejects these abundantly transmitted, manifest, and authentic reports from the Sunnah and the Companions, then blindly follows feeble, fabricated reports in deeming the runaway slave [as such] - neither justifying them nor interpreting this [matter] within them? Yet they assert in their principles that a report, even if weak, is stronger than rational analysis - and sufficient for us is Allah, what an excellent Trustee He is!

وَخَالَفَ مَا جَاءَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - دُونَ أَنْ يُعْرَفَ لَهُمْ مِنْهُمْ مُخَالِفٌ وَهُمْ يُشَنِّعُونَ بِأَقَلَّ مِنْ هَذَا. فَمَنْ أَعْجَبُ مِمَّنْ يَرُدُّ هَذِهِ الْآثَارَ الْمُتَوَاتِرَةَ الْمُتَظَاهِرَةَ الصِّحَاحَ مِنْ السُّنَنِ، وَعَنْ الصَّحَابَةِ ثُمَّ يُقَلِّدُ آثَارًا وَاهِيَةً مَكْذُوبَةً فِي جُعْلِ الْآبِقِ فَلَا يُعَلِّلُهَا، وَلَا يَتَأَوَّلُ فِيهَا هَذَا؟ وَهُمْ يُطْلِقُونَ فِي أُصُولِهِمْ أَنَّ الْأَثَرَ وَإِنْ كَانَ ضَعِيفًا فَهُوَ أَقْوَى مِنْ النَّظَرِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

[مَسْأَلَة بَيْعُ كُلِّ مَا ظَهَرَ مِنْ أَصْنَافِ ثِمَارِ الْحَائِطِ]

L23275 The ruling on the sale of all types of fruits that have appeared from the walled orchard.

L23276 Issue 1471: If a walled garden contains various types of fruits such as pears,

apples, peaches, and others, and the ripeness of some fruits from one variety becomes apparent while other varieties remain unripe, it is permissible to sell all varieties of fruits from that walled garden that have shown ripeness, even if they have not yet ripened, provided they are sold in a single transaction. If one intends to sell them in two transactions, it is forbidden to sell any fruit that has not shown signs of ripeness, even if that variety later begins to ripen—except for dates and grapes. It is forbidden to sell any of them, whether separately or combined with other fruits, until the dates reach the stage of *zahw* and the grapes begin to darken or show signs of ripeness.

١٤٧١ - مَسْأَلَةٌ: فَإِنْ كَانَ فِي حَائِطٍ أَنْوَاعٌ مِنَ الثِّمَارِ مِنَ الْكُمَّثْرَى، وَالتُّفَّاحِ، وَالْخَوْخِ، وَسَائِرِ الثِّمَارِ، فَظَهَرَ صَلَاحُ شَيْءٍ مِنْهَا مِنْ صِنْفٍ دُونَ سَائِرِ أَصْنَافِهِ -: جَازَ بَيْعُ كُلِّ مَا ظَهَرَ مِنْ أَصْنَافِ ثِمَارِ ذَلِكَ الْحَائِطِ، وَإِنْ كَانَ لَمْ يَطِبْ بَعْدُ إِذَا بِيعَ كُلُّ ذَلِكَ صَفْقَةً وَاحِدَةً، فَإِنْ أَرَادَ بَيْعَهُ صَفْقَتَيْنِ لَمْ يَجُزْ بَيْعُ مَا لَمْ يَبْدُ فِيهِ شَيْءٌ مِنَ الصَّلَاحِ، وَإِنْ كَانَ قَدْ بَدَا صَلَاحُ ذَلِكَ الصِّنْفِ بَعْدُ حَاشَا ثَمَرِ النَّخْلِ وَالْعِنَبِ فَقَطْ: فَإِنَّهُ لَا يَجُوزُ بَيْعُ شَيْءٍ مِنْهُ لَا وَحْدَهُ وَلَا مَعَ غَيْرِهِ إِلَّا حَتَّى يَزْهَى ثَمَرُ النَّخْلِ، وَيَبْدَأَ سَوَادُ الْعِنَبِ أَوْ طِيبُهُ.

L23277 The proof for this is that the Messenger of Allah—peace be upon him—prohibited the sale of fruits until their ripeness becomes evident. This ripeness—which permits selling fruits after the initial prohibition—must necessarily refer to one of the following: either the Prophet—peace be upon him—intended by it the first appearance of ripeness in any part of the fruit, the attainment of full ripeness throughout its entirety from beginning to end, the presence of ripeness in most of it, in a minimal portion of it, or in a specified fraction such as half, a third, a quarter, a tenth, or similar measures. It is absolutely imperative that this ripeness correspond to one of these descriptions.

بُرْهَانُ ذَلِكَ -: نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرَةِ حَتَّى يَبْدُوَ صَلَاحُهَا، وَلَا يَخْلُو هَذَا الصَّلَاحُ الَّذِي بِهِ يَحِلُّ بَيْعُ الثِّمَارِ بَعْدَ تَحْرِيمِهِ مِنْ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - أَرَادَ بِهِ ابْتِدَاءَ ظُهُورِ الطِّيبِ فِي شَيْءٍ مِنْهُ، أَوْ تَنَاهِي الطِّيبِ فِي جَمِيعِهِ أَوَّلِهِ عَنْ آخِرِهِ، أَوْ فِي أَكْثَرِهِ، أَوْ فِي أَقَلِّهِ، أَوْ فِي جُزْءٍ مُسَمًّى مِنْهُ: كَنِصْفٍ، أَوْ ثُلُثٍ، أَوْ رُبُعٍ، أَوْ عُشْرٍ، أَوْ نَحْوِ ذَلِكَ لَا بُدَّ ضَرُورَةً مِنْ أَحَدِ هَذِهِ الْوُجُوهِ.

L23278–23279 It is impossible and inconceivable - indeed, wholly impossible - that he (peace be upon him) would intend most of it, the least of it, or a specifically named portion thereof and then fail to explicitly state or clarify it, when Allah the Exalted has mandated him to elucidate. There is no basis for him to impose upon us a divine law that we do not know what it is, for this would mean he (peace be upon him) is contradicting his Lord's command to clarify - a claim no Muslim would utter.

فَمِنَ الْمُحَالِ الْمُمْتَنِعِ الَّذِي لَا يُمْكِنُ أَصْلًا أَنْ يُرِيدَ - عَلَيْهِ السَّلَامُ - أَكْثَرَهُ، أَوْ أَقَلَّهُ، أَوْ جُزْءًا مُسَمًّى مِنْهُ ثُمَّ لَا يَنُصُّ عَلَى ذَلِكَ وَلَا يُبَيِّنُهُ، وَقَدْ افْتَرَضَ اللَّهُ عَزَّ وَجَلَّ عَلَيْهِ الْبَيَانَ، فَلَا سَبِيلَ إِلَى أَنْ يُكَلِّفَنَا شَرْعًا لَا نَدْرِي مَا هُوَ؛ لِأَنَّهُ كَانَ يَكُونُ - عَلَيْهِ السَّلَامُ - مُخَالِفًا لِأَمْرِ رَبِّهِ تَعَالَى لَهُ بِالْبَيَانِ، وَهَذَا مَا لَا يَقُولُهُ مُسْلِمٌ.

L23280 Moreover, this would impose upon us a divine obligation beyond our capacity—to know what we have not been informed of. Yet Allah, the Exalted, has spared us from this through His statement: "Allah does not burden any soul beyond its capacity" [Al-Baqarah: 286].[29]

وَأَيْضًا - فَإِنَّ ذَلِكَ كَانَ يَكُونُ تَكْلِيفًا لَنَا مَا لَا نُطِيقُهُ مِنْ مَعْرِفَةِ مَا لَمْ نُعَرَّفْ بِهِ وَقَدْ أَمَّنَنَا اللَّهُ تَعَالَى مِنْ ذَلِكَ بِقَوْلِهِ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦].

[29] **Qur'an references (L23280):** Qur'an 2:286 (Al-Baqarah).

فَبَطَلَتْ هَذِهِ الْوُجُوهُ بِيَقِينٍ لَا مِرْيَةَ فِيهِ، وَلَمْ يَبْقَ إِلَّا وَجْهَانِ فَقَطْ: إِمَّا ظُهُورُ الصَّلَاحِ فِي شَيْءٍ مِنْهُ وَإِنْ قَلَّ، وَإِمَّا عُمُومُ الصَّلَاحِ لِجَمِيعِهِ -: فَنَظَرْنَا فِي لَفْظِهِ - عَلَيْهِ السَّلَامُ - فَوَجَدْنَاهُ حَتَّى يَبْدُوَ صَلَاحُهُ، فَصَحَّ أَنَّهُ ظُهُورُ الصَّلَاحِ: وَبِصَلَاحِ حَبَّةٍ وَاحِدَةٍ يُطْلَقُ عَلَيْهِ فِي اللُّغَةِ أَنَّهُ قَدْ بَدَا صَلَاحُ هَذَا الثَّمَرِ، فَهَذَا مُقْتَضَى لَفْظِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23281 These opinions are invalidated with certainty beyond doubt, leaving only two possibilities: either the emergence of ripeness in any part of it—even if minimal—or the universality of ripeness encompassing all of it. We examined the wording of the Prophet (peace be upon him) and found that it states: "until its ripeness becomes apparent," thus confirming that it is the emergence of ripeness. For even the ripeness of a single seed is linguistically applied to the whole by saying, "the ripeness of this fruit has emerged." This is the requirement dictated by the wording of the Messenger of Allah (peace be upon him).

وَلَوْ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ صَلَاحَ جَمِيعِهِ لَقَالَ: حَتَّى يَصْلُحَ جَمِيعُهُ.

L23282 And if he (peace be upon him) had intended the reform of all of it, he would have said: "until all of it is reformed."

وَأَيْضًا - فَإِنَّ جَمِيعَ الثِّمَارِ يَبْدُو صَلَاحُ بَعْضِهِ ثُمَّ يَتَتَابَعُ صَلَاحُ شَيْءٍ شَيْءٍ مِنْهُ، فَلَا يَصِحُّ آخِرُهُ إِلَّا وَلَوْ تَرَكَ أَوَّلَهُ لَفَسَدَ وَضَاعَ بِلَا شَكٍّ، وَقَدْ نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إِضَاعَةِ الْمَالِ.

L23283 Furthermore, for all fruits, the ripeness of some initially becomes evident, then continues to develop gradually. Thus, the latter [stage] cannot properly ripen unless the former [stage] is preserved—for if the first were neglected, it would undoubtedly spoil and be wasted. The Messenger of Allah (peace be upon him) prohibited the squandering of property.

وَأَيْضًا - فَلَا نَعْرِفُ أَحَدًا قَالَ هَذَا قَدِيمًا وَلَا حَدِيثًا، وَلَا زَالَ النَّاسُ يَتَبَايَعُونَ الثِّمَارَ كُلَّ عَامٍ عَمَلًا عَامًّا فَاشِيًا ظَاهِرًا بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ كَذَلِكَ كُلَّ عَامٍ فِي جَمِيعِ أَقْطَارِ أَهْلِ الْإِسْلَامِ مَا قَالَ قَطُّ أَحَدٌ: إِنَّهُ لَا يَحِلُّ بَيْعُ الثَّمَرِ إِلَّا حَتَّى يَتِمَّ صَلَاحُ جَمِيعِهِ حَتَّى لَا يَبْقَى مِنْهُ وَلَا حَبَّةٌ وَاحِدَةٌ.

L23284 Moreover, we do not know of anyone who has ever stated this, neither in ancient nor modern times. People have continuously engaged in mutual trade of fruits annually—a general, widespread, and evident practice carried out with the knowledge of the Messenger of Allah (peace be upon him). Then, in this manner, it has continued every year across all regions of the Muslim lands. No one has ever asserted that selling fruit is impermissible until all of it is fully ripe such that not even a single seed remains unripe.

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ الْأَمْرُ كَمَا ذَكَرْنَا فَبَيْعُ ثِمَارِ الْحَائِطِ الْجَامِعِ لِأَصْنَافِ الشَّجَرِ صَفْقَةً وَاحِدَةً بَعْدَ ظُهُورِ الطِّيبِ فِي شَيْءٍ مِنْهُ: جَائِزٌ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، لِأَنَّهُ بَيْعُ ثِمَارٍ قَدْ بَدَا صَلَاحُهَا، وَلَمْ يَقُلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: إِنَّ ذَلِكَ لَا يَجُوزُ إِلَّا فِي صِنْفٍ وَاحِدٍ، وَلَوْ كَانَ ذَلِكَ هُوَ اللَّازِمُ لَمَا أَغْفَلَ - عَلَيْهِ السَّلَامُ - بَيَانَهُ.

L23285 Abu Muhammad said: Since the matter is as we have described, the sale of fruits from a unified walled orchard encompassing diverse tree types in a single transaction after any part of them shows ripeness is permissible—this being the opinion of al-Layth ibn Saʿd—because it is the sale of fruits whose ripeness has become apparent. The Messenger of Allah—peace and blessings be upon him and his family—did not state that such permissibility applies only to a single type. Had this been the necessary consequence, he—peace be upon him—would not have omitted its clarification.

L23286–23288 When produce is sold in two transactions, it is impermissible to sell any fruit

that has not yet shown any signs of suitability [for consumption]—whether it is from a type where suitability has appeared in others (of the same type) or from another type—because this constitutes selling fruit whose suitability has not yet manifested. This is forbidden. The Messenger of Allah—peace and blessings be upon him and his family—undoubtedly referred the pronoun (the "hā" in "its ripeness") back to the sold fruit mentioned in the report. Thus, what we have stated is confirmed with certainty. As for date palms and grapes, another explicit text specifically addressed them: his prohibition—peace be upon him—against selling dates until they ripen or redden, and against selling grapes until they blacken or their ripeness becomes evident by their inclusion among other fruits—even if they are of a type that does not blacken. Therefore, it is impermissible to sell any dates or grapes until the sold portion of them reaches a state of blooming/color change or demonstrates inherent ripeness through blackening or another indicator—and success is only by Allah's facilitation, the Exalted.

وَأَمَّا إِذَا بِيعَ الثَّمَرُ صَفْقَتَيْنِ فَلَا يَجُوزُ بَيْعُ مَا لَمْ يَبْدُ فِيهِ شَيْءٌ مِنْ الصَّلَاحِ بَعْدُ، سَوَاءٌ كَانَ مِنْ صِنْفٍ قَدْ بَدَا الصَّلَاحُ فِي غَيْرِهِ أَوْ مِنْ صِنْفٍ آخَرَ؛ لِأَنَّهُ بَيْعُ ثَمَرَةٍ لَمْ يَبْدُ صَلَاحُهَا وَهَذَا حَرَامٌ، وَإِنَّمَا رَدَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الضَّمِيرَ - وَهُوَ الْهَاءُ الَّذِي فِي " صَلَاحِهِ " - إلَى الثَّمَرِ الْمَبِيعِ الْمَذْكُورِ فِي الْخَبَرِ بِلَا شَكٍّ - فَصَحَّ مَا قُلْنَاهُ يَقِينًا. وَأَمَّا النَّخْلُ، وَالْعِنَبُ، فَقَدْ خَصَّهُمَا نَصٌّ آخَرُ، وَهُوَ نَهْيُهُ - عَلَيْهِ السَّلَامُ - عَنْ بَيْعِ ثَمَرِ النَّخْلِ حَتَّى تَزْهَى أَوْ تَحْمَرَّ، وَعَنْ بَيْعِ الْعِنَبِ حَتَّى يَسْوَدَّ أَوْ يَبْدُوَ صَلَاحُهُ بِدُخُولِهِ فِي سَائِرِ الثِّمَارِ - وَإِنْ كَانَ مِمَّا لَا يَسْوَدُّ، فَلَا يَجُوزُ بَيْعُ شَيْءٍ مِنْ ثِمَارِ النَّخْلِ، وَالْعِنَبِ؛ إلَّا حَتَّى يَصِيرَ الْمَبِيعُ مِنْهُمَا فِي حَالِ الْإِزْهَاءِ أَوْ ظُهُورِ الطِّيبِ فِيهِ نَفْسِهِ بِالسَّوَادِ، أَوْ بِغَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The sale of young pigeons within the dovecote for a specified term, such as one year.

[مَسْأَلَةُ بَيْعُ فِرَاخِ الْحَمَامِ فِي الْبُرْجِ مُدَّةً مُسَمَّاةً كَسَنَةٍ]

1472 - Issue:

١٤٧٢ - مَسْأَلَةٌ:

It is impermissible to sell pigeon chicks in the dovecote for a specified duration—such as a year, six months, or the like—because this constitutes selling what has not yet been created and a *gharar* sale where neither the quantity nor attributes are known, amounting to wrongful consumption of wealth. The lawful obligation in this matter is to sell only those chicks that have become visible after the seller (or his *wakīl*) and the buyer (or his *wakīl*) have inspected them, even if they—or one of them—do not know their exact number, or if none of the aforementioned parties have seen them. The sale is then concluded based on the description provided by whichever party has seen them.

وَلَا يَحِلُّ بَيْعُ فِرَاخِ الْحَمَامِ فِي الْبُرْجِ مُدَّةً مُسَمَّاةً كَسَنَةٍ، أَوْ سِتَّةِ أَشْهُرٍ، أَوْ نَحْوِ ذَلِكَ؛ لِأَنَّهُ بَيْعُ مَا لَمْ يُخْلَقْ، وَبَيْعُ غَرَرٍ لَا يُدْرَى كَمْ يَكُونُ، وَلَا أَيُّ صِفَةٍ يَكُونُ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَإِنَّمَا الْوَاجِبُ فِي الْحَلَالِ فِي ذَلِكَ بَيْعُ مَا ظَهَرَ مِنْهَا بَعْدَ أَنْ يَقِفَ الْبَائِعُ أَوْ وَكِيلُهُ، وَالْمُشْتَرِي أَوْ وَكِيلُهُ عَلَيْهَا، وَإِنْ لَمْ يَعْرِفَا أَوْ أَحَدُهُمَا عَدَدَهَا أَوْ يَرَهَا أَحَدُ مَنْ ذَكَرْنَا فَيَقَعُ الْبَيْعُ بَيْنَهُمَا عَلَى صِفَةِ الَّذِي رَآهَا مِنْهُمَا.

If the two parties dispute thereafter regarding chicks, with the buyer asserting, "They existed at the time of sale and were included in it," and the other party claiming, "They did not exist at that time," and there is no evidence:

فَإِنْ تَدَاعَيَا بَعْدَ ذَلِكَ فِي فِرَاخٍ فَقَالَ الْمُشْتَرِي: كَانَتْ مَوْجُودَةً حِينَ الْبَيْعِ فَدَخَلَتْ فِيهِ، وَقَالَ الْآخَرُ: لَمْ تَكُنْ مَوْجُودَةً حِينَئِذٍ، وَلَا بَيِّنَةَ: حَلَفَا مَعًا، وَقُضِيَ بِهَا بَيْنَهُمَا، لِأَنَّهَا فِي

both shall swear together, and the matter is decided between them. This is because they share possession—the buyer by right of purchase for the chicks in the brooding enclosure, and the original owner by right of ownership over the hens and the location. And success comes from Allah, the Exalted. However, if the buyer took possession of all the chicks and acknowledged this, then later claimed something remained there, it belongs solely to the seller upon the seller's oath alone, as he is the one against whom the claim is made regarding what is in his possession.

The ruling on selling the young of all animals at the time of their birth.

Issue 1473: It is permissible to sell the young of all animals at birth. Both the buyer and seller are compelled to let them remain with their mothers until they can survive independently in a manner that causes no harm to the mothers. Similarly, it is permissible to sell incubated eggs, and both are compelled to let them remain until they hatch and no longer require the mothers.

The proof of that is Allah's statement, the Mighty and Majestic: "And Allah has permitted trade" [Al-Baqarah 2:275].[30]

As for abandoning all of that until [the offspring] no longer need the mothers, this is derived from the words of God Almighty: _"Cooperate in righteousness and piety, and do not cooperate in sin and aggression"_ [Al-Mā'idah: 2], the prohibition against wasting wealth, the stern divine warning against those who torture animals or make them endure suffering, and the removal of the offspring from the mothers before... Neglecting to slaughter it when required is a punishment for its owner and slaughter, except for one who slaughters it solely for consumption as we mentioned in "The Book of What is Permissible to Eat and What is Prohibited." Removing the eggs after they have changed from their state through incubation is wasteful destruction of wealth.[31]

[30] **Qur'an references (L23295):** Qur'an 2:275 (Al-Baqarah).
[31] **Qur'an references (L23296):** Qur'an 5:2 (Al-Ma'idah).

أَيْدِيهِمَا مَعًا، هِيَ بِيَدِ الْمُشْتَرِي بِحَقِّ الشِّرَاءِ لِلْفِرَاخِ الَّتِي فِي الْبُرْجِ، وَهِيَ بِيَدِ صَاحِبِ الْأَصْلِ بِحَقِّ مِلْكِهِ لِلْأَصْلِ مِنْ الْأُمَّهَاتِ وَالْمَكَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، إلَّا إنْ كَانَ الْمُشْتَرِي قَبَضَ كُلَّ الْفِرَاخِ وَعَرَّفَ ذَلِكَ ثُمَّ ادَّعَى أَنَّهُ بَقِيَ لَهُ شَيْءٌ هُنَالِكَ فَهُوَ لِلْبَائِعِ وَحْدَهُ مَعَ يَمِينِهِ؛ لِأَنَّهُ مُدَّعًى عَلَيْهِ فِيمَا بِيَدِهِ.

[مَسْأَلَةُ بَيْعُ الصِّغَارِ مِنْ جَمِيعِ الْحَيَوَانِ حِينَ تُولَدُ]

١٤٧٣ - مَسْأَلَةٌ: وَجَائِزٌ بَيْعُ الصِّغَارِ مِنْ جَمِيعِ الْحَيَوَانِ حِينَ تُولَدُ، وَيُجْبَرُ كِلَاهُمَا عَلَى تَرْكِهَا مَعَ الْأُمَّهَاتِ إلَى أَنْ يَعِيشَ دُونَهَا عَيْشًا لَا ضَرَرَ فِيهِ عَلَيْهَا، وَكَذَلِكَ يَجُوزُ بَيْعُ الْبَيْضِ الْمَحْضُونَةِ، وَيُجْبَرُ كِلَاهُمَا عَلَى تَرْكِهَا إلَى أَنْ تَخْرُجَ وَتَسْتَغْنِيَ عَنْ الْأُمَّهَاتِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَأَمَّا تَرْكُ كُلِّ ذَلِكَ إلَى أَنْ يَسْتَغْنِيَ عَنْ الْأُمَّهَاتِ فَلِقَوْلِ اللَّهِ تَعَالَى: {وتعاونوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَالنَّهْيُ عَنْ إضَاعَةِ الْمَالِ وَالْوَعِيدِ الشَّدِيدِ عَلَى مَنْ عَذَّبَ الْحَيَوَانَ وَأَصْبَرَهَا، وَإِزَالَةُ الصِّغَارِ عَنْ الْأُمَّهَاتِ قَبْلَ اسْتِغْنَائِهَا عَنْهَا عَذَابٌ لَهَا وَقَتْلٌ إلَّا مَنْ ذَبَحَهَا لِلْأَكْلِ فَقَطْ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ مَا يَحِلُّ أَكْلُهُ وَمَا يَحْرُمُ " وَإِزَالَةُ الْبَيْضِ بَعْدَ أَنْ تَغَيَّرَتْ بِالْحَضْنِ عَنْ حَالِهَا إضَاعَةً لِلْمَالِ.

[مَسْأَلَةُ بَيْعُ شَيْءٍ مِنْ ثَمَرِ النَّخْلِ مِنْ البلح وَغَيْره بَعْضه بِبَعْضٍ]

The ruling regarding the sale of any part of the fruit of the palm tree, such as fresh dates or others, by exchanging part of it for another part of the same type.

١٤٧٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ مِنْ ثَمَرِ النَّخْلِ، مِنْ: الْبَلَحِ، وَالْبُسْرِ، وَالزَّهْوِ، وَالْمُكْثِ، وَالْحُلْقَانِ، وَالْمَعْوِ، وَالْمَعْدِ، والثغد، وَالرُّطَبِ بَعْضُهُ بِبَعْضٍ مِنْ صِنْفِهِ، أَوْ مِنْ صِنْفٍ آخَرَ مِنْهُ وَلَا بِالتَّمْرِ، وَلَا مُتَمَاثِلًا وَلَا مُتَفَاضِلًا، وَلَا نَقْدًا وَلَا نَسِيئَةً، وَلَا فِي رُءُوسِ النَّخْلِ وَلَا مَوْضُوعًا فِي الْأَرْضِ.

L23299 L23300 Issue 1474: It is not permissible to sell any part of date palm fruits - such as unripe dates (balaḥ), partially ripe dates (busr), yellowish dates (zahū), hardened dates (mukth), reddening dates (ḥulqān), softening dates (maʿw), dates ready for drying (maʿḍ), thaghd dates, or fresh soft dates (rutab) - exchanging some for others of the same variety or a different variety, nor in exchange for dates, whether identical in type or differing in quality, whether for immediate payment or deferred payment, whether while still on the palms or after being placed on the ground.

وَيَجُوزُ بَيْعُ الزَّهْوِ، وَالرُّطَبِ بِكُلِّ شَيْءٍ يَحِلُّ بَيْعُهُ، حَاشَا مَا ذَكَرْنَا نَقْدًا وَبِالدَّرَاهِمِ وَالدَّنَانِيرِ نَقْدًا وَنَسِيئَةً، حَاشَا الْعَرَايَا فِي الرُّطَبِ وَحْدَهُ.

L23301 The sale of unripe dates and ripe dates is permissible in exchange for anything lawful to sell, except for the cash transaction as specified, dirhams and dinars whether paid immediately or deferred, and the ʻaraya exception applicable solely to ripe dates.

وَمَعْنَاهَا أَنْ يَأْتِيَ الرُّطَبُ وَيَكُونُ قَوْمٌ يُرِيدُونَ ابْتِيَاعَ الرُّطَبِ لِلْأَكْلِ فَأُبِيحَ لَهُمْ أَنْ يَبْتَاعُوا رُطَبًا فِي رُءُوسِ النَّخْلِ بِخَرْصِهَا تَمْرًا فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ، يَدْفَعُ التَّمْرَ إِلَى صَاحِبِ الرُّطَبِ وَلَا بُدَّ - وَلَا يَحِلُّ بِتَأْخِيرٍ، وَلَا فِي خَمْسَةِ أَوْسُقٍ فَصَاعِدًا، وَلَا بِأَقَلَّ مِنْ خَرْصِهَا تَمْرًا وَلَا بِأَكْثَرَ، فَإِنْ وَقَعَ مَا قُلْنَا: أَنَّهُ لَا يَجُوزُ فَسْخٌ أَبَدًا، وَضَمِنَ ضَمَانَ الْغَصْبِ.

L23302 Its meaning is that when fresh dates arrive and people wish to purchase them for consumption, they are permitted to buy fresh dates still on palm trees by assessing their equivalent in dried dates for quantities under five wasqs. The dried dates must be delivered to the owner of the fresh dates without fail - it is impermissible with delay, nor for five wasqs or more, nor for assessing less or more than their dried date value. If the impermissible conditions we mentioned occur, the transaction is permanently invalidated, and the liable party incurs liability as in unlawful seizure.

بُرْهَانُ ذَلِكَ - مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا ابْنُ نُمَيْرٍ: وَزُهَيْرُ بْنُ حَرْبٍ، قَالَا جَمِيعًا: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ أَنَا الزُّهْرِيُّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ» .

L23303 The evidence for this is what was narrated to us through the path of Muslim: I [am] Ibn Numayr and Zuhayr ibn Harb—they both said: We [narrate] from Sufyan ibn ʻUyaynah, who said: We [narrate] from Az-Zuhri, from Salim ibn ʻAbdullah, from his father, that the Messenger of Allah - peace and blessings of Allah be upon him - prohibited the sale of dates for dates.[32]

L23304 Through the chain of Muslim: I, Abdullah ibn Maslamah al-Qaʻnabi, nar-

[32] **Hadith references (L23303):** Mishkat al-Masabih 2837.

rated from Sulayman ibn Bilal, who narrated from Yahya ibn Sa'id al-Ansari, who narrated from Bashir ibn Yasar, who narrated from certain Companions of the Messenger of Allah (peace be upon him) from among the members of their household—including Sahl ibn Abi Hathma—that the Messenger of Allah (peace be upon him) forbade exchanging dates for dates, stating: "That is usury."

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَهْلِ دَارِهِمْ مِنْهُمْ سَهْلُ بْنُ أَبِي حَثْمَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ وَقَالَ: ذَلِكَ الرِّبَا» .

L23305 It has also been authentically established through the narration of Rāfiʿ ibn Khadīj and Abū Hurayrah from the Messenger of Allah—peace and blessings be upon him—that there is a prohibition against selling dates for dates, and the term "agricultural goods" implies the categories we mentioned.

وَصَحَّ أَيْضًا مِنْ طَرِيقِ رَافِعِ بْنِ خَدِيجٍ، وَأَبِي هُرَيْرَةَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: النَّهْيُ عَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ» وَالثَّمْرُ يَقْتَضِي الْأَصْنَافَ الَّتِي ذَكَرْنَا -.

L23306–23307 The prohibition against that has been authenticated as transmitted by Saʿd ibn Abī Waqqāṣ.

وَصَحَّ النَّهْيُ عَنْ ذَلِكَ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ.

L23308 Sa'id ibn al-Musayyib did not permit exchanging a qafiz of fresh dates for a qafiz of dry dates - and this is the opinion of Malik, al-Shafi'i, al-Layth, Abu Yusuf, Muhammad ibn al-Hasan, Abu Thawr, and Abu Sulayman - and this is contrary to the opinions of Sufyan, Ahmad, and Ishaq.

وَلَمْ يُجِزْ سَعِيدُ بْنُ الْمُسَيِّبِ قَفِيزَ رُطَبٍ بِقَفِيزٍ مِنْ جَافٍ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَاللَّيْثِ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ - وَهُوَ الْخَارِجُ مِنْ أَقْوَالِ سُفْيَانَ، وَأَحْمَدَ، وَإِسْحَاقَ.

L23309 Abu Hanifah permitted the sale of fresh dates for dried dates in equivalent volume with immediate payment, but he did not permit it with an excess or deferred payment. He said: "The sale of fruit still on palm trees is specifically forbidden in exchange for dried dates," and he did not permit this, neither in the case of *'arāyā* nor in other contexts.

وَأَجَازَ أَبُو حَنِيفَةَ بَيْعَ الرُّطَبِ بِالتَّمْرِ كَيْلًا بِمِثْلِهِ نَقْدًا وَلَمْ يُجِزْ مُتَفَاضِلًا وَلَا نَسِيئَةً - وَقَالَ: إنَّمَا يَحْرُمُ بَيْعُ التَّمْرِ الَّذِي فِي رُءُوسِ النَّخْلِ خَاصَّةً بِالتَّمْرِ، وَلَمْ يُجِزْ ذَلِكَ لَا فِي الْعَرَايَا وَلَا فِي غَيْرِهَا.

L23310 His emulators argued for it based on the authentic narration from Ibn Umar: "The Messenger of Allah (peace be upon him) prohibited Muzabana," and Muzabana is selling unharvested dates in the fruit-bearing clusters of palm trees for a specified measure of dried dates: 'If there is excess, it is mine; if there is a deficit, I bear it.' A similar narration is reported through a connected chain from Abu Sa'id Al-Khudri. Through the chain of 'Ata' from

وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِمَا صَحَّ مِنْ طَرِيقِ ابْنِ عُمَرَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ» ، وَالْمُزَابَنَةُ أَنْ يُبَاعَ مَا فِي رُءُوسِ النَّخْلِ مِنْ ثَمَرٍ بِتَمْرٍ مُسَمًّى بِكَيْلٍ، إنْ زَادَ فَلِي وَإِنْ نَقَصَ فَعَلَيَّ ". وَمِثْلُهُ مُسْنَدًا أَيْضًا مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ. وَمِنْ طَرِيقِ عَطَاءٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ فَسَّرَ لَهُمْ الْمُزَابَنَةَ: أَنَّهَا بَيْعُ الرُّطَبِ فِي النَّخْلِ بِالتَّمْرِ كَيْلًا.

Jabir ibn ʻAbdullah, it is explained that Muzabana refers to selling ripe dates on the palm tree for dried dates by measure.[33]

L23311 Abū Muḥammad said: They have no valid proof in any of these narrations, for we do not dispute with them concerning the prohibition of selling fresh dates on the palm trees in exchange for dried dates by measure—indeed, even without measure. Nor do we contest their assertion that this constitutes *muzābanah*. Their reliance on it as evidence is weak obfuscation and a baseless implication. None of these narrations—or others—state that the prohibition of selling fresh dates for dried dates applies solely to this specific description, nor does any of them indicate that what falls outside this is permissible. Rather, all that is in these narrations forms part of what is found in the *ḥadīth* of Ibn ʻUmar, with which we commenced, and part of what is in the *ḥadīths* of Sahl ibn Abī Ḥathmah, Rāfiʻ, and Abū Hurayrah.

L23312 And those reports have gathered what is in these and added to them. Therefore, it is impermissible to abandon the additional legal ruling contained within them because it was not mentioned in these hadiths.

L23313 Just as the statement of Allah, the Most High, *"Among them are four sacred months—that is the upright religion—so do not wrong yourselves therein"* [At-Tawbah: 36] is not proof for the permissibility of wrongdoing in other months. Likewise, all divine laws—from the first to the last—are such that not every divine law is mentioned in every hadith.[34]

L23314–23316 Moreover—we say to them: From where did you derive your assertion that the intended meaning in those narrations containing the prohibition... Regarding the sale of unripe fruit for dried dates, it is precisely what we have mentioned in these other reports containing the prohibition against selling fruit on the heads of palm trees in exchange for dates. What constitutes your proof for this? Have you presented us with anything beyond these bare false assertions? From where does it become obligatory to abandon

قَالَ أَبُو مُحَمَّد: لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ، لِأَنَّا لَمْ نُنَازِعْهُمْ فِي تَحْرِيمِ الرُّطَبِ فِي رُءُوسِ النَّخْلِ بِالتَّمْرِ كَيْلًا، نَعَمْ، وَغَيْرَ كَيْلٍ، وَلَا نَازَعْنَاهُمْ فِي أَنَّ هَذَا مُزَابَنَةٌ فَاحْتِجَاجُهُمْ بِهَا تَمْوِيهٌ وَإِيهَامٌ ضَعِيفٌ، وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ وَلَا غَيْرِهَا: أَنَّهُ لَا يَحْرُمُ مِنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ إلَّا هَذِهِ الصِّفَةُ فَقَطْ وَلَا فِي شَيْءٍ مِنْ هَذَا: أَنَّ مَا عَدَا هَذَا فَحَلَالٌ - لَكِنْ كُلُّ مَا فِي هَذِهِ الْأَخْبَارِ فَهُوَ بَعْضُ مَا فِي حَدِيثِ ابْنِ عُمَرَ الَّذِي صَدَّرْنَا بِهِ وَبَعْضُ مَا فِي حَدِيثِ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعٍ، وَأَبِي هُرَيْرَةَ.

وَتِلْكَ الْأَخْبَارُ جَمَعَتْ مَا فِي هَذِهِ وَزَادَتْ عَلَيْهَا، فَلَا يَحِلُّ تَرْكُ مَا فِيهَا مِنْ زِيَادَةِ الْحُكْمِ مِنْ أَجْلِ أَنَّهَا لَمْ تُذْكَرْ فِي هَذِهِ الْأَحَادِيثِ.

كَمَا أَنَّ قَوْلَ اللَّهِ تَعَالَى {مِنْهَا أَرْبَعَةٌ حُرُمٌ ذَلِكَ الدِّينُ الْقَيِّمُ فَلا تَظْلِمُوا فِيهِنَّ أَنْفُسَكُمْ} [التوبة: ٣٦] لَيْسَ حُجَّةً فِي إبَاحَةِ الظُّلْمِ فِي غَيْرِهَا - وَهَكَذَا جَمِيعُ الشَّرَائِعِ أَوَّلِهَا عَنْ آخِرٍ، لَيْسَتْ كُلُّ شَرِيعَةٍ مَذْكُورَةً فِي كُلِّ حَدِيثٍ.

وَأَيْضًا - فَإِنَّا نَقُولُ لَهُمْ: مِنْ أَيْنَ قُلْتُمْ: إنَّ الْمُرَادَ فِي تِلْكَ الْأَخْبَارِ الَّتِي فِيهَا النَّهْيُ عَنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ إنَّمَا هُوَ مَا ذَكَرْنَا فِي هَذِهِ الْأَخْبَارِ الْأُخَرِ مِنْ النَّهْيِ عَنْ بَيْعِ الثَّمَرِ فِي رُءُوسِ النَّخْلِ بِالتَّمْرِ، وَمَا بُرْهَانُكُمْ عَلَى ذَلِكَ؟ وَهَلْ زِدْتُمُونَا عَلَى الدَّعْوَى الْمُجَرَّدَةِ الْكَاذِبَةِ شَيْئًا؟ وَمِنْ أَيْنَ وَجَبَ تَرْكُ عُمُومِ تِلْكَ الْأَخْبَارِ الثَّابِتَةِ مِنْ أَجْلِ أَنَّهُ ذُكِرَ فِي هَذِهِ بَعْضُ مَا فِي تِلْكَ؟ فَإِنَّهُمْ لَا سَبِيلَ إلَى دَلِيلٍ أَصْلًا - لَا قَوِيٍّ وَلَا ضَعِيفٍ - فَخَصَلُوا عَلَى الدَّعْوَى فَقَطْ، فَإِنْ ادَّعَوْا إجْمَاعًا عَلَى مَا فِي هَذِهِ كَذَبُوا.

[33] **Hadith references (L23310):** Sunan Abi Dawud 3405; Sahih Muslim 1536g; Sahih Muslim 1542d.

[34] **Qur'an references (L23313):** Qur'an 9:36 (At-Tawbah).

the general applicability of those established reports merely because some of their content is mentioned here? They possess no evidence whatsoever—neither strong nor weak—having obtained nothing but mere claims. Should they allege consensus regarding what these reports contain, they would be lying.

L23317 We have been narrated through the chain of Ibn Abi Shaybah, who said: "I [heard] from Ibn al-Mubarak, from Uthman ibn Hakim, from Ata', from Ibn Abbas, who said: 'Exchanging unripe dates for dates by volume measurement while they are still on the palm trees is permissible if there is a dinar or ten dirhams [settled] between them, and there is no harm in it.'" This is an authentic report. Uthman ibn Hakim is trustworthy, and all the other narrators in the chain are eminent scholars.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ الْمُبَارَكِ عَنْ عُثْمَانَ بْنِ حَكِيمٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الثَّمَرُ بِالتَّمْرِ عَلَى رُءُوسِ النَّخْلِ مُكَايَلَةً إِنْ كَانَ بَيْنَهُمَا دِينَارٌ أَوْ عَشَرَةُ دَرَاهِمَ فَلَا بَأْسَ بِهِ، وَهَذَا خَبَرٌ صَحِيحٌ، وَعُثْمَانُ بْنُ حَكِيمٍ ثِقَةٌ وَسَائِرُ مَنْ فِيهِ أَئِمَّةٌ أَعْلَامٌ.

L23318 And Ibn Umar explained al-Muzabana, as was narrated to us through the chain of Malik from Nafi' from Ibn Umar: "The Messenger of Allah—peace be upon him—prohibited," and mentioned al-Muzabana, which is: selling fresh dates for dried dates by measure, and selling grapes on the vine for raisins by measure.

وَقَدْ فَسَّرَ ابْنُ عُمَرَ الْمُزَابَنَةَ كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْمُزَابَنَةَ، وَالْمُزَابَنَةُ: بَيْعُ الثَّمَرِ بِالتَّمْرِ كَيْلًا، وَبَيْعُ الْكَرْمِ بِالزَّبِيبِ كَيْلًا» .

L23319 Humam narrated to us: Abbas ibn Asbagh → Muhammad ibn Abd al-Malik ibn Ayman → Bakr (Ibn Hammad) → Musaddad → Yahya (Ibn Sa'id al-Qattan) → Ubayd Allah ibn Umar → Nafi' → Ibn Umar, who said: "The Messenger of Allah (peace and blessings be upon him) prohibited muzabana, and muzabana is purchasing fresh dates for dried dates and fresh grapes for raisins by measure."

وَحَدَّثَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا بَكْرٌ - هُوَ ابْنُ حَمَّادٍ - أَنَا مُسَدَّدٌ أَنَا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ، وَالْمُزَابَنَةُ: اشْتِرَاءُ الثَّمَرِ بِالتَّمْرِ وَاشْتِرَاءُ الْعِنَبِ بِالزَّبِيبِ كَيْلًا» .

L23320 Whoever deems the interpretation of Ibn Umar invalid while considering the interpretations of Jābir and Abū Saʿīd valid—rather, both are true, and all such practices constitute prohibited *muzābana*. Anything beyond this is misguidance and arbitrary imposition in the religion of Allah, the Exalted, based on falsehood.

فَمَنْ جَعَلَ تَفْسِيرَ ابْنِ عُمَرَ بَاطِلًا وَتَفْسِيرَ جَابِرٍ، وَأَبِي سَعِيدٍ صَحِيحًا. بَلْ كِلَاهُمَا حَقٌّ وَكُلُّ ذَلِكَ مُزَابَنَةٌ مَنْهِيٌّ عَنْهَا، وَمَا عَدَا هَذَا فَضَلَالٌ وَتَحَكُّمٌ فِي دِينِ اللَّهِ تَعَالَى بِالْبَاطِلِ.

L23321 The true amazement lies in Abu Hanifa's permissibility—and that of those who blindly follow his rulings in religious matters—regarding matters which the Messenger of Allah (peace and blessings be upon him) explicitly prohib-

وَالْعَجَبُ كُلُّهُ مِنْ إبَاحَةِ أَبِي حَنِيفَةَ وَمَنْ قَلَّدَهُ دِينَهُ مَا قَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى النَّهْيِ عَنْهُ مِنْ بَيْعِ الرُّطَبِ بِالتَّمْرِ، وَبَيْعِ التَّمْرِ بِالتَّمْرِ، وَتَحْرِيمِهِ مَا لَمْ

ited: the sale of fresh dates for dried dates, the sale of dates for dates, and Abu Hanifa's prohibition of what Allah the Exalted never forbade at all, nor His Messenger (peace and blessings be upon him), nor was there any prohibition transmitted from the Prophet regarding selling walnuts still on their trees for harvested walnuts. This is utterly astonishing, for we have never seen an abandoned Sunnah except that alongside it lies a prevalent innovation. We seek refuge in Allah from being forsaken.

يُحَرِّمْهُ اللَّهُ تَعَالَى قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا جَاءَ قَطُّ عَنْهُ نَهْيٌ مِنْ بَيْعِ الْجَوْزِ عَلَى رُءُوسِ أَشْجَارِهِ بِالْجَوْزِ الْمَجْمُوعِ، وَهَذَا عَجَبٌ جِدًّا وَمَا رَأَيْنَا قَطُّ سُنَّةً مُضَاعَةً إِلَّا وَإِلَى جَنْبِهَا بِدْعَةٌ مُذَاعَةٌ، وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L23322–23323 They also argued by stating: Fresh dates and dried dates cannot be free from being either a single genus or two distinct genera. If they are a single genus, equivalence within the same genus is permissible, because the Messenger of Allah—peace and blessings be upon him—permitted exchanging dried dates for dried dates in equal measure. If they are two distinct genera, then it is all the more permissible for them, based on the statement of the Messenger of Allah—peace and blessings be upon him: "When the genera differ, sell them as you wish provided it is hand to hand."

وَاحْتَجُّوا أَيْضًا - بِأَنْ قَالُوا: لَا يَخْلُو الرُّطَبُ، وَالتَّمْرُ مِنْ أَنْ يَكُونَا جِنْسًا وَاحِدًا أَوْ جِنْسَيْنِ، فَإِنْ كَانَا جِنْسًا وَاحِدًا فَالتَّمَاثُلُ فِي الْجِنْسِ الْوَاحِدِ جَائِزٌ، لِإِبَاحَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - التَّمْرَ بِالتَّمْرِ مِثْلًا بِمِثْلٍ، وَإِنْ كَانَا جِنْسَيْنِ فَذَلِكَ فِيهِمَا أَجْوَزُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا اخْتَلَفَتْ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ» .

L23324 Abu Muhammad said: We say to them: The One who permitted exchanging dates for dates of equal measure hand to hand, and commanded us that when the types differ we may sell however we wish if it is hand to hand—He is the same One who prohibited us from selling fresh dates for dried dates in general, and from selling dates for dates, and informed us that this constitutes usury. That His obedience being obligatory in some of what He commanded and non-obligatory in others is disbelief on the part of whoever says it. Rather, obedience to Him in everything He commanded is obligatory.

قَالَ أَبُو مُحَمَّدٍ: فَنَقُولُ لَهُمْ: الَّذِي أَبَاحَ التَّمْرَ بِالتَّمْرِ مُتَمَاثِلًا يَدًا بِيَدٍ، وَأَمَرَنَا إذَا اخْتَلَفَتْ الْأَصْنَافُ أَنْ نَبِيعَ كَيْفَ شِئْنَا إذَا كَانَ يَدًا بِيَدٍ، هُوَ الَّذِي نَهَانَا عَنْ بَيْعِ الرُّطَبِ بِالتَّمْرِ جُمْلَةً، وَعَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ، وَأَخْبَرَنَا: أَنَّهُ الرِّبَا، وَلَيْسَتْ طَاعَتُهُ فِي بَعْضِ مَا أَمَرَ بِهِ وَاجِبَةً وَفِي بَعْضِهِ غَيْرَ وَاجِبَةٍ، هَذَا كُفْرٌ مِمَّنْ قَالَهُ، بَلْ طَاعَتُهُ فِي كُلِّ مَا أَمَرَ بِهِ وَاجِبَةٌ.

L23325 But O you people, where were you concerning this corrupt reasoning which you deemed valid and thereby opposed the Sunnah of Allah the Exalted and His Messenger—peace be upon him? For you prohibited by your corrupt opinion the sale of flour for wheat or for parched barley flour (sawīq) in totality. Why then do you permit it neither with disparity, nor equivalence, nor as cash, nor credit, nor by measure, nor by weight? Why did you not say to yourselves: Flour, wheat, and parched barley flour must either constitute one category, two categories, or three categories. If they are one category, equivalence within the same category is permissible, as the Messenger of

لَكِنْ يَا هَؤُلَاءِ أَيْنَ كُنْتُمْ عَنْ هَذَا الِاسْتِدْلَالِ الْفَاسِدِ الَّذِي صَحَّحْتُمُوهُ وَعَارَضْتُمْ بِهِ سُنَّةَ اللَّهِ تَعَالَى وَرَسُولِهِ - عَلَيْهِ السَّلَامُ -؟ إذْ حَرَّمْتُمْ بِرَأْيِكُمْ الْفَاسِدِ بَيْعَ الدَّقِيقِ بِالْحِنْطَةِ أَوْ بِالسَّوِيقِ جُمْلَةً، فَلِمَ تُجِيزُوهُ لَا مُتَفَاضِلًا، وَلَا مُتَمَاثِلًا، وَلَا نَقْدًا، وَلَا نَسِيئَةً، وَلَا كَيْلًا، وَلَا وَزْنًا - وَهَلَّا قُلْتُمْ لِأَنْفُسِكُمْ: لَا يَخْلُو الدَّقِيقُ وَالْحِنْطَةُ، وَالسَّوِيقُ، مِنْ أَنْ تَكُونَ جِنْسًا وَاحِدًا أَوْ جِنْسَيْنِ أَوْ ثَلَاثَةَ أَجْنَاسٍ، فَإِنْ كَانَتْ جِنْسًا وَاحِدًا فَالتَّمَاثُلُ فِي

الْجِنْسِ الْوَاحِدِ جَائِزٌ، لِإِبَاحَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحِنْطَةَ بِالْحِنْطَةِ مِثْلًا بِمِثْلٍ، وَإِنْ كَانَتْ جِنْسَيْنِ أَوْ ثَلَاثَةً فَذَلِكَ فِيهَا أَجْوَزُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا اخْتَلَفَتْ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ» فَهَذَا الْمَكَانُ أَوْلَى بِالِاعْتِرَاضِ، وَبِالرَّدِّ، وَبِالْإِطْرَاحِ، لَا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمُهُ.

Allah—peace and blessings be upon him—permitted exchanging wheat for wheat like for like. If they are two or three categories, this is even more permissible, according to the saying of the Messenger of Allah—peace and blessings be upon him: "When the types differ, sell as you wish, provided it is hand to hand." This flawed position is what merits objection, rejection, and dismissal—not the saying and ruling of the Messenger of Allah—peace and blessings be upon him.

فَقَالَ قَائِلٌ مِنْهُمْ: التَّفَاضُلُ فِي الدَّقِيقِ بِالْحِنْطَةِ مَوْجُودٌ فِي الْوَقْتِ، وَأَمَّا فِي الرُّطَبِ بِالتَّمْرِ، فَلَا يُوجَدُ إلَّا بَعْدَ الْوَقْتِ؟ فَقُلْنَا: فَكَانَ مَاذَا لَوْ كَانَ مَا قُلْتُمْ حَقًّا؟ وَمِنْ أَيْنَ وَجَبَ مُرَاعَاةُ التَّفَاضُلِ فِي الْوَقْتِ أَوْ بَعْدَهُ؟ فَكَيْفَ وَالَّذِي قُلْتُمْ بَاطِلٌ؟ لِأَنَّ الْمُمَاثَلَةَ بِالْكَيْلِ مَوْجُودَةٌ فِي الرُّطَبِ بِالتَّمْرِ، كَمَا هِيَ مَوْجُودَةٌ فِي الدَّقِيقِ بِالسَّوِيقِ، وَفِي الدَّقِيقِ بِالْحِنْطَةِ فِي الْوَقْتِ، فَلَا تَفَاضُلَ فِيهِمَا أَصْلًا، وَإِنَّمَا كَانَ التَّفَاضُلُ مَوْجُودًا فِي الدَّقِيقِ بِالسَّوِيقِ فِيمَا خَلَا وَبَطَلَ الْآنَ، وَلَا يُقْطَعُ أَيْضًا بِهَذَا، فَبَطَلَ فَرْقُكُمْ الْفَاسِدُ.

L23326–23327 Then one of them said: "The disparity in exchanging flour for wheat applies during the transaction period, while in fresh dates for dried dates, it only occurs afterward?" We countered: "What consequence would follow if your claim were valid? How could the obligation to observe disparity during or after the transaction period even arise? Particularly when your claim is invalid? Equivalence by measure exists in exchanging fresh dates for dried dates, just as it exists in flour for sawiq (roasted barley flour) and in flour for wheat during the transaction period. Thus, no disparity exists in these cases whatsoever. Any disparity previously claimed in flour-for-sawiq exchanges is now rendered invalid, and even this cannot be conclusively proven. Therefore, your invalid distinction collapses."

وَأَيْضًا - فَإِنَّمَا أَبَاحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - التَّمْرَ بِالتَّمْرِ مِثْلًا بِمِثْلٍ، وَبِالْمُشَاهَدَةِ نَدْرِي أَنَّ الرُّطَبَ لَيْسَ مِثْلًا لِلتَّمْرِ فِي صِفَاتِهِ.

L23328 Moreover, the Messenger of Allah—peace and blessings be upon him—only permitted the exchange of dates for dates, like for like, and through direct observation we know that fresh dates are not equivalent to dried dates in their qualities.

وَاحْتَجُّوا أَيْضًا بِأَنْ قَالُوا: بَيْعُ التَّمْرِ الْحَدِيثِ بِالتَّمْرِ الْقَدِيمِ جَائِزٌ، وَهُوَ يَنْقُصُ، عَنْهُ فِيمَا بَعْدُ؟ فَقُلْنَا: نَعَمْ فَكَانَ مَاذَا؟ وَمَتَى جَعَلْنَا لَكُمْ عِلَّةَ الْمَنْعِ مِنْ بَيْعِ الرُّطَبِ بِالتَّمْرِ، إنَّمَا هِيَ نُقْصَانُهُ إذَا يَبِسَ؟ حَاشَا لِلَّهِ أَنْ يَقُولَ هَذَا، لِأَنَّ الْأَثَرَ الَّذِي مِنْ طَرِيقِ سَعْدٍ، الَّذِي فِيهِ: أَيَنْقُصُ الرُّطَبُ إذَا جَفَّ لَا يَصِحُّ، لِأَنَّهُ مِنْ رِوَايَةِ زَيْدِ بْنِ أَبِي عَيَّاشٍ - وَهُوَ مَجْهُولٌ - وَلَوْ صَحَّ لَأَذْعَنَّا لَهُ وَلَقُلْنَا بِهِ، وَهَذَا التَّعْلِيلُ مِنْكُمْ بَاطِلٌ وَتَخَرُّصٌ فِي دِينِ اللَّهِ

L23329 They also argued by stating: "The sale of recently harvested dried dates (al-tamr al-ḥadīth) for old dried dates (al-tamr al-qadīm) is permissible, even though they diminish afterward?" We responded: "Yes—what does that imply? When did we ever claim that the reason for prohibiting the sale of fresh dates (al-ruṭab) for dried dates is their reduction upon drying? Allah is far above saying such a thing! The narration transmitted through Sa'd—which states, 'Do fresh dates diminish when they dry?'—is unsound, as it is reported by Zayd ibn Abī 'Ayyāsh—a narrator of unverified status. Had it been authentic, we would have submitted to it and acted upon it. This rationale of yours is invalid—a reckless fabrication in the religion of Allah

Almighty, unsupported by the Quran or Sunnah. Obedience is owed solely to Allah Almighty and His Messenger—peace be upon him."

L23330 "So let those who deviate from his command beware, lest strife or a painful punishment befall them." (Quran 24:63)[35]

L23331 And we say to those who assert the assignment of effective causes, claiming this constitutes divine wisdom while considering anything else futile: Inform us of the effective cause behind the prohibition of carrion, blood, pork, taking a fifth wife in marriage, and the rest of the divine rulings?

L23332 There is no way for them to establish the existence of anything whatsoever. From what basis does it become obligatory that some religious ordinances should be justified by false claims while others remain unjustified?

L23333 We do not know of any predecessor before Abū Ḥanīfah among those who prohibit usury in non-deferred transactions who permitted exchanging fresh dates for dried dates. Mālik said: "The sale of fresh dates in exchange for dried dates is permissible," but this is erroneous due to the Messenger of Allāh—peace be upon him—prohibiting the sale of fresh fruit for dried dates.

L23334 And Ash-Shāfiʿī held the same opinion as us - and with Allah, the Exalted, lies all divine enablement.

L23335–23336 As for the 'Araya—it has been reported to us through the chain of Nāfiʿ from Ibn 'Umar, who said: "The 'Araya was when a man would sell the produce of one or two specified palm trees from his property?" 'Alī said: "This does not clarify the ruling of the 'Araya"—and it has been reported to us from Mūsā ibn 'Uqbah that he said: "The 'Araya refers to specific palm trees that one approaches and buys directly."

L23337 We have been narrated from Zayd ibn Thābit, Yaḥyā ibn Saʿīd al-Anṣārī, and Muḥammad ibn Isḥāq that a single palm tree, two palm trees, or multiple palm trees are governed by the juristic opinion, and they sell their fruit by estimating its yield while on the tree in terms of dried dates.

تَعَالَى لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَإِنَّمَا هُوَ الطَّاعَةُ لِلَّهِ تَعَالَى وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ - فَقَطْ.

{فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣].

وَنَقُولُ لِمَنْ ادَّعَى التَّعْلِيلَ، وَأَنَّهُ هُوَ الْحِكْمَةُ، وَمَا عَدَاهُ عَبَثٌ: أَخْبِرُونَا مَا عِلَّةُ تَحْرِيمِ الْمَيْتَةِ، وَالدَّمِ، وَلَحْمِ الْخِنْزِيرِ، وَالْخَامِسَةِ فِي النِّكَاحِ، وَسَائِرِ الشَّرَائِعِ؟

فَلَا سَبِيلَ لَهُمْ إلَى وُجُودِ شَيْءٍ أَصْلًا، فَمِنْ أَيْنَ وَجَبَ أَنْ تُعَلَّلَ بَعْضُ الشَّرَائِعِ بِالدَّعَاوَى الْكَاذِبَةِ، وَلَا تُعَلَّلَ سَائِرُهَا؟

وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ سَلَفًا قَبْلَهُ فِي إبَاحَةِ الرُّطَبِ بِالتَّمْرِ مِمَّنْ يَحْرُمُ الرِّبَا فِي غَيْرِ النَّسِيئَةِ - وَقَالَ مَالِكٌ: بَيْعُ الرُّطَبِ جَائِزٌ، وَهَذَا خَطَأٌ لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ.

وَقَالَ الشَّافِعِيُّ كَقَوْلِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الْعَرَايَا - رُوِّينَا مِنْ طَرِيقِ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: كَانَتْ الْعَرَايَا أَنْ يُعْرِيَ الرَّجُلُ فِي مَالِهِ النَّخْلَةَ وَالنَّخْلَتَيْنِ؟ قَالَ عَلِيٌّ: لَيْسَ فِي هَذَا بَيَانُ حُكْمِ الْعَرَايَا - وَرُوِّينَا عَنْ مُوسَى بْنِ عُقْبَةَ أَنَّهُ قَالَ: الْعَرَايَا نَخَلَاتٌ مَعْلُومَاتٌ يَأْتِيهَا فَيَشْتَرِيهَا.

وَرُوِّينَا عَنْ زَيْدِ بْنِ ثَابِتٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَمُحَمَّدِ بْنِ إِسْحَاقَ أَنَّهَا النَّخْلَةُ وَالنَّخْلَتَانِ وَالنَّخَلَاتُ تُجْعَلُ لِلْقَوْلِ فَيَبِيعُونَ ثَمَرَهَا بِخَرْصِهَا تَمْرًا.

[35] **Qur'an references (L23330):** Qur'an 24:63 (An-Nur).

وَقَالَ سُفْيَانُ بْنُ حُسَيْنٍ، وَسُفْيَانُ بْنُ عُيَيْنَةَ، وَالْأَوْزَاعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ مِثْلَ هَذَا، إِلَّا أَنَّهُمْ خَصُّوا بِذَلِكَ الْمَسَاكِينَ يُجْعَلُ لَهُمْ ثَمَرُ النَّخْلِ فَيَصْعُبُ عَلَيْهِمْ الْقِيَامُ عَلَيْهَا، فَأُبِيحَ لَهُمْ أَنْ يَبِيعُوهَا بِمَا شَاءُوا مِنْ التَّمْرِ.

L23338 Sufyan ibn Husayn, Sufyan ibn Uyaynah, Al-Awzaʿī, and Ahmad ibn Hanbal held a similar view, except they restricted this ruling to the poor **to whom palm fruit is allocated** but who find it difficult to **maintain** the palm trees. Thus, it **was** permitted for them to sell the fruit for **any quantity of dates they wished**.

وَرُوِّينَا عَنْ عَبْدِ رَبِّهِ بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ الْعَرِيَّةَ الرَّجُلُ يُعْرِي النَّخْلَةَ، أَوْ يَسْتَثْنِي مِنْ مَالِهِ النَّخْلَةَ أَوْ النَّخْلَتَيْنِ يَأْكُلُهَا فَيَبِيعُهُمَا بِمِثْلِ خَرْصِهِمَا تَمْرًا.

L23339 It has been reported to us from ʿAbd Rabbihi ibn Saʿīd al-Anṣārī that *al-ʿariyya* refers to when a man exempts a palm tree or reserves one or two from his property to eat their dates, then sells the dates on the tree for an amount equivalent to their estimated yield as fresh dates.

وَقَالَ أَبُو حَنِيفَةَ: الْعَرِيَّةُ أَنْ يَهَبَ الرَّجُلُ رَجُلًا آخَرَ ثَمَرَةَ نَخْلَةٍ أَوْ نَخْلَتَيْنِ ثُمَّ يَبْدُوَ لَهُ فَيُعْطِيَهُ مَكَانَ ثَمَرِ مَا أَعْطَاهُ تَمْرًا يَابِسًا فَيَخْرُجَ بِذَلِكَ عَنْ إخْلَافِ الْوَعْدِ.

L23340 Abu Hanifa said: The *ʿariyya* is when a man grants another the produce of one or two palm trees, then later decides to give him dried dates in place of the produce he had given, thereby avoiding breaking the promise.

وَقَالَ مَالِكٌ: الْعَرِيَّةُ أَنْ يَهَبَ الرَّجُلُ لِآخَرَ ثَمَرَ نَخْلَةٍ أَوْ نَخْلَتَيْنِ أَوْ نَخَلَاتٍ مِنْ مَالِهِ وَيَكُونُ الْوَاهِبُ سَاكِنًا بِأَهْلِهِ فِي ذَلِكَ الْحَائِطِ فَيَشُقُّ عَلَيْهِ دُخُولُ الْمُعْرِي فِي ذَلِكَ الْحَائِطِ، فَلَهُ أَنْ يَبْتَاعَ مِنْهُ ذَلِكَ الثَّمَرِ بِخَرْصِهِ تَمْرًا إلَى الْجِدَادِ وَلَا يَجُوزُ عِنْدَهُ إلَّا نَسِيئَةً وَلَا بُدَّ، وَأَمَّا يَدًا بِيَدٍ فَلَا.

L23341 Mālik said: The ʿariyya is when a man grants another the fruit of one palm tree, two palm trees, or several palm trees from his property, while the grantor resides with his family in that orchard, making it difficult for the recipient to enter it. In such a case, the recipient may purchase that fruit by estimating its yield in dried dates to be delivered at the time of drying. This is only permissible in Mālik's view if done through deferred payment, which is required. As for an immediate exchange, it is not permitted.

وَأَمَّا قَوْلُ الشَّافِعِيِّ فَإِنَّهُ قَالَ: الْعَرِيَّةُ أَنْ يَأْتِيَ أَوَانُ الرُّطَبِ، وَهُنَاكَ قَوْمٌ فُقَرَاءُ لَا مَالَ لَهُمْ، وَيُرِيدُونَ ابْتِيَاعَ رُطَبٍ يَأْكُلُونَهُ مَعَ النَّاسِ، وَلَهُمْ فُضُولُ تَمْرٍ مِنْ أَقْوَاتِهِمْ، فَأُبِيحَ لَهُمْ أَنْ يَشْتَرُوا الرُّطَبَ بِخَرْصِهَا مِنْ التَّمْرِ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ نَقْدًا وَلَا بُدَّ.

L23342 As for the statement of Al-Shafiʿi, he said: The ʿariyya (a permitted exception to the prohibition of ribā) occurs when fresh dates ripen, and there are poor people with no wealth who wish to purchase fresh dates to eat with others. They have surplus dried dates from their provisions, so it is permitted for them to buy fresh dates by estimating the fresh dates' quantity in terms of dried dates for less than five awsuq as an immediate transaction, and this is necessarily required.

وَأَمَّا قَوْلُنَا الَّذِي ذَكَرْنَا فَهُوَ قَوْلُ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَأَبِي سُلَيْمَانَ.

L23343 As for the opinion that we mentioned, it is the position of Yaḥyā ibn Saʿīd al-Anṣārī, and Abī Sulaymān.

L23344–23346 It has been narrated to us through the chain of Muslim: I am Muḥammad ibn Rumḥ ibn al-Muhājir; I am al-Layth ibn Saʿd, from... Yahya ibn Saʿīd al-Anṣārī said: The ʿariyya is when a man buys the fruit of palm trees as

fresh dates for his family's consumption by estimating their dried equivalent through khars.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ رُمْحِ بْنِ الْمُهَاجِرِ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: الْعَرِيَّةُ أَنْ يَشْتَرِيَ الرَّجُلُ ثَمَرَ النَّخَلَاتِ لِطَعَامِ أَهْلِهِ رُطَبًا بِخَرْصِهَا تَمْرًا.

L23347 Abu Muhammad said: As for the statements of Ibn ʻUmar and Musa ibn ʻUqbah, there is no elucidation in both of them.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ ابْنِ عُمَرَ، وَمُوسَى بْنِ عُقْبَةَ فَلَا بَيَانَ فِيهِمَا.

L23348 As for the opinion of Zayd ibn Thabit, and one of the two opinions of Yahya ibn Sa'id—alongside the opinions of Ibn Ishaq, Sufyan ibn Husayn, al-Awza'i, and Ahmad—the evidence cited for it is what has been narrated to us through the chain of Malik from Nafiʿ from Ibn ʿUmar from Zayd ibn Thabit: that the Messenger of Allah (may Allah's peace and blessings be upon him) permitted the owner of an ʿariyya to sell it by estimating its yield of dates [while still on the palm].[36]

وَأَمَّا قَوْلُ زَيْدِ بْنِ ثَابِتٍ، وَأَحَدُ قَوْلَيْ يَحْيَى بْنِ سَعِيدٍ، وَابْنِ إِسْحَاقَ، وَسُفْيَانَ بْنِ حُسَيْنٍ، وَالْأَوْزَاعِيِّ، وَأَحْمَدَ، فَإِنَّهُ يَحْتَجُّ لَهُ بِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ زَيْدِ بْنِ ثَابِتٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَخَّصَ، لِصَاحِبِ الْعَرِيَّةِ أَنْ يَبِيعَهَا بِخَرْصِهَا مِنْ التَّمْرِ» .

L23349 Ali said: "They have no proof whatsoever in this report. It only states that the owner of fresh dates is he who sells them as dried dates through estimation while still on the palm - and this is exactly our position. It is permissible in our view to sell fresh dates through such estimation pertaining to both the dates and the palm trees under his ownership. It is also permissible to sell them through this estimation by the owner of fresh dates alone, whether acquired through gift, purchase, inheritance, authorization, or declared gift (as dowry). This report aligns with our position (praise be to Allah), as it merely describes the seller's qualification without mentioning the buyer's identity."

قَالَ عَلِيٌّ: لَيْسَ لَهُمْ فِي هَذَا الْحَدِيثِ حُجَّةٌ أَصْلًا، وَإِنَّمَا فِيهِ أَنَّ صَاحِبَ الرُّطَبِ هُوَ الَّذِي يَبِيعُهُ بِخَرْصِهِ تَمْرًا - وَنَحْنُ هَكَذَا نَقُولُ، وَجَائِزٌ عِنْدَنَا أَنْ نَبِيعَ الرُّطَبَ كَذَلِكَ الَّذِي هُوَ لَهُ وَالنَّخْلُ مَعًا، وَجَائِزٌ أَنْ نَبِيعَهُ أَيْضًا كَذَلِكَ مِنْ مَالِكِ الرُّطَبِ وَحْدَهُ بِهِبَةٍ أَوْ بِشِرَاءٍ أَوْ بِمِيرَاثٍ أَوْ بِإِجَازَةٍ أَوْ بِإِصْدَاقٍ فَهَذَا الْخَبَرُ مُوَافِقٌ لِقَوْلِنَا وَلِلَّهِ الْحَمْدُ، وَلَيْسَ فِيهِ إلَّا صِفَةُ الْبَائِعِ فَقَطْ، وَلَيْسَ فِيهِ مَنْ هُوَ الْمُشْتَرِي.

L23350 As for those who follow the position of ʿAbd Rabbihi ibn Saʿīd, he argues for it based on what we transmitted from the narration in Ṣaḥīḥ Muslim: Abū Bakr ibn Abī Shaybah narrated from Abū Usāmah, from al-Walīd ibn Kathīr, who narrated from Bashīr ibn Yasār—client of Banū Ḥārithah—that Rafiʿ ibn Khadīj and Sahl ibn Abī Ḥathmah reported to him: "The Messenger of Allah—peace and blessings be upon him—prohibited muzābanah (the sale

وَأَمَّا مَنْ ذَهَبَ مَذْهَبَ عَبْدِ رَبِّهِ بْنِ سَعِيدٍ فَإِنَّهُ يَحْتَجُّ لَهُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ - أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا أَبُو أُسَامَةَ عَنْ الْوَلِيدِ بْنِ كَثِيرٍ حَدَّثَنِي بَشِيرُ بْنُ يَسَارٍ مَوْلَى بَنِي حَارِثَةَ: أَنَّ رَافِعَ بْنَ خَدِيجٍ، وَسَهْلَ بْنَ أَبِي حَثْمَةَ حَدَّثَاهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْمُزَابَنَةِ الثَّمَرِ بِالتَّمْرِ إلَّا أَصْحَابَ الْعَرَايَا فَإِنَّهُ أَذِنَ لَهُمْ» .

[36] **Hadith references (L23348):** Sahih Muslim 1539c.

of fresh dates still on the palm for dried dates by estimation), but permitted it for those granted the ʿarāyā concession."

L23351 Abu Muhammad said: This provides no valid proof for them, as it contains no clarification of their claim—neither by explicit text, nor by implication, nor by evidence. Rather, it merely states that the people of ʻarāyā were permitted to exchange dates for dates exclusively—and this is what we assert—thus, it becomes invalid to claim that either of these two opinions holds any valid proof in either of these two narrations.

L23352–23354 Then we examined al-Shāfiʿī's statement and found it to be an unsubstantiated claim. He only cited a ḥadīth whose origin, source, or transmission method no one recognizes. He mentioned it without any chain of narrators—thus it is rendered invalid as containing any authoritative evidence. His statement constitutes a claim without proof - we refer to his specification that those permitted to purchase fresh dates by estimating their quantity using the standard of dried dates are only those who lack the means to acquire fresh dates except for consumption solely.

L23355 Then we examined Mālik's statements and found his assertion that "the ʿarīya consists of palm fruit assigned to others," his claim that "those who designated it reside with their families in the orchard containing those palms," and his declaration that "the palm owners announce the entry of those for whom the palms were designated"—these three assertions: there exists no evidence for any of them, neither in the Quran, nor in the Sunnah, nor in a weak narration, nor in a Companion's opinion, nor a Successor's, nor analogy, nor linguistic evidence, nor any opinion grounded in valid reasoning. We know of no one before him who asserted this.

L23356 Then the outrageous and profoundly astonishing matter is his statement: "This is not permissible except as deferred payment until harvest time, nor is immediate payment permissible at all" - for this constitutes manifestly prohibited usury - "nor for an unspecified term." We know no predecessor who held this view, as it is plainly unlawful and fundamentally impermissible. The permissibility here applies solely to exchanging fresh dates for dried dates by virtue of the explicit textual ruling. We have determined that deferred payment in transactions involving usury is forbidden in every respect.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ بَيَانُ قَوْلِهِمْ لَا بِنَصٍّ وَلَا بِإِشَارَةٍ وَلَا بِدَلِيلٍ، وَإِنَّمَا فِيهِ: أَنَّ أَصْحَابَ الْعَرَايَا أُذِنَ لَهُمْ فِي التَّمْرِ بِالتَّمْرِ فَقَطْ، وَهَكَذَا نَقُولُ - فَبَطَلَ أَنْ يَكُونَ لِشَيْءٍ مِنْ هَذَيْنِ الْقَوْلَيْنِ فِي شَيْءٍ مِنْ هَذَيْنِ الْخَبَرَيْنِ حُجَّةٌ.

ثُمَّ نَظَرْنَا فِي قَوْلِ الشَّافِعِيِّ فَوَجَدْنَاهُ دَعْوَى بِلَا بُرْهَانٍ، وَإِنَّمَا ذَكَرَ فِيهِ حَدِيثًا لَا يَدْرِي أَحَدٌ مُنْشَأَهُ وَلَا مَبْدَأَهُ وَلَا طَرِيقَهُ، ذَكَرَهُ أَيْضًا بِغَيْرِ إِسْنَادٍ - فَبَطَلَ أَنْ يَكُونَ فِيهِ حُجَّةٌ، وَحَصَلَ قَوْلُهُ دَعْوَى بِلَا بُرْهَانٍ - نَعْنِي تَخْصِيصَهُ أَنَّ الَّذِينَ أُبِيحَ لَهُمْ ابْتِيَاعُ الرُّطَبِ بِخَرْصِهِ تَمْرًا إِنَّمَا هُمْ مَنْ لَا شَيْءَ لَهُمْ يَبْتَاعُونَ بِهِ الرُّطَبَ لِيَأْكُلُوهُ فَقَطْ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ فَوَجَدْنَا قَوْلَهُ: إِنَّ الْعَرِيَّةَ هِيَ ثَمَرُ نَخْلٍ تُجْعَلُ لِآخَرِينَ - وَقَوْلَهُ: إِنَّ الَّذِينَ جَعَلُوهُ يَسْكُنُونَ بِأَهْلِيهِمْ فِي الْحَائِطِ الَّذِي فِيهِ تِلْكَ النَّخْلُ - وَقَوْلَهُ: إِنَّ أَصْحَابَ النَّخْلِ يُنَادُونَ بِدُخُولِ الَّذِينَ جَعَلَ لَهُمْ تِلْكَ النَّخْلَ أَقْوَالًا ثَلَاثَةً؟ لَا دَلِيلَ عَلَى شَيْءٍ مِنْهَا، لَا فِي قُرْآنٍ، وَلَا فِي سُنَّةٍ، وَلَا فِي رِوَايَةٍ سَقِيمَةٍ، وَلَا فِي قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا لُغَةٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَمَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

ثُمَّ الشُّنْعَةُ وَالْأُعْجُوبَةُ الْعَظِيمَةُ قَوْلُهُ: إِنَّ ذَلِكَ لَا يَجُوزُ إِلَّا نَسِيئَةً إِلَى الْجِدَادِ، وَلَا يَجُوزُ نَقْدًا أَصْلًا - وَهَذَا هُوَ الرِّبَا الْمُحَرَّمُ جِهَارًا، ثُمَّ إِلَى أَجَلٍ مَجْهُولٍ - وَلَا نَعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَهُ، وَهُوَ حَرَامٌ مَكْشُوفٌ لَا يَحِلُّ أَصْلًا، وَإِنَّمَا حَلَّ هَهُنَا الرُّطَبُ بِالتَّمْرِ بِالنَّصِّ الْوَارِدِ فِيهِ فَقَطْ، وَوَجَدْنَا النَّسِيئَةَ فِيمَا فِيهِ الرِّبَا حَرَامًا بِكُلِّ وَجْهٍ، فَلَمَّا حَلَّ بَيْعُ التَّمْرِ

بِالتَّمْرِ هَهُنَا لَمْ يَجُزْ إِلَّا يَدًا بِيَدٍ وَلَا بُدَّ، لِأَنَّهُ لَا بَيْعَ إِلَّا إِمَّا نَقْدًا وَإِمَّا نَسِيئَةً، فَالنَّسِيئَةُ حَرَامٌ: لِأَنَّهُ رِبًا فِي كُلِّ مَا يَقَعُ فِيهِ الرِّبَا بِلَا خِلَافٍ - وَلِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى - يَعْنِي اشْتِرَاطَ تَأْخِيرِهِ فَهُوَ بَاطِلٌ فَلَمْ يَبْقَ إِلَّا النَّقْدُ فَلَمْ يَجُزْ غَيْرُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

When the exchange of dates for dates became permissible here, it could only be conducted hand-to-hand without exception, for there is no valid sale except either immediate payment or deferred payment. Deferred payment is forbidden because it constitutes usury in all transactions where usury occurs without dispute, and because it imposes a condition absent from Allah's Book - meaning the stipulation of deferment is void. Thus, only immediate payment remains valid, and no other form is permissible. And success comes only from Allah, the Exalted.

L23357 ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ فَوَجَدْنَاهُ أَبْعَدَ الْأَقْوَالِ، لِأَنَّهُ خَالَفَ جَمِيعَ الْآثَارِ كُلِّهَا جِهَارًا، وَأَتَى بِدَعْوَى لَا دَلِيلَ عَلَيْهَا، وَلَا نَعْلَمُ أَحَدًا قَالَ بِهَا قَبْلَهُ.

L23357 Then we examined the opinion of Abu Hanifah and found it to be the most distant of all opinions, for he openly contradicted all transmitted traditions without exception, advanced a claim lacking any evidence, and we know of no one who asserted it before him.

L23358 وَالْخَبَرُ فِي اسْتِثْنَاءِ جَوَازِ بَيْعِ الرُّطَبِ بِالتَّمْرِ لِأَهْلِ الْعَرَايَا خَاصَّةً مَنْقُولٌ نَقْلَ التَّوَاتُرِ: رَوَاهُ رَافِعٌ، وَسَهْلٌ، وَجَابِرٌ، وَأَبُو هُرَيْرَةَ، وَزَيْدٌ، وَابْنُ عُمَرَ فِي آخَرِينَ سِوَاهُمْ كُلُّ مَنْ سَمَّيْنَا هُوَ عَنْهُمْ فِي غَايَةِ الصِّحَّةِ - فَخَالَفُوا ذَلِكَ بِآرَائِهِمْ الْفَاسِدَةِ.

L23358 The report concerning the exception permitting the sale of fresh dates for dried dates specifically for the people of ʿarāyā is transmitted through mutawātir narration: it was narrated by Rāfiʿ, Sahl, Jābir, Abū Hurayrah, Zayd, and Ibn ʿUmar among others besides them. Every one we named is among those whose narrations are of the highest reliability. Yet they opposed this with their corrupt opinions.

L23359 وَالْبُرْهَانُ لِصِحَّةِ قَوْلِنَا -: هُوَ مَا رُوِّينَاهُ مِنْ طُرُقٍ جَمَّةٍ كُلُّهَا تَرْجِعُ إِلَى مَالِكٍ: أَنَّ دَاوُد بْنَ الْحُصَيْنِ حَدَّثَهُ عَنْ أَبِي أَحْمَدَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَخَّصَ فِي بَيْعِ الْعَرَايَا بِخَرْصِهَا فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ أَوْ فِي خَمْسَةِ أَوْسُقٍ» يَشُكُّ دَاوُد.

L23359 The proof for the validity of our statement is what we have transmitted through numerous chains - all tracing back to Mālik: that Dāwūd ibn al-Ḥuṣayn narrated to him from Abū Aḥmad, from Abū Hurayrah, that "Allah's Messenger (may Allah bless him and his family and grant peace) granted a concession for the sale of al-ʿarāyā [unharvested dates on the palm tree] by estimating their yield [while still on the tree], in less than five awsuq or up to five awsuq" — Dāwūd expressed uncertainty.

L23360–23362 قَالَ أَبُو مُحَمَّد: فَالْيَقِينُ وَاقِعٌ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ بِلَا شَكٍّ، فَهُوَ مَخْصُوصٌ فِيمَا حَرُمَ مِنْ بَيْعِ التَّمْرِ بِالتَّمْرِ، وَلَا يَجُوزُ أَنْ يُبَاحَ مُتَيَقَّنُ الْحَرَامِ بِشَكٍّ، وَلَوْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَاحَ ذَلِكَ فِي خَمْسَةِ أَوْسُقٍ لَحَفِظَهُ اللَّهُ تَعَالَى حَتَّى يُبَلِّغَ إِلَيْنَا مُبَيَّنًا،

L23360–23362 Abu Muhammad said: Certainty is established without doubt for what is less than five wasqs, as it is specifically restricted to the prohibition of selling dates for dates. It is not permissible to permit what is definitively prohibited based on doubt, even if the Messenger of Allah (peace be upon him)... He permitted that in five awsuq, so Allah, the Exalted, thereby preserved it until it was conveyed to us clearly, and the proof was established through it. Yet Allah, the Exalted, did not do that, so we became certain that His Prophet

(peace be upon him) never permitted it in five awsuq, but with certainty in less than that—and with Allah, the Exalted, is the attainment of guidance.

وَتَقُومَ بِهِ الْحُجَّةُ، فَلَمْ يَفْعَلْ اللَّهُ تَعَالَى ذَلِكَ، فَأَيْقَنَّا أَنَّهُ لَمْ يُبِحْهُ نَبِيُّهُ - عَلَيْهِ السَّلَامُ - قَطُّ فِي خَمْسَةِ أَوْسُقٍ، لَكِنْ فِيمَا دُونَهَا بِيَقِينٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23363 It is not permissible for anyone to reach that measure in a single year—whether through one transaction or through transactions amounting to five wasqs in total—fundamentally, neither for the seller nor the buyer, as it contravenes the injunction of the Messenger of Allah, peace and blessings be upon him.

فَلَا يَجُوزُ لِأَحَدٍ أَنْ يَبْلُغَ ذَلِكَ فِي عَامٍ وَاحِدٍ فِي صَفْقَةٍ وَاحِدَةٍ، وَلَا فِي صَفَقَاتٍ خَمْسَةِ أَوْسُقٍ أَصْلًا، لَا الْبَائِعُ وَلَا الْمُشْتَرِي؛ لِأَنَّهُ يُخَالِفُ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23364 From the chain of Muslim ibn al-Ḥajjāj: I, Yaḥyā ibn Yaḥyā al-Naysābūrī, narrate from Sulaymān ibn Bilāl, from Yaḥyā ibn Saʿīd al-Anṣārī, who informed me that Nāfiʿ reported that he heard ʿAbdullāh ibn ʿUmar narrate that Zayd ibn Thābit related to him: "The Messenger of Allah—may Allah's peace and blessings be upon him—permitted regarding the ʿariyya (fresh dates still on the palm) for the people of the household to take them by estimating them as dried dates in quantity, and they eat them as fresh dates."[37]

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ أَنَا يَحْيَى بْنُ يَحْيَى - هُوَ النَّيْسَابُورِيُّ - أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَخْبَرَنِي نَافِعٌ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عُمَرَ يُحَدِّثُ أَنَّ زَيْدَ بْنَ ثَابِتٍ حَدَّثَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَخَّصَ فِي الْعَرِيَّةِ يَأْخُذُهَا أَهْلُ الْبَيْتِ بِخَرْصِهَا تَمْرًا يَأْكُلُونَهَا رُطَبًا» .

L23365 And through the chain of Muslim: Abdullah ibn Maslamah al-Qa'nabi reported from Sulayman ibn Bilal, who reported from Yahya ibn Sa'id al-Ansari, from Bashir ibn Yasar, from some of the Companions of the Messenger of Allah (peace and blessings be upon him) from the people of their household—among them Sahl ibn Abi Hathmah—from the Prophet (peace and blessings be upon him and his family), that he forbade selling dates for dates and said: "That is usury, that is muzābanah," except that he permitted the sale of the 'ariyya and a palm tree or two palm trees, which the household members take by estimating their fresh dates on the tree as dried dates, so they may eat them as fresh dates.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَهْلِ دَارِهِمْ مِنْهُمْ سَهْلُ بْنُ أَبِي حَثْمَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّهُ نَهَى عَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ وَقَالَ: ذَلِكَ الرِّبَا تِلْكَ الْمُزَابَنَةُ، إلَّا أَنَّهُ رَخَّصَ فِي بَيْعِ الْعَرِيَّةِ وَالنَّخْلَةِ وَالنَّخْلَتَيْنِ يَأْخُذُهَا أَهْلُ الْبَيْتِ بِخَرْصِهَا تَمْرًا يَأْكُلُونَهَا رُطَبًا» .

L23366 Abū Muḥammad said: The Prophet's stipulation—peace and blessings be upon him—in the ḥadīth of Abū Hurayrah, "less than five awsāq," takes precedence over these ḥadīths. For if the produce from the two palm trees amounts to five awsāq, it is impermissible, and if the produce from the palm trees is less than five awsāq, it is permissible regarding them. This is because

قَالَ أَبُو مُحَمَّدٍ: تَحْدِيدُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ أَبِي هُرَيْرَةَ «مَا دُونَ خَمْسَةِ أَوْسُقٍ» يَقْضِي عَلَى هَذِهِ الْأَحَادِيثِ؛ لِأَنَّهُ إنْ كَانَ فِي النَّخْلَتَيْنِ خَمْسَةُ أَوْسُقٍ لَمْ يَجُزْ، وَإِنْ كَانَ فِي النَّخَلَاتِ أَقَلُّ مِنْ خَمْسَةِ أَوْسُقٍ جَازَ ذَلِكَ فِيهَا؛ لِأَنَّ تَحْدِيدَ الْخَمْسَةِ الْأَوْسُقِ زِيَادَةُ حُكْمٍ، وَزِيَادَةُ حَدٍّ، وَزِيَادَةُ بَيَانٍ، وَلَا يَجُوزُ تَرْكُهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[37] **Hadith references (L23364):** Sahih Muslim 1539d.

stipulating five awsāq introduces an additional ruling, a restriction, and a clarification, and it is not permissible to abandon it. And success is by Allāh, the Exalted.

A legal case in which a person bought fresh dates for consumption, then died, while his intention at the time of purchase was unrestricted.

1475. Issue: If someone purchases fresh dates for consumption under these circumstances and then dies—so they are passed down as part of his inheritance—or falls ill, or no longer needs to consume them, except that at the time of purchase his intention was unquestionably to consume them, then he validly owns the dates and may sell or dispose of them as he wishes.

And by Allah, the Exalted, is the success.

Question: The Ruling on *ʿarāyā* Regarding Certain Fruits

1476 – Issue:

The aforementioned ruling of ʿaraya does not apply to any fruits other than dates, as we have stated. It is impermissible at all to sell any fruits besides dates by kharṣ-estimation, neither while they remain on the palm trees nor after being gathered on the ground at all.

It is impermissible to sell grapes for raisins by measure, whether in total quantity or while still on the stem, nor to sell standing crops for wheat. This is based on what was transmitted to us through Muslim's narration: Yaḥyā ibn Maʿīn and Hārūn ibn ʿAbdullāh both said: "Abū Usāmah reported to us, stating: I heard from ʿUbaydullāh—the son of ʿUmar—from Nāfiʿ, from Ibn ʿUmar, who said: 'The Messenger of Allah—peace and blessings be upon him—forbade muzābaṇa. Muzābaṇa is the sale of fresh dates on the palm

[مَسْأَلَة ابْتَاعَ رطبا للأكل ثُمَّ مَاتَ وَكَانَتْ نيته عِنْد الشِّرَاء للكل]

١٤٧٥ - مَسْأَلَةٌ: فَمَنْ ابْتَاعَ كَذَلِكَ رُطَبًا لِلْأَكْلِ ثُمَّ مَاتَ فَوُرِثَتْ عَنْهُ، أَوْ مَرِضَ، أَوْ اسْتَغْنَى عَنْ أَكْلِهَا إِلَّا أَنَّهُ حِينَ اشْتَرَاهَا كَانَتْ نِيَّتُهُ أَكْلَهَا بِلَا شَكٍّ، فَقَدْ مَلَكَ الرُّطَبَ مِلْكًا صَحِيحًا، وَيَفْعَلُ فِيهِ مَا شَاءَ مِنْ بَيْعٍ أَوْ غَيْرِهِ.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ الْعَرَايَا فِي شَيْءٍ مِنْ الثِّمَارِ]

١٤٧٦ - مَسْأَلَةٌ:

وَلَا يَجُوزُ حُكْمُ الْعَرَايَا الْمَذْكُورُ فِي شَيْءٍ مِنْ الثِّمَارِ غَيْرَ ثِمَارِ النَّخْلِ كَمَا ذَكَرْنَا - وَلَا يَجُوزُ بَيْعُ شَيْءٍ مِنْ الثِّمَارِ سِوَى ثَمَرِ النَّخْلِ بِخَرْصِهَا أَصْلًا، لَا فِي رُءُوسِ النَّخْلِ وَلَا مَجْمُوعَةٍ فِي الْأَرْضِ أَصْلًا.

وَلَا يَحِلُّ أَنْ يُبَاعَ الْعِنَبُ بِالزَّبِيبِ كَيْلًا، لَا مَجْمُوعًا وَلَا فِي عُودِهِ، وَلَا بَيْعُ الزَّرْعِ بِالْحِنْطَةِ، لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا يَحْيَى بْنُ مَعِينٍ، وَهَارُونُ بْنُ عَبْدِ اللَّهِ قَالَا: أَنَا أَبُو أُسَامَةَ أَنَا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ، وَالْمُزَابَنَةُ بَيْعُ ثَمَرِ النَّخْلِ بِالتَّمْرِ كَيْلًا وَبَيْعُ الزَّبِيبِ بِالْعِنَبِ كَيْلًا، وَعَنْ كُلِّ ثَمَرٍ بِخَرْصِهِ» .

for dried dates by measure, the sale of raisins for grapes by measure, and the sale of any fruit for its estimated yield.'"[38]

L23375 Through the chain of Muslim: Abu Bakr ibn Abi Shaybah reported from Muhammad ibn Bishr, from Ubaydullah—son of Umar—from Nafi', from Ibn Umar, who informed him that the Messenger of Allah—peace and blessings of Allah be upon him—prohibited selling grain in exchange for wheat by measured quantity.

L23376 As reported by Muslim: Qutaybah narrated from Al-Layth ibn Sa'd, from Nafi', from Ibn 'Umar, that the Messenger of Allah (peace and blessings be upon him) prohibited muzabanah: selling the produce of one's orchard - if it is palm trees - for dried dates by measure; if it is a vineyard, selling its grapes for raisins by measure; and if it is crops, selling them for food by measure.[39]

L23377 **Issue: Dried fruits other than date fruits may not be sold in combination with their fresh counterparts.**

L23378 1477 - Question:

L23379 If the fruit in question is other than dates, it is permissible to sell it for dried or fresh fruit of its own type or another type—whether for more than it, less, or the same—and to deliver the goods in its own type or another type, provided the transaction does not involve assessing unharvested yield as we mentioned, nor exchanging raisins measured by volume for grapes, because Allah, the Exalted and Most High, said: "And Allah has permitted trade" [Al-Baqarah: 275].[40]

L23380 And He, the Exalted, has said: "He has detailed for you what He has forbidden for you" [Al-An'am 6:119].[41]

L23381 So if it had been forbidden, He would have elaborated on its prohibition to

[38]**Hadith references (L23374):** Sahih Muslim 1542d.
[39]**Hadith references (L23376):** Sahih Muslim 1542g.
[40]**Qur'an references (L23379):** Qur'an 2:275 (Al-Baqarah).
[41]**Qur'an references (L23380):** Qur'an 6:119 (Al-An'am).

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا مُحَمَّدُ بْنُ بِشْرٍ أَنَا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَخْبَرَهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الزَّرْعِ بِالْحِنْطَةِ كَيْلًا» .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْمُزَابَنَةِ أَنْ يَبِيعَ ثَمَرَ حَائِطِهِ إنْ كَانَتْ نَخْلًا بِتَمْرٍ كَيْلًا، وَإِنْ كَانَ كَرْمًا أَنْ يَبِيعَهُ بِزَبِيبٍ كَيْلًا، وَإِنْ كَانَ زَرْعًا أَنْ يَبِيعَهُ بِكَيْلِ طَعَامٍ» .

[مَسْأَلَة مَسْأَلَةٌ ثَمَرُ مَا عَدَا ثَمَرَ النَّخْلِ يُبَاع يابسه برطبه]

١٤٧٧ - مَسْأَلَةٌ:

فَإِنْ كَانَ ثَمَرُ مَا عَدَا ثَمَرَ النَّخْلِ جَازَ أَنْ يُبَاعَ بِيَابِسٍ وَرُطَبٍ مِنْ صِنْفِهِ، وَمِنْ غَيْرِ صِنْفِهِ بِأَكْثَرَ مِنْهُ، وَبِأَقَلَّ وَمِثْلِهِ، وَأَنْ يُسَلَّمَ فِي جِنْسِهِ وَغَيْرِ جِنْسِهِ مَا لَمْ يَكُنْ بِخَرْصِهِ كَمَا ذَكَرْنَا، وَمَا لَمْ يَكُنْ زَبِيبًا كَيْلًا بِعِنَبٍ؛ لِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

فَلَوْ كَانَ حَرَامًا لَفَصَّلَ لَنَا تَحْرِيمَهُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

us, “And your Lord is not forgetful.” [Maryam: 64].[42]

L23382–23383 If it is said: “He—peace be upon him—prohibited selling fresh dates for dried dates,” and it is reported that “he—peace be upon him—asked, ’Do fresh dates diminish when they dry?’ They said, ’Yes,’ so he forbade selling them for dried dates,” we respond: As for the report “Do fresh dates diminish when they dry,” Mālik and Ismāʿīl ibn Umayyah both narrated it from ʿUbayd Allāh ibn Yazīd from Zayd Abī ʿAyyāsh from Saʿd. Mālik once said, “Ziyādah, Abū ʿAyyāsh—the freed slave of Banū Zuhrah”—a man who is unknown and unidentified. Even if the report were authentic, it would not necessitate that this be a legal cause for anything beyond what was explicitly stated regarding fresh dates for dried dates alone, for that would constitute transgressing the boundaries set by Allah, the Almighty.

L23384 Among the most wondrous of wonders is that it has been soundly narrated from the Messenger of Allah (peace be upon him) that he said: “What causes blood to flow with Allah’s name invoked over it, eat—except what is slaughtered with a tooth or claw. As for the tooth, it is a bone; and as for the claw, it is the blades used by the Abyssinians.”

L23385 The Hanafis and Malikis opposed this position, maintaining that the bony nature [of an instrument] does not constitute a valid legal cause to prohibit its use for slaughter. The Shafi’is do not regard the use of Ethiopian blades for slaughtering as a legal cause invalidating the act except in the case of the claw alone. Yet they then adopt the unsubstantiated report attributed to the Prophet (ﷺ)—“Does fresh fruit diminish when dried?”—as a legal cause applicable to all fruits. What absurdity could surpass this? As for trading fresh dates for dried ones, the foundational report lacks authenticity entirely. Its chain includes Abu Salih Abdullah ibn Salih—scribe of Al-Layth, a weak narrator—via Al-Layth ibn Sa’d, Usamah ibn Zayd—another weak narrator—and an unknown transmitter, from Abdullah ibn Yazid, freedman of Al-Aswad ibn Sufyan, from Abu Salamah ibn Abd al-Rahman ibn Awf, from some Companions of the Prophet (ﷺ): “The Messenger of Allah (ﷺ) was asked about exchanging fresh dates for dried dates. He inquired: ’Do

فَإِنْ قِيلَ: قَدْ نَهَى عَنْ الرُّطَبِ بِالْيَابِسِ وَرُوِيَ «أَنَّهُ - عَلَيْهِ السَّلَامُ - سَأَلَ: أَيَنْقُصُ الرُّطَبُ إذَا يَبِسَ؟ فَقِيلَ: نَعَمْ، فَنَهَى عَنْ بَيْعِهِ بِالتَّمْرِ» قُلْنَا: أَمَّا أَيَنْقُصُ الرُّطَبُ إذَا يَبِسَ، فَإِنَّ مَالِكًا، وَإِسْمَاعِيلَ بْنَ أُمَيَّةَ رَوَيَاهُ عَنْ عُبَيْدِ اللَّهِ بْنِ يَزِيدَ عَنْ زَيْدٍ أَبِي عَيَّاشٍ عَنْ سَعْدٍ، وَقَالَ مَالِكٌ مَرَّةً: زِيَادَةُ أَبِي عَيَّاشٍ مَوْلَى بَنِي زُهْرَةَ - وَهُوَ رَجُلٌ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ - ثُمَّ لَوْ صَحَّ لَمَا وَجَبَ أَنْ يَكُونَ ذَلِكَ عِلَّةً لِغَيْرِ مَا نَصَّ عَلَيْهِ فِيهِ مِنْ الرُّطَبِ بِالتَّمْرِ وَحْدَهُ؛ لِأَنَّهُ كَانَ يَكُونُ تَعَدِّيًا لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

وَمِنْ الْعَجَبِ الْعَجِيبِ أَنْ يَكُونَ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَا أَنْهَرَ الدَّمَ وَذُكِرَ اسْمُ اللَّهِ عَلَيْهِ فَكُلُوا إلَّا السِّنَّ وَالظُّفُرَ، أَمَّا السِّنُّ فَإِنَّهُ عَظْمٌ، وَأَمَّا الظُّفُرُ فَإِنَّهُ مُدَى الْحَبَشَةِ» .

فَخَالَفَهُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَلَا يَرَوْنَ الْعَظْمِيَّةَ عِلَّةً لِمَا يَمْنَعُ مِنْ أَنْ يُذَكَّى بِهِ، وَلَا يَرَى الشَّافِعِيُّونَ كَوْنَ الَّذِي يُذَكَّى بِهِ مِنْ مُدَى الْحَبَشَةِ عِلَّةً فِي مَنْعِ الذَّكَاةِ بِهِ إلَّا فِي الظُّفُرِ وَحْدَهُ، ثُمَّ يَجْعَلُونَ مَا لَمْ يَصِحَّ عَنْهُ مِنْ «أَيَنْقُصُ الرُّطَبُ إذَا يَبِسَ» عِلَّةً فِي جَمِيعِ الثِّمَارِ، فَأَيُّ عَجَبٍ أَعْجَبُ مِنْ هَذَا؟ وَأَمَّا الرُّطَبُ بِالْيَابِسِ فَلَا يَصِحُّ أَصْلًا؛ لِأَنَّهُ أَثَرٌ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي صَالِحٍ عَبْدِ اللَّهِ بْنِ صَالِحٍ كَاتِبِ اللَّيْثِ - وَهُوَ ضَعِيفٌ - عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ أُسَامَةَ بْنِ زَيْدٍ - وَهُوَ ضَعِيفٌ - وَغَيْرُهُ - وَهُوَ مَجْهُولٌ - عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ بْنِ سُفْيَانَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ بَعْضِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ

[42] **Qur’an references (L23381):** Qur’an 19:64 (Maryam).

fresh dates decrease [in quantity]?' They replied: 'Yes.' He ruled: 'Fresh dates must not be traded for dried ones.'" Such a report is inadmissible as evidence. Had it been authentic, we would not hesitate to uphold it.

L23386 It is astonishing that the Ḥanafī jurists adopt every weak narration and disconnected report—such as ablution for audible laughter during prayer, ablution using nabīdh, and other similar matters—yet contradict these very disconnected reports and weak narrations.

L23387–23389 Moreover, the Shafi'is and Malikis, who claim to follow this report, have contradicted it. Because they permit selling fresh dates in exchange for dried dates, figs, and grapes of a different kind, and this contradicts the general ruling of the hadith.

L23390 If they say, "Does that [statement] only refer to what is of its kind?"

L23391 We said: And what is your proof for that? And what difference is there between you and Abu Hanifa, who stated: "This only refers to what was on the treetops of his trees"? Is this not merely a claim with a claim without any proof? Allah suffices us, and He is the excellent Trustee.

L23392 It was narrated to us through the chain of Ibn Abī Shaybah: "I, Yaḥyā ibn Abī Zā'idah, narrated from Muḥammad ibn 'Amr, from Abū Salamah ibn 'Abd al-Raḥmān ibn 'Awf, from Abū Sa'īd al-Khudrī, who said: 'The Messenger of Allāh—peace be upon him and his family—prohibited muḥāqalah and muzābanah. Thus, muḥāqalah pertains to crops, and muzābanah pertains to date palms.'"

L23393 This is the exact wording of Abū Sa'īd—may Allah be pleased with him—and this is the precise statement of our position, because he only permitted *muzabana* in palm trees alone, excluding other fruits—all praise is due to Allah, Lord of the worlds—and we know of no one among the Companions—may Allah be pleased with them—who disagreed with him.

L23394 And through the chain recorded in Muslim's collection: I am 'Abdullāh

رُطَبٍ بِتَمْرٍ؟ فَقَالَ: أَيَنْقُصُ الرُّطَبُ؟ قَالُوا: نَعَمْ، قَالَ: لَا يُبَاعُ الرُّطَبُ بِالْيَابِسِ» وَمِثْلُ هَذَا لَا يَحِلُّ الِاحْتِجَاجُ بِهِ، وَلَوْ صَحَّ لَمَا تَرَدَّدْنَا فِي الْأَخْذِ بِهِ.

وَالْعَجَبُ مِنْ الْحَنَفِيِّينَ الْآخِذِينَ بِكُلِّ ضَعِيفٍ، وَمُرْسَلٍ، كَالْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ، وَالْوُضُوءِ بِالنَّبِيذِ، وَغَيْرِ ذَلِكَ ثُمَّ يُخَالِفُونَ هَذَا الْمُرْسَلَ وَهَذَا الضَّعِيفَ.

وَأَيْضًا: فَإِنَّ الشَّافِعِيِّينَ، وَالْمَالِكِيِّينَ، الْمُدَّعِينَ الْأَخْذَ بِهَذَا الْخَبَرِ قَدْ خَالَفُوهُ، لِأَنَّهُمْ يُبِيحُونَ بَيْعَ الرُّطَبِ مِنْ التَّمْرِ، وَالتِّينِ، وَالْعِنَبِ، بِالْيَابِسِ مِنْ غَيْرِ جِنْسِهِ، وَهَذَا خِلَافُ لِعُمُومِ الْخَبَرِ.

فَإِنْ قَالُوا: إنَّمَا أُرِيدَ بِذَلِكَ مَا كَانَ مِنْ جِنْسِهِ؟

قُلْنَا: وَمَا دَلِيلُكُمْ عَلَى ذَلِكَ؟ وَمَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ أَبِي حَنِيفَةَ الْقَائِلِ: إنَّمَا أُرِيدَ بِذَلِكَ مَا كَانَ فِي رُءُوسِ أَشْجَارِهِ فَقَطْ؟ وَهَلْ هِيَ إلَّا دَعْوَى بِدَعْوَى بِلَا بُرْهَانٍ وَحَسْبُنَا اللَّهِ وَنِعْمَ الْوَكِيلُ.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا يَحْيَى بْنُ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الْمُحَاقَلَةِ، وَالْمُزَابَنَةِ، فَالْمُحَاقَلَةُ فِي الزَّرْعِ وَالْمُزَابَنَةُ فِي النَّخْلِ» .

هَذَا نَصُّ لَفْظِ أَبِي سَعِيدٍ - رَضِيَ اللَّهُ عَنْهُ - وَهَذَا نَصُّ قَوْلِنَا، لِأَنَّهُ لَمْ يَرَ الْمُزَابَنَةَ إلَّا فِي النَّخْلِ وَحْدَهُ، لَا فِي سَائِرِ الثِّمَارِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَمَا نَعْلَمُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفًا.

ibn Maslamah al-Qa'nabī; I [heard] from Sulaymān ibn Bilāl from Yaḥyā—who is Ibn Sa'īd al-Anṣārī—from Bashīr ibn Yasār from some Companions of Allah's Messenger (peace and blessings be upon him), among them Sahl ibn Abī Ḥathmah, that Allah's Messenger prohibited selling fresh dates for dried dates, saying: "That is usury—that is muzābanah (a usurious practice)," except that he permitted the 'arīyya sale (the sale of fresh dates on the palm). He then proceeded to mention the full ḥadīth.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْأَنْصَارِيُّ - عَنْ بُشَيْرِ بْنِ يَسَارٍ عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُمْ سَهْلُ بْنُ أَبِي حَثْمَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ، وَقَالَ: ذَلِكَ الرِّبَا تِلْكَ الْمُزَابَنَةُ، إلَّا أَنَّهُ رَخَّصَ بَيْعَ الْعَرِيَّةِ» وَذَكَرَ الْحَدِيثَ.

L23395 From the chain transmitted by Imam Muslim: I, Muhammad ibn Rumh, report from Al-Layth ibn Sa'd, from Nafi', from Ibn 'Umar, who said: "The Messenger of Allah—peace and blessings be upon him—prohibited *muzabana*—the sale of unpicked fruit for measured produce. This includes selling the fruit of one's orchard: if it were palm trees, to sell its fruit for dried dates by measure; if it were grapevines, to sell its fruit for raisins by measure; and if it were crops, to sell its fruit for food by measure."

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ رُمْحٍ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الْمُزَابَنَةِ أَنْ يَبِيعَ ثَمَرَ حَائِطِهِ إنْ كَانَتْ نَخْلًا بِتَمْرٍ كَيْلًا، وَإِنْ كَانَ كَرْمًا أَنْ يَبِيعَهُ بِزَبِيبٍ كَيْلًا، وَإِنْ كَانَ زَرْعًا أَنْ يَبِيعَهُ بِكَيْلِ طَعَامٍ» .

L23396–23398 Abu Muhammad said: There is no muzabana (sale of unpicked fruit for dried fruit by measure) except what the Prophet—may Allah bless him, his family, and grant him peace—clarified, then the Companions elaborated. Allah is pleased with them—after him [the scholar]—that this constitutes muẓābanah (a prohibited sale involving uncertainty), and anything beyond this is invalid and a certain error without doubt. And success is with Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: لَا مُزَابَنَةَ إلَّا مَا بَيَّنَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، ثُمَّ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - بَعْدَهُ أَنَّهُ مُزَابَنَةٌ، وَمَا عَدَا ذَلِكَ فَبَاطِلٌ وَخَطَأٌ مُتَيَقَّنٌ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23399 The issue of selling dates for anything other than Dirhams and Dinars.

[مَسْأَلَةَ بَيْعِ التَّمْرِ بِغَيْرِ الدَّرَاهِمِ وَالدَّنَانِيرِ]

L23400 1478 - Question:

١٤٧٨ - مَسْأَلَةٌ:

L23401 If someone were to say: "You are the claimants to adhering to authentic narrations—yet you yourselves narrated through Ibn Wahb's transmission: Ibn Jurayj narrated to me on the authority of 'Aṭā', and (separately) on the authority of Abū al-Zubayr, who narrated from Jābir that the Messenger of Allah (peace be upon him) prohibited selling fruits until they ripen, and nothing of it should be sold except using dinars and dirhams."

فَإِنْ قَالَ قَائِلٌ: فَأَنْتُمْ الْمُنْتَمُونَ إلَى الْأَخْذِ بِمَا صَحَّ مِنْ الْآثَارِ - وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ وَهْبٍ: أَخْبَرَنِي ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ، وَأَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الثَّمَرِ حَتَّى يَطِيبَ، وَلَا يُبَاعُ شَيْءٌ مِنْهُ إلَّا بِالدَّنَانِيرِ، وَالدَّرَاهِمِ» .

وَرَوَيْتُمُوهُ أَيْضًا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ جَابِرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ؟

L23402 And have you also narrated it through the chain of Sufyān ibn ʾUyaynah from Ibn Jurayj from ʾAṭāʾ from Jābir from the Messenger of Allāh (peace be upon him), and is this report of the utmost authenticity?

قُلْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: نَعَمْ؛ لِأَنَّ الثِّمَارَ كُلَّهَا إذَا يَبِسَتْ حُدَّتْ أَوْ لَمْ تُجَدَّ فَهِيَ ثِمَارٌ قَدْ طَابَتْ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَلَا خِلَافَ فِي اللُّغَةِ.

L23403 We said—and with Allah alone lies all success—yes, [this is the case]. For all fruits, when dried and harvested or not gathered, are deemed permissible without disagreement from anyone or in the language.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَمَرَ بِبَيْعِ التَّمْرِ يَدًا بِيَدٍ، كَيْلًا بِكَيْلٍ، مِثْلًا بِمِثْلٍ، وَأَمَرَ بِبَيْعِهِ بِغَيْرِ صِنْفِهِ كَيْفَ شِئْنَا.

L23404 It has been authentically reported from the Messenger of Allah—peace and blessings be upon him—that he commanded the sale of dates to be conducted hand-to-hand, measure for measure, kind for kind, and ordered its exchange for other types as we wish.

فَصَحَّ النَّصُّ عَلَى جَوَازِ بَيْعِ التَّمْرِ بِمَا شِئْنَا مِمَّا يَحِلُّ بَيْعُهُ، فَكَانَ مَا فِي هَذَا مُضَافًا إلَى مَا فِي خَبَرِ جَابِرٍ الْمَذْكُورِ وَزَائِدًا عَلَيْهِ، فَكَانَ ذَلِكَ: لَا تَبِيعُوا الثَّمَرَ إذَا طَابَ إلَّا بِالدَّنَانِيرِ وَالدَّرَاهِمِ، وَبِمَا شِئْتُمْ، حَاشَا مَا نُهِيتُمْ عَنْهُ، وَهَذَا هُوَ الَّذِي لَا يَجُوزُ غَيْرُهُ.

L23405 The text affirms the permissibility of selling dates in exchange for whatever we wish from permissible commodities. This content is added to and expands upon the report of Jabir mentioned earlier. Thus, it states: “Do not sell fruit once it ripens except for dinars, dirhams, or whatever you wish—excluding what you are prohibited from.” This is the sole permissible ruling, and no alternative is valid.

وَقَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ الْمَقْطُوعُ بِهِ عَلَى أَنَّ جَمِيعَ الثِّمَارِ بَعْدَ طِيبِهَا حُكْمُهَا فِيمَا يُبَاعُ مِمَّا يَجُوزُ حُكْمُ التَّمْرِ، وَهَذَا بُرْهَانٌ صَحِيحٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ وَمَا نَعْلَمُ أَحَدًا مَنَعَ مِنْ بَيْعِ التَّمْرِ بِغَيْرِ الدَّنَانِيرِ وَالدَّرَاهِمِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23406 A conclusive and indisputable consensus has been firmly established that all fruits, once fit for consumption, are subject to the same sales rulings as dates. This constitutes sound proof—and success lies solely with Allah the Exalted. We are unaware of any scholar who prohibited selling dates except in exchange for gold dinars and silver dirhams, and with Allah the Exalted alone resides all success.

[مَسْأَلَة الربا لَا يكُون إلَّا فِي بَيْع أَوْ قَرْض أَوْ سلم]

The issue of *riba* does not occur except in a sale, a loan, or a *salam* contract.

١٤٧٩ - مَسْأَلَةٌ: الرِّبَا: وَالرِّبَا لَا يَكُونُ إلَّا فِي بَيْعٍ، أَوْ قَرْضٍ، أَوْ سَلَمٍ، وَهَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، لِأَنَّهُ لَمْ تَأْتِ النُّصُوصُ إلَّا بِذَلِكَ، وَلَا حَرَامَ إلَّا مَا فُصِّلَ تَحْرِيمُهُ، قَالَ اللَّهُ تَعَالَى {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] .

L23407 Riba (usury), riba only occurs in sale, loan, or salam. No one disagrees about this, as the texts have only specified these, and nothing is prohibited except what has had its prohibition detailed. Allah, the Exalted, said: “He has created for you all that is on the earth.” [Al-Baqarah: 29].[43]

[43] **Qur’an references (L23408):** Qur’an 2:29 (Al-Baqarah).

L23409 And He, the Exalted, said: “Allah has permitted trade and forbidden usury” [Al-Baqarah: 275].[44]

L23410 And He, the Exalted, said: “He has detailed to you what He has forbidden upon you” [al-Anʿām 6:119].[45]

L23411 The Issue of What is Permissible Concerning Riba Among Sale and Salam

L23412–23414 1480 - Issue: *Riba* is not permissible in sales and *salam* except in the case of six things only: dates, wheat, barley, salt, gold, and silver—and it applies to all things in the context of loans. It is impermissible to lend anything so that less or more is returned to you, nor anything of another type whatsoever. Rather, only the same as what you lent in kind and quantity—as we detailed in the “Book of Loans” within this compilation of ours, rendering its repetition unnecessary—and this is a definitive consensus held with certainty.

L23415 The distinction between sale and salam on one hand, and a loan on the other, is that sale and salam can be conducted by exchanging one commodity type for another type or within the same commodity type, whereas a loan must necessarily only occur within the same commodity type without exception. And with Allah, the Exalted, lies success.

L23416 And similarly, what we have mentioned concerning the occurrence of riba in the six mentioned types within the context of sale and salam is a definitive consensus.

L23417 Regarding types beyond those mentioned, there is disagreement as to whether ribā occurs in them.

L23418 Usury (ribā) is among the greatest of major sins. Allah, the Exalted, said: “Those who consume usury will not rise except as one rises whom the Devil has driven to madness through his touch. That is because they say, ’Indeed,

[44] **Qur’an references (L23409):** Qur’an 2:275 (Al-Baqarah).
[45] **Qur’an references (L23410):** Qur’an 6:119 (Al-An’am).

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

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

[مَسْأَلَة مَا يَجُوز فِيهِ الربا مِنْ الْبَيْع والسلم]

١٤٨٠ - مَسْأَلَةٌ: وَالرِّبَا لَا يَجُوزُ فِي الْبَيْعِ، وَالسَّلَمِ إلَّا فِي سِتَّةِ أَشْيَاءَ فَقَطْ: فِي التَّمْرِ، وَالْقَمْحِ، وَالشَّعِيرِ، وَالْمِلْحِ، وَالذَّهَبِ، وَالْفِضَّةِ - وَهُوَ فِي الْقَرْضِ فِي كُلِّ شَيْءٍ، فَلَا يَحِلُّ إقْرَاضُ شَيْءٍ لِيُرَدَّ إلَيْك أَقَلَّ وَلَا أَكْثَرَ، وَلَا مِنْ نَوْعٍ آخَرَ أَصْلًا، لَكِنْ مِثْلُ مَا أَقْرَضْت فِي نَوْعِهِ وَمِقْدَارِهِ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ الْقَرْضِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ وَهَذَا إجْمَاعٌ مَقْطُوعٌ بِهِ.

وَالْفَرْقُ بَيْنَ الْبَيْعِ وَالسَّلَمِ، وَبَيْنَ الْقَرْضِ، هُوَ أَنَّ الْبَيْعَ وَالسَّلَمَ: يَكُونَانِ فِي نَوْعٍ بِنَوْعٍ آخَرَ، وَفِي نَوْعٍ بِنَوْعِهِ، وَلَا يَكُونُ الْقَرْضُ إلَّا فِي نَوْعٍ بِنَوْعِهِ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَكَذَلِكَ الَّذِي ذَكَرْنَا مِنْ وُقُوعِ الرِّبَا فِي الْأَنْوَاعِ السِّتَّةِ الْمَذْكُورَةِ فِي الْبَيْعِ وَالسَّلَمِ، فَهُوَ إجْمَاعٌ مَقْطُوعٌ بِهِ.

وَمَا عَدَا الْأَنْوَاعَ الْمَذْكُورَةَ فَمُخْتَلَفٌ فِيهِ، أَيَقَعُ فِيهِ الرِّبَا أَمْ لَا؟

وَالرِّبَا مِنْ أَكْبَرِ الْكَبَائِرِ قَالَ تَعَالَى {الَّذِينَ يَأْكُلُونَ الرِّبَا لا يَقُومُونَ إِلا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] .

trade is just like usury,' but Allah has permitted trade and forbidden usury." [Surah Al-Baqarah 2:275][46]

L23419 And He, the Exalted, said: "O you who have believed, fear Allah and abandon what remains of usury, if you are true believers" [Al-Baqarah: 278]. "But if you do not, then be informed of a declaration of war from Allah and His Messenger" [Al-Baqarah: 279].[47]

L23420 And through the chain of Muslim: I am Harun ibn Sa'id al-Ayli, I am Ibn Wahb. Sulayman ibn Bilal informed me from Thawr ibn Zayd from Abu al-Ghayth from Abu Hurayrah that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Avoid the seven heinous sins." They asked: "O Messenger of Allah, what are they?" He replied: "Associating partners with Allah, practicing sorcery, killing a soul Allah has forbidden except by just cause, devouring the wealth of the orphan, consuming usury, fleeing the battlefield, and slandering chaste, innocent, believing women."[48][49]

L23421 As narrated by Muslim: 'Uthman ibn Abi Shaybah narrated from Jarir (Ibn 'Abdul Hamid), from Al-Mughirah ibn Miqsam, from Ibrahim (Al-Nakha'i), from 'Alqamah ibn Qays, from Ibn Mas'ud, who said: "The Messenger of Allah—may the peace and blessings of Allah be upon him—cursed the consumer of usury and the one who authorizes it."'[50]

L23422–23423 Abu Muhammad said: Since Allah the Exalted has permitted trade and forbidden usury, it is obligatory to seek knowledge of it so that it may be avoided. He the Exalted said: "He has detailed for you what He has forbidden to you, except that to which you are driven by necessity" [Surah al-An'ām 6:119].[51]

وَقَالَ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِنْ كُنْتُمْ مُؤْمِنِينَ} [البقرة: ٢٧٨] {فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ} [البقرة: ٢٧٩] .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلَالٍ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ أَبِي الْغَيْثِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ قِيلَ: يَا رَسُولَ اللَّهِ، وَمَا هُنَّ؟ قَالَ: الشِّرْكُ بِاللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ مَالِ الْيَتِيمِ، وَأَكْلُ الرِّبَا، وَالتَّوَلِّي يَوْمَ الزَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ» .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ أَنَا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ أَنَا إبْرَاهِيمُ - هُوَ النَّخَعِيُّ - عَنْ عَلْقَمَةَ بْنِ قَيْسٍ عَنْ ابْنِ مَسْعُودٍ قَالَ «لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - آكِلَ الرِّبَا وَمُوَكِّلَهُ» .

قَالَ أَبُو مُحَمَّدٍ: فَإِذَا أَحَلَّ اللَّهُ تَعَالَى الْبَيْعَ وَحَرَّمَ الرِّبَا فَوَاجِبٌ طَلَبُ مَعْرِفَتِهِ لِيُجْتَنَبَ، وَقَالَ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

[46] **Qur'an references (L23418):** Qur'an 2:275 (Al-Baqarah).
[47] **Qur'an references (L23419):** Qur'an 2:278 (Al-Baqarah); Qur'an 2:279 (Al-Baqarah).
[48] **Hadith references (L23420):** Sahih Muslim 89.
[49] **Qur'an references (L23420):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra); Qur'an 25:68 (Al-Furqan).
[50] **Hadith references (L23421):** Sunan Abi Dawud 3333; Sahih Muslim 1598; Sunan an-Nasai 5105.
[51] **Qur'an references (L23423):** Qur'an 6:119 (Al-An'am).

فَصَحَّ أَنَّ مَا فَصَّلَ لَنَا بَيَانَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - مِنْ الرِّبَا، أَوْ مِنْ الْحَرَامِ، فَهُوَ رِبًا وَحَرَامٌ، وَمَا لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ فَهُوَ حَلَالٌ، لِأَنَّهُ لَوْ جَازَ أَنْ يَكُونَ فِي الشَّرِيعَةِ شَيْءٌ حَرَّمَهُ اللَّهُ تَعَالَى ثُمَّ لَمْ يُفَصِّلْهُ لَنَا، وَلَا بَيَّنَهُ رَسُولُهُ - عَلَيْهِ السَّلَامُ - لَكَانَ تَعَالَى كَاذِبًا فِي قَوْلِهِ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] وَهَذَا كُفْرٌ صَرِيحٌ مِمَّنْ قَالَ بِهِ، وَلَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَاصِيًا لِرَبِّهِ تَعَالَى إذْ أَمَرَهُ بِالْبَيَانِ فَلَمْ يُبَيِّنْ فَهَذَا كُفْرٌ مُتَيَقَّنٌ مِمَّنْ أَجَازَهُ.

L23424 Thus, it is established that whatever He has detailed for us through the exposition of His Messenger—peace and blessings of Allah be upon him—regarding usury or prohibited matters is indeed usury and forbidden. Whatever He has not detailed for us concerning its prohibition is permissible, for if it were permissible that there existed in the Sharia something forbidden by Allah the Exalted without Him detailing it to us, nor His Messenger—peace and blessings of Allah be upon him—clarifying it, then He would be false in His statement, the Exalted: "And He has detailed for you what He has forbidden to you" (6:119). This constitutes explicit disbelief from anyone who asserts it, and the Messenger of Allah—peace and blessings of Allah be upon him—would be disobedient to his Lord the Exalted when He commanded him to clarify, but he failed to do so. This is undeniable disbelief from anyone who permits it.[52]

وَمِمَّنْ قَالَ: لَا رِبَا إلَّا فِي الْأَصْنَافِ الْمَذْكُورَةِ: طَاوُسٌ، وَقَتَادَةُ، وَعُثْمَانُ الْبَتِّيُّ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L23425 Among those who held that riba applies only to the specified categories are Tāwus, Qatādah, ʿUthmān al-Battī, Abū Sulaymān, and all the adherents of our school.

وَاخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: إنَّ هَذِهِ الْأَصْنَافَ السِّتَّةَ إنَّمَا ذُكِرَتْ لِتَكُونَ دَلَالَةً عَلَى مَا فِيهِ الرِّبَا مِمَّا سِوَاهَا مِمَّا يُشْبِهُهَا فِي الْعِلَّةِ الَّتِي حَيْثُمَا وُجِدَتْ كَانَ مَا وُجِدَتْ فِيهِ رِبًا.

L23426 People have differed regarding this. A group holds that these six categories were mentioned solely to indicate what constitutes usury from analogous cases sharing the same effective cause, such that wherever the cause exists, that in which it is found is usury.

ثُمَّ اخْتَلَفُوا فِي تِلْكَ الْعِلَّةِ، وَكُلُّ طَائِفَةٍ مِنْهَا تُبْطِلُ عِلَّةَ الْآخَرِينَ أَوْ تَنْفِيهَا فَقَالَتْ طَائِفَةٌ: هِيَ الطَّعْمُ، وَاللَّوْنُ -: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ الْحِمَّصِ بِالْعَدَسِ اثْنَانِ بِوَاحِدٍ يَدًا بِيَدٍ؟ فَقَالَ ابْنُ شِهَابٍ: كُلُّ شَيْءٍ خَالَفَ صَاحِبَهُ بِاللَّوْنِ، وَالطَّعْمِ، فَلَا أَرَاهُ إلَّا شَبَهَ الطَّعَامِ - وَقَالَ ابْنُ وَهْبٍ: وَبَلَغَنِي عَنْ ابْنِ مَسْعُودٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ، مِثْلُهُ.

L23427 Then they differed regarding that legal cause, with each faction among them invalidating or negating the cause upheld by the others. A group said: It is taste and color—as narrated to us through the chain of Ibn Wahb from Yunus ibn Yazīd, who said: Ibn Shihāb was asked about exchanging chickpeas for lentils, two units for one unit, hand to hand. Ibn Shihāb replied: "Anything that differs from its counterpart in color and taste—I consider it part of the same category of food." Ibn Wahb added: "I have received reports from Ibn Masʿūd, Yaḥyā ibn Saʿīd al-Anṣārī, and Rabīʿah stating the same."

[52] **Qur'an references (L23424):** Qur'an 6:119 (Al-An'am).

قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِي هَذَا فَوَجَدْنَاهُ قَوْلًا بِلَا دَلِيلٍ فَسَقَطَ - وَقَدْ بَيَّنَ ابْنُ شِهَابٍ أَنَّهُ رَأْيٌ مِنْهُ وَالرَّأْيُ إذَا لَمْ يُسْنَدْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ خَطَأٌ بِلَا شَكٍّ.

L23428 Abu Muhammad said: We examined this and found it to be a claim devoid of textual proof, thus it is invalid. Ibn Shihab indeed clarified that it was his personal opinion, and any opinion not grounded in the Prophet—peace be upon him—is undeniably erroneous.

وَقَالَتْ طَائِفَةٌ: هِيَ وُجُوبُ الزَّكَاةِ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالتُّفَّاحَتَيْنِ بِالتُّفَّاحَةِ، وَالْخَوْخُ مِثْلُ ذَلِكَ.

L23429 A group held that the ruling entails the obligation of Zakāh, as narrated via Ibn Wahb from ʿAbd al-Jabbār ibn ʿUmar from Rabīʿah ibn Abī ʿAbd al-Raḥmān: he saw no issue in exchanging two apples for one apple, and peaches are treated the same way.

وَكُلُّ مَا لَمْ تَجُزْ فِيهِ الزَّكَاةُ، فَنَظَرْنَا فِي هَذَا فَوَجَدْنَاهُ أَيْضًا قَوْلًا بِلَا دَلِيلٍ، وَوَجَدْنَا الْمِلْحَ لَا زَكَاةَ فِيهِ، وَالرِّبَا يَقَعُ فِيهِ بِالنَّصِّ، فَبَطَلَ.

L23430–23431 As for all items on which zakah is impermissible, we examined this matter and found it to be an assertion lacking textual proof. We further established that salt bears no zakah obligation, yet riba applies to it by explicit textual ruling, thereby nullifying that exemption.

قَالَ عَلِيٌّ: وَمَا يَعْجَزُ مَنْ قَلَّدَ رَبِيعَةَ فِي هَذَا عَمَّا قَدَرَ عَلَيْهِ مَالِكٌ، وَالشَّافِعِيُّ، بِزِيَادَتِهِمْ فِي عِلَّتِهِمْ، كَمَا قَالَ الشَّافِعِيُّ: عِلَّةُ الرِّبَا الطَّعْمُ، وَالتَّثْمِينُ.

L23432 Ali said: How could someone who imitates Rabīʿah in this matter fail to attain what Mālik and al-Shāfiʿī achieved, given their extension of the legal cause—just as al-Shāfiʿī stated: “The legal cause of usury is edibility and measurability by weight”?

وَقَوْلُ مَالِكٍ: عِلَّةُ الرِّبَا الِادِّخَارُ فِيمَا يُؤْكَلُ، وَالتَّثْمِينُ.

L23433 The statement of Mālik: The effective cause of ribā is hoarding foodstuffs and valuation.

فَهَلْ هَذَا إلَّا كَقَوْلِ مَنْ قَلَّدَ رَبِيعَةَ: عِلَّةُ الرِّبَا بِمَا فِيهِ الزَّكَاةُ وَالْمِلْحِيَّةُ؟ وَهَلْ هِيَ إلَّا دَعْوَى كَدَعْوَى كِلَاهُمَا بِلَا بُرْهَانٍ؟

L23434 Is this not akin to the statement of one who imitates Rabīʿah: “The rationale for usury lies in its containing zakāt and milḥiyyah?” Is this not merely a claim like the claims of both—devoid of any proof?

وَقَالَتْ طَائِفَةٌ بِغَيْرِ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا عَبْدُ اللَّهِ بْنُ كَثِيرٍ عَنْ شُعْبَةَ سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ عَمَّنْ اشْتَرَى خَمْسَةَ عَشَرَ جَرِيبًا مِنْ أَرْضٍ بِعَشَرَةِ أَجْرِبَةٍ؟ فَقَالَ: لَا بَأْسَ بِهِ - وَكَرِهَهُ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ وَلَا نَدْرِي مَا عِلَّتُهُ فِي ذَلِكَ، وَلَعَلَّهَا الْجِنْسُ، فَلَمْ يَجُزْ التَّفَاضُلُ فِي جِنْسٍ وَاحِدٍ، كَائِنًا مَا كَانَ وَاَللَّهُ أَعْلَمُ، إلَّا أَنَّهَا دَعْوَى لَيْسَتْ غَيْرُهَا أَصَحَّ مِنْهَا، وَلَا هِيَ بِأَضْعَفَ مِنْ غَيْرِهَا.

L23435 A group held a differing opinion—as transmitted to us through ʿAbd al-Razzāq’s chain: I am ʿAbd Allāh ibn Kathīr, reporting from Shuʿbah, who said: “I asked al-Ḥakam ibn ʿUtaybah about one who purchases fifteen *jarībs* of land for ten *jarībs*.” He replied, “There is no harm in it.” Yet Ḥammād ibn Abī Sulaymān disapproved of it, though we do not know his rationale. It may have been due to the category, making inequality impermissible within a single category, whatever it may be—and Allāh knows best—except that this assertion is neither more sound nor weaker than others.

وَقَدْ رُوِيَ مِثْلُهُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَهُوَ أَنَّهُ جَعَلَ عِلَّةَ الرِّبَا تَقَارُبَ الْمَنْفَعَةِ فِي الْجِنْسِ الْوَاحِدِ، أَوْ الْجِنْسَيْنِ.

L23436 A similar narration is reported from Sa'īd ibn Jubayr, stating that he considered the effective cause of riba to be the similarity in benefit within the same type or two types.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا الرَّبِيعُ بْنُ صُبَيْحٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: إذَا اخْتَلَفَ النَّوْعَانِ فَلَا بَأْسَ إذَا كَانَ يَدًا بِيَدٍ، وَاحِدًا بِاثْنَيْنِ.

L23437 It has been narrated to us through the chain of Al-Ḥajjāj ibn al-Minhāl that I, Ar-Rabīʿ ibn Ṣubayḥ, narrate from Muḥammad ibn Sīrīn, who said: "If the two categories differ, there is no harm in a hand-to-hand exchange of one for two."

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ أَعَمُّ الْعِلَلِ فَيَلْزَمُ مَنْ قَالَ مِنْهُمْ: بِالْعِلَّةِ الْعَامَّةِ أَنْ يَقُولَ بِهَا - وَقَالَ الْمَالِكِيُّونَ: عِلَّةُ الرِّبَا هِيَ الاقْتِيَاتُ، وَالادِّخَارُ فِي الْجِنْسِ، فَمَا كَانَ يُدَّخَرُ مِمَّا يَكُونُ قُوتًا فِي الْأَكْلِ، فَالرِّبَا فِيهِ نَقْدًا وَنَسِيئَةً، وَمَا كَانَ لَا يُقْتَاتُ وَلَا يُدَّخَرُ، فَلَا يَدْخُلُ الرِّبَا فِيهِ يَدًا بِيَدٍ - وَإِنْ كَانَ جِنْسًا وَاحِدًا - لَكِنْ يَدْخُلُ فِيهِ الرِّبَا فِي النَّسِيئَةِ إذَا كَانَ جِنْسًا وَاحِدًا، وَهَذِهِ هِيَ عِلَّةُ الْمُتَقَدِّمِينَ مِنْهُمْ، ثُمَّ رَغِبَ عَنْهَا الْمُتَأَخِّرُونَ مِنْهُمْ؛ لِأَنَّهُمْ وَجَدُوهَا تُفْسِدُ عَلَيْهِمْ، لِأَنَّ الثُّومَ، أَوْ الْبَصَلَ، وَالْكُرَّاثَ، وَالْكَرَوْيَا، وَالْكُزْبَرَةَ، وَالْخَلَّ، وَالْفُلْفُلَ - نَعَمْ، وَالْمِلْحُ الَّذِي جَاءَ فِيهِ النَّصُّ لَيْسَ مِنْهُ شَيْءٌ يَكُونُ قُوتًا أَصْلًا، بَلْ بَعْضُهُ يَقْتُلُ إذَا أُكِلَ مِنْهُ نِصْفُ وَزْنِ مَا يُؤْكَلُ مِمَّا يَتَقَوَّتُ بِهِ، كَالْمِلْحِ، وَالْفُلْفُلِ، فَلَوْ أَنَّ إنْسَانًا أَكَلَ رِطْلَ فُلْفُلٍ فِي جِلْسَةٍ لَقَتَلَهُ بِلَا شَكٍّ، وَكَذَلِكَ الْمِلْحُ، وَالْخَلُّ الْحَاذِقُ، وَكَذَلِكَ الثُّومُ - وَوَجَدُوهَا تُفْسِدُ عَلَيْهِمْ أَيْضًا فِي اللَّبَنِ، وَالْبَيْضِ، فَإِنَّهُمَا لَا يُمْكِنُ ادِّخَارُهُمَا، وَالرِّبَا عِنْدَهُمْ يَدْخُلُ فِيهِمَا، وَوَجَدُوهَا أَيْضًا تُفْسِدُ عَلَيْهِمْ فِي الْكَمُّونِ، وَالشُّونِيزِ، وَالْحُلْبَةِ الرَّطْبَةِ، وَالْكُزْبَرَةِ، وَالْكَرَوْيَا، لَيْسَ شَيْءٌ مِنْ ذَلِكَ قُوتًا، وَالرِّبَا عِنْدَهُمْ فِي كُلِّ ذَلِكَ، فَلَمَّا رَأَوْا هَذِهِ الْعِلَّةَ كَذَلِكَ، وَهِيَ عِلَّةُ مَنْ قَلَّدُوهُ دِينَهُمْ اطَّرَحُوهَا، وَلَمْ تَكُنْ عَلَيْهِمْ مُؤْنَةٌ فِي اسْتِخْرَاجِ غَيْرِهَا بِآرَائِهِمْ لِتَسْتَقِيمَ لَهُمْ آرَاؤُهُمْ فِي الْفُتْيَا عَلَيْهَا؟ فَقَالَ بَعْضُهُمْ: إنَّمَا

L23438–23440 Abū Muḥammad said: This is the broadest legal rationale, thus whoever among them asserts a general legal rationale is obliged to apply it. The Mālikīs stated: The rationale for ribā is being a staple food and stored within the same genus. Therefore, whatever is stored as a staple food for consumption is subject to ribā in both immediate and deferred exchange. What is neither a staple nor stored does not entail ribā in hand-to-hand exchange—even if it is the same genus—but ribā applies in deferred exchange if the items are of the same genus. This was the rationale upheld by their early scholars, which their later scholars abandoned, for they found it invalidating their framework. Items such as garlic, onion, leek, caraway, coriander, vinegar, pepper (indeed, even salt, which is explicitly mentioned in textual rulings)—none of these are staple foods whatsoever. Some of these items, like salt and pepper, would be lethal if consumed in half the weight of what is consumed as staple food. If one were to eat a riṭl of pepper in a single sitting, it would undoubtedly kill them without doubt, as would be the case with salt, potent vinegar, and likewise. Garlic—they found that it caused spoilage in their milk and eggs, as these could not be stored, and riba according to their jurisprudence applied to both. They also observed spoilage in cumin, black seed, fresh fenugreek, coriander, and caraway—none being staple foods—with riba rulings encompassing all such items. When they recognized this effective cause, which was the legal rationale of those they emulated in matters of faith, they rejected it, facing no difficulty in deriving alternative rulings through their reasoning so that their legal opinions in issuing rulings on it would be consistent. Some argued: The Messenger of Allah—peace and blessings be upon him—specified the most superior sustenance (wheat) and the most inferior

sustenance (salt) to indicate that rulings for intermediate foodstuffs follow the same principle.

ذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْلَى الْقُوتِ، وَهُوَ الْبُرُّ، وَأَدْوَنَ الْقُوتِ، وَهُوَ الْمِلْحُ، لِيَدُلَّ عَلَى أَنَّ حُكْمَ مَا بَيْنَهُمَا كَحُكْمِهِمَا.

L23441 Abū Muḥammad said: This is a sheer lie upon the Prophet—peace and blessings of Allah be upon him—fabricated without effort. How could a Muslim's heart be at ease with uttering such claims upon Allah, the Exalted, and His Messenger—peace and blessings of Allah be upon him?

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَذِبٌ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُجَرَّدٌ بِلَا كُلْفَةٍ، وَمَا نَدْرِي كَيْفَ يَنْشَرِحُ صَدْرُ مُسْلِمٍ لِإِطْلَاقِ مِثْلِ هَذَا عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟

L23442 If this person had made a similar declaration regarding the keeper of his donkey without informing him personally, he would have been deemed a liar and discredited—how much more severe then is it concerning Allah Almighty and His Prophet, peace be upon him? O Allah, to You belongs all praise for Your tremendous blessing in deterring us from such things and their like.

وَلَوْ أَطْلَقَ هَذَا الْمُطْلِقُ مِثْلَهُ عَلَى سَائِسِ حِمَارِهِ بِغَيْرِ أَنْ يُخْبِرَهُ بِهِ عَنْ نَفْسِهِ لَكَانَ كَاذِبًا مُجَرَّحًا بِذَلِكَ، فَكَيْفَ عَلَى اللَّهِ تَعَالَى وَعَلَى نَبِيِّهِ - عَلَيْهِ السَّلَامُ -؟ اللَّهُمَّ لَك الْحَمْدُ عَلَى عَظِيمِ نِعْمَتِك فِي تَنْفِيرِنَا عَنْ مِثْلِ هَذَا وَشَبَهِهِ.

L23443 Then the rest of them were not satisfied with this legal cause and said: "Salt is not inferior to staple foods; rather, the need for it is more urgent than for garlic, fresh fenugreek, and black cumin." Thus, they sought another cause, akin to one who arbitrarily controls the threshing floor of his dates, taking what is deemed preferable and discarding what is not.

ثُمَّ لَمْ يَرْضَ سَائِرُهُمْ هَذِهِ الْعِلَّةَ وَقَالُوا: لَيْسَ الْمِلْحُ دُونَ الْأَقْوَاتِ، بَلْ الْحَاجَةُ إلَيْهِ أَمَسُّ مِنْهَا إلَى الثُّومِ، وَالْحُلْبَةِ الرَّطْبَةِ، وَالشُّونِيزِ، فَارْتَادُوا غَيْرَهَا، كَمَنْ يَتَحَكَّمُ فِي بَيْدَرِ تَمْرِهِ، وَيَأْخُذُ مَا اُسْتُحْسِنَ وَيَتْرُكُ مَا لَمْ يُسْتَحْسَنْ.

L23444 They said: The reason in usury varies. Among them are being staple foods and storability, as their earlier scholars stated by analogy to wheat and barley. Among them are sweet foods and storability, such as raisins, figs, and honey, by analogy to dates. Among them are being used as condiments and storability by analogy to salt. This reasoning was contrived for them by Muḥammad ibn ʿAbd Allāh ibn Ṣāliḥ al-Abharī. This reasoning invalidates their position, for turnips, eggplants, squash, cabbage, purslane, amaranth, chard, carrots, cauliflower, and horseradish are predominantly used by people as condiments.

فَقَالُوا: الْعِلَّةُ فِي الرِّبَا مُخْتَلِفَةٌ، فَمِنْهَا الِاقْتِيَاتُ، وَالِادِّخَارُ، كَمَا قَالَ أَسْلَافُهُمْ قِيَاسًا عَلَى الْبُرِّ وَالشَّعِيرِ - وَمِنْهَا الْحَلَاوَةُ، وَالِادِّخَارُ، كَالزَّبِيبِ وَالتِّينِ، وَالْعَسَلِ قِيَاسًا عَلَى التَّمْرِ - وَمِنْهَا التَّأَدُّمُ، وَالِادِّخَارُ قِيَاسًا عَلَى الْمِلْحِ، وَهَذَا تَعْلِيلٌ اسْتَصْنَعَهُ لَهُمْ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ صَالِحٍ الْأَبْهَرِيُّ، وَهَذَا تَعْلِيلٌ يُفْسِدُ عَلَيْهِمْ؛ لِأَنَّ السَّلْجَمَ وَالْبَاذِنْجَانَ، وَالْقَرْعَ، وَالْكُرُنْبَ، وَالرِّجْلَةَ، وَالْقِطْفَ، وَالسَّلْقَ، وَالْجَزَرَ، وَالْقُنَّبِيطَ، والبربز إدَامُ النَّاسِ فِي الْأَغْلَبِ.

L23445–23447 Much of that is stored and Riba does not occur in it according to them: such as turnips, carrots, and eggplants. Rather, all such items permit exchanging two units for one of the same kind in immediate hand-to-hand exchange. Some scholars discarded this legal cause as unsatisfactory for the reasons we

وَكَثِيرٌ مِنْ ذَلِكَ يُدَّخَرُ وَلَا يَقَعُ الرِّبَا فِيهِ عِنْدَهُمْ: كَاللُّفْتِ، وَالْجَزَرِ، وَالْبَاذِنْجَانِ، بَلْ كُلُّ ذَلِكَ يَجُوزُ مِنْهُ اثْنَانِ بِوَاحِدٍ يَدًا بِيَدٍ مِنْ جِنْسٍ وَاحِدٍ، فَاطَّرَحَ بَعْضُهُمْ هَذِهِ الْعِلَّةَ

mentioned. One of them then expanded upon it by stating: “This category includes sweetness and storing [of items] from that which is consumed as delicacies and serves as viable sustenance.” Others disapproved of this legal cause and said: “It holds no validity, for pepper and garlic...” As for caraway and cumin, none of them is consumed for enjoyment, nor is it suitable for sustenance, nor used as a condiment, nor is it sweet.

وَلَمْ تُعْجِبْهُ لِمَا ذَكَرْنَا فَزَادَ فِيهَا بِأَنْ قَالَ: وَمِنْهَا الْحَلَاوَةُ، وَالِادِّخَارُ مِمَّا يُتَفَكَّهُ بِهِ وَيَصْلُحُ لِلْقُوتِ - فَلَمْ يَرْضَ غَيْرُهُ مِنْهُم هَذِهِ الْعِلَّةَ وَقَالَ: لَيْسَتْ بِشَيْءٍ؛ لِأَنَّ الْفُلْفُلَ، وَالثُّومَ، وَالْكَرَوْيَا، وَالْكَمُّونَ، لَيْسَ شَيْءٌ مِنْهَا يُتَفَكَّهُ بِهِ وَلَا يَصْلُحُ لِلْقُوتِ، وَلَا يُتَأَدَّمُ بِهِ، وَلَا هُوَ حُلْوٌ.

L23448 Additionally, jujubes, dried plums, dried pears, and podded legumes are all consumed for enjoyment and are suitable for sustenance. According to their view, none of these are subject to *ribā*. This necessitated employing another legal rationale, so he stated: “The determining factors are being a staple food, being stored, and what enhances the suitability of nourishing food.” To validate his conjectured inclusion of cumin, caraway, onions, garlic, leeks, chili peppers, and vinegar among items subject to *ribā* through analogy with salt, he argued that food is made suitable by all these substances.

وَأَيْضًا: فَإِنَّ الْعُنَّابَ وَالْإِجَّاصَ الْمُزَبَّبَ، وَالْكُمَّثْرَى الْمُزَبَّبَ والمخيطاء كُلُّهَا يُتَفَكَّهُ بِهِ وَيَصْلُحُ لِلْقُوتِ، وَلَا يَدْخُلُ الرِّبَا فِي شَيْءٍ مِنْهُ عِنْدَهُمْ - فَاحْتَاجَ إِلَى اسْتِعْمَالِ عِلَّةٍ أُخْرَى، فَقَالَ: الْعِلَّةُ هِيَ الِاقْتِيَاتُ، وَالِادِّخَارُ، وَمَا يَصْلُحُ بِهِ الطَّعَامُ الْمُتَقَوَّتُ بِهِ لِيَصِحَّ لَهُ فِيمَا ظَنَّ إِدْخَالُ: الْكَمُّونِ، وَالْكَرَوْيَا، وَالْبَصَلِ، وَالثُّومِ، وَالْكُرَّاثِ، وَالْفُلْفُلِ، وَالْخَلِّ، فِيمَا يَقَعُ فِيهِ الرِّبَا قِيَاسًا عَلَى الْمِلْحِ؛ لِأَنَّ الطَّعَامَ يَصْلُحُ بِكُلِّ ذَلِكَ.

L23449 Abū Muḥammad said: These are the most corrupt reasons they mentioned—though all of them are invalid, with clear proof. The evidence for this is that improving food through the spices, vegetables, and vinegar we described bears no resemblance whatsoever to improving it with salt. This is because cooked food, if left entirely uneaten, cannot be consumed by anyone except one who is near death from hunger or fears it. As for enhancing food with the mentioned spices and vegetables, the food requires none of these except due to extravagance and indulgence.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ أَفْسَدُ الْعِلَلِ الَّتِي ذَكَرُوا، وَإِنْ كَانَتْ كُلُّهَا فَاسِدَةً، وَاضِحَةَ الْبُرْهَانِ، بُرْهَانُ ذَلِكَ -: أَنَّ إِصْلَاحَ الطَّعَامِ بِمَا ذَكَرْنَا مِنْ التَّوَابِلِ، وَالْخَضْرَاوَاتِ، وَالْخَلِّ، لَا يُشْبِهُ إِصْلَاحُهُ بِالْمِلْحِ أَصْلًا؛ لِأَنَّ الطَّعَامَ الْمَطْبُوخَ إِنْ لَمْ يُؤْكَلْ أَصْلًا، وَلَا يَقْدِرُ عَلَيْهِ أَحَدٌ، إِلَّا مَنْ قَارَبَ الْمَوْتَ مِنْ الْجُوعِ أَوْ خَافَهُ، وَإِمَّا إِصْلَاحُهُ بِالتَّابِلِ، وَالْخَضْرَاوَاتِ الْمَذْكُورَةِ فَمَا بِالطَّعَامِ إِلَى شَيْءٍ مِنْهُ حَاجَةٌ إِلَّا عَنْ بَذَخٍ وَأَشِرٍ.

L23450 Moreover, every being with sound sensory perception in the world inherently knows through immediate perception that improving food with caraway, cumin, pepper, coriander, and nigella seeds is equivalent to improving it with Chinese cinnamon, galangal, Ceylon cinnamon, spikenard, and saffron. There is no distinction—indeed, improving it with these [spices] renders it more flavorful, fragrant, and suitable than with those. Yet, in their view, riba does not apply to these [transactions]. Undoubtedly, the necessity (ḍarūrah) of improving food with water is more pressing and critical, yet

وَأَيْضًا: فَإِنَّ كُلَّ ذِي حِسٍّ سَلِيمٍ فِي الْعَالَمِ يَدْرِي بِضَرُورَةِ الْحِسِّ أَنَّ إِصْلَاحَ الطَّعَامِ بِالْكَرَوْيَا، وَالْكَمُّونِ، وَالْفُلْفُلِ، وَالْكُزْبَرِ، وَالشُّونِيزِ، كَإِصْلَاحِهِ بِالدَّارَصِينِيِّ، وَالْخُولَنْجَانِ، وَالْقِرْفَةِ، وَالسُّنْبُلِ، وَالزَّعْفَرَانِ، وَلَا فَرْقَ، بَلْ إِصْلَاحُهُ بِهَذِهِ أَطْيَبُ لَهُ وَأَعْبَقُ، وَأَصْلَحُ مِنْهُ بِتِلْكَ، وَالرِّبَا عِنْدَهُمْ لَا يَدْخُلُ فِي هَذِهِ، وَبِلَا شَكٍّ أَنَّ الضَّرُورَةَ فِي إِصْلَاحِ الطَّعَامِ

riba, according to them, is not incurred in water exchanged for water. We know of no legal cause they uphold beyond what we have elaborated.

بِالْمَاءِ أَشَدُّ وَأَمَسُّ، وَالرِّبَا عِنْدَهُمْ لَا يَدْخُلُ فِي الْمَاءِ بِالْمَاءِ - وَمَا نَعْلَمُ لَهُمْ عِلَّةً غَيْرَ مَا ذَكَرْنَا.

L23451 All these reasons were mentioned—some by ʿAbdullāh ibn Abī Zayd al-Qayrawānī, and the rest by Ibn al-Qaṣṣār and by ʿAbd al-Wahhāb ibn ʿAlī ibn Naṣr—in their respective works, both in scattered and compiled forms.

وَهَذِهِ الْعِلَلُ كُلُّهَا ذَكَرَ بَعْضَهَا عَبْدُ اللَّهِ بْنُ أَبِي زَيْدٍ الْقَيْرَوَانِيُّ، وَذَكَرَ سَائِرَهَا ابْنُ الْقَصَّارِ، وَعَبْدُ الْوَهَّابِ بْنُ عَلِيِّ بْنِ نَصْرٍ فِي كُتُبِهِمْ مُفَرَّقَةً وَمَجْمُوعَةً.

L23452 Abū Muḥammad said: All of these are invalid due to the negligence we mentioned and because they are fabricated and in use. It is said to them: What difference exists between your effective cause here and that of one who argues, “Rather, the effective cause of ribā (usury) is that which has an ear of grain by analogy to wheat and barley; that which has pits by analogy to dates; that which has a salty taste by analogy to salt; and that which is metallic by analogy to gold and silver”?

قَالَ أَبُو مُحَمَّد: وَكُلُّهَا فَاسِدٌ بِمَا ذَكَرْنَا مِنْ التَّخَاذُلِ، وَبِأَنَّهَا مَوْضُوعَةٌ مُسْتَعْمَلَةٌ - وَيُقَالُ لَهُمْ: مَا الْفَرْقُ بَيْنَ عِلَّتِكُمْ هَذِهِ وَبَيْنَ مَنْ قَالَ: بَلْ عِلَّةُ الرِّبَا مَا كَانَ ذَا سُنْبُلٍ قِيَاسًا عَلَى الْبُرِّ، وَالشَّعِيرِ، وَمَا كَانَ ذَا نَوًى قِيَاسًا عَلَى التَّمْرِ، وَمَا كَانَ طَعْمُهُ مِلْحِيًّا قِيَاسًا عَلَى الْمِلْحِ، وَمَا كَانَ مَعْدِنِيًّا قِيَاسًا عَلَى الذَّهَبِ، وَالْفِضَّةِ.

L23453–23454 If they say, “No one has ever said this,” we respond, “Nor did anyone before you ever endorse your legal justifications.”

فَإِنْ قَالُوا: لَمْ يَقُلْ بِهَذَا أَحَدٌ؟ قُلْنَا: وَلَا قَالَ بِعِلَلِكُمْ أَحَدٌ قَبْلَكُمْ.

L23455 If someone were to say: “This stance would also parallel your own. Moreover, how did you come to assign an effective cause to wheat, barley, dates, and salt, yet refrain from doing so for gold and silver—when all these are equally addressed by explicit texts? What justifies this arbitrary judgment, O these people? Is this not akin to mere trifling? This is no place to claim consensus, for the Ḥanafīs assigned weight as the effective cause for gold and silver, and measurement by volume for the four categories.”

فَإِنْ قَالَ قَائِلٌ: هَذِهِ أَيْضًا يَكُونُ مِثْلَكُمْ، وَأَيْضًا: فَمِنْ أَيْنَ خَرَجَ لَكُمْ أَنْ تُعَلِّلُوا الْبُرَّ، وَالشَّعِيرَ، وَالتَّمْرَ، وَالْمِلْحَ؟ وَلَا تُعَلِّلُونَ الذَّهَبَ، وَالْفِضَّةَ، وَكُلُّهَا جَاءَ النَّصُّ بِهِ سَوَاءً، فَمِنْ أَيْنَ هَذَا التَّحَكُّمُ يَا هَؤُلَاءِ؟ وَهَلْ هَذَا إلَّا شَبَهُ اللَّعِبِ؟ وَلَيْسَ هَذَا مَكَانَ دَعْوَى إجْمَاعٍ، فَقَدْ عَلَّلَ الْحَنَفِيُّونَ الذَّهَبَ وَالْفِضَّةَ بِالْوَزْنِ، وَعَلَّلُوا الْأَصْنَافَ الْأَرْبَعَةَ بِالْكَيْلِ.

L23456 Ali said: Others among them did not provide a rationale for any of that, and it is necessary to either provide a rationale for all of it and apply *qiyas* thereon, or to abandon providing a rationale for all of it and abandon *qiyas* thereon, limiting oneself solely to what the Text has stated. This is something from which they have no way out whatsoever.

قَالَ عَلِيٌّ: وَغَيْرُهُمْ لَمْ يُعَلِّلْ شَيْئًا مِنْ ذَلِكَ، وَلَا بُدَّ مِنْ تَعْلِيلِ الْجَمِيعِ وَالْقِيَاسِ عَلَيْهِ، أَوْ تَرْكِ تَعْلِيلِ الْجَمِيعِ وَتَرْكِ الْقِيَاسِ عَلَيْهِ، وَالِاقْتِصَارِ عَلَى مَا جَاءَ بِهِ النَّصُّ فَقَطْ، وَهَذَا مَا لَا مُخَلِّصَ لَهُمْ مِنْهُ أَصْلًا.

L23457 We have strived hard to find for their proponents any argument they could present to counteract some of these flaws—even if it were measured as mere clamor—but we found nothing to that effect in any of their writings.

وَقَدْ أَجْهَدْنَا أَنْفُسَنَا فِي أَنْ نَجِدَ لِنُظَّارِهِمْ شَيْئًا يُقَوُّونَ بِهِ شَيْئًا مِنْ هَذِهِ الْعِلَلِ يُمْكِنُ إيرَادُهُ - وَإِنْ كَالَ شَغَبًا - فَمَا قَدَرْنَا عَلَيْهِ فِي شَيْءٍ مِنْ كُتُبِهِمْ.

وَجَهَدْنَا أَنْ نَجِدَ لَهُمْ شَيْئًا نُورِدُهُ - وَإِنْ لَمْ يُورِدُوهُ - كَمَا نَفْعَلُ بِهِمْ وَبِكُلِّ مَنْ خَالَفَنَا، فَإِنَّهُمْ وَإِنْ كَانُوا لَمْ يَنْتَبِهُوا لَهُ فَلَا يَبْعُدُ أَنْ يَنْتَبِهَ لَهُ مُنْتَبِهٌ فَيَشْغَبَ بِهِ، فَمَا قَدَرْنَا عَلَى ذَلِكَ.

L23458 We strove to find something to cite against them—even if they did not cite it themselves—as we do with them and all who oppose us. For though they might not have noticed it, it remains possible that an observer might notice it and raise an objection with it. Therefore, we could not accomplish this.

وَأَيْضًا: فَإِنَّا لَمْ نَجِدْ لِمَالِكٍ فِي تَعْلِيلِهِ الْمَذْكُورِ الَّذِي عَلَيْهِ بَنَى أَقْوَالَهُ فِي الرِّبَا سَلَفًا أَلْبَتَّةَ، لَا مِنْ صَاحِبٍ، وَلَا مِنْ تَابِعٍ، وَلَا مِنْ أَحَدٍ قَبْلَهُ، وَلَهُمْ تَخَالِيطُ عَظِيمَةٌ فِي أَقْوَالِهِمْ فِي الرِّبَا، فَقَدْ تَقَصَّيْنَاهَا فِي غَيْرِ هَذَا الْمَكَانِ، وَلَمْ نَذْكُرْهَا هَهُنَا، لِأَنَّهُ كِتَابٌ مُخْتَصَرٌ، لَكِنْ يَكْفِي مِنْ إِيرَادِهَا: أَنْ يَنْظُرَ كُلُّ ذِي فَهْمٍ كَيْفَ تَكُونُ أَقْوَالٌ بُنِيَتْ عَلَى هَذِهِ الْقَوَاعِدِ وَفُرُوعٌ أُنْشِئَتْ مِنْ هَذِهِ الْأُصُولِ؟ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23459 Moreover, we have found no precedent whatsoever for Mālik's aforementioned reasoning—upon which he based his pronouncements concerning usury—from any companion, follower, or anyone before him. Their statements on usury contain grave inconsistencies, which we have exhaustively detailed elsewhere but omitted here due to the concise nature of this book. However, it suffices from citing them that every discerning person should consider: how can statements built upon such principles and branches established from these foundations exist? And success is from Allah, the Most High.

وَقَالَتْ طَائِفَةٌ مِنْهُمْ: أَبُو ثَوْرٍ، وَمُحَمَّدُ بْنُ الْمُنْذِرِ، وَالنَّيْسَابُورِيِّ، وَهُوَ قَوْلُ الشَّافِعِيِّ فِي أَوَّلِ قَوْلَيْهِ -: عِلَّةُ الرِّبَا هِيَ الْأَكْلُ، وَالشُّرْبُ، وَالْكَيْلُ، وَالْوَزْنُ، وَالتَّثْمِينُ - فَمَا كَانَ مِمَّا يُؤْكَلُ أَوْ يُشْرَبُ، أَوْ يُكَالُ أَوْ يُوزَنُ، لَمْ يَجُزْ مِنْهُ مِنْ جِنْسٍ وَاحِدٍ وَاحِدٌ بِاثْنَيْنِ، لَا يَدًا بِيَدٍ وَلَا نَسِيئَةً، وَكَذَلِكَ الذَّهَبُ وَالْفِضَّةُ، وَمَا كَانَ يُكَالُ أَوْ يُوزَنُ مِمَّا لَا يُؤْكَلُ وَلَا يُشْرَبُ، أَوْ كَانَ يُؤْكَلُ وَلَا يُشْرَبُ، أَوْ كَانَ يُؤْكَلُ أَوْ يُشْرَبُ مِمَّا لَا يُكَالُ وَلَا يُوزَنُ، فَلَا رِبَا فِيهِ يَدًا بِيَدٍ، وَالتَّفَاضُلُ فِيهِ جَائِزٌ، فَأَجَازُوا الْأُتْرُجَّ فِي الْأُتْرُجِّ مُتَفَاضِلًا نَسِيئَةً.

L23460 A group among them—Abu Thawr, Muhammad ibn al-Mundhir, and al-Naysaburi, which is al-Shafi'i's first opinion—held that the effective cause of riba is edibles, potables, measurement by volume, weight, or counting. Thus, anything that is edible, potable, measured by volume, or weighed cannot be exchanged as one [unit] for two [units] of the same kind, whether hand-to-hand or deferred. This applies similarly to gold and silver. As for items measured by volume or weighed that are neither edible nor potable, or edible but not potable, or edible or potable but not measured by volume or weighed, there is no riba in their hand-to-hand exchange, and disparity in quantity is permissible. Hence, they permitted deferred exchange of citrons for citrons with a disparity in quantity.

وَكَذَلِكَ كُلُّ مَا لَا يُوزَنُ وَلَا يُكَالُ مِمَّا يُؤْكَلُ أَوْ يُشْرَبُ، وَكُلُّ مَا يُكَالُ أَوْ يُوزَنُ مِمَّا لَا يُؤْكَلُ وَلَا يُشْرَبُ، وَلَا هُوَ ذَهَبٌ وَلَا فِضَّةٌ - وَهَذَا الْقَوْلُ صَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، ذَكَرَهُ مَالِكٌ عَنْ أَبِي الزِّنَادِ عَنْهُ فِي مُوَطَّئِهِ، وَلَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَ سَعِيدٍ، وَلَا عَنْ غَيْرِهِ مِنْ أَهْلِ عَصْرِهِ.

L23461–23462 Similarly, everything that is neither weighed nor measured by volume among what is eaten or drunk, and everything that is measured by volume or weighed among what is neither eaten nor drunk, nor is it gold or silver—this opinion is authentically reported from Sa'īd ibn al-Musayyab, as narrated by Mālik from Abū al-Zinād from him in his *Muwaṭṭa'*. We do not know of this opinion being reported from anyone before Sa'īd or from anyone else among the people of his time.

L23463 Proponents of this opinion claim that there is scholarly consensus on it.

وَحُجَّةُ أَهْلِ هَذَا الْقَوْلِ أَنَّهُمْ ادَّعَوْا الْإِجْمَاعَ عَلَيْهِ، قَالُوا: وَمَا عَدَاهُ فَمُخْتَلَفٌ فِيهِ - وَلَا دَلِيلَ عَلَى وُجُوبِ الرِّبَا فِيمَا عَدَا مَا ذَكَرْنَا.

They stated: "Anything beyond this is disputed, and there is no evidence for the obligation of *ribā* in matters beyond what we have mentioned."

قَالَ أَبُو مُحَمَّدٍ: وَدَعْوَاهُمْ هَهُنَا بَاطِلٌ؛ لِأَنَّ مَنْ ادَّعَى الْإِجْمَاعَ عَلَى أَهْلِ الْإِسْلَامِ - وَفِيهِمْ الْجِنُّ، وَالْإِنْسُ - فِي مَسْأَلَةٍ لَمْ يُرْوَ فِيهَا قَوْلٌ عَنْ ثَمَانِيَةٍ مِنْ الصَّحَابَةِ أَصْلًا أَكْثَرُهَا بَاطِلٌ لَا يَصِحُّ، وَلَا عَنْ ثَلَاثَةَ عَشَرَ مِنْ التَّابِعِينَ أَصْلًا، عَلَى اخْتِلَافٍ شَدِيدٍ بَيْنَهُمْ، فَقَدْ ادَّعَى الْبَاطِلَ، فَكَيْفَ وَالْخِلَافُ فِي هَذَا أَشْهَرُ مِنْ الشَّمْسِ؟ لِأَنَّ مَالِكًا وَمَنْ وَافَقَهُ لَا يَرَوْنَ الرِّبَا فِي الْمَاءِ، وَلَا فِي كُلِّ مَا يُكَالُ أَوْ يُوزَنُ مِمَّا يُؤْكَلُ وَيُشْرَبُ، إذَا لَمْ يَكُنْ مُقْتَاتًا مُدَّخَرًا.

L23464 Abu Muhammad said: Their claim here is invalid, for whoever asserts consensus among all Muslims—including jinn and humankind—regarding an issue for which no opinion has been transmitted from even eight Companions at all—since most such claims are invalid and unsound—nor from thirteen Successors at all, amidst intense disagreement among them, has indeed made a false assertion. How could this be, when disagreement on this matter is more evident than the sun? For Mālik and those who concur with him do not recognize ribā in water, nor in anything measured by volume or weight from what is eaten or drunk, provided it is not a staple food stored for preservation.

فَلَا يَرَوْنَ الرِّبَا فِي: التُّفَّاحِ، وَلَا فِي الْعُنَّابِ، وَلَا فِي حَبِّ الْقَنْبِ، وَلَا فِي زَرِيعَةِ الْكَتَّانِ، وَلَا فِي الْكُرُنْبِ، وَلَا فِي غَيْرِ ذَلِكَ، وَكُلُّهُ يُوزَنُ أَوْ يُكَالُ وَيُؤْكَلُ - فَبَطَلَ هَذَا الْإِجْمَاعُ الْمَكْذُوبُ.

L23465 They do not consider usury to apply to apples, jujubes, hemp seeds, flax plants, cabbage, or anything else—all of which are weighed or measured and eaten—thus invalidating this false consensus.

وَمَا وَجَدْنَا لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا، وَلَا قَدَرْنَا عَلَى أَنْ نَأْتِيَ لَهُمْ بِغَيْرِهَا، فَبَطَلَ هَذَا الْقَوْلُ لِتَعَرِّيهِ مِنْ الْبُرْهَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23466 We did not find for them any proof whatsoever besides this at all, nor were we able to bring forth anything else for them. Thus, this statement is invalid due to its lack of demonstrative proof—and with Allah the Exalted lies all success.

وَقَالَتْ طَائِفَةٌ: عِلَّةُ الرِّبَا إنَّمَا هِيَ الطَّعْمُ فِي الْجِنْسِ أَوْ الْجِنْسَيْنِ، وَالتَّثْمِينُ فِي الْجِنْسِ أَوْ الْجِنْسَيْنِ، فَمَا كَانَ يُؤْكَلُ، وَيُشْرَبُ، فَلَا يَجُوزُ مُتَفَاضِلًا أَصْلًا وَلَا بِنَسِيئَةٍ أَصْلًا، وَإِنَّمَا يَجُوزُ فِيهِ التَّمَاثُلُ نَقْدًا فَقَطْ إذَا كَانَ فِي جِنْسٍ وَاحِدٍ، فَإِنْ كَانَ مِنْ جِنْسَيْنِ: جَازَ فِيهِ التَّمَاثُلُ وَالتَّفَاضُلُ نَقْدًا، وَلَمْ يَجُزْ فِيهِمَا النَّسِيئَةُ.

L23467 A group has stated: The rationale for ribā is edibility in the same kind or two kinds, and measurement by weight/volume in the same kind or two kinds. Therefore, anything that is eaten or drunk may not be exchanged with an excess at all—whether in immediate or deferred terms at all. Only equal exchange is permitted in it, restricted to immediate payment only when within a single kind. If it involves two kinds: equal and unequal immediate exchange is permissible in them, but deferred exchange is not permitted in both kinds.

L23468 And what is neither consumed as food nor drink, nor is it gold or silver -

equivalence and disparity, spot payment and deferred payment are permissible for such items, whether of one kind or two kinds. Thus it is permissible to exchange one ritl of iron for two ritls of iron on a deferred basis, and likewise for all things that are neither consumed as food nor drink, nor are they gold or silver.

وَمَا كَانَ لَا يُؤْكَلُ وَلَا يُشْرَبُ، وَلَا هُوَ ذَهَبٌ وَلَا فِضَّةٌ، فَالتَّمَاثُلُ وَالتَّفَاضُلُ، وَالنَّقْدُ وَالنَّسِيئَةُ: جَائِزٌ فِيهِ جِنْسًا كَانَ أَوْ جِنْسَيْنِ - فَأَجَازَ رِطْلُ حَدِيدٍ بِرِطْلَيْ حَدِيدٍ إِلَى أَجَلٍ، وَكَذَلِكَ فِي كُلِّ مَا لَا يُؤْكَلُ وَلَا يُشْرَبُ، وَلَا هُوَ ذَهَبٌ وَلَا فِضَّةٌ.

L23469–23470 It was prohibited to sell one *riṭl* of saqamūniyyā in exchange for two *riṭls* of saqamūniyyā, and likewise anything used as a remedy, because it is consumed in some manner. This is al-Shāfiʿī's other opinion, and upon this his followers rely, and it is this opinion they uphold.

وَمُنِعَ مِنْ بَيْعِ رِطْلٍ سَقَمُونْيَا بِرِطْلَيْ سَقَمُونْيَا، وَكَذَلِكَ كُلُّ مَا يُتَدَاوَى بِهِ؛ لِأَنَّهُ يُطْعَمُ عَلَى وَجْهٍ مَا - وَهُوَ قَوْلُ الشَّافِعِيِّ الْآخَرُ، وَعَلَيْهِ يَعْتَمِدُ أَصْحَابُهُ، وَإِيَّاهُ يَنْصُرُونَ.

L23471 The proponents of this view cited the authentic report from the Messenger of Allah—may the peace and blessings of Allah be upon him—: "Food for food, like for like," through the narration of Umar ibn Abdullah al-Adawi from the Messenger of Allah—may the peace and blessings of Allah be upon him.

وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» مِنْ طَرِيقِ عُمَرَ بْنِ عَبْدِ اللَّهِ الْعَدَوِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23472 Abu Muhammad said: Thus we have narrated it through the chain of Muslim: I am Harun ibn Ma'ruf, from Abdullah ibn Wahb, who informed me that Amr—meaning Ibn al-Harith—narrated that Abu al-Nadr reported to him that Busr ibn Sa'id narrated to him from Ma'mar ibn Abdullah al-Adawi, who said: "I heard the Messenger of Allah—peace be upon him—say: 'Food for food, equal for equal.'"

قَالَ أَبُو مُحَمَّدٍ: هَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا هَارُونُ بْنُ مَعْرُوفٍ أَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنِي عَمْرٌو - هُوَ ابْنُ الْحَارِثِ - أَنَّ أَبَا النَّضْرِ حَدَّثَهُ أَنَّ بُسْرَ بْنَ سَعِيدٍ حَدَّثَهُ عَنْ مَعْمَرِ بْنِ عَبْدِ اللَّهِ الْعَدَوِيِّ قَالَ " كُنْت أَسْمَعُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» .

L23473 Ali said: Some of their later scholars—who had no knowledge of Hadith nor any piety in him to restrain him from attributing to the Messenger of Allah (peace and blessings be upon him) what he did not say, nor what was transmitted from him, nor about what he had no knowledge—stated it without restraint through an unsupported chain, claiming: "The Messenger of Allah (peace and blessings be upon him) said: 'Food must not be sold for food except equal measure for equal measure.'" Abu Muhammad said: This is pure falsehood and intentional fabrication of Hadith—unless it be an error by an ignorant person. It has never been transmitted in this form, nor is it ever found through any authentic chain of narration.

قَالَ عَلِيٌّ: وَحَرَّفَهُ بَعْضُ مُتَأَخِّرِيهِمْ مِمَّنْ لَا عِلْمَ لَهُ بِالْحَدِيثِ وَلَا وَرَعَ لَهُ يَحْجِزُهُ عَنْ أَنْ يَتَكَلَّمَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا لَمْ يَقُلْهُ، وَلَا جَاءَ عَنْهُ وَبِمَا لَا عِلْمَ لَهُ بِهِ، فَأَطْلَقَهُ إطْلَاقًا بِلَا إسْنَادٍ فَقَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُبَاعُ الطَّعَامُ بِالطَّعَامِ إلَّا مِثْلًا بِمِثْلٍ» . قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَذِبٌ بَحْتٌ، وَتَعَمُّدٌ لِوَضْعِ الْحَدِيثِ، إنْ لَمْ يَكُنْ خَطَأً مِنْ جَاهِلٍ، وَمَا جَاءَ هَكَذَا قَطُّ، وَلَا يُوجَدُ أَبَدًا مِنْ طَرِيقٍ غَيْرِ مَوْضُوعَةٍ.

L23474 Abu Muhammad said: There is no proof for them in the mentioned narration, for it merely states “food for food, like for like,” and it does not contain within it the prohibition of it, a like for more, nor does it permit it—it is silent on the matter. Thus, it must be sought from other than this narration.

قَالَ أَبُو مُحَمَّد: وَلَا حُجَّةَ لَهُمْ فِي الْخَبَرِ الْمَذْكُورِ، لِأَنَّهُ إِنَّمَا فِيهِ " الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ، وَلَيْسَ فِيهِ الْمَنْعُ عَنْهُ مِثْلًا بِأَكْثَرَ، وَلَا إِبَاحَتُهُ، إِنَّمَا هُوَ مَسْكُوتٌ عَنْهُ، فَوَجَبَ طَلَبُهُ مِنْ غَيْرِ هَذَا الْخَبَرِ ".

L23475 Moreover, the word “food” (al-ṭaʿām) in the Arabic language applies exclusively to wheat alone, as has been narrated to us through the chain of Abū Saʿīd al-Khudrī—who is an authority in language—who said: “During the time of the Messenger of Allah—peace and blessings be upon him—we would give the Fitr charity as a ṣāʿ of food, or a ṣāʿ of barley, or a ṣāʿ of dates, or a ṣāʿ of dried curd. Thus, the name ’food’ did not apply except to wheat alone.”

وَأَيْضًا - فَإِنَّ لَفْظَةَ " الطَّعَامِ " لَا تُطْلَقُ فِي لُغَةِ الْعَرَبِ إِلَّا عَلَى الْبُرِّ وَحْدَهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ وَهُوَ حُجَّةٌ فِي اللُّغَةِ «كُنَّا نُخْرِجُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ الْفِطْرِ صَاعًا مِنْ طَعَامٍ، أَوْ صَاعًا مِنْ شَعِيرٍ، أَوْ صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ أَقِطٍ - فَلَمْ يَقَعْ اسْمُ الطَّعَامِ إِلَّا عَلَى الْبُرِّ وَحْدَهُ» .

L23476–23478 Furthermore, if the statement of the Messenger of Allah—peace be upon him—“Food in exchange for food, like for like” entails... According to your stance that prohibits selling food for food in excess of like for like, you must necessarily regard his restriction—peace be upon him—to the six categories as preventing *riba* in what lies beyond them; otherwise, you have contradicted yourselves.

وَأَيْضًا - فَإِذَا كَانَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» مُوجِبًا عِنْدَكُمْ لِلْمَنْعِ مِنْ بَيْعِ الطَّعَامِ بِالطَّعَامِ أَكْثَرَ مِنْ مِثْلٍ بِمِثْلٍ، فَاجْعَلُوا - وَلَا بُدَّ - اقْتِصَارَهُ - عَلَيْهِ السَّلَامُ - عَلَى ذِكْرِ الْأَصْنَافِ السِّتَّةِ مَانِعًا مِنْ وُقُوعِ الرِّبَا فِيمَا عَدَاهَا، وَإِلَّا فَقَدْ تَنَاقَضْتُمْ.

L23479 If they say: What is the benefit in the Messenger of Allah’s statement—peace and blessings be upon him—“Food for food, like for like”? We reply: The supreme benefit lies in extending the term ’food’ to all edibles, for this refutes the position of the Mālikīs who prohibit exchanging one apple for another unless it is conclusively known which is larger, nor leafy greens for leafy greens unless it is definitively ascertained which is greater in quantity. If the term ’food’ is confined to wheat alone, this permits selling superior wheat for inferior wheat, or superior and inferior wheat for average wheat—provided they are equal in measure.

فَإِنْ قَالُوا: فَمَا الْفَائِدَةُ فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» ؟ قُلْنَا: أَعْظَمُ الْفَائِدَةِ إِنْ كُنْتُمْ تَتَعَدُّونَ بِاسْمِ الطَّعَامِ إِلَى كُلِّ مَا يُؤْكَلُ، فَإِنَّ فِيهِ إِبْطَالَ قَوْلِ الْمَالِكِيِّينَ: لَا يَجُوزُ تُفَّاحَةٌ بِتُفَّاحَةٍ إِلَّا حِينَ يُوقَنُ أَيُّهُمَا أَكْبَرُ، وَلَا الْخُضَرُ بِالْخُضَرِ إِلَّا حِينَ يُوقَنُ أَيُّهَا أَكْثَرُ، وَإِنْ كَانَ لَا يَتَعَدَّى بِلَفْظَةِ الطَّعَامِ الْبُرُّ، فَفِيهِ إِبَاحَةُ بَيْعِ بُرٍّ فَاضِلٍ بِأَدْنَى، وَفَاضِلٍ وَأَدْنَى بِمُتَوَسِّطٍ إِذَا تَمَاثَلَتْ فِي الْكَيْلِ -.

L23480 Moreover, neither an Arab nor an Arabized non-Arab applies the term “food” to saqamūniyā, neither with absolute usage nor with a construct state.

وَأَيْضًا: فَلَا يُطْلِقُ عَرَبِيٌّ وَلَا مُسْتَعْرِبٌ عَلَى السَّقَمُونْيَا اسْمَ طَعَامٍ لَا بِإِطْلَاقٍ وَلَا بِإِضَافَةٍ.

L23481 If they say: “But these are consumed in medicines,” we respond: Sandalwood

is consumed in medicines, as are Armenian bole, red clay, ṭifl clay (a type of clay), palm fiber, pearls, and the stone of the Jews. By this logic, they would impose usury on all such things—though they do not actually do this. Indeed, some people consume their fingernails, beard hair, or parchment as a pretextual means, thereby applying usury to them in food transactions, for these two are likewise consumed.

فَإِنْ قَالُوا: قَدْ تُؤْكَلُ فِي الْأَدْوِيَةِ؟ قُلْنَا: وَالصَّنْدَلُ قَدْ يُؤْكَلُ فِي الْأَدْوِيَةِ، وَالطِّينُ الْأَرْمِينِيُّ، وَالْأَحْمَرُ، وَالطَّفْلُ كَذَلِكَ، وَالسَّبَدُ، وَاللُّؤْلُؤُ، وَحَجَرُ الْيَهُودِ كَذَلِكَ، فَأَوْقَعُوا الرِّبَا فِي كُلِّ ذَلِكَ - وَهُمْ لَا يَفْعَلُونَ هَذَا، نَعَمْ، وَفِي النَّاسِ مَنْ يَأْكُلُ أَظْفَارَهُ، وَشَعْرَ لِحْيَتِهِ، وَالرَّقَّ، أَكْلًا ذَرِيعًا، فَأَوْقَعُوهَا فِي الطَّعَامِ، وَأَدْخَلُوا الرِّبَا فِيهَا، لِأَنَّهُمَا قَدْ يُؤْكَلَانِ أَيْضًا.

L23482 They also invoked as proof the report related by Aḥmad ibn Muḥammad al-Ṭalamankī, from Ibn Mufarrij, from Muḥammad ibn Ayyūb al-Raqqī, from Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār, from Yūsuf ibn Mūsā, from Muḥammad ibn Fuḍayl, from Muḥammad ibn Isḥāq, from Yazīd ibn ʿAbd Allāh ibn Qusayṭ, from ʿAṭāʾ ibn Yasār and Abū Salama ibn ʿAbd al-Raḥmān—both of whom reported from Abū Saʿīd al-Khudrī, who said: "The Messenger of Allah—peace and blessings be upon him—distributed varying portions of food. We resold them among ourselves at a profit, but the Messenger of Allah—peace and blessings be upon him—forbade us from taking them except as equal measure for equal measure."

وَاحْتَجُّوا أَيْضًا بِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ أَنَا ابْنُ مُفَرِّجٍ أَنَا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيُّ أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ أَنَا يُوسُفُ بْنُ مُوسَى أَنَا مُحَمَّدُ بْنُ فُضَيْلٍ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ عَنْ عَطَاءِ بْنِ يَسَارٍ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، كِلَاهُمَا عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «قَسَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا مُخْتَلِفًا فَتَبَايَعْنَاهُ بَيْنَنَا بِزِيَادَةٍ، فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَأْخُذَهُ إِلَّا كَيْلًا بِكَيْلٍ» .

L23483 And according to what we have narrated via the chain of Ahmad ibn Shu'ayb: Ibrāhīm ibn al-Ḥasan informed me from Ḥajjāj—who is Ibn Muḥammad—who said: Ibn Jurayj said: Abū al-Zubayr informed me that he heard Jābir ibn 'Abdillāh say: The Messenger of Allah—peace and blessings be upon him—said, "Do not sell an unspecified heap of food for another unspecified heap of food, nor an unspecified heap of food for a measured quantity of food that is specified [in advance]."

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي إِبْرَاهِيمُ بْنُ الْحَسَنِ أَنَا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - قَالَ: قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُبَاعُ الصُّبْرَةُ مِنْ الطَّعَامِ بِالصُّبْرَةِ مِنْ الطَّعَامِ، وَلَا الصُّبْرَةُ مِنْ الطَّعَامِ بِالْكَيْلِ مِنْ الطَّعَامِ الْمُسَمَّى» .

L23484–23485 These are two authentic hadiths; however, they offer no proof for them in these two cases, because the term "food" - as we explained - does not apply in absolute usage among the Arabs except to wheat specifically, as we mentioned earlier from Abu Sa'id al-Khudri.

فَهَذَانِ حَدِيثَانِ صَحِيحَانِ إِلَّا أَنَّهُمَا لَا حُجَّةَ لَهُمْ فِيهِمَا، لِأَنَّ اسْمَ " الطَّعَامِ " لَا يَقَعُ كَمَا قُلْنَا عِنْدَ الْعَرَبِ مُطْلَقًا إِلَّا عَلَى الْبُرِّ فَقَطْ، كَمَا ذَكَرْنَا عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ آنِفًا.

L23486 If it is said: Indeed, Allah Almighty has stated, *"The food of those who were given the Scripture is lawful for you, and your food is lawful for them"* [Al-

فَإِنْ قِيلَ: فَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ {وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ} [المائدة: ٥] فَأَرَادَ تَعَالَى ذَبَائِحَنَا وَذَبَائِحَهُمْ.

Ma'idah: 5], thus the Exalted means our ritually slaughtered animals and theirs.[53]

L23487 The Messenger of Allah (peace be upon him) said: "There is no prayer in the presence of food."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا صَلَاةَ بِحَضْرَةِ طَعَامٍ» ؟

L23488 We said: We do not deny that the term "food" may apply to other than wheat through annexation or textual evidence, for this argument opposes the Shāfiʿīs rather than supports them. This is because, in one of their two positions, they unanimously agree that the slaughtered animals of the People of the Book and our slaughtered animals are permissible to exchange some of one for some of the other with differing values. In their second position, they hold that it is impermissible to sell any part of them for another at all until it has fully dried.

قُلْنَا: لَا نَمْنَعُ مِنْ وُقُوعِ اسْمِ " الطَّعَامِ " عَلَى غَيْرِ الْبُرِّ بِإِضَافَةٍ أَوْ بِدَلِيلٍ مِنْ النَّصِّ عَلَى أَنَّ هَذَا الِاحْتِجَاجَ هُوَ عَلَى الشَّافِعِيِّينَ لَا لَهُمْ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَحَدِ قَوْلَيْهِمْ: إنَّ ذَبَائِحَ أَهْلِ الْكِتَابِ وَذَبَائِحَنَا جَائِزٌ بَعْضُهَا بِبَعْضٍ مُتَفَاضِلًا، وَفِي قَوْلِهِمْ الثَّانِي: أَنَّهُ لَا يَجُوزُ بَيْعُ شَيْءٍ مِنْهَا بِشَيْءٍ أَصْلًا حَتَّى يَيْبَسَ.

L23489 And these two opinions contradict their argument in their application of the term "food" to meats and other things.

وَهَذَانِ الْقَوْلَانِ مُخَالِفَانِ لِاحْتِجَاجِهِمْ بِإِطْلَاقِ اسْمِ الطَّعَامِ عَلَى اللُّحُومِ وَغَيْرِهَا.

L23490 Abu Muhammad said: These two reports contradict the statements of Malik and Abu Hanifah as a whole. If they interpret them to mean that "food" applies to everything edible, these reports nullify their opinions on usury.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ الْخَبَرَانِ مُخَالِفَانِ لِقَوْلِ مَالِكٍ، وَأَبِي حَنِيفَةَ، جُمْلَةً إنْ حَمَلَاهُمَا عَلَى أَنَّ " الطَّعَامَ " وَاقِعٌ عَلَى كُلِّ مَا يُؤْكَلُ مُبْطِلَانِ لِقَوْلِهِمَا فِي الرِّبَا.

L23491 And all divine success comes from Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23492 As for the ḥadīth of Abū Saʿīd, it is as we have stated. Their argument using it is also invalidated because it was narrated from Ibn Isḥāq by someone more precise and retentive than Ibn Fuḍayl—Qutaybah—as it was narrated to us through the chain of Ibn Abī Shaybah: "I am Ibn Numayr (he is ʿAbdullāh), I am Muḥammad ibn Isḥāq from Yazīd ibn ʿAbdullāh ibn Qusayṭ from ʿAṭāʾ ibn Yasār from Abū Saʿīd al-Khudrī, who said: 'The Messenger of Allāh—peace and blessings of Allāh be upon him—distributed among us food consisting of dates of varying quality, some being superior to others. We started vying to acquire more of it, so the Messenger of Allāh—peace and blessings of Allāh be upon him—forbade us except by equal measure for equal measure.'" Thus, their clinging to that argument is invalidated.

وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ فَكَمَا قُلْنَا، وَيَبْطُلُ أَيْضًا احْتِجَاجُهُمْ بِهِ بِأَنَّهُ قَدْ رَوَاهُ عَنْ ابْنِ إِسْحَاقَ مَنْ هُوَ أَضْبَطُ وَأَحْفَظُ مِنْ ابْنِ فُضَيْلٍ: قُتَيْبَةُ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ نُمَيْرٍ - هُوَ عَبْدُ اللَّهِ - أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ " قَالَ: «قَسَمَ فِينَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَعَامًا مِنْ التَّمْرِ مُخْتَلِفًا بَعْضُهُ أَفْضَلُ مِنْ بَعْضٍ، فَذَهَبْنَا نَتَزَايَدُ فِيهِ فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا كَيْلًا بِكَيْلٍ» فَبَطَلَ تَعَلُّقُهُمْ بِذَلِكَ.

[53] **Qur'an references (L23486):** Qur'an 5:5 (Al-Ma'idah).

وَأَيْضًا: فَإِنَّهُ لَا خِلَافَ بَيْنَنَا وَبَيْنَهُمْ فِي أَنَّ ذَلِكَ الطَّعَامَ الَّذِي فَرَّقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ إنَّمَا كَانَ صِنْفًا وَاحِدًا: إمَّا تَمْرًا، أَوْ بُرًّا، أَوْ غَيْرَ ذَلِكَ؛ لِأَنَّ فِيهِ نَهْيَهُمْ عَنْ أَنْ يَبِيعُوهُ بَعْضَهُ بِبَعْضٍ بِزِيَادَةٍ، هَذَا مَا لَا شَكَّ فِيهِ.

L23493 Additionally, there is no disagreement between us and them that the food which the Messenger of Allah—peace and blessings of Allah be upon him—distributed among them was indeed a single category: either dates, wheat, or other than that, because in this context he prohibited them from selling portions of it for other portions with an increase. This is beyond doubt.

فَإِذْ هُوَ كَذَلِكَ فَتَسْمِيَتُهُ بِالطَّعَامِ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُمْكِنُ لَهُمْ أَنْ يُنَازِعُونَا فِي مَعْنَاهُ، ثُمَّ يَحْمِلُوهُ عَلَى عُمُومِهِ، إنَّمَا هُوَ مِنْ كَلَامِ أَبِي سَعِيدٍ وَقَدْ أُخْبِرْنَا عَنْ أَبِي سَعِيدٍ أَنَّهُ لَا يُطْلِقُ اسْمَ " الطَّعَامِ " إلَّا عَلَى الْبُرِّ.

L23494–23496 Since this is the case, its designation as food—based on the statement of the Messenger of Allah (peace be upon him)—makes it possible for them to challenge us regarding. Its meaning is first established, then interpreted according to its general sense. This stems solely from Abu Sa'id's statement, as we have been informed that he applies the term "food" exclusively to wheat.

ثُمَّ لَا يُمَارُونَنَا فِي أَنَّ حُكْمَ ذَلِكَ الْخَبَرِ إنَّمَا هُوَ فِي ذَلِكَ الْمَقْسُومِ - هَذَا نَصُّ مُقْتَضَى لَفْظِ الْخَبَرِ يَقِينًا ضَرُورَةً وَلَا بُدَّ، فَلَا حُجَّةَ لَهُمْ فِيهِ فِي جَمِيعِ أَصْنَافِ مَا يُرِيدُونَ أَنْ يُسَمُّوهُ طَعَامًا، إلَّا بِقِيَاسٍ فَاسِدٍ يُنَازِعُونَ فِيهِ، وَهُمْ لَا يَدَّعُونَ مَعْرِفَةَ مَا كَانَ مِنْ صِنْفِ ذَلِكَ الطَّعَامِ، فَيُمْكِنُهُمْ عِنْدَنَا أَنْ يَحْتَجُّوا عَلَيْنَا بِهِ لَوْ صَحَّ لَهُمْ أَنَّهُ لَمْ يَكُنْ بُرًّا، وَلَا تَمْرًا، وَلَا شَعِيرًا، وَيَبْطُلُ تَعَلُّقُهُمْ بِهِ إنْ كَانَ بُرًّا، أَوْ تَمْرًا، أَوْ شَعِيرًا؛ لِأَنَّ هَذَا هُوَ قَوْلُنَا فِي هَذِهِ الْأَصْنَافِ الثَّلَاثَةِ، فَبَطَلَ تَعَلُّقُهُمْ بِخَبَرِ أَبِي سَعِيدٍ بِيَقِينٍ لَا إمْكَانَ فِي سِوَاهُ -.

L23497 Then they cannot contend with us that the ruling of that narration applies solely to that apportioned portion—this is the text necessitated by the wording of the narration with necessary and irrefutable certainty. Thus, they have no valid argument in this matter concerning all the categories they seek to label as food except through an invalid analogy they dispute. Moreover, they do not claim knowledge of what type of food that was. According to our position, they could only argue against us with it if it had been valid for them that it was neither wheat, dates, nor barley. Their reliance on it becomes void if it was wheat, dates, or barley, for this is our doctrine regarding these three categories. Therefore, their dependence on the narration of Abu Sa'id is invalidated with certainty allowing no possibility for anything else.

وَلِلَّهِ تَعَالَى الْحَمْدُ.

L23498 And to Allah, the Most High, belongs all praise.

وَاسْتَدْرَكْنَا فِي حَدِيثِ جَابِرٍ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ قَالَ: وَأَنَا بِهِ إبْرَاهِيمُ بْنُ الْحَسَنِ مَرَّةً أُخْرَى فَقَالَ: أَنَا حَجَّاجٌ قَالَ: قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الصُّبْرَةِ مِنْ التَّمْرِ لَا يُعْلَمُ مَكِيلَتُهَا بِالْكَيْلِ الْمُسَمَّى مِنْ التَّمْرِ» .

L23499 We supplemented in the narration of Jabir what we transmitted through the chain of Ahmad ibn Shu'ayb, who said—and in another narration, I [Ahmad] am accompanied by Ibrahim ibn al-Hasan—Hajjaj said: Ibn Jurayj narrated: Abu al-Zubayr informed me that he heard Jabir ibn 'Abdullah say, "The Messenger of Allah (peace and blessings be upon him) prohibited the sale of a heap of dates whose measure is unknown for a specified measure of dates."[54]

[54] **Hadith references (L23499):** Sahih Muslim 1530a; Mishkat al-Masabih 2816.

L23500 Aḥmad ibn Shuʿayb narrated that Ibrāhīm ibn al-Ḥasan recounted that Ḥadīth to them on another occasion, and he reported from him that it was the very same Ḥadīth.

فَقَدْ أَخْبَرَ أَحْمَدُ بْنُ شُعَيْبٍ: أَنَّ إِبْرَاهِيمَ بْنَ الْحَسَنِ حَدَّثَهُمْ بِذَلِكَ الْحَدِيثِ مَرَّةً أُخْرَى فَأَخْبَرَ عَنْهُ: أَنَّه هُوَ ذَلِكَ الْحَدِيثُ نَفْسُهُ.

L23501 It has been established that Ibrāhīm ibn al-Ḥasan narrated it once according to its meaning as he held it and another time verbatim as he heard it. Moreover, Ḥajjāj ibn Muḥammad did not mention therein that he heard it from Ibn Jurayj.

وَصَحَّ أَنَّ إِبْرَاهِيمَ بْنَ الْحَسَنِ حَدَّثَ بِهِ مَرَّةً عَلَى مَا هُوَ مَعْنَاهُ عِنْدَهُ، وَمَرَّةً عَلَى مَا سَمِعَهُ - وَأَيْضًا: فَإِنَّ حَجَّاجَ بْنَ مُحَمَّدٍ لَمْ يَذْكُرْ فِيهِ أَنَّهُ سَمِعَهُ مِنْ ابْنِ جُرَيْجٍ.

L23502 We have transmitted it as a sound, connected chain through Muslim ibn al-Hajjaj who said: I am Ahmad ibn Amr ibn al-Sarh, I am Ibn Wahb. Ibn Jurayj informed me that Abu al-Zubayr reported to him, having heard Jabir ibn Abdullah say: “The Messenger of Allah (peace and blessings be upon him) forbade selling a heap of dates whose measured quantity is unknown in exchange for a known specified measure of dates.”[1]

وَقَدْ رُوِّينَاهُ مُسْنَدًا صَحِيحًا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ قَالَ: أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي ابْنُ جُرَيْجٍ: أَنَّ أَبَا الزُّبَيْرِ أَخْبَرَه أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الصُّبْرَةِ مِنْ التَّمْرِ لَا يُعْلَمُ مَكِيلَتُهَا بِالْكَيْلِ الْمُسَمَّى مِنْ التَّمْرِ» .

L23503–23504 Muslim said: Ishaq ibn Ibrahim—that is, Ibn Rahawayh—also prohibited him: I, Rawh ibn Ubada, report from Ibn Jurayj, who reports from Abu al-Zubayr, that he heard Jabir ibn Abdullah say: “The Messenger of Allah—peace and blessings be upon him—prohibited...” then he mentioned a similar prohibition, except he omitted the phrase “by the specified measure” in the hadith’s conclusion. Thus, this is the continuously transmitted authentically transmitted (sahih) chain.

قَالَ مُسْلِمٌ: وَنَاهُ أَيْضًا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا رَوْحُ بْنُ عُبَادَةَ أَنَا ابْنُ جُرَيْجٍ أَنَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ مِثْلَهُ إِلَّا أَنَّهُ لَمْ يَقُلْ بِالْكَيْلِ الْمُسَمَّى» فِي آخِرِ الْحَدِيثِ، فَهَذَا هُوَ الْمُتَّصِلُ الصَّحِيحُ.

L23505 Through all this, it is confirmed that Ibrāhīm ibn al-Ḥasan either erred once and corrected another instance, or narrated it once according to his own interpretation and another time as he heard it - just as others transmitted it.

وَصَحَّ بِهَذَا كُلِّهِ أَنَّ إِبْرَاهِيمَ بْنَ الْحَسَنِ أَخْطَأَ فِيهِ مَرَّةً وَاسْتَدْرَكَ أُخْرَى، أَوْ حَدَّثَ بِهِ مَرَّةً عَلَى مَا مَعْنَاهُ عِنْدَهُ، وَمَرَّةً كَمَا سَمِعَهُ كَمَا رَوَاهُ غَيْرُهُ -

L23506 And with Allah, the Exalted, lies the granting of success. Thus, dependency on these two narrations is wholly invalid.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَبَطَلَ التَّعَلُّقُ بِهَذَيْنِ الْخَبَرَيْنِ جُمْلَةً.

L23507 If they deceive with what we have narrated through the chain of Ibn Wahb from Ibn Lahīʿah from Abū al-Zubayr from Jābir, who said: “During the time of the Messenger of Allah (peace be upon him), we would give a ṣāʿ of wheat

فَإِنْ مَوَّهُوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ «جَابِرٍ قَالَ: كُنَّا فِي زَمَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُعْطِي الصَّاعَ مِنْ حِنْطَةٍ بِسِتَّةِ

[1] **Hadith references (L23502):** Sahih Muslim 1530a; Mishkat al-Masabih 2816.

in exchange for six ṣāʿs of dates. As for other types of food, that is disliked except like for like." This is baseless, for it comes through Ibn Lahīʿah's chain - he is rejected.

أَصْوُعٍ مِنْ تَمْرٍ فَأَمَّا سِوَى ذَلِكَ مِنْ الطَّعَامِ فَيُكْرَهُ ذَلِكَ إِلَّا مِثْلٌ بِمِثْلٍ» فَهَذَا لَا شَيْءَ؛ لِأَنَّهُ مِنْ طَرِيقِ ابْنِ لَهِيعَةَ هُوَ سَاقِطٌ.

L23508 Moreover, if it were authentic, it would be a *mawqoof* narration stopped at Jabir and not one attributed to the Messenger of Allah, peace and blessings be upon him.

ثُمَّ لَوْ صَحَّ لَكَانَ مَوْقُوفًا عَلَى جَابِرٍ وَلَيْسَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23509 Moreover, it entirely contradicts the positions of the Mālikīs, Shāfiʿīs, and Ḥanafīs, for they do not prohibit differential exchange in dates when traded with items other than wheat, nor do they limit the permissibility of differential exchange to wheat traded specifically for dates, as indicated in this report.

ثُمَّ هُوَ مُخَالِفٌ لِقَوْلِ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، وَالْحَنَفِيِّينَ جُمْلَةً؛ لِأَنَّهُمْ لَا يَمْنَعُونَ مِنْ التَّفَاضُلِ فِي التَّمْرِ مَعَ غَيْرِ الْبُرِّ، وَلَا يَقْتَصِرُونَ فِي إبَاحَةِ التَّفَاضُلِ فِي الْبُرِّ بِالتَّمْرِ خَاصَّةً، كَمَا فِي هَذَا الْخَبَرِ.

L23510 This is all they could possibly cite as evidence, and we have thoroughly investigated it. They mentioned, regarding this matter, narrations from those below the rank of the Messenger of Allah—peace and blessings be upon him—that which has been narrated to us via the chain of Ibn Wahb from Yunus ibn Yazīd from Ibn Shihāb al-Zuhrī: It has reached us that Umar ibn al-Khaṭṭāb said: "There is no harm in engaging in immediate exchange when the types of food differ"—meaning dates for wheat and dates for raisins.

هَذَا كُلُّ مَا يُمْكِنُ أَنْ يَحْتَجُّوا بِهِ فَقَدْ تَقَصَّيْنَاهُ. وَذَكَرُوا فِي ذَلِكَ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ الزُّهْرِيِّ: بَلَغَنَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَا بَأْسَ أَنْ تَبَايَعُوا يَدًا بِيَدٍ مَا اخْتَلَفَتْ أَلْوَانُهُ مِنْ الطَّعَامِ - يُرِيدُ التَّمْرَ بِالْقَمْحِ وَالتَّمْرَ بِالزَّبِيبِ.

L23511 From the chain of Abd al-Razzaq: I, Ma'mar, narrate from al-Zuhri, from Salim ibn Abdullah, from his father, that he said: When their types of food differ, there is no harm in exchanging them hand-to-hand: wheat for dates, raisins for barley. But he disapproved of it on credit, and he disapproved of selling one type of food for another with delayed payment.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ أَنَّهُ قَالَ: مَا اخْتَلَفَتْ أَلْوَانُهُ مِنْ الطَّعَامِ، فَلَا بَأْسَ بِهِ يَدًا بِيَدٍ، الْبُرُّ بِالتَّمْرِ، وَالزَّبِيبُ بِالشَّعِيرِ، وَكَرِهَهُ نَسِيئَةً، وَكَانَ يَكْرَهُ الطَّعَامَ أَنْ يُبَاعَ شَيْءٌ مِنْهُ بِشَيْءٍ نَظْرَةً.

L23512 And through the chain of Al-Ḥajjāj ibn Al-Minhāl, from Ar-Rabīʿ ibn Ṣubayḥ, from ʿAṭāʾ ibn Abī Rabāḥ: He disliked purchasing fruit measured in exchange for a quantity of food on deferred payment.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا الرَّبِيعُ بْنُ صُبَيْحٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ كَانَ يَكْرَهُ أَنْ يَشْتَرِيَ شَيْئًا مِنْ الْفَاكِهَةِ مَا يُكَالُ بِشَيْءٍ مِنْ الطَّعَامِ نَسِيئَةً.

L23513 Abu Muhammad said: As for the statement of Umar, its chain is disconnected. Then, even if it were authentic, a conflicting opinion from Umar has been narrated, as we will mention when discussing Abu Hanifah's view - God, the Exalted, willing.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ عُمَرَ فَمُنْقَطِعٌ، ثُمَّ لَوْ صَحَّ فَقَدْ رُوِيَ عَنْ عُمَرَ خِلَافُهُ كَمَا نَذْكُرُ فِي ذِكْرِنَا قَوْلَ أَبِي حَنِيفَةَ - إنْ شَاءَ اللَّهُ تَعَالَى.

ثُمَّ لَيْسَ فِيهِ بَيَانٌ بِمَنْعِهِ مِنْ النَّظْرَةِ فِيمَا عَدَا السِّتَّةَ الْأَصْنَافِ فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L23514–23515 Furthermore, there is no explicit statement in it prohibiting one from looking at anything other than the six categories, thus rendering their reliance on it invalid.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَلَا حُجَّةَ فِيهِ، وَهُوَ صَحِيحٌ؛ لِأَنَّهُ كَرَاهِيَةٌ لَا تَحْرِيمٌ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، وَقَدْ رُوِيَ عَنْهُ خِلَافُهُ عَلَى مَا نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي ذِكْرِنَا أَقْوَالَ أَبِي حَنِيفَةَ، فَعَادَ حُجَّةً عَلَيْهِمْ؛ لِأَنَّهُ خِلَافُ قَوْلِهِمْ.

L23516 As for the ḥadīth of Ibn ʿUmar, there is no proof in it, though it is authentic, for it indicates dislike (karāhīyah) rather than prohibition (taḥrīm). There is no proof in anyone other than the Messenger of Allah—peace and blessings be upon him. Contrary reports have been transmitted from him, as we shall mention—if Allah the Exalted wills—in our discussion of the opinions of Abū Ḥanīfah. Thus, it reverts to being a proof against them, for it contradicts their stance.

ثُمَّ كَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ وَابْنَ عُمَرَ، كَتَوْرِيثِ عُمَرَ الْمُطَلَّقَةَ ثَلَاثًا فِي الْمَرَضِ - وَقَوْلِ عُمَرَ وَابْنِ عُمَرَ فِيمَنْ أَكَلَ يَظُنُّ أَنَّهُ لَيْلٌ فَإِذَا بِهِ قَدْ طَلَعَ الْفَجْرُ أَنَّ صَوْمَهُ تَامٌّ وَلَا قَضَاءَ عَلَيْهِ - وَفِي تَوْرِيثِ ذَوِي الْأَرْحَامِ - وَفِي أَنْ لَا يُقْتَلُ أَحَدٌ قَوَدًا بِمَكَّةَ - وَفِي أَنْ لَا يَحُجَّ أَحَدٌ عَلَى بَعِيرٍ جِلَالٍ - وَفِي غَيْرِ مَا قِصَّةٍ، فَكَيْفَ وَلَمْ يَأْتِ عَنْ عُمَرَ وَابْنِهِ - رَضِيَ اللَّهُ عَنْهُمَا - وَعَنْ عَطَاءٍ هَهُنَا إلَّا الْكَرَاهَةُ فَقَطْ، لَا التَّحْرِيمُ الَّذِي يَقْدُمُونَ عَلَيْهِ بِلَا بُرْهَانٍ أَصْلًا؟ وَقَدْ حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا عَبْدُ اللَّهِ بْنُ نَصْرٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا ابْنُ وَضَّاحٍ أَنَا مُوسَى بْنُ مُعَاوِيَةَ أَنَا وَكِيعٌ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ بَعْضِ أَصْحَابِهِ عَنْ ابْنِ عُمَرَ قَالَ: إنَّهُ لَيُعْجِبُنِي أَنْ يَكُونَ بَيْنَ الْحَلَالِ وَالْحَرَامِ سِتْرٌ مِنْ الْحَرَامِ.

L23517 Then, how many instances are there where they opposed ʿUmar and Ibn ʿUmar, such as ʿUmar's granting inheritance to a woman thrice-divorced during illness; the opinion of ʿUmar and Ibn ʿUmar regarding one who ate thinking it was still night but dawn had broken, that their fast remains valid with no making up required; their stance on granting inheritance to distant kindred; their view that no one should be executed in retaliation within Mecca; their prohibition of performing Hajj on a camel used for carrying loads; and numerous other instances. How can this be, when nothing is reported from ʿUmar, his son—may Allah be pleased with them—or ʿAṭāʾ here except mere dislike, not the prohibition they impose without any evidence whatsoever? Muḥammad ibn Saʿīd ibn Nabāt narrated to us: ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: from Sufyān al-Thawrī from one of his companions from Ibn ʿUmar, who said: "It pleases me that there be a barrier between the lawful and the unlawful from the unlawful."

وَقَدْ جَاءَ عَنْ عُمَرَ: أَنَّهُ خَافَ أَنْ يَزِيدَ فِيمَا نَهَى عَنْهُ مِنْ الرِّبَا أَضْعَافَ الرِّبَا الْمُحَرَّمِ خَوْفًا مِنْ الْوُقُوعِ فِيهِ عَلَى مَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ عَنْ عَامِرٍ الشَّعْبِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَامَ خَطِيبًا فَقَالَ: إنَّا وَاَللَّهِ مَا نَدْرِي لَعَلَّنَا نَأْمُرُكُمْ بِأُمُورٍ لَا تَصْلُحُ لَكُمْ، وَلَعَلَّنَا نَنْهَاكُمْ عَنْ أُمُورٍ تَصْلُحُ لَكُمْ، وَإِنَّهُ

L23518 It has been reported from Umar that he feared increasing the multiples of the prohibited usury he had forbidden might lead to falling into it, according to what was narrated to us through the chain of Al-Hajjaj ibn Al-Minhal: Yazid ibn Zurai' reported from Dawud ibn Abi Hind from Amir Al-Sha'bi that Umar ibn Al-Khattab stood to deliver a sermon and said: "By Allah, we do not know - perhaps we command you with matters unsuited to you, and perhaps we forbid you from matters suited to you. Indeed, the verses

on usury were among the last revelations of the Quran, and the Messenger of Allah—peace and blessings be upon him—passed away before he could clarify it for us. Therefore, abandon what raises doubt for what leaves no doubt."

كَانَ مِنْ آخِرِ الْقُرْآنِ نُزُولًا لِآيَاتِ الرِّبَا، فَتُوُفِّيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْلَ أَنْ يُبَيِّنَهُ لَنَا، فَدَعُوا مَا يَرِيبُكُمْ إِلَى مَا لَا يَرِيبُكُمْ.

L23519 Ali said: Far removed is Allah that His Messenger—may Allah's blessings and peace be upon him—would fail to clarify the riba for which Allah threatened the severest punishment and against which Allah the Exalted has sanctioned war. Even if he did not clarify it to Umar, he undoubtedly clarified it to others. He is not required to do more than that, nor is he duty-bound to explain everything to everyone. However, if he clarified it to those who would convey it, he has conveyed what he was obligated to convey.

قَالَ عَلِيٌّ: حَاشَ لِلَّهِ مِنْ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُبَيِّنْ الرِّبَا الَّذِي تَوَعَّدَ فِيهِ أَشَدَّ الْوَعِيدِ، وَالَّذِي أَذِنَ اللَّهُ تَعَالَى فِيهِ بِالْحَرْبِ، وَلَئِنْ كَانَ لَمْ يُبَيِّنْهُ لِعُمَرَ فَقَدْ بَيَّنَهُ لِغَيْرِهِ، وَلَيْسَ عَلَيْهِ أَكْثَرُ مِنْ ذَلِكَ، وَلَا عَلَيْهِ أَنْ يُبَيِّنَ كُلَّ شَيْءٍ لِكُلِّ أَحَدٍ، لَكِنْ إِذَا بَيَّنَهُ لِمَنْ يُبَلِّغُهُ فَقَدْ بَلَّغَ مَا لَزِمَهُ تَبْلِيغُهُ.

L23520 From the narration of Abd al-Razzaq, via Sufyan al-Thawri, via Isa ibn al-Mughirah, via al-Sha'bi, who reported: Umar ibn al-Khattab said, "We abandoned nine-tenths of the permissible for fear of *ribā*."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عِيسَى بْنِ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: تَرَكْنَا تِسْعَةَ أَعْشَارِ الْحَلَالِ مَخَافَةَ الرِّبَا.

L23521–23522 Thus, any connection they might have to what we have mentioned is invalidated. It is established that their claim of having no precedent in this matter whatsoever stands, nor do we know of it from anyone before them.

فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ فِي شَيْءٍ مِمَّا ذَكَرْنَا، وَحَصَلَ قَوْلُهُمْ لَا سَلَفَ لَهُمْ فِيهِ أَصْلًا، وَلَا نَعْرِفُهُ عَنْ أَحَدٍ قَبْلَهُمْ.

L23523 They said: The Prophet—may Allah bless him and grant him peace—mentioned six types: four edible ones and two that serve as prices for commodities. So we analogized all edible matters to the edible category, yet refrained from applying analogy to monetary values at all?

وَقَالُوا: إِنَّمَا ذَكَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِتَّةَ أَصْنَافٍ: أَرْبَعَةً مَأْكُولَةً، وَاثْنَتَيْنِ هُمَا ثَمَنُ الْأَشْيَاءِ، فَقِسْنَا عَلَى الْمَأْكُولَةِ كُلَّ مَأْكُولٍ، وَلَمْ نَقِسْ عَلَى الْأَثْمَانِ شَيْئًا؟

L23524 We said: This is the first error. If analogy is invalid, it is impermissible for you to apply it to the four mentioned edible items while excluding others. If analogy is valid, it is impermissible for you to abandon gold and silver without applying analogy to them, as you did with the four edible items—with no distinction. Then apply analogy to gold and silver for every weighed substance, as Abū Ḥanīfa did, or for everything metallic. If you refuse and justify gold and silver by valuation through weight, we say: This is against you, not for you. For everything permissible to sell is a valid price for anything permissible to sell, by your consensus along with the people on this matter. We do not know from where you derived restricting valuation

فَقُلْنَا: هَذَا أَوَّلُ الْخَطَأِ، إِنْ كَانَ الْقِيَاسُ بَاطِلًا فَمَا يَحِلُّ لَكُمْ أَنْ تَقِيسُوا عَلَى الْأَرْبَعَةِ الْمَأْكُولَةِ الْمَذْكُورَةِ غَيْرَهَا، وَإِنْ كَانَ الْقِيَاسُ حَقًّا فَمَا يَحِلُّ لَكُمْ أَنْ تَدَعُوا الذَّهَبَ، وَالْفِضَّةَ: دُونَ أَنْ تَقِيسُوا عَلَيْهِمَا، كَمَا فَعَلْتُمْ فِي الْأَرْبَعَةِ الْمَأْكُولَةِ وَلَا فَرْقَ، فَقِيسُوا عَلَى الذَّهَبِ وَالْفِضَّةِ كُلَّ مَوْزُونٍ كَمَا فَعَلَ أَبُو حَنِيفَةَ، أَوْ كُلَّ مَعْدِنِيٍّ، فَإِنْ أَبَيْتُمْ وَعَلَّلْتُمْ الذَّهَبَ وَالْفِضَّةَ بِالتَّثْمِينِ؟ قُلْنَا: هَذَا عَلَيْكُمْ لَا لَكُمْ؛ لِأَنَّ كُلَّ شَيْءٍ يَجُوزُ بَيْعُهُ فَهُوَ ثَمَنٌ صَحِيحٌ لِكُلِّ شَيْءٍ يَجُوزُ بَيْعُهُ، بِإِجْمَاعِكُمْ مَعَ النَّاسِ عَلَى ذَلِكَ، وَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ

by weight to gold and silver, as there is no textual evidence for this, nor any statement from any of the people of Islam? This is an error of utmost outrageousness, and it binds the Shāfiʿīs and Mālikīs with a binding necessity from which there is no escape.

لَكُمْ الِاقْتِصَارُ بِالتَّثْمِينِ عَلَى الذَّهَبِ، وَالْفِضَّةِ، وَلَا نَصَّ فِي ذَلِكَ، وَلَا قَوْلَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ؟ وَهَذَا خَطَأٌ فِي غَايَةِ الْفُحْشِ، وَلَازِمٌ لِلشَّافِعِيِّينَ، وَالْمَالِكِيِّينَ، لُزُومًا لَا انْفِكَاكَ مِنْهُ.

L23525 Moreover, what makes your legal cause more valid than that of the Hanafis, who ascribed the four categories to volumetric measurement and gold and silver to weight—claiming that he (peace be upon him) mentioned only what is volumetrically measured or weighed? This is a matter they cannot evade. Exalted is Allah above such a thing! That there could be here a legal cause He did not clarify in His Book or on the tongue of His Messenger (peace be upon him), thereby leaving us in misguidance and an incomplete religion, relegating us to the conjectures of Abu Hanifa, Malik, and al-Shafiʿi—conjectures which are devoid of meaning. This is a matter no rational person would doubt. Praise be to Allah, Lord of the worlds.

وَأَيْضًا: فَمَا الَّذِي جَعَلَ عِلَّتَكُمْ بِأَوْلَى مِنْ عِلَّةِ الْحَنَفِيِّينَ الَّذِينَ عَلَّلُوا الْأَرْبَعَةَ الْأَصْنَافَ بِالْكَيْلِ، وَالذَّهَبَ وَالْفِضَّةَ بِالْوَزْنِ - وَقَالُوا: لَمْ يَذْكُرْ - عَلَيْهِ السَّلَامُ - إلَّا مَكِيلًا أَوْ مَوْزُونًا، وَهَذَا مَا لَا مُخَلِّصَ لَهُمْ مِنْهُ، وَحَاشَ لِلَّهِ أَنْ يَكُونَ هَهُنَا عِلَّةٌ لَمْ يُبَيِّنْهَا اللَّهُ فِي كِتَابِهِ، وَلَا عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -، بَلْ تَرَكَنَا فِي ضَلَالٍ وَدِينٍ غَيْرِ تَامٍّ، وَوَكَّلَنَا إلَى ظُنُونِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، الَّتِي لَا مَعْنَى لَهَا، هَذَا أَمْرٌ لَا يَشُكُّ فِيهِ ذُو عَقْلٍ. وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L23526 A group has stated that the cause of usury lies solely in measurement by volume or weight within a single category or two categories. If a commodity is measured by volume, it must be sold for its own kind in equal measure with immediate payment, where neither inequality in quantity nor deferred payment is permitted. However, it is permissible to sell it for another type of volume-measured commodity with unequal quantity, provided payment is immediate. Deferred payment remains impermissible in such cases.

If a commodity is weighed, it is permissible to sell it for its own kind in equal weight with immediate payment, where neither inequality in quantity nor deferred payment is allowed. It is also permissible to sell it for another type of weighed commodity with unequal weight, provided payment is immediate. Deferred payment remains impermissible except specifically in the case of gold and silver, for it is permissible to sell all other weighed commodities for gold or silver on deferred payment terms.

وَقَالَتْ طَائِفَةٌ: عِلَّةُ الرِّبَا هِيَ الْكَيْلُ وَالْوَزْنُ فِي جِنْسٍ وَاحِدٍ أَوْ جِنْسَيْنِ فَقَطْ، فَإِذَا كَانَ الصِّنْفُ مَكِيلًا بِيعَ بِنَوْعِهِ كَيْلًا بِمِثْلِهِ يَدًا بِيَدٍ، وَلَمْ يَحِلَّ فِيهِ التَّفَاضُلُ وَلَا النَّسِيئَةُ - وَجَازَ بَيْعُهُ بِنَوْعٍ آخَرَ مِنْ الْمَكِيلَاتِ مُتَفَاضِلًا يَدًا بِيَدٍ، وَلَا يَجُوزُ فِيهِ النَّسِيئَةُ - وَإِذَا كَانَ مَوْزُونًا جَازَ بَيْعُهُ بِنَوْعِهِ وَزْنًا بِوَزْنٍ نَقْدًا، وَلَا يَجُوزُ فِيهِ التَّفَاضُلُ وَلَا النَّسِيئَةُ، وَجَازَ بَيْعُهُ بِنَوْعٍ آخَرَ مِنْ الْمَوْزُونَاتِ مُتَفَاضِلًا يَدًا بِيَدٍ، وَلَا يَجُوزُ فِيهِ النَّسِيئَةُ إلَّا فِي الذَّهَبِ، وَالْفِضَّةِ، خَاصَّةً فَإِنَّهُ يَجُوزُ أَنْ يُبَاعَ بِهِمَا سَائِرُ الْمَوْزُونَاتِ نَسِيئَةً.

L23527–23528 Permissible is the sale of a volume-measured commodity for a weight-measured one, whether in unequal or equal quantities, as immediate or deferred payment—such as meat for wheat, honey for dates, raisins for barley,

and likewise for all other things. This is the opinion of Abū Ḥanīfa and his companions.

وَجَائِزٌ بَيْعُ الْمَكِيلِ بِالْمَوْزُونِ مُتَفَاضِلًا وَمُتَمَاثِلًا نَقْدًا وَنَسِيئَةً، كَاللَّحْمِ بِالْبُرِّ، أَوْ كَالْعَسَلِ بِالتَّمْرِ، أَوْ الزَّبِيبِ بِالشَّعِيرِ، وَهَكَذَا فِي كُلِّ شَيْءٍ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ.

L23529 Some of the later scholars among them abandoned this rationale due to its invalidation against them concerning gold and silver within all weighed substances. They retreated to claiming: "The cause of usury is the existence of measured quantity or weight in what is inherently specified." Yet through this, they have added nothing but madness and falsehood by their assertion that dinars and dirhams are not specified - a stubborn denial of evident reality.

وَقَدْ رَغِبَ بَعْضُ الْمُتَأَخِّرِينَ مِنْهُمْ عَنْ هَذِهِ الْعِلَّةِ بِسَبَبِ انْتِقَاضِهَا عَلَيْهِمْ فِي الذَّهَبِ وَالْفِضَّةِ بِسَائِرِ الْمَوْزُونَاتِ، فَلَجَأَ إلَى أَنْ قَالَ: عِلَّةُ الرِّبَا هِيَ وُجُودُ الْكَيْلِ، أَوْ الْوَزْنِ فِيمَا يَتَعَيَّنُ، فَمَا زَادُونَا بِهَذَا إلَّا جُنُونًا وَكَذِبًا بِدَعْوَاهُمْ أَنَّ الدَّنَانِيرَ، وَالدَّرَاهِمَ: لَا تَتَعَيَّنُ، وَهَذِهِ مُكَابَرَةُ الْعِيَانِ.

L23530 Moreover, the effective cause for gold and silver in their view is precisely defined, and they permit its transfer in weighed transactions. Thus, they derived no benefit from this absurd addition in removing their contradiction.

وَأَيْضًا: فَإِنَّ عِلَّةَ الذَّهَبِ وَالْفِضَّةِ عِنْدَهُمْ تَتَعَيَّنُ، وَهُمْ يُجِيزُونَ تَسْلِيمَهُ فِيمَا يُوزَنُ، فَلَمْ يَنْتَفِعُوا بِهَذِهِ الزِّيَادَةِ السَّخِيفَةِ فِي إزَالَةِ تَنَاقُضِهِمْ.

L23531 Then they came forth with absurdities akin to what is brought by wrong-doers whose intellects are corrupt—matters we have exhaustively detailed in this work. However, among these is their contravention of the unanimously established Sunnah upheld by all who maintain that usury applies to non-delayed transactions. They permitted exchanging one date for two dates in an immediate transaction, which would logically compel them to allow handing over three grains of wheat for two grains of dates. This constitutes a departure from the certain consensus.

ثُمَّ أَتَوْا بِتَخَالِيطَ تُشْبِهُ مَا يَأْتِي بِهِ مَنْ بَغَى لِفَسَادِ عَقْلِهِ، قَدْ تَقَصَّيْنَاهَا فِي هَذَا الْمَكَانِ، إلَّا أَنَّ مِنْهَا مُخَالَفَتَهُمْ السُّنَّةَ الْمُتَّفَقَ عَلَيْهَا مِنْ كُلِّ مَنْ يَرَى الرِّبَا فِي غَيْرِ النَّسِيئَةِ، فَأَجَازُوا التَّمْرَةَ بِالتَّمْرَتَيْنِ يَدًا بِيَدٍ، وَيَلْزَمُهُمْ أَنْ يُجِيزُوا تَسْلِيمَ ثَلَاثِ حَبَّاتٍ مِنْ قَمْحٍ فِي حَبَّتَيْنِ مِنْ تَمْرٍ، وَهَذَا خُرُوجٌ عَنْ الْإِجْمَاعِ الْمُتَيَقَّنِ.

L23532 Abu Muhammad said: They argued for their position by citing what we have reported through the chain of Muslim: I am Ibn Qa'nab from Sulayman - meaning Ibn Bilal - from Abd al-Majid ibn Suhayl ibn Abd al-Rahman ibn Awf, that he heard Sa'id ibn al-Musayyab relate that Abu Hurayrah and Abu Sa'id informed him: "The Messenger of Allah - peace and blessings of Allah be upon him - sent a man from Banu Adi al-Ansari and appointed him over Khaybar. He came with premium dates, so the Messenger of Allah - peace and blessings of Allah be upon him - asked him: 'Are all dates of Khaybar like these?' He replied: 'No, by Allah, O Messenger of Allah! We trade two sa's of al-Jam' dates for one sa' of these.' The Messenger of Allah - peace and blessings of Allah be upon him - said: 'Do not do this. Rather, exchange

قَالَ أَبُو مُحَمَّد: وَاحْتَجُّوا لِقَوْلِهِمْ هَذَا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا ابْنُ قَعْنَبٍ عَنْ سُلَيْمَانَ - يَعْنِي ابْنَ بِلَالٍ - عَنْ عَبْدِ الْمَجِيدِ بْنِ سُهَيْلِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيَّبِ يُحَدِّثُ أَنَّ أَبَا هُرَيْرَةَ، وَأَبَا سَعِيدٍ حَدَّثَاهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ أَخَا بَنِي عَدِيٍّ الْأَنْصَارِيَّ فَاسْتَعْمَلَهُ عَلَى خَيْبَرَ فَقَدِمَ بِتَمْرٍ جَنِيبٍ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَكُلُّ تَمْرِ خَيْبَرَ هَكَذَا؟ قَالَ: لَا، وَاَللَّهِ يَا رَسُولَ اللَّهِ إنَّا لَنَشْتَرِي الصَّاعَ بِالصَّاعَيْنِ مِنْ الْجَمْعِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى

like for like, or sell these and buy others with its price. And similarly the measure.”’ They used this wording as evidence, specifically the phrase “and similarly the measure.”[2]

L23533–23534 From the narration of ʿAbd al-Razzāq: Maʿmar reported from Yaḥyā ibn Abī Kathīr, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Saʿīd, who said: “The Messenger of Allah—peace and blessings be upon him—entered upon some members of his household and found with them dates of superior quality to their own. He said: ’From where are these?’ They replied: ’We exchanged two *ṣāʿ*s of our dates for one *ṣāʿ* of theirs.’ The Messenger of Allah—peace and blessings be upon him—said: ’It is not valid to exchange two *ṣāʿ*s for one *ṣāʿ*, nor two dirhams for one dirham.”’

L23535 From the path of Ibn Abi Shaybah: He said: I [narrate] from Ibn Abi Za’idah, from Muhammad ibn ’Amr ibn ’Alqamah al-Laythi, from Abu Salamah ibn ’Abd al-Rahman, from Abu Sa’id, that the Messenger of Allah—peace be upon him—said: “It is not permissible to exchange one dirham for two dirhams, nor one sa’ for two sa’s.” These are two authentic narrations, but they contain no valid evidence for their position in these two matters, as we shall elucidate, Allah willing.

L23536 And what we have narrated via Wakīʿ: Abū Jannāb reported from his father, from Ibn ʿUmar, who said: “The Messenger of Allah—peace and blessings of Allah be upon him—said near this pillar (which was at that time a date palm trunk, now a pillar): ’Do not sell a dinar for two dinars, nor a dirham for two dirhams, nor a ṣāʿ for two ṣāʿs. I fear for you the ramā’—and ramā’ is ribā (usury).”’ Some narrators added: A man approached him and said: “O Messenger of Allah, what if a man sells a horse for horses or a high-bred camel for camels?” He replied: “There is no harm if it is done hand to hand.”

L23537 And according to what was narrated to us by Aḥmad ibn Muḥammad al-Ṭalamankī: Ibn Mufarrij narrated to us: Ibrāhīm ibn Aḥmad ibn Farrās narrated to us: Aḥmad ibn Muḥammad ibn Sālim al-Naysābūrī narrated

اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا تَفْعَلُوا، وَلَكِنْ مِثْلًا بِمِثْلٍ، أَوْ بِيعُوا هَذَا وَاشْتَرُوا بِثَمَنِهِ مِنْ هَذَا، وَكَذَلِكَ الْمِيزَانُ» فَاحْتَجُّوا بِهَذِهِ اللَّفْظَةِ، وَهِيَ قَوْلُ " وَكَذَلِكَ الْمِيزَانُ ".

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَعِيدٍ قَالَ: «دَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى بَعْضِ أَهْلِهِ فَوَجَدَ عِنْدَهُمْ تَمْرًا أَجْوَدَ مِنْ تَمْرِهِمْ فَقَالَ: مِنْ أَيْنَ هَذَا؟ فَقَالُوا: أَبْدَلْنَا صَاعَيْنِ بِصَاعٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ وَلَا دِرْهَمَيْنِ بِدِرْهَمٍ» .

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ اللَّيْثِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي سَعِيدٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا يَصْلُحُ دِرْهَمٌ بِدِرْهَمَيْنِ وَلَا صَاعٌ بِصَاعَيْنِ» وَهَذَانِ خَبَرَانِ صَحِيحَانِ إلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِمَا، عَلَى مَا نُبَيِّنُ، إنْ شَاءَ اللَّهُ تَعَالَى.

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ أَنَا أَبُو جَنَّابٍ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ قَالَ «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَ هَذِهِ السَّارِيَةِ وَهِيَ يَوْمَئِذٍ جِذْعُ نَخْلَةٍ -: لَا تَبِيعُوا الدِّينَارَ بِالدِّينَارَيْنِ، وَلَا الدِّرْهَمَ بِالدِّرْهَمَيْنِ، وَلَا الصَّاعَ بِالصَّاعَيْنِ، إنِّي أَخَافُ عَلَيْكُمْ الرَّمَاءَ - وَالرَّمَاءُ الرِّبَا - زَادَ بَعْضُهُمْ: فَقَامَ إلَيْهِ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ الرَّجُلُ يَبِيعُ الْفَرَسَ بِالْأَفْرَاسِ وَالنَّجِيبَ بِالْإِبِلِ، قَالَ: لَا بَأْسَ إذَا كَانَ يَدًا بِيَدٍ» .

وَبِمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ أَنَا ابْنُ مُفَرِّجٍ أَنَا إبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فَرَّاسٍ أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ أَنَا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا رَوْحٌ أَنَا

[2] **Hadith references (L23532):** Sahih Muslim 1593a.

to us: Isḥāq ibn Ibrāhīm (Ibn Rāhwayh) narrated to us: Rawḥ narrated to us: Ḥayyān ibn ʾUbayd Allāh - a man of verified integrity - said: "I asked Abū Mijlaz about the exchange of currency or specified commodities. He replied: ʾHand to hand. Ibn ʾAbbās did not consider it impermissible as long as the exchange was conducted immediately.ʾ Then Abū Saʿīd came to him and said: ʾDo you not fear Allah? How long will people engage in usury? Has it not reached you that Allah's Messenger - peace and blessings be upon him - said: "Dates for dates, wheat for wheat, barley for barley, gold for gold, and silver for silver - hand to hand, same substance for same substance, equal measure for equal measure. Whatever exceeds this is usury. This ruling also applies to items sold by volume-measurement or weight-measurement"?ʾ Ibn ʾAbbās told Abū Saʿīd: ʾMay Allah reward you with Paradise! You have reminded me of a matter I had forgotten. I seek Allah's forgiveness and repent.ʾ Thereafter, he prohibited such transactions."

«حَيَّانُ بْنُ عُبَيْدِ اللَّهِ - وَكَانَ رَجُلُ صِدْقٍ - قَالَ سَأَلْتُ أَبَا مِجْلَزٍ عَنْ الصَّرْفِ؟ فَقَالَ: يَدًا بِيَدٍ، كَانَ ابْنُ عَبَّاسٍ لَا يَرَى بِهِ بَأْسًا مَا كَانَ مِنْهُ يَدًا بِيَدٍ، فَأَتَاهُ أَبُو سَعِيدٍ فَقَالَ لَهُ: أَلَا نَتَّقِي اللَّهَ، حَتَّى مَتَى يَأْكُلُ النَّاسُ الرِّبَا؟ أَوَمَا بَلَغَكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: التَّمْرُ بِالتَّمْرِ، وَالْحِنْطَةُ بِالْحِنْطَةِ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ يَدًا بِيَدٍ، عَيْنًا بِعَيْنٍ، مِثْلًا بِمِثْلٍ، فَمَا زَادَ فَهُوَ رِبًا؟ ثُمَّ قَالَ: وَكَذَلِكَ مَا يُكَالُ وَيُوزَنُ أَيْضًا» ؟ فَقَالَ ابْنُ عَبَّاسٍ لِأَبِي سَعِيدٍ: جَزَاكَ اللَّهُ الْجَنَّةَ، ذَكَّرْتَنِي أَمْرًا قَدْ كُنْتُ أُنْسِيتُهُ، فَأَنَا أَسْتَغْفِرُ اللَّهَ وَأَتُوبُ إِلَيْهِ - فَكَانَ يَنْهَى عَنْهُ بَعْدَ ذَلِكَ -.

L23538–23539 And this is all that they have cited as evidence, and there is no authoritative evidence for them in any part of it.

وَهَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ.

L23540 As for the ḥadīth of Ibn Abī Zāʾidah from Muḥammad ibn ʿAmr from Abū Salamah from Abī Saʿīd, it has been transmitted from Muḥammad ibn ʿAmr by narrators more precise in memorization and more reliable than Ibn Abī Zāʾidah, and they added clarification to it—as narrated to us by Aḥmad ibn Muḥammad al-Ṭalamankī: From Ibn Mufarrij, from Ibrāhīm ibn Aḥmad ibn Farrās, from Aḥmad ibn Muḥammad ibn Sālim al-Naysābūrī, from Isḥāq ibn Rāhwayh, from al-Fuḍayl ibn Mūsā and al-Naḍr ibn Shumayl, both of whom narrated: From Muḥammad ibn ʿAmr, from Abū Salamah ibn ʿAbd al-Raḥmān, from Abī Saʿīd al-Khudrī, who said: "Allah's Messenger—peace and blessings of Allah be upon him—would provide us with dates from the collected dates. We would exchange them for superior dates while increasing the price. Thereupon Allah's Messenger—peace and blessings of Allah be upon him—said: ʾThis is impermissible. It is impermissible to exchange two ṣāʿs for one ṣāʿ, two dirhams for one dirham, a dinar for two dinars, or a dirham for a dirham. No excess may exist between them, as any excess constitutes usury.ʾ"

أَمَّا حَدِيثُ ابْنِ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ عَنْ أَبِي سَعِيدٍ فَإِنَّهُ رَوَاهُ عَنْ مُحَمَّدِ بْنِ عَمْرٍو مَنْ هُوَ أَحْفَظُ مِنْ ابْنِ أَبِي زَائِدَةَ وَأَوْثَقُ، فَزَادَ فِيهِ بَيَانًا -: كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ أَنَا ابْنُ مُفَرِّجٍ أَنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فَرَّاسٍ أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ أَنَا إِسْحَاقُ بْنُ رَاهْوَيْهِ أَنَا الْفُضَيْلُ بْنُ مُوسَى، وَالنَّضْرُ بْنُ شُمَيْلٍ، قَالَا جَمِيعًا: أَنَا مُحَمَّدُ بْنُ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَرْزُقُنَا تَمْرًا مِنْ تَمْرِ الْجَمْعِ، فَنَسْتَبْدِلُ تَمْرًا أَطْيَبَ مِنْهُ وَنَزِيدُ فِي السِّعْرِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا يَصْلُحُ هَذَا لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ، وَلَا دِرْهَمَانِ بِدِرْهَمٍ، وَلَا الدِّينَارُ بِدِينَارَيْنِ، وَلَا الدِّرْهَمُ بِالدِّرْهَمِ لَا فَضْلَ بَيْنَهُمَا إِلَّا رِبًا» .

L23541 Abu Muhammad said: The statement of the Prophet - peace be upon him -

"This is not valid, this is not valid: two ṣāʿs for a ṣāʿ" refers specifically to the dates mentioned in the hadith, as no other interpretation is fundamentally possible. He - peace be upon him - initially declared "This is not valid" while indicating their action, then commenced a new grammatical construction by stating "This is not valid - two ṣāʿs for a ṣāʿ." Here, "this" serves as the subject (mubtada), while "two ṣāʿs for a ṣāʿ is not valid" constitutes the predicate (khabar). The phrase "two ṣāʿs for a ṣāʿ" functions as an accusative specifier (tamyīz). No alternative grammatical analysis is permissible, for had the Prophet - peace be upon him - said "This is not valid" then independently stated "Two ṣāʿs for a ṣāʿ is not valid" without the second verb containing a referential pronoun, it would constitute an impermissible solecism (laḥn) – a grammatical error entirely invalid in construction.

L23542 Among the categorically false assertions is that he—peace be upon him—commits grammatical errors. It is impermissible to reject the wording of a report as long as a valid interpretation exists for it. Thus, their clinging to this report is nullified. All praise is due to God, the Exalted.

L23543 As for the ḥadīth of Saʿīd ibn al-Musayyib from Abū Saʿīd and Abū Hurayrah containing "and likewise the scale," they have boldly ascribed sheer falsehood to the Messenger of Allah (peace and blessings be upon him) by decisively claiming he (peace be upon him) intended to declare: "Unequal exchange is impermissible in every category of weighed commodities, nor is deferred payment permissible," whereas he limited himself to stating "and likewise the scale."

L23544–23546 Abu Muhammad said: The Messenger of Allah—may Allah bless him and grant him peace—was sent solely with clarity. As for ambiguity in religion and obfuscation in the Sharīʿah, Allah forbid such a thing! And there is nothing more abundant in obfuscation and ambiguity than... The Messenger of Allah—peace and blessings be upon him—intended to prohibit every category of items measured by volume when exchanged for something of the same kind with excess or deferred payment terms, and every category of items measured by weight when exchanged for something of the same kind with excess or deferred payment terms. He confined his explanation

قَالَ أَبُو مُحَمَّد: فَقَوْلُه - عَلَيْهِ السَّلَامُ -: «لَا يَصْلُحُ، هَذَا لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ» إشَارَةٌ إلَى التَّمْرِ الْمَذْكُورِ فِي الْخَبَرِ، لَا يُمْكِنُ غَيْرُ ذَلِكَ أَصْلًا، بَدَأَ - عَلَيْهِ السَّلَامُ - فَقَالَ: " لَا يَصْلُح " مُشِيرًا إلَى فِعْلِهِمْ، ثُمَّ ابْتَدَأَ الْكَلَامَ فَقَالَ: " هَذَا لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ " فَ " هَذَا، ابْتِدَاءٌ، وَ " لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ " جُمْلَةٌ فِي مَوْضِعِ خَبَرِ الِابْتِدَاءِ وَانْتَصَبَ " صَاعَيْنِ بِصَاعٍ " عَلَى التَّمْيِيزِ، وَلَا يَجُوزُ غَيْرُ ذَلِكَ أَصْلًا، لِأَنَّهُ لَوْ قَالَ - عَلَيْهِ السَّلَامُ -: لَا يَصْلُحُ هَذَا، ثُمَّ ابْتَدَأَ الْكَلَامَ بِقَوْلِهِ: لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ، دُونَ أَنْ يَكُونَ فِي يَصْلُحُ الثَّانِيَةِ ضَمِيرٌ رَاجِعٌ إلَى مَذْكُورٍ، أَوْ مُشَارٍ إلَيْهِ لَكَانَ لَحْنًا لَا يَجُوزُ أَلْبَتَّةَ.

وَمِنْ الْبَاطِلِ الْمَقْطُوعِ بِهِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَلْحَنُ، وَلَا يَحِلُّ إحَالَةُ لَفْظِ الْخَبَرِ مَا دَامَ يُوجَدُ لَهُ وَجْهٌ صَحِيحٌ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ. وَلِلَّهِ تَعَالَى الْحَمْدُ.

وَأَمَّا حَدِيثُ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي سَعِيدٍ، وَأَبِي هُرَيْرَةَ، الَّذِي فِيهِ «وَكَذَلِكَ الْمِيزَانُ» فَإِنَّهُمْ جَسَرُوا هَهُنَا عَلَى الْكَذِبِ الْبَحْتِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ قَطَعُوا بِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ أَنْ يَقُولَ: لَا يَحِلُّ التَّفَاضُلُ فِي كُلِّ جِنْسٍ مِنْ الْمَوْزُونَاتِ بِجِنْسِهِ، وَلَا النَّسِيئَةُ، فَاقْتَصَرَ مِنْ هَذَا كُلِّهِ عَلَى أَنْ قَالَ " وَكَذَلِكَ الْمِيزَانُ ".

قَالَ أَبُو مُحَمَّد: إنَّمَا بُعِثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَيَانِ، وَأَمَّا بِالْإِشْكَالِ فِي الدِّينِ، وَالتَّلَبُّسِ فِي الشَّرِيعَةِ: فَمَعَاذَ اللَّهِ مِنْ هَذَا، وَلَيْسَ فِي التَّلْبِيسِ، وَالْإِشْكَالِ: أَكْثَرُ مِنْ أَنْ يُرِيدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُحَرِّمَ كُلَّ جِنْسٍ مِمَّا يُكَالُ بِشَيْءٍ مِنْ جِنْسِهِ مُتَفَاضِلًا أَوْ نَسِيئَةً، وَكُلَّ جِنْسٍ مِمَّا يُوزَنُ بِشَيْءٍ مِنْ جِنْسِهِ مُتَفَاضِلًا أَوْ نَسِيئَةً، فَيَقْتَصِرُ مِنْ بَيَانِ ذَلِكَ عَلَيْنَا، وَتَفْصِيلِهِ لَنَا، عَلَى أَنْ يَقُولَ فِي التَّمْرِ الَّذِي اُشْتُرِيَ بِتَمْرٍ

and detailed clarification to us by stating regarding dates purchased with a greater quantity of dates: “Do not do so; rather, exchange equal for equal, or sell this and buy with its price from that.” The same applies to weighing [transactions].[3]

L23547 Allah has never created anyone who comprehends these two categories of Divine Speech, nor has He, the Exalted, ever composed this Divine Speech upon those two superstitions.

L23548 If a person from among the people sought to argue for these two laws using this speech and expressed them in this manner, they would be mocked. Anyone who heard him would consider him nothing more than a stammerer, a libertine among the profligate, or a fool among the simpletons.

L23549 Do they not feel ashamed of these destructive scandals before Allah the Exalted—disgraceful in this worldly life? Yet we utter words by which we seek closeness to Allah the Exalted, words validated by every person of understanding, whether opponent or supporter. That is: The statement of Allah’s Messenger (peace and blessings be upon him), “And likewise the scale,” is a general pronouncement like Allah’s decree: {Establish prayer and give zakah} [Quran 2:43]. We believe in all such texts and seek their clarification through other texts. We do not advance false assumptions or deceitful claims to assert, “Allah the Exalted intended such-and-such,” or “His Messenger (peace be upon him) meant such-and-such”—when the wording does not warrant such interpretations according to linguistic norms. Therefore, we examined this matter and found the narrations of Ubada ibn al-Samit, Abu Bakrah, and Abu Hurayrah, wherein the Prophet (peace be upon him) explicitly clarified within them his intended meaning of “And likewise the scale.” His explanation (peace be upon him) in that context was: “It is impermissible to exchange gold for gold except by equal weight, nor silver for silver except by equal weight.” Thus we decisively conclude: This is indeed the intended meaning

[3] **Hadith references (L23544):** Sahih Muslim 1593a.

أَكْثَرَ مِنْهُ: لَا تَفْعَلُوا، وَلَكِنْ مِثْلًا بِمِثْلٍ، أَوْ بِيعُوا هَذَا وَاشْتَرُوا بِثَمَنِهِ مِنْ هَذَا، وَكَذَلِكَ الْمِيزَانُ.

وَمَا خَلَقَ اللَّهُ قَطُّ أَحَدًا يَفْهَمُ تِلْكَ الصِّنْفَيْنِ مِنْ هَذَا الْكَلَامِ، وَلَا رَكَّبَ اللَّهُ تَعَالَى قَطُّ هَذَا الْكَلَامَ عَلَى تِلْكَ الْخُرَافَتَيْنِ.

وَلَوْ أَنَّ إِنْسَانًا مِنْ النَّاسِ أَرَادَ تِلْكَ الشَّرِيعَتَيْنِ اللَّتَيْنِ احْتَجُّوا لَهُمَا بِهَذَا الْكَلَامِ، فَعَبَّرَ عَنْهُمَا بِهَذَا الْكَلَامِ، لَسُخِرَ مِنْهُ، وَلَمَا عَدَّهُ مَنْ يَسْمَعُهُ إِلَّا أَلْكَنَ اللِّسَانِ، أَوْ مَاجِنًا مِنْ الْمُجَّانِ، أَوْ سَخِيفًا مِنْ النَّوْكَى.

أَفَلَا يَسْتَحْيُونَ مِنْ هَذِهِ الْفَضَائِحِ الْمُوبِقَةِ عِنْدَ اللَّهِ تَعَالَى، الْمُخْزِيَةِ فِي الْعَاجِلِ، وَلَكِنَّا نَقُولُ قَوْلًا نَتَقَرَّبُ بِهِ إِلَى اللَّهِ تَعَالَى، وَيَشْهَدُ لِصِحَّتِهِ كُلُّ ذِي فَهْمٍ مِنْ مُخَالِفٍ وَمُؤَالِفٍ - وَهُوَ أَنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَكَذَلِكَ الْمِيزَانُ» قَوْلٌ مُجْمَلٌ، مِثْلُ قَوْلِ اللَّهِ تَعَالَى: {وَأَقِيمُوا الصَّلاةَ وَآتُوا الزَّكَاةَ} [البقرة: ٤٣] نُؤْمِنُ بِكُلِّ ذَلِكَ، وَنَطْلُبُ بَيَانَهُ مِنْ نُصُوصٍ أُخَرَ، وَلَا نَقْدَمُ بِالظَّنِّ الْكَاذِبِ، وَالدَّعْوَى الْآفِكَةِ عَلَى أَنْ نَقُولَ: أَرَادَ اللَّهُ تَعَالَى كَذَا وَكَذَا، وَأَرَادَ رَسُولُهُ - عَلَيْهِ السَّلَامُ - مَعْنَى كَذَا -: لَا يَقْتَضِيهِ ذَلِكَ اللَّفْظُ بِمَوْضُوعِهِ فِي اللُّغَةِ، فَطَلَبْنَا ذَلِكَ -: فَوَجَدْنَا حَدِيثَ عُبَادَةَ بْنِ الصَّامِتِ، وَأَبِي بَكْرَةَ، وَأَبِي هُرَيْرَةَ، قَدْ بَيَّنَ فِيهَا مُرَادَهُ - عَلَيْهِ السَّلَامُ - بِقَوْلِهِ هَهُنَا: " وَكَذَلِكَ الْمِيزَانُ " وَهُوَ تَفْسِيرُهُ - عَلَيْهِ السَّلَامُ - هُنَالِكَ: أَنَّهُ لَا يَحِلُّ الذَّهَبُ بِالذَّهَبِ إِلَّا وَزْنًا بِوَزْنٍ، وَلَا الْفِضَّةُ بِالْفِضَّةِ إِلَّا وَزْنًا بِوَزْنٍ - فَقَطَعْنَا: أَنَّ هَذَا هُوَ مُرَادُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوْلِهِ: " وَكَذَلِكَ الْمِيزَانُ ".

of Allah's Messenger (peace and blessings be upon him) in his statement "And likewise the scale."[4]

L23550 We testify by the testimony of Allah, the Most High, that he—peace be upon him—if he had intended anything other than this, he would have clarified and explained it clearly so that the people of Islam might comprehend it. He did not leave us to depend on Abu Hanifah's conjecture and his opinion—no opinion being more invalid than his—nor to the worthless divinations of his companions, whose sweet talk about it results only in disgrace. The Most High said: "To clarify for mankind what was sent down to them" [16:44], "He has already detailed for you what He forbade to you" [6:119]. Thus their obfuscation through this narration collapses—and all praise belongs to Allah, the Most High.[5]

وَشَهِدْنَا بِشَهَادَةِ اللَّهِ تَعَالَى: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَوْ أَرَادَ غَيْرَ هَذَا لَبَيَّنَهُ وَوَضَّحَهُ حَتَّى يَفْهَمَهُ أَهْلُ الْإِسْلَامِ وَلَمْ يَكِلْنَا إلَى ظَنِّ أَبِي حَنِيفَةَ وَرَأْيِهِ، الَّذِي لَا رَأْيَ أَسْقَطُ مِنْهُ، وَلَا إلَى كَهَانَةِ أَصْحَابِهِ الْغَثَّةِ الَّتِي حُلْوَانُهُمْ عَلَيْهَا الْخِزْيَةُ فَقَطْ، قَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] ، {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَسَقَطَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

L23551–23552 What is utterly astonishing is their statement concerning what is manifestly clear from the Messenger of Allah—peace and blessings of Allah be upon him—prohibiting exchanging fresh dates for dried dates: that he only meant those dates at the tops of palm trees. Yet this is not mentioned in any of the narrations, for that is one report and this is another.

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ قَوْلِهِمْ فِي الْبَيِّنِ الْوَاضِحِ مِنْ نَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الرُّطَبِ بِالتَّمْرِ: أَنَّهُ إنَّمَا أَرَادَ الَّتِي فِي رُءُوسِ النَّخْلِ - وَلَيْسَ هَذَا فِي شَيْءٍ مِنْ الْأَخْبَارِ؛ لِأَنَّ ذَلِكَ خَبَرٌ وَهَذَا آخَرُ.

L23553 They approach an ambiguous statement from which no one can understand anything except what he (peace be upon him) explained elsewhere. Yet they add to it, interpret it falsely, and ascribe to his wording (peace be upon him) meanings that it does not entail in any way.

وَيَأْتُونَ إلَى مُجْمَلٍ لَا يَفْهَمُ أَحَدٌ مِنْهُ إلَّا مَا فَسَّرَهُ - عَلَيْهِ السَّلَامُ - فِي مَكَان آخَرَ، فَيَزِيدُونَ فِيهِ وَيُفَسِّرُونَهُ بِالْبَاطِلِ، وَبِمَا لَا يَقْتَضِيهِ لَفْظُهُ - عَلَيْهِ السَّلَامُ - أَصْلًا.

L23554 As for the ḥadīth of Yaḥyā ibn Abī Kathīr from Abū Salama: "It is not permissible to exchange two *ṣāʿ*s for one *ṣāʿ*," they said: This is a general ruling encompassing all that is measured by volume (*makīl*).

وَأَمَّا حَدِيثُ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ: لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ، فَإِنَّهُمْ قَالُوا: هَذَا عُمُومٌ لِكُلِّ مَكِيلٍ.

L23555 Abu Muhammad said: This is a report that Ma'mar either abbreviated from Yahya ibn Abi Kathir or erred in it with certainty, without ambiguity. Ibn Abi Za'ida narrated it from Muhammad ibn 'Amr, or erred in it as we previously mentioned, because this report was transmitted from Yahya ibn Abi Kathir via their own chains: Al-Awza'i, Hisham al-Dastuwa'i, and Shayban ibn Farrukh

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ اخْتَصَرَهُ مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، أَوْ وَهَمَ فِيهِ بِيَقِينٍ لَا إشْكَالَ فِيهِ، فَرَوَاهُ ابْنُ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو، أَوْ وَهَمَ فِيهِ عَلَى مَا ذَكَرْنَا قَبْلُ؛ لِأَنَّ هَذَا خَبَرٌ رَوَاهُ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ بِإِسْنَادِهِ: الْأَوْزَاعِيُّ، وَهِشَامٌ الدَّسْتُوَائِيُّ،

[4] **Qur'an references (L23549):** Qur'an 2:43 (Al-Baqarah).
[5] **Qur'an references (L23550):** Qur'an 16:44 (An-Nahl); Qur'an 6:119 (Al-An'am).

- and neither Hisham nor Al-Awza'i are inferior to Ma'mar, if Hisham is not more reliable in memorization than him.

وَشَيْبَانُ بْنُ فَرُّوخَ - وَلَيْسَ هِشَامٌ، وَالْأَوْزَاعِيُّ، دُونَ مَعْمَرٍ، إِنْ لَمْ يَكُنْ هِشَامٌ أَحْفَظَ مِنْهُ.

L23556 We have narrated it through the chain of Muslim: Isḥāq ibn Manṣūr reported to me, from ʿUbaydullāh ibn Mūsā, from Shaybān; and through the chain of Aḥmad ibn Shuʿayb: Hishām ibn Abī ʿAmmār reported to me, from Yaḥyā ibn Ḥamzah, from al-Awzāʿī; and Ḥammām reported to us, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Bakr ibn Ḥammād, from Musaddad, from Bishr ibn al-Mufaḍḍal, from Hishām—that is, al-Dastuwāʾī—all of them transmitting from Yaḥyā ibn Abī Kathīr, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Saʿīd al-Khudrī, that the Messenger of Allāh—peace and blessings be upon him—said: "Do not exchange two ṣāʿ of dates for a single ṣāʿ, nor two ṣāʿ of wheat for a single ṣāʿ, nor two dirhams for one dirham."[6]

فَرُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ شَيْبَانَ - وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا هِشَامُ بْنُ أَبِي عَمَّارٍ عَنْ يَحْيَى بْنِ حَمْزَةَ أَنَا الْأَوْزَاعِيُّ - وَحَدَّثَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا بَكْرُ بْنُ حَمَّادٍ أَنَا مُسَدَّدٌ أَنَا بِشْرُ بْنُ الْمُفَضَّلِ أَنَا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - كُلُّهُمْ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا صَاعَيْ تَمْرٍ بِصَاعٍ، وَلَا صَاعَيْ حِنْطَةٍ بِصَاعٍ، وَلَا دِرْهَمَيْنِ بِدِرْهَمٍ» .

L23557 Al-Awzaʿī said in his narration from Yaḥyā ibn Abī Kathīr: Abū Salama ibn ʿAbd al-Raḥmān narrated to me; Abū Saʿīd al-Khudrī narrated to me. And this very is the narration of Muḥammad ibn ʿAmr himself.

قَالَ الْأَوْزَاعِيُّ فِي رِوَايَتِهِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ: حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ حَدَّثَنِي أَبُو سَعِيدٍ الْخُدْرِيُّ - وَهَذَا هُوَ خَبَرُ مُحَمَّدِ بْنِ عَمْرٍو نَفْسُهُ.

L23558 Abu Muhammad said: Maʿmar omitted mentioning dates and wheat.

قَالَ أَبُو مُحَمَّدٍ: فَأَسْقَطَ مَعْمَرٌ ذِكْرَ التَّمْرِ، وَالْحِنْطَةِ.

L23559–23561 Among the clear evidence of Ma'mar's undoubted error is his inclusion of a grammatical error in the Messenger of Allah's—peace be upon him—narration by attributing to him the statement: "Two ṣāʿs in exchange for one ṣāʿ is not valid." By Allah, the Messenger of Allah—peace be upon him—never uttered this at all. Unless he points to something, in which case the pronoun in "is not valid" would refer to that thing—especially since Al-Awzāʿī mentioned Yaḥyā ibn Abī Kathīr's hearing from Abū Salama, and Abū Salama's hearing from Abū Saʿīd, whereas Maʿmar did not mention this. This does not impair anything in our view, unless it is a single report wherein the

وَمِنْ الْبَيَانِ الْوَاضِحِ عَلَى خَطَأِ مَعْمَرٍ الَّذِي لَا شَكَّ فِيهِ: إيرَادُهُ اللَّحْنَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا الْخَبَرِ بِقَوْلِهِ: لَا يَصْلُحُ صَاعَيْنِ بِصَاعٍ - وَوَاَللَّهِ مَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ، إلَّا أَنْ يُشِيرَ إلَى شَيْءٍ، فَيَكُونُ ضَمِيرُهُ فِي " لَا يَصْلُحُ " لَا سِيَّمَا وَالْأَوْزَاعِيُّ يَذْكُرُ سَمَاعَ يَحْيَى بْنِ أَبِي كَثِيرٍ مِنْ أَبِي سَلَمَةَ، وَسَمَاعَ أَبِي سَلَمَةَ مِنْ أَبِي سَعِيدٍ، لَمْ يَذْكُرْ ذَلِكَ مَعْمَرٌ - وَهَذَا لَا يَكْدَحُ عِنْدَنَا شَيْئًا، إلَّا إذَا كَانَ

[6] **Hadith references (L23556):** Sunan an-Nasai 4556.

narrators differed. In such a case, the narration of the one who mentioned the hearing takes precedence, especially from one who cited it through *tadlīs*.

خَبَرًا وَاحِدًا اخْتَلَفَ فِيهِ الرُّوَاةُ، فَإِنَّ رِوَايَةَ الَّذِي ذَكَرَ السَّمَاعَ أَوْلَى، لَا سِيَّمَا مِمَّنْ ذَكَرَ بِتَدْلِيسٍ.

L23562 Furthermore, even if the wording of Ibn Abī Zā'ida and Ma'mar were valid for them—without additions from others besides these two or clarifications from anyone other than them both—they would have no proof in it, due to two reasons:

ثُمَّ لَوْ صَحَّ لَهُمْ لَفْظُ ابْنِ أَبِي زَائِدَةَ، وَمَعْمَرٍ، بِلَا زِيَادَةٍ مِنْ غَيْرِهِمَا، وَلَا بَيَانٍ مِنْ سِوَاهُمَا، لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ لِوَجْهَيْنِ -:

L23563 The first [argument] is that [the text] makes no mention at all of a single kind or two kinds. Yet they permit exchanging two sa's of wheat for one sa' of dates and any two commodities that are not of the same kind—and this contradicts the general implication of the report.

أَحَدُهُمَا - أَنَّهُ لَيْسَ فِيهِ ذِكْرُ جِنْسٍ وَاحِدٍ، وَلَا جِنْسَيْنِ أَصْلًا، وَهُمْ يُجِيزُونَ صَاعَيْ حِنْطَةٍ بِصَاعِ تَمْرٍ، وَبِكُلِّ مَا لَيْسَا مِنْ جِنْسٍ وَاحِدٍ - وَهَذَا خِلَافُ عُمُومِ الْخَبَرِ.

L23564 If they say: "Did other reports explain this?" We said: "Similarly, other reports explained what Ma'mar summarized."

فَإِنْ قَالُوا: فَسَّرَ هَذَا أَخْبَارٌ أُخَرُ؟ قُلْنَا: وَكَذَلِكَ فَسَّرَتْ أَخْبَارٌ أُخَرُ مَا أَجْمَلَهُ مَعْمَرٌ.

L23565 The second perspective is to assert that this ruling applies to loans, not sales. Indeed, it is impermissible in loans to exchange two ṣā's for one ṣā' in any of all things. As for sale, however, there is no prohibition, for Allah the Exalted says: "And Allah has permitted sale" [Al-Baqarah: 275].[7]

وَالْوَجْهُ الثَّانِي - أَنْ يَقُولَ هَذَا فِي الْقَرْضِ لَا فِي الْبَيْعِ، نَعَمْ، لَا يَجُوزُ فِي الْقَرْضِ صَاعَانِ بِصَاعٍ فِي شَيْءٍ مِنْ الْأَشْيَاءِ كُلِّهَا، وَأَمَّا الْبَيْعُ فَلَا، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L23566 If they claim a consensus, they have lied, for they permit two *sa'*s of barley for one *sa'* of wheat, and people do not all permit this; rather, they differ over its permissibility.

فَإِنْ ادَّعَوْا إجْمَاعًا كَذَبُوا؛ لِأَنَّهُمْ يُجِيزُونَ صَاعَيْ شَعِيرٍ بِصَاعِ بُرٍّ، وَالنَّاسُ لَا يُجِيزُونَهُ كُلُّهُمْ، بَلْ يَخْتَلِفُونَ فِي إجَازَتِهِ.

L23567 Two ṣā' of chickpeas in exchange for one ṣā' of lupin beans, and there is no consensus here; thus, Mālik does not permit it.

وَصَاعَيْ حِمَّصٍ بِصَاعِ لُبْيَاءَ، وَلَا إجْمَاعَ هَهُنَا، فَمَالِكٌ لَا يُجِيزُهُ.

L23568 If they say: "The Messenger of Allah (peace be upon him) said: 'If the categories differ, then sell as you wish,'" we respond: It is authentically established that he (peace be upon him) stated: "If **these** categories differ, then sell as you wish **if [the exchange is] hand-to-hand**." The Messenger of Allah (peace be upon him) only spoke regarding **the categories he named in the hadith that mentions this wording in its conclusion**. It is unlawful to

فَإِنْ قَالُوا: قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَإِذَا اخْتَلَفَتْ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ» ؟ قُلْنَا: صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: «فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ» فَإِنَّمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي

[7] **Qur'an references (L23565):** Qur'an 2:275 (Al-Baqarah).

attribute to him (peace be upon him) any statement founded upon **a false assumption**.[8]

الْأَصْنَافِ الَّتِي سَمَّى فِي الْحَدِيثِ الَّذِي ذَكَرَ هَذَا اللَّفْظَ فِي آخِرِهِ - وَلَا يَحِلُّ أَنْ يُنْسَبَ إِلَيْهِ - عَلَيْهِ السَّلَامُ - قَوْلٌ بِظَنٍّ كَاذِبٍ.

L23569–23571 It suffices here that they are in unanimous agreement with us regarding the phrase "no two ṣāʿs for a ṣāʿ" being invalid. Regarding their generality, they asserted: "In every volume-measured item of a single kind," while we maintained: "It applies to the categories textually stipulated." Thus, their claim is but a claim.

وَيَكْفِي مِنْ هَذَا أَنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى لَفْظَةِ " لَا صَاعَيْنِ بِصَاعٍ " لَيْسَتْ عَلَى عُمُومِهَا، فَقَالُوا هُمْ: فِي كُلِّ مَكِيلٍ مِنْ جِنْسٍ وَاحِدٍ، وَقُلْنَا نَحْنُ: هُوَ فِي الْأَصْنَافِ الْمَنْصُوصِ عَلَيْهَا، فَدَعْوَى كَدَعْوَى.

L23572 Our proof is the following: the validity of the text supporting our position. Their claim stands without evidence, so their reliance on this narration is nullified—and to Allah, the Exalted, belongs all praise.

وَبُرْهَانُنَا نَحْنُ -: صِحَّةُ النَّصِّ عَلَى قَوْلِنَا، وَبَقِيَ قَوْلُهُمْ بِلَا بُرْهَانٍ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

L23573 As for the ḥadīth of Ibn ʿUmar, it is rejected because it is narrated from Abī Janāb—who is Yaḥyā ibn Abī Ḥayyah al-Kalbī—from whom Yaḥyā al-Qaṭṭān and ʿAbd al-Raḥmān ibn Mahdī abandoned narrating, and he was deemed weak and noted for tadlīs (concealment in transmission). Furthermore, it is narrated from his father, who is completely unknown—thus, relying on it is invalidated. Even if it were authentic, the ruling regarding it would align with those of the other narrations we previously mentioned that contradict its generality.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَسَاقِطٌ، لِأَنَّهُ عَنْ أَبِي جُنَابٍ - وَهُوَ يَحْيَى بْنُ أَبِي حَيَّةَ الْكَلْبِيُّ - تَرَكَ الرِّوَايَةَ عَنْهُ يَحْيَى الْقَطَّانُ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَضَعُفَ، وَذُكِرَ بِتَدْلِيسٍ، ثُمَّ هُوَ عَنْ أَبِيهِ وَهُوَ مَجْهُولٌ جُمْلَةً - فَبَطَلَ التَّعَلُّقُ بِهِ - ثُمَّ لَوْ صَحَّ لَكَانَ الْقَوْلُ فِيهِ كَالْقَوْلِ فِي غَيْرِهِ مِمَّا ذَكَرْنَا آنِفًا مِمَّا خَالَفُوا فِيهِ عُمُومَهُ.

L23574 As for the ḥadīth of Abū Saʿīd al-Khudrī, which we cited through the chain of Ḥayyān ibn ʿUbayd Allāh from Abī Mijlaz, there is no valid proof in it because its chain is disconnected, as we mentioned—Abū Mijlaz did not hear it neither from Abū Saʿīd nor from Ibn ʿAbbās. He mentioned in it that Ibn ʿAbbās repented and retracted from holding that opinion—and this is falsehood and the assertion of someone to whom a report was conveyed that they neither witnessed nor received from a trustworthy narrator.

وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ الْخُدْرِيِّ الَّذِي أَوْرَدْنَا مِنْ طَرِيقِ حَيَّانَ بْنِ عُبَيْدِ اللَّهِ عَنْ أَبِي مِجْلَزٍ، فَلَا حُجَّةَ فِيهِ، لِأَنَّهُ مُنْقَطِعٌ كَمَا أَوْرَدْنَا، لَمْ يَسْمَعْهُ، لَا مِنْ أَبِي سَعِيدٍ، وَلَا مِنْ ابْنِ عَبَّاسٍ، وَذَكَرَ فِيهِ: أَنَّ ابْنَ عَبَّاسٍ تَابَ وَرَجَعَ عَنْ الْقَوْلِ بِذَلِكَ - وَهَذَا الْبَاطِلُ وَقَوْلُ مَنْ بَلَغَهُ خَبَرٌ لَمْ يَشْهَدْهُ وَلَا أَخَذَهُ عَنْ ثِقَةٍ.

L23575 Abu al-Jawza' narrated Ibn Abbas's retraction—as transmitted by Sulayman ibn Ali al-Rabaʿī from him, who is unidentified—and Abu al-Sahbāʾ narrated from Sulayman that Ibn Abbas disliked the retraction.

وَقَدْ رَوَى رُجُوعَ ابْنِ عَبَّاسٍ: أَبُو الْجَوْزَاءِ - رَوَاهُ عَنْهُ سُلَيْمَانُ بْنُ عَلِيٍّ الرَّبَعِيُّ - وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ - وَرَوَى عَنْهُ أَبُو الصَّهْبَاءِ أَنَّهُ كَرِهَهُ.

[8] **Hadith references (L23568):** Sunan Abi Dawud 3350; Sahih Muslim 1587c; Mishkat al-Masabih 2808.

وَرَوَى عَنْهُ طَاوُسٌ مَا يَدُلُّ عَلَى التَّوَقُّفِ.

L23576 Tāwus narrated from him something that indicates withholding judgment.

وَرَوَى الثِّقَةُ الْمُخْتَصُّ بِهِ خِلَافَ هَذَا -: كَمَا حَدَّثَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي هَاشِمٍ أَنَا أَبُو بِشْرٍ - هُوَ جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: مَا كَانَ الرِّبَا قَطُّ فِي هَاءٍ وَهَاتٍ.

L23577 A trustworthy narrator exclusively associated with him transmitted a contrary report: as narrated to us by Ḥumām, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from ʿAbdullāh ibn Aḥmad ibn Ḥanbal, from my father Hāshim, from Abū Bishr - who is Jaʿfar ibn Abī Waḥshiyyah - from Saʿīd ibn Jubayr, from Ibn ʿAbbās, that he said: "Usury was never present in immediate hand-to-hand transactions (referred to in Arabic as *hā'* and *hāt*)."

وَحَلَفَ سَعِيدُ بْنُ جُبَيْرٍ: بِاللَّهِ مَا رَجَعَ عَنْهُ حَتَّى مَاتَ.

L23578 Sa'id ibn Jubayr swore by Allah that he never recanted it until his death.

ثُمَّ هُوَ أَيْضًا مِنْ رِوَايَةِ حَيَّانَ بْنِ عُبَيْدِ اللَّهِ - وَهُوَ مَجْهُولٌ - ثُمَّ لَوْ انْسَنَدَ حَدِيثُ أَبِي مِجْلَزٍ الْمَذْكُورُ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ اللَّفْظَ الَّذِي تَعَلَّقُوا بِهِ مِنْ " وَكَذَلِكَ مَا يُكَالُ وَيُوزَنُ " لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا هُوَ مِنْ كَلَامِ أَبِي سَعِيدٍ لَوْ صَحَّ.

L23579 Moreover, it is also from the narration of Ḥayyān ibn ʿUbayd Allāh—who is obscure—, and even if the mentioned narration of Abū Mijlaz were supported by a chain of narrators, they would have no argument in it, because the wording they clung to—"and likewise what is measured and weighed"—is not from the speech of the Messenger of Allāh (peace be upon him), but rather from the speech of Abū Saʿīd, if it were authentic.

وَهُوَ أَيْضًا عَنْهُ مُنْقَطِعٌ؛ لِأَنَّ هَذَا خَبَرٌ رَوَاهُ: نَافِعٌ، وَأَبُو صَالِحٍ السَّمَّانُ، وَأَبُو الْمُتَوَكِّلِ النَّاجِي، وَسَعِيدُ بْنُ الْمُسَيَّبِ، وَعُقْبَةُ بْنُ عَبْدِ الْغَافِرِ، وَأَبُو نَضْرَةَ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَسَعِيدٌ الْجُرَيْرِيُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ، كُلُّهُمْ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، وَكُلُّهُمْ ذَكَرُوا أَنَّهُمْ سَمِعُوهُ مِنْهُ، وَكُلُّهُمْ مُتَّصِلُ الْأَسَانِيدِ بِالثِّقَاتِ الْمَعْرُوفِينَ إِلَيْهِمْ، لَيْسَ مِنْهُمْ أَحَدٌ ذَكَرَ هَذَا اللَّفْظَ فِيهِ، وَهُوَ بَيِّنٌ فِي الْحَدِيثِ الْمَذْكُورِ نَفْسِهِ؛ لِأَنَّهُ لَمَّا تَمَّ كَلَامُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ أَبُو مِجْلَزٍ: ثُمَّ قَالَ فَابْتَدَأَ الْكَلَامَ الْمَذْكُورَ مِنْ ذِكْرِ " وَكَذَلِكَ كُلُّ مَا يُكَالُ وَيُوزَنُ " مَفْصُولًا عَنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

L23580–23582 The chain is also disconnected from him, as this report was narrated by Nāfiʿ, Abū Ṣāliḥ al-Sammān, Abū al-Mutawakkil al-Nājī, Saʿīd ibn al-Musayyab, ʿUqbah ibn ʿAbd al-Ghāfir, and Abū Naḍrah. Abu Salamah ibn Abd al-Rahman, Sa'id al-Jurayri, and 'Ata' ibn Abi Rabah—all narrated from Abu Sa'id al-Khudri, mentioning they heard him directly. Their chains of transmission are connected to them by trustworthy, well-known narrators, with none mentioning this specific wording. This is evident from the hadith itself, for when the Messenger of Allah—peace and blessings be upon him—concluded his speech, Abu Mijlaz said, then he himself began the aforementioned speech starting with the mention of "and likewise everything measured and weighed"—a distinct statement separate from the speech of the Messenger of Allah. It is plausible this originated from Abu Mijlaz's speech—indeed the most evident interpretation—thus rendering it void in all respects. It is impermissible to attribute speech to the Messenger of Allah—peace and blessings be upon him—through false conjecture.

- وَمَا يَبْعُدُ أَنْ يَكُونَ مِنْ كَلَامِ أَبِي مِجْلَزٍ - وَهُوَ الْأَظْهَرُ - فَبَطَلَ مِنْ كُلِّ جِهَةٍ، وَلَا يَحِلُّ أَنْ يُنْسَبَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَلَامٌ بِالظَّنِّ الْكَاذِبِ.

L23583 Abu Muhammad said: Then, the entire astonishment lies in their arguing about matters wherein there is no explicit text from him, nor evidence, nor narration, and their contradicting what is therein established with certainty - clearly attributed as the saying of the Messenger of Allah, may Allah's peace and blessings be upon him.

قَالَ أَبُو مُحَمَّدٍ ثُمَّ الْعَجَبُ كُلُّهُ مِنْ احْتِجَاجِهِمْ فِيمَا لَيْسَ فِيهِ مِنْهُ نَصٌّ وَلَا دَلِيلٌ وَلَا أَثَرٌ، وَخِلَافُهُمْ لِيَقِينِ مَا فِيهِ مَنْسُوبًا مُبَيَّنًا أَنَّهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23584 It has been authentically established other than this report that the following is from the speech of the Messenger of Allah (peace and blessings be upon him): "Dates for dates, wheat for wheat, barley for barley, gold for gold, silver for silver - hand to hand; equal for equal."

وَقَدْ صَحَّ مِنْ غَيْرِ هَذَا الْخَبَرِ أَنَّهُ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «التَّمْرُ بِالتَّمْرِ، وَالْحِنْطَةُ بِالْحِنْطَةِ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، يَدًا بِيَدٍ، عَيْنًا بِعَيْنٍ» .

L23585 They declared openly: "Yes! It is permissible to exchange non-tangible property for non-tangible property, and tangible property for non-tangible property. Yes! They declare it permissible to exchange one date for two dates or more!" After these scandals, could greater scandals exist? Does any religion remain alongside this? Or shame in the face of disgrace—or fear of the Fire? We seek refuge in Allah from misguidance and ruin.

فَقَالُوا هُمْ جِهَارًا: نَعَمْ، وَيَجُوزُ غَيْرُ عَيْنٍ بِغَيْرِ عَيْنٍ، وَيَجُوزُ عَيْنٌ بِغَيْرِ عَيْنٍ، نَعَمْ، يَجُوزُ تَمْرَةٌ بِتَمْرَتَيْنِ وَبِأَكْثَرَ، فَهَلْ بَعْدَ هَذِهِ الْفَضَائِحِ فَضَائِحُ؟ أَوْ يَبْقَى مَعَ هَذَا دِينٌ أَوْ حَيَاءٌ مِنْ عَارٍ أَوْ خَوْفِ نَارٍ - نَعُوذُ بِاللَّهِ مِنْ الضَّلَالِ وَالدَّمَارِ.

L23586 Abu Muhammad said: Among what reveals the utmost clarity is that this wording—we intend "and likewise what is measured and weighed"—is definitively proven not to be from the speech of the Prophet, peace be upon him. It also nullifies their effective cause rooted in weight and measurement through sensory necessity, rational immediacy, and sound reasoning. For it constitutes sheer falsehood to assert that the Prophet, peace be upon him, established weight, measurement, and disparity in exchange as the effective cause for prohibiting usury, while the One who commissioned him, may He be exalted and glorified, knows—and the Prophet, peace be upon him, was aware, as every rational person recognizes—that rulings on traded goods differ most significantly across regions. What is weighed in one land is measured by volume in another: such as honey, oil, flour, and ghee. Oil and honey are sold

قَالَ أَبُو مُحَمَّدٍ: وَمِمَّا يَبِينُ غَايَةَ الْبَيَانِ: أَنَّ هَذَا اللَّفْظَ - نَعْنِي وَكَذَلِكَ مَا يُكَالُ وَيُوزَنُ - لَيْسَ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطْعًا بِبُرْهَانٍ وَاضِحٍ - وَهُوَ أَيْضًا مُبْطِلٌ لِعِلَّتِهِمْ بِالْوَزْنِ، وَالْكَيْلِ، مِنْ طَرِيقِ ضَرُورَةِ الْحِسِّ، وَبَدِيهَةِ الْعَقْلِ، وَصَادِقِ النَّظَرِ، فَإِنَّ مِنْ الْبَاطِلِ الْبَحْتِ أَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - يَجْعَلُ عِلَّةَ الْحَرَامِ فِي الرِّبَا: الْوَزْنَ، وَالْكَيْلَ، وَالتَّفَاضُلَ فِيهِ، وَبَاعِثُهُ عَزَّ وَجَلَّ يَعْلَمُ، وَهُوَ - عَلَيْهِ السَّلَامُ - يَدْرِي، وَكُلُّ ذِي عَقْلٍ يَعْرِفُ: أَنَّ حُكْمَ الْمَبِيعَاتِ يَخْتَلِفُ فِي الْبِلَادِ أَشَدَّ اخْتِلَافٍ، فَمَا يُوزَنُ

by weight in Baghdad and Kufa, whereas none of these are sold in Andalusia except by volume.

فِي بَلْدَةٍ يُكَالُ فِي أُخْرَى: كَالْعَسَلِ، وَالزَّيْتِ وَالدَّقِيقِ، وَالسَّمْنِ، يُبَاعُ الزَّيْتُ وَالْعَسَلُ بِبَغْدَادَ وَالْكُوفَةِ وَزْنًا، وَلَا يُبَاعُ شَيْءٌ مِنْهَا بِالْأَنْدَلُسِ إِلَّا كَيْلًا.

L23587 Butter and flour are sold by volume in some lands, but in our land they are sold only by weight. Wild figs are sold by volume in the wild, but in Seville and Cordoba they are sold only by weight. The same applies to all other goods.

وَيُبَاعُ السَّمْنُ وَالدَّقِيقُ فِي بَعْضِ الْبِلَادِ كَيْلًا، وَلَا يُبَاعُ عِنْدَنَا إِلَّا وَزْنًا، وَالتِّينُ يُبَاعُ بَرِّيَّةً كَيْلًا، وَلَا يُبَاعُ بِإِشْبِيلِيَّةَ وَقُرْطُبَةَ إِلَّا وَزْنًا، وَكَذَلِكَ سَائِرُ الْأَشْيَاءِ.

L23588–23590 There is no way to ascertain how that was originally sold during the time of the Messenger of Allah—peace be upon him. Thus, usury has become something whose nature is unknown—it cannot be avoided—nor do they recognize what is not usury to practice permissible dealings. Consequently, the forbidden and permissible in Allah's religion have become thoroughly intermingled, never to be distinguished from each other.

وَلَا سُبُلَ إِلَى أَنْ يُعْرَفَ كَيْفَ كَانَ يُبَاعُ ذَلِكَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْلًا، فَحَصَلَ الرِّبَا لَا يُدْرَى مَا هُوَ حَتَّى يُجْتَنَبَ؟ وَلَا مَا لَيْسَ هُوَ فَيُسْتَعْمَلَ وَصَارَ الْحَرَامُ وَالْحَلَالُ فِي دِينِ اللَّهِ تَعَالَى أَمْشَاجًا مُخْتَلِطَيْنِ لَا يُعْرَفُ هَذَا مِنْ هَذَا أَبَدًا.

L23591 All the types of sold commodities into which they introduce usury—they neither comprehend how usury enters them nor how to be safe from it! We absolve ourselves before Allah the Exalted from a religion characterized thus. Far removed! Where is this false claim in relation to the truthful words of Allah the Exalted: *"This day I have perfected for you your religion"* [Al-Mā'idah: 3], and the statement of Allah's Messenger—peace and blessings be upon him—when he said: *"O Allah, have I conveyed?"* They responded: *"O Allah, yes!"* He said: *"O Allah, bear witness!"*[9]

وَحَصَلَتْ الْأَنْوَاعُ الْمَبِيعَةُ كُلُّهَا الَّتِي يُدْخِلُونَ فِيهَا الرِّبَا لَا يَدْرُونَ كَيْفَ يَدْخُلُ الرِّبَا فِيهَا؟ وَلَا كَيْفَ يَسْلَمُ مِنْهُ؟ نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ دِينٍ هَذِهِ صِفَتُهُ، هَيْهَاتَ أَيْنَ هَذَا الْقَوْلُ الْكَاذِبُ؟ مِنْ قَوْلِ اللَّهِ تَعَالَى الصَّادِقِ {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] وَمِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «اللَّهُمَّ هَلْ بَلَّغْتُ؟ قَالُوا: اللَّهُمَّ نَعَمْ، قَالَ: اللَّهُمَّ اشْهَدْ» .

L23592 If they return to making the custom of each locality's people the basis, religion becomes a plaything. Should the inhabitants of a region wish to legalize the forbidden, they could convert all commodities they previously sold by measure to weighing, and what they sold by weighing to measure—thereby permitting what was forbidden through their own choice, an offense more harmful than disparity between two measures or two weights. What Allah wills occurs. This very matter also applies to the Malikis and Shafi'is, for when they extend usury rulings to all edibles or stored consumables, we ask them about the numerous traded types within these categories—not one or

فَإِنْ رَجَعُوا إِلَى أَنْ يَجْعَلُوا لِأَهْلِ كُلِّ بَلَدٍ عَادَتَهُ حَصَلَ الدِّينُ لَعِبًا إِذَا شَاءَ أَهْلُ بَلَدٍ أَنْ يَسْتَحِلُّوا الْحَرَامَ رَدُّوا كُلَّ مَا كَانُوا يَبِيعُونَهُ بِكَيْلٍ إِلَى الْوَزْنِ، وَمَا كَانُوا يَبِيعُونَهُ بِوَزْنٍ إِلَى كَيْلٍ فَحَلَّ لَهُمْ بِاخْتِيَارِهِمْ مَا كَانَ حَرَامًا أَمَسَّ مِنَ التَّفَاضُلِ بَيْنَ الْكَيْلَيْنِ، أَوْ بَيْنَ الْوَزْنَيْنِ مَا شَاءَ اللَّهُ كَانَ، وَهَذَا بِعَيْنِهِ أَيْضًا يَدْخُلُ عَلَى الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ؛ لِأَنَّهُمْ إِذَا أَدْخَلُوا الرِّبَا فِي الْمَأْكُولِ كُلِّهِ، أَوْ فِي الْمُدَّخَرِ الْمُقْتَاتِ: سَأَلْنَاهُمْ عَنْ الْأَصْنَافِ الْمَبِيعَةِ مِنْ ذَلِكَ، وَلَيْسَتْ صِنْفًا، وَلَا صِنْفَيْنِ، بَلْ هِيَ عَشَرَاتٌ كَثِيرَةٌ: بِأَيِّ شَيْءٍ

[9] **Qur'an references (L23591):** Qur'an 5:3 (Al-Ma'idah).

two kinds, but many dozens. By what standard do they mandate equivalence: measure or weight? Whichever they choose, they become imposers of falsehood, having no greater validity than one who advocates weighing for what they prescribe by measure, or measure for what they prescribe by weight. Where then is the deliverance? How can people engage in lawful trade? How can they avoid the usury forbidden to them? This constitutes an impermissible error for those whom Allah Almighty has facilitated for self-counsel.

يُوجِبُونَ فِيهَا التَّمَاثُلَ، أَبِالْكَيْلِ أَمْ بِالْوَزْنِ؟ فَأَيًّا مَا قَالُوا صَارُوا مُتَحَكِّمِينَ بِالْبَاطِلِ، وَلَمْ يَكُونُوا أَوْلَى مِنْ آخَرَ يَقُولُ بِالْوَزْنِ فِيمَا قَالُوا هُمْ فِيهِ بِالْكَيْلِ، أَوْ بِالْكَيْلِ فِيمَا قَالُوا هُمْ فِيهِ بِالْوَزْنِ، فَأَيْنَ الْمُخَلِّصُ؟ أَمْ كَيْفَ يَبِيعُ النَّاسُ مَا أُحِلَّ لَهُمْ مِنَ الْبَيْعِ؟ أَمْ كَيْفَ يَجْتَنِبُونَ مَا حَرُمَ عَلَيْهِمْ مِنَ الرِّبَا؟ وَهَذَا مِنَ الْخَطَأِ الَّذِي لَا يَحِلُّ عَلَى مَنْ يَسَّرَهُ اللَّهُ تَعَالَى لِنَصِيحَةِ نَفْسِهِ.

L23593 They mentioned in that context from predecessors what was narrated to us through the chain of transmission of Ibn Wahb from Makhramah ibn Bukayr from his father: I heard ʻAmr ibn Shuʻayb say: ʻUmar ibn al-Khaṭṭāb wrote to Abū Mūsā al-Ashʻarī: "A saʻ must not be sold for two saʻs if they are of the same kind, even when exchanged hand-to-hand. If they differ in kind, there is no harm. When disagreement arises regarding a debt transaction, it becomes invalid. Every item sold by weight follows this ruling in the same manner as items measured by volume."

وَذَكَرُوا فِي ذَلِكَ عَمَّنْ تَقَدَّمَ مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ سَمِعْتُ عَمْرَو بْنَ شُعَيْبٍ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ: أَنْ لَا يُبَاعَ الصَّاعُ بِالصَّاعَيْنِ إِذَا كَانَ مِثْلَهُ وَإِنْ كَانَ يَدًا بِيَدٍ، فَإِنْ اخْتَلَفَ فَلَا بَأْسَ، وَإِذَا اُخْتُلِفَ فِي الدَّيْنِ فَلَا يَصْلُحُ - وَكُلُّ شَيْءٍ يُوزَنُ مِثْلُ ذَلِكَ كَهَيْئَةِ الْمِكْيَالِ.

L23594 From the narration of Yahya ibn Sa'id al-Qattan: Sadaqah ibn al-Muthanna reported from his grandfather - Rabah ibn al-Harith - that 'Ammar ibn Yasir said in the Grand Mosque: "One slave is better than two slaves, one female slave better than two female slaves, one camel better than two camels, and one garment better than two garments. Whatever is exchanged hand to hand, there is no harm in it. Verily, usury lies in deferred transactions except what is measured or weighed."

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا صَدَقَةُ بْنُ الْمُثَنَّى أَنَا جَدِّي - هُوَ رَبَاحُ بْنُ الْحَارِثِ أَنَّ عَمَّارَ بْنَ يَاسِرٍ قَالَ فِي الْمَسْجِدِ الْأَكْبَرِ: الْعَبْدُ خَيْرٌ مِنَ الْعَبْدَيْنِ وَالْأَمَةُ خَيْرٌ مِنَ الْأَمَتَيْنِ، وَالْبَعِيرُ خَيْرٌ مِنَ الْبَعِيرَيْنِ، وَالثَّوْبُ خَيْرٌ مِنَ الثَّوْبَيْنِ، فَمَا كَانَ يَدًا بِيَدٍ فَلَا بَأْسَ بِهِ، إِنَّمَا الرِّبَا فِي النَّسَاءِ إِلَّا مَا كِيلَ أَوْ وُزِنَ.

L23595–23597 Abu Muhammad said: Some of them added to this report: "Therefore, a category thereof must not be sold for another category." except like for like. According to the narration of Ibn Abī Shaybah: I [narrate] from ʻAbd al-Aʻlā from Maʻmar from al-Zuhrī from Sālim that Ibn ʻUmar saw no objection to exchanging measured goods hand-to-hand—one unit for two—when their types differ.

قَالَ أَبُو مُحَمَّدٍ: وَزَادَ بَعْضُهُمْ فِي هَذَا الْخَبَرِ: فَلَا يُبَاعُ صِنْفٌ مِنْهُ بِالصِّنْفِ الْآخَرِ إِلَّا مِثْلًا بِمِثْلٍ - وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمٍ أَنَّ ابْنَ عُمَرَ كَانَ لَا يَرَى بَأْسًا فِيمَا يُكَالُ يَدًا بِيَدٍ وَاحِدًا بِاثْنَيْنِ إِذَا اخْتَلَفَتْ أَلْوَانُهُ.

L23598 And through the chain of ʿAbd al-Razzāq from Maʿmar from Ḥammād ibn Abī Sulaymān from al-Nakhaʿī and a man from al-Ḥasan, they both collectively said: "Lend volume-based items in exchange for weight-based

items not measured by volume, and lend weight-based items in exchange for volume-based items not measured by weight.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ النَّخَعِيِّ وَعَنْ رَجُلٍ عَنْ الْحَسَنِ، قَالَا جَمِيعًا: سَلِّفْ مَا يُكَالُ فِيمَا يُوزَنُ وَلَا يُكَالُ، وَسَلِّفْ مَا يُوزَنُ وَلَا يُكَالُ فِيمَا يُكَالُ وَلَا يُوزَنُ.

L23599 From the narration of Abd al-Razzaq, from Sufyan al-Thawri, from Musa ibn Abi A’isha, from Ibrahim al-Nakha’i, who said: “In any sale involving goods measured by volume exchanged like for like, if they differ, then increase and add hand to hand. If it is a single commodity weighed by weight, then like for like; but if it differs, then increase and add hand to hand.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُوسَى بْنِ أَبِي عَائِشَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَا كَانَ مِنْ بَيْعٍ يُكَالُ مِثْلًا بِمِثْلٍ، فَإِذَا اخْتَلَفَتْ فَزِدْ وَازْدَدْ يَدًا بِيَدٍ، وَإِنْ كَانَ شَيْئًا وَاحِدًا يُوزَنُ فَمِثْلًا بِمِثْلٍ، فَإِذَا اخْتَلَفَ فَزِدْ وَازْدَدْ يَدًا بِيَدٍ.

L23600 Narrated via the chain of ʿAbd al-Razzāq → Maʿmar → al-Zuhrī, who said: “Anything that is weighed, then it follows the same ruling as gold and silver, and anything that is measured by capacity, then it follows the same ruling as wheat and barley.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: كُلُّ شَيْءٍ يُوزَنُ فَهُوَ يَجْرِي مَجْرَى الذَّهَبِ وَالْفِضَّةِ، وَكُلُّ شَيْءٍ يُكَالُ فَهُوَ يَجْرِي مَجْرَى الْبُرِّ وَالشَّعِيرِ.

L23601 As for the narration from Maʿmar, it is interrupted, and likewise from Al-Ḥasan.

فَأَمَّا الرِّوَايَةُ عَنْ مَعْمَرٍ فَمُنْقَطِعَةٌ، وَعَنْ الْحَسَنِ كَذَلِكَ.

L23602 As for the statement of ʿAmmār, it does not conform to their doctrine, but they obscured their position with it. This is because his statement—“except what is measured or weighed”—can only be interpreted in two ways: either he excluded it from deferred payment (nasi’ah) transactions that constitute usury (ribā), or he excluded it from his declaration: “There is no harm in it when it is hand-to-hand.” No third interpretation is possible. If he excluded it from deferred payment (nasi’ah) transactions that constitute usury, this explicitly contradicts their doctrine and necessitates that usury applies only to what is measured or weighed in deferred transactions. If he excluded it from his declaration about hand-to-hand transactions, this likewise contradicts their doctrine and necessitates that exchanging measured items for weighed items in immediate exchange is impermissible.

وَأَمَّا قَوْلُ عَمَّارٍ: فَغَيْرُ مُوَافِقٍ لِقَوْلِهِمْ، لَكِنَّهُمْ مَوَّهُوا بِهِ؛ لِأَنَّهُ لَا يَخْلُو قَوْلُهُ: إلَّا مَا كِيلَ أَوْ وُزِنَ مِنْ أَنْ يَكُونَ اسْتَثْنَاهُ مِنْ النَّسَاءِ الَّذِي هُوَ رِبًا، أَوْ يَكُونَ اسْتَثْنَاهُ مِمَّا قَالَ: إنَّهُ لَا بَأْسَ بِهِ مَا كَانَ يَدًا بِيَدٍ، وَلَا سَبِيلَ إلَى وَجْهٍ ثَالِثٍ، فَإِنْ كَانَ اسْتَثْنَاهُ مِنْ النَّسَاءِ الَّذِي هُوَ رِبًا، فَهُوَ ضِدُّ مَذْهَبِهِمْ عَيْنًا، وَمُوجِبٌ أَنَّهُ لَا رِبَا إلَّا فِيمَا يُكَالُ أَوْ يُوزَنُ فِي النَّسِيئَةِ، فَإِنْ كَانَ اسْتَثْنَاهُ مِمَّا لَا بَأْسَ بِهِ يَدًا بِيَدٍ، فَهُوَ أَيْضًا ضِدُّ مَذْهَبِهِمْ وَمُوجِبُ: أَنَّهُ لَا يَجُوزُ مَا كِيلَ بِمَا وُزِنَ يَدًا بِيَدٍ.

L23603 As for the increase they introduced, no kind of it may be exchanged for another kind except like for like—thus it is evidently contrary to their school in every case.

وَأَمَّا الزِّيَادَةُ الَّتِي زَادُوهَا فَلَا يُبَاعُ صِنْفٌ مِنْهُ بِالصِّنْفِ الْآخَرِ إلَّا مِثْلًا بِمِثْلٍ فَهُوَ ضِدُّ مَذْهَبِهِمْ عِيَانًا بِكُلِّ حَالٍ.

L23604 As for the statement of Ibn ʻUmar, it is authentically reported from him, and its contradiction is likewise authentically established, as we indicated in our discussion of Al-Shafiʻi's position. Thus, neither of his two opinions holds greater precedence over the other, despite the absence of any disapproval of disparity in exchange of measurable goods within it, nor does it align with their remaining positions. We have not found their view authentically transmitted from any predecessor except Al-Nakhaʻi and Al-Zuhri alone. Consequently, all the embellishments they contrived through the transmitted reports are rendered baseless.

وَأَمَّا قَوْلُ ابْنِ عُمَرَ فَصَحِيحٌ عَنْهُ، وَقَدْ صَحَّ عَنْهُ خِلَافُهُ كَمَا ذَكَرْنَا فِي ذِكْرِنَا قَوْلَ الشَّافِعِيِّ، فَلَيْسَ أَحَدُ قَوْلَيْهِ بِأَوْلَى مِنَ الْآخَرِ، مَعَ أَنَّهُ لَيْسَ فِيهِ كَرَاهِيَةُ التَّفَاضُلِ فِيمَا يُكَالُ، وَلَا يُوَافِقُهُ سَائِرُ أَقْوَالِهِمْ، وَمَا وَجَدْنَا قَوْلَهُمْ يَصِحُّ عَنْ أَحَدٍ قَبْلَهُمْ إِلَّا عَنِ النَّخَعِيِّ، وَالزُّهْرِيِّ فَقَطْ - فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ مِنَ الْآثَارِ.

L23605 If they say: He—peace be upon him—only specified items measured by capacity and weight?

فَإِنْ قَالُوا: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى مَكِيلٍ، وَمَوْزُونٍ؟

L23606–23608 We said: What is the difference between this and one who said, "The Prophet (peace be upon him) did not explicitly stipulate except regarding an edible item or"? A price—or [what of] one who says: "The Prophet—peace be upon him—did not specify [rulings] except for stored staple provisions, minerals, and what makes food wholesome?"

قُلْنَا: مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ مَنْ قَالَ: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى مَأْكُولٍ أَوْ ثَمَنٍ - أَوْ مَنْ قَالَ: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى مُقْتَاتٍ مُدَّخَرٍ، وَمَعْدِنِيٍّ؟ وَمَا يَصْلُحُ بِهِ الطَّعَامُ.

L23609 Or one who says: He (peace be upon him) only specified what is subject to zakah and savory edibles - or one who says: He (peace be upon him) only specified plants, metals, and non-perishable items - thus applying riba to all that grows like aloe and similar things, while exempting it from milk and its derivatives, honey, meat, and fish? In this case, none of these assertions holds greater validity than another.

أَوْ مَنْ قَالَ: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى مَا يُزَكَّى وَعَلَى مَالِحِ الطَّعْمِ فَقَطْ - أَوْ مَنْ قَالَ: لَمْ يَنُصَّ - عَلَيْهِ السَّلَامُ - إِلَّا عَلَى نَبَاتٍ، وَمَعْدِنِيٍّ، وَجَامِدٍ؟ فَأَدْخَلَ الرِّبَا فِي كُلِّ مَا يَنْبُتُ كَالصَّبِرِ وَغَيْرِ ذَلِكَ، وَأَسْقَطَهُ عَنِ اللَّبَنِ وَمَا يَتَصَرَّفُ مِنْهُ، وَعَنِ الْعَسَلِ، وَاللَّحْمِ، وَالسَّمَكِ، فَلَيْسَ بَعْضُ هَذِهِ الدَّعَاوَى أَوْلَى مِنْ بَعْضٍ.

L23610 All of this, if one transgresses with it what is mentioned in the text, constitutes a violation of the boundaries set by Allah the Exalted. The Messenger of Allah—peace and blessings be upon him—never failed to clarify his intent to us. Far be it from him to abandon us regarding the gravest matters, such as usury—for which one is threatened with the Fire of Hell in the Hereafter and warfare in this world—by relegating us to these false soothsayers and baseless conjectures—darknesses, one above another. We praise Allah for granting us deliverance.

وَكُلُّ هَذَا إِذَا تَعَدَّى بِهِ مَا وَرَدَ فِيهِ النَّصُّ فَهُوَ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَمَا عَجَزَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ عَنْ أَنْ يُبَيِّنَ لَنَا مُرَادَهُ، وَحَاشَ لَهُ أَنْ يَكِلَنَا فِي أَصْعَبِ الْأَشْيَاءِ مِنَ الرِّبَا الْمُتَوَعَّدِ فِيهِ بِنَارِ جَهَنَّمَ فِي الْآخِرَةِ وَالْحَرْبِ بِهِ فِي الدُّنْيَا إِلَى هَذِهِ الْكَهَانَاتِ الْكَاذِبَةِ، وَالظُّنُونِ الْآفِكَةِ، ظُلُمَاتٌ بَعْضُهَا فَوْقَ بَعْضٍ - وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

وَعَهِدْنَا بِهِمْ يَقُولُونَ: نَحْنُ عَلَى يَقِينٍ مِنْ وُجُوبِ قَطْعِ الْيَدِ فِي عَشَرَةِ دَرَاهِمَ، وَغَيْرُ مُوقِنِينَ بِوُجُوبِ قَطْعِهَا فِي أَقَلَّ، وَنَحْنُ مُوقِنُونَ بِتَحْرِيمِ عَصِيرِ الْعِنَبِ إِذَا أَسْكَرَ وَلَمْ نُوقِنْ بِتَحْرِيمِ مَا عَدَاهُ - وَنَحْنُ مُوقِنُونَ بِالْقَصْرِ فِي ثَلَاثٍ وَلَا نُوقِنُ بِهِ فِي أَقَلَّ، فَلَا نَقُولُ بِشَيْءٍ مِنْ ذَلِكَ حَيْثُ لَا نُوقِنُهُ.

L23611 We instructed them to say: We are certain of the obligation to amputate the hand for ten dirhams, but we are not certain of the obligation to amputate it for less. We are certain of the prohibition of grape juice if it intoxicates, but we are not certain of the prohibition of what is other than it. We are certain of shortening prayers in three, but we are not certain of it in less than that. Thus, we do not affirm anything of that wherein we lack certainty.

فَهَلَّا قَالُوا هَهُنَا: نَحْنُ مُوقِنُونَ بِالرِّبَا فِي الْأَصْنَافِ الْمَنْصُوصِ عَلَيْهَا، وَلَسْنَا عَلَى يَقِينٍ مِنْهُ فِي غَيْرِهَا، فَلَا نَقُولُ بِهِ حَيْثُ لَا يَقِينَ مَعَنَا فِيهِ؟

L23612 Why don't they say here, "We are fully convinced about riba in the textually specified categories, but we lack such conviction regarding others, so we refrain from ruling on it where no certainty exists"?

وَلَوْ فَعَلُوا هَذَا هَهُنَا وَتَرَكُوا هُنَالِكَ لَوُفِّقُوا لِأَنَّهُمْ كَانُوا يَتَّبِعُونَ السُّنَنَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - ثُمَّ لَمْ يَلْبَثُوا أَنْ نَقَضُوا عِلَّتَهُمْ أَقْبَحَ نَقْضٍ، فَأَجَازُوا تَسْلِيفَ الذَّهَبِ، وَالْفِضَّةِ فِيمَا يُكَالُ، وَمَا يُوزَنُ.

L23613 If they had done this here and abandoned that there, they would have been granted success (and by Allah the Exalted is all success) for they were following the traditions. Yet it was not long before they invalidated their rationale in the most repugnant invalidation, permitting the advancing of gold and silver as payment in salam contracts for that which is measured by volume and that which is weighed.

وَأَجَازُوا بَيْعَ آنِيَةِ نُحَاسٍ بِآنِيَةِ نُحَاسٍ أَوْ وَزْنٍ مِنْهَا، وَلَمْ يُجِيزُوا ذَلِكَ فِي آنِيَةِ الذَّهَبِ، وَالْفِضَّةِ، وَكُلُّ ذَلِكَ سَوَاءٌ عِنْدَهُمْ فِي دُخُولِ الرِّبَا فِيهِ.

L23614 They permitted exchanging copper vessels for copper vessels or their weight [in kind], but they did not permit this for gold or silver vessels. All such cases are equal in their view concerning the presence of riba within them.

ثُمَّ أَجَازُوا بَيْعَ قَمْحٍ بِعَيْنِهِ بِقَمْحٍ بِغَيْرِ عَيْنِهِ، أَوْ تَمْرٍ بِعَيْنِهِ بِتَمْرٍ بِغَيْرِ عَيْنِهِ أَوْ شَعِيرٍ بِعَيْنِهِ بِشَعِيرٍ بِغَيْرِ عَيْنِهِ، فَيُقْبَضُ الَّذِي بِغَيْرِ عَيْنِهِ ثُمَّ يَفْتَرِقَانِ قَبْلَ قَبْضِ الَّذِي بِعَيْنِهِ - وَحَرَّمُوا ذَلِكَ فِي ذَهَبٍ بِعَيْنِهِ بِذَهَبٍ بِغَيْرِ عَيْنِهِ، وَفِي فِضَّةٍ بِعَيْنِهَا بِفِضَّةٍ بِغَيْرِ عَيْنِهَا، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ، لَا فِي نَصٍّ، وَلَا فِي مَعْقُولٍ، فَأَبَاحُوا الرِّبَا جِهَارًا - وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ - فَبَطَلَتْ عِلَّةُ هَؤُلَاءِ، وَبَطَلَ قَوْلُهُمْ يَقِينًا.

L23615–23617 They permitted the sale of physically present wheat for non-present wheat, or physically present dates for non-present dates, or physically present barley for non-present barley, stipulating that the non-present item must be received first, after which the parties must separate before the physically present item is taken. They prohibited this in the case of physically present gold for non-present gold and physically present silver for non-present silver, with no distinction between... Not a thing of that—neither in textual evidence nor rational basis—so they permitted riba openly—and we seek refuge in Allah from being forsaken—so the legal basis of these people is nullified, and their claim is invalidated with certainty.

1481 - Issue: Abu Muhammad said, "Here are certain matters mentioned by all the proponents (who explain the rationale of the hadith on usury), which include what was narrated to us through Waki''s chain: from Ismāʿīl

L23618

ibn Abī Khālid, from Ḥakīm ibn Jābir, from ʿUbādah ibn al-Ṣāmit: ʾI heard the Messenger of Allah—peace and blessings be upon him—say: ”Gold for gold, silver for silver, measure for measure, until it culminates even in salt.“”

١٤٨١ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: وَهَهُنَا أَشْيَاءُ ذَكَرَهَا الْقَائِلُونَ - بِتَعْلِيلِ حَدِيثِ الرِّبَا - كُلُّهُمْ، وَهِيَ أَنَّهُمْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ حَكِيمِ بْنِ جَابِرٍ «عَنْ عُبَادَةَ بْنِ الصَّامِتِ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، وَالْكِفَّةُ بِالْكِفَّةِ، حَتَّى خَلَصَ إلَى الْمِلْحِ» .

L23619 They said: “Thus, this indicates that he—peace be upon him—mentioned something other than that.” Abu Muhammad said: “This is baseless for several reasons—the first being that this wording was solely reported by Hakim ibn Jabir, who is unknown.”

قَالُوا: فَهَذَا يَدُلُّ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - ذَكَرَ غَيْرَ ذَلِكَ. قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّ هَذَا اللَّفْظَ لَمْ يَرْوِهِ إلَّا حَكِيمُ بْنُ جَابِرٍ - وَهُوَ مَجْهُولٌ.

L23620 The second is that he excluded from this report any mention of wheat, dates, and barley, thereby nullifying their presumption that he cited types not mentioned by other narrators.

وَالثَّانِي: أَنَّهُ قَدْ أَسْقَطَ مِنْ هَذَا الْخَبَرِ ذِكْرَ الْبُرِّ، وَالتَّمْرِ وَالشَّعِيرِ -، فَبَطَلَ تَقْدِيرُهُمْ أَنَّهُ ذَكَرَ أَصْنَافًا لَمْ يَذْكُرْهَا غَيْرُهُ مِنْ الرُّوَاةِ.

L23621 The third: We narrated this report via the chain: Bakr ibn Hammad → Musaddad → Yaḥyā ibn Saʿīd al-Qaṭṭān → Ismāʿīl ibn Abī Khālid → Ḥakīm ibn Jābir → ʿUbādah ibn al-Ṣāmit → the Prophet (peace be upon him), wherein he stated: “until he specifically mentioned salt.” Thus, it became clear that he did not mention any other types besides those types.

وَالثَّالِثُ: أَنَّ هَذَا الْخَبَرَ رُوِّينَاهُ مِنْ طَرِيقِ بَكْرِ بْنِ حَمَّادٍ عَنْ مُسَدَّدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ حَكِيمِ بْنِ جَابِرٍ عَنْ عُبَادَةَ بْنِ الصَّامِتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ: «حَتَّى خَصَّ الْمِلْحَ» فَلَاحَ أَنَّهُ لَمْ يَذْكُرْ غَيْرَ تِلْكَ الْأَصْنَافِ.

L23622 The fourth is that among the certain falsehoods is [the claim] that he, peace be upon him, would mention religiously mandated laws, then their mention would cease from all people—from their first to their last—without abrogation. This contradicts Allah the Exalted’s statement: “He does not speak from whim. It is not but a revelation revealed” [An-Najm: 3-4].[10]

وَالرَّابِعُ: أَنَّ مِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَذْكُرَ - عَلَيْهِ السَّلَامُ - شَرَائِعَ مُفْتَرَضَةً فَيَسْقُطُ ذِكْرُهَا عَنْ جَمِيعِ النَّاسِ - أَوَّلِهِمْ عَنْ آخِرِهِمْ - مِنْ غَيْرِ نَسْخٍ، هَذَا خِلَافُ قَوْلِ اللَّهِ تَعَالَى: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

L23623 And the words of the Most High: “Indeed, We have sent down the Reminder, and indeed, We are its Preservers” [Al-Hijr: 9].[11]

وَقَوْله تَعَالَى {إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ} [الحجر: ٩] .

L23624 If this were permissible, the religion would not have been perfected, the

[10] **Qur’an references (L23622):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm).
[11] **Qur’an references (L23623):** Qur’an 15:9 (Al-Hijr).

Sharia would be corrupt, for indeed things from it have been lost to us. We would be obligated to do what we are incapable of and commanded to do what we have no knowledge of whatsoever. And these are delusions grave enough in their severity, and an evident falsehood.

وَلَوْ جَازَ هَذَا لَكَانَ الدِّينُ لَمْ يَكْمُلْ، وَالشَّرِيعَةُ فَاسِدَةً، قَدْ ضَاعَتْ مِنْهَا عَنَّا أَشْيَاءُ، وَلَكُنَّا مُكَلَّفِينَ مَا لَا نَقْدِرُ عَلَيْهِ، وَمَأْمُورِينَ بِمَا لَا نَدْرِيهِ أَبَدًا، وَهَذِهِ ضَلَالَاتٌ نَاهِيك بِهَا، وَبَاطِلٌ لَا خَفَاءَ بِهِ.

L23625 They mentioned what was narrated to us through the chain of Ibn Wahb from Yazīd ibn Iyāḍ from Isḥāq ibn ʿAbd Allāh from Jubayr from Mālik ibn Aws ibn al-Ḥadathān: that the Prophet—peace and blessings of Allāh be upon him—said, "Dates for dates, raisins for raisins, wheat for wheat, butter for butter, oil for oil, dinar for dinar, dirham for dirham—there is no increase between them."

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَزِيدَ بْنِ عِيَاضٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ عَنْ جُبَيْرٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «التَّمْرُ بِالتَّمْرِ، وَالزَّبِيبُ بِالزَّبِيبِ، وَالْبُرُّ بِالْبُرِّ، وَالسَّمْنُ بِالسَّمْنِ، وَالزَّيْتُ بِالزَّيْتِ، وَالدِّينَارُ بِالدِّينَارِ، وَالدِّرْهَمُ بِالدِّرْهَمِ، لَا فَضْلَ بَيْنَهُمْ» .

L23626–23627 Abu Muhammad said: This is a fabricated and false ḥadīth; it is impermissible to narrate it except to expose its disgrace, for Mālik ibn Aws is not known to have heard anything from the Messenger of Allāh—peace and blessings of Allāh be upon him. Jubayr ibn Abī Ṣāliḥ is unknown—it is not known who he is; Isḥāq ibn ʿAbd Allāh (al-Farwī) is rejected; and Yazīd ibn ʿIyāḍ (Ibn Juʿdubah) is noted for lying and fabricating ḥadīths.

قَالَ أَبُو مُحَمَّد: وَهَذَا حَدِيثٌ مَوْضُوعٌ مَكْذُوبٌ لَا تَحِلُّ رِوَايَتُهُ إِلَّا عَلَى بَيَانِ فَضِيحَتِهِ؛ لِأَنَّ مَالِكَ بْنَ أَوْسٍ لَا يُعْرَفُ لَهُ سَمَاعٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَجُبَيْرَ بْنَ أَبِي صَالِحٍ - مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ، وَإِسْحَاقَ بْنَ عَبْدِ اللَّهِ - هُوَ الْفَرْوِيُّ - مَتْرُوكٌ - وَيَزِيدَ بْنَ عِيَاضٍ - هُوَ ابْنُ جعدبة مَذْكُورٌ بِالْكَذِبِ وَوَضْعِ الْأَحَادِيثِ.

L23628 Moreover, if it were valid, they would have no proof therein regarding the positing of an effective cause whatsoever; rather, it would only involve an additional mention of oil, ghee, and raisins.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ فِي إيجَابِ عِلَّةٍ أَصْلًا، وَإِنَّمَا كَانَ يَكُونُ فِيهِ زِيَادَةُ ذِكْرِ الزَّيْتِ، وَالسَّمْنِ، وَالزَّبِيبِ، فَقَطْ.

L23629 Moreover, if this were valid, then the Malikis would be in opposition to it because they permit exchanging a dirham for more than its weight as a recognized practice, and the Hanafis would also be in opposition to it because they permit exchanging three dates for six dates, ten grains of wheat for thirty grains of wheat, and likewise in barley, salt, raisins, and salt. It is not permissible to prohibit what is lawful out of fear of falling into the prohibited, thus hastening to commit that sin, nor to engage in falsehood out of fear that others may fall into it.

وَأَيْضًا: فَلَوْ صَحَّ لَكَانَ الْمَالِكِيُّونَ مُخَالِفِينَ لَهُ، لِأَنَّهُمْ يُجِيزُونَ الدِّرْهَمَ بِأَوْزَنَ مِنْهُ عَلَى سَبِيلِ الْمَعْرُوفِ وَلَكَانَ الْحَنَفِيُّونَ مُخَالِفِينَ لَهُ، لِأَنَّهُمْ يُجِيزُونَ ثَلَاثَ تَمَرَاتٍ بِسِتِّ تَمَرَاتٍ، وَعَشْرَ حَبَّاتِ بُرٍّ بِثَلَاثِينَ حَبَّةَ بُرٍّ - وَكَذَلِكَ فِي الشَّعِيرِ، وَالْمِلْحِ، وَالزَّبِيبِ، وَالْمِلْحِ، وَلَا يَحِلُّ تَحْرِيمُ حَلَالٍ خَوْفَ الْوُقُوعِ فِي الْحَرَامِ، فَيَسْتَعْجِلُ مِنْ فِعْلِ ذَلِكَ الْمَعْصِيَةَ، وَالْوُقُوعُ فِي الْبَاطِلِ خَوْفَ أَنْ يَقَعَ فِيهِ غَيْرُهُ.

L23630 From the chain of Wakīʿ: I, Ibrāhīm ibn Yazīd, report from Abū al-Zubayr, from Jābir, that he disapproved exchanging two *mudds* of barley for one *mudd* of wheat as deferred payment. Ibrāhīm is abandoned and accused. This indicates *karāhiyah* (dislike), not *taḥrīm* (prohibition), and it remains unknown whether he disliked the measure or the grain?

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا إِبْرَاهِيمُ بْنُ يَزِيدَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ أَنَّهُ كَرِهَ مُدَّيْ ذُرَةٍ بِمُدِّ حِنْطَةٍ نَسِيئَةً - إبْرَاهِيمُ - مَتْرُوكٌ مُتَّهَمٌ - وَهَذَا كَرَاهِيَةٌ لَا تَحْرِيمٌ، وَلَا يُدْرَى هَلْ كَرِهَ الْكَيْلَ أَوْ الطَّعَامَ؟

L23631 We have mentioned every opinion narrated in this chapter from the predecessors, clarified their disagreement regarding these opinions, and that they espoused positions on this matter which are not recorded from anyone before them.

وَقَدْ ذَكَرْنَا كُلَّ قَوْلٍ رُوِيَ فِي هَذَا الْبَابِ عَنْ الْمُتَقَدِّمِينَ وَبَيَّنَّا خِلَافَهُمْ لَهَا، وَأَنَّهُمْ قَالُوا فِي ذَلِكَ بِأَقْوَالٍ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُمْ.

L23632 The most astonishing thing is the audacity of one devoid of religion in openly asserting consensus regarding the occurrence of usury in categories beyond those explicitly specified - a blatant lie glaringly evident. By Allah, consensus has not been authenticated concerning the explicitly specified categories, so how then regarding others?

وَأَعْجَبُ شَيْءٍ مُجَاهَرَةُ مَنْ لَا دِينَ لَهُ بِدَعْوَى الْإِجْمَاعِ عَلَى وُقُوعِ الرِّبَا فِيمَا عَدَا الْأَصْنَافِ الْمَنْصُوصِ عَلَيْهَا - وَهَذَا كَذِبٌ مَفْضُوحٌ مِنْ قَرِيبٍ، وَاَللَّهِ مَا صَحَّ الْإِجْمَاعُ فِي الْأَصْنَافِ الْمَنْصُوصِ عَلَيْهَا فَكَيْفَ فِي غَيْرِهَا.

L23633 Or do not Ibn Masʿūd and Ibn ʿAbbās say: "There is no usury in what is exchanged hand-to-hand?" This was the position of ʿAṭāʾ, the disciples of Ibn ʿAbbās, and the jurists of Mecca.

أَوْ لَيْسَ ابْنُ مَسْعُودٍ، وَابْنُ عَبَّاسٍ يَقُولَانِ: لَا رِبَا فِيمَا كَانَ يَدًا بِيَدٍ؟ وَعَلَيْهِ كَانَ عَطَاءٌ، وَأَصْحَابُ ابْنِ عَبَّاسٍ، وَفُقَهَاءُ أَهْلِ مَكَّةَ.

L23634 It was narrated to us via the chain of Saʿīd ibn Manṣūr, from Abū Muʿāwiyah, from al-Aʿmash, from Ibrāhīm al-Taymī, from al-Ḥārith ibn Suwayd, from ʿAbd Allāh ibn Masʿūd who said: "There is no Riba in what is exchanged hand to hand, and water for water."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو مُعَاوِيَةَ أَنَا الْأَعْمَشُ عَنْ إبْرَاهِيمَ التَّيْمِيِّ عَنْ الْحَارِثِ بْنِ سُوَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: لَا رِبَا فِيمَا كَانَ يَدًا بِيَدٍ وَالْمَاءُ مِنْ الْمَاءِ.

L23635–23636 And through the chain of Abū Bakr ibn Abī Shaybah: from Wakīʿ, from Sufyān—who is al-Thawrī—from Ibn Jurayj, from ʿAṭāʾ, who said: "There is no harm in engaging in a *salam* sale of what is measured in what is measured, and what is weighed in what is weighed. It is only food for food." This is the same as our position and contradicts all the statements of these [views].

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ أَنَا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَا بَأْسَ بِأَنْ يُسَلِّمَ مَا يُكَالُ فِيمَا يُكَالُ، وَمَا يُوزَنُ فِيمَا يُوزَنُ، إنَّمَا هُوَ طَعَامٌ بِطَعَامٍ، وَهَذَا نَفْسُ قَوْلِنَا، وَمُخَالِفٌ لِجَمِيعِ قَوْلِ هَؤُلَاءِ.

L23637 It has been authentically reported from Talhah ibn Ubaydullah that he permitted selling gold for silver where one metal is taken immediately while the other's receipt is deferred to an unspecified term. They do not restrict

وَقَدْ صَحَّ عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ إبَاحَةُ بَيْعِ ذَهَبٍ بِفِضَّةٍ، يُقْبَضُ أَحَدُهُمَا وَيَتَأَخَّرُ قَبْضُ الْآخَرِ إلَى أَجَلٍ غَيْرِ مُسَمًّى، وَلَا يُقَدِّرُونَ فِيمَا عَدَا السِّتَّةَ الْأَصْنَافِ فِي الرِّبَا عَلَى كَلِمَةٍ،

rulings beyond the six specified categories in riba to a definitive ruling, except for seven Companions—may Allah be pleased with them—who held differing opinions, all contradicting the positions of Abu Hanifah, Malik, and Al-Shafi'i. No narration from any of these Companions—neither sound nor weak—aligns with the opinions of these latter scholars.

إِلَّا عَنْ سَبْعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخْتَلِفِينَ، كُلُّهُمْ مُخَالِفٌ لِأَقْوَالِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، لَيْسَ عَنْ أَحَدٍ مِنْهُمْ رِوَايَةٌ تُوَافِقُ أَقْوَالَ هَؤُلَاءِ صَحِيحَةٌ وَلَا سَقِيمَةٌ.

L23638 And from approximately twelve of the Followers—who likewise differed among themselves and contradicted their own opinions—none [did so] except Ibrāhīm alone, for his position aligned with the foundational principle of Abū Ḥanīfah.

وَعَنْ نَحْوِ اثْنَيْ عَشَرَ مِنْ التَّابِعِينَ مُخْتَلِفِينَ أَيْضًا كَذَلِكَ مُخَالِفِينَ لِأَقْوَالِهِمْ إِلَّا إبْرَاهِيمُ وَحْدَهُ، فَإِنَّهُ وَافَقَ قَوْلُهُ أَصْلَ أَبِي حَنِيفَةَ.

L23639 Moreover, most of the narrations we mentioned from the Companions and the Successors are weak and invalid. So who would consider such a thing as consensus except someone devoid of both faith and intellect—and with Allah, the Exalted, is all success.

وَأَيْضًا: فَأَكْثَرُ الرِّوَايَاتِ الَّتِي ذَكَرْنَا عَنْ الصَّحَابَةِ وَالتَّابِعِينَ فَوَاهِيَةٌ لَا تَصِحُّ، فَمَنْ يَجْعَلُ مِثْلَ هَذَا إجْمَاعًا إلَّا مِنْ لَا دِينَ لَهُ وَلَا عَقْلَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23640 We found an unorthodox opinion attributed to Bishr ibn Ghiyāth al-Marīsī: that exchanging every genus of goods for a different genus is permissible—such as gold for silver, silver for gold, wheat for barley, dates for salt, and every type of these for another—and that usury does not occur except in transactions involving the same genus exclusively.

وَوَجَدْنَا لِبِشْرِ بْنِ غِيَاثٍ الْمَرِيسِيِّ قَوْلًا غَرِيبًا، وَهُوَ أَنَّ تَسْلِيمَ كُلِّ جِنْسٍ فِي غَيْرِ جِنْسِهِ جَائِزٌ كَالذَّهَبِ فِي الْفِضَّةِ وَالْفِضَّةِ فِي الذَّهَبِ، وَالْقَمْحِ فِي الشَّعِيرِ، وَالتَّمْرِ فِي الْمِلْحِ، وَكُلِّ صِنْفٍ مِنْهَا فِي غَيْرِهِ، وَأَنَّ الرِّبَا لَا يَقَعُ إلَّا فِيمَا بِيعَ بِجِنْسِهِ فَقَطْ.

L23641 Then we do not know: does it apply to every genus in the world by analogy to the textually specified matters—this being the more evident implication of his statement—or is it restricted solely to the textually specified matters? This latter opinion contradicts what has been authentically established from the Messenger of Allah—may Allah bless him and grant him peace—hence there is no basis for occupying oneself with it.

ثُمَّ لَا نَدْرِي أَعَمَّ كُلَّ جِنْسٍ فِي الْعَالَمِ قِيَاسًا عَلَى الْمَنْصُوصَاتِ، وَهُوَ الْأَظْهَرُ مِنْ قَوْلِهِ؟ أَوْ خَصَّ الْمَنْصُوصَاتِ فَقَطْ - وَهَذَا قَوْلٌ مُخَالِفٌ لِمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا وَجْهَ لِلِاشْتِغَالِ بِهِ.

L23642 1482: Question:

١٤٨٢ - مَسْأَلَةٌ:

L23643 Ali said: Since all these statements have been invalidated, we must present the proof for the correctness of our opinion by the aid of Allah, the Most High. It has been narrated to us through Imam Muslim's chain: Qutaybah ibn Sa'id said: I heard from Al-Layth—that is, Ibn Sa'd—who narrated from Ibn Shihāb from Mālik ibn Aws ibn al-Ḥadathān that he said: I began asking, "Who exchanges dirhams?"

قَالَ عَلِيٌّ: فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا فَالْوَاجِبُ أَنْ نَذْكُرَ الْبُرْهَانَ عَلَى صِحَّةِ قَوْلِنَا بِعَوْنِ اللَّهِ تَعَالَى -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ قَالَ: أَنَا اللَّيْثُ - هُوَ ابْنُ

سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ أَنَّهُ قَالَ: أَقْبَلْتُ أَقُولُ: مَنْ يَصْطَرِفُ الدَّرَاهِمَ؟

L23644–23645 Talha ibn Ubaydullah—who was with Umar ibn al-Khattab—said: “Show us your gold, then we will come when our servant arrives to give you your silver.” Umar ibn al-Khattab said: “No, by Allah! You must either give him his silver or return his gold. For the Messenger of Allah—peace and blessings be upon him—said: ’Silver for gold is usury unless exchanged hand to hand; wheat for wheat is usury unless exchanged hand to hand; barley for barley is usury unless exchanged hand to hand; dates for dates are usury unless exchanged hand to hand.’”[12]

فَقَالَ طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ - وَهُوَ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ -: أَرِنَا ذَهَبَكَ؟ ثُمَّ جِئْنَا إِذَا جَاءَ خَادِمُنَا نُعْطِكَ وَرِقَكَ؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: كَلَّا، وَاللَّهِ لَتُعْطِيَنَّهُ وَرِقَهُ أَوْ لَتَرُدُّنَّ إِلَيْهِ ذَهَبَهُ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْوَرِقُ بِالذَّهَبِ رِبًا، إِلَّا هَاءَ وَهَاءَ وَالْبُرُّ بِالْبُرِّ رِبًا، إِلَّا هَاءَ وَهَاءَ، وَالشَّعِيرُ بِالشَّعِيرِ رِبًا، إِلَّا هَاءَ وَهَاءَ، وَالتَّمْرُ بِالتَّمْرِ رِبًا، إِلَّا هَاءَ وَهَاءَ» .

L23646 In the narration transmitted by Muslim: I am Ubaydullah ibn Umar al-Qawariri; Hammad ibn Zayd narrated from Ayyub al-Sikhtiyani, from Abu Qilabah, from Abu al-Ashʿath, from ʿUbadah ibn al-Samit, who said: I heard the Messenger of Allah (peace be upon him) prohibit selling gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, except in equal measure, hand to hand. Whoever adds or receives more has engaged in usury.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ أَنَا أَبُو الْأَشْعَثِ عَنْ «عُبَادَةَ بْنِ الصَّامِتِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَى عَنْ بَيْعِ الذَّهَبِ بِالذَّهَبِ، وَالْفِضَّةِ بِالْفِضَّةِ، وَالْبُرِّ بِالْبُرِّ، وَالشَّعِيرِ بِالشَّعِيرِ، وَالتَّمْرِ بِالتَّمْرِ، وَالْمِلْحِ بِالْمِلْحِ، إِلَّا سَوَاءً بِسَوَاءٍ، عَيْنًا بِعَيْنٍ، فَمَنْ زَادَ أَوْ ازْدَادَ فَقَدْ أَرْبَى» .

L23647 And through the chain of Muslim: I, Isḥāq ibn Ibrāhīm—he is Ibn Rāhawayh—from ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī, from Ayyūb al-Sikhtiyānī with a similar wording.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - عَنْ عَبْدِ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ الثَّقَفِيِّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ بِنَحْوِهِ.

L23648 From the chain of Aḥmad ibn Shuʿayb: From Muḥammad ibn al-Muthannā, from ʿAmr ibn ʿĀṣim, from Hammām—that is, Ibn Yaḥyā—from Qatādah, from Abū al-Khalīl, from Muslim al-Makkī, from Abū al-Ashʿath al-Ṣanʿānī, from ʿUbādah ibn al-Ṣāmit, who said: The Messenger of Allah—peace be upon him—said, “Gold for gold—its raw form and minted form—weight for weight. Silver for silver—its raw form and minted form—weight for weight. Salt for salt, dates for dates, wheat for wheat, barley for barley—measure for

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَمْرُو بْنُ عَاصِمٍ أَنَا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - أَنَا قَتَادَةُ عَنْ أَبِي الْخَلِيلِ عَنْ مُسْلِمٍ الْمَكِّيِّ عَنْ أَبِي الْأَشْعَثِ الصَّنْعَانِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الذَّهَبُ بِالذَّهَبِ تِبْرُهُ وَعَيْنُهُ وَزْنًا بِوَزْنٍ، وَالْفِضَّةُ بِالْفِضَّةِ تِبْرُهُ وَعَيْنُهُ وَزْنًا بِوَزْنٍ، وَالْمِلْحُ بِالْمِلْحِ، وَالتَّمْرُ

[12] **Hadith references (L23645):** Sahih Muslim 1586a; Jami at-Tirmidhi 1243.

measure. Whoever gives more or takes more has engaged in *ribā*. There is no harm in selling barley for wheat, barley being the larger quantity of the two, provided the exchange is hand to hand."

بِالتَّمْرِ، وَالْبُرُّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، كَيْلًا بِكَيْلٍ فَمَنْ زَادَ أَوْ ازْدَادَ فَقَدْ أَرْبَى، وَلَا بَأْسَ بِبَيْعِ الشَّعِيرِ بِالْبُرِّ، وَالشَّعِيرُ أَكْثَرُهُمَا يَدًا بِيَدٍ» .

L23649 Abū Muḥammad said: ʻAmr ibn ʻĀṣim, an Anṣārī, is reliable and well-known. Abū al-Khalīl (Ṣāliḥ ibn Abī Maryam) is reliable. Muslim al-Makkī—he is Muslim ibn Yasār al-Khayyāṭ (the tailor), the client of ʻUthmān (may Allāh be pleased with him)—is reliable.

قَالَ أَبُو مُحَمَّد: عَمْرُو بْنُ عَاصِمٍ أَنْصَارِيٌّ ثِقَةٌ مَعْرُوفٌ، وَأَبُو الْخَلِيلِ - هُوَ صَالِحُ بْنُ أَبِي مَرْيَمَ - ثِقَةٌ، وَمُسْلِمٌ الْمَكِّيُّ - هُوَ مُسْلِمُ بْنُ يَسَارٍ الْخَيَّاطُ مَوْلَى عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - ثِقَةٌ.

L23650–23651 This has also been narrated to us through authentic chains, so there is no usury except in what the Messenger of Allah—peace and blessings be upon him—who was commanded to clarify, specified. What is other than that is permissible, {and your Lord is never forgetful} [Maryam: 64]. And success comes only from Allah, the Most High.[13]

وَقَدْ رُوِّينَا هَذَا أَيْضًا مِنْ طَرِيقٍ صِحَاحٍ فَلَا رِبَا إِلَّا فِيمَا نَصَّ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورُ بِالْبَيَانِ، وَمَا عَدَا ذَلِكَ فَحَلَالٌ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23652 The issue of exchanging wheat for wheat and other types of the same category, trading some for others.

[مَسْأَلَة بَيْع الْقَمْح بالقمح وَغَيْره مِنْ الصناف بَعْضهَا بِبَعْضٍ]

L23653 1483 – Issue: It is not permissible to sell wheat for wheat except like for like, measure for measure, hand to hand, kind for kind. Nor is it permissible to sell barley for barley except in the same manner.

١٤٨٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يُبَاعَ قَمْحٌ بِقَمْحٍ إِلَّا مِثْلًا بِمِثْلٍ كَيْلًا بِكَيْلٍ يَدًا بِيَدٍ، عَيْنًا بِعَيْنٍ - وَلَا يَحِلُّ أَنْ يُبَاعَ شَعِيرٌ بِشَعِيرٍ إِلَّا كَذَلِكَ.

L23654 It is not permissible to sell dates for dates except equally and hand-to-hand.

وَلَا يَحِلُّ أَنْ يُبَاعَ تَمْرٌ بِتَمْرٍ إِلَّا كَذَلِكَ.

L23655 It is impermissible to sell salt for salt except in the same manner—whether mineral [salt] or what solidifies from water. All such [salt] may not be exchanged, some for some, except as we have mentioned.

وَلَا يَحِلُّ أَنْ يُبَاعَ مِلْحٌ بِمِلْحٍ إِلَّا كَذَلِكَ، وَسَوَاءٌ مَعْدِنِيَّةٌ أَوْ مَا يَنْعَقِدُ مِنْهُ مِنْ الْمَاءِ، كُلُّ ذَلِكَ لَا يُبَاعُ بَعْضُهُ بِبَعْضٍ إِلَّا كَمَا ذَكَرْنَا.

L23656 Similarly, all types of wheat—superior, inferior, and average—are the same in the ruling we have mentioned, and likewise the types of barley.

وَكَذَلِكَ أَصْنَافُ الْقَمْحِ فَهِيَ كُلُّهَا قَمْحٌ - الْأَعْلَى، وَالْأَدْنَى، وَالْوَسَطُ: سَوَاءٌ فِيمَا قُلْنَا، وَكَذَلِكَ أَقْسَامُ الشَّعِيرِ.

[13] **Qur'an references (L23651):** Qur'an 19:64 (Maryam).

L23657 Similarly, the types of dates: if the receipt of either commodity is delayed, it constitutes prohibited *Ribā*, perpetually invalidated, governed by the rulings of usurpation (ghaṣb), whether delayed by an instant or longer. The large and small quantities of all that we have mentioned are equal in the rulings we have described.

وَكَذَلِكَ أَقْسَامُ التَّمْرِ فَإِنْ تَأَخَّرَ قَبْضُ أَحَدِ الْعَيْنَيْنِ فَهُوَ رِبًا حَرَامٌ مَفْسُوخٌ أَبَدًا، مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ، سَوَاءٌ تَأَخَّرَ طَرْفَةَ عَيْنٍ أَوْ أَكْثَرَ، وَالْكَثِيرُ وَالْقَلِيلُ مِنْ كُلِّ مَا ذَكَرْنَا سَوَاءٌ فِيمَا وَصَفْنَا.

L23658 It is not permissible for anything we have mentioned of the same type to be exchanged weight for weight, weight for measure, estimated amount for estimated amount, estimated amount for measure, or estimated amount for weight, because all of this is entailed by the words of the Messenger of Allah (peace and blessings be upon him) which we have mentioned, its understood meaning, and its established meaning in the language with which he addressed us, and with Allah, the Most High, is success.

وَلَا يَحِلُّ شَيْءٌ مِمَّا ذَكَرْنَا مِنْ نَوْعِهِ وَزْنًا بِوَزْنٍ، وَلَا وَزْنًا بِكَيْلٍ، وَلَا جُزَافًا بِجُزَافٍ، وَلَا جُزَافًا بِكَيْلٍ، وَلَا جُزَافًا بِوَزْنٍ، لِأَنَّ كُلَّ هَذَا مُقْتَضَى كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، وَمَفْهُومُهُ وَمَوْضُوعُهُ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23659 Abu Hanifah and Al-Shafi'i said: It is permissible to sell any portion of it without its own type - whether specified or unspecified. It is also permissible for mutual possession to be delayed from the time of contract so long as the two parties do not physically separate, even if prolonged - though this contradicts the statement of Allah's Messenger (peace be upon him). We were narrated through Al-Hajjaj ibn Al-Minhal, from Yazid ibn Ibrahim, from Muhammad ibn Sirin, who said: "I was informed that Umar ibn Al-Khattab stood to deliver a sermon and proclaimed: 'Behold! O people - a dirham for a dirham, a dinar for a dinar: same type for same type, exactly equal exactly equal, like for like.'"

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: جَائِزٌ أَنْ يُبَاعَ مِنْهَا شَيْءٌ بِغَيْرِ عَيْنِهِ بِمُعَيَّنٍ وَبِغَيْرِ مُعَيَّنٍ، وَجَائِزٌ أَنْ يَتَأَخَّرَ التَّقَابُضُ عَنْ وَقْتِ الْعَقْدِ مَا لَمْ يَفْتَرِقَا بِأَبْدَانِهِمَا وَإِنْ طَالَ ذَلِكَ - وَهَذَا خِلَافُ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ إبْرَاهِيمَ أَنَا مُحَمَّدُ بْنُ سِيرِينَ قَالَ: نُبِّئْت أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَامَ يَخْطُبُ فَقَالَ: يَا أَيُّهَا النَّاسُ أَلَا إنَّ الدِّرْهَمَ بِالدِّرْهَمِ، وَالدِّينَارَ بِالدِّينَارِ، عَيْنٌ بِعَيْنٍ، سَوَاءً سَوَاءً، مِثْلًا بِمِثْلٍ

L23660 Thus, here is Umar (in the presence of the Companions) permitting no exchange of dirhams and dinars except like for like in kind, and he maintains that they must be exchanged in equal kind and quantity. None of the Companions were known to dissent from this ruling, yet they opposed him.

فَهَذَا عُمَرُ بِحَضْرَةِ الصَّحَابَةِ لَا يُجِيزُ فِي الدَّرَاهِمِ وَالدَّنَانِيرِ إلَّا عَيْنًا بِعَيْنٍ، وَيَرَى أَنَّهَا تَتَعَيَّنُ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ: فَخَالَفُوهُ.

[مَسْأَلَةٌ بَيْعُ كُلِّ صِنْفٍ مِمَّا بِالْأَصْنَافِ الْأُخَرِ مِنْهَا مُتَفَاضِلًا وَمُتَمَاثِلًا وَجُزَافًا]

L23661–23662 **An issue: the sale of every kind from among the other kinds, whether they differ in quality, are equivalent, or are sold in bulk without precise measurement.**

L23663 Issue: It is permissible to sell every type we have mentioned in exchange

for other types from them—whether with excess, equal, by estimation, by weight, or by measure—in any manner you choose, provided the exchange is hand-to-hand.

مَسْأَلَةٌ: وَجَازَ بَيْعُ كُلِّ صِنْفٍ مِمَّا ذَكَرْنَا بِالْأَصْنَافِ الْأُخَرِ مِنْهَا، مُتَفَاضِلًا وَمُتَمَاثِلًا وَجُزَافًا، وَزْنًا وَكَيْلًا كَيْفَمَا شِئْتَ إذَا كَانَ يَدًا بِيَدٍ.

L23664 It is impermissible to delay even for the blink of an eye or longer in that matter, neither in a sale nor in a *salam* contract. This is the implication of the statement of the Messenger of Allah—peace and blessings be upon him—which we mentioned, and it is agreed upon, except for Mālik. He did not permit the sale of barley for wheat unless their measures were equivalent, measure for measure. Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān permitted it, as we stated.

وَلَا يَجُوزُ فِي ذَلِكَ التَّأْخِيرُ طَرْفَةَ عَيْنٍ فَأَكْثَرَ، لَا فِي بَيْعٍ وَلَا فِي سَلَمٍ، وَهَذَا مُقْتَضَى قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا وَهُوَ مُتَّفَقٌ عَلَيْهِ، إلَّا مَالِكًا فَإِنَّهُ لَمْ يُجِزْ بَيْعَ الشَّعِيرِ بِالْقَمْحِ إلَّا مُتَمَاثِلًا كَيْلًا بِكَيْلٍ - وَأَجَازَهُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، كَمَا قُلْنَا.

L23665 The proof for the validity of our statement is what has been narrated to us through the chain of Muslim: Abū Kurayb → Ibn Fuḍayl (he is Muḥammad) → his father → Abū Zurʿah ibn ʿAmr ibn Jarīr → Abū Hurayrah, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said, “Dates for dates, wheat for wheat, barley for barley, salt for salt, like for like, hand to hand. Whoever increases or seeks increase has engaged in usury, except when their kinds differ.”

بُرْهَانُ صِحَّةِ قَوْلِنَا -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو كُرَيْبٍ أَنَا ابْنُ فُضَيْلٍ - هُوَ مُحَمَّدٌ - عَنْ أَبِيهِ عَنْ أَبِي زُرْعَةَ بْنِ عَمْرِو بْنِ جَرِيرٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «التَّمْرُ بِالتَّمْرِ، وَالْحِنْطَةُ بِالْحِنْطَةِ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالْمِلْحُ بِالْمِلْحِ، مِثْلًا بِمِثْلٍ، يَدًا بِيَدٍ، فَمَنْ زَادَ وَاسْتَزَادَ فَقَدْ أَرْبَى، إلَّا مَا اخْتَلَفَتْ أَلْوَانُهُ» .

L23666 Through the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated from Waki‘, from Sufyan al-Thawri, from Khalid al-Khazzaz, from Abu al-Ash‘ath, from ‘Ubadah ibn al-Samit, who said: The Messenger of Allah, peace and blessings be upon him, said, “Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt: like for like, hand to hand, equal for equal. If these commodities differ, then sell however you wish so long as it is hand to hand.”

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي الْأَشْعَثِ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، وَالْبُرُّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالتَّمْرُ بِالتَّمْرِ، وَالْمِلْحُ بِالْمِلْحِ، مِثْلًا بِمِثْلٍ، يَدًا بِيَدٍ، سَوَاءً بِسَوَاءٍ فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ» .

L23667 We have previously discussed the matter of his explicit textual ruling—peace be upon him—on the permissibility of selling barley for wheat with a difference in quantity. No authority lies in anyone’s statement besides the Messenger of Allah—may Allah bless him and grant him peace.

وَقَدْ ذَكَرْنَا قَبْلَ هَذِهِ بِمَسْأَلَةِ نَصِّهِ - عَلَيْهِ السَّلَامُ - عَلَى جَوَازِ بَيْعِ الشَّعِيرِ بِالْبُرِّ مُتَفَاضِلًا، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L23668 Through the chain of Ahmad ibn Shuʿayb: Muhammad ibn ʿAbdillāh ibn Baziʿ narrated to us, from Yazīd, from Salamah ibn ʿAlqamah, from Muham-

mad ibn Sīrīn, from Muslim ibn Yasār and ʿAbdillāh ibn ʿUbayd (who is Ibn Hurmuz)—both of whom collectively stated: "'Ubādah ibn al-Ṣāmit narrated to them, saying: 'Allah's Messenger—peace and blessings be upon him—prohibited selling gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, except equivalent for equivalent, hand to hand. He commanded us to sell gold for silver, silver for gold, wheat for barley, barley for wheat, hand to hand, as we desire.'" One of the two added in his narration: "salt for salt," while the other omitted it.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ بَزِيعٍ أَنَا يَزِيدُ أَنَا سَلَمَةُ بْنُ عَلْقَمَةَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ مُسْلِمِ بْنِ يَسَارٍ، وَعَبْدِ اللَّهِ بْنِ عُبَيْدٍ - هُوَ ابْنُ هُرْمُزَ - قَالَا جَمِيعًا: إِنَّ عُبَادَةَ بْنَ الصَّامِتِ حَدَّثَهُمْ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الذَّهَبِ بِالذَّهَبِ، وَالْوَرِقِ بِالْوَرِقِ، وَالْبُرِّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالتَّمْرِ بِالتَّمْرِ، إِلَّا مِثْلًا بِمِثْلٍ يَدًا بِيَدٍ، وَأَمَرَنَا أَنْ نَبِيعَ الذَّهَبَ بِالْوَرِقِ، وَالْوَرِقَ بِالذَّهَبِ، وَالْبُرَّ بِالشَّعِيرِ، وَالشَّعِيرَ بِالْبُرِّ، يَدًا بِيَدٍ كَيْفَ شِئْنَا زَادَ أَحَدُهُمَا فِي حَدِيثِهِ: الْمِلْحَ بِالْمِلْحِ، وَلَمْ يَقُلْهُ الْآخَرُ» .

L23669–23670 This is a mutawatir report narrated from the Messenger of Allah (may Allah bless him and grant him peace) by Abu Hurayrah and 'Ubadah ibn al-Samit: Abu Zur'ah ibn 'Amr ibn Jarir and Abu Hazim narrated it from Abu Hurayrah.

فَهَذَا أَثَرٌ مُتَوَاتِرٌ رَوَاهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبُو هُرَيْرَةَ، وَعُبَادَةُ بْنُ الصَّامِتِ - وَرَوَاهُ عَنْ أَبِي هُرَيْرَةَ: أَبُو زُرْعَةَ بْنُ عَمْرِو بْنِ جَرِيرٍ، وَأَبُو حَازِمٍ.

L23671 And it was narrated from ʿUbādah ibn al-Ṣāmit by Abū al-Ashʿath al-Ṣanʿānī and ʿAbdullāh ibn ʿUbayd. And it was narrated from Abū al-Ashʿath by Abū Qilābah and Muslim ibn Yasār.

وَرَوَاهُ عَنْ عُبَادَةَ بْنِ الصَّامِتِ: أَبُو الْأَشْعَثِ الصَّنْعَانِيُّ، وَعَبْدُ اللَّهِ بْنُ عُبَيْدٍ. وَرَوَاهُ عَنْ أَبِي الْأَشْعَثِ: أَبُو قِلَابَةَ، وَمُسْلِمُ بْنُ يَسَارٍ.

L23672 Abu al-Khalil and Ibn Sirin narrated it from Muslim ibn Yasar – and it was narrated from these individuals by: subsequent narrators.

وَرَوَاهُ عَنْ مُسْلِمِ بْنِ يَسَارٍ أَبُو الْخَلِيلِ، وَابْنُ سِيرِينَ -. وَرَوَاهُ عَنْ هَؤُلَاءِ: النَّاسُ.

L23673 The Malikis cited as evidence what was narrated to us through Ibn Wahb's transmission from 'Amr ibn al-Hārith: that Abū al-Naḍr related to him that Busr ibn Sa'īd related to him from Ma'mar ibn 'Abd Allāh—that he sent his servant with a ṣā' of wheat and said, "Sell it, then buy barley with it." The servant went and took a ṣā' plus an extra portion of a ṣā'. When he returned, Ma'mar said to him, "Why did you do this? Go and return it. Take only like for like, for I heard the Prophet—peace and blessings of Allah be upon him—say, 'Food for food must be equal measure for equal measure.'" It was said, "But it is not equivalent to it." He replied, "I fear they might be equated."

وَاحْتَجَّ الْمَالِكِيُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ: أَنَّ أَبَا النَّضْرِ حَدَّثَهُ أَنَّ بُسْرَ بْنَ سَعِيدٍ حَدَّثَهُ عَنْ «مَعْمَرِ بْنِ عَبْدِ اللَّهِ: أَنَّهُ أَرْسَلَ غُلَامَهُ بِصَاعِ قَمْحٍ وَقَالَ: بِعْهُ ثُمَّ اشْتَرِ بِهِ شَعِيرًا، فَذَهَبَ الْغُلَامُ فَأَخَذَ صَاعًا وَزِيَادَةَ بَعْضِ صَاعٍ، فَلَمَّا جَاءَ قَالَ لَهُ مَعْمَرٌ: لِمَ فَعَلْتَ ذَلِكَ؟ انْطَلِقْ فَرُدَّهُ، وَلَا تَأْخُذَنَّ إِلَّا مِثْلًا بِمِثْلٍ فَإِنِّي كُنْتُ أَسْمَعُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ» قِيلَ: فَإِنَّهُ لَيْسَ مِثْلَهُ، قَالَ: إِنِّي أَخَافُ أَنْ يُضَارَعَ.

L23674 And according to what we have narrated through the chain of Mālik from Nāfi' from Sulaymān ibn Yasār, who said: 'Abd al-Raḥmān ibn al-Aswad ibn

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: قَالَ عَبْدُ الرَّحْمَنِ بْنُ الْأَسْوَدِ بْنِ عَبْدِ يَغُوثَ لِغُلَامِهِ: خُذْ مِنْ حِنْطَةِ أَهْلِكَ طَعَامًا فَابْتَعْ بِهَا شَعِيرًا، وَلَا تَأْخُذْ إِلَّا مِثْلَهُ.

'Abd Yaghūth said to his servant: "Take wheat from your family's supply as food, buy barley with it, and take only an equivalent measure."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: أَرْسَلَ عُمَرُ بْنُ الْخَطَّابِ غُلَامًا لَهُ بِصَاعٍ مِنْ بُرٍّ يَشْتَرِي لَهُ بِهِ صَاعًا مِنْ شَعِيرٍ، وَزَجَرَهُ إِنْ زَادُوهُ أَنْ يَزْدَادَ.

L23675 From the narration of Ibn Abi Shaybah: Abu Dawud al-Tayalisi reported to us from Hisham al-Dastuwa'i, from Yahya ibn Abi Kathir, who said: "Umar ibn al-Khattab sent his servant with a _sa'_ of wheat to buy a _sa'_ of barley for him, and warned him not to accept any increase if they offered more."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا شَبَابَةُ عَنْ لَيْثٍ عَنْ نَافِعٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ مِثْلُ هَذَا.

L23676 And via the route of Ibn Abi Shaybah: I from Shababah, from Layth, from Nafi', from Sulayman ibn Yasar, from Sa'd ibn Abi Waqqas—a similar one.

وَمِنْ طَرِيقِ مَالِكٍ أَنَّهُ بَلَغَهُ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ مُعَيْقِيبٍ مِثْلُ هَذَا أَيْضًا - وَهُوَ قَوْلُ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ صَحَّ عَنْهُ ذَلِكَ، وَرُوِيَ - وَلَمْ يَصِحَّ - عَنْ الْقَاسِمِ، وَسَالِمٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ.

L23677–23679 And through the chain of Mālik, it was reported to him from al-Qāsim ibn Muḥammad from Muʿayqib the like of this also—and he... The statement of Abu Abd al-Rahman al-Sulami that has been authentically reported from him, and it has been narrated—but not authentically—from al-Qasim, Salim, and Sa'id ibn al-Musayyib.

وَصَحَّ عَنْ رَبِيعَةَ، وَأَبِي الزِّنَادِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَاللَّيْثِ بْنِ سَعْدٍ، قَالُوا: فَهَؤُلَاءِ، عُمَرُ، وَسَعْدٌ، وَمُعَيْقِيبٌ، وَعَبْدُ الرَّحْمَنِ بْنُ الْأَسْوَدِ، وَمَعْمَرُ بْنُ عَبْدِ اللَّهِ: خَمْسَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L23680 It has been authentically reported from Rabīʿah, Abū al-Zinād, al-Ḥakam ibn ʿUtaybah, Ḥammād ibn Abī Sulaymān, and al-Layth ibn Saʿd, who said: So these—ʿUmar, Saʿd, Muʿayqīb, ʿAbd al-Raḥmān ibn al-Aswad, and Maʿmar ibn ʿAbd Allāh—are five of the Companions—may Allah be pleased with them—.

قَالَ عَلِيٌّ: وَجَسَرَ بَعْضُهُمْ فَقَالَ: لَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنْ الصَّحَابَةِ -.

L23681 Ali said: Some of them dared and said, "No dissent from the Companions is recorded against their position."

وَجَسَرَ آخَرُ مِنْهُمْ فَادَّعَى إجْمَاعَ السَّلَفِ فِي ذَلِكَ؟

L23682 Did another from among them dare to claim the consensus of the Salaf therein?

قَالَ عَلِيٌّ: مَا لَهُمْ حُجَّةٌ غَيْرُ هَذَا أَصْلًا.

L23683 Ali said: They have no argument whatsoever other than this.

L23684 As for the narration of Ma'mar, it constitutes a proof against them because

they designate dates as food and permit unequal exchange of dates for wheat, thereby contradicting the hadith through their interpretation by their own acknowledgment. They possess no valid argument whatsoever in this matter, for the hadith only specifies exchanging food for food in equal measure - which we neither disagree with them on this matter nor on its permissibility. It does not state that food cannot be exchanged for food except in equal measure. Rather, this matter is entirely unaddressed in Ma'mar's narration, while being explicitly affirmed as permissible in the narration of Abu Hurairah and Ubadah from the Messenger of Allah (peace and blessings be upon him). Thus their reliance on it is wholly invalidated, and it stands as a proof against them.

L23685 As for Maʿmar's statement from his personal opinion, they have no basis to rely on it, for he explicitly clarified that barley is not like wheat. However, he abandoned it as a precaution, fearing it might be treated as analogous to wheat, and not due to any obligation.

L23686 As for the chain from ʿUmar, it is disconnected, and likewise the chain from Muʿayqib is disconnected.

L23687 How many instances are there where they opposed ʿUmar, Saʿd, and a greater number of Companions—such as [the rulings on] wiping over turbans, wiping over socks, legal retaliation (qisas) for a blow or a slap, and other matters in many cases where no opponent from the Companions (may Allah be pleased with them) is known therein? Yes, and with them are the established Sunnah. Indeed, those we have mentioned opposed a group of the Companions (may Allah be pleased with them):

L23688 As we have been narrated through the path of Ibn Abi Shaybah: from Yazid ibn Harun, from Sa'id ibn Abi Arubah, from Qatadah, from Muslim ibn Yasar, from Abu al-Ash'ath al-San'ani: that Ubadah ibn al-Samit said: "There is no harm in selling wheat for barley - the barley being more than it - through immediate hand-to-hand exchange, but it is invalid if deferred." This is Ubadah; he transmitted it with a chain and issued a ruling thereon.

L23689–23690 And via the narration of Ibn Abī Shaybah: From ʿAbd al-Aʿlā, from ʿUmar,

فَأَمَّا حَدِيثُ مَعْمَرٍ فَهُوَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّهُمْ يُسَمُّونَ التَّمْرَ طَعَامًا وَيُبِيحُونَ فِيهِ التَّفَاضُلَ بِالْبُرِّ، فَقَدْ خَالَفُوا الْحَدِيثَ عَلَى تَأْوِيلِهِمْ بِإِقْرَارِهِمْ، وَلَا حُجَّةَ لَهُمْ أَصْلًا فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ إِلَّا الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ، وَهَذَا مِمَّا لَا نُخَالِفُهُمْ فِيهِ وَفِي جَوَازِهِ، وَلَيْسَ فِيهِ: أَنَّ الطَّعَامَ لَا يَجُوزُ بِالطَّعَامِ إِلَّا مِثْلًا بِمِثْلٍ، بَلْ هَذَا مَسْكُوتٌ عَنْهُ جُمْلَةً فِي خَبَرِ مَعْمَرٍ، وَمَنْصُوصٌ عَلَى جَوَازِهِ فِي خَبَرِ أَبِي هُرَيْرَةَ، وَعُبَادَةَ: عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ جُمْلَةً، وَعَادَ حُجَّةً عَلَيْهِمْ.

وَأَمَّا قَوْلُ مَعْمَرٍ مِنْ رَأْيِهِ فَلَا مُتَعَلَّقَ لَهُمْ فِيهِ؛ لِأَنَّهُ قَدْ صَرَّحَ بِأَنَّ الشَّعِيرَ لَيْسَ مِثْلَ الْقَمْحِ، لَكِنْ تَخَوَّفَ أَنْ يُضَارِعَهُ فَتَرَكَهُ احْتِيَاطًا لَا إِيجَابًا.

وَأَمَّا عَنْ عُمَرَ فَمُنْقَطِعٌ، وَكَذَلِكَ عَنْ مُعَيْقِيبٍ.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ، وَسَعْدًا، وَأَكْثَرَ مِنْ هَذَا الْعَدَدِ مِنَ الصَّحَابَةِ كَالْمَسْحِ عَلَى الْعِمَامَةِ، وَعَلَى الْجَوْرَبَيْنِ، وَالْقَوَدِ مِنَ الضَّرْبَةِ، وَاللَّطْمَةِ - وَغَيْرِ ذَلِكَ فِي كَثِيرٍ لَا يُعْرَفُ لَهُمْ فِيهِ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، نَعَمْ، وَمَعَهُمُ السُّنَنُ الثَّابِتَةُ. وَقَدْ خَالَفَ مَنْ ذَكَرْنَا طَائِفَةً مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -:

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا يَزِيدُ بْنُ هَارُونَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ مُسْلِمِ بْنِ يَسَارٍ عَنْ أَبِي الْأَشْعَثِ الصَّنْعَانِيِّ: أَنَّ عُبَادَةَ بْنَ الصَّامِتِ قَالَ: لَا بَأْسَ بِبَيْعِ الْحِنْطَةِ بِالشَّعِيرِ - وَالشَّعِيرُ أَكْثَرُ مِنْهُ - يَدًا بِيَدٍ، وَلَا يَصْلُحُ نَسِيئَةً - فَهَذَا عُبَادَةُ أَسْنَدَهُ وَأَفْتَى بِهِ.

from al-Zuhrī, from Sālim, from Ibn ʿUmar: He saw no harm in measuring one for two, hand to hand, provided their types differed.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ عُمَرَ عَنْ الزُّهْرِيِّ عَنْ سَالِمٍ عَنْ ابْنِ عُمَرَ: كَانَ لَا يَرَى بَأْسًا فِيمَا يُكَالُ وَاحِدًا بِاثْنَيْنِ، يَدًا بِيَدٍ إذَا اخْتَلَفَتْ أَلْوَانُهُ.

L23691 Via the chain of Ibn Abi Shaybah: I [Ibn Abi Shaybah] narrate from Ibn Fudayl, from Ashʿath, from Abu al-Zubayr, from Jabir ibn ʻAbdullah, who said: "If the two kinds differ, there is no harm in an excess when exchanged hand to hand."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ فُضَيْلٍ عَنْ أَشْعَثَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: إذَا اخْتَلَفَ النَّوْعَانِ فَلَا بَأْسَ بِالْفَضْلِ يَدًا بِيَدٍ.

L23692 These chains of transmission are more authentic than theirs, contrary to their claim—and this is the view of Ibn Masʻud and Ibn Abbas, without doubt. It is authentically reported from both of them that there is absolutely no usury in unequal exchange of the same commodity whatsoever, rather usury applies exclusively to deferred transactions.

فَهَذِهِ أَسَانِيدُ أَصَحُّ مِنْ أَسَانِيدِهِمْ بِخِلَافِ قَوْلِهِمْ - وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ بِلَا شَكٍّ: أَنَّهُ صَحَّ عَنْهُمَا أَنَّهُ لَا رِبَا فِي التَّفَاضُلِ أَصْلًا، وَإِنَّمَا الرِّبَا فِي النَّسِيئَةِ.

L23693 Through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī—that he saw no harm in two jarībs of barley in exchange for one jarīb of burr wheat.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ لَمْ يَرَ بَأْسًا بِجَرِيبَيْنِ مِنْ شَعِيرٍ بِجَرِيبٍ مِنْ بُرٍّ.

L23694 Via the chain of Ibn Abi Shaybah: Jarir from al-Mughirah ibn Miqsam from al-Sha'bi, who said: "I asked him and Ibrahim about exchanging four jareeb of barley for two jareeb of wheat." They both responded: "There is no harm in it."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا جَرِيرٌ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ الشَّعْبِيِّ قَالَ الْمُغِيرَةُ: سَأَلْته وَإِبْرَاهِيمَ عَنْ أَرْبَعَةِ أَجْرِبَةٍ مِنْ شَعِيرٍ بِجَرِيبَيْنِ مِنْ حِنْطَةٍ؟ فَقَالَا جَمِيعًا: لَا بَأْسَ بِهِ.

L23695 Narrated through Ibn Abi Shaybah: I am 'Abd al-A'la, from Ma'mar, from al-Zuhri, that he deemed no harm in selling wheat for barley hand to hand, even if one quantity is greater than the other.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِبَيْعِ الْبُرِّ بِالشَّعِيرِ يَدًا بِيَدٍ، أَحَدُهُمَا أَكْثَرُ مِنْ الْآخَرِ.

L23696 From the chain of Ibn Abi Shaybah: Al-Fadl ibn Dukayn reported from Unays ibn Khalid al-Tamimi that he said: "I asked 'Aṭā' about exchanging barley for wheat—two units for one in a spot exchange." He replied: "There is no harm in it." Thus, it is authentically reported from these five Companions—may Allah be pleased with them—that the permissibility of exchanging unequal amounts of wheat for barley is allowed in Islamic jurisprudence, along with a group of the Successors.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا الْفَضْلُ بْنُ دُكَيْنٍ عَنْ أُنَيْسِ بْنِ خَالِدٍ التَّمِيمِيُّ قَالَ: سَأَلْت عَطَاءً عَنْ الشَّعِيرِ بِالْحِنْطَةِ اثْنَيْنِ بِوَاحِدٍ يَدًا بِيَدٍ؟ فَقَالَ لَا بَأْسَ بِهِ - فَهَؤُلَاءِ خَمْسَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - صَحَّ عَنْهُمْ جَوَازُ التَّفَاضُلِ فِي الْبُرِّ بِالشَّعِيرِ، وَطَائِفَةٌ مِنْ التَّابِعِينَ.

L23697 This is the position of Sufyan, Abu Hanifah, al-Shafi'i, Abu Thawr, Ahmad

ibn Hanbal, Ishaq, and Abu Sulayman.

وَهُوَ قَوْلُ سُفْيَانَ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ.

L23698 When people differ, the reference is to the Quran and the Sunnah. It has been authentically reported from the Messenger of Allah (may Allah bless him and grant him peace) that the permissibility of exchanging unequal amounts in wheat and barley is confirmed, as we have mentioned. Thus, no one's opinion holds weight against his.

وَإِذَا اخْتَلَفَ النَّاسُ فَالْمَرْدُودُ إِلَيْهِ هُوَ الْقُرْآنُ، وَالسُّنَّةُ - وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَوَازُ التَّفَاضُلِ فِي الْبُرِّ، وَالشَّعِيرِ، كَمَا ذَكَرْنَا، فَلَا قَوْلَ لِأَحَدٍ مَعَهُ.

L23699–23701 What is astonishing about Malik is that he considers wheat, barley, and saltum (hulled barley) as a single category here and in zakat, yet he does not permit someone who subsists on wheat to give barley or saltum for zakat al-fitr—contrary to the maxim "each person should discharge from what they consume." This is a glaring contradiction. Another point of astonishment is his combining of gold and silver in zakat while requiring the discharge of... One of them concerning the other regarding obligatory zakah - while permitting the sale of gold for silver with a differential here - constitutes a self-evident contradiction.

وَالْعَجَبُ مِنْ مَالِكٍ إِذْ يَجْعَلُ هَهُنَا وَفِي الزَّكَاةِ: الْبُرَّ وَالشَّعِيرَ وَالسَّلْتَ صِنْفًا وَاحِدًا ثُمَّ لَا يُجِيزُ لِمَنْ يَتَقَوَّتُ الْبُرَّ إِخْرَاجَ الشَّعِيرِ أَوْ السَّلْتَ فِي زَكَاةِ الْفِطْرِ، وَقَوْلُ: أَنْ يُخْرِجَ كُلُّ أَحَدٍ مِمَّا يَأْكُلُ - وَهَذَا تَنَاقُضٌ فَاحِشٌ. وَعَجَبٌ آخَرُ: وَهُوَ أَنَّهُ يَجْمَعُ بَيْنَ الذَّهَبِ، وَالْفِضَّةِ فِي الزَّكَاةِ، وَيَرَى إِخْرَاجَ أَحَدِهِمَا عَنْ الْآخَرِ فِي الزَّكَاةِ الْمَفْرُوضَةِ - وَيُجِيزُ هَهُنَا أَنْ يُبَاعَ الذَّهَبُ بِالْفِضَّةِ مُتَفَاضِلَيْنِ - وَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ.

L23702 No one has ever recognized—whether in sharia, language, or nature—that barley is wheat or that wheat is barley. Rather, all of that testifies they are two distinct types, like the difference between dates, raisins, and figs.

وَمَا عَلِمَ قَطُّ أَحَدٌ، لَا فِي شَرِيعَةٍ، وَلَا فِي لُغَةٍ، وَلَا فِي طَبِيعَةٍ: أَنَّ الشَّعِيرَ بُرٌّ، وَلَا أَنَّ الْبُرَّ شَعِيرٌ، بَلْ كُلُّ ذَلِكَ يَشْهَدُ أَنَّهُمَا صِنْفَانِ مُخْتَلِفَانِ كَاخْتِلَافِ التَّمْرِ، وَالزَّبِيبِ، وَالتِّينِ.

L23703 There is no disagreement among the jurists that if one swears not to eat free-threshing wheat (burr) but eats barley, or swears not to eat barley but eats free-threshing wheat—or swears not to purchase free-threshing wheat but purchases barley, or swears not to purchase barley but purchases free-threshing wheat—they do not incur oath violation.

وَلَا يَخْتَلِفُونَ فِي أَنَّ مَنْ حَلَفَ لَا يَأْكُلُ بُرًّا فَأَكَلَ شَعِيرًا - أَوْ لَا يَأْكُلُ شَعِيرًا فَأَكَلَ بُرًّا - أَوْ أَنْ لَا يَشْتَرِيَ بُرًّا فَاشْتَرَى شَعِيرًا - أَوْ أَنْ لَا يَشْتَرِيَ شَعِيرًا فَاشْتَرَى بُرًّا: فَإِنَّهُ لَا يَحْنَثُ.

L23704 These are grave contradictions that have absolutely no justification whatsoever—neither from the Quran, nor the Sunnah, nor a weak narration, nor analogy. And success comes only from Allah, the Most High.

فَهَذِهِ تَنَاقُضَاتٌ فَاحِشَةٌ، لَا وَجْهَ لَهَا أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23705 A Question on the Sale of Gold for Silver

[مَسْأَلَةُ بَيْعُ الذَّهَبِ بِالْفِضَّةِ]

L23706 Issue 1485:

١٤٨٥ - مَسْأَلَةٌ:

L23707 It is permissible to sell gold for silver, whether this involves dinars for dirhams, gold jewelry for silver, or silver fragments. Similarly, it is permissible to exchange dirhams for gold jewelry, gold ingots, or raw gold, and silver jewelry may be sold for gold jewelry, ingots, or raw gold. Gold ingots and raw gold may be exchanged for silver fragments, provided the exchange must be immediate (hand-to-hand) and in-kind (same type for same type), whether the amounts are unequal or equal—by weight for weight, estimation for estimation, or weight for estimation—without omitting any form of exchange. Deferment is impermissible in such transactions, even for the blink of an eye, whether in a sale or a salam contract.

وَجَائِزٌ بَيْعُ الذَّهَبِ بِالْفِضَّةِ، سَوَاءٌ فِي ذَلِكَ الدَّنَانِيرُ بِالدَّرَاهِمِ، أَوْ بِالْحُلِيِّ، أَوْ بِالنِّقَارِ، وَبِالدَّرَاهِمِ بِحُلِيِّ الذَّهَبِ وَسَبَائِكِهِ، وَتِبْرِهِ، وَالْحُلِيُّ مِنْ الْفِضَّةِ بِحُلِيِّ الذَّهَبِ وَسَبَائِكِهِ، وَسَبَائِكُ الذَّهَبِ وَتِبْرُهُ بِنِقَارِ الْفِضَّةِ يَدًا بِيَدٍ وَلَا بُدَّ، عَيْنًا بِعَيْنٍ وَلَا بُدَّ، مُتَفَاضِلَيْنِ وَمُتَمَاثِلَيْنِ، وَزْنًا بِوَزْنٍ، وَجُزَافًا بِجُزَافٍ، وَوَزْنًا بِجُزَافٍ فِي كُلِّ ذَلِكَ لَا تَحَاشٍ شَيْئًا - وَلَا يَجُوزُ التَّأْخِيرُ فِي ذَلِكَ طَرْفَةَ عَيْنٍ، لَا فِي بَيْعٍ وَلَا فِي سَلَمٍ.

L23708 Gold is sold for gold, whether it be dinars, jewelry, ingots, or raw gold, weight for weight, like for like, hand to hand. Excess in this is impermissible at all, nor is delay permissible even for the blink of an eye, neither in a sale nor in a salam.

وَيُبَاعُ الذَّهَبُ بِالذَّهَبِ سَوَاءً كَانَ دَنَانِيرَ، أَوْ حُلِيًّا، أَوْ سَبَائِكَ، أَوْ تِبْرًا، وَزْنًا بِوَزْنٍ، عَيْنًا بِعَيْنٍ يَدًا بِيَدٍ، لَا يَحِلُّ التَّفَاضُلُ فِي ذَلِكَ أَصْلًا، وَلَا التَّأْخِيرُ طَرْفَةَ عَيْنٍ، لَا بَيْعًا وَلَا سَلَمًا.

L23709 Silver is sold for silver—whether in the form of dirhams, jewelry, or scrap—weight for weight, like for like, hand to hand. No disparity whatsoever is permitted in this regard, nor any delay, even the blink of an eye, neither in a spot sale nor a salam contract.

وَتُبَاعُ الْفِضَّةُ بِالْفِضَّةِ، دَرَاهِمَ أَوْ حُلِيًّا أَوْ نِقَارًا، وَزْنًا بِوَزْنٍ، عَيْنًا بِعَيْنٍ، يَدًا بِيَدٍ، وَلَا يَجُوزُ التَّفَاضُلُ فِي ذَلِكَ أَصْلًا، وَلَا التَّأْخِيرُ طَرْفَةَ عَيْنٍ، لَا بَيْعًا وَلَا سَلَمًا.

L23710 The exchange of filings from one of the two [items], even if similar in type, is categorically impermissible by volume measurement. It must necessarily be done by weight. It is irrelevant whether one of the two gold items is naturally superior in quality to the other or equal to it.

وَلَا تَجُوزُ بُرَادَةُ أَحَدِهِمَا مِثْلُهَا مِنْ نَوْعِهَا كَيْلًا أَصْلًا، لَكِنْ بِوَزْنٍ وَلَا بُدَّ، وَلَا نُبَالِي كَانَ أَحَدُ الذَّهَبَيْنِ أَجْوَدَ مِنْ الْآخَرِ بِطَبْعِهِ أَوْ مِثْلَهُ.

L23711–23713 Similarly, regarding the two silvers; this is unanimously agreed upon, except what we mentioned from Ṭalḥah ibn ʿUbayd Allāh, and except the sale of silver for silver or gold for gold. For Ibn ʿAbbās, Ibn Masʿūd, and those who agreed with them permitted disparity in quantity or quality in such transactions when exchanged hand to hand. However, Abū Ḥanīfah and Al-Shāfiʿī permitted all such transactions without... They permitted delaying receipt provided they do not physically separate, as we previously cited from Umar contrary to their opinion. However, Mālik does not permit sale by

وَكَذَلِكَ فِي الْفِضَّتَيْنِ، وَهَذَا مُجْمَعٌ عَلَيْهِ، إلَّا مَا ذَكَرْنَا عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ وَإِلَّا بَيْعَ الْفِضَّةِ بِالْفِضَّةِ، أَوْ الذَّهَبِ بِالذَّهَبِ، فَإِنَّ ابْنَ عَبَّاسٍ، وَابْنَ مَسْعُودٍ، وَمَنْ وَافَقَهُمَا: أَجَازُوا فِيهِمَا التَّفَاضُلَ يَدًا بِيَدٍ - وَإِلَّا أَنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ: أَجَازَا بَيْعَ كُلِّ ذَلِكَ بِغَيْرِ عَيْنِهِ - وَأَجَازَا تَأْخِيرَ الْقَبْضِ مَا لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا، وَقَدْ ذَكَرْنَاهُ عَنْ عُمَرَ قَبْلُ

approximation in exchanging dinars for dinars or dirhams for dirhams. He permits it for ornaments made from one for ornaments from the other, and allows giving a dirham for a dirham or a weight of it as an act of generosity.

هَذَا بِخِلَافِ قَوْلِهِمْ وَإِلَّا أَنَّ مَالِكًا لَا يُجِيزُ الْجُزَافَ فِي الدَّنَانِيرِ، وَلَا فِي الدَّرَاهِمِ، بَعْضُهَا بِبَعْضٍ، وَيُجِيزُهُ فِي الْمَصُوغِ مِنْ أَحَدِهِمَا بِالْمَصُوغِ مِنْ الْآخَرِ، وَيُجِيزُ إعْطَاءَ دِرْهَمٍ بِدِرْهَمٍ أَوْ وَزْنٍ مِنْهُ، عَلَى سَبِيلِ الْمُكَارَمَةِ.

L23714 As for this statement of Mālik, and the statements of Abū Ḥanīfah and al-Shāfiʿī, there is no evidence for any of them—neither from the Qur'ān, nor the Sunnah, nor a weak narration, nor analogy, nor the saying of a companion. Rather, it contradicts the command of the Messenger of Allah—peace and blessings be upon him—which we mentioned earlier from his instruction—peace and blessings be upon him—that we sell silver for gold however we wish, hand to hand.

فَأَمَّا قَوْلُ مَالِكٍ هَذَا، وَقَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، فَلَا حُجَّةَ لِشَيْءٍ مِنْهَا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، بَلْ هُوَ خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا آنِفًا مِنْ أَمْرِهِ - عَلَيْهِ السَّلَامُ - أَنْ نَبِيعَ الْفِضَّةَ بِالذَّهَبِ كَيْفَ شِئْنَا يَدًا بِيَدٍ.

L23715 As for the statement of Ibn Abbas, he cited the narration transmitted through Ahmad ibn Shu'ayb: "I [Ahmad] heard from Muhammad ibn Mansur, from Sufyan al-Thawri, from Amr ibn Dinar, from Abu al-Minhal, who said: 'My partner sold silver currency (warq) on credit. He came and informed me, so I said: "This is improper." He responded: "By Allah, I sold it in the market and none objected." I went to al-Bara ibn Azib and inquired? He said: "When Allah's Messenger - peace be upon him - came to Medina, we engaged in this type of sale. He declared: 'What is exchanged hand-to-hand is permissible, but deferred payment constitutes usury.' Then he instructed me: 'Approach Zayd ibn Arqam.' I went to Zayd ibn Arqam and inquired? He affirmed the same ruling.'"[14]

وَأَمَّا قَوْلُ ابْنِ عَبَّاسٍ، فَإِنَّهُ احْتَجَّ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ «عَنْ أَبِي الْمِنْهَالِ قَالَ: بَاعَ شَرِيكٌ لِي وَرِقًا بِنَسِيئَةٍ فَجَاءَنِي فَأَخْبَرَنِي فَقُلْتُ: هَذَا لَا يَصْلُحُ فَقَالَ: قَدْ وَاَللَّهِ بِعْتُهُ فِي السُّوقِ وَمَا عَابَهُ عَلَيَّ أَحَدٌ، فَأَتَيْتُ الْبَرَاءَ بْنَ عَازِبٍ فَسَأَلْتُ؟ فَقَالَ: قَدِمَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ وَنَحْنُ نَبِيعُ هَذَا الْبَيْعَ، فَقَالَ: مَا كَانَ يَدًا بِيَدٍ فَلَا بَأْسَ بِهِ، وَمَا كَانَ نَسِيئَةً فَهُوَ رِبًا ثُمَّ قَالَ لِي: ائْتِ زَيْدَ بْنَ أَرْقَمَ فَأَتَيْتُ زَيْدَ بْنَ أَرْقَمَ فَسَأَلْتُهُ؟ فَقَالَ: مِثْلَ ذَلِكَ» .

L23716 From the chain of Ahmad ibn Shu'ayb: Qutaybah narrated from Sufyan ibn 'Uyaynah, from 'Amr ibn Dinar, from Abu Salih al-Samman - that he heard Abu Sa'id al-Khudri report in a hadith: Ibn 'Abbas said to him, "Usamah ibn Zayd informed me that the Messenger of Allah (peace be upon him) said: 'Verily, usury exists only in deferred transactions.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ أَنَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرٍو - هُوَ ابْنُ دِينَارٍ - عَنْ أَبِي صَالِحٍ السَّمَّانِ: أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ فِي حَدِيثٍ: إنَّ ابْنَ عَبَّاسٍ قَالَ لَهُ: أُسَامَةُ بْنُ زَيْدٍ أَخْبَرَنِي: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّمَا الرِّبَا فِي النَّسِيئَةِ» .

[14] **Hadith references (L23715):** Sahih Muslim 1589a.

L23717–23718 Via Saʿīd ibn Manṣūr: He narrated to me Abū Muʿāwiyah (i.e., Muḥammad ibn Khāzim al-Ḍarīr) from al-Aʿmash, from Ibrāhīm al-Taymī, from al-Ḥārith ibn Suwayd, who said: ʿAbdullāh ibn Masʿūd said, “There is no ribā in a hand-to-hand [transaction], and water [is purified] by water.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ حَدَّثَنِي أَبُو مُعَاوِيَةَ - هُوَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ - عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ التَّيْمِيِّ عَنْ الْحَارِثِ بْنِ سُوَيْدٍ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ، لَا رِبَا فِي يَدٍ بِيَدٍ، وَالْمَاءِ مِنْ الْمَاءِ.

L23719 It is authentically established from Ibn Umar that he adopted the opinion of Ibn Abbas, then retracted from that opinion.

وَصَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ بِقَوْلِ ابْنِ عَبَّاسٍ، ثُمَّ رَجَعَ عَنْهُ.

L23720 And it was narrated to us through the chain of Ḥajjāj ibn al-Minhāl that Jarīr ibn Ḥāzim said: I asked ʿAṭāʾ ibn Abī Rabāḥ regarding exchange (ṣarf). He replied: “O my son, if you find one hundred dirhams for a dirham on the spot, take it.”

وَرُوِّينَا مِنْ طَرِيقِ حَجَّاجِ بْنِ الْمِنْهَالِ أَنَا جَرِيرُ بْنُ حَازِمٍ قَالَ: سَأَلْت عَطَاءَ بْنَ أَبِي رَبَاحٍ عَنْ الصِّرْفِ؟ فَقَالَ: يَا بُنَيَّ إنْ وَجَدْتَ مِائَةَ دِرْهَمٍ بِدِرْهَمٍ نَقْدًا فَخُذْهُ.

L23721 Abu Muhammad said: The narrations of Ubadah, Abu Hurayrah, Umar, and Abu Saʿid concerning the six categories—that each is to be traded with its own kind, and if there is an excess in weight of one over the other, it constitutes ribā—are superior in legal ruling to the narrations of Usāmah, Al-Bara’, and Zayd. It is not permissible to omit the excess, and success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: حَدِيثُ عُبَادَةَ، وَأَبِي هُرَيْرَةَ، وَعُمَرَ، وَأَبِي سَعِيدٍ، فِي أَنَّ الْأَصْنَافَ السِّتَّةَ كُلُّ صِنْفٍ مِنْهَا بِصِنْفِهِ: رِبًا إنْ كَانَ فِي أَحَدِهِمَا زِيَادَةٌ عَلَى وَزْنِ الْآخَرِ: هُوَ زَائِدٌ حُكْمًا عَلَى حَدِيثِ أُسَامَةَ، وَالْبَرَاءِ، وَزَيْدٍ - وَالزِّيَادَةُ لَا يَحِلُّ تَرْكُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23722 The Issue of Selling Wheat, Barley, and Similar Grains in Exchange for Gold and Silver

[مَسْأَلَة بَيْع الْقَمْح وَالشَّعِير وَغَيْرهمْ بِالذَّهَبِ وَالْفِضَّة]

L23723 1486 – Issue:

١٤٨٦ - مَسْأَلَةٌ:

L23724 It is permissible to sell wheat, barley, dates, and salt for gold or silver, whether hand to hand or on credit. It is also permissible to deliver gold or silver for the types we mentioned in exchange for these commodities, as the textual evidence has permitted all of that. And the success is from Allah, the Exalted.

وَجَائِزٌ بَيْعُ الْقَمْحِ، وَالشَّعِيرِ، وَالتَّمْرِ، وَالْمِلْحِ بِالذَّهَبِ، أَوْ بِالْفِضَّةِ يَدًا بِيَدٍ وَنَسِيئَةً - وَجَائِزٌ تَسْلِيمُ الذَّهَبِ أَوْ الْفِضَّةِ بِالْأَصْنَافِ الَّتِي ذَكَرْنَا؛ لِأَنَّ النَّصَّ جَاءَ بِإِبَاحَةِ كُلِّ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23725 The jurisprudential question regarding loans involving wheat, barley, and other such commodities.

[مَسْأَلَة القرض فِي الْقَمْح وَالشَّعِير وَغَيْرهمْ مِنْ الْأَصْنَاف]

L23726 1487 - Issue: As for loans, they are permissible in the categories we mentioned and others, and in all possessions that can be owned and lawfully transferred out of ownership. Usury does not enter into it except in one

case only: stipulating more than what was lent, less than what was lent, higher quality than what was lent, or inferior quality than what was lent. This is unanimously agreed upon, being textually specified for the six categories—as we stated that it constitutes usury. For other cases, any condition not mentioned in the Book of Allah—the Exalted—is invalid. It is permissible to set a specified term or defer repayment without stipulating a term, though it remains an immediate liability due whenever the lender demands it.

١٤٨٧ - مَسْأَلَةٌ: وَأَمَّا الْقَرْضُ فَجَائِزٌ فِي الْأَصْنَافِ الَّتِي ذَكَرْنَا وَغَيْرِهَا، وَفِي كُلِّ مَا يُتَمَلَّكُ، وَيَحِلُّ إخْرَاجُهُ عَنْ الْمِلْكِ، وَلَا يَدْخُلُ الرِّبَا فِيهِ، إلَّا فِي وَجْهٍ وَاحِدٍ فَقَطْ، وَهُوَ اشْتِرَاطُ أَكْثَرَ مِمَّا أَقْرَضَ، أَوْ أَقَلَّ مِمَّا أَقْرَضَ، أَوْ أَجْوَدَ مِمَّا أَقْرَضَ، أَوْ أَدْنَى مِمَّا أَقْرَضَ، وَهَذَا مُجْمَعٌ عَلَيْهِ، وَهُوَ فِي الْأَصْنَافِ السِّتَّةِ مَنْصُوصٌ عَلَيْهِ، كَمَا أَوْرَدْنَا بِأَنَّهُ رِبًا وَهُوَ فِيمَا عَدَاهَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ - وَيَجُوزُ إلَى أَجَلٍ مُسَمًّى وَمُؤَخَّرًا بِغَيْرِ ذِكْرِ أَجَلٍ، لَكِنْ حَالٌّ فِي الذِّمَّةِ مَتَى طَلَبَهُ صَاحِبُهُ أَخَذَهُ.

L23727 Mālik said: He may not reclaim it until after a period during which the borrower has benefited from the loan.

وَقَالَ مَالِكٌ: لَا يَأْخُذُهُ إلَّا بَعْدَ مُدَّةٍ يَنْتَفِعُ فِيهَا الْمُسْتَقْرِضُ بِمَا اسْتَقْرَضَ -.

L23728 And this is a mistake because it is not supported by the Quran, the Sunnah, a weak narration, analogy, nor the opinion of anyone we know before him.

وَهَذَا خَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا قَوْلُ أَحَدٍ نَعْلَمُهُ قَبْلَهُ.

L23729 Moreover, it is an invalid ḥadd punishment because the benefit can only occur in an hour or more.

وَأَيْضًا: فَإِنَّهُ حَدٌّ فَاسِدٌ، لِأَنَّ الِانْتِفَاعَ لَا يَكُونُ إلَّا فِي سَاعَةٍ فَمَا فَوْقَهَا.

L23730 Allah, the Most High, said: {Indeed, Allah commands you to render trusts to their rightful owners} [An-Nisa: 58]. A loan is a trust; thus, it is obligatory to repay it to its rightful owner whenever they demand it. And success is from Allah alone.[15]

وَقَالَ اللَّهُ تَعَالَى {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا} [النساء: ٥٨] وَالْقَرْضُ أَمَانَةٌ فَفُرِضَ أَدَاؤُهَا إلَى صَاحِبِهَا مَتَى طَلَبَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع الذَّهَب مَعَ غَيْره أَوْ ممزوج بِغَيْرِهِ أَوْ مضاف فِيهِ أَوْ مَجْمُوع إلَيْهِ فِي دَنَانِير أَوْ غَيْرهَا]

The ruling on selling gold that is alongside another material, mixed with something else, added to it, or aggregated with it, whether in the form of dinars or other forms.

L23731–23732

L23733 Issue: If gold is accompanied by anything else—whether an item of silver or other material—whether blended with it, incorporated into it, or combined with it in the form of dinars or other forms, it is impermissible to sell it with that item or to sell it separately in exchange for gold under any circum-

مَسْأَلَةٌ: فَإِنْ كَانَ مَعَ الذَّهَبِ شَيْءٌ غَيْرُهُ - أَيَّ شَيْءٍ كَانَ مِنْ فِضَّةٍ أَوْ غَيْرِهَا -: مَمْزُوجٌ بِهِ، أَوْ مُضَافٌ فِيهِ، أَوْ مَجْمُوعٌ إلَيْهِ فِي دَنَانِيرَ، أَوْ فِي غَيْرِهَا: لَمْ يَحِلَّ بَيْعُهُ مَعَ ذَلِكَ

[15] **Qur'an references (L23730):** Qur'an 4:58 (An-Nisa).

stance—whether for more than its weight, less than it, or equal to it—until the gold becomes purely isolated, entirely alone in its purity.

الشَّيْءِ، وَلَا دُونَهُ بِذَهَبٍ أَصْلًا، لَا بِأَكْثَرَ مِنْ وَزْنِهِ وَلَا بِأَقَلَّ، وَلَا بِمِثْلِهِ، إِلَّا حَتَّى يَخْلُصَ الذَّهَبُ وَحْدَهُ خَالِصًا.

L23734 Similarly, if there is something other than silver combined with it - such as copper, gold, or other materials - whether mixed, attached, or collected with it, it is fundamentally impermissible to sell the silver with that substance using silver at all - whether they are dirhams or other than dirhams - neither more than its weight, nor less, nor equal to it, unless the silver is completely purified and isolated on its own. This ruling applies equally to all mentioned cases: the ornamented sword, the embellished Mus'haf, the ring containing a gemstone, jewelry with gemstones, gilded silver, gold coins (dinars) mixed with copper or silver, or dirhams mixed with any substance. There is fundamentally no riba in anything beyond what we have mentioned.

وَكَذَلِكَ إِنْ كَانَ مَعَ الْفِضَّةِ شَيْءٌ غَيْرُهَا: كَصُفْرٍ، أَوْ ذَهَبٍ، أَوْ غَيْرُهُمَا، مَمْزُوجٌ بِهَا، أَوْ مُلْصَقٌ مَعَهَا، أَوْ مَجْمُوعٌ إِلَيْهَا: لَمْ يَحِلَّ بَيْعُهَا مَعَ ذَلِكَ الشَّيْءِ، وَلَا دُونَهُ بِفِضَّةٍ أَصْلًا - دَرَاهِمَ كَانَتْ أَوْ غَيْرَ دَرَاهِمَ - لَا بِأَكْثَرَ مِنْ وَزْنِهَا، وَلَا بِأَقَلَّ، وَلَا بِمِثْلِ وَزْنِهَا، إِلَّا حَتَّى تَخْلُصَ الْفِضَّةُ وَحْدَهَا خَالِصَةً، سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا: السَّيْفُ الْمُحَلَّى، وَالْمُصْحَفُ الْمُحَلَّى، وَالْخَاتَمُ فِيهِ الْفَصُّ، وَالْحُلِيُّ فِيهِ الْفُصُوصُ، أَوْ الْفِضَّةُ الْمُذَهَّبَةُ، أَوْ الدَّنَانِيرُ فِيهَا خِلْطُ صُفْرٍ أَوْ فِضَّةٍ، أَوْ الدَّرَاهِمُ فِيهَا خِلْطُ مَا، وَلَا رِبَا فِي غَيْرِ مَا ذَكَرْنَا أَصْلًا.

L23735 Similarly, if wheat is mixed or combined with something else—such as foreign matter or anything else—it is impermissible to sell it with that substance included, nor to sell it for less [than its value] using originally pure wheat.

وَكَذَلِكَ إِنْ كَانَ فِي الْقَمْحِ شَيْءٌ مِنْ غَيْرِهِ مَخْلُوطٌ بِهِ، أَوْ مُضَافٌ إِلَيْهِ مِنْ دَغَلٍ أَوْ غَيْرِهِ: لَمْ يَجُزْ بَيْعُهُ بِذَلِكَ الشَّيْءِ، وَلَا دُونَهُ بِقَمْحٍ صَافٍ أَصْلًا.

L23736 Similarly, the ruling applies to barley—if there is something else in it or mixed with it—it is not permissible to sell it for pure barley. And in the case of dates, if there is something else in them or mixed with them, then it is not permissible to sell them for pure dates.

وَكَذَلِكَ الْقَوْلُ فِي الشَّعِيرِ - فِيهِ شَيْءٌ غَيْرُهُ أَوْ مَعَهُ شَيْءٌ غَيْرُهُ -: فَلَا يَحِلُّ بَيْعُهُ بِشَعِيرٍ مَحْضٍ - وَفِي التَّمْرِ يَكُونُ مَعَهُ أَوْ فِيهِ شَيْءٌ غَيْرُهُ أَوْ مَعَهُ فَلَا يَحِلُّ بَيْعُهُ بِتَمْرٍ مَحْضٍ.

L23737 Similarly, the ruling pertains to salt that contains impurities or is mixed with another substance: it is not permissible to sell it in exchange for pure salt.

وَكَذَلِكَ الْقَوْلُ فِي الْمِلْحِ يَكُونُ فِيهِ أَوْ مَعَهُ شَيْءٌ غَيْرُهُ -: فَلَا يَحِلُّ بَيْعُهُ بِمِلْحٍ صَافٍ.

L23738 All of this applies when the effect of mixing becomes apparent in any of the matters we mentioned. As for what neither produces an effect nor shows any observable trace nor even requires scrutiny, its ruling remains equivalent to the pure, because names are designated according to the attributes through which legal boundaries are defined.

وَإِنَّمَا هَذَا كُلُّهُ إِذَا ظَهَرَ أَثَرُ الْخِلْطِ فِي شَيْءٍ مِمَّا ذَكَرْنَا - وَأَمَّا مَا لَمْ يُؤَثِّرْ وَلَا ظَهَرَ لَهُ فِيهِ عَيْنٌ وَلَا نَظَرٌ أَيْضًا: فَحُكْمُهُ حُكْمُ الْمَحْضِ؛ لِأَنَّ الْأَسْمَاءَ إِنَّمَا هِيَ مَوْضُوعَةٌ عَلَى حَسَبِ الصِّفَاتِ الَّتِي بِهَا تَنْتَقِلُ الْحُدُودُ.

L23739 The proof of this is: "The Prophet (may God's blessings and peace be upon him) commanded that gold and silver must not be sold for anything of their

own kind except as like for like, weight for weight, and that nothing from the four categories should be sold for anything of its kind except as measure for measure, like for like." Therefore, if there is an adulterant or foreign substance in any of the mentioned types, it is impermissible to sell it for anything of its kind—whether like for like, measure for measure, or weight for weight—because it is fundamentally impossible to do so.

بُرْهَانُ ذَلِكَ: «أَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يُبَاعَ الذَّهَبُ وَالْفِضَّةُ بِشَيْءٍ مِنْ نَوْعِهِمَا، إلَّا عَيْنًا بِعَيْنٍ، وَزْنًا بِوَزْنٍ، وَأَنْ لَا يُبَاعَ شَيْءٌ مِنْ الْأَصْنَافِ الْأَرْبَعَةِ بِشَيْءٍ مِنْ نَوْعِهِ إلَّا كَيْلًا بِكَيْلٍ عَيْنًا بِعَيْنٍ» ، فَإِذَا كَانَ فِي أَحَدِ الْأَنْوَاعِ الْمَذْكُورَةِ خِلْطٌ أَوْ شَيْءٌ مُضَافٌ إلَيْهِ فَلَا سَبِيلَ إلَى بَيْعِهِ بِشَيْءٍ مِنْ نَوْعِهِ عَيْنًا بِعَيْنٍ، وَلَا كَيْلًا بِكَيْلٍ، وَلَا وَزْنًا بِوَزْنٍ، لِأَنَّهُ لَا يَقْدِرُ عَلَى ذَلِكَ أَصْلًا.

L23740–23741 Those who permitted this stated: If we determine its weight or measure, it becomes permissible to sell it for a greater quantity of its own kind in weight or measure, such that the weight or measure corresponds to it, with the excess exchanged for the silver grain. For example, a dinar containing a silver grain may be sold for a pure gold dinar. In this case, the pure dinar (excluding the silver grain) equates in gold quantity to the gold in the dinar containing the silver grain, while the excess gold in the pure dinar is exchanged for the silver grain.

فَقَالَ مَنْ أَجَازَ ذَلِكَ: إذَا عَلِمْنَا وَزْنَهُ أَوْ كَيْلَهُ: جَازَ بَيْعُهُ بِشَيْءٍ مِنْ نَوْعِهِ أَكْثَرَ وَزْنًا أَوْ كَيْلًا مِنْهُ، فَيَكُونُ مِقْدَارُ وَزْنِهِ بِهِ، أَوْ مِقْدَارُ كَيْلِهِ كَذَلِكَ، وَيَكُونُ الْفَضْلُ بِذَلِكَ الشَّيْءِ -: مِثَالُ ذَلِكَ: دِينَارٌ فِيهِ حَبَّةُ فِضَّةٍ فَيُبَاعُ بِدِينَارِ ذَهَبٍ صِرْفٍ، فَيَكُونُ مِنْ هَذَا الدِّينَارِ الصِّرْفِ دِينَارٌ غَيْرُ حَبَّةٍ بِإِزَاءِ الذَّهَبِ الَّذِي فِي ذَلِكَ الدِّينَارِ الَّذِي فِيهِ حَبَّةُ فِضَّةٍ، وَيَكُونُ مَا زَادَ عَلَى ذَلِكَ مِنْ ذَهَبِ هَذَا الدِّينَارِ بِالْحَبَّةِ الْفِضَّةُ.

L23742 Similarly, a dirham containing a quarter, third, or half copper is to be exchanged for a dirham of pure silver. The silver present in this dirham corresponds to an equivalent weight of silver in that other dirham, while the copper combined with this silver is equivalent to the remaining portion of silver in that other dirham. This principle applies in the same manner to the remaining four types.

وَكَذَلِكَ الدِّرْهَمُ يَكُونُ فِيهِ رُبُعُهُ أَوْ ثُلُثُهُ أَوْ نِصْفُهُ صُفْرًا فَيُبَاعُ بِدِرْهَمِ فِضَّةٍ مَحْضَةٍ، فَيَكُونُ مَا فِي هَذَا الدِّرْهَمِ مِنْ الْفِضَّةِ بِإِزَاءِ وَزْنِهِ مِنْ ذَلِكَ الدِّرْهَمِ الْآخَرِ مِنْ الْفِضَّةِ، وَيَكُونُ الصُّفْرُ الَّذِي مَعَ هَذِهِ الْفِضَّةِ بِإِزَاءِ مَا بَقِيَ مِنْ ذَلِكَ الْآخَرِ مِنْ الْفِضَّةِ - وَهَكَذَا فِي الْأَرْبَعَةِ الْأَصْنَافِ الْبَاقِيَةِ.

L23743 Abu Muhammad said: We said: If you have freed yourselves through this intention from weighing, you have not freed yourselves from specification; for it is unclear which specific silver this dirham you sold was exchanged for in relation to the silver of the other. The Messenger of Allah—peace and blessings be upon him—has mandated that this is unlawful unless exchanged as specific item for specific item. How can this be when there exists an explicit textual ruling on this matter? As transmitted to us through Muslim's chain: I am Abu al-Tahir Ahmad ibn Amr ibn Sarh from Ibn Wahb, informed

قَالَ أَبُو مُحَمَّد: فَقُلْنَا: إنْ كُنْتُمْ تَخَلَّصْتُمْ بِهَذِهِ النِّيَّةِ مِنْ الْوَزْنِ، فَلَمْ تَتَخَلَّصُوا مِنْ التَّعْيِينِ؛ لِأَنَّهُ لَا يُعْرَفُ أَيُّ فِضَّةٍ هَذَا الدِّرْهَمُ بِعْتُمْ بِفِضَّةِ ذَلِكَ الْآخَرِ؟ وَقَدْ افْتَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ لَا يَحِلُّ ذَلِكَ إلَّا عَيْنًا بِعَيْنٍ، فَكَيْفَ وَقَدْ وَرَدَ فِي هَذَا نَصٌّ؟ كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ سَرْحٍ أَنَا ابْنُ وَهْبٍ

by Abu Hani' al-Khawlani, who heard Ali ibn Rabah al-Lakhmi say: I heard Fadalah ibn Ubayd say: "A necklace containing gold and beads, which was among the spoils that were being sold, was brought to the Messenger of Allah—peace and blessings be upon him—while he was in Khaybar. The Messenger of Allah—peace and blessings be upon him—ordered the gold in the necklace to be separated out alone, then said to them—peace be upon him—: 'Gold is to be exchanged for gold, equal weight for equal weight.'"

أَخْبَرَنِي أَبُو هَانِئٍ الْخَوْلَانِيُّ أَنَّهُ سَمِعَ عَلِيَّ بْنَ رَبَاحٍ اللَّخْمِيَّ يَقُولُ: سَمِعْتُ فَضَالَةَ بْنَ عُبَيْدٍ يَقُولُ: «أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِخَيْبَرَ بِقِلَادَةٍ فِيهَا ذَهَبٌ وَخَرَزٌ وَهِيَ مِنْ الْمَغَانِمِ تُبَاعُ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالذَّهَبِ الَّذِي فِي الْقِلَادَةِ فَنُزِعَ وَحْدَهُ، ثُمَّ قَالَ لَهُمْ - عَلَيْهِ السَّلَامُ -: الذَّهَبُ بِالذَّهَبِ وَزْنًا بِوَزْنٍ» .

L23744 Through the chain of Abu Dawud: Muhammad ibn al-Ala narrated to us: Ibn al-Mubarak narrated to us from Sa'id ibn Yazid—who is Abu Shuja'—from Khalid ibn Abi 'Imran from Hanash al-San'ani from Fadalah ibn 'Ubayd al-Ansari, who said: "A necklace containing gold and beads was brought to the Messenger of Allah (peace be upon him) during the year of Khaybar. A man bought it for nine dinars. The Messenger of Allah (peace be upon him) said: 'Until you distinguish between the two.' The man said: 'I only wanted the stones.' He (peace be upon him) replied: 'No, until you distinguish between the two.' The Prophet then made him return it until he distinguished between them."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ الْعَلَاءِ أَنَا ابْنُ الْمُبَارَكِ عَنْ سَعِيدِ بْنِ يَزِيدَ - هُوَ أَبُو شُجَاعٍ - عَنْ خَالِدِ بْنِ أَبِي عِمْرَانَ عَنْ حَنَشٍ الصَّنْعَانِيِّ عَنْ فَضَالَةَ بْنِ عُبَيْدٍ الْأَنْصَارِيِّ قَالَ: «أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ خَيْبَرَ بِقِلَادَةٍ فِيهَا ذَهَبٌ وَخَرَزٌ ابْتَاعَهَا رَجُلٌ بِتِسْعَةِ دَنَانِيرَ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: حَتَّى تُمَيِّزَ بَيْنَهُ وَبَيْنَهُ فَقَالَ: إنَّمَا أَرَدْتُ الْحِجَارَةَ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: لَا، حَتَّى تُمَيِّزَ بَيْنَهُمَا، فَرَدَّهُ حَتَّى مَيَّزَ بَيْنَهُمَا» .

L23745–23746 Thus, the Messenger of Allah—peace be upon him—did not consider his intention wherein his sole objective was the beads, with the gold being incidental. He did not account for whether the price was high or low due to abundance or scarcity, and he mandated distinction and balancing as essential—though there is disagreement on this matter, of which we will mention a portion, God willing. It has been narrated to us through Shu'bah: narrated by 'Umarah ibn Abi Hafsah, narrated by al-Mughirah ibn Hunayn, who heard 'Ali ibn Abi Talib—while delivering a sermon—when a man approached him and said, "O Commander of the Faithful, there are people in our land who consume usury." 'Ali asked, "How so?" The man replied, "They sell garments mixed with gold and silver in exchange for silver coins." 'Ali lowered his head and said, "No harm in it." From the narration of Sa'id ibn Mansur: narrated by Jarir ibn 'Abd al-Hamid, narrated by al-Sammak ibn Musa, narrated by Musa ibn Anas ibn Malik, narrated by his father: 'Umar gave him Khosrowani vessels combined with gold and said, "Go sell them, stipulating

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَلْتَفِتْ إلَى نِيَّتِهِ فِي أَنَّهُ إنَّمَا كَانَ غَرَضُهُ الْخَرَزَ وَيَكُونُ الذَّهَبُ تَبَعًا، وَلَا رَاعَى كَثْرَةَ ثَمَنٍ مِنْ قِلَّتِهِ، وَأَوْجَبَ التَّمْيِيزَ وَالْمُوَازَنَةَ وَلَا بُدَّ - وَفِي هَذَا خِلَافٌ نَذْكُرُ مِنْهُ طَرَفًا - إنْ شَاءَ اللَّهُ تَعَالَى -: رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ أَنَا عُمَارَةُ بْنُ أَبِي حَفْصَةَ عَنْ الْمُغِيرَةِ بْنِ حُنَيْنٍ سَمِعْت عَلِيَّ بْنَ أَبِي طَالِبٍ - وَهُوَ يَخْطُبُ - إذْ أَتَاهُ رَجُلٌ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ إنَّ بِأَرْضِنَا قَوْمًا يَأْكُلُونَ الرِّبَا؟ قَالَ عَلِيٌّ: وَمَا ذَلِكَ؟ قَالَ: يَبِيعُونَ جَامَاتٍ مَخْلُوطَةً بِذَهَبٍ وَفِضَّةٍ بِوَرِقٍ، فَنَكَّسَ عَلِيٌّ رَأْسَهُ، وَقَالَ: لَا - أَيْ لَا بَأْسَ بِهِ - وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ السَّمَّاكِ بْنِ مُوسَى عَنْ مُوسَى بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ أَبِيهِ: أَنَّ عُمَرَ أَعْطَاهُ آنِيَةً خُسْرُوَانِيَّةً مَجْمُوعَةً

our consent." He sold them to a Jew for twice their weight and informed ʻUmar, who then said, "Go reclaim them. Only by their weight."

بِالذَّهَبِ فَقَالَ عُمَرُ: اذْهَبْ فَبِعْهَا وَاشْتَرَطَ رِضَانَا، فَبَاعَهَا مِنْ يَهُودِيٍّ بِضِعْفِ وَزْنِهَا، ثُمَّ أَخْبَرَ عُمَرُ، فَقَالَ لَهُ عُمَرُ: اذْهَبْ فَارْدُدْهُ، لَا، إِلَّا بِزِنَتِهِ.

L23747 And through the chain of Sa'id ibn Mansur: I [Hushaym] report from Mujalid from al-Sha'bi that Abdullah ibn Mas'ud sold scrap from the treasury - debased dirhams (zuyūf) - for dirhams of lesser weight than theirs.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ مُجَالِدٍ عَنِ الشَّعْبِيِّ: أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ بَاعَ نُفَايَةَ بَيْتِ الْمَالِ زُيُوفًا بِدَرَاهِمَ دُونَ وَزْنِهَا.

L23748 And via the transmission chain of Ibn Abī Shaybah: from Sharīk ibn ʿAbd Allāh, from Ibrāhīm ibn Muhājir, from Ibrāhīm al-Nakhaʿī, who said, "Khabbāb was a metalworker, and he would sometimes purchase a sword adorned with silver."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا شَرِيكُ بْنُ عَبْدِ اللَّهِ عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ خَبَّابٌ قَيْنًا، وَكَانَ رُبَّمَا اشْتَرَى السَّيْفَ الْمُحَلَّى بِالْوَرِقِ.

L23749 Via the chain of Ibn Abi Shaybah: Abd al-Salam ibn Harb reported from Yazid al-Dālānī, from Qays ibn Muslim, from Tariq ibn Shihab, who said: "We would sell the sword adorned with silver and acquire it [in trade]."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ السَّلَامِ بْنُ حَرْبٍ عَنْ يَزِيدَ الدَّالَانِيِّ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ قَالَ: كُنَّا نَبِيعُ السَّيْفَ الْمُحَلَّى بِالْفِضَّةِ وَنَشْتَرِيهِ.

L23750 And through the chain of Ibn Abi Shaybah: from Waki', from Isra'il, from ʻAbd al-Aʻla, from Saʻid ibn Jubayr, from Ibn ʻAbbas, who said: There is no harm in selling an adorned sword for dirhams.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ إِسْرَائِيلَ عَنْ عَبْدِ الْأَعْلَى عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: لَا بَأْسَ بِبَيْعِ السَّيْفِ الْمُحَلَّى بِالدَّرَاهِمِ.

L23751 These individuals are: Umar, Ali, Anas, Ibn Masʿud, Tariq, Ibn Abbas, and Khabbab. However, Ali, Khabbab, Ibn Masʿud, Tariq, and Ibn Abbas did not specify conditions beyond or below the silver content. Umar adhered to the weight standard of silver and abolished the use of gold, though he permitted currency exchange (ṣarf) with the option of mutual consent after the transacting parties had parted. Anas alone considered exceeding the weight standard and permitted the option in currency exchange.

فَهَؤُلَاءِ: عُمَرُ، وَعَلِيٌّ، وَأَنَسٌ، وَابْنُ مَسْعُودٍ، وَطَارِقٌ، وَابْنُ عَبَّاسٍ، وَخَبَّابٌ، إِلَّا أَنَّ عَلِيًّا، وَخَبَّابًا، وَابْنَ مَسْعُودٍ، وَطَارِقًا، وَابْنَ عَبَّاسٍ لَمْ يَخُصُّوا بِأَكْثَرَ مِمَّا فِيهَا مِنَ الْفِضَّةِ وَلَا أَقَلَّ - وَعُمَرُ رَاعَى وَزْنَ الْفِضَّةِ وَأَلْغَى الذَّهَبَ، إِلَّا أَنَّهُ أَجَازَ الصَّرْفَ بِخِيَارِ رِضَاهُ بَعْدَ افْتِرَاقِ الْمُتَصَارِفِينَ - وَأَنَسٌ وَحْدَهُ رَاعَى أَكْثَرَ مِنَ الْوَزْنِ، وَأَجَازَ الْخِيَارَ فِي الصَّرْفِ.

L23752–23753 Among those after them, it has been narrated to us through the chain of Ahmad ibn Hanbal from Yahya ibn Abi Za'idah: Ibn Abi Ghunyah informed me, "I asked Al-Hakam ibn 'Utaybah about exchanging one thousand and sixty dirhams for one thousand dirhams and five dinars." He replied, "There is no harm in it: one thousand for one thousand, with the surplus being in dinars."

وَمِمَّنْ بَعْدَهُمْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ يَحْيَى بْنِ أَبِي زَائِدَةَ أَخْبَرَنِي ابْنُ أَبِي غُنْيَةَ سَأَلْتُ الْحَكَمَ بْنَ عُتَيْبَةَ أَلْفَ دِرْهَمٍ وَسِتِّينَ دِرْهَمًا بِأَلْفِ دِرْهَمٍ وَخَمْسَةِ دَنَانِيرَ؟ فَقَالَ: لَا بَأْسَ بِهِ أَلْفٌ بِأَلْفٍ وَالْفَضْلُ بِالدَّنَانِيرِ.

L23754 From the transmission of ʿAbd al-Razzāq: Maʿmar, Sufyān al-Thawrī, and

Ḥayy ibn ʿUmar. Maʿmar said: From Qatādah, from al-Ḥasan al-Baṣrī. Sufyān said: From al-Mughīrah, from Ibrāhīm al-Nakhaʿī. Ḥayy said: From ʿAbd al-Karīm Abū Umayyah, from al-Shaʿbī. Then al-Ḥasan, Ibrāhīm, and al-Shaʿbī agreed, all stating: There is no harm in selling a sword adorned with ornamentation, a sword belt, or a ring—whether for more than its value, less than its value, or on credit.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ، وَسُفْيَانُ الثَّوْرِيُّ، وَحَيُّ بْنُ عُمَرَ قَالَ مَعْمَرٌ: عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَقَالَ سُفْيَانُ: عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ حَيٌّ: عَنْ عَبْدِ الْكَرِيمِ أَبِي أُمَيَّةَ عَنْ الشَّعْبِيِّ، ثُمَّ اتَّفَقَ الْحَسَنُ، وَإِبْرَاهِيمُ، وَالشَّعْبِيُّ، قَالُوا كُلُّهُمْ: لَا بَأْسَ بِالسَّيْفِ فِيهِ الْحِلْيَةُ، وَالْمِنْطَقَةُ، وَالْخَاتَمُ أَنْ يَبْتَاعَهُ بِأَكْثَرَ مِمَّا فِيهِ أَوْ بِأَقَلَّ وَنَسِيئَةً.

L23755 From the chain of Abd al-Razzaq: Hushaym said, "I [heard] from Mughirah—I asked Ibrahim al-Nakhaʿī about a ring: 'Should I sell it with deferred payment?' He responded: 'Does it have a gemstone?' I said: 'Yes.' Then it was as though he made light of it."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا هُشَيْمٌ عَنْ مُغِيرَةَ سَأَلْت إبْرَاهِيمَ النَّخَعِيَّ عَنْ الْخَاتَمِ أَبِيعُهُ نَسِيئَةً؟ فَقَالَ: أَفِيهِ فَصٌّ؟ فَقُلْتُ: نَعَمْ، فَكَأَنَّهُ هَوَّنَ فِيهِ.

L23756 From the chain of Ibn Abi Shaybah: He narrated from Uthman ibn Matar from Hisham—he is Ibn Hassān—and Sa'id ibn Abi Arubah. Hisham said: From Ibn Sirin, and Sa'id said: From Qatadah. Then Ibn Sirin and Qatadah concurred: There is no harm in purchasing a silver-plated sword, a silver-plated platter (khiwān), or a cup in exchange for dirhams.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عُثْمَانُ بْنُ مَطَرٍ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانٍ - وَسَعِيدُ بْنُ أَبِي عَرُوبَةَ قَالَ هِشَامٌ: عَنْ ابْنِ سِيرِينَ، وَقَالَ سَعِيدٌ: عَنْ قَتَادَةَ ثُمَّ اتَّفَقَ ابْنُ سِيرِينَ، وَقَتَادَةُ: أَنَّهُ لَا بَأْسَ بِشِرَاءِ السَّيْفِ الْمُفَضَّضِ، وَالْخِوَانِ الْمُفَضَّضِ، وَالْقَدَحِ بِالدَّرَاهِمِ.

L23757 Via Shu'bah's chain, Shu'bah said: I asked Ḥammād ibn Abī Sulaymān about an adorned sword being sold for dirhams, and he said: "There is no harm in it." This was also narrated from Sulaymān ibn Mūsā and Makḥūl.

وَمِنْ طَرِيقِ شُعْبَةَ قَالَ: سَأَلْت حَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ السَّيْفِ الْمُحَلَّى يُبَاعُ بِالدَّرَاهِمِ؟ فَقَالَ: لَا بَأْسَ بِهِ - وَرُوِيَ هَذَا عَنْ سُلَيْمَانَ بْنِ مُوسَى، وَمَكْحُولٍ أَيْضًا.

L23758 From the chain of Saʿīd ibn Manṣūr: Hushaym reported from Ḥuṣayn—who is Abū ʿAbd al-Raḥmān—from al-Shaʿbī that he deemed no objection to purchasing an ornamented sword through immediate payment or deferred credit, stating: "It contains iron and the hilt." We received narration via Shu'bah's chain that he questioned al-Ḥakam ibn ʿUtaybah about selling an ornamented sword for dirhams. He responded: "If the dirhams [used as currency] exceed the decorative material in quantity, there is no harm in it."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا حُصَيْنٌ - هُوَ أَبُو عَبْدِ الرَّحْمَنِ - عَنْ الشَّعْبِيِّ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالسَّيْفِ الْمُحَلَّى يُشْتَرَى نَقْدًا وَنَسِيئَةً وَيَقُولُ: فِيهِ الْحَدِيدُ، وَالْحَمَائِلُ وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ: أَنَّهُ سَأَلَ الْحَكَمَ بْنَ عُتَيْبَةَ عَنْ السَّيْفِ الْمُحَلَّى يُبَاعُ بِالدَّرَاهِمِ؟ فَقَالَ: إنْ كَانَتْ الدَّرَاهِمُ أَكْثَرَ مِنْ الْحِلْيَةِ فَلَا بَأْسَ بِهِ.

L23759 A similar report was also narrated to us from al-Ḥasan and Ibrāhīm—and this is the opinion of Sufyān.

وَرُوِّينَا مِثْلَهُ أَيْضًا عَنْ الْحَسَنِ، وَإِبْرَاهِيمَ - وَهُوَ قَوْلُ سُفْيَانَ.

L23760 And a third opinion has been transmitted to us from Ibrāhīm, as reported via the chain of Saʿīd ibn Manṣūr: "I [Saʿīd] heard from Jarīr, who reported from Mughīrah from Ibrāhīm regarding the case when gold and silver are

combined together?" He said: "They are not to be sold except by one and the same weight standard for both."

وَرُوِّينَا عَنْ إِبْرَاهِيمَ قَوْلًا ثَالِثًا، كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا جَرِيرٌ عَنْ مُغِيرَةَ عَنْ إِبْرَاهِيمَ فِي الذَّهَبِ وَالْفِضَّةِ يَكُونَانِ جَمِيعًا؟ قَالَ: لَا يُبَاعُ إِلَّا بِوَزْنٍ وَاحِدٍ مِنْهُمَا.

L23761–23762 Abu Muhammad said: It is as though he nullifies the one. Al-Awzāʿī said: If the ornament is subsidiary and the excess is in the blade, it is permissible to sell it in kind for immediate or deferred payment.

قَالَ أَبُو مُحَمَّدٍ: كَأَنَّهُ يُلْغِي الْوَاحِدَ، وَقَالَ الْأَوْزَاعِيُّ: إِذَا كَانَتْ الْحِلْيَةُ تَبَعًا، وَكَانَ الْفَضْلُ فِي النَّصْلِ: جَازَ بَيْعُهُ بِنَوْعِهِ نَقْدًا وَتَأْخِيرًا.

L23763 Malik said: If the silver of a sword ornamented with silver, or a Quran codex likewise, or a belt likewise, or a silver ring likewise, does not exceed a third of their total value when combined with the blade, sheath, carrying straps, the Quran as a whole, or the gemstone—and similarly, if women's jewelry of gold or silver combined with stones does not exceed a third of the total value or less—then selling all such items in exchange for their own kind (whether more, equal, or less in immediate currency) is permissible, but not through deferred payment. If the precious metal exceeds a third, the transaction is fundamentally impermissible.

وَقَالَ مَالِكٌ: إِنْ كَانَتْ فِضَّةُ السَّيْفِ الْمُحَلَّى بِالْفِضَّةِ، أَوْ الْمُصْحَفُ كَذَلِكَ، أَوْ الْمِنْطَقَةُ كَذَلِكَ، أَوْ خَاتَمُ الْفِضَّةِ كَذَلِكَ: يَقَعُ فِي الثُّلُثِ مِنْ قِيمَتِهَا مَعَ النَّصْلِ، وَالْغِمْدِ، وَالْحَمَائِلِ، وَمَعَ الْمُصْحَفِ، وَمَعَ الْفَصِّ، وَكَانَ حُلِيُّ النِّسَاءِ مِنْ الذَّهَبِ، أَوْ الْفِضَّةِ، يَقَعُ الْفِضَّةُ أَوْ الذَّهَبُ فِي ثُلُثِ قِيمَةِ الْجَمِيعِ مَعَ الْحِجَارَةِ فَأَقَلَّ: جَازَ بَيْعُ كُلِّ ذَلِكَ بِنَوْعِهِ أَكْثَرَ مِمَّا فِيهِ وَمِثْلِهِ، وَأَقَلَّ نَقْدًا وَلَا يَجُوزُ نَسِيئَةً، فَإِنْ كَانَتْ أَكْثَرَ مِنْ الثُّلُثِ لَمْ يَجُزْ أَصْلًا.

L23764 This is a grave contradiction, because exchanging unequal values is prohibited just as delay is prohibited, with no distinction between them. Therefore, if one prohibits either of them, let them prohibit the other. And if they permit one because it is dependent, let them also permit the other, since both are dependent.

وَهَذَا تَنَاقُضٌ عَظِيمٌ، لِأَنَّ التَّفَاضُلَ حَرَامٌ كَالتَّأْخِيرِ وَلَا فَرْقَ، فَإِنْ مَنَعَ مِنْ أَحَدِهِمَا فَلْيَمْنَعْ مِنْ الْآخَرِ - وَإِنْ أَجَازَ أَحَدَهُمَا - لِأَنَّهُ تَبَعٌ فَلْيُجِزْ الْآخَرَ أَيْضًا، لِأَنَّهُ تَبَعٌ.

L23765 Another astonishment is his specification of one-third as the limit? No rational person has ever accepted that ten ratls of silver - being a third of the value of what they comprise - could be considered insignificant, while a dirham of silver - being half the value of what it comprises - could be deemed excessive. This constitutes profoundly corrupt reasoning, unsupported by any evidence from the Qur'an, nor the Sunnah, nor any weak narration, nor any precedent from earlier scholars that we know of, nor analogy, nor opinion with valid basis, nor precautionary principle.

وَتَحْدِيدُهُ الثُّلُثَ عَجَبٌ آخَرُ؟ وَمَا عَقَلَ قَطُّ أَحَدٌ أَنَّ وَزْنَ عَشَرَةِ أَرْطَالٍ فِضَّةً تَكُونُ ثُلُثَ قِيمَةِ مَا هِيَ فِيهِ يَكُونُ قَلِيلًا، وَوَزْنَ دِرْهَمٍ فِضَّةً يَكُونُ نِصْفَ قِيمَةِ مَا هِيَ فِيهِ يَكُونُ كَثِيرًا - وَهَذَا فَاسِدٌ مِنْ الْقَوْلِ جِدًّا، وَلَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ قَبْلَهُ نَعْلَمُهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا احْتِيَاطٍ.

L23766 He also said: It is not permissible to sell anything other than what we have mentioned that contains silver or gold in any form present within it—

whether little or much—such as a knife adorned with silver or gold, a saddle similarly adorned, or anything comparable. However, if the silver or gold within it—when removed—does not amount to anything significant, then there is no harm in selling it using the same form present in it (as currency), whether through immediate payment, deferred payment, or in whatever manner he chooses.

وَقَالَ أَيْضًا: لَا يَجُوزُ بَيْعُ غَيْرِ مَا ذَكَرْنَا يَكُونُ فِيهِ فِضَّةٌ أَوْ ذَهَبٌ بِنَوْعِ مَا فِيهِ مِنْهُمَا - قَلَّ أَوْ كَثُرَ - كَالسِّكِّينِ الْمُحَلَّاةِ بِالْفِضَّةِ أَوْ الذَّهَبِ، وَالسَّرْجُ كَذَلِكَ، وَكُلُّ شَيْءٍ كَذَلِكَ، إلَّا أَنْ يَكُونَ مَا فِيهِ مِنْ الْفِضَّةِ أَوْ الذَّهَبِ إذَا نُزِعَ لَمْ يَجْتَمِعْ مِنْهُ شَيْءٌ لَهُ بَالٌ، فَلَا بَأْسَ حِينَئِذٍ بِبَيْعِهِ بِنَوْعِ مَا فِيهِ مِنْ ذَلِكَ نَقْدًا وَبِتَأْخِيرٍ، وَكَيْفَ شَاءَ.

L23767 Abu Muhammad said: A matter of no significance is speech that comes to nothing, while a grain of gold or silver holds significance among the poor—yes, and among merchants and most people. It is not permissible according to him or to us to increase it in weighted transactions involving usury. Then his differentiation between the sword, the Quranic codex (Mus'haf), the ring, the girdle, and women's jewelry in that context—and between the saddle, bridle, spurs, knife, and other such items—is this not utterly perplexing?

قَالَ أَبُو مُحَمَّد: شَيْءٌ لَهُ بَالٌ كَلَامٌ لَا يَحْصُلُ، وَحَبَّةُ ذَهَبٍ أَوْ فِضَّةٍ لَهَا بَالٌ عِنْدَ الْمَسَاكِينِ، نَعَمْ، وَعِنْدَ التُّجَّارِ، وَعِنْدَ أَكْثَرِ النَّاسِ، وَلَا يَحِلُّ عِنْدَهُ وَلَا عِنْدَنَا تَزِيدُهَا فِي الْمُوَازَنَةِ فِيمَا فِيهِ الرِّبَا، ثُمَّ تَفْرِيقُهُ بَيْنَ السَّيْفِ، وَالْمُصْحَفِ، وَالْخَاتَمِ، وَالْمِنْطَقَةِ، وَحُلِيِّ النِّسَاءِ فِي ذَلِكَ - وَبَيْنَ السَّرْجِ وَاللِّجَامِ وَالْمَهَامِيزِ، وَالسِّكِّينِ، وَغَيْرِ ذَلِكَ عَجَبٌ جِدًّا؟

L23768 If they were to say, "Is it because the taking of what we mentioned earlier is permissible?"

فَإِنْ قَالُوا: لِأَنَّ مَا ذَكَرْنَا قَبْلُ مُبَاحٌ اتِّخَاذُهُ؟

L23769–23771 We said: Dinars are permissible to possess; therefore, permit selling them along with other items for gold when they constitute a third of the value. If it is less—and Malik permitted exchanging unmixed dinars for dinars adulterated with copper or silver, whether the adulteration is much or little, a third, more, or less—they are to be exchanged equally.

قُلْنَا: وَالدَّنَانِيرُ مُبَاحٌ اتِّخَاذُهَا فَأَجِيزُوا بَيْعَهَا مَعَ غَيْرِهَا بِذَهَبٍ إذَا كَانَتْ ثُلُثَ الْقِيمَةِ فَأَقَلَّ - وَأَجَازَ مَالِكٌ بَدَلَ الدَّنَانِيرِ الْمَحْضَةِ بِالدَّنَانِيرِ الْمَغْشُوشَةِ بِالصُّفْرِ، أَوْ الْفِضَّةِ - كَثُرَ الْغِشُّ أَمْ قَلَّ - كَانَ الثُّلُثُ، أَوْ أَكْثَرَ أَوْ أَقَلَّ - مِثْلًا بِمِثْلٍ.

L23772 Similarly, he permitted substituting debased dirhams containing copper or other substances in exchange for unalloyed silver dirhams on a like-for-like basis, whether the debasement constituted a third, exceeded it, or was less.

وَكَذَلِكَ أَجَازَ بَدَلَ الدَّرَاهِمِ الْمَغْشُوشَةِ بِالصُّفْرِ وَغَيْرِهِ بِالدَّرَاهِمِ الْفِضَّةِ الْمَحْضَةِ، مِثْلًا بِمِثْلٍ - كَانَ الْغِشُّ الثُّلُثَ أَوْ أَكْثَرَ أَوْ أَقَلَّ.

L23773 He said: If this is done under the guise of sale, it is invalid. He maintains that zakah applies to adulterated coins when their total weight - including adulterants - reaches two hundred dirhams, or when the weight of dinars reaches twenty dinars, even if the actual silver or gold content within them is less than one-tenth.

قَالَ: فَإِنْ كَانَ ذَلِكَ بِاسْمِ الْبَيْعِ لَمْ يَجُزْ، وَهُوَ يَرَى فِي الْمَغْشُوشَةِ الزَّكَاةَ إذَا بَلَغَ وَزْنُهَا بِغِشِّهَا مِائَتَيْ دِرْهَمٍ، أَوْ بَلَغَ وَزْنُ الدَّنَانِيرِ عِشْرِينَ دِينَارًا، وَإِنْ كَانَتْ الْفِضَّةُ أَوْ الذَّهَبُ فِيهِمَا أَقَلَّ مِنْ الْعُشْرِ.

وَهَذَا تَنَاقُضٌ آخَرُ، وَلَئِنْ كَانَ حُكْمُهَا حُكْمَ الصَّافِيَةِ فِي وُجُوبِ الزَّكَاةِ فِيهَا، وَكَانَتْ وَرِقًا، فَإِنَّ بَيْعَ بَعْضِهَا بِبَعْضٍ جَائِزٌ، لِأَنَّهَا شَيْءٌ وَاحِدٌ، وَوَرِقٌ وَلَئِنْ كَانَ بَيْعُ بَعْضِهَا بِبَعْضٍ لَا يَجُوزُ، لِأَنَّهَا لَيْسَتْ شَيْئًا وَاحِدًا، وَلَا هِيَ وَرِقٌ، فَإِنَّ الزَّكَاةَ فِيهَا لَا تَجِبُ لِذَلِكَ سَوَاءً سَوَاءً.

L23774 This is another contradiction. And if indeed its ruling follows that of pure silver in the obligation of zakah, and it was silver, then exchanging portions of it for others is permissible, because it is a single entity and silver. But if exchanging portions of it for others is impermissible because it is neither a single entity nor silver, then zakah is not obligatory in it for that reason, altogether equal.

ثُمَّ الْفَرْقُ بَيْنَ الْبَدَلِ، وَبَيْنَ الْبَيْعِ: عَجَبٌ آخَرُ مَا سَمِعْنَاهُ عَنْ أَحَدٍ قَبْلَهُ وَلَا نَدْرِي مِنْ أَيْنَ قَالَهُ؟ وَلَئِنْ كَانَ لِلْبَدَلِ هُنَا غَيْرُ حُكْمِ الْبَيْعِ لَيَجُوزَنَّ الدِّينَارُ بِالدِّينَارَيْنِ عَلَى الْبَدَلِ، لَا عَلَى اسْمِ الْبَيْعِ، وَهَذِهِ عَجَائِبُ كَمَا تَسْمَعُ.

L23775 Then, the distinction between exchange and sale: another marvel—we have not heard it from anyone before him, nor do we know where he derived it. For if exchange here entails a ruling different from sale, it would indeed permit exchanging one dinar for two dinars under exchange, not under the designation of sale. These are marvels, as you can see.

وَقَالَ أَبُو حَنِيفَةَ: كُلُّ شَيْءٍ مُحَلًّى بِفِضَّةٍ أَوْ ذَهَبٍ فَجَائِزٌ بَيْعُهُ بِنَوْعِ مَا فِيهِ مِنْ ذَلِكَ إِذَا كَانَ الثَّمَنُ أَكْثَرَ مِمَّا فِي الْمَبِيعِ مِنَ الْفِضَّةِ أَوِ الذَّهَبِ، وَلَا يَجُوزُ بِمِثْلِ مَا فِيهِ مِنْ ذَلِكَ وَلَا بِأَقَلَّ.

L23776 Abu Hanifah said: Any item adorned with silver or gold may be sold based on the type of metal it contains, provided the price is greater than the value of the silver or gold in the item. It is not permissible to sell it for an equivalent value or less of that metal.

قَالَ: وَلَا بُدَّ مِنْ قَبْضِ مَا يَقَعُ لِلْفِضَّةِ أَوْ لِلذَّهَبِ مِنَ الثَّمَنِ قَبْلَ التَّفَرُّقِ، فَكَانَ هَذَا طَرِيفًا جِدًّا، وَمُخَالِفًا لِلسُّنَّةِ كَمَا ذَكَرْنَا مِنْ قَبْلُ.

L23777 He said: It is necessary to physically receive the portion of the price payable in silver or gold before the parties separate. This was an entirely unprecedented ruling and contrary to the Sunnah, as we have previously mentioned.

وَقَالَ أَبُو حَنِيفَةَ فِي الدَّرَاهِمِ الْمَغْشُوشَةِ: إِنْ كَانَ الثُّلُثَانِ هُوَ الصُّفْرُ، وَكَانَتِ الْفِضَّةُ الثُّلُثَ وَلَا يَقْدِرُ عَلَى تَخْلِيصِهَا، لِأَنَّهُ لَا يَدْرِي إِنْ خَلَصَتْ أَيَبْقَى الصُّفْرُ أَمْ يَحْتَرِقُ؟ فَلَا بَأْسَ بِبَيْعِهَا بِوَزْنِ جَمِيعِهَا فِضَّةً مَحْضَةً.

L23778 Abu Hanifah said regarding adulterated dirhams: If two-thirds is copper and the silver is one-third, and he is unable to purify them because he does not know whether the copper would remain or burn if purified, then there is no harm in him selling them by their total weight as pure silver.

وَبِأَكْثَرَ مِنْ وَزْنِ جَمِيعِهَا أَيْضًا، وَلَا يَجُوزُ بَيْعُهَا بِمِثْلِ الْفِضَّةِ الَّتِي فِيهَا وَلَا بِأَقَلَّ مِنْهَا.

L23779 And it is also not permissible to exchange it with more than the total weight of all of it, nor is it permissible to sell it for the equivalent amount of silver contained within it or for less than that amount.

قَالَ: فَإِنْ كَانَ نِصْفُهَا صُفْرًا أَوْ نِصْفُهَا فِضَّةً؟ فَإِنْ كَانَتِ الْفِضَّةُ هِيَ الْغَالِبَةُ: جَازَ بَيْعُهَا بِوَزْنِ جَمِيعِهَا مِنَ الْفِضَّةِ الْمَحْضَةِ، وَلَا تُبَاعُ بِأَكْثَرَ مِنْ ذَلِكَ مِنَ الْفِضَّةِ وَإِنْ لَمْ يَكُنْ

L23780–23782 He said: "If half of it is [made of] brass or half is [made of] silver? If silver is the predominant [element], then it is permissible." Selling it by the total weight of all its pure silver, and it must not be sold for more than that

amount of silver. If neither of the two is of greater value than the other, it becomes permissible at that point to sell it for an amount equivalent to the total weight of all its pure silver—whether greater or lesser—but only after the silver in the price exceeds the silver present in the dirhams. If the parties do not know which of the two silvers is greater—whether the silver serving as the price or the silver in the dirhams—the sale is invalid.

أَحَدُهُمَا غَالِيًا لِلْآخَرِ جَازَ بَيْعُهَا حِينَئِذٍ بِمِثْلِ وَزْنِ جَمِيعِهَا فِضَّةً مَحْضَةً، وَبِأَكْثَرَ وَبِأَقَلَّ بَعْدَ أَنْ يَكُونَ فِضَّةُ الثَّمَنِ أَكْثَرَ مِنْ الْفِضَّةِ الَّتِي فِي الدَّرَاهِمِ فَإِنْ لَمْ يَدْرِ أَيُّ الْفِضَّتَيْنِ أَكْثَرُ الَّتِي هِيَ ثَمَنٌ أَمْ الَّتِي فِي الدَّرَاهِمِ؟ فَالْبَيْعُ فَاسِدٌ.

L23783 He said: If the dirhams are two-thirds (silver) and one-third copper, it is impermissible to sell them for pure silver except like for like in equal measure - neither less nor more.

قَالَ: فَإِنْ كَانَ ثُلُثَا الدَّرَاهِمِ وَثُلُثُهَا صُفْرًا لَمْ يَجُزْ أَنْ تُبَاعَ بِالْفِضَّةِ الْمَحْضَةِ إلَّا مِثْلًا بِمِثْلٍ، لَا بِأَقَلَّ وَلَا بِأَكْثَرَ.

L23784 These are Satanic whispers; if a child were to utter them at the outset of his understanding, one would despair of his salvation, and it would be obligatory that a mule be procured for him. We seek refuge in Allah from such tribulation, for these rulings have no foundation whatsoever—neither from the Quran, nor the Sunnah, nor an unsound narration, nor analogy, nor sound opinion, nor precaution, nor have I heard of anyone before this. Allah is sufficient for us, and He is the best trustee.

وَهَذِهِ وَسَاوِسُ لَوْ قَالَهَا صَبِيٌّ فِي أَوَّلِ فَهْمِهِ لَيُئِسَ مِنْ فَلَاحِهِ، وَلَوَجَبَ أَنْ يُسْتَعَدَّ لَهُ بَغْلٌ وَنَعُوذُ بِاَللَّهِ مِنْ الْبَلَاءِ، وَمَا لِهَذِهِ الْأَحْكَامِ وَجْهٌ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ، وَلَا احْتِيَاطٍ، وَلَا سَمِعْتُ عَنْ أَحَدٍ قَبْلَهُ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L23785 The wonder is that he once saw the third here as small.

وَالْعَجَبُ: أَنَّهُ مَرَّةً رَأَى الثُّلُثَ هَهُنَا قَلِيلًا.

L23786 And once he deemed a fourth (of the belly) excessive in what is uncovered from the free woman's stomach during prayer.

وَمَرَّةً رَأَى الرُّبُعَ كَثِيرًا، فِيمَا يَنْكَشِفُ مِنْ بَطْنِ الْحُرَّةِ فِي الصَّلَاةِ.

L23787 On one occasion, he deemed the measurement of the Baghli dirham [as a standard] excessive for what is exposed of a woman's thigh or posterior.

وَمَرَّةً رَأَى مِقْدَارَ الدِّرْهَمِ الْبَغْلِيِّ كَثِيرًا فِيمَا يَنْكَشِفُ مِنْ فَخِذِهَا أَوْ دُبُرِهَا.

L23788 Once he deemed the half insufficient.

وَمَرَّةً رَأَى النِّصْفَ قَلِيلًا.

L23789 And on one occasion, he ruled that three fingers' breadth from the entire head was excessive.

وَمَرَّةً رَأَى مِقْدَارَ ثَلَاثَةِ أَصَابِعَ مِنْ جَمِيعِ الرَّأْسِ كَثِيرًا.

L23790 These are irrational absurdities and arbitrary impositions in the religion of Allah Almighty, based on falsehood.

وَهَذِهِ تَخَالِيطُ لَا تُعْقَلُ، وَتَحَكُّمٌ فِي دِينِ اللَّهِ تَعَالَى بِالْبَاطِلِ.

L23791 Abu Muhammad said: It has been reported similar to our statement from groups of the Salaf, as transmitted to us through the path of Ibn Abi Shaybah: Waki', from Muhammad ibn 'Abd Allah al-Shu'aythi, from Abu Qilabah, from

Anas, who said: A letter from ʻUmar ibn al-Khattab reached us while we were in the land of Persia, stating: "Do not sell swords with silver rings in exchange for dirhams."

L23792–23794 From the chain of Saʿīd ibn Manṣūr: Mahdī ibn Maymūn narrated from Muḥammad ibn ʿAbd Allāh ibn Abī Yaʿqūb. Yaḥyā al-Ṭawīl related to me, on the authority of a man from Hamdān, who said: "I asked ʿAlī ibn Abī Ṭālib..." I said: "O Commander of the Faithful, the silver coins have become stagnant for me. May I exchange them at a premium or discount?" He replied: "That is instant usurious gain." Through the chain of Sa'īd ibn Manṣūr: I, Jarīr, report from Mughīrah ibn Miqsam from his father from a man among the oil merchants, who said: "Alī ibn Abī Ṭālib stated: 'If one of you has dirhams that remain unspent, let him buy gold with them, then use the gold to purchase whatever he wishes.'"

L23795 And through the chain of Saʻīd ibn Manṣūr: Hushaym narrated from Mujālid, from Al-Shaʻbī: that ʻAbdullāh ibn Masʻūd sold scrap from the treasury—debased coins and bows—for underweight dirhams. ʻUmar prohibited him from that, saying, "Burn them until the iron or copper within them is eliminated, leaving pure silver, then sell the silver by its weight."

L23796 And through the chain of Muslim ibn al-Hajjaj: Abu al-Tahir narrated to me—on the authority of Ibn Wahb—from Amr ibn al-Harith that Amir ibn Yahya al-Ma'afiri informed them from Hanash ibn Abdullah al-San'ani: "I was with Fadalah ibn Ubaid on a military expedition when a necklace containing gold, silver, and jewels came into my possession and that of my companions. I intended to purchase it, so I asked Fadalah ibn Ubaid. He replied: 'Separate its gold and place it on one scale, then place your gold on another scale. Take only like for like, for the Messenger of Allah—peace and blessings of Allah be upon him—commanded.'" Then he related the hadith.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ مِثْلُ قَوْلِنَا عَنْ طَوَائِفَ مِنَ السَّلَفِ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الشُّعَيْثِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ قَالَ: أَتَانَا كِتَابُ عُمَرَ بْنِ الْخَطَّابِ وَنَحْنُ بِأَرْضِ فَارِسٍ: لَا تَبِيعُوا سُيُوفًا فِيهَا حَلْقَةُ فِضَّةٍ بِالدَّرَاهِمِ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا مَهْدِيُّ بْنُ مَيْمُونٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي يَعْقُوبَ حَدَّثَنِي يَحْيَى الطَّوِيلُ عَنْ رَجُلٍ مِنْ هَمْدَانَ قَالَ: سَأَلْتُ عَلِيَّ بْنَ أَبِي طَالِبٍ، فَقُلْتُ: يَا أَمِيرَ الْمُؤْمِنِينَ إِنَّهُ يَكْسُدُ عَلَيَّ الْوَرِقُ أَفَأَصْرِفُهُ بِالزِّيَادَةِ وَالنُّقْصَانِ؟ قَالَ: ذَلِكَ الرِّبَا الْعَجْلَانُ؟ وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا جَرِيرٌ عَنْ مُغِيرَةَ بْنِ مِقْسَمٍ عَنْ أَبِيهِ عَنْ رَجُلٍ مِنَ السَّمَّانِينَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إِذَا كَانَ لِأَحَدِكُمْ دَرَاهِمُ لَا تُنْفَقُ فَلْيَبْتَعْ بِهَا ذَهَبًا، وَلْيَبْتَعْ بِالذَّهَبِ مَا شَاءَ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ مُجَالِدٍ عَنِ الشَّعْبِيِّ: أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ بَاعَ نُفَايَةَ بَيْتِ الْمَالِ زُيُوفًا وَقِسْيَانَ بِدَرَاهِمَ دُونَ وَزْنِهَا؟ فَنَهَاهُ عُمَرُ عَنْ ذَلِكَ، وَقَالَ: أَوْقِدْ عَلَيْهَا حَتَّى يَذْهَبَ مَا فِيهَا مِنْ حَدِيدٍ أَوْ نُحَاسٍ وَتَخْلُصَ، ثُمَّ بِعْ الْفِضَّةَ بِوَزْنِهَا.

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ حَدَّثَنِي أَبُو الطَّاهِرِ أَنَا ابْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ أَنَّ عَامِرَ بْنَ يَحْيَى الْمَعَافِرِيَّ أَخْبَرَهُمْ «عَنْ حَنَشِ بْنِ عَبْدِ اللَّهِ الصَّنْعَانِيِّ أَنَّهُ كَانَ مَعَ فَضَالَةَ بْنِ عُبَيْدٍ فِي غَزْوَةٍ فَطَارَتْ لِي وَلِأَصْحَابِي قِلَادَةٌ فِيهَا ذَهَبٌ وَوَرِقٌ وَجَوْهَرٌ، فَأَرَدْتُ أَنْ أَشْتَرِيَهَا، فَسَأَلْتُ فَضَالَةَ بْنَ عُبَيْدٍ؟ فَقَالَ: انْزِعْ ذَهَبَهَا فَاجْعَلْهُ فِي كِفَّةٍ وَاجْعَلْ ذَهَبَكَ فِي كِفَّةٍ، ثُمَّ لَا تَأْخُذَنَّ إِلَّا مِثْلًا بِمِثْلٍ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ.» . ثُمَّ ذَكَرَ الْحَدِيثَ.

L23797 From the narration of Waki‘: I am Fudayl ibn Ghazwan, from Nafi‘, who said: Ibn ‘Umar would not sell a saddle or a sword containing silver until he removed it, then sell it weight for weight. Thus, these are: ‘Umar, ‘Ali, Ibn ‘Umar, and Fadalah ibn ‘Ubayd. Among the Followers—as narrated to us through the chain of Ibn Abi Shaybah: From ‘Abd al-A‘la ibn ‘Abd al-A‘la, from Ma‘mar, from al-Zuhri—that he disliked purchasing a sword adorned with silver and would say: “Buy it with gold immediately.”

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا فُضَيْلُ بْنُ غَزْوَانَ عَنْ نَافِعٍ قَالَ: كَانَ ابْنُ عُمَرَ لَا يَبِيعُ سَرْجًا وَلَا سَيْفًا فِيهِ فِضَّةٌ حَتَّى يَنْزِعَهُ ثُمَّ يَبِيعَهُ وَزْنًا بِوَزْنٍ: فَهَؤُلَاءِ: عُمَرُ، وَعَلِيٌّ، وَابْنُ عُمَرَ، وَفَضَالَةُ بْنُ عُبَيْدٍ، وَمِنَ التَّابِعِينَ: كَمَا رُوِّينَا عَنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ: أَنَّهُ كَانَ يَكْرَهُ أَنْ يُشْتَرَى السَّيْفُ الْمُحَلَّى بِفِضَّةٍ، وَيَقُولُ: اشْتَرِهِ بِالذَّهَبِ يَدًا بِيَدٍ.

L23798 And via the chain of Ibn Abī Shaybah: I, Ismā‘īl ibn Ibrāhīm—known as Ibn ‘Ulayyah—narrate from Ayyūb al-Sikhtiyānī that Muḥammad ibn Sīrīn deemed the purchase of an adorned sword reprehensible unless exchanged for goods.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ أَنَّ مُحَمَّدَ بْنَ سِيرِينَ: كَانَ يَكْرَهُ شِرَاءَ السَّيْفِ الْمُحَلَّى إِلَّا بِعَرَضٍ.

L23799–23800 From the chain of Sa‘īd ibn Manṣūr: From Hushaym, from Yūnus, from Ibn Sīrīn, that he used to say: If the jewelry is silver, he buys it with gold; if the jewelry is gold, he buys it with silver; and if it is both gold and silver, he does not buy it with gold or silver, but buys it with merchandise.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ عَنِ ابْنِ سِيرِينَ أَنَّهُ كَانَ يَقُولُ: إِذَا كَانَتِ الْحِلْيَةُ فِضَّةً اشْتَرَاهَا بِالذَّهَبِ، وَإِنْ كَانَتِ الْحِلْيَةُ ذَهَبًا اشْتَرَاهَا بِالْفِضَّةِ، وَإِنْ كَانَتْ ذَهَبًا وَفِضَّةً فَلَا يَشْتَرِيهَا بِذَهَبٍ وَلَا فِضَّةٍ وَاشْتَرَاهَا بِعَرَضٍ.

L23801 From the chain of Sa‘īd ibn Manṣūr: Hushaym reported: I [heard] from al-Shaybānī, who is Abū Isḥāq, from al-Sha‘bī, from Shurayḥ that he was presented with a golden necklace containing gemstones. Shurayḥ said: “Separate the gold from the gemstones. Sell the gold in immediate exchange and the gemstones as you wish.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا الشَّيْبَانِيُّ هُوَ أَبُو إِسْحَاقَ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ أَنَّهُ أُتِيَ بِطَوْقِ ذَهَبٍ فِيهِ جَوْهَرٌ، فَقَالَ شُرَيْحٌ: أَزِيلُوا الذَّهَبَ مِنَ الْجَوْهَرِ فَبِيعُوا الذَّهَبَ يَدًا بِيَدٍ وَبِيعُوا الْجَوْهَرَ كَيْفَ شِئْتُمْ.

L23802 From the transmission of Waki‘: I [Waki‘] narrate via Zakariyyā ibn Abī Zā’idah from al-Sha‘bī, who said: Shuraiḥ was asked about a golden necklace containing gemstones: “Can it be sold for gold dinars?” He replied: “Remove the gemstones first, then sell the gold for gold—weight for weight.”

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا زَكَرِيَّا هُوَ ابْنُ أَبِي زَائِدَةَ عَنِ الشَّعْبِيِّ قَالَ: سُئِلَ شُرَيْحٌ عَنْ طَوْقِ ذَهَبٍ فِيهِ فُصُوصٌ، أَتُبَاعُ بِدَنَانِيرَ؟ قَالَ: تُنْزَعُ الْفُصُوصُ ثُمَّ يُبَاعُ الذَّهَبُ بِالذَّهَبِ وَزْنًا بِوَزْنٍ

L23803 And through the chain of ‘Abd al-Razzāq from Ma‘mar, who narrated from al-Zuhrī and Qatādah - Qatādah said: From Ibn Sīrīn. Then Ibn Sīrīn and

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ، وَقَتَادَةَ، قَالَ قَتَادَةُ: عَنِ ابْنِ سِيرِينَ، ثُمَّ اتَّفَقَ ابْنُ سِيرِينَ، وَالزُّهْرِيُّ، قَالَا جَمِيعًا: يُكْرَهُ أَنْ يُبَاعَ الْخَاتَمُ فِيهِ فِضَّةٌ بِالْوَرِقِ.

al-Zuhrī aligned in opinion, both stating: It is reprehensible to sell a ring containing silver in exchange for silver coins.

L23804 From the path of Hammad ibn Salama, from Hammad ibn Abi Sulayman, from Ibrahim al-Nakhaʿi: he disapproved of buying gold and silver with gold. Hammad said regarding one who intends to purchase one thousand dirhams for one hundred dinars and one dirham: he prohibited this and said, "No, but purchase one thousand dirhams excluding one dirham for one hundred dinars." All that we have stated constitutes the opinion of al-Shāfiʿī, Aḥmad, and the majority of our scholars. And success is by Allah, the Exalted.

L23805 **The issue of the deferred-payment sale of gold.**

L23806 1489 - Issue:

L23807 If there is gold with another item besides silver—whether attached to it or compounded in it—it is permissible to sell it as it is, along with what is with it and less than it, for dirhams hand to hand. It is not permissible to sell it on credit.

L23808 Similarly, if silver is mixed with, combined into, or present within a substance other than gold, it is permissible to sell it—either with what it is mixed with or independently of it—for immediate payment in dinars (hand-to-hand). Deferred payment is not permissible.

L23809 Similarly, wheat mixed with dates, salt, or another item: it is permissible to sell it with the other item or without it for barley in a spot transaction, but it is not permissible to sell it on credit.

L23810–23811 If barley is combined with dates, salt, or other items, it is permissible to sell either (1) the barley along with those items or (2) the items alone (without barley) in exchange for wheat, provided payment is immediate, not deferred. Similarly, if dates are combined with barley, salt, or other items, it is permissible to sell either (1) the dates along with those items or (2) the items alone (without dates) in exchange for wheat, with immediate payment, not deferred.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ يَكْرَهُ أَنْ يُشْتَرَى ذَهَبٌ، وَفِضَّةٌ بِذَهَبٍ، وَقَالَ حَمَّادٌ: فِيمَنْ أَرَادَ أَنْ يَشْتَرِيَ أَلْفَ دِرْهَمٍ بِمِائَةِ دِينَارٍ وَدِرْهَمٍ؟ فَمَنَعَ مِنْ ذَلِكَ وَقَالَ: لَا، وَلَكِنْ اشْتَرِ أَلْفَ دِرْهَمٍ غَيْرَ دِرْهَمٍ بِمِائَةِ دِينَارٍ وَكُلُّ مَا قُلْنَا فَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ وَجُمْهُورِ أَصْحَابِنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع الذَّهَب نَسِيئَة]

١٤٨٩ - مَسْأَلَةٌ:

فَإِنْ كَانَ ذَهَبٌ وَشَيْءٌ آخَرُ غَيْرُ الْفِضَّةِ مَعَهُ أَوْ مُرَكَّبًا فِيهِ جَازَ بَيْعُهُ كَمَا هُوَ مَعَ مَا هُوَ مَعَهُ وَدُونَهُ بِالدَّرَاهِمِ يَدًا بِيَدٍ وَلَا يَجُوزُ نَسِيئَةً.

وَكَذَلِكَ الْفِضَّةُ مَعَهَا شَيْءٌ آخَرُ غَيْرُ الذَّهَبِ أَوْ مُرَكَّبًا فِيهَا، أَوْ هِيَ فِيهِ: جَازَ بَيْعُهَا مَعَ مَا هِيَ مَعَهُ أَوْ دُونَهُ بِالدَّنَانِيرِ يَدًا بِيَدٍ، وَلَا يَجُوزُ نَسِيئَةً.

وَكَذَلِكَ الْقَمْحُ مَعَهُ تَمْرٌ أَوْ مِلْحٌ أَوْ شَيْءٌ آخَرُ: فَجَائِزٌ بَيْعُهُ مَعَ الْآخَرِ أَوْ دُونَهُ بِشَعِيرٍ يَدًا بِيَدٍ، وَلَا يَجُوزُ نَسِيئَةً.

وَكَذَلِكَ الشَّعِيرُ مَعَهُ تَمْرٌ أَوْ مِلْحٌ أَوْ غَيْرُ ذَلِكَ: فَجَائِزٌ بَيْعُهُ وَمَا مَعَهُ أَوْ دُونَهُ بِقَمْحٍ نَقْدًا، لَا نَسِيئَةً وَكَذَلِكَ التَّمْرُ مَعَهُ شَعِيرٌ أَوْ مِلْحٌ أَوْ غَيْرُ ذَلِكَ: فَجَائِزٌ بَيْعُهُ مَعَهُ أَوْ دُونَهُ بِقَمْحٍ نَقْدًا، لَا نَسِيئَةً.

L23812 Similarly, if salt is alongside wheat, barley, or other such items, it is permissible to sell it for dates with immediate payment, but not for deferred payment.

وَكَذَلِكَ الْمِلْحُ مَعَهُ قَمْحٌ أَوْ شَعِيرٌ أَوْ غَيْرُ ذَلِكَ: فَجَائِزٌ بَيْعُهُ بِالتَّمْرِ نَقْدًا، لَا بِنَسِيئَةٍ

L23813 The proof of that is the statement of the Messenger of Allah—peace and blessings be upon him—: "When these categories differ, then sell as you wish, provided the exchange is hand to hand." Thus, weighing, measuring, and equivalence in type are abolished, and only cash remains. And success is from Allah, the Exalted.[16]

بُرْهَانُ ذَلِكَ: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدٍ» فَسَقَطَتْ الْمُوَازَنَةُ، وَالْمُكَايَلَةُ، وَالْمُمَاثَلَةُ، وَبَقِيَ النَّقْدُ فَقَطْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23814 It has been narrated to us through the chain of Ḥammād ibn Salamah, from al-Ḥajjāj ibn Arṭāh, from Jaʿfar ibn ʿAmr ibn Ḥurayth, that his father purchased from ʿAlī ibn Abī Ṭālib a brocade garment interwoven with gold for four thousand dirhams with women. He then burned it and extracted from it the value of twenty thousand dirhams.

رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ جَعْفَرِ بْنِ عَمْرِو بْنِ حُرَيْثٍ: أَنَّ أَبَاهُ اشْتَرَى مِنْ عَلِيِّ بْنِ أَبِي طَالِبٍ دِيبَاجَةً مُلْحَمَةً بِذَهَبٍ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ بِنِسَاءٍ فَأَحْرَقَهَا فَأَخْرَجَ مِنْهَا قِيمَةَ عِشْرِينَ أَلْفِ دِرْهَمٍ.

L23815 Rabi'ah permitted the sale of a sword embellished with silver in exchange for gold on credit.

وَأَجَازَ رَبِيعَةُ بَيْعَ سَيْفٍ مُحَلًّى بِفِضَّةٍ بِذَهَبٍ إلَى أَجَلٍ.

L23816 Ali said: "There is no binding proof in the words of anyone apart from the Messenger of Allah—may Allah bless him and grant him peace." This is among the matters in which the Malikis and Hanafis were inconsistent: they opposed the practice of Ali and ʿAmr ibn Ḥurayth while in the presence of the Companions—may Allah be pleased with them.

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الْمَالِكِيُّونَ: وَالْحَنَفِيُّونَ فَخَالَفُوا عَمَلَ عَلِيٍّ وَعَمْرِو بْنِ حُرَيْثٍ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L23817 The issue of selling stamped and adulterated dirhams.

[مَسْأَلَةَ بَيْعِ الدَّرَاهِمِ المنقوشة والمغشوشة]

L23818 1490. Issue:

١٤٩٠ - مَسْأَلَةٌ:

L23819 As for stamped dirhams and adulterated dinars: indeed, if two parties exchange adulterated dirhams wherein the adulteration is evident for adulterated dirhams wherein the adulteration is evident, this is permissible when they conclude the sale contract - stipulating that the copper in one set is exchanged for the silver in the other, and the silver in the former for the copper

وَأَمَّا الدَّرَاهِمُ الْمَنْقُوشَةُ وَالدَّنَانِيرُ الْمَغْشُوشَةُ فَإِنَّهُ إنْ تَبَايَعَ اثْنَانِ دَرَاهِمَ مَغْشُوشَةً قَدْ ظَهَرَ الْغِشُّ فِيهَا بِدَرَاهِمَ مَغْشُوشَةٍ قَدْ ظَهَرَ الْغِشُّ فِيهَا: فَهُوَ جَائِزٌ إذَا تَعَاقَدَا الْبَيْعَ، عَلَى أَنَّ الصُّفْرَ الَّذِي فِي هَذِهِ بِالْفِضَّةِ الَّتِي فِي تِلْكَ، وَالْفِضَّةَ الَّتِي فِي هَذِهِ بِالصُّفْرِ الَّذِي فِي

[16] **Hadith references (L23813):** Sunan Abi Dawud 3350; Sahih Muslim 1587c; Mishkat al-Masabih 2808.

in the latter. This transaction is permissible and lawful (ḥalāl), whether they exchange them with disparity, equally, by uncertain quantity for a known amount, or by uncertain quantity for uncertain quantity, because exchanging copper for silver is lawful.

تِلْكَ: فَهَذَا جَائِزٌ حَلَالٌ، سَوَاءٌ تَبَايَعَا ذَلِكَ مُتَفَاضِلًا، أَوْ مُتَمَاثِلًا، أَوْ جُزَافًا بِمَعْلُومٍ، أَوْ جُزَافًا بِجُزَافٍ، لِأَنَّ الصُّفْرَ بِالْفِضَّةِ حَلَالٌ.

L23820 Similarly, if two parties exchange debased dinars for debased dinars where the adulteration in both is evident in this manner, and if they exchange the gold of this one for the silver of that one and the gold of that one for the silver of this one: this is also permissible whether exchanged equally, unequally, or without precise measurement, provided immediate cash payment is made. This is because it involves gold for silver, where unequal exchange is permissible, and immediate cash payment is obligatory. And success is from Allah, the Most High.

وَكَذَلِكَ إِنْ تَبَايَعَا دَنَانِيرَ مَغْشُوشَةً بِدَنَانِيرَ مَغْشُوشَةٍ قَدْ ظَهَرَ الْغِشُّ فِي كِلَيْهِمَا عَلَى هَذِهِ الصِّفَةِ، فَإِنْ تَبَايَعَا ذَهَبَ هَذِهِ بِفِضَّةِ تِلْكَ وَذَهَبَ تِلْكَ بِفِضَّةِ هَذِهِ: فَهَذَا أَيْضًا حَلَالٌ مُتَمَاثِلًا، وَمُتَفَاضِلًا، وَجُزَافًا نَقْدًا وَلَا بُدَّ لِأَنَّهُ ذَهَبٌ بِفِضَّةٍ، فَالتَّفَاضُلُ جَائِزٌ، وَالتَّنَاقُدُ فَرْضٌ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع الْقَمْح بدقيقه وسويقه وخبزه وَغَيْر ذَلِكَ]

The legal issue of selling wheat as flour, roasted meal, bread, and other similar derivatives.

L23821–23822

مَسْأَلَةٌ:

L23823 Issue:

وَجَائِزٌ بَيْعُ الْقَمْحِ بِدَقِيقِ الْقَمْحِ وَسَوِيقِ الْقَمْحِ وَبِخُبْزِ الْقَمْحِ وَدَقِيقِ الْقَمْحِ بِدَقِيقِهِ وَبِسَوِيقِهِ وَخُبْزِهِ، وَسَوِيقِهِ بِسَوِيقِهِ وَبِخُبْزِهِ، وَخُبْزِ الْقَمْحِ بِخُبْزِ الْقَمْحِ، مُتَفَاضِلًا كُلُّ ذَلِكَ، وَمُتَمَاثِلًا، وَجُزَافًا وَالزَّيْتُونِ بِالزَّيْتِ وَالزَّيْتُونِ، وَالزَّيْتِ بِالزَّيْتِ، وَالْعِنَبِ بِالْعِنَبِ وَبِالْعَصِيرِ، وَبِخَلِّ الْعِنَبِ بِالْخَلِّ، يَدًا بِيَدٍ وَأَنْ يُسَلَّمَ كُلُّ مَا ذَكَرْنَا بَعْضُهُ فِي بَعْضٍ.

L23824 It is permissible to sell wheat for wheat flour, wheat *sawīq* (roasted flour), or wheat bread; wheat flour for its flour, its *sawīq*, or its bread; wheat *sawīq* for its *sawīq* or its bread; and wheat bread for wheat bread—whether with excess, equivalence, or by approximation without measurement. Likewise, olives may be sold for olive oil and olives; olive oil for olive oil; grapes for grapes, grape juice, or grape vinegar; and grape vinegar for vinegar—through immediate exchange, requiring reciprocal delivery of some of it in some of it at the time of transaction.

وَكَذَلِكَ دَقِيقُ الشَّعِيرِ بِالْقَمْحِ وَبِالشَّعِيرِ وَبِدَقِيقِ الشَّعِيرِ وَبِخُبْزِهِ، وَالتِّينِ بِالتِّينِ، وَالزَّبِيبِ بِالزَّبِيبِ، وَالْأُرْزِ بِالْأُرْزِ، كَيْفَ شِئْتَ مُتَفَاضِلًا، وَمُتَمَاثِلًا؛ وَيُسَلَّمُ بَعْضُهُ فِي بَعْضٍ.

L23825 Similarly, barley flour exchanged for wheat, barley, barley flour, or its bread; figs for figs, raisins for raisins, rice for rice—whether in unequal or equal amounts, as you wish—with part exchanged for part.

وَلَا رِبَا أَلْبَتَّةَ، وَلَا حَرَامَ، إلَّا فِي الْأَصْنَافِ السِّتَّةِ الَّتِي قَدَّمْنَا وَفِي الْعِنَبِ بِالزَّبِيبِ كَيْلًا، وَيَجُوزُ وَزْنًا كَيْفَ شِئْتَ.

L23826 And there is no *ribā* whatsoever, nor anything *ḥarām*, except in the six categories we have previously mentioned and in exchanging grapes for raisins by volume. And it is permissible by weight however you wish.

L23827 Regarding an unharvested standing crop consisting of wheat measured by

volume: if the crop is neither wheat nor barley, nor has it reached the ear-forming stage, then it is permissible to sell it by measured volume for barley and by measured volume for anything else except wheat.

L23828 The Malikis permitted exchanging *sawiq* made from wheat for wheat with a disparity in quantity.

L23829 The Hanafis permitted exchanging wheat bread for wheat with an excess in quantity, as both originate from wheat, and there is no difference.

L23830 The proof of this is what we have previously mentioned: that there is no riba (usury) or anything forbidden except what the Messenger of Allah—peace and blessings of Allah be upon him—explicitly stated. The Exalted said: {Allah has permitted trade and forbidden riba (usury)} [Al-Baqarah: 275].[17]

L23831 "And the Exalted said: 'Do not consume your wealth among yourselves wrongfully, except that it be trade by mutual consent from you.' [An-Nisāʾ: 29]"[18]

L23832 The Messenger of Allah (peace be upon him) permitted salaf in a specified measure or a specified weight, to a specified term. Allah the Exalted said: {And He has elaborated in detail what He has forbidden upon you} [al-Anʿām 6:119].[19]

L23833 It has become as clear as the sun that every trade, every sale, and every salam sale in a known measure, a known weight, or to a known term is absolutely permissible, leaving no room for doubt in that, except what Allah the Exalted has explicitly prohibited to us through the verbal articulation of His Messenger (peace be upon him).

L23834–23836 We bear witness by the testimony of Allah, the Most High, and we affirm and decisively state that Allah, the Most High, has not forbidden anything to His servants. He withheld it from them, and His Messenger, peace be upon him, did not clarify it for them, and that He, the Exalted, did not leave us - concerning what He has prohibited us - to rely upon the conjectures of

وَفِي الزَّرْعِ الْقَائِمِ بِالْقَمْحِ كَيْلًا، فَإِنْ كَانَ الزَّرْعُ لَيْسَ قَمْحًا وَلَا شَعِيرًا وَلَا سَنْبَلَ بَعْدُ: فَقَدْ جَازَ بَيْعُهُ بِالشَّعِيرِ كَيْلًا وَبِكُلِّ شَيْءٍ مَا عَدَا الْقَمْحَ كَيْلًا.

وَأَجَازَ الْمَالِكِيُّونَ السَّوِيقَ مِنْ الْقَمْحِ بِالْقَمْحِ مُتَفَاضِلًا.

وَأَجَازَ الْحَنَفِيُّونَ خُبْزَ الْقَمْحِ بِالْقَمْحِ مُتَفَاضِلًا وَكُلُّ ذَلِكَ أَصْلُهُ الْقَمْحُ، وَلَا فَرْقَ.

بُرْهَانُ ذَلِكَ: مَا أَوْرَدْنَا قَبْلُ مِنْ أَنَّهُ لَا رِبَا وَلَا حَرَامَ إلَّا مَا نَصَّ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥]

وَقَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

«وَأَبَاحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - السَّلَفَ فِي كَيْلٍ مَعْلُومٍ، أَوْ وَزْنٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ» وَقَالَ اللَّهُ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩]

فَصَحَّ بِأَوْضَحِ مِنْ الشَّمْسِ أَنَّ كُلَّ تِجَارَةٍ، وَكُلَّ بَيْعٍ، وَكُلَّ سَلَفٍ فِي كَيْلٍ مَعْلُومٍ، أَوْ وَزْنٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ: فَحَلَالٌ مُطْلَقٌ لَا مِرْيَةَ فِي ذَلِكَ، إلَّا مَا فَصَّلَ اللَّهُ تَعَالَى لَنَا تَحْرِيمَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -.

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى وَنَبُتُّ وَنَقْطَعُ بِأَنَّ اللَّهَ تَعَالَى لَمْ يُحَرِّمْ عَلَى عِبَادِهِ شَيْئًا كَتَمَهُ عَنْهُمْ وَلَمْ يُبَيِّنْهُ رَسُولُهُ - عَلَيْهِ السَّلَامُ - لَهُمْ، وَأَنَّهُ تَعَالَى لَمْ يَكِلْنَا فِيمَا حَرَّمَ عَلَيْنَا إلَى ظُنُونِ أَبِي حَنِيفَةَ، وَمَالِكٍ، الشَّافِعِيِّ، أَوْ غَيْرِهِمْ، وَلَا إلَى ظُنُونِنَا وَلَا إلَى ظَنِّ أَحَدٍ، وَلَا إلَى دَعَاوَى لَا بُرْهَانَ عَلَيْهَا.

[17] **Qur'an references (L23830):** Qur'an 2:275 (Al-Baqarah).
[18] **Qur'an references (L23831):** Qur'an 4:29 (An-Nisa).
[19] **Qur'an references (L23832):** Qur'an 6:119 (Al-An'am).

Abū Ḥanīfah, Mālik, al-Shāfiʿī, or others, nor upon our own conjectures, nor upon the conjecture of anyone, nor upon claims without proof.

وَمَا وَجَدْنَا عَنْ أَحَدٍ قَبْلَ مَالِكٍ الْمَنْعَ مِنْ بَيْعِ الزَّيْتُونِ بِالزَّيْتِ ثُمَّ اتَّبَعَهُ عَلَيْهِ الشَّافِعِيُّ، وَإِنْ كَانَ لَمْ يُصَرِّحْ بِهِ، وَأَجَازَهُ أَبُو حَنِيفَةَ وَأَصْحَابُهُ إِذَا كَانَ الزَّيْتُ أَكْثَرَ مِمَّا فِي الزَّيْتُونِ مِنْ الزَّيْتِ وَإِلَّا فَلَا.

L23837 We did not find anyone before Mālik who prohibited the sale of olives for oil. Then al-Shāfiʿī followed him on this prohibition, though he did not explicitly state it. And Abū Ḥanīfah and his disciples permitted it if the exchanged oil exceeded the oil producible from the olives; otherwise, not.

فَإِنْ قَالُوا: هِيَ مُزَابَنَةٌ؟ قُلْنَا: قُلْتُمْ الْبَاطِلَ، قَدْ فَسَّرَ الْمُزَابَنَةَ: أَبُو سَعِيدٍ الْخُدْرِيُّ، وَجَابِرُ بْنُ عَبْدِ اللَّهِ، وَابْنُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُمْ أَعْلَمُ النَّاسِ بِاللُّغَةِ وَبِالدِّينِ فَلَمْ يَذْكُرُوا شَيْئًا مِنْ هَذِهِ الْوُجُوهِ فِيهِ أَصْلًا

L23838 If they say, “Is this Muzabana?” We reply: “You speak falsely. It is Abu Sa’id al-Khudri, Jabir ibn Abdullah, and Ibn Umar (may Allah be pleased with them all) who interpreted Muzabana - and they are the most knowledgeable of people in language and religion - yet they did not mention any of these interpretations concerning it whatsoever.”

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الرُّطَبِ بِالتَّمْرِ، وَالزَّبِيبِ بِالْعِنَبِ كَيْلًا؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ هَذِهِ مِنْهُ عَيْنُ الْبَاطِلِ، لِأَنَّ الزَّبِيبَ هُوَ عَيْنُ الْعِنَبِ نَفْسِهِ، إلَّا أَنَّهُ يَبِسَ، وَالتَّمْرُ هُوَ عَيْنُ الرُّطَبِ إلَّا أَنَّهُ يَابِسٌ وَالزَّيْتُ هُوَ شَيْءٌ آخَرُ غَيْرُ الزَّيْتُونِ لَكِنَّهُ خَارِجٌ مِنْهُ كَخُرُوجِ اللَّبَنِ مِنْ الْغَنَمِ، وَالتَّمْرِ مِنْ النَّخْلِ، وَبَيْعُ كُلِّ ذَلِكَ بِمَا يَخْرُجُ مِنْهُ: جَائِزٌ بِلَا خِلَافٍ. فَهَذَا أَصَحُّ فِي الْقِيَاسِ لَوْ صَحَّ الْقِيَاسُ يَوْمًا مَا.

L23839 If they say: “We analogize that to fresh dates **to** dried dates and raisins **to** grapes by measured quantity?” We say: “All analogy is invalid. Moreover, this case is the **epitome of invalidity in analogy**, for raisins are the **very substance of grapes themselves**—except that they have dried—and dried dates are the **very substance of fresh dates** except that they are desiccated. Olive oil, however, is a distinct substance separate from olives, though extracted from them—**as** milk is extracted from sheep or dates from palm trees. Selling any of these **in exchange for** what produces them is permissible without disagreement. Thus, this would be the soundest analogy—**if analogy were ever valid one day**.”

وَقَدْ ذَكَرْنَا أَقْوَالَهُمْ الْمُخْتَلِفَةَ الْمُتَنَاقِضَةَ وَكُلُّ قَوْلٍ مِنْهَا يُكَذِّبُ قَوْلَ الْآخَرِ وَيُبْطِلُهُ، وَيَشْهَدُ عَلَيْهِ بِالْخَطَأِ، كُلُّ ذَلِكَ بِلَا بُرْهَانٍ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ عَلَى عَظِيمِ نِعَمِهِ عَلَيْنَا كَثِيرًا، وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا.

L23840 We have mentioned their differing and contradictory statements, each of which refutes and invalidates the other and bears witness against it to its error—all of this without any proof. And praise be to Allah, Lord of the worlds, for His immense blessings bestowed upon us abundantly. This is the view of Abū Sulaymān and our companions.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عُبَيْدَةُ بْنُ حُمَيْدٍ عَنْ مُطَرِّفٍ هُوَ ابْنُ طَرِيفٍ عَنْ الشَّعْبِيِّ: أَنَّهُ سُئِلَ عَنْ السَّوِيقِ بِالْحِنْطَةِ؟ فَقَالَ: إنْ لَمْ يَكُنْ رِبًا فَهُوَ رِيبَةٌ.

L23841 From the chain of Ibn Abi Shaybah: I [narrate] from Ubaydah ibn Humaid, from Mutarrif ibn Tarif, from Al-Sha‘bi. He was asked about sawiq (parched wheat meal) made from wheat, and he replied: “If it is not usury, then it is suspicious.”

L23842 And through the chain of Ibn Abi Shaybah: Jarir from Layth from Mujahid, who said: "There is no harm in exchanging wheat for parched grain flour, or wheat flour for wheat and parched grain flour." He did not stipulate equivalence. We have already mentioned the statements of the Companions and those after them regarding *muzābanah*, rendering repetition unnecessary.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا جَرِيرٌ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: لَا بَأْسَ بِالْحِنْطَةِ بِالسَّوِيقِ، وَالدَّقِيقِ بِالْحِنْطَةِ وَالسَّوِيقِ، فَلَمْ يَشْتَرِطْ الْمُمَاثَلَةَ، وَقَدْ ذَكَرْنَا أَقْوَالَ الصَّحَابَةِ وَمَنْ بَعْدَهُمْ فِي الْمُزَابَنَةِ فَأَغْنَى عَنْ تَكْرَارِهِ

L23843 **The issue of exchanging dirhams for dinars or vice versa.**

[مَسْأَلَةُ أَخْذِ الدَّرَاهِمِ عَنْ الدَّنَانِيرِ أَوْ الدَّنَانِيرِ عَنْ الدَّرَاهِمِ]

L23844–23846 1492- Issue:

١٤٩٢ - مَسْأَلَةٌ:

L23847 If someone is owed dinars, dirhams, wheat, barley, salt, dates, or other items not subject to usury—whatever the item, without exception—whether through sale, interest-free loan, salam contract, or any other means, whether immediately due or deferred, it is impermissible for them to take from the debtor anything other than what is rightfully theirs held by the debtor, at all.

وَمَنْ كَانَ لَهُ عِنْدَ آخَرَ دَنَانِيرُ، أَوْ دَرَاهِمُ، أَوْ قَمْحٌ، أَوْ شَعِيرٌ، أَوْ مِلْحٌ، أَوْ تَمْرٌ، أَوْ غَيْرُ ذَلِكَ، مِمَّا لَا يَقَعُ فِيهِ الرِّبَا أَيُّ شَيْءٍ كَانَ لَا تَحَاشَ شَيْئًا إمَّا مِنْ بَيْعٍ، إمَّا مِنْ قَرْضٍ، أَوْ مِنْ سَلَمٍ، أَوْ مِنْ أَيِّ وَجْهٍ كَانَ ذَلِكَ لَهُ عِنْدَهُ حَالًّا كَانَ أَوْ غَيْرَ حَالٍّ فَلَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهُ شَيْئًا مِنْ غَيْرِ مَالِهِ عِنْدَهُ أَصْلًا.

L23848 If one exchanges dinars for dirhams, dirhams for dinars, barley for wheat, dirhams for non-monetary commodities, or one category for another category without exception, then in transactions where usury applies, it constitutes explicit usury; and in transactions where usury does not apply, it is utterly impermissible and amounts to wrongful appropriation of wealth.

فَإِنْ أَخَذَ دَنَانِيرَ عَنْ دَرَاهِمَ، أَوْ دَرَاهِمَ عَنْ دَنَانِيرَ، أَوْ شَعِيرًا عَنْ بُرٍّ، أَوْ دَرَاهِمَ عَنْ عَرَضٍ، أَوْ نَوْعًا عَنْ نَوْعٍ لَا تَحَاشَ شَيْئًا: فَهُوَ فِيمَا يَقَعُ فِيهِ الرِّبَا رِبًا مَحْضٌ، وَفِيمَا لَا يَقَعُ فِي الرِّبَا حَرَامٌ بَحْتٌ وَأَكْلُ مَالٍ بِالْبَاطِلِ.

L23849 All of that is invalidated, perpetually rejected, and subject to the ruling of usurpation, except when one is entirely incapable of obtaining redress. In such a case, he may take what he can feasibly recover from what is lawfully owned by him, without omitting anything, equivalent to his rightful due with no excess; this is permissible for him.

وَكُلُّ ذَلِكَ مَفْسُوخٌ مَرْدُودٌ أَبَدًا مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ، إلَّا أَنْ لَا يَقْدِرَ عَلَى الِانْتِصَافِ أَلْبَتَّةَ فَيَأْخُذُ مَا أَمْكَنَهُ، مِمَّا يَحِلُّ مِلْكُهُ، لَا تَحَاشَ شَيْئًا، بِمِقْدَارِ حَقِّهِ، وَلَا مَزِيدَ، فَهَذَا حَلَالٌ لَهُ.

L23850 The evidence for this is what we previously mentioned regarding the Prophet's prohibition (peace be upon him) of gold, silver, wheat, dates, barley, and salt except like for like, hand to hand. Then he (peace be upon him)

بُرْهَانُ ذَلِكَ: مَا ذَكَرْنَا قَبْلُ مِنْ تَحْرِيمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الذَّهَبَ، وَالْفِضَّةَ، وَالْبُرَّ، وَالتَّمْرَ، وَالشَّعِيرَ، وَالْمِلْحَ إلَّا مِثْلًا بِمِثْلٍ عَيْنًا بِعَيْنٍ، ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: «فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إذَا كَانَ يَدًا بِيَدٍ»

said: “If these categories differ, then sell as you wish, provided it is hand to hand.”[20]

L23851 The transaction we have described is not a hand-to-hand exchange; rather, one of the two [items] is absent, and perhaps it has not even been extracted from its mine yet. Thus, it is prohibited by the explicit wording of his statement—upon him be peace.

L23852 Moreover, we have narrated through Muslim’s transmission: Muhammad ibn Rumh reported from Al-Layth ibn Sa‘d, from Nāfi‘, that he heard Abū Sa‘īd al-Khudrī say: “My eyes saw and my ears heard the Messenger of Allah (peace be upon him) saying: ’Do not sell gold for gold, nor silver for silver, except in equal measure. Do not give an excess of one over the other, and do not sell anything deferred from it for something immediate, except through immediate exchange.’”[21]

L23853–23855 From the chain of al-Bukhārī: I am Ḥafṣ ibn ‘Umar al-Ḥawḍī. I am Shu‘bah, who was informed by Ḥabīb ibn Abī Thābit. He said: I heard Abū al-Minhāl say: I asked al-Barā’ ibn ‘Āzib and Zayd ibn Arqam about exchange. Both of them said: “The Messenger of Allāh (peace and blessings of Allāh be upon him) prohibited selling gold for silver as deferred payment.” Malik, Abu Hanifah, Al-Shafi’i in one of his two opinions, and our companions held the permissibility of taking gold in exchange for silver coins and silver coins in exchange for gold. They argued for this by citing what was narrated to us through the chain of Qasim ibn Asbagh: I am Ja‘far ibn Muhammad, I heard from Affan ibn Muslim, I heard from Hammad ibn Salamah, from Simak ibn Harb, from Sa‘id ibn Jubayr, from Ibn Umar, who said: “I asked, ’O Messenger of Allah, may I sell camels for dinars and take dirhams, or sell for dirhams and take dinars, taking one in exchange for the other?’ He replied, ’There is no objection to taking them at the day’s rate.’”

وَالْعَمَلُ الَّذِي وَصَفْنَا لَيْسَ يَدًا بِيَدٍ، بَلْ أَحَدُهُمَا غَائِبٌ وَلَعَلَّهُ لَمْ يَخْرُجْ مِنْ مَعْدِنِهِ بَعْدُ، فَهُوَ مُحَرَّمٌ بِنَصِّ كَلَامِهِ - عَلَيْهِ السَّلَامُ -.

وَأَيْضًا: فَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ رُمْحٍ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ أَنَّهُ سَمِعَ «أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: أَبْصَرَتْ عَيْنَايَ وَسَمِعَتْ أُذُنَايَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: لَا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ، وَلَا تَبِيعُوا الْوَرِقَ بِالْوَرِقِ، إِلَّا مِثْلًا بِمِثْلٍ، وَلَا تُشِفُّوا بَعْضَهُ عَلَى بَعْضٍ، وَلَا تَبِيعُوا شَيْئًا غَائِبًا مِنْهُ بِنَاجِزٍ، إِلَّا يَدًا بِيَدٍ»

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا حَفْصُ بْنُ عُمَرَ هُوَ الْحَوْضِيُّ أَنَا شُعْبَةُ أَخْبَرَنِي حَبِيبُ بْنُ أَبِي ثَابِتٍ قَالَ: سَمِعْتُ أَبَا الْمِنْهَالِ قَالَ: سَأَلْتُ الْبَرَاءَ بْنَ عَازِبٍ، وَزَيْدَ بْنَ أَرْقَمَ، عَنْ الصَّرْفِ؟ فَكِلَاهُمَا يَقُولُ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الذَّهَبِ بِالْوَرِقِ دَيْنًا» وَذَهَبَ مَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ، وَأَصْحَابُنَا، إلَى جَوَازِ أَخْذِ الذَّهَبِ مِنْ الْوَرِقِ، وَالْوَرِقِ مِنْ الذَّهَبِ وَاحْتَجُّوا فِي ذَلِكَ: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا جَعْفَرُ بْنُ مُحَمَّدٍ أَنَا عَفَّانُ بْنُ مُسْلِمٍ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ «ابْنِ عُمَرَ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ أَبِيعُ الْإِبِلَ بِالدَّنَانِيرِ وَآخُذُ الدَّرَاهِمَ وَأَبِيعُ بِالدَّرَاهِمِ وَآخُذُ الدَّنَانِيرَ، وَآخُذُ هَذِهِ مِنْ هَذِهِ؟ فَقَالَ: لَا بَأْسَ أَنْ تَأْخُذَهَا بِسِعْرِ يَوْمِهَا»

[20] **Hadith references (L23850):** Sunan Abi Dawud 3350; Sahih Muslim 1587c; Mishkat al-Masabih 2808.

[21] **Hadith references (L23852):** Sahih Muslim 1584b.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَبَرٌ لَا حُجَّةٌ فِيهِ، لِوُجُوهٍ: أَحَدُهَا - أَنَّ سِمَاكَ بْنَ حَرْبٍ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ شَهِدَ عَلَيْهِ بِذَلِكَ شُعْبَةُ وَأَنَّهُ كَانَ يَقُولُ لَهُ: حَدَّثَكَ فُلَانٌ عَنْ فُلَانٍ؟ فَيَقُولُ: نَعَمْ، فِيمَ سُئِلَ عَنْهُ.

L23856 Abū Muḥammad said: This is a report that constitutes no legal proof, for several reasons. The first is that Simāk ibn Ḥarb is weak and susceptible to coaching, as Shuʿbah observed regarding him – for he would ask him: "Did so-and-so narrate to you from so-and-so?" and he would respond "Yes" concerning whatever he was asked about.

وَثَانِيهَا - أَنَّهُ قَدْ جَاءَ هَذَا الْخَبَرُ بِهَذَا السَّنَدِ بِبَيَانٍ غَيْرِ مَا ذَكَرُوا كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ أَنَا أَبُو الْأَحْوَصِ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ «ابْنِ عُمَرَ قَالَ: كُنْتُ أَبِيعُ الذَّهَبَ بِالْفِضَّةِ أَوْ الْفِضَّةَ بِالذَّهَبِ، فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرْتُهُ بِذَلِكَ؟ فَقَالَ: إذَا بَايَعْت صَاحِبَك فَلَا تُفَارِقْهُ وَبَيْنَك وَبَيْنَهُ لَبْسٌ» وَهَذَا مَعْنًى صَحِيحٌ، وَهُوَ كُلُّهُ خَبَرٌ وَاحِدٌ.

L23857 The second point is that this report has come through this chain with an explanation differing from what they mentioned, as we were narrated through the chain of Aḥmad ibn Shuʿayb: Qutaybah from Abū al-Aḥwaṣ from Simāk ibn Ḥarb from Saʿīd ibn Jubayr from Ibn ʿUmar, who said: "I used to sell gold for silver or silver for gold. I came to the Messenger of Allah (peace be upon him) and informed him of this. He said: 'When you transact with your counterparty, do not part from him while ambiguity exists between you.'" This meaning is sound, and it is entirely a single report.[22]

وَثَالِثُهَا - أَنَّهُ لَوْ صَحَّ لَهُمْ كَمَا يُرِيدُونَ لَكَانُوا مُخَالِفِينَ لَهُ؛ لِأَنَّ فِيهِ اشْتِرَاطَ أَخْذِهَا بِسِعْرِ يَوْمِهَا، وَهُمْ يُجِيزُونَ أَخْذَهَا بِغَيْرِ سِعْرِ يَوْمِهَا، فَقَدْ اطَّرَحُوا مَا يَحْتَجُّونَ بِهِ.

L23858 The third point is that if the ruling were valid for them as they intend, they would contradict it, for their own reasoning stipulates taking it at the day's price, yet they permit taking it at a different price. Thus, they have discarded the very argument they cite.

وَمِمَّا يُبْطِلُ قَوْلَهُمْ هَهُنَا أَنَّهُ قَدْ صَحَّ النَّهْيُ عَنْ بَيْعِ الْغَرَرِ، وَهَذَا أَعْظَمُ مَا يَكُونُ مِنْ الْغَرَرِ؛ لِأَنَّهُ بَيْعُ شَيْءٍ لَا يَدْرِي أَخُلِقَ بَعْدُ أَمْ لَمْ يُخْلَقْ؟ وَلَا أَيُّ شَيْءٍ هُوَ؟ وَالْبَيْعُ لَا يَجُوزُ إلَّا فِي عَيْنٍ مُعَيَّنَةٍ بِمِثْلِهَا، وَإِلَّا فَهُوَ بَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ، وَالسَّلَمُ لَا يَجُوزُ إلَّا إلَى أَجَلٍ: فَبَطَلَ أَنْ يَكُونَ هَذَا الْعَمَلُ بَيْعًا أَوْ سَلَمًا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L23859 Among what invalidates their statement here is that the prohibition against selling gharar has been authentically established. This represents the most extreme form of gharar, for it involves selling something whose creation is uncertain - whether it has been created yet or not - and whose nature is unknown. A sale is permissible only for a specified item of equivalent value; otherwise it constitutes a sale of gharar and unjust seizure of wealth. Salam is valid only with a specified term. Thus this transaction is invalidated as being a sale or salam - it is purely unjust appropriation of wealth.

وَأَيْضًا فَإِنَّ هَذَا الْخَبَرَ إنَّمَا جَاءَ فِي الْبَيْعِ، فَمِنْ أَيْنَ أَجَازُوهُ فِي الْقَرْضِ؟ وَقَدْ فَرَّقَ بَعْضُ الْقَائِلِينَ بِهِ بَيْنَ الْقَرْضِ فِي الْبَيْعِ فِي ذَلِكَ وَاحْتَجُّوا مِنْ فِعْلِ السَّلَفِ فِي ذَلِكَ: بِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ سَعِيدٍ مَوْلَى الْحَسَنِ، قَالَ: أَتَيْت ابْنَ عُمَرَ أَتَقَاضَاهُ؟ فَقَالَ لِي: إذَا خَرَجَ خَازِنُنَا أَعْطَيْنَاك، فَلَمَّا خَرَجَ بَعَثَهُ مَعِي

L23860–23862 Furthermore, this narration specifically pertains to sale, so how did they permit it in loan? Moreover, some proponents of this view have distinguished between a loan within the context of sale on that matter, citing as evidence the practice of the early predecessors in... That is due to what we have narrated through the chain of Waki': From Ismāʿīl ibn Abī Khālid, from al-

[22] **Hadith references (L23857):** Sunan an-Nasai 4583.

Sha‘bī, from Sa‘īd—the client of al-Hasan—who said: “I came to Ibn ‘Umar to demand payment from him. He told me: ’When our treasurer emerges, we will give you.’ When he emerged, he sent him with me to the market and said: ’If a price is established, then if he wishes to take them at their value, he takes them.’” And through the chain of al-Ḥajjāj ibn al-Minhāl: From Abū ‘Awānah, from Ismā‘īl al-Suddī, from ‘Abdullāh al-Bahī, from Yasār ibn Numayr, who said: “A man owed me silver dirhams and offered me gold dinars. I said: ’I will not take them until I ask ‘Umar.’ When I asked him, he replied: ’Take them to the money-changers and present them. If they are appraised at a set rate, you may take them if you wish, or take the equivalent in your silver dirhams.’” The permissibility of this has been established as valid from al-Ḥasan al-Baṣrī, al-Ḥakam, Ḥammād, Sa‘īd ibn Jubayr (with differing accounts from him), Ṭāwūs, al-Zuhrī, Qatādah, and al-Qāsim ibn Muḥammad. Differing opinions are recorded from Ibrāhīm and ‘Aṭā’ regarding this matter.

إِلَى السُّوقِ وَقَالَ: إِذَا قَامَتْ عَلَى ثَمَنٍ فَإِنْ شَاءَ أَخَذَهَا بِقِيمَتِهَا أَخَذَهَا: وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ أَنَا إِسْمَاعِيلُ السُّدِّيُّ عَنْ عَبْدِ اللَّهِ الْبَهِيِّ عَنْ يَسَارِ بْنِ نُمَيْرٍ قَالَ: كَانَ لِي عَلَى رَجُلٍ دَرَاهِمُ فَعَرَضَ عَلَيَّ دَنَانِيرَ فَقُلْت: لَا آخُذُهَا حَتَّى أَسْأَلَ عُمَرَ فَسَأَلْته؟ فَقَالَ: ائْتِ بِهَا الصَّيَارِفَةَ فَأَعْرِضْهَا، فَإِذَا قَامَتْ عَلَى سِعْرٍ، فَإِنْ شِئْت فَخُذْهَا، وَإِنْ شِئْت فَخُذْ مِثْلَ دَرَاهِمِك وَصَحَّتْ إبَاحَةُ ذَلِكَ عَنْ الْحَسَنِ الْبَصْرِيِّ وَالْحَكَمِ وَحَمَّادٍ، وَسَعِيدِ بْنِ جُبَيْرٍ بِاخْتِلَافٍ عَنْهُ، وَطَاوُسٍ وَالزُّهْرِيِّ، وَقَتَادَةَ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ وَاخْتُلِفَ فِيهِ عَنْ إبْرَاهِيمَ، وَعَطَاءٍ

L23863 Abu Muhammad said: It has been reported to us that a group of the Salaf prohibited this. It was narrated via Malik’s transmission from Nāfi‘, from Ibn ‘Umar, who said: ‘Umar ibn al-Khaṭṭāb said, “Do not sell gold for silver currency where one [item] is deferred and the other is immediate.” This is authentic.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا الْمَنْعَ مِنْ ذَلِكَ عَنْ طَائِفَةٍ مِنْ السَّلَفِ: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَا تَبِيعُوا الذَّهَبَ بِالْوَرِقِ أَحَدُهُمَا غَائِبٌ وَالْآخَرُ نَاجِزٌ هَذَا صَحِيحٌ.

L23864 Narrated through the chain of Waki‘ from ‘Abdullāh ibn ‘Awf from Ibn Sīrīn from ‘Abdullāh ibn Mas‘ūd that he deemed it reprehensible to demand repayment of gold with silver coins or silver coins with gold.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْفٍ عَنْ ابْنِ سِيرِينَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ كَانَ يَكْرَهُ اقْتِضَاءَ الذَّهَبِ مِنْ الْوَرِقِ، وَالْوَرِقِ مِنْ الذَّهَبِ.

L23865 From the chain of Sa’id ibn Mansur: Hushaym al-Shaybani - he is Abu Ishaq - narrated from ’Ikrimah, from Ibn Abbas: that he disapproved of demanding gold [in exchange] for silver [for gold], and this is authentic.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا الشَّيْبَانِيُّ هُوَ أَبُو إِسْحَاقَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَرِهَ اقْتِضَاءَ الذَّهَبِ مِنْ الْوَرِقِ مِنْ الذَّهَبِ وَهَذَا صَحِيحٌ.

L23866 And via the chain of Sufyān ibn ‘Uyaynah from Sa‘d ibn Kidām, who said: Ma‘n ibn ‘Abd al-Raḥmān ibn ‘Abd Allāh ibn Mas‘ūd swore to me that he found in his father’s book, written in his own handwriting, that ‘Abd Allāh ibn Mas‘ūd said: “Allah forbid that we take dirhams in exchange for dinars or dinars in exchange for dirhams.”

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ سَعْدِ بْنِ كِدَامٍ قَالَ: حَلَفَ لِي مَعْنٌ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ وَجَدَ فِي كِتَابِ أَبِيهِ بِخَطِّهِ قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: مَعَاذَ اللَّهِ أَنْ نَأْخُذَ دَرَاهِمَ مَكَانَ دَنَانِيرَ أَوْ دَنَانِيرَ مَكَانَ دَرَاهِمَ.

L23867 From the chain of Abd al-Razzaq: Sufyan ibn Uyaynah narrated from Amr ibn Dinar, who was informed by Abu al-Minhal Abd al-Rahman ibn Mut'im that Abdullah ibn Umar said to him: "The Commander of the Believers"—meaning his father—"forbade us from selling debt for cash," and this narration is of the highest authenticity.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ أَخْبَرَنِي أَبُو الْمِنْهَالِ عَبْدُ الرَّحْمَنِ بْنُ مُطْعِمٍ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ قَالَ لَهُ: نَهَانَا أَمِيرُ الْمُؤْمِنِينَ يَعْنِي أَبَاهُ أَنْ نَبِيعَ الدَّيْنَ بِالْعَيْنِ وَهَذَا فِي غَايَةِ الصِّحَّةِ.

L23868–23869 From the narration of Ḥammād ibn Zayd: Ayyūb al-Sikhtiyānī narrated to me from Muḥammad ibn Sīrīn, that Zaynab—the wife of Ibn Masʿūd—sold her enslaved woman either for gold or silver. The other currency type was then offered to her. ʿUmar was asked about this, and he said: "She must take the type by which she conducted the sale."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ أَنَا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ زَيْنَبَ امْرَأَةَ ابْنِ مَسْعُودٍ بَاعَتْ جَارِيَةً لَهَا إِمَّا بِذَهَبٍ وَإِمَّا بِفِضَّةٍ فَعُرِضَ عَلَيْهَا النَّوْعُ الْآخَرُ فَسُئِلَ عُمَرُ؟ فَقَالَ: لِتَأْخُذْ النَّوْعَ الَّذِي بَاعَتْ بِهِ.

L23870 Through the chain of Sa'id ibn Mansur: I am Khalid ibn Abdullah—who is At-Tahhan—from Ash-Shaybani—who is Abu Ishaq—from Muhammad ibn Zayd—from Ibn Umar concerning one who sells food for dirhams: "May he take food in exchange for dirhams?" He said: "No, until one takes possession of their dirhams." Ibn Umar did not say anything regarding the permissibility of that in non-food matters.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا خَالِدُ بْنُ عَبْدِ اللَّهِ هُوَ الطَّحَّانُ عَنْ الشَّيْبَانِيِّ هُوَ أَبُو إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ ابْنِ عُمَرَ فِيمَنْ بَاعَ طَعَامًا بِدَرَاهِمَ، أَيَأْخُذُ بِالدَّرَاهِمِ طَعَامًا؟ فَقَالَ: لَا، حَتَّى تَقْبِضَ دَرَاهِمَك وَلَمْ يَقُلْ ابْنُ عُمَرَ بِإِبَاحَةِ ذَلِكَ فِي غَيْرِ الطَّعَامِ.

L23871 From the path of Ibn Abi Shaybah: Ali ibn Mushir narrated from Abu Ishaq al-Shaybani, from Muhammad ibn Zayd, from Ibn Umar - regarding one who lent dirhams: "May he take food in exchange for their price?" He disapproved of it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ ابْنِ عُمَرَ فِيمَنْ أَقْرَضَ دَرَاهِمَ أَيَأْخُذُ بِثَمَنِهَا طَعَامًا؟ فَكَرِهَهُ

L23872 And from the chain of Muḥammad ibn al-Muthannā: I [narrate] from Mu'ammal ibn Ismāʿīl, I [narrate] from Sufyān al-Thawrī, from al-Zubayr ibn ʿAdiyy, from Ibrāhīm al-Nakhaʿī that he disapproved of claiming dinars for dirhams or dirhams for dinars. And from the chain of Aḥmad ibn Shuʿayb: I [narrate] from Muḥammad ibn Bashshār, I [narrate] from Wakīʿ, I [narrate] from Mūsā ibn Nāfiʿ, from Saʿīd ibn Jubayr that he disapproved of accepting dinars for dirhams or dirhams for dinars.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا مُؤَمَّلُ بْنُ إِسْمَاعِيلَ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ الزُّبَيْرِ بْنِ عَدِيٍّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَرِهَ اقْتِضَاءَ الدَّنَانِيرِ مِنْ الدَّرَاهِمِ، وَالدَّرَاهِمِ مِنْ الدَّنَانِيرِ، وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا وَكِيعٌ أَنَا مُوسَى بْنُ نَافِعٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ كَرِهَ أَنْ يَأْخُذَ الدَّنَانِيرَ مِنْ الدَّرَاهِمِ وَالدَّرَاهِمَ مِنْ الدَّنَانِيرِ

L23873 And through the chain of Ibn Abi Shaybah: I [narrate] from Ibn 'Ulayyah from Yunus—the son of 'Ubayd—from Anas Ibn Sirin, who said: Abu 'Ubaydah Ibn 'Abdullah Ibn Mas'ud said to me: "Do not take gold dinars in ex-

change for a debt owed to you in silver dirhams, nor take silver dirhams in exchange for a debt owed in gold dinars."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنِ عُلَيَّةَ عَنْ يُونُسَ وَهُوَ ابْنُ عُبَيْدٍ عَنْ أَنَسِ بْنِ سِيرِينَ، قَالَ: قَالَ لِي أَبُو عُبَيْدَةَ بْنُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ: لَا تَأْخُذْ الذَّهَبَ مِنْ الْوَرِقِ يَكُونُ لَك عَلَى الرَّجُلِ وَلَا تَأْخُذَنَّ الْوَرِقَ مِنْ الذَّهَبِ

L23874 And through the report of Ibn Abī Shaybah: From Wakīʿ ibn ʿAlī ibn al-Mubārak, from Yaḥyā (Ibn Abī Kathīr), from Abū Salamah (Ibn ʿAbd al-Raḥmān ibn ʿAwf) that he disliked that there be for you a loan of dirhams to another, from which you take repayment in dinars.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعُ بْنُ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ هُوَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ كَرِهَ أَنْ يَكُونَ لَك عِنْدَ آخَرَ قَرْضُ دَرَاهِمُ فَتَأْخُذَ مِنْهُ دَنَانِيرَ.

L23875–23877 Via Ibn Abī Shaybah's transmission: I [received from] ʿAbd al-Aʿlā ibn ʿAbd al-Aʿlā, who reported from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn, regarding one who was owed dirhams by another. If he took some of them and then sought to take dinars equal to their value, [Ibn Sīrīn] disapproved of it. From the transmission of Ibn Abi Shaybah: I am Marwan ibn Mu'awiyah al-Fazari reporting from Musa ibn Ubaydah. Ata, the freedman of Umar ibn Abd al-Aziz, informed me that he purchased a she-camel from Burd, the client of Said ibn al-Musayyib, for four dinars. Burd came to claim his due. I said: "I have dirhams with me, but no dinars." He responded: "I must seek Said ibn al-Musayyib's instruction," so he sought his counsel. Said told him: "Take tangible dinars from him in physical form. If he refuses, his appointment is with Allah - leave him."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ فِيمَنْ كَانَتْ لَهُ عَلَى آخَرَ دَرَاهِمُ فَأَخَذَ مِنْهَا ثُمَّ أَرَادَ أَنْ يَأْخُذَ بِقِيمَتِهَا دَنَانِيرَ فَكَرِهَهُ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ هُوَ الْفَزَارِيّ عَنْ مُوسَى بْنِ عُبَيْدَةَ أَخْبَرَنِي عَطَاءٌ مَوْلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ ابْتَاعَ مِنْ بُرْدٍ مَوْلَى سَعِيدِ بْنِ الْمُسَيَّبِ نَاقَةً بِأَرْبَعَةِ دَنَانِيرَ فَجَاءَ يَلْتَمِسُ حَقَّهُ؟ فَقُلْت: عِنْدِي دَرَاهِمُ لَيْسَ عِنْدِي دَنَانِيرُ؟ فَقَالَ: حَتَّى أَسْتَأْمِرَ سَعِيدَ بْنَ الْمُسَيَّبِ فَاسْتَأْمَرَهُ؟ فَقَالَ لَهُ سَعِيدٌ: خُذْ مِنْهُ دَنَانِيرَ عَيْنًا، فَإِنْ أَبَى فَمَوْعِدُهُ اللَّهُ، دَعْهُ.

L23878 Via the chain of Ibn Abī Shaybah: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated from Ibn Ḥarmalah, who said: "I sold camels for dirhams payable by harvest time. When the payment became due, they settled with wheat, barley, and hulled barley. I asked Saʿīd ibn al-Musayyib, and he replied: 'This is invalid. Do not take anything except the dirhams.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ ابْنِ حَرْمَلَةَ قَالَ: بِعْت جُزُورًا بِدَرَاهِمَ إلَى الْحَصَادِ، فَلَمَّا حَلَّ قَضَوْنِي حِنْطَةً، وَشَعِيرًا، وَسَلْتًا، فَسَأَلْت سَعِيدَ بْنَ الْمُسَيَّبِ؟ فَقَالَ: لَا يَصْلُحُ، لَا تَأْخُذْ إلَّا الدَّرَاهِمَ.

L23879 These are: Umar, Ibn Abbas, Ibn Mas'ud, Ibn Umar, and Al-Nakha'ī.

فَهَؤُلَاءِ: عُمَرُ، وَابْنُ عَبَّاسٍ، وَابْنُ مَسْعُودٍ، وَابْنُ عُمَرَ، وَالنَّخَعِيُّ

L23880 Sa'id ibn Jubayr, Abu 'Ubaydah ibn 'Abdullah ibn Mas'ud, Abu Salamah ibn 'Abd al-Rahman, Ibn Sirin, and Ibn al-Musayyib.

وَسَعِيدُ بْنُ جُبَيْرٍ، وَأَبُو عُبَيْدَةَ بْنُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ وَابْنُ سِيرِينَ، وَابْنُ الْمُسَيِّبِ

وَهَذَا مِمَّا تَرَكُوا فِيهِ الْقُرْآنَ فِي تَحْرِيمِهِ أَكْلَ الْمَالِ بِالْبَاطِلِ لِخَبَرٍ سَاقِطٍ مُضْطَرِبٍ وَقَوْلُنَا هُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلُ ابْنِ شُبْرُمَةَ

L23881 This is among the matters in which they abandoned the Quran in its prohibition of consuming wealth unjustly due to a weak and inconsistent hadith. Our opinion is one of the two opinions of Al-Shāfiʿī and is the opinion of Ibn Shubrumah.

وَأَمَّا إذَا لَمْ يَقْدِرْ عَلَى الِانْتِصَافِ فَقَدْ قَالَ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠]

L23882 And as for when one is unable to seek redress, the Exalted has said: "And the recompense for an evil deed is an evil deed equivalent to it" [al-Shūrā 40].[23]

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

L23883 Allah, the Most High, said: "So whoever transgresses against you, respond to him in the same measure as he has transgressed against you." [Al-Baqarah: 194][24]

فَهَذَا عُمُومٌ لِكُلِّ مَا أَمْكَنَ الْمَمْنُوعُ حَقُّهُ أَنْ يَنْتَصِفَ بِهِ، أَوْ بِأَنْ يُوَكِّلَ غَرِيمَهُ عَلَى بَيْعِ مَالِهِ عِنْدَهُ، وَبِأَنْ يَبْتَاعَ لَهُ مَا يُرِيدُ: فَهَذَا جَائِزٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L23884 This is a general principle applicable to every situation where one denied his right can either obtain his due through it, appoint his creditor as an agent to sell the debtor's assets in their possession, or have the debtor purchase for the creditor what he requires. All this is permissible, and success comes solely from Allah, the Exalted.

[مَسْأَلَة بَيْع دقيق الْقَمْح]

The Jurisprudential Matter of the Sale of Wheat Flour

١٤٩٣ - مَسْأَلَةٌ:

L23885

1493 - Question:

وَاسْتَدْرَكْنَا مُنَاقَضَاتٍ لَهُمْ يُعَارِضُونَ بِهَا أَنْ شَنَّعُوا عَلَيْنَا بِبَيْعِ الْقَمْحِ بِدَقِيقِهِ وَدَقِيقِ غَيْرِهِ مُتَفَاضِلًا، وَتَسْلِيمِ أَحَدِهِمَا فِي الْآخَرِ، وَكَذَلِكَ دَقِيقِ الْقَمْحِ بِدَقِيقِ الْقَمْحِ، وَبِالْخُبْزِ وَالزَّيْتِ بِالزَّيْتُونِ وَبِالزَّيْتِ، وَاللَّبَنِ بِاللَّبَنِ، وَبِالْجُبْنِ وَالسَّمْنِ وَكُلِّ شَيْءٍ، مَا عَدَا مَا وَرَدَ بِهِ النَّصُّ مِنْ السُّنَّةِ.

L23886

L23887 We have identified contradictions in their arguments which they use to oppose us, such as their condemnation of our sale of wheat for its flour and the flour of another [grain] with an excess, and the delivery of one of them within the other, and similarly wheat flour for wheat flour, bread for olives, oil for oil, milk for milk, cheese for cheese, ghee for ghee, and everything else, except what has been explicitly stipulated by the explicit textual evidence from the Sunnah.

[23] **Qur'an references (L23882):** Qur'an 42:40 (Ash-Shuraa).
[24] **Qur'an references (L23883):** Qur'an 2:194 (Al-Baqarah).

وَلَا شُنْعَةَ فِي شَيْءٍ مِنْهُ، لِأَنَّنَا لَمْ نَتَعَدَّ حُدُودَ اللَّهِ تَعَالَى، وَلَا حَرَّمْنَا مَا لَمْ يُحَرِّمْهُ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَإِنَّمَا الشَّنِيعُ فِيمَا نَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى: قَالَ مَالِكٌ: يَجُوزُ بَيْعُ الدَّقِيقِ مِنْ الْقَمْحِ بِالْقَمْحِ كَيْلًا بِكَيْلٍ، مِثْلًا بِمِثْلٍ يَدًا بِيَدٍ، قَالَ: وَلَا يَجُوزُ دَقِيقِ الْقَمْحِ بِدَقِيقِ الْقَمْحِ كَيْلًا بِكَيْلٍ، لَكِنْ وَزْنًا بِوَزْنٍ، مِثْلًا بِمِثْلٍ.

L23888–23890 There is no reprehensibility in any of it, for we have not transgressed the bounds of Allah the Exalted, nor have we prohibited what Allah the Exalted has not prohibited nor His Messenger—peace be upon him—has prohibited. Rather, the reprehensible lies in what we will mention, if Allah the Exalted wills. Malik said: It is permissible to sell wheat-derived flour for wheat as measure for measure, like for like, hand to hand. He said: However, wheat-derived flour may not be exchanged for wheat-derived flour as measure for measure, but rather as weight for weight, like for like.

قَالَ عَلِيٌّ فَإِنْ كَانَ دَقِيقُ الْقَمْحِ نَوْعًا وَاحِدًا مَعَ الْقَمْحِ؟ فَمَا يَحِلُّ أَنْ يَبِيعَ دَقِيقَ قَمْحٍ بِدَقِيقِ قَمْحٍ إِلَّا كَيْلًا بِكَيْلٍ كَمَا يَبِيعُ الدَّقِيقَ بِالْقَمْحِ، لِأَنَّهُمَا قَمْحٌ مَعًا وَإِنْ كَانَ دَقِيقُ الْقَمْحِ صِنْفًا غَيْرَ الْقَمْحِ، فَوَاجِبٌ أَنْ يُجِيزَهُ بِالْقَمْحِ مُتَفَاضِلًا، وَأَجَازَ الْقَمْحَ بِسَوِيقِ الْقَمْحِ مُتَفَاضِلًا؟ فَأَيُّ فَرْقٍ بَيْنَ دَقِيقِ قَمْحٍ وَبَيْنَ سَوِيقِ قَمْحٍ بِقَمْحٍ؟ وَأَعْجَبُ مِنْ هَذَا احْتِجَاجُهُمْ فِي ذَلِكَ: بِأَنَّ السَّوِيقَ دَخَلَتْهُ صَنْعَةٌ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَقَعَ لَكُمْ الْفَرْقُ بِأَنَّهُ دَخَلَتْهُ صَنْعَةٌ؟ نَعَمْ، وَالدَّقِيقُ أَيْضًا دَخَلَتْهُ، صَنْعَةٌ وَلَا فَرْقَ.

L23891 Ali said: If wheat flour is considered the same type as wheat itself, it becomes impermissible to sell wheat flour for wheat flour except through equal measure for equal measure - just as selling flour for wheat, since both are fundamentally wheat. But if wheat flour is deemed a distinct category from wheat, it would logically require permitting its exchange for wheat with quantity disparity. Yet they permit wheat to be exchanged for parched wheat flour with disparity? What difference exists between wheat flour and parched wheat flour when traded for wheat? More astonishing still is their argument in this matter: that parched flour involves processing. We countered: What consequence does this have? From what basis have you established this distinction by claiming it underwent processing? Indeed, flour too has undergone processing, with no difference whatsoever.

وَقَالُوا أَيْضًا: إنَّمَا يُرَاعَى تَقَارُبُ الْمَنَافِعِ؟ فَقُلْنَا: وَهَذَا أَيْضًا مِنْ أَيْنَ وَقَعَ لَكُمْ؟ وَمِنْ أَيْنَ وَجَبَ لَكُمْ أَنْ تُرَاعُوا تَقَارُبَ الْمَنَافِعِ؟ وَهَلْ هِيَ إلَّا دَعْوَى بِلَا بُرْهَانٍ؟ وَقَوْلٌ لَمْ تُسْبَقُوا إلَيْهِ، وَتَعْلِيلٌ فَاسِدٌ.

L23892 They also said: “Is only the proximity of benefits to be considered?” We replied: “And this too—from where did this arise for you? From where were you obligated to consider the proximity of benefits? Is it anything but a claim without evidence—a statement none preceded you in, a flawed rationale?”

وَأَيْضًا: فَإِنَّ الْمَنَافِعَ فِي جَمِيعِ الْمَأْكُولَاتِ وَاحِدَةٌ لَسْنَا نَقُولُ: مُتَقَارِبَةً، بَلْ شَيْءٌ وَاحِدٌ، وَهُوَ طَرْدُ الْجُوعِ، أَوْ التَّأَدُّمِ، أَوْ التَّفَكُّهُ، أَوْ التَّدَاوِي، وَلَا مَزِيدَ.

L23893 Moreover, the benefits in all foods are one—we do not say *similar*, but one and the same: to repel hunger, season food, delight the palate, or treat illness, and nothing more.

وَمَنَعُوا مِنْ الْحِنْطَةِ الْمَبْلُولَةِ بِالْيَابِسَةِ، وَأَجَازُوا الْحِنْطَةَ الْمَقْلِيَّةَ بِالْيَابِسَةِ وَكِلْتَاهُمَا مُخْتَلِفَةٌ مَعَ الْأُخْرَى.

L23894 They prohibited wheat moistened with the dry substance but permitted wheat fried with dry ingredients, and these two methods are distinct from one another.

L23895 They prohibited [using] flour in the dough once it had undergone processing.

وَمَنَعُوا مِنْ الدَّقِيقِ بِالْعَجِينِ وَقَدْ دَخَلَتْ الْعَجِينَ صَنْعَةٌ.

L23896 They permitted exchanging wheat for bread made from wheat with a disparity in quality.

وَأَبَاحُوا الْقَمْحَ بِالْخُبْزِ مِنْ الْقَمْحِ مُتَفَاضِلًا.

L23897 They prohibited the exchange of milk for butter entirely. Yes, and they prohibited the exchange of milk for cheese. Is cheese from milk not akin to bread from wheat? They also prohibited exchanging the milk of a sheep for a lactating sheep, except when there is no milk presently in its udder, as it has been depleted by milking.

وَمَنَعُوا مِنْ اللَّبَنِ بِالسَّمْنِ جُمْلَةً؟ نَعَمْ، وَمَنَعُوا مِنْ اللَّبَنِ بِالْجُبْنِ وَهَلْ الْجُبْنُ مِنْ اللَّبَنِ إلَّا كَالْخُبْزِ مِنْ الْقَمْحِ؟ وَمَنَعُوا مِنْ بَيْعِ لَبَنِ شَاةٍ بِشَاةٍ لَبُونٍ، إلَّا أَنَّهُ لَا لَبَنَ الْآنَ فِي ضَرْعِهَا؛ لِأَنَّهُ قَدْ اُسْتُنْفِذَ بِالْحَلْبِ.

L23898 The jurists permitted selling date palms in exchange for dates on the condition that there are no dates within them.

وَأَجَازُوا بَيْعَ النَّخْلِ بِالتَّمْرِ إذَا كَانَتْ لَا تَمْرَ فِيهَا.

L23899 They argued that milk comes from the sheep's udder and that clarified butter is made from milk? So we said: Dates come from the date palm and bread is made from wheat.

وَاحْتَجُّوا بِأَنَّ اللَّبَنَ يَخْرُجُ مِنْ ضَرْعِ الشَّاةِ، وَأَنَّ السَّمْنَ يُعْمَلُ مِنْ اللَّبَنِ؟ فَقُلْنَا: وَالتَّمْرُ يَخْرُجُ مِنْ النَّخْلِ، وَالْخُبْزُ يُعْمَلُ مِنْ الْقَمْحِ.

L23900–23901 They prohibited exchanging grapes for juice but permitted it for vinegar. These are astonishing matters without parallel. If we were to examine them exhaustively, the matter would exceed manageable scope. What we have mentioned suffices, and all of it—as we mentioned—is not known from anyone before Mālik. Likewise, the prohibition against exchanging oil for olives in an immediate exchange, whether unequal or equal, is not recorded from anyone before Mālik.

وَمَنَعُوا مِنْ بَيْعِ الْعِنَبِ بِالْعَصِيرِ، وَأَجَازُوهُ بِالْخَلِّ وَهَذِهِ عَجَائِبُ لَا نَظِيرَ لَهَا، لَوْ تَقَصَّيْنَاهَا لَا تَسَعُ الْأَمْرَ فِي ذَلِكَ، وَفِيمَا ذَكَرْنَاهُ كِفَايَةٌ، وَهُوَ كُلُّهُ كَمَا ذَكَرْنَا لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَ مَالِكٍ، وَكَذَلِكَ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَ مَالِكٍ الْمَنْعَ مِنْ بَيْعِ الزَّيْتِ بِالزَّيْتُونِ يَدًا بِيَدٍ مُتَفَاضِلًا وَمُتَمَاثِلًا.

L23902 As for the Ḥanafīs, they explicitly permitted the usury stipulated in revealed texts without reservation, legitimizing the sale of one date for two dates, while forbidding the sale of a *ratl* of rough black linen suitable only for caulking ships in return for a *ratl* of Egyptian white linen smooth as silk.

وَأَمَّا الْحَنَفِيُّونَ: فَإِنَّهُمْ أَبَاحُوا الرِّبَا الْمَنْصُوصَ عَلَيْهِ جِهَارًا فَأَحَلُّوا بَيْعَ تَمْرَةٍ بِتَمْرَتَيْنِ، وَحَرَّمُوا بَيْعَ رِطْلِ كَتَّانٍ أَسْوَدَ أَخْرَشَ لَا يَصْلُحُ إلَّا لِقُلْفَةِ الْمَرَاكِبِ بِرِطْلِ كَتَّانٍ أَبْيَضَ مِصْرِيٍّ أَمْلَسَ كَالْحَرِيرِ

L23903 Similarly, they prohibited the sale of a ratl of fine spinnable cotton for a ratl of coarse cotton not suitable except for stuffing, and they said: All cotton is a single category, and all linen is a single category.

وَكَذَلِكَ حَرَّمُوا بَيْعَ رِطْلِ قُطْنٍ طَيِّبٍ غَزْلِيٍّ بِرِطْلِ قُطْنٍ خَشِنٍ لَا يَصْلُحُ إلَّا لِلْحَشْوِ، وَقَالُوا: الْقُطْنُ كُلُّهُ صِنْفٌ وَاحِدٌ، وَالْكَتَّانُ كُلُّهُ صِنْفٌ وَاحِدٌ.

L23904 They said: As for garments made from cotton, they are of different types;

unequal exchange and credit sales are permissible when exchanging some types for others. They permitted the sale of one Mervi cotton garment from Khurasan for two Mervi cotton garments from Baghdad, whether in immediate payment or credit. They said: As for cotton yarn, in all such cases it constitutes a single type, in which neither unequal exchange nor credit sales are permissible.

قَالُوا: وَأَمَّا الثِّيَابُ الْمَعْمُولَةُ مِنْ الْقُطْنِ فَأَصْنَافٌ مُخْتَلِفَةٌ يَجُوزُ فِي بَعْضِهَا بِبَعْضٍ التَّفَاضُلُ وَالنَّسِيئَةُ فَأَجَازُوا بَيْعَ ثَوْبِ قُطْنٍ مَرْوِيٍّ خُرَاسَانِيٍّ بِثَوْبَيْ قُطْنٍ مَرْوِيٍّ بَغْدَادِيٍّ نَقْدًا وَنَسِيئَةً قَالُوا: وَأَمَّا غَزْلُ الْقُطْنِ فِي كُلِّ ذَلِكَ فَصِنْفٌ وَاحِدٌ لَا يَجُوزُ فِيهِ التَّفَاضُلُ وَلَا النَّسِيئَةُ.

L23905 They said: The fat of the ram's belly is one category, while the fat of its back and the fat of the rest of its body is another category. Thus, they permitted the sale of two *ritls* of fat from its belly for one *ritl* of fat from its back in a cash payment.

قَالُوا: شَحْمُ بَطْنِ الْكَبْشِ صِنْفٌ، وَشَحْمُ ظَهْرِهِ وَشَحْمُ سَائِرِ جَسَدِهِ صِنْفٌ آخَرُ، فَأَجَازُوا بَيْعَ رِطْلَيْنِ مِنْ شَحْمِ بَطْنِهِ بِرِطْلٍ مِنْ شَحْمِ ظَهْرِهِ نَقْدًا.

L23906 They said: The tail fat of the sheep is one category, and the rest of its meat is another category. Thus, it is permissible to exchange one ratl (a traditional unit of measurement) of its tail fat for two ratls of the rest of its meat.

قَالُوا: وَأَلْيَةُ الشَّاةِ صِنْفٌ، وَسَائِرُ لَحْمِهَا صِنْفٌ آخَرُ، فَجَائِزٌ بَيْعُ رِطْلٍ مِنْ أَلْيَتِهَا بِرِطْلَيْنِ مِنْ سَائِرِ لَحْمِهَا.

L23907 They said: It is not permissible to sell a *ritl* of ram's meat except for a *ritl* of the same meat with no excess, weight for weight in immediate payment, necessarily. And they permitted [this transaction] for two *ritls* of ox meat in immediate payment, necessarily.

قَالُوا: وَلَا يَجُوزُ بَيْعُ رِطْلٍ مِنْ لَحْمِ كَبْشٍ إِلَّا بِرِطْلٍ مِنْ لَحْمِهِ وَلَا مَزِيدَ، وَزْنًا بِوَزْنٍ نَقْدًا، وَلَا بُدَّ وَأَجَازُوهُ بِرِطْلَيْنِ مِنْ لَحْمِ الثَّوْرِ نَقْدًا وَلَا بُدَّ.

L23908 As for the meat of geese and chickens, it is permissible to trade one ritl of each type for two ritls of the same kind. Thus, it is permitted to trade one ritl of chicken meat for two ritls of chicken meat only as an immediate payment, or for two ritls of goose meat either as an immediate payment or on deferred terms.

وَأَمَّا لَحْمُ الْإِوَزِّ، وَلَحْمُ الدَّجَاجِ، فَيَجُوزُ مِنْ كُلِّ وَاحِدٍ مِنْهُمَا رِطْلٌ بِرِطْلَيْنِ مِنْ نَوْعِهِ فَأَجَازُوا رِطْلَ لَحْمِ دَجَاجٍ بِرِطْلَيْنِ مِنْ لَحْمِ دَجَاجٍ نَقْدًا أَوْ بِرِطْلَيْنِ مِنْ لَحْمِ الْإِوَزِّ نَقْدًا وَنَسِيئَةً.

L23909–23911 They stated: The credit sale (nasi'ah) regarding all items subject to usury - such as dates, wheat, barley, and others - applies only when the term is stipulated at the time of contract. As for what involves delayed receipt until the parties separate without stipulation... If there is a delay in it, the sale is not invalidated in any way, except in gold and silver only. If the delivery is delayed in them, it constitutes ribā—whether stipulated or not.

وَقَالُوا: النَّسِيئَةُ فِي كُلِّ مَا يَقَعُ فِيهِ الرِّبَا مِنْ التَّمْرِ وَالْبُرِّ وَالشَّعِيرِ، وَغَيْرِ ذَلِكَ، إِنَّمَا هِيَ مَا اُشْتُرِطَ فِيهِ الْأَجَلُ فِي حِينِ الْعَقْدِ، وَأَمَّا مَا تَأَخَّرَ قَبْضُهُ إلَى أَنْ تَفَرَّقَا وَلَمْ يَكُنْ اُشْتُرِطَ فِيهِ التَّأْخِيرُ، فَلَا يَضُرُّ الْبَيْعُ فِي ذَلِكَ شَيْئًا، إِلَّا فِي الذَّهَبِ، وَالْفِضَّةِ فَقَطْ، فَإِنْ تَأَخَّرَ الْقَبْضُ فِيهِمَا رَبَا اُشْتُرِطَ أَوْ لَمْ يُشْتَرَطْ.

L23912 Among the remarkable aspects of worldly matters is his permitting fresh dates in exchange for dried dates, while entirely prohibiting the exchange of

flour or roasted barley meal with wheat as a whole—he did not permit such exchanges at all. Had he reversed his statement, he would have been correct.

وَمِنْ عَجَائِبِ الدُّنْيَا إِجَازَتُهُ الرُّطَبَ بِالتَّمْرِ، وَمَنْعُهُ مِنَ الدَّقِيقِ أَوِ السَّوِيقِ بِالْقَمْحِ جُمْلَةً، فَلَمْ يُجِزْهُ أَصْلًا، فَلَوْ عَكَسَ قَوْلَهُ لَأَصَابَ.

L23913 And all of these are whispers, absurdities, and contradictions—there is no evidence for them, nor are they statements preserved from anyone before him. We ask Allah for deliverance.

وَهَذِهِ كُلُّهَا وَسَاوِسُ، وَسَخَافَاتٌ، وَمُنَاقَضَاتٌ، لَا دَلِيلَ عَلَيْهَا، وَأَقْوَالٌ لَا تُحْفَظُ مِنْ أَحَدٍ قَبْلَهُ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L23914 As for the Shāfiʿīs: they prohibited the exchange of one ratl of squill for two ratls of it, since they consider it among edible items. They permitted exchanging a dirham's weight of saffron for two dirhams' weight of it in both immediate payment and deferred payment, because it is not consumed as food according to them.

وَأَمَّا الشَّافِعِيُّونَ: فَإِنَّهُمْ مَنَعُوا مِنْ رِطْلِ سَقَمُونْيَا بِرِطْلَيْنِ مِنْ سَقَمُونْيَا؛ لِأَنَّهَا عِنْدَهُمْ مِنَ الْمَأْكُولَاتِ، وَأَبَاحُوا وَزْنَ دِرْهَمِ زَعْفَرَانٍ بِوَزْنِ دِرْهَمَيْنِ مِنْهُ نَقْدًا وَنَسِيئَةً؛ لِأَنَّهُ لَا يُؤْكَلُ عِنْدَهُمْ.

L23915 They did not permit the sale of honey purchased with its wax in its original state unless both are purified, but they permitted the sale of walnuts with their shells as they are.

وَلَمْ يُجِيزُوا بَيْعَ عَسَلٍ مُشْتَارٍ بِشَمْعِهِ كَمَا هُوَ بِعَسَلٍ مُشْتَارٍ بِشَمْعِهِ كَمَا هُوَ أَصْلًا، إِلَّا حَتَّى يُصَفَّى كِلَاهُمَا وَأَجَازُوا بَيْعَ الْجَوْزِ بِقِشْرِهِ بِالْجَوْزِ بِقِشْرِهِ.

L23916 They argued that extracting honey from its comb improves it, whereas removing walnuts and almonds from their shells and extracting seeds from dates spoils them.

وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ إِخْرَاجَ الْعَسَلِ مِنْ شَمْعِهِ صَلَاحٌ لَهُ، وَإِخْرَاجَ الْجَوْزِ وَاللَّوْزِ مِنْ قِشْرِهِ، وَنَزْعَ النَّوَى مِنَ التَّمْرِ فَسَادٌ لَهُ.

L23917 Nay! There is no good in what you mentioned except like the corruption you described. There is no good in that, nor corruption in this. Were it corruption, it would not have been permissible at all, for Allah the Exalted says: {And Allah does not love corruption} [Al-Baqarah: 205].[25]

فَقُلْنَا: كَلَّا، مَا الصَّلَاحُ فِيمَا ذَكَرْتُمْ إِلَّا كَالْفَسَادِ فِيمَا وَصَفْتُمْ، وَمَا فِي ذَلِكَ صَلَاحٌ، وَلَا فِي هَذَا فَسَادٌ، وَلَوْ كَانَ فَسَادًا لَمَا حَلَّ أَصْلًا؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَاللَّهُ لا يُحِبُّ الْفَسَادَ} [البقرة: ٢٠٥]

L23918 These are also evident contradictions, and statements we do not know anyone to have preceded them in. Success is through Allah, the Exalted. We do not know anyone before Abū Ḥanīfah who prohibited the sale of oil for olives in a spot transaction, whether the oil content in the olives was greater, equal, or lesser.

وَهَذِهِ أَيْضًا مُنَاقَضَاتٌ ظَاهِرَةٌ، وَأَقْوَالٌ لَا نَعْلَمُ أَحَدًا سَبَقَهُمْ إِلَيْهَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ وَلَا نَعْلَمُ أَحَدًا قَبْلَ أَبِي حَنِيفَةَ مَنَعَ مِنْ بَيْعِ الزَّيْتِ بِالزَّيْتُونِ يَدًا بِيَدٍ، سَوَاءٌ كَانَ أَكْثَرَ مَا فِي الزَّيْتُونِ مِنَ الزَّيْتِ، أَوْ مِثْلَهُ أَوْ أَقَلَّ.

L23919 Abū Muḥammad said: The reality, which is attested to by language, the

[25] **Qur'an references (L23917):** Qur'an 2:205 (Al-Baqarah).

Sharīʿah, and sensory perception, is that flour is neither wheat nor barley—neither in name, nor attribute, nor natural properties.

قَالَ أَبُو مُحَمَّد: وَالْحَقِيقَةُ الَّتِي تَشْهَدُ لَهَا اللُّغَةُ، وَالشَّرِيعَةُ، وَالْحِسُّ، فَهُوَ أَنَّ الدَّقِيقَ لَيْسَ قَمْحًا وَلَا شَعِيرًا، لَا فِي اسْمِهِ، وَلَا فِي صِفَتِهِ، وَلَا فِي طَبِيعَتِهِ.

L23920 These animals are fed flour and bread, which do not harm them; rather, they benefit them. But when fed wheat, it destroys them. Date syrup is not dates—neither linguistically, legally, nor empirically.

فَهَذِهِ الدَّوَابُّ تُطْعَمُ الدَّقِيقَ وَالْخُبْزَ فَلَا يَضُرُّهَا بَلْ يَنْفَعُهَا، وَتُطْعَمُ الْقَمْحَ فَيُهْلِكُهَا، وَالدِّبْسُ لَيْسَ تَمْرًا، لَا فِي لُغَةٍ، وَلَا فِي شَرِيعَةٍ، وَلَا فِي مُشَاهَدَةٍ.

L23921 nor in His name, nor in His attributes.

وَلَا فِي اسْمِهِ، وَلَا فِي صِفَاتِهِ.

L23922–23923 Water is not salt, for ablution is permissible with water but impermissible with salt.

وَالْمَاءُ لَيْسَ مِلْحًا، لِأَنَّهُ يَجُوزُ الْوُضُوءُ بِالْمَاءِ، وَلَا يَجُوزُ بِالْمِلْحِ.

L23924 And the begetting of Allah, the Exalted, is not a thing derived from another thing, for this would necessitate that the begotten entity be equivalent to the source from which it was begotten. By contrast, we were created from dust, a nutfah, and water, yet we are neither nutfah, nor dust, nor water.

وَلَيْسَ تَوْلِيدُ اللَّهِ تَعَالَى شَيْئًا مِنْ شَيْءٍ بِمُوجِبِ أَنَّ الْمُتَوَلِّدَ هُوَ الَّذِي عَنْهُ تُوُلِّدَ، فَنَحْنُ خُلِقْنَا مِنْ تُرَابٍ، وَنُطْفَةٍ، وَمَاءٍ، وَلَسْنَا نُطْفَةً، وَلَا تُرَابًا، وَلَا مَاءً.

L23925 Wine is produced from juice; it is forbidden, whereas the juice itself is permissible.

وَالْخَمْرُ مُتَوَلِّدَةٌ مِنَ الْعَصِيرِ وَهِيَ حَرَامٌ وَالْعَصِيرُ حَلَالٌ.

L23926 Milk is generated from blood; milk is halal, and blood is haram.

وَاللَّبَنُ مُتَوَلِّدٌ عَنِ الدَّمِ وَاللَّبَنُ حَلَالٌ وَالدَّمُ حَرَامٌ.

L23927 The excrement is transformed into dust—a permissible and pure substance.

وَالْعَذِرَةُ تَسْتَحِيلُ تُرَابًا حَلَالًا طَيِّبًا.

L23928 The hen consumes carrion and blood, which are then transformed into lawful and wholesome meat as part of its flesh.

وَالدَّجَاجَةُ تَأْكُلُ الْمَيْتَةَ وَالدَّمَ فَيَصِيرَانِ فِيهَا لَحْمًا حَلَالًا طَيِّبًا.

L23929 Vinegar is generated from wine; it is ḥalāl, and wine is ḥarām.

وَالْخَلُّ مُتَوَلِّدٌ مِنَ الْخَمْرِ وَهُوَ حَلَالٌ وَهِيَ حَرَامٌ.

L23930 As for ornaments of gold and silver, they are gold and silver by their two names, their two attributes, and their inherent nature in the language and in the Sharia. “And whoever transgresses the limits set by Allah has certainly wronged himself.” [At-Talaq: 1][26]

وَأَمَّا حُلِيُّ الذَّهَبِ وَالْفِضَّةِ فَهُمَا ذَهَبٌ وَفِضَّةٌ بِاسْمَيْهِمَا وَصِفَاتِهِمَا وَطَبِيعَتِهِمَا فِي اللُّغَةِ وَفِي الشَّرِيعَةِ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

L23931 **A legal issue in which one sold gold or other than it for**

[مَسْأَلَة بَاعَ ذهب أَوْ غَيْره بمثلة ثُمَّ وجد أَحَدهمَا بِمَا اشْتَرَى عَيْبًا]

[26] **Qur’an references (L23930):** Qur’an 65:1 (At-Talaq).

its equivalent, then either of them found a defect in what was purchased.

L23932 Issue 1494:

١٤٩٤ - مَسْأَلَةٌ:

L23933 Whoever sells gold for gold in a permissible sale, or silver for silver likewise, or silver for gold similarly—whether minted for minted, two ornamented items, ornamented for minted, raw metal, or unminted metal—and either party discovers a defect in what was purchased of that [item] before they physically separate and before either offers the other the choice to annul the sale.

وَمَنْ بَاعَ ذَهَبًا بِذَهَبٍ بَيْعًا حَلَالًا، أَوْ فِضَّةً بِفِضَّةٍ كَذَلِكَ، أَوْ فِضَّةً بِذَهَبٍ كَذَلِكَ، مَسْكُوكًا بِمِثْلِهِ أَوْ مَصُوغَيْنِ، أَوْ مَصُوغًا بِمَسْكُوكٍ، أَوْ تِبْرًا أَوْ نَقَارًا، فَوَجَدَ أَحَدُهُمَا بِمَا اشْتَرَى مِنْ ذَلِكَ عَيْبًا قَبْلَ أَنْ يَتَفَرَّقَا بِأَبْدَانِهِمَا، وَقَبْلَ أَنْ يُخَيِّرَ أَحَدُهُمَا الْآخَرَ

L23934 He has the choice: if he wishes, he may annul the sale, or if he wishes, substitute, because the sale between them has not yet been finalized. Rather, he is initiating a new sale by mutual consent or abandoning it, as outlined earlier. And success is from Allah, the Exalted.

فَهُوَ بِالْخِيَارِ إِنْ شَاءَ فَسَخَ الْبَيْعَ، وَإِنْ شَاءَ اسْتَبْدَلَ؛ لِأَنَّهُ لَمْ يَتِمَّ بَيْنَهُمَا بَيْعٌ بَعْدُ، فَإِنَّمَا هُوَ مُسْتَأْنِفٌ لِبَيْعٍ عَنْ تَرَاضٍ أَوْ تَارِكٌ عَلَى مَا ذَكَرْنَا قَبْلُ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23935 1495 – Issue:

١٤٩٥ - مَسْأَلَةٌ:

L23936 If the defect is found after physical separation or after the choice when the entitled party selects to complete the sale, and the defect arises from adulteration with something other than what was purchased—such as silver or copper mixed with gold, or copper or other metals mixed with silver—the entire transaction is invalidated and revoked, regardless of whether the defect is significant or minor, or the adulteration is small or substantial. This is because the adulterated item is neither what was purchased nor what the contract was based upon, as mutual agreement on it was never reached through the contract, and the parties separated before the sale attained legal validity. In transactions involving usury, only sales validated by physical separation are permissible, with no option to uphold them, because no explicit text exists regarding this matter. Success comes solely from Allah, the Exalted.

فَإِنْ وَجَدَ الْعَيْبَ بَعْدَ التَّفَرُّقِ بِالْأَبْدَانِ، أَوْ بَعْدَ التَّخْيِيرِ وَاخْتَارَ الْمُخَيَّرُ إِتْمَامَ الْبَيْعِ فَإِنْ كَانَ الْعَيْبُ مِنْ خَلْطٍ وَجَدَهُ مِنْ غَيْرِ مَا اشْتَرَى، لَكِنْ كَفِضَّةٍ أَوْ صُفْرٍ فِي ذَهَبٍ، أَوْ صُفْرٍ أَوْ غَيْرِهِ فِي فِضَّةٍ، فَالصَّفْقَةُ كُلُّهَا مَفْسُوخَةٌ، مَرْدُودَةٌ، كَثُرَتْ أَمْ قَلَّتْ، قَلَّ ذَلِكَ الْخَلْطُ أَمْ كَثُرَ؛ لِأَنَّهُ لَيْسَ هُوَ الَّذِي اشْتَرَى، وَلَا الَّذِي عَقَدَ عَلَيْهِ الصَّفْقَةَ، فَلَيْسَ هُوَ الَّذِي تَرَاضَى بِالْعَقْدِ عَلَيْهِ وَقَدْ تَفَرَّقَا قَبْلَ صِحَّةِ الْبَيْعِ. وَلَا يَجُوزُ فِيمَا يَقَعُ فِيهِ الرِّبَا إِلَّا صِحَّةُ الْبَيْعِ بِالتَّفَرُّقِ، وَلَا خِيَارَ فِي إِمْضَائِهَا؛ لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ نَصٌّ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L23937 1496 – Issue

١٤٩٦ - مَسْأَلَةٌ:

L23938–23940 Similarly, if part of what was purchased—whether lesser or greater—becomes rightfully due, or if the receipt of any portion of their mutually

contracted exchange—whether lesser or greater—is delayed, the contract is void because it was not validly concluded. Whatever is not valid is void. Every contract in which the unlawful is commingled with the lawful is a void contract, because the lawful portion of it cannot be validly established except... If the forbidden is deemed valid, then anything deriving validity solely from what is invalid cannot itself be valid. Nor is it permissible to obligate someone to what they have not consented to individually, without others.

وَكَذَلِكَ لَوْ اسْتَحَقَّ بَعْضَ مَا اشْتَرَى أَقَلُّهُ أَوْ أَكْثَرُهُ، أَوْ لَوْ تَأَخَّرَ قَبْضُ شَيْءٍ مِمَّا تَبَايَعَا قَلَّ أَوْ كَثُرَ لِأَنَّ الْعَقْدَ لَمْ يَتِمَّ صَحِيحًا وَمَا لَمْ يَصِحَّ فَهُوَ فَاسِدٌ، وَكُلُّ عَقْدٍ اخْتَلَطَ الْحَرَامُ فِيهِ بِالْحَلَالِ فَهُوَ عَقْدٌ فَاسِدٌ، لِأَنَّهُ لَمْ يُعْقَدْ صِحَّةُ الْحَلَالِ مِنْهُ إِلَّا بِصِحَّةِ الْحَرَامِ، وَكُلُّ مَا لَا صِحَّةَ لَهُ إِلَّا بِصِحَّةِ مَا لَا يَصِحُّ، فَلَا صِحَّةَ لَهُ، وَلَا يَحِلُّ أَنْ يُلْزَمَ مَا لَمْ يَرْضَ بِهِ وَحْدَهُ. دُونَ غَيْرِهِ.

L23941 1497. Chapter.

١٤٩٧ - مَسْأَلَةٌ:

L23942 If the defect is inherent in the purchased item itself, such as a break, or if the gold is naturally deficient in value, like reddish or greenish gold by its nature, and silver is likewise deficient in value by its nature.

فَإِنْ كَانَ الْعَيْبُ فِي نَفْسِ مَا اشْتَرَى كَكَسْرٍ، أَوْ كَانَ الذَّهَبُ نَاقِصَ الْقِيمَةِ بِطَبْعِهِ، وَالْفِضَّةُ كَذَلِكَ، كَالذَّهَبِ الْأَشْقَرِ وَالْأَخْضَرِ بِطَبْعِهِ.

L23943 If he stipulated a warranty against defects, the entire transaction is rescinded because he discovered the item differed from what he purchased, and thus it is impermissible for him to retain another's property for which no sale contract was concluded.

فَإِنْ كَانَ اشْتَرَطَ السَّلَامَةَ فَالصَّفْقَةُ كُلُّهَا مَفْسُوخَةٌ، لِأَنَّهُ وَجَدَ غَيْرَ مَا اشْتَرَى، فَلَا يَحِلُّ لَهُ مَالُ غَيْرِهِ مِمَّا لَمْ يَعْقِدْ عَلَيْهِ بَيْعًا.

L23944 If he did not stipulate soundness, he may choose either to keep the transaction as it is with no recourse for any claim, or he must annul it entirely. This is because he purchased the tangible asset through a valid contract but later found unfair pricing. When the seller consents to this unfair pricing and acknowledges its extent, it becomes permissible without any disapproval - as we previously explained.

وَإِنْ كَانَ لَمْ يَشْتَرِطْ السَّلَامَةَ فَهُوَ مُخَيَّرٌ بَيْنَ إِمْسَاكِ الصَّفْقَةِ كَمَا هِيَ وَلَا رُجُوعَ لَهُ بِشَيْءٍ، وَإِمَّا فَسْخُهَا كُلِّهَا وَلَا بُدَّ، لِأَنَّهُ اشْتَرَى الْعَيْنَ، فَهُوَ عَقْدٌ صَحِيحٌ ثُمَّ وَجَدَ غَبْنًا، وَالْغَبْنُ إِذَا رَضِيَهُ الْبَائِعُ وَعَرَفَ قَدْرَهُ جَائِزٌ لَا كَرَاهِيَةَ فِيهِ عَلَى مَا قَدَّمْنَا قَبْلُ.

L23945 It is not permissible for him to divide the transaction, because the sale was not mutually consented to by his counterpart except in its entirety. Thus, he has no right to anything beyond what they mutually consented to together, due to the decree of Allah the Exalted: "Do not consume your wealth among yourselves unjustly except through trade stemming from mutual consent among you" [An-Nisa: 29].[27]

وَلَا يَحِلُّ لَهُ تَبْعِيضُ الصَّفْقَةِ، لِأَنَّهُ لَمْ يَتَرَاضَ الْبَيْعَ مِنْ صَاحِبِهِ إِلَّا عَلَى جَمِيعِهَا، فَلَيْسَ لَهُ غَيْرُ مَا تَرَاضِيَا بِهِ مَعًا، لِقَوْلِ اللَّهِ تَعَالَى {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩]

L23946 The Messenger of Allah—peace and blessings be upon him—said: "Indeed,

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ»

[27] **Qur'an references (L23945):** Qur'an 4:29 (An-Nisa).

your blood and your wealth are inviolable for you."

L23947 Therefore, nothing from another's wealth is permissible for him except what is mutually consented to.

فَلَا يَحِلُّ لَهُ مِنْ مَالِ غَيْرِهِ إِلَّا مَا تَرَاضِيَا بِهِ مَعًا.

L23948 Abu Muhammad said: This is a matter over which predecessors and successors have differed. It has been narrated to us through the chain of Al-Hajjaj ibn Minhal: I am Hafs ibn Ghiyath ibn Al-Ash'ath Al-Harrani, from Ikrimah, from Ibn Abbas, concerning one who purchases dirhams while stipulating that if any counterfeit coins are found among them, he is entitled to return them. Ibn Abbas disliked the stipulation, saying: This right belongs to him even if he does not stipulate it.

قَالَ أَبُو مُحَمَّد: وَهَذَا مَكَانٌ اخْتَلَفَ فِيهِ الْخَلْفُ وَالسَّلَفُ: فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَفْصُ بْنُ غِيَاثِ بْنِ الْأَشْعَثِ الْحَرَّانِيُّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ فِيمَنْ يَشْتَرِي الدَّرَاهِمَ وَيَشْتَرِطُ إِنْ كَانَ فِيهَا زَائِفٌ أَنْ يَرُدَّهُ: أَنَّهُ كَرِهَ الشَّرْطَ، وَقَالَ: ذَلِكَ لَهُ إِنْ لَمْ يَشْتَرِطْ.

L23949 Ali said: The apparent meaning of this is the annulment of the sale, for had he intended to reject only the counterfeit item alone, he would have mentioned the invalidity of its counterpart in the contract and the validity of the contract regarding the remainder of the transaction, or he would have mentioned juridical inference. Yet he did not mention anything from all of this. Thus, it is impermissible to attribute to him what he did not say, and Ibn Abbas's statement is our statement.

قَالَ عَلِيٌّ: ظَاهِرُ هَذَا رَدُّ الْبَيْعِ، لِأَنَّهُ لَوْ أَرَادَ رَدَّ الزَّائِفِ وَحْدَهُ لَذَكَرَ بُطْلَانَ مَا قَابَلَهُ، وَصِحَّةَ الْعَقْدِ فِي سَائِرِ الصَّفْقَةِ، أَوْ لَذَكَرَ الِاسْتِدْلَالَ، وَلَمْ يَذْكُرْ مِنْ ذَلِكَ كُلِّهِ شَيْئًا، فَلَا يَجُوزُ أَنْ يَقُولَ مَا لَمْ يَقُلْ فَقَوْلُ ابْنِ عَبَّاسٍ هُوَ قَوْلُنَا.

L23950 And through the chain of Al-Ḥajjāj ibn Al-Minhāl: Hammām, who is Ibn Yaḥyā, said: Ibn Jurayj reported that Ibn ʿUmar exchanged dinars for dirhams, but they erred in the transaction by a suttūq [sixth] of a dirham, so he disliked retaining the erroneous amount. This chain is interrupted, and we do not know of any contemporary scholar who upheld this view, nor do we know now of any other opinion from the Companions—may Allah be pleased with them—apart from what we have mentioned.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا هَمَّامٌ هُوَ ابْنُ يَحْيَى قَالَ: زَعَمَ ابْنُ جُرَيْجٍ: أَنَّ ابْنَ عُمَرَ اشْتَرَى دَرَاهِمَ بِدَنَانِيرَ فَأَخْطَئُوا فِيهَا بِدِرْهَمٍ سَتُّوقٍ فَكَرِهَ أَنْ يَسْتَبْدِلَهُ وَهَذَا مُنْقَطِعٌ، وَلَا نَعْلَمُ أَحَدًا مِنْ الْحَاضِرِينَ قَالَ بِهِ، وَلَا نَعْلَمُ الْآنَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - غَيْرَ مَا ذَكَرْنَا.

L23951–23952 Sufyan al-Thawri said: He may choose between replacing it and annulling the ṣarf transaction, but only for the amount he found defective. Al-Awzaʿī, al-Layth, and al-Ḥasan ibn Ḥayy said: He must replace everything he found to be counterfeit, whether little or much. Ibn Ḥayy and al-Suttūq said likewise.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: هُوَ مُخَيَّرٌ بَيْنَ أَنْ يَسْتَبْدِلَهُ وَبَيْنَ أَنْ يَنْقُضَ الصَّرْفَ فِي مِقْدَارِ مَا وَجَدَ رَدِيئًا فَقَطْ قَالَ الْأَوْزَاعِيُّ، وَاللَّيْثُ، وَالْحَسَنُ بْنُ حَيٍّ: يَسْتَبْدِلُ كُلَّ مَا وَجَدَ زَائِفًا قَلَّ أَوْ كَثُرَ قَالَ ابْنُ حَيٍّ وَالسَّتُّوقُ كَذَلِكَ.

L23953 Ali said: As-sattūq (debased currency) is that which is adulterated with

قَالَ عَلِيٌّ: السَّتُّوقُ هُوَ الْمَغْشُوشُ بِشَيْءٍ غَيْرِهِ، مِثْلُ أَنْ يَكُونَ الدِّرْهَمُ كُلُّهُ رَصَاصًا، أَوْ يَكُونَ الدِّينَارُ كُلُّهُ فِضَّةً أَوْ نُحَاسًا.

foreign substances, such as a dirham (silver coin) being entirely made of lead, or a dinar (gold coin) being entirely composed of silver or copper.

وَالزَّائِفُ الرَّدِيءُ مِنْ طَبْعِهِ الَّذِي فِيهِ غِشٌّ

L23954 The counterfeit and inferior item, by its very nature, involves fraud.

وَقَالَ أَبُو حَنِيفَةَ: إنْ وُجِدَ بَعْدَ التَّفَرُّقِ نِصْفُ الْجَمِيعِ فَأَكْثَرَ زُيُوفًا فَلَيْسَ لَهُ أَنْ يَسْتَبْدِلَ أَلْبَتَّةَ، لَكِنْ إنْ رَدَّ الزُّيُوفَ بَطَلَ الصَّرْفُ فِي مِقْدَارِهَا مِنْ الصَّفْقَةِ وَصَحَّ فِيمَا سِوَاهَا.

L23955 Abu Hanifa said: If half of the total or more is found to be defective coins after the parties have separated, he has no right whatsoever to replace them. However, if he returns the defective coins, the ṣarf [exchange of monetary commodities] becomes nullified to the extent of their amount in the transaction while remaining valid for the remainder.

وَظَاهِرُ قَوْلِهِ أَنَّ لَهُ أَنْ لَا يَرُدَّ، فَإِنْ وَجَدَهَا أَقَلَّ مِنْ النِّصْفِ فَلَهُ أَنْ يُمْسِكَ وَلَهُ أَنْ يَسْتَبْدِلَ مَا وَجَدَ زَائِفًا فَقَطْ، وَلَا يُفَارِقُهُ حَتَّى يَقْبِضَ الْبَدَلَ، فَإِنْ فَارَقَهُ قَبْلَ الْقَبْضِ انْتَقَضَ الصَّرْفُ فِيمَا لَمْ يَقْبِضْ وَلَوْ أَنَّهُ دِرْهَمٌ أَوْ أَكْثَرُ وَصَحَّ فِيمَا قَبَضَ وَلَوْ أَنَّهُ دِرْهَمٌ أَوْ أَقَلُّ.

L23956 The apparent meaning of his statement is that he has the right not to return it. If he found it to be less than half, he may retain it, and he may replace only what he found to be counterfeit. He must not part with the counterparty until he takes possession of the substituted item. If he parted with him before taking possession, the exchange becomes nullified for what he has not acquired—even if it is a dirham or more—but remains valid for what he has acquired, even if it is a dirham or less.

فَإِنْ كَانَ الَّذِي وَجَدَ سُتُّوقًا انْتَقَضَ الصَّرْفُ فَقَطْ لَوْ لَمْ يَكُنْ إلَّا دِرْهَمًا وَاحِدًا فَأَكْثَرَ وَصَحَّ فِي بَاقِي الصَّفْقَةِ وَيَكُونُ هُوَ وَالْبَائِعُ شَرِيكَيْنِ فِي الدِّينَارِ الَّذِي انْتَقَضَ الصَّرْفُ فِي بَعْضِهِ.

L23957 If the exchange conducted at the suq is invalidated only—even if involving a single dirham or more—while the remainder of the transaction remains valid, then the buyer and seller become partners in the dinar in which copper was partially invalidated.

قَالَ أَبُو مُحَمَّدٍ: لَيْتَ شِعْرِي، أَيُّ بَعْضٍ مِنْهُ انْتَقَضَ فِيهِ الصَّرْفُ، وَأَيُّ بَعْضٍ، مِنْهُ صَحَّ فِيهِ الصَّرْفُ هَذَا الْمَجْهُولُ وَالْغَرَرُ بِعَيْنِهِ، وَرُوِيَ عَنْهُ: أَنَّهُ حَدَّ مَا يَسْتَبْدِلُهُ مِمَّا لَا يَجُوزُ فِيهِ الِاسْتِبْدَالُ بِالثُّلُثِ وَهَذَا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَتَقْسِيمٌ فِي غَايَةِ الْفَسَادِ بِلَا بُرْهَانٍ، وَحُكْمُ الْحَرَامِ وَالْحَلَالِ فِي الْكَثِيرِ وَالْقَلِيلِ مِنْهُمَا سَوَاءٌ، إلَّا أَنْ يَأْتِيَ قُرْآنٌ أَوْ

L23958 Abū Muḥammad said: Would that I knew: Which portion of it invalidates the currency exchange (ṣarf), and which portion validates it? This unknown matter and gharar (prohibited uncertainty) are precisely one and the same. It is reported from him that he limited substitution in matters where substitution is impermissible to a third. This is an opinion we have not known from anyone before him—a division at the height of corruption without proof. The rulings of prohibition and permissibility apply equally to their abundance and scarcity unless a Quranic verse or Sunnah establishes a distinction or specification, in which case hearing and obedience are required.

سُنَّةٌ بِفَرْقٍ وَتَحْدِيدٍ فَالسَّمْعُ وَالطَّاعَةُ وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: يَسْتَبْدِلُ مَا وَجَدَ زَائِدًا أَوْ سُتُّوقًا، قَلَّ أَوْ كَثُرَ.

Abū Yūsuf and Muḥammad ibn al-Ḥasan said: One may substitute whatever excess or defective items are found, whether little or much.

L23959 قَالَ عَلِيٌّ: هَذَا بَاطِلٌ؛ لِأَنَّهُ يَصِيرُ ذَهَبًا بِفِضَّةٍ، أَوْ بِذَهَبٍ، أَوْ فِضَّةٍ بِفِضَّةٍ غَيْرَ يَدٍ بِيَدٍ، وَهَذَا الرِّبَا الْمَحْضُ وَقَالَ زُفَرُ: يُنْتَقَضُ الصَّرْفُ وَلَا بُدَّ فِيمَا وَجَدَ قَلَّ أَوْ كَثُرَ وَيَصِحُّ فِي السَّالِمِ قَلَّ أَوْ كَثُرَ.

Ali said: This is invalid because it involves exchanging gold for silver, gold for gold, or silver for silver without a hand-to-hand transaction - and this constitutes pure usury. Zufar said: The currency exchange is rendered void, and this applies unavoidably to any quantity present, whether small or large, while it remains valid in the salam transaction regardless of quantity, whether small or large.

L23960–23962 قَالَ عَلِيٌّ: هَذَا تَبْعِيضُ صَفْقَةٍ لَمْ يَقَعْ الْعَقْدُ قَطُّ عَلَى بَعْضِهَا دُونَ بَعْضٍ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَقَالَ مَالِكٌ: إنْ وَجَدَ سُتُّوقًا أَوْ زَائِفًا فَإِنْ كَانَ دِرْهَمًا أَوْ أَكْثَرَ مَا لَمْ يَتَجَاوَزْ صَرْفَ دِينَارٍ انْتَقَضَ الصَّرْفُ فِي دِينَارٍ وَاحِدٍ، وَصَحَّ سَائِرُ الصَّفْقَةِ، فَإِنْ وَجَدَ مِنْ ذَلِكَ مَا يَكُونُ صَرْفُهُ أَكْثَرَ مِنْ دِينَارٍ أَوْ دِينَارَيْنِ أَوْ دَنَانِيرَ: انْتَقَضَ الصَّرْفُ فِيمَا قَابَلَ مَا وَجَدَهُ فَإِنْ شَرَعَ الِانْتِقَاضُ فِي دِينَارٍ انْتَقَضَ ذَلِكَ الدِّينَارُ.

Ali said: This pertains to the partialization of a transaction where the contract was never concluded on any part without the others; therefore, it constitutes unjust consumption of wealth. Wealth acquired unlawfully, and Mālik said: If one found debased or counterfeit currency, and if it amounted to a dirham or more without exceeding the exchange value of one dinar, the exchange is invalidated for one dinar while the remainder of the transaction remains valid. If he found among them coins whose exchange value exceeds a dinar, two dinars, or more, the exchange is invalidated in the portion corresponding to what he discovered. If the invalidation begins with a dinar, that specific dinar is invalidated.

L23963 قَالَ عَلِيٌّ: لَيْتَ شِعْرِي أَيُّ دِينَارٍ هُوَ الَّذِي يُنْتَقَضُ، أَيُّهَا هُوَ الَّذِي لَا يُنْتَقَضُ؟ هَذَا بَيْعُ الْغَرَرِ، وَالْمَجْهُولِ وَأَكْلُ الْمَالِ بِالْبَاطِلِ.

Ali said: Would that I knew which dinar is invalidated and which is not? This is the sale of gharar (excessive uncertainty), the sale of the unknown, and the unlawful consumption of wealth.

L23964 ثُمَّ عَجَبٌ آخَرُ وَهُوَ إجَازَتُهُ بَعْضَ الصَّفْقَةِ دُونَ بَعْضِهَا وَإِبْطَالُهُ صَرْفَ جَمِيعِ الدِّينَارِ الَّذِي شَرَعَ الِانْتِقَاضُ فِي بَعْضِهِ وَهَذَا تَنَاقُضٌ ظَاهِرٌ، وَكِلَاهُمَا تَبْعِيضٌ لِمَا لَمْ يَتَرَاضَيَا بِتَبْعِيضِهِ فِي الْعَقْدِ، وَقَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

Then another point of astonishment is his approval of part of the transaction while excluding another part, and his nullification of the currency exchange (ṣarf) of the entire dinar for which he commenced the annulment concerning a portion of it. This constitutes an evident contradiction, as both scenarios involve dividing something the parties did not mutually agree to divide in the contract - a statement not known to have been attributed to anyone before him.

L23965 Al-Shāfiʿī holds two opinions: one is that the entire monetary exchange (ṣarf) is nullified, and the second is that it is replaced, as maintained by

Al-Layth, Al-Awzāʿī, and Al-Ḥasan ibn Ḥayy. This is among the matters in which they opposed the opinion of two Companions, with no dissent from the other Companions—may Allah be pleased with them—recorded against their position.

وَلِلشَّافِعِيِّ قَوْلَانِ أَحَدُهُمَا: أَنَّ الصَّرْفَ كُلَّهُ يُنْتَقَضُ، وَالثَّانِي: أَنَّهُ يُسْتَبْدَلُ، كَقَوْلِ اللَّيْثِ وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ وَهَذَا مِمَّا خَالَفُوا فِيهِ قَوْلَ صَاحِبَيْنِ، لَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

[مَسْأَلَة بَيْع تمر بتمر أجود مِنْهُ أَوْ أردأ مِنْهُ]

L23966 **The ruling on exchanging dates for dates of superior or inferior quality compared to them.**

L23967 1498 – Issue:

١٤٩٨ - مَسْأَلَةٌ:

L23968 Among the purely lawful transactions is the sale of two _mudds_ of dates—one being of the highest quality and the other of the lowest quality—in exchange for two _mudds_ of dates that are either better than both, worse than both, below the good of the two and above the lowest quality of the two, equal to one of them, or some being good and others lowest quality. All these cases are treated the same, and all are permissible.

وَمِنْ الْحَلَالِ الْمَحْضِ بَيْعُ مُدَّيْنِ مِنْ تَمْرٍ أَحَدُهُمَا جَيِّدٌ غَايَةً، وَالْآخَرُ رَدِيءٌ غَايَةً: بِمُدَّيْنِ مِنْ تَمْرٍ أَجْوَدَ مِنْهُمَا، أَوْ أَدْنَى مِنْهُمَا، أَوْ دُونَ الْجَيِّدِ مِنْهُمَا، وَفَوْقَ الرَّدِيءِ مِنْهُمَا، أَوْ مِثْلَ أَحَدِهِمَا، أَوْ بَعْضُهُمَا جَيِّدٌ وَالْبَعْضُ رَدِيءٌ كُلُّ ذَلِكَ سَوَاءٌ وَكُلُّ ذَلِكَ جَائِزٌ.

L23969 The same ruling applies to dinars exchanged for dinars, dirhams for dirhams, wheat for wheat, barley for barley, and salt for salt, with no distinction. This is based on the Prophet's permission (peace and blessings be upon him) for exchanging each category we have mentioned with its own kind, equal for equal, measured by capacity for wheat, barley, dates, and salt, and weighed for gold and silver.

وَكَذَلِكَ الْقَوْلُ فِي دَنَانِيرَ بِدَنَانِيرَ، وَفِي دَرَاهِمَ بِدَرَاهِمَ، وَقَمْحٍ بِقَمْحٍ، وَفِي شَعِيرٍ بِشَعِيرٍ، وَفِي مِلْحٍ بِمِلْحٍ وَلَا فَرْقَ، لِإِبَاحَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّ صِنْفٍ مِمَّا ذَكَرْنَا بِصِنْفِهِ، مِثْلًا بِمِثْلٍ، فِي الْمُكَايَلَةِ، فِي الْقَمْحِ، وَالشَّعِيرِ، وَالتَّمْرِ وَالْمِلْحِ وَالْمُوَازَنَةِ فِي الذَّهَبِ وَالْفِضَّةِ.

L23970–23972 It has been narrated to us through the chain of Muslim: I am Al-Qa'nabi, I am Sulayman ibn Bilal, from Abd al-Majid ibn Suhayl ibn Abd al-Rahman ibn Awf, that he heard Sa'id ibn al-Musayyab relate: Abu Huraira and Abu Sa'id al-Khudri narrated to him that the Messenger of Allah (peace and blessings of Allah be upon him) dispatched a man from Banu Adi al-Ansari and appointed him as governor of Khaybar. He arrived with Janiyb dates, so the Messenger of Allah (peace and blessings of Allah be upon him) asked him: "Are all the dates of Khaybar like these?" He replied: "No, by Allah, O..." "O Messenger of Allah, indeed we buy one ṣāʿ [of grain] for two ṣāʿs of common grain." The Messenger of Allah—peace and blessings be upon him—said to me: "Do not

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا الْقَعْنَبِيُّ أَنَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ عَبْدِ الْمَجِيدِ بْنِ سُهَيْلِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيَّبِ يُحَدِّثُ: أَنَّ أَبَا هُرَيْرَةَ، وَأَبَا سَعِيدٍ الْخُدْرِيَّ حَدَّثَاهُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ أَخَا بَنِي عَدِيٍّ الْأَنْصَارِيِّ فَاسْتَعْمَلَهُ عَلَى خَيْبَرَ فَقَدِمَ بِتَمْرٍ جَنِيبٍ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَكُلُّ تَمْرِ خَيْبَرَ هَكَذَا؟ قَالَ: لَا، وَاَللَّهِ يَا رَسُولَ اللَّهِ إنَّا لَنَشْتَرِي الصَّاعَ بِالصَّاعَيْنِ

do that. Instead, exchange like for like, or sell this [grain] and use its price to buy the other. The same applies to weighing."[28]

مِنْ الْجَمْعِ، فَقَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا تَفْعَلُوا، وَلَكِنْ مِثْلًا بِمِثْلٍ، أَوْ بِيعُوا هَذَا وَاشْتَرُوا بِثَمَنِهِ مِنْ هَذَا وَكَذَلِكَ الْمِيزَانُ»

L23973 He (peace be upon him) explicitly permitted the sale of the selected portion of dates (al-Janīb) - being entirely choice dates - for the mixed aggregate (al-Jamʿ) of dates, which combines good, poor, and average qualities.

فَأَبَاحَ - عَلَيْهِ السَّلَامُ - نَصًّا: بَيْعَ الْجَنِيبِ مِنْ التَّمْرِ وَهُوَ الْمُتَخَيَّرُ كُلُّهُ بِالْجَمْعِ مِنْ التَّمْرِ وَهُوَ الَّذِي جَمَعَ جَيِّدًا وَرَدِيئًا وَوَسَطًا.

L23974 Some people prohibited others from exchanging two mudds of dates (one of good quality and the other inferior) for two mudds of medium-quality dates that are lower in quality than the good ones and superior to the inferior ones.

مَنَعَ بَعْضُ النَّاسِ مِنْ مُدَّيْنِ مِنْ تَمْرٍ أَحَدُهُمَا جَيِّدٌ وَالْآخَرُ رَدِيءٌ بِمُدَّيْنِ مِنْ تَمْرٍ مُتَوَسِّطَيْنِ أَدْنَى مِنْ الْجَيِّدِ وَأَجْوَدَ مِنْ الرَّدِيءِ.

L23975 They argued as evidence that the Messenger of Allah (peace be upon him) prescribed equivalence in kind and quantity when exchanging dates for dates.

وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْجَبَ الْمُمَاثَلَةَ فِي التَّمْرِ بِالتَّمْرِ.

L23976 Abu Muhammad said: There is no proof for them in this matter, because they agree with us regarding the permissibility of exchanging a saʿ of inferior-quality dates with a saʿ of good-quality dates, and it is not equivalent. Thus, it is established that the Prophet—may Allah's peace and blessings be upon him—intended equivalence in measure or weight only, and this is something unanimously agreed upon.

قَالَ أَبُو مُحَمَّدٍ لَا حُجَّةَ لَهُمْ فِي هَذَا؛ لِأَنَّهُمْ مُوَافِقُونَ لَنَا فِي جَوَازِ صَاعٍ بِصَاعِ تَمْرٍ رَدِيءٍ بِصَاعِ تَمْرٍ جَيِّدٍ وَلَيْسَ مِثْلَهُ فَصَحَّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا أَرَادَ الْمُمَاثَلَةَ فِي الْكَيْلِ أَوْ فِي الْوَزْنِ فَقَطْ وَهَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ.

L23977 They argued using authentic hadiths concerning janiyb (premium dates) and jamʿ (dates on the cluster), such as: "Sell the jamʿ (dates on the cluster) and use its price to purchase janiyb (premium dates)." This provides no valid evidence for their position, for the authentic report we mentioned adds a legal ruling beyond those reports, and it is impermissible to disregard this supplement of justice.

وَاحْتَجُّوا بِأَحَادِيثَ صِحَاحٍ فِي الْجَنِيبِ بِالْجَمْعِ فِيهَا: «بِيعُوا الْجَمْعَ وَاشْتَرُوا بِثَمَنِهِ مِنْ الْجَنِيبِ» وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ الْخَبَرَ الَّذِي ذَكَرْنَا زَائِدٌ عَلَى تِلْكَ الْأَخْبَارِ حُكْمًا، وَلَا يَحِلُّ تَرْكُ زِيَادَةِ الْعَدْلِ.

L23978 The crux of their argument is that they stated: The seller's acceptance here pertains to the two items—one being good and the other inferior—by giving more than a mudd from the standard measure for the good one and less than a mudd from the standard measure for the inferior one, thereby resulting in an unequal exchange.

وَعُمْدَةُ حُجَّتِهِمْ أَنَّهُمْ قَالُوا: إنَّمَا رَضِيَ الْبَائِعُ هَهُنَا لِلْمُدَّيْنِ: اللَّذَيْنِ أَحَدُهُمَا جَيِّدٌ وَالْآخَرُ رَدِيءٌ، بِأَنْ يُعْطِيَ الْجَيِّدَ أَكْثَرَ مِنْ مُدٍّ مِنْ الْمُتَوَسِّطِ، وَأَنْ يُعْطِيَ الْأَرْدَأَ بِأَقَلَّ مِنْ مُدٍّ مِنْ الْمُتَوَسِّطِ: فَحَصَلَ التَّفَاضُلُ.

[28] **Hadith references (L23970):** Sahih Muslim 1593a.

قَالَ أَبُو مُحَمَّد: وَهَذَا فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَيْسَ كَمَا قَالُوا، وَحَتَّى لَوْ أَنَّهُ أَرَادَ ذَلِكَ لَكَانَ عَمَلُهُ مُخَالِفًا لِإِرَادَتِهِ، فَحَصَلُوا عَلَى التَّكَهُّنِ، وَالظَّنِّ الْكَاذِبِ وَإِنَّمَا يُرَاعَى فِي الدِّينِ الْكَلَامُ وَالْعَمَلُ، فَإِذَا جَاءَ كَمَا أَمَرَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - فَمَا نُبَالِي بِمَا فِي قُلُوبِهِمَا، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَمْ أُبْعَثْ لِأَشُقَّ عَنْ قُلُوبِ النَّاسِ»

L23979 Abu Muhammad said: This is utterly invalid, for it is not as they claimed. Even if he intended that, his actions would contradict his intention, so they resorted to conjecture and false supposition. In religion, only speech and action are considered. If it conforms to what Allah the Exalted and His Messenger—peace be upon him—have commanded, we do not judge what lies in the hearts of both. The Messenger of Allah—peace be upon him—said: "I was not sent to scrutinize the hearts of people."

فَإِنْ قَالُوا: فَقَدْ قَالَ - عَلَيْهِ السَّلَامُ -: «الْأَعْمَالُ بِالنِّيَّاتِ» .

L23980 If they say: Indeed, he (peace be upon him) said, "Actions are judged by intentions."

قُلْنَا: نَعَمْ، وَلَكِنَّ مَنْ لَكُمْ بِأَنَّ هَذَيْنِ نَوَيَا مَا ذَكَرْتُمْ، وَهَذَا مِنْكُمْ ظَنُّ سُوءٍ بِمُسْلِمٍ لَمْ يُخْبِرْكُمْ بِذَلِكَ عَنْ نَفْسِهِ، وَلَيْسَ فِي الظُّلْمِ أَكْثَرُ مِنْ أَنْ تُفْسِدُوا صَفْقَةَ مُسْلِمٍ بِتَوَهُّمِكُمْ: أَنَّهُ أَرَادَ الْبَاطِلَ، وَهُوَ لَمْ يُخْبِرْكُمْ ذَلِكَ فَقَطْ عَنْ نَفْسِهِ، وَلَا ظَهَرَ مِنْ فِعْلِهِ إِلَّا الْحَلَالُ الْمُطْلَقُ.

L23981–23983 We said: Yes, but how can you be certain these two intended what you mentioned? This is an evil assumption you harbor toward a Muslim. He did not inform you of that about himself, and there is no greater wrongdoing than you invalidating a Muslim's transaction through your presumption: that he intended invalid intent—while he did not inform you of that specific point about himself, and nothing appeared from his action except absolute permissibility.

وَيَلْزَمُكُمْ عَلَى هَذَا إِذَا رَأَيْتُمْ مَنْ يَشْتَرِي تَمْرًا أَوْ تِينًا أَوْ عِنَبًا أَنْ تَفْسَخُوا صَفْقَتَهُ وَتَقُولُوا لَهُ: إِنَّمَا تَنْوِي فِيهِ عَمَلَ الْخَمْرِ مِنْهُ، وَمَنْ اشْتَرَى ثَوْبًا أَنْ تَفْسَخُوهُ وَتَقُولُوا: إِنَّمَا تُرِيدُ تَلْبَسُهُ فِي الْمَعَاصِي.

L23984 Based on this, it becomes incumbent upon you that if you see someone purchasing dates, figs, or grapes, you must rescind his transaction and say to him: "You only intend through this purchase to make wine from it." And if someone buys a garment, you must rescind his transaction and say: "You only intend to wear it in sinful acts."

وَمَنْ اشْتَرَى سَيْفًا أَنْ تَفْسَخُوا وَتَقُولُوا: إِنَّمَا تُرِيدُ بِهِ قَتْلَ الْمُسْلِمِينَ، وَهَذَا هَوَسٌ لَا نَظِيرَ لَهُ، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ هَذَا وَبَيْنَ مَا أَفْسَدْتُمْ بِهِ الْمَسْأَلَةَ الْمُتَقَدِّمَةَ.

L23985 And whoever buys a sword so that you may invalidate [the transaction] and say, "You only intend to kill Muslims with it," this is an obsession without equal. There is no difference between any aspect of this and what you corrupted through the previous matter.

رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ أَنَا أَيُّوبُ السِّخْتِيَانِيُّ قَالَ: كَانَ مُحَمَّدُ بْنُ سِيرِينَ يَأْتِي بِالدَّرَاهِمِ السُّودِ الْجِيَادِ، وَبِالنُّفَايَةِ: يَأْخُذُ بِوَزْنِهَا غَلَّةً.

L23986 It was narrated to us via Al-Ḥajjāj ibn Al-Minhāl → Ḥammād ibn Zayd → Ayyūb al-Sikhtiyānī, who said: "Muḥammad ibn Sīrīn would bring excellent black dirhams along with scrap coins, taking a gain based on their weight."

قَالَ عَلِيٌّ: السُّودُ أَجْوَدُ مِنْ الْغَلَّةِ، وَالنُّفَايَةُ أَدْنَى مِنْ الْغَلَّةِ وَهَذَا نَفْسُ مَسْأَلَتِنَا.

L23987 Ali said: Black dates are of greater value than the yield, while waste is of lesser value than the yield. This is the same as our issue.

L23988 **A legal issue involving a person who exchanged his final**

dinars for dirhams and was unable to fulfill his intention.

1499 - Issue:

Whoever exchanges another's dinars for dirhams and cannot fulfill his intention, then borrows from his lenders or others what he needs to complete his exchange—this is permissible, provided it is not due to a condition stipulated in the transaction, for neither the Quran nor the Sunnah prohibits this.

An issue where one sold some of the last dinars for dirhams, then bought dinars from him with those dirhams.

1500. Issue:

And whoever sells dinars acquired from another in exchange for dirhams, then once the sale is concluded between them by physical separation or exercising the option [to annul], buys from him or from another with those dirhams—whether the same dinars, others, fewer or more—all of that is permissible as long as it is not based on a condition. This is because such transactions are valid contracts, and there exists an explicit textual ruling affirming their validity. As for the condition, it is forbidden, for it is a condition not found in the Book of Allah Almighty, and thus invalid.

Some people prohibited this and said, "He sold dinars for dinars with a disparity." We responded: This is false, and he never did anything of the sort. Rather, these are two separate transactions. But tell us: Is it permissible for him to exchange the dinars after a month or a year for those dirhams and dinars without any stipulation? They answered: Yes. We said to them: Then you have permitted both disparity and deferred payment while prohibiting spot exchange. This is an unparalleled contradiction. It is authentically reported from the Prophet—peace and blessings be upon him—as we mentioned earlier, that he commanded the sale of collected dates for goods, then to use the proceeds to purchase superior dates. Yet this is precisely the very practice they prohibited.

[مَسْأَلَة صارف آخر دَنَانِير بِدَرَاهِم فعجز عَنْ تَمَام مُرَاده]

١٤٩٩ - مَسْأَلَةٌ:

وَمَنْ صَارَفَ آخَرَ دَنَانِيرَ بِدَرَاهِم فَعَجَزَ عَنْ تَمَامِ مُرَادِهِ فَاسْتَقْرَضَ مِنْ مَصَارِفِه، أَوْ مِنْ غَيْرِهِ مَا أَتَمَّ بِهِ صَرْفَهُ فَحَسَنٌ، مَا لَمْ يَكُنْ عَنْ شَرْطٍ فِي الصَّفْقَةِ؛ لِأَنَّهُ لَمْ يَمْنَعْ مِنْ هَذَا قُرْآنٌ، وَلَا سُنَّةٌ.

[مَسْأَلَة بَاعَ مِنْ آخر دَنَانِير بِدَرَاهِم ثُمَّ اشْتَرَى مِنْهُ بتلك الدَّرَاهِم دَنَانِير]

١٥٠٠ - مَسْأَلَةٌ:

وَمَنْ بَاعَ مِنْ آخَرَ دَنَانِيرَ بِدَرَاهِمَ فَلَمَّا تَمَّ الْبَيْعُ بَيْنَهُمَا بِالتَّفَرُّقِ أَوْ التَّخَيُّرِ اشْتَرَى مِنْهُ، أَوْ مِنْ غَيْرِهِ بِتِلْكَ الدَّرَاهِمِ دَنَانِيرَ تِلْكَ، أَوْ غَيْرَهَا أَقَلَّ أَوْ أَكْثَرَ فَكُلُّ ذَلِكَ حَلَالٌ مَا لَمْ يَكُنْ عَنْ شَرْطٍ، لِأَنَّ كُلَّ ذَلِكَ عَقْدٌ صَحِيحٌ، وَعَمَلٌ مَنْصُوصٌ عَلَى جَوَازِهِ، وَأَمَّا الشَّرْطُ فَحَرَامٌ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

وَمَنَعَ مِنْ هَذَا قَوْمٌ وَقَالُوا: إنَّهُ بَاعَ مِنْهُ دَنَانِيرَ بِدَنَانِيرَ مُتَفَاضِلَةً؟ فَقُلْنَا: هَذَا كَذِبٌ، وَمَا فَعَلَ قَطُّ شَيْئًا مِنْ ذَلِكَ، بَلْ هُمَا صَفْقَتَانِ، وَلَكِنْ أَخْبِرُونَا: هَلْ لَهُ أَنْ يُصَارِفَهُ بَعْدَ شَهْرٍ أَوْ سَنَةٍ بِتِلْكَ الدَّرَاهِمِ وَتِلْكَ الدَّنَانِيرِ عَنْ غَيْرِ شَرْطٍ؟ فَمِنْ قَوْلِهِمْ: نَعَمْ؟ فَقُلْنَا لَهُمْ: فَأَجَزْتُمْ التَّفَاضُلَ وَالنَّسِيئَةَ مَعًا وَمَنَعْتُمْ مِنْ النَّقْدِ، هَذَا عَجَبٌ لَا نَظِيرَ لَهُ وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا ذَكَرْنَا آنِفًا الْأَمْرُ بِبَيْعِ التَّمْرِ الْجَمْعِ بِسِلْعَةٍ ثُمَّ يُبْتَاعُ بِالسِّلْعَةِ جَنِيبًا مِنْ التَّمْرِ وَهَذَا هُوَ الَّذِي مَنَعُوا نَفْسَهُ.

L23995–23996 Through the chain of al-Ḥajjāj ibn al-Minhāl: I, Yazīd ibn Ibrāhīm al-Tustarī, narrated from Muḥammad ibn Sīrīn, who said: ʿUmar ibn al-Khaṭṭāb delivered a sermon and said: “Listen! A dirham for a dirham and a dinar for a dinar—kind for kind, equal for equal, like for like.” ʿAbd al-Raḥmān ibn ʿAwf said to him: “Are you debasing our coins so that we give the inferior [currency] and take the superior?” ʿUmar replied: “No. Rather, purchase merchandise with them. When you take possession of it as your own, sell it and discount whatever you wish, then take any cash you desire.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ إِبْرَاهِيمَ هُوَ التُّسْتَرِيُّ أَنَا مُحَمَّدُ بْنُ سِيرِينَ قَالَ: خَطَبَ عُمَرُ بْنُ الْخَطَّابِ فَقَالَ: أَلَا إِنَّ الدِّرْهَمَ بِالدِّرْهَمِ وَالدِّينَارَ بِالدِّينَارِ، عَيْنًا بِعَيْنٍ، سَوَاءً بِسَوَاءٍ، مِثْلًا بِمِثْلٍ، فَقَالَ لَهُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: تُزَيِّفُ عَلَيْنَا أَوْرَاقَنَا فَنُعْطِي الْخَبِيثَ وَنَأْخُذُ الطَّيِّبَ؟ قَالَ عُمَرُ: لَا، وَلَكِنْ ابْتَعْ بِهَا عَرَضًا، فَإِذَا قَبَضْتَهُ وَكَانَ لَكَ فَبِعْهُ وَاهْضِمْ مَا شِئْتَ، وَخُذْ أَيَّ نَقْدٍ شِئْتَ.

L23997 So here is Umar, in the presence of the Companions—may Allah be pleased with them—with none among them opposing him, commanding that dirhams or dinars be sold in exchange for a commodity, then selling the commodity for whatever he wishes after purchasing it, without stipulating “from someone other than the one from whom the commodity was purchased.”

فَهَذَا عُمَرُ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا مُخَالِفَ لَهُ مِنْهُمْ يَأْمُرُ بِبَيْعِ الدَّرَاهِمِ أَوْ الدَّنَانِيرِ بِسِلْعَةٍ، ثُمَّ يَبِيعُهَا بِمَا شَاءَ مِنْ ذَلِكَ إثْرَ ابْتِيَاعِهِ لِلْعَرَضِ وَلَمْ يَقُلْ مِنْ غَيْرِ مَنْ تُبْتَاعُ مِنْهُ الْعَرَضُ.

L23998 It has been narrated to us through the chain of Saʿīd ibn Manṣūr: I, Hushaym, narrate from Sulaymān ibn Bashīr, who said: Al-Aswad ibn Yazīd gave me dirhams and told me, “Buy dinars for me with these, then buy dirhams for me with the dinars at such-and-such rate.” I sold them to a man and took possession of the dinars. I inquired in the market until I ascertained the current rate, then returned to my buyer and sold the dinars to him for the dirhams I intended. When I mentioned this to Al-Aswad ibn Yazīd, he saw no harm in it.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ سُلَيْمَانَ بْنِ بَشِيرٍ قَالَ: أَعْطَانِي الْأَسْوَدُ بْنُ يَزِيدَ دَرَاهِمَ وَقَالَ لِي: اشْتَرِ لِي بِهَا دَنَانِيرَ، ثُمَّ اشْتَرِ لِي بِالدَّنَانِيرِ دَرَاهِمَ كَذَا وَكَذَا، قَالَ: فَبِعْتُهَا مِنْ رَجُلٍ فَقَبَضْت الدَّنَانِيرَ، وَطَلَبْت فِي السُّوقِ حَتَّى عَرَفْت السِّعْرَ، فَرَجَعْت إلَى بَيْعَتِي فَبِعْتُهَا مِنْهُ بِالدَّرَاهِمِ الَّتِي أَرَدْت؟ فَذَكَرْت ذَلِكَ لِلْأَسْوَدِ بْنِ يَزِيدَ، فَلَمْ يَرَ بِهِ بَأْسًا.

L23999 Abu Muhammad said: Ibn Sirin disliked it, and it has been narrated to us from Umar ibn al-Khattab that he said: “Riba applies only to one who intends to increase and defer payment.” It was narrated to us via Abd al-Razzaq from Sufyan al-Thawri from Yunus ibn Ubayd from Ibn Sirin from Umar.

قَالَ أَبُو مُحَمَّدٍ: وَكَرِهَهُ ابْنُ سِيرِينَ وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: إنَّمَا الرِّبَا عَلَى مَنْ أَرَادَ أَنْ يُرْبِيَ وَيُنْسِئَ وَرُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ ابْنِ سِيرِينَ عَنْ عُمَرَ.

L24000 Ali said: Among the marvels of their arguments here is their claim: "He only intended riba as dirhams exchanged for more than them," so he contrived exchanging them for dinars, then exchanging the dinars back for dirhams? I said: May Allah bless him - what a scrupulous man, fearful of standing before his Lord! {For those who fear standing before their Lord are two gardens} (55:46). He intended riba but abandoned it and turned to lawful means. This man is most virtuous, and his action is excellent - may we not be deprived of him! Yet you have transformed recognized good into evil? Is this not like one who intended to commit adultery with a woman but refrained, instead marrying her if she were free or purchasing her if she were a slave to have relations? As for this, it is good and obedience to Allah Almighty.[1]

L24001 ## The ruling on mutually agreed deferral in the sale of gold for gold and the remaining three categories [silver, dates, and wheat].

L24002 Question 1501: A mutual contractual promise in exchanging gold for gold or silver, silver for silver, and all other transactions involving the four ribawi categories (gold, silver, wheat, barley, etc.) - exchanging portions of one category for another - is permissible, whether the parties subsequently formalize the sale or not, because a contractual promise does not constitute a sale.

L24003–24004 Similarly, negotiated sale (musāwama) is also permissible whether the two parties have transacted or not, because no prohibition has been issued regarding any of that. Every single thing forbidden to us has been explicitly detailed by name. Allah, the Most High, said: "And He has detailed for you what He has forbidden to you" [Al-An'am: 119].[2]

L24005 Everything that has not been explicitly prohibited for us is permissible by the explicit text of the Quran, for in religion there is nothing except the obligatory, the forbidden, or the permissible. As for the obligatory, it is commanded to be performed in the Quran and the Sunnah; as for the forbidden, it is specified by name in the Quran and the Sunnah; and what lies

قَالَ عَلِيٌّ: وَمِنْ عَجَائِبِ حُجَجِهِمْ هُنَا أَنَّهُمْ قَالُوا: إِنَّمَا أَرَادَ بِالرِّبَا دَرَاهِمَ بِأَكْثَرَ مِنْهَا، فَتَخَيَّلَ بِأَنْ صَرْفَهَا بِدَنَانِيرَ، ثُمَّ صَرْفَ الدَّنَانِيرِ بِدَرَاهِمَ؟ فَقُلْت بَارَكَ اللَّهُ فِيهِ مِنْ وَرِعٍ، خَائِفٍ لِمَقَامِ رَبِّهِ {وَلِمَنْ خَافَ مَقَامَ رَبِّهِ جَنَّتَانِ} [الرحمن: ٤٦] أَرَادَ الرِّبَا فَتَرَكَهُ وَهَرَبَ عَنْهُ إلَى الْحَلَالِ، هَذَا فَاضِلٌ جِدًّا وَعَمَلٌ جَيِّدٌ لَا عَدِمْنَاهُ، فَنَرَاكُمْ جَعَلْتُمْ الْمَعْرُوفَ مُنْكَرًا؟ وَهَلْ هَذَا إلَّا كَمَنْ أَرَادَ الزِّنَى بِامْرَأَةٍ فَلَمْ يَفْعَلْ، لَكِنْ تَزَوَّجَهَا، أَوْ اشْتَرَاهَا إنْ كَانَتْ أَمَةً فَوَطِئَهَا، أَمَّا هَذَا فَحَسَنٌ مُطِيعٌ لِلَّهِ تَعَالَى

[مَسْأَلَة التواعد فِي بَيْع الذَّهَب بِالذَّهَبِ وَفِي سَائِر الْأَصْنَاف الأربعة]

١٥٠١ - مَسْأَلَةٌ: وَالتَّوَاعُدُ فِي بَيْعِ الذَّهَبِ بِالذَّهَبِ أَوْ بِالْفِضَّةِ، وَفِي بَيْعِ الْفِضَّةِ بِالْفِضَّةِ، وَفِي سَائِرِ الْأَصْنَافِ الْأَرْبَعَةِ بَعْضِهَا بِبَعْضٍ جَائِزٌ تَبَايَعَا بَعْدَ ذَلِكَ، أَوْ لَمْ يَتَبَايَعَا؛ لِأَنَّ التَّوَاعُدَ لَيْسَ بَيْعًا.

وَكَذَلِكَ الْمُسَاوَمَةُ أَيْضًا جَائِزَةٌ تَبَايَعَا أَوْ لَمْ يَتَبَايَعَا لِأَنَّهُ لَمْ يَأْتِ نَهْيٌ عَنْ شَيْءٍ مِنْ ذَلِكَ، وَكُلُّ مَا حُرِّمَ عَلَيْنَا فَقَدْ فُصِّلَ بِاسْمِهِ، قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩]

فَكُلُّ مَا لَمْ يُفَصَّلْ لَنَا تَحْرِيمُهُ فَهُوَ حَلَالٌ بِنَصِّ الْقُرْآنِ، إذْ لَيْسَ فِي الدِّينِ إلَّا فَرْضٌ أَوْ حَرَامٌ أَوْ حَلَالٌ، فَالْفَرْضُ مَأْمُورٌ بِهِ فِي الْقُرْآنِ وَالسُّنَّةِ، وَالْحَرَامُ مُفَصَّلٌ بِاسْمِهِ فِي الْقُرْآنِ وَالسُّنَّةِ، وَمَا عَدَا هَذَيْنِ فَلَيْسَ فَرْضًا وَلَا حَرَامًا فَهُوَ بِالضَّرُورَةِ: حَلَالٌ إذْ لَيْسَ هُنَالِكَ قِسْمٌ رَابِعٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقِ.

[1] **Qur'an references (L24000):** Qur'an 55:46 (Ar-Rahman).
[2] **Qur'an references (L24004):** Qur'an 6:119 (Al-An'am).

beyond these two categories is neither obligatory nor forbidden—thus by necessity, it is permissible, since no fourth category exists. And success [in understanding this] is from Allah, the Exalted.

The issue of exchanging dirhams by their weights.

1502. Question:

It is not permissible to exchange dirhams for dirhams of greater weight, neither through approved practice nor otherwise—and this is the reprehensible, not the approved—because it contradicts what has been transmitted from the Prophet (peace be upon him), Abū Bakr, ʿUmar, and Ibn ʿUmar. We previously mentioned this regarding ʿUmar in the presence of the Companions (may Allāh be pleased with them), and it represents the consensus of the people. Mālik permitted this practice, but we know of no one before him who agreed with him among those who maintained that usury applies to minted coins.

The legal question regarding selling gold or silver utensils prior to their dismantling.

1503 - Issue:

It is not permissible to sell gold or silver vessels except after breaking them, due to the authenticity of the Prophet's prohibition—peace and blessings be upon him—against them, as we mentioned in *Kitāb al-Ṭahārah*. Since owning them is forbidden, selling them is likewise prohibited, for this constitutes consuming wealth unlawfully.

Divine facilitation lies with Allah, the Exalted.

The Question of Selling Half a Dirham as a Specific Object

Issue 1504:

[مَسْأَلَة بَيْع بدل دَرَاهِم بأوزن مِنْهَا]

١٥٠٢ - مَسْأَلَةٌ:
وَلَا يَحِلُّ بَدَلُ دَرَاهِمَ بِأَوْزَنَ مِنْهَا لَا بِالْمَعْرُوفِ وَلَا بِغَيْرِهِ وَهَذَا هُوَ الْمُنْكَرُ لَا الْمَعْرُوفُ، لِأَنَّهُ خِلَافُ مَا جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَنْ أَبِي بَكْرٍ، وَعُمَرَ وَابْنِ عُمَرَ، وَقَدْ ذَكَرْنَا هَذَا آنِفًا عَنْ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُوَ قَوْلُ النَّاسِ، وَأَجَازَ ذَلِكَ مَالِكٌ وَمَا نَعْلَمُ لَهُ مُوَافِقًا قَبْلَهُ مِمَّنْ رَأَى الرِّبَا فِي النَّقْدِ.

[مَسْأَلَة بَيْع آنِيَة ذهب أَوْ فِضَّة قَبْل كسرها]

١٥٠٣ - مَسْأَلَةٌ:
وَلَا يَحِلُّ بَيْعُ آنِيَةِ ذَهَبٍ وَلَا فِضَّةٍ إلَّا بَعْدَ كَسْرِهَا لِصِحَّةِ نَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهَا وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الطَّهَارَةِ " فَلَا يَحِلُّ تَمَلُّكُهَا فَإِذْ لَا يَحِلُّ تَمَلُّكُهَا فَلَا يَحِلُّ بَيْعُهَا؛ لِأَنَّهَا أَكْلُ مَالٍ بِالْبَاطِلِ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع نصف درهم بِعَيْنِهِ]

١٥٠٤ - مَسْأَلَةٌ:

L24015 It is permissible for a person to purchase half of a specific dirham, half of specific dirhams, half of a dinar similarly, or half of specific dinars as jointly owned. This involves exchanging silver for gold or gold for silver, provided both parties agree to keep the items with one of them or a third party.

وَجَائِزٌ أَنْ يَبْتَاعَ الْمَرْءُ نِصْفَ دِرْهَمٍ بِعَيْنِهِ، أَوْ نِصْفَ دَرَاهِمَ بِأَعْيَانِهَا، أَوْ نِصْفَ دِينَارٍ كَذَلِكَ، أَوْ نِصْفَ دَنَانِيرَ بِأَعْيَانِهَا مُشَاعًا: يَبْتَاعُ الْفِضَّةَ بِالذَّهَبِ، وَالذَّهَبَ بِالْفِضَّةِ، وَيَتَّفِقَانِ عَلَى إِقْرَارِهَا عِنْدَ أَحَدِهِمَا أَوْ عِنْدَ أَجْنَبِيٍّ.

L24016 It is not permissible at all to exchange gold for gold fundamentally, nor silver for silver fundamentally, because it becomes a specific item for a non-specific item, and this is only lawful as a specific item for a specific item according to what we have presented. As for exchanging gold for silver in shared form, no textual prohibition has been established regarding it, {Nor is your Lord forgetful} [Maryam: 64].[3]

وَلَا يَجُوزُ فِي ذَلِكَ ذَهَبٍ بِذَهَبٍ أَصْلًا، وَلَا فِضَّةٍ بِفِضَّةٍ أَصْلًا، لِأَنَّهُ يَصِيرُ عَيْنًا بِغَيْرِ عَيْنٍ، وَهَذَا لَا يَحِلُّ إِلَّا عَيْنًا بِعَيْنٍ عَلَى مَا قَدَّمْنَا وَأَمَّا الذَّهَبُ بِالْفِضَّةِ مُشَاعًا، فَلَمْ يَأْتِ بِالنَّهْيِ عَنْهُ نَصٌّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

The issue of selling for a dinar except a dirham.

L24017

[مَسْأَلَة الْبَيْع بِدِينَارٍ إِلَّا درهما]

L24018 1505. Issue: It is not permissible to sell [an item] for a dinar except [in exchange] for a dirham. If such a sale occurs, it is invalid and annulled, because it constitutes the removal of the dirham's value from the dinar, rendering the exception uncertain, since the sale is for a dinar except the value of a dirham from it.

١٥٠٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعٌ بِدِينَارٍ إِلَّا دِرْهَمًا، فَإِنْ وَقَعَ فَهُوَ بَاطِلٌ مَفْسُوخٌ، لِأَنَّهُ إِخْرَاجُ لَقِيمَةِ الدِّرْهَمِ مِنْ الدِّينَارِ، فَصَارَ اسْتِثْنَاءً مَجْهُولًا، إِذْ بَاعَ بِدِينَارٍ إِلَّا قِيمَةَ دِرْهَمٍ مِنْهُ.

L24019–24020 If the value of the dirham is known to both parties, the transaction remains invalid, for they stipulated the removal of the specific dirham itself from the dinar. This is absurd, as the dirham is not a constituent part of the dinar that could be separated from it. Thus, the transaction is invalid in every case. Our position aligns with the views of ʻAṭā', al-Nakhaʻī, and Muḥammad ibn Sīrīn, whereas Abū Salamah ibn ʻAbd al-Raḥmān deemed it permissible. Success comes solely from Allah, the Exalted.

فَإِنْ كَانَتْ قِيمَةُ الدِّرْهَمِ مَعْلُومَةً عِنْدَهُمَا فَهُوَ بَاطِلٌ أَيْضًا، لِأَنَّهُمَا شَرَطَا إِخْرَاجَ الدِّرْهَمِ بِعَيْنِهِ مِنْ الدِّينَارِ، وَهَذَا مُحَالٌ، لِأَنَّهُ لَيْسَ هُوَ بَعْضٌ لِلدِّينَارِ فَيَخْرُجُ مِنْهُ، فَهُوَ بَاطِلٌ بِكُلِّ حَالٍ وَقَوْلُنَا هُوَ قَوْلُ عَطَاءٍ، وَالنَّخَعِيِّ وَمُحَمَّدِ بْنِ سِيرِينَ وَأَجَازَهُ أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

Issue regarding the sale of categories governed by riba rules between an enslaved person and their master, and between a Muslim and a non-Muslim.

L24021

[مَسْأَلَة بَيْع الْأَصْنَاف الربوية بَيْن الْعَبْد وسيده وَبَيْن الْمُسْلِم والكافر]

L24022 1506 - Issue:

١٥٠٦ - مَسْأَلَةٌ:

[3] **Qur'an references (L24016):** Qur'an 19:64 (Maryam).

وَالرِّبَا فِي كُلِّ مَا ذَكَرْنَا بَيْنَ الْعَبْدِ وَسَيِّدِهِ كَمَا هُوَ بَيْنَ الْأَجْنَبِيَّيْنِ، وَبَيْنَ الْمُسْلِمِ وَالذِّمِّيِّ، وَبَيْنَ الْمُسْلِمِ وَالْحَرْبِيِّ، وَبَيْنَ الذِّمِّيَّيْنِ كَمَا هُوَ بَيْنَ الْمُسْلِمَيْنِ، وَلَا فَرْقَ.

L24023 Usury applies in all the aforementioned cases between a slave and his master, just as it applies between two strangers, between a Muslim and a *dhimmi*, between a Muslim and a *harbi*, and between two *dhimmis* just as it applies between two Muslims, there being no distinction.

رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا بَكْرُ بْنُ حَمَّادٍ أَنَا مُسَدَّدٌ أَنَا حَفْصُ بْنُ غِيَاثٍ عَنْ أَبِي الْعَوَّامِ الْبَصْرِيِّ عَنْ عَطَاءٍ كَانَ ابْنُ عَبَّاسٍ يَبِيعُ مِنْ غِلْمَانِهِ النَّخْلَ السَّنَتَيْنِ وَالثَّلَاثَ، فَبَعَثَ إِلَيْهِ جَابِرُ بْنُ عَبْدِ اللَّهِ: أَمَا عَلِمْت نَهْيَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ هَذَا؟ فَقَالَ ابْنُ عَبَّاسٍ: بَلَى، وَلَكِنْ لَيْسَ بَيْنَ الْعَبْدِ وَبَيْنَ سَيِّدِهِ رِبًا

L24024 It was narrated to us through the chain of Qasim ibn Asbagh → Bakr ibn Hammad → Musaddad → Hafs ibn Ghiyath, from Abu al-Awwam al-Basri, from Ata: Ibn Abbas would sell palm trees [for delivery] in two or three years to his male slaves. Jabir ibn Abdullah sent him a message: "Do you not know the Messenger of Allah's prohibition (peace be upon him) against this?" Ibn Abbas replied: "Indeed [I know], but there is no ribā between the slave and his master."

وَهُوَ قَوْلُ الْحَسَنِ وَجَابِرِ بْنِ زَيْدٍ وَالنَّخَعِيِّ وَالشَّعْبِيِّ وَسُفْيَانَ الثَّوْرِيِّ وَعُثْمَانَ الْبَتِّيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَاللَّيْثِ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

L24025 This is the position of al-Ḥasan, Jābir ibn Zayd, al-Nakhaʿī, al-Shaʿbī, Sufyān al-Thawrī, ʿUthmān al-Battī, al-Ḥasan ibn Ḥayy, al-Layth, Abū Ḥanīfah, and al-Shāfiʿī.

وَإِنَّمَا قَالَهُ هَؤُلَاءِ عَلَى أَصْلِهِمْ الَّذِي قَدْ تَقَدَّمَ إفْسَادُنَا لَهُ مِنْ أَنَّ الْعَبْدَ لَا يَمْلِكُ، وَذَكَرْنَا أَنَّ ابْنَ عُمَرَ يَرَى الْعَبْدَ يَمْلِكُ، وَهَذَا جَابِرٌ قَدْ أَنْكَرَ ذَلِكَ عَلَى ابْنِ عَبَّاسٍ.

L24026 They only said this based on their principle—which we have refuted—that a slave does not own. We mentioned that Ibn Umar holds the view that a slave does own, and Jabir, however, denied that against Ibn Abbas.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا إبْرَاهِيمُ عَنْ أَبِي إِسْحَاقَ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادٍ، قَالَ: مَرَّ الْحُسَيْنُ بْنُ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - بِرَاعٍ فَأَهْدَى الرَّاعِي إلَيْهِ شَاةً؟ فَقَالَ لَهُ الْحُسَيْنُ: حُرٌّ أَنْتَ أَمْ مَمْلُوكٌ؟ فَقَالَ: مَمْلُوكٌ، فَرَدَّهَا الْحُسَيْنُ عَلَيْهِ؟ فَقَالَ لَهُ الْمَمْلُوكُ: إنَّهَا لِي، فَقَبِلَهَا مِنْهُ، ثُمَّ اشْتَرَاهُ وَاشْتَرَى الْغَنَمَ، فَأَعْتَقَهُ، وَجَعَلَ الْغَنَمَ لَهُ.

L24027 It has been narrated to us through the chain of Ibn Abi Shaybah: Ishaq ibn Mansur narrated to us, Ibrahim narrated from Abu Ishaq from Abdullah ibn Shaddad, who said: Al-Husayn ibn Ali—may Allah be pleased with them both—passed by a shepherd, and the shepherd offered him a sheep. Al-Husayn asked him: "Are you free or a slave?" He replied: "A slave." Al-Husayn then returned the sheep to him. The slave said: "It is mine," so Al-Husayn accepted it from him. He then purchased the slave and purchased the sheep, freed him, and gave him the sheep.

فَهَذَا الْحُسَيْنُ تَقَبَّلَ هَدِيَّةَ الْمَمْلُوكِ إذَا أَخْبَرَهُ أَنَّهَا لَهُ وَقَدْ ذَكَرْنَا مِثْلَ ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا وَهُوَ الْحُجَّةُ الْبَالِغَةُ لَا مَنْ سِوَاهُ

L24028 Thus, al-Husayn accepted the slave's gift when he informed him that it belonged to him. We have mentioned a similar account from the Messenger of Allah—peace and blessings be upon him—in the preceding sections of this book. He is the conclusive proof, not anyone besides him. When Allah the Exalted prohibited usury and threatened punishment for it, He did not single

out a slave from a free person. {And your Lord is not forgetful} [Maryam: 64].[4]

وَإِذَا حَرَّمَ اللَّهُ تَعَالَى الرِّبَا وَتَوَعَّدَ فِيهِ فَمَا خَصَّ عَبْدًا مِنْ حُرٍّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L24029 What is perplexing is that Al-Shafi'i and Abu Hanifa do not permit a person to sell his own property to himself. Yet if the slave's property [is deemed to] belong to his master, they have contradicted their own foundational principle and permitted him [the slave] to sell his own property to himself.

وَالْعَجَبُ: أَنَّ الشَّافِعِيَّ، وَأَبَا حَنِيفَةَ: لَا يُجِيزَانِ أَنْ يَبِيعَ الْمَرْءُ مَالَ نَفْسِهِ مِنْ نَفْسِهِ، فَإِنْ كَانَ مَالُ الْعَبْدِ لِسَيِّدِهِ فَقَدْ نَقَضُوا أَصْلَهُمْ، وَأَجَازُوا لَهُ بَيْعَ مَالِ نَفْسِهِ مِنْ نَفْسِهِ.

L24030–24031 If the slave's property does not belong to the master unless he sells or seizes it, they have openly sanctioned usury.

وَإِنْ كَانَ مَالُ الْعَبْدِ لَيْسَ لِلسَّيِّدِ مَا لَمْ يَبِعْهُ أَوْ يَنْتَزِعْهُ: فَقَدْ أَجَازُوا الرِّبَا صُرَاحًا.

L24032 As for the disbelievers, Allah the Exalted says: "Whoever seeks a religion other than Islam, it will never be accepted from him" [Āl 'Imrān 3:85].[5]

وَأَمَّا الْكُفَّارُ: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ} [آل عمران: ٨٥]

L24033 Allah says: "Until there is no persecution, and all sovereignty is entirely for Allah." [8:39][6]

وَقَالَ تَعَالَى: {حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩]

L24034 And He, the Most High, said: "And that you judge between them by what Allah has revealed" [Al-Ma'idah: 49].[7]

وَقَالَ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

L24035 Thus, it is established that whatever is forbidden to us is forbidden to them. We ask those who oppose us: Does Islam impose its religion upon them and forbid them from the opposition they adhere to? Are they upon falsehood or not? If they say Islam does not impose its religion upon them, nor forbid them from the opposition they adhere to, and that they are not upon falsehood—then they have disbelieved without doubt.

فَصَحَّ أَنَّ كُلَّ مَا حُرِّمَ عَلَيْنَا فَهُوَ حَرَامٌ عَلَيْهِمْ، وَنَسْأَلُ مَنْ خَالَفَنَا: أَيُلْزِمُهُمْ دِينَ الْإِسْلَامِ وَيُحَرِّمُ عَلَيْهِمْ مَا هُمْ عَلَيْهِ مِنْ خِلَافِهِ؟ وَهَلْ هُمْ عَلَى بَاطِلٍ أَمْ لَا؟ فَإِنْ قَالُوا: لَا يُلْزِمُهُمْ دِينَ الْإِسْلَامِ، وَلَا يُحَرِّمُ عَلَيْهِمْ مَا هُمْ عَلَيْهِ مِنْ خِلَافِهِ، وَأَنَّهُمْ لَيْسُوا عَلَى بَاطِلٍ: كَفَرُوا بِلَا مِرْيَةٍ.

L24036 And if they say: "The religion of Islam is binding upon them, and what they practice contrary to it is forbidden for them, while they are upon falsehood?" They have spoken the truth and returned to our position. Consequently, it becomes obligatory upon him to invalidate falsehood and nullify the forbidden, so he is guided by God's guidance Almighty; or he must confess

وَإِنْ قَالُوا: يَلْزَمُهُمْ دِينُ الْإِسْلَامِ وَحَرَامٌ عَلَيْهِمْ مَا هُمْ عَلَيْهِ مِنْ خِلَافِهِ، وَهُمْ عَلَى بَاطِلٍ؟ قَالُوا الْحَقَّ وَرَجَعُوا إِلَى قَوْلِنَا، وَلَزِمَهُ إِبْطَالُ الْبَاطِلِ، وَفَسْخُ الْحَرَامِ، فَيَهْتَدِي بِهَدْيِ اللَّهِ تَعَالَى، أَوْ الْإِقْرَارُ عَلَى نَفْسِهِ بِأَنَّهُ يُنَفِّذُ الْحُكْمَ بِالْبَاطِلِ، وَيُجِيزُ الْحَرَامَ، وَمَا أَوْرَدْنَا مِنْهُ كُلَّ هَذَا.

[4] **Qur'an references (L24028):** Qur'an 19:64 (Maryam).
[5] **Qur'an references (L24032):** Qur'an 3:85 (Ali 'Imran).
[6] **Qur'an references (L24033):** Qur'an 8:39 (Al-Anfal).
[7] **Qur'an references (L24034):** Qur'an 5:49 (Al-Ma'idah).

upon himself that he implements rulings through falsehood and permits the forbidden. All this we have cited from him.

L24037 If they say: "How severe is the disbelief they adhere to!" We respond: "The disbelief they follow cannot be openly proclaimed, as the scriptural ruling forbids compelling them to prayer, zakah, fasting, or Hajj."

L24038 Similarly, He has commanded that we judge between them by what Allah has revealed, so it is impermissible to abandon either of the two texts for the other, and with Allah, the Most High, is the success.

L24039 Abu Hanifah said: There is no harm in usury between a Muslim and a non-Muslim from a hostile territory, and this is an extremely grave matter.

L24040 ## The Issue of Selling Meat of the Live Animal

L24041 1507 – Issue.

L24042 It is permissible to sell meat for an animal, whether they are of the same kind or different kinds. Similarly, it is permissible to sell meat for meat, whether of the same kind or different kinds, whether differing or equal.

L24043 Similarly, it is permissible to deliver meat in exchange for meat.

L24044–24046 The exchange of animals as meat—such as exchanging the meat of one ram for that of another, whether of differing quality or identical—must be exchanged hand to hand. And to a term, likewise with meat from another species – such as transferring a ram in exchange for *ratls* of its meat or another type deferred to a term – all of that is permissible and lawful.

L24047 Allah, the Exalted, said: "He has permitted trade and forbidden usury." [Al-Baqarah: 275][8]

L24048 And He, the Exalted, said: "He has explained in detail what He has forbidden

[8] **Qur'an references (L24047):** Qur'an 2:275 (Al-Baqarah).

فَإِنْ قَالُوا: مَا هُمْ عَلَيْهِ مِنْ الْكُفْرِ أَشَدُّ؟ قُلْنَا: إنَّ الَّذِي هُمْ عَلَيْهِ مِنْ الْكُفْرِ لَا يُفْسَحُ لَهُمْ فِي إعْلَانِهِ، وَقَدْ جَاءَ النَّصُّ بِأَنْ لَا نَجْبُرَهُمْ عَلَى الصَّلَاةِ، وَالزَّكَاةِ، وَالصِّيَامِ، وَالْحَجِّ.

وَكَذَلِكَ جَاءَ بِأَنْ نَحْكُمَ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ، فَلَا يَحِلُّ تَرْكُ أَحَدِ النَّصَّيْنِ لِلْآخَرِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ أَبُو حَنِيفَةَ: لَا بَأْسَ بِالرِّبَا بَيْنَ الْمُسْلِمِ، وَالْحَرْبِيِّ وَهَذَا عَظِيمٌ جِدًّا.

[مَسْأَلَة بَيْع اللَّحْم بِالْحَيَوَانِ]

١٥٠٧ - مَسْأَلَةٌ:

وَجَائِزٌ بَيْعُ اللَّحْمِ بِالْحَيَوَانِ مِنْ نَوْعٍ وَاحِدٍ كَانَا أَوْ مِنْ نَوْعَيْنِ وَكَذَلِكَ يَجُوزُ بَيْعُ اللَّحْمِ بِاللَّحْمِ مِنْ نَوْعٍ وَاحِدٍ أَوْ مِنْ نَوْعَيْنِ مُتَفَاضِلًا، وَمُتَمَاثِلًا.

وَجَائِزٌ تَسْلِيمُ اللَّحْمِ فِي اللَّحْمِ كَذَلِكَ.

وَتَسْلِيمُ الْحَيَوَانِ فِي اللَّحْمِ، كَلَحْمِ كَبْشٍ بِلَحْمِ كَبْشٍ مُتَفَاضِلًا وَمُتَمَاثِلًا، يَدًا بِيَدٍ، وَإِلَى أَجَلٍ وَكَذَلِكَ بِاللَّحْمِ مِنْ غَيْرِ نَوْعِهِ أَيْضًا وَكَتَسْلِيمِ كَبْشٍ فِي أَرْطَالِ لَحْمِ كَبْشٍ أَوْ غَيْرِهِ إلَى أَجَلٍ كُلُّ ذَلِكَ جَائِزٌ حَلَالٌ.

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

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩]

to you" [Al-An'am: 119].[9]

فَهَذَا كُلُّهُ بَيْعٌ لَمْ يُفَصَّلْ تَحْرِيمُهُ.

L24049 Thus, all of this is a sale whose prohibition has not been detailed.

وَأَمَّا اللَّحْمُ بِاللَّحْمِ فَلَمْ يَأْتِ نَهْيٌ عَنْهُ أَصْلًا، لَا صَحِيحٌ وَلَا سَقِيمٌ مِنْ أَثَرٍ.

L24050 As for meat exchanged for meat, no prohibition against it has come at all—neither a sound nor a weak narration from any report.

وَأَمَّا اللَّحْمُ بِالْحَيَوَانِ فَجَاءَ فِيهِ أَثَرٌ لَا يَصِحُّ.

L24051 As for the meat of the animal, there is a report concerning it that is not authentic.

وَهَذَا كُلُّهُ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا. وَرُوِيَ عَنِ ابْنِ عَبَّاسٍ وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ

L24052 All of this is the opinion of Abū Sulaymān and our companions. It has been narrated from Ibn ʿAbbās, and it is the opinion of Sufyān al-Thawrī.

وَاخْتَلَفَ الْحَاضِرُونَ عَلَى فِرَقٍ: فَطَائِفَةٌ مَنَعَتْ مِنْ بَيْعِ اللَّحْمِ بِالْحَيَوَانِ جُمْلَةً، أَيَّ لَحْمٍ كَانَ لَا تَحَاشَ شَيْئًا، بِأَيِّ حَيَوَانٍ كَانَ لَا تَحَاشَ شَيْئًا، حَتَّى مَنَعُوا مِنْ بَيْعِ الْعَبْدِ بِاللَّحْمِ.

L24053 The attendees were divided into factions: one faction categorically prohibited the sale of meat for animals—regardless of the type of meat or animal, without distinction—to the extent that they even prohibited the sale of a slave for meat.

وَهَذَا قَوْلُ الشَّافِعِيِّ، وَاخْتَلَفَ قَوْلُهُ فِي اللَّحْمِ بِاللَّحْمِ فَرُوِيَ عَنْهُ: أَنْ يُجْمَعَ لُحُومُ الْحَيَوَانِ كُلِّهَا طَائِرَةً وَوَحْشِيَّةً، وَالْأَنْعَامِ، كُلِّهَا صِنْفٌ وَاحِدٌ.

L24054 This is the opinion of Al-Shafi'i, and he held differing views regarding meat exchanged for meat. It is reported from him that all meats of animals—including birds, wild animals, and domesticated grazing animals—all of them constitute a single category.

وَرُوِيَ عَنْهُ: أَنَّ لَحْمَ كُلِّ نَوْعٍ صِنْفٌ عَلَى حِيَالِهِ، وَلَمْ يَخْتَلِفْ عَنْهُ فِي أَنَّهُ لَا يُبَاعُ لَحْمٌ بِلَحْمٍ أَصْلًا حَتَّى يَتَنَاهَى جَفَافُهُ وَيَبَسُهُ؟ فَعَلَى أَحَدِ قَوْلَيْهِ: لَا يُبَاعُ قَدِيدُ غَنَمٍ بِقَدِيدِ إِبِلٍ، أَوْ بِقَدِيدِ دَجَاجٍ، أَوْ إِوَزٍّ أَوْ مِثْلًا بِمِثْلٍ، وَعَلَى الْقَوْلِ الثَّانِي: أَنَّهُ لَا يُبَاعُ قَدِيدُ غَنَمٍ بِقَدِيدِ غَنَمٍ، إِلَّا يَدًا بِيَدٍ، مِثْلًا بِمِثْلٍ، وَجَائِزٌ أَنْ يُبَاعَ بِقَدِيدِ الْبَقَرِ مُتَفَاضِلًا يَدًا بِيَدٍ.

L24055 It has been narrated from him that the meat of each type constitutes a distinct category, with no disagreement reported from him that meat should not be sold for meat at all until it is completely dry. According to one of his two positions: cured sheep meat must not be traded for cured camel meat, cured chicken, goose, or like for like. According to the second position: cured sheep meat must not be exchanged for cured sheep meat except hand-to-hand and like for like, though it is permissible to trade it for cured cow meat with a difference in quantity, provided the exchange is immediate.

وَقَالَ أَبُو حَنِيفَةَ: جَائِزٌ بَيْعُ اللَّحْمِ بِالْحَيَوَانِ عَلَى كُلِّ حَالٍ، جَائِزٌ كُلُّ ذَلِكَ، كَقَوْلِنَا سَوَاءً بِسَوَاءٍ.

L24056 Abu Hanifah said: It is permissible to sell meat in exchange for an animal under all circumstances; all of that is permissible, as we say, like for like.

[9] **Qur'an references (L24048):** Qur'an 6:119 (Al-An'am).

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: جَائِزٌ بَيْعُ لَحْمِ شَاةٍ بِشَاةٍ حَيَّةً، إِذَا كَانَ اللَّحْمُ أَكْثَرَ مِنْ لَحْمِ الشَّاةِ الْحَيَّةِ، فَإِنْ كَانَ مِثْلَهُ أَوْ أَقَلَّ لَمْ يَجُزْ، وَأَجَازَ بَيْعَ شَاةٍ بِبَقَرَةٍ حَيَّةً كَيْفَ شَاءُوا.

L24057 Muhammad ibn al-Hasan said: It is permissible to sell the meat of a slaughtered sheep for a live sheep, provided the slaughtered meat is greater in quantity than the meat of the live sheep [if it were slaughtered]. If it is equal to or less than it, it is not valid. He also permitted selling a sheep for a live cow, according to whatever terms they mutually agree upon.

وَأَجَازَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ بَيْعَ لَحْمِ شَاةٍ بِلَحْمِ شَاةٍ مُتَمَاثِلًا نَقْدًا وَلَا بُدَّ، وَكَذَلِكَ لَحْمُ كُلِّ صِنْفٍ بِلَحْمٍ مِنْ صِنْفِهِ وَأَبَاحُوا التَّفَاضُلَ يَدًا بِيَدٍ فِي كُلِّ لَحْمٍ بِلَحْمٍ مِنْ غَيْرِ صِنْفِهِ، وَالْبَقَرُ عِنْدَهُمْ صِنْفٌ، وَالْغَنَمُ صِنْفٌ آخَرُ، وَالْإِبِلُ صِنْفٌ ثَالِثٌ وَكَذَلِكَ كُلُّ حَيَوَانٍ فِي صِنْفِهِ، إِلَّا الْحِيتَانُ فَإِنَّهَا كُلَّهَا عِنْدَهُ صِنْفٌ وَاحِدٌ، وَإِلَّا لُحُومُ الطَّيْرِ، فَرَأَوْا بَيْعَ بَعْضِهَا بِبَعْضٍ مُتَفَاضِلًا يَدًا بِيَدٍ، لَا نَسِيئَةً، كَلَحْمِ دَجَاجٍ بِلَحْمِ دَجَاجٍ، أَوْ بِلَحْمِ صَيْدٍ، أَوْ غَيْرِ ذَلِكَ.

L24058–24060 Abu Hanifah and his companions permitted the sale of sheep meat for sheep meat provided they are identical, paid immediately without exception, and similarly. The meat of each category is exchanged with meat of its own kind. They permitted unequal exchange hand-to-hand when exchanging any meat for meat from a different category. According to their classification, cows constitute one category, sheep another category, camels a third category, and similarly every animal belongs to its own category - except fish, which he considers all varieties to form a single category, and except poultry meat. They ruled that exchanging some poultry meat for other poultry meat with disparity is permissible hand-to-hand (not on credit), such as chicken meat for chicken meat, or exchanging poultry meat for game meat, or other types.

وَرَأَى شَحْمَ الْبَطْنِ مِنْ كُلِّ حَيَوَانٍ صِنْفًا غَيْرَ لَحْمِهِ، وَغَيْرَ شَحْمِ ظَهْرِهِ.

L24061 He considered the abdominal fat of every animal to be a distinct category separate from its meat and the fat of its back.

وَرَأَى الْأَلْيَةَ صِنْفًا آخَرَ غَيْرَ اللَّحْمِ وَالشَّحْمِ.

L24062 The Ḥanafī school regarded the alyah as a separate category excluded from meat and fat.

وَهَذِهِ وَسَاوِسُ لَا نَظِيرَ لَهَا، وَأَقْوَالٌ لَا تُعْقَلُ، وَلَا تُعْلَمُ عَنْ أَحَدٍ قَبْلَهُ.

L24063 These are unparalleled whispers, and statements that cannot be comprehended, nor have they been known from anyone before him.

وَقَالَ مَالِكٌ: ذَوَاتُ الْأَرْبَعِ كُلُّهَا صِنْفٌ وَاحِدٌ: الْبَقَرُ، وَالْغَنَمُ، وَالْإِبِلُ، وَالْأَرَانِبُ، وَالْأَيَايِلُ، وَحُمُرُ الْوَحْشِ، وَكُلُّ ذِي أَرْبَعٍ، فَلَا يَحِلُّ لَحْمُ شَيْءٍ مِنْهَا بِحَيٍّ مِنْهَا فَلَمْ يَجُزْ بَيْعُ لَحْمِ أَرْنَبٍ حَيٍّ بِلَحْمِ جَمَلٍ أَصْلًا، وَلَا لَحْمِ جَمَلٍ بِلَحْمِ كَبْشٍ، إِلَّا مِثْلًا بِمِثْلٍ، يَدًا بِيَدٍ، وَكَذَلِكَ سَائِرُ ذَوَاتِ الْأَرْبَعِ.

L24064 Mālik said: All four-legged animals constitute a single category: cattle, sheep, camels, rabbits, deer, wild donkeys, and every quadruped. It is impermissible to exchange the meat of any of them for a live animal of the same category. Therefore, selling slaughtered rabbit meat for a live camel is fundamentally invalid, nor camel meat for ram meat—unless [the exchange is] like for like, hand to hand. This ruling applies uniformly to all four-legged animals.

L24065 He considered all birds as a single category: chickens, pigeons, ostriches, geese, partridges, sandgrouse, and others. Thus, the meat of any bird remains impermissible in exchange for a live bird of the same category, even if it is of

a different type. He permitted exchanging the meat of one bird for another of equal value through immediate exchange, but prohibited disparity in value. Consequently, he disallowed unequal exchange between chicken meat and bustard meat (different species), applying this ruling uniformly to all birds in the category.

وَرَأَى الطَّيْرَ كُلَّهُ صِنْفًا وَاحِدًا: الدَّجَاجُ، وَالْحَمَامُ، وَالنَّعَامُ، وَالْإِوَزُّ، وَالْحَجَلُ، وَالْقَطَا، وَغَيْرُ ذَلِكَ فَلَمْ يَجُزْ أَيْضًا لَحْمُ شَيْءٍ مِنْهَا بِحَيٍّ مِنْهَا وَإِنْ كَانَ مِنْ غَيْرِ نَوْعِهِ وَأَجَازَ فِي لَحْمِ بَعْضِهَا بِبَعْضٍ: التَّمَاثُلَ يَدًا بِيَدٍ، وَمَنَعَ مِنْ التَّفَاضُلِ، فَلَمْ يُجِزْ التَّفَاضُلَ فِي لَحْمِ دَجَاجٍ بِلَحْمِ حُبَارَى وَهَكَذَا فِي كُلِّ شَيْءٍ مِنْهَا.

L24066 He observed all sea creatures as a single kind, similarly.

وَرَأَى الْحِيتَانَ كُلَّهَا صِنْفًا وَاحِدًا كَذَلِكَ أَيْضًا.

L24067 He considered the locust an independent fourth category, despite having hunted birds sufficient to fulfill his obligation during the sacred state of Iḥrām.

وَرَأَى الْجَرَادَ صِنْفًا رَابِعًا عَلَى حِيَالِهِ، هَذَا وَهُوَ عِنْدَهُ صَيْدٌ مِنْ الطَّيْرِ يُجْزِيهِ الْمُحَرَّمَ.

L24068 He prohibited uncooked dried meat exchanged for roasted meat and prohibited both when exchanged for fresh raw meat. He permitted all items from these three types in exchange for cooked meat of their own kind—whether differing in quantity or equal—through immediate spot exchange. He permitted meat cooked using honey to be exchanged for meat cooked using milk when equal in measure, but prohibited disparity in quantity between them.

وَحَرَّمَ الْقَدِيدَ النِّيءَ بِاللَّحْمِ الْمَشْوِيِّ، وَحَرَّمَهُمَا جَمِيعًا بِاللَّحْمِ النِّيءِ الطَّرِيِّ، وَأَجَازَ كُلَّ شَيْءٍ مِنْ هَذِهِ الثَّلَاثَةِ الْأَصْنَافِ بِاللَّحْمِ الْمَطْبُوخِ مِنْ صِنْفِهَا مُتَفَاضِلَةً وَمُتَمَاثِلَةً يَدًا بِيَدٍ، وَأَجَازَ اللَّحْمَ الْمَطْبُوخَ بِعَسَلٍ بِاللَّحْمِ الْمَطْبُوخِ بِلَبَنٍ مُتَمَاثِلًا وَمَنَعَ فِيهِ مِنْ التَّفَاضُلِ.

L24069 He permitted exchanging a slaughtered sheep for a slaughtered sheep after careful scrutiny, and this contradicts its foundational principle.

وَأَجَازَ شَاةً مَذْبُوحَةً بِشَاةٍ مَذْبُوحَةٍ عَلَى التَّحَرِّي وَهَذَا ضِدُّ أَصْلِهِ.

L24070 These are statements of utmost corruption, and we know of no one who uttered them before him. Were we to scrutinize their verbosity here and his contradictions, it would become exceedingly lengthy, and this suffices for whoever seeks self-improvement.

وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ، وَلَا نَعْلَمُ أَحَدًا قَالَهَا قَبْلَهُ وَلَوْ تَقَصَّيْنَا تَطْوِيلَهُمْ هَهُنَا وَتَنَاقُضَهُ، لَطَالَ جِدًّا وَفِي هَذَا كِفَايَةٌ لِمَنْ نَصَحَ نَفْسَهُ.

L24071–24072 Abū Muḥammad said: The Shāfiʿīs cited as evidence what we have narrated via the chain of Mālik, from Zayd ibn Aslam, from Saʿīd ibn al-Musayyib—"The Messenger of Allāh (peace be upon him) prohibited the sale/exchange of live animals for meat."

قَالَ أَبُو مُحَمَّد: وَاحْتَجَّ الشَّافِعِيُّونَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِك عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْحَيَوَانِ بِاللَّحْمِ» .

L24073 And through the chain of Al-Ḥajjāj ibn Al-Minhāl: ʿAbdullāh ibn ʿUmar An-Numayrī narrated to us from Yūnus ibn Yazīd Al-Aylī from Az-Zuhrī, who said: I heard Saʿīd ibn Al-Musayyab say, "The Messenger of Allah (peace

and blessings be upon him) forbade buying a living animal for a dead one." Az-Zuhrī said: "Thus, it is not valid to do so with a live ewe."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ النُّمَيْرِيُّ عَنْ يُونُسَ بْنِ يَزِيدَ الْأَيْلِيِّ عَنْ الزُّهْرِيِّ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبْتَاعَ الْحَيُّ بِالْمَيِّتِ» قَالَ الزُّهْرِيُّ: فَلَا يَصْلُحُ بِشَاةٍ حَيَّةٍ.

L24074 From the narration of Abd al-Razzaq, from Ibrahim ibn Abi Yahya, from Salih, the client of al-Taw'ama, from Ibn Abbas: A man intended to sell a part of camel meat for a sheep? Abu Bakr al-Siddiq said: "This is not permissible."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنْ صَالِحٍ مَوْلَى التَّوْأَمَةِ عَنْ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا أَرَادَ أَنْ يَبِيعَ جُزْءًا مِنْ لَحْمِ بَعِيرٍ بِشَاةٍ؟ فَقَالَ أَبُو بَكْرٍ الصِّدِّيقُ: لَا يَصْلُحُ هَذَا.

L24075 It has been authentically reported from Sa'id ibn al-Musayyab that it is impermissible to sell a live animal for a ritually slaughtered one, and that it is impermissible to exchange a camel for a specified number of sheep if he intends to slaughter the camel.

وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنْ لَا يُبَاعَ حَيٌّ بِمَذْبُوحٍ، وَأَنَّهُ لَا يَجُوزُ بَعِيرٍ بِغَنَمٍ مَعْدُودَةٍ إنْ كَانَ يُرِيدُ الْبَعِيرَ لِيَنْحَرَهُ.

L24076 And he said: Among the forms of maysir (gambling) in the pre-Islamic era was exchanging meat for a sheep.

وَقَالَ: كَانَ مِنْ مَيْسِرِ أَهْلِ الْجَاهِلِيَّةِ بَيْعُ اللَّحْمِ بِالشَّاةِ.

L24077 Abu al-Zinad said: I witnessed people prohibiting the exchange of meat for live animals and writing this prohibition in the contractual agreements of workers during the time of Aban ibn Uthman and Hisham ibn Isma'il. Ibn Abi al-Zinad mentioned this practice from the Seven Jurists, stating that they regarded it with utmost gravity and permitted no leniency in its observance.

وَقَالَ أَبُو الزِّنَادِ: أَدْرَكْت النَّاسَ يَنْهَوْنَ عَنْ بَيْعِ اللَّحْمِ بِالْحَيَوَانِ وَيَكْتُبُونَهُ فِي عُهُودِ الْعُمَّالِ فِي زَمَنِ أَبَانَ بْنِ عُثْمَانَ، وَهِشَامِ بْنِ إسْمَاعِيلَ وَذَكَرَهُ ابْنُ أَبِي الزِّنَادِ عَنْ الْفُقَهَاءِ السَّبْعَةِ، وَأَنَّهُمْ كَانُوا يُعَظِّمُونَ ذَلِكَ وَلَا يَتَرَخَّصُونَ فِيهِ.

L24078 Abu Muhammad said: As for the report concerning this matter, it is a _mursal_ and was never supported by any chain of transmission. It is astonishing that al-Shāfiʿī - who affirmed the impermissibility of relying on the _mursal_ - should then rely on it here.

قَالَ أَبُو مُحَمَّد: أَمَّا الْخَبَرُ فِي ذَلِكَ فَمُرْسَلٌ لَمْ يُسْنَدْ قَطُّ، وَالْعَجَبُ مِنْ قَوْلِ الشَّافِعِيِّ: إنَّ الْمُرْسَلَ لَا يَجُوزُ الْأَخْذُ بِهِ، ثُمَّ أَخَذَ هَهُنَا بِالْمُرْسَلِ.

L24079 Then another point of amazement concerning the Hanafis—who assert that the *mursal* is equivalent to the *musnad*—is that they contradicted this very *mursal*, even though there is no stronger *mursal* among the *marasil* than this one. And this is among the matters in which the Hanafis opposed the majority of scholars.

ثُمَّ عَجَبٌ آخَرُ مِنْ الْحَنَفِيِّينَ الْقَائِلِينَ: الْمُرْسَلُ كَالْمُسْنَدِ، ثُمَّ خَالَفُوا هَذَا الْمُرْسَلَ الَّذِي لَيْسَ فِي الْمَرَاسِيلِ أَقْوَى مِنْهُ وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ جُمْهُورَ الْعُلَمَاءِ.

L24080 Then the Malikis: a third astonishment, for they cited this report as evidence

while giving the false impression of adhering to it, though they opposed it by permitting bird meat with sheep. This contradicts the report and instead aligns with al-Shāfiʿī's position.

ثُمَّ الْمَالِكِيُّونَ: فَعَجَبٌ ثَالِثٌ، لِأَنَّهُمْ احْتَجُّوا بِهَذَا الْخَبَرِ، وَأَوْهَمُوا أَنَّهُمْ أَخَذُوا بِهِ، وَهُمْ قَدْ خَالَفُوهُ، لِأَنَّهُمْ أَبَاحُوا لَحْمَ الطَّيْرِ بِالْغَنَمِ، وَهَذَا خِلَافُ الْخَبَرِ وَإِنَّمَا هُوَ مُوَافِقٌ لِقَوْلِ الشَّافِعِيِّ.

L24081–24083 Mālik also differed here from what was transmitted from the Seven Fuqaha of Medina and the practice of the governors in Medina. This difference greatly magnifies the weight of their opinion when it aligns with theirs, and they argued using the narration of Abū Bakr—which is transmitted through Ibrāhīm ibn Abī Yaḥyā. The first to decree that his narrations not be accepted was Mālik, and then those from Ṣāliḥ—the freed slave of al-Tawʾamah. The first to weaken his narrations was Mālik. By Allah! By the Muslims! When trustworthy narrators relate a report contradicting their opinions, they devise false pretexts to reject it. Yet when one whom they testify is a liar narrates what aligns with their views, they cite it as proof. What religion could endure this? If the Shāfiʿīs argue: "The interrupted narrations of Saʿīd ibn al-Musayyab are authoritative, unlike others," we respond: "Is this now considered authoritative?" Behold what we have transmitted through Saʿīd ibn Manṣūr: Ḥafṣ ibn Maysarah reported from Ibn Ḥarmalah from Saʿīd ibn al-Musayyab, who said: "The Messenger of Allah (peace and blessings be upon him) prohibited selling livestock for the colostrum of sheep. Adhere to this, or you have indeed made a mockery. Fear Allah!"

وَقَدْ خَالَفَ مَالِكٌ أَيْضًا هَهُنَا مَا رُوِيَ عَنْ الْفُقَهَاءِ السَّبْعَةِ، وَعَمَلِ الْوُلَاةِ بِالْمَدِينَةِ، وَهَذَا يُعَظِّمُهُ جِدًّا إذَا وَافَقَ رَأْيَهُمْ وَاحْتَجُّوا بِخَبَرِ أَبِي بَكْرٍ وَهُوَ مِنْ رِوَايَةِ ابْنِ أَبِي يَحْيَى إبْرَاهِيمَ، وَأَوَّلُ مَنْ أَمَرَ أَنْ لَا تُؤْخَذَ رِوَايَتُهُ فَمَالِكٌ، ثُمَّ عَنْ صَالِحٍ مَوْلَى التَّوْأَمَةِ، وَأَوَّلُ مَنْ ضَعَّفَهُ فَمَالِكٌ فَيَا لِلَّهِ وَيَا لِلْمُسْلِمِينَ إذَا رَوَى الثِّقَاتُ خَبَرًا يُخَالِفُ رَأْيَهُمْ تَحَيَّلُوا بِالْأَبَاطِيلِ فِي رَدِّهِ، وَإِذَا رَوَى مَنْ يَشْهَدُونَ عَلَيْهِ بِالْكَذِبِ مَا يُوَافِقُهُمْ احْتَجُّوا بِهِ، فَأَيُّ دِينٍ يَبْقَى مَعَ هَذَا؟ فَإِنْ قَالَ الشَّافِعِيُّونَ: مَرَاسِيلُ سَعِيدِ بْنِ الْمُسَيِّبِ حُجَّةٌ بِخِلَافِ غَيْرِهِ؟ قُلْنَا لَهُمْ: السَّاعَةُ صَارَتْ حُجَّةً؟ فَدُونَكُمْ مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَفْصُ بْنُ مَيْسَرَةَ عَنْ ابْنِ حَرْمَلَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبَاعَ الْحَيَوَانُ بِالْمَفَاطِيمِ مِنْ الْغَنَمِ فَقُولُوا بِهِ، وَإِلَّا فَقَدْ تَلَاعَبْتُمْ، وَاتَّقُوا اللَّهَ» .

L24084 Narrations with additional details have also been reported regarding this. It has been reported to us through the chain of Ḥammād ibn Salamah, who narrated to us from ʿAbd al-Karīm ibn Yazīd ibn Ṭalq: A man slaughtered a male camel and began selling limbs in exchange for sheep, pregnant she-camels, or on credit. Ibn ʿUmar disapproved of this practice.

وَقَدْ رُوِيَتْ فِي هَذِهِ آثَارٌ أَيْضًا بِزِيَادَةٍ، فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ حَدَّثَنَا عَبْدُ الْكَرِيمِ بْنُ يَزِيدَ بْنِ طَلْقٍ: أَنَّ رَجُلًا نَحَرَ جَزُورًا فَجَعَلَ يَبِيعُ الْعُضْوَ بِالشَّاةِ، وَبِالْقَلُوصِ، إلَى أَجَلٍ فَكَرِهَ ذَلِكَ ابْنُ عُمَرَ.

L24085 From the narration of Wakīʿ: I [Isrāʾīl] report from ʿAbdullāh ibn ʿIṣmah, who said: I heard Ibn ʿAbbās being asked about someone who purchased a limb from a camel that had been ritually slaughtered in exchange for the leg of a young she-goat, with the condition imposed on the she-goat's owner to suckle it until it is weaned. Ibn ʿAbbās replied: "It is not permissible."

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا إسْرَائِيلُ عَنْ عَبْدِ اللَّهِ بْنِ عِصْمَةَ سَمِعْت ابْنَ عَبَّاسٍ وَسُئِلَ عَمَّنْ اشْتَرَى عُضْوًا مِنْ جَزُورٍ قَدْ نُحِرَتْ بِرِجْلِ عِنَاقٍ وَشُرِطَ عَلَى صَاحِبِهَا أَنْ يُرْضِعَهَا حَتَّى تُفْطَمَ؟ فَقَالَ ابْنُ عَبَّاسٍ: لَا يَصْلُحُ.

L24086 Abū Muḥammad said: This is a condition not found in the Book of God, the Exalted, so it is invalid.

قَالَ أَبُو مُحَمَّدٍ: هَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

L24087 It was narrated to us through the chain of Abd al-Razzaq: I, Ma'mar, [narrate] from Yahya ibn Abi Kathir, from a man, from Ibn Abbas, who said: "There is no harm in selling meat in exchange for a sheep."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ رَجُلٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا بَأْسَ أَنْ يُبَاعَ اللَّحْمُ بِالشَّاةِ.

L24088 If it is said: "Is this from a man?" We respond: The narration of Abu Bakr from Ibn Abi Yahya is not more reliable than someone about whom silence was maintained, whoever he may be.

فَإِنْ قِيلَ: هَذَا عَنْ رَجُلٍ؟ قُلْنَا: وَخَبَرُ أَبِي بَكْرٍ عَنْ ابْنِ أَبِي يَحْيَى وَلَيْسَ بِأَوْثَقَ مِمَّنْ سَكَتَ عَنْهُ كَائِنًا مَنْ كَانَ.

L24089 And via the chain of Abd al-Razzaq from Sufyan al-Thawri: There is no harm in a sheep standing with the slaughtered [animal].

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ: لَا بَأْسَ بِالشَّاةِ الْقَائِمَةِ بِالْمَذْبُوحَةِ.

L24090 The issue of selling an item prior to taking possession of it.

[مَسْأَلَة بَيْع الشَّيْء قَبْل قبضه]

L24091 1508. Question:

١٥٠٨ - مَسْأَلَةٌ:

L24092 Whoever purchases any item—whatever it may be among permissible commodities to sell, except wheat—it is unlawful for him to sell it until he takes possession. Possession occurs when he freely accesses it without any barrier between himself and the item. If no barrier exists for any period, however brief or prolonged, and later a barrier arises through usurpation or other means, it becomes lawful for him to sell it, for he has already taken possession. He may gift it, lease it, assign it as a dower, lend it, transfer it, or give it as charity before taking possession by freely accessing it.

وَمَنْ ابْتَاعَ شَيْئًا أَيَّ شَيْءٍ كَانَ مِمَّا يَحِلُّ بَيْعُهُ، حَاشَ الْقَمْحَ، فَلَا يَحِلُّ لَهُ أَنْ يَبِيعَهُ حَتَّى يَقْبِضَهُ، وَقَبْضُهُ لَهُ: هُوَ أَنْ يُطْلِقَ يَدَهُ عَلَيْهِ بِأَنْ لَا يُحَالَ بَيْنَهُ وَبَيْنَهُ، فَإِنْ لَمْ يَحُلْ بَيْنَهُ وَبَيْنَهُ مُدَّةٌ مَا قَلَّتْ أَمْ كَثُرَتْ ثُمَّ حِيلَ بَيْنَهُ وَبَيْنَهُ بِغَصْبٍ أَوْ غَيْرِهِ: حَلَّ لَهُ بَيْعُهُ؛ لِأَنَّهُ قَدْ قَبَضَهُ، وَلَهُ أَنْ يَهَبَهُ، وَأَنْ يُؤَاجِرَ بِهِ، وَأَنْ يُصْدِقَهُ، وَأَنْ يُقْرِضَهُ، وَأَنْ يُسَلِّمَهُ، وَأَنْ يَتَصَدَّقَ بِهِ قَبْلَ أَنْ يَقْبِضَهُ، وَقَبْلَ أَنْ تُطْلَقَ يَدُهُ عَلَيْهِ.

L24093–24094 If he owns anything—whatever it may be—that is permissible to sell through means other than a sale contract, such as inheritance, a gift, a loan, a dower, charity, a salam contract, compensation, or other such means, it is permissible for him to sell it before taking possession of it and to dispose of it by assigning it as a dower, gifting it, or giving it in charity, except for wheat.

فَإِنْ مَلَكَ شَيْئًا مَا أَيَّ شَيْءٍ كَانَ مِمَّا يَحِلُّ بَيْعُهُ بِغَيْرِ الْبَيْعِ، لَكِنْ بِمِيرَاثٍ أَوْ هِبَةٍ، أَوْ قَرْضٍ، أَوْ صَدَاقٍ، أَوْ صَدَقَةٍ، أَوْ سَلَمٍ، أَوْ أَرْشٍ، أَوْ غَيْرِ ذَلِكَ: جَازَ لَهُ بَيْعُهُ قَبْلَ أَنْ يَقْبِضَهُ، وَأَنْ يَتَصَرَّفَ فِيهِ بِالْإِصْدَاقِ، وَالْهِبَةِ، وَالصَّدَقَةِ، حَاشَ الْقَمْحَ.

L24095 As for wheat: regardless of how he acquired it—whether via purchase, gift, charity, dower, lease, blood money, salam contract, interest-free loan, or

other means—it is not lawful for him to sell it until he takes possession of it, as previously stated, so that no intermediary is placed between him and it.

وَأَمَّا الْقَمْحُ: فَإِنَّهُ بِأَيِّ وَجْهٍ مَلَكَهُ مِنْ: بَيْعٍ، أَوْ هِبَةٍ، أَوْ صَدَقَةٍ، أَوْ صَدَاقٍ، أَوْ إِجَارَةٍ، أَوْ أَرْشٍ، أَوْ سَلَمٍ أَوْ قَرْضٍ، أَوْ غَيْرِ ذَلِكَ: فَلَا يَحِلُّ لَهُ بَيْعُهُ حَتَّى يَقْبِضَهُ، كَمَا ذَكَرْنَا بِأَنْ لَا يُحَالَ بَيْنَهُ وَبَيْنَهُ.

L24096 If he purchased wheat exclusively in a juzaf sale (bulk sale without measurement), it is not permissible for him to sell it until he takes possession as we mentioned, and until he relocates it away from its original location to another place, whether adjacent or distant.

فَإِنْ كَانَ اشْتَرَى الْقَمْحَ خَاصَّةً جُزَافًا، فَلَا يَحِلُّ لَهُ بَيْعُهُ حَتَّى يَقْبِضَهُ كَمَا ذَكَرْنَا، وَحَتَّى يَنْقُلَهُ وَلَا بُدَّ عَنْ مَوْضِعِهِ الَّذِي هُوَ فِيهِ إِلَى مَكَانٍ آخَرَ قَرِيبٍ مُلَاصِقٍ أَوْ بَعِيدٍ.

L24097 If he purchased wheat specifically by measure, it is not permissible for him to sell it until he has measured it. Once measured, it becomes permissible for him to sell it even if he did not move it from its place.

فَإِنْ كَانَ اشْتَرَى الْقَمْحَ خَاصَّةً بِكَيْلٍ لَمْ يَحِلَّ لَهُ أَنْ يَبِيعَهُ حَتَّى يَكْتَالَهُ، فَإِذَا اكْتَالَهُ حَلَّ لَهُ بَيْعُهُ وَإِنْ لَمْ يَنْقُلْهُ عَنْ مَوْضِعِهِ.

L24098 It is not permissible for him to trust the seller's measurement of the wheat, even if the seller measures it for himself in his presence while he observes and witnesses it. The buyer must measure it himself. It is permissible for him, in all that we have mentioned, to gift, give as ṣadaqah, lease, settle, give as ṣadaqah, or lend it before measuring it and before transferring it in bulk, whether it was purchased in bulk or by measure. These rulings do not apply at all to anything other than wheat.

وَلَا يَحِلُّ لَهُ تَصْدِيقُ الْبَائِعِ فِي كَيْلِهِ وَحَتَّى لَوْ اكْتَالَهُ الْبَائِعُ لِنَفْسِهِ بِحَضْرَتِهِ وَهُوَ يَرَاهُ وَيُشَاهِدُهُ وَلَا بُدَّ مِنْ أَنْ يَكْتَالَ الْمُشْتَرِي لِنَفْسِهِ، وَجَائِزٌ لَهُ فِي كُلِّ مَا ذَكَرْنَا أَنْ يَهَبَهُ، وَأَنْ يَصْدُقَهُ، وَأَنْ يُؤَاجِرَ بِهِ، وَأَنْ يُصَالِحَ، وَأَنْ يَتَصَدَّقَ بِهِ، وَأَنْ يُقْرِضَهُ قَبْلَ، أَنْ يَكْتَالَهُ، وَقَبْلَ أَنْ يَنْقُلَهُ جُزَافًا اشْتَرَاهُ أَوْ بِكَيْلٍ وَلَيْسَتْ هَذِهِ الْأَحْكَامُ فِي غَيْرِ الْقَمْحِ أَصْلًا.

L24099 The evidence for this is what was narrated to us through the chain of Qāsim ibn Aṣbagh: Aḥmad ibn Zuhayr ibn Ḥarb narrated to us on the authority of Ubayy, who narrated to us on the authority of Ḥayyān ibn Hilāl, who narrated to us on the authority of Hammām ibn Yaḥyā ibn Abī Kathīr, reporting from Yaʿlā ibn Ḥakīm, who narrated to him from Yūsuf ibn Māhak, who narrated to him from Ḥakīm ibn Ḥizām, that he said: "O Messenger of Allah, I am a man who engages in these transactions. What is permissible for me from them, and what is forbidden among them?" He replied: "O my nephew, when you purchase a commodity, do not sell it until you have taken possession of it."

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نا أُبَيٌّ أَنَا حَيَّانُ بْنُ هِلَالٍ أَنَا هَمَّامُ بْنُ يَحْيَى بْنِ أَبِي كَثِيرٍ: أَنَّ يَعْلَى بْنَ حَكِيمٍ حَدَّثَهُ: أَنَّ يُوسُفَ بْنَ مَاهَكَ حَدَّثَهُ: أَنَّ «حَكِيمَ بْنَ حِزَامٍ حَدَّثَهُ: أَنَّهُ قَالَ يَا رَسُولَ اللَّهِ، إِنِّي رَجُلٌ أَشْتَرِي هَذِهِ الْبُيُوعَ، فَمَا يَحِلُّ لِي مِنْهَا مِمَّا يَحْرُمُ عَلَيَّ؟ قَالَ: يَا ابْنَ أَخِي إِذَا ابْتَعْتَ بَيْعًا فَلَا تَبِعْهُ حَتَّى تَقْبِضَهُ»

L24100 This is a generality encompassing every sale and purchase, a specification for both from matters that are neither sales nor purchases, and an answer

فَهَذَا عُمُومٌ لِكُلِّ بَيْعٍ، وَلِكُلِّ ابْتِيَاعٍ، وَتَخْصِيصٌ لَهُمَا مِمَّا لَيْسَا بَيْعًا وَلَا ابْتِيَاعًا، وَجَوَابٌ مِنْهُ - عَلَيْهِ السَّلَامُ - إِذْ سُئِلَ عَمَّا يَحِلُّ مِمَّا يَحْرُمُ.

from him (peace be upon him) when he was asked about what is permissible from what is forbidden.

فَإِنْ قِيلَ: فَإِنَّ هَذَا الْخَبَرَ مُضْطَرِبٌ.

L24101 If it is said, "But indeed this narration is conflicting..."

لِأَنَّكُمْ رَوَيْتُمُوهُ مِنْ طَرِيقِ خَالِدِ بْنِ الْحَارِثِ الْهُجَيْمِيِّ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، قَالَ: حَدَّثَنِي رَجُلٌ مِنْ إِخْوَانِنَا حَدَّثَنِي يُوسُفُ بْنُ مَاهَكَ: أَنَّ عَبْدَ اللَّهِ بْنَ عِصْمَةَ الْجُشَمِيَّ حَدَّثَهُ: أَنَّ حَكِيمَ بْنَ حِزَامٍ حَدَّثَهُ نَذْكُرُ هَذَا الْخَبَرَ وَعَبْدُ اللَّهِ بْنُ عِصْمَةَ مَتْرُوكٌ؟

L24102 Because you have narrated it through the chain of Khālid ibn al-Ḥārith al-Hujaymī from Hishām al-Dastawā'ī from Yaḥyā ibn Abī Kathīr, who said: A man from our brethren narrated to me: Yūsuf ibn Māhak narrated to me that ʿAbdullāh ibn ʿIṣmah al-Jushamī narrated to him that Ḥakīm ibn Ḥizām narrated to him. Do we cite this report while ʿAbdullāh ibn ʿIṣmah is abandoned?

قُلْنَا: نَعَمْ، إِلَّا أَنَّ هَمَّامَ بْنَ يَحْيَى رَوَاهُ كَمَا أَوْرَدْنَا قَبْلُ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ فَسَمَّى ذَلِكَ الرَّجُلَ مِنْ الَّذِي لَمْ يُسَمِّهِ هِشَامٌ، وَذَكَرَ أَنَّهُ يَعْلَى بْنُ حَكِيمٍ وَيَعْلَى ثِقَةٌ وَذَكَرَ فِيهِ: أَنَّ يُوسُفَ سَمِعَهُ مِنْ حَكِيمِ بْنِ حِزَامٍ وَهَذَا صَحِيحٌ فَإِذَا سَمِعَهُ مِنْ حَكِيمٍ فَلَا يَضُرُّهُ أَنْ يَسْمَعَهُ أَيْضًا مِنْ غَيْرِ حَكِيمٍ عَنْ حَكِيمٍ، فَصَارَ حَدِيثُ خَالِدِ بْنِ الْحَارِثِ لَغْوًا كَانَ أَوْ لَمْ يَكُنْ بِمَنْزِلَةٍ وَاحِدَةٍ.

L24103–24104 We said: Yes, except that Hammām ibn Yaḥyā narrated it as we previously mentioned from Yaḥyā ibn Abī Kathīr, identifying the man whom Hishām left unnamed. He stated that he was Yaʿlā ibn Ḥakīm—and Yaʿlā is trustworthy—and mentioned in it that Yūsuf heard it from Ḥakīm ibn Ḥizām, and this is authentic. Thus, if he heard it from Ḥakīm, it does not detract from its authenticity to also hear it from someone other than Ḥakīm narrating from Ḥakīm. Consequently, the ḥadīth of Khālid ibn al-Ḥārith becomes invalid, whether it existed or not, as they are of one status.

فَإِنْ قِيلَ: فَقَدْ رُوِيَتْ مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ ابْتَاعَ طَعَامًا فَلَا يَبِعْهُ حَتَّى يَقْبِضَهُ»

L24105 If it is said: It has been narrated through Mālik from ʿAbd Allāh ibn Dīnār from Ibn ʿUmar that the Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever purchases food must not sell it until he takes possession of it."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ أَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ أَمَّا الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبَاعَ حَتَّى يُقْبَضَ فَهُوَ الطَّعَامُ، قَالَ ابْنُ عَبَّاسٍ بِرَأْيِهِ: وَلَا أَحْسَبُ كُلَّ شَيْءٍ إِلَّا مِثْلَهُ؟ قُلْنَا: نَعَمْ، هَذَانِ صَحِيحَانِ: إِلَّا أَنَّهُمَا بَعْضُ مَا فِي حَدِيثِ حَكِيمِ بْنِ حِزَامٍ فَحَدِيثُ حَكِيمِ بْنِ حِزَامٍ دَخَلَ فِيهِ: الطَّعَامُ وَغَيْرُ الطَّعَامِ، فَهُوَ أَعَمُّ، فَلَا يَجُوزُ تَرْكُهُ؛ لِأَنَّهُ فِيهِ حُكْمًا لَيْسَ فِي خَبَرِ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ.

L24106 From the path of Sufyān ibn ʿUyaynah: I am ʿAmr ibn Dīnār from Ṭāwūs from Ibn ʿAbbās: "As for what the Messenger of Allah—peace and blessings of Allah be upon him—prohibited from being sold until it is taken possession of, it is food." Ibn ʿAbbās said according to his opinion: "I do not deem anything except to be like it." We said: "Yes." Both of these are authentic, though they form part of the ḥadīth of Ḥakīm ibn Ḥizām. The ḥadīth of Ḥakīm ibn Ḥizām includes food and non-food, making it more comprehensive. Thus, it is not permissible to disregard it, because it includes a ruling absent from the narrations of Ibn ʿAbbās and Ibn ʿUmar.

فَإِنْ قِيلَ: قَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رَوَيْتُمْ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي زِيَادُ بْنُ أَيُّوبَ أَنَا هُشَيْمٌ أَنَا أَبُو بِشْرٍ هُوَ ابْنُ أَبِي وَحْشِيَّةَ عَنْ يُوسُفَ بْنِ مَاهَكَ «عَنْ حَكِيمِ بْنِ حِزَامٍ قُلْتُ: يَا رَسُولَ اللَّهِ يَسْأَلُنِي الْمَرْءُ الْبَيْعَ لَيْسَ عِنْدِي مَا أَبِيعُهُ مِنْهُ ثُمَّ أَبْتَاعُ لَهُ مِنَ السُّوقِ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: لَا تَبْتَعْ مَا لَيْسَ عِنْدَكَ» قُلْنَا: نَعَمْ، وَبِهِ نَقُولُ هُوَ بَيِّنٌ كَمَا تَسْمَعُ، إِنَّمَا نَهْيٌ عَنْ بَيْعِ مَا لَيْسَ فِي مِلْكٍ كَمَا فِي الْخَبَرِ نَصًّا، وَإِلَّا فَكُلُّ مَا يَمْلِكُهُ الْمَرْءُ فَهُوَ عِنْدَهُ وَلَوْ أَنَّهُ بِالْهِنْدِ يَقُولُ: عِنْدِي ضَيْعَةٌ سَرِيَّةٌ، وَعِنْدِي فَرَسٌ فَارَّةٌ وَسَوَاءٌ عِنْدَنَا كَانَ مَغْصُوبًا أَوْ لَمْ يَكُنْ، وَهُوَ عِنْدَ صَاحِبِهِ، أَيْ فِي مِلْكِهِ وَلَهُ.

L24107–24109 If it is said, “You have narrated through the chain of Aḥmad ibn Shuʿayb—Ziyād ibn Ayyūb informed me: Hushaym narrated to us, from Abū Bishr, Ibn Abī Waḥshiyyah, from Yūsuf ibn Māhak, from Ḥakīm ibn Ḥizām, who said: ‘I asked, “O Messenger of Allah, a man asks me to sell him something I do not possess. Should I then purchase it for him from the market?”’ He—peace be upon him—responded, ‘Do not sell what you do not possess.’”—this has been authentically reported from the Prophet, may Allah bless him and grant him peace. We said: Yes, and by this we affirm its evident clarity. The prohibition pertains solely to selling what is not owned, as explicitly stated in the hadith. Otherwise, everything a person owns remains in his possession even if he were in India. He may say: “I possess a hidden estate,” or “I possess a runaway horse,” and it makes no difference to us whether the item is usurped or not, for it remains with its owner—that is, within his ownership and rightfully his.

فَإِنْ قِيلَ: فَإِنَّكُمْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا زُهَيْرُ بْنُ حَرْبٍ أَنَا إِسْمَاعِيلُ هُوَ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ حَدَّثَنِي أَبِي عَنْ أَبِيهِ عَنْ أَبِيهِ حَتَّى ذَكَرَ عَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَحِلُّ سَلَفٌ وَبَيْعٌ وَلَا شَرْطَانِ فِي بَيْعٍ وَلَا رِبْحُ مَا لَمْ يَضْمَنْ وَلَا بَيْعُ مَا لَيْسَ عِنْدَكَ»

L24110 If it is said: You have narrated through the chain of Abū Dāwūd—Zuhayr ibn Ḥarb → Ismāʿīl ibn ʿUlayyah → Ayyūb al-Sakhtiyānī, who narrated: “‘Amr ibn Shuʿayb reported to me, my father reported to me, from his father, from his grandfather”—until reaching ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, who said: The Messenger of Allah (peace be upon him) said: “It is not permissible to combine a loan and a sale, nor stipulate two conditions in one sale, nor profit for what one has not guaranteed, nor to sell what you do not possess.”[10]

قُلْنَا: نَعَمْ، هَذَا صَحِيحٌ، وَبِهِ نَأْخُذُ، وَلَا نَعْلَمُ لِعَمْرِو بْنِ شُعَيْبٍ حَدِيثًا مُسْنَدًا إِلَّا هَذَا وَحْدَهُ، وَآخَرُ فِي الْهِبَاتِ رَوَاهُ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمَنْعِ مِنَ الرُّجُوعِ فِي الْهِبَاتِ إِلَّا الْوَالِدَ فِيمَا أَعْطَى وَلَدَهُ وَلَيْسَ فِي هَذَا الْخَبَرِ إِلَّا الَّذِي فِي حَدِيثِ حَكِيمِ بْنِ حِزَامٍ مِنَ النَّهْيِ عَنْ بَيْعِ مَا لَيْسَ لَكَ فَقَطْ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L24111 We said: Yes, this is sound, and we adopt it. We know of no hadith with a complete chain transmitted by ‘Amr ibn Shu‘ayb except this one alone, and another regarding gifts which he narrated from Tāwūs from Ibn ‘Abbās and Ibn ‘Umar from the Prophet (peace be upon him) concerning the prohibition of retracting gifts except for a parent regarding what they have given their child. There is nothing in this report except what is in the hadith of Ḥakīm ibn Ḥizām regarding the prohibition of selling what you do not own – only this. Success comes from Allah, the Most High.

وَمِمَّنْ قَالَ بِقَوْلِنَا فِي هَذَا: ابْنُ عَبَّاسٍ كَمَا أَوْرَدْنَاهُ.

L24112 Among those who have adopted our position on this matter is Ibn Abbas,

[10] **Hadith references (L24110):** Jami at-Tirmidhi 1234; Mishkat al-Masabih 2870.

as we have mentioned.

L24113 Just as it has been narrated to us through the chain of transmission from ʿAbd al-Razzāq, from Ibn Jurayj, who reported: Abū al-Zubayr informed me that he heard Jābir ibn ʿAbd Allāh saying: Do not conclude a sale until you take possession of it.

وَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: لَا تَبِعْ بَيْعًا حَتَّى تَقْبِضَهُ.

L24114–24116 Abd al-Razzaq reported from Maʿmar, from Ayyub al-Sikhtiyani, who said: Abd al-Rahman ibn Awf and al-Zubayr asked Umar, "Debased coins are being presented to us. Should we give the inferior ones and take the pure ones?" He replied, "Do not do that." But proceed to al-Baqīʿ and sell your silver coins for a garment or goods. Once you have received it and it is yours, then sell it, and he mentioned the hadith.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ وَالزُّبَيْرُ لِعُمَرَ: إِنَّهُ تُزَيَّفُ عَلَيْنَا أَوْرَاقٌ فَنُعْطِي الْخَبِيثَ وَنَأْخُذُ الطَّيِّبَ؟ قَالَ: فَلَا تَفْعَلُوا، وَلَكِنْ انْطَلِقْ إِلَى الْبَقِيعِ فَبِعْ وَرِقَكَ بِثَوْبٍ أَوْ عَرَضٍ، فَإِذَا قَبَضْتَ وَكَانَ لَك فَبِعْهُ وَذَكَرَ الْخَبَرَ.

L24117 Thus, Umar states this and clarifies that possession is that which makes the thing belong to a person, and our view in this matter aligns with the position of Al-Ḥasan and Ibn Shubrumah.

فَهَذَا عُمَرُ يَقُولُ بِذَلِكَ، وَيُبَيِّنُ أَنَّ الْقَبْضَ هُوَ الَّذِي يَكُونُ الشَّيْءُ لِلْمَرْءِ وَقَوْلُنَا فِي هَذَا كَقَوْلِ الْحَسَنِ، وَابْنِ شُبْرُمَةَ

L24118 Some scholars held the view that this ruling applies specifically to food, meaning that it cannot be sold before taking possession. Others maintained that it pertains exclusively to what requires measuring by volume or weighing, as narrated through Yahya ibn Saʿid al-Qattān: Saʿid ibn Abi ʿArūbah narrated from Qatādah, from ʿAbd Rabbihi, from Abī ʿIyāḍ, from ʿUthmān ibn ʿAffān: "There is no objection if a man enters into a sale and resells it before taking possession, except for what requires measuring by volume or weighing."

وَذَهَبَ قَوْمٌ إِلَى أَنَّ هَذَا الْحُكْمَ إِنَّمَا هُوَ فِي الطَّعَامِ فَقَطْ يَعْنِي أَنْ لَا يُبَاعَ قَبْلَ أَنْ يُقْبَضَ وَذَهَبَ آخَرُونَ إِلَى أَنَّهُ فِيمَا يُكَالُ أَوْ يُوزَنُ فَقَطْ: كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عَبْدِ رَبِّهِ عَنْ أَبِي عِيَاضٍ عَنْ عُثْمَانَ بْنِ عَفَّانَ: لَا بَأْسَ إِذَا اشْتَرَى الرَّجُلُ الْبَيْعَ أَنْ يَبِيعَهُ قَبْلَ أَنْ يَقْبِضَهُ مَا خَلَا الْكَيْلَ وَالْوَزْنَ.

L24119 And through the narration of Ḥammād ibn Salamah from Qatādah from Saʿīd ibn al-Musayyab: that he saw no objection to a man purchasing an item not quantified by measuring or weighing, then selling it before taking possession of it.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يَبْتَاعَ الرَّجُلُ بَيْعًا لَا يُكَالُ وَلَا يُوزَنُ أَنْ يَبِيعَهُ قَبْلَ أَنْ يَقْبِضَهُ.

L24120 From the narration of Abd al-Razzaq, from Ma'mar, from Ayyub, from Ibn Sirin, who said: There is no harm in purchasing something not measured by volume or weight with cash payment, then selling it before taking possession

of it. This is the view of al-Hakam, Ibrahim, and Hammad ibn Abi Sulayman; al-Nakha'i mentioned it from those he met.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ قَالَ: لَا بَأْسَ بِأَنْ يَشْتَرِيَ شَيْئًا لَا يُكَالُ وَلَا يُوزَنُ بِنَقْدٍ ثُمَّ يَبِيعَهُ قَبْلَ أَنْ يَقْبِضَهُ وَهُوَ قَوْلُ الْحَكَمِ وَإِبْرَاهِيمَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَذَكَرَهُ النَّخَعِيُّ عَمَّنْ لَقِيَ.

L24121 And 'Aṭā' said: It is permissible to sell anything before taking possession.

وَقَالَ عَطَاءٌ: جَائِزٌ بَيْعُ كُلِّ شَيْءٍ قَبْلَ أَنْ يَقْبِضَ.

L24122 Abu Hanifah said: Anything owned through a contract—which is nullified upon the item's destruction—is not permissible to sell before taking possession, such as sale and lease contracts, except for real estate, which may be sold before taking possession.

وَقَالَ أَبُو حَنِيفَةَ: كُلُّ مَا مُلِكَ بِعَقْدٍ يُنْتَقَضُ الْعَقْدُ بِهَلَاكِهِ، فَلَا يَجُوزُ بَيْعُهُ قَبْلَ قَبْضِهِ: كَالْبَيْعِ، وَالْإِجَارَةِ، إِلَّا الْعَقَارَ: فَجَائِزٌ بَيْعُهُ قَبْلَ قَبْضِهِ.

L24123 He said: Any property owned by virtue of a contract that is not invalidated by its perishing may be sold before taking possession, such as the dower, stipulated reward, khulʿ divorce, and similar cases. This is an opinion that, to our knowledge, no one before him has held.

قَالَ: وَكُلُّ مَا مُلِكَ بِعَقْدٍ لَا يُنْتَقَضُ الْعَقْدُ بِهَلَاكِهِ: فَجَائِزٌ بَيْعُهُ قَبْلَ قَبْضِهِ كَالصَّدَاقِ، وَالْجُعْلِ، وَالْخُلْعِ، وَنَحْوِهِ وَهَذَا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

L24124–24126 Malik said: Anything edible and water—it is impermissible to sell them before taking possession. Except for these two, selling before possession is permissible. On another occasion, he said: Only edible items. As for water, its sale is permissible before possession. In both statements, he included crops like white radish, carrots, and chard, [asking]: "Should none of these be sold before taking possession?" We replied: "No one consumes this [produce] at all, yet you objected to this [ruling]!" Regarding al-Shāfiʿī's inclusion of saqamūniyā among edible substances, they said: "Does it yield from itself what is eaten?" We responded: "If a tree yields what is eaten from it, then prohibit the sale of saqamūniyā before taking possession!" They ceased, and we do not know that this entire opinion of theirs is attributed to anyone before them.

وَقَالَ مَالِكٌ: كُلُّ مَا يُؤْكَلُ وَالْمَاءُ: فَلَا يَحِلُّ بَيْعُهُ قَبْلَ أَنْ يُقْبَضَ وَمَا عَدَا هَذَيْنِ فَجَائِزٌ بَيْعُهُ قَبْلَ أَنْ يُقْبَضَ وَقَالَ مَرَّةً أُخْرَى: كُلُّ مَا يُؤْكَلُ فَقَطْ، وَأَمَّا الْمَاءُ: فَبَيْعُهُ جَائِزٌ قَبْلَ قَبْضِهِ وَجَعَلَ فِي كِلَا قَوْلَيْهِ: زَرِيعَةَ الْفُجْلِ الْأَبْيَضِ، وَزَرِيعَةَ الْجَزَرِ، وَزَرِيعَةَ السَّلْقِ: لَا يُبَاعُ شَيْءٌ مِنْهَا قَبْلَ الْقَبْضِ؟ فَقُلْنَا: هَذَا لَا يَأْكُلُهُ أَحَدٌ أَصْلًا، وَهَذَا الَّذِي أَنْكَرْتُمْ عَلَى الشَّافِعِيِّ فِي إِدْخَالِهِ السَّقَمُونْيَا فِيمَا يُؤْكَلُ؟ فَقَالُوا: إِنَّهُ يُخْرِجُ مِنْهَا مَا يُؤْكَلُ؟ فَقُلْنَا: وَالشَّجَرُ يَخْرُجُ مِنْهَا مَا يُؤْكَلُ فَامْنَعُوا مِنْ بَيْعِهَا قَبْلَ الْقَبْضِ، فَانْقَطَعُوا وَمَا نَعْلَمُ قَوْلَهُمْ هَذَا كُلَّهُ كَمَا هُوَ عَنْ أَحَدٍ قَبْلَهُمْ.

L24127 Here, the Ḥanafīs and Mālikīs opposed every opinion narrated from the Companions—may Allah be pleased with them—on this matter. As for al-Shāfiʿī, he prohibited the sale of property acquired through sale, marriage, or khulʿ before taking possession at all. This is an unsound opinion without any evidence.

وَخَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ هَهُنَا كُلَّ قَوْلٍ رُوِيَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَأَمَّا الشَّافِعِيُّ: فَلَمْ يُجِزْ بَيْعَ مَا مُلِكَ بِبَيْعٍ، أَوْ نِكَاحٍ أَوْ خُلْعٍ، قَبْلَ الْقَبْضِ أَصْلًا وَهَذَا قَوْلٌ فَاسِدٌ بِلَا دَلِيلٍ.

L24128 If they say: "We have analogized marriage and khulʿ to sale," we respond: "All analogy is invalid. Moreover, even were analogy valid, this analogy itself would embody invalidity, for marriage is permissible without any mention of a bridal gift whatsoever, whereas sale is impermissible without a specified price. Marriage does not confer ownership of anything through a bridal gift at all, and khulʿ is likewise, in contrast to sale. Thus, the invalidity of this argument becomes evident. Success is from Allah, the Exalted."

فَإِنْ قَالُوا: قِسْنَا النِّكَاحَ وَالْخُلْعَ عَلَى الْبَيْعِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ النِّكَاحَ يَجُوزُ بِلَا مَهْرٍ يُذْكَرُ أَصْلًا، وَلَا يَجُوزُ الْبَيْعُ بِلَا ثَمَنٍ يُذْكَرُ، وَالنِّكَاحُ لَمْ يُمْلَكْ بِصَدَاقٍ رَقَبَةَ شَيْءٍ أَصْلًا، وَالْخُلْعُ كَذَلِكَ، بِخِلَافِ الْبَيْعِ فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L24129 As for the ruling on wheat: [it is] what we previously mentioned in the connected discourse from Ibn Abbas' narration about the Prophet—peace and blessings of Allah be upon him—that the Messenger of Allah—peace and blessings of Allah be upon him—prohibited selling until taking possession applies specifically to food. This specifies a ruling for food in sale exclusively while establishing its general applicability through any means of ownership.

أَمَّا حُكْمُ الْقَمْحِ: فَالَّذِي ذَكَرْنَا قَبْلَ هَذَا فِي الْكَلَامِ الْمُتَّصِلِ بِهَذَا مِنْ حَدِيثِ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَّا الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبَاعَ حَتَّى يُقْبَضَ فَهُوَ الطَّعَامُ، فَهَذَا تَخْصِيصٌ لِلطَّعَامِ فِي الْبَيْعِ خَاصَّةً وَعُمُومٌ لَهُ بِأَيِّ وَجْهٍ مُلِكَ.

L24130 If it is asked: "On what basis have you specified wheat with that ruling to the exclusion of other foods?" We say: Because the term "food" in the language in which the Messenger of Allah—peace and blessings be upon him—addressed us is applied exclusively to wheat, and it is only applied to other things through annexation.

فَإِنْ قِيلَ: مِنْ أَيْنَ خَصَّصْتُمْ الْقَمْحَ بِذَلِكَ دُونَ سَائِرِ الطَّعَامِ؟ قُلْنَا: لِأَنَّ اسْمَ الطَّعَامِ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُطْلَقُ هَذَا إلَّا عَلَى الْقَمْحِ وَحْدَهُ، وَإِنَّمَا يُطْلَقُ عَلَى غَيْرِهِ بِإِضَافَةٍ.

L24131 The Almighty has said: **{The food of those who were given the Scripture is lawful for you, and your food is lawful for them}** [Al-Mā'idah: 5]. Thus, He, Exalted and Majestic, meant slaughtered animals—not what they eat—for they eat carrion, blood, and pork, and none of that has ever been permissible for us.[11]

وَقَدْ قَالَ تَعَالَى: {وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ} [المائدة: ٥] فَأَرَادَ عَزَّ وَجَلَّ الذَّبَائِحَ لَا مَا يَأْكُلُونَ فَإِنَّهُمْ يَأْكُلُونَ الْمَيْتَةَ، وَالدَّمَ، وَالْخِنْزِيرَ، وَلَمْ يَحِلَّ لَنَا شَيْءٌ مِنْ ذَلِكَ قَطُّ.

[11] **Qur'an references (L24131):** Qur'an 5:5 (Al-Ma'idah).

وَقَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنَّ اللَّهَ مُبْتَلِيكُمْ بِنَهَرٍ فَمَنْ شَرِبَ مِنْهُ فَلَيْسَ مِنِّي وَمَنْ لَمْ يَطْعَمْهُ فَإِنَّهُ مِنِّي} [البقرة: ٢٤٩] فَذَكَرَ تَعَالَى الطُّعْمَ فِي الْمَاءِ بِإِضَافَةٍ، وَلَا يُسَمَّى الْمَاءُ طَعَامًا.

L24132 Allah, the Mighty and Majestic, said: “Indeed, Allah will test you with a river. Whoever drinks from it is not of me, and whoever does not taste it, he is with me” [Al-Baqarah 2:249]. He, the Exalted, mentioned the tasting in water through metaphorical attribution, yet water is not called food.[12]

وَقَالَ لَقِيطُ بْنُ مَعْمَرٍ الْإِيَادِيُّ جَاهِلِيٌّ فَصِيحٌ فِي شِعْرٍ لَهُ مَشْهُورٌ:

L24133–24134 Laqīṭ ibn Maʿmar al-Iyādī—an eloquent pre-Islamic poet with renowned poetry—

لَا يَطْعَمُ النَّوْمَ إِلَّا رَيْثَ يَبْعَثُهُ ... هَمٌّ يَكَادُ جَوَاهُ يَحْطِمُ الضِّلَعَا

L24135 He does not taste sleep except until a worry—whose core nearly shatters his ribs—awakens him...

فَأَضَافَ الطُّعْمَ إِلَى النَّوْمِ وَالنَّوْمُ لَيْسَ طَعَامًا بِلَا شَكٍّ.

L24136 He attributed taste to sleep, and sleep is undoubtedly not taste.

وَقَدْ ذَكَرْنَا قَوْلَ عَبْدِ اللَّهِ بْنِ مَعْمَرٍ وَكَانَ طَعَامُنَا يَوْمَئِذٍ الشَّعِيرَ، فَذَكَرَ الطَّعَامَ فِي الشَّعِيرِ فِي إِضَافَةٍ لَا بِإِطْلَاقٍ.

L24137 We mentioned the statement of Abdullah ibn Ma’mar, and our food at that time was barley. Ibn Ma’mar mentioned the food concerning barley in a genitive construct (iḍāfa), not in an absolute form.

وَقَدْ ذَكَرْنَا مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ قَوْلَهُ: كُنَّا نُخْرِجُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ الْفِطْرِ: صَاعًا مِنْ طَعَامٍ، صَاعًا مِنْ شَعِيرٍ، صَاعًا مِنْ تَمْرٍ، صَاعًا مِنْ أَقِطٍ فَلَمْ يُطْلِقِ الطَّعَامَ إِلَّا عَلَى الْقَمْحِ وَحْدَهُ.

L24138 We have mentioned through the narration of Abū Saʿīd al-Khudrī his statement: “During the time of the Messenger of Allah (peace be upon him), we used to give Sadaqat al-Fitr as one saʿa of food—specifically wheat—one saʿa of barley, one saʿa of dates, one saʿa of dried curd.” Yet the term “food” here referred solely to wheat.

لَا عَلَى الشَّعِيرِ وَلَا غَيْرِهِ.

L24139 It does not apply to barley or to anything else.

وَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ إِبْرَاهِيمَ أَنَا مُحَمَّدُ بْنُ سِيرِينَ قَالَ: عَرَضَ عَلَيَّ عَبْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ زَيْتًا لَهُ؟ فَقُلْت لَهُ: إنَّ أَصْحَابَ الزَّيْتِ قَلَّمَا يَسْتَوْفُونَ حَتَّى يَبِيعُونَ، فَقَالَ: إنَّمَا سُمِّيَ الطَّعَامُ أَيْ إنَّمَا أَمَرَ بِالْبَيْعِ بَعْدَ الِاسْتِيفَاءِ فِي الطَّعَامِ فَلَمْ يَرَ الزَّيْتَ طَعَامًا.

L24140 It was narrated to us via Al-Ḥajjāj ibn al-Minhāl: Yazīd ibn Ibrāhīm narrated to us: Muḥammad ibn Sīrīn said: ʿAbdullāh ibn ʿUtbah ibn Masʿūd presented his oil to me. I said to him: “Oil owners seldom complete their transactions until they sell.” He replied: “The term ’food’ was explicitly designated—meaning the command to sell applies only after full acquisition regarding food—so he did not consider oil to be food.”

وَأَبُو سَعِيدٍ الْخُدْرِيُّ وَعَبْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ: حُجَّتَانِ فِي اللُّغَةِ قَاطِعَتَانِ، لَا سِيَّمَا وَعَبْدُ اللَّهِ هُذَلِيٌّ قَبِيلَةٌ مُجَاوِرَةٌ لِلْحَرَمِ فَلُغَتُهُمْ لُغَةُ قُرَيْشٍ.

L24141 Abu Sa’id al-Khudri and Abdullah ibn Utbah ibn Mas’ud: two decisive linguistic proofs; especially since Abdullah is a Hudhali - a member of a tribe neighboring the Haram - and thus their dialect is the dialect of Quraysh.

[12] **Qur’an references (L24132):** Qur’an 2:249 (Al-Baqarah).

L24142 And among those who upheld our view—that “food” in its general meaning refers solely to wheat—was Abū Thawr.

وَمِمَّنْ قَالَ بِقَوْلِنَا: إِنَّ الطَّعَامَ بِإِطْلَاقٍ إِنَّمَا هُوَ الْقَمْحُ وَحْدَهُ: أَبُو ثَوْرٍ

L24143 As for wheat purchased without precise measurement, it is not permissible to sell it until it is taken possession of and removed from its location. This is based on what we have narrated through the transmission of al-Bukhārī: From Isḥāq ibn Rāhawayh, from al-Walīd ibn Muslim, from al-Awzāʿī, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father—may Allah be pleased with him—who said: “I saw those who bought food without precise measurement being struck during the era of Allah’s Messenger—peace and blessings be upon him—if they sold it before taking it to their dwellings.”

وَأَمَّا الْقَمْحُ يُشْتَرَى جُزَافًا فَلَا يَحِلُّ بَيْعُهُ حَتَّى يُقْبَضَ وَيُنْقَلَ عَنْ مَوْضِعِهِ: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا إِسْحَاقُ هُوَ ابْنُ رَاهْوَيْهِ أَنَا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ «عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: رَأَيْتُ الَّذِينَ يَشْتَرُونَ الطَّعَامَ مُجَازَفَةً يُضْرَبُونَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعُوهُ حَتَّى يُؤْوُوهُ إلَى رِحَالِهِمْ» .

L24144–24146 And we have narrated it through the chain of Muslim: Muhammad ibn Abdullah ibn Numayr reported: My father reported to me, from Abdullah ibn Umar, from Nafiʾ, from Ibn Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: “Whoever purchases food must not sell it until he has taken full possession of it.” He said, “We used to buy food from caravan travelers without weighing it, but the Messenger of Allah (peace be upon him) forbade us from selling it until we took possession of it.”

وَرُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ أَنَا أَبِي أَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ اشْتَرَى طَعَامًا فَلَا يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ قَالَ وَكُنَّا نَشْتَرِي الطَّعَامَ مِنْ الرُّكْبَانِ جُزَافًا فَنَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَبِيعَهُ حَتَّى نَنْقُلَهُ مِنْ مَكَانِهِ»

L24147 And through the chain of Muslim: I am Abū Bakr ibn Abī Shaybah, from ʿAbd al-Aʿlā, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from Ibn ʿUmar: That during the time of the Messenger of Allāh (may Allah’s peace and blessings be upon him), they were punished if they purchased food in bulk and then sold it in the same place before moving it.[13]

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ «عَنْ ابْنِ عُمَرَ: أَنَّهُمْ كَانُوا يُضْرَبُونَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا اشْتَرَوْا طَعَامًا جُزَافًا أَنْ يَبِيعُوهُ فِي مَكَانِهِ حَتَّى يُحَوِّلُوهُ» .

L24148 Abu Muhammad said: It is inconceivable for anyone other than him—peace be upon him—to enforce upon the Muslims in Medina a law they are commanded to follow in the markets without his knowledge whatsoever. Thus, it is established that this constitutes a grave transgression for which no concession is permitted.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يُمْكِنُ أَنْ يَكُونَ غَيْرُهُ - عَلَيْهِ السَّلَامُ - يَضْرِبُ الْمُسْلِمِينَ بِالْمَدِينَةِ عَلَى شَرِيعَةٍ يُؤْمَرُونَ بِهَا فِي الْأَسْوَاقِ بِغَيْرِ عِلْمِهِ أَصْلًا فَصَحَّ أَنَّهُ جُرْمٌ كَبِيرٌ لَا يُرَخَّصُ فِيهِ.

L24149 If it is said: “In some of what you have narrated, [the wording] is ’until they shelter him in their encampments’?” We respond: Yes, and any place he is

فَإِنْ قِيلَ: إنَّ فِي بَعْضِ مَا رَوَيْتُمْ “ حَتَّى يُؤْوُوهُ إلَى رِحَالِهِمْ ”؟ قُلْنَا: نَعَمْ، وَكُلُّ مَكَانٍ رَحَّلَهُ إلَيْهِ فَهُوَ رَحْلٌ لَهُ إذَا كَانَ مُبَاحًا لَهُ أَنْ يُرَحِّلَهُ إلَيْهِ.

[13] **Hadith references (L24147):** Sahih Muslim 1527c.

relocated to becomes his encampment, provided it is permissible to relocate him there.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ هَذَا الْحَدِيثَ عَنْ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ فَلَمْ يَذْكُرْ فِيهِ الْجُزَافَ؟ قُلْنَا: عُبَيْدُ اللَّهِ بْنُ عُمَرَ إِنْ لَمْ يَكُنْ فَوْقَ مَالِكٍ، وَإِلَّا فَلَيْسَ هُوَ دُونَهُ أَصْلًا وَقَدْ رَوَاهُ عَنْ نَافِعٍ فَذَكَرَ فِيهِ الْجُزَافَ.

L24150 If it is said: You have narrated this ḥadīth from Mālik, from Nāfiʿ, from Ibn ʿUmar—yet Mālik did not mention the approximation sale (al-juzāf) in his transmission? We respond: Even if ʿUbayd Allāh ibn ʿUmar is not ranked above Mālik in reliability, he is certainly not beneath him in status. For ʿUbayd Allāh narrated it from Nāfiʿ and explicitly mentioned the approximation sale in his transmission.

وَرَوَاهُ الزُّهْرِيُّ عَنْ سَالِمٍ كَمَا أَوْرَدْنَا فَذَكَرَ فِيهِ الْجُزَافَ وَهُوَ خَبَرٌ وَاحِدٌ بِلَا شَكٍّ.

L24151 Az-Zuhri also narrated it from Salim as we have cited, and he mentioned the juzāf (approximation-based sale) within it, and this is unquestionably a solitary report (khabar wāḥid).

وَجُمْهُورُ الرُّوَاةِ عَنْ مَالِكٍ لِهَذَا الْحَدِيثِ فِي الْمُوَطَّأِ وَغَيْرِهِ ذَكَرُوا فِيهِ عَنْهُ الْجُزَافَ، كَمَا ذَكَرَهُ عُبَيْدُ اللَّهِ عَنْ نَافِعٍ، وَالزُّهْرِيُّ عَنْ سَالِمٍ، وَإِنَّمَا أَسْقَطَ ذِكْرَ الْجُزَافِ: الْقَعْنَبِيُّ، وَيَحْيَى، فَقَطْ فَصَحَّ أَنَّهُمَا وَهُمَا فِيهِ بِلَا شَكٍّ، لِأَنَّهُ يَتَعَيَّنُ خَبَرُ وَاحِدٍ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L24152 The majority of narrators from Mālik regarding this ḥadīth in the *Muwaṭṭaʾ* and other works mentioned *juzāf* in it, just as ʿUbayd Allāh narrated from Nāfiʿ and al-Zuhrī from Sālim. Only al-Qaʿnabī and Yaḥyā omitted the mention of *juzāf*. Thus, it was established that their omission in this matter is undoubtedly sound, as it is restricted to a solitary report. With Allāh, the Exalted, lies success.

وَإِنَّمَا كَانَ يَصِحُّ الْأَخْذُ بِرِوَايَةِ الْقَعْنَبِيِّ، وَيَحْيَى، لَوْ أَمْكَنَ أَنْ يَكُونَا خَبَرَيْنِ اثْنَيْنِ عَنْ مُوَطَّئَيْنِ مُخْتَلِفَيْنِ وَقَوْلُنَا هَهُنَا هُوَ قَوْلُ الشَّافِعِيِّ وَأَبِي سُلَيْمَانَ، وَلَمْ يَقُلْ بِهِ مَالِكٌ، وَلَا نَعْلَمُ لِمُقَلِّدِهِ وَلَا لَهُ حُجَّةً أَصْلًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L24153–24155 The validity of adopting the narrations of Al-Qaʿnabī and Yaḥyā would only apply if they could be two reports from two different transmitters of the Muwatta. Our view here is the position of Al-Shāfiʿī and Abū Sulaymān. Mālik did not hold this view, and we are unaware of any evidence for it from him or his emulator at all. And all divine enablement is from Allah, the Exalted.

وَأَمَّا الْقَمْحُ يَبْتَاعُهُ الْمَرْءُ بِكَيْلٍ فَلَا يَحِلُّ لَهُ بَيْعُهُ حَتَّى يَكْتَالَهُ لِنَفْسِهِ، ثُمَّ يَكْتَالُهُ الَّذِي يَبِيعُ مِنْهُ وَلَا بُدَّ سَوَاءٌ حَضَرَا كِلَاهُمَا كَيْلَهُ قَبْلَ ذَلِكَ أَوْ لَمْ يَحْضُرَا، فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارِ أَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحِيمِ أَنَا مُسْلِمٌ هُوَ ابْنُ إِبْرَاهِيمَ أَنَا مَخْلَدُ بْنُ الْحُسَيْنِ الْأَزْدِيُّ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ

L24156 As for wheat that a person purchases by measure, it is not lawful for him to sell it until he measures it for himself. Then the seller must measure it again, regardless of whether both parties were present during the initial measurement or not. This is based on what we have transmitted through the chain of Ahmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār: I heard from Muḥammad ibn ʿAbd al-Raḥīm, who heard from Muslim ibn Ibrāhīm, who heard from Makhlad ibn al-Ḥusayn al-Azdī, from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn, from Abū Hurayrah, who said: “The Messenger of Allah (peace and blessings be upon him) prohibited the sale of food until two

sa‘ measures have been duly measured, whereby the surplus belongs to the owner and the deficit rests upon the seller.”

«نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الطَّعَامِ حَتَّى يَجْرِيَ فِيهِ الصَّاعَانِ، فَيَكُونُ لِصَاحِبِهِ الزِّيَادَةُ وَعَلَيْهِ النُّقْصَانُ» .

L24157 We have narrated it through the chain of Abū Bakr ibn Abī Shaybah who said: I [heard from] Sharīq, from Ibn Abī Laylā, from Muḥammad ibn Bayān, from Ibn ‘Umar, that he was asked about one who purchased food while having witnessed its measurement. He said: “No, until the two *sa‘*s have been applied to it.”

وَرُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا شَرِيكٌ عَنْ ابْنِ أَبِي لَيْلَى عَنْ مُحَمَّدِ بْنِ بَيَانٍ عَنْ ابْنِ عُمَرَ أَنَّهُ سُئِلَ عَمَّنْ اشْتَرَى الطَّعَامَ وَقَدْ شَهِدَ كَيْلَهُ؟ قَالَ: لَا، حَتَّى يَجْرِيَ فِيهِ الصَّاعَانِ.

L24158 Narrated via Ibn Abi Shaybah: Muhammad ibn Fudayl reported from Mutarrif (who is the son of Tarif): I said to Al-Sha’bi: “If I witness food being measured as it is portioned and then purchase it, do I take it by its measured quantity?” He replied: “With every transaction comes a measuring.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ مُطَرِّفٍ هُوَ ابْنُ طَرِيفٍ قُلْت لِلشَّعْبِيِّ: أَكُونُ شَاهِدَ الطَّعَامِ وَهُوَ يُكَالُ فَأَشْتَرِيهِ، آخُذُهُ بِكَيْلِهِ؟ فَقَالَ: مَعَ كُلِّ صَفْقَةٍ كَيْلَةٌ

L24159 From the narration of Ibn Abi Shaybah: Marwan narrates from Ziyad, the freed slave of the family of Sa‘d, who said: I asked Sa‘id ibn al-Musayyib, “A man purchased food and then measured it. Is it permissible for me to buy it based on his measurement?” He replied: “No, until it is measured in your presence.” It is authentically reported from him that he said regarding this matter: “This is riba.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مَرْوَانُ عَنْ زِيَادٍ مَوْلَى آلِ سَعْدٍ قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ: رَجُلٌ ابْتَاعَ طَعَامًا فَاكْتَالَهُ، أَيَصْلُحُ لِي أَنْ اشْتَرِيهِ بِكَيْلِ الرَّجُلِ؟ قَالَ: لَا، حَتَّى يُكَالَ بَيْنَ يَدَيْك وَصَحَّ عَنْهُ أَنَّهُ قَالَ فِيهِ: هَذَا رِبًا.

L24160 And from the narration of Ibn Abi Shaybah: Zayd ibn al-Hubab reported from Sawadah ibn Hayyan, who said: I heard Muhammad ibn Sirin being asked about two men, one of whom purchased food while the other was with him. He said: “Did you witness the sale and the taking possession?” The man said: “Take profit from me and give it to me.” He replied: “No, until the two sa‘ measures have been applied to it, so that the surplus would belong to you and the shortfall would be your liability.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا زَيْدُ بْنُ الْحُبَابِ عَنْ سَوَادَةَ بْنِ حَيَّانَ سَمِعْت مُحَمَّدَ بْنَ سِيرِينَ سُئِلَ عَنْ رَجُلَيْنِ اشْتَرَى أَحَدُهُمَا طَعَامًا وَالْآخَرُ مَعَهُ؟ فَقَالَ: قَدْ شَهِدْت الْبَيْعَ وَالْقَبْضَ؟ فَقَالَ: خُذْ مِنِّي رِبْحًا وَأَعْطِنِيهِ فَقَالَ: لَا، حَتَّى يَجْرِيَ فِيهِ الصَّاعَانِ، فَتَكُونُ لَك زِيَادَتُهُ وَعَلَيْك نُقْصَانُهُ.

L24161 Narrated via Ibn Abī Shaybah: From Waki‘, via ‘Umar Abī Ḥafṣ, who said: I heard Al-Ḥasan Al-Baṣrī being asked about someone who buys food while watching it be measured. What is the ruling? He replied: No, until he measures it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ عُمَرَ أَبِي حَفْصٍ قَالَ: سَمِعْت الْحَسَنَ الْبَصْرِيَّ وَسُئِلَ عَمَّنْ اشْتَرَى طَعَامًا مَا وَهُوَ يَنْظُرُ إلَى كَيْلِهِ؟ قَالَ: لَا، حَتَّى يَكِيلَهُ.

L24162–24164 Through the chain of Abd al-Razzaq, from Ma’mar, from al-Zuhri, from Sa’id ibn al-Musayyib, who said: In the year that passed, whoever purchases

food or fat by measure must measure it before selling it. When he sells it... It is also measured by volume when sold by measure, and this is the opinion of Ata ibn Abi Rabah, Abu Hanifah, al-Shafi'i, Ahmad ibn Hanbal, Ishaq, and Abu Sulayman.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: فِي السَّنَةِ الَّتِي مَضَتْ: إنَّ مَنْ ابْتَاعَ طَعَامًا أَوْ وَدَكًا كَيْلًا أَنْ يَكْتَالَهُ قَبْلَ أَنْ يَبِيعَهُ، فَإِذَا بَاعَهُ اُكْتِيلَ مِنْهُ أَيْضًا إذَا بَاعَهُ كَيْلًا وَهُوَ قَوْلُ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ.

L24165 Malik said: When a sale is made with immediate payment, there is no harm in trusting the seller's stated measurement without measuring it, but this is disliked in deferred payment. This is an opinion not known from anyone before him. He opposed in this matter a scholar (from earlier authorities) who had no known opposition from them, and contradicted the majority of scholars. We know of no valid proof for his opinion at all - neither from Quranic text, nor Sunnah, nor weak narration, nor analogy, nor any rationally plausible juristic reasoning.

وَقَالَ مَالِكٌ: إذَا بِيعَ بِالنَّقْدِ فَلَا بَأْسَ بِأَنْ يُصَدِّقَ الْبَائِعَ فِي كَيْلِهِ وَلَا يَكْتَالُهُ وَيُكْرَهُ ذَلِكَ فِي الدَّيْنِ وَهَذَا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَخَالَفَ فِيهِ صَاحِبًا لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ، وَخَالَفَ فِيهِ جُمْهُورَ الْعُلَمَاءِ، وَمَا نَعْلَمُ لِقَوْلِهِ حُجَّةً أَصْلًا، لَا مِنْ نَصِّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

L24166 If it is said: You have narrated through the chain of Abū Dāwūd from Muḥammad ibn ʿAwf al-Ṭāʾī—from Aḥmad ibn Khālid al-Wahbī—Muḥammad ibn Isḥāq narrated to us from Abī al-Zinād from ʿUbayd ibn Ḥunayn from Ibn ʿUmar, who said: "I purchased oil in the market, and when the sale became binding, a man met me offering a good profit for it. I intended to confirm the transaction, but a man behind me seized my arm. I turned and found Zayd ibn Thābit, who said: 'Do not sell it where you bought it until you take possession of it at your premises, for the Messenger of Allah—peace and blessings be upon him—forbade selling goods where they are purchased until merchants transfer them to their own premises.'"? We respond: This was narrated by Aḥmad ibn Khālid al-Wahbī, who is unknown. By Allah, even if it were authenticated by our criteria, we would hasten to act upon it. We praise Allah for the abundance He has enabled us to achieve in this regard.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ مُحَمَّدِ بْنِ عَوْفٍ الطَّائِيِّ أَنَا أَحْمَدُ بْنُ خَالِدٍ الْوَهْبِيُّ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ أَبِي الزِّنَادِ عَنْ عُبَيْدِ بْنِ حُنَيْنٍ عَنْ ابْنِ عُمَرَ قَالَ: «ابْتَعْتُ زَيْتًا فِي السُّوقِ فَلَمَّا اسْتَوْجَبْتُهُ لَقِيَنِي رَجُلٌ أَعْطَانِي بِهِ رِبْحًا حَسَنًا فَأَرَدْتُ أَنْ أَضْرِبَ عَلَى يَدِي، فَأَخَذَ رَجُلٌ مِنْ خَلْفِي بِذِرَاعِي فَالْتَفَتُّ فَإِذَا زَيْدُ بْنُ ثَابِتٍ فَقَالَ: لَا تَبِعْهُ حَيْثُ ابْتَعْتَهُ حَتَّى تَحُوزَهُ إلَى رَحْلِكَ؟ فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ تُبَاعَ السِّلَعُ حَيْثُ تُبْتَاعَ حَتَّى تَحُوزَهَا التُّجَّارُ إلَى رِحَالِهِمْ» ؟ قُلْنَا: هَذَا رَوَاهُ أَحْمَدُ بْنُ خَالِدٍ الْوَهْبِيُّ وَهُوَ مَجْهُولٌ وَبِاَللَّهِ لَوْ صَحَّ عِنْدَنَا لَسَارَعْنَا إلَى الْأَخْذِ بِهِ نَحْمَدُ اللَّهَ عَلَى مَا يَسَّرَنَا لَهُ مِنْ ذَلِكَ كَثِيرًا.

L24167 In all these matters we have mentioned, whoever acts contrary to them has irrevocably invalidated. If the report had reached him, he would be flogged as the Messenger of Allah (peace be upon him) commanded.

وَكُلُّ مَا ذَكَرْنَا فِي هَذِهِ الْمَسَائِلِ فَمَنْ فَعَلَ خِلَافَ ذَلِكَ فُسِخَ أَبَدًا، فَإِنْ كَانَ قَدْ بَلَغَهُ الْخَبَرَ ضُرِبَ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24168 And Ibn Umar narrated that the Prophet, peace be upon him, said: "Whoever performs a deed not in accordance with our command, it is rejected."

L24169 **The issue of partnership (sharikah), mutual dissolution (iqalah), and cost-price sale (tawliyah); all are newly initiated sale transactions.**

L24170 1509 - Issue:

L24171 Partnership, rescission by mutual consent, and resale at cost are all commenced transactions; none of them are permissible except what is permissible in all other sales, without exception. This is the position of Al-Shāfiʿī and our school's scholars regarding partnership and resale at cost.

L24172–24174 They said: Mutual rescission is the revocation of a sale and is not itself a sale. Rabiʿah and Malik said: Every case where it is not permissible [...] The sale before taking possession or before measuring by volume is permissible in cases of partnership, resale at cost, and cancellation by mutual consent before taking possession or measuring. This has been narrated from al-Ḥasan specifically regarding resale at cost.

L24175 They cited as evidence what we have narrated through the chain of ʿAbd al-Razzāq, who said: Ibn Jurayj reported to me that Rabīʿah ibn Abī ʿAbd al-Raḥmān informed him that the Messenger of Allah—peace be upon him—narrated a well-known ḥadīth in Medina: "Whoever purchases food must not sell it until he takes possession of it and completes its full receipt, unless he enters into a partnership over it, resells it at cost price, or accepts it."

L24176 Malik said: The scholars unanimously held that there is no objection to partnership, mutual rescission (iqālah), and resale at cost (tawliyah) in food and other matters - meaning before taking possession. Abu Muhammad said: We know of no narrations about this except those reported solely through Rabi'ah and Tawus. As for Abu Muhammad's attribution to Al-Hasan regarding tawliyah, a contradictory position from Al-Hasan himself has been transmitted.

L24177 Ali said: As for the narration of Rabiʿah, it is *mursal*, and there is no proof

وَرَوَاهُ ابْنُ عُمَرَ قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ»

[مَسْأَلَة الشَّرِكَة وَالْإِقَالَة والتولية كُلّهَا بُيُوع مُبْتَدَأَة]

١٥٠٩ - مَسْأَلَةٌ:

وَالشَّرِكَةُ، وَالْإِقَالَةُ، وَالتَّوْلِيَةُ: كُلُّهَا بُيُوعٌ مُبْتَدَأَةٌ لَا يَجُوزُ فِي شَيْءٍ مِنْهَا إلَّا مَا يَجُوزُ فِي سَائِرِ الْبُيُوعِ لَا تَحَاشَ، شَيْئًا وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِنَا فِي الشَّرِكَةِ، وَالتَّوْلِيَةِ.

وَقَالُوا: الْإِقَالَةُ فَسْخُ بَيْعٍ، وَلَيْسَتْ بَيْعًا، وَقَالَ رَبِيعَةُ، وَمَالِكٌ: كُلُّ مَا لَا يَجُوزُ فِيهِ الْبَيْعُ قَبْلَ الْقَبْضِ أَوْ قَبْلَ الِاكْتِيَالِ فَإِنَّهُ لَا بَأْسَ فِيهِ بِالشَّرِكَةِ، وَالتَّوْلِيَةِ، وَالْإِقَالَةِ قَبْلَ الْقَبْضِ، وَقَبْلَ الِاكْتِيَالِ وَرُوِيَ هَذَا عَنْ الْحَسَنِ فِي التَّوْلِيَةِ فَقَطْ.

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي رَبِيعَةُ بْنُ أَبِي عَبْدِ الرَّحْمَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ حَدِيثًا مُسْتَفَاضًا فِي الْمَدِينَةِ «مَنْ ابْتَاعَ طَعَامًا فَلَا يَبِعْهُ حَتَّى يَقْبِضَهُ وَيَسْتَوْفِيَهُ، إلَّا أَنْ يُشْرِكَ فِيهِ أَوْ يُوَلِّيَهُ أَوْ يَقْبَلَهُ» .

وَقَالَ مَالِكٌ: إنَّ أَهْلَ الْعِلْمِ اجْتَمَعَ رَأْيُهُمْ عَلَى أَنَّهُ لَا بَأْسَ بِالشَّرِكَةِ، وَالْإِقَالَةِ، وَالتَّوْلِيَةِ فِي الطَّعَامِ وَغَيْرِهِ يَعْنِي قَبْلَ الْقَبْضِ قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ رُوِيَ هَذَا إلَّا عَنْ رَبِيعَةَ، وَعَنْ طَاوُسٍ فَقَطْ - وَقَوْلُهُ عَنْ الْحَسَنِ فِي التَّوْلِيَةِ قَدْ جَاءَ عَنْهُ خِلَافُهَا.

in a *mursal* narration. Had it been supported by an *isnād*, we would have quickly accepted it. If its widespread transmission had originated from an authentic source, al-Zuhrī would have been more likely to know that than Rabiʿah, for there is a vast difference between them in this matter. Moreover, al-Zuhrī contradicts him in that.

قَالَ عَلِيٌّ: أَمَّا خَبَرُ رَبِيعَةَ فَمُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَوْ اسْتَنَدَ لَسَارَعْنَا إِلَى الْأَخْذِ بِهِ، وَلَوْ كَانَتْ اسْتِفَاضَتُهُ عَنْ أَصْلٍ صَحِيحٍ لَكَانَ الزُّهْرِيُّ أَوْلَى بِأَنْ يَعْرِفَ ذَلِكَ مِنْ رَبِيعَةَ، فَبَيْنَهُمَا فِي هَذَا الْبَابِ بَوْنٌ بَعِيدٌ، وَالزُّهْرِيُّ مُخَالِفٌ لَهُ فِي ذَلِكَ.

L24178 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: "Tawliya is a sale in food and other items." And through him (ʿAbd al-Razzāq) to Maʿmar from Ayyūb al-Sikhtiyānī, who said: Ibn Sīrīn said: "There is no tawliya until it is taken possession of and measured."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: التَّوْلِيَةُ بَيْعٌ فِي الطَّعَامِ وَغَيْرِهِ وَبِهِ إِلَى مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: قَالَ ابْنُ سِيرِينَ: لَا تَوْلِيَةَ حَتَّى يُقْبَضَ وَيُكَالَ.

L24179 From the narration chain of Al-Ḥajjāj ibn al-Minhāl: Ar-Rabīʿ ibn Ṣubayḥ reported: I asked Al-Ḥasan about a man who purchases food then transfers it to the man (before taking possession). He said: "He may not transfer it until he takes possession of it." ʿAbd al-Malik ibn ash-Shaʿshaʿ said to him: "O Abā Saʿīd, do you state this by your opinion?" He replied: "I do not state it by my opinion, but rather we received it from our predecessors and our companions."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا الرَّبِيعُ بْنُ صُبَيْحٍ قَالَ: سَأَلْت الْحَسَنَ عَنْ الرَّجُلِ يَشْتَرِي الطَّعَامَ فَيُوَلِّيهِ الرَّجُلَ؟ قَالَ: لَيْسَ لَهُ أَنْ يُوَلِّيَهُ حَتَّى يَقْبِضَهُ؟ فَقَالَ لَهُ عَبْدُ الْمَلِكِ بْنُ الشَّعْشَاعِ: يَا أَبَا سَعِيدٍ أَبِرَأْيِك تَقُولُهُ؟ قَالَ: لَا أَقُولُهُ بِرَأْيِي، وَلَكِنَّا أَخَذْنَاهُ عَنْ سَلَفِنَا، وَأَصْحَابِنَا

L24180–24182 Ali said: Al-Hasan's predecessors were the Companions - may Allah be pleased with them. He encountered over five hundred Companions, fought in expeditions alongside hundreds of them, and his companions were the senior Followers. If someone were to advance a claim of consensus here, it would be more valid than the consensus mentioned by Malik without doubt, through the chain of... From ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Zakariyyā ibn Abī Zāʾidah and Fiṭr ibn Khalīfah. Zakariyyā reported from al-Shaʿbī, while Fiṭr reported from al-Ḥakam. Then al-Shaʿbī and al-Ḥakam concurred that *tawlīyah* (sale at cost price) constitutes a valid sale. Sufyān said: We hold that partnership is governed by the rules of sale, and one does not form a partnership until taking possession. Such were the rulings of the Companions and the Successors, as evident here.

قَالَ عَلِيٌّ: سَلَفُ الْحَسَنِ هُمْ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -، أَدْرَكَ مِنْهُمْ خَمْسَمِائَةِ صَاحِبٍ وَأَكْثَرَ، وَغَزَا مَعَ مِئِينَ مِنْهُمْ وَأَصْحَابُهُ هُمْ أَكَابِرُ التَّابِعِينَ، فَلَوْ أَقْدَمَ امْرُؤٌ عَلَى دَعْوَى الْإِجْمَاعِ هَهُنَا لَكَانَ أَصَحَّ مِنْ الْإِجْمَاعِ الَّذِي ذَكَرَهُ مَالِكٌ بِلَا شَكٍّ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ وَفِطْرِ بْنِ خَلِيفَةَ، قَالَ زَكَرِيَّا عَنْ الشَّعْبِيِّ، وَقَالَ فِطْرٌ: عَنْ الْحَكَمِ، ثُمَّ اتَّفَقَ الشَّعْبِيُّ، وَالْحَكَمُ: عَلَى أَنَّ التَّوْلِيَةَ بَيْعٌ، قَالَ سُفْيَانُ: وَنَحْنُ نَقُولُ: وَالشَّرِكَةُ بَيْعٌ، وَلَا يُشْرِكُ حَتَّى يَقْبِضَ فَهَؤُلَاءِ الصَّحَابَةُ، وَالتَّابِعُونَ كَمَا تَرَى.

L24183 Abu Muhammad said: Partnership and tawliyah are nothing but the transfer of a person's ownership of a specific item for which his ownership is valid, or a portion of a specific item for which his ownership is valid, to another's ownership for a stipulated price. This is the sale itself. This description

قَالَ أَبُو مُحَمَّد: الشَّرِكَةُ، وَالتَّوْلِيَةُ، إنَّمَا هُوَ نَقْلُ مِلْكِ الْمَرْءِ عَيْنًا مَا صَحَّ مِلْكُهُ لَهَا، أَوْ بَعْضَ عَيْنٍ مَا صَحَّ مِلْكُهُ لَهَا إلَى مِلْكِ غَيْرِهِ بِثَمَنٍ مُسَمًّى وَهَذَا هُوَ الْبَيْعُ نَفْسُهُ، لَيْسَتْ هَذِهِ

belongs solely to sale, and no sale can fundamentally exist except with this description. Thus, it is established that both are valid sales, and they do not disagree with us that only what is permissible in a sale applies to these two - except in what we have mentioned here alone. This amounts to a specification without proof.

L24184 As for the Ḥanafīs: they uphold the mursal report, yet they violated their principle here by disregarding the mursal report of Rabīʿah that we mentioned. We do not know that the Mālikīs used any proof beyond what we have mentioned, except that some of them argued: "Are partnership, resale at cost, and mutual rescission not customary norms?" We responded: "What of it? Sale too is a customary norm, and we have never observed customary norms that permit unlawful matters. Were this the case, they would be reprehensible rather than customary."

L24185 And we will discuss, if Allah, the Exalted, wills, the matter of mutual cancellation subsequent to this issue in a separate issue. There is no might nor power except with Allah, the Most High, the Almighty.

L24186 The issue of whether mutual rescission (iqālah) in a sale constitutes annulment (fasakh).

L24187 1510. Issue:

L24188–24190 As for rescission (iqālah, mutual dissolution of a contract), it has been authentically established from the Messenger of Allah—peace and blessings be upon him—that he encouraged its practice. It has been narrated to us through Abū Dāwūd's chain: Yaḥyā ibn Maʿīn from Ḥafṣ ibn Ghīyāth, from al-Aʿmash, from Abū Ṣāliḥ, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—stated, "Whoever grants rescission to a regretful person, Allah will forgive his misstep." Abu Hanifah, Al-Shafi'i, and Abu Sulayman said: It is not a sale, but rather the annulment of a sale.

L24191 Abu Yusuf said: After taking possession, it is a sale; before taking possession, it is the rescission of a sale.

L24192 It was narrated from Mālik that it is a sale.

الصِّفَةُ أَلْبَتَّةَ إِلَّا لِلْبَيْعِ، وَلَا يَكُونُ بَيْعٌ أَصْلًا إِلَّا بِهَذِهِ الصِّفَةِ فَصَحَّ أَنَّهُمَا بَيْعٌ صَحِيحٌ، وَهُمْ لَا يُخَالِفُونَنَا فِي أَنَّهُ لَا يَجُوزُ فِيهِمَا إِلَّا مَا يَجُوزُ فِي الْبَيْعِ، إِلَّا فِيمَا ذَكَرْنَا هَهُنَا فَقَطْ وَهَذَا تَخْصِيصٌ بِلَا بُرْهَانٍ.

وَأَمَّا الْحَنَفِيُّونَ: فَإِنَّهُمْ يَقُولُونَ بِالْمُرْسَلِ وَنَقَضُوا هَهُنَا أَصْلَهُمْ، فَتَرَكُوا مُرْسَلَ رَبِيعَةَ الَّذِي ذَكَرْنَاهُ وَمَا نَعْلَمُ الْمَالِكِيِّينَ احْتَجُّوا بِغَيْرِ مَا ذَكَرْنَا إِلَّا أَنَّ بَعْضَهُمْ قَالَ: الشَّرِكَةُ، وَالتَّوْلِيَةُ، وَالْإِقَالَةُ مَعْرُوفٌ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَالْبَيْعُ أَيْضًا مَعْرُوفٌ، وَمَا عَهِدْنَا الْمَعْرُوفَ تُبَاحُ فِيهِ مُحَرَّمَاتٌ، وَلَوْ كَانَ ذَلِكَ لَكَانَ مُنْكَرًا لَا مَعْرُوفًا.

وَسَنَتَكَلَّمُ إِنْ شَاءَ اللَّهُ تَعَالَى فِي الْإِقَالَةِ إِثْرَ هَذِهِ الْمَسْأَلَةِ فِي مَسْأَلَةٍ مُفْرَدَةٍ وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ.

[مَسْأَلَةُ الْإِقَالَةِ بَيْعٌ أَمْ فَسْخٌ]

١٥١٠ - مَسْأَلَةٌ:

وَأَمَّا الْإِقَالَةُ فَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحَضُّ عَلَيْهَا: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا يَحْيَى بْنُ مَعِينٍ أَنَا حَفْصٌ هُوَ ابْنُ غِيَاثٍ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَقَالَ نَادِمًا أَقَالَهُ اللَّهُ عَثْرَتَهُ» وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: لَيْسَتْ بَيْعًا، إِنَّمَا هِيَ فَسْخُ بَيْعٍ.

وَقَالَ أَبُو يُوسُفَ: هِيَ بَعْدَ الْقَبْضِ بَيْعٌ، وَقَبْلَ الْقَبْضِ فَسْخُ بَيْعٍ.

وَرُوِيَ عَنْ مَالِكٍ: أَنَّهَا بَيْعٌ.

L24193 It has been narrated from him that which indicates this is an annulment of the sale. As for Abū Yūsuf's categorization, it is an unsubstantiated claim and a classification devoid of evidence; anything of this nature is invalid.

وَرُوِيَ عَنْهُ مَا يَدُلُّ عَلَى أَنَّهَا فَسْخُ بَيْعٍ: فَأَمَّا تَقْسِيمُ أَبِي يُوسُفَ فَدَعْوَى بِلَا بُرْهَانٍ، وَتَقْسِيمٌ بِلَا دَلِيلٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L24194 As for those who said it is not a sale, they cited as evidence that the Messenger of Allah (peace be upon him) named it "iqālah," and Muslims followed him in this matter. He (peace be upon him) did not designate it as a sale, and the act of naming in matters of religion must be taken exclusively from him (peace be upon him). Thus, it is not permissible to call it a sale, since he (peace be upon him) did not assign it this name.

وَأَمَّا مَنْ قَالَ: لَيْسَتْ بَيْعًا، فَإِنَّهُمْ احْتَجُّوا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَمَّاهَا بِاسْمِ الْإِقَالَةِ، وَاتَّبَعَهُ الْمُسْلِمُونَ عَلَى ذَلِكَ، وَلَمْ يُسَمِّهَا - عَلَيْهِ السَّلَامُ - بَيْعًا، وَالتَّسْمِيَةُ فِي الدِّينِ لَا تُؤْخَذُ إِلَّا عَنْهُ - عَلَيْهِ السَّلَامُ -، فَلَا يَجُوزُ أَنْ تُسَمَّى بَيْعًا؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُسَمِّهَا هَذَا الِاسْمَ.

L24195 They said: A consensus has indeed been established on the permissibility of mutual revocation in the *salam* contract, and a sale before taking possession is not permissible. Thus, it is confirmed that it does not constitute a sale. We know of no argument they have other than these two.

وَقَالُوا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى جَوَازِ الْإِقَالَةِ فِي السَّلَمِ، وَالْبَيْعُ قَبْلَ الْقَبْضِ لَا يَجُوزُ، فَصَحَّ أَنَّهَا لَيْسَتْ بَيْعًا، مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَاتَيْنِ.

L24196 Abu Muhammad said: Their argument invoking the Prophet's naming—peace be upon him—is valid. However, we do not concede that he—peace be upon him—termed as iqalah the act of one who sells to another, then annuls the transaction by having the purchased item returned while the seller takes back the price. Nor did he—peace be upon him—designate this as a sale. They will never find this in any narration, sound or unsound. As for this mursal report transmitted via Rabi'ah's chain: if we wished to cite it as proof that iqalah is a sale, we would do so, for it contains the prohibition against selling before taking possession—except in partnership transactions, transfer of rights, or rescission. This clearly indicates that these are sales excluded from the general category of sales.

قَالَ أَبُو مُحَمَّد: احْتِجَاجُهُمْ بِالتَّسْمِيَةِ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَوْلُهُمْ حَقٌّ، إِلَّا أَنَّنَا لَا نُسَلِّمُ لَهُمْ أَنَّهُ - عَلَيْهِ السَّلَامُ - سَمَّى إقَالَةً: فِعْلَ مَنْ بَاعَ مِنْ آخَرَ بَيْعًا ثُمَّ اسْتَقَالَهُ فِيهِ، فَرَدَّ إلَيْهِ مَا ابْتَاعَ مِنْهُ وَأَخَذَ ثَمَنَهُ مِنْهُ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُسَمِّ ذَلِكَ بَيْعًا، وَلَا يَجِدُونَ هَذَا أَبَدًا، لَا فِي رِوَايَةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ وَهَذَا الْخَبَرُ الْمُرْسَلُ مِنْ طَرِيقِ رَبِيعَةَ لَوْ شِئْنَا أَنْ نَسْتَدِلَّ مِنْهُ بِأَنَّ الْإِقَالَةَ بَيْعٌ لَفَعَلْنَا؛ لِأَنَّهُ فِيهِ النَّهْيُ عَنْ الْبَيْعِ قَبْلَ الْقَبْضِ إلَّا مَنْ أَشْرَكَ، أَوْ وَلَّى، أَوْ أَقَالَ فَهَذَا ظَاهِرٌ أَنَّهَا بُيُوعٌ مُسْتَثْنَاةٌ مِنْ جُمْلَةِ الْبُيُوعِ.

L24197 As for the authentic report we mentioned, it only encourages rescission. Rescission applies not to sales but rather to gifts and similar matters.

وَأَمَّا الْخَبَرُ الصَّحِيحُ الَّذِي ذَكَرْنَا فَإِنَّمَا فِيهِ الْحَضُّ عَلَى الْإِقَالَةِ فَقَطْ، وَالْإِقَالَةُ تَكُونُ فِي غَيْرِ الْبَيْعِ، لَكِنْ فِي الْهِبَةِ، وَنَحْوِ ذَلِكَ.

وَلَا فِيهِ أَيْضًا أَنَّ الْإِقَالَةَ لَا تُسَمَّى بَيْعًا، وَلَا لَهَا حُكْمُ الْبَيْعِ فَبَطَلَ مَا صَدَّرُوا بِهِ مِنْ هَذَا الِاحْتِجَاجِ الصَّحِيحِ أَصْلُهُ الْمَوْضُوعَ فِي غَيْرِ مَوْضِعِهِ.

L24198 Nor does the text therein state that rescission is termed a sale or carries the legal ruling of a sale. Thus, their use of this valid argument—whose valid basis is applied out of context—is rendered void.

وَأَمَّا دَعْوَاهُمْ الْإِجْمَاعَ عَلَى جَوَازِ الْإِقَالَةِ فِي السَّلَمِ قَبْلَ الْقَبْضِ فَبَاطِلٌ، وَإِقْدَامٌ عَلَى الدَّعْوَى عَلَى الْأُمَّةِ، وَمَا وَقَعَ الْإِجْمَاعُ قَطُّ عَلَى جَوَازِ السَّلَمِ، فَكَيْفَ عَلَى الْإِقَالَةِ فِيهِ.

L24199 As for their claim of consensus on the permissibility of rescission in a salam contract prior to taking possession, it is baseless and constitutes a presumptuous assertion against the Ummah. Consensus has never occurred regarding the permissibility of salam itself—how then could it exist concerning rescission within it?

وَقَدْ رُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو، وَعَبْدِ اللَّهِ بْنِ عُمَرَ، وَالْحَسَنِ، وَجَابِرِ بْنِ زَيْدٍ، وَشُرَيْحٍ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ وَابْنِ الْمُسَيَّبِ، وَعَبْدِ اللَّهِ بْنِ مَعْقِلٍ وَطَاوُسٍ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحَسَنِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَعَمْرِو بْنِ الْحَارِثِ أَخِي أُمِّ الْمُؤْمِنِينَ جُوَيْرِيَةَ: أَنَّهُمْ مَنَعُوا مِنْ أَخْذِ بَعْضِ السَّلَمِ، وَالْإِقَالَةِ فِي بَعْضِهِ، فَأَيْنَ الْإِجْمَاعُ؟ فَلَيْتَ شِعْرِي هَلْ تَقَرَّوْا جَمِيعَ الصَّحَابَةِ أَوَّلَهُمْ عَنْ آخِرِهِمْ حَتَّى أَيْقَنُوا بِأَنَّهُمْ أَجْمَعُوا عَلَى ذَلِكَ؟ أَمْ تَقَرَّوْا جَمِيعَ عُلَمَاءِ التَّابِعِينَ مِنْ أَقْصَى خُرَاسَانَ إلَى الْأَنْدَلُسِ فَمَا بَيْنَ ذَلِكَ كَذَلِكَ.

L24200–24202 It has been narrated to us from Abdullah ibn Amr, Abdullah ibn ʿUmar, al-Hasan, and Jabir ibn Zayd. And Shuraih, Al-Sha'bi, Al-Nakhai, Ibn al-Musayyib, Abdullah ibn Ma'qil, Tawus, Muhammad ibn Ali ibn al-Hasan, Abu Salama ibn Abd al-Rahman, Mujahid, Sa'id ibn Jubayr, Salim ibn Abdullah, Al-Qasim ibn Muhammad, and Amr ibn al-Harith—the brother of Umm al-Mu'minin Juwayriyah—all prohibited taking part of a salam contract and mutual cancellation in part of it. So where is the consensus? Would that I knew—do you affirm that all the Companions, from the first to the last, [agreed] until they became certain of their unanimous agreement on this? Or do you affirm that all the scholars among the Tabi'in from the outermost regions of Khurasan to Andalusia and all lands between them did likewise?

ثُمَّ لَوْ صَحَّ لَهُمْ هَذَا وَهُوَ لَا يَصِحُّ أَبَدًا فَمَا يَخْتَلِفُ مُسْلِمَانِ فِي أَنَّ مِنْ الْجِنِّ قَوْمًا صَحِبُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَآمَنُوا بِهِ، وَمَنْ أَنْكَرَ هَذَا فَهُوَ كَافِرٌ، لِتَكْذِيبِهِ الْقُرْآنَ، فَلِأُولَئِكَ الْجِنِّ مِنْ الْحَقِّ وَوُجُوبِ التَّعْظِيمِ مِنَّا، وَمِنْ مَنْزِلَةِ الْعِلْمِ، وَالدِّينِ، مَا لِسَائِرِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، هَذَا مَا لَا شَكَّ فِيهِ عِنْدَ مُسْلِمٍ، فَمَنْ لَهُ بِإِجْمَاعِهِمْ عَلَى ذَلِكَ؟ وَرَحِمَ اللَّهُ أَحْمَدَ بْنَ حَنْبَلٍ فَلَقَدْ صَدَقَ إذْ يَقُولُ: مَنْ يَدَّعِي الْإِجْمَاعَ فَقَدْ كَذَبَ، مَا يُدْرِيهِ لَعَلَّ النَّاسَ اخْتَلَفُوا؟ لَكِنْ لِيَقُلْ: لَا أَعْلَمُ خِلَافًا، هَذِهِ أَخْبَارُ الْمَرِيسِيِّ، وَالْأَصَمِّ.

L24203 Then, even if this were valid for them—though it is eternally invalid—no two Muslims dispute that among the jinn are those who kept company with Allah's Messenger (peace be upon him) and believed in him. Whoever denies this is a denier, for rejecting the Quran. Thus, those jinn have a share of the right to reverence, the obligation of honor, and the status of knowledge and religion that belongs to all other Companions (may Allah be pleased with them). This is beyond doubt for any Muslim. So who among them has consensus on this? May Allah have mercy on Ahmad ibn Hanbal, for he spoke truthfully when he said: "Whoever claims consensus has lied. What informs him? Perhaps people differed." Let him instead say: "I know of no disagreement." These are the reports of al-Marisi and al-Asamm.

L24204 Abū Muḥammad said: The claim of consensus is not permissible except in two cases. The first: that which is established with certainty—through their authentic transmission—that all the Companions (may Allah be pleased with them) recognized it, acknowledged it, and affirmed it. The second: matters where opposition renders one a disbeliever (kāfir), such as the testimony that there is no deity but Allah and that Muḥammad is the Messenger of Allah; fasting in Ramadan; Hajj to the House (Kaaba); belief in the Quran; the five prayers; the general obligation of zakah; ritual purification for prayer and from major impurity; the prohibition of carrion, pork, and blood; and whatever belongs exclusively to this category.

قَالَ أَبُو مُحَمَّد: لَا تَحِلُّ دَعْوَى الْإِجْمَاعِ إِلَّا فِي مَوْضِعَيْنِ: أَحَدُهُمَا: مَا تُيُقِّنَ أَنَّ جَمِيعَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَرَفُوهُ بِنَقْلٍ صَحِيحٍ عَنْهُمْ وَأَقَرُّوا بِهِ وَالثَّانِي: مَا يَكُونُ مَنْ خَالَفَهُ كَافِرًا خَارِجًا عَنْ الْإِسْلَامِ، كَشَهَادَةِ أَنْ لَا إلَهَ إلَّا اللَّهُ، وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَصِيَامِ رَمَضَانَ، وَحَجِّ الْبَيْتِ، وَالْإِيمَانِ بِالْقُرْآنِ، وَالصَّلَوَاتِ الْخَمْسِ، وَجُمْلَةِ الزَّكَاةِ، وَالطَّهَارَةِ لِلصَّلَاةِ، وَمِنْ الْجَنَابَةِ، وَتَحْرِيمِ الْمَيْتَةِ، وَالْخِنْزِيرِ، وَالدَّمِ، وَمَا كَانَ مِنْ هَذَا الصِّنْفِ فَقَطْ.

L24205 Furthermore, if their claimed consensus regarding the permissibility of rescission in *salam* contracts were valid, it would constitute a sale transaction excluded by consensus from the general category of sales. How then [can this hold], when there exists an authentic report from Ibn ʿAbbās indicating the prohibition of rescission in *salam*?

ثُمَّ لَوْ صَحَّ لَهُمْ مَا ادَّعَوْهُ مِنْ الْإِجْمَاعِ عَلَى جَوَازِ الْإِقَالَةِ فِي السَّلَمِ لَكَانَ بَيْعًا مُسْتَثْنًى بِالْإِجْمَاعِ مِنْ جُمْلَةِ الْبُيُوعِ، فَكَيْفَ وَقَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ مَا يَدُلُّ عَلَى الْمَنْعِ مِنْ الْإِقَالَةِ فِي السَّلَمِ.

L24206 It has been narrated to us through the chain of Saʿīd ibn Manṣūr, Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, who said: If you lend something for a term, specify the term. When that term arrives and you do not find what you lent, take goods of lower value and do not profit twice. He did not issue a fatwa regarding cancellation.

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ هُوَ ابْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إذَا أَسْلَفْت فِي شَيْءٍ إلَى أَجَلٍ فَسَمِّي فَجَاءَ ذَلِكَ الْأَجَلُ وَلَمْ تَجِدْ الَّذِي أَسْلَفْت فِيهِ: فَخُذْ عَرَضًا بِأَنْقَصَ وَلَا تَرْبَحْ مَرَّتَيْنِ وَلَمْ يُفْتِ بِالْإِقَالَةِ.

L24207–24208 Ali said: Rescission is not permissible in a salam contract because it constitutes selling what you do not possess, a sale involving gharar (undue uncertainty), selling what has not been received, and an unidentified sale where the specific item is unknown globally. This amounts to unlawful consumption of wealth, as no textual evidence exists to validate it and thereby exempt it from these prohibited categories. The ruling for one who cannot obtain what was advanced in the contract is to wait until it is found or to accept retribution and an agreed-upon penalty corresponding to the value owed to him, in accordance with Allah's decree: "For sacred violations, there is lawful retribution" [2:194]. The inviolability of wealth is a sacred inviolability that must not be violated, and retribution must be exacted for its infringement. If the creditor wishes to act benevolently, he may absolve the debtor entirely,

قَالَ عَلِيٌّ: وَلَا تَجُوزُ الْإِقَالَةُ فِي السَّلَمِ؛ لِأَنَّهُ بَيْعُ مَا لَيْسَ عِنْدَكَ، وَبَيْعُ غَرَرٍ، وَبَيْعُ مَا لَمْ يُقْبَضْ، وَبَيْعٌ مَجْهُولٌ لَا يَدْرِي أَيَّمَا فِي الْعَالَمِ هُوَ؟ وَهَذَا هُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ، إذْ لَمْ يَأْتِ بِجَوَازِهِ نَصٌّ فَيَسْتَثْنِيهِ مِنْ جُمْلَةِ هَذِهِ الْمُحَرَّمَاتِ، فَإِنَّمَا الْحُكْمُ فِيمَنْ لَمْ يَجِدْ مَا أَسْلَفَ فِيهِ أَنْ يَصْبِرَ حَتَّى يُوجَدَ، أَوْ يَأْخُذَ مِنْهُ قِصَاصًا وَمُعَاقَبَةً مَا اتَّفَقَا عَلَيْهِ وَتَرَاضَيَا بِهِ: قِيمَةَ مَا وَجَبَ لَهُ عِنْدَهُ، لِقَوْلِ اللَّهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَحَرِيمَةُ الْمَالِ حُرْمَةٌ مُحَرَّمَةٌ يَجِبُ أَنْ يُقْتَصَّ مِنْهَا، فَإِنْ أَرَادَ الْإِحْسَانَ إلَيْهِ فَلَهُ أَنْ يُبْرِئَهُ مِنْ كُلِّ مَا لَهُ عِنْدَهُ، أَوْ يَأْخُذَ بَعْضَ مَا لَهُ عِنْدَهُ، أَوْ يُبْرِئَهُ مِمَّا شَاءَ مِنْهُ وَيَتَصَدَّقَ بِهِ

accept partial repayment, forgive any portion he chooses and donate it to him as charity - just as the Messenger of Allah instructed regarding the insolvent debtor when he said: “Give him charity.” He then added: “Take what you find, for you have no right beyond that.”[14]

L24209 We have mentioned it with its Isnād in *Judicial Insolvency* and *Natural Calamities* in this book of ours.

L24210 Abu Muhammad said: Since all the evidence they presented has been invalidated, let us affirm our corrected position with the help of God Almighty. We declare—and through His exalted support we are strengthened—that if iqālah constituted annulment of a sale, it would only be permissible by returning the actual price itself, not with something else, and this is necessary as Ibn Sīrīn said. As we have narrated through the chain of Al-Ḥajjāj ibn Minhal: Ar-Rabīʿ ibn Ḥabīb reported: “We used to frequent the Sawad region where harvested grain lay in heaps. We would purchase a kurr measure for such and such an amount, paying our money in advance. When the workers permitted threshing, some sellers fulfilled our stipulated quantity while others claimed their grain had diminished, requesting us to reclaim a portion of our principal corresponding to the shortfall. I asked Al-Ḥasan about this, and he disapproved unless either the full stipulated quantity was delivered or we reclaimed all our money entirely. I asked Ibn Sīrīn, who responded: ’If your dirhams are in their original form, there is no harm.’ I asked ʿAṭāʾ, who said: ’I perceive you have shown leniency and done good to him.’”

L24211–24213 Abu Muhammad said: This is the description of annulment. Then we return and say: Indeed, sale constitutes a valid contract established by the Quran, the Sunnah, and the certain and conclusive consensus from all... A Muslim existing on the earth’s surface - whether already present or yet to come - when he is established as such with certainty, not through false claims, it becomes impermissible to invalidate a contract validated by Allah the Exalted in His Book and through His Messenger’s pronouncements (peace be upon him) except by another textual ruling. No textual permission exists for annulling contracts through instant mutual consent except in cases where

[14] **Qur’an references (L24208):** Qur’an 2:194 (Al-Baqarah).

عَلَيْه، كَمَا «أَمَرَ رَسُولُ اللَّهِ فِي الْمُفْلِسِ إِذْ قَالَ: تَصَدَّقُوا عَلَيْهِ» ثُمَّ قَالَ - عَلَيْهِ السَّلَامُ -: «خُذُوا مَا وَجَدْتُمْ وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ»

وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ " فِي التَّفْلِيسِ " وَفِي " الْجَوَائِحِ " مِنْ كِتَابِنَا هَذَا.

قَالَ أَبُو مُحَمَّد: فَإِذَا بَطَلَ كُلُّ مَا احْتَجُّوا بِهِ فَلْنَقُلْ عَلَى تَصْحِيحِ قَوْلِنَا بِعَوْنِ اللَّهِ تَعَالَى، فَنَقُولُ، وَبِهِ تَعَالَى نَتَأَيَّدُ: إِنَّ الْإِقَالَةَ لَوْ كَانَتْ فَسْخَ بَيْعٍ لَمَا جَازَتْ إِلَّا بِرَدِّ عَيْنِ الثَّمَنِ نَفْسِهِ لَا بِغَيْرِهِ وَلَا بُدَّ لَهُ كَمَا قَالَ ابْنُ سِيرِينَ، كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا الرَّبِيعُ بْنُ حَبِيبٍ: كُنَّا نَخْتَلِفُ إِلَى السَّوَادِ فِي الطَّعَامِ وَهُوَ أَكْدَاسٌ قَدْ حُصِدَ فَنَشْتَرِيهِ مِنْهُمْ الْكُرَّ بِكَذَا وَكَذَا، وَنَنْقُدُ أَمْوَالَنَا، فَإِذَا أَذِنَ لَهُمْ الْعُمَّالُ فِي الدِّرَاسِ، فَمِنْهُمْ مَنْ يَفِي لَنَا بِمَا سُمِّيَ لَنَا، وَمِنْهُمْ مَنْ يَزْعُمُ أَنَّهُ نَقَصَ طَعَامُهُ فَيَطْلُبُ إِلَيْنَا أَنْ نَرْتَجِعَ بِقَدْرِ مَا نَقَصَ رُءُوسُ أَمْوَالِنَا، فَسَأَلْت الْحَسَنَ عَنْ ذَلِكَ؟ فَكَرِهَهُ إِلَّا أَنْ يُسْتَوْفَى مَا سُمِّيَ لَنَا، أَوْ نَرْتَجِعَ أَمْوَالَنَا كُلَّهَا، وَسَأَلْت ابْنَ سِيرِينَ؟ فَقَالَ: إِنْ كَانَتْ دَرَاهِمُك بِأَعْيَانِهَا فَلَا بَأْسَ، وَسَأَلْت عَطَاءً؟ فَقَالَ: مَا أَرَاك إِلَّا قَدْ رَفَقْت وَأَحْسَنْت إِلَيْهِ.

قَالَ أَبُو مُحَمَّد: هَذِهِ صِفَةُ الْفَسْخِ، ثُمَّ نَرْجِعُ فَنَقُولُ: إِنَّ الْبَيْعَ عَقْدٌ صَحِيحٌ بِالْقُرْآنِ، وَالسُّنَنِ، وَالْإِجْمَاعِ الْمُتَيَقَّنِ الْمَقْطُوعِ بِهِ مِنْ كُلِّ مُسْلِمٍ عَلَى أَدِيمِ الْأَرْضِ كَانَ أَوْ هُوَ كَائِنٌ فَإِذْ هُوَ كَذَلِكَ بِالْيَقِينِ لَا بِالدَّعَاوَى الْكَاذِبَةِ، فَلَا يَحِلُّ فَسْخُ عَقْدٍ صَحَّحَهُ اللَّهُ تَعَالَى فِي كِتَابِهِ، وَعَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا بِنَصٍّ آخَرَ، وَلَا نَصَّ فِي جَوَازِ فَسْخِهِ مُطَارَفَةً بِتَرَاضِيهِمَا، إِلَّا فِيمَا جَاءَ نَصٌّ بِفَسْخِهِ، كَالشُّفْعَةِ، وَمَا فِيهِ الْخِيَارُ بِالنَّصِّ، فَإِذْ ذَلِكَ كَذَالِك، وَلَمْ يَكُنْ بَيْنَ مَنْ أَجَازَ الْفَسْخَ نَصٌّ أَصْلًا فَقَدْ صَحَّ: أَنَّ

specific texts authorize dissolution, such as pre-emption rights or contractual options established by textual evidence. When this reality is confirmed, and no textual basis exists whatsoever among those permitting annulment, it becomes established that mutual rescission (iqālah) constitutes a sale among sales through mutual consent. What is permissible in sales transactions remains permissible in it, and what is prohibited in sales remains prohibited in it.

الْإِقَالَةَ بَيْعٌ مِنْ الْبُيُوعِ بِتَرَاضِيهِمَا، يَجُوزُ فِيهَا مَا يَجُوزُ فِي الْبُيُوعِ، وَيَحْرُمُ فِيهَا مَا يَحْرُمُ فِي الْبُيُوعِ.

L24214 And whoever holds that iqālah (mutual rescission) constitutes the dissolution of a sale is obligated not to permit it beyond what the sale was concluded upon, because the increase—since it was not a sale—constitutes usurpation of wealth wrongfully.

وَمَنْ رَأَى أَنَّ الْإِقَالَةَ فَسْخُ بَيْعٍ لَزِمَهُ أَنْ لَا يُجِيزَهَا بِأَكْثَرَ مِمَّا وَقَعَ بِهِ الْبَيْعُ، لِأَنَّ الزِّيَادَةَ إذْ لَمْ تَكُنْ بَيْعًا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L24215 As for those who deem it a sale, they permit amending it by increasing, decreasing, or substituting the original terms—whether through immediate payment, deferred liability, or term-based deferment in cases where such periods are permissible. This is the position we uphold, and success is from Allah, the Exalted.

وَأَمَّا مَنْ رَآهَا بَيْعًا فَإِنَّهُ يُجِيزُهَا بِأَكْثَرَ مِمَّا وَقَعَ بِهِ الْبَيْعُ أَوَّلًا، وَبِأَقَلَّ، وَبِغَيْرِ مَا وَقَعَ بِهِ الْبَيْعُ، وَحَالًّا، وَفِي الذِّمَّةِ، وَإِلَى أَجَلٍ فِيمَا يَجُوزُ فِيهِ الْأَجَلُ، وَبِهَذَا نَأْخُذُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع دِين يَكُون لِإِنْسَانٍ عَلَى غَيْره]

L24216 **The issue of selling a debt (deen) owed to an individual by another.**

L24217 1511 - Issue:

١٥١١ - مَسْأَلَةٌ:

L24218 It is not permissible to sell a debt owed to a person by another—whether the sale is for cash, another debt, in kind, or goods—regardless of whether the debt is evidenced by proof, acknowledged by admission, or not. All such transactions are invalid.

وَلَا يَحِلُّ بَيْعُ دَيْنٍ يَكُونُ لِإِنْسَانٍ عَلَى غَيْرِهِ، لَا بِنَقْدٍ، وَلَا بِدَيْنٍ، لَا بِعَيْنٍ، وَلَا بِعَرَضٍ، كَانَ بِبَيِّنَةٍ أَوْ مُقِرًّا بِهِ أَوْ لَمْ يَكُنْ: كُلُّ ذَلِكَ بَاطِلٌ.

L24219 The method for one seeking what is lawful is to purchase on credit from whomever he wishes whatever he wishes—from items whose sale is permissible. When the sale is concluded by the parties' separation or the expiry of the right to retract, he then transfers the debt for the price to the one indebted to him. This is valid.

وَوَجْهُ الْعَمَلِ فِي ذَلِكَ لِمَنْ أَرَادَ الْحَلَالَ: أَنْ يَبْتَاعَ فِي ذِمَّتِهِ مِمَّنْ شَاءَ مَا شَاءَ، مِمَّا يَجُوزُ بَيْعُهُ، ثُمَّ إذَا تَمَّ الْبَيْعُ بِالتَّفَرُّقِ أَوْ التَّخَيُّرِ، ثُمَّ يُحِيلُهُ بِالثَّمَنِ عَلَى الَّذِي لَهُ عِنْدَهُ الدَّيْنُ، فَهَذَا حَسَنٌ.

L24220 The proof of this is that it is an unspecified sale where the specific item is unknown, and this is wrongful consumption of wealth - and it is the statement of Al-Shafi'i.

بُرْهَانُ ذَلِكَ: أَنَّهُ بَيْعٌ مَجْهُولٌ، وَمَا لَا يَدْرِي عَيْنَهُ، وَهَذَا هُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَهُوَ قَوْلُ الشَّافِعِيِّ.

L24221 It was narrated to us via Waki‘, who narrated from Zakariyyā ibn Abī Zā’idah, who said: Al-Sha‘bī was asked about one who purchased a promissory note acknowledging three dinars in exchange for a garment. He replied: “It is invalid.” Waki‘ added: Sufyān narrated to us from ‘Abdullāh ibn Abī al-Safar, from al-Sha‘bī, who said: “It constitutes gharar.”

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ قَالَ: سُئِلَ الشَّعْبِيُّ عَمَّنْ اشْتَرَى صَكًّا فِيهِ ثَلَاثَةُ دَنَانِيرَ بِثَوْبٍ؟ قَالَ: لَا يَصْلُحُ، قَالَ وَكِيعٌ: وَحَدَّثَنَا سُفْيَانُ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ قَالَ: هُوَ غَرَرٌ.

L24222 Mālik said: If he acknowledges the debt owed, it is permissible to sell it for a commodity in cash. If he does not acknowledge it, selling it is impermissible—whether there is evidence against him or not—because it constitutes a contentious sale.

وَقَالَ مَالِكٌ: إنْ كَانَ مُقِرًّا بِمَا عَلَيْهِ جَازَ بَيْعُهُ بِعَرَضٍ نَقْدًا، فَإِنْ لَمْ يَكُنْ مُقِرًّا لَمْ يَجُزْ بَيْعُهُ كَانَتْ عَلَيْهِ بَيِّنَةٌ أَوْ لَمْ تَكُنْ لِأَنَّهُ شِرَاءُ خُصُومَةٍ.

L24223 Ali said: This is of no consequence, for even if he acknowledges it today, he may deny it tomorrow. Thus, the matter reverts to requiring proof despite his acknowledgment, enabling him to acquire a pretext for litigation unjustly without valid basis.

قَالَ عَلِيٌّ: وَهَذَا لَا شَيْءَ؛ لِأَنَّهُ وَإِنْ أَقَرَّ الْيَوْمَ فَيُمْكِنُ أَنْ يُنْكِرَ غَدًا، فَيَرْجِعُ الْأَمْرُ إلَى الْبَيِّنَةِ بِإِقْرَارِهِ، فَيَحْصُلُ عَلَى شِرَاءِ خُصُومَةٍ وَلَا فَرْقَ.

L24224–24225 Those who permitted it cited as evidence what we reported through ʿAbd al-Razzāq’s chain: Al-Aslamī informed me that ʿAbd Allāh ibn Abī Bakr reported from ʿUmar ibn ʿAbd al-ʿAzīz that “the Messenger of God—peace and blessings be upon him—established the right of preemption concerning debt. This pertains to a man owed a debt by another man: if the debtor sells [the item], the creditor has the prior right to it.”

وَاحْتَجَّ الْمُجِيزُونَ لَهُ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا الْأَسْلَمِيُّ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي بَكْرٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالشُّفْعَةِ فِي الدَّيْنِ وَهُوَ الرَّجُلُ يَكُونُ لَهُ الدَّيْنُ عَلَى رَجُلٍ فَيَبِيعُهُ فَيَكُونُ صَاحِبُ الدَّيْنِ أَحَقَّ بِهِ»

L24226 Abd al-Razzaq said: Ma’mar narrated to us from a man of Quraysh that Umar ibn Abd al-Aziz ruled regarding a mukatab who purchased what was owed from him with a commodity. He decreed that the mukatab had the foremost right to himself, then said: “The Messenger of Allah (peace be upon him) stated: ’Whoever purchases a debt owed by a man, the original creditor has a greater right if he repays the same amount paid by his companion.’”

قَالَ عَبْدُ الرَّزَّاقِ: وَحَدَّثَنَا مَعْمَرٌ عَنْ رَجُلٍ مِنْ قُرَيْشٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى فِي مُكَاتَبٍ اشْتَرَى مَا عَلَيْهِ بِعَرَضٍ فَجَعَلَ الْمُكَاتَبَ أَوْلَى بِنَفْسِهِ، ثُمَّ قَالَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ ابْتَاعَ دَيْنًا عَلَى رَجُلٍ فَصَاحِبُ الدَّيْنِ أَوْلَى إذَا أَدَّى مِثْلَ الَّذِي أَدَّى صَاحِبُهُ»

L24227 Through the chain of ʿAbd al-Razzāq: Ibn Jurayj reported to us, Abū al-Zubayr reported to us that he heard Jābir ibn ʿAbd Allāh ask about one who has a debt and uses it to purchase a male slave. Jābir said: “There is no harm in it.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَسْأَلُ عَمَّنْ لَهُ دَيْنٌ فَابْتَاعَ بِهِ غُلَامًا؟ قَالَ: لَا بَأْسَ بِهِ.

L24228 Abu Muhammad said: The two narrations of Umar ibn Abd al-Aziz are mursal. One of them is from al-Aslami - who is Ibrahim ibn Abi Yahya, an

abandoned transmitter accused of unreliability. The other is likewise from an unnamed narrator, and there is no valid proof in anyone other than the Messenger of Allah (peace and blessings of Allah be upon him).

قَالَ أَبُو مُحَمَّد: حَدِيثَا عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مُرْسَلَانِ: أَحَدُهُمَا: عَنْ الْأَسْلَمِيِّ وَهُوَ إبْرَاهِيمُ بْنُ أَبِي يَحْيَى وَهُوَ مَتْرُوكٌ مُتَّهَمٌ. وَالْآخَرُ أَيْضًا: عَمَّنْ لَمْ يُسَمَّ وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24229 And this is among the matters in which the Shāfiʿīs upheld the position of a scholar (ṣāḥib) for whom no dissenting opponent from among them is known.

وَهَذَا مِمَّا تَرَكَ فِيهِ الشَّافِعِيُّونَ صَاحِبًا لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ.

L24230 There is no valid proof for the Mālikīs in these two reports nor in the report of Jābir, for none of them specify that it was established through mere confession without evidence. Thus, they contravene the general purport of the report, and with Allah, the Exalted, is success.

وَلَا حُجَّةَ لِلْمَالِكِيِّينَ فِي هَذَيْنِ الْخَبَرَيْنِ، وَلَا فِي خَبَرِ جَابِرٍ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا: أَنَّهُ كَانَ بِإِقْرَارٍ دُونَ بَيِّنَةٍ فَهُمْ مُخَالِفُونَ لِعُمُومِ الْخَبَرِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L24231 The Issue of the Sale of Water

[مَسْأَلَة بَيْع الْمَاء]

L24232 1512 – Question:

١٥١٢ - مَسْأَلَةٌ:

L24233 It is not permissible to sell water in any manner—neither from an irrigation channel, river, spring, or well; nor water in a well, nor in a reservoir, nor water collected in a water-skin, nor in a vessel. However, whoever sells their share of the element of water, or a specified portion thereof, or sells the entire well or a specified part of it, or sells the entire irrigation channel or a specified portion thereof: this is permissible, and the water becomes his lawful sale.

وَلَا يَحِلُّ بَيْعُ الْمَاءِ بِوَجْهٍ مِنْ الْوُجُوهِ لَا فِي سَاقِيَةٍ وَلَا مِنْ نَهْرٍ أَوْ مِنْ عَيْنٍ وَلَا مِنْ بِئْرٍ، وَلَا فِي بِئْرٍ، وَلَا فِي صِهْرِيجٍ، وَلَا مَجْمُوعًا فِي قِرْبَةٍ، وَلَا فِي إنَاءٍ، لَكِنْ مَنْ بَاعَ حِصَّتَهُ مِنْ عُنْصُرِ الْمَاءِ، وَمِنْ جُزْءٍ مُسَمًّى مِنْهَا، أَوْ بَاعَ الْبِئْرَ كُلَّهَا أَوْ جُزْءًا مُسَمًّى مِنْهَا، أَوْ بَاعَ السَّاقِيَةَ كُلَّهَا أَوْ الْجُزْءَ الْمُسَمَّى مِنْهَا: جَازَ ذَلِكَ، وَكَانَ الْمَاءُ بَيْعًا لَهُ.

L24234 No one owns flowing water except for as long as it remains within his irrigation channel and river. Once it leaves both, his ownership over it ceases from him, and it becomes the property of whoever's land it enters, and this rule applies perpetually.

وَلَا يَمْلِكُ أَحَدٌ الْمَاءَ الْجَارِيَ إلَّا مَا دَامَ فِي سَاقِيَتِهِ وَنَهْرِهِ، فَإِذَا فَارَقَهُمَا بَطَلَ مِلْكُهُ عَنْهُ، وَصَارَ لِمَنْ صَارَ فِي أَرْضِهِ وَهَكَذَا أَبَدًا.

L24235–24237 Whoever is compelled to use water for irrigation or their need, it is obligatory that conveyance to them be ensured, or [...] If the water is poured into his vessel at his disposal under a rental contract exclusively, the same applies to one whose livelihood depends on water. It is obligatory that he also be

فَمَنْ اُضْطُرَّ إلَى مَاءٍ لِسَقْيِهِ، أَوْ لِحَاجَتِهِ، فَالْوَاجِبُ أَنْ يُعَامَلَ عَلَى سَوْقِهِ إلَيْهِ، أَوْ عَلَى صَبِّهِ عِنْدَهُ فِي إنَائِهِ عَلَى سَبِيلِ الْإِجَارَةِ فَقَطْ وَكَذَلِكَ مَنْ كَانَ مَعَاشُهُ مِنْ الْمَاءِ فَالْوَاجِبُ عَلَيْهِ أَنْ يُعَامَلَ أَيْضًا عَلَى صَبِّهِ أَوْ جَلْبِهِ كَذَلِكَ فَقَطْ.

treated strictly on the basis of pouring or fetching it under these same terms alone.

وَمَنْ مَلَكَ بِئْرًا بِحَفْرٍ فَهُوَ أَحَقُّ بِمَائِهَا مَا دَامَ مُحْتَاجًا إِلَيْهِ، فَإِنْ فَضَلَ عَنْهُ مَا لَا يَحْتَاجُ إِلَيْهِ لَمْ يَحِلَّ لَهُ مَنْعُهُ عَمَّنْ يَحْتَاجُ إِلَيْهِ، وَكَذَلِكَ فَضْلُ النَّهْرِ، وَالسَّاقِيَةِ وَلَا فَرْقَ.

L24238 Whoever owns a well by digging it has the greater right to its water as long as he is in need of it. If there is surplus beyond his needs, it is not permissible for him to prevent others in need from using it. The same applies to surplus from rivers and irrigation channels, with no distinction.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ عُثْمَانَ النَّوْفَلِيُّ نا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ نا ابْنُ جُرَيْجٍ: أَخْبَرَنِي زِيَادُ بْنُ سَعْدٍ: أَخْبَرَنِي هِلَالُ بْنُ أُسَامَةَ أَنَّ أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يُبَاعُ فَضْلُ الْمَاءِ لِيُبَاعَ بِهِ الْكَلَأُ»

L24239 The evidence for this is what we have narrated through the chain of Muslim: Ahmad ibn Uthman al-Nawfali narrated to us, Abu Asim al-Dahhak ibn Makhlad narrated to us, Ibn Jurayj narrated to us: Ziyad ibn Sa'd informed me: Hilal ibn Usamah informed me that Abu Salamah ibn Abd al-Rahman informed him that he heard Abu Hurayrah say: "Allah's Messenger (peace be upon him) said: 'Do not sell excess water so that pasture may be sold through it.'"

وَحَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نَا أَبِي عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ أَخْبَرَهُ أَبُو الْمِنْهَالِ أَنَّ إِيَاسَ بْنَ عَبْدٍ الْمُزَنِيَّ قَالَ لِرَجُلٍ: لَا تَبِعْ الْمَاءَ فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نَهَى عَنْ بَيْعِ الْمَاءِ»

L24240 Hummam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Ahmad ibn Zuhayr ibn Harb narrated to us: My father reported from Sufyan ibn Uyaynah, from Amr ibn Dinar: Abu al-Minhal informed him that Iyas ibn Abd, al-Muzani, said to a man: "Do not sell water, for the Messenger of Allah (may Allah bless him and grant him peace) prohibited the sale of water."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الْمِنْهَالِ قَالَ: سَمِعَ «إِيَاسَ بْنَ عَبْدٍ الْمُزَنِيَّ وَرَأَى أُنَاسًا يَبِيعُونَ الْمَاءَ فَقَالَ: لَا تَبِيعُوا الْمَاءَ، فَإِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَنْهَى أَنْ يُبَاعَ الْمَاءُ» .

L24241 Through the chain of Ibn Abī Shaybah: Sufyān ibn ʿUyaynah reported to us from ʿAmr ibn Dīnār from Abū al-Minhāl, who said: "Iyas ibn ʿAbd al-Muzanī heard [the Prophet] and saw people selling water. He said: 'Do not sell water, for I heard the Messenger of Allah—peace and blessings be upon him—forbid the sale of water.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا ابْنُ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أُمِّهِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُمْنَعَ نَقْعُ الْبِئْرِ» يَعْنِي الْمَاءَ هَكَذَا فِي الْحَدِيثِ تَفْسِيرُهُ.

L24242 From the transmission of Ibn Abi Shaybah: Yazeed ibn Harun narrated to us, Ibn Ishaq narrated to us, from Muhammad ibn Abd al-Rahman, from his mother Amrah bint Abd al-Rahman, from Aisha, the Mother of the Believers, who said: "The Messenger of Allah—may Allah's peace and blessings be upon him—forbade that the stirred-up water of the well be withheld," meaning the water—this is how the explanation is given in the hadith.

L24243 And we have also transmitted it as a musnad (with a connected chain) through the route of Jābir.

وَرُوِّينَاهُ أَيْضًا مُسْنَدًا مِنْ طَرِيقِ جَابِرٍ.

L24244 These are four of the Companions—may Allah be pleased with them—and this is a mutawātir transmission; opposing it is impermissible.

فَهَؤُلَاءِ أَرْبَعَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَهُوَ نَقْلٌ تَوَاتَرَ، وَلَا تَحِلُّ مُخَالَفَتُهُ.

L24245–24246 As for the one who held that opinion, we have previously mentioned him as derived from the legal opinions of Iyas ibn ʿAbd.

وَأَمَّا مَنْ قَالَ بِذَلِكَ فَقَدْ ذَكَرْنَاهُ آنِفًا عَنْ إيَاسِ بْنِ عَبْدٍ مِنْ فُتْيَاهُ.

L24247 And through the chain of Ibn Abī Shaybah: Wakiʿ narrated to us, al-Masʿūdī—who is Abū ʿUmays—narrated to us from ʿImrān ibn ʿUmayr, who said: "My neighbor withheld the excess of his water from me, so I asked ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd. He replied: 'I heard Abū Hurayrah say: It is not lawful to sell the excess water.'"

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ هُوَ أَبُو عُمَيْسٍ عَنْ عِمْرَانَ بْنِ عُمَيْرٍ قَالَ: مَنَعَنِي جَارِي فَضْلَ مَائِهِ فَسَأَلْت عُبَيْدَ اللَّهِ بْنَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ؟ فَقَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: لَا يَحِلُّ بَيْعُ فَضْلِ الْمَاءِ.

L24248 From the transmission of Ibn Abi Shaybah: Yahyā ibn Ādam reported to us from Zuhayr, from Abū al-Zubayr, from ʿAmr ibn Shuʿayb, from his father, from his grandfather: A young servant of theirs sold excess water they had from a spring for twenty thousand. ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ said to him: "Do not sell it, for its sale is not lawful."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ آدَمَ نا زُهَيْرٌ عَنْ أَبِي الزُّبَيْرِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ: أَنَّ غُلَامًا لَهُمْ بَاعَ فَضْلَ مَاءٍ لَهُمْ مِنْ عَيْنٍ بِعِشْرِينَ أَلْفًا، فَقَالَ لَهُ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ: لَا تَبِعْهُ فَإِنَّهُ لَا يَحِلُّ بَيْعُهُ.

L24249 From the chain of Ibn Abi Shaybah, who narrated to us from Yahyā ibn Zakariyyā ibn Abī Zā'idah, from Yahyā ibn Saʿīd al-Anṣārī, from al-Qāsim ibn Muḥammad ibn Abī Bakr that he said: The sale of surplus water is deemed reprehensible. Thus, Iyās ibn ʿAbd, Abū Hurayrah, and ʿAbdullāh ibn ʿAmr prohibit the sale of water entirely, with no dissenting opinion from the Companions—may Allah be pleased with them—and two of the Successors: al-Qāsim and ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ أَنَّهُ قَالَ: يُكْرَهُ بَيْعُ فَضْلِ الْمَاءِ: فَهَذَا إيَاسُ بْنُ عَبْدٍ، وَأَبُو هُرَيْرَةَ وَعَبْدُ اللَّهِ بْنُ عَمْرٍو: يُحَرِّمُونَ بَيْعَ الْمَاءِ جُمْلَةً، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَاثْنَانِ مِنْ التَّابِعِينَ: الْقَاسِمُ، وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ

L24250 It has been reported to us that the permissibility of selling water in vessels and selling water for drinking purposes is narrated from ʿAṭā', Abū Ḥanīfah, and al-Shāfiʿī. Similarly, the permissibility of such sales is established, while from Mālik [it is narrated] regarding selling water for drinking. From Masrūq [comes the report] permitting the setting of a price for water in bulk. No one's argument holds proof against the Messenger of Allah (peace and blessings be upon him).

وَرُوِّينَا إبَاحَةَ بَيْعِ الْمَاءِ فِي الْآنِيَةِ، وَبَيْعَهُ فِي الشُّرْبِ: عَنْ عَطَاءٍ وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَإبَاحَةَ بَيْعِهِ كَذَلِكَ، وَفِي الشُّرْبِ عَنْ مَالِكٍ، وَعَنْ مَسْرُوقٍ إبَاحَةَ ثَمَنِ الْمَاءِ جُمْلَةً وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24251 An additional proof for the prohibition of selling drinking water is that Allah the Exalted says: “He sends down from the sky water and causes it to flow through the earth as springs” [Az-Zumar 39:21]. The prohibition of selling ambiguous items (gharar) has been established because it involves excessive uncertainty and risk. Therefore, selling drinking water is impermissible because one does not know whether it is in the sky or not. This constitutes unjust consumption of wealth. Furthermore, water reaches springs, rivers, and wells through channels and passages in the earth that are distant and lie outside the ownership of the one who excavated them. Thus, one is selling what they do not yet own, and this is invalid and prohibited. And success comes only from Allah, the Exalted.[15]

وَبُرْهَانٌ زَائِدٌ عَلَى تَحْرِيمِ بَيْعِ مَاءِ الشُّرْبِ: وَهُوَ أَنَّ اللَّهَ تَعَالَى يَقُولُ: {أَنْزَلَ مِنَ السَّمَاءِ مَاءً فَسَلَكَهُ يَنَابِيعَ فِي الأَرْضِ} [الزمر: ٢١] وَقَدْ صَحَّ النَّهْيُ عَنْ بَيْعِ الْمَجْهُولِ، لِأَنَّهُ غَرَرٌ، فَلَا يَحِلُّ بَيْعُ الشُّرْبِ، لِأَنَّهُ لَا يَدْرِي أَفِي السَّمَاءِ هُوَ أَمْ لَا؟ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ وَأَيْضًا: فَإِنَّهُ إِنَّمَا يَأْتِي إِلَى الْعَيْنِ، وَالنَّهْرِ، وَالْبِئْرِ: مِنْ خُرُوقٍ، وَمَنَافِسَ فِي الْأَرْضِ بَعِيدَةٍ هِيَ فِي غَيْرِ مِلْكِ صَاحِبِ الْمُفَجِّرِ، فَإِنَّمَا يَبِيعُ مَا لَمْ يَمْلِكْ بَعْدُ، وَهَذَا بَاطِلٌ مُحَرَّمٌ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of the Sale of Khamr

[مَسْأَلَةُ بَيْعِ الْخَمْرِ]

L24253 Issue 1513:

١٥١٣ - مَسْأَلَةٌ:

L24254 The sale of wine is not permissible, neither to a believer nor to a disbeliever, nor the sale of pigs, nor their hair, nor anything from them, nor the sale of a cross, nor an idol, nor carrion, nor blood except musk alone, for its sale and ownership are permissible. Whoever sells any of the prohibited items we have mentioned, the sale is perpetually annulled.

وَلَا يَحِلُّ بَيْعُ الْخَمْرِ، لَا لِمُؤْمِنٍ، وَلَا لِكَافِرٍ، وَلَا بَيْعُ الْخَنَازِيرِ كَذَلِكَ، وَلَا شُعُورِهَا، وَلَا شَيْءٍ مِنْهَا، وَلَا بَيْعُ صَلِيبٍ، وَلَا صَنَمٍ، وَلَا مَيْتَةٍ، وَلَا دَمٍ إِلَّا الْمِسْكَ وَحْدَهُ، فَهُوَ حَلَالٌ بَيْعُهُ وَمِلْكُهُ، فَمَنْ بَاعَ مِنَ الْمُحَرَّمِ الَّذِي ذَكَرْنَا شَيْئًا فُسِخَ أَبَدًا.

L24255–24257 And it has been narrated to us via Muslim: Abu Kurayb narrated to us, Abu Mu‘awiyah narrated to us, from Muslim, who is Abu al-Duha. Narrated by Masruq from Aisha, the Mother of the Believers: “The Messenger of Allah—peace and blessings be upon him—went to the Prophet’s Mosque and prohibited trading in wine.”[16]

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ نا أَبُو مُعَاوِيَةَ عَنْ مُسْلِمٍ هُوَ أَبُو الضُّحَى عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى الْمَسْجِدِ فَحَرَّمَ التِّجَارَةَ فِي الْخَمْرِ» .

L24258 Narrated by Jabir ibn ’Abdullah and conveyed through Qutaybah ibn Sa’id to Muslim: From Layth ibn Sa’d, from Yazid ibn Habib, from ’Ata’ ibn Abi Rabah: “I heard Allah’s Messenger - peace and blessings be upon him - during the Year of Conquest in Mecca proclaiming: ’Allah, the Almighty and Majestic, and His Messenger have prohibited the sale of intoxicants, carrion,

وَبِهِ إِلَى مُسْلِمٍ: أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا لَيْثٌ هُوَ ابْنُ سَعْدٍ عَنْ يَزِيدَ بْنِ حَبِيبٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، " أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَ الْفَتْحِ وَهُوَ بِمَكَّةَ يَقُولُ: «إِنَّ اللَّهَ عَزَّ وَجَلَّ وَرَسُولَهُ حَرَّمَ بَيْعَ الْخَمْرِ وَالْمَيْتَةِ، وَالْخِنْزِيرِ، وَالْأَصْنَامِ، فَقِيلَ: يَا رَسُولَ اللَّهِ أَرَأَيْتَ شُحُومَ الْمَيْتَةِ فَإِنَّهُ يُطْلَى بِهَا السُّفُنُ، وَيُدْهَنُ بِهَا

[15] **Qur’an references (L24251):** Qur’an 39:21 (Az-Zumar).
[16] **Hadith references (L24255):** Sahih Muslim 1580b.

swine, and idols.' It was said: 'O Messenger of Allah, what do you say about the fat of carrion? For ships are caulked with it, hides are greased with it, and people use it for lamps.' He responded: 'No, it is forbidden. May Allah fight the Jews! When Allah prohibited them from consuming its fats, they processed it then sold it and consumed its price.'"[17]

الْجُلُودُ وَيَسْتَصْبِحُ بِهَا النَّاسُ قَالَ: لَا، هُوَ حَرَامٌ، قَاتَلَ اللَّهُ الْيَهُودَ إِنَّ اللَّهَ لَمَّا حَرَّمَ عَلَيْهِمْ شُحُومَهَا أَجْمَلُوهُ ثُمَّ بَاعُوهُ فَأَكَلُوا ثَمَنَهُ» .

L24259 Abū Muḥammad said: Certain people have misrepresented this report to corroborate qiyas, yet it contains no basis for qiyas whatsoever. Rather, it demonstrates that divine commands are general in scope, for the Prophet (peace be upon him) informed that Allah the Exalted had forbidden animal fats to the Jews, yet they deemed their sale permissible. He vehemently condemned them for restricting the prohibition and failing to apply it generally.

قَالَ أَبُو مُحَمَّدٍ: مَوَّهَ قَوْمٌ بِهَذَا الْخَبَرِ فِي تَصْحِيحِ الْقِيَاسِ، وَلَيْسَ فِيهِ لِلْقِيَاسِ أَثَرٌ، لَكِنْ فِيهِ: أَنَّ الْأَوَامِرَ عَلَى الْعُمُومِ؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَخْبَرَ: أَنَّ اللَّهَ تَعَالَى حَرَّمَ الشُّحُومَ عَلَى الْيَهُودِ فَاسْتَحَلُّوا بَيْعَهَا، فَأَنْكَرَ ذَلِكَ عَلَيْهِمْ أَشَدَّ الْإِنْكَارِ، إِذْ خَصُّوا التَّحْرِيمَ وَلَمْ يَحْمِلُوهُ عَلَى عُمُومِهِ.

L24260 Thus, it is validated that when something is prohibited, its ownership, sale, transactions involving it, and consumption are forbidden under the generality of its prohibition, unless there appears a text specifying any aspect thereof, in which case it is to be strictly adhered to.

فَصَحَّ بِهَذَا أَنَّهُ مَتَى حُرِّمَ شَيْءٌ فَحَرَامٌ مِلْكُهُ، وَبَيْعُهُ، وَالتَّصَرُّفُ فِيهِ، وَأَكْلُهُ عَلَى عُمُومِ تَحْرِيمِهِ، إِلَّا أَنْ يَأْتِيَ نَصٌّ بِتَخْصِيصِ شَيْءٍ مِنْ ذَلِكَ فَيُوقَفُ عِنْدَهُ.

L24261 And Allah the Exalted has forbidden swine, intoxicants, carrion, and blood. Thus, He has forbidden ownership of any of that, drinking it, benefiting from it, and selling it.

وَقَدْ حَرَّمَ اللَّهُ تَعَالَى: الْخِنْزِيرَ، وَالْخَمْرَ، وَالْمَيْتَةَ، وَالدَّمَ، فَحَرَّمَ مِلْكَ كُلِّ ذَلِكَ، وَشُرْبَهُ، وَالِانْتِفَاعَ بِهِ، وَبَيْعَهُ.

L24262 And indeed, Allah, the Exalted, has decreed the religion of Islam as obligatory upon every human and jinn.

وَقَدْ أَوْجَبَ اللَّهُ تَعَالَى دِينَ الْإِسْلَامِ عَلَى كُلِّ إِنْسٍ وَجِنٍّ.

L24263 Allah, the Exalted, said: {And judge between them by what Allah has revealed} [Al-Ma'idah 5:49].[18]

وَقَالَ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

L24264 Allah, the Most High, said: "And whoever seeks a religion other than Islam—it will never be accepted from him" [Āl ʿImrān: 85].[19]

وَقَالَ تَعَالَى: {وَمَنْ يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ} [آل عمران: ٨٥]

L24265 And He, the Exalted, said: "Fight them until there is no persecution and religion is wholly for Allah" [Al-Anfal: 39].[20]

وَقَالَ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩]

[17] **Hadith references (L24258):** Sunan Abi Dawud 3486.
[18] **Qur'an references (L24263):** Qur'an 5:49 (Al-Ma'idah).
[19] **Qur'an references (L24264):** Qur'an 3:85 (Ali 'Imran).
[20] **Qur'an references (L24265):** Qur'an 8:39 (Al-Anfal).

فَوَجَبَ الْحُكْمُ عَلَى الْيَهُودِ، وَالنَّصَارَى، وَالْمَجُوس: بِحُكْمِ الْإِسْلَامِ، أَحَبُّوا أَمْ كَرِهُوا.

L24266 Thus, the ruling of Islam is obligatory upon the Jews, Christians, and Zoroastrians, in accordance with its judgment, whether they love or hate.

وَمَنْ أَجَازَ لَهُمْ بَيْعَ الْخَمْرِ ظَاهِرًا وَشِرَاءَهَا كَذَلِكَ، وَتَمَلُّكَهَا عَلَانِيَةً، وَتَمَلُّكَ الْخَنَازِيرِ كَذَلِكَ، لِأَنَّهُمْ مِنْ دِينِهِمْ بِزَعْمِهِ، وَصَدَّقَهُمْ فِي ذَلِكَ: لَزِمَهُ أَنْ يَتْرُكَهُمْ أَنْ يُقِيمُوا شَرَائِعَهُمْ فِي بَيْعِ مَنْ زَنَى مِنْ النَّصَارَى الْأَحْرَارِ، وَخِصَاءِ الْقِسِّيسِ إذَا زَنَى، وَقَتْلِ مَنْ يَرَوْنَ قَتْلَهُ وَهُمْ لَا يَفْعَلُونَ ذَلِكَ فَظَهَرَ تَنَاقُضُهُمْ.

L24267–24268 Whoever permits them to openly sell and purchase wine, to publicly own it, and to similarly own pigs—claiming these acts originate from their religion and accepting their assertion—would thereby be obliged to let them enforce their legal rulings, such as selling free Christians who commit adultery, castrating priests who commit adultery, and executing those they deem deserving of death even though they themselves do not carry out such killings. Thus their contradiction becomes evident.

وَقَالَ أَبُو حَنِيفَةَ: إذَا أَمَرَ الْمُسْلِمُ نَصْرَانِيًّا بِأَنْ يَشْتَرِيَ لَهُ خَمْرًا: جَازَ ذَلِكَ وَهَذِهِ مِنْ شُنَعِهِ الَّتِي نَعُوذُ بِاَللَّهِ مِنْ مِثْلِهَا.

L24269 And Abu Hanifah said: If a Muslim commands a Christian to buy wine for him, that is permissible. Yet this is among his detestable rulings - from such things we seek refuge in Allah.

وَأَمَّا الْمِسْكُ: فَقَدْ صَحَّ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - التَّطَيُّبُ بِالْمِسْكِ وَتَفْضِيلُهُ عَلَى الطِّيبِ» وَأَيْضًا: فَقَدْ سَقَطَ عَنْهُ اسْمُ الدَّمِ وَصِفَاتِهِ وَحْدَهُ، فَلَيْسَ دَمًا، وَالْأَحْكَامُ إنَّمَا هِيَ عَلَى الْأَسْمَاءِ، وَالْأَسْمَاءُ إنَّمَا هِيَ عَلَى الصِّفَاتِ، وَالْحُدُودِ.

L24270 As for musk: it is authentically established from the Messenger of Allah—peace and blessings be upon him—that he used musk as perfume and preferred it over other perfumes. Moreover, musk alone has been divested of the name and attributes of blood; thus, it is not blood. Legal rulings are based on names, names derive from attributes, and attributes derive from defined legal parameters.

رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ أَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ أَنَا عُمَرُ الْمُكْتِبُ أَنَا حِزَامٌ عَنْ رَبِيعَةَ بْنِ زَكَا أَوْ زَكَّارٍ قَالَ: نَظَرَ عَلِيُّ بْنُ أَبِي طَالِبٍ إلَى زُرَارَةَ فَقَالَ: مَا هَذِهِ الْقَرْيَةُ؟ قَالُوا: قَرْيَةٌ تُدْعَى زُرَارَةَ يُلْحَمُ فِيهَا، وَيُبَاعُ فِيهَا الْخَمْرُ؟ قَالَ: أَيْنَ الطَّرِيقُ إلَيْهَا؟ قَالُوا: بَابُ الْجِسْرِ، قَالُوا: يَا أَمِيرَ الْمُؤْمِنِينَ نَأْخُذُ لَك سَفِينَةً؟ قَالَ: لَا، تِلْكَ شَجَرَةٌ، وَلَا حَاجَةَ لَنَا فِي الشَّجَرَةِ، انْطَلِقُوا بِنَا إلَى بَابِ الْجِسْرِ، فَقَامَ يَمْشِي حَتَّى أَتَاهَا، فَقَالَ عَلِيٌّ بِالنِّيرَانِ أَضْرِمُوهَا فِيهَا، فَاحْتَرَقَتْ.

L24271 It has been narrated to us through the chain of Abū ʾUbayd, from Marwān ibn Muʾāwiyah, from ʾUmar the Scribe, from Ḥizām, from Rabīʾah ibn Zakā or Zakār, who said: ʾAlī ibn Abī Ṭālib gazed toward Zurārah and asked, “What is this village?” They replied, “It is a village called Zurārah where meat is preserved and wine is sold.” He inquired, “Where is the path to it?” They said, “The Bridge Gate.” They asked, “O Commander of the Faithful, shall we procure a boat for you?” He responded, “No. That is merely wood, and we have no need for wood. Take us to the Bridge Gate.” He then rose and walked until he reached it. He commanded, “Bring me firebrands to kindle within it!” They set the fires ablaze, and it burned down.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هِشَامٌ وَمَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيّ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الْحَارِثِ بْنِ شُبَيْلٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ، قَالَ: بَلَغَ عُمَرَ بْنَ الْخَطَّابِ أَنَّ رَجُلًا

L24272 From the chain of Abu ʻUbayd, from Hishām and Marwān ibn Muʻāwiyah al-Fazārī, from Ismāʻīl ibn Abī Khālid, from al-Ḥārith ibn Shubayl, from Abu ʻAmr al-Shaybānī, who said: It reached ʻUmar ibn al-Khaṭṭāb that a man

from the people of al-Sawād had amassed wealth through intoxicant trade. He wrote: “Destroy every possession of his that you are able to seize, expel all his livestock, and let no one whatsoever shelter anything belonging to him.”

L24273 This is the ruling of Ali and Umar in the presence of the Companions—may Allah be pleased with them—regarding one who sells wine to the polytheists. No dissenter against this ruling is known among the Companions, yet others opposed them both.

L24274 **The issue of selling and keeping a dog.**

L24275 Issue 1514:

L24276 The sale of dogs is fundamentally unlawful in any form—neither a hunting dog, nor a herding dog, nor any other type. If compelled by necessity to acquire one and unable to find someone who will give it to him, he may purchase it. This becomes permissible for the buyer but remains prohibited for the seller. The buyer may reclaim the payment from the seller whenever able, like paying bribes to repel oppression, ransoming captives, or appeasing a tyrant. No distinction applies.

L24277–24278 It is fundamentally impermissible to keep a dog except for livestock, hunting, crops, or a wall—and the term “wall” applies only to an orchard or the wall of a house.

L24279 It is also impermissible to kill dogs. Whoever kills one must compensate with its equivalent or with mutually agreed compensation, except for the pitch-black dog or the black dog with two spots—regardless of where these two spots are located. If the spots grow so large that Arabic linguistic convention no longer describes them as “two spots” but rather as “two patches,” killing it becomes impermissible. Therefore, owning such a dog is fundamentally impermissible for any of the cases we have mentioned, and killing it is obligatory wherever found.

L24280 The evidence for this is what we have reported through the chain of Muslim: Isḥāq ibn Ibrāhīm—that is, Ibn Rāhwayh—reported to us; al-Walīd ibn

مِنْ أَهْلِ السَّوَادِ أَثْرَى فِي تِجَارَةِ الْخَمْرِ، فَكَتَبَ: أَنْ اكْسِرُوا كُلَّ شَيْءٍ قَدَرْتُمْ لَهُ عَلَيْهِ، وَسَيِّرُوا كُلَّ مَاشِيَةٍ لَهُ، وَلَا يُؤْوِيَنَّ أَحَدٌ لَهُ شَيْئًا.

فَهَذَا حُكْمُ عَلِيٍّ، وَعُمَرَ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِيمَنْ بَاعَ الْخَمْرَ مِنْ الْمُشْرِكِينَ وَلَا مُخَالِفَ لَهُ يُعْرَفُ مِنْ الصَّحَابَةِ نخَالَفُوهُمَا.

[مَسْأَلَة بَيْع الْكَلْب واقتنائه]

١٥١٤ - مَسْأَلَةٌ:

وَلَا يَحِلُّ بَيْعُ كَلْبٍ أَصْلًا، لَا كَلْبَ صَيْدٍ وَلَا كَلْبَ مَاشِيَةٍ، وَلَا غَيْرَهُمَا، فَإِنْ اُضْطُرَّ إلَيْهِ وَلَمْ يَجِدْ مَنْ يُعْطِيه إيَّاهُ فَلَهُ ابْتِيَاعُهُ، وَهُوَ حَلَالٌ لِلْمُشْتَرِي حَرَامٌ عَلَى الْبَائِعِ يَنْتَزِعُ مِنْهُ الثَّمَنَ مَتَى قَدَرَ عَلَيْهِ، كَالرِّشْوَةِ فِي دَفْعِ الظُّلْمِ، وَفِدَاءِ الْأَسِيرِ، وَمُصَانَعَةِ الظَّالِمِ وَلَا فَرْقَ.

وَلَا يَحِلُّ اتِّخَاذُ كَلْبٍ أَصْلًا، إلَّا لِمَاشِيَةٍ، أَوْ لِصَيْدٍ، أَوْ لِزَرْعٍ، أَوْ لِحَائِطٍ وَاسْمُ الْحَائِطِ يَقَعُ عَلَى الْبُسْتَانِ وَجِدَارِ الدَّارِ فَقَطْ.

وَلَا يَحِلُّ أَيْضًا: قَتْلُ الْكِلَابِ، فَمَنْ قَتَلَهَا ضَمِنَهَا بِمِثْلِهَا، أَوْ بِمَا يَتَرَاضَيَانِ عَلَيْهِ عِوَضًا مِنْهُ، إلَّا الْأَسْوَدَ الْبَهِيمَ، أَوْ الْأَسْوَدَ ذَا النُّقْطَتَيْنِ أَيَّتَمَا كَانَتْ النُّقْطَتَانِ مِنْهُ فَإِنْ عَظُمَتَا حَتَّى لَا تُسَمَّيَا فِي اللُّغَةِ الْعَرَبِيَّةِ نُقْطَتَيْنِ، لَكِنْ تُسَمَّى لَمْعَتَيْنِ: لَمْ يَجُزْ قَتْلُهُ، فَلَا يَحِلُّ مِلْكُهُ أَصْلًا لِشَيْءٍ مِمَّا ذَكَرْنَا، وَقَتْلُهُ وَاجِبٌ حَيْثُ وُجِدَ.

Muslim reported to us from al-Awzāʿī from Yaḥyā ibn Abī Kathīr. Ibrāhīm ibn Qāriẓ narrated to me from al-Sā’ib ibn Yazīd. Rāfiʿ ibn Khadīj narrated to me from the Messenger of Allah—peace and blessings be upon him—who said: “The price of a dog is impure, the fee of a prostitute is impure, and the earnings of a cupper are impure.” These two narrators are consecutive in the chain.[21]

L24281 From the narration of Mālik from Ibn Shihāb from Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām from Abū Masʿūd al-Anṣārī that the Messenger of Allāh (peace be upon him) prohibited the price of a dog, the fee of a prostitute, and the payment of a fortune-teller.[22]

L24282 And it has also been authenticated through the chains of Abū Hurayrah, Jābir, and Abū Juḥayfah.

L24283 This is a transmission of such incontrovertible authority that it is impermissible to disregard it or oppose it.

L24284 It has been narrated to us via the transmission of Ahmad ibn Shuʿayb: Al-Ḥasan ibn Aḥmad ibn Shabīb reported to us: Muḥammad ibn ʿAbd al-Raḥmān ibn Numayr reported to us: Asbāṭ reported to us: Al-Aʿmash reported from ʿAṭā’ ibn Abī Rabāḥ, who said: Abū Hurayrah said: “Four are among illicit earnings: the stud’s fee, the price of a dog, the earnings of a prostitute, and the cupper’s earnings.”

L24285 We transmitted it from Jābir as well.

L24286–24287 From the path of Ibn Abi Shaybah, who narrated to us Waki‘ from Isra’il from ‘Abd al-Karim from Qays ibn Habtar from Ibn ‘Abbas, who attributed it to the Prophet: “The price of a dog, the earnings of a prostitute, and the price of wine are forbidden.” The least that can be said about it is that it is Ibn ‘Abbas’s own statement.

بُرْهَانُ ذَلِكَ مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ نا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ حَدَّثَنِي إِبْرَاهِيمُ بْنُ قَارِظٍ عَنْ السَّائِبِ بْنِ يَزِيدَ حَدَّثَنِي رَافِعُ بْنُ خَدِيجٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «ثَمَنُ الْكَلْبِ خَبِيثٌ، وَمَهْرُ الْبَغِيِّ خَبِيثٌ، وَكَسْبُ الْحَجَّامِ خَبِيثٌ» فَهَذَانِ صَاحِبَانِ فِي نَسَقٍ.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِي مَسْعُودٍ الْأَنْصَارِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ ثَمَنِ الْكَلْبِ، وَمَهْرِ الْبَغِيِّ، وَحُلْوَانِ الْكَاهِنِ»

وَصَحَّ أَيْضًا مِنْ طَرِيقِ أَبِي هُرَيْرَةَ وَجَابِرٍ وَأَبِي جُحَيْفَةَ

فَهَذَا نَقْلٌ تَوَاتَرَ لَا يَسَعُ تَرْكُهُ وَلَا يَحِلُّ خِلَافُهُ.

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا الْحَسَنُ بْنُ أَحْمَدَ بْنِ شَبِيبٍ نا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ نُمَيْرٍ نا أَسْبَاطُ نا الْأَعْمَشُ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: قَالَ أَبُو هُرَيْرَةَ: «أَرْبَعٌ مِنْ السُّحْتِ، ضِرَابُ الْفَحْلِ، وَثَمَنُ الْكَلْبِ، وَمَهْرُ الْبَغِيِّ، وَكَسْبُ الْحَجَّامِ» .

وَرُوِّينَاهُ عَنْ جَابِرٍ أَيْضًا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ إِسْرَائِيلَ عَنْ عَبْدِ الْكَرِيمِ عَنْ قَيْسِ بْنِ حَبْتَرٍ عَنْ ابْنِ عَبَّاسٍ رَفَعَهُ «ثَمَنُ الْكَلْبِ وَمَهْرُ الْبَغِيِّ وَثَمَنُ الْخَمْرِ حَرَامٌ» وَأَقَلُّ مَا فِيهِ أَنْ يَكُونَ قَوْلَ ابْنِ عَبَّاسٍ.

[21] **Hadith references (L24280):** Sahih Muslim 1568b; Mishkat al-Masabih 2763.

[22] **Hadith references (L24281):** Sahih Muslim 1567a; Mishkat al-Masabih 2764; Riyad as-Salihin 1673.

From the chain of Ibn Abi Shaybah: Ibn Idris reported to us from Ash'ath, from Ibn Sirin, who said: The most impure earnings are the earnings of the flute player and the price of a dog.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ إِدْرِيسَ عَنْ أَشْعَثَ عَنِ ابْنِ سِيرِينَ قَالَ: أَخْبَثُ الْكَسْبِ كَسْبُ الزَّمَّارَةِ، وَثَمَنُ الْكَلْبِ.

Az-zammārah refers to the female fornicator; I heard Abū ʿUbaydah state this.

الزَّمَّارَةُ: الزَّانِيَةُ، سَمِعْت أَبَا عُبَيْدَةَ يَقُولُ ذَلِكَ.

Via the chain of Ibn Abi Shaybah: Yunus ibn Muhammad narrated to us, Shariq narrated from Abu Farwah, who said: I heard ʿAbd al-Raḥmān ibn Abī Laylā say, "I do not care whether I acquire the proceeds from selling a dog or a pig."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يُونُسُ بْنُ مُحَمَّدٍ نا شَرِيكٌ عَنْ أَبِي فَرْوَةَ سَمِعْت عَبْدَ الرَّحْمَنِ بْنَ أَبِي لَيْلَى يَقُولُ: مَا أُبَالِي ثَمَنَ كَلْبٍ أَكَلْتُ، أَوْ ثَمَنَ خِنْزِيرٍ.

Through the chain of Ibn Abī Shaybah, Ibn Idrīs reported to us from Shuʿbah: I heard al-Ḥakam and Ḥammād ibn Abī Sulaymān both disapproving of the price of a dog. No sound disagreement with their view is established from any of the Companions. This is the position of Mālik, al-Shāfiʿī, Aḥmad, Abu Sulaymān, Abu Thawr, and others.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ إِدْرِيسَ عَنْ شُعْبَةَ سَمِعْت الْحَكَمَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ يَكْرَهَانِ ثَمَنَ الْكَلْبِ وَلَا يَصِحُّ خِلَافُهُمَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَأَبِي ثَوْرٍ، وَغَيْرِهِمْ.

The Ḥanafīs opposed the Sunnah in this matter, permitting the sale of dogs and the retention of money earned from their sale.

وَخَالَفَ الْحَنَفِيُّونَ السُّنَنَ فِي ذَلِكَ، وَأَبَاحُوا بَيْعَ الْكِلَابِ، وَأَكْلَ أَثْمَانِهَا.

They argued for this by citing what was transmitted to us through the chain of Aḥmad ibn Shuʿayb, who said: Ibrāhīm ibn al-Ḥasan ibn Aḥmad al-Miṣīṣī informed me; Ḥajjāj ibn Muḥammad reported to us from Ḥammād ibn Salamah, from Abū al-Zubayr, from Jābir ibn ʿAbd Allāh: "The Messenger of Allah—peace and blessings be upon him—prohibited the price of a cat and a dog, except for a dog used for hunting."[23]

وَاحْتَجُّوا فِي ذَلِكَ بِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ، قَالَ: أَخْبَرَنِي إِبْرَاهِيمُ بْنُ الْحَسَنِ بْنِ أَحْمَدَ الْمِصِّيصِيُّ نا حَجَّاجُ بْنُ مُحَمَّدٍ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ ثَمَنِ السِّنَّوْرِ وَالْكَلْبِ إِلَّا كَلْبَ صَيْدٍ»

And according to what was transmitted to us through the chain of Qāsim ibn Aṣbagh: Muḥammad ibn Ismāʿīl narrated to us, Ibn Abī Maryam narrated to us, Yaḥyā ibn Ayyūb narrated to us, Al-Muthannā ibn Al-Ṣabbāḥ narrated to me from ʿAṭāʾ ibn Abī Rabāḥ from Abū Hurayrah from the Messenger of Allah (peace and blessings be upon him), who said: "The price of a dog is unlawful gain except for a hunting dog."

وَبِمَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا ابْنُ أَبِي مَرْيَمَ نا يَحْيَى بْنُ أَيُّوبَ حَدَّثَنِي الْمُثَنَّى بْنُ الصَّبَّاحِ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «ثَمَنُ الْكَلْبِ سُحْتٌ إِلَّا كَلْبَ صَيْدٍ»

And what we have narrated through the chain of Ibn Wahb from someone

[23] **Hadith references (L24293):** Sunan an-Nasai 4295.

who informed him from Ibn Shihāb from Abū Bakr from the Prophet—may the peace and blessings of Allah be upon him—who said: "Three things constitute unlawful wealth: the payment to the fortune-teller, the dowry of the adulteress, and the price of the vicious dog."

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَمَّنْ أَخْبَرَهُ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي بَكْرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «ثَلَاثٌ هُنَّ سُحْتٌ: حُلْوَانُ الْكَاهِنِ، وَمَهْرُ الزَّانِيَةِ، وَثَمَنُ الْكَلْبِ الْعَقُورِ»

L24296–24297 Through the chain of Ibn Wahb, from Ash-Shimr ibn Numayr, from Husayn ibn Abdullah ibn Ḍumayrah, from his father, from his grandfather, from Ali ibn Abi Talib, that the Prophet (peace and blessings of Allah be upon him) forbade the price of a biting dog.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ الشِّمْرِ بْنِ نُمَيْرٍ عَنْ حُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ ثَمَنِ الْكَلْبِ الْعَقُورِ» .

L24298 Abu Muhammad said: As for these two ahadith of Ibn Wahb, they are too weak to be considered except by one ignorant of hadith or an arrogant denier who knows the truth but defiantly rejects it. For Ḥusayn ibn ʿAbdullāh is at the peak of unreliability and rejection by unanimous agreement of the scholars of narration, while the other hadith has a broken chain at two points.

قَالَ أَبُو مُحَمَّد: أَمَّا حَدِيثَا ابْنِ وَهْبٍ هَذَانِ فَأَسْقَطُ مِنْ أَنْ يُشْتَغَلَ بِهِمَا إلَّا جَاهِلٌ بِالْحَدِيثِ، أَوْ مُكَابِرٌ يَعْلَمُ الْحَقَّ فَيُولِيهِ ظَهْرَهُ، لِأَنَّ حُسَيْنَ بْنَ عَبْدِ اللَّهِ فِي غَايَةِ السُّقُوطِ وَالِاطِّرَاحِ بِاتِّفَاقِ أَهْلِ النَّقْلِ، وَالْآخَرَ مُنْقَطِعٌ فِي مَوْضِعَيْنِ.

L24299 Then, if these two [hadiths] were authentic, they would not serve as a valid argument for them regarding the two, for they contain nothing but the prohibition against the price of the vicious dog alone—and this is correct—and they do not permit the price of other dogs. Moreover, the mass-transmitted narrations we previously cited, which include additional rulings beyond these two, render it impermissible to discard them.

ثُمَّ لَوْ صَحَّا لَمَا كَانَ لَهُمْ فِيهِمَا حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِمَا إلَّا النَّهْيُ عَنْ ثَمَنِ الْكَلْبِ الْعَقُورِ فَقَطْ وَهَذَا حَقٌّ، وَلَيْسَ فِيهِ إبَاحَةُ ثَمَنِ مَا سِوَاهُ مِنْ الْكِلَابِ وَجَاءَتْ الْآثَارُ الْمُتَوَاتِرَةُ الَّتِي قَدَّمْنَا بِزِيَادَةٍ عَلَى هَذَيْنِ لَا يَحِلُّ تَرْكُهَا.

L24300 As for the ḥadīth of Abū Hurayrah, it is utterly unreliable because it contains Yaḥyā ibn Ayyūb and al-Muthannā ibn al-Ṣabbāḥ - both being extremely weak narrators. Mālik formally testified that Yaḥyā ibn Ayyūb was a liar, and Aḥmad discredited his reliability.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ: فَفِي غَايَةِ السُّقُوطِ لِأَنَّ فِيهِ يَحْيَى بْنَ أَيُّوبَ، وَالْمُثَنَّى بْنَ الصَّبَّاحِ، وَهُمَا ضَعِيفَانِ جِدًّا قَدْ شَهِدَ مَالِكٌ عَلَى يَحْيَى بْنِ أَيُّوبَ بِالْكَذِبِ، وَجَرَحَهُ أَحْمَدُ

L24301 As for the Muthannā: so Aḥmad discredited it because the ḥadīth was weak, Yaḥyā rejected it, and ʿAbd al-Raḥmān rejected it.

وَأَمَّا الْمُثَنَّى: فَجَرَّحَهُ بِضَعْفِ الْحَدِيثِ أَحْمَدُ، وَتَرَكَهُ يَحْيَى، وَعَبْدُ الرَّحْمَنِ

L24302 Moreover, if it were valid, it would constitute evidence against them, for it only exempts the hunting dog. Yet they permit what is prohibited therein: the price of the agricultural dog, the livestock dog, and all other dogs - thereby violating its stipulations.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ؛ لِأَنَّهُ لَيْسَ فِيهِ إلَّا اسْتِثْنَاءَ كَلْبِ الصَّيْدِ فَقَطْ، وَهُمْ يُبِيحُونَ مَا حُرِّمَ فِيهِ مِنْ ثَمَنِ كَلْبِ الزَّرْعِ، وَكَلْبِ الْمَاشِيَةِ، وَسَائِرِ الْكِلَابِ فَهُمْ مُخَالِفُونَ لِمَا فِيهِ.

وَأَمَّا حَدِيثُ جَابِرٍ: فَإِنَّهُ مِنْ رِوَايَةِ أَبِي الزُّبَيْرِ عَنْهُ، وَلَمْ يَسْمَعْهُ مِنْهُ بِإِقْرَارِ أَبِي الزُّبَيْرِ عَلَى نَفْسِهِ، حَدَّثَنِي يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ عُمَرَ وَمُحَمَّدُ بْنُ يُوسُفَ الْأَزْدِيُّ نا إِسْحَاقُ بْنُ أَحْمَدَ الْعُقَيْلِيُّ نا زَكَرِيَّا بْنُ يَحْيَى الْحَلْوَانِيُّ نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ أَبِي مَرْيَمَ نا أَبِي نا اللَّيْثُ بْنُ سَعْدٍ، قَالَ: إِنَّ أَبَا الزُّبَيْرِ دَفَعَ إِلَيَّ كِتَابَيْنِ، فَقُلْت فِي نَفْسِي: لَوْ سَأَلْته أَسَمِعَ هَذَا كُلَّهُ مِنْ جَابِرٍ؟ فَرَجَعْت إِلَيْهِ فَقُلْت: هَذَا كُلُّهُ سَمِعْته مِنْ جَابِرٍ؟ فَقَالَ: مِنْهُ مَا سَمِعْته، وَمِنْهُ مَا حَدَّثْت عَنْهُ، فَقُلْت لَهُ: أَعْلِمْ لِي عَلَى مَا سَمِعْتَ؟ فَأَعْلَمَ لِي عَلَى هَذَا الَّذِي عِنْدِي.

L24303 As for the ḥadīth of Jābir: It is transmitted through the narration of Abū al-Zubayr from him, and he did not hear it directly from him by Abū al-Zubayr's own admission. Yūsuf ibn ʿAbd Allāh al-Namarī narrated to me: ʿAbd Allāh ibn ʿUmar and Muḥammad ibn Yūsuf al-Azdī narrated to us: Isḥāq ibn Aḥmad al-ʿUqaylī narrated to us: Zakariyyā ibn Yaḥyā al-Ḥalwānī narrated to us: Muḥammad ibn Saʿīd ibn Abī Maryam narrated to us: My father narrated to us: al-Layth ibn Saʿd narrated to us, saying: Abū al-Zubayr handed me two books. I thought to myself: "If I ask him, 'Did you hear all of this from Jābir?'" So I returned to him and asked: "Did you hear all of this from Jābir?" He replied: "Some of it I heard from him, and some of it I transmitted on his authority." I said to him: "Mark for me what you heard directly." He then marked the one that is in my possession.

قَالَ أَبُو مُحَمَّدٍ: فَكُلُّ حَدِيثٍ لَمْ يَقُلْ فِيهِ أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ، أَوْ حَدَّثَهُ بِهِ جَابِرٌ أَوْ لَمْ يَرْوِهِ اللَّيْثُ عَنْهُ عَنْ جَابِرٍ فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ بِإِقْرَارِهِ.

L24304 Abu Muhammad said: Every hadith in which Abu al-Zubayr did not explicitly state that he heard it from Jabir, or that Jabir narrated it to him, or which al-Layth did not transmit through him, from Jabir – then by Abu al-Zubayr's own admission, he did not hear it from Jabir.

وَهَذَا الْحَدِيثُ لَمْ يَذْكُرْ فِيهِ أَبُو الزُّبَيْرِ سَمَاعًا مِنْ جَابِرٍ، وَلَا هُوَ مِمَّا عِنْدَ اللَّيْثِ فَصَحَّ أَنَّهُ لَمْ يَسْمَعْهُ مِنْ جَابِرٍ، فَخَصَلَ مُنْقَطِعًا.

L24305 In this ḥadīth, Abū al-Zubayr did not mention having heard it from Jābir, nor is it among what is documented with al-Layth. Thus, it is established that he did not hear it from Jābir, resulting in a disconnected chain.

ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لَهُ، لِأَنَّهُ لَيْسَ فِيهِ إبَاحَةُ ثَمَنِ شَيْءٍ مِنْ الْكِلَابِ غَيْرَ كَلْبِ الصَّيْدِ، وَالنَّهْيِ عَنْ ثَمَنِ سَائِرِهَا وَهُمْ يُبِيحُونَ أَثْمَانَ سَائِرِ الْكِلَابِ الْمُتَّخَذَةِ لِغَيْرِ الصَّيْدِ: فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ الْآثَارِ.

L24306–24307 Then, if it were authentic, they would be opposing it, because it does not permit the price of any dogs except hunting dogs and prohibits the price of all others, while they permit the prices of other dogs kept for non-hunting purposes. Thus, all the textual evidences they relied on are nullified.

وَأَمَّا النَّظَرُ فَإِنَّهُمْ قَالُوا: كَانَ النَّهْيُ عَنْ ثَمَنِهَا حِينَ الْأَمْرِ بِقَتْلِهَا، فَلَمَّا حُرِّمَ قَتْلُهَا وَأُبِيحَ اتِّخَاذُ بَعْضِهَا انْتَسَخَ النَّهْيُ عَنْ ثَمَنِ مَا أُبِيحَ اتِّخَاذُهُ مِنْهَا.

L24308 As for the legal consideration, they stated: The prohibition against its sale price existed when killing them was commanded. When killing them was prohibited and keeping some of them became permissible, the prohibition on the sale price of those permitted to be kept was abrogated.

L24309 Abu Muhammad said: This is a pure falsehood against Allah, the Exalted, and against His Messenger (peace be upon him), for it is a report of falsehood and what no textual evidence has ever established—a claim without proof.

The abrogation of one matter does not necessitate the abrogation of another, nor does permitting the acquisition of something permit its sale. These are the people who allow raising silkworms and honeybees yet prohibit their sale due to misguidance and opposition to the truth. Acquiring mothers of the children (ummahāt al-awlād, enslaved women who bore their masters' children) is permissible, but selling them is not. Thus, the invalidity of this argument is evident.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَذِبٌ بَحْتٌ عَلَى اللهِ تَعَالَى، وَعَلَى رَسُولِهِ - عَلَيْهِ السَّلَامُ -، لِأَنَّهُ إِخْبَارٌ بِالْبَاطِلِ، وَبِمَا لَمْ يَأْتِ بِهِ قَطُّ نَصٌّ، وَدَعْوَى بِلَا بُرْهَانٍ، وَلَيْسَ نَسْخُ شَيْءٍ بِمُوجِبِ نَسْخِ شَيْءٍ آخَرَ، وَلَيْسَ إِبَاحَةُ اتِّخَاذِ شَيْءٍ بِمُبِيحٍ لِبَيْعِهِ، فَهَؤُلَاءِ هُمْ الْقَوْمُ الْمُبِيحُونَ اتِّخَاذَ دُودِ الْقَزِّ، وَنَحْلِ الْعَسَلِ، وَلَا يُحِلُّونَ ثَمَنَهُمَا إضْلَالًا وَخِلَافًا لِلْحَقِّ، وَاتِّخَاذُ أُمَّهَاتِ الْأَوْلَادِ حِلٌّ، وَلَا يَحِلُّ بَيْعُهُنَّ: فَظَهَرَ فَسَادُ هَذَا الِاحْتِجَاجِ.

L24310 They said: The price of the dog and the earnings of the cupper were prohibited. When the prohibition on the cupper's earnings was abrogated, was the prohibition on the dog's price also abrogated? Abu Muhammad said: This is a lie like the previous one, corrupt speech, and a baseless claim.

وَقَالُوا: حُرِّمَ ثَمَنُ الْكَلْبِ، وَكَسْبُ الْحَجَّامِ، فَلَمَّا نُسِخَ تَحْرِيمُ كَسْبِ الْحَجَّامِ نُسِخَ تَحْرِيمُ ثَمَنِ الْكَلْبِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَذِبٌ كَالَّذِي قَبْلَهُ، وَكَلَامٌ فَاسِدٌ، وَدَعْوَى بِلَا بُرْهَانٍ.

L24311 They are also required that the prohibition on the illicit payment of the fornicatress be abrogated as well, since it was mentioned alongside those two. Then, who bears responsibility for abrogating the prohibition on the cupper's earnings when they occur in the prohibited manner.

وَيَلْزَمُهُمْ أَيْضًا: أَنْ يُنْسَخَ أَيْضًا تَحْرِيمُ مَهْرِ الزَّانِيَةِ، لِأَنَّهُ ذُكِرَ مَعَهُمَا، ثُمَّ مَنْ لَهُمْ بِنَسْخِ تَحْرِيمِ كَسْبِ الْحَجَّامِ إذَا وَقَعَ عَلَى الْوَجْهِ الْمَنْهِيِّ عَنْهُ.

L24312 Thus, the invalidity of their statement became entirely clear, and this is one of the issues they opposed regarding the mass-transmitted traditions and the two Companions, whom none of the Companions may validly contradict.

فَوَضَحَ فَسَادُ قَوْلِهِمْ جُمْلَةً، وَهَذَا مِمَّا خَالَفُوا فِيهِ الْآثَارَ الْمُتَوَاتِرَةَ، وَصَاحِبَيْنِ لَا يَصِحُّ خِلَافُهُمَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ.

L24313 If they mention the ruling of ʿUthmān and ʿAbdullāh ibn ʿAmr regarding the valuation of a vicious dog, we say: This is not a disagreement, for it is neither a sale nor a price. It is merely compensation of property for property destruction alone, and there is no price for a deceased person at all.

فَإِنْ ذَكَرُوا قَضَاءَ عُثْمَانَ وَعَبْدِ اللَّهِ بْنِ عَمْرٍو بِقِيمَةِ الْكَلْبِ الْعَقُورِ؟ قُلْنَا: لَيْسَ هَذَا خِلَافًا، لِأَنَّهُ لَيْسَ بَيْعًا، وَلَا ثَمَنًا، إنَّمَا هُوَ قِصَاصُ مَالٍ عَنْ فَسَادِ مَالٍ فَقَطْ، وَلَا ثَمَنَ لِمَيِّتٍ أَصْلًا.

L24314 It has been narrated to us via Ibn Abi Shaybah's chain: Waki' reported from Hammad ibn Salamah, from Abū al-Zubayr - from Jābir and Abū al-Muhazzim from Abū Hurayrah - that both of them disapproved of selling dogs except a hunting dog, and they disapproved of selling cats. Abū al-Muhazzim is a very weak narrator, and others have disagreed with them regarding the permissibility of selling cats, as you can see.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ، وَأَبِي الْمُهَزِّمِ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُمَا كَرِهَا ثَمَنَ الْكَلْبِ إلَّا كَلْبَ صَيْدٍ، وَكَرِهَا ثَمَنَ الْهِرِّ وَأَبُو الْمُهَزِّمِ ضَعِيفٌ جِدًّا، وَقَدْ خَالَفُوهُمَا فِي ثَمَنِ الْهِرِّ كَمَا تَرَى.

وَقَدْ رُوِّينَا إِبَاحَةَ ثَمَنِ الْكَلْبِ عَنْ عَطَاءٍ، وَيَحْيَى بْنِ سَعِيدٍ، وَرَبِيعَةَ، وَعَنْ إِبْرَاهِيمَ إِبَاحَةَ ثَمَنِ كَلْبِ الصَّيْدِ، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24315–24316 It has been narrated to us that the permissibility of the price of dogs is affirmed by ʿAṭāʾ, Yaḥyā ibn Saʿīd, and Rabīʿah, and from Ibrāhīm the permissibility of the price of hunting dogs. No one's argument holds validity against the Messenger of Allah (peace and blessings be upon him).

وَأَمَّا مَنْ احْتَاجَ إِلَيْهِ، فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] فَمَا لَا يَحِلُّ بَيْعُهُ، وَتَحِلُّ هِبَتُهُ، فَإِمْسَاكُ مَنْ عِنْدَهُ مِنْهُ فَضْلٌ عَنْ حَاجَتِهِ ذَلِكَ: الْفَضْلُ عَمَّنْ هُوَ مُضْطَرٌّ إِلَيْهِ ظُلْمٌ لَهُ.

L24317 As for one in need of it, Allah the Exalted has said: "Do not neglect graciousness between yourselves" [Al-Baqarah: 237]. Therefore, withholding surplus - of what is impermissible to sell but permissible to gift - by one who possesses it beyond his need constitutes a denial of that graciousness to one compelled by necessity to require it, and this constitutes injustice against him.[24]

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» وَالظُّلْمُ وَاجِبٌ أَنْ يُمْنَعَ مِنْهُ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

L24318 The Messenger of Allah (peace and blessings be upon him) said, "A Muslim is the brother of a Muslim: he does not wrong him nor forsake him." It is obligatory to prevent him from oppression, and with Allah, the Exalted, is success.

وَأَمَّا اتِّخَاذُهَا: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا رَوْحُ بْنُ عُبَادَةَ نا ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ الْكِلَابِ ثُمَّ نَهَى رَسُولُ اللَّهِ عَنْ قَتْلِهَا، وَقَالَ: عَلَيْكُمْ بِالْأَسْوَدِ الْبَهِيمِ ذِي النُّقْطَتَيْنِ فَإِنَّهُ شَيْطَانٌ» .

L24319 It has been narrated to us through the chain of Muslim: Isḥāq ibn Manṣūr narrated to me, Rawḥ ibn ʿUbādah narrated to us from Ibn Jurayj, who narrated to me that Abū al-Zubayr reported hearing Jābir ibn ʿAbdullāh say: "The Messenger of Allah (peace be upon him) commanded us to kill dogs, then the Messenger of Allah prohibited their killing, and said: 'You must target the completely jet-black dog with two spots, for it is a devil.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عِمْرَانُ بْنُ مُوسَى نا يَزِيدُ بْنُ زُرَيْعٍ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَوْلَا أَنَّ الْكِلَابَ أُمَّةٌ مِنْ الْأُمَمِ لَأَمَرْتُ بِقَتْلِهَا، فَاقْتُلُوا مِنْهَا الْأَسْوَدَ الْبَهِيمَ، وَأَيُّمَا قَوْمٍ اتَّخَذُوا كَلْبًا لَيْسَ بِكَلْبِ حَرْثٍ، أَوْ صَيْدٍ، أَوْ مَاشِيَةٍ، فَإِنَّهُ يُنْقَصُ مِنْ أَجْرِهِ كُلَّ يَوْمٍ قِيرَاطٌ» .

L24320 Through the chain of Aḥmad ibn Shuʿayb: From ʿImrān ibn Mūsā, from Yazīd ibn Zurayʿ, from Yūnus ibn ʿUbayd, from al-Ḥasan al-Baṣrī, from ʿAbdullāh ibn Mughaffal, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said, "If dogs were not a nation among the nations, I would have ordered their killing. So kill every jet-black one among them. And any people who keep a dog that is not a dog for farming, hunting, or livestock—then a qīrāṭ will be subtracted from their reward daily."[25]

[24] **Qur'an references (L24317):** Qur'an 2:237 (Al-Baqarah).
[25] **Hadith references (L24320):** Sunan an-Nasai 4280.

L24321–24323 And via the transmission of Muslim: Harmalah narrated to us, Ibn Wahb narrated to us, Yunus informed me from Ibn Shihāb from Saʿīd ibn al-Musayyab from Abū Hurayrah from the Messenger of Allah (peace be upon him), who said: “Whoever keeps a dog that is not [a dog for...] [text incomplete].” “No game, nor grazing animals, nor land, because two qirāṭān will be deducted from his reward daily.» And the dwelling is included in the category of land because it is land.”[26]

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا حَرْمَلَةُ حَدَّثَنَا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اقْتَنَى كَلْبًا لَيْسَ بِكَلْبِ صَيْدٍ، وَلَا مَاشِيَةٍ، وَلَا أَرْضٍ، فَإِنَّهُ يُنْقَصُ مِنْ أَجْرِهِ قِيرَاطَانِ كُلَّ يَوْمٍ» وَتَدْخُلُ الدَّارُ فِي جُمْلَةِ الْأَرْضِ؛ لِأَنَّهَا أَرْضٌ.

L24324 So these hadiths contain the text of what we have said.

فَهَذِهِ الْأَحَادِيثُ فِيهَا نَصُّ مَا قُلْنَا.

L24325 And it has been transmitted to us from Ibrāhīm al-Nakhaʿī: “We were commanded to kill the black dog,” and we have mentioned this with its chain of transmission in the “Book of Hunting” of this compilation of ours. And success is from Allāh, the Exalted.

وَقَدْ رُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ أُمِرْنَا بِقَتْلِ الْكَلْبِ الْأَسْوَدِ، وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الصَّيْدِ " مِنْ دِيوَانِنَا هَذَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L24326 The Juridical Question of Selling Cats and Bequeathing Them

[مَسْأَلَة بَيْع الْهِرّ والوصية بِهِ]

L24327 1515 – Legal Question:

١٥١٥ - مَسْأَلَةٌ:

L24328 It is not permissible to sell cats. If someone is compelled to acquire one due to harm from mice, it becomes obligatory. Whoever possesses surplus cats beyond their need must give from them what suffices to repel harm, through which Allah the Exalted wards it off from him - just as we stated regarding one compelled to use a dog, with no distinction between the two.

وَلَا يَحِلُّ بَيْعُ الْهِرِّ فَمَنْ اُضْطُرَّ إلَيْهِ لِأَذَى الْفَأْرِ فَوَاجِبٌ وَعَلَى مَنْ عِنْدَهُ مِنْهَا فَضْلٌ عَنْ حَاجَتِهِ أَنْ يُعْطِيَهُ مِنْهَا مَا يَدْفَعُ بِهِ اللَّهُ تَعَالَى عَنْهُ الضَّرَرَ: كَمَا قُلْنَا فِيمَنْ اُضْطُرَّ إلَى الْكَلْبِ وَلَا فَرْقَ.

L24329 The proof of that is what has been narrated to us through the chain of Muslim: Salamah ibn Shabīb reported to me; he said: Al-Ḥasan ibn Aʿyan narrated to us; Maʿqil narrated to us from Abū al-Zubayr, who said: I asked Jābir ibn ʿAbd Allāh about the sale of a dog and a cat. He said: “The Messenger of Allah (peace be upon him) prohibited that.”

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي سَلَمَةُ بْنُ شَبِيبٍ قَالَ: نا الْحَسَنُ بْنُ أَعْيَنَ نا مَعْقِلٌ عَنْ «أَبِي الزُّبَيْرِ قَالَ: سَأَلْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ عَنْ ثَمَنِ الْكَلْبِ وَالسِّنَّوْرِ؟ فَقَالَ: زَجَرَ عَنْ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L24330 Abu Muhammad said: Rebuke is the strongest form of prohibition.

قَالَ أَبُو مُحَمَّدٍ: الزَّجْرُ أَشَدُّ النَّهْيِ.

L24331 It was narrated to us through the chain of Qāsim ibn Aṣbagh, from Muḥam-

[26] **Hadith references (L24321):** Sunan an-Nasai 4290; Sahih Muslim 1575a; Riyad as-Salihin 1689.

mad ibn Waḍḍāḥ, from Muḥammad ibn Ādam, from ʿAbdullāh ibn al-Mubārak, from Ḥammād ibn Salamah, from Abī al-Zubayr, from Jābir ibn ʿAbdillāh that he considered the price of dogs and cats disliked.

وَرُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا مُحَمَّدُ بْنُ آدَمَ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّهُ كَرِهَ ثَمَنَ الْكَلْبِ وَالسِّنَّوْرِ.

L24332 Therefore, this is the legal opinion of Jabir concerning what was narrated, and we do not know of any opposer to him among the Companions.

فَهَذِهِ فُتْيَا جَابِرٍ لِمَا رُوِيَ وَلَا نَعْرِفُ لَهُ مُخَالِفًا مِنْ الصَّحَابَةِ.

L24333 And through the chain of Saʿīd ibn Manṣūr, Abū al-Aḥwaṣ reported to us from Layth, from Ṭāwus and Mujāhid, that they both deemed it reprehensible to benefit from the skins of wildcats or profit from their sale.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو الْأَحْوَصِ عَنْ لَيْثٍ عَنْ طَاوُسٍ، وَمُجَاهِدٍ أَنَّهُمَا كَرِهَا أَنْ يُسْتَمْتَعَ بِمُسُوكِ السَّنَانِيرِ، وَأَثْمَانِهَا.

L24334 From the chain of Ibn Abī Shaybah, he narrated to us: Ḥafs—Ibn Ghiyāth—from Layth, from Ṭāwūs and Mujāhid, that they both disliked selling cats, receiving payment for them, and eating their meat. This is the position of Abū Sulaymān and all our fellow scholars.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ هُوَ ابْنُ غِيَاثٍ عَنْ لَيْثٍ عَنْ طَاوُسٍ، وَمُجَاهِدٍ أَنَّهُمَا كَرِهَا بَيْعَ الْهِرِّ، وَثَمَنَهُ، وَأَكْلَهُ وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L24335–24337 Some of those who possess no knowledge nor piety to restrain him from lying have claimed that Ibn Abbas and Abu Hurairah both reported from the Prophet—peace and blessings be upon him—the permissibility of selling cats. Abū Muḥammad said: We do not know this to have any basis from a weak chain recognized by transmission scholars. As for an authentic one, we affirm that anyone who claims such a thing is entirely lying.

وَزَعَمَ بَعْضُ مَنْ لَا عِلْمَ لَهُ، وَلَا وَرَعَ يَزْجُرُهُ عَنْ الْكَذِبِ: أَنَّ ابْنَ عَبَّاسٍ، وَأَبَا هُرَيْرَةَ: رَوَيَا «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إبَاحَةَ ثَمَنِ الْهِرِّ» قَالَ أَبُو مُحَمَّد: وَهَذَا لَا نَعْلَمُهُ أَصْلًا مِنْ طَرِيقٍ وَاهِيَةٍ تُعْرَفُ عِنْدَ أَهْلِ النَّقْلِ، وَأَمَّا صَحِيحَةٍ فَنَقْطَعُ بِكَذِبِ مَنْ ادَّعَى ذَلِكَ جُمْلَةً.

L24338 As for the ruling in the ḥadīth, it remains as long as Iblīs and his followers are present on earth.

وَأَمَّا الْوَضْعُ فِي الْحَدِيثِ فَبَاقٍ مَا دَامَ إبْلِيسُ وَأَتْبَاعُهُ فِي الْأَرْضِ.

L24339 Then, even if it had been valid for them, they would have no argument in it, for it would have conformed to the established principle without doubt. There is no uncertainty that when he—peace be upon him—prohibited its price, the prior permissibility was invalidated and abrogated with definitive certainty, leaving no room for doubt. Whoever claims the abrogated ruling has returned has lied, fabricated, spoken falsely, and followed what he has no knowledge of. Far be it from Allah that what He abrogated should return, without any subsequent clarification establishing Allah's conclusive proof re-

ثُمَّ لَوْ صَحَّ لَهُمْ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ كَانَ يَكُونُ مُوَافِقًا لِمَعْهُودِ الْأَصْلِ بِلَا شَكٍّ، وَلَا مِرْيَةَ فِي أَنَّ حِينَ زَجْرِهِ - عَلَيْهِ السَّلَامُ - عَنْ ثَمَنِهِ بَطَلَتْ الْإِبَاحَةُ السَّالِفَةُ، وَنُسِخَتْ بِيَقِينٍ لَا مَجَالَ لِلشَّكِّ فِيهِ، فَمَنْ ادَّعَى أَنَّ الْمَنْسُوخَ قَدْ عَادَ فَقَدْ كَذَبَ وَافْتَرَى وَأَفَكَ وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَحَاشَ لِلَّهِ أَنْ يَعُودَ مَا نَسَخَ، ثُمَّ لَا يَأْتِي بَيَانٌ بِذَلِكَ تَقُومُ بِهِ حُجَّةُ اللَّهِ تَعَالَى فِيمَا نَسَخَ وَفِيمَا بَقِيَ عَلَى الْمَأْمُورِينَ بِذَلِكَ مِنْ عِبَادِهِ.

garding what He abrogated and what remained binding upon those of His servants commanded thereby.

L24340 Far be it! The religion of Allah, the Exalted and Majestic, is more exalted and more secure than that.

L24341 Those who permit it said: Since consensus has been established on the obligation to include cats and dogs—whose ownership is permissible—in inheritance, bequest, and ownership, their sale is permissible.

L24342 Abu Muhammad said: This is among the matters wherein they have openly proclaimed falsehood and contradicted their own foundational principles. The first of these is that it constitutes a claim without evidence. Moreover, they permit the inclusion of bees, silkworms, and dogs in inheritance and wills according to their view, yet they do not permit the sale of any such thing.

L24343 They permit bequeathing what has not yet been produced from the fruit of palm trees and others, and incorporate it into the inheritance shares.

L24344 They do not permit the sale of any of that, so their negligence became evident, and with Allah, the Most High, is success.

L24345 The issue of selling on the condition that you make a profit for me of one dirham per dinar, nor on the condition that I share a profit with you of such-and-such in the transaction.

L24346 1516 - Issue:

L24347 It is impermissible to sell on the condition that you give me a profit of one dirham per dinar, nor on the condition that I profit with you in it by such and such dirhams. If such a sale occurs, it is perpetually invalid.

L24348 If they contracted the sale without this condition, but the seller informed him that he acquired the commodity for such-and-such amount and that he does not profit with the buyer in it beyond such-and-such amount, then the sale has occurred as valid. If the buyer finds that he lied in what he stated, this does not harm the sale in any way, nor does it grant any right of recourse

هَيْهَاتَ دِينُ اللَّهِ عَزَّ وَجَلَّ أَعَزُّ مِنْ ذَلِكَ وَأَحْرَزُ.

وَقَالَ الْمُبِيحُونَ لَهُ: لَمَّا صَحَّ الْإِجْمَاعُ عَلَى وُجُوبِ دُخُولِ الْهِرِّ، وَالْكَلْبِ الْمُبَاحِ اتِّخَاذُهُ فِي الْمِيرَاثِ، وَالْوَصِيَّةِ، وَالْمِلْكِ: جَازَ بَيْعُهُمَا.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا جَاهَرُوا فِيهِ بِالْبَاطِلِ، وَبِخِلَافِ أُصُولِهِمْ: أَوَّلُ ذَلِكَ: أَنَّهُ دَعْوَى بِلَا بُرْهَانٍ ثُمَّ إنَّهُمْ يُجِيزُونَ دُخُولَ النَّحْلِ، وَدُودِ الْحَرِيرِ فِي الْمِيرَاثِ، وَالْوَصِيَّةِ، وَكَذَلِكَ الْكَلْبِ عِنْدَهُمْ، وَلَا يُجِيزُونَ بَيْعَ شَيْءٍ مِنْ ذَلِكَ.

وَيُجِيزُونَ الْوَصِيَّةَ بِمَا لَمْ يُخْلَقْ بَعْدُ مِنْ ثَمَرِ النَّخْلِ وَغَيْرِهَا، وَيُدْخِلُونَهُ فِي الْمِيرَاثِ.

وَلَا يُجِيزُونَ بَيْعَ شَيْءٍ مِنْ ذَلِكَ، فَظَهَرَ تَخَاذُلُهُمْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْبَيْعِ عَلَى أَنْ تربحني للدينار درهما وَلَا عَلَى أني أربح معك فِيهِ كَذَا]

١٥١٦ - مَسْأَلَةٌ:

وَلَا يَحِلُّ الْبَيْعُ عَلَى أَنْ تُرْبِحَنِي لِلدِّينَارِ دِرْهَمًا، وَلَا عَلَى أَنِّي أَرْبَحُ مَعَك فِيهِ كَذَا وَكَذَا دِرْهَمًا، فَإِنْ وَقَعَ فَهُوَ مَفْسُوخٌ أَبَدًا.

فَلَوْ تَعَاقَدَا الْبَيْعَ دُونَ هَذَا الشَّرْطِ، لَكِنْ أَخْبَرَهُ الْبَائِعُ بِأَنَّهُ اشْتَرَى السِّلْعَةَ بِكَذَا وَكَذَا، وَأَنَّهُ لَا يَرْبَحُ مَعَهُ فِيهَا إلَّا كَذَا وَكَذَا فَقَدْ وَقَعَ الْبَيْعُ صَحِيحًا، فَإِنْ وَجَدَهُ قَدْ كَذَبَ فِيمَا

whatsoever, except in cases of a defect in it or manifest unfair pricing as is the case with all sales. The liar is sinful solely for his lie.

قَالَ لَمْ يَضُرَّ ذَلِكَ الْبَيْعَ شَيْئًا، وَلَا رُجُوعَ لَهُ بِشَيْءٍ أَصْلًا، إِلَّا مِنْ عَيْبٍ فِيهِ، أَوْ غَبْنٍ ظَاهِرٍ كَسَائِرِ الْبُيُوعِ، وَالْكَاذِبُ آثِمٌ فِي كَذِبِهِ فَقَطْ.

L24349–24351 The proof of this is that a sale contingent on you making me a profit of such-and-such is a condition not found in the Book of Allah Almighty, thus it is invalid, and the contract containing it is invalid. Moreover, it is a sale with an unknown price, because the two parties contracted the sale on the basis that it [...] He profits with it a dirham per dinar. If the purchase was a dinar excluding a quarter, the purchase is based on that, and the profit is a dirham excluding a quarter of a dirham. This is the prohibited sale of gharar (uncertainty) which the Messenger of Allah (peace and blessings be upon him) forbade – a sale for a price whose amount is not known.

بُرْهَانُ ذَلِكَ: أَنَّ الْبَيْعَ عَلَى أَنْ تُرْبِحَنِي كَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ وَالْعَقْدُ بِهِ بَاطِلٌ وَأَيْضًا: فَإِنَّهُ بَيْعٌ بِثَمَنٍ مَجْهُولٍ، لِأَنَّهُمَا إِنَّمَا تَعَاقَدَا الْبَيْعَ عَلَى أَنَّهُ يُرْبَحُ مَعَهُ لِلدِّينَارِ دِرْهَمًا، فَإِنْ كَانَ شِرَاؤُهُ دِينَارًا غَيْرَ رُبُعٍ كَانَ الشِّرَاءُ بِذَلِكَ، وَالرِّبْحُ دِرْهَمًا غَيْرَ رُبُعِ دِرْهَمٍ فَهَذَا بَيْعُ الْغَرَرِ الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْبَيْعُ بِثَمَنٍ لَا يَدْرِي مِقْدَارَهُ.

L24352 If the sale is free of this condition, it has validly occurred as Allah the Exalted has commanded. The seller's lie constitutes disobedience to Allah the Exalted, but the sale is not contingent upon it. Rather, it is like his fornication if he were to fornicate, or his drinking if he were to consume wine—there being no difference.

فَإِذَا سَلِمَ الْبَيْعُ مِنْ هَذَا الشَّرْطِ فَقَدْ وَقَعَ صَحِيحًا كَمَا أَمَرَ اللَّهُ تَعَالَى، وَكِذْبَةُ الْبَائِعِ مَعْصِيَةٌ لِلَّهِ تَعَالَى لَيْسَتْ مَعْقُودًا عَلَيْهَا الْبَيْعُ، لَكِنْ كَزِنَاهُ لَوْ زَنَى، أَوْ شُرْبِهِ لَوْ شَرِبَ الْخَمْرَ وَلَا فَرْقَ.

L24353 It was narrated to us through the chain of Waki', who narrated on the authority of Sufyān al-Thawrī, from 'Abd al-A'lā, from Sa'īd ibn Jubayr, from Ibn 'Abbās that he disliked the sale called "dah davāzdah"—a Persian phrase meaning "I will give you twelve for ten"—which is the sale of murābaḥah.

رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْأَعْلَى عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَرِهَ بَيْعَ " دَه دوازده " مَعْنَاهُ أُرْبِحُك لِلْعَشَرَةِ اثْنَيْ عَشَرَ وَهُوَ بَيْعُ الْمُرَابَحَةِ

L24354 It has been reported to us from Ibn Abbas that he explicitly stated: "This constitutes usury."

وَرُوِّينَا عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: هُوَ رِبًا.

L24355 And via the chain of Waki' and 'Abd al-Razzaq, both narrated jointly: From Sufyan al-Thawri, from 'Ammar al-Duhni, from Ibn Abi Nu'm, from Ibn 'Umar, who said: The sale of "dah duwazdah" (ten for twelve) is riba.

وَمِنْ طَرِيقِ وَكِيعٍ، وَعَبْدِ الرَّزَّاقِ، قَالَا جَمِيعًا: أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَمَّارٍ الدُّهْنِيِّ عَنِ ابْنِ أَبِي نُعْمٍ عَنِ ابْنِ عُمَرَ أَنَّهُ قَالَ: بَيْعُ " دَه دوازده " رِبًا.

L24356 Ikrimah said: It is unlawful (ḥarām). Al-Ḥasan disliked it (karhiha), and Masrūq disliked it (karhiha), with Masrūq adding: "No, I would rather buy it for such-and-such or sell it for such-and-such."

وَقَالَ عِكْرِمَةُ: هُوَ حَرَامٌ وَكَرِهَهُ الْحَسَنُ وَكَرِهَهُ مَسْرُوقٌ وَقَالَ: بَلْ أَشْتَرِيهِ بِكَذَا أَوْ أَبِيعُهُ بِكَذَا.

L24357 It has been narrated to us from Ibn Mas'ud that he permitted it provided

وَرُوِّينَا عَنِ ابْنِ مَسْعُودٍ أَنَّهُ أَجَازَهُ إِذَا لَمْ يَأْخُذْ لِلنَّفَقَةِ رِبْحًا.

no profit was charged beyond covering the sustenance costs.

L24358 Ibn al-Musayyib and Shurayh permitted it. Ibn Sīrīn said: “There is no harm in ten to twelve (dah davāzdah),” and the expense for clothing should be calculated.

L24359 For those who permit it, there exists excessive prolongation regarding one who buys on deferred terms and sells for cash, one who purchases amidst currency fluctuation and sells during market stagnation; what is not legally accounted for as valid rent for stretching and folding services; the dyer’s fee, the cloth-bleacher’s wage; what is provided as sustenance to crafts; the broker’s fee; when an error is alleged or falsehood exposed—all of this being corrupt legal reasoning.

L24360 However, we say: Whoever is tested in trade in a land where purchasing occurs only in this manner should state, “I incurred such and such [cost],” according to his expenditure on it, or say, “I bought it for such and such,” without calculating any expenses in that amount. Then he should say, “However, I do not sell it at my purchasing price; you seek to acquire it from me through a sale for such and such. If not, then abandon it.” This constitutes a valid sale with no defect involved.

L24361–24363 It has been narrated to us through the chain of Ibn Abi Shaybah: Jarīr—who is Ibn ʿAbd al-Ḥamīd—from Abi Sinān, from ʿAbdullāh ibn al-Ḥārith, who said: “A man passed by a group among whom was the Messenger of Allah—peace and blessings be upon him—carrying a garment, so the man said to him...” Some of them asked, “For how much did you purchase it?” He answered him, then said, “You have lied,” while the Messenger of Allah—peace and blessings of Allah be upon him—was among them. The man retracted and said, “O Messenger of Allah, I bought it for such-and-such amount—less than what I had claimed.” The Messenger of Allah—peace and blessings of Allah be upon him—told him, “Give the excess as charity.” They hold that the Mursal (narrative with interrupted chain) is treated like the Musnad (authenticated narrative with complete chain), yet they contradicted this Mursal because the Prophet neither invalidated the sale nor reduced any portion of the profit.

وَأَجَازَهُ ابْنُ الْمُسَيِّبِ، وَشُرَيْحٌ، وَقَالَ ابْنُ سِيرِينَ: لَا بَأْسَ “ ده دوازده ” وَتُحْسَبُ النَّفَقَةُ عَلَى الثِّيَابِ.

وَلِمَنْ أَجَازَهُ تَطْوِيلٌ كَثِيرٌ فِيمَنْ ابْتَاعَ نَسِيئَةً، وَبَاعَ نَقْدًا، وَفِيمَنْ اشْتَرَى فِي نَفَاقٍ، وَبَاعَ فِي كَسَادٍ، وَمَا يُحْسَبُ كِرَاءِ الشَّدِّ وَالطَّيِّ، وَالصَّبَّاغِ، وَالْقَصَّارَةِ، وَمَا أُطْعِمَ الْحُرَفَا، وَأُجْرَةِ السِّمْسَارِ، وَإِذَا ادَّعَى غَلَطًا، وَإِذَا انْكَشَفَ أَنَّهُ كَذِبٌ وَكُلُّهُ رَأْيٌ فَاسِدٌ.

لَكِنْ نَقُولُ: مَنْ امْتُحِنَ بِالتِّجَارَةِ فِي بَلَدٍ لَا ابْتِيَاعَ فِيهِ إِلَّا هَكَذَا فَلْيَقُلْ: قَامَ عَلَيَّ بِكَذَا، وَبِحَسَبِ نَفَقَتِهِ عَلَيْهِ أَوْ يَقُولُ: ابْتَعْته بِكَذَا، وَلَا يَحْسِبُ فِي ذَلِكَ نَفَقَةً، ثُمَّ يَقُولُ: لَكِنِّي لَا أَبِيعُهُ عَلَى شِرَائِي، تُرِيدُ أَخْذَهُ مِنِّي بَيْعًا بِكَذَا وَكَذَا، وَإِلَّا فَدَعْ فَهَذَا بَيْعٌ صَحِيحٌ لَا دَاخِلَةَ فِيهِ.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ هُوَ ابْنُ عَبْدِ الْحَمِيدِ عَنْ أَبِي سِنَانٍ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ قَالَ «مَرَّ رَجُلٌ بِقَوْمٍ فِيهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَعَهُ ثَوْبٌ، فَقَالَ لَهُ بَعْضُهُمْ بِكَمْ ابْتَعْتَهُ؟ فَأَجَابَهُ، ثُمَّ قَالَ: كَذَبْتَ وَفِيهِمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَجَعَ فَقَالَ: يَا رَسُولَ اللَّهِ ابْتَعْتُهُ بِكَذَا وَكَذَا بِدُونِ مَا كَانَ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: تَصَدَّقْ بِالْفَضْلِ» وَهُمْ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ، وَهَذَا مُرْسَلٌ قَدْ خَالَفُوهُ؛ لِأَنَّهُ لَمْ يَرُدَّ بَيْعَهُ، وَلَا حَطَّ عَنْهُ شَيْئًا مِنْ الرِّبْحِ.

[مَسْأَلَة الْبَيْع عَلَى الرقم أَوْ أَنْ يغري أحدا بِمَا يرقم عَلَى سلعته]

١٥١٧ - مَسْأَلَةٌ:

وَلَا يَجُوزُ الْبَيْعُ عَلَى الرَّقْمِ وَلَا أَنْ يُغْرِ أَحَدًا بِمَا يُرَقِّمُ عَلَى سِلْعَتِهِ، لَكِنْ يُسَوِّمُ وَيُبَيِّنُ الزِّيَادَةَ الَّتِي يَطْلُبُ عَلَى قِيمَةِ مَا يَبِيعُ، وَيَقُولُ: إِنْ طَابَتْ نَفْسُك بِهَذَا، وَإِلَّا فَدَعْ.

The issue of selling based on a numbering system, or enticing someone by what is numbered on his commodity.

1517: Question:

It is impermissible to sell based on a marked price, nor to entice anyone through the markings on their merchandise. Rather, one must negotiate the price, clearly state the markup above the value of what is being sold, and say: "If you are content with this, proceed; otherwise, leave it."

[مَسْأَلَة البيعتان فِي بيعة]

١٥١٨ - مَسْأَلَةٌ:

وَلَا يَحِلُّ بَيْعَتَانِ فِي بَيْعَةٍ، مِثْلُ: أَبِيعُك سِلْعَتِي بِدِينَارَيْنِ عَلَى أَنْ تُعْطِيَنِي بِالدِّينَارَيْنِ كَذَا وَكَذَا دِرْهَمًا.

أَوْ كَمَنْ ابْتَاعَ سِلْعَةً بِمِائَةِ دِرْهَمٍ عَلَى أَنْ يُعْطِيَهُ دَنَانِيرَ كُلَّ دِينَارٍ بِعَدَدٍ مِنْ الدَّرَاهِمِ وَمِثْلُ: أَبِيعُك سِلْعَتِي هَذِهِ بِدِينَارَيْنِ نَقْدًا أَوْ بِثَلَاثَةٍ نَسِيئَةً.

وَمِثْلِ أَبِيعُك سِلْعَتِي هَذِهِ بِكَذَا وَكَذَا عَلَى أَنْ تَبِيعَنِي سِلْعَتَك هَذِهِ بِكَذَا وَكَذَا.

فَهَذَا كُلُّهُ حَرَامٌ مَفْسُوخٌ أَبَدًا مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا يَحْيَى بْنُ مَعِينٍ نا هُشَيْمٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعَتَيْنِ فِي بَيْعَةٍ» .

The issue of two sales in one sale.

1518 – Issue:

It is unlawful to conclude two sales in one sale, such as: "I sell you my goods for two dinars, provided you give me such-and-such dirhams for them."

Or like one who purchases a commodity priced at a hundred dirhams on the condition that he pays in dinars - each dinar being exchanged for a number of dirhams. Similar to: "I sell you this commodity of mine for two dinars in cash or three dinars on credit."

I am selling you this commodity of mine for [specific terms], on the binding condition that you sell me this commodity of yours for [specific terms].

Therefore, all of this is forbidden, perpetually nullified, and subject to the ruling of usurpation.

The proof of that is what has been narrated to us via Qāsim ibn Aṣbagh, from Aḥmad ibn Zuhayr, from Yaḥyā ibn Maʿīn, from Hushaym, from Yūnus ibn ʿUbayd, from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allah (peace and blessings of Allah be upon him) prohibited two sales in one sale.[27]

[27] **Hadith references (L24373):** Sunan an-Nasai 4632; Jami at-Tirmidhi 1231; Mishkat al-Masabih 2868.

وَرُوِّينَا عَنْ الشَّعْبِيِّ، وَمُحَمَّدِ بْنِ عَلِيٍّ: أَنَّهُمَا كَرِهَا ذَلِكَ وَمَا نَعْلَمُ لِلْمَالِكِيِّينَ حُجَّةً إلَّا أَنَّهُمْ قَالُوا: الْبَيْعَةُ الْأُولَى لَغْوٌ فَهَذَا الِاحْتِجَاجُ أَفْسَدُ مِنْ الْقَوْلِ الَّذِي احْتَجُّوا لَهُ بِهِ، وَأَفْقَرُ إلَى حُجَّةٍ؛ لِأَنَّهُ دَعْوَى مُجَرَّدَةٌ، عَلَى أَنَّهُمْ أَتَوْا بِعَظَائِمَ طَرْدًا مِنْهُمْ لِهَذَا الْأَصْلِ الْفَاسِدِ: فَأَجَازُوا بَيْعَ هَذِهِ السِّلْعَةِ بِخِنْزِيرٍ، أَوْ بِقِسْطِ خَمْرٍ، عَلَى أَنْ يَأْخُذُوا بِالْخِنْزِيرِ، أَوْ الْخَمْرِ: دِينَارَيْنِ وَهَذِهِ عَظِيمَةٌ تَمْلَأُ الْفَمَ، وَيَكْفِي ذِكْرُهَا عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِمْ، وَمَا الدِّيَانَةُ كُلُّهَا إلَّا بِأَسْمَائِهَا وَأَعْمَالِهَا، لَا بِأَحَدِ الْأَمْرَيْنِ دُونَ الْآخَرِ.

L24374 And it has been related to us from al-Sha'bī and Muḥammad ibn 'Alī that they both disapproved of that. We know of no evidence for the Mālikīs except their statement: "The initial pledge is invalid." This argument is more corrupt than the position they sought to justify with it, and more lacking in evidence, as it constitutes an unsubstantiated claim. Indeed, they committed grave sins in their repudiation of this corrupt principle by permitting the sale of this commodity for a pig or a portion of wine, on the condition that they then take two dinars in exchange for the pig or wine. This is a monstrous act that leaves one aghast—its mere mention suffices without laborious refutation. For religion in its entirety is nothing but its declarations and its deeds, not one of these aspects without the other.

وَنَحْنُ نَجِدُ الْمُسْتَقْرِضَ يَقُولُ: أَقْرِضْنِي دِينَارَيْنِ عَلَى أَنْ أَرُدَّ لَك دِينَارَيْنِ إلَى شَهْرٍ لَكَانَ قَوْلًا حَسَنًا، وَعَمَلًا صَحِيحًا، فَلَوْ قَالَ لَهُ يَعْنِي دِينَارَيْنِ بِدِينَارَيْنِ إلَى شَهْرٍ لَكَانَ قَوْلًا خَبِيثًا، وَعَمَلًا فَاسِدًا، حَرَامًا، وَالْعَمَلُ وَاحِدٌ وَالصِّفَةُ وَاحِدَةٌ وَمَا فَرَّقَ بَيْنَهُمَا إلَّا اللَّفْظُ.

L24375–24376 We find the borrower saying: "Lend me two dinars on the condition that I repay you two dinars after a month," and this would be a commendable statement and a valid action. But if he were to say: "meaning: two dinars for two dinars after a month," it would be a sinful statement, an invalid and prohibited action. The action and its description are the same, and nothing distinguishes between them except the wording.

وَلَوْ قَالَ امْرُؤٌ لِآخَرَ: أَبِحْنِي وَطْءَ ابْنَتِك بِدِينَارٍ مَا شِئْت؟ فَقَالَ لَهُ: نَعَمْ لَكَانَ قَوْلًا حَرَامًا: وَزِنًا مُجَرَّدًا، فَلَوْ قَالَ لَهُ: زَوِّجْنِيهَا بِدِينَارٍ، لَكَانَ قَوْلًا صَحِيحًا، وَعَمَلًا صَحِيحًا، وَالصِّفَةُ وَاحِدَةٌ، وَالْعَمَلُ وَاحِدٌ، وَإِنَّمَا فَرَّقَ بَيْنَهُمَا الِاسْمُ.

L24377 If a man were to say to another, "Permit me to have intercourse with your daughter for a dinar whenever you wish," and the latter responds, "Yes," this would constitute a forbidden statement—sheer fornication. But if he were to say to him, "Marry her to me for a dinar," it would be a valid statement and a valid act. The essence is the same, the act is the same, and only the name distinguishes between them.

وَقَوْلُهُمْ هَذَا جَمَعَ وُجُوهًا مِنْ الْبَلَاءِ، وَأَنْوَاعًا مِنْ الْحَرَامِ: مِنْهَا: تَعَدِّي حُدُودِ اللَّهِ تَعَالَى، وَشَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، وَبَيْعَتَيْنِ فِي بَيْعَةٍ، وَبَيْعُ مَا لَا يَحِلُّ وَابْتِيَاعُهُ مَعًا، وَبَيْعُ غَائِبٍ بِنَاجِزٍ فِيمَا يَقَعُ فِيهِ الرِّبَا وَبَيْعُ الْغَرَرِ وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِ هَذَا.

L24378 And their statement combines aspects of calamity and types of prohibition: among them are transgressing the limits ordained by Allah the Exalted, stipulating a condition not found in the Book of Allah the Exalted, two sales in one transaction, selling what is unlawful and buying it in the same transaction, selling deferred goods for immediate payment in contexts where usury applies, the sale involving *gharar* (uncertainty), and we seek refuge with Allah from the likes of this.

L24379 If it is said: You state regarding what we have reported through the chain of Abu Bakr ibn Abi Shaybah—reported to us by Yahya ibn Abi Za'ida, re-

ported from Muhammad ibn ʻAmr ibn ʻAlqamah, reported from Abu Salama, reported from Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said, "Whoever combines two transactions in one sale, he must take the lesser of the two prices—otherwise it is usury." Shuraih upheld this ruling, as reported to us by Hammam—reported from ʻAyyash ibn Asbagh, reported from Muhammad ibn ʻAbd al-Malik ibn Ayman, reported from ʻAbdullah ibn Ahmad ibn Hanbal, reported from al-Aʻla, reported from Hammad, reported from Qatadah, Ayyub al-Sikhtiyani, Yunus ibn ʻUbayd, and Hisham ibn Hassan—all of whom reported from Muhammad ibn Sirin. He said: Two conditions in a sale: "I will sell to you [something] with a term of one month for ten; if you retain it for a month, then you take ten." Shuraih said: "The lesser of the two prices and the more distant of the two terms—otherwise it is usury." ʻAbdullah said: So I asked my father, "What about this?" He replied: "This is a voidable sale."[28]

L24380 Abu Muhammad said: He means that if you detain him for another month, you will take another ten.

L24381–24383 Abu Muhammad said: We say: This is an authentic report, except that it aligns with the established original principle. Indeed, usury, two transactions in one contract, and stipulations in sales—all of those were not unlawful in the absolute sense until they were entirely prohibited. When all that we mentioned was forbidden, the initial permissibility was undoubtedly abrogated. Therefore, this report is unquestionably abrogated. Since it is undoubtedly prohibited to engage in two sales within a single transaction, both must be invalidated together, as they constitute a prohibited act. And success comes only from Allah, the Exalted.

L24384 **An issue of a transaction that combines lawful and unlawful elements.**

L24385 1519: Legal Question

L24386 Any transaction combining unlawful and lawful elements is entirely void; none of it is valid. Examples include cases where part of the sold item is

[28]**Hadith references (L24379):** Sunan Abi Dawud 3461.

فَإِنْ قِيلَ: تَقُولُونَ فِيمَا رَوَيْتُمْ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ أَبِي زَائِدَةَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ بَاعَ بَيْعَتَيْنِ فِي بَيْعَةٍ فَلَهُ أَوْكَسُهُمَا أَوْ الرِّبَا» وَقَدْ أَخَذَ بِهَذَا شُرَيْحٌ: كَمَا حَدَّثَنَا حُمَامٌ نا عَيَّاشُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا عَبْدُ الْأَعْلَى نا حَمَّادٌ عَنْ قَتَادَةَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، وَيُونُسَ بْنِ عُبَيْدٍ، وَهِشَامِ بْنِ حَسَّانَ، كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، قَالَ: شَرْطَيْنِ فِي بَيْعٍ أَبِيعُك إلَى شَهْرٍ بِعَشَرَةٍ، فَإِنْ حَبَسْته شَهْرًا فَتَأْخُذُ عَشَرَةً، قَالَ شُرَيْحٌ: أَقَلُّ الثَّمَنَيْنِ، وَأَبْعَدُ الْأَجَلَيْنِ أَوْ الرِّبَا قَالَ عَبْدُ اللَّهِ: فَسَأَلْت أَبِي؟ فَقَالَ: هَذَا بَيْعٌ فَاسِدٌ.

قَالَ أَبُو مُحَمَّدٍ: يُرِيدُ فَإِنْ حَبَسْته شَهْرًا آخَرَ فَتَأْخُذُ عَشَرَةً أُخْرَى.

قَالَ أَبُو مُحَمَّدٍ: فَنَقُولُ: هَذَا خَبَرٌ صَحِيحٌ إلَّا أَنَّهُ مُوَافِقٌ لِمَعْهُودِ الْأَصْلِ، وَقَدْ كَانَ الرِّبَا، وَبَيْعَتَانِ فِي بَيْعَةٍ، وَالشُّرُوطُ فِي الْبَيْعِ: كُلُّ ذَلِكَ مُطْلَقًا غَيْرُ حَرَامٍ إلَى أَنْ حُرِّمَ كُلُّ ذَلِكَ، فَإِذْ حُرِّمَ كُلُّ مَا ذَكَرْنَا فَقَدْ نُسِخَتْ الْإِبَاحَةُ بِلَا شَكٍّ، فَهَذَا خَبَرٌ مَنْسُوخٌ بِلَا شَكٍّ بِالنَّهْيِ عَنْ بَيْعَتَيْنِ فِي بَيْعَةٍ بِلَا شَكٍّ، فَوَجَبَ إبْطَالُهُمَا مَعًا، لِأَنَّهُمَا عَمَلٌ مَنْهِيٌّ عَنْهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة صَفْقَة جمعت حلالا وحراما]

١٥١٩ - مَسْأَلَةٌ:

وَكُلُّ صَفْقَةٍ جَمَعَتْ حَرَامًا وَحَلَالًا فَهِيَ بَاطِلٌ كُلُّهَا، لَا يَصِحُّ مِنْهَا شَيْءٌ مِثْلُ: أَنْ يَكُونَ بَعْضُ الْمَبِيعِ مَغْصُوبًا، أَوْ لَا يَحِلُّ مِلْكُهُ، أَوْ عَقْدًا فَاسِدًا وَسَوَاءٌ كَانَ أَقَلَّ الصَّفْقَةِ، أَوْ

stolen, ownership of it is impermissible, or the contract is invalid—regardless of whether the unlawful element constitutes the least, most, lowest, highest, or middle portion. Mālik said: If the unlawful element is central to the transaction's purpose, the entire transaction is void. If it is a minor element, only the unlawful portion is void, while the lawful portion remains valid.

أَكْثَرَهَا، أَوْ أَدْنَاهَا، أَوْ أَعْلَاهَا، أَوْ أَوْسَطَهَا وَقَالَ مَالِكٌ: إِنْ كَانَ ذَلِكَ وَجْهَ الصَّفْقَةِ بَطَلَتْ كُلُّهَا، وَإِنْ كَانَ شَيْئًا يَسِيرًا بَطَلَ الْحَرَامُ، وَصَحَّ الْحَلَالُ.

L24387 Ali said: This is a corrupt opinion; there is no evidence for its validity—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor analogy.

قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ فَاسِدٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ.

L24388 "Among the astonishing claims is their argument for this position by stating: 'The basis of the transaction is its intended purpose and aim?' We countered them: 'What then? On what basis does this establish what you have mentioned as obligatory? This is nothing but your own assertion, which you then invoke as evidence for itself.' Thus, this argument is thereby invalidated."

وَمِنْ الْعَجَائِبِ احْتِجَاجُهُمْ لِذَلِكَ بِأَنْ قَالُوا: إنَّ وَجْهَ الصَّفْقَةِ هُوَ الْمُرَادُ وَالْمَقْصُودُ؟ فَقُلْنَا لَهُمْ: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ بِذَلِكَ مَا ذَكَرْتُمْ؟ وَمَا هُوَ إلَّا قَوْلُكُمْ احْتَجَجْتُمْ لَهُ بِقَوْلِكُمْ، فَسَقَطَ هَذَا الْقَوْلُ.

L24389 Others said: The lawful remains valid whether it be small or large in quantity, and the unlawful remains invalid whether it be small or large in quantity.

وَقَالَ آخَرُونَ: يَصِحُّ الْحَلَالُ قَلَّ أَوْ كَثُرَ وَيَبْطُلُ الْحَرَامُ قَلَّ أَوْ كَثُرَ.

L24390 Abu Muhammad said: We found this opinion invalidated by the words of Allah Almighty: "Do not consume your properties among yourselves unjustly except through mutual consent in a transaction" [Surah An-Nisa' 4:29]. These two parties did not mutually consent to portions of the transaction while excluding others, but rather consented to its entirety. Whoever obliges them to part of the transaction without the other part has imposed what they did not mutually accept at the contract's formation, thereby opposing Allah's command and ruling in favor of unjust wealth consumption - which is forbidden by the Quran. If they now agree to this, we do not prohibit them, but only through a new contract with their joint consent, for the original agreement was never established as such.[29]

قَالَ أَبُو مُحَمَّد: فَوَجَدْنَا هَذَا الْقَوْلَ يُبْطِلُهُ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَهَذَانِ لَمْ يَتَرَاضَيَا بِبَعْضِ الصَّفْقَةِ دُونَ بَعْضٍ، وَإِنَّمَا تَرَاضَيَا بِجَمِيعِهَا، فَمَنْ أَلْزَمَهُمَا بَعْضَهَا دُونَ بَعْضٍ فَقَدْ أَلْزَمَهُمَا مَا لَمْ يَتَرَاضَيَا بِهِ حِينَ الْعَقْدِ، فَخَالَفَ أَمْرَ اللَّهِ تَعَالَى، وَحَكَمَ بِأَكْلِ الْمَالِ بِالْبَاطِلِ وَهُوَ حَرَامٌ بِالْقُرْآنِ، فَإِنْ تَرَاضَيَا الْآنَ بِذَلِكَ لَمْ نَمْنَعْهُمَا، وَلَكِنْ بِعَقْدٍ مُجَرَّدٍ بِرِضَاهُمَا مَعًا، لِأَنَّ الْعَقْدَ الْأَوَّلَ لَمْ يَقَعْ هَكَذَا.

L24391 Moreover, the valid aspect of that transaction was not established by the two parties as valid except through the validity of the void—which inherently lacks validity. Whatever derives its validity solely from what can never be

وَأَيْضًا: فَإِنَّ الصَّحِيحَ مِنْ تِلْكَ الصَّفْقَةِ لَمْ يَتَعَاقَدَا صِحَّتَهُ إلَّا بِصِحَّةِ الْبَاطِلِ الَّذِي لَا صِحَّةَ لَهُ، وَكُلُّ مَا لَا صِحَّةَ لَهُ إلَّا بِصِحَّةِ مَا لَا يَصِحُّ أَبَدًا فَلَا صِحَّةَ لَهُ أَبَدًا وَهُوَ قَوْلُ أَصْحَابِنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[29] **Qur'an references (L24390):** Qur'an 4:29 (An-Nisa).

valid will itself never be valid. This is the position of our companions, and with Allah, the Exalted, lies success.

Issue: It is unlawful to sell a free individual.

L24392

L24393–24395 1520 - Issue: It is not permissible to sell a free person. The evidence for this is what was transmitted to us via the chain of transmission cited by Al-Bukhari: Bishr ibn Marḥūm narrated to us, Yaḥyā ibn Sulaym narrated to us, from Ismāʿīl ibn Umayyah, from Saʿīd ibn Abī Saʿīd al-Maqburī, from Abū Hurayrah, from the Prophet—peace and blessings of Allah be upon him—who said: Allah, the Almighty, said: "Three types of people I will oppose on the Day of Resurrection: a man who swears a pledge by My name then betrays it; a man who sells a free person into slavery and consumes its price; and a man who hires a worker, takes full advantage of his labor, yet does not give him his wage."[30]

L24396 Ali said: "There is ancient and ongoing disagreement on this matter. We will present—God Almighty willing—what He has facilitated for presentation, so claimants of consensus in matters more obscure than this may know they are false: It was narrated to us through Muhammad ibn al-Muthannā, who reported from 'Abd al-Raḥmān ibn Mahdī and Mu'ādh ibn Hishām al-Dastuwā'ī. 'Abd al-Raḥmān stated: 'Hammām ibn Yaḥyā reported to us,' while Mu'ādh said: 'My father reported to us.' Then Hishām and Hammām concurred. Both transmitted from Qatādah, from 'Abd Allāh ibn Buraydah: 'A man sold himself, and 'Umar ibn al-Khaṭṭāb ruled him a slave as he had declared himself, designating his price for God Almighty's cause.' This is Hammām's wording. As for Hishām's version: 'He acknowledged himself to a man until he sold him.' Both narrations align in other respects, and the meaning is necessarily unified in both wordings."

L24397 Via the chain of Ibn Abi Shaybah: Shariq narrated from Jabir, from ʿĀmir al-Shaʿbī, from ʿAlī ibn Abī Ṭālib, who said: "If someone confesses to his own enslavement, he is an enslaved person."

[30] **Hadith references (L24393):** Sahih al-Bukhari 2270.

[مَسْأَلَةٌ لَا يَحِلُّ بَيْعُ الْحُرِّ]

١٥٢٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الْحُرِّ. بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا بِشْرُ بْنُ مَرْحُومٍ نا يَحْيَى بْنُ سُلَيْمٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: قَالَ اللَّهُ عَزَّ وَجَلَّ: ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ: رَجُلٌ أَعْطَى بِي ثُمَّ غَدَرَ، وَرَجُلٌ بَاعَ حُرًّا فَأَكَلَ ثَمَنَهُ، وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوْفَى مِنْهُ وَلَمْ يُعْطِهِ أَجْرَهُ»

قَالَ عَلِيٌّ: وَفِي هَذَا خِلَافٌ قَدِيمٌ وَحَدِيثٌ، نُورِدُ إِنْ شَاءَ اللَّهُ تَعَالَى مِنْهُ مَا يَسَّرَ لِإِيرَادِهِ، لِيَعْلَمَ مُدَّعِي الْإِجْمَاعِ فِيمَا هُوَ أَخْفَى مِنْ هَذَا أَنَّهُ كَاذِبٌ: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ وَمُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ، قَالَ عَبْدُ الرَّحْمَنِ: نا هَمَّامُ بْنُ يَحْيَى، وَقَالَ مُعَاذٌ: نَا أَبِي ثُمَّ اتَّفَقَ هِشَامٌ، وَهَمَّامٌ، كِلَاهُمَا: عَنْ قَتَادَةَ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ: أَنَّ رَجُلًا بَاعَ نَفْسَهُ، فَقَضَى عُمَرُ بْنُ الْخَطَّابِ بِأَنَّهُ عَبْدٌ كَمَا أَقَرَّ نَفْسَهُ، وَجَعَلَ ثَمَنَهُ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ هَذَا لَفْظُ هَمَّامٍ وَأَمَّا لَفْظُ هِشَامٍ فَإِنَّهُ أَقَرَّ لِرَجُلٍ حَتَّى بَاعَهُ، وَاتَّفَقَا فِيمَا عَدَا ذَلِكَ، وَالْمَعْنَى وَاحِدٌ فِي كِلَا اللَّفْظَيْنِ وَلَا بُدَّ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا شَرِيكٌ عَنْ جَابِرٍ عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا أَقَرَّ عَلَى نَفْسِهِ بِالْعُبُودِيَّةِ فَهُوَ عَبْدٌ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ بْنُ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ سَاقَ إِلَى امْرَأَتِهِ رَجُلًا حُرًّا؟ فَقَالَ إِبْرَاهِيمُ: هُوَ رَهْنٌ بِمَا جَعَلَ فِيهِ حَتَّى يَفْتَكَّ نَفْسَهُ.

From the chain of Saʿīd ibn Manṣūr, who narrated to us through Hushaym, who narrated from al-Mughīrah ibn Miqsam, reporting Ibrāhīm al-Nakhaʿī's ruling regarding a man who provided a free man to his wife [as part of the dowry]. Ibrāhīm responded: "He remains collateral for the obligation stipulated against him until he redeems himself."

وَعَنْ زُرَارَةَ بْنِ أَوْفَى قَاضِي الْبَصْرَةِ مِنْ التَّابِعِينَ: أَنَّهُ بَاعَ حُرًّا فِي دَيْنٍ.

And from Zurārah ibn Awfā, the judge of Basra and a Tābiʿī (Successor), that he sold a free man due to debt.

وَقَدْ رُوِّينَا هَذَا الْقَوْلَ عَنْ الشَّافِعِيِّ وَهِيَ قَوْلَةٌ غَرِيبَةٌ لَا يَعْرِفُهَا مِنْ أَصْحَابِهِ إلَّا مَنْ تَبَحَّرَ فِي الْحَدِيثِ وَالْآثَارِ.

We have been narrated this statement from Al-Shāfiʿī - a rare statement unknown to his followers except those profoundly versed in Hadith and Athar.

قَالَ عَلِيٌّ: هَذَا قَضَاءُ عُمَرَ وَعَلِيٍّ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا يَعْتَرِضُهُمْ فِي ذَلِكَ مِنْهُمْ مُعْتَرِضٌ، فَإِنْ شَنَّعُوا هَذَا؟ قُلْنَا: يَا هَؤُلَاءِ لَا عَلَيْكُمْ، وَاَللَّهِ لَقَدْ قُلْتُمْ بِأَشْنَعَ مِنْ هَذَا وَأَشَدَّ، وَفِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا.

Ali said: This is the judgment of Umar and Ali in the presence of the Companions—may Allah be pleased with them—with none among them objecting to them in that matter. If they denounce this, we say: O these people, there is no blame on you, for by Allah, you have asserted things more denounceable and severe than this, in this very matter itself.

أَلَيْسَ الْحَنَفِيُّونَ يَقُولُونَ: إنْ ارْتَدَّ الْحَسَنِيُّ، أَوْ الْحُسَيْنِيُّ، أَوْ الْعَبَّاسِيُّ، أَوْ الْمَنَافِيُّ، أَوْ الْقُرَشِيُّ، فَلَحِقَ بِأَرْضِ الْحَرْبِ فَإِنْ وُلِدَ وَلَدُهُ يُسْتَرَقُّونَ، وَإِنْ أَسْلَمُوا كَانُوا عَبِيدًا، وَأَنَّ الْقُرَشِيَّةَ إنْ ارْتَدَّتْ وَلَحِقَتْ بِدَارِ الْحَرْبِ سُبِيَتْ وَأُرِقَّتْ، فَإِنْ أَسْلَمَتْ كَانَتْ مَمْلُوكَةً تُبَاحُ وَيُسْتَحَلُّ فَرْجُهَا بِمِلْكِ الْيَمِينِ، وَإِنْ لَمْ تُسْلِمْ تُرِكَتْ عَلَى كُفْرِهَا، وَجَازَ أَنْ يَسْتَرِقَّهَا الْيَهُودِيُّ وَالنَّصْرَانِيُّ؟ أَوَ لَيْسَ ابْنُ الْقَاسِمِ صَاحِبَ مَالِكٍ يَقُولُ: إنْ تَذَمَّمَ أَهْلُ الْحَرْبِ وَفِي أَيْدِيهِمْ أَسْرَى مُسْلِمُونَ، وَمُسْلِمَاتٌ أَحْرَارٌ، وَحَرَائِرُ، فَإِنَّهُمْ يُقَرُّونَ عَبِيدًا لَهُمْ وَإِمَّا يَتَمَلَّكُونَهُمْ وَيَتَبَايَعُونَهُمْ، فَأُفٍّ لِهَذَيْنِ الْقَوْلَيْنِ وَتُفٍّ، فَأَيُّهُمَا أَشْنَعُ مِمَّا لَمْ يُقَلِّدُوا فِيهِ عُمَرَ، وَعَلِيًّا - رَضِيَ اللَّهُ عَنْهُمَا -؟ قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَنْ صَارَ حُرًّا بِعِتْقٍ، أَوْ بِأَنْ كَانَ ابْنَ حُرٍّ مِنْ أَمَةٍ لَهُ، أَوْ بِأَنْ حَمَلَتْ بِهِ حُرَّةٌ، أَوْ بِأَنْ أُعْتِقَتْ أَمَةٌ وَهِيَ حَامِلٌ بِهِ، وَلَمْ يَسْتَثْنِهِ

Do the Ḥanafīs not assert: If a Ḥasanī, a Ḥusaynī, an ʿAbbāsī, a Manāfī, or a Qurayshite apostatizes and flees to the land of war, then if his child is born, they are enslaved, and if they embrace Islam, they would be Slaves, and that if a Qurayshi woman apostatizes and joins the abode of war, she is captured and reduced to slavery. If she embraces Islam, she becomes a lawful slave whose intimacy becomes permissible through rightful possession. If she does not embrace Islam, she is left in her disbelief. Is it permissible for a Jew or Christian to enslave her? Is it not Ibn al-Qasim, Malik's companion, who states: If the people of war demand a truce while holding Muslim captives—free Muslim men and freeborn women—they are left as their slaves, or they take ownership of them and trade them? Fie on these two opinions—how vile! Which is more abhorrent: that they did not follow the rulings of Umar and Ali—may Allah be pleased with them? Abu Muhammad said: Anyone who gains freedom through manumission, by being born to a free father from his enslaved woman, by a free woman's pregnancy with him, or by an enslaved woman's manumission while pregnant with him—provided the manumitter did not exclude him—has attained freedom. This freedom cannot be nullified

for him nor for any descendant of his, male or female, through the lineage we described, forever. Not through his apostasy or hers, nor through capture, nor through the apostasy of his father, grandfather (however distant), grandmother (however distant), nor through any ancestor's joining the abode of war—male or female—nor through his own joining, nor through acknowledgment of enslavement, debt, self-sale, nor under any circumstance. For neither the Quran nor the Sunnah mandates this. There is a report that free persons were sold for debt in early Islam until Allah the Exalted revealed: {If someone is in hardship, grant them respite until ease} [Al-Baqarah: 280]. Success comes from Allah the Exalted.[31]

Legal case regarding the sale of a female slave who became pregnant by her master.

1521 – Issue:

It is not permissible to sell a female slave who has become pregnant by her master, according to what Yūsuf ibn ʿAbd Allāh narrated to us from ʿAbd al-Wārith ibn Sufyān from Qāsim ibn Aṣbagh from Muṣʿab ibn Saʿīd from ʿAbd Allāh ibn ʿAmr al-Raqqī from ʿAbd al-Karīm al-Jazarī from ʿIkrimah from Ibn ʿAbbās, who said: "When Māriyah gave birth to Ibrāhīm, the Messenger of Allāh (peace be upon him) said: 'Her child emancipated her.'" This is a report with a ṣaḥīḥ chain, and the legal proof based on it is established.

If it is said: What is established from Ibn Abbas is the opinion permitting the sale of *ummahāt al-awlād* (mothers of offspring), and this report derives from his narration—would he have abandoned a transmitted ruling except due to its weakness in his assessment and in favor of what he deemed stronger in evidence? We respond: We—O assembly of Zahiris—are not opposed by such chaff of speech, nor is this objection raised against us except by those deficient in intellect. For proof in our school rests upon transmitted narrations, not opinion-based reasoning. Only those clinging to [opinion-

[31] **Qur'an references (L24402):** Qur'an 2:280 (Al-Baqarah).

الْمُعْتِقُ، فَإِنَّ الْحُرِّيَّةَ قَدْ حَصَلَتْ لَهُ، فَلَا تَبْطُلُ عَلَيْهِ، وَلَا عَمَّنْ تَنَاسَلَ مِنْهُ مِنْ ذَكَرٍ أَوْ أُنْثَى عَلَى هَذِهِ السَّبِيلِ مِنَ الْوِلَادَةِ الَّتِي ذَكَرْنَا أَبَدًا، لَا بِأَنْ يَرْتَدَّ، وَلَا بِأَنْ تَرْتَدَّ، وَلَا بِأَنْ يُسْبَى، وَلَا بِأَنْ يَرْتَدَّ أَبُوهُ أَوْ جَدُّهُ وَإِنْ بَعُدَ، أَوْ جَدَّتُهُ وَإِنْ بَعُدَتْ وَلَا بِلَحَاقٍ بِأَرْضِ الْحَرْبِ مِنْ أَحَدِ أَجْدَادِهِ، أَوْ جَدَّاتِهِ أَوْ مِنْهُ أَوْ مِنْهَا: وَلَا بِإِقْرَارِهِ بِالرِّقِّ، وَلَا بِدَيْنٍ، وَلَا بِبَيْعِهِ نَفْسِهِ، وَلَا بِوَجْهٍ مِنَ الْوُجُوهِ أَبَدًا لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَقَدْ جَاءَ أَثَرٌ بِأَنَّ الْحُرَّ كَانَ يُبَاعُ فِي الدَّيْنِ فِي صَدْرِ الْإِسْلَامِ إِلَى أَنْ أَنْزَلَ اللَّهُ تَعَالَى: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع أمة حملت مِنْ سيدها]

١٥٢١ - مَسْأَلَةٌ:

وَلَا يَحِلُّ بَيْعُ أَمَةٍ حَمَلَتْ مِنْ سَيِّدِهَا، لِمَا حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ نا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ نا قَاسِمُ بْنُ أَصْبَغَ نا مُصْعَبُ بْنُ سَعِيدٍ نا عَبْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيُّ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: «لَمَّا وَلَدَتْ مَارِيَةُ إِبْرَاهِيمَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَعْتَقَهَا وَلَدُهَا» وَهَذَا خَبَرٌ صَحِيحُ السَّنَدِ وَالْحُجَّةُ بِهِ قَائِمَةٌ.

فَإِنْ قِيلَ: الثَّابِتُ عَنِ ابْنِ عَبَّاسٍ الْقَوْلُ بِجَوَازِ بَيْعِ أُمَّهَاتِ الْأَوْلَادِ، وَهَذَا الْخَبَرُ مِنْ رِوَايَتِهِ، فَمَا كَانَ لِيَتْرُكَ مَا رُوِيَ إِلَّا لِضَعْفِهِ عِنْدَهُ، وَلِمَا هُوَ أَقْوَى عِنْدَهُ؟ قُلْنَا: لَسْنَا نُعَارَضُ - مَعْشَرَ الظَّاهِرِيِّينَ - بِهَذَا الْغُثَاءِ مِنَ الْقَوْلِ، وَلَا يُعْتَرَضُ بِهَذَا عَلَيْنَا إِلَّا ضِعَافُ الْعَقْلِ، لِأَنَّ الْحُجَّةَ عِنْدَنَا فِي الرِّوَايَةِ، لَا فِي الرَّأْيِ، يُعَارِضُ بِهَذَا مَنْ يَتَعَلَّقُ بِهِ إِذَا عُورِضَ بِالسُّنَنِ الثَّابِتَةِ.

based reasoning] employ this [argument] when confronted with established prophetic traditions.

L24409–24410 And he contradicts it among the Hanafis and Malikis—those who show no concern for contradiction in that matter, acting one way at this time and another way at that time—who feel no hesitation in claiming consensus here, then proceed to designate Ibn Mas'ud, Zayd ibn Thabit, Ali ibn Abi Talib, and Ibn Abbas as opponents of the consensus. This characterizes their knowledge of the Sunnah, and this demonstrates their understanding of consensus. Allah suffices us, and He is the finest Trustee.

L24411 1521 – Issue:

L24412 Abu Muhammad said: If the master's semen is deposited in the vagina of his female slave, her status is pending observation. If it remains until it becomes a formed entity discernible as a child, selling her is prohibited from the moment the semen was deposited in her vagina, and her sale is invalidated if she was sold. But if it exits her before becoming a formed entity discernible as a child, selling her is never prohibited.

L24413 The proof for the validity of this opinion is that if prohibiting the sale of the female slave in the aforementioned circumstance were not incumbent, then selling her would be permissible. If selling her were permissible, it would be lawful for her purchaser to have sexual relations with her before the semen could result in a child, and this contradicts the aforementioned explicit text.

L24414 Similarly, the ruling concerning the deceased following the presence of his semen in his wife's vagina is that his status remains contingent. If the child is born alive, we ascertain that his inheritance right is established due to his father's death. If the child is stillborn, we ascertain that no inheritance right ever accrues to him. For were it otherwise, a right to inheritance would have arisen for him that others had already lawfully claimed. And success comes only from Allah, the Exalted.

The Issue of the Sale of Air

L24415

L24416 Question 1522:

وَهُوَ مُخَالِفٌ لَهَا مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، الَّذِينَ لَا يُبَالُونَ بِالتَّنَاقُضِ فِي ذَلِكَ، مَرَّةً هَكَذَا وَمَرَّةً هَكَذَا، وَالَّذِينَ لَا يُبَالُونَ بِأَنْ يَدَّعُوا هَهُنَا الْإِجْمَاعَ ثُمَّ لَا يُبَالُونَ بِأَنْ يَجْعَلُوا: ابْنَ مَسْعُودٍ، وَزَيْدَ بْنَ ثَابِتٍ وَعَلِيَّ بْنَ أَبِي طَالِبٍ، وَابْنَ عَبَّاسٍ، مُخَالِفِينَ لِلْإِجْمَاعِ فَهَذِهِ صِفَةُ عِلْمِهِمْ بِالسُّنَنِ، وَهَذَا مِقْدَارُ عِلْمِهِمْ بِالْإِجْمَاعِ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

١٥٢١ - مَسْأَلَةٌ:

قَالَ أَبُو مُحَمَّد: إذَا وَقَعَ مَنِيُّ السَّيِّدِ فِي فَرْجِ أَمَتِهِ فَأَمْرُهَا مُتَرَقَّبٌ، فَإِنْ بَقِيَ حَتَّى يَصِيرَ خَلْقًا يَتَبَيَّنُ أَنَّهُ وَلَدٌ فَهِيَ حَرَامٌ بَيْعُهَا مِنْ حِينِ سُقُوطِ الْمَنِيِّ فِي فَرْجِهَا وَيُفْسَخُ بَيْعُهَا إنْ بِيعَتْ، وَإِنْ خَرَجَ عَنْهَا قَبْلَ أَنْ يَصِيرَ خَلْقًا يَتَبَيَّنُ أَنَّهُ وَلَدٌ، فَلَمْ يَحْرُمْ بَيْعُهَا قَطُّ.

وَبُرْهَانُ صِحَّةِ هَذَا الْقَوْلِ: أَنَّهُ لَوْ لَمْ يُسْتَحَقَّ الْمَنْعُ مِنْ الْبَيْعِ فِي الْحَالِ الَّتِي ذَكَرْنَا لَكَانَ بَيْعُهَا حَلَالًا، لَوْ كَانَ بَيْعُهَا حَلَالًا لَحَلَّ فَرْجُهَا لِمُشْتَرِيهَا قَبْلَ أَنْ يَصِيرَ الْمَنِيُّ وَلَدًا وَهَذَا خِلَافُ النَّصِّ الْمَذْكُورِ.

وَهَكَذَا الْقَوْلُ فِي الْمَيِّتِ إثْرَ كَوْنِ مَنِيِّهِ فِي فَرْجِ امْرَأَتِهِ أَنَّهُ مُتَرَقَّبٌ أَيْضًا، فَإِنْ وُلِدَ حَيًّا عَلِمْنَا أَنَّهُ قَدْ وَجَبَ مِيرَاثُهُ بِمَوْتِ أَبِيهِ، وَإِنْ وُلِدَ مَيِّتًا عَلِمْنَا أَنَّهُ لَمْ يَجِبْ لَهُ قَطُّ مِيرَاثٌ، إذْ لَوْ كَانَ غَيْرَ هَذَا لَمَا حَدَثَ لَهُ حَقٌّ فِي مِيرَاثٍ قَدْ اسْتَحَقَّهُ غَيْرُهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ بَيْعُ الْهَوَاءِ]

١٥٢٢ - مَسْأَلَةٌ:

وَلَا يَحِلُّ بَيْعُ الْهَوَاءِ أَصْلًا، كَمَنْ بَاعَ مَا عَلَى سَقْفِهِ وَجُدْرَانِهِ لِلْبِنَاءِ عَلَى ذَلِكَ، فَهَذَا بَاطِلٌ مَرْدُودٌ أَبَدًا؛ لِأَنَّ الْهَوَاءَ لَا يَسْتَقِرُّ فَيُضْبَطُ بِمِلْكٍ أَبَدًا، وَإِنَّمَا هُوَ مُتَمَوِّجٌ يَمْضِي مِنْهُ شَيْءٌ وَيَأْتِي آخَرُ أَبَدًا، فَكَانَ يَكُونُ بَيْعُهُ أَكْلَ مَالٍ بِالْبَاطِلِ؛ لِأَنَّهُ بَاعَ مَا لَا يَمْلِكُ، وَلَا يَقْدِرُ عَلَى إمْسَاكِهِ، فَهُوَ بَيْعُ غَرَرٍ، وَبَيْعُ مَا لَا يَمْلِكُ، وَبَيْعُ مَجْهُولٍ.

L24417 The sale of air is fundamentally impermissible, such as one selling what is above their roof and walls for construction upon it. This transaction is permanently void and rejected because air does not settle and cannot be permanently controlled as property. Rather, it is in constant motion, with something ceaselessly departing and others arriving endlessly. Selling it would thus constitute wrongful consumption of wealth, as one sells what they neither own nor have the ability to retain. It is a sale involving *gharar*, a sale of what is not owned, and a sale of an unknown entity.

فَإِنْ قِيلَ: إنَّمَا بِيعَ الْمَكَانُ لَا الْهَوَاءُ؟ قُلْنَا: لَيْسَ هُنَاكَ مَكَانٌ أَصْلًا غَيْرَ الْهَوَاءِ، فَلَوْ كَانَ مَا قُلْتُمْ لَكَانَ لَمْ يَبِعْ شَيْئًا أَصْلًا؛ لِأَنَّهُ عَدَمٌ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ حَقًّا.

L24418 If it is said: "Only the place was sold, not the space?" We reply: "There is no place at all except space. If your claim were valid, nothing would have been sold whatsoever, for it is non-existent. Thus, it is unequivocally an illegitimate usurpation of property."

فَإِنَّ قِيلَ: إنَّمَا بَاعَ سَطْحَ سَقْفِهِ وَجُدْرَانِهِ؟

L24419 If it is said: "Did he sell only the flat roof and walls?"

قُلْنَا: هَذَا بَاطِلٌ وَهُوَ أَيْضًا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ - تَعَالَى - فَهُوَ بَاطِلٌ؛ لِأَنَّهُ شَرَطَ لَهُ أَنْ يَهْدِمَ شَيْئًا مِنْ سَقْفِهِ، وَلَا مِنْ رُءُوسِ جُدْرَانِهِ، وَهَذَا شَرْطٌ لَمْ يَأْتِ النَّصُّ بِإِبَاحَتِهِ فَهُوَ بَاطِلٌ حَرَامٌ مَفْسُوخٌ أَبَدًا - وَقَدْ رُوِّينَا هَذَا الْقَوْلَ عَنْ الشَّافِعِيِّ، وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْقِسْمَةِ " وَأَنَّهُ لَا يَحِلُّ أَلْبَتَّةَ أَنْ يَمْلِكَ أَحَدٌ شَيْئًا وَيَمْلِكُ غَيْرُهُ الْعُلُوَّ الَّذِي عَلَيْهِ - وَمَنْ بَاعَ سَقْفَهُ فَقَطْ فَحَلَالٌ، وَيُؤْخَذُ الْمُشْتَرِي بِإِزَالَةِ مَا اشْتَرَى عَنْ مَكَانِ مِلْكِهِ لِغَيْرِهِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24420–24421 We said: This is invalid, and it is also a condition not found in the Book of Allah—Exalted be He—thus it is invalid. For he stipulated that one must demolish part of his ceiling but not the tops of his walls, and this is a condition not sanctioned by textual evidence as permissible. Therefore, it is invalid, prohibited, and perpetually nullified. This opinion has been transmitted to us from Al-Shāfiʿī, and we have mentioned it in *The Book of Division*, affirming that it is entirely impermissible for one to own something while another owns the upper structure above it. If someone sells only his ceiling, it is permissible, but the buyer is required to remove what he purchased from the place owned by another. And success is from Allah—Exalted be He.

[مَسْأَلَةُ بَيْعِ مَنْ لَا يَعْقِلُ لِسُكْرٍ أَوْ جُنُونٍ]

The Issue of the Sale by One Who Lacks Reason Due to Intoxication or Insanity

١٥٢٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ مَنْ لَا يَعْقِلُ لِسُكْرٍ، أَوْ جُنُونٍ، وَلَا يَلْزَمُهُمَا؛ لِقَوْلِ اللَّهِ - تَعَالَى -: {لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] .

L24422 Issue 1523: A sale conducted by a person lacking mental capacity due to intoxication or insanity is invalid, and such transactions are not legally binding. This is based on Allah's statement, the Exalted: "Do not approach

prayer while you are intoxicated until you know what you are saying" [Quran 4:43].[32]

L24424 The Exalted and Majestic has borne witness that the intoxicated person does not comprehend what he utters, and a sale is a verbal declaration or its equivalent for those incapable of speech due to a defect such as muteness or an oral impairment. Thus, one who does not understand what he says—has he not engaged in any sale or purchase? Some deemed it permissible, but we know of no evidence whatsoever for their position beyond their assertion that such a person disobeyed God—Exalted and Majestic—and brought this state upon himself. We responded: "Indeed, he is liable to the hadd punishment in this world and the Fire in the Hereafter unless God—Exalted—forgives him. Yet this does not necessitate imposing an additional legal obligation beyond what God—Exalted—has decreed." They do not dispute that if an intoxicated person were to act recklessly, fall, and break his leg, he would be granted the concession to pray seated, like the one who sustained that injury in the cause of God—Exalted—with no distinction.

L24425 Similarly, tayammum is permitted when one has wounds that prevent wudu and ghusl – and this is a crude contradiction – and success comes from Allah, the Most High.

L24426 They assert that someone who intentionally consumes marking nuts and consequently loses his mental capacity is subject to the same legal ruling as an insane person who did not induce that state upon himself in matters of sale, divorce, and other such legal acts. What distinction then exists between the two cases? As for the insane person, there is no disagreement with us on this matter.

L24427 If they say: And who knows that he is intoxicated? We say: And who knows that he is insane? Perhaps he has feigned foolishness. The ruling applies only to one in whom both states are confirmed through direct observation. It has been authentically reported from the Prophet—peace be upon him—that he said: "The pen is lifted from three: the insane until he regains his senses, the child until he reaches puberty..."

فَشَهِدَ - عَزَّ وَجَلَّ - بِأَنَّ السَّكْرَانَ لَا يَدْرِي مَا يَقُولُ، وَالْبَيْعُ قَوْلٌ، أَوْ مَا يَقُومُ مَقَامَ الْقَوْلِ: مِمَّنْ لَا يَقْدِرُ عَلَى الْقَوْلِ مِمَّنْ بِهِ آفَةٌ مِنَ الْخَرَسِ، أَوْ بِفَمِهِ آفَةٌ، فَمَنْ لَا يَدْرِي مَا يَقُولُ فَلَمْ يَبِعْ شَيْئًا وَلَا ابْتَاعَ شَيْئًا؟ وَأَجَازَهُ قَوْمٌ وَلَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا أَكْثَرَ مِنْ أَنْ قَالُوا: هُوَ عَصَى اللَّهَ - تَعَالَى وَعَزَّ وَجَلَّ - وَأَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ؟ فَقُلْنَا نَعَمْ، وَحَقُّهُ عَلَى ذَلِكَ الْحَدُّ فِي الدُّنْيَا، وَالنَّارُ فِي الْآخِرَةِ إِلَّا أَنْ يَغْفِرَ اللَّهُ - تَعَالَى - لَهُ، وَلَيْسَ ذَلِكَ بِمُوجِبٍ إِلْزَامِهِ حُكْمًا زَائِدًا لَمْ يُلْزِمْهُ اللَّهُ - تَعَالَى - إِيَّاهُ، وَهُمْ لَا يَخْتَلِفُونَ فِي سَكْرَانَ عَرْبَدَ فَوَقَعَ فَانْكَسَرَتْ سَاقُهُ، فَإِنَّ لَهُ مِنَ الرُّخْصَةِ فِي الصَّلَاةِ قَاعِدًا كَالَّذِي أَصَابَهُ ذَلِكَ فِي سَبِيلِ اللَّهِ - تَعَالَى -، وَلَا فَرْقَ.

وَكَذَلِكَ التَّيَمُّمُ إِذَا جُرِحَ جِرَاحَاتٍ تَمْنَعُهُ مِنَ الْوُضُوءِ وَالْغُسْلِ - وَهَذَا تَنَاقُضٌ سَمِجٌ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

وَيَقُولُونَ فِيمَنْ تَنَاوَلَ الْبَلَاذِرَ عَمْدًا فَذَهَبَ عَقْلُهُ: أَنَّ حُكْمَهُ حُكْمُ الْمَجْنُونِ الَّذِي لَمْ يُدْخِلْ ذَلِكَ عَلَى نَفْسِهِ فِي الْبَيْعِ، وَالطَّلَاقِ وَغَيْرِ ذَلِكَ، فَأَيُّ فَرْقٍ بَيْنَ الْأَمْرَيْنِ، وَأَمَّا الْمَجْنُونُ فَلَا يَخْتَلِفُونَ مَعَنَا فِي ذَلِكَ.

فَإِنْ قَالُوا: وَمَنْ يَدْرِي أَنَّهُ سَكْرَانُ؟ قُلْنَا: وَمَنْ يَدْرِي أَنَّهُ مَجْنُونٌ؟ وَلَعَلَّهُ قَدْ تَحَامَقَ، وَإِنَّمَا الْقَوْلُ فِيمَنْ عُلِمَ كِلَا الْأَمْرَيْنِ مِنْهُ بِالْمُشَاهَدَةِ - وَقَدْ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ فَذَكَرَ الْمُبْتَلَى حَتَّى يُفِيقَ وَالصَّبِيَّ حَتَّى يَبْلُغَ» .

[32] **Qur'an references (L24423):** Qur'an 4:43 (An-Nisa).

The Issue of the Sale by One Who Has Not Reached It.

[مَسْأَلَة بَيْعُ مَنْ لَمْ يَبْلُغْ]

Issue: The sale by one who has not reached puberty is invalid, except for what is indispensable for him out of necessity—such as food for his consumption, clothing to shield himself from cold and heat, and what falls under this category—provided the people of his community neglect him and fail to provide for him.

مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ مَنْ لَمْ يَبْلُغْ، إلَّا فِيمَا لَا بُدَّ لَهُ مِنْهُ ضَرُورَةً، كَطَعَامٍ لِأَكْلِهِ، وَثَوْبٍ يَطْرُدُ بِهِ عَنْ نَفْسِهِ الْبَرْدَ وَالْحَرَّ، وَمَا جَرَى هَذَا الْمَجْرَى إذَا أَغْفَلَهُ أَهْلُ مَحَلَّتِهِ وَضَيَّعُوهُ.

The proof of that is the statement of the Messenger of Allah—may Allah bless him and grant him peace—which we mentioned. If the people of his locality neglect it and he purchases what we mentioned through his due right, he has conformed to the obligation. It is incumbent upon the people of his locality to enforce it, and it is impermissible for anyone to reject the due right. His contract at that point—if the one who concluded it is authorized in the matter—becomes a valid contract. If he is unauthorized in the matter, then as we mentioned, it is an action conforming to the due right, and thus it is impermissible to reject it. Success comes from Allah, the Most High.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، فَإِذَا ضَيَّعَهُ أَهْلُ مَحَلَّتِهِ فَاشْتَرَى مَا ذَكَرْنَا بِحَقِّهِ، فَقَدْ وَافَقَ الْوَاجِبَ، وَعَلَى أَهْلِ مَحَلَّتِهِ إمْضَاؤُهُ، فَلَا يَحِلُّ لِأَحَدٍ رَدُّ الْحَقِّ وَتَكُونُ مُبَايَعَتُهُ حِينَئِذٍ إنْ كَانَ جَائِزَ الْأَمْرِ هُوَ الَّذِي عَقَدَ ذَلِكَ الْعَقْدَ عَلَيْهِ، فَهُوَ عَقْدٌ صَحِيحٌ، فَإِنْ كَانَ أَيْضًا غَيْرَ جَائِزِ الْأَمْرِ فَهُوَ كَمَا ذَكَرْنَا عَمَلٌ وَافَقَ الْحَقَّ الْوَاجِبَ فَلَا يَجُوزُ رَدُّهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

As for the sale by one who has not reached legal maturity on behalf of another by the latter's command, and his purchasing for him by his command, it is valid and permissible. This is because his hand (agency) and contract are none other than the hand and contract of the commander, thus it is permissible. And success comes only from Allah, the Most High.

وَأَمَّا بَيْعُ مَنْ لَمْ يَبْلُغْ لِغَيْرِهِ بِأَمْرِ ذَلِكَ الْآخَرِ، وَابْتِيَاعُهُ لَهُ بِأَمْرِهِ فَهُوَ نَافِذٌ جَائِزٌ، لِأَنَّ يَدَهُ وَعَقْدَهُ إنَّمَا هُمَا يَدُ الْآمِرِ وَعَقْدُهُ فَهُوَ جَائِزٌ، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

Legal issue concerning the transaction of half of this house from this side.

[مَسْأَلَة بَيْع نصف هَذِهِ الدَّار مِنْ هَذِهِ الجهة]

1525. Issue: It is not permissible to sell half of this house, nor this garment, this land, or this piece of wood from this side. Similarly, selling a third of it, a quarter of it, or any such portion is impermissible. However, if the exact limits of each of those is known, it becomes permissible, because if not known, it would constitute the sale of an undefined object. The sale of an undefined object is impermissible, as mutual consent cannot occur over something undefined. And with Allah, the Most High, is success.

١٥٢٥ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ نِصْفِ هَذِهِ الدَّارِ، وَلَا هَذَا الثَّوْبِ أَوْ هَذِهِ الْأَرْضِ، أَوْ هَذِهِ الْخَشَبَةِ مِنْ هَذِهِ الْجِهَةِ، وَكَذَلِكَ ثُلُثُهَا أَوْ رُبُعُهَا أَوْ نَحْوُ ذَلِكَ، فَلَوْ عُلِمَ مُنْتَهَى كُلِّ ذَلِكَ جَازَ، لِأَنَّهُ مَا لَمْ يُعْلَمْ بَيْعُ مَجْهُولٍ، وَبَيْعُ الْمَجْهُولِ لَا يَجُوزُ، لِأَنَّ التَّرَاضِيَ لَا يَقَعُ عَلَى مَجْهُولٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

The issue of selling a property, house, or land that has no

right of way to it.

L24436 1526 - Issue: It is not permissible to sell a residence, house, or land that has no legal access to it, as this constitutes squandering of property. Nor is it permissible to compel [the seller] to grant access that was not sold. However, if the property is connected to the buyer's own property, such a sale is permissible, since he can reach what he purchased, thus preventing squandering. If the buyer's property is later rightfully claimed [by another], this purchase becomes invalid, as the sale was invalid due to having absolutely no access to it.

[مَسْأَلَة بَيْعُ دَارٍ أَوْ بَيْتٍ أَوْ أَرْضٍ لَا طَرِيقَ إِلَيْهَا]

١٥٢٦ - مَسْأَلَةٌ: لَا يَجُوزُ بَيْعُ دَارٍ أَوْ بَيْتٍ أَوْ أَرْضٍ لَا طَرِيقَ إِلَيْهَا لِأَنَّهُ إِضَاعَةٌ لِلْمَالِ، وَلَا يَجُوزُ أَنْ يُلْزَمَ طَرِيقًا لَمْ يَبِعْهُ، فَلَوْ كَانَ ذَلِكَ مُتَّصِلًا بِمَالِ الْمُشْتَرِي جَازَ ذَلِكَ الْبَيْعُ؛ لِأَنَّهُ يَصِلُ إِلَى مَا اشْتَرَى فَلَا تَضْيِيعَ، فَلَوْ اُسْتُحِقَّ مَالُ الْمُشْتَرِي بَطَلَ هَذَا الشِّرَاءُ؛ لِأَنَّهُ وَقَعَ فَاسِدًا إِذَا كَانَ لَا طَرِيقَ لَهُ إِلَيْهِ أَلْبَتَّةَ.

L24437 **Issue concerning the sale of an unspecified bulk quantity on the basis that each ṣāʿ thereof is [priced] at one dirham.**

[مَسْأَلَة بَيْع جُمْلَة مَجْهُولَة الْقَدْر عَلَى أَنْ كُلّ صَاعٌ مِنْهَا بدرهم]

L24438 1527 - Issue: It is not permissible to sell an indeterminate aggregate whose total measure is unspecified at a rate of one dirham per ṣāʿ, one dirham per raṭl, one dirham per dhirāʿ, one dirham per base unit, or a specified rate per item thereof – and likewise for all measures and numerical quantities. However, if both parties mutually know the aggregate's total quantity in terms of number, volume, weight, or dhirāʿ measurement, and they know the due price stipulated for that quantity, then it becomes permissible. If the entire aggregate is sold as-is without any increment, this is permissible.

١٥٢٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ جُمْلَةٍ مَجْهُولَةِ الْقَدْرِ عَلَى أَنَّ كُلَّ صَاعٍ مِنْهَا بِدِرْهَمٍ، أَوْ كُلَّ رَطْلٍ مِنْهَا بِدِرْهَمٍ، أَوْ كُلَّ ذِرَاعٍ مِنْهَا بِدِرْهَمٍ، أَوْ كُلَّ أَصْلٍ مِنْهَا، أَوْ كُلَّ وَاحِدٍ مِنْهَا بِكَذَا وَكَذَا - وَهَكَذَا فِي جَمِيعِ الْمَقَادِيرِ وَالْأَعْدَادِ، فَإِنْ عَلِمَا جَمِيعًا مِقْدَارَ مَا فِيهَا مِنَ الْعَدَدِ، أَوِ الْكَيْلِ، أَوِ الْوَزْنِ أَوِ الذَّرْعِ، وَعَلِمَا قَدْرَ الثَّمَنِ الْوَاجِبِ فِي ذَلِكَ: جَازَ ذَلِكَ، فَإِنْ بِيعَتِ الْجُمْلَةُ كَمَا هِيَ وَلَا مَزِيدَ، فَهُوَ جَائِزٌ.

L24439–24440 Similarly, if a bulk sale is made on the condition that it contains a specified volume, weight, cubits, or number, the transaction is permissible. If the item conforms to the stipulated terms, the sale is valid; otherwise, it is invalid.

وَكَذَلِكَ لَوْ بِيعَتْ جُمْلَةٌ عَلَى أَنَّ فِيهَا كَذَا وَكَذَا مِنَ الْكَيْلِ، أَوْ مِنَ الْوَزْنِ، أَوْ مِنَ الذَّرْعِ، أَوْ مِنَ الْعَدَدِ، فَهُوَ جَائِزٌ - فَإِنْ وُجِدَتْ كَذَلِكَ صَحَّ الْبَيْعُ، وَإِلَّا فَهُوَ مَرْدُودٌ.

L24441 The proof of that is: selling them by stipulating that every specified measure of volume among them is for such-and-such, every weight for such-and-such, every cubit for such-and-such, or every single unit for such-and-such constitutes a sale with an unknown price. The seller does not know what is due to him, nor does the buyer know what is incumbent upon him at the time the contract is concluded.

بُرْهَانُ ذَلِكَ -: أَنَّ بَيْعَهَا عَلَى أَنَّ كُلَّ كَيْلٍ مَذْكُورٍ مِنْهَا بِكَذَا، أَوْ كُلَّ وَزْنٍ بِكَذَا، أَوْ كُلَّ ذَرْعٍ بِكَذَا، أَوْ كُلَّ وَاحِدٍ بِكَذَا، بَيْعٌ بِثَمَنٍ مَجْهُولٍ لَا يَدْرِي الْبَائِعُ مَا يَجِبُ لَهُ، وَلَا الْمُشْتَرِي مَا يَجِبُ عَلَيْهِ حَالَ الْعَقْدِ.

L24442 Allah the Exalted has said: "Do not consume your wealth among yourselves

unjustly except through trade by mutual consent." [An-Nisa: 29] Mutual consent is only possible in a transaction with clear terms; otherwise, it is consuming wealth invalidly and a sale of gharar (speculative risk).[33]

وَقَدْ قَالَ اللَّهُ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَالتَّرَاضِي لَا يُمْكِنُ إِلَّا فِي مَعْلُومٍ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَبَيْعُ غَرَرٍ.

L24443 The prohibition of gharar (uncertainty) in sales is firmly established. If all such uncertainty is resolved to the extent that both parties jointly possess full knowledge of it, and this occurs after the contract, it is illogical for the contract to be void at its inception yet valid afterward when they had neither mutually agreed to it nor committed to its terms. If both parties jointly knew the extent of that at the time of the contract, it constitutes a valid consensual agreement free from gharar.

وَقَدْ صَحَّ النَّهْيُ عَنْ بَيْعِ الْغَرَرِ، فَإِذَا خَرَجَ كُلُّ ذَلِكَ إِلَى حَدِّ الْعِلْمِ مِنْهُمَا مَعًا، وَكَانَ ذَلِكَ بَعْدَ الْعَقْدِ، فَمِنَ الْبَاطِلِ أَنْ يَبْطُلَ الْعَقْدُ حِينَ عَقْدِهِ، وَيَصِحَّ بَعْدَ ذَلِكَ حِينَ لَمْ يَتَعَاقَدَاهُ، وَلَا الْتَزَمَاهُ، فَإِذَا عَلِمَا جَمِيعًا قَدْرَ ذَلِكَ عِنْدَ الْعَقْدِ فَهُوَ تَرَاضٍ صَحِيحٌ لَا غَرَرَ فِيهِ.

L24444 If the lot is sold in this manner, it is the sale of a visible item encompassed by a known price, constituting a valid mutual agreement free from uncertainty. If the lot is sold for a specified price on the condition that it contains specific attributes, this is a sale based on description, which is valid if the item is found as stipulated in the contract. Otherwise, if what is found differs from what was contracted upon, then no contract was ever concluded for the actual item obtained, and this constitutes unjust consumption of wealth through false means.

فَإِنْ بِيعَتْ الْجُمْلَةُ هَكَذَا فَهُوَ بَيْعُ شَيْءٍ مَرْئِيٍّ مُحَاطٍ بِثَمَنٍ مَعْرُوفٍ، فَهُوَ تَرَاضٍ صَحِيحٌ لَا غَرَرَ فِيهِ، فَإِنْ بِيعَتْ الْجُمْلَةُ بِثَمَنٍ مَعْلُومٍ عَلَى أَنَّ فِيهَا كَذَا وَكَذَا، فَهَذَا بَيْعٌ بِصِفَةٍ، وَهُوَ صَحِيحٌ إِنْ وُجِدَ كَمَا عُقِدَ عَلَيْهِ، وَإِلَّا فَإِنَّمَا وُجِدَ غَيْرُ مَا عُقِدَ عَلَيْهِ، فَلَمْ يُعْقَدْ قَطُّ عَلَى الَّذِي وُجِدَ، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

L24445 We have been narrated through the chain of Abd al-Razzaq from Sufyan al-Thawri, who said: If you say, "I will buy from you whatever is in this house, whatever the amount, with each unit [priced] at so much for so much," then it is a disliked sale.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: إذَا قُلْت: أَبْتَاعُ مِنْك مَا فِي هَذَا الْبَيْتِ مَا بَلَغَ، كُلُّ جُزْءٍ كَذَا بِكَذَا، فَهُوَ بَيْعٌ مَكْرُوهٌ.

L24446 Abu Hanifah said: If he sells this heap at one qafīz for a *dirham*, he is bound to provide only one qafīz for one *dirham*. Muhammad ibn al-Hasan said: He must provide all of it—every qafīz for a *dirham*. These are two unsound opinions for the reasons we have stated. And success comes only from Allah—the Exalted.

وَقَالَ أَبُو حَنِيفَةَ: إذَا بَاعَ هَذِهِ الصُّبْرَةَ قَفِيزًا بِدِرْهَمٍ لَمْ يَلْزَمْهُ مِنْهَا إلَّا قَفِيزٌ وَاحِدٌ بِدِرْهَمٍ فَقَطْ - وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يَلْزَمُهُ كُلُّهَا كُلُّ قَفِيزٍ بِدِرْهَمٍ - وَهَذَانِ رَأْيَانِ فَاسِدَانِ، لِمَا ذَكَرْنَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24447 **An issue regarding the sale of patronage and its gifting.**

[مَسْأَلَةٌ بَيْعُ الْوَلَاءِ وَهِبَتُهُ]

[33] **Qur'an references (L24442):** Qur'an 4:29 (An-Nisa).

L24448 1528 - Issue: It is not permissible to sell al-walā’ or gift it. This is based on what has been reported to us through the narrations of Shu‘bah, ‘Ubayd Allāh ibn ‘Umar, Mālik, and Sufyān ibn ‘Uyaynah—all of them narrating from ‘Abd Allāh ibn Dīnār, from Ibn ‘Umar, who said: “The Messenger of Allāh, peace and blessings be upon him, prohibited the sale of al-walā’ and gifting it.”

L24449–24450 The Ummah has differed on this matter, and we will mention it, Allah willing—the Exalted—in the section on “Manumission” within this volume of ours. There is no might nor power except with Allah, the Most High, the Almighty, and no argument holds against the Messenger of Allah, peace and blessings be upon him.

L24451 ## The Legal Question Regarding the Sale of One Who Was Coerced into the Sale.

L24452 Issue 1529: It is impermissible to sell the property of someone coerced into selling, and such a sale is invalid according to the statement of Allah’s Messenger (peace be upon him): “Allah has pardoned my Ummah for errors, forgetfulness, and what they are compelled to do,” and the Almighty’s words: “Do not consume your wealth among yourselves unjustly, unless it be through trade by mutual consent” (4:29). Thus, it is established that every sale not based on mutual consent is invalid, except a sale mandated by textual ruling—such as selling on behalf of one obligated to fulfill a right who is either absent or refuses to ensure fairness. This is because the obligated party is commanded to fulfill the right due to the claimant, and we are commanded to enforce this obligation.[34]

L24453 And by preventing him from delay (in payment), which is injustice, and since there is no way to prevent injustice except by selling some of his property, we are commanded to sell it.

L24454 If the judge were to rule for the creditor by permitting the rightful claimant to recover their due from the property of the defaulting or absent debtor, and the creditor subsequently sells it by judicial order to secure the amount owed,

[34] **Qur’an references (L24452):** Qur’an 4:29 (An-Nisa).

١٥٢٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الْوَلَاءِ وَلَا هِبَتُهُ -: لِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، وَمَالِكٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، كُلِّهِمْ: عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْوَلَاءِ وَهِبَتِهِ» .

وَقَدْ اخْتَلَفَتْ الْأُمَّةُ فِي هَذَا، وَسَنَذْكُرُهُ إنْ شَاءَ اللَّهُ - تَعَالَى - " فِي الْعِتْقِ " مِنْ دِيوَانِنَا هَذَا - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ الْعَلِيِّ الْعَظِيمِ، وَلَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَةُ بَيْعُ مَنْ أُكْرِهَ عَلَى الْبَيْعِ]

١٥٢٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ مَنْ أُكْرِهَ عَلَى الْبَيْعِ، وَهُوَ مَرْدُودٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ اللَّهَ عَفَا لِأُمَّتِي عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» ؛ وَلِقَوْلِهِ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَصَحَّ أَنَّ كُلَّ بَيْعٍ لَمْ يَكُنْ عَنْ تَرَاضٍ فَهُوَ بَاطِلٌ، إلَّا بَيْعًا أَوْجَبَهُ النَّصُّ، كَالْبَيْعِ عَلَى مَنْ وَجَبَ عَلَيْهِ حَقٌّ وَهُوَ غَائِبٌ، أَوْ مُمْتَنِعٌ مِنْ الْإِنْصَافِ؛ لِأَنَّهُ مَأْمُورٌ بِإِنْصَافِ ذِي الْحَقِّ قِبَلَهُ، وَنَحْنُ مَأْمُورُونَ بِذَلِكَ.

وَبِمَنْعِهِ مِنْ الْمَطْلِ الَّذِي هُوَ الظُّلْمُ، وَإِذْ لَا سَبِيلَ إلَى مَنْعِهِ مِنْ الظُّلْمِ إلَّا بِبَيْعِ بَعْضِ مَالِهِ، فَنَحْنُ مَأْمُورُونَ بِبَيْعِهِ.

وَلَوْ أَنَّ الْقَاضِيَ قَضَى لِلْغَرِيمِ بِمَا يُمْكِنُ انْتِصَافُ ذِي الْحَقِّ مِنْهُ مِنْ عَيْنِ مَالِ الْمُمْتَنِعِ، أَوْ الْغَائِبِ، ثُمَّ بَاعَهَا الْمَقْضِيُّ لَهُ بِأَمْرِ الْحَاكِمِ لِتَوْصِيلِهِ إلَى مِقْدَارِ حَقِّهِ، فَإِنْ فَضَلَ

then any surplus must be returned to the defendant. This procedure would be more appropriate, sounder, and farther removed from all objections. The Hanafis, Malikis, and Shafi'is have aligned with our position in nullifying coerced sales. Success is attained through Allah, the Most High.

فَضْلٌ رُدَّ إِلَى الْمَقْضِيِّ عَلَيْهِ لَكَانَ أَوْلَى، وَأَصَحُّ وَأَبْعَدُ مِنْ كُلِّ اعْتِرَاضٍ - وَقَدْ وَافَقَنَا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، عَلَى إِبْطَالِ بَيْعِ الْمُكْرَهِ عَلَى الْبَيْعِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

The Issue of the One Compelled to Sell

L24455

[مَسْأَلَةُ الْمُضْطَرِّ إِلَى الْبَيْعِ]

L24456 1530 - Issue: As for the one compelled to sell—such as one who starves and fears death, thus selling to sustain himself and his family; or one obligated to ransom himself or a close relative from the abode of war; or one coerced by a tyrant into surrendering wealth through pressure (without direct compulsion to sell, but merely forced to pay an unjust liability), thereby selling to fulfill this obligation—people have differed regarding this. We narrate through the chain of Sa'īd ibn Manṣūr: Hushaym informed us from Ṣāliḥ ibn Rustum from a Tamīmī shaykh who said: 'Alī addressed us—or said: 'Alī said: "There will come upon people a time of biting hardship when the affluent cling greedily to their wealth without divine command. Allah says: {And do not neglect [your] favor among yourselves} [2:237]. The wicked will rise, the virtuous will be humiliated, and the compelled will engage in sales—and indeed Allah's Messenger (peace be upon him) forbade the sale by the compelled, the sale involving uncertainty (gharar), and the sale of fruit before it becomes edible."[35]

١٥٣٠ - مَسْأَلَةٌ: وَأَمَّا الْمُضْطَرُّ إِلَى الْبَيْعِ، كَمَنْ جَاعَ وَخَشِيَ الْمَوْتَ فَبَاعَ فِيمَا يُحْيِي بِهِ نَفْسَهُ وَأَهْلَهُ، وَكَمَنْ لَزِمَهُ فِدَاءُ نَفْسِهِ أَوْ حَمِيمِهِ مِنْ دَارِ الْحَرْبِ أَوْ كَمَنْ أَكْرَهَهُ ظَالِمٌ عَلَى غُرْمِ مَالِهِ بِالضَّغْطِ وَلَمْ يُكْرِهْهُ عَلَى الْبَيْعِ، لَكِنْ أَلْزَمَهُ الْمَالَ فَقَطْ، فَبَاعَ فِي أَدَاءِ مَا أُكْرِهَ عَلَيْهِ بِغَيْرِ حَقٍّ؟ فَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا صَالِحُ بْنُ رُسْتُمَ نا شَيْخٌ مِنْ بَنِي تَمِيمٍ قَالَ: خَطَبَنَا عَلِيٌّ، أَوْ قَالَ: قَالَ عَلِيٌّ: " سَيَأْتِي عَلَى النَّاسِ زَمَانٌ عَضُوضٌ يَعَضُّ الْمُوسِرُ عَلَى مَا فِي يَدَيْهِ، وَلَمْ يُؤْمَرْ بِذَلِكَ، قَالَ {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] وَيَنْهَدُ الْأَشْرَارُ، وَيُسْتَذَلُّ الْأَخْيَارُ، وَيُبَايِعُ الْمُضْطَرُّونَ وَقَدْ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْمُضْطَرِّ، وَعَنْ بَيْعِ الْغَرَرِ، وَعَنْ بَيْعِ الثَّمَرِ قَبْلَ أَنْ يُطْعَمَ» .

L24457–24458 And from him to Hushaym from Kawthar ibn Hakim from Makhul, he said: It reached me from Hudhayfah that he narrated from the Messenger of Allah—peace and blessings be upon him—that he said: "After your time will come a voracious era where the wealthy will bite greedily upon what is in their hands without being commanded to withhold it. Allah the Exalted said: *'Whatever you spend of anything, He will replace it, and He is the Best of Providers.'* [Saba': 39] The worst of Allah's creation will rise to exploit every person in distress. Know that the sale of those in distress is forbidden. A

وَبِهِ إِلَى هُشَيْمٍ عَنْ كَوْثَرِ بْنِ حَكِيمٍ عَنْ مَكْحُولٍ، قَالَ: بَلَغَنِي عَنْ حُذَيْفَةَ أَنَّهُ حَدَّثَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِنَّ بَعْدَ زَمَانِكُمْ هَذَا زَمَانًا عَضُوضًا يَعَضُّ الْمُوسِرُ عَلَى مَا فِي يَدَيْهِ، وَلَمْ يُؤْمَرْ بِذَلِكَ، قَالَ اللَّهُ - تَعَالَى - {وَمَا أَنْفَقْتُمْ مِنْ شَيْءٍ فَهُوَ يُخْلِفُهُ وَهُوَ خَيْرُ الرَّازِقِينَ} [سبأ: ٣٩] وَيَنْهَدُ شِرَارُ خَلْقِ اللَّهِ - تَعَالَى - يُبَايِعُونَ

[35] **Qur'an references (L24456):** Qur'an 2:237 (Al-Baqarah).

Muslim is a brother to another Muslim; he does not wrong him nor betray him. If you possess goodness, support your brother with it, and do not add destruction to his destruction."[36]

كُلُّ مُضْطَرٍّ، أَلَا إِنَّ بَيْعَ الْمُضْطَرِّينَ حَرَامٌ، الْمُسْلِمُ أَخُو الْمُسْلِمِ، لَا يَظْلِمُهُ، وَلَا يَخُونُهُ، وَإِنْ كَانَ عِنْدَكَ خَيْرٌ فَعُدْ بِهِ عَلَى أَخِيكَ وَلَا تَزِدْهُ هَلَاكًا إِلَى هَلَاكِهِ» .

L24459 Abu Muhammad said: If these two reports had been authenticated, we would have hastened to act upon them. However, they are both mursal (reports with incomplete chains), and it is not permissible to issue rulings in matters of religion based on mursal reports.

قَالَ أَبُو مُحَمَّد: لَوْ اسْتَنَدَ هَذَانِ الْخَبَرَانِ لَقُلْنَا بِهِمَا مُسَارِعِينَ، لَكِنَّهُمَا مُرْسَلَانِ، وَلَا يَجُوزُ الْقَوْلُ فِي الدِّينِ بِالْمُرْسَلِ.

L24460 The rejection of the established Sunnah via a narration from a shaykh of Banu Kinānah necessitated—given his claim that "the *mursal* is equivalent to the *musnad* in the view of the Ḥanafīs and Mālikīs"—that a shaykh from Banu Tamīm and a shaykh from Banu Kinānah narrate these two reports. This narration is more plausible and explicit, being traced through ʿAlī back to the Messenger of Allah—peace and blessings of Allah be upon him—and also through Ḥudhayfah. Yet they are a people of inconsistency.

وَلَقَدْ كَانَ يَلْزَمُ مِنْ رَدِّ السُّنَنِ الثَّابِتَةِ بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ، وَيَقُولُ: الْمُرْسَلُ كَالْمُسْنَدِ مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ أَنْ يَقُولَ بِهَذَيْنِ الْخَبَرَيْنِ شَيْخٌ مِنْ بَنِي تَمِيمٍ، وَشَيْخٌ مِنْ بَنِي كِنَانَةَ، وَهَذِهِ الرِّوَايَةُ أَمْكَنُ وَأَوْضَحُ، ثُمَّ هِيَ عَنْ عَلِيٍّ، وَعَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ عَنْ حُذَيْفَةَ، وَلَكِنَّهُمْ قَوْمٌ مُضْطَرِبُونَ.

L24461 Abu Muhammad said: Since these two reports are not valid, let us seek this ruling from other sources. We found that anyone who buys sustenance for himself and his family for food and clothing is undoubtedly compelled by necessity to purchase it. If the transaction of this compelled person were invalid, then the sale by everyone who does not obtain sustenance from his own property would also be invalid—and this is undeniably false, as established through necessary transmission from the masses. The Prophet—peace and blessings be upon him—purchased sa's of barley for his family's sustenance and died—peace be upon him—while his armor was pledged as collateral for its price. Thus, it is confirmed that the sale by one compelled to obtain sustenance for himself and his family, and the sale of what he buys to procure sustenance, is a valid and binding transaction. It is also a sale by mutual consent, as no one compelled him to it, and thus it is valid by the explicit injunction of the Quran.

قَالَ أَبُو مُحَمَّد: فَإِذَا لَمْ يَصِحَّ هَذَانِ الْخَبَرَانِ فَلْنَطْلُبْ هَذَا الْحُكْمَ مِنْ غَيْرِهِمَا -: فَوَجَدْنَا كُلَّ مَنْ يَبْتَاعُ قُوتَ نَفْسِهِ وَأَهْلِهِ لِلْأَكْلِ وَاللِّبَاسِ فَإِنَّهُ مُضْطَرٌّ إلَى ابْتِيَاعِهِ بِلَا شَكٍّ، فَلَوْ بَطَلَ ابْتِيَاعُ هَذَا الْمُضْطَرِّ لَبَطَلَ بَيْعُ كُلِّ مَنْ لَا يُصِيبُ الْقُوتَ مِنْ ضَيْعَتِهِ - وَهَذَا بَاطِلٌ بِلَا خِلَافٍ، وَبِضَرُورَةِ النَّقْلِ مِنْ الْكَوَافِّ وَقَدْ ابْتَاعَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْوُعًا مِنْ شَعِيرٍ لِقُوتِ أَهْلِهِ، وَمَاتَ - عَلَيْهِ السَّلَامُ - وَدِرْعُهُ مَرْهُونَةٌ فِي ثَمَنِهَا فَصَحَّ أَنَّ بَيْعَ الْمُضْطَرِّ إلَى قُوتِهِ وَقُوتِ أَهْلِهِ، وَبَيْعَهُ مَا يَبْتَاعُ بِهِ الْقُوتَ بَيْعٌ صَحِيحٌ لَازِمٌ، فَهُوَ أَيْضًا بَيْعُ تَرَاضٍ لَمْ يُجْبِرْهُ أَحَدٌ عَلَيْهِ، فَهُوَ صَحِيحٌ بِنَصِّ الْقُرْآنِ.

L24462 Then we examined the case of those who sell property to ransom themselves or their close relatives from the grasp of a disbeliever or the oppression of an oppressor. We found that neither the disbeliever nor the oppressor compelled

ثُمَّ نَظَرْنَا فِيمَنْ بَاعَ فِي إنْقَاذِ نَفْسِهِ، أَوْ حَمِيمِهِ، مِنْ يَدِ كَافِرٍ أَوْ ظُلْمِ ظَالِمٍ -: فَوَجَدْنَا الْكَافِرَ وَالظَّالِمَ لَمْ يُكْرِهَا فَادِيَ الْأَسِيرِ، وَلَا الْأَسِيرَ، وَلَا الْمَضْغُوطَ عَلَى بَيْعِ مَا بَاعُوا فِي

[36] **Qur'an references (L24458):** Qur'an 34:39 (Saba).

the ransom payer (fādi) of the captive, nor the captive themselves, nor those pressured to sell their property to rescue themselves or those they sought to rescue. Rather, they solely compelled them to hand over wealth. Even if the two parties had brought both of them money through a loan or means other than sale, the disbeliever and oppressor would not have compelled the two to sell. Thus, it is validly established that this constitutes a consensual sale.

L24463–24465 It is obligatory for one who is wrongfully pursued to defend himself and to rectify the evil that has befallen him. That he should not surrender his property unjustly. Thus, it is established that his sale remains valid and binding upon him, while the coerced surrender of property in such a case constitutes an invalid transaction that does not obligate him. The property therefore remains within his ownership, as would be ruled in his favor whenever feasible. He may reclaim it from the oppressor or the disbelieving ḥarbī (enemy combatant) whenever possible—whether by retrieving it from spoils before distribution or after distribution, from the possession of any holder: a Muslim, a Dhimmi, or even from the possession of that disbeliever himself should he become a Dhimmi or embrace Islam permanently. This applies if he identifies the specific property, for it remains his as before. The disbeliever is not held liable for compensation, as the ḥarbī who becomes a Dhimmi or embraces Islam bears no accountability for prior acts of oppression or killing.

L24466 As for the unjust Muslim, he remains perpetually accountable for it—whether through equivalent restitution, its like, or its value—regardless of being a Kharijite, combatant, rebel, ruler, or usurper, for he seized it unlawfully. Allah the Exalted says: “So whoever transgresses against you, retaliate against him in the same measure as his transgression” [Al-Baqarah: 194].[37]

L24467 ## Jurisprudential Ruling on the Sale of Animals

L24468 1531. Issue: The sale of animals is not permissible except for a legally valid benefit, whether for consumption, riding, use in hunting, or medicinal purposes.

[37] **Qur’an references (L24466):** Qur’an 2:194 (Al-Baqarah).

اسْتِنْقَاذَ أَنْفُسِهِمْ، أَوْ مَنْ يَسْعَوْنَ لِاسْتِنْقَاذِهِ وَإِنَّمَا أَكْرَهُوهُمْ عَلَى إِعْطَاءِ الْمَالِ فَقَطْ، وَلَوْ أَنَّهُمْ أَتَوْهُمَا بِمَالٍ مِنْ قَرْضٍ، أَوْ مِنْ غَيْرِ الْبَيْعِ مَا أَلْزَمُوهُمَا الْبَيْعَ - فَصَحَّ أَنَّهُ بَيْعُ تَرَاضٍ.

وَالْوَاجِبُ عَلَى مَنْ طُلِبَ بِبَاطِلٍ أَنْ يَدْفَعَ عَنْ نَفْسِهِ، وَأَنْ يُغَيِّرَ الْمُنْكَرَ الَّذِي نَزَلَ بِهِ لَا أَنْ يُعْطِيَ مَالَهُ بِالْبَاطِلِ: فَصَحَّ أَنَّ بَيْعَهُ صَحِيحٌ لَازِمٌ لَهُ، وَأَنَّ الَّذِي أُكْرِهَ عَلَيْهِ مِنْ دَفْعِ الْمَالِ فِي ذَلِكَ هُوَ الْبَاطِلُ الَّذِي لَا يَلْزَمُهُ، فَهُوَ بَاقٍ فِي مِلْكِهِ، كَمَا كَانَ يَقْضِي لَهُ بِهِ مَتَى قَدَرَ عَلَى ذَلِكَ، وَيَأْخُذُهُ مِنَ الظَّالِمِ، وَمِنَ الْحَرْبِيِّ الْكَافِرِ، مَتَى أَمْكَنَهُ، أَوْ مَتَى وَجَدَهُ فِي مَغْنَمٍ قَبْلَ الْقِسْمَةِ، وَبَعْدَ الْقِسْمَةِ، مِنْ يَدِ مَنْ وَجَدَهُ فِي يَدِهِ، مِنْ مُسْلِمٍ، أَوْ ذِمِّيٍّ، أَوْ مِنْ يَدِ ذَلِكَ الْكَافِرِ، لَوْ تَذَمَّمَ، أَوْ أَسْلَمَ أَبَدًا - هَذَا إِذَا وَجَدَ ذَلِكَ الْمَالَ بِعَيْنِهِ؛ لِأَنَّهُ مَالُهُ كَمَا كَانَ، وَلَا يُطْلَبُ الْكَافِرُ بِغَيْرِهِ بَدَلًا مِنْهُ؛ لِأَنَّ الْحَرْبِيَّ إِذَا أَسْلَمَ أَوْ تَذَمَّمَ غَيْرُ مُؤَاخَذٍ بِمَا سَلَفَ مِنْ ظُلْمٍ أَوْ قَتْلٍ.

وَأَمَّا الْمُسْلِمُ الظَّالِمُ فَيَتْبَعُهُ بِهِ أَبَدًا، أَوْ بِمِثْلِهِ، أَوْ قِيمَتِهِ، سَوَاءٌ كَانَ خَارِجِيًّا أَوْ مُحَارِبًا، أَوْ بَاغِيًا، أَوْ سُلْطَانًا، أَوْ مُتَغَلِّبًا؛ لِأَنَّهُ أَخَذَ مِنْهُ بِغَيْرِ حَقٍّ، وَاللَّهُ - تَعَالَى - يَقُولُ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

[مَسْأَلَة بَيْع الْحَيَوَان]

١٥٣١ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الْحَيَوَانِ إِلَّا لِمَنْفَعَةٍ، إِمَّا لِأَكْلٍ، وَإِمَّا لِرُكُوبٍ، وَإِمَّا لِصَيْدٍ، وَإِمَّا لِدَوَاءٍ.

L24469 If it has no benefit for any of those things, then its sale is not permissible, nor is ownership permissible, because it constitutes a squandering of wealth by the buyer and wrongful consumption of wealth by the seller.

L24470 If there is benefit in it for any of the matters we have mentioned, or other than those, its sale is permissible because it is a sale based on mutual consent. "And Allah has permitted sale" [al-Baqarah 2:275], and it does not constitute squandering wealth or consuming wealth unlawfully. And with Allah, the Exalted, is success alone.[38]

L24471 ## The issue of sale without specifying the price.

L24472 1532 - Issue: A sale is not valid without a specified price, such as selling based on what the price reaches in the market, what someone else purchased it for, or the market valuation. All such transactions are void because they involve uncertainty (gharar) and unlawful consumption of wealth, as mutual consent is not validly established in such cases. Mutual consent is only valid when the amount is known. One party might agree assuming it will reach some price, but if it exceeds [the price], the buyer would not consent, and if it is less, the seller would not consent.

L24473 Among the marvels of this world is Abū Ḥanīfa's ruling: Whoever sells with stipulated profit, sells by swearing upon the Kaaba, or sells without any price does not gain ownership through physical possession. Similarly, if one sells in exchange for a dead animal or blood, the same ruling applies.

L24474 It is not permissible for the buyer to emancipate the slave—even if he takes possession of him with the seller's permission. But if he sells the slave for an unspecified price, or sells him for wine or a pig, and takes possession of him with the seller's permission, then emancipates him, the emancipation is permissible for him.

L24475–24476 Ali said: "There is nothing in madness more than this speech—and we seek refuge in Allah from misguidance."

[38] **Qur'an references (L24470):** Qur'an 2:275 (Al-Baqarah).

فَإِنْ كَانَ لَا مَنْفَعَةَ فِيهِ لِشَيْءٍ مِنْ ذَلِكَ لَمْ يَحِلَّ بَيْعُهُ، وَلَا مِلْكُهُ؛ لِأَنَّهُ إضَاعَةُ مَالٍ مِنْ الْمُبْتَاعِ، وَأَكْلُ مَالٍ بِالْبَاطِلِ مِنْ الْبَائِعِ.

فَإِنْ كَانَ فِيهِ مَنْفَعَةٌ لِشَيْءٍ مِمَّا ذَكَرْنَا، أَوْ لِغَيْرِهِ جَازَ بَيْعُهُ؛ لِأَنَّهُ بَيْعٌ عَنْ تَرَاضٍ، {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَلَيْسَ إضَاعَةَ مَالٍ، وَلَا أَكْلَ مَالٍ بِالْبَاطِلِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة الْبَيْع مِنْ غَيْر تَسْمِيَة الثَّمَن]

١٥٣٢ - مَسْأَلَةٌ: وَلَا يَصِحُّ الْبَيْعُ بِغَيْرِ ثَمَنٍ مُسَمًّى، كَمَنْ بَاعَ بِمَا يَبْلُغُ فِي السُّوقِ، أَوْ بِمَا اشْتَرَى فُلَانٌ، أَوْ بِالْقِيمَةِ، فَهَذَا كُلُّهُ بَاطِلٌ؛ لِأَنَّهُ بَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ؛ لِأَنَّهُ لَمْ يَصِحَّ فِيهِ التَّرَاضِي، وَلَا يَكُونُ التَّرَاضِي إلَّا بِمَعْلُومِ الْمِقْدَارِ، وَقَدْ يَرْضَى؛ لِأَنَّهُ يَظُنُّ أَنَّهُ يَبْلُغُ ثَمَنًا مَا فَإِنْ بَلَغَ أَكْثَرَ لَمْ يَرْضَ الْمُشْتَرِي، وَإِنْ بَلَغَ أَقَلَّ لَمْ يَرْضَ الْبَائِعُ.

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ أَبِي حَنِيفَةَ: مَنْ بَاعَ بِالرِّبْحِ، أَوْ بِالْكَعْبَةِ، أَوْ بِلَا ثَمَنٍ، فَإِنَّهُ لَا يَمْلِكُهُ بِالْقَبْضِ، فَإِنْ بَاعَ بِالْمَيْتَةِ، أَوْ بِالدَّمِ فَكَذَلِكَ أَيْضًا.

وَلَا يَجُوزُ عِتْقُهُ لَهُ - وَإِنْ قَبَضَهُ بِإِذْنِ بَائِعِهِ - فَإِنْ بَاعَهُ بِثَمَنٍ لَمْ يُسَمِّيَاهُ، أَوْ بَاعَهُ بِخَمْرٍ، أَوْ خِنْزِيرٍ فَقَبَضَهُ بِإِذْنِ بَائِعِهِ فَأَعْتَقَهُ: جَازَ عِتْقُهُ لَهُ.

قَالَ عَلِيٌّ: مَا فِي الْجُنُونِ أَكْثَرُ مِنْ هَذَا الْكَلَامِ - وَنَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ.

If he were to say: “Indeed, among the people are those who possess wine and swine”—they being the disbelievers, namely the Christians—we would respond: “They indeed also possess carrion and blood likewise, and the Magians likewise do the same, with no distinction—and success is from Allah, the Most High.”

فَإِنْ قَالَ: إنَّ فِي النَّاسِ مَنْ يَتَمَلَّكُ الْخَمْرَ، وَالْخِنْزِيرَ - وَهُمْ الْكُفَّارُ مِنْ النَّصَارَى - قُلْنَا: إنَّهُمْ يَتَمَلَّكُونَ أَيْضًا الْمَيْتَةَ، وَالدَّمَ كَذَلِكَ، وَالْمَجُوسُ أَيْضًا كَذَلِكَ وَلَا فَرْقَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

The Legal Ruling on the Sale of the Dice

[مَسْأَلَةُ بَيْعُ النَّرْدِ]

1533 - Issue: It is not permissible to sell backgammon due to what we have transmitted via the chain of Mālik from Mūsā ibn Maysarah from Saʿīd ibn Abī Hind from Abū Mūsā al-Ashʿarī: “The Messenger of Allah—peace and blessings be upon him—said: ’Whoever plays with backgammon has disobeyed Allah and His Messenger. It is prohibited; its ownership is forbidden, and its sale is forbidden.’”

١٥٣٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ النَّرْدِ، لِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ مُوسَى بْنِ مَيْسَرَةَ عَنْ سَعِيدِ بْنِ أَبِي هِنْدٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ لَعِبَ بِالنَّرْدِ فَقَدْ عَصَى اللَّهَ وَرَسُولَهُ فَهِيَ مُحَرَّمَةٌ فَمُلْكُهَا حَرَامٌ، وَبَيْعُهَا حَرَامٌ» .

It has been narrated to us from Mālik from Nāfiʿ from Ibn ʿUmar that whenever he found any member of his household playing backgammon, he would strike him and destroy it.

وَقَدْ رُوِّينَا عَنْ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ إذَا أَخَذَ أَحَدًا مِنْ أَهْلِهِ يَلْعَبُ بِالنَّرْدِ ضَرَبَهُ وَكَسَرَهَا.

On the authority of Malik from Alqamah from his mother from Aisha, the Mother of the Believers: She learned that a family residing in her house possessed a backgammon board. She sent them a message: “If you do not remove it, I will most assuredly expel you from my house,” and she rebuked them for it.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَلْقَمَةَ عَنْ أُمِّهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا بَلَغَهَا أَنَّ أَهْلَ بَيْتٍ فِي دَارِهَا كَانُوا سُكَّانًا فِيهَا أَنَّ عِنْدَهُمْ نَرْدًا فَأَرْسَلَتْ إلَيْهِمْ لَئِنْ لَمْ تُخْرِجُوهَا لَأُخْرِجَنَّكُمْ مِنْ دَارِي، وَأَنْكَرَتْ عَلَيْهِمْ.

The issue of selling two commodities by a single person for one price.

[مَسْأَلَةُ بَيْعِ اثْنَانِ سِلْعَتَيْنِ لَهُمَا مِنْ إنْسَان وَاحِد بِثَمَنٍ وَاحِد]

1534 – Issue: It is impermissible for two individuals to sell two distinct commodities—neither of which has co-owners from a single person—for a single price. This is because such a sale is based on conflated valuation, and neither seller knows what will happen to their commodity at the time of concluding the contract. Thus, it constitutes a sale involving *gharar* and wrongful consumption of wealth.

١٥٣٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يَبِيعَ اثْنَانِ سِلْعَتَيْنِ مُتَمَيِّزَتَيْنِ لَهُمَا لَيْسَا فِيهِمَا شَرِيكَيْنِ مِنْ إنْسَانٍ وَاحِدٍ بِثَمَنٍ وَاحِدٍ؛ لِأَنَّ هَذَا بَيْعٌ بِالْقِيمَةِ، وَلَا يَدْرِي كُلُّ وَاحِدٍ مِنْهُمَا مَا يَقَعُ لِسِلْعَتِهِ حِينَ الْعَقْدِ، فَهُوَ بَيْعُ غَرَرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ.

L24484 As for the sale between two partners or multiple partners—whether from a single party or multiple parties—or the purchase by two or more buyers from a single seller or two partners: this is permissible, for each share has a known price and a specified limit. And success is granted by Allah, the Most High.

وَأَمَّا بَيْعُ الشَّرِيكَيْنِ، أَوْ الشُّرَكَاءِ مِنْ وَاحِدٍ، أَوْ مِنْ أَكْثَرَ، أَوْ ابْتِيَاعُ اثْنَيْنِ فَصَاعِدًا، مِنْ وَاحِدٍ، أَوْ مِنْ شَرِيكَيْنِ: فَحَلَالٌ، لِأَنَّ حِصَّةَ كُلِّ وَاحِدٍ مِنْهَا مَعْلُومَةُ الثَّمَنِ، مَحْدُودَتُهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

Legal Issue on Ascertaining the Price

[مَسْأَلَة تبين الثَّمَن]

L24485

L24486 1535 – Issue: If someone is in a region where various types of currency circulate, it is impermissible to sell without specifying which currency type the price is in. If the two parties do not clarify that, the sale is annulled and rejected—as it occurs without mutual agreement on the price. Moreover, it constitutes a sale involving gharar. And success is from Allah, the Most High.

١٥٣٥ - مَسْأَلَةٌ: وَمَنْ كَانَ فِي بَلَدٍ تَجْرِي فِيهِ سِكَكٌ كَثِيرَةٌ شَتَّى، فَلَا يَحِلُّ الْبَيْعُ إلَّا بِبَيَانٍ مِنْ أَيِّ سِكَّةٍ يَكُونُ الثَّمَنُ، وَإِنْ لَمْ يُبَيِّنَا ذَلِكَ -: فَهُوَ بَيْعٌ مَفْسُوخٌ، مَرْدُودٌ؛ لِأَنَّهُ وَقَعَ عَنْ غَيْرِ تَرَاضٍ بِالثَّمَنِ، وَهُوَ أَيْضًا بَيْعُ غَرَرٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

The issue of selling the mukātab's kitābah (written manumission contract), where the mukātab is a bondsperson under a contractual freedom agreement.

[مَسْأَلَةٌ بَيْعُ كِتَابَةِ الْمُكَاتَبِ]

L24487

L24488 1536 - Issue: It is not permissible to sell the *kitābah* of the *mukātab*, nor the service of the *mudabbar*. This is the view held by al-Shāfiʿī, Abū Sulaymān, and Abū Ḥanīfah.

١٥٣٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ كِتَابَةِ الْمُكَاتَبِ، وَلَا خِدْمَةُ الْمُدَبَّرِ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ.

L24489–24490 Mālik permitted both cases: as for the mudabbar, [freedom is granted] only by the master himself, and as for the mukatab, [it is granted] by the master himself and others. Al-Zuhrī and Ibn al-Musayyib permitted the sale of both collectively.

وَأَجَازَ مَالِكٌ كِلَا الْأَمْرَيْنِ: أَمَّا الْمُدَبَّرُ فَمِنْ نَفْسِهِ فَقَطْ، وَأَمَّا الْمُكَاتَبُ فَمِنْ نَفْسِهِ وَمِنْ غَيْرِهِ، وَأَجَازَ بَيْعَهُمَا جُمْلَةً: الزُّهْرِيُّ، وَابْنُ الْمُسَيِّبِ.

L24491 We have been narrated a statement similar to that of Mālik, from ʿAṭāʾ and Ibn Sīrīn, because the *mukātab*'s obligation is established solely through the fulfillment of installments and is not binding prior to that. Thus, whoever sells the obligation has sold what he does not yet possess, and does not know whether it will become binding [for the buyer] or not. Furthermore, it is not a specified entity: the seller cannot identify which specific item he sells from the category of goods transacted, nor does the buyer know what he acquires.

وَرُوِّينَا مِثْلَ قَوْلِ مَالِكٍ عَنْ عَطَاءٍ، وَابْنِ سِيرِينَ؛ لِأَنَّ كِتَابَةَ الْمُكَاتَبِ إنَّمَا تَجِبُ بِالنُّجُومِ، وَلَا تَجِبُ قَبْلَ ذَلِكَ، فَمَنْ بَاعَهَا فَقَدْ بَاعَ مَا لَا يَمْلِكُ بَعْدُ، وَلَا يَدْرِي أَيَجِبُ لَهُ أَمْ لَا؟ وَأَيْضًا: فَلَيْسَتْ عَيْنًا مُعَيَّنَةً، فَلَا يَدْرِي الْبَائِعُ أَيَّ شَيْءٍ بَاعَ مِنْ نَوْعِ مَا بَاعَ، وَلَا يَدْرِي الْمُشْتَرِي مَا اشْتَرَى، فَهُوَ بَيْعُ غَرَرٍ، وَمَجْهُولُ الْعَيْنِ، وَأَكْلُ مَالٍ بِالْبَاطِلِ.

This constitutes a sale involving *gharar* (speculative risk), an indeterminate asset, and illegitimate consumption of wealth.

L24492 If it is said: "It has been reported from Jābir that he permitted its sale?" We reply: How many narratives reported from Jābir have you contradicted? Among them are his statement – which we have cited – that nothing purchased, whatever it may be, should be sold until it is received; his statement: "The ʿUmrah is obligatory"; his statement: "No one should enter the state of consecration (ihram) for Hajj before the months of Hajj"; and his statement: "The price of a cat is not permissible."

L24493 And there are many other matters where no opposing view is known from the Companions, may Allah be pleased with them, regarding such issues. Now it is considered a proof, but not in those cases? Truly, this is astonishing! There is no proof in the statement of anyone apart from the Messenger of Allah, peace and blessings be upon him. Our position is the position of Al-Shāfiʿī.

L24494 As for the service of a *mudabbar* (a slave promised freedom upon the master's death), selling it is manifestly corrupt and invalid, for one cannot know how long he will serve—he might serve fifty years, die tomorrow, within an hour, or be freed in the same manner. This is pure prohibition, wrongful appropriation of wealth, a sale involving *gharar* (uncertainty), a sale of what is not a concrete asset, and a sale of what does not yet exist. It combines every form of detriment.

L24495 If it is asked: "You have narrated through the chain of Muḥammad ibn ʿAlī ibn al-Ḥusayn that the Messenger of Allah (peace and blessings be upon him) sold the labor of the *mudabbar*"—has this [same report] been narrated to us through the chain of Shuʿbah from al-Ḥakam from Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn?

L24496–24497 We said: This is a mursal narration, and a mursal narration does not constitute a valid proof. Likewise, the sale of the servitude of an enslaved servant is impermissible in principle, due to what we mentioned regarding the servitude of a *mudabbar* (a slave designated for eventual freedom), as there is no difference between them. And success is by Allah, the Exalted.

فَإِنْ قِيلَ: فَقَدْ رُوِيَ عَنْ جَابِرٍ أَنَّهُ أَجَازَ بَيْعَهَا؟ قُلْنَا: وَكَمْ قِصَّةٍ رُوِيَتْ عَنْ جَابِرٍ خَالَفْتُمُوهَا -: مِنْهَا: قَوْلُهُ الَّذِي قَدْ أَوْرَدْنَا أَنْ لَا يُبَاعَ شَيْءٌ اُشْتُرِيَ كَائِنًا مَا كَانَ إِلَّا حَتَّى يُقْبَضَ وَقَوْلُهُ: الْعُمْرَةُ فَرِيضَةٌ، وَقَوْلُهُ: لَا يُحْرِمُ أَحَدٌ قَبْلَ أَشْهُرِ الْحَجِّ بِالْحَجِّ وَقَوْلُهُ: لَا يَجُوزُ ثَمَنُ الْهِرِّ.

وَغَيْرُ ذَلِكَ كَثِيرٌ مِمَّا لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ، فَالْآنَ صَارَ حُجَّةً وَهُنَالِكَ لَا؟ إنَّ هَذَا لَعَجَبٌ وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوْلُنَا هُوَ قَوْلُ الشَّافِعِيِّ.

وَأَمَّا خِدْمَةُ الْمُدَبَّرِ فَبَيْعُهَا ظَاهِرُ الْفَسَادِ وَالْبُطْلَانِ، لِأَنَّهُ لَا يَدْرِي كَمْ يَخْدِمُ وَلَعَلَّهُ سَيَخْدِمُ خَمْسِينَ سَنَةً، أَوْ لَعَلَّهُ يَمُوتُ غَدًا، أَوْ بَعْدَ سَاعَةٍ، أَوْ يَخْرُجُ حُرًّا كَذَلِكَ - فَهَذَا هُوَ الْحَرَامُ الْبَحْتُ، وَأَكْلُ الْمَالِ بِالْبَاطِلِ، وَبَيْعُ الْغَرَرِ، وَبَيْعُ مَا لَيْسَ عَيْنًا، وَبَيْعُ مَا لَمْ يُخْلَقْ بَعْدُ، فَقَدْ جَمَعَ كُلَّ بَلَاءٍ.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاعَ خِدْمَةَ الْمُدَبَّرِ» رُوِّينَا ذَلِكَ مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ؟

قُلْنَا: هَذَا مُرْسَلٌ، وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ - وَكَذَلِكَ لَا يَجُوزُ بَيْعُ خِدْمَةِ الْمُخْدِمِ أَصْلًا، لِمَا ذَكَرْنَا فِي خِدْمَةِ الْمُدَبَّرِ وَلَا فَرْقَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24498 **A jurisprudential issue concerning the sale of liquid ghee into which a mouse falls.**

L24499 Issue 1537: It is impermissible to sell liquid clarified butter into which a mouse, alive or dead, has fallen, due to the instruction of Allah's Messenger (peace be upon him) to discard it. We have mentioned this in the "Book of Purification" within this book of ours and in the "Book of Lawful and Unlawful Foods," rendering its repetition unnecessary.

[مَسْأَلَةُ بَيْعُ السَّمْنِ الْمَائِعِ يَقَعُ فِيهِ الْفَأْرُ]

١٥٣٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ السَّمْنِ الْمَائِعِ يَقَعُ فِيهِ الْفَأْرُ حَيًّا أَوْ مَيِّتًا لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَرْقِهِ وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الطَّهَارَةِ " مِنْ دِيوَانِنَا هَذَا وَفِي " كِتَابِ مَا يَحِلُّ أَكْلُهُ وَمَا يَحْرُمُ " فَأَغْنَى عَنْ إعَادَتِهِ.

فَإِنْ كَانَ جَامِدًا أَوْ وَقَعَ فِيهِ مَيْتَةٌ غَيْرُ الْفَأْرِ أَوْ نَجَاسَةٌ فَلَمْ تُغَيِّرْ لَوْنَهُ، وَلَا طَعْمَهُ وَلَا رِيحَهُ، أَوْ وَقَعَ الْفَأْرُ الْمَيِّتُ أَوْ الْحَيُّ، أَوْ أَيُّ نَجَاسَةٍ، أَوْ أَيُّ مَيْتَةٍ كَانَتْ فِي مَائِعٍ غَيْرِ السَّمْنِ، فَلَمْ تُغَيِّرْ طَعْمًا وَلَا لَوْنًا وَلَا رِيحًا: فَبَيْعُهُ حَلَالٌ، وَأَكْلُهُ حَلَالٌ؛ لِأَنَّهُ لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ.

L24500 If it is solid or a dead animal other than a mouse or an impurity falls into it without altering its color, taste, and smell; or if the dead mouse or the live mouse, any impurity, or any dead animal falls into a liquid other than ghee without altering its taste, color, and smell, then its sale and consumption are permissible, because there is no explicit scriptural prohibition against it.

وَقَدْ قَالَ اللَّهُ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L24501 Allah—Exalted is He—has said: “He has explained in detail what He has forbidden for you” (Surah Al-An’am 6:119).[1]

وَقَالَ - تَعَالَى -: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَهَذَا قَوْلُ أَصْحَابِنَا، وَقَدْ ذَكَرْنَاهُ عَنْ بَعْضِ السَّلَفِ فِي الْكُتُبِ الْمَذْكُورَةِ، فَإِنْ تَغَيَّرَ طَعْمُهُ أَوْ لَوْنُهُ أَوْ رِيحُهُ: جَازَ بَيْعُهُ أَيْضًا، كَمَا يُبَاعُ الثَّوْبُ النَّجِسُ.

L24502 And He - the Most High - said: {And your Lord is not forgetful} [Maryam: 64]. This is the position of our scholars, and we have cited it on the authority of some of the Salaf in the aforementioned books. If its taste, color, or odor changes, its sale becomes permissible as well, just as an impure garment may be sold.[2]

وَقَدْ قُلْنَا: إنَّ الطَّاهِرَ لَا يُنَجَّسُ بِمُلَاقَاتِهِ النَّجِسَ وَلَوْ أَمْكَنَنَا أَنْ نَفْصِلَهُ مِنْ الْحَرَامِ لَحَلَّ أَكْلُهُ، وَلَمْ يَمْنَعْ مِنْ الِانْتِفَاعِ بِهِ فِي غَيْرِ الْأَكْلِ نَصٌّ فَهُوَ مُبَاحٌ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24503 We have stated: Indeed, what is pure does not become impure through contact with an impure substance. Even if we could separate it from what is unlawful, its consumption would become permissible. Since there is no textual evidence prohibiting benefiting from it in non-consumptive uses, it is permissible. And with Allah, the Most High, is success.

وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، يَعْنِي مَا تَغَيَّرَ لَوْنُهُ أَوْ طَعْمُهُ أَوْ رِيحُهُ مِنْ الْمَائِعَاتِ الَّتِي حَلَّتْهَا النَّجَاسَاتُ، لِأَنَّهُ إنَّمَا يُبَاعُ الشَّيْءُ الَّذِي حَلَّتْهُ النَّجَاسَةُ لَا النَّجَاسَةُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24504 This is the opinion of Abū Ḥanīfah, meaning: [the ruling applies to] liquids whose color, taste, or smell has changed due to ritually impure substances that have dissolved into them. This is because only the liquid into which the impure substance has dissolved is sold, not the impure substance itself. And success is attained only through Allah, the Most High.

[مَسْأَلَةُ بَيْعُ الصُّوَرِ]

The Issue of the Sale of Images

١٥٣٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ الصُّوَرِ إلَّا لِلَعِبِ الصِّبَايَا فَقَطْ، فَإِنَّ اتِّخَاذَهَا لَهُنَّ حَلَالٌ حَسَنٌ، وَمَا جَازَ مِلْكُهُ جَازَ بَيْعُهُ إلَّا أَنْ يَخُصَّ شَيْئًا مِنْ ذَلِكَ نَصٌّ فَيُوقَفُ عِنْدَهُ.

L24505

1538 - Issue: It is not permissible to sell images except solely for the play of young girls, for creating them for their use is permissible and commendable. Whatever it is permissible to own, it is permissible to sell unless there is an

L24506

[1] **Qur’an references (L24501):** Qur’an 6:119 (Al-An’am).
[2] **Qur’an references (L24502):** Qur’an 19:64 (Maryam).

explicit text regarding something from that, in which case one must adhere to it.

L24507 Allah, the Most High, said: “And Allah has permitted trade.” [Al-Baqarah: 275][3]

قَالَ اللَّهُ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L24508 And He, Exalted is He, said: “He has explained in detail to you what He has forbidden” [Al-Anʿām 6:119].[4]

وَقَالَ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L24509–24511 Similarly, it is not permissible to create images except for what constitutes a flat design on a garment—due to what we have narrated through the chain of Muslim: Isḥāq ibn Ibrāhīm (Ibn Rāhawayh) narrated to us from Sufyān ibn ʿUyaynah, from al-Zuhrī, from... The angels do not enter a house in which there is a dog or an image.[5]

وَكَذَلِكَ لَا يَحِلُّ اتِّخَاذُ الصُّوَرِ إلَّا مَا كَانَ رَقْمًا فِي ثَوْبٍ -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ أَبِي طَلْحَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَدْخُلُ الْمَلَائِكَةُ بَيْتًا فِيهِ كَلْبٌ وَلَا صُورَةٌ» .

L24512 And via Malik’s chain from Abu al-Nadr from Ubayd Allah ibn Abd Allah ibn Utbah, who visited Abu Talha. He found Sahl ibn Hunayf present with him. Abu Talha ordered a rug beneath him to be removed. Sahl asked: “Why did you remove it?” He replied: “Because it contained images, and the Messenger of Allah stated the ruling you know.” Sahl said: “Did he not exclude mere patterns?” He said: “Yes, but it is purer for my soul.”

وَمِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي النَّضْرِ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّهُ دَخَلَ عَلَى أَبِي طَلْحَةَ يَعُودُهُ قَالَ: فَوَجَدَ عِنْدَهُ سَهْلَ بْنَ حُنَيْفٍ فَأَمَرَ أَبُو طَلْحَةَ بِنَزْعِ نَمَطٍ كَانَ تَحْتَهُ؟ فَقَالَ لَهُ سَهْلٌ: لِمَ نَزَعْتَهُ؟ قَالَ: لِأَنَّ فِيهِ تَصَاوِيرَ، وَقَدْ قَالَ رَسُولُ اللَّهِ: مَا قَدْ عَلِمْت؟ قَالَ سَهْلٌ: أَلَمْ يَقُلْ إلَّا مَا كَانَ رَقْمًا؟ قَالَ: بَلَى، وَلَكِنَّهُ أَطْيَبُ لِنَفْسِي.

L24513 Abu Muhammad said: It is forbidden for us to repel the angels from our homes, for they are the messengers of Allah—the Exalted and Majestic—and one is brought near to Him—the Exalted and Majestic—through closeness to them.

قَالَ أَبُو مُحَمَّد: حَرَامٌ عَلَيْنَا تَنْفِيرُ الْمَلَائِكَةِ عَنْ بُيُوتِنَا، وَهُمْ رُسُلُ اللَّهِ - عَزَّ وَجَلَّ - وَالْمُتَقَرَّبُ إلَيْهِ - عَزَّ وَجَلَّ - بِقُرْبِهِمْ.

L24514 And through the chain of Muslim: I am Yahya ibn Yahya, who said: I heard from Abdul Aziz ibn Muhammad al-Darawardi, who narrated from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers, who said: “I used to play with dolls in the presence of the Messenger of Allah

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى قَالَ: أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كُنْتُ أَلْعَبُ بِالْبَنَاتِ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَانَ يَأْتِينِي صَوَاحِبِي فَكُنَّ يَتَقَمَّعْنَ مِنْ رَسُولِ اللَّهِ - صَلَّى

[3] **Qur’an references (L24507):** Qur’an 2:275 (Al-Baqarah).
[4] **Qur’an references (L24508):** Qur’an 6:119 (Al-An’am).
[5] **Hadith references (L24509):** Sahih al-Bukhari 3322; Sahih al-Bukhari 4002; Sahih al-Bukhari 3225.

(peace be upon him). My female companions would come to me, and they would shy away from the Messenger of Allah (peace be upon him), so he would discreetly allow them to approach me." Thus, it became obligatory to exclude dolls for young girls from the entirety of what was prohibited regarding images.

L24515 As for crosses, the ruling differs, and it is impermissible to leave them in garments or other items - based on what was reported to us through the chain of Qāsim ibn Aṣbagh, from Bakr ibn Ḥammād, from Musaddad, from Yaḥyā—Ibn Saʿīd al-Qaṭṭān—from Hishām al-Dastuwāʾī, from Yaḥyā ibn Abī Kathīr, from ʿImrān ibn Ḥiṭṭān, from ʿĀʾishah, Mother of the Believers: "The Messenger of Allah—may Allah's peace and blessings be upon him—did not leave any garment in his house containing cross-shaped patterns without unravelling it."

L24516–24518 It has been authentically established from the Messenger of Allah—may Allah bless him and grant him peace—that he disliked the curtain on which images were hung, so a part of it was fashioned for him instead. a cushion, and he did not disapprove of it. Thus, it is established that images in curtains are disliked but not prohibited, and as for images in cushions and items other than curtains, they are not disliked in their use.

The Issue of Sale on the Day of Friday

L24519

L24520 Issue 1539: It is impermissible to sell from when the sun passes the meridian on Friday until the completion of the two sermons and the prayer. This prohibition applies equally to believers, disbelievers, women, and the sick. As for those who attend the Friday prayer, the prohibition lasts until their prayer is fully concluded. Every sale occurring during the specified time is nullified. This is Mālik's view. Al-Shāfiʿī and Abū Ḥanīfa, however, permit selling during that time.

L24521 As for marriage, the Salam contract, Ijarah (leasing), and all other contracts—they are permissible at that time for everyone. This is the opinion of al-Shāfiʿī and Abū Ḥanīfah, while Mālik did not permit them.

اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيُسَرِّبُهُنَّ إِلَيَّ» فَوَجَبَ اسْتِثْنَاءُ الْبَنَاتِ لِلصَّبَايَا مِنْ جُمْلَةِ مَا نُهِيَ عَنْهُ مِنْ الصُّوَرِ.

وَأَمَّا الصُّلُبُ فَبِخِلَافِ ذَلِكَ، وَلَا يَحِلُّ تَرْكُهَا فِي ثَوْبٍ، وَلَا فِي غَيْرِهِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا بَكْرُ بْنُ حَمَّادٍ أَنَا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِمْرَانَ بْنَ حِطَّانَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَكُنْ يَدَعُ فِي بَيْتِهِ ثَوْبًا فِيهِ تَصْلِيبٌ إِلَّا نَقَضَهُ» .

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ كَرِهَ السِّتْرَ الْمُعَلَّقَ فِيهِ التَّصَاوِيرُ فَجُعِلَتْ لَهُ مِنْهُ وِسَادَةً فَلَمْ يُنْكِرْهَا - فَصَحَّ أَنَّ الصُّوَرَ فِي السُّتُورِ مَكْرُوهَةٌ غَيْرُ مُحَرَّمَةٍ، وَفِي الْوَسَائِدِ، وَغَيْرِ السُّتُورِ لَيْسَتْ مَكْرُوهَةَ الِاسْتِخْدَامِ بِهَا.

[مَسْأَلَةَ الْبَيْعِ يَوْمَ الْجُمُعَةِ]

١٥٣٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْبَيْعُ مُذْ تَزُولُ الشَّمْسُ مِنْ يَوْمِ الْجُمُعَةِ إلَى مِقْدَارِ تَمَامِ الْخُطْبَتَيْنِ وَالصَّلَاةِ، لَا لِمُؤْمِنٍ، وَلَا لِكَافِرٍ، وَلَا لِامْرَأَةٍ، وَلَا لِمَرِيضٍ، وَأَمَّا مَنْ شَهِدَ الْجُمُعَةَ فَإِلَى أَنْ تَتِمَّ صَلَاتُهُمْ لِلْجُمُعَةِ، وَكُلُّ بَيْعٍ وَقَعَ فِي الْوَقْتِ الْمَذْكُورِ فَهُوَ مَفْسُوخٌ - وَهَذَا قَوْلُ مَالِكٍ - وَأَجَازَ الْبَيْعَ فِي الْوَقْتِ الْمَذْكُورِ: الشَّافِعِيُّ، وَأَبُو حَنِيفَةَ.

وَأَمَّا النِّكَاحُ، وَالسَّلَمُ وَالْإِجَارَةُ، وَسَائِرُ الْعُقُودِ - فَجَائِزَةٌ كُلُّهَا فِي ذَلِكَ الْوَقْتِ لِكُلِّ أَحَدٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي حَنِيفَةَ - وَلَمْ يُجِزْهَا مَالِكٌ.

L24522 بُرْهَانُ صِحَّةِ قَوْلِنَا: قَوْلُ اللَّهِ - تَعَالَى -: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ} [الجمعة: ٩] {فَإِذَا قُضِيَتِ الصَّلاةُ فَانْتَشِرُوا فِي الأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ} [الجمعة: ١٠] فَهُمَا أَمْرَانِ مُفْتَرَضَانِ: السَّعْيُ إِلَى ذِكْرِ اللَّهِ - تَعَالَى -، وَتَرْكُ الْبَيْعِ، فَإِذَا سَقَطَ أَحَدُهُمَا بِنَصٍّ وَرَدَ فِيهِ كَالْمَرِيضِ، وَالْخَائِفِ وَالْمَرْأَةِ، وَالْمَعْذُورِ، لَمْ يَسْقُطِ الْآخَرُ، إِذْ لَمْ يُوجِبْ سُقُوطَهُ قُرْآنٌ، وَلَا سُنَّةٌ - وَجَبَ إِلْزَامُ الْكُفَّارِ كَذَلِكَ، لِقَوْلِ اللَّهِ - تَعَالَى -: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩].

L24523 وَلِقَوْلِهِ - تَعَالَى -: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَأَمَّا إِدْخَالُ مَالِكٍ النِّكَاحَ، وَالْإِجَارَةَ فِي ذَلِكَ، فَخَطَأٌ ظَاهِرٌ، لِأَنَّ اللَّهَ - تَعَالَى - إِنَّمَا نَهَى عَنِ الْبَيْعِ، وَلَوْ أَرَادَ النَّهْيَ عَنِ النِّكَاحِ، وَالْإِجَارَةِ لَمَا عَجَزَ عَنْ ذَلِكَ، وَلَا كَتَمَنَا مَا أَلْزَمَنَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَتَعَدِّي حُدُودِ اللَّهِ - تَعَالَى - لَا يَحِلُّ.

L24524 وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ إِنَّمَا هُوَ أَنْ يُقَاسَ الشَّيْءُ عَلَى نَظِيرِهِ، وَلَيْسَ الْبَيْعُ نَظِيرَ النِّكَاحِ، لِأَنَّهُ يَجُوزُ بِلَا ذِكْرِ مَهْرٍ.

L24525 وَلَا يَجُوزُ الْبَيْعُ بِغَيْرِ ذِكْرِ ثَمَنٍ، وَالْمُتَنَاكِحَانِ لَا يَمْلِكُ أَحَدُهُمَا الْآخَرَ، وَلَا فِي النِّكَاحِ نَقْلُ مِلْكٍ، وَالْبَيْعُ نَقْلُ مِلْكٍ.

L24522 Proof for the validity of our position: the words of Allah—Exalted is He—: {O you who believe, when the call is proclaimed for the prayer on the Day of Congregation, hasten to the remembrance of Allah and leave off trade. That is better for you, if you but knew} [Al-Jumu'ah: 9] {Then when the prayer is concluded, disperse freely in the land and seek Allah's bounty} [Al-Jumu'ah: 10]. These are two prescribed obligations: hastening to the remembrance of Allah—Exalted is He—and abandoning trade. If one of them is waived due to a scriptural text pertaining to it—such as for the sick, those in fear, a woman, or the excused—the other remains obligatory, as neither the Quran nor the Sunnah necessitates its waiver. It is obligatory to compel disbelievers to adhere to these rulings likewise, due to the words of Allah—Exalted is He—: {And judge between them by what Allah has revealed} [Al-Ma'idah: 49].[6]

L24523 And due to His - the Most High's - statement: {And fight them until there is no discord and the religion, all of it, is for Allah} [Al-Anfal: 39]. As for Malik's inclusion of marriage and leasing in that, it is a clear error; because Allah - the Most High - only prohibited selling, and if He had intended to prohibit marriage and leasing, He would not have failed to do so, nor would we hide what He has enjoined upon us. {And your Lord is not forgetful} [Maryam: 64]. Transgressing the limits set by Allah - the Most High - is not permissible.[7]

L24524 If analogy were valid, this case would be invalid under it, because analogy—according to its proponents—is the comparison of a thing to its counterpart. Sale is not the counterpart of marriage, since the latter is permissible without mentioning a mahr.

L24525 It is not permissible to conduct a sale without mentioning the price. The two parties to the marriage do not own one another—neither of them owns

[6] **Qur'an references (L24522):** Qur'an 62:9 (Al-Jumu'ah); Qur'an 62:10 (Al-Jumu'ah); Qur'an 5:49 (Al-Ma'idah).

[7] **Qur'an references (L24523):** Qur'an 8:39 (Al-Anfal); Qur'an 19:64 (Maryam).

the other—nor is there a transfer of ownership in marriage, whereas a sale is a transfer of ownership.

L24526–24527 As for leasing, it is exclusively a compensatory contract for usufructs not yet created by God, the Exalted. Selling what has not yet been created is invalid. A free person may lease himself, but it is unlawful for him to sell himself. Thus, there is no resemblance between leasing and marriage, or between leasing and sale.

L24528 If the prohibition of sale is rationalized by what distracts from prayer, this leads to adopting the opinion of Abū Ḥanīfah and al-Shāfiʿī, obliging him to permit sales that involve no distraction from prayer. According to those who uphold this view, no analogy is valid except when based on an effective legal cause; if no cause is established, the analogy becomes invalid. We know of no precedent from the Salaf for this opinion.

L24529 As for the permissibility according to Abū Ḥanīfah and Al-Shāfiʿī of conducting sales during the mentioned time, this contravenes the command of Allah (Exalted is He). We know of no argument whatsoever for their position beyond their claim that the prohibition merely relates to being preoccupied [with worldly matters] instead of hastening to the prayer. Indeed, were a person to sell during the prayer itself, the sale would still be valid.

L24530 Abu Muhammad said: These two statements are utterly invalid. As for their claim that Allah only intended by this the preoccupation away from striving, it is an assertion of utmost gravity. I wish I knew who informed them of this while they hear Allah—exalted is He—say: “And that you ascribe to Allah what you do not know” [Al-Baqarah 2:169].[8]

L24531 If Allah—Exalted is He—had intended what they claimed, He would not have prohibited us from selling absolutely, nor would He have been unable to clarify His intent in that matter. There is neither here a necessity compelling this understanding nor any definitive text. Thus, it is sheer falsehood—a false claim devoid of any proof.

L24532 As for their statement: “If one were to sell during prayer, the sale would

وَأَمَّا الْإِجَارَةُ فَإِنَّمَا هِيَ مُعَاوَضَةٌ فِي مَنَافِعَ لَمْ يَخْلُقْهَا اللَّهُ - تَعَالَى - بَعْدُ، وَلَا يَجُوزُ بَيْعُ مَا لَمْ يُخْلَقْ بَعْدُ، وَيَجُوزُ أَنْ يُؤَاجِرَ الْحُرُّ نَفْسَهُ، وَلَا يَحِلُّ لَهُ أَنْ يَبِيعَ نَفْسَهُ، فَلَا شَبَهَ بَيْنَ الْإِجَارَةِ وَالنِّكَاحِ وَبَيْنَ الْبَيْعِ.

فَإِنْ عَلَّلَ النَّهْيَ عَنْ الْبَيْعِ بِمَا يُشَاغِلُ عَنْ السَّعْيِ: صَارَ إلَى قَوْلِ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَلَزِمَهُ أَنْ يُجِيزَ مِنْ الْبَيْعِ مَا لَا تَشَاغَلَ مِنْهُ عَنْ السَّعْيِ، وَلَا قِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ إلَّا عَلَى عِلَّةٍ، فَإِنْ لَمْ يُعَلِّلْ بَطَلَ الْقِيَاسُ - وَمَا نَعْلَمُ لَهُ سَلَفًا فِي هَذَا الْقَوْلِ.

وَأَمَّا إجَازَةُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ: الْبَيْعَ فِي الْوَقْتِ الْمَذْكُورِ فَخِلَافٌ لِأَمْرِ اللَّهِ - تَعَالَى -، وَلَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا أَكْثَرَ مِنْ أَنْ قَالُوا: إنَّمَا نَهَى عَنْ التَّشَاغُلِ عَنْ السَّعْيِ إلَى الصَّلَاةِ فَقَطْ، وَلَوْ أَنَّ امْرَأً بَاعَ فِي الصَّلَاةِ لَصَحَّ الْبَيْعُ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ فَاسِدَانِ مِنْ الْقَوْلِ جِدًّا -: أَمَّا قَوْلُهُمْ: إنَّمَا أَرَادَ اللَّهُ بِذَلِكَ التَّشَاغُلَ عَنْ السَّعْيِ فَقَطْ، فَعَظِيمٌ مِنْ الْقَوْلِ جِدًّا، لَيْتَ شِعْرِي مَنْ أَخْبَرَهُمْ بِذَلِكَ وَهُمْ يَسْمَعُونَ اللَّهَ - تَعَالَى - يَقُولُ: {وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] .

وَلَوْ أَنَّ اللَّهَ - تَعَالَى - أَرَادَ مَا قَالُوا لَمَا نَهَانَا عَنْ الْبَيْعِ مُطْلَقًا، وَلَا عَجَزَ عَنْ بَيَانِ مُرَادِهِ مِنْ ذَلِكَ، وَمَا هَهُنَا ضَرُورَةٌ تُوجِبُ فَهْمَ هَذَا وَلَا نَصٌّ، فَهُوَ بَاطِلٌ مَحْضٌ، وَدَعْوَى كَاذِبَةٌ بِلَا بُرْهَانٍ.

[8] **Qur’an references (L24530):** Qur’an 2:169 (Al-Baqarah); Qur’an 7:33 (Al-A’raf).

be permissible”—this is a feeble deception, for when the worshipper begins speaking during bargaining, their prayer becomes invalid, rendering them no longer engaged in prayer. Thus, the invalidity of their argument becomes wholly evident.

وَأَمَّا قَوْلُهُمْ: لَوْ بَاعَ فِي الصَّلَاةِ لَجَازَ الْبَيْعُ: فَتَمْوِيهٌ بَارِدٌ، لِأَنَّ الْمُصَلِّيَ بِأَوَّلِ أَخْذِهِ فِي الْكَلَامِ فِي الْمُسَاوَمَةِ بَطَلَتْ صَلَاتُهُ فَصَارَ غَيْرَ مُصَلٍّ - فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ جُمْلَةً.

L24533 If they say: “Is this merely a recommended act?” We reply: “What is your proof for that? How can God—Exalted is He—command: ’Do,’ yet they claim: ’Its meaning is: Do not do if you wish’? Or how can God—Exalted is He—prohibit: ’Do not do,’ yet they assert: ’Its meaning is: Do if you wish’? This is nullification of fundamental truths, the essence of disobedience, and distortion of the words from their rightful contexts.”

فَإِنْ قَالُوا: هَذَا نَدْبٌ؟ قُلْنَا: مَا دَلِيلُكُمْ عَلَى ذَلِكَ، وَكَيْفَ يَقُولُ اللَّهُ - تَعَالَى -: افْعَلْ، فَيَقُولُونَ: مَعْنَاهُ - لَا تَفْعَلْ إنْ شِئْت؟ أَمْ كَيْفَ يَقُولُ اللَّهُ - تَعَالَى -: لَا تَفْعَلْ، فَيَقُولُونَ: مَعْنَاهُ: افْعَلْ إنْ شِئْت؟ وَهَذَا إبْطَالُ الْحَقَائِقِ، وَنَفْسُ الْمَعْصِيَةِ، وَتَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ.

L24534–24536 If they say, “We have found commands and prohibitions whose meaning is recommendation?” We say, “Yes, by another explicit text that clarified that.” Likewise, we have found verses [with rulings] abrogated by another explicit text, and [those rulings] were no longer obligatory. To claim that a verse is abrogated based on this, or that it indicates a commendable act—whoever does so has nullified whatever he desires without proof. It was narrated to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: from Muḥammad ibn Abī Bakr—al-Muqaddamī—from Sulaymān ibn Dāwūd, from Sulaymān ibn Muʿādh, from Simāk, from ʿIkrimah, from Ibn ʿAbbās, who said: “Engaging in trade becomes invalid on Friday when the prayer call is proclaimed. Once the prayer concludes, then buy and sell.” We know of no opposition to this ruling among the Companions.

فَإِنْ قَالُوا: قَدْ وَجَدْنَا أَوَامِرَ وَنَوَاهِيَ مَعْنَاهَا: النَّدْبُ؟ قُلْنَا: نَعَمْ بِنَصٍّ آخَرَ بَيَّنَ ذَلِكَ وَكَذَلِكَ وَجَدْنَا آيَاتٍ مَنْسُوخَاتٍ بِنَصٍّ آخَرَ وَلَمْ يَجِبْ بِذَلِكَ حَمْلُ آيَةٍ عَلَى أَنَّهَا مَنْسُوخَةٌ، وَلَا عَلَى أَنَّهَا نَدْبٌ، وَمَنْ فَعَلَ ذَلِكَ فَقَدْ أَبْطَلَ مَا شَاءَ بِلَا دَلِيلٍ -: رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي - نَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ - هُوَ الْمُقَدَّمِيُّ - نا سُلَيْمَانُ بْنُ دَاوُد نا سُلَيْمَانُ بْنُ مُعَاذٍ نا سِمَاكٌ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا يَصْلُحُ الْبَيْعُ يَوْمَ الْجُمُعَةِ حِينَ يُنَادَى لِلصَّلَاةِ، فَإِذَا قُضِيَتْ فَاشْتَرِ وَبِعْ وَلَا نَعْلَمُ لَهُ مُخَالِفًا مِنْ الصَّحَابَةِ.

L24537 From Hammad ibn Zayd from al-Walid ibn Abi Hisham from Abd al-Rahman ibn al-Qasim ibn Muhammad from his father that he invalidated a sale that occurred between some women and a perfumer after the Jumuʿah adhan.

وَعَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ الْوَلِيدِ بْنِ أَبِي هِشَامٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّهُ فَسَخَ بَيْعًا وَقَعَ بَيْنَ نِسَاءٍ وَبَيْنَ عَطَّارٍ بَعْدَ النِّدَاءِ لِلْجُمُعَةِ.

L24538 1540. Issue: If a person has only enough time remaining to enter into the prayer with the *takbīr* (saying “Allāhu Akbar”), has not yet prayed, is mindful of the prayer, and aware of the remaining time, then anything they engage in at that moment—such as a sale or other transactions—is invalid and annulled permanently. This is based on the statement of the Messenger of Allāh (peace and blessings of Allāh be upon him): “Whoever performs an action not in accordance with our command, it is invalid.” During that

١٥٤٠ - مَسْأَلَةٌ: وَمَنْ لَمْ يَبْقَ عَلَيْهِ مِنْ وَقْتِ الصَّلَاةِ إلَّا مِقْدَارَ الدُّخُولِ فِي الصَّلَاةِ بِالتَّكْبِيرِ، وَهُوَ لَمْ يُصَلِّ بَعْدُ، وَهُوَ ذَاكِرٌ لِلصَّلَاةِ، عَارِفٌ بِمَا بَقِيَ عَلَيْهِ مِنْ الْوَقْتِ، فَكُلُّ شَيْءٍ فَعَلَهُ حِينَئِذٍ مِنْ بَيْعٍ أَوْ غَيْرِهِ: بَاطِلٌ مَفْسُوخٌ أَبَدًا، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ

time, selling and other acts are prohibited for them, as they are commanded to enter into the prayer. If they were unaware of that, all their actions during that time would be permissible, because the time for prayer remains perpetually extended for the forgetful person.[9]

L24539 As for one who was heedless and concluded the prayer before its completion, any sales or other dealings he executed are entirely invalid, for he was aware of the prohibition against such acts while remaining in prayer. However, he is pardoned for forgetfulness. He merely presumed he had sold when no sale occurred, having altered the transaction which Allah—the Exalted—had made lawful for him. Thus, it remains impermissible—and with Allah, the Most High, lies all success.

L24540 A legal inquiry into whether a co-owner can be compelled to sell their share jointly with another co-owner.

L24541 Issue 1541: It is not permissible to compel anyone to sell jointly with his partner—neither that which is divisible nor that which is indivisible—nor to force him to resist his partner so that one of them sells to the other. However, whichever of the two partners or partners wishes to sell his share may do so. Whoever refuses cannot be compelled. If a judge or anyone else compels him to do so, his ruling is perpetually annulled, and the matter is judged according to the legal ruling on usurpation.

L24542 The proof of this is the words of Allah, the Exalted: "Do not consume your wealth among yourselves wrongfully, unless it be trade by mutual consent" [An-Nisa: 29].[10]

L24543–24544 And whoever is compelled to sell their right without consenting to it, it is not permissible for them, for it contradicts the command of Allah—the Exalted—as it constitutes wrongful consumption of wealth, except where Allah—the Exalted—has commanded the sale even without consent, such as

[9] **Hadith references (L24538):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[10] **Qur'an references (L24542):** Qur'an 4:29 (An-Nisa).

عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَهُوَ فِي ذَلِكَ الْوَقْتِ مُحَرَّمٌ عَلَيْهِ الْبَيْعُ وَغَيْرُهُ، مَأْمُورٌ بِالدُّخُولِ فِي الصَّلَاةِ، فَلَوْ لَمْ يَكُنْ عَارِفًا بِذَلِكَ: جَازَ كُلُّ مَا عَمِلَ فِيهِ؛ لِأَنَّ وَقْتَ الصَّلَاةِ لِلنَّاسِي مُمْتَدٌّ أَبَدًا.

وَأَمَّا مَنْ سَهَا فَسَلَّمَ قَبْلَ تَمَامِ صَلَاتِهِ فَمَا أَنْفَذَ مِنْ بَيْعٍ أَوْ غَيْرِهِ: فَمَرْدُودٌ كُلُّهُ؛ لِأَنَّهُ قَدْ عَرَفَ النَّهْيَ عَنْ ذَلِكَ مَا دَامَ فِي صَلَاتِهِ، وَهُوَ فِي صَلَاتِهِ، لَكِنْ عُفِيَ لَهُ عَنْ النِّسْيَانِ، فَهُوَ إنَّمَا ظَنَّ أَنَّهُ بَاعَ وَلَمْ يَبِعْ؛ لِأَنَّهُ غَيَّرَ الْبَيْعَ الَّذِي أَحَلَّهُ اللَّهُ - تَعَالَى - لَهُ، فَإِذَا هُوَ غَيْرُ جَائِزٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة يُجْبَرَ أَحَدٌ عَلَى أَنْ يَبِيعَ مَعَ شَرِيكِهِ]

١٥٤١ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يُجْبَرَ أَحَدٌ عَلَى أَنْ يَبِيعَ مَعَ شَرِيكِهِ لَا مَا يَنْقَسِمُ وَلَا مَا لَا يَنْقَسِمُ، وَلَا عَلَى أَنْ يُقَاوِمَهُ فَيَبِيعَ أَحَدُهُمَا مِنْ الْآخَرِ، لَكِنْ مَا شَاءَ مِنْ الشَّرِيكَيْنِ أَوْ الشُّرَكَاءِ أَنْ يَبِيعَ حِصَّتَهُ: فَلَهُ ذَلِكَ، وَمَنْ أَبَى لَمْ يُجْبَرْ، فَإِنْ أَجْبَرَهُ عَلَى ذَلِكَ حَاكِمٌ أَوْ غَيْرُهُ: فُسِخَ حُكْمُهُ أَبَدًا، وَحُكِمَ فِيهِ بِحُكْمِ الْغَصْبِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَمَنْ أُجْبِرَ عَلَى بَيْعِ حَقِّهِ فَلَمْ يَرْضَ فَلَا يَجُوزُ عَلَيْهِ؛ لِأَنَّهُ خِلَافُ أَمْرِ اللَّهِ - تَعَالَى -، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ إلَّا حَيْثُ أَمَرَ اللَّهُ - تَعَالَى - بِالْبَيْعِ، وَإِنْ لَمْ يَرْضَ كَالشُّفْعَةِ، وَعَلَى الْغَائِبِ، وَعَلَى الصَّغِيرِ، وَعَلَى الظَّالِمِ.

in pre-emption, or rulings applicable to the absent person, the minor, and the wrongdoer.

L24545 Those who argue for compelling a co-owner to sell alongside their partner have relied on a narration citing: "No harm and no reciprocation of harm." However, this narration has never been authenticated; it is only transmitted as a mursal report or through a chain containing Isḥāq ibn Yaḥyā—who is unknown. Even if it were authentic, it would stand as evidence against their position, for the greatest harm and injury is what they perpetrate by forcing a person to sell his property without his consent and without God, Exalted is He, having imposed such an obligation. God, Exalted is He, has never permitted favoring one co-owner's satisfaction by provoking his partner's displeasure regarding his very own property. This is blatant tyranny and manifest injustice.

وَاحْتَجَّ الْقَائِلُونَ بِإِجْبَارِ الشَّرِيكِ عَلَى الْبَيْعِ مَعَ شَرِيكِهِ بِخَبَرٍ رُوِيَ فِيهِ «لَا ضَرَرَ وَلَا ضِرَارَ» وَهَذَا خَبَرٌ لَمْ يَصِحَّ قَطُّ، إِنَّمَا جَاءَ مُرْسَلًا، أَوْ مِنْ طَرِيقٍ فِيهَا إِسْحَاقُ بْنُ يَحْيَى - وَهُوَ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ؛ لِأَنَّ أَعْظَمَ الضِّرَارِ وَالضَّرَرِ: هُوَ الَّذِي فَعَلُوهُ مِنْ إِجْبَارِهِمْ إِنْسَانًا عَلَى بَيْعِ مَالِهِ بِغَيْرِ رِضَاهُ، وَبِغَيْرِ أَنْ يُوجِبَ اللَّهُ - تَعَالَى - عَلَيْهِ ذَلِكَ، وَمَا أَبَاحَ اللَّهُ - تَعَالَى - قَطُّ أَنْ يُرَاعَى رِضَا أَحَدِ الشَّرِيكَيْنِ بِإِسْخَاطِ شَرِيكِهِ فِي مَالِهِ نَفْسِهِ، وَهَذَا هُوَ الْجَوْرُ وَالظُّلْمُ الصُّرَاحُ.

L24546 There is no difference between one partner being permitted to demand: "My partner must sell with me so I may ensure a fair price within my share," and the other partner being permitted to demand: "My partner must be prevented from selling his share, for this harms my own share." Both scenarios constitute aggression and injustice. However, the truth is that each retains autonomy over their share: whoever wishes may sell their portion, and whoever chooses may keep theirs.

وَلَا فَرْقَ بَيْنَ أَنْ يُجَابَ أَحَدُ الشَّرِيكَيْنِ إِلَى قَوْلِهِ: لَا بُدَّ أَنْ يَبِيعَ شَرِيكِي مَعِي لِأَسْتَجْزِلَ الثَّمَنَ فِي حِصَّتِي، وَبَيْنَ أَنْ يُجَابَ الْآخَرُ إِلَى قَوْلِهِ: لَا بُدَّ أَنْ يُمْنَعَ شَرِيكِي مَعَ بَيْعِ حِصَّتِهِ؛ لِأَنَّ فِي ذَلِكَ ضَرَرًا عَلَيَّ فِي حِصَّتِي، وَكِلَا الْأَمْرَيْنِ عُدْوَانٌ وَظُلْمٌ، لَكِنَّ الْحَقَّ أَنَّ كِلَيْهِمَا مُمَكَّنٌ مِنْ حِصَّتِهِ، مَنْ شَاءَ بَاعَ حِصَّتَهُ وَمَنْ شَاءَ أَمْسَكَ حِصَّتَهُ.

L24547 They embellished that with what has been narrated to us through the chain of Waki': Abu Bishr narrated to us from Ibn Abi Najih from Mujahid: "A palm tree belonging to a man was located in another's garden. The garden owner asked him to let him buy it from him, but he refused. The Messenger of Allah (peace and blessings be upon him) said: 'No harm [is allowed] in Islam.'" This is a mursal narration.

وَقَدْ مَوَّهُوا فِي ذَلِكَ بِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا أَبُو بِشْرٍ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: «أَنَّ نَخْلَةً كَانَتْ لِإِنْسَانٍ فِي حَائِطِ آخَرَ، فَسَأَلَهُ أَنْ يَشْتَرِيَهَا مِنْهُ، فَأَبَى، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا ضَرَرَ فِي الْإِسْلَامِ» وَهَذَا مُرْسَلٌ.

L24548 Furthermore, were it valid, it would be an argument against them, for we say to them: "Yes, this prevents compelling the other partner to purchase from their partner when they do not wish to do so, or to sell to him or others when they do not wish to do so—these two constitute manifest harm."

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، لِأَنَّا نَقُولُ لَهُمْ نَعَمْ، وَهَذَا مَنْعٌ مِنْ أَنْ يُجْبَرَ الْآخَرُ عَلَى الشِّرَاءِ مِنْ شَرِيكِهِ، وَهُوَ لَا يُرِيدُ ذَلِكَ، أَوْ عَلَى الْبَيْعِ مِنْهُ أَوْ مِنْ غَيْرِهِ، وَهُوَ لَا يُرِيدُ ذَلِكَ -: فَهَذَانِ ضَرَرٌ ظَاهِرٌ.

L24549–24551 They also mentioned what we have reported through the chain of trans-

mission of Abū Dāwūd, from Sulaymān ibn Dāwūd al-ʿAtakī, from Ḥammād, who informed us. Wasil, the freed slave of Abu Uyaynah, said: I heard Muhammad ibn Ali narrating from Samurah ibn Jundub that he owned a cluster of palm trees within the walled garden of a man from the Ansar. The Ansari man said: "He lived there with his family. Samurah would enter his palm trees, causing harm to him. He pleaded with him to sell it or transfer its ownership, but he refused." When this matter was mentioned to the Prophet, peace and blessings of Allah be upon him, he urged Samurah: "Sell it to him," but he refused. He then said: "Transfer its ownership," but he still refused. The Prophet, peace and blessings of Allah be upon him, said: "Then gift it to him, and you will have such-and-such reward," enticing him with a promise. When he refused again, the Prophet declared: "You are causing harm." Thereupon the Messenger of Allah, peace and blessings of Allah be upon him, instructed the Ansari man: "Go and uproot his palm trees."

وَذَكَرُوا أَيْضًا: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا سُلَيْمَانُ بْنُ دَاوُد الْعَتَكِيُّ نا حَمَّادٌ نا وَاصِلٌ مَوْلَى أَبِي عُيَيْنَةَ قَالَ: سَمِعْت مُحَمَّدَ بْنَ عَلِيٍّ يُحَدِّثُ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ: «أَنَّهُ كَانَتْ لَهُ عَضُدٌ مِنْ نَخْلٍ فِي حَائِطِ رَجُلٍ مِنْ الْأَنْصَارِ قَالَ: وَمَعَ الرَّجُلِ أَهْلُهُ فَكَانَ سَمُرَةُ يَدْخُلُ إلَى نَخْلِهِ فَيَتَأَذَّى بِهِ، فَطَلَبَ إلَيْهِ أَنْ يَبِيعَهُ أَوْ يُنَاقِلَهُ فَأَبَى فَذَكَرَ ذَلِكَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَطَلَبَ إلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَبِيعَهُ، فَأَبَى، فَطَلَبَ إلَيْهِ يُنَاقِلُهُ، فَأَبَى قَالَ: فَهَبْهُ لَهُ وَلَك كَذَا وَكَذَا أَمْرًا رَغَّبَهُ فِيهِ، فَأَبَى، فَقَالَ: أَنْتَ مُضَارٌّ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْأَنْصَارِيِّ: اذْهَبْ فَاقْلَعْ نَخْلَهُ» .

L24552 Abu Muhammad said: This is disconnected because Muhammad ibn Ali did not hear from Samurah. Even if it were authentic, they would contradict him in two matters: One - they do not compel anyone other than a co-owner to sell from his neighbor or to sell alongside him, while this hadith opposes that.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُنْقَطِعٌ، لِأَنَّ مُحَمَّدَ بْنَ عَلِيٍّ لَا سَمَاعَ لَهُ مِنْ سَمُرَةَ، ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لَهُ فِي مَوْضِعَيْنِ -: أَحَدُهُمَا - أَنَّهُمْ لَا يُجْبِرُونَ غَيْرَ الشَّرِيكِ عَلَى الْبَيْعِ مِنْ جَارِهِ، وَلَا عَلَى الْبَيْعِ مَعَهُ، وَفِي هَذَا الْحَدِيثِ خِلَافُ ذَلِكَ.

L24553 The second is the uprooting of his date palms—a ruling they do not endorse—and all success comes from Allah, the Exalted.

وَالثَّانِي - قَلْعُ نَخْلِهِ - وَهُمْ لَا يَقُولُونَ بِهَذَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24554 The issue of selling war spoils taken by Muslims from the abode of war to people of the dhimma.

[مَسْأَلَة بَيْع مَا غَنِمَهُ الْمُسْلِمُونَ مِنْ دَارِ الْحَرْبِ لِأَهْلِ الذِّمَّةِ]

L24555 1542. Issue: It is not permissible to sell what the Muslims have seized as spoils of war from the abode of war to the People of the Dhimma—whether slaves or other spoils—and this is the position of Umar ibn al-Khattab, as stated in "the Book of Jihad."

١٥٤٢ - مَسْأَلَةٌ: وَلَا يَجُوزُ بَيْعُ مَا غَنِمَهُ الْمُسْلِمُونَ مِنْ دَارِ الْحَرْبِ لِأَهْلِ الذِّمَّةِ لَا مِنْ رَقِيقٍ وَلَا مِنْ غَيْرِهِ - وَهُوَ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ الْجِهَادِ ".

L24556 From the narration chain of Sa'īd ibn Manṣūr: Jarīr reported to us from al-Mughīrah ibn Miqsam from Umm Mūsā, who said: 'Alī ibn Abī Ṭālib came across vessels interlaced with gold from the Persians' utensils. He intended to break them and distribute the pieces among the Muslims. Some village chiefs said: "If you break these, you'll destroy their value. Shall we offer

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ أُمِّ مُوسَى قَالَتْ: أَتَى عَلِيُّ بْنُ أَبِي طَالِبٍ بِآنِيَةٍ مُخَوَّصَةٍ بِالذَّهَبِ مِنْ آنِيَةِ الْعَجَمِ فَأَرَادَ أَنْ يَكْسِرَهَا وَيُقَسِّمَهَا

you a higher price for them?" 'Alī responded: "It is not for me to return a possession Allah has stripped from you." He then broke the vessels and distributed the fragments among the people.

L24557 Abu Muhammad said: This is a form of humiliation, and every humiliation must be imposed upon them.

L24558 As for slaves, there is another consideration: that the invitation to Islam is obligatory under all circumstances. Among the supportive factors for embracing Islam is the male and female disbelievers being under the ownership of a Muslim, while among the factors that distance them from Islam is their being under a disbeliever who fortifies their insight into disbelief. And with Allah, the Most High, lies all success.

L24559–24560 Issue: Selling an item to one whom it is certain will disobey God by means of it or in its use.

L24561 Issue: It is not permissible to sell anything to one whom it is certain will use it to disobey Allah—whether by means of it or in it—and such a sale is perpetually invalid.

L24562 Like the sale of anything made into _nabidh_ or pressed by one about whom it is certain that he will make it into _khamr_.

L24563 And like the sale of defective dirhams by one about whom it is certain that he conceals [fraud] with them.

L24564 And like selling slave boys to someone conclusively known to make them commit sinful acts or castrate them, and like selling a slave to someone conclusively known to misuse his ownership rights.

L24565 Or like the sale of weapons or horses to someone who is certain to attack with them against the Muslims.

L24566 Or like selling silk to someone from whom it is certain that he will wear it, and similarly in every matter, due to the saying of Allah (Exalted is He): {And cooperate in righteousness and piety, and do not cooperate in sin and transgression} [Al-Mā'idah: 2]. The transactions we have mentioned clearly

بَيْنَ الْمُسْلِمِينَ فَقَالَ نَاسٌ مِنْ الدَّهَاقِينَ: إنْ كَسَرْت هَذِهِ كَسَرْت ثَمَنَهَا، وَنَحْنُ نُغْلِي لَك بِهَا؟ فَقَالَ عَلِيٌّ: لَمْ أَكُنْ لِأَرُدَّ لَكُمْ مِلْكًا نَزَعَهُ اللَّهُ مِنْكُمْ، فَكَسَرَهَا وَقَسَّمَهَا بَيْنَ النَّاسِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مِنْ الصَّغَارِ، وَكُلُّ صَغَارٍ فَوَاجِبٌ حَمْلُهُ عَلَيْهِمْ.

وَأَمَّا الرَّقِيقُ: فَفِيهِ وَجْهٌ آخَرُ، وَهُوَ أَنَّ الدُّعَاءَ إلَى الْإِسْلَامِ وَاجِبٌ بِكُلِّ حَالٍ، وَمِنْ الْأَسْبَابِ الْمُعِينَةِ عَلَى الْإِسْلَامِ كَوْنُ الْكَافِرِ وَالْكَافِرَةِ فِي مِلْكِ الْمُسْلِمِ، وَمِنْ الْأَسْبَابِ الْمُبْعِدَةِ عَنْ الْإِسْلَامِ كَوْنُهُمَا عِنْدَ كَافِرٍ يُقَوِّي بَصَائِرَهُمَا فِي الْكُفْرِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة بَيْعُ شَيْءٍ مِمَّنْ يُوقَنُ أَنَّهُ يَعْصِي اللَّهَ بِهِ أَوْ فِيهِ]

مَسْأَلَةٌ: وَلَا يَحِلُّ بَيْعُ شَيْءٍ مِمَّنْ يُوقَنُ أَنَّهُ يَعْصِي اللَّهَ بِهِ أَوْ فِيهِ، وَهُوَ مَفْسُوخٌ أَبَدًا.

كَبَيْعِ كُلِّ شَيْءٍ يُنْبَذُ أَوْ يُعْصَرُ مِمَّنْ يُوقَنُ بِهَا أَنَّهُ يَعْمَلُهُ خَمْرًا.

وَكَبَيْعِ الدَّرَاهِمِ الرَّدِيئَةِ مِمَّنْ يُوقَنُ أَنَّهُ يُدَلِّسُ بِهَا.

وَكَبَيْعِ الْغِلْمَانِ مِمَّنْ يُوقَنُ أَنَّهُ يَفْسُقُ بِهِمْ أَوْ يُخْصِيهِمْ، وَكَبَيْعِ الْمَمْلُوكِ مِمَّنْ يُوقَنُ أَنَّهُ يُسِيءُ مَلَكَتَهُ.

أَوْ كَبَيْعِ السِّلَاحِ أَوْ الْخَيْلِ: مِمَّنْ يُوقَنُ أَنَّهُ يَعْدُو بِهَا عَلَى الْمُسْلِمِينَ.

involve cooperation in sin and transgression without prolongation, and annulling them constitutes cooperation in righteousness and piety.[11]

أَوْ كَبَيْعِ الْحَرِيرِ مِمَّنْ يُوقَنُ أَنَّهُ يَلْبَسُهُ، وَهَكَذَا فِي كُلِّ شَيْءٍ؛ لِقَوْلِ اللَّهِ - تَعَالَى -: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَالْبُيُوعُ الَّتِي ذَكَرْنَا تَعَاوُنٌ ظَاهِرٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ بِلَا تَطْوِيلٍ، وَفَسْخُهَا تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى.

L24567 If he is not certain of any of that, the sale is valid because he did not aid in sin. If the buyer thereafter disobeys Allah, the Exalted, it is upon him. We have been narrated via the chain of Wakīʿ, from Sufyān al-Thawrī, from Ibn Jarīr, from ʿAṭāʾ, who said: "Do not sell it to one who would make it into wine."

فَإِنْ لَمْ يُوقَنْ بِشَيْءٍ مِنْ ذَلِكَ فَالْبَيْعُ صَحِيحٌ؛ لِأَنَّهُ لَمْ يُعِنْ عَلَى إِثْمٍ، فَإِنْ عَصَى الْمُشْتَرِي اللَّهَ - تَعَالَى - بَعْدَ ذَلِكَ فَعَلَيْهِ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ ابْنِ جَرِيرٍ عَنْ عَطَاءٍ قَالَ: لَا تَبِعْهُ مِمَّنْ يَجْعَلُهُ خَمْرًا.

The Issue of Bulk Sale (Bayʿ al-Juzāf).

[مَسْأَلَة بَيْع الجزاف]

L24568

L24569 1544 - Issue: If someone sells something without precise measurement—whether by volume, weight, crop, or count—and the buyer does not know this, the sale is permissible and not disliked. This is because there is no textual prohibition against such a sale whatsoever, nor does it involve deceit or fraud. Tāwus and Mālik prohibited it, while Abū Ḥanīfah, Al-Shāfiʿī, and Abū Sulaymān permitted it.

١٥٤٤ - مَسْأَلَةٌ: وَمَنْ بَاعَ شَيْئًا جُزَافًا كَيْلُهُ أَوْ وَزْنُهُ أَوْ زَرْعُهُ أَوْ عَدَدُهُ، وَلَمْ يَعْرِفْ الْمُشْتَرِي بِذَلِكَ فَهُوَ جَائِزٌ لَا كَرَاهِيَةَ فِيهِ، لِأَنَّهُ لَمْ يَأْتِ عَنْ هَذَا الْبَيْعِ نَهْيٌ فِي نَصٍّ أَصْلًا، وَلَا فِيهِ غِشٌّ وَلَا خَدِيعَةٌ - وَمَنَعَ مِنْهُ: طَاوُسٌ، وَمَالِكٌ - وَأَجَازَهُ: أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

L24570 Ali said: There is no distinction between knowing the measure, weight, cultivation, or quantity—while the buyer is unaware of these details—and knowing who wove the garment, for whom it was made, when it was woven, or where this wheat and these dates were sourced—while the buyer knows nothing of those details. Whoever differentiates between them is mistaken and asserts a claim without proof.

قَالَ عَلِيٌّ: وَلَا فَرْقَ بَيْنَ أَنْ يَعْلَمَ كَيْلَهُ أَوْ وَزْنَهُ، أَوْ زَرْعَهُ أَوْ عَدَدَهُ، وَلَا يَعْلَمُهُ الْمُشْتَرِي، وَبَيْنَ أَنْ يَعْلَمَ مَنْ نَسَجَ الثَّوْبَ، وَلِمَنْ كَانَ، وَمَتَى نُسِجَ، وَأَيْنَ أُصِيبَ هَذَا الْبُرُّ، وَهَذَا التَّمْرُ؟ وَلَا يَعْلَمُ الْمُشْتَرِي شَيْئًا مِنْ ذَلِكَ، وَالْمُفَرِّقُ بَيْنَهُمَا مُخْطِئٌ وَقَائِلٌ بِلَا دَلِيلٍ.

L24571 They cited as evidence what we have narrated through the chain of ʿAbd al-Razzāq, who said: Ibn al-Mubārak reported from al-Awzāʿī: The Messenger of God—peace and blessings be upon him—said: "It is not lawful for a man to sell food without precise measurement whose quantity he knows until

وَاحْتَجُّوا فِي ذَلِكَ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، قَالَ: قَالَ ابْنُ الْمُبَارَكِ عَنْ الْأَوْزَاعِيِّ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ لِرَجُلٍ أَنْ يَبِيعَ طَعَامًا جُزَافًا قَدْ عَلِمَ كَيْلَهُ حَتَّى يَعْلَمَ صَاحِبُهُ» وَهَذَا مُنْقَطِعٌ فَاحِشُ الِانْقِطَاعِ.

[11] **Qur'an references (L24566):** Qur'an 5:2 (Al-Ma'idah).

the other party knows it." This chain is severely interrupted, with a gross interruption.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى الْمَالِكِيِّينَ؛ لِأَنَّهُمْ لَا يَخُصُّونَ بِهَذَا الْحُكْمِ الطَّعَامَ دُونَ غَيْرِهِ، وَلَيْسَ فِي هَذَا الْمُرْسَلِ إلَّا الطَّعَامُ فَقَطْ.

L24572–24573 Then, if it were authentic, it would serve as evidence against the Mālikīs because they do not limit this ruling to food to the exclusion of other matters, and this *mursal* report mentions nothing but food alone.

فَإِنْ قَالُوا: قِسْنَا عَلَى الطَّعَامِ غَيْرَ الطَّعَامِ؟ قُلْنَا: فَهَلَّا قِسْتُمْ عَلَى الطَّعَامِ غَيْرَ الطَّعَامِ فِي الْمَنْعِ مِنْ بَيْعِهِ حَتَّى يُقْبَضَ؟ فَإِنْ قَالُوا: لَمْ يَأْتِ النَّصُّ إلَّا فِي الطَّعَامِ.

L24574 If they say: "We analogized from food to non-food," we reply: "Why, then, did you not analogize from food to non-food in prohibiting its sale until it is received?" If they respond: "The explicit text was only revealed concerning food."

قُلْنَا: وَلَيْسَ فِي هَذَا الْخَبَرِ إلَّا الطَّعَامُ، فَإِمَّا اتَّبَعُوا النَّصَّيْنِ مَعًا دُونَ الْقِيَاسِ، وَإِمَّا قِيسُوا عَلَيْهِمَا جَمِيعًا، وَمَا عَدَا هَذَا فَبَاطِلٌ مُتَيَقَّنٌ، فَكَيْفَ وَالنَّصُّ قَدْ جَاءَ بِالنَّهْيِ عَنْ الْبَيْعِ فِي كُلِّ مَا ابْتِيعَ قَبْلَ أَنْ يُقْبَضَ فَخَالَفُوهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24575 We said: This report pertains only to food. Therefore, either follow the two texts together without analogy or apply analogy to both texts. Anything beyond this is certainly invalid. So how is it, when the text explicitly prohibits selling anything purchased before taking possession, yet they contradicted it? And with Allah, the Exalted, is success.

١٥٤٥ - مَسْأَلَةٌ: وَبَيْعُ الْحِيتَانِ - الْكِبَارِ أَوْ الصِّغَارِ - أَوْ الْأُتْرُجِّ - الْكِبَارِ أَوْ الصِّغَارِ - أَوْ الدُّلَّاعِ، أَوْ الثِّيَابِ، أَوْ الْخَشَبِ، أَوْ الْحَيَوَانِ، أَوْ غَيْرِ ذَلِكَ جُزَافًا: حَلَالٌ لَا كَرَاهِيَةَ فِيهِ، وَمَنَعَ مَالِكٌ مِنْ ذَلِكَ فِي الْكِبَارِ مِنْ الْحِيتَانِ، وَالْخَشَبِ، وَأَجَازَهُ فِي الصِّغَارِ - وَهَذَا بَاطِلٌ لِوُجُوهٍ -: أَوَّلُهَا: أَنَّهُ خِلَافُ الْقُرْآنِ فِي قَوْلِ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L24576 1545. Issue: The sale of fish—whether large or small—citrons—whether large or small—colocynth, garments, wood, animals, or other such items in bulk is permissible, with no disapproval in it. Mālik prohibited this practice regarding large fish and wood but permitted it for small ones—this position is invalid for several reasons. First: It contradicts the Qur'an in Allah's statement—Exalted is He—: {Allah has permitted trade} [Al-Baqarah 2:275].[12]

وَقَالَ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَهَذَا بَيْعٌ حَلَالٌ وَلَمْ يَأْتِ تَفْصِيلٌ بِتَحْرِيمِهِ.

L24577 And He, the Exalted, said: "He has detailed for you what He has forbidden to you" (Al-Anʿām 6:119). Thus, this sale is lawful, and no detailed explanation has been given concerning its prohibition.[13]

وَالثَّانِي: أَنَّهُ فَاسِدٌ، إذْ لَمْ يَجِدْ الْكَبِيرَ الَّذِي مُنِعَ بِهِ مِنْ بَيْعِ الْجُزَافِ مِنْ الصَّغِيرِ الَّذِي أَبَاحَهُ بِهِ - وَهَذَا رَدِيءٌ جِدًّا؛ لِأَنَّهُ حَرَّمَ وَحَلَّلَ، ثُمَّ لَمْ يُبَيِّنْ مَا الْحَرَامُ فَيَجْتَنِبُهُ مَنْ يَبِيعُهُ، وَمَا الْحَلَالُ فَيَأْتِيهِ.

L24578 The second [issue] is that it is invalid, as the major consideration necessitating the prohibition of the juzaf sale was not established alongside the minor consideration permitting it - and this is extremely flawed, because it

[12] **Qur'an references (L24576):** Qur'an 2:275 (Al-Baqarah).
[13] **Qur'an references (L24577):** Qur'an 6:119 (Al-An'am).

prohibited and permitted [matters] yet failed to clarify what is forbidden so that those who engage in it may avoid it, and what is permissible so that they may follow it.

L24579 The third is that nothing is considered large except in relation to something smaller than it, and nothing is considered small except in relation to something larger than it. Thus, the *shabil* (a type of fish) is very small compared to the *shawli* (another fish) but very large compared to the sardine. Javelins are very large compared to arrows but very small compared to masts, and so it goes for everything.

L24580–24582 Fourthly: The practice of Muslims during the time of the Messenger of Allah (may Allah bless him and grant him peace) and after him, across the east and west of the earth, has always been the sale of agricultural estates containing abundant date palms, trees, and other such assets, without enumeration. But arbitrarily—and he is among those who permit that there but prohibit it here—we know of no foundational basis attached to it, nor anyone who stated it before him.

L24583 The issue of the sale of women's milk and hair, and the sale of excrement, manure, and urine.

L24584 Issue 1546: The sale of women's milk is permissible, as is hair; the sale of excrement and manure for use as fertilizer, and the sale of urine to the dyer: permissible—though a group have prohibited the sale of all these.

L24585 Abu Muhammad said: There is no disagreement that a woman may milk her milk into a vessel and give it to someone to feed a child. This constitutes a conferral of ownership from her to him. Everything that can be legitimately owned and for which valid transfer of ownership applies is permissible to sell, based on Allah's statement—Exalted is He—: "And Allah has permitted sale" [Al-Baqarah: 275], except where there exists explicit textual evidence stating otherwise.[14]

L24586 As for hair, excrement, and urine: all such matters are discarded, and no

[14] **Qur'an references (L24585):** Qur'an 2:275 (Al-Baqarah).

وَالثَّالِثُ: أَنَّهُ لَا كَبِيرَ إِلَّا بِإِضَافَتِهِ إِلَى مَا هُوَ أَصْغَرُ مِنْهُ، وَلَا صَغِيرَ إِلَّا بِإِضَافَتِهِ إِلَى مَا هُوَ أَكْبَرُ مِنْهُ، فَالشَّابِلُ صَغِيرٌ جِدًّا بِالْإِضَافَةِ إِلَى الشَّوْلِيِّ وَكَبِيرٌ جِدًّا بِالْإِضَافَةِ إِلَى السَّرْدِينِ، وَالْمَدَارِي كِبَارٌ جِدًّا بِالْإِضَافَةِ إِلَى السِّهَامِ وَصِغَارٌ جِدًّا بِالْإِضَافَةِ إِلَى الصَّوَارِي، وَهَكَذَا فِي كُلِّ شَيْءٍ.

وَالرَّابِعُ: أَنَّهُ لَمْ يَزَلْ عَمَلُ الْمُسْلِمِينَ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَعْدَهُ فِي شَرْقِ الْأَرْضِ وَغَرْبِهَا: بَيْعُ الضِّيَاعِ، وَفِيهَا النَّخْلُ الْكَثِيرُ، وَالشَّجَرُ، وَغَيْرُ ذَلِكَ، بِغَيْرِ عَدَدٍ، لَكِنْ جُزَافًا - وَهُوَ أَحَدُ مَنْ يُجِيزُ ذَلِكَ هُنَالِكَ، وَيَمْنَعُهُ هَهُنَا - وَمَا نَعْلَمُ لَهُ مُتَعَلَّقًا أَصْلًا، وَلَا أَحَدًا قَالَهُ قَبْلَهُ.

[مَسْأَلَةُ بَيْعِ أَلْبَانِ النِّسَاءِ والشعور وَبَيْعِ العذرة والزبل والبول]

١٥٤٦ - مَسْأَلَةٌ: وَبَيْعُ أَلْبَانِ النِّسَاءِ جَائِزٌ، وَكَذَلِكَ الشُّعُورُ، وَبَيْعُ الْعَذِرَةِ وَالزِّبْلِ لِلتَّزْبِيلِ، وَبَيْعُ الْبَوْلِ لِلصَّبَّاغِ: جَائِزٌ - وَقَدْ مَنَعَ قَوْمٌ مِنْ بَيْعِ كُلِّ هَذَا.

قَالَ أَبُو مُحَمَّدٍ: لَا خِلَافَ فِي أَنَّ لِلْمَرْأَةِ أَنْ تَحْلُبَ لَبَنَهَا فِي إِنَاءٍ وَتُعْطِيَهُ لِمَنْ يَسْقِيهِ صَبِيًّا، وَهَذَا تَمْلِيكٌ مِنْهَا لَهُ، وَكُلُّ مَا صَحَّ مِلْكُهُ وَانْتِقَالُ الْإِمْلَاكِ فِيهِ: حَلَّ بَيْعُهُ؛ لِقَوْلِ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] إِلَّا مَا جَاءَ فِيهِ نَصٌّ بِخِلَافِ هَذَا.

one is barred from it. This is the practice of all people on earth. If any of these substances become owned by someone, their sale becomes permissible as we previously mentioned.

L24587 It has been narrated to us through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from ʿAbd al-Malik al-ʿArzamī, from ʿAṭāʾ ibn Abī Rabāḥ: "There is no harm in benefiting from people's hair; the people used to do so."

L24588 ## The Ruling on Selling Bees, Silkworms, Dhab Lizards, and Hyenas.

L24589 Issue 1547: The sale of bees, silkworms, spiny-tailed lizards, and hyenas is permissible and sound. As for the spiny-tailed lizard and the hyena, their consumption is lawful as we mentioned before - being game animals among lawful prey. What may legitimately be owned may legitimately be sold, as we stated earlier.

L24590 As for bees and silkworms, they both have a clear benefit and are legally owned, and thus their sale is permissible.

L24591 Abu Hanifa prohibited all of that—and we know of no proof whatsoever for his stance, nor did anyone before him prohibit the sale of bees and silkworm cocoons. As for the honey that bees produce in combs not owned by their keeper, it belongs to whoever first claims it, because it is neither a part of them nor generated from them like eggs, offspring, milk, or wool. Rather, it is their earnings, akin to the prey of a trained hunting animal. However, the honey and prey are distinct from the bees and the hunting animal themselves; thus, they belong to whoever first seizes them. As for what the bees deposit in their keeper's combs, it belongs to him because he placed the combs for that purpose. Therefore, whatever enters them is his.

L24592 Similarly, whoever sets a snare for hunting, a vessel for water, or an enclosure for fish: whatever falls into it belongs to him, as he has acquired ownership by establishing the aforementioned means for himself. And with God (Exalted is He) alone is success.

L24593 ## The Issue of Purchasing Silk in Islamic Jurisprudence

وَأَمَّا الشُّعُور، وَالْعَذِرَة، وَالْبَوْل: فَكُلُّ ذَلِكَ يُطْرَح، وَلَا يُمْنَع مِنْهُ أَحَدٌ: هَذَا عَمَل جَمِيع أَهْلِ الْأَرْضِ، فَإِذَا تُمُلِّكَ لِأَحَدٍ جَازَ بَيْعُهُ كَمَا ذَكَرْنَا.

رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ عَبْدِ الْمَلِكِ الْعَرْزَمِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: لَا بَأْسَ بِأَنْ يَسْتَمْتِعَ بِشُعُورِ النَّاسِ، كَانَ النَّاسُ يَفْعَلُونَهُ.

[مَسْأَلَة بَيْعُ النَّحْلِ وَدُودِ الْحَرِيرِ وَالضَّبِّ وَالضَّبُعِ]

١٥٤٧ - مَسْأَلَةٌ: وَبَيْعُ النَّحْلِ، وَدُودِ الْحَرِيرِ، وَالضَّبِّ، وَالضَّبُعِ: جَائِزٌ حَسَنٌ -: أَمَّا الضَّبُّ وَالضَّبُعُ: فَحَلَالٌ أَكْلُهُمَا كَمَا ذَكَرْنَا قَبْلُ وَصَيْدٌ مِنْ الصُّيُودِ، وَمَا جَازَ تَمَلُّكُهُ جَازَ بَيْعُهُ كَمَا قَدَّمْنَا.

وَأَمَّا النَّحْلُ، وَدُودُ الْحَرِيرِ: فَلَهُمَا مَنْفَعَةٌ ظَاهِرَةٌ، وَهُمَا مَمْلُوكَانِ: فَبَيْعُهُمَا جَائِزٌ.

وَمَنَعَ أَبُو حَنِيفَةَ مِنْ كُلِّ ذَلِكَ - وَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا، وَلَا أَحَدًا سَبَقَهُ إلَى الْمَنْعِ مِنْ بَيْعِ النَّحْلِ، وَدُودِ الْقَزِّ - وَأَمَّا مَا عَسَّلَتْ النَّحْلُ فِي غَيْرِ خَلَايَا مَالِكِهَا: فَهُوَ لِمَنْ سَبَقَ إلَيْهِ؛ لِأَنَّهُ لَيْسَ بَعْضَهَا، وَلَا مُتَوَلِّدًا مِنْهَا كَالْبَيْضِ، وَالْوَلَدِ، وَاللَّبَنِ، وَالصُّوفِ، لَكِنَّهُ كَسْبٌ لَهَا، كَصَيْدِ الْجَارِحِ، وَهُمَا غَيْرُ النَّحْلِ وَالْجَارِحِ: فَهُوَ لِمَنْ سَبَقَ إلَيْهِ - وَأَمَّا مَا وَضَعَتْ فِي خَلَايَا صَاحِبِهَا: فَلَهُ؛ لِأَنَّهُ لِذَلِكَ وَضَعَ الْخَلَايَا، فَمَا صَارَ فِيهَا فَهُوَ لَهُ.

وَكَذَلِكَ مَنْ وَضَعَ حِبَالَةً لِلصَّيْدِ، أَوْ قُلَّةً لِلْمَاءِ، أَوْ حَظِيرًا لِلسَّمَكِ: فَكُلُّ مَا وَقَعَ فِي ذَلِكَ فَهُوَ لَهُ؛ لِأَنَّهُ قَدْ تَمَلَّكَهُ بِوَضْعِ مَا ذَكَرْنَا لَهُ -، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة ابتياع الْحَرِير]

L24594–24596 Issue 1584: Purchasing silk is permissible, though some of the Salaf prohibited it, as we have narrated. Through the chain of Muhammad ibn al-Muthanna: I, Hafs ibn Ghiyath, narrate from Layth, from Tawus - that he disliked trading in thin Shabiri fabric and silk, and wearing them.

١٥٤٨ - مَسْأَلَةٌ: وَابْتِيَاعُ الْحَرِيرِ جَائِزٌ، وَقَالَ بِالْمَنْعِ مِنْهُ بَعْضُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا حَفْصُ بْنُ غِيَاثٍ عَنْ لَيْثٍ عَنْ طَاوُسٍ: أَنَّهُ كَرِهَ التِّجَارَةَ فِي الشَّابِرِيِّ الرَّقِيقِ، وَالْحَرِيرِ وَلُبْسَهُ.

L24597 It was narrated to us through the chain of Ibn Wahb: from Muawiyah ibn Salih, from Abdul Wahhab ibn Bukht, from Abu al-Zinad, from al-A'raj, from Abu Hurairah that the Messenger of Allah—peace and blessings be upon him—said: "Indeed Allah, Blessed and Most High, has forbidden intoxicants and their price, forbidden carrion and its price, and forbidden silk and its price."

جَاءَ فِي ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَنَا مُعَاوِيَةُ بْنُ صَالِحٍ عَنْ عَبْدِ الْوَهَّابِ بْنِ بُخْتٍ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ اللَّهَ تَبَارَكَ وَتَعَالَى حَرَّمَ الْخَمْرَ وَثَمَنَهَا، وَحَرَّمَ الْمَيْتَةَ وَثَمَنَهَا وَحَرَّمَ الْحَرِيرَ وَثَمَنَهُ» .

L24598 In this chain is Muawiyah ibn Salih, who is weak—and even if it were authentic, we would adhere to it—and it is authentically reported from the Prophet (peace be upon him) that he said regarding the two-piece silk garment he gave to Umar: "I did not give it to you to wear, but so that you may sell it," or words to this effect.

وَهَذَا فِيهِ مُعَاوِيَةُ بْنُ صَالِحٍ وَهُوَ ضَعِيفٌ - وَلَوْ صَحَّ لَقُلْنَا بِهِ - وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي حُلَّةِ الْحَرِيرِ الَّتِي كَسَاهَا عُمَرَ «لَمْ أَكْسُكَهَا لِتَلْبَسَهَا، وَلَكِنْ لِتَبِيعَهَا» أَوْ كَلَامًا هَذَا مَعْنَاهُ.

L24599 **The issue of purchasing a child born of fornication and the fornicatress.**

[مَسْأَلَة ابتياع وَلَد الزِّنَا والزانية]

L24600 Issue 1549: [Is it permissible to] purchase the child of fornication or the fornicatress? Narrated to us through the chain of Muḥammad ibn al-Muthannā, from Muʿtamir ibn Sulaymān, from Layth, from Mujāhid, who said: "The child of fornication—do not sell him, do not buy him, and do not consume his price."

١٥٤٩ - مَسْأَلَةٌ: وَابْتِيَاعُ وَلَدِ الزِّنَى، وَالزَّانِيَةِ حَلَالٌ -: رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: وَلَدُ الزِّنَى لَا تَبِعْهُ وَلَا تَشْتَرِهِ، وَلَا تَأْكُلْ ثَمَنَهُ.

L24601 Ali said: No one holds religious authority except the Messenger of Allah (peace be upon him) - "Allah has permitted trade" [al-Baqarah 2:275] - and he (peace be upon him) commanded the sale of the female slave who has received the hadd punishment for adultery three times, if she commits adultery a fourth time.[15]

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَقَدْ أَمَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِبَيْعِ الْأَمَةِ الْمَحْدُودَةِ فِي الزِّنَى ثَلَاثَ مَرَّاتٍ إذَا زَنَتْ الرَّابِعَةَ.

L24602 **The Issue of Selling Skins from Dead Animals (Carrion).**

[مَسْأَلَة بَيْع جُلُود الميتات]

[15] **Qur'an references (L24601):** Qur'an 2:275 (Al-Baqarah).

L24603 Issue 1550: The sale of the skins of all dead animals is permissible if they are tanned, and likewise the skin of a pig; however, its hair and bones are not permissible.

١٥٥٠ - مَسْأَلَةٌ: وَبَيْعُ جُلُودِ الْمَيْتَاتِ كُلِّهَا حَلَالٌ إذَا دُبِغَتْ، وَكَذَلِكَ جِلْدُ الْخِنْزِيرِ - وَأَمَّا شَعْرُهُ وَعَظْمُهُ فَلَا.

L24604 The bones of a dead animal are fundamentally impermissible. Mālik prohibited the sale of their skins even if tanned, whereas al-Shāfiʿī and Abū Ḥanīfah permitted it.

وَلَا يَحِلُّ عِظَامُ الْمَيْتَةِ أَصْلًا - وَمَنَعَ مَالِكٌ مِنْ بَيْعِ جُلُودِهَا وَإِنْ دُبِغَتْ - وَأَبَاحَهُ الشَّافِعِيُّ، وَأَبُو حَنِيفَةَ.

L24605 Mālik permitted the sale of carrion's wool – Al-Shāfiʿī prohibited the sale thereof.

وَأَبَاحَ مَالِكٌ بَيْعَ صُوفِ الْمَيْتَةِ - وَمَنَعَ مِنْهُ الشَّافِعِيُّ.

L24606 The proof for the correctness of our view is the statement of the Messenger of Allah (peace be upon him): "Why did they not take its hide, tan it, and benefit from it?"

بُرْهَانُ صِحَّةِ قَوْلِنَا: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «هَلَّا أَخَذُوا إهَابَهَا فَدَبَغُوهُ فَانْتَفَعُوا بِهِ؟

L24607–24608 They said: "O Messenger of Allah, it is carrion." He said: "Its consumption is forbidden." We have mentioned this with its chain of transmission in "the book of purification" within this collection of ours, rendering its repetition superfluous.

قَالُوا: يَا رَسُولَ اللَّهِ إنَّهَا مَيْتَةٌ، قَالَ إنَّهَا حَرُمَ أَكْلُهَا» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الطَّهَارَةِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ.

L24609 He (peace be upon him) commanded that benefit be derived from the hides of dead animals after tanning, and clarified that consuming them is forbidden. Selling is undoubtedly a benefit, thus it falls within what is permissible and excluded from prohibition since its prohibition was not explicitly detailed. The Almighty said: "He has elaborated for you what He prohibited for you" [Al-An'am 6:119]. As for the pig, all of it is prohibited except for the purification of its hide through tanning alone.[16]

فَأَمَرَ - عَلَيْهِ السَّلَامُ - بِأَنْ يُنْتَفَعَ بِجُلُودِ الْمَيْتَةِ بَعْدَ الدِّبَاغِ، وَأَخْبَرَ أَنَّ أَكْلَهَا حَرَامٌ، وَالْبَيْعُ مَنْفَعَةٌ بِلَا شَكٍّ، فَهُوَ دَاخِلٌ فِي التَّحْلِيلِ، وَخَارِجٌ عَنْ التَّحْرِيمِ إذْ لَمْ يُفَصَّلْ تَحْرِيمُهُ، قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] أَمَّا الْخِنْزِيرُ: فَحَرَامٌ كُلُّهُ، حَاشَا طَهَارَةَ جِلْدِهِ بِالدِّبَاغِ فَقَطْ.

L24610 Among the strange arguments of the Mālikīs here is their assertion: "The hide becomes impure, and likewise feathers are rendered impure by the dead animal, whereas wool and hair do not become impure." If their position were reversed and they were told: "Rather, hides do not become impure, and likewise feathers, while wool and hair are rendered impure by the dead animal?" By what means could they counter this? Is this not merely a claim like their claim? We have been narrated through 'Abd al-Razzāq's chain from Maʿmar from Ḥammād ibn Abī Sulaymān that there is no harm in

وَمِنْ عَجَائِبِ احْتِجَاجِ الْمَالِكِيِّينَ هَهُنَا قَوْلُهُمْ: إنَّ الْجِلْدَ يَمُوتُ، وَكَذَلِكَ الرِّيشُ تُسْقِيهِ الْمَيْتَةُ، وَأَمَّا الصُّوفُ وَالشَّعْرُ فَلَا يَمُوتُ - فَلَوْ عُكِسَ قَوْلُهُمْ، فَقِيلَ لَهُمْ: بَلْ الْجُلُودُ لَا تَمُوتُ وَكَذَلِكَ الرِّيشُ، وَأَمَّا الصُّوفُ وَالشَّعْرُ فَتُسْقِيهِ الْمَيْتَةُ؟ بِأَيِّ شَيْءٍ كَانُوا يَنْفَصِلُونَ، وَهَلْ هِيَ إلَّا دَعْوَى كَدَعْوَى؟ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَمَّادِ بْنِ

[16] **Qur'an references (L24609):** Qur'an 6:119 (Al-An'am).

أَبِي سُلَيْمَانَ لَا بَأْسَ بِرِيشِ الْمَيْتَةِ، وَأَبَاحَ الِانْتِفَاعَ بِعَظْمِ الْفِيلِ وَبَيْعَهُ: طَاوُسٌ، وَابْنُ سِيرِينَ، وَعُرْوَةُ بْنُ الزُّبَيْرِ - وَمَنَعَ مِنْهُ الشَّافِعِيُّ، وَغَيْرُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

feathers from dead animals. Permitting the use and sale of elephant bones was endorsed by Ṭāwūs, Ibn Sīrīn, and ʻUrwah ibn al-Zubayr. Al-Shāfiʻī and others prohibited it—and success is from Allah, the Exalted.

[مَسْأَلَةُ بَيْعُ الْمُكَاتَبِ قَبْلَ أَنْ يُؤَدِّيَ شَيْئًا مِنْ كِتَابَتِهِ]

The issue of selling a mukatab before he has paid any part of his kitābah.

١٥٥١ - مَسْأَلَةٌ: وَبَيْعُ الْمُكَاتَبِ قَبْلَ أَنْ يُؤَدِّيَ شَيْئًا مِنْ كِتَابَتِهِ جَائِزٌ، وَتَبْطُلُ الْكِتَابَةُ بِذَلِكَ، فَإِنْ أَدَّى مِنْهَا شَيْئًا حَرُمَ بَيْعُ مَا قَابَلَ مِنْهُ مَا أَدَّى، وَجَازَ بَيْعُ مَا قَابَلَ مِنْهُ مَا لَمْ يُؤَدِّ، وَبَطَلَتْ الْكِتَابَةُ فِيمَا بِيعَ مِنْهُ، وَبَقِيَ مَا قَابَلَ مِنْهُ مَا أَدَّى حُرًّا - مِثْلُ أَنْ يَكُونَ أَدَّى عُشْرَ كِتَابَتِهِ، فَإِنَّ عُشْرَهُ حُرٌّ - وَيَجُوزُ بَيْعُ تِسْعَةِ أَعْشَارِهِ، وَهَكَذَا فِي كُلِّ جُزْءٍ - كَثُرَ أَوْ قَلَّ - وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ، فَقَالَتْ طَائِفَةٌ: الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ وَلَوْ دِرْهَمٌ مِنْ كِتَابَتِهِ أَوْ أَقَلُّ، وَبَيْعُهُ جَائِزٌ مَا دَامَ عَبْدًا وَتُنْتَقَضُ الْكِتَابَةُ بِذَلِكَ، وَالْمُكَاتَبُ عِنْدَهُمْ مُعْتَقٌ بِصِفَةٍ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا.

١٥٥١ - Issue 1551: The sale of a mukatab is permissible before he pays anything of his kitabah, thereby nullifying the contract. If he pays any portion, the sale of the corresponding value to his payment becomes prohibited, while the sale of the remaining unpaid portion remains permissible. The kitabah becomes void in the sold portion, while the value equivalent to his payment becomes free. For example, if he pays one-tenth of his contractual sum, one-tenth of his value is emancipated. Nine-tenths may then be sold, and this ruling applies to every portion regardless of size. This matter has been disputed among scholars. One group holds that the mukatab remains a slave while any debt remains - even a dirham or less - and his sale remains valid as long as enslavement persists, annulling the kitabah. In their view, the mukatab is conditionally freed. This is the position of Abū Sulaymān and the scholars of our school.

وَقَالَتْ طَائِفَةٌ: الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ مِنْ كِتَابَتِهِ دِرْهَمٌ أَوْ أَقَلُّ، إلَّا أَنَّهُ لَا يَحِلُّ بَيْعُهُ إلَّا أَنْ يَعْجِزَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ - وَهَذَا قَوْلٌ ظَاهِرُ التَّنَاقُضِ؛ لِأَنَّهُ كَانَ عَبْدًا فَبَيْعُهُ جَائِزٌ مَا لَمْ يَأْتِ بِنَصٍّ بِالْمَنْعِ مِنْ بَيْعِهِ، وَلَا نَصَّ فِي ذَلِكَ.

A group of scholars held: The mukatab remains a slave as long as even a single dirham or less of his kitābah payment remains outstanding. However, it is impermissible to sell him unless he defaults—this is the opinion of Abū Ḥanīfah, Mālik, and al-Shāfiʻī. This view is clearly contradictory, for, since he is a slave, selling him is permissible unless there exists a textual prohibition against it, and there is no such text in this matter.

وَذَهَبَ قَوْمٌ إلَى أَنَّهُ إنْ أَدَّى رُبُعَ كِتَابَتِهِ فَهُوَ حُرٌّ - وَهُوَ غَرِيمٌ يُتْبَعُ بِمَا بَقِيَ عَلَيْهِ مِنْهَا -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ، قَالَ: سَمِعْت إبْرَاهِيمَ، وَالشَّعْبِيَّ يَقُولَانِ: كَانَ ابْنُ مَسْعُودٍ يَقُولُ فِي الْمُكَاتَبِ إذَا أَدَّى رُبُعَ قِيمَتِهِ فَهُوَ غَرِيمٌ لَا يُسْتَرَقُّ.

A group held that if a slave pays a quarter of his contractual obligation, he becomes free—while remaining liable for the debt to be pursued for what remains of it. It was narrated to us via the chain of Saʻīd ibn Manṣūr, from Hushaym, from al-Mughīrah, who said: I heard Ibrāhīm and al-Shaʻbī both state: Ibn Masʻūd ruled regarding a contracted slave that if he pays a quarter of his contractual valuation, he becomes liable for the debt who cannot be re-enslaved.

وَكَانَ زَيْدُ بْنُ ثَابِتٍ يَقُولُ: هُوَ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ.

Zayd ibn Thabit used to say: He remains a slave as long as a dirham is still

owed by him.

L24617 Ali ibn Abi Talib said: A mukatab is emancipated in proportion to what he has paid, remains in servitude in proportion to what remains unpaid, inherits in proportion to that, and is barred from inheritance in proportion to that.

وَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى، وَيُرَقُّ مِنْهُ بِقَدْرِ مَا بَقِيَ، وَيَرِثُ بِقَدْرِ ذَلِكَ، وَيُحْجَبُ بِقَدْرِ ذَلِكَ.

L24618 Through Sufyān ibn ʿUyaynah, from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd, from his uncle al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd, from Jābir ibn Samurah, who said: ʿUmar ibn al-Khaṭṭāb said: "You are to grant *mukātaba* contracts to enslaved persons. Whichever of them pays half [of the agreed sum], he is no longer enslaved."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ عَمِّهِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: تُكَاتِبُونَ مُكَاتَبِينَ فَأَيُّهُمْ - مَا - أَدَّى الشَّطْرَ فَلَا رِقَّ عَلَيْهِ.

L24619 It has also been narrated from Ibn Masʿud that when one allocates the third of the estate, they are considered a debtor.

وَرُوِيَ عَنْ ابْنِ مَسْعُودٍ أَيْضًا: إذْ أَدَّى الثُّلُثَ فَهُوَ غَرِيمٌ.

L24620 From the chain of Waki': Sufyān al-Thawrī reported from Manṣūr ibn al-Muʿtamir from Ibrāhīm, who said: It was said, "When the mukatab pays one-fourth, he becomes a debtor."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ كَانَ يُقَالُ: إذَا أَدَّى الْمُكَاتَبُ الرُّبُعَ فَهُوَ غَرِيمٌ.

L24621 From the narration of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ: If the *mukatab* still owes a quarter of the amount stipulated in his *mukataba* contract and pays the remaining three-quarters, he becomes a debtor and does not return to enslavement.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ إذَا بَقِيَ عَلَى الْمُكَاتَبِ رُبُعُ كِتَابَتِهِ وَأَدَّى سَائِرَهَا فَهُوَ غَرِيمٌ، وَلَا يَعُودُ عَبْدًا.

L24622 From the narration of ʿAbd al-Razzaq through ʿIkrimah ibn ʿAmmar through Yahya ibn Abi Kathir, who said: Ibn ʿAbbas stated: If a mukatab (a slave contracted for emancipation) has five awāq remaining, or five dhawd, or five wasqs, he becomes a liable debtor. It is also narrated from him that if he executes the emancipation document, he becomes a liable debtor.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: إذَا بَقِيَ عَلَى الْمُكَاتَبِ خَمْسُ أَوَاقٍ: أَوْ خَمْسُ ذَوْدٍ، أَوْ خَمْسَةُ أَوْسُقٍ: فَهُوَ غَرِيمٌ - وَرُوِيَ عَنْهُ أَيْضًا إذَا أَخَذَ الصَّكَّ فَهُوَ غَرِيمٌ.

L24623 A group of scholars has endorsed all these positions.

وَبِكُلِّ هَذِهِ الْأَقْوَالِ قَالَتْ طَائِفَةٌ مِنْ الْعُلَمَاءِ.

L24624 Ali said: The proof in case of dispute is that to which Allah, the Exalted, has commanded us to refer back—if we are believers—from His Book and the Sunnah of His Messenger, peace and blessings be upon him.

قَالَ عَلِيٌّ: الْحُجَّةُ عِنْدَ التَّنَازُعِ هُوَ مَا أَمَرَ اللَّهُ - تَعَالَى - بِالرُّجُوعِ إلَيْهِ - إنْ كُنَّا مُؤْمِنِينَ - مِنْ كِتَابِهِ وَسُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24625–24627 It has been narrated to us through Al-Bukhari's chain: from Qutaybah, from Al-Layth ibn Sa'd, from Ibn Shihāb, from 'Urwah ibn al-Zubayr, from 'Ā'ishah the Mother of the Believers, who informed him: "Barirah came seeking her help regarding her manumission contract while she had not yet paid any portion of it. 'Ā'ishah said to her: 'Return to your owners. If they agree that I pay your manumission fee on your behalf while your allegiance (walā') becomes mine, I will do so.' Barirah mentioned this to her owners. But they refused and said: 'If she wishes to...'" "Seek reward [by doing it], then do it! And will the clientage belong to us?" She mentioned this to the Messenger of Allah (peace be upon him), and the Messenger of Allah (peace be upon him) said: "Purchase [the slave] and free them, for indeed the clientage belongs to the one who frees [them]."

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَخْبَرَتْهُ «أَنَّ بَرِيرَةَ جَاءَتْ تَسْتَعِينُهَا فِي كِتَابَتِهَا وَلَمْ تَكُنْ قَضَتْ مِنْهَا شَيْئًا، فَقَالَتْ لَهَا عَائِشَةُ: ارْجِعِي إِلَى أَهْلِكِ فَإِنْ أَحَبُّوا أَنْ أَقْضِيَ عَنْكِ كِتَابَتَكِ وَيَكُونَ وَلَاؤُكِ لِي فَعَلْتُ؟ فَذَكَرَتْ ذَلِكَ بَرِيرَةُ لِأَهْلِهَا؟ فَأَبَوْا وَقَالُوا: إِنْ شَاءَتْ أَنْ تَحْتَسِبَ عَلَيْكِ فَلْتَفْعَلْ، وَيَكُونُ لَنَا وَلَاؤُكِ؟ فَذَكَرَتْ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْتَاعِي وَأَعْتِقِي فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» .

L24628 From the path of Al-Bukhārī: Khallād ibn Yaḥyā narrated to us: ʿAbd al-Wāḥid ibn Ayman al-Makkī narrated to us, from his father, who said: I entered upon ʿĀ'ishah, and she said: "Barirah came to me while she was a mukatabah and said: 'O Mother of the Believers, buy me, for my owners are selling me, so emancipate me?' I said: 'Yes.' She then said: 'But my owners will not sell me unless they stipulate [retaining] my patronage.' I replied: 'I have no need for you.' When the Prophet (peace be upon him) heard of this or it was conveyed to him, he said: 'What is the matter with Barirah? Buy her and emancipate her, and let them stipulate whatever they wish.' She [ʿĀ'ishah] said: 'So I bought her and emancipated her,' and she mentioned the remainder of the report."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا خَلَّادُ بْنُ يَحْيَى نا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنَ الْمَكِّيُّ عَنْ أَبِيهِ قَالَ: دَخَلْتُ عَلَى عَائِشَةَ فَقَالَتْ: «دَخَلَتْ عَلَيَّ بَرِيرَةُ وَهِيَ مُكَاتَبَةٌ فَقَالَتْ: يَا أُمَّ الْمُؤْمِنِينَ اشْتَرِينِي فَإِنَّ أَهْلِي يَبِيعُونِي فَأَعْتِقِينِي؟ فَقَالَتْ: نَعَمْ، فَقَالَتْ: إِنَّ أَهْلِي لَا يَبِيعُونِي حَتَّى يَشْتَرِطُوا وَلَائِي؟ فَقَالَتْ: لَا حَاجَةَ لِي فِيكِ، فَسَمِعَ ذَلِكَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ بَلَغَهُ فَقَالَ: مَا شَأْنُ بَرِيرَةَ اشْتَرِيهَا فَأَعْتِقِيهَا وَلْيَشْتَرِطُوا مَا شَاءُوا؟ قَالَتْ فَاشْتَرَيْتُهَا فَأَعْتَقْتُهَا وَذَكَرَتْ بَاقِيَ الْخَبَرِ» .

L24629 The case of Barirah's sale while she was in a state of mukataba—for nine awqiyyah over nine years, one awqiyyah per year—is more well-known than the sun. She had not yet paid anything from her mukataba, and she was sold under those terms. Her owners offered her for sale while she was in mukataba, with the Prophet's knowledge (peace and blessings of Allah be upon him), and he did not censure them. Rather, he ordered her purchase, emancipation, and that the wala' (patronage right) belonged to the one who freed her. This is an inescapable fact. When they obstinately argued regarding it, a faction falsely claimed she had defaulted—a pure and sheer fabrication. No narrator ever reported her defaulting, nor does the tradition

فَأَمْرُ بَيْعِ بَرِيرَةَ وَهِيَ مُكَاتَبَةٌ - عَلَى تِسْعِ أَوَاقٍّ فِي تِسْعِ سِنِينَ، كُلَّ سَنَةٍ أُوقِيَّةٌ، أَشْهَرُ مِنَ الشَّمْسِ، وَأَنَّهَا لَمْ تَكُنْ أَدَّتْ بَعْدُ مِنْ كِتَابَتِهَا شَيْئًا، وَأَنَّهَا بِيعَتْ كَذَلِكَ، وَأَنَّ أَهْلَهَا عَرَضُوهَا لِلْبَيْعِ - وَهِيَ مُكَاتَبَةٌ - بِعِلْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُنْكِرُ ذَلِكَ عَلَيْهِمْ، بَلْ أَمَرَ بِشِرَائِهَا وَعِتْقِهَا وَالْوَلَاءِ لِمَنْ أَعْتَقَهَا، وَهَذَا مَا لَا مُخَلَّصَ مِنْهُ، فَبَلَّحُوا عِنْدَهَا -: فَقَالَتْ طَائِفَةٌ: إِنَّهَا كَانَتْ عَجَزَتْ - وَهَذَا كَذِبٌ بَحْتٌ مُجَرَّدٌ، مَا رَوَى قَطُّ أَحَدٌ أَنَّهَا كَانَتْ عَجَزَتْ، وَلَا جَاءَ ذَلِكَ عَنْهَا فِي الْخَبَرِ، وَأَيْنَ الْعَجْزُ مِنْهَا وَهِيَ فِي اسْتِقْبَالِ تِسْعَةِ

mention it. How could she default when she was at the outset of nine years? Moreover, ʿAisha was with the Messenger of Allah (peace and blessings of Allah be upon him) at the time, competent in her affairs—purchasing and emancipating—while she had only resided with the Messenger of Allah for nine years.

أَعْوَامٍ، وَعَائِشَةُ بَعْدُ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَائِزَةُ الْأَمْرِ تَبْتَاعُ وَتُعْتِقُ، وَلَمْ تُقِمْ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا تِسْعَةَ أَعْوَامٍ فَقَطْ.

L24630 Some of them cited as evidence the words of Allah, the Most High: {Fulfill the contracts} [Al-Mā'idah: 1]. We replied: Yes, one is commanded to fulfill the contract and does not have the right to annul it. However, when it leaves his ownership, his contract regarding others becomes invalid, according to the words of Allah, the Most High: {No soul bears the burden of another} [Al-Anʿām: 164].[17]

وَاحْتَجَّ بَعْضُهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] فَقُلْنَا: نَعَمْ وَهُوَ مَأْمُورٌ بِالْوَفَاءِ بِالْعَقْدِ وَلَيْسَ لَهُ نَقْضُهُ لَكِنْ إِذَا خَرَجَ عَنْ مِلْكِهِ بَطَلَ عَقْدُهُ عَنْ غَيْرِهِ لِقَوْلِ اللَّهِ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L24631–24633 What is astonishing is that those who cite this as evidence permit retracting emancipation in wills, yet they do not invoke "Fulfill the contracts" [Al-Mā'idah: 1] against their own position. This is not a consensus because Sufyān al-Thawrī does not permit retracting emancipation or wills. Yet all of them permit selling a slave when his master says to him, "If my father comes, then you..." He is free, yet they nullify his sale through this very contract, and they do not sanction his participation in it unless he relinquishes ownership. Thus, the immense nature of their contradiction and the invalidity of their statement became manifest.[18]

وَالْعَجَبُ أَنَّ الْمُحْتَجِّينَ بِهَذَا يَرَوْنَ الرُّجُوعَ فِي الْعِتْقِ فِي الْوَصِيَّةِ، وَلَا يَحْتَجُّونَ عَلَى أَنْفُسِهِمْ بِ {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَلَيْسَ إِجْمَاعًا فَإِنَّ سُفْيَانَ الثَّوْرِيَّ لَا يَرَى الرُّجُوعَ فِي الْعِتْقِ وَالْوَصِيَّةِ، وَكُلُّهُمْ يُجِيزُ بَيْعَ الْعَبْدِ يَقُولُ لَهُ سَيِّدُهُ: إِنْ جَاءَ أَبِي فَأَنْتَ حُرٌّ، وَيُبْطِلُونَ بَيْعَهُ بِهَذَا الْعَقْدِ، وَلَا يُجِيزُونَ لَهُ فِي الْعَقْدِ بِغَيْرِ إِخْرَاجِهِ عَنْ مِلْكِهِ فَظَهَرَ عَظِيمُ تَنَاقُضِهِمْ، وَفَسَادُ قَوْلِهِمْ.

L24634 If someone cites the narrations which state, "A mukātab remains a slave as long as a single dirham is owed," they are all discarded: one of them is transmitted through ʿAmr ibn Shuʿayb, from his father, from his grandfather—and it is a written record. How often they contradicted this chain of transmission whenever it opposed their school's doctrine!

فَإِنْ ذَكَرَ ذَاكِرُ الْآثَارِ الَّتِي جَاءَتْ «الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ» فَإِنَّهَا كُلُّهَا سَاقِطَةٌ -: أَحَدُهَا - مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ، وَهِيَ صَحِيفَةٌ، وَكَمْ خَالَفُوا هَذِهِ الطَّرِيقَ إِذَا خَالَفَتْ مَذْهَبَهُمْ.

L24635 And the other [narration]—through the path of ʿAṭāʾ ibn al-Sāʾib from Ibn ʿAmr ibn al-ʿĀṣ, with no record of direct hearing—and the ḥadīth is munqatiʿ (broken).

وَالْآخَرُ - مِنْ طَرِيقِ عَطَاءِ بْنِ السَّائِبِ عَنْ ابْنِ عَمْرِو بْنِ الْعَاصِ وَلَا سَمَاعَ لَهُ مِنْهُ - وَالْحَدِيثُ مُنْقَطِعٌ.

L24636 Then, if it were valid, there would only be a stipulation in both cases specify-

ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِمَا إِلَّا تَحْدِيدٌ: أَنَّهُ عَبْدٌ مَا بَقِيَ عَلَيْهِ عُشْرُ مُكَاتَبَتِهِ أَوْ عُشْرُ عُشْرِهَا.

[17] **Qur'an references (L24630):** Qur'an 6:164 (Al-An'am); Qur'an 5:1 (Al-Ma'idah).
[18] **Qur'an references (L24631):** Qur'an 5:1 (Al-Ma'idah).

ing that he remains a slave for as long as a tenth of his *mukatabah* remains owed or a tenth of a tenth of it.

L24637 A fabricated and false report via the chain of Ibn ʿUmar; thus all of them were invalidated.

L24638 As for when he pays a portion of his kitabah, according to what we have reported through the chain of Aḥmad ibn Shuʿayb: Aḥmad ibn ʿĪsā al-Dimashqī narrated to us, Yazīd ibn Hārūn narrated to us, Ḥammād ibn Salama narrated to us from Qatādah and Ayyūb al-Sikhtiyānī. Qatādah said: from Khilāṣ from ʿAlī ibn Abī Ṭālib, and Ayyūb said: from ʿIkrimah from Ibn ʿAbbās. Then both ʿAlī and Ibn ʿAbbās agreed, reporting from the Prophet—peace and blessings of Allāh be upon him—that he said: "The mukatab is freed in proportion to what he has paid, the hadd punishment is applied to him in proportion to the portion by which he has been freed, and he is inherited from in proportion to the portion by which he has been freed."

L24639 Ali said: "This is a chain of narration of utmost authenticity, and we do not know anyone who criticized it except that some people transmitted it as mursal. This is astonishing because those who raise this objection claim: 'The mursal is stronger than the musnad, or equivalent to it.' Now the mursal transmission by those who narrated it is invalidated, and the chain from those who transmitted it as musnad is invalidated because of it. No one follows this path in religion except those devoid of faith and shame - and we seek refuge in Allah from abandonment."

L24640 The Issue of the Sale of the Mudabbar (Male Slave Granted Deferred Freedom) and the Mudabbara (Female Slave Granted Deferred Freedom)

L24641 Issue 1552: The sale of a male slave granted deferred manumission (mudabbar) and a female slave granted deferred manumission (mudabbara) is permissible without necessity or debt; no reprehensibility applies to any of this.

L24642 tadbīr is invalidated by sale, just as a bequest is invalidated by the sale of the slave whose emancipation was stipulated in the bequest, and there is no difference—this is the opinion of al-Shāfiʿī and Abū Sulaymān.

وَخَبَرٌ مَوْضُوعٌ مِنْ طَرِيقِ ابْنِ عُمَرَ مَكْذُوبٌ - فَسَقَطَتْ كُلُّهَا.

وَأَمَّا إِذَا أَدَّى شَيْئًا مِنْ كِتَابَتِهِ فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عِيسَى الدِّمَشْقِيُّ نا يَزِيدُ بْنُ هَارُونَ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، قَالَ قَتَادَةُ: عَنْ خِلَاسٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ أَيُّوبُ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَابْنُ عَبَّاسٍ، كِلَاهُمَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى وَيُقَامُ عَلَيْهِ الْحَدُّ بِقَدْرِ مَا عَتَقَ مِنْهُ وَيُورَثُ بِقَدْرِ مَا عَتَقَ مِنْهُ».

قَالَ عَلِيٌّ: وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ، وَمَا نَعْلَمُ أَحَدًا عَابَهُ إِلَّا بِأَنَّهُ قَدْ أَرْسَلَهُ بَعْضُ النَّاسِ فَكَانَ هَذَا عَجَبًا لِأَنَّ الْمُعْتَرِضِينَ بِهَذَا يَقُولُونَ: إِنَّ الْمُرْسَلَ أَقْوَى مِنَ الْمُسْنَدِ، أَوْ مِثْلُهُ، فَالْآنَ صَارَ إِرْسَالُ مَنْ أَرْسَلَ يُبْطِلُ، وَيُبْطِلُ بِهِ الْإِسْنَادُ مِمَّنْ أَسْنَدَهُ، وَمَا يَسْلُكُ فِي دِينِهِ هَذِهِ الطَّرِيقَ إِلَّا مَنْ لَا دِينَ لَهُ، وَلَا حَيَاءَ - وَنَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ.

[مَسْأَلَةُ بَيْعُ الْمُدَبَّرِ وَالْمُدَبَّرَةِ]

١٥٥٢ - مَسْأَلَةٌ: وَبَيْعُ الْمُدَبَّرِ، وَالْمُدَبَّرَةِ، حَلَالٌ لِغَيْرِ ضَرُورَةٍ، وَلِغَيْرِ دَيْنٍ لَا كَرَاهَةَ فِي شَيْءٍ مِنْ ذَلِكَ.

وَيَبْطُلُ التَّدْبِيرُ بِالْبَيْعِ، كَمَا تَبْطُلُ الْوَصِيَّةُ بِبَيْعِ الْمُوصَى بِعِتْقِهِ وَلَا فَرْقَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

وَقَالَ أَحْمَدُ: يُبَاعُ الْمُدَبَّرُ - كَمَا قُلْنَا - وَلَا تُبَاعُ الْمُدَبَّرَةُ -.

L24643–24644 Aḥmad said: The male slave designated for posthumous manumission is sold—as we have said—but the female slave designated for posthumous manumission is not sold—.

وَهَذَا تَفْرِيقٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَقَالَ مَالِكٌ: لَا يُبَاعُ الْمُدَبَّرُ وَلَا الْمُدَبَّرَةُ إِلَّا فِي الدَّيْنِ فَقَطْ، فَإِنْ كَانَ الدَّيْنُ قَبْلَ التَّدْبِيرِ بِيعَا فِيهِ فِي حَيَاةِ سَيِّدِهِمَا، وَإِنْ كَانَ الدَّيْنُ بَعْدَ التَّدْبِيرِ لَمْ يُبَاعَا فِيهِ فِي حَيَاةِ الْمُدَبِّرِ، وَبِيعَا فِيهِ بَعْدَ مَوْتِهِ، فَإِنْ لَمْ يَحْمِلْ الثُّلُثَ الْمُدَبَّرُ، وَلَا دَيْنَ هُنَالِكَ: أُعْتِقَ مِنْهُ مَا يَحْمِلُ الثُّلُثَ وَرَقَّ سَائِرُهُ.

L24645 This is a distinction without any proof of its validity. Mālik said: The male slave designated for posthumous emancipation and the female slave designated for posthumous emancipation may not be sold except to settle a debt exclusively. If the debt existed prior to the designation, they may be sold for it during their master's lifetime. If the debt arose after the designation, they may not be sold for it during the lifetime of the one who designated them, but they may be sold for it after his death. If the third of the estate is insufficient to cover the emancipation of the designated slave, and there is no debt present, the portion of the slave that the third can cover is emancipated, and the remainder remains enslaved.

قَالَ: فَإِنْ بِيعَ فِي الْحَيَاةِ بِغَيْرِ دَيْنٍ فَأَعْتَقَهُ الَّذِي اشْتَرَاهُ نَفَذَ الْبَيْعُ وَجَازَ.

L24646 He said: If he is sold during the lifetime without being due to a debt, and the purchaser emancipates him, the sale is executed and valid.

وَهَذِهِ أَقْوَالٌ فِي غَايَةِ التَّنَاقُضِ، وَلَئِنْ كَانَ بَيْعُهُ حَرَامًا فَمَا يَحِلُّ بَيْعُهُ لَا فِي دَيْنٍ وَلَا فِي غَيْرِهِ - أَعْتَقَ أَوْ لَمْ يُعْتِقْ - كَمَا لَا تُبَاعُ أُمُّ الْوَلَدِ وَلَا يَنْفُذُ بَيْعُهَا - وَإِنْ أُعْتِقَتْ - وَلَئِنْ كَانَ بَيْعُهُ حَلَالًا فَمَا يَحْرُمُ مَتَى شَاءَ سَيِّدُهُ بَيْعَهُ.

L24647 These assertions are utterly contradictory. If selling him is forbidden, then it is impermissible to sell him—whether in debt or otherwise, whether emancipated or not—just as the *umm al-walad* cannot be sold, nor is her sale valid even if emancipated. Conversely, if selling him is permissible, it cannot be prohibited whenever his master wishes to sell him.

وَمَا نَعْلَمُ لَهُمْ فِي هَذَا التَّقْسِيمِ حُجَّةً لَا مِنْ نَصٍّ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

L24648 We are unaware of any argument they have in this categorization—neither from a textual source, nor a weak narration, nor a statement of a Companion, nor analogy, nor an opinion with a sound basis.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُبَاعُ الْمُدَبَّرُ - لَا فِي دَيْنٍ وَلَا فِي غَيْرِ دَيْنٍ لَا فِي الْحَيَاةِ وَلَا بَعْدَ الْمَوْتِ -: وَهُوَ مِنْ الثُّلُثِ، فَإِنْ لَمْ يَحْمِلْهُ الثُّلُثُ اسْتَسْعَى فِي ثُلُثَيْ قِيمَتِهِ وَقَالَ زُفَرُ: هُوَ

L24649 Abu Hanifah said: A *mudabbar* (slave granted deferred emancipation) cannot be sold—neither in debt nor outside debt, neither during the lifetime nor after death. He is to be accounted for from the third. If the third cannot cover his value, he is compelled to work off two-thirds of his value. Zufar said: He is to be taken from the principal of the estate, like the *umm al-

walad* (a slave who bears her master's child). We know of no valid evidence for their opinion whatsoever, nor any basis in the statement of Allah, the Exalted: *"Fulfill the contracts"* [Quran 5:1].[19]

L24650 As for the Malikis, they permitted its sale in the instances we have mentioned, yet they did not fulfill the contracts.

L24651 As for the Ḥanafīs, they required compensation within two-thirds of the slave's value but failed to honor the contractual obligations.

L24652 Abu Muhammad said: They advanced certain proofs—which we shall mention, Allah the Exalted willing—including a report narrated by Abd al-Baqi ibn Qani' from Musa ibn Zakariyya from Ali ibn Harb from Amr ibn Abdul-Jabbar, a trustworthy narrator, from his uncle Ubaydah ibn Hassan from Ayyub from Nafi' from Ibn Umar from the Prophet (peace be upon him): "A slave designated for deferred emancipation (mudabbar) is not to be sold or purchased, and his freedom is to be granted from [the proceeds of] one-third [of the estate]."

L24653–24654 This is a fabricated report because Abd al-Baqi is a transmitter mired in every defect, and his narrations have been discarded once the defect within them became manifest.

L24655 Then the rest of those who transmitted it up to Ayyūb are layers of darkness, one over another - all of them being unknown narrators. As for ʿAmr ibn ʿAbd al-Jabbār, if he is al-Sinjārī, he is weak (as a narrator); but if he is another, he is unknown. Even if the narration were authentic, the Mālikī school would have opposed it.

L24656 The Hanafis permitted the sale of a mudabbar (a slave designated for posthumous freedom) under certain circumstances. They held that if a slave was jointly owned by two individuals—where one designated his share for posthumous freedom (tadbeer), while the other manumitted his own share—the one who applied tadbeer must be liable for the value of his partner's share, which the latter manumitted. This effectively amounts to a sale of

مِنْ رَأْسِ الْمَالِ كَأُمِّ الْوَلَدِ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، وَلَا مُتَعَلَّقَ لَهُمْ فِي قَوْلِ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

أَمَّا الْمَالِكِيُّونَ فَأَجَازُوا بَيْعَهُ فِي مَوَاضِعَ قَدْ ذَكَرْنَاهَا فَلَمْ يَفُوا بِالْعُقُودِ.

وَأَمَّا الْحَنَفِيُّونَ فَاسْتَسْعَوْهُ فِي ثُلُثَيْ قِيمَتِهِ فَلَمْ يَفُوا بِالْعُقُودِ.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجُّوا بِأَشْيَاءَ نَذْكُرُهَا إِنْ شَاءَ اللَّهُ - تَعَالَى -: مِنْهَا: خَبَرٌ رَوَاهُ عَبْدُ الْبَاقِي بْنُ قَانِعٍ عَنْ مُوسَى بْنِ زَكَرِيَّا عَنْ عَلِيِّ بْنِ حَرْبٍ عَنْ عَمْرِو بْنِ عَبْدِ الْجَبَّارِ ثِقَةٌ عَنْ عَمِّهِ عُبَيْدَةَ بْنِ حَسَّانَ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمُدَبَّرُ لَا يُبَاعُ وَلَا يُشْتَرَى وَهُوَ حُرٌّ مِنْ الثُّلُثِ» .

وَهَذَا خَبَرٌ مَوْضُوعٌ؛ لِأَنَّ عَبْدَ الْبَاقِي رَاوِي كُلِّ بَلِيَّةٍ، وَقَدْ تُرِكَ حَدِيثُهُ، إذْ ظَهَرَ فِيهِ الْبَلَاءُ.

ثُمَّ سَائِرُ مَنْ رَوَاهُ إلَى أَيُّوبَ ظُلُمَاتٌ بَعْضُهَا فَوْقَ بَعْضٍ، كُلُّهُمْ مَجْهُولُونَ، وَعَمْرُو بْنُ عَبْدِ الْجَبَّارِ إنْ كَانَ هُوَ السِّنْجَارِيَّ فَهُوَ ضَعِيفٌ وَإِنْ كَانَ غَيْرَهُ فَهُوَ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَكَانَ الْمَالِكِيُّونَ قَدْ خَالَفُوهُ.

وَقَدْ أَجَازَ الْحَنَفِيُّونَ بَيْعَ الْمُدَبَّرِ فِي بَعْضِ الْأَحْوَالِ، وَهُوَ أَنَّهُمْ قَالُوا فِي عَبْدٍ بَيْنَ اثْنَيْنِ دَبَّرَهُ أَحَدُهُمَا ثُمَّ أَعْتَقَ الْآخَرُ نَصِيبَهُ: فَإِنَّ عَلَى الَّذِي دَبَّرَ نَصِيبَهُ أَنْ يَضْمَنَ قِيمَةَ نَصِيبِ صَاحِبِهِ الَّذِي أَعْتَقَ حِصَّتَهُ - وَهَذَا بَيْعٌ لِلْمُدَبَّرِ - فَقَدْ خَالَفُوا هَذَا الْخَبَرَ الْمَوْضُوعَ مَعَ احْتِجَاجِهِمْ بِهِ.

[19] **Qur'an references (L24649):** Qur'an 5:1 (Al-Ma'idah).

the mudabbar. Thus, they contradicted this forged hadith despite their own reliance on it as evidence.

L24657 Indeed, it is truly astonishing how some reject the hadiths on the sale of a mukātab, the fraudulent withholding of milk from livestock to deceive buyers, and the prohibition of selling a dog—despite their sound chains of transmission and widespread circulation—and then rely on this fabrication as evidence.

L24658 They cited what was narrated to us through the chain of Abū Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn: "The Messenger of Allāh—peace be upon him—sold the service of a *mudabbar*." This is a *mursal* narration, and no authoritative evidence can be derived from a *mursal*. Even if it were authentic, it would serve as evidence against the Ḥanafīs and Mālikīs, for they do not recognize the validity of selling a *mudabbar*'s service. They have no transmitted evidence whatsoever apart from what we have mentioned.

L24659 They cited a narration reported by Nuʿaym ibn Ḥammād from Ibn al-Mubārak from Ibn Jurayj from Abū al-Zubayr that he heard Jābir ibn ʿAbd Allāh say concerning the offspring of a *mudabbara* slave woman designated for emancipation upon her master's death: "When her master dies, we deem them free, and her child is likewise emancipated through her, as if he were a limb of hers."

L24660–24661 From the narration of Ibn Wahb via ʿAbd al-Jabbar ibn ʿUmar, who narrated from Ibn Shihab and Rabiʿah—both of them said: Indeed, ʿAishah, the Mother of the Believers, sold a slave girl she had designated for eventual emancipation among the Bedouins. When ʿUmar was informed of this, he sent to search for the slave girl but could not find her. He then sent to ʿAishah, took the payment, purchased another slave girl with it, and placed her in her position under the same *tadbeer* stipulation.

L24662 And via the chain of Wakiʿ: I am Ḥammād ibn Zayd, from Ayyūb, from Nāfiʿ, from Ibn ʿUmar, that he held it reprehensible (*makrūh*) to sell a *mudabbar* (a slave designated for eventual freedom). This is all they have cited as justification from the Companions—may Allah be pleased with them—and none of it constitutes valid evidence in their favor.

وَإِنَّ الْعَجَبَ لَيَكْثُرُ مِمَّنْ يَرُدُّ حَدِيثَ بَيْعِ الْمُكَاتَبِ، وَحَدِيثَ الْمُصَرَّاةِ، وَحَدِيثَ النَّهْيِ عَنْ بَيْعِ الْكَلْبِ، مَعَ صِحَّةِ أَسَانِيدِهَا وَانْتِشَارِهَا ثُمَّ يَحْتَجُّ بِهَذِهِ الْكَذِبَةِ.

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاعَ خِدْمَةَ الْمُدَبَّرِ» وَهَذَا مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ، أَنَّهُمْ لَا يَرَوْنَ بَيْعَ خِدْمَةِ الْمُدَبَّرِ: مَا لَهُمْ أَثَرٌ غَيْرُ مَا ذَكَرْنَا.

وَاحْتَجُّوا بِرِوَايَةِ عَنْ نُعَيْمِ بْنِ حَمَّادٍ عَنْ ابْنِ الْمُبَارَكِ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي أَوْلَادِ الْمُدَبَّرَةِ: إِذَا مَاتَ سَيِّدُهَا مَا نَرَاهُمْ إِلَّا أَحْرَارًا، وَوَلَدُهَا كَذَلِكَ مِنْهَا فَكَأَنَّهُ عُضْوٌ مِنْهَا.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ ابْنِ شِهَابٍ، وَرَبِيعَةَ، قَالَا جَمِيعًا: إِنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ بَاعَتْ مُدَبَّرَةً لَهَا فِي الْأَعْرَابِ، فَأُخْبِرَ بِذَلِكَ عُمَرُ فَبَعَثَ فِي طَلَبِ الْجَارِيَةِ فَلَمْ يَجِدْهَا، فَأَرْسَلَ إِلَى عَائِشَةَ فَأَخَذَ الثَّمَنَ فَاشْتَرَى بِهِ جَارِيَةً فَجَعَلَهَا مَكَانَهَا عَلَى تَدْبِيرِهَا.

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَرِهَ بَيْعَ الْمُدَبَّرِ - هَذَا كُلُّ مَا مَوَّهُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ.

L24663 As for the report of ‘Umar, it is rejected because al-Zuhri and Rabi’ah were born over thirty-five years and more after ‘Umar’s death; thus, it has an interrupted chain of transmission—

أَمَّا خَبَرُ عُمَرَ: فَسَاقِطٌ؛ لِأَنَّ الزُّهْرِيَّ، وَرَبِيعَةَ، لَمْ يُولَدَا إِلَّا بَعْدَ مَوْتِ عُمَرَ بِخَمْسٍ وَثَلَاثِينَ سَنَةً وَزِيَادَةً، فَهُوَ مُنْقَطِعٌ -.

L24664 And also: In it is ‘Abd al-Jabbar ibn ‘Umar, and he is weak.

وَأَيْضًا: فَفِيهِ عَبْدُ الْجَبَّارِ بْنُ عُمَرَ وَهُوَ ضَعِيفٌ.

L24665 Then, if it were valid, this would count against them rather than support them, for several reasons. First: the Mother of the Believers opposed his position in this matter. Therefore, his statement cannot serve as conclusive evidence against her, nor does it hold greater authority than her statement. This being a dispute, the obligation in such cases is to refer back to the Quran and the Sunnah—and both permit the sale of a *mudabbar*—a slave designated for posthumous freedom.

ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا عَلَيْهِمْ لَا لَهُمْ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّ أُمَّ الْمُؤْمِنِينَ قَدْ خَالَفَتْهُ فِي ذَلِكَ، فَلَيْسَ قَوْلُهُ حُجَّةً عَلَيْهَا، وَلَا أَوْلَى مِنْ قَوْلِهَا، وَهَذَا تَنَازُعٌ، فَالْوَاجِبُ عِنْدَ التَّنَازُعِ الرَّدُّ إِلَى الْقُرْآنِ، وَالسُّنَّةِ، وَهُمَا يُبِيحَانِ بَيْعَ الْمُدَبَّرِ.

L24666 And the second:

وَالثَّانِي -

L24667 They have opposed him because he took the price to purchase with it a female slave and subsequently appointed her as a *mudabbara* in her place. May God protect the Commander of the Faithful from this corrupt, evidently defective ruling, as it is forbidden to sell one female slave due to another (female slave) whose sale is unlawful.

أَنَّهُمْ قَدْ خَالَفُوهُ، لِأَنَّ فِيهِ أَنَّهُ قَدْ أَخَذَ الثَّمَنَ فَابْتَاعَ بِهِ جَارِيَةً فَجَعَلَهَا مُدَبَّرَةً مَكَانَهَا، وَيُعِيذُ اللَّهُ أَمِيرَ الْمُؤْمِنِينَ مِنْ هَذَا الْحُكْمِ الْفَاسِدِ، الظَّاهِرِ الْعَوَارِ، إِذْ يَحْرُمُ بَيْعُ مَمْلُوكَةٍ مِنْ أَجْلِ مَمْلُوكَةٍ أُخْرَى بِيعَتْ لَا يَحِلُّ بَيْعُهَا.

L24668 According to this, it becomes incumbent upon one who sells a free person to purchase a slave with the proceeds and emancipate them in their place. This contradicts the words of Allah, Exalted is He: “No soul earns a burden except against itself, nor does any bearer of burdens bear the burden of sin of another” [Al-An‘ām 6:164].[20]

وَيَلْزَمُ عَلَى هَذَا مَنْ بَاعَ حُرًّا أَنْ يَبْتَاعَ بِالثَّمَنِ عَبْدًا فَيُعْتِقَهُ مَكَانَهُ، وَهَذَا خِلَافُ قَوْلِ اللَّهِ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L24669 And how if the price is lost, or no slave is found for it, or slaves are found for it, or the sold female slave is found after this other female has been designated for eventual freedom in her place? Perhaps this one dies while still owned - what is the ruling? Or perhaps she lives, and the sold female slave dies while owned - what is the ruling in this confusion? Allah is far

وَكَيْفَ إِنْ ذَهَبَ الثَّمَنُ أَوْ لَمْ تُوجَدْ بِهِ رَقَبَةٌ أَوْ وُجِدَتْ بِهِ رِقَابٌ أَوْ وُجِدَتْ الْمَبِيعَةُ بَعْدَ أَنْ جُعِلَتْ هَذِهِ الْأُخْرَى مُدَبَّرَةً مَكَانَهَا، وَلَعَلَّ هَذِهِ تَمُوتُ مَمْلُوكَةً، فَكَيْفَ الْعَمَلُ؟ أَوْ لَعَلَّهَا تَعِيشُ وَتَمُوتُ الْمَبِيعَةُ مَمْلُوكَةً فَكَيْفَ الْعَمَلُ فِي هَذَا التَّخْلِيطِ؟ حَاشَا لِلَّهِ مِنْ هَذَا - فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِ عُمَرَ.

[20] **Qur’an references (L24668):** Qur’an 6:164 (Al-An’am).

above such a thing - thus their reliance on the statement of Umar becomes invalid.

L24670 As for the ḥadīth of Jābir, they have no basis in it whatsoever—it is mere obfuscation on their part. For it contains no prohibition against selling a mudabbara at all, but rather pertains solely to the ruling regarding her child if she herself is emancipated.

وَأَمَّا خَبَرُ جَابِرٍ: فَلَا مُتَعَلَّقَ لَهُمْ فِيهِ أَصْلًا، وَإِنَّمَا هُوَ تَمْوِيهٌ مِنْهُمْ مُجَرَّدٌ؛ لِأَنَّهُ لَيْسَ فِيهِ الْمَنْعُ مِنْ بَيْعِ الْمُدَبَّرَةِ أَصْلًا، وَإِنَّمَا فِيهِ حُكْمُ وَلَدِهَا إِنْ عَتَقَتْ هِيَ فَقَطْ.

L24671 If they had any modesty, they would not have distorted the religion with such things as this. How could they do so, especially when what is narrated from Jābir contradicts their claims?

وَلَوْ كَانَ لَهُمْ حَيَاءٌ مَا مَوَّهُوا فِي الدِّينِ بِمِثْلِ هَذَا، فَكَيْفَ وَقَدْ جَاءَ عَنْ جَابِرٍ خِلَافُ قَوْلِهِمْ؟

L24672–24673 As reported through the chain of Ibn Wahb from ʾUbayd Allāh ibn ʾUmar, from Nāfiʿ, from Ibn ʾUmar, who said: The child of a *mudabbarah* (a slave woman designated for posthumous emancipation) shares her legal status—their enslavement is tied to hers, and their emancipation to her emancipation.

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ: وَلَدُ الْمُدَبَّرَةِ بِمَنْزِلَتِهَا يُرَقُّونَ بِرِقِّهَا، وَيُعْتَقُونَ بِعِتْقِهَا.

L24674 Ibn Wahb narrated from men of knowledge—Uthman ibn Affan, Ali ibn Abi Talib, Zayd ibn Thabit, Jabir ibn Abdullah, and others—a view like Ibn Umar's statement. This Jabir held that the *mudabbara* (a slave granted deferred manumission) must be legally retained in enslavement. If it is said: "This is a *mursal* report?" We reply: "You have argued against us using the *mursal*—so either accept it or refrain from invoking it as proof."

وَذَكَرَ ابْنُ وَهْبٍ عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنْ عُثْمَانَ بْنِ عَفَّانَ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ ثَابِتٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَغَيْرِهِمْ، مِثْلَ قَوْلِ ابْنِ عُمَرَ - فَهَذَا جَابِرٌ يَرَى إِرْقَاقَ الْمُدَبَّرَةِ، فَإِنْ قِيلَ: هَذَا مُرْسَلٌ؟ قُلْنَا: بِالْمُرْسَلِ احْتَجَجْتُمْ عَلَيْنَا فَخُذُوهُ أَوْ فَلَا تَحْتَجُّوا بِهِ.

L24675 As for the narration of Ibn ʿUmar, it contains only reprehensibility. And it has been authentically established from Ibn ʿUmar that he explained the permissibility of selling a slave woman under deferred manumission *mudabbara*, as has been transmitted to us through the strongest chain via Mālik from Nāfiʿ from Ibn ʿUmar that he used to say: "A man should not have intercourse with a slave woman except a slave woman whom, if he wishes, he may sell her, gift her, or do with her as he pleases."

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَإِنَّمَا فِيهِ الْكَرَاهَةُ فَقَطْ - وَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ بَيَانُ جَوَازِ بَيْعِ الْمُدَبَّرَةِ، كَمَا رُوِّينَا بِأَصَحِّ سَنَدٍ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ: لَا يَطَأُ الرَّجُلُ وَلِيدَةً إِلَّا وَلِيدَةً: إِنْ شَاءَ بَاعَهَا، وَإِنْ شَاءَ وَهَبَهَا، وَإِنْ شَاءَ صَنَعَ بِهَا مَا شَاءَ.

L24676 And through the chain of Abd al-Razzaq from Ma'mar from Ayyub al-Sikhtiyani from Nafi' from Ibn Umar: that he designated two of his female slaves for *tadbeer* (freedom upon his death), and he had intercourse with them, resulting in one of them giving birth. This is an explicit text from Ibn

Umar affirming the permissibility of selling the *mudabbara* (slaves designated for freedom upon the owner's death).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ دَبَّرَ جَارِيَتَيْنِ لَهُ، فَكَانَ يَطَؤُهُمَا حَتَّى وَلَدَتْ إحْدَاهُمَا فَهَذَا نَصٌّ جَلِيٌّ مِنْ ابْنِ عُمَرَ عَلَى جَوَازِ بَيْعِ الْمُدَبَّرَةِ.

L24677 If they claim there is a consensus permitting intercourse with her, they lie - because of what we have narrated through ʿAbd al-Razzāq from Maʿmar, from al-Zuhrī: that he disapproved of a man having intercourse with his *mudabbara* (a slave woman whose manumission is deferred until her owner's death). Maʿmar said: "I asked him, 'Why do you disapprove of it?' He replied, 'Due to ʿUmar's statement: "Do not approach her if there is any stipulation pertaining to her for another person."'"

فَإِنْ ادَّعَوْا إجْمَاعًا عَلَى جَوَازِ وَطْئِهَا؟ كَذَبُوا، لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: أَنَّهُ كَانَ يَكْرَهُ أَنْ يَطَأَ الرَّجُلُ مُدَبَّرَتَهُ، قَالَ مَعْمَرٌ: فَقُلْت لَهُ: لِمَ تَكْرَهُهُ؟ فَقَالَ: لِقَوْلِ عُمَرَ: لَا تَقْرَبْهَا وَفِيهَا شَرْطٌ لِأَحَدٍ.

L24678 Thus, the invalidity of what they clung to from the Companions (may Allah be pleased with them) became evident, and that they have no valid argument in anything reported from them. They obscured [the issue] through rational analysis by asserting: "Since they differentiated between the term *al-mudabbar* (one scheduled for posthumous manumission) and the term *al-mawṣā bi ʿitqihi* (one designated for manumission by will), it was necessary to distinguish between their legal rulings."

فَظَهَرَ فَسَادُ مَا تَعَلَّقُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَأَنَّهُ لَيْسَ لَهُمْ حُجَّةٌ فِي شَيْءٍ جَاءَ عَنْهُمْ، وَمَوَّهُوا مِنْ طَرِيقِ النَّظَرِ بِأَنْ قَالُوا: لَمَّا فَرَّقَ بَيْنَ اسْمِ الْمُدَبَّرِ، وَاسْمِ الْمُوصَى بِعِتْقِهِ، وَجَبَ أَنْ يُفَرِّقَ بَيْنَ حُكْمَيْهِمَا.

L24679 Abū Muḥammad said: This is invalid because it is an unsupported claim. Not every two differing names must differ in their meanings and legal rulings if they exist in the language with the same meaning. For instance, al-muḥarrar (emancipated) and al-muʿtaq (freed slave) are two distinct names with identical meanings. Similarly, zakāh and ṣadaqah are likewise, and al-zawāj (marriage) and al-nikāḥ (marriage) are likewise. Such instances are exceedingly numerous.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ؛ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَلَيْسَ كُلُّ اسْمَيْنِ اخْتَلَفَا وَجَبَ أَنْ يَخْتَلِفَ مَعْنَاهُمَا وَحُكْمُهُمَا إذَا وُجِدَا فِي اللُّغَةِ مُتَّفِقِي الْمَعْنَى: فَإِنَّ " الْمُحَرَّرَ، وَالْمُعْتَقَ " اسْمَانِ مُخْتَلِفَانِ وَمَعْنَاهُمَا وَاحِدٌ، " وَالزَّكَاةُ، وَالصَّدَقَةُ " كَذَلِكَ، " وَالزَّوَاجُ، وَالنِّكَاحُ " كَذَلِكَ، وَهَذَا كَثِيرٌ جِدًّا.

L24680 Even if this invalid ruling were deemed valid for them, the obligation—when a scriptural text pertaining to both arises—would be to adhere to it. Moreover, the difference between the two names does not necessitate selling one and not the other, for the names "horse" and "slave" differ, yet both are sold.

وَحَتَّى لَوْ صَحَّ لَهُمْ هَذَا الْحُكْمُ الْفَاسِدُ لَكَانَ الْوَاجِبُ إذَا جَاءَ فِيهِمَا نَصٌّ أَنْ يُوقَفَ عِنْدَهُ - وَأَيْضًا فَلَيْسَ فِي اخْتِلَافِ الِاسْمَيْنِ مَا يُوجِبُ أَنْ يُبَاعَ أَحَدُهُمَا وَلَا يُبَاعَ الْآخَرُ، وَقَدْ اخْتَلَفَ اسْمُ: الْفَرَسِ، وَالْعَبْدِ، وَكِلَاهُمَا يُبَاعُ.

L24681–24682 Ali said: Thus, there remained no basis left for them to cling to at all. Among the proofs for the permissibility of selling a male or female *mudabbar* slave designated for eventual freedom is Allah's statement—the Most High: "Allah has permitted selling" [Al-Baqarah: 275].[21]

قَالَ عَلِيٌّ: فَلَمْ يَبْقَ لَهُمْ مُتَعَلَّقٌ أَصْلًا - وَمِنْ الْبُرْهَانِ عَلَى جَوَازِ بَيْعِ الْمُدَبَّرِ وَالْمُدَبَّرَةِ: قَوْلُ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L24683 Allah, the Exalted, says: "And He has already detailed for you what He has forbidden to you" [Quran 6:119].[22]

وَقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L24684 It is thereby validated that the sale of every owned entity is lawful except what has been explicitly prohibited for us. Since no explicit prohibition has been outlined to us regarding the sale of the mudabbar (male slave designated for posthumous manumission) and the mudabbara (female slave similarly designated), their sale is lawful.

فَصَحَّ أَنَّ بَيْعَ كُلِّ مُتَمَلَّكٍ جَائِزٌ إلَّا مَا فَصَّلَ لَنَا تَحْرِيمَ بَيْعِهِ، وَلَمْ يُفَصِّلْ لَنَا تَحْرِيمَ بَيْعِ الْمُدَبَّرِ، وَالْمُدَبَّرَةِ، فَبَيْعُهُمَا حَلَالٌ.

L24685 From the Sunnah is what was transmitted to us through Waki': Sufyan al-Thawri and Isma'il ibn Abi Khalid—both of whom narrated from Salamah ibn Kuhayl, from 'Ata' ibn Abi Rabah, from Jabir ibn 'Abdullah—that the Messenger of Allah, may Allah bless him and grant him peace, sold the *mudabbar* [a slave whose manumission is deferred until the owner's death].

وَمِنْ السُّنَّةِ: مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ، وَإِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، كِلَاهُمَا عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَاعَ الْمُدَبَّرَ» .

L24686 And through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from ʿAmr ibn Dīnār that he heard Jābir ibn ʿAbd Allāh say: "A man from the Anṣār declared his slave to be mudabbar (when) he owned no property besides him? The Messenger of Allāh (peace and blessings be upon him) said: 'Who will buy him from me?' A man from Banū ʿAdī ibn Kaʿb purchased him. Jābir said: 'A Coptic slave died last year during Ibn al-Zubayr's governorship.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «دَبَّرَ رَجُلٌ مِنْ الْأَنْصَارِ غُلَامًا لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَنْ يَبْتَاعُهُ مِنِّي؟ فَاشْتَرَاهُ رَجُلٌ مِنْ بَنِي عَدِيِّ بْنِ كَعْبٍ، قَالَ جَابِرٌ: غُلَامٌ قِبْطِيًّا مَاتَ عَامَ أَوَّلَ فِي إمَارَةِ ابْنِ الزُّبَيْرِ» .

L24687 We have also narrated it through the chain of Al-Layth and Ayyub from Abu Az-Zubayr that he heard it from Jabir. This is a well-known narration decisively authenticated by mass transmission, concerning an event that occurred in the presence of the Companions—may Allah be pleased with them—all of whom acquiesced and approved. Thus, if a Muslim were to claim consensus here, it would not be unreasonable, unlike their false claims. Then some of the liars said: "A sale involving debt; otherwise, for what reason was it

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ اللَّيْثِ، وَأَيُّوبَ عَنْ أَبِي الزُّبَيْرِ أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ -: فَهَذَا أَثَرٌ مَشْهُورٌ مَقْطُوعٌ بِصِحَّتِهِ بِنَقْلِ التَّوَاتُرِ، وَأَمْرٌ كَانَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كُلُّهُمْ مُسَلِّمٌ رَاضٍ، فَلَوْ ادَّعَى الْمُسْلِمُ هَهُنَا الْإِجْمَاعَ لَمَا أَبْعَدَ، لَا كَدَعَاوِيهِمْ الْكَاذِبَةِ؟ فَقَالَ بَعْضُ أَهْلِ الْكَذِبِ: بَيْعٌ فِي دَيْنٍ، وَإِلَّا فَلِأَيِّ وَجْهٍ بِيعَ؟ فَقُلْنَا: كَذَبْتُمْ وَأَفَكْتُمْ، وَإِنَّمَا بِيعَ؛ لِأَنَّهُ لَمْ يَكُنْ لِمُدَبِّرِهِ مَالٌ غَيْرُهُ، فَلِهَذَا بَاعَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[21] **Qur'an references (L24682):** Qur'an 2:275 (Al-Baqarah).
[22] **Qur'an references (L24683):** Qur'an 6:119 (Al-An'am).

sold?" We replied: "You have lied and slandered! It was sold only because its caretaker had no other property, and for this reason, the Prophet—peace and blessings be upon him—sold it."

وَأَمَّا لَوْ كَانَ لَهُ مَالٌ غَيْرُهُ فَبَيْعُهُ مُبَاحٌ لَا وَاجِبٌ كَسَائِرِ مَنْ تَمَلَّكَ.

L24688 If he has other property, selling it is permissible, not obligatory, like all others who have acquired ownership.

وَمِنْ طَرِيقِ النَّظَرِ أَنَّهُ صَحَّ الْإِجْمَاعُ عَلَى جَوَازِ بَيْعِ الْمُدَبَّرِ قَبْلَ أَنْ يُدَبَّرَ، فَمَنْ مَنَعَ مِنْهُ بَعْدَ أَنْ يُدَبَّرَ فَقَدْ أَبْطَلَ وَادَّعَى مَا لَا بُرْهَانَ لَهُ بِهِ.

L24689 And through rational deduction, the consensus holds that selling a *mudabbar* slave (one promised freedom via *tadbeer* after the owner's death) is permissible prior to enacting *tadbeer*. Thus, whoever prohibits selling him after *tadbeer* has been enacted invalidates [the consensus] and advances a claim unsupported by evidence.

وَمِنْ طَرِيقِ الْقِيَاسِ الَّذِي لَوْ صَحَّ الْقِيَاسُ لَمْ يَكُنْ شَيْءٌ أَصَحَّ مِنْ هَذَا، وَهُوَ أَنَّ الْمُعْتَقَ بِصِفَةٍ لَا يَدْرِي أَيُدْرِكُهَا الْمُعْتَقُ بِهَا أَمْ لَا؟ وَالْمُوصَى بِعِتْقِهِ: لَا يَخْتَلِفُونَ فِي جَوَازِ بَيْعِهِ قَبْلَ مَجِيءِ تِلْكَ الصِّفَةِ، وَالْمُدَبَّرُ مُوصًى بِعِتْقِهِ، كِلَاهُمَا مِنَ الثُّلُثِ فَوَاجِبٌ إِنْ صَحَّ الْقِيَاسُ أَنْ يُبَاعَ الْمُدَبَّرُ كَمَا يُبَاعُ الْآخَرَانِ، وَلَكِنْ لَا النُّصُوصَ يَتَّبِعُونَ، وَلَا الْقِيَاسَ يُحْسِنُونَ.

L24690–24692 And by way of analogy (which, if analogy were valid, nothing would be more correct than this): it concerns the slave manumitted based on a trait that one does not know whether the slave will attain it or not. As for the slave bequeathed for manumission, scholars do not disagree about the permissibility of selling them before the occurrence of that trait. The *mudabbar* is bequeathed for manumission. Both derive from the third portion, thus it is obligatory if valid. The analogy is that the *mudabbar* is to be sold just as the other two are sold, but they neither follow the texts nor apply analogy correctly.

وَمِمَّنْ صَحَّ عَنْهُ بَيْعُ الْمُدَبَّرِ مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ جَدَّتِهِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ، بَاعَتْ مُدَبَّرَةً لَهَا.

L24693 Among those from whom the sale of a *mudabbar* is authentically reported is what was transmitted to us through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Yaḥyā ibn Saʿīd al-Anṣārī from his grandmother ʿAmrah bint ʿAbd al-Raḥmān: that ʿĀ'ishah, the Mother of the Believers, sold a female *mudabbara* belonging to her.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَمُحَمَّدِ بْنِ سِيرِينَ، قَالَا جَمِيعًا: الْمُدَبَّرُ وَصِيَّةٌ.

L24694 Narrated via Abd al-Razzaq, from Ma'mar, from Ayyub al-Sakhtiyani, from Umar ibn Abd al-Aziz and Muhammad ibn Sirin, who both stated: The mudabbar [testamentary manumission] is a bequest (wasiyyah).

L24695 From him [in the chain] to Ma'mar, from Abdullah ibn Tawus, who said: Muhammad ibn al-Munkadir asked me concerning the mudabbar (designated for deferred manumission): "What was my father's position regarding it?

May its owner sell it?" I responded: "My father would say: He may sell it if he needed." Ibn al-Munkadir then said: "Even if he did not need."

وَبِهِ إِلَى مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ، قَالَ: سَأَلَنِي مُحَمَّدُ بْنُ الْمُنْكَدِرِ عَنْ الْمُدَبَّرِ كَيْفَ كَانَ قَوْلُ أَبِي فِيهِ، أَيَبِيعُهُ صَاحِبُهُ؟ فَقُلْت: كَانَ أَبِي يَقُولُ: يَبِيعُهُ إنْ احْتَاجَ فَقَالَ ابْنُ الْمُنْكَدِرِ: وَإِنْ لَمْ يَحْتَجْ.

L24696 Through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who reported: ʿAmr ibn Dīnār informed me, saying: "Ṭāwus deemed it permissible for a man to revoke his act of manumission." ʿAmr said: "This means the *tadbīr*."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: كَانَ طَاوُسٌ لَا يَرَى بَأْسًا أَنْ يَعُودَ الرَّجُلُ فِي عَتَاقَتِهِ - قَالَ عَمْرٌو: يَعْنِي التَّدْبِيرَ.

L24697 From the transmission of Sufyān ibn ʿUyaynah, via Ibn Abī Najīḥ, via Mujāhid, who said: The mudabbar [a slave designated for posthumous freedom] is a testamentary act, and the owner may retract it if they wish.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: الْمُدَبَّرُ وَصِيَّةٌ يَرْجِعُ فِيهِ إذَا شَاءَ.

L24698 Via Abd al-Razzaq, from Ibn Jurayj: I heard Ata' say, "The ruling applies to the *mudabbar* (a slave designated for eventual freedom) and in all matters of bequests." We have received narrations from Ibn Sirin and Ata' stating the disapproval of selling the *mudabbar*. From al-Sha'bi: "The bold may sell it, but the pious refrain from doing so."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْت عَطَاءً يَقُولُ: يُعَادُ فِي الْمُدَبَّرِ، وَفِي كُلِّ وَصِيَّةٍ - وَقَدْ رُوِّينَا عَنْ ابْنِ سِيرِينَ، وَعَطَاءٍ: كَرَاهِيَةَ بَيْعِ الْمُدَبَّرِ، وَعَنْ الشَّعْبِيِّ يَبِيعُهُ الْجَرِيءُ، وَيَرَعُ عَنْهُ الْوَرِعُ.

L24699 Abu Muhammad said: Rather, the pious sell it in emulation of the Messenger of Allah (peace and blessings be upon him), while those ignorant of the law refrain from it. By Allah! There is no fear of accountability from Allah (Exalted and Majestic) concerning any matter whose prohibition He has not specified for us in His Book nor in the Sunnah of His Messenger (peace and blessings be upon him). Rather, we fear accountability from Him (Exalted and Majestic) for our prohibition of what He has not specified the prohibition of, or for our abstention from it fearing it might be unlawful - and we seek refuge with Allah (Exalted is He) from this.

قَالَ أَبُو مُحَمَّد: بَلْ يَبِيعُهُ الْوَرِعُ اقْتِدَاءً بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيَقِفُ عَنْهُ الْجَاهِلُ، وَتَاَللَّهِ مَا تُخَافُ تَبِعَةٌ مِنْ اللَّهِ - تَعَالَى - فِي أَمْرٍ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ فِي كِتَابِهِ وَلَا فِي سُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ نَخَافُ التَّبِعَةَ مِنْهُ - عَزَّ وَجَلَّ - فِي تَحْرِيمِنَا مَا لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ، أَوْ فِي تَوَقُّفِنَا فِيهِ خَوْفَ أَنْ يَكُونَ حَرَامًا - وَنَعُوذُ بِاَللَّهِ - تَعَالَى - مِنْ هَذَا.

L24700 He, the Exalted, said: "Nay, by your Lord! They will not believe until they make you the judge concerning disputes that have arisen between them, then feel no resentment within themselves regarding what you have decreed and submit with full submission." (An-Nisa 4:65)[23]

قَالَ - تَعَالَى -: {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا} [النساء: ٦٥] .

[23] **Qur'an references (L24700):** Qur'an 4:65 (An-Nisa).

L24701 The sale of the *mudabbar* (a slave designated for deferred manumission) is among what was decreed by the Messenger of Allah (peace and blessings be upon him). Therefore, whoever is a believer should feel no unease within himself concerning that which has been decreed. And by Allah, the Exalted, is all success.

وَبَيْعُ الْمُدَبَّرِ مِمَّا قَضَى بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ كَانَ مُؤْمِنًا فَلَا يَجِدُ فِي نَفْسِهِ حَرَجًا مِمَّا قَضَى فِيهِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24702–24703 The issue of selling the child of a female mudabbara from someone other than her master.

[مَسْأَلَةُ بَيْعُ وَلَدِ الْمُدَبَّرَةِ مِنْ غَيْرِ سَيِّدِهَا]

L24704 Issue: The sale of the child of a deferred-freedom female slave (mudabbara) by someone other than her master—whether she conceived the child before or after the deferment—is permissible. Likewise, the sale of offspring born to a female slave under a manumission contract (mukataba)—whether before the contract was concluded or after, provided she has not fulfilled any part of her contractual obligations—is permissible.

مَسْأَلَةٌ: وَبَيْعُ وَلَدِ الْمُدَبَّرَةِ مِنْ غَيْرِ سَيِّدِهَا - حَمَلَتْ بِهِ قَبْلَ التَّدْبِيرِ أَوْ بَعْدَهُ - حَلَالٌ - وَبَيْعُ مَا وَلَدَتْ الْمُكَاتَبَةُ قَبْلَ أَنْ تُكَاتَبَ وَبَعْدَ أَنْ كُوتِبَتْ مَا لَمْ تُؤَدِّ شَيْئًا مِنْ كِتَابَتِهَا: حَلَالٌ -.

L24705 The sale of a child (whose birth would render his mother an *umm al-walad*) by someone other than her master, before she attains the status of an *umm al-walad*, is lawful.

وَبَيْعُ وَلَدِ أُمِّ الْوَلَدِ مِنْ غَيْرِ سَيِّدِهِ قَبْلَ أَنْ تَكُونَ أُمَّ وَلَدٍ: حَلَالٌ.

L24706 There is no disagreement regarding any part of this, except for the child borne by the enslaved woman granted tadbīr [deferred emancipation] after the tadbīr.

هَذَا كُلُّهُ لَا خِلَافَ فِي شَيْءٍ مِنْهُ، إلَّا مَا حَمَلَتْ بِهِ الْمُدَبَّرَةُ بَعْدَ التَّدْبِيرِ.

L24707 As for the child born to the Umm al-Walad by someone other than her master after she became an Umm al-Walad, it is forbidden to sell them, and their legal status mirrors that of their mother.

وَأَمَّا مَا وَلَدَتْ أُمُّ الْوَلَدِ مِنْ غَيْرِ سَيِّدِهَا بَعْدَ أَنْ صَارَتْ أُمَّ وَلَدٍ: فَحَرَامٌ بَيْعُهُ، وَحُكْمُهُ حُكْمُ أُمِّهِ.

L24708 And we will mention—if Allah, the Exalted, wills—the rulings pertaining to what the *mukatabah* (contract of manumission) involves, after the *mukatab* (enslaved person under contract) has paid a portion of their stipulated payments (*kitabah*), in the “Book of the Mukatab” within this volume of ours. There is no power nor strength except with Allah—the Mighty and Majestic.

وَسَنَذْكُرُ إنْ شَاءَ اللَّهُ - تَعَالَى - حُكْمَ مَا حَمَلَتْ بِهِ الْمُكَاتَبَةُ بَعْدَ أَنْ تُؤَدِّيَ شَيْئًا مِنْ كِتَابَتِهَا فِي " كِتَابِ الْمُكَاتَبِ " مِنْ دِيوَانِنَا هَذَا - إنْ شَاءَ اللَّهُ - تَعَالَى، وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ - عَزَّ وَجَلَّ -.

L24709 The proof of the validity of our statement regarding the child of the woman under deferred manumission who becomes pregnant with him after the de-

ferment declaration is that he is the child of a slave woman whose sale is permissible; hence he is a slave, for the child of a slave woman is a slave.

بُرْهَانُ صِحَّةِ قَوْلِنَا فِي وَلَدِ الْمُدَبَّرَةِ الَّتِي تَحْمِلُ بِهِ بَعْدَ التَّدْبِيرِ: هُوَ أَنَّهُ وَلَدُ أَمَةٍ جَائِزٌ بَيْعُهَا، فَهُوَ عَبْدٌ، لِأَنَّ وَلَدَ الْأَمَةِ عَبْدٌ -.

L24710 It has been narrated to us a statement similar to ours from ʿAbd al-Razzāq, from Maʿmar: Maʿmar reported to me that someone who heard ʿIkrimah say informed me: "The children of a *mudabbara* are not emancipated."

وَرُوِّينَا مِثْلَ قَوْلِنَا هَذَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ: أَخْبَرَنِي مَنْ سَمِعَ عِكْرِمَةَ يَقُولُ: أَوْلَادُ الْمُدَبَّرَةِ لَا عِتْقَ لَهُمْ.

L24711 From the narration of Abd al-Razzaq via Ibn Jurayj and Ibn Uyaynah: Ibn Jurayj reported from Amr ibn Dinar and Ata, both of them narrating from Abu al-Sha'tha. Ibn Uyaynah said: From Amr ibn Dinar, from Abu al-Sha'tha, who said: "The children of the *mudabbara* (a slave woman designated for posthumous emancipation) remain slaves. As for the child she carries, if she is emancipated before giving birth, it is free alongside her—unless the master explicitly excludes it—due to what we previously mentioned: that even if distinct from her, it follows her legal status."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ: وَابْنِ عُيَيْنَةَ، قَالَ ابْنُ جُرَيْجٍ: عَنْ عَمْرِو بْنِ دِينَارٍ، وَعَطَاءٍ، كِلَاهُمَا عَنْ أَبِي الشَّعْثَاءِ، وَقَالَ ابْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ، قَالَ: أَوْلَادُ الْمُدَبَّرَةِ عَبِيدٌ، وَأَمَّا مَا حَمَلَتْ بِهِ ثُمَّ أَدْرَكَهَا الْعِتْقُ قَبْلَ أَنْ تَضَعَهُ فَهُوَ حُرٌّ مَعَهَا مَا لَمْ يَسْتَثْنِهِ السَّيِّدُ لِمَا ذَكَرْنَا قَبْلُ: مِنْ أَنَّهُ وَإِنْ كَانَ غَيْرَهَا فَهُوَ تَبَعٌ لَهَا.

L24712 The opponents argued against the opinion that the child of a mudabbara (a female enslaved person granted deferred manumission) shares the same legal status as their mother by citing authentic reports from ʿUthmān, Jābir, and Ibn ʿUmar; reports are also narrated from ʿAlī, Ibn ʿAbbās, and Zayd, with no known opposition from any of the Companions to their position.

وَاحْتَجَّ الْمُخَالِفُونَ عَلَى الْقَوْلِ بِأَنَّ وَلَدَ الْمُدَبَّرَةِ بِمَنْزِلَةِ أُمِّهِمْ بِأَنَّهُ قَدْ صَحَّ عَنْ عُثْمَانَ، وَجَابِرٍ، وَابْنِ عُمَرَ - وَرُوِيَ عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ، وَزَيْدٍ، وَلَا يُعْرَفُ لَهُمْ مِنَ الصَّحَابَةِ مُخَالِفٌ.

L24713 Abu Muhammad said: There is no valid proof in anyone other than the Messenger of Allah—peace and blessings be upon him. We have mentioned their differing positions concerning certain groups of the Companions for whom no opposing view from the Companions is known. This includes what is authentically reported from Uthman, Suhayb, and Tamim al-Dari regarding the sale of a house while stipulating the seller's right to reside in it for the duration of his lifetime—a transaction which took place in the presence of the Companions with no dissent among them recorded. Similar cases are very many.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ ذَكَرْنَا خِلَافَهُمْ لِطَوَائِفَ مِنَ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، كَالَّذِي صَحَّ عَنْ عُثْمَانَ، وَصُهَيْبٍ، وَتَمِيمٍ الدَّارِيِّ مِنْ أَنَّ الْبَيْعَ لِدَارٍ وَاشْتِرَاطَ سُكْنَاهَا مُدَّةَ عُمُرِ الْبَائِعِ، وَذَلِكَ بِحَضْرَةِ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا.

L24714–24715 As for the child born to an umm al-walad before she attained the status of umm al-walad, there is no disagreement on this matter.

وَأَمَّا وَلَدُ أُمِّ الْوَلَدِ قَبْلَ أَنْ تَكُونَ أُمَّ وَلَدٍ فَلَا خِلَافَ فِيهِ.

L24716 As for what she conceives after becoming an *umm walad*, it is imper-

missible to sell them, because her sale is forbidden. If she conceives him after becoming an *umm walad*, then selling him is forbidden. Whatever is definitively prohibited from being sold cannot become permissible thereafter except by explicit textual evidence, and there is no text permitting his sale after his separation from her.

L24717 If they cite the statement, "Every uterine relative's child shares her status," this is not from the Messenger of Allah—may Allah bless him and grant him peace—and thus holds no legal validity. Furthermore, they are the first to contradict this principle concerning the children of conditionally emancipated women and those emancipated for a fixed term. And with Allah alone is success—the Most High.

L24718 **The Issue of Selling a Slave Granted Deferred Emancipation to a Term or with Stipulated Attributes.**

L24719 1554. Issue: Selling a slave designated for emancipation - whether by a fixed term or a condition - is permissible as long as emancipation has not become obligatory due to the occurrence of that condition. For example, if a man says to his slave: "You will be free tomorrow," he may sell him before tomorrow arrives. Or if he says: "You will be free when my sick [relative] recovers," he may sell him before the recovery occurs. This is because the slave remains enslaved until he becomes entitled to emancipation. This is the opinion of Al-Shāfiʿī, Abū Ḥanīfah, Abū Sulaymān, and their followers.

L24720 Malik said: Similarly regarding emancipation contingent on an attribute that may or may not exist, but he did not state this concerning emancipation for a specified period, arguing that "it must necessarily be?" We responded: Granted, what then is the consequence? Except that until now it has not yet come to pass, and they possess no evidence whatsoever for this distinction - it is merely a claim and a circular argument based on their own assertions.

L24721 **The issue of selling a commodity in the market for less than its price or for more than its price.**

L24722 Issue 1555: It is permissible for one who enters the market - whether from

وَأَمَّا مَا - حَمَلَتْ بِهِ بَعْدَ أَنْ تَكُونَ أُمَّ وَلَدٍ فَلَا يَحِلُّ بَيْعُهُمْ، لِأَنَّهَا حَرَامٌ بَيْعُهَا وَهُوَ إذَا - حَمَلَتْ بِهِ بَعْضُهَا: فَحَرَامٌ بَيْعُهُ، وَمَا حَرُمَ بَيْعُهُ بِيَقِينٍ فَلَا يَحِلُّ بَعْدَ ذَلِكَ إلَّا بِنَصٍّ، وَلَا نَصَّ فِي جَوَازِ بَيْعِهِ بَعْدَ مُفَارَقَتِهِ لَهَا.

فَإِنْ ذَكَرُوا " كُلُّ ذَاتِ رَحِمٍ فَوَلَدُهَا بِمَنْزِلَتِهَا " فَهُوَ لَيْسَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا حُجَّةَ فِيهِ - ثُمَّ هُمْ أَوَّلُ مُخَالِفٍ لِهَذَا فِي وَلَدِ الْمُعْتَقَةِ بِصِفَةٍ، وَوَلَدُ الْمُعْتَقَةِ إلَى أَجَلٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة بَيْعُ الْمُعْتَقِ إلَى أَجَلٍ أَوْ بِصِفَةٍ]

١٥٥٤ - مَسْأَلَةٌ: وَبَيْعُ الْمُعْتَقِ إلَى أَجَلٍ، أَوْ بِصِفَةٍ: حَلَالٌ مَا لَمْ يَجِبْ لَهُ الْعِتْقُ بِحُلُولِ تِلْكَ الصِّفَةِ، كَمَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ غَدًا، فَلَهُ بَيْعُهُ مَا لَمْ يُصْبِحْ الْغَدُ، أَوْ كَمَنْ قَالَ لَهُ: أَنْتَ حُرٌّ إذَا أَفَاقَ مَرِيضِي: فَلَهُ بَيْعُهُ مَا لَمْ يُفِقْ مَرِيضُهُ، لِأَنَّهُ عَبْدٌ مَا لَمْ يَسْتَحِقَّ الْعِتْقَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِمْ.

وَقَالَ مَالِكٌ: كَذَلِكَ فِي الْمُعْتَقِ بِصِفَةٍ يُمْكِنُ أَنْ تَكُونَ، وَيُمْكِنُ أَنْ لَا تَكُونَ، وَلَمْ يَقُلْهُ فِي الْمُعْتَقِ إلَى أَجَلٍ، وَاحْتَجَّ بِأَنَّهُ لَا بُدَّ أَنْ يَكُونَ؟ فَقُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ إلَّا أَنَّهُ حَتَّى الْآنَ لَمْ يَكُنْ بَعْدُ، وَلَا دَلِيلَ لَهُمْ عَلَى هَذَا الْفَرْقِ أَصْلًا، وَإِنَّمَا هُوَ دَعْوَى وَاحْتِجَاجٌ لِقَوْلِهِمْ بِقَوْلِهِمْ

[مَسْأَلَة بَيْع السِّلْعَة فِي السوق بِأَقَلّ مِنْ سعرها أَوْ بِأَكْثَر]

their own household or outside it - to sell their merchandise for less than its market price or for more. Neither the market vendors nor the ruler may object to them in this matter.

١٥٥٥ - مَسْأَلَةٌ: وَجَائِزٌ لِمَنْ أَتَى السُّوقَ مِنْ أَهْلِهِ، أَوْ مِنْ غَيْرِ أَهْلِهِ، أَنْ يَبِيعَ سِلْعَتَهُ بِأَقَلَّ مِنْ سِعْرِهَا فِي السُّوقِ، وَبِأَكْثَرَ - وَلَا اعْتِرَاضَ لِأَهْلِ السُّوقِ عَلَيْهِ فِي ذَلِكَ، وَلَا لِلسُّلْطَانِ.

L24723 The Malikis said: He does not have the right to sell for less than its price and is restrained from doing so, but he may sell for more than its price.

وَقَالَ الْمَالِكِيُّونَ: لَيْسَ لَهُ أَنْ يَبِيعَ بِأَقَلَّ مِنْ سِعْرِهَا، وَيُمْنَعُ مِنْ ذَلِكَ وَلَهُ أَنْ يَبِيعَ بِأَكْثَرَ.

L24724 Ali said: "It is truly astonishing that they would forbid him from granting concessions to Muslims, yet permit him to inflate prices? This is astonishing indeed, and we know of no one from whom this opinion of theirs is reported before Malik."

قَالَ عَلِيٌّ: وَهَذَا عَجَبٌ جِدًّا أَنْ يَمْنَعُوهُ مِنْ التَّرْخِيصِ عَلَى الْمُسْلِمِينَ، وَيُبِيحُونَ لَهُ التَّغْلِيَةَ؟ إنَّ هَذَا لَعَجَبٌ وَمَا نَعْلَمُ قَوْلَهُمْ هَذَا عَنْ أَحَدٍ قَبْلَ مَالِكٍ.

L24725 Then they grew even more astonished and cited what was reported to us through Malik's narration from Yunus ibn Yusuf from Sa'id ibn al-Musayyab: that 'Umar passed by Hatib ibn Abi Balta'a while he was selling his raisins in the market. 'Umar said to him: "Either you increase the price, or leave our market."

ثُمَّ زَادُوا فِي الْعَجَبِ وَاحْتَجُّوا بِالَّذِي رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يُونُسَ بْنِ يُوسُفَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ مَرَّ بِحَاطِبِ بْنِ أَبِي بَلْتَعَةَ وَهُوَ يَبِيعُ زَبِيبًا لَهُ بِالسُّوقِ، فَقَالَ لَهُ عُمَرُ: إمَّا أَنْ تَزِيدَ فِي السِّعْرِ، وَإِمَّا أَنْ تَرْفَعَ عَنْ سُوقِنَا.

L24726–24727 Ali said: In this, there is no authoritative evidence for them due to several aspects—one of them being that there is no authoritative evidence regarding anyone other than the Messenger of Allah—may Allah bless him and grant him peace.

قَالَ عَلِيٌّ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَحَدُهَا: أَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24728 The second point is that they opposed 'Umar in many instances, such as his compelling paternal cousins to provide financial support for their paternal cousin, his freeing every relative within a prohibited degree of kinship when he owned one, and other such matters.

وَالثَّانِي: أَنَّهُمْ كَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ كَإِجْبَارِهِ بَنِي عَمٍّ عَلَى النَّفَقَةِ عَلَى ابْنِ عَمِّهِمْ، وَكَعِتْقِهِ كُلَّ ذِي رَحِمٍ مَحْرَمَةٍ إذَا مَلَكَ، وَغَيْرِ ذَلِكَ.

L24729 The third is that it is not authentically reported from 'Umar because Sa'id ibn al-Musayyib did not hear from 'Umar except the announcement of the death of al-Nu'man ibn Muqarrin only.

وَالثَّالِثُ: أَنَّهُ لَا يَصِحُّ عَنْ عُمَرَ؛ لِأَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ لَمْ يَسْمَعْ مِنْ عُمَرَ إلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقْرِنٍ فَقَطْ.

L24730 The fourth is that if this were valid, they would have erred regarding Umar by interpreting his ruling in an impermissible manner. Umar only intended

by this statement—if his saying "either to increase the price" were authentic—that you sell more measures for this price than you would sell [normally]. This contradicts their position. It is impermissible to presume any intent other than this for Umar—how could this be otherwise when an explicit clarification from Umar has been transmitted?

وَالرَّابِعُ: أَنَّهُ لَوْ صَحَّ لَكَانُوا قَدْ أَخْطَئُوا فِيهِ عَلَى عُمَرَ، فَتَأَوَّلُوهُ بِمَا لَا يَجُوزُ، وَإِنَّمَا أَرَادَ عُمَرُ بِذَلِكَ لَوْ صَحَّ عَنْهُ بِقَوْلِهِ إِمَّا أَنْ تَزِيدَ فِي السِّعْرِ، يُرِيدُ أَنْ تَبِيعَ مِنَ الْمَكَايِيلِ أَكْثَرَ مِمَّا تَبِيعُ بِهَذَا الثَّمَنِ، وَهَذَا خِلَافُ قَوْلِهِمْ - هَذَا الَّذِي لَا يَجُوزُ أَنْ يُظَنَّ بِعُمَرَ غَيْرُهُ، فَكَيْفَ وَقَدْ جَاءَ عَنْ عُمَرَ مُبَيَّنًا.

L24731 As we have transmitted this report from him through the chain of Abd al-Razzaq, from Ibn Jurayj, from Amr ibn Shu'ayb, who said: Umar encountered Hatib ibn Abi Balta'ah selling raisins in Medina and said: "How do you sell, O Hatib?" He answered: "Two mudd measures." Umar said: "You purchase at our doorways, in our courtyards, and in our markets, undermining our livelihoods. Then you sell as you wish. Sell by the sa' measure. Otherwise, do not sell in our markets. Otherwise, travel through the land, then bring your goods, then sell as you desire."

كَمَا رُوِّينَا هَذَا الْخَبَرَ عَنْهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: وَجَدَ عُمَرُ حَاطِبَ بْنَ أَبِي بَلْتَعَةَ يَبِيعُ الزَّبِيبَ بِالْمَدِينَةِ فَقَالَ: كَيْفَ تَبِيعُ يَا حَاطِبُ؟ فَقَالَ: مُدَّيْنِ، فَقَالَ عُمَرُ: تَبْتَاعُونَ بِأَبْوَابِنَا، وَأَفْنِيَتِنَا، وَأَسْوَاقِنَا، تَقْطَعُونَ فِي رِقَابِنَا. ثُمَّ تَبِيعُونَ كَيْفَ شِئْتُمْ، بِعْ صَاعًا، وَإِلَّا فَلَا تَبِعْ فِي أَسْوَاقِنَا، وَإِلَّا فَسِيبُوا فِي الْأَرْضِ ثُمَّ اجْلِبُوا ثُمَّ بِيعُوا كَيْفَ شِئْتُمْ.

L24732 This is the report of Umar with Ḥāṭib concerning raisins, as it is necessarily presumed about him.

فَهَذَا خَبَرُ عُمَرَ مَعَ حَاطِبٍ فِي الزَّبِيبِ كَمَا يَجِبُ أَنْ يُظَنَّ بِعُمَرَ.

L24733 If they say: "Is there harm in this upon the market vendors?" We respond: "This is baseless. Rather, the harm is in your statement upon all the townspeople, the poor, and this charitable person to the people. There is no harm in this upon the market vendors, for if they wish to lower prices as this person did, they may do so. Otherwise, they are more entitled to their wealth, just as this person is more entitled to his wealth."

فَإِنْ قَالُوا: فِي هَذَا ضَرَرٌ عَلَى أَهْلِ السُّوقِ؟ قُلْنَا: هَذَا بَاطِلٌ، بَلْ فِي قَوْلِكُمْ أَنْتُمُ الضَّرَرُ عَلَى أَهْلِ الْبَلَدِ كُلِّهِمْ، وَعَلَى الْمَسَاكِينِ، وَعَلَى هَذَا الْمُحْسِنِ إِلَى النَّاسِ، وَلَا ضَرَرَ فِي ذَلِكَ عَلَى أَهْلِ السُّوقِ، لِأَنَّهُمْ إِنْ شَاءُوا أَنْ يُرَخِّصُوا كَمَا فَعَلَ هَذَا فَلْيَفْعَلُوا، وَإِلَّا فَهُمْ أَمْلَكُ بِأَمْوَالِهِمْ كَمَا هَذَا أَمْلَكُ بِمَالِهِ.

L24734 The decisive proof in this matter is the saying of Allah, the Most High: "unless it is a trade by mutual consent among you" [An-Nisa: 29] and His saying, the Most High: "And Allah has permitted sale" [Al-Baqarah: 275].[24]

وَالْحُجَّةُ الْقَاطِعَةُ فِي هَذَا قَوْلُ اللَّهِ - تَعَالَى -: {إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وقَوْله تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L24735 A case in which a man purchased a commodity in the mar-

[مَسْأَلَة ابْتَاعَ سِلْعَة فِي السوق فَأَرَادَ أَهْلُ السُّوقِ أَنْ يشاركوه فِيهَا]

[24] **Qur'an references (L24734):** Qur'an 4:29 (An-Nisa); Qur'an 2:275 (Al-Baqarah).

ket, then the people of the market wished to partner with him in it.

L24736 Issue 1556: If a person purchases merchandise in the market, it is impermissible to rule that he must associate the people of that market as partners in it, as it is the exclusive property of its purchaser, and this is the scholars' view.

L24737–24739 The Malikis said: He is compelled to share in it, and we know of no one besides them who has stated this—and it is oppression. The ruling is manifest, and Allah's statement—the Exalted—nullifies it: {Except it be trade by mutual consent among you} [Quran 4:29]. For the seller did not mutually consent except with this buyer, not with others. Thus, applying this ruling to someone else constitutes unlawful consumption of wealth without any evidence whatsoever—and with Allah, the Exalted, lies all success.[25]

L24740 Rather, a ruling from 'Umar has been transmitted pertaining to others, not for their own advantage, regarding the market traders in this matter — as we have been narrated through the chain of 'Abd al-Razzāq from Sufyān al-Thawrī from Yaḥyā ibn Sa'īd al-Anṣārī from Muslim ibn Jundub, who said: Food arrived in Medina, and the market traders went out to purchase it. 'Umar said to them: "Do you trade in this market of ours? Either include the people, or leave, purchase [your goods], then return to sell."

L24741 Ali said: This ruling decreed by the Maliki jurists inflicts the gravest harm upon Muslims, for market artisans collude to kill the market for goods sold by the trader or the distressed seller. They conspire not to raise their offers and appoint one among them to undercut him until the distressed seller yields to their terms. Then they divide the goods among themselves. It is obligatory to prevent them from this practice, for it constitutes cheating. Allah's Messenger (peace be upon him) said: "He who cheats us is not of us."

L24742 **The jurisprudential matter of sale with a warranty against**

[25] **Qur'an references (L24737):** Qur'an 4:29 (An-Nisa).

١٥٥٦ - مَسْأَلَةٌ: وَمَنْ ابْتَاعَ سِلْعَةً فِي السُّوقِ فَلَا يَحِلُّ أَنْ يُحْكَمَ عَلَيْهِ بِأَنْ يُشْرِكَهُ فِيهَا أَهْلُ تِلْكَ السُّوقِ، وَهِيَ لِمُشْتَرِيهَا خَاصَّةً - وَهُوَ قَوْلُ النَّاسِ.

وَقَالَ الْمَالِكِيُّونَ: يُجْبَرُ عَلَى أَنْ يُشْرِكُوهُ فِيهَا، وَمَا نَعْلَمُ أَحَدًا قَالَهُ غَيْرَهُمْ وَهُوَ ظُلْمٌ ظَاهِرٌ، وَيُبْطِلُهُ قَوْلُ اللَّهِ - تَعَالَى -: {إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَلَمْ يَتَرَاضَ الْبَائِعُ إِلَّا مَعَ هَذَا الْمُبْتَاعِ لَا مَعَ غَيْرِهِ، فَالْحُكْمُ بِهِ لِغَيْرِهِ أَكْلُ مَالٍ بِالْبَاطِلِ بِلَا دَلِيلٍ أَصْلًا - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

بَلْ قَدْ جَاءَ عَنْ عُمَرَ الْحُكْمُ عَلَى أَهْلِ السُّوقِ بِهَذَا فِي غَيْرِهِمْ لَا لَهُمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ قَالَ: قَدِمَ الْمَدِينَةَ طَعَامٌ فَخَرَجَ أَهْلُ السُّوقِ إِلَيْهِ فَابْتَاعُوهُ، فَقَالَ لَهُمْ عُمَرُ: أَفِي سُوقِنَا هَذَا تَتَّجِرُونَ؟ أَشْرِكُوا النَّاسَ، أَوْ اُخْرُجُوا فَاشْتَرُوا ثُمَّ ائْتُوا فَبِيعُوا.

قَالَ عَلِيٌّ: وَهَذَا الَّذِي حَكَمَ بِهِ الْمَالِكِيُّونَ أَعْظَمُ الضَّرَرِ عَلَى الْمُسْلِمِينَ؛ لِأَنَّ أَهْلَ الصِّنَاعَةِ مِنْ السُّوقِ يَتَوَاطَئُونَ عَلَى إمَاتَةِ السِّلْعَةِ الَّتِي يَبِيعُهَا الْجَالِبُ أَوْ الْمُضْطَرُّ، وَيَتَّفِقُونَ عَلَى أَنْ لَا يَزِيدُوا فِيهَا، وَيَتْرُكُوا وَاحِدًا مِنْهُمْ يَسُومُهُ حَتَّى يَتْرُكَ الْمُضْطَرُّ عَلَى حُكْمِهِ، ثُمَّ يَقْتَسِمُونَهَا بَيْنَهُمْ، وَهَذَا وَاجِبٌ مَنْعُهُمْ مِنْهُ؛ لِأَنَّهُ غِشٌّ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيْسَ مِنَّا مَنْ غَشَّنَا» .

[مَسْأَلَة الْبَيْع بالبرائة مِنْ كُلّ عَيْب]

all defects.

L24743 Issue 1557: It is not permissible to conduct a sale with a waiver of all defects, nor on the condition that no defect may be asserted against me. A sale conducted in this manner is void and annulled forever. However, Abū Ḥanīfa maintained that sales with a waiver are permissible and did not recognize any right for the buyer to pursue a claim regarding defects at all—whether the seller knew of them or not.

L24744 Sufyan, al-Hasan ibn Hayy, and Abu Sulayman maintained that one is not absolved of liability for any of the defects—whether the seller knew them or not.

L24745 Al-Shafi'i held that by that [declaration], the seller is not relieved of liability for any defects except in the case of animals specifically, for he is relieved of liability for unknown defects in the sold animal, but he is not relieved of liability for defects he knew about and concealed.

L24746 For Mālik there are three opinions: one of them—which is the one we mentioned as agreed upon among them, and is identical to al-Shāfiʿī's opinion letter for letter—and it is his opinion in al-Muwaṭṭaʾ.

L24747 The second is that he is not exonerated thereby except specifically in the case of slaves. He is exonerated from what he did not know, but not from what he knew and concealed. However, regarding other animals and inanimate objects, he is not thereby exonerated from any defect whatsoever.

L24748–24749 The third [opinion]—to which he ultimately reverted—is that the principle of exemption (al-barā'ah) can only be invoked in three specific matters.

L24750 It refers to the governing authority's sale of spoils of war or the sale of an insolvent person's assets.

L24751 The second [ruling]: a minor defect - especially in slaves - is specifically applicable to everyone.

L24752 The third: specifically concerning what befalls enslaved individuals during the three-day liability period.

L24753 Some early scholars, including ʿAṭāʾ and Shurayḥ, held that no seller is ab-

١٥٥٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْبَيْعُ بِالْبَرَاءَةِ مِنْ كُلِّ عَيْبٍ، وَلَا عَلَى أَنْ لَا يُقَوَّمَ عَلَيَّ بِعَيْبٍ - وَالْبَيْعُ هَكَذَا فَاسِدٌ مَفْسُوخٌ أَبَدًا، وَذَهَبَ أَبُو حَنِيفَةَ إِلَى جَوَازِ الْبَيْعِ بِالْبَرَاءَةِ، وَلَمْ يَرَ لِلْمُشْتَرِي الْقِيَامَ بِعَيْبٍ أَصْلًا - عَلِمَهُ الْبَائِعُ أَوْ لَمْ يَعْلَمْهُ.

وَذَهَبَ سُفْيَانُ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو سُلَيْمَانَ: إِلَى أَنَّهُ لَا يَبْرَأُ بِشَيْءٍ مِنْ ذَلِكَ مِنْ الْعُيُوبِ - عَلِمَهُ الْبَائِعُ أَوْ لَمْ يَعْلَمْهُ.

وَذَهَبَ الشَّافِعِيُّ إِلَى أَنَّهُ لَا يَبْرَأُ بِذَلِكَ مِنْ شَيْءٍ مِنْ الْعُيُوبِ إِلَّا فِي الْحَيَوَانِ خَاصَّةً فَإِنَّهُ يَبْرَأُ بِهِ مِمَّا لَمْ يَعْلَمْ مِنْ عُيُوبِ الْحَيَوَانِ الْمَبِيعِ، وَلَا يَبْرَأُ مِمَّا عَلِمَهُ مِنْ عُيُوبِهِ فَكَتَمَهُ.

وَلِمَالِكٍ ثَلَاثَةُ أَقْوَالٍ -: أَحَدُهَا - وَهُوَ الَّذِي ذَكَرْنَا أَنَّهُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ، وَهُوَ مِثْلُ قَوْلِ الشَّافِعِيِّ حَرْفًا حَرْفًا، وَهُوَ قَوْلُهُ فِي الْمُوَطَّأِ.

وَالثَّانِي - أَنَّهُ لَا يَبْرَأُ بِذَلِكَ إِلَّا فِي الرَّقِيقِ خَاصَّةً، فَيَبْرَأُ مِمَّا لَمْ يَعْلَمْ، وَلَا يَبْرَأُ مِمَّا عَلِمَ فَكَتَمَ، وَإِنَّمَا فِي سَائِرِ الْحَيَوَانِ وَغَيْرِ الْحَيَوَانِ، فَلَا يَبْرَأُ بِهِ مِنْ عَيْبٍ أَصْلًا.

وَالثَّالِثُ - وَهُوَ الَّذِي رَجَعَ إِلَيْهِ، وَهُوَ أَنَّهُ لَا يَنْتَفِعُ بِالْبَرَاءَةِ إِلَّا فِي ثَلَاثَةِ أَشْيَاءَ فَقَطْ - وَهُوَ بَيْعُ السُّلْطَانِ لِلْمَغْنَمِ، أَوْ عَلَى مُفْلِسٍ.

وَالثَّانِي: الْعَيْبُ الْخَفِيفُ خَاصَّةً فِي الرَّقِيقِ خَاصَّةً لِكُلِّ أَحَدٍ.

وَالثَّالِثُ: فِيمَا يُصِيبُ الرَّقِيقَ فِي عُهْدَةِ الثَّلَاثِ خَاصَّةً.

solved—even if the sale included a waiver—unless they explicitly disclose a defect and physically acknowledge it.

وَذَهَبَ بَعْضُ الْمُتَقَدِّمِينَ، مِنْهُمْ: عَطَاءٌ، وَشُرَيْحٌ، إِلَى أَنَّهُ لَا يَبْرَأُ أَحَدٌ وَإِنْ بَاعَ بِالْبَرَاءَةِ، إِلَّا مِنْ عَيْبٍ بَيَّنَهُ وَوَضَعَ يَدَهُ عَلَيْهِ.

L24754 As for the statement concerning the placement of the hand, it has been narrated to us from Shurayh, and it has been authenticated from ʿAṭāʾ.

فَأَمَّا الْقَوْلُ بِوَضْعِ الْيَدِ فَرُوِّينَاهُ عَنْ شُرَيْحٍ، وَصَحَّ عَنْ عَطَاءٍ.

L24755 It has been narrated to us through the chain of ʿAbd al-Razzāq—Maʿmar—Ayyūb al-Sikhtiyānī—Abū ʿUthmān al-Nahdī, who said: I never observed them permitting anything regarding an ailment unless I had clarified it and placed [my] hand upon it.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ قَالَ: مَا رَأَيْتهمْ يُجِيزُونَ مِنْ الدَّاءِ إِلَّا مَا بَيَّنْت وَوَضَعْت يَدَك عَلَيْهِ.

L24756 Abū Muḥammad said: Had the Ḥanafīs and Mālikīs encountered such a report, they would have flown with it in every direction, for Abū ʿUthmān coexisted with all the Companions—from the first to the last—and even with the Messenger of Allah (peace and blessings be upon him), though he did not meet him.

قَالَ أَبُو مُحَمَّد: وَلَوْ وَجَدَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ مِثْلَ هَذَا لَطَارُوا بِهِ كُلَّ مَطَارٍ، لِأَنَّ أَبَا عُثْمَانَ أَدْرَكَ جَمِيعَ الصَّحَابَةِ - أَوَّلَهُمْ عَنْ آخِرِهِمْ - وَأَدْرَكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنَّهُ لَمْ يَلْقَهُ.

L24757 If they had encountered anything similar to this within their beliefs, they would have asserted: “This was only reported from the Companions, and that constitutes consensus.”

فَلَوْ وَجَدُوا مِثْلَ هَذَا فِيمَا يَعْتَقِدُونَهُ لَقَالُوا: إنَّمَا ذُكِرَ ذَلِكَ عَنْ الصَّحَابَةِ وَهَذَا إجْمَاعٌ.

L24758 Ali said: As for us, we do not make definitive rulings based on speculative assumptions, nor do we know the jurisprudential basis for placing the hand. Matters such as these are only taken from the Messenger of Allah—may Allah bless him and grant him peace—not from anyone else. And success is from Allah, the Exalted.

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا نَقْطَعُ بِالظُّنُونِ، وَلَا نَدْرِي لِوَضْعِ الْيَدِ مَعْنًى، وَمِثْلُ هَذَا لَا يُؤْخَذُ إلَّا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا عَنْ غَيْرِهِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24759 As for Al-Shafi’i’s statement: We know of no proof for him except that he merely followed what was narrated to us from Uthman through Malik, from Ibn Sa‘id al-Ansari, from Salim ibn Abdullah, who said: His father (Abdullah ibn Umar) sold a slave of his with exemption from liability. The buyer then took him to court before Uthman, saying: “He sold me a slave with a disease he did not specify to me?” Ibn Umar said: “I sold him with exemption from liability.” Uthman ruled against Ibn Umar, requiring him to swear that he had sold the slave and there was no disease he knew of. Ibn Umar refused to swear and reclaimed the slave.

وَأَمَّا قَوْلُ الشَّافِعِيِّ: فَمَا نَعْلَمُ لَهُ حُجَّةً إلَّا أَنَّهُ قَلَّدَ مَا رُوِّينَا عَنْ عُثْمَانَ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ قَالَ: إنَّ أَبَاهُ بَاعَ غُلَامًا لَهُ بِالْبَرَاءَةِ فَخَاصَمَهُ الْمُشْتَرِي إلَى عُثْمَانَ وَقَالَ: بَاعَنِي عَبْدًا وَبِهِ دَاءٌ لَمْ يُسَمِّهِ لِي؟ فَقَالَ ابْنُ عُمَرَ: بِعْته بِالْبَرَاءَةِ، فَقَضَى عُثْمَانُ عَلَى ابْنِ عُمَرَ بِأَنْ يَحْلِفَ لَقَدْ بَاعَهُ الْغُلَامَ وَمَا بِهِ دَاءٌ يَعْلَمُهُ، فَأَبَى ابْنُ عُمَرَ مِنْ أَنْ يَحْلِفَ وَارْتَجَعَ الْعَبْدَ.

قَالَ أَبُو مُحَمَّد: وَهَذَا عَجَبٌ جِدًّا إذْ قَلَّدَ عُثْمَانَ وَلَمْ يُقَلِّدْ ابْنَ عُمَرَ جَوَازَ الْبَيْعِ بِالْبَرَاءَةِ فِي الرَّقِيقِ، وَالشَّافِعِيُّ أَشَدُّ النَّاسِ إنْكَارًا لِلتَّقْلِيدِ.

L24760 Abu Muhammad said: This is deeply perplexing, for he followed Uthman's opinion but did not adopt Ibn Umar's ruling permitting the sale of enslaved persons with exoneration of liability, and al-Shāfiʿī was the most emphatic of people in rejecting blind adherence.

ثُمَّ عَجَبٌ آخَرُ كَيْفَ قَلَّدَ عُثْمَانَ فِيمَا لَمْ يَقُلْهُ عُثْمَانُ قَطُّ، وَلَا صَحَّ عَنْهُ، وَلَمْ يُقَلِّدْهُ فِي هَذَا الْخَبَرِ نَفْسِهِ فِي قَضَائِهِ عَلَى ابْنِ عُمَرَ بِالنُّكُولِ وَهُوَ صَحِيحٌ عَنْهُ؟ إنَّ هَذَا هُوَ عَيْنُ الْعَجَبِ.

L24761 Then another wonder: how he imitated Uthman regarding matters Uthman never uttered, nor authentically transmitted from him, yet failed to imitate Uthman himself in this very report - wherein he ruled against Ibn Umar for refusing to swear an oath, though this ruling is authentically transmitted from him? Truly, this is the height of astonishment.

وَاحْتَجَّ لِتَرْجِيحِهِ رَأْيَ عُثْمَانَ بِأَنَّ الْحَيَوَانَ لَا يَكَادُ يَخْلُو مِنْ عَيْبٍ بَاطِنٍ، وَأَنَّهُ يَتَغَذَّى بِالصِّحَّةِ وَالسَّقَمِ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ بِهَذَا أَنْ يَنْتَفِعَ بِالْبَرَاءَةِ فِيهِ مِمَّا لَمْ يَعْلَمْهُ مِنْ الْعُيُوبِ وَلَا يَنْفَعُهُ مِمَّا عَلِمَ فَكَتَمَ؟ إنَّ هَذَا لَعَجَبٌ؟ فَوَجَبَ رَفْضُ هَذَا الْقَوْلِ لِتَعَرِّيهِ مِنْ الدَّلَائِلِ.

L24762–24763 He argued for preferring Uthman's opinion by asserting that an animal is hardly ever free from internal defects and that it is nourished in both health and sickness. We responded: What then follows? How does this necessitate exoneration regarding defects one did not know, while granting no benefit for defects he knew yet concealed? This is truly astonishing! Thus, rejecting this view becomes obligatory due to its complete lack of evidence.

وَأَيْضًا: فَإِنَّ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَقُلْ: إنَّ الْحُكْمَ بِمَا حَكَمَ بِهِ إنَّمَا هُوَ فِي الْحَيَوَانِ دُونَ مَا سِوَاهُ، فَمِنْ أَيْنَ خَرَجَ لَهُ تَخْصِيصُ الْحَيَوَانِ بِذَلِكَ؟ فَإِنْ قَالُوا: إنَّمَا حَكَمَ بِذَلِكَ فِي عَبْدٍ؟ قُلْنَا: فَلَا تَتَعَدَّوْا بِذَلِكَ الْعَبِيدَ، أَوْ الرَّقِيقَ.

L24764 Moreover, Uthman—may Allah be pleased with him—did not state that the ruling he issued applies exclusively to animals and not to other matters. From where did he derive specifying animals for that? If they argue: "He only issued that ruling concerning a slave," we respond: "Then do not go beyond slaves or those in bondage."

فَإِنْ قَالُوا: قِسْنَا الْحَيَوَانَ عَلَى الْعَبْدِ؟ قُلْنَا: وَلِمَ لَمْ تَقِيسُوا جَمِيعَ الْمَبِيعَاتِ عَلَى الْعَبْدِ؟ فَخَصَلُوا عَلَى خَبَالِ الْقِيَاسِ، وَعَلَى مُخَالَفَةِ عُثْمَانَ، وَابْنِ عُمَرَ، فَكَيْفَ وَقَدْ رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ: أَنَّهُ بَاعَ سِلْعَةً كَانَتْ لَهُ بِالْبَرَاءَةِ، ثُمَّ ذَكَرَ الْخَبَرَ بِتَمَامِهِ، وَقَضَى عُثْمَانُ عَلَيْهِ بِالْيَمِينِ: أَنَّهُ مَا بَاعَهُ وَبِهِ دَاءٌ يَعْلَمُهُ فَكَرِهَ ابْنُ عُمَرَ الْيَمِينَ وَارْتَجَعَ السِّلْعَةَ.

L24765 If they were to say: "We have analogized animals to the slave?" We would reply: "Why did you not analogize all saleable goods to the slave?" Thus, they end up with the corruption of analogy and contravening ʿUthmān and Ibn ʿUmar. Moreover, we have received this report through the chain of Saʿīd ibn Manṣūr → Hushaym → Yaḥyā ibn Saʿīd al-Anṣārī → Sālim ibn ʿAbd Allāh ibn ʿUmar → his father: that he sold a commodity he owned with a warranty against defects, then the full report was recounted. ʿUthmān ruled that he must take an oath affirming he had not sold it while knowingly concealing any defect. Ibn ʿUmar disliked taking the oath and reclaimed the commodity.

L24766 This is a general ruling applicable to every item of sale, and its chain of transmission is continuous and sound, narrated through his father. We do

not know of any predecessor from the Companions who made this distinction at all.

فَهَذَا عُمُومٌ لِكُلِّ مَبِيعٍ وَإِسْنَادُهُ مُتَّصِلٌ سَالِمٌ عَنْ أَبِيهِ، وَمَا نَعْلَمُ لَهُمْ سَلَفًا فِي تَفْرِيقِهِمْ هَذَا مِنْ الصَّحَابَةِ أَصْلًا.

L24767 As for the statements of Mālik: they are severely contradictory. The first of these is that he narrated from one of them—which aligns with al-Shāfiʿī's opinion—that it is the matter unanimously agreed upon among them. This wording, according to his followers, is among the proofs that cannot be contradicted. In this, there are two astonishing aspects:

وَأَمَّا أَقْوَالُ مَالِك: فَشَدِيدَةُ الِاضْطِرَابِ -: أَوَّلُ ذَلِكَ أَنَّهُ حَكَى عَنْ أَحَدِهَا - وَهُوَ الْمُوَافِقُ لِقَوْلِ الشَّافِعِيِّ - أَنَّهُ الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ، وَهَذَا اللَّفْظُ عِنْدَ مُقَلِّدِيهِ مِنْ الْحُجَجِ الَّتِي لَا يَجُوزُ خِلَافُهَا، وَفِي هَذَا عَجَبَانِ عَجِيبَانِ -:.

L24768 One of the two is that a divergent opinion regarding this agreed-upon matter is reported from Uthmān and Ibn Umar, and we do not know of any consensus from which Uthmān and Ibn Umar deviated.

أَحَدُهُمَا - أَنَّهُ رُوِيَ عَنْ عُثْمَانَ، وَابْنِ عُمَرَ خِلَافُ هَذَا الْأَمْرِ الْمُجْتَمَعِ عَلَيْهِ، وَمَا عَلِمْنَا إجْمَاعًا يَخْرُجُ مِنْهُ عُثْمَانُ، وَابْنُ عُمَرَ.

L24769–24771 The second is that Mālik himself retracted this opinion he mentioned as being the consensus among them. For if the matter of consensus in Medina constitutes an authoritative proof that may not be opposed, how did Mālik permit himself to oppose the Medinan consensus, which is the truth? Indeed, he contradicted the truth and abandoned it after... That he knew it—and even though the matter they collectively uphold in Medina is neither a proof nor binding to follow—why then do they entice the vulnerable with it and cite it in rejecting the Sunnah? Is this not astonishing? If they say: "Malik only retracted from it due to a disagreement he found there," we respond: "He was indeed susceptible to error in his claim of consensus and later encountered disagreement. Therefore, do not deny such a possibility in all matters alleged to be unanimously agreed upon, nor deny the existence of disagreement therein. This is inescapable for them, except that this argument—which we have invalidated in our refutation of Al-Shāfiʿī's position as baseless—and in Allah, the Exalted, we find strength."

وَالثَّانِي - أَنَّهُ رَجَعَ مَالِكٌ نَفْسُهُ عَنْ هَذَا الْقَوْلِ الَّذِي ذَكَرَهُ أَنَّهُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ، فَلَئِنْ كَانَ الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ بِالْمَدِينَةِ حُجَّةً لَا يَجُوزُ خِلَافُهَا، فَكَيْفَ اسْتَجَازَ مَالِكٌ أَنْ يُخَالِفَ الْمُجْتَمَعَ عَلَيْهِ بِالْمَدِينَةِ، وَهُوَ الْحَقُّ؟ فَلَقَدْ خَالَفَ الْحَقَّ وَتَرَكَهُ بَعْدَ أَنْ عَلِمَهُ، وَإِنْ كَانَ الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَهُمْ بِالْمَدِينَةِ لَيْسَ حُجَّةً، وَلَا يَلْزَمُ اتِّبَاعُهُ، فَمَا بَالُهُمْ يَغُرُّونَ الضُّعَفَاءَ بِهِ، وَيَحْتَجُّونَ بِهِ فِي رَدِّ السُّنَنِ، أَمَا هَذَا عَجَبٌ؟ فَإِنْ قَالُوا: لَمْ يَرْجِعْ مَالِكٌ عَنْهُ إلَّا لِخِلَافٍ وَجَدَهُ هُنَالِكَ؟ فَقُلْنَا: فَقَدْ جَازَ الْوَهْمُ عَلَيْهِ فِي دَعْوَى الْإِجْمَاعِ، وَوَجَدَ الْخِلَافَ بَعْدَ ذَلِكَ، فَلَا تُنْكِرُوا مِثْلَ هَذَا فِي سَائِرِ مَا ذُكِرَ فِيهِ أَنَّهُ الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ، وَلَا تُنْكِرُوا وُجُودَ الْخِلَافِ فِيهِ، وَهَذَا مَا لَا مَخْلَصَ لَهُمْ مِنْهُ، إلَّا أَنَّ هَذَا الْقَوْلَ قَدْ بَيَّنَّا فِي إبْطَالِنَا قَوْلَ الشَّافِعِيِّ بُطْلَانَهُ - وَبِاَللَّهِ - تَعَالَى - نَتَأَيَّدُ.

L24772 As for his second statement regarding his specification of slaves specifically, we find no basis for it at all—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor analogy, nor personal opinion.

وَأَمَّا قَوْلُهُ الثَّانِي: فِي تَخْصِيصِهِ الرَّقِيقَ خَاصَّةً، فَمَا نَدْرِي لَهُ مُتَعَلَّقًا أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ.

وَلَعَلَّ قَائِلًا يَقُولُ: إنَّهُ قَلَّدَ عُثْمَانَ؟ فَقُلْنَا: وَمَا بَالُ تَقْلِيدِ عُثْمَانَ دُونَ تَقْلِيدِ ابْنِ عُمَرَ وَكِلَاهُمَا صَاحِبٌ -.

L24773 Perhaps someone might say: "He followed ʿUthmān?" We would respond: "Why follow ʿUthmān instead of Ibn ʿUmar when both of them are Companions!"

وَأَيْضًا: فَمَا قَلَّدَ عُثْمَانَ، لِأَنَّ عُثْمَانَ لَمْ يَقُلْ إنَّ هَذَا الْحُكْمَ إنَّمَا هُوَ فِي الرَّقِيقِ خَاصَّةً، وَقَدْ خَالَفَهُ فِي قَضَائِهِ بِالنُّكُولِ، فَمَا حَصَلَ إلَّا عَلَى خِلَافِ عُثْمَانَ، وَابْنِ عُمَرَ - فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا لِتَعَرِّيهِ عَنْ الْأَدِلَّةِ جُمْلَةً.

L24774 Moreover, he did not emulate Uthman's opinion because Uthman did not state that this ruling applies exclusively to slaves. Furthermore, he contradicted Uthman's judgment regarding the refusal to take an oath, thereby resulting in nothing but disagreement from Uthman and Ibn Umar. Consequently, this opinion is also invalidated, as it is entirely devoid of supporting evidence.

وَأَمَّا قَوْلُهُ الثَّالِثُ: الَّذِي رَجَعَ إلَيْهِ فَأَشَدُّهَا فَسَادًا لِأَنَّهُ لَا مُتَعَلَّقَ لَهُ بِقَوْلِ أَحَدٍ نَعْلَمُهُ: لَا صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

L24775 As for his third statement—the one he reverted to—it is the most flawed of them because it has no basis in the statement of anyone we know of: neither a Companion, nor a follower, nor analogical reasoning, nor Prophetic tradition, nor a weak narration, nor an opinion with a valid basis.

ثُمَّ تَخْصِيصُهُ الْبَيْعَ عَلَى الْمُفْلِسِ عَجَبٌ، وَعُهْدَةُ الثَّلَاثِ كَذَلِكَ، ثُمَّ تَخْصِيصُهُ بِالْعَيْبِ الْخَفِيفِ - وَهُوَ لَمْ يُبَيِّنْ مَا الْخَفِيفُ مِنْ الثَّقِيلِ - فَحَصَلَ مُقَلِّدُوهُ فِي أَضَالِيلَ لَا يَحْكُمُونَ بِهَا فِي دِينِ اللَّهِ - تَعَالَى - إلَّا بِالظَّنِّ.

L24776 Then his specification of the sale regarding the bankrupt is perplexing, and the liability of the three [parties] is likewise. Then his restriction to minor defects—while he failed to distinguish between minor and major—has plunged his followers into delusions, for they do not judge by them [delusions] in the religion of Allah—Exalted is He—except through conjecture.

فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24777 Thus, all these statements have been invalidated. And by Allah, the Exalted, is all divine success.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَإِنَّهُمْ قَالُوا: قَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ عَلَى أَنَّهُ إذَا بَاعَ وَبَرِئَ مِنْ عَيْبٍ سَمَّاهُ فَإِنَّهُ يَبْرَأُ مِنْهُ، وَلَا فَرْقَ بَيْنَ تَفْصِيلِهِ عَيْبًا عَيْبًا وَبَيْنَ إجْمَالِهِ الْعُيُوبَ، وَقَالُوا: قَدْ رُوِيَ قَوْلُنَا عَنْ بَعْضِ الصَّحَابَةِ كَمَا ذَكَرْنَا عَنْ ابْنِ عُمَرَ، وَزَيْدِ بْنِ ثَابِتٍ، وَلَعَلَّهُمْ يَحْتَجُّونَ «بِالْمُسْلِمِينَ عِنْدَ شُرُوطِهِمْ» .

L24778 As for the statement of Abū Ḥanīfah, his followers said: A certain consensus has been established that if one sells an item and is absolved from a defect he specifies, he is indeed absolved from it. There is no distinction between enumerating each defect individually and generalizing them collectively. They added: Our position has been transmitted from some Companions, as we have mentioned concerning Ibn ʿUmar and Zayd ibn Thābit. They likely base their argument on the principle: "Muslims are bound by their stipulated conditions."

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ شَغَبًا غَيْرَ هَذَا، فَأَمَّا «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَقَدْ قَدَّمْنَا: أَنَّهُ بَاطِلٌ لَا يَصِحُّ وَأَنَّهُ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّ شُرُوطَ الْمُسْلِمِينَ لَيْسَتْ

L24779–24780 Abū Muḥammad said: We do not know of any dispute from them except this. As for the statement "Muslims are bound by their conditions," we have previously established that it is invalid and impermissible, and even if it were valid, they would have no proof for it. This is because the condi-

tions applicable to Muslims are only those which Allah—the Exalted—and His Messenger—peace and blessings of Allah be upon him—have explicitly permitted, not conditions that Allah—the Exalted—or His Messenger—upon him be peace—have not sanctioned. The Messenger of Allah—peace and blessings of Allah be upon him—said: "Every condition not in the Book of Allah—the Exalted—is invalid."

إِلَّا الشُّرُوطَ الَّتِي نَصَّ اللَّهُ - تَعَالَى - عَلَى إبَاحَتِهَا وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا شُرُوطًا لَمْ يُبِحْهَا اللَّهُ - تَعَالَى - وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ - تَعَالَى - فَهُوَ بَاطِلٌ» .

L24781 As for narrations from some Companions, they differed, and there is no proof in the opinion of some of them over others. As for their statement: "There is no difference between specifying defects explicitly and mentioning them generally"—they lied. Rather, the greatest distinction exists between them. For if one names the defect and acknowledges it, they have spoken truthfully and are absolved from it. But if one mentions defects generally, they have lied with certainty, since defects are contradictory. Thus, the sale contract becomes established upon falsehood and is therefore invalidated. How can there be no difference between a truthful contract and a false one? As for the Companions, they differed, and there is no proof in the opinion of anyone apart from the Messenger of Allah—peace and blessings be upon him. Thus, this opinion is also invalidated due to its lack of evidence.

وَأَمَّا الرِّوَايَةُ عَنْ بَعْضِ الصَّحَابَةِ فَقَدْ اخْتَلَفُوا، وَلَا حُجَّةَ فِي قَوْلِ بَعْضِهِمْ دُونَ بَعْضٍ - وَأَمَّا قَوْلُهُمْ: لَا فَرْقَ بَيْنَ تَفْصِيلِ الْعُيُوبِ وَبَيْنَ إجْمَالِهَا، فَكَذَبُوا، بَلْ بَيْنَهُمَا أَعْظَمُ الْفَرْقِ، لِأَنَّهُ إذَا سَمَّى الْعَيْبَ وَوَقَفَ عَلَيْهِ فَقَدْ صَدَقَ وَبَرِئَ مِنْهُ، وَإِذَا أَجْمَلَ الْعُيُوبَ فَقَدْ كَذَبَ بِيَقِينٍ، لِأَنَّ الْعُيُوبَ تَتَضَادُّ، فَصَارَتْ صَفْقَةً انْعَقَدَتْ عَلَى الْكَذِبِ فَهِيَ مَفْسُوخَةٌ، وَكَيْفَ لَا يَكُونُ فَرْقٌ بَيْنَ صَفْقَةِ صِدْقٍ وَصَفْقَةِ كَذِبٍ - وَأَمَّا الصَّحَابَةُ: فَقَدْ اخْتَلَفُوا وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا لِتَعَرِّيهِ مِنْ الْأَدِلَّةِ.

L24782 Abū Muḥammad said: Let us now present the proof for the validity of our position by the power of Allah, Exalted is He, and His might. Whoever sells on the condition that no defect may be contested if discovered—such a sale is voidable and void, for it is contracted under a condition not stipulated in the Book of Allah, Exalted is He, therefore it is void, and because it constitutes fraud, and fraud is forbidden.

قَالَ أَبُو مُحَمَّدٍ: فَلْنَذْكُرْ الْآنَ الْبُرْهَانَ عَلَى صِحَّةِ قَوْلِنَا بِحَوْلِ اللَّهِ - تَعَالَى - وَقُوَّتِهِ -: وَهُوَ أَنَّ مَنْ بَاعَ بِشَرْطِ أَنْ لَا يُقَامَ عَلَيْهِ بِعَيْبٍ إنْ وُجِدَ، فَهُوَ بَيْعٌ فَاسِدٌ بَاطِلٌ، لِأَنَّهُ انْعَقَدَ عَلَى شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ - تَعَالَى -، فَهُوَ بَاطِلٌ، وَلِأَنَّهُ غِشٌّ، وَالْغِشُّ مُحَرَّمٌ.

L24783 He (peace be upon him) said: "Whoever deceives us is not one of us." And he (peace be upon him) said: "Religion is sincere devotion to Allah, His Messenger, His Book, the rulers of the Muslims, and their common people."

قَالَ - عَلَيْهِ السَّلَامُ -: «مَنْ غَشَّنَا فَلَيْسَ مِنَّا» وَقَالَ - عَلَيْهِ السَّلَامُ -: «الدِّينُ النَّصِيحَةُ لِلَّهِ وَلِرَسُولِهِ وَلِكِتَابِهِ وَلِأَئِمَّةِ الْمُسْلِمِينَ وَعَامَّتِهِمْ» .

L24784 Whoever sells with a disclaimer of defects must necessarily have intended one of two scenarios: either that no claim may be brought against him if a defect is found, and that he is free from liability for it—as we have established that a sale formulated thus is void—or that he intended this disclaimer to encompass every defect. The latter is certainly void, for fever constitutes a

وَمَنْ بَاعَ بِالْبَرَاءَةِ مِنْ الْعُيُوبِ: فَلَا يَخْلُو مِنْ أَنْ يَكُونَ أَرَادَ بِذَلِكَ أَنْ لَا يُقَامَ عَلَيْهِ بِعَيْبٍ إنْ وُجِدَ، وَأَنَّهُ بَرِيءٌ مِنْهُ، فَقَدْ ذَكَرْنَا أَنَّ الْبَيْعَ هَكَذَا بَاطِلٌ أَوْ يَكُونَ أَرَادَ فِيهِ

defect from heat, while hemiplegia constitutes a defect from cold, and these two are mutually contradictory.

كُلَّ عَيْبٍ فَهَذَا بَاطِلٌ بِيَقِينٍ؛ لِأَنَّ الْحُمَّى عَيْبٌ، وَهِيَ مِنْ حَرٍّ، وَالْفَالِجُ عَيْبٌ وَهُوَ مِنْ بَرْدٍ، وَهُمَا مُتَضَادَّانِ.

L24785–24787 Every sale contracted upon falsehood and voidance is void, because it was contracted on the premise that it holds no validity unless... Regarding the validity of what inherently lacks validity, it holds no validity. There is no distinction in this regard between specifying all defects, some of them, or none at all, for he specified one defect and added more defects while lying about them. Thus, the transaction is invalid because it is founded on falsehood, on attributing to it what does not exist within it, and because he purchased it based on that false premise. Since the defect is not present, the purchase is invalid for him in this matter—and this is perfectly clear. Success comes solely from Allah, the Exalted.

وَكُلُّ بَيْعٍ انْعَقَدَ عَلَى الْكَذِبِ وَالْبَاطِلِ فَهُوَ بَاطِلٌ؛ لِأَنَّهُ انْعَقَدَ عَلَى أَنَّهُ لَا صِحَّةَ لَهُ إِلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ، فَلَا صِحَّةَ لَهُ - وَلَا فَرْقَ فِي هَذَا الْوَجْهِ بَيْنَ أَنْ يُسَمِّيَ الْعُيُوبَ كُلَّهَا، أَوْ بَعْضَهَا، أَوْ لَا يُسَمِّيَهَا؛ لِأَنَّهُ إِنَّمَا سَمَّى عَيْبًا وَاحِدًا فَأَكْثَرَ وَكَذَبَ فِيهِ، فَالصَّفْقَةُ بَاطِلَةٌ؛ لِانْعِقَادِهَا عَلَى الْبَاطِلِ، وَعَلَى أَنَّ بِهِ مَا لَيْسَ فِيهِ، وَأَنَّهُ عَلَى ذَلِكَ يَشْتَرِيهِ، فَإِذْ لَيْسَ بِهِ ذَلِكَ الْعَيْبُ، فَلَا شِرَاءَ لَهُ فِيهِ - وَهَذَا فِي غَايَةِ الْوُضُوحِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24788 If he sells and remains silent, neither absolving himself from any defect nor stipulating soundness, then the sale is valid. If a defect is found, the one who finds it has the choice to return [the item] or retain it; otherwise, the sale is binding. And with Allah, the Exalted, lies success.

فَإِنْ بَاعَ وَسَكَتَ وَلَمْ يَبْرَأْ مِنْ عَيْبٍ أَصْلًا وَلَا شَرَطَ سَلَامَةً، فَهُوَ بَيْعٌ صَحِيحٌ إِنْ وُجِدَ الْعَيْبُ فَالْخِيَارُ لِوَاجِدِهِ فِي رَدٍّ أَوْ إِمْسَاكٍ، وَإِلَّا فَالْبَيْعُ لَازِمٌ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

L24789 The issue of selling copies of the Quran and books of sciences.

[مَسْأَلَة بَيْع الْمَصَاحِف وكتب الْعُلُوم]

L24790 1558. Issue: The sale of muṣḥafs is permissible, as is the sale of all books of knowledge—Arabic and non-Arabic ones—because what is sold is merely the parchment, paper, sheets and ink, the tanned leather (if the books are bound), and the ornamentation (if present solely on them).

١٥٥٨ - مَسْأَلَةٌ: وَبَيْعُ الْمَصَاحِفِ جَائِزٌ، وَكَذَلِكَ جَمِيعُ كُتُبِ الْعُلُومِ - عَرَبِيِّهَا وَعَجَمِيِّهَا - لِأَنَّ الَّذِي يُبَاعُ إِنَّمَا هُوَ الرَّقُّ أَوْ الْكَاغَدُ أَوْ الْقِرْطَاسُ وَالْمِدَادُ، وَالْأَدِيمُ - إِنْ كَانَتْ مُجَلَّدَةً - وَحِلْيَةً إِنْ كَانَتْ عَلَيْهَا فَقَطْ.

L24791 As for knowledge, it is not sold because it is not a corporeal body; this is the opinion of Abu Hanifah, Malik, al-Shafi'i, and Abu Sulayman.

وَأَمَّا الْعِلْمُ فَلَا يُبَاعُ؛ لِأَنَّهُ لَيْسَ جِسْمًا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L24792 And it has been narrated to us through the chain of Sa'īd ibn Manṣūr: from Khālid ibn 'Abdillāh, known as al-Ṭaḥḥān (the miller), from Sa'īd ibn Iyās al-Jurāyirī, from 'Abdillāh ibn Shaqīq, who said: The Companions of the

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا خَالِدُ بْنُ عَبْدِ اللَّهِ - هُوَ الطَّحَّانُ - عَنْ سَعِيدِ بْنِ إِيَاسٍ الْجُرَيْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَقِيقٍ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَكْرَهُونَ بَيْعَ الْمَصَاحِفِ، وَتَعْلِيمَ الصِّبْيَانِ بِالْأَرْشِ - يُعَظِّمُونَ ذَلِكَ.

Messenger of Allah (peace be upon him) used to disapprove of selling copies of the Qur'ān and teaching children in exchange for compensation. They regarded this matter with profound gravity.

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ سَالِمِ بْنِ عَجْلَانَ - هُوَ الْأَفْطَسُ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ ابْنُ عُمَرَ: وَدِدْت أَنِّي قَدْ رَأَيْت أَنَّ الْأَيْدِيَ تُقْطَعُ فِي بَيْعِ الْمَصَاحِفِ.

L24793 From the narration of Waki': I, Sufyan al-Thawri, [narrate] from Salim ibn 'Ajlan - he is Al-Aftas - from Sa'id ibn Jubayr, who reported that Ibn 'Umar said: I wish I had witnessed hands being cut off for trafficking copies of the Qur'an.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا هَمَّامُ بْنُ يَحْيَى أَنَا قَتَادَةُ عَنْ زُرَارَةَ بْنِ أَوْفَى الْحَرَشِيِّ عَنْ مُطَرِّفِ بْنِ مَالِكٍ قَالَ: شَهِدْت فَتْحَ تُسْتَرَ مَعَ أَبِي مُوسَى الْأَشْعَرِيِّ فَأَصَبْنَا دَانْيَالَ بِالسُّوسِ وَمَعَهُ رَبْعَةٌ فِيهَا كِتَابٌ، وَمَعَنَا أَجِيرٌ نَصْرَانِيٌّ فَقَالَ: تَبِيعُونِي هَذِهِ الرَّبْعَةَ وَمَا فِيهَا؟ قَالُوا: إنْ كَانَ فِيهَا ذَهَبٌ أَوْ فِضَّةٌ أَوْ كِتَابُ اللَّهِ لَمْ نَبِعْك؟ قَالَ: فَإِنَّ الَّذِي فِيهَا كِتَابُ اللَّهِ - تَعَالَى -، فَكَرِهُوا بَيْعَهُ، قَالَ: فَبِعْنَاهُ الرَّبْعَةَ بِدِرْهَمَيْنِ، وَوَهَبْنَا لَهُ الْكِتَابَ، قَالَ قَتَادَةُ: فَمِنْ ثَمَّ كُرِهَ بَيْعُ الْمَصَاحِفِ؛ لِأَنَّ الْأَشْعَرِيَّ، وَالصَّحَابَةَ كَرِهُوا بَيْعَ ذَلِكَ الْكِتَابِ.

L24794 Through the chain of Al-Ḥajjāj ibn al-Minhāl: Hammām ibn Yaḥyā narrates from Qatādah, who narrates from Zurārah ibn Awfā al-Ḥarashī from Muṭarrif ibn Mālik, who said: I witnessed the conquest of Tustar with Abū Mūsā al-Ashʿarī. We found Daniel in Sus with a square case containing a book. A Christian hired worker with us said: "Will you sell me this case and its contents?" They replied: "If it contained gold, silver, or the Book of Allah, we would not sell it to you." He said: "What is inside is the Book of Allah - the Exalted." They disliked selling it. He said: So we sold him the case for two dirhams and gifted him the book. Qatādah said: This is why selling copies of the Quran is disliked, for al-Ashʿarī and the Companions disliked selling that book.

قَالَ أَبُو مُحَمَّد: إنَّمَا كَرِهُوا الْبَيْعَ نَفْسَهُ لَيْسَ مِنْ أَجْلِ أَنَّ الْمُشْتَرِيَ كَانَ نَصْرَانِيًّا، أَلَا تَرَى أَنَّهُمْ قَدْ وَهَبُوهُ لَهُ بِلَا ثَمَنٍ.

L24795 Abu Muhammad said: They disapproved the sale itself, not because the buyer was a Christian; do you not see that they had gifted it to him without payment?

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي الضُّحَى سَأَلْت عَبْدَ اللَّهِ بْنَ يَزِيدَ، وَمَسْرُوقًا، وَشُرَيْحًا، عَنْ بَيْعِ الْمَصَاحِفِ؟ فَقَالُوا: لَا نَأْخُذُ لِكِتَابِ اللَّهِ ثَمَنًا.

L24796–24797 And from the narration of Waki': I, Sufyan al-Thawri, report from Abu Husayn, from Abu al-Duha, who said: "I asked 'Abdullah ibn Yazid, Masruq, and Shurayh about selling copies of the Qur'an." They replied: "We do not take a price for the Book of Allah."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ أَنَّ ابْنَ جُرَيْجٍ ذَكَرَ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ فِي الْمَصَاحِفِ: اشْتَرِهَا وَلَا تَبِعْهَا.

L24798 On the authority of ʿAbd al-Razzāq, from Sufyān, who reported that Ibn Juraij narrated from ʿAṭāʾ, from Ibn ʿAbbās, who said regarding copies of the Quran: "Buy them and do not sell them."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ عَنِ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ فِي الْمَصَاحِفِ: اشْتَرِهَا وَلَا تَبِعْهَا.

L24799 And via the chain of Ibn Abi Shaybah: Abdullah ibn Idris al-Awdi reported from Ibn Jurayj, from Abu al-Zubayr, from Jabir ibn Abdullah, who said regarding copies of the Quran, “Buy them and do not sell them.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - عَنْ لَيْثٍ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ عَنْ عَلْقَمَةَ عَنِ ابْنِ مَسْعُودٍ أَنَّهُ كَرِهَ شِرَاءَ الْمَصَاحِفِ وَبَيْعَهَا.

L24800 And through the chain of Ibn Abi Shaybah: I, Ismāʿīl ibn Ibrāhīm (he is Ibn ʿUlayyah), narrated from Layth, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm, from ʿAlqamah, from Ibn Masʿūd that he held the buying and selling of Masāhif (Qur’anic codices) to be disliked.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ فُضَيْلٍ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قُلْتُ لِعَلْقَمَةَ: أَبِيعُ مُصْحَفًا؟ قَالَ: لَا.

L24801 And from the chain of Ibn Abi Shaybah: I, Ibn Fudayl, narrated from al-A’mash, from Ibrāhīm al-Nakhaʿī. I asked ʿAlqamah: “May I sell a *Muṣḥaf*?” He said: “No.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنِ عُلَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ أَبِي مَعْشَرٍ عَنْ إِبْرَاهِيمَ قَالَ: لَحْسُ الدُّبُرِ أَحَبُّ إِلَيَّ مِنْ بَيْعِ الْمَصَاحِفِ.

L24802 Through the chain of Ibn Abi Shaybah: Ibn ʿUlayyah narrated from Saʿīd ibn Abī ʿArūbah, from Abū Maʿshar, from Ibrāhīm, who said: “Licking the anus is more preferable to me than selling Qur’anic codices.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ يَقُولُ: لَا يُورَثُ الْمُصْحَفُ: هُوَ لِأَهْلِ الْبَيْتِ الْقُرَّاءِ مِنْهُمْ.

L24803 And through the chain of Al-Ḥajjāj ibn Al-Minhāl → Abū ʿAwānah → Al-Mughīrah ibn Miqsam → Ibrāhīm An-Nakhaʿī, who said: The Muṣḥaf is not inherited; it belongs to the readers among the members of the household.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ، قَالَ: كَانَ يَكْرَهُ بَيْعَ الْمَصَاحِفِ وَابْتِيَاعَهَا.

L24804 From the chain of Al-Ḥajjāj ibn Al-Minhāl: Yazīd ibn Zuraiʿ reported from Khālid—known as Al-Ḥadhdhā’—who reported from Muḥammad ibn Sīrīn, from ʿAbīdah Al-Salmānī, who said: He disapproved of selling copies of the Quran and purchasing them.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ عُلَيَّةَ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ أَنَّهُ كَرِهَ بَيْعَ الْمَصَاحِفِ وَابْتِيَاعَهَا، وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا مَهْدِ بْنُ مَيْمُونٍ سَأَلْتُ مُحَمَّدَ بْنَ سِيرِينَ عَنْ كُتَّابِ الْمَصَاحِفِ بِالْأَجْرِ؟ فَقَالَ: كَرِهَ كُتَّابَهَا وَاسْتِكْتَابَهَا وَبَيْعَهَا وَشِرَاءَهَا.

L24805 And via the chain of Ibn Abi Shaybah: from Ibn ʿUlayyah, from Khalid al-Hadhdha, from Muhammad ibn Sirin, from ʿUbaydah al-Salmani that he disliked selling Qurans and purchasing them. And via the chain of al-Hajjaj ibn al-Minhāl: from Mahdi ibn Maimun: “I asked Muhammad ibn Sirin about scribes writing Qurans for payment.” He said: “He disliked writing them, commissioning their writing, selling them, and buying them.”

L24806–24808 And through the chain of Ibn Abi Shaybah: He said, “Waki‘ narrated from ʿIkrimah ibn ʿAmmar, from Salim—the son of ʿAbdullah ibn ʿUmar—who said: Detestable is the trade of selling copies of the Qur’an.” Among the chains

of transmission is that of Wakiʿ, who narrated from Saʿid ibn Abi ʿArubah and Shuʿbah. Saʿid ibn Abi ʿArubah narrated from Qatādah from Saʿid ibn al-Musayyib, while Shuʿbah narrated from Abi Bishr from Saʿid ibn Jubayr. Ibn al-Musayyib and Ibn Jubayr then concurred, both stating: “Acquire the Muṣḥafs and do not sell them.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ سَالِمٍ هُوَ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ - قَالَ: بِئْسَ التِّجَارَةُ بَيْعُ الْمَصَاحِفِ وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، وَشُعْبَةَ، قَالَ سَعِيدٌ: عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَقَالَ شُعْبَةُ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ، ثُمَّ اتَّفَقَ ابْنُ الْمُسَيِّبِ، وَابْنُ جُبَيْرٍ قَالَا جَمِيعًا: اشْتَرِ الْمَصَاحِفَ وَلَا تَبِعْهَا.

L24809 Through the chain of Ibn Abi Shaybah: I, Al-Mu’tamir ibn Sulayman, report from Ma’mar, from Qatadah, who said: “Purchase and do not sell”—referring to the Quranic codices.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: اشْتَرِ وَلَا تَبِعْ - يَعْنِي الْمَصَاحِفَ.

L24810 From the transmission path of Ibn Abi Shaybah: from Affan, from Hammam, from Yahya ibn Abi Kathir, who said: I asked Abu Salama ibn Abd al-Rahman ibn Awf about selling Qur’anic codices. He said: “Buy them and do not sell them” - and this is the view of al-Hakam ibn Utayba and Muhammad ibn Ali ibn al-Husayn.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَفَّانَ أَنَا هَمَّامٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: سَأَلْت أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ بَيْعِ الْمَصَاحِفِ؟ قَالَ: اشْتَرِهَا وَلَا تَبِعْهَا - وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ.

L24811 And via the transmission of ʿAbd al-Razzāq, on the authority of Maʿmar, he said, “I asked al-Zuhrī, ’What about selling *Masāḥif*?’ He disapproved of it.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَنْ بَيْعِ الْمَصَاحِفِ؟ فَكَرِهَهُ.

L24812 Through the chain of Wakiʿ: Isrāʾīl narrated from Jābir, from ʿĀmir al-Shaʿbī, who said: “Purchase copies of the Qur’an (muṣḥafs) and do not sell them.”

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا إِسْرَائِيلُ عَنْ جَابِرٍ عَنْ عَامِرٍ الشَّعْبِيِّ قَالَ: اشْتَرِ الْمَصَاحِفَ وَلَا تَبِعْهَا.

L24813 And from the narration of Ḥammād ibn Salamah through Ḥumayd from al-Ḥasan that he deemed reprehensible the sale of Qur’anic codices. Matar al-Warrāq [the manuscript trader] insisted relentlessly until he granted him permission. These authorities include Abū Mūsā al-Ashʿarī along with all those associated with him among the Companions or Followers during ʿUmar ibn al-Khaṭṭāb’s era, then six explicitly named Companions: Ibn Masʿūd, ʿAbdullāh ibn ʿAbbās, ʿAbdullāh ibn Zayd, Jābir ibn ʿAbdullāh, Ibn ʿUmar, followed by all the Companions collectively without dissent among them.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ أَنَّهُ كَرِهَ بَيْعَ الْمَصَاحِفِ فَلَمْ يَزَلْ بِهِ مَطَرٌ الْوَرَّاقُ حَتَّى أَرْخَصَ لَهُ، فَهَؤُلَاءِ أَبُو مُوسَى الْأَشْعَرِيُّ، وَكُلُّ مَنْ مَعَهُ مِنْ صَاحِبٍ أَوْ تَابِعٍ أَيَّامَ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ، وَعَبْدِ اللَّهِ بْنِ عَبَّاسٍ، وَعَبْدِ اللَّهِ بْنِ زَيْدٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ عُمَرَ: سِتَّةٌ مِنْ الصَّحَابَةِ بِأَسْمَائِهِمْ، ثُمَّ جَمِيعُ الصَّحَابَةِ بِإِطْلَاقٍ لَا مُخَالِفَ لَهُمْ مِنْهُمْ.

وَمِنْ التَّابِعِينَ الْمُسَمَّيْنَ: مَسْرُوقٌ، وَشُرَيْحٌ، وَمُطَرِّفُ بْنُ مَالِكٍ، وَعَلْقَمَةُ، وَإِبْرَاهِيمُ، وَعَبِيدَةُ السَّلْمَانِيُّ، وَابْنُ سِيرِينَ، وَسَالِمُ بْنُ عَبْدِ اللَّهِ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَقَتَادَةُ، وَالزُّهْرِيُّ، وَالشَّعْبِيُّ، وَالْحَسَنُ، كُلُّهُمْ يَنْهَى عَنْ بَيْعِ الْمَصَاحِفِ - وَلَا يَرَاهُ سِوَى مَنْ ذَكَرَ ذَلِكَ عَنْهُ مِنْ الْجُمْهُورِ مِمَّنْ لَمْ يُسَمِّ وَمَا نَعْلَمُهُ رُوِّيَ إبَاحَةَ بَيْعِهَا إلَّا عَنْ الْحَسَنِ، وَالشَّعْبِيِّ بِاخْتِلَافٍ عَنْهُمَا، وَعَنْ أَبِي الْعَالِيَةِ، وَأَثَرَيْنِ مَوْضُوعَيْنِ -: أَحَدُهُمَا: مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ طَلْقِ بْنِ السَّمْحِ عَنْ عَبْدِ الْجَبَّارِ بْنِ عَمْرٍو الْأَيْلِيِّ قَالَ: كَانَ ابْنُ مُصَبِّحٍ يَكْتُبُ الْمَصَاحِفَ فِي زَمَانِ عُثْمَانَ وَيَبِيعُهَا وَلَا يُنْكَرُ ذَلِكَ عَلَيْهِ.

L24814–24816 Among the explicitly named Followers are: Masrūq, Shuraiḥ, Muṭarrif ibn Mālik, ʿAlqamah, Ibrāhīm, ʿUbeydah al-Salmānī, Ibn Sīrīn, Sālim ibn ʿAbdillāh, Saʿīd ibn al-Musayyab, Saʿīd ibn Jubayr, Abū Salamah ibn ʿAbd al-Raḥmān, Qatādah, al-Zuhrī, al-Shaʿbī, and al-Ḥasan—all of them prohibited the sale of muṣḥafs. None deemed it permissible except those among the majority who were cited as holding this view (despite not being explicitly named). As far as we know, no one transmitted reports permitting its sale except al-Ḥasan and al-Shaʿbī—with conflicting accounts from them—along with Abū al-ʿĀliyah and two fabricated narrations: one via the transmission chain of ʿAbd al-Malik ibn Ḥabīb from Ṭalq ibn al-Samḥ from ʿAbd al-Jabbār ibn ʿAmr al-Aylī. He said: Ibn Muṣabbiḥ used to write copies of the Qur'an during the time of ʿUthmān and sell them, and this was not disapproved against him.

وَالْآخَرُ أَيْضًا: مِنْ طَرِيقِ ابْنِ حَبِيبٍ عَنْ الْحَارِثِ بْنِ أَبِي الزُّبَيْرِ الْمَدَنِيِّ عَنْ أَنَسِ بْنِ عِيَاضٍ عَنْ بُكَيْرِ بْنِ مِسْمَارٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَكْرَهُ لِلرَّجُلِ أَنْ يَبِيعَهَا - يَتَّخِذُهَا مَتْجَرًا - وَلَا يَرَى بَأْسًا بِمَا عَمِلَتْ يَدَاهُ مِنْهَا أَنْ يَبِيعَهُ.

L24817 Another narration is also reported via Ibn Habib from al-Harith ibn Abi al-Zubayr al-Madani from Anas ibn Iyad from Bukayr ibn Mismar from Ibn Abbas: He disapproved of a man selling the property if he established it as a shop, but he saw no harm in selling what his hands had produced from it through labor.

ابْنُ حَبِيبٍ سَاقِطٌ - وَابْنُ مُصَبِّحٍ، وَالْحَارِثُ بْنُ أَبِي الزُّبَيْرِ، وَطَلْقُ بْنُ السَّمْحِ: لَا يَدْرِي أَحَدٌ مَنْ هُمْ مِنْ خَلْقِ اللَّهِ - تَعَالَى -، وَعَبْدُ الْجَبَّارِ بْنُ عَمْرٍو سَاقِطٌ وَلَمْ يُدْرِكْ عُثْمَانَ، وَبُكَيْرُ بْنُ مِسْمَارٍ ضَعِيفٌ - ثُمَّ هُمَا مُخَالِفَانِ لِقَوْلِهِمْ؛ لِأَنَّهُ لَيْسَ فِي حَدِيثِ ابْنِ مُصَبِّحٍ: أَنَّ عُثْمَانَ عَرَفَ بِذَلِكَ، وَلَا أَنَّ أَحَدًا مِنْ الصَّحَابَةِ عَرَفَ بِذَلِكَ، وَفِي حَدِيثِ ابْنِ عَبَّاسٍ: أَنَّهُ كَرِهَ أَنْ يَتَّخِذَ بَيْعَهَا مَتْجَرًا.

L24818 Ibn Ḥabīb is rejected. As for Ibn Muṣabbiḥ, al-Ḥārith ibn Abī al-Zubayr, and Ṭalq ibn al-Samḥ: none among Allah's creation—Exalted is He—knows who they are. ʿAbd al-Jabbār ibn ʿAmr is rejected and did not meet ʿUthmān. Bukayr ibn Mismār is weak. Moreover, these two narrations conflict with their statement, for Ibn Muṣabbiḥ's narration does not mention that ʿUthmān was aware of this, nor that any of the Companions knew of it. In Ibn ʿAbbās's narration, it is mentioned that he disliked taking its sale as a trade.

فَأَيْنَ الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ الْمُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَالْمُشَنِّعُونَ بِخِلَافِ جُمْهُورِ الْعُلَمَاءِ - وَقَدْ وَافَقُوا هَهُنَا كِلَا الْأَمْرَيْنِ.

L24819 Where are the Malikis, Hanafis, and Shafi'is—those who denounce disagreement with the Companion with whom no opponent is known, and those who denounce disagreement with the majority of scholars—when they have here concurred with both matters?

L24820 Then, the most astonishing thing of all is their claim regarding a statement attributed to ʿĀ'isha—which lacks sound transmission from her—that Zayd ibn Arqam informed me he had invalidated his jihad with the Messenger of Allah (peace and blessings of Allah be upon him) if he did not repent for purchasing a slave on deferred payment for eight hundred dirhams and selling him to the woman who had sold him the slave for six hundred dirhams in cash payment—while Zayd ibn Arqam himself contradicted her.

ثُمَّ الْعَجَبُ كُلُّ الْعَجَبِ، قَوْلُهُمْ فِي قَوْلِ عَائِشَةَ الَّذِي لَمْ يَصِحَّ عَنْهَا: أَبْلَغَنِي زَيْدُ بْنُ أَرْقَمَ أَنَّهُ قَدْ أَبْطَلَ جِهَادَهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ لَمْ يَتُبْ فِي ابْتِيَاعِهِ عَبْدًا إِلَى الْعَطَاءِ بِثَمَانِمِائَةِ دِرْهَمٍ وَبَيْعِهِ إِيَّاهُ مِنَ الَّتِي بَاعَتْهُ مِنْهُ بِسِتِّمِائَةِ دِرْهَمٍ نَقْدًا، وَقَدْ خَالَفَهَا زَيْدُ بْنُ أَرْقَمَ.

L24821 They said: Such a ruling cannot be based on personal opinion, so it can only be rooted in textual stipulation. They did not cite here the authentic reports from Ibn ʿUmar – concerning which no authentic report from any Companion contradicts him – regarding the permissibility of cutting hands in the sale of Qur'anic codices, nor did they mention anything from the Companions collectively.

فَقَالُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَلَمْ يَبْقَ إِلَّا أَنَّهُ تَوْقِيفٌ، وَلَمْ يَقُولُوا هَهُنَا فِيمَا صَحَّ عَنِ ابْنِ عُمَرَ مِمَّا لَمْ يَصِحَّ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ خِلَافُهُ مِنْ إِبَاحَةِ قَطْعِ الْأَيْدِي فِي بَيْعِ الْمَصَاحِفِ، وَعَنِ الصَّحَابَةِ جُمْلَةً.

L24822 Why did they not say: Such a matter cannot be determined by opinion? Yet here their contradiction becomes evident in everything they decree concerning Allah's religion—the Exalted—and we praise Allah for granting us safety.

فَهَلَّا قَالُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، وَلَكِنْ هَهُنَا يَلُوحُ تَنَاقُضُهُمْ فِي كُلِّ مَا تَحْكُمُوا بِهِ فِي دِينِ اللَّهِ - تَعَالَى - وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

L24823 As for us, we do not consider the statement of anyone as authoritative proof besides the Messenger of Allah—peace and blessings be upon him—whether those who say it are many or few, and regardless of who the speaker may be. We do not speculate and claim: "Such a statement is not based on personal reasoning," thereby attributing to the Messenger of Allah—peace and blessings be upon him—what he did not say. For this is the open lie against him.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَثُرَ الْقَائِلُونَ بِهِ أَمْ قَلُّوا - كَائِنًا مَنْ كَانَ الْقَائِلُ، لَا نَتَكَهَّنُ فَنَقُولُ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَنَنْسُبُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ، وَهَذَا هُوَ الْكَذِبُ عَلَيْهِ جِهَارًا.

L24824–24825 The entire proof is as follows: Allah's statement, the Most High: "And Allah has permitted trade" [Al-Baqarah 2:275], and His statement, the Exalted in Might and Majesty: "And He has indeed detailed for you what He has forbidden upon you" [Al-Anʿām 6:119].[26]

وَالْحُجَّةُ كُلُّهَا -: قَوْلُ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَقَوْلُهُ - عَزَّ وَجَلَّ -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L24826 The sale of all muṣḥafs is permissible, for He has not explicitly detailed its prohibition to us: {And your Lord is never forgetful} [Maryam: 64]. Had He explicitly detailed its prohibition, Allāh, exalted is He, would have preserved

[26] **Qur'an references (L24825):** Qur'an 2:275 (Al-Baqarah); Qur'an 6:119 (Al-An'am).

it until the proof is established by it against His servants—and by Allāh, the Exalted, is success.[27]

[The Legal Case of Selling Goods for a Specified Price]

Issue 1559: If someone sells a commodity for a specified price payable immediately or to a specified near or distant term, they may repurchase that same commodity from the buyer to whom they sold it at the same price, a higher price, a lower price with immediate payment, or for a deferred term that is closer, farther, or equal to the original term. All of this is permissible with no reprehensibility in any aspect, provided this is not based on a condition stipulated in the contract itself. If it is based on such a condition, the transaction becomes forbidden, perpetually annulled, and governed by the rulings applicable to unlawfully seized property. This is the opinion of al-Shāfiʿī, Abū Sulaymān, and their companions.

The proof for this is the statement of Allah—the Most High: "And Allah has permitted trade" [Al-Baqarah: 275].[28]

And His saying, the Exalted: "He has detailed for you what He has forbidden upon you" Quran 6:119 (Al-Anʿām).[29]

These are two sales, and they are permissible by the explicit text of the Quran. No detailed prohibition of them is found in the Book or the Sunnah, as Allah states in the Quran: *"And your Lord is not forgetful"* [Maryam: 64]. Therefore, they are not forbidden.[30]

As for stipulating that, it is based on the statement of the Messenger of

فَبَيْعُ الْمَصَاحِفِ كُلِّهَا حَلَالٌ، إِذْ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَوْ فَصَّلَ تَحْرِيمَهُ لَحَفِظَهُ اللَّهُ - تَعَالَى - حَتَّى تَقُومَ بِهِ الْحُجَّةُ عَلَى عِبَادِهِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَةُ مَنْ بَاعَ سِلْعَةً بِثَمَنٍ مُسَمًّى]

١٥٥٩ - مَسْأَلَةٌ: وَمَنْ بَاعَ سِلْعَةً بِثَمَنٍ مُسَمًّى حَالَّةً، أَوْ إِلَى أَجَلٍ مُسَمًّى قَرِيبًا أَوْ بَعِيدًا فَلَهُ أَنْ يَبْتَاعَ تِلْكَ السِّلْعَةَ مِنْ الَّذِي بَاعَهَا مِنْهُ بِثَمَنٍ مِثْلِ الَّذِي بَاعَهَا بِهِ مِنْهُ، وَبِأَكْثَرَ مِنْهُ، وَبِأَقَلَّ حَالًّا، وَإِلَى أَجَلٍ مُسَمًّى أَقْرَبَ مِنْ الَّذِي بَاعَهَا مِنْهُ إلَيْهِ، أَوْ أَبْعَدَ وَمِثْلَهُ، كُلُّ ذَلِكَ حَلَالٌ لَا كَرَاهِيَةَ فِي شَيْءٍ مِنْهُ، مَا لَمْ يَكُنْ ذَلِكَ عَنْ شَرْطٍ مَذْكُورٍ فِي نَفْسِ الْعَقْدِ، فَإِنْ كَانَ عَنْ شَرْطٍ فَهُوَ حَرَامٌ مَفْسُوخٌ أَبَدًا مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

وَقَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

فَهَذَانِ بَيْعَانِ فَهُمَا حَلَالَانِ بِنَصِّ الْقُرْآنِ وَلَمْ يَأْتِ تَفْصِيلُ تَحْرِيمِهِمَا فِي كِتَابٍ وَلَا سُنَّةٍ، عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَلَيْسَا بِحَرَامٍ.

وَأَمَّا اشْتِرَاطُ ذَلِكَ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ» .

[27] **Qur'an references (L24826):** Qur'an 19:64 (Maryam).
[28] **Qur'an references (L24829):** Qur'an 2:275 (Al-Baqarah).
[29] **Qur'an references (L24830):** Qur'an 6:119 (Al-An'am).

Allah (peace be upon him): “Every condition not found in the Book of Allah is invalid, even if there are a hundred such conditions.”[31]

وَذَهَبَ أَبُو حَنِيفَةَ إِلَى أَنَّ مَنْ اشْتَرَى سِلْعَةً بِثَمَنٍ مَا وَقَبَضَ السِّلْعَةَ ثُمَّ بَاعَهَا مِنْ الْبَائِعِ لَهَا مِنْهُ بِأَقَلَّ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهَا بِهِ قَبْلَ أَنْ يَنْقُدَ هُوَ الثَّمَنَ الَّذِي كَانَ اشْتَرَاهَا هُوَ بِهِ: فَالْبَيْعُ الثَّانِي بَاطِلٌ.

L24833 Abu Hanifah maintained that if a person buys a commodity for a certain price, takes possession of it, and then sells it back to the seller for less than the original price before paying the amount he owed for the purchase, the second sale is invalid.

فَإِنْ بَاعَهَا مِنْ الَّذِي كَانَ ابْتَاعَهَا مِنْهُ بِدَنَانِيرَ، وَكَانَ هُوَ قَدْ اشْتَرَاهَا بِدَرَاهِمَ أَوْ ابْتَاعَهَا بِدَنَانِيرَ ثُمَّ بَاعَهَا مِنْ بَائِعِهَا بِدَرَاهِمَ فَإِنْ كَانَ قِيمَةُ الثَّمَنِ الثَّانِي أَقَلَّ مِنْ قِيمَةِ الثَّمَنِ الْأَوَّلِ فَإِنَّهُ لَا يَجُوزُ.

L24834 If he sells it to the one from whom he had purchased it in dinars, having purchased it in dirhams or purchased it in dinars, then sells it to the original seller in dirhams - if the value of the second price is less than the value of the first price, it is impermissible.

فَإِنْ كَانَ اشْتَرَاهَا بِدَنَانِيرَ أَوْ بِدَرَاهِمَ ثُمَّ بَاعَهَا مِنْ الَّذِي ابْتَاعَهَا هُوَ مِنْهُ بِسِلْعَةٍ: جَازَ ذَلِكَ - كَانَ ثَمَنُهَا أَقَلَّ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهَا بِهِ أَوْ أَكْثَرَ.

L24835 If he purchased it with dinars or dirhams then sold it to the seller from whom he had acquired it for a commodity, that is permissible - whether its price was less than the price he bought it for or more.

فَإِنْ ابْتَاعَهَا فِي كُلِّ مَا ذَكَرْنَا بِثَمَنٍ ثُمَّ بَاعَهَا مِنْ بَائِعِهَا مِنْهُ بِثَمَنٍ أَكْثَرَ مِنْ الثَّمَنِ الَّذِي ابْتَاعَهَا بِهِ مِنْهُ فَهُوَ جَائِزٌ.

L24836–24837 If he purchases it in all that we have mentioned for a price, then sells it back to the same seller for a price higher than the price he had purchased it from him, it is permissible.

قَالَ: وَكُلُّ مَا يَحْرُمُ فِي هَذِهِ الْمَسْأَلَةِ عَلَى الْبَائِعِ الْأَوَّلِ فَهُوَ يَحْرُمُ عَلَى شَرِيكِهِ فِي التِّجَارَةِ الَّتِي تِلْكَ السِّلْعَةُ مِنْهَا، وَعَلَى وَكِيلِهِ، وَعَلَى مُدَبَّرِهِ، وَعَلَى مُكَاتَبِهِ، وَعَلَى عَبْدِهِ الْمَأْذُونِ لَهُ فِي التِّجَارَةِ.

L24838 He said: Every prohibition incumbent upon the first seller in this matter is likewise prohibited upon his partner in the trade to which that commodity belongs, and upon his agent, and upon his mudabbar (a slave designated for posthumous freedom), and upon his mukatab (a slave contracting for freedom), and upon his slave authorized to engage in trade.

وَقَالَ مَالِكٌ: مَنْ اشْتَرَى سِلْعَةً بِثَمَنٍ مُسَمًّى إلَى أَجَلٍ مُسَمًّى، ثُمَّ ابْتَاعَهَا هُوَ مِنْ الَّذِي ابْتَاعَهَا مِنْهُ بِأَكْثَرَ مِنْ ذَلِكَ الثَّمَنِ إلَى مِثْلِ ذَلِكَ الْأَجَلِ لَمْ يَجُزْ.

L24839 Malik said: If someone purchases a commodity for a specified price to a specified term, then he himself buys it back from the one who sold it to him for a higher price than that original price to the same specified term, it is not permissible.

L24840 If a person purchases a commodity—neither food nor drink—for a specified

[30] **Qur’an references (L24831):** Qur’an 19:64 (Maryam).
[31] **Hadith references (L24832):** Sunan Ibn Majah 2521.

price, and the seller who had sold it repurchases it from them before taking possession for a price lower or higher than the original amount, there is no harm in it. However, if this is done by someone involved in ʿeenah transactions who has already paid the price in cash, there is no good in it.

فَإِنْ ابْتَاعَ سِلْعَةً لَيْسَتْ طَعَامًا وَلَا شَرَابًا بِثَمَنٍ مُسَمًّى ثُمَّ اشْتَرَاهَا مِنْهُ الَّذِي كَانَ بَاعَهَا مِنْهُ قَبْلَ أَنْ يَقْبِضَهَا مِنْهُ بِأَقَلَّ مِنْ ذَلِكَ الثَّمَنِ أَوْ بِأَكْثَرَ فَلَا بَأْسَ بِهِ، إِلَّا أَنْ يَكُونَ مِنْ أَهْلِ الْعِينَةِ وَقَدْ نَقَدَهُ الثَّمَنَ فَلَا خَيْرَ فِيهِ.

L24841 If one purchases a commodity for a specified price deferred to a specified term, it is impermissible for them to sell it back to the original seller for a price lower than that price, for a commodity worth less than that price in cash, or for a term shorter than or equal to the original term. None of this is permissible. However, they may sell it back to the original seller for a price higher than that price in cash, or for a term shorter than or equal to the original term. It is impermissible for them to sell it back to their original seller for a price higher than that price for a term longer than the original term, nor for a commodity worth more than that price for a term longer than the original term.

فَإِنْ ابْتَاعَ سِلْعَةً بِثَمَنٍ مُسَمًّى إِلَى أَجَلٍ مُسَمًّى فَإِنَّهُ لَا يَجُوزُ لَهُ أَنْ يَبِيعَهَا مِنَ الَّذِي بَاعَهَا مِنْهُ بِثَمَنٍ أَقَلَّ مِنْ ذَلِكَ الثَّمَنِ، أَوْ بِسِلْعَةٍ تُسَاوِي أَقَلَّ مِنْ ذَلِكَ الثَّمَنِ نَقْدًا، أَوْ إِلَى أَجَلٍ أَقَلَّ مِنْ ذَلِكَ الْأَجَلِ أَوْ مِثْلِهِ: لَمْ يَجُزْ شَيْءٌ مِنْ ذَلِكَ وَلَهُ أَنْ يَبِيعَهَا مِنَ الَّذِي بَاعَهَا مِنْهُ بِثَمَنٍ أَكْثَرَ مِنْ ذَلِكَ الثَّمَنِ نَقْدًا، أَوْ إِلَى أَجَلٍ أَقَلَّ مِنْ ذَلِكَ الْأَجَلِ، أَوْ مِثْلِهِ، وَلَيْسَ لَهُ أَنْ يَبِيعَهَا مِنْ بَائِعِهَا مِنْهُ بِثَمَنٍ أَكْثَرَ مِنْ ذَلِكَ الثَّمَنِ إِلَى أَبْعَدَ مِنْ ذَلِكَ الْأَجَلِ، وَلَا بِسِلْعَةٍ تُسَاوِي أَكْثَرَ مِنْ ذَلِكَ الثَّمَنِ إِلَى أَبْعَدَ مِنْ ذَلِكَ الْأَجَلِ.

L24842 Abu Muhammad said: The proponents of these two opinions cited as evidence what we have reported—through the chain of Shuʿbah from Abū Isḥāq from his wife, and through the chain of Yūnus ibn Abī Isḥāq from his mother al-ʿĀliyah bint Ayyaf ibn Shuraḥbīl—then both agreed from her. She said: We entered the presence of ʿĀ'ishah, the Mother of the Believers, and the umm walad of Zayd ibn Arqam. The umm walad of Zayd ibn Arqam said: "I sold a slave belonging to Zayd ibn Arqam for eight hundred dirhams deferred until the stipend, then bought him for six hundred?" ʿĀ'ishah responded: "Inform Zayd that you have nullified your jihad with the Messenger of Allah—peace and blessings be upon him—unless you repent. How evil is what you bought and how evil is what you sold!" She said: "What if I take only my principal?" ʿĀ'ishah replied: {"Whoever desists after receiving an admonition from his Lord may retain what has preceded"} [Quran 2:275]. They argued: "Such a warning cannot be based on personal opinion nor in matters where the path is independent reasoning." Thus, it was confirmed that this ruling is textually stipulated.[32]

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ أَهْلُ هَذَيْنِ الْقَوْلَيْنِ بِمَا رُوِّينَاهُ -: مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ عَنْ امْرَأَتِهِ، وَمِنْ طَرِيقِ يُونُسَ بْنِ أَبِي إِسْحَاقَ عَنْ أُمِّهِ الْعَالِيَةَ بِنْتِ أَيْفَعَ بْنِ شُرَحْبِيلَ، ثُمَّ اتَّفَقَا عَنْهَا قَالَتْ: دَخَلْنَا عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَأُمِّ وَلَدِ لِزَيْدِ بْنِ أَرْقَمَ فَقَالَتْ أُمُّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ: إِنِّي بِعْت غُلَامًا مِنْ زَيْدِ بْنِ أَرْقَمَ بِثَمَانِمِائَةِ دِرْهَمٍ نَسِيئَةً إِلَى الْعَطَاءِ وَاشْتَرَيْتُهُ بِسِتِّمِائَةٍ؟ فَقَالَتْ عَائِشَةُ: أَبْلِغِي زَيْدًا أَنَّك قَدْ أَبْطَلْت جِهَادَك مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنْ يَتُوبَ، بِئْسَمَا اشْتَرَيْت وَبِئْسَمَا شَرَيْت؟ قَالَتْ: أَرَأَيْت إِنْ لَمْ آخُذْ إِلَّا رَأْسَ مَالِي؟ قَالَتْ {فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ} [البقرة: ٢٧٥] فَقَالُوا: مِثْلُ هَذَا الْوَعِيدِ لَا يُقَالُ بِالرَّأْيِ وَلَا فِيمَا سَبِيلُهُ الِاجْتِهَادُ - فَصَحَّ أَنَّهُ تَوْقِيفٌ.

[32] **Qur'an references (L24842):** Qur'an 2:275 (Al-Baqarah).

وَبِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ حَيَّانَ بْنِ عُمَيْرٍ الْقَيْسِيِّ عَنْ ابْنِ عَبَّاسٍ فِي الرَّجُلِ يَبِيعُ الْجَرِيرَةَ إِلَى رَجُلٍ فَكَرِهَ أَنْ يَشْتَرِيَهَا - يَعْنِي بِدُونِ مَا بَاعَهَا.

L24843–24844 And according to what was narrated to us through the chain of Waki‘, from Sufyan al-Thawri, from Sulayman al-Taymi, from Hayyan ibn Umayr al-Qaysi, from Ibn Abbas regarding a man who sells a jarīrah (a she-camel that has miscarried) to another man, and the buyer considered it religiously reprehensible (makruh) to purchase it (i.e., without including the miscarried offspring that was part of the sale).

وَقَالُوا: هِيَ دَرَاهِمُ بِأَكْثَرَ مِنْهَا، وَقَالُوا: هَذَانِ أَرَادَا الرِّبَا فَتَحَيَّلَا لَهُ بِهَذَا الْبَيْعِ - مَا لَهُمْ شَيْءٌ شَغَبُوا بِهِ غَيْرَ مَا ذَكَرْنَاهُ.

L24845 They said: They are dirhams exceeding them in quantity. They also said: These two intended ribā (usury), so they devised this sale as a ruse to circumvent it. They have no valid grounds for their clamorous objections other than what we have already mentioned.

فَأَمَّا خَبَرُ امْرَأَةِ أَبِي إِسْحَاقَ: فَفَاسِدٌ جِدًّا، لِوُجُوهٍ -: أَوَّلُهَا - أَنَّ امْرَأَةَ أَبِي إِسْحَاقَ مَجْهُولَةُ الْحَالِ، لَمْ يَرْوِ عَنْهَا أَحَدٌ غَيْرُ زَوْجِهَا، وَوَلَدُهَا يُونُسُ، عَلَى أَنَّ يُونُسَ قَدْ ضَعَّفَهُ شُعْبَةُ بِأَقْبَحِ التَّضْعِيفِ، وَضَعَّفَهُ يَحْيَى الْقَطَّانُ، وَأَحْمَدُ بْنُ حَنْبَلٍ جِدًّا، وَقَالَ فِيهِ شُعْبَةُ: أَمَا قَالَ لَكُمْ: حَدَّثَنَا ابْنُ مَسْعُودٍ.

L24846 As for the narration of Abū Isḥāq’s wife: it is utterly invalid due to multiple reasons—the first being that Abū Isḥāq’s wife is of unknown status, as none narrated from her except her husband and her son Yūnus. Yet despite this, Yūnus himself was severely weakened by Shu‘bah in the most severe form of weakening, and Yaḥyā al-Qaṭṭān and Aḥmad ibn Ḥanbal rigorously weakened him. Shu‘bah remarked about him: “Did he not tell you: ‘Ibn Mas‘ūd narrated to us...’?”

وَالثَّانِي أَنَّهُ قَدْ صَحَّ أَنَّهُ مُدَلِّسٌ، وَأَنَّ امْرَأَةَ أَبِي إِسْحَاقَ لَمْ تَسْمَعْهُ مِنْ أُمِّ الْمُؤْمِنِينَ، وَذَلِكَ أَنَّهُ لَمْ يَذْكُرْ عَنْهَا زَوْجُهَا، وَلَا وَلَدُهَا: أَنَّهَا سَمِعَتْ سُؤَالَ الْمَرْأَةِ لِأُمِّ الْمُؤْمِنِينَ، وَلَا جَوَابَ أُمِّ الْمُؤْمِنِينَ لَهَا، إِنَّمَا فِي حَدِيثِهَا: دَخَلْت عَلَى أُمِّ الْمُؤْمِنِينَ، أَنَا، وَأُمُّ وَلَدٍ لِزَيْدِ بْنِ أَرْقَمَ، فَسَأَلَتْهَا أُمُّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ - وَهَذَا يُمْكِنُ أَنْ يَكُونَ ذَلِكَ السُّؤَالُ فِي ذَلِكَ الْمَجْلِسِ، وَيُمْكِنُ أَنْ يَكُونَ فِي غَيْرِهِ، فَوَجَدْنَا: مَا حَدَّثَنَاهُ عَلِيُّ بْنُ مُحَمَّدِ بْنِ عَبَّادٍ الْأَنْصَارِيُّ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ يَزِيدَ اللَّخْمِيُّ أَنَا ابْنُ مُفَرِّجٍ الْقَاضِي أَنَا الْحَسَنُ بْنُ مَرْوَانَ الْقَيْسَرَانِيُّ أَنَا إِبْرَاهِيمُ بْنُ مُعَاوِيَةَ أَنَا مُحَمَّدُ بْنُ يُوسُفَ الْفِرْيَابِيُّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ امْرَأَةِ أَبِي السَّفَرِ: أَنَّهَا بَاعَتْ مِنْ زَيْدِ بْنِ أَرْقَمَ خَادِمًا لَهَا بِثَمَانِمِائَةٍ

L24847 The second is that it has been established he was a *mudallis* (practitioner of *tadlīs*), and that the wife of Abū Isḥāq did not hear it from Umm al-Mu’minīn. This is because neither her husband nor her child attributed to her that she heard the woman’s question to Umm al-Mu’minīn or Umm al-Mu’minīn’s response to her. In her narration, it states: “I entered upon Umm al-Mu’minīn, along with an *umm walad* (concubine) of Zayd ibn Arqam. The *umm walad* of Zayd ibn Arqam asked her...” This could mean the question was posed during that gathering or another. We found what ʿAlī ibn Muḥammad ibn ʿAbbād al-Anṣārī narrated to us: from Muḥammad ibn ʿAbd Allāh ibn Muḥammad ibn Yazīd al-Lakhmī, from Ibn Mufarrij the Judge, from al-Ḥasan ibn Marwān al-Qaysarānī, from Ibrāhīm ibn Muʿāwiyah, from Muḥammad ibn Yūsuf al-Firyābī, from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī, from the wife of Abū al-Safar: She sold a servant of hers to Zayd ibn Arqam for eight hundred dirhams payable at a later date. When he faced hardship, she repurchased him for six hundred dirhams. She asked ʿĀ’ishah, Umm al-Mu’minīn, who replied repeatedly: “Evil is your selling and evil is

your buying. Inform Zayd ibn Arqam that his jihad is invalidated unless he repents." She said: "What if I only take back my principal?" ʿĀ'ishah said: *"Whoever refrains after receiving an admonition from his Lord may retain what is past"* [Al-Baqarah 2:275].[33]

دِرْهَمٍ إِلَى الْعَطَاءِ، فَاحْتَاجَ فَابْتَاعَتْهَا مِنْهُ بِسِتِّمِائَةِ دِرْهَمٍ فَسَأَلَتْ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ؟ فَقَالَتْ: بِئْسَ مَا شَرَيْت وَبِئْسَ مَا اشْتَرَيْت مِرَارًا، أَبْلِغِي زَيْدَ بْنَ أَرْقَمَ أَنَّهُ قَدْ بَطَلَ جِهَادُهُ إنْ لَمْ يَتُبْ؟ قَالَتْ: فَإِنْ لَمْ آخُذْ إلَّا رَأْسَ مَالِي قَالَتْ عَائِشَةُ: {فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ} [البقرة: ٢٧٥] .

L24848–24850 And what we have narrated through the chain of 'Abd al-Razzāq from Sufyān al-Thawrī from Abī Isḥāq al-Sabīʿī from his wife, who said: I heard the wife of Abī al-Safar say: I asked ʿĀ'ishah, the Mother of the Believers, saying: "I sold Zayd ibn Arqam, a servant, to the stipend office for eight hundred dirhams and repurchased him from it for six hundred dirhams?" She replied to her: A person said to ʿĀ'ishah: "What a wretched purchase you have made, or what a vile transaction! Inform Zayd ibn Arqam that he has nullified his jihad alongside the Messenger of Allah—peace and blessings be upon him—unless he repents." She [ʿĀ'ishah] responded: "What do you say if I reclaim my original capital?" The person replied: "There is no blame." [She then cited]: *"But whoever refrains after receiving a warning from their Lord may keep what they have previously acquired"* [Al-Baqarah 2:275].[34]

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ امْرَأَتِهِ قَالَتْ: سَمِعْت امْرَأَةَ أَبِي السَّفَرِ تَقُولُ: سَأَلْت عَائِشَةَ أُمَّ الْمُؤْمِنِينَ فَقُلْت: بِعْت زَيْدَ بْنَ أَرْقَمَ خَادِمًا إلَى الْعَطَاءِ بِثَمَانِمِائَةِ دِرْهَمٍ وَابْتَعْتهَا مِنْهُ بِستِّمِائَةِ دِرْهَمٍ؟ فَقَالَتْ لَهَا عَائِشَةُ بِئْسَ مَا شَرَيْت أَوْ بِئْسَ مَا اشْتَرَيْت أَبْلِغِي زَيْدَ بْنَ أَرْقَمَ أَنَّهُ قَدْ أَبْطَلَ جِهَادَهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَنْ يَتُوبَ؟ قَالَتْ: أَفَرَأَيْت إنْ أَخَذْت رَأْسَ مَالِي؟ قَالَتْ: لَا بَأْسَ {فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ} [البقرة: ٢٧٥] .

L24851 Sufyan clarified the obscure element in this hadith, establishing that Abu Ishaq's wife did not hear it from the Mother of the Believers. Rather, she narrated it from the wife of Abu al-Safar—the one who sold [herself] to Zaid and was an umm walad (an enslaved woman who bore her master's child) of Zaid. She was of greater obscurity and more profoundly unknown than Abu Ishaq's wife. Thus, the narration became unknown [as transmitted] by someone even more obscure and rejected than her—rendering it entirely invalidated. All praise belongs to Allah, the Exalted.

فَبَيَّنَ سُفْيَانُ الدَّفِينَةَ الَّتِي فِي هَذَا الْحَدِيثِ وَأَنَّهَا لَمْ تَسْمَعْهُ امْرَأَةُ أَبِي إِسْحَاقَ مِنْ أُمِّ الْمُؤْمِنِينَ، وَإِنَّمَا رَوَتْهُ عَنْ امْرَأَةِ أَبِي السَّفَرِ، وَهِيَ الَّتِي بَاعَتْ مِنْ زَيْدٍ، وَهِيَ أُمُّ وَلَدٍ لِزَيْدٍ، وَهِيَ فِي الْجَهَالَةِ أَشَدُّ وَأَقْوَى مِنْ امْرَأَةِ أَبِي إِسْحَاقَ، فَصَارَتْ مَجْهُولَةً عَنْ أَشَدَّ مِنْهَا جَهَالَةً وَنَكِرَةً - فَبَطَلَ جُمْلَةً وَلِلَّهِ - تَعَالَى - الْحَمْدُ.

L24852 There is no distinction between Yunus and Sufyan in trustworthiness and memorization, so the narration is what Sufyan narrated.

وَلَيْسَ بَيْنَ يُونُسَ، وَبَيْنَ سُفْيَانَ نِسْبَةٌ فِي الثِّقَةِ وَالْحِفْظِ، فَالرِّوَايَةُ مَا رَوَى سُفْيَانُ.

L24853 The third proof—among the clear evidences exposing this report's falsehood

وَالثَّالِثُ - أَنَّ مِنْ الْبُرْهَانِ الْوَاضِحِ عَلَى كَذِبِ هَذَا الْخَبَرِ وَوَضْعِهِ، وَأَنَّهُ لَا يُمْكِنُ أَنْ يَكُونَ حَقًّا أَصْلًا: مَا فِيهِ مِمَّا نُسِبَ إلَى أُمِّ الْمُؤْمِنِينَ مِنْ أَنَّهَا قَالَتْ: أَبْلِغِي زَيْدَ بْنَ أَرْقَمَ

[33] **Qur'an references (L24847):** Qur'an 2:275 (Al-Baqarah).
[34] **Qur'an references (L24848):** Qur'an 2:275 (Al-Baqarah).

and fabrication, demonstrating its inherent impossibility—lies in its attribution to the Mother of the Believers that she allegedly said: “Inform Zayd ibn Arqam that he has nullified his military efforts with Allah’s Messenger—peace be upon him—unless he repents.” Yet Zayd missed only two campaigns with Allah’s Messenger—peace be upon him: Badr and Uhud. He participated in all other campaigns alongside him—peace be upon him—spent in charity before the Conquest, fought valiantly, witnessed the Pledge of Ridwān under the tree at Ḥudaybiyyah—concerning which Quranic verses were revealed—and Allah the Exalted affirmed his truthfulness and guaranteed him Paradise through His Messenger’s declaration—peace be upon him—that none who pledged allegiance beneath that tree would enter the Fire.

أَنَّهُ قَدْ أَبْطَلَ جِهَادَهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنْ لَمْ يَتُبْ وَزَيْدٌ لَمْ يَفُتْهُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا غَزْوَتَانِ فَقَطْ: بَدْرٌ، وَأُحُدٌ، فَقَطْ، وَشَهِدَ مَعَهُ - عَلَيْهِ السَّلَامُ - سَائِرَ غَزَوَاتِهِ، وَأَنْفَقَ قَبْلَ الْفَتْحِ وَقَاتَلَ، وَشَهِدَ بَيْعَةَ الرِّضْوَانِ تَحْتَ الشَّجَرَةِ بِالْحُدَيْبِيَةِ، وَنَزَلَ فِيهِ الْقُرْآنُ، وَشَهِدَ اللَّهُ - تَعَالَى - لَهُ بِالصِّدْقِ وَبِالْجَنَّةِ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -: أَنَّهُ لَا يَدْخُلُ النَّارَ أَحَدٌ بَايَعَ تَحْتَ الشَّجَرَةِ.

L24854 The Quran explicitly affirmed that Allah—Exalted is He—was pleased with him and his companions who pledged allegiance beneath the Tree. By Allah, no sin from the sins nullifies all this except apostasy from Islam alone. Allah—Exalted is He—protected him from it through His pleasure with him, and protected the Mother of the Believers from uttering this falsehood.

وَنَصَّ الْقُرْآنُ بِأَنَّ اللَّهَ - تَعَالَى - قَدْ رَضِيَ عَنْهُ وَعَنْ أَصْحَابِهِ الَّذِينَ بَايَعُوا تَحْتَ الشَّجَرَةِ، فَوَاَللَّهِ مَا يُبْطِلُ هَذَا كُلَّهُ ذَنْبٌ مِنْ الذُّنُوبِ غَيْرُ الرِّدَّةِ عَنْ الْإِسْلَامِ فَقَطْ، وَقَدْ أَعَاذَهُ اللَّهُ - تَعَالَى - مِنْهَا بِرِضَاهُ عَنْهُ، وَأَعَاذَ أُمَّ الْمُؤْمِنِينَ مِنْ أَنْ تَقُولَ هَذَا الْبَاطِلَ.

L24855 The fourth [point] is that it also clarifies the falsehood of this report: if it were valid that Zayd committed the gravest of sins of explicit usury—while being ignorant of its prohibition—he would be rewarded with a single reward and not be deemed sinful. The same ruling would apply to him as to Ibn Abbas—may Allah be pleased with him—regarding his permissibility of exchanging one dirham for two dirhams openly as a spot transaction (hand-to-hand exchange), and as to Talha—may Allah be pleased with him—when he took Malik ibn Aws’s dinars but postponed converting them into dirhams until his treasurer arrived from the forest in the presence of Umar—may Allah be pleased with him. Umar did not go beyond prohibiting him from teaching [others], nor did Abu Sa‘id go beyond meeting Ibn Abbas and instructing him.

وَالرَّابِعُ - أَنَّهُ يُوَضِّحُ كَذِبَ هَذَا الْخَبَرِ أَيْضًا -: أَنَّهُ لَوْ صَحَّ أَنَّ زَيْدًا أَتَى أَعْظَمَ الذُّنُوبِ مِنْ الرِّبَا الْمُصَرَّحِ - وَهُوَ لَا يَدْرِي أَنَّهُ حَرَامٌ - لَكَانَ مَأْجُورًا فِي ذَلِكَ أَجْرًا وَاحِدًا غَيْرَ آثِمٍ، وَلَكَانَ لَهُ مِنْ ذَلِكَ مَا لِابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُ - فِي إبَاحَةِ الدِّرْهَمِ بِالدِّرْهَمَيْنِ جِهَارًا يَدًا بِيَدٍ، وَمَا لِطَلْحَةَ - رَضِيَ اللَّهُ عَنْهُ - إذْ أَخَذَ دَنَانِيرَ مَالِكِ بْنِ أَوْسٍ ثُمَّ أَخَّرَهُ بِالدَّرَاهِمِ فِي صَرْفِهَا إلَى مَجِيءِ خَازِنِهِ مِنْ الْغَابَةِ بِحَضْرَةِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -: فَمَا زَادَ عُمَرُ عَلَى مَنْعِهِ مِنْ تَعْلِيمِهِ، وَلَا زَادَ أَبُو سَعِيدٍ عَلَى لِقَاءِ ابْنِ عَبَّاسٍ وَتَعْلِيمِهِ.

L24856 Neither ʿUmar nor Abū Saʿīd thereby invalidated even a single *takbīrah* in the practice of Ṭalḥah and Ibn ʿAbbās. Both opinions, according to the established text, are pure usury, and there is nothing in usury that surpasses it.

وَمَا أَبْطَلَ عُمَرُ، وَلَا أَبُو سَعِيدٍ بِذَلِكَ تَكْبِيرَةً وَاحِدَةً مِنْ عَمَلِ طَلْحَةَ، وَابْنِ عَبَّاسٍ، وَكِلَا الْوَجْهَيْنِ بِالنَّصِّ الثَّابِتِ رِبًا صُرَاحٌ، وَلَا شَيْءَ فِي الرِّبَا فَوْقَهُ.

فَكَيْفَ يُظَنُّ بِأُمِّ الْمُؤْمِنِينَ إبْطَالُ جِهَادِ زَيْدِ بْنِ أَرْقَمَ فِي شَيْءٍ عَمِلَهُ مُجْتَهِدًا، لَا نَصَّ فِي الْعَالَمِ يُوجَدُ خِلَافُهُ، لَا صَحِيحٌ وَلَا مِنْ طَرِيقٍ وَاهِيَةٍ، هَذَا وَاَللَّهِ الْكَذِبُ الْمَحْضُ الْمَقْطُوعُ بِهِ، فَلْيَتُبْ إلَى اللَّهِ - تَعَالَى - مَنْ يَنْسُبُهُ إلَى أُمِّ الْمُؤْمِنِينَ، وَمَنْ يُحَرِّمُ بِهِ فِي دِينِ اللَّهِ - تَعَالَى - مَا لَمْ يُحَرِّمْهُ اللَّهُ - تَعَالَى - وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذِهِ بَرَاهِينُ أَرْبَعَةٌ فِي بُطْلَانِ هَذَا الْخَبَرِ، وَأَنَّهُ خُرَافَةٌ مَكْذُوبَةٌ.

L24857–24858 How can it be presumed that the Mother of the Believers would invalidate the jihad of Zayd ibn Arqam in a matter he undertook as one exercising ijtihad, when there exists no text in the world—neither authentic nor via a weak chain—that contradicts it? By Allah, this is pure, certain falsehood. Let whoever attributes this to the Mother of the Believers repent to Allah—Exalted is He—and whoever declares unlawful through it in the religion of Allah—Exalted is He—what Allah—Exalted is He—and His Messenger—peace and blessings of Allah be upon him—did not declare unlawful. These are four proofs of the invalidity of this report and that it is a fabricated myth.

ثُمَّ نَقُولُ: إنَّهُ لَوْ صَحَّ صِحَّةَ الشَّمْسِ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ قَوْلٌ مِنْ أُمِّ الْمُؤْمِنِينَ، وَمَا قَوْلُهَا بِأَوْلَى مِنْ قَوْلِ زَيْدٍ - وَإِنْ كَانَتْ أَفْضَلَ مِنْهُ - إذَا تَنَازَعَا، لِأَنَّ اللَّهَ - تَعَالَى - يَقُولُ: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ إنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [النساء: ٥٩] وَلَمْ يَأْمُرْنَا بِالرَّدِّ إلَى أَحَدٍ دُونَ الْقُرْآنِ وَالسُّنَّةِ.

L24859 Then we say: If it were as sound as the sun itself, they would have no valid argument regarding it for several aspects. The first is that this is a statement from the Mother of the Believers, and her statement is no more entitled to precedence than Zaid's – even if she is superior to him – when they disagree, because Allah the Exalted says: "If you differ concerning any matter, refer it to Allah and His Messenger, if you believe in Allah and the Last Day" (4:59). He did not command us to refer it to anyone besides the Qur'an and the Sunnah.[35]

وَالثَّانِي - أَنْ نَقُولَ لَهُمْ: كَمْ قَوْلَةٍ رَدَدْتُمُوهَا لِأُمِّ الْمُؤْمِنِينَ بِالدَّعَاوَى الْفَاسِدَةِ كَبَيْعِهَا الْمُدَبَّرَةَ وَإِبَاحَتِهَا الِاشْتِرَاطَ فِي الْحَجِّ، فَاطَّرَحْتُمْ حُكْمَهَا وَتَعَلَّقْتُمْ بِمُخَالَفَةِ عُمَرَ لَهَا فِي الْمُدَبَّرَةِ.

L24860 The second is that we should say to them: How many legal opinions of the Mother of the Believers have you rejected with invalid claims - such as her sale of the *mudabbara* and her permitting stipulated conditions during Hajj - thereby discarding her ruling while clinging to Umar's disagreement with her regarding the *mudabbara*?

وَصَحَّ عَنْ عُمَرَ: مَنْ قَدَّمَ ثِقْلَهُ مِنْ مِنًى قَبْلَ أَنْ يَنْفِرَ فَلَا حَجَّ لَهُ، وَالِاشْتِرَاطُ فِي الْحَجِّ، فَأَطْرَحْتُمْ قَوْلَ عُمَرَ، وَلَمْ تَقُولُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَلَمْ يَبْقَ إلَّا أَنَّهُ تَوْقِيفٌ.

L24861 It is authentically reported from Umar: "Whoever sends his luggage ahead from Mina before departing has no valid Hajj." As for stipulating conditions in Hajj, since you have discarded Umar's opinion and did not say, "Such a ruling is not based on personal judgment," nothing remains except that it is divinely prescribed.

وَخَالَفْتُمُوهُ لِقَوْلِ ابْنِهِ: لَا أَعْرِفُ الِاشْتِرَاطَ فِي الْحَجِّ، فَمَرَّةً يَكُونُ قَوْلُ أُمِّ الْمُؤْمِنِينَ حُجَّةً، وَمَرَّةً لَا يُشْتَغَلُ بِهِ، وَمَرَّةً تَكُونُ عَائِشَةُ حُجَّةً عَلَى زَيْدِ بْنِ أَرْقَمَ، وَعُمَرُ حُجَّةً عَلَى

L24862 You opposed him based on his son's statement: "I do not know of preconditions in Hajj." At times, the Mother of the Believers' statement is taken as authoritative evidence; at times, it is disregarded. At times, 'Ā'ishah is authoritative evidence against Zayd ibn Arqam, 'Umar is authoritative evi-

[35] **Qur'an references (L24859):** Qur'an 4:59 (An-Nisa).

dence against ʻĀ'ishah, Ibn ʻUmar is authoritative evidence against ʻUmar, and someone other than Ibn ʻUmar is authoritative evidence against Ibn ʻUmar—this constitutes playing fast and loose with religion and its truths.

L24863 The third point is that it has been authentically established from Ibn Umar—regarding what we cited in the previous chapter from his statement: "I wish I saw hands being cut off in the sale of Masahif"—so why did you not say, "Such a ruling cannot be based on personal opinion," as you asserted here?

L24864 The fourth point is that it is among the gravest misguidance to suppose she—may Allah be pleased with her—possessed a report from the Messenger of Allah (peace and blessings be upon him) regarding this matter, then concealed it by not narrating it to any of Allah's creation—Exalted is He. Far be it from her from such a thing to conceal what she held of clear proofs and guidance?

L24865–24866 They gained nothing except lying against the Messenger of Allah (peace and blessings be upon him) by attributing to him statements he never uttered. For had he said such a thing, it would have been preserved through Allah's preservation (Exalted is He) until it reached his Ummah, and lying against the Mother of the Believers.

L24867 The fifth point is that she denied the sale in relation to the gift through her statement: "Evil is what you have purchased." The Malikis permit it based on such a statement, and this is extremely astonishing? Half of her speech constitutes valid proof while the other half does not.

L24868 The sixth point is that it has been narrated to us through the chain of Saʻīd ibn Manṣūr from Khudayj ibn Muʻāwiyah from Abū Isḥāq al-Sabīʻī from Umm Maḥabbah, the daughter-in-law of Abū al-Safar, that she vowed to walk to Mecca but became unable to do so. Ibn ʻAbbās said to her, "Do you have a daughter who can walk on your behalf?" She replied, "Yes, but she considers herself too dignified for that."

L24869 If this chain of transmission holds no validity, then it is identical to it or similar to it. Rather, it is also narrated in the hadith transmitted by Zayd

عَائِشَةَ، وَابْنُ عُمَرَ حُجَّةً عَلَى عُمَرَ، وَغَيْرُ ابْنِ عُمَرَ حُجَّةً عَلَى ابْنِ عُمَرَ - وَهَذَا هُوَ التَّلَاعُبُ بِالدِّينِ وَبِالْحَقَائِقِ.

وَالثَّالِثُ - أَنَّ ابْنَ عُمَرَ قَدْ صَحَّ عَنْهُ مَا أَوْرَدْنَاهُ فِي الْبَابِ الَّذِي قَبْلَ هَذَا مِنْ قَوْلِهِ وَدِدْت أَنِّي رَأَيْت الْأَيْدِيَ تُقْطَعُ فِي بَيْعِ الْمَصَاحِفِ فَهَلَّا قُلْتُمْ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ كَمَا قُلْتُمْ هَهُنَا؟

وَالرَّابِعُ - أَنَّ مِنْ الضَّلَالِ الْعَظِيمِ أَنْ يُظَنَّ أَنَّ عِنْدَهَا - رَضِيَ اللَّهُ عَنْهَا - فِي هَذَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَثَرًا ثُمَّ تَكْتُمُهُ فَلَا تَرْوِيهِ لِأَحَدٍ مِنْ خَلْقِ اللَّهِ - تَعَالَى - حَاشَا لَهَا مِنْ ذَلِكَ مِنْ أَنْ تَكْتُمَ مَا عِنْدَهَا مِنْ الْبَيِّنَاتِ وَالْهُدَى؟

فَمَا حَصَلُوا إلَّا عَلَى الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَقْوِيلِهِ مَا لَمْ يَقُلْهُ قَطُّ، إذْ لَوْ قَالَهُ لَكَانَ مَحْفُوظًا بِحِفْظِ اللَّهِ - تَعَالَى - حَتَّى بَلَغَ إلَى أُمَّتِهِ، وَالْكَذِبِ عَلَى أُمِّ الْمُؤْمِنِينَ.

وَالْخَامِسُ - أَنَّهَا أَنْكَرَتْ الْبَيْعَ إلَى الْعَطَاءِ بِقَوْلِهَا بِئْسَ مَا شَرَيْت - وَالْمَالِكِيُّونَ يُبِيحُونَهُ بِمِثْلِ هَذَا، وَهَذَا عَجَبٌ جِدًّا؟ نِصْفُ كَلَامِهَا حُجَّةٌ وَنِصْفُهُ لَيْسَ بِحُجَّةٍ.

؟ وَالسَّادِسُ - أَنَّنَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ خَدِيجِ بْنِ مُعَاوِيَةَ عَنْ أَبِي إسْحَاقَ السَّبِيعِيِّ عَنْ أُمِّ مَحَبَّةَ خَتَنَةِ أَبِي السَّفَرِ أَنَّهَا نَذَرَتْ مَشْيًا إلَى مَكَّةَ فَعَجَزَتْ؟ فَقَالَ لَهَا ابْنُ عَبَّاسٍ: هَلْ لَكِ ابْنَةٌ تَمْشِي عَنْكِ؟ قَالَتْ: نَعَمْ، وَلَكِنَّهَا أَعْظَمُ فِي نَفْسِهَا مِنْ ذَلِكَ.

ibn Arqam on the authority of Umm Maḥabba. If that report constitutes valid proof, then this one is also valid proof; otherwise, a contradiction has occurred—thereby rendering the invalidity of this argument wholly evident. All praise belongs to Allah, the Exalted.

فَإِنْ كَانَتْ هَذِهِ الطَّرِيقُ لَا حُجَّةَ فِيهَا فَهِيَ تِلْكَ نَفْسُهَا أَوْ مِثْلُهَا، بَلْ قَدْ جَاءَ فِي حَدِيثِ زَيْدِ بْنِ أَرْقَمَ عَنْ أُمِّ مَحَبَّةَ أَيْضًا، وَإِنْ كَانَ ذَلِكَ الْخَبَرُ حُجَّةً، فَهَذَا حُجَّةٌ، وَإِلَّا فَقَدْ حَصَلَ التَّنَاقُضُ - فَظَهَرَ فَسَادُ هَذَا الِاحْتِجَاجِ جُمْلَةً - وَلِلَّهِ - تَعَالَى - الْحَمْدُ.

L24870 As for the narration of Ibn Abbas: it represents his personal opinion, which Ibn Umar contradicted—as we have been narrated via Abd al-Razzaq from Sufyan from Layth from Mujahid, who said: A man was mentioned to Ibn Umar who sold a saddle for cash, then wanted to buy it for less than his selling price before receiving payment. Ibn Umar said: "Perhaps if he sold it to someone else, he would sell it for less than that amount," and he saw no harm in it.

وَأَمَّا خَبَرُ ابْنِ عَبَّاسٍ: فَهُوَ رَأْيٌ مِنْهُ، وَقَدْ خَالَفَهُ ابْنُ عُمَرَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ: ذُكِرَ لِابْنِ عُمَرَ رَجُلٌ بَاعَ سَرْجًا بِنَقْدٍ، ثُمَّ أَرَادَ أَنْ يَبْتَاعَهُ بِدُونِ مَا بَاعَهُ قَبْلَ أَنْ يَنْتَقِدَ، فَقَالَ ابْنُ عُمَرَ: لَعَلَّهُ لَوْ بَاعَهُ مِنْ غَيْرِهِ بَاعَهُ بِدُونِ ذَلِكَ، وَلَمْ يَرَ بِهِ بَأْسًا.

L24871 And how many cases involving Ibn Abbas are there in which they opposed him, as we have just mentioned earlier—thus their reliance on Ibn Abbas has been nullified.

وَكَمْ قِصَّةٍ لِابْنِ عَبَّاسٍ خَالَفُوهُ فِيهَا كَمَا ذَكَرْنَا قَبْلَ هَذَا آنِفًا - فَسَقَطَ تَعَلُّقُهُمْ بِابْنِ عَبَّاسٍ.

L24872 It has been narrated to us through the chain of Abd al-Razzaq, who said: Ma'mar narrated to us from Ayyub al-Sikhtiyani from Muhammad ibn Sirin, who said: There is no harm in buying an item on credit then selling it back to the one from whom he purchased it for less than the price, provided he settles through mutual offset (muqāṣaṣah) with him.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: لَا بَأْسَ بِأَنْ يَشْتَرِيَ الشَّيْءَ إلَى أَجَلٍ ثُمَّ يَبِيعَهُ مِنْ الَّذِي اشْتَرَاهُ مِنْهُ بِأَقَلَّ مِنْ الثَّمَنِ إذَا قَاصَصَهُ.

L24873–24875 Abū Muḥammad said: As for their claim, "They are dirhams traded for more dirhams"—this is truly an unparalleled delusion. I said to one of them: "What is your ruling regarding someone who sells a commodity on credit for one dinar, then repurchases it for two dinars in cash?" He replied: "It is permissible." I said: "On what basis is it obligatory that selling it for two dinars and buying the commodity for one dinar constitutes ribā—a dinar for two—yet selling it for one dinar on credit and buying it for two dinars does not constitute ribā—a dinar for two? Could any delusion be greater than Zayd selling a dinar to ʿAmr for two dinars, thereby [text incomplete]?" ribā, and he sells two dinars thereof for a dinar, then it is not ribā. Would that I knew: in which religion have you found this? Or by what reasoning? For he has not presented any distinction, nor will they ever present it.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا قَوْلُهُمْ: إنَّهَا دَرَاهِمُ بِأَكْثَرَ مِنْهَا؟ فَعَجَبٌ لَا نَظِيرَ لَهُ جِدًّا، وَقَدْ قُلْت لِبَعْضِهِمْ: مَا تَقُولُونَ فِيمَنْ بَاعَ سِلْعَةً إلَى أَجَلٍ بِدِينَارٍ ثُمَّ اشْتَرَاهَا بِنَقْدٍ بِدِينَارَيْنِ؟ فَقَالَ: حَلَالٌ: فَقُلْت لَهُ: وَمِنْ أَيْنَ وَجَبَ أَنْ يَكُونَ إذَا بَاعَهُ بِدِينَارَيْنِ وَاشْتَرَاهُ بِدِينَارٍ رِبًا وَدِينَارًا بِدِينَارَيْنِ، وَلَمْ يَجِبْ إذَا بَاعَهُ بِدِينَارٍ إلَى أَجَلٍ وَاشْتَرَاهُ بِدِينَارَيْنِ: أَنْ يَكُونَ رِبًا وَدِينَارًا بِدِينَارَيْنِ، وَهَلْ فِي الْهَوَسِ أَعْظَمُ مِنْ أَنْ يَبِيعَ زَيْدٌ مِنْ عَمْرٍو دِينَارًا بِدِينَارَيْنِ

فَيَكُونَ رِبًا، وَيَبِيعَ مِنْهُ دِينَارَيْنِ بِدِينَارٍ فَلَا يَكُونُ رِبًا، لَيْتَ شِعْرِي فِي أَيِّ دِينٍ وَجَدْتُمْ هَذَا؟ أَمْ فِي أَيِّ عَقْلٍ؟ فَمَا أَتَى بِفَرْقٍ، وَلَا يَأْتُونَ بِهِ أَبَدًا.

L24876 As for their statement that the two intended usury as we mentioned and thus employed this legal act, the response is: If they indeed intended usury as you claimed and resorted to this procedure, then may Allah bless them, for they have excelled in what they desired by fleeing from forbidden usury to lawful sale. They escaped from disobedience to Allah—Exalted is He—to what He has lawfully permitted. Truly, whoever condemns them for this has acted wrongly in what he willed and sinned twice: first, for rejecting their good deed, then for suspecting them of what may never have occurred to them. The Messenger of Allah—peace and blessings be upon him—said: "Suspicion is the falsest of speech." As for the opinions of Abū Ḥanīfa and Mālik on this matter, we have mentioned a small part of their categorizations. Anyone who examines them will see that these classifications are profoundly unsound and contradictory—such as Abū Ḥanīfa's distinction between purchasing with a commodity and purchasing with dinars, though in both cases the sale is made with dirhams—and his prohibition of this for his agent and partner.

وَأَمَّا قَوْلُهُمْ: إنَّهُمَا أَرَادَا الرِّبَا كَمَا ذَكَرْنَا فَتَحَيَّلَا بِهَذَا الْعَمَلِ؟ فَجَوَابُهُمْ أَنَّهُمَا إنْ كَانَا أَرَادَا الرِّبَا كَمَا ذَكَرْتُمْ فَتَحَيَّلَا بِهَذَا الْعَمَلِ، فَبَارَكَ اللَّهُ فِيهِمَا، فَقَدْ أَحْسَنَا مَا شَاءَا إذْ هَرَبَا مِنْ الرِّبَا الْحَرَامِ إلَى الْبَيْعِ الْحَلَالِ، وَفَرَّا مِنْ مَعْصِيَةِ اللَّهِ - تَعَالَى - إلَى مَا أَحَلَّ، وَلَقَدْ أَسَاءَ مَا شَاءَ مَنْ أَنْكَرَ هَذَا عَلَيْهِمَا، وَأَثِمَ مَرَّتَيْنِ لِإِنْكَارِهِ إحْسَانَهُمَا، ثُمَّ لِظَنِّهِ بِهِمَا مَا لَعَلَّهُمَا لَمْ يَخْطِرْ بِبَالِهِمَا، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الظَّنُّ أَكْذَبُ الْحَدِيثِ» .

L24877 And like Malik's distinction between purchasing it for more than the price he sold it for—which he deems permissible—and purchasing it for less—which he deems forbidden. These are astonishing views without any evidence, as you can see? Then Abū Ḥanīfah gave the impression of adhering to ʿĀ'isha's narration—may Allah be pleased with her—though he did not actually do so, for he applies this ruling to one who sells for an immediate price as long as the entire price is not received in full. Yet this has no basis in ʿĀ'isha's narration whatsoever—and with Allah, the Most High, is success.

وَأَمَّا أَقْوَالُ أَبِي حَنِيفَةَ، وَمَالِكٍ، فِي هَذِهِ الْمَسْأَلَةِ فَقَدْ ذَكَرْنَا طَرَفًا يَسِيرًا مِنْ تَقْسِيمِهِمَا، وَكُلُّ مَنْ تَأَمَّلَهُ يَرَى أَنَّهَا تَقَاسِيمُ فِي غَايَةِ الْفَسَادِ، وَالتَّنَاقُضِ، كَتَفْرِيقِ أَبِي حَنِيفَةَ بَيْنَ ابْتِيَاعِهِ بِسِلْعَةٍ وَبَيْنَ ابْتِيَاعِهِ بِدَنَانِيرَ، وَفِي كِلَا الْوَجْهَيْنِ إنَّمَا بَاعَ بِدَرَاهِمَ - وَكَتَحْرِيمِهِ ذَلِكَ عَلَى وَكِيلِهِ وَشَرِيكِهِ.

وَكَتَفْرِيقِ مَالِكٍ بَيْنَ ابْتِيَاعِهِ بِأَكْثَرَ مِمَّا كَانَ بَاعَهَا بِهِ فَيَرَاهُ حَلَالًا، وَبَيْنَ ابْتِيَاعِهِ بِأَقَلَّ فَيَرَاهُ حَرَامًا، وَهَذِهِ عَجَائِبُ بِلَا دَلِيلٍ كَمَا تَرَى؟ ثُمَّ إنَّ أَبَا حَنِيفَةَ أَوْهَمَ أَنَّهُ أَخَذَ بِخَبَرِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - وَلَمْ يَأْخُذْ بِهِ؛ لِأَنَّهُ يَرَى ذَلِكَ فِيمَنْ بَاعَ بِثَمَنٍ حَالٍّ مَا لَمْ يَنْتَقِدْ جَمِيعَ الثَّمَنِ، وَلَيْسَ هَذَا فِي خَبَرِ عَائِشَةَ أَصْلًا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

Issue of the Sale of Dwellings in Makkah

[مَسْأَلَة بَيْع دُور مَكَّة]

L24878

L24879 1560. Issue: The sale and purchase of dwellings in Mecca—may Allah the Exalted honor it—are permissible. We have mentioned this in the Book of Hajj, which suffices without repeating it.

١٥٦٠ - مَسْأَلَةٌ: وَبَيْعُ دُورِ مَكَّةَ - أَعَزَّهَا اللَّهُ تَعَالَى - وَابْتِيَاعُهَا حَلَالٌ، وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْحَجِّ " فَأَغْنَى عَنْ إعَادَتِهِ.

L24880 1561 – Issue: The sale by a blind person or his purchase based on description is permissible, like valid transactions, with no difference. This is because there is no Quranic verse or Sunnah that establishes a distinction between any aspect of such transactions. *"And Allah has permitted trade"* [Al-Baqarah: 275], and thus, the blind and the sighted fall under this ruling. Success comes from Allah, Exalted is He.[36]

L24881–24882 The legal ruling on selling a slave and buying him without his master's permission.

L24883 Issue: A slave's act of selling and purchasing without his master's permission is permissible, as long as the master does not seize his property. If the master seizes it, the property then becomes the master's, and the slave is not permitted to dispose of it. The proof for this is Allah's statement—Exalted is He—: {Allah has permitted trade} [Al-Baqarah: 275], which does not distinguish between a free person and a slave.[37]

L24884 And He, the Exalted, said: "He has already detailed for you what He has forbidden you" (Quran 6:119). If the slave's sale of his property without his master's permission were forbidden, the Almighty and Majestic would have detailed it for us, and He would not have compelled us in this matter to resort to false conjectures and contrived opinions.[38]

L24885 Since the prohibition was not specified to us, it is correct that it is lawful and not forbidden. We have mentioned in the "Book of Zakat" within this compilation of ours and others the validity of a slave's ownership of his property. As for a master seizing a slave's wealth, it is authentically reported from the Messenger of Allah—peace and blessings be upon him—that he gave the cupping practitioner his fee and asked, "What about his tax?" Then he instructed his guardians to reduce it for him.

L24886 It has been narrated to us via the chain of Muslim: I [heard] from ʿAbd ibn Ḥumayd, from ʿAbd al-Razzāq, from Maʿmar, from ʿĀṣim, from al-Shaʿbī, from Ibn ʿAbbās: "A slave belonging to Banū Bayāḍah performed cupping on

[36] **Qur'an references (L24880):** Qur'an 2:275 (Al-Baqarah).
[37] **Qur'an references (L24883):** Qur'an 2:275 (Al-Baqarah).
[38] **Qur'an references (L24884):** Qur'an 6:119 (Al-An'am).

١٥٦١ - مَسْأَلَةٌ: وَبَيْعُ الْأَعْمَى، أَوْ ابْتِيَاعُهُ بِالصِّفَةِ جَائِزٌ كَالصَّحِيحِ، وَلَا فَرْقَ؛ لِأَنَّهُ لَمْ يَأْتِ قُرْآنٌ، وَلَا سُنَّةٌ بِالْفَرْقِ بَيْنَ شَيْءٍ فِي شَيْءٍ مِنْ ذَلِكَ {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] فَدَخَلَ فِي ذَلِكَ الْأَعْمَى، وَالْبَصِيرُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة بَيْع الْعَبْد وابتياعه مِنْ غَيْر أذن سيدَهْ]

مَسْأَلَةٌ: وَبَيْعُ الْعَبْدِ، وَابْتِيَاعُهُ بِغَيْرِ إذْنِ سَيِّدِهِ جَائِزٌ، مَا لَمْ يَنْتَزِعْ سَيِّدُهُ مَالَهُ فَإِنْ انْتَزَعَهُ فَهُوَ حِينَئِذٍ مَالُ السَّيِّدِ، لَا يَحِلُّ لِلْعَبْدِ التَّصَرُّفُ فِيهِ، بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] فَلَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ.

وَقَالَ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَلَوْ كَانَ بَيْعُ الْعَبْدِ مَالَهُ بِغَيْرِ إذْنِ سَيِّدِهِ حَرَامًا لَفَصَّلَهُ - عَزَّ وَجَلَّ - لَنَا، وَلَمَا أَلْجَأَنَا فِيهِ إلَى الظُّنُونِ الْكَاذِبَةِ، وَالْآرَاءِ الْمُدَبَّرَةِ.

فَإِذْ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ، فَصَحَّ أَنَّهُ حَلَالٌ غَيْرُ حَرَامٍ، وَقَدْ ذَكَرْنَا فِي " كِتَابِ الزَّكَاةِ " مِنْ دِيوَانِنَا هَذَا وَغَيْرِهِ صِحَّةَ مِلْكِ الْعَبْدِ لِمَالِهِ، وَأَمَّا انْتِزَاعُ السَّيِّدِ مَالَ الْعَبْدِ فَقَدْ صَحَّ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَعْطَى الْحَجَّامَ أَجْرَهُ وَسَأَلَ عَنْ ضَرِيبَتِهِ؟ فَأَمَرَ مَوَالِيَهِ أَنْ يُخَفِّفُوا عَنْهُ مِنْهَا» .

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا عَبْدُ بْنُ حُمَيْدٍ أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ عَاصِمٍ عَنْ الشَّعْبِيِّ عَنْ ابْنِ عَبَّاسٍ «حَجَمَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَبْدٌ لِبَنِي بَيَاضَةَ فَأَعْطَاهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَجْرَهُ وَكَلَّمَ سَيِّدَهُ فَخَفَّفَ عَنْهُ مِنْ ضَرِيبَتِهِ» .

the Prophet (peace and blessings of Allah be upon him). The Prophet (peace and blessings of Allah be upon him) gave him his wages and spoke to his master, who then reduced a portion of his tax obligation."[39]

فَصَحَّ أَنَّ الْعَبْدَ يَمْلِكُ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَعْطَاهُ أَجْرَهُ فَلَوْ لَمْ يَكُنْ لَهُ مَا أَعْطَاهُ مَا لَيْسَ لَهُ - وَصَحَّ أَنَّ لِلسَّيِّدِ أَخْذَهُ بِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِأَنْ يُخَفِّفَ عَنْهُ مِنْ خَرَاجِهِ، فَصَحَّ أَنَّ مَالَ الْعَبْدِ لَهُ مَا لَمْ يَنْتَزِعْهُ سَيِّدُهُ، وَصَحَّ أَنَّ لِلسَّيِّدِ أَخْذَ كَسْبِ عَبْدِهِ لِنَفْسِهِ.

L24887 It is valid that a slave owns property, for the Prophet (peace be upon him) gave him his wage. If he did not have the authority to give him what was not his, this would not be valid. It is also valid that the master may take that wealth by the Prophet's (peace be upon him) command to reduce part of his kharaj. Thus, it is valid that the slave's property belongs to him as long as his master does not take it away, and it is valid that the master may take his slave's earnings for himself.

وَاخْتَلَفَ النَّاسُ فِي هَذَا فَقَالَ أَبُو حَنِيفَةَ: إذَا ادَّانَ الْعَبْدُ بِبَيْعٍ أَوْ ابْتِيَاعٍ بِغَيْرِ إذْنِ سَيِّدِهِ فَهِيَ جِنَايَةٌ فِي رَقَبَتِهِ، وَيَلْزَمُ السَّيِّدَ فَكُّهُ بِهَا أَوْ إسْلَامُهُ إلَى صَاحِبِ دِينِهِ.

L24888 People have differed regarding this. Abū Ḥanīfah said: If a slave incurs debt by selling or purchasing without his master's permission, this constitutes a transgression burdening him personally. The master is then obligated to either free him by settling the debt or surrender him as property to the creditor.

قَالَ أَبُو مُحَمَّد: أَوَّلُ مَا يُقَالُ لَهُمْ: مِنْ أَيْنَ قُلْتُمْ هَذَا؟ وَلَيْسَ هَذَا الْحُكْمُ مَوْجُودًا فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ يُعْقَلُ لَهُ وَجْهٌ، بَلْ هُوَ ضِدُّ ذَلِكَ كُلِّهِ، قَالَ اللَّهُ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L24889 Abū Muḥammad said: The first thing to be said to them is: From where did you derive this? This ruling is not found in the Qur'an, nor in the Sunnah, nor in weak narrations, nor in the statement of a Companion, nor in analogy, nor in an opinion that can be logically substantiated. Rather, it contradicts all of that. Allah—Exalted is He—said: "No soul earns except against itself, and no bearer of burdens will bear the burden of another" [al-Anʿām 6:164].[40]

فَبَطَلَ أَنْ يَكْسِبَ الْحُرُّ أَوْ الْعَبْدُ عَلَى سَيِّدِهِ، أَوْ عَلَى غَيْرِ نَفْسِهِ إلَّا حَيْثُ أَوْجَبَهُ النَّصُّ كَالْعَاقِلَةِ.

L24890 Thus, it is invalid for a free person or a slave to acquire a claim against their master or anyone other than themselves, except where explicitly prescribed by the legal text, such as in the case of the _ʿāqilah_.

ثُمَّ وَجْهٌ آخَرُ - وَهُوَ قَوْلُهُ: إنَّ الْبَيْعَ وَالِابْتِيَاعَ جِنَايَةٌ - وَهَذَا تَخْلِيطٌ آخَرُ، وَقَالَ مَالِكٌ: إذَا تَدَايَنَ الْعَبْدُ بِغَيْرِ إذْنِ سَيِّدِهِ فَلِسَيِّدِهِ فَسْخُ الدَّيْنِ عَنْهُ - وَهَذَا بَاطِلٌ شَنِيعٌ، لِأَنَّهُ إبَاحَةٌ لِأَكْلِ أَمْوَالِ النَّاسِ بِالْبَاطِلِ، وَقَدْ حَرَّمَهُ اللَّهُ - تَعَالَى -، وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - قَالَ

L24891–24892 Then another viewpoint—his statement: "Selling and purchasing constitute a transgression"—which is another confusion. Mālik said: "If a slave incurs debt without his master's permission, the master may annul the debt incurred by him." This is a heinous falsehood, for it permits the unlawful

[39] **Hadith references (L24886):** Sahih Muslim 1202c.
[40] **Qur'an references (L24889):** Qur'an 6:164 (Al-An'am).

consumption of people's wealth—a practice prohibited by Allah, Exalted, and His Messenger, peace be upon him. The Almighty said: "Do not consume your wealth among yourselves unlawfully unless it be through trade with mutual consent" [An-Nisāʾ 4:29].[41]

L24893 The Messenger of Allah (peace and blessings be upon him) said: "Your blood and your wealth are inviolable for you [to violate]."

L24894 Among the wonders of the world is that they impose punishment for what he has committed upon those who have not reached the age of legal responsibility, and likewise the insane, then nullify the obligatory sale concerning a sane slave. Then they have brought forth from that a ruling that has never been mentioned in the Quran, nor the Sunnah, nor a weak narration, nor any statement from anyone before Malik that we know of, nor in analogical reasoning, nor any opinion with validity.

L24895 Another perplexity is their assertion: If the commodity acquired by the slave himself is found, it must be returned to its owner. I wonder: On what basis is the removal of the commodity from the slave's possession obligatory, yet he is not liable to compensate for its price if it is not found?

L24896 If the commodity is indeed the property of the seller, then the payment is his property.

L24897 If indeed the price is not the property of the seller, then the commodity is not his property either. Rather, the matter here is reversed in the vilest manner and most evidently corrupt, for it restores to the seller a commodity from which his ownership has been nullified, while the purchasing slave's valid ownership over it has been established. Thus, it grants him what he no longer rightfully possesses while withholding the price that is unquestionably his due - and these are catastrophic injustices without parallel.

L24898 Al-Shāfiʿī said: Rather, is the price a debt incumbent upon him in his liability if he is manumitted on any day? This is an utterly flawed opinion, because if

[41] **Qur'an references (L24892):** Qur'an 4:29 (An-Nisa).

- تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

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

وَمِنْ عَجَائِبِ الدُّنْيَا أَنَّهُمْ يُوجِبُونَ عَلَى مَنْ لَمْ يَبْلُغْ جَزَاءَ مَا جَنَى، وَكَذَلِكَ الْمَجْنُونُ، ثُمَّ يُسْقِطُونَ الْبَيْعَ الْوَاجِبَ عَنْ الْعَبْدِ الْعَاقِلِ، ثُمَّ أَتَوْا مِنْ ذَلِكَ بِقَوْلٍ لَمْ يَأْتِ قَطُّ فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ قَبْلَ مَالِكٍ نَعْلَمُهُ، وَلَا فِي قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

وَعَجَبٌ آخَرُ - وَهُوَ أَنَّهُمْ يَقُولُونَ: إنْ وُجِدَتْ السِّلْعَةُ الَّتِي اشْتَرَى الْعَبْدُ بِيَدِهِ وَجَبَ رَدُّهَا إلَى صَاحِبِهَا، فَلَيْتَ شِعْرِي مِنْ أَيْنَ وَجَبَ إزَالَةُ السِّلْعَةِ عَنْ يَدِ الْعَبْدِ، وَلَمْ يَجِبْ إغْرَامُهُ الثَّمَنَ عَنْهَا إنْ لَمْ تُوجَدْ.

وَلَئِنْ كَانَتْ السِّلْعَةُ مَالَ الْبَائِعِ: فَإِنَّ الثَّمَنَ مَالُهُ.

وَلَئِنْ كَانَ الثَّمَنُ لَيْسَ هُوَ مَالَ الْبَائِعِ، فَإِنَّ السِّلْعَةَ لَيْسَتْ مَالَهُ، بَلْ قَدْ عُكِسَ الْأَمْرُ هَهُنَا أَقْبَحَ الْعَكْسِ وَأَوْضَحَهُ فَسَادًا؛ لِأَنَّهُ رَدَّ إلَى الْبَائِعِ سِلْعَةً قَدْ بَطَلَ مِلْكُهُ عَنْهَا، وَصَحَّ مِلْكُ الْعَبْدِ الْمُشْتَرِي عَلَيْهَا، فَأَعْطَاهُ مَا لَيْسَ لَهُ وَلَمْ يُعْطِهِ الثَّمَنَ الَّذِي هُوَ لَهُ بِلَا شَكٍّ - وَهَذِهِ طَوَامُّ لَا نَظِيرَ لَهَا.

وَقَالَ الشَّافِعِيُّ: بَلْ الثَّمَنُ دَيْنٌ عَلَيْهِ فِي ذِمَّتِهِ إذَا أُعْتِقَ يَوْمًا مَا؟ وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ؛ لِأَنَّهُ إنْ كَانَ الثَّمَنُ لَازِمًا لِلْعَبْدِ فَلِأَيِّ مَعْنًى يُؤَخَّرُ بِهِ إلَى أَنْ يُعْتَقَ.

the price is binding upon the slave, then for what reason is it thereby delayed until his manumission?

L24899 If the price is not currently binding, it is impermissible to penalize him for default when he is manumitted.

L24900 If it is established that his purchase was valid, the price becomes obligatory for him to pay immediately.

L24901 If his purchase is invalid, he is not liable for the price; rather, he is liable only for the value of what he destroyed.

L24902–24903 These are corrupt, mutually weakening, and contradictory opinions, with no evidence supporting the validity of any of them. Their disagreement about them proves they do not come from Allah, the Almighty and Majestic. Thus, every discerning person becomes certain of the collapse of all of them.

L24904 Our statement is the statement of Abī Sulaymān and our companions. We have also mentioned it from Al-Ḥasan ibn ʿAlī, may Allāh be pleased with them both, and from others. And by Allāh, the Exalted, is success.

L24905 **The Issue of the Sale of Virgin and Previously Married Women.**

L24906 1563 - Issue: The sale by a woman is permissible from the time she reaches puberty—whether she is an unmarried woman with a father, an unmarried woman without a father, a previously married woman with a husband, or a previously married woman without a husband—and her purchase is likewise permissible, based on what we previously mentioned in "The Book of Legal Interdiction" within this compilation of ours, rendering its repetition unnecessary. And success is by Allah, the Exalted.

L24907 1564 - Issue: Whoever owns a mine may sell it, as it constitutes property from his wealth. If it is a gold mine, it is impermissible to sell it for gold, as this would entail exchanging gold for an unequal amount, since gold exists in its mine in its natural state. It is permissible to exchange it for silver through immediate hand-to-hand cash payment, deferred terms, or as an immediate debt obligation. If it is a silver mine, it is permissible to sell it for silver or gold via cash payment—hand-to-hand, as a debt obligation, or on deferred

وَلَئِنْ كَانَ الثَّمَنُ لَيْسَ لَازِمًا الْآنَ فَلَا يَجُوزُ إِغْرَامُهُ إِيَّاهُ إِذَا أُعْتِقَ.

وَلَئِنْ كَانَ ابْتِيَاعُهُ صَحِيحًا فَإِنَّ الثَّمَنَ عَلَيْهِ الْآنَ وَاجِبٌ.

وَلَئِنْ كَانَ ابْتِيَاعُهُ فَاسِدًا فَمَا يَلْزَمُهُ ثَمَنٌ إِنَّمَا يَلْزَمُهُ قِيمَةُ مَا أَتْلَفَ فَقَطْ.

فَهَذِهِ آرَاءٌ فَاسِدَةٌ مُتَخَاذِلَةٌ مُتَنَاقِضَةٌ، لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، وَاخْتِلَافُهُمْ فِيهَا دَلِيلٌ عَلَى أَنَّهَا لَيْسَتْ مِنْ عِنْدِ اللَّهِ عَزَّ وَجَلَّ، فَتَيَقَّنَ كُلُّ مُوقِنٍ سُقُوطَهَا كُلَّهَا.

وَقَوْلُنَا هُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَقَدْ ذَكَرْنَاهُ أَيْضًا عَنْ الْحَسَنِ بْنِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - وَعَنْ غَيْرِهِ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَةَ بَيْعُ الْمَرْأَةِ الْبِكْرِ وَالثَّيِّبَ]

١٥٦٣ - مَسْأَلَةٌ: وَبَيْعُ الْمَرْأَةِ مُذْ تَبْلُغُ الْبِكْرِ ذَاتِ الْأَبِ، وَغَيْرِ ذَاتِ الْأَبِ وَالثَّيِّبِ ذَاتِ الزَّوْجِ وَالَّتِي لَا زَوْجَ لَهَا جَائِزٌ، وَابْتِيَاعُهَا كَذَلِكَ، لِمَا ذَكَرْنَاهُ قَبْلُ فِي " كِتَابِ الْحَجْرِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

١٥٦٤ - مَسْأَلَةٌ: وَمَنْ مَلَكَ مَعْدِنًا لَهُ جَازَ بَيْعُهُ؛ لِأَنَّهُ مَالٌ مِنْ مَالِهِ، فَإِنْ كَانَ مَعْدِنَ ذَهَبٍ لَمْ يَحِلَّ بَيْعُهُ بِذَهَبٍ؛ لِأَنَّهُ ذَهَبٌ بِأَكْثَرَ مِنْهُ، إذْ الذَّهَبُ مَخْلُوقٌ فِي مَعْدِنِهِ كَمَا هُوَ هُوَ، جَائِزٌ بِالْفِضَّةِ يَدًا بِيَدٍ نَقْدًا وَإِلَى أَجَلٍ وَحَالًّا فِي الذِّمَّةِ، فَإِنْ كَانَ مَعْدِنَ فِضَّةٍ

terms—for no actual silver exists there; rather, its ore is processed into silver through smelting.

L24908 Whoever opposes us in this matter has permitted the sale of palm trees without fruit in exchange for dates—whether paid in cash, as an immediate liability, or deferred—while dates are produced from them. Similarly, he has allowed the sale of land for wheat, and all of this is the same. Success is from Allah, the Most High.

The Issue of Selling Fodder

L24909

L24910 1565 - Issue: The sale of fodder is permissible while still rooted in the land and after its uprooting, as it is property from the landowner's wealth. Whatever originates from a person's property becomes part of their wealth, such as offspring from animals, fruits, plants, milk, wool, and other such things: {Allah has permitted sale} [Al-Baqarah: 275]. No textual prohibition has been revealed regarding the sale of anything from all of these: {Your Lord is never forgetful} [Maryam: 64], {He has already detailed what He forbade you} [Al-An'ām: 119].[42]

L24911 Abu Hanifah said: The sale of fodder is only permissible after it has been uprooted.

L24912–24914 Ali said: "We do not know of any valid argument for this statement whatsoever. It is merely a flawed categorization and a baseless claim. Should anyone raise this—" What has been narrated to us through Ḥurayz ibn 'Uthmān—I, Abū Khidāsh—that I heard a man from the Companions of the Messenger of Allah, peace and blessings be upon him, say: "He fought in three campaigns with the Messenger of Allah, peace and blessings be upon him, and he heard him say: 'Muslims are partners in three things: water, pasture, and fire.'"

جَازَ بَيْعُهُ بِفِضَّةٍ أَوْ بِذَهَبٍ نَقْدًا، أَوْ فِي الذِّمَّةِ، وَإِلَى أَجَلٍ؛ لِأَنَّهُ لَا فِضَّةَ هُنَالِكَ، وَإِنَّمَا يَسْتَحِيلُ تُرَابُهُ بِالطَّبْخِ فِضَّةً.

وَمَنْ خَالَفَنَا فِي هَذَا فَقَدْ أَجَازَ بَيْعَ النَّخْلِ لَا ثَمَرَ فِيهَا بِالتَّمْرِ نَقْدًا وَحَالًّا فِي الذِّمَّةِ وَنَسِيئَةً، وَالتَّمْرُ يَخْرُجُ مِنْهَا - وَكَذَلِكَ أَبَاحَ بَيْعَ الْأَرْضِ بِالْبُرِّ، وَكُلُّ هَذَا سَوَاءٌ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَةُ بَيْعُ الْكَلَأِ]

١٥٦٥ - مَسْأَلَةٌ: وَبَيْعُ الْكَلَأِ جَائِزٌ فِي أَرْضٍ وَبَعْدَ قَلْعِهِ؛ لِأَنَّهُ مَالٌ مِنْ مَالِ صَاحِبِ الْأَرْضِ، وَكُلُّ مَا تَوَلَّدَ مِنْ مَالِ الْمَرْءِ فَهُوَ مِنْ مَالِهِ، كَالْوَلَدِ مِنْ الْحَيَوَانِ، وَالثَّمَرِ، وَالنَّبَاتِ وَاللَّبَنِ، وَالصُّوفِ، وَغَيْرِ ذَلِكَ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَلَمْ يَأْتِ نَصٌّ بِتَحْرِيمِ بَيْعِ شَيْءٍ مِنْ ذَلِكَ كُلِّهِ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] ، {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

وَقَالَ أَبُو حَنِيفَةَ: لَا يَحِلُّ بَيْعُ الْكَلَأِ إلَّا بَعْدَ قَلْعِهِ.

قَالَ عَلِيٌّ: وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا وَإِنَّمَا هُوَ تَقْسِيمٌ فَاسِدٌ، وَدَعْوَى سَاقِطَةٌ - فَإِنْ ذَكَرَ ذَاكِرٌ -: مَا رُوِّينَا مِنْ طَرِيقِ حُرَيْزِ بْنِ عُثْمَانَ أَنَا أَبُو خِدَاشٍ " أَنَّهُ سَمِعَ «رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: إنَّهُ غَزَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَلَاثَ غَزَوَاتٍ فَسَمِعَهُ يَقُولُ: الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ الْمَاءُ وَالْكَلَأُ وَالنَّارُ» .

[42] **Qur'an references (L24910):** Qur'an 2:275 (Al-Baqarah); Qur'an 19:64 (Maryam); Qur'an 6:119 (Al-An'am).

وَرَوَاهُ أَيْضًا حُرَيْزُ بْنُ عُثْمَانَ عَنْ حِبَّانَ بْنِ زَيْدٍ الشَّرْعَبِيِّ - وَهُوَ أَبُو خِدَاشٍ نَفْسُهُ - عَنْ رَجُلٍ مِنْ قَرْنٍ.

L24915 It was also narrated by Ḥurayz ibn ʿUthmān from Ḥibbān ibn Zayd al-Sharʿabī—and he is Abū Khidāsh himself—from a man from Qarn.

وَمِنْ طَرِيقِ الْحُذَافِيِّ أَخْبَرَنِي يَزِيدُ بْنُ مُسْلِمٍ الْجُرَيْرِيُّ قَالَ لِي وَهْبُ بْنُ مُنَبِّهٍ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اتَّقُوا السُّحْتَ بَيْعَ الشَّجَرِ وَإِجَارَةَ الْأَمَةِ الْمُسَاحِقَةِ وَثَمَنَ الْخَمْرِ».

L24916 Via the transmission of al-Ḥudhāfī, Yazīd ibn Muslim al-Jurayrī reported to me, [narrating] that Wahb ibn Munabbih said to me: The Prophet—peace and blessings of Allah be upon him—said: “Guard against unlawful earnings—selling trees, renting out a slave woman for fornication, and the price of wine.”

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ أَنَا أَبِي كَهْمَسٍ عَنْ سَيَّارِ بْنِ مَنْظُورٍ الْفَزَارِيِّ عَنْ أَبِيهِ عَنْ بُهَيْسَةَ عَنْ أَبِيهَا «سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا الَّذِي لَا يَحِلُّ بَيْعُهُ؟ فَأَجَابَهُ: الْمَاءُ، وَالْمِلْحُ».

L24917 And via the chain of Abu Dawud: I am ʿUbaydullah ibn Muʿadh al-ʿAnbari, from my father Kahmas, from Sayyar ibn Manzur al-Fazari, from his father, from Buhaysah, from her father that he asked the Prophet (peace be upon him), “What is it that is not permissible to sell?” He replied, “Water and salt.”

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ لَا شَيْءَ - أَبُو خِدَاشٍ هُوَ حِبَّانُ بْنُ زَيْدٍ الشَّرْعَبِيُّ نَفْسُهُ - وَهُوَ مَجْهُولٌ -.

L24918 Abu Muhammad said: All of this is baseless — Abu Khidāsh is Hibban ibn Zayd al-Sharʿabī himself — and he is unknown.

وَأَيْضًا: فَإِنَّهُ مُخَالِفٌ لِقَوْلِ الْحَنَفِيِّينَ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ صَاحِبَ الْمَاءِ أَوْلَى بِهِ لَا يُشَارِكُهُ فِيهِ غَيْرُهُ، وَكَذَلِكَ صَاحِبُ النَّارِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L24919 Moreover, it contradicts the opinion of the Hanafis, as they unanimously hold that the owner of water has a prior claim to it, and no one else shares it with him. The same applies to the owner of fire. Thus, their reliance on this narration is nullified.

وَأَيْضًا: فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ أَخَذَ مَاءً فِي إنَاءٍ أَوْ كَلَأً فَجَمَعَهُ، فَإِنَّهُ يَبِيعُهُمَا وَلَا يُشَارِكُهُ فِيهِمَا أَحَدٌ - وَهَذَا خِلَافُ عُمُومِ الْخَبَرِ فَعَادَ حُجَّةً عَلَيْهِمْ.

L24920 Additionally, they do not disagree that whoever takes water in a vessel or takes fodder and collects it may sell both without anyone sharing with him in them—and this contradicts the general purport of the report, thus it becomes a proof against them.

فَإِنْ قَالُوا: إنَّمَا عَنَى بِهِ الْكَلَأَ قَبْلَ أَنْ يُجْمَعَ؟ قُلْنَا: بَلْ الْكَلَأُ الثَّابِتُ فِي الْأَرْضِ غَيْرِ الْمَمْلُوكَةِ - وَهَذَا التَّأْوِيلُ مُتَّفَقٌ عَلَيْهِ وَتَأْوِيلُكُمْ دَعْوَى مُخْتَلَفٌ فِيهَا لَا بُرْهَانَ عَلَى صِحَّتِهِ.

L24921 If they say, “He only meant the pasture before it is gathered,” we respond: Rather, it is the pasture established in non-owned land—this interpretation is agreed upon by consensus, whereas yours is a claim subject to disagreement, lacking any proof for its validity.

L24922–24924 As for the ḥadīth of Wahb ibn Munabbih, it is disconnected. The ruling concerning it and the contradictory evaluations regarding him aligns with

the ruling concerning the ḥadīth of Ḥurayz ibn ʿUthmān, with no distinction. The ḥadīth of Buhaysah is transmitted through an unknown narrator from an unknown narrator from an unknown female narrator. Then... There is no mention of pasture in it whatsoever—it was incumbent upon the Mālikīs, those who uphold the mursal ḥadīth, to adopt these mursal reports, but they contradicted their own position and consequently abandoned them.

وَأَمَّا حَدِيثُ وَهْبِ بْنِ مُنَبِّهٍ فَمُنْقَطِعٌ، ثُمَّ الْقَوْلُ فِيهِ وَفِي خِلَافِهِمْ لَهُ كَالْقَوْلِ فِي حَدِيثِ حُرَيْزِ بْنِ عُثْمَانَ وَلَا فَرْقَ - وَحَدِيثُ بُهَيْسَةَ مَجْهُولٌ عَنْ مَجْهُولٍ عَنْ مَجْهُولَةٍ - ثُمَّ لَيْسَ فِيهِ ذِكْرُ الْكَلَأِ أَصْلًا - وَكَانَ يَلْزَمُ الْمَالِكِيِّينَ الْقَائِلِينَ بِالْمُرْسَلِ الْأَخْذُ بِهَذِهِ الْمَرَاسِيلِ، لَكِنَّهُمْ تَنَاقَضُوا فَتَرَكُوهَا.

L24925 It has been reported to us from ʿAbd al-Razzāq, from Maʿmar, from ʿAbd Allāh ibn Ṭāwus, from his father, that he did not permit a landowner to sell the fodder of his land but allowed him to restrict it for the use of his livestock.

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ لَمْ يُجِزْ لِصَاحِبِ الْأَرْضِ بَيْعَ كَلَأِ أَرْضِهِ وَأَبَاحَ لَهُ أَنْ يَحْمِيَهُ لِدَوَابِّهِ.

L24926 It is reported through the transmission of ʿAbd al-Razzāq from Wahb ibn Nāfiʿ that he heard ʿIkrimah say: Do not consume the price of the tree, for it is unlawful gain. And from al-Ḥasan that he disapproved of selling all of the pasture.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ وَهْبِ بْنِ نَافِعٍ أَنَّهُ سَمِعَ عِكْرِمَةَ يَقُولُ: لَا تَأْكُلُوا ثَمَنَ الشَّجَرِ فَإِنَّهُ سُحْتٌ - وَعَنْ الْحَسَنِ أَنَّهُ كَرِهَ بَيْعَ الْكَلَأِ كُلِّهِ

L24927 Muhammad ibn Sa’id ibn Nabat narrated to us from Isma’il ibn Ishaq al-Nasri from Isa ibn Habib from Abd al-Rahman ibn Abdullah ibn Muhammad from my grandfather Muhammad ibn Abdullah ibn Yazid al-Muqri, who said: Sufyan ibn Uyaynah said to us: Three things are not to be withheld: water, pasture, and fuel.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا إِسْمَاعِيلُ بْنُ إِسْحَاقَ النَّصْرِيُّ أَنَا عِيسَى بْنُ حَبِيبٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ أَنَا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي قَالَ: قَالَ لَنَا سُفْيَانُ بْنُ عُيَيْنَةَ: ثَلَاثٌ لَا يُمْنَعْنَ: الْمَاءُ وَالْكَلَأُ، وَالنَّارُ.

L24928 So these [jurists] have relied on the general applicability of these mursal reports. Thus, whoever claims the opponents from the followers of Abū Ḥanīfah has lied. This is why we have cited them.

فَهَؤُلَاءِ أَخَذُوا بِعُمُومِ هَذِهِ الْمَرَاسِيلِ فَمَنْ ادَّعَى مِنْ أَصْحَابِ أَبِي حَنِيفَةَ الْخُصُومَ فَقَدْ كَذَبَ، وَلِهَذَا أَوْرَدْنَاهَا.

[مَسْأَلَة بَيْع آلات اللَّهْو]

The Issue of Selling Instruments of Frivolous Entertainment

L24929

L24930 1566. Issue: The sale of chess, flutes, drumsticks, musical instruments, and tambourines is entirely permissible. Whoever breaks any of these items is liable for it, unless it is a depicted image – in which case there is no liability upon its breaker (as we mentioned previously) because it constitutes property owned by its possessor. Similarly, the sale and purchasing of female singers are permissible.

١٥٦٦ - مَسْأَلَةٌ: وَبَيْعُ الشِّطْرَنْجِ، وَالْمَزَامِيرِ، وَالْعِيدَانِ، وَالْمَعَازِفِ، وَالطَّنَابِيرِ: حَلَالٌ كُلُّهُ، وَمَنْ كَسَرَ شَيْئًا مِنْ ذَلِكَ ضَمِنَهُ، إلَّا أَنْ يَكُونَ صُورَةً مُصَوَّرَةً فَلَا ضَمَانَ عَلَى كَاسِرِهَا، لِمَا ذَكَرْنَا قَبْلُ، لِأَنَّهَا مَالٌ مِنْ مَالِ مَالِكِهَا - وَكَذَلِكَ بَيْعُ الْمُغَنِّيَاتِ وَابْتِيَاعُهُنَّ.

L24931 He, the Exalted, said: “He created for you all that is on the earth” [Al-Baqarah: 29]; and He, the Exalted, said: “And Allah has made selling lawful” [Al-Baqarah: 275]; and He, the Exalted, said: “And He has detailed for you what He has forbidden to you” [Al-Anʿām: 119]. No textual evidence exists prohibiting the sale of any of such matters, and Abū Ḥanīfah held that financial liability lies upon whoever damages anything of these [lawful] things.[43]

قَالَ - تَعَالَى -: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] ، وَقَالَ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] ، وَقَالَ - تَعَالَى -: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] ، وَلَمْ يَأْتِ نَصٌّ بِتَحْرِيمِ بَيْعِ شَيْءٍ مِنْ ذَلِكَ، وَرَأَى أَبُو حَنِيفَةَ الضَّمَانَ عَلَى مَنْ كَسَرَ شَيْئًا مِنْ ذَلِكَ.

L24932–24934 Those who prohibit have cited narrations that are unsound or partially authentic, yet these provide no valid evidence for their position. These include reports transmitted to us via the chain of Abu Dawud al-Tayalisi: Hisham narrates from Yahya ibn Abi Kathir, from Abu Salam, from Abdullah ibn Zayd ibn al-Azraq, from Uqbah ibn Amir al-Juhani, who said: “Allah’s Messenger (PBUH) said: ’Every...” Any diversion a man engages in is futile except his shooting with his bow, disciplining his horse, or affectionate play with his wife—for these indeed are among righteous acts.

وَاحْتَجَّ الْمَانِعُونَ بِآثَارٍ لَا تَصِحُّ، أَوْ يَصِحُّ بَعْضُهَا، وَلَا حُجَّةَ لَهُمْ فِيهَا، وَهِيَ -: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ أَنَا هِشَامٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَامٍ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدِ بْنِ الْأَزْرَقِ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ قَالَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَيْءٍ يَلْهُو بِهِ الرَّجُلُ فَبَاطِلٌ، إِلَّا رَمْيَ الرَّجُلِ بِقَوْسِهِ، أَوْ تَأْدِيبَهُ فَرَسَهُ، أَوْ مُلَاعَبَتَهُ امْرَأَتَهُ، فَإِنَّهُنَّ مِنْ الْحَقِّ» .

L24935 Abdullah ibn Zayd ibn al-Azraq is deemed majhool (of unknown reliability status).

عَبْدُ اللَّهِ بْنُ زَيْدِ بْنِ الْأَزْرَقِ مَجْهُولٌ.

L24936 And from the narration of Ibn Abī Shaybah from ʿĪsā ibn Yūnus from ʿAbd al-Raḥmān ibn Yazīd from Jābir: I am Abū Salām al-Dimashqī, narrating from Khālid ibn Zayd al-Juhanī. ʿUqbah ibn ʿĀmir said to me: The Messenger of Allah (peace be upon him) said, “There is no diversion for a believer except three things,” then he mentioned it [the ḥadīth]. Khālid ibn Zayd is unknown [as a narrator].

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عِيسَى بْنِ يُونُسَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ عَنْ جَابِرٍ أَنَا أَبُو سَلَامٍ الدِّمَشْقِيُّ عَنْ خَالِدِ بْنِ زَيْدٍ الْجُهَنِيِّ قَالَ لِي عُقْبَةُ بْنُ عَامِرٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَيْسَ لَهْوُ الْمُؤْمِنِ إِلَّا ثَلَاثٌ» ثُمَّ ذَكَرَهُ - خَالِدُ بْنُ زَيْدٍ مَجْهُولٌ.

L24937 From the chain of Ahmad ibn Shuʿayb: I am Saʿīd, I am Ibn Ḥafṣ, I am Mūsā ibn Aʿyan, from Khālid ibn Abī Yazīd, who narrated to me: ʿAbd al-Raḥīm narrated from al-Zuhrī, from ʿAṭāʾ ibn Abī Rabāḥ: “I saw Jābir ibn ʿAbdullāh and Jābir ibn ʿUbayd, the two Anṣārīs, practicing archery. One said to the other: ʿDid you not hear Allah’s Messenger (peace be upon him) say: ”Every matter devoid of Allah’s remembrance is play, except four: a man’s play with

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا سَعِيدٌ أَنَا ابْنُ حَفْصٍ أَنَا مُوسَى بْنُ أَعْيَنَ عَنْ خَالِدِ بْنِ أَبِي يَزِيدَ حَدَّثَنِي عَبْدُ الرَّحِيمِ عَنْ الزُّهْرِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ رَأَيْت جَابِرَ بْنَ عَبْدِ اللَّهِ، وَجَابِرَ بْنَ عُبَيْدٍ الْأَنْصَارِيَّيْنِ يَرْمِيَانِ فَقَالَ أَحَدُهُمَا لِلْآخَرِ " أَمَا سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «كُلُّ شَيْءٍ لَيْسَ مِنْ ذِكْرِ اللَّهِ فَهُوَ لَعِبٌ، لَا يَكُونُ

[43] **Qur’an references (L24931):** Qur’an 2:29 (Al-Baqarah); Qur’an 2:275 (Al-Baqarah); Qur’an 6:119 (Al-An’am).

his wife, a man's training of his horse, a man's walking between two targets, and a man's teaching swimming.'"

أَرْبَعَةً: مُلَاعَبَةُ الرَّجُلِ امْرَأَتَهُ، وَتَأْدِيبُ الرَّجُلِ فَرَسَهُ، وَمَشْيُ الرَّجُلِ بَيْنَ الْغَرَضَيْنِ، وَتَعْلِيمُ الرَّجُلِ السِّبَاحَةَ» .

L24938 This is a corrupted, deceptively transmitted ḥadīth with a severe form of concealment, because the al-Zuhrī mentioned in it is not Ibn Shihāb, but rather an unknown man bearing the nisba al-Zuhrī named ʿAbd al-Raḥīm. We have reported it through the chain of Aḥmad ibn Shuʿayb: I am Muḥammad ibn Wahb al-Ḥarrānī, from Muḥammad ibn Salamah al-Ḥarrānī, from Abū ʿAbd al-Raḥīm—who is Khālid ibn Abī Yazīd, the maternal uncle of Muḥammad ibn Salamah—from ʿAbd al-Raḥīm al-Zuhrī, from ʿAṭāʾ: "I saw Jābir ibn ʿAbd Allāh and Jābir ibn ʿUbayd, the two Anṣārīs, shooting arrows. One of them said to the other: I heard the Messenger of Allāh (peace and blessings be upon him) say: 'Every matter lacking remembrance of Allāh—Exalted is He—is idle diversion and play except four: a man's play with his wife, his training of his horse, his walking between two targets, and his teaching of swimming.'" Thus, this report is invalid.

هَذَا حَدِيثٌ مَغْشُوشٌ مُدَلَّسٌ دُلْسَةَ سُوءٍ، لِأَنَّ الزُّهْرِيَّ الْمَذْكُورَ فِيهِ لَيْسَ هُوَ ابْنَ شِهَابٍ، لَكِنَّهُ رَجُلٌ زُهْرِيٌّ مَجْهُولٌ اسْمُهُ عَبْدُ الرَّحِيمِ -: رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ وَهْبٍ الْحَرَّانِيُّ عَنْ مُحَمَّدِ بْنِ سَلَمَةَ الْحَرَّانِيِّ عَنْ أَبِي عَبْدِ الرَّحِيمِ - هُوَ خَالِدُ بْنُ أَبِي يَزِيدَ - وَهُوَ خَالُ مُحَمَّدِ بْنِ سَلَمَةَ - عَنْ عَبْدِ الرَّحِيمِ الزُّهْرِيِّ عَنْ عَطَاءٍ: رَأَيْت جَابِرَ بْنَ عَبْدِ اللَّهِ، وَجَابِرَ بْنَ عُبَيْدٍ الْأَنْصَارِيَّيْنِ يَرْمِيَانِ، فَقَالَ أَحَدُهُمَا لِلْآخَرِ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «كُلُّ شَيْءٍ لَيْسَ فِيهِ ذِكْرُ اللَّهِ - تَعَالَى - فَهُوَ لَهْوٌ وَلَعِبٌ، إلَّا أَرْبَعَةً: مُلَاعَبَةُ الرَّجُلِ امْرَأَتَهُ، وَتَأْدِيبُ الرَّجُلِ فَرَسَهُ، وَمَشْيُهُ بَيْنَ الْغَرَضَيْنِ، وَتَعْلِيمُ الرَّجُلِ السِّبَاحَةَ» فَسَقَطَ هَذَا الْخَبَرُ.

L24939–24941 We have also narrated it through the chain of Aḥmad ibn Shuʿayb: I, Isḥāq ibn Ibrāhīm, from I, Muḥammad ibn Salamah. I am Abū ʿAbd al-Raḥīm, reporting from ʿAbd al-Wahhāb ibn Bukht, who reported from ʿAṭāʾ ibn Abī Rabāḥ: "I saw Jābir ibn ʿAbdullāh and Jābir ibn ʿUbayd, and he mentioned him. In the report appears: 'Everything unrelated to the remembrance of Allah constitutes idle talk and heedlessness.'" ʿAbd al-Wahhāb ibn Bukht is not renowned for uprightness. Furthermore, the report only describes it as idle talk and heedlessness, and there is no prohibition in it.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إبْرَاهِيمَ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ أَنَا أَبُو عَبْدِ الرَّحِيمِ عَنْ عَبْدِ الْوَهَّابِ بْنِ بُخْتٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ رَأَيْت جَابِرَ بْنَ عَبْدِ اللَّهِ، وَجَابِرَ بْنَ عُبَيْدٍ، فَذَكَرَهُ، وَفِيهِ «كُلُّ شَيْءٍ لَيْسَ مِنْ ذِكْرِ اللَّهِ فَهُوَ لَغْوٌ وَسَهْوٌ» عَبْدُ الْوَهَّابِ بْنُ بُخْتٍ غَيْرُ مَشْهُورٍ بِالْعَدَالَةِ، ثُمَّ لَيْسَ فِيهِ إلَّا أَنَّهُ سَهْوٌ وَلَغْوٌ وَلَيْسَ فِيهِ تَحْرِيمٌ.

L24942 It has been narrated through the chain of Al-'Abbās ibn Muḥammad al-Dūrī from Muḥammad ibn Kathīr al-'Abdī, from Ja'far ibn Sulaymān al-Ḍuba'ī, from Sa'īd ibn Abī Razīn from his brother, from Layth ibn Abī Sulaym, from 'Abd al-Raḥmān ibn Sābiṭ, from 'Ā'ishah the Mother of the Believers—may Allah be pleased with her—from the Prophet—peace and blessings of Allah be upon him—who said: "Verily Allah has forbidden the female singer, selling her, her price, teaching her, and listening to her."

وَرُوِيَ مِنْ طَرِيقِ الْعَبَّاسِ بْنِ مُحَمَّدٍ الدُّورِيِّ عَنْ مُحَمَّدِ بْنِ كَثِيرٍ الْعَبْدِيِّ أَنَا جَعْفَرُ بْنُ سُلَيْمَانَ الضُّبَعِيُّ عَنْ سَعِيدِ بْنِ أَبِي رَزِينٍ عَنْ أَخِيهِ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَابِطٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ اللَّهَ حَرَّمَ الْمُغَنِّيَةَ وَبَيْعَهَا وَثَمَنَهَا وَتَعْلِيمَهَا وَالِاسْتِمَاعَ إلَيْهَا» .

فِيهِ: لَيْثٌ، وَهُوَ ضَعِيفٌ، وَسَعِيدُ بْنُ أَبِي رَزِينٍ وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ عَنْ أَخِيهِ، وَمَا أَدْرَاكَ مَا عَنْ أَخِيهِ هُوَ مَا يُعْرَفُ وَقَدْ سُمِّيَ، فَكَيْفَ أَخُوهُ الَّذِي لَمْ يُسَمَّ.

L24943 In it: Laith—who is weak—and Sa'id ibn Abi Razin—who is unknown, as the brother from whom he narrates is unidentified. And what could make you comprehend what "from his brother" signifies? He is unknown despite having been named—so what of his brother, who has not been named?

وَحَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ أَنَا أَبُو أَحْمَدَ سَهْلُ بْنُ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ سَهْلٍ الْمَرْوَزِيُّ أَنَا لَاحِقُ بْنُ الْحُسَيْنِ الْمَقْدِسِيُّ - قَدِمَ مَرْوَ - أَنَا أَبُو الْمُرَجَّى ضِرَارُ بْنُ عَلِيِّ بْنِ عُمَيْرٍ الْقَاضِي الْجِيلَانِيُّ أَنَا أَحْمَدُ بْنُ سَعِيدِ بْنِ عَبْدِ اللَّهِ بْنِ كَثِيرٍ الْحِمْصِيُّ أَنَا فَرَجُ بْنُ فَضَالَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ مُحَمَّدِ بْنِ عَلِيِّ ابْنِ الْحَنَفِيَّةِ عَنْ أَبِيهِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِذَا عَمِلَتْ أُمَّتِي خَمْسَ عَشْرَةَ خَصْلَةً حَلَّ بِهَا الْبَلَاءُ - فَذَكَرَ مِنْهُنَّ وَاتِّخَذُوا الْقَيْنَاتِ، وَالْمَعْزَفَ فَلْيَتَوَقَّعُوا عِنْدَ ذَلِكَ رِيحًا حَمْرَاءَ، وَمَسْخًا وَخَسْفًا» .

L24944 Aḥmad ibn ʿUmar ibn Anas narrated to us: Abū Aḥmad Sahl ibn Muḥammad ibn Aḥmad ibn Sahl al-Marwazī narrated to us: Lāḥiq ibn al-Ḥusayn al-Maqdisī—who came to Marw—narrated to us: Abū al-Murajjā Ḍirār ibn ʿAlī ibn ʿUmayr al-Qāḍī al-Jīlānī narrated to us: Aḥmad ibn Saʿīd ibn ʿAbd Allāh ibn Kathīr al-Ḥimṣī narrated to us: Faraj ibn Faḍālah narrated to us from Yaḥyā ibn Saʿīd from Muḥammad ibn ʿAlī ibn al-Ḥanafiyyah from his father ʿAlī ibn Abī Ṭālib, who said: The Messenger of Allah (peace and blessings be upon him) said: "When my nation engages in fifteen traits, calamity will befall them." He mentioned among these: "Adopting female singers and the stringed instrument - let them then anticipate at that time a red wind, transformation [into beasts], and the earth swallowing them."

لَاحِقُ بْنُ الْحُسَيْنِ، وَضِرَارُ بْنُ عَلِيٍّ، وَالْحِمْصِيُّ - مَجْهُولُونَ -.

L24945 Laḥiq ibn al-Ḥusayn, Ḍirār ibn ʿAlī, and al-Ḥimṣī—unknown.

وَفَرَجُ بْنُ فَضَالَةَ حِمْصِيٌّ مَتْرُوكٌ، تَرَكَهُ يَحْيَى، وَعَبْدُ الرَّحْمَنِ.

L24946 Faraj ibn Fadalah al-Himsi is discarded; Yahya rejected him, and ʿAbd al-Rahman.

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا إِبْرَاهِيمُ بْنُ إِسْحَاقَ النَّيْسَابُورِيُّ أَنَا أَبُو عُبَيْدَةَ بْنُ الْفُضَيْلِ بْنِ عِيَاضٍ أَنَا أَبُو سَعِيدٍ مَوْلَى بَنِي هَاشِمٍ - هُوَ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ - أَنَا عَبْدُ الرَّحْمَنِ بْنُ الْعَلَاءِ عَنْ مُحَمَّدِ بْنِ الْمُهَاجِرِ عَنْ كَيْسَانَ مَوْلَى مُعَاوِيَةَ أَنَا مُعَاوِيَةُ قَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ تِسْعٍ وَأَنَا أَنْهَاكُمْ عَنْهُنَّ الْآنَ - فَذَكَرَ فِيهِنَّ -: الْغِنَاءَ، وَالنَّوْحَ» .

L24947 From the narration of Qasim ibn Asbagh: From Ibrahim ibn Ishaq al-Naysaburi, from Abu Ubaydah ibn al-Fudayl ibn Iyad, from Abu Sa'id—the client of Banu Hashim, who is 'Abd al-Rahman ibn 'Abd Allah—from 'Abd al-Rahman ibn al-'Ala', from Muhammad ibn al-Muhajir, from Kaysan—the client of Mu'awiyah—from Mu'awiyah, who said: "The Messenger of Allah—peace be upon him—prohibited nine things, and I now forbid you from them." He mentioned among these: singing and wailing.

مُحَمَّدُ بْنُ الْمُهَاجِرِ ضَعِيفٌ، وَكَيْسَانُ مَجْهُولٌ.

L24948–24949 Muhammad ibn al-Muhājir is weak, and Kaysān is unknown.

وَبِإِسْنَادِ أَبِي دَاوُدَ: مُسْلِمُ بْنُ إِبْرَاهِيمَ نَا سَلَّامُ بْنُ مِسْكِينٍ عَنْ شَيْخٍ أَنَّهُ سَمِعَ أَبَا وَائِلٍ قَالَ: سَمِعْتُ ابْنَ مَسْعُودٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: ’إِنَّ

L24950 And through the chain of Abū Dāwūd: Muslim ibn Ibrāhīm narrated from Salām ibn Miskīn, from a shaykh, that he heard Abū Wā'il say: "I heard Ibn Mas'ūd say: I heard the Messenger of Allāh (peace be upon him) say: 'Indeed,

singing cultivates hypocrisy in the heart,'" reported from a shaykh—a matter of great astonishment.

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُسْلِمُ بْنُ إِبْرَاهِيمَ أَنَا سَلَامُ بْنُ مِسْكِينٍ عَنْ شَيْخٍ أَنَّهُ سَمِعَ أَبَا وَائِلٍ يَقُولُ: سَمِعْت ابْنَ مَسْعُودٍ يَقُولُ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إنَّ الْغِنَاءَ يُنْبِتُ النِّفَاقَ فِي الْقَلْبِ» عَنْ شَيْخٍ عَجَبٌ جِدًّا.

L24951 From the chain of Muḥammad ibn Aḥmad ibn al-Jahm: Muḥammad ibn ʿAbdūs narrated to me, Ibn Abī Shaybah narrated to me, Zayd ibn al-Ḥubāb narrated to me, from Muʿāwiyah ibn Ṣāliḥ, from Ḥātim ibn Ḥurayth, from Mālik ibn Abī Maryam, who reported: ʿAbd al-Raḥmān ibn Ghanm narrated to me, Abū Mālik al-Ashʿarī narrated to me that he heard the Prophet (peace be upon him) say: "People among my nation will drink intoxicants, calling them by names other than their own. Musical instruments and female singers will be played over their heads, and Allah will cause the earth to engulf them."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ الْجَهْمِ أَنَا مُحَمَّدُ بْنُ عَبْدُوسٍ أَنَا ابْنُ أَبِي شَيْبَةَ أَنَا زَيْدُ بْنُ الْحُبَابِ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ أَنَا حَاتِمُ بْنُ حُرَيْثٍ عَنْ مَالِكِ بْنِ أَبِي مَرْيَمَ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ غَنْمٍ حَدَّثَنِي أَبُو مَالِكٍ الْأَشْعَرِيُّ أَنَّهُ سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «يَشْرَبُ نَاسٌ مِنْ أُمَّتِي الْخَمْرَ يُسَمُّونَهَا بِغَيْرِ اسْمِهَا يُضْرَبُ عَلَى رُءُوسِهِمْ بِالْمَعَازِفِ وَالْقَيْنَاتِ يَخْسِفُ اللَّهُ بِهِمْ الْأَرْضَ» .

L24952 Mu'awiyah ibn Salih is a weak narrator, and his narration contains no indication that the mentioned threat applies specifically to musical instruments, just as it does not apply to keeping enslaved singing women. The apparent meaning is that the threat concerns their legalization of wine under a different name, and religious rulings cannot be established through conjecture.

مُعَاوِيَةُ بْنُ صَالِحٍ ضَعِيفٌ، وَلَيْسَ فِيهِ: أَنَّ الْوَعِيدَ الْمَذْكُورَ إنَّمَا هُوَ عَلَى الْمَعَازِفِ، كَمَا أَنَّهُ لَيْسَ عَلَى اتِّخَاذِ الْقَيْنَاتِ - وَالظَّاهِرُ أَنَّهُ عَلَى اسْتِحْلَالِهِمْ الْخَمْرَ بِغَيْرِ اسْمِهَا، وَالدِّيَانَةُ لَا تُؤْخَذُ بِالظَّنِّ.

L24953 Ahmad ibn Isma'il al-Hadrami the judge narrated to us from Muhammad ibn Ahmad ibn al-Khallas, from Muhammad ibn al-Qasim ibn Sha'ban al-Misri, from Ibrahim ibn Uthman ibn Sa'id, from Ahmad ibn al-Ghimr ibn Abi Hammad in Homs, and from Yazid ibn Abd al-Samad, from Ubaid ibn Hisham al-Halabi (he is Ibn Nu'aym), from Abdullah ibn al-Mubarak, from Malik ibn Anas, from Muhammad ibn al-Munkadir, from Anas ibn Malik, who said: The Messenger of Allah (peace and blessings be upon him) said: "Whoever sits with a female singer and listens to her singing, Allah will pour molten lead into his ears on the Day of Resurrection."

حَدَّثَنَا أَحْمَدُ بْنُ إسْمَاعِيلَ الْحَضْرَمِيُّ الْقَاضِي أَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ أَنَا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ الْمِصْرِيُّ حَدَّثَنِي إبْرَاهِيمُ بْنُ عُثْمَانَ بْنِ سَعِيدٍ أَنَا أَحْمَدُ بْنُ الْغِمْرِ بْنِ أَبِي حَمَّادٍ بِحِمْصَ، وَيَزِيدُ بْنُ عَبْدِ الصَّمَدِ أَنَا عُبَيْدُ بْنُ هِشَامٍ الْحَلَبِيُّ - هُوَ ابْنُ نُعَيْمٍ - أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ جَلَسَ إلَى قَيْنَةٍ فَسَمِعَ مِنْهَا صَبَّ اللَّهُ فِي أُذُنَيْهِ الْآنُكَ يَوْمَ الْقِيَامَةِ» .

L24954 This is a fabricated, composite Hadith—a scandal never known at all through the chain of Anas, the narration of Ibn al-Munkadir, the Hadith of Mālik, or

through Ibn al-Mubārak. All those below Ibn al-Mubārak up to Ibn Shaʿbān are unknown (مجهول) narrators.

هَذَا حَدِيثٌ مَوْضُوعٌ مُرَكَّبٌ، فَضِيحَةٌ مَا عُرِفَ قَطُّ مِنْ طَرِيقِ أَنَسٍ، وَلَا مِنْ رِوَايَةِ ابْنِ الْمُنْكَدِرِ، وَلَا مِنْ حَدِيثِ مَالِكٍ، وَلَا مِنْ جِهَةِ ابْنِ الْمُبَارَكِ وَكُلُّ مَنْ دُونَ ابْنِ الْمُبَارَكِ إِلَى ابْنِ شَعْبَانَ مَجْهُولُونَ.

L24955–24956 Ibn Shaʿbān among the Mālikīs is equivalent to ʿAbd al-Bāqī ibn Qāniʿ among the Ḥanafīs. We have examined their ḥadīth transmissions and found in them evident corruption, utter falsehood, manifest fabrication, and immense scandals. Either their transmissions were altered, their books became mixed up, or they intentionally narrated from every worthless individual—liars and gullible persons who accept prompting.

وَابْنُ شَعْبَانَ فِي الْمَالِكِيِّينَ نَظِيرُ عَبْدِ الْبَاقِي بْنِ قَانِعٍ فِي الْحَنَفِيِّينَ، قَدْ تَأَمَّلْنَا حَدِيثَهُمَا فَوَجَدْنَا فِيهِ الْبَلَاءَ الْبَيِّنَ، وَالْكَذِبَ الْبَحْتَ، وَالْوَضْعَ اللَّائِحَ، وَعَظِيمَ الْفَضَائِحِ، فَإِمَّا تَغَيَّرَ ذِكْرُهُمَا، أَوْ اخْتَلَطَتْ كُتُبُهُمَا، وَإِمَّا تَعَمَّدَا الرِّوَايَةَ عَنْ كُلِّ مَنْ لَا خَيْرَ فِيهِ مِنْ كَذَّابٍ، وَمُغَفَّلٍ يَقْبَلُ التَّلْقِينَ.

L24957 As for the third—which is the third foundational stone: that the affliction stems from them—we ask Allah for protection from harm, sincerity, and correctness in judgment.

وَأَمَّا الثَّالِثَةُ - وَهُوَ ثَالِثَةُ الْأَثَافِي: أَنْ يَكُونَ الْبَلَاءُ مِنْ قِبَلِهِمَا - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ، وَالصِّدْقَ، وَصَوَابَ الِاخْتِيَارِ.

L24958 Through the path of Ibn Sha’ban: Hashim ibn Nasih narrated from Umar ibn Musa from Makhul from Aisha, who said: The Messenger of Allah (peace be upon him) said: “Whoever dies while possessing a singing slave girl, do not perform the funeral prayer over him.”

وَمِنْ طَرِيقِ ابْنِ شَعْبَانَ قَالَ: رَوَى هَاشِمُ بْنُ نَاصِحٍ عَنْ عُمَرَ بْنِ مُوسَى عَنْ مَكْحُولٍ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَاتَ وَعِنْدَهُ جَارِيَةٌ مُغَنِّيَةٌ فَلَا تُصَلُّوا عَلَيْهِ» .

L24959 Hashim and Umar: both are unknown, and Makhul did not meet ʿĀ’ishah. We do not know a path (i.e., chain) for this narration; they merely cited it without qualification: “Allah, the Exalted, forbade two accursed sounds: the sound of a wailing woman and the sound of a singing woman.” This is baseless.

هَاشِمٌ، وَعُمَرُ: مَجْهُولَانِ، وَمَكْحُولٌ لَمْ يَلْقَ عَائِشَةَ، وَحَدِيثٌ لَا نَدْرِي لَهُ طَرِيقًا، إِنَّمَا ذَكَرُوهُ هَكَذَا مُطْلَقًا، «أَنَّ اللَّهَ - تَعَالَى - نَهَى عَنْ صَوْتَيْنِ مَلْعُونَيْنِ: صَوْتِ نَائِحَةٍ، وَصَوْتِ مُغَنِّيَةٍ» وَهَذَا لَا شَيْءَ.

L24960 From the chain of Sa’id ibn Mansur: Isma’il ibn ’Ayyash narrated to us via Muṭarrif ibn Yazid, from ’Ubaydullah ibn Zahr, from ’Ali ibn Yazid, from al-Qasim, from Abu Umamah: I heard Allah’s Messenger—peace and blessings be upon him—say: “It is unlawful to sell female singers, to purchase them, or to take their price. The confirmation of this is found in Allah’s Book: _And among people are those who buy idle talk to divert others from Allah’s path

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ مُطَرِّحِ بْنِ يَزِيدَ أَنَا عُبَيْدُ اللَّهِ بْنُ زَحْرٍ عَنْ عَلِيِّ بْنِ يَزِيدَ عَنْ الْقَاسِمِ عَنْ أَبِي أُمَامَةَ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يَحِلُّ بَيْعُ الْمُغَنِّيَاتِ وَلَا شِرَاؤُهُنَّ وَثَمَنُهُنَّ حَرَامٌ وَقَدْ نَزَلَ تَصْدِيقُ

without knowledge_ [Luqman:6]. By Him in whose hand my soul rests, no man has ever raised his voice in loud song without two devils accompanying him closely, striking his chest and back until he becomes silent."[44]

ذَلِكَ فِي كِتَابِ اللَّهِ: {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ بِغَيْرِ عِلْمٍ} [لقمان: ٦] الْآيَةَ، وَالَّذِي نَفْسِي بِيَدِهِ مَا رَفَعَ رَجُلٌ قَطُّ عَقِيرَةَ صَوْتِهِ بِغِنَاءٍ إِلَّا ارْتَدَفَهُ شَيْطَانَانِ يَضْرِبَانِهِ عَلَى صَدْرِهِ وَظَهْرِهِ حَتَّى يَسْكُتَ» .

L24961 Ismaʿīl is weak; discarded and unknown; ʿUbayd Allāh ibn Zuḥar is weak; al-Qāsim is weak; and ʿAlī ibn Yazīd is a Damascene who is rejected and abandoned in ḥadīth.

إِسْمَاعِيلُ ضَعِيفٌ، وَمُطَرِّحٌ مَجْهُولٌ، وَعُبَيْدُ اللَّهِ بْنُ زُحَرَ ضَعِيفٌ، وَالْقَاسِمُ ضَعِيفٌ، وَعَلِيُّ بْنُ يَزِيدَ دِمَشْقِيٌّ مُطَّرَحٌ مَتْرُوكُ الْحَدِيثِ.

L24962–24964 Via the chain of ʿAbd al-Malik ibn Ḥabīb al-Andalusī, transmitted through ʿAbd al-ʿAzīz al-Uwaysī, from Ismāʿīl ibn ʿAyyāsh. On the authority of Ali ibn Yazid, from Al-Qasim ibn Abdur-Rahman, from Abu Umamah Al-Bahili: I heard the Messenger of Allah—peace and blessings be upon him—say: "It is not lawful to teach singing women, nor to purchase them, nor to sell them, nor to employ them, and their price is forbidden. Allah has revealed this in His Book: {And among the people is he who buys idle talk to mislead from the path of Allah without knowledge} [Luqman: 6]. By the One in Whose Hand is my soul, no man raises his voice in song without two devils clinging to him, striking his chest and back with their feet until he becomes silent."[45]

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ عَنْ عَبْدِ الْعَزِيزِ الْأُوَيْسِيِّ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عَلِيِّ بْنِ يَزِيدَ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يَحِلُّ تَعْلِيمُ الْمُغَنِّيَاتِ، وَلَا شِرَاؤُهُنَّ، وَلَا بَيْعُهُنَّ، وَلَا اتِّخَاذُهُنَّ، وَثَمَنُهُنَّ حَرَامٌ وَقَدْ أَنْزَلَ اللَّهُ ذَلِكَ فِي كِتَابِهِ: {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ بِغَيْرِ عِلْمٍ} [لقمان: ٦] وَالَّذِي نَفْسِي بِيَدِهِ مَا رَفَعَ رَجُلٌ عَقِيرَتَهُ بِالْغِنَاءِ إِلَّا ارْتَدَفَهُ شَيْطَانَانِ يَضْرِبَانِ بِأَرْجُلِهِمَا صَدْرَهُ وَظَهْرَهُ حَتَّى يَسْكُتَ» .

L24965 And from the path of Ibn Ḥabīb as well: I am Ibn Maʿbad, from Mūsā ibn Aʿyan, from al-Qāsim, from ʿAbd al-Raḥmān, from Abū Umāmah, that the Prophet—may Allah's peace and blessings be upon him—said: "Indeed, Allah has forbidden teaching female singers, buying them, selling them, and consuming the proceeds from their sale."

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ أَيْضًا: أَنَا ابْنُ مَعْبَدٍ عَنْ مُوسَى بْنِ أَعْيَنَ عَنْ الْقَاسِمِ عَنْ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ اللَّهَ حَرَّمَ تَعْلِيمَ الْمُغَنِّيَاتِ وَشِرَاءَهُنَّ، وَبَيْعَهُنَّ، وَأَكْلَ أَثْمَانِهِنَّ» .

L24966 As for the first chain: ʿAbd al-Malik is perished; Ismāʿīl ibn ʿAyyāsh is ḍaʿīf; ʿAlī ibn Yazīd is ḍaʿīf and his ḥadīth are abandoned (matrūk); and al-Qāsim ibn ʿAbd al-Raḥmān is ḍaʿīf.

أَمَّا الْأَوَّلُ: فَعَبْدُ الْمَلِكِ هَالِكٌ، وَإِسْمَاعِيلُ بْنُ عَيَّاشٍ ضَعِيفٌ، وَعَلِيُّ بْنُ يَزِيدَ ضَعِيفٌ مَتْرُوكُ الْحَدِيثِ، وَالْقَاسِمُ بْنُ عَبْدِ الرَّحْمَنِ ضَعِيفٌ.

[44] **Qur'an references (L24960):** Qur'an 31:6 (Luqman).
[45] **Qur'an references (L24962):** Qur'an 31:6 (Luqman).

L24967 And the second: from ʿAbd al-Malik, al-Qasim, and Musa ibn Aʿyan—weak.

وَالثَّانِي: عَنْ عَبْدِ الْمَلِكِ، وَالْقَاسِمِ أَيْضًا، وَمُوسَى بْنُ أَعْيَنَ ضَعِيفٌ.

L24968 And through the chain of Abd al-Malik ibn Habib from Abd al-Aziz al-Awza'i from Abdullah ibn Umar, who said: A man said, "O Messenger of Allah, I have camels—should I urge them with chanting?" He said, "Yes." The man asked, "Should I sing to them?" He said, "Know that the singer's ears are in the grasp of a devil, who compels him until he becomes silent."

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ عَبْدِ الْعَزِيزِ الْأُوَيْسِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: «قَالَ رَجُلٌ يَا رَسُولَ اللَّهِ لِي إِبِلٌ، أَفَأَحْدُو فِيهَا؟ قَالَ: نَعَمْ، قَالَ: أَفَأُغَنِّي فِيهَا؟ قَالَ: اعْلَمْ أَنَّ الْمُغَنِّيَ أُذُنَاهُ بِيَدِ شَيْطَانٍ يُرْغِمُهُ حَتَّى يَسْكُتَ» .

L24969 This is Abd al-Malik, and Al-Umari the Younger, who is weak.

هَذَا عَبْدُ الْمَلِكِ، وَالْعُمَرِيُّ الصَّغِيرُ - وَهُوَ ضَعِيفٌ.

L24970 From the chain of Sa'id ibn Mansur: I am Abu Dawud—he is Sulaym ibn Salim, a Basran—from Hassan ibn Abi Sinan, from a man, from Abu Hurairah, who said: The Messenger of Allah—peace and blessings be upon him—said: "A group from my nation will be transformed into monkeys and pigs at the end of time." They asked: "O Messenger of Allah, even though they testify that there is no god but Allah and that you are the Messenger of Allah?" He replied: "Yes, and they pray, fast, and perform Hajj." They said: "Then what is their condition, O Messenger of Allah?" He said: "They took to using stringed instruments, professional female entertainers, and tambourines, and they drank these intoxicating drinks. They spent the night absorbed in revelry and drink, and by morning they became monkeys and pigs."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو دَاوُد - هُوَ سُلَيْمُ بْنُ سَالِمٍ بَصْرِيٌّ - أَنَا حَسَّانُ بْنُ أَبِي سِنَانٍ عَنْ رَجُلٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يُمْسَخُ قَوْمٌ مِنْ أُمَّتِي فِي آخِرِ الزَّمَانِ قِرَدَةً وَخَنَازِيرَ قَالُوا: يَا رَسُولَ اللَّهِ يَشْهَدُونَ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّكَ رَسُولُ اللَّهِ؟ قَالَ: نَعَمْ، وَيُصَلُّونَ، وَيَصُومُونَ، وَيَحُجُّونَ قَالُوا: فَمَا بَالُهُمْ يَا رَسُولَ اللَّهِ؟ قَالَ: اتَّخَذُوا الْمَعَازِفَ وَالْقَيْنَاتِ، وَالدُّفُوفَ، وَيَشْرَبُونَ هَذِهِ الْأَشْرِبَةَ، فَبَاتُوا عَلَى لَهْوِهِمْ، وَشَرَابِهِمْ، فَأَصْبَحُوا قِرَدَةً وَخَنَازِيرَ» .

L24971 This is about a man who was not named, and it was not known who he was?

هَذَا عَنْ رَجُلٍ لَمْ يُسَمَّ، وَلَمْ يُدْرَ مَنْ هُوَ؟

L24972–24973 From the path of Sa'id ibn Mansur as well: I am Al-Harith ibn Nabhan, I am Farqad as-Sabkhi, from 'Asim ibn 'Amr, from Abu Umamah, who said: The Messenger of Allah - peace and blessings be upon him - said: "A group from my Ummah will spend the night engrossed in amusement and play, eating and drinking, then awaken transformed into monkeys and swine. Among them will occur sinkings, stone-pelting, and a wind will be sent upon a tribe from their tribes, sweeping them away as it swept away those before them - all due to their deeming the forbidden permissible, their wearing of silk, their beating of tambourines, and their keeping of singing girls."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَيْضًا: أَنَا الْحَارِثُ بْنُ نَبْهَانَ أَنَا فَرْقَدٌ السَّبَخِيُّ عَنْ عَاصِمِ بْنِ عَمْرٍو عَنْ أَبِي أُمَامَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «تَبِيتُ طَائِفَةٌ مِنْ أُمَّتِي عَلَى لَهْوٍ وَلَعِبٍ، وَأَكْلٍ وَشُرْبٍ، فَيُصْبِحُوا قِرَدَةً وَخَنَازِيرَ، يَكُونُ فِيهَا خَسْفٌ، وَقَذْفٌ، وَيُبْعَثُ عَلَى حَيٍّ مِنْ أَحْيَائِهِمْ رِيحٌ فَتَنْسِفُهُمْ، كَمَا نَسَفَتْ مَنْ كَانَ قَبْلَهُمْ بِاسْتِحْلَالِهِمْ الْحَرَامَ، وَلُبْسِهِمْ الْحَرِيرَ، وَضَرْبِهِمْ الدُّفُوفَ، وَاتِّخَاذِهِمْ الْقِيَانَ» .

وَالْحَارِثُ بْنُ نَبْهَانَ لَا يُكْتَبُ حَدِيثُهُ، وَفَرْقَدٌ السَّبَخِيُّ ضَعِيفٌ، نَعَمْ: وَسُلَيْمُ بْنُ سَالِمٍ، وَحَسَّانُ بْنُ أَبِي سِنَانٍ، وَعَاصِمُ بْنُ عَمْرٍو: لَا أَعْرِفُهُمْ - فَسَقَطَ هَذَانِ الْخَبَرَانِ بِيَقِينٍ.

L24974 The hadith of al-Ḥārith ibn Nabhān is rejected, and Farqad al-Sabakhī is weak. Yes: Sulaym ibn Sālim, Ḥassān ibn Abī Sinān, and ʿĀṣim ibn ʿAmr—I do not know them. Thus, these two reports are conclusively dismissed.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا فَرَجُ بْنُ فَضَالَةَ عَنْ عَلِيِّ بْنِ يَزِيدَ عَنْ الْقَاسِمِ عَنْ أَبِي أُمَامَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ اللَّهَ بَعَثَنِي رَحْمَةً لِلْعَالَمِينَ، وَأَمَرَنِي بِمَحْوِ الْمَعَازِفِ، وَالْمَزَامِيرِ، وَالْأَوْثَانِ، وَالصُّلُبِ: لَا يَحِلُّ بَيْعُهُنَّ، وَلَا شِرَاؤُهُنَّ، وَلَا تَعْلِيمُهُنَّ، وَلَا التِّجَارَةُ بِهِنَّ، وَثَمَنُهُنَّ حَرَامٌ» نَعْنِي الضَّوَارِبَ - الْقَاسِمُ ضَعِيفٌ.

L24975 From the transmission path (ṭarīq) of Sa’īd ibn Manṣūr: We [received it] from Faraj ibn Faḍālah, from ’Alī ibn Yazīd, from al-Qāsim, from Abī Umāmah, who said: The Messenger of Allāh - peace and blessings of Allāh be upon him - said: “Allāh sent me as a mercy to the worlds, and commanded me to obliterate musical instruments, flutes, idols, and crosses. Their sale is unlawful, their purchase is unlawful, teaching them is unlawful, trading in them is unlawful, and their price is forbidden” - referring to the percussive ones. Al-Qāsim is weak.

وَمِنْ طَرِيقِ الْبُخَارِيِّ قَالَ هِشَامُ بْنُ عَمَّارٍ: أَنَا صَدَقَةُ بْنُ خَالِدٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ يَزِيدَ بْنِ جَابِرٍ أَنَا عَطِيَّةُ بْنُ قَيْسٍ الْكِلَابِيُّ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ غُنْمٍ الْأَشْعَرِيُّ حَدَّثَنِي أَبُو عَامِرٍ - أَوْ أَبُو مَالِكٍ الْأَشْعَرِيُّ - وَاَللَّهِ مَا كَذَبَنِي: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَيَكُونَنَّ مِنْ أُمَّتِي قَوْمٌ يَسْتَحِلُّونَ الْحِرَ وَالْحَرِيرَ، وَالْخَمْرَ، وَالْمَعَازِفَ».

L24976 And through the chain of al-Bukhārī, Hishām ibn ʿAmmār said: I am Ṣadaqah ibn Khālid - I am ʿAbd al-Raḥmān ibn Yazīd ibn Jābir - I am ʿAṭiyyah ibn Qays al-Kilābī who reported to me: I am ʿAbd al-Raḥmān ibn Ghanm al-Ashʿarī who reported to me: I am Abū ʿĀmir (or Abū Mālik al-Ashʿarī) - by Allah, he did not lie to me - that he heard the Messenger of Allah - peace **and blessings** of Allah be upon him - say: “There will assuredly be among my nation a people who deem lawful fornication, silk, wine, and musical instruments.”

وَهَذَا مُنْقَطِعٌ لَمْ يَتَّصِلْ مَا بَيْنَ الْبُخَارِيِّ وَصَدَقَةَ بْنِ خَالِدٍ - وَلَا يَصِحُّ فِي هَذَا الْبَابِ شَيْءٌ أَبَدًا، وَكُلُّ مَا فِيهِ فَمَوْضُوعٌ، وَوَاَللَّهِ لَوْ أُسْنِدَ جَمِيعُهُ أَوْ وَاحِدٌ مِنْهُ فَأَكْثَرَ مِنْ طَرِيقِ الثِّقَاتِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَا تَرَدَّدْنَا فِي الْأَخْذِ بِهِ.

L24977 This chain is disconnected; the connection between al-Bukhārī and Ṣadaqah ibn Khālid is interrupted. Nothing in this chapter is ever authentic—all its contents are fabricated. By Allah, were all of it—or even a single element within it, let alone more—supported through chains of trustworthy narrators leading to the Messenger of Allah (peace and blessings be upon him), we would not hesitate to act upon it.

وَلَوْ كَانَ مَا فِي هَذِهِ الْأَخْبَارِ حَقًّا مِنْ أَنَّهُ لَا يَحِلُّ بَيْعُهُنَّ لَوَجَبَ أَنْ يُحَدَّ مَنْ وَطِئَهُنَّ بِالشِّرَاءِ، وَأَنْ لَا يَلْحَقَ بِهِ وَلَدُهُ مِنْهَا.

L24978–24979 If what is mentioned in these reports were true—that it is impermissible to sell them—then it would be obligatory to impose the ḥadd punishment on anyone who has intercourse with them through purchase, and his child from her would not be ascribed to him.

ثُمَّ لَيْسَ فِيهَا تَحْرِيمُ مِلْكِهِنَّ، وَقَدْ تَكُونُ أَشْيَاءُ يَحْرُمُ بَيْعُهَا وَيَحِلُّ مِلْكُهَا وَتَمْلِيكُهَا كَالْمَاءِ، وَالْهِرِّ، وَالْكَلْبِ -.

L24980 Furthermore, there is no prohibition against owning them. There may also be things whose sale is prohibited while their ownership and granting of ownership remain permissible, such as water, cats, and dogs.

L24981 This is all that has been compiled for mention from what is attributed to the Messenger of Allah (peace and blessings of Allah be upon him).

هَذَا كُلُّ مَا حَضَرَنَا ذِكْرُهُ مِمَّا أُضِيفَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24982 As for those other than him—may Allah be pleased with them—we have been narrated via Ibn Abi Shaybah's chain: I, Hatim ibn Isma'il, from Humayd ibn Sakhr, from 'Ammar al-Duhni, from Sa'id ibn Jubayr, from Abu al-Sahba, from Ibn Mas'ud regarding Allah's statement—Exalted is He—"And among the people is he who buys vain talk to lead others astray from the path of Allah" [Luqman:6]. He said: "It is singing—and by the One besides whom there is no god!"[46]

وَأَمَّا عَمَّنْ دُونَهُ - عَلَيْهِ السَّلَامُ -: فَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ حُمَيْدِ بْنِ صَخْرٍ عَنْ عَمَّارٍ الدُّهْنِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ أَبِي الصَّهْبَاءِ عَنْ ابْنِ مَسْعُودٍ فِي قَوْلِ اللَّهِ - تَعَالَى -: {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ} [لقمان: ٦] الْآيَةَ، فَقَالَ: الْغِنَاءُ، وَالَّذِي لَا إِلَهَ غَيْرُهُ.

L24983 From the chain of Waki' via Ibn Abī Laylā via al-Ḥakam via Miqsam via Ibn ʿAbbās regarding this verse, he said: "Singing and purchasing a female singer."

وَمِنْ طَرِيقِ وَكِيعٍ عَنِ ابْنِ أَبِي لَيْلَى عَنِ الْحَكَمِ عَنْ مِقْسَمٍ عَنِ ابْنِ عَبَّاسٍ فِي هَذِهِ الْآيَةِ، قَالَ: الْغِنَاءُ، وَشِرَاءُ الْمُغَنِّيَةِ.

L24984 And from the chain of Ibn Abī Shayba: I am Ibn Fuḍayl, from ʿAṭāʾ, from Saʿīd ibn Jubayr, from Ibn ʿAbbās regarding this verse: "Singing, and the like."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا ابْنُ فُضَيْلٍ عَنْ عَطَاءٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ فِي هَذِهِ الْآيَةِ، قَالَ: الْغِنَاءُ، وَنَحْوُهُ.

L24985 And through the chain of Sa'id ibn Mansur: Abu 'Awanah narrated from 'Abd al-Karim al-Jazari from Abu Hashim al-Kufi from Ibn 'Abbas, who said: The tambourine is forbidden, musical instruments are forbidden, the flute is forbidden, and the small drum is forbidden.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ أَبِي هَاشِمٍ الْكُوفِيِّ عَنِ ابْنِ عَبَّاسٍ قَالَ: الدُّفُّ حَرَامٌ، وَالْمَعَازِفُ حَرَامٌ: وَالْمِزْمَارُ حَرَامٌ، وَالْكُوبَةُ حَرَامٌ.

L24986 From the path of Saʿīd ibn Manṣūr: I narrate from Abū ʿAwanah, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm, who said: Singing cultivates hypocrisy in the heart.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ قَالَ: الْغِنَاءُ يُنْبِتُ النِّفَاقَ فِي الْقَلْبِ.

L24987 Through the chain of Saʿīd ibn Manṣūr—I, Abū Wakīʿ, narrate from Manṣūr from Ibrāhīm—who said: Our companions would control the entrances of the streets and tear apart the tambourines.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو وَكِيعٍ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ قَالَ: كَانَ أَصْحَابُنَا يَأْخُذُونَ بِأَفْوَاهِ السِّكَكِ يَخْرِقُونَ الدُّفُوفَ.

L24988–24990 From the transmission of Ibn Abi Shaybah: from Waki', from Sufyan, from Habib ibn Abi Thabit, from Mujahid concerning Allah's statement—Exalted is

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ سُفْيَانَ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ مُجَاهِدٍ فِي قَوْلِ اللَّهِ - تَعَالَى -: {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ} [لقمان: ٦] قَالَ: الْغِنَاءُ

[46] **Qur'an references (L24982):** Qur'an 31:6 (Luqman).

He—: {And among the people are those who purchase idle talk} [Luqman: 6]. Mujahid said: Singing. This is also the statement of Habib ibn Abi Thabit. Via Ibn Abi Shaybah's chain: I am 'Abdah ibn Sulayman, from Isma'il ibn Abi Khalid, from Shu'ayb, from 'Ikrimah regarding this verse. He said: "It is singing."[47]

- وَهُوَ أَيْضًا قَوْلُ حَبِيبِ بْنِ أَبِي ثَابِتٍ وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَبْدَةُ بْنُ سُلَيْمَانُ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ شُعَيْبٍ عَنْ عِكْرِمَةَ فِي هَذِهِ الْآيَةِ، قَالَ: هُوَ الْغِنَاءُ.

L24991 Abu Muhammad said: None of this constitutes proof for several reasons—one of them: that no one besides the Messenger of Allah (may Allah bless him and grant him peace) possesses authoritative evidence.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي هَذَا كُلِّهِ لِوُجُوهٍ -: أَحَدُهَا: أَنَّهُ لَا حُجَّةَ لِأَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L24992 The second is that he differed from others other than them among the Companions and the Successors.

وَالثَّانِي: أَنَّهُ قَدْ خَالَفَ غَيْرَهُمْ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ.

L24993 The third is that the text of the verse invalidates their argument based on it, for it states: *"And among people are those who purchase idle talk to mislead others from Allah's path without knowledge and take His path as mockery—those will have a humiliating punishment"* [Luqmān:6]. This is an attribute of one who, when he takes the path of Allah—Exalted is He—as mockery, becomes a disbeliever, without any disagreement.[48]

وَالثَّالِثُ: أَنَّ نَصَّ الْآيَةِ يُبْطِلُ احْتِجَاجَهُمْ بِهَا؛ لِأَنَّ فِيهَا {وَمِنَ النَّاسِ مَنْ يَشْتَرِي لَهْوَ الْحَدِيثِ لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ بِغَيْرِ عِلْمٍ وَيَتَّخِذَهَا هُزُوًا أُولَئِكَ لَهُمْ عَذَابٌ مُهِينٌ} [لقمان: ٦] وَهَذِهِ صِفَةُ مَنْ فَعَلَهَا كَانَ كَافِرًا، بِلَا خِلَافٍ، إذَا اتَّخَذَ سَبِيلَ اللَّهِ - تَعَالَى - هُزُوًا.

L24994 If a man were to purchase a Quran to mislead others from Allah's path by it and to mock it, he would be a disbeliever. This is the one whom Allah—Exalted and Majestic—has condemned. Yet He—Exalted and Majestic—has never condemned one who purchases idle tales to divert himself with them and refresh his soul, not to mislead others from Allah's path—Exalted and Majestic. Thus, their reliance on the arguments of all those we have mentioned is invalidated.

وَلَوْ أَنَّ امْرَأً اشْتَرَى مُصْحَفًا لِيُضِلَّ بِهِ عَنْ سَبِيلِ اللَّهِ وَيَتَّخِذُهَا هُزُوًا لَكَانَ كَافِرًا، فَهَذَا هُوَ الَّذِي ذَمَّ اللَّهُ - تَعَالَى -، وَمَا ذَمَّ قَطُّ - عَزَّ وَجَلَّ - مَنْ اشْتَرَى لَهْوَ الْحَدِيثِ لِيَلْتَهِيَ بِهِ وَيُرَوِّحَ نَفْسَهُ، لَا لِيُضِلَّ عَنْ سَبِيلِ اللَّهِ - تَعَالَى -، فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِ كُلِّ مَنْ ذَكَرْنَا.

L24995 Similarly, whoever intentionally neglects prayer by reciting the Quran, reading the Sunnah, engaging in conversation, attending to his wealth, singing, or similar acts, he is a sinner—disobedient to Allah, the Exalted. And whoever does not neglect any obligatory prayers due to preoccupation with the aforementioned acts, he is virtuous.

وَكَذَلِكَ مَنْ اشْتَغَلَ عَامِدًا عَنْ الصَّلَاةِ بِقِرَاءَةِ الْقُرْآنِ، أَوْ بِقِرَاءَةِ السُّنَنِ، أَوْ بِحَدِيثٍ يَتَحَدَّثُ بِهِ، أَوْ يَنْظُرُ فِي مَالِهِ، أَوْ بِغِنَاءٍ، أَوْ بِغَيْرِ ذَلِكَ، فَهُوَ فَاسِقٌ، عَاصٍ لِلَّهِ - تَعَالَى -، وَمَنْ لَمْ يُضَيِّعْ شَيْئًا مِنْ الْفَرَائِضِ اشْتِغَالًا بِمَا ذَكَرْنَا فَهُوَ مُحْسِنٌ.

[47] **Qur'an references (L24988):** Qur'an 31:6 (Luqman).
[48] **Qur'an references (L24993):** Qur'an 31:6 (Luqman).

L24996 They argued and said: “Is singing from the truth or from other than the truth? There is no way to a third category.” Then they said: “Allah—the Exalted and Majestic—has said: ’What is there after the truth except error?’ [Yunus 10:32].”[49]

L24997 Our answer—and from Allah, the Exalted, comes success—is that the Messenger of Allah, peace and blessings be upon him, said: “Verily deeds are judged by intentions, and every person will have what they intended.” Thus, whoever intends through listening to singing to enable disobedience to Allah, the Exalted, is sinful—and likewise everything besides singing. Whoever intends through it to refresh his soul to strengthen himself for obeying Allah, the Almighty and Majestic, and to invigorate himself for righteous deeds, is an obedient doer of good, and his action belongs to righteousness. Whoever intends neither obedience nor disobedience, it is a frivolity forgiven by Allah, like a person going to his garden for leisure, sitting at his doorstep for relaxation, dyeing his garment lapis lazuli blue or green or other colors, stretching or bending his leg, and all his other actions. Thus, every contentious argument they raise is utterly invalidated with certainty—and all praise belongs to Allah, the Exalted. We know of no specious argument they have except what we have mentioned.

L24998–25000 As for chess: It was narrated to us through the chain of ʿAbd al-Malik ibn Ḥabīb, who said: “‘Abd al-Malik ibn al-Mājishūn narrated to me.” Narrated by al-Mughīrah from Muḥammad ibn Kaʿb al-Qurazī: The Messenger of Allah – peace be upon him – said: “Whoever engages in gambling – meaning dice and chess – then stands to pray is like one who performs ablution with the filth of pus and swine’s blood, then prays. Would we say: Does Allah accept his prayer?”

[49] **Qur’an references (L24996):** Qur’an 10:32 (Yunus).

وَاحْتَجُّوا فَقَالُوا: مِنْ الْحَقِّ الْغِنَاءُ أَمْ مِنْ غَيْرِ الْحَقِّ، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ؟ فَقَالُوا: وَقَدْ قَالَ اللَّهُ - عَزَّ وَجَلَّ -: {فَمَاذَا بَعْدَ الْحَقِّ إلا الضَّلالُ} [يونس: ٣٢]

فَجَوَابُنَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ -: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» فَمَنْ نَوَى بِاسْتِمَاعِ الْغِنَاءِ عَوْنًا عَلَى مَعْصِيَةِ اللَّهِ - تَعَالَى - فَهُوَ فَاسِقٌ، وَكَذَلِكَ كُلُّ شَيْءٍ غَيْرُ الْغِنَاءِ، وَمَنْ نَوَى بِهِ تَرْوِيحَ نَفْسِهِ لِيَقْوَى بِذَلِكَ عَلَى طَاعَةِ اللَّهِ - عَزَّ وَجَلَّ - وَيُنَشِّطَ نَفْسَهُ بِذَلِكَ عَلَى الْبِرِّ فَهُوَ مُطِيعٌ مُحْسِنٌ، وَفِعْلُهُ هَذَا مِنْ الْحَقِّ، وَمَنْ لَمْ يَنْوِ طَاعَةً وَلَا مَعْصِيَةً، فَهُوَ لَغْوٌ مَعْفُوٌّ عَنْهُ كَخُرُوجِ الْإِنْسَانِ إلَى بُسْتَانِهِ مُتَنَزِّهًا، وَقُعُودِهِ عَلَى بَابِ دَارِهِ مُتَفَرِّجًا وَصِبَاغِهِ ثَوْبَهُ لَازَوَرْدِيًّا أَوْ أَخْضَرَ أَوْ غَيْرَ ذَلِكَ، وَمَدِّ سَاقِهِ وَقَبْضِهَا وَسَائِرِ أَفْعَالِهِ - فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ بُطْلَانًا مُتَيَقَّنًا - وَلِلَّهِ - تَعَالَى - الْحَمْدُ، وَمَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ مَا ذَكَرْنَا.

وَأَمَّا الشِّطْرَنْجُ: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ حَدَّثَنِي عَبْدُ الْمَلِكِ بْنُ الْمَاجِشُونِ عَنْ الْمُغِيرَةِ عَنْ مُحَمَّدِ بْنِ كَعْبٍ الْقُرَظِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ لَعِبَ بِالْمَيْسِرِ - يَعْنِي النَّرْدَ وَالشِّطْرَنْجَ - ثُمَّ قَامَ يُصَلِّي مِثْلَ الَّذِي يَتَوَضَّأُ بِالْقَيْحِ وَدَمِ الْخِنْزِيرِ ثُمَّ يُصَلِّي، أَفَنَقُولُ: يَقْبَلُ اللَّهُ صَلَاتَهُ» ؟ .

L25001 This is a mursal narration; ʻAbd al-Malik is disregarded, and ʻAbd al-Malik ibn al-Mājishūn is weak.

هَذَا مُرْسَلٌ، وَعَبْدُ الْمَلِكِ سَاقِطٌ، وَعَبْدُ الْمَلِكِ بْنُ الْمَاجِشُونِ ضَعِيفٌ.

L25002 This report is a proof against the Malikis and Hanafis who uphold the mursal, for they would be obligated to act upon it - which would necessitate invalidating wuḍūʾ by playing chess. If they abandon it, they contradict themselves and engage in playfulness.

وَهَذَا الْخَبَرُ حُجَّةٌ عَلَى الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، الْقَائِلِينَ بِالْمُرْسَلِ؛ لِأَنَّهُمْ يَلْزَمُهُمْ الْأَخْذُ بِهِ فَيَنْقُضُونَ الْوُضُوءَ بِلَعِبِ الشِّطْرَنْجِ، فَإِنْ تَرَكُوهُ تَنَاقَضُوا وَتَلَاعَبُوا.

L25003 From the narration of Abdul Malik ibn Habib: Asad ibn Musa and Ali ibn Ma’bad narrated from Ibn Jurayj from Habba ibn Salim that the Messenger of Allah, peace and blessings be upon him, said: “Chess is cursed - cursed is whoever plays it, and the observer of it is like one consuming swine flesh.”

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ أَنَا أَسَدُ بْنُ مُوسَى، وَعَلِيُّ بْنُ مَعْبَدٍ عَنْ ابْنِ جُرَيْجٍ عَنْ حَبَّةَ بْنِ سَلِمٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الشِّطْرَنْجُ مَلْعُونَةٌ مَلْعُونٌ مَنْ لَعِبَ بِهَا، وَالنَّاظِرُ إلَيْهَا كَآكِلِ لَحْمِ الْخِنْزِيرِ» .

L25004 Ibn Habib: rejected; Asad: weak; Habba ibn Salam: unknown; and the chain is interrupted.

ابْنُ حَبِيبٍ لَا شَيْءَ، وَأَسَدٌ ضَعِيفٌ، وَحَبَّةُ بْنُ سَلِمٍ مَجْهُولٌ، وَهُوَ مُنْقَطِعٌ.

L25005 From the chain of Ibn Ḥabīb: Al-Juḍhamī narrated to us from Ibn Abī Rawwād from his father that the Messenger of Allah—peace and blessings of Allah be upon him—said: “The most severely punished people on the Day of Resurrection will be the owner of a sheep who declares: ’I slaughtered it, by Allah! I destroyed it completely, by Allah! I uprooted it, by Allah!’—[this being] falsehood, fabrication, and lies against Allah.”

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ حَدَّثَنَا الْجُذَامِيُّ عَنْ ابْنِ أَبِي رَوَّادٍ عَنْ أَبِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ أَشَدَّ النَّاسِ عَذَابًا يَوْمَ الْقِيَامَةِ صَاحِبُ الشَّاهِ الَّذِي يَقُولُ: قَتَلْتُهُ، وَاَللَّهِ أَهْلَكْتُهُ، وَاَللَّهِ اسْتَأْصَلْتُهُ، وَاَللَّهِ إفْكًا وَزُورًا وَكَذِبًا عَلَى اللَّهِ» .

L25006 ʿAbd al-Malik has no validity, and his claim is void.

عَبْدُ الْمَلِكِ لَا شَيْءَ، وَهُوَ مُنْقَطِعٌ.

L25007 They transmitted that statement from someone other than the Messenger of God—may God bless him and grant him peace—through the chain of Ibn Ḥabīb from Aṣbagh ibn al-Faraj from Ibn Wahb from Yaḥyā ibn Ayyūb from Abū Qabīl from ʿUqbah ibn ʿĀmir al-Juhanī, who reportedly said: “I would consider worshiping an idol **instead of** God—Exalted is He—dearer to me than playing chess.” This is sheer falsehood, and God forbid that a Companion would say any sin could equal **worshiping idols instead of** God—Exalted is He—so how could disbelief be less grave than it? Yaḥyā ibn Ayyūb is **weak**, and Abū Qabīl lacks mention of **trustworthiness**.

وَرَوَوْا فِي ذَلِكَ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رُوِّينَا مِنْ طَرِيقِ ابْنِ حَبِيبٍ عَنْ أَصْبَغَ بْنِ الْفَرَجِ عَنْ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ أَبِي قَبِيلٍ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ، أَنَّهُ قَالَ: لَأَنْ أَعْبُدَ وَثَنًا مِنْ دُونِ اللَّهِ - تَعَالَى - أَحَبُّ إلَيَّ مِنْ أَنْ أَلْعَبَ بِالشِّطْرَنْجِ - هَذَا كَذِبٌ بَحْتٌ وَمَعَاذَ اللَّهِ أَنْ يَقُولَ صَاحِبٌ إنَّ عِبَادَةَ الْأَوْثَانِ مِنْ دُونِ اللَّهِ - تَعَالَى - يَعْدِلُهَا شَيْءٌ مِنْ الذُّنُوبِ، فَكَيْفَ أَنْ يَكُونَ الْكُفْرُ أَخَفَّ مِنْهَا؟ وَيَحْيَى بْنُ أَيُّوبَ لَا شَيْءَ - وَأَبُو قَبِيلٍ غَيْرُ مَذْكُورٍ بِالْعَدَالَةِ.

L25008–25010 And via the chain of Ibn Habib from Ali ibn Ma'bad, and of Asad ibn Musa from their two narrators: that Ali ibn Abi Talib passed by men playing shatranj (chess) and said, "What are these images to which you are devoted?" [Al-Anbiya: 52] It is better for one of you to hold a burning ember until it dies out than to even touch it. Were it not for this being part of the Sunnah, I would strike your faces with this ember. Then he commanded regarding them, and they were confined.[1]

وَمِنْ طَرِيقِ ابْنِ حَبِيبٍ عَنْ عَلِيِّ بْنِ مَعْبَدٍ، وَأَسَدِ بْنِ مُوسَى عَنْ رِجَالِهِمَا: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ مَرَّ بِرِجَالٍ يَلْعَبُونَ بِشِطْرَنْجٍ فَقَالَ {مَا هَذِهِ التَّمَاثِيلُ الَّتِي أَنْتُمْ لَهَا عَاكِفُونَ} [الأنبياء: ٥٢] لَأَنْ يُمْسِكَ أَحَدُكُمْ جَمْرَةً حَتَّى تُطْفَى خَيْرٌ لَهُ مِنْ أَنْ يَمَسَّهَا، لَوْلَا أَنْ تَكُونَ سُنَّةً لَضَرَبْت بِهَا وُجُوهَكُمْ - ثُمَّ أَمَرَ بِهِمْ فَحُبِسُوا.

L25011 This chain is interrupted, and in it is Ibn Ḥabīb—we know nothing about them other than what we have mentioned.

هَذَا مُنْقَطِعٌ، وَفِيهِ ابْنُ حَبِيبٍ - مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ مَا ذَكَرْنَا.

L25012 The response to their statement—"Is it from the truth or falsehood?"—is akin to our response regarding musical singing, and there is no difference. Success comes solely from Allah, the Most High.

وَالْجَوَابُ عَنْ قَوْلِهِمْ أَهُوَ مِنْ الْحَقِّ أَمْ مِنْ الْبَاطِلِ؟ كَجَوَابِنَا فِي الْغِنَاءِ وَلَا فَرْقَ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25013 Abu Muhammad said: Since neither Allah (Exalted is He) nor His Messenger (peace and blessings of Allah be upon him) has provided explicit details prohibiting any of the matters we have mentioned, it is confirmed that all of it is absolutely permissible. How could this be otherwise when we have been narrated through the chain of transmission via Muslim: Hārūn ibn Saʿīd al-Aylī narrated to me, from Ibn Wahb, from ʿAmr ibn al-Ḥārith, from Ibn Shihāb, from ʿUrwah ibn al-Zubayr, from ʿĀ'ishah, the Mother of the Believers, that Abū Bakr entered upon her while two young girls were singing and striking [an instrument] beside her - while the Messenger of Allah (peace and blessings of Allah be upon him) lay covered with his garment. Abū Bakr rebuked them, but the Messenger of Allah (peace and blessings of Allah be upon him) uncovered his face and said: "Leave them, O Abū Bakr, for these are the days of Eid."

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا لَمْ يَأْتِ عَنْ اللَّهِ - تَعَالَى -، وَلَا عَنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَفْصِيلٌ بِتَحْرِيمِ شَيْءٍ مِمَّا ذَكَرْنَا صَحَّ أَنَّهُ كُلُّهُ حَلَالٌ مُطْلَقٌ، فَكَيْفَ وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ حَدَّثَنِي ابْنُ وَهْبٍ أَنَا عَمْرٌو - هُوَ ابْنُ الْحَارِثِ - أَنَا ابْنُ شِهَابٍ حَدَّثَهُ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ أَبَا بَكْرٍ دَخَلَ عَلَيْهَا وَعِنْدَهَا جَارِيَتَانِ تُغَنِّيَانِ وَتَضْرِبَانِ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُسَجًّى بِثَوْبِهِ - فَانْتَهَرَهُمَا أَبُو بَكْرٍ، فَكَشَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجْهَهُ وَقَالَ: دَعْهُمَا يَا أَبَا بَكْرٍ فَإِنَّهَا أَيَّامُ عِيدٍ» .

L25014 And through him also to ʿAmr ibn al-Ḥārith that Muḥammad ibn ʿAbd al-Raḥmān (he is Abū al-Aswad) narrated to him from ʿUrwah ibn al-Zubayr from ʿĀ'ishah, the Mother of the Believers, who said: "The Messenger of Allah (peace be upon him) came to me while two young girls were singing the songs of Buʿāth. He lay down on the bed and turned his face away. Then Abū Bakr entered and rebuked me, saying: 'Satanic music in the presence of

وَبِهِ أَيْضًا إلَى عَمْرِو بْنِ الْحَارِثِ أَنَّ مُحَمَّدَ بْنَ عَبْدِ الرَّحْمَنِ - هُوَ أَبُو الْأَسْوَدِ - حَدَّثَهُ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ " قَالَتْ: «دَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعِنْدِي جَارِيَتَانِ تُغَنِّيَانِ بِغِنَاءِ بُعَاثٍ فَاضْطَجَعَ عَلَى الْفِرَاشِ وَحَوَّلَ

[1] **Qur'an references (L25008):** Qur'an 21:52 (Al-Anbya).

وَجْهَهُ فَدَخَلَ أَبُو بَكْرٍ فَانْتَهَرَنِي وَقَالَ لِي: أَمِزْمَارُ الشَّيْطَانِ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: دَعْهُمَا» .

the Messenger of Allah (peace be upon him)?' The Messenger of Allah (peace be upon him) said to him: 'Leave them.'"

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ هَذَا الْخَبَرَ مِنْ طَرِيقِ أَبِي أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ وَقَالَ فِيهِ: وَلَيْسَتَا بِمُغَنِّيَتَيْنِ؟ قُلْنَا: نَعَمْ، وَلَكِنَّهَا قَدْ قَالَتْ: إِنَّهُمَا كَانَتَا تُغَنِّيَانِ، فَالْغِنَاءُ مِنْهُمَا قَدْ صَحَّ، وَقَوْلُهَا " لَيْسَتَا بِمُغَنِّيَتَيْنِ " أَيْ لَيْسَتَا بِمُحْسِنَتَيْنِ.

L25015 If it is said: "You have narrated this report through the chain of Abū Usāmah from Hishām ibn ʿUrwah from his father from ʿĀ'ishah, and he said in it: 'And they were not professional singers?'" We reply: Yes, however she has said that the two of them used to sing. Therefore, their singing has been confirmed, and her statement "they were not professional singers" means they were not proficient singers.

وَهَذَا كُلُّهُ لَا حُجَّةَ فِيهِ، إِنَّمَا الْحُجَّةُ فِي إِنْكَارِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَبِي بَكْرٍ قَوْلَهُ: أَمِزْمَارُ الشَّيْطَانِ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَصَحَّ أَنَّهُ مُبَاحٌ مُطْلَقٌ، لَا كَرَاهِيَةَ فِيهِ، وَأَنَّ مَنْ أَنْكَرَهُ فَقَدْ أَخْطَأَ بِلَا شَكٍّ.

L25016 All of this holds no valid argument. The valid argument lies in the Prophet's—peace and blessings of Allah be upon him—rejection of Abu Bakr's statement: "Is this the flute of Satan in the presence of the Messenger of Allah?" Thus, it is confirmed that it is absolutely permissible, with no dislike (karāhiyyah) in it, and whoever denies its permissibility has unquestionably erred.

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا أَحْمَدُ بْنُ عُبَيْدٍ الْغُدَانِيُّ أَنَا الْوَلِيدُ بْنُ مُسْلِمٍ أَنَا سَعِيدُ بْنُ عَبْدِ الْعَزِيزِ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: «سَمِعَ ابْنُ عُمَرَ مِزْمَارًا فَوَضَعَ أُصْبُعَيْهِ فِي أُذُنَيْهِ، وَنَأَى عَنْ الطَّرِيقِ وَقَالَ لِي: يَا نَافِعُ هَلْ تَسْمَعُ شَيْئًا؟ قُلْتُ: لَا، فَرَفَعَ أُصْبُعَيْهِ مِنْ أُذُنَيْهِ وَقَالَ: كُنْتُ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَسَمِعَ مِثْلَ هَذَا وَصَنَعَ مِثْلَ هَذَا» .

L25017–25018 From the chain of Abu Dawud: I am Ahmad ibn 'Ubayd al-Ghudani, I am al-Walid ibn Muslim, I am Sa'id ibn 'Abd al-'Aziz, from Sulayman ibn Musa, from Nafi', the freed slave of Ibn 'Umar, who said: Ibn 'Umar heard a flute, so he placed his fingers in his ears and withdrew from the path. He said to me: "O Nafi', do you hear anything?" I said: "No." He then lifted his fingers from his ears and said: "I was with the Prophet, peace and blessings be upon him, when he heard the like of this, and he did the same thing."

قَالَ أَبُو مُحَمَّد: هَذِهِ هِيَ الْحُجَّةُ الْقَاطِعَةُ بِصِحَّةِ هَذِهِ الْأَسَانِيدِ، وَلَوْ كَانَ الْمِزْمَارُ حَرَامًا سَمَاعُهُ لَمَا أَبَاحَ - عَلَيْهِ السَّلَامُ - لِابْنِ عُمَرَ سَمَاعَهُ، وَلَوْ كَانَ عِنْدَ ابْنِ عُمَرَ حَرَامًا سَمَاعُهُ لَمَا أَبَاحَ لِنَافِعٍ سَمَاعَهُ، وَلَأَمَرَ - عَلَيْهِ السَّلَامُ - بِكَسْرِهِ وَبِالسُّكُوتِ عَنْهُ، فَمَا فَعَلَ - عَلَيْهِ السَّلَامُ - شَيْئًا مِنْ ذَلِكَ.

L25019 Abu Muhammad said: This is the decisive proof for the validity of these chains of transmission. If listening to the musical instrument had been forbidden, he (peace be upon him) would not have permitted Ibn Umar to listen to it. If listening to it had been forbidden in Ibn Umar's view, he would not have permitted Nafi' to listen to it. He (peace be upon him) would have commanded its destruction and enjoined silence regarding it, yet he (peace be upon him) did not perform any of these actions.

L25020 He (peace be upon him) only refrained from listening to it as he avoided

most permissible matters among the majority of worldly affairs, such as his avoidance of eating while reclining, allowing a dinar or dirham to remain with him overnight, and hanging curtains on a niche in the house—except for the embroidered curtains, which were only in Fatimah's house. And by Allah, the Most High, is success.

وَإِنَّمَا تَجَنَّبَ - عَلَيْهِ السَّلَامُ - سَمَاعَهُ كَتَجَنُّبِهِ أَكْثَرَ الْمُبَاحِ مِنْ أَكْثَرِ أُمُورِ الدُّنْيَا، كَتَجَنُّبِهِ الْأَكْلَ مُتَّكِئًا، وَأَنْ يَبِيتَ عِنْدَهُ دِينَارٌ أَوْ دِرْهَمٌ، وَأَنْ يُعَلِّقَ السُّتُرَ عَلَى سَهْوَةٍ فِي الْبَيْتِ وَالسُّتُرُ الْمُوَشَّى فِي بَيْتِ فَاطِمَةَ فَقَطْ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25021 Through the narration of Muslim ibn al-Hajjaj: I am Zuhayr ibn Harb, [narrating] from Jarir, from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers, who said: "Abyssinians came performing a dance on the day of Eid in the mosque. The Prophet (peace be upon him) called me, so that I placed my head on his shoulder, and I kept watching their performance until I was the one who stopped watching." It was narrated to us through Sufyan al-Thawri, from Abu Ishaq al-Sabi'i, from Amir ibn Sa'd al-Bajali, that he saw Abu Mas'ud al-Badri, Qarazah ibn Ka'b, and Thabit ibn Yazid at a wedding where there was singing. He said to them: "You, the companions of Muhammad (peace be upon him), [participate in] this?" They replied: "He permitted us to have singing at weddings and weeping over the deceased without wailing." No prohibition is mentioned here against singing outside of weddings.

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ أَنَا زُهَيْرُ بْنُ حَرْبٍ أَنَا جَرِيرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «جَاءَ حَبَشٌ يَزْفِنُونَ فِي يَوْمِ عِيدٍ فِي الْمَسْجِدِ فَدَعَانِي النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى وَضَعْتُ رَأْسِي عَلَى مَنْكِبِهِ فَجَعَلْتُ أَنْظُرُ إِلَى لَعِبِهِمْ حَتَّى كُنْتُ أَنَا الَّتِي انْصَرَفْتُ عَنْ النَّظَرِ» وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَامِرِ بْنِ سَعْدٍ الْبَجَلِيِّ أَنَّهُ رَأَى أَبَا مَسْعُودٍ الْبَدْرِيَّ، وَقَرَظَةَ بْنَ كَعْبٍ، وَثَابِتَ بْنَ يَزِيدَ - وَهُمْ فِي عُرْسٍ وَعِنْدَهُمْ غِنَاءٌ - فَقُلْتُ لَهُمْ: هَذَا وَأَنْتُمْ أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: «إنَّهُ رَخَّصَ لَنَا فِي الْغِنَاءِ فِي الْعُرْسِ، وَالْبُكَاءِ عَلَى الْمَيِّتِ مِنْ غَيْرِ نَوْحٍ» - لَيْسَ فِيهِ النَّهْيُ عَنْ الْغِنَاءِ فِي غَيْرِ الْعُرْسِ.

L25022–25024 And through the chain of Ḥammād ibn Zayd: from Ayyūb al-Sikhtiyānī, Hishām ibn Ḥassan, and Salamah—meaning ibn Kuhayl—their narrations became interwoven with one another, all transmitting from Muḥammad ibn Sīrīn: A man arrived in Medina with female slaves and approached ʿAbdullāh ibn Jaʿfar, presenting them to him. He instructed one girl among them to play an instrument. Ayyūb specified: "with a tambourine," while Hishām stated: "with a lute"—until Ibn ʿUmar believed he himself had witnessed this. Ibn ʿUmar then said: Enough of Satan's psalm for the rest of the day! He bargained with him, then the man came to Ibn Umar and said, "O Abu Abd al-Rahman, I was defrauded of seven hundred dirhams." Ibn Umar went to Abdullah ibn Ja'far and said, "He was defrauded of seven hundred dirhams. Either give him the amount or revoke his sale." He replied, "Rather, we will give it to him."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ أَنَا أَيُّوبُ السِّخْتِيَانِيُّ، وَهِشَامُ بْنُ حَسَّانَ، وَسَلَمَةُ - هُوَ ابْنُ كُهَيْلٍ - دَخَلَ حَدِيثُ بَعْضِهِمْ فِي حَدِيثِ بَعْضٍ، كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ رَجُلًا قَدِمَ الْمَدِينَةَ بِجَوَارٍ فَأَتَى إلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ فَعَرَضَهُنَّ عَلَيْهِ، فَأَمَرَ جَارِيَةً مِنْهُنَّ فَأَحْدَثَتْ، قَالَ أَيُّوبُ: بِالدُّفِّ، وَقَالَ هِشَامٌ: بِالْعُودِ، حَتَّى ظَنَّ ابْنُ عُمَرَ أَنَّهُ قَدْ نَظَرَ إلَى ذَلِكَ، فَقَالَ ابْنُ عُمَرَ: حَسْبُك - سَائِرَ الْيَوْمِ - مِنْ مَزْمُورِ الشَّيْطَانِ، فَسَاوَمَهُ، ثُمَّ جَاءَ الرَّجُلُ إلَى ابْنِ عُمَرَ فَقَالَ: يَا أَبَا عَبْدِ الرَّحْمَنِ إنِّي غُبِنْتُ بِسَبْعِمِائَةِ دِرْهَمٍ، فَأَتَى ابْنُ عُمَرَ إلَى عَبْدِ اللَّهِ بْنِ جَعْفَرٍ فَقَالَ لَهُ: إنَّهُ غُبِنَ بِسَبْعِمِائَةِ دِرْهَمٍ، فَأَمَّا أَنْ تُعْطِيَهَا إيَّاهُ، وَإِمَّا أَنْ تَرُدَّ عَلَيْهِ بَيْعَهُ، فَقَالَ: بَلْ نُعْطِيهَا إيَّاهُ.

فَهَذَا ابْنُ عُمَرَ قَدْ سَمِعَ الْغِنَاءَ وَسَعَى فِي بَيْعِ الْمُغَنِّيَةِ، وَهَذِهِ أَسَانِيدُ صَحِيحَةٌ لَا تِلْكَ الْمُلَفَّقَاتُ الْمَوْضُوعَةُ.

L25025 So this Ibn ʿUmar indeed heard the singing and strived to sell the female singer, and these are sound chains of transmission—not those concocted and forged ones.

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا فُضَيْلُ بْنُ مَرْزُوقٍ عَنْ مَيْسَرَةَ النَّهْدِيِّ قَالَ: مَرَّ عَلِيُّ بْنُ أَبِي طَالِبٍ بِقَوْمٍ يَلْعَبُونَ بِالشِّطْرَنْجِ فَقَالَ: {مَا هَذِهِ التَّمَاثِيلُ الَّتِي أَنْتُمْ لَهَا عَاكِفُونَ} [الأنبياء: ٥٢] فَلَمْ يُنْكِرْ إِلَّا التَّمَاثِيلَ فَقَطْ - وَهَذَا هُوَ الصَّحِيحُ عَنْهُ لَا تِلْكَ الزِّيَادَةُ الْمَكْذُوبَةُ الَّتِي رَوَاهَا مَنْ لَا خَيْرَ فِيهِ.

L25026 From the narration via Waki‘: I, Fudayl ibn Marzuq, report from Maysarah al-Nahdi, who said: Ali ibn Abi Talib passed by a group of people playing chess and remarked, “What are these idols to which you are devoted?” [Quran 21:52]. He objected only to the idols. This is the authentic narration from him, not the fabricated addition transmitted by unreliable individuals.[2]

فَإِنْ قِيلَ: قَدْ رَوَى: «أَعْلِنُوا النِّكَاحَ وَاضْرِبُوا عَلَيْهِ بِالْغِرْبَالِ» ؟ قُلْنَا: هَذَا سَاقِطٌ، لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ أَصْبَغَ عَنْ السَّبِيعِيِّ عَنْ رَبِيعَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَهُ - وَعَبْدُ الْمَلِكِ سَاقِطٌ، وَالسَّبِيعِيُّ مَجْهُولٌ، ثُمَّ هُوَ مُنْقَطِعٌ.

L25027 If it is said: “It has been narrated: ’Publicize marriage and strike upon it with sieves,’” we say: This narration is rejected; as it is transmitted through the chain of ʿAbd al-Malik ibn Ḥabīb from Aṣbagh from al-Sabīʿī from Rabīʿah that the Messenger of Allah—peace be upon him—said it. However, ʿAbd al-Malik is rejected, al-Sabīʿī is unknown, and furthermore, the chain is disconnected.

فَإِنْ قِيلَ: الدُّفُّ مُجْمَعٌ عَلَيْهِ؟ قُلْنَا: هَذَا الْبَاطِلُ -: وَرُوِّينَا مِنْ أَصَحِّ طَرِيقٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا سُفْيَانُ الثَّوْرِيُّ حَدَّثَنِي مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ أَصْحَابَ ابْنِ مَسْعُودٍ كَانُوا يَسْتَقْبِلُونَ الْجَوَارِي فِي الْمَدِينَةِ مَعَهُنَّ الدُّفُوفُ فَيُشَقِّقُونَهَا.

L25028 If it is said: “Is there consensus regarding the daff?” We reply: This is invalid. We have narrated through the most authentic chain from Yaḥyā ibn Saʿīd al-Qaṭṭān - Sufyān al-Thawrī reported to me from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī that the companions of Ibn Masʿūd would confront female singers in Medina who carried daffs, and they would split the drums open.

وَقَدْ جَاءَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ، وَمُحَمَّدِ بْنِ سِيرِينَ: أَنَّهُمَا كَانَا يُحْسِنَانِ اللَّعِبَ بِالشِّطْرَنْجِ - وَعَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ كَانَ يُغَنِّي بِالْعُودِ -، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25029 It has been reported from Sa’id ibn Jubayr and Muhammad ibn Sirin that they were skilled at playing chess—and from Sa’id ibn Abd al-Rahman ibn Awf that he sang accompanied by the lute—and with Allah, the Exalted, is success.

[مَسْأَلَةُ الْبَيْعُ فِي الْمَسْجِدِ]

The Issue of Selling in the Mosque

١٥٦٧ - مَسْأَلَةٌ: وَالْبَيْعُ فِي الْمَسْجِدِ مَكْرُوهٌ، وَهُوَ جَائِزٌ لَا يُرَدُّ، وَالْبَيْعُ قَبْلَ طُلُوعِ الشَّمْسِ جَائِزٌ.

L25030

L25031 Issue 1567: Selling in the mosque is disliked (makrūḥ), though permissible and not invalidated. Selling before sunrise is permissible.

[2] **Qur’an references (L25026):** Qur’an 21:52 (Al-Anbya).

L25032–25034 A person's purchase of an item for which he does not possess the payment is permissible, based on Allah's statement—(glorified and exalted is He)—"Allah has made trade lawful" [Al-Baqarah: 275]. Reports have been transmitted concerning this matter, but they lack sound authentication. Ar-Rabee ibn Habib reported from Nawfal ibn Abdullah from his father - and all of them are unknown - from Ali: "The Messenger of Allah - may Allah bless him and grant him peace - forbade outbidding before sunrise."[3][4]

وَابْتِيَاعُ الْمَرْءِ مَا لَيْسَ عِنْدَهُ ثَمَنُهُ جَائِزٌ، لِقَوْلِ اللَّهِ - تَعَالَى -: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَقَدْ رُوِيَتْ فِي ذَلِكَ آثَارٌ لَا تَصِحُّ -: رَوَى الرَّبِيعُ بْنُ حَبِيبٍ عَنْ نَوْفَلِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِ - وَكُلُّهُمْ مَجْهُولُونَ - عَنْ عَلِيٍّ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ السَّوْمِ قَبْلَ طُلُوعِ الشَّمْسِ» .

L25035 Through the chain of Ibn Wahb: Usāmah—Ibn Zayd—reported to me from ʿAmr ibn Shuʿayb, from his father, from his grandfather: "The Messenger of Allah—peace and blessings be upon him—forbade buying and selling in the mosque."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي أُسَامَةُ - هُوَ ابْنُ زَيْدٍ - عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْبَيْعِ وَالشِّرَاءِ فِي الْمَسْجِدِ» .

L25036 From the narration of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Muḥammad ibn ʿAjlān, from ʿAmr ibn Shuʿayb, from his father, from his grandfather: "The Messenger of Allah—may Allah grant him peace and blessings—prohibited sitting in circles in the mosque before prayer, and selling and buying in the mosque." This is a written record.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ التَّحَلُّقِ فِي الْمَسْجِدِ قَبْلَ الصَّلَاةِ، وَعَنْ الْبَيْعِ، وَالشِّرَاءِ فِي الْمَسْجِدِ» - هَذِهِ صَحِيفَةٌ.

L25037 From the path of Abū Dāwūd, from ʿUthmān ibn Abī Shaybah, from Wakīʿ, from Shurayk, from Simāk, from ʿIkrimah, from Ibn ʿAbbās: "The Prophet (peace be upon him) purchased from another person a sale while he did not possess its price, then profited in it. He sold it and gave the price in charity to the needy widows of Banū ʿAbd al-Muṭṭalib, then said: 'I will not purchase anything after it unless I possess its price.'" Simāk and Shurayk are weak narrators.

وَمِنْ طَرِيقِ أَبِي دَاوُد عَنْ عُثْمَانَ بْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ شَرِيكٍ عَنْ سِمَاكٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْتَاعَ مِنْ غَيْرِهِ بَيْعًا وَلَيْسَ عِنْدَهُ ثَمَنُهُ فَأَرْبَحَ فِيهِ، فَبَاعَهُ وَتَصَدَّقَ بِالثَّمَنِ عَلَى أَرَامِلِ بَنِي عَبْدِ الْمُطَّلِبِ، ثُمَّ قَالَ: لَا أَشْتَرِي بَعْدَهَا شَيْئًا إلَّا وَعِنْدِي ثَمَنُهُ» - سِمَاكٌ، وَشَرِيكٌ ضَعِيفَانِ.

L25038 It was narrated through the chain of al-Darawardī from Yazīd ibn Khuṣayfah from Muḥammad ibn ʿAbd al-Raḥmān ibn Thawbān from Abū Hurayrah that the Messenger of Allah—peace and blessings of Allah be upon him—said: "If you see a man making public requests in the mosque, say to him: 'May Allah not grant your request,' and if you see him selling, say to him: 'May Allah not make your trade profitable.'" This [statement] does not imply a prohibition against selling; rather, it indicates that the act is discouraged.

وَرُوِيَ مِنْ طَرِيقِ الدَّرَاوَرْدِيِّ عَنْ يَزِيدَ بْنِ خُصَيْفَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ عَنْ أَبِي هُرَيْرَةَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا رَأَيْتُمْ الرَّجُلَ يَنْشُدُ فِي الْمَسْجِدِ فَقُولُوا لَهُ لَا رَدَّ اللَّهُ عَلَيْكَ، وَإِذَا رَأَيْتُمُوهُ يَبِيعُ فَقُولُوا لَهُ: لَا أَرْبَحَ اللَّهُ تِجَارَتَكَ» لَيْسَ فِيهِ مَنْعٌ مِنْ الْبَيْعِ، وَلَكِنَّهَا كَرَاهِيَةٌ.

[3] **Hadith references (L25032):** Sunan Ibn Majah 2206.
[4] **Qur'an references (L25032):** Qur'an 2:275 (Al-Baqarah).

A Juristic Issue Regarding Hoarding

[مَسْأَلَة فِي الِاحْتِكَار]

L25039

L25040 1568 – Issue: Hoarding that harms people is prohibited—whether in buying or retaining what has been bought—and such action is forbidden.

١٥٦٨ - مَسْأَلَة: وَالْحُكْرَةُ الْمُضِرَّةُ بِالنَّاسِ حَرَامٌ - سَوَاءٌ فِي الِابْتِيَاعِ أَوْ فِي إمْسَاكِ مَا ابْتَاعَ - وَيُمْنَعُ مِنْ ذَلِكَ.

L25041 The hoarder during a time of abundance is not sinful; rather, he is acting righteously, for when traders hasten to sell, they increase the supply of goods. When their merchandise stagnates and finds no buyers, they stop bringing goods - which harms the Muslims. Allah the Exalted said: _"Cooperate in righteousness and piety, and do not cooperate in sin and aggression"_ [Surah Al-Mā'idah 5:2].[5]

وَالْمُحْتَكِرُ فِي وَقْتِ رَخَاءٍ لَيْسَ آثِمًا، بَلْ هُوَ مُحْسِنٌ؛ لِأَنَّ الْجُلَّابَ إذَا أَسْرَعُوا الْبَيْعَ أَكْثَرُوا الْجَلَبَ، وَإِذَا بَارَتْ سِلْعَتُهُمْ وَلَمْ يَجِدُوا لَهَا مُبْتَاعًا تَرَكُوا الْجَلَبَ، فَأَضَرَّ ذَلِكَ بِالْمُسْلِمِينَ، قَالَ اللَّهُ - تَعَالَى -: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L25042–25044 If it is said: "Indeed, you authenticate the ḥadīth through the chain of Muḥammad ibn ʿAjlān, from Muḥammad ibn ʿAmr ibn ʿAṭā'." From Saʿīd ibn al-Musayyib, from Maʿmar ibn ʿAbd Allāh al-ʿAdawī: The Messenger of Allah, peace be upon him, said, "No one hoards except a sinner."

فَإِنْ قِيلَ: فَإِنَّكُمْ تُصَحِّحُونَ الْحَدِيثَ مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ مَعْمَرِ بْنِ عَبْدِ اللَّهِ الْعَدَوِيِّ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحْتَكِرُ إلَّا خَاطِئٌ» ؟ .

L25045 We said: Yes. However, it was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Mālik ibn Aws ibn al-Ḥadathān that he heard ʿUmar ibn al-Khaṭṭāb say: "The Messenger of Allah - peace and blessings be upon him - would reserve a year's provision for his family, then place whatever remained of his produce in the status of Allah's wealth."

قُلْنَا: نَعَمْ، وَلَكِنَّنَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ أَنَّهُ سَمِعَ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَحْبِسُ، نَفَقَةَ أَهْلِهِ سَنَةً، ثُمَّ يَجْعَلُ مَا بَقِيَ مِنْ ثَمَرِهِ مَجْعَلَ مَالِ اللَّهِ» .

L25046 So this Prophet—peace be upon him—withheld the sustenance of his household for a year and did not extend it beyond that period.

فَهَذَا النَّبِيُّ - عَلَيْهِ السَّلَامُ - قَدْ احْتَبَسَ قُوتَ أَهْلِهِ سَنَةً، وَلَمْ يَمْنَعْ مِنْ أَكْثَرَ.

L25047 It is thus established that retaining what is indispensable is permissible, and purchasing is permissible. What is reproached is undoubtedly the impermissible. This is the hoarding we have mentioned, for all hoarding constitutes retention. Hoarding is blameworthy, but not every instance of retention is blameworthy; rather, it remains permissible unless evidence arises to prohibit it - at which point it becomes blameworthy. And success is from Allah, the Most High.

فَصَحَّ أَنَّ إمْسَاكَ مَا لَا بُدَّ مِنْهُ مُبَاحٌ، وَالشِّرَاءُ مُبَاحٌ، وَالْمَذْكُورُ بِالذَّمِّ هُوَ غَيْرُ الْمُبَاحِ بِلَا شَكٍّ، فَهَذَا الِاحْتِكَارُ الَّذِي ذَكَرْنَاهُ، وَكُلُّ احْتِكَارٍ فَإِنَّهُ إمْسَاكٌ، وَالِاحْتِكَارُ مَذْمُومٌ، وَلَيْسَ كُلُّ إمْسَاكٍ مَذْمُومًا، بَلْ هُوَ مُبَاحٌ حَتَّى يَقُومَ دَلِيلٌ بِالْمَنْعِ مِنْ شَيْءٍ مِنْهُ فَهُوَ الْمَذْمُومُ حِينَئِذٍ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[5] **Qur'an references (L25041):** Qur'an 5:2 (Al-Ma'idah).

L25048 It has been narrated to us through the chain of Yazīd ibn Hārūn from Aṣbagh ibn Zayd al-Juhanī from Abū Bishr from Abū al-Zāhiriyyah from Kathīr ibn Murrah al-Ḥaḍramī from Ibn ʿUmar from the Prophet (peace and blessings be upon him), who said: "Whoever hoards food for forty days has disassociated himself from Allah, and Allah has disassociated Himself from him."

وَقَدْ رُوِّينَا حَدِيثًا مِنْ طَرِيقِ يَزِيدَ بْنِ هَارُونَ عَنْ أَصْبَغَ بْنِ زَيْدٍ الْجُهَنِيِّ عَنْ أَبِي بِشْرٍ عَنْ أَبِي الزَّاهِرِيَّةِ عَنْ كَثِيرِ بْنِ مُرَّةَ الْحَضْرَمِيِّ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ احْتَكَرَ طَعَامًا أَرْبَعِينَ يَوْمًا فَقَدْ بَرِئَ مِنْ اللَّهِ وَبَرِئَ اللَّهُ مِنْهُ» .

L25049 This ruling is invalid because Asbagh ibn Zayd and Kathir ibn Murrah are both unverified narrators.

وَهَذَا لَا يَصِحُّ؛ لِأَنَّ أَصْبَغَ بْنَ زَيْدٍ، وَكَثِيرَ بْنَ مُرَّةَ مَجْهُولَانِ.

L25050 It has been narrated to us through the chain of Abd al-Razzaq from al-Mu'tamir ibn Sulayman al-Taymi from Layth ibn Abi Sulaym, who narrated that Abu al-Hakam informed me: "Ali ibn Abi Talib burned food hoarded with a hundred thousand."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ أَخْبَرَنِي أَبُو الْحَكَمِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَحْرَقَ طَعَامًا اُحْتُكِرَ بِمِائَةِ أَلْفٍ.

L25051 From the transmission of Ibn Abi Shaybah: [It is narrated by] Humaid ibn Abd al-Rahman al-Ru'asi, from al-Hasan ibn Ḥayy, from al-Hakam ibn Utaybah, from Abd al-Rahman ibn Qays, who said: Hubaysh said, "Ali ibn Abi Talib burned my threshing floors in al-Sawad that I had hoarded. Had he left them, I would have gained profits equal to the stipend of Kufa." Al-Bayadir are storage areas for scarce food.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ الرُّؤَاسِيُّ عَنْ الْحَسَنِ بْنِ حَيٍّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ قَيْسٍ قَالَ: قَالَ حُبَيْشٌ أَحْرَقَ لِي عَلِيُّ بْنُ أَبِي طَالِبٍ بَيَادِرَ بِالسَّوَادِ كُنْت احْتَكَرْتهَا، لَوْ تَرَكَهَا لَرَبِحْت فِيهَا مِثْلَ عَطَاءِ الْكُوفَةِ - الْبَيَادِرُ أَنَادِرُ الطَّعَامِ.

L25052 Abu Muhammad said: "This occurred in the presence of the Companions, and it is obligatory for whoever condemns such an act to adhere to it."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بِحَضْرَةِ الصَّحَابَةِ، وَيَلْزَمُ مَنْ شَنَّعَ بِمِثْلِ هَذَا أَنْ يَأْخُذَ بِهِ.

L25053 ## The Issue of Trading with Dār al-Ḥarb

[مَسْأَلَةُ التِّجَارَةِ إلَى أَرْضِ الْحَرْبِ]

L25054–25056 1569 – Issue: If Muslim merchants enter the abode of war, they are subjected to humiliation there. The rulings applicable to disbelievers apply to them. Trading to the land of war is forbidden, and they must be prevented from it; otherwise, it is merely disliked. Selling to them is permissible except for anything they might use to strengthen themselves against Muslims—such as pack animals, weapons, iron, or similar items. Selling any of these to them is fundamentally prohibited. Allah the Exalted said: "So do not weaken and call for peace while you are dominant" [47:35]. Entering their lands in a manner that subjects one to their rulings constitutes weakness, humiliation, and an invitation to peace—all of which is forbidden. Allah the Exalted also

١٥٦٩ - مَسْأَلَةٌ: وَإِنْ كَانَ التُّجَّارُ الْمُسْلِمُونَ إذَا دَخَلُوا أَرْضَ الْحَرْبِ أُذِلُّوا بِهَا وَجَرَتْ عَلَيْهِمْ أَحْكَامُ الْكُفَّارِ، فَالتِّجَارَةُ إلَى أَرْضِ الْحَرْبِ حَرَامٌ، وَيُمْنَعُونَ مِنْ ذَلِكَ، وَإِلَّا فَنَكْرَهُهَا فَقَطْ، وَالْبَيْعُ مِنْهُمْ جَائِزٌ إلَّا مَا يَتَقَوَّوْنَ بِهِ عَلَى الْمُسْلِمِينَ مِنْ دَوَابَّ أَوْ سِلَاحٍ أَوْ حَدِيدٍ أَوْ غَيْرِ ذَلِكَ، فَلَا يَحِلُّ بَيْعُ شَيْءٍ مِنْ ذَلِكَ مِنْهُمْ أَصْلًا، قَالَ - تَعَالَى -: {فَلَا تَهِنُوا وَتَدْعُوا إِلَى السَّلْمِ وَأَنْتُمُ الأَعْلَوْنَ} [محمد: ٣٥] فَالدُّخُولُ إلَيْهِمْ بِحَيْثُ تَجْرِي عَلَى

said: “And do not cooperate in sin and aggression” [5:2]. Strengthening them through selling or other means that empower them against Muslims is forbidden. Those who do this must be punished severely as a deterrent, and their imprisonment shall be excessively prolonged.[6]

الدَّاخِلِ أَحْكَامُهُمْ وَهَنٌ وَانْسِفَالٌ وَدُعَاءٌ إِلَى السِّلْمِ - وَهَذَا كُلُّهُ مُحَرَّمٌ، وَقَالَ - تَعَالَى -: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَتَقْوِيَتُهُمْ بِالْبَيْعِ وَغَيْرِهِ مِمَّا يَقْوَوْنَ بِهِ عَلَى الْمُسْلِمِينَ حَرَامٌ، وَيُنَكَّلُ مَنْ فَعَلَ ذَلِكَ، وَيُبَالَغُ فِي طُولِ حَبْسِهِ.

L25057 **A case where someone purchased a commodity under a *salam* contract on the condition of it being free from defects but later found it defective.**

[مَسْأَلَة اشْتَرَى سِلْعَةً عَلَى السَّلَامَةِ مِنْ الْعُيُوبِ فَوَجَدَهَا مَعِيبَةً]

L25058 1570 - Issue: If someone purchases a commodity on the basis of soundness from defects and then finds it defective, the entire transaction is wholly annulled. He has no option to keep it unless both parties renew another sale through mutual consent. This is because the defective item is undeniably not the sound one, for he purchased a sound item but was given a defective one. What he received differs from what he purchased, thus it is impermissible for him to retain what he did not purchase, as this constitutes unlawful consumption of wealth through falsehood.

١٥٧٠ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى سِلْعَةً عَلَى السَّلَامَةِ مِنْ الْعُيُوبِ فَوَجَدَهَا مَعِيبَةً فَهِيَ صَفْقَةٌ مَفْسُوخَةٌ كُلُّهَا، لَا خِيَارَ لَهُ فِي إمْسَاكِهَا إلَّا بِأَنْ يُجَدِّدَا فِيهَا بَيْعًا آخَرَ بِتَرَاضٍ مِنْهُمَا؛ لِأَنَّ الْمَعِيبَ بِلَا شَكٍّ غَيْرُ السَّالِمِ، وَهُوَ إنَّمَا اشْتَرَى سَالِمًا فَأُعْطِيَ مَعِيبًا، فَالَّذِي أُعْطِيَ غَيْرُ الَّذِي اشْتَرَى فَلَا يَحِلُّ لَهُ مَا لَمْ يَشْتَرِ؛ لِأَنَّهُ أَكْلُ مَالٍ بِالْبَاطِلِ.

L25059 The Messenger of Allah—peace and blessings of Allah be upon him—said: “Your blood and your wealth are inviolable to you,” and the Most High said: “Do not devour your wealth among yourselves wrongfully unless it is a trade by mutual consent among you” [An-Nisa: 29]. We have mentioned much discussion regarding this matter in the preceding sections of our book, and this suffices. Success is from Allah, the Most High.[7]

قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» ، وَقَالَ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَقَدْ ذَكَرْنَا كَلَامًا كَثِيرًا فِي هَذِهِ الْمَسْأَلَةِ فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا، وَفِي هَذَا كِفَايَةٌ وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25060 **[Case: A person purchased goods without stipulating their soundness from defects and later discovered they were defective]**

[مَسْأَلَة أشترى سِلْعَة وَلَمْ يَشْتَرِط السلامة مِنْ الْعُيُوب فوجدها مُعَيَّبَة]

L25061 1571 – Issue: If he did not stipulate freedom from defects, nor was a defect disclosed to him, and he then found a defect, he may choose to retain or return [the item]. If he retains it, he is entitled to nothing, because he

١٥٧١ - مَسْأَلَةٌ: فَإِنْ لَمْ يَشْتَرِطْ السَّلَامَةَ، وَلَا بُيِّنَ لَهُ مَعِيبٌ فَوَجَدَ عَيْبًا فَهُوَ مُخَيَّرٌ بَيْنَ إمْسَاكٍ أَوْ رَدٍّ، فَإِنْ أَمْسَكَ فَلَا شَيْءَ لَهُ؛ لِأَنَّهُ قَدْ رَضِيَ بِعَيْنِ مَا اشْتَرَى فَلَهُ أَنْ

[6] **Qur’an references (L25054):** Qur’an 47:35 (Muhammad); Qur’an 5:2 (Al-Ma’idah).
[7] **Qur’an references (L25059):** Qur’an 4:29 (An-Nisa).

has consented to the exact item purchased, so he may uphold his consent. Alternatively, he may rescind the entire deal, as he has encountered deception, fraud, and exploitation—for fraud and deception are prohibited.

L25062 He is not permitted to retain what he purchased and claim compensation for the defect's value, for he is only entitled to rescind consent due to the loss incurred through fraudulent disadvantage. Neither a Quranic verse nor Sunnah establishes his right to the seller's property; rather, the seller's property remains religiously forbidden to him as we stated. He may not return part of the purchased item, because he did not validly consent to a portion of the sold item to the exclusion of another. No one's property becomes lawful for another except through mutual consent or a definitive textual proof necessitating its permissibility. This ruling applies whether the defect pertains to the primary aspect of the transaction, most of it, or a lesser part, for neither the Quran nor Sunnah distinguishes between such cases. And success is from Allah, the Exalted, alone.

A juristic issue concerning someone who purchased a *musarrāh* (an animal whose milk was withheld to deceive buyers), believing it to be in milk, but later discovered otherwise.

L25063–25064

L25065 Issue: This ruling applies to all defective animals except the muṣarrāh. The muṣarrāh refers to a female animal whose udder was tied to accumulate milk. If someone purchases such an animal believing it to be lactating, but later discovers its udder had been restrained to retain milk—and the truth is revealed when he milks it—the buyer has the option for three days. If he chooses to keep it, he retains it without compensation. If he chooses to return it, he must necessarily return it along with a ṣāʿ (a defined volume measure) of dates.

L25066 The ruling applies equally whether the tied-udder animal is one, two, a thousand, or more—only one ṣāʿ of dates must be given as compensation in all such cases. This holds true whether it was purchased for a high price or a low price, even if bought for a tenth of a ṣāʿ of dates.

يَسْتَصْحِبَ رِضَاهُ، وَلَهُ أَنْ يَرُدَّ جَمِيعَ الصَّفْقَةِ؛ لِأَنَّهُ وَجَدَ خَدِيعَةً وَغِشًّا وَغَبْنًا - وَالْغِشُّ، وَالْخَدِيعَةُ: حَرَامَانِ.

وَلَيْسَ لَهُ أَنْ يُمْسِكَ مَا اشْتَرَى، وَيَرْجِعَ بِقِيمَةِ الْعَيْبِ؛ لِأَنَّهُ إنَّمَا لَهُ تَرْكُ الرِّضَا بِمَا غُبِنَ فِيهِ فَقَطْ؛ وَلِأَنَّهُ لَمْ يُوجِبْ لَهُ حَقًّا فِي مَالِ الْبَائِعِ: قُرْآنٌ، وَلَا سُنَّةٌ، بَلْ مَالُهُ عَلَيْهِ حَرَامٌ كَمَا ذَكَرْنَا، وَلَيْسَ لَهُ رَدُّ الْبَعْضِ؛ لِأَنَّ نَفْسَ الْمُعَامِلِ لَهُ لَمْ تَطِبْ لَهُ بِبَعْضِ مَا بَاعَ مِنْهُ دُونَ بَعْضٍ، وَلَا يَحِلُّ مَالُ أَحَدٍ إلَّا بِتَرَاضٍ، أَوْ بِنَصٍّ يُوجِبُ إحْلَالَهُ لِغَيْرِهِ - وَسَوَاءٌ كَانَ الْمَعِيبُ وَجْهَ الصَّفْقَةِ أَوْ أَكْثَرَهَا أَوْ أَقَلَّهَا؛ لِأَنَّهُ لَمْ يَأْتِ بِالْفَرْقِ بَيْنَ شَيْءٍ مِنْ ذَلِكَ: قُرْآنٌ، وَلَا سُنَّةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة أشترى مصراة يَظُنّهَا لبونا فتبين غَيْر ذَلِكَ]

مَسْأَلَةٌ: هَذَا حُكْمُ كُلِّ مَعِيبٍ حَاشَا الْمُصَرَّاةَ فَقَطْ، فَإِنَّ حُكْمَهَا أَنَّ مَنْ اشْتَرَى مُصَرَّاةً وَهِيَ مَا كَانَ يُحْلَبُ مِنْ إنَاثِ الْحَيَوَانِ، وَهُوَ يَظُنُّهَا لَبُونًا فَوَجَدَهَا قَدْ رُبِطَ ضَرْعُهَا حَتَّى اجْتَمَعَ اللَّبَنُ، فَلَمَّا حَلَبَهَا افْتَضَحَ لَهُ الْأَمْرُ: فَلَهُ الْخِيَارُ ثَلَاثَةَ أَيَّامٍ، فَإِنْ شَاءَ أَمْسَكَ وَلَا شَيْءَ لَهُ، وَإِنْ شَاءَ رَدَّهَا وَرَدَّ مَعَهَا صَاعًا مِنْ تَمْرٍ وَلَا بُدَّ.

وَسَوَاءٌ كَانَتْ الْمُصَرَّاةُ وَاحِدَةً أَوْ اثْنَتَيْنِ أَوْ أَلْفًا أَوْ أَكْثَرَ لَا يَرُدُّ فِي كُلِّ ذَلِكَ إلَّا صَاعًا وَاحِدًا مِنْ تَمْرٍ، وَسَوَاءٌ كَانَ اشْتَرَاهَا بِكَثِيرٍ أَوْ بِقَلِيلٍ، وَلَوْ بِعُشْرِ صَاعِ تَمْرٍ.

فَإِنْ كَانَ اللَّبَنُ الَّذِي فِي ضَرْعِهَا يَوْمَ اشْتَرَاهَا حَاضِرًا رَدَّهُ كَمَا هُوَ حَلِيبًا أَوْ حَامِضًا - فَإِنْ كَانَ قَدْ اسْتَهْلَكَهُ رَدَّ مَعَهَا لَبَنًا مِثْلَهُ، وَإِنْ كَانَ قَدْ مَخَضَهُ أَوْ عَقَدَهُ رَدَّهُ، فَإِنْ نَقَصَ عَنْ قِيمَتِهِ لَبَنًا رَدَّ مَا بَيْنَ النَّقْصِ وَالتَّمَامِ، لِأَنَّهُ لَبَنُ الْبَائِعِ -، وَلَيْسَ عَلَيْهِ رَدُّ مَا حَدَثَ مِنْ اللَّبَنِ فِي كَوْنِهَا عِنْدَهُ، لِأَنَّهُ حَدَثَ فِي مَالِهِ فَهُوَ لَهُ.

L25067 If the milk in the udder on the day of purchase remains present, he must return it as is—whether fresh or soured. If he consumed it, he must replace it with equivalent milk alongside the animal. If he churned it into butter or coagulated it into cheese, he must return the processed product. Should the milk's value decrease, he must compensate the difference between the diminished value and the original value, for this milk rightfully belongs to the seller. He bears no obligation to return milk generated during his ownership of the animal, as it arose within his property and thus belongs to him.

فَإِنْ رَدَّهَا بِعَيْبٍ آخَرَ غَيْرِ التَّصْرِيَةِ لَمْ يَلْزَمْهُ رَدُّ التَّمْرِ وَلَا شَيْءٍ غَيْرِ اللَّبَنِ الَّذِي كَانَ فِي ضَرْعِهَا إذَا اشْتَرَاهَا، فَإِنْ انْقَضَتْ الثَّلَاثَةُ الْأَيَّامُ، وَلَمْ يَرُدَّهَا بَعْدُ لَزِمَتْهُ، وَبَطَلَ خِيَارُهُ إلَّا مِنْ عَيْبٍ آخَرَ غَيْرِ التَّصْرِيَةِ.

L25068 If he returns her due to a defect other than milk-withholding fraud, he is not obligated to return the dates or anything beyond the milk that was in her udder at the time of purchase. If the three days pass and he has not returned her, the sale becomes binding upon him, and his option to annul is invalidated except for another defect unrelated to it.

وَإِنَّمَا سُمِّيَتْ مُصَرَّاةً، لِأَنَّ التَّصْرِيَةَ هِيَ الْجَمْعُ وَهَذِهِ جُمِعَ لَبَنُهَا - وَهِيَ أَيْضًا الْمُحَفَّلَةُ، لِأَنَّهُ قَدْ حُفِّلَ لَبَنُهَا فِي ضَرْعِهَا.

L25069 It is specifically named muṣarrah because taṣriyah is the gathering, and here its milk was gathered; it is also termed muḥaffalah due to the intensive accumulation of milk in its udder.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: قَالَ أَبُو الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ ابْتَاعَ مُحَفَّلَةً أَوْ مُصَرَّاةً فَهُوَ بِالْخِيَارِ ثَلَاثَةَ أَيَّامٍ إنْ شَاءَ أَنْ يُمْسِكَهَا أَمْسَكَهَا، وَإِنْ شَاءَ أَنْ يَرُدَّهَا رَدَّهَا وَصَاعًا مِنْ تَمْرٍ لَا سَمْرَاءَ» السَّمْرَاءُ: الْبُرُّ فَهَذَا خَبَرٌ صَحِيحٌ يَقْتَضِي كُلَّ مَا قُلْنَاهُ وَهُوَ الزَّائِدُ عَلَى سَائِرِ الْأَخْبَارِ.

L25070 The evidence for this—: what we have narrated through the chain of Ahmad ibn Shuʿayb, narrated by Muḥammad ibn Manṣūr, narrated by Sufyān ibn ʿUyaynah, from Ayyūb al-Sikhtiyānī, from Muḥammad ibn Sīrīn, who said: I heard Abū Hurayrah say: Abū al-Qāsim—may Allah bless him and grant him peace—said: "Whoever purchases a milch camel or an animal with its udder tied (to appear milk-filled) has the choice for three days. If he wishes to retain it, he may retain it; and if he wishes to return it, he may return it along with a ṣāʿ of dates—not samrāʾ" (samrāʾ: wheat). This is an authentic report that entails all we have stated, and it constitutes an addition beyond other narrations.[8]

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ عَمْرِو بْنِ جَبَلَةَ نا مَكِّيُّ بْنُ إبْرَاهِيمَ أَخْبَرَنِي زِيَادٌ قَالَ: إنَّ ثَابِتًا مَوْلَى عَبْدِ الرَّحْمَنِ بْنِ زَيْدٍ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ

L25071–25073 It has been transmitted to us through Al-Bukhārī's chain of transmission: Muḥammad ibn ʿAmr ibn Jabalah reported to us from Makkī ibn Ibrāhīm; Ziyād informed me, saying: Thābit, the freed slave of ʿAbd al-Raḥmān ibn Zayd, reported to Ziyād that he heard Abū Hurayrah say: The Prophet said...

[8] **Hadith references (L25070):** Sunan an-Nasai 4489.

The Messenger of Allah (peace be upon him) said: “Whoever buys a sheep whose milk was withheld by tying its udders and then milks it—if he is satisfied with it, he may keep it; but if he is dissatisfied, then for its milking is a ṣāʿ of dates.”[9]

L25074 Abu Muhammad said: The report of al-Muṣarrāh has been narrated to us through the chain of transmission of Ibn Sīrīn and Thābit, the client of ʿAbd al-Raḥmān ibn Zayd, as we have mentioned.

L25075 And from the chains of Muḥammad ibn Ziyād, Mūsā ibn Yasār, Abū Ṣāliḥ al-Sammān, Hammām ibn Munabbih, al-Aʿraj, Mujāhid, Abū Isḥāq, Yazīd ibn ʿAbd al-Raḥmān ibn Udhaynah, and others. It was narrated from these individuals: Ḥammād ibn Salamah, Dāwūd ibn Qays, Suhayl ibn Abī Ṣāliḥ, Maʿmar, Ayyūb, Ḥabīb ibn al-Shahīd, Hishām ibn Ḥassān, Mālik, Ibn ʿUyaynah, ʿUbayd Allāh ibn ʿUmar—all of them from Abū al-Zinād from al-Aʿraj; and Ibn Jurayj from Ziyād from Thābit; and al-Layth ibn Saʿd from Jaʿfar ibn Rabīʿah from al-Aʿraj. These imams are the firmly established, trustworthy ones.

L25076 And it has been narrated by these individuals—whom none can enumerate except Allah, the Almighty and Majestic—to the extent that it became a transmission of universal consensus and mass-transmitted corroboration, rejected only by one deprived [of divine favor] and not granted success. This is what the Salaf, both past and present, have adhered to.

L25077 It has been narrated to us through the chain of Al-Bukhārī: Musaddad narrated to us, Al-Muʿtamir ibn Sulaymān At-Taymī narrated to us—I heard my father say: Abū ʿUthmān—he is An-Nahdī—narrated to us from ʿAbdullāh ibn Masʿūd, who said: “Whoever purchases a calibrated vessel should return with it a saʿ of dates.” This isnād is like pearls, and it is also authentically established from Abū Hurayrah in his legal verdicts—and there is no dissenter from the Companions against them both regarding this matter.

[9] **Hadith references (L25071):** Sahih al-Bukhari 2151.

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ اشْتَرَى غَنَمًا مُصَرَّاةً فَاحْتَلَبَهَا فَإِنْ رَضِيَهَا أَمْسَكَهَا، وَإِنْ سَخِطَهَا فَفِي حَلْبَتِهَا صَاعٌ مِنْ تَمْرٍ» .

قَالَ أَبُو مُحَمَّد: رُوِّينَا خَبَرَ الْمُصَرَّاةِ مِنْ طَرِيقِ ابْنِ سِيرِينَ، وَثَابِتٍ مَوْلَى عَبْدِ الرَّحْمَنِ بْنِ زَيْدٍ، كَمَا أَوْرَدْنَا.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ زِيَادٍ، وَمُوسَى بْنُ يَسَارٍ وَأَبِي صَالِحٍ السَّمَّانِ وَهَمَّامِ بْنِ مُنَبِّهٍ، وَالْأَعْرَجِ، وَمُجَاهِدٍ، وَأَبِي إِسْحَاقَ، وَيَزِيدَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أُذَيْنَةَ، وَغَيْرِهِمْ. وَرَوَاهُ عَنْ هَؤُلَاءِ: حَمَّادُ بْنُ سَلَمَةَ، وَدَاوُد بْنُ قَيْسٍ، وَسُهَيْلُ بْنُ أَبِي صَالِحٍ، وَمَعْمَرٌ، وَأَيُّوبُ، وَحَبِيبُ بْنُ الشَّهِيدِ، وَهِشَامُ بْنُ حَسَّانَ، وَمَالِكٌ، وَابْنُ عُيَيْنَةَ، وَعُبَيْدُ اللَّهِ بْنُ عُمَرَ، كُلُّهُمْ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ، وَابْنِ جُرَيْجٍ عَنْ زِيَادٍ عَنْ ثَابِتٍ، وَاللَّيْثِ بْنِ سَعْدٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنْ الْأَعْرَجِ - وَهَؤُلَاءِ الْأَئِمَّةِ الْأَثْبَاتِ الثِّقَاتِ.

وَرَوَاهُ عَنْ هَؤُلَاءِ مَنْ لَا يُحْصِيهِمْ إلَّا اللَّهُ - عَزَّ وَجَلَّ -، فَصَارَ نَقْلَ كَافَّةٍ وَتَوَاتُرٍ لَا يَرُدُّهُ إلَّا مَحْرُومٌ غَيْرُ مُوَفَّقٍ - وَبِهَذَا يَأْخُذُ السَّلَفُ قَدِيمًا وَحَدِيثًا.

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ سَمِعْت أَبِي يَقُولُ: نا أَبُو عُثْمَانَ - هُوَ النَّهْدِيُّ - عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ " مَنْ اشْتَرَى مُحَفَّلَةً فَلْيَرُدَّ مَعَهَا صَاعًا مِنْ تَمْرٍ " وَهَذَا إسْنَادٌ كَاللُّؤْلُؤِ وَصَحَّ أَيْضًا عَنْ أَبِي هُرَيْرَةَ مِنْ فُتْيَاهُ - وَلَا مُخَالِفَ لَهُمَا مِنْ الصَّحَابَةِ فِي ذَلِكَ

- وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، وَمَالِكٍ فِي أَحَدِ قَوْلَيْهِ، وَأَصْحَابِهِ، إلَّا أَشْهَبَ.

L25078 It is the opinion of al-Layth ibn Saʿd, Mālik in one of his two opinions, and his disciples except Ashhab.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِمَا، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا، وَأَحَدُ قَوْلَيْ أَبِي لَيْلَى - وَقَالَ زُفَرُ بْنُ الْهُذَيْلِ: يَرُدُّهَا وَصَاعًا مِنْ تَمْرٍ أَوْ صَاعًا مِنْ شَعِيرٍ أَوْ نِصْفَ صَاعٍ مِنْ بُرٍّ.

L25079 This is the opinion of al-Shafi'i, Ahmad ibn Hanbal, their companions, Abu Thawr, Abu Ubayd, Ishaq ibn Rāhawayh, Abu Sulayman, all the scholars of our school, and one of the two opinions of Abu Layla. Zufar ibn al-Hudhayl said: "He must return it along with either a *sa'* of dates, a *sa'* of barley, or half a *sa'* of husked wheat."

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ زِيَادَةٌ عَلَى أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَعَدٍّ لِحُدُودِهِ، وَالزَّائِدُ فِي الشَّيْءِ كَالنَّاقِصِ مِنْهُ.

L25080 Abu Muhammad said: This is an addition to the command of the Messenger of Allah—peace and blessings be upon him—and a transgression of his boundaries. The one who adds to something is like the one who detracts from it.

وَقَالَ ابْنُ أَبِي لَيْلَى فِي أَحَدِ قَوْلَيْهِ، وَأَبُو يُوسُفَ فِي أَحَدِ قَوْلَيْهِ يَرُدُّهَا وَقِيمَةَ صَاعٍ مِنْ تَمْرٍ - وَهُوَ أَيْضًا خِلَافُ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L25081–25082 Ibn Abi Layla in one of his two opinions, and Abu Yusuf in one of his two opinions, ruled that he must return it along with the value of a saʿ of dates - and this is also contrary to his command - upon him be peace and blessings.

وَقَالَ مَالِكٌ فِي أَحَدِ قَوْلَيْهِ: يُؤَدِّي أَهْلُ كُلِّ بَلَدٍ صَاعًا مِنْ أَغْلَبِ عَيْشِهِمْ - وَهَذَا خِلَافٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25083 Mālik said in one of his two opinions that the people of every region must give a ṣāʿ of their predominant staple food, and this contradicts the command of the Messenger of Allah, peace be upon him.

وَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: إنْ كَانَ اللَّبَنُ حَاضِرًا لَمْ يَتَغَيَّرْ رَدَّهَا وَرَدَّ اللَّبَنَ، وَلَا يَرُدُّ مَعَهَا صَاعَ تَمْرٍ وَلَا شَيْئًا، وَإِنْ كَانَ قَدْ أَكَلَ اللَّبَنَ لَمْ يَكُنْ لَهُ رَدُّهَا، لَكِنْ يَرْجِعُ بِقِيمَةِ الْعَيْبِ فَقَطْ - وَهَذَا خِلَافٌ ظَاهِرٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ.

L25084 Abu Hanifa and Muhammad ibn al-Hasan said: If the milk of the female slave is present and unchanged, he must rescind the sale of her and return the milk, and he does not return a ṣāʿ of dates or anything else alongside her. If he has consumed the milk, he forfeits the right to rescind the sale of her, but may only claim compensation for the defect. This is a clear contradiction of the command of the Messenger of Allah—may Allah bless him and grant him peace—we seek refuge in Allah from that.

وَقَالَ أَبُو يُوسُفَ: إنْ كَانَ قَدْ أَكَلَ اللَّبَنَ رَدَّهَا وَقِيمَةَ مَا أَكَلَ مِنْ اللَّبَنِ. وَيَكْفِي مِنْ فَسَادِ هَذَيْنِ الْقَوْلَيْنِ: أَنَّهُمَا خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُ لَا سَلَفَ لَهُمْ فِيهِ، وَمَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُمْ، وَأَنَّهُ خِلَافُ قَوْلِ ابْنِ مَسْعُودٍ، وَأَبِي هُرَيْرَةَ، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا خَالَفَ تَقْلِيدَهُمْ.

L25085 Abū Yūsuf said: If he consumed the milk, he must return the sheep along with the value of the milk consumed. The invalidity of these two opinions suffices as refutation: they contradict the command of Allah's Messenger—peace and blessings be upon him—and they have no precedent from the predecessors in this matter. We know of none who held this view before them, and it opposes the position of Ibn Masʿūd and Abū Hurayrah with no

dissenting opinion from the Companions—though they would consider such contradiction of their adherence a grave matter.

L25086 Abu Muhammad said: They raised objections in that matter by citing flaws in the report. At one point they asked: "Does it contradict the foundational principles?" We responded: "You have lied. Rather, it is itself a major foundational principle. The actual contradiction of foundational principles is your claim that ablution is required due to loud laughter occurring specifically during prayer."

L25087 Your claim that regurgitation does not invalidate ablution at all unless it amounts to a mouthful.

L25088 And your opinion on setting the compensation for the runaway slave at forty dirhams if he is at a distance of a three-day journey.

L25089 Your statement regarding the eye of a beast being a quarter of its value, ablution with wine, and all such calamitous absurdities—which are laughable—along with what is introduced by fabricated matters: these are more akin to the laws of Islam.

L25090 And on another occasion they said: Since those who uphold it did not apply analogy to it, we knew that it is abandoned. We replied: The analogy is invalid. Why do you not confront yourselves with this objection, since you did not apply analogy from the prohibition of selling the *mudabbar* to the prohibition of selling one bequeathed for emancipation and the conditionally emancipated, and since you did not apply analogy from bread in eating forgetfully by one who is fasting, and since you did not apply analogy from the expelled fetus for which a *ghurrah* is due?

L25091–25093 Once, they said: "It is abrogated by the prohibition in ribā because it constitutes food of dates exchanged for food of milk?" We responded: "You lied. It is neither milk for food nor dates for food. Rather, it refers to dates which God—Exalted is He—made obligatory for the seller upon the buyer if he returns the deceitfully milked animal, just as He obligated the bridal gift of ṣadāq upon the husband, not the wife, though she remains lawfully entitled to it." Marriage makes lawful his private parts, which were previ-

قَالَ أَبُو مُحَمَّد: وَاعْتَرَضُوا فِي ذَلِكَ بِأَنْ تَعَلَّلُوا فِي الْخَبَرِ بِعِلَلٍ، فَمَرَّةً قَالُوا: هُوَ مُخَالِفٌ لِلْأُصُولِ؟ فَقُلْنَا: كَذَبْتُمْ، بَلْ هُوَ أَصْلٌ مِنْ كِبَارِ الْأُصُولِ، وَإِنَّمَا الْمُخَالِفُ لِلْأُصُولِ قَوْلُكُمْ فِي الْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ خَاصَّةً.

وَقَوْلُكُمْ بِأَنَّ الْقَلْسَ لَا يَنْقُضُ الْوُضُوءَ أَصْلًا إلَّا إذَا كَانَ مِلْءَ الْفَمِ.

وَقَوْلُكُمْ فِي جُعْلِ الْآبِقِ أَرْبَعُونَ دِرْهَمًا إذَا كَانَ عَلَى مَسِيرَةِ ثَلَاثٍ.

وَقَوْلُكُمْ فِي عَيْنِ الدَّابَّةِ رُبُعُ ثَمَنِهَا، وَالْوُضُوءِ بِالْخَمْرِ، وَسَائِرِ تِلْكَ الطَّوَامِّ الَّتِي هِيَ بِالْمَضَاحِكِ، وَبِمَا يَأْتِي بِهِ الْمُبَرْسَمُ: أَشْبَهُ مِنْهَا بِشَرَائِعِ الْإِسْلَامِ.

وَمَرَّةً قَالُوا: لَمَّا لَمْ يَقِسْ عَلَيْهِ الْقَائِلُونَ بِهِ عَلِمْنَا أَنَّهُ مَتْرُوكٌ؟ فَقُلْنَا: الْقِيَاسُ بَاطِلٌ، وَهَلَّا عَارَضْتُمْ أَنْفُسَكُمْ بِهَذَا الِاعْتِرَاضِ، إذْ لَمْ تَقِيسُوا عَلَى الْمَنْعِ مِنْ بَيْعِ الْمُدَبَّرِ الْمَنْعَ مِنْ بَيْعِ الْمُوصَى بِعِتْقِهِ وَالْمُعْتَقِ بِصِفَةٍ، وَإِذْ لَمْ تَقِيسُوا عَلَى الْخُبْزِ فِي الْأَكْلِ نَاسِيًا وَهُوَ صَائِمٌ، وَإِذْ لَمْ تَقِيسُوا عَلَى الْجَنِينِ يُلْقَى فَيَكُونُ فِيهِ غُرَّةٌ.

وَمَرَّةً قَالُوا: هُوَ مَنْسُوخٌ بِالتَّحْرِيمِ فِي الرِّبَا، لِأَنَّهُ طَعَامٌ مِنْ التَّمْرِ بِطَعَامٍ مِنْ اللَّبَنِ؟ فَقُلْنَا: كَذَبْتُمْ مَا هُوَ لَبَنٌ بِطَعَامٍ وَلَا بِتَمْرٍ، إنَّمَا هُوَ تَمْرٌ أَوْجَبَهُ اللَّهُ - تَعَالَى - لِلْبَائِعِ عَلَى الْمُبْتَاعِ - إنْ رَدَّ عَلَيْهِ الْمُصَرَّاةَ - كَمَا أَوْجَبَ الصَّدَاقَ عَلَى الزَّوْجِ لَا عَلَى الْمَرْأَةِ وَهِيَ مُسْتَحِلَّةٌ

ously forbidden to her, just as it makes lawful her private parts, which were forbidden to him, with no distinction.

بِذَلِكَ النِّكَاحِ فَرْجَهُ الَّذِي كَانَ حَرَامًا عَلَيْهَا، كَمَا هُوَ مُسْتَحِلٌّ بِهِ فَرْجَهَا الَّذِي كَانَ عَلَيْهِ حَرَامًا وَلَا فَرْقَ.

L25094 He obligated the blood money upon the liable agnatic kin and did not recommend it as a voluntary act for them.

وَكَمَا أَوْجَبَ الدِّيَةَ عَلَى الْعَاقِلَةِ وَلَا نَدَبَ لَهَا.

L25095 And once they said: "Have you considered if he sold her for a *mudd* of dates—does a *sa'* of dates not become due from him? Or have you considered if her milk were exceedingly abundant or scarce—is a *sa'* of dates not once compensation for half a *sa'* of milk, and another time for many *sa'* measures of milk?" We replied: "No, it is not compensation for the milk. As for purchasing her for a *mudd* of dates, we say: yes. What would the ruling be then? {'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]. Why do you not confront yourselves with this contradiction, given your ruling that the owner of a fleeing slave must pay forty dirhams to whoever retrieves him—even if the slave is worth merely one dirham—and that one who kills a slave woman unintentionally pays only five thousand dirhams excluding five dirhams, even if she were equivalent to a hundred thousand dinars? Herein lies the objection to these absurdities—not against what is definitively established from the Messenger of Allah (peace be upon him)."[10]

وَمَرَّةً قَالُوا: أَرَأَيْتُمْ إِنْ كَانَ إِنَّمَا بَاعَهَا مِنْهُ بِمُدِّ تَمْرٍ أَلَيْسَ تَرْجِعُ عَلَيْهِ وَصَاعُ تَمْرٍ، أَوْ أَرَأَيْتُمْ إِنْ كَانَ لَبَنُهَا كَثِيرًا جِدًّا أَوْ قَلِيلًا جِدًّا، أَلَيْسَ صَاعُ التَّمْرِ عِوَضًا مَرَّةً عَنْ نِصْفِ صَاعِ اللَّبَنِ، وَمَرَّةً عَنْ صِيعَانٍ كَثِيرَةٍ مِنْ اللَّبَنِ؟ قُلْنَا: لَا، مَا هُوَ عِوَضًا عَنْ اللَّبَنِ، وَأَمَّا فِي ابْتِيَاعِهِ إيَّاهَا بِمُدِّ تَمْرٍ فَنَقُولُ: نَعَمْ، فَكَانَ مَاذَا؟ {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] وَهَلَّا عَارَضْتُمْ أَنْفُسَكُمْ بِهَذِهِ الْمُعَارَضَةِ إذْ قُلْتُمْ: يَغْرَمُ سَيِّدُ الْآبِقِ لِمَنْ رَدَّهُ عَلَيْهِ أَرْبَعِينَ دِرْهَمًا - وَإِنْ كَانَ الْآبِقُ لَا يُسَاوِي إلَّا دِرْهَمًا وَاحِدًا - وَلَا يُؤَدِّي قَاتِلُ الْأَمَةِ خَطَأً إلَّا خَمْسَةَ آلَافِ دِرْهَمٍ غَيْرَ خَمْسَةِ دَرَاهِمَ - وَلَوْ أَنَّهَا كَانَتْ تُسَاوِي مِائَةَ أَلْفِ دِينَارٍ؟ فَهَهُنَا فِي هَذِهِ الْحَمَاقَاتِ هُوَ الِاعْتِرَاضُ، لَا عَلَى الْمُتَيَقَّنِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25096 Once, they said: "Was this ruling [applicable] when punishments involved property, such as burning the saddle of the embezzler of war spoils and similar matters?" We responded: "You have lied as Satan lied, and you have asserted what never appeared in any of the narrations. Those reports you mentioned are divided into three categories: the first being invalid reports—such as the ḥadīth about seizing half the wealth of those who withhold zakāt, the ḥadīth about burning the saddle of the embezzler of war spoils, and the ḥadīth regarding one who has intercourse with his wife's female slave."

وَمَرَّةً قَالُوا: كَانَ هَذَا الْحُكْمُ إذْ كَانَتْ الْعُقُوبَاتُ فِي الْأَمْوَالِ كَحَرْقِ رَحْلِ الْغَالِّ، وَنَحْوِ ذَلِكَ؟ فَقُلْنَا: كَذَبْتُمْ كَمَا كَذَبَ الشَّيْطَانُ، وَقُلْتُمْ مَا لَمْ يَأْتِ قَطُّ فِي شَيْءٍ مِنْ الرِّوَايَاتِ، وَتِلْكَ الْأَخْبَارُ الَّتِي ذَكَرْتُمْ مُنْقَسِمَةٌ إلَى ثَلَاثِ أَقْسَامٍ -: إمَّا خَبَرٌ بَاطِلٌ، كَحَدِيثِ أَخْذِ نِصْفِ مَالِ مَانِعِ الزَّكَاةِ، وَحَدِيثِ حَرْقِ رَحْلِ الْغَالِّ، وَحَدِيثِ وَاطِئِ أَمَةِ امْرَأَتِهِ.

L25097 If it is an established report, its ruling remains valid, such as the expiation required of one who intentionally has intercourse during the daytime of

وَإِمَّا خَبَرٌ ثَابِتٌ، - فَحُكْمُهُ بَاقٍ كَالْكَفَّارَةِ عَلَى الْوَاطِئِ عَامِدًا فِي نَهَارِ رَمَضَانَ، وَالدِّيَةِ عَلَى قَاتِلِ الْعَمْدِ إذَا رَضِيَهَا أَوْلِيَاءُ الْقَتِيلِ، وَجَزَاءِ الصَّيْدِ.

[10] **Qur'an references (L25095):** Qur'an 33:36 (Al-Ahzab).

Ramadan, the blood money required of an intentional killer if the heirs of the slain accept it, and the compensation for hunting.

L25098 As for the category whose abrogation is established by another text, the obligatory ruling is that it is abrogated. In our time, we only mention that if such a text existed, it would be true. As for anyone who claims abrogation regarding an authentic report, he is a liar, fabricator, sinner: one who states about Allah—Exalted is He—what He did not say without basis, misreports about the Messenger of Allah—peace be upon him—what he did not state about himself, and declares what he has no knowledge of.

وَإِمَّا قِسْمٌ ثَبَتَ بِنَصٍّ آخَرَ نَسْخُهُ فَوَجَبَ الْقَوْلُ بِأَنَّهُ مَنْسُوخٌ وَمَا نَذْكُرُهُ فِي وَقْتِنَا هَذَا إلَّا أَنَّهُ لَوْ وُجِدَ لَصَدَقَ - وَأَمَّا كُلُّ مَنْ ادَّعَى فِي خَبَرٍ ثَابِتٍ نَسْخًا فَهُوَ كَاذِبٌ آفِكٌ آثِمٌ قَائِلٌ عَلَى اللَّهِ - تَعَالَى - مَا لَمْ يَقُلْهُ، وَمُخْبِرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ، قَائِلٌ مَا لَا عِلْمَ لَهُ بِهِ.

L25099–25100 And likewise, whoever interprets the Hadith contrary to its apparent meaning in any way—how can he justify this? The response to him is: You lied, you lied, you lied! You have spoken falsehood against the Messenger of Allah (peace and blessings of Allah be upon him), fabricated words he never uttered, judged by conjecture which is the most deceitful of speech, and rejected certainty for baseless assumptions.

وَهَكَذَا كُلُّ مَنْ حَمَلَ الْحَدِيثَ عَلَى غَيْرِ ظَاهِرِهِ بِأَيِّ وَجْهٍ أَحَالَهُ؟ فَجَوَابُهُ: كَذَبْتَ كَذَبْتَ كَذَبْتَ، وَقُلْتَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَاطِلَ، وَقَوَّلْتَهُ مَا لَمْ يَقُلْهُ وَحَكَمْت بِالظَّنِّ الَّذِي هُوَ أَكْذَبُ الْحَدِيثِ، وَرَدَدْت الْيَقِينَ بِالظُّنُونِ.

L25101 Some of them said: “This is a disputed hadith. Saʿīd ibn Manṣūr narrated it from Fulayḥ ibn Sulaymān, from Ayyūb ibn ʿAbd al-Raḥmān, from Yaʿqūb ibn Abī Yaʿqūb, from Abū Hurayrah, from the Prophet (peace be upon him), who said: ’Whoever purchases a sheep whose udders were tied to inflate milk production, the buyer has the option: if he wishes, to return it along with a ṣāʿ of milk.’”

وَقَالَ بَعْضُهُمْ هَذَا حَدِيثٌ مُضْطَرَبٌ فِيهِ، رَوَاهُ سَعِيدُ بْنُ مَنْصُورٍ عَنْ فُلَيْحِ بْنِ سُلَيْمَانَ عَنْ أَيُّوبَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ يَعْقُوبَ بْنِ أَبِي يَعْقُوبَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اشْتَرَى شَاةً مُصَرَّاةً فَالْمُشْتَرِي بِالْخِيَارِ إنْ شَاءَ رَدَّهَا وَصَاعًا مِنْ لَبَنٍ» .

L25102 And Abu Dawud narrated it: Abu Kamil narrated to us, Abd al-Wahid narrated to us, Sadaqah ibn Sa’id narrated to us from Jumayy ibn Umayr al-Taymi: I heard Abdullah ibn Umar say, and he mentioned it, with the narration stating: “If he returns it, he returns along with it wheat equivalent to one or two times its milk.”

وَرَوَاهُ أَبُو دَاوُد نا أَبُو كَامِلٍ نا عَبْدُ الْوَاحِدِ نا صَدَقَةُ بْنُ سَعِيدٍ عَنْ جُمَيْعِ بْنِ عُمَيْرٍ التَّيْمِيِّ: سَمِعْت عَبْدَ اللَّهِ بْنَ عُمَرَ يَقُولُ فَذَكَرَهُ وَفِيهِ: «فَإِنْ رَدَّهَا رَدَّ مَعَهَا مِثْلَ أَوْ مِثْلَيْ لَبَنِهَا قَمْحًا» .

L25103 Hammad ibn Abi al-Ja‘d narrated from Qatadah from Ibn Sirin from Abu Hurayrah from the Prophet—peace and blessings be upon him—: “A *sa‘* of dates, not the dark variety.”

وَرَوَاهُ حَمَّادُ بْنُ أَبِي الْجَعْدِ عَنْ قَتَادَةَ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَاعًا مِنْ تَمْرٍ، لَا سَمْرَاءَ» .

L25104 Similarly, Ashʿath ibn ʿAbd al-Malik al-Ḥumrānī narrated it as a musnad from Ibn Sīrīn from Abū Hurayrah. Similarly, ʿAbd al-Aʿlā narrated it as a

musnad from Hishām ibn Ḥassān from Ibn Sīrīn from Abū Hurayrah. Qurrah ibn Khālid narrated it from Ibn Sīrīn from Abū Hurayrah from the Prophet: «A ṣāʿ of food - not barley.»

وَهَكَذَا رَوَاهُ أَشْعَثُ بْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا - وَهَكَذَا رَوَاهُ عَبْدُ الْأَعْلَى عَنْ هِشَامِ بْنِ حَسَّانَ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا - وَرَوَاهُ قُرَّةُ بْنُ خَالِدٍ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ: «صَاعًا مِنْ طَعَامٍ لَا سَمْرَاءَ» .

L25105 We have narrated it through the chain of al-Bazzār: ʿAmr ibn ʿAlī narrated to us, Abū ʿĀṣim narrated to us from al-Ashʿath—who is Ibn ʿAbd al-Malik al-Ḥumrānī—from Muḥammad ibn Sīrīn, from Abū Hurayrah, who said: The Messenger of Allāh—peace and blessings be upon him—said: "Whoever purchases a lactating sheep retains the option for three days. If he returns it, he must do so along with a ṣāʿ of dates - not samrāʾ."

رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ نا عَمْرُو بْنُ عَلِيٍّ نا أَبُو عَاصِمٍ عَنِ الْأَشْعَثِ - هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنِ اشْتَرَى شَاةً مُحَفَّلَةً فَهُوَ بِالْخِيَارِ ثَلَاثَةَ أَيَّامٍ إِنْ رَدَّهَا رَدَّهَا وَرَدَّ مَعَهَا صَاعًا مِنْ تَمْرٍ لَا سَمْرَاءَ» .

L25106 Via Muslim's transmission: Muḥammad ibn ʿAmr ibn Jabalah → Abū ʿĀmir (al-ʿAqdī) → Qurrah (ibn Khālid) → Muḥammad ibn Sīrīn → Abū Hurayrah → the Prophet (peace and blessings be upon him), who said: "Whoever purchases a sheep fraudulently confined to retain its milk retains the option for three days. If he returns it, he must return it with a ṣāʿ of dates - not white dates."[11]

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَمْرِو بْنِ جَبَلَةَ نا أَبُو عَامِرٍ - هُوَ الْعَقَدِيُّ - نا قُرَّةُ - هُوَ ابْنُ خَالِدٍ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنِ اشْتَرَى شَاةً مُصَرَّاةً فَهُوَ بِالْخِيَارِ ثَلَاثَةَ أَيَّامٍ فَإِنْ رَدَّهَا رَدَّ مَعَهَا صَاعًا مِنْ طَعَامٍ لَا سَمْرَاءَ» .

L25107 Similarly, Al-Ḥajjāj ibn Al-Minhāl narrated it from Ḥammād ibn Salamah, from Ayyūb and Ḥabīb ibn Al-Shahīd, from Ibn Sīrīn, from Abū Hurayrah, from the Prophet - peace and blessings of Allah be upon him: "A ṣāʿ of food, not samrāʾ."

وَهَكَذَا رَوَاهُ الْحَجَّاجُ بْنُ الْمِنْهَالِ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ وَحَبِيبِ بْنِ الشَّهِيدِ عَنِ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «صَاعًا مِنْ طَعَامٍ لَا سَمْرَاءَ» .

L25108–25109 And via the chain of Shu'bah, al-Hakam ibn 'Utaybah informed me that he heard 'Abd al-Rahman ibn Abi Layla from a man among the Companions of the Messenger of Allah—peace and blessings be upon him—"he rejected her [case] while she had a ṣāʿ of food."

وَمِنْ طَرِيقِ شُعْبَةَ أَخْبَرَنِي الْحَكَمُ بْنُ عُتَيْبَةَ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنِ بْنَ أَبِي لَيْلَى عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رَدَّهَا وَمَعَهَا صَاعٌ مِنْ طَعَامٍ» .

L25110 And through the chain of Rawḥ ibn ʿUbādah from ʿAwf ibn Abī Jamīlah from

[11] **Hadith references (L25106):** Sahih Muslim 1524c; Mishkat al-Masabih 2847.

Khilās ibn ʿAmr, and Ibn Sīrīn, both narrating from Abū Hurayrah from the Prophet (peace be upon him), “Return it along with a vessel of food.”

وَمِنْ طَرِيقِ رَوْحِ بْنِ عُبَادَةَ عَنْ عَوْفِ بْنِ أَبِي جَمِيلَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو، وَابْنِ سِيرِينَ، كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رَدَّهَا وَإِنَاءً مِنْ طَعَامٍ» .

L25111 They said: “So is this severe inconsistency?” We replied: “By no means! As for the hadith of Saʿīd ibn Manṣūr, its chain includes Fulayḥ—and he is a narrator of debated reliability.”

قَالُوا: فَهَذَا اضْطِرَابٌ شَدِيدٌ؟ قُلْنَا: كَلَّا، أَمَّا حَدِيثُ سَعِيدِ بْنِ مَنْصُورٍ، فَفِيهِ: فُلَيْح - وَهُوَ مُتَكَلَّمٌ فِيهِ.

L25112 Ayyub ibn Abd al-Rahman—al-ʻAdawi—is weak and unknown.

وَأَيُّوبُ بْنُ عَبْدِ الرَّحْمَنِ - هُوَ الْعَدَوِيُّ - ضَعِيفٌ مَجْهُولٌ.

L25113 Yaʻqub ibn Abī Yaʻqub — an unknown narrator — was therefore excluded.

وَيَعْقُوبُ بْنُ أَبِي يَعْقُوبَ - مَجْهُولٌ - فَسَقَطَ.

L25114 As for the narration of Ibn ʾUmar, in its chain are Ṣadaqah ibn Saʿīd and Jumayʿ ibn ʿUmayr - both being weak narrators - thus it is discarded.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ فَفِيهِ صَدَقَةُ بْنُ سَعِيدٍ، وَجُمَيْعُ بْنُ عُمَيْرٍ، وَهُمَا ضَعِيفَانِ - فَسَقَطَ.

L25115 As for the narration of Awf regarding “a vessel of food,” it is general in wording, so all other ahadith clarify that this vessel refers to a ṣāʿ.

وَأَمَّا رِوَايَةُ عَوْفٍ «إنَاءً مِنْ طَعَامٍ» فَمُجْمَلٌ، فَسَّرَتْهُ سَائِرُ الْأَحَادِيثِ بِأَنَّ ذَلِكَ الْإِنَاءَ صَاعٌ.

L25116 As for the narration transmitted by al-Ḥajjāj from Ḥammād ibn Salamah, we transmitted it through Muḥammad ibn al-Muthannā from al-Ḥajjāj with his chain of transmission. Al-Ḥajjāj expressed doubt regarding it, questioning whether it was *burr* or not.

وَأَمَّا رِوَايَةُ الْحَجَّاجِ عَنْ حَمَّادِ بْنِ سَلَمَةَ فَإِنَّا رُوِّينَاهَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ الْحَجَّاجِ بِإِسْنَادِهِ، فَشَكَّ فِيهِ الْحَجَّاجُ، أَهُوَ بُرٌّ أَمْ لَا.

L25117 We narrated it from Hammad ibn Salamah, from Ayyub, Hisham ibn Hassan, and Habib ibn al-Shahid, via the chain of Musa ibn Ismail, who said: “A saʿ of dates,” and he does not doubt.

وَرُوِّينَاهَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ، وَهِشَامِ بْنِ حَسَّانَ، وَحَبِيبِ بْنِ الشَّهِيدِ مِنْ طَرِيقِ مُوسَى بْنِ إسْمَاعِيلَ فَقَالَ: صَاعُ تَمْرٍ، وَلَا يَشُكُّ.

L25118 Hammad ibn al-Jaʻd from Qatadah is weak.

وَحَمَّادُ بْنُ الْجَعْدِ عَنْ قَتَادَةَ ضَعِيفٌ.

L25119 Only the hadiths narrated by Ashʻath and Qurrah from Ibn Sīrīn from Abū Hurayrah remain, and both are authentic with no hidden defect in them. One states “a saʻ of dates, excluding the samrā’ variety,” and the other “a saʻ of food [wheat], excluding the samrā’ variety.” We have previously clarified

that “food” [i.e., wheat], when mentioned in this unrestricted manner, refers specifically to wheat itself alone.

فَلَمْ يَبْقَ إِلَّا حَدِيثُ أَشْعَثَ وَقُرَّةَ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ، وَهُمَا صَحِيحَانِ لَا عِلَّةَ فِيهِمَا، أَحَدُهُمَا «صَاعَ تَمْرٍ، لَا سَمْرَاءَ» وَالْآخَرُ «صَاعَ طَعَامٍ، لَا سَمْرَاءَ» وَالطَّعَامُ قَدْ بَيَّنَّا قَبْلُ أَنَّهُ الْبُرُّ نَفْسُهُ فَقَطْ إِذَا أُطْلِقَ هَكَذَا.

L25120 A group of people said: “Ibn Sirīn is the one who showed inconsistency in narrating this matter. It is therefore obligatory to disregard the narrations on this matter in which he was inconsistent and to turn instead to the reports of others besides him who transmitted it from Abū Hurayrah—those whose narrations remained consistent, and they are a group of reliable transmitters.”

فَقَالَ قَوْمٌ: إِنَّ ابْنَ سِيرِينَ هُوَ الَّذِي اضْطَرَبَ عَلَيْهِ فَالْوَاجِبُ تَرْكُ مَا اضْطَرَبَ عَلَيْهِ فِيهِ، وَالرُّجُوعُ إِلَى رِوَايَةِ مَنْ رَوَاهُ عَنْ أَبِي هُرَيْرَةَ سِوَاهُ فَلَمْ يَضْطَرِبْ عَلَيْهِ فِيهِ، وَهُمْ جَمَاعَةٌ.

L25121–25123 Abu Muḥammad said: We do not adopt this position because neither Qur’ān nor Sunnah established this ruling, nor... Reasonable, but we say—and by Allah, Exalted is He, success is attained—that both expressions are sound in terms of the chain of transmission. There is no way to conclusively attribute delusion or error to the narration of a trustworthy narrator except with absolute certainty that admits no other possibility.

قَالَ أَبُو مُحَمَّدٍ: وَلَسْنَا نَقُولُ بِهَذَا، لِأَنَّهُ لَمْ يُوجِدْ هَذَا الْحُكْمَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا مَعْقُولٌ، لَكِنَّا نَقُولُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ: إِنَّ كِلَا اللَّفْظَيْنِ صَحِيحٌ مِنْ طَرِيقِ الْإِسْنَادِ، وَلَا سَبِيلَ إِلَى الْقَطْعِ بِالْوَهْمِ وَالْخَطَأِ عَلَى رِوَايَةِ ثِقَةٍ إِلَّا بِيَقِينٍ لَا يُحْتَمَلُ غَيْرُهُ.

L25124 The term *as-samrā’* must either denote specific types of wheat or refer to all wheat. If it refers to all wheat, then their narration is undeniably a delusion and an inevitable error, for it is impermissible for the Messenger of Allah—peace and blessings be upon him—to say, “a saa‘ of wheat, but not of wheat.”

وَلَا تَخْلُو “ السَّمْرَاءُ ” مِنْ أَنْ تَكُونَ لَفْظَةً وَاقِعَةً عَلَى بَعْضِ أَصْنَافِ الْبُرِّ، أَوْ تَكُونَ اسْمًا وَاقِعًا عَلَى جَمِيعِ الْبُرِّ، فَإِنْ كَانَتْ وَاقِعَةً عَلَى جَمِيعِ الْبُرِّ، فَحَدِيثُ هَؤُلَاءِ وَهْمٌ بِلَا شَكٍّ، وَخَطَأٌ بِلَا مُحَالَةٍ، لِأَنَّهُ لَا يَجُوزُ أَنْ يَقُولَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَاعًا مِنْ بُرٍّ وَلَا مِنْ بُرٍّ.

L25125 If the term “as-samrā’” (white wheat) applies to certain varieties of wheat, the obligation requires that no compensation suffices for a muṣarrāh animal (one with a withheld udder) among all livestock types except a saʿ of dates exclusively—except for sheep alone. In the case of sheep, one must return with it a saʿ of dates as we mentioned, or a saʿ from any type of wheat given—excluding “as-samrā’”—for only dates suffice, not white wheat. Non-wheat compensations for sheep are invalid if the conditions are as we stated. And success comes from Allah alone, the Exalted.

وَإِنْ كَانَتْ لَفْظَةُ “ السَّمْرَاءِ ” وَاقِعَةً عَلَى بَعْضِ أَصْنَافِ الْبُرِّ فَالْوَاجِبُ أَنْ لَا يُجْزِيَ فِي الْمُصَرَّاةِ مِنْ جَمِيعِ أَنْوَاعِ الْحَيَوَانِ كُلِّهَا إِلَّا صَاعُ تَمْرٍ فَقَطْ، إِلَّا الشَّاةَ وَحْدَهَا، فَإِنَّهُ يُرَدُّ مَعَهَا صَاعًا مِنْ تَمْرٍ، كَمَا ذَكَرْنَا، أَوْ صَاعًا مِنْ أَيِّ أَصْنَافِ الْبُرِّ أَعْطَى، حَاشَا “ السَّمْرَاءَ ” لَا يُجْزِي غَيْرُ التَّمْرِ، وَغَيْرُ “ الْبُرِّ ” فِي الشَّاةِ إِنْ كَانَ كَمَا ذَكَرْنَا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

If dates are unavailable, their monetary value—assuming they were present in that location—is assessed, or the obligation to procure dates becomes necessary.

فَإِنْ لَمْ يُوجَدْ التَّمْرُ فَقِيمَتُهُ لَوْ وُجِدَ فِي ذَلِكَ الْمَكَانِ، أَوْ تَكْلِيفُ الْمَجِيءِ بِالتَّمْرِ وَلَا بُدَّ.

If it is asked: From where do you derive the ruling to return the milk or compensate for it, when this is not stated in the textual evidence? We respond: Nor does the textual evidence state that it should not be returned. However, the milk is purchased with the ewe as a single transaction, and the obligation is to either retain the transaction or return it, as we previously established through the texts we cited. Its components cannot be separated.

فَإِنْ قِيلَ: فَمِنْ أَيْنَ قُلْتُمْ بِرَدِّ اللَّبَنِ أَوْ تَضْمِينِهِ، وَلَيْسَ هُوَ فِي الْخَبَرِ؟ قُلْنَا: وَلَا فِي الْخَبَرِ أَنْ لَا يَرُدَّهُ، إِلَّا أَنَّ اللَّبَنَ مُشْتَرًى مَعَ الشَّاةِ صَفْقَةً وَاحِدَةً، وَالْوَاجِبُ إِمْسَاكُ الصَّفْقَةِ أَوْ رَدُّهَا كَمَا قَدَّمْنَا بِالنُّصُوصِ الَّتِي ذَكَرْنَا، لَا يَتْرُكُ بَعْضُهَا الْبَعْضَ.

If it is said: Indeed, it is mentioned in the hadith, "Thus, in its al-ḥalba (act of milking) is a ṣāʿ of dates," we respond: Yes, and al-ḥalba refers to the act (of milking), though it can also denote the extracted milk. However, this term was designated metaphorically, and it is impermissible to transfer a word from its literal meaning to a metaphorical sense except by textual evidence – for wealth is prohibited except by textual evidence. Success is from Allah, the Exalted.

فَإِنْ قِيلَ: قَدْ جَاءَ فِي الْخَبَرِ فَفِي حَلْبَتِهَا صَاعٌ مِنْ تَمْرٍ؟ قُلْنَا: نَعَمْ، وَالْحَلْبَةُ هِيَ الْفِعْلُ، وَقَدْ تَكُونُ أَيْضًا اللَّبَنَ الْمُحْتَلَبَ، إِلَّا أَنَّهُ إِنَّمَا سُمِّيَ بِذَلِكَ مَجَازًا، وَلَا يَجُوزُ نَقْلُ اللَّفْظَةِ عَنْ مَوْضُوعِهَا إِلَى الْمَجَازِ إِلَّا بِنَصٍّ، وَالْأَمْوَالُ مُحَرَّمَةٌ إِلَّا بِنَصٍّ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The defective item lapses due to death, sale, manumission, childbirth, or destruction.

[مَسْأَلَة فَاتَ الْمَعِيبُ بِمَوْتٍ أَوْ بَيْعٍ أَوْ عِتْقٍ أَوْ إِيلَادٍ أَوْ تَلَفٍ]

Issue 1573: If the defective item is lost due to death, sale, emancipation, breeding, or destruction, the buyer or seller may claim compensation for the defect's value. This is because if the item was not pledged as collateral and the defect was acquired along with the fraudulent loss imposed on the owner, it becomes unlawful (ḥarām) for the taker to possess his property without consent. Since there is no means to rescind the transaction, the obligated recourse is to claim compensation for the defect's value from his property, for which no mutual agreement on compensation existed.

١٥٧٣ - مَسْأَلَةٌ: فَإِنْ فَاتَ الْمَعِيبُ بِمَوْتٍ، أَوْ بَيْعٍ، أَوْ عِتْقٍ، أَوْ إِيلَادٍ أَوْ تَلَفٍ، فَلِلْمُشْتَرِي، أَوْ الْبَائِعِ: الرُّجُوعُ بِقِيمَةِ الْعَيْبِ؛ لِأَنَّهُ إِذَا لَمْ يَرْهَنْ وَأَخَذَ الْعَيْبَ بِمَا عَلَيْهِ مِنْ الْغَبْنِ فَمَالُهُ حَرَامٌ عَلَى آخِذِهِ بِغَيْرِ رِضَاهُ، وَلَا سَبِيلَ إلَى رَدِّ الصَّفْقَةِ، فَالْوَاجِبُ الرُّجُوعُ بِمَا لَمْ يَرْضَ بِبَدَلِهِ مِنْ مَالِهِ.

Similarly, whoever is disadvantaged in their sale due to unfair pricing may reclaim the value of the disparity, and this is obligatory.

وَكَذَلِكَ مَنْ غُبِنَ فِي بَيْعِهِ فَإِنَّهُ يَرْجِعُ بِقِيمَةِ الْغَبْنِ وَلَا بُدَّ.

Similarly, whoever purchases seeds, plants them, and they do not sprout may reclaim the difference in its value as it is. It is defective, and there exists a disparity between its [current] value and its value when cultivated, for its

وَكَذَلِكَ مَنْ اشْتَرَى زَرِيعَةً فَزَرَعَهَا فَلَمْ تَنْبُتْ فَإِنَّهُ يَرْجِعُ بِمَا بَيْنَ قِيمَتِهَا كَمَا هِيَ رَدِيئَةٌ وَبَيْنَ قِيمَتِهَا نَابِتَةً؛ لِأَنَّهَا قَدْ تَلِفَتْ عَيْنُهَا، فَإِنَّمَا لَهُ الرُّجُوعُ بِقِيمَةِ الْغَبْنِ، فَإِنْ كَانَ اشْتَرَاهَا

original form has perished. Thus, the buyer may only recover the amount of the fraudulent disparity. If he purchased it under the stipulation that it was cultivated, the transaction becomes voidable. He must return an equivalent item or its monetary value—if unavailable—and may recover the entire price. And success is from Allah alone.

The Issue of Rescission Due to the Emergence of a Defect

Issue 1574: If he sells it and it is returned to him, he no longer retains the right to return it. Rather, he may only reclaim the value of the defect. This is because his right of return has been nullified by the defective item's departure from his ownership, in accordance with Allah's statement - Exalted is He: {No soul bears the burden of another} [Al-An'ām 6:164].[12]

He is entitled only to the value of the fraudulent overreach, and whatever ruling has been nullified by evidence cannot be reinstated except by a definitive scriptural text necessitating it. And success is from Allah—the Most High—.

Issue: If the person entitled to return a defective item dies before verbally declaring the return.

1575. Issue: If the one entitled to rescission dies before verbally declaring rescission and [affirming] that he does not consent, the transaction becomes binding on his heirs. This is because the rescission option is not inherited - as it is not property - and because he had consented to the contract. The contract remains valid unless it becomes established that he was not consenting. If this is not established, then Allah the Exalted has said: "No soul earns except against itself" (6:164).[13]

Issue: The death of the one upon whom it is obligatory to restore the defective item.

1576. Issue: If the party obligated to accept the return dies, the discoverer

[12] **Qur'an references (L25136):** Qur'an 6:164 (Al-An'am).
[13] **Qur'an references (L25139):** Qur'an 6:164 (Al-An'am).

عَلَى أَنَّهَا نَابِتَةٌ فَالصَّفْقَةُ فَاسِدَةٌ، وَيَرُدُّ مِثْلَهَا أَوْ قِيمَتَهَا - إِنْ لَمْ تُوجَدْ - وَيَرْجِعُ بِالثَّمَنِ كُلِّهِ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ الرَّدِّ بِخُرُوجِ الْمَعِيبِ]

١٥٧٤ - مَسْأَلَةٌ: فَإِنْ بَاعَهُ فَرُدَّ عَلَيْهِ لَمْ يَكُنْ لَهُ أَنْ يَرُدَّهُ، لَكِنْ يَرْجِعُ بِقِيمَةِ الْعَيْبِ فَقَطْ، لِأَنَّهُ قَدْ بَطَلَ مَا كَانَ لَهُ مِنْ الرَّدِّ بِخُرُوجِ الْمَعِيبِ عَنْ مِلْكِهِ، لِقَوْلِ اللَّهِ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

وَلَمْ يَجِبْ لَهُ إِلَّا قِيمَةُ الْغَبْنِ فَقَطْ، وَمَا سَقَطَ حُكْمُهُ بِبُرْهَانٍ فَلَا يَرْجِعُ إِلَّا بِنَصٍّ يُوجِبُ رُجُوعَهُ -، وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَةَ مَاتَ الَّذِي لَهُ رَدُّ المعيب قَبْلَ أَنْ يَلْفِظَ بِالرَّدِّ]

١٥٧٥ - مَسْأَلَةٌ: فَإِنْ مَاتَ الَّذِي لَهُ الرَّدُّ قَبْلَ أَنْ يَلْفِظَ بِالرَّدِّ، وَبِأَنَّهُ لَا يَرْضَى: فَقَدْ لَزِمَتْ الصَّفْقَةُ وَرَثَتَهُ، لِأَنَّ الْخِيَارَ لَا يُورَثُ، إذْ لَيْسَ مَالًا، وَلِأَنَّهُ قَدْ رَضِيَ بِالْعَقْدِ، فَهُوَ عَلَى الرِّضَا مَا لَمْ يَتَبَيَّنْ أَنَّهُ غَيْرُ رَاضٍ، فَإِنْ لَمْ يَتَبَيَّنْ ذَلِكَ، فَقَدْ قَالَ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

[مَسْأَلَةَ مَاتَ الَّذِي يَجِبُ عَلَيْهِ رَدُّ المعيب]

١٥٧٦ - مَسْأَلَةٌ: فَإِنْ مَاتَ الَّذِي يَجِبُ عَلَيْهِ الرَّدُّ كَانَ لِوَاجِدِ الْعَيْبِ أَنْ يَرُدَّ الْمَعِيبَ عَلَى الْوَرَثَةِ، لِأَنَّ لَهُ الرِّضَا أَوْ الرَّدَّ، فَلَا يُبْطِلُهُ مَوْتُ الْغَابِنِ، وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

of the defect may return the defective item to the heirs, because he retains the option of acceptance or return. Therefore, the death of the unfair party does not nullify this right. And with God, the Exalted, is success.

The issue of the defect that necessitates rescission.

1577. Issue: The defect warranting rescission is one that reduces the price at which the buyer purchased or the seller sold an asset to an extent people would customarily overlook in equivalent transactions, for this constitutes *ghubn* (unjust loss), and no other form of *ghubn* qualifies.

If someone purchases an item at a price equivalent to its value as a defective item, or sells it at a price equivalent to its value as a defective item—while unaware of the defect—and later discovers the defect, they have no right to rescind the transaction, because the price already reflected the defective condition.

Some people have said he has the right to rescind—this is a blatant error, for it constitutes injustice toward the seller and consideration and favoritism toward the buyer without any evidence, neither from the Quran nor the Sunnah.

Issue: A person purchased [an item] for a price, then discovered a defect that would reduce the price, and afterward, the price increased.

1578 – Issue: If someone purchased an item for a price and later discovered a defect that would have justified a reduction in the price at the time of purchase—but the price has since risen to the point where no reduction from the original price is possible, or the defect ceased to exist before or after the buyer became aware of it—the buyer retains the right to rescind the transaction in all these cases, because at the time of the contract, he suffered an unfair detriment. He has the right to reject the fraud—when he becomes aware of it—and this does not necessitate forfeiting his right to the option, for there is no Quranic text or Sunnah [to contradict this], as we have previously stated. And success comes only from Allah, the Most High.

[مَسْأَلَة الْعَيْبُ الَّذِي يَجِبُ بِهِ الرَّدُّ]

١٥٧٧ - مَسْأَلَةٌ: وَالْعَيْبُ الَّذِي يَجِبُ بِهِ الرَّدُّ: هُوَ مَا حَطَّ مِنْ الثَّمَنِ الَّذِي اشْتَرَى بِهِ أَوْ بَاعَ بِهِ مَالًا يَتَغَابَنُ النَّاسُ بِمِثْلِهِ؛ لِأَنَّ هَذَا هُوَ الْغَبْنُ، لَا غَبْنَ غَيْرُهُ.

فَإِنْ كَانَ اشْتَرَى الشَّيْءَ بِثَمَنٍ هُوَ قِيمَتُهُ مَعِيبًا، أَوْ بَاعَهُ بِثَمَنٍ هُوَ قِيمَتُهُ مَعِيبًا - وَهُوَ لَا يَدْرِي الْعَيْبَ - ثُمَّ وَجَدَ الْعَيْبَ فَلَا رَدَّ لَهُ؛ لِأَنَّهُ لَمْ يَجِدْ عَيْبًا.

وَقَدْ قَالَ قَوْمٌ: لَهُ الرَّدُّ - وَهَذَا خَطَأٌ فَاحِشٌ؛ لِأَنَّهُ ظُلْمٌ لِلْبَائِعِ، وَعِنَايَةٌ وَمُحَابَاةٌ لِلْمُشْتَرِي بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ.

[مَسْأَلَة اشْتَرَى بِثَمَنٍ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ كَانَ يَحُطُّ مِنْ الثَّمَنِ ثُمَّ غلى]

١٥٧٨ - مَسْأَلَةٌ: فَلَوْ كَانَ قَدْ اشْتَرَى بِثَمَنٍ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ كَانَ يَحُطُّ مِنْ الثَّمَنِ حِينَ اشْتَرَاهُ، إلَّا أَنَّهُ قَدْ غَلَا حَتَّى صَارَ لَا يَحُطُّ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهُ شَيْئًا، أَوْ زَالَ الْعَيْبُ قَبْلَ أَنْ يَعْلَمَ بِهِ، أَوْ بَعْدَ أَنْ عَلِمَ بِهِ، فَلَهُ الرَّدُّ فِي كُلِّ ذَلِكَ؛ لِأَنَّهُ حِينَ الْعَقْدِ وَقَعَ عَلَيْهِ غَبْنٌ فَلَهُ أَنْ لَا يَرْضَى بِالْغَبْنِ - إذَا عَلِمَهُ - وَلَا يُوجِبُ سُقُوطَ مَا لَهُ مِنْ الْخِيَارِ لِمَا ذَكَرْنَا قُرْآنٌ، وَلَا سُنَّةٌ، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة بَاعَ بِدَرَاهِم إِلَى أَجَل فلما قبض الثَّمَن وجد عَيْبًا أَوْ اسْتَحَقَّ مَا أَخَذَ]

١٥٧٩ - مَسْأَلَةٌ: وَمَنْ بَاعَ بِدَرَاهِمَ أَوْ بِدَنَانِيرَ فِي الذِّمَّةِ أَوْ إلَى أَجَلٍ، أَوْ سَلَمٍ فِيمَا يَجُوزُ فِيهِ السَّلَمُ - فَلَمَّا قَبَضَ الثَّمَنَ، أَوْ مَا سَلَّمَ فِيهِ: وَجَدَ عَيْبًا أَوْ اسْتَحَقَّ مَا أَخَذَ أَوْ بَعْضَهُ: فَلَيْسَ لَهُ إلَّا الِاسْتِبْدَالُ فَقَطْ، لِأَنَّهُ لَيْسَ لَهُ - عَيْنٌ مُعَيَّنَةٌ، إنَّمَا لَهُ صِفَةٌ، فَالَّذِي أُعْطِيَ هُوَ غَيْرُ حَقِّهِ، فَعَلَيْهِ أَنْ يَرُدَّ مَا لَيْسَ لَهُ، وَأَنْ يَطْلُبَ مَا لَهُ -، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة وَكَّلَ وَكِيلًا لِيَبْتَاعَ لَهُ شَيْئًا سَمَّاهُ فَابْتَاعَهُ لَهُ بِغَبْنٍ]

١٥٨٠ - مَسْأَلَةٌ: وَمَنْ وَكَّلَ وَكِيلًا لِيَبْتَاعَ لَهُ شَيْئًا سَمَّاهُ، فَابْتَاعَهُ لَهُ بِغَبْنٍ بِمَا لَا يَتَغَابَنُ النَّاسُ بِمِثْلِهِ، أَوْ وَجَدَهُ مَعِيبًا عَيْبًا يَحُطُّ بِهِ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهُ بِهِ: فَلَهُ مِنْ الرَّدِّ، أَوْ الْإِمْسَاكِ، أَوْ الِاسْتِبْدَالِ، أَوْ مِنْ فَسْخِ الصَّفْقَةِ كَالَّذِي ذَكَرْنَا قَبْلُ سَوَاءً سَوَاءً؛ لِأَنَّ يَدَ وَكِيلِهِ هِيَ يَدُهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة هَلْ الْعَيْب حدث قَبْل الْبَيْع أَمْ بَعْده]

١٥٨١ - مَسْأَلَةٌ: فَإِنْ لَمْ يَعْرِفْ هَلْ الْعَيْبُ حَادِثٌ أَمْ كَانَ قَبْلَ الْبَيْعِ؟ فَلَيْسَ عَلَى الْمَرْدُودِ عَلَيْهِ إلَّا الْيَمِينُ: بِاَللَّهِ مَا بِعْته إيَّاهُ وَأَنَا أَدْرِي فِيهِ هَذَا الْعَيْبَ - وَيَبْرَأُ، إلَّا أَنْ

Issue: If a person sells [goods] for silver dirhams payable at a deferred term, then upon receiving the price discovers a defect or the price becomes rightfully claimed [by another].

1579 - Issue: If someone sells for dirhams or dinars on credit, for a deferred term, or through a salam contract in commodities permitting salam - then upon receiving the price or the item subject to the salam contract, he discovers a defect in what he took, or that all or part of it is rightfully claimed - he may only seek substitution. This is because he possesses no specified tangible item, but rather a described attribute. What he was given does not constitute his rightful due. He must therefore return what does not belong to him and claim what is owed to him. Success comes solely from Allah, the Exalted.

A case where someone appointed an agent to purchase a specified item for him, and the agent bought it for him at a detrimentally unfair price.

1580 - Issue: If someone appoints an agent to purchase a specified item for them, and the agent acquires it through unconscionable overpricing that people would not typically tolerate in such transactions, or if the item is found defective with an imperfection reducing its value below the purchase price: the principal holds the right to return, keep, exchange, or rescind the transaction—exactly as we previously mentioned, without the slightest difference. This is because the hand of his agent is his hand. And success is from Allah—the Most High.

Legal Issue: Whether the defect occurred before or after the sale.

1581 - Issue: If it is not known whether the defect occurred after the sale or existed beforehand, the seller must only swear: "By Allah, I did not sell this to him knowing of this defect"—and he is exonerated. This stands unless upright witnesses provide testimony that this defect predates the time of the transaction, in which case it must be returned. For the transaction is a sale,

and Allah has permitted sales; thus, it cannot be invalidated through claims or suspicions. And success comes only from Allah, the Exalted.

A buyer purchased a single commodity in one transaction from two or more sellers and discovered a defect.

1582 - Issue: If someone purchases a single item from two or more sellers in one combined transaction and subsequently discovers a defect, he may return the share of whoever he wishes while retaining ownership of the share of whoever he chooses. He also holds the right to return the entire purchase if he desires, or retain the whole transaction in the same manner.

Similarly, if the share of one of them is claimed, the contract is not dissolved regarding the share of the other, because the sale of each party's share—whether from the two or among them—is a distinct contract from the others'. Allah, the Exalted, said: "No soul bears except its own burden, and no bearer of burdens shall bear another's" [Al-An'ām 6:164].[14]

Issue: Two or more buyers purchased an item from a single seller and discovered a defect.

1583: Issue: And similarly, if two or more individuals purchase a commodity from a single seller and subsequently discover a defect. Whichever contracting party wishes to rescind may rescind, and whichever wishes to retain may retain, since, as previously stated, the contract of each of them is separate from the other's.

Similarly, if the price paid by one of them is rightfully reclaimed and remains extant, the contract is annulled, but the other's contract pertaining to his portion is not annulled as a result. And success comes from Allah, the Exalted.

Issue: He purchased a commodity and found a defect in it that had arisen while in his possession.

[14] **Qur'an references (L25158):** Qur'an 6:164 (Al-An'am).

تَقُومَ بَيِّنَةُ عَدْلٍ بِأَنَّ هَذَا الْعَيْبَ أَقْدَمُ مِنْ أَمَدِ التَّبَايُعِ فَيُرَدُّ؛ لِأَنَّ الصَّفْقَةَ بَيْعٌ، وَقَدْ أَحَلَّ اللَّهُ الْبَيْعَ، فَلَا يَجُوزُ نَقْضُهُ بِالدَّعَاوَى وَلَا بِالظُّنُونِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اشْتَرَى مِنْ اثْنَيْنِ فَأَكْثَرَ سِلْعَةً وَاحِدَةً صَفْقَةً وَاحِدَةً فَوَجَدَ عَيْبًا]

١٥٨٢ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى مِنْ اثْنَيْنِ فَأَكْثَرَ سِلْعَةً وَاحِدَةً صَفْقَةً وَاحِدَةً فَوَجَدَ عَيْبًا لَهُ أَنْ يَرُدَّ حِصَّةَ مَنْ شَاءَ وَيَتَمَسَّكَ بِحِصَّةِ مَنْ شَاءَ، وَلَهُ أَنْ يَرُدَّ الْجَمِيعَ إنْ شَاءَ، أَوْ يُمْسِكَ الْكُلَّ كَذَلِكَ.

وَكَذَلِكَ لَوْ اُسْتُحِقَّتْ حِصَّةُ أَحَدِهِمْ لَمْ يَنْفَسِخْ الْعَقْدُ فِي حِصَّةِ الْآخَرِ؛ لِأَنَّ بَيْعَ كُلِّ وَاحِدٍ مِنْهُمَا، أَوْ مِنْهُمْ حِصَّتَهُ عَقْدٌ غَيْرُ عَقْدِ الْآخَرِ، قَالَ اللَّهُ - تَعَالَى -: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤].

[مَسْأَلَة اشْتَرَى اثْنَانِ فَصَاعِدًا سِلْعَةً مِنْ وَاحِدٍ فَوَجَدَا عَيْبًا]

١٥٨٣ - مَسْأَلَةٌ: وَكَذَلِكَ لَوْ اشْتَرَى اثْنَانِ فَصَاعِدًا سِلْعَةً مِنْ وَاحِدٍ فَوَجَدَا عَيْبًا فَأَيُّهُمَا شَاءَ أَنْ يَرُدَّ رَدَّ، وَأَيُّهُمَا شَاءَ أَنْ يُمْسِكَ أَمْسَكَ؛ لِمَا ذَكَرْنَا مِنْ أَنَّ صَفْقَةَ كُلِّ وَاحِدٍ مِنْهُمَا غَيْرُ صَفْقَةِ الْآخَرِ.

فَكَذَلِكَ لَوْ اُسْتُحِقَّ الثَّمَنُ الَّذِي دَفَعَهُ أَحَدُهُمَا، وَكَانَ بِعَيْنِهِ فَإِنَّهُ يَنْفَسِخُ وَلَا يَنْفَسِخُ بِذَلِكَ عَقْدُ الْآخَرِ فِي حِصَّتِهِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اشْتَرَى سِلْعَةً فَوَجَدَ بِهَا عَيْبًا وَقَدْ كَانَ حَدَثَ عِنْدَهُ فِيهَا عَيْبٌ]

L25165 1584. Issue: If someone purchases a commodity and finds a defect in it, and a defect had previously occurred in it—whether by Allah's decree, the purchaser's own action, or another's action—he may return it, as we have stated, or retain it. However, he may not return it due to anything that occurred while it was in his possession, nor due to anything he himself caused in it, because it was within his ownership and right; he did not transgress or wrong anyone in this matter. As for the unjust loss (ghabn), it has been previously discussed, so he is entitled to reclaim the loss inflicted upon him through injustice. This is because neither the Quran nor the Sunnah imposes a financial penalty on him in such a case. And success is from Allah, the Most High.

١٥٨٤ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى سِلْعَةً فَوَجَدَ بِهَا عَيْبًا وَقَدْ كَانَ حَدَثَ عِنْدَهُ فِيهَا عَيْبٌ مِنْ قِبَلِ اللَّهِ - تَعَالَى -، أَوْ مِنْ فِعْلِهِ، أَوْ مِنْ فِعْلِ غَيْرِهِ فَلَهُ الرَّدُّ، كَمَا قُلْنَا، أَوْ الْإِمْسَاكُ، وَلَا يَرُدُّ مِنْ أَجْلِ مَا حَدَثَ عِنْدَهُ شَيْئًا، وَلَا مِنْ أَجْلِ مَا أَحْدَثَ هُوَ فِيهِ شَيْئًا؛ لِأَنَّهُ فِي مِلْكِهِ وَحَقِّهِ لَمْ يَتَعَدَّ، وَلَا ظَلَمَ فِيهِ أَحَدًا، وَالْغَبْنُ قَدْ تَقَدَّمَ، فَلَهُ مَا قَدْ وَجَبَ لَهُ مِنْ رَدِّ الْغَبْنِ الَّذِي ظُلِمَ فِيهِ؛ وَلِأَنَّهُ لَمْ يُوجِبْ عَلَيْهِ فِي ذَلِكَ غَرَامَةً قُرْآنٌ، وَلَا سُنَّةٌ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

Issue: A person purchased something, used it, and subsequently found a defect in it.

[مَسْأَلَة اشْتَرَى شَيْئًا فاستعمله ثُمَّ وجد بِهِ عَيْبًا]

L25166

L25167 Issue 1585: If someone purchases a female slave, an animal, a garment, a house, or other items—then has intercourse with the female slave, deflowers her if she was a virgin, marries her off (whether she becomes pregnant or not), wears the garment, overworks the animal, inhabits the house, or utilizes and benefits from the purchased item (regardless of whether this usage is prolonged or brief)—and subsequently discovers a defect, he may either return it (as we have mentioned) or retain it.

١٥٨٥ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى جَارِيَةً، أَوْ دَابَّةً، أَوْ ثَوْبًا، أَوْ دَارًا أَوْ غَيْرَ ذَلِكَ فَوَطِئَ الْجَارِيَةَ، أَوْ افْتَضَّهَا إنْ كَانَتْ بِكْرًا، أَوْ زَوَّجَهَا فَحَمَلَتْ أَوْ لَمْ تَحْمِلْ، أَوْ لَبِسَ الثَّوْبَ، وَأَنْضَى الدَّابَّةَ، وَسَكَنَ الدَّارَ، وَاسْتَعْمَلَ مَا اشْتَرَى وَاسْتَغَلَّهُ، وَطَالَ اسْتِعْمَالُهُ الْمَذْكُورُ أَوْ قَلَّ، ثُمَّ وَجَدَ عَيْبًا، فَلَهُ الرَّدُّ كَمَا ذَكَرْنَا أَوْ الْإِمْسَاكُ.

L25168 Nor is he obligated to compensate for his use for that purpose, for he has disposed of his own wealth and possessions as permitted by God—Exalted is He. God, Exalted is He, said: "And those who guard their private parts" [23:5] "except from their spouses or those whom their right hands possess—then surely they are not to be blamed" [23:6] "But whoever seeks beyond that, it is they who are the transgressors" [23:7]. Thus, whoever God—Exalted is He—does not censure and whose action He permits in that matter is deemed virtuous by logical necessity.[15]

وَلَا يَرُدُّ مَعَ ذَلِكَ شَيْئًا مِنْ أَجْلِ اسْتِعْمَالِهِ لِذَلِكَ؛ لِأَنَّهُ تَصَرَّفَ فِي مَالِ نَفْسِهِ، وَفِي مَتَاعِهِ بِمَا أَبَاحَ اللَّهُ - تَعَالَى - لَهُ، قَالَ اللَّهُ - تَعَالَى -: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] فَمَنْ لَمْ يَلُمْهُ اللَّهُ - تَعَالَى - وَأَبَاحَ لَهُ فِعْلَهُ ذَلِكَ: فَهُوَ بِضَرُورَةِ الْعَقْلِ مُحْسِنٌ.

وَقَالَ - تَعَالَى -: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

[15] **Qur'an references (L25168):** 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).

L25169 And He, the Exalted, said: “There is no blame upon those who do good” (At-Tawbah 91).[16]

L25170 And the imposition of a monetary penalty is an established legal recourse for those obligated to it, though Allah, the Most High, has annulled it from him. It is analogous to cases of unjust detriment where one may either ratify [the transaction] or seek restitution. And with Allah alone lies all success.

L25171 [Issue of Discovering a Defect in What He Purchased That Necessitates Return]

L25172 1586. Ruling: If a buyer discovers a defect in their purchase that necessitates rescission, they may annul the sale immediately upon discovery. Alternatively, they may retain the item and rescind the sale at any time thereafter, regardless of whether the period is long or short.

L25173–25175 Nor do his actions after learning of the defect—such as by intercourse or use—nullify his right to restitution. and the right to ride, wear, or dwell, nor his responsibility to remove the defect, nor his obligation to present it to jurists specialized in such defects, nor his exposing that item for sale without disclosing the defect.

L25176 The obligation of restitution owed to him is not nullified except by one of five modes, with no sixth among them. These are: his explicit declaration of consent to retaining it; the property’s transfer out of his ownership entirely or partially; the enslaved woman bearing a child; his death; or the destruction of the property’s entirety or part of it (whether due to death or other causes). This is the view of Abū Thawr and others.

L25177 Whoever claims that his obligation to make restitution is waived by any of the aforementioned means has asserted a claim without evidence; and this is void.

L25178 The proof for the validity of our statement is that the refund is obligatory for him by the agreement between us and our opponents, and by the proofs we

[16] **Qur’an references (L25169):** Qur’an 9:91 (At-Tawbah).

وَإِغْرَامُ الْمَالِ سَبِيلٌ مُسَبَّلَةٌ عَلَى مَنْ كُلِّفَهَا، وَقَدْ أَسْقَطَ اللَّهُ - تَعَالَى - عَنْهُ ذَلِكَ - ثُمَّ هُوَ كَسَائِرِ وَاجِدِي الْغَبْنِ فِي أَنَّ لَهُ الرِّضَا، أَوْ الرَّدَّ، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اطَّلَعَ فِيمَا اشْتَرَى عَلَى عَيْبٍ يَجِبُ بِهِ الرَّدُّ]

١٥٨٦ - مَسْأَلَةٌ: وَمَنْ اطَّلَعَ فِيمَا اشْتَرَى عَلَى عَيْبٍ يَجِبُ بِهِ الرَّدُّ فَلَهُ أَنْ يَرُدَّ سَاعَةَ يَجِدُ الْعَيْبَ، وَلَهُ أَنْ يُمْسِكَ ثُمَّ يَرُدَّهُ مَتَى شَاءَ - طَالَ ذَلِكَ الْأَمَدُ أَمْ قَرُبَ.

وَلَا يُسْقِطُ مَا وَجَبَ لَهُ مِنْ الرَّدِّ تَصَرُّفُهُ بَعْدَ عِلْمِهِ بِالْعَيْبِ بِالْوَطْءِ، وَالِاسْتِخْدَامِ، وَالرُّكُوبِ، وَاللِّبَاسِ، وَالسُّكْنَى، وَلَا مُعَانَاتِهِ إزَالَةَ الْعَيْبِ، وَلَا عَرْضِهِ إيَّاهُ عَلَى أَهْلِ الْعِلْمِ بِذَلِكَ الْعَيْبِ، وَلَا تَعْرِيضِهِ ذَلِكَ الشَّيْءَ لِلْبَيْعِ.

وَلَا يُسْقِطُ مَا وَجَبَ لَهُ مِنْ الرَّدِّ إلَّا أَحَدُ خَمْسَةِ أَوْجُهٍ لَا سَادِسَ لَهَا، وَهِيَ نُطْقُهُ بِالرِّضَا بِإِمْسَاكِهِ، أَوْ خُرُوجُهُ كُلُّهُ، أَوْ بَعْضُهُ عَنْ مِلْكِهِ، أَوْ إيلَادُ الْأَمَةِ، أَوْ مَوْتُهُ، أَوْ ذَهَابُ عَيْنِ الشَّيْءِ أَوْ بَعْضِهَا بِمَوْتٍ أَوْ غَيْرِهِ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَغَيْرِهِ.

وَمَنْ ادَّعَى سُقُوطَ مَا وَجَبَ لَهُ مِنْ الرَّدِّ بِشَيْءٍ مِمَّا ذَكَرْنَا قَبْلُ فَقَدْ ادَّعَى مَا لَا بُرْهَانَ لَهُ بِهِ - وَهَذَا بَاطِلٌ -.

وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: هُوَ أَنَّ الرَّدَّ قَدْ وَجَبَ لَهُ بِاتِّفَاقٍ مِنَّا وَمِنْ مُخَالِفِينَا، وَبِمَا أَوْرَدْنَا مِنْ بَرَاهِينِ الْقُرْآنِ، وَالسُّنَّةِ فِي تَحْرِيمِ الْغِشِّ وَإِيجَابِ النَّصِيحَةِ.

have cited from the Quran and Sunnah regarding the prohibition of deceit and the obligation of dutiful advice.

L25179 He is bound by what has been made obligatory for him; it is impermissible to waive it except by explicit textual proof or a definitive consensus, and there is no way for either to exist here—and none of what we have mentioned earlier qualifies as consent.

L25180 As for the lapse of the right to return due to consent, the removal of the item or part of it from ownership, the partial or complete destruction of the item itself, or its death—we have previously established the proof for this. Regarding the destruction of the item itself or part of it, the return of the purchased item is rendered impossible, for Allah, Exalted is He, says: "Allah does not burden any soul beyond its capacity" [Al-Baqarah: 286]. As for the bearing of offspring by a slave woman for her master, we have presented the evidence prohibiting the permissibility of granting ownership of one's umm walad to another—and success is by Allah, the Exalted.[17]

L25181 **A jurisprudential issue where a person purchased an item and discovered a hidden defect within it, such as in the case of eggs.**

L25182 Issue 1587: If someone purchases an item and discovers a defect in its interior—such as in eggs, cucumbers, squash, wood, or similar items—they may either return it or keep it, regardless of whether the defect could have been detected by ordinary means or could only be known by breaking or splitting it. This ruling applies because defrauding is impermissible and unlawful unless the defrauded party consents, knows the extent of the defraudation, and willingly accepts it. Otherwise, it constitutes unlawful consumption of wealth. Even if the seller did not intend deception, his brother's property has come into his possession without consent. Allah—Exalted is He—has forbidden this in His saying: _"Do not consume one another's wealth unlawfully except through trade by mutual consent"_ (Quran 4:29). Consent

[17] **Qur'an references (L25180):** Qur'an 2:286 (Al-Baqarah).

فَهُوَ عَلَى مَا وَجَبَ لَهُ، لَا يَجُوزُ أَنْ يُسْقِطَ عَنْهُ إِلَّا نَصٌّ، أَوْ إِجْمَاعٌ مُتَيَقَّنٌ، وَلَا سَبِيلَ إِلَى وُجُودِهِمَا هَهُنَا -، وَلَيْسَ شَيْءٌ مِمَّا ذَكَرْنَا قَبْلُ رِضًا.

وَأَمَّا سُقُوطُ الرَّدِّ بِالرِّضَا أَوْ بِخُرُوجِ الشَّيْءِ أَوْ بَعْضِهِ عَنْ الْمِلْكِ أَوْ بِذَهَابِ بَعْضِ عَيْنِهِ أَوْ كُلِّهِ أَوْ بِمَوْتِهِ فَقَدْ ذَكَرْنَا الْبُرْهَانَ عَلَى ذَلِكَ وَهُوَ فِي ذَهَابِ عَيْنِهِ أَوْ بَعْضِهَا مُمْتَنِعٌ مِنْهُ الرَّدُّ لِمَا اشْتَرَى، وَاَللَّهُ - تَعَالَى - يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَأَمَّا الْإِيلَادُ فَقَدْ ذَكَرْنَا الْبُرْهَانَ عَلَى الْمَنْعِ مِنْ جَوَازِ تَمْلِيكِ الْمَرْءِ أُمَّ وَلَدِهِ غَيْرَهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اشْتَرَى شَيْئًا فَوَجَدَ فِي عُمْقِهِ عَيْبًا كَبَيْضٍ]

١٥٨٧ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى شَيْئًا فَوَجَدَ فِي عُمْقِهِ عَيْبًا، كَبَيْضٍ، أَوْ قِثَّاءٍ، أَوْ قَرْعٍ، أَوْ خَشَبٍ، أَوْ غَيْرِ ذَلِكَ: فَلَهُ الرَّدُّ، أَوْ الْإِمْسَاكُ، سَوَاءٌ كَانَ مِمَّا يُمْكِنُ التَّوَصُّلُ إلَى مَعْرِفَتِهِ أَوْ مِمَّا لَا يُمْكِنُ، إلَّا بِكَسْرِهِ أَوْ شَقِّهِ؛ لِأَنَّ الْغَبْنَ لَا يَجُوزُ، وَلَا يَحِلُّ، إلَّا بِرِضَا الْمَغْبُونِ وَمَعْرِفَتِهِ بِقَدْرِ الْغَبْنِ، وَطِيبِ نَفْسِهِ بِهِ، وَإِلَّا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، وَالْبَائِعُ وَإِنْ كَانَ لَمْ يَقْصِدْ الْغِشَّ فَقَدْ حَصَلَ بِيَدِهِ مَالُ أَخِيهِ بِغَيْرِ رِضًا مِنْهُ، وَاَللَّهُ - تَعَالَى - قَدْ حَرَّمَ ذَلِكَ بِقَوْلِهِ - تَعَالَى -: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَلَا يُمْكِنُ وُجُودُ الرِّضَا إلَّا بَعْدَ الْمَعْرِفَةِ بِمَا يَرْضَى بِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

cannot exist except after knowing what is being consented to. This is the opinion of Abu Hanifa, Al-Shafi'i, and Abu Sulayman.[18]

L25183 **A legal question concerning notification of a presumed defect.**

L25184–25186 1588. Question: If someone purchases a male or female slave, and it becomes evident that the slave has the defect of absconding or epilepsy, His consent has become binding upon him, and he retains no right to rescind any part of it—whether he was aware of the duration of absconding and the nature of the usurpation or these details were not clarified to him—for all forms of absconding constitute absconding, and all forms of usurpation constitute usurpation, and he has consented to the general application of these terms.

L25187 If the matter proved lesser than what was disclosed to him and he discovered it was contrary to what was clarified, the transaction becomes void because it differs from what he purchased. If he found a surplus over what was clarified to him, he has the option to return or retain it, as it constitutes a defect that was not disclosed. And success is by Allah, the Exalted.

L25188 **A legal issue where someone purchases an item provided that it contains such and such specified attributes within it.**

L25189 1589. Issue: If someone purchases a bundle on the condition that it contains a specified number of garments, such-and-such ratls [a unit of weight] of clarified butter, honey, or other weighed commodities, such-and-such apples or other counted items, such-and-such mudds [a unit of volume] of a commodity measured by volume - or buys a heap on the condition that it contains such-and-such qafīz [a dry measure] or similar measure, or an item on the condition that it has such-and-such cubits in length - and then found it to be less or more, the entire transaction is irrevocably nullified. This is

[18] **Qur'an references (L25182):** Qur'an 4:29 (An-Nisa).

[مَسْأَلَة أطلع عَلَى عَيْب فرضيه]

١٥٨٨ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى عَبْدًا أَوْ أَمَةً، فَبُيِّنَ لَهُ بِعَيْبِ الْإِبَاقِ أَوْ الصَّرْعِ، فَرَضِيَهُ فَقَدْ لَزِمَهُ، وَلَا رُجُوعَ لَهُ بِشَيْءٍ - عَرَفَ مُدَّةَ الْإِبَاقِ، وَصِفَةَ الصَّرْعِ أَوْ لَمْ يُبَيَّنْ لَهُ ذَلِكَ -؛ لِأَنَّ جَمِيعَ أَنْوَاعِ الْإِبَاقِ إبَاقٌ، وَجَمِيعَ أَنْوَاعِ الصَّرْعِ صَرْعٌ، وَقَدْ رَضِيَ بِجُمْلَةِ إطْلَاقِ ذَلِكَ.

فَلَوْ قُلِّلَ لَهُ الْأَمْرُ فَوَجَدَ خِلَافَ مَا بُيِّنَ لَهُ بَطَلَتْ الصَّفْقَةُ؛ لِأَنَّهُ غَيْرُ مَا اشْتَرَى - وَلَوْ وَجَدَ زِيَادَةً عَلَى مَا بُيِّنَ لَهُ فَلَهُ الْخِيَارُ فِي رَدٍّ أَوْ إمْسَاكٍ؛ لِأَنَّهُ عَيْبٌ لَمْ يُبَيَّنْ لَهُ - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة اشْتَرَى شَيْئًا عَلَى أَنْ فِيهِ كَذَا وَكَذَا]

١٥٨٩ - مَسْأَلَةٌ: وَمَنْ اشْتَرَى عِدْلًا عَلَى أَنَّ فِيهِ عَدَدًا مُسَمًّى مِنْ الثِّيَابِ، أَوْ كَذَا وَكَذَا رَطْلًا مِنْ سَمْنٍ أَوْ عَسَلٍ، أَوْ غَيْرِ ذَلِكَ مِمَّا يُوزَنُ، أَوْ كَذَا وَكَذَا تُفَّاحَةً، أَوْ غَيْرَ ذَلِكَ مِمَّا يُعَدُّ، أَوْ كَذَا وَكَذَا مُدًّا مِمَّا يُكَالُ - أَوْ اشْتَرَى صُبْرَةً عَلَى أَنَّ فِيهَا كَذَا وَكَذَا قَفِيزًا أَوْ نَحْوَ ذَلِكَ، أَوْ شَيْئًا عَلَى أَنَّ فِيهِ كَذَا وَكَذَا ذِرَاعًا، فَوَجَدَ أَقَلَّ أَوْ أَكْثَرَ: فَالصَّفْقَةُ كُلُّهَا مَفْسُوخَةٌ أَبَدًا؛ لِأَنَّهُ أَخَذَ غَيْرَ مَا اشْتَرَى، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ لَا بِتِجَارَةٍ عَنْ تَرَاضٍ.

because he has taken something other than what he purchased, constituting unjust appropriation of wealth, not a consensual trade.

L25190 By necessity, every person of sound senses knows that the standard measure containing fifty garments is not the standard measure containing forty-nine garments, nor is it the standard measure containing fifty-one garments. Similarly, this applies to all numbers, weights, volume measures, and linear measures.

L25191 If the sale contract was not concluded on that basis, yet the customary and known practice is that those measures contain a known quantity, and likewise that pile, and likewise all items sold by volume, by weight, by cubit measurement, or by count—or if the seller described it with that attribute—though the sale itself was not concluded on those terms.

L25192 If the deficiency found reduces the purchase price by an amount people would not disregard in equivalent transactions, the buyer may choose between returning [the item] or retaining it, with no further recourse.

L25193 If the excess found exceeds the price at which the seller sold the item—an increase people would not mutually disregard as deceptive—the seller may choose between retracting the sale or consenting to the excess. This is because both scenarios entail unfair advantage to one of the two transacting parties, and such unfair advantage is impermissible except with the consent of the disadvantaged party and their awareness of its extent. Otherwise, it constitutes unlawful appropriation of wealth, not a consensual transaction by mutual agreement. Neither party holds greater entitlement to protection and consideration than the other. Whoever asserts otherwise nullifies [the ruling] and imposes without justification, lacking proof. In Allah—Exalted—we seek support.

L25194–25195 **Issue: He said to his counterpart, "These are your dirhams, and I discovered this debased dirham among them." The latter responded, "I do not know."**

L25196 A legal issue: If someone says to their transacting party, "These are your

وَبِالضَّرُورَةِ يَدْرِي كُلُّ سَلِيمِ الْحِسِّ أَنَّ الْعِدْلَ الَّذِي فِيهِ خَمْسُونَ ثَوْبًا لَيْسَ هُوَ الْعِدْلَ الَّذِي فِيهِ تِسْعَةٌ وَأَرْبَعُونَ ثَوْبًا، وَلَا هُوَ أَيْضًا الْعِدْلَ الَّذِي فِيهِ وَاحِدٌ وَخَمْسُونَ ثَوْبًا، وَهَكَذَا أَيْضًا فِي سَائِرِ الْأَعْدَادِ، وَالْأَوْزَانِ، وَالْأَكْيَالِ، وَالذَّرْعِ.

فَلَوْ لَمْ يَقَعْ عَقْدُ الْبَيْعِ عَلَى ذَلِكَ لَكِنَّ الْمَعْهُودَ وَالْمَعْرُوفَ أَنَّ فِي تِلْكَ الْأَعْدَالِ عَدَدًا مَعْرُوفًا، وَكَذَلِكَ تِلْكَ الصُّبْرَةُ، وَكَذَلِكَ سَائِرُ الْمَكِيلَاتِ، وَالْمَوْزُونَاتِ، وَالْمَذْرُوعَاتِ، وَالْمَعْدُودَاتِ، أَوْ وَصَفَهُ الْبَائِعُ بِتِلْكَ الصِّفَةِ، إِلَّا أَنَّ الْبَيْعَ لَمْ يَنْعَقِدْ عَلَى ذَلِكَ.

فَإِنْ كَانَ مَا وَجَدَ مِنْ النَّقْصِ يَحُطُّ مِنْ الثَّمَنِ الَّذِي اشْتَرَاهُ بِهِ مَا لَا يَتَغَابَنُ بِهِ النَّاسُ بِمِثْلِهِ فَهُوَ مُخَيَّرٌ بَيْنَ رَدٍّ أَوْ إمْسَاكٍ، وَلَا شَيْءَ لَهُ غَيْرُ ذَلِكَ.

وَإِنْ كَانَ مَا وَجَدَ مِنْ الزِّيَادَةِ يَزِيدُ عَلَى الثَّمَنِ الَّذِي بَاعَ بِهِ الْبَائِعُ زِيَادَةً لَا يَتَغَابَنُ النَّاسُ بِهَا، فَالْبَائِعُ مُخَيَّرٌ بَيْنَ رَدٍّ أَوْ رِضًا؛ لِأَنَّ كِلَا الْأَمْرَيْنِ غَبْنٌ لِأَحَدِ الْمُتَبَايِعَيْنِ، وَالْغَبْنُ لَا يَحِلُّ إلَّا بِرِضَا الْمَغْبُونِ وَمَعْرِفَتِهِ بِقَدْرِهِ، وَإِلَّا فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، لَا تِجَارَةٌ عَنْ تَرَاضٍ،، وَلَيْسَ أَحَدُهُمَا أَوْلَى بِالْحِيَاطَةِ وَالنَّظَرِ لَهُ مِنْ الْآخَرِ، وَمَنْ قَالَ غَيْرَ هَذَا فَهُوَ مُبْطِلٌ مُتَحَكِّمٌ بِلَا بُرْهَانٍ، وَبِاَللَّهِ - تَعَالَى - نَتَأَيَّدُ.

[مَسْأَلَة قَالَ لمعامله هَذِهِ دراهمك وجدت فِيهَا هَذَا الرَّدِيء فَقَالَ لَا أدري]

dirhams or dinars, and I found this defective item among them," or the buyer says, "This is your commodity; I found a defect in it," and the other responds, "I cannot distinguish them, nor do I know whether they are my dirhams, dinars, or commodity or not," then if the one claiming a defect and the defective item has legally admissible proof that they are indeed those, the ruling is in his favor. Otherwise, the one who says, "I do not know," must take an oath, swearing by Allah—Exalted is He—"I do not know what you are claiming," and is absolved. This is because the Messenger of Allah—peace and blessings be upon him—ruled that the claimant must provide legally admissible proof and the defendant must take an oath. Here, the claimant is the one seeking to take something from the other, and the defendant is the one denying that this obligation applies to him. If the commodity and the price are in the buyer's possession, his statement, accompanied by an oath, is accepted, as he is the defendant regarding the removal of what is in his possession.

مَسْأَلَةٌ: وَمَنْ قَالَ لِمُعَامِلِهِ: هَذِهِ دَرَاهِمُك أَوْ دَنَانِيرُك وَجَدْت فِيهَا هَذَا الرَّدِيءَ، أَوْ قَالَ الْمُشْتَرِي: هَذِهِ سِلْعَتُك وَجَدْت فِيهَا عَيْبًا؟ فَقَالَ الْآخَرُ، مَا أُمَيِّزُهَا وَلَا أَدْرِي أَنَّهَا دَرَاهِمِي، أَوْ دَنَانِيرِي، أَوْ سِلْعَتِي أَمْ لَا فَإِنْ كَانَتْ لِلَّذِي يَذْكُرُ وُجُودَ الْعَيْبِ وَالرَّدِيءِ بَيِّنَةٌ بِأَنَّهَا تِلْكَ قُضِيَ لَهُ، وَإِلَّا فَعَلَى الَّذِي يَقُولُ: لَا أَدْرِي، الْيَمِينُ: بِاَللَّهِ - تَعَالَى - مَا أَدْرِي مَا تَقُولُ، وَيَبْرَأُ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْبَيِّنَةِ عَلَى الْمُدَّعِي وَالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ - وَالْمُدَّعِي هَهُنَا هُوَ الَّذِي يُرِيدُ أَخْذَ شَيْءٍ مِنْ الْآخَرِ، وَالْمُدَّعَى عَلَيْهِ هُوَ الَّذِي يُنْكِرُ وُجُوبَ ذَلِكَ عَلَيْهِ فَإِنْ كَانَتْ السِّلْعَةُ وَالثَّمَنُ بِيَدِ الْمُشْتَرِي، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ؛ لِأَنَّهُ مُدَّعًى عَلَيْهِ خُرُوجَ مَا بِيَدِهِ عَنْ يَدِهِ.

A legal issue concerning the return due to a defect when the responsible party has usurped the slave child.

[مَسْأَلَةُ رَدِّ بِعَيْبٍ وَقَدْ اغْتَلَّ الْوَلَدَ]

Issue 1591: If someone returns [an item] due to a defect but had utilized the offspring, milk, fruit, kharāj (land tax), or similar benefits, he may still return [the item] and does not return anything from those benefits, as they occurred during his ownership and within his property, and were not part of what constituted the subject of the sale. The seller has no rightful claim to them.

١٥٩١ - مَسْأَلَةٌ: وَمَنْ رَدَّ بِعَيْبٍ وَقَدْ اغْتَلَّ الْوَلَدَ، وَاللَّبَنَ، وَالثَّمَرَةَ، وَالْخَرَاجَ، وَغَيْرَ ذَلِكَ، فَلَهُ الرَّدُّ، وَلَا يَرُدُّ شَيْئًا مِنْ كُلِّ ذَلِكَ؛ لِأَنَّهُ حَدَثَ فِي مَالِهِ وَفِي مِلْكِهِ، وَلَيْسَ مِمَّا وَقَعَ عَلَيْهِ الشِّرَاءُ، فَلَا حَقَّ لِلْمَرْدُودِ عَلَيْهِ فِيهِ.

And by Allah—Exalted is He—is success.

وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

It is the opinion of Abū Ḥanīfah and, in some of those matters, of Mālik.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ فِي بَعْضِ ذَلِكَ.

This is the opinion of Al-Shāfiʿī, Abū Sulaymān, and Aḥmad—and there is a longstanding disagreement on this matter.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَحْمَدَ - وَفِي هَذَا خِلَافٌ قَدِيمٌ.

It was narrated to us through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, al-Mughīrah reported to us from al-Ḥārith al-ʿUklī: A man purchased a slave woman who had milk, hired her as a wet nurse, and profited

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ الْحَارِثِ الْعُكْلِيِّ: أَنَّ رَجُلًا اشْتَرَى أَمَةً لَهَا لَبَنٌ فَاكْتَرَاهَا ظِئْرًا وَأَصَابَ مِنْ غَلَّتِهَا ثُمَّ وَجَدَ بِهَا دَاءً كَانَ عِنْدَ الْبَائِعِ

from her services. Then he discovered she had a pre-existing disease from the seller's possession, so he took him to Judge Shurayḥ for adjudication. Shurayḥ said to him: "Return her with her disease and repay what you gained from her earnings." The man said: "I refuse to return her since you require me to repay what I gained from her earnings. I accept her despite her disease." Shurayḥ replied: "This is not for me to decide. My ruling on this has been transferred to your opponent."

فَخَاصَمَهُ إِلَى شُرَيْحٍ؟ فَقَالَ لَهُ شُرَيْحٌ، رُدَّهَا بِدَائِهَا وَرُدَّ مَعَهَا مَا أَصَبْت مِنْ غَلَّتِهَا؟ قَالَ: فَإِنِّي لَا أَرُدُّهَا إذْ كَلَّفْتنِي أَنْ أَرُدَّ مَا أَصَبْت مِنْ غَلَّتِهَا، فَأَقْبَلُهَا بِدَائِهَا، فَقَالَ لَهُ شُرَيْحٌ: لَيْسَ ذَلِكَ إلَيَّ قَدْ مَضَى قَضَائِي ذَلِكَ إلَى خَصْمِك.

L25203 And it has been reported from Shurayḥ, al-Ḥasan, and al-Shaʿbī that the like of our opinion has been transmitted.

وَقَدْ رُوِيَ عَنْ شُرَيْحٍ، وَالْحَسَنِ، وَالشَّعْبِيِّ مِثْلُ قَوْلِنَا.

L25204 Abu Muhammad said: "And regarding what we have mentioned, there is disagreement. We mention from it what Allah, the Exalted, has facilitated for us to mention."

قَالَ أَبُو مُحَمَّدٍ وَفِيمَا ذَكَرْنَا خِلَافٌ نَذْكُرُ مِنْهُ مَا يَسَّرَ اللَّهُ - تَعَالَى - لَنَا ذِكْرَهُ.

L25205 Among these [cases] are the loss of the defective [slave] due to their death, manumission, childbirth, physical destruction, or the loss of part of them. Indeed, our jurists said: He has no right to retain [the slave], nor can he claim any compensation.

فَمِنْ ذَلِكَ -: فَوْتُ الْمَعِيبِ بِمَوْتٍ، أَوْ عِتْقٍ، أَوْ إيلَادٍ، أَوْ تَلَفٍ، أَوْ فَوْتُ بَعْضِهِ، فَإِنَّ أَصْحَابَنَا قَالُوا: لَيْسَ لَهُ الْإِمْسَاكُ، وَلَا يَرْجِعُ بِشَيْءٍ.

L25206–25208 This is the statement of Qatadah, which we have narrated through the chain of Abd al-Razzaq from Maʿmar from Qatadah. He said: There is no liability after death. If she dies, liability ceases. And it is the opinion of Shurayḥ, and al-Ḥasan al-Baṣrī.

وَهُوَ قَوْلُ قَتَادَةَ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: لَا عُهْدَةَ بَعْدَ الْمَوْتِ إذَا مَاتَتْ جَازَ عَلَيْهِ وَهُوَ قَوْلُ شُرَيْحٍ، وَالْحَسَنِ الْبَصْرِيِّ.

L25209 From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Zakariyya ibn Abi Zaʿida, from al-Shaʿbi regarding one who purchases a slave and manumits him, then discovers a defect in him? He said: He must return the excess of the difference between their values to the seller, and what was returned to him must be allocated for emancipating slaves, because he had already directed him toward freedom.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ فِيمَنْ ابْتَاعَ عَبْدًا فَأَعْتَقَهُ، ثُمَّ وَجَدَ بِهِ عَيْبًا؟ قَالَ: يَرُدُّ عَلَى صَاحِبِهِ فَضْلَ مَا بَيْنَهُمَا وَيُجْعَلُ مَا رُدَّ عَلَيْهِ فِي رِقَابٍ؛ لِأَنَّهُ قَدْ وَجَّهَهُ.

L25210 Ali said: The servant's intention is directed solely toward Allah—Exalted is He—not toward reclaiming what is owed to him, such as recovering part of his wealth from transactions in which he was disadvantaged. In such cases, he is not the servant [in this matter], and thus is not obligated to direct his intention [to reclaiming his rights] unless he chooses to do so, since neither the Quran nor the Sunnah imposes this obligation upon him.

قَالَ عَلِيٌّ: إنَّمَا وَجَّهَ لِلَّهِ - تَعَالَى - الْعَبْدَ لَا مَا وَجَبَ لَهُ مِنْ رَدِّ بَعْضِ مَالِهِ إلَيْهِ مِمَّا غُبِنَ فِيهِ فَهُوَ غَيْرُ الْعَبْدِ، فَلَا يَلْزَمُهُ أَنْ يُوَجِّهَهُ إلَّا أَنْ يَشَاءَ، إذْ لَمْ يُوجِبْ عَلَيْهِ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ.

L25211 It has been reported from Al-Sha'bi and Al-Zuhri as well that one may recover the value of the defect as per our view.

وَقَدْ رُوِيَ عَنْ الشَّعْبِيِّ، وَالزُّهْرِيِّ أَيْضًا أَنَّهُ - يَرْجِعُ بِقِيمَةِ الْعَيْبِ كَقَوْلِنَا.

L25212 Abu Hanifah said: If one sells him, sells a share of him, gifts a share of him, or manumits him in exchange for payment, then if a defect is found, there is no recourse for any claim. But if he manumits him without payment, declares him a *mudabbar* (to be freed after the owner's death), or impregnates the slave woman, then discovers a defect, he may reclaim compensation equivalent to the defect's reduction in value.

وَقَالَ أَبُو حَنِيفَةَ: إذَا بَاعَهُ أَوْ بَاعَ بَعْضَهُ، أَوْ وَهَبَ بَعْضَهُ أَوْ أَعْتَقَهُ، عَلَى مَالٍ، ثُمَّ وَجَدَ عَيْبًا فَلَا رُجُوعَ لَهُ بِشَيْءٍ، فَلَوْ أَعْتَقَهُ عَلَى غَيْرِ مَالٍ أَوْ دَبَّرَهُ، أَوْ أَوْلَدَ الْأَمَةَ ثُمَّ وَجَدَ عَيْبًا رَجَعَ بِقِيمَةِ الْعَيْبِ.

L25213 He said: If he sells it and then it is returned to him due to a defect, then if this return occurs after taking possession: if it was by a judicial decree, he must also return it to the immediate seller from whom he purchased it. If it occurred without a judicial decree, he may not return it to the first seller. If this return occurs before taking possession, he may return it to the immediate seller from whom he acquired it - whether the return was ordered by a judicial decree or not.

قَالَ: فَلَوْ بَاعَهُ ثُمَّ رُدَّ عَلَيْهِ بِعَيْبٍ، فَإِنْ كَانَ هَذَا الرَّدُّ بَعْدَ الْقَبْضِ، فَإِنْ كَانَ بِقَضَاءِ قَاضٍ رَدَّهُ هُوَ أَيْضًا عَلَى الَّذِي بَاعَهُ عَنْهُ، وَإِنْ كَانَ بِغَيْرِ قَضَاءِ قَاضٍ لَمْ يَكُنْ لَهُ أَنْ يَرُدَّهُ عَلَى الْأَوَّلِ، وَإِنْ كَانَ هَذَا الرَّدُّ قَبْلَ الْقَبْضِ فَلَهُ أَنْ يَرُدَّهُ أَيْضًا هُوَ عَلَى الْبَائِعِ لَهُ مِنْهُ - سَوَاءٌ رُدَّ عَلَيْهِ بِقَضَاءِ قَاضٍ أَوْ بِغَيْرِ قَضَاءِ قَاضٍ.

L25214 Mālik said: If the slave dies, or the master declares posthumous manumission (tadbīr) for him, enters into a manumission contract (mukātaba), emancipates him, gifts him without consideration, or donates him or the commodity as charity—and a defect is subsequently discovered—the owner has recourse only for the value of the defect.

وَقَالَ مَالِكٌ: إنْ مَاتَ الْعَبْدُ، أَوْ دَبَّرَهُ السَّيِّدُ، أَوْ كَاتَبَهُ، أَوْ أَعْتَقَهُ أَوْ وَهَبَهُ لِغَيْرِ ثَوَابٍ، أَوْ تَصَدَّقَ بِهِ أَوْ بِالْعَرْضِ، ثُمَّ أُطْلِعَ عَلَى عَيْبٍ، فَلَهُ الرُّجُوعُ بِقِيمَةِ الْعَيْبِ فَقَطْ.

L25215 If he sold it, mortgaged it, or leased it, then becomes aware of a defect, he has no recourse to retract nor to demand its return.

فَلَوْ بَاعَهُ أَوْ رَهَنَهُ أَوْ أَجَرَهُ، ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَا رُجُوعَ لَهُ وَلَا رَدَّ.

L25216 When the collateral is released, the lease is completed, or it is returned to him after the sale, he has the right to reclaim it.

فَإِذَا خَرَجَ عَنْ الرَّهْنِ، أَوْ تَمَّتْ الْإِجَارَةُ، أَوْ رَجَعَ إلَيْهِ بَعْدَ الْبَيْعِ فَلَهُ الرَّدُّ.

L25217 A gift given in exchange for a counter-value is treated like a sale. If a seller sells half of an item, the seller is instructed: "Return half the value of the defect, or take the remaining half for half the price."

وَالْهِبَةُ لِلثَّوَابِ كَالْبَيْعِ - فَإِنْ بَاعَ نِصْفَ السِّلْعَةِ قِيلَ لِلْبَائِعِ: رُدَّ نِصْفَ قِيمَةِ الْعَيْبِ، أَوْ خُذْ النِّصْفَ الْبَاقِيَ فِي نِصْفِ ثَمَنٍ.

L25218 Al-Shafi'i said: If he emancipates the slave or the slave dies, he may reclaim the value of the defect. But if he sells him or sells part of him, he cannot reclaim anything. Uthman al-Batti said: If he sells him or emancipates him,

he may reclaim the value of the defect - and this is our view. Uthman added: If he sells him for the price he paid, he cannot reclaim anything.

وَقَالَ الشَّافِعِيُّ: إِنْ أَعْتَقَهُ، أَوْ مَاتَ الْعَبْدُ، رَجَعَ بِقِيمَةِ الْعَيْبِ فَلَوْ بَاعَهُ أَوْ بَاعَ بَعْضَهُ لَمْ يَرْجِعْ بِشَيْءٍ - وَقَالَ عُثْمَانُ الْبَتِّيُّ: إِنْ بَاعَهُ، أَوْ أَعْتَقَهُ رَجَعَ بِقِيمَةِ الْعَيْبِ - وَهُوَ قَوْلُنَا قَالَ عُثْمَانُ: فَلَوْ بَاعَهُ بِمَا كَانَ اشْتَرَاهُ لَمْ يَرْجِعْ بِشَيْءٍ.

L25219–25220 Abu Muhammad said: We only take into account unfair exploitation at the time of concluding the sale contract, not before it nor after it. If the slave escapes and he then becomes aware of a defect, Malik ruled that he may rescind the contract and recover the full price.

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا نُرَاعِي الْغَبْنَ حِينَ عَقْدِ الْبَيْعِ لَا بَعْدَهُ وَلَا قَبْلَهُ، فَلَوْ أَبَقَ الْعَبْدُ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ قَالَ مَالِكٌ: لَهُ الرَّدُّ، وَيَأْخُذُ جَمِيعَ الثَّمَنِ.

L25221 Ali said: “We hold this view because it remains in his ownership afterward, and his transfer of ownership to another is valid. He is not required to deliver it physically, but only to relinquish control over it to the transferee.” Sufyan al-Thawri said: “He has no entitlement until the runaway [slave] is present to be returned, or dies - at which point he may claim compensation for the defect’s reduced value.”

قَالَ عَلِيٌّ: وَبِهَذَا نَأْخُذُ، لِأَنَّهُ فِي مِلْكِهِ بَعْدُ، وَتَمْلِيكُهُ غَيْرَهُ جَائِزٌ، وَلَيْسَ عَلَيْهِ تَسْلِيمُهُ إِنَّمَا عَلَيْهِ إِطْلَاقُ يَدِ مَنْ مَلَّكَهُ إِيَّاهُ عَلَيْهِ فَقَطْ - وَقَالَ سُفْيَانُ الثَّوْرِيُّ: لَا شَيْءَ لَهُ حَتَّى يَحْضُرَ الْآبِقُ فَيَرُدَّهُ، أَوْ يَمُوتَ فَيَرْجِعَ بِقِيمَةِ الْعَيْبِ.

L25222 Ali said: The opinions of Abu Hanifah and Malik lack any substantiating proof, and we know of no one who held their view before them—meaning their aforementioned classification. As for a commodity partitioned into distinct parts where a defect is found in some portions, the position of Shuraih, al-Sha‘bi, al-Shāfiʿī, and Abu Thawr corresponds to our opinion: one must either rescind the entire transaction or retain the entirety.

قَالَ عَلِيٌّ: قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، لَا بُرْهَانَ عَلَيْهِمَا، وَلَا نَعْلَمُ لَهُمَا قَائِلًا قَبْلَهُمَا - نَعْنِي تَقْسِيمَهُمَا الْمَذْكُورَ - وَأَمَّا السِّلْعَةُ الَّتِي تَتَبَعَّضُ فَيُوجَدُ بِبَعْضِهَا عَيْبٌ فَقَوْلُ شُرَيْحٍ، وَالشَّعْبِيِّ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، كَقَوْلِنَا إِمَّا أَنْ يَرُدَّ الْجَمِيعَ وَإِمَّا أَنْ يُمْسِكَ الْجَمِيعَ.

L25223 Malik said: If the defect affects the essence of the transaction or the part that yields profit, the buyer may rescind the entire sale or keep all of it. But if the defect does not relate to these aspects, he may only rescind the defective portion in proportion to its share of the price. This is a view not known from any predecessor before him, and no proof validates its correctness.

وَقَالَ مَالِكٌ: إِنْ كَانَ الْمَعِيبُ هُوَ وَجْهَ الصَّفْقَةِ، أَوْ الَّذِي فِيهِ الرِّبْحُ رَدَّ الْجَمِيعَ، أَوْ أَمْسَكَ الْجَمِيعَ، وَإِنْ كَانَ الْمَعِيبُ لَيْسَ هُوَ كَذَلِكَ كَانَ لَهُ رَدُّهُ بِحِصَّتِهِ مِنْ الثَّمَنِ فَقَطْ - وَهَذَا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا بُرْهَانَ عَلَى صِحَّتِهِ.

L25224 Abū Ḥanīfah said: If the item is a pair of shoes or two door panels, and a defect is found in one of them, the buyer has no right except to return both together or keep both together. If they are two slaves or two garments, he may return the defective one proportionate to its value and keep the other.

وَقَالَ أَبُو حَنِيفَةَ: إِنْ كَانَتْ السِّلْعَةُ خُفَّيْنِ، أَوْ مِصْرَاعَيْنِ، فَوَجَدَ بِأَحَدِهِمَا عَيْبًا لَمْ يَكُنْ لَهُ إِلَّا رَدُّهُمَا مَعًا، أَوْ إِمْسَاكُهُمَا مَعًا، فَإِنْ كَانَا عَبْدَيْنِ أَوْ ثَوْبَيْنِ كَانَ لَهُ رَدُّ الْمَعِيبِ بِحِصَّتِهِ مِنْ الثَّمَنِ وَإِمْسَاكُ الْآخَرِ.

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، لِأَنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى جَوَازِ بَيْعِ أَحَدِ الْخُفَّيْنِ وَأَحَدِ الْمِصْرَاعَيْنِ دُونَ الْآخَرِ، كَجَوَازِ بَيْعِ أَحَدِ الثَّوْبَيْنِ، وَأَحَدِ الْعَبْدَيْنِ، وَلَا فَرْقَ، فَالتَّفْرِيقُ بَيْنَ ذَلِكَ فِي الرَّدِّ بَاطِلٌ، وَهُوَ أَيْضًا قَوْلٌ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ.

L25225 Abū Muḥammad said: This is void, for they are in consensus with us regarding the permissibility of selling one of the two khuffs or one of the two door panels without the other, just as it is permissible to sell one of two garments or one of two slaves—since there is no distinction. Thus, differentiating between these cases in nullification is void, and this is also a view not known from any predecessor before him.

وَمِمَّا يُبْطِلُ رَدَّ بَعْضِ السِّلْعَةِ: أَنَّ بَاقِيَهَا الَّذِي يَحْتَبِسُ بِهِ يَرْجِعُ إِلَى الْقِيمَةِ، لِأَنَّهُ إِنَّمَا يُمْسِكُهُ بِحِصَّتِهِ مِنَ الثَّمَنِ فَصَارَ بَيْعًا بِقِيمَةٍ، وَالْبَيْعُ بِالْقِيمَةِ لَا يَجُوزُ.

L25226 Among the things that invalidate the return of part of the commodity is that the remaining portion which the seller withholds based on their share of the price reverts to valuation. This makes it a sale by valuation, and sales by valuation are impermissible.

وَأَمَّا مَنْ وَطِئَ، أَوْ اسْتَغَلَّ، أَوْ اسْتَعْمَلَ ثُمَّ وَجَدَ الْعَيْبَ فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ شَرِيكٍ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِيمَنِ اشْتَرَى جَارِيَةً فَوَطِئَهَا ثُمَّ وَجَدَ بِهَا عَيْبًا: إِنْ كَانَتْ ثَيِّبًا رَدَّهَا وَنِصْفَ عُشْرِ قِيمَتِهَا، وَإِنْ كَانَتْ بِكْرًا رَدَّهَا وَرَدَّ مَعَهَا عُشْرَ قِيمَتِهَا وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - الْمُغِيرَةُ - هُوَ ابْنُ مِقْسَمٍ - قَالَ مُطَرِّفٌ: عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ، وَقَالَ الْمُغِيرَةُ: عَنْ إِبْرَاهِيمَ، ثُمَّ اتَّفَقَ شُرَيْحٌ، وَإِبْرَاهِيمُ، قَالَا جَمِيعًا: إِذَا وَطِئَهَا، ثُمَّ رَأَى بِهَا عَيْبًا رَدَّهَا بِالْعَيْبِ وَرَدَّ مَعَهَا عُقْرَهَا إِنْ كَانَتْ بِكْرًا فَالْعُشْرُ، وَإِنْ كَانَتْ ثَيِّبًا نِصْفُ الْعُشْرِ.

L25227–25229 As for one who had intercourse with her, exploited her, or put her to work and then discovered a defect, we narrate via Ibn Abī Shaybah from Sharīk from Jābir from al-Shaʿbī that ʿUmar ibn al-Khaṭṭāb ruled regarding a man who purchased a slave girl, had intercourse with her, then found her defective: If she was previously married (thayyib), he may return her and claim one-twentieth of her value. If she was a virgin, he may return her and claim one-tenth of her value. From the path of Saʿīd ibn Manṣūr: We received [the report] through Hushaym; we received [it] through Muṭarrif (son of Ṭarīf) and al-Mughīrah (son of Miqsam). Muṭarrif said: From al-Shaʿbī, from Shurayḥ; while al-Mughīrah said: From Ibrāhīm. Then Shurayḥ and Ibrāhīm concurred. Both said: If he consummates the marriage with her, then observes a defect in her, he may return her due to the defect and must restore with her the bridal gift. If she was a virgin, then [it is] a tenth; if she was previously married, half of a tenth.

وَصَحَّ أَيْضًا عَنْ قَتَادَةَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْهُ.

L25230 And it has also been authentically established from Qatādah via Abd al-Razzāq, from Ma’mar, from him.

وَقَدْ رُوِّينَا أَيْضًا مِنْ طَرِيقِ وَكِيعٍ عَنْ شَرِيكٍ عَنْ أَبِي هِنْدٍ الْمَرْهَبِيِّ عَنِ الضَّحَّاكِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: إِذَا وَطِئَهَا فَهِيَ مِنْ مَالِهِ وَيَرُدُّ عَلَيْهِ الْبَائِعُ قِيمَةَ الْعَيْبِ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ

L25231 It has been narrated to us from the path of Wakīʿ from Sharīk from Abū Hind al-Marhabī from al-Ḍaḥḥāk from ʿUmar ibn al-Khaṭṭāb, who said: “If he has intercourse with her, she becomes part of his wealth, and the seller must reimburse him the value of the defect.” From the path of Saʿīd ibn Manṣūr: We narrate from Ismāʿīl ibn Ibrāhīm (known as Ibn ʿUlayyah) from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn: A man bought a slave girl,

had intercourse with her, then found a defect in her. He took the dispute to Shurayḥ, who said: "Would it please you if I say to you: 'You have committed adultery'?" Ibn Sīrīn reported: "I was later informed that in Kūfah, the ruling required him to return her and return with her the deflowering indemnity of one hundred units." Ibn Sīrīn added: "It is more preferable to me that he accept her despite the defect and have the amount equivalent to the defect's value deducted—this being the position of Sufyān al-Thawrī and al-Zuhrī."

مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ رَجُلًا اشْتَرَى جَارِيَةً فَوَطِئَهَا ثُمَّ وَجَدَ بِهَا عَيْبًا، فَخَاصَمَ إِلَى شُرَيْحٍ؛ فَقَالَ شُرَيْحٌ: أَيَسُرُّك أَنْ أَقُولَ لَك: إِنَّك زَنَيْت؟ قَالَ ابْنُ سِيرِينَ: ثُمَّ أُخْبِرْت أَنَّهُ قَضَى بِالْكُوفَةِ أَنْ يَرُدَّهَا وَيَرُدَّ مَعَهَا عُقْرَهَا مِائَةً، قَالَ ابْنُ سِيرِينَ: وَأَحَبُّ إِلَيَّ أَنْ يَتَجَوَّزَهَا وَيُوضَعَ عَنْهُ قَدْرُ الدَّاءِ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالزُّهْرِيِّ.

L25232 Two opinions have been narrated to us from Ali—one of them through Ibn Abi Shaybah from Hafs ibn Ghiyath, from Ja'far ibn Muhammad ibn Ali ibn al-Husayn, from his father, from his grandfather Ali ibn al-Husayn: that Ali ibn Abi Talib said, "He must not return her, but the value of the defect is to be reimbursed to him"—referring to the case of one who has intercourse with a female slave and subsequently finds a defect in her.

وَقَدْ رُوِّينَا عَنْ عَلِيٍّ قَوْلَيْنِ -: أَحَدُهُمَا - مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ جَدِّهِ عَلِيِّ بْنِ الْحُسَيْنِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا يَرُدُّهَا، لَكِنْ يُرَدُّ عَلَيْهِ قِيمَةُ الْعَيْبِ - يَعْنِي فِي الَّذِي يَطَأُ الْجَارِيَةَ ثُمَّ يَجِدُ بِهَا عَيْبًا.

L25233 And the other -

وَالْآخَرُ -

L25234 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Jubayr, from al-Ḍaḥḥāk: ʿAlī ibn Abī Ṭālib said: If he consummates the marriage, the dowry becomes obligatory upon him. If he detects a defect before consummating with her, he may choose to retain her or return her. This opinion is confirmed from al-Ḥasan. From ʿUmar ibn ʿAbd al-ʿAzīz, it is established that he cannot return her nor reclaim anything.

مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا جُبَيْرٌ عَنْ الضَّحَّاكِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: إذَا وَطِئَهَا وَجَبَتْ عَلَيْهِ، وَإِنْ رَأَى الْعَيْبَ قَبْلَ أَنْ يَطَأَهَا، فَإِنْ شَاءَ أَخَذَ وَإِنْ شَاءَ رَدَّ - وَصَحَّ هَذَا الْقَوْلُ عَنْ الْحَسَنِ، وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ لَا يَرُدُّهَا وَلَا يَرْجِعُ بِشَيْءٍ.

L25235 It has been narrated to us through the chain of Ibn Abī Shaybah—ʿAbd al-Aʿlá from Maʿmar from al-Zuhrī from Saʿīd ibn al-Musayyib, who said: He must return ten dinars with her—that is, if he has had intercourse with her and subsequently discovers a defect.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: يَرُدُّ مَعَهَا عَشَرَةَ دَنَانِيرَ - يَعْنِي إذَا وَطِئَهَا ثُمَّ اطَّلَعَ عَلَى عَيْبٍ.

L25236–25238 From the transmission of Sa'id ibn Mansur: Narrated by Jarir from al-Mughirah, from al-Harith al-'Ukli regarding a man who bought a slave girl, had sexual intercourse with her, then she was lawfully reclaimed. Al-Harith al-'Ukli said: The rightful claimant takes his slave girl, and this buyer is not refunded. The buyer is obligated to provide *ʿuqr* (compensation for harm). As for dwellings, lands, and similar properties, their return follows the same principle if a defect is found in them, akin to a case where a rightful claim

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ الْحَارِثِ الْعُكْلِيِّ فِي رَجُلٍ اشْتَرَى جَارِيَةً فَوَقَعَ عَلَيْهَا ثُمَّ اُسْتُحِقَّتْ قَالَ: يَأْخُذُ الْمُسْتَحِقُّ جَارِيَتَهُ وَلَا يَرُدُّ هَذَا الْمُشْتَرِي عَلَيْهِ عُقْرًا، وَالدُّورُ، وَالْأَرْضُونَ، وَأَشْبَاهُ ذَلِكَ عَلَى مِثْلِ هَذَا يَكُونُ رَدُّهُ إذَا وَجَدَ بِهَا عَيْبًا، كَالَّذِي اُسْتُحِقَّ فَاسْتُنْقِذَ مِنْ يَدَيْهِ.

is established and the property is subsequently reclaimed from the buyer's possession.

L25239 Abu Muhammad said: This is our view. As for the later scholars: Abu Hanifah stated: If he consummates the marriage with her, then discovers a defect, he is only entitled to the equivalent value of the defect itself, unless the seller agrees to accept her - then he may reject that [marriage] and reclaim the price.

قَالَ أَبُو مُحَمَّدٍ: هَذَا هُوَ قَوْلُنَا - وَأَمَّا الْمُتَأَخِّرُونَ: فَإِنَّ أَبَا حَنِيفَةَ قَالَ: إذَا وَطِئَهَا ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَيْسَ لَهُ إلَّا قَدْرُ قِيمَةِ الْعَيْبِ فَقَطْ، إلَّا أَنْ يَشَاءَ الْبَائِعُ قَبُولَهَا فَلَهُ رَدُّ ذَلِكَ، وَيَرُدُّ الثَّمَنَ.

L25240 Ibn Abi Laylā said: He must return it along with three-fortieths of its value - this being its uterine compensation. The rationale in his perspective is to calculate a tenth of its value and half of a tenth, sum them, then take half of that total - this being the amount he is obligated to return.

وَقَالَ ابْنُ أَبِي لَيْلَى: يَرُدُّهَا وَيَرُدُّ مَعَهَا ثَلَاثَةَ أَرْبَاعِ عُشْرِ قِيمَتِهَا - وَهَذَا هُوَ عُقْرُهَا، وَوَجْهُهُ عِنْدَهُ أَنْ يَأْخُذَ عُشْرَ قِيمَتِهَا وَنِصْفَ عُشْرِ قِيمَتِهَا فَيَجْمَعَهَا ثُمَّ يَأْخُذَ نِصْفَ مَا اجْتَمَعَ فَهُوَ الَّذِي يُقْضَى عَلَيْهِ بِرَدِّهِ.

L25241 Ibn Shubruma, Al-Ḥasan ibn Hayy, and Ubayd Allāh ibn Al-Ḥasan said: He must restore her [to her marital rights] and provide the standard mahr (mahr al-mithl) appropriate to her social standing, even if it is exceedingly high.

وَقَالَ ابْنُ شُبْرُمَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: يَرُدُّهَا وَيَرُدُّ مَعَهَا مَهْرَ مِثْلِهَا بَالِغًا مَا بَلَغَ.

L25242 Uthman al-Batti said: If marital intercourse does not reduce it, he must return it without anything else. But if it does reduce it, he must return it along with the amount by which it was reduced.

وَقَالَ عُثْمَانُ الْبَتِّيُّ: إنْ لَمْ يُنْقِصْهَا الْوَطْءُ فَإِنَّهُ يَرُدُّهَا وَلَا يَرُدُّ مَعَهَا شَيْئًا، فَإِنْ نَقَصَهَا رَدَّهَا وَرَدَّ مَعَهَا مَا نَقَصَهَا.

L25243 Malik, al-Layth ibn Saʿd, and al-Shāfiʿī (in one of his two juristic positions) maintained: If she was a virgin, he must return her and restore the amount by which her dowry was reduced due to consummation. If she was a non-virgin, he must return her but is not required to restore anything with her.

وَقَالَ مَالِكٌ، وَاللَّيْثُ بْنُ سَعْدٍ، وَالشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ: إنْ كَانَتْ بِكْرًا رَدَّهَا وَرَدَّ مَعَهَا مَا نَقَصَهَا وَطْؤُهُ، وَإِنْ كَانَتْ ثَيِّبًا رَدَّهَا وَلَمْ يَرُدَّ مَعَهَا شَيْئًا.

L25244 Al-Shāfiʿī stated in the more authoritative of his two opinions: If he deflowered her, he cannot repudiate her, but may only reclaim the value of the defect from the dowry. If she was a previously married woman, he may repudiate her without returning anything [of the dowry].

وَقَالَ الشَّافِعِيُّ فِي أَشْهَرِ قَوْلَيْهِ: إنْ كَانَ افْتَضَّهَا فَلَيْسَ لَهُ رَدُّهَا، لَكِنْ يَرْجِعُ بِقِيمَةِ الْعَيْبِ فَقَطْ، وَإِنْ كَانَتْ ثَيِّبًا رَدَّهَا وَلَمْ يَرُدَّ مَعَهَا شَيْئًا.

L25245 Ali said: Malik's opinion is not known to have been reported from anyone before him, and there is no basis for imposing compensation for injury or a financial penalty upon the buyer; because he had intercourse with his

قَالَ عَلِيٌّ: قَوْلُ مَالِكٍ لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا مَعْنَى لِإِيجَابِ - عُقْرٍ وَلَا غَرَامَةٍ عَلَى الْمُشْتَرِي؛ لِأَنَّهُ وَطِئَ أَمَتَهُ الَّتِي لَوْ حَمَلَتْ لَحِقَهُ وَلَدُهَا، وَالَّتِي لَا يُلَامُ عَلَى وَطْئِهَا.

slave woman—whose child, if she were to become pregnant, would be legally affiliated with him—and whom he is not blamed for having intercourse with.

وَلَوْ أَنَّ الْبَائِعَ وَطِئَهَا وَهِيَ فِي مِلْكِ الْمُشْتَرِي لَكَانَ زَانِيًا يُرْجَمُ إِنْ كَانَ مُحْصَنًا، وَيُجْلَدُ الْحَدَّ إِنْ كَانَ غَيْرَ مُحْصَنٍ، فَأَيُّ حَقٍّ لَهُ فِي بُضْعِهَا حَتَّى يُعْطِيَ لَهُ عُقْرًا أَوْ قِيمَةً، وَقَدْ يُوجَدُ فِي الْإِمَاءِ مَنْ لَا يَحُطُّ الِافْتِضَاضُ مِنْ قِيمَتِهَا شَيْئًا، كَخَدَمِ الْخِدْمَةِ وَيُوجَدُ مَنْ يَحُطُّهَا الْوَطْءُ وَإِنْ كَانَتْ ثَيِّبًا كَالرَّقِيقِ الْعَالِي يَطَؤُهَا النَّذْلُ الَّذِي يُعَيِّرُ بِهِ سَيِّدُهَا وَوَلَدُهَا وَهِيَ، أَيْضًا.

L25246 If the seller were to have intercourse with her while she is under the ownership of the buyer, he would be deemed an adulterer subject to stoning if he is a legally protected person, and flogged with the prescribed penalty if he is not legally protected. What right then does he hold over intercourse with her that he should be granted compensation for unlawful intercourse or financial compensation? Among enslaved women, some suffer no loss in value from defloration—such as those engaged in menial labor—while others incur reduced value from intercourse even if previously married, like highly valued enslaved women when a lowly man—whose act brings disgrace upon her master, child, and herself—has intercourse with her.

فَهَذِهِ كُلُّهَا أَقْوَالٌ لَا بُرْهَانَ عَلَى صِحَّتِهَا، وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْمُعَظِّمِينَ لِخِلَافِ الصَّاحِبِ الْقَائِلِينَ: إِنَّ الْمُرْسَلَ كَالْمُسْنَدِ، الْقَائِلِينَ فِيمَا وَافَقَهُمْ: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ أَنْ يَقُولُوا هَهُنَا بِقَوْلِ عُمَرَ بْنِ الْخَطَّابِ، كَمَا قَالُوا فِي تَقْوِيمِ الْغُرَّةِ بِخَمْسِينَ دِينَارًا، وَتَقْوِيمِ الدِّيَةِ، وَغَيْرِ ذَلِكَ، وَلَكِنْ لَا يُبَالُونَ بِالتَّنَاقُضِ.

L25247–25249 All of these are statements without proof of their soundness, and indeed, it was incumbent upon the Maliki jurists—those who venerate [X]—to... Due to the position of the Companion among those who say: "The mursal is equivalent to the musnad"—those who argue in matters aligning with their view, such as this ruling not being based on personal opinion—to say here by the ruling of Umar ibn al-Khattab, just as they stated in valuing the ghurrah at fifty dinars, the valuation of blood money, and other cases. Yet they do not care about the contradiction.

وَأَمَّا مَنْ أَحْدَثَ فِيهَا حَدَثًا فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ أَيُّوبَ عَنِ ابْنِ سِيرِينَ عَنْ عُثْمَانَ بْنِ عَفَّانَ: أَنَّهُ قَضَى فِي الثَّوْبِ يَشْتَرِيهِ الرَّجُلُ وَبِهِ الْعُوَارُ: أَنَّهُ يَرُدُّهُ إِذَا كَانَ قَدْ لَبِسَهُ.

L25250 As for one who introduces an improper act in a garment, it has been narrated to us through the chain of Ibn Abī Shaybah—ʿAbd al-Wahhāb al-Thaqafī → Ayyūb → Ibn Sīrīn → ʿUthmān ibn ʿAffān—that he judged regarding a garment purchased by a man with a defect: the buyer may return it even after wearing it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: أَنَّ ابْنَ عُمَرَ اشْتَرَى عِمَامَةً فَقَبِلَهَا وَرَضِيَهَا وَكَوَّرَهَا عَلَى رَأْسِهِ، فَرَأَى خَيْطًا أَحْمَرَ فَرَدَّهَا. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا غُنْدَرٌ نا شُعْبَةُ عَنْ جَبَلَةَ بْنِ سُحَيْمٍ قَالَ: رَأَيْت

L25251 From the transmission of Saʿīd ibn Manṣūr: Sufyān ibn ʿUyaynah reported to us from Ibn Abī Najīḥ via Mujāhid: Ibn ʿUmar purchased a turban, accepted it, approved it, and coiled it around his head. Then he noticed a red stripe in it and returned it. From the transmission of Ibn Abī Shaybah: Muḥammad ibn Jaʿfar reported to us via Ghundar: Shuʿbah reported to us from Jabalah ibn Suḥaym, who said: I saw Ibn ʿUmar buy a shirt, wear it, then notice

yellow discoloration from his beard had stained it. He wished to return it but refrained because of the discoloration.

ابْنَ عُمَرَ اشْتَرَى قَمِيصًا فَلَبِسَهُ فَأَصَابَتْهُ صُفْرَةٌ مِنْ لِحْيَتِهِ، فَأَرَادَ أَنْ يَرُدَّهُ فَلَمْ يَرُدَّهُ مِنْ أَجْلِ الصُّفْرَةِ.

L25252 And through the chain of Ibn Shaybah: Hafs ibn Ghiyath reported to us from al-Hasan ibn 'Ubaydillah, from Ibrahim, from Shurayh that a man who bought a Herati item from another man came to dispute before him. He had cut it, then found a defect in it. Shurayh said to him: "What was newly done to it is more severe than what was originally in it."

وَمِنْ طَرِيقِ ابْنِ شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنِ الْحَسَنِ بْنِ عُبَيْدِ اللَّهِ عَنْ إِبْرَاهِيمَ عَنْ شُرَيْحٍ أَنَّهُ اخْتَصَمَ إِلَيْهِ رَجُلٌ اشْتَرَى مِنْ آخَرَ هَرَوِيَّةً فَقَطَعَهَا، ثُمَّ وَجَدَ بِهَا عَيْبًا، فَقَالَ لَهُ شُرَيْحٌ: الَّذِي أُحْدِثَ بِهَا أَشَدُّ مِنَ الَّذِي كَانَ بِهَا.

L25253 Ghundar said: From Shu'bah, who said: I asked al-Hakam about one who buys a garment, cuts it, and then finds a defect in it. He said: He must return it. Shu'bah said: And I asked Hammad ibn Abi Sulayman about this. He said: He must return it and pay compensation for the cutting.

قَالَ غُنْدَرٌ: نا شُعْبَةُ قَالَ: سَأَلْتُ الْحَكَمَ عَمَّنِ اشْتَرَى ثَوْبًا فَقَطَعَهُ فَوَجَدَ بِهِ عُوَارًا؟ قَالَ: يَرُدُّهُ، قَالَ شُعْبَةُ: وَسَأَلْتُ حَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ هَذَا؟ فَقَالَ: يَرُدُّهُ وَيَرُدُّ مَعَهُ أَرْشَ التَّقْطِيعِ.

L25254 Shu'bah said: Al-Haytham reported to me on the authority of Ḥammād that he said: "The compensation for inherent defects is waived for him."

قَالَ شُعْبَةُ: وَأَخْبَرَنِي الْهَيْثَمُ عَنْ حَمَّادٍ: أَنَّهُ قَالَ: يُوضَعُ عَنْهُ أَرْشُ الْعُوَارِ.

L25255 From the path of Ibn Abī Shaybah, narrated to us Ismā'īl ibn 'Ulayyah from Ayyūb al-Sikhtiyānī from Ibn Sīrīn, who said: A man purchased an animal and traveled on it. When he returned, he found a defect in it and took the dispute to Shuraih. He said to him: You permitted the buyer concerning its back.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ سِيرِينَ قَالَ: اشْتَرَى رَجُلٌ دَابَّةً فَسَافَرَ عَلَيْهَا فَلَمَّا رَجَعَ وَجَدَ بِهَا عَيْبًا فَخَاصَمَهُ إِلَى شُرَيْحٍ؟ فَقَالَ لَهُ: أَنْتَ أَذِنْتَ لَهُ فِي ظَهْرِهَا.

L25256 Abu Muhammad said: This opinion of al-Hakam is the opinion of Uthman al-Batti, one of the opinions of al-Shafi'i, and an opinion transmitted from Shurayh as well. It is our opinion.

قَالَ أَبُو مُحَمَّدٍ: وَقَوْلُ الْحَكَمِ هَذَا هُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَهُوَ أَحَدُ أَقْوَالِ الشَّافِعِيِّ، وَهُوَ قَوْلٌ قَدْ رُوِيَ عَنْ شُرَيْحٍ أَيْضًا، وَهُوَ قَوْلُنَا.

L25257–25259 As for the subsequent scholars, Abū Ḥanīfah said: Whoever cuts a garment he has purchased or introduces a change in what he has purchased. If a defect existed in the item when he acquired it and later discovers it, he has no right to return the item; however, he may recover the value of the defect—this being one of the two opinions of Ḥammād.

وَأَمَّا الْمُتَأَخِّرُونَ: فَإِنَّ أَبَا حَنِيفَةَ قَالَ: مَنْ قَطَعَ ثَوْبًا اشْتَرَاهُ أَوْ حَدَثَ بِمَا اشْتَرَى عَيْبٌ عِنْدَهُ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَا رَدَّ لَهُ، لَكِنْ يَرْجِعُ بِقِيمَةِ الْعَيْبِ - وَهُوَ أَحَدُ قَوْلَيْ حَمَّادٍ.

L25260 Some of his companions, among them are Al-Ṭaḥāwī and Muḥammad ibn

Shujāʿ, held the view that they do not repudiate it, nor do they retract anything.

وَذَهَبَ بَعْضُ أَصْحَابِهِ مِنْهُمْ الطَّحَاوِيُّ، وَمُحَمَّدُ بْنُ شُجَاعٍ، إلَى أَنَّهُ لَا يَرُدُّهُ، وَلَا يَرْجِعُ بِشَيْءٍ.

L25261 And for Al-Shafiʿi there are two opinions - one of them being in accordance with the opinion of Abu Hanifah, which is also the opinion of Sufyan al-Thawri and Ibn Shubruma.

وَلِلشَّافِعِيِّ قَوْلَانِ -: أَحَدُهُمَا: كَقَوْلِ أَبِي حَنِيفَةَ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَابْنِ شُبْرُمَةَ.

L25262 The second is that he must return it and must return along with it the value of the defect that arose during his possession, which is the opinion of Abū Thawr and one of the two positions held by Ḥammād.

وَالثَّانِي: أَنَّهُ يَرُدُّهُ وَيَرُدُّ مَعَهُ قِيمَةَ مَا حَدَثَ عِنْدَهُ مِنْ الْعَيْبِ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَحَدُ قَوْلَيْ حَمَّادٍ.

L25263 Ahmad and Ishaq stated: The buyer may choose either to return the item and the value of what occurred during his possession, or to retain it and reclaim the value of the defect.

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: هُوَ بِالْخِيَارِ بَيْنَ أَنْ يَرُدَّهُ، وَيَرُدَّ مَعَهُ قَدْرَ مَا حَدَثَ عِنْدَهُ، وَبَيْنَ أَنْ يُمْسِكَهُ وَيَرْجِعَ بِقِيمَةِ الْعَيْبِ.

L25264 Mālik said: If the invalidating defect that arose during his custody is one that voids the transaction, he must return it and refund the market value of what developed under his possession. If the defect is minor, he returns it without refunding anything—and this is an opinion we know no one to have stated before him, meaning this categorization. The position of Abū Ḥanīfah and Mālik here contradicts the rulings transmitted from ʿUthmān and Ibn ʿUmar—may Allah be pleased with them—and we know of no other statement from the Companions on this matter besides theirs.

وَقَالَ مَالِكٌ: إنْ كَانَ الْعَيْبُ الَّذِي حَدَثَ عِنْدَهُ مُفْسِدًا فَإِنَّهُ يَرُدُّهُ وَيَرُدُّ قِيمَةَ مَا حَدَثَ عِنْدَهُ، وَإِنْ كَانَ الْعَيْبُ خَفِيفًا رَدَّهُ وَلَمْ يَرُدَّ مَعَهُ شَيْئًا - وَهَذَا قَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ - يَعْنِي هَذَا التَّقْسِيمَ - وَقَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ هَهُنَا خِلَافُ مَا رُوِيَ عَنْ عُثْمَانَ، وَابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -، وَلَا نَعْلَمُ فِي هَذَا عَنْ الصَّحَابَةِ قَوْلًا غَيْرَهُ.

L25265 Uthman—may Allah be pleased with him—permitted returning garments due to defects after wearing, since wearing causes garments to deteriorate. Ibn Umar's refusal to allow cancellation of sale due to yellow discoloration does not indicate he generally prohibited returns. He may have voluntarily chosen to disallow this specific return, considering the yellowing isn't a true defect as it disappears quickly through wiping or by washing the shirt.

وَقَدْ أَبَاحَ عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - الرَّدَّ بِالْعَيْبِ بَعْدَ اللِّبَاسِ، وَاللِّبَاسُ يُخْلِقُ الثَّوْبَ، وَلَيْسَ امْتِنَاعُ ابْنِ عُمَرَ مِنْ الرَّدِّ مِنْ أَجْلِ الصُّفْرَةِ دَلِيلًا عَلَى أَنَّهُ لَمْ يُجِزْ الرَّدَّ، وَقَدْ يَتْرُكُ ذَلِكَ اخْتِيَارًا مَعَ أَنَّ الصُّفْرَةَ لَيْسَتْ عَيْبًا؛ لِأَنَّهَا تَزُولُ سَرِيعًا بِالْمَسْحِ، وَبِالْغَسْلِ لِلْقَمِيصِ.

L25266 As for defects inherent in an item's interior, Mālik said: The buyer has no recourse for such defects, as these are upon the buyer. This applies to items like eggs, lumber, and similar goods.

وَأَمَّا مَا عَيْبُهُ فِي جَوْفِهِ فَإِنَّ مَالِكًا قَالَ: لَا رُجُوعَ لَهُ فِيهِ وَهُوَ مِنْ الْمُشْتَرِي، كَالْبَيْضِ، وَالْخَشَبِ وَغَيْرِ ذَلِكَ.

L25267 Abu Hanifah and al-Shafiʿi obligated the return to the legal judgment inher-

ent in that matter.

وَأَوْجَبَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: الرُّجُوعَ بِحُكْمِ مَا فِي ذَلِكَ.

L25268–25270 Abu Muhammad said: We know of no predecessor for Malik, nor any evidence supporting this statement of his. Among all astonishing and contrary rulings, none is more baffling than his opinion regarding one who sells eggs later found spoiled, or wood discovered to be internally termite-ridden: that the entire price remains with the seller, and the buyer has no legal recourse against him - though the seller transacted a defective item and unjustly devoured his brother's wealth. He further states: If someone sells a slave who dies, is killed on the third day, escapes within that period, or becomes one-eyed... If a defect exists in it, then it is the liability of the seller, even if it becomes insane, contracts glanders, or develops leprosy before the completion of one year after its sale to him, then it remains the seller's liability.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لِمَالِكٍ سَلَفًا، وَلَا حُجَّةً فِي هَذِهِ الْقَوْلَةِ، وَمَا فِي الْعَجَبِ وَالْعَكْسِ أَعْجَبُ مِنْ قَوْلِهِ فِيمَنْ بَاعَ بَيْضًا فَوَجَدَهُ فَاسِدًا أَوْ خَشَبًا فَوَجَدَهُ مُسَوَّسَ الدَّاخِلِ: أَنَّ الثَّمَنَ كُلَّهُ لِلْبَائِعِ، وَلَا شَيْءَ لِلْمُشْتَرِي عَلَيْهِ - وَهُوَ قَدْ بَاعَهُ شَيْئًا فَاسِدًا، وَأَكَلَ مَالَ أَخِيهِ بِالْبَاطِلِ ثُمَّ يَقُولُ: مَنْ بَاعَ عَبْدًا فَمَاتَ، أَوْ قُتِلَ فِي الْيَوْمِ الثَّالِثِ، أَوْ هَرَبَ فِيهِ، أَوْ اعْوَرَّتْ عَيْنُهُ فِيهِ: فَهُوَ مِنْ مُصِيبَةِ الْبَائِعِ - وَإِنْ جُنَّ، أَوْ تَجَذَّمَ، أَوْ بَرِصَ، إلَى قَبْلِ تَمَامِ سَنَةٍ مِنْ بَعْدِ بَيْعِهِ لَهُ، فَإِنَّهُ مِنْ مُصِيبَةِ الْبَائِعِ.

L25271 Whoever purchases dates while still on the palm trees, and they are struck by wind or consumed by locusts, this becomes the seller's misfortune. He must invalidate the wrongfully taken price and incur a penalty equivalent to the rightfully taken price. Defects arising while the goods are in the seller's possession are considered the buyer's misfortune, while defects arising while in the buyer's possession are considered the seller's misfortune. Allah is utterly free from such [unjust rulings].

وَمَنْ ابْتَاعَ تَمْرًا فِي رُءُوسِ الشَّجَرِ فَأَصَابَتْهُ رِيحٌ، أَوْ أَكَلَتْهُ جَرَادٌ فَمِنْ مُصِيبَةِ الْبَائِعِ، فَهُوَ يُهْنِيهِ الثَّمَنَ الَّذِي أَخَذَهُ بِالْبَاطِلِ، وَيُغَرِّمُهُ الثَّمَنَ الَّذِي أَخَذَهُ بِالْحَقِّ - وَيَجْعَلُ مِنْ مُصِيبَةِ الْمُشْتَرِي مَا حَدَثَ عِنْدَ الْبَائِعِ مِنْ الْعُيُوبِ، وَيَجْعَلُ مِنْ مُصِيبَةِ الْبَائِعِ مَا حَدَثَ عِنْدَ الْمُشْتَرِي مِنْ الْعُيُوبِ، حَاشَا لِلَّهِ مِنْ هَذَا.

L25272 Hummam ibn Ahmad reported to us: Abdullah ibn Muhammad ibn Ali al-Baji informed us: Muhammad ibn Abd al-Malik ibn Ayman reported to us: Al-Husayn ibn Zakariyya narrated to us: Abu Thawr informed us: Mu'alla narrated to us: Hushaym reported from al-Mughirah, from al-Harith—who is al-Ukli—from Shurayh: A client of Amr ibn Huraith bought for him four or five ostrich eggs for a dirham. When he placed them before Amr ibn Huraith, Amr broke one, and it was rotten. Then a second, then a third, until they kept turning out rotten one after another. He sought the Bedouin seller and disputed with him before Shurayh. Shurayh said: "As for what he broke, he is liable to compensate for it at the price he received. As for what remains, you, O Bedouin, have the choice. If you wish, the buyers may break them. Whatever they find rotten, they return them; whatever they find good, it is theirs at the price for which you sold them."

حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنُ أَيْمَنَ نا الْحُسَيْنُ بْنُ زَكَرِيَّا نا أَبُو ثَوْرٍ نا مُعَلَّى نا هُشَيْمٌ عَنْ الْمُغِيرَةِ عَنْ الْحَارِثِ هُوَ الْعُكْلِيُّ عَنْ شُرَيْحٍ: أَنَّ مَوْلًى لِعَمْرِو بْنِ حُرَيْثٍ اشْتَرَى لِعَمْرِو بْنِ حُرَيْثٍ بَيْضًا مِنْ بَيْضِ النَّعَامِ أَرْبَعًا أَوْ خَمْسًا بِدِرْهَمٍ، فَلَمَّا وَضَعَهُنَّ بَيْنَ يَدَيْ عَمْرِو بْنِ حُرَيْثٍ كَسَرَ وَاحِدَةً، فَإِذَا هِيَ فَاسِدَةٌ، ثُمَّ ثَانِيَةً ثُمَّ ثَالِثَةً حَتَّى تَتَابَعَ مِنْهُنَّ فَاسِدَاتٌ، فَطَلَبَ الْأَعْرَابِيَّ فَخَاصَمَهُ إلَى شُرَيْحٍ، فَقَالَ شُرَيْحٌ: أَمَّا مَا كَسَرَ فَهُوَ ضَامِنٌ لَهُ بِالثَّمَنِ الَّذِي أَخَذَهُ بِهِ، وَأَمَّا مَا بَقِيَ

فَأَنْتَ يَا أَعْرَابِيُّ بِالْخِيَارِ، إِنْ شِئْت كَسَرُوا فَمَا وَجَدُوا فَاسِدًا رَدُّوهُ وَمَا وَجَدُوا طَيِّبًا فَهُوَ لَهُمْ بِالسِّعْرِ الَّذِي بِعْتهمْ بِهِ.

L25273 Ali said: As for the ruling of Shurayh—so the Malikis and the Hanafis do not adopt it, nor do we. Therefore, there is no basis for the Malikis in it.

قَالَ عَلِيٌّ: أَمَّا حُكْمُ شُرَيْحٍ - فَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ لَا يَأْخُذُونَ بِهِ وَلَا نَحْنُ، فَلَا مُتَعَلَّقَ لِلْمَالِكِيِّينَ بِهِ.

L25274 As for ʿAmr ibn Ḥurayth, he upheld the rejection of that matter—which is our position—and he is a Companion for whom no opposing stance from the other Companions (may Allah be pleased with them all) is known. They would greatly respect such a rejection when it aligned with their views.

وَأَمَّا عَمْرُو بْنُ حُرَيْثٍ فَقَدْ رَأَى الرَّدَّ فِي ذَلِكَ - وَهُوَ قَوْلُنَا - وَهُوَ صَاحِبٌ لَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ آرَاءَهُمْ.

L25275 As for use and consummation after becoming aware of the defect, it is authentically reported from Shurayh that he said: If one consummates after seeing the defect or offers her for sale, then it becomes obligatory upon him—and this is his ruling regarding all goods.

وَأَمَّا الِاسْتِعْمَالُ، وَالْوَطْءُ بَعْدَ الِاطِّلَاعِ عَلَى الْعَيْبِ، فَإِنَّهُ صَحَّ عَنْ شُرَيْحٍ أَنَّهُ قَالَ إذَا وَطِئَ بَعْدَ مَا رَأَى الْمَعِيبَ أَوْ عَرَضَهَا عَلَى الْبَيْعِ، فَقَدْ وَجَبَ عَلَيْهِ - وَهَذَا قَوْلُهُ فِي جَمِيعِ السِّلَعِ.

L25276 This is also the position of al-Ḥasan al-Baṣrī, Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad, and Isḥāq, except that Abū Ḥanīfah stated: Residing in the dwelling after discovering the defect, kissing the bondmaid out of desire, or having intercourse with her—constitutes acceptance of the defect.

وَهُوَ أَيْضًا قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، إلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: سُكْنَى الدَّارِ بَعْدَ الْمَعْرِفَةِ بِالْعَيْبِ، وَتَقْبِيلُ الْأَمَةِ لِشَهْوَةٍ، وَوَطْؤُهَا -: رِضًا بِالْعَيْبِ.

L25277–25278 He said: As for using the female slave, riding the animal, or wearing the shirt—to test all of that after becoming aware of the defect—none of these actions constitutes consent.

قَالَ وَأَمَّا اسْتِخْدَامُ الْأَمَةِ، أَوْ رُكُوبُ الدَّابَّةِ، أَوْ لِبَاسُ الْقَمِيصِ، لِيَخْتَبِرَ كُلَّ ذَلِكَ بَعْدَ اطِّلَاعِهِ عَلَى الْعَيْبِ، فَلَيْسَ شَيْءٌ مِنْ ذَلِكَ رِضًا.

L25279 Ubaydullah ibn al-Hasan said: Utilization is not consent.

وَقَالَ عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: لَيْسَ الِاسْتِخْدَامُ رِضًا.

L25280 Abū Muḥammad said: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, from ʿAbd Allāh ibn Muḥammad ibn ʿAlī al-Bājī, who said: Aḥmad ibn Khālid narrated to us, who said: al-Ḥasan ibn Aḥmad al-Ṣanʿānī narrated to us, from Muḥammad ibn ʿUbayd ibn Ḥassāb, from Ḥammād ibn Zayd, from

قَالَ أَبُو مُحَمَّدٍ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ قَالَ: نا أَحْمَدُ بْنُ خَالِدٍ، قَالَ: نا الْحَسَنُ بْنُ أَحْمَدَ الصَّنْعَانِيُّ نا مُحَمَّدُ بْنُ عُبَيْدِ بْنِ حَسَّابٍ نا حَمَّادُ

Ayyūb—that is, al-Sikhtiyānī—and Hishām ibn Ḥassān, both of them from Muḥammad ibn Sīrīn, who said: ʿAbd al-Raḥmān ibn ʿAwf purchased a slave girl. He was told: "She has a husband." He sent for her husband and said to him: "Divorce her." He refused. He offered him one hundred, but he refused. He offered him two hundred, but he refused. He offered him five hundred, but he refused. He sent word to his master: "He refuses to divorce her; take back your slave girl."

بْنُ زَيْدٍ عَنْ أَيُّوبَ - هُوَ السِّخْتِيَانِيُّ - وَهِشَامِ بْنِ حَسَّانَ كِلَاهُمَا عَنْ مُحَمَّدِ بْنِ سِيرِينَ، قَالَ: ابْتَاعَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ جَارِيَةً، فَقِيلَ لَهُ: إِنَّ لَهَا زَوْجًا فَأَرْسَلَ إِلَى زَوْجِهَا فَقَالَ لَهُ: طَلِّقْهَا، فَأَبَى، فَجَعَلَ لَهُ مِائَةً فَأَبَى، فَجَعَلَ لَهُ مِائَتَيْنِ فَأَبَى، فَجَعَلَ لَهُ خَمْسَمِائَةٍ فَأَبَى، فَأَرْسَلَ إِلَى مَوْلَاهُ: أَنَّهُ قَدْ أَبَى أَنْ يُطَلِّقَ فَاقْبَلُوا جَارِيَتَكُمْ.

L25281 This is ʿAbd al-Raḥmān ibn ʿAwf, who became aware of the flaw that she had a husband. He did not return her until he sent to the husband and bargained with him to divorce her, assigning him wealth for that. Then he increased him, then increased him again. When he despaired, he then returned her - with no opposition known from any of the Companions, and they held such a matter in great esteem.

فَهَذَا عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ قَدْ اطَّلَعَ عَلَى عَيْبٍ أَنَّ لَهَا زَوْجًا فَلَمْ يَرُدَّ حَتَّى أَرْسَلَ إِلَى الزَّوْجِ وَرَاوَضَهُ عَلَى طَلَاقِهَا، وَجَعَلَ لَهُ مَالًا عَلَى ذَلِكَ، ثُمَّ زَادَهُ، ثُمَّ زَادَهُ، فَلَمَّا يَئِسَ رَدَّ حِينَئِذٍ - وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا.

L25282 And via the chain of Abd al-Razzaq from Sufyan al-Thawri from Abdullah ibn Dinar, who said: I heard Ibn Umar state: "I used to purchase when I consented, until I heard Abdullah ibn Muṭīʿ say: 'A man may consent and then retract.'" Ibn Umar said: "It was as if he had awakened me." Thereafter, Ibn Umar would transact purchases while stipulating: "If you accept."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ قَالَ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: كُنْت أَبْتَاعُ إنْ رَضِيتُ، حَتَّى سَمِعْتُ عَبْدَ اللَّهِ بْنَ مُطِيعٍ يَقُولُ: إنَّ الرَّجُلَ لَيَرْضَى ثُمَّ يَدَعَ، قَالَ ابْنُ عُمَرَ: فَكَأَنَّمَا أَيْقَظَنِي، فَكَانَ ابْنُ عُمَرَ يَبْتَاعُ وَيَقُولُ: إنْ أَخَذْت.

L25283 This Ibn Umar does not consider internal consent [to be] anything unless it is expressed verbally, and no dissent from the Companions against his view is known. They revered such a stance when it aligned with their adherence to precedent.

فَهَذَا ابْنُ عُمَرَ لَا يَرَى الرِّضَا بِالْقَلْبِ شَيْئًا حَتَّى يُظْهِرَهُ بِالْقَوْلِ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L25284 As for the restitution of revenue in cases where [something] is returned due to defects, we have mentioned the juristic disagreements thereon.

وَأَمَّا رَدُّ الْغَلَّةِ فِيمَا رُدَّ بِالْعَيْبِ فَقَدْ ذَكَرْنَا الْخِلَافَ فِي ذَلِكَ.

L25285 Zufar ibn al-Hudhayl, Uthman al-Batti, and Ubayd Allah ibn al-Hasan held opinions regarding this matter which we shall mention. As for Zufar ibn al-Hudhayl, he said: If a man purchases a slave girl, consummates the marriage with her, then discovers a defect in her and returns her by a judge's decree, he must return her along with a mahr equivalent to that of her peers. If another man has intercourse with her under doubtful circumstances and takes a mahr for her, or marries her in a valid marriage and takes her mahr, or harms her and takes compensatory payment (arsh) for the injury – then if a defect is

وَقَالَ زُفَرُ بْنُ الْهُذَيْلِ، وَعُثْمَانُ الْبَتِّيُّ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ فِي ذَلِكَ مَا نَذْكُرُهُ -: فَأَمَّا زُفَرُ بْنُ الْهُذَيْلِ فَإِنَّهُ قَالَ: مَنْ اشْتَرَى جَارِيَةً فَوَطِئَهَا ثُمَّ اطَّلَعَ عَلَى عَيْبٍ بِهَا، فَإِنْ رَدَّهَا بِقَضَاءِ قَاضٍ رَدَّهَا وَرَدَّ مَعَهَا مَهْرَ مِثْلِهَا، فَإِنْ وَطِئَهَا غَيْرُهُ بِشُبْهَةٍ فَأَخَذَ لَهَا مَهْرًا، أَوْ زَوَّجَهَا فَأَخَذَ مَهْرَهَا، أَوْ جُنِيَ عَلَيْهَا فَأَخَذَ لِلْجِنَايَةِ أَرْشًا - ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَإِنَّهُ يَرُدُّهَا،

subsequently discovered, he must return her along with the mahr in the case of the valid marriage, the mahr in the case of doubtful intercourse, and the arsh that he had taken for her.

وَيَرُدُّ مَعَهَا الْمَهْرَ فِي الزَّوْجِيَّةِ الصَّحِيحَةِ، وَفِي الْوَطْءِ بِالشُّبْهَةِ، وَيَرُدُّ مَعَهَا الْأَرْشَ الَّذِي أَخَذَ لَهَا.

L25286–25287 Similarly, he must return the fruit of date palms and other trees if he returns the original trees due to a defect. If he consumed any of the fruit, he must return it and compensate with the value of what he consumed from it.

وَكَذَلِكَ يَرُدُّ ثَمَرَ النَّخْلِ، وَالشَّجَرِ، إِذَا رَدَّ الْأُصُولَ بِالْعَيْبِ، فَإِنْ أَكَلَ الثَّمَرَةَ رَدَّهَا وَرَدَّ مَعَهَا قِيمَةَ مَا أَكَلَ مِنْ الثَّمَرَةِ.

L25288 Uthman al-Batti and Ubayd Allah ibn al-Hasan said: If someone purchases a slave, utilizes his labor, and then discovers a defect, he may return him. If he returns him, he must return all proceeds generated by him along with him. Ubayd Allah said: Similarly, if he gifted the slave a gift, he must return the gift along with him as well.

وَقَالَ عُثْمَانُ الْبَتِّيُّ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ: مَنْ اشْتَرَى عَبْدًا فَاسْتَغَلَّهُ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَهُ رَدُّهُ، فَإِنْ رَدَّهُ لَزِمَهُ أَنْ يَرُدَّ الْغَلَّةَ كُلَّهَا مَعَهُ قَالَ عُبَيْدُ اللَّهِ: وَكَذَلِكَ لَوْ وَهَبَ لِلْعَبْدِ هِبَةً فَإِنَّهُ يَرُدُّ الْهِبَةَ مَعَهُ أَيْضًا.

L25289 Mālik said: All the produce—including milk, fruit, and other things—belongs to the buyer, except the offspring, for he must return them along with their mothers as part of the entire livestock and the female slaves.

وَقَالَ مَالِكٌ: الْغَلَّةُ كُلُّهَا لِلْمُشْتَرِي مِنْ اللَّبَنِ، وَالثَّمَرَةِ، وَغَيْرِ ذَلِكَ، حَاشَا الْأَوْلَادَ فَإِنَّهُ يَرُدُّهُمْ مَعَ الْأُمَّهَاتِ فِي الْحَيَوَانِ كُلِّهِ، وَالْإِمَاءِ.

L25290 Abū Ḥanīfah said: As for one who purchased a sheep and milked it, or it gave birth in his possession, or fruit-bearing assets that yielded fruit in his possession—whether he consumed its fruit or not—and then discovered a defect, he has no right to annul the sale. He may only recover the *arsh* for the defect.

وَقَالَ أَبُو حَنِيفَةَ: أَمَّا مَنْ ابْتَاعَ شَاةً فَحَلَبَهَا، أَوْ وَلَدَتْ عِنْدَهُ، أَوْ أُصُولًا فَأَثْمَرَتْ عِنْدَهُ فَأَكَلَ ثَمَرَتَهَا، أَوْ لَمْ يَأْكُلْ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ، فَلَا رَدَّ لَهُ، لَكِنْ يَرْجِعُ بِأَرْشِ الْعَيْبِ فَقَطْ.

L25291 If it was a house he inhabited or rented out, an animal he rode or rented out, or a slave he employed or rented out, and he subsequently discovers a defect, he may return the slave or the animal. He is not obligated to return any earnings, nor anything from inhabiting, renting out, employing, or riding.

فَلَوْ كَانَتْ دَارًا فَسَكَنَهَا، أَوْ آجَرَهَا أَوْ دَابَّةً فَرَكِبَهَا أَوْ آجَرَهَا أَوْ عَبْدًا فَاسْتَخْدَمَهُ أَوْ آجَرَهُ ثُمَّ اطَّلَعَ عَلَى عَيْبٍ فَلَهُ رَدُّ الْعَبْدِ، وَالدَّابَّةِ، وَلَا يَلْزَمُهُ رَدُّ شَيْءٍ مِنْ الْغَلَّةِ، وَلَا رَدُّ شَيْءٍ عَمَّا سَكَنَ وَآجَرَ، وَاسْتَخْدَمَ وَرَكِبَ.

L25292 Among those who held that whatever occurs within the buyer's possession belongs to him and is not returned, but he must return the breeding females, parent plants, and defective goods, are: Shurayh, al-Nakhaʿī, Saʿīd ibn Jubayr, al-Ḥasan, Ibn Sīrīn, al-Shāfiʿī, Sufyān, Aḥmad, Isḥāq, Abū Thawr, Abū ʿUbayd, Abū Sulaymān, and others.

وَمِمَّنْ قَالَ بِأَنَّ كُلَّ مَا حَدَثَ فِي مِلْكِ الْمُشْتَرِي فَإِنَّهُ لَهُ وَلَا يَرُدُّهُ، وَيَرُدُّ الْأُمَّهَاتِ، - وَالْأُصُولَ، وَالشَّيْءَ الْمَعِيبَ: شُرَيْحٌ، وَالنَّخَعِيُّ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَالْحَسَنُ، وَابْنُ سِيرِينَ، وَالشَّافِعِيُّ، وَسُفْيَانُ، وَأَحْمَدُ، وَإِسْحَاقُ، وَأَبُو ثَوْرٍ وَأَبُو عُبَيْدٍ، وَأَبُو سُلَيْمَانَ، وَغَيْرُهُمْ.

L25293 Ali said: As for the opinion of Abu Hanifah and Malik, it is manifestly

contradictory and lacks evidence, and we know of no precedent for their view.

قَالَ عَلِيٌّ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ فَظَاهِرُ الْمُنَاقَضَةِ، وَعَدِيمٌ مِنْ الدَّلِيلِ، وَلَا نَعْلَمُ لَهُمَا أَحَدًا قَالَ بِهِ قَبْلَهُمَا.

L25294 As for the opinion of Uthman, Ubaydullah, and Zufar, their argument is that returning [an item] due to a defect constitutes rescission of the sale. Therefore, since this is a rescission of the sale, it is as though the defective merchandise had never ceased to be the seller's property.

وَأَمَّا قَوْلُ عُثْمَانَ، وَعُبَيْدِ اللَّهِ، وَزُفَرَ، فَيُشْبِهُ أَنْ تَكُونَ الْحُجَّةُ لَهُمْ أَنْ يَقُولُوا: إنَّ الرَّدَّ بِالْعَيْبِ إنَّمَا هُوَ فَسْخٌ لِلْبَيْعِ، فَإِذْ هُوَ فَسْخٌ لِلْبَيْعِ فَكَأَنَّهُ لَمْ يَزَلْ الْمَبِيعُ الْمَعِيبُ فِي مِلْكِ الْبَائِعِ.

L25295–25297 Abū Muḥammad said: This is invalid; it is not an annulment of the contract in the sale, but rather an invalidation of its remaining in the buyer's ownership and the return of it to the seller through evidence necessitating this. Had their assertion been valid, he would be deemed an adulterer due to his illicit act, but this is invalid. Rather, the initial contract remains valid, then an event occurred granting the buyer the right to rescind regarding... Retaining it with him in that state, or returning it henceforth—not by invalidating the prior ownership that originally necessitates restitution—and the success is by Allah—the Most High.

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، مَا هُوَ فَسْخٌ لِلْعَقْدِ فِي الْبَيْعِ، بَلْ هُوَ إبْطَالٌ لِبَقَائِهِ فِي مِلْكِ الْمُشْتَرِي وَرَدِّهِ إلَى الْبَائِعِ بِالْبَرَاهِينِ الْمُوجِبَةِ لِذَلِكَ، وَلَوْ كَانَ مَا قَالُوهُ لَكَانَ زَانِيًا بِوَطْئِهِ، وَهَذَا بَاطِلٌ، بَلْ الْعَقْدُ الْأَوَّلُ صَحِيحٌ، ثُمَّ حَدَثَ مَا جَعَلَ لِلْمُشْتَرِي فِي الْخِيَارِ فِي إبْقَائِهِ بِهِ كَذَلِكَ، أَوْ رَدِّهِ مِنْ الْآنَ، لَا بِإِبْطَالِ الْمِلْكِ الْمُتَقَدِّمِ لِلرَّدِّ أَصْلًا - وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25298 By our covenant with them, they validate the corrupt statement—"The revenue is in return for the liability"—which they invoke as evidence in cases of usurpation and other matters. Then they have contradicted it here, as we mentioned. And success is from Allah, the Most High.

وَعَهْدُنَا بِهِمْ يُصَحِّحُونَ الْخَبَرَ الْفَاسِدَ «الْخَرَاجُ بِالضَّمَانِ» وَيَحْتَجُّونَ بِهِ فِي الْغُصُوبِ، وَفِي غَيْرِ ذَلِكَ، ثُمَّ قَدْ خَالَفُوهُ هَهُنَا كَمَا ذَكَرْنَا، وَبِاَللَّهِ - تَعَالَى - التَّوْفِيقُ.

L25299 An issue where another party holds a right against him, stemming from a sale, a *salam* contract, or other such matters.

[مَسْأَلَةٌ كَانَ لِآخَرَ عِنْدَهُ حَقٌّ مِنْ بَيْعٍ أَوْ سَلَمٍ أَوْ غَيْرِ ذَلِكَ]

L25300 1592. Issue: If someone owes a right to another arising from a sale, salam contract, or similar transactions in every respect—whether involving measurement by volume, weight, or length—then the obligation to measure by weight, volume, or length lies with the debtor.

١٥٩٢ - مَسْأَلَةٌ: وَمَنْ كَانَ لِآخَرَ عِنْدَهُ حَقٌّ مِنْ بَيْعٍ أَوْ سَلَمٍ أَوْ غَيْرِ ذَلِكَ مِنْ جَمِيعِ الْوُجُوهِ بِكَيْلٍ أَوْ وَزْنٍ أَوْ ذَرْعٍ، فَالْوَزْنُ وَالْكَيْلُ وَالذَّرْعُ عَلَى الَّذِي عَلَيْهِ الْحَقُّ.

L25301 Whoever owes dinars, dirhams, or anything specified through a forward sale, dowry, hire contract, kitābah (a contract for a slave's self-manumission), or other such obligations, the responsibility also falls upon the debtor. This is

because Allah—Exalted is He—has obligated every indebted person to fulfill what they owe to its rightful claimant, and the Messenger of Allah—peace be upon him—ruled that every right-holder must be granted their due. Thus, whoever owes a right measured by volume, weight, length, number, or described with pure quality or any defining attribute must deliver what is owed in its stipulated form. Nothing is required of the claimant, for the entitlement belongs solely to them without any obligation imposed upon them.

وَمَنْ كَانَ عَلَيْهِ دَنَانِيرُ أَوْ دَرَاهِمُ أَوْ شَيْءٌ بِصِفَةٍ مِنْ سَلَمٍ، أَوْ صَدَاقٍ، أَوْ إجَارَةٍ، أَوْ كِتَابَةٍ أَوْ غَيْرِ ذَلِكَ، فَالتَّقْلِيبُ عَلَى الَّذِي عَلَيْهِ الْحَقُّ أَيْضًا؛ لِأَنَّ اللَّهَ - تَعَالَى - أَوْجَبَ عَلَى كُلِّ مَنْ عَلَيْهِ حَقٌّ أَنْ يُوفِيَ مَا عَلَيْهِ مِنْ ذَلِكَ مَنْ هُوَ لَهُ عَلَيْهِ وَحَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُعْطَى كُلُّ ذِي حَقٍّ حَقَّهُ، فَمَنْ كَانَ حَقُّهُ كَيْلًا أَوْ وَزْنًا أَوْ ذَرْعًا أَوْ عَدَدًا مَوْصُوفًا بِطِيبٍ، أَوْ بِصِفَةٍ مَا فَعَلَيْهِ إحْضَارُ مَا عَلَيْهِ كَمَا هُوَ عَلَيْهِ - وَلَا شَيْءَ عَلَى الَّذِي لَهُ الْحَقُّ، إنَّمَا الْحَقُّ لَهُ وَلَا حَقَّ عَلَيْهِ.

L25302 And He, the Most High, said: "Give full measure and balance with fairness." [Hud: 85][19]

وَقَالَ - تَعَالَى -: {أَوْفُوا الْمِكْيَالَ وَالْمِيزَانَ بِالْقِسْطِ} [هود: ٨٥] .

L25303 And He, the Exalted, said: {And weigh with the straight balance} [Al-Isra: 35]. And He, the Exalted, said: {Establish weighing with justice, and do not diminish the balance} [Ar-Rahman: 9]. If they cite the words of Allah, the Exalted: {Woe to the defrauders} [Al-Mutaffifin: 1] {Who, when they take measure from people, demand full measure} [Al-Mutaffifin: 2] {But when they measure or weigh for them, they cause loss} [Al-Mutaffifin: 3], we say: Yes, this is our view; for Allah, the Exalted, has established in this verse that measuring and weighing are obligations upon those obligated to fulfill others' rights, and He threatened them with punishment for causing loss to the rightful claimant and for fraud. There is no evidence in His statement that when they take measure from people, they demand full measure, to indicate that they measure for themselves, or that the one entitled to a right does not measure for them. For the Exalted only mentioned their claiming in full what is due to them in measure, and claiming in full is achieved through any measurer's act of measuring. Thus, they have no basis in this wording. His statement confirms: {But when they measure or weigh for them, they

وَقَالَ - تَعَالَى -: {وَزِنُوا بِالْقِسْطَاسِ الْمُسْتَقِيمِ} [الإسراء: ٣٥] وَقَالَ - تَعَالَى -: {وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلا تُخْسِرُوا الْمِيزَانَ} [الرحمن: ٩] فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ - تَعَالَى -: {وَيْلٌ لِلْمُطَفِّفِينَ} [المطففين: ١] {الَّذِينَ إِذَا اكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ} [المطففين: ٢] {وَإِذَا كَالُوهُمْ أَوْ وَزَنُوهُمْ يُخْسِرُونَ} [المطففين: ٣] قُلْنَا: نَعَمْ، هَذَا هُوَ قَوْلُنَا؛ لِأَنَّ اللَّهَ - تَعَالَى - جَعَلَ فِي هَذِهِ الْآيَةِ الْكَيْلَ وَالْوَزْنَ عَلَى الَّذِينَ عَلَيْهِمْ الْحَقُّ، وَتَوَعَّدَهُمْ عَلَى إخْسَارِ ذِي الْحَقِّ، وَعَلَى التَّطْفِيفِ، وَلَيْسَ فِي إخْبَارِهِ - تَعَالَى - بِأَنَّهُمْ إذَا اكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ دَلِيلٌ عَلَى أَنَّهُمْ يَكْتَالُونَ لِأَنْفُسِهِمْ، وَأَنَّ الَّذِي لَهُمْ عَلَيْهِ الْحَقُّ لَا يَكِيلُ لَهُمْ؛ لِأَنَّهُ - تَعَالَى - إنَّمَا ذَكَرَ اسْتِيفَاءَهُمْ مَا لَهُمْ مِنْ الْكَيْلِ فَقَطْ، وَالِاسْتِيفَاءُ يَكُونُ بِكَيْلِ كَائِلٍ مَا، فَلَا مُتَعَلَّقَ لَهُمْ فِي هَذِهِ اللَّفْظَةِ - وَصَحَّ بِقَوْلِهِ - تَعَالَى -: {وَإِذَا كَالُوهُمْ أَوْ وَزَنُوهُمْ يُخْسِرُونَ} [المطففين: ٣] أَنَّ الَّذِي عَلَيْهِ الْحَقُّ هُوَ يَكِيلُ وَيَزِنُ، وَأَنَّهُ مَنْهِيٌّ عَنْ الْإِخْسَارِ.

[19] **Qur'an references (L25302):** Qur'an 11:85 (Hud).

cause loss} [Al-Mutaffifin: 3] that the one obligated to fulfill the right is the one who measures and weighs, and he is prohibited from causing loss.[20]

The jurisprudential ruling on one who purchased land: it is his, with all that is within it.

Issue: Whoever purchases land owns it with all that is in it, such as existing buildings or growing trees.

Similarly, whoever purchases a house owns its entire structure and everything permanently fixed within it—such as doors, staircases or steps, and other such components. This constitutes a definite consensus, for people have traded houses and lands in this manner continuously since the time of Allah's Messenger (peace and blessings be upon him). Not a day passes without a house or land being sold accordingly. However, items placed within the property but not structurally fixed—such as doors, staircases, steps, bricks, marble, wood, or similar materials—do not belong to the purchaser. Likewise, crops that are uprooted or have not yet taken root remain the seller's property. Success comes solely from Allah, the Most High.

Whoever purchases debris or trees separate from the land, all such things must be uprooted without exception, and success is from Allah, the Most High.

The Issue of the Giving of Charity by Merchants in the Course of Their Selling and Buying

1594 - Issue: It is obligatory upon merchants to give charity during their buying and selling, offering what their souls are pleased to give. This is based on what we have reported through the transmission of Aḥmad ibn Shuʿayb: Muḥammad ibn Qudāmah al-Miṣṣīṣī informed me from Jarīr from Manṣūr from Abū Wā'il from Qays ibn Abī Gharzah, who said: "The Messenger of

[20] **Qur'an references (L25303):** Qur'an 17:35 (Al-Isra); Qur'an 26:182 (Ash-Shu'ara); Qur'an 55:9 (Ar-Rahman); Qur'an 83:1 (Al-Mutaffifin); Qur'an 83:2 (Al-Mutaffifin); Qur'an 83:3 (Al-Mutaffifin).

[مَسْأَلَة مَنْ اشْتَرَى أَرْضًا فَهِيَ لَهُ بِكُلِّ مَا فِيهَا]

مَسْأَلَةٌ: وَمَنْ اشْتَرَى أَرْضًا فَهِيَ لَهُ بِكُلِّ مَا فِيهَا مِنْ بِنَاءٍ قَائِمٍ، أَوْ شَجَرٍ نَابِتٍ.

وَكَذَلِكَ كُلُّ مَنْ اشْتَرَى دَارًا فَبِنَاؤُهَا كُلُّهُ لَهُ، وَكُلُّ مَا كَانَ مُرَكَّبًا فِيهَا مِنْ بَابٍ أَوْ دَرَجٍ أَوْ غَيْرِ ذَلِكَ - وَهَذَا إِجْمَاعٌ مُتَيَقَّنٌ، وَمَا زَالَ النَّاسُ يَتَبَايَعُونَ الدُّورَ وَالْأَرْضِينَ مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَكَذَا لَا يَخْلُو يَوْمٌ مِنْ أَنْ يَقَعَ فِيهِ بَيْعُ دَارٍ أَوْ أَرْضٍ هَكَذَا، وَلَا يَكُونُ لَهُ مَا كَانَ مَوْضُوعًا فِيهَا غَيْرَ مَبْنِيٍّ، كَأَبْوَابٍ، وَسُلَّمٍ، وَدَرَجٍ، وَآجُرٍّ، وَرُخَامٍ، وَخَشَبٍ، وَغَيْرِ ذَلِكَ؛ وَلَا يَكُونُ لَهُ الزَّرْعُ الَّذِي يُقْلَعُ وَلَا يَنْبُتُ، بَلْ هُوَ لِبَائِعِهِ - وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ -.

وَمَنْ ابْتَاعَ أَنْقَاضًا، أَوْ شَجَرًا، دُونَ الْأَرْضِ، فَكُلُّ ذَلِكَ يُقْلَعُ وَلَا بُدَّ، وَبِاللَّهِ - تَعَالَى - التَّوْفِيقُ.

[مَسْأَلَة التَّصَدُّق مِنْ التجار فِي خلال بيعهم وشرائهم]

١٥٩٤ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى التُّجَّارِ أَنْ يَتَصَدَّقُوا فِي خِلَالِ بَيْعِهِمْ وَشِرَائِهِمْ بِمَا طَابَتْ بِهِ نُفُوسُهُمْ -: لِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ قُدَامَةَ الْمِصِّيصِيُّ عَنْ جَرِيرٍ عَنْ مَنْصُورٍ عَنْ أَبِي وَائِلٍ عَنْ قَيْسِ بْنِ أَبِي غَرْزَةَ قَالَ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَا مَعْشَرَ التُّجَّارِ إِنَّهُ يَشْهَدُ بَيْعَكُمْ الْحَلِفُ، وَاللَّغْوُ: شُوبُوهُ بِالصَّدَقَةِ» .

Allah (peace be upon him) said: 'O assembly of merchants! Your sales are attended by swearing and frivolous speech—mix them with charity.'"

L25311 His command—may the peace and blessings of Allah be upon him—is obligatory. Allah the Exalted has said: _"Let those who deviate from his command beware, lest a trial befall them or a painful punishment."_ [An-Nur: 63] His statement—peace be upon him—_"Mix it with charity"_ necessitates constancy and repetition in the linguistic context. And success comes only from Allah, the Exalted.[21]

وَأَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْفَرْضِ، قَالَ اللَّهُ - تَعَالَى -: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] وَقَوْلُهُ - عَلَيْهِ السَّلَامُ -: «شُوبُوهُ بِالصَّدَقَةِ» يَقْتَضِي الْمُدَاوَمَةَ وَالتَّكْرَارَ فِي مَوْضُوعِ اللُّغَةِ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[21] **Qur'an references (L25311):** Qur'an 24:63 (An-Nur).